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## Order Decision

Site visit made on 28 October 2018

**by Helen Heward BSc (Hons) MRTPI**

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

**Decision date: 10 December 2018**

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### **Order Ref: ROW/3197782**

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the Council of the East Riding of Yorkshire Council (Bugthorpe Footpath No.1) Public Path Diversion and Definitive Map & Statement Modification Order, 2017.
- The Order is dated 21 April 2017 and proposes to divert the public right of way shown on the Order map and described in the Order Schedule. If confirmed, the Order will also modify the Definitive Map and Statement for the area in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981
- There was one objection 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 proposed for confirmation subject to modifications set out in the Formal Decision.**

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### **Preliminary Matters**

1. I undertook an unaccompanied site visit on 20 October 2018.
2. Bugthorpe Public Footpath No. 1 (FP1) crosses land owned by the Trustees of the Halifax Estate who are the landowners and applicants. The Order has been made in the interests of the landowners, and the Order Making Authority (OMA) takes a neutral stance in the application.

### **Main Issues**

3. Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied that it is expedient in the interests of the landowners that the footpath in question should be diverted, and that the new footpath would not be substantially less convenient to the public as a result of the diversion.
4. I then consider whether it is expedient to confirm the Order having regard to the effect which the diversion would have on public enjoyment of the path as a whole and on land crossed by the existing path and that to be crossed by the new one. In addition I am required to have regard to any material provisions of a public rights of way improvement plan (ROWIP) which has been prepared for the area in which the path lies.

### **Reasons**

#### ***The interests of the landowner***

5. Bugthorpe Grange and farm buildings sit within a broadly rectangular area of open pasture which, for the most part, is defined by hedgerows. It is owned by the applicants and crossed by the section of FP1 which is proposed to be diverted between Points A and B on the Order map. Section A-B of FP1 is
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- approximately 400m long, relatively straight, and runs broadly north-north west through the middle of this area and the building group.
6. At Point A FP1 passes through a boundary hedgerow and enters the area of open pasture to the south of the building group. For a short section it follows a rough worn farm track across this area of grass. On approaching the buildings the farm track veers to the left towards the farmyard, whereas FP1 maintains a relatively straight direction across the grass and on between the farm yard to the left and the dwelling to the right. Once past the buildings FP1 follows another farm track across more open pasture to Point B, where it passes through a hedgerow. This section of track has been laid with stone and is well defined and good underfoot. Once past Point B the path continues along the track to Bleaberry Lane to the north.
  7. FP1 does not go through the farmyard. Rather it runs between the farmyard buildings and the dwelling in an area that could be used for access, parking and manoeuvring of vehicles and machinery in association with the use of the buildings. The side of the dwelling facing the path includes ground floor windows to single aspect rooms. I do not doubt that the diversion would have a beneficial impact for the privacy of occupants of the dwelling and the security and safety of users of the dwelling and farm buildings.
  8. There is little evidence about proposals to refurbish the buildings and let them and the grass paddocks as an equine establishment and there's little to say which fields would be used for what and how.
  9. The main vehicular approach would be from Bleaberry Lane to the north, this single vehicular width track is good underfoot and unbounded at the sides. Vehicles are unlikely to be travelling at speed on the track and there is good visibility. Walkers can presently move to the side to allow vehicles to pass. Paddocks may be enclosed in the future but I am not persuaded that this would be likely to prevent room for a walker to step aside; otherwise two vehicles could not pass. The applicants accept that where FP1 continues beyond point B toward Bleaberry Lane, the farm track is much the same as that between the farm building group and Point B, and it is not intended to divert that section.
  10. I attach little weight to arguments that it is necessary to divert FP1 to segregate walkers from horses in paddocks or vehicles on the farm track approach from Bleaberry Lane.
  11. Nonetheless I observed that points A and B on the Order map coincide with the boundary hedgerows that enclose the open pastures surrounding the building group. Therefore I agree that it would be beneficial to be able to secure access at Points A and B, and remove the intervening section of FP1 across the pastures immediately surrounding the buildings and from close proximity to and between the buildings to increase privacy for the occupants of the dwelling and generally increase the safety and security of the building group.
  12. The test under section 119 of the 1980 Act is one of expediency not desirability. A definition of expediency provided by the Oxford English Dictionary is: "*convenient and practical although possibly improper or immoral*", "*suitable or appropriate*". In the light of my findings above I

conclude that the diversion in principle would be suitable and appropriate and it is expedient that the section of footpath in question should be diverted.

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

13. The path might be only lightly used by walkers but the objector, Mr Thompson, acknowledges that moving the path from the section between the buildings would have a slight impact in reducing the potential for conflict between vehicles and walkers on FP1 and I agree.
14. The existing length of section A-B of FP1 is roughly 400m. The proposed diversion A-B would increase the length by approximately 204m. Mr Thompson accepts that the path is predominantly used for recreational purposes and that the additional length would not be substantially more inconvenient. I agree and find that in the context of the overall length of FP1 the diversion would not increase the length greatly.
15. A path following a relatively straight line might be more intuitive, but there is little to say that in principle it would be more enjoyable than one with twists and turns. To my mind such features can offer relief, variety and change.
16. The existing section A-B is relatively direct without any noticeable change in direction. The diversion would add four corners and incur changes in direction. The diverted section would be along field edges and close to hedgerows. I observed that the experience of FP1 south of Point A is very much of a field edge path, with changes in direction at field corners. The proposed diversion would be similar in this regard. However, PART 3 of the Order Schedule proposes that the width of the new path or way should be "*2 metres with a centre line of 2 metres from the centre of the hedge*".
17. On my visit I observed that without any enclosing boundaries the existing route of section A-B feels wider. When I attempted to walk at a distance of 2m from the centre of the hedgerows alongside the proposed diversion route A-B. I found it quite hard to do so. It felt very close to the hedgerow, even though most appeared to have been recently cut back. In places blackthorn was spreading out beyond 2m. Often the ground close to the hedgerow was quite uneven and I found that I had to walk further away to obtain an even and steady footing. An increase in width would allow the path more clearance from annual hedgerow growth and provide for an experience more commensurate with the spacious feeling of walking along the existing route. I also observed that south of Point A where FP1 is a field edge path; the trod line of the path often appeared to me to be more than 2m from the centre of the hedgerow.
18. Therefore, if I were minded to confirm the Order I consider that in order to ensure that the diversion is not substantially less convenient for the public it would be necessary to make the width of the path wider. A width of 3m would be reasonable to achieve this. This could be achieved by modifying that part of PART 2 of the Order Schedule which describes the width of the new path or way to read "*3 metres with a centre line of 3 metres from the centre of the hedge*". PART 3, (Modification of Definitive Statement), the fifth column of the table in the section "ADDITIONS", would also need to be similarly amended to read "*\*3.0m with a centre line of 3.0m from the centre of the hedge*".
19. I am satisfied that for the reasons given these minor modifications would be appropriate and reasonable and that they would not cause any injustice to any

of the parties. With these modifications I conclude that the new footpath would not be substantially less convenient to the public.

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

20. Mr Thompson submits that the vast majority of paths in the locality and wider area are field edge paths along agricultural fields enclosed on one side by a hedgerow. Therefore, he argues, it is important to maintain the unenclosed open outlook of the existing path for variety. On my site visit I found that a section of FP1 between Bleaberry Lane and Point B crosses a relatively large scale agricultural field unbounded and on high ground at Wether Hill. The experience here is very much open with wide long distance views all round. This section would remain unchanged.
21. However, although the section proposed to be diverted, A-B, runs along an unbounded track through the middle of the pasture land, the landscape here is more intimate, enclosed by perimeter hedgerows only a few hundred metres away and the changing topography and woodland blocks all combine to limit the extent of the views. It is undoubtedly a pleasant experience walking through the middle of the pastures with views of the buildings, but there is nothing to say that the land would remain as open pasture. If it were used as paddocks, crops or for other agricultural purposes it could be enclosed.
22. The diversion section would be along field edges. Views would be partially enclosed to one side by hedgerows and there would be a loss of close direct views of the farm building group, but the building group would still be glimpsed in partial and restricted views and the available countryside views would be over fields and toward woodland blocks. The views and the general outlook along the diverted section would be in keeping with the types of views offered along FP1 south of Point A where it is already very much a field edge path, enclosed by hedgerows to one side and with changes in direction.
23. I conclude that the diversion would not have a materially adverse effect upon the public enjoyment of the path as a whole.

***The effect upon land crossed by the existing paths***

24. The removal of the footpath crossing the internal site would have a beneficial impact upon the privacy and security of the applicants on this land. The land which the diversion would cross is also owned by the applicants and affected by the existing overall alignment of FP1. The diversion would not adversely affect land crossed by the existing footpath to be removed or the proposed diversion.

***Rights of way Improvement Plan (ROWIP)***

25. An extract from the Councils ROWIP indicates that a key action point at Section 3b seeks to remove barriers to routes and increase easy access. Two gate barriers would be removed, but there is another barrier elsewhere along the route of FP1. I am not persuaded that there is evidence to say that provisions of the ROWIP either indicate support for or against the diversion.

***Other Matters***

26. The objector is concerned that the Order would set a precedent for more diversions and for more paths to be diverted for similar reasons. However, each case must be considered on its own merits and it is the significance of the issues raised, not the number of persons that raise them that affects the

weight attached to them. Although the objector has suggested alternative proposals, I must confine my considerations to the order before me.

27. Maintenance of the proposed diversion would be the responsibility of the highway authority, and their policies on such matters are not for me to comment upon. Even if the landowners were to contribute towards annual maintenance of the diverted 60mm there is little evidence to say that this would outweigh the identified benefits of the diversion to the landowners.

***Whether or not it is expedient to confirm the Order and conclusions***

28. I have concluded that the Order would be expedient in the interests of the landowner and, with a modification in relation to the width of the proposed diversion, would not be substantially less convenient to the public or have a materially adverse effect upon the public enjoyment of the path as a whole.

29. I found no evidence to say that the diversion would adversely affect land crossed by the existing path or by the proposed diversion. Nor did I find evidence to say that the Order would be contrary to provisions of a ROWIP. Therefore, and having considered all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications described in paragraph 18 above.

**Formal Decision**

30. The Order is proposed for confirmation subject to the following modifications:

- (i) Amend the Schedule PART 2 to describe the width of the new path or way as a "*3 metres with a centre line of 3 metres from the centre of the hedge*"; and
- (ii) Amend the Schedule PART 3 table of Proposed Statement, column five (width) to read "*\*3.0m with a centre line of 3.0m from the centre of the hedge*".

31. The Order to be confirmed would affect land not affected by the Order as submitted. Therefore, having regard to paragraph 2 (3) of Schedule 6 to the 1980 Act, I am required to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modification. A letter will be sent in connection with the advertisement of the notice and the deposit of the associated documents to all persons to whom this Order Decision has been sent.

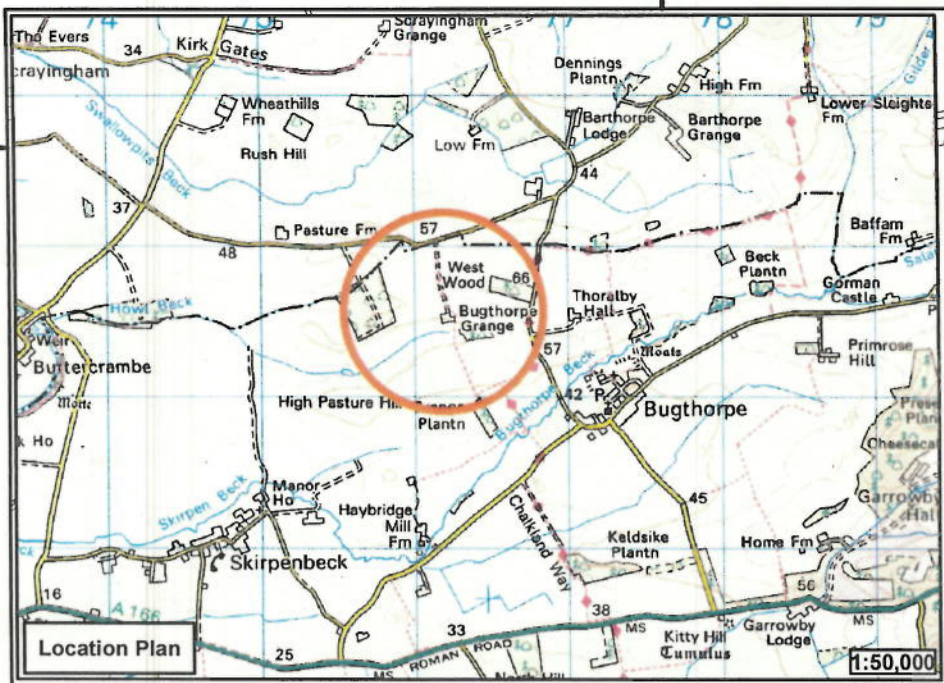
*Helen Heward*  
Inspector

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**EAST RIDING**  
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**MAP NOT TO ORIGINAL SCALE**

Wether Hill

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- Legend**
- Footpath to be Created A-B
  - Footpath to be Stopped Up A-B
  - Public Footpath

Property and Commercial  
Law Manager

**EAST RIDING**  
OF YORKSHIRE COUNCIL  
Alan Menzies Planning and Environment

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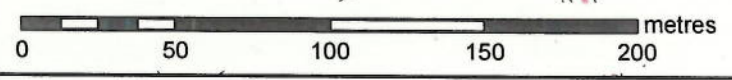
The **EAST RIDING** Council  
(1)

Public Path Diversion and **EAST RIDING** Modification Order 2017

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