



Order Decision

Site visit made on 14 May 2024

by **C Beeby BA (Hons) MIPROW**

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

Decision date: 12 June 2024

Order Ref: ROW/3318409

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Council of the City of York Wildlife and Countryside Act 1981 North Riding of Yorkshire Definitive Map and Statement Public Bridleway Skelton 12 Modification Order 2021.
- The Order is dated 19 August 2021 and proposes to modify the Definitive Map and Statement for the area by the addition of a bridleway between Shipton Road and Public Footpath Skelton 8 as shown in the Order plan and described in the Order Schedule.
- There were four objections outstanding when the Council of the City of York submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.

The Main Issues

2. The Council of the City of York made the Order under Section 53(2)(b) of the 1981 Act on the basis of events specified in sub-section 53(3)(c)(i). As a result, the main issue is whether the discovery by the Council of evidence (when considered with all other evidence available) is sufficient to show that a public right of way on horseback which is not shown in the map and statement subsists over land in the area to which the map relates.
3. The submitted evidence is solely documentary. As a result, Section 32 of the Highways Act 1980 ("the 1980 Act") is additionally relevant. This requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it appropriate weight, before determining whether the way has been dedicated as a public bridleway.

Reasons

Background

4. Point A of the Order route leaves Hurns Bridge on the A19 road. Point J joins Public Footpath Skelton 8, which leads to Moor Lane.

Documentary evidence

1630 Forest of Galtres map

5. A gate is marked at point A, with a feature depicted by a dotted line passing north. A route in the area between double dashed lines is annotated 42, which is described in the key as “the road from Shipton to Wigginton”. It passes to the south of a dwelling within land parcel 3, which is described as “The Warren House The Corburne – closes”. The (modern) A19 road is depicted between double solid lines and Moor Lane, to the east of Skelton, is shown between double dashed lines.

1697 Parliamentary Act for Enlarging Common Highways

6. This suggests that it shall be lawful for justices of the peace to require surveyors of highways to erect a stone or post with an inscription showing the name of the next market town where “two or more crosse high-ways” meet.

1771 Jefferey’s Map of Yorkshire

7. A “stub” of route only is shown at point A of the Order route. According to the key it is an “inclosed road”. A building is marked at the location of Hall Moor Farm (South).

1781-1794 Torrington Diaries

8. Extracts from the diaries of John Byng Torrington are provided. These suggest that he used maps when travelling.

1789 Traveller’s Companion

9. This provides a “new itinerary of England...being an accurate and comprehensive view of the principal roads in Great Britain taken from actual surveys wherein every object worthy of notice is pointed out”. The document’s preface indicates that it was “compared with the actual Surveys of the several Counties, and every other authentic Source of Information” as there were areas which its author had either never visited, or had not visited recently.

1806 Inclosure Act

10. This is an Act for inclosing lands in the township of Skelton in the parishes of Skelton and Overton, in the North Riding of the County of York. The Act relies on the provisions of the Inclosure Consolidation Act of 1801, so that the commissioners had the power to set out highways.

1806 Inclosure notice of meeting

11. The document gives notice of the inclosure commissioner’s intention to hold a meeting for putting the Act into execution and requests the attendance of persons with an interest in the town of Skelton. Notice is also given of the commissioner’s intention to walk the boundaries of Skelton.

1807 sealed Inclosure Map and Award

12. A short section of the Order route from point A east is shown on the map between double unbroken lines. The section is open to the highway. Approximately section B-H is then shown between double pecked lines before meeting the drive to Hall Moor Farm, which is shown between double unbroken lines. The route is coloured sienna and is depicted as the only access to the farm at that time.
13. The award sets out public and private roads, a public bridle road and two public foot roads. It refers to the Order route three times. It is described as “Hall Moor Lane”, “lane leading to Hall Moor” and “road to Hall Moor”. No part of the Order route is set out within the award as either a public or private way, and it is not referred to as an “ancient” or pre-existing way.
14. No sheep or lambs were to be kept in any of the new allotments for seven years following the Award’s date, unless the new boundary hedges were protected by fencing. Any person who did not comply with these directions was liable to a fine payable to the Surveyor of Highways, to be used for highway maintenance.

1807 unsealed Inclosure Map

15. This shows section A-I of the Order route in the same way as the sealed map. It is submitted that the route is depicted on this map to then continue uncoloured to the east, as far as the property “Moorlands”.

1816 Tuke’s Map

16. A “stub” of route only is shown at point A of the Order route. According to the key it is an “other road”. “Hall Moor” is marked at the farm’s location.

1817 Greenwood’s Map

17. Approximately section A-I of the Order route is depicted as a “cross road”, leading to Hall Moor. A track to “Wide Open” Farm to the south which is not a recorded public right of way is shown in a similar way. Section A-B of the Order route is shown by bolder lines.

1828 Teesdale Map

18. Approximately section A-I of the Order route is depicted as a “cross road”. A track to “Wide Open” Farm is shown in a similar way. Section A-B of the Order route is shown by bolder lines.

1825/1832 Cary’s Map

19. A route is shown in the vicinity of the Order route’s section A-H by double dashed lines and leading to “Hall Moor”. It may be depicted as a “parochial road” according to the key, or it may be shown as a track between dashed lines. A track to “Wide Open” Farm is shown in a similar way.

1834 Fowler’s Map

20. Approximately section A-I of the Order route is depicted as a “cross road”. A track to “Wide Open” Farm is shown in a similar way.

1843 Hobson's Map

21. Approximately section A-I of the Order route is depicted as a "cross road". A track to "Wide Open" Farm is shown in a similar way.

Undated 25 inch OS Map, 1841-1952

22. Section G-J of the route is shown as a track which is annotated "F.P."

One inch OS Map Sheet 63 surveyed 1845, published 1898

23. Section I-J is shown by a single dashed line, in the same way as a path between Skelton and Wigginton which is now a recorded public bridleway. It joins a track leading to Moor Lane. Section E-I is shown between double dashed lines.

1852 One inch Ordnance Survey (OS) Map

24. A track is shown by double pecked lines to follow the approximate course of the Order route between points A-I. The track then continues away from the Order route north past Hall Moor Farm (South) to meet Corban Lane. Section I-J of the route is depicted by a single dashed line only, appearing to join Skelton Footpath 8.

1854 6 inch OS Map

25. Approximately section A-C of the route is shown between double solid lines and named Hurns Lane. Section C-I of the route is shown by a varying notation and annotated "Bridle Road" at two points. An unannotated track between points I and J terminates at J without connection to another route. The A19 road is named "Shipton Street" near point A.

1858 One inch OS Map

26. Approximately section A-C of the route is shown between double solid lines. Section C-I is shown between either solid or dashed double lines. A short section of track running east from point I only is depicted.

1859 Newspaper cutting

27. The cutting advertises the sale by auction of effects at Hall Moor Farm, Skipton.

1864 Newspaper cutting

28. This advertises a sale of stock and potatoes at Hall Moor Farm.

1891-93 25 inch OS Map

29. Section A-C of the route is shown between double solid lines and annotated Hurns Lane. Approximately section C-I is shown between double pecked lines, or between an unbroken and a pecked line, and annotated "B.R.". Approximately section I-J is shown between double pecked lines and annotated "F.P.", appearing to join Skelton Footpath 8.

1893 6 inch OS Map

30. Approximately section A-C of the route is shown between double solid lines annotated Hurns Lane. Approximately section C-F is shown between an unbroken and a pecked line.

1895 6 inch OS Map

31. Point G passing east is shown between double pecked lines and annotated “B.R.”. Point J passing west is shown by an unbroken and a pecked line and annotated “F.P.”, appearing to join Skelton Footpath 8.

Dictionary definitions:

- *1903 Webster’s International Dictionary*
- *1905 Nuttall’s Bijou Dictionary*
- *1932 Shorter Oxford Dictionary*
- *1968 A Medieval Farming Glossary*

32. Definitions from the documents are provided.

1898 One inch OS Map

33. The approximate Order route is shown between points A and H or I by either solid or pecked lines. A track continues away from the Order route north past Hall Moor Farm (South). Section I-J of the route is depicted by a single dashed line only, appearing to join Skelton Footpath 8.

1904 One inch OS Map

34. The approximate Order route is shown between points A and H or I by either solid or pecked lines. The track then continues away from the Order route north past Hall Moor Farm (South) to meet Corban Lane. Section I-J of the route is depicted by a single dashed line only, appearing to join Skelton Footpath 8.

1909-11 25 inch OS Map

35. Section A-C of the route is shown between double solid lines and annotated Hurns Lane. Approximately section C-I is shown between double pecked lines, or between an unbroken and a pecked line. Approximately section I-J is shown between double pecked lines and annotated “F.P.”, appearing to join Skelton Footpath 8.

1909-1912 Six inch OS Map

36. Section I-J of the route is shown as a track which is annotated “F.P.”. Section F-I is shown as a track which is not annotated.

Finance Act 1910 documents

37. The area of land containing section A-F of the route is not shown on the submitted plan. The remainder of the route passes through land parcel numbers 31 and 47. An entry under “Fixed Charges, Easements, Common Rights and Restrictions” in the accompanying Field Book in respect of Parcel 47 states “Footpath Shipton to Wigginton”. An entry for “Particulars, description and notes made on inspection” includes a “Footpath, Shipton to Wigginton; Bridle Road from Shipton to Moorlands”. No deductions from the tax are made for “Public Rights of Way or User”, or for easements.

1910-12 6 inch OS Map

38. Section A-C of the route is shown between double solid lines and annotated Hurns Lane. Approximately section C-I is shown between double pecked lines, or between an unbroken and a pecked line. Approximately section I-J is shown by a single pecked line adjacent to a field boundary and annotated "F.P.", appearing to join Skelton Footpath 8.

1916 Sales Particulars for the Beningbrough Estate

39. Section A-C of the route is shown on the base map between double solid lines and annotated Hurns Lane. Section C-J is shown as a track and annotated "F.P." near point J.

1920s Bacon's Cycling Map

40. Approximately section A-I of the Order route is shown as a track to Hall Moor Farm. No key accompanies the submitted extract.

1920s Bacon's Half Inch Road Map

41. Approximately section A-I of the Order route is shown as a track to Hall Moor Farm. Section I-J of the route is not shown.

1920s Johnson's Motoring and Touring Map 3 miles to the inch

42. Approximately section A-I of the Order route is shown between double lines as part of a longer track which then passes to the north of Hall Moor Farm. Approximately section I-J of the route is shown by single dashed lines, although along an apparently different alignment.

1920 One inch OS Map, 1920 One inch OS Map published at the War Office 1941 and 1920 One inch OS Map published with corrections in 1947

43. Approximately section C-I of the route is shown as a track, which appears to meet the A19 road at A. Section I-J is shown by a single dashed line which joins Skelton Footpath 8.

1930 6 inch OS Map and 1930-31 25 inch OS Map

44. The approximate Order route is shown by varying notation and is annotated "Hurns Lane" near point A and "F.P." near point J. It appears to join Skelton Footpath 8.

1938 25 inch OS Map

45. Approximately section A-F of the route is shown by varying notation and annotated "Hurns Lane" near point A.

1942 Newspaper cutting

46. This advertises the sale of farms including Hall Moor Farm.

1943 Newspaper cutting

47. This advertises the sale of stock and machinery at Hall Moor Farm.

1946 2.5 inch OS Map

48. The Order route is shown as a track which is marked "F.P." at point J.

1950 Skelton parish maps

49. These mark a footpath over section I-J of the Order route, as part of Skelton Footpath 8 passing to the north of Hall Moor Farm (South).

1950 One inch OS Map

50. Approximately sections A-C and I-J of the route only are shown as tracks; the central section is absent from the map.

1952 6 inch OS Map and 1958 1:10,000 OS Map

51. Approximately section A-C of the route is shown annotated "Hurns Lane". The central section is again absent and section I-J is shown as a track.

1956 North Riding of Yorkshire Definitive Map

52. The Council states that section I-J of the Order route was shown on the definitive map as a public footpath.

1957 1:25,000 OS Map

53. Approximately section A-C of the route is shown as a track. The central section is absent and section I-J is shown as a track annotated "F.P.".

1967 25 inch OS Map sheet

54. Approximately section A-D of the route is shown as a track which is annotated "Hurns Lane". The central section is absent.

1960 One inch OS Map reprinted with the addition of public rights of way and new major roads 1967

55. Approximately section A-C of the route is shown as a track. The central section is absent and section I-J is shown as a track.

1969 25 inch OS Map and 1971 1:10,000 OS Map

56. Approximately section A-D of the route is shown as a track. The central section is generally absent and section I-J is shown as a track which is annotated "Path".

1977 Diversion Order, Highways Act 1959

57. The confirmed Order diverted part of Footpath 8, including section I-J of the Order route, to a route passing through fields to the north of Hall Moor Farm instead of alongside the farm buildings.

1984 1:10,000 OS Map, 1992 1:10,000 OS Map and 1993-95 25 inch OS Map

58. Approximately section A-D only of the route is shown as a track which is annotated "Hurns Lane".

1986 York Historian article about the 1630 Map of Skelton, York

59. This provides further detail on the 1630 map. It suggests that the Hurns Gutter “sike”, or ditch, is ancient.

2002 and 2007 Aerial photographs

60. A track which corresponds with section A-D and part of section G-J of the route is visible.

2014 Aerial photograph

61. A track is generally visible over section A-C. A track is visible over part of section G-J.

2017 and 2020 Aerial photographs

62. A track is generally visible over section A-C. A track is still present for most of the route G-J.

Land Registry copy of register of title 2019

63. This document refers to land crossed by section A-G of the Order route. Section A-D is shown as a track which is annotated Hurns Lane. A route is marked on an older plan from 1939 between point A and passing point I, although it has a slightly different alignment from the Order route. The conveyance records the existence of “rights of way” across fields crossed by section A-G of the Order route, although it does not state whether these are considered to be public or private rights, or their status.

Hurns Lane street record number

64. Hurns Lane is recorded in the highway authority’s List of Streets as a publicly maintainable cul-de-sac. A Unique Property Reference Number for Hurns Lane is supplied.
65. The applicant supplies details of a public bridleway elsewhere in the area with publicly maintainable sections at both ends only.

Modern Flood Mapping

66. The possible route of road No. 42 on the 1630 map has been plotted onto an Environment Agency flood map, indicating a route between areas more at risk of flooding.

Documentary evidence conclusions

67. A route is annotated 42 and named “the road from Shipton to Wigginton” on the 1630 map. The Council and an objector consider that the route corresponds to the modern Corban Lane, with land parcel number 3 (“The Warren House The Corburne – closes”) forming the modern Hall Moor Farm (North) or Newlands Farm. The applicant considers that route number 42 passes to the south of a building at the site of the modern Hall Moor Farm (South).
68. It is difficult to match the network of routes shown on the 1630 Map with those on a modern map, or indeed the other documentary evidence, with certainty. There appear to have been some changes to the network, and the map is not to scale and

relatively schematic in appearance. Its primary concern was the ownership of land, so that it did not set out to identify public rights of way.

69. Nevertheless, I concur with the submission that the single dotted lines on the 1630 Map appear to correspond with drainage features. Thus, whilst a gate is shown on the map at point A, the dotted line following the parish boundary north from that point is likely to depict “Hurns Gutter”, a drain which still follows the parish boundary today, rather than the Order route. The bends in the drain as it passes north shown on the 1630 Map (and other maps such as the 1817 Greenwood and 1828 Teesdale Map) are still present today. In depicting a dwelling at land parcel 3 relatively close to this longstanding (as suggested by the 1986 article) landscape feature, the map is consequently more likely to show a building at the site of Hall Moor Farm (South). This is further supported by the location of the distinctive series of smaller rectangular enclosures named “Flatts” and “Northfield Closes” on the 1630 Map to the south-west of the farm and near the gate at point A, which continue to be depicted on the inclosure maps and 1850s OS mapping.
70. Thus, the “road from Shipton to Wigginton” is most likely to include a route in the vicinity of section I-J of the Order route. The route is annotated as a road between settlements and is shown on the map in the same way as other such routes. Together these considerations weigh in favour of a route in the area of section I-J of the Order route having a reputation, at the time, as public. However, the map has no key, so that the status of any public rights over it is not clear. Given the map’s limitations as identified above, the precise location of the route is additionally unclear.
71. The Traveller’s Companion document of 1789 names places on the route between London and Thirsk, with potential onward destinations from these also named. No accompanying map is supplied. Nevertheless, the Companion lists Skelton Hall, Wigginton and Haxby as onward destinations from a point just before “Shipton Smythe”, which would approximately correspond with point A of the Order route according to submitted maps from the time.
72. Jefferey’s Map 1771 shows a “stub” of route at point A of the Order route, which leaves the (now) A19 road towards Skelton Hall, Wigginton and Haxby, which are all marked to the east. No other potential routes are shown in the mapping of the time. As a result, point A of the Order route may have been considered by the compilers of the “Traveller’s Companion” to be a point from which to access those destinations. Whilst use to access the property Skelton Hall may have been in exercise of a private right, use of a route between the highway at point A and another highway at the Order route’s eastern end to access Wigginton or Haxby could have comprised public use.
73. The support provided by the Traveller’s Companion evidence for the availability of the Order route as a through route between the A19 road and access to the two villages is, however, limited in part by the contemporaneous mapping evidence. Whilst the Jefferey and Tuke Maps show a “stub” of route at point A, no corresponding feature indicates the other end of the Order route, or the end of Skelton Footpath 8. The Inclosure, Greenwood, Fowler, Teesdale and Cary evidence depicts the approximate Order route between point A and Hall Moor Farm only. Together, the Traveller’s Companion and contemporaneous mapping evidence consequently does not indicate that the Order route, or a similar route, was used for access between point A and point J at the time.

74. Furthermore, the Traveller's Companion was compiled to show destinations and distances, rather than to record public rights of way. The note within the document that the journeys described all terminate at a "place of importance or note" may refer to the end destination of journeys, so that the description does not necessarily include point A of the route.
75. Moreover, the preface to the Traveller's Companion indicates that some of its contents were based on information taken from earlier documents rather than from a recent survey. It is not possible to ascertain whether this applied to the locations listed near the Order route. However, given the large area which the document covers and the limited number of people who appear from the preface to have been involved in its production, it is most likely that many of the documented locations had not been recently visited by its authors. There is no indication of the origin of the source documents generally relied upon, their date and whether they were concerned with the identification of public rights of way. These matters limit the reliability of the Traveller's Companion document.
76. When taken in combination with the mapping evidence from the time, the Traveller's Companion evidence consequently provides only minimal support in favour of the believed availability of the Order route for use by the public at the time.
77. Turning to the inclosure evidence, as the Award does not set out Hall Moor Lane and refers to it only for locational purposes, it appears that the lane was considered by the commissioners to be a pre-existing way. The route's named destination was a private farm, which does not suggest that it was considered to be public at the time. Whilst one of the maps appears to show an uncoloured track over the section I-J, this is not referred to in the Award and it appears to serve a dwelling.
78. Section A-I of the Order route is coloured sienna on both inclosure maps. Nevertheless, the colouring on maps varies. No key or other information provides an explanation of the colouring used on the inclosure maps. Other routes on both maps which are coloured sienna and shown to be open to the highway in a similar way include both public and private ways which are set out in the Award. These considerations consequently suggest that the section had a reputation as either public or private.
79. The Inclosure Act stated that allotments to Thomas Place and John Allen, as rector and vicar, were to be enclosed with an outer fence and ditch, to be planted with "good transplanted quickstep". This appears to refer to quickset hedgerow. Joshua Hepworth was also required to plant a hedge on the boundary of one allotment with Wigginton Road. New hedgerow was subject to a requirement to protect it with sheep fencing where necessary. Fines for any non-compliance with this direction were payable to the Surveyor of Highways, who had a duty to review the condition of roads within the parish and to secure labour from inhabitants for work on the roads.
80. The Award requires the new owner of land adjoining Hall Moor Farm Lane to erect and maintain fences and ditches along the land's boundary with the lane. It consequently does not require the planting of hedgerow along these boundaries. The requirement to erect partial boundary fencing applies to several of the other new land parcels. These include boundaries with highways, other privately owned

- land and private roads. The requirement consequently does not indicate that the lane was considered to be public.
81. Furthermore, as the fines concerned hedgerow rather than fencing, they did not apply to the boundaries of the Order route. Thus, their payment towards highway maintenance does not suggest that the route had a reputation as public.
 82. The evidence before me does not indicate that an extract from a judgment (1899 *Neeld v Hendon* UDC 81LT 405) concerning fencing of the highway should suggest that the Order route should be considered to have had public status at the points where it was enclosed.
 83. It is submitted that the Order route may have formed one of a number of routes used by local people to access a common to the west of Wigginton which is referred to in the 1807 Inclosure Award. Nevertheless, an assumption that the route was used in this way would be conjecture and hence does not add weight in favour of the Order.
 84. Examples provided from inclosure documents from other areas concerning private carriage roads are of minimal relevance because the Order route was not set out as such. In any case, the inclosure process evolved over several centuries and involved different commissioners and surveyors with different levels of expertise, operating in different parts of the country at different times with varying local practices and traditions. It therefore cannot be assumed that the interpretation of one map and award can be unequivocally applied to another.
 85. Seventeenth century definitions of the terms public and private ways are submitted. However, the Order route is not identified as either a public or private route in the inclosure documents. Furthermore, the definitions were recorded some 150 years prior to the inclosure process and are not referred to in the inclosure documents in this case, so that it is unclear whether the terms informed the approach taken by the commissioners.
 86. A document of 1734 concerns the maintenance of private ways rather than who may use them, so that it does not provide clear evidence that such ways had a reputation as public, and in any case does not clearly relate to the Order route.
 87. It is submitted that the depiction of the Order route west of Hall Moor Farm as a cross road in early nineteenth century commercial maps indicated a public road. The depiction of a cross road on a historic map does not automatically suggest the existence of public rights over it. The term's meaning may vary depending on the road pattern or markings on each map, with potential meanings including a highway running between, and joining, other highways, a byway, and a road that joined regional centres.
 88. In this case, the documents in question indicate that the route ended at the farm. They consequently suggest that the route was considered to be a cul-de-sac rather than part of a network of highways. This is supported by the preceding inclosure evidence, which was drawn with greater precision. A number of the commercial maps also show a cul-de-sac track to "Wide Open" farm to the south, which is not a recorded public right of way, as a cross road. For these reasons the term "cross road" appears to have been applied, on the commercial maps, to routes including cul-de-sac routes to farms, which were unlikely to be of use to the travelling public.

89. If the purchasers of commercial maps expected to be able to use the ways shown and the full Order route was considered to be available for public use at the time, the section I-J would also be expected to be shown in order to inform those planning a journey that the route formed access between the A19 road and Wigginton. The general depiction of the route as a cul-de-sac ending at the farm in both the nineteenth and twentieth century commercial maps consequently does not lend support to a reputation as public at the time.
90. Furthermore, maps showing part of the route as a cross road show similar features and are relatively close in date, so that some of their contents may have been copied from earlier maps. Information may consequently have been accepted from previous documents rather than gained from an independent survey in some cases. The likelihood of such repetition means that their cumulative evidential weight is not significantly more than that to be accorded to a single map. The cross road annotation is consequently of only minimal weight in favour of the existence of public rights over section A-I.
91. As the meaning of “cross road” may vary, it is unclear whether the “crosse High-Ways” referred to in the 1697 Act had the same intended meaning as the cross roads shown over a century later in commercial maps. The 1697 evidence consequently does not add weight in favour of the Order.
92. Whilst commercial mapping evidence shows a “stub” of route at point A or a route to Hall Moor Farm, it cannot be assumed that a route east of the farm existed before the 1840s. The 1630 Map weighs in favour of a route in the area of section I-J of the Order route having a reputation, at the time, as public. However, the map has no key, so that the status of any public rights over it is not clear. The precise location of the route is additionally unclear, and there is a subsequent gap of over 200 years until the physical existence of section I-J starts to be depicted. The Order route is consequently not shown as part of a network of routes until OS evidence from the mid nineteenth century.
93. OS maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way from 1888. Whilst one of the OS maps prior to this annotates the western part of the route as a bridle road, this evidence suggests only that a bridle road was considered to physically exist. Other clear evidence to suggest the existence of public rights over the route at or before this time has not been identified.
94. Apparently conflicting statements issued by the OS in the late nineteenth century on the annotation of paths present a somewhat ambiguous picture of the approach taken in this regard. Furthermore, whilst the submissions concerning OS evidence are of interest, successive judgments that such evidence shows the physical existence of routes but not their status form a binding precedent. The submitted articles and opinions consequently do not overcome the established judgments on the matter.
95. Repairs to tracks would have been necessary whether they were public or private, so that the presence of a sand pit adjacent to point H on the 1854 OS Map is consistent with either. Whilst the section A-C is consistently named Hurns Lane in the evidence, it is also shown in a different way from the remainder of the route, as reflected in its publicly maintainable status today. A line is shown across the route at point C in many of the OS maps, potentially indicating a limitation such as a gate,

- and suggesting a separation between section A-C and the remainder. As a result of these considerations, the evidence suggests that only the section A-C was considered to be named Hurns Lane, so that the lane was a cul-de-sac and did not connect one main road and another.
96. The Finance Act map supplied does not show the whole of land parcel 47, but appears to omit only a small corner of it. In favour of the full Order route through the parcel forming the “bridle road” referred to is the western section’s annotation “B.R.” on the base OS mapping. Against is the description “Shipton to Moorlands”, as, whilst Moorlands is still an area of woodland east of point J today and hence logically accessed from that point, the village of Shipton by Beningbrough lies some distance to the north of the other end of the Order route. By the time of the 1893 base OS mapping used for the Finance Act assessments, section A-C of the route had been annotated “Hurns Lane” in OS mapping for many years. It also lay in Skelton parish. If the footpath or bridle road through parcel number 47 included section A-I of the Order route, Hurns Lane or Skelton would be a more logical description of its termination than Shipton, which lies several fields away. Whilst the A19 road is named “Shipton Street” near point A on mapping from 1854, the word “street” is not used, so that the reference in the 1910 Finance Act documents is more likely to be to the village of Shipton.
97. Furthermore, if the footpath or bridle road through parcel 47 had been the Order route, reference to it could be expected in the entry for parcel 31 to the south-west, which would have covered the route’s western end. Nevertheless, any such evidence is not before me.
98. Two other paths which pass through the north part of parcel 47 are likely to originate from Shipton, before merging and then meeting Hall Moor farmyard. An additional track forms access between the farm and Corban Lane. One or more of these is more likely to be the footpath and bridle road referred to through parcel number 47 than the western section of the Order route. Section I-J of the Order route would then form the only marked path to provide access between the farm and the Moorlands area, hence making it most likely to form part of the bridle road referred to. The Finance Act documents consequently provide evidence that section I-J of the Order route only was considered to be part of a footpath and a bridle road. As a deduction from the tax is not recorded under public rights of way or user, or from easements, it is not clear whether it was considered to be public or private.
99. Whilst some equivocation is introduced by the reference to the presence of both a footpath and bridle road through the Finance Act land parcel, the evidence otherwise generally shows that a footpath only was considered to physically exist over the section I-J. This is consistent with its recording in the definitive map and statement (DM&S) as part of Footpath 8 which passed north of Hall Moor Farm.
100. The 1939 conveyance records rights of way over the western part of the Order route. Nevertheless, it is unclear whether these are considered to be public or private rights. The reservation of a private right of way across the land sold to access the A19 road from Hall Moor Farm would be logical. The conveyance consequently does not add weight in favour of the Order.
101. The newspaper cuttings provided do not provide information about the Order route and consequently do not add any weight in favour of the Order.

102. The 1977 Diversion Order diverted a section of public footpath away from I-J. Documentary evidence should have been consulted in carrying out the survey to draw up the DM&S only a few years before then. That process and the public notice of the subsequent draft map and statement would have provided the opportunity to identify any errors in status at a point in time which was relatively close to the consideration of the diversion order. Together, these considerations and the preceding documentary evidence do not suggest that the footpath status of I-J was incorrect at the time of its diversion.
103. A short section of the western end of the Order route is highway maintainable at the public expense. This is evidence of the highway authority's acceptance of maintenance responsibility, a commitment that they would not normally have undertaken lightly. However, these documents were principally for internal administrative use, were not readily available to the public and did not purport to be a record of rights.
104. In this case, the remainder of the Order route is not recorded as publicly maintainable. The evidence does not suggest an explanation for this, or for the potential existence of a cul-de-sac public right of way over the publicly maintainable section only. There is no obvious destination of interest to the public to explain the existence of a potential cul-de-sac public right over the section. The suggestion that the track served a former domestic refuse tip is undisputed, and could explain its publicly maintainable status. The public bridleway with short publicly maintainable sections at both ends elsewhere in the area is not directly comparable to the Order route, which lacks a maintainable section at its eastern end.
105. The later twentieth century OS maps and the twenty first century aerial photography show only the physical existence of parts of the Order route, and do not shed light on its status and whether it was considered to be public or private.
106. Section A-C of the Order route is consistently shown as a short lane, in keeping with its publicly maintainable status today and apparent use to serve a former domestic refuse tip.
107. The 1630 map suggests the public status of a route in the vicinity of section I-J of the Order route only, which does not generally appear on mapping again until the mid-nineteenth century. The Traveller's Companion evidence is of limited reliability and provides minimal support in favour. The inclosure evidence suggests a reputation of section A-I as either public or private. The cross road annotation in commercial maps attracts minimal weight in favour. Until the mid-nineteenth century the evidence shows the physical existence of section A-I of the Order route as a cul-de-sac route which ended at a farm. It appears to have formed the only access to that property over this period.
108. Maps from the mid nineteenth century are the earliest documents to show the physical existence of the full Order route. Where the track I-J is annotated in mapping, it is consistently shown to have had the physical character of a footpath. It may be referred to as part of a bridle road in the Finance Act evidence, however this does not clarify whether it was considered to be public. The evidence as a whole does not support the existence of public bridleway rights over section I-J. Neither does it suggest that an error was made in recording it in the DM&S as part of a longer public footpath to the north which linked Shipton and Moor Lane.

109. If a public bridleway had existed over section A-I its eastern terminus would consequently either have been at a point of interest to explain the existence of a cul-de-sac route, or would have linked to a different highway than section I-J. Hall Moor Farm is a private dwelling and the evidence does not suggest the existence of any point of public interest to equestrians at, or near, point I. The evidence shows the physical existence of a track between the farm and Corban Lane only, without annotation as a bridle road or footpath or any suggestion of public rights. The existence of a continuing public bridleway over A-I is therefore not supported.
110. As a result, the bridle road shown in mapping over A-I is most likely to have ended at Hall Moor Farm, with no point of interest at its terminus to explain the existence of a cul-de-sac route. The evidence as a whole, and these considerations, are most consistent with the historic existence of a private bridle road only over section A-I of the Order route.
111. The original route of Skelton Footpath 8 is shown on maps from the mid nineteenth century. This route included section I-J of the Order route, and connected Moor Lane and the highway in Shipton. Section A-I of the route was shown to physically connect the A19 and Footpath 8 from the mid nineteenth century. Nevertheless, the evidence as a whole does not suggest the coexistence of the identified cul-de-sac private bridle road and a public right of way of any other status over section A-I, so that there is no evidential basis to propose confirmation of the Order with a modification to the status of that section.
112. To conclude, the evidence does not show, on the balance of probabilities, that a public bridleway or a public right of way of any other status subsists over the Order route.

Other Matters

113. I acknowledge concerns raised regarding the existence of other rights of way in the vicinity and the Order's potential effect on crime levels, highway safety, noise and wildlife. Nevertheless, the only issue here is whether a public right of way exists: suitability and amenity must be disregarded in deciding whether to confirm an order. These matters consequently lie outside the criteria set out within the relevant legislation. As a result, I cannot give them weight in reaching my decision.

Conclusion

114. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

115. I do not confirm the Order.

C Beeby

INSPECTOR

Order map - copy - not to scale

