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| **Order Decision** |
| Hearing held on 8 October 2024 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 November 2024** |

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| **Order Ref: ROW/3284255** |
| * This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the North Yorkshire County Council Bridleway No. 15.29/78 and Restricted Byway 15.29/79 Heyshaw to Lanes Foot Road, Dacre. Modification Order 2020.
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| * The Order is dated 23 October 2020 and proposes to modify the Definitive Map and Statement for the area by upgrading part of a footpath to bridleway, upgrading part of a footpath to restricted byway, and upgrading a bridleway to restricted byway as shown in the Order map and described in the Order Schedule.
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| * There were four objections outstanding at the commencement of the hearing.
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| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. I carried out an unaccompanied site visit on 4 October 2024 where I walked the Order route and the surrounding area.
2. I will refer to various points shown on the Order map in my decision. I have appended a copy of it to the end of my decision for ease of reference. Section F to H of the Order route is part of Lane Foot Road which continues south-east from point H to Dacre Lane. Monk Ing Road and Northwoods Road cross Lane Foot Road at point G.
3. Some documents refer to Lane Foot as Lanes Foot. When quoting from documents, I have used the spelling used in them.

The Main Issues

1. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event under section 53(3)(c)(ii) which requires me to consider if, on the balance of probabilities, the evidence shows that highways shown in the Definitive Map and Statement (DMS) as highways of particular descriptions should be shown as highways of different descriptions.
2. The Order has been made on the basis of documentary evidence. Section 32 of the Highways Act 1980 requires me to take into consideration any map, plan, or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
3. I shall examine the evidence as a whole to establish whether a public right of way for vehicles exists along the Order route. However, the Natural Environment and Rural Communities Act 2006 (the 2006 Act) extinguished rights for mechanically propelled vehicles (MPVs) subject to certain exceptions set out in section 67 of that Act. In this case, it is not argued they have been saved by any of the exceptions set out in that Act. Accordingly, should I find in favour of public vehicular rights existing, the way should be recorded as a Restricted Byway.

Reasons

*Dacre Tithe Map 1843*

1. The Order route between A and F is not shown across the fields between Heyshaw and Lanes Foot on the Dacre Tithe map, 1843. Three routes are shown across Dacre Pasture with double dashed lines, but Lane Foot Road is not one of them.

*Inclosure Awards*

1. The Dacre Pastures Inclosure Award 1844 (the 1844 Award) sets out five *‘public carriage ways or roads’*, two ‘*public bridle ways or roads’*, seven *‘public footways’*, six *‘occupation ways or roads’*, and one *‘private carriage and occupation way or road’*. The three routes shown across Dacre Pasture in the Tithe map are set out on similar lines as public carriageways or roads.
2. Lane Foot Road, including section F to H of the Order route, is set out as an *‘occupation way or road’* called Lane Foot Road with a width of 18 feet between ditches. It commences *‘at a gate in an ancient Lane in the said township of Dacre called Lane Foot and extending thence in a southwardly direction to and unto the said Dacre and Thornthwaite on Dacre and West End Road’* (now Dacre Road).
3. A *‘public footway’* with a width of 5 feet called *‘Lane Foot Foot Road’* is set out from *‘Hunter’s Land’* across pasturethen into andalongMonk Ing and Northwoods Road then along *‘another occupation Road called Lane Foot Road and from thence in a Northwardly direction to a Gate called Lane Foot Gate’*. The northern end of this footway is section F to G of the Order route. Therefore this section of the Order route is set out in the Award as an occupation road and a footpath, but section G to H is only set out as an occupation road.
4. The public roads *‘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 the Realm’*. All *‘Private Carriage and Occupation Roads… shall… for ever hereafter be supported and kept in repair by the person or persons to be appointed as hereafter mentioned and the expenses thereof defrayed by the Owners and Proprietors for the time being of the lands and grounds in the said township of Dacre’*. Schedules set out the share and proportions. The occupation roads are not set out for use by any named persons, but the private road is for the use of named individuals.
5. The 1844 Award also set out a public watering place at the north end of Lane Foot Road called Lane Foot Watering Place No. 22a. It is stated to be *‘for the common use of all persons interested therein All that parcel of land to be used as a Public Watering Place’*. The Lane Foot Watering Place *‘shall from time to time forever hereafter be well and sufficiently cleansed, scoured, forever repaired and amended by the Surveyor of the Highways of the Township of Dacre’*.
6. All of Dacre Foot Lane is shown coloured brown with double solid edges on the 1844 Award map. The public and occupation roads are shown in the same way, but the private road is uncoloured.
7. There is nothing in the 1844 Award to indicate public or private rights over the ancient lane or the status of it. It may have been a route for landowners to reach their land or for commoners to reach Dacre stinted pasture rather than a public highway. A route connecting Dacre to the ancient lane is likely to have been needed after the land was enclosed, but there is nothing before me to indicate there was a pre-existing highway along Lane Foot Road before 1844. The setting out of section F to G as a public footpath shows public rights on foot which are likely to have continued over the ancient lane. If higher public rights existed, setting out a public footpath would not have been necessary.
8. However, the Award also sets out occupation roads with no restrictions on use and a private carriage road for use by named individuals. This may suggest local inhabitants had a right to use Occupation ways and roads particularly as they lead to places they may need to reach such as a chapel, school, fold, or public watering place, or continue as public footpaths. Some parties considered it unlikely that a public watering place would be set out without a public right to access it, and other awarded watering places appear to be on public roads.
9. Dacre Heyshaw Moor and Braithwaite Moor Inclosure Award 1876 set out a public carriage road or highway called Heyshaw *Road ‘to and terminating in the village of Heyshaw’*. The Award map shows it with an opening at the eastern end which some parties considered could indicate that the public carriage road continued east. However, the 1876 Award map does not show a route continuing east and the Award states it terminates in the village. I do not consider the 1876 Award provides any evidence of public rights over the Order route.

*Dacre Township Map 1852*

1. The Order route is shown between points A to F on the Dacre Township map of 1852 with narrow double dashed lines which the key indicates are *‘Bridle and Occupation Roads unfenced’*. At the western end between points A and B, the route shown appears to be slightly further north, but only by a few metres. This could be due to the accuracy of the map or due to ground conditions at the time. It also runs on the south side of a hedge from just west of D to point E. However, it appears the hedge is shown in a different position rather than the Order route.
2. Lane Foot Road, including section E to H of the Order route, is shown with double solid edges, unnumbered and excluded from the surrounding parcels of land. The key indicates this as *‘Highways &c fenced off’*. The key for unfenced highways indicated the *‘&c’* are *‘and Carriage Roads’*. Footpaths are shown with a single dashed line. The Township map is accompanied by a *‘Book of Particulars’* but this does not provide any information relating to the status or rights over the Order route.
3. It is claimed that the Township map was produced to calculate rates to be levied on owners and occupiers in the administration of the township including the highway rates and poor laws. This may be the case, but this is not clear from the documents before me.
4. The Township map does not appear to distinguish between bridleways and occupation roads. This may be because all the occupation roads were also bridleways. Other recorded bridleways are shown in the same way, including a route awarded in the 1876 Award as a *‘Private Carriage and Occupation Road and Public Bridle Road’*. A route recorded on the DMS as a footpath, that was previously recorded as a bridleway, at the end of Monk Ing Road is not shown.

*Finance Act Maps*

1. The whole of Lane Foot Road, including section F to H of the Order route, is shown excluded from the surrounding hereditaments. Other public roads are also shown in the same way, but so are Monk Ing and Northwoods Road.
2. Section A to F is within three hereditaments but no deductions are given for public rights of way or user in the valuation book. However, this section of the Order route is recorded on the DMS as a public footpath and other public footpaths run through two of the parcels. This could suggest the landowners preferred not to claim a deduction for public rights of way over their land.
3. The Finance Act 1910 imposed a tax on the increase in land value, which was payable when the land changed hands. Maps were produced to show taxable land following a survey by the Board of Inland Revenue. The existence of public rights of way over land reduced its value and the liability for tax so were recorded in the survey. The exclusion of part of the Order route from the adjoining hereditaments could indicate public rights which are more likely to be vehicular. However, it could be argued there are other reasons for excluding it, such as there being several parcels of land off the Order route or no owners of Lane Foot Road.

*Commercial and Township Maps*

1. On Bartholomew’s 1906 map the Order route is shown as an *‘indifferent road (Passable)’*. Monk Ing Road and Northwoods Road are not shown. The map has a disclaimer stating the representation of a road or footpath is no evidence of a right of way.
2. The Geographia Large Scale Road map of the West Riding of Yorkshire from the 1920s shows the Order route as *‘Other Roads (Subject to a right of way)’*. Footpaths are shown with a single dashed line. Monk Ing Road to the south-west of Lane Foot Road is shown in the same way but Northwoods Road to the north-east is not.
3. On Johnston’s 1920s New Road Map the Order route is shown uncoloured with double solid edges. The key states *‘the uncoloured roads are inferior and not to be recommended’*. Monk Ing Road and Northwoods Road are not shown.
4. Storey’s Motoring map circa 1926 shows the Order route with double solid edges as a road or track. Monk Ing Road is shown in the same way and Northwoods Road is shown with double dashed lines.
5. Commercial maps were produced for the travelling public who would have expected them to show routes that were available to use and some of these maps were aimed at cyclists and motorists. There would have been no point in showing a road if the public did not have a right to use it. If routes shown could not be used, the maps are unlikely to have sold as well as they did.
6. However, the quality of commercial maps and the weight that can be given to them varies. They are rarely sufficient in their own right to infer the routes shown on them are public highways. However, when considered with other evidence, they can tip the balance in favour of public rights. I must consider the weight that can be given to these maps and the disclaimer on one of the maps will reduce the weight given to that map.

*Ordnance Survey Maps and records*

1. The Ordnance Survey (OS) 2nd Revision Object Name Book 1907-1909 lists Lane Foot Road, including section F to H of the Order route, as *‘a road extending in a S.E direction from Lane Foot to the high road’*. Other public roads are listed in the same way.
2. On the Yorkshire 6-inch to 1-mile OS map 1854, section A to F is shown with solid and dashed lines labelled *‘Bridle Road’*. It is shown running on the south side of a hedge just east of points D and E. Lane Foot Road is shown with double solid edges and is labelled ‘*Lane Foot Road’*. Other public roads are shown in the same way but so is Monk Ing Road.
3. The Order route is shown in the same way on the 1896 and 1910 6-inch to 1 mile, the 1909 25-inch to the mile, and the 1956 2-and-a-half-inch to the mile OS maps. However, section A to F is not labelled on the 1896, 1909, and 1910 OS maps and is labelled *‘F.P.*’ on the 1956 map. After 1909 section D to E is shown running on the north side of the hedge indicating a boundary change. The key for the 1956 map shows all of the Order route as an *‘other road, (not classified by the Ministry of Transport)’* and footpaths are shown with double dashed lines labelled *‘F.P.’*
4. On the 1-inch to 1-mile OS map 1898 the whole of the Order route is shown as a third-class metalled road which is partly fenced and partly unfenced between A to F with Lane Foot Road being enclosed. Footpaths are shown with pecked lines.
5. Instructions to OS Field Examiners from 1905 states footpaths for the use of a household, cottage, or farm should not be shown *‘but paths leading to a well-defined object of use or interest’* should be. *‘A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public’*. It also states, ‘*the initials F.P. should be inserted to footpaths, with the object of avoiding the chance of their being mistaken on the plans for roads traversable by horses or wheeled traffic’*.
6. The Field Headquarter Division Order No. 110 (D.22) dated November 1947 describes how to show footpaths and bridle roads and other ways across the countryside. It states *‘Bridle Road (or Path) is no longer to be written on field documents of the 1/1250 or 1/2500 scales’*. It also states the letter C.T. for Cart Tracks *‘will apply only to Tracks which show definitive evidence of regular use by vehicles, and which do not come within the category of public or occupation roads, but which fulfil the conditions’* for footpaths. *‘Ways which do not fall within the category Cart Track, or higher… will be described as either Track (TK) or Footpath (F.P.)’*.
7. On the 1-inch to 1-mile New Popular Sheet 1947, section A to F is shown with a single dashed line and section F to H is shown with double solid edges. The key indicates the former are *‘bridle & footpaths’* and the latter *‘minor roads’*. Monk Ing Road is shown largely with double solid edges.
8. Since 1888 OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of public rights. Some of the OS records indicate reasons why section A to F may not have been labelled bridleway, or only labelled as a footpath after 1854. However, there may have been other reasons for this such as it was private, or only a footpath which was marked in error as a bridleway on the first map. There is also another route is labelled *‘B.R.’* on the 1910 OS map.

*Highway Records*

1. Various Account books for the Surveyor of Highways for Dacre Township, 1826 to 1894, list the amounts paid each year for maintenance and expenses, and the amount of highway rates received. The Account books had to be *‘open for inspection’* by the inhabitants of the parish or parish district. An entry in an Account book stated to be from 1891 (although the year is not written on the account) details spending on ditching for *‘Dacre Lane to Watering Trough Lanefoot’*. The 1881 Account book does not include any exemptions to rates for landowners adjoining Lane Foot Road which would have been expected if they were responsible for maintaining it.
2. The Surveyor of Highways would not have been spending money on a route that did not carry public rights. As it was being maintained to the public watering trough, it is likely to have been considered to carry at least bridleway rights as they can include a right to drive animals.
3. The Local Government Act of 1929 transferred the maintenance of public roads from district to county councils which became County Roads. Handover maps were drawn up to show the roads transferred. Lane Foot Road, including section F to H of the Order route, is shown coloured orange as a minor unclassified road on the Handover map. School Lane is also coloured orange, but Monk Ing Road is uncoloured. Lane Foot Road southeast of point G is still recorded on North Yorkshire County Council’s List of Streets (LOS) as a highway maintainable at public expense. The Handover map appears to only show public carriage roads and does not show any public footpaths or bridleways.
4. There is nothing before me to indicate why the length maintained at public expense changed. Some parties suggested it was removed because it was not tarmacked with other parties suggesting it was shown in error and was subsequently removed. Unlike the DMS, there is no formal legal procedure for maintaining the LOS.

*Definitive Map Records*

1. The Parish Schedule was completed in 1951 by James Love for Dacre Parish Council (the PC) under the National Parks and Access to the Countryside Act 1949 (the 1949 Act) in preparation for the DMS. Lane Foot Road from ‘*West End Road (County Road)’* to ‘*Monk Ing Road’* is stated to be a *‘road used as a public path’* (RUPP). It is described as a *‘metalled surface with Occupation Road section in rough condition’* and *‘Awarded 1845 Occupation Road and part County Road’*. This suggests that part of this section of Lane Foot Road, which is currently recorded on the LOS, may not have been in 1951. The rest of Lane Foot Road is also stated to be a RUPPwith a *‘cart bridge over the beck and fieldgate at Lane Foot Road end’* and a *‘metalled surface in bad condition’*.
2. The Parish Schedule for the rest of the Order route states it is a footpath from Lane Foot Road to Heyshaw Village. It refers to two field gates, a gateway (gate missing) and a bridle gate along the route. It is stated to have an *‘uneven paved surface 2 ft - 3ft wide, at irregular intervals throughout the length of the path’*.
3. On 5 December 1970, the PC wrote to the West Riding County Engineer and Surveyor concerning the Provisional Map. They state *‘Lanes Foot Road… is an unclassified county road from its commencement with West End Lane to Monk Ing Road, and not as shown part bridleway. The remainder of No. 39 from Monk Ing Road to Lanes Foot is a bridleway and not a footpath as shown...This bridleway should continue from Lanes Foot through existing bridle gates on No. 42 to the unclassified county road at Heyshaw Village’*. A response from the County Engineer and Surveyor states the only amendments which could be made to the Provisional Map at that time were those brought about by appeals to Quarter Sessions. They were advised to raise these points when the review occurred.
4. The definition of a RUPP in the 1949 Act was a *‘highway other than a public path, used by the public mainly for the purpose for which footpaths or bridleways are so used’*. Referring to the Order route as a RUPP in the Parish Schedules may suggest the PC considered vehicular rights existed over the Order route. The reference to field gates and a bridle gate indicates it would have been possible for horses to use section A to F at that time, although there is no evidence of use on horseback before me.

*Parish Minutes*

1. The minutes of the PC meeting on 26 May 1970, record that West Riding County Council (WRCC) had requested details of footpaths needing signposts. WRCC were to be informed of five paths that needed signposts including the *‘bridleway from Lanes Foot crossroads, Dacre to Heyshaw’*.
2. The minutes also show a letter had been received from WRCC concerning the proposed classification of rights of way to ensure they were properly identified. They agreed to split into three groups to check the paths.
3. At the PC meeting on 1 December 1970 the Draft Provisional map was discussed, and the minutes note several points which required amendment. It was unanimously agreed they would be forwarded to the County Engineer and Surveyor for his attention. The amendments include *‘Right of Way No. 39 - Lanes Foot Road This Right of Way from West End Road to Monk Ing Road is an unclassified county road and not part Bridleway as shown. The remainder of 39, Monk Ing Road to Lanes Foot is a Bridleway - not a footpath - and continues as such through existing bridlegates on No.42 to the unclassified county road at Heyshaw Village.’*
4. The minutes from 21 January 1971 record a response from WRCC stating the only amendments that could be made to the Provisional map were those brought about by appeals at the Quarter Sessions. This could be expensive for the PC, so they agreed to await the review of the DMS.
5. The minutes from 26 September 1972 state they would be consulted when the review occurred. As a review date was not known, it was suggested details of rights of way requiring amendment be re-submitted. A special meeting was held on 6 November 1972 to review the DMS and it was agreed to send the schedule from 5 December 1970 to WRCC with the details of rights of way requiring amendment. The PC minutes dated 16 February 1973, 14 March 1973, and 4 May 1973 mention the sub-committee formed to deal with the review, but details of their findings are not mentioned.
6. James Love was a member of the Parish Council in the 1970s and on the sub-committee for the review of the DMS. It is unclear as to why he claimed section A to F as a footpath in the 1951 Parish Schedule but agreed it was a bridleway in the 1970s. However, if he had evidence it was not a bridleway, it is likely to have been considered by the PC in the 1970s.
7. The minutes for 1 December 1970 and 21 January 1971 refer to the potential sale of watering places, and the minutes for 31 May 1972 report the highest tender for the watering place at Lane Foot was from Lane Foot Farm which was accepted.

*Conclusions on the Documentary Evidence*

1. Section A to F of the Order route appears to have existed before 1844 but there is nothing to indicate its status or public rights at this time. Lane Foot Road was set out in the 1844 Award and was not shown on the Tithe map. I consider the provision of a public watering place at the north end of Lane Foot in the 1844 Award suggests the public would have needed to use the Order route with livestock. Furthermore, the 1844 Award does not restrict who could use the Occupation ways and roads which may suggest local inhabitants could use them. Therefore, some sections of the 1844 Award are suggestive of public rights over Lane Foot Road at a higher status than footpath. However, the setting out of a public footpath along the occupation road between points F and G indicates public rights on foot only over part of Lane Foot Road and no public rights south of G. Nothing in the Award prevents the dedication of higher rights at a later date.
2. None of the later documents provide conclusive evidence of higher public rights. However, I must consider the evidence as a whole weighing up the evidential value of the documents accordingly. I need to consider if there is a synergy in the documents that point, on the balance of probabilities, to the existence of higher rights.
3. I consider the township map to be suggestive of bridleway rights over section A to F. I also consider it indicates the whole of Lane Foot Road was considered to be a public carriage road at this time.
4. Lane Foot Road is shown on the Finance Act map in a way that is consistent with public vehicular rights although a lack of ownership could also result in it being shown in the same way. It does not provide any evidence as to the status of public rights over section A to F.
5. The commercial and OS maps show the physical existence of the Order route.
I consider the commercial maps and some of the OS maps are suggestive of public rights of a higher status than footpath at the time of publication.
6. I consider the Highway records show all of Lane Foot Road was maintained at public expense by the Surveyor of Highways between at least 1891 and 1929, not the adjoining landowners. I also consider the Highway records indicate higher rights than footpath that were more likely to have been vehicular. However, they do not provide any evidence in relation to the status of section A to F of the Order route.
7. Claiming Lane Foot Road in the Parish Schedule as a RUPP and County Road suggests the PC may have considered it to be a vehicular highway in 1951. Section A to F was only claimed as a footpath although the presence of a bridle gate along it could suggest it was used by horses in the past. The PC minutes and letter to WRCC indicate the Order route was considered to be part County Road and part public bridleway in the 1970s. The minutes also show the PC was still responsible for the public watering place. As the 1844 Award made the Surveyor of Highways responsible for the maintenance of Lane Foot watering place, it suggests the PC were Surveyors of the Highways in the past.
8. The evidence for section A to F is finely balanced. However, taken as a whole, I consider it more suggestive of public bridleway rights. Therefore, I conclude it is sufficient to show that, on the balance of probabilities, a public bridleway exists over section A to F of the Order route.
9. The whole of Lane Foot Road is consistently shown in the same way on all the documents after 1844. In the past section F to H was maintained at public expense in the same way as the rest of Lane Foot Road. Taken as a whole, I consider the evidence indicates public carriageway rights over section F to H of the Order route. As none of the exceptions set out in section 67 of the 2006 Act have been met, rights for mechanically propelled vehicles would have extinguished. Therefore, I conclude it is sufficient to show that, on the balance of probabilities, a public restricted byway exists over section F to H of the Order route.

**Other Matters**

1. Matters relating to suitability and desirability were raised including wear and tear on the lane, increased frequency of repairs, maintenance costs, waterlogged land not being suitable for use by horses, preservation of the landscape, and the negative impact on walkers. Although I understand these concerns, they are not matters I can take into consideration when determining the Order.
2. No user evidence was submitted in support of the Order route and the landowners stated their family had no recollection of use of the Order route by horses since 1945. However, I consider the documentary evidence indicates public bridleway and restricted byway rights. Public rights cannot be lost if they fall out of use and can only be extinguished by due legal procedure. There is no evidence of any extinguishment of public rights over the Order route.

Conclusions

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

Formal Decision

1. I confirm the Order.

Claire Tregembo

INSPECTOR

**APPEARANCES**

 **For the Council**

Bethan Brown Principal Definitive Map Officer

 **In Support of the Order:**

 Caroline Bradley British Horse Society County Access and Bridleway Officer, North Yorkshire, Western Area (volunteer)

 Mark Corrigan British Horse Society Access Officer

 **In Objection to the Order:**

Andrew Hutchinson On behalf of Landowners

 David Marshall Landowner

 Martin Lister On behalf of Landowners

**DOCUMENTS PRODUCED AT THE INQUIRY**

1. Additional page of The Highway Rate Book for Dacre 1881
2. Dacre Pasture Inclosure map with Occupation Roads highlighted
3. Parish Schedules for paths 39 and 42

**Order Map**

