

# Order Decision

Site Visit on 5 April 2016

**by Sue Arnott FIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 20 May 2016**

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## **Order Ref: FPS/R4408/7/16**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Metropolitan Borough of Barnsley (West Riding of Yorkshire County Council Definitive Map and Statement) (Darton) Modification Order (No.12) 2015.
- The Order is dated 13 July 2015. It proposes to modify the definitive map and statement for the area by recording a public footpath along the old alignment of Bloomhouse Lane, Darton, as shown on the Order map and described in the Order schedule.
- There were two objections and three representations<sup>1</sup> outstanding when Barnsley Metropolitan Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

**Summary of Decision: Confirmation of the Order is proposed subject to the modifications set out in the Formal Decision below.**

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## **Procedural Matters**

1. I visited the site on Tuesday 5 April 2016 accompanied by Mr R Catling on behalf of Barnsley Metropolitan Borough Council (BMBC), Mr I King (the applicant), Cllr Mr R Miller, Messrs Sanders, Crossley, Brook, Grainger and Ms Pearson (supporters), Mr K Wike (landowner and objector) and Ms G Hartley representing the British Horse Society (BHS) (objector).

## **The Main Issues**

2. The Order was made under the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of events specified in sub-section 53(3)(c)(i), namely the discovery of evidence which shows a public right of way that is not recorded in the definitive map subsists over land in the area to which the map relates.
3. On examining all the evidence it had discovered, BMBC concluded that the route should be recorded as a public footpath. Objectors Mr and Mrs Wike challenge this and submit there is no public right of way at all. The BHS also objects to the Order but on the grounds that the route should be recorded with higher rights, and specifically as a byway open to all traffic (BOAT)<sup>2</sup>.
4. The main issue is therefore whether, on a balance of probability, the evidence shows that a public right of way has been established along the Order route and, if so, whether this is a public footpath, a bridleway or a vehicular highway.

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<sup>1</sup> One representation offers support for the Order and two oppose it.

<sup>2</sup> Section 66 of the 1981 Act defines a byway open to all traffic as a highway over which the public has a right of way for vehicular and all other kinds of traffic but which is used by the public mostly for the purpose for which footpaths and bridleways are so used.

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5. BMBC made the Order on the basis of the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to occur, sufficient evidence is required of use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
6. Although the Council's case does not rely on the historical evidence it discovered to show the existence of a public right of way, this does form the basis of the BHS's claim that the route is a carriageway with historical origins. Following the principle "*Once a highway, always a highway*", if the way is shown to have been a public one at any time in the past, the public's rights will still exist today (unless there is evidence of formal closure). In assessing this historical evidence, comprising of inclosure, tithe and railway documents, old maps and other archived records, I note that Section 32 of the 1980 Act provides as follows:

*"A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced."*

## **Reasons**

7. Barnsley MBC received an application from Mr King on 30 October 2014. The application sought to record on the definitive map a public footpath from Fountain Square north-eastwards along the old Bloomhouse Lane via Manor House Farm to join the adopted highway also known as Bloomhouse Lane.
8. Following investigation, on 19 June 2015 BMBC concluded that the evidence discovered was sufficient to show the status of the way as a public footpath, the issues being set out comprehensively in a detailed report. The Order was made on the basis of statutory dedication under Section 31 of the 1980 Act.
9. However, the British Horse Society has submitted historical documentation with its objection which, when combined with the archive material considered by BMBC, relates to the possible establishment of a much older highway in the distant past. I propose to start by addressing this issue since it will provide a better context in which to then consider the evidence of use by the public in more recent times.

## **Historical evidence**

10. During the course of its investigations, BMBC examined a number of documents held in its archives together with other records submitted by the BHS from its own research. Whilst BMBC was not convinced that these documents were sufficient to prove the existence of a highway of any higher status than footpath, the BHS contends that they show the Order route to have been part of a highway

- (Bloomhouse Lane) with origins dating back at least as far as the early nineteenth century if not before that.
11. In particular the BHS highlights two sets of records: those from the inclosure period in the early 1800s and those prepared under the Finance Act of 1910.
  12. BMBC does not dispute that the **Darton Inclosure Award of 1823** set out the Order route as part of "Bloomhouse Green Road", a "public bridle and private carriage and occupation road" from the Notton Road, westwards then south via Manor House Farm to Darton Mill, then eastwards to join "the Darton and Maplewell Road" (the present B6131).
  13. The BHS submits that the Order route forms only part of Bloomhouse Green Road and that all other parts are now accepted as full vehicular adopted highways.
  14. BMBC points out that in awards such as this which were made under the general provisions of the 1801 Inclosure Consolidation Act, Commissioners were not able to set out *public* carriage roads with a width of less than 30 feet<sup>3</sup>. It contends that there is no conclusive evidence that the bridleway and private road awarded along Bloomhouse Green Road was actually set out at the 24 feet (7.3 m) width intended by the Award; it notes that the present day width is now significantly less than this, varying between a 3 metre surfaced track south of Manor House Farm and 5.5 metres between walls for much of the route. Consequently it submits that the inclosure award should not be relied upon and that later records (especially those connected with the railway) should take precedence.
  15. To be able to better interpret the Inclosure Award, I have looked at other contemporary documents together with the Act of Parliament which authorised the division.
  16. The first of these is a map published by John Cary in 1825 showing the Order route as part of the longer through-route identified in the Inclosure Award as Bloomhouse Green Road. Cary shows this in the category "Parochial Roads" (as opposed to "Carriage Roads which are Parochial Roads"). The BHS submits this road was probably used by the public in connection with Darton Mill but accepts that there is no evidence to support its submission that corn was transported to and from the mill by horse and cart. However it emphasises that this map was available to the public and that Cary would be unlikely to include routes that could not be used by the public.
  17. BMBC accepts that it is a useful guide to what physically existed on the ground despite being a commercial, privately produced map but submits it is not reliable evidence of the status of the route.
  18. Although Cary's map was published after the date of the Award, the date of survey has not been established. It is therefore difficult to be certain whether it pre- or post-dates the Inclosure Award and the setting out of the various roads by the Inclosure Commissioner.
  19. The Award describes a part of the Order route as joining "*the north end of an ancient road at the homestead belonging to Godfrey Wentworth Wentworth*"<sup>4</sup> (*sic*)

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<sup>3</sup> The Courts now adopt a purposive interpretation of the terminology used in relevant sections of the 1801 Act; see *R (oao Andrews) and Secretary of State for Environment, Food & Rural Affairs* [2015] EWCA Civ 699

<sup>4</sup> Godfrey Wentworth Wentworth Esquire is named as lord of the manor of Darton in the 1820 Inclosure Act

*Esquire in the occupation of Ann Carr and from the south end of the said ancient road near Darton Mill in an eastwardly direction...".* I deduce from this that only part of Bloomhouse Green Road pre-dated the Award and that therefore Cary's map must have been surveyed after the awarded bridleway and private road had been set out. Since it was categorised as a parochial road, it probably carried a public right of way of some description.

20. Some twenty years later the **Darton Tithe Map 1844** depicts the whole of the lane from the Notton Road, via Manor House Farm and Darton Mill to the Darton - Mapplewell Road, shaded in the same manner as other known public roads.
21. The BHS says that the depiction of the route on this map is evidence that Bloomhouse Green Road *was* set out by the Inclosure Commissioner in 1823 and *was* available for use by the public at the time the tithe map was produced. BMBC acknowledges this is evidence of the physical existence of the route but it offers no evidence to confirm the status of the way. No key to the map is available and no reference to the route has been found in the accompanying tithe apportionment. Objectors Mr and Mrs Wike submit that this supports the conclusion that the way was a private one.
22. I agree that this record offers no proof of the precise legal status of the lane but it is very clear that in 1844 it was in existence as a road and appears to be un-gated. It may not be direct evidence of a public footpath, bridleway or vehicular highway but this record would be consistent with any of those conclusions. Given the nature of the way as a through-route, the number of properties along its length and the fact it appears in its entirety on this map I consider it unlikely that it carried no public rights at all.
23. In the same period, plans were laid for the development of the railway line which now passes through Darton. The **1845 Railway Plan and Book of Reference** record the corridor through which the proposed line was to be constructed as including the part of the awarded Bloomhouse Green Road that now skirts Fountain Square (being a continuation of the section now at issue). The Book of Reference lists this road (No 13) as an occupation road in the ownership<sup>5</sup> (or reputed ownership) of Thomas Beaumont<sup>6</sup>. The BHS points out that this road is today an accepted vehicular highway.
24. The Society also draws attention to the underpass along this road which is 12 feet in width, corresponding to the minimum requirements for a private road under Section 49 of the Railway Clauses Consolidation Act 1835. The Act did not specify a minimum width for a bridleway or footpath but a public carriage road would have required an underpass 25 feet wide. The BHS argues the deposited plans and reference books provide evidence of the reputation of the Order route at the time they were drawn up but are not conclusive.
25. However BMBC submits that the railway plans were authorised by Act of Parliament and subject to an exacting process including public consultation. In its view the identification of the claimed route as an occupation road is "*a clear contradiction of the inclosure award from 20 years beforehand*". Elsewhere the record lists "Occupation Road and Public Footway", indicating that where a private road coincided with a public path, both were listed. Although Mr and Mrs Wike argue that this was simply a private road to Manor House Farm, BMBC says

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<sup>5</sup> The occupiers are listed as William Poppleton, Elizabeth Dickenson and Ann Dickenson.

<sup>6</sup> Thomas Richard Beaumont Esquire is named as a lay impropiator in the 1820 Inclosure Act for Darton

that at the very least these records show that there were no public vehicular rights of way along the route at that time.

26. I agree with the latter point: if the awarded Bloomhouse Green Road had been a public vehicular highway, the underpass would have been wider than it is. Yet I cannot accept that the identification of the lane simply as an occupation road is wholly inconsistent with the Inclosure Award. The Inclosure Commissioner set this out as a private carriage and occupation road and a public bridleway. Failing to mention public bridle rights here is not necessarily fatal to their existence.
27. The **Ordnance Survey (OS) maps** which follow (dated **1854, 1895 and 1910**) all show the creation of a new road on the east side of the railway parallel to Mill Lane and the development of Fountain Square. It is *possible* that this was initially a private road but the evidence provided by Ms M Parker of Fountain Square suggests otherwise. A plan attached to the deeds of her cottage dated 1885 specifically names the road between point A and the railway as "Bloomhouse Lane". Indeed, on the site visit I was shown the place on the gable end of the terrace adjoining this road where the street sign had formerly been attached. It is hard to believe that the name would have been retained if there was no means of public access along it to Bloomhouse.
28. The records prepared for land taxation purposes under the **1910 Finance Act** shown the Order route excluded from adjacent land holdings (or hereditaments). The BHS accepts there may be other reasons for excluding the road but *"given that surrounding routes that are vehicular roads today are dealt with in the same way, that is, excluded from the hereditaments, (this) strongly suggests that the route in question had the same status as the other roads at that time"*.
29. The Society also points out that the exclusion of public roads from the valuation process stems from Section 35 of the 1910 Act which provided *"No land under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority"* (which included a highway authority). Here the BHS argues that if the lane carried only a public footpath it would not have been excluded from adjacent land holdings but instead a deduction allowed against the value of the holding of which it was part<sup>7</sup>.
30. BMBC responds by highlighting the fact that there are other reasons for the exclusion of land and that this does not offer conclusive evidence of the status of the way. However I regard the BHS' argument as having some force here, given the earlier historical evidence that I have just examined.
31. At some time between the **OS maps of 1910 and 1930** the development of nearby Woolley Colliery prompted the creation of a new road leading west from point A (along a former occupation road) then northwards where it met another new road leading from Bloomhouse via point B. (Until this point in time, the awarded Bloomhouse Green Road had turned before point B along the line I will mark on the Order map as C-D.)
32. It is Mr and Mrs Wike's belief that despite it forming *"part of the old carriageway network"*, on the construction of these new link roads to Woolley Colliery, closure

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<sup>7</sup> I have noted the Wike's submission that the lane *"has not been allocated as highway status and the claim of £140 due to 'public rights of way or user' also seem to confirm this"*. In fact the £140 deduction for public rights of way applies to the adjacent hereditament No 1221. As this is a very large land parcel it is difficult to identify exactly which rights of way are being accounted for. However it is clear from the accompanying plan that the lane itself does not form part of this hereditament.

- and diversion orders were made in respect of the Order route and that this ceased to be a public right of way<sup>8</sup>. BMBC confirms that it has checked Quarter Sessions records where any such orders would be enrolled and found no relevant closures. Neither is there any record in the minutes of meetings of the former highway authorities West Riding County Council (1968-1973) or South Yorkshire County Council (1973-1986).
33. Subsequent **OS maps** in **1948, the 1960s and 1990** show the lane continued to exist as a through route although Mr and Mrs Wike challenge the use by the public that is claimed since 1930 and argue that since then it has provided only farm access to the fields further north.
34. One last piece of documentary evidence is the highway authority's '**List of Streets**' recording highways maintainable at the public expense. This does not show the section of Bloomfield Lane at issue here as being publicly maintained although it does record the sections east and west of point B. BMBC's list of unadopted roads does include "*Bloomhouse Lane – between Fountain Square and made up section*" (the Order route), noting that "*Manor House Farm (NCB<sup>9</sup>) is served by this roadway. Roadway is metalled but in very poor condition.*"
35. In a letter to Mr Wike on 22 March 1984 the County Engineer of South Yorkshire County Council confirmed that the lane "*is unadopted and the maintenance responsibility lies with the frontagers.*" However that is not a statement of the legal status of the way as far as the public's rights over it are concerned. In fact I interpret this record as confirmation that the way is a highway (albeit one that is privately maintained) otherwise it would not appear on the highway authority's list at all. Whilst it does acknowledge that the public has a right of way over it, the extent of those rights is not defined.
36. Returning to the Inclosure Award (to which I attach significant evidential weight), I accept that the Inclosure Commissioner set out a public bridle road over the majority of the Order route to co-exist with a private carriage and occupation road. The extent of those private rights was not explicitly defined but I interpret this to mean an occupational right of way with all types of vehicle for anyone needing access to land or property along the length of the lane. The public bridle road was to be maintained in the same way as other bridleways in the township (whereas the private road was to be maintained by those with allotments on the common being divided by the Award<sup>10</sup>). Thus it is not surprising to find it shown as a parochial road on Cary's county map.
37. I regard the tithe map as clear evidence that the way had, by 1844, come into existence as a through-route. Whilst I regard the 1845 railway records as neutral in relation to the existence of the awarded public bridleway, it does offer some evidence that the route was not defined as a public carriageway at that time (otherwise the underpass would have been required to be wider).
38. Yet the most likely explanation for the exclusion of the route from the 1910 Finance Act map is that it was a highway and most probably a public carriageway. However I find the support for a full vehicular highway too finely

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<sup>8</sup> The objectors assert that this was confirmed to them in a letter dated 6 October 1994 from a Mr John Sanderson, then Head of Planning at the Council. However no copy of this letter has been produced.

<sup>9</sup> National Coal Board

<sup>10</sup> And "Bloomhouse Green Road so far as the same is a Private Carriage and Occupation Road ... (and other private carriage and occupation roads) ... shall be forever hereafter repaired, maintained and kept in repair by and at the General Expense of owners and occupiers of allotments upon the said Commons and Waste Lands"

balanced to conclude that it was once regarded as having that status. Yet I acknowledge the clear intention of the Inclosure Commissioner that the way should carry a public right of way for horses as well as pedestrians alongside the private rights. I consider the information shown on the tithe map, the railway plans and the 1910 Finance Act plans to be entirely compatible with a highway of that status. The highway authority maintenance records acknowledge this road carries a public right of way but, considering the significance of this route in the development of this part of Darton in the nineteenth century, in all probability it would have been used with horses as well as on foot.

*Conclusions from the historical documentary evidence*

39. I am left in no doubt that the route in question is a public bridleway at least, established through the inclosure process in the mid-nineteenth century and accepted as having that status into the twentieth century. I suspect that ambiguity over responsibility for its maintenance (given the co-existing private occupational rights) led to its being omitted from the highway authority's list of maintainable streets, yet it clearly is recorded as a non-maintainable highway.
40. I consider it possible that the public has enjoyed a vehicular right of way over the lane but I find the evidence to support such a finding falls short of that required to tip the scales. My conclusion is that the historical evidence before me is sufficient to show, on a balance of probability, that the Order route carries a public right of way for horses as well as pedestrians and therefore should be recorded on the definitive map as a public bridleway.
41. However, it is important to note that this evidence supports the historical route of Bloomhouse Green Road A-D-C as the awarded bridleway, not the route leading to point B as shown on the Order map. I therefore propose to modify the Order so as to show this as the bridleway to be recorded on the definitive map and statement.

***Evidence of long use by the public***

42. Having reached the conclusion that the Order route should be recorded but with a higher status and on an amended alignment, any subsequent user of this path can be attributed to an existing (but unrecorded) public right of way.
43. Nevertheless, since there remains a question over the extent of the public's rights between points D and B, there is still a need for me to address the matter of presumed dedication under Section 31 of the 1980 Act. Therefore the first matter to be established is when the public's rights were brought into question.

*Bringing into question*

44. BMBC considered this to have occurred in June 2012 when it received complaints from members of the public that a sign had been erected at the southern end of the claimed footpath which stated "Private Land – No Access". In fact use of the Order route continued despite this notice and it was not until it was replaced in October 2014 with one stating "Private Land : No access : No Dog Walking" that Mr King was prompted to request the lane be recorded as a public path.
45. Mr and Mrs Wike (who erected the notices) state that a similar sign was in place near point A around 2007 but have no proof.

46. Since June 2012 was the earliest identifiable challenge to public access, BMBC took this to be the point at which the status of the way was brought into question, thereby fixing the relevant twenty year period as June 1992-June 2012.
47. However there is also evidence indicating that a gate was installed across the lane just north of Manor House Farm around 1994. At that time, Mr Wike had recently acquired additional land at either side of the lane from British Coal (the successor to the National Coal Board) and had erected this (locked) gate together with a metal crash barrier and a number of conifer trees at point B, primarily to deter vehicular use. It seems this did not deter pedestrians and that people continued to walk through a gap at the side of this gate and around the crash barrier.
48. BMBC did not consider this to have brought into question the status of the way, yet it did clearly restrict the type of traffic using the route at that time. It may not have prevented pedestrians from walking through (although Mr Wike challenges this) but it did stop vehicles. In my view this raised a question over the extent of the public's rights along the lane and I therefore will consider use over the twenty years between 1974 and 1994 as well.
49. In summary, I accept that the status of the Order route was brought into question in June 2012 and also in 1994 so will examine the use claimed by the public during both preceding twenty year periods.

*Evidence of use by the public*

50. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed 'as of right', without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of permission.
51. BMBC relied on the evidence of use gathered by the applicant which consists of the written statements of 9 people, all of whom had completed a standard public rights of way evidence form and marked the route used on a map.
52. At no time during either of the periods in question were any of these claimants ever challenged whilst walking the route. It is not suggested that this use had taken place in secret and no-one stated they had ever sought or otherwise been given express permission by the owner to use the path; indeed ownership of the lane does not appear to be widely known.
53. In addition to this evidence, a representation submitted by Mr I M Hobson following publication of the Order has contributed information about his personal use of the route on foot during the 1950s, 60s and 1970s to get to the railway station for trains to and from work.
54. I therefore have before me evidence from 10 people who have known and used the route A-B as of right, for various periods dating back as far as the 1940s, mostly on foot but some refer to use on a bicycle and (pre-1994) with a motor vehicle. However it is their use specifically during each of the relevant twenty year periods that needs to be considered here.
55. Between 1992 and 2012, eight of these claimants were using the route, most of them on a regular basis throughout the whole of the period; one person used it from 1999 onwards. For the earlier period, between 1974 and 1994, seven



people provided evidence of regular use throughout all twenty years and two others for lesser periods.

56. These are not large numbers of people but the written statements given by each claimant are very clear and I find their evidence consistent and reliable. Most refer to the obstructions put in place in 1994 but also say that access was still possible on foot. One claimant (Mr Hirst) recalls there being an old green footpath sign at point B.
57. Mr and Mrs Wike challenge this evidence. They say the route was not physically passable after 1994 until the gap at the side of the gate installed near Manor House Farm was forced by persons unknown and branches on a nearby tree were sawn off to allow passage. They refer to "*an ongoing battle with these people for the last twenty years or more*", with trees<sup>11</sup>, bushes, conifers and fencing destroyed on a regular basis. They say people were challenged by themselves and their previous neighbour (2000-2006), Mr Sharland<sup>12</sup>. They also say that notices had been in place before 2012 to deter public use but none of these lasted long before being torn down. However none of these actions have been documented so there is no other evidence to support their statements.
58. Without the benefit of cross-examination at inquiry it is difficult to resolve questions over the veracity of evidence given by users but, having studied the written material provided, I am satisfied that use by the public took place between points A and B during both periods, 1974-1994 and 1992-2012, sufficient to raise a presumption that the way was dedicated as a public path.

*Intentions of the landowner(s)*

59. Although Mr and Mrs Wike lived at Manor House Farm from 1984 until 2015, they have been owners of the lane since 1994 after purchasing it from the NCB.
60. The Wikes say that since 1989 they "*have had no intention to dedicate this land as a public right of way and have tried our utmost to stop pedestrians using it as a footpath by installing the gate to the south and a crash barrier to the north. We have also erected signs on numerous occasions which have been removed and also confronted the trespassers on our land since purchasing it in 1994.*" Since 1984 any vehicular use has been only to and from the south, not north of Manor House Farm. Vegetation was purposely left to grow so as to stop any unauthorised access up or down our drive; this is apparent from aerial photos.
61. Although Mr and Mrs Wike's actions post-1994, in their capacity as landowners, demonstrated their lack of intention to dedicate the lane as a public right of way, no steps are reported to have been taken by the previous owners to make clear any intention to stop the public from acquiring rights over it. Consequently the presumption of dedication was not rebutted.
62. Specifically in respect of the northernmost section of the Order route D-B, (and since I have already concluded that most of the lane was historically of bridleway status) I find that the use by the public between 1974 and 1994, as illustrated by the claimants, was sufficient to raise a presumption of dedication as a footpath, and that there is no evidence to demonstrate a lack of intention to dedicate the way by the then landowners. I therefore conclude that, on a balance of

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<sup>11</sup> Trees damaged by Yorkshire Water during drainage works were eventually replaced.

<sup>12</sup> I note Mr Sharland has provided a statement confirming the action he took along with Mr and Mrs Wike.

probability, the route D-B can be presumed to have been dedicated as a public footpath.

#### *Width of the Order route*

63. The Order records the route as having a width of 3 metres over the southernmost 150 metres and the remaining 100m (north of the gate) as 1.2 metres. BMBC made the Order on the basis of presumed dedication and these widths accord with its conclusion.
64. In 1823 the Inclosure Award set out the bridleway along Bloomhouse Green Road as 24 feet (7.3m) wide. Subsequent records show that its boundaries have changed very little over time; the OS map of 1854 (which reflects the exact same boundaries as are shown on the more detailed 1:2500 edition of 1910 on which the Finance Act details were superimposed) shows that the full width of the lane was historically available and that this width continues to be defined by the present day walls, hedges and fences enclosing the majority of the lane. Measurements taken during the site visit in three places recorded widths between these boundaries as 7.9m, 5.4m and 8.2 m.
65. I therefore conclude that, based on the available historical data, the width of the bridleway should be recorded as 7.3 m (24 feet) wide, narrowing to 5.4 m south west of Manor House Farm, but that the length of footpath between points D and B, established by long use leading to presumed dedication, be recorded as 1.2 metres.

#### **Other matters**

66. Mr Wike referred to proposals for the development of land at either side of the Order route, suggesting that it would be sensible to work with the developer to agree a position for the right of way (if confirmed). However, I must make clear that the merits or disadvantages of the route are not matters that I can take into consideration when determining the present legal status and alignment of the public right of way. Any discussion about possible diversion to accommodate proposed development would be a matter for the highway authority.

#### **Conclusion**

67. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to modification of the status (of part), of the alignment (of part) and of the width as described in the Order schedule, as noted in paragraphs 40, 41, 62 and 65 above.

#### **Formal Decision**

68. I propose to confirm the Order subject to the following modifications:

##### On the Order map

Add points C and D to reflect the historical route of Bloomhouse Green Road; show as "Bridleway to be added" the route between points A, D and C whilst the route D-B remains shown as "Footpath to be added";

In the Order schedule: Part I: Modification of the Definitive Map

Amend entry as follows:

<u>Annexed Map Ref</u>	<u>Modification</u>	<u>Path/Way No.</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Width(s) en route</u>
1	<b>Bridleway</b> addition	45	Point A	<b>Point C</b>	<b>290 metres</b>	<b>7.3 m (24 feet) narrowing to 5.4 m south west of Manor House Farm</b>
<b>1</b>	<b>Footpath</b> addition	<b>46</b>	<b>Point D</b>	<b>Point B</b>	<b>25 metres</b>	<b>1.2 metres</b>

In the Order schedule: Part II: Particulars to be added to the Definitive Statement

Amend entry as follows:

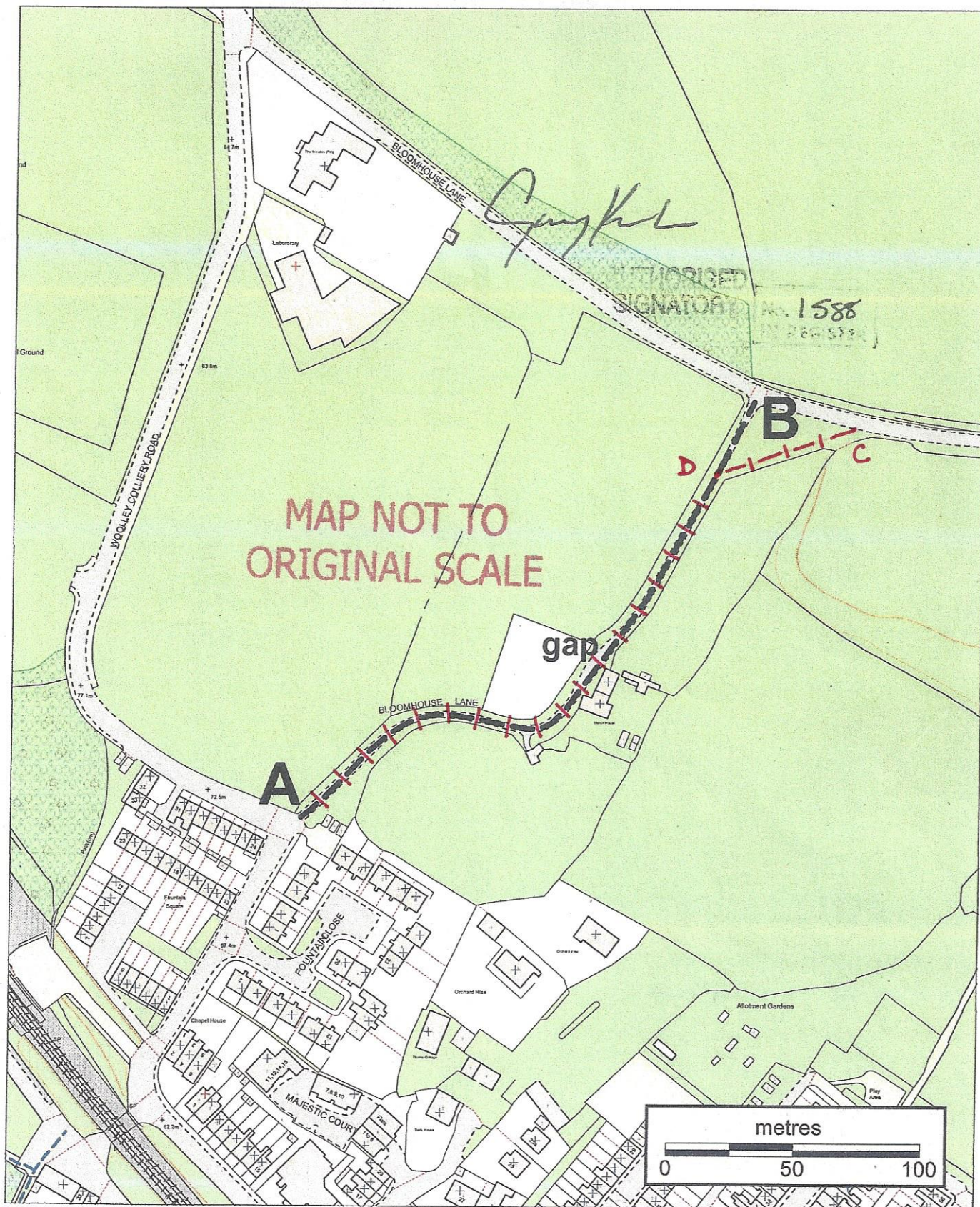
<u>Path No.</u>	<u>Map Ref</u>	<u>Description of route</u>	<u>Nature of Surface</u>	<u>Length</u>	<u>Width(s) en route</u>	<u>General</u>
45	SE 31 SW	<b>Bridleway</b> commencing on Fountain Square and proceeding generally north east along the old alignment of Bloomhouse Lane via Manor House Farm to join the adopted highway also known as Bloomhouse Lane	Metalled Earth	<b>290 metres</b>	<b>7.3 m (24 feet) narrowing to 5.4 m south west of Manor House Farm</b>	
<b>46</b>	<b>SE 31 SW</b>	<b>Footpath from Bloomhouse Lane proceeding south westwards to join Bridleway 45.</b>	<b>Earth</b>	<b>25 metres</b>	<b>1.2 metres</b>	

(All modifications are shown in bold type.)

69. Since the confirmed Order would (a) affect land not affected by the Order and (b) show as a highway of one description a way which is shown in the Order as a highway of another description, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Sue Arnott***Inspector**





Map 1 referred to in The Metropolitan  
Borough of Barnsley (West Riding of  
Yorkshire County Council Definitive  
Map and Statement) (Darton)  
Modification Order (No. 12) 2015

Drawn by BMBC

Scale 1 : 2000

Map 1

Bridleway to be added -|-|-

Footpath to be added

Unaffected rights of way

