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CENTRAL MAILROOM

26 FEB 1998

LANCASHIRE COUNTY COUNCIL

The Chief Executive and Clerk
Lancashire County Council
PO Box 78, County Hall
PRESTON
Lancashire PR1 8XJ.

Your Ref:

71/SPS/807/72

Our Ref:

FPS/C2300/7/49

Date:

25 FEB 1998

Dear Sir,

THE WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53 AND SCHEDULE 15

THE LANCASHIRE COUNTY COUNCIL (DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY) (DEFINITIVE MAP MODIFICATION) (No 1) ORDER 1988.

1. I refer to the above named order submitted by your Council to the Secretary of State for confirmation. I have been appointed to determine the matter in accordance with paragraph 10(1) of schedule 15 to the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. The effect of the order, if confirmed without modification, would be that the definitive map and statement for the County of Lancashire would be modified to -
 - (a) add a byway open to all traffic over a route between points A and B as described in the schedule to the order and shown on the order map, where no public right of way of any description is shown on the definitive map and statement, and
 - (b) substitute for lengths of footpath between points B and C and between points C and D as described in that schedule and shown on that map, lengths of byways open to all traffic.
3. There are about 30 objectors to the order.
4. On 8 December 1997 I made an unaccompanied site visit. On 9 and 10 December 1997 I held a local inquiry at the Council

Chamber, Borough of Pendle, Town Hall, Nelson. On 11 December 1997 I made a site visit accompanied by representatives of your Council and of the supporters of the order and by objectors to the order. During the site visits I walked the whole length of the route.

5. At the inquiry it was confirmed on behalf of your Council that all the relevant formalities had been complied with. The order is substantially in the prescribed form.

6. In this letter

- a reference to a lettered point is to the point so lettered on the order map,

- a reference to a numbered paragraph is to the paragraph so numbered in this letter,

- "byway" means a byway open to all traffic as defined in section 66(1) of the Act, and

- "the route" means the claimed byway to which the order relates.

DESCRIPTION OF THE ROUTE OF THE CLAIMED BYWAY AND THE SURROUNDING AREA.

7.1 At point A the route joins the south side of the B 6251 road near the junction between that road and another county road (Standing Stone Lane) which runs south-westwards towards Blacko. Between points A and B the route follows a track about 3 metres wide mostly with a grass surface and between stone walls between about 4 and 5 metres apart. About 25 metres south of point A there is a gap about 2.7 metres wide in the wall on the west of the track. A stone pillar stands on each side of the gap. One of those pillars contains a round hole with a diameter of about 7 centimetres. At point B the route is joined by footpath 8.

7.2 Between points B and C the route follows a track of indistinct width. On most of each side of the track there is a stone wall. The distance between one wall and the other varies from between about 6 metres to about 10 metres. Varying parts of that distance are occupied by banks of earth. The width of the track between those banks varies considerably but is mostly about 3 metres. Much of the surface of that track is stony and rough, but in a few places concrete bricks have been laid. Footpath 9 goes eastwards from point C. Footpath 10 goes westwards from point C.

7.3 Between point C and its junction with footpath 24 the route is contained within a track mostly between stone walls. The distance between one wall and the other varies from about 12 metres to about 8 metres. Alongside each wall there is an earth bank, mostly overgrown with holly and other vegetation. There

re - number of mature trees growing on the banks. The width of those banks is mostly about 4 metres. The beaten track between the banks has a width varying from about 2.5 metres to about 1 metre. The track is mostly sunken below the level of the walls and mounds of earth; its surface is rough. The track is on a slope which is in places steep. On the west side of the route about 25 metres north of its junction with footpath 24 there is a construction on the stream which goes under the route in a culvert. Near this point there is a feature which might be an old bench mark.

7.4 Between its junction with footpath 24 and point D the route follows a level track with a metalled surface about 3.5 metres wide. On each side of that surface there is a grass verge and beyond each verge there is a fence. The distance between one fence and the other is about 9 metres. The route crosses a disused railway about 80 metres north-west of point D. At point D the route joins a county road called Reedymoor Lane. Near that point there is a notice stating "PRIVATE ROAD TO "HOLLY BUSH" "BALL HOUSE" "SANDHALL" "MISTRALS" NO UNAUTHORISED MOTOR VEHICLES OR MOTOR CYCLES ANY VEHICLE OBSTRUCTING THE LANE WILL BE REMOVED AT THE OWNER'S LIABILITY", and a second notice stating "PRIVATE ROAD KEEP ACCESS CLEAR AT ALL TIMES THANK YOU".

7.5 The route passes through pleasant countryside on which major engineering works in the form of a canal, a railway (disused) and reservoirs have made a considerable impression.

SUBMISSIONS OF THE PARTIES

8. The material points of the submissions are as follows.

The case for the order making authority.

9.1 The order was made by the Council in compliance with a direction by the Secretary of State under paragraph 4(2) of schedule 14 to the 1981 Act. The Council takes a neutral stance as to whether or not the order should be confirmed. However, the Council submits as evidence to the inquiry the Statement of Case and recommendations which informed the Council's decision on 16 July 1985 not to accept the claim for a byway.

9.2 For the purposes of section 56(2) of the 1981 Act the relevant date is 1 January 1953 as regards the original definitive map and 1 June 1966 as regards the first review of the definitive map. The draft definitive map was published in 1955. The original definitive map was published in 1962.

9.3 The Council has no record of any objections being received as regards provisions relating to the route or any part of it during the process of making the original definitive map or the first (and only) review of the Definitive Map. Nor has the

Council any record of any public expenditure on the maintenance of the route.

9.4 If the order is confirmed it should be modified as follows-

(a) in the preamble

- for "section 53(3)(C)" substitute "section 53(3)(c)(i) and (ii)", and

- after "being a right of way to which this Part applies" add "and that a highway shown on the map and statement as a highway of a particular description (a footpath) ought to be there shown as a highway of a different description (a byway open to all traffic)"; and

(b) in Part I of the schedule for "between 3 metres and 19 metres" substitute "between 3 metres and 13 metres".

Those modifications are within the modification power given by paragraph 7(3) of schedule 15 to the 1981 Act and do not fall within the arc of paragraph 8 of that schedule.

The case for the supporters

10.1 The onus is on the persons claiming that a byway exists to show that on a balance of probability it does exist.

10.2 If the order cannot be confirmed so as to modify the definitive map and statement to show the route as a byway, the modifications should show the route as a bridleway.

10.3 The supporters do not know what evidence the County Council took into account in the course of preparing the definitive map. The supporters therefore contend that all the evidence on which they rely should be regarded as having been discovered as fresh evidence for the purposes of section 53(3)(c) of the 1981 Act.

10.4 The Council erred in reaching its decision in 1985 not to grant the application to make an order to modify the definitive map so as to show the byway as claimed in the application.

10.5 Factors relating to the narrowness of the lane in parts, the alleged danger to pedestrians and the possible obstruction to vehicles seeking access to properties are irrelevant and no weight should be attached to them. However, the limited vehicular use which has been made of the route in recent times is a result of the poor state of repair.

10.6 Repair of the route by frontagers, the existence of gates across the route and any falling out of use of the route do not deprive the route of its highway status.

10.7 Reedymoor Lane and Standing Stone Lane are in the occupation of the highway authority and maintainable at the public expense. The route connects these two public carriageways together! Therefore the public are occupiers of land served by the route just as much as the adjoining landowners are for the purposes of user. The term "occupation road" probably means a road where some or all of the maintenance liability fell to persons occupying adjoining land and did not imply restrictions of use. The instructions to Field Examiners issued by the Ordnance Survey in 1905 states that "occupation roads" includes "roads leading from a public road to a farm or inhabited house, and roads over which there is a private right of way from a public road". This does not preclude through roads, such as the route, which have been used by the public, but seems to relate to roads which end at a private house or field. There may be both an occupation way and a highway over the same road.

10.8 The bargaining stone near the north of the route is a facility said to have been used by farmers to strike a bargain by touching hands through a hole in the stone. It is improbable that such a facility would have been sited in a place which the farmer or merchant could not reach on his horse or with a horse-drawn cart.

10.9 When railway undertakings were mapping prospective railway lines it was in their interests to record roads at their lowest status in order to limit levels of compensation. No explanation has been given as to why Reedymoor Lane is described as an occupation road in documents relating to the construction of the railway under the Shipley to Colne Railway Act 1845 although it is undoubtedly a highway.

10.10 Land Registry records show that Ball House is registered land, but the route is not. This shows that the present owner of Ball House is exercising either a private easement, a prescriptive right or a public right of way over the route to reach the house. This strongly suggests that the route carries a vehicular public right of way. The same deduction can be made as regards an exception or reservation from the title to Ball House by which another person has a right over a way which can be reached only from the route.

Documentary evidence.

10.11 The following maps and comments on them are material -

(i) Yates' Map 1786. The southern section of the route appears. It seems from the map legend that the cartographer was depicting turnpike roads and cross roads, and not footpaths or bridleways. It is likely that the term "cross road" indicates a public road in respect of which no toll was payable (*Hollins v Oldham* 1995 refers).

- (ii) Smith's Map 1808. The route is shown on this map although it is on a very small scale.
- (iii) Greenwood's Map 1818. This map shows the route as a cross road; it is in direct alignment with a road continuing northwards to Barnoldswick.
- (iv) Baines' Map 1824. Although this map is only on a scale of 4 miles to 1 inch the route was promoted by the cartographer as a cross road.
- (v) Teesdale-Hennet's Map 1828-1830. This map is on a scale of 1 inch to 1 mile; it shows the order route as a cross road.
- (vi) Foulridge Tithe Map and schedule 1842. The route is shown as a walled lane annotated by the number 162a. The northern extension of the route is annotated by the number 363. Both roads are described in the schedule as "Road from Barnoldswick to Colne". Nothing about the tithe map suggests that the route is anything other than a public carriageway.
- (vii) Chapelry of Colne Map (pre-1844). This map shows the route and shows it continuing in a straight line to Barnoldswick. There is nothing in its depiction to suggest that it has any lower status than neighbouring motor roads.
- (viii) Map relating to the Skipton to Colne extension of the Leeds to Bradford Railway Line 1844. This map shows the route as an occupation road.
- (ix) Ordnance Survey Map 1847 (6 inches to 1 mile). Standing Stone gate is shown at the northern end of the route; a finger post is also shown. Five bench marks are shown along the order route.
- (x) Ordnance Survey Map 1870-80. The scale is 1 inch to 1 mile which is too small to show footpaths. The route is discernable; it is shown in the same style as other non-turnpike roads.
- (xi) Ordnance Survey Map 1895 (6 inches to 1 mile). This map shows the route and a guide post at its north end. There is no narrowing of the route near Ball House where an artificial mound now prevents free passage of vehicles.
- (xii) Finance Act 1910 Map (based on Ordnance Survey Map 1907) and field books. The scale of this map is 25 inches to 1 mile. The route is not shown as within the boundary of any hereditament and it was not within any calculation of land tax. The owner of Moss Farm (now Holly Bush Farm) claimed an allowance of £25 for a public road within hereditament 6567. That road connects the order route to a route to Moss House, Greenshaw and Slipper Hill. Under section 35(1) of the 1910 Act no duty would be charged on

land held by a rating authority. The highway authority would fit the definition of rating authority.

(xiii) Bartholomew's Maps of the 1920s, 1930 and 1938. These maps were produced for leisure and travel. The route appears as a secondary motoring road.

(xiv) Ordnance Survey Map 1938 (6 inches to 1 mile). The route appears as a walled lane of considerable width.

(xv) Ordnance Survey Map 1969/70. This map shows Standing Stone Gate and a guide post at the northern end of the route. The route is given its own plot numbers (8550 and 9792) with acreages. It is annotated as a track.

10.12 Photographic evidence shows physical features which do not resemble a footpath but have the typical characteristics of an ancient vehicular highway.

10.13 The book called "The Story of Foulridge" by Fay Oldland, a local historian, helps to show that the route is a public vehicular highway.

User evidence.

10.14 Claims of use contained in forms submitted to the inquiry and evidence given to the inquiry by a member of the Trail Riders Fellowship show that the requirement under section 31 of the Highways Act 1980 to show 20 years exercise of a right of way with wheeled vehicles and/or on horseback as of right has not been interrupted is easily achieved. The Council has stated that there is clear evidence that the full route is used by pedestrians and equestrians and also by motorcycles.

10.15 Vehicular use has been made of the route in recent times by motorcyclists despite parts of the route being shown on the definitive map as a footpath and parts not shown on that map as a public right of way of any description. Motorcycle trials have been known to occur on the route. That use has not been considered unlawful because the users considered that they had a public vehicular right over it. The provisions in the Road Traffic Act 1988 (re-enacted from earlier legislation) to the effect that it is an offence without lawful authority to drive a motor vehicle on any road being a footpath have either not been known about or, if known about, have not been seen as an impediment to vehicular use.

10.16 In the absence of any known landowner (other than the Council) the user evidence on motorcycles and on horseback, coupled with physical clues, the width of the route, its function within the context of an ancient highway network and corroborative map evidence strongly suggests that it is more likely than not that the public with horses and vehicles would have freely used the route in previous centuries and in the first half of this century.

the case for the objectors

11.1 The route (known as Ball House Lane) existed in the sixteenth century, but there is no evidence that Ball House Lane pre-existed the building of Ball House.

11.2 The *Story of Foulridge* by Fay Oldland does not include the route in the chapter on Road and Rail. That omission was because the route, unlike Cocker Hill and Standing Stone Lane, was not considered by the authoress to be an ancient highway. The pictorial map taken from that book by the supporters shows Ball House, but it does not show a way on the line of the route.

11.3 Historically Ball House is one of the most important houses in the district; it features in the book *Rural Houses of the Lancashire Pennines* published by the Royal Commission on Historic Monuments. There is evidence (including the ancient blocked doorway on the first floor) that Ball House was built by a "putter-out" (a cloth merchant who sent yarn out to houses with hand-loomers and brought back the cloth woven from the yarn). That trade needed a track to Ball House to allow carts to deliver and collect. The house was extended in 1627 by John Moore, a quaker who received into the house persons who shared his beliefs. The first owner of this house would have constructed and maintained the most efficient route to the pre-existing highway system at or near Standing Stone Gate; subsequent owners would have maintained that route.

11.4 The route may also have been used in connection with the quarrying of sandstone. A sandstone quarry near the route is shown on the Ordnance Survey map of 1844. The remains of many smaller quarries are apparent in the area. Huge quantities of this material would have been needed for the construction of three large reservoirs, the Canal tunnel and the railway, all of which occurred between about 1790 and 1850. The use of part of the route for carting quarried stone may account for that part of the route being wider than the rest or having moved from its original line on its northern section.

11.5 The route has never provided vehicular access to anything beyond the houses which it serves, and the nearby fields and quarries. Therefore it would have been inappropriate for that route to have been anything more than an occupation road, namely a way used by the people of the district for local purposes and not by travellers passing through.

11.6 The fact that the northern section of the route runs from Standing Stone Gate in a direct southerly line towards Colne does not support the claim that it was part of a continuous route to Colne from Barnoldswick. It is clear from historical evidence that in the vicinity of Foulridge the route from Barnoldswick to Colne was by Cocker Hill. On Barcroft's map Cocker Hill is marked as "the route from Barnoldswick to Colne" and its continuation along Foulridge Lane is marked "from Foulridge to Colne".

8

↓
cant find map
Thomas Barcroft 1652 on Foulridge
was it his map??

11.7 The historical maps which have been produced were prepared for different purposes; they appear to be inconclusive and contradictory in respect of the status of the route. For an example, Greenwood's map, 1818, shows numerous lanes in the area but does not distinguish between private lanes (such as that serving Wanless Farm) and accepted highways.

11.8 The claim that the absence of any award of tithes on the route indicates that it was a highway is a dangerous assumption. This circumstance is not affected by the fact that other routes dealt with in a similar manner under the Tithe Act 1836 are now highways. If a road was shown it was because it produced no crops. A road which carried private rights may have been as unproductive of crops as a highway.

11.9 The records prepared under the Shipley to Colne Railway Act 1845 show the route as a occupation road. The use in the book of reference to "owners or reputed owners" was a standard heading on a pre-printed form. Obviously the Railway Company would go to great lengths to ensure that they were dealing with the rightful owners of the land and on the correct basis.

11.10 The Memorandum of Agreement between Thomas Parker of Browsholme Hall and the Railway Company illustrates the precision with which the procedures of acquiring land for the purposes authorised by the Shipley to Colne Railway Act 1845 were carried out. The land to which that agreement related included plot 71. That plot was described as "Occupation Road" in the relevant Book of Reference under the Act. The owners or reputed owners were the Leeds and Liverpool Canal Company,, Thomas Parker and three other individuals. Those persons were described as occupying the land in common. That was incompatible with the route being a highway. The fact that other routes, some of which are now highways, were also recorded as occupation roads, and some were recorded as township roads does not indicate that the route was a highway. Had the route been a public carriageway provision would have been made for it under the 1845 Act section 25 (crossing on bridges) or section 26 (crossing on a level).

11.11 The gates which were in use when the railway was operating and other gates across the route indicate that the route is not a vehicular highway.

11.12 A likely explanation of the formation of part of the route which is sunken is that it once formed a watercourse. Some of the stones on the surface of the route, and some which have been taken to build walls or for other purposes, are washed river stones. The canal Company diverted some of this water. Its works for that purpose required the wall to be built so as to avoid the works. The divergence in the distance between the walls on the west of the route and those on the east indicate that the walls were built as field boundaries and not with reference to the route. There is nothing in the physical characteristics of the route which justifies a conclusion that it is a vehicular highway.

1.1.3 There is no evidence that any public authority has accepted responsibility for maintaining the route, either before the Highway Act 1835 or afterwards. Such maintenance as has occurred has been done by the frontagers to the route, sometimes at great cost to themselves. The frontagers, accepting responsibility for this occupation road to their own properties, cleared the route after the severe flood damage in 1932. Also the frontagers, having been told by the highway authority that that authority had no responsibility for the route, excavated the route between Standing Stone Gate and Ball House in 1964 as it had become impassable. The hump between the walls near Ball House is not an obstacle which has been deliberately placed there; it is where the excavations ceased.

11.14 In so far as the route falls within the arc of the Lancashire County Council (Colne-Foulridge Bypass Classified Road) (Side Roads) Order 1996 and the Lancashire County Council (Colne-Foulridge Bypass Classified Road) Compulsory Purchase Order 1996, it is not treated as a vehicular highway.

11.15 The police have treated the route as not being a highway. They have therefore declined to take action in relation to vehicles belonging to persons fishing nearby reservoirs being obstructively parked.

11.16 The owner of Sandhall pays for an easement to pipe water under the route. That easement would not be appropriate if the route were a vehicular highway.

11.17 The route is entirely unsuitable for motor vehicles; there appears to be no drainage; even if the surface were made good and the vegetation cleared most of the route would still be too narrow for vehicles. A vehicular highway would be inconsistent with the Lancashire Structure Plan which aims to conserve sites of acknowledged nature conservation value.

11.18 Evidence given by a supporter that the route was once used for motorcycle trials is evidence that the route is not a highway. It is usual for such trials to be off highways. When motorcyclists have been seen using the route they have been warned off.

The case for the interested person

12. Mrs L.J.Lazonby stated that she has used the route on horseback over 20 times for each of the past 12 years. She has seen persons walking the route, but has never seen anyone using, or trying to use, it with a vehicle.

CONCLUSIONS

General points

13.1 Having taken all representations, objections and other material considerations into account, and on the basis of the evidence given to me, and from my site visits, I reach the following conclusions. I have received written evidence since the inquiry but it has not affected my decision.

13.2 To confirm the order I must, under section 53(3)(c) of the 1981 Act (on which the Council relies), be satisfied that there has been discovery of evidence which (when considered with all other relevant evidence available) shows, on a balance of probability, that -

(i) a byway subsists or is reasonably alleged to subsist over the route between points A and B; and

(ii) the length of footpath 8 between points B and C and the length of footpath 63 between points C and D ought to be shown on the definitive map as a byway.

13.3 In accordance with the decision of Lord Justice Farquharson in *Fowler v Secretary of State for the Environment 1992 JPL* at page 747 the evidence discovered by the Council has to be fresh in the sense that it was not available at the date of the definitive map and I have to identify that fresh evidence. Lord Justice Russell held in *R v Secretary of State ex parte Simms 1990 3 All ER 515* that the use of the word discovery in this context embraces a situation where a mistaken decision was made and its correction becomes possible because of the discovery of information which may or may not have existed at the date of the definitive map.

13.4 The supporters' contention mentioned in paragraph 10.3 that all the evidence on which they rely should be regarded as having been discovered after the date of the definitive map and treated as fresh evidence is unsupported. The process of preparing the definitive map and statement under sections 27 to 32 of the National Parks and Access to the Countryside Act 1949 was very thorough. The Council's experience in this field of work must have led them to be aware of and to have expertly considered most, if not all, of the documentary evidence which existed at the date of the original definitive map and statement. That includes most of the documentary evidence on which the supporters seek to rely.

13.5 I can not accede to the supporters' request mentioned in paragraph 10.2 that if the order cannot be confirmed in its present form it should be confirmed modified to show the route as a bridleway. That request is inconsistent with most of the contentions which they made during the inquiry and I have no sufficient evidence on which I could confirm the order so modified. No request was made for the order to be modified so as to show on the definitive map a footpath on the part of the

oute where no footpath is at present shown.

13.6 The supporters are mistaken in claiming, as recorded in paragraph 10.5, that factors such as the narrowness of the route are irrelevant. If the route is physically too narrow to accommodate vehicular traffic that factor is crucial (*Sherringham v Halsey 1904 68 JP 395* illustrates the point). Fences or walls do not mark the boundary of a way if there are circumstances which show that they were built for a purpose other than marking that boundary (*A.G. v Moorsom Roberts 1908 JP 123* illustrates the point). In this case I find that the irregularity of the walls and fences and the physical features which lie between them, which include banks, mature trees and watercourses as well as a track, indicate that the objectors are correct to contend, as mentioned in paragraph 11.12, that the walls were built as field boundaries and not to mark the boundaries of the way. Parts of the route are at present too narrow to allow the passage of a two-wheel axled vehicle. But as the route has been used as an occupation road there must have been times when it was wide enough for the passage of such vehicles.

13.7 The supporters contend, as mentioned in paragraph 10.6, that the doing of repairs and the placing of gates do not deprive the route of its highway status. No evidence was given to indicate that if the route was a highway it would not have been a highway maintainable at the public expense at least since the coming into effect of section 38 of the Highways Act 1959. It is not denied that in the 1930s and the 1960s some of the persons owning land adjoining the route did extensive works to clear part of it. Evidence was given, and not contradicted, that the local highway authority did not consider the route to be a highway when those works were done or at any other time. A gate may be lawfully placed across a highway only in very limited circumstances. No evidence was given that any such circumstances exist in respect of the route.

13.8 I find the supporters' contentions, mentioned in paragraph 10.7, about occupation roads mistaken. The highway authority as owner of the highway (but not usually of the land beneath it) and statutory undertakers have certain rights and duties as regards the highway. But there can be no occupation of a highway in the ordinary meaning of the word. A vehicular highway cannot also be an occupation road, that is a road laid out for the accommodation of occupiers of adjoining properties and legally open only to them (*Pratt and Mackenzie's Law of Highways, 21 Edition. page 3* refers). The route is an occupation road which serves properties which adjoin it, but with a footpath superimposed on it between points B and D. Use of the route for the quarries would not ground a presumed dedication of a highway (*Leckhampton Quarries Co. Ltd. v Ballinger and Cheltenham Rural District Council 1905 JP 464* refers).

Documentary evidence

13.9 The statements made by objectors relating to the *Story of Foulridge* by Fay Oldland are correct. The supporters' contentions about the bargaining stone (described in paragraph 7.1) mentioned in paragraph 10.8 are at best speculative.

13.10 I find the supporters' deductions, mentioned in paragraph 10.10, from the land certificate relating to Ball House to be mistaken. The fact that part of the land over which the route runs is not registered as part of the title No LA722893 is not proof that the registered proprietor of the land in that title is not the owner of that part of the route. If the route were a highway there would be a rebuttable presumption that the owner of the adjoining land would own the subsoil of the highway to the middle of the way.

13.11 Yates' Map shows part of the route reasonably clearly as a "cross road" but does not show most of the route at all. Smith's Map, Baines' Map and the Bartholomew Maps of 1920 and 1938 are on too small a scale to enable the route to be ascertained clearly or at all. A way is shown on the Teesdale-Hennet Map, but at least the northern section is on a different line to the route as it does not continue straight into what is now the B6251 at Standing Stone Gate. The copy of the tracing of the Chapelry of Colne Map shows a way on the line of the route, but its reliability is diminished because no evidence was given as to the author or provenance of that map. Greenwood's Map shows the whole route as a "cross road". That term is imprecise and does not appear ever to have had a relevant statutory definition. The archaic meaning of the term is usually taken to denote a road running across between two main roads, or a by-road.

13.12 The Ordnance Survey map of 1844-1848 shows a way approximately on part of the line of the route, but not between the railway line and Reedymoor Lane. It also shows a sandstone quarry slightly north of Ball House. The Ordnance Survey map of 1870-80 is on too small a scale to show a way on the exact line of the route and it does not seem to show any way between the railway and Reedymoor Lane. The Ordnance Survey maps of 1895, 1938 and 1969/70 and the Bartholomew map of 1930 show a way on the line of the route. However, the 1:2500 scale 1969/70 map marks a track along only part of the way and that track has no co-incidence with the field boundaries. The Ordnance Survey maps were concerned to show physical features, not to define public rights of way.

13.13 The tithe map separates a strip of land from the plots of land which surround that strip. The map shows the number 162a within that strip near Ball House. Another strip of land starts north of Standing Stone Gate. The map shows the number 363 within that strip. In the schedule of tithe apportionment plots 162a and 363 are bracketed together. Both plots are listed under the heading "Roads". The column in the schedule merely states

Ditto ditto". Those symbols appear to relate to the entry above them which reads "Road from Barnoldswick to Colne". No tithe is awarded in respect of these plots. It was the purpose of the Tithe Act 1836 to establish what lands were titheable. Tithes were to be paid out of all things which with the aid of cultivation yield increase (*Burns; Ecclesiastical Law; 4 edition, page 684* refers). No tithe would be awarded in respect of a road (whether or not a highway) which did not yield titheable produce. The objector's contentions in this respect mentioned in paragraph 11. 8 are correct. As a matter of practice land over which a road passed and in respect of which no tithe was awarded was described as a road. But it was no part of the purpose to record which roads were public rights of way, nor to record the perceived destination of a road.

13.14 The Shipley to Colne Railway Act 1845 enabled the Leeds and Bradford Railway Company to make the railway which crosses the route. Section 25 provides for the crossing of roads by bridges over, or tunnels under, that railway. Section 26 provides for certain highways to be crossed on a level. The route is not mentioned in either of those sections. The relevant plan shows the part Cocker Hill which crossed the railway as plots 53 and 54; it shows the part of the route which crossed the railway as plot 71. The Book of Reference records plot 53 as an occupation road; plot 54 as a township road and plot 71 as an occupation road. The supporters' criticisms, mentioned in paragraph 10.9, of the methods employed seem to have been made without regard to the exacting procedures which attend the enactment of legislation and its implementation. It is not clear why in the Book of Reference the part of the route affected by the railway works and part of Cocker Hill were given the same description, or why different lengths of Cocker Hill were given different descriptions. However section .2 of that Act incorporated the Lands Clauses Consolidation Act 1845 and the Railways Clauses Consolidation Act 1845 which provided a standardised procedure for the acquisition of land. Plots 53, 54 and 71 were amongst those purchased by the Company under the agreement dated 27 August 1846.

13.15 The Map prepared under the Finance Act 1910 shows the railway crossing the route without any break in the rails, and with barriers across the route on each side of the railway. No plot number appears to be given to the route. Section 25(3) of the 1910 Act allows for deductions from valuations in respect of both public rights of way and easements. The apparent lack of a duty leviable on the route may have been on account of it being regarded as burdened with easements. I find the supporters' contention that the route may have been exempt because under section 35(1) of the Act it was land held by a rating authority to be mistaken. The term "rating authority" is defined for this purpose in section 35(2); it is confined to a rating authority as such. The supporters are wrong to state that for plot 6567 an allowance of £25 was made in respect of a public road. The allowance was in respect of a road with no indication of the status of the road.

user evidence

13.16 The supporters, in a list of 17 items which they perceive to be irrelevant, include the item "no user evidence". They do not explain why they consider it appropriate to provide their own user evidence. The user evidence on which they appear to rely is as follows -

(a) Two user evidence forms and two letters claiming vehicular use as of right. The longest period of use claimed is 10 years. Section 13 of the Road Traffic Act 1988 (re-enacting earlier legislation) provides that it is an offence to promote or take part in a competition or trail involving the use of motor vehicles on a public way unless the trail is authorised and conducted under conditions imposed by or under regulations. If, as mentioned in paragraphs 10.15 and 11.18, the route has been used for motorcycle trials and if the statutory requirements have not been complied with, the trails would have been unlawful and cannot found a claim of use as of right. I have no evidence that those requirements were met and therefore conclude that any trails which did occur provide evidence that the route is not a vehicular highway. Section 34 of the 1988 Act (re-enacting earlier legislation) provides that it is an offence, without lawful authority, to drive a motor vehicle on a footpath. The supporters had no satisfactory comment to make as regards the application of those provisions in respect of the lengths of the route which comprise parts of footpaths 8 and 63.

each form done, need to write 2008

(b) Twelve user evidence forms claiming use on foot and horseback as of right. Only four of the claims were for a period of 20 years or more. Two of those claims refer to the reputation of the route as being not for "traffic" use.

The user evidence is too weak to give rise to a presumed dedication of a byway under the terms of section 31 of the Highways Act 1980. No dedication at common law was claimed.

Overall conclusions

13.17 My overall conclusions are as follows -

(a) Even if all the documentary evidence could be correctly treated as having been discovered on or after the date of the definitive map and correctly taken into account as fresh evidence, it does not (when considered with all other relevant evidence available, including the user evidence) on a balance of probability show that -

(i) a byway subsists or is reasonably alleged to subsist over the route between points A and B; or

(ii) the length of footpath 8 between points B and C and the length of footpath 63 between points C and D ought to be shown on the definitive map as a byway.

(b) Therefore the Order should not be confirmed.

DECISION

14.1 For the above reasons, and in exercise of the powers transferred to me, I have decided not to confirm the order. The order, in duplicate, is therefore returned.

14.2 Copies of this letter are being sent to each of the persons who appeared at the inquiry and to other interested persons.

Yours faithfully,



B.W. James, C.B.E., LL.B., Barrister.
INSPECTOR

OBJECTORS

Mr John Bank
Ball House, Reedymoor Lane,
Foulridge, Colne, Lancashire, BB8
7LL.

Mr J Taylor
Holly Bush Farm, Reedymoor Lane,
Foulridge, Colne, Lancashire, BB8
7LL.

Mr C A. Wilson
Cocker Hill Farm, Foulridge,
Colne, Lancashire, BB8 7LN.

Mr P.S.Clegg
Foulridge Parish Council, 16
Sycamore Gardens, Foulridge
Colne, Lancashire, BB8 7LN.

Mrs Fay Oldland
Past President, Colne and
District Local History Society, 4
Priestfield Avenue, Colne,
Lancashire, BB8 9QJ.

Mrs C. Harrison
Ramblers' Association, Burnley
and Pendle Group, 54, Brier
Crescent, Nelson, Lancashire, BB9
0QD.

INTERESTED PERSON

Mrs L.J.Lazonby
Weets House Farm, Gisburn Old
Road, Blacko, Nelson, Lancashire,
BB9 6R.

DOCUMENTS

1. Attendance lists.

Documents provided by the Lancashire County Council.

2. Report, recommendations and Statement of Reasons relating to the Council's decision on 16 July 1985 not to make an order.

3. Documents relating to the definitive map -

Parish Survey Card (undated) and Parish Survey Map,
Draft Definitive Map (published 1 January 1955),
Provisional Definitive Map (published 25 March 1960),
Definitive Map (published 1 June 1962),
Definitive Map following first review (published 25
April 1975),
Definitive Statement.
List of dates relating to the original definitive map
and its first review.

4. Documents relating to the Shipley to Colne Railway line-

The Shipley to Colne Railway Enabling Act 1845,
Extract from Book of Reference,
Extract from map used under the Act,
Memorandum of Agreement dated 27 August 1846 between
Mr T.G.Parker as life tenant of land and the Leeds and
Bradford Railway Company.

5. Extracts from Maps and related documents-

Yates' Map 1786 and key,
Smith's Map 1818,
Greenwood's Map 1818 and key,
Teesdale-Hennet's map 1840 and key,,
Tithe Map 1842 (with extract form tithe awards),
Map used under the Finance Act 1910 (with extract from
Field Book),
Ordnance Survey Maps -
1844-48
1879/80
1894
1969/70

6. Bundle of 21 letters and one petition with 31 signatures objecting to the order.

Documents provided by or on behalf of Supporters.

7. Extracts from -

The Highway Act 1773,
The Barkisland Enclosure Award 1814
The Highway Act 1835.

8. Extracts from Maps and related documents-

Yates' Map 1786 (with a note on the author),
Smith's Map 1808,
Greenwood's Map 1818 and key,
Baines Map 1824,
Teesdale-Hennet's map 1840,
Colne Chapelry Map 1847,
Tithe Map 1842 (with extract from tithe awards),
Map prepared under the Shipley to Colne Railway Act
1845.
Map used under the Finance Act 1910 (with extract from
Field Book),
Bartholomew's Maps dated 1920, 1938
Ordnance Survey Maps -
1844-48
1879/80
1895
1938
1969/70.

9. Extracts claimed to be from various booklets or articles
under the headings -

The Story of Foulridge (with map),
Rights of Way,
A Key to Maps,
Conventional Signs used in plans relating to the
commutation of tithes,
Railway and Canal deposited plans,
Repair of Highways,
Finance Act Roads
Bench Marks
Double Cross
What is a Cross Road ?

10. Bundle of 2 forms and 2 letters supplied by the Trail
Riders' Fellowship claiming vehicular use of the route.
11. Bundle of 12 user forms supplied by the Pendleside
Bridleways Association claiming bridleway use.
12. Bundle of 24 photographs of the route.
13. Copy Land Certificate for Title Number LA722893 with plan.
14. Bundle of miscellaneous papers.

Documents provided by Objectors

15. The Story of Foulridge by Fay Oldland.
16. Extract from Rural Houses on the Lancashire Pennines.
17. Article on sandstone and sandstone crushing.
18. Map of Land belonging to William Barcroft in Foulridge.
19. Jefferies' Map 1771, Yates' map 1786, Smith's map 1808, Greenwood's map 1818.
20. Memorandum of Agreement dated 27 August 1846 between Mr T.G.Parker as life tenant of land and the Leeds and Bradford Railway Company.
21. Lancashire Strategic Plan : policy E6 : Important Wildlife Sites.
22. The Lancashire County Council (Colne-Foulridge Bypass Classified Road) (Side Roads) Order 1996 and the Lancashire County Council (Colne-Foulridge Bypass) Compulsory Purchase Order 1996.
23. Note entitled "Natural Characteristics" and 6 photographs.

Document provided by interested person

24. User evidence form.

