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| **Order Decision** |
| Site visit on 29 March 2022 |
| **by Paul Freer BA(Hons) LLM PhD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 May 2022** |

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| **Order Ref: ROW/3281569** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Former West Riding of Yorkshire (Area 2) Definitive Map and Statement Restricted Byway No. 15.113/16 & Footpath No 12.113/12 Roecliffe Modification Order 2021. |
| * The Order is dated 16 February 2021. It proposes to modify the definitive map and statement for the area by adding a Restricted Byway along part of Thorns Lane; upgrading part of footpath 15.113/16 to Restricted Byway; and making consequential amendments to the statement for part of footpath 15.113/12, as shown in the Order map and described in the Schedule. |
| * There was one objection outstanding when North Yorkshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs. |
| **Summary of Decision: The Order is confirmed.** |

**Main Issues**

1. The main issue here is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a Restricted Byway can be presumed to have been established.
2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-sections 53(3)(c)(i) and 53(3)(c)(ii). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a public right of way on foot, on horseback/leading a horse and/or with the use non-mechanically propelled vehicles subsists along the route described in the Order or in addition to the public footpath already recorded on the definitive map, as the case may be.

Reasons

1. North Yorkshire County Council (NYCC) made this Order in response to an application dated 17 November 2003, supported by documentary evidence and fourteen forms giving evidence of use. As initially submitted, the application sought to upgrade the route from Point B to Point G as shown on the Order map from a footpath to a bridleway. However, in considering the application, NYCC considered that the historical evidence showed use as a Restricted Byway, including the section from Point A to Point B as now shown on Order map. The section from Point A to Point B was accordingly added to the Order. In relation to that section of the route between Point A and Point B, the case in support is entirely based upon documentary evidence.
2. I shall first give consideration to the documentary evidence. If necessary, I will also give consideration to whether dedication of a Restricted Byway can be deemed to have occurred under section 31 of the 1980 Act.

*Assessment of the documentary evidence*

1. The 1841 Inclosure Award and Map describes Becklands Lane (broadly corresponding to Points B to D on the Order route), Bowlands Lane (Points D to G) and Junction Road (Points A to B, and now called Thorns Lane) as private carriage and occupation ways. They therefore fell into the category of roads in that Award that “*shall for ever hereafter be maintained and kept in repair by such ways and means and in such manner as the public Highways are repaired by the Laws of this Realm”*. Reference in the Award to “carriages”, along with the fact that other routes laid out as bridle roads are referred to as such, indicates that Becklands Lane, Bowlands Lane and Junction Road (Thorns Lane) were of a higher status than bridleway, albeit at that time private carriageways.
2. The Order route is clearly shown on the 1844 Hobsons Map, a commercially available map drawn to a very small scale. The inclusion of the route on such as small-scale map is an indication of the relative importance of the route at that time. A route broadly corresponding to the Order route is also shown on Bacons ½ inch Road Map.
3. In the Tithe Award 1852, both Becklands Lane and Junction Road are described as a “road in the new enclosure”, albeit no specific mention is made of Bowlands Lane. The 1846 Railway Deposited Plans indicate a section of the Order route as a ‘Public Highway’, the term also used to describe the main road through the village to Ripon (now Bar Lane). The terminology within the schedule to the Deposited Plans makes no distinction between the status of the main village street and the application route, providing evidence that the Order route (or at least part of it) was of the same status as the village street at that time, being a public thoroughfare.
4. The Order route is consistently depicted on OS maps dating from 1855, 1893 and 1898. The Order route is shown as an enclosed lane on all of these OS maps. Although these OS maps provide no indication of status, the manner of depiction on these maps is consistent with a status above that of a footpath.
5. The route appears on the 1940 Map 2nd War revision. There is no key or title to that map and therefore no indication of the status of the route, but the inclusion of the Order route is nonetheless evidence that it was physically present on that date.
6. The route is described in the 1949 Parish Schedules produced for the first stage of the preparation of Definitive Maps as a “Private carriageway used by the public when Bar Lane becomes flooded”. This is evidence that by 1949/50 the route was still physically passable in a vehicle, and that the public still made occasional use of the route by vehicle.
7. By 1953, the Order route had been described in the Draft Statement as a ‘bridle road and footpath’. The British Transport Commission initially objected to the route being shown as a public route of any description, but by 1955 had admitted the existence of footpath rights. The Parish Council then agreed to the route to be recorded as a footpath in the next stage of the process.

*Conclusion on the documentary evidence*

1. The documentary evidence points towards use of the Order Route as a ‘private carriageway’ from the time of the 1841 Inclosure Award. However, the Railway Deposited Plans indicate that by 1846 a section of the Order route was being used by the public. The order route was subsequently depicted in maps through to 1898. There is then evidence that occasional vehicular use of the Order was made by the public as late as 1949. That evidence tends to suggest that a Byway open to all traffic had become established. Pursuant to section 67 of the Natural Environment and Rural Communities Act 2006, this would then become a Restricted Byway.
2. There is, however, the discrepancy of the route being recorded as a footpath on the Definitive Map. On my reading of the evidence, it appears that having initially identified the route as ‘private carriageway’, for reasons that remain unexplained the Parish Council accepted that the route should be recorded as having a lower status. That does not mean that the Parish Council was factually correct to have done so, and its acceptance of the route as a footpath does not override any higher public rights that had been acquired by 1846 and seemingly exercised for nearly a century thereafter.
3. The situation in relation to Point A to Point B is somewhat more complex. Thorns Lane is clearly used by motor vehicles. There is a motor garage half- way along it, and at least one residential property is served by it. It is therefore evidently used by mechanically propelled vehicles. There is no public right of way along Thorns Lane at present and there is a sign at the start of Thorns Lane (at point A) which states “No Unauthorised access”. There is also a barrier across Thorns Lane at this point upon which is affixed a highway sign. The objector explains that this barrier is locked every night for security reasons, and has been for at least 30 years.
4. The signage and the barrier across Thorns Lane, particularly given that it is locked at times, suggest that the vehicular use is purely a private right. The sign and the barrier are also clear indications that the landowner had no intention to dedicate a right of way for the public of any description between Point A and Point B. Nevertheless, the documentary evidence suggests that the use of Thorns Lane was, more likely than not, also made by the public in the past. Any private use by vehicles that may now subsist does not prevent the establishment of other rights (i.e. a Restricted Byway) by the public.
5. Given that there is cogent evidence of the existence of public Restricted Byway rights over the Order route, it is not necessary for me to examine the evidence of use submitted in support of the application made in 2003; any use of the Order route by the public in that respect is pursuant to those public rights. Nevertheless, I note that the description of the use of the Order route in the user evidence forms submitted is largely consistent with public rights that had been established.

**Other matters**

1. The objection raises concerns about the practical and safety implications of horse riders sharing the Order route with farm traffic and vehicles associated with the garage located on Thorns Lane, including damage to hedgerows. Concerns are also expressed about the safety of horses using the access points onto Bar Lane and Thorns Lane. Whilst these are clearly matters of importance to the landowner, they are not relevant to my consideration of this Order which seeks to determine whether a Restricted Byway has already been established in law through historical and user evidence.
2. The objector also points out that the Order route between points D and E is no longer available, the land having been redeveloped since 2003 as an extension of a logistics depot. NYCC acknowledge that this resulted in a diversion of the route, and advise that a Public Path Creation Agreement has been made to use the diverted route (Point C direct to Point E on the Order map) as either a Bridleway or a Restricted Byway. The Creation Agreement is dependent upon the outcome of this Modification Order application and, in the event that this Order is confirmed, NYCC then would seek to have the section C – D – E stopped up.
3. There is no objection in relation to Point B to Point H of the Order route.

**Width of the Route**

1. The width of the Order route between Point A and Point G is stated as 7.32 metres throughout. The objector points out, and I noted during my site visit, that the width of the surface varies at some points of the route. In particular, it appears to me that the width is narrower than 7.32 metres between Points B and C, and significantly narrower between Points C and D. In the latter, as well as within the general vicinity of Point C, I estimate that in places the width is no greater than 2 metres.
2. However, in making the Order, NYCC relies upon the 1841 Inclosure Award as evidence of the status of the route. It therefore follows that reliance should be placed on that award for the width of the Order route. This is clearly stated in that Award as twenty-four feet, which correlates to the 7.32 metres stated in the Order. Although the actual width of the path on the ground is in places considerably narrower than that, the used or trodden width is different to the width over which the public have a right to pass and re-pass. I therefore see no reason to modify the Order in this respect.

Conclusion

1. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Paul Freer

INSPECTOR

