
Order Decision

Inquiry opened on 2 August 2016

Site visit made on 3 November 2016

by Susan Doran BA Hons MIPROW

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

Decision date: 19 January 2017

Order Ref: FPS/Q9495/7/33

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Lake District National Park Authority Definitive Map Modification Order 2015 Rights of Way between High Cark & Seatle, Staveley-in-Cartmel Parish.
- The Order is dated 8 April 2015 and proposes to modify the Definitive Map and Statement for the area by upgrading to bridleway the footpath as shown in the Order plan and described in the Order Schedule.
- There were 6 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Procedural Matters

1. This case concerns a route running in a generally northerly direction between High Cark (point U on the plan attached to the Order) and Seatle Lane (Z). It currently comprises three public footpaths: Footpath 573014 (U-V), Footpath 573013 (part) (V-W) and Footpath 573015 (W-Z) which it is proposed are upgraded to bridleway. The Order route comprises a track of varying width, mostly bounded on both sides¹ by a stone wall and/or hedges, with access to adjoining fields at various points along its length.
2. I made an unaccompanied inspection of the Order route during the afternoon preceding the opening of the Inquiry on 2 August 2016. The Inquiry ran for three days before it was adjourned. It resumed on 1 November for a further two days, following which I revisited the Order route and walked Footpath 573013 between W and Seatle ('the western route') accompanied by Mr Thorne representing the Lake District National Park Authority ('LDNPA') and Messrs J and T Addison. Earlier that morning, and at the request of the LDNPA, I made an unaccompanied visit to and walked parts of two bridleways to the south of High Cark known as 'Sturdy's' and 'Watery Lane', as well as noting features in the locality such as Back Lane.
3. The LDNPA was represented by Mrs Rumfitt, and the principle Objectors (Messrs Addison, Mrs Addison and Dr Henderson) were represented by Mr Carr.
4. At the Inquiry² I accepted several new documents submitted by the parties. In addition, I agreed a deadline by which any further documentation could be submitted during the adjournment for circulation prior to the Inquiry resuming in November.

¹ Some of the old boundaries having been removed

² Between 2 and 4 August 2016

5. A previous order (made in 2011) to upgrade the same lengths of footpath to bridleways was considered at a Public Inquiry held in 2012. However, the appointed Inspector declined to confirm it. The Order before me for determination results from a new application further to which additional user and documentary evidence had been adduced. This comprises new user evidence not previously considered, evidence relating to Endurance Events taking place in the 1990s, commercial tourist maps not previously considered, Ulverston Rural District Council ('RDC') 1929 'handover maps', and minutes from Staveley Parish Council dating from the 1930s-1950s.
6. I shall consider all of the evidence now available to me in reaching my decision.

The Main Issues

7. The Order has been made by the LDNPA under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 ('the 1981 Act') on an analysis of historic documentary evidence, and more particularly on claimed use by the public on horseback. I must consider whether the evidence discovered, when considered with all other relevant evidence available, is sufficient to show that the existing public rights of way ought to be shown as highways of a different description, and that the Definitive Map and Statement ('DMS') require modification.
8. As regards the documentary evidence, Section 32 of the Highways Act 1980 ('the 1980 Act') requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
9. As regards the user evidence, the LDNPA relied on a presumption of dedication having arisen under Section 31 of the 1980 Act. This requires the date to be established when the public's right to use the Order route was brought into question. The evidence can then be examined to determine whether use by the public has been as of right and without interruption for a period of not less than 20 years ending on that date. Finally, it is necessary to consider whether there is sufficient evidence that there was during this 20 year period no intention on the part of the landowner(s) to dedicate public footpath rights.
10. Should these tests not be met, I shall consider the evidence under common law. At common law a right of way may be created through expressed or implied dedication and acceptance. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to dedicate a public right of way; or that public use has gone on for so long that it could be inferred; or that the landowner was aware of and acquiesced in public use. Use of the claimed way by the public must be as of right (without force, secrecy or permission) however, there is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades. There is no particular date from which use must be calculated retrospectively.
11. In considering the evidence and in reaching my decision I take into account relevant case law, including that adduced by the parties.

Reasons

Documentary evidence

Undated Plan

12. The LDNPA believes this plan is contemporary with and part of the enclosure award process which would date it to c.1796, when the land around the Order route was enclosed. However, the Objectors point out it is archived with other documents, one dating to 1851.
13. On this undated plan, the Order route is shown as a bounded track only between points Z-X and W-V, suggesting it served as access to adjoining landholdings rather than as a through route. Nevertheless, it is colour-washed throughout its length, including from V-U where there is a western boundary and pecked line to the east, and X-W bounded only to the east. The western route is shown uncoloured as a bounded track immediately south of the buildings and then by double pecked lines. However, these depictions contrast with Johnson's Valuation Survey for the Enclosure Award c.1796, and the Cartmel Enclosure Award Map 1796 to 1801 (Draft Award), neither of which show the Order route as continuous, with Johnson's Survey colouring both the western route and the bounded parts of the Order route (between Z-X, and W-V). Nor does the Order route appear as a continuous track on the Final Award Map, which does not show the western route south of the buildings.
14. Whatever its date and purpose, it would appear that whoever prepared this plan considered the Order route to be more important than the western route, and coloured it in like manner to other routes known now to be public highways or roads. However, the map has no key to explain the colouring, and some other routes that are private are shown coloured. The weight I can attach to this map as evidence of the existence of a through route with higher rights is very limited given its uncertain date and purpose. Neither is it known by whom it was compiled.

Hennet's Map of Lancashire 1829

15. The copying of maps was commonplace at this time, but there is no evidence of any earlier map showing a fully bounded through route at this location from which it could have been copied. Accordingly, I tend to agree with the LDNPA that this map is likely to have been the result of a new survey. It shows a bounded route between Seatle and High Cark as a crossroad.
16. However, it is debateable which route it shows: the Order route, or the western route. Dr Henderson believed it showed the western route, a wider lane of sufficient proportions to accommodate a tractor, unlike parts of the Order route. Although the Order route is narrow in particular between X and Y, this is not, in my view, evidence that it could not have been traversed on horseback or indeed by some form of cart pulled by horsepower in 1829.
17. The Map, however, is problematic in that, for example, it shows a building opposite point U on the Order route where none is said to have existed, and its depiction of other roads such as Back Lane is impressionistic rather than accurate. In addition, as Mr Andrews commented, although the general shape of the way depicted is consistent with the Order route, if it is the Order route

then Palace Lane³ is positioned too far to the east, and if Palace Lane is correctly shown then the Order route is too far to the west. Nevertheless, Mr Andrews, like the LDNPA, considered it a little more likely that it shows the Order route.

18. I consider the Map has its limitations. It suggests that a through route existed at this time, its appearance similar to that of the Order route, although its position at odds with its northern end. Accordingly the weight I can attach to this map is limited.
19. The only other early County map (pre-dating Hennet's Map) to depict the Order route, or in this case part of it, is Greenwood's Map of 1818. It shows a short length to the east of the buildings at Seatle, as a cross road, equivalent to Z to a point south of Y. This in my view takes the matter no further forward.

Other road maps, guides and OS maps

20. The Order route is not depicted on early road maps, and those dating up to the mid-19th Century. Garnett's map of the Lake District – Westmorland and North Lancashire, by Bartholomew c.1850s to 1920, does show it. Several commercial/tourist maps dating from the latter half of the 19th century and early part of the 20th Century, despite their small scale, show a way equating to the Order route, although, several do not.
21. These maps were published to help people get around and, given their scale, tended not to show footpaths unless otherwise stated. This would suggest that the routes shown were of a higher status. However, such a conclusion is cautioned by the fact that many of these commercial maps, for example those produced by Bacon, Bartholomew and the AA, were based on OS mapping and few employed their own surveyors. Mr Andrews view was that many maps produced for hikers and cyclists at a scale of 6 inches to the mile or less would have been edited and selective as to what to show or not show, concentrating on those routes considered useful for the intended purchaser.
22. From the late 1880s onwards OS maps carried a disclaimer that the representation on the map of a road, track or footpath is no evidence of the existence of a right of way. It is presumed that this applied to earlier mapping too. Instructions to OS surveyors prior to 1900 are lost, but I do not think it can be concluded that an enclosed lane depicted on a map was necessarily public, in the absence of supporting evidence. From the 1950s onwards a bounded lane may be annotated as a 'track', although this could refer to a private or a public route, the annotation, Mr Andrews indicated, essentially determined by what was seen on the ground and whether it was capable of being used by vehicles. The Order route is annotated track on the 1970 25-inch to 1 mile OS map⁴, but no status can be inferred from this.
23. OS mapping, however, is consistent in depicting the Order route as a bounded feature from 1840 onwards, including on road maps and tourist maps of the Lake District presumably produced with the touring public in mind.
24. Given that many of these maps produced for the travelling public were derived from OS mapping, which whilst providing good evidence of the physical

³ Which runs in a north-south direction to meet Seatle Lane to the east of the Order route

⁴ Mr Andrews believed this to be in error given the narrow width of the Order route in places

existence of a way add little in terms of determining its status, I find they are of limited value.

Finance Act Map 1910, Estate maps and other records

25. The Order route is excluded from hereditaments on the Finance Act 1910 map. The LDNPA considered this is evidence that the route formed part of the general highway network, and placed significant weight on this in view of the consultations conducted with landowners as part of the valuation process. Taken together with the documentary evidence leading up to the Finance Act documents (commercial and other maps, the undated map and Hennet's map) and the ownership evidence produced by the objectors (paragraph 38), they concluded this was more likely to be a public rather than private route, of higher status than footpath.
26. The exclusion of the route from Valuation Plans is normally indicative of public status, usually (though not necessarily) vehicular since deductions are usually recorded for footpaths and bridleways in other documentation. Here the evidence adduced by the Objectors, from 1851 onwards, indicates that the Order route did not form part of the private ownership of adjoining land. As the LDNPA argues, this suggests the Order route was bounded or fenced off from the adjoining land and therefore more likely to have been public. The Finance Act evidence needs to be considered in the light of the other evidence to establish the status of the Order route.
27. There are references to the Order route as a 'cart track' or 'ancient track' in footpath guides, providing some evidence of its physical characteristics.

1929 Handover records

28. The Ulverston Rural District Council handover map does not show the Order route as one repairable by them, and accordingly provides no evidence to support the existence of higher rights over the Order route.

Staveley Parish Council Minutes

29. Minutes dated March 1936 list five 'Roads' that it was recommended be handed over to the County Council and put into a good state of repair and these included a route named 'Seatle Farm Road'. In June 1938 four 'Township Roads' were recommended to come under the County Council, including 'Seatle Road to High Cark'. In November 1948 confirmation that the road from Seatle to High Cark had been previously maintained was forwarded to the County Council. However, I am not convinced, as is the LDNPA, that the routes are the same, especially as different names are given.
30. The Objectors argued that Seatle Farm Road referred to the route running around the farmstead and between the buildings of Seatle itself – this was the view of Mr Repton and Dr Henderson. Further, that Seatle Road to High Cark referred to the western route, as shown on an 1851 Sale Plan and on the earlier Inclosure mapping, and a route more suited to vehicular traffic than the narrower Order route.
31. Whilst I consider the former is a possibility, although I note it was not claimed for inclusion in the DMS in the 1950s, I am less convinced by the latter. The Parish claim for routes to be added to the DMS just a few years later (paragraph 35), clearly describes Footpath 32 (between High Cark and Seatle,

now Footpath 573013) as entering 'farm lane' and then passing through the farmyard to Seatle. I consider this description is consistent with the western route rather than with the Order route. Further, the western route fell within hereditaments for which deductions were claimed for footpaths. The Order route is described in the Parish claim (paragraph 33) as running to the road leading into Seatle, the northern end partially obstructed by overgrowth. This is consistent with much of the oral evidence given to the Inquiry as regards the conditions along this section. In addition, it is consistent with a route running to/from the road rather than to/from the buildings at Seatle.

32. I agree that the Parish Council Minutes distinguished between footpaths and roads, and in that respect Seatle Road to High Cark appears to have been regarded as a road, at least at that time. However, neither the 1936 nor 1938 recommendations made by the Parish Council or the (unspecified) evidence of maintenance submitted to the County Council in 1948, resulted in responsibility for its maintenance being taken over by them. It was later agreed between the Parish Clerk and County Council that it be recorded as a public footpath (paragraph 34).

Definitive Map records

33. The Parish Council surveyed the Order route (or at least part of it) in 1951, one of the surveyors being Richard Holme of Seatle. It was claimed for inclusion in the definitive map as a cart road used mainly as a footpath (CRF) and described as running from east of High Cark Hall northwards to the road leading into Seatle, the northern end noted as partially obstructed by an overgrown hedge and nettles. This is consistent with the evidence adduced both by the Objectors and referred to by path users of the northern end being overgrown (see below).
34. In 1953 the surveying authority, then Lancashire County Council, agreed with the Parish Council Clerk that the route should be shown as a footpath. It is the LDNPA's view that Lancashire County Council had a policy of not recording Roads Used as Public Paths ('RUPPs'), the designation normally applied to a route claimed as a CRF or CRB (cart road used mainly as a bridleway) in the DMS. Mr Lawler considered it possible the original designation was believed to be a mistake and that this was corrected. I prefer the LDNPS's view, since an examination of North Lonsdale parishes showed that of 54 paths claimed as a CRF, none were recorded on the DMS as RUPPs.
35. Survey cards for footpaths connecting with the Order route describe it as Seatle to High Cark Lane, while Footpath 32 (now Footpath 573013) is described when leaving the Order route as crossing a field into 'farm lane' (this being the western route).
36. It seems however, that the Order route was not fully included in the Survey: the northern part later claimed by the Friends of the Lake District as Footpath 40 commencing at Seatle Lane to its junction with Footpath 32 (point W).
37. No objections to the recording of the Order route were lodged at the Draft or Provisional stages of the Definitive Map process.
38. The Parish Claim and earlier Parish Council Minutes regarding Seatle Road to High Cark are, in my view, the only evidence to lend some support to the Finance Act evidence. However, the agreement to record it as a public

footpath in the 1950s suggests that either the status of footpath (agreed by the Parish Council's representative) was correct, or alternatively that there was no, or insufficient, evidence to support the Parish Council's previously expressed view of the reputation of the route as a road.

Landownership evidence

39. Dr Henderson's research led her to conclude that the consolidation of landholdings and amalgamation of fields at Seale by landowners in the latter part of the 19th and early part of the 20th Centuries meant that the situation that had existed from 1796 (whereby the Order route was partially bounded) was no longer suitable. Farmers needing to access their fields therefore walled the unbounded sections of the Order route creating a wider route at those points, more suited to the needs of the day. The Order route thus provided an agricultural lane for owners to move stock.
40. The documentary evidence shows that the Order route had become bounded along its entire length by 1840 (OS 1-inch Map). Dr Henderson's research also showed that the Order route had not been included in sales documents and between X and W land on either side was in the same ownership. The LDNPA concluded the Order route had been fenced or hedged against rather than providing private access to adjoining land or isolated fields, that is, an already existing way. In addition, the area is a stock rearing one and the presence of patches of nettles along parts of the Order route is consistent with stock passing along it.

Conclusions on the documentary evidence

41. Although Dr Henderson considered the western route to have been a more important one, given in particular its width, there is no evidence in the mapping reviewed above that it was depicted as a bounded through route; a point on which she agreed. The Order route, on the other hand, had become a bounded feature certainly by 1840 (OS mapping), and was subsequently excluded from landholdings, as evidenced in later sale documents. Its origins, though, appear to have been agricultural, serving landholdings rather than as a through route, as evidenced by the 1796 inclosure records. Hennet's Map shows a through route, but which one is unclear.
42. I do not find the undated map of any great assistance given its limitations and its inconsistencies with the maps concerning the 1796 inclosure. It adds nothing of substance to the other evidence in my view.
43. The Order route does feature on a large number of maps produced for tourists, motorists and hikers (but by no means on all of those adduced in evidence). Many of these, though, were based on OS mapping, thus confirming the physical existence rather than status of the route shown.
44. I do not consider the evidence prior to 1910 points to the existence of higher rights. The exclusion of the Order route from the Finance Act valuation is suggestive of rights of at least those that currently in existence, and perhaps of higher rights. The Finance Act evidence together with the Parish Council Minutes and claim in the 1950s to record the route as a CRF, in my view, lends some support to the LDNPA's case on documentary evidence. Nevertheless, the County Council declined to take on maintenance liability for the route in the 1930s and 1940s and, notwithstanding any policy they may have had as

regards the recording of RUPPs in the DMS, the Parish Council through its Clerk agreed footpath status and this was not challenged during the DMS process. Moreover, there was no, or insufficient, evidence to support higher rights at the time, the Order route having been claimed on the basis of a CRF, with use on foot, and agreed as enjoying pedestrian rights.

45. Considering the evidence as a whole, on balance, I am not satisfied that it is sufficient to demonstrate that the Order route *ought* to be upgraded to a bridleway.

User evidence

When use of the claimed route was brought into question

46. It is not disputed that the right of the public to use the Order route as a bridleway was brought into question in 2007 when the Addisons installed boulders in front of a gate at point X, having encountered groups of riders and challenged them. Whilst the obstruction enabled users on foot to pass through, it prevented those on horseback. For the purposes of section 31 of the 1980 Act, this provides a 20 year period of 1987 to 2007.

Use by the public

47. Evidence of claimed use was provided by 45 people, with 43 claiming use during the 20 year period. I heard from six witnesses⁵⁵, and attach greater weight to the evidence that has been tested. Mrs Pape's use (1972-1984), however, predated the 20 year period, and I have not taken it into account in this assessment.
48. Mrs Piper's use began in 1974, and continued to 1992. However, she used the western route rather than the Order route to reach point X. Accordingly her evidence attracts little weight. Mrs Barker used the route between 1976 and 2007 once or twice a week on average. Mr Whittaker rode it monthly, more often in winter between 1992 and 2007, usually on Sunday mornings and of an evening in both directions. He rode with Mrs Barker and others. Mrs Farrer used it from 1984 to 1994 on Sunday mornings with up to 15 riders. Mrs Fell began using it in 1976, with up to five other riders, more in spring and summer as part of circular rides, less in winter when needing shorter rides. From 1982 to 2004 she used it between 6 and 14 times a year. She used the western route on one occasion with Mrs Fell.
49. Recollections as to the positions and type of structures along the route varied amongst witnesses, whether users or witnesses for the Objectors, although this is not necessarily unusual given the passage of time. There was uncertainty as regards a gate, or prior to that an iron bar, at U; witnesses believing that if it was there it was easy to negotiate. Most recalled a gate of some description at V, and some recalled the hedge cuttings following the grubbing out of a short section north of V (around 1998). As regards the structure at X, descriptions of which included a rickety hurdle, none of the riders were unable to open it, although some described it as difficult to move. Some referred to the boulders in 2007 at X. Others recalled there was something at Y, which was tricky to open.

⁵⁵ Mrs Pape, Mrs Fell and Mrs Barker gave evidence to the 2012 Inquiry

50. None of those giving evidence used it during the Foot & Mouth outbreak in 2001. Riders, other than those accompanying the witnesses, were rarely seen. This appears consistent with the LDNPA's experience that horse riding in this locality is relatively light. Most used it as part of circuit for example with Back Lane, travelling south to north along the Order route.
51. Only two witnesses recalled meeting any of the landowners, describing one occasion at the High Cark end of the route in April 2006.
52. By contrast, witnesses for the Objectors had neither seen nor encountered horses on the Order route. Neither had Messrs Addison save for on one Endurance Event. Although Mr John Addison acknowledged that there probably was use, but that he never saw it; but also that he had seen one or two riders.
53. Overall, and somewhat unusually, the evidence of claimed use indicates more taking place in the first part of the 20 year period and less in the later part. There is nothing to suggest that claimed use was with force or carried out in secrecy. It seems that permission to use the route was granted to one rider, Mrs Bowen, although the actual date when this occurred is unclear, being either 1976 or 1986. A further permission is said to have been given with regard to an Endurance Event again unclear when, either in 1993/4 or 1999.

Endurance Events

54. There is new evidence regarding a series of events held in the locality during the 1990s. Claimants argued that the Order route formed part of a long distance Endurance Event for competitors and pleasure riders held annually over several years, starting and ending at Cartmel (to the south of Seale).
55. Mrs Fell explained how she had prepared maps for the Events in 1990, 1991 and 1992. These showed the route and direction of travel and were sent out to prospective competitors prior to the Event, with riders often transferring the route to their own maps or annotating those provided to them. Mrs Farrer, a competitor in Endurance Events, would transfer the details to her own OS map. She described the route being marked and people were there to open gates for riders to pass through.
56. Significantly, the chosen course included the Order route, although Mrs Farrer could not recall if she had used it herself. It formed part of the return route heading southwards, thus riders would be following it in a north to south direction (Z-U). Mrs Fell had been responsible for contacting landowners for permission to use routes that were not bridleways on the bottom half of the route, but this did not include the Order route which fell into the top half. The Events comprised two routes: the endurance ride of some 22-27 miles in length, and the pleasure ride of some 15-16 miles.
57. Typically these events attracted some 30, 40 or more riders, as evidenced in newspaper reports. Those for 1990 refer to 44 horses and riders of which 27 took the shorter pleasure route and the remainder the longer one; and for 1991, 55 participants of which 22 took the shorter route and the remainder the longer route. It is likely that, as Mr White suggested, not all those taking part completed the course: a small number may have been eliminated, or bowed out for other reasons.

58. The Addisons had no recollection of seeing riders on the Endurance Events with the exception of one occasion referred to as the 'Jill McDonald event' in 1999⁶. Mr John Addison had seen the tapes marking the route, and Mr Tom Addison had observed a group of riders leaving the Order route at Z, in other words heading in a south to north direction. I heard though that riders were unlikely to be in groups – riders in groups were more likely to have come from a riding school than to be taking part in an endurance event. Further, the group of riders seen were travelling in the opposite direction to the course set out for the Event. It is possible that Mr Addison was mistaken as to when he saw the riders, or alternatively, the riders were not participating in the event itself. It was this event that the Addisons claimed to have granted permission for. However, Mrs McDonald's evidence was that she had not sought permission but rather commented that the event was taking place: she had not organised it and would not therefore have been seeking permission.
59. Photographs taken of competitive riders on parts of the course⁷ showed a lack of protective clothing such as boots and chaps that Mr White argued would have been required to cope with the nettles and thorns experienced along parts of the Order route. At least two of these events took place in March when vegetation growth would have been less of an issue, another in August when it may have been, and others in September. This suggests that the route could be used, at least on these occasions. However, it was the Objectors' case that the Order route was overgrown such that use by horse riders was impossible. Further, that no signs of use by horses was observed.

The physical condition of the Order route and whether it was overgrown

60. The Objectors maintained that parts of the Order route, in particular between X and Y, were overgrown with nettles and brambles making passage difficult: the accounts of their witnesses being consistent in having to detour into the fields to avoid being nettled or scratched. This was described as a regular occurrence, more so in the summer.
61. Dr Henderson had often used the Order route to access adjacent land for survey purposes during the 1990s. She recalled that its condition varied hugely between summer and winter. V-W was quite overgrown with brambles and narrow due to the hedges. X-Y was very overgrown in summer with nettles, and at X the hedges grew across. She had monitored the growth of nettles over a period of time to ascertain height and density, and also the effect of a person walking through them to see if they left a trace.
62. Parts of the Order route were also affected by overhanging branches and side growth from hedges encroaching into the width of the available route. It was suggested that the hedges alongside the northern part of the route towards Seattle had been laid in the 1970s and thereafter received little attention save for on the field side which had been regularly trimmed. However, the Addisons now believed that the tops of the hedges had also been regularly machine trimmed to heights of either 4 or 6 feet between Z and X, initially only partially across the width. Nevertheless, the inside of the hedges (either side of the Order route) had not been cut back on a regular basis. This appears contrary to Dr Henderson's recollections from the late 1980s/early 1990s that the hedge tops were not trimmed, unless (as was the case in the early years) the

⁶ Or possibly 1994

⁷ None were adduced showing use of the Order route itself

- machinery had been unable to reach fully across the hedges which are particularly wide along this section of the Order route.
63. The descriptions of vegetation and hedge growth are consistent with the description of the Order route in the 1950s Parish Survey (paragraph 32).
64. Whilst (more recently) walkers found the Order route difficult to pass where affected by vegetation, believing it would not be possible for horses to get through, the evidence of riders was that they could. They had appropriate clothing (leather chaps) for such conditions and the horses often wore protection too, furthermore a horse and rider was higher than a walker. If necessary, riders would dismount and walk their horses beneath overhanging vegetation. Mrs Barker had always found the route passable: soft vegetation would spring back and growing branches were soft to ride through. Mr Whittaker would duck beneath branches. Mrs Farrer remembered encountering nettles, and Mrs Fell who said the appearance of the route varied throughout the year, believed the Ramblers' sometimes cut back the vegetation. Mr Whittaker indicated that it was possible to pass through vegetation on horseback and leave no mark, depending on the weather conditions. Mrs Piper had never found it overgrown.
65. There is evidence that vegetation was cut back from time to time. In addition, the LDNPA received few complaints about overgrowth on the route. This may point to it having been by and large unobstructed, or alternatively that it was not often used.
66. Other parts of the Order route, particularly towards the southern end, were subject to waterlogging and at times flooding during winter months which the Objectors considered prevented use. This in my view is more likely to be an issue for walkers than for riders.
67. A series of aerial photographs show the Order route, but it is difficult to establish from them the extent of any alleged overgrowth or undergrowth. Photographs provided by Mrs Fell and thought to date to sometime in the period 1998 – 2000 show a route consistent with the descriptions of riders, that is one that could be ridden on horseback. In 1998 there had been a complaint to the LDNPA made by horse riders that part of the hedge had been grubbed out.
68. Given all the evidence before me, I have no doubt that horses and their riders have been able to use the Order route. However, there will have been times when it was overgrown and difficult to pass through and on occasion obstructed, such that clearance was needed. There would also have been times when it was possible for horses to pass through without difficulty (for example after clearance).

Whether there were other signs of use on the ground

69. The surface conditions towards Seatle were described as soft. A photograph taken by Mrs Addison showed the effect here of the passage of two horses on one occasion. This demonstrated that in certain weather conditions it would be plainly obvious that the route had been used by horses as evidenced by hoof prints in the soft ground. However, neither Dr Henderson, who was used to looking for signs of disturbance, nor other witnesses had seen evidence of hoof prints, or dung, or indeed any other indication of use by horses, the visible trod

being relatively narrow. Indeed, Dr Henderson had visited the site some three weeks after the Endurance Events of 1990 and 1991 and seen no evidence of hoof prints, although she accepted that in certain conditions such as following rainfall they can disappear (in a matter of days), but in dry conditions would have persisted for longer.

70. I heard that it would take less than 10 minutes for a horse to walk the Order route and a horse may not dung there, or within that period. Further, that horses passing in single file were unlikely to leave a wider trod than would be expected by use on foot. Whether a hoof print would be or remain visible depended on a number of factors including whether or not the horse was shod, the surface and weather conditions, weight of the horse and rider and so forth.

The actions of the landowners

71. It is the Addisons belief that they have owned at least parts of the Order route since 1945, as they own adjacent land. There is no documented proof of ownership of the Order route. However, it is accepted that adjoining landowners will own to the centre line in such circumstances.
72. It is claimed that permission to use the Order route was requested of the Addisons by Mrs Bowen in 1976 or 1986, in any event before the 20 year period. This could, in my view, render her subsequent use as permissive rather than as of right, at least as regards part of the Order route. A further permission was apparently granted to Mrs McDonald for an Endurance Event in the 1990s although Mrs McDonald disputes the Addison's version of events, stating that she was not in a position to seek or be granted permission as she had not organised it. In around 2001/2 Mrs Fell and Mrs Bowen asked if the Addisons would consider dedicating the Order route as a public bridleway, which they refused. By this time they owned land either side of the Order route so arguably would have been in a position to demonstrate a lack of intention to dedicate by such an act.

Conclusions on presumed dedication

73. I acknowledge that there are discrepancies in some of the evidence presented and heard at the Inquiry and this affects the weight that can be attached to it. Nevertheless, there remains a distinct conflict between the recollections of the witnesses: essentially that there was no use or that there was regular and sustained use. I do not consider it credible that there was no use. However, neither do I consider it credible that the level of use claimed took place without leaving any (or more of a) visible trace, or being seen. Indeed, both the Addisons and Dr Henderson now accept that there has been some light use of the Order route on horseback.
74. The nature of the Order route is such that at times it has been overgrown and impassable: there are instances of riders choosing to use the western route to avoid the overgrown conditions. At other times, it has been less overgrown, for example during the winter months or following occasional clearances and cutting back. Consequently, and having regard to the claimed use, I am satisfied that use on horseback has taken place.
75. Although the Endurance Events had not been seen or recalled by the Addisons, nor indeed by other landowners in the area, I am satisfied on the available evidence, both oral and documented, that they took place. On the balance of

probability, the Order route formed part of the selected course, at least so far as the competitive riders were concerned – it is less clear whether or not the pleasure riders used the Order route as part of their circuit. Nevertheless, these were annual events which took place over a period of 7 years, and cannot in my view be regarded as regular or consistent use of the Order route.

76. The LDNPA maintains that on the present evidence claimed use amounts to weekly or more which is commensurate with the rural locality. However, it also acknowledged that the claimed use is likely to have been exaggerated, albeit that the Endurance Event evidence lends credibility to the claimed use: that it went unnoticed suggests other claimed use took place but also went unnoticed. It has not been possible to test much of the evidence, some of which is sketchy and in some cases very light. Indeed the LDNPA conceded that the level of use is likely to be much lower than that user evidence might suggest.
77. Notwithstanding that I accept there has been use by horse riders, on balance I am not convinced that the level of use now apparent is sufficient to tip the balance and raise a presumption of dedication of the Order route such that it ought to be recorded as a bridleway. The evidence of use given to the Inquiry is, in my view, light, infrequent and sporadic, even taking into account the evidence of the Endurance Events between 1990 and 1996, amounting to 30+ riders once a year. It follows that, in my view, the section 31 tests have not been met.

Common law

78. The LDNPA did not rely on a case being made out at common law.
79. Of those giving evidence to the Inquiry, claimed use extended from 1972. Mrs Pape, Mrs Fell and Mrs Piper all claimed use in the 1970s (along with others), although Mrs Piper followed the western route, but was aware of the gate at X.
80. As stated above, it is not known who owns the Order route and it is therefore assumed that adjoining landowners own to the centre line. There is no evidence that any landowner(s) intended to dedicate the Order route, or that it could be inferred from their actions that they had such an intention. The Addison's' granting of 'permission' to use the route could amount to a lack of intention if they were landowners at the time. That they declined an approach to dedicate the Order route as a bridleway in 2001 (when they owned land either side of it) in my view amounts to a lack of intention.
81. In any event, the evidence of use is in my view insufficient due to its light and infrequent nature for an inference of dedication at common law to arise.

Conclusions

82. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

83. I do not confirm the Order.

S Doran

Inspector

APPEARANCES

For the Order Making Authority:

Mrs S Rumfitt Sue Rumfitt Associates (Rights of Way Consultant),
who called *Representing* Lake District National Park Authority

Mr N Thorne Countryside Access Adviser, LDNPA

Mrs C Barker

Mrs L Farrer

Mrs L Fell

Mrs J Pape

Mrs C Piper

Mr C Whittaker

For The Objectors:

Mr R Carr Robin Carr Associates (Rights of Way Consultant)
representing Messrs Addison

who called

Mrs C Addison

Mr J Addison

Mr T Addison

Mr D Andrews Andrews Consulting

Mrs L Heath

Dr M Henderson

Elsbeth Mason

Mr R Repton

Miss C Whitton

Mr D Wrigley

Mr L Wrigley

Other Objectors who spoke against the Order

Mr D White

Mr S Lawler Chairman, Staveley Parish Council

DOCUMENTS

1. 'Endurance Ride Review, Establishing the Facts', submitted by Mr White
2. 'Analysis of Rider Information, Non-Endurance Rides', submitted by Mr White
3. Signed copies of Statutory Declarations submitted on behalf of the Addisons and Dr Henderson
4. Revised Table of Contents to the Objectors' Statement of Case together with a 'Summary of evidence that the Order route was historically overgrown', and a copy of an email from Lis Fell to Nick Thorne, dated 16 July 2009, submitted on behalf of the Addisons and Dr Henderson
5. Series of photographs concerning 'Height of Nettles', 'How long do hoof prints last?', and 'Effect of rain on hoof prints', submitted on behalf of the Addisons and Dr Henderson
6. Additional documents and information subsequent to circulation of Proofs of Evidence, comprising corrections to errors in statements/evidence; documents relating to Mr White's visit to the Lake District National Park Authority's office; documents received following circulation of Proofs of Evidence; and analysis in relation to various issues raised in the Proofs of Evidence, submitted by the Lake District National Park Authority
7. Copies of Mr White's documents 1 and 2 (above) together with responses to them, submitted by the Lake District National Park Authority
8. 2001 Google aerial photograph showing northern section of the Order route forming part of Mr Whittaker's evidence on behalf of the Lake District National Park Authority
9. Cartmel Peninsula location plan, submitted by the Lake District National Park Authority
10. List of evidence/documents not before the 2012 Public Inquiry, submitted by the Lake District National Park Authority
11. Enlarged copy of email attachment of 28 April 2016, 'Information relating to other roads mentioned by Staveley Parish Council', submitted by the Lake District National Park Authority

Submitted during the adjournment

12. Copy of Circular 58/53 concerning Roads Used as Public Paths; letters from Dr Henderson submitted to the 2012 Inquiry, copy of judgement *Powell and Another v Secretary of State for Environment, Food and Rural Affairs* [2014] EWHC 4009 (Admin), submitted by the Lake District National Park Authority
13. Extracts from Endurance GB Ride Programme and Members' Handbook 2013, submitted by Mr White

Submitted to the Inquiry in November 2016

14. Plan of Seale, submitted by the Lake District National Park Authority
15. Closing submissions on behalf of Messrs Addison
16. Closing submissions on behalf of the Lake District National Park Authority

Lake District
National Park

**MARCH 2015**

Date: 8 April 2015