

IN THE MATTER OF:

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 OF BUCKHURST ROAD,
RAMSBOTTOM FROM PUBLIC FOOTPATH TO RESTRICTED BYWAY)
DEFINITIVE MAP MODIFICATION ORDER 2015

THE ORDER MAKING AUTHORITY'S COMMENTS ON OBJECTIONS

The Order subject of the appeal attracted the one objection.

The objection is within a letter dated 02 October 2015 (Document 4) sent by P Wilson & Company (Chartered Surveyors) on behalf of John Walsh, Andrea Walsh Richard and Alan Walsh of Buckhurst Farm, Buckhurst Road, Walmersley BL9 6SZ; and Mrs Marlene Walsh of Buckhurst Cottage, Buckhurst Road, Walmersley BL9 6SZ.

The objection is made against the evidence submitted with the application, the map and documentary evidence in general, the Definitive Map and Statement, followed by objection against the user evidence. However, this Order was not supported by any user evidence and therefore the OMA is unable to make any comment on that element of the objection.

Objections

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

All the maps and documents relied upon, while showing the route, do not prove the status of the route.

No individual piece of evidence should be taken in isolation. The OMS considers that taken together the evidence shows on the balance of probabilities that public restricted byway rights exist along Buckhurst Road.

The following maps are not determinative of status and no keys are on them so they should not be regarded as evidence of public bridleway rights:

Ordnance Survey 6" map 1849;

Ordnance Survey 6" map 1930;

Yate's 1" 1786;

Authentic Map Directory of South Lancashire 1931-35;

Smith's 1802;

Cassini 1844 Ordnance Survey 1"

½" Ordnance Survey Preston map 1907;

Geographia Road Map 30 miles around Manchester revised 1921 ½"to 1 mile;

Abel Heywood & Sons Cycling & Touring Map 60 miles around Manchester ½".

The OMA have looked at a range of historical maps and documents in coming to the decision to make an Order to record the route as a restricted byway.

Unlike the historical Ordnance Survey maps which were produced to record the topographical features and were primarily for military purposes, small-scale commercial maps, including some of those mentioned above, were produced primarily to assist the travelling public on horseback and in carts. This suggests the route was considered to be a public equestrian or vehicular route from the late 1700s and early 1800s. In addition to these maps, the OMA have considered a range of early commercial and publicly available maps available from the 1700s through to the 1900s (including a number of additional maps considered prior to the Order being made but not specified by the objector and some additional maps not originally considered by the OMA prior to making the Order). Whilst no one single piece of map or documentary evidence is conclusive, taking them all into consideration the OMA are of the view that the consistent appearance of the route as part of a longer network of routes with recorded public vehicular or bridleway status would lead to the presumption of the route being of at least bridleway status, and on balance a highway open to the public in all vehicles including carts and carriages having been dedicated to public use.

The Objector is incorrect to state that the maps do not include keys or legends. Whilst some of the maps examined did not include keys or legends, most of the maps did

and the way that the Order Route was consistently depicted indicated the existence of public vehicular rights. Whilst it is accepted that the way that the route is shown (or referred to in the key panels available) is not conclusive with regards to public status, the fact that the Order Route is included consistently on a range of maps from the 1700s through to the 1900s, points strongly to a public right of way. The Order route is shown as a 'High Road' on the Derby Estate Map of 1824 (as indicated in the map key) and described as a 'Cross Road' in the key panels on Yates' Map of 1786 and Smith's Map of 1801 and excluded on the Finance Act 1910 Maps, which gives a strong indication of the route being a public right of way of at least bridleway status. The fact that the route is shown as a significant named route consistent with the way that other public vehicular ways are shown on the vast majority of the maps researched, only leads to the highly probable conclusion that the route was a public right of way and that right of way was more likely to be a carriageway. One would not expect a footpath to be depicted on many of these maps which only points to the route having a higher status.

Lord Derby Estate Plans of 1824

Land north and south of Buckhurst Road did not form part of Lord Derby's Estate and a large part of the Order route is omitted from the plan. Consequently this evidence is inconclusive of the status of any right of way.

The OMA did not make the Order on the basis of one single piece of map or documentary evidence but looked at a body of evidence, spanning a substantial period of time, from which public carriageway rights could be inferred.

The Derby Estate Plans of 1824 show the sections of the route within the Estate as a 'High Road'. The objector states that because the section outside the Estate is not shown on the plans, it is inconclusive on the status of any rights of way. However, the plan only shows those parts of the route across land forming part of the Derby Estate and the OMA contends that the other part of the route is not shown because the land it crossed was not part of the Derby Estate and therefore not included on this map. It is clearly shown as a through-route on the majority of other commercial maps produced around that time. The Order route is 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. Based on the map evidence as a whole, it is unlikely that 2 cul-de-sac public routes would exist as shown without a connection of the same status across the area not shown on the map. The line of that connection can be inferred from other maps of that era which provide the physical detail.

Finance Act 1920 [sic] Map

As neither the Valuation Book or Field Book extracts were provided the map extract cannot be interpreted. The map extract alone provides insufficient information to determine the status of a right of way.

It should be noted that the objection letter refers to the "Finance Act 1920 map" which appears to be an error, as this was not produced or considered as evidence by the OMA. The OMA did consider the maps under The Finance (1909-1910) Act, which required all land to be valued and 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 objector states that the map extract alone provides insufficient information to determine the status of the right of way.

The OMA point out that whilst it is 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 map evidence depicting the same route presented and considered by the OMA.

Because the Order route is excluded from the numbered hereditaments the District Valuation Book and Field Books do not provide any information about it which is good evidence that in the early 1900s the route was still considered to be a public carriageway.

The field book entries for the adjacent hereditaments were examined and showed that much of the land on either side of the route was included in braced hereditaments owned by the Earl of Derby, but which were split by the excluded Order route giving

further weight to the belief that the Order route passing through land owned by the Earl of Derby was considered to be for public use and that it carried public vehicular rights (as footpaths and bridleways were normally included in the numbered plots). It was an offence for a false claim to be made under the Finance Act and the fact that the valuation plans show the route excluded is, as pointed out, strong evidence of the existence of public vehicular rights.

Metropolitan Borough of Bury Register of Streets Maintainable by the Inhabitants at large.

The objector queries whether this was an official register and states that alone this document does not prove the status of Buckhurst Road.

The OMA are not relying on this document to prove the status of the Order route and consider that the route was dedicated as a public vehicular route in the late 1700s or early 1800s.

The Register of Streets is a document in the possession of Bury Metropolitan Council and the purpose of it was to record publicly maintainable roads. The fact that the Order route is not recorded in the document as being publicly maintainable does not mean that it is not a public right of way. Not all public rights of way are publicly maintainable. The Public Rights of Way Officer for Bury Metropolitan Council confirmed that the Order route was not recorded in the current List of Streets (2016).

Definitive Map and Statement

The objector states that there is nothing in the content of the Definitive Map and Statement of Public Rights of Way to suggest that the Order route is anything but a footpath.

The Definitive Map and Statement is a legal record of the public's rights of way. If a footpath is shown on the Map then that is conclusive evidence that there was, at the relevant date, a highway as shown on the map over which the public has a right of way on foot, without prejudice to any question whether the public had at that date any right of way other than that right. Section 53 of the Wildlife and Countryside Act 1981 places a duty on the OMA to keep the Definitive Map and Statement under continuous

review and to make modifications to the same, by way of order, in accordance with the requirements at S53(3).

In this particular case, following receipt of a duly made application, the evidence available to the OMA suggested strongly that the route was in fact a vehicular public right of way and that an Order should be made to correct the legal record, as per the requirement of the aforementioned s.53

The fact that the route was not recorded as a public vehicular highway when the First Definitive Map was prepared in the 1950s does not preclude it being recorded as such now and does not provide evidence that the route was not a public vehicular highway at that time. The implementation of the National Environment Rural Communities Act 2006 does however mean that, because of none of the exemptions listed in the Act apply, any rights for mechanically propelled vehicles have been extinguished and it should be recorded as restricted byway.

User evidence

The objector disputes the information contained in the user evidence forms and that he is in receipt of evidence contradicting the user evidence and historical documents.

The OMA assert that the Order route is a historical public vehicular route. No modern user evidence was submitted with the application, and none has been considered with regards to this case. Modern use of the route appears to be on foot but it is the OMA's case that public vehicular 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 being in possession of evidence to contradict the user evidence and historical documents but has provided no further information despite being asked for further details. The OMA cannot therefore comment on this part of the objection.

Conclusion

Having considered all the points raised in the objection received the OMA submits that it does 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.