

THE LANCASHIRE COUNTY COUNCIL
BRIDLEWAY ON BALL HOUSE LANE, FOULRIDGE
DEFINITIVE MAP MODIFICATION ORDER 2018

Lancashire County Council's (the Order Making Authority – 'OMA') comments on objections

Six duly made objections to the Order have been received by the OMA (Document 4).

Five of the objections simply state that their objection in full is as stated in the objection letter submitted by Mr John Bank of Ball House (located immediately adjacent to the Order route and accessed from it) and request that either the Order is rescinded or that a public hearing is held to determine the matter.

None of the objectors are registered owners of any part of the Order route or have provided any information asserting that they own any part of the Order route.

The five objectors are listed below together with information relating to their registered addresses and their proximity to the Order route:

Mr J Garnett - Hollybush Barn (Uses the Order route between point A and point D to access their property and is one of the registered owners of Hollybush Farm).

Mrs P K Rhind – Hollybush Farm (Uses the Order route between point A and point D to access the property but is not a registered owner of Hollybush Farm).

Mr R Edward Bank – Mistals (Uses the Order route between point A and point C to access the property and is the registered owner of Mistals including an access strip from the property leading directly onto the Order route at point F).

Mrs J Clarke – Springfield House, Hill Top, Foulridge (Registered owner of Springfield House. Does not use Order route to access the property which is situated north east of point H).

Mrs Z M Stubbs – Staniston Bungalow (Accesses the property from the Order route at point I and is the registered owner of Staniston Bungalow).

The objections raised by the five individuals listed above cover the exact same points as the one substantial objection received to the Order from Mr John Bank of Ball House. The OMA's Comments on Objections below will therefore directly address the submissions made by Mr Bank.

Mr Bank has been the registered owner of Ball House since 1993 but is not the registered landowner of any part of the Order route itself.

Mr Bank submitted his objection on 15 January 2019 comprising of two letters of the same date providing both a summary and full objection to the points in the Regulatory Committee report (Document 4 and Document 21).

Two Letters dated 15th January 2019 submitted by Mr Bank

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

Mr Bank requests that either the Order is rescinded or that a public hearing is held to determine the matter.

There is no statutory provision for the Order once made to be rescinded. Having considered the objections made, the OMA are still of the view that there is strong evidence to support the confirmation of the Order to record the route as a public bridleway and are referring it to the Planning Inspectorate requesting that it be confirmed.

Mr Bank requests that if the Order is not rescinded the County Council fund work to carry out drainage works to prevent flooding which renders the route unusable and surfaces the full length of the Order route with hard core topped with grit. He suggests that if the route is to be made suitable for wheelchairs then a width of surfaced track would be needed and if it is to be suitable for horses then horse gates would be required.

Mr Bank also requests that there be a budget for annual maintenance.

The OMA have made the Order to record existing public rights and concerns about maintenance of the route cannot be taken into account except insofar as they assist with evidence of existing status. If the Order is confirmed, the OMA will consider its statutory duties and powers in relation to maintenance of the lane.

The Order route (with the exception of the route between point H and point I) is already a publicly maintainable highway although this maintenance responsibility currently relates to a duty to maintain it to a standard appropriate for pedestrian use. If the Order is confirmed on the basis of historical map and documentary evidence, then the whole length of the route will become a publicly maintainable bridleway – to be maintained to a standard appropriate for equestrian and pedestrian use.

The report is inadequately and inaccurately researched thus the document fails. The report is biased against any objection and unfairly deals with objections by ignoring them. The researcher is not knowledgeable concerning what they are looking at nor do they understand the ways/customs of the area reported on.

The document referred to by Mr Bank is the report presented to the County Council's Regulatory Committee on 18th July 2018 (Document 21).

Experienced officers carried out a thorough, impartial and detailed examination of available map and documentary evidence to determine whether, on balance, the route under investigation (the Order route) should be correctly recorded as a bridleway on the basis of historical documentary evidence. In addition, an analysis of the user evidence submitted to the OMA was provided and assessed and any comments or information provided by others – including Mr Bank – in relation to this investigation were considered.

Although there was no statutory requirement to do so, the views of those living along the Order route (including Mr Bank) were sought and relevant points made in any

responses received were included in the report and considered by the OMA in coming to the decision to make an Order.

The investigation was a new investigation into the existence of bridleway rights and the OMA made the Order based on the evidence before them and are promoting it to confirmation.

Eight Point Summary Provided by Mr Bank referred to by the Objector as a 1 page document titled 'I John Bank of Ball House, Foulridge'

Route F to I was created by the canal company after 1796 and before the completion of Whitemoor reservoir in 1840 although the exact date is unknown as records were destroyed during the bombing of Liverpool during WW2. The route was used to bring sand from a quarry in the fields north of point G.

The earliest map evidence found by the OMA showing the full length of the Order route is the Honour of Clitheroe Map 1804-1810 (Document 26).

Mr Bank provides no evidence to substantiate his assertion that the Order route was originally constructed by the canal company to transport sand between 1796 and 1840.

The Order route existed by 1804-1810 as evidenced by the Honour of Clitheroe Map.

In addition, there is new supporting evidence (not previously considered as part of the earlier investigation into the public status of this route) found since the making of the Order made to record the route as a bridleway.

A plan titled 'A Map of Ballhouse, Greenshaw and Stone Edge Estates belonging to T Parker Esquire' dated 1828 (Document 28) shows the Order route passing to the north of Ball House and shows the fields to the north of the Order route which were owned by the Parker family numbered and referenced by name. Neither plot 3 or plot 4 include a sandstone quarry and neither plot is named with reference to a quarry suggesting that the quarry did not exist in 1828, but confirming that the Order route already existed as a substantial route at this time.

Whilst the Order route may have been used later to provide access to and from the quarry, there is no evidence that any part of the Order route was created as a private route just to service the quarry.

It appears to the OMA that the Order route existed prior to the quarry and that it provided part of a longer through-route past the quarry, or that the quarry was dug there because it had road access. If, as asserted by the objector, the Order route was constructed to provide access from the quarry to Whitemoor reservoir, then there would be no reason for it to continue south west past the quarry and past Ball House (and beyond).

The existence of the Sandstone quarry on the 1st edition 6 inch OS map was not commented on by the OMA in the report to the Regulatory Committee and the objector comments that the track was the width to allow two sand carts to pass and that the walls were 'rebuilt' to contain the track whereas south east of point

F the walls were to keep stock in fields and did not refer to the differences in the track surfaces.

The observations detailed in the report submitted to the Regulatory Committee related specifically to how the Order route was depicted on the 1st edition Ordnance Survey – namely that the full length of the route was shown to physically exist at that time.

Had there been a clear and evident access track leading from the Order route to quarry or had the quarry been larger, this may have been mentioned but would not significantly alter the OMA's view regarding the significance of the way the Order route was depicted on the 6 inch map as a substantial through-route capable of being used on horseback at that time.

The objector provides no evidence to substantiate speculation that the width of the route was set out specifically to allow for the passage of two sand carts or that walls were rebuilt to contain the track or that it had been widened and walls rebuilt for that purpose.

Maps predating the 1st edition 6 inch OS map show a bounded route which appeared capable of being used on horseback and the OMA assert that throughout its history, the Order route appears to have been wide enough to have been capable of having been used at least on horseback and possibly by horse and cart.

Prior to the canal company there was from 1580 an access track solely from D to F Ball House Farm while a public footpath made its way onwards to Hill Top and across County Brook to Salterforth.

Map and documentary evidence examined from the early 1800's onwards supports the view, on balance, that the full length of the Order route existed from that time connecting to a network of public vehicular highways and that the full length of the Order route would have been capable of being used as a public bridleway.

The OMA assert that the origins of how and why the Order route originally came into being are not known. What can be deduced from the map and documentary evidence however is that the route existed by at least the early 1800's as a substantial bounded through-route which providing access to a number of properties, linked to recognised public vehicular highways and which appeared to be capable of being used on horseback and possibly by horse and carts. The OMA are of the view that the Order route was likely to have been used as a public bridleway sufficiently to presume dedication by at least the early 1800's.

The objector refers to other routes and makes particular reference to a route shown on old commercial maps from point D on the Order route continuing north west through Hollybush Farm (Moss House) to White Moor Bottom.

The route from point D on the Order route extending north west through to Standing Stone Lane is recorded as a public footpath (Footpaths Foulridge 64 and 23). The objector points out that this route is shown on early commercial maps (Honor of Clitheroe Map 18904-1810, Greenwoods Map 1818, Hennets Map 1830) as a road, but says that it is not a road and has never existed as one. By inference, the objector

argues that the maps were incorrect to show that route as a road and that they are therefore also incorrect in showing the Order route in such a way.

The OMA have investigated the history of the Order route – and not other routes in the area. Whilst the OMA accept that it is important to consider the Order route in the context of how it connects to other routes in the area and how it is considered in historical records, it is the public status of the Order route that is under consideration here.

The OMA have taken a view of the evidence relating to the physical existence of the Order route and how it is so consistently shown throughout hundreds of years in historical maps and records. It considers that the Order route existed as a substantial through-route from at least the early 1800's and should be recorded as a public bridleway.

The route referred to by the objector is shown to exist on some of the early commercial maps, the Tithe Map and 1st edition 6 inch map and so the objector's argument that it never physically existed appears unfounded. The recorded public status of this route is footpath – whether higher rights existed in the past is not at issue here.

The condition of the Order route between points D-I was unusable for most of its history and the 25 inch OS map published in 1894 shows an alternative access route to Ball House which he argues would be unnecessary if the Order route between points D-I had been accessible.

The OMA have found no evidence to suggest that the Order route between points D-I was unusable for most of its history. On the contrary, it clearly shows up on key historical documents including the 1842 Tithe Map where it is described in the Award as being part of the road from Barnoldswick to Colne – which, by inference would not be the case if it were 'unusable'.

The 1st edition 25 inch OS map published in 1894 (Document 35) shows the whole of the Order route shaded to one side on the black and white edition of the map and on the coloured copy of the same map the full length of the route is also shown coloured as was consistent with the way that routes considered to be public roads at that time where shown.

From the map – derived from a survey carried out between 1891-94 – the Order route existed providing access to a number of properties, but that it was also a through-route connecting Reedymoor Lane with Standing Stone Lane and Whitemoor Road. It would not be shown in such a way if it had been found by the OS surveyor to be unusable.

Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the Order route is shown on the 1st edition 25 inch map in this way is consistent with how it was recorded on the Tithe Map and Award and how it was included on early small scale commercial maps and indicated that the

route was probably capable of being used by horses. It is consistent with use of the route by the public at least on horseback at that time – and not evidence of a route that was 'unusable'.

The OMA do not consider that the fact that there is an alternative route shown providing access to Ball House on the 1st edition 25 inch map means that the Order route was impassable between point D and point I. There are other reasons for alternative access routes being constructed and it is still the case that many properties have such additional access for reasons of privacy, security or status or because they chose to create a better standard access or one they had a right to maintain.

If, as the objector asserts, the full length of the Order route was not as suitable – or as convenient - for access to a property in the 1894, this is a separate issue to whether public bridleway rights already existed.

The only references found by the OMA to part of the Order route being impassable 'at present' were on the parish survey map drawn up in the 1950's as part of the process of preparing the Definitive Map of Public Rights of Way.

The OMA assert, in the first instance, that the Order route was already dedicated as a public bridleway by at least the early 1800's and the fact that it was noted as being very wet, boggy and impassable over a short distance in the 1950's may mean that use at that time was consequently limited to being on foot reflecting why it was then recorded as a public footpath.

Modern user evidence submitted to the OMA in support of bridleway status suggests that the route – whilst not suitable for modern day vehicular use from point D onwards – was, in fact, still passable both on foot and on horseback.

The objector makes frequent references to the Order route being impassable for most of its history due to it being flooded. The OMA have found no evidence to substantiate this argument, but note that by 1930 a watercourse was shown running within the boundaries of the route between point F and point H. Prior to then, there is no suggestion that this part of the Order route was adversely affected by the flow of water along it. The OMA assert however that public bridleway rights already existed along the route by this time and that the existence of a watercourse within the boundaries of the route would not necessarily render it incapable of being used on horseback.

By the 1950's the Order route had been abandoned in favour of the one used today from point C and there would have been no need to do this if the Order route between point D to point I had been adequate. The Halstead family tried – in 1968 – to make the track from point I to point F useable for themselves but this failed due to the field drainage and weather destroying their efforts. In addition details of land ownership or the sale of land in 1895 are deposited at Colne library.

Whilst not clearly specified in the objection, it is assumed that the work said to have been carried out by the Halstead family between point I and point F was done so in an attempt to make the route useable with mechanically propelled vehicles to enable them to access the property from the north.

The OMA assert, in the first instance, that the Order route was already dedicated as a public bridleway by at least the early 1800's and the fact that it may not have been in a suitable condition for motorised vehicles to use it as access to Ball House in the 1960's is not relevant to the confirmation of the Order.

The objector also referred to information regarding land ownership and the sale of land in 1895. Further specific information was not provided by the objector – nor was any explanation regarding the relevance of such documents.

Sale documents deposited at the County Records Office relate to the sale of extensive areas of land owned by the Parker family including Ball House at a public auction held on 31st July 1889 (Document 34).

The Sale did not include the Order route which was shown coloured brown on the sale plan and passed straight through the land to be sold. The fact that it was not included in the sale of the land is highly suggestive of a public route and indicates that the Order route existed as a through-route passing to the north of Ball House – and that it was not a route providing access solely to a private property. The colour used for the Order route was conventionally used for depicting public roads on many 19th Century maps.

Additional auction plans and documents dated April 1903 relating to the further sale of Ball House and land – but excluding the Order route - were also subsequently found in the County Records Office (Document 58) and again indicated that the Order route existed as a through-route passing to the north of Ball House – and that it was not considered to be a route providing access solely to a private property.

The OMA consider that the details of land ownership and sale of land in 1889 referred to by the objector provide further evidence in support of the fact that the Order route was an established recognised public route at that time.

The objector is of the view that the OMA have attached importance to the horse riders statements when he considers that in 1998 the Inspector 'realised they were a team writing effort – and at the politest fiction'. He refers to use by motorcyclists and occasional mountain bikers and states that the OMA quotes hearsay from the late Alan Wilson and Jack Judson ignoring evidence from Andrew Wilson in 1998 stating he never used the Order route for access and neither had anyone else.

The OMA assert that the Order route was already dedicated as a public route of at least bridleway status by the early 1800s. As such, the user evidence submitted may be considered to be 'modern' evidence of use of a recognised and established bridleway that already existed.

References to what may have been said and evidence evaluated at the 1998 public inquiry into whether the route was a byway open to all traffic is not being relied on in this matter with 'new' evidence having been evaluated in respect of the existence of public bridleway rights.

The OMA's case remains that use made of the route by horse riders is in fact modern use of a route already dedicated as a public bridleway by the late early 1800's and that modern use is use of a recognised route already considered to be a public bridleway.

A witness said he and his family were unable to live as tenants at Ball House in 1931/32 due to bad weather ('and so the track?')

The OMA have not been provided with details of the testament of a witness regarding tenancy of Ball House in the 1930's and assume that the testament referred to was in relation to the Inquiry proceedings from 1997.

It is not disputed that there may have been issues regarding accessibility for vehicles – but not necessarily on foot or on horseback - along the Order route in the 1930's. However, the OMA contend that the Order route was already dedicated as a public bridleway by the early 1800's and the condition of the route – and whether it restricted or made use of any part of it difficult or impossible for vehicles or other traffic in the 1930's - is not relevant to the existence of public bridleway rights.

John Bank is the one alive remaining resident today who could have provided information for the Committee Report.

The OMA did consult Mr Bank prior to the making of the Order and considered those comments when deciding to make the Order.

Mr Bank, and other interested parties, have now made representations or objections to the Order. The OMA have given considerable thought to those objections and have carried out additional research as a result of some of the points raised. The OMA are still firmly of the view that the Order route is at least a historical public bridleway and that the Order should be confirmed.

A police incident with the elderly James Taylor whom the objector states knew the area better than anyone else having lived at Holly Bush Farm for 40 years and having been Colne Borough Surveyor for 30 years.

The reference to Mr Taylor in the Regulatory Committee report was made as part of a summary of the user evidence submitted by members of the local horse-riding community.

As part of that initial assessment, the OMA look at a number of factors including during what years the public claim to have used the route, by what means (on foot, horseback, bicycle or by other means), the frequency of use, why they were using the route, whether they were ever given permission and whether they were ever stopped or challenged.

One user of the route referred to an incident stating that two horse riders were 'assaulted' by Mr Taylor and that the police were involved. They could not recall the date.

It is noted that Mr Taylor objected to the Order made to record the route as a public byway and was present at the 1997 inquiry. However, this current Order has been made to record the route as a public bridleway based on evidence available at that time but also on the discovery of new and additional evidence.

Sadly, it is acknowledged that it has not been possible to consult Mr Taylor as he is now deceased.

The OMA assert that the Order route was already dedicated as a public bridleway by at least the early 1800's and that the Order should be confirmed to record the route as a public bridleway on that basis. The OMA further asserts that the modern user evidence of use of the route on horseback (and foot in relation to the route between point H and point I) is modern use of a historical bridleway.

The only property between point D to point I was Ball House.

The OMA have looked at the location, position and topography of the route in making comments regarding the fact that it is a substantial bounded through-route which provides access to a number of properties, but most significantly is a through-route connecting to existing public vehicular routes. Map and documentary evidence from the late 1700's and early 1800's clearly shows that the route was not just a route providing access to private properties, but continued past them. The OMA assert that the route could have been used by the public on horseback from at least the early 1800s.

Mr Bank concludes that there is sufficient evidence that the Order route between point D and point I was never used for vehicular traffic of any sort and that the Order route has always been unsuitable due to weather and land drainage. He requests the Order be rescinded or an appeal be permitted.

The OMA are not asserting that the route should be recorded as a public vehicular route, but that the evidence strongly supports the fact that a historical public bridleway has existed since at least the early 1800's and that the Order should be confirmed.

The OMA do not share the view of the objector that the Order route has always been unsuitable due to weather and land drainage for it to have been used on foot, horseback or by vehicles.

18 page document submitted by Mr Bank as part of his objection

Mr Bank summarised the objections made in this lengthy document in his Appendix to letter 2 and these objections have already been addressed above.

The OMA do not therefore propose to go through each point made in this additional document as the significant points made have already been addressed.

The following points are however made by the OMA in direct response to the 18-page document:

1. The 2018 Order made does not seek to 'change the result' of the 1997 public inquiry. The Public Inquiry decision from 1997 and evidence considered at that time are not directly comparable with the evidence being considered in respect of bridleway rights.
2. The Objector states that he does not accept the 'new' evidence – although he does not specify exactly what he does not accept. He appears to consider the route to be a private occupation road which evolved in time into a public footpath as a convenient route to Hill Top. He provides no evidence to substantiate that view.

For clarity, the 'new' evidence considered by the Order Making Authority (OMA) in relation to the making of the 2018 Order recording the route as a public bridleway is listed below and will be in detail as part of the OMAs case:

Map of Barnoldswick, Yorkshire, with Foulridge, Lancashire showing houses, fields, watercourses and Whytmore, the land in dispute 1580

Sand Holes Estate Plan 19th Century

Honor of Clitheroe Map 1804-1810

Bacon's Map of Lancashire circa 1904

Bartholomew's half inch maps published 1906 and 1919-24

The OMA assert that the maps listed above – together with all the other map and documentary evidence considered in relation to this investigation - all add weight to the view that the Order route is a historical public bridleway dedicated as such by at least the late early 1800's and that the Order should be confirmed.

In addition, since the Order was made, and in consideration of the objections raised, the OMA have discovered further map and documentary evidence in support of the confirmation of the Order:

Plan titled 'A Map of Ballhouse, Greenshaw and Stone Edge Estates belonging to T Parker Esquire' dated 1828

1889 Sale plan and brochure detailing the proposed sale of Ball House and land adjacent to the Order route.

1903 Sale plan and brochure detailing the proposed sale of Ball House and adjacent land

The Objector refers to the user evidence presented to the public inquiry in 1997 stating that it was not accepted by the Inspector.

User evidence submitted in respect of the 1997 Inquiry was not considered as part of this investigation into the existence of bridleway rights or relied upon in respect of the OMA's decision to make this Order.

The user evidence considered in respect of the making of the 2018 relates to bridleway use of the route only and whilst some of those providing evidence in relation to this matter may have been present at the 1997 Inquiry – or may have provided evidence at that time, this does not mean that it is not relevant to the confirmation of this Order.

Of particular significance though is that although the OMA consider that there is evidence of modern use on horseback this was not necessary to show dedication, and is instead modern use of an old route previously dedicated as a bridleway.

Any use of the route by off-road motorcyclists is not being considered by the OMA as part of the grounds for making or confirming this Order.

Comments made by the Objector with specific reference to consultations included in the report presented to the County Council in a report dated 18 July 2018 (Document 21)

Pendle BC do not state that there is no evidence of public bridleway rights – only that they themselves do not hold any evidence of public bridleway rights.

Foulridge Town Council, whilst stating that they did not support the application, did not provide any evidence for or against the existence of bridleway rights. The comments made by the Town Council are slightly misleading in that they appear to understand that the 1997 public inquiry concluded that the route was not a public right of way whereas it was still, in fact, recorded as a public footpath – with the exception of the route between point H and point I.

Mr Bank claims that he was not made aware of the investigation into public bridleway rights and was not consulted. This is not correct. The comments made by Mr Bank are reported to the Regulatory Committee under the heading information from adjoining landowners. In addition, it was noted in one response from Mr Bank dated 14 September 1998 that prior to the public inquiry into the Order to record the route as a Byway Open to all Traffic, he had no objection to horses using the route, but had since then changed his mind due to the attitude of local horse riders.

Conclusion

Taking into consideration all of the available historical map and documentary evidence, 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.

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.