

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK
PUBLIC BRIDLEWAY SKELTON 12 MODIFICATION ORDER 2021

PLANNING INSPECTORATE REFERENCE: To be advised

Introduction

1. This document comprises the Statement of Grounds and Statement of Case of the Council of the City of York for the order Public Bridleway Skelton 12 Modification Order 2021 ("the Order"). The Council is the order making authority ("the OMA").
2. The Order is the subject of four objections and one representation in support. These comprise:
 - a) Mr A.J. Barrowman (affected land owner)
 - b) Mr D. Blacker (affected land owner)
 - c) Ms W. Davis
 - d) Mr J. le Masurier
 - e) Mrs C. Cook (supporter on behalf of the BHS)
3. All the objections and representations received can be found at Appendix 2 page 20.
4. The OMA has been unable to secure the withdrawal of these objections and consequently is referring the Order to the Secretary of State for determination.

Factual Background

5. The route shown in the Order ("the Order Route") runs from the publicly maintainable highway known as the A19 to public footpath Skelton 8, Skelton.
6. The OMA received the application to record the Order Route in January 2018. The applicant is Mr D. Jackson.
7. The applicant exercised their right to appeal the OMA's failure to determine their

application within twelve months of receipt. Consequently, an Inspector appointed by the Secretary of State directed the OMA to determine the application no later than April 2020. A copy of the direction is at appendix 20, page 217.

8. When the OMA determined the application in December 2019, it was accompanied by a good deal of documentary evidence including the Skelton Inclosure Award, extracts from the 1910 Finance Act assessment and a number of maps from various sources.
9. The application sought to add a public bridleway to the North Riding of Yorkshire Definitive Map and Statement (“the Definitive Map”).
10. The OMA made the Order on 2 August 2021 and the statutory consultation ran between 21 October 2021 and 3 December 2021 during which the four duly made objections were received by the OMA. All the objections received can be found at Appendix 2 page 20.

Legal Framework

11. Section 53(2) of the Wildlife & Countryside Act 1981 (“WCA 1981”) requires surveying authorities to keep definitive maps and statements under review. This provision states as follows:

“As regards every definitive map and statement, the surveying authority shall –

- a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”*

12. The OMA is the relevant “surveying authority”.

13. The Order was made on the grounds that an event set out in section 53(3)(c)(i) of the WCA 1981 had occurred. This provision states as follows:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows 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 such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.”

14. Section 55(3) of the WCA 1981 requires that for formerly excluded areas:

“...the surveying authority shall prepare for that area a map and statement such that, when they have been modified in accordance with the provisions of the Part, they will serve as the definitive map and statement for that area.”

The Evidence

Documentary evidence

15. The documentary evidence comprises ordnance survey (“OS”) maps (appendix 14, page 135 and appendix 24, page 263), aerial photographs (appendix 15, page 163), Finance Act documents (appendix 18, page 188), 1806 Inclosure Act (appendix 22, page 228), Inclosure Award and notice (appendix 23, page 244 and appendix 28, page 298), 1977 diversion order (appendix 25, page 269), 1630 Forest of Galtres map (appendix 30, page 304), and newspaper cuttings (appendix 33, page 347).
16. All the OS maps (appendix 14, page 135 and appendix 24, page 263) show some or all of the Order Route. The OS maps up to 1895 note the section of the Order Route from Hurns Bridge to Hall Moor Farm as a bridle road (shown as points A to H on the Order Map). The section from Hall Moor Farm towards Moorland Wood (I to J on the Order Map) being generally noted as a footpath.
17. The full Order route is shown on all the OS maps from the 1891 25 inch map to the 1930-31 25 inch map.

18. The one OS map that predates these maps (1854 6 inch map) shows the Order Route except for a short missing section from point I towards point J on the Order Map. This is the only OS map available that predates the Ordnance Survey's disclaimer about the depiction of Public right of way.
19. After the 1930-31 25 inch map only two sections of the Order Route are reliably shown. These being noted on the Order Map as section A – C and section I – J.
20. Mrs Cook also submitted a number of map extracts from many commercial maps in her representation which can be found at appendix 2, page 88. On these maps the Order Route is depicted as either a stub off what is today the A19 or as a route to access the property that is today called Hallmoor Farm.
21. All the aerial photographs (appendix 15, page 163) show the parts of the Order Route that are still in use as a vehicle access track. With the exception of the aerial photograph taken in 2017, there are still some visible traces of the Order Route where it has been incorporated into the fields.
22. The Finance Act field book records that accompanied the application did not relate to the land affected by the Order Route. Investigations show that these records relate to the Skelton parish in Cleveland. They are included with this statement of case at appendix 19, page 192 for completeness but will not be referred to again.
23. The Finance Act field books and map relating to Hall Moor Farm can be found at appendix 18, page 188. The Order Route is not recorded on the Finance Act map except as it appears on the OS map sheet that the Finance Act survey used to record the hereditaments.
24. The field book entry for Hall Moor Farm makes three mentions of footpaths or bridleways. In the section of the field book that was completed once the Valuation Office had received Form-4 from the land owner there is recorded a "footpath Shipton to Wigginton".
25. In the section filled in by the Valuation Office surveyor "footpath, Shipton to Wigginton" is noted again. In addition, the surveyor also noted "bridle road from Shipton to Moorlands". However, no deduction was made for the presence of a public right of way.

26. The Inclosure Act for Skelton parish (appendix 22, page 228) makes no specific mention of powers to set out public highways. Instead, it relies on the provisions of the Inclosure Consolidation Act 1801. Therefore, the Inclosure Commissioners had the power to set out public highways of all classes.
27. The map that accompanies the Inclosure Award (appendix 23, page 244) shows the section of the Order Route between points A and H on the Order Map but does not specifically name the Order Route on the map. There is no route shown on the Award map covering the points H to J on the Order Map.
28. Within the Inclosure Award, on the three occasions it is mentioned, the Order Route is referred to variously as "Hall Moor Lane", "lane leading to Hall Moor", and "road to Hall Moor". On each occasion the Order Route was noted as being part of an award to a specific person.
29. Specifically, the part of the Order Route between point A and, approximately, point F was mentioned three times within the Award as it was allotted to Joshua Hepworth. From, approximately, point F to point J on the Order Map was awarded to Edward Place but there is no mention of this part of the Order Route within the Award.
30. No part of the Order Route was set out by the Award as either a public or private way.
31. The 1977 diversion order makes no mention of the Order Route except insofar as it is shown on the OS map that shows the diversion of public footpath Skelton 8 (appendix 25, page 269).
32. On the North Riding Definitive Map the only section of the Order Route recorded corresponds to points I to J on the Order Map and was shown as a public footpath. This part was diverted in 1977 to move the footpath away from Hall Moor Farm. The diversion order can be found at appendix 25, page 269.
33. This same section (point I to J on the Order Map) was claimed as part of the parish survey. There is no suggestion on the parish survey maps that the section of the Order Route A to H was considered to be a public right of way (appendix 37, page 381).

34. The 1630 Forest of Galtres map along with the applicant's interpretation of the locations from the 1630 shown on a modern map can be found at appendix 30, page 304.
35. There are two features shown on the map that might be interpreted as being the Order Route. The first is the dotted line that runs generally north east from the feature labelled as "32 Long Lanebrig". The second being the double dashed line labelled as "42 the road from Shipton to Wigginton".
36. In addition, whilst the areas of land crossed by the Order Route are both named on the map ("2 The Halmore" and "4 The Hernes") there is no mention of Hall Moor Farm. The only building shown outside the village is not specifically named but adjacent features are labelled as "3 The Warren House The Corburne – closes".
37. The OMA's interpretation of the Forest Galtres map can be found at appendix 35, page 359. In addition, the article by D.A. Spratt that informed this interpretation can be found at appendix 34, page 352. The article includes a very helpful transcription of the map.
38. At appendix 36, page 362 are copies of the Land Registry entries for the land affected by the Order Route. A conveyance of 1939 mentions "subsisting rights of way" over specific parcels of the land being conveyed. The conveyance does not specify that these rights are private or public. Further the conveyance does not ascribe a particular status such a bridleway to the rights being reserved over the land. The route indicated in the conveyance runs from point A on the Order Route to approximately point G.
39. At appendix 33, page 347 there are a number of notices inserted into local newspapers relating to agricultural sales at Hall Moor Farm.

Consideration of the evidence

40. As set out above only documentary evidence has been adduced in respect of the Order.

Documentary evidence

41. The OS maps up to 1895 describe the Order Route in part as a bridle road and the earliest map predates the inclusion of the OS disclaimer. However, as set out by R. Oliver in “Ordnance Survey Map – a concise guide for historians” the inclusion of the disclaimer may have simply made explicit what was implicit for the earlier maps.
42. Consequently, the OMA considers that whilst the depiction of the Order Route as a bridle road is good evidence, it is insufficient, in isolation, to allow any conclusion to be drawn about the presence or absence of public rights.
43. The commercial maps kindly supplied by Mrs Cook also support the existence of the Order Route on the ground. Where the full route is shown it extends as far as Hall Moor Farm but no further.
44. There is nothing in this evidence that indicates the Order Route connected to any place or property other than Hall Moor Farm. Consequently, there is a reasonable case that any member of public using the Order Route was doing so under an implied licence to access Hall Moor Farm granted by the owner or tenant of that property. As such this use would not be as of right and therefore not bring a public right of way into being.
45. The aerial photographs demonstrate that whilst only small sections of the Order Route remain in use, echoes of the Order Route can still be seen in places over the changed arrangement of the fields. This despite these changes having existed for almost a century, based on the OS map evidence. This does not support or refute the existence of a public bridleway over the Order Route.
46. The OMA considers that Finance Act records only have significant evidential value for definitive map modifications orders when a deduction for the presence of a public right of way has been made.
47. However, the OMA does not accept the argument that the absence of a deduction must, perforce, mean that no public right of way existed. This position rests on the following reasoning.
48. First and foremost, the Finance Act and the subsequent nationwide survey was interested primarily in land values. Matters of whether a particular route was a

public highway were not at the forefront of the minds of the surveyors or the land owners being surveyed.

49. Land owners were not penalised for failing to admit to the presence of public right of way. Further, their decision to omit a public right of way from the survey was not subject to scrutiny by any outside body via, for example, a public consultation.
50. Section 7 of the Finance Act exempts agricultural land from the tax where its value was no higher than the then current market value of such land. The principal target of the tax being land where its value had increased exponentially because, as it was adjacent to an existing town or city, it had benefitted from public expenditure to improve sanitation, roads, and a myriad of other public works. These works making the land ideal for use as residential building land and consequently significantly more valuable.
51. Finally, no instructions from the Valuation Office detailing how to conduct the surveys with specific regard to identifying and recording public rights of way have ever been discovered. This means we have no idea what regime the surveyors worked under. For example, public roads open to all traffic were generally excluded from the hereditaments and not assessed. But this was not always the case. Further, there are examples of private roads (in the modern sense) being so excluded from the survey as well.
52. Anecdotally, whether a way was included within a hereditament seems to have largely been determined by how much the way in question looked like a road, but again there are instances contradicting this view.
53. Clearly these inconsistencies highlight the unreliability of Finance Act records when it comes to public right of way matters unless a specific deduction is made.
54. Taken at face value the Finance Act records for Hall Moor Farm present a contradiction. There are two entries within the Field Book that mention a footpath from Shipton to Wigginton and a single entry for a bridle road from Shipton to Moorlands. Despite this no deduction for the presence of a public right of way was made.

55. In the OMA's view, it seems likely that the footpath from Shipton to Wigginton recorded in the Field Book is the public footpath Skelton 8 and was diverted away from Hall Moor Farm in 1977. Prior to the diversion, Skelton 8 was shown on the North Riding Definitive Map in a way that closely resembles the routes shown on the 1909 OS 25 inch maps that were used during the Finance Act survey.
56. It is worth noting that this footpath must have been admitted to by the land owner because it is noted in the section of the Field Book that was completed prior to the survey being done. This section contained information taken from Land Form-4 that land owners had been required to complete during the summer of 1910.
57. The bridle road noted by the Valuation Office surveyor as running from Shipton to Moorlands does not so neatly accord with the evidence as the footpath.
58. In the OMA's view this entry could refer to two possible routes: the Order Route or the way leading north from Hall Moor Farm to Corban Lane.
59. Regardless of which route was thought to be the bridle road by the surveyor, we are required to accept, on the basis of the map evidence, that point I to point J on the Order Map was both the bridle road from Shipton to Moorlands and the Footpath from Shipton to Wigginton.
60. Given the note at paragraph 40 above that accurate recording of highways was not the primary focus of the Valuation Office surveyors, accepting that point I to point J on the Order Map was called both footpath and bridle road does not appear unreasonable to the OMA.
61. Turning to where the bridle road may have headed from Hall Moor Farm also presents difficulties of interpretation. This is because deciding whether a way was a bridle road or simply a track is not something that can be readily determined on the ground.
62. In the OMA's view the description of bridle road is most likely to have stemmed from the surveyor being told that it was such. Possibly by the land owner or, and more likely in the OMA's view, the tenant. It is possible that this particular surveyor used bridle road as a synonym for track or unmetalled road, but this would be extremely difficult to prove at this remove.

63. If the bridle road referred to by the surveyor was the Order Route, it is important to note that it was no longer recorded as such on the 1909 edition of the 25 inch OS maps to which they had access. It is not clear whether the surveyors would have had knowledge of the previous editions of the maps where the Order Route was labelled as a bridle road. However, the OMA suspects that this is unlikely.
64. Further, the description of it running from Shipton is also problematic. The start of the bridle road on what is today the A19 is clearly recorded as Hurns Bridge on the map and is within Skelton parish. Describing it as running from Skelton or Hurns Bridge appear to the OMA to be more logical descriptions if the bridle road was the Order Route.
65. That being said the northern route does not make any more compelling a case for it being the bridle road than the Order Route. Whilst it does have the virtue of coming directly from Shipton, that relies on initially following Corban Lane. A road that is specifically named on the maps the survey was using. So why describe as coming from Shipton rather than Corban Lane?
66. Consequently, in the OMA's view, the already extremely limited evidential value of Finance Act records where no deduction for a public right of way is made is eliminated entirely by the confusion over which route could have been referred to as a bridle road. Therefore, offering no assistance in deciding whether a public bridleway exists over the Order Route.
67. Whilst the Skelton Inclosure Award mentions part of the Order Route on three occasions, these are never in the context of setting it out as a way, either public or private. As a result, it appears to have no evidential value when assessing whether a public bridleway exists over the Order Route.
68. The 1977 diversion order shows part of the Order Route but only as a consequence of it appearing as a track on the 25 inch scale base map North Yorkshire County Council used to show the changes being made to Skelton 8 public footpath. There are no references to a bridleway within the text of the diversion order.
69. The depiction of the Order Route on OS maps was dealt with at paragraphs 35 and 36. The diversion order offers no evidence supporting or refuting the existence of the Order Route as a public bridleway.

70. The North Riding Definitive Map (appendix 11, page 124) shows public footpath Skelton 8 prior to it being diverted by the diversion mentioned above.
71. There is no evidence on the parish survey maps (appendix 37, page 381) of marks or other signs that may indicate that the surveyors may have considered including the Order Route between points A and H on the North Riding Definitive Map. This despite including the section of the Order Route between point I and J, the whole Order Route being clearly marked on the OS Map used for the survey, and even labelled as "Hurns Lane" near Hurns Bridge.
72. In the OMA's view this indicates that the parish surveyors did not consider the section of the Order Route between points A and H to be a public right of way of any description at the time of the survey further undermining the possibility of it being a public bridleway.
73. The OMA carried out its own interpretation of the Forest of Galtres map and this can be found at appendix 35, page 359. It is worth noting that at this time what is today the A19 was not a major road. This way linked York only with the nearby market town of Easingwold. The principal route for journeys heading north via Skelton is shown on the 1630 as "40 the road from Crayke to York" to the east of the village.
74. In the OMA's view the Forest of Galtres map does not support the existence of the Order Route. This position is founded on the following information.
75. The feature labelled as "32 Long Lanebrig" appears to the OMA to be what is today known as Hurns Bridge on the A19. The dotted line that runs north east from this feature could be seen as being the Order Route.
76. However, the OMA considers this unlikely because the dotted line is shown crossing what is today the A19 and continuing off the torn edge of the map. Further there are other features marked with a dotted line shown on the map. One of these is labelled as "14 White Sike". A sike being a small stream or ditch and White Sike still being in existence today. The other feature marked with a dotted line was thought to be Pennells Drain by D. A Spratt. The OMA agrees with this interpretation. Finally, the alignment of the dotted line that may be the Order Route actually matches the general course of Hurns Gutter shown on the 1850 OS map. This being another ditch or stream.

77. In the OMA's view this means the dotted line from the feature labelled as "32 Long Lanebrig" is Hurns Gutter and not the Order Route.
78. The second feature that might be the Order Route is the double dashed line labelled as "42 the road from Shipton to Wigginton" and runs generally east west across the map. Significantly in the OMA's view the route shown on the 1630 map begins, in the east, at a crossroads. Heading north from this crossroads would lead to Crayke (as confirmed by the 1630 map), south leads to York and east to Wigginton.
79. This crossroads still exists today and is the junction of Moor Lane, Bull Lane and Corban Lane. The alignment of the route shown on the 1630 map is similar to these roads. Consequently, the OMA believes that the double dashed line labelled as "42 the road from Shipton to Wigginton" corresponds to the road today called Corban Lane. This means that it cannot be the Order Route because it passes some distance to the north of Hall Moor Farm.
80. Finally, that the feature on the 1630 map labelled as "3 The Warren House The Corburne – closes" is adjacent to what is today called Corban Lane may suggest that if the building shown on the 1630 map is on the site of what is today called North Hall Moor and is marked on the 1850 OS map as Hall Moor Farm (North). This further strengthens the OMA's view that the double dashed line labelled as "42 the road from Shipton to Wigginton" is not the Order Route.
81. The rights of way referred to by the 1939 conveyance do follow the first part of the Order Route. However, as the sale of this land means that the residents of Hall Moor Farm would be isolated from the A19, the most reasonable conclusion that can be drawn is that they were included in the conveyance to maintain Hall Moor Farm's access to the A19. Consequently, these rights should be properly seen as a private right of access over this land for Hall Moor Farm and not for the public at large.
82. Further, in the OMA's experience, where a public right of way is referred to within a conveyance, not only is it made explicit that the way is for the use of the public, the class of public right of way is also specified.
83. As a result, in the OMA's view, the "subsisting rights of way" referred to in the 1939 conveyance do not refer to a public right of way. Rather they are present

to protect the right of access for Hall Moor Farm over the conveyed land. As such they do not assist in deciding whether a public bridleway exists over the Order Route.

84. None of the newspaper notices at appendix 33 (page 347) make any reference to the presence or otherwise of any public rights of way meaning they do not help in determining whether any such rights exist over the Order Route.
85. As demonstrated by the evidence, the Order Route is remarkably well documented, having existed from at least 1771. Unfortunately, none of this extensive documentation indicates that the Order Route was a public bridleway.
86. Consequently, whilst the OMA considers that the evidence is sufficient to allege that a public bridleway exists over the Order Route, it is not sufficient, on the balance of probabilities. Therefore, the OMA is taking a neutral stance towards the confirmation of the Order.

Comment on the objections

87. Four duly made objections were received from Mr A.J. Barrowman (affected land owner), Mr D Blacker (affected land owner), Ms W Davis, and Mr J le Masurier.
88. The full text of the objections can be found at Appendix 2 page 20. The OMA's comments on the objections can be found in the sub paragraphs following the summary of each ground for objection.
89. The objection of Mr Barrowman (Appendix 2, page 22) was made on the following ground:
 - a) The OMA considers that Mr Barrowman's position is justified by the evidence.
90. That the evidence supporting the existence of the Order Route as a public bridleway is insufficient, on the balance of probabilities, to allow the Order to be confirmed.
91. The objection of Mr Blacker (Appendix 2, page 82) was made on the following grounds:

92. Mr Blacker supports Mr Barrowman's view of the evidence and agrees that it is insufficient to allow the Order to be confirmed.
- a) The OMA considers that Mr Barrowman's position is justified by the evidence.
93. That advice from the National Farmers Union states that applications for dead end routes should not be granted.
- a) The OMA considers this to be a misunderstanding of the legal position. There is nothing in law that prevents dead end routes becoming public rights of way
94. That the confirmation of the Order will lead to an increase in rural crime.
- a) Whilst the OMA appreciates his concern, these are not matters that the Inspector is permitted to take into account under the legislation.
95. That it would be dangerous for a public bridleway's only point of access is off the A19.
- a) Whilst the OMA appreciates his concern, these are not matters that the Inspector is permitted to take into account under the legislation.
96. The objection of Ms Davis (Appendix 2, page 84) was made on the following grounds:
97. That the confirmation of the Order will lead to an increase in rural crime.
- a) Whilst the OMA appreciates her concern, these are not matters that the Inspector is permitted to take into account under the legislation.
98. The objection of Mr J. le Masurier (Appendix 2, page 85) was made on the following grounds:
99. That the Order Route is not a public right of way.
- a) This is a matter for the Inspector to decide based on the evidence.
100. That there is already a public footpath crossing Hall Moor Farm.
- a) This is not a matter that the Inspector can take into account when deciding whether to confirm the Order.

101. That the confirmation of the Order will lead to an increase in rural crime.

- a) Whilst the OMA appreciates his concern, these are not matters that the Inspector is permitted to take into account under the legislation.

102. That the confirmation of the Order and the recording of the Order Route would affect his quiet enjoyment of his property.

- a) Whilst the OMA appreciates his concern, these are not matters that the Inspector is permitted to take into account under the legislation.

103. The presence of the Order Route would have an adverse effect on local wildlife.

- a) Whilst the OMA appreciates his concern, these are not matters that the Inspector is permitted to take into account under the legislation.

Conclusion

104. After examining all the available evidence, the view of the OMA is that there is insufficient evidence to support the existence of a public right of way over the Order Route on the balance of probabilities.

105. Therefore, the OMA is taking a neutral stance towards the confirmation of the Order.

The Council of the City of York

February 2023