
Order Decision

Site visits made on 28 October 2018 and 14 November 2019.

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 18 November 2019

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.
- East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
- 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. Full details of the route are set out in the Order Plan and Schedule.
- In accordance with Paragraph 2(3) of Schedule 6 to the Highways Act 1980 notice has been given of my proposal to confirm the Order subject to modifications which would include land not affected by the Order as submitted.

Summary of Decision: I have confirmed the Order subject to the modifications that I formerly proposed with one additional minor modification.

Preliminary Matters

1. The effect of the Order if confirmed with the modifications that I previously proposed would be to divert Bugthorpe Public Footpath No. 1 (FP1) around Bugthorpe Grange and farm buildings.
 2. I had proposed that the Order should be modified to increase the width of the new path as follows:
 - 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*".
 3. The Order to be confirmed would have affected land not affected by the Order as submitted. Having regard to paragraph 2 (3) of Schedule 6 to the 1980 Act, I gave notice of the proposal to modify the Order and afforded an opportunity for objections and representations to be made to the proposed modification.
 4. One statutory objection was made about how the width of the path should be measured. It proposed "middle" rather than "centre line".
 5. FP1 crosses land owned by the Trustees of the Halifax Estate; the landowners and applicants. The Order has been made in the interests of the landowners,
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and the Order Making Authority (OMA) took a neutral stance in the application. Neither the applicant nor OMA objected to the proposed modification.

Main Issue

6. The issue is how to define a width of the path which is precise, enforceable and reasonable in all other respects.

Reasons

7. The objector submits that the branches and foliage of a hedge comprise the body of a hedge and so the centre of the hedge is the middle – or the median of the foliage. In this case I had noted that the hedgerow contains sections of blackthorn. A species with a tendency to send up suckers which might not be evenly distributed on both sides depending upon several factors including the growing conditions. In which case the use of the word 'middle' might not be appropriate for maintaining the line of the path.
8. The objector also refers to use of "root of hedge" cited in J B Harley, Ordnance Survey Maps a descriptive manual and an extract of the Southampton Ordnance Survey, 1975. I agree that this is useful. To avoid any confusion over new suckers it can be further specified to the woody roots of the hedge. Accordingly I propose to further modify the Order as follows:-
 - i. Amend the Schedule PART 2 to describe the width of the new path or way as a "*3 metres with a centre line 3 metres from the woody roots 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 woody roots of the hedge*".
9. The further modifications would not prejudice the interests of the land owners and applicants and the OMA does not object to the objector's proposal.

Conclusion

10. Bearing in mind all relevant matters, I conclude that the Order should be confirmed subject to the modifications set out in paragraph 8 above.

Formal Decision

11. In exercise of the powers transferred to me, the Order is confirmed subject to the 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 3 metres from the woody roots 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 woody roots of the hedge*".
12. I do not consider it necessary to give notice of this further minor amendment to the previous proposed modification which has already subject to consultation.

Helen Heward

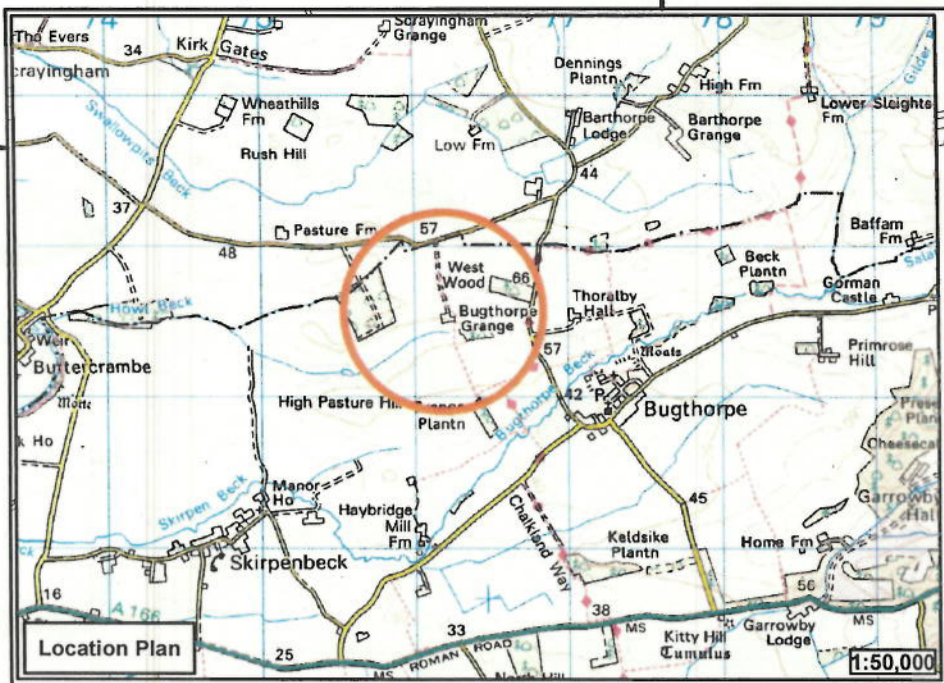
Inspector

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EAST RIDING
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MAP NOT TO ORIGINAL SCALE

Wether Hill

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Bugthorpe Grange

Property and Commercial
Law Manager

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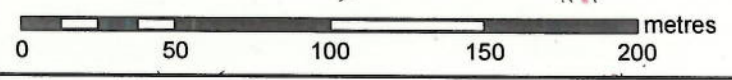
- Legend**
- Footpath to be Created A-B
 - Footpath to be Stopped Up A-B
 - Public Footpath

EAST RIDING
OF YORKSHIRE COUNCIL

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The **EAST RIDING** Council
(1)
Public Path Diversion and Modification Order 2017
ORIGINAL SCALE 1:2,500 @ A3 DATE Apr 2017 DR M
PER/DM/BUGT/5756/Drg02

DO NOT SCALE



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