



## Order Decision

Site visit undertaken on 9 January 2024

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 29 February 2024**

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### Order Ref: ROW/3309474

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as Public Footpath Heslington 15 Modification Order 2021.
- The Order was made by The Council of the City of York ('the Council') on 25 June 2021 and proposes to add a footpath ('the claimed route') to the definitive map and statement.
- There were twenty objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is not confirmed.**

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### Procedural Matters

1. All of the points referred to below correspond to those delineated on the Order Map. The claimed route runs between Heslington Footpath No. 2 (also known as Boss Lane) and Main Street, Heslington.
2. The Council has adopted a neutral stance albeit they do not consider that the evidence is sufficient to confirm the Order. Whilst the objectors have submitted a joint statement, no case has been made in support of the confirmation of the Order during the exchange of written representations.

### Main Issues

3. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a footpath which is not shown in the definitive map and statement subsists.
  4. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ('the 1980 Act'). This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
  5. If statutory dedication is not applicable, I shall consider whether the evidence is supportive of the dedication of a public right of way under common law. An inference of dedication can be drawn at common law from the actions of a landowner (or lack of action) and acceptance of the dedication by the public in the form of use of the route.
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## **Reasons**

### ***Statutory dedication***

6. The Council's view that the status of the claimed route was brought into question by the application to add the route to the definitive map in January 2006 is not disputed. This means the relevant period for the purpose of the 1980 Act is 1986-2006 ('the relevant period').
7. Nine user evidence forms ('UEFs') have been submitted in support of the application. These forms comprise of two pages and no plans are included to show the extent of the route used. Whilst reference is made to a route between Boss Lane and Butchers Row in the UEFs, the actual route between them cannot be determined. Additionally, the documentary evidence outlined below casts doubt on the extent to which the claimed route could have been used during the relevant period.
8. However, it is apparent that only two people have potentially provided evidence of use during the relevant period. The frequency of the use by these two people is stated to have been occasional and previously weekly. It is unclear when the use by the second person occurred on a weekly basis.
9. In my view, the evidence of use during the relevant period falls way short of raising a presumption of the dedication of a public footpath. This means there is no need for me to consider the issue of statutory dedication further.

### ***Common law dedication***

10. Two people who have submitted a UEF in relation to use prior to the commencement of the above relevant period have referred to their family having a tenancy and another person says her father was the gamekeeper for the landowner. In the absence of any further information, the inference to be drawn from the evidence of these people is that their use during unspecified periods of time was likely to have been on a permissive basis. None of the other users indicate that they used the route with permission.
11. When taken at face value there is evidence of use from six people over a fairly lengthy period of time and no evidence is provided of this use being challenged. However, the quality of the user evidence and the general frequency specified in relation to the use serves to limit the weight of this evidence. There is also evidence from the objectors of a lack of observed use of the claimed route and the route not being available to use due to obstructions. This evidence covers a large proportion of the period of use outlined in the UEFs.
12. A track is shown on a number of Ordnance Survey ('OS') maps produced between 1853 and 1958, which corresponds with a proportion of the claimed route. It is apparent that this track previously provided access to five allotments for the occupiers of properties located on what was known as Butchers Row. The objectors believe that this arrangement ceased during the 1950s with the allotments being absorbed into Bridge Farm.
13. A 1962 aerial photograph shows that the five allotments had ceased to exist by that point in time. From 1967 onwards the OS maps show that the allotments had been amalgamated into two parcels with no track now in place. Whilst there is no direct continuation shown at point A, I note that reference has been made by some of the

users to a hand gate at the junction with Boss Lane. There are also a few other references to gates and two people refer to a gate at Butchers Row. However, it is evident that the OS maps and aerial photographs from the latter part of the twentieth century onwards show structures and other features which would have impacted on use of the claimed route. These documents provide support for the objectors' evidence that the claimed route was not available during the latter part of the twentieth century and casts further doubt on the reliance that can be placed on the UEFs. The Council also has reservations regarding whether the claimed route could have been used from the late 1960s onwards.

14. Overall, I am not satisfied that the evidence is sufficient on balance to infer the common law dedication of a footpath over the claimed route.

#### **Other Matters**

15. Some additional matters have been raised regarding the impact of adding the claimed route to the definitive map. However, these matters sit outside of the issues that are relevant to my decision.

#### **Conclusion**

16. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

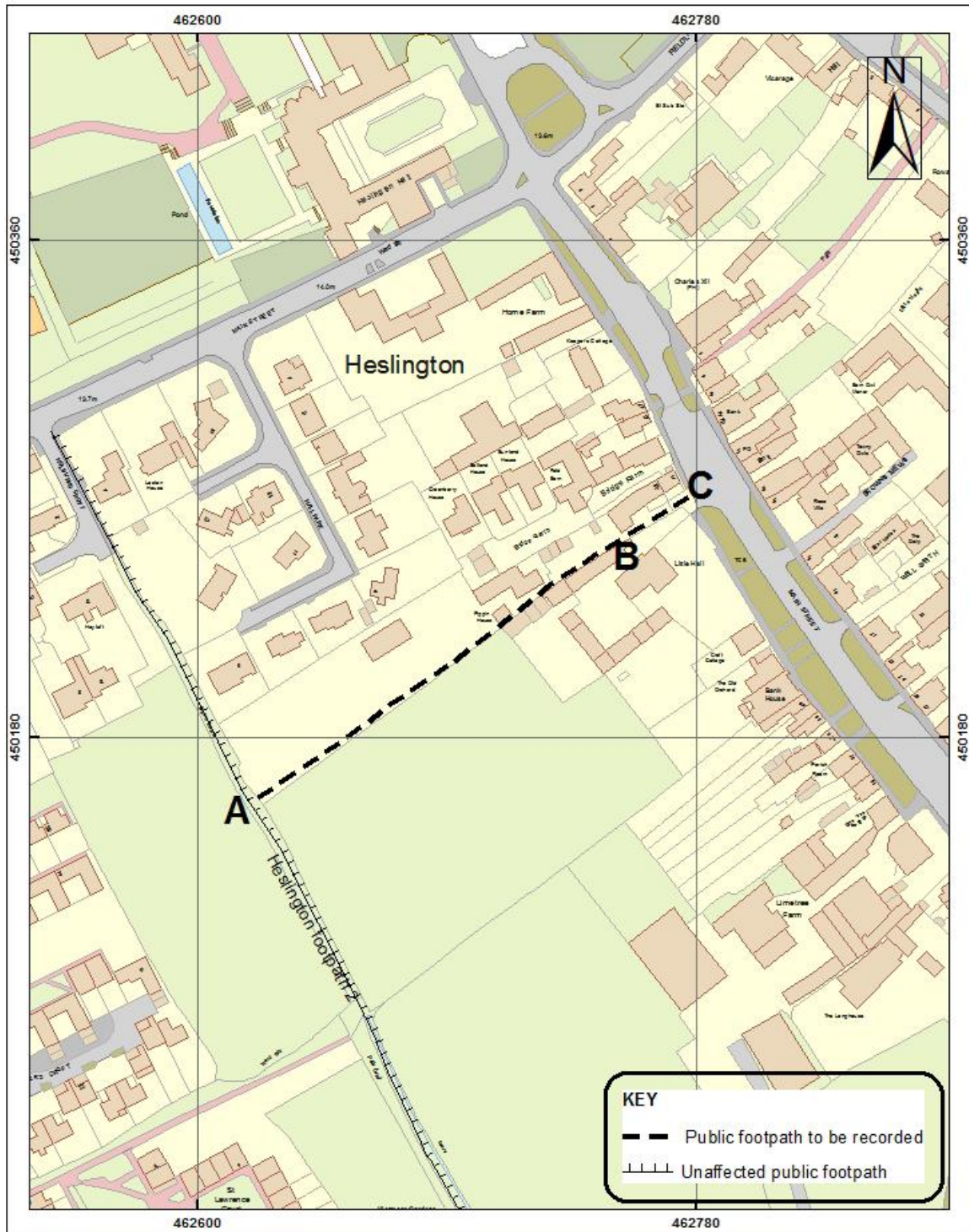
#### **Formal Decision**

17. The Order is not confirmed.

*Mark Yates*

**Inspector**

**ORDER MAP - COPY NOT TO SCALE**



**CITY OF YORK COUNCIL**  
 West Offices, Station Rise, York,  
 YO1 6GA  
 Telephone: 01904 551550

**PUBLIC FOOTPATH HESLINGTON 15  
 MODIFICATION ORDER 2021**

Scale 1:1,825	Drawn By: LRG	Date: 11/6/21
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