

Definitive Map and Statement Modification Order

S53 – Wildlife and Countryside Act 1981, Claim to register Public Footpath at Laurel Avenue, Chadderton PINS Appeal

Portfolio Holder:

Councillor C Goodwin, Cabinet Member for Transport & Highways

Officer Contact: Nasir Dad, Director of Environment

Report Author: Liam Kennedy, PRow Officer
Ext. 4325

Highway Regulation Committee – 26 March 2026

Reason for Decision

Following the decision of the Highways Regulation Committee on 19 June 2025 not to approve the application for the making of an Order for the addition of the claimed route to the Definitive Map & Statement at Laurel Avenue, Chadderton, the applicant submitted an appeal to the Planning Inspectorate. The decision of the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs is that Oldham Council is now directed to make an Order as they are satisfied that the legal tests for use of the claimed route 'as of right' for a continuous period of 20 years are satisfied.

Executive Summary

To seek approval (as directed by the Secretary of State) for the making of a Definitive Map and Statement Modification Order for the addition of the claimed route at Laurel Avenue, Chadderton to the Definitive Map & Statement as detailed in the report (Appendix 1) and the Director of Environment and the Director of Legal Services be authorised to carry out the necessary procedures to make the Order and to confirm the Order in the event that no objections are made to it.

Recommendations

It is recommended that:

1. The Council make a Definitive Map and Statement Modification Order for the addition of the claimed footpath route at Laurel Avenue, Chadderton to the Council's Definitive Map and Statement and the Director of Environment and the Director of Legal Services be authorised to carry out the necessary procedures to make the Order and to confirm the Order in the event that no objections are made to it.

**Definitive Map and Statement Modification Order. S53 – Wildlife and Countryside Act 1981
Claim to register Public Footpath at Laurel Avenue, Chadderton PINS Appeal**

1 Background

- 1.1 An application for a Modification Order was submitted by Graham Taylor, Chairman of the Firwood and District Residents Association, following the erection of gates by the current landowner in November 2024. The evidence in support of the application consists of 43 user evidence forms and maps claiming more than 20 years use of the Application Route. The user evidence must be considered against the statutory provisions in section 31 of the Highways Act 1980 (“the 1980 Act”) concerning dedication of a highway through 20 years’ usage as of right.
- 1.2 The application and associated evidence was investigated and considered by the Public Rights of Way Officer. The Officer was satisfied that considering all evidence, upon the balance of probabilities a right of way exists and that there was no evidence prior to the erection of the gates in November 2024 of a lack of intention to dedicate by the landowner. These findings were reflected in the Officer recommendation in the report presented to the Highway Regulation Committee on 19th June 2025.
- 1.3 At the Highway Regulation Committee meeting on 19th June 2025 the decision made by the Committee was not to approve the application for the addition of the claimed route to the Definitive Map & Statement, based on the landowner’s objection .
- 1.4 The applicant exercised their right to appeal the decision to the Planning Inspectorate and an Inspector was appointed to process the appeal and determine whether or not the appeal would be upheld or the decision of the Highways Regulation Committee confirmed.
- 1.5 The appointed Inspector has investigated and issued their decision (Appendix 2) that the appeal be allowed and Oldham Council is now directed to make a Definitive Map Modification Order under section 53(2) and Schedule 14 of the Wildlife and Countryside Act 1981 within 3 months.

2 Proposal

- 2.1 The Council make a Definitive Map Modification Order for the addition of the claimed route at Laurel Avenue Chadderton as detailed in the appended report and the Director of Environment and the Director of Legal Services be authorised to carry out the necessary procedures to make the Order and to confirm the Order in the event that no objections are made to it.

3 Community Cohesion Implications, including crime and disorder implications under Section 17 of the Crime and Disorder Act 1998

None

4 Risk Assessments

None.

5 Procurement Implications

None.

6 Current Position

6.1 The Planning Inspectorate have issued their decision and we are legally obliged to comply with their instruction.

7 Options/Alternatives

7.1

- i. Option 1: To approve the recommendation.
- ii. Option 2: Not to approve the recommendation.

8 Preferred Option

8.1 The preferred Option is Option 1, as it is a legal requirement to follow the direction issued by the Inspector on behalf of the Secretary of State.

9 Consultation

9.1 The Ward Members have been consulted and Councillors McLaren, Brownridge and Moores fully support the making of the Order.

10 Financial Implications

10.1 See appended report (Appendix 1)

11 Legal Implications

11.1 Under Schedule 14 of the Wildlife and Countryside Act 1981, where the Council decide not to make a Definitive Map Modification Order, the applicant for the Order may appeal to the Secretary of State within 28 days of receipt of the Council's decision. If on considering the appeal the Secretary of State considers that an order should be made, he shall give the Council such directions as appear to him necessary for the purpose.

11.2 The Council has been directed to make a Definitive Map Modification Order for the claimed route at Laurel Avenue, Chadderton. Therefore the Committee must agree to make the Order. As stated in the original report at Appendix 1 and confirmed by the Inspector at paragraphs 7 -10 of her decision, the discrepancy between the user evidence forms and the landowner's photos is best examined at the objection stage of the order making process as the Planning Inspectorate can hold a public inquiry where the user evidence and the landowner's photos can be examined in more detail. (A Evans)

12 Equality Impact, including implications for Children and Young People

12.1 No

13 Key Decision

13.1 No

14 Key Decision Reference

14.1 N/A

15 **Background Papers**

15.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

There are no background papers for this report.

16 **Appendices**

16.1 Appendix 1 – Highways Regulation Committee Report 19th June 2025
Appendix 2 – PINS Decision Letter 2nd March 2026

Definitive Map and Statement Modification Order

S53 – Wildlife and Countryside Act 1981, Claim to register Public Footpath at Laurel Avenue, Chadderton

Portfolio Holder:

Councillor C Goodwin, Cabinet Member for Transport & Highways

Officer Contact: Nasir Dad, Director of Environment

Report Author: Liam Kennedy, PRow Officer

Ext. 4325

Highway Regulation Committee – 19 June 2025

Reason for Decision

To determine an application submitted under Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act), requesting that a Modification Order be made in respect of a stepped route running from the side of 31 Laurel Avenue, Chadderton to the Rochdale Canal towpath (the Application Route), which is shown on the attached plan, 764/A4/252/1.

Executive Summary

An application has been received to register a Footpath on the Definitive Map and Statement. The application meets the required legal test of 20 years use of the whole of the Application Route 'as of right'. The report is requesting that the Highway Regulation Committee consider whether to approve or reject the application to make a Definitive Map Modification Order in respect of the Application Route and if the application is approved, the Director of Environment be authorised to carry out the necessary procedures to make the Order and to confirm the Order in the event that no objections are made to it.

Recommendations

It is recommended that:

1. The application for a Modification Order in respect of the route at Laurel Avenue, Chadderton, be recorded in the Definitive Map and Statement as a Footpath, as detailed in Schedule 1, be approved and the Director of Environment be authorised to carry out the necessary procedures to make the Order and to confirm the Order in the event that no objections are made to it.
2. The Applicant and the owner/occupier of the land subject to the application be notified of the Council's decision as required by Schedule 14 of the 1981 Act.

**Definitive Map and Statement Modification Order. S53 – Wildlife and Countryside Act 1981
Claim to register Public Footpath at Laurel Avenue, Chadderton.****1 Background**

- 1.1 Under section 53 of the 1981 Act, the Council is required to make a Modification Order amending the definitive map and statement where it appears requisite in consequence of the discovery by the Council of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the definitive map relates, being a right of way such that the land over which the right subsists is a public path (ie a footpath or bridleway) or a restricted byway.
- 1.2 The application for a Modification Order was submitted by Graham Taylor, Chairman of the Firwood and District Residents Association, following the erection of gates by the current landowner in November 2024. The evidence in support of the application consists of 43 user evidence forms and maps claiming more than 20 years use of the Application Route. The user evidence must be considered against the statutory provisions in section 31 of the Highways Act 1980 (“the 1980 Act”) concerning dedication of a highway through 20 years’ usage as of right.
- 1.3 Under section 31 of the 1980 Act, a way is deemed to have been dedicated as a highway after 20 years use by the public as of right and without interruption unless there is sufficient evidence that there was no intention during that period to dedicate it. In order to establish a presumed dedication under this section, each element in the wording of section 31(1) and (2) needs to be proved on the balance of probabilities.
- “(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise”.
- (3) Where the owner of the land over which any such way as aforesaid passes:-
- (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
- (b) has maintained the notice after the 1 January 1934, or any later date on which it was erected,
- (c) the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.”
- 1.4 To make a Modification Order to add the Application Route to the Definitive Map, the Council needs to decide whether an event under section 53 of the 1981 Act has occurred. If so, a Modification Order should be made. The “events” which are relevant to this application are those in section 53(3)(b) and section 53(3)(c)(i) of the 1981 Act. Section 53(3)(b) requires the expiration in relation to any way in the area to which the Definitive Map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path. Section 53(3)(c)(i) requires the discovery by the Council of evidence which (when considered with all other

relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or a byway open to all traffic.

- 1.5 These provisions can overlap. “The discovery of evidence which shows that a right subsists or is reasonably alleged to subsist” under section 53(3)(c)(i) can include the discovery that the period of use required to raise a presumption of dedication has expired. Thus, where an application is made for the addition of a path on the grounds of use for a requisite period, the application can be for an Order either under section 53(3)(b) and/or under section 53(3)(c)(i). An important difference between section 53(3)(b) and section 53(3)(c)(i) should be noted. The former does not contain words “reasonably alleged”. Unless the period has without doubt expired, the subsection does not apply. Under the latter, it is sufficient if it is no more than reasonably alleged that the way exists as a public right of way.

2 **Analysis of Claim**

- 2.1 The Council has cannot confirm precisely when and by whom the steps were constructed.
- 2.2 The evidence submitted in support of the Application consists of User Evidence Forms completed by various individuals. In total, 43 completed Right of Way Evidence Forms have been received in support of the Application. It can be seen from the summary of User Evidence at Table A below that:-

- A high volume of people claim to have used the routes; all are local people.
- None of the persons who completed a User Evidence form have indicated that they ever sought or were granted permission to use the Application Route. No User Evidence forms indicate users having been stopped or turned back from using the Application Routes until November 2024.
- The periods of use range from 20 years to 57 years, with the earliest use being ‘late 1967’. For those persons who have used the Application Route, the frequency of their use is very high.

The Council has to decide what it considers are the correct facts, and on the basis of those facts, whether an event under section 53(3)(c)(i) has occurred.

- 2.3 Use of the way is not in itself enough – it is the nature of such use that has to be established. All the provisions of section 31 of the 1980 Act, together with the common law rules need to be carefully considered.

a) use “by the public”

Whilst the User Evidence submitted comes mainly from residents who live in the area, that does not mean that the use cannot be regarded as use “by the public”. In the case of *R v Inhabitants of Southampton 1887*, it was held that use by the public “must not be taken in its widest senses; it cannot mean that it is a use by all the subjects of the Queen, for it is common knowledge that in many cases, it is only the residents in the neighbourhood who ever use a particular road”

Use by those persons who completed User Evidence Forms can be regarded as use “by the public”

b) use “as of right”

None of those persons who completed User Evidence Forms have indicated being challenged themselves. The use of the Application Route by those who completed User Evidence forms appears to have been open and without force or permission and can therefore be considered to be use “as of right”.

- c) “period of 20 years to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise”.

It is considered that the date when the public’s right to use the Application Route was first called into question was 15 November 2024, when gates were erected and locked, preventing access to the steps. Subsection (3) applies where the owner of the land has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a Highway and has maintained the notice after it was erected. No evidence has been provided to the Council that such notices have been erected on the way.

However, the landowner has provided photos purporting to show the Application Route as overgrown and impassible, so an earlier period of 20 years use of the Application Route as of right may be required. There are 16 users who claim to have used the Application Route for 40+ years and 15 who claim to have used the Application Route for between 30-40 years. The number of persons claiming use of the Application Route for over 30 years is, therefore, considerable, so the route can be considered to be reasonably alleged to subsist (as per section 53(3)(c)(i) of the 1981 Act) to justify making the Order. The discrepancy between the photos and the claimed use of the route can then be dealt with at the objection stage of the Order making process, as the Planning Inspectorate can hold a public inquiry where the evidence can be examined in more detail.

- d) “without interruption”

An interruption has been defined as the actual and physical stopping of the use of a way by the landowner or their Agent. Moreover, such interruption must be with the intention to prevent public use. It is not sufficient if the interruption is for some other purpose.

There is no evidence that use of the Application Route for a full period of 20 years has been interrupted.

- e) “unless there is sufficient evidence that there was no intention during that period to dedicate it”

There have been numerous legal rulings on what constitutes “sufficient evidence” that there was no intention to dedicate a highway. The leading case for this example took place in the town of Godmanchester, which was considered by the House of Lords in 2007. In that case, the House of Lords ruled that the words “unless there is sufficient evidence that there was no intention during that period to dedicate” in section 31(1) of the 1980 Act required landowners to have communicated to Users their lack of intention to dedicate and that must have been communicated at some point(s) during the 20 year period of use by the public.

There has been no evidence provided of any intention of the landowner not to dedicate the Application Route as a footpath.

3 Community Cohesion Implications, including crime and disorder implications under Section 17 of the Crime and Disorder Act 1998

None

4 **Risk Assessments**

There is potential risk of Legal Challenge if we do or do not make the Order however, if we are satisfied that the evidential test is met we have no choice other than to make the Order.

5 **Co-operative Implications**

N/A. (J Mulvaney)

6 **Procurement Implications**

None.

7 **Current Position**

7.1 The application and User Evidence have been examined and the Officer is satisfied that the documentation provided meets the legal test of 20 years use of the whole of the Application Route 'as of right'. The decision to approve or not approve the application lies with the Highway Regulation Committee.

8 Options/Alternatives

8.1

- iii. Option 1: To approve the application and add the Application Route to the Definitive Map and Statement as a footpath.
- iv. Option 2: Not to approve the application.

9 Preferred Option

9.1 The preferred Option is Option 1, as the claim meets the required legal test of 20 years use of the whole of the Application Route 'as of right'.

10 Consultation

10.1 The Ward Members have been consulted and Councillor McLaren has commented on behalf of himself, Councillor Moores and Councillor Brownridge;

"The local community will be pleased to note that the report recommends that the long established use of the steps from Laurel Avenue to the Rochdale Canal Tow Path as a means of accessing the wider network of footpaths across Chadderton remain open. The steps have been in unrestricted use for more than 50 years as stated by the many residents who have submitted statements which are referenced in the report.

The Ward Councillors have no previous recollection of the steps being overgrown and inaccessible. If this had been the case, there is little doubt that residents would have raised their concerns with Elected Members to ensure that the steps remained open for public use. The steps have been used on a daily basis for over 50 years without interruption. It should be noted, however, that the area has been landscaped and the steps modified by the landowner in the recent past but this did not include clearing the steps of any overgrown bushes.

The Ward Councillors have not received any previous reports relating to any anti-social behaviour on, or in close proximity to, the steps again, any such behaviour would have been highlighted by those living in close proximity to the steps.

The residents are hoping that their long standing use of the steps will be recognised and that they will continue to enjoy their use in the future. The Ward Councillors hope that the Highways regulation Committee will support the recommendation to approve the application and make a Definitive Map Modification Order in respect of the application route and that the Director of Environment be authorised to carry out the necessary procedure to make and confirm the order."

10.2 The registered landowner has been consulted and is opposed to the application for the registration of the route as a Definitive Right of Way on the following grounds;

- The property was purchased 10-11 years ago and the steps were reportedly impassable due to overgrown vegetation. Similarly, when the land the steps lie on was purchased 4-5 years ago the situation was reportedly the same therefore the continuous usage of the route is disputed. Photos provided by the landowner are attached at Appendix 1.
- Issues of fly tipping and various anti-social behaviour including drug usage, urination/defecation, and the steps being used as a 'cut through' following robbery.
- Alternative, existing access to Footpath (Canal towpath) on opposite side of road approximately 10m away.
- Theft of stoneworks/walls/paving.

11 **Financial Implications**

- 11.1 The advertising costs to register this branch of Footpath 23, Chadderton as a public footpath will be £0.7k and will be revenue expenditure. This will be funded from the Public Rights of Way Budget within the Highways Service.

(John Edisbury)

12 **Legal Implications**

- 12.1 The burden of proof on establishing that the Application Route is a footpath lies with the claimant. If objections to the application are received the application will be sent to the Planning Inspectorate for determination by the Secretary of State. The discrepancy between the user evidence forms and the landowner's photos is best examined at the objection stage of the order making process as the Planning Inspectorate can hold a public inquiry where the user evidence and the landowner's photos can be examined in more detail. (A Evans)

13 **Equality Impact, including implications for Children and Young People**

- 13.1 No

14 **Key Decision**

- 14.1 No

15 **Key Decision Reference**

- 15.1 N/A

16 **Background Papers**

16.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

There are no background papers for this report.

17 **Appendices**

17.1 Appendix 1 – photos provided by the landowner

Table A

Summary of User Evidence

USE R	USAGE FROM-TO	YEAR S	FREQUENCY P/A	PURPOSE	PERMISSIO N	METHO D
1	-2024	25+	52+	Leisure	No	Foot
2	1989-2024	36	52	Leisure	No	Foot
3	1999-2024	25	156-208	Leisure	No	Foot
4	1989-2024	35	150	Leisure	No	Foot
5	1990-2024	34	365	Leisure	No	Foot
6	1968-2024	56	360	Leisure	No	Foot
7	1981-2024	43	365	Leisure	No	Foot
8	1981-2024	43	365	Leisure	No	Foot
9	1999-2024	25	104	Leisure	No	Foot
10	<1984-2024	40+	200	Leisure	No	Foot
11	2001-2024	23	100	Leisure	No	Foot
12	1974-2024	50	156	Leisure	No	Foot
13	<2004-2024	20+	24	Leisure	No	Foot
14	1986-2024	38	200	Leisure	No	Foot
15	2000-2024	24	100+	Leisure	No	Foot
16	1999-2024	25	200+	Leisure	No	Foot
17	1990-2024	34	360	Leisure	No	Foot
18	1990-2024	34	210	Leisure	No	Foot
19	1989-2024	35	30	Leisure	No	Foot
20	1967-2024	57	20+	Leisure	No	Foot
21	1995-2025	30	100	Leisure	No	Foot
22	1978-2024	46	100	Leisure	No	Foot
23	1981-2024	43	Frequently	Leisure	No	Foot
24	1996-2024	28	6-9	Leisure	No	Foot
25	1980-2024	44	52+	Leisure	No	Foot
26	1993-2024	31	365	Leisure	No	Foot
27	1993-2024	31	182	Leisure	No	Foot
28	1989-2025	36	365+	Leisure	No	Foot
29	2003-2024	21	52	Leisure	No	Foot

30	1998-2024	26	52	Leisure	No	Foot
31	1976-2024	48	60-72	Leisure	No	Foot
32	1991-2024	33	36	Leisure	No	Foot
33	1982-2024	42	52	Leisure	No	Foot
34	1974-2024	50	52	Leisure	No	Foot
35	1980-2025	45	340	Leisure	No	Foot
36	1994-2024	30	150	Leisure	No	Foot
37	1985-2024	39	320	Leisure	No	Foot
38	1995-2024	29	50+	Leisure	No	Foot
39	2005-2024	19	365	Leisure	No	Foot
40	1984-2024	40	52+	Leisure	No	Foot
41	1983-2024	41	104	Leisure	No	Foot
42	1983-2024	41	52	Leisure	No	Foot
43	1990-2024	34	52	Leisure	No	Foot

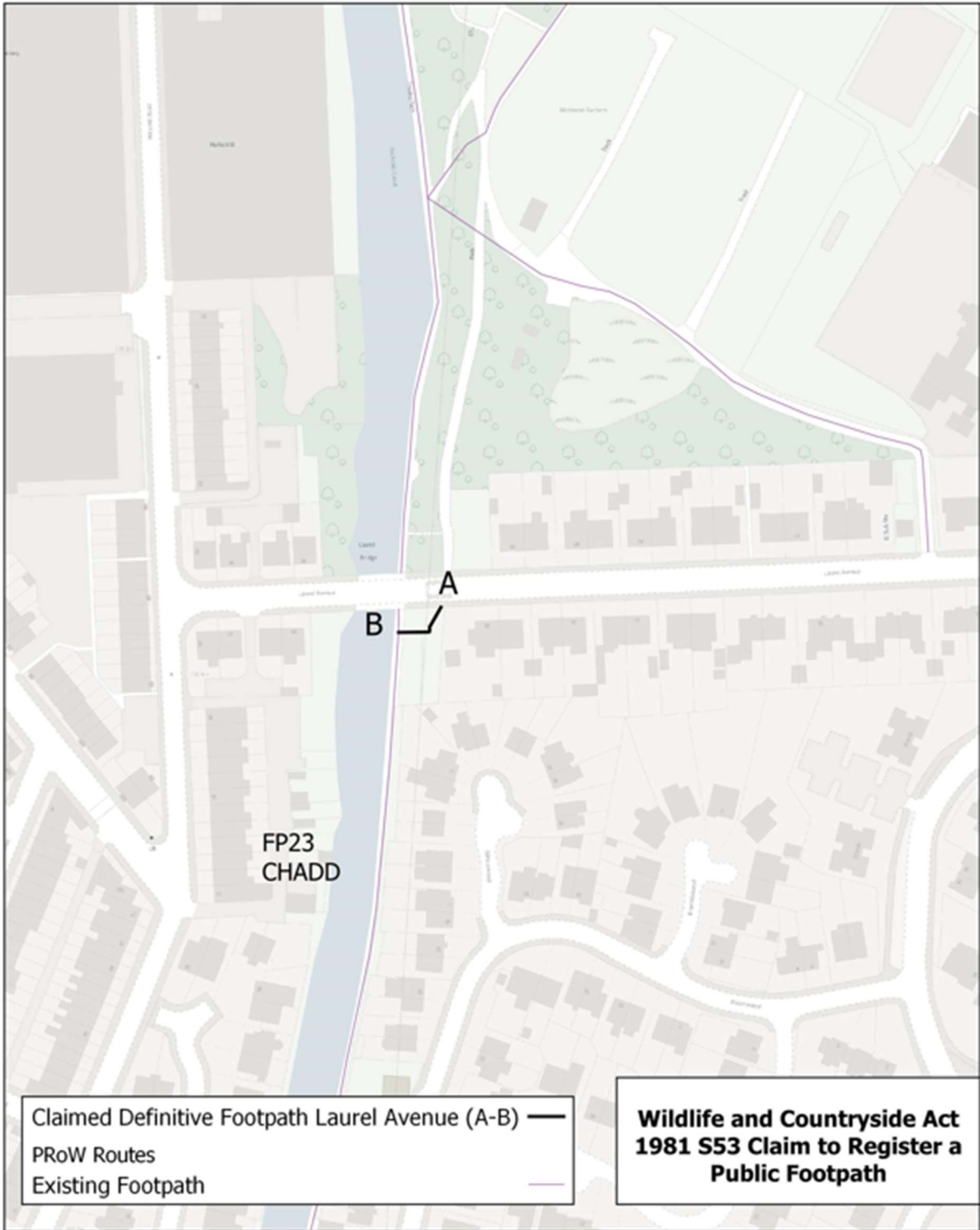
Schedule 1 – Existing Definitive Statement

District and path number	Page Number	Status	Length (m)	Description	Comments
CHADDERTON 23	4-9	Canal Towpath	526		Side Road Order M60 7.4.89

Schedule 2 – Modification of Definitive Statement (Amendments in bold)

District and path number	Page Number	Status	Length (m)	Description	Comments
CHADDERTON 23	4-9	Footpath Canal Towpath	5327	Footpath following the Rochdale Canal Towpath commencing at Rochdale/Oldham Borough Boundary (GR SD88729 06598) proceeding in a South Easterly then Easterly direction for a distance of approximately 415 metres to its junction with Definitive Footpath 22 Chadderton at (GR SD89094 06472), continuing East then South for a distance of approximately 180 metres to its junction with Definitive Footpath 24 Chadderton at (GR SD89171 06365). Continuing South along Towpath for a distance of approximately 170 metres to its junction with Definitive Footpath 25A Chadderton at (GR SD89102 06205) continuing West then South for a distance of approximately 610 metres to its junction with Definitive Footpath 33 Chadderton at (GR SD88943 05738). Continuing along Towpath in a generally Southerly direction for a distance of	Side Road Order M60 7.4.89 Footbridge over M60 Steps on branch path leading to Laurel Avenue 1.2-1.4m wide 10 No. Risers, landing platform (2.2x2.1m), 12 No. Risers

				<p>approximately 140 metres to (GR SD88933 05602) where a branch path proceeds East then North via a set of steps leading to Laurel Avenue (adjacent to No.31)</p> <p>Continuing in a generally Southerly direction for a distance of approximately 2693 metres to (GR SD89707 03237) then proceeding South West over the M60 via footbridge to (GR SD89611 03163) then continuing in a generally Southerly direction for a distance of approximately 1119 metres to the Chadderton/Failsworth Ward Boundary at (GR SD89740 02132) where Footpath continues as Definitive Footpath 2 Failsworth.</p>	
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Drawn By:	LK
Division:	Highways & Engineering
Date:	11/04/2025
Drawing No.	764/A4/252/1

Oldham Council
 Spindles Shopping Centre
 West Street
 Oldham
 OL1 1LF

1:1,551



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Appendix 1
Photos provided by Landowner



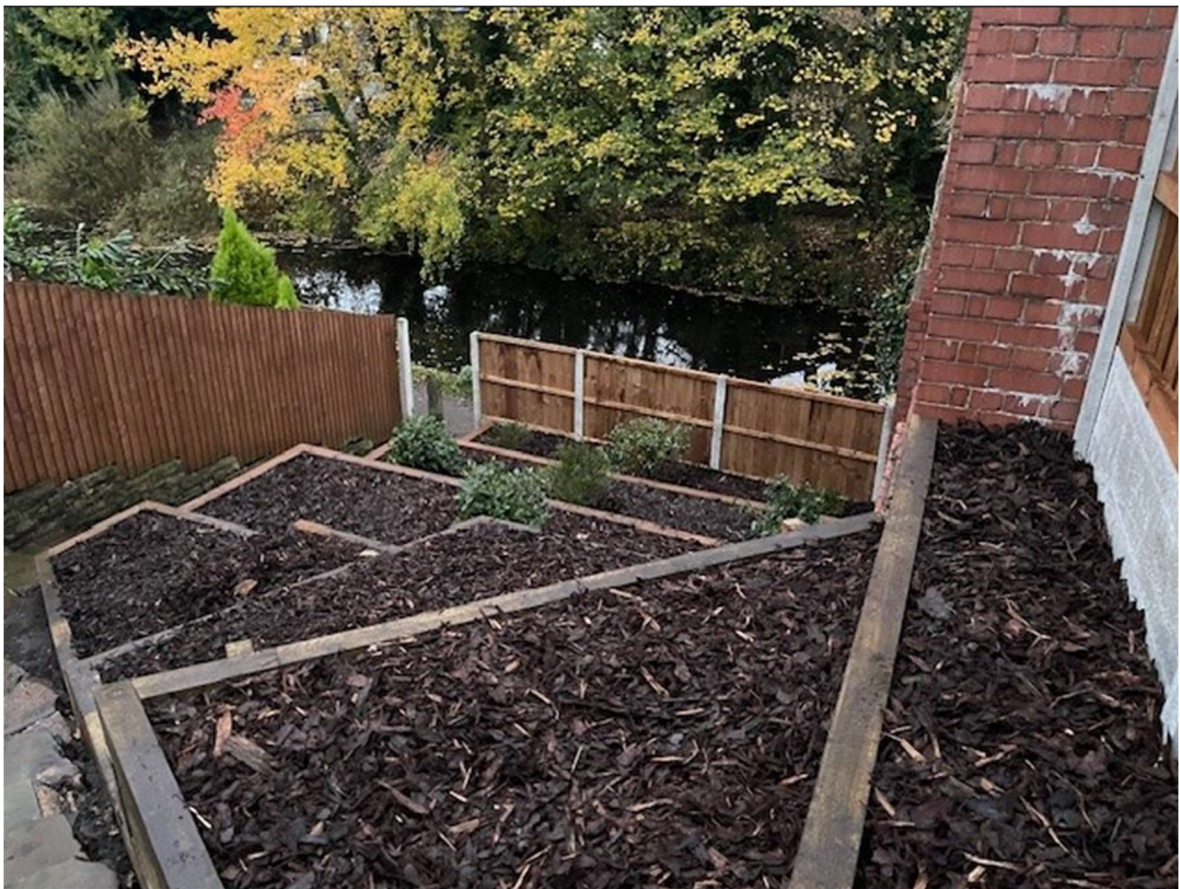
















Appeal Decision

Papers on file

by Claire Tregembo BA(Hons) MIPROW

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

Decision date: 02 March 2026

Appeal Ref: ROW/3370600

- This Appeal is made under section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Oldham Council not to make an Order under section 53(2) of that Act.
- The application dated 7 February 2025 was refused by the Council on 19 June 2025.
- The appellants claim that the definitive map and statement of public rights of way should be modified by adding the footpath shown on the plan appended to this decision.

Summary of Decision: The Appeal is allowed.

Procedural Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
2. The appeal has been determined on the papers submitted. I have not visited the site, but I am satisfied that I can make my decision without the need to do so.

Main Issues

3. The application was made under section 53(2) of the 1981 Act which requires the surveying authority to keep their definitive map and statement (DMS) under continuous review, and to modify them upon occurrence of specific events cited in section 53(3).
4. The need for an Order to be considered when evidence is submitted in support of a claim that a public right of way which is not shown in the DMS subsists is dealt with under section 53 (3)(c)(i) of the 1981 Act. This provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown subsists or is reasonably alleged to subsist over land in the area to which the map relates.
5. In arriving at my conclusions, I have taken account of the evidence submitted by the parties, the relevant part of the 1981 Act and the findings of the Courts in the cases of *Secretary of State for the Environment ex parte Bagshaw and Norton* (QBD) [1994] 68 P & CR 402 [1995] (*Bagshaw and Norton*) and *R v Secretary of State for Wales ex parte Emery* [1996] 4 All ER 367 (*Emery*).
6. As made clear by the High Court in *Bagshaw and Norton* this involves two tests:
Test A - Does a right of way subsist on the balance of probabilities?
Test B - Is it reasonable to allege that a right of way subsists? For this possibility to exist, it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.

<https://www.gov.uk/planning-inspectorate>

7. In relation to Test B, the Court of Appeal recognised in the *Emery* case that there may be instances where conflicting evidence was presented at the schedule 14 stage. Roche LJ held that "...*The problem arises where there is conflicting evidence...In approaching such cases, the authority and the Secretary of State must bear in mind that an order...made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry.*"
8. Roche LJ also held that "*Where the applicant for a modification order produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, and there is a conflict of apparently credible evidence in relation to one of the other issues which arises under s31, then the allegation that the right of way subsists is reasonable and the Secretary of State should so find, unless there is documentary evidence which must inevitably defeat the claim for example by establishing incontrovertibly that the landowner had no intention to dedicate or that the way was of such a character that use of it could not give rise at common law to any presumption of dedication*".
9. At this stage, I need only to be satisfied that the evidence meets test B, the lesser test.
10. User evidence has been submitted in support of the claimed route. Section 31 of the Highways Act 1980 (the 1980 Act) relies on a statutory presumption of dedication as a highway where it has been actually enjoyed by the public as a right of way and without interruption for a full period of twenty years. The date when the public's right to use the routes was brought into question needs to be established. I then need to determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this was the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowner to dedicate public rights during this period.
11. Section 32 of 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 highway.

Reasons

12. The claimed footpath runs along a flight of steps from Laurel Avenue to the Rochdale Canal towpath. The application was considered by Oldham Council Highways Regulation Committee on 19 June 2025. The Public Rights of Way Officer recommended to make a Modification Order, but the Committee turned down the application due to evidence provided by the landowner.

When was use of the claimed route called into question?

13. The user evidence forms (UEF) indicate that locked gates were erected at either end of the claimed footpath in November 2024 preventing access.
14. The landowner states the steps have been impassible for 20 to 30 years. They provided photographs which they state show the steps completely overgrown when they purchased the land in 2018 or 2019. Supporters of the application claim the photographs show the wider garden not the steps and are not an accurate

representation of their condition. Furthermore, the UEF show use of the steps for over 50 years prior to November 2024 indicating the vegetation did not prevent use.

15. Therefore, I consider use of the claimed footpath was brought into question in November 2024 and the relevant twenty year period of use is November 2004 to November 2024.

Evidence of Use

16. The UEF show use of the steps by 47 people dating back to 1967 with everyone claiming use for over 20 years. None of those using the steps refer to any challenges or permission. Use appears to be open, without secrecy, or force, is predominantly for leisure, and frequency of use is high with many using it several hundred times a year. I am satisfied there is sufficient evidence of use of the claimed footpath without interruption, permission, force, or secrecy for twenty years prior to November 2024, to demonstrate a presumption of dedication.

Lack of intention to dedicate

17. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware that they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.
18. I do not consider a route becoming overgrown with vegetation would constitute action by the landowner to demonstrate a lack of intention to dedicate a public right of way. In any event, the user evidence does not indicate that vegetation prevented use of the claimed footpath. None of the parties refer to any other actions by the landowner to prevent use of the claimed footpath prior to November 2024.

Conclusions on the user evidence

19. I have concluded above that the UEF provide credible evidence of use of the claimed footpath for over 50 years until locked gates were erected across it in November 2024. There are disputed claims that the claimed footpath was overgrown and not possible to use. However, I consider the user evidence is sufficient to reasonably allege that public rights exist. There is nothing before me to indicate any action by the landowner to demonstrate a lack of intention to dedicate public rights before November 2024.

Conclusions

20. Having regard to these and all other matters raised in the written representations, I conclude that the appeal should be allowed.

Other Matters

21. Some parties refer to other issues including crime, anti-social behaviour, safety, and alternative routes. These are not matters that can legally be considered when determining applications for Modification Orders.

Formal Decision

22. In accordance with paragraph 4(2) of Schedule 14 of the 1981 Act, Oldham Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act within 3 months of the date of this decision to add the public footpath, as proposed in the application dated 14 February 2025 and shown on the plan appended to this decision. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with their powers under Schedule 15 of the 1981 Act.

Claire Tregembo

INSPECTOR

Application Map

