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| **Final Order Decision** |
| Site visit made on 21 February 2023. |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 February 2025** |

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| **Order Ref: ROW/3283792(M2)** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Former Riding of Yorkshire (Area 2) Definitive Map And Statement Restricted Byways No.s 15.126/2 Stonebeck Up & 15.44/28 Fountain Earths & The Western Part of the County of the Former North Riding of Yorkshire Definitive Map And Statement Restricted Byways No.s 15.57/12 Healey & 15.63/3 Ilton-Cum-Pott Modification Order 2020
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| * North Yorkshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
* The Order is dated 20 November 2020.
* The Order proposes to modify the Definitive Map and Statement for the area by upgrading two bridleways and two footpaths to restricted byways.
* In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981, notice has been given of my proposal to confirm the Order with modifications.
* One objection was received in response to the notice.
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| **Summary of Decision: The Order is confirmed subject to the modifications proposed in my Second Interim Decision.**  |
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Procedural Matters

1. The effect of the Order, if confirmed with the modifications I previously proposed, would be: to upgrade section A to B from bridleway to byway open to all traffic with a width of 3.05 metres and a surface of ‘metaled stone road’, to amend the width of section G-H-I to 7.32 metres, to amend the width of section I-J to 12.19 metres, to correct the grid reference for the start of 15.44/2, to correct the grid references for several gates, and to remove dual recorded gates to ensure they are only recorded on one path.
2. In my Second Interim decision dated 21 February, I proposed to confirm the Order subject to the modifications described in paragraph 1 above. As the modifications proposed in my Second Interim decision would show a way as a highway of one description which is shown in the Order as a highway of another description, I was required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of my proposal to modify the Order and to give an opportunity for objections and representations to be made.
3. This decision should be read with my Interim Decision dated 2 May 2023 and my Second Interim Decision dated 21 February 2024.

**Main Issues**

1. The main issue remains whether the evidence before me is sufficient to show, on the balance of probabilities, that public rights claimed over the Order route subsist.
2. With regards to the modifications proposed in my Second Interim decision dated 21 February 2024, the main issues now requiring consideration are whether the modifications proposed are justified and whether there is any new evidence that has a bearing on the proposed modifications.

**Reasons**

1. In my Interim Decision, I set out the documentary evidence before me and my conclusions for each section of the Order route. In my Second Interim Decision, I considered the objections to my proposed modifications and the new evidence submitted.
2. The only objection raised following my Second Interim Decision concerns the widths of sections G-H-I and I-J. The width modifications were proposed in my Interim Decision, and no objections were made following the notice of my Interim Decision. However, to ensure fairness, I will consider the objection in relation to these widths.

***The Widths of Section G to J***

1. In my Interim Decision, I concluded the combined weight of the documents before me indicated that, on the balance of probabilities, public vehicular rights existed over section G-H-I-J. None of the exemptions under the 2006 Act prevented the extinguishment of public rights for MPVs. Therefore, this section of the Order should be confirmed as a restricted byway as made. The documentary evidence indicated different widths to those included in the Order, and I proposed to modify the Order accordingly.
2. In my Second Interim Decision, I concluded the 1794 Mashamshire Inclosure Award to be inconclusive as to the existence and status of public rights over section I-J. However, I still considered the combined weight of the other documents indicated, on the balance of probabilities, that public vehicular rights existed, and it should still be confirmed as a restricted byway.
3. A 1770 plan of Mashamshire taken for Lord Danby is presented as new evidence. It shows section G-H-I-J with double pecked lines and is labelled *‘To Netherdale’* at its western end. It is suggestive of public vehicular rights and adds to the combined weight of the other evidence supporting my conclusion that this section existed before the 1794 Award as a public road. This plan does not provide a width of section G-H-I-J, but it appears to be a similar width to that shown on other maps.
4. Although I concluded the 1794 Award is inconclusive about the rights over section I-J, it sets out a width of 40 feet (12.19 metres). In my Interim Decision, I concluded the width of section G-H would have been at least 24 feet (7.32 metres) to match the width set out in the 1855 Fountains Earth Inclosure Award for Coal Road. Earlier and later maps show section G-H-I-J with a similar width.
5. Although the surfaced width on the ground today is narrower, it does not mean that this is the full extent of public rights. There is no evidence that any of the width set out in the Inclosure Awards has been stopped up by due legal procedure. No evidence has been put forward to change my conclusions of the widths of section G-H-I-J.

###### Conclusions

1. Bearing in mind the above, I now conclude the Order should be confirmed subject to the modifications set out in my Second Interim Decision dated 21 February 2024.

**Other Matters**

1. Concerns are raised about the Order route being within the Nidderdale Moors Site of Special Scientific Interest and the Nidderdale National Landscape and the impact this would have on them. The Order seeks to record rights that already exist. There is no requirement to delineate the full width of the Order route on the ground. If any work is required to maintain the Order route, the Highway Authority would need to get any relevant consent before undertaking any work.

###### Formal Decision

1. I confirm the Order subject to the following modifications:

 In Part I of the Schedule to the Order

* Under the first restricted byway listed, in the first column, delete ‘A-’. In the second description column delete ‘Grid Reference 40665 47714, Point A and runs north west for approximately 150 metres to’.
* Under the second restricted byway listed, in the first column after ‘3.5 metres’ add ‘between Points F-G and 7.32 metres between Points G-H’.
* Under the third restricted byway listed, in the first column replace ‘3.5’ with ‘7.32’.
* Under the fourth restricted byway listed, in the first column replace ‘3.5’ with ’12.19’.
* Insert a new heading in the first column ‘Section of Byway Open to All Traffic as shown on the attached map’ and under it add ‘Indicated on the Order map and marked as Points A-B currently recorded on the Definitive Map as a bridleway to be upgraded to Byway Open to All Traffic with a width of 3.05 metres’. In the second column insert the heading ‘Description’ and under it add ‘Starts at Grid Reference 40665 47714, Point A and runs north west for approximately 158 metres to Grid Reference 40652 47721, Point B’.

 In Part II of the Schedule to the Order

* Amend Restricted Byway 15.126/2 to start at ‘40652 47721’. From the description, delete ‘Grid Reference 40665 47714 and then runs north west for approximately 150 metres to’ Amend the length to ‘4,530m 4.53 km total’. Under Lawful Obstructions And Conditions replace ‘GR 40257 47760’ with ‘GR 41025 47760’.
* Amend the width of Restricted Byway 15.44/28 to ‘7.32 metres’. Delete ‘Field Gate at GR 41025 47760’
* Amend the width of Restricted Byway 15.57/12 to ‘7.32 metres’.
* Amend the width of Restricted Byway 15.63/3 to ‘12.19 metres’.
* Amend Bridleway 15.44/2 to start at ‘41003 47707’ and delete ‘Field gate at GR 41100 47679’.
* Add a new route as follows: Under Path Number add ‘Byway Open to all Traffic’. Under Grid Reference End Points add ‘Start 40665 47714’ and ‘End 40652 47721’. Under the description add ‘Starts at Grid Reference 40665 47714, and runs north west for approximately 158 metres to Grid Reference 40652 47721 at Carle Fell Road’. Under Nature of Surface add ‘Metalled Stone Road’. Under Length add ‘158m 0.16km total’. Under Width add ‘3.05 metres’

 On the Order Map

* Amend the line style between points A and B from Restricted Byway to Byway Open to All Traffic

Claire Tregembo

INSPECTOR

