

The Motoring Organisations' Land Access & Recreation Association.

Kirkby Bank 'Trodd'.

Notes on the Historical Status and Present-day Traffic Management of this Public Road.

A Report by LARA: July 2014.



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This paper is with regard to the unsealed part of the unclassified road that runs southwards from Stokesley, via Kirkby, with a sealed surface as far as Toft Hill, and then as an unsealed road to Cold Moor and beyond.

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Location.

Starting at Toft House (Toft Hill) and running southwards there is a length of stone-flag 'trod', or (more properly) 'causey', exposed in part, and extending for about 400-500 yards, to the 'moor gate', where the road becomes a basic stony track, down to bedrock in parts.



Physical Characteristics.

Just south of the gate at the end of the sealed road, the unsealed stone public road climbs on a slightly curved path. Just to the west of this curve there is a clear 'slot' in the undergrowth, suggesting that there may be causey stones in here, as yet uncovered. This 'slot' is clearly visible on online satellite photography (north to the top, the gate just off the photograph):



The exposed causey stones start near to this red-roof building above (Scout Association) and run southwards, changing from the east to the west side of the wider road.



This non-statutory notice is at the start of the exposed causey, and says, 'Please treat with care and do not ride bikes or horses on the footway.' Given that the through-road is regarded as being part of a longer packhorse route, it is probable that these flagstones are a horse causey, and not a foot causey, and so were put in with the express purpose of facilitating horse traffic. The causey is part of – comprised in – the highway.



Moving southwards beyond the Scout building, the causey shifts to the west side of the wider road, which is clearly visible here, and on the satellite photograph on the next page. The causey is on a raised embankment.

Here north is to the top. Toft House is top left. The map extract is Ordnance Survey 1857. The close boundaries match. The width of the road between boundaries (the eastern boundary has gone) easily matches that of the sealed & verge section north of Toft House.



The causey extends as far as the moor gate.



The causey has a row of stone posts, most single, this one double, for which the only obvious reason is to stop waggons getting on to, and then staying on, the causey, as per the provision in the Highways Act 1896, *et seq.*



Left. There is a patch of what looks to be wet-weather 4x4 rutting adjacent to, but not on, the elevated causey.

Below. Towards the top of the causey, on the embankment, there is what appears to be a motorcycle rut for a considerable distance, again probably resulting from irresponsible driving when the ground is very wet.



References in Statute to Horse and Foot Causeys.

'The General Highways Act' 1696: "An act for the better amending and repairing the highways and explanation of the laws relating thereunto."

S.6, "And whereas it hath been found necessary to secure horsecauseways, or causeways for horses, and foot-causeways, to travel upon in publick highways, by posts, blocks, or great stones, fixed in the ground, or by banks of earth cast up, or otherwise, from being broken up and spoiled with waggons, wains, or carts: And forasmuch as several evil-disposed persons do frequently pull up, cut down, and remove, the said posts, blocks, and great stones so fixed as aforesaid, and also dig and cast down the said banks, which are the securities and defence of the said causeways, whereby the causeways are often ruined and destroyed: ... every person who shall pull up, cut down, or remove any post, block, great stone, bank of eart, or other security ... shall forfeit for every of the said offences the sum of twenty shillings ... to be employed in the repair of the said highways ... and such evil-disposed Persons ... be committed to the House of Correction of such County, Riding, Division ... there to be whipped, and kept to hard Labour for any Time not exceeding one Calendar Month, nor less than seven Days, at the Direction of such Justice."

'The Highways Consolidation Act' 1767: "An Act to explain, amend, and reduce into one Act of Parliament, the several Statutes now in being for the Amendment and Preservation of the Publick Highways of this Kingdom; and for other Purposes therein mentioned."

S.29, margin note, "Where the General or Quarter Sessions shall be satisfied, upon the Application of the Surveyor, that the Duty and Money have been faithfully applied; or that the Highways, Bridges, Causeways, Streets or Pavements, can't be sufficiently provided for by the means prescribed ..."

S.34, "And whereas in some Places it hath been, and may be, found necessary to secure Horse Causeways and Foot Causeways to travel upon, in Publick Highways, by Posts, Blocks, or great Stones, fixt in the Ground, or by Banks of Earth cast up, or otherwise, from being broken up or spoiled with Waggons, Wains, Carts, or Carriages: And forasmuch as several evil-disposed Persons do wilfully or wantonly pull up, cut down, and remove, the said Posts, Blocks, and great Stones so fixt as aforesaid, and also dig and

cast down the said Banks, which are the Securities and Defence of the said Causeways, whereby the Causeways are often ruined and destroyed; and such evil-disposed Persons ... be committed to the House of Correction of such County, Riding, Division ... there to be whipped, and kept to hard Labour for any Time not exceeding one Calendar Month, nor less than seven Days, at the Direction of such Justice.”

‘The General Turnpike Act’ 1822: “An Act to amend general laws now in being for regulating turnpike roads in ... England.”

S.111, ‘Power to make Causeways’.

“And be it further enacted, that it shall be lawful for the trustees or commissioners to make and keep in repair, or cause to be made and kept in repair, any causeway or causeways for the use of foot passengers in, upon, or on the sides of the turnpike road in such manner as they shall think proper;”

‘The General Highways Act 1835’: “An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England.”

S.5, “... that the Word ‘Highways’ shall be understood to mean all Roads, Bridges (not being County Bridges), Carriageways, Cartways, Horseways, Bridleways, Footways, Causeways, Churchways, and Pavements ...”

S.22, “... and that the Surveyor of every Parish ... and also to secure Horse Causeways and Foot Causeways, by Posts, Blocks, or Stones fixed in the Ground, or by Banks of Earth cast up or otherwise, from being passed over and spoiled by Waggon, Wains, Carts, or Carriages ...”

The Highways Act 1980.

S.66 Footways and guard-rails etc. for publicly maintainable highways.

(1) It is the duty of a highway authority to provide in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway, a proper and sufficient footway as part of the highway in any case where they consider the provision of a footway as necessary or desirable for the safety or accommodation of pedestrians; and they may light any footway provided by them under this subsection.

(2) A highway authority may provide and maintain in a highway maintainable at the public expense by them which consists of or comprises a carriageway,

such raised paving, pillars, walls, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.

S. 71 Margins for horses and livestock.

(1) It is the duty of a highway authority to provide in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway adequate grass or other margins as part of the highway in any case where they consider the provision of margins necessary or desirable for the safety or accommodation of ridden horses and driven livestock; and a highway authority may light a margin provided by them under this section.

References to horse causeys in *Byway and Bridleway*.

Horse causeys in context: 2000/4/28.

Horse causey unearthed: 2000/8/51.

Horse causeys & halterpaths: 2005/7/66.

Second thoughts on Ashover: 2010/5/89.

See also: David Hey, *Packmen, Carriers and Packhorse Roads: Trade and Communications in North Derbyshire and South Yorkshire*. Leicester University Press, 1980, ISBN 978-0718511920, particularly pages 64-71.

Author's Note.

For a while I thought that this road is the road subject to a court hearing in the case, R v. The Inhabitants of Greenhow [1876] QBD 703, which dealt with whether a road, virtually destroyed by a landslip, had ceased to exist as a matter of law. On a careful reading of the recited facts, and in comparing these to a contemporaneous large-scale Ordnance map, the road in the case is the next road to the east (arrowed below), which the court holds to be a public vehicular road running down to Bilsdale. That will need an 'upgrade' from bridleway to restricted byway by the National Park Authority.



Status Conclusions.

1. The physical width of the road, at least as far as the moor gate, is considerably more than the width of the causey and, where this exists, the embankment on which the causey flags are set. The early, large-scale Ordnance maps support this.
2. The nature of the road as a whole: width, the thrown-up embankment, the causey flags, and the stone posts (presumably to stop vehicles: what other purpose would these have?) is a good fit with the long-running statutory provisions to make and protect horse and foot causeys in public cart / carriage roads.
3. This causey feature is unlikely to be a foot causey. The construction and maintenance of this for foot traffic only would have been a considerable cost for little economic utility. Foot causeys are mostly shorter, and intended to keep pedestrians out of road muck in towns, and flood waters in low areas. This causey is more probably a horse causey.
4. The fact that this public road has not been recorded on the definitive map as a public right of way is good evidence of its reputation as a public general-purpose road. See: *The Motoring Organisations' Land Access & Recreation Association. Unsealed Unclassified Roads. Their History, Status, and the Effect of the Natural Environment & Rural Communities Act 2006.* This is available on LARA's website: www.laragb.org.

Management Options.

5. On this site visit the inspection did not go 'over the top' of the dog-leg climb, out on to Cold Moor, but what is suggested as regards management for the causey section is relevant further south.
6. The causey itself is a Scheduled Ancient Monument, and whilst this scheduling does not of itself override highway rights, it does have an effect on the management of the exercise of highway rights.
7. As may be seen from the accompanying notes on the law regarding horse and foot causeys, these surfaced ways have (since at least 1696) had available a form of traffic regulation so as to bar their use by waggons, carts, and (later) carriages.
8. A traffic regulation order could be used to prohibit cycles and motors (but not horses) from the whole of the road, but that seems unreasonable given that motorcycles have used this road without harm for 35 years to the knowledge of the author, and longer than that by other people.
9. A properly drafted traffic regulation order based on the format in LARA's *Traffic Management Hierarchy. Good Practice in Traffic Management on Unsealed Public Roads. Part 1: A Selective Approach to Traffic Management. (May 2014)* would give the highway authority a flexible power to close the road without further notice in and after periods of extreme weather, and also to impose a permanent 'no motors' exclusion on the causey itself (bar the 'cross-over' place). The order could also bite on pedal cycles in all or any parts.

proposed went far beyond the council's powers under the Highway Act, and that the whole width of bridleways #38, 34 & 35 would be "... a cycleway... rolled flat hard and akin to a pavement." The result, said Mr Johnson, "... a Rolls Royce route for cyclists [although] only a small minority of the total current users... An encouragement to greater numbers of cyclists... An encouragement to recklessly fast cycling... Unsafe and dangerous for walkers and horseriders in dry conditions when facing solitary let alone groups of cyclists... Inappropriate to best environmental practice... Akin to a pavement..." Mr Johnson summarised that the works were "... neither 'maintenance' nor 'improvement' nor 'making good' and 'levelling' is unnecessary."

Durham's county solicitor responded, reasserting the council's powers under ss.41, 62 and 76, and adding s.99: metalling of highways, for additional authorisation. He tells Mr Johnson that "It is clearly not the case that any landowner has a 'veto' over the exercise of these powers." He further advises Mr Johnson that any repeat of an earlier incident when council crews were prevented from doing the work could be treated as an offence under ss.303, 333, and 137 of the Highways Act 1980.

Mr Johnson wrote back immediately querying the council's assertion that it can 'metal' such a rural bridleway. "Given your interpretation of your powers," says Mr Johnson, "it follows that you consider the council empowered to metal a footpath that crosses an arable field! This clearly cannot be right."

A further attempt by the council to gain access to do the works (with the police in attendance) was frustrated by Mr Johnson's intervention, followed by further correspondence and the consideration of High Court action. By February 2000 Mr Johnson had decided that he could not prevent the works being done by direct intervention, or court order, and had instead referred the matter to the local Ombudsman under complaint.

Byway & Bridleway heard about this case in early December, took a look at one of the bridleways to be 'improved', and discussed some aspects with both the landowner and the county council. Mr Mike Lowe, head of rights of way at County Hall, told us that the surface to be applied would not be a 'pavement' but rather a well-drained and resilient smooth dressing of stone and fines, not unlike that used on the county's 'rail trails' (almost all of which are open to horse riders). He added "The proposals were developed after consultation with local equestrians who support the surfacing of the bridleways." [The surface specification is: 2.5 metres wide where possible, 150mm sub-base of planings (preferred) or dolomite, 20mm whin dust over, laid to drain.]

The case for a long distance bridleway in Wales

Andrew Kelly writes:

England -11, Wales - 0. This is not the latest international football result, but the statistics of how many 'long distance' bridleway routes are available throughout England and Wales - there are probably many more! The Pennine Bridleway is included although not yet open. From these figures you can see for yourselves that it is time that Wales has its share of the market, or at least be given something for the long distance recreational rider. There are the occasional promoted routes in Wales such as the Ceiriog and Upper Ceiriog Trails, both of which I have played a major part in developing, but nothing for those wishing to travel along linear routes.

Scenery and views are two qualities that riders look for if they decide to ride in a different part of the country. In a survey of visitors using the Offa's Dyke National Trail it was revealed that one of the reasons given for visiting this path was the quality of the landscape through which it passes; this proves in one respect that Wales has what it takes to attract visitors.

As far as I know there are no long distance linear horse riding routes available in Wales. Perhaps I should say that none have been brought to my desk to be looked at, and be asked whether it would attract anyone. With the dawn of the new Millennium I hope that this will all change. I am prepared to work on a route that will ensure Wales is put on the map as a destination for those wishing to go on a horse-riding holiday. I thought a good starting point was to see what the Countryside Council for Wales (CCW) has in its policies relating to National Trails, in particular relating to those for horse riding. It comes as no surprise to learn that CCW has no definitive plans on the subject. In CCW's policy statement on the subject of National Trails, Policy 11 states "*CCW recognises the needs of horse riders and cyclists and will, where practicable, support the development of associated recreational routes as branches off the main Trails following consultation with interested parties. However, CCW has no current proposals to develop a National Trail for horse riders and cyclists. The demand for*

the longer routes for horse riders and cyclists is being partly met through other initiatives such as Lon Las Cymru (National Cycle Route for Wales) currently being developed by Sustrans". If my suggestion of a long distance route ever gets off the ground then CCW will have to rewrite their policies and ensure that equestrian interests are taken into account when deciding where their resources should be spent.

Are there any economic benefits to such an idea? Money will be spent by whoever uses the trail, and this includes day visitors as well as those who travel and stay in overnight accommodation. The income generated will maintain existing businesses such as local post offices, village shops and public houses.

What next? So long as sufficient funds can be raised, a feasibility study will be undertaken to assess how much money is needed to bring the path into a standard expected for a promoted route. It is probably going to become a Regional Trail to begin with, as financial constraints on CCW do not allow a route to become a National Trail from the outset. For a start CCW as mentioned above do not have plans to create such a trail. In due course it is envisaged that an application will be submitted to CCW to turn it into a National Trail.

Extra income will go to those who offer essential services to the travelling rider such as farriers, vets, feed merchants. In addition to giving benefit to the local economy it will create more work for those who supply the local trade. For example spending in a local restaurant will mean an increase in the amount of food needed, which in turn means the supplier needs more food and in turn the public will spend their money.

If any readers wish to pass on any comments regarding the suggestion of a long distance riding route in Wales, I am sure the editor of *Byway & Bridleway* would like to hear from you. Any ideas on exactly where the route should go would be welcomed too, through Mid-Wales avoiding the valleys and the busy North Wales section in Snowdonia? If anyone feels such a route is not needed, on what grounds are your objections?

Horse causeys in context?

From *The Old Coaching Days in Yorkshire*, Tom Bradley, 1889.

Prior to the passing of several local acts between the years 1740 and 1760 for the improvement of highways the roads about Leeds were in a most deplorable condition, being nothing more in most cases than a narrow slip of rough flags leading across a common, with deep ruts on either side. Speaking of these roads, Dr Whitaker says "they were sloughs almost impassable by single carts, surmounted at the height of several feet by narrow worn tracks, where travellers who encounter each other sometimes tried to wear out each other patience rather than each would risk a deviation."

Horse causey unearthed in turnpike renovation



The highway network between Alston and Penrith, in Cumbria, is a fascinating illustration of the evolution of roads from Roman times to the coming of the motor age. The five main roads radiating out of Alston (claimed to be the highest market town in England) are of particular interest, all having received the attentions of John Loudon McAdam in a major turnpiking programme in 1823. McAdam, in his very practical and economical approach, improved the existing roads, building new alignments only where the benefit outweighed the cost. One 'new section' is now the hairpinned-loop of the A686 at Hartside Cross, which 'replaced' the earlier line over Twotop Hill. That earlier line would itself seem to have been a first turnpike (no plans have yet been located, but the surviving Private Acts suggest this); certainly it was the main road between the market towns of Alston and Penrith, and is shown in Hodkinson & Donald's county map of 1770/71, marked with 'mile points'.

Cumbria County Council has this summer reinstated the waterlogged and debris-piled surface of the old road. By

carefully scraping away almost two centuries of deposit, the wide stone carriageway was found to be in remarkable condition - flat, wide and made from the standard 'egg-sized stones' of turnpike builders. There was still a proper drainage system of culverts under the metalled surface. These had blocked from neglect, but the metalling was so well-made that the fell water had merely run over the top and deposited soil, rather than destroying the roadway.

Perhaps the most fascinating discovery (and plaudits are due for the skill and care of the JCB driver here) was the survival of what appears to be a 'horse causeway' of stone setts, about four feet wide, that is in part underneath, and in part alongside, the main metalled carriageway. This accords with the provisions of s.11 of the Highway Act, 1767, "That the said Surveyor... of the Highways shall... Make every Cartway leading to any Market Town, twenty feet wide at the least... And that where Horse Causeways are used... They shall not be less than three Feet in Breadth."

LAW & PRACTICE

A big slice...

... of (non-animal) humble pie has been consumed in the editorial lunchbreak. In *Mmmm... We'd forgotten that!* (B&B 2000/5/31) we reported with a degree of glee the consultation by Northumberland County Council concerning the 'improvement' of an unclassified road that was, we said, subject to an earlier cesser order. In fact, the road up for improvement is a nearby road - not the 'de-maintained' length at all. The consequent big slap from NCC is accepted with apologies.

Not binding

Some months ago we reported an inspector's decision which turned, at least partly, upon an interpretation of a High Court judgment by Mr Justice Collins in the case of *R. v. Secretary of State for the Environment ex parte Patterson (Limitation of powers, B&B 2000/2/12-13)*. On this interpretation, it appeared that an order-making authority receiving an application for a diversion order should direct itself solely to the question of whether the proposed diversion would be in the interests of the applicant. If this were indeed the case, then the authority has no discretion but to make the order.

B&B now understands that legal opinion is that no such weight can be given to what seems to have been merely a comment made when granting leave to an applicant to proceed, in the course of a summary oral hearing. However, in practice the discretion of order-making authorities will be consid-

erably limited if and when Schedule 6 of the Countryside and Rights of Way Bill is enacted. This would require authorities to determine applications for diversion or extinguishment from agricultural landowners or occupiers within no more than four months from date of receipt.

Your sins will find you out

Back in the early 1990s Newcastle upon Tyne City Council commenced an ambitious and controversial scheme to build an inner-city road called the Cradlewell Bypass. The scheme was itself controversial, cutting through a Victorian park, but part of the mode of implementation has, several years later, come back to haunt the council in a damning District Auditor's report.

District Auditor David Allsop considers, among several other complaints, the council's use of traffic regulation orders to effect 'permanent stopping-up' of severed and re-engineered highways. The council decided (according to a complainant) to use traffic regulation orders instead of the conventional side road order approach to sidestep the cost and delay that would arise from likely objections to any side road order, leading to a public inquiry. Council officers were told at the time that this approach was incorrect and unlawful - the Byways and Bridleways Trust was one such objector - but they decided to bluff it out and carried on regardless. Unfortunately for the council, a local resident, Geoff Stansfield, refused to be intimidated by the bullying and stonewalling he encountered, and doggedly pursued the matters through the full range of complaint procedures.

The District Auditor finds that the council has no power to 'stop up' a highway for a road development of this type without a side road order, and that unlawful *de facto* stopping up has taken place by means of barriers, topsoil and paving. He further finds that the expenditure of £1887.35 on these items is "contrary to law", but declines to order any repayment.

Report by the District Auditor under Section 8 of the Audit Commission Act 1998. Newcastle upon Tyne City Council. Cradlewell Bypass. August 2000.

Rosedale update

Last year we reported at some length on Karl Briggs' Schedule 14 appeal against the refusal of the North York Moors National Park Authority to add part of the route of the disused Rosedale ironstone railway to the definitive map as a BOAT (*No BOATs at any price #2: B&B 1999/8/61*). The unusual feature of this claim is that it was based squarely upon evidence of a long period of user by pedal cyclists.

As is now customary, the appeal was considered by an Inspector (in this case Mr M F Davies) and his report has now been accepted by the Secretary of State. As a result the authority has been directed to make an order upgrading from footpath to BOAT the western section of the route, roughly 15km. in length. However, the Secretary of State has turned down the appeal as far as it relates to the addition to the definitive map as a BOAT of the eastern section, of almost the same length. The likelihood of objections means that a public inquiry is on the cards.

HISTORY

Horse causeys and halter paths

The Reigate to Crawley horse causey: an expressway for equestrians?

Charles G. Harper, *The Brighton Road*, 1892, revised 1922:

“Among the many isolated roads made or improved, which did not in the beginning contemplate getting to Brighton at all, the pride of place certainly belongs to the ten miles between Reigate and Crawley, originally made as a causeway for horsemen, and guarded by posts, so that wheeled traffic could not pass. This was constructed under the Act 8th William III, 1696, and was the first new road made in Surey since the time of the Romans.

“It remained as a causeway until 1755, when it was widened and thrown open to all traffic, on paying toll.”

Was this Reigate to Crawley road only a bridleway, albeit a well-made one? No. Mr Harper’s reference to the 1696 act is to, 8 William III, c.29, “An act for the better amending and repairing the highways, and explanation of the laws relating thereunto.” S.VI: “And whereas it hath been found necessary to secure horsecausways, or causways for horses, and foot-causways, to travel upon in publick highways, by posts, blocks, or great stones fixed in the ground, or by banks of earth cast-up, or otherwise, from being broken up and

spoiled with wagons, wains, or carts: and forasmuch as several evil disposed persons do frequently pull up, cut down, and remove the said posts, blocks and great stones, so fixed as aforesaid, and also dig and cast down the said banks, which are the securities and defences of the said causeways, whereby the causeways are often ruined and destroyed: for remedy whereof ... every person who shall pull up, cut down, or remove any ... shall ... forfeit for every one of the said offences the sum of twenty shillings ...”

Belinda Burne has kindly sent in two book extracts on the subject of horse causeys.

From the *Journeys of Celia Fiennes*:

“ANOTHER JOURNEY to the Bath, from Newtontony to Warminster, a good road town, and good way; thence to Breackly [Berkley] a deep clay way; we passed over one Common of some miles length on a narrow Causy [Causeway] that a Coach can scarce pass, all pitched with slatts and stones, our Coach was once wedged in the wheele in the stones that severall men were forced to lift us out; its made only for Packhorses, which is the way of carriage in those parts; the Common is so moorish [marshy] their feete and wheeles would sinke in, so no going there.”

From *Packmen, Carriers and Packhorse Roads*, by David Hey, 1980 (page 50):

“These flag pavements were formed for horse paths, not foot paths. Before carriage roads were formed of hard materials, these horse paths were common in the north of England, and, necessarily, on the sides of public lanes, in every deep soiled district of the kingdom; – for the use of pack horses and travellers on horseback, in the winter season; when clayey lanes were otherwise impassable. Where broad stones were not to be procured narrow causeways of pebbles were the packways.

And in similar vein ...

In a recent public inquiry in Somerset, it was argued (against the existence of public rights) that a ‘halter path’ was not a riding route – not a public bridleway. Stephanie Wheeler has kindly sent in a copy of an entry in the minutes of the Langport Highway Board in 1882 (Somerset Record Office, 1882, D/R/La, 32/1/2, page 136), which indicates that in the era of horse transport, the terms were regarded as synonymous: “Recommendation of the vestry to repair a bridle or halter path beside Horsey Plantation leading from Kingsbury to Muchelney. The Surveyor to inspect and report at the next meeting.” Horsey Drove is now definitive bridleway L17/45.

Other references to halter path/way:

History: B&B 1996/7/41

Halterways defined: B&B 1994/4/14

Halterpaths: 1993/4/14

Making and maintenance

Laverstock & Ford tithing

Act 58 G.III c.3 (Private). *Award* 5 July 1820, W.R.O. 114.

Roads 7 public roads, 2 private roads and public bridleway, 6 private roads, 3 public footpaths.

Salisbury Highway District Board Minutes, 7th September 1864. Surveyor’s Report (extract) WRO G11/1/1: Laverstock. The Roads awarded as private appear from the award as included for public use & the liability to repair arises from the parties having had certain lands allotted to them with a joint liability to repair, in particular, as specified in the Schedule annexed thereto – with others that are awarded as occupation Roads – Resolved that the Surveyor be authorised

to take the necessary steps with a view of placing the private Roads mentioned in his report into good repair –

Ringstones Road was set out as a public bridleroad in the Barkisland Inclosure award of 1817.

(a) There was no requirement for it to be walled. All fences abutting were allotment boundary walls and the allotments were awarded subject to the road.

(b) It was to be ‘made’ by the Inclosure surveyor appointed by the allottees, and thereafter to be maintained by the owners and occupiers of the allotments as directed in the award.

What ‘made’ means in this context is described in the records of the Dewsbury Inclosure (1803-1806), for which Thomas

Gee [the commissioner for the Barkisland award] acted as surveyor:

“As regards construction, the 40ft and the 30ft roads were always stoned, but 20ft roads might be stoned or just formed. The 15ft roads were only formed, but with sewers and, occasionally with causeways. There does not seem to have been a standard cross-section for the roads. The 15ft and 20ft and even 30ft roads were specifically made ‘crowned’, but the larger ones were ‘flat’ with a declivity away from the causeway. Drains and sewers have certainly been made, but their frequency in a road seems to have been a haphazard arrangement, which [varied] from road to road.” (John F. Broadbent, ‘Dewsbury Inclosure 1796-1806’, *Yorkshire Archaeological Journal*, vol. 69, 1997, pp. 220).

ule 14 to the 1981 Act of “such an application” for an order to modify the definitive map before the date of commencement, 2 May 2006. In this case the 1993 application had been determined in September 2004 by the decision of the OMA to make an order. However, the reference in s.67(3)(b) to “such an application” indicates that this provision only relates to applications made for the purposes of s.67(3)(a) of the Act which, as already stated, must be fully compliant with the requirements of Schedule 14 of the 1981 Act. In other words, an application that would have failed to trigger an exception under s.67(3)(a) cannot trigger one under s.67(3)(b) and, accordingly the exception set out in s.67(3)(b) does not apply in this case”.

The order is confirmed as made.

Second thoughts on Ashover

An Inspector is persuaded to change his mind about a claimed Derbyshire BOAT.

Adrian I’Anson

FPS/U1050/7/46M

28 June 2010

In October 2008 Inspector I’Anson held a three-day public inquiry into an order from Derbyshire County Council adding an 820m.-long BOAT, known as Marsh Green Lane, to the definitive map for Ashover. The core of the council’s case was an inclosure award of 1783, which set out two short public carriageways over strips of common land at either end of the order route. The Inspector described this as “ambiguous”, and found the evidence for public vehicular rights over the middle 690m. of the route to be “weak and unconvincing”. He confirmed this section as a bridleway, with only the two ends of the route having cul-de-sac BOAT status [*Ambiguous, weak and unconvincing*, B&B 2009/2/17-18].

Objections to these modifications have occasioned another public inquiry, this time extending over five days. It began as a standard paragraph 8 second inquiry, but after an adjournment it was reconvened on the basis of paragraph 7, as a re-opening of the original inquiry to hear new evidence into the unmodified part of the order and concurrently to continue the inquiry into the proposed modifications. Objectors to the existence of any public vehicular rights included Andy Dunlop, representing the local parish council. The council headed those challenging the modifications, with Alan Kind appearing on behalf of the Trail Riders Fellowship, the original applicant for the order.

In his interim decision the Inspector had concluded “that there was no clear evidence that the inclosure award established a public carriage road over the intervening length [i.e. the middle section].”

Representations from the council at the second inquiry now persuade him that “the issue before me, in this respect, is whether or not the award is consistent with the prior existence of the intervening length as a carriage road”, and that his earlier approach was “misconceived.” In this context he gives “significant weight” to the point made by the council’s expert witness that “if the order route was only necessary to serve properties at either end the commissioners would have stopped it up and awarded private carriage roads, sometimes called occupation roads.” He goes on to consider the contention from an objector that the awarded carriageways were never “made and formed”, as required by the inclosure act, and hence never became public highways. Here he accepts the argument of Mr Kind, citing the judgment in *AG & Rural District of Settle v Rural District Council of Lunesdale* [1902], Law Times 16 August 1902, that in “pre-1801 inclosure awards, matters as to width and making and forming are merely directory.” Thus, he concludes, “even if the ends of Marsh Green Lane ... were never ‘made and formed’ as required by the inclosure act, that would not prevent these lengths becoming public highways.” He also gives little weight to the contention that the two ends “were set out as cul-de-sac public carriage roads to avoid the commissioners having to research (and, if necessary, arbitrate on) disputes as to the rights that existed over the intervening length of road.” Overall, he now finds “that the wording of the inclosure award, when given a proper construction, shows, on a balance of probability, that the whole through route of Marsh Green Lane was a public carriage road.”

The Inspector next considers, and rejects, a suggestion that the 1783 commissioners had adopted an unduly uniform and arbitrary approach to their work. He also considers the issue of cul-de-sac highways, with reference to case law and the Planning Inspectorate’s Consistency Guidelines (also “*Inclosure Awards: law and practice*” by David Braham, Rights of Way Law Review 9.3, 139-45). He has “no doubt that the principle set out in the Guidelines and supported by the case law makes it clear that I would have to identify special circumstances to justify the creation of culs-de-sac ... No special circumstances, such as a place of interest or a beauty spot ... have been suggested to me. This enhances the case for the intervening section ... together with the two ends formally set out as a public carriage road under the award being a continuous public carriageway.” Mr. I’Anson goes on to consider further “significant evidence” of nineteenth-century ‘encroachments’ upon the route: a matter to which he had given some weight in his interim decision. Now, however, he feels that it must be seen in the light of “the

fact that rights had probably been acquired prior to 1751 and acknowledged by the award in 1783. In view of that, I consider that the fact of the encroachments and lack of maintenance do not detract to any significant extent from the conclusion that the Award has led me to.”

Evidence was submitted by Mr Kind concerning the existence of a ‘causey’ or raised footway on one part of the order route. The Inspector comments that “a causey could provide extra width of passage for either a horse or walkers or an alternative way where the existing way was worn, sunken or waterlogged. Having raised this issue on the penultimate day of the inquiry, it is unfortunate that Mr Kind was absent on the last day to provide more evidence on this issue and to give other parties an opportunity to test the extent to which it might have existed and, if so, its relevance to the order before me”. He adds that “the site inspection failed to convince me as to any probability of the existence of this feature.” [See below for more on causeys. Ed.]

Additional evidence of use of the route on motor bikes was also given, which the Inspector finds gives “a small amount of added weight to the posi-

tion that the order route is a longstanding vehicular route.” Finally, he deals with further objections from Mr Dunlop to the preservation of rights for mechanically propelled vehicles thanks to s.67(2) (b) of the 2006 Natural Environment and Rural Communities Act. This provides an exemption from extinguishment for routes which immediately before 2 May 2006 were not shown on a definitive map but were shown on a statutory ‘list of streets’. Mr Dunlop’s first challenge, not accepted by the Inspector, was that the council’s ‘list’ – an interactive map search facility – did not qualify as such. His second was that it failed to comply with the statutory requirement of listing highways maintainable at public expense. The council did not accept that “a list produced in partial compliance with the statutory requirement, but which excludes ... footpaths and bridleways, is not capable of comprising a statutory list of streets” – and the Inspector agrees. Thirdly, Mr Dunlop contended that –contrary to current guidance from *defra* – for an exemption to apply it must comply with all the tests set out in s.67(2) of the 2006 Act. The Inspector is not persuaded.

The order is confirmed as made, subject to previous modifications as to width and some further minor modifications.



For more on horse and foot causeys see:
Packmen, Carriers and Packhorse Roads, David Hey 1980 (available via Amazon at the time of writing).
 B&B 2000/4/28.
 B&B 2000/8/51.
 B&B 2005/7/66.

The ‘Highways Act’ of 1696. S.6, “And whereas it hath been found necessary to secure horsecausways, or causways for horses, and foot-causways, to travel upon in publick highways, by posts, blocks, or great stones fixed in the ground, or by banks of earth cast up, or otherwise, from being broken up and spoiled

with waggons, wains, or carts : and forasmuch as several evil disposed persons to frequently pull up, cut down, and remove the said posts, blocks and great stones ... whereby the causways are often ruined and destroyed : for remedy whereof ... every person who shall pull up [etc.] ... shall forfeit for every of the said offences the sum of twenty shillings.”

The ‘Highway Act’ of 1833. S.24, “... and also to secure Horse Causeways and Foot Causeways, by Posts, Blocks, or Stones fixed in the Ground, or by Banks of Earth cast up or otherwise, from being passed over and spoiled by Waggons, Wains, Carts, or Carriages ...”