

THE LANCASHIRE COUNTY COUNCIL
DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
(DEFINITIVE MAP MODIFICATION) (No. 8) ORDER 2010

Lancashire County Council's (the Order Making Authority – 'OMA') Comments on Objection

One duly made objection to the Order has been received by the OMA.

A copy of the objection is contained within the List of Documents (Document 4) and is summarised below.

Mr John Pallister Chartered Surveyors, auctioneers, Land Agents, agricultural & Tenant Rights Valuers of The Coach House, 28 Duck Street, Clitheroe Lancashire on behalf of Mr John R Dinsdale, owner of Rainhall Farm, Barnoldswick at the time the objection was made (2010).

The objector – Mr John R Dinsdale is now deceased and all the land crossed by the Order route is now in the registered ownership of David John Dinsdale and Matthew Robert Dinsdale of Rain Hall Farm, Salterforth BB18 6JE. The land was registered in their ownership in 2016 (LAN 47087 (Document 31)).

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

The track between points D and G on the Order route is a private track and records show it has always been a private track. Refers to a toll cottage situated on the track from which access payments were once levied. The track was gated and probably the gate was locked.

The records referred to by the objector are not specified and copies have not been supplied. Likewise, records showing a toll cottage have not been supplied but could be a reference to the Manorial Records detailed in the OMA's Statement of Case. It is not known if or when the toll cottage referred to by the objector existed or its location/purpose. There is no evidence of the existence of a toll cottage on any Ordnance Survey maps dating back to the 1840's or on early the commercial plans or estate plans examined by the OMA.

With regards the track being gated and toll leviers keeping it locked, no evidence has been provided.

A gate may have existed across the Order route at point G from as early as 1765 (Estate plan of Edward Parker (Document 22)). A gate at point G is consistently shown on Ordnance Survey plans from 1896 to 1954 but does not appear on Ordnance survey maps from 1954 to the present day. A gate across a track would not necessarily indicate that a route was private, kept closed or locked in any event.

The earliest references to the Order route date from medieval times. An article submitted by Mr Nicholas Livsey from the Earby and District Local History Society describes the history of a road referred to as the ancient Musghyll Gate to Dumphill Gate Road (Document 45). The Order route was described as an important medieval route between settlements which was historically used on horseback but which by the 17th and early 18th century was being used by horse and cart.

Refers to an agreement dated June 1863 (Document 4, 'Annex A') relating to the title to Rainhall Farm and to local people knowing the track was private. Asserts that a local man paid the owner of the farm for access and use of the track.

The agreement is difficult to read. It is handwritten and although stamped has not been signed by both parties to the agreement.

The objector claims that the document demonstrates that in 1863 the owners of Rainhill farm and local people knew that the use of the track was private use and state that a local man paid the owner of the farm for access and use of the track. The OMA has not been supplied with any evidence to substantiate this.

The agreement refers to there being a road for horses over and across Rainhall Farm and also a road for carts carrying corn and grain between Salterforth and Barnoldswick where there was a corn mill. It is possible that the road for horses was that shown as a Bridle Road on the First Edition 6 inch Map (Document 35) which passed close to Rain Hall.

If that is the case, it appears likely that it is the Order route that is referred to as being the road used by carts carrying grain to and from the corn mill. The payments referred to appear to be in relation to use of the road for purposes other than carrying corn and the payment to be requested was specified to be for the purpose of repairing the road.

It is not considered that the wording is necessarily inconsistent with the existence of public carriageway rights because maintenance of roads within a parish in 1863 combined historical parish-based responsibility, declining turnpike trusts, and the emergence of highway districts. It is likely that at that time local rates or tolls were still funding work to maintain or repair the road network within Salterforth and that as an important route identified as being used by horses and carts to transport grain between two villages then funding would be required to keep the route passable throughout the year.

The road for carts taking grain between Salterforth and the mill at Barnoldswick is perhaps the Order route although the Order route is clearly named as Salterforth Lane on the Ordnance Survey maps before (1853) and after (1894) this agreement (1863) yet the agreement does not use this name but describes a road for carrying corn between Salterforth and the mill at Barnoldswick. It refers to taking goods from Barnoldswick to the nearby railway station yet the station was central to Barnoldswick and the journey is not specifically referred to as passing along the Order route with no plan was appended to the agreement to clarify the routes referred to. If it does refer to the Order route the

document suggests that this road was not considered by either of the signatories to be vehicular highway in 1863 but does not go further in showing what the public at large, the parish or the RDC considered the road to be as this document would have had no form of public scrutiny or consultation.

Reference is made to a conveyance dated 1918 relating to Rainhall Farm (Document 4, 'Annex B'). The conveyance plan marks the Order route as a 'private cart road' and that the conveyance stated that one of the rights appurtenant to the farm, was private rights granted to those enjoying Rainhall Farm and adjacent tracks.

The full length of the Order route is shown on the plan. That section between points B to D is labelled 'Road 36 feet wide' with no reference to the words 'private'. Between point E and F the Order route is labelled as a private cart road. Rainhall Crescent (named as Long Ing Lane on the First Edition 6 inch OS Map (Document 35)) and which extends west from point A is also shown labelled as a private road.

It is not unusual for private rights of access to be included within a conveyance document thus protecting the purchaser should public rights be found not to exist or to be subsequently extinguished.

Prior to the 1918 sale the 1910 Finance Act material examined lists Mr J Wilkinson as owner of Rainhall Farm at that time and the Order route between points A-B and D-G was shown crossing land forming part of Rainhall Farm with a tax deduction claimed for the presence of footpaths (although the exact routes are not specified). The Order route B-C-D was in another ownership recorded as plot 76 (Document 27). The Field Book entry specifically recorded that there was a 'public right of way over tunnel to Salterforth' and a reduction in tax of £20 was claimed. The nature of the public right of way is not recorded but both landowners acknowledged the existence of public rights across their land in the early 1900s and in respect of the Order route B-C-D the description of the route specifically refers to it continuing to Salterforth.

Because it was necessary to reserve specific rights to access over the track adjoining Rainhall Farm in 1918, the use of the track was not available to the public.

It is not uncommon for private access rights to be written into conveyances even where public rights are acknowledged to exist. The OS mapping available at that time, and other maps including Bartholomew's Maps suggest that the route may have been available to the public to use before and after 1918.

The old commercial maps dated variously 1772, 1817 and other maps dated 1817/1827/1829 are less than satisfactory. The 1863 agreement and conveyance of 1918 indicate the Order route was not public.

As part of the investigations carried out by the OMA, it is normal practice to inspect the earliest maps available to try to determine whether the route physically existed at that time and if so, what status.

It is often the case that no one piece of documentary evidence is judged to be conclusive as to the status of the route and often various pieces of evidence are not in accord with one another. It is necessary to look at a range of material to determine what the status of the Order route might be.

The Order route is clearly shown Greenwood, Teesdale and Bingley Map of Yorkshire first published in 1817 and corrected in 1827 and 1828 (Document 30). The map shows the full length of the Order route as part of a longer route between Coates and Salterforth.

The Order route is shown as a 'cross road' in the 'explanation' or key to the map. The only other kind of road or way shown are turnpike roads. As the map was produced for sale, it is likely that all the routes shown on it were for the travelling public to use. The map does not show footpaths or bridleways and so it is probable that all the roads shown on it would be accessible by horsedrawn vehicles.

There is no evidence of use of the route by horse drawn vehicles and if such use did take place, it was not public use but was by gratuitous licence of the owners of Rainhall Farm or following payment. Reference is again made to the 1863 agreement concerning payment.

The OMA consider that when considered in its entirety the map and documentary evidence spanning several hundred years is sufficient from which to infer that public carriageway rights subsist. It is not known when public rights came into being except that the 1863 document suggests that if the Order route was the route in question it was not acknowledged by those parties to be vehicular highway and at the (unknown) later date it was recorded by Skipton Rural District Council as publicly maintainable along with other vehicular highways.

The objector does not accept the statements that use in more recent years has amounted to 20 years of uninterrupted public access by horse riders. Those making such statements must be put to proof.

The user evidence submitted as part of the application was provided by members of the public in good faith and they were aware that they may have been asked to provide further details and for their evidence to be tested more thoroughly or to be cross examined at a public inquiry.

As detailed in the OMA's Statement of Case it is unfortunate that in the time taken to refer this Order to the Planning Inspectorate the 16 user evidence forms submitted with the application have been lost as part of the file containing the original application and pre-Order consultations. With regards to the user evidence, whilst this is not ideal, on researching the history of the Order route further the Order Making Authority ("OMA") assert that the user evidence is 'modern' user of a route that was dedicated to the public at least several hundred years ago.

Nick Livsey in his paper "History of the Ancient Musghyll Gate to Dumphill Gate Road" (Document 45) refers to the tarring of the roads around Salterforth in 1924 and draws an 'unsupported conclusion' that Skipton RDC omitted work on the Order route because the 'New Road' offered a better route. The objector asserts that the Order route was not tarred and that assertions that local residents believed it to be an unclassified highway were unsubstantiated.

In the early 1900s Skipton RDC would have been starting on a programme to tarmac public vehicular routes. Mr Livsey may be correct in his belief that use of the Order route declined when the 'new road' (Kelbrook Road) had been built between Salterforth and Barnoldswick but we have no records regarding any consideration Skipton RDC may have given to tarring the Order route at that time.

Records from the 1960s (Document 43) have been located for Skipton Rural District Council recording it as an unclassified county road at that time giving credibility to local residents claims that they knew it as an unclassified county road. In addition, the recording of several public footpaths leading directly to but not across or along the Order route on the Definitive Map and Statement in the 1950s again suggests that it was known and recognised as a public vehicular route and so it was considered that it did not meet the criteria to be recorded on the Definitive Map and Statement at that time.

The OMA has no duty to modify the definitive map simply because it prefers a modification. Evidence is required.

The OMA was required by law to investigate the application made and to consider all available evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. If evidence shows that a right of way 'subsists' or is 'reasonably alleged to subsist' then an order must be made.

The OMA's decision to make an Order was based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties. Each piece of evidence was tested on the balance of probabilities.

Conclusion

The OMA submits that the objections received do not in any way undermine the evidence that the Order route is, on balance, already a byway open to all traffic, and respectfully requests that the Secretary of State confirms the Order subject to the proposed modification as detailed in the OMA's Statement of Case.