

## Response to Objector's Comments as Regards a Bridleway Running Along Hurns Lane From the A19 (formerly Shipton Street) to Moorlands in the Parish of Skelton.

PINs Ref: ROW/3318409

Presented by: British Horse Society (BHS) c/o Catriona Cook MBE of [REDACTED]

It is understandable that the three objectors are unaware of the historical past as regards horse transport across this area. The past is a foreign country and many terms had different meanings. All three think that the order route was private (modern day meaning) but I was told by my father and elders born in the 1870's that private had a different meaning and application as regards historical roads.

### Historical Meaning of Public and Private Roads

Language evolves over the centuries and today when referring to roads the words 'public and private' refer to who can use them. Historically the origin of the words 'public and private' as regards roads was to do with the origin of the land, the King's highway versus the private individual's land. And over the centuries the difference evolved into the means of repair and not as to user. Since 'public' referred to the main roads, the commissioners were not ultra vires when awarding roads for use of the public less than the width stipulated for public roads under the General Inclosure Act 1801. The following shows the legal origin of the word 'private' as regards roads and examples of use of both 'public' and 'private' by diarists and parliamentary documents.

**Private Carriage Roads:** was a common term for the local and byway road network during the inclosure period. The following document of 1654 explains its meaning, that is that a private way that was vicinalis (or communis strata), was a common or local way. This was some 100 or more years before the inclosure process, which legal principle would have been known to the commissioners, unlike now some 200-300 years later, when the meaning of private has evolved into only meaning particularis. The courts have accepted that communis strata roads were used by the public, which is another term for private vicinalis roads.

**1654 William Sheppard, Serjeant at Law** and Oliver Cromwell's legal expert discusses the two types of vehicular way, public and private and how the private ways also fell into two types:

#### ***"The Second Part of the Faithful Councillor: Or the Marrow of the English Law"***

*A Cart-way, for this is jus eundi, vehendi, et vehiculum, et jumentum ducendi, and this is it which in the Law-books is called Chimin. And from hence doth come the word Chiminage, which doth signifie a Toll due by custome for the having of a way through a Forrest (the which is sometimes in ancient Records called pedagium) And this way also is two, fold.,*

*Publique, the which is called via regia, the Kings High-way, or the Royall way, which is the way that leadeth from one Village to another, and to Market Townes, and this is a way for all men, and wherin every man ought to pass to and fro without let, which is called the Kings highway, because the King hath at all times passage in it for himself and all his people, and he may*

*punish all the Nuisances and abuses done in it.*

**Private**, and then it is either:-

**Vicinalis** that which doth belong to a Village or Town, or that which is in, or leadeth to, or from a Village, or doth serve for a Village to lead to the high-way, Church, Market, Field, or the like, and this way is called **communis strata**, or

**Particularis**, which is such a way as one or more hath by grant, or Prescription through another man's ground, either from one Close to another, or from his house into the field, high-way, or the like: And this way is sometimes appendant, (i) adjoining to some other thing as house or land, and appertaining therunto; as if a man hire a Close, or Pasture, & hath a Covenant for Ingress & Egress, to and from the said Close through the ground of some other man, through which otherwise he might not pass: Or it may be that which is called Reall, which is when a man purchaseth a way through the ground of another man, for such as do, or shall dwell in such a house, or for such as shall be owners of such a Mannor for ever; Or it is in grosse. (i) Such a way as a man doth hold principally and solely by itself; As where one doth covenant for a way through the ground of another man for himself and his Heirs.

**So that there are high-ways, common ways, and private ways."**

*Terms of the Law, (Coo. Super Litt. 56: Kytch. fol. 137. 35. Broo. (Chimin. in to Stathan Chimin 1.20 Ass:28.39 H.6.6.*

#### **1654 Marrow of the Law original**

<https://books.google.co.uk/books?id=ghIAAAAcAAJ&pg=PA309&dq=marrow+of+the+english+law+particularis&hl=en&sa=X&ved=0ahUKEwiXvIjc7pbSAhVhCMAKHUFeDSUQ6AEIGjAA#v=onepage&q=marrow%20of%20the%20english%20law%20particularis&f=false>

**1939 Oxford Shorter Dictionary:** "**Vicinal:** Vicinal way or road, a local common way as distinct from a highway; a by-road or cross-road."

**1980 Highways Act:** Under maintenance covers highways maintained at public expense and 'private streets' which are not publicly maintainable but are still highways for use by the public.

**1850 (reprint 1989) Dictionary of Archaic Words:** "**Way Wardens:** Keepers of private roads." Way wardens would not have been in charge of private particularis roads.

**1734 (reprint 1996) The Complete Parish Officer: Surveyors, etc.** page 81 this explains that every inhabitant may bring an action, meaning that they were public as to use:

*"Before I come to the Office of Surveyors of the Highways, I shall let you know what are Highways, and what are private Ways in the Eye of the Law.*

*And first, Any Cart, Horse or Foot-way, common to all People, is the Kings Highway; (whether it directly lead to any Market-Town or not) and a Nuisance in any of the said Ways, is punishable by Indictment.....*

*A private Way is that which leads from a Village, etc. to the Parish Church, or Fields, without any Communication with a great Road; which is to be repaired by the Village or Hamlet, and*

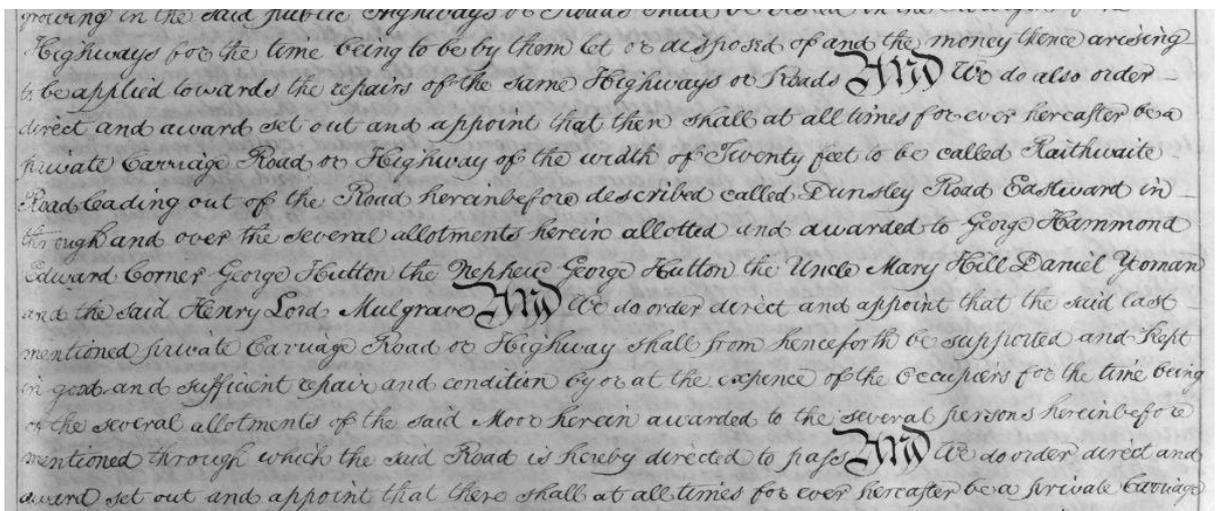
sometimes by a private person; (contra of Highways, the whole Parish shall be charged). If such a Way be out of Repair, every Inhabitant may bring an Action.....”

### Examples of Inclosure Awarded Private Carriage Roads Being Regarded as Minor Public Roads

The first example from North Yorkshire called the private carriage roads highways. The Derbyshire example showed that the private carriage roads were used as minor public roads.

#### 1793 Newholme-cum-Dunsley Inclosure Award, North Yorkshire. ZPA NYCC Archives

“**And** we do also order direct and award set out and appoint that there shall at all times for hereafter be a **Private Carriage Road or Highway** of the width of twenty feet to be called Raithwaite Road leading out of the Road hereinbefore described called Dunsley Road Eastwards in through and over the several allotments herein allotted and awarded to George Hammond, Edward Corner, George Hutton the nephew, George Hutton the uncle, Mary Hill, Daniel Yoman and the said Henry Lord Mulgrave. **And** we do order direct and appoint that the said last mentioned private Carriage Road or Highway shall from henceforth be supported and kept in good and sufficient repair and condition by or at the expense of the occupiers for the time being of the several allotments of the said Moor herein awarded to the several persons hereinbefore are mentioned through which the said Road is hereby directed to pass.”



#### 1831 Brampton Inclosure Award, Derbyshire: Nether Moor Road, Private Carriage Road

“**And** we do hereby direct all the said Private Carriage Roads so hereinbefore by us set out as aforesaid (save and except the said Road called the Nether Moor Road) shall be forever hereafter repaired by the person or persons whose Lands adjoin the same. **And** that the said excepted Road called Nether Moor Road as aforesaid shall on account of the great public Traffic and Travelling thereupon be forever hereafter repaired by the Surveyors of the Highways of the Parish of Brampton aforesaid as part and parcel of the General Highways of that Parish.”

**Conclusion re 1807 Skelton Inclosure Award:** this means that when referring to public roads they meant the main roads and private roads were the byways used by the public. The county maps showed the order route as the latter category. The order route was not awarded since it was an existing road, hence its winding nature and the new allotments being described as being bounded by it.

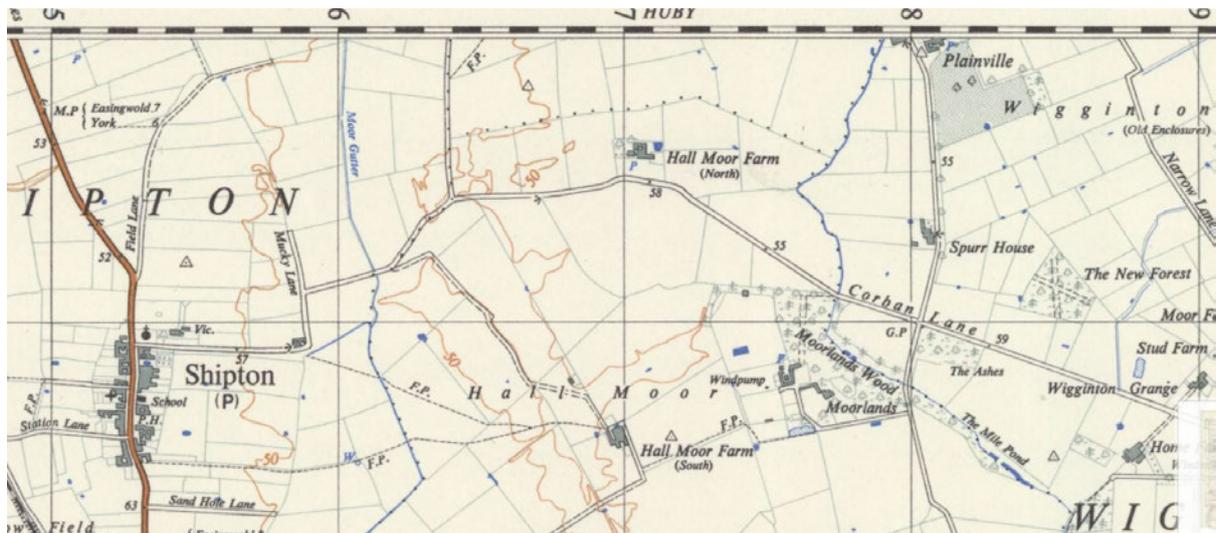
**1630 Map compared with 1946 2 ½" OS Map, 1807 Inclosure Plan & County Maps as Regards Corban Lane and the Order Route.**

I believe that Corban Lane was **not** Road 42 on the 1630 map for the following reasons. Road 42 when travelling from the west swings south east, curving in a shallow U round the building marked 3, which is not tight up against the parish boundary with Huby. Corban Lane from the west swung north east with a northern curve, an upside down shallow U or V much nearer the parish boundary. I believe that Corban Lane developed at a later period but is clearly shown on the 1807 Inclosure Plan as a gated unfenced route across the moor and by the County Maps, being depicted as a shallow upturned V. (Plan below & BHS SoC p14 Greenwood, p19 Teesdale, p23 Hobson) The sunken curve of road 42 is similar to the sunken curve of the subsequent footpath route, part of which was the order route. The route was called the Shipton to Wiggington Road on the 1630 Map and again Shipton to Moorlands in the 1910 Finance Act evidence, nearly 3 centuries later.

1630 Map



1946 2 1/2" OS



1807 Inclosure Plan: Corban Lane, gated and unfenced across the moor.



**Terminology:** one objector debates the words bridle road and bridleway. As with the words public and private, history and geography effect terminology. The following are all terms for a bridleway: Bridle Path, Bridle Road, Bridle Stone, Horse Stile or Sty, Halter Path, Horse Road, Sack & Seam Road. (1850 reprint 1989 Dictionary of Archaic Words)

**1910 Finance Act:** on reflection I think that this is good evidence since a bridle road was acknowledged and we do know where it was from the OS maps. Which showed it because it was in obvious use by the public and coincides with the order route.

**1977 Diversion as a Footpath:** as already stated riding was regarded as an anachronism during the definitive map process and was at a very low ebb after the War. I was aware of the definitive map process in two different parishes, 200 miles apart. The attitude of the few who rode can be summed up by a lady I rode with. When asked by my father why she did

not object to the bridleways that we had ridden that day being shown as footpaths, she replied "These new maps are for townies who don't know where they can walk. All the riders and farmers know where the bridleways are, so these maps are not relevant." The Rambler's oversaw most surveys and the BHS Access department did not exist until 1979. Things were no better during the 1970's and there was no means of changing the definitive map until the 1981 Act; which meant that the diversion could only be progressed as a footpath.

**Summary:** for nearly three centuries during the era of horse transport the order route has been depicted on ten different documents, initially as a road and subsequently as a bridle road. Shown as a bridleway on OS maps because it was in obvious use by the public, and thus the historical truth is that it could be used by the public riding horses.

I respectfully ask you to confirm the order as a bridleway.

6.4.24