

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY

PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

9 NOVEMBER 2023

Application for a Definitive Map Modification Order (DMMO) to record Moor Lane, Farnley Tyas, as a public footpath/bridleway on the Definitive Map and Statemen **Item 9 – Page 11**

Please note two submissions on this PROW agenda item.

Kirklees Council has received a written submission via three emails dated between 3rd-6th November 2023 from a member of the public on behalf of Kirklees Bridleways Group. Their personal informal has been redacted for the purposes of GDPR.

SUBMISSION ONE

Email dated 3rd November 2023.

Dear Mark, Why are you are giving your committee false information re Moor Lane and informing them, falsely, that its depiction on Greenwood's map as a 'cross road' is of "LOW EVIDENTIAL VALUE"? Who instructed you to tell your members this:

*"The investigation has also researched ...Greenwoods 1817 Map of Yorkshire, which shows the application route as a cross road, but this document is of **low evidential value** and the surveyor recorded both public and private roads. Accordingly, the Definitive Map Officer considers that there is no credible evidence to reasonably allege the existence of a public bridleway."*

Instead of the above, which is absolutely not true, you should consider telling your members that:

"Greenwood's map legend, considered along with the Oxford English Dictionary definition of the epithet that Greenwood uses for his second class public roads, 'cross road', along with three High Court and 1 Appeal Court rulings, provides credible evidence to reasonably allege that this road is a public vehicular highway."

Also a study of Inclosure Awards, including Brampton, Derbyshire, [see attached extract] proves unequivocally that private carriage roads were often set out for the unequivocal use of the public for all purposes and that the word 'private' referred to the maintenance regime (by the allottees or frontagers instead of the surveyor of highways) and does not refer to the user.

Have you read “*What is a Cross Road?*” by Susan Taylor, 1997, [British Library] which proves that Greenwood was following the style of Parliament’s ‘*Conventional Sign*’ for a byway or second class road used for the Commutation of Tithes Act 1836? Do you have this book in your office? It is available for free download from the BHS website at <https://www.bhsaccess.org.uk/uploads/what-is-a-cross-road.pdf>

I’m sure that Phil Champion knows about it as it was on his shelf when at Calderdale MBC. Is he still a colleague?

The whole contents of this book should be part of the evidence you put before your committee to assure them that they have the highest level of evidence, integrity and honesty on which to base their decision especially considering how long the applicants have waited for this decision and that this might be the last opportunity to correct your Definitive Map and Statement.

See also the *Oxford English Dictionary* definition for ‘*cross road*’ on page 9 and see the attached extract.

You should also apply the common law decisions of *Hollins v Oldham* (see page 39) the *Trafford v St Faiths RDC* and the *Fortune v Wiltshire* (High Court and Appeal Court) rulings to all *cross road* evidence for all your DMMO work where the status of a ‘*cross road*’ is being decided.

Three high court judges and three appeal court judges agree with me that, on the balance of probability, a mapped thoroughfare ‘*cross road*’ is a public road. That is the common law. If ‘*cross roads*’ were not public roads then, according to Greenwood and yourself, there weren’t any public roads for people to drive on to reach the turnpikes. So how did they get there?

What is your evidence that Greenwood maps are of low quality? He mapped almost every county of England and Wales and only went out of business because the Ordnance Survey, which was a government initiative, did not have to bear commercial overheads like a wages bill.

PRIVATE ROADS : Do you know that private roads can be *public* for use and *private* for land ownership and/or maintenance simultaneously...they are therefore simultaneously public/private roads! See the Brampton Award [attached – first clause) which reads:

“And we do hereby direct all the said Private Carriage Roads so hereinbefore by us set out as aforesaid (save and except the said Road called the Nether Moor Road) shall be forever hereafter repaired by the person or persons whose Lands adjoin the

same. And that the said excepted Road called Nether Moor Road as aforesaid shall **on account of the great public Traffic and Travelling thereupon** be forever hereafter repaired by the Surveyors of the Highways of the Parish of Brampton aforesaid as part and parcel of the General Highways of that Parish.”

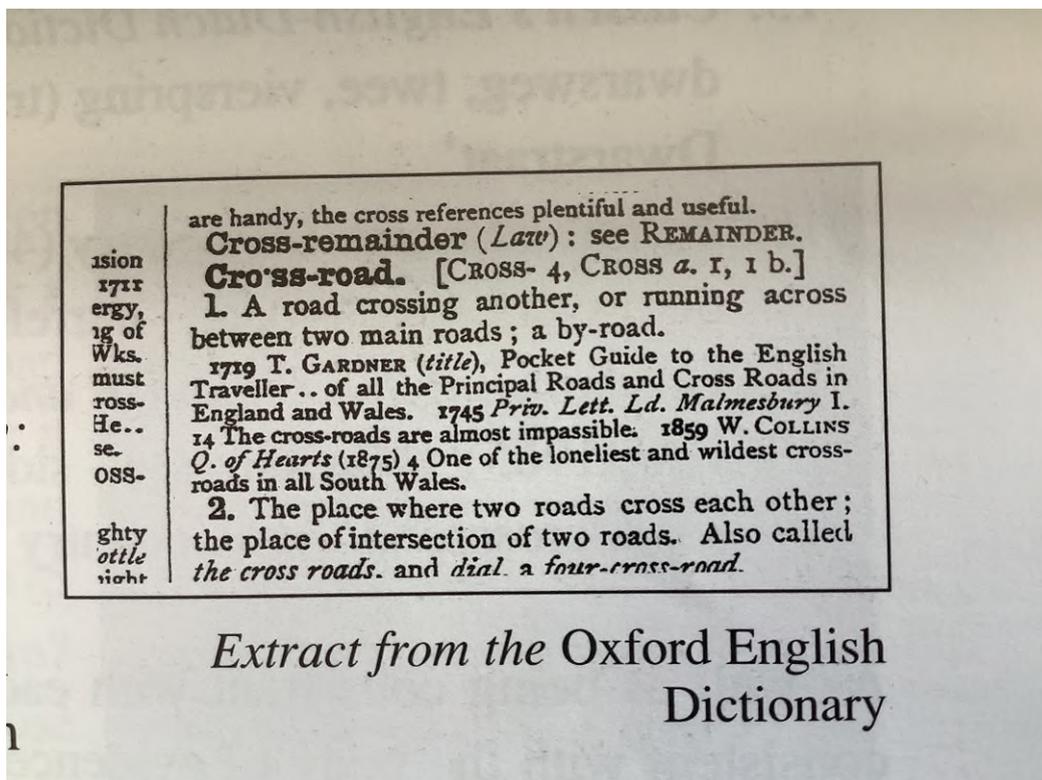
Please let me know whether or not you intend to change your report and recommendation to your members to reflect these evidential truths?

Attachments:

Extract from the OXFORD ENGLISH DICTIONARY

Cross-Road.

1. A road crossing another, or running across between two main roads; a by road.
1759 T. Gardner (*title*), *Pocket Guide to the English Traveller..of all the Principal Roads and Cross Roads in England and Wales.* 1745 *Priv. Lett Ld. Malmesbury I.* 14 The cross-roads are almost impassible. 1859 W Collins *Q. of Hearts* (1875) 4. One of the loneliest and wildest cross-roads in all South Wales.
2. The place where two roads cross each other; the place of intersection of two roads. Also called *the cross roads* and dial. a *four-cross-road*.



Survey 104

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

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And Know Ye Further that we the said Commissioners did
immediately after we entered upon the execution of the said Act
direct the said George Urwin (as the Surveyor appointed as aforesaid)
to make a true exact and particular Survey Admeasurement and
Plan of all the Lands and Grounds directed by the said first mentioned
Act to be divided and inclosed and of all the Tenements and anciently
inclosed Lands and Grounds within the Parish of Brampton aforesaid
and to reduce the same into writing obediently to the directions of the
said second mentioned Act and such Survey Admeasurement and Plan
have accordingly been made by the said George Urwin and verified upon
his Oath administered to him by us. And the same Survey Admeasurement
and Plan (together with the Valuations made by us of all such Lands
and Grounds directed to be inclosed and of all the Tenements and anciently
inclosed Lands and Grounds within the said Parish of Brampton) are

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Email dated 3rd November 2023

Dear Mark, Re my earlier email about the above lane I'm attaching my barrister's opinion regarding how cross road evidence should be treated by OMA's and Inspectors – it must be weighed on the side of Restricted Byway. Not to do this is an **error of law**. See para 11. Speaking of the *Hollins v Oldham* case she says....

*“That is clearly relevant to any case in which the status of a way marked as a cross road on an old map is being determined. Moreover, as a decision of the High Court, **it is binding precedent**”.*

Please let me know if I can attend the committee and address the members. Where will it be held, and what time? Thanks,

Attachment: Barristers Opinion on Status of Cross Roads (see next page).

RE: STATUS OF CROSS ROADS

OPINION

1. I am asked to advise upon the status of cross roads and the preferable way forward to obtain a definitive ruling from the Court as to their status which will be binding authority on the Planning Inspectorate in determining future applications for Definitive Map Modification Orders which involve a cross road.

BACKGROUND

2. The salient background facts are set out in my detailed Instructions and enclosures to which I refer and on which basis I advise. By way of summary, concerns are understandably increasing over the extent of unrecorded, or wrongly recorded, public rights of way given the implications of section 53 of the Countryside and Rights of Way Act 2000 which will result in the immediate extinguishment of many public rights of way which are not recorded on the cut-off date of 1 January 2026. It is thus imperative that existing rights of way are properly recorded. Despite that context, it appears that rights of way inspectors have been somewhat inconsistent in their decision-making over, in particular, their assessment of cross roads shown to be marked on old maps. Various examples and extracts of inconsistent decisions have been provided which I have read. Moreover, it is suggested that the current guidance to inspectors contained in the Consistency Guidelines is materially lacking in relation to cross roads and the identification of relevant binding caselaw.
3. In such circumstances, I am asked to consider whether an application could be made to the Court seeking a declaration or other remedy against the Secretary of State for Environment, Food and Rural Affairs in relation to the status of a cross road. In addition, I am asked to consider the lawfulness of the Planning Inspectorate's inconsistent decision making in relation to a cross road and of its present Consistency Guidelines.

LEGAL FRAMEWORK

Section 32 Highways Act 1980

4. Turning to the relevant legal framework, the starting point is section 32 of the Highways Act 1980 (“the 1980 Act”). It provides:

“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

5. It follows from that provision that any court or other tribunal, including a rights of way inspector, **MUST** take into account any map or other document which is adduced in evidence in determining whether a way has been dedicated as a highway of any description or the date of such dedication. The use of the words “*shall take into consideration*” requires each and every map produced to be taken into account as a matter of law. A failure to do so by the inspector would amount to an error of law.
6. The **weight** to then be attributed to any such map adduced in evidence is a matter for the decision-maker on a case by case basis, taking all material considerations into account. As set out in section 32, those considerations include:
 1. The antiquity of the document;
 2. The status of the person by whom it was made;
 3. The purpose for which it was made; and
 4. The custody in which it has been kept and from which it is produced.

It is thus apparent that the weight to be given to any particular map or other document must be assessed on an individual map or other document basis. Although the weight is for the decision maker to determine, it would be an error of law for the Inspector to fail to take into account any relevant factors in ascertaining such weight, or to fail to undertake that assessment which is required by section 32.

7. Moreover, it is significant to note that **all** relevant maps and other documents adduced in evidence must be taken into account and appropriate weight be attributed to each of them. Ultimately, in any case, the decision-maker must consider and assess all relevant evidence in reaching a decision.

Caselaw

8. As to relevant caselaw, 3 decisions are of particular note which I shall consider in turn, namely:
 1. *Trafford v. St Faith's Rural District Council* (1910) 74 JP 297;
 2. *Hollins v. Oldham* [1995] (unreported) C94/0206; and
 3. *Fortune v. Wiltshire Council* [2013] 1 W.L.R. 808.

9. The *Trafford* case is an early example of the application of what is now section 32 of the 1980 Act. Old maps were produced, including Bryant's map of 1826, and an issue arose over whether the maps were admissible as evidence of merely the fact that a physical track existed or whether they were also evidence of whether the road in question was a public road, namely a highway. It was held by the High Court that the old county maps showing the way, one published in 1797 by the King's Geographer and the other in 1826 by Bryant, a well-known country surveyor, both produced from the British Museum by the proper official, were admissible as some evidence of the way's reputation as a public road. In relation to Bryant's map, Neville J. stated:

*“In the next map of 1826, Bryant's map, I think we have some indication of reputation, inasmuch as it is indicated on that map by the sign which we are told is meant to indicate a good cross or driving road. That the map is some evidence of reputation is, I think, obvious, because, although the person who was responsible for the drawing of the map may not have been an inhabitant of the immediate locality, no doubt he must have had such information as he possessed with regard to the character of the roads from persons in the vicinity, and therefore I think **that is a little bit of evidence to indicate that as early as 1826 this road was considered to be a public road.**”* (My emphasis).

He therefore took Bryant's map into account as evidence that the way was a public highway, albeit the weight he attributed to it was not as great as the weight he gave to other documentary evidence, such as an 1848 sale plan on which the route was stated to be a public road.

10. Much later in 1995, the *Hollins* case came before HHJ Howarth sitting as a Judge of the High Court in the Chancery Division. It is therefore a High Court decision. It is unfortunately unreported and I have not had sight of a copy of the transcript of the Judgment which it would be useful to obtain. Nonetheless, I have seen a number of extracts from the Judgment on which I have relied. In determining that a section of a road known as Pingot Lane in Mottram, Cheshire was an old public vehicular highway, the Judge considered a number of maps on which the road was shown as a cross road. In relation to Burdett's Map of Cheshire dated 1777, he stated:

“Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used upon payment of a toll and, secondly, other types of roads which are called cross roads. That does not mean a place where two roads cross (as one would understand it to be in this case) but a road called a cross road. This latter category, it seems to me, must mean a public road in respect of which no toll was payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser that he did not have the right to use.” (My emphasis).

11. That is clearly relevant to any case in which the status of a way marked as a cross road on an old map is being determined. Moreover, as a decision of the High Court, it is binding precedent. For the compelling reasons given by the Judge, Burdett's map of 1777 was regarded as positive supporting evidence that the road marked on that map as a cross road was a public vehicular highway. That is an approach which Inspectors are required to follow where the same reasoning is applicable to the particular map under consideration.

12. Nonetheless, it remains significant to note that even in such circumstances where the map provides supporting evidence as to the public status of a route, it remains necessary for the decision-maker to then go on to determine the weight to attribute to any such old map, applying the criteria contained in section 32 of the 1980 Act and any other relevant factors. In addition, thereafter, all other relevant evidence must be considered and weighed in the overall decision-making process. In other words, *Hollins* is not authority for the principle that a way marked as a cross road on an old map is consequently a public vehicular highway. Instead, it remains necessary to go on to assess the weight to be given to any such map, which must then be considered together with all other relevant evidence in any particular case. That is apparent from other extracts of the Judgment which I have seen.

13. Hence, the Judge further noted:

“Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles.”

That indicates the Judge’s acknowledgment that an assessment needs to be made on a case by case and on a map by map basis as to the likelihood of the map maker being correct in his view as to the status of a way shown. Although a road marked on a map as a cross road is evidence that the map maker regarded it as a vehicular highway, it does not **automatically** follow that he was correct in being of that view. Consideration must accordingly also be given to that factor in determining the weight to be given to that particular piece of evidence by making an assessment as to its reliability applying the section 32 and other relevant factors. Moreover, the Judge also emphasised the importance of reaching a determination only after having considered all the relevant evidence. He stated:

“The whole of the documents have to be examined to assess their reliability. It seems to me that I have to assess each piece of documentary evidence to see how far I can rely upon it. This applies just as much to official documents such as the definitive map or ordnance survey sheets or tithe surveys as it does to other records such as commercially produced maps. They have all been produced by human beings and are so liable to error to some extent.”

In my view, that again reflects the approach required by section 32 of the 1980 Act which must always be undertaken.

14. Although the more recent **Fortune** Court of Appeal decision is not as directly relevant as **Hollins** to the present circumstances, it nonetheless has some relevance and is consistent with the approach applied in that earlier case. In considering the various maps in order to assess whether a particular route was a public vehicular highway, the Judge at first instance had taken into account the route’s marking as a cross road on Greenwood’s map of Wiltshire of 1829, another well known commercial map maker who produced maps of many English counties. Lewison LJ stated at paragraph 54:

“As the judge pointed out, in 1829 the expression “cross road” did not have its modern meaning of a point at which two roads cross. Rather in “old maps and documents, a “cross road” included a highway running between, and joining other, regional centres”. Indeed that is the first meaning given to the expression

in the Oxford English Dictionary (“A road crossing another, or running across between two main roads; a byroad”).”

At paragraph 56, he went on to state:

“The judge concluded that Greenwood’s map supported “the emerging picture” of an established thoroughfare. In our judgment the label “cross road” added further support.”

15. Therefore, again, the marking of a route as a cross road on an old commercially produced county map was regarded at Court of Appeal level as **evidence in support of the route being a public vehicular highway**. It was part of “*the emerging picture*” being developed from the various strands of relevant evidence which all had to be taken into account.

APPLICATION FOR DECLARATION

16. In the context of the above legal framework, I turn next to the first specific question raised in my Instructions, namely the appropriateness of making an application for declaratory relief against the Secretary of State for Environment, Food and Rural Affairs in relation to “*whether on the balance of probabilities a cross road is definitively a public carriageway and byway*”.
17. In my opinion, such an application would be inadvisable. The suggested question posed is far too general to enable the Court to make a declaration, and indeed, any alternative wording would necessarily be too general. The fundamental reasoning is that it is not possible to declare that a route marked on an old map as a cross road is a public carriageway and a byway open to all traffic without going on to take into account all the relevant factors, including those contained in section 32 of the 1980 Act, to ascertain the weight to attribute to that particular map, and thereafter all other relevant evidence in relation to a particular way. The issue is not capable of determination “in a vacuum” by way of a general legal principle. Instead, it is necessarily dependent upon all the available evidence on a case by case basis. That is apparent from section 32 itself and also from the above caselaw. Therefore, it does not seem to me that a relevant question could be posed capable of determination without reference to any particular factual circumstances, and which would nonetheless achieve the ultimate objective of obtaining a definitive ruling to be applied in subsequent cases.
18. Indeed, such a general declaration would be inherently inconsistent with the legal position whereby each relevant map must be afforded appropriate weight as determined by applying the section 32 factors and then considered as one element of the overall pot of evidence in each individual case.

APPROPRIATE APPLICATION

19. Instead, any application to the Courts needs to be made in the context of particular circumstances and a specific decision. Hence, if an Inspector erroneously applies the correct legal position as set out above, then that particular decision is capable of being legally challenged. A declaration could be sought as part of those proceedings as to the relevant law, and which the Court would proceed to apply to the Inspector's decision in determining whether it should be quashed.

20. However, any such challenge would need to be made within the relatively short time period applicable. If the challenge was against an Inspector's failure to confirm a Definitive Map Modification Order, judicial review proceedings would be required to be instigated promptly, and in any event within 3 months of the Inspector's decision. In contrast, if the challenge was to a confirmed Order, a statutory challenge would need to be made within 6 weeks of the decision by virtue of paragraph 12 of Schedule 15 to the Wildlife and Countryside Act 1981. It is not an available option to challenge previous erroneous decisions made by Inspectors outwith those time periods.

POTENTIAL GROUNDS OF CHALLENGE

21. Any such challenge could only be made on a point of law and not on the merits. The Court would not reassess the merits of the Inspector's decision. Further, and importantly, the Court will not interfere with issues of how much weight was given by an Inspector to a particular piece of evidence. It is well established that the weight to be given to specific evidence is a matter for the Inspector's judgment with which the Court will not interfere. Instead, it would be necessary to demonstrate that in reaching a decision, the particular Inspector had incorrectly applied the law; had taken irrelevant considerations into account; had failed to take into account a relevant consideration; had reached a decision that no reasonable Inspector could have reached; had failed to give adequate reasons for the decision; or had acted procedurally unfairly. Whether such grounds can be established in an individual case would require detailed consideration before any judicial review proceedings or statutory challenge was embarked upon.

22. That in turn leads to the other two specific questions raised in my Instructions, namely:
- a. Whether the Planning Inspectorate is acting unlawfully by failing to weigh cross road evidence in favour of public carriageway status when dealing with Definitive Map Modification Orders; and
 - b. Whether the Planning Inspectorate is acting unlawfully in failing to inform Inspectors that the *Trafford* case is binding authority that a cross road is a public carriageway.
23. As to the former, as indicated above, it is an error of law for an Inspector to fail to take into account any relevant map evidence. Moreover, although the weight to be attributed to any individual piece of evidence is a matter for the Inspector, the correct legal approach must be applied, namely by the Inspector considering the reliability of that evidence applying the section 32 criteria and then weighing that evidence in the balance with all other relevant evidence. In some instances, the proper application of the criteria will result in a map showing a cross road being supportive evidence of it having a public carriageway status. That would arise, for example, where the circumstances as arose in *Hollins* or *Fortune* existed. A failure by an Inspector to so find would then be an error of law and the decision would be capable of challenge on that ground. In contrast, in other instances, the application of the criteria will suggest that the particular map cannot be relied upon as evidence as to the status of a route shown, but is only evidence that a physical route existed on the ground. The position will inevitably vary dependent upon the nature of the map in question and the application of the relevant criteria to that map in any particular case. Nonetheless, that exercise of the application of the criteria must still be undertaken on a case by case and on a map by map basis, as was done in *Hollins*, with adequate reasons provided by the Inspector for the view reached in relation to each map. Otherwise, the decision is erroneous in law and capable of successful challenge in principle.
24. Importantly, it is also worthy of note that although a previous Inspector's decision is not a binding precedent, if a decision made is inconsistent with a previous Inspector's decision on the same point, then such an inconsistent decision is erroneous in law unless the matter in issue is materially distinguishable, or if other sound and justifiable reasons are given for departing from the previous decision.

25. Therefore, it is apparent that a number of potential grounds of challenge may arise against an Inspector's decision in relation to the erroneous assessment of the evidence in determining the status of a cross road.
26. As to the Planning Inspectorate's Consistency Guidelines, or any other Advice Notes, it is my opinion that there is no scope for contending that the Planning Inspectorate is acting unlawfully by failing to refer to the **Trafford** case as binding authority. Such guidance is just that, namely guidelines and advice, but not law. Indeed, it is stated at paragraph 1.8 of the current version of the Consistency Guidelines:
- “The Guidelines are neither definitive nor exhaustive and do not set any precedent. They are subject to change, whether by the application of new case law, or as a result of new understanding following academic research.”*
- They cannot be regarded by Inspectors or any Party to an Inquiry as a statement of the law. In that context, it is not unlawful for the Guidelines to fail to refer Inspectors to the **Trafford** decision in relation to a cross road. They do not purport to identify an exhaustive list of relevant binding caselaw.
27. Nonetheless, an Inspector cannot “hide behind” any such guidance, such as by not regarding **Trafford** as binding authority on the basis that it is not referred to in the Guidelines. That would be an error of law and the decision would be susceptible to challenge. The guidance is not infrequently incorrect in law, as I have pointed out at various inquiries and informed the Inspector to instead apply the correct legal approach contrary to the guidance. Had the Inspector proceeded to apply the erroneous guidance in such circumstances, the decision would be challengeable.
28. Ultimately, the preferable course is to ensure that in each instance where the status of a cross road is in issue, the Inspector is specifically referred to the **Trafford**, **Hollins** and **Fortune** decisions, and to their correct legal application to the circumstances before the Inquiry.

WAY FORWARD

29. Given the above, in the first instance, it unfortunately seems to me that there is no available mechanism to obtain a definitive general ruling to the effect that every route identified as a cross road on an old map is a public carriageway and byway open to all traffic, or at least a restricted byway taking into account the implications of section 67 of the Natural Environment and Rural Communities Act 2006 which extinguished many unrecorded vehicular public rights of way. Instead, the issue is always one to be addressed on a case by case basis and is necessarily

dependent upon the totality of the evidence in any given case. It therefore follows that, in my opinion, there is regrettably no means to avoid the need to identify each unrecorded, or wrongly recorded, route individually and to seek an appropriate modification of the Definitive Map. I understand that an extension to the 1 January 2026 cut-off date is currently being actively promoted by various parties which should hopefully prove to be of some assistance.

30. Instead, there are two potential options available, namely:

- a. Identify an “appropriate” cross road decision, namely one raising those particular issues on which clear rulings from the Court are required, which has been wrongly decided by an Inspector and has reasonable prospects of being successfully challenged, and proceed to instigate proceedings against that decision; and/or
- b. Actively participate in public inquiries concerning a cross road to ensure that all relevant caselaw is presented to the Inspector and to seek to ensure its correct application in each case.

31. In relation to those two options, one approach would be to ensure that for all instances where a cross road is in issue, specific participation at public inquiries is ensured, with appropriate legal representation if necessary. If such decisions are favourable, then there is arguably no necessity for any further binding decision to be sought, particularly given that both *Trafford* and *Hollins* are already binding decisions. In the event that an adverse decision was nonetheless made, consideration could then be given at that stage to challenging that particular decision if an error of law was capable of being demonstrated.

32. Alternatively, the other approach would be to proceed to actively seek to identify an appropriate decision which has been wrongly decided and to instigate proceedings through the Courts. That would be appropriate in the event that a definitive ruling from the Court on certain matters is regarded as the primary objective. In that scenario, it would be advisable at the outset to identify the specific matters on which a ruling is sought over and above the definitive rulings which have already been made in *Trafford* and *Hollins*. It would then be necessary to identify a particular decision where those matters on which specific rulings from the Court are sought were in issue and which matters the Inspector proceeded to determine wrongly by making an error of law.

33. In relation to any challenge in either case, the strict time limits must be closely heeded. Further, the Claimant must have the requisite standing to pursue any Claim. That would arise, for example, if the Claimant had submitted evidence to the Inquiry, even merely in writing, or if the Claimant was an interested local resident or a user of the route in question.
34. The cost implications of any challenge through the Court must also be borne in mind. If unsuccessful, the Claimant could be ordered to meet all the Secretary of State's reasonable costs in defending the proceedings as well as meeting its own. However, in relation to the Secretary of State's costs, early attempts could be made to seek to limit the amount of any such costs in the event that the Claim was unsuccessful pursuant to the Aarhus Convention. That enables a cap to be placed on such costs in cases involving environmental matters. It is usually £10,000, or reduced to £5,000 where the Claimant is acting solely as an individual.
35. Finally, whichever option is pursued, co-ordination of interested user groups on a national basis will be required to identify forthcoming inquiries relating to cross roads which would be worth attending and/or decisions which may be susceptible to challenge.
36. I advise accordingly, and if I can be of any further assistance, please do not hesitate to contact me.

15 February 2021

Kings Chambers
36 Young Street Manchester M3 3FT
5 Park Square East Leeds LS1 2NE and
Embassy House, 60 Church Street, Birmingham B3 2DJ

RE: STATUS OF CROSS ROADS

OPINION

Your Ref: AC
Our Ref: RS 470164

Email dated 5th November 2023

Hello, I plan to visit the above meeting representing Kirklees Bridleways Group and request permission to speak in support of this Definitive Map Modification Order application for footpath/bridleway.

Please can you tell me what time I should arrive and what is the address of the meeting venue? I will send you a statement tomorrow.

Briefly our case is that, according to the evidence, Moor Lane is a public vehicular road which means that the correct status for the Definitive Map should be *Restricted Byway*.

I have sent Mark Drydale my barrister's opinion confirming that a mapped cross road, such as Moor Lane which is recorded on Greenwood's 19thC map of Yorkshire, is, on the balance of probability, a public vehicular road which would match with the width, name and location of Moor Lane.

It would also be compatible with the fact that the sub-soil was not claimed to be private land in 1910 when the Finance Act Map was made...so if it wasn't private land for tax purposes then it can't possibly be a private road now, because no one claimed it as such...but it is clearly a road...so it can only be a public vehicular road.

There are three high court and one Appeal Court decisions supporting the fact that a cross road is, on the balance of probability, a public carriage road. They are *Hollins v Oldham* (1995), *Trafford v St Faith's Rural District Council* (1910) and *Fortune v Wiltshire Council* (2010 High Court and 2012 Appeal Court). That's three high court judges and three Appeal Court judges who all agree with me. In *Trafford* and *Fortune* it was the highway authorities, not user groups, which successfully argued that a cross road was a public vehicular road. That was because the highway authorities recognised that the cross road epithet translated as a byway...a fact confirmed by the Oxford English Dictionary.

My 'book "*What is a Cross Road?*" is available from the bhs access website. <https://www.bhsaccess.org.uk/uploads/what-is-a-cross-roadpdf> and I would be surprised if your public rights of way department do not have a copy of it as it was widely circulated when published in 1997.

What I can't tell from your report is whether or not all or any of Moor Lane is on anyone's title deeds? Do you know the answer to that please?

I look forward to hearing from you. Thanks.

Reply Email dated 7th November 2023

Dear....

Please see the attached response to your emails regarding Agenda Item 9, Moor Lane, Farnley Tyas. Please also note, that our correspondence will be circulated in an 'Update Document' to inform Members of the additional information that has been received since the Committee Report was published.

I have reflected and deliberated on the documentary evidence over the last few days. I maintain the view that Greenwoods 1817 Map of Yorkshire has limited evidential value, which is supported by case law and the Definitive Map Consistency Guidelines. The 1817 advert is a relatively new piece of evidence that I have not come across in the ten years I have been a Definitive Map Officer, and has probably not been considered in judgements. However, again whilst I have differing analytical views, there is some synergy between Greenwoods Map, the 1893 OS Map showing it as a second class metalled carriage road, and the 1910 Finance Act Maps. None of the documents preclude the existence of public rights and collectively they may be considered reasonable to allege the existence of a vehicular highway.

I have therefore advised in the update document for Members to take into account the submissions provided on behalf of Kirklees Bridleways Group, the attached response from myself, and if considered appropriate, to exercise the second option under paragraph 15 of the Committee Report, under the heading 'Guidance to Members' that Kirklees Council make a DMMO to modify the Definitive Map and Statement based on members interpretation of the evidence.

I have also reiterated that it is still reasonable to allege the existence of a public footpath based on the user evidence. Of course, if a DMMO is made and confirmed as a public bridleway or restricted byway, then such use would have been 'by right'.

**Reply Letter to Submission One Sent By Definitive Map Officer via Email
on 7th November 2023**

Dear

Thank you for your emails regarding the determination of Moor Lane, Farnley Tyas, ('the application route') and the evidence you have presented. Based on my understanding, your representation is mainly based on the evidential weight attributed to Greenwoods 1817 Map of Yorkshire ('Greenwoods Map') and its consideration within the overall decision-making process. In the first instance, I stated at paragraph 52 of the Investigation Report that the document provides a high degree of accuracy with regards to the topographical features recorded, this corresponds with sub-paragraph 14.2.9 of the [Definitive Map Consistency Guidelines](#).

Furthermore, paragraphs 57, 58, and 59, of the Investigation Report respectively refer to all three judgements you have listed, in order to review the evidential weight to be placed on the commercial map: *Hollins v Oldham* (Ch) [1995] ('Hollins'), *Trafford v St Faiths RDC* 1910 ('Trafford'), and *Fortune & Others v Wiltshire County Council & Another* [2012] EWCA Civ 334 ('[Fortune](#)'); and others that are not considered in the Barristers 'Opinion on the Status of Cross Roads'. Sub-paragraphs 2.4.1. to 2.4.7 of the Definitive Map Consistency Guidelines, and paragraph 17 of the Barristers opinion, state that public rights are not automatically inferred from the depiction of a cross road on an old map. The designation will depend on analysis of the particular map.

The judge in *Hollins* noted that commercially produced maps are liable to human error to some extent. Whilst in *Trafford*, Neville J only attributed a little bit of evidential weight to Bryant's 1826 commercial map, as noted by the Barrister at paragraph 9 of their report. Lastly, in *Norfolk County Council v Mason* [2004], Judge Roger Cooke stated (see paragraph 58 of the Investigation Report) that Bryant's commercial map was anything but a firm indicator and not too much reliance should be placed on it. In *Merstham Manor v Coulsdon & Purley UDC* [1937], the judge did not consider that the depiction of a route as a road on Greenwoods Map of 1822 and 1823 provided evidence of public status (see paragraph 56 of the Investigation Report). However,

Fortune suggests that a route shown as a cross road on Greenwoods 1829 Map of Wiltshire added further support of public rights in corroboration with other documents.

For example, see [ROW/3270493](#), in which the Planning Inspector analyses Greenwoods Map of Kent 1819-1820 at paragraphs 8 and 9, but does not consider that they provide a reliable indication of status in isolation. Following an analysis of the judgements and the 1817 advert that details the purpose of the document, to record both public and private roads, paragraph 65 of the Investigation Report states that Greenwoods Map could be supportive evidence towards a reasonable allegation of public status, such as a public bridleway, but other corroborative documents are required as Greenwoods Map cannot provide a reliable indication of public status on its own.

In a follow up email, you have stated that the depiction of Moor Lane on Greenwoods Map must be weighted on the side of a restricted byway. I believe this is with reference to paragraph 11 of the Barristers Opinion and the analysis of Hollins, that a road marked on that particular map as a cross road was a public vehicular highway. The inference of a public bridleway at paragraph 65 in the Investigation Report was also based on the Hollins judgement, which stated that a route marked on that particular commercial map as a cross road must have been considered, rightly or wrongly, by the map maker as being either a bridleway or vehicular highway.

Both statuses may therefore be inferred, with public bridleway status being less burdensome to a landowner and is consistent with the 'Discovering Lost Ways' pilot in Shropshire. Additionally, the Barrister qualifies their statement, and continues that the required approach to follow where the same reasoning is applicable to the particular map under consideration. However, in that case the judge was considering a map produced 40 years earlier than Greenwoods Map and by a different cartographer. Therefore, whilst consideration is given to the legal precedent set by Hollins, it is important to consider the context of the individual map before drawing any inferences, as set out above.

Overall, I think there is a correlation between our views; the depiction of Moor Lane on Greenwoods Map as a cross road can be supportive of public status. Next, we have both corroborated the document with other evidential sources, such as the 1893 OS Map, and the 1910 Finance Act Map. I don't necessarily agree with the interpretation of the Finance Act Map, based on the explanations set out in the Investigation Report, nevertheless, I can see the merit behind your reasoning in support of a reasonable allegation of bridleway/vehicular highway status. Whilst the inclusion of Moor Lane on all three documents are consistent with the route being a private occupation road, they do not preclude the existence of public rights and there is some synergy between the documents. The majority of the freehold is Moor Lane is registered on Land Registry, with the exception of a small area of land adjacent Tanners Croft & Ash Croft, at Manor Road.

As stated in option two (2) in paragraph 15 of the Committee Report, it is open to Kirklees Council to make a Definitive Map Modification Order based on Members interpretation of the evidence. Therefore, in my presentation to Committee, I am providing a summary of the documentary and user evidence in relation to Moor Lane. It is without question that I recommend to the Committee that a public footpath is reasonably alleged to subsist based on the user evidence submitted with the two Schedule 14 applications. However, Members may decide to make a DMMO for public bridleway or vehicular highway status.

I appreciate that there is often a difference of opinion when it comes to public right of way matters. However, I hope you can see that I put of a lot of time, effort, and care in producing investigation reports to the highest of my abilities for each case. The information I have presented to Committee cites the correct legal judgements, provides a detailed background to the documentary evidence, and carefully explains the analysis and how I have arrived at every conclusion.

Kind Regards,

Mark Drydale
Definitive Map Officer

SUBMISSION TWO

Email dated 7th November 2023

Dear Andrea

Regarding the above meeting, I would like to make a representation regarding the footpath application but I am unable to attend the meeting. I wonder if it is possible for my representation to be made know to those attending.

The current status quo has existed for many years. People occasionally use this route for recreational purposes, with the landlords permission, and without interference. People are neither encouraged nor discouraged to use the route. I do not see why it has to be made into an official "Public Footpath".

The route is not a good one, and indeed one of my friends recently had a nasty fall along the route caused by an exposed tree root. My main objection to this is that this change of status from permissive to official will achieve nothing. It will not change the use of the route and will be associated with the erection of signs, work to actually establish a footpath followed by repair and maintenance costs for the council, which as we know must use its funds wisely at this time.

There is no actual distinct footpath there at the moment, and the route following the wall changes according to the weather conditions and the seasonal size of the hawthorn bushes along the way. It cannot be described as safe but the people that use it, the rambling and hiking groups, are well equipped with correct footwear and walking sticks where required. I am concerned that if designated at as footpath, it may encourage the use by people not adequately prepared and result in more accidents and possible litigation costs for the council.

I can see no reason to change the current situation which has been the status quo for many years and serves our community well without confrontations or difficulties.

ADDITIONAL INFORMATION FOR MEMBERS

As stated in the Committee Report at paragraph 10, under the heading 'Statutory Provisions', the test to be applied at the Schedule 14 stage is 'Test B':

- Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the Council should find that a public right of way has been reasonably alleged to subsist.

In support of restricted byway status, Kirklees Bridleways Group rely on the depiction of Moor Lane on Greenwoods 1817 Map of Yorkshire as a 'cross road', its annotation as a second class metalled carriage road on the 1893 OS Map, and its exclusion from adjacent hereditaments on the 1910 Finance Act Map. As stated in the response to the Kirklees Bridleway Group representative, each of these documents are consistent with public or private status and are each of limited value. Nevertheless, despite differences of opinion, there is some synergy between the documents and they do not preclude the existence of public rights.

Having deliberated and reflected again on the evidence over the last few days whilst writing the response letter, the Definitive Map Officer considers that, collectively, the documentary evidence may be reasonable to allege the existence of a restricted byway, which is a public right of way on foot, horse, cycle, or cart, but not with a mechanically propelled vehicle, taking into account the exceptions found in [Section 67 of the Natural Environment & Rural Communities Act, 2006](#).

Whilst I still support my recommendation that a public footpath is reasonably alleged to subsist based on user evidence, I advise members to take into account the submissions received by Kirklees Bridleways Group and the response by the Definitive Map Officer, and if considered appropriate, exercise the second option under paragraph 15 of the Committee Report, under the heading 'Guidance to Members' that Kirklees Council make a DMMO to modify

the Definitive Map and Statement based on members interpretation of the evidence. Any DMMO made based on the documentary evidence should record the full variable width of Moor Lane, but not include any gates or styles as limitations as there is no evidence that they were present historically.

Members will also need to decide whether to actively support confirmation of the Order or take a neutral stance.

Planning Application 2022/92619

Item 11 – Page 189

Change of use of land and formation of skate park

Royds Park, Bradford Road, Rawfolds, Cleckheaton, BD19 5LL

Officers have received a consultation response from The Coal Authority which raises no objection to the proposed development. Officers therefore put forward the following amended recommendation:

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report.

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