

THE LANCASHIRE COUNTY COUNCIL (DARK LANE, EARBY)

DEFINITIVE MAP MODIFICATION ORDER 2018

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

Five duly made objections to the Order have been received by the OMA.

Copies of the objections are contained within the List of Documents (Document 4) and are summarised below.

Objection 1 – Mr S Taylor of 7 Longroyd Road, Earby, Lancashire

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

The objector refers to the fact that his grandad was a farrier in Earby from 1919 and that his father took over the business in 1946. He acknowledges that use of horses was widespread at that time – particularly for heavy work - and says that he has no recollection of his father talking about Dark Lane being used on horseback or as a through route. He considered the map evidence showed little evidence of a route and no evidence of a Public Bridleway. He also expressed safety concerns for horses and riders.

The OMA assert that whilst there is no single piece of documentary or map evidence which provides compelling evidence that the Order route should be correctly recorded as a public bridleway, there is a significant body of both map and documentary evidence supporting the physical existence of the Order route since at least the early 1800s, and a degree of conjecture that it had existed for a long time prior to that.

The OMA consider that there is good, consistent and compelling evidence that the Order route existed and was capable of being used on horseback and possibly by horse and cart as a substantial through route since at least the 1800s.

Whilst the map evidence may not specifically show the Order route as a public bridleway, this is not surprising or uncommon and it is necessary to look at evidence spanning a considerable period of time from which it can be inferred that a substantial named through route physically existed that was capable of being used by the public on horseback and possibly with horse and cart.

The OMA consider that there is good map and documentary evidence which, on balance, indicates that the Order route was dedicated to public use and used by the public and that it was a historical public route available as a bridleway since at least the early 1800s. This is further supported by later map and documentary evidence including an auction plan dated 1857, a series of commercially produced small scale maps produced in the late 19th and early 20th Century, the Finance Act plans prepared circa 1910, records detailing that the Order route was maintained by Earby RDC as a 'road' in the 1920s and Bartholomew's half inch maps published between 1904 and 1919-24.

The OMA also refer to references in the Definitive Statements to footpaths meeting Dark Lane (FPs 30 and 31 Earby) or running parallel to Dark Lane (FP 32 Earby) suggesting that Dark Lane was considered to be a road of some sort are consistent with the information identified which provided details of Dark Lane being maintained by Earby Urban District Council as a road.

It is therefore the OMA's case that public bridleway rights were established in the 1800s and that lack of use in more recent decades would not remove any existing public rights. The legal maxim "Once a highway always a highway" would apply as unless stopped up by proper legal process a highway remains where it was dedicated even if no longer used.

The objector refers to his grandad working in the village of Earby as a farrier from 1919 and his father taking over the business in 1946. Neither of these gentlemen have been able to submit their own recollections or memories and the objector refers to having no recollection of his father talking about Dark Lane being used as a bridleway. Evidence provided to the OMA by the applicant by way of written letters (Document 4) all refer to the Order route being used on horseback (and it is suggested with carts) prior to the 1940s, but that it then became blocked and overgrown between 1939-1945. As such, by the time that the Objectors father took over the farrier business it appears likely that use of the Order route had declined or become difficult. The OMA assert that the Order route, by this time had already been dedicated as a public bridleway and that those rights still exist today.

The OMA have made the Order to record existing public rights and concerns relating to future use of the Order route and specifically the safety of horses and riders on the Order route cannot be taken into account. If the Order is confirmed, the OMA will consider its statutory duties and powers in relation to maintenance of the lane.

Objection 2 – Mrs S Beresford, Deerstone House, Windlefield Farm, Earby (owner of the land crossed by the Order route)

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

The objector says she was not informed about the committee meeting which approved the making of the order and that information relating to the decision made by the OMA to make an order was incorrectly advertised.

The OMA have previously been in contact with the objector to explain that whilst she was consulted about the application and was invited at that stage to provide comments which would have been included in the Committee report. The Regulatory Committee do not hold a hearing at which she could have put forward her objections, but she has had the opportunity to do this once the Order was made. The OMA do not specifically inform applicants or landowners of the date that an application is to be presented to the Regulatory Committee although Committee reports are published before the meeting. The fact that the objector was unaware of the date of the Committee meeting does not make the application or Order invalid and is not something to be taken into consideration when considering whether the Order should be confirmed.

The OMA acknowledge that the letter initially issued by the OMA informing the objector of the outcome of the Committee meeting erroneously referred to the objector as the applicant and incorrectly detailed which part of the application route had been accepted. These errors were swiftly corrected, and nobody was put at a disadvantage.

The Order was subsequently made and correctly advertised and all procedural matters in relation to it were correctly complied with.

The objector considers that there is insufficient evidence from which to infer that the Order route is a public bridleway and made specific points relating to the evidence:

Thomas Jeffery's map of 1775 – the objector considers the map to be totally unclear and that it is impossible to make any judgement of the route from it and that the map is not worthy of any consideration relating to the Route.

The original map extract included in the Regulatory Committee report (Document 21) was a poor-quality photocopy provided by the applicant. The OMA has now sourced a better copy of the map (Document 23) surveyed in 1771 and available to view online [Jefferys' Map of Yorkshire \(1771\) - sheet 6 - Huddersfield Exposed: Exploring the History of the Huddersfield Area](#). Whilst surveyed in 1771, the date given by the applicant of 1775 is understood to be a date of publication.

The OMA assert that whilst there is no one single piece of documentary or map evidence which provides compelling evidence that the route should be correctly recorded as a public bridleway the evidence when taken as a whole, on balance indicates that the route was dedicated to public use and used by the public and that it was a historical public route available as a bridleway since at least the early 1800s.

Jeffreys' Map is relevant and is one of the earliest maps examined showing a significant route extending east out of Earby which may include all or part of the application route. This is not shown as a through route but is shown ending as it meets the higher ground.

The OMA consider that the extension of the route shown (i.e., the Order route) may have existed as a route of lesser importance used predominantly on foot or horseback, but was not shown. Jeffreys' map starts to build a picture of the history of the Order route and is worthy of consideration in doing so.

The Order route was not shown on Yates' Map of Lancashire 1786, Smith's Map 1822, Teasdale's Map of Yorkshire 1829 or Greenwood's Map of Yorkshire 1834 so why are they listed?

As part of the initial pre-order investigation process, the OMA looks at all the available evidence and not just the evidence submitted by an applicant in order to come to a decision as to whether an application should be accepted and an order made.

In this case, several early small-scale commercial maps that cover the area were examined to help to determine whether the Order route existed as a substantial through route at that time. Most of the maps examined were published between the early 1770s and 1840s some of which showed the Order route and some of which didn't. From the early map evidence available, it appears that the Order route probably existed during this time (or it would not have been shown on any of the maps during this period) and may have been used by the public but that it was probably not a significant public through-route used by horse and cart or horse and carriage explaining why it was probably not included on some of the early commercial maps examined as it is generally accepted that these early maps were published primarily to assist the public travelling by horse and cart/carriage at that time.

The OMA consider that the fact that the Order route is not shown on the maps detailed above, is not evidence which goes against the confirmation of an Order to record public bridleway rights because these were very small-scale maps which only showed more significant through routes and were not generally published to show routes which were considered to be bridleways or lesser-used public vehicular carriageways.

John Tuke's 1787 Map (Document 28) is unclear and it is difficult to assess any specific route. The area marked is not the area of Dark Lane.

The OMA appreciate that the map extract provided is an annotated photocopy of a map provided by the applicant but have been unable to locate a better copy. The OMA is not relying on this map extract to 'prove' public bridleway rights, but included it in the report analysing the evidence prior to the Order being made because it was submitted as part of the application. It is however another map which helps to build a picture of the landscape and the Order route at that time. Again, there is a route shown on the map extending east out of Earby which may have led to the Order route.

David Charles' map of 1840 (Document 27) is drawn out of proportion, the actual width of the application area between banks/wall area is 6' or 2 meters. This map does not give an accurate impression of a 2-meter-wide gully. Other maps from this period do not show a through route.

The full length of the Order route is shown on the David Charles map referred to and of significance is that it is shown connecting to and consistent with the way that routes recorded as public vehicular highways are shown.

This map is important in that it is a reprint of the First Edition of the one-inch Ordnance Survey map of the area known as the Old Series maps. These maps are generally regarded as providing a good degree of accuracy in Lancashire, but the original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The scale of the map means that the width of a specific route could not be shown – the significance in this case is that the route is shown as part of a longer route supporting the OMA's case that the Order route physically existed in the 1840s and appears to have been capable of being used at least on horseback. Public use of the route is not inferred from the inclusion on one single map, but from looking at all the evidence presented in support of confirmation of the Order.

References to a Private Inclosure Act (Document 31 and 32) do not give any credence of any public route.

The OMA has considered all available evidence in concluding that the Order route is at least a historical public bridleway. The Inclosure Act provides relevant details pertaining to the enclosure of land and powers given to the appointed Commissioners. Whilst it does not specifically refer to the Order route, it is necessary background information which is considered in the context of the Inclosure Award which the Act empowered to be made.

1819 Notice given in the Leeds Intelligencer (Document 33) provides no evidence that the route is a public bridleway.

The Notice was submitted by the applicant and considered by the OMA. Whilst it does not specifically refer to the Order route, it is necessary background information which is considered in the context of the Inclosure Award which the Act empowered to be made.

The Thornton Inclosure Award and Map (Document 31) provides no evidence that a public bridleway existed to cross the moor, as a through route. It provides no evidence of status.

The Thornton Inclosure Award and Map are dated 1825 and a relevant to the OMA's case.

The OMA assert that whilst there is no one single piece of documentary or map evidence which provides compelling evidence that the Order route should be correctly recorded as a public bridleway the evidence when taken as a whole, on balance indicates that the Order route was dedicated to

public use and used by the public and that it was a historical public route available as a bridleway since at least the early 1800s.

From the information relating to the inclosure of land in Earby, the OMA have concluded that it does not appear that the land crossed by the Order route was included as part of the Inclosure process and that the Order route was not created as part of that process. The Report includes all available evidence, both for and against the application, to enable the Committee to make a properly informed decision; it does not prejudge that decision hence some of the information in the Report will not necessarily support a particular stance.

Particularly relevant, when looking at all information spanning a significant period of time, is the fact that the Inclosure plan shows that the Order route existed in 1825 as part of a clearly defined longer route leading out from Earby onto the moorland. It is not shown as a through-route connecting to Dodgson House Lane although access may have been possible across the moor between the two routes and makes reference to an ancient lane which could be the continuation of Birch House Lane along the Order route.

Hobson's Map extracts dated circa 1844 (Document 35 and 36) are of poor quality. The route is not shown so there is no evidence of any public bridleway.

The OMA are not relying on Hobson's Map of 1844 as part of the evidence. The fact that the Order route was not shown on this small-scale commercial map suggests that it wasn't considered by Hobson to be a significant route providing access to the public travelling by horse and cart/carriage in the mid-19th Century. The fact that the Order route was not included on the map does not mean that it did not exist though – as evidenced by its inclusion on other maps prepared before and after this time and it doesn't mean that the Order route could not be, or was not, used by the public and routes which may have been used predominantly on foot or horseback at that time were not generally shown on small-scale commercial maps.

The route shown on the 6" Ordnance Survey (OS) Map Yorkshire sheet 184 surveyed 1848-1850 and published in 1853 (Document 39) is not the Order route and the inference that a route shown was capable of being used on horseback does not give it status of a public bridleway. A footpath shown running parallel to the Order route could mean that the lane was private, and that the footpath was public. The map provides no evidence to suggest the lane and the footpath had a considerable level of use. The Second Edition 6 inch OS map published in 1896 (Document 40) does not substantiate that there is a public bridleway along the route.

The Order route is shown and is clearly named on the map as Dark Lane. The inclusion of the Order route on this map provides good evidence of the position of Order route at the time of survey and of the position of buildings and other structures. The OMA have considered the inclusion of the Order route on OS maps in the context that these maps do not generally provide evidence of the legal status of routes, but as part of the collective evidence inclusion on the map not only provides further evidence that the Order route existed in 1848-50 but that it was known locally as Dark Lane and appeared capable of being used at least on horseback as part of a longer route.

The Order route may have looked very different in 1848-1850 than it does today – in fact Birch Hall which was located close to the Order route no longer exists and there is no trace of it at all on current mapping. The geography of the Order route may explain why a footpath existed running parallel to the enclosed section of Dark Lane as an inspection of the Order route confirms that it is sunken and enclosed and in winter may not have been suitable underfoot for pedestrians (i.e. wet and muddy in

comparison to the well-drained land above) or may have been too narrow for horses and pedestrians to pass with ease. Such an arrangement is not uncommon. The fact that both the lane and a parallel footpath are shown to exist suggests a considerable level of use.

The second edition 6 inch map published 43 years later, also shows the Order route as part of a longer route named as Dark Lane. Despite the fact that Birch Hall no longer existed by that time the Order route remained unaltered and still appeared capable of being used by the public consistent with the OMA's view that public bridleway rights exist.

The Auction Sale Plan 1857 (Document 35) is not drawn to scale because in reality the Order route can only be as it is today – a narrow deep track, no more than 2 meters wide because it is walled and the map does not prove or provide any evidence that it was a public bridleway.

There are no details of scale provided on the auction plan, but that does not detract from the supporting evidence provided by this document. In 1857 the Order route could, and probably did, look very different than it does today particularly if it was in regular use and not overgrown.

Inclusion of the Order route on the plan provides further evidence of its existence in the 1850s and shows the Order route in the same way as other routes now recorded as public vehicular routes are shown. There is no indication on the plan or in the auction documentation that the Order route was not public and by inference the fact that the Order route was not shown as part of the land to be sold suggests that it was considered to be a public route and not part of the large estate being divided up and sold.

Taken with all other available evidence, the OMA considers that the information provided by the auction documents is consistent with the information that you would expect to find where land adjacent to a public carriageway was to be sold and supports the confirmation of the Order to record at least public bridleway rights.

The way that the Order route is shown on the Cassini Old Series Mapping 1842 — 1859 (Document 37) is not suggestive of a significant through-route that had public rights of way for travellers particularly when its only 2 meters wide in places with walled sides.

This map is essentially the same map as the one published by John Charles detailed above and is important in that it is a further reprint of the First Edition of the one-inch Ordnance Survey map of the area known as the Old Series maps – the significance in this case is that the Order route is shown as part of a longer route supporting the OMA's case that the Order route physically existed in the 1840s and appears to have been capable of being used at least on horseback. Public use of the Order route is not inferred from the inclusion on one single map, but from looking at all the evidence presented in support of confirmation of the Order.

The 1" OS Map from 1896-99 published in 1912 (Document 41) and described as a road map is of very poor quality to analyse correctly and would not have assisted the travelling public.

The OS map extract was provided by the applicant and the OMA have been unable to locate a better copy. Despite this, the Order route is visible as part of a longer through-route and the significance of its inclusion, when considered along with all other available evidence, is the fact that the Order route was shown on a small-scale map used primarily at that time to assist the travelling public. The inclusion of the Order route on this map and others both before and after this time, supports the OMA's case that the Order route was used by the public and that it was a historical public route available as a bridleway since at least the early 1800s and that it was still capable of being used in the early 1900s.

Henry Speight Upper Wharfedale 1900 Map (Document 30) does not clearly depict the route and would not assist the travelling public. The application route cannot be identified from this map.

This map extract was provided by the applicant and the OMA has been unable to obtain a better copy. However, it does appear that a route consistent with the alignment of a longer route of which the application route formed part is shown and further supports the OMA case that the Order route formed part of a significant through-route prior to the mid-1900s.

Bartholomew Map sheet 6 Harrogate 1906 includes a disclaimer that the representation of a road or footpath is no evidence of the existence of right of way and gives no credence to whether the route was public or private. Bartholomew half inch map 1919—1924 also carries the same disclaimer and the map is drawn out of proportion as the Order route is in places less than 2 metres wide and not a significant route.

Bartholomew's maps were drawn at a scale of half an inch to the mile. The significance of the fact that the Order route is shown on such a small-scale map was that only the more significant routes could be shown. The maps were produced by John Bartholomew & Son Ltd primarily to assist the increasing numbers of motoring and cycling public during the first half of the twentieth century. The map did not, and could not, show the width of specific routes shown but the inclusion of the Order route is significant and adds to the OMAs case.

The Order route is shown as an uncoloured road described in the key as being inferior and not to be recommended for cyclists - the inference being that cyclists were allowed to use it but that it was not in a fit condition for bicycles of that time. Taken with other available evidence, the OMA consider that this is actually suggestive of public vehicular rights as the Order route is indicated as being a carriageway as opposed to a footpath or bridleway as cyclists did not have a public right of access over bridleways at that time. Whilst the map does not indicate whether the road was considered to be public or private, its inclusion on the map as a through-route linking other public vehicular routes suggests that it was considered as such and that it was capable of being used as such at that time. The fact that the Order route was not recommended for cyclists (when an alternative was available further south) is not surprising as the Order route passes along a sunken track adjacent to which there is evidence (on larger scale maps prepared at that time) that the public walked along an adjacent path and due to the fact that the Order route then crossed an area of moorland.

Cassini New Series Mapping 1903-1904 (Document 38) - the objector points out that Windlefield is shown in a similar way to the Order route but is a private farm road and that just because a route may have been capable of being used on horseback doesn't mean it is a public bridleway.

The Cassini New Series maps are reproductions of the Ordnance Survey 1 inch maps surveyed and published at the turn of the century. The OMA have looked at a range of maps covering a significant period of time in coming to the conclusion that the Order route was historically used by the public.

The OMA are not asserting that just because a route was shown on a map that it was a public route, but are looking at a range of maps and documents. In the case of a small-scale map like the 1 inch OS mapping /Cassini reprints the fact that the route was shown is significant in that it suggests that the Order route still existed as part of a longer through-route in the early 1900s and was considered

to be sufficiently important to be included on a commercially produced small-scale map sold to the public. With regards to the route to Windlefield (now renamed as Deerstone House) it is noted that the Order route referred to by the objector is shown leading to but not past or beyond the property in contrast to the Order route which was shown as part of a longer through-route.

6" OS Map published 1910 (Document 43) – the OMA's comments about the Order route being access to the Quarry would justify why Dark Lane was created this does not substantiate it being a public bridle way.

Maps and documents from the late 1700s onwards have been examined and show the Order route as a through-route passing the location of the quarry. The earliest larger scale 6 inch OS maps surveyed in 1848-50 and 1892 do not show the quarry site but do show the continuation of the Order route and the OMA are of the view that whilst access to and from the quarry (when in use) may have been along the Order route, there is no evidence to suggest that the Order route was created specifically to access the quarry or that such use was solely private. If the Order route was used to access the quarry and to transport stone, then this further substantiates the fact that the Order route was capable of being used with horses and probably carts.

Finance Act 1910 map and valuation books (Document 63) do not support the assertion that the Order route is a public bridleway particularly as a deduction was made for 'footpaths' east of the Order route

The OMA consider that the Order route had already been dedicated as a public route by 1910 when the District Valuation was carried out and that there is no evidence to suggest that public rights had been stopped up.

The OMA consider that the Finance Act does support the evidence for confirmation of the Order made. The fact that the whole of the Order route is shown excluded from the adjacent hereditaments (plots) in the same way that Birch Hall Lane (south from point A) is shown, continuing beyond the County boundary (point B) through to the point where the enclosed route meets a gate and continues across the moor as an unbounded track is further good supporting evidence that the Order route was considered to be public and that public carriageway rights, not just bridleway rights, may have existed.

Access to Fiddling Clough east of the Order route is described in the Field Book as being 'really bad', but it is not known whether this relates to access across the 106 acre plot itself or whether it refers to access along either the Order route or another route. The details in the field book relating to plot 42 confirm that routes described as public footpaths existed across the plot and do not support the view that a public vehicular route physically existed across the moor at that time. The description of unspecified 'footpaths' does not support use by the public on horseback of a through-route at that time but as previously explained the OMA consider that historical public rights already existed by this time and if use (as a through route) had started to decline by the 1900s this could explain the reference made to footpaths.

Scarborough's Map of Yorkshire 1913 (Document 46) is of poor quality and contains little detail, its vague and badly drawn and describing a route as being capable of being used does not mean that it is a public bridleway.

The map extract was provided by the applicant and the OMA have been unable to locate a better copy. The inclusion of the Order route on this small-scale commercial map is further evidence in support of the fact that the Order route historically existed as part of a longer significant through-

route. The inference is that its inclusion on this map suggested that it was a route available to be used by the public i.e. a highway.

Extract from the Burnley News 1925 (Document 50) – this is not an official council record and the exact route described as Dark Lane was not specified. The quote in the newspaper relating to work on Dark Lane cannot be used as evidence.

The newspaper article reported on an annual meeting of the Earby Urban District Council. Whilst not the official minutes of the Meeting this article was included by the applicant in support of their application. The Order route is consistently named on OS maps from the mid-1800s through to the current day as Dark Lane. The OMA have carried out further investigations and found only one other nearby road named as Dark Lane on early OS maps which was in Kelbrook (south of Earby) and is now shown on maps and recorded on the County Council's List of Streets as Old Stone Trough Lane information provided is consistent with other information presented during that time (1920s).

The OMA accept that there is no certainty that the route referred to is the Order route, but it is not inconsistent with information provided by the user evidence that Dark Lane (the Order route) was used by horses and carts in the 1920s and that it was maintained by Earby Urban District Council.

6" OS Map 1948 (Document 45) is exactly the same as the 1910 map with the continuation of the route east of the Order route marked as a footpath. When this map was published in 1948, the section of the Order route had become overgrown and impassable, so a route is shown - but it would not be possible to use it.

The fact that the Order route is shown unaltered on 6 inch maps published in 1910 and 1948 is not unexpected as the site evidence suggests that the alignment of the Order route has existed unaltered for hundreds of years. The map evidence provides no details of whether the Order route was overgrown in 1948 – just that it existed. It is information from other sources that detail that it was between 1910 and 1948 that the Order route became physically overgrown and use appeared to stop.

The OMA consider that the cumulative evidence predating the 1940s shows that the Order route was dedicated to public use and used by the public as a bridleway since at least the early 1800s. The fact that it is no longer accessible and has not been accessible for some time does not mean that public rights cease to exist.

The comment about the adjacent footpath being visible on the 1940s aerial photograph is irrelevant to the application for a bridleway

As part of the investigation carried out by the OMA prior to making the order, all available sources of evidence were looked at and commented upon.

Observations made with regards to what could be seen on the 1940s aerial photograph relate to changes that were reported by the users to have occurred around this time. They are relevant as the information is consistent with evidence about Order route being blocked by this time.

6" OS Map 1956 (Document 52) -There was no access in 1956 as it was overgrown and impassable. The map does not signify any public access to Dodgson's Lane, except on foot.

The 6 inch OS map referred to was revised before 1930 and shows the Order route named as Dark Lane. There is no indication on the map that there was no access along the Order route and it cannot be inferred from looking at the map that the Order route was overgrown or impassable when the map was surveyed in (or before) 1930.

The map shows that the continuation of the Order route beyond the enclosed section running south east past the old quarries to Dodgson Lane as a double pecked line. It is not annotated as a footpath (F.P.) and there is no indication on that map that access from the Order route through to Dodgson Lane (now recorded as a Restricted Byway) was on foot only.

The OMA consider that the 6 inch OS map revised before 1930 and published in 1956 supports the case for the confirmation of the Order.

Aerial Photograph 1960s (Document 49) shows the area was overgrown and impassable, with mature trees which have a significant amount of age to them to substantiate this. The aerial photograph taken in 2014 (Document 51) also shows the route overgrown and impassable

As part of the investigation carried out by the OMA prior to making the order all available sources of evidence were looked at and commented upon.

The OMA made the Order based on historical map and documentary evidence and more recent (1940s onwards evidence) suggests that it had fallen out of use by the 1960s. The fact that the Order route fell into disuse many years ago does not extinguish any pre-existing public rights.

The First Edition 25 inch OS map surveyed in 1892 (Document) shows the Order route as a tree lined route indicating that trees along the Order route would now be very mature and that following blockage of the Order route if the trees were no longer cut back or the Order route maintained it would most likely become overgrown.

Definitive Map records do not record the Order route as a public bridleway

The fact that the Order route is not recorded on the Definitive Map and Statement as a public bridleway does not mean that it isn't one.

There are many reasons why routes were not initially recorded as public rights of way on the Definitive Map and Statement. The fact that some pre-existing public routes were not recorded or were incorrectly recorded is the reason why applications can now be made under the provisions of the 1981 Wildlife and Countryside Act.

Dark Lane (the Order route) is named in the Definitive Statements prepared as a lane to which a number of public footpaths connected or ran alongside and the OMA suggest that when considered in light of other available evidence, it may have been considered by the surveying authority at that time as a route carrying higher public rights that were not required by the 1949 Act to be recorded on the Definitive Map.

The Order route is not recorded on the List of Streets by the OMA and was not considered publicly maintainable from 1929 to the present day. There is no evidence that it was a public bridleway.

The fact that no record of the Order route being a publicly maintained highway has been found does not mean that historical public bridleway rights do not, or could not, exist.

Public maintenance liability does not always accompany public rights; however, user evidence provided by local people recall the Order route being a publicly maintained route which the Inspector is invited to take into consideration when considering whether the Order should be confirmed as made.

The fact that the OMA reported that there are no Highway Stopping Up Orders found between 1835-2014 is not evidence of a public bridleway along the Order route

The OMA consider that the cumulative historical evidence shows that the Order route was dedicated to public use and used by the public as a bridleway since at least the early 1800s. The fact no Highways Stopping Up Orders have been found suggest that despite the Order route becoming blocked and no longer accessible in the 1940s, public rights along it still exist. The maxim 'once a highway, always a highway' means that if it is accepted that the Order route was a public route in the 1800s along the route shown on the maps examined then it remains as such unless there is evidence that those public rights have been legally extinguished. The OMA have found no evidence of public rights having been extinguished.

Statutory deposit and declaration made under section 31(6) Highways Act 1980 – From the 1950s when the land crossed by the Order route was purchased to the present day, the objector and her husband state that they have regarded the Order route as not having any public right of way over it and comment that it was overgrown and not passable.

Land Registry documents show that the land crossed by the Order route was registered in the ownership of the objector and her husband in 2005. No earlier documentation regarding purchase of the land in the 1950s has been seen by the OMA.

No Statutory deposit has been deposited with the OMA in relation to the land crossed by the Order route.

The Order has been made and is being promoted to confirmation to record public rights that the OMA consider already legally exist based on historical map and documentary evidence predating the 1950s when the current landowner (objector) purchased the land.

'Modern' user evidence post dating 1950 is not being considered so any action that may have been taken by the landowner since the 1950s to stop, prevent or challenge use is not relevant to this case.

The existence of the boundary marker on the Order route is not evidence of a public right of way

Again, the OMA have considered this piece of evidence as part of the broader picture and as part of a cumulative body of map, documentary and site evidence. The OMA consider that the existence of the boundary marker on Dark Lane suggests that the Order route was public at some point in the past because the provision (and maintenance) of such a marker at public expense would only be appropriate where it made a material difference such as on a highway, particularly but not only, a publicly maintainable highway. If Dark Lane had been for private use only, there would be no purpose in a boundary marker in the holloway and it would be reasonable to expect one only by the footpath, particularly as the corner in the boundary was there, according to the maps.

The article 'Life at Fiddling Clough in the 1920s and Ms Stephanie Carter' (Document 60) gives no evidence of a through route and no indication whether the 1920s car rally used the route by right or with permission. Use of vehicles along the lane and across the moor seems unlikely

The article was written by Stephanie Carter who was a member of Earby and District Local History Society. It provides supporting information about the area in the early 20th Century and in particular life at the farm which was accessed from the Order route. It appears from the article that the full length of the Order route was accessible in the 1920s and 1930s and was used to access the farm, but also appeared to be a known route across the moor from Earby through to Dodgson Lane. The OMA have acknowledged that the fact that there is reference to a car rally and the route being a driveable through route by car in the 1920s (but not by wagon which collected the pigs at the end of

Dark Lane) is in itself no indication whether the car rally was by right or permission but should be considered as part of a wider body of evidence.

User Forms – the objector provides some detailed commentary on the user evidence forms submitted. The commentary dealt principally with the argument that 20 years use of the route on horseback was not satisfied by the information provided and that there was nothing in the information to show that the route was a public bridleway.

The OMA have considered the information provided by the six users and consider that it provides useful supporting information about the history of the Order route and the land crossed by the Order route in the early 1900s. The OMA concluded on balance, the historical map and other documentary evidence is in itself was sufficient to conclude that the Order route was a historical public highway and that inferred dedication could on balance be satisfied. However, should the Inspector have any reservations as to the strength of the map and documentary evidence he/she may also wish to also consider whether deemed dedication under S31 Highways Act 1980 or inference at common law can be satisfied from the user of the Order route.

Topography of the Order route – the objector describes the current condition of the Order route, the existing vegetation, remains of stone walling, depth and surface and also refers to nesting boxes and environmental schemes concluding that it cannot be accessed by horses.

The OMA do not disagree that in its current condition the Order route is no longer suitable or useable as a bridleway, but in line with the legislation the Order has been made to record public rights that historically already legally exist. Use of the Order route appears to have ceased approximately 80 years ago with references to it being physically blocked at that time. It is not surprising therefore that it is now overgrown and that with no maintenance water has eroded the surface.

Although it is accepted that the Order route is not currently suitable for 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 manage public use.

The existence of a through-route has been mentioned many times by the OMA but the continuation of the 'through-route' in Yorkshire was investigated by North Yorkshire County Council in 2012 and rejected.

The OMA are aware that a corresponding application was made to North Yorkshire County Council, comprising the same evidence for the continuation of Dark Lane from the County boundary (point B) to be recorded as bridleway, and also for a lane known as Dodgson Lane to be recorded as bridleway.

North Yorkshire County Council investigated the application for the route within their area, and determined to make an Order for part, but not all of the application route. An Order was subsequently made to record Dodgson Lane as a restricted byway. The section which it was decided not to make an Order for was the continuation of Dark Lane from the County boundary to its junction with Dodgson Lane. The report considered by North Yorkshire County Council Planning and Regulatory Functions Committee on 22 June 2012 (Document 66 and 67) was considered by the OMA prior to the making of this Order.

The investigation carried out by the OMA included the same evidence that North Yorkshire County Council considered but also additional historical map and other documentary evidence from which

the OMA concluded was sufficient to conclude that the route was a historical public highway and that inferred dedication could on balance be satisfied.

Officers from North Yorkshire County Council have been informed about the making of the Order and will undertake a review of the case should the Order be confirmed.

Objection 3 – Mr J Wilson of Hill Crest, School Field, Earby

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

The objector states that a large number of maps presented to the OMA's Regulatory Committee did not show the route, some were blurred and others not to scale. He states that the OS Maps do not show a continuous route and that any maps showing a through-route after 1939 / 1945 are irrelevant as in this period the Order route was blocked by undergrowth and was impassable.

The objector disputes the evidence provided in the six evidence forms and was of the view that everyone walking or who claimed to be on a horse were either visiting farms, picking blackberries or visiting the shooting box and that this did not give any credibility to the claim that it is a public bridleway, as they were not travelling to other destinations.

The objector was of the opinion that the evidence considered by the OMA was very weak and inconclusive.

The Regulatory Committee report (Document 21) referred to by the objector was prepared ahead of the OMA deciding that there was sufficient evidence to make an order and to promote it to confirmation.

At that stage the investigation carried out by the OMA included details of all available evidence and that was considered by the OMA in coming to the decision to make the Order. As such, the report included some maps and documents that did not show the Order route and was not supportive of the applicant's case. Nothing included in that report however suggested that the Order route was not a public bridleway.

The earliest OS maps examined, First Edition 6 inch OS Map (Document 39) and 1 inch OS Old Series Map (Cassini reprint) (Document 37) both show the Order route existing as part of a longer through route in the 1840s and a series of map prints post-dating that time continue to show the Order route in such a way as to suggest that it would have been capable of being used on horseback until it apparently became blocked between 1939 and 1945.

The OMA consider that there is good map and documentary evidence which, on balance, indicates that the Order route was dedicated to public use and used by the public and that it was a historical public route available as a bridleway since at least the early 1800s. This is further supported by later map and documentary evidence including an auction plan dated 1857, a series of commercially produced small-scale maps produced in the late 19th and early 20th Century, the Finance Act plans prepared circa 1910, records detailing that the Order route was maintained by Earby RDC as a 'road' in the 1920s and Bartholomew's half inch maps published between 1904 and 1919-24.

The OMA has not made the Order based on the user evidence submitted, but that evidence is relevant in understanding how and why use of the Order route declined and supports the fact that

the OMA asserts that the Order route was dedicated to public use and used by the public and that it was a historical public route available as a bridleway since at least the early 1800s.

Objector 4 – Alex Whitlock of Pendle Archaeology Group C/0 40 Westwood Road, Burnley, Lancashire

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

The objector says the presence of a road or lane on the OS map doesn't mean it is a right of way. The OS is a record of what is on the ground and no distinction made between public or private roads unless indicated by the map's legend or notes. At the time of the 1st OS 6 inch map for the area, both the lane and the footpath are present. This is significant because it means that the lane was unlikely to be any sort of public right of way or the footpath would not be necessary. A further implication is that the footpath precedes the sunken lane.

The inclusion of the Order route on Ordnance Survey mapping provides good evidence of the position of the Order route at the time of survey and of the position of any buildings and other structures. The OMA have considered the inclusion of the Order route on OS maps in the context that these maps do not generally provide evidence of the legal status of routes, but as part of the collective evidence inclusion on the map not only provides evidence that the Order route existed from the 1800s through to the current day, but that it was known locally as Dark Lane from as early as the 1840s and appeared capable of being used at least on horseback as part of a longer route.

The geography of the Order route may explain why a footpath existed running parallel to the enclosed section of Dark Lane as an inspection of the Order route confirms that it is sunken and enclosed and in winter may not have been suitable underfoot for pedestrians (i.e. wet and muddy in comparison to the well-drained land above) or may have been too narrow for horses and pedestrians to pass with ease. Such an arrangement is not uncommon (and such footpaths sometimes referred to as 'winter paths'). The fact that both the lane and a parallel footpath are shown to exist is consistent with a considerable level of use as only if the surface of Dark Lane was churned up or there was sufficient likelihood of meeting oncoming traffic would a pedestrian make the effort to climb the bank and stile onto the field edge.

The OMA have seen no evidence to suggest that the footpath preceded the Order route and if anything would argue the opposite.

The objector asserts that the construction of the Lane and its gradient are typically late post medieval quarry access/extraction routes. Further evidence of this is the presence of walling, albeit decayed in places, on both sides of the lane on just the stretch from the public road to the quarry.

Maps and documents from the late 1700s onwards have been examined and show the Order route as a through-route passing the location of the quarry. The earliest larger scale 6 inch OS maps surveyed in 1848-50 (document 39) does not show the quarry site, but does show the continuation of the Order route and the OMA are of the view that whilst access to and from the quarry (when in use) may have been along the Order route there is no evidence to suggest that the Order route was created specifically to access the quarry or that such use was solely private. If the Order route was used to access the quarry and to transport stone, then this further substantiates the fact that the

route was capable of being used with horses. Use could be both as a quarry access and a public through-route at the same or different times.

The boundary marker is not an indication of public access but marks the point at which the boundary for the ward and parish make an abrupt right angled change of direction.

The boundary marker is located at the base of the Order route.

The OMA have considered the location of the boundary marker as part of the broader picture and as part of a cumulative body of map, documentary and site evidence.

The OMA consider that the existence of the boundary marker on Dark Lane suggests that the route was public at some point in the past because the provision (and maintenance) of such a stone at public expense would only be appropriate where it made a material difference such as on a highway, particularly but not only, a publicly maintainable highway.

If Dark Lane had been for private use only and the only public route was along the field edge footpath, it is more likely that the boundary stone would have been in the hedge by the footpath so that it was visible to the public rather than on a private route slightly removed from the corner of the boundary.

The maps provide contradictory evidence but the ones that have been properly surveyed indicate it is a quarry access and the later continuation to Dodgson's is a function of the footpath not Dark Lane.

The OMA have looked at map and documentary evidence spanning a significant period of time and show the Order route as a through-route passing the location of the quarry. The earliest larger scale 6 inch OS maps surveyed in 1848-50 does not show the quarry site, but does show the continuation of the Order route and the OMA are of the view that whilst access to and from the quarry (when in use) may have been along the Order route there is no evidence to suggest that the Order route was created specifically to access the quarry or that such use was solely private. If the Order route was used to access the quarry and to transport stone, then this further substantiates the fact that the Order route was capable of being used with horses.

The continuation of the Order route through to Dodgson Lane is shown on a number of historical maps and documents as a significant route which appeared to be more than just a footpath across the moor.

Taken collectively, the OMA consider the map and documentary evidence supports the confirmation of the Order to record bridleway rights.

The purpose of the Order route was not public access to the Thornton Inclosures and from the evidence provided, Dodgson Lane provides a more likely access to the Inclosure area and it links directly with the main highway to Colne.

The OMA consider that the map and documentary evidence examined shows that the Order route existed prior to the inclosure of Thornton Moor and that the Order route (unlike Dodgson Lane which

was created as a public bridleway and carriage road as part of the Inclosure process) existed prior to the inclosure and would have provided access from the village of Earby onto the moor.

Objector 5 - Mr Jeff Horse (Retired Engineering Instructor) at SAIT, Southern Alberta Inst. Of Technology (no contact address provided)

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

The evidence is speculative and the historical data submitted imparts little credibility of evidence that a bridleway. There is no evidence that anyone ever used this as a public bridleway to give this application any justification.

The OMA consider that there is good map and documentary evidence which, on balance, indicates that the Order route was dedicated to public use and used by the public and that it was a historical public route available as a bridleway since at least the early 1800s. This is further supported by later map and documentary evidence including an auction plan dated 1857, a series of commercially produced small scale maps produced in the late 19th and early 20th Century, the Finance Act plans prepared circa 1910, records detailing that the Order route was maintained by Earby RDC as a 'road' in the 1920s and Bartholomew's half inch maps published between 1904 and 1919-24.

The OMA has not made the Order based on the user evidence submitted, but that evidence is relevant in understanding how and why use of the Order route declined and supports the fact that the OMA asserts that the Order route was dedicated to public use and used by the public and that it was a historical public route available as a bridleway since at least the early 1800s. The user evidence considered by the OMA as part of this investigation, provides information regarding use and knowledge of the Order route prior to 1939 when it appeared to have been blocked.

There is no need for another bridleway and the environmental impact on clearing the route and potential erosion and flooding issues should be considered.

Whether it is considered that a public bridleway is needed or not is not a consideration that can be taken into account.

The OMA are not seeking to create new public rights, but to record public rights that they consider already exist. As such, issues relating to need or the environmental impact of clearing the Order route should the Order be confirmed are not relevant in satisfying the tests for the confirmation of the Order.

The OMA are aware that in its current condition the Order route is no longer suitable or useable as a bridleway, but in line with the legislation the Order has been made to record public rights that historically already legally exist. Use of the Order route appears to have ceased approximately 80 years ago with references to it being physically blocked at that time. It is not surprising therefore that it is now overgrown and that with no maintenance water has eroded the surface.

Should the Order be confirmed, the OMA will then need to consider what options are available to manage public use.

There is no physical sign of a wider route to allow horses or carriages and the rough land across the moor would not have been suitable for carriages which would have become bogged down or seriously damaged.

The Order has been made on the basis of historical map and documentary evidence that the OMA considers to show that the Order route existed and was capable of being used by the public over 200 years ago. More recent evidence has also been considered with local recollections of a route used by horse and cart in the early 1900s.

It appears that the Order route has been blocked more than 80 years and how it looked 80-200 years ago is likely to be very different to how it looks today.

The Order has been made to record public rights on horseback although it is open to the Inspector to consider whether higher public rights exist.

Conclusion

Having considered all the objections received, the OMA submits that the objections received do not in any way undermine the evidence that the Order route is, on balance, already a bridleway, and respectfully requests that the Inspector confirms the Order.