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# Order Decision

Inquiry held on 2 September 2015

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 16 September 2015**

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## **Order Ref: FPS/P2745/7/50**

- This Order is made under Section 53(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Public Footpath No 25.45/16, Helmsley, Ryedale Modification Order 2013.
- The Order is dated 15 July 2013 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath running between Bridge Street and Pottergate, Helmsley, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed.**

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## **Procedural Matters**

1. I held a public inquiry into this Order on 2 September 2015 at the Feathers Hotel, Helmsley. I made an unaccompanied site inspection on 1 September 2015, when I was able to walk most of the Order route and view the remainder. It was agreed by all parties at the inquiry that an accompanied visit was not necessary but I made a further unaccompanied visit on 3 September.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

## **The Main Issues**

3. The requirement of Section 53(3)(c)(i) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. Much of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
5. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

## Reasons

### ***Documentary Evidence***

6. North Yorkshire County Council, the Order Making Authority (OMA) discovered little documentary evidence regarding the Order route and therefore relied upon user evidence in support of the confirmation of the Order.
7. On behalf of the objector, two letters were submitted, written by Ian Sagers FRICS, agent to Helmsley Estate, owners or former owners of much of the land crossed by the route. The letters were written in May and November 2012 and in the latter he states that he does not think there was an access which would have enabled through passage from Pottergate to Bridge Street (by way of the Order route) and in the former he states that he does not consider that there was a public right of way from Pottergate to Bridge Street by way of 19 and 21 Bridge Street. He did not say what period he was referring to with regard to these statements. He also stated in the later letter that there was a physical barrier of a four foot wall or thereabouts between 19 and 21 Bridge Street preventing access. Again, it was not stated when such a wall existed.
8. With regard to this evidence, it is certainly the case that there has never been a public right of way recorded which accords with the Order route. However, the statements to the effect that access was not possible or was obstructed by a wall are not corroborated by any other evidence available to me and are inconsistent with evidence provided by users of the route. Although there is some evidence of the existence of a wall it appears that this probably ran parallel to the Order route and would not have obstructed access along it.
9. Mr Hinchcliffe, director of the company which has owned Nos. 1-6 Meeting House Court since 1988, stated that when the properties were purchased it was assumed that the access to them by way of the Order route was a public right of way as no private rights of access over it were also acquired. Subsequently the owner of the land crossed by the route had sought a further payment to ensure that the access would not be reduced in width but again no private right appears to have been granted.
10. A copy of a study commissioned by the Lord Feversham to consider proposals made by Helmsley Rural District Council<sup>1</sup> was submitted by the OMA. This includes plans which show a route similar to the Order route forming part of a pedestrian link between residential and car parking areas and the town centre. However, this study only dealt with proposals and was prepared over 40 years ago. No evidence was presented as to whether proposals in the study were ever subsequently pursued.
11. On balance, it is my view that the limited amount of documentary evidence that is available does not provide much assistance in determining the current status of the Order route. Accordingly, the question of whether the Order should be confirmed depends on the evidence of public use of the Order route that is available.

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<sup>1</sup> The Future of Helmsley, John H Popham, October 1973.

## ***Evidence of Presumed Dedication under the 1980 Act***

### *Date when public use was brought into question*

12. The middle section of the Order route (a short distance either side of Point D) has been physically obstructed preventing continued public use since 2011.
13. However, a deposit was made under Section 31(6) of the 1980 Act on 5 July 2005 by the owners of the middle part of the Order route indicating that they had no intention of dedicating a public right of way. This would have been available for public inspection and therefore can be taken as having brought public use of the route into question at that time.
14. Evidence was given of a chain having been in place across the Order route on some occasions since the early 1990s. However, users of the route who completed User Evidence Forms (UEFs) and/or appeared at the inquiry stated that they had either never encountered a chain across the route or that on the infrequent occasions when they had they had assumed it was intended to restrict vehicular access only as it was relatively easy for a pedestrian to step over or duck under and did not interrupt their use. Accordingly, the presence of the chain does not seem to have brought public use of the Order route into question before 2005.
15. On balance it is my view that public use of the Order route was brought into question in July 2005 as a result of the deposit made under section 31 of the 1980 Act and accordingly the 20 year period of public use before dedication of the route as a public footpath can be presumed in accordance with the provisions of the 1980 Act runs from July 1985 to July 2005 in this case.

### *Evidence of Users*

16. Fifty seven UEFs were submitted in support of the application for the Order route to be added to the definitive map. The OMA considered that twenty one of these should not be taken into account for various reasons such as their failure to specify the dates when the route had been used or the description of use by permission rather than as of right. In addition, 11 users of the route appeared at the inquiry, 8 of whom had also completed a UEF.
17. The remaining 36 forms and evidence given at the inquiry describe use of the Order route from the 1940s to 2011 with 20 people claiming to have used it throughout the 20 year period 1985-2005 and a further 19 for part of that period. Generally, people claimed to have used the route on a regular basis, often daily, typically to gain access to shops and other facilities in the town centre from residential areas to the east.
18. It was stated on behalf of the objector that when her family had purchased their property in 1989, they had been advised by the vendor that it would be advisable to obstruct the route with a chain on at least one day each year so as to avoid the establishment of a public right of way. Evidence was presented that this had been done since at least 1993/94 and that the chain had been in place across the route for up to 12 days each year since then. This had not been on a fixed basis but more random and without any accompanying notice to inform users of the reason for the obstruction, although it was stated that residents of Rye Court had been forewarned on some occasions. It was also accepted that the chain had been vandalised, sometimes 2 or 3 times a year but it had been quickly repaired on each occasion. It was further stated that

- after a fire in 2000, which destroyed some sheds, the chain was moved to a slightly different position.
19. Most people who completed UEFs did not mention a chain and stated that they had not met with any obstruction before 2011. However a few people referred to it in UEFs and, at the inquiry, several people recalled a chain, although some said it did not extend across the whole route. Others said that on infrequent occasions there had been a chain across the whole route but that this had been quite low and could be stepped over relatively easily. Two people also referred to it having been possible for the chain to be lifted to allow them to pass under it. They said that, because of its nature, they assumed it had been erected to restrict vehicular access rather than that of pedestrians.
  20. I have seen a copy of a photograph taken on an unknown date after 2000 which shows a chain in place but only blocking part of the parking area. On my visits I also saw a post with some chain still attached on the south side of the former parking area. This post is approximately 90cm high and, from descriptions given at the inquiry, could have been around 5m from the next post to the north. It therefore seems likely that the chain would have sagged so as to be somewhat less than 90cm from the ground midway between the posts. It therefore seems plausible that most path users might have found it relatively easy to step over.
  21. In these circumstances, taking account of the nature of the obstruction to pedestrians resulting from the occasional erection of a chain, I do not think that it would be reasonable to regard the stepping over it (or ducking under) as amounting to use of the Order route by force rather than as of right. Clearly the breaking of the chain would have involved the use of force but there is no evidence to suggest that any of the people who provided evidence of use of the route were responsible for such action.
  22. Forty one questionnaire forms were submitted by the objector, nearly all of which stated that the person completing the form had received permission to use the Order route from either the objector or one of her parents and that they had been aware of the presence of a chain obstructing the route on occasion. The forms did not specify when or how frequently the route had been used and most appeared to have been completed by visitors to the objector's or her family's retail premises at Nos. 7 and 8 Meeting House Court.
  23. It was also stated on behalf of the objector that there had been signs displayed on the route at various times. However, little specific detail of these was given, although signs stating 'No Cycles' and 'No Dogs' were mentioned as were signs relating to private parking and private property. No substantive evidence of signs restricting pedestrian access or stating that there was no right of way was presented.
  24. Some reference was also made to challenges that were said to have been made to users of the route. Again, no specific details were available but it appeared that challenges were made to people behaving in some sort of anti-social manner on the route rather than people merely walking along it.
  25. On the other hand, a seat was placed alongside the route close to Point C by the objector's father, and was considered by path users to be for the convenience of all passers-by and not only customers of his retail premises.

### *Conclusions regarding Statutory Dedication*

26. Although some use of the Order route appears to have taken place with permission of the owners of a section of it, a large amount of use also took place without permission having been sought or given and without any obstruction or challenge.
27. Overall, it is my view, on the balance of probability, that there was enough public use of the Order route as of right during the period from 1985 to 2005 to raise the presumption that it had been dedicated as a public footpath and the actions of landowners during that period were not sufficient to bring such use into question or to indicate a lack of intent to dedicate a public right of way. Accordingly, the route can be presumed to have been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

### **Common Law**

28. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
29. In this case, there is evidence that the public have used the Order route since the 1940s and there is no evidence that the owners of most of it have ever taken any action to discourage public use. However, the owners of the central section have since 2005 clearly indicated that they did not intend to dedicate a right of way. Prior to 2005 it seems that some steps were taken to avoid a public right of way being established but this was not made clear enough to users of the route. In addition, some action was taken by the same owners which could have been construed as encouraging public use, particularly the placing of a seat alongside the route.
30. Overall, it is my view that it could be argued that dedication of the Order route as a public footpath might be inferred at common law. However, in view of my conclusion regarding the statutory dedication of the route under the 1980 Act, I have not pursued this matter further.

### **Other Matters**

31. It was stated on behalf of the OMA that until relatively recently it is likely that users of the Order route probably did not follow the precise route marked on the Order Map. Until around 2010 the area immediately to the east of No. 8 Meeting House Court was open and used as a private car parking area in connection with the retail premises at that address. Accordingly, users probably walked diagonally south-eastwards across this area rather than following the southern wall of the Arts Centre to Point D and then turning south-eastwards. Now that part of the former parking area has been enclosed by a high stone wall to form the private garden of what is now a private residence at Nos. 7 and 8 Meeting House Court, the only route that could readily be made available to pedestrians is that shown on the Order Map.
32. It is logical that users of the route would normally have chosen to follow the most direct line across the open parking area rather than the slightly longer route shown on the Order Map and this is reflected in the way in which the route is marked on maps attached to UEFs. However, as the area was formerly used for car parking, it is likely that the actual route walked may have varied at

times to avoid vehicles. I have considered this matter carefully and it is my view that the route walked during the relevant period is not likely to have deviated from that shown on the Order Map by much more than 5m and then only for a short distance. Also, the route shown on the map would have been available and may have been used. In these circumstances, I regard the slight variation in the route as insignificant and do not think it is necessary to propose any modification of the Order.

33. It was stated by some users of the route that they had been misled into believing that, after work had been completed in connection with the conversion of retail premises at Nos. 7 and 8 Meeting House Court to residential use, a through pedestrian route would be re-opened. Signs displayed on the route had stated that closure was temporary and the application for permission for the change of use of the property had referred to a pedestrian route remaining. The objector herself confirmed that it had been her original intention to maintain the route as a permissive path but circumstances had subsequently changed. However, the planning application and consequent works commenced some time after 2005 and therefore have not affected my conclusions regarding the current Order. I also note that the maintenance of a through pedestrian route was not required as a condition of the planning permission granted.

### **Conclusions**

34. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

### **Formal Decision**

35. I confirm the Order.

*Barney Grimshaw*

**Inspector**

## **APPEARANCES**

### **For the OMA**

Andrew Parkinson Counsel, representing North Yorkshire County Council (NYCC)

#### Who called:

E Jane Barker	Path user, Councillor and past Chairman, Helmsley Town Council
Nicholas Boyes	Local resident and path user
Jean Gray	Local resident and path user
Nigel Gray	Local resident and path user
Timothy Cooper	Path user
Barry Marshall	Local resident and path user
Hilary Sinclair	Local resident and path user
Penny Noake	Principal Definitive Map Officer, NYCC

### **Supporters**

Julia Kershaw	Local resident and path user
Nicholas Gaunt	Local resident and path user
Les Hinchcliffe	Landowner
Paul Harris	Local resident and path user
Brian Hutchinson	Local resident and path user
Val Arnold	County Councillor
Steve Arnold	District Councillor

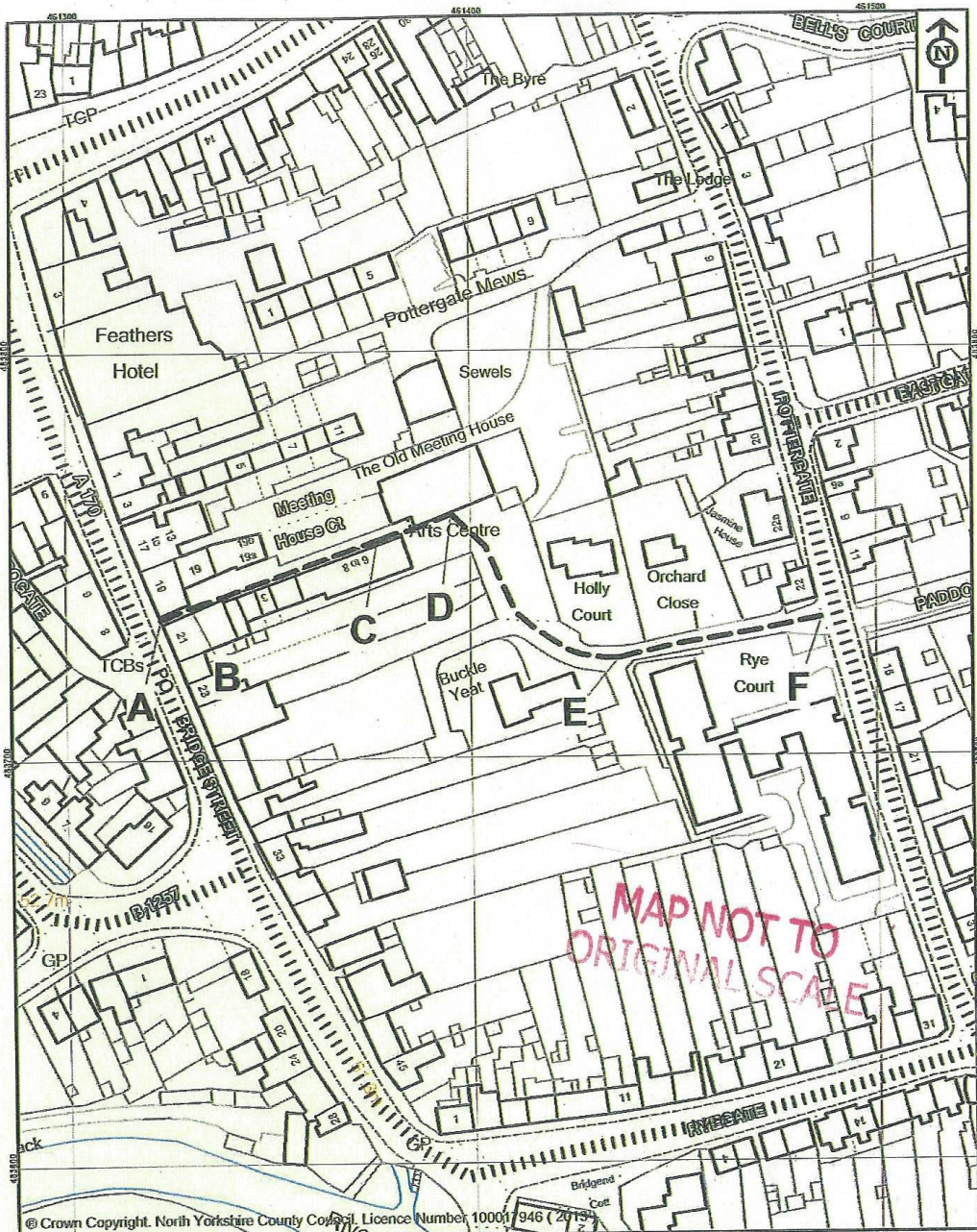
### **Objectors**

Pennita Wilshire	Landowner
Glennis Wilshire	Landowner
Hazel Harper	Local resident and path user


## **DOCUMENTS**

1. Statement of Case and supporting documents, NYCC.
2. Proof of Evidence of Russell Varley, NYCC (presented by Penny Noake).
3. Opening comments, NYCC.
4. Statement of EJ Barker.
5. Statement of Nicholas Boyes.
6. Statement of JE Gray.
7. Statement of Nigel Gray.
8. Statement of Timothy Cooper.
9. Statement of Barry Marshall.
10. Statement of Nicholas Gaunt.
11. Statement of Hilary Sinclair.
12. Statement of Paul Harris.
13. Copy of 'The Future of Helmsley' (October 1973).
14. Copy of Planning Conditions relating to planning Application No. 10/00753/FUL.
15. Copies of 2 photos of sign erected during building work (N Gaunt)





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 <p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton Tel 7 8444</p>	<p><b>Key:</b> Footpath to be recorded (A-B-C-D-E-F) ———— Other footpaths ———— Maintainable Highways      </p> <p>Map drawn on 26 June 2013 Drawn by R.I.V Scale 1:1250</p>	<p><b>North Yorkshire County Council</b> Wildlife and Countryside Act 1981 Section 53</p> <p><b>PUBLIC FOOTPATH No. 25.45/16, HELMSLEY, RYEDALE MODIFICATION ORDER 2013</b></p> <p>File Ref No. RYE/2012/04/DMMO</p>
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