



Final Order Decision

Site visits undertaken on 22 August 2023 and 14 January 2025

by Mark Yates BA(Hons) MIPROW

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

Decision date: 12 February 2025

Order Ref: ROW/3286833M1

- This Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as Public Footpath Acaster Malbis 9 & Public Footpath Bishopthorpe 3 Modification Order 2019.
- The Order was made by The Council of the City of York ("the Council") on 10 October 2019 and proposed to add two footpaths, which form one continuous route, to the definitive map and statement.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 notice has been given of the proposal to confirm the Order with modifications.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I proposed in my Interim Decision ('ID') of 23 October 2023 to modify the Order by extending the route included in the Order ('the riverside path') through to Chantry Lane ('the churchyard path'). This Final Decision ('FD') should be read in conjunction with my ID with the numbers in square brackets representing particular paragraphs in the ID.
2. Two objections were made in response to the advertising of the proposed modifications. The objections from Mr Hargreaves and Mr Wright relate solely to the proposed addition of the churchyard path. No objection has been raised in relation to the riverside path (the unmodified element of the Order).
3. I reached my ID on the basis of the written representations of the parties at that stage and an unaccompanied visit to the site. In reaching my FD, I have had regard to the further written submissions and a second site visit where I was accompanied by the interested parties.
4. Reference is made by Mr Wright to an earlier submission to the Planning Inspectorate of 2 October 2021. It is apparent that the applicant for this Order (Bishopthorpe Parish Council) appealed against the Council's decision to only make an Order for the riverside path (Ref: FPS/C2741/12A/3). I understand that this appeal was dismissed on a procedural ground. It is not the role of the Planning Inspectorate to retain papers in the event that they may be needed in relation to a subsequent Order. However, I have had regard to this submission in reaching my FD.

Main Issues

5. I set out the statutory framework [5-8] and main issues [9] in relation to the Order as made. It is evident that the dedication of a public right of way within the
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churchyard could only have arisen under Section 31 of the Highways Act 1980 [16-19]. The main issue to now be determined from the submissions is whether a particular path was used for the whole of the relevant twenty year period in order to raise a presumption of the dedication of a public footpath in accordance with Section 31 of the Act. The relevant period in this case being 1974-1994 [10].

Reasons

6. A number of people completed a user evidence form ('UEF') in support of use of a route by reference to particular locations. The route is commonly described as commencing at the churchyard or running through the churchyard. The route used is stated to lead to Ferry Lane or continue over the riverside path. In the absence of a plan with the UEFs, there is uncertainty regarding the route taken between these points during the relevant period. However, there is nothing to suggest there was any significant variation in the route used in connection with the riverside path evident on Ordnance Survey ('OS') mapping and on site. It remains my view that on balance the evidence is supportive of the dedication of this route as a public footpath. I therefore focus on the evidence in relation to the churchyard path. Although reference has been made to the route marked on the application map, the main issue to be determined is the route used by the public during the relevant period.
7. The 1967, 1971 and 1978 OS maps show the former carriage road to Bishopthorpe Palace continuing from the end of Chantry Lane. A path is shown leading out of the carriage road and across the churchyard towards the bank of the River Ouse. This path continues onwards to Ferry Lane. The Council has plotted this route on a modern map, and this indicates that land crossed by a section of the path has been subject to erosion and no longer exists.
8. The 1982 OS map shows a path leading out of the carriage road a short distance to the south of where the path shown on the earlier maps entered the churchyard. It is also evident that the path is shown on the 1982 map running on a different alignment, particularly in relation to the churchyard where it passes closer to the remains of the former church than the path depicted on the earlier maps. The route shown on the map provided by the Council for the purpose of my proposed modifications reflects the path shown on the 1982 OS map.
9. Works were undertaken as part of a millennium project which had the effect of creating a path alongside the river which continues over the former carriage road. This route was completed after the end of the relevant period under consideration. The purpose of this project was to provide a path which is separate from the now enclosed churchyard. It is evident that a proportion of this path was physically created by works, including the building of a new section reclaimed from the river. Other sections of this path coincide with the route shown on the 1982 OS map towards each end.
10. The majority of the millennium path does not correspond with any route used during the relevant period. Whilst it is apparent that there is some support for this path being designated as a public footpath, I am unable to reach my decision on the basis of what may be a desirable outcome. Any potential diversion or claim in respect of this path are outside of the matters that I need to determine.
11. OS mapping is generally taken to provide a reliable indication of the position and existence of physical features. Despite the presence of certain features within the

churchyard, a path is shown on the OS maps continuing across the churchyard. The OS maps also depict a change in the alignment of this path during the relevant period. The comparison map produced by the Council shows a significant difference between the paths shown on the 1978 and 1982 maps and they only really converge over a section of the carriage road. There is also evidence of erosion which has led to a section of the original worn path being lost to the river. The map evidence could therefore be indicative of a change in the route used in this locality.

12. The OS maps are unclear as to when the land was surveyed for the different editions. This leaves open the possibility that the change in the alignment of the path occurred at some time earlier than 1982. However, the Council has drawn attention to two incidents of severe flooding that occurred in the area in December 1978 and January 1982. They believe it was either the 1978 or 1982 floods that were the cause of the section of path represented on the 1978 OS map being washed away.
13. The UEFs only indicate that people walked between Chantry Lane and Ferry Lane via the churchyard. Four recent statements have been provided in support of use of the route shown on the 1982 OS map. However, I have some reservations regarding the amount of weight that should be placed on these statements given that 30 years have passed since the end of the relevant period. Nor do these statements speak to the route used by others who completed a UEF in support of the 1994 application.
14. The evidence as a whole is supportive of people being able to walk through the churchyard and that they did so during the relevant period. Some weight should be given to the recent statements in support of use of the route shown on the 1982 OS map throughout this period. However, they need to be considered in comparison to the other pieces of evidence and I consider the weight to be given to these statements will be limited by the time that has elapsed since the relevant period. These statements alone are not sufficient to conclude that a particular path has been dedicated as a public footpath.
15. It is clear that at some point there was a change in the route visible beyond the former carriage drive. Whilst no firm conclusion can be reached in relation to when this change occurred, it is more likely to have occurred around the time that a proportion of the original path was lost to the river. Details provided by the Council reveal that severe flooding occurred in 1978 and 1982. The change in the extent of the river bank is evident from looking at the 1978 and 1982 OS maps.
16. I do not consider that the map evidence alone carries a significant amount of weight and regard in such cases should primarily be given to the evidence of use provided. I have addressed the recent statements above. In terms of the UEFs, these do not provide sufficient information to enable a conclusion to be reached in relation to the use of a particular route. It cannot be determined what route they used through the churchyard or whether there was consistent use of the same route.
17. Overall, I am not satisfied on balance in light of the further submission that the evidence is sufficient to raise a presumption of dedication in relation to the churchyard path and there is no need to consider the issue of statutory dedication further in respect of this route. There is nothing in the submissions that has any bearing on the conclusions reached in the ID regarding the riverside path.

Therefore, I conclude that the Order should be confirmed without any modifications being made to it.

Overall Conclusion

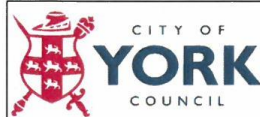
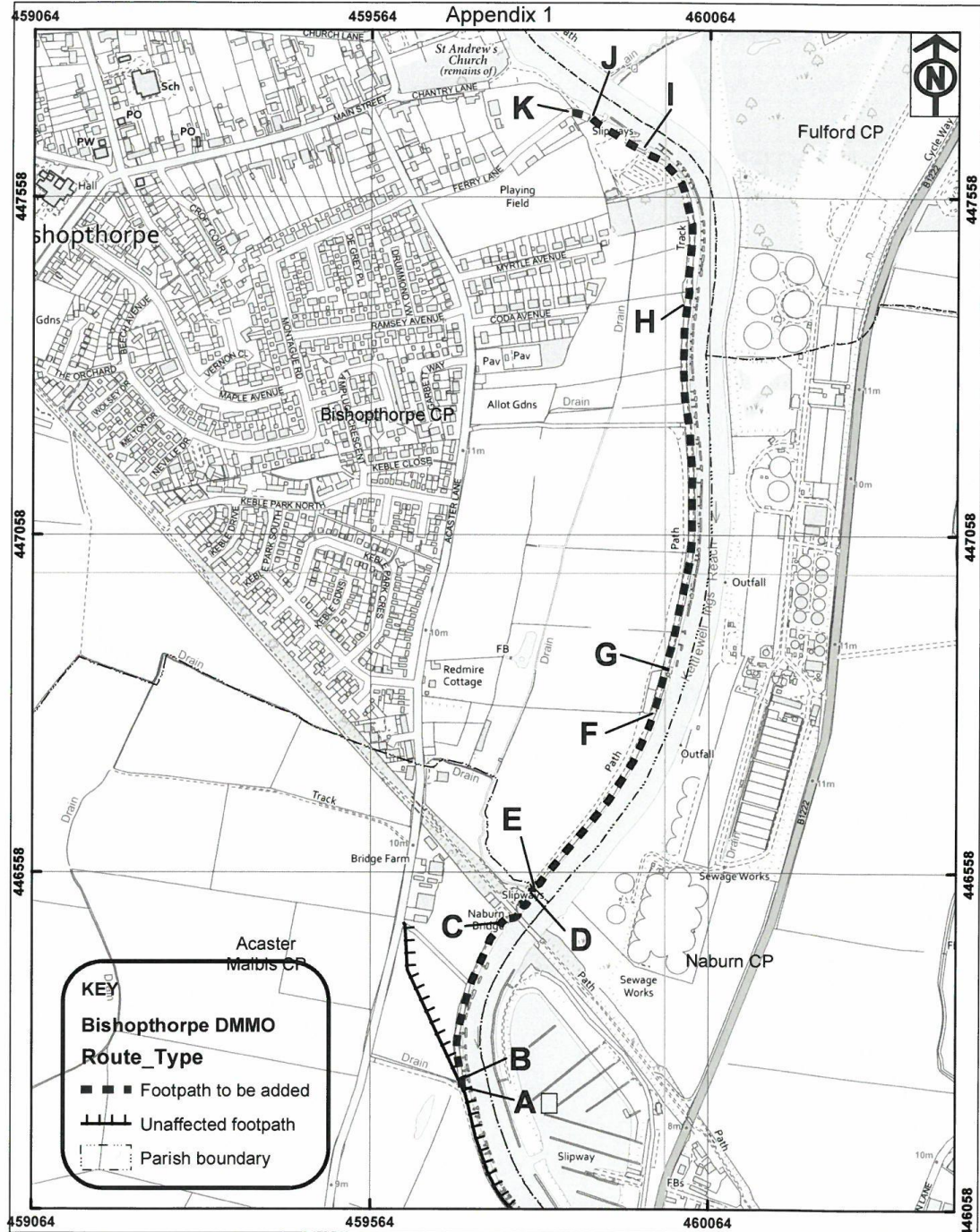
18. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

19. I confirm the Order.

Mark Yates

Inspector



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**PUBLIC FOOTPATH ACASTER MALBIS 9 & PUBLIC
FOOTPATH BISHOPTHORPE 3 MODIFICATION ORDER 2019**

Scale 1:7,500

Drawn By: RJV

Date: 15/10/19

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