

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR  
THE COUNTY OF LANCASHIRE**

**THE LANCASHIRE COUNTY COUNCIL  
UPGRADING TO RESTRICTED BYWAY  
OF FOOTPATHS RAMSBOTTOM 208 (SALES'S LANE)  
AND RAMSBOTTOM 245, ROSSENDALE BOROUGH  
DEFINITIVE MAP MODIFICATION ORDER 2016**

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**COMMENTS ON OBJECTIONS**

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The Order subject of this appeal attracted objections from two local landowners; the freehold owner of Sales's Farm and the freehold owner of Buckhurst Farm, the latter having instructed P Wilson & Company to act on their behalf.

The objections are made against the map and documentary evidence, followed by objections against the user evidence.

The points of objection are summarised in bold italics below with the Order Making Authority's ("OMA's") response after each as follows:

Objection from freehold owners of Sales's Farm

***The freehold owners of Sales's Farm (G.E. Roberts, C. Roberts, G. Roberts and G.J. Roberts) object on the basis that they believed that:***

***"the route's existence was not for the purpose assumed"***

***"that Sales's Lane was not a public highway" and***

***"was simply used to service the land owned by Sales's Farm".***

It is often the case that a route's existence serves multiple purposes any or all of which may not be the original purpose. It may be that a farm or other building is established on a highway of some sort to facilitate access but that highway, especially if it is only a footpath or bridleway, needs to be improved in order to provide vehicular access to the premises and perhaps enclosed for operational reasons. It may be that a private access to a farm is established which subsequently becomes used by the public,

especially if it connects to other ways, and long term acquiescence by the landowners can imply dedication. It is often not possible nor necessary to be sure of the origin of the way in order to show that there are public and/or private rights over it as evidence from later years, or centuries, can be used to deduce this.

In this case we already know that both Sales's Lane and the connection to Croston Close Road via Lark Mount are highways, as well as presumably carrying private vehicular rights, because they are recorded on the Definitive Map and Statement as Footpaths Ramsbottom 208 and 245 respectively, i.e. that they are highways with at least pedestrian rights for the public and without prejudice to any question of whether the public have other rights.

In respect of the map-based evidence as cited within the report presented to the County Council's Regulatory Committee prior to the making of the Order (Document 21), evidence, which has not been provided by the objector, would be needed to support the notion that would lead to the OMA's assessment of the documentary evidence being wrongly interpreted. No such evidence has been submitted and the OMA remain of the view that there is a significant body of evidence, spanning a substantial period of time, from which public carriageway rights can be inferred.

Unless the OMA is able to see the Roberts family's evidence it is unable to make further comment.

#### Objection from freeholder of Buckhurst Farm

***The objector considered that the analysis of the individual documents was partly based on conjecture and that a more plausible explanation of their contents exists. Further evidence is being obtained to present to the Inspector in due course.***

The objection referred to the fact that further evidence in support of the objection would be presented to the Inspector but this has not been made available to the OMA. Similarly no alternative explanation of the evidence in the Committee Report was suggested. Therefore we have been unable to consider it at this stage.

***The objector disagrees with the OMA's view that the exclusion of the full length of the Order route from the numbered hereditaments on the Finance Act Map is because it is likely to have been a public highway.***

Under the Finance (1909-1910) Act 1910 deductions in tax could be made for both public and private rights of way and the Order route served various premises as well as connecting Bentley Lane, Buckhurst Lane, Croston Close Road.

The Finance (1909-1910) Act 1910 required all land to be valued but routes shown on the base plans which corresponded to known public highways, usually vehicular, were not normally included in the hereditaments i.e. were shown uncoloured and un-numbered.

The OMA point out that whilst not conclusive the exclusion of the whole route from the map is strong evidence of public vehicular rights *and* that this is reinforced by the other evidence presented.

Field book entries for some of the adjacent hereditaments were also examined which showed that much of the land on either side of the route was included in braced hereditaments owned by the same landowners further suggesting that the route was considered to be a public carriageway which was not in the same ownership as the land on either side of it.

Land crossed by public rights of way along routes recognised as public footpaths and bridleways was more normally included in numbered plots with deductions claimed and listed in the relevant Field Books. The same is often found with regards to private easements.

***Furthermore Sales's Lane provided sole vehicular access to parcels of agricultural land in different ownership/occupation and ownership may have been in doubt.***

This should be put into context. The two sections of the Order route (Sales's Lane and the connection to Croston Close Road via Lark Mount) do not *only* provide access to properties or parcels of land immediately accessed from them but both form part of

routes connecting to other public highways, mostly or all vehicular, and neither could be argued to lead to 'dead ends'.

The objector refers to a Planning Inspectorate Appeal Decision against the OMA's decision not to make an order to upgrade a Footpath to Restricted Byway elsewhere in the County (Appeal Ref: FPS/Q2371/14A/15). However, that case is significantly different. In that particular case not all of the route applied for had been excluded from the numbered hereditaments and there was not the same strength of other map and documentary evidence supporting the existence of public vehicular rights either before or after the date of the 1910 Valuation. No direct comparison can be made between the two cases.

In the case of the Order route, it should also be noted that some lengths of the Order route are in registered landownership but that in 1910 the valuation process excluded the whole route from the taxation process with evidence of numbered plots on either side of the route being in the same ownership.

It remains the view of the OMA that the Finance Act records, when considered as part of all the available map and documentary evidence, provide strong evidence of public vehicular rights.

***The Tithe Award described the Order route as occupation road.***

The Objector considers that their explanation of the Order route as a private access road with uncertain ownership is not inconsistent with it being described as an occupation road in the Tithe Award. The OMA is of the view that the way the routes are shown on the Tithe Map both routes appear to have been wide enough to be used by vehicles in 1840 and that they provided access to a number of properties but also formed through-routes linking to other highways and this is the more likely interpretation.

The meaning of the term 'occupation roads' is not given. The prelude to the Award states no tithes were payable on 'public roads' but yet the phrase 'public road' was not used within the Award with most roads being described as 'occupation roads' with no tithes payable.

***The Order route is shown on the Lord Derby Estate map in 1824 quite possibly used by occupiers to access private property.***

The objector also asserts that despite Sales's Lane being shown as a road on the Derby Estate Plan of 1824 it is quite possible that it was used as a private road rather than a public road. The OMA acknowledge that it is not uncommon for both public and private rights to co-exist along the same routes and a great many, perhaps the majority, of properties were then and are now accessed directly from public highway. The 1824 Plan provides further evidence of the physical existence of the Order route (between points A-B-C-D-E-F-I) and the fact that it is largely depicted as a 'High Road' on the map key and is clearly distinguished in the key from 'Private Roads' meaning that it appeared to be considered at the time of the survey not as a private road but a public road carrying public vehicular rights.

***Bartholomew's Half-Inch Map has a disclaimer stating 'The representation of a road or footpath is no evidence of the existence of a right of way' which was not brought to the Committees attention and is crucial to its interpretation.***

THE OMA have evaluated the inclusion of the route on Bartholomew's map in the context of the reason the map was produced. The maps were very popular with the public and sold in their millions primarily for the purpose of driving and cycling, due largely to their accurate road classification. The inclusion of the whole route on this small-scale map and the fact that the route from points A-D and D-L were shown as passable (albeit indifferent) roads further supports the view that the routes physically existed in the early 1900s with the inference that they were still being used as public roads. The objector's assertion that the map was merely trying to provide a record of condition does not bear scrutiny: if the condition was of interest to anyone (except the occupiers of the adjacent land who would already be familiar with it) it would only be because they had a right to use it.

***The Definitive Map and Statement, and specifically the record card, recorded the Order route as footpath only.***

There were no Parish Survey cards, as in the former rural districts, because Ramsbottom was an urban district pre-1974. Ramsbottom 208 and 245 were listed on the Definitive Statement sheet with " (ditto) in the 'Kind of Path' column, referring to 'Footpath' further up the column and within the statements for nearby paths these are all referred to as 'path'. However, more importantly the legislation makes it clear that

there is a difference between a 'footpath' (a highway with public rights on foot only) and 'a way shown on the Definitive Map and Statement as a footpath' (a highway with public rights at least on foot but without prejudice to the possible existence of other rights); Wildlife and Countryside Act 1981 S56.

***Commercial and Ordnance Survey maps adduced by the OMA show the existence of tracks/roads but do not show that the status of the routes as public rights of way.***

These maps include the Ordnance Survey (OS) Maps at a range of scales published in 1848, 1891, 1907, 1930, 1956 and 1964 and the privately produced Cassini map based on OS mapping published circa 1842-1844. In addition the route is shown on Yates' 1976, Authentic Map Directory 1931-1935, Smith's 1802, ½" to 1 mile OS Preston 1907, Geographia Road Map 30 miles around Manchester 1921 and Abel and Heywood & Sons Cycling & Touring Map.

Whilst the objector is correct in stating that the maps do not necessarily include keys or legends to indicate the public status of the route, the fact that they are included consistently on a range of publicly available maps from the 1700s through to the 1900s, being described as a 'High Road' on an Estate plan dated 1824, as well as the whole route being excluded on the Finance Act 1910 Maps, taken together strongly points towards a public route that historically carried public vehicular rights..

The fact that the route is shown on the vast majority of the maps researched, only leads to the conclusion that the route was a public right of way, probably a carriageway.

### **User evidence objections**

The objector claims to be able to rebut the user evidence but as no evidence for this has yet been given we are unable to comment.

### **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 restricted byway, and respectfully requests that the Inspector confirms the Order.

**LANCASHIRE COUNTY COUNCIL**

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