

---

## Order Decision

Inquiry held on 23 July 2019

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

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

**Decision date: 13 August 2019**

---

### **Order Ref: ROW/3213138**

- This Order is made under Section 53(2)(a) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as North Yorkshire County Council Footpath No.15.73/59 Abbey Road to River Nidd, Knaresborough Modification Order 2012.
- The Order is dated 15 May 2012 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running along the bank of the River Nidd to the south-west of Abbey Road, Knaresborough as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed subject to a modification that does not require advertising.**

---

### **Procedural Matters**

1. I held a public inquiry into this Order on 23 July 2019 at Harrogate Library. I made an unaccompanied site inspection on 22 July when I was able to view the whole of the Order route. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
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.
3. North Yorkshire County Council, the Order Making Authority (OMA), chose to adopt a neutral stance regarding the confirmation of the Order and support for it at the inquiry was therefore led by Mr Andrew Willoughby on behalf of the applicant, Knaresborough Town Council.
4. A few days before the opening of the inquiry it was learnt that neither the sole objector to the Order nor his legal representative were able to attend. At that stage it was not possible to alter the arrangements made for the inquiry which therefore proceeded as planned. However, the objector was able to make a further written submission before the inquiry which I have taken into account along with his previous submission.

### **The Main Issues**

5. 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.

6. All 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.
7. 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.

### **Reasons**

8. No documentary evidence supporting the confirmation of the Order was submitted.
9. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public footpath 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***

#### *Date when public use was brought into question*

10. It was common ground that public use of the Order route was brought into question in 1984 when the land crossed by the claimed route was fenced off from Abbey Road.
11. Accordingly, I have taken the relevant period of 20 years public use which would raise a presumption that this route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act as running from 1964 to 1984 in this case.

#### *Evidence of Use*

12. A total of 37 User Evidence Forms (UEFs) were submitted in support of the Order. 20 of these were submitted in 1985 when the application for the addition of the path to the definitive map was made and a further 17 in 2010-2012 when the OMA was investigating the claim. Four people who had submitted UEFs also appeared at the inquiry to give evidence in person.
13. The UEFs describe use of the claimed route from 1925 until 1984. The original 20 forms contain limited information. Although each includes a map indicating that a route similar to the Order route was used, they also state that there was no visible path and the approximate route followed is marked. It is argued by the objector that this indicates that people roamed over the land rather than following a specific route.
14. The later UEFs contain more detailed information and whilst they all have plans attached only 7 of them have a footpath marked thereon. Others shaded the

whole of the area of land crossed by the claimed route and some made comments to the effect that they visited the land for picnics, access to the river or general recreational activities which suggested that they might not necessarily have followed the claimed route.

15. The frequency with which the path was used is not easy to quantify. The early UEFs did not provide information regarding the frequency with which the route was used. The one person who appeared at the inquiry who had also completed one of these forms said that she used the route more than once per week. The later forms which included a map with the route marked generally stated that the route had been used more than 10 times per year.
16. The users who appeared at the inquiry said that Abbey Road was a popular route for walkers that linked with several other rights of way but there were few points where the river could be accessed or indeed seen from it. It had therefore been common practice for walkers to leave the road and walk alongside the river where this was possible, such as the Order route before 1984. It was accepted that there had been no fence alongside the road between Points A and D and it had been possible leave the road at other points. It was also accepted that some people roamed over the land rather than following a specific route. Nevertheless, it was maintained that most people did in fact follow the Order route to make the most of the access to the river bank as part of a longer walk.
17. It was also stated that Abbey Road was part of the route of cross country runs for local school children and that runners often left the road and ran alongside the river by way of the Order route as this was more comfortable and attractive.
18. It was also stated that before 1984 there were more large trees on the land and as a result the number of possible routes through it was limited.
19. On my visit, which took place on a sunny afternoon in school holidays, I saw numerous people walking along Abbey Road in both directions and it seems quite plausible to me that many of these might have diverted to walk along the river bank if given the opportunity especially as the road is narrow, is used by vehicular traffic and has no footway.
20. Overall, it is my view that, on the balance of probability, despite the limitations of the available UEFs, the evidence of public use of the Order route between 1964 and 1984 is sufficient to raise the presumption that the route was dedicated as a public footpath in accordance with the provisions of the 1980 Act unless there is enough evidence of action by landowners during the same period that would rebut this presumption.

#### *Actions of landowners*

21. The current owner of the land crossed by the Order route did not acquire the land until 2007. However, he has stated that his parents bought the land in around 1979 and lived at The Abbey for four or five years thereafter. The land appears to have changed hands again by 1984 as evidence indicates that the fence was erected by a different owner after the grant of planning permission by Harrogate Borough Council.
22. The current owner also stated that his parents never experienced members of the public using the claimed footpath during their ownership of the land. He did

however state that his father found it necessary to take steps to restrict the parking of cars and use of the land for picnics and freely roaming over the land. This may have involved the placing of logs to discourage parking.

23. Other than this no evidence has been put forward of action taken by landowners before 1984 that would indicate a lack of intention to dedicate a public footpath. In my view this limited evidence is not sufficient to rebut the presumption that the route was dedicated as a public footpath as a result of public use between 1964 and 1984.

### **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, there is evidence of public use of the Order route over a long period and little evidence of action taken by landowners to restrict this use. In these circumstances it might be reasonable to infer that the route had been dedicated as a public footpath at common law. However, in view of my conclusion regarding the statutory dedication of the route, it is not necessary to pursue this possibility further.

### **Other Matters**

26. The Order states that it was made under Section 53(2)(a) of the 1981 Act whereas this should have referred to Section 53(2)(b) as the Order relates to an event which occurred after the commencement date of the definitive map. I therefore propose to modify the Order accordingly. However, I do not believe that any party has been misled by this error or had their interests prejudiced by it and the modification will not need to be subject to further advertisement.

### **Conclusions**

27. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

### **Formal Decision**

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

In the first line of the Order delete 'Section 53(2)(a)' and add 'Section 53(2)(b)'.

*Barney Grimshaw*

**Inspector**

## **APPEARANCES**

### **For the OMA**

Ron Allan

Definitive Map Officer, North Yorkshire  
County Council (NYCC)

### **Supporters**

Andrew Willoughby

Path user and representative of  
Knaresborough Town Council

Who also called:

Patricia Waite

Path user

David Welch

Path user

Christine Willoughby

Path user

### **Objectors**

Not represented

## **DOCUMENTS**

1. Statement of Case of Andrew Willoughby on behalf of Knaresborough Town Council.
2. Proof of Evidence of Andrew Willoughby.
3. Proof of Evidence of Christine Willoughby.
4. Proof of Evidence of Patricia Waite.
5. Proof of Evidence of David Welch.
6. Statement of David Patrick Brown.
7. Additional Statement of David Patrick Brown.

