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| **Order Decision** |
| Inquiry held on 28 February 2023 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 May 2023** |

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| **Order Ref: ROW/3212585M** |
| * 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 Footpath, Knapton No.4 (Grange Lane to Rufforth Airfield) Definitive Map Modification Order 2010. |
| * The Order is dated 29 March 2010 and proposes to modify the Definitive Map and Statement for the area by adding a footpath, running from Grange Lane (opposite Nos 66 and 68) generally westwards to the eastern edge of Rufforth Airfield, as shown on the Order Maps and described in the Order Schedule. |
| * In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications to alter the status of the route to be added to Restricted Byway. |
| **Summary of Decision: I confirm the Order subject to the modifications I proposed previously.** |
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Procedural Matters

1. I originally opened an inquiry into this Order on Wednesday 11 March 2020 but had to immediately adjourn it as a result of one of the main parties being unable to attend due to the coronavirus outbreak. Further delays occurred as a result of the outbreak and for other reasons. The inquiry resumed on Tuesday 15 and Wednesday 16 February 2022 as a ‘blended’ event with some people attending in person and some online.
2. I made an unaccompanied site inspection on Tuesday 10 March 2020 when I was able to walk most of the Order route and view the remainder. I made a further visit on Monday 21 February 2022, when I was accompanied by parties represented at the inquiry.
3. The Council of the City of York, the Order Making Authority (OMA), having considered objections and representations made to the Order, concluded that the Order route carries higher rights than a footpath and has requested that the Order be modified so as to record the route as a Restricted Byway, if it is confirmed.
4. After consideration of the available evidence, I concluded that the Order should be confirmed in the modified form requested.
5. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, two objections, two representations of support and one further representation were received within the statutory period specified.
6. I subsequently held a second public inquiry on February 28, 2023. At this inquiry, some documentary evidence that had not been considered previously was available along with the opportunity for parties to clarify their interpretation of the evidence. I have therefore found it appropriate to consider all of the available evidence. However, to avoid unnecessary repetition, I have concentrated in writing this decision on the new evidence and arguments put forward at the second inquiry.
7. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.

The Main Issues

1. 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.
2. Some 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.
3. Common law also requires me to consider whether the use of the route and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.
4. As the Order concerns a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

***Documentary Evidence***

*The Marwood Map*

1. The earliest map that has been discovered which appears to show part of the Order route is a map of Acomb Grange said to date from 1760. At that time Acomb Grange was owned by Henry Marwood and the map was referred to at the inquiry as ‘the Marwood Map’. This map shows a road running along the northern boundary of the estate, the eastern part of which appears to be within the estate and the rest outside the boundary, and which appears to be similar to the Order route.
2. At the western edge of this map the road is annotated *‘From Rufforth 1 mile’.* To the east of this section of the road, points are marked *‘A’* and *‘B’* and it is annotated *‘From A to B is part of the antient road from Wetherby to York & repaired by Marwood’*. The next sections are annotated *‘Wm Stoddard Road’* and then *‘Road to York 2 miles. To Acomb ¼ mile’*.
3. This was a map prepared privately for the landowner and not intended for use by the public. It therefore does not identify routes as being public. Nevertheless, there would be no reason for the map maker to show a road where none existed.
4. The annotations on this map seem to indicate that the route formed part of a through route between York and Wetherby and that it was regarded as an ancient (‘antient’) route in 1760.
5. The note on the map that part of the route was ‘*repaired by Marwood’* might be taken to suggest that the route was maintained privately and accordingly only for private rather than public use. However, it was argued on behalf of the OMA and others that, prior to the 1766 Highways Act, the maintenance of roads was the duty of all the residents of a parish and that this note could be interpreted as simply indicating that the landowner had taken on the maintenance of part of the route adjoining his estate as his part of the duty owed.
6. It was suggested on behalf of objectors that the map appears to show buildings obstructing the road and that these are buildings which are clearly shown to the south of the road on later Ordnance Survey maps. This being the case, it was further suggested that it indicated that the accuracy of the map could not be relied on and it should be given little weight. However, in my view it is by no means clear from the copies of the map that I have seen that it shows buildings obstructing the road. The OMA also disputes that the map shows the road obstructed by buildings.

*Early Commercial Maps*

1. Jefferys’ Map, published in 1775 but surveyed between 1767 and 1770, shows a route resembling the Order route as the only route between Rufforth and Acomb.
2. Tuke’s Map (1787) shows similar information to Jeffery’s Map. However, this is perhaps not surprising as this map is believed to have been based on the same survey as Jefferys’ and not on a new survey of the area.
3. Other commercial maps published between 1801 and 1898, which were considered by the OMA, and others submitted by supporters of the Order, nearly all show two routes between Rufforth and Acomb which appear to relate to the B1224 and the Order route. The only exception is a map prepared by Cary at an unknown date although another Cary map, dated 1825, does show both routes.
4. It was argued by supporters of the Order, as proposed to be amended, that the inclusion of the Order route on maps designed to be sold to the travelling public suggested that it was believed to be available for public use. This was disputed by objectors.

*The York and Collingham Turnpike Trust (the Turnpike Trust)*

1. The Turnpike Trust was formed in 1771 and a turnpike road was established between York and Wetherby, which has now become the B1224 road. It is not known when the turnpike road was constructed but it is assumed by the OMA that this would have been some time after the establishment of the trust in 1771. This would explain why it was not shown on Jefferys’ or Tuke’s maps.
2. It was argued on behalf of objectors that turnpikes were usually established mainly by improving existing routes rather than creating new ones. The 1771 Act which set up this trust has not been produced in evidence, but it was referred to in a subsequent 1826 Act as an *“Act for repairing and widening the Road from Collingham through Wetherby to the City of York”.* This would appear to suggest that the turnpike road followed the route of a pre-existing road.
3. On behalf of the OMA, it was argued that the wording quoted above was part of a standard pre-amble to such Acts and would not have precluded part of the turnpike being established on a re-aligned route rather than following a pre-existing route.
4. As the only 2 maps discovered which fail to show the route of the turnpike before 1771 were based on the same survey, it was suggested on behalf of objectors that this may have been an error and, accordingly, the Order route may not have been the only route between Wetherby and York before the establishment of the turnpike. In the absence of other maps for comparison, such a possibility cannot be completely dismissed but, the omission of a relatively major route and inclusion of a lesser route would have constituted a major error and seems unlikely.

*Inclosure Awards*

1. The Acomb and Holgate Inclosure Award (1776) set out the Wetherby Turnpike Road and another public highway referred to as Rufforth Road and leading “*to the ancient gate into the township of Rufforth”*. It was stated on behalf of the OMA that the term ‘gate’ may have referred to a road rather than a gate in the modern sense. Either way the wording in the award would appear to suggest that the route continued beyond the boundary of the award. The map that would have accompanied the award is missing but a copy believed to be a faithful contemporaneous copy is held in York Archives. By cross referencing the description of this road, the copy map, the earliest Ordnance Survey map and the text of the award, the OMA has concluded that this road is what is now known as Grange Lane. Although the road referred to is not the Order route but the section of Grange Lane east of Point A, it seems unlikely that such a public road would simply terminate at the parish boundary where there was no feature of public interest. Accordingly, it would appear that the road was believed to continue westwards to Rufforth.
2. The Knapton Inclosure Award (1788) does not include any land crossed by the Order route. On behalf of objectors, it was pointed out that none of the parcels of land to be enclosed were described as being bounded by what is now known as Grange Lane. However, in the absence of a map, the significance of this is not clear.
3. The Rufforth Inclosure Award (1795) set out a way described as *“…one other private or occupation carriage road by me called Rufforth Grange Road which if fenced off shall be of the width of twenty four feet…”*. This route appears to coincide with the continuation of the Order route west of Point F. There was dispute regarding whether the use of the word ’private’ in the award should be interpreted in its modern sense so as to mean that members of the public were not allowed to use the route or in some other manner. The award itself states that *“…all public carriage road and private occupation roads hereinbefore by me awarded shall be made and forever hereafter repaired and maintained by and at the expense of the inhabitants and occupiers of hereditaments in the township of Rufforth aforesaid in the manner and with like exceptions from contributing to repair as the public highways of the said township…”*. This would suggest that routes were to be maintained at public expense which would seem unlikely for routes that members of the public were not allowed to use. It was suggested by objectors that the commissioners may have exceeded their authority by making such provision for maintenance of ‘private’ roads. However, I have seen no evidence that would lead me to such a conclusion.
4. I also note that this award was made under a local Act of 1794 and that under this Act the Rufforth Court Leet was required to inspect and enforce the maintenance of private ways. It was argued by supporters of the Order that the court would not have had any interest in purely ‘private’ (modern meaning) ways.
5. If it were to be accepted that the continuations of the Order route to both the east and the west were public roads, it would be logical to assume that the route linking them, the Order route, was also likely to have been public.

*Ordnance Survey (OS) Maps*

1. OS maps from 1850 to 1993 consistently show the Order route on its current alignment named as Grange Lane. However, as stated in my interim decision, these maps do not indicate whether routes shown were public or private.

*Finance Act 1910*

1. As stated in my interim decision, the Finance Act records do not provide any evidence of the existence of public rights over the Order route. However, this does not necessarily mean that no such rights existed. By the time of the Finance Act survey, a better and more direct route between Rufforth and Acomb, what is now the B1224, had existed for a long time and the Order route may have faded from local memory.

*Rufforth Airfield*

1. This airfield was established during the Second World War under emergency wartime powers. After the war, in 1953, the Ministry for Transport formalised the wartime measures to allow the continued peace time use of the airfield. Part of this process involved the formal stopping up of the continuation of the Order route westwards across the airfield and the creation of a new route which is now recorded as a public footpath (Rufforth 8).
2. This would suggest that in 1953 it was believed that the route had carried public rights, albeit as a footpath. It is not known on what basis the pre-war status of the route was determined. However, if any higher rights existed, it is debatable whether they might still subsist on the original route but that is not a matter for me to address at this time.

*Compulsory Purchase Order 1982*

1. The North Yorkshire County Council (York Outer Ring Road) Compulsory Purchase Order 1982 (the CPO) was confirmed on behalf of the Secretary of State for Transport in December 1983. This was made to enable the construction of what is now the A1237 York Outer Ring Road which crosses the current Order route between Points D and E. In the Schedule to the CPO which describes the land to be acquired, one area (No.17) is described as follows:

*“17,490 square metres. Arable land forming part of Acomb Grange Farm and including a half width of drainage ditch immediately south of Grange Lane and part of private roads Broad Lane and Grange Lane”*

1. This indicates that the current Order route was then considered to be a private rather than a public road. This is not surprising as, at that time, the Order route was not recorded as a public route of any sort on the definitive map or in highway records. It is unlikely that any detailed investigation of the status of the Order route would have been undertaken in the absence of an objection being raised to the CPO, which did not occur. At the inquiry, A representative of the Ramblers Association stated that, although evidence in connection with a claim for the Order route to be recorded as a public right of way was being collected at the time, no objection was felt necessary to the CPO as it was considered that the new road would not affect any existing rights over the Order route.
2. After the inquiry, evidence was submitted to show that the Ramblers Association had in fact submitted 2 letters of objection to the CPO, although it was not suggested that these related to the Order route.
3. It is not contested by any party that in the early 1980s, Grange Lane was not recorded as a public route and would have appeared to be a private road and was accordingly treated as such in the CPO. Nevertheless, if public rights over the route had been established at some time before then, the CPO would not have had the effect of extinguishing them.

*Conclusion regarding documentary evidence*

1. The Order route appears to have existed for a long time. It was already described as an ancient route in 1760. Although the evidence that it was part of the only route between Wetherby and York prior to the establishment of the turnpike on the line of what is now the B1224 is limited, there is no substantive evidence of another route. This being the case it seems inevitable that the route would have been used by the public.
2. It is also likely that use of the Order route may have continued after the establishment of the turnpike so as to avoid paying tolls. However, after the end of the turnpike era in the 19th century it is likely that use of the Order route would have declined considerably as what is now the B1224 offered a better and more direct route.
3. The evidence of the inclosure awards does not directly assist in determining the status of the Order route. However, it does seem to confirm that the continuation of the route eastwards was a public road and it is arguable that the continuation westwards was also public. If the continuation westwards was not public, it would mean that public rights terminated either at the parish boundary of Acomb or at some point on the Order route itself. On balance, it seems more likely that public rights continued throughout the route.
4. None of the other evidence adduced precludes the possibility that the Order route was a public road available for all traffic and, when it is considered as a whole, it seems that this is the most likely interpretation that should be made. It would appear that since the 19th century use of the route has declined but there is no evidence of any rights over it having been formally extinguished and therefore rights that were established still remain.

***Evidence of Use***

1. No additional evidence of use of the Order route was submitted and I therefore had no reason to come to any different conclusion than I did previously regarding the insufficiency of the available evidence to raise a presumption that the route has been dedicated as a public right of way of any sort in accordance with the provisions of the 1980 Act.

**Common Law**

1. 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.
2. In this case, the evidence of recent use by the public is limited and there is no evidence of action by landowners indicating an intention to dedicate public rights. However, the documentary evidence suggests that public use of the route may have taken place over a long period in the past and it may well be that this resulted in the establishment of public rights under common law.

**The 2006 Act**

1. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case it would appear that none of the exceptions is applicable. Accordingly, any right of way for MPVs over the route have now been extinguished and, in the light of my conclusions regarding the documentary evidence, it is appropriate that the route be recorded as a Restricted Byway.

Other Matters

1. If the Order is confirmed, as proposed to be modified, the Restricted Byway to be recorded will appear to be a cul de sac terminating at Point F for all traffic other than walkers, as a result of the stopping up and diversion of the continuation of the route westwards as a footpath only. However, this does not mean that the Order should not be confirmed as proposed to be modified given that I have concluded that the evidence indicates that the Order route is a Restricted Byway. Also, as I have mentioned already, it may be arguable that higher rights to the west have not been extinguished.
2. Objectors referred to the disruptive effect recording of the Order route as a public right of way might have on agricultural activities on the land crossed. I fully understand their concerns, but this is not a matter to which I can give weight under the legislation when making my decision.
3. It was also suggested that use of the Order route by the public which would involve crossing the busy A1237 road would potentially be dangerous. This is also a concern which I understand but cannot give weight to in my decision. The appropriate future management of this crossing will be a matter for the highway authority to consider.

Conclusions

1. On the balance of probabilities, the documentary evidence that is available, reinforced to some extent by the evidence of users, indicates that the Order route was a public highway open to all traffic. However, as any right of way for MPVs over the route was extinguished in accordance with the provisions of the 2006 Act, the route should now be recorded as a Restricted Byway.
2. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modification to record the route as a Restricted Byway rather than a footpath.

Formal Decision

1. I confirm the Order subject to the following modifications:

* In the Order and the Schedule to the Order, delete the words ‘Public Footpath’ or ‘Footpath’ and substitute ‘Restricted Byway’;
* Amend the Order Maps accordingly.

Barney Grimshaw

Inspector

appearances

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| **For the OMA** |  |
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| Stephanie Hall | Counsel, representing the City of York Council (CYC) |
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| Who called: |  |
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| Russell Varley | Definitive Map Officer, HCC |
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| **Supporters (of the Order as proposed to be modified)** |  |
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| Catriona Cook | Representing the Byways and Bridleways Trust and the British Horse Society |
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| David Nunns | Ramblers |
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| **Objectors** |  |
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| Paul Butler | Surveyor, representing Mr & Mrs Swiers, landowners |
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| Philippa Farthing | Landowner |
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**DOCUMENTS**

1. Opening submission on behalf of CYC.
2. Statement of Case of CYC.
3. Proof of Evidence of Russell Varley, CYC.
4. Statements of Case for the Byways and Bridleways Trust (BBT) and British Horse society (BHS).
5. Statement of Case, addendum and summary of P Butler (on behalf of Mr & Mrs Swiers).

