

Statement of Case of the Order Making Authority

Background

On 12th April 2021, the British Horse Society (the Applicant) submitted an application to Lancashire County Council (the relevant surveying authority) for an order under Section 53(2) of the Wildlife and Countryside Act 1981 (the "1981 Act") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by upgrading the footpath recorded as FP0120006 from a point at the junction of Back Lane, Melling-with-Wrayton to a point on that footpath on the junction of tracks in front of a gateway through which the continuation of FP0120006 runs; and the addition of a bridleway from the junction with FP0120006 as described above continuing along an unrecorded route south east through an area of woodland and then south south west along a bounded route to an open junction with Melling Moor.

The Application was supported by number of historical documents which were listed in the Application (Document 19) and which the applicant submitted depicted the route in a manner which would suggest that the existing footpath should be upgraded to bridleway and that the unrecorded section of the application route should be recorded as a public bridleway.

Officers from Lancashire County Council (hereinafter referred to as "the OMA") investigated whether higher public rights existed over the application route (the Investigation) by reviewing all available historical documents and prepared a report including their recommendations (Document 20). This report was considered by the OMA's Regulatory Committee on 24th January 2024 where the decision was made to accept the Application (Document 15) and to make an Order to modify the DMS by recording a bridleway along the full length of the application route and to promote the Order to confirmation as it was satisfied that the higher test could be met.

Notice of the OMA's decision to make an Order, including a statement of reasons for making the Order, was sent to affected individuals on 20th January 2025 (Document 15).

A Definitive Map Modification Order was duly made on 5th February 2025 (the "Order") (Document 1). The Order was made under Section 53(2)(b) of the 1981 Act, relying on the discovery of evidence relevant to sub-paragraphs 53(3)(c)(i) and (ii) of the 1981 Act

Notice of the making of the Order was served to affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 3 of Schedule 15 of the 1981 Act on 24th July 2025 (Document 15).

During the specified period for objections and representations to the Order, the OMA received 1 objection to the making of the Order (Document 4) from the Green Lane

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Association.

The Objection has not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is submitting the Order to the Planning Inspectorate for a determination on confirmation.

The Order Route

The route is shown on the Order Map between points A-B-C-D-E-F as a bold green line. All references to specific points along the Order route within the OMA's Statement of Case and Comments on Objections refer specifically to the points marked A-F on the Order Maps.

It should be noted however that that the Regulatory Committee report prepared prior to the making of the Order (Document 20) showed the application route running along the same route but referenced with points A-B-C-D-E-F-G-H-I and also included point X. The Regulatory Committee report therefore refers to features marked along the Order route at the points marked on the Committee plans but those points do not correspond to the equivalently annotated points on the Order maps. All such references below refer to the Order Map not Committee Plan.

The Order route commences at a point at the junction of Back Lane, Melling-with-Wrayton opposite the entrance to Wrayton Old Hall (point A on the Order Map) running in a south south westerly direction along a tarmac roadway providing access to several residential properties. The route continues beyond the end of the tarmac (which leads directly to 'The Farmhouse') to then run along a stone surfaced/compact earth track descending gently downhill to pass through woodland and through a gateway (point B) to continue for a further 15 metres along a less well-defined grass and earth track to a junction of tracks (point C) in front of a gateway through which the continuation of FP0120006 (hereafter referred to as "Footpath 6") runs through to/from Melling Moor.

This section of the route to be upgraded to bridleway described above is currently recorded as part of Footpath 6 and is 0.53 km long.

The Order route then continues from point C on Footpath 6 south east along a wide grassed strip ascending gently uphill through an area of woodland to pass through a gateway (point D) and continuing south east to the eastern end of the woodland where it turns south through a further gateway (point E). The route then continues in a south south westerly direction along a strip of grassland lined with trees and hedging which continues through to the open junction with Melling Moor (point F).

This section of the route is currently not recorded on the Definitive Map and Statement and is 0.56 km long.

Legal Issues

The provisions of the Wildlife and Countryside Act 1981 set out tests which must be addressed in deciding whether the DMS should be modified. The OMA should make

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an Order if it appears to the OMA that the DMS require modification in consequence of the occurrence of an event specified in S53(3)(c)(i) and (ii) namely the discovery by the OMA 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, namely a bridleway and that a highway shown in the DMS as a highway of a particular description, namely a public footpath, ought to be there shown as a highway of a different description namely a bridleway.

The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered. S53 permits both upgrading and downgrading of ways shown on and additions to and deletions from the map. The statutory test at S53(3)(c)(i), to add a way to the DMS, comprises two separate questions, one of which must be answered in the affirmative before an Order is made consequent to the event described in that sub-paragraph. There has to be evidence discovered. The claimed right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B). This second test B is easier to satisfy, but it should be noted it is the 'higher' Test A which needs to be satisfied in deciding whether to confirm the Order. The statutory test at S53(3)(c)(ii), to show a highway already recorded on the DMS as one of a different description, requires the higher test A to be met in order to make the Order as well as to confirm it.

In the case of *Todd and another v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1450 Evans-Lombe J made it clear that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an opposed order) must be satisfied on the balance of probabilities that the right of way subsists. This means that when considering the confirmation of an order, the Secretary of State is only able to consider whether on the balance of probabilities the right of way subsists.

Accordingly, for the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, when considered with all other evidence there is sufficient evidence from which to infer a public bridleway was already dedicated on this route (in this case many decades ago) and that, the route marked A-B-C on the Order plan should be upgraded from a footpath to bridleway on the DMS and that the route marked C-D-E-F should be added as a bridleway on the DMS.

It is established law that if it is shown that a highway existed then highway rights continue to exist even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners or others cannot be considered.

It is the view of the OMA that route subsists as a bridleway and should be recorded as such on the Definitive Map and Statement.

Evidence

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

No modern or historical public user evidence has been submitted so in these circumstances a presumption of dedication of a public bridleway under section 31 cannot be relied upon. It is therefore necessary to consider whether the map and/or documentary evidence is sufficient to support the dedication of a public bridleway under common law.

The cumulative evidence suggests that historically a way existed over the full length of the Order route connecting to two public vehicular highways and of particular significance providing a link between the village of Melling and the hamlet of Wrayton.

The key issue is whether it carried any public rights – other than public rights of access on foot from point A to point C - and, if so, the nature of those rights.

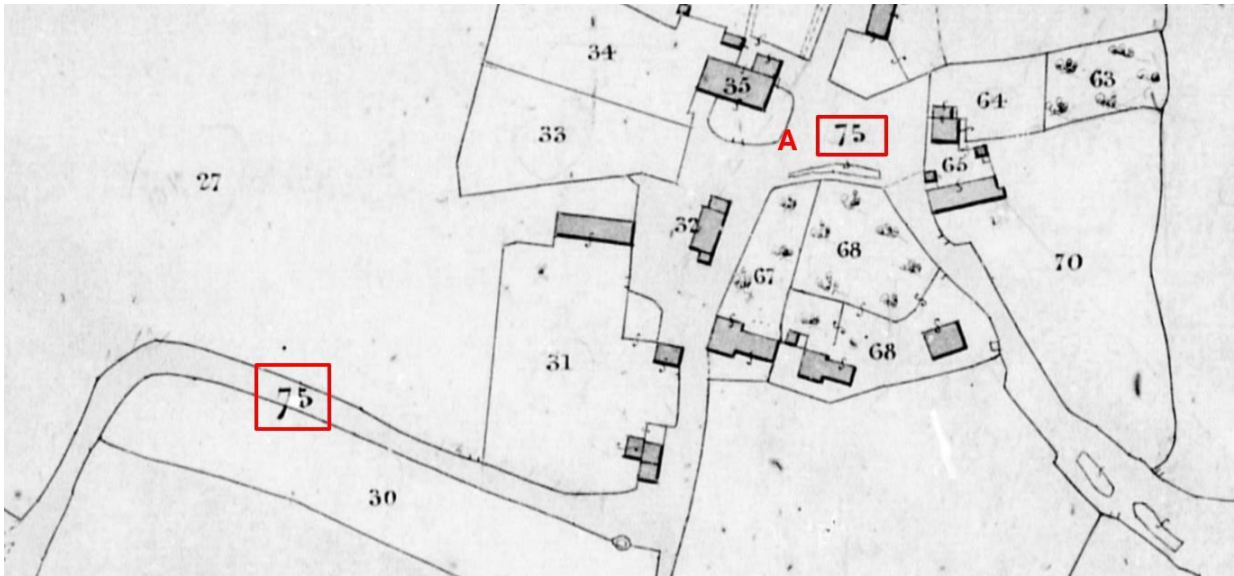
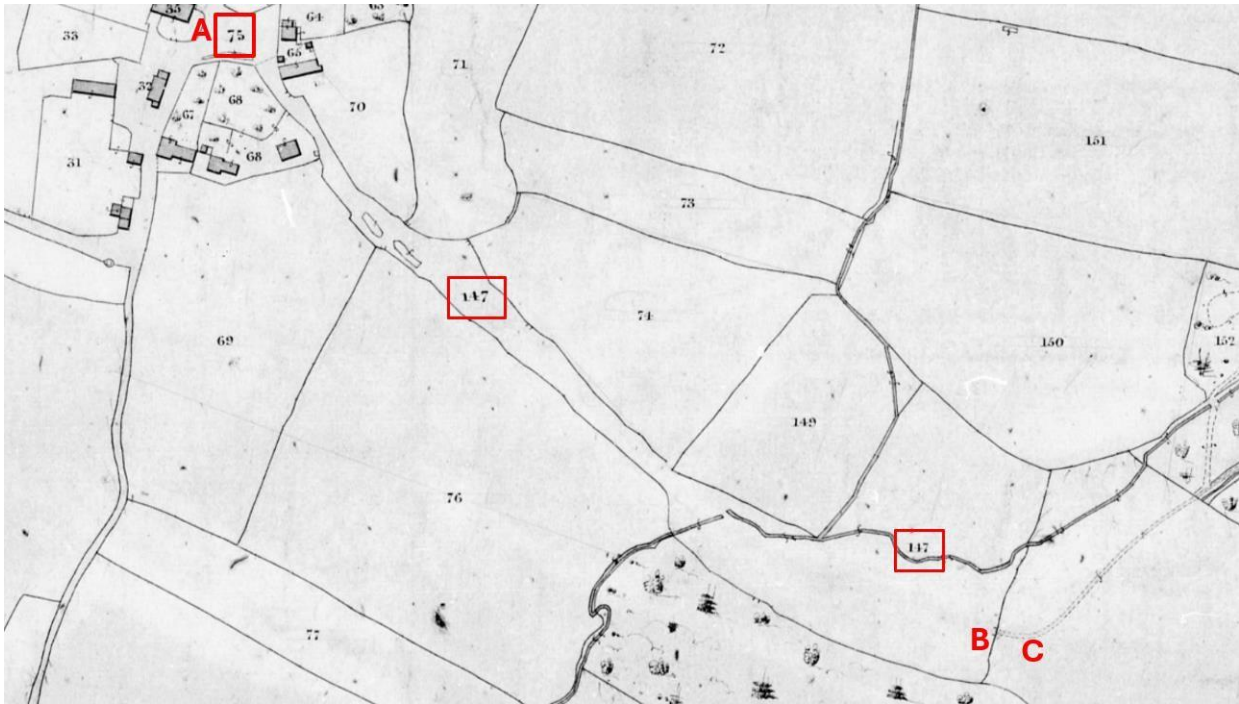
The early commercial maps examined do not show the full length of the route as part of the road network at that time although Greenwood's Map published in 1818 (Document 22) does show a tree lined avenue consistent with the Order route between points E-F suggesting that the route – or at least part of it existed at that time.

Hennet's Map of Lancashire published in 1830 (Document 23) shows the start of the route at point A suggesting that a route extending south from point A may have existed at that time but possibly that it was not considered to be a significant route available for use by the travelling public.

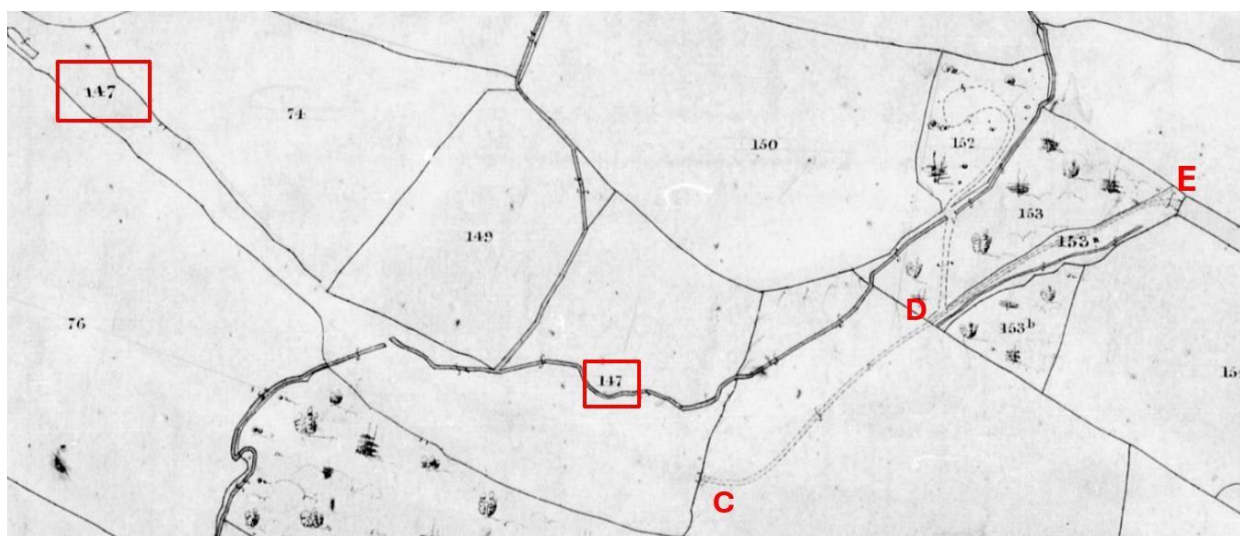
The earliest maps to show the full length of the route were the First Edition 1 inch and 6 inch Ordnance Survey ('OS') maps. The 1 inch maps for Kendal (Document 24) and Lancaster (Document 25) were surveyed between 1842 and 1857 and show the full length of the Order route (split over two map sheets) with parts unfenced (shown by parallel broken dashed lines). The First Edition 6 inch map was surveyed between 1844-45 and published in 1847 (Document 26) and showed the route in greater detail suggesting that the Order route was a substantial through route capable of being used at that time at least on horseback.

The Tithe Map and Award (1848) (Document 27) show the Order route although the section between point A-B-C is not as clearly defined as it is shown on the OS maps.

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The very start of the Order route at point A appears to have been considered as part of the road network and owned by the township. It is numbered as part of plot 75 in the same way as Back Lane – which is now recorded as a publicly maintained road. The remainder of the route through to point B was included in a plot numbered 147 which was listed as 'waste' owned by the township. There was no reference to a 'Road' 'Footpath' 'Bridleway' or any form of track but the purpose of the Tithe Map and Award was to assess land and calculate Tithes and not to record public (or private) rights so this is not necessarily significant – particularly if the route was used on foot and horseback but not with carts and there was no 'obvious' track on the ground.

Between points B-C-D and D-E the Order route passed through land recorded in the private ownership of two different landowners and was described as moorland (B-C-D plot 146) and road and waste (D-E plot 153a). The OMA, in its initial assessment of the evidence, considered that the way this section of the Order route was shown and recorded in the Tithe Award suggested that it was probably not considered to be a public vehicular through route in 1848 but was not inconsistent with a through route used on foot and horseback.

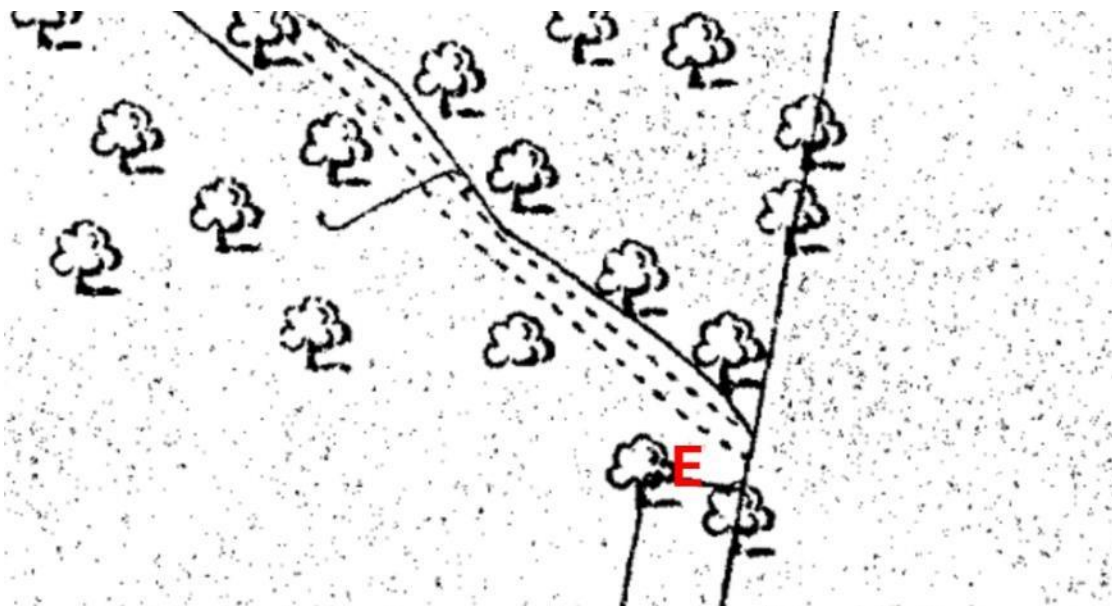
It is noted however that from point E to point F the Order route was listed as part of plot 174 which also included 'Melling Moor' – a publicly maintained vehicular road. This part of the Order route was not subsequently recorded as being a publicly maintained highway on the 1929 Handover Maps and although it did form part of a longer through route the OMA still consider the evidence of the Tithe Map consistent with bridleway rights but not providing strong evidence at that time of a public vehicular through route.

Unfortunately the 1st Edition 6" Lancashire Sheet XXVI published 1847 has the 'Y' of 'Wrayton' printed over this point E and although there is no other way shown into the field to the east or elsewhere, the connection between the unfenced section of the Order route D-E and the enclosed section E-F has to be inferred because the detail is obscured. The 1" Sheet XCVIII SE Kendal published in 1865 is similarly obscured at that point by the second 'e' of 'Cringleber' but clearly implies connectivity:

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The first 25 inch OS Map surveyed in 1890 (Document 28) shows a discontinuity at point E in the full length of the Order route which otherwise is a through route connecting two recognized vehicular highways and it appeared to have been gated in three locations:



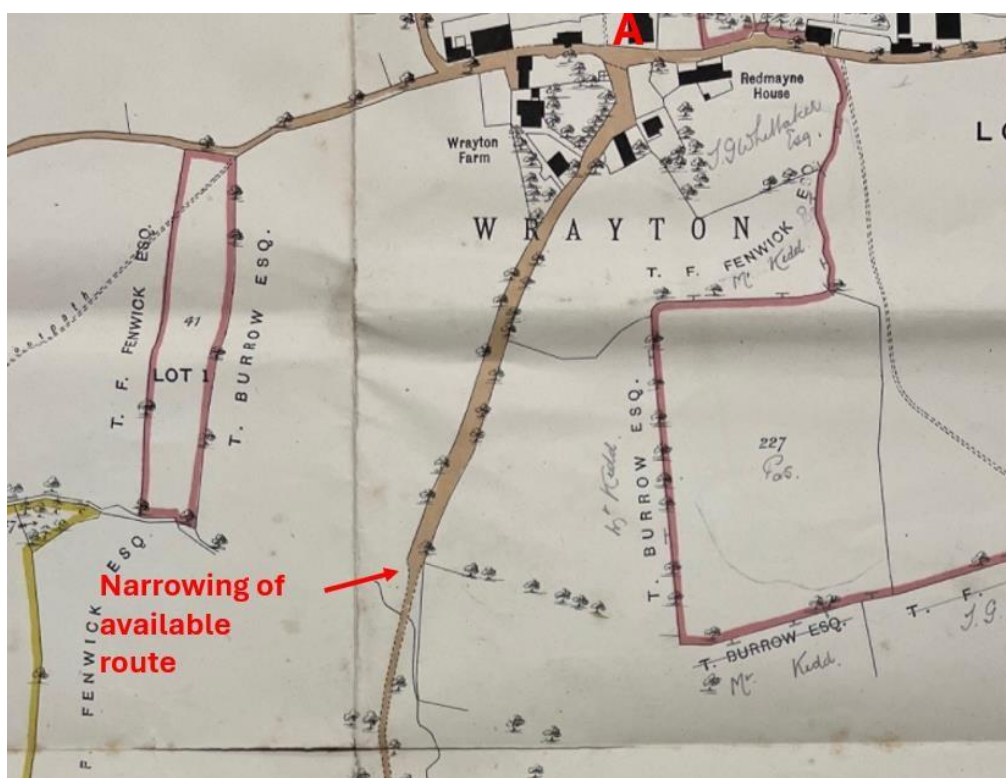
The possible presence of gates then shown across the Order route by the OS is not inconsistent with a public route in a rural area and the Order route is depicted in such a way that it appears to have been capable of being used on horseback. The depiction of the discontinuity only means that the visible track, in 1890, did not run between the unfenced section D-E and the enclosed section E-F, instead it led to the field boundary (presumably a gate). This does not mean that traffic could not continue south as shown on the Tithe Map, even if it was less frequently used or used primarily on foot and horseback. Furthermore the section E-F has no pecked lines delineating a made-up or 'worn' surface within the boundaries on either the First or Second Edition 25 inch OS maps, as would be expected for a vehicular road, although it is noted that Melling Moor, running west and east from point F, which is known to be vehicular, is shown in the same way but significantly is shown with a thickened line along the south side on the First Edition 25 inch map. In contrast section A-B of the Order route is shown with the usable width delineated.

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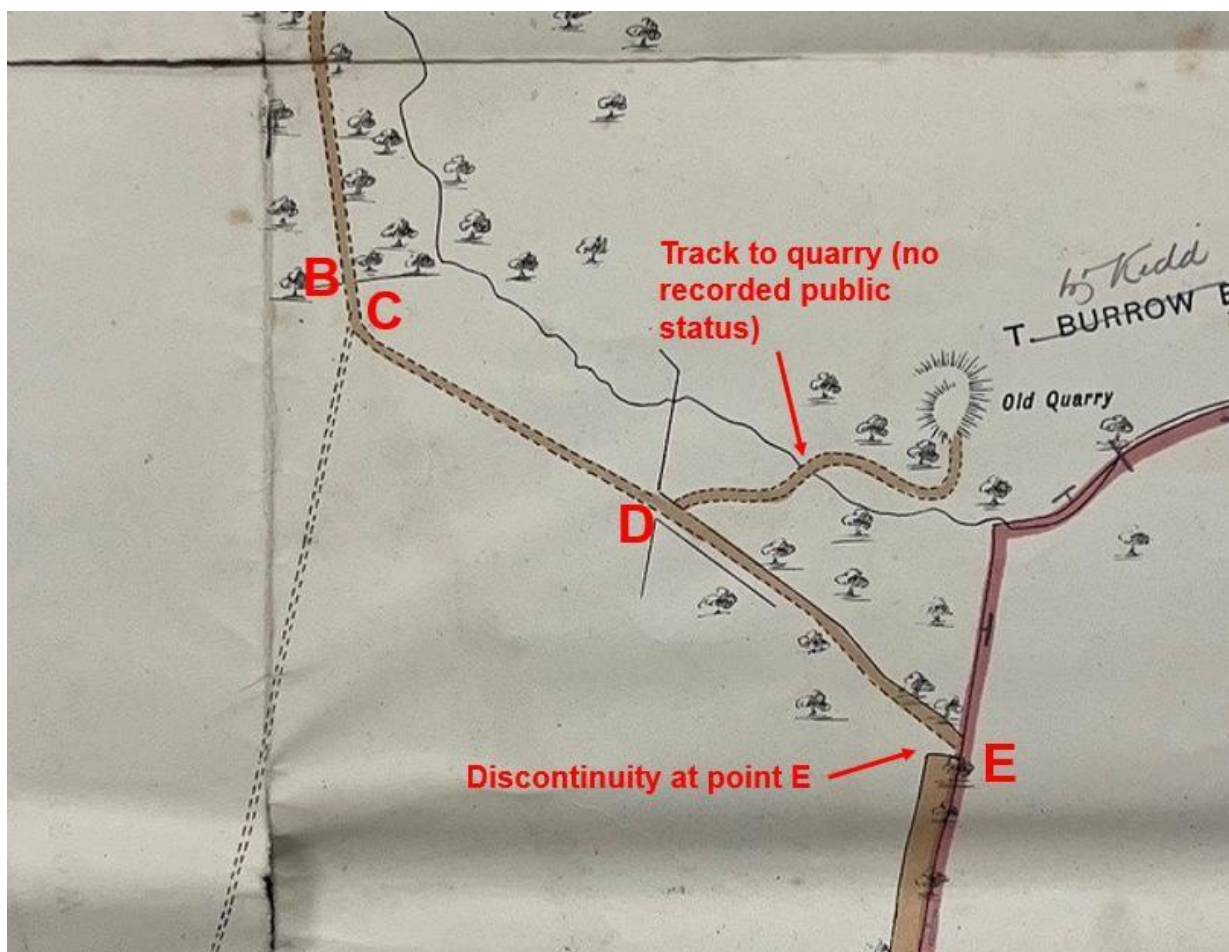
The fact that the first 325 metres of the Order route from point A is shown with a thickened line to one side on the black and white edition of the map in the way that Back Lane and Melling Moor are shown suggests that part of the Order route was considered to be a publicly maintained vehicular road in good condition and that this part of the Order route, described as 'waste' in the Tithe Award nearly 50 years earlier, had possibly been improved to provide access down to the area of woodland recorded as common land. The 'middle section' of the route (B-C-D-E) is shown as an unfenced route across rough pasture.

The Order route is then consistently shown largely unaltered on all subsequent OS maps inspected, suggesting that it would have been passable along its full length on foot and horseback and by vehicles.

Since the Order was made in 2025 a sale plan was located in the Lancashire Records Office (Reference DDHH1/368) (Document 29) has been located and inspected. The plan and accompanying auction document (which was incomplete) related to the sale of the Wrayton Hall Estate in 1901 and shows the Order route:



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It is noted on the plan that the full length of the Order route (albeit with the exception of a small discontinuity at point E) is shown and coloured brown. Connecting public vehicular routes are also coloured brown as is a nearby way currently recorded as public bridleway, but a few other routes – including the track leaving the Order route to access a disused quarry (which has no recorded public status) are also shown coloured brown. Footpaths did not appear to be coloured and some access roads leading to farms or properties were also left uncoloured.

The key to the sale plan does not indicate what was intended to be shown by the brown colouring and no part of the Order route was included in the numbered plots to be auctioned. Ownership of some of the land crossed by the Order route was marked and, in some cases, original details crossed out with new names inserted.

The route coloured brown narrows on the plan midway between point A and point B and has the discontinuity at point E with the sections to the north and south of that middle part shown much wider. The narrower middle section is also shown unfenced (bounded by pecked lines) suggesting that the shading was done up to any enclosing boundary lines where they were shown and to the pecked edge of surface otherwise, which would be both reasonable and conventional.

The fact that the Order route (albeit disjointed at point E) is shown coloured on this plan does support the view that a public through route existed along it and that it appeared to be accessible along the full length on horseback. From point C the continuation of

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Footpath 6 is shown continuing south but is not coloured supporting the view that the Order route A-C was considered to be part of a longer through route which was considered to carry higher public rights than footpath.

The Finance Act records were originally considered to be inconsistent but did appear supportive of the route's public status by 1910 suggesting that the various landowners at that time recognised the existence of public rights across the land.

Finance Act Maps from both the County Records Office and the National Archives were obtained.

The first section of the Order route between point A to the entrance of the woodland recorded as common land looks like it may have been excluded from the numbered hereditaments but the maps are not entirely clear:



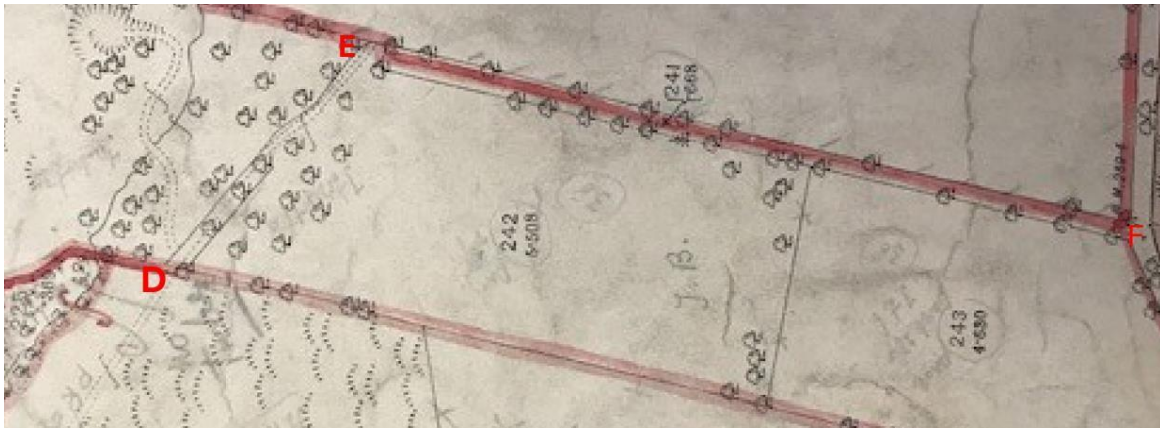
Extract from Map deposited in the County Records Office [left] and extract of Map deposited in The National Archives [right]

The apparent exclusion of the northern 325 metres of the Order route is consistent with that part of the Order route shown on the OS 25 inch base map with a thickened line along the east side. The exclusion of the Order route suggests that this part of the route was considered to be a public vehicular route at the time of the Finance Act survey although this was not the only reason that routes were excluded and if ownership of the route was not known (or admitted) then this may be another reason for it being excluded.

Land on either side of the route is numbered as part of plot 38 which significantly also included the Order route D-E-F. From point E-F however the line drawn on both the Finance Act Map deposited in the County Records Office and that deposited in The

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National Archives shows the boundaries between hereditaments 38 and 4 running down the centre of the Order route:



Map deposited in the County Records Office [Above]



Extract from Finance Act Map deposited at The National Archives [Above]

The land contained in hereditament 38 is listed in the Finance Act Valuation Book and Field Book (Documents 30) as being owned by Thomas Burrow of Wrayton. A £15 deduction for Public Rights of Way or User was listed in both documents and within the Field Book it is written:

Let at £95
Charges, Easements, and Restrictions affecting market value of Fee Simple
2/11/10 £4. 2. 8 x 27 YP = say £110
Public Footpath & bridle road. (little used) £15

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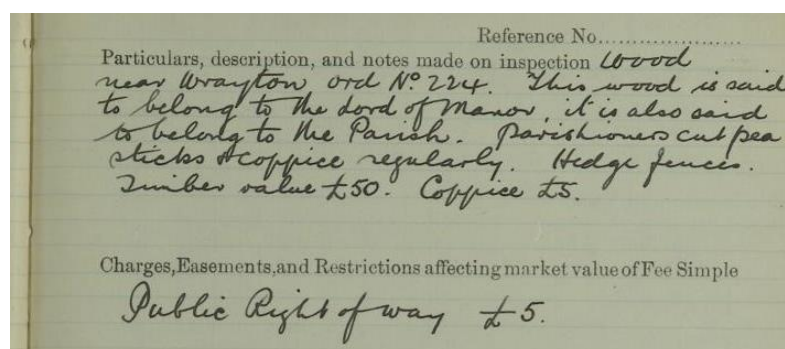
Whilst the specific location of routes is not identified the deduction is said to be made for a public footpath and bridle road described as being little used.

Only one path or track is marked on the OS base map within hereditament 38 if it is accepted that the first part of the Order route from point A was excluded. Therefore the only possibility was that the deduction referred to the Order route D-E-F. The phrase 'footpath and a bridle road' was sometimes used to refer to a single path used on foot and horse or may have referred to 2 paths – as is usual it is not specified in the documentation where the path(s) was/were, and as the Order route D-E-F was a substantial length of the total route it is suggested that the bridle road reference relates to it.

The land to the east of the Order route E-F was included in hereditament 4. The western boundary of hereditament 4 was shown to run along the Order route E-F implying that ownership of this part of the Order route was considered to be half in the ownership of Thomas Burrow (38) and part in the ownership of Alexander Burrow (4) (Document 31).

The Field Book entry for hereditament 4 related to land, house (Wrayton Hall) and buildings occupied by Frederick Tomlinson and owned by Alexander Burrow of Wrayton Hall. A £50 deduction was listed for 'public footpaths' and £20 for 'easements' but the location of the footpaths referred to – or details of the 'easements' are not specified.

The woodland now recorded as common land was labelled as hereditament 94 and the Order route from point A to point B passed through it. A £5 deduction was listed for a 'public right of way' through the woodland and it is noted that it was referred to as a public right of way rather than more specifically as a public footpath (Document 32).



The Order route B-C-D was included in hereditament 11 which was listed as being owned by R E Fenwick of Wrayton Hall and tenanted by John Bell. It was originally documented in the Regulatory Committee report that a deduction of £15 had been made for Public Rights of Way or User but an inspection of the relevant Field Book extract (Document 33) shows that the deduction was actually for a more significant £75:

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Less deductions in respect of—	
Fixed Charges, including—	
Fee Farm Rent, rent seck, quit rent, chief rents, rent of Assize	£
Any other perpetual rent or Annuity.....	£
Tithe or Tithe Rent Charge	£ 335
Other Burden or Charge arising by operation of law or under any Act of Parliament	£
If Copyhold, Estimated Cost of Enfranchisement.....	£
Public Rights of Way or User	£ 75
Rights of Common.....	£
Easements	£
Restrictions	£
	£ 410
TOTAL VALUE.....	£ 5200
Less Value attributable to Structures, timber, &c.	

Whilst the Order route is not specified hereditament 11 contained a significant length of the public footpath FP012006 and also the Order route B-C-D which was clearly marked up as a 'PROW' on the Field Book deposited at the CRO:



In conclusion, therefore the OMA consider that in 1910 Finance Act records support the existence of a public right of way along the full length of the Order route with various different landowners acknowledging the existence of those public rights. There is a suggestion that the route was considered to be more than a public footpath as it is referred to as a public right of way and possibly as a bridle road that was now (1910) rarely used but other than the possible exclusion of the first 325 metres of the Order route from point A there is no suggestion that the remainder of the Order route was considered to be a public vehicular route in 1910.

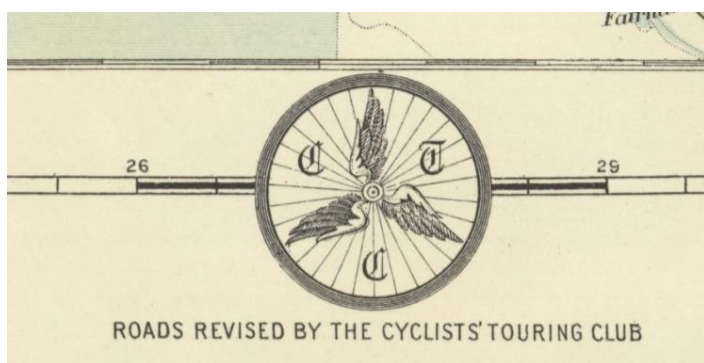
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The Order route is however shown on all three editions of Bartholomew's maps as an uncoloured or other road during the first half of the 1900s (Document 34) and none of the three maps label any footpaths or bridleways in the immediate area.

The first of these maps was published in 1905 (several years before the Finance Act Valuations took place).

Considered alone, the fact that the full length of the Order route is shown on all three of Bartholomew's Map may be considered good evidence that the full length of the Order route was considered to be a public vehicular route at that time.

These maps were produced for the use of motorists and cyclists, with the oversight of and feedback from local branches of the Cyclists' Touring Club and maps where this was the case includes the logo of the CTC and a short statement of their involvement:



[Above] Logo included on the 1904 and 1921 editions of Bartholomew's Map for the area crossed by the Order Route.

As cyclists could not use bridleways until 1968, the inclusion of the route on Bartholomew's Maps does suggest that it was considered to be capable of being used at least by bicycle and by inference it was considered to carry public vehicular rights in the first half of the twentieth century. However, paragraph 108 of a High Court decision (*Commission for New Towns and Another v JJ Gallagher Ltd (2002)* (Document 35)) refers to the disclaimer contained within the Bartholomew's Maps and that it is necessary to consider whether the map was produced specifically for identifying public highways (or not). To what extent Bartholomew checked the recorded status of recorded as being passable by cyclists on each map published is not fully known. Furthermore, it is important to consider that in acknowledging that the maps were for the use of cyclists they show information to enable cyclists to know where they were, as well as to plan routes. To this end they showed railways, paths, rivers and contours not for cyclists to ride along but to assist orientation. A map which showed these other features but omitted non-carriageway tracks which were obvious on the ground would be very misleading and this could have been included for that reason.

The OMA considered whether there was sufficient evidence to make and promote an Order to confirmation for public vehicular rights however the evidence including the Tithe Map and Award, Finance Act and 1929 Handover Map documentation does not support the existence of public vehicular rights existing along the full length of the route. The OS maps show that from the 1890s the surfaced track only ran from A as far as the woodland

recorded as common land (i.e. the first 325 metres from point A) and Bartholomew's maps alone were insufficient evidence of public vehicular rights.

In conclusion, there is a large body of evidence which supports the physical existence of the route from the 1840s onwards, all of which supports the view that it was capable of being used by the public on foot and horseback and parts of it possibly by vehicle. Although the Tithe and Finance Act records could be suggestive of public vehicular rights over parts of the route, the OMA considered that the majority of the documentary evidence inspected with the exception of the Bartholomew Maps provided little support for the existence of public vehicular rights of way along the entire route.

The OMA did consider however that the evidence was however supportive of at least public bridleway rights along the full length of the Order route.

Summary

The OMA submits that an examination of the historical evidence leads to a conclusion that the Order route has been a part of the public highway network from at least the mid to late 1800s.

As explained above is established law that if it is shown that a highway existed then highway rights continue to exist even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made.

It is the OMA's case that as the Order route can be demonstrated, by reference to historical evidence, to have been subject to at least public bridleway access rights along the full length and no orders extinguishing those rights can be found the Order must be confirmed.

The OMA submits that if the Inspector is minded to modify the Order to record historical public vehicular rights along all or part of the Order route the Natural Environment and Rural Communities Act 2006 has extinguished any public rights that may have existed with mechanically propelled vehicles over the Order route. The Order route was, at the time of the Natural Environment and Rural Communities Act 2006 recorded as a public footpath between points A-B-C and the whole length was not on the List of Streets (maintained at public expense). The OMA is not aware that any other of the other exemptions contained in the Natural Environment and Rural Communities Act 2006 apply.

Conclusion

The OMA submits that public bridleway rights subsist along the Order route. The OMA further contends that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above is met. For the reasons stated in the OMA's 'Comments on Objections', the objections received to the Order do not give any grounds

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for the OMA to reverse its decision on promoting the Order to confirmation.

The OMA therefore respectfully requests that the Planning Inspector confirms the Order.