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## Order Decisions

Site visit made on 28 November 2017

**by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

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

**Decision date: 05 April 2018**

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### **Order Ref: ROW/3172209 (known as Order A)**

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the East Riding of Yorkshire Council (Woodmansey Footpath No 19) Public Path Extinguishment Order 2016.
- The Order is dated 26 October 2016 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when the East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

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### **Order Ref: ROW/3172200 (known as Order B)**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the East Riding of Yorkshire Council (Woodmansey Footpath No 12) Public Path Diversion Order 2016.
- The Order is dated 26 October 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when the East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

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### **Procedural Matters**

1. The Council appears to view the objections by the owners of Park Grange Farm and the Old Granary as not validly made, at least that seems to be the approach taken in its report seeking authority to submit the Orders for confirmation. However it is clear to me from the owners' letters prior to submission that they object to the changes proposed in both Orders. I accept that in these proceedings no objection can ultimately be sustained to the proposed dedication agreement whereby a new public path would be created if FP No 19 is extinguished. However the objections are clearly stated and not withdrawn, including those to the diversion of FP No 12, and I deal with them on their merits as discussed further below.
  2. When I visited, a footbridge was missing at Beverley Parks Sewer on the route of FP No 12 and the Council had erected notices advising the public of the unavailability of the public right of way. The route also crosses a garden pond and a stretch of open water. Although the existing route is not fully available
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for use, I was able to compare the existing and alternative routes. My decision assumes that the existing route is available to the public to its full legal extent.

### **Background to the Orders**

3. Following investigations in connection with temporary public path diversion orders relating to the construction of the Minster Way relief road, it was found that it was not possible to walk FP No 12 on the ground. Negotiations began to find an alternative route but the landowners were not all in agreement. The Orders represent what the Council, as Order Making Authority (OMA) deems the most acceptable of the alternative routes.
4. With regard to the proposed extinguishment of FP No 19, a cul-de-sac route ending at Ivy House Farm, the landowner has agreed to the creation of a new footpath to the side of the field and parallel to the Hull to Scarborough railway line, forming a link between FP No 12 and Long Lane. The path to be created is on the line of an existing tarmac track giving access to Park Grange Farm and the Old Granary. The owners of these residential properties have raised concerns as to the dedication of this land as a new public right of way. However as the power to dedicate the land lies with the landowners, RFB Trustees One Limited and RFB Trustees Two Limited, any concerns in this regard are not relevant to the issues to be considered under the requirements of s118 of the 1980 Act. I will also make clear that as it is established law that conditional creation agreements should not be taken into account when assessing the expediency of extinguishing a public right of way under a s118 order, I have not taken the agreement into account in my reasoning below.

### **Main Issues**

#### **Order A**

5. Section 118 (2) of the 1980 Act requires that before confirming the Order I should be satisfied that it is expedient to stop up the footpath in question having regard to the extent that it appears that it would, apart from the Order, be likely to be used by the public; and that I should consider the effect which the extinguishment of the rights of way would have as respects land served by the path, account being taken of the provisions as to compensation.

#### **Order B**

6. The Order is made in the interests of the owner of the land crossed by the current line of FP No 12. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
  - a) it is expedient, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public that the line of the path in question should be diverted;
  - b) the footpath will not be substantially less convenient to the public;
  - c) it is expedient to confirm the Order having regard to its effect:
    - (i) on public enjoyment of the path as a whole; and
    - (ii) the effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over

which the new path is created together with any land held with it, having regard to the provisions as to compensation.

### **Orders A and B**

7. In determining whether or not to confirm the Orders, sections 118 (6A) and 119 (6A) of the 1980 Act require that I consider any material provision of a rights of way improvement plan (ROWIP) of any local highway authority whose area includes land affected by the Orders.
8. I also need to consider the impact if any of the proposed diversion on the needs of agriculture and forestry, biodiversity and natural beauty of the area.<sup>1</sup>

### **Order A**

*The extent to which the footpath would, apart from the Order, be likely to be used by the public*

9. FP No 19 is a cross-field path through to Ivy House Farm where the right of way terminates in a cul-de-sac. The route is not visible across the field.
10. As the route of FP No 19 leads only to Ivy House Farm where it ends, it seems unlikely that it would continue to be publicly used to any great extent, indeed I have no evidence that it is so used or needed. I conclude that the footpath is likely, apart from the Order, to be used to a very limited extent if at all.

*The effect which the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation*

11. No issue of compensation has arisen in connection with the Order. The extinguishment will remove the maintenance responsibilities of a cross-field path. There is no evidence before me from which I could conclude that extinguishment of FP No 19 would have any adverse effect in respect of this requirement of s118.

### **Conclusion – Order A**

12. I conclude that the requirements of section 118 (2) which are set out in paragraph 4 above are met in respect of this Order, and that it is therefore expedient that it be confirmed.

### **Order B**

***Whether it is expedient, in the interests of the owner or occupier of land crossed by the path that the footpath in question should be diverted***

13. The existing route of FP 12 crosses the middle of a paddock, a working field and two bodies of water. Although the owners of Park Grange Farm and the Old Granary object to the proposed diversion, if the Orders are confirmed the Council contends that they will be the main beneficiaries in that they will no longer have any public rights of way on their land.
14. Furthermore there are other landowners who support the Order, including RFB Trustees One Limited and RFB Trustees Two Limited who maintain that it will allow for a more effective agricultural use of their property.

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<sup>1</sup> S121 (3) of the 1980 Act; s40 Natural Environment and Rural Communities Act 2006; s11 Countryside Act 1968

15. I conclude that it is in the interests of the owner of land crossed by FP No 12 that it is expedient that the line of the path should be diverted.

***Whether the proposed footpath would be not substantially less convenient to the public***

16. Much of FP No 12 is currently unavailable for public use and is obstructed by a pond and to the east, wetlands. Disregarding obstructions, parts of the existing route between the Old Granary and point G on the Order map are difficult to follow on the ground, and the terrain is muddy and prone to waterlogging. It appears that the public have walked unofficial routes between points A and B on the Order map for a number of years, the main route corresponding to the proposed diversion, from points A to H and H to B.
17. The proposed diversion route would be a further 20m long, totalling 460m. Whilst this may be an inconvenience in terms of the extra distance required to walk, it would not be substantial. The new diverted section of the footpath would run along a pre-existing hardstanding surface. This route is preferred by the Council's countryside access team, not least due to the need to have gates in place at the paddock in the Old Granary whereas the proposed diversion would be more accessible to less able bodied people. In these respects, the proposed path would not be substantially less convenient as the existing path.
18. RFB Trustees One Limited and RFB Trustees Two Limited own most of the surrounding land to which their tenant farmer has access with farm machinery. I have considered the objectors' concerns on safety grounds related to use of farm vehicles and equipment, but I have found no evidence to suggest that altering the line of the path as proposed would raise significant safety issues.
19. Whilst acknowledging that the garden area of the Old Granary would be physically closer to the line of the path as diverted, the new path would now be outside that property. I see no basis for the assertion that strangers would be likely to be found leering over the fence or that adults or children would be put at risk from those using the footpath.
20. I do not therefore consider that the proposed diversion would be substantially less convenient for members of the public wishing to journey along FP No 12.

***Whether it is expedient to confirm the Order having regard to:***

*The effect the diversion would have on public enjoyment of the path as a whole*

21. There would be some benefit to the public from not having to traverse residential properties which may detract from enjoyment of the path due to a feeling of intrusion. In addition the proposed diversion of FP 12 would have little or no impact on views of the surrounding countryside or other features of interest visible from the footpath.
22. I conclude that the enjoyment of the public who seek to use FP 12 for recreational or other purposes would not be diminished as a result of the proposed diversion.

*The effect the coming into operation of the Order would have with respect to the land served by the existing path*

23. There is no evidence before me that the Order would have, in this respect, any effects separately identifiable from those considered above in relation to the other requirements of s119 of the 1980 Act.

*The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation*

24. There is no evidence before me that the proposed diversion would have any detrimental impact on the land over which FP No 12 would run. Compensation under s28 of the 1980 Act is unlikely to be an issue in this case.

*Summary*

25. I conclude that it is expedient to confirm the Order having taking into account the effect the diversion would have on the public enjoyment of the path as a whole, on the land served by the existing and proposed paths and on any land held with it.

***Consideration given to the provisions of a ROWIP***

26. The orders form part of a scheme to improve the network connectivity in the vicinity of Minster Way in accordance with the ROWIP prepared by the Council.

***Consideration given to the conservation of biodiversity and natural beauty***

27. The land crossed by the proposed diversion is not designated as being of special importance in a national context and is not covered by any other local designations aimed at conserving habitat types or species diversity. There is no evidence before me that confirmation of the orders would have any impact on biological diversity.

**Conclusion - Order B**

28. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Formal Decision – Order A**

29. I confirm the Order.

**Formal Decision – Order B**

30. I confirm the Order.

*Grahame Kean*

INSPECTOR

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**EAST RIDING**  
OF YORKSHIRE COUNCIL

Park  
Grange  
Farm  
The  
Old  
Granary

Footpath No.13

Footpath No.12

Footpath No.12

MAP NOT TO  
ORIGINAL SCALE



**EAST RIDING**  
OF YORKSHIRE COUNCIL

Footpath No.19

Footpath to be created by agreement  
Hull to Scarborough Railway

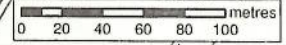
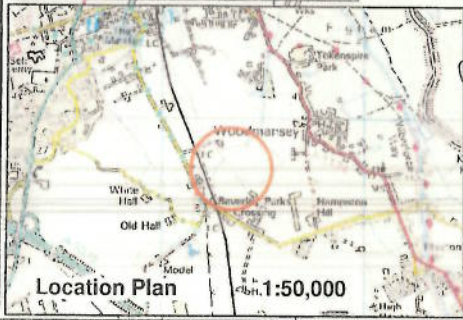


**EAST RIDING**  
OF YORKSHIRE COUNCIL

Ivy House  
Farm

**LEGEND**

- Footpath to be extinguished (C - D)
- Footpath to be created by agreement
- Existing Public Footpath



**EAST RIDING**  
OF YORKSHIRE COUNCIL  
Alan Menzies Planning and Economic Regeneration

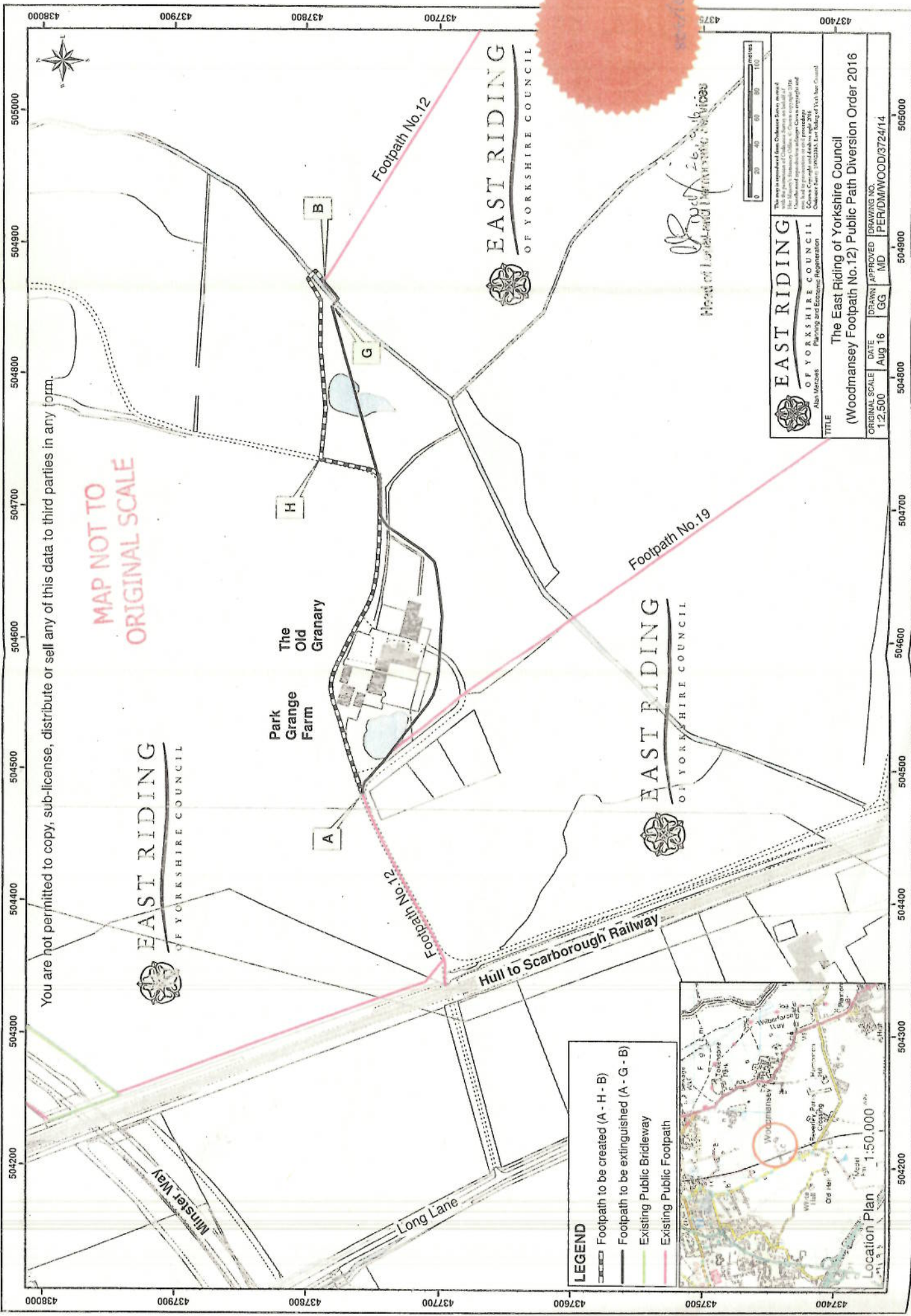
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TITLE				
The East Riding of Yorkshire Council (Woodmansey No.19) Public Path Extinguishment Order 2016				
ORIGINAL SCALE	DATE	DRAWN	APPROVED	DRAWING NO.
1:2,500	Aug 16	GG	MD	PER/DM/WOOD/3724/15



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MAP NOT TO ORIGINAL SCALE



- LEGEND**
- Footpath to be created (A - H - B)
  - Footpath to be extinguished (A - G - B)
  - Existing Public Bridleway
  - Existing Public Footpath



**EAST RIDING OF YORKSHIRE COUNCIL**  
 Planning and Economic Regeneration  
 Alan Metcalf

**EAST RIDING OF YORKSHIRE COUNCIL**  
 Planning and Economic Regeneration  
 Alan Metcalf

**The East Riding of Yorkshire Council**  
 (Woodmansey Footpath No. 12) Public Path Diversion Order 2016

ORIGINAL SCALE	DATE	DRAWN	APPROVED	DRAWING NO.
1:2,500	Aug 16	GG	MD	PERDM/WOOD/3724/14

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*Handwritten signature and notes:* Woodmansey Footpath No. 12