



Planning Inspectorate

Order Decision

Site visit on 1 October 2025

by **Paul Freer** BA (Hons) LLM PhD MRTPI

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: **11 December 2025**

Order Ref: ROW/3339653

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Lake District National Park Authority Definitive Map Modification Order, Footpath 409052/419049, Gaterigghow Bridge to Hollins Bridge along the River Irt, Parishes of Gosforth and Wasdale
- The Order is dated 8 March 2023 and proposes to modify the Definitive Map and Statement for the area by the addition of a footpath as shown in the Order plan and described in the Order Schedule.
- There were two objections outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: the Order is confirmed

Procedural matters

1. On 11 March 2025, the High Court handed down its judgment in *The King on the application of the Ramblers' Association v Secretary of State for Environment, Food and Rural Affairs v Roxlena Limited, Cumberland Council* [2025] EWHC 537 (Admin), 2025 WL 00757743. It was part of the landowner's case that the Foot & Mouth outbreak in 2001 prevented access to the land over which the Order Route passes, such that it constituted an interruption to the use of the Order Route. At paragraph 126 of the *Roxlena* judgment, Mrs Justice Lang held that in the light of the Inspector's findings in that case, no reasonable landowner would conclude from the absence of public use in the period of restrictions that the public assertion of the right (as demonstrated by public use in the rest of the period) had been withdrawn. I consider below the implications of that judgement in this case.
2. The Order route is within the Lake District National Park. Section 11a of the National Parks and Access to the Countryside Act 1949 (the 1949 Act), as updated by the Levelling-up and Regeneration Act 2023, states that in exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall seek to further the purposes specified in that Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park. I have had regard to my responsibilities in that respect in confirming the Order.

Main issues

3. The main issue here is whether the evidence is sufficient to show a footpath can be presumed to have been established.
4. The Order was made under the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of events specified in sub-sections 53(3)(c)(i). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a footpath subsists along the route described in the Order and that other particulars contained in the map and statement require modification.

Reasons

5. The Lake District National Park Authority (LDNPA) made this Order in response to an application from the National Trust and the West Cumbria Rivers Trust. There is no significant documentary evidence relating to the proposed route. The case in support is therefore based entirely on user evidence.

Bringing into question

6. In early 2021, the National Trust and the West Cumbria Rivers Trust put forward a proposal to re-naturalise the river and move/re-align the path that ran alongside it. The statement made by them at the time was that this was only a permitted path. The threat of closure or diversion of the path stimulated an application for a definitive map modification order application to be lodged with the Lake District National Park Authority. That application was made on 7 July 2021. I have taken that application as bringing the status of the route into question. Consequently, I need to examine use by the public during the period between July 2001 and July 2021.

User Evidence

7. A total of 35 individuals submitted user evidence, the majority on User Evidence Forms (UEFs). Of those 23 claimed to have 20 years or more use of the Order Route. Frequency of use varies from just occasionally to daily, with several users reporting using the route around 50 or 30 times a year. One individual claims to have used the Order on a daily basis consecutively for some 34 years up to the date on which the status of the route was brought into question. Another individual claims to have used the Order route for in excess of 50 years up to the date on which the status of the route was brought into question. Purpose is typically stated as for recreation, particularly dog walking, jogging and birdwatching, sometimes as part of a circular walk to Nether Wasdale.
8. None of those who completed UEFs used the route with the permission of the landowner. The majority of the UEFs do not report seeing any signs indicating that they could not use the route. There is one reference to a sign at Gaterigghow Bridge but the respondent could not recall when that appeared. There is also reference to signs stating that the route was only to be used by anglers. However, from the evidence before me these signs only appeared after the Order was made.
9. None of those who completed UEFs reported being stopped or challenged when using the route. Indeed, several report meeting with the landowner or tenant farmer when using the path. None report being advised that they had permission to use the path, with some believing that the route was a public right of way.
10. In addition, evidence has been received from 11 members of the angling club that holds the fishing rights for this stretch of the River Irt. Those anglers pay an annual fee to belong to the angling club. I therefore take their use of the Order route to be by right rather than as of right. As such, their use does not count as evidence of the use of the Order route.

Nevertheless, several of these anglers record seeing others using the Order route, mostly for dog walking.

11. The objectors dispute the level of use claimed in the UEFs. The objectors refer to the importance of this stretch of river and explain that the amount of illegal fishing / poaching in that era was such that there was an almost 24-hour surveillance on the stretch between the two bridges, with intense patrolling (overtly and covertly) between May and January throughout the relevant period. The objectors maintain that the number of people claiming usage for 40 years simply is not correct. They consider the claims of 2-3 people a day using the path to be 'ridiculous' and explain that any non-angler would have been seen and shifted on rapidly. The reason why they were not, in their view, is simply because they were not there.
12. I have great difficulty in reconciling the evidence of regular use of the Order route in some 35 UEFs with the objector's claim that this level of use simply did not happen. I recognise that the submission of the UEFs may have been the result of one or more individuals encouraging the submission of UEFs but the UEFs that have been submitted are clearly from separate individuals. As such, they relate separate experiences of the use of the Order route. Moreover, some of the UEFs are supported by supplementary statements providing more detailed information of that individual's use of the Order, in some cases including photographs. It highly unlikely that this substantial body of detailed evidence was manufactured. I am therefore satisfied that the level of use of the Order route stated in the UEFs is genuine.
13. I am satisfied that the recorded use of the Order route is sufficient to show, on the balance of probability, that a footpath subsists on this route.

Interruptions

14. On 28 February 2001, all public rights of way within Cumbria were closed by the Foot and Mouth Disease Order 1983 (1983 Order). All paths remained closed until 1 August 2001, although some promoted routes with specific access points in the central Lake District fells were opened by 1 July 2001. From 1 August 2001, partial revocations of the Order were made throughout the county: mainly within the National Park, with monthly mapping updates as to which areas had been reopened being published. The final revocation was 24 December 2001.
15. The Order route was only accessible by using the existing public rights of way network, all of which had been closed to the public. The closure of all existing public rights of way resulting from 1983 Order covered the early months of the relevant 20-year period in this case. However, in the light of the judgement in *Roxlena*, I consider that the closure of the route as a result of the Foot & Mouth outbreak did not constitute an interruption of the use of the Order Route. I am not aware of any other interruptions to the use of the Order Route.

Intention to dedicate

16. There is no evidence before me that the landowner did not intend to dedicate the Order route as public right of way. No signs were put up and no gates were locked. The landowner did not make a deposit under section 31(6) of the Highways act 1980.

Other matters

17. It has been commented that the wild salmon that inhabit the River Irt are an endangered species. That is not a matter that I can take into account in my Decision, which must be based entirely on evidence of use of the Order route. Furthermore, the right being recorded only relates to a right to pass and repass not to fish.

Conclusion

18. Having regard to the above and all other matters raised in the written representations, I confirm the Order with a modification.

Formal Decision

19. The Order is confirmed.

Paul Freer
INSPECTOR

