

STATEMENT OF CASE FOR MRS PHILIPPA FARTHING

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**Introduction**

1. The Council has not made out its case that the Order Route should be added to the Definitive Map as either a public footpath or any other public right of way.
2. The Order Route has not previously been recorded on the Definitive Map and Statement. Unless the OMA can demonstrate that previous decisions were wrong not to include the Order Route on the Definitive Map and Statement, the position should be that the Definitive Map and Statement remain unaltered and the Order fails.
3. There is no sufficiently reliable user evidence or documents that directly demonstrate that any public rights of way exist. The documents referenced to base the argument for a public right of way are vague, leading to a presumption on the balance of probabilities. However the documentary evidence strongly proves that no such rights exist.

**Commercial Map Evidence**

4. All evidence relied on should be made available to all that have made an objection. These documents (Maps) have not been available to me and therefore I am at a disadvantage and unable to challenge them fully.
5. The OMA's case is that the Commercial Maps demonstrate that the Route was the only route between Rufforth and Acomb pre 1771 and so must have been ancient highway and accordingly should now be subject to public rights. The maps have been mis-interpreted and their case is based on assumption rather than fact. They fail to prove with evidence that the Route was the only route and that it was an ancient highway.
6. The OMA argue that the Turnpike Road is not on Jeffrey's map 1775. Whilst they place great weight on this omission they do not address the fact that the Turnpike Road was omitted from Tuke's map 1787 also. The OMA does not dispute that the Turnpike Road existed in 1787. No reason is offered for its omission. Their argument is weakened as if one road could be omitted from one map, then why not two? Therefore, routes to Rufforth may have been in existence and the claim that Grange Lane was the only route is unsupported.
7. The OMA have not presented evidence that proves that rights existed over the route. The Turnpike road may have been built due to a lack of route which made the new Turnpike road a necessity.
8. There is no evidence to suggest that public rights existed over any route depicted on the commercial maps. It cannot be assumed that just because a route is included on a map made available to the public that rights existed over it

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**Marwood Map**

9. As the map covers a relatively small area it cannot be assumed that there were no other routes between the villages.
10. The description of the route as the "Ancient road" could be argued to mean that the track was already considered historic and of no importance some 260 years ago. Therefore without any evidence of creation by statute or dedication at common law, how can the OMA seek to establish the status of the route?
11. The OMA's interpretation of the reference to the route being repaired by Marwood is unsupported, however the assertion that this reference was in fact referring to Marwood's new ownership of the land is supported:

An essay written in 2006 by the University of California looks at Parliament, Property Rights, and Public Goods in England: 1600 to 1815. It cites the House Of Lord's "Portculis" as it's point of reference. It explains the meaning of the Enclosure Act, which Rufforth was subject to, and is referred to by the OMA in point 25 of their statement of case.

*"Enclosure acts altered rights to agricultural land. Enclosure acts disbanded collectively managed open-field villages. Individuals received rights to particular pieces of property, which they cultivated individually, and relinquished rights to shared assets. Enclosure acts also shifted agricultural land to new uses, particularly near growing towns and cities."*

Therefore the Marwood map is more likely to be a way to identify new ownership of land previously owned by the community. This is further enforced by the following, which accurately reflects Rufforth's history prior to the drawing up of the Marwood map.

*"Enclosure acts changed rights to property, often in open-field agricultural villages. At the beginning of the eighteenth century, approximately one-quarter of the arable land in England lay in such villages, where residents shared rights to communal assets, such as water, pasture, and woods. Villagers also shared rights in the large open fields, which served as common pasture during fallow periods and as cropland during the growing season. The cropland was divided among the residents, who possessed the right to grow grain on acre-sized plots scattered throughout the fields and intermingled with those of their neighbors. Villagers managed these collective assets, such as the open arable fields, through village institutions, including customary laws and manorial courts. **Enclosure acts reorganized rights to property in open field villages, replaced collective ownership of common resources with individual ownership of particular plots of land, and replaced collective management through village institutions by individual management of personal estates.**"*

The essay re-enforces the claim that Marwood was named on the Map as he was the agreed owner of the land.

*"The commissioners decided on the validity of these claims. After they made their decisions, the surveyors created a map of the new village, displaying the new features, such as fields, roads, fences, and irrigation channels, and the owners of each."*

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The essay continues to enforce the argument that Marwood was required to “repair” the road to comply with the conditions placed on his new ownership.

*“The authority to allot appears to be the power to determine which of the villagers received which of the new parcels. The authority to enclose appears to be the authority to ensure that villagers contributed to the construction of the infrastructure, such as fencing, paths, roads, and water channels, required by the reorganization of the village.”*

Rufforth Inclosure Award

12. The award states that the western end of the Order route is a “private or occupation carriage road”. This is direct evidence that describes the intended use of the route. It clearly states “Private” not “Public”.

Finance Act Records

13. The fact that the western part of the order route was included in the records of land and holdings but no deductions were made is a strong indication that no public right exist over the order route. If rights has existed there would have been a strong incentive for the landowner to declare those rights in order to reduce their tax liability.

Conclusion

Seventeen years ago the City of York Council commissioned an investigation into Public Path anomalies (2000-2001). The report discusses the possibility of opening Grange Lane to the public. The report proves that the Council’s opinion at that time was that no rights existed at that time. The Council should explain why they have changed their view of Grange Lane since this time and their change in opinion should be substantiated with evidence otherwise their view of Grange Lane as being private should still stand.

The OMA have failed to provide evidence to support their claim that rights existed over Grange Lane. In fact the evidence provided (The finance Act, Marlow’s map, the Rufforth Inclosure Award) all prove that the route was a private road and no rights exist over the route.