

LANCASHIRE COUNTY COUNCIL
DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY
The LANCASHIRE COUNTY COUNCIL
RESTRICTED BYWAY ALONG SOD HALL LANE, SOUTH RIBBLE
DEFINITIVE MAP MODIFICATION ORDER 2022

COMMENTS ON DULY MADE OBJECTION

The Objection

A copy of the objection received from Network Rail to the Order is contained within the List of Documents (Document 4).

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

Network Rail reiterated comments previously made in response to the bridleway application: indicating Sod Hall Lane was a private road and the crossing was provided was to maintain access for adjacent landowner/s; infrastructure at the crossing would need to be reconsidered; and an unacceptable increase in risk at the crossing.

These comments were originally made prior to the application being considered by the OMA's Regulatory Committee and were reported to the Committee as part of the detailed report submitted to them (Doc).

In 1846, it is acknowledged that a railway was built across the Order route (marked D-E on the Order Map) confirming the existence of the Order route prior to the railway but referring to that part of the Order route listed as being in private ownership as a 'Private or occupation road'. Details of landowners and occupiers are given suggesting that this part of the Order route at least could have been originally created as part of the inclosure of Leyland Moss with private rights of access given to owners of adjacent land. Early Commercial Maps pre-dating the construction of the railway and likely inclosure of the moss land show Sod Hall suggesting the Order route, or at least part of it, existed prior to inclosure.

The nature of the level crossing (D-E) is interesting. It appears to have been constructed as a gated crossing with adjacent gatehouse which was owned by the Railway Board. As such, this appears consistent with what would be required where a railway crossed a public vehicular highway and the earliest available census information (1851) for a property named in the census as 'Sod Hall Crossing' was occupied by a Railway Gate Keeper.

The fact that the Order route may have historically come into being or been considered to be a private route does not mean that public rights could not have been acquired or dedicated at a later date or that it was used by the public as well as providing access for adjacent landowners.

Comments relating to the fact that modern day infrastructure at the crossing and that the making and confirmation of the Order would create an unacceptable increase in risk at the crossing are not relevant considerations with regards to the confirmation of the Order. Should the Order be confirmed, these concerns, and any work required to mitigate against the risks, would need to be discussed with Network Rail.

Following the making of the Order, and having had sight of the report presented to the OMA's Regulatory Committee, Network Rail added further points to their objection:

Reference is made to the Liverpool, Ormskirk & Preston Railway Act 1846's Book of Reference recording the route as a 'private or occupation road' suggesting 'occupation' describes a road with private rights for owners of adjacent land, or some other private right of way.

Whilst it appears that the railway records do not provide strong support for the Order route being considered to be a public vehicular route at the time that it was proposed, the Book of Reference confirms the existence of the Order route prior to the construction of the railway as a significant route capable of being used by vehicles at that time.

It subsequently appears to have been constructed as a gated crossing with adjacent gatehouse which was owned by the Railway Board. As such, this appears consistent with what would be required where a railway crossed a public vehicular highway and the earliest found census information (1851) for a property named in the census as 'Sod Hall Crossing' was occupied by a Railway Gate Keeper.

As with most cases investigated, the OMA have found that no single piece of map or documentary evidence stands alone to confirm the public rights on the route. The evidence on which the OMA made the Order included maps dating back to the 1830s through to the modern day, historical documentary evidence and historical and current air and ground photographs which taken as a whole were considered by the OMA to suggest the dedication over time of a public vehicular route.

The use of the term 'private' in the Book of Reference description suggests that it may have been a toll or turnpike road of some description and not a public carriageway. Railway records from 1933 had been located suggesting a toll had existed that ceased in around 1903.

The OMA have acknowledged that the Order route was described as a 'Private or Occupation Road' in the Book of Reference and that there is considerable ambiguity about what this may have meant.

The OMA have found no evidence of a toll being charged to cross the railway but have drawn attention to the existence of the Round House just south of point G which existed in the 1800s. Various sources suggest that this ceased

to exist/operate from the early 1900s and the totality of the map and documentary evidence thereafter indicates that the route was then, in its entirety, capable of being used by the public as a public through route.

The 1846 Railway Act would have contained model clauses referring to works for the protection and accommodation of lands adjoining the railway. Sod Hall level crossing was provided to accommodate the already existing private or occupation road for the benefit of the landowners and possibly other users if it was indeed a toll/turnpike road. If there had been a gatekeeper employed at any time, this does not necessarily mean that the route was public but supports the objector's suggestion that the route was a private toll/turnpike road that pre-existed the railway.

The OMA assert that there are many instances whereby routes originally created as private routes alter over the course of time – particularly where they provide through routes connecting to existing public highways. In this particular case, the OMA consider it necessary to look at the range of map and documentary evidence available throughout the twentieth century in particular from which the dedication of public rights can be inferred.

Reference is made in the objector's records to confusion 'over the years' as to the status of the route. Information from files state that any crossing attendance that may still have been provided at that time was withdrawn in 1968 and by the early 1970s those requiring vehicular access over the crossing were given keys to the gates with telephones provided so for contacting the signaller.

Copies of the relevant correspondence from the files has not been provided by the objector. The objector acknowledges that there was some confusion and that a crossing attendant had been provided prior to 1968 which is not inconsistent with the use of the route by the public.

The objector is of the opinion that the route had never been considered to be a public crossing (other than on foot), and that there is insufficient evidence for any higher status.

The OMA is respectful of the views of the Objector, but has concluded that no evidence has been provided to show that the Order route has never been considered to be a public vehicular route or that it has not been used by the public.

Conclusion

The OMA submits that restricted byway rights subsist along the Order route. The OMA further contends that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above is met. The objection received does not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation. The OMA therefore respectfully requests that the Planning Inspector confirms the Order.