

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK
PUBLIC FOOTPATH KNAPTON No. 4 DEFINITIVE MAP MODIFICATION
ORDER 2010

PLANNING INSPECTORATE REFERENCE: To be advised

Introduction

1. This document comprises the Statement of Grounds and Statement of Case of the Council of the City of York for the modification and confirmation of the Public Footpath Knapton No. 4 Definitive Map Modification Order 2010 (“the order”). The council is the order making authority (“the OMA”).

2. The order is the subject of two representations and twelve objections (see appendix 4).
 - i. Mr Alan Atkinson, c/o Mr M Atkinson of Harrogate
 - ii. Bartle and Son on behalf of Mr and Mrs E. Swiers
 - iii. Bartle and Son on behalf of Mr Sykes
 - iv. The British Horse Society
 - v. The Byways and Bridleways Trust
 - vi. Mrs C. Cook of Scarborough
 - vii. Ms P. Farthing of Rufforth
 - viii. Mr and Mrs Grainger of York
 - ix. Mr R. Morton of KCS Developments
 - x. Mr J. Porter of Rufforth
 - xi. Ramblers Association
 - xii. Rufforth with Knapton Parish Council
 - xiii. Mrs E. Swiers of Rufforth
 - xiv. Mr E. Swiers of Rufforth

The OMA has been unable to secure the withdrawal of the objections and is referring it to the secretary of state for determination.

Factual Background

3. The route shown in the order (“the order route”) runs along what appears to the OMA to be an ancient road now known as Grange Lane. Grange Lane linked the village of Acomb near York with the village of Rufforth near York. Both villages are mentioned in the Domesday Book (1086 CE).
4. The OMA made the order following extensive investigations and a long history of uncertainty over the status of Grange Lane. Consequently there is no applicant for this order.
5. The order seeking to record Grange Lane as a public footpath was made on 29 March 2010 and was followed by a partial consultation. A full consultation was carried out between 7 December 2017 and 18 January 2018. The objections mentioned at paragraph 2 were received as a consequence of both consultations (see appendix 4).

Legal Framework

6. Section 53(2) of the Wildlife & Countryside Act 1981 (“WCA 1981”) requires surveying authorities to keep definitive maps and statements under review. This provision states as follows:

“As regards every definitive map and statement, the surveying authority shall –

- a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*

b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”

7. The OMA is the relevant “surveying authority”.

8. The order was made on the grounds that an event set out in section 53(3)(c)(i) of the WCA 1981 had occurred. This provision states as follows:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.”

9. As regards to relevant evidence section 31(1) of the Highways Act 1980 (“HA 1980”) states:

“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

10. Section 31(9) expressly states that a highway (and so a public footpath) can be established at common law, as well as pursuant to the statutory test in section 31(1):

“Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less than 20 years, or being presumed or

proved in circumstances in which it might have been presumed or proved immediately before the commencement of this Act.”

11. Therefore, in relation to user evidence, the requisite period for the purpose of meeting the requirements of s53(3)(c)(i) WCA 1981 can be either of the following:

i. 20 years, such that the relevant tests set out in section 31 of the HA 1980 have been met (the “Statutory Test”)

or

ii. A period of use such that an intention to dedicate the land as a public right of way can be demonstrated (the “Common Law Test”)

See: para 4.4 of Rights of Way Circular 1/09 and para 53 of Planning Inspectorate Advice Note 9.

The Evidence

12. The evidence supporting the order route being a public right of way is diverse consisting of both documentary evidence and user evidence.

Documentary evidence

13. The earliest evidence that has come to light is a map of Acomb Grange found in the Busby Hall papers located at the North Yorkshire County Record Office (see appendix 17). The 1760 map shows a road through the middle of the property and a second road along its northern edge. By cross referencing this map with early Ordnance Survey (“OS”) maps (see appendix 23), the position of the grange and the woodland on the western edge of the map indicate that the route along the northern edge is Grange Lane. The road through the centre of the map is noted as being Broad Lane on the OS maps.

14. The way shown along the northern edge of this map carries the notation *“From Rufforth 1 mile A. From A to B is part of the antient road from Weatherby to York & repaired by Marwood. B Wm Stoddard Road Wm Stoddard Road. Road to York 2 miles. To Acomb ¼ mile”*.
15. Jeffery’s Map (published 1775, see appendix 18) is the only commercial map the OMA has discovered whose publication predates the inclosure awards referred to below. It depicts the area around Grange Lane as well as the area now occupied by the B1224. The road that was to become the B1224 is not shown indicating that when Jeffery’s surveyors arrived in the area the turnpike did not yet exist. The surveys for the map were carried out between 1767 and 1770.
16. The York and Collingham Turnpike Trust (“the Turnpike Trust”) was formed in 1771 and charged tolls on persons and vehicles wishing to use the turnpike. Examination of the trust’s archives held by the West Yorkshire Archive Service indicates that the turnpike road is now the B1224 linking Acomb with Rufforth (see appendix 19).
17. Throughout its life the Turnpike Trust deposited several schemes with the West Riding’s Clerk of the Peace suggesting possible improvements and diversions of the turnpike. All the maps of these proposals show a short spur where what is now known as Grange Lane left the turnpike heading south east.
18. In addition, the plans submitted with the Turnpike Trust’s 1825 proposal include a detailed drawing of New Gate Bridge (along with a note describing its poor state of repair). This bridge is on the B1224 today and is still known by the same name.
19. The 1776 Acomb and Holgate Inclosure Award (see appendix 20) set out a public highway that it refers to as the Wetherby Turnpike Road. The wording in the award is *“WE do also order determine and award that there shall be a public highway or road of the breadth of sixty feet at the least between and exclusive of the ditches as and where the same is now staked or set out and herein called the Wetherby Turnpike Road leading from the town of Acomb aforesaid westward over a parcel of land called Back Green into a field called Beck Field in the said township of Acomb and*

from there continuing over the said Beck Field into the antient lane between the antient enclosures of said John Hotham, and of Giles Alcock Stephen Croft and John Cleaver as lessors.”

20. This road is today known as the B1224 and at the time of the award was the turnpike referred to at para 16 above.

21. The Acomb and Holgate Inclosure Award set out another public highway that it refers to as Rufforth Road. The wording of the award is *“WE do also order determine and award that there shall be a public highway or road of the breadth of sixty feet at the least between and exclusive of the ditches as and where the same is now staked or set out and herein called Rufforth Road leading from the Wetherby Road southward at the north corner of an allotment herein awarded for a sand pit in the Back Green and across the same green to an antient Back Lane from there southwards over part of the Chapel Field to the west end of the town street of Acomb and from there westward through and over the said Chapel Field to the antient gate leading into the township of Rufforth.”*

22. Unfortunately the map that should accompany the enrolled award is missing. However, York Archives also hold a bound, unsealed copy of the award in the same hand writing as the enrolled award. Held within this bound volume is a map that appears to be a contemporaneous copy of the inclosure award map. Careful cross referencing of the map with the various allotments made in the enrolled award indicates that it is a faithful copy of the missing map (see appendix 21). On the copy map most of the roads set out by the award are named but Rufforth Road is not. However, the road that matches the description of Rufforth Road is coloured in the same way as all the other named public highways.

23. By cross referencing the description of the road with the copy map, the earliest OS map, and the text of the award it is clear that Rufforth Road is today called Grange Lane.

24. Tuke's map from 1787 also shows the area around the order route and does not depict the turnpike road (what is now the B1224). It is not clear why the Turnpike is not depicted even though it had been in existence for more than a decade by the time Tuke's map was published (see appendix 18).
25. The 1795 Rufforth Inclosure Award (see appendix 22) set out a way named as Rufforth Grange Road. The award text reads as *"AND ALSO ONE OTHER private or occupation carriage road by me called Rufforth Grange Road which if fenced off shall be of the width of twenty four feet exclusive of the ditches. Beginning at the turnpike road at the north east corner of an allotment made to John Barlow in Spate Lane and returning there southwards on the east side of the same allotment to and into an allotment awarded to William Marwood in the said Spate Lane and from there in its ancient course. AND I DO AWARD that the same road as far as it crosses the said allotment of the said John Barlow and afterwards in like manner as other private roads are herein awarded to be repaired."*
26. The route described above coincides with the west end of Grange Lane that was later diverted to allow Rufforth Airfield to operate under peace time conditions.
27. With regard to the maintenance responsibility for private occupation carriage roads, the Rufforth Inclosure Award adds the following, *"I do award that all public carriage roads and private occupation carriage roads hereinbefore by me awarded shall be made and forever hereafter repaired supported and maintained by and at the expense of the inhabitants and occupiers of hereditaments in the township of Rufforth aforesaid in the manner and with like exceptions from contributing to repair as the public highways of the said township are or ought to be by law repaired and maintained."*
28. Apart from Jeffery's map (see para 15 above) Tuke's map (see para 24 above) and the undated Cary map, all the commercial maps available to the OMA show both the order route and the turnpike road (see appendix 18).

29. The historic OS maps available to the OMA date from 1850 to 1992. All of them show Grange Lane meaning that the way has existed physically since at least 1850 (see appendix 23).
30. The OS Object Name Books that accompanied the second edition of the County Series date from circa 1907. The book describes Grange Lane as a public road within Acomb and the remainder as a lane (see appendix 24).
31. The Finance (1909-10) Act 1910 resulted in a survey of land being taken throughout the country. The results of these surveys were recorded in valuation maps, valuation books, and field books. Land owners who had a public right of way crossing their land could claim a reduction in the taxable value of that piece of land. Consequently the recording of a public right of way in these documents can be seen as strong evidence that it existed.
32. Unfortunately it has not been possible to find the records for the eastern end of Grange Lane. The records for the western part of the order route show that part of it was included in the land holdings, but no deductions were made (see appendix 25).
33. Rufforth Airfield was established during the Second World War using emergency wartime powers. In 1953 the Minister for Transport formalised the wartime measures. Part of this process included stopping up the western end of the order route that ran across the airfield. In its place a new route was created running south from New Gate Bridge to Grange Lane. This route is today recorded on the definitive map as Rufforth 8, a public footpath (see appendix 26).

User evidence

34. In 1981 the Rambler's Association submitted six user evidence forms to North Yorkshire County Council that showed uninterrupted use of the order route between 1921 and 1981 (see appendix 5). The submission of the forms appears to have been caused by the erection of a barbed wire fence across the order route.

35. In 1981 North Yorkshire County Council also received a declaration made under section 31(6) of the Highways Act 1980 indicating that the land owner (Bartle and Son on behalf of J. N. Sykes) had no intention to dedicate any public rights of way across their land. This included the eastern end of the order route (see appendix 27).
36. In 1999 a similar deposit was made under section 31(6) of the aforesaid Act by Mr and Mrs Swires. This declaration was renewed in 2010 and is due to expire on 1 March 2020 (see appendix 27).
37. In 2001 two further user evidence forms were submitted to the OMA alleging use between 1975 and 2001 (see appendix 5).
38. All the user forms can be found at appendix 5.

Consideration of the evidence

39. Examination of all the map evidence shows that the order route was, before the arrival of the turnpike, the main route linking the townships of Acomb and Rufforth. From this it must be inferred that the route was of some significance and would have been used by the public at large to travel between these two places.
40. Detailed examination of the Acomb Grange map from 1760 also demonstrates further matters relevant to the order. First, however, in order to assist in interpretation of this map it is necessary to address a small point relating to the history of cartography in western Europe. From the middle ages to the 18th century it was common for cartographers to orient their maps so that east was at the top of the page and west at the bottom (the word “orient” comes from Latin *oriens* meaning east). Therefore, the northern edge of the map is the left hand edge of the page. To compare this 1760 map to a more recent map it is necessary to turn it 90 degrees clockwise.
41. The map specifically notes that the stretch of road in question is 1 mile from Rufforth in the west and a ¼ mile from Acomb in the east. This reinforces the OMA’s view at

para 39 that Grange Lane was the most significant route linking the ancient villages of Rufforth and Acomb prior to the building of the turnpike.

42. Comparison of the road shape and alignment shown on the Marwood map with early OS maps confirms that this is a section of Grange Lane. It covers the stretch from SE 5441 5086 (marked as A on the map) in the west to SE 5554 5084 (marked as B on the map) around the mid point of the lane. From there the section noted as Wm (William) Stoddard Road continues as far as SE 5640 5083.
43. Cross referencing the above grid references derived from the 1760 map with the order illustrates a remarkable consistency with today. The western end of the order route is at SE 5440 5086 and the eastern end is shown at SE 5641 5084. Changing the alignment of a road is something that has never been undertaken lightly at any time in history. That these positions have remained consistent for almost 260 years reinforces the OMA's view that the order route is an ancient highway of some sort.
44. Furthermore, the map clearly states that in the middle of the 18th century Grange Lane was thought to be an ancient route. This suggests that the order route's history extends much further back in time than available records can substantiate.
45. The note on the map that it was "repaired by Marwood" is also a matter for consideration. At first glance, the modern interpretation of "repaired by Marwood" might be that the order route was being maintained privately, thus potentially casting doubt on it being a public right of way. However, this interpretation would be in error.
46. From the Highways Act 1555 until the provision was repealed by the Highways Act 1766 the maintenance of roads was the duty of all the residents within a parish. Each resident was required to give four days labour each year towards the upkeep of the roads among other duties.
47. In light of this information the note on the 1760 map should be interpreted as an adjacent land owner taking on the responsibility of maintaining that section of the order route as part of the duties owed under the Highway Act.

48. Far from casting doubt on its public status, this note (in the legislative landscape of 1760) reinforces that this already ancient lane was a highway maintained by and for the residents of the parish as well as travellers passing between the townships. Today we would characterise such a group of people as constituting the public and as such reinforces the OMA's view that the order route is an ancient public highway of some sort.
49. The records of the Turnpike Trust provide documentary evidence of the order route and its significance. As noted above the Turnpike Trust lodged several proposals for improvements to the turnpike with West Riding's Clerk of the Peace. On each plan accompanying the proposals the order route was always depicted as a short spur.
50. That the plans show the order route gives an indication that Grange Lane was considered a way that needed to be taken into account by any proposals to alter the turnpike. In addition, it must also be noted that none of the proposals ever sought to remove or change the junction between the turnpike and the order route.
51. This demonstrates that the Turnpike Trust were aware this link was important to users of the turnpike but that it was not within the Turnpike Trust's responsibilities. Hence they were unwilling to invest in a highway that would not yield a financial return in the form of tolls. From this it is reasonable to infer that use of the order route was sufficiently high to indicate that it was a public highway of some sort.
52. Furthermore, the inclusion of plans for New Gate Bridge on the turnpike allows another historical quirk to add to the narrative of the order route. Many towns and cities across the country have road names ending with the word "gate." Often this indicated a road where there was a gate into the town. An example in York is Micklegate. However, the Old Norse word for street or road was "gata", indeed the modern Swedish word for street is "gaten". Consequently some roads in the north of England (and other areas that constituted the Danelaw) that have never had any sort of town gate on them, nevertheless are named gate.

53. This appears to be the case with New Gate Bridge. This suggests that the turnpike was known, probably only locally, as New Gate meaning New Street. As both the order route and the turnpike are the only two ways linking the townships of Acomb and Rufforth it is reasonable to conclude that because the B1224 is “new street”, the order route must be the old, or pre-existing, street. This adds further to the OMA’s view that Grange Lane is an ancient public highway of some sort.
54. That the east section of Grange Lane was legally recorded as a sixty feet wide public highway by the Acomb and Holgate Inclosure Award demonstrates beyond doubt that public rights exist over the route shown in the award. However, what is shown directly in the award is largely coincident with what is recorded on the OMA’s list of streets as a publicly maintainable highway. It does not offer any direct evidence that the order route carried a public right of way.
55. That notwithstanding, it is notable that the inclosure award refers to the continuation of Rufforth Road as being to an “antient gate” (antient is an archaic form of ancient). This again suggests that it was an old pre-existing road, further adding to the OMA’s view that the order route is an ancient public highway of some sort.
56. The Rufforth Inclosure Award describes the western end of Grange Lane as a “*private or occupation carriage road*” with a width of twenty four feet. Examination of the award map shows that the awarded road is part of the route that was diverted by the Minister for Transport in 1953. This means that, as with the Acomb and Holgate Inclosure Award, the Rufforth Inclosure Award offers no direct evidence that the order route carried a public right of way.
57. Again, that notwithstanding, it is notable that once the enclosure commissioners finish describing the part of the order route that is affected by the award they say that Rufforth Grange Road continues “*in its ancient course.*” This adds further to the OMA’s view that Grange Lane is an ancient public highway of some sort.
58. Whilst the award sets out this short section of Grange Lane as being a private or occupation carriage road, the later text stating that they were “*to be by law repaired*

and maintained” is indicative that they were intended to be public. This position reflects the view reached in *Dunlop v Secretary for the Environment* (“the Dunlop case”) and in many other cases. Although it is acknowledged by the OMA that the Rufforth Inclosure Award enabling Act predates the General Inclosure Act 1801 (“the 1801 Act”) that was the subject of the Dunlop case. Nevertheless, the wording of the award matches that of the 1801 Act so closely that the OMA contends that adopting the principles of the Dunlop case for this case is reasonable.

59. It is important to remember the enclosure of land did not apply to all the land within a parish. Rather enclosure acts and their subsequent awards usually only applied to those areas of land that had previously been common or parish land. They did not affect land that had already been enclosed by local agreements or sales.
60. As is still often the case today, the legislative framework for inclosure was trying to catch up with and formalise processes that were already happening. Inclosure by private act of Parliament had begun over a century before. Consequently some areas of land were never subject to the statutory inclosure process because either they had already been enclosed by a local process or because they were already privately owned.
61. The picture of the order route being created by the two inclosure awards is that it was not thought necessary by either parish to subject the area around the order route to enclosure. It appears reasonable to the OMA to assume that this was because their status had already been determined by one or both of the methods outlined above.
62. In addition, examination of the 1760 map lends weight to the conclusion that enclosure of the land around the order route happened before the formal inclosure awards. This map depicts a large number of small fields and a wood. It is clearly not the large, open landscape that characterised the parish fields and commons. This adds further weight to the OMA’s view that the order route is an ancient public highway of some sort.

63. Examination of the map evidence and the Object Name Book that came after the inclosure awards leads, inexorably, to a single conclusion. Whilst the order route was undoubtedly superseded as the principle route between Acomb and Rufforth by the turnpike, the depiction of Grange Lane has remained remarkably consistent. From 1850 to 1992 the order route has been depicted as an enclosed lane with a visible walked or surfaced strip in the middle.
64. Whilst the importance of Grange Lane appears to have faded from local memory, the mark left on the landscape by this ancient road is still visible today, more than two centuries after the turnpike was built.
65. As mentioned above, it appears that Grange Lane had faded somewhat from some local memories at least by the time the tax assessors arrived in 1910. However, not making deductions for a right of way does not mean that public rights did not exist. Rather the OMA views this as being consistent with the view many land owners hold towards ancient ways today. That is to say that they believe that their boundary stops at the boundary of the lane leaving many routes apparently not owned by anyone. Therefore, the lack of acknowledgement within the Finance Act records does not undermine the OMA's view that Grange Lane is an ancient public highway of some sort.
66. The stopping up of the western end of Grange Lane to enable the continued peace time use of Rufforth Airfield demonstrates that even as recently as 65 years ago the lane still had some reputation as being a public right of way, albeit a footpath. This meant that the Minister had to make a formal order to remove public rights over that part of the airfield. This again reinforces the OMA's position that the order route carries public rights of some sort. Whether the Minister's order was sufficient to stop up any higher rights that existed over the route is a question beyond the scope of this statement of case.
67. The user evidence received from the Rambler's Association and the declaration made by J.N. Sykes in 1981 both serve to set an extremely clear date when the public's rights over the route were first called into question (as defined under the

Highways Act 1980). Therefore the statutory period that must be considered is 1961 to 1981. It is the view of the OMA that this period has two significant effects on the evidence supporting and refuting order.

68. First, it is unlikely that many people who used the route in this period would be available to give live evidence at a hearing or inquiry meaning that there is little prospect of being able to test their evidence. This reduces the evidential value of the forms.

69. Second, section 31(6) declarations are not retrospective. In other words they can only indicate the intention of the land owner going forward from the date of the declaration. As the declaration made by J.N. Sykes and the fencing across the order route happened at the same time, the declarations do not have any relevance for consideration of this order. The later declaration made by Mr and Mrs Swiers is also rendered irrelevant because it was made after the public's right to use the route was called into question.

70. Nevertheless, as user of the route has been evidenced it is necessary to apply both the statutory and common law tests.

71. There is nothing within the user evidence or the objections that suggests the user was ever carried out by stealth, by force or with permission which means that the use was likely to have been as of right as required by statute.

72. With regard to the statutory test, the OMA's view is that the eight user forms adduced were sufficient to raise an allegation that a right of way exists. However, in isolation they do not demonstrate sufficient user to indicate that the order route exists as a public right of way on the balance of probabilities. Particularly as it is unlikely that this evidence can be further tested owing to the passage of time.

73. With regard to the Common Law test, the OMA is not satisfied that the user evidence taken in isolation is sufficient to indicate that the Common Law test has been met.

74. In conclusion, the OMA's position is that, whilst there is no direct evidence that public rights were created over the order route by some legal process such as inclosure, all the evidence available demonstrates that the order route is an ancient road of some significance. By the time local authorities were charged with the systematic recording of such public rights the memory of the order route being public had faded to the point where it was overlooked. This order seeks to rectify that oversight.
75. Therefore it is proper to consider what sort of public rights exist over the route. Given that all the available evidence points to this being the only highway between Acomb and Rufforth before the construction of the turnpike the OMA's view is that Grange Lane was open to all forms of traffic. However, routes that were open to all forms of traffic need to be examined in the light of the provisions of the Natural Environment and Rural Communities Act 2006 (NERC).
76. NERC has the effect of extinguishing rights for mechanically propelled vehicles along such routes, except under the following prescribed conditions:
- a) "a way whose main use by the public during the period of 5 years ending with the commencement (of the Act) was used for mechanically propelled vehicles;
 - b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36 (6) of the Highways Act 1980 (list of highways maintained at public expense);
 - c) it was created on terms that expressly provide for it to be a right of way for mechanically propelled vehicles;
 - d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used for such vehicles;
 - e) it was created by virtue of use by such vehicles during a period ending before December 1930. "

N.B. Any private rights to use mechanically propelled vehicles, for example to access property, on routes which previously enjoyed public vehicular rights are retained.

77. There is no evidence to suggest that conditions a, b, c, or d apply. There may be a case that condition e is relevant but given that the order route's status as the primary route between Acomb and Rufforth finished at the end of the 18th century the OMA is sceptical about finding any relevant evidence of motorised vehicle use. Therefore it is the OMA's position that it is very likely that the rights for mechanically propelled vehicles have been extinguished.
78. Consequently the OMA is asking the secretary of state to modify the order by deleting all references to footpath and replacing them with restricted byway.
79. As well as considering what status the order route should be, it is also appropriate to consider the kind of evidence that the OMA believes would be required to successfully refute the existence of public rights.
80. The OMA's position is that the order route is an ancient public highway linking two villages that were already in existence in 1086. As such, the order route has existed beyond the general memory of the communities it served. Neither village appears to have ever been granted a charter to hold a market. This means that the nearest market for both villages would have been held in York. The OMA considers it inevitable that a public highway existed between them. Furthermore, it is the OMA's view that such a public highway has existed between Rufforth and Acomb for as long as they have been settlements.
81. As the order route has existed beyond the general memory of the communities it served, it would require some formal, public process to remove or alter those rights. This could only be done (from 1760, the earliest direct evidence available) by the quarter sessions or, later, the magistrate's court. Alternatively, in more recent times the relevant highway board or authority could have made an order that stopped up public rights.
82. Despite extensive research, no such order or court ruling has been found by the OMA. It is also important to note that the Minister of Transport believed a formal process was necessary to change Grange lane as recently as 1953.

Comment on the objections

83. Each duly made objection and representation is considered below in the order set out at para 2 above. The full text of the objections can be found at appendix 4. The OMA's comments on the objections can be found in the sub paragraphs following the objection.

84. The objection of Mr A. Atkinson was made on the grounds that the route has never been regarded as public, making the order route public would encourage unauthorised vehicle use, and that the nearby A1237 makes using the route unsafe.

- a) Mr Atkinson has not provided any evidence to substantiate his assertion. In the light of the evidence discussed above the OMA does not agree with Mr Atkinson.
- b) The legislation does not allow possible increases in unauthorised vehicle use to be considered.
- c) The legislation does not allow the safety of users of the route to be considered.

85. The objection of Bartle and Son on behalf of Mr and Mrs Swiers was made on the ground that the evidence is unfounded, inconclusive, and insufficiently reliable. The objection also cites the way being dangerous for users if it becomes public.

- a) Bartle and Son have not expanded on their views nor have they cited specific instances that they contend demonstrate the unreliability of the evidence. The OMA is looking forward to receiving a full explanation of their clients' views in their statement of case.
- b) The legislation does not allow the safety of user of the route to be considered.

86. Bartle and Son on behalf of Mr and Mrs Swiers submitted additional representations (see appendix 4), most of which reiterated previously made comments. The new comments relate to it not being possible to rely on commercial maps indicating definitively a public right of way. In addition they request that the inspector determines the case by means of a local public inquiry or at least a local hearing.

- a) The OMA accepts that commercial maps do not directly evidence public rights in the same way a map accompanying an inclosure award might. Nonetheless it is important to remember that such maps were made available to anyone who could afford to buy them. Consequently, the depiction of any route on them must carry a strong inference that public rights existed over that route, even if the exact nature of those rights is not specified.
- b) The OMA notes the objectors' request.

87. The objection of Bartle and Son on behalf of Mr Sykes was made on the ground that the evidence is unfounded, inconclusive, and insufficiently reliable. The objection also cites the way being dangerous for users if it becomes public. A report by Mr M. Taylor (see appendix 4) on behalf of the objector was submitted prior to the order being made but is dealt with below for the sake of completeness.

- a) Bartle and Son have not expanded on their views nor have they cited specific instances that they contend demonstrate the unreliability of the evidence. The OMA is looking forward to receiving a full explanation of their client's views in their statement of case.
- b) The legislation does not allow the safety of user of the route to be considered.
- c) The OMA agrees with all the factual points made by Mr Taylor in his report which constitutes a précis of the effect of the Rufforth Inclosure Award as it relates to the Rufforth Grange Road. As mentioned in para 56 above, the route mentioned in the inclosure award was later stopped up by the Minister of Transport and therefore has no direct evidence to offer this case.

88. Bartle and Son on behalf of Mr Sykes submitted additional representations (see appendix 4), most of which reiterated previously made comments. The new comments relate to it not being possible to rely on commercial maps indicating definitively a public right of way. In addition they request that the inspector determines the case by means of a local public inquiry or at least a local hearing.

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could afford to buy them. Consequently, the depiction of any route on them must carry a strong inference that public rights existed over that route, even if the exact nature of those rights is not specified.

b) The OMA notes the objectors' request.

89. The objection of the British Horse Society was made on the ground that the evidence demonstrated that higher rights than footpath existed over the order route.

a) The objection of the British Horse Society (among others) caused the OMA to reflect on the available evidence. Finding that there was a good deal of merit in the society's view, the OMA has resolved to ask that the inspector modifies the order to show the order route as a restricted byway.

90. The objection of the Byways and Bridleways Trust was made on the ground that the evidence demonstrated that higher rights than footpath existed over the order route.

a) The objection of the Byways and Bridleways Trust (among others) caused the OMA to reflect on the available evidence. Finding that there was a good deal of merit in the trust's view, the OMA has resolved to ask that the inspector modifies the order to show the order route as a restricted byway.

91. The objection of the Mrs Cook was made on the ground that the evidence demonstrated that higher rights than footpath existed over the order route.

a) The objection of Mrs Cook (among others) caused the OMA to reflect on the available evidence. Finding that there was a good deal of merit in Mrs Cook's view, the OMA has resolved to ask that the inspector modifies the order to show the order route as a restricted byway.

92. The objection of Ms Farthing was made on the grounds that the order route was a drove way, that it was not acknowledged as a right of way when the A1237 was built, the cost of making the route accessible, current operations would be jeopardised by the route becoming public, the way being dangerous for users if it becomes public, there is no need for it, and this matter had already been dealt with by the OMA.

- a) Ms Farthing has not provided any evidence to substantiate her assertion that the route was a drove way. The OMA is looking forward to receiving this as part of her statement of case.
- b) The OMA is not clear on how this part of the objection is relevant within the legislative framework. Again the OMA is looking forward to receiving clarification in Ms Farthing's statement of case.
- c) The legislation does not allow the cost of making the route accessible to be considered.
- d) The legislation does not allow the impact the route being recorded as public might have on private operations to be considered.
- e) The legislation does not allow the safety of users to be considered.
- f) The order is not addressing a question of need. The order is seeking to record a way that the OMA considers is already a public on the definitive map as part of the OMA's duties under section 53 of the Wildlife and Countryside Act 1981.
- g) This part of the objection is not relevant because it is a misunderstanding of the process the OMA is required to follow. The objector is referring to the decision session of the Executive Member for City Strategy where authorisation was given to make the order that is the subject of this statement.

93. Ms Farthing supplemented the objection detailed at para 92 above (see appendix 4) with further comment including a detailed view on the Rufforth Inclosure Award and Map, and the Minister of Transport's order and agreement that affected the part of Grange Lane crossing Rufforth Airfield. The objector contends that the Turnpike Road is the same as the A1237, that part of Grange Lane was stopped up, that the 1959 Highways Act describes in detail the route of footpaths that do not encompass Grange Lane, that the inclosure award sets out what is today called Grange Lane as a private road, the report by the OMA in 2000 proves that it had not been accessed by the public for twenty years, and that the CLA states that a right of way should have a purpose. The objector also draws attention to the OMA's recent decision session report on the order not dealing with the cost of fencing the route, the safety implications of the route becoming public, and the impact on crime and disorder that making the route public would have (see appendix 28).

- a) The OMA's view is that the objector has misunderstood the inclosure map. The A1237 did not exist until late 20th century. The route shown on the map is the Turnpike which later became the B1224.
- b) The OMA agrees that part of Grange Lane was stopped up. This is dealt with at para 65 above.
- c) The OMA agrees with the objector that the footpaths described in the stopping up order made under the Highways Act 1959 do not encompass the order route. This left the order route unrecorded, hence the need for the current order.
- d) This is an accurate reflection of what the inclosure award records. However, in the current legislative framework the later text in the award indicates that the route was intended to be public (see para 58 above).
- e) This appears to be a misunderstanding. The OMA contends that the relevant statutory period of use is 1961 to 1981. This period was set by the erection of a fence across the route and the submission of a section 31 declaration by Mr Sykes.
- f) The OMA notes the general views of the CLA. However the legislation does not allow them to be taken into account.
- g) The three other matters also referenced (cost, safety, and anti-social behaviour) cannot be considered under the legislation.

94. The objection of Mr and Mrs Grainger was made on the ground that allowing the public to access the order route would pose a disease risk to their pig rearing business.

- a) The legislation does not allow the increased potential for disease spread to be considered.

95. The representation of Mr Morton related to the impact the way being recorded as public might have on future development of neighbouring lands.

- a) Whilst the legislation does not allow such matters to be considered, the OMA did offer the opinion that it was unlikely that his development plans for land adjacent to the order route would be adversely affected if it was recorded on the definitive map.

96. The objection of Mr Porter was made on the grounds that users of the route would be in danger from livestock and that livestock would be in danger from users of the order route.
- a) The legislation does not allow the safety of users to be considered.
 - b) The legislation does not allow the safety of livestock to be considered.
97. The Ramblers Association made representations supporting the order route being recorded as a public footpath. In addition the Ramblers Association supports any application to record the order route with higher rights.
- a) The OMA has considered the objections to the order route being recorded as a footpath and has resolved to ask the inspector appointed to determine this case to modify the order to show the order route as a restricted byway.
98. The objection of Rufforth with Knapton Parish Council was made on the grounds that the way had been stopped up by the Minister of Transport, that the status of the route had previously been investigated with no public rights being found to exist, the order route is not recorded as a public right of way, the route is no longer discernible in places, and a public right of way is not desirable.
- a) This part of the objection is not relevant because only the section of Grange Lane that crossed the airfield was stopped up by the Minister of Transport.
 - b) The parish council has not provided any evidence to substantiate its assertion that the route has already been investigated and found not to exist. The OMA is looking forward to receiving this as part of the council's statement of case.
 - c) This does not constitute a valid objection because if the route was already recorded as a public right of way an order to record it as a public right of way would not be necessary.
 - d) The legislation does not allow the route being lost on the ground in places to be considered.
 - e) The legislation does not allow the desirability of a public right of way to be considered.

99. The objection of Mrs Swiers was made on the grounds that she was not aware that the order had been made and that the route was recorded as a public right of way.
- a) The OMA carried out the statutory consultation in accordance with the legislation and does not accept this part of the objection.
 - b) This does not constitute a valid objection because if the route was already recorded as a public right of way an order to record it as a public right of way would not be necessary.
100. The objection of Mr Swiers was made on the grounds that the order route becoming public would encourage illegal waste tipping, be unsafe for users of the route, and affect the safety of livestock.
- a) The legislation does not allow the impact of the route being public on the amount of illegal waste disposal to be considered.
 - b) The legislation does not allow the safety of users to be considered.
 - c) The legislation does not allow the safety of livestock to be considered.

Conclusion

101. No evidence has been found or adduced that in any way challenges the OMA's view that the order route is an ancient public highway.
102. Having reflected on the available evidence the OMA considers that in making the order for a footpath a mistake was made. The OMA considers that the order route is a public highway of some considerable antiquity and has been in regular use by the public beyond the scope of the available evidence.
103. Therefore, the OMA respectfully asks that the Secretary of State modifies the order to show the route as a public restricted byway rather than a public footpath and then consults on the proposed modifications.

The Council of the City of York
September 2018