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## Order Decision

Site visit made on 2 December 2020

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

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

**Decision date: 21 December 2020**

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### **Order Ref: ROW/3240185**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Public Footpaths 15.95/6 (Part) and 15.95/11, Moor Monkton Modification Order 2014.
- The Order is dated 29 July 2014 and proposes to modify the Definitive Map and Statement for the area by deleting a footpath running on the north side of a drainage ditch and boundary between Scagglethorpe Lane and Woodhouse Bridge and adding a footpath on the south side of the same ditch and boundary, as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding when North Yorkshire County 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 modifications that do not require advertising.**

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### **Procedural Matters**

1. I made a site inspection on 2 December 2020 when I was accompanied by Mr R Allan, North Yorkshire County Council, Mr S Grice, applicant, Mrs S Luman, supporter, and Mr T Parker, objector. I was able to walk the whole of the path proposed to be deleted and to view the route of the path proposed to be added.
2. The Order was made following a direction by the Secretary of State after North Yorkshire County Council, the Order Making Authority (OMA), had refused to make an order in response to an application. The OMA has subsequently chosen to oppose the confirmation of the Order.
3. 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**

4. With regard to the addition of the claimed right of way, the requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (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.
5. Some of the evidence in this case relates to usage of the claimed 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.

6. 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.
7. With regard to the deletion of the existing right of way, the requirement of Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that there is no public right of way over land shown on the definitive map and statement as a highway of any description.

## **Reasons**

### ***Path proposed to be added***

8. In addition to the documentary evidence referred to later, evidence of public use of the claimed path has been submitted which could lead to a presumption of dedication of the route as a public right of way in accordance with the provisions of the 1980 Act (Statutory Dedication) or an inference of dedication at Common Law.

### *Statutory Dedication*

9. It is accepted by all parties that public use of the claimed path was brought into question in 2011 when the landowner erected substantial fences across both ends of the route. In addition, the landowner claims to have challenged some users of the path in 2010 although all of the users providing evidence state that they were not challenged and it seems that these challenges were insufficient to bring public use into question. In my view, the relevant 20 year period which would raise a presumption that the route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act runs from 1991 to 2011 in this case. However, I have also considered the period 1990 to 2010.
10. Twenty-five User Evidence Forms (UEFs) were submitted in support of this part of the Order describing use of the claimed path from 1946 until 2011. Nineteen people claimed to have used the route throughout the 20 year period 1991-2011 and a further 5 for part of that period.
11. The frequency of use varied but most people who completed UEFs claimed to have used the path at least 10 times per year. Users claimed they had never been challenged or prevented from using the route. However, three people who completed UEFs had connections with the landowner and it could be argued that their use may have been permissive rather than 'as of right' as required by the 1980 Act.
12. The evidence of use in the period 1990 to 2010 is very similar to that from 1991 to 2011.

13. An aerial photo taken in 2011 and another photo from the same year show a clearly defined trodden path.
14. It is suggested by an objector that the route to the south of the boundary was only used because the route to the north was obstructed and that its use should not therefore contribute to a presumption of dedication. It is disputed that the route to the north was obstructed but, in any event, there is no right for path users to deviate on to land in another ownership to avoid an obstruction and I therefore do not discount any of the claimed use of the southern route.
15. The former owner of the land crossed by the claimed path from 1965 until 2010 has stated in a letter that in 1965 the (definitive) line of the footpath had been fenced off at Woodhouse Bridge. He was aware that walkers used the claimed route but took no action to prevent such use.
16. The current owner of land to the south of the boundary states that he owned the land to the north from 1977 to 1981 and that during that time there was a beaten track along the northern route, stiles at Points C and D and a plank bridge over a shallow ditch at Point B. This would suggest that the northern route was in use at that time but there is little other evidence available of use of this route.

#### *Common Law*

17. 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.
18. In this case, there is evidence of public use over a long period of which the landowner between 1965 and 2010 was aware but took no action to discourage.

#### *Conclusions regarding the path proposed to be added*

19. It is my view that the available evidence of public use of the claimed route during the 20 year period 1991 to 2011 raises the presumption that the route has been dedicated as a public footpath and that there is not sufficient evidence of action by landowners during the same period to indicate a lack of intention to dedicate a public footpath which would rebut this presumption. In addition, as the route appears to have been used for a considerable period with the knowledge of the landowner without any action being taken to discourage public use it can also be inferred that it has been dedicated as a public footpath at common law.

#### ***Path proposed to be deleted***

20. It is claimed by the applicant for the Order that this path was included in the definitive map in error. Definitive maps are normally regarded as providing conclusive evidence of rights of way. Nevertheless, the 1981 Act provides for orders to be made to delete ways if evidence shows they did not exist at the time they were added to the map. Official guidance<sup>1</sup> states that the evidence that is needed to justify such a deletion must satisfy certain requirements:

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<sup>1</sup> Rights of Way Circular 1/09, Defra, October 2009.

- *"The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
- *The evidence must be of sufficient substance to displace the presumption that the definitive map is correct.*
- *The evidence must be cogent."*

21. The evidence now available in this case must therefore be assessed in the light of these requirements.

#### *The Definitive Map*

22. The current definitive map shows this Order route as a footpath on the north side of the boundary. The original map was prepared following parish surveys carried out in the 1950s. In the survey for Moor Monkton, Bridleway 6 was recorded terminating at the northern end of Scagglethorpe Lane but no right of way of any sort running eastwards from there was recorded.
23. The county council then wrote to the district council requesting further consideration be given to various routes which had not been included in the first parish survey. No records of further surveys that were carried out are available but when the draft definitive map was published in 1953 it appears to have showed a route on the north side of the boundary (A-B-C-D on the Order Map) as a bridleway but as a straight line with no deviation near Woodhouse Bridge. However, the scale of the map and the thickness of lines makes detailed interpretation impossible. No reference to the route was included within the accompanying statement. It is not known on what basis the route was first shown on the definitive map or what evidence was then taken into account.
24. Then, in 1955, the county council wrote to the parish council stating that the route should be downgraded to footpath and subsequently the definitive map was published showing the route as a footpath. Again, no deviation from a straight line is apparent at Woodhouse Bridge.

#### *Ordnance Survey (OS) maps*

25. The OS 6" to 1 mile scale maps dated 1852, 1895, 1910 and 1952 all show Woodhouse Bridge and the boundary between fields in their present locations as does the 1:10000 scale map dated 1958 but none of these maps shows a route on the line of either of the Order routes.
26. However, an OS 1:10000 scale map dated 1970 shows a fenced track immediately to the south of the boundary but no route to the north as does a 25" to 1 mile map revised in 1967. In addition, OS Pathfinder series 1:25000 scale maps dated 1959-70 and 1990 show the track to the south of the boundary carrying a public footpath and no route to the north.
27. The applicant states that copies of OS maps dated 1946 and 1974 were submitted to the OMA and that these clearly show the route on the south side of the boundary. The OMA has not referred to these maps in evidence and I have not seen them.
28. OS maps are generally regarded as providing good evidence of features that were present on the ground at the time they were surveyed but most do not

claim to indicate the status of routes shown. However, the Pathfinder series maps do show public rights of way which should be those shown on the definitive map. It is therefore unusual for such maps to differ from the definitive map as appears to be the case here. It is possible that the difference arose because the definitive map was not clear and the only route visible on the ground was on the south side of the boundary.

### *Other Evidence*

29. The applicant submitted copies of extracts from several walks leaflets describing walks which include the Order route. These include '100 Walks in Yorkshire (Eastern)' (not dated), 'Walks in York, Nether Poppleton', published by York City Council (not dated), 'Walks in the Vale of York', published by the Ramblers Association York Group in 1977, and a walk card describing a walk 'Nether Poppleton and Red House' (not dated). The descriptions in all of these state that the path runs on the south side of the hedge between Woodhouse Bridge and Scagglethorpe Lane. These documents would suggest that the claimed route rather than the definitive route had the reputation of being the public footpath.
30. There is a footpath sign close to the western end of the Order routes which appears to point towards the north side of the boundary. It is not known how long this sign has been in place or whether it has always pointed the same way. In any event, its significance is perhaps limited as it would be logical for a sign to indicate the route shown on the definitive map.
31. The applicant has stated that his late wife's family farmed the land on the north side of the boundary from 1945 to 1965 as tenants and from 1965 to 1974 as owners and said that no one walked on the north side of the boundary. It is also argued that it would have been illogical for the route to be on the north side of the boundary, particularly as a bridleway, as this would mean crossing two ditches and sharp changes of direction near Woodhouse Bridge. On the other hand, south of the boundary there was a straight flat route available.

### *Conclusions regarding the path proposed to be deleted*

32. The available evidence is to some extent inconsistent and it is not known what was taken into account during the preparation of the first definitive map. However, it is my view, on the balance of probabilities, that, if all the evidence now available had been considered at that time, the right of way would not have been recorded on the north side of the boundary. It follows that it should now be deleted.

### **Other Matters**

33. The OMA has requested that, if the Order is confirmed it be modified to replace references to Path No. 15.95/6 with Path No. 15.95/10. I see no reason why such a modification would prejudice any party's interests and therefore propose to make the requested modification.
34. An objector states that he has an electricity supply cable which runs beneath the claimed route to the south of the boundary and he is concerned that access to this will become more difficult if the route is recorded as a public footpath. I understand this concern, but it is not a matter to which I can attach weight in reaching my decision. I also note that it is not uncommon for services of various kinds to run beneath highways.

### **Conclusions**

35. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modification mentioned above.

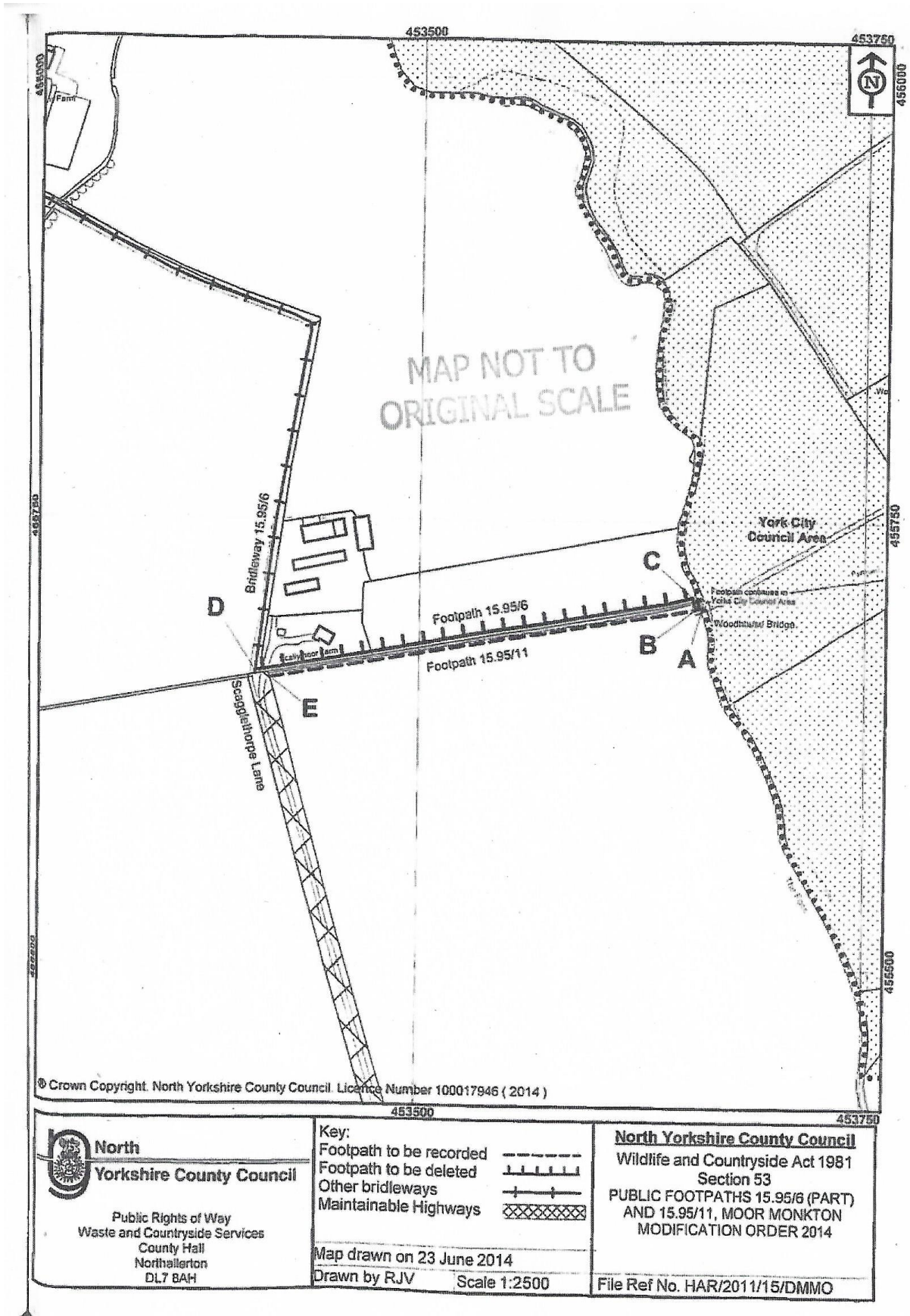
### **Formal Decision**

36. I confirm the Order subject to the following modification:

In the Order, the Schedule to the Order and the Order Map, replace reference to Path No. 15.95/6 with Path No. 15.95/10.

*Barney Grimshaw*

**Inspector**



<p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p><b>Key:</b></p> <p>Footpath to be recorded <span style="border-bottom: 1px dashed black; width: 50px; display: inline-block;"></span></p> <p>Footpath to be deleted <span style="border-bottom: 1px dotted black; width: 50px; display: inline-block;"></span></p> <p>Other bridleways <span style="border-bottom: 1px solid black; width: 50px; display: inline-block;"></span></p> <p>Maintainable Highways <span style="border-bottom: 1px solid black; width: 50px; display: inline-block; background-image: linear-gradient(to right, transparent 49%, black 49%, black 51%, transparent 51%); background-size: 4px 4px;"></span></p>	<p><b>North Yorkshire County Council</b></p> <p>Wildlife and Countryside Act 1981 Section 53 <b>PUBLIC FOOTPATHS 15.95/6 (PART) AND 15.95/11, MOOR MONKTON MODIFICATION ORDER 2014</b></p>
<p>Map drawn on 23 June 2014</p> <p>Drawn by RJV</p>		<p>Scale 1:2500</p> <p>File Ref No. HAR/2011/15/DMMO</p>