



Order Decision

Inquiry held on 1 July 2008

by **Alan Beckett BA, MSc, MIPROW**

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

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Decision date:
29 July 2008

Order Ref: FPS/C9499/7/7

- This Order is made under Section 53 (2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Yorkshire Dales National Park Authority (Byway Open to All Traffic At Moor Head Lane, Horton-in-Ribblesdale and Stainforth) Modification Order 2002.
- The Yorkshire Dales National Park Authority (the Order Making Authority or OMA) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural affairs.
- The Order was made on 21 November 2002. It was the subject of a public local inquiry which I held on 29, 30 and 31 August 2007. As a result of that inquiry, in my decision of 23 November 2007, I proposed modifications to the Order as submitted. Three objections and one representation have been received in response to my proposed modifications.
- The Order as submitted proposed to upgrade Public Bridleway Nos. 40 and 46 Horton-in-Ribblesdale to the status of Byway Open to All Traffic (BOAT), and to add a BOAT along Moor Head Lane, Stainforth as shown on the Order plan A – L – M – B – C – D - E. My proposed modifications would alter the classification of that section of the Order route M – B to that of Restricted Byway and alter the lengths of the routes to be recorded in the Definitive Statement.

Summary of Decision: The Order is confirmed subject to the modifications previously proposed.

Procedural Matters

1. I held a second public local inquiry into my proposed modifications to the Order at the OMA's Yoredale offices in Bainbridge on 1 July 2008. Mr Brocklehurst, one of the three statutory objectors to my proposed modification to the status of M – B, appeared at the inquiry. My proposed modifications were supported by the OMA who had requested the proposed modification to the status of M – B at the first inquiry, and by the Yorkshire Dales Green Lanes Alliance (YDGLA), which had appeared at the first inquiry in objection to the Order as submitted.

The Main Issues

2. At the first inquiry, the OMA had requested a modification of the Order to show M – B as a Restricted Byway following the coming in to operation of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act). It was, and remains, the OMA's view that the public's right to use that section of Moor Head Lane with mechanically propelled vehicles (MPVs) had been extinguished on 2 May 2006 by Section 67 (1) of the 2006 Act as none of the
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exceptions to the extinguishment of such rights found in Section 67 (2) or 67 (3) were applicable.

3. Mr Brocklehurst and the other two statutory objectors submitted that the exception found in Section 67 (2) (a) was applicable to M – B; it was their contention that the main lawful use of the route at issue during the five years prior to 2 May 2006 had been by MPVs.
4. The main issue before the inquiry was whether the user evidence adduced by Mr Brocklehurst and others was sufficient to show, on a balance of probabilities that the main use of M – B between May 2001 and May 2006 (the relevant period) had been by the public with MPVs.

Reasons

5. I heard direct evidence of MPV use of Moor Head Lane from seven individuals; six of these had used the route with a motorcycle and one with a 4x4 vehicle. With the exception of Mr Lewis who had driven along Moor Head Lane on a weekly basis in the company of other recreational users, and Mr Brocklehurst who had ridden the route around 8 times per year, the users gave evidence of their use of Moor Head Lane between 2 and 4 times per year. None of the users had made contemporaneous notes as to the extent of other use they had observed, but all gave evidence from memory that non-motorised use by others, if observed at all, had been very small, with MPV use being the majority activity that had been seen.
6. In support of their assertions that MPV had been the main lawful use during the relevant period, the objectors submitted a total of 88 user evidence forms (UEFs) that had been completed by individuals who had used Moor Head Lane with motor vehicles. Seventy-five of these forms were submitted before the second inquiry, with an additional 13 forms being submitted at the inquiry by Mr Monk. Whilst the majority of the forms contain some information with regard to the balance of use, 34 of these forms are of no assistance as they do not provide any comparative data between MPV and non-MPV use.
7. The remaining 54 forms provide evidence as to the frequency of use of the route by motorcyclists and the extent of use by others that had been observed by the respondents during their visits to Moor Head Lane. The record of this assessment took the form of a grid into which figures for the number of other users (walkers, cyclists, horseriders, motorcyclists 4x4's) seen on a "per trip" and "per year" basis could be entered. Levels of non-MPV use observed in most cases were in single figures, if recorded at all, and the majority of use observed by the respondents was MPV. It is not clear from the UEFs whether the MPV use recorded was of other independent users encountered whilst on a journey or was made up of other members of the respondent's party if they were riding with others in a group.
8. The frequency of MPV use found in the UEFs broadly reflects that given orally at the inquiry by witnesses in that the average use was less than once per month; only one respondent (65 times in five years) used the route in excess of that average figure.
9. With the exception of one respondent, it was not possible to subject these UEFs to any scrutiny at the inquiry. The one respondent who appeared acknowledged

that his recollection of the extent of non-MPV use was not drawn from contemporaneous notes, but was based on his recollection of events up to 7 years prior to completing the UEF. I do not find it surprising that none of the witnesses had access to diary entries or other records of the extent of non-MPV users encountered on a journey along Moor Head Lane as it is likely that prior to the coming into operation of Section 67 there would have been no reason to collect and retain such data.

10. I have no reason to doubt the evidence of the extent, duration or frequency of use given by the witnesses, however, the period of time during which the objectors would have spent on site, either individually or collectively appears to have been quite short. Estimates were given by the objectors of a 4x4 taking between 20 and 30 minutes to travel along Moor Head Lane with a motorcycle taking between 15 – 20 minutes. On that basis, those users who travelled along Moor Head Lane on an average of four times a year (the majority of those witnesses who appeared at the inquiry) would be present on Moor Head Lane for approximately 1 hour and 20 minutes per year or less than 7 hours in total over the five year period under consideration. With regard to the UEF evidence, even if it could be assumed that all 54 UEF respondents rode as individuals and at different times (and I accept that a number of respondents state that they rode the route in the company of others), the length of time during which they would have been in a position to observe non-MPV use is less than 2% of the five year period at issue.
11. The limited length of time which the objectors were physically present on Moor Head Lane, and on M – B in particular raises a doubt in my mind as to whether the MPV users are in a position to give a reliable assessment that the main use of the Order route was by MPV, as there would have been a substantial period of time during each day, week or month when MPV users would have been absent from the site. If each of the 88 UEF respondents used the route once per month (as per the average use claimed) there would be 2.8 visits per day and motorised use would account for around 1 hour per day. Any use by others when the objectors were not on site would therefore go unnoticed and unrecorded. It is clear from the UEF evidence and from other evidence given at the inquiry, that MPV use was not the only use that occurred on Moor Head Lane during the relevant period.
12. Evidence of non-MPV use during 2001 - 2006 was provided by Mr Ellison and Mr Harper. Mr Ellison had ridden along Moor Head Lane on a pedal cycle between 70 and 100 times per year during the relevant period either by himself or in the company of other cyclists. During his use Mr Ellison had also seen other groups of cyclists, a number of pedestrians and one group of three motorcyclists. Mr Ellison did not recall meeting or observing any MPV use other than one group of motorcyclists during this period. I take it that the majority of Mr Ellison's use would have occurred during periods where MPV users were not present on Moor Head Lane; consequently this use would have gone unnoticed by the objectors.
13. Mr Ellison also gave details of 8 cycle events between 2003 and 2005 in the Horton / Stainforth area which had attracted around 120 participants to each event. As part of these events, described as "orienteering on a bike", control checkpoints had been stationed throughout the district, with each control visited earning participants a given number of points; one such control had

been located on the Stainforth section of Moor Head Lane. Given that high value checkpoints were also located on Long Lane and Goat Lane, I accept Mr Ellison's submission that it is more likely than not that participants in the event would have used M – B as a link between these three control points. The use of M – B on a number of occasions by competitive cyclists also appears to have been use which was not observed by the objectors.

14. I also heard from Mr Harper as to pedestrian use of Moor Head Lane by members of the North Yorkshire Fell Club. Mr Harper kept a log of the routes used by the Fell Club and provided evidence of pedestrian use of Moor Head Lane on 4 dates within the relevant period by him and others when following part of the Ribble Way or as part of a circular walk around Pen-y-Gent. Written evidence of walks organised and promoted by the Ramblers' Association and by DalesRail during the relevant period which would have incorporated Moor Head Lane was also submitted by the YDGLA.
15. Although Mr Ellison and Mr Harper provided evidence of the non – MPV use of M – B during the five year period in question, neither witness ventured to make an estimate of the balance of use of M – B based on the extent of their own use. The log of walks completed by Mr Harper was not compiled with this purpose in mind, and although Mr Ellison's recollection of MPV use was limited, it too was anecdotal as opposed to being derived from records compiled for such a purpose.
16. It was suggested that as M – B formed part of the Ribble Way, a regional long distance walk and was part of a well known route used for the ascent or descent of Pen-y-Ghent, that there would have been a greater amount of pedestrian use of Moor Head Lane than that which had been observed by the objectors. I note that the Ribble Way is named as a long distance walk on Ordnance Survey 1:50,000 and 1:25,000 scale maps and that there are two commercially published walking guides that give details of the route to be followed. Although I consider that it is likely that the existence of a promoted long-distance footpath during the relevant period would stimulate pedestrian use of Moor Head Lane, in the absence of any figures as to the numbers of people who walked the Ribble Way between 2001 – 2006, the fact that M – B is part of the Ribble Way is not evidence in itself that the balance of use during the relevant period was predominantly non-MPV.
17. The parties drew my attention to the figures for MPV use obtained from a vehicle movement logger (vehicle logger) that the OMA had erected on Moor Head Lane between 5 May 2006 and 9 February 2007. This equipment utilises magnetic and acoustic resonance to record the passage of a vehicle past the sensor and can differentiate between bicycles, cars, motorcycles and other vehicles; the equipment could not detect the passage of pedestrians or horseriders.
18. The OMA stated that due to technical problems, the vehicle logger was only operational for 161 days from a possible 304. Nonetheless during that period 126 MPV movements had been recorded with an increase in motorcycle and 4x4 use at weekends. Average use during the week was 3.8 vehicles per day which rose to between 5.5 and 7.25 per day at weekends.

19. Mr Monk stated that vehicle loggers had been present on other routes near to Moor Head Lane before and after May 2006 and claimed that the data from these sites showed that there had been a reduction in motor vehicle use of around 47% after 2 May 2006. Mr Monk submitted that a similar reduction in vehicular use of Moor Head Lane post May 2006 was likely as the other routes surveyed were close to Moor Head Lane and could easily have been used in conjunction with it. None of the data from these additional loggers was provided to the inquiry, and as there is no vehicle logger data for Moor Head Lane prior to 2 May 2006 for MPV use prior to 2 May, Mr Monk's claim that use of Moor Head Lane may have been greater prior to 2006 cannot be anything other than reasonable speculation to which I can attach very little weight.
20. The vehicle logger evidence is of limited value in relation to the balance of use test as no data was collected prior to 2 May 2006 and with pedestrian or equestrian use not being recognised, the vehicle logger does not provide any comparative figures from which the balance of use pre or post-NERC could be established.
21. The vehicle logger data is only of assistance in making a comparison between 2006 / 2007 MPV use and that recorded in other, earlier surveys conducted by the OMA in 1993 and 1995. The 1993 survey had been conducted over four days whereas the 1995 survey ran over eight days from April to September. The 1993 surveys recorded a total of 8 walkers, 1 4x4 and 2 farm vehicles. The 1995 survey was carried out on three Saturdays, four Sundays and on one Wednesday between 10:00 and 16:30. Over the period of the surveys, 118 pedestrians, 14 cyclists, 0 horseriders, 23 motorcycles, 10 4x4s and 6 farm vehicles were observed.
22. This data clearly represents only a snapshot of the balance of use of Moor Head Lane at a point in time before the relevant period, but what these limited surveys demonstrate is that the predominant use of Moor Head Lane on the dates the survey was conducted was by pedestrians. I place some weight upon the surveys of the early 1990s and the vehicle logger surveys in that they are as free as possible from any influence of the 2006 Act.
23. In order for the level of MPV use recorded in the 1993 / 1995 balance of use survey to be comparable with the results obtained from the vehicle logger in 2007 Mrs Mallinson, a qualified statistician, had weighted the results from both surveys to account for the different number of weekdays and weekend days in the two surveys on which MPV data was recorded. Mrs Mallinson's calculations showed that MPV use in the 1993/1995 surveys was 1.8 per day and in 2006/2007 was 3.8 per day. The weighted figure for pedestrian use in the 1993/1995 surveys was 5.4 per day.
24. The surveys from the 1990s and the vehicle logger recorded both agricultural MPV traffic in addition to other MPV traffic. Mr Brocklehurst argued that the agricultural use recorded in both surveys should be considered to be evidence of public use, no private means of access over Moor Head Lane having been awarded in 1771 and there being no known owner of M - B. I agree with Mr Brocklehurst, but I do not consider that the inclusion of agricultural use in the total of MPV use assists the case for the main use of the Order route being MPV. If agricultural use was stripped out of the 1993 / 1995 survey figures for example, public use on foot would become even more predominant. Including

agricultural use as part of public MPV use in the 1993 / 1995 figures still shows non-MPV use to have outweighed MPV use by a factor of 3:1. Both the raw figures from the surveys in the 1990s and the weighted figures produced by Mrs Mallinson show that the main use of the Order route at that time was by the public on foot.

25. The evidence of Mr Ellison, Mr Harper and others is that pedal cycle and pedestrian use of Moor Head Lane had been a regular occurrence during the relevant period, although it is not possible to determine the overall level of all such use from the evidence submitted. It is clear, however, that the non-MPV use demonstrated by the 1995 survey continued to be present between 2001 and 2006, although largely unobserved by the objectors.
26. There are no estimates as to the full extent of non-MPV use of M – B during the relevant period as balance of use surveys were not carried out during that period. The evidence from the limited surveys of 1993 / 1995 is therefore the “next best” evidence of such use that is available. Even assuming that non-MPV use between 1995 and 2007 had not risen above the 1995 level, the per day level of MPV use on Moor Head Lane in 2006 / 2007 shown by the vehicle loggers would not have outweighed the 1995 level of pedestrian use.
27. I am not persuaded by Mr Brocklehurst’s submission that photographs of the condition of part of Moor Head Lane which appeared on the Ramblers’ Association website or on that of YDGLA would have the effect of reducing the appeal of the route to recreational walkers, and would have reduced the quantity of non-MPV use during the relevant period. Written evidence of the use of Moor Head Lane by organised walking groups or the inclusion of the lane in published guides tends to suggest that the condition of the lane has not been a deterrent to use of the lane by the public on foot.
28. No cogent evidence was submitted by the objectors which would lead me to conclude that the levels of pedestrian use recorded in the 1993 / 1995 surveys had fallen to a level such that the claimed or recorded MPV use was greater than non-MPV use. Whilst the inclusion of M – B as part of the Ribble Way and the promotion of that route as a long distance recreational footpath cannot be taken as evidence that pedestrian use has increased since 1995, I consider that the promotion of such a route is unlikely to have led to a reduction in the level of use of M – B on foot since that date.
29. The objectors’ evidence of non-MPV use is based on their recollections of observations made whilst on Moor Head Lane for extremely short periods of time, as opposed to being from whole-day, multi-day observations of all use of the lane along the lines of those conducted by the OMA in 1993 and 1995. At best the objector’s evidence represents the predominant use which had been observed during the 20 to 30 minutes of each of the infrequent occasions when the objectors were on site.
30. It follows that I am not persuaded that the evidence of use submitted demonstrates, on a balance of probability that the main lawful use of M - B was by MPVs during the five years ending on 2 May 2006.

Other matters

31. In a letter dated 28 January 2008, Mrs P A Newby took issue with two aspects of my interim decision. Mrs Newby's first point was that in paragraph 41 I erroneously stated that maintenance responsibility for footpaths and bridleways had lain with parish councils until altered by the National Parks and Access to the Countryside Act 1949, and that my conclusion that the depiction of Moor Head Lane in highways maintenance records from 1865, 1980 and 1915 showed that the route had been considered to be a public carriageway could not be substantiated.
32. It was not stated in my interim decision that the reference to maintenance responsibilities of parish councils was an unchallenged submission made by the OMA. Whereas I stand to be corrected if maintenance responsibilities for footpaths and bridleways lay with bodies other than parish councils prior to 1949, as asserted by Mrs Newby, this has no bearing upon my overall conclusion as to the carriageway status of Moor Head Lane.
33. Mrs Newby's second point was that my reference to the *Hollins v Oldham* case was inconsistent with the judgement of Howarth J in that case. Whilst I acknowledge the omission from the interim decision that the term "*cross road*" had been held to be either a bridleway *or* a carriageway, in the case of Moor Head Lane, I remain of the view that the depiction of the Order route as a "*cross road*" by early cartographers reflected its status as a public carriageway.

Conclusion

34. I conclude that the evidence submitted by the objectors to my proposed modifications is insufficient to demonstrate on a balance of probabilities that the main lawful use of M – B in the five years prior to 2 May 2006 was by MPV traffic, and that public MPV rights were extinguished over M – B on that date.
35. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed subject to the modifications previously proposed.

Formal Decision

36. I confirm the Order subject to the following modifications:

in the title of the Order, in paragraph 3 of the preamble and in the Order key add "and Restricted Byway" after the words "Byway Open to All Traffic";

in those sections of the Order schedules which deal with BOAT 46 (M – B), delete references to "Byway Open to All Traffic" and "BOAT" and insert "Restricted Byway" and "RB";

in the Order Schedule Part II:

delete the term "*approximate*" from both columns dealing with length and width;

for BOAT 40A (A – M) delete "0.46Km" under the heading "*length*" and insert "0.465Km";

for RB 46 (M – B) delete “0.78Km” under the heading “*length*” and insert “0.784Km”;

for BOAT 22 (B – E) delete “1.31Km” under the heading “*length*” and insert “1.303Km”;

in the Order plan key show a Restricted Byway by a solid line with arrowheads above the line, and show the route M - B in the same manner in the Order plan.

Alan Beckett

INSPECTOR

APPEARANCES

Objector:

Mr A Brocklehurst Wharfe House, Austwick, Lancaster, LA2 8QD.

Who called:

Mr S Monk 21 Ned Road, Ingleton, Carnforth, LA6 3HL.

Mr R Smith Dalegarth, Holbeck Close, Windermere, Cumbria, LA23 1NA.

Mr D Loney 28 Bramley Lane, Halifax, HX3 8SR.

Mr J S Pighills 61 Wattisfield Road, Kendal, LA9 5JL.

Mr B Thompson 55 Warkworth Street, Newcastle upon Tyne, NE15 8ED.

Mr A Brocklehurst Wharfe House, Austwick, Lancaster, LA2 8QD.

Objector:

Mr B Lewis Juno, Hawes Road, Ingleton, Carnforth, Lancashire, LA6 3AN.

Supporters

For the Yorkshire Dales National Park Authority:

Mr R Carr 2 Friarage Avenue, Northallerton, DL6 1DZ.

Who called:

Mr M Allum Access Officer (Projects) YDNPA, Yoredale, Bainbridge, Leyburn, North Yorkshire.

Mr J Dwyer Senior Definitive Map Officer, YDNPA, Yoredale, Bainbridge, Leyburn, North Yorkshire.

Mr C P Ellison High Bank House, Wharfe, Austwick, LA2 8DG.

For the Yorkshire Dales Green Lanes Alliance:

Mr M Bartholomew YDGLA, Civic Centre, Cross Green, Otley, LS21 1HD.

Who called:

Mr H Harper Iona House, 77 Hookstone Drive, Harrogate, HG2 8PH.

Mrs D Mallinson 49 Carleton Mill, Carleton, Skipton, BD23 3EG.

Inquiry documents

1. The Order
2. Statement of Mr Brocklehurst and bundle of documents.
3. Statement of Mr Monk and 13 user evidence forms.
4. Statement of Mr Allum and analysis of vehicle logger data.
5. Statement of Mr Dwyer and bundle of documents.
6. Statement of Mr Harper and extracts from a logbook of walks incorporating Moor Head Lane between 2001 – 2006.
7. Statement of Mr Ellison and plan of organised cycle event dated 23 November 2003.
8. Statement of Mrs Mallinson and bundle of documents.