



**PUBLIC FOOTPATH KEXBY 19 DEFINITIVE MAP MODIFICATION
ORDER 2020**

STATEMENT OF CASE

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK
PUBLIC FOOTPATH KEXBY 19 MODIFICATION ORDER 2020

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 Kexby 19 Modification Order 2020 (“the Order”). The Council is the order making authority (“the OMA”).
2. The order is the subject of ten objections from eleven objectors (see appendix 2, page 17). The objectors comprise:
 - i. Kexby Parish Council
 - ii. Mary Byworth of Dunnington
 - iii. Gil Calvert of Dunnington
 - iv. Round Pebble Holding Company Ltd, joint land owner
 - v. Joan Drummond of Middleton-on-the-Wolds, former land owner
 - vi. Michael Gray of Dunnington
 - vii. Richard Hart of Dunnington
 - viii. John Hornby of Dunnington
 - ix. Gary Kay of Dunnington
 - x. Christine Simpson and Michael Thompson of Dunnington, joint objection and joint land owners.
3. The OMA has been unable to secure the withdrawal of these objections and consequently is referring it to the Secretary of State for determination.

Factual Background

4. The route shown in the Order (“the Order Route”) runs from public footpath Kexby 11 to public bridleway Kexby 8. The Order Route is noted within the order as public footpath Kexby 19.
5. The application was received by the OMA in December 1997 from the Friends of

Hagg Wood. The application was accompanied by user evidence forms, 1910 Finance Act records, a number of old maps, and a history of Hagg Wood written by the applicant.

6. The OMA made the order on 24 February 2020 and the statutory consultation ran between 3 March 2020 and 17 April 2020 during which ten duly made objections were received by the OMA.

Legal Framework

7. 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.”*

8. The OMA is the relevant “surveying authority”.
9. 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.”

10. Section 55(3) of the Wildlife & Countryside Act 1981 (“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.”

11. 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.”

12. 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.”

13. 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

14. The order is supported by 37 user evidence statements attesting to the use of the Order Route by 38 people between 1947 and 1997 (see appendix 5, page 90).
15. 24 of the 38 users claim use of the route for a period of twenty or more years (see appendix 5, page 91 for a graph illustrating the use period).
16. All 38 people claim use of the Order Route on foot. One indicated that they used the route on a bicycle as well.
17. Eleven users claim to have used the route on foot every week. Nine users claim to have used the route every month. The remaining eighteen people used the Order Route less frequently. In addition to the use on foot, the person who claims to have used the route on a bicycle did so once a month.
18. Nine of the users report coming across gates and stiles when they were using the Order Route. It is not clear from the forms whether the gates and stiles were in place at the same time or if a gate replaced a stile or vice versa. 25 users report finding only gates on the Order Route.
19. The locations of the gates and/or stiles remain consistently reported. A piece of furniture is recorded where the Order Route leaves Hagg Wood heading north (point B on the Order Route) and a second piece of furniture allowed people to access bridleway 8 (point C on the Order Route).
20. Three users report finding gates locked across the Order Route in 1997. One further user (John Firth) also reported coming across a locked gate in 1987 with access being restored a year later.

21. Three people reported finding signs on the Order Route. Two of these are clearly the “Welcome to Hagg Wood” Forestry Commission signs and have no bearing on the Order. The third user reports that signs appeared stating that the Order Route was not a public right of way (PRoW) in 1997. Again this has no bearing on the Order.
22. No users report ever having been challenged by any of the land owners or tenants during the 50 years use claimed by the user evidence statements.
23. In addition none of the users record ever having received permission from the land owner or tenant to use the Order Route.
24. The width of the route, where reported, was variously recorded between four feet and fifteen feet, although the most users recorded the width being in the region of 3 metres.

Documentary evidence

25. The application was supported by Finance Act 1910 records, historic Ordnance Survey (OS) maps, a history of access into Hagg Wood written by the applicant, an exchange of correspondence between Smiths Gore and North Yorkshire County Council, and the conveyance of the land affected by the Order Route from the Church Commissioners to Mr and Mrs Drummond.
26. The OMA has added a number of additional historic OS maps which show the Order Route and recent aerial photographs.
27. One of the objectors has submitted documentary evidence refuting the existence of the Order Route, this is set out below.
28. In the 1910 Finance Act records the OMA can find no mention of deductions for the presence of a public right of way (PRoW). The entry for Keepers Cottage notes an easement but this property is some 300 metres east of the northern end of the Order Route and does not appear to relate to it (see appendix 16, page 316). Therefore the OMA considers this document offers no evidence supporting or refuting the existence of a PRoW over the Order Route.

29. The entire Order Route (A – B – C – D) appears on the very oldest historic OS map (1854). The section of the Order Route A – B appears on all the OS maps available to the OMA. The entire Order Route is again recorded by the OS in 1984 (see appendix 15, page 280).
30. The history of access to Hagg Wood provided by the applicant suggests that the track the Order Route follows was reinstated by the Forestry Commission in the late 1970s (see appendix 17, page 326).
31. It also references the user evidence of John Firth (see para 20 above) and the locking of the gate. Although the applicant's history suggests that this happened when the track was reinstated and appears to have been locked by mistake (see appendix 17, page 326).
32. The applicant's date for the reinstatement of the track is not contradicted by the OS maps. Informal communication between the OMA and the current land agent for the Forestry Commission indicated that the Forestry Commission has no information that contradicts the forestry track having been built by 1984.
33. The letter from Smiths Gore to North Yorkshire County Council is an enquiry asking for the location of the public rights of way affecting the land edged respectively red or blue in the supplied map. Unfortunately time seems to have caused the overlaid colours to react and appear brown so the land cannot be accurately identified (see appendix 21, page 397).
34. The conveyance between the Church Commissioners and Mr and Mrs Drummond dated 27 June 1986 was obtained from the Land Registry and relates to the sale of land including part of the Order Route (see appendix 22, page 401).
35. In the conveyance the Church Commissioners clearly set out that they consider the land is subject to a public footpath and includes a map that matches the alignment of the Order Route between points B – C – D (see appendix 22, page 410).
36. The 1905 sale particulars provided by the objector clearly state the land subject to the sale is "without public road or footpath thereon". Unfortunately one of the accompanying maps has been shaded to the point where any details on it have

been obscured nor is it clear that the accompanying maps relate to the sale particulars (see appendix 20, page 357).

37. The two aerial photographs from 1970 and 1974 supplied by the objector show no built track at the northern end of the Order Route. The aerial photographs available to the OMA only start in 2002 and all show the track (see appendix 19, page 352).
38. The letter from the Forestry Commission to the OMA asserts that the Forestry Commission is a tenant of the land and so has no power to dedicate a public footpath without the consent of their landlord, the Church Commissioners.
39. The letter from the Forestry Commission to Mr J Dundon confirms what the Forestry Commission told the OMA in that they have no specific evidence with regard to the date of construction of the track the Order Route follows at its northern end (B – C – D on the Order Route).
40. The letter from Smiths Gore to Mr & Mrs Drummond supplied by the objector does not appear to offer any comment on whether the Order Route was a public right of way.
41. The local land charge search supplied by the objector shows that the Order Route had been objected to at the special review of the East Riding Definitive Map.
42. The records of the initial survey for the definitive map for Kexby show that the Order Route was claimed as part of that process.
43. The objector provided an analysis of the user evidence supporting the application.
44. A letter from the Forestry Commission to Mr Drummond detailing some improvements to the vehicular access arrangements again does not appear to comment on the presence or otherwise of public rights of access.
45. Two maps showing the track confirming the user evidence regarding the presence of gates across the Order Route.
46. Finally, the objector submitted a letter from the OMA detailing the reasons for the Order being written as the Order Route appeared in 1997 rather than as it is today.

Consideration of the evidence

User evidence

47. User evidence can be considered under section 31 of the Highways Act 1980 (“the statutory test”) or under Common Law.

The statutory test

48. Under section 31 of the Highways Act 1980 any route that is used by the public for a period of 20 or more years (“the Statutory Period”) becomes a public right of way (PRoW) unless the land owner can demonstrate they had no intention to dedicate as a PRoW.

49. The relevant 20 year period under consideration is defined by the submission of the DMMO application in 1997; this being first credible the event that called the public’s right to use the route into question. There are also suggestions within the user evidence that at least one gate was locked across the route in 1997 and signs may have been erected as well.

50. These events set the Statutory Period that relevant evidence must fall in as 1977 – 1997.

51. 37 of the 38 users fall within the Statutory Period, the remaining user providing evidence of use between 1957 and 1967.

52. All people evidencing use accessed the route on foot with only one person indicating they also used the Order Route on a bicycle. Therefore, the OMA believes any rights established through use would be for pedestrians only.

53. Establishment of a PRoW through use requires a number of 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.

54. 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.

55. Finally, the route must be used by the public at large, not a particular group.

Use by force

56. There is no suggestion in the evidence from the users or the objectors that the route was ever accessed by force.

Use by stealth

57. 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

58. There is no suggestion in the evidence from the users or the objectors that use of the Order Route was done with permission.

59. The OMA is satisfied that there are 37 users who can claim as of right use during the Statutory Period. Thirteen of these of people having used the route for the whole of the Statutory Period.

Frequency of use

60. As set out at para 17 above, the user evidence forms show that the Order Route was used by the majority of people at least every month.

61. None of the available documentary evidence contradicts the implication of the user evidence that the Order Route was used extensively during the Statutory Period. Consequently the OMA is satisfied that there was sufficient use for the land owner to be aware the public were asserting a right of way over the land.

Use by the public at large

62. The diversity of the user evidence is sufficient to demonstrate that, on the balance of probabilities, it was used by the public at large.

63. As a result the OMA is satisfied that section 31(1) of the Highways Act 1980 has been met by the user evidence and, on the balance of probabilities, a public footpath was brought into being over the Order Route at the end of the Statutory Period.

Evidence indicating a lack of intention to dedicate

64. Once section 31(1) of the Highways Act 1980 has been satisfied the affected land owner needs to demonstrate that they took sufficient, overt actions to indicate to the public that they had no intention to dedicate the Order Route as a PRow.
65. With reference to the section of the Order Route between points A and B, the OMA has been unable to find any evidence that the land owner (the Church Commissioners) took any steps during the Statutory Period to communicate to the users of the Order Route that they had no intention to dedicate it as a PRow.
66. In addition, with reference to the same section of the Order Route, the OMA has been unable to find any evidence that the Forestry Commission took any steps to indicate the Order Route was not a PRow on behalf of their landlord.
67. With reference to the section of the Order Route B – C – D there are two mentions of possible locked gates within the evidence. The first was noted by the applicant in their history of access to Hagg Wood and is alleged to have occurred in the 1970s shortly after the Forestry Commission reinstated the track. The applicant's history indicates that the gate was unlocked swiftly after the intervention of a "retired forestry worker". This corresponds with a lack of any record in the OMA's files of ever having received a complaint about access to the wood being denied before 1997.
68. The second mention of a locked gate is in the user evidence form of John Firth. He noted that a gate was locked across the Order Route in approximately 1987 with access being restored around a year later.
69. Neither of these events are corroborated by any of the other evidence available to the OMA. The year the applicant reports the Forestry Commission built the track is not supported by the Forestry Commission themselves.
70. The OMA does not accept John Firth's assertion that the Order Route was inaccessible for around a year, because there is no evidence within the OMA's records of a single person complaining about the locked gate.

71. When the Order Route was blocked in 2019 the OMA received an overwhelming number of complaints from residents of nearby Dunnington within a few days of the access being denied. As a result the OMA is unwilling to give either of these reports any weight.
72. The OMA considers it most likely that if the gate was ever locked it occurred very briefly after the arrival of Mr & Mrs Drummond in 1986 or 1987 and was insufficient to indicate to the public that the new land owners had no intention to dedicate the Order Route as a PRow.
73. Most of the users reported finding gates on the route but only four reported finding them locked. One was John Firth whose evidence is dealt with at para 68 to 72. The remaining three reports of locked gates occurred in 1997, an event contributing to the public's right to use the route being called into question. Consequently they have no bearing on the consideration of the Order
74. None of the signs reported as being found on the Order Route had the effect of indicating a lack of intention to dedicate a PRow.
75. There is nothing in the evidence submitted by the objectors that shows any steps were taken by the land owner during the Statutory Period demonstrating a lack of intention to dedicate.
76. In summary, the OMA has no evidence that any affected land owner took any steps that were sufficient to inform the public that they had no intention to dedicate the Order Route as a PRow.
77. Therefore, the OMA is satisfied that the Statutory Test has been met and that, on the balance of probabilities, a public footpath exists over the Order Route based on use occurring between 1977 and 1997.

Common Law dedication

78. 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

79. The OMA is satisfied that two pieces of documentary evidence clearly indicate that the land owner at the time (the Church Commissioners) did expressly dedicate the Order Route as a PRow, specifically as public footpath.
80. The first document is the 1985 correspondence between Smiths Gore, acting on behalf of the Church Commissioners, and North Yorkshire County Council (the highway authority for the area at the time). In the correspondence the map provided by Smiths Gore was marked by the County Council clearly showing the Order Route as a public footpath (see appendix 20, page 357).
81. The second document is the conveyance of the land and property known as Oak Farm dated 27 June 1986. The conveyance was between the Church Commissioners (vendors) and Mr and Mrs Drummond (purchasers) (see appendix 22, page 401).
82. In the conveyance Mr and Mrs Drummond are to hold the land in fee simple:

“subject to all rights of way water light and other easements (if any) affecting the said land particularly and including the public footpath passing through the property the approximate position of which is indicated by the purple line on the plan annexed hereto.”
83. The plan referred to above is the final page of the conveyance and clearly shows the Order Route marked as a purple line.
84. The OMA has found no evidence that the Church Commissioners ever disputed the depiction of the Order Route as a public footpath. Indeed the OMA contends that by voluntarily querying which local paths were PRow and then including the Order Route within the conveyance ten months later the Church Commissioners must have been happy with the Order Route being a public footpath. The best explanation for this being that they had dedicated the Order Route as a public footpath.
85. It is possible that the Church Commissioners had intended that North Yorkshire County Council would produce some sort of agreement or other document

formalising the dedication and enabling it to be recorded on the definitive map. However the OMA has found no evidence of such an agreement being produced.

86. It is also worth noting that parishes that were formerly within the area of East Riding County Council were under a direction from the Secretary of State to complete a special review of the definitive map under the 1949 National Parks and Access to the Countryside Act. The administrative complications this situation caused may have meant that the formal recording the Church Commissioners' dedication was overlooked.

87. Nevertheless, the OMA is satisfied that these two documents demonstrate that by the 22 August 1985 (the date of the reply from North Yorkshire County Council) the Church Commissioners had dedicated the Order Route as a public footpath.

88. As mentioned at para 77 above the dedication of a public footpath at Common Law is a two stage process. The OMA is content that the second stage, acceptance by the public, is amply demonstrated by the 37 people providing evidence of use in the period 1985 to 1997 set out in the Statutory Test section above.

89. The OMA is satisfied that there is very strong evidence of the Order Route being dedicated as a public footpath at Common Law on the balance of probabilities.

90. The OMA considers that the available evidence strongly supports the existence of the Order Route as a public footpath when considered under either the statutory test or the Common Law.

Evidence refuting dedication at Common Law

91. Beyond what has already been mentioned the OMA has been unable to locate any documentary evidence that refutes the express dedication of the Order Route by the land owner.

92. None of the evidence supplied by the objector contradicts the OMA's position that the Church Commissioners dedicated the Order Route as a public footpath sometime after 1974 (the date of the most recent aerial photograph supplied by the objector) but before 22 August 1985.

93. The OMA considers that available evidence strongly supports the existence of the Order Route as a public footpath respectfully asks that the Secretary of State confirms the order.

Comment on the objections

94. The ten duly made objections received from the objectors made a number of points seeking to refute the order. Each point is considered below. The full text of the objections can be found at appendix 2, page 17. The OMA's comments on the objections can be found in the sub paragraphs following the objection.

95. The objection of Kexby Parish Council was made on the grounds that the evidence does not support the existence of public rights over the Order Route and the local infrastructure was insufficient to cope with the existence of a public right of way.

- a) The parish council have provided no detail on why they consider the evidence insufficient. The OMA looks forward to receiving their detailed arguments in due course in their statement of case.
- b) The adequacy of local infrastructure is not a relevant legal consideration when determining the existence of a right of way.

96. The objection of Mary Byworth was made on the grounds that the track did not exist until the early 1980s, that three gates were locked across the Order Route sufficient to prevent public access, and that there was no public access prior to the construction of the track.

- a) The OMA agrees with Mary Byworth that the track was not constructed until the early 1980s. The absence of the track, however, does not mean that a PRow did not exist.
- b) In relation to the locked gates, the OMA contends that Mary Byworth is referring to the vehicle gates present on the route and are reflected in the Order. Locked vehicle gates are effective in preventing the public gaining a right of way in a vehicle but do not stop the acquisition of a PRow on foot because walkers could use the pedestrian gate or stile beside the locked vehicle gates.

- c) The assertion there was no public access before the track was built is not supported by the evidence.

97. The objection of Gill Calvert was made on the grounds that the track did not exist until the early 1980s, that three gates were locked across the Order Route sufficient to prevent public access, and that there was no public access prior to the construction of the track.

- a) The OMA agrees with Gill Calvert that the track was not constructed until the early 1980s. The absence of the track, however, does not mean no public rights existed.
- b) In relation to the locked gates, the OMA contends that Gill Calvert is referring to the vehicle gates present on the route and are reflected in the Order. Locked vehicle gates are effective in preventing the public gaining a right of way in a vehicle but do not stop the acquisition of a PRow on foot because walkers could use the pedestrian gate or stile beside the locked vehicle gates.
- c) The assertion there was no public access before the track was built is not supported by the evidence.

98. The objection of Round Pebble Holding Company Ltd was made on the grounds that the evidence does not support the existence of public rights over the Order Route and that evidence they hold demonstrates that the Order Route never existed as a PRow.

- a) The 1905 sale particulars. The OMA accepts that in 1905 the land owner did not believe any PRow were present over the land being sold
- b) The 1998 letter from the Forestry Commission is directly contradicted by the user evidence. On balance, the OMA considers that 38 local people possessed significantly more local knowledge than the land agent for an area that extended from County Durham south to north Nottinghamshire.
- c) The objector appears to have misunderstood the comments of Rt Hon Malcolm Alison MP (see appendix 23, page 416 for the full transcript of the debate from Hansard). The Rt Hon Malcolm Alison MP specifically mentioned that whilst Hagg Wood was not subject to an open access agreement he acknowledged

that there was customary use which had yet to be tested. The mechanism by which the customary use was to be tested was by means of the submission of the DMMO in 1997. It is also worthy of note that the debate also featured the Rt Hon Frank Dobson MP who was born and lived in and around Dunnington and clearly notes that he had been accessing Hagg Wood for 50 years.

- d) The Order Route does appear in the parish survey records. The objector is incorrect in this statement. Nor is the presence of a constructed track a prerequisite for the inclusion of a way within the definitive map.
- e) The availability of written records confirming the date of construction of the track is not relevant.
- f) The correspondence from Smiths Gore states that no mention is made of the Order Route. Again the OMA agrees with the objector regarding the letter's content, but the OMA does not accept the objectors' implication that the failure to mention the Order Route excludes the possibility of the Order Route being a public right of way.
- g) Local authority search makes no mention of a definitive map modification order process; it refers to the process of special review that parishes within the former East Riding County Council area were subject to at the time. The objector's position is directly contradicted by the conveyance of the property, a document produced by the land owner of the time and subject to a due process of scrutiny.
- h) The OMA accepts that person employed by a land owner or tenant would not generally have the capacity to create a right of way because their use would be by right. There is, however, a substantial body of user evidence from people who were using the Order Route as of right as required by the legislation.
- i) The OMA does not accept the objector's interpretation of the parish survey records. It appears to be a misunderstanding of the records which clearly show the Order Route (see appendix 18, page 349).
- j) The correspondence from East Riding County Council's Highways Department refers to a proposal to stop up part of the Order Route. No evidence has been adduced that shows this proposal was ever put into effect.

Nevertheless even if the Order Route had been formally stopped up it was recreated by the dedication of the Church Commissioners prior to the sale to Mr and Mrs Drummond.

- k) Aerial photographs. The OMA is grateful to the objectors for including these photographs. However, whilst the existence of a physical feature may indicate the presence of a PRow, the converse is not true. Public rights can exist without physical features being present.
 - l) The objector's comments regarding the Friends of Hagg Wood are not matter that can be taken into consideration.
 - m) The photographs from the applicant referred to by the objector were taken in 1997 when one to the events that called the public's right to use the wood into question was the locking of gates. They are not relevant to the Statutory Period other than to establish the end of the 20 years under consideration.
 - n) The testimony of David Bristow refers to obtaining the key for gates to move farm machinery. The OMA contends that David Bristow is referring to the vehicle gates present on the route and are reflected in the Order. Locked vehicle gates are effective in preventing the public gaining a right of way in a vehicle but do not stop the acquisition of a PRow on foot because walkers could use the pedestrian gate or stile beside the locked vehicle gates.
 - o) The testimony of C Grieves refers to there being no access into Hagg Wood before they left the village in the early 1980s. This statement is contradicted by a great deal of the available evidence. Their reference to locked gates being present in the 1990s, again the OMA contends that C Grieves is referring to the vehicle gates present on the route and are reflected in the Order. Locked vehicle gates are effective in preventing the public gaining a right of way in a vehicle but do not stop the acquisition of a PRow on foot because walkers could use the pedestrian gate or stile beside the locked vehicle gates.
99. The objection of Joan Drummond was made on the ground that three gates were locked across the Order Route sufficient to prevent public access. The keys being held by herself and the Forestry Commission.

- a) The OMA does not accept that three gates were locked across the Order Route that were sufficient to prevent public access. The OMA contends that Joan Drummond is referring to the vehicle gates present on the route and are reflected in the Order. Locked vehicle gates are effective in preventing the public gaining a right of way in a vehicle but do not stop the acquisition of a PRow on foot because walkers could use the pedestrian gate or stile beside the locked vehicle gates.
100. The objection of Michael Gray was made on the ground that the Order Route was never open to the public.
- a) The evidence adduced does not support Michael Gray's unsupported assertion. The OMA looks forward to receiving evidence substantiating his assertion in his statement of case.
101. The objection of Richard Hart was made on the grounds that the Order Route was not used by the public and, following its construction, the forestry track blocked by two locked gates and a metal railing.
- a) The evidence available to the OMA directly contradicts Richard Hart's unsubstantiated statement. The OMA notes that he agrees the forestry track was constructed in the early 1980s.
 - b) In relation to the locked gates, the OMA contends that Richard Hart is referring to the vehicle gates present on the route and are reflected in the Order. Locked vehicle gates are effective in preventing the public gaining a right of way in a vehicle but do not stop the acquisition of a PRow on foot because walkers could use the pedestrian gate or stile beside the locked vehicle gates.
102. The objection of John Hornby was made on the ground that the Order Route was never open to the public.
- a) The evidence adduced does not support John Hornby's unsupported assertion. The OMA looks forward to receiving evidence in his statement of case. The OMA notes the he agrees that the forestry track was constructed in the early 1980s.

103. The objection of Gary Kay was made on the grounds that the Order Route was locked and barred by two locked gates and a metal railing, that the public never accessed the triangular field, and the land was used for grazing livestock.

- a) In relation to the locked gates, the OMA contends that Gary Kay is referring to the vehicle gates present on the route and are reflected in the Order. Locked vehicle gates are effective in preventing the public gaining a right of way in a vehicle but do not stop the acquisition of a PRow on foot because walkers could use the pedestrian gate or stile beside the locked vehicle gates.
- b) The evidence adduced does not support Gary Kay's unsupported assertion. The OMA looks forward to receiving evidence substantiating his assertion in his statement of case.
- c) That land is used for grazing livestock does not prevent the existence of a public right of way.

104. The joint objection of Christine Simpson and Michael Thompson supported the points raised by Round Pebble Holding Company Ltd at paragraph 98. Please see the OMA comments at paragraph 98 (a) on.

Conclusion

105. The OMA's view is that there is sufficient evidence to support the existence of the Order Route as a public footpath on the balance of probabilities.

106. Therefore the OMA respectfully asks the Secretary of State to confirm the order.

The Council of the City of York

August 2020