



Order Decision

Inquiry opened on 10 December 2024

by **K R Seward Solicitor, MIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 3 February 2025

Order Ref: ROW/3278454M

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Kirklees Council (Huddersfield 231 – Sandy Lane to Nether Moor Road, South Crosland) Definitive Map Modification Order 2020.
- The Order is dated 11 September 2020 and proposes to modify the Definitive Map and Statement ('DMS') for the area by downgrading a way recorded as a byway open to all traffic ('BOAT') to a bridleway and to record a number of limitations to the route, as detailed in the Order plan and described in the Order Schedules.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act, notice has been given of my proposal to modify the Order.

Summary of Decision: The Order is confirmed subject to the modifications previously proposed as set out below in the Formal Decision.

Preliminary Matters

1. This Decision follows and should be read in conjunction with my Interim Order Decision ('IOD') issued on 5 January 2024. References to paragraphs within the IOD are placed within square [] brackets and references to map points are those marked on the proposed modified map, the OMA having sought correction of Point D. The IOD followed an Inquiry held over dates in May and October 2023 ('the 2023 Inquiry').
2. The Order proposed to downgrade a way currently recorded in the DMS as a BOAT to a bridleway, and to add limitations. The effect of the Order, if confirmed with the modifications that I proposed in my IOD, would be to change the status of the way from a BOAT to a footpath with limitations.
3. My conclusion was reached having found [195], on the balance of probabilities, it had not been demonstrated that an error had occurred such that no public rights of way existed on the Order route to justify its deletion from the DMS altogether. However, there had been a discovery of evidence which (when considered with all other relevant evidence available) was sufficient to show that the BOAT subsists as a highway of a different description, namely a public footpath.
4. Advertisement of the proposed modifications resulted in 10 objections and 2 representations. All were duly made. Therefore, the Inquiry was re-opened.
5. At the time of the first Inquiry, Mrs Bradley was the sole statutory objector to the Order. Both Mr and Mrs Bradley ('the Bradleys') objected to the proposed modifications, maintaining the position that no public right of way exists over the route and that it should be deleted from the DMS altogether. Andy Dunlop also objected querying the processes leading to the recording of the Order route as a public right of way. He subsequently confirmed support for the Bradleys' position.

6. Two separate objections were expressed to be made on behalf of The British Horse Society ('BHS'). At local level Mark Corrigan, Access Field Officer, produced more user evidence for a bridleway whereas Will Steel, Head of Access, took a different position at national level arguing for a restricted byway on legal grounds. Due to this divergence in stance, I sought clarification from Mr Corrigan if his objection should be taken as made on behalf of Kirklees Bridleways Group of which he is Chairman. He confirmed that to be correct.
7. Kieron Foster originally objected to the proposed modifications on behalf of Cycling UK. He subsequently pursued his case in writing for a restricted byway as Access Officer for the Byways and Bridleways Trust ('BBT').
8. Kirklees Council, as Order Making Authority ('OMA') made representations on the modified map to the effect that: (i) the line style should be changed to that for a footpath (ii) the word 'bridleway' requires correction to 'footpath' in the key, and (iii) grid reference SE 1170 1338 was not amended on the map to SE 1167 1336 to correct an error in the grid reference given in the Order for point D. These are matters easily correctable should the proposed modifications be confirmed.
9. While remaining of the view that the route should be recorded as a bridleway, the OMA's statement of case stated that it is otherwise generally in agreement with the conclusions in the IOD. Although it does not wholly agree with my conclusions on particular evidence, the OMA recognises that the conclusions reached appear to be reasonable ones. The OMA initially stated that it would take a neutral stance at the re-opened Inquiry. This was with the caveat that the OMA may re-visit its position if further arguments were made to challenge my view that section 32(4) of the National Parks and Access to Countryside Act 1949 has retrospective effect. No such challenge was made to my finding that equestrian and footpath use would have been 'by right' with effect from 20 April 1966, that being the relevant date of the 1st DMS.
10. Nonetheless, the OMA took an active part in the Inquiry having explained that its participation was to maintain what was its alternative case at the 2023 Inquiry for footpath status and to oppose any deletion of the Order route or further modifications. It also resists non-confirmation of the Order to leave the route as a BOAT. Therefore, its position is not neutral.

The 2024 Inquiry

11. The Inquiry was fixed as an in-person event. To accommodate those unable to attend, the OMA arranged for proceedings to be observed remotely. I agreed to allow Mrs Cook of BBT to give evidence online. All closing submissions were heard remotely on 17 December 2024.
12. At the start of the Inquiry Susan Taylor sought to introduce copies of the Bradley's mortgage documents as late evidence. I had already rejected the late submission of these documents as not relevant to the points in issue. No reasons were given to cause me to come to a contrary view. Further attempts were made over the course of the Inquiry to re-submit them. As made clear at the time, the Inquiry is not concerned with whether there is any breach of mortgage terms. Nor is it concerned with addressing planning related matters or alleged flaws in the OMA's decision-making process in making the Order.

13. In refusing to accept the mortgage documents, I informed Miss Taylor that she may submit evidence in writing by the close of the Inquiry in line with Rule 21(8) of the Rights of Way (Hearings and Inquiries Procedure)(England) Rules 2007. I reiterated this option at the end of week 1. It was further clarified in writing via the case officer that a note could be supplied before the Inquiry closed and that I would accept an email. Instead, Miss Taylor included arguments within her closing statement over the mortgage deed along with 'several planning permissions', none of the documents being in evidence. After Counsel for the Bradleys (Ms Stockley) understandably objected, Miss Taylor confirmed that these paragraphs (24 to 26 (inc)) within her closing statement should be struck out. I have disregarded those submissions accordingly.
14. Following closing submissions, Miss Taylor made costs applications against both the Bradleys and OMA. Those applications were subsequently withdrawn. Her threat to claim costs against the Planning Inspectorate for perceived failings in my IOD was not pursued once informed that costs applications at an Inquiry can only be made against participants and not the decision maker.
15. Whilst BHS objected to the IOD and provided a statement of case, they did not submit a proof of evidence or take the opportunity to appear at the Inquiry even though Mr Steel from BHS logged in each day to observe proceedings remotely. It was therefore a surprise to receive a written closing statement from Mr Steel. Unless appearing at the Inquiry, there was no entitlement to make a closing statement. One observer suggested that the Planning Inspectorate had verbally agreed to BHS delivering a closing. I find this improbable and most likely a misunderstanding of generic information. Only the Inspector could give agreement, and I had not done so.
16. Neither Counsel objected to the BHS submission being accepted as it was brief, and they could address the points in their own closings. That being so, I permitted Mr Steel to read out the closing statement, as an exception to the norm in the individual circumstances. In doing so, I emphasised that by accommodating BHS on this occasion it did not set any form of precedent.
17. Andy Dunlop objected to the IOD and submitted a brief statement of case containing 3 very short points. After I refused to allow Mr Dunlop to cross-examine witnesses unless he was appearing at the Inquiry himself, he gave very brief oral evidence on the walking surveys undertaken in the 1950's and 1960s and made generalised references to paragraphs within the so-called 'Leeds Report' (discussed below). Despite the brevity of his own case, Mr Dunlop produced over 9 typed pages of closing submissions purporting to give commentary on a multitude of points, which had never featured in his own case. As such, those taking an opposing view had been unable to question him on, or respond to, his views. It raised a clear issue of procedural fairness. Unsurprisingly, the OMA raised concerns albeit keen to avoid the re-opening of evidence. Eventually, Mr Dunlop decided to withdraw his closing submission entirely and I have disregarded it.

Issues before the Inquiry

18. The re-opened Inquiry proceeded on the basis that evidence would be heard on core points arising from the objections, as set out in my Statement of Matters. In no particular order, the issues are:

- The *Trevelyan* presumption, including the 1st DMS.
 - The effect of section 55(5)(b) of the Wildlife and Countryside Act 1981.
 - Whether the evidence shows that the route was added to the 1st DMS as a road used as a public path ('RUPP') in error.
 - Whether the evidence demonstrates that no public rights of way exist, including the impact, if any, of the land being in strict settlement.
 - Implications of the judgment in *R v SSE ex parte Hood* [1975] 1 QB 891.
 - Implications of the Natural Environment and Rural Communities Act 2006, if any i.e. should the route be reclassified as a restricted byway?
 - Whether any user evidence is relevant.
 - If user evidence may be relevant, from what date was equestrian use 'by right'.
 - If the correct date to apply for the purposes of section 32(4) of the National Parks and Access to Countryside Act 1949 is 1975, does the user evidence suffice to demonstrate that the route has bridleway status?
 - New evidence not previously considered.
19. This decision concentrates on those main points of contention. I use those topics as the framework for this decision, whilst also picking up other points arising. I do not address every single argument raised, it being impractical and unnecessary to do so although I have clearly considered the entirety of material presented.

The Trevelyan presumption

20. BHS said in closing that it has seen no cogent nor compelling evidence that errors of sufficient substance took place in the preparation of the DMS to override the correctness of its depiction as a BOAT. That is hardly surprising when only the BHS explicitly raised the *Trevelyan* presumption and the conclusivity of the current DMS at this resumed Inquiry. Yet the BHS did not participate to explain or advance their point for there to be any counter arguments.
21. Moreover, BHS did not engage in the 2023 Inquiry when the arguments and evidence were heard at considerable length. Neither the BHS nor any other objector truly grappled with my findings that evidence of a mistake *did* exist from the discovery that there was no legal order to record the Order route as required and the incorrect line style on the Definitive Map [39-67, 72]. BHS submitted that an administrative error should not allow an adverse inference as to the correct status of the way. As explained in my IOD [58] the failure to comply with legal procedures cannot be considered a mere administrative error. Furthermore, I was clear [62] that the omission of the required legal order alone does not mean that the route ought to be shown as a highway of a different description or that no highway existed. All other relevant and available evidence had to be considered. My findings followed that exercise.
22. An assertion that there is no new or compelling evidence of a mistake is not evidence. It does not cause me to depart from my previous view that the *Trevelyan* presumption has been rebutted for the current DMS [84].
23. BBT says that errors made on the current DMS cannot overturn the *Trevelyan* presumption regarding the original recording of the route as a RUPP in the 1st (1975) DMS. The same point is taken by others. It appears to overlook the

implications of the 1974 Memorandum to which I shall return. Firstly, the issue arises of whether the *Trevelyan* presumption applies to an earlier DMS once the presumption in favour of the current DMS has been rebutted.

24. The Bradleys argue that the *Trevelyan* presumption applies only to the current DMS because the 1st DMS has been superseded and no longer exists. My attention is drawn to the words of Lord Phillips at paragraph 38 of *Trevelyan* that an inspector considering “*whether a right of way that is marked on a definitive map exists, must start with an initial presumption that it does*”. It continues: “*the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists.*” Emphasis is placed upon the “initial presumption” to argue that only one presumption needs to be outweighed.
25. Of course, the words of Lord Phillips concerned the facts in *Trevelyan* and the evidential approach to be taken. The point in issue differed. I do not read the words “initial presumption” as a constraint to a single occasion. I see no reason in principle why the presumption should not apply to an earlier DMS.
26. BBT’s line of argument continues that there is no evidence the original inclusion of the route on the 1st DMS was in error and must therefore be accepted as conclusive. However, the 1974 Memorandum is a piece of relevant evidence that was subject to detailed argument at the 2023 Inquiry [68-71,74-80, 92,143-146].
27. The OMA acknowledged that the 1974 Memorandum displaces any *Trevelyan* presumption in terms of the classification of the Order route as a RUPP in the 1st DMS [74] and its minimum status as a bridleway [146]. For the avoidance of any doubt, I accepted that position. I was satisfied that the correctness of the classification in the 1st DMS cannot be presumed in light of the 1974 Memorandum. The 1974 Memorandum cast doubt upon “the classification of routes as between F.P., F.P.(CRF) & B.W.” To that extent the *Trevelyan* presumption was “swept away” as the OMA put it. Nothing I have heard during the re-opened Inquiry causes me to come to a contrary view.
28. I reiterate my point that the 1974 Memorandum focuses only on whether the correct classification was applied. There is no suggestion in the Memorandum that the routes may not have public status at all. As made clear in my IOD [80] [144], the 1974 Memorandum does not in my view undermine the very existence of any public rights. However, it does suffice on balance in the circumstances of this case, to undermine the correctness of the classification so that any presumption in respect thereof is rebutted.
29. Taking the evidence as a whole, I conclude that the recording of the route as a RUPP in the 1st DMS was in error, but not its inclusion as a public right of way.

Judgment in Hood

30. There is some misconception that I have misapplied the judgment in *Hood*. It is argued that upon a correct application of *Hood*, the Order route was a RUPP that conclusively carried at least bridleway rights. Therefore, it can only be reclassified as a footpath if there is positive evidence that bridleway rights do not exist and that only footpath rights exist. That is incorrect in this case. *Hood* involved a special review of the classification of a RUPP under Part III of

Schedule 3 to the Countryside Act 1968. This is not a special review under the 1968 Act and those provisions in *Hood* quite simply do not apply.

31. The relevance of *Hood* concerns the comments of Lord Denning on the meaning of 'CRF' and 'CRB' [91] and the reminder, as quoted by BHS that: "*The definitive map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living. Such evidence might well have been lost or forgotten by 1975. So it would be very unfair to reopen everything in 1975.*"
32. Furthermore, as Ms Stockley points out, *Hood* was superseded by the 1981 Act, with section 54 requiring the reclassification of RUPPs. This is not a reclassification order under section 54. It is an order made under section 53(3)(c) and it is the *Trevelyan* evidential presumption that now applies.
33. As the OMA accepted, there cannot be an evidential presumption attaching to the 1st DMS for bridleway status because any such status only arose from its embodiment in the RUPP classification, which has been rebutted and is erroneous. That is why the OMA previously presented a user case for bridleway status as it did not consider there to be merit in a legal case.

Section 55(5)(b)

34. Section 55(5)(b) of the 1981 Act essentially placed a duty upon an authority to make an order for particulars as shown in the draft map and statement where a review had been abandoned and there were no outstanding representations or objections.
35. There is no evidence before this Inquiry of any objection or representations to the depiction of the Order route on the 1st DMS as a RUPP, or on the draft revision map and statement as a BOAT. However, there is no ongoing duty on the OMA to make an order to reclassify the way to give effect to what was shown on the 1st Draft DMS and to record it as a BOAT. That is because section 55(5)(b) was no longer applicable once the OMA made the current DMS and the 1st DMS ceased to be the map and statement under review.

User evidence

36. Several horse riders appeared as witnesses for the OMA at the 2023 Inquiry when it argued that bridleway use was exercised 'as of right' until 1975. On this point, I agreed with the Bradleys that use could only be 'as of right' until 20 April 1966, being the relevant date of the 1st DMS. No further legal arguments on the point have emerged during this Inquiry. The upshot is that user evidence would need to have occurred prior to 20 April 1966 to be taken into account.
37. It was not wrong in law or superfluous, as Cycling UK claim, to analyse user evidence prior to the 1966 date and to consider whether dedication had occurred at common law. The purpose was to establish whether user evidence demonstrated any higher rights above public footpath status. Indeed, the OMA's case relied upon user evidence in making the Order, recognising that neither the legal case nor documentary evidence sufficed.
38. I appreciate from the statutory declaration made on 30 August 2024 by Virginia Stewart (one of the OMA's witnesses), that she had not understood the

significance of the 1966 and 1975 dates after the previous Inspector's Decision was quashed. It is apparent that others had similarly misunderstood. Kirklees Bridleways Group produced 8 more user evidence forms. None claimed equestrian use of the Order route before 1966. Only 1 of the 8 claimed any prior use, and that was on foot starting from 1962 approximately. The booklets produced of circular riding routes in Kirklees similarly post-date 1966 (and 1975).

39. The user evidence of equestrian and pedestrian use after 20 April 1966 is not relevant given my finding (which remains unchanged) that such use was lawful from that date onwards in light of the Order route being recorded in the 1st DMS. As a result, the use was 'by right'.

Natural Environment and Rural Communities Act 2006

40. Section 67(1) of Natural Environment and Rural Communities Act 2006 extinguishes existing public rights of way for mechanically propelled vehicles over unrecorded BOATs. Both Counsel agree, and I concur, that the provisions of the 2006 Act cannot apply given that the Order route *is* recorded in the current DMS as a BOAT and not a RUPP.
41. Argument is raised that if the recording of the Order route on the current DMS was invalid, then it remained a RUPP and should be redesignated as a restricted byway under section 47(2) of the Countryside and Rights of Way Act 2000. Section 47(2) only applies to a way which, immediately before the commencement of the section, was shown in any DMS as a RUPP. As the Order route was shown as a BOAT (in the current DMS) and not a RUPP immediately before commencement of the section, section 47(2) simply cannot apply.

Other new evidence and arguments

Cross roads

42. In arriving at my findings in my IOD, Greenwood's map was considered as part of the entirety of the evidence. Objection is raised by Miss Taylor that my IOD did not properly consider how Greenwood's maps recorded both public and private roads as 'cross roads'. According to Miss Taylor, 'cross roads' "*are on the balance of probability, for public use*", as discussed in her case law paper. At no time during the 2023 Inquiry did the meaning and relevance of 'cross roads' on Greenwood's maps arise, hence, no mention in my IOD. That was so despite lengthy written and oral testimony from three highly experienced professionals appearing for parties pursuing opposing outcomes. There was consensus among these witnesses that the documentary evidence was neutral, except for the Finance Act map [98].
43. In essence, Miss Taylor maintains there is a distinction between roads that are 'private' as to use, and roads that are public highways, but 'private' as to maintenance. Quite simply, this is not a case where arguments over any distinction in how the word 'private' is to be applied can realistically succeed.
44. I recognise that the route is shown on Greenwood's map 1817 in the manner identified in the key as a 'cross road', but only from Sandy Lane terminating around the buildings of Nether Moor Farm, i.e. as a cul-de-sac route [120].

45. Ms Stockley draws attention to the relatively recent judgment in *Trail Riders Fellowship v Secretary of State for Environment Food and Rural Affairs* [2023] EWHC 900 (Admin), which addressed the interpretation of ‘cross roads’ on maps, such as Greenwood’s. Paragraph 36 is particularly pertinent:
- “The courts have also considered the term “cross road” which the inspector had to consider here, particularly in relation to the Greenwood map, and have acknowledged that such a term may be evidence of public roads, as it suggests a thoroughfare between two places, see *Trafford v St Faith’s Rural District Council* (1910) 74 JP 297, *Hollins v. Oldham* [1995] (unreported) C94/0206, and *Fortune v. Wiltshire Council* [2012] EWHC Civ 334. In the latter case, Lewison LJ, giving the judgment of the court, considered the meaning of the term at paragraphs 54-56. He observed that the term in old maps did not have its modern meaning of a point at which two roads cross, but included a highway running between, and joining, regional centres. He had regard to guidance given to inspectors on the point. He referred to the conclusion of the judge in that case, His Honour Judge McCahill QC, sitting as a judge of the High Court, that the Greenwood map in that case supported the emerging picture of an established thoroughfare, and observed that the label “cross road” added further support. Modern guidance to inspectors, PINS “DMO Consistency Guidelines” (5th Revision July 2013), makes similar points, but adds that inspectors will need to take into account that the meaning of the term may vary depending on the road pattern/markings in each map.”
46. As paragraph 49 of the judgment makes plain, the process of assessing historical maps is one of drawing inferences of fact from disparate material and such inference may vary from case to case depending on the evidence and material.
47. In this specific case the depiction of part of the Order route as a ‘cross road’ on Greenwood’s map does not, on the balance of probabilities, suffice to demonstrate the existence of public rights or indeed a public vehicular road. The evidential threshold is not met. Greenwood’s maps were advertised to show both “Public and Private Roads”. When advertised there was no indication given that ‘private’ meant ‘privately maintainable roads’. Greenwood’s maps did not solely show public roads, a point acknowledged by Miss Taylor in evidence. Added to which the route is not depicted as a through route but ends at the farm buildings.
48. Miss Taylor contends that, at the date of Greenwood’s map, Nether Moor Farm was a place of public resort where dairy produce was on sale. Therefore, the public had a need to walk, ride and drive on the ‘cross road’ Sandy Lane and then on Nether Moor Lane, also a ‘cross road’, to access foodstuffs at the farm.
49. This line of argument is flawed. Even if customers had used the section of route between points A and B to make purchases at the farm (of which no evidence is produced), it does not mean they were exercising public rights of way. Such usage would be consistent with customers being licenced by the farmer for that specific purpose i.e. use by consent.
50. As set out in the IOD [120-121], Greenwood’s map is not comprehensive and the depiction as a cul-de-sac is inconsistent with earlier mapping. All things considered, there is too much uncertainty for Greenwood’s map to assist one way or another. I note that in 1977 Mr Dodd, Director of Highways and Transport, at The Planning Inspectorate alerted Inspectors to the judgment of *Hollins v*

Oldham where the meaning of ‘cross road’ was considered, which Inspectors should “bear in mind” when reaching their conclusions. In line with the more recent judgement in *Trail Riders Fellowship* (above) the totality of evidence must be considered from the multitude of available sources.

51. After carefully considering all arguments including those now put, my view remains that Greenwood’s maps are of very limited evidential value in this case [122].
52. Furthermore, the Inclosure Award extract produced by Miss Taylor referring to Nether Moor Road is for the parish of Brampton, another parish entirely. If produced in an attempt to illustrate that *Dunlop v Secretary of State for the Environment* [1995] 70 P & CR 307 is wrongly decided, as Ms Stockley suspected, the argument is irrelevant to the case before me. As Ms Stockley pointed out, the route is not set out as a private road in an Inclosure Award nor is any private maintenance liability awarded. There are no references to the terms ‘private road’ or ‘occupation road’ in relation to this Order route.
53. An extract was produced of ‘*Conventional Signs to be used in the Plans made under the Act for the Commutation of Tithes in England and Wales*’ from a British Parliamentary Paper that illustrates ‘Bye or Cross roads’ in one way and ‘Bridle roads’ in another. Miss Taylor says this proves that in 1836 ‘cross roads’ were considered by Government to be equal in status to ‘bye roads’ and higher in status and different from ‘bridle roads’. Mr Champion of the OMA made the more persuasive point that the fact the document did not give any option to show a private road suggested they had to be included within the term ‘cross road’.

The Leeds Report

54. The application for a definitive map modification order (‘DMMO’) to change the status of the recorded route was investigated by Officers of Leeds City Council on behalf of the OMA. The findings and recommendations were set out in a report produced in 2017, described in these proceedings as ‘the Leeds Report’.
55. The author of the Leeds Report opined that the depiction of the Order route on the Plan of South Crosland 1804 and 1848 and the Beaumont Estate map (listed between 1857 and 1913) indicated that it “*was considered to have public rights, most likely vehicular*”. That is not a view shared by the experts who have appeared before this Inquiry, who have had the benefit of more information and whose views have been tested through cross-examination.
56. Notwithstanding those comments, the recommendation within the Leeds Report was to make a DMMO to downgrade the route to a bridleway and so the report does not support those wishing to retain BOAT status in the way suggested. Importantly, the bridleway recommendation was made without the appreciation that equestrian use was ‘by right’ from 1966. Aside from that key point, additional documentary material has since been uncovered and placed before me.
57. For those reasons, the findings of the Leeds Report are part of the procedural background to this case, which I note, but there is now more comprehensive material and examined evidence upon which I place greater weight.

Mrs Mallinson's evidence

58. Diana Mallinson gave evidence at the 2023 Inquiry and made a representation providing 'new evidence' to support either a public footpath or bridleway. Much of the new material also featured in the Bradleys case below, where it is addressed.

BBT

59. Whilst the statement of case and proof of evidence for BBT argued for a bridleway or restricted byway, Mrs Cook (who was speaking on their behalf) said she personally thought the route is a BOAT. Her oral testimony described how horse riders in the past would ride anywhere they could. Times have changed, and I appreciate this as a factor to be borne in mind. However, my focus is, and must be, on relevant evidence and the application of the law to this specific case.
60. Mrs Cook further argued that the Order route is consistently shown as part of the road network in 1920's and 1940's commercial maps. This is essentially the same point originally raised by GLASS in its statement of case for the 2023 Inquiry that "*Maps of the 1920s and the contemporary maps from Bartholomew. All these maps show Huddersfield 231 as part of the minor road network and distinct from the public paths.*"
61. On Bartholomew's maps 1904 to 1944, the Order route was identified as a road. These small-scale maps were based on OS mapping and similarly carried a disclaimer that: "*The representation of a road or footpath is no evidence of a right of way.*" They demonstrate a physical feature, but they are not evidence of a public right of way. Notably, by the close of the Inquiry GLASS no longer pursued the point accepting that the historical evidence is "fairly neutral", the exception being the Finance Act map.
62. BBT reproduced an extract of a 'Geographia' map from the 1920's. It is cited as showing the Order route as part of the minor road network without differentiation, which Mrs Cook says means that it too must be a minor road. However, the key on the map identifies it as: "*Other Roads: subject to a right of way*" and not a first class or second-class road, which appear differently. The mapping source is not identified. Robin Carr (for the Bradleys) stated that Geographia generally obtained data from Government sources and "*they will no doubt have obtained the data from the Ordnance Survey.*" In the circumstances, it cannot be ascertained one way or another from the map whether the Order route had public or private status.

Lanes

63. Much was made by those supporting the retention of the Order route as a BOAT to it being described as 'Nether Moor Lane' in the Beaumont Estate maps and early surveys, with emphasis on the word 'Lane'. Numerous examples were given of public vehicular highways nationally bearing the name 'Lane'. Of course, countless named 'Lanes' also exist that do not carry any public rights.
64. The name of a route as a 'lane' does not in itself denote status. Whilst it was said in *Attorney-General v Woolwich* (1929) J.P.173 that the word 'lane' usually meant a minor road leading between one main road and another, it did not say that this was always the case. The term 'lane' does not bear any legal definition.

65. Mrs Cook produced late documentary evidence consisting of short extracts of 3 quotes relating to 'lanes' said to be the source of information mentioned in her oral testimony that had already been given. No objection in principle was raised to their late production. However, I was asked to note by Ms Stockley that a meaningful response to the document was difficult due to the lack of context. As it is, the quotes carry little weight.
66. The Oxford Thesaurus of English published by Oxford University does not advance the case further. The Old English entry for the word '*lane*' is: '*A narrow way between hedges or banks; a narrow road or street between houses or walls; a bye-way.*' Aside from the thesaurus providing synonyms and examples rather than a definition, it is misleading to look at this single entry in isolation. For context, it should be read alongside the entry for '*bye-way*', which the Bradleys produced, and is relevant to the argument made. The word '*bye-way*' is expressed as a '*variant of byway*' being: '*A way other than the highway; a side road; a secluded, private, obscure, or unfrequented way.*' Inclusion of the word '*private*' runs contrary to the argument that a lane in Old English meant a road carrying public vehicular rights. Reliance on the Oxford Thesaurus is misplaced.

Thoroughfare principle

67. Arguments are also made of a 'thoroughfare principle' to the effect that a way between two public highways is itself public. As the Order route is a through route between the two public vehicular highways along Sandy Lane and Nether Moor Road, it is maintained that the route similarly carries public vehicular rights.
68. Mr Carr summarised the position well when he accepted that a key, but not essential, characteristic of a public highway is that it has a point of public terminus at either end of at least equal or possibly higher status. With few exceptions (such as a cul-de-sac highway), a public highway will be a through route or thoroughfare. However, not all through routes or thoroughfares are public highways.
69. It is wrong to suggest that *all* through routes are highways, and such position is unsupported by legal authority.

Ratione tenurae

70. Miss Taylor argued that it is "highly probable" that the Order route is a *ratione tenurae* road ('RT road') being a highway available for public use, but privately maintained by the adjoining landowners by reason of their tenure.
71. I disagree that the words "Repair Roads" in the Bradley's 1954 Conveyance demonstrates a demand to repair the Order Route on their land. The actual text in the Fourth Schedule provides that the hereditaments were conveyed subject to all "*liabilities to maintain fences repair roads and the like to which the same may be subject*". It does not say there *is* a liability to repair roads. The land was conveyed subject to any liabilities there *may* be. It does not constitute a demand, as suggested. In any event, a liability for repair would not automatically mean they are public roads.
72. Furthermore, the 1954 local land charge search does not provide evidence, by omission, of the Order route being a RT road.

73. My view would be unchanged even if part of Nether Moor Road (to which the Order route connects) was once a RT road, as claimed. Mrs Mallinson expressed the view that if the Order route was a RT road, then people would have been aware of it. That may well be so. I am more swayed by the lack of substantive evidence. I concur with both Counsel appearing that the RT road argument is wholly misconceived.

OS maps

74. The Ordnance Survey ('OS') maps relied upon by BBT, are not 'new' and were considered in reaching my interim decision. BBT simply raises a different interpretation on what they show.
75. BBT says that the Order route was shown on OS maps because it was "*in obvious use by the public*", quoting the 1905 'Instructions to Surveyors'. As Mrs Mallinson helpfully pointed out, this is a partial quotation. The full text said: "*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 did not say, and does not mean, that routes recorded on OS maps were in obvious use by the public.
76. Appended to the Bradleys statement of case is an OS Map 1963, scale 1:2500. No particular point appears to be taken. I note that FP Huddersfield 233 is shown by double pecked lines. Where it meets the Order route at point B and proceeds south-west, there is a single pecked line parallel with a solid line becoming two solid parallel lines that connect with Sandy Lane. In the opposite direction, the lane appears as a physical feature running through the farmyard and continuing through the fields (between solid parallel lines) towards Nether Moor Road.
77. It is well-established that OS maps show physical features and "are only indicative of what are the physical qualities of the area which they delineate" (*Moser v Ambleside UDC* [1925] 89 JP 118, para 119). As stated in *Attorney-General v Antrobus* [1905] 2 Ch 188 (para 203), OS maps "*are not evidence on questions of title, or questions whether a road is public or private.*" Furthermore, from around 1880, OS maps contained a disclaimer to the effect that the representation of a route on the map was not evidence of the existence of a public right of way. Whilst Mrs Cook dismissed the disclaimer as a safeguard to prevent the OS becoming involved in litigation, the fact remains that the disclaimer exists, and its message is plain as reinforced by caselaw.

Occupation roads

78. Mrs Cook for BTT submitted that it was common practice in rural areas for occupation roads to have co-existing public and private rights. Public and private rights clearly can co-exist. In this case, it cannot be gleaned one way or another whether public rights existed where the Order route is described as an occupation road. The evidence of the Order route being identified as an 'occupation road' was considered previously [126 to 128].

Walking surveys

79. In oral evidence Mr Dunlop maintained that the walking surveys for the 1st and 2nd Draft Maps were not undertaken in 1951 and 1967. Instead, they were based on map evidence resulting in the survey description not following the Order route. Similar arguments were raised by the Bradleys in their objection to the IOD when

they claimed that the surveys in 1965 and 1966 did not actually take place but were desktop exercises or surveys viewed from Nether Moor Road. Both argued that the survey for the 2nd Draft simply copied the first survey.

80. As Mrs Mallinson highlighted, the entry in the 1st Draft Statement records that the route was walked by 'East District Rangers' in August 1951. Again, the 2nd Draft Statement records that surveys were conducted by named surveyors in December 1965 and March 1966.
81. There is an annotated copy of the 1st (1952) Draft Statement with changes made in pencil that may have prompted the arguments. It appears to be a working document. The OMA explained that this document was mistitled in the Leeds Report as '1966 Draft Schedule'. The actual 2nd Draft Statement (relevant date 20 April 1966) significantly differs from the 1st Draft Statement.
82. Instructions issued by Huddersfield County Borough Council ('HCBC') in July 1965 for the 'walking of footpaths' were attached to a plan showing routes at Nether Moor Farm with path numbering used in 1952 and revised numbers for 1966. Minutes of HCBC's Town Planning Committee on 21 April 1966 show that it resolved to express thanks to Huddersfield Civic Society for their assistance in making the survey for "*a Draft Map showing the public footpaths and bridleways at present subsisting in the Borough together with a Statement of the position and widths thereof.*" As Mrs Mallinson says, the help of the Civic Society appears unlikely to have been needed unless there was a new survey on the ground.
83. All these factors indicates that a survey on the ground probably was undertaken for each Draft Map. I find no cause to conclude that the surveying process undermines the evidential weight to be attributed to either Draft DMS.

Settled land

84. Mr Dunlop suggested that the Order route is on land held in settlement until 1954. In response to my question Ms Stockley confirmed that the Bradleys do not say the land was in settlement until 1954. Their position is unchanged from closing submissions at the 2023 Inquiry. I have since noted that paragraph 38 of their previous closing did specify the end date as 1954 with reliance placed upon the 1954 Conveyance and the land being conveyed by the Trustees.
85. Nevertheless, I am not swayed that this demonstrates the land remained in settlement until conveyed in 1954. It appears more likely that the land was held in settlement until either the death of the last tenant in 1948 or upon the grant of probate in 1950 rather than the subsequent date of sale.
86. Essentially, the Bradleys accept that a tenant for life could have capacity to dedicate, but in lesser circumstances. They cannot say that it was absolutely impossible for dedication to occur, other than to reiterate that the evidential bar was still a high one.
87. My IOD addressed the issue of settled land in some depth [130-141]. There is no new reasoned argument for me to depart from my previously stated view. I conclude that it has not been demonstrated that settlement would have been an impediment to dedication of the Order route as a public highway in this case.

'Procedural irregularity'

Foot and mouth disease

88. The Bradleys had raised 4 new points of 'procedural irregularity' to support their case for deletion. One of these points, made by Mr Carr in his proof of evidence, questioned whether the walking survey of the Order route had actually occurred in preparation of the 1951 Draft Map due to the impact of Foot and Mouth disease. The point was retracted by Mr Carr without prompting during his cross-examination. He confirmed that references to Foot and Mouth are to be struck from his proof of evidence. Mr Carr conceded that the records uncovered by Mrs Mallinson showed that the Order route was neither within a declared infected area nor controlled area at the time of the walking survey in August 1951. Accordingly, I do not address the issue of Foot and Mouth further.
89. There remain 3 procedural points, addressed below.

Section 27(1) National Parks and Access to Countryside Act 1949 ('the 1949 Act')

90. Firstly, a procedural point was taken by Mr Carr over section 27(1) of the 1949 Act, although it does not feature in the Bradleys closing submissions. Section 27(1) required councils to prepare a draft map of their area by December 1952 unless the Minister gave a time extension.
91. The 1952 Draft Map was published within the requisite timescale with the Order route shown as a public footpath, having been walked in August 1951. The statutory deadline had expired when HCBC subsequently re-started the entire process and published the 2nd (1966) Draft Map. Mr Carr contended there was non-compliance with section 27(1) because no evidence of Ministerial consent giving an extension of time has been located.
92. It might reasonably be anticipated that a record would have survived if Ministerial consent to an extension had been granted as a document of importance. I take the OMA's point that if the Ministry had intervened to direct that no further draft map process be undertaken, it might equally be expected that there would be a surviving record.
93. What is clear from HCBC's 'Note for Town Clerk' on the 'Survey of Rights of Way' dated 31 July 1965 is that the Ministry had telephoned HCBC and suggested that it must carry on and not start again as the draft proposals had been advertised and objections received. HCBC disagreed as "it was crazy to proceed with an out-of-date map". The Ministry had been "sympathetic" and asked for a letter and they would "get the legal side to consider it". The outcome is unknown. It cannot be presumed there was never Ministerial endorsement.
94. Moreover, upon my reading of section 27(1), the requirement was to prepare a draft map within the prescribed period. That duty was discharged with publication of the 1st Draft Map. I read nothing into that section that prevented the preparation of a further draft.
95. It is important to emphasise that it is not claimed the 1st DMS that followed the 2nd Draft Map was legally flawed in consequence of a non-compliance with section 27(1). Nor is it claimed that there was any failure in the actual procedures at

second draft map stage. As noted in my IOD, the process in fact gave additional opportunity for landowner objections and representations [147].

96. Ultimately, there is insufficient evidence of any statutory non-compliance to diminish the weight to be attributed to the 2nd (1966) Draft Map or to accord it less weight than the 1st (1952) Draft Map.

1974 Memorandum

97. Secondly, Mr Carr cites procedural irregularity arising from the 1974 Memorandum. As before, the Memorandum undermines the classification of the Order route in the 1st DMS. I do not agree that the concerns expressed by the Council officer affect the very existence of the Order route as a public right of way for the reasons already given [80] and earlier in this decision.

1954 Memorandum on path widths

98. Thirdly, Mr Carr produces a memorandum dated December 1954 from the County Engineer and Surveyor as “*further evidence of malpractice in the preparation of the original Definitive Map and Statement*”. The memorandum requests amendments to the statement accompanying the Draft Map so that all footpaths shown with a width greater than 6 feet should be changed to 4 feet. All bridleways shown of greater width than 10 feet should be reduced to 8 feet.
99. As this is an internal Memorandum of the West Riding County Council with no responsibility for production of the 1966 Draft Map, it does not evidence any procedural irregularity. It makes no difference that West Yorkshire Metropolitan County Council took over responsibility from HCBC for finalising the DMS upon local government re-organisation in 1974. They were still different councils. The 1954 Memorandum is therefore irrelevant.

New evidence – The Bradleys

100. The Bradleys contend that new evidence has been adduced to the Inquiry that demonstrates that no public rights of way exist over the Order route. A quirk of this Inquiry is that the ‘new’ evidence relied upon by the Bradleys for deletion is principally that produced by Mrs Mallinson from her further research and upon which she relies in her case for footpath or bridleway status.

Quarrying works

101. The Order route was physically diverted on the ground between points E and F during quarrying works at some time after 1888 (being the survey date for the OS 25” map, published 1892), and then reinstated on the original line. In their grounds of objection, the Bradleys suggested that 40 years public use could not have occurred by the early 1950’s due to the quarrying works and the reinstatement of the Order route not having taken place until circa 1912/13.
102. The reinstatement date was not agreed by the OMA (and Mrs Mallinson placed it as by 1910), but the point became somewhat academic. Ms Stockley clarified in closing that no point is now taken on 40 years. From a legal viewpoint it is accepted that the retrospective effects of section 1(2) of the Rights of Way Act 1932 (as amended by section 58 of the National Parks and Access to Countryside Act 1949) required only 20 years use by the public to raise a presumption of dedication.

103. No evidence has been found of a legal diversion of the Order route during quarrying works. The argument relied upon is that the lack of any legal order to lawfully divert the Order route temporarily during quarrying works indicates it was not a public right of way at the time i.e. the early 20th century.
104. Mr Carr drew on his own experiences to focus on the high level of record keeping of the relevant local authorities. If there was a legal diversion, Mr Carr expected the evidence to have been kept. He referred to the extensive research conducted by Mrs Mallinson without uncovering any such record.
105. Mrs Mallinson had located the Minutes of South Crosland Urban District Council ('SCUDC') from 1896 to 1903, the highway authority at the time. They record an issue with quarrying activities affecting a different public footpath, which is now Huddersfield 288. The tenant of the Whitley Beaumont Estate had sought sanction from SCUDC in 1896 to divert the footpath for quarrying. The Clerk produced an agreement entered into in another district under similar circumstances. When asked to sanction a diversion in 1901, SCUDC told the tenant it had no power to do so, and application should be made forthwith to the Quarter Sessions. No application can have been made as an issue ensued with the tenant "destroying the footpath" and SCUDC involving the Whitley Beaumont Estate to obtain a substituted footpath pending the restoration and fencing of the original footpath.
106. The Bradleys take the point made by Mrs Mallinson that the same agreement with SCUDC could have been made for the Order route diversion *if* it had public footpath or bridleway rights at the time. They say, this strongly suggests the Order route was not a footpath or bridleway as of 1915 (1912/13 was the date given in their statement of case). Their rationale is that the Order route was on the same estate with the same landowner and same quarrying works and there is no good reason why it would not have been subject to similar considerations and agreement if indeed it was a public right of way. It is further submitted that all SCUDC minutes have been located and it is inconceivable a legal order or agreement would have been made without being minuted.
107. To my mind this is not strong evidence. It is an arguable point carrying limited weight only. It presumes an application to SCUDC would have been made and that all informal agreements were minuted. Records concerning another footpath is not direct evidence of the disputed route. The lack of record of an agreement or application to Quarter Sessions is not positive evidence that public rights did not exist. Pivotaly, it was still possible for public rights to have come into existence upon 20 years user evidence by the time of the 1st (1952) Draft Map even if restoration of the affected section of Order route was as late as 1915. I note there is no suggestion that the Order route between A and B was affected by quarrying.

Trespass in Dene Wood

108. Dene Wood (now 'Dean Wood') lies to the south of the Order route. Up until the Bradley family's acquisition of Nether Moor Farm in 1954, both the Order route and Dene Wood were owned by the Beaumont Estate.
109. A request was made of the Estate by SCUDC that a footpath through Dene Wood (used by inhabitants for 75 years) be kept open. The agent's response of

- 1 September 1905 expressed concern over persistent trespassers in Dene Wood. Ms Stockley agreed that the correspondence relates only to Dene Wood but argued that it demonstrated the mindset of the landowner, which is important. Emphasis is placed upon the concluding words of the letter that Mr Beaumont: “*feels it to be his duty, not to himself only, but to his successors to take some definite action to prevent his property being further overrun by trespassers.*” It is suggested that there is no reason why the landowner would go to such lengths to preclude trespassers from the woods and not from the rest of the estate.
110. Ms Stockley dismissed possible explanations given by Mrs Mallinson and Mr Champion as to why the landowner might be concerned to protect the woods and prevent logs being taken for example, as “speculation”.
111. I find it equally speculative how the landowner might have regarded the Order route. When the 1905 letter is read as a whole, it was written in a particular context. It states: “*The Public have no rights in the Woods, such tracks as exist are trespass roads made by people in the neighbourhood and outside districts*”. It goes on to refer to how several years before “*boards were fixed in the Woods cautioning people against trespassing.*” Hence, there were very specific issues with multiple tracks created and trespass in Dene Woods.
112. There are other examples from correspondence in 1908 of the landowner’s agent not recognising any public footpath through another farm on the estate. Another letter in 1909 headed “Trespassers – Warning” concerns the erection of signs elsewhere on the estate, not in the woods. None of the examples either individually or collectively demonstrates a clear mindset of the landowner that can be translated more broadly across the estate. The correspondence deals with specific issues without any mention of the Order route or Nether Moor Farm,
113. I do not consider that the material on trespass shows positive evidence of a lack of intention to dedicate the Order route by the landowner, so that common law dedication cannot have occurred.

1938/1939 Minutes of the Huddersfield Corporation Highways Committee

114. The Minutes of the Highways Committee on 24 November 1938 and 27 February 1939 record that the Borough Engineer reported on the bad condition of Nether Moor Road “from Private Road, Nether Moor to Railway Bridge” and following an inspection it was resolved that no repairs be carried out. It is undisputed that the “Private Road” is the eastern part of the Order route.
115. The Bradleys argue that the wording is consistent with the Order route being private with no public rights of way over it, with added weight to be attributed due to the source being the highways authority. I would have agreed, but for the context. The reference to “Private Road” is for identification purposes. It describes the location of the section of highway along Nether Moor Road that is in bad condition. The item clearly concerns the possible need of repair of that stretch of road. It is not focussed on the status or maintenance liability of anywhere else.
116. At most, the Minutes support the road being private for the passage of vehicles. To this limited extent it is but one strand of evidence of RUPP status, but it is not evidence of no public rights at all.

1970 Minutes of the Highways and Sewage Committee

117. The minutes of the Highways and Sewage Committee dated 21 May 1970 report a request by Messrs JH Bradley and Sons of Nether Moor Farm to divert Footpath No 409 from one field to another to allow erection of electric fencing. FP409 is now recorded in the DMS as FP233, which connects with the Order route at point B. The letter of request has not been located.
118. Ms Stockley maintained that the Minute not only indicated how the Bradleys took a responsible and proper approach to dealing with public rights of way on their land but is further evidence of footpaths on the estate being referenced in Minutes and correspondence. Ms Stockley argued that it is extremely telling that despite extensive research there is not one reference anywhere of the Order route in any document until the 1st (1952) Draft Map.
119. The point was expressed in no stronger terms than the absence of prior mention “further suggests” that no public rights of way exist. Notably, this suggestion was not wholly shared by the Bradleys own professional witness. In recognition of his duty to the Inquiry as an expert witness, Mr Carr acknowledged that the 1970 minutes are supportive of the existence of public footpath rights between points A to B. Whilst contrary to his clients’ position, Mr Carr stated that “*it would be reasonable to infer that it was accepted that public footpath rights ran along the Order Route between the end of Huddersfield Footpath 233 and Sandy Lane (A-B on the Order Plan)*”. In oral evidence Mr Carr accepted that this may be where the evidence leads.
120. I conclude that the Minute shows that the landowners accepted there were public rights over FP409 for there to be a need of diversion. FP409 would have been a cul-de-sac path unless, at least part of, the Order route also existed. The stretch between A to B is the natural continuation to/from Sandy Lane. To that extent it is positive evidence of the existence of a public footpath from A to B. There is no suggestion that the Minute provides evidence that the Bradleys accepted public rights over the remainder of the Order route. As Mr Champion agreed in cross examination, B to G would not be the most direct way between the start of FP409 and Nether Moor Road for a walker seeking the shortest route.

Other arguments/evidence

121. In a repeat of his submission at the 2023 Inquiry, Mr Carr reiterated that the Plan of the Manor of South Crosland, circa 1764 shows the origins of the Order route as a cul-de-sac, which he considers tips the balance in favour of private status. As before [128] that is going too far. Notwithstanding the issues previously recorded over the quality of the plan [112-117], it is but one plan, and public rights could have been acquired since [129].
122. Appended to the Bradleys statement of case is a ‘public rights of way information sheet’ completed in 2009 by Lewis Osterfield whose grandparents owned the farm now known as ‘Greengate Knoll’, located adjacent to the western end of the route. The form states that Mr Osterfield has known the Order route since 1927. “*It was always a route for driven [sic] animals to the farm and fields on either side*”. He was told by his mother and grandparents not to walk on the lane as it was private land. There was unlocked gate marked on a map together with a stile close to the farm buildings, but no dates are given.

123. In a handwritten letter dated 6 July 2009, Mr Osterfield describes walking to the adjacent farm at 'Knowle Farm' before school in the first 6 years of his life between 1924 to 1929/30. His grandparents lived and farmed Knowle Farm from approximately 1890 to 1938. The letter says that the "*bit of road in question to Nethermoor Farm is neither road, bridleway or footpath in any way, just a means of movement of animal and tractor drawn implements to service field work.*" He would "definitely not" take the "short cut bit of the lane" to Nethermoor Lane, which "*is, has been and always should be PRIVATE*".
124. Mr Osterfield's stated belief that the route is private, attracts limited weight only.

Conclusions

125. I am invited by the Bradleys to make further modifications to delete the Order route from the DMS or, alternatively, to delete the section of Order route from B to G. They accept the onus lies on them to show, on the balance of probabilities, that no public rights exist, rather than for any other party to show that they do.
126. No new material mapping evidence has been produced since the 2023 Inquiry. Mr Carr stated that not one piece of evidence, prior to the documents relating to the preparation of the DMS, attributes the Order route any form of public status. Despite attempts by other objectors to the IOD, to argue otherwise, I find that the historical evidence is neutral overall as to the status of the Order route. In reaching this view I have found it unnecessary, as suggested, to apportion a percentage in weight to individual documents. Instead, I have evaluated and weighed up the documentary evidence as a whole, as is the usual practice.
127. Whilst the Bradleys maintain that the absence of reference to the Order route being a public right of way anywhere in any correspondence, minutes or any other documentation suggests it was not a footpath, it is no more than a suggestion. A lack of evidence is not positive evidence that public rights do not exist. It might be inferred that this was because no public rights existed at the given time, and I do not dismiss that explanation as a factor for consideration among others in weighing the case for deletion. However, it is not a strong point. Indeed, the Bradley's statement of case acknowledges that a finding on the absence of evidence does not go far enough to further modify the Order to delete the Order route altogether from the DMS.
128. I re-emphasise the important point [142] that it is unknown what information was before the relevant authority when the Order route firstly appeared on the Draft Map in 1951 leading to it subsequently becoming recorded in the 1st DMS as a public right of way, and thereafter. Whether the Bradleys predecessors knew of the inclusion of the Order route in the draft maps is a matter of speculation.
129. To my mind it is a weighty factor (if not conclusively presumed) that the Order route was recorded not just on the 1st and 2nd Draft Maps but also the 1st DMS as a public right of way. Even though its classification as a RUPP was undermined by the 1974 Memorandum, its public status was not [144].
130. The 1970 Highways and Sewage Committee Minutes are supportive of public footpath rights from points A to B at least. Mr Carr claimed that the public would not have used B to G before publication of the 1st Draft Map because people did not go for recreational walks in those times. Footpaths were used for utilitarian purposes. The fact remains that the entire route was recorded on the 1st Draft

Map (and 1st Definitive Statement) as a public footpath without any objection. It firmly indicates that dedication had occurred prior to 1 September 1952, being the relevant date of the 1st Draft Map.

131. FP Huddersfield 233 would be a cul-de-sac unless the Order route was a public right of way, at least between points A to B. I gather that the status of FP Huddersfield 233 may be subject to challenge, but it is currently recorded in the DMS and its status as a public footpath is conclusively presumed, as things stand. There is no logical reason why FP Huddersfield 233 would be a cul-de-sac. This further supports the Order route being a public footpath as a minimum.
132. In my judgement, the additional evidence relied upon by the Bradleys does not suffice to discharge the burden of proof upon them to demonstrate that no public rights of way exist. Having been satisfied that public rights exist over the Order route, the question turns to the correct classification. Taking into account the multitude of arguments and counter arguments raised and all the available material, I remain of the view that the BOAT classification was erroneous.
133. The 1st Draft DMS with a relevant date of 1 September 1952 is evidence the route was considered a public footpath in the early 1950's. I rely on my previous comments at IOD [90-92] concerning the addition of (CRF) after the word 'footpath' in the 2nd Draft Statement up to and including the 1st DMS. Why there was a change from 'footpath' as shown in the earlier draft stages is unknown. Having regard to the 1974 memorandum, a plausible explanation is that the Surveyor was influenced by the characteristics of the Order route rather than its status. There was an error when the Order route was recorded as a RUPP, but the 1st DMS is evidence nevertheless of a public right of way with minimum status as a footpath.
134. The OMA previously sought to rely upon user evidence to argue for bridleway status recognising that the legal argument and documentary material was not strong enough to found a case beyond a public footpath. Cumulatively, the strands of evidence are still no stronger than demonstrating the existence of a public footpath. The user evidence of equestrian use prior to 20 April 1966 is thin.
135. Having assessed the totality of evidence, including that previously considered, and all the legal arguments raised, I remain of the view that a public footpath subsists over the Order route. There is insufficient evidence to support status any higher than a public footpath.

Limitations

136. The position of the OMA and the Bradleys on limitations is unchanged since the 2023 Inquiry. The primary position of the Bradleys is that they oppose the recording of any limitations because they do not acknowledge that any public rights of way exist. In this eventuality of me finding that there is a public right of way, I agree that the only limitations that can be recorded are those that existed prior to and at the point such rights came into being [187]. I cannot record those that came into existence afterwards.
137. As per my IOD [188], the public right of way must have come into existence prior to the relevant date in 1966 when the route was recorded as a 'footpath (CRF)' in the 1st DMS. From the 1st draft DMS, the route was considered a public footpath by 1 September 1952.

138. There are no new arguments to cause me to depart from my previous findings on the limitations to be added and those that should not.

Overall Conclusions

139. On the balance of probabilities, it has not been demonstrated that an error occurred such that no public right of way exists, and the route should be deleted from the DMS altogether. However, there has been a discovery of evidence which (when considered with all other relevant evidence available) is sufficient to show that the BOAT shown in the DMS subsists as a highway of a different description, namely a public footpath.
140. Having regard to all other matters raised at the Inquiries and in the written representations, I conclude that the Order should be confirmed with the modifications previously proposed, as a public footpath, and with corresponding corrections to the Order map.

Formal Decision

141. I confirm the Order subject to the following modifications, which do not need advertising:-

In the Order schedule: Part 1

- Delete the word 'bridleway' and replace with 'footpath'.

In the Order schedule: Part 2

- In the 'General' column, first entry, insert the word 'wall' after 'Gate'.
- In the 'General' column, second entry, replace grid reference 'SE 1170 1338' with 'SE 1167 1336'.

On the Order map:

- The line style to be changed to that of a footpath.
- In the key, delete the word 'Bridleway' and replace with 'Footpath'.
- Replace grid reference 'SE 1170 1338' with 'SE 1167 1336'.
- Move point D to grid reference 'SE 1167 1336'.

KR Seward

INSPECTOR

APPEARANCES

For Kirklees Council:

Mr Alan Evans	Counsel instructed by the Council
who called:	
Philip Champion	Definitive Map Officer

Interested party – in support

Diana Mallinson

In objection:

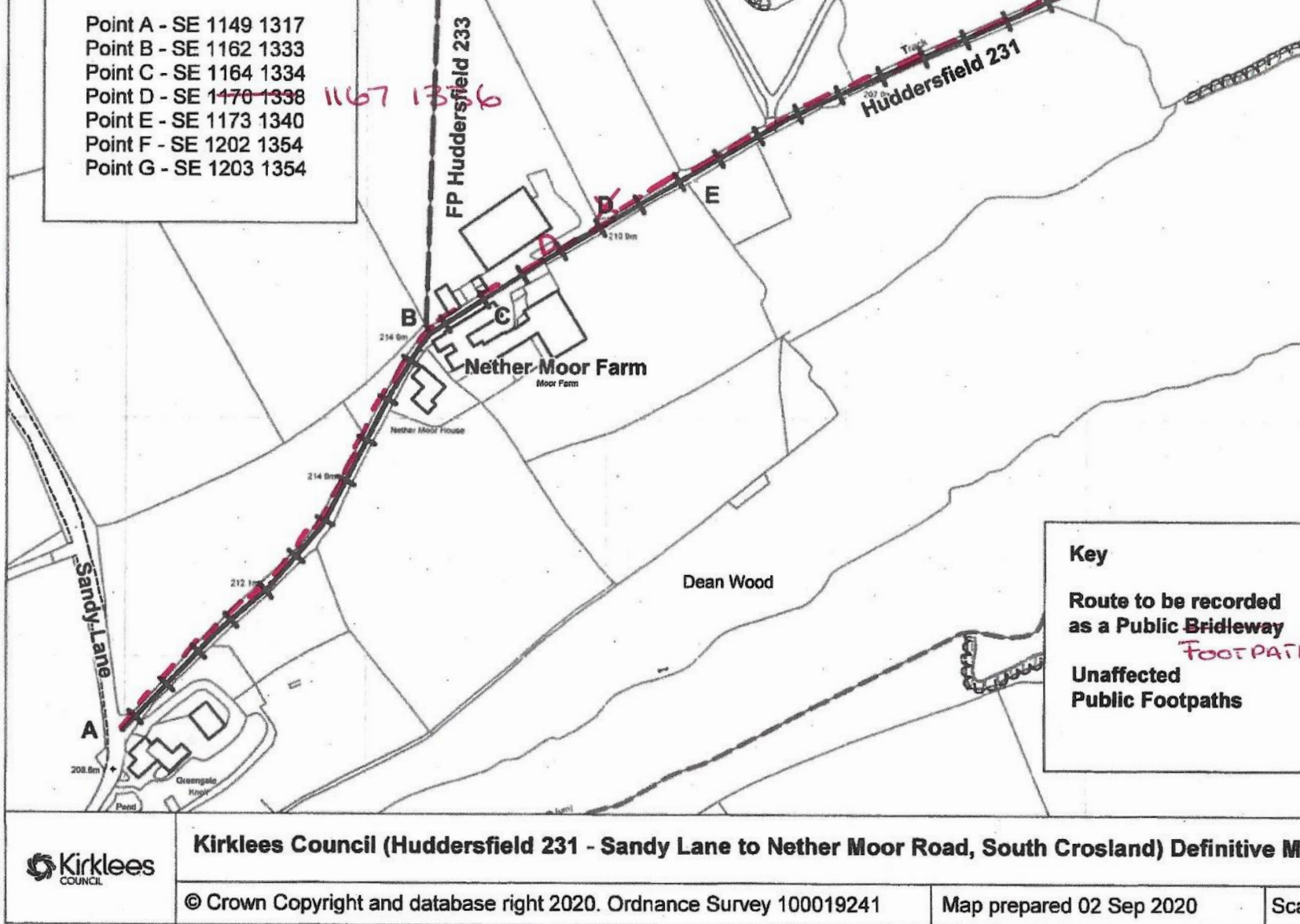
Ms Ruth Stockley KC	King's Counsel instructed by Irwin Mitchell LLP on behalf of Mr and Mrs Bradley
who called:	
Robin Carr	Consultant

Also in objection:

Catriona Cook	Byways and Bridleways Trust
Susan Taylor	
Andy Dunlop	
Will Steel	British Horse Society (closing statement only)

DOCUMENTS submitted at the Inquiry

1. Appendix DM22 – (i) extract from ‘Rights of Way - A Guide to Law and Practice’ by Riddall and Trevelyan on ‘Definitive maps – background’, and (ii) Huddersfield County Borough Council – adoption of survey provisions, 1950
2. Opening statement on behalf of the OMA
3. Opening statement by Diana Mallinson
4. Opening statement by Susan Taylor
5. Opening statement on behalf of Mr and Mrs Bradley
6. Chapter 1 of the ‘Guide to the Surveyors of the High-Ways’ by Meriton, 1694
7. 3 quotes relating to ‘lanes’ produced by Catriona Cook
8. Oxford Thesaurus of English entries for the words ‘lane’ and ‘bye-way’
9. Closing statement of the British Horse Society
10. Closing submission of the Byways and Bridleways Trust
11. Closing statement of Susan Taylor
12. Closing statement of Diana Mallinson
13. Closing statement of Andy Dunlop (withdrawn)
14. Closing submissions on behalf of Mr and Mrs Bradley
15. Closing submissions on behalf of the OMA



- Point A - SE 1149 1317
- Point B - SE 1162 1333
- Point C - SE 1164 1334
- Point D - SE ~~1170 1338~~ 1167 1356
- Point E - SE 1173 1340
- Point F - SE 1202 1354
- Point G - SE 1203 1354

Key

- Route to be recorded as a Public **Bridleway**
- Unaffected Public Footpaths

FOOTPATH



Kirklees Council (Huddersfield 231 - Sandy Lane to Nether Moor Road, South Crosland) Definitive M

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Map prepared 02 Sep 2020

Scale