



## Order Decision

On papers on file

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 11 June 2020**

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### **Order Ref: ROW/3212379**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Footpath No 15.89/25, Black Bull Yard to Quaker Terrace, Masham Modification Order 2010.
- The Order is dated 29 September 2010 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when North Yorkshire County Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision.**

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### **Procedural Matters**

1. As noted above, there was one objection outstanding when the Order was submitted to the Secretary of State. That objection was withdrawn by letter dated 13 August 2019. The Order has therefore been determined following a consideration of the documents submitted in relation to it.
2. The Council have requested two modifications to the Order. The first relates to a typographical error in the preamble where it is stated that the Order has been made under section 53(2)(a) of the 1981 Act. As the event specified in section 53(3)(c)(i) which gave rise to the Order occurred after 28 February 1983, the Order should have been made under section 53(2)(b). I do not consider that any party would have been prejudiced by this technical error or that it would have misled anyone as to the purpose and intent of the Order. Consequently, I will make the modification as requested by the Council.
3. The second requested modification concerned the width and length of the footpath to be recorded by part 2 of the schedule. The Council is of the view that it was difficult to relate the different widths to any specific points on the route and that a consistent width of 2 metres along A – B and C – D would accurately represent the route used by the public. In relation to B – C, it is considered that a width of 1.6 metres would represent the width of the route which would have been used by the public and which would mitigate the impact on the current landowner. The Council had re-surveyed the Order route which required the amendment to its recorded length.
4. Advice Note 16 published by the Planning Inspectorate provides guidance on the recording of widths of public rights of way in Modification Orders. Paragraph 9 states: "*Determination of the width will, if not defined by any*

*inclosure award, physical boundary or statute, be based on evidence provided during the confirmation process, or, where there is no such clear evidence, the type of user and what is reasonable."*

5. Of the 19 user evidence forms submitted in support of the application, 17 provided an estimate of the width of the path they had used; these estimates varied between 1.5m and 3.04m. The Council's requested modifications appear to be more closely aligned with the user's evidence as to the width of the path used than the widths recorded in the Order as drafted. There is no documentary evidence in this case which would justify the widths set out in the Order, and the available user evidence suggests that the width of the footpath is much less than originally specified. I propose to modify the Order in the manner requested by the Council.
6. The ownership of part of the land over which the Order route runs is unknown; in consequence as part of the application process, the Council posted notice of the application on the land in accordance with Schedule 8 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993. A similar notice was not however served on the land when the Order was made, a process provided for by paragraph 3(4) to Schedule 15 of the 1981 Act.
7. Before the Order could be determined, the Council was required to post notices of the making of the Order with the appropriate period being allowed for further representations to be made. A representation was received from the new owners of the Black Bull Garage which is located in Black Bull Yard. Whilst no objection is made to the proposal contained in the Order, the new owners of the garage express their concerns at the works they understand are being proposed to ensure that the claimed footpath will be available for future public use.
8. The submissions made by the new owners of the garage led to two further representations being made by Mr White, the former owner of the garage and by Parish Councillor Rosemary Blades. I have taken these additional comments into account in reaching my decision.

### **The Main Issue**

9. The Order<sup>1</sup> has been made under Section 53(2)(b) of the 1981 Act in consequence of the occurrence of an event specified in Section 53(3)(c)(i).
10. Therefore, the main issue is whether the discovery by the authority of evidence which, when considered with all other evidence available, is sufficient to show that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates.

### **Reasons**

#### ***Legal Framework***

11. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist for an Order to be made, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required which demonstrates, on a balance of probabilities, that a right of way subsists.

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<sup>1</sup> As proposed to be modified

12. Dedication of a public right of way through a long period of use can be deemed to have occurred under Section 31 of the Highways Act 1980 ('the 1980 Act'). Section 31 provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that during that period the landowner had no intention to dedicate it. Use 'as of right' is use which has been without force, secrecy or permission.
13. 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, either by a notice or otherwise.

***The date of which the right of the public to use the footpath was brought into question***

14. It is the Council's case that that public use of the Order route was brought into question in 2006 by the submission of the application to record the route on the definitive map<sup>2</sup>. The barriers reportedly erected whilst construction work was being carried out on the site of the former cheese factory in 2004/2005 did not obstruct the route as users were able to move them to one side. Although there is evidence of the existence of gates at point B during the 1980s, there is no evidence that they were locked or closed to prevent access from Black Bull Yard to Quaker Terrace. Accordingly, the relevant 20-year period is 1986 to 2006.

***Whether the claimed footpath was used by the public for a period of not less than 20 years ending on the date the public's right to do so was brought into question***

15. Twenty-five user evidence forms were submitted in support of the application, of which the Council had discounted six. Of the remaining nineteen forms, eleven respondents claimed use of the Order route throughout the relevant 20-year period with the remainder claiming use for varying other periods during that time. These eleven users also claimed to have commenced their use prior to 1986, with one user having commenced use in 1920 and seven demonstrating use in excess of fifty years prior to 2006.
16. Use of the Order route was for a variety of purposes; for access to and from work premises off Quaker Terrace; for access from Silver Street and Leyburn Road to Park Square and the facilities located there. None of those claiming use recalled having been prevented from doing so or had been challenged in their use by anyone purporting to be the owner of the land.
17. No representations were received which questioned the evidence of use of the claimed footpath which extends back to the 1920s. There is no evidence before me that the claimed use was other than 'as of right'; that is, without force, secrecy or permission or that such use had been interrupted.

***Whether there is sufficient evidence that there was during the 20-year period under consideration no intention to dedicate the claimed right of way***

18. Gates were erected at point B in 2007 in the opening in the wall of the former industrial premises. I understand that these gates remain in place and prevent access between Black Bull Yard and Quaker Terrace over what are now the

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<sup>2</sup> Section 31 (7A) and (7B) of the 1980 Act

outside amenity spaces of two dwellings. However, as these gates were erected after public use of the footpath was brought into question, they have no bearing upon the question of interruption of public use during the relevant 20-year period nor do they serve as evidence of a lack of intention to dedicate on the part of the landowner during that period.

19. There is no evidence that the owner of the land crossed by the claimed footpath (whoever he, she or they, may have been) had taken any action during the relevant 20-year period to demonstrate to those using the path that there was no intention to dedicate the Order route as a public right of way.

### **Conclusion on statutory dedication**

20. Having examined all the available information regarding the presumed dedication of the Order route as a public right of way, I conclude that the evidence discovered by the Council is sufficient to show use of the way on foot by the public as of right and without interruption throughout the period between 1986 and 2006. The evidence is therefore sufficient to raise a presumption that the way has been dedicated as a public footpath. There is no evidence that during that period, the owner of the land demonstrated a lack of intention to dedicate which would rebut that presumption.

### **Other matters**

21. The new owner of Black Bull Garage supports the re-opening of the claimed footpath but understands that in order to make the footpath available for public use, a proposal has been made to make a further opening in the wall to the east of the existing gates. The new owner of the garage submits that the wall and the building which now houses the garage business pre-date 1850 and are located within the Masham Conservation Area. Furthermore, the area to the east of the gates has been used for parking associated with the garage business for at least 40 years.
22. Support is given to the re-opening of the access between Black Bull Yard and Quaker Terrace through the existing gateway which has been blocked since 2007. It is submitted that there is no justification for the proposed deviation of the route away from the existing gateway or for the demolition of part of the wall to create a separate entry or exit point.
23. Although the submissions and comments of the new owner of the garage were circulated, no comments on those representations were made by the Council. I have therefore no information regarding what is being considered in order to make the Order route available for public use once more. The evidence before me is that the public travelled between Black Bull Yard and Quaker Terrace via the opening in the wall which was available to them; this being the opening which is obstructed by the gates erected in 2007.
24. Should a proposal be made to create an alternative means of access to and from the path at a point in the wall to the east of the existing gateway, any consents which would be necessary for works within the conservation area would need to be obtained. As the suggested opening to the east of the gateway used by the public would not be located on the route deemed to have been dedicated, diversion of that line is likely to be required under the provisions of section 119 of the 1980. However, consideration of these matters is not within my remit which is limited to a determination as to whether a

public right of way can be deemed to have been dedicated and whether the definitive map and statement requires modification in consequence.

### **Overall conclusions**

25. Having regard to these and all other matters raised in the papers before me I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

26. I confirm the Order subject to the following modifications;

in the preamble to the order, first line, amend "Section 53(2)(a)" to read "Section 53(2)(b)";

in the Schedule, part 2 amend the columns headed "Length (km)" and "Width (m)" to show:

- (i) the path between GR 42231 48081 and GR 42237 48084 as having a length of 0.070Km at a width of 2.0m;
- (ii) the path between GR 42237 48084 and GR 42237 48086 as having a length of 0.021Km at a width of 1.6m;
- (iii) the path between GR 42237 48086 and GR 42245 48088 as having a length of 0.085Km at a width of 2.0m
- (iv) amend the total length of the path to 0.176Km.

*Alan Beckett*

Inspector



**NORTH YORKSHIRE COUNTY COUNCIL**

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE FORMER NORTH RIDING OF YORKSHIRE DEFINITIVE MAP AND STATEMENT**

**FOOTPATH NO 15.89/25, BLACK BULL YARD TO QUAKER TERRACE, MASHAM  
MODIFICATION ORDER 2010**

This Order is made by North Yorkshire County Council under Section 53(2)(a) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that The Former North Riding of Yorkshire Definitive Map and Statement require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) of the Act, namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to Section 54A, a byway open to all traffic.

The authority have consulted with every local authority whose area includes the land to which the Order relates. North Yorkshire County Council hereby order that:-

1. For the purposes of this Order the relevant date is 14 September 2010.
2. The Former North Riding of Yorkshire Definitive Map and Statement shall be modified as described in Part 1 and Part 2 of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as "Footpath No 15.89/25, Black Bull Yard to Quaker Terrace, Masham Modification Order 2010".

**SCHEDULE**

**PART 1**

**MODIFICATION OF DEFINITIVE MAP**

**DESCRIPTION OF PATH OR WAY TO BE ADDED**

<b><u>Section of Footpath as shown on the attached map</u></b>	<b><u>Description</u></b>
Marked by a bold broken black line and shown as A – B – C – D.	The route commences at the northern junction of Public Footpath No 15.89/19 at Point A (Grid Reference 42231 48081) and heads in an easterly direction along Black Bull Yard for approximately 69 metres to Point B (Grid Reference 42237 48084), then the route continues in a northerly direction for approximately 21 metres to Point C (Grid Reference 42237 48086) and continues in an easterly direction along Quaker Terrace for approximately 90 metres to Silver Street at the finish point of the route at Point D (Grid Reference 42245 48088).

**PART 2**

**MODIFICATION OF DEFINITIVE STATEMENT**

**PARTICULARS OF PATH OR WAY TO BE ADDED**

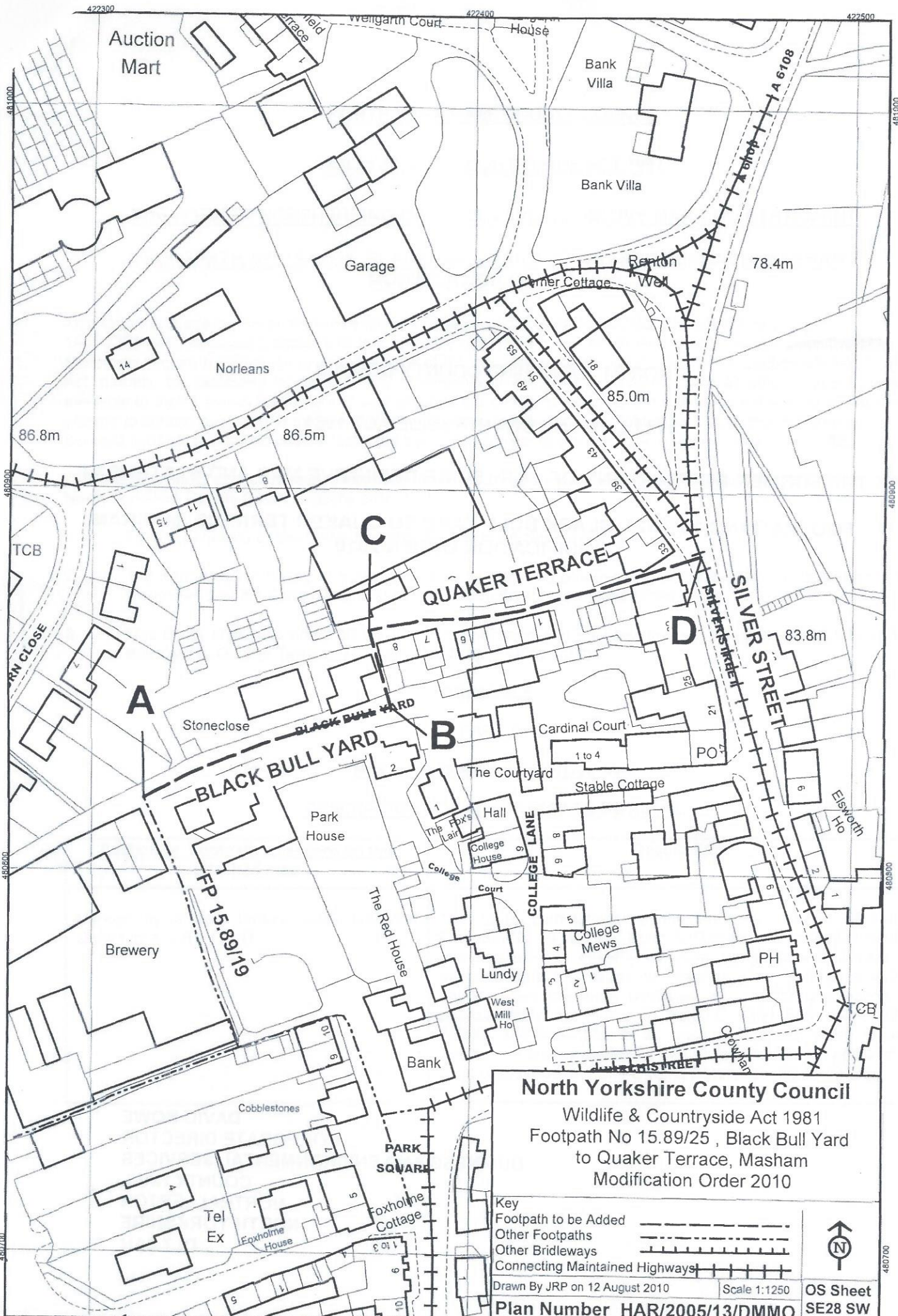
<u>Path Number</u>	<u>Grid Reference End Points</u>	<u>Description</u>	<u>Nature of Surface</u>	<u>Length (km)</u>	<u>Width (m)</u>	<u>Lawful Obstructions and Conditions</u>
15.89/25	42231 48081 (Start)  42245 48088 (End)	The route commences at the northern junction of Public Footpath No 15.89/19 at Grid Reference 42231 48081 and heads in an easterly direction along Black Bull Yard for approximately 69 metres to Grid Reference 42237 48084, then the route continues in a northerly direction for approximately 21 metres to Grid Reference 42237 48086 and continues in an easterly direction along Quaker Terrace for approximately 90 metres to Silver Street at the finish point of the route at Grid Reference 42245 48088.	Crushed Stone/ Tarmac	<del>0.000</del>  <del>0.027</del> <b>0.070</b> <del>0.043</del>  0.021  <del>0.037</del>  0.053  <b>0.085</b>  Total <del>0.181</del> <b>0.176</b>	<del>4.8</del>  <del>8.1</del> <b>2.0</b> <del>21 &gt; 2.4</del>  <b>1.6</b> <del>6.4</del> <del>2.7</del>  <del>2.7</del>  <b>2.0</b>	None

THE COMMON SEAL of NORTH )  
 YORKSHIRE COUNTY COUNCIL )  
 was hereunto affixed this 29<sup>th</sup> day )  
 of September 2010 in the presence )  
 of:- )







*[Handwritten Signature]*  
**AUTHORISED  
 SIGNATORY**





**North Yorkshire County Council**  
 Wildlife & Countryside Act 1981  
 Footpath No 15.89/25, Black Bull Yard  
 to Quaker Terrace, Masham  
 Modification Order 2010

Key  
 Footpath to be Added   
 Other Footpaths   
 Other Bridleways   
 Connecting Maintained Highways 

Drawn By JRP on 12 August 2010      Scale 1:1250      OS Sheet SE28 SW

**Plan Number HAR/2005/13/DMMO**