



Order Decision

Inquiry opened on 9 April 2024

Site visit undertaken on 8 April 2024

by Mark Yates BA(Hons) MIPROW

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

Decision date: 12 July 2024

Order Ref: ROW/3306775

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Definitive Map Modification (Restricted Byway 30A, Worlaby) Order 2021(1).
- The Order was made by the North Lincolnshire Council ('the Council') on 17 November 2021 and proposes to add a restricted byway ('the claimed route') to the definitive map and statement.
- There was one objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public inquiry into the Order on 9-11 April and 9-10 May 2024 at Worlaby Village Hall where I heard evidence from the various interested parties. The inquiry concluded virtually on 13 May 2024 when closing submissions were delivered.
2. I was notified on the second day of the inquiry that the Council's witness (Mr Wilkinson) had spoken to some people during a break in cross-examination. He has subsequently provided a witness statement outlining the nature of the conversation, which involved two Council officers. Whilst his conduct was inappropriate at that particular point in the inquiry, he has confirmed that the case itself was not discussed during the relatively brief conversation with the parties concerned. There is nothing to suggest that this issue has any bearing on the weight to be attached to Mr Wilkinson's evidence.
3. If I decide to confirm the Order, I will need to consider whether it should be modified in relation to the extent of the route shown on the Order Map.
4. An application for an award of costs was made at the inquiry and this will be the subject of a separate decision.

Legal Framework and Main Issues

5. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a public right of way subsists.
 6. The user evidence can be considered in accordance with Section 31 of the Highways Act 1980 ('the 1980 Act') or common law.
 7. Section 31 requires consideration to be given to whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence
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that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

8. Three main issues arise in relation to dedication at common law: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public as of right may support an inference of dedication and may also show acceptance of the dedication by the public.
9. In terms of the documentary evidence, consideration can be given to whether it is sufficient to infer the dedication of a public right of way at some point in the past. Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.
10. None of the exemptions in Section 67(2) or (3) of the Natural Environment and Rural Communities Act 2006 are stated to be applicable and therefore any public right of way for mechanically propelled vehicles is extinguished. This means that if historical vehicular rights are shown to subsist, the appropriate status for the route would be a restricted byway.
11. Consideration also needs to be given to the issues of statutory incompatibility and criminality given that the claimed route crosses an operational railway line.

Reasons

Background

12. The route is part of Carr Lane, which connects at its north-eastern end with the B1204 Low Road (in the village of Worlaby). The claimed route comprises of a railway level crossing and the section of Carr Lane to the south-west of the crossing. It terminates at its south-western end on the western bank of the Weir Dike, near to the River Ancholme. To the north-east of the railway level crossing, Carr Lane is included in the Council's list of streets as a highway maintained at public expense and this section is not included in the Order. No public rights are currently recorded over the claimed route.

The user evidence

13. A number of user evidence forms ('UEFs') have been submitted in support of use of the claimed route. These were broadly completed in two batches in 1992/93 and 2018 respectively. Additionally, the Council undertook interviews with some of the users and a number of people gave evidence at the inquiry in support of use of the claimed route.
14. It is accepted that use of the claimed route was prevented by the locking of pedestrian gates at the crossing in 2018. A few people refer to challenges to use of the route and the erection of signage to indicate the claimed route was private in 2017. Overall, there is limited evidence of action being taken to challenge use prior to the locking of the pedestrian gates. In contrast, the locking of the gates clearly served to bring the status of the route into question for the purpose of Section 31 of the 1980 Act. Therefore, I take 2018 as the starting point for the consideration of

- dedication under statute and the relevant twenty-year period would be 1998-2018 ('the relevant period').
15. The UEFs are supportive of use on foot and cycle both before and during the relevant period. However, I am mindful that the earlier set of UEFs do not relate to the relevant period. These forms seem to have been submitted in response to the locking of vehicular gates at the crossing. There is nothing to suggest that this served to prevent access for pedestrians or cyclists given the presence of the pedestrian gates. No evidence has been provided to indicate that the pedestrian gates were locked prior to 2018.
 16. The evidence of use is not generally challenged but Network Rail Infrastructure Limited ('NR'), the sole objector, have highlighted some issues in relation to the quality of this evidence. A particular issue arises out of the poor quality of the plans or, in some cases, an absence of a plan with the UEFs to identify the route used. Nonetheless, other information contained in the forms is supportive of the use corresponding to Carr Lane to order to reach the River Ancholme. The evidence of the witnesses who spoke at the inquiry was supportive of widespread use of the claimed route.
 17. It is evident that a landowner to the south-west of the level crossing entered into a Countryside Stewardship Scheme during the period of 2005/6-2015/16 with the former Rural Development Service. This scheme provided for the provision of permissive access over the claimed route for which the landowner received a payment. The provision of permissive access during a proportion of the relevant period could constitute use '*by right*' as opposed to '*as of right*' and potentially serve to bring the status of the route into question on an earlier date. However, there is no evidence of notices being erected on site or elsewhere to advertise this permissive arrangement and none of the users who were interviewed recall any such signage. There is also correspondence in relation to the lack of access boards on the land concerned.
 18. Whilst the landowner informed the Council in 2006 that they did not agree to the route being a permanent right of way and wished it to remain available for permissive access only under the scheme, there is nothing to suggest that this correspondence was made known to users of the route. Aside from the potential challenges in 2017, there is no evidence of any action being taken during the relevant period which was sufficient to demonstrate to the public that there was a lack of intention to dedicate a public right of way.
 19. In light of the above, the user evidence could support the dedication of a public right of way under statute during the relevant period. Further, if the status of the route was brought into question in 2006 or 2017, the evidence would support the same finding. In the circumstances, there is no need to consider the potential for dedication under common law to have arisen from the relatively recent use of the route. However, consideration needs to be given to the submissions on the issues of statutory incompatibility and criminality. These issues could impact on the dedication of a public right of way under statute or common law.

Statutory incompatibility ('SI')

20. Both the Council and the applicant (Worlabby Parish Council) have accepted NR's position on SI, which is stated to arise in relation to safety and operational efficiency where the claimed route crosses the railway. Reliance is placed on the

judgment in *Ramblers Association v Secretary of State for Environment, Food and Rural Affairs and others* [2017] EWHC 716 Admin in relation to the SI point. This case outlined that the consideration of whether SI is applicable needs to be assessed at the time of the decision into the status of the alleged right of way and it is a forward-looking exercise. No case has been pursued in support of the existence of a cul de sac to the south-west of the level crossing.

21. Some of those who spoke in support of use of the claimed route have also given their views on the safety of the crossing, most notably Mr Whitfield who is a safety consultant. Mr Cunningham gave evidence for NR on the issue of safety at the crossing. He spoke to the risk assessments undertaken for the level crossing at Carr Lane. An overview for NR has also been provided by Mr Greenwood. During my site visit I was able to look at the crossing and I acknowledge the point made regarding the visibility of the miniature stop lights to warn of an approaching train and I observed the views of the railway line in each direction.
22. The All Level Crossing Risk Model ('ALCRM') is a computer-based application used by NR. This provides a quantitative assessment from the data provided in relation to matters such as crossing type, train sighting, warning time, amount of rail use, speed of trains and amount of use by the public (having regard to different types of user). A risk result is produced consisting of a letter (A-M for individual risk) and number (1-13 for collective risk). The risk is deemed to be higher towards A and 1. In this case the crossing was awarded a score of B4 on the basis that it is presently only a private crossing.
23. A Narrative Risk Assessment is then undertaken by the Level Crossing Manager. This is a qualitative assessment looking at the site itself and having regard to the ALCRM score. Observations are also provided by the Route Level Crossings Manager. Additionally, an Impact Assessment Report ('IAR') was produced in this case which considered the impact of the route being recorded as a restricted byway. The conclusion in the IAR is that if the claimed route were recorded as a public right of way the safety risk at the crossing is likely to increase to an unacceptable level even when allowing for mitigation measures.
24. Despite the presence of the warning lights, Mr Cunningham pointed to there being no barrier to prevent people from accessing the crossing (clearly this would apply if the current locks on the gates were to be removed). He outlined that the lights are not connected to the signal and if a fault arises there would be a need to use the phone at the crossing.
25. In terms of whether a comparison exercise should be undertaken, for instance with the crossing nearby at Elsham, Mr Cunningham highlighted every crossing has to be individually assessed with regard to site specific information. Mr Whitfield considered there to be a potential greater risk arising out of people climbing over the locked gates to access the route with bikes or fishing equipment than if the route were available to use. He believes that a comparison exercise should have been undertaken in relation to the different circumstances where the gates are left open or locked. However, what needs to be considered is whether the dedication of a public right of way could not arise by reason of SI. The risk posed by people climbing over locked gates to access the crossing sits outside of this consideration. It is open to NR to take appropriate action to prevent unauthorised access at the crossing in the event that no public right of way is found to exist.

26. Overall, significant weight should be given to the evidence of Mr Cunningham on the issue of safety at the crossing given his expertise on this topic. I do not consider the points raised by other parties are sufficient to undermine the weight of Mr Cunningham's evidence. I further note that no party has challenged the second limb of NR's case on SI, namely operational efficiency, which forms part of Mr Greenwood's evidence. I conclude on balance that the dedication of a public right of way would have been incompatible with the statutory functions of the relevant railway body by reason of safety and operational efficiency. This prevents the dedication of a right of way from being found from the user evidence detailed above.
27. Both the Council and NR accept that if the claimed route is found to have been a highway prior to the railway by reference to the documentary evidence then SI would not be applicable. NR assert that this occurred when the relevant Act for the railway was passed in 1861. It is submitted that the Act gave the power for land to be used for statutory purposes even if it was in the ownership of another party. They submit that the dedication of a highway would be incompatible with the statute. The Council consider this is more likely to have occurred when the railway company reached agreement to purchase the land in 1862. Additionally, there may be some merit in the view that SI first arises with the opening of the railway, which in this case occurred in around 1864, given that the passing of an Act did not mean that a railway would necessarily be built.

Criminality

28. Given my conclusion on the issue of SI, there can have been no post railway dedication of a highway over the claimed route irrespective of whether the use by the public constituted a criminal offence. The issue of criminality would not arise if it were found that a public right of way was dedicated prior to the existence of the railway. It is therefore not necessary for me to consider this issue further.

The documentary evidence

Early maps

29. Carr Lane is shown on Bryant's map of 1828. It is additionally depicted on the Greenwood map of 1830 as a cross road. A cross road in this context would typically mean a road running between two other roads. In this case Carr Lane commenced from what is presently known as Low Road in Worlaby and travelled towards the river. Therefore, a question arises as to whether there is other evidence in support of historical public use to the river via Carr Lane. The primary value of these maps is that they are supportive of the physical existence of Carr Lane before the construction of the railway. It would need to be shown by reference to other pieces of evidence that the road shown on these maps had been dedicated prior to the railway.
30. A deposited plan in relation to an Act of 1825 to improve the River Ancholme does not show Carr Lane. It is stated on the plan that the land was surveyed in 1767 and 1768. The extent to which there was a need to make modifications to the plan is likely to have depended upon whether any material additional features needed to be recorded. There is no indication on the plan that the land had been re-surveyed. It may well be the case that this plan was sufficient for the purpose of the 1825 Act and there was no need to make any changes to it. Therefore, I do not consider that this plan provides a reliable indication regarding whether Carr Lane

existed in 1825. Nonetheless, it can only be concluded from the early map evidence that the route existed from at least 1828.

31. The 1840 Worlaby tithe map shows the claimed route by way of a solid line on one side to represent a boundary feature and a dashed line on the other side to indicate that it was not enclosed by a physical feature. It is shown on the map as comprising of parcels 6a, 7a and 8a. Despite the route being unbounded on one side, it is distinct feature recorded separately from other parcels of land. The respective parcels are recorded in the tithe apportionment as a road. They are stated to be in the ownership of private individuals and not subject to the payment of tithes. It also appears to be the case that the state of cultivation for each is described as pasture.
32. The tithe documents record the existence of a section of road which corresponds to the claimed route. It may be the case that the reason for the absence of tithes did not relate to the issue of productivity given the apparent description of the land as pasture. However, it remains the case that the exclusion of a road from the tithed parcels of land is not necessarily indicative of public status. Whilst the tithe documents could provide some support for the route being a highway, I consider that they carry only a limited amount of evidential weight. The tithe documents would not be inconsistent with the route being a private road.

Railway documents

33. The railway line now crossed by the claimed route was authorised by the Trent, Ancholme and Grimsby Railway Act 1861 ('the 1861 Act'). This Act incorporated the general provisions found in the Railway Clauses Consolidation Act 1845 ('the 1845 Act') and also made specific provisions in respect of the proposed railway. As part of the Parliamentary process a book of reference and plans were drawn up in relation to the proposed railway.
34. The deposited plan for the railway shows a section of the claimed route falling within plot 16. In the accompanying book of reference, plot 16 is described as '*Field, Occupation Road and Drain*' in the ownership of two private parties and occupied by several others. This is supportive of the route being considered to be a private road. The deposited plan also notes in the sectional line diagram that the road at the site of the claimed route was an occupation road.
35. Section 46 of the 1845 Act required (except where otherwise provided for by the specific railway Act) that a level crossing or bridge should be provided where a railway would cross a public road. Section 26 of the 1861 Act made provision for two public roads to cross on the level and these were located elsewhere. NR consider that this level crossing was provided for under Section 68 of the 1845 Act for the benefit of the owners and occupiers of lands adjoining the railway given the references in the deposited documents to an occupation road.
36. In terms of the evidence presented by NR in relation to discovered errors in books of reference being rare, the Council have provided a copy of an Order Decision (ROW/3240495) whereby a route was recorded in the book of reference as a private road but was found by the Inspector to be a public right of way. In that case, there was other evidence both before and after the railway documents that the Inspector considered was supportive of highway status.
37. The proposal to apply to Parliament for an Act to authorise the building of a railway would have included the book of reference and deposited plans being made

available for public inspection. This process would have included consultation with landowners and the surveyors of highways. The proposal would then be subjected to Parliamentary scrutiny. The information contained in the book of reference and shown on the deposited plans is supportive of the claimed route being a private road prior to the building of the railway.

38. Given the level of scrutiny involved, I view the railway documents as carrying a significant amount of evidential weight. Clearly, errors can arise in railway documents, but this is dependent upon the discovery of other evidence which is sufficient to cast doubt on the weight of the documents. I address later the infrastructure that was subsequently provided at the level crossing.

Diversion

39. An extract has been provided in relation to the diversion of a road in 1876 granted at the Lincoln Quarter Sessions. It is apparent that the road was diverted at the instigation of the surveyors of highways. The road now known as New Road was created by the diversion and the road that was stopped up is presently a public bridleway. The entrance to New Road is opposite to the north-eastern end of Carr Lane. The relevant passage outlining the reasons for the diversion states:

'And we the said justices hereby further certify that the reasons why the said new public highway will be more commodious to the public are as follows. Because the said proposed new road will be nearer and more direct than the said part of the said highway so proposed to be stopped up as aforementioned, for horses carts and carriages employed in the conveyance of corn and other produce from a large district of land situate at the east end of the said proposed new road to the Ancholme Navigation and also to a goods siding of the Trent Ancholme and Grimsby Railway and also for the conveyance of agricultural manure cattle seed Coals and other articles required by the residents in the said district of land to the east of the said proposed new road from the Ancholme Navigation and drainage and from the said siding of the said Railway to the said district of land to the east of the said proposed new road'.

40. Firstly, it should be borne in mind that the diversion did not specifically relate to Carr Lane, and it was the new road that it was considered would be more commodious to the public. This lessens the weight that can be attached to the diversion document. Nonetheless, the convenience of the new road arises from it being nearer for the movement of goods to and from the river and the railway sidings.
41. It can be concluded from the extract that there was a means of access to the river and railway sidings, and this is more likely to have been via Carr Lane. However, the document is silent on the status of this route. It only refers to the diversion providing for the more convenient transportation of goods by reference to the new road. It does not necessarily follow that Carr Lane was a public road. In contrast, the earlier railway documents specifically addressed the issue of the status of the claimed route. I address below the use of the River Ancholme by commercial and passenger traffic.

The River Ancholme

42. A channel was constructed in 1635 and this became the new River Ancholme. Subsequent Acts were passed in relation to the primary functions of the new river, which were firstly to aid with land drainage and secondly to enable the river to be navigable for commercial traffic. It was privately funded and owned and managed by Commissioners.
43. An 1802 Act made provision for an increase in the tolls charged to transport various commodities along the River Ancholme by reference to the distance travelled. This followed the tolling charges prescribed by a 1767 Act. The 1802 Act does not specify that tolls were charged in respect of the transportation of commodities to specific destinations.
44. The Ancholme Drainage and Navigation Table of Charges and Tolls (1895) shows the tolls charged for the transport of goods to particular locations, including a landing at Worlaby. A publication titled '*Shipping on the Humber, The South Bank*' by Mike Taylor outlines that the Ancholme Packet Company was formed in 1879 and ran market boats between Brigg and Hull and called at landings on route.
45. An extract from the publication titled '*The Canals of Eastern England*' by John Boyes and Ronald Russell (published 1977) outlines that a packet (later a steam packet) operated from around 1793 and took passengers between Hull and Brigg via the River Ancholme. It is apparent from the Baines Directory of May 1869, that this service was to be disestablished. Nonetheless, it can only be determined that the service originally transported fare paying passengers between Hull and Brigg. There is no evidence to indicate that it stopped at Worlaby and access for passengers is not mentioned in the diversion document.
46. It is apparent that tolls have been charged to take commodities along the River Ancholme since before the railway. The 1895 table of tolls reveals that there was a landing at Worlaby and the market boats that operated from 1879 could have potentially stopped at Worlaby. This would be consistent with the reference in the diversion document. However, there is no evidence to indicate whether the landing at Worlaby pre-dated or post-dated the railway. Further, it cannot be determined to what extent any use to access the landing was of a public nature.
47. The use of Carr Lane to transport commercial goods could correspond with the existence of a private road serving the railway sidings and river landing rather than a public road. When taken in conjunction with the diversion, the use of Carr Lane to take commodities to the river is only indirect evidence that could potentially support the existence of public rights over the claimed route.

Finance Act evidence

48. The exclusion of a route from the surrounding hereditaments on a map produced in relation to the 1910 Finance Act can provide good evidence of highway status and is more likely to be indicative of a vehicular highway. Colouring was used to delineate the extent of the numbered hereditaments. Copies of the working and final versions of the Finance Act map have been provided.
49. The claimed route is shown uncoloured and separate from the surrounding hereditaments on the working plan. Reference has also been made by the Council

to the annotation '*parish road*' placed on this map in connection with the route. However, this is not clearly visible on the copy provided. In contrast, the final version shows the claimed route coloured. Attention is drawn to the annotation '*roadway not valued*' on this version in connection with the route, and this is visible on one of the copies provided.

50. Firstly, where there are discrepancies between the Finance Act maps, I consider that the final version should prevail. Secondly, it cannot be said who placed the annotations on these maps. There is a greater likelihood that the working version was annotated by someone from the valuation office given that it was a working document. This is less likely to be the case in respect of the final version. The annotation provides some support for a view being taken that the route was a local road, but not necessarily by someone from the valuation office.
51. The final plan shows the claimed route coloured which is not consistent with the existence of a public road. It is a similar colour to the thicker line denoting the boundary of Hereditament 119, although there appears to be a slight difference in the shade of the colouring used. I also note that the colouring for the claimed route extends over the drain crossing to the field beyond.
52. The Council consider that whilst it is shown coloured, the route is external to the numbered hereditaments and therefore the map continues to provide support for the route being a highway. However, for a route to be viewed as being external to the hereditaments I would expect it to be shown uncoloured and unnumbered, which does not arise in this case. It does not have a hereditament number probably because it is shown coloured in its entirety.
53. Having regard to the above, I find that the colouring on the final version of the Finance Act map is not supportive of the claimed route being a public road. The annotation indicates that a view was taken by a person or persons unknown that the route was a local road, but I consider that little reliance can be placed on it.

Maintenance

54. Two maps from 1940 and circa 1960 produced by the former Lindsey County Council ('LCC') show a proportion of the claimed route to be maintained at public expense. The 1940 map shows it as an unmetalled road and the 1960s map identifies the section shown as a '*G road*'. G roads were recognised as highways but received only minimal maintenance. They were stated to include grass tracks and bridle roads. However, it is telling that only a short section of the route is shown on the maintenance maps extending over the level crossing and to a point just south of the crossing. It is also noteworthy that this section is not shown on the Council's current maintenance records. There is nothing to indicate at what point the route was considered to not be maintained in the locality of the crossing.
55. A note accompanying the UEF completed by Mr Wilson refers to his family coming to Worlaby in 1920 and living at one of the cottages near the crossing. He says the route was routinely maintained by the local council roadman down to the river. However, the records outlined above do not point to any maintenance responsibly as far as the river. No official records have been provided, such as the 1929 handover map, to indicate that the claimed route was publicly maintained at that time.

Local history publications

56. Various extracts have been provided from the publication titled '*A Miscellany of a North Lincolnshire Village Between 1870 and 1970*' by Nannette Machin. It is apparent that her book was based on research undertaken in relation to various local documentary sources.
57. There is a reference to several farmsteads and cottages originally being along Carr Lane including a gate house at the crossing. However, there is no apparent reference in the publication to use being made of Carr Lane for the transport of goods in relation to the river.
58. An entry from November 1926, which appears to be taken from parish council minutes, records that a letter was to be sent to the railway company asking if an alteration could be made to the two wicket gates at the Worlaby siding as they are presently inconvenient to cyclists. It is also noted that during the silver jubilee celebrations in 1935 several youths went down Carr Lane to have a swim due to the lovely weather. These entries record that there was some use of the claimed route by cyclists during the 1920s and occasions when people travelled down the route to the river. They provide a little weight in support of the route having the reputation of a highway.
59. Reference is made by Tom Cave in '*Worlaby Views*' to a report involving an accident at the crossing in 1902. A child in a horse drawn cart was killed by a train when returning with his grandfather from collecting wood from the river wharf. The report states '*There is a signal box near, but it is not connected with the gates, and the crossing is simply for the convenience of farmers and those using the wharf and railway sidings*'. The article is not supportive of the gates being opened by railway employees or widespread public use. It is potentially indicative of the route having private status.

Later railway evidence

60. Correspondence from the early part of 1966 from LCC to British Railways outlined that the claimed route appeared to be an occupation road and the route beyond the crossing was not a highway maintainable at public expense. However, it was stated that this did not mean that no public rights existed.
61. A letter of 22 September 1966 from British Railways to LCC set out their view that the crossing was private for the benefit of those with an interest in land to the west of the crossing. Whilst British Railways considered there was no obligation to provide an attendant at the crossing and gates could be locked with access only for authorised users, they asked for the view of LCC on this matter.
62. The minutes of the meeting of the LCC Highways Committee on 2 January 1967 record that approval was granted for British Railways proposals subject to the pedestrian gates remaining unlocked. This resolution was communicated to British Railways on 5 January 1967. A letter of 9 January 1967 from British Railways outlined that as it was not a public road they could remove attendance at the crossing, but the pedestrian gates would be left open. The vehicular gates would be kept locked with keys provided for authorised users.

63. An internal LCC memorandum of 13 January 1967 refers to the intention to add the route as a footpath to the rights of way map at the next review. A minute from the LCC Highways Committee meeting of 6 March 1967 records that there was no objection to the removal of attendance at the crossing subject to the erection of notices warning the public to ascertain that it is safe to cross.
64. The correspondence reveals that British Railways had sought clarification prior to removing attendance at the crossing and locking the gates. British Railways took the view that the road was private, and this view was not disputed by LCC. However, LCC raised the potential of the existence of public rights and requested that the pedestrian gates be retained. It is apparent that LCC were considering adding a footpath to the definitive map, but this never materialised. LCC gave the view that the claimed route was not publicly maintained which casts doubt on the reliance that can be placed on the maintenance maps.
65. The correspondence refers to the gating arrangement at the crossing in the 1960s and it is apparent that there was an attendant at the crossing. There are also some references to a gatehouse at the crossing during the twentieth century and one of the people who spoke at the inquiry (Mr Sharpe) says that he lived at the gatehouse from 1964 and his mother was employed to open the gates for people such as fishermen until the late 1960s. In contrast, the report involving the accident in 1902 does not indicate that there was a railway employee present to open and close the gates at the crossing.
66. NR outline that the majority of manned crossings are provided for highways, but there are many other cases where they exist at private crossings and examples were provided of where this is the case. The level of traffic or type of traffic may mean that a private crossing is manned. Further, no provision was made in the 1861 Act for a level crossing and associated infrastructure to be originally provided in relation to a public road at this location.
67. Overall, I consider the existence of infrastructure at the crossing to be generally neutral in terms of the status of the claimed route in that it could have been in place in relation to a public or private crossing.

Other evidence

68. The claimed route is recorded differently to the remainder of Carr Lane on the commercial maps produced by Bartholomew's for the period 1940-47. However, I consider that these have little value in terms of the determination of the status of the claimed route. They merely reflect the physical nature of the route as documented on the 1940 highways map.
69. In terms of the representation of the route in the National Street Gazetteer Information, it is apparent that not all entries relate to highways. Although it points to mixed maintenance responsibility for a proportion of the claimed route, only the section of Carr Lane to the north of the crossing is currently considered by the Council to be maintained at public expense.

Conclusions

70. The user evidence could be supportive of the dedication of a public right of way. However, I have found that such a dedication would be incompatible with the existence of an operational railway line by reason of safety and operational

efficiency. SI would apply to the dedication of a right way from some point between 1861 and 1864.

71. The early map evidence is supportive of the existence of Carr Lane prior to the railway, but it is not necessarily indicative of public status. I attach significant weight to the railway documents which directly addressed the status of the claimed route. They are supportive of the route being an occupation road immediately prior to the construction of the railway.
72. The key pieces of evidence following the construction of the railway are those in relation to the diversion of a nearby road and the transport of goods. This indirect evidence could provide some support for the claimed route being a public road. However, I do not consider that this evidence carries a significant amount of weight given that it did not directly address the status of Carr Lane. There is the potential for any use of a route to the railway sidings and river for the transport of goods to have been of a private nature. This evidence would not be sufficient to outweigh the railway documents in this case.
73. There is a conflict between the maps produced in accordance with the 1910 Finance Act, but I find the final version should be the one that prevails. Whilst the annotation on the maps could be supportive of the route being a local road, the final map is not indicative of public status.
74. There are some more recent pieces of evidence that could be supportive of public use. However, the evidence of more widespread recreational use does not arise until well into the twentieth century. There is no correlation between this use and the alleged use for commercial purposes to the railway or river. The maintenance maps indicate that only a short section of the claimed route was considered to be maintained at public expense and this does not appear to have been the position of LCC in the late 1960s.
75. I accept that there is some evidence that could provide support for the existence of a public right of way. However, this evidence when taken together is not of sufficient weight to demonstrate on balance that this is the case. Moreover, the evidence is not sufficient to support a finding that public rights existed prior to the railway, whichever date from the 1860s is applicable for the purposes of SI. It follows that I conclude that the Order should not be confirmed.

Overall Conclusion

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

Formal Decision

77. I do not confirm the Order.

Mark Yates

Inspector

APPEARANCES

For the Council

Mr A. Evans Counsel instructed for the Council

He called:

Mr C. Wilkinson Principal Access and Commons Officer

Other Supporters

Mr B. Whitfield
Mr M. Speakman Worlaby Parish Council
Mr T. Cave
Mr B. Doughty
Mr J. Greaves
Cllr C. Sherwood North Lincolnshire Ward Councillor
Mr R. Beeforth
Mr D. Sharpe
Ms S. Newton
Mr A. Marshall
Mr N. Vincent
Mr R. Hassall
Mr R. Holloway

For NR

Mr J. Lopez Counsel instructed for NR

He called:

Mr A. Cunningham Route Level Crossing Manager North East
Ms S. Bedford Liability Negotiations Manager Eastern Region
Mr J. Greenwood Head of Liability Negotiations

DOCUMENTS TENDERED AT THE INQUIRY

1. Rebuttal proof of Ms Bedford
2. Copies of emails sent by Ms Bedford to Worlaby Parish Council
3. Network Rail Infrastructure Ltd and Welsh Ministers [2020] judgment
4. Extracts from the Greenwood map
5. Extracts from the publication 'A Miscellany of a North Lincolnshire Village Between 1870 and 1970' by Nanette Machin
6. Extracts from 1876 Diversion Order
7. Opening remarks on behalf of the Council
8. Statement of Mr Whitfield
9. Email exchange between Ms Bedford and Mr Wilkinson
10. Statement of Cllr Sherwood
11. Letter to the Inquiry of 9 April 2024 from Andrew Percy MP

12. Additional submissions on the Finance Act documents by Ms Bedford
13. Copy of the article titled 'Tragedy at Worlaby in 1902' by Tom Cave
14. Timeline for the River Ancholme
15. Proposed modification to the Order Map
16. Responses by Mr Wilkinson to two questions
17. Comments by Mr Wilkinson on additional Finance Act submissions
18. Witness statement of Mr Wilkinson
19. Extract from 1802 Act for the River Ancholme
20. Extract from 'Shipping on the Humber, The South Bank' by Mike Taylor
21. Bartholomew map key
22. Title Deed extract
23. Newspaper article in relation to the inspection of the railway
24. Examples of private crossings with gatehouses
25. Closing remarks of Mr Whitfield
26. Closing submissions on behalf of NR
27. Closing submissions for the Council
28. Costs application and addendum to the costs application

