



Order Decision

Unaccompanied site visit made on 18 November 2019

by **Helen Heward BSc Hons MRTPI**

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

Decision date: 28 November 2019

Order Ref: ROW/3226055

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Council of the City of York Public Footpaths in York (Acomb) Definitive Map Modification Order 2010.
- The Order is dated 29 March 2010 and proposes to alter the Definitive Map and Statement for the area by adding a public path as shown on Order plan drawing No 38 and described in Part 2 of the Order Schedule.
- There was one objection outstanding when the City of York Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. The Order created by the Council related to six ways. The Council advise that there were no objections to five of the routes which they confirmed. This decision is concerned only with the route to which an objection was made. It is the route in the Order Schedule 2 Part 2 called "*Public Footpath, York 119*" and described as "*path running from footpath York 118 in a predominantly north easterly direction along the rear of houses Rosedale Avenue to connect to footpath York 122*" with a length of 222m.

Main Issues

2. The outstanding objection relates to the introduction of more tarmac into a green area planted to encourage wildlife, the path runs parallel to Rosendale Avenue which provides a well-lit route for pedestrians and the Order route is unnecessary and a waste of money.
 3. Section 53(3)(c)(i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other evidence available, shows that a public right of way for vehicles which is not shown on the definitive map and statement subsists, or is reasonably alleged to subsist over land in the area to which the map relates. The process does not provide for the recording, or otherwise, of what might be considered by the parties to be desirable or preferable. Consequently, the concerns of the objector are not ones that I can consider in reaching my decision.
 4. The Council made the Order having discovered from its records evidence to suggest that the route in question should be recorded on the Definitive Map and Statement as a public path. Although the outstanding objector does not agree with the Order, they have not challenged the Council's interpretation of the evidence or the conclusions that have been drawn from it.
 5. Therefore, the main issue is whether there is evidence which, when considered with all other relevant evidence available, and on a balance of probabilities,
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shows that a public right of way for use as a path was once in existence along the Order route.

Reasons

Documentary evidence

6. Aerial photographs taken in 1951, 1962 and 1971 provide little clear evidence of a discernible path along the exact alignment of the Order route. Colour aerial photographs from 2002 and 2007 show what appears to be a route along the Order route. But it is not possible to clearly discern the entire route in later aerial photographs from 2014 and 2017 due to the effects of tree cover.
7. Even if I were to accept the part sections as evidence of a trod route, the photographic evidence provides only an indication of a route over a relatively limited period of time. It does not confirm whether the route was used by people, cannot establish the purpose of the route and cannot be used to presume public rights. The Council acknowledge that the Order route is not shown on any of the historic maps available to them. The documentary evidence is not convincing.

User evidence

8. The Order is supported by 10 user evidence forms (UEFs). All users claim to have used the route either daily or weekly, on foot or bicycle. Reasons for using the route include recreation, pleasure, to go to shops, services and/or work. There is no suggestion that the use was by stealth or force. In one case a user advises that they were Chair of Fishponds Wood during the years 1998-1999 and so it is not clear if their use was by right during this time. All user evidence forms name the route as "Acomb Path No 11" but none of the UEFs provide a clear description of the actual route and there are no plans attached.
9. The area is crossed by several routes. References to a sign at the entry to "Fishpond Wood Nature Reserve" only helps identify the general area of green space and not this specific route. The purposes for use cited provide little help in clarifying the exact route used. Several users claim use between 27 and 54 years but do not specify when. Three do not provide evidence of use over a 20 year period. Two users describe the surface as clearly/well-trodden whilst others describe it as having a hard surface, raising further doubts about whether the route referred to in these UEFs is the specific Order route. User evidence is not compelling.

Conclusions

10. The Council accepts that neither the documentary evidence or user evidence alone is sufficient to demonstrate that the Order route is a public right of way and I find the weaknesses in the evidence are such that the combination of all of the evidence does not create a more persuasive picture either.
11. I conclude that, on a balance of probabilities, the evidence is not sufficient to show that a public right of way for use as a path was once in existence along the Order route. Therefore, having considered all other matters raised, and for the reasons set out above, I conclude that the Order should not be confirmed.

Formal Decision

12. The Order is not confirmed.

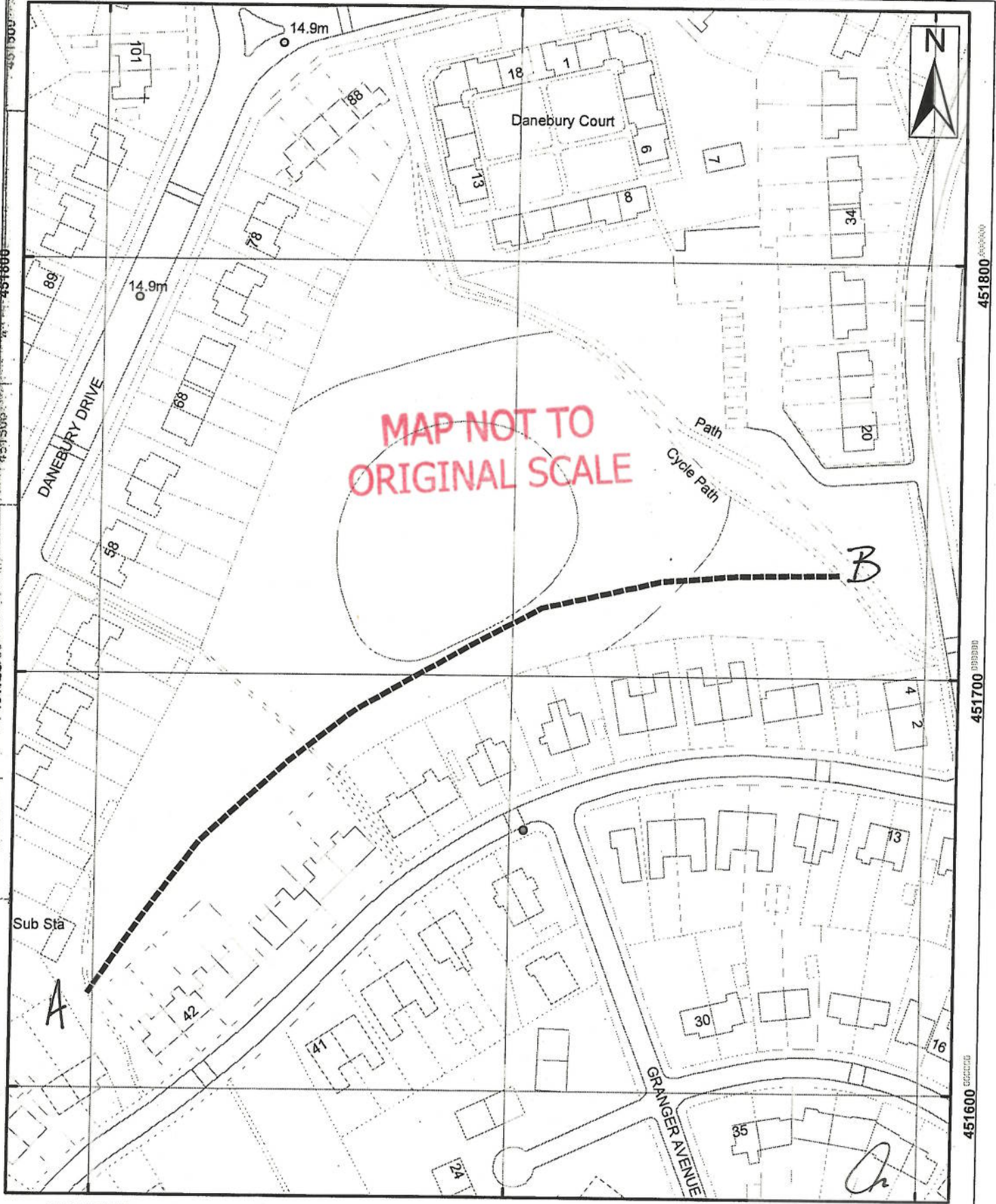
Helen Heward

INSPECTOR

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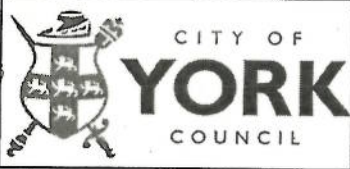
MAP NOT TO ORIGINAL SCALE



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York, Footpath No 119 (Acomb Ward)

Scale 1:1,250	Drawn By:	Date:
Public Rights of Way	Reference:	Drawing No.

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