

**Order Decision**

Inquiry opened on 15 November 2016

**by Mark Yates BA(Hons) MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs Decision date: 23 December 2016**

**Order Ref: FPS/J0350/7/1**

* This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) and is known as the Slough Borough Council Bridleway 93 Modification Order 2015.
* The Order was made by Slough Borough Council (“the Council”) on 15 September 2015 and proposes to add a bridleway to the definitive map and statement, as detailed in the Order Map and Schedule.
* There were four objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

**Procedural Matters**

1. I held a public inquiry into the Order on 15-16 November 2016 at the Council’s offices. I visited the site alone prior to the inquiry and conducted a further visit accompanied by the interested parties on 16 November 2016.
2. It is not disputed that a public right of way subsists. The Council believes that a bridleway has been dedicated under statute or common law over the varying width specified in the Order. In contrast, two of the objectors (Mrs Young1 and Mr Phillips2) rely on dedication at common law. In this respect, reliance is placed on the available historical documentary evidence and the user evidence provided. They submit that a vehicular highway with a width of 30 feet should be recorded in the definitive map and statement.
3. There was no objection to the Council’s request to record the inquiry.

However, this was subject to copies of the recording being provided to myself and Mrs Young and Mr Phillips.

**Main Issues**

1. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a right of way, which is not shown in the map and statement, subsists. The burden of proof to be applied is the balance of probabilities.
2. I shall first assess whether the documentary evidence is sufficient to infer the dedication of a public right of way at some point in the past. Section 32 of the

Highways Act 1980 (“the 1980 Act”) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway. If

1. She is the applicant for the Order
2. He is acting on his own behalf in relation to this matter

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I do not find that the dedication of a way can be inferred from the documentary evidence, I shall consider the user evidence provided. The user evidence can be assessed under common law or statute.

1. Dedication at common law requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public as of right3 may support an inference of dedication and may also show acceptance of the dedication by the public.
2. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the 1980 Act. This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
3. Should I find that a vehicular highway subsists, I shall have regard to the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”). This Act has the effect of extinguishing unrecorded public rights of way for mechanically propelled vehicles unless one or more of the exemptions outlined in Section 67(2) or (3) of the Act is applicable.

**Reasons**

***Background matters***

1. The route included in the Order corresponds to Blandford Road North (“BRN”) and commences at the junction with Langley Road, where there is initially a wide area of land. However, the width in the Order is taken to broadly correspond to the surfaced track rather than the whole of the land. The current available width narrows further down BRN in light of the boundary fencing erected in 1981-82 in relation to properties on Blandford Close. Beyond the southern end of the Order route are a grass area and a surfaced path leading to Blandford Road South (“BRS”).
2. It is not my role to make a definitive ruling on landownership, nor is it necessary for the purpose of my decision to do so. The Council’s position is that the land crossed by BRN was conveyed on 11 February 1952 from W J Lobjoit & Son Ltd as part of the transfer of a large area of land at Ryvers Farm to the former London County Council. It is apparent that this position is not necessarily accepted by Mrs Young and Mr Phillips. The land then passed to the Greater London Council and later Slough Borough Council. There is no paper title for the land crossed by BRN but the Council was able to have the land registered in 2008. It is nevertheless not disputed that there was a landowner with the capacity to dedicate a public right of way.
3. Mrs Young made an application under Section 56 of the 1980 Act in 2013 for the Council to repair BRN. The application was dismissed by agreement of the parties. This issue is relevant in the sense that two reports were produced at the time by Mr Phillips and Dr Crosby on behalf of Mrs Young and the Council respectively. These reports are relied upon by the parties in relation to the documentary evidence addressed below.
4. Without force, secrecy or permission

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***The documentary evidence***

1. A route is shown on the 1761 Roque map which appears to broadly correspond initially to BRN. The route shown continues further to the south east and terminates within a rectangular parcel of land. A short section of this route from the junction with the present Langley Road is shown on Jeffrey’s map of 1770. Mr Phillips has provided a copy of a traced plan stated to have been originally produced in 1750. However, he acknowledges that the provenance of this plan cannot be verified. This plan shows the relevant route leading out of Langley Road and continuing south-eastwards. The First Edition Ordnance Survey (“OS”) map, published in the late 1830s but initially surveyed in 1811, shows a route proceeding to the rectangular parcel in the same manner as the Roque map.
2. The early maps indicate that there was a route leading out of Langley Road when the land was surveyed. However, they provide no confirmation regarding the status of the roads and tracks shown. The Roque and OS maps are only supportive of a feature that terminated at a particular parcel of land. It cannot be inferred from these maps that the route formed part of the local highway network. Members of the public looking at the early maps would have been made aware that the route was not a through route.
3. A local inclosure Act for the parish of Langley Marish was made in 1809 which incorporated the provisions of the Inclosure Consolidation Act of 1801. The land was surveyed in 1809 and a plan produced. The Langley Marish Inclosure Award was subsequently made on 26 February 1813.
4. The route depicted on the early maps is shown on the inclosure map. There appears to be a solid line across the route adjacent to the south western corner of parcel 413. The section to the north of this point is annotated as “*Private Road 25*”. Private Road 25 is described in the inclosure award as having awidth of 30 feet4 and branching out of the present Langley Road (awarded as public road number 6) and “*extending in a Southward direction between the Allotments set out to Isleworth Poor and the Public Gravel Pitt then continuing between Old Inclosures belonging to the Isleworth Poor and Edward Peter Ives where the same enters an ancient Inclosure belonging to the said William Gilkes which said Private Road is set out by us as an Occupation Road for the use of the Owner and Occupier of the said Ancient Inclosure and the Owners and Occupiers of the Lands and Grounds adjoining the said Occupation Road their Work People and Servants*”.
5. A clause in the inclosure award outlines that “*all the said Private and Occupation Roads shall for ever hereafter be supported and kept in repair by and at the expense of the several Owners and Proprietors of the lands and Grounds for whose use and benefit the said Private and Occupation Roads are respectively by us set out in Proportion to the quantity of the Land occupied by them respectively*”.
6. There is a distinction between the public and private roads set out in the inclosure award. I see no reason from the information supplied from the local

Act and inclosure award to interpret ‘*private*’ any differently from its present meaning. It is clear that a section of the historical route was awarded as a private road for the benefit of particular parties. It is also clear that the private and occupation roads were to be maintained by those parties who benefitted

1. Except where it passed between old inclosures

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from each road. I take “*occupation road*” in the description to equate to a road serving as a means of access to particular parcels of land.

1. In relation to the single reference to “*said public road*” found in the description of an adjacent parcel (numbered 412), it could be an error or intended to apply to public road number 6, as suggested by the Council’s witness (Mrs Rumfitt).

In this respect, the description refers earlier to public road number 6 and private road number 25. Nonetheless, as outlined above, the award clearly set out a private road over this part of the historical route. The remainder of the historical route was not set out in the award. It is described in one reference as an “*old inclosed lane*”. This suggests to me that it was enclosed by physical boundaries and provides no indication of status.

1. I do not consider that the route shown on the early maps can be determined to have been a highway by reason of it providing access to particular common fields. The use of the route is likely to have been confined to those people who had rights in relation to these fields. There is nothing to suggest that the route was available for the use of all members of the local community or parish. The award itself only made provision for a private road over part of the historical cul de sac route for use by a limited group of people. Further, it is apparent that the local Act incorporated the provisions of the Inclosure Consolidation Act of 1801. Section 11 of the latter had the effect of stopping up any pre-existing roads that were not set out in the award. I agree with Mr Buley, on behalf of the Council, that the general savings clause in the local Act5 preserved existing rights unless they were extinguished by the award.
2. Parcel 414 was allotted in the inclosure award as one of the four public gravel pits in the ownership of the surveyors of the highways of the parish. This parcel was bounded to the north by public road number 6 and to the east by private road number 25. The gravel pits were to have convenient roads to them. They were to be used by the proprietors of land and estates within the parish and their tenants for the repair of the public and private roads.
3. Mr Phillips believes it is more likely that access to this gravel pit was from the private road rather than the public road. It is not possible to determine from the historical evidence whether this was the case. If it were the case, only limited groups of people were entitled to use the gravel pit. Further, if there was an entrance to the pit from the private road, this could have been located at any point along its length. The gravel extracted was to be used for both public and private purposes. Research undertaken by Dr Crosby in relation to the Langley Marish Parish minutes indicates that this gravel pit had been exhausted by 1847. He also points to an earlier minute which could suggest that the pit ceased to be used as early as 1830.
4. I note the point made by Mr Phillips regarding statute labour; however, it is not possible to infer from the evidence any wider use of the private road beyond those entitled by the award to use this road. Such use was likely to have been over so much of the private road as was necessary to access the relevant parcels of land. This would apply equally to any access to the gravel pit until it ceased to be used for this purpose. It also needs to be borne in mind that four parcels of land were allotted in the award for use as gravel pits.
5. A proportion of the historical route is shown on Bryant’s 1825 map under the “*Lanes & Bridleways”* category. Although it continues to the south east, the
6. This broadly corresponds to the savings clause found in Section 41 of the Inclosure Consolidation Act.

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route is again represented as a cul de sac. I do not find that this map adds anything further to the pre-inclosure maps in terms of the status of the relevant route. The depiction of a ‘*lane’* could be indicative of a route that was capable of being used by vehicles, whether of a public or private nature.

1. An 1845 tithe map shows the cul de sac route outside of the tithed parcels of land and coloured sienna. Highways were incidental to the tithe process and this will usually serve to limit the evidential weight of these maps. The exclusion of a route from the surrounding parcels of land could be indicative of a public or private route as both would have impacted upon the productivity of the land being assessed.
2. It may be possible to draw an inference from the colouring of the route in the same manner as the present public roads in the locality but there could be another explanation, such as the physical nature of these routes. Mrs Young makes a comparison between the depiction of the historical route and an existing private road. Whilst the latter is shown differently, the central strip is shown coloured. In the absence of a map key, the tithe map by itself will carry limited weight and needs to be assessed in light of the other evidence provided.
3. A proportion of the historical route is shown on the 1876 OS map. The continuation southwards is represented by pecked lines beyond a solid line. I take this solid line and the others shown to indicate a physical boundary. The presence of the pecked lines southwards suggests that there was a means of access beyond this boundary. In terms of the dashed line shown at the northern end of the route, this is indicative of the junction with Langley Road. I do not believe that any inference can be drawn from the solid and dashed lines shown in terms of the status of the route. Nor does the fact that the route is given its own parcel number necessarily point to public status. The accompanying book of reference lists this parcel as a “*Road*” but does not state whether it was viewed as a public or private road.
4. A map compiled in relation to the 1910 Finance Act shows the route within a particular hereditament with no claimed deduction recorded for any public rights of way through this hereditament. This evidence is not supportive of the route being viewed at the time as a highway. It cannot be determined that the valuer made a mistake, as asserted by Mr Phillips and Mrs Young. However, it needs to be borne in mind that the existence or otherwise of a right of way was incidental to the Finance Act.
5. The route shown on the 1876 OS map is represented on the later OS maps of 1924 and 1932. The latter shows a route by way of pecked lines continuing to the south east past Ryvers Farm to the London Road. A 19566 OS map shows

BRN annotated as “*Blandford Road*”. BRS is shown as a separate feature to the south. I address the use arising out of the housing development which occurred during the 1950s later in this decision. In terms of the naming of a road, I concur with Mrs Rumfitt that this provides no indication of status as named private roads do exist in some cases. The two sections were subsequently named as BRN and BRS in 1958. It is apparent that a proposed link road incorporating the two sections was never implemented. In respect of the annotation “*Occupation Road*” which appears, for instance, on a Land Registry plan of 1926, I have concluded that this term is likely to have referred to a road used for access purposes.

1. Surveyed in 1952

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1. I have concluded that the evidence is not supportive of the existence of a highway over the historical route shown on the pre-inclosure maps. The inclosure award itself only made provision for a private road over part of this route. Having regard to my conclusions regarding the other pieces of documentary evidence, I do not find on balance that an implication of the dedication of a public right of way can be inferred from this evidence. Further, I am not satisfied that the submissions made by Mr Phillips in relation to the Highways Act 1835 have any bearing on my decision in light of the documentary provided. The Order therefore needs to be determined in relation to the user evidence provided.

***The user evidence***

1. Whilst the Council relies upon dedication under Section 31 of the 1980 Act, it accepts that there is sufficient evidence to infer the dedication of a public bridleway prior to 1959 under common law. This view takes into account the evidence of use by pedestrians, cyclists and horse riders. If it can be established that a public right of way of a particular status was dedicated at common law those rights will exist irrespective of the subsequent use by the public during the potential periods for the purpose of statutory dedication.
2. The evidence of personal use dates back to 1940 in the case of Mr Harvey. Following the acquisition of the Ryvers Farm site in 1952, by the London County Council, the construction of properties commenced on what is known as the Langley Estate. One of the witnesses, Mrs Watson confirms that her family moved to Trelawney Avenue in 1954 and her use commenced in that year.

She says one of the regular routes she rode incorporated BRN and it was used by groups of five or six riders from a riding school. Her personal equestrian use continued until 1979.

1. Mrs Watson outlines that she used the route on foot and cycle to get to particular schools. It is apparent that BRN was used by people from the Langley Estate in general. There is also evidence of use of BRN by parents and children following the opening of the Ryvers School in 1956. Mrs Watson says that her family moved to BRS in around 1956/57 and from that time she personally witnessed many people using BRN to get to the bus stops located on Langley Road and to cycle to work and school. She also says that she saw motor vehicles using BRN from 1956/7 onwards in order to travel between the estate and Langley Road and Middle Green Road.
2. There is written evidence of personal use from another six people whose use commenced prior to 1959. This written evidence includes personal use on foot, horseback and pedal cycle. It is apparent from the evidence of Mr Harvey that his early use also encompassed the route through to London Road depicted on the 1932 OS map. Mrs Jago states that her late husband cycled along this route from the 1930s. There is additional evidence of use from the 1960s onwards.
3. It is accepted that a chain link fence was erected in the early 1960s in order to prevent use by four wheeled vehicles. Mrs Watson says that in around 1961 a post was put in place at the southern end of BRN. At the same time a chain link fence was erected from the western boundary to a point about 3 feet from the post. She recalls that the chain link fence lasted a couple of years before it became dilapidated. Mrs Watson also recollects a collision between a vehicle and the chain link fence. A 1961 OS map shows the post and an adjacent solid line to the west. In addition, a 1968 photograph provided shows a post in

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place on the eastern side and a separate wider track to the west. This evidence suggests that there was sufficient concern regarding use by four wheeled vehicles for action to be taken to prevent such use. It is apparent that this action did not prevent use by cyclists.

1. There is evidence that, prior to the erection of the present fencing in 1981-82, there was a track on the eastern side of BRN and to the west was a belt of trees and other vegetation. Beyond the trees were a fence and a field known as Broad Platts Meadow in which horses were kept. Mr Harvey describes the western part as comprising of a dense wood around 15 feet wide. The trees are shown on the 1956 and 1961 OS maps. However, no trees are depicted at either end of BRN and this is consistent with the evidence of some of the witnesses. This is most evident towards the southern end where the trees extend only as far as the property annotated on the map as “*Garlands”*.
2. There is evidence of use of the western section until the fencing was erected, most notably by people following a worn path around the trees. I am not convinced from the descriptions of this path that there would have been any significant use by horse riders or cyclists through the trees. Clearly the use by motor vehicles would have been confined to the eastern track. I consider it likely that the track would have provided the most convenient means of access for all users. Activities such as playing in the area generally and making camps in the trees would not be consistent with highway use. Further, people leaving the eastern track to feed or stroke horses would only cross any path within the trees.
3. The parties agree that the dedication of a public right of way occurred prior to 1959. Although the personal evidence is limited after such a lengthy period of time, the evidence points to widespread use by the public. In reaching this conclusion, I give particular weight to the detailed evidence of Mrs Watson. The Council accepts that this use included use by cyclists. It is also apparent that motor vehicles used BRN on occasions prior to the action taken in the early 1960s. The evidence of Mrs Watson indicates that the use by motor vehicles was not confined to residents of BRN.
4. An issue arises out of the acknowledged use by cyclists. Whilst I note that Mrs Young challenges particular aspects of the judgment in the case of *Whitworth & ORS and Secretary of State for Environment, Food and Rural Affairs 2010*

(“*Whitworth*”), I am bound by this judgment. However, a right to cycle on a bridleway did not exist prior to the passing of the 1968 Countryside Act7. Mr Phillips draws attention to Section 85 of the Local Government Act 1888, which extended the definition of a carriage to include bicycles.

1. The Council accepts that the dedication of a bridleway can be inferred at common law following public use that included cyclists. Nonetheless, this cycling use would have been viewed at the time as being of a vehicular nature. This is distinct from the issue decided in *Whitworth*. In these circumstances, it is not in my view appropriate to adopt the principal highlighted by the Council from *Whitworth,* namely that I should infer the form of dedication least burdensome to the landowner. There is also some evidence of use of a through route by motor vehicles. The erection of the structures in the early 1960s to deter use by four wheeled vehicles occurred too late in respect of the accepted earlier dedication of a highway. Having regard to the above, I conclude on the balance of probabilities that a vehicular highway subsists.
2. Section 30(1) of this Act

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1. Turning to the width of the route, it cannot be determined that the original western boundary was set out with reference to the highway. In my view, it was only set out in relation to a historical private road. Therefore, in determining the width of the highway, regard should be given to the width used by the public prior to 1959.
2. It appears to me that the vehicular use would have been generally confined to the eastern section rather than through the belt of trees. In this respect, for the purpose of recording the public vehicular rights, I agree with the Council that the section through the trees should not be shown on the definitive map. However, it is apparent that the land covered by the trees did not extend over the full length of BRN. This is most apparent from looking at the 1956 OS map. The wide entry point at the southern end is clearly visible on the later photograph of 1968. I therefore conclude that the relevant sections at each end should have a recorded width of 9 metres.
3. There is an issue in relation to the claimed use by pedestrians of a route through the area containing the trees. It is possible that such use could be supportive of the existence of a separate footpath prior to the erection of the fencing in 1981-82. However, the alignment of the worn path mentioned within this area cannot be determined from the evidence. Further, I consider that there are practical difficulties in transposing a separate path on the Order Map.

***The application of the 2006 Act***

1. Mr Phillips put forward two possible exemptions which would lead to the preservation of public rights for mechanically propelled vehicles. I find there to be no evidence in support of the exemption in Section 67(2)(e) of the 2006 Act being applicable. This only applies where the way was created by virtue of use by mechanically propelled vehicles during a period ending before 1 December 1930.
2. The second claimed exemption is found in Section 67(2)(b), namely if

“*immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980*”. The Council has provided an extract from its currentlist of streets and has no reason to believe that the relevant entry differs from the position immediately prior to the commencement of the 2006 Act. BRN is included in the list and recorded as a “*private street*”.

1. The above entry in the list of streets does cause a little concern bearing in mind the purpose of this document. However, the intention of the exemption is to preserve unrecorded public rights of way which are shown in the list of streets. It may be the case that BRN should not have been included in this document. However, a literal interpretation indicates that the public rights for mechanically propelled vehicles are not extinguished where the route in question was recorded in the list of streets immediately prior to the commencement of the 2006 Act. It follows in my view that the route should be recorded in the definitive map and statement as a byway open to all traffic.

**Conclusion**

1. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

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**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:
   * Delete all of the references in the Order to “*bridleway*” and insert “*byway open to all traffic*”.
   * Replace the notation on the Order Map for a bridleway with the notation for a byway open to all traffic and amend the map key accordingly.
   * Replace the existing widths of the relevant sections of the route shown on the Order Map with a width of 9 metres.
2. Since the confirmed Order would show as a highway of one description a way which is shown as a highway of another description and to affect land not affected by the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mark Yates*

**Inspector**

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**APPEARANCES**

**For the Council:**

Mr T. Buley Barrister instructed by the Council

He called:

Mrs S. Rumfitt Consultant

**The Objectors:**

Mr P. Phillips

Mrs M. Young Applicant

She also called:

Mr B. Basra

Mr S. Arora

Ms J. Rouse

Mr S. Young

Mrs D. Watson

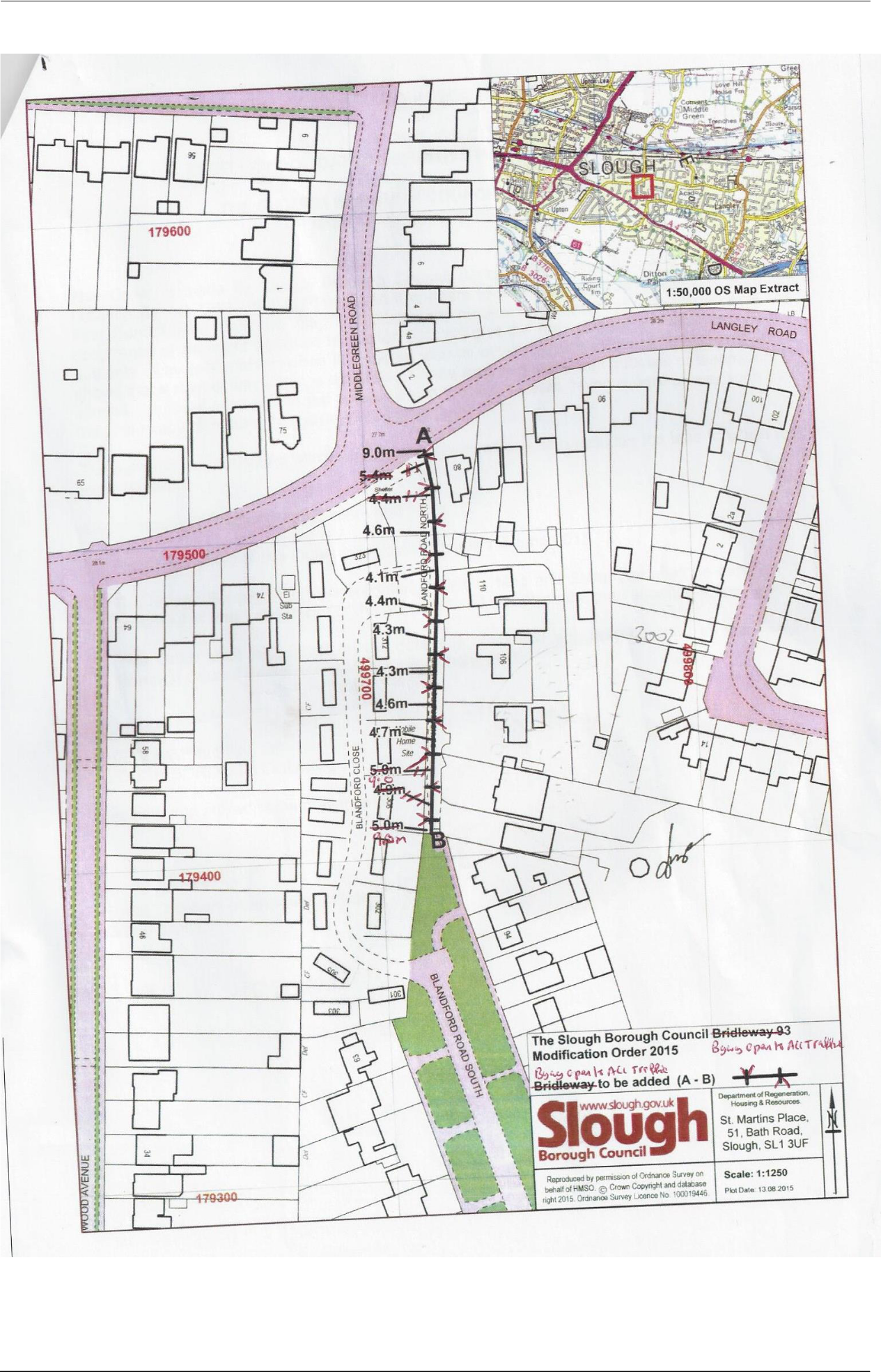
Mr L. Watson

**DOCUMENTS**

1. Opening statement for the Council
2. Authorities relied upon by Mrs Young
3. Statement of Ms Rouse
4. Transcripts of the savings clauses in the relevant inclosure Acts
5. Extract from the 2006 Act
6. Testimony of Mrs Watson
7. Testimony of Mr Watson
8. Submissions of Mrs Young
9. DVD provided by Mrs Young
10. Closing submission of Mr Phillips
11. Closing submissions of Mrs Young
12. Closing submissions for the Council
13. Recording of the inquiry

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