

THE LANCASHIRE COUNTY COUNCIL

(RESTRICTED BYWAY FROM CLERK HILL ROAD TO MOOR LANE, WISWELL, RIBBLE VALLEY)

DEFINITIVE MAP MODIFICATION ORDER 2017

COMMENTS ON OBJECTIONS RECEIVED

Three objections to the Order have been received by the Order Making Authority (OMA).

Copies of the objections are contained within the List of Documents and the objections summarised below.

Objection 1 – Mr Nicholas Fielden & Mrs Nicola Fielden of Manor House Farm, Moor Lane, Wiswell who own the land crossed by the Order route between point J and point G

The points of objection are summarised in bold italics below with the OMA's response after each as follows:

Mr and Mrs Fielden sent a series of emails to the OMA following notification that the Order had been made. They submitted in the first instance that there was no need for the order, as the route was already an unclassified county road which allowed for use on foot, bicycle and horses. They were concerned about how such a redesignation may affect the maintenance of the route and were specifically concerned about the perceived loss of a right to access part of their land via the Order route with vehicles.

Although the OMA has historical records showing the Order route recorded as an unclassified county road, it no longer shows up as such on the List of Streets and no record as to why has been found. The List of Streets records public maintainability, but not what class/type of user may use a route, so whilst inclusion on the List of Streets may imply that public vehicular rights exist it is not conclusive. The Order will record the public rights to use the route as being limited to non-mechanically propelled vehicles (as well as on foot, bicycle and horseback). Because of the history of the route, it is the OMA's view that it would be recorded as a publicly maintainable route.

The OMA made the Order to record the route as a restricted byway because although there is historical map and documentary evidence that the Order route is an old road, it is no longer possible to record the route as a byway open to all traffic due to the extinguishment of public rights for mechanically propelled vehicles ("MPVs") by the Natural Environment Rural Communities Act 2006 (NERC Act).

The Order route was recorded as an unclassified county road from 1929 until sometime between 1987 and 2006 when for reasons unknown it was removed, the OMA believes erroneously, from the List. The fact that it was no longer recorded on the List of Streets did not remove any of the public rights except that in 2006 the NERC Act extinguished public MPV rights in such cases (with certain exceptions). These rights were extinguished regardless of whether the OMA made an Order to record it as Restricted Byway or not. The fact that it apparently should have still been recorded on the List of Streets and the fact that we can find

no legal authority for its removal does not exempt it from the extinguishment of public rights for mechanically propelled vehicles. However, the NERC Act also had the effect of creating private vehicular rights for people who would otherwise have relied on the extinguished public rights to get to their land and it may be that Mr and Mrs Fielden have gained such private rights in this instance.

The OMA believes that there were unrecorded vehicular rights along the Order route immediately prior to 1 May 2006. However, by virtue of Section 67 of the NERC Act whilst such public MPV rights were extinguished, private MPV rights were automatically created if exercise of that right was reasonably necessary to enable persons with an interest in the land to obtain access to land that they have an interest in.

Having considered the objection submitted by Mr and Mrs Fielden, the OMA are of the view that the objection relating to concerns about the loss of access to their land via the Order route across that part of the route not in their ownership is not a matter which the Inspector can take into account when deciding whether to confirm the Order.

Objection 2 – In addition to holding objection made by Solicitor, Richard Buxton, an Objection was submitted by Mr George Lawrence KC on behalf of Mr John Jackson of Bramley Farm House, Clerk Hill Road, Wiswell. The objector asks that the Order be not confirmed and disagrees with the OMA's view that the available evidence shows that the route is a historical public vehicular route.

The main points of objection are summarised in bold italics below with the Authority's response after each as follows:

The user evidence in the case is almost exclusively of use on foot and on horseback

The OMA did not make the order to record a restricted byway based on the evidence of use submitted as part of the bridleway application.

The OMA considered that the map and documentary evidence examined as part of the investigation was sufficient to conclude that the route was a historical public vehicular road and that inferred dedication is satisfied. The user evidence submitted to the OMA supports the view that the Order route was already a recognised public route which, by the later half of the nineteenth century, was mainly used by the public on foot, horseback and bicycle due to the nature of the terrain.

The Explanatory Statement relevant to the Order (Document 71) states that the evidence on which the Council has made the order is "as follows: Inclosure Award, Ordnance Survey Maps, Aerial Photographs, Finance Act evidence and user evidence" but the objector asserts that this is incorrect because the user evidence does not support vehicular status for the Order Route; that the Inclosure Award of 1780 does not support vehicular status for the Order Route either and that there is nothing in any OS map relied on by the OMA which expressly or impliedly supports an inference that the Order Route carried rights for vehicles.

In addition, the Objector contends that the Finance Act material is, at best, equivocal and, in relation to certain stretches of the Order Route, points away from there being public rights over the Order Route higher than footpath.

The OMA acknowledge that the information in the Explanatory Statement (Document 71) that was sent out with the Order is incorrect and misleading with regards to the evidence on which the OMA based its decision to make an Order and to promote it to confirmation. The Explanatory Statement was written subsequent to the investigation by officers and to the decision by the Regulatory Committee and it did not, and does not, form part of the OMA's assessment or case.

The OMA carried out a thorough investigation to determine whether public rights existed. That investigation is detailed in the Committee report dated 16th November 2016 (Document 22).

The OMA considered all the evidence and concluded that as with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.

The OMA are not relying on one single piece of map or documentary evidence in relation to this case, but have looked at map and documentary evidence spanning a substantial period of time from which it can be inferred that historical public vehicular rights exist.

Whilst the Order route may have originated as a private carriage way (as detailed in the Inclosure Award) by the 1890s, the full length of the Order route existed on the current alignment and appears to have remained unaltered since that time.

The map evidence examined – including that listed in the Explanatory Statement - shows that the Order route appears to have been wide enough to be used by horses and vehicles since its construction in the late 1700s and on the modern day alignment since at least the late 1800s.

It remains the OMA's case that the information obtained from the Finance Act records, when taken together with all other available evidence, suggest that the Order route was considered to be public carriageway in the early 1900s.

The Objector submits that the Handover Map or map derived from it does not itself establish public vehicular status for the Order Route and that no other evidence lends support to the OMA's conclusion that the Order Route was in the past correctly regarded as a public vehicular highway.

The OMA assert that there is consistent and sufficient evidence spanning a significant period of time from which to conclude that the Order route is a historical public vehicular route.

The 1929 handover records show the Order route as part of a longer route linking (and including) Moor Lane and Clerk Hill Lane for which the OMA were responsible for the maintenance after this was handed over from the rural districts in 1929. These maps only showed routes which were numbered as part of the vehicular highways network and the

other roads so recorded are now accepted as maintainable as public vehicular roads so it reasonable to assert a public right of way in vehicles subsisted in 1929 over the Order route.

The OMA are of the view that additional supporting evidence is available to support the view that the Order route is a historical public vehicular highway. Bartholomew's half inch maps published in 1906, 1924 and 1941 as an uncoloured road or other road as opposed to a footpath or bridleway all imply that the route carried public vehicular rights.

Of particular significance is the fact that at the time the Draft Definitive Map was prepared in the 1950s a request to include the Order route on the Draft Map was rejected because the route was already an unclassified county road, which was supported by the then landowners. The status of unclassified road is not in general conclusive of vehicular rights, but taken in this context is strongly suggestive of carriageway status – if it only had footpath or bridleway rights the request would have been accepted and the way added to the Provisional Definitive Map. The other roads on the handover maps are acknowledged to be vehicular.

Further evidence is provided by the fact that the Order route was not included on the DMS – even though footpaths 9 and 11 Wiswell were both recorded as terminating at different points along it adding further weight to the fact that on balance the Order route had a higher public status than a bridleway.

The Order route was still recorded as an unclassified road in 1985 when an application to record it as a public bridleway was made and in 1987 when the OMA rejected the application on the grounds that the route was already recorded as a highway on the List of Streets as Unclassified County Road 4/84.

The Order Route was deliberately removed from the County Council's digitised list of streets, in circumstances and/or for reasons the OMA has been unable to determine. In any event, as a matter of law, the inclusion of a route on the list of publicly maintainable streets is consistent with the route having a lesser public status than that of a public vehicular highway.

The objector has offered no support for the allegation that the way was deliberately removed from the list of maintained streets. It is relatively recent and documentation of any duly made stopping up would be available in OMA records and London Gazette. It is not known why the Order route was removed from the records in this instance, but there are other examples of this occurring across the county in relation to routes with unsealed surfaces being removed by Highways Inspectors or Engineers who appeared to have regarded the list as a schedule of roads whose tarmac they had to inspect and maintain.

The map and documentary evidence relied upon by the OMA clearly indicates that the public rights along this route were more than public rights on foot or horseback and that historical public vehicular rights existed – and still exist today.

Objection 3 – The Byways & Bridleways Trust

This objection was submitted after the specified period for objections.

The whole of Moor Lane and the order route continuation is an historical public vehicular road. Moor Lane, as far as the frontage of Sheep Cote Farm, is a metalled public vehicular highway. A footpath diversion order made by the District Council diverted Footpath 8 so that it ran along part of Moor Lane, along the Order route, K-J-I.

The effect of s.67(1) of the Natural Environment and Rural Communities Act 2006 is to extinguish the public right of way with mechanically propelled vehicles along that part of Moor Lane where Footpath 8 overlies the road.

The historical evidence of status is the same for the order route as it is for Moor Lane itself, and the outcome of the order as drafted, if confirmed, is that Moor Lane will in 2026 be broken as a through-route. It will be: county road - footpath - restricted byway, thus denying through passage to equestrians and cyclists.

The remedy is to ask the Secretary of State to modify the order to extend the restricted byway north-westwards beyond point K for the whole distance that Footpath 8 overlies Moor Lane.

The fact that part of Footpath 8 Wiswell is recorded along the south eastern end of Moor Lane (U22866) north east of point K on the Order Map is not a reason not to confirm the Order.

The recording of part of the footpath over this section of Moor Lane is without prejudice to higher rights and does not deny passage to other users. This issue would be better dealt with by the OMA making a separate Order to upgrade that section of the footpath to restricted byway (if it is considered that the NERC Act has extinguished the MPV rights) or to upgrade it to Byway Open to All Traffic (if it is considered that the NERC Act has not extinguished public MPV rights and it had the nature of a byway) or to delete it (if that part of Moor Lane is not of the nature of a byway). This raises a difficulty in that the NERC Act would have extinguished public MPV rights unless the way was on the List of Streets (which we know it was) and not on the DMS as footpath. Footpath Wiswell 8 (FP0347008) was only diverted onto that section of Moor Lane in 2000 by the District Council. As that Council was not the Surveying Authority the Order was not a combined one (i.e. did not have the effect of a concurrent definitive map modification order) and hence did not change the Definitive Map and Statement. Any extinguishment under the NERC Act would therefore depend on whether the DMS is considered, for the purposes of the NERC Act to include all legal events subsequent to the Relevant Date of the Definitive Map and Statement but for which no legal event modification orders have yet been made. It is suggested that such a contentious matter would be better left for a separate Order. However, it may be within the powers of the Inspector to modify the current Order to resolve this should he/she so choose.

Conclusion

The OMA submits that the objections received do not in any way undermine the evidence that the Order route is, on balance, already a restricted byway in law, and respectfully requests that the Inspector confirms the Order.