

Order Decision

Site visit made on 6 May 2025

by **Laura Renaudon LLM LARTPI Solicitor**

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

Decision date: 25 June 2025

Order Ref: ROW/3343314

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the North Riding of Yorkshire Definitive Map Modification Order 2021 Public Footpath Skelton 11.
- The Order is dated 19 August 2021 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown on the Order plan and described in the Order Schedule.
- The application was made by Mr D Jackson on 23 January 2018.
- There were four objections outstanding when the Council of the City of York submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: the Order is confirmed.

The Main Issues

1. The main question arising in the case is whether the evidence discovered by the Council, as the Order Making Authority ('OMA') shows that a right of way which is not shown in the existing Definitive Map and Statement for the area does in fact subsist. The test on confirmation is whether on the balance of probabilities the right of way subsists.

Reasons

2. The route is not currently in use and does not appear to have been used within living memory. However a highway, once established, cannot be lost except through a specific formal process, of which there is no record here. Hence the question becomes whether the historical documentary records discovered by the OMA are sufficient to demonstrate the existence of a public footpath.
3. The documents discovered are principally the 1806 Skelton & Overton Inclosure Act and the 1807 Skelton Inclosure Award. That Inclosure Award set out, appointed and awarded several highways and roads including the one under consideration, which was set out and awarded as a 'public foot road' and is annotated on the accompanying map as 'foot road to York' on the same alignment as shown in the OMA's Order now under consideration.
4. Power was given to the Inclosure Commissioners to make such awards as well as to record the existence of pre-existing routes, and although the route is not otherwise recorded on any historical documents, there is no doubt that it was awarded the status of a public footpath by the Commissioner. The Commissioner's powers to do so were derived from the local Act of 1806 which in turn incorporated the general clauses of the 1801 Inclosure Consolidation Act. As the OMA point out, the Court of Appeal decided in *Andrews v SSEFRA* [2015] EWCA Civ 669 that those powers included the ability to award new public footpaths (although the case was itself concerned with a bridleway).
5. Therefore, although it appears that any footpath so created may have fallen into disuse relatively shortly afterwards, perhaps explaining why it does not appear on any other historical maps, this does not negate the creation of the path by the acts of the Inclosure Commissioner in the early 1800s.

Other matters

6. A number of matters have been raised in objection to the Order, as well as some supporting comments. The objections generally relate to the merits of the footpath, pointing out that it would deprive the farmer of a crop yield, could result in damage to a nearby building, is unnecessary because a parallel footpath exists only a few metres away; results in a dead end at the beck; is generally locally opposed and that these proceedings are an unacceptable waste of taxpayer funds.
7. All these points might carry some weight in different proceedings from these. My task here is to consider, on the basis of the historical evidence put forward, whether or not a public footpath *does* exist. Whether or not it *should* do is beyond the scope of my considerations.

Conclusion

8. For the above reasons I conclude that the Order should be confirmed.

Formal Decision

9. The Order is confirmed.

Laura Renaudon

INSPECTOR

Order Map – Copy Not to scale

