

LANCASHIRE COUNTY COUNCIL

DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY

BRIDLEWAY - WATERY LANE FROM HAUNDERS LANE TO LIVERPOOL ROAD, MUCH HOOLE

DEFINITIVE MAP MODIFICATION ORDER 2023

COMMENTS ON DULY MADE OBJECTIONS

Two duly made objections to the Order has been received by the Order Making Authority (OMA)

The objection

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

The first was submitted by Acland Bracewell Surveyors Limited acting on behalf of Lilford 2005 Limited who are the freehold owner of the land over which the Order route is situated.

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

With regards to the early commercial maps (citing Hennet's Map 1830) the objector disputes that historically the route being 'open to all forms of traffic' referring specifically to the fact that the Beconsall ferry across the River Asland carried pedestrians (not horses), that use of horses was rare, that there are few houses/farms that would have been served by the Order and that any horses and horse drawn vehicles would have used Haunders Lane not Watery Lane.

The Order made by the OMA is to record a bridleway and not historical rights for a route used by all forms of traffic.

Three key documents dating from 1830 to 1848 were instrumental in the decision to make the order to record the route as a bridleway.

The Order route is shown on Hennet's Map of 1830 (Doc ...) and shown as a crossroad consistent with how Haunders Lane (a public vehicular route) is shown.

It is not fully known what is meant by this the term 'cross road' but it is generally accepted that as the only other category of 'road' shown on this small-scale commercial map are turnpike roads, and a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in Hollins v Oldham).

It is unusual for Hennet's Map to show footpaths suggesting that the Order route existed as a substantial through route which was accessible at least on horseback in 1830.

Much Hoole Tithe Map and Award were prepared in 1841 and show the Order route as a substantial bounded through route which was listed at the end of the Tithe Award in a

separate list titled 'Roads'. The evidence provided by the Tithe Map and Award suggests that the Order route was a substantial route capable of being used at least on horseback at that time and that it was considered to be part of the public vehicular highway network at that time.

The First Edition 6 inch Ordnance Survey (OS) map surveyed 1844-45 and published 1848 shows the Order route consistent with how it is depicted on the Tithe Map several years earlier. Of significance is the fact that it was named as Watery Lane and a watercourse was shown running along the route from point D through to midway between point B and point A.

Taking these three key documents together it is the OMA's case that the evidence is sufficient to show that the Order route was historically depicted on maps as a road but that the nature of the route (running within the confines of a fenced strip containing a watercourse) may have meant that use was more likely to be on horseback or with pack horse rather than wheeled carts – hence the fact that the order has been made to record a bridleway and not a route open to all forms of traffic.

The existence of the foot ferry across the River Asland would certainly give weight to the fact that public rights on foot may have come into being along routes leading to and from the ferry.

The Order route did not provide direct or the only access to the ferry crossing and was only part of one of the routes that may have been used to get to the ferry. While the ferry carried foot passengers it may also have carried goods that required transportation over land using horses and persons crossing the river via the ferry may have then continued their journey on horseback or horse drawn vehicle.

The ferry crossing referred to by the Objector is not marked on any of the early commercial maps examined or the Tithe Maps of Hesketh with Beconsall 1839 or Much Hoole 1841. The only map examined showing the Beconsall Ferry is the First Edition 6 inch OS map surveyed in 1844-45 and even on this map the only reference to the crossing point is on the western bank (from Beconsall Lane) suggesting that the Order route existed as part of a network of routes irrespective of the existence of a foot ferry.

It is not uncommon for no or few properties to be located along a public bridleway or historical public vehicular route – especially in rural areas where the route is either part of a longer route or connects to other public bridleways or public vehicular routes so the OMA does not consider the fact that there are no properties situated along it to be evidence that it was not a public bridleway in the 1800s.

The Order route provided one of two named routes in the 1830s-1840s to Much Hoole Marsh House – the other being Haunders Lane. Both at that time were listed in the Tithe Award as roads and both appeared to be capable of being used. The fact that the Order route then fell largely out of use and Haunders Lane became the primary access route to and from Much Hoole Marsh House (now Hannings Farm) and Marsh Farm is not relevant as to whether the Order route existed as at least a public bridleway in the 1830s-1840s.

The First Edition 25 inch OS map defines Watery Lane as a footpath and later maps provide no evidence of a route of substantial construction which would allow for the passage of horses.

The evidence shows, on balance, that public bridleway rights already existed by the mid-1800s before use of the route declined (as evidenced by OS maps surveyed and published from the late 1890s onward) and that because no legal order was made to extinguish those public rights then the rights still exist and should be recorded even though there is no evidence that the full length of the route has been used, or has been capable of being used, for a considerable amount of time.

Bartholomew's Map 1902 [sic] defines the route as inferior and not to be recommended to cyclists and as such it would not therefore be expected that a horse would have a right of passage.

The Order route was already dedicated as being at least a public bridleway by the 1840s and those public rights still exist and should be recorded.

Later map and documentary evidence examined suggests that use of the route had started to decline by the 1890s but this does not detract or alter the conclusion that the route already existed as a public bridleway by the 1840s.

Bartholomew only shows part of the Order route. As Bartholomew's Maps were derived from the OS maps of that time it may be that part of the Order route had been purposely omitted by Bartholomew possibly due to the limitations of scale or because that section of the Order route was no longer accessible.

The fact that the route shown was described as inferior and not to be recommended for cyclists is relevant in that it suggests that it may have been considered to carry public vehicular rights as cyclists had no rights to use public bridleways at that time. If it was only footpath there would be no need to show the lane at all or to describe it as inferior or not recommended for cyclists.

The second objection letter was submitted by Mr Roger Bracewell on behalf of Bracewell Farms Limited who are occupiers of land adjacent to the Order route.

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

The proposed route is now the route of a substantial brook and is completely unsuitable and unusable in its current condition as a bridleway.

The Order route A-B is useable and appears to have remained unaltered since it was shown on the Tithe Map and first edition Ordnance Survey maps in the 1800s.

The Order route from point B through to point D is largely unusable and the OMA agree that it is no longer suitable or useable as a bridleway.

However, the Order does not seek to create any new public rights and has been made to record public rights that historical map and documentary evidence show already legally exist.

Although it is accepted that the route B-D is not suitable for walkers, cyclists or equestrian use this is not a consideration that can be taken into account when deciding whether an Order to record existing public rights should be made or confirmed.

Should the Order be confirmed the OMA will then need to consider what options are available to reinstate the route, legally divert, extinguish, prohibit or restrict use of it by the public.

To enable the Highway Authority to maintain and enable the use of the bridleway the Highway Authority would need to culvert or undertake extensive work which would affect field drainage which currently discharges into the brook.

The Order has been made to record public rights that already legally exist based on historical map and documentary evidence and cannot take into consideration what work may need to be carried out to reinstate the route – or whether it is possible, desirable or practicable to do so.

Practical considerations regarding any future use of the route or work required to reinstate it would only be considered if the Order was confirmed. Any work proposed to be carried out would be done in full consultation with affected landowners.

Maps of 100 years ago may refer to 'Watery Lane' but use of the land has now changed and it is now a vital drainage ditch with the footpath relocated adjacent to the brook.

The map evidence shows that the Order route followed the watercourse for much of its length. It also tells a story of how use of the route on horseback seemingly declined and how a public footpath came into being running alongside the bridleway along the field edge.

The public footpath, whilst not as old as the Order route, is a separate public route in its own right and there is no evidence to suggest that the public rights were diverted (or relocated) to run along the public footpath.

Use of the land crossed by the Order route does not appear to have altered significantly in the past two hundred years (agricultural) but it is acknowledged that the drainage ditches have been enlarged.

Any change of use of the land does not alter the fact that if the route was historically dedicated as a bridleway and those rights were not subsequently extinguished or diverted then they still exist.

The closure of Footpath 34 (also referred to as 7-8-FP2) from point D on Liverpool Road to point B as shown on the order map will prevent the use of the current field boundary route, and result in all users having to walk along the bottom of the ditch, as opposed to the boundary of the field.

The OMA draw attention to an error on the two order maps which the OMA had not noticed prior to the Order being made and advertised. This error was the inclusion of a spurious, short, dashed line labelled 'temporary closure', in the style of a legend, which had no relevance to the Order and has led to a misunderstanding for which the OMA apologises.

For clarification the public footpath running along the Order route A-B (green line on the Order map), then to the south of the green Order route B-C (black dashes on the Order map) and then to the north of the green Order route C-D (black dashes on the Order map) is recorded on the Definitive Map in the District of South Ribble (7), Parish of Much Hoole (8) as a footpath (FP2) and is referenced in the Order as 7-8-FP2.

Should the Order be confirmed as made that part of 7-8-FP2 A-B would be recorded as bridleway (7-8-BW34) along with the green route B-D (currently not recorded as any public rights). If the Order is not confirmed there will be no route recorded as 7-8-BW34. In neither case would there be a Footpath 34 (7-8-FP34).

Should the Order be confirmed as made 7-8-FP2 would still exist as footpath over the black dashed line on the map south of the green line B-C and north of the green line C-D. Section A-B (green on the map) would be shown as bridleway but this would not affect the public's use of the route on foot.

Both Order maps contain keys (legends) explaining what is shown on the Order maps.

When preparing the maps a label that was not relevant in this case was mistakenly included: no routes currently covered by temporary closure orders were shown.

There is no intention to close any part of the existing route of 7-8-FP2 and the public will not be required to walk the Order route instead of the existing public footpath.

The status of the route as a bridleway has changed over the last 100 years. The route is no longer a bridleway, but a substantial ditch.

Whilst the condition and use of the Order route has changed there is no evidence to suggest that the legal status of the Order route has changed in the past 100 years or more. It was a road or bridleway historically and has fallen out of use and become unusable but the public bridleway rights do not disappear.

The use of this 'watery Lane' is no longer a bridleway and has reverted to a registered footpath running along the ditch boundary. This is an established footpath route, and the order should not close footpath 34 between point D and point B as shown on the order map and relocate this into the bottom of the brook.

The OMA made the Order because there is sufficient evidence to show that the Order route was a public bridleway historically. No evidence has been found to suggest that public bridleway rights have been extinguished at any time or that the route was legally downgraded to footpath and diverted onto the alignment of 7-8-FP2 between point B and Liverpool Road despite the practical reality.

The Order made by the OMA seeks to record public bridleway rights along the route coloured green on the order map and to record it as 7-8-BW34. The Order will not extinguish any existing public rights on foot along any part of 7-8-FP2. It does however seek to upgrade that part of footpath 7-8-FP2 A-B to bridleway 7-8-BW34.

Summary:

The OMA consider that there is historical evidence to show that the Order route is at least a public bridleway and that those public rights have not been extinguished despite the fact that the much of the route is no longer in use. It is perhaps arguable that the route should have been recorded as a restricted byway but having considered the topography and location of the route the OMA considered that whilst it can be argued that the route was used on horseback there is less certainty that it was ever usable by vehicles more than exceptionally.

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 public bridleway in law, and respectfully requests that the Secretary of State confirms the Order as made.