



Order Decision

On papers on file

by Martin Elliott BSc FIPROW

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

Decision date: 02 March 2020

Order Ref: ROW/3218475

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Council of the City of York Public Footpaths in York (Westfield) Definitive Map Modification Order (No 4) 2010.
- The Order is dated 29 March 2010 and proposes to modify the Definitive Map and Statement for the area by adding 10 public footpaths as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the City of York Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. The Order as originally made proposes the addition of ten public footpaths to the definitive map and statement. Following its advertisement, one objection was received in relation to public footpath 101. No objections were received to the remainder of the Order. In consequence the Order was confirmed, in part, on 14 February 2011, in accordance with Paragraph 5 of the 1981 Act which allows severance of those parts of an order to which there are no objections.
2. The effect of the severed Order is to add public footpath 101 to the definitive map and statement. However, the Council take the view that there is insufficient evidence to show that the Order route subsists and do not support its confirmation.
3. The sole objection does not raise any issues which can be taken into account under the 1981 Act. Paragraph 7(2A) of Schedule 15 to the 1981 Act informs that where none of the representations or objections relate to an issue which the inspector is able to consider, there is no obligation on the Secretary of State to hold an inquiry.
4. I have come to a decision on this Order on the basis of the papers on file. I have not visited the site but am satisfied I can reach a decision without the need to do so.

The Main Issues

5. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of an event specified in section 53(3)(c)(i). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over the land in the area to which

the map relates. The test to be applied to the evidence is on the balance of probabilities.

Reasons

Documentary evidence

6. The Order route is not shown on any inclosure or tithe award or other historic maps.
7. Aerial photographs from 1936 to 1971 do not provide any evidence of a route. The aerial photographs show some buildings at the northern end of the route which the Council say are kennel buildings; these would have obstructed the route. The aerial photograph of 2002 shows that by that date the kennel buildings have disappeared and shows a worn line which corresponds with the Order route. The aerial photographs from 2007 and 2017 show a worn line which coincides with the Order route.
8. Aerial photographs show physical features on the day the photograph was taken but provide no evidence as to the use of any way. As such the aerial photographs do not evidence public rights on the Order route.
9. The Council say that historic maps available to them show that up to 1969 the northern end of the route ran through kennel buildings. However, by 1982 the Ordnance Survey map shows that the kennel buildings had disappeared. None of the Ordnance Survey maps show any route corresponding with the Order route.
10. The documentary evidence does not support the existence of a public footpath on the Order route.

Evidence of use

11. Correspondence from one individual suggests that this person has used the route frequently as a dog walker since 1973. No other evidence of use has been submitted. The Council say that they received occasional complaints regarding the condition of the stile 'in the north western corner of the field' although this is not on the Order route.
12. The evidence of use is insufficient to raise any presumption of dedication under section 31 of the Highways Act 1980. The evidence as a whole is also insufficient to raise any inference of dedication at common law.

Conclusion

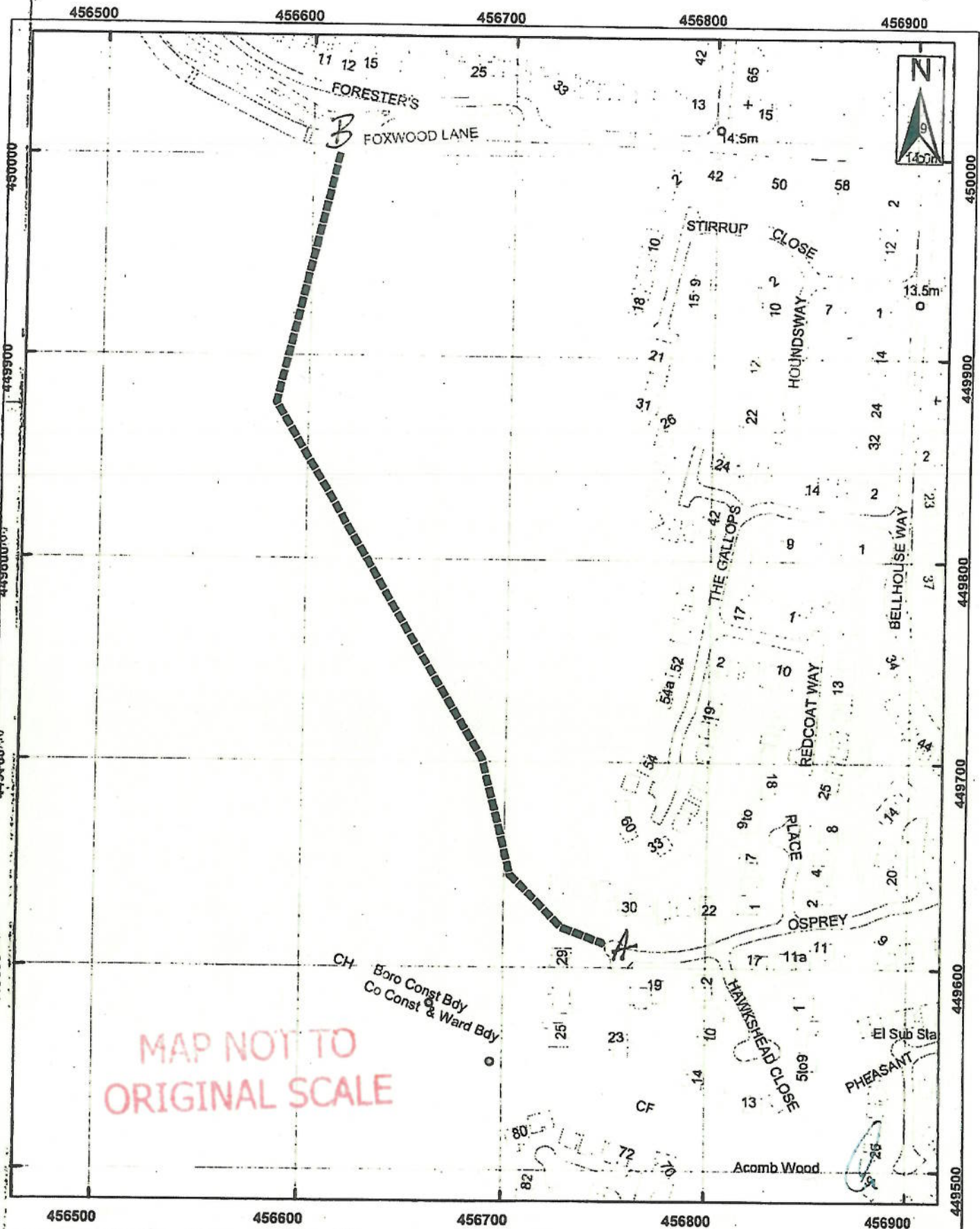
13. Having regard to these and all other matters raised in the papers on file I conclude that the Order should not be confirmed.

Formal Decision

14. I do not confirm the Order.

Martin Elliott

INSPECTOR



MAP NOT TO ORIGINAL SCALE



**York, Footpath No 101
(Westfield Ward)**

Scale 1:2,500 Drawn By: Date:

Public Rights of Way Reference: Drawing No.

9 St. Leonards Place, York, YO1 1PL
Telephone: 01904 613161

York (Westfield) Definitive Map Modification Order (No. 4) 2010 88

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