



CITY OF  
**YORK**  
COUNCIL

**PUBLIC FOOTPATH NABURN 7 MODIFICATION ORDER 2021**

**STATEMENT OF CASE**

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**PUBLIC FOOTPATH NABURN 7 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 Footpath Naburn 7 Modification Order 2021 (“the Order”). The Council is the order making authority (“the OMA”).
  
2. The Order is the subject of seventeen objections and representations. These comprise:
  - a) Mr A. Bird (supporter and applicant)
  
  - b) Mr W. Cuthbert (supporter)
  
  - c) Mr & Mrs Dickinson (objectors)
  
  - d) Mr N. Eden (supporter)
  
  - e) Mr P. Gannon (supporter)
  
  - f) Ms J. Hedley (supporter)
  
  - g) Ms K. Lamb (supporter)
  
  - h) Ms T. Land (supporter)
  
  - i) Mr R. Lawson (objector and applicant)
  
  - j) Mr D. Moores (supporter)
  
  - k) Mr R. Mulvihill (supporter)
  
  - l) Ms S. Pierson (objector)
  
  - m) Dr P.S. Price (objector)

- n) Ms D. Riley (objector)
  - o) Mr R. Scruton (objector)
  - p) Mr J. Visser (supporter)
  - q) Ms G. Whitney (objector)
3. All the objections and representations received can be found at Appendix 2 page 17.
  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 Palmes Close, Naburn to the publicly maintainable highway known as Vicarage Lane, Naburn.
6. The OMA received the application to record the Order Route in February 2008. The applicants are Mr A. Bird and Mr R. Lawson. When the OMA determined the application, it was supported by twelve user evidence forms giving the evidence of twelve people.
7. The application sought to add a public footpath to the Definitive Map and Statement for the former East Riding of Yorkshire now situated inside the area of the Council of the City of York (“the Definitive Map”).
8. The OMA made the Order on 2 June 2021 and the statutory consultation ran between 19 August 2021 and 1 October 2021 during which five duly made objections were received by the OMA. An additional consultation was undertaken with other adjoining land owners between 14 January 2022 and 25 February 2022. During this additional consultation period two further duly made objections were received. All the objections and representations received can be found at Appendix 2 page 17.
9. It is relevant to this Order that the area around Palmes Close is susceptible to flooding. At times flood water can prevent the residents of Palmes Close

accessing local amenities. The land where the Order Route is situated is slightly higher and not as badly affected. This has led to it being used by the residents as a way of getting away from Palmes Close when flooding has blocked the road.

### **Legal Framework**

10. 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.”*

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

12. 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.”*

13. 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.”*

14. As regards to relevant evidence, section 31(1) of the Highways Act 1980 (“HA 1980”) states:

*“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*

15. Section 31(9) expressly states that a highway (and so a public footpath) can be established at common law, as well as pursuant to the statutory test in section 31(1):

*“Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less than 20 years, or being presumed or proved in circumstances in which it might have been presumed or proved immediately before the commencement of this Act.”*

16. Therefore, in relation to user evidence, the requisite period for the purpose of meeting the requirements of s53(3)(c)(i) WCA 1981 can be either of the following:

- i. 20 years, such that the relevant tests set out in section 31 of the HA 1980 have been met (the “Statutory Test”)

or

- ii. A period of use such that an intention to dedicate the land as a public right of way can be demonstrated (the “Common Law Test”)

See: para 4.4 of Rights of Way Circular 1/09 and para 53 of Planning Inspectorate Advice Note 9.

## **The Evidence**

### *User evidence*

17. The Order is supported by twelve user evidence statements attesting to the use of the Order Route by twelve people from 1980 to 2007 (see appendix 6, page 74).
18. Two of the users claim use of the Order Route for a period of twenty or more years (see appendix 19, page 203 for a chart illustrating the use period and appendix 20 for a user distribution map).
19. All twelve people claim use of the Order Route on foot.
20. Seven users claim to have used the Order Route on foot every day. The remaining five people claim to have used the Order Route weekly.
21. Ten users report seeing a stile at point A when they were using the Order Route and one user reports seeing a gate and a stile.
22. Three of the users reported finding signs on the Order Route but these appear to have been signs that were erected by the new land owner when access to the order route was closed and lead to the application being made.
23. None of the users report being challenged by anyone.
24. One of the users lives on Vicarage Lane and has accessed the field where the Order Route is situated via a gate in their rear fence. It is not clear how they used the Order Route.
25. Where reported, the width of the Order Route is noted as being approximately 0.5 metres wide.
26. The OMA contacted everyone supporting the Order. Two users, Ms T. Land (appendix 6, page 95 and Mr J. Visser (appendix 6, page 124) consented to an interview. The notes of these interviews can be found with their respective user evidence forms.
27. Ms Land began using the Order Route in 1998 when she arrived in the village. The Order Route was part of her dog walking circuit. During the interview she

stated that at the Vicarage Lane end of the Order Route (point B) access was easy. She thought she could remember there being a gap between the hedge and the gate.

28. At the Palmes Close end of the Order Route (point A) she remembered a little gap in the fence giving access to the field.
29. She also noted that the path was not well used and on the occasions she did meet someone they were almost always from the village.
30. Mr Visser began using the Order Route in the late 1970s. He remembers walking through the farmyard past the barn to gain access to the Order Route at point A.
31. Once Palmes Close had been built he then climbed over the post and rail fence to get access to the Order Route. He remembers the fields being largely set aside that were occasionally grazed with sheep.
32. Mr Visser thinks the stile was installed by David Southworth.
33. Like Ms Land, Mr Visser reports that he did not often meet anyone using the route but when he did, he recognised them. He referred to them in the interview as “not being strangers”.

#### *Objector evidence*

34. From the beginning of the user evidence (1980) to the sale of the land in 2007 it was suggested to the OMA that the Palmes Trust, based in the Isle of Man, owned land affected by the Order Route. Investigations have shown that this was not the case. The land in fact owned by a company called Beacon Investments Ltd. The OMA has been unable to trace this company after it sold the field over which by the Order Route runs.
35. In 2007 the land was sold to Mr and Mrs Arundel who erected signs stating that the Order Route was not a public right of way. In addition, Mr and Mrs Arundel removed the stile that gave access to the Order Route from Palmes Close (point A on the Order Map) and also secured the Vicarage Lane end of the Order Route (point B on the Order Map).

36. Mr and Mrs Dickinson moved to their house adjacent to the Order Route in 2006. During their interview with the OMA, they stated that it was their understanding that the stile at point A on the Order Map was installed in 2000. The reason they gave for its installation was to help a pregnant lady negotiate the fence during a period of flooding. It is their understanding that a Mr Lawson was the person who installed the stile (appendix 2, page 36).
37. In correspondence with the OMA, Ms S. Pierson notes that the Order Route was only ever used by a few of her neighbours on Palmes Close as a place to walk their dogs (appendix 2, page 41).
38. Further, Ms Pierson states that the Order Route was rarely used by people crossing the field. Rather they walked their dogs around the field.
39. Finally, Ms Pierson noted that she thought the stile was installed around 2004.
40. The OMA interviewed the objectors Dr P.S. Price and Ms G. Whitney together and the notes of this interview can be found at appendix 2, page 63. After the interview Dr Price submitted a number of photographs that can be found at appendix 2, page 47.
41. There are a number of aerial views of the land affected by the Order Route supplied by Dr Price. None of them show a worn strip crossing the field. These views also show the large barn that occupied the land where numbers 11, 15, and 17 Palmes Close are today.
42. In addition to the aerial photographs there is a picture of 17 Palmes Close under construction in 1985. In this picture a worn strip can be seen running alongside the house and appears most likely to be associated with the works being undertaken. There is no evidence of the Order Route in this view.
43. Mr R. Scruton of 9 Palmes Close asserted in his objection that his house offers a view of the whole Order Route. He has lived at this address since 1985 and during that time the use he has observed is people walking their dogs around the field. He has never seen anyone walk the Order Route.

44. The objection of Ms G. Whitney of 17 Palmes Close makes the point that she does not consider there is sufficient evidence to support the dedication of a public right of way through use.
45. Ms Whitney also asserts that the stile at point A on the Order Map was installed by Mr David Southworth during the floods of 2001/2 to aid a pregnant woman getting out of Palmes Close. She also noted that during the floods that had happened a year earlier the top bar of the fence had been removed. This was also to help people leave Palmes Close via the field.
46. Ms Whitney also states that the use of the field during the floods was with the permission of the land owner.
47. In her objection Ms Whitney stated that there was a locked gate at point B on the Order map for at least 26 years. In the later interview Ms Whitney clarified that she meant the gate had been locked for the whole time she had lived at Palmes Close. She moved to Palmes Close in 1996. She also commented that the gate and locks had changed on occasions over that time along with repairs being made to the surrounding fencing.

*Documentary evidence*

48. The documentary evidence comprises maps (appendix 15, page 149), aerial photographs (appendices 16 page 160), and photographs of the route (appendix 17, page 174).
49. The Order Route is not shown on any of the maps available to the OMA.
50. The aerial photographs (appendix 16, page 160) provide coverage for the period 1978 to 2020. The earliest aerial photograph that shows a worn strip crossing the field following the alignment of the Order Route is 2002.
51. The photographs of the route (appendix 17, page 174) show no worn strip across the field up to 2007. The photographs submitted with the application taken in 2007 do show a worn strip that follows the Order Route.

52. In the photographs taken since the application was there is no worn strip visible following the Order Route. However, in every photograph taken of point A on the Order Map there is obvious squashed vegetation in the vicinity of the former stile.

### **Consideration of the evidence**

#### *User evidence*

53. User evidence can be considered under section 31 of the Highways Act 1980 (“the Statutory Test”) or under the Common Law Test.

#### **The statutory test**

54. Under section 31 of the Highways Act 1980, if the public enjoys continuous use of a way for a period of 20 or more years (“the Statutory Period”) that route becomes a public right of way (“PRoW”) unless the land owner can demonstrate they had no intention to dedicate it as a PRoW.
55. The evidence adduced in respect of the Order indicates that the public’s right to use the Order Route was called into question when the new owners (Mr and Mrs Arundel) removed the stile at point A and erected signs telling people to keep out at both ends of the Order Route in late 2007.
56. The actions of the land owners in 2007 means the relevant 20 year period under consideration for the statutory test is 1987 to 2007.
57. During the Statutory Period the land affected by the Order Route was owned by Beacon Investments Ltd. This company does not appear to exist anymore.
58. All the users fall within the Statutory Period. A chart showing this use can be found at appendix 19 page 203.
59. However, only two users claim use for the full Statutory Period. The remaining ten users claim periods of less than twenty years use with most having used the Order Route for ten or fewer years.
60. The OMA considers it significant that the use claimed by all but two of those witnesses who have not used the Order Route for the full Statutory Period did so

between 1997 and 2007. In addition, there is a noticeable increase in use once the stile was installed in the early 2000s.

61. This pattern of usage, in the OMA's view, indicates that it was the provision of the stile in the early 2000s that led to the Order Route being used by more people.
62. However, this increase in use appears to have largely been confined to residents of Palmes Close. It must be noted that users David and Lizanne Southworth lived at 12 Palmes Close when they claim to have used the path. Their use stopped when they move away from the area. Consequently, eight of the twelve users of the Order Route lived on Palmes Close.
63. All the users claim use on foot only. Consequently, there being nothing in the objectors' evidence to contradict it, the OMA is content that if any rights have been established through use, they are for pedestrians only.
64. Establishment of a PRoW through use requires several conditions to be met. First, the use must not be made by force. Second, the use must be open. Third, the use must be done without permission from the land owner. These three conditions taken together are referred to "as of right" use.
65. In addition to being as of right, the use must also be of sufficient quantity that the owner of the land is aware that the public are asserting a right of way over the Order Route.
66. Finally, the route must be used by the public at large, not a particular group.

#### *Use by force*

67. Mr Visser's evidence is that he climbed the fence at point A on the Order Map prior to the installation of the stile in the early 2000s. The OMA considers that climbing a fence to gain access to the Order Route is access by force. As such, Mr Visser's use from 1985 to the early 2000s was not as of right.
68. Furthermore, it is not clear that the stile was installed with knowledge or permission of the then land owner, Beacon Investments Ltd. The OMA considers that if it was done without the land owner's permission this is likely to render using it to access to the Order Route as use by force.

*Use by stealth*

69. There is no suggestion in the evidence from the users or the objectors that any actions were taken to attempt to conceal the use of the Order Route.

*Use by permission*

70. There is conflicting evidence relating to permission. None of the users note that they received permission to use the Order Route. However, Ms Whitney who lives adjacent to the Order Route states that the access over the field during the floods was done with the permission of the land owner.
71. That being said, if permission to use the Order Route during the floods was granted there is no evidence to show this being communicated by the land owner to users of the Order Route.
72. Consequently, the OMA considers that even if permission were granted by the land owner it does not appear to have been communicated to the users. As such, their use of the Order Route appears to have been without overt permission.

*Sufficiency of use*

73. As set out at para 20 above, more than half the users claim to have used the Order Route on a daily basis with the remainder using it at least once per week.
74. Further, whilst Beacon Investments Ltd may not have been aware of the use there was clearly enough evidence of it on the ground by 2007 for the new owners to take swift steps to prevent the access.
75. As such the OMA considers that a reasonably attentive land owner would have been aware of people using the Order Route by 2007.
76. However, the OMA is not satisfied that the use would have been apparent to any but the most attentive land owner before the stile was installed in the early 2000s.
77. Consequently, the claimed use of the route from 1987 to the installation of the stile may not have been enough to make the land owner aware that the public were asserting a right over the Order Route.

*Use by the public at large*

78. As noted at para 61 above, two thirds of the people claiming use of the Order Route lived on Palmes Close. Two of the remaining four people lived on Vicarage Lane which is where the eastern end of the Order Route is located (point B on the Order Map).
79. Of the remaining two people, one lives on York Street. York Street links Palmes Close and Vicarage Lane and this witness (Ms Land) lives on the junction of York Street and Vicarage Lane.
80. This leaves one person (Miss Smith) who does not live immediately adjacent to the Order Route. This distribution is illustrated on the user distribution map at appendix 20, page 205.
81. Whilst the OMA accepts that a short path within a village is unlikely to attract users from far and wide, the OMA contends that the character of the use of the Order Route is closer to that of an easement for residents of Palmes Close than a public right of way.
82. As such, the OMA is not satisfied that the Order Route has been used by the public at large.

*Evidence indicating a lack of intention to dedicate*

83. During the Statutory Period the land owner who could have indicated they had no intention to dedicate the Order Route as a PRow was Beacon Investments Ltd. No evidence has been presented to, or discovered by, the OMA that they ever attempted to demonstrate such a lack of intention to dedicate.
84. With regard to the Statutory Test, the OMA is not satisfied that the provisions of Section 31 of the Highways Act 1980 have been met on the balance of probabilities.
85. There are only two people who can claim use of the Order Route for twenty or more years. One of these two users climbed a fence to access the Order Route for part of the Statutory Period which rendered at least some of their use not as of right.

86. This leaves the use of a single person spanning the Statutory Period. A single person cannot be construed as representing the public at large.
87. The OMA is also not convinced that any significant use beyond the two people mentioned above took place before the stile was built in the early 2000s.
88. Further, the OMA considers there is also an argument that the Order Route has not been used by the public at large. Rather it has been used a very small group of people living immediately adjacent to the Order Route.
89. All of which means that the OMA does not consider the Order Route to be a PRoW under the provisions of the Statutory Test on the balance of probabilities.

### **The Common Law test**

90. Dedication of a PRoW at common law can happen in two ways: explicit dedication by the land owner, or inference of dedication through long, unopposed as of right use by the public. In both cases the public need to accept the route so dedicated. This is usually demonstrated by use of the route.
91. The OMA has found no evidence of explicit dedication of the Order Route.
92. For the same reasons set out for the Statutory Test above, the OMA does not consider there is sufficient evidence to raise an inference of dedication at Common Law.
93. Therefore, on the balance of probabilities, the Order Route is not a PRoW as a consequence of dedication under the Common Law.

### **Documentary evidence**

94. The available documentary evidence for this Order consists of maps and photographs (both aerial and terrestrial). Such documents are only helpful in assessing whether a physical feature existed on the ground.
95. None of the maps available to the OMA show the Order Route. This suggests that it did not obviously exist for long enough for the map surveyors to record its presence.

96. The evidential picture presented by the photographic evidence appears compelling to the OMA. No photographic evidence of the existence of the Order Route captured before 2002 has been presented.
97. Between 2002 and 2007 there are a number of photographs clearly showing a worn line across the field.
98. Once the stile was removed in 2007, the worn line disappears.
99. This photographic evidence clearly supports the user evidence because, with the exception of four users, most of the use of this route falls into the last ten years of the statutory period.
100. The only anomaly in the photographic evidence there is the continued presence of squashed vegetation at point A on the Order Map suggesting that some low level of use continues to this day.
101. When considered with the other evidence, the documentary evidence supports the OMA's view that the Order Route was only used extensively for around ten years. As such, this again leads to the conclusion that, on the balance of probabilities, the order Route is not a PRow.

### **Comment on the objections**

102. Seven duly made objections were received from Mr and Mrs Dickinson, Mr R. Lawson, Ms S. Pierson, Dr P.S. Price, Ms D. Riley, Mr R. Scruton, and Ms G. Whitney.
103. The full text of the objections can be found at Appendix 2 page 35. The OMA's comments on the objections can be found in the sub paragraphs following the summary of each ground for objection.
104. The objection of Mr and Mrs Dickinson (Appendix 2, page 36) was made on the following grounds:
105. That the application was invalid because it was a joint application and one of the applicants has now objected to the Order.

- a) Section 53 of the Wildlife and Countryside Act 1981 places a statutory duty on the OMA to investigate when it is made aware of a possible error on the definitive map. One of the original applicants withdrawing their support for the Order does not remove the duty placed on the OMA.
106. That the access to the Order Route was via a stile constructed in 2000 and the application was made in 2007. There has not been the required twenty years use.
- a) As set out elsewhere in this Statement of Case, the OMA considers that Mr and Mrs Dickinson's view has a good deal of merit.
107. That the field is a wildlife habitat and the presence of a PRow will adversely affect the wildlife.
- a) Whilst the OMA appreciates their concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.
108. That there is no public benefit to the Order Route and it will also be hazardous to some users.
- a) Whilst the OMA appreciates their concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.
109. The presence of the Order Route would pose a threat to any livestock in the field.
- a) Whilst the OMA appreciates their concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.
110. Access to the Order Route would involve crossing land that they are in the process of adversely possessing.
- a) This is not something that the Secretary of State is permitted to take into account under the legislation.
111. That recording the Order Route as a PRow would lead to increased nuisance and safety concerns for the residents of Palmes Close.

- a) Whilst the OMA appreciates their concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.
112. The objection of Mr R. Lawson (Appendix 2, page 40) was made on the following grounds:
113. That there is no public benefit to the Order Route.
- a) Whilst the OMA appreciates his concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.
114. The presence of the Order Route would pose a threat to any livestock in the field.
- a) Whilst the OMA appreciates his concern, these are not matters that the Secretary of State is permitted to take into account under the legislation
115. The objection of Ms S. Pierson (Appendix 2, page 41) was made on the following ground:
116. That recording the Order Route as a PRow would lead to increased nuisance and safety concerns for the residents of Palmes Close.
- a) Whilst the OMA appreciates her concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.
117. The objection of Dr P.S. Price (Appendix 2, page 45) was made on the following grounds:
118. That the application has lain dormant for thirteen years.
- a) Whilst the OMA appreciates the frustration this delay has caused the OMA is still required to investigate and make an order where the conditions set out by the legislation are met.
119. That one of the applicants and many of the supporters have left the village.
- a) Section 53 of the Wildlife and Countryside Act 1981 places a statutory duty on the OMA to investigate when it is made aware of a possible error on the definitive map. One of the original applicants withdrawing their support for the Order does not remove the duty placed on the OMA.

120. The Order Route providing a play area for children is no longer relevant because there are new amenities in the village.
- a) This is not something that the Secretary of State is permitted to take into account under the legislation.
121. That the Order Route does not provide a direct link to the cycle track for most of the residents of Naburn.
- a) This is not something that the Secretary of State is permitted to take into account under the legislation.
122. That the land crossed by the Order Route does not represent the actual use of the field.
- a) Whilst the OMA accepts that this is Dr Price's experience of the Order Route, the evidence supporting the application contradicts her experience.
123. That there is limited scope for parking on Palmes Close and that people parking on the Close could affect access for emergency services.
- a) Whilst the OMA appreciates her concern, these are not matters that the Secretary of State is permitted to take into account under the legislation
124. The objection of Ms D. Riley (Appendix 2, page 53) was made on the following grounds:
125. That recording the Order Route as a PRow would lead to increased nuisance and safety concerns for the residents of Vicarage Lane.
- a) Whilst the OMA appreciates her concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.
126. That there is limited scope for parking on Palmes Close and that people parking on the Close could affect access for emergency services.
- a) Whilst the OMA appreciates her concern, these are not matters that the Secretary of State is permitted to take into account under the legislation.

127. The objection of Mr R. Scruton (Appendix 2, page 55) was made on the following ground:

128. That he has never seen anyone using the Order Route.

- a) Whilst the OMA accepts that this is Mr Scruton's experience of the Order Route, the evidence supporting the application contradicts his experience.

129. The objection of Ms G. Whitney (Appendix 2, page 56) was made on the following grounds:

130. That the Order Route has not been used without interruption over the 26 years she has lived on Palmes Close.

- a) As set out elsewhere in this Statement of Case, the OMA considers that Ms Whitney's view has a good deal of merit.

131. That use of the Order Route during floods is insufficient to raise a presumption of dedication.

- a) As set out elsewhere in this Statement of Case, the OMA considers that Ms Whitney's view has a good deal of merit.

132. That there has been a locked gate across the Order Route at point B on the Order Map for 26 years.

- a) Whilst the OMA accepts that this is Ms Whitney's experience of the Order Route, the evidence supporting the application contradicts her experience.

133. That notices excluding the public from the Order Route were erected in 2007.

- a) The erection of the signs were part of the events that called the public's right to use the Order Route into question. As such they set the relevant period under consideration but themselves fall outside that period.

134. The presence of the Order Route would pose a threat to any livestock in the field.

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

135. That the application has lain dormant for thirteen years.

- a) Whilst the OMA appreciates the frustration this delay has caused the OMA is still required to investigate and make an order where the conditions set out by the legislation are met.

### **Conclusion**

136. After examining all the available evidence and the experiences of the objectors the view of the OMA is that there is insufficient evidence to support the existence of a PRow over the Order Route on the balance of probabilities.

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

The Council of the City of York

December 2022