

ANNEX 2 - Consideration of Evidence

Documentary Evidence

1. The DMMO process requires the authority to carry out a detailed search of all available historic documents. In the case of Grange Lane, the following documents were examined:

Acomb & Holgate Inclosure Award 1774 (Annex 3, Tab 4)

2. The Acomb & Holgate Inclosure Award of 1774 sets out the "Rufforth Road":
3. *"We do also determine and award that there shall be one other public highway or road of the breadth of sixty feet at the least between and exclusive of the ditches as and where the same is now staked or set out and herein called the Rufforth Road leading from the Wetherby Road southwards at the north corner of an allotment hereby awarded for a sand pit in the (??) and across same ? to an ancient (??) from there southwards over part of the chapel fields to the west end of the town street of Acomb and from there westwards through and over the said chapel field to the ancient gate leading into the township of Rufforth."*
4. Unfortunately a map to accompany the Award has not been discovered, however, by reference to the Ordnance Survey Maps for the area, it has been possible to confirm that the road described within the Award as the "Rufforth Road" is in fact Grange Lane.

Rufforth Inclosure Map and Award 1795 (Annex 3, Tab 5)

5. The Rufforth Inclosure Map and Award of 1795 set out the "Rufforth Grange Road", which is the section of Grange Lane which would have crossed the Rufforth Airfield as:
6. *"And also one other private or occupation carriage road by me called the Rufforth Grange Road which if fenced off shall be of the width of twenty four feet between and exclusive of the ditches. Beginning at the Turnpike Road at the north east corner of an allotment made to John Barlow in Spate Lane returning there southwards on the east side of the same allotment to and into an allotment awarded to William Marwood in the said Spate Lane and from there in its ancient course.*
7. *And I do award that the same road as far as it crosses the said allotment of the said Samuel Barlow shall until the same shall be fenced off from the residue of the said allotment be repaired by the said Samuel Barlow and afterwards in like manner as other private roads are herein awarded to be repaired."*
8. In respect of the future maintenance of the private roads the Award also states:
9. *"I do award that all the said public carriage roads and private occupation carriage roads hereinbefore by me awarded shall made and forever hereafter repaired supported and maintained by and at the expense of the inhabitants and occupiers of hereditaments in the township of Rufforth aforesaid in the manner and with the like exemptions from contributing to repair as the public*

highways of the said township are or ought to be by law repaired and maintained.”

Map of the Acomb Grange property owned by the Marwood family 1760 (Annex 3, Tab 6)

10. This map shows the section of Grange Lane that passes through Acomb Grange, that being the centre section of Grange Lane that lies between the end sections that were set out in the Acomb & Holgate, and Rufforth Inclosure Awards.
11. The lane is annotated: “*From A to B is part of the ancient Road from Wetherby to York. Repaired by WB*” at each end it is also annotated “*Road to York 2 Miles*” and “*from Rufforth 1 mile*” respectively

Eighteenth & Nineteenth Century Commercial Maps (Annex 3, Tab 7)

12. Jeffery’s Map (1770) & Tuke’s Map (1787) both show Grange Lane, but not the road that is the modern B1224. Later maps by Tuke (1794 & 1816), Smith (1801), Greenwood (1817), and Teesdale 1828 show both Grange Lane and the B1224.

York to Collingham Turnpike Road (Modern B1224)

13. The road from York to Wetherby and Collingham was turnpiked in 1771, when it was stated that this would benefit the city's corn market. The trust did not include members of the York Corporation but the erection of a gate within three miles of the city was prohibited. The trustees' powers were renewed in 1792 and 1813, and again in 1826 when the restriction on the position of gates was removed. The trust was continued until 1875.

Ordnance Survey Maps and Plans (Annex 3, Tab 8)

14. The Ordnance Survey maps for the area show the physical existence of Grange Lane, but also carry a general disclaimer regarding the status of any route shown.

Ordnance Survey Object Names Books (Annex 3, Tab 9)

15. The object name books for the second edition County Series maps, compiled circa 1907, describe the section of Grange Lane within Acomb as a public road. The remainder is referred to as a “*lane*”.

1910 Finance Act records (Annex 3, Tab 10)

16. The 1910 Finance Act plans for the eastern end of Grange Lane have not been located. The plans for the western end show that part of the lane was included in the land holdings and part excluded. For those parts included in the land holdings, no deductions in respect of rights of way have been claimed, although Grange Lane is specifically listed in the field book entry relating to hereditement 58.

Wartime closures (Annex 3, Tab 11)

17. “*The Stopping Up of Highways (west Riding of Yorkshire) (No 1) Order 1953*” sought to permanently stop up footpath rights over the section of Grange Lane running from the B1224 to the Foss Dike, that being the section awarded as a Private Carriage Road in the Rufforth Inclosure Award. It also permanently stopped up the section of the York to Rufforth Road into which Grange Lane links.

Declarations pursuant to Section 31 (6) of the Highways Act 1980 (Annex 3, Tab 13)

18. In July 1981 the landowner submitted plans, statements and statutory declarations pursuant to Section 31 (6) of the Highways Act 1980. A copy of the plan and statement is included in Annex 3, Tab 13. A copy of the statutory declaration is not available but is referred to in a County Council memorandum, a copy of which is included in Tab 13. A further deposition was made in 1994, but does not appear to have been followed by a Statutory Declaration. This is also included in Tab 13.

Consideration of Documentary Evidence

19. Definitive Map Modification Orders do not create, extinguish or divert any public rights, they simply seek to record the true, current and existing situation with regard to the existence or otherwise of public rights of way. As a result issues such as desirability, suitability, need, privacy, security and even public safety, whilst undoubtedly genuine concerns, are not matters that can lawfully be taken into consideration as part of the decision making process.

Geographical Context - Parishes

20. The majority of that part of Grange Lane, which is under investigation falls within the ancient parish of Acomb Grange. Research by the local historian Jeniffer Kaner (Annex 3, Tab14) suggests that by 1520 the parish of Acomb Grange had become part of the parish of Rufforth, which itself has, in more recent years, merged with the adjoining parish of Knapton. This is certainly the case insofar as the modern day civil parishes are concerned. As part of this research it has become evidence that a number of key 18th and 19th Century documentary sources for the parishes of both Rufforth and Knapton, do not include the former Acomb Grange, as one might expect. This is probably because it was in the ownership of the church, and therefore not subjected to either Enclosure or Tithe apportionment.

Acomb & Holgate Inclosure Award 1774 (Annex 3, Tab 4)

21. Inclosure Awards were part of the Parliamentary process of enclosing land in the 18th and 19th Centuries. They were governed by Acts of Parliament, and were legally binding. They are of considerable evidential value when considering the existence and status of public highways.
22. As mentioned above, by reference to the Ordnance Survey Maps for the area, it has been possible to confirm that the road described within the Award as the "*Rufforth Road*" is in fact Grange Lane. This provides very strong evidence of the status of the route within Acomb and Holgate, as a public vehicular highway.
23. The reference to this highway linking into the "*ancient gate leading into the township of Rufforth*" suggests that Grange Lane was the ancient road (predecessor of the current B1224) leading to Rufforth. This should perhaps be further read in context to the fact that to get to Rufforth, it first had to pass through the parish of Acomb Grange (i.e. Acomb and Rufforth were not considered to be adjoining parishes).

24. The use of the term “*Gate*” is considered to mean “*road*”, rather than its modern meaning, its origins arising from the Norse and translating in modern Norwegian into “*Street*”. Given the history of the area it is not unsurprising that such terms have been used, indeed there still remain many examples around the City of York today.
25. The fact that Grange Lane was the ancient road to Rufforth, and onward to Wetherby and Collingham, and being described as the “ancient gate leading into the township of Rufforth” is perhaps further supported by the fact that on the later Turnpike Road, now the B1224, “*New Gate Bridge*” (the bridge on the new road) can be found.

Rufforth Inclosure Award 1795 (Annex 3, Tab 5)

26. It is a matter of documented fact that this section of the route was set out as a “*private or occupation carriage road*”. These documents must, however, be interpreted with care, and the descriptions given in Inclosure Awards and Acts to roads and ways of that era are not always easy reconciled with the clear modern distinction between public and private roads. This does not, of course, mean that such documents can be interpreted independently from the general law of highways as it was understood at the time.
27. By reference to Stephen Sauvain QC’s “*Highway Law*” third edition, page 64 (Annex 3, Tab 16); it is suggested that where a way, set out as a private carriage road was to be repaired in the same way as other highways “*are by law*” to be maintained, this is likely to be indicative that the way itself was intended to be a public highway.
28. The section of Grange Lane, which falls within the area of the Rufforth Enclosure Award, was set out as a “*private or occupation carriage road*”, however the Award goes on to state that both public and private roads are to be maintained in the manner that “*the public highways of the said township are or ought to be by law repaired and maintained*”.
29. This would suggest that despite the route being described as being “*private*”, by reference to its future maintenance requirements, the term is not being used in its modern form, and the route was, in fact, meant to be “*public*”.
30. Once again the route is described as linking into its “ancient course” where it passes into Acomb Grange.

Map of the Acomb Grange property owned by the Marwood family 1760 (Annex 3, Tab 6)

31. This map predates both of the Inclosure Awards, and the York to Collingham Turnpike Trust, which was formed in 1771. It’s description of Grange Lane as being “ancient” is consistent with both Inclosure Awards, suggesting that it truly is an historic route, predating the modern B1224 (the Turnpike Road), and which still enjoyed public carriageway status at the time of the Inclosure Awards.

Eighteenth & Nineteenth Century Commercial Maps (Annex 3, Tab 7)

32. Jeffery’s Map (1770) predates the formation of the Turnpike Trust and confirms that Grange Lane was, at that time, the only road between Acomb and Rufforth. It is further described in contemporary maps (Annex 3, Tab 6)

and the Acomb Enclosure Award (Annex 3, Tab 4) as being an “ancient road” at that time.

33. However, it would appear that Tuke’s Map (1787) cannot be relied upon because, by reference to the Enclosure Awards (Annex 3, Tabs 4 & 5), it is confirmed that the Turnpike Road (B1224) was in existence prior to 1787. This may suggest that this map was a reprint of an earlier survey. This may be where the theory that Grange Lane originally formed part of the Turnpike arose.

34. With regard to the remainder of the maps, Grange Lane certainly physically existed when these maps were produced, and therefore it is not surprising that they are shown. Whilst such maps do not provide strong evidence of highway status, they are supportive, and the fact that the ways are shown, would suggest that they were open and available to the type of people who would purchase such maps i.e. travellers unfamiliar with the area.

York to Collingham Turnpike Road (Modern B1224)

35. The Acomb & Holgate Inclosure Award of 1774, made just three years after the formation of the Turnpike Trust, and the later Rufforth Inclosure Award and Map (1795) both indicate that the Turnpike Road ran more or less on the same alignment as the current B1224.

36. It is considered unlikely that in the three years between the formation of the Trust and the making of the Acomb & Holgate Award that the alignment was altered from Grange Lane onto its current alignment, a theory put forward in the first report on this case (Annex 3, Tab 2). It is perhaps more likely that the B1224 was specifically built upon formation of the Turnpike Trust.

Ordnance Survey Maps and Plans (Annex 3, Tab 8)

37. The physical existence of Grange Lane is not in dispute, and therefore it is of little surprise that they are shown on the Ordnance Survey mapping. Such maps generally carry a disclaimer in respect of public highway rights, and it generally is not possible to infer any status from these documents

Ordnance Survey Object Names Books (Annex 3, Tab 9)

38. These documents are working papers compiled by Ordnance Survey when confirming and checking the names of places etc that were to be recorded on the Ordnance Survey maps.

39. The section of Grange Lane recorded as a public road is consistent with the Acomb and Holgate Inclosure Award and what appears to have been the “made up” section of the road within the County Borough.

40. The fact that the remainder of the Grange Lane is recorded as a “Lane” does not in any way preclude the existence of public rights, the difference in description possibly being attributed to its standard of maintenance.

1910 Finance Act records (Annex 3, Tab 10)

41. One of the purposes of the 1910 Finance Act was to levy a tax against any increase in land values, when land was sold. Whilst the provisions were never fully implemented, and were later repealed, the associated

documentation can provide strong evidence in support of the existence of public rights of way.

42. The fact that a landowner may have chosen not to claim tax relief in respect of the rights of way across his land, does not mean that such rights did not exist. It is not therefore possible to infer that public rights did not exist simply due to a lack of a claim. It simply means that the documents are of little value.
43. The exclusion of a track or lane from the adjoining land, and its exclusion from assessment is generally taken as good evidence in support of the route being a public highway.

Wartime closures (Annex 3, Tab 11)

44. If the section of Grange Lane which is now covered by the airfield was only stopped up as a footpath, as per the statutory instrument, if higher rights are deemed to exist, then the previous closure will have no effect and the historical rights will still exist.
45. However, because the section of the York to Rufforth road into which Grange Lane linked into was also stopped up there will now be a short gap, where no rights exist, between the end of Grange Lane and the B1224.

Declarations pursuant to Section 31 (6) of the Highways Act 1980 (Annex 3 Tab 13)

46. having examined the dates on the various documents there is perhaps some doubt as to whether a statutory declaration was actually made in 1981. If it was not then the plan and statement may not have the same effect.

User Evidence

47. In 1981 the Ramblers' Association submitted six user evidence forms, providing evidence of uninterrupted use of Grange Lane between 1921 and 1981, when a gate was locked across the lane. Two further user evidence forms were submitted in 2001 providing further evidence of user between 1975 and 2001. Copies of the user evidence is included in Annex 3, Tab 12.

Consideration of User Evidence

48. The user evidence would certainly suggest that, if historic rights do not exist, there is a case in favour of the establishment of public footpath rights arising from user prior to the locking of a gate in 1981.
49. The submissions made under the provisions of Section 31(6) of the Highways Act 1980 would not affect a user based case because they do not have any retrospective effect.

Objections

50. Indications of objections to any proposed Definitive Map Modification Order have been received from two of the adjoining landowners, their estate agent. The objectors dispute the existence of any public rights along Grange Lane. Copies of correspondence from both landowner and land agent are included in Annex 3, Tab 15.

51. In 2002/03, in support of their objection the landowners sought their own independent expert opinion on the available evidence (Annex 3, Tab 3), which raised some queries/anomalies with the original research report (Annex 3, Tab 2) commissioned by the Council.
52. The landowners also rely upon the fact that the section of Grange Lane, which used to cross what is now Rufforth Airfield was set out in the Rufforth Inclosure Award (Annex 3, Tab 5) as a “private or occupation carriage road”.
53. In 1981, and again in 1994 the landowners also submitted plans and statements pursuant to Section 31(6) of the Highways Act 1980.

Consideration of Objections

54. Definitive Map Modification Orders do not create, extinguish or divert any public rights, they simply seek to record the true, current and existing situation with regard to the existence or otherwise of public rights of way. As a result issues such as desirability, suitability, need, privacy, security and even public safety, whilst undoubtedly genuine concerns, are not matters that can lawfully be taken into consideration as part of the decision making process.
55. The matters raised by the objectors have been taken into account, and clarification provided where appropriate, within the consideration of the evidence as a whole.
56. Any evidence submitted as a result of the consultation exercise has been included Annex 3.