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## Order Decision

Site visit made on 18 January 2021

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

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

**Decision date: 04 February 2021**

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### **Order Ref: ROW/3251400**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Restricted Byway Copmanthorpe 8 Modification Order 2020.
- The Order is dated 22 January 2020 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding when the Council of the City of York submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.**

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### **Procedural Matters**

1. I made an unaccompanied site inspection on Monday 18 January 2021 when I was able to walk most of the Order route and view the remainder.
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 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.
4. Some 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.

6. As this Order is concerned with a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

### **Reasons**

7. The Order route comprises 3 sections, annotated A-B, C-D and E-F on the Order Map which are linked by adopted highways (B-C and D-E).
8. Both documentary and user evidence has been submitted in support of this Order. I deal with the two types of evidence separately.

### **Documentary Evidence**

#### *Inclosure Award*

9. In the Copmanthorpe Inclosure Award (1843) the Order route was awarded as a Private Carriage Road known as '*York Field Occupation Road*' with a width of 25'. The Award further directed that 2 residents of the parish be appointed as surveyors of the private carriage roads and public drains each year and that they should use revenue from the sale of herbage from the verges of the private carriage roads towards the repair of the roads and public drains and bridges thereof.
10. I have not seen a copy of the Award itself only an extract from it and therefore do not know if any pre-existing rights were extinguished by it. However, this would not have been unusual. It is argued on behalf of the City of York Council, the Order Making Authority (OMA), and supporters of the Order that the description of the route as 'private' in the Award did not necessarily mean that the public were not allowed to use it. The Award did not identify who was entitled to use the route as was often the case in such awards and it is suggested that the appointment of local residents as 'surveyors' indicated a public maintenance liability for the route. However, the Award also seems to state that the 'surveyors' should also be people with an interest in the land to be allotted and enclosed.
11. The route is named as '*York Field Occupation Road*' and appears to terminate at a plot boundary to the east of the railway. It does not appear to have been part of a through route. Its purpose would therefore appear to have been solely to provide access to the land adjoining it, as is normal for an 'Occupation Road'. The adjoining plots were allotted to various different people but there would seem to be no reason why the route would have been used other than to access fields. The arrangements in the Award for the maintenance of the private carriage roads awarded do not in my view necessarily indicate that the Order route was for public use.
12. On balance, it is my view that it cannot be assumed in this case that it was the intention in the Award that the Order route should be a public road.

#### *Other Documents*

13. Some early commercial maps show the Order route. White's map (1785) shows the route partly as a '*Private or Occupation Road*' and partly as an '*Open or uninclosed Road*'. Greenwood's map (1817) shows a stub of the route as a

'Cross Road' and Fowler's map (1834) also shows a stub of the route as a 'Cross Road'. These maps indicate the existence of a route at the time they were surveyed but do not state the status of it and two of them do not show the alignment of the route.

14. The Copmanthorpe Tithe Map (1839) shows the Order route apparently excluded for the purpose of tithe payment. This indicates the fact that it was not regarded as occupying productive land and although this is the manner in which public roads would have been shown, private routes could also diminish the productive value of land for the assessment of tithe.
15. Records drawn up by the York and North Midland Railway Company in 1836 relating to what is now the East Coast Main Line show the Order route but do not indicate its status. Later records relating to the upgrading of the railway, dated 1900, describe the Order route as an 'Occupation Road'. These records indicate the route crossing the railway, but the crossing no longer exists and the route is blocked at the edge of the railway. I have seen no evidence of any formal procedure to close the crossing as would have been necessary if it had been regarded as a public route of any sort.
16. Ordnance Survey (OS) maps from 1858 onwards consistently show the Order route. It is shown as an enclosed track and named 'Yorkfield Lane'. These maps provide good evidence of features that existed on the ground when they were surveyed but cannot be relied upon to indicate the status of routes shown. Although surveyors were instructed only to include paths if they were in obvious use by the public, the maps included a disclaimer stating that routes shown were not necessarily public rights of way.

#### *Conclusions regarding Documentary Evidence*

17. The documentary evidence shows that the Order route may have existed for over 200 years. In 1843 it was awarded as a private carriage road which appears to have led only to agricultural land in various ownerships and it seems logical to assume that it was intended to serve as an 'occupation road' to provide access for the adjoining landowners. Other documentary evidence is consistent with this interpretation.
18. On balance, it is my view that the documentary evidence available does not indicate the existence of any public rights over the Order route. Accordingly, the determination of this Order depends on the evidence of public use of the claimed route that is available and whether this indicates that a public right of way can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred to have been dedicated at common law.

#### **Statutory Dedication**

19. I have seen no evidence of any event which brought public use of the route into question before the submission of the application for it to be recorded as a public right of way in 2005. It also appears that a locked gate was erected across the route at Point C around the same time or soon after. Accordingly, it is my view, that the relevant 20 year period which would raise a presumption that the route has been dedicated as a public right of way in accordance with the provisions of the 1980 Act runs from 1985 to 2005 in this case.

20. There is also a gate with a gap at the side close to Point A. This is said to be situated in part of the adopted highway rather than the Order route but appears to be intended to restrict use of the route to pedestrians.
21. Fourteen User Evidence Forms (UEFs) were submitted in support of the Order describing use of the route by 15 people. All of these claimed to have used the route on foot and 4 had also cycled along it.
22. Most people claimed to have used the route between the late 1990s and 2005 and only two had used it before the early 1990s. Most people also claimed to have used the route to visit the school and/or village centre from their homes which suggests use of the sections A-B and C-D but not necessarily E-F.

#### *Conclusions regarding Statutory Dedication*

23. The evidence of public use of the Order route throughout the relevant 20 year period is not sufficient to raise a presumption that the route can be presumed to have been dedicated as a right of way of any sort in accordance with the provisions of the 1980 Act.

#### **Common Law**

24. 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.
25. In this case, the ownership of the land crossed by the claimed route is not known despite efforts having been made to ascertain the identity of the owner.
26. As previously stated, the route has existed for a long time and when the area was developed for housing in the 1970s the route was left undeveloped except for two sections which were used for estate roads (B-C and D-E).
27. It would appear that since the houses were built the route has been used as a means of access to the local school and the village centre at least between points A and E. This use appears to have continued to the present day. On my visit I noted that the section A-B appeared well used. Section C-D was obstructed by gates and overgrown but is by-passed by a paved footpath which I observed being used. Section E-F also appeared to be well used but this is somewhat puzzling as it is a cul de sac terminating at the railway where it is blocked by a fence and overgrowth. However, there were signs that users may have continued parallel to the railway at the edge of an adjoining field where there is no recorded public right of way.
28. I have seen no evidence of any action taken by an owner of the land crossed by the claimed route to discourage or prevent public use.
29. Overall, it is my view that, as the land crossed by Section A-B of the Order route was left undeveloped when the surrounding land was developed for housing and the public appear to have used it for 40 years or more without any obstruction, it is reasonable to infer the dedication of public rights over it. However, public use seems to have been primarily on foot and therefore it should now be recorded as a public footpath.
30. Similar consideration might have applied to the section C-D, but it appears that this has been obstructed since around 2005, although probably not by an

owner of the land. There is however a paved footpath running parallel to this section which appears from OS maps to have been present since the 1980s. People currently use this path and may well have done prior to 2005 in preference to the unsurfaced Order route. On balance therefore it is my view that the evidence of public use that I have seen is not sufficient for it to be inferred that this section of the Order route has been dedicated as a public right of way of any sort at common law.

31. With regard to the section E-F the situation is somewhat different. Although I saw some evidence of use on my visit, it is not clear on what basis this use had taken place nor for how long it had been going on. The other evidence of public use that is available does not indicate significant use of this section and, as it is a cul de sac section, there would seem no similar reason for it to be used such as would apply to other sections. I therefore do not think it reasonable to infer that this section has been dedicated as a public right of way of any sort.

### **The 2006 Act**

32. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. However, as I have concluded that such rights have not been shown to subsist in this case, no further consideration of the Act is necessary.

### **Conclusions**

33. Having regard to these and all other matters raised, I propose to confirm the Order modified so as to describe section A-B of the Order route as a public footpath and to delete reference to other sections of the route.

### **Formal Decision**

34. I propose to confirm the Order subject to the following modifications:

Amend all references to '*Public Restricted Byway Copmanthorpe 8*' to read '*Public Footpath Copmanthorpe 8*';

In the Schedule to the Order, Part I, delete references to sections C-D and E-F;

In the Schedule to the Order, Part II, delete references to sections C-D and E-F (GR SE 5696 4717 to GR SE 5700 4720 and GR SE 5707 4727 to GR SE 5729 4745);

Amend the Order Map accordingly.

35. The proposed modifications would have the effect of not showing part of a way that is shown in the Order and of showing as a highway of one description part of a way which is shown in the Order as a highway of another description. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modifications.

*Barney Grimshaw*

**Inspector**

Copmanthorpe 8 Modification Order

