

PROOF OF EVIDENCE OF THE COUNCIL OF THE CITY OF YORK

PUBLIC FOOTPATH KNAPTON No. 4 DEFINITIVE MAP MODIFICATION ORDER 2010

PLANNING INSPECTORATE REFERENCE: ROW/3212585

My name is Russell Varley BSc. I am employed by the Council of the City of York (“the OMA”) as a Definitive Map Officer, a function I have performed for over ten years. My role is to manage the review of the Definitive Map and Statement (“the DMS”) for the City of York under Part III of the Wildlife & Countryside Act 1981. The evidence contained in this proof is true to the best of my knowledge and belief, and the views expressed herein represent my professional opinion

This proof of evidence should be read alongside the OMA’s statement of case which contains the substance of the OMA’s case for the amendment and confirmation of the Public Footpath Knapton No.4 Definitive Map Modification Order 2010 (“the Order”). This proof will concentrate on the specific points raised in the statement of case received from Mr and Mrs Swiers (“the objectors”). The joint statement of case submitted by the British Horse Society and the Byways and Bridleways Trust broadly agrees with the OMA’s position, consequently no further comment is needed.

OMA submission of a statement of case

1. The objectors state at paragraph 2 that the OMA had not provided a statement of case. This is factually incorrect, the OMA submitted its statement of case when the opposed order was sent to the Secretary of State for confirmation, 12 months in advance of the deadline.

Presumption of administrative regularity

2. At paragraph 4 of their statement of case the objectors make reference to previous decisions regarding the route set out by the order (“the Order Route”). The records available to the OMA make no mention of any decision being made about the Order

Route prior to 2010. In 2010 the OMA made the decision to make the order that is the subject of this inquiry. Consequently, no prior administrative decision relating to the Order Route exists.

3. It seems to be implied by the objector that the absence of any prior reference to the Order Route in the DMS indicates that the issue had been considered previously and rejected. That is misguided for the reason already explained. However, it should be recalled that the legislation recognises that pre-existing public rights of way will not always be identified in the DMS and the OMA's statutory duty requires it to make orders to record them on the DMS when evidence of their existence comes to light. .

Tuke's Map 1787

4. With regard to the objectors' comments about Tuke's Map at para 9, this map was, according to John E. Rawnsley in "Antique Maps of Yorkshire and their Makers", based largely on the earlier the Jefferys' map rather than a new survey. As no new survey was conducted this explains why Tuke's Map was not updated and does not show the turnpike despite it having been in existence for up to 10 years by the time he published his map. Consequently, the OMA is content to maintain its position that the commercial maps can largely be relied upon as offering an accurate picture of the development of the road network between Rufforth and York.

Jefferys' Map

5. At paragraph 10 the objectors appear to be assuming that the establishment of the turnpike trust in 1771 meant that the turnpike was built immediately afterwards. However the evidence demonstrates that this cannot have been the case. The turnpike road was legally set out by the Rufforth Inclosure Award in 1776 some five years after the establishment of the turnpike trust.

6. Therefore when the surveyors for Jefferys' Map of 1775 arrived in the area sometime between 1767 and 1770, the construction of the turnpike was at least six years in the future. Therefore it is unreasonable to suggest that Jefferys should have depicted a route that did not yet exist, even assuming they had been aware of the possibility of its construction.
7. Furthermore, at paragraph 11, the objectors are suggesting that no highway existed between the two villages prior to the construction of the turnpike. This position directly contradicts the evidence provided by Jefferys' Map.
8. As set out at para 80 of the OMA's statement of case, York is the closest large settlement to Rufforth, situated some 7km away (as the crow flies) over a largely flat landscape (Rufforth is 16 metres above sea level, York city centre is 15 metres above sea level). The other surrounding towns, all smaller than York, are between 9km and 18km away as the crow flies. In addition, the River Ouse has been bridged at York since the 1st century C.E.
9. Therefore, the suggestion that there was no highway by which the people of Rufforth could access their nearest large settlement is counter-intuitive to say the least. The objectors will need to provide substantial, probative evidence to prevent this position being rendered untenable.
10. Consequently, the OMA's position is that the route shown on the Marwood Map and on Jefferys' Map was the only route that linked York and Rufforth, first recorded in the Domesday Book, before the construction of the turnpike sometime after 1776. This route, which has existed for almost 1000 years, is coincident with the Order Route and that in itself is strong evidence of it being a public right of way ("PRoW").

Ancient road

11. At paragraphs 16 to 19 the objectors suggest that it is not possible to attach any weight to evidence demonstrating the long existence of the Order Route and that

without relevant statute or dedication it is impossible to demonstrate that public rights exist.

12. The OMA would draw the objectors' attention to lack of such conclusive documentation for the establishment of almost every highway in England. Are the objectors suggesting that ancient routes like Ermine Street and Dere Street (both now in part forming the A1) are not public highways because no such documentation exists?
13. If this is the objectors' settled position, they are creating an evidential burden which very few public highways could meet; including many of the routes they will use to attend the forthcoming public inquiry.
14. The OMA considers this a most unreasonable position to adopt. Rather the OMA continues to contend that the Order Route has existed as a public highway for almost 1000 years and that in itself is strong evidence of it being a PROW.

Turnpike evidence

15. With regard to the objectors' comments relating to the depiction of the order route as a spur on the maps associated the turnpike trust's diversion proposals, the OMA agrees with the objectors that no inference of status can be drawn from them. However, this is to rather miss the reason the OMA included this evidence. The inclusion of the order route within the plans of the turnpike trust indicates that it was a route they needed to take into account and demonstrates that when these plans were drawn up the order route still existed. This again contradicts the objectors' suggestion that the route did not exist.

New Gate

16. With regard to the objectors' comments at paragraph 21 regarding New Gate and New Gate Bridge, the objectors have helpfully illustrated the point. New College, Oxford (full name St. Mary's College of Winchester in Oxford) was the second

college to be built in city, being completed in 1386. It quickly became known as New College to distinguish it from the existing St Mary College that had been established in 1326 (now known as Oriel College). At the time of its founding New College was the most recent college in Oxford.

17. The parallels with the turnpike being called New Gate are clear. At the time of its construction it was the new road. There must, by definition, therefore have been an old road. The OMA argues that the old road was the Order Route, being the only other route shown in the evidence.
18. Furthermore, it is notable that New College gained the name to distinguish it from the existing, similar institution which it could have been confused with. Similarly the turnpike was called New Gate to distinguish it from the order route (the “Old Gate” if you will) because the two routes were of similar importance in the area.

Inclosure evidence

19. The OMA does not agree with the objectors’ comments at paragraph 23 and remains content that the copy map discovered in the archives is a fair copy of the now missing enrolled map that accompanied the inclosure award. Furthermore, their claim that a route being mentioned within an inclosure award could be disused is remarkable given that one of the duties imposed by inclosure acts on the inclosure commissioners was to set out necessary highways. These highways were then detailed within the resulting award. The wording of the award indicates that the highway established by the award continued on its historic route linking two villages together and was not a cul-de-sac as suggested by the objectors.
20. With reference to paragraphs 25 to 28, the objectors appear to have misunderstood the *Dunlop* case. The issue in that case was whether the Inspector had erred in law by concluding that the way was a public road open to wheeled vehicles. Having considered the legislative background and the specific terms of the inclosure award in that particular case, the Court concluded that the disputed way was not a public highway open to all traffic but rather a public bridleway.

21. OMA have relied on the ratio of the *Dunlop* case, particularly the interpretation of Sedley J that as a "private or occupation carriage road" the road should be a bridleway, a species of public right of way. As such it is a PRow and "the road is to be shown in the definitive map and statement".
22. The objectors' comments on the width of tracks is limited to the interpretation of inclosure awards and those which are comparable to the inclosure award in the *Dunlop* case. The ratio of *Dunlop* holds that a width of 30 feet denotes a "public carriage road" whereas a width of 20 feet denotes a "private or occupation carriage road". The Objectors agree the width of the Order Route is 24 feet and so more closely corresponds with the width for a "public carriage road". Therefore, the route is a PRow.
23. With reference to the comments regarding the Rufforth Inclosure Award, the OMA maintains its position (see para 66 of the OMA's statement of case) that the private occupation road set out by that award was part of the route diverted by the secretary of state in 1953. As such the public rights the inclosure award established are immaterial; the diversion was a due legal process that formally set out the public rights over the diverted route. Therefore, the diversion established beyond doubt that a highway existed over the site of the airfield and that as a consequence it needed diverting once wartime powers had lapsed so the airfield could continue to operate.

OS Object name book

24. The comments made by the objectors at para 34 of their statement of case regarding the name of the order route are creative yet stretched to reach the conclusion that no PRow existed.

Finance Act 1910

25. With regard to the comments about the Finance Act 1910 set out by the objector at paras 35, the OMA does not dispute that there was a financial incentive for land owners to include every PROW on their land. However the OMA would contend that there is an obvious contradiction in this evidence that objectors have not addressed.
26. It is common ground that the owner of the parcel of land numbered 58 on the Finance Act map made no deduction for PROW over the land. The part of 58 that lies to the east of parcel 42 shows that they did not consider the Order Route to be part of their holding meaning the lack of a deduction is unsurprising.
27. The contradiction arises when examining the part of parcel 58 that lies to the west of parcel 42. Here the Order Route is shown as forming the northern boundary of parcel 58 but is, nevertheless, within that parcel for which no deductions have been made. However, this section of parcel 58 comprises that part of the ancient route that was diverted in 1953 conclusively establishing that a PROW existed over land for which no deductions were made.
28. The OMA contends that this contradiction reduces the already limited evidential value of the absence of deductions significantly for both parcel 58 and 42. Consequently the records not showing any public rights cannot be interpreted as no public rights being present.

1953 Diversion order

29. At paragraph 40, the OMA finds the objectors' dismissal of the legally conclusive evidence afforded by the 1953 diversion order interesting, especially in the light of their demands at para 16 to 19 of their statement of case for evidence of similarly unimpeachable legal standing.

30. Whilst there are no formal records of the investigation of highways made prior to the 1953 diversion order, it seems reasonable to presume that at least basic local enquiries would have been made with adjacent landowners or that those landowners would have taken legal action against the order at the time if it had been inaccurate. There is no evidence to show the then owners objected to the order being made.
31. Therefore the presumption of legal regularity must apply. For the Secretary of State to have confirmed the diversion order, he must have been convinced on the balance of probabilities that a PROW existed over the historic route necessitating its stopping up by the diversion order.
32. Furthermore, the diversion route enabled users of the way to access the western end of the Order Route indicating that the secretary of state considered that the continuation of the route was also a PROW. If this was not the case the secretary of state would simply have stopped up the way crossing the airfield.

User evidence

33. With regard to the user evidence, the OMA considers the objectors' reference at para 43 to a "wide ranging, informal licence" is an unsubstantiated assertion for which no evidence has been adduced. None of the research carried out by the OMA suggests that any such licence existed and would be entirely inconsistent with the available evidence.

Conclusion

34. The OMA has carefully re-examined all the available evidence in the light of the comments made by the objectors and considers them all to be without merit.
35. The OMA's position is that the evidence demonstrates that, on the balance of probabilities, the Order Route is a public highway. Furthermore, the Order Route

gave the residents of Rufforth their sole means of accessing the City of York for at least 800 years prior to the construction of the turnpike.

36. As such the OMA maintains its position that the Order Route existed between Acomb and Rufforth back into antiquity and that it should be recorded as a public restricted byway as a consequence of the Natural Environment and Rural Communities Act 2006.

37. The OMA respectfully asks that the inspector modifies the order to that effect before confirmation.

The Council of the City of York
February 2020