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| **Order Decisions** |
| Inquiry held on 7, 8, 9 and 10 June 2022Site visit made on 10 June 2022 |
| **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: 22 February 2023** |

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| **Order Ref:** **ROW/3259130** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Footpath Kexby 19 Modification Order 2020.
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| * The Order is dated 24 February 2020 and proposes to modify the Definitive Map and Statement for the area by adding Footpath FP19 to extend from Point A to Point D as shown on the Order Map and Schedule.
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| * There were ten objections outstanding when City of York Council (the “Council”) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed** |
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| **Order Ref: ROW/3257816** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Footpath Kexby 20 Modification Order 2020.
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| * The Order is dated 24 February 2022 and proposes to modify the Definitive Map and Statement for the area by adding Footpath FP20 to extend from Point A to Point C as shown on the Order Map and Schedule.
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| * There were ten objections outstanding when City of York Council (the “Council”) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is not confirmed** |
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**Preliminary matters and general description of the claimed routes**

1. The claimed route in ROW/3259130 runs between public footpath Kexby 11 and public bridleway Kexby 8. This bridleway is on Intake Lane and referred to as such by some witnesses. The claimed route in ROW/325816 also runs between FP11 and BW8 on a separate alignment. In this decision I refer to both claimed routes as, respectively K19 and K20.
2. I made an accompanied site inspection, walking the full length of the claimed routes with the exception of K20 where it goes from point 20B to 20C, due to parts of it appearing to be waterlogged.
3. The main parties, ie the Council, the supporters, largely drawn from the Friends of Hagg Wood (FoHW) and the objectors, requested a separate decision to be issued for each Order.
4. Although there are separate decisions, I have brought together some issues common to both Orders in the interests of brevity and clarity.

The Main Issue in the Decisions

1. The main issue is whether the evidence discovered by the Council, taken with all other relevant evidence is sufficient to show on a balance of probabilities that a right of way, in this case a footpath, not shown in the Definitive Map and Statement (DMS), subsists over land as shown on the Order Map.
2. Issues about criminal activity along the routes, safety, security, and their suitability, although legitimate concerns generally expressed by some of the objectors, are not relevant to the main issue, nor is the assumed importance or benefit to the public of the routes as suggested on occasion by the supporters.

**The relevant law**

1. The Orders are made under section 53(2)(b) of the 1981 Act. Section s53(3)(c) states that an Order should be made to modify the DMS for an area on the discovery of evidence which, when considered with all other relevant evidence available, shows: *“(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applie*s.”
2. By s32 Highways Act 1980 I must take account of any “*map, plan or history of the locality or other relevant document*” offered in evidence and give such weight to it as is justified by the circumstances, including its antiquity, the status of the person who made or compiled it, including for what purpose, and the custody in which it has been kept and from which it is produced.
3. Section 31 of the 1980 Act sets out a statutory presumption of dedication: if public use of a way for twenty years or more is shown, the way is deemed to have been dedicated as a highway of that description unless there is sufficient evidence from which one may conclude there was no such intention during that period to dedicate it. The twenty-year period must be calculated retrospectively from the date when the public right to use the way as claimed is brought into question. Further, at common law it may be inferred that a way was dedicated and accepted for public use for periods less than 20 years.
4. In order to prevent an additional right of way, the deposit of a legal statement and statutory declaration and placing in a local authority register may be made. (ss.31(6) and 31A.)

**K19 ROW/3259130**

**K19 *When was the use of the route as a footpath brought into question?***

1. The relevant section of K19 in which the objectors have an interest in B-C-D, is a surfaced forestry track from Intake Lane across Hagg Farm and into Hagg Wood. The Church Commissioners (CC) had owned the freehold land over which K19 runs and leased it to the Forestry Commission (FC) who appear to have constructed the track sometime in the 1980s.
2. When making the order the Council considered that the relevant period was 1977-1997, ie to the date of the application, referring to evidence about a pre-existing route in the same area that pre-dates the creation of the formal track. The objectors point to a further period 1999 to 2019, due to what they state was the locking of the gates prior to and after the sale of the land that included the forestry track in 2019.
3. The supporters submit that it matters little what was the date of bringing into question the alleged right of way under s31 of the 1980 Act as according to them there is abundant evidence of public user as of right throughout the periods posited, and they are content to argue for a 20-year period of use between 1999-2019.
4. A certain period of at least 20 years must be defined if reliance is placed on s31. Furthermore, if there are two or more such periods advanced for consideration, they should be examined in turn. This is because the earliest period if substantiated will thenceforth control the position; in other words if, say by 1997 public rights of way had been established in accordance with the requirements, no action in subsequent years could dislodge the proposition “*once a highway, always a highway*”, short of a statutory closure or destruction in certain circumstances, neither of which obtains here.
5. The evidence indicates to me that it was in the summer of 1997 when the public right of way was brought into question, due principally to the contemporaneous account given in the applicants’ history of the route. It was noted therein that negotiations for permissive access had faltered and the owner had tied up one of the gates on the Order route with string and there was a notice stating that there was no public footpath. At about this time a padlocked gate was installed which could not be traversed easily or safely by several users. The application to add the way to the DMS followed in December 1997 from the FoHW.
6. Although the making of an application to record a public right of way may amount to an act bringing the right of the public to use the way into question, I am satisfied that the earliest date when the public use of K19 was effectively brought into question was in the summer of 1997. Therefore for the purposes of the statutory test of deemed dedication such use must have subsisted for twenty years before that date, ie the relevant period to be considered firstly, is 1977 to 1997.

**K19 Documentary evidence**

1. The historical mapping evidence shows something of the K19 route but not in its entirety. The OS maps provide no evidence of public status, and the other historical documentation such as the 1905 estate sale documents and the 1910 Finance Act Index Plan are inconclusive.
2. On balance I agree with the part of the objectors’ case that there is no evidence from which it may be inferred on balance of probability that K19 was subject to any public rights of way in the 19c or early 20c. Furthermore, whether there was a landowner with capacity to dedicate prior to 1925 is not an issue that I need to resolve.
3. A right of way from Intake Lane into Hagg Wood was granted to the FC in a lease dated 25 September 1952 from the CC. Reliance is placed on the lease plan which is said to show the forestry access track marked brown. The objectors’ view is that it shows the then access road aligned inconsistently with the current forestry track, and that the owners Mr and Mrs D were advised in 1986 that the access to the FC right of way had been altered, suggesting further changes in the layout and alignment of the forestry track.
4. The FC had a right over this or a similar route for several years. The absence of visible wear to the surface does not support the existence of public user but nor does it mean that such a way was not usable or used. The forestry access track on the 1952 FC lease is at a small scale, and no firm conclusions can be drawn from this map alone, however the alignment is broadly consistent in my view with that part of K19 as claimed.
5. There is no clear evidence of obstruction of the FC’s private access rights. It is reasonable to assume that there was a gate to which they controlled access, and if vehicles could pass it is likely in my view that it would have been physically possible for pedestrians to access the same route.
6. The Definitive Map process for the former East Riding of Yorkshire became complicated due to successive changes in local government entities and has been delayed with outstanding objections to the inclusion of routes relating to public footpath claims from the 1950's and 1960's. I note the objector’s assertion that the precise line claimed under the 1949 Act does not align with the Order Route in the vicinity of the forestry track, as shown on the map overlay. However it seems to me that most of K19 may nevertheless have been subject of a claim, the discrepancy being the section nearer to the farm buildings. That said there appeared to be no substantive contemporaneous evidence for the claim under the 1949 Act.
7. Other documentary evidence supplied to the inquiry has been considered. In particular, an alleged public right of way is referred to in a conveyance of land from the CC to Mr and Mrs D in 1986, said to support the dedication of K19 as a public right of way. In fact the Council suggests that the deed amounts to a relevant act of dedication plainly accepted by the public at large based upon their continued use of the track up to 2019. Such inclusion of a public right of way in the conveyance is taken by the Council and supporters to be evidence of actual dedication, or of an intention to dedicate the way.
8. The new owners took the land with actual or constructive knowledge of the deed’s contents, but Mrs D does not consider it to reflect the reality of the position as she stated that the gates were locked when she took possession. Whatever her state of mind, in my opinion the deed itself on its proper construction was not an act of dedication. It obliges the purchasers to hold the land subject to “*all rights of way water light and other easements (if any)”* affecting the land and “*particularly and including the [sic] public footpath*” indicated by the purple line on the annexed plan.
9. Whilst the purple line corresponds with the route of K19, the use of the definite article to my mind makes it unlikely that a fresh dedication or intention to dedicate the land arose by dint of the words used, but on its face they appear to acknowledge that there was thought to be a pre-existing public right of way through the land.
10. The correspondence leading up to execution of the conveyance unfortunately did contain ambiguities as to the precise nature of the ways enquired about. It would be incorrect to say that the OMA categorically advised in August 1985 that the routes shown in purple on the plan were public footpaths. The request was to mark up a plan to show ’*all public bridleways, footpaths, etc*.’ and the plan was returned under cover of a letter that advised:’…*coloured on the plan in purple are the routes of the “footpaths”* [sic]’, without any confirmation as to their precise status. The Council might have been more precise and confirmed that the route shown was not on the DMS given the nature of the enquiry.
11. However in April 1986 a local land charges (LLC) search by the Ds’ solicitors, was returned by Selby District Council, specifically referring to the footpath, part of which went through the land envisaged to be purchased. The path was shown on the attached plan coloured brown that “*was objected to at a special review stage of the Definitive Map*”. The brown-coloured route within the proposed purchasers’ land does correspond reasonably well with the Order Route even if the base map (the 1957 draft survey map) on which the objectors overlaid the line of the Order route, did not.
12. Clearly if the parties believed that the way was part of the DMS they were in error. However, a public right of way may exist even if not recorded on the DMS. The FC had generally supported public rights through the woodland and the CC did not object as landowner. If there were a mistaken belief as to the status of the way no action was taken to rectify the error. Even the relevant titles to the land referred to the current owners expressly taking the land subject to the rights set out in the 1986 conveyance.
13. It is suggested that it was unnecessary to include reference to the Order route as a public footpath in the conveyance unless it were intended to dedicate the land, but this deed more likely refers to a pre-existing public footpath thought to exist whether or not recorded on the DMS. Given the uncertainty surrounding the status of outstanding claims within Hagg Wood potentially affecting the forestry track or part of it, a deliberate choice may have been to include the section of the route in the conveyance, although the CC as vendors did not have to do so. Considering the evidence, I am not persuaded that there was clearly an error in including the reservation as to the public nature of the footpath, within the conveyance. The purchasers’ solicitors would have been well aware of the LLC search reply, and it is this official response that would have been the formal position relied on by them.
14. Also, I note that at no time during this first period under consideration 1977 to 1997, or indeed at any time, was there any deposit made under s31 HA1980 that would have operated to manifest an intention not to dedicate the way in question.

**K19 User evidence**

1. The OMA and supporters have together submitted to the inquiry over 80 UEFs, which when analysed suggest that the 20-year period 1977 to 1997 is covered by user evidence. Those who gave oral evidence also provided written statements. There is no clearly defined period in which users of the Order route agreed they could not access the route.
2. The Order was originally supported by 37 UEFs attesting to use of the Order Route by 38 people between 1947 and 1997, 24 of whom claimed use on foot for 20 years or more. 11 claimed use every week, 9 every month and others less frequently. 9 users reported coming across gates and stiles when using the Order Route, 25 report finding only gates on the Order Route, however their locations were consistently reported.
3. 3 users reported finding gates locked across the Order Route in 1997 and 1 user reported that signs appeared stating that the Order Route was not a public right of way (PRoW) in 1997. No users reported ever being challenged by land owners or tenants during the 50 years’ use claimed in the UEFs and none record having received permission to use the Order Route.
4. I am satisfied that on the balance of probability that the user evidence in terms of its quantity and quality shows public use of the order route from 1977 to 1997, sufficient to raise a presumption of dedication and acceptance by the public of a footpath under s31 of the 1980 Act
5. The objectors contend that the gates along the route were locked. Given the volume and the individual detail provided in the UEFs and testimony, it is unlikely that the claimed use is invented, or it had to be by climbing over several locked gates or only when the FC was working in the woods and left the gates open. Users comprised several persons who were variously, with pushchairs, walking groups, accompanied by dogs, or elderly. As to the oral evidence given by the Council and supporters, I accept the witnesses honestly attempted to recollect their own experience in relation to the Order route. Their experience can be characterised as one where the gates were either unlocked or could be passed around and this remained the position until complaints were made and the events of 1997.
6. A key point of divergence for the objectors is the variety of routes taken either along the side of the farm buildings, or through the “stackyard” which ran through the buildings of Hagg Farm. The evidence is that several routes were used to get to Hagg Wood from Intake Lane and there is some inconsistency between accounts of the paths taken. This is unsurprising, as whilst most of the Order route runs through the wood itself, nearest the farm buildings the land is more open. However as the Council put it, it is no-one's case that the route shown on the OS maps as terminating at the edge of the wood, ever did so in reality. The objectors correctly point out that a public right of way, by its nature and character, runs along a specific alignment. However, that would not prevent a specific claimed route acquiring public rights of passage, being one of, or a part of, other routes not presently claimed and that may or may not have also acquired public status.
7. I have considered the evidence of the objectors and their key witnesses. As to GK the sign on the gate said to be locked, on the line of the forestry track, where it met the bridleway through Hagg Farm, was not clearly remembered. As to its being permanently locked, this cannot be so given the evidence about the need for keys to unlock it and the general work around the farm undertaken by the tenant and others, including GK. Some users may have utilised the bridleway to access the wood further along to the Order route, however that does not necessarily indicate that the latter route was not used.
8. REH’s evidence is very consistent with GK’s evidence, although lacking in detail and is also vague as to the wording of the FC notice on the gate near the junction with Intake Lane. JCH’s evidence is also consistent with this account, but he also stated that the gate was installed by the FC when they created the forestry track. RAK’s evidence relates to a period when she was riding, that ended in 1993/94. However in passing the gate in question, it was occasionally open. RAK’s knowledge of what tracks were public or private seems to be based on advice at an early age as a rider where she could go or not go.
9. CS, and her partner MT currently own land crossed by the Order route. CS was away from the area from 1979 to 1984 and on returning she found the position much as described by GK and other objectors. She bought the property in which she now resides, in 1997, at which time the smaller side gate for pedestrians had been installed. She certainly recalled both gates being locked then, which is however at the end of the period under consideration. Her partner, MT stated that c1988 the forestry track had a sign stating that it was a forestry track but gives no other details. The fact that keys may have been handed out to acquaintances of Mrs D (who owned the land crossed by the forestry track from 1986 until 2019) to access fields by the track, would not be effective to demonstrate lack of intention to dedicate.
10. Mrs D and her daughter HY, along with others, give evidence as to the existence and replacement at various stages, of the three gates along the Order route. The gates were discussed at length during the inquiry with the objectors’ stance being that by and large they were kept locked. I note also that there was a dispute as to whether there were stiles to the sides of the gates, and in particular I observed there was as HY put it, a small fence section which filled the gap beside the gate at the entrance to the wood itself, also shown in some of the photographs submitted. Although it does not appear as some stiles do, it seems to have been consistently lower than the gate and provided a platform, albeit narrow, for users to use, and it was at this location that top rails were often removed or damaged and from time to time replaced. The absence of any endeavours to remove an obstruction is relevant and although the circumstances in which damage took place is not known or admitted to, during the period under consideration there does not appear to have been any appreciable difficulties in using the Order route as reflected in the testimony of the users.
11. As to the “pig gate” or “middle gate” it seemed to me from the images supplied and what I observed that there would have been scope for going around it if and when locked, quite easily. The gate at the junction with Intake Lane had a gap to the side that was later filled by the pedestrian gate and the notice related to vehicular access. There appears no reported user evidence of a sign clearly indicating that there was no public right of way in respect of these gates, despite the testimony of HY and others to the contrary.
12. AC who owns land crossed by the Order route was unaware of the configuration of the gates. The single field gate at the junction with the bridleway was to the “best of his recollection” locked and his knowledge of the forestry track from the mid 80’s was “minimal”. He could not recall the precise wording on the sign on the gate. The forestry track was not fenced off from the adjacent field and was part of an open field to the rear of the “stack yard”, through which, when younger he used to access the wood with friends through the farm buildings when the farmer was not there, which is not part of the Order route.
13. The testimony of CAG does not span a large part of the period under consideration, for she was away from the village from 1984 until 1996. The difficulty in negotiating the access with a baby buggy over a locked gate is unsurprising but there was uncertainty over the period or periods during which this obtained. The evidence from ADS for this period 1977-1997 is very limited, he observed there to be no forestry track before he left the area in the 1980’s and saw it at some indeterminate date in the 1990’s when constructed.
14. With so many testimonies from all parties, it is inevitable there was some inconsistency with information given. Some of the objector's witnesses had working knowledge of the immediate area and there is a notable similarity among the objectors’ statements in recollecting a single, locked field gate prior to 1988, indeed the same wording is often used. This is unsurprising as several objectors have close or friendly relationships with one another and they have been able to corroborate each other’s evidence quite precisely.
15. By contrast, however several users recall that there was always a pedestrian gate which was always usable and never locked. M’s evidence was that he was "pretty sure" it was always in the arrangement shown on the 1997 photographs, another witness DC stated that she "remember[ed] there was always a pedestrian side gate", DB who commenced her use in 1987 doesn't remember a time without a side gate, and LC stated that in relation to all claimed gates, you could "always pass by on the left".
16. There is also a clear conflict of evidence as between the objectors and user witnesses who do not recall notices such as those Mrs D described or challenges, or as members of the public being given permission.
17. The objectors’ evidence paints a consistent picture that the gates were locked for substantial periods of time, although in my view it is probable that they were left unlocked for substantial periods of time due to the comings and goings of the FC, farm workers and those who had been given permission to access the wood for various reasons. In any event, the recollections of the objector’s witnesses do not persuade me that the three gates in question, during the period 1977 to 1997, whether locked or not, were otherwise impassable or could not be relatively easily negotiated by the side or in the case of that at 19B, by use of the stile/lower section of fencing.
18. The exercise of private rights is disregarded as evidence of exercise of public rights. Circumstances here may have facilitated trespass, albeit that the evidence of user is inconsistent with the argument that users were merely using the route when the forestry operations were in progress, or just when gates were left unlocked. I find it more likely that although the claimed gates may have existed, they were generally either unlocked or presented no real or sustained difficulty that impeded passage by pedestrians wishing to access the woods along the Order route.
19. If usage is by permission there can be no deemed dedication, but the owners during this time were well aware of many users who did not have permission. The persons challenged by Mrs D were said by her to be in the tens, the evidence is lacking in detail on dates and circumstances. The overall impression from listening to the testimony and reading the statements is that there is insufficient evidence that the owner or owners communicated to the public that they had no intention of dedicating the way at some point during this 20-year period.
20. The underlying principle is the landowner's acquiescence in the use of the path. Whilst a single act of interruption by the owner is of much more weight as to intention, than many acts of enjoyment, there is lacking evidence of some overt act or acts on the part of the owner that came to the attention of the public who used the way and demonstrated to them that they had no such intention (at least until 1997). Overall it has to be concluded that the owners acquiesced in the use of the path during this period, whether by tolerance, good nature, inertia or the like. Communication to the public is key and is lacking here. The widely published FoHG minutes which recorded the owners’ unwillingness to dedicate the Order route as a public right of way occurred in 2006, outside the first period under consideration.
21. The purpose of the three main gates was predominantly to prevent either vehicular use or intrusion of animals. Whilst an obstruction, if they were unlocked, they would be easily negotiable. The gates may well have been locked from time to time and unlocked at other times. But if no one knows of the locking, no one would have been prevented from using the Order route footpath and it would be unsurprising there were no complaints during the period under consideration. The size, nature and location of these gates would not have presented a significant interference with free passage. No user encountered locked gates prior to 1997 yet if gates had been locked to the extent and frequency that is claimed, people would probably remember having had to climb a series of three locked gates, which for parents with young children, older and less mobile members of the public and those walking dogs, would be memorable. Some witnesses did not clearly recall locking of gates.
22. I find on this issue that the requirement to bring home to members of the public a lack of intention to dedicate has not been satisfied on the balance of probability.

*Summary*

1. The earliest date when use as a footpath was effectively brought into question, was the summer of 1997. There is little if any evidence of the physical existence of the way prior to its being laid out with hard surfacing, which did not occur any later than 1984. However that does not necessarily mean that Order route has not been available or used before 1984, or for the full period of twenty years to 1997, despite the evidence of some residents. Indeed, I find that the use of K19 during the period 1977 to 1997 was by sufficient number of people to show use by the public, and sufficient to bring home to the mind of the reasonable non-absentee landowner that the public were asserting a continuous right to use the Order route in question.
2. An intention not to dedicate during this time must be made clear to the public by a sufficiently overt, notorious and unmistakable act, however such act did not occur. The 1986 conveyance, on its face a tacit acceptance by the then owners of the existence of a public right of way along the forestry track, part of K19 is relevant to consider. I do not necessarily infer therefrom a previous dedication of the land as a highway, but it certainly has to be weighed against the claimed challenges made to individuals encountered during this period 1977 to 1997.

**K19 Lengths and widths specified in the Order**

1. The width of the route where reported was variously recorded between four and fifteen feet, although the most users recorded the width being in the region of 3 metres. Overall the user evidence is clear and consistent and corresponds with observations during my visit. The width claimed is consistent with the former use of the land. I therefore consider the claimed width of 3 metres reflects both the way and the use made of it and is appropriate.
2. The length of section C to D from the pedestrian gate to BW8 at Intake Lane was measured and varied according to the exact position from where the junction was said to be. I am satisfied however that the length of 13m as stated in the Order is reasonable and allows for a margin of error such as would not cut off any part of the route from the junction with Intake Lane.

**K19 Conclusion as to Order Ref: ROW/3259130**

1. For the above reasons and considering all other matters raised I conclude that the Order should be confirmed.

**K20 ROW/3257816**

**K20 *When was the use of the route as a footpath brought into question?***

1. It is undisputed that the erection of fencing in 1987 brought into question the existence of a public right of way over the Order route. Therefore the relevant twenty-year period for the purposes of s31 of the 1980 Act is 1967-1987.

**K20 Documentary evidence**

1. The application was supported by Finance Act 1910 records, historic Ordnance Survey (OS) maps, and a history of access into Hagg Wood written by the applicant. The Council submitted additional historic OS maps which show the Order Route. Two of the objectors submitted documentary evidence refuting the existence of the Order Route set out below.
2. The 1910 Finance Act records do not mention deductions for the presence of a right of way. The Order Route appears sporadically in historic OS maps and other old map evidence. However the 1910 25 inch map does not show the Order Route which is not depicted again until 1952 and again in 1958. The 1969 map does not show the Order Route, nor do the map records thereafter. The history of access to Hagg Wood shows that pre WWII access was not encouraged by land owners and gamekeepers they employed.
3. The 1905 sale particulars state the land subject to the sale is “without public road or footpath thereon” and one of the accompanying maps lacks clarity as to whether it relate to the sales particulars.
4. The 1998 letter from the FC to the OMA would suggest that this body never considered the public had a right of access on foot over the triangular field across which the Order route lies. The LLC search reply shows no public rights of way recorded over the land to be purchased in 1986. Two aerial photographs dated 1970 and 1974 show no worn strip through the field at the northern end of the Order Route. The other aerial images start from 2002 and equally show no worn strip. The initial survey for the definitive map for Kexby shows that the K20 Order Route was not claimed as part of that process.
5. No significant reliance was placed on the documentary evidence and no inference as to the status of the Order route can be drawn from therefrom.

**K20 User evidence**

1. The supporters acknowledge that at this distance in time it was difficult to call oral evidence, although the Council states that the evidence must be considered in the context of a rural route into a woodland in an area not heavily populated.
2. 41 UEFs attested to the use of the Order Route by 42 people on foot between 1927 and 1997, 24 of whom claimed use for a period of twenty or more years. 17. 8 users claimed to have walked the route every week, 17 every month and the others less frequently. One user reports seeing in the 1950s a green/gold sign in the corner of the field where the Order route enters Hagg Wood but did not record its purpose. A few users reported seeing fire beaters in this location and 11 reported coming across gates and stiles in using the Order route, although the UEFs were unclear whether they were there at the same time or replaced others. 8 users recorded finding stiles only on the Order Route and 12 found only gates.
3. The UEFs suggest that the access on to bridleway 8 changed over the period of use from the western to the eastern corner of the field, 36 witnesses reported using the Order route with 6 users recording that they only gained access to bridleway 8 via a gate or stile in the eastern corner of the field, and none found the gates locked. One recorded a wire fence which the witness’s dog was too heavy to lift over whilst another said they worked for the farmer tenant of the field crossed by the Order Route, but where there is some uncertainty whether their use would have been as of right. No user reported being challenged by land owners or tenants during the 70 years’ use claimed in the UEFs and none received permission from land owners or tenants to use the Order Route, therefore 41 appear to have used the route as of right. The width of the route, where reported, was said to be between two feet and three metres, with most recording it as c3 feet.
4. The objectors raise several anomalies in the written evidence of the Council and supporters, as to sufficiency of user evidence during the relevant period and alignments used. It could have been any one of four, or possibly more, thus giving rise to a picture more akin to general wandering across the triangular field rather than use of a specific route.
5. The Order Route was used by several families from the nearby village and it is correct that the inhabitants of a parish or community may constitute the public for such purposes, but whether there was sufficient diversity in the evidence to demonstrate that, on the balance of probabilities, it was used by the public at large, is doubtful.
6. The objectors made much of the fact that there was a large pond in the middle of the triangular-shaped field over which the Order route runs, and which appeared to be waterlogged for substantial periods of time over the period in question. On the day of my inspection the pond was clearly visible although I accept from what I have seen as well as read, including the photographic images, that at times it was waterlogged over a much wider area.
7. It is also the case that four different routes are claimed to have been used. Some went by one side of the pond, others walked on the other side or varied their routes and yet others stated that people cut across the field wherever they wanted. Most witnesses did not give direct evidence, so their statements were not subject to live questioning.
8. However in any event, I remain concerned as to the frequency of use of the Order route. The historic OS maps do not show features on the ground that could realistically be the Order Route. The aerial images, in particular those from 1970 and 1974 show no worn strip crossing the field and the frequency of use was unlikely to have create such features. That the sign noted by one user asked people to take care not to start fires, and that a reasonable explanation was that the FC expected this to be used as access into Hagg Wood, may be one thing, but there is no real basis on which it is likely aimed exclusively at the public rather than forestry workers or others permitted to access the land, which would be consistent with the FC letter to the OMA.
9. On balance I am unpersuaded that the use of the Order route was sufficient to demonstrate that the public were asserting a right over the land. I find this to be the case in respect of any 20-year period prior to the application for its inclusion as a public right of way on the DMS.
10. As to a possible dedication at common law, the quality of user required to establish a public right of way is the same both under s.31 and at common law. It must be open, uninterrupted and as of right. I am not persuaded that there has been use by the public of the line of the claimed route across the triangular filed, which was so notorious or conducted in a way that would have made the owners aware that the public was asserting public rights of passage, such as would make them take steps to communicate lack of intention to dedicate. Therefore I find there is insufficient evidence to infer dedication of the route at common law on the balance of probabilities.

K20 Conclusion as to Order Ref: ROW/3257816

1. For the above reasons and considering all other matters raised I conclude that the Order should not be confirmed.

**Formal Decision as to Order Ref: ROW/3259130 (K19)**

1. I confirm the Order

**Formal Decision as to Order Ref: ROW/3257816 (K20)**

1. The Order is not confirmed.

Grahame Kean

INSPECTOR

**APPEARANCES**

**For the Council**

Miss Stephanie Hall Counsel, Kings Chambers

She called:

Mr Varley (K19, K20) Rights of Way Officer

JS (K19) User witness

CW (K19) User witness

DC (K19) User witness

DB (K19) User witness

FC (K20) User witness

Mrs S (K19) User witness

LC (K19, K20) User witness

**In support of the Order**

Mrs Sue Rumfitt Sue Rumfitt Associates

She called:

HS (K19) User witness

CS (K20) User witness

DU (K19) User witness

IG (K19) User witness

CW(2) (K19) User witness

BP (K19) User witness (scout group leader)

TM (K19) User witness

KS (K19) User witness

EB (K20) User witness

KS(2) (K19) User witness

**Against the Order**

Mr Robin Carr Robin Carr Associates

He called:

GK (K19/K20) User witness

MB (K19) User witness

GC (K19/K20) User witness

AC (K19/K20) User witness

RK (K19/K20) User witness

AR (K19) User witness

JH (K19/K20) User witness

MJG (K19/K20) User witness

JD (K19/K20) User witness

HY (K19/K20) User witness

AS (K19/K20) User witness

DW (K19/K20) User witness

CS(3) (K19/K20) User witness

MT (K19/K20) User witness

**Additional Documents submitted during the Inquiry**

1. Statement of Kexby and Scoreby Parish Council
2. Statutory declarations of Objectors who appeared
3. Statutory declarations of Objectors (not appearing)
* GH
* RH
* CG
* MB
1. Statements of AM and LJ (not appearing)
2. North Yorkshire County Council letter 12 March 2022 re DMS
3. Plan submitted by objectors
4. Social media post, dated 2019
5. Photographs showing waterlogged field, 2007
6. Forest Enterprise letter 8 November 1996 re Hagg Wood
7. HM Land Registry title number NYK343452 issued 13 March 2020
8. Extracts from textbooks re culs-de-sac as highways
9. *Rubinstein v Secretary of State for the Environment (1987) 57 P & CR 111 (*overruled by Court of Appeal in *R v Secretary of State for the Environment ex parte Burrows and Simms [1991] 2 QB 354)*.

ROW/3259130 - ORDER MAP



ROW/3257816 - ORDER MAP

