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METHLEY JUNCTION PATHS INQUIRY - FPS/N4720/7/20

COLIN SEYMOUR OCTOBER 2009

LEGAL SUBMISSION No. 1

The common law right of Parishioners to perambulate their Parish Boundary raises the presumption that such use is use by the Public

"The adoption of the parish by repairing part of it (road), does not vary the case : the adoption of a parish is no more than the use of it by the public; the parish are merely a part of the public. . . . . . If a road has been used by people in the parish, it furnishes evidence pro tanto of it being a way for the rest of the public" (Littledale J. R v Leake (1833) 5 B & Ad. 469 at 484)

Note - Leake approved by House of Lords (Westmorland(1958) AC126 at 142) - **"cited in many cases, some of them in this House, and never disapproved"**

1 From time immemorial, the manor, township and parish of Methley have shared the same boundary. This commences in the west at the "Parting of the Manors" and follows the rivers Aire and Calder eastwards to their confluence at Castleford.

2 "The Statute for View of Frankpledge" (1325) 18 Edw. 2 includes a statutory requirement to inspect the boundaries of manors. The statute contains 34 clauses covering all matters and nuisances which were, by custom, of general concern to the whole manor. The margin note states **"Leets : Of what things Stewards in their Leets shall enquire".**

3 Clauses 9 to 11 of the Act relate to bounds, ways, and waters, they state :-

* Clause 9 **"Of bounds withdrawn and taken away"**

* Clause 10 **"Of ways and paths opened or stopped"**

* Clause 11 **"Of waters turned or stopped, or brought from their right course**

4 It was common practice for the Steward of the Leet (upon whom the statutory duty rested) to delegate the tasks of inspection, inquisition, and presentment to the "Jurors of the Court Leet" (see 'The Seymour Papers' : "A Moving Right of Way", pages 30 - 34, for a longer discussion of the subject)

5 The Methley Manor Rolls (1331 to 1590) confirm that the statute was obeyed and that the boundary of the manor was inspected on a regular basis by the Jurors who presented all nuisances to the Manor Court. In order for the Jurors to carry out their delegated statutory obligation it was necessary for them to 'perambulate' the boundaries of the manor. On such perambulations they were accompanied by other "Tenants of the Lord" who were anxious to ensure that the inspection was properly and impartially carried out.

6 Thus, by statute, and by common law, the custom of perambulating the Methley bank of the River Calder was established. The Manor Rolls confirm that such inspections were in fact carried out . The rolls

refer to 18 specific instances of nuisances, relating to the River Calder, being presented to the Court Leet. For example : -

* 12 Henry 4(1410) Penalty on Jurors to see and present all the defects of **"Ditches & sewers in the Thorpe by Kelder - xijd"**

* 15 Henry 6(1437) **"The Jurors say that Matilda Brown repaired not the banks of the water of Calder called Penbanke - Penalty xxs"**

* 37 Henry 6(1459) **"enjoined on all the tenants that they cause to be mended the common way alongside the water of Kelder from Ottford to the meadow there - Penalty xld"**

* 27 Eliz(1585) **"Jurors say that the water of the Kelder lately encroached and won half a rood of land in a place called Beckcrooke"**

7 'The New Law Dictionary' - Jacob (1744) states re perambulation :-
"Perambulation of Parishes is to be made by the Minister, Church-wardens and Parishioners, by going round the same once a Year, in or about Ascension Week : And the Parishioners may justify going over any Man's Land in their Perambulation, according to Usage : and it is said may abate all Nuisances in their Way - Cro. Eliz. 444"

8 As the centuries progressed Parliament recognised the importance of inspecting and maintaining parish boundaries. Many Inclosure Acts, made before 1801, ordered the Jury of the Court Leet to annually inspect all matters of public concern in the parish (for example - the comprehensive list of directions at page 13 of the Tockwith Inclosure Act, 32 Geo 3 cap. 58 (1792).

9 'The Law relating to Highways' Glen (1883) page 310 states :-
"Perambulation of the boundaries are very generally made in most of the parishes in England, in Rogation week in each year. The parishioners may justify entering and going over a man's land for that purpose . . . . . and citing Lord Denman C.J. "The right to perambulate parochial boundaries, to enter private land for that purpose, and to remove obstructions that might prevent this from being done, cannot be disputed (Taylor v Devey 7 A & E 415)"

10 Glen also makes the point (when commenting upon section 58 Highway Act 1835 : highways along parish boundaries) that expenses incurred when perambulating boundaries could be recovered out of public funds. Thus the parishioners could take payment out of the poor rate to cover the expenses incurred in the correction of nuisances observed when perambulating their boundary (section 60 Poor Law Amendment Act (1844) 7 & 8 Vict. c.101).

11 It is persuasive of the existence of a public right along a parish boundary, when, a public statute allows public funds to be used for maintaining that public boundary. For as Littledale J. said in Leake : **"the parish are merely a part of the public . . . . If a road has been used by people in the parish, it furnishes evidence pro tanto of it being a way for the rest of the public"**

12 A perambulation was, and still is, in the eyes of the law, a public activity. It is an activity whose sole purpose is to assert the right of the local public to a way along a defined route in order to inspect and protect public conveniences.

13 The contention, that the parishioners are 'the public', is supported by the words of Lord Wright, Master of the Rolls, in Jennings v Stephens (1936) 1 Ch 469, who said at 476 : **"The public . . . . may mean for practical purposes only the inhabitants of a village"**

14 The matter of 'Who are the public' was discussed in BBT (1997/8/53) and RWLR (1998 s.6.3 p.55). It is now well-accepted law that the judgment of Lord Coleridge C.J. in R v Southampton (1887) 19 QBD 590 is the definitive word on the subject. He held at page 598 : **"the word 'public' . . . cannot mean that it is user by all the subjects of the Queen, for it is common knowledge that in many cases it is only the residents in the neighbourhood who ever use a particular road or bridge"**

15 When Joshua W Brooke submitted a "Right of Way Report" to the Marlborough Rural District Council on the 5th October 1905 he had no doubts that parish boundaries were public rights of way. He stated, regarding evidence of reputation of the existence of a highway, that : **"tracks running along Parish Boundaries . . are indisputable . . . . The tracks following the boundaries or vice versa"** (reported BBT 2005/8/72).

16 It is therefore my submission that the path along the parish boundary from Frost Dam to Methley Bridge is a public footpath.

17 In addition to the matters pleaded above, further documentary evidence (1371-1985) supports and confirms that the said way is a public footpath.

18 **1371** - as stated, the Court Rolls confirm that the **"King's highway"** followed **"Pontefract Lane"** to the river and to the public crossing at **"Ottford".**

19 **1459 -** the rolls further confirm that from Ottford the way alongside the River Calder was **"the common way"** repairable by **"the tenants"** (re 'Tenants of the Lord' - see 'The Seymour Papers' : "The Public of the Locality"). In other words "the common way" was a highway repairable at public expense.

20 **Pre 1699** - ancient documents confirm that the rivers Aire and Calder were used for navigation purposes as early as 1224 and 1499 respectively (paras 20-38 of the paper prepared by Colin Seymour for British Coal : A & C Act 1992). The 'Methley Pound' (i.e. from Methley Dam (Frost Dam) on the Calder to Fleet Mills on the River Aire) was used out of necessity, as a public highway, to service the everyday needs of the township. Evidence indicates that boats went down the Calder and up the Aire, presumably pulled by horses or men along a customary towing path.

21 At this time the common law held **"that everyman of common right, was justified in going with horses on the banks of navigable rivers for towing - Lord Raym. 725, 6 Mod Rep 163"** as cited in 'James Kent's Commentaries'. Therefore, as the River Calder was navigable before 1699, a common law right of hauling along the Methley riverbanks predated the statutory right granted under section 1 of the 1699 Act.

22 **Post 1699** - once the river was improved, as a statutory public navigation, the Methley bank was used as the towing path from Frost Dam to Methley Bridge. A towing path following a parish boundary supports the inference of a public way along the trodden path. Particularly when, at this time, the path ran over common land, and the right of towing was an established common right.

23 **1768** - the survey plan by Mason and Snead shows Windmill Moor as **"Common Land"** with **"Free fishing to brig"** (Methley Bridge shown "Free brig"). Given that the river bank was both the parish

boundary and the towing path, the presumption is raised that there was public access over the common land, to and along the river bank, in order for the right of free fishing to be enjoyed.

24 The annotated plan showing **"Free fishing to brig"** had the support of the law at that time. Warren v Matthews (1704) 1 Salkeld 357 held **: The subject has a right to fish in all navigable rivers, as he has to fish in the sea . . . In navigable rivers the fishery is common; it is prima facie, in the King, and is public. If anyone claims it exclusively, he must shew a right"**

25 **1833-1837 -** the statutory works to straighten the river at Fairies Hill could not be carried out because of a legal challenge. Ss.30-32 A&C 1828 stopped the navigation from being opened until compensation was paid to Lee and Watson. Following a series of court cases it was held that the works could proceed (Lee and Others v Undertakers of the Aire and Calder Navigation -
Court of Exchequer). The law report plan shows the disputed section.

26 **1835** - the Deposited Plan for the York to Altofts Railway Act of 1836 (6/7 Will 4 cap.lxxxi) confirms that there was a towing path on the Methley bank at this date. The plan shows **"Footpath - Towing Path - River Calder - Footpath".**

27 **1837** - The Methley Parochial Assessment map shows that the works for the new river cut were being carried out at the same time as the works for the Leeds to London railway. The map shows the new railway bridge crossing the new cut, rather than the old river, as shown on the Deposited Plan.

28 **Post 1837**- Section 92 A&C (1828) required new ways to be made when any existing ways were lost to the navigation. Thus the perambulation of the boundary, and the public right, moved to follow the new course of the river, as upheld by common law (see Seymour above "A Moving Right of Way").

29 **1845** - the Book of Reference for the Wakefield Pontefract and Goole Railway confirms the existence of a public path alongside the river : **"The River Bank and Public Footpath" .** The Deposited Plan shows the footpath (**No.35**) following the river bank eastwards from the railway to Methley Bridge.

30 The line sections of the Deposited Plan, south-eastwards from the main line, show **"Public Footpath - River Calder and Aire & Calder Navigation - Bridge of 3 openings each 30 feet span and 33 feet high - Towing Path".**

31 The plans therefore confirm that between 1835 and 1845 the towing path changed banks.

32 The plans for all three railway bridges show an intention to leave a space between the bridge footings and the river bank to accommodate the public path. OS maps indicate that the river began to erode the bank and by 1908 the river was up to the bridge footings in two places. This was the likely consequence of the straightening of the former river loop which slowed down the flow. The rest of the path however remained unaffected by the erosion.

33 **1892-1985** during this period Ordnance Survey maps showed **"F.P." or "Path"** along the riverbank between points **A - B - E(a) - E.** Therefore, a trodden-way must have existed, and must have been clearly visible to the surveyors for a 100 year regardless of any disclaimer as to public rights.

Conclusion

34 It is my respectful submission, that once the Inquiry has noted that the way A - E follows the parish boundary, and, has also noted that the parishioners, as part of the public, have the right to walk that boundary, an inference of a public way arises.

35 This inference is strengthened by the fact that the river is a public navigation, and alongside it there was, at first, a common law right of towing and, later, a statutory right to tow boats along the Methley bank.

36 The said inference ripens into a presumption of a public way once further documentary evidence has been noted. This refers to : "the common way alongside the Calder"; the "free fishing to brig"; the "public footpath" (alongside the Calder); and to the O.S. maps showing "F.P." and "Path" along the riverbank.

37 The strength of the evidence of a public path alongside the River Calder thus weighs down the scales of probability far beyond the point of 'more likely than not'. Indeed, as the pan on the other side is all but bare of any argument to the contrary, the balance rests firmly and squarely in favour of the public right.

38 I therefore submit, that under the common law, there is a public right to walk along the river bank from Frost Dam to Methley Bridge, notwithstanding any statutory evidence concerning 20-year user.

METHLEY JUNCTION PATHS INQUIRY - Ref. FPS/N4720/7/20

COLIN SEYMOUR October 2009

LEGAL SUBMISSION No. 2

The law presumes that if a Ferry exists across a Public Navigation it must connect with a Highway on either bank leading to a public place, or the right could not have been granted in the first instance.

"A ferry is a common highway to all the Queen's subjects, usually across a large and deep river. It must be a continuation of or connected with a highway, and must lead to a vill or some public place, or the Crown could not grant it" ('The Law Relating to Highways' W.C. & A. Glen (1883 page 14)

1 The River Calder was a public navigable river, and highway at common law, centuries before it was improved by the Aire and Calder Navigation Acts (Consultancy paper June 1989 prepared by Colin Seymour for British Coal re the Aire and Calder Navigation Act 1992).

2 The Public Act of 10/11 Will. 3 c.19 (1699) improved the navigation of the rivers Aire and Calder from Weeland on the River Aire to Leeds and Wakefield. Later Acts dated 1774(14 Geo.3 c.96), 1820 (1 Geo 4 c.39), and 1828 (9 Geo 4 c.98) allowed further improvements to be made.

3 Section 2 of the 1828 Act gave authority for works which changed the course of the River Calder at Fairies Hill Methley **- "also a navigable Cut or Canal, or new Course or Channel for the said River Calder, from and out of the said River Calder, at or near to Woodnook aforesaid, to join and communicate with the same River at a Bend therein in the Township of Methley aforesaid, below a certain Place called Fairies Hill".**

4 The River Calder is therefore a statutory public navigation from Fairies Hill Methley to its confluence with the River Aire at Castleford. Nevertheless, the river also remains a highway at common law.

5 It thus follows that the Fairies Hill Ferry was itself a highway, and operated across a public navigation and common highway. Under s.69 (1774) and s.95 (1820) a private ferry would have been an obstruction to the navigation. S. 71 (1774) allowed adjoining landowners to use "pleasure boats" within their own pound. But a ferry, be it public or private, is not a private "pleasure boat".

6 In the case of a ferry across a public navigation, the law presumes two things. Firstly, that all rights to the ferry, or to the site of the ferry, originated by a grant from the Crown. Secondly, that no grant could originally have been made unless that ferry was connected to highways on both sides which led to the nearest township or public place.

7 Leading cases on the subject are Huzzey v Field (1835) 2 CM & R 432, and Newton v Cubitt (1862) 12 CB(N.S.) 32.

8 Huzzey was a case heard upon Appeal from the Assizes by the Court of Exchequer. Lord Abinger C.B. delivered the judgment of the court. He said (page 190) : **"It is quite clear , that a ferry is a franchise which none can set up without a licence from the Crown; and in the case of a ferry by prescription, a grant or licence is presumed"**
He also cited ancient authorities going back to 22 Henry 6 (1444).

9 He continued at page 191, and said : **"A public ferry, then is a public highway, of a special description, and its termini must be in places where the public have rights, as, towns or vills, or highways leading to towns or vills. The right of the grantee is, in the one case, an exclusive right of carrying from one point to the other, all who are going to use the highway to the nearest town or vill to which the highway leads on either side"**

10 Lord Abinger in Huzzey was followed by Willes J. in Newton. At 58 (page 1064) he said : **"A ferry exists in respect of persons using a right of way, where the line of way is across water, There must be a line of way on land, coming to a landing-place on the water's edge . . . . . or, where the ferry is from or to a vill"**

11 He continued, and stated : "**The ferry is unconnected with the occupation of land, and exists only in respect of persons using the right of way".**

12 It is my submission, that the Inquiry, having noted that a public ferry existed across a public navigation and was connected by a highway to Altofts, must then accept the legal presumption that the ferry originated by grant and that it must have been connected to Methley otherwise no grant could have been made in the first instance.

13 Thus, the Inquiry must accept that the ferry at Fairies Hill was connected by a public way to Methley, or to a highway leading to Methley. Indeed, unless evidence is led to the contrary (i.e. that the presumption does not apply in this instance) the Inquiry is estopped from finding otherwise.

14 Whilst the law requires the applicant to prove his case, the law also holds that in matters of Highway Law there can be a shifting burden of proof even though the facts to be decided remain the same (Harry Brown v West Yorkshire MCC - Mr Justice McCullough 15-10-82 - page 6, unreported) Therefore, once the legal presumption surrounding the ferry has been raised, the burden of proof shifts to those who assert that the presumption can be rebutted : for the law holds that **"He who asserts must prove".**

15 The Inquiry will also have noted that in 1908 there were three other ferries in Methley : Penbank and Bottomboat on the River Calder and Allerton on the River Aire - and that all these ferries were connected to highways on both sides. Thus the "'ferry and highway' presumption held good as far as Methley was concerned.

16 It defeats commonsense, and is contrary to common law, for it to be asserted that passengers from Altofts (having reached the ferry via a public path) were left stranded on the other bank with no right of access to Methley. A ferry is essentially a two-way operation. Fairies Hill ferry was no exception.

17 The grant of the right to a ferry across the River Calder can be presumed to stem from time immemorial. The rolls of the Methley Court Leet confirm that in the period 1331 -1590 an ancient crossing place existed over the River Calder at a place called **"Otreforth" or "Ottford" or Oterford".** This was situated at the end of **"Pontefract Lane"** which was the ancient way leading to Pontefract (see location : 1st Ed. 6"

OS c.1849).The Court Rolls further confirm that at various times there was a **"bridge" - a "ford" - and a "boat"** over the river, and that there was a **"common way"** along the river bank.

18 The Methley Court Rolls are transcribed and printed at pages 131 to 243 of "The History of Methley" (1937) Rev. H.S. Darbyshire M.A. . A Manor Court or Court Leet was a Court of Record. At the View of Frankpledge the King was represented by the Steward of the Lord. These courts were the most ancient courts in the land (Jacob (1744) citing 2 Danv. Abr. 289).The rolls include specific references to a passage over the River Calder :-

* 30 Edw.3 (1356) Matilda del More amerced for taking away **"timber belonging to the bridge at Ot-reforth - penalty ijd"**

* 45 Edw. 3 (1371) **"Wm. Porter encroached on the King's highway near his house on the South side leading beyond the Kelder (Calder) to the nuisance of all crossing there - penalty iiijd"**

* 12 Richard 2 (1388) Thos Ellis of Pontefract surrendered to the Lord a meadow **"bordering on the banks of the water of the Kelder on the West side of "the fourth" (ford) of the same water"** . . . . .no fine on entry because **"the greater part of the meadow lies for an easement of way -**

* 37 Henry 6 (1459) It was enjoined **"on all the tenants that they cause to be mended the common way alongside the water of Kelder from Ottford to the meadow there - penalty xld"**

* 2 Richard 3 (1485) Re account of Wm. Hagger, Baylie, the Rodercorne or Candlemas rent **"for the passage over Calder"** (the baylies fee for the Steward of the Lord).

* 1488 - following the death of Sir Robert Waterton (High Sheriff of Yorkshire) an act of partition was drawn up which included **"Oterford Ferry over the Calder, with the boat and access thereto"**

19 "Mature" rivers, such as the Calder, constantly changed course as "cut- offs" and "oxbows" formed. Passengers had to take their chance with each new formation, and crossing places moved as the river altered. Once the river had been made navigable under the 1698 Act the flow increased and ancient crossing places became unusable or hazardous.

20 During the 15th century Methley Bridge was built to replace the ancient crossing place at **"Pontefract Lane"** (to the west). Consequently, the Leeds and Pontefract Road was diverted eastwards to a longer route than the section which it replaced (see 1" OS c.1838 re both routes). It is recorded that from 1533 to 1793 the bridge was constantly in need of repair and rebuilding.

21 The Fairies Hill Ferry (as it was in 1908) was therefore one of a succession of ancient river crossings. These crossings were all situated within the same pound of the river, and connected Methley with town-ships to the south. Unless powerful evidence to the contrary is produced the presumption is that the ferry was public and that it formed part of the thoroughfare between Methley and Altofts. A public path certainly connected with the ferry at Altofts.

Conclusion

22 It is my respectful submission, that the Inquiry, having noted that a ferry existed across a public navigation, and, having noted the legal presumption regarding such ferries, must commence from the standpoint that a public way connects the site of the former ferry with a highway leading to Methley. Thus the only question to be decided is the route of that way and its status.

23 It would be perverse, and against all legal authority, for the Inquiry to start from any other such premise.

24 The burden of proof therefore rests with the Objectors to show that no grant of ferry may be assumed, and thus the "ferry/highway" presumption cannot apply.

25 Until powerful evidence to the contrary is produced, the Applicant may therefore rely upon the said legal presumption as proof of the public right from the northern bank of the ferry to a public place.

26 It is more likely than not, that the route of the way, from the ferry northwards to the township, followed the line of the "F.P." (footpath) as shown on the same 25" O.S. maps of 1895+1908 as show the "Ferry".

27 The said footpath itself appears to follow the general line of the "ancient lane" which ran from the Leeds and Pontefract Road to H and then southwards to the riverbank at E(b). This was the lane awarded as Windmill Moor Road - and directed to be repaired ratione tenurae (see Legal Submission No.3).

METHLEY JUNCTION PATHS INQUIRY - FPS/N4720/7/20

COLIN SEYMOUR OCTOBER 2009

LEGAL SUBMISSION No.3

The Law presumes that when a liability ratione tenurae was created by Grant, Charter or Statute, it was for the public benefit and was a public obligation whose performance could be enforced by indictment.

(Lyme Regis Corporation v Henley (House of Lords1834) 1 Scott 29 at 49) -
When considering a liability ratione tenurae, imposed upon a corporate body by the King to keep in repair defences against the sea, Mr Justice Park stated
"It is admitted, that, if their liability arose by prescription, they would be indictable . . . . . Now, we are unable to see any sound distinction between a liability by prescription, and a liability arising within the time of memory, but legally created. We do not say that prescription necessarily implies a charter or grant; but it necessarily implies some legal origin . . . . . If the origin be legal, how can it be important when it took place ? . . . . . Where the King, for the benefit of the people, has made a certain grant, imposing certain public duties, we are of opinion that the public may enforce the performance of those duties by indictment, and individuals peculiarly injured, by action"

1 The law holds that all liabilities ratione tenurae stem from a legal origin. Such liabilities having arisen in the first instance as a condition of the grant of tenure. Without exception, the object of any liability ratione tenurae was some form of public benefit. Thus the obligation to repair harbours, bridges and roads became attached to the tenure of certain lands. All liabilities ratione tenurae were an obligation to the public. Grants ratione tenurae were never made, nor intended to be used, to keep in repair the private possessions of individual persons. The public could enforce the performance of the liability by indictment. An indictment could only be brought in the name of the public.

2 Thus, there is a very powerful presumption, that any road or bridge which was required to be repaired ratione tenurae was a public way. A way which was of benefit to the public, and which was used by them, and which could be the subject of an indictment when out of repair.

3 There is absolutely no evidence, and no legal authority, which even suggests that a road repairable ratione tenurae could be any other than a public way. There are many reported cases involving ratione tenurae. Without exception every one is concerned with proving the liability to repair, and/or how to enforce that liability. There is no case whatsoever which states that roads repairable ratione tenurae may not be used by the public.

4 Furthermore, because Parliament accepted that the repair of roads ratione tenurae was for the benefit of the public, it enacted at s.33 Highway Act 1835 that **"Certain persons to be exempt from payment of highway rate".** Those repairing roads ratione tenurae were therefore exempt from paying highway rates for the rest of the parish roads. Thus it was generally accepted that ratione tenurae roads were part

of the parish highway network. Otherwise, the exemption would not have been granted. Because, it would have been of no concern to the legislature within a Highway Act and of no benefit to the parish.

5 Further confirmation that the law regarded ratione tenurae roads as highways was the fact that **"Fines for not repairing roads ratione tenurae are payable to the surveyors of the highways"** (Glen 1865 p.178 citing R v Wingfield 1 W. Bl 602). Fines imposed upon private persons for the upkeep of strictly private roads, for the benefit of other private persons, would not have been paid to the surveyors of highways.

6 Therefore, once it has noted that two of the roads at issue ('**Windmill Moor Road'** and the **'Road branching from Nalson Lane'**) were required to be repaired **"in like manner as other roads repairable ratione tenurae are or ought to be by the Laws of this Realm repaired and kept in repair"** the Inquiry must commence from the standpoint that these two roads are public roads. Indeed, the Inquiry is estopped from adopting any other stance without very cogent evidence to the contrary, of which there is none.

7 In 1789, when the Methley Inclosure Commissioners so directed, the **"Laws of this Realm"** relating to ratione tenurae were :

(a) Statute Quia Emptores (1290) 18 Edw. 1 c.1
(b) The common law, and the customary law of the Methley Court Leet
(c) Bridges Act (1670) 22 Car. 2 c.12 section 2
(d) Highway Act (1773) 13 Geo 3 c.78 sections 23 and 65

8 The law with regard to ratione tenurae is ancient and complex. Law reports are numerous. Text book references are many. I refer the Inquiry to the list of reference sources attached to this submission.

9 In essence, the liability ratione tenurae stems from a grant by the Crown prior to the statute Quia Emptores (1290) cap.1 18 Edw. 1. Unless that is, it was made by grant, charter or statute at a later date. In the absence of any evidence of such grant the law presumes that the very words 'ratione tenurae' may themselves be taken as **"implying immemoriality"** (Glen (1883) page 108 citing R v Stoughton 2 Wms. Saund. 462 Ed.1871)

10 Following the Conquest, the King was ultimately responsible for the repair of essential public necessities such as harbours, bridges and roads. This was a public obligation which the King owed to his subjects **: "all things of public safety and convenience being in a special manner under the king's care, supervision and protection" -** Lord Hale De Jure Maris, page 8 (cited by Glen(1883) page 65).

11 As lands were distributed, for services rendered by "Knight Service" to the King, the obligations arising upon those lands passed from the King to the new owners. In turn, as lands were further divided, the obligations passed to the Lord of the Manor who then "**threw this duty upon the whole body of tenants of the Manor, their several obligations being in some way adjusted and enforced by the Court Leet"** (Webb - page 5 "Story of the King's Highway').

12 Although lands became more fragmented and diverse, the original obligation to the public remained absolute. The person liable for that obligation being the occupier for the time being, rather than the owner.

13 The law holds that the liability ratione tenurae can be enforced against any one of a group of persons occupying lands or buildings upon which the original liability rests. That person can then enforce a contribution towards the whole cost from other occupiers (R v Bucklugh (1704) 1 Salk. 358). In turn, those per-

sons may then compel any owner of the premises to recompense them for their share of the total liability (Baker v Greenhill (1842) 3 QB 148).

14 As the many law reports confirm, the liability ratione tenurae applied to a great variety of public obligations. Thus harbours - ports - havens - staiths - landing places - river banks - sea banks - sea shores - mounds - ditches - beacons - watermills - buildings - bridges - roads - pavements - causeways - bridleways - footways - church buildings and church furniture - could all be required to be repaired by the occupiers of premises which were liable to that particular obligation. Furthermore, certain public positions, such as Reeve or Tythingman, were sometimes required to be occupied by those persons who, by the tenure of certain premises, inherited the obligation to fill that position. For example on 7th October 1590, the Methley Court Rolls record that Richard Shann senior was obliged to fill the public position of Reeve for one year, because he occupied a certain bovate of land in the Manor.

15 There is no recorded instance of the liability ratione tenurae being applicable to the repair of the possessions of a private person. Indeed, the law holds that private grants to private persons cannot establish the liability. The liability is therefore only applicable to those public necessities which were at that time essential to the very well-being of that community. In other words the liability ratione tenurae is an obligation to the public. Therefore, roads repairable ratione tenurae are roads which can be used by the public.

16 It was held by the House of Lords in Lyme Regis v Henley that the obligation ratione tenurae is a matter of public concern, even when it may only apply to the inhabitants of a single township. It was further held (pages 45-46) that the obligation was **"of so general and public concern that an indictment will lie for the breach of it"**.

17 The law thus holds that the liability ratione tenurae is an obligation to the public. The public may therefore seek indictment against those failing to carry out that obligation. It is well-established law that only matters concerning the public may be the subject of an indictment. For an indictment to be good the road in question must be a highway (Glen (1883) page 124 citing 1 Hawk PC 703-4). Therefore, if the public could seek indictment when a ratione tenurae road was out of repair - it follows that the road was a highway.

18 The township roads in Methley which were awarded to be repaired ratione tenurae were set out in lieu of ancient roads which were themselves also repairable by reason of tenure. The ancient liability to repair such roads was constantly enforced by the Court Leet as the Manor Rolls confirm.

19 Therefore, given that these roads existed before the Methley Inclosure Act of 1786 was passed, the law presumes that the stated liability ratione tenurae must have a legal origin dating back to the time when the Manor of Methley was granted by the King.

20 Evidence to support the assertion that the roads awarded ratione tenurae were set out in lieu of ancient roads already so repairable, is to be found in papers prepared for the prosecution of persons who had destroyed the new inclosure fences at Methley (see 'The Seymour Papers' re critique of 'The Dunlop Judgment' for a report on the case).

21 On the 26 January 1791, Samuel Buck of Leeds prepared a "Case for Mr Recorder's Opinion" in it he states :
"If in the Award there had been no Directions by whom the new Roads were to be repaired, it would have become necessary for them particularly to have specified in Lieu of what ancient Road every new Road was set out, and in Cases where the ancient Roads were to be repaired rati-

one tenurae they must have specified what each particular portion of these new Roads were set out for the respective portions of the old Roads, that each person might have known what proportion of the new Road he was then for ever after to be liable ratione tenurae to repair - This would have been endless, & would have created the greatest confusion - They have therefore in my Opinion very wisely avoided this difficulty, and have completely answered the intent of this Act of Parliament by particularly directing by whom each Road set out by them shall be repaired"
(Transcript of original papers - Mexborough Collection No.834 - WYAS Leeds)

22 The Inquiry will have noted that the Methley Inclosure Act of 1786 was only concerned with 500 acres of common and waste, and 300 acres of common fields. The remaining 2,450 acres of the township were unaffected by the inclosure because they were outside the jurisdiction of the Act.

23 The Award confirms that "**Windmill Moor Road"** was **"an ancient lane",** and that "**Nalson Lane"** was an **"Ancient Lane in Methley",** and that the **"road branching from Nalson Lane"** was **"the Ancient Occupation Road".** The Act did not give the Commissioners powers to turn or extinguish any ancient road outside of the lands to be inclosed and divided. Therefore, the status and repair liability of all the ancient roads, which were unaffected by the inclosure, remained as before.

24 Common law knew nothing about strictly private "ancient lanes". Such ways were invariably parish lanes over former common or waste which had been fenced-off on both sides by adjoining owners. These persons were then required by the law to keep the way in good repair in exchange for the public having the right to deviate when the way was foundrous.

25 A good example of this practice being Nalson Lane. Nalson was obliged to repair the lane under the Award but not by reason of tenure. His obligation originated in earlier times when the ancient "King's Highway" from Leeds to Pontefract ran over the waste and along "Pontefract Lane" to the river bank. The highway was "laned-off" from the common by the adjoining owner and the liability ratione clausurae (by reason of inclosure) arose. The Commissioners when informed of the liability made their award as directed by the Act.

26 Only the northern end of Windmill Moor Road was actually awarded in lieu of the old road (allotment to George Higham). The remainder of the **"ancient lane"** ran southwards, as before, over ancient inclosures which were of no concern to the inclosure. As the whole of the ancient lane was formerly repairable ratione tenurae, it was ordered that George Higham repair the new section of road in the same manner.

27 In 1789 the burden of repair lay upon the occupiers of land owned by Higham, Mexborough and Shann. By 1845 the liability had passed to Burnley and others. From 1859 to 1947 it lay jointly with Briggs & Co. and various Railway Companies (as per agreements of 1863 and 1925 see letter below).The liability then passed to the NCB and the BTC. By 1975 WYMCC and BR were responsible for repair. Today the joint liability for the repair of Windmill Moor Road rests with Network Rail and the occupier of Junction Farm. This is confirmed by an agreement of 1955 whereby the cost was shared between Briggs 25% - NCB 25% - BTC 50% (see letter in Appeal papers BTC to WRCC 9.6.55)

28 Following s. 47 NPAC Act 1949(as repealed and re-enacted) the Highway Authority became liable for all public paths in existence before 15.12.49. But the liability ratione tenurae remained. Under s. 57 HA 1980 the authority may recover costs incurred when repairing a **"privately maintainable highway".**

29 Before inclosure the old road ran across the waste of Windmill Moor. All the inhabitants, and especially those who occupied the ancient inclosures to the south, could pass over the waste as of right : **" If a**

road led through a park, the jury might naturally infer the right to be limited; but if it went over a common, they might infer a right for all purposes" (Cowling v Higginson (1838) 4 M. & W. 245). Because the land to the south was not part of the land to be inclosed and divided, the public right over the ancient lane remained unaffected.

30 When the locus is examined, an inference arises that the public used the ancient lane as far as John Shann's ancient meadow, and then continued alongside that meadow to the river bank. This inference is supported by legal authority.

31 The Court Rolls confirm that those who had a meadow were required to throw it open once the hay had been cut. This was because all meadows were common land for the benefit of all : **"13 Henry 8 (1521) 7 May - It was decreed by the Court that any one who has any closes of meadow or grass which have been cut that he shall hold them in severalty at his will until Michaelmas & then shall cause them to be open so that the tenants of the Lord can have common until the Feast of the Purification of the Blessed Virgin Mary & the Jurors say that this is the custom from time immemorial"**

32 No such way over the meadow is recorded in the award nor shown on the award maps. This is because, being outside of the lands to be inclosed, it was of no concern to Commissioners. But, commonsense states that if there was a way along the river bank, and if there was a common right of fishing, there was more likely than not a convenient way to that river bank by the shortest route. In this instance, that route was alongside a common meadow.

33 It is not just a coincidence that the shortest route to the ferry followed the ancient lane to the gate in John Shann's field, and then followed the hedge to the river, a distance of only 88 yards (see 1837 Parish Assessment Map).

34 The Inquiry will also have noted that the road branching from Nalson Lane was only awarded over the short western stretch (i.e. over Windmill Moor). It then joined the **"Ancient Occupation Road**" which was already repairable ratione tenurae (see 1837 map).

35 The Commissioners, as required by common law, directed that this new section of road, set out in lieu of the old road, be also repaired ratione tenurae. As the remainder of the old road fell outside their jurisdiction, the Commissioners had no powers to restrict public user.

36 The Inquiry will also be aware that page 18 of the Act, when declaring that once the new roads had been set out it was then unlawful to use any old road, qualified this by stating **"in lieu of which such new Highway or Road shall be set out and made".**

37 This was the crucial clause in the Act as regards which old roads could be used after the Award and which could not. Indeed, learned counsel, dealing with the 1790 prosecutions, suggested that the case might not succeed because the Award did not say which new road was set out in lieu of which old road (Mr Lambe's Opinion 11th July 1790).

38 Certainly, two centuries after the inclosure, Rothwell UDC regarded the road to Low Common and Carr Houses section as a public street, albeit maintainable ratione tenurae. Council Resolutions during the period 1947 to 1967 confirm that RUDC was concerned about the state of the road and the danger to persons using it. It assisted the frontagers to keep the road in repair. Such repairs could not have been carried out at public expense if the street was not used by the public.

39 During the time when British Rail and West Riding County Council were claiming that there was no public way along the road, Rothwell UDC as Highway Authority was carrying out repairs. These were being done by Council Officers with the full authority of the Council Members.

40 Minute 1634 (1947-1948) re **"Low Common and Carr Houses Methley - that the owners be supplied with dross for surfacing the above roads and footpaths, at a charge of 1s 0d a load".** This resolution would have been ultra vires if the road from point **I** to Carr Houses (**I(a)**) had not been a highway.

41 It is a fact, that all three Methley Stations were situated alongside a road awarded to be repaired ratione tenurae. These roads were ways of necessity, used by the public in order to reach a public facility The local authorities at that time certainly regarded these roads as public ways and ensured that they were kept in repair by those responsible : UDC Minutes 1894-1974.

42 "**Woodrow Road"** the awarded ratione tenurae road, which became the access road to Methley North Station, was described in the Book of Reference for the 1836 Midland Railway Act as being a **"Public Road owned by Surveyor of Highways".** Need I say more on this point ?

43 In some places every parish road was repairable ratione tenurae : **"All the roads in the township A are repairable ratione tenurae with the exception of one main road"** ('Questions and Answers : Justice of the Peace' 30 August 1902 page 558). Are we seriously to believe that, in those parishes, the inhabitants were prisoners in their own back yards with no public access to the outside world ? Commonsense shouts 'No'.

Conclusion

44 It cannot be disputed that the Methley Inclosure Act and Award remain good law, and that their provisions are still binding and conclusive. Thus the Inquiry is bound to accept those provisions regarding the roads directed to be repaired ratione tenurae.

45 Therefore, once the Inquiry has noted that Windmill Moor Road and the Branch Road from Nalson Lane are repairable ratione tenurae, and that they were awarded in lieu of ancient roads which existed before the Inclosure Act was passed, it must accept the premise that the liability to repair stems from time immemorial.

46 It thus follows that under common law the original liability is presumed to have arisen by a grant of tenure before 1189.

47 Having accepted that the original liability arose by grant, the Inquiry must further accept that this liability was an obligation to the public of the township, who, must therefore, have had the right to use the roads.

48 It also follows that as the liability to repair was a public obligation the public could enforce its performance, initially by presentment to the Court Leet and later by indictment at Quarter Session. It was strict law that only roads which were highways could be the subject of indictment. Thus, as ratione tenurae roads could be the subject of an indictment, it therefore follows that they all must have been highways.

49 Therefore, unless the Inquiry has seen powerful evidence to the contrary. Evidence which is capable of overturning 800 years of common law, and which specifically states that the liability ratione tenurae is for a <u>private benefit only</u>. It must commence from the presumption that the two roads in question are <u>highways for their full length and breadth.</u>

<u>Reference Sources</u>

'Ratione Tenurae' (2009) 'The Seymour Papers' re list of all source material
Rights of Way Law Review (1991) section 5.2 pages 1-11
Halsbury's Laws of England (1973) para 262 pages 191-192
Pratt & Mackenzie (1967) 21st Ed. pages 76-81
Justice of the Peace : Questions and Answers1877-1937
Webb (1913) pages 5-7-11-88-106
Glen (1883) pages 107-116
Glen (1865) pages 170-185
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METHLEY JUNCTION PATHS INQUIRY - FPS/N4720/7/20

COLIN SEYMOUR OCTOBER 2009

LEGAL SUBMISSION No.4

The public rights of way at Methley Junction were lawfully used and were compatible with railway operations and the working of the colliery

"If the usefulness of a parcel of land is not exhausted by its user for its particular statutory purpose, why should it not be used for some other purpose not incompatible with that purpose . . . . land acquired for a particular statutory purpose may yet be used for another purpose which is not incompatible with it" . . . . . "to hold that at no time, at no points, and in no circumstances could a railway company grant de novo even a footpath over, across, or under the railway lines would be a grave impediment to public amenity" . . . . . "Such structures (bridges) are not imposed upon the railway line ab extra by voluntary initiative of the railway companies themselves. On the contrary, their creation and maintenance for an indefinite period are conditions subject to which the undertakers are required to operate their line"
(British Transport Commission v Westmorland County Council and Worcestershire County Council (1958) AC 126 at pages 142,153 and 156)

1 On 25.3.55 Rothwell UDC sought to have a footpath at Methley Junction recorded. The way was opposed by the British Transport Commission who were opposing such ways all over the country. The Commission had already lost a test case at the Quarter Sessions and at the Divisional Court. It was just about to lose a further appeal in the Court of Appeal.

2 At a hearing on 9.6.55 BTC argued before West Riding County Council that no public way could exist to Methley South Railway station. The Commission's case was based on the assertion that no public rights could exist over an "**occupation road"** and a "**private road",** and that a privately maintainable road could not be a highway. This submission was wrong in both fact and law.

3 In its objection BTC did not rely upon s.57 British Transport Commission Act 1949. Neither did the Commission raise s.57 in the Westmorland case of 1954-58 even though it went to the very heart of the appeal. But in 1982 Definitive Map Review officers regarded s.57 as lawful authority to dismiss the claim at Methley Junction for a similar way across a railway bridge.

4 On 22.6.55 WRCC wrote to RUDC. The letter stated **"The approaches to each of the ends of this path seem to be private (private streets) and if this is so additions should be made to the Draft Map if No.52 is retained".** The County was not asking the Council to delete the path, it was in fact suggesting a way forward by having the claim amended to commence at the A639.

5 The UDC did not follow this suggestion. On 20.12.55 it replied, stating that its Committee had decided that the way **"should be deleted from the draft map since it connects at each end with private streets"**. This decision to have the way deleted was based on a misunderstanding of the law.

6 WRCC acknowledged the deletion of Path No. 54 on 29.12.55. Almost a year later, on 12.11.56 it informed BTC that the path was deleted.

7 In the meanwhile, on 22.3.56, BTC had lost its appeal in the Court of Appeal. The case involved certain matters which were relevant to the Methley path. But the opportunity to re-assess the claim passed and was then lost.

8 In 1973 RUDC prepared another **"Survey of Public Rights of Way"** under the NPAC Act 1949. This survey included the former **"Path No.52"** and two other paths at Methley Junction. However, before anything useful could happen, in 1974, RUDC was abolished and became part of Leeds.

9 In 1979 the Definitive Map Review was carried out by West Yorkshire Metropolitan County Council. On 9.6.80 Rothwell Footpath Group applied for paths at Methley Junction, as shown upon the 1973 Survey, to be included within the Review. On 9.3.82 the application was rejected by WYMCC.

10 The main reason given for rejection was that **"A hearing was held on 10.6.52 where it was decided that no public rights existed and the path was removed from the map. It is considered that this decision still applies"**.

11 This reason was not correct. The hearing was 1955 not 1952. It did not decide that no public rights existed and therefore this was the reason why the path was removed from the map (the letter of 22.6.55 confirms that WRCC suggested a way to get the path on the map). The path was eventually deleted because RUDC asked for it to be deleted. The evidence suggests that both authorities failed to realise that the term **"private street"** as used in The Private Street Works Act (1892) was only applicable to streets used by the public and any attempt to impose the section upon "private ways" could result in claims for compensation (Pratt & Mackenzie 19th Ed. p.398 note '(f)').

12 A further reason given for rejection was that "**Section 57 of the British Transport Commission Act 1949 prevented a right of way being acquired by prescription or use" . . . .** and . . . . **"No rights can exist through the Station".**

13 S.57 was not pleaded by any objector to the Review. It was county officers who regarded the section as giving them lawful authority to recommend that **"No further action is considered to be necessary. It has already been decided at the Hearing of 10.6.52 that no public rights exist along this route".**

14 S.57 was clearly not relevant to the Methley Junction path in 1955, otherwise it would have been pleaded by BTC. Thus, if not relevant in 1955 it could not have been relevant in 1982. The law had not materially changed.

15 Doubts about the relevance of the section are further supported by the fact that in 1958 BTC did not cite s.57 in Westmorland. The Commission had a very powerful team (Sir Andrew Clark QC**,** Sir Frank Soskice QC and John Widgery) who thoroughly explored the law. If s.57 had been concerned with preventing public access over railway property it would have been put before the House of Lords. But it was not - the question thus arises - and why not ?.

16 The most obvious reason why s.57 was not pleaded in Westmorland was because it was not considered to apply to the prevention of the acquisition of public rights of way. Its main purpose being to stop private rights of way from being acquired under s.2 Prescription Act 1832. Because where the Act is concerned with highways it refers to **"public road"** or **"public highway"** or **"road authority"**. Thus leaving

the meaning clear and unambiguous. At s.57 it merely refers to **"right of way"** and omits any mention of the word "public".

17 The British Transport Commission Act 1949 (12 & 13 Geo. 6 cap.xxix) is a Private and Local Act. It is not a Public and General Act. As its title and Schedules confirm its main concern was to deal with specific local situations which could not be done without the consent of Parliament. The Act was not intended to restrict public rights. This would have been incompatible with the statutory duty of the Commission. The preamble to the Act recites that duty, as enacted by the Transport Act 1947, to **"provide . . . for the needs of the public agriculture commerce and industry".**

18 Section 57 states **"As from the passing of this Act no right of way against the Commission shall be acquired by prescription or user over any road footpath thoroughfare or place now or hereafter the property of the Commission and forming an access or approach to any station goods-yard wharf garage or depot or any dock or harbour premises of the Commission"**

19 If Parliament had intended the section to include public rights it would have said so in words clear and simple. Furthermore, the legislature would not have used a Private and Local Act to implement a clause of such public and general importance. Particularly when, in the same Session of Parliament, it was actively promoting public access under the National Parks and Access to the Countryside Act.

20 It is a well-established principle that private acts cannot by inference override common law and public statutes. The law can only be amended by plain words (AG v Shonleigh Nominees 1974 1 WLR 305). Thus it is doubtful whether s.57 had the authority to overturn centuries of common law, and to prevent the operation of s.1 of the Rights of Way Act 1932. Section 1 was considered in Westmorland and Viscount Simonds held, at p.146, that subsection 1(7) did not help BTC but preserved the existing law. If s.57 had applied to override s.1 1932 someone in the case would have seized upon it.

21 The words of s.57 are also incompatible with hundreds of railway and canal statutes still in existence. These acts all contain a clause known as "The Free Principle". An example being s.135 of the Leeds to Selby Railway Act of 1830 (11 Geo 4 cap. lix) which states **"And be it further enacted, That all Persons shall have free Liberty to use, with Carriages, all Roads, Ways, and Passages, for the Purpose of conveying Goods, Wares, Merchandize, or other Things, or Passengers, or Cattle, to and from the said Railway and every Part thereof"**

22 Section 45 of The Railway Clauses Consolidation Act 1845 took the free principle even further. It enacted that **"upon payment of tolls . . . . all persons shall be entitled to use the railway, with engines and carriages".** The section remained in force until 1959. There is a mistaken belief that the charge of a toll prevents public rights from being acquired. However, the law has long held that where a toll stems from a legal origin such as Grant, Charter or Statute, the charge confirms the public right rather than prevents its acquisition.

23 In 1949 the voice of authority concerning Highway Law was Pratt & Mackenzie's 'Law of Highways'. The 19th Ed. 1952 was published with the law as stated on November 1st 1951 - thus including 1949 legislation.

24 If s.57 had applied to public rights of way in 1952 Pratt & Mackienzie would have mentioned it. Because it would have been a fundamental impediment to the acquisition of public rights. However, the book is silent about the BTC Act 1949. Therefore, any reasonable person using it for reference would conclude that as s.57 was not mentioned, it was of no concern to Highway Law.

25 In 1962 the 20th Edition of Pratt & Mackenzie was published with the law as stated on January 31st 1962. The book says nothing about the effects of s.57 on Highway Law. The 21st Edition was published in 1967 with the law as stated on 30th June 1967. This book also says nothing about s.57.

26 The 1st Ed. (1989) of 'Highway Law' by Stephen Sauvain contains no reference to s.57 either. The 2nd Ed. (1997) also contains no reference to it. It seems that the author did not regard s.57 as being relevant to his book.

27 The Rights of Way Law Review (2007) also contains no mention of s.57.

28 However, the 4th Ed. (2007) of "Rights of Way" (the Ramblers' Blue Book) seems to believe that s.57 BTC Act 1949 does apply to public rights. Thus the question arises - What happened after Pratt & Mackenzie (1967) to make s.57 become applicable to public rights ? As far as I can see - nothing.

29 In recent years it has become fashionable for objectors against claims for public paths over railway land to raise s.57. In some cases Inspectors have upheld these objections. However, the yardstick for the measure of the worth of the section, as a tool to defeat claims for public rights, remains Westmorland. If s.57 did not apply to the1958 case how can it apply today ?

30 In 1982, when it rejected the Rothwell Footpath Group application, WYMCC failed to acknowledge that the law had changed since 1955. And was, as confirmed by Westmorland in 1958. This omission is surprising, as Westmorland was one of the most important highway cases of that period.

31 Rothwell UDC was unfairly treated the first time round in 1955. Rothwell Footpath Group was also unfairly treated the second time round in 1981 because of the failure of County Officers to properly apply the law to its application. Now, on the third time round, the present Applicant has also been treated unfairly, because the OMA and its Consultant again failed to correctly apply the law to his application. Hence the successful Appeal and this Inquiry.

32 In its submission to the Appeal the OMA pleaded s.57 as the reason why the path was properly rejected in 1982. Both the OMA and Network Rail also stated that the colliery operations were incompatible with the acquisition of public rights. Thus for the second time in 25 years the Highway Authority has totally failed to take into account the fact that the law on this point was made very clear by the unanimous verdict of the Law Lords in 1958.

33 To return to the Westmorland case. At p.137 the House accepted the plea of the Respondents that **"The appellants and their predecessors in title were at all material times capable of dedicating such footpaths as these as rights of way. To say that a statutory body is incapable of granting a right of way or an easement, expressly or impliedly, would reverse the law accepted for over a century. Thus, canal towing-paths have been accepted as rights of way"**.

34 This must be the starting point of any consideration of the ways over **RIys. 2-3-4-6** and the way underneath **RIys. 3** and **6.** The Inquiry must accept that the railway companies have always been capable of dedicating a public footpath across these lines.

35 However, the power to dedicate depends upon the test of whether the public use of the footpath as a highway is compatible with the statutory objects of the authority. This question is one of fact, taking into account the particular circumstances of the locus at any given time.

36 Unlike the way pleaded in Westmorland, the four railway lines at Methley were built across an existing "ancient lane", a lane repairable ratione tenurae. The railway companies were required to provide and maintain tunnels, level- crossings and bridges, before they could interfere with the course of that lane.

37 As to the question of compatibility. The first railway to cross the ancient lane in 1836 was **Rly.2**. This was built in the knowledge that a **"Foot Path"** existed south of the line. Railway surveyors were required to consult Parish Officers before depositing their Plan. The company was thus aware that both public and private occupiers needed access across the railway to the land to the south. To satisfy this need a tunnel at **F(a)** was made. It cannot be said that any use of this tunnel was incompatible with the working of the railway.

38 The next railway to affect the lane was **Rly.3** in 1846 This required the lane to cross the railway by first a level-crossing and then, in 1852, the hump-back bridge. It cannot be claimed that any public use of the lane at this time was incompatible with statutory purpose. Particularly when hundreds of miners, horses and carts, were also crossing the railway at the same place, to reach the colliery. Public use on foot was just part of the mainstream traffic.

39 By 1850 the level-crossing provided access to the new station. Any public access to the station itself must have been compatible with railway operations. Because at that time railways were built for the public good and the public needed access to trains (Seymour Papers-'Railways as Highways').

39 The 1863 Act required **Rlys. 4-5-6** to cross the lane twice between **Rly.3** and **Rly.2.** For ease of purpose, the lane was diverted resulting in a level-crossing at **H(a)** and a bridge at **F-G.** Both the level-crossing and the Iron Bridge were used by all the same colliery traffic which used the hump-back bridge. Thus use by the public on foot, following the diverted course of the lane, cannot have been incompatible with the statutory purpose of the railway.

40 Under the same Act of 1863, an extension to the tunnel at **I(a)** and a new level-crossing at **I(b)** were constructed. This route became the way from the Pontefract Road to both Methley Junction stations. Such public access must also have been compatible with the railway operations at that time.

41 The diversion of the ancient lane and the construction of the Iron Bridge (as a substitute for the 1836 tunnel) were carried out in 1863 under ss.16,53,56.68 of TRCC Act 1845. Section 53 required the company to **"maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with"** As Westmorland confirmed (p.159) under s.16 1845 such bridges and passages (as at Methley) could be discontinued, but only with the priviso to **"substitute others in their stead".**

42 Under s.68 of the 1845 Act, the company was required to maintain the level-crossings and bridges at MJC for the use of both public and private occupiers **"for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made"**.

43 Regarding the public as 'occupiers' of the highway. Pratt and Mackenzie (21st Ed. pp.1209-1210 note '(d)') state - **"A highway running alongside a railway is adjoining land within this section and any person lawfully passing along such a highway is therefore in the position of an occupier of such land (Manchester, Sheffield and Lincolnshire Rail. Co. v Wallis (1854) 18 JP 138)".**

44 In the 19th century the law recognised **"public occupation road"** as a species of parish road. The law held **"that there may be both an occupation way and a public way over the same road"** (Brown-

low v Tomlinson (1840) 1 M&G 486). However, the term **"occupation road"** (as relied upon by BTC in 1955) has no legal definition (page 248 'Justice of the Peace' - 'Questions and Answers' 1877-96). As 'The Rights of Way Law Review' s.9.3 p.24 states **"occupation roads frequently carried public rights of way".** Thus there is no merit in the argument that the term 'occupation road' excludes public rights.

45 The Ferry was in operation across the River Calder before 1895. The way to that ferry being along the diverted ancient lane and across the Iron Bridge. The public passed in both directions from Methley and Altofts. This right of passage was definitely compatible with the working of the railway because the same route **F-G-H** was in constant use by foot passengers, horses and carts.

46 In Westmorland the bridge in question was built as a **"private accommodation bridge for the benefit of the owners and occupiers of the lands on either side of the railway line"** (Headnote p.126). Nevertheless, use by the public for more than 20 years raised the presumption of dedication. The case for public rights at Methley is even more firmly based, because the Iron Bridge was made to accommodate the diversion of an ancient lane, repairable ratione tenurae, which had existed since time immemorial.

47 During the period 1933-83 when **Rly.2** was all but abandoned, the use by the public of the Iron Bridge must have been compatible with the statutory purpose. In 1960 Methley South station closed and by 1983 **Rlys 3-4-5-6** were dismantled. But public and private rights along the ancient lane remained unaffected by these changes. The statutory liability to **"maintain such substituted road"** continued as before and that liability still exists today.

48 To return finally to section 57 1949. The application of the section turns upon the words "**now or hereafter the property of the Commission"**. The surface of the public ways claimed at Methley Junction is not the property of Network Rail. It is vested in the Highway Authority, in fee simple, to hold on behalf of the public. The ways thus fall outside the jurisdiction of the section.

49 The BTC Act was passed on 30 July 1949 and was quickly overtaken by events. On the 16th December 1949 the NPAC Act was passed. S.47 enacted that all public paths were to be repairable by the Inhabitants at Large, notwithstanding any enactment made before 15th December 1949. Thus the surface of public paths across railway property became vested in the Highway Authority as per the Local Government Act 1929 s.32(1). Subsection 47(3) retained the liability of those persons responsible for repair by reason of **"any enactment, or by reason of tenure, enclosure or prescription".**

50 By December 1949 the public use of the Iron Bridge was well-established. Passengers from the ferry had used the bridge as of right from before 1895. Statements examined by the OMA Consultant confirm user from the mid-1920's onwards. Thus, by reason of public use, the surface of the bridge was vested in RUDC by the time s.57 BTC was enacted. The bridge was therefore no longer the sole **"property of the Commission".** It was held in Seymour v North Yorkshire (1987) that whilst the Authority was liable to repair the surface of a way over a bridge another party was liable for the structure.

51 By 1950 the Iron Bridge had not spanned a live railway for some 20 years. Therefore, to quote Westmorland p.126 **"the continued existence of the bridge would not endanger the running of the trains nor the operation of the railway"**. Even when the railway became "live" again in 1983, the use of the bridge by the public remained compatible with the railway operations.

52 It was stated in Westmorland p.139 that **"When this bridge ceased to be an accommodation bridge, the obligation to maintain it would fall on the local authority"**. Lord Denning in Greenhalgh v

British Rly. Board (1969) 2 All ER 114 made a similar finding regarding a former accommodation bridge. Does this mean that the obligation to maintain the Iron Bridge now falls on Leeds ?
53 Several question are thus raised. Did Network Rail consult with the Highway Authority in 2004 before it removed the Iron Bridge, knowing that the Authority held claims for a public right of way over the bridge ? If so why did the Authority agree to the removal in the light of the said claims ? As the bridge was constructed under the provisions of TRCC Act 1845 why was Network Rail not required by the Authority to provide the public with a substitute means of crossing in its stead, as required by s.16 of the Act ?

54 When the Iron Bridge became a permanent substitution for the ancient lane (as per ss. 53 and 56 1845) whatever public rights existed over the lane were transferred to the diverted way. As the lane was repairable ratione tenurae the law holds that it remains so repairable notwithstanding being diverted by the railway company (upheld by Friern Barnet Local Board v Great Northern Rail. Co.(1893) 57 JP Jo 53 as cited P&M 21st Ed. p.1205 note '(c)'). Following s.47 NPAC Act 1949 the Highway Authority became responsible for the liability to repair even though the way went across railway land.

Conclusion

55 British Transport Commission v Westmorland and Another (1958) supports the reasoning that the Order Routes at Methley Junction have always been compatible with the statutory purpose of the railway and with the working of the colliery. There is absolutely no evidence which even suggests otherwise.

56 Section 57 British Transport Commission Act 1949 does not apply to the Order Routes. The surface of the ways is not the property of Network Rail. By reason of section 47 National Parks and Access to the Countryside Act 1949 (as repealed and re-enacted) the surface of the ways is vested in the Highway Authority under section 263 Highways Act 1980. Thus s.57 is no statutory bar to the acquisition of the public rights of way at Methley Junction.

57 As the former Iron Bridge was constructed under the powers granted by section 16,53,56 and 68 of The Railway Clauses Consolidation Act 1845, Network Rail is required by s.16 to provide an alternative public way across the railway as a substitute for the bridge which it demolished in 2004.

58 The law holds that the section of "the ancient lane" which was diverted (south of the hump-back bridge) remains a highway today, notwithstanding the many changes to its route and character. The law also holds that the ancient liability to repair ratione tenurae remains notwithstanding the liability of the Highway Authority. Network Rail as occupier shares this burden.

59 Finally - It is clear that the first Applicant was unfairly treated in 1955. The second Applicant was also treated unfairly in 1982. Now the third Applicant has also been unfairly treated by the Order Making Authority in 2007. All three applications were rejected because of the failure of public officers to properly apply the Laws of the Realm. **I therefore look to this Inquiry, to put an end once and for all, to this saga of long-standing public maladministration, by confirming the Order Routes sought by Mr Croman the Applicant.**

METHLEY JUNCTION PATHS INQUIRY - FPS/N4720/7/20

COLIN SEYMOUR - FEBRUARY 2010

LEGAL SUBMISSION No.5

The words "Road to Station" (when shown upon a Statutory Plan deposited in preparation for an Act of Parliament for the purpose of providing information to the general public about the content of the Bill) raise the presumption in the mind of the reader that the "road" in question is a way over which the public have access rather than a private way over which the public have no rights.

Neuberger J. (Commission for New Towns v Gallagher Ltd (2002) EWHC 2668(Ch); (2003) 2 P & CR 3 at paras 90 and 102) said of such plans :-
"It was agreed between both experts that the designation "from X" or "to X" on a road was indicative of highway status" . . . . . (and) **. . . . . "the expression "a Road" in today's parlance would tend to suggest a public carriageway"**

1 It has been a cartographic convention from the 18th century onwards, for statutory plans and private plans to indicate from where, and to where, roads shown on the plan come from or lead to. Such annotations traditionally concerned public roads only and as such indicated from where and to where the public could proceed from the subject area of the plan.

2 To cite three examples of such plans from Methley only :-

(a) 1786 - the Inclosure Award Plan indicates **"From Leeds"** - **"From Wakefield"** - **"To Rothwell"**.

(b) 1819 - the Deposited Plan for the Turnpike Road : Barnsdale Bar to Thwaite Gate (59 Geo 3 c.lxxxi) indicates the road from **"From Fleet Mills",** and, opposite the road **"From Wakefield"** it shows the road **"To Allerton"** (this plan was an exhibit in two successful cases Seymour v Leeds City Council (1987- Fleet Lane) and (2004 - Boat Lane leading to Allerton Ferry).

(c) 1820 - the Quarter Session Plan to divert several ways in Methley indicates **"Road to Mickletown"** (this was the road set out at inclosure as **"Woodrow Road"** repairable ratione tenurae. After 1840 it became "Station Road" leading to Methley North Station. Thus this road and the road below have a great deal in common)

3 The Deposited Plan (Ref.1903/23) for the West Riding Tramways Act 1904 (cap. ccxiv) shows the awarded **"Windmill Moor Road"** as **"Road to Station"** at the point where it leaves the Leeds and Barnsdale Road and runs southwards

through Methley Junction to Methley South Station.

4 The Record Map for the 1910 Finance Act, which was made some seven years later, shows the said "Road" defined by two parallel red lines, all the way from the Barnsdale Road to **Rlys. No. 3 and 4.** The road is shown uncoloured. It is also excluded from adjacent hereditaments. It was treated by the Inland

Revenue surveyors in the same manner as any other public road was required to be treated by the statute.

5 Thus when the said Deposited Plan is taken together with the Record Map, and both are set against the Inclosure Award direction to repair ratione tenurae, a firm presumption arises that the road through Methley Junction is a public carriageway at least as far as Methley South Station. This is well beyond the point where the present notice states **"Private Road No Public Access".**

6 The WR Tramways Act 1904 was enacted under the provisions of The Tramways Act 1870 (33 & 34 Vict. C.78). As the Deposited Plan for the Enabling Act was made under the authority of a Public Act it must be accorded full weight as such.

7 The Interpretation Clause at section 3 (1870) states that **"The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same".**

8 In this instance this definition is appropriate, because the "**Road to Station"** after leaving the main road passed over the hump-back bridge before arriving at Methley South Station. Therefore. the word "Road" as shown upon the Deposited Plan must be given its statutory meaning of **"any carriageway being a public highway".**

9 Methley Urban District Council was formed under section 21 of the Local Government Act 1894. Under section 25(2) of the Act it became responsible for ensuring that roads such as "Windmill Moor Road", which were repairable ratione tenurae, were surveyed and kept in proper repair. Section 26 (the forerunner of s.130 HA 1980) also placed a duty upon Methley UDC **"to protect all public rights of way"** including the "Road to Station**".**

10 In 1904 Methley Urban District fell within the provisions of The Town Police Clauses Act 1847. Section 3 of the Act defined **"Street"** as including **"any road, square, court, alley, and thoroughfare, or public pasage".**

11 Pratt and Mackenzie 20th Ed. Page 212 state, re this clause, that **"this definition of "street" <u>does not</u> include places other than those over which the public has rights"** citing Curtis v Embery (1872) LR 7 Ex. 369.

12 In Curtis v Embery - Branwell B. stated **"A road as used in the Act of Parliament must manifestly mean a pubic road, a road which the public have the right to use for passage".**

13 Many other Acts, following The Tramways Act 1870, either extend or restrict the meaning of the word "road". For example, section 4 Public Health Act 1875 defined **"Street"** as **"includes any highway (not being a turnpike road), and any road lane footway square court alley or passage whether a thoroughfare or not".** Whilst section 121(1) Road Traffic Act 1930 defined **"Road"** as **"means any highway and any other road to which the public has access, and includes bridges over which a road passes".**

14 The meaning of the word "road" and the meaning of the term **"**any other road to which the public has access" was considered at great length by Lord Clyde in Clark and Others v Kato, Smith and Gen. Acc. Fire and Life Ins. Corp. and Cutter v Eagle Star Ins. Co. (H.L. 1998). The judgement cites Harrison v Hill (1932) J.C.13 at 17 **"Any road may be regarded as a road to which the public have access upon**

which members of the public are to be found who have not obtained access either by overcoming a physical obstruction or in defiance of prohibition express or implied"

15 In 1904, any reasonable person would conclude that all members of the public had access to the road running to and from Methley Junction. This access continued as far as the railway station and then beyond to the public ferry boat across the River Calder.

16 There is no evidence that passengers ever had to climb over gates, or passed along the route in defiance of notices prohibiting public use. Neither is there evidence that the public used the way whilst recognising that such use was only by the permission of the railway company or the owners of the adjoining land.

17 It is therefore reasonable to conclude, that the term "Road to Station", as used on the1903 Deposited Tramway Plan, was referring to a public road over which the public had rights. Those rights extended all the way from the Leeds and Barnsdale Road to Methley South Station, and then beyond to the public ferry.

18 It would have been pointless, for a statutory plan (produced for the benefit of the legislature and for the benefit of the public of the locality) to have indicated a point where tram passengers could alight, in order to walk to the railway station, if that place was not situated upon a road over which they had public access.

19 **In conclusion - the depiction upon the Tramways Plan of 1903 of the "Road to Station" was an indication to the public that they could use that route as a public road at least as far as the railway station.**

METHLEY JUNCTION PATHS INQUIRY - FPS/N4720/7/20

COLIN SEYMOUR - FEBRUARY 2010

LEGAL SUBMISSION No. 6

PUBLIC AND PRIVATE OCCUPATION ROADS

Every public road which provides access to adjoining lands serves a dual purpose as both a highway and as an occupation road. The two uses carry separate and distinct legal rights. Such a road does not cease to be a highway when used mainly for occupation purposes, and does not cease to be an occupation road when the highway is extinguished by statute. An occupation road may be for general use, or, for the restricted use of named individuals. Unless an occupation road was granted as a strictly private easement over the soil of another, or, for the specific use of a named party, there is a presumption that the road may be used for public access. This is because the use of a way as an occupation road may have arisen in the first instance simply because it already existed as a common way before the lands on either side were inclosed from the waste :

"Whilst on the one hand little weight ought to be attached to occasional user by the public of a road systematically used for occupation purposes, it is on the other hand necessary to remember that user for occupation purposes may have arisen precisely because the road was a public road, it being open to every one with a field adjoining a highway to open from the highway a gate into his field and to use the highway for his own accommodation as owner of that field" (Parker J. AG (at Relation of A H Hastie) v Godstone RDC (1912) JP 76 189)

1 Legal Definition - It is a fact that there is no legal definition of the term "Occupation Road". The matter was considered by "Justice of the Peace" : "Questions and Answers" (1877-1896) page 248 which states :-

"XV - Occupation Roads - Definition of.
Can you refer me to any legal definition of an "occupation road" as distinct from a private road on the one hand and a public highway on the other ?
ANSWER - We are not aware of any "legal definition" of the term, but we understand it to mean a road leading to private lands or premises and used by persons going to or from, or otherwise for the purpose of such land or premises. There may be a public right of way over a road which is chiefly an occupation road, but this is not because of any legal character attaching to the road as an occupation road, but because of it having been dedicated to public use [Vol. L1., 106)"

2 There is no doubt that both an occupation road and a public highway may exist over the same route. If a highway becomes used mainly for occupation purposes it does not cease to be a highway, and if an occupation way becomes used mainly as a highway it does not cease to be an occupation way. If highway rights are extinguished by statute any existing occupation rights remain unaffected.

3 An early case concerning the use of a way as both a public right of way and as an occupation way is Allen v Ormond (1806) 8 East 4. The principle set out in this case is still relevant today. It helps to explain why Inclosure Commissioners needed to set out as "private carriage and occupation roads" ways which

were clearly intended to be used and repaired by the public. As such they were regarded as being no different from any other parish highway.

4 It was held in Allen v Ormond that **"One who has a grant of an occupation way may declare in case against the owner of the land over which the way leads for obstructing it, although it be proved that the public in general had used the way without denial for the last 12 years . . . . . where a party has a certain special right of way granted to him, he may rest upon that title, and need not resort to a general right, which may possibly be disputed by conflicting evidence; especially in a case, like the present, of a public right of way growing out of an occupation way"** (cited from Walsh v Oates below)

5 In 1840, the principle set out in Allen v Ormond was extended by Lord Denman CJ when giving judgment in Brownlow v Tomlinson, Walker, and Clayton (Man. & G.484 at 486). The judgment recites that in 1774 Inclosure Commissioners set out a private road, to be repaired by the inhabitants, in lieu of an ancient public way. This road was to be **"for the use and benefit of the inhabitants of, and occupiers of grounds within, the parish of Beckingham.** The awarded road thus fell within that category of road sometimes referred to as a "public occupation road" (see below).

6 The judgment further recites **"The evidence shows that the whole line of the road, in addition to it being an occupation way, had been used as a public road leading to a towing path along the Trent".**

7 The Lord Chief Justice then went on to hold that **"there might be both a public highway and an occupation way over the road in question, and that it did not on becoming a highway cease to be an occupation way"**

8 Lord Denman's judgment, regarding "public occupation roads", became an accepted part of the common law . The case was followed by the courts, and his words were taken to be the authority on the subject - see Shelford 1862 (page 18); Glen 1883 (pages 25 and 53), and Sauvain 1997 (para 2-56).

9 In 1877, the law was further extended by Wells v London, Tilbury and Southend Rail Co. 5 Ch.D.126. The case arose because **"The plaintiffs had been entitled from 1855 to a carriage-way to property of theirs over a railway by a level crossing. By an Act of Parliament obtained by the company in 1875, reciting that it was expedient that the rights of way in respect of certain footways which crossed the railway on the level should be extinguished, it was enacted that all rights of way in, over, or affecting the footways numbered 2,4,5,6,and 7 on the deposited plans should be extinguished. No provision for compensation was made. The roadway in question was numbered 5 on the deposited plans, and was thereon marked 'roadway and footway', the others being marked simply 'footway'."**

10 It was held (affirming the decision of Malins V C in the court below) **"that upon the true construction of the Act, it did not interfere with private rights of way, but only with public rights of footway, and that an injunction restraining the railway company from obstructing the way had been rightly granted"** (both quotations taken from Walsh v Oates (below) at 582-583)

11 Glen (1883) considered the Wells case at page 53 and states **"And an Act of Parliament dealing with and extinguishing the public right of way only will not affect the private right of way, which may continue to be exercised notwithstanding the extinction of the public right".**

12 Wells was also considered by Pratt and Mackenzie 19th Ed page 947 note (b) re section 53 The Railway Clauses Consolidation Act 1845, who state **"A railway company cannot obstruct a private way without compensation, and an Act which enables a company to extinguish certain footways without compensation will be construed to apply to public ones only"**

13 In 1943, the principle established in Wells, which had remained good law for almost a century, was challenged by the making of an order by Halifax Quarter Sessions under section 91 Highway Act 1835. The effect of the order was to extinguish both public and private rights over the whole of the road. Walsh appealed to the County Court in 1953. The Court, relying on R v Wallace (1879) 4 QBD 641 at 644, held that the order of Quarter Sessions extinguished any private right which the plaintiff might have over the highway.

14 The matter then went before Singleton, Denning and Romer LJJ in the Court of Appeal (Walsh v Oates (1953) 1 QB 578). Singleton LJ cited 19th Ed. Pratt and Mackenzie at pages 16 and 130. He also referred to Wells (1877) but commented that because it concerned a Private Act it was not quite as useful as Allen (1806).

15 The Lord Justice dismissed Wallace (1879), relied upon by the Court below, as being distinguishable from, and therefore not relevant to, the issue before him. In that matter, Cockburn CJ, stated at 644 **"There appears to be no foundation for this objection, for the simple reason that as soon as the diversion to which the certificate of the justices has referred is established, the old road ceases to be a highway and the land reverts unencumbered by any easement, to the original owners of the soil"** (see Pratt & Mackenzie 19th page 221 note (c) re case in relation to section 91 HA 1835)

16 Denning LJ (as he was then) summed up the proceedings (at 584) by holding **"It is clear law that there may be a private right of way along a road and a public right of way existing at the same time. When an order is made under the Act of 1835 stopping up a highway, that extinguishes the public right but does not affect the private right"** .

17 In 1997, the principle established in Allen v Ormond two centuries earlier, was followed to confirm a private right, even though the public right had already been judicially decided. On the 15 August 1997 an Order was made by Hull Crown Court under section 56 HA 1980 (Seymour v North Lincolnshire Council) to repair an awarded **"Private Carriage Bridle and Drift Road"** and reinstate it back to its statutory width of 40 feet. The Council, anxious to avoid the cost of repair and reinstatement, considered extinguishing part of the statutory width. This prompted a local landowner to apply for a Declaratory Judgment (against the offending landowner) to confirm his private rights to the full width granted by the Messingham Inclosure Act and Award.

18 On the 30 September 1997, in the matter of Smith v Anderson, Scunthorpe County Court ordered **" IT IS DECLARED THAT the Plaintiff, Walter Smith, in common with all other inhabitants of the Township of Messingham, by reason of the Messingham Inclosure Act 1798 (38 Geo 3) has a right of way along Twigmoor Side Road with carriages, horses, cattle and on foot, to a width of 40 feet, without hindrance from any adjoining landowner whatsoever"**

19 Occupation roads fall within six distinct categories :-

(i) Those awarded for both public and private use where the public right is equal to the private right, for example as in Brownlow v Tomlinson above.

(ii) Those awarded for both public and private use where the private right is greater than the public right, for example to **"be used and enjoyed with carts and carriages for the occupation of . . . lands . . . . adjoining . . . and by all persons whomsoever on foot and on horseback"** - as in the Methley Award.

(iii) Those awarded to be repaired in the same manner as public roads, for example as in Methley above, and as awarded in the adjoining parish of Swillington in 1799. Such repair out of public funds equating with public use **"the duty to repair an ancient highway was always co-extensive with the right of passage by the public"** (Wills J. Eyre v New Forest H.B. (1892) 56 JP 517 at 519).

(iv) Those awarded to be repaired ratione tenurae, for example as in Methley. As these roads could be the subject of indictment when out of repair they were a class of public road, because only matters of concern to the general public could be the subject of indictment.

(v) Those for the use of, and repairable by, the owners and occupiers of lands within the parish, with no restriction placed upon general user and no named persons granted authority to prevent such use.

(vi) Those awarded specifically for the "sole and separate use" of named individuals, as for example a 15 feet private carriage road in the Tockwith (WR York) Award 1792.

20 Roads falling within categories (i) to (iii) were invariably named and were always thoroughfares. They were no different from public roads generally, except that, by reason of section 55 Highway Act 1773, the heavy wagons of the public carriers were confined to the turnpike roads and excluded from the private parish roads. These roads were also subject to orders made by the Quarter Sessions under section 57 HA 1773 regarding the need for extra horses up steep hills in the parish. Such orders could not have been made if the private roads were not used by the public : **"Order for additional number of Horses on private roads under the General Highway Act of 13 Geo 3"** (Kesteven Q.S. Minute Book 14 October 1822)

21 Roads repairable ratione tenurae (iv) were used by the public as thoroughfares, or, as ways to a public benefit such as common meadows, watering places, quarries or navigations. Today they fall as "highways maintainable by reason of tenure enclosure or prescription", and/or as "private streets" : **"a street that is not a highway maintainable at the public expense".**

22 Roads within category (v) were invariably thoroughfares awarded in lieu of former roads running over the unenclosed commons and wastes. These ways were never intended to be restricted. The soil was not awarded to a private person, thus no one had the authority to prosecute for trespass. These roads were immediately accepted as parish highways and were, in effect, kept in repair by the same persons who paid Highway Rates towards the remainder of the parish highway network. Many of these roads are now adopted highways.

23 It is only those occupation roads, which were specifically ordered to be for the "sole and separate use" of named individuals, which can safely be said not to have both public and private rights over them. Such roads are usually cul-de-sacs. They were rarely named when awarded, as for example the Skewkirk road above, and three private 12 feet roads set out in the Wakefield Award 1805. These were not repairable by the parish, or repairable ratione tenurae. They invariably went over, or through, or across, lands already allotted to others, or, to the named recipient of the private right. They were quite separate and distinct in nature from other parochial roads.

24 Therefore, where the term “occupation road” is used in statutory documents, without a specific limitation as to user, an inference arises that the road is a parochial road for the use of the public of the locality. This is particularly so when the road is a thoroughfare connecting with other parish roads. Or, it is stated elsewhere to be a “public occupation road”, or, a “public road”. Any “private occupation road” liable to be repaired ratione tenurae, is, by definition, a highway, albeit not maintainable at the public expense.

25 “Public Occupation Road” this was a term, which was used in the 19th century, to describe a class of public road in Yorkshire and Lincolnshire,

26 In 1808, a plan was deposited with Highway Orders made at the Easter Sessions of Lindsey Quarter Sessions at Kirton in Lindsey. The Orders concerned the parish of Searby near Brigg. The road on the plan is shown as **“Public Occupation Road”.** Chris Padley (a contributor to RWLR) confirmed in 1985 that the road was awarded in 1765 as a “Public Road” and is now a maintained highway.

27 On July 19th 1843, the Inhabitants of Thorne met in Vestry to consider highway matters. It was “**Resolved that the Surveyors of the Highways be directed to have the said Sewer called Smock Dyke thoroughly cleansed and Arched over with Brick. And also relative to the repair of certain public occupation roads out of the Surplus monies arising from the agistment of Cows in the Lanes included in the aforesaid public notice”.**

28 Occupation Roads and Railway Plans - Thousands of “occupation roads” were crossed by the railway lines. As the Rights of Way Law Review points out (s.9.3 p. 24) such roads **“frequently carried public rights of way”.**

29 It is essential when considering the contents of deposited railway documents to also read the enabling Act if one was approved by Parliament. Sometimes, a way which is shown upon the Deposited Plan and Book of Reference as an “Occupation Road” is referred to in the Act as a “Public Road”. Sometimes also the status of a road shown in the Book of Reference can vary from the status shown on the line sections which were intended to deal with the statutory obligations for level-crossings or bridges.

31 The Deposited Plan and Book of Reference for the Midland Railway (Derby to Leeds) (WYAS ref. 1835/7) shows parcel No.96 within the parish of Methley as being an **“Occupation Road and Bridleway”.** Whereas the Act of 1836 (6-7 Will 4 c. cvii) confirms, at sections 72 and 92, that the road is a **“Public Carriage Road”.** This road was reinstated as such following orders by Leeds Crown Court in 1986-7 (Seymour v Leeds City Council and Others).

32 The Deposited Plan and Book of Reference for the Great Northern Railway Co. Extension (WYAS ref.1846/6) shows parcels 101,106 and 119 within the parish of Crowle as **“Occupation Road”** albeit jointly owned by named individuals and the township Surveyors and Constables. Whilst the Act of 1848 (11-12 Vict. c. cxiv), at section 11, refers to these three roads by reference to the Deposited Plan and states that they are all **“Public Roads”.** The status of the road as described in the Act was regarded as compelling evidence in the Sch.14 Appeal to DEFRA (NATROW/Y2003/529A/07/52) - Inspector’s Report 28 March 2008.

33 The Book of Reference for the Leeds, Castleford, and Pontefract Junction Railway (Railway No. 1) within the parish of Garforth states, re parcel 26, **“Occupation Road”** - albeit jointly occupied by named

persons and the Township Surveyors. However, the line section shown on the Deposited Plan (at 3 chains) states **"Public Road".** This designation was accepted in the matter of Seymour v WYMCC and Makin (1985-86), and the road was restored to its full awarded width, with the roadside boundary hedge also being replanted by the offending landowner.

34 Therefore, railway plans alone cannot be used as conclusive evidence that no public right existed when the line was constructed. In very few instances can a way, described upon a railway plan as an "Occupation Road", be taken to mean a private and restricted way over which the public had no rights whatsoever at that time.

35 On the other hand, where the Plan or the Book shows a public way that is good evidence of the existence of a public right at that time. Section 10 Railway Clauses Consolidation Act 1845 states "**True Copies of the said Plans and Books of Reference shall be received in all Courts of Justice or elsewhere as Evidence of the Contents thereof"**

36 As the Rights of Way Law Review s.9.3 page 24 states **"Railway plans have been admitted in courts as evidence of public rights of way. . . .** (citing Vyner v Wirral RDC (1909) 73 JP 242) **. . . On the other hand , they are weak evidence of the non-existence of public rights . . . . . The only real risk is of under recording of public rights of way, rather than over recording . . . . It is unlikely that a false claim of a public right would have been made, and if made it would almost certainly have been detected by those upon whom it placed a financial burden"**

37 Railway surveyors were always conscious of the cost of the scheme and their duty to shareholders. Railway Bills were very expensive and the omission of proper provision for both public and private rights could result in challenges to the scheme and lengthy delays in Parliament.

36 When a railway crossed a highway, the statutory requirements were expensive for the railway company. This was particularly so when public roads had to be crossed by a tunnel, bridge, or level crossing with keeper's house. If minor highways could be subsumed within the higher provisions for private occupation roads that was a bonus for the railway company.

37 Parish highway surveyors would be unlikely to object if footpaths and bridleways were diverted by the company along occupation roads which were required to be repaired at private expense. Hence the term "occupation road" being frequently used by railway surveyors to describe ways over which both public and private rights existed, and which were jointly owned and occupied by township officers and private persons.

38 <u>The Public as Occupiers of the Highway</u> - The deposited documents for the railway at Crowle (above) demonstrate that Highway Surveyors and Constables were regarded at that time as "occupiers" of the said "Occupation Road" and "Public Road". However, these officers, when acting in their elected capacity as "occupiers", were in fact acting on behalf of (in the stead of) all those individual members of the public who used the road. Thus, each individual member of the public, passing along the road at any given time, was in fact "the occupier" of that "occupation road" .

39 It was held by Manchester Sheffield Lincolnshire Rail Co. v Wallis (1854) 18 JP 138, and Midland Railway Co. v Daykin (1855) 20 JP 23, that persons lawfully passing along a highway adjacent to a railway are occupiers of the highway land.

40 These two cases arose out of the proper construction of section 68 of The Railway Clauses Consolidation Act 1845. The section states **"The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway . . . convenient gates, bridges, arches, culverts, and passages . . as shall be necessary for the purpose of making good any interruptions caused the railway to the use of the lands through which the railway shall be made" . . . etc . . . etc.**

41 Pratt & Mackenzie 19th Ed. page 955 at notes (a) and (d) state **"A highway running alongside a railway is adjoining land within this section and any person lawfully passing along such a highway is therefore in the position of an occupier of such land"** (citing Wallis and Daykin).

42 It thus follows, that any member of the public, lawfully using a public occupation road crossed by a railway, has a legitimate expectation (as an "occupier" of that road) that the railway company will make good (and maintain) any interruptions caused by the railway to the use of the road.

43 Therefore, any bridge or passage, constructed to serve both public and private occupiers of land, is still required to be maintained even when the company has bought out the greater interests of the private occupier. There have been recent instances where Network Rail having reached agreement with private occupiers to close a bridge or tunnel, have disregarded the lesser public right because its status was still awaiting clarification.

44 Correlation between ratione tenurae roads and public occupation roads - there is a strong link between roads repairable ratione tenurae and occupation roads used by the public. All roads liable to be repaired ratione tenurae, are by their very nature, both occupation roads and public roads. The liability arising because of the occupation of certain lands. As Jacob commented in the 'New Law Dictionary' (5th Ed 1744) **"Occupation - signifies in our Law Use or Tenure; as we say such Land is in the Tenure or Occupation of such a Man".**

45 At the turn of the 19th century, in many rural townships, there were few roads repairable by the parish as public roads. In some places, maybe with the exception of the main road, all roads used by the inhabitants were occupation roads repairable ratione tenurae : **"All the roads in the township A are repairable ratione tenurae with the exception of one main road"** ('Questions and Answers : Justice of the Peace' - 30 August 1902 page 558)

46 Roads shown as Private or Occupation Road essential for public access -
The 'Plan of the City of York and Ainsty' dated 1785 covers an area of some 100 square miles and includes many individual townships. The Plan shows only three types of road : **"Turnpike Road - Private or Occupation Road - Open or uninclosed Road".**

47 Every one of the turnpike roads ended on the outskirts of the City of York and connected with a private or occupation road. Every main street of the various townships was shown as being a private or occupation road. Therefore, unless we are seriously to believe that every inhabitant of York and its surrounding townships was a prisoner in his own backyard, these roads must be construed as being used for public access.

48 Thus the very words "private and occupation road" must be re-appraised as to their meaning at that time. It is impossible to understand the 'World We Have Lost' (book by Peter Laslett) from a 21st century

social construction of reality. Because, in a world where the feet of horses and men grew tired through their daily toil, it was unthinkable for an open thoroughfare not to be available for public use as a way of necessity. _

49 The Ainsty Map was considered at length by those involved in a series of lengthy inquiries held at Tadcaster (FPS/P2745/7/14M). Several learned counsel were involved, along with prominent expert witnesses.

50 Mr Sleath LLB the Inspector stated at para 137 of his report **"Whilst considering the Ainsty Map (York 1785) I conclude that the representation on this map of a route described as a 'private or occupation road' does not necessarily mean that there are no public rights existing over it. I think this applies particularly in town or village centres where the argument of Mr Seymour supported by Dr Hodgson and Professor Kain . . . . seems particularly pertinent. I also believe that this may have other implications for other maps of this period in this particular locality".**

51 The Inspector accepted my legal submission (which was not challenged by George Laurence QC or other counsel present) that the Law has long held that the High Street (or Town Street or Main Street) of every settlement is "common to all". Therefore, the depiction of a High Street as a 'private or occupation road' is synonymous with a public right of way over that route. The 'New Law Dictionary' (9th Ed. 1772) states at page TOR re 'Toll Traverse' **"A man cannot prescribe to have a Thorough toll of men passing through a vill in the high street because it is against the common law and common right; for the high street is common to all"**

52 When considering public access over occupation roads it is important to realise that all occupation roads repairable at public expense were public roads : use and repair walking hand-in-hand. Likewise, all occupation roads repairable ratione tenurae were also public roads which, like those repairable by the parish, could also be the subject of indictment. A difficulty arises however, when those occupation roads, which were awarded to be repaired by the "owners and occupiers of lands" within the parish, are the subject of inquiry. Far too often, without any supporting evidence apart from the repair liability, these roads are held to be private ways over which the public have no rights.

53 However, once it is realised that such a determination simply placed the liability for repair on the same persons as repaired the public roads within the parish the situation becomes clearer. Under 43 Eliz. (1601) c. 2 section 1 every inhabitant and every occupier of lands and houses was required to contribute towards the Poor Rate. These same persons were also required to keep the parish roads in repair, i.e. from 1555 to 1835, by performing their 'statute duty', and from 1835 to 1925, by contributing towards the 'highway rate' (see 'The Seymour Papers' : 'The Public of the Locality').

54 Thus if these occupation roads were thoroughfares, and were part of the parochial road network, it must be presumed that the inhabitants at the time regarded them as being no different from other parish roads as far as public use was concerned These roads were therefore "public occupation roads" to be used and enjoyed by everyone.

Conclusion

55 There is no legal definition of the term “occupation road”. However, unless there is clear evidence that any particular road was granted for the sole and personal use of a named person, a presumption in favour of a public right must be inferred. Because, as case law confirms, use for occupation purposes may have arisen in the first instance simply because a public way already existed before the waste was inclosed.

56 Every public highway giving access to adjoining lands serves the dual purpose of public road and occupation road. The Law confirms that there may be both a public road and an occupation road over the same route. These dual rights are quite separate and distinct from each other. The extinguishment of the public right leaves the private right intact. Likewise, the abandonment of the private right leaves the public right unaffected.

57 There is no doubt that in the 18th century, in northern England in particular, a common type of road in the countryside was a “private and occupation road“. A large proportion of these so-named occupation roads were repairable ratione tenurae and thus were a species of public road. Certainly in the 19th century, ratione tenurae roads seem to have been far more common in rural townships than were public roads repairable by the parish.

58 The term “public occupation road” was commonly used in Yorkshire and Lincolnshire in the mid 1800’s. These roads were under the supervision of the surveyors of the highways who let out the grazing and used the money to pay for repairs to the other parish highways. They were clearly public roads.

59 The term “occupation road” when used, for example, in deposited railway documents, is not evidence that no public rights exist over that route. Indeed, the term may be supportive of public rights if the land over which the road passes was formerly common or waste over which the public had access as of right under common law.

60 There are many instances of railway documents either confirming or indicating public rights over occupation roads. For example, by either referring to those roads in the enabling Act as “Public Roads”, or, by naming the surveyors of highways as owners or occupiers, or, by failing to name any private owner or occupier of the road in the Book of Reference.

61 Therefore, if an occupation road is a named thoroughfare; or leads from one public place to another; or is repairable either at public expense or ratione tenurae; or was granted in lieu of an ancient way running over a former common or waste; and was not granted for the sole and personal use of named persons; there is a strong presumption of a public right of way over that route.

Footnote : The application of the above to railways Nos. 1 to 6 at MJC.

Rly 1 not applicable, the relevant occupation roads not referred to in Book.

Rly 2 (1835 Book) - numbers on Plan totally faded thus Book not relevant

Rly (1836 Book) - Two “occupation roads” with no named owner or occupier

Rly 3 (1845 Book) - Two “occupation roads” both with named owner

Rly (a) (1846 Book) - No 89 “Road” with named owner

Rly (b) (1846 Book) - Nos.53-54-58 “Road” with named owner

Rlys 4-5- 6 (1858 Book) - No. 59 “occupation road” with named owner.

Windmill Moor Road was thus described as a “road” with a named owner.
It was also described as an “occupation road” with no named owner.
And also described as an “occupation road” with a named owner.

FPS/N4720/7/20 Methley Junction Paths Inquiry Colin Seymour

Legal Submissions 1-6 : Law Reports and Legal Authorities referred to

No.1

1 R v Leake (1833) 5 B & Ad 469 at 484
2 Statute for the View of Frankpledge (1325) 18 Edw 2 clauses 9-11
3 Methley Manor Court Rolls 1410 - 1437 -1459 -1585
4 Glen (1883) 'The Law Relating to Highways' page 310
5 'Byway and Bridleway' 2005/8/72
6 'Words and Phrases Legally Defined' (2nd Ed. Vol.4 page 216)
7 Warren v Matthews (1704) 1 Salkeld 357

No.2

8 Glen (1883) (above) page 14
9 Huzzey v Field (1835) 2 CM & R 432
10 Newton v Cubitt (1862) 12 CB(NS) 32
11 Methley Manor Rolls 1356 -1371-1388 - 1459 - 1485 - 1488
11A Trotter v Harris (1828) 2 J&Y 284

No.3

12 Lyme Regis Corp. v Henley (1834) (House of Lords) 1 Scott 29
13 Statute Quia Emptores (1290) 18 Edw. 1 cap.1
14 Glen (1883) (above) pages 65-66 and 108
15 Webb (1913) 'The Story of the King's Highway' page 5
16 Halsbury's 'Laws of England' (4th Ed. Vol.21 paras 262- 266)
17 "Case for Recorder's Opinion' Samuel Buck (Leeds) 26 January 1791

No.4

18 BTC v Westmorland and Worcestershire C.C. (1958) (HL) AC126

No.5

19 Comm. for New Towns v Gallagher (2003) 2 P&CR 3 pages 46-48,54
20 Statute - The Tramways Act (1870) 33 & 34 Vict. cap. 78 sections 3 +14
21 Pratt & Mackenzie 'Law of Highways' (20th Ed. Page 212 note (a))
22 Curtis v Embery (1872) LR 7 Ex.369

No.6

23 AG (at Relation of A H Hastie) v Godstone RDC (1912) JP 76 189)
24 'Justice of the Peace' - 'Questions and Answers' (1877-1896) page 248
25 Brownlow v Tomlinson, Walker and Clayton (1840) Man & G 484
26 Walsh v Oates (1953) (Court of Appeal) 1 QB 578
27 Crown Court Order : Seymour v North Lincolnshire Council -15 Aug.1997
28 County Court Order : Smith v Anderson 30 September 1997
29 Plan : Highway Order : Lindsey Quarter Sessions - Easter 1808
30 Vestry Resolution : Inhabitants of Thorne - 19 July 1843
31 Great Northern Railway Act (1848) cap. cxiv sections 11 and 12
32 Part : Book of Reference (Parish of Crowle) re above (WYAS ref. 1846/6)
33 Section : 'A Plan of the City of York and Ainsty' (1785)

METHLEY JUNCTION PATHS INQUIRY - FPS/N4720/7/20

COLIN SEYMOUR - JULY 2010

OPENING LEGAL SUBMISSION

The existence of a Ferry over the River Calder at Fairies Hill Methley from 1846 to 1930 gives rise to a presumption in law that it was connected to the Town Street of Methley, or a public place, by a highway

1 The law holds that a ferry across a public navigation must have a legal origin bottomed in the Crown (Seymour - Legal Submission No.2). A legal origin is presumed if the ferry has been in operation for 35 years (Trotter v Harris (1828) 2 J&Y 284 - Law report No. 11A Seymour bundle).

2 Fairies Hill Ferry existed from at least 1846 to the 1930's (Applicant's bundle - Letter OS to Croman 15 July 2003). Therefore, the law presumes a legal origin based on a grant from the Crown.

3 The law further holds that a ferry must connect with a highway on either bank which leads to a public place, or the Crown could not grant the right to a ferry in the first instance (Legal Submission No. 2 - Seymour).

4 Thus, once the Inquiry has noted the existence of the ferry for over 80 years it must commence from the presumption that a highway connected that ferry to another public place. Indeed, the Inquiry is estopped by law from commencing at any other starting point. Unless that is, centuries of existing highway law are successfully rebutted by argument to the contrary.

5 Therefore, the only matter to remain an issue is the direction of the route from the ferry to the public road connecting Pontefract and Leeds. However, logic and commonsense dictate that passengers from the ferry followed the footpath shown on the OS maps of 1846, 1892 and 1908 to the point **E(b)** where that path connected with the way shown on the 1837 Township Assessment Plan (Seymour Bundle - Doc. 14).

6 The 1837 Township Plan shows a way commencing from the Leeds Road and running southwards. Firstly over that small section of road awarded as "Windmill Moor Road", and then continuing southwards over the way referred to in the Award as "an ancient lane".

7 This "ancient lane" was outside the scope of the Methley Inclosure Act and thus not within the powers of the Commissioners. Therefore any ancient rights remained unaffected. The law at time did not recognise a species of way, involving strictly private rights, called an ancient lane. Ancient lanes were, by their very nature, open to the inhabitants and to the general public.

8 It was common practice for such ancient lanes to be repaired ratione tenurae by those who had originally fenced them off from the common or waste. The Inclosure Commissioners recognised this when they directed that the short new section of road be also repaired ratione tenurae (Seymour - Legal Submission No. 3).

9 The law holds “once a highway - always a highway”. Therefore, any divertions or alterations to the ancient lane caused by the railways are of no consequence to this Inquiry. It matters not that the railway plans described the ancient lane as “road” or “occupation road”. This description did not alter the existing status of the ancient lane at that time, nor does it today.

10 Regarding the matter of common law dedication. In 1786 the law knew nothing about dedication or ownership to the middle of the way. These were creatures of fiction later devised by the courts in order to overcome the obstacles presented by lost grants. Indeed, in the case of Pelham v Pickersgill (1787) 1 TR 661 at 667 Ashurst J. stated “**For there are very few cases where it could possibly be shewn that the soil over which an ancient road passes was the soil of a private person”.**

11 Therefore, where “an ancient lane” has been in existence since before 1786 (Seymour - Docs.6+10) dedication must be presumed. It would be an impossible task to be looking for signs of any dedication taking place when John Shann of Shann Hall Methley first acquired the riverside meadow (c.14th century). Thus the law presumes a lost grant in such circumstances. Particularly when, by custom, from time immemorial, such common meadows in Methley were open to the inhabitants once the hay had been cut (Seymour - Legal Submission No.3).

12 Earl Mexborough purchased this meadow land c.1805 following the death of John Shann. The Earl thus owned the soil of the ferry landing place in 1846. Therefore, it must be concluded that either he or his predecessor had dedicated that landing place to public user otherwise the public ferry could not have operated from that location.

13 Likewise, dedication can also be presumed from the ferry and along the ancient lane as it proceeded northwards, through lands owned by Earl Mexborough and others, to the point where the ancient Windmill Moor common was inclosed. Before inclosure the ancient lane was entered from off the common. Windmill Moor Road was awarded in lieu of this ancient right. George Higham the new allottee was required to fence off the road to protect the rights of user and his allotment was granted **“subject to a road hereinbefore awarded over the same situate on and part of Wind Mill Moor”**

14 Highway law recognises a shifting burden of proof in certain circumstances (WYMCC v Harry Brown (QB Div. 15-10-82 unreported page 6 paras A-C). Once the ferry/highway presumption has been set in place the applicant may rely upon that presumption for the route from the ferry to the Pontefract Road. The burden of proof therefore shifts to the objectors to prove beyond the balance of probability that no public way existed to the public ferry whilst it was in existence.

REBUTTAL of the relevance of HOLLOWAY v EGHAM UDC (1908)

1 If Holloway v Egham UDC (1908) 72 JP 433 was being decided today, as a declaratory judgment as to the existence of the public right, it is more probable than not, that, given the present state of the law, the verdict would favour the defendant rather than the plaintiff.

2 Holloway can be distinguished from the matter at issue. The case is site specific and therefore has no general application to other cases where the locus is different. It is certainly not applicable to the matter of the Methley Junction paths. Because the ancient lane, to be eventually crossed by four railway lines, led to a public ferry across a public navigation before three of the said railways were constructed.

3 When Rly 2 was constructed under the1836 Act, the ancient lane was carried under that railway by means of a tunnel. User could therefore proceed as before along the ancient lane and footpath to the south of the railway. As each successive railway crossed the lane provision was made by a succession of various means to accommodate the users of the ferry and the operations of Methley Junction Colliery. These provisions were the said tunnel under Rly 2, a level-crossing over Rly 3, then a hump-backed bridge across Rly 3 to replace the crossing, then a level crossing over Rly 4, and lastly the Iron Bridge across Rly 2 to replace the tunnel.

4 Unlike Holloway the railway was not fenced-off against public user of the ancient lane. Indeed, the four railways at Methley Junction were devised to accommodate users both public and private.

5 In Holloway the way crossed by the railway was awarded in 1817 (under the 1801 Inclosure Consolidation Act) as a private carriage and occupation road. Whilst at Methley Junction the way crossed by the four railways was stated in the award of 1789 to be an ancient lane.

6 The only similarity between Holloway and Methley is the fact that Rly 2 runs through a cutting at the site where the Iron Bridge was constructed in 1865. But unlike Holloway the ancient lane was not obstructed by the railway but carried over it by means of a bridge. Whilst it was pleaded in Holloway that "There is no evidence that the lane has been repaired by the parish at any time" - this is of no relevance to Methley because the lane in question was repairable ratione tenurae and therefore the parish had no legal interest in repair.

7 Neville J decided Holloway in 1908. His attitude to public user of occupation roads (page 434) was in marked contrast to that of Parker J (a very experienced highway judge) in 1912 in AG (re Hastie) v Godstone RDC JP 76 188. Parker J stated at 189 that it was necessary to remember that user for occupation purposes may have arisen precisely because the road was originally a public road (see Seymour - Legal Submission No.6). I submit that the latter doctrine is to be preferred.

Colin Seymour July 2010