



Order Decision

Inquiry on 19 November 2024

by **Claire Tregembo BA(Hons) MIPROW**

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

Decision date: 6 January 2025

Order Ref: ROW/3324444

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Council of the City of York Public Footpath York (Westfield) 243 and York (Westfield) 245 Modification Order 2021.
- The Order is dated 19 August 2021 and proposes to modify the Definitive Map and Statement for the area by adding two footpaths as shown in the Order plan and described in the Order Schedule.
- There were three objections and fourteen representations outstanding at the start of the inquiry.

Summary of Decision: The Order is confirmed.

Application for costs

1. An application for costs was made by the Council of the City of York against the Lycett Green Family Trust and York Ainsty (South) Hunt. This application is the subject of a separate Decision.

Procedural Matters

2. I made an unaccompanied site visit on 18 November 2024 where I walked the Order routes and familiarised myself with the area.
3. None of the objectors appeared at the Inquiry with only one indicating they would not attend in advance. The evidence submitted in support of the Order is user based. I heard evidence from witnesses who stated they had used the Order routes at the Inquiry to assist in my decision making. I also asked the witnesses questions to test the evidence and ensure I had a full understanding of it.
4. I will refer to various points shown on the Order plan. For ease of reference, I have appended a copy to the end of my decision. There are two footpaths in the Order; Footpath 243 running between points A-B-C-D-E-F-G and Footpath 245 between points F to Z.

The Main Issues

5. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in section 53(3)(c)(i). This requires me to consider if, on the balance of probabilities, the evidence shows that public footpaths subsist along the Order route. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
6. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in section 31 of the Highways Act 1980 (the

1980 Act). This requires me to consider if the public has used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. I must establish the date when the public's right to use the Order route was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowners to dedicate public footpaths during this period.

7. Documentary evidence has also been submitted in support of the Order. Section 32 of the 1980 Act requires me to take into consideration any map, plan, or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining if a way has been dedicated as a highway.

Reasons

Documentary Evidence

8. Ordnance Survey (OS) maps dating between 1853 and 1969 show the York and Ainsty Kennels obstructing section F-G. These buildings are not shown on the 1982 OS maps. There is an additional field boundary shown on the OS maps from 1853 to 1969. This boundary is also shown on the 1982 1:10000 map but is not shown on the 1982 1:1250 map or later OS maps. Osprey Close is first shown on OS maps from 1992 and the enclosed path into the fields from Osprey Close is first shown on the 1994 OS map.
9. Aerial photographs from 1936, 1951, 1962, and 1971 show the Kennels across section F to G. On the 1951 and 1962 aerial photographs, there appears to be a clear, open entrance to the field at point Z. The additional field boundary between points D and E is shown on the aerial photographs until 1962 but is not shown on the 1971 aerial photograph. The fields through which the Order routes run appear to be pasture on the aerial photographs between 1936 and 2007. The field alongside section D to E appears to be cultivated on the aerial photographs between 2013 and 2020. The field alongside Foxwood Lane does not appear to be cultivated until the 2020 aerial photograph. Osprey Close and the path into the field are first shown on the 1999 aerial photographs. There is a clear worn line visible along sections A to D and F to Z on the 1999 to 2020 aerial photographs. There is also a worn line partly visible along section D to E on some of the aerial photographs between 2007 and 2020. Section F to G is not visible on any of the aerial photographs.
10. The Google Street View images from September 2008, May 2011, May 2012, and July 2019 show a stile at point G, although it looks partly collapsed in 2019. At point Z, there is a stile alongside a gate on the May 2011 Google Street View image but the access into the field is realigned on the May 2012 image with no stile and a chained gate.
11. Photographs of the Order routes taken in April 2011 show a mown line between section C to D, and well-worn lines either side of point D, between sections D and E, and F to Z. There are stiles at points E, G, and Z, and a kissing gate at point B. Photographs taken in October 2018 show a locked gate, wooden and barbed wire fencing at point Z, the remains of a stile at point G, a stile at point E, a gap at point

D, and a kissing gate at point B. Section C to D is mown, and the grass is shorter on the approaches to points G and Z in a way that would suggest a walked line.

12. The aerial photographs, Google Street View images and site photographs show the physical features of the Order routes. They show it would have been possible to use Footpath 243 until 2018 and Footpath 245 until May 2011, and suggest they were well used. However, they do not provide evidence as to the status of the Order routes, or show if use was public, private, or with permission. I do not consider the documentary evidence sufficient, on the balance of probabilities, to show public rights over the Order routes.

User Evidence

Bringing into question

13. To bring into question the right of the public to use the Order route some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.
14. In the absence of evidence of overt acts bringing the right of the public to use the route into question, section 31(7a) and (7b) of the 1980 Act provides that a Definitive Map Modification Order Application (DMMOA) made to the surveying authority, can serve as a challenge to use for the purposes of section 31(2) of the 1980 Act.
15. One person was told the Order routes were not public by a person who put horses in the field closest to Foxwood Lane. Another person was told by a man that she would not be walking in the fields again because he was putting horses in it. However, both path users continued to use the Order routes. Most people could not recall when the horses were in the field, but one person stated it was between 2014 and 2017 with others recalling them in the 1990s. I do not consider these two challenges, which did not stop people walking the footpaths, to be sufficient to bring to the attention of those using the Order routes that their use was being brought into question.
16. There was a change to the field access at point Z between May 2011 and May 2012 when the field gate was locked, and the stile removed. Some of those speaking at the Inquiry recalled a stile remaining at point Z after the access was realigned but others recalled barbed wire on the fencing and gate. Other people stated they could not access the road at point Z, so they walked along the northern field boundary to reach point G. I consider use of Footpath 245 was brought into question between May 2011 and May 2012. Therefore, I consider the relevant twenty year period for Footpath 245 to be May 1991 to May 2011.
17. There were no other challenges to the use of Footpath 243 until 2020 when a log was placed at point G preventing access. Path users recalled the fields being ploughed, but the field edge section between points D and F was not ploughed and the cross-field section between points F and G was not ploughed in 2019 or 2020. Furthermore, ploughing and cropping did not stop people walking the Order routes.
18. The DMMOA was submitted in January 2019 by the Foxwood Residents Association. They had become concerned about the condition of the stiles but were

informed the Order routes were not public rights of way when they made enquiries about getting them repaired. In the absence of any other acts bringing use of Footpath 243 into question, I consider the DMMOA served as a challenge to use. Therefore, I consider the relevant period for Footpath 243 to be January 1999 to January 2019.

Analysis of use

19. To satisfy the requirements of section 31 of the 1980 Act, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowner, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works.
20. I must also be satisfied that there was sufficient use by the public to raise a presumption of dedication.
21. Twenty nine people used section A to F of Footpath 243 between January 1999 and January 2019 with thirteen using it for the full twenty year period. The user evidence forms show less use of section F to G, but it was still used by fourteen people with nine people using it for the whole of the relevant period. Twenty people used Footpath 245 between May 1991 and May 2011 with nine people using it for the full twenty year period. Use of section A to F and Footpath 245 dates back to 1953 with use of section F to G dating back to 1975.
22. Use appears to be mostly for dog walking and pleasure with some people also using the footpaths as a shortcut. None of the path users had permission to use the Order routes and use appears to be open, without secrecy or force. Most of the path users refer to the kissing gate at point B and stiles at points E, G, and Z.
23. None of the path users recall any obstructions on Footpath 243 until a tree trunk was placed at point G in 2020 after the challenge date in January 2019. No one recalled any obstructions on Footpath 245 between May 1991 and May 2011.
24. The only notices seen on the Order routes were in around 2017 concerning the removal of horses being grazed in the fields without permission and a notice about keeping dogs on leads shortly after horses were put in the field. No one recalled any notices saying the Order routes were not public or that they could not use them. The only verbal challenge to use was to two people by a person who put horses into the field, which did not stop use.
25. I consider there is sufficient evidence of use during the relevant periods without interruption, challenge, permission, force, or secrecy to demonstrate a presumption of dedication over both Order routes.

Lack of intention to dedicate

26. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.

27. The Barlow Family has owned the field alongside section D to E since the 1800s which became the Barlow Family Trust (the Trust) from the 1920s. Their agent has managed tenancies on the land for over thirty years and the footpaths have never been included in any farm tenancy. They stated the previous tenant's staff had repeatedly challenged trespassers only to be verbally abused on most occasions. In 2001, their agent stated previous and current tenants had grown crops in the field but left a two metre wide corridor alongside any hedge or ditch as a wildlife corridor for Cross Compliance with rural payment schemes 1992. However, in an email dated 1 October 2024, they stated the field had been ploughed and worked up to the boundary every year.
28. Three of the five members of the Trust live overseas and have never visited the land. One of the other Trustees stated he had only visited it on a couple of occasions and had not seen anyone using the Order routes. The Agent stated the tenant and landlord did not live nearby, and time spent in the field was minimal. The Trust and their Agent both stated they had not erected notices on the land stating no trespassing or to stop people walking, although they had done this on other land in their ownership.
29. York and Ainsty (South) Hunt has owned the field abutting Foxwood Lane since 13 July 1910. They stated they leased the land to farming tenants after the hunt kennels were relocated in the mid-1960s. The land had predominantly been let for grazing and mowing with a more recent let for arable use. They stated the tenants maintained the boundaries which consist of fences, hedges, and a blocked and padlocked gate to prevent trespass by unauthorised users. They stated they had not granted permission for anyone to walk on the land and none of the tenancies had granted third-party access to the land. A previous agent stated the footpath furniture had been illegally erected with no permission sought.
30. Lycett Green Family Trust has owned the land between C and D since 1926 and previously owned the land between A and B until it was sold to Bellway Homes in the late 1960s. They have never given anyone permission to walk on the land or instructed anyone to cut the grass. The land was farmed by a tenant until the mid-1990s. They do not provide any information regarding any challenges, interruptions, or notices denying public rights over the Order routes.
31. The agents for the land between section D to E stated their tenants had challenged people. However, none of the path users were challenged when walking along this section of the Order route. The two people who were challenged were in the field alongside Foxwood Lane. However, it is not clear if these challenges were by anyone who owned or leased the land as path users recalled notices to remove horses being grazed without the landowner's permission. The landowners of the field alongside Foxwood Lane do not refer to any challenges by themselves or their tenants. I have already considered above in paragraph 15 that these two challenges were not sufficient to bring into question use of the Order routes. For the same reasons, I do not consider they were sufficient to indicate a lack of intention to dedicate public footpaths by the landowners.
32. With regards to section D to E the agent initially stated a two metre strip was left uncultivated, but later stated it was cultivated to the hedge. However, photographs of this section and some of the aerial photographs show no crops along the field

edge and path users stated their use of this section of the Order route was not affected by cultivation.

33. The landowners and their agents confirmed there have never been any notices stating the Order routes were not public or indicating they did not intend to dedicate public rights. None of them have granted permission to anyone to walk over the land.
34. One of the landowners stated they only occasionally visited the site and did not see anyone using the Order routes. However, one of the other Agents stated that trespass over their land was evident. The aerial and site photographs also show worn lines. I consider these worn lines would suggest the Order routes were being used to anyone visiting the land.
35. Overall, I do not consider there is sufficient evidence to demonstrate a lack of intention to dedicate public footpaths over the Order routes during the relevant twenty year periods.

Conclusions on section 31

36. I have found there is sufficient evidence of use of Footpath 243 as of right and without interruption between January 1999 and January 2019. I have also found there is sufficient evidence of use of Footpath 245 as of right and without interruption between May 1991 and May 2011. I do not consider there is sufficient evidence of challenges, permission, or other actions by the landowners to demonstrate a lack of intention to dedicate public footpath rights during the relevant twenty year periods. Therefore, I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that public footpaths subsist over the Order routes.

Conclusions

37. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed.

Formal Decision

38. I confirm the Order.

Claire Tregembo

INSPECTOR

APPEARANCES

For the Council

Sue Rumfitt Rights of Way Consultant

Who Called:

Russell Varley Definitive Map Officer

James Williams Path User

Cllr. Emily Nelson Path User and Ward Councillor

Jacqueline Brown Path User

Marilyn Forsyth Path User

Faye Rodger Path User

In Support of the Order:

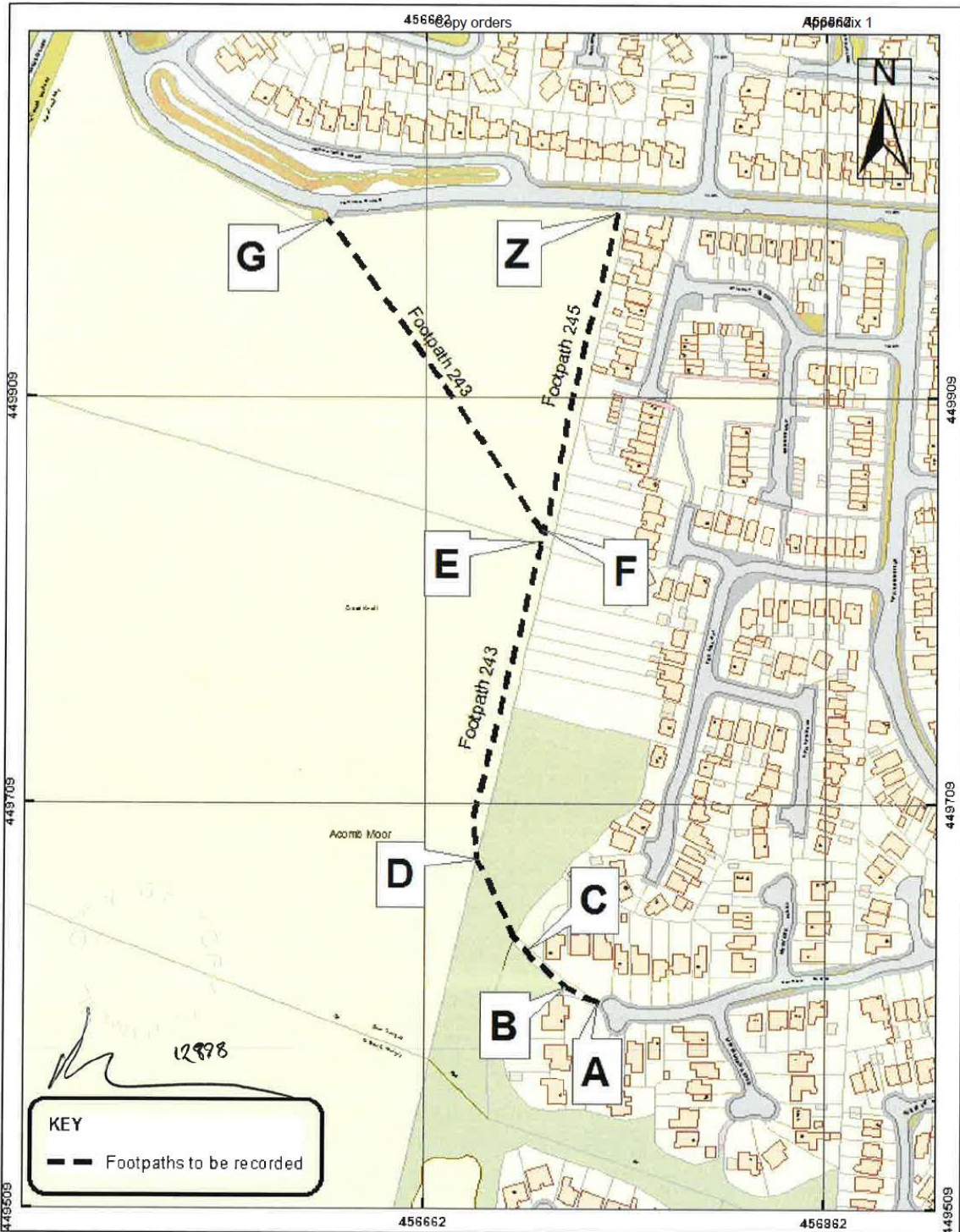
Steve Galloway Foxwood Residents Association

Cllr. Andrew Waller Ward Councillor

DOCUMENTS PRODUCED AT THE INQUIRY

Opening Remarks on Behalf of the Order Making Authority

Order Plan



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PUBLIC FOOTPATHS YORK (WESTFIELD) 243 and YORK (WESTFIELD) 245 MODIFICATION ORDER 2021		
Scale 1:2,500	Drawn By:RJV	Date:22/7/21
Public Rights of Way	Reference:	Drawing No.
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