

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

Order Making Authority Statement of Case

Background

1. On 25th April 2007, Mr Tom Partridge, Countryside Access Officer for Pendle Borough Council, currently based at Fleet Street Depot, Nelson, Lancashire, BB9 7YQ, submitted an application to Lancashire County Council (the relevant surveying authority) for an order under section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by adding a public bridleway from Rainhill Crescent, Barnoldswick to a point on Salterforth Lane, Salterforth at the junction with Footpaths 14 and 20 Salterforth.
2. The application (Document 19) was supported by 16 user evidence forms, an extract from a publication titled '*The History of the Ancient Musghyll Gate to Dumphill Gate Road*', an extract from an Estate plan dated 1888, extract from the Manorial Court Rolls for Barnoldswick dated 1769 and 1733, a letter from a land agent representing an affected landowner dated 2007 and map showing the route applied for.
3. Unfortunately, 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. The letter from a land agent representing an affected landowner dated 2007 was also lost.
4. On receipt of the application in 2007 Officers from the OMA investigated whether they considered that the public rights applied for existed over the application route and prepared a report detailing their investigation together with their recommendation that the application should be accepted (Document 20). The report was considered by the OMA's Regulatory Committee on 18th November 2009 where the

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

decision was made to make an order modify the DMS by recording a bridleway along shown as A-B-C-D-E-F-G on the Order plan.

5. Notice of the OMA's decision to make an order, including a statement of reasons for making the Order, was sent to affected individuals on 14th December 2009 (Document 15).
6. A Definitive Map Modification Order was duly made on 21st July 2010 ("the Order") (Document 1). The Order was made because it appeared to the OMA that the DMS for Lancashire required modification in consequence of an event specified in Section 53(3)(c)(i) of the 1981 Act, namely: the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, namely a bridleway.
7. Notice of the Making of the Order was served on affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 7 of Schedule 15 of the 1981 Act (Document 7).
8. During the specified period for objections and representations to the Order, the OMA received one objection (Document 4).
9. The objection has not been withdrawn so the Order is opposed and cannot be confirmed by the OMA.
10. The OMA had a significant backlog of Orders needing to be referred to the Planning Inspectorate. Appreciating that it was 16 years since the Order was made the OMA recently reviewed the case in preparation for submitting it to the Planning Inspectorate and identified that the 2009 Committee decision to accept the application and to make an Order did not specifically address the confirmation of the Order.

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

11. Officers presented a further report to the Regulatory Committee on 9th September 2026 (Document 15) explaining that they had reviewed the content of the objection letter and evidence submitted with the application and subsequently identified additional evidence that was not considered when the application was originally accepted and Order made.
12. Officers considered that when referring the Order to the Planning Inspectorate, the additional information identified (including highway records listing the route as an unclassified county road and its inclusion on Bartholomew's Maps) added weight to the evidence that public vehicular rights existed along the Order route but Officers also considered that the evidence originally considered by the Regulatory Committee in 2009 was actually sufficient to satisfy the higher status.
13. With the agreement of the Regulatory Committee the OMA are now referring the Order to the Planning Inspectorate for determination and request that the Order be modified to record the route as a byway open to all traffic.

The Order Route

14. The Order route is in the District of Pendle and is shown on the Order Plan between points A-B-C-D-E-F-G denoted by a broken line with cross bars in the intervals.
15. The section between points A-B and D-E-F-G is within the parish of Salterforth and between points B-C-D the Order route is within the parish of Barnoldswick. The Order route is approximately 740 metres long.
16. Photographs of the Order route were taken in 2008 and were included in a presentation to the Regulatory Committee at their meeting in 2009 (Document 21).

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

17. The Order route starts at the junction of Rainhall Crescent, Ben Lane and Public Footpath 22 Salterforth at point A on the Order plan.
18. When inspected in 2008 it was noted that the start of the Order route was open and not gated and there were no signs indicating that it was private. A tarmac surface ceased after several metres and gave way to a compact stone surfaced track approximately 3 metres wide:



19. From point A, the Order route extends in a south easterly direction for a distance of approximately 62 metres to point B.
20. From point B, the Order route turned to run in a south westerly direction for a distance of approximately 70 metres bounded by fences on both sides and continued as a 3-metre-wide stone surfaced track. On the western side of the Order route was a residential property called 'Windrush' accessed via the Order route.

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



21. From point C, the Order route continued in a south easterly direction passing through the site of an old quarry. To the east of the Order route the old quarry has been in-filled and grassed over with air vents visible. This former landfill site is fenced off from the Order route by wooden closeboard fencing.
22. On the western side of the Order route, the quarry had not been filled and is shown on the Order plan titled 'Little Cut'. A wooden closeboard fence separated the Order route from the old quarry, but sections of the fence had fallen into disrepair.



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

23. Just before reaching point D, it was possible to access the 'Little Cut' by a series of constructed wooden steps leading down to the bottom of the quarry. There was no indication that public access was allowed although access was available from the Order route and appeared to be reasonably well used. A sign in a tree on the western side of the Order route suggested that there was no authorised public access to the quarry and read, 'PRIVATE, Legal action may be taken against unauthorised persons found on this property', accompanied by a 'Danger' warning sign.
24. At point D, the Order route crosses the parish boundary (not marked) and the route was crossed by an access track from Higher Barnsley Farm to the west and a farm track providing access to the fields on the east:



25. From point D the Order route continued along a track approximately 3.5 metres wide with a compacted earth and stone surface evidently used by farm vehicles. At point E, a private access road leaves the eastern side of the Order route to provide vehicular access to Rain Hall Farm.

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



26. From point E, the Order route continued in a more southerly direction along a 3-metre-wide stone surfaced and compacted earth track bounded on either side by fences with a number of field gates opening onto the Order route. There was evidence of equestrian use (hoof prints and manure) and evidence that the Order route was also used to move cattle between different fields.



27. The surface of the Order route was hard and compacted but on the day of the OMA inspection there were some large potholes filled with water and after heavy rain it would be necessary to wear wellingtons to pass

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

through several of the puddles that extended the full width of the Order route.



28. At point F, the Order route was joined from the west by Public Footpath 19 Salterforth and continued in a south easterly direction to end at point G where it was joined from the east by Public Footpath 20 Salterforth and Public Footpath 14 Salterforth (which also provided vehicular access to Kay Field Farm).



29. From the end of the Order route at point G, it was possible to continue in a south easterly direction along the tarmac section of Salterforth Lane which eventually leads down into Salterforth.

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

30. The Order route was reinspected in 2026 and was found to be largely unaltered from how it originally looked although it was noted that a number of the large potholes filled with water when the route was first inspected had recently been filled with stone.

Landownership

31. 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).
32. At the time that the application was originally submitted and the Order was made the owner of the land was Mr John Robert Dinsdale (now deceased).
33. Mr John Robert Dinsdale (deceased) was the statutory objector to the Order.

Legal Issues

34. The provisions of the Wildlife and Countryside Act 1981 set out tests which must be addressed in deciding whether the DMS should be modified. If it appears to the OMA that the DMS require modification in consequence of the occurrence of an event specified in S53(3)(c)(i) of the 1981 Act namely the discovery by the OMA of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the DMS relates, namely a byway open to all traffic (as opposed to bridleway).
35. The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered. S53 permits both upgrading and downgrading of highways and deletions from the map. The statutory test at S53(3)(c)(i) comprises two separate

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

questions, must be answered in the affirmative before an Order is made under that subsection. The alleged right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B). This second test B is easier to satisfy, but it should be noted it is the 'higher' Test A which needs to be satisfied in deciding whether to confirm the Order.

36. In the case of *Todd and another v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1450 Evans-Lombe J made it clear that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an opposed order) must be satisfied on the balance of probabilities that the right of way subsists. This means that when considering the confirmation of an order, the Secretary of State is only able to consider whether on the balance of probabilities the right of way subsists.
37. Accordingly, for the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, *when considered with all other evidence* there is sufficient evidence from which to infer that public carriageway rights subsist over the Order route, that the effects of the Natural Environment and Rural Communities Act 2006 did not extinguish public rights for mechanically propelled vehicles and therefore that the route marked A-B-C-D-E-F-G as a bridleway on the Order plan should be amended and the route added to the DMS as a byway open to all traffic (BOAT).
38. It should be noted that a common law dedication of a BOAT may be inferred if the evidence points on balance to an intention on the part of the landowner to dedicate. The burden of proof is on those alleging carriageway rights to prove the dedication. Evidence of use of an Order route by the public and how an owner acted towards them is one of the factors which may be taken into account in deciding whether public rights have been dedicated. No minimum period is necessary. All the circumstances must be taken into account. The use needs to be 'as of right' which means it must be open, not secretly or by force or with permission.

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

39. The relevant statutory provision in relation to the dedication of a public right of way is Section 31 of the Highways Act 1980 (the "1980 Act"). Section 31 provides that where a way has actually been enjoyed by the public, 'as of right' (meaning without secrecy, force or permission) and without interruption, for a period of twenty years prior to its status being brought into question, the way is deemed to have been dedicated as a highway, unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate a public right of way. Section 31 does not necessarily preclude dedication of a public right of way under common law, however.
40. In this particular case the OMA are not relying on a statutory dedication based on 20 years use but are relying on common law dedication of public vehicular rights many years ago.
41. Noting that the OMA are requesting that the Order be modified and that the route be recorded as a BOAT the OMA draw attention to the provisions of The Natural Environment and Rural Communities Act 2006 which extinguishes public rights of way for mechanically propelled vehicles on routes shown on routes shown on the definitive map unless one of eight exceptions applies.
42. The exceptions whereby mechanical vehicular rights may be "saved" were considered by the OMA and as detailed later in this Statement of Case, the Order route was recorded on the List of Streets prior to 2006 which means that one of the exemptions applies.
43. For reasons detailed below it is the view of the OMA that Order route subsists as a BOAT and should be recorded as such on the DMS (Document 15).

Historical, Map and Documentary Evidence

44. At the time that the application was made (2007) the Order route was not recorded on the DMS and the applicant understood it not to be recorded as a publicly maintained highway.

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

45. Likewise, there was no reference to it being recorded as a publicly maintained highway in the Regulatory Committee report (Document 20) when the decision was taken to make an Order.
46. However, the full length of Salterforth Lane (including the Order route) is shown as a publicly maintainable unclassified road on the Lancashire County Council highway records including FindMyStreet [Map - FindMyStreet](#) identifying it as an unclassified publicly maintainable highway.
47. It is not entirely clear when the route was added to Lancashire County Council's highway records. There appears to be some information suggesting that it was included in Lancashire County Council original electronic mapping although there is no evidence to suggest that this was when it became publicly maintainable and earlier records understood to have been compiled in the 1960s for Skipton Rural Council record it as an unclassified county road (Document 43) at that time.
48. No evidence has been found that it was adopted by means of a legal process and it is considered by the Highways Team to be an ancient highway, i.e. it was publicly maintainable either before or by the general provisions of the Highways Act 1835.
49. All highways in existence (whatever their status) in 1835 became publicly maintainable and are usually referred to by the OMA as "ancient highways" but this does not assist in determining what type of highway rights exist.
50. In practical terms the application was originally made due to concerns about the lack of record of the route with no suggestion that it had been blocked off or access challenged. If, at the time, the digital highway records had been completed it is unlikely the application would have been made. That said, the term unclassified county road does not record status and whilst some may only be footpaths or bridleways the

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

majority are found to carry public vehicular rights. In this instance an application for bridleway was made primarily because it was public use on foot, horseback and bicycle that was being impacted by the poor condition of the route.

51. As referred to above (paragraph 47) whilst preparing this Statement of Case the OMA found records showing that Salterforth Lane is on a list of maintained highways handed over to Lancashire County Council by the former West Riding Council (Document 43). The exact provenance of this document is not clear but it certainly explains, confirms and justifies the inclusion of the whole of Salterforth Lane on the Highway records of routes maintainable at public expense (with the specific exception of the section of the road over the railway bridge and approaches which was listed as not being publicly maintained):

SKIPTON RURAL DISTRICT. Salterforth Parish.					
Name of Road.		Div. No.	Mileage to nearest 1/100th of a mile.		Description of route with map references.
			U.N.	Total.	
Salterforth Lane & Cross Lane.		2	1.12	1.12	From Barnoldswick Urban District boundary near Little Out (889470) to C.203 in Salterforth (889455) via Bamier and Cross Lane.
Salterforth & Lane Head.		2	0.72	0.72	From B.6383 in Salterforth (889454) to B.6251 near Lower Close
					Remarks. Road over Railway Bridge and approaches not maintained by County Council. Road over Canal Bridge not

52. Although this document is not conclusive regarding the status of public rights it is consistent with it being a general-purpose highway carrying at least public pedestrian rights.
53. Turning now to the evidence supporting the confirmation of the Order, as with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of a route and a variety of maps, plans and other documents were examined to try to find out when the Order route came into being and to determine what its status might be.
54. As already explained, since the making of the Order, additional information has been found or provided in support of the OMA's

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

request for the confirmation of the Order with the modification to record the route as a BOAT.

55. 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 being 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.
56. Mr Livsey wrote a second article in 2003 (Document 46) titled the Musghyll Guide Stone which he explains was found and then relocated from point G to the junction of Cross Lane, Mucky Lane and Musghyll Gate (Salterforth Lane) further south than the Order route.
57. A further article written by Mr Livsey titled 'Broadstone Chapel, Burial Ground of Ease and the Corpse Roads to St Mary-le-Ghyll' (Document 44) described how the inhabitants of Salterforth had been taking their dead to St Mary-le-Ghyll church located north east of the Order route (Grid Reference SD 8929 4801) since 1157 AD. The route taken from Salterforth is described as the Corpse Road along a route which included the full length of the Order route. Specific reference was made to Rainhall Bridge which it was said was partly built to allow access to farmland but also to allow Salterforth people their right of passage to the church.
58. The earliest map examined to show the Order route was found in a book of plans of the estate of Edward Parker dated 1765 (Lancashire County Records Office Ref DDB84/1) (Document 22). It shows the 'Rain Hall Estate' comprising 15 named fields in the north of the parish of Salterforth. The 'explanation' or key to the map refers to High Roads, fences, footpaths and boggy ground. A route largely consistent with the Order route is shown as a High Road passing through the Estate although the quarry (through which the Order route C-D subsequently passed) was not shown. A gate was drawn across the 'High Road' at

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

point G consistent with the location of the Musghyll Gate detailed above and a stile has been drawn on the map at point G giving access to a 'footpath' that follows the route of the footpath now recorded on the DMS as Public Footpath no. 20 Salterforth). Significantly, at both points where the Order route (High Road) enters and exit the Estate Land (point A and point G on the Order route) it is shown as continuing:



59. Whilst there is no definition of 'High Road' given in the book the inclusion of the route on the Estate Plan suggests that a substantial route existed in 1765 that was shown passing through the Estate (not just within it). The description of it being a 'High Road' is suggestive of a route that was capable of being used on horseback and by horse drawn vehicles at that time. In addition, the list of land detailed as comprising the Rainhall Estate does not include mention of the High Road in the measurements given suggesting that it was considered as a separate through route likely to have been used by the public (Document 22).
60. Submitted as part of the original application were references to excerpts from the Manorial Court Rolls of 1733 and 1769 which were included in article titled 'History of the Ancient Musghyll Gate to Dumphill Gate Road' (Document 45). The excerpt dated 17th April 1733 states "We also amerce every person who useth the way from Salterforth Town Stoops (Mucky Lane Stoops) to Barnoldswick-Coates within the jurisdiction of this court with cart and carriage and any other loads, not having a right there in mercy of the Lords, 4 shillings for each offence." This was interpreted by the author as meaning that if a traveller was from outside the parish or manor then they would have to pay for passage if caught on this road with cart, carriage or load, and that the money gained would have been used for the maintenance of

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

the local road network administered by the manorial court and constable for Salterforth.

61. The excerpt dated 6th April 1769 (also contained within the article) states 'We the jurors for the court of Barnoldswick present a piece of road from Musgill Gate to Dumphill Gate leading to Coates such a road is a bridle road belonging to Thomas Peel of Rainhall that the same be made a sufficient Hackney Causeway before ye first of July next'.
62. These records appear to record the route as being recognised as a bridleway in the 1700s with a suggestion that it was to be upgraded to a full carriage road – a Hackney Causeway.
63. The Order route is then clearly shown Teesdale and Stocking's 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:

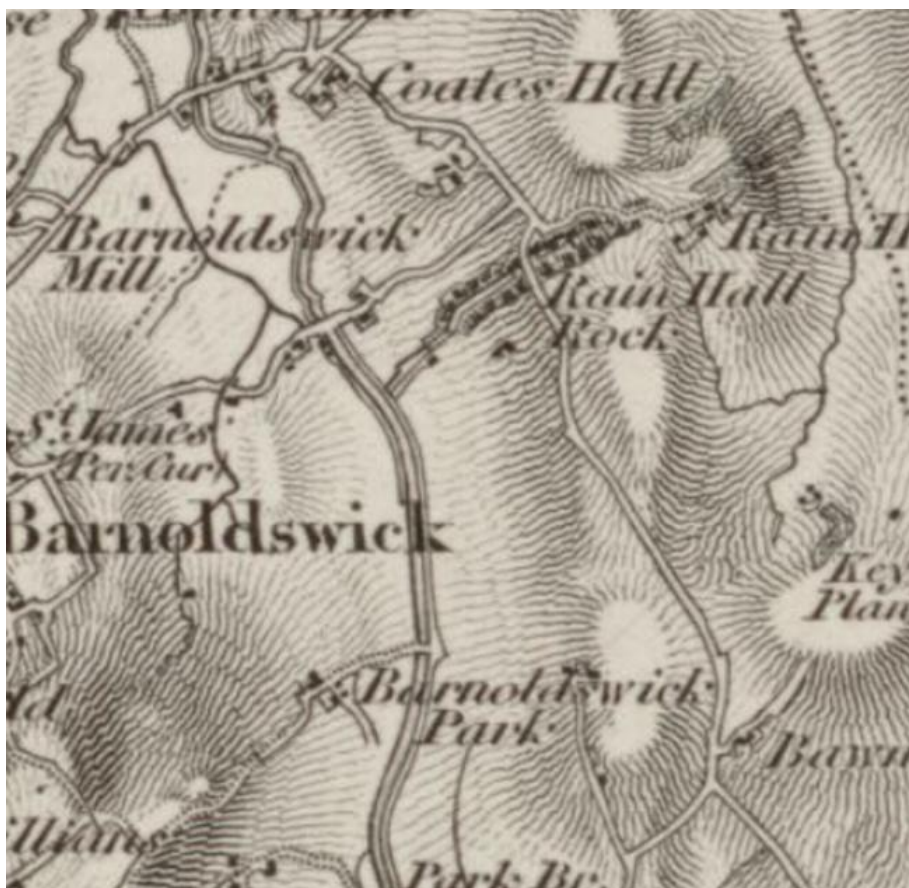


64. The Order route is shown as a 'cross road' in the 'explanation' or key to the map. The only other kind of road or way shown are turnpike roads. As the map was produced for sale, it is likely that all the routes shown

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

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.

65. The First edition 1 inch OS map (known as the 'Old Series 1 inch mapping') also showed the Order route (Document 34) as part of a longer substantial through route. It is shown in the same way as other routes that are now recorded as public vehicular routes. Rain Hall Rock is shown and the route shown on previous maps is now shown passing through (and not around) Rain Hall Rock on the exact alignment of the Order route:



66. The inclusion of the Order route on this small-scale OS map suggests the existence of a substantial route capable of being used by the public in the mid-1800s. The fact that the pre-existing route shown on the earlier Estate Plan and Teesdale and Stocking's Map was accommodated (albeit on a slightly different alignment) when the limestone quarry and canal

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

cut were created suggests that although no records relating to the diversion of the route were found that this was a significant public route that was purposefully retained as a through route.

67. The 6-inch Ordnance Survey map surveyed in 1848-1850 and published in 1853 (Document 35) shows the full length of the Order route in more detail and names it as part of a longer route named as Salterforth Lane. Between points A and B, the Order route is edged on both sides with solid lines which would indicate that it was enclosed by walls, fences or hedges. The Order route continues as an enclosed track or lane to point C and then crosses limestone quarry and canal branch called The Little Cut to point D. No lines (probable gates) are shown at point A or point G and the way that it is depicted suggests that it was a substantial through route capable of being used.
68. The 6-inch Ordnance Survey map published in 1896 (Documents 41-42) also shows the Order route as part of a longer through route and named as Salterforth Lane. There is a line drawn across the Order route at point G which would indicate some sort of barrier to passage such as a gate. From point G, southwards the lane continues into Salterforth village.
69. By the 1900s the maps produced under the requirements of the 1910 Finance Act (Documents 27-29) show the routes leading up to point A as excluded from the numbered plots but the Order route is within numbered land holdings. The Order route between points A and B, and D to G crosses land in one ownership and recorded as plot 2621 (Document 28). A deduction in tax of £20 was claimed for the presence of 'footpaths' but it is not recorded which routes the owner recognised as public rights of way.
70. 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

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

route B-C-D the description of the route specifically refers to it continuing to Salterforth.

71. The reason why the Order route is the only part of Salterforth Lane not to be shown excluded from the taxation process is not fully known but it was noted that the 25 inch OS map sheet used to prepare the Finance Act Map (Yorkshire Sheet CLXXIV.1 (Documents 36-37) which can be viewed online [View map: Ordnance Survey, Yorkshire CLXXXIV.1 \(Barnoldswick; Earby; Salterforth\) - Ordnance Survey 25 inch England and Wales, 1841-1952](#) showed that in 1907 when the map was revised, no part of the route from point A to point G was double fenced/bounded on both sides whereas other routes shown excluded were clearly bounded on either side with separate OS parcel numbers.
72. Bartholomew's half inch maps were not considered when the Order was originally made. In the first half of the twentieth century they were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. These maps were not inspected when the application was first investigated but are included here because the Order route is clearly shown as part of a longer through route on all three map editions suggesting that the Order route was considered to be a route capable of being used by the public and that it was probably considered to be more than a footpath or bridleway in the first half of the twentieth century.
73. On the maps published in 1906 (Document 23) and 1919-24 (Document 24) the Order route was shown as part of a longer uncoloured road described as roads not to be recommended to cyclists. As cyclists had no public right to use bridleways at that time the fact that these routes were described as not to be recommended does suggest that whilst in poor condition public vehicular rights may have existed along them. In 1941 (Document 25) the Order route was shown as 'Other Road' again suggesting the existence of public rights.

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

74. The 6-inch OS map published in 1956 (Document 38) again shows the Order route as part of a longer through route with the full length of the Order route now shown enclosed on both sides with walls, fences or hedges. There are no barriers or gates across the route other than at point G. The Order route is still named as Salterforth Lane.
75. The 25-inch OS maps published in 1964 (Documents 39-40) shows that 2 gates or other barriers have been erected across the Order route where it passed over the canal tunnel between points C and D, whilst the gate at point G is no longer there. The route was still named as Salterforth Lane and still appeared capable of being used.
76. When the Definitive Maps and Statements of Public Rights of Way were initially prepared in the 1950s the Order route was in the West Riding of Yorkshire. The parish map for Salterforth has not survived although the parish survey cards did. The Draft, Provisional and Definitive Maps have also survived and have been inspected.
77. The Order route was not recorded on any of the maps available to view. Three public footpaths however were listed as joining the Order route, at point A, point F and point G (Document 18).
78. Without public access along Salterforth Lane (the Order route) Footpaths 19 and 20 would be dead end paths suggesting that the Order route must have carried higher public rights which the West Riding of Yorkshire County Council considered inappropriate to record on the DMS at that time.
79. OS maps post-dating the preparation of the DMS continue to show the Order route as part of a longer route named as Salterforth Lane to the present day.

Summary

80. The OMA submits that an examination of the historical evidence, including articles written by a local historian, leads to a conclusion that the Order route has been a part of the public vehicular highway network in the parish of Salterforth since at least the mid-1700's.

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

81. Whilst its use as a public vehicular route appears to have declined from the mid-1900s onwards it is established law that if it is shown that a highway existed then highway rights continue to exist even if use of a route has since declined unless a legal order stopping up or diverting the rights has been made.
82. It is the OMA's case that there is strong historical evidence of a public vehicular route with more recent highway authority records listing it as an unclassified county road.
83. The OMA submits that because the Order route was recorded in the County Council's records as an unclassified county road before and after 2006, and can be presumed to have been so recorded at the relevant time, any public rights that may have existed in relation to mechanically propelled vehicles over the Order route have been retained under the provisions of the Natural Environment and Rural Communities Act 2006
84. It is the OMA's case that as public carriageway rights are shown to exist over the Order route the appropriate to be recorded on the DMS is byway open to all traffic.

Conclusion

85. The OMA submits that public byway open to all traffic 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. For the reasons stated in the OMA's 'Comments on Objections', the objections received to the Order do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation or its decision for requesting that the Order be modified to record the route as a byway open to all traffic. The OMA therefore respectfully requests that the Planning Inspector confirms the Order subject to the proposed modification.