



**PUBLIC PATH CREATION ORDER AND DEFINITIVE MAP  
MODIFICATION ORDER  
COUNCIL OF THE CITY OF YORK, PUBLIC FOOTPATH, ASKHAM BRYAN  
NO 9 (PART) CREATION ORDER 2019 AND PUBLIC FOOTPATH, ASKHAM  
BRYAN NO 9 (PART) EXTINGUISHMENT ORDER 2019**

## **STATEMENT OF CASE**

### **STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK**

#### **PUBLIC PATH CREATION ORDER AND DEFINITIVE MAP MODIFICATION ORDER**

#### **COUNCIL OF THE CITY OF YORK, PUBLIC FOOTPATH, ASKHAM BRYAN NO 9 (PART) CREATION ORDER 2019 AND PUBLIC FOOTPATH, ASKHAM BRYAN NO 9 (PART) EXTINGUISHMENT ORDER 2019**

**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 orders; Council of The City Of York, Public Footpath, Askham Bryan No 9 (Part) Creation Order 2019 and Public Footpath, Askham Bryan No 9 (Part) Extinguishment Order 2019 (“the orders”) (see Appendix 1: Orders). The council is the order making authority (“the OMA”).
  
2. The orders are the subject of 9 outstanding objections and 1 representation (see Appendix 3: List of objections).
  - 1) Mrs Audrey Hollas
  - 2) Mr David Marsh
  - 3) Julian Sturdy MP
  - 4) Mrs Sylvia Smith
  - 5) Mr Chris Steward (former ward councillor)
  - 6) John and Asha Boeing and Mark Donovan (joint objection)
  - 7) Mr David Nunns (Local Ramblers representative)

- 8) Dr Darryn Mitchell
  - 9) Askham Bryan Parish Council
  - 10) Ms Kate Ashbrook (General Secretary, Open Spaces Society)
3. The OMA has been unable to secure the withdrawal of the outstanding objections and is referring both orders to the Secretary of State for determination.

### **Factual Background**

4. The route affected by the orders forms part of a public footpath known as Askham Bryan No 9 (“the footpath”) that runs through Askham Bryan College campus (located in the parish of Askham Bryan, York), between York Road (C286) and the A64 (see Appendix 9: Location plan). Askham Bryan No 9 was added to the definitive map following the confirmation of a definitive map modification order (DMMO) in 2017.
5. The path follows the original alignment of the maintainable public highway known as Askham Fields Lane. The public highway was diverted to allow the construction of the A64 and put onto a new alignment (North Yorkshire County Council (York Outer Ring Road) (Classified Roads) Side Roads Order 1982). The part of Askham Fields Lane (“the estate road”) that was no longer public highway became a private estate road within the college, serving adjacent properties.
6. On 13<sup>th</sup> February 2014 planning permission (13/02946/FULM) was granted by the council for, amongst other things, the erection of security fencing, gates and animal shelters to turn land that included the southern section of the estate road into a wildlife park.
7. The new fencing and gates that were erected in 2014 pursuant to the planning permission effectively prevented use of the southernmost section of the estate road and triggered an application for a DMMO to record the footpath on the definitive map and statement (DM&S). The 24 user evidence statements (UES) that were submitted in support of the application indicated that the footpath was used to travel between

Copmanthorpe, Askham Bryan village, the college and also to access the off-slip bus stop.

8. Whilst the DMMO application was being considered, the college continued with their plans for the wildlife park and on 16<sup>th</sup> December 2015 notified the council of their intention to apply for the required zoo license. A formal application was received on 15<sup>th</sup> March 2016 and after the site had been inspected and deemed to comply with the requirements of the license, the license was granted on 1<sup>st</sup> June 2016. The zoo license was renewed on 1<sup>st</sup> June 2020 and runs for another 6 years.
9. The footpath is currently obstructed by the security fencing, gates, animal enclosures and various other structures relating to an estate compound which occupies the southern section of the estate road where it runs through the wildlife park.
10. Opening the footpath as it is shown on the DM&S would cause a breach of the terms of the zoo license which prohibits unrestricted access by the public to that area of the campus.
11. The college has previously applied on two separate occasions to remove the footpath from the wildlife area.
12. First, an application was made under section 257 of the Town and Country Planning Act 1990 to divert the affected section of footpath to a new alignment that follows the footway adjacent to the main vehicle access road into the college from Askham Fields Lane. This was after a further planning application was received (17/02898/FUL, validated 20/12/17), for additional animal enclosures, a teaching classroom, and a pair of gates (retrospective) that block the footpath. However the footpath diversion application was abandoned as it did not meet the requirements of the legislation.
13. The second application was made under s 116 of the Highways Act 1980 and was to stop up the section of footpath through the wildlife area. This proposal also included provision of an alternative way which was again to be along the footway adjacent to

the main college access road. Preliminary consultation was carried out with Askham Bryan Parish Council who opposed the application. The application could not be taken further by virtue of s 116 (3) of the Highways Act 1980.

14. The current application (received 27<sup>th</sup> August 2018) seeks to concurrently create a new public footpath along the footway adjacent to the college access road (“the creation order” route shown as A to C on the creation order map) and to extinguish the section of the footpath running through the wildlife park (“the extinguishment order” route, shown as A to B on the extinguishment order map) under sections 118 and 26 of the Highways Act 1980. The application was made by the college.
15. Following pre-order consultation (see Appendix 6: Pre-Order consultation), the application was considered at the Council’s Executive Member for Transport and Planning Decision Session on 17<sup>th</sup> January 2019 where due to the requirements of the legislation having been met, authorisation was given to make the orders (see Appendix 1: Orders). The statutory consultation period ran between 20<sup>th</sup> February 2019 and 20<sup>th</sup> March 2019 (see Appendix 4: Copy Notice). Notices were published, served and posted on site and at council offices (see Appendix 5: Certificate serving Notice and consultation). Statutory undertakers were also consulted (see Appendix 7: All persons notified).
16. The creation order seeks to link the footpath with Askham Fields Lane via the existing footway alongside the main private vehicular access road into the college.
17. The footway is in daily use and serves as the main private pedestrian access into the college. The route has a well maintained tarmac surface, is 2 metres wide, and is street lit. There is a campus 10 mph speed limit on the adjacent vehicular access road.
18. The extinguishment order route has been subject to a temporary Traffic Regulation Order (TRO) since 9<sup>th</sup> September 2017. The TRO has been extended by a further 6 months by the council and has then extended a further 12 months on application to the Secretary of State on two occasions. The current restriction expires on 15<sup>th</sup>

November 2020.

### **Legal Framework**

19. Local authorities have power, under s 26 of the Highways Act 1980, to create a footpath, bridleway and restricted byway by creation order. Before confirming an opposed order made under s 26 of the 1980 Act the Secretary of State must be satisfied that:

- a) There is a need for the footpath included in the Order; and
- b) It is expedient to confirm the Order having regard to:
  - i. The extent to which the footpath would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons in the area; and
  - ii. The effect the creation of the footpath would have on the rights of the persons interested in the land, having regard to the provisions for compensation.

20. Local authorities have power, under s 118 of the Highways Act 1980, to extinguish a footpath, bridleway and restricted byway by extinguishment order. Before confirming an opposed order made under s 118 of the 1980 Act the Secretary of State must be satisfied that it expedient to extinguish the section of footpath having regard to:

- i. The extent (if any) to which it appears that it would, apart from the Order, be likely to be used by the public; and
- ii. The effect that the extinguishment of the section of path would have as respects land served by it, having regards to the provisions of compensation.

21. Section 118(5) of the 1980 Act specifies that in considering the test outlined in para 18(a) above, regard can be given to the extent to which an Order under s 26 of the Act would provide an alternative path. Paragraph 5.54 of the Department of Environment, Food and Rural Affairs Circular 1/09 advises that account should be taken of the convenience of the route proposed compared to that which is to be extinguished.

22. Section 118(6) of the 1980 Act states that any temporary circumstances preventing or diminishing the use of the footpath by the public should be disregarded.

23. Section 118 (6A) states that regard shall also be given to any material provision contained in a rights of way improvement plan (ROWIP) for the area when considering the two Orders.

### **Reasons for confirming the Orders**

#### **Creation Order**

##### ***Whether there is a need for the footpath***

24. Due to the fact that the obstruction (by security fencing etc) of the previously unrecorded route along the length of the estate road, triggered a DMMO application to add a footpath to the DM&S, the OMA considers that there is a continued need for a route between the estate road, the A64 and the off-slip bus stop.

25. There are other means of accessing the various destinations accessed by the footpath. However, the number of complaints received about the obstruction of the footpath demonstrates a demand for a right of way in the locality.

26. The creation order route would provide a link to other public rights of way within the area as well as providing the possibility of a circular walk using the local road network and the two other public footpaths that run through the college grounds.

27. In conclusion, the OMA believes the creation order will provide for all the above trips currently served by the footpath.

##### ***Whether it is expedient to create the footpath having regard to:***

a) *The extent to which the footpath would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the area.*

28. Before making the creation order, the OMA considered various routes through the campus and the footway adjacent to the main college access road was found to be the most convenient to the public.
29. The OMA reached this conclusion because, the creation order route retains the ability to travel between those destinations previously reached using the footpath but removes the need to walk beside fast moving traffic on the busy A64 if travelling to the off-slip bus stop and Copmanthorpe. The OMA understands from the objectors that these journeys are the most common ones undertaken by the public using the footpath. In addition, the creation order route makes these journeys more convenient because it provides a shorter means of reaching these specific destinations.
30. The above notwithstanding, the creation order route still maintains access to the A64 for those people wishing to make westward journeys to access Bilborough and other parts of the rights of way network.
31. In contrast to the extinguishment order route, the creation order route has a more convenient width of 2 metres, allowing 2 users to pass each other comfortably, and better accomodates users with buggies, wheelchairs and dogs. This contrasts with Askham Bryan No 9 which has a narrower recorded width of 1 metre throughout, which should the Orders not be confirmed will require to be security fenced either side with mesh over the top to comply with the college's zoo license, thus creating a narrow and arguably less pleasent corridor/tunnel for users along the whole length of the footpath through the zoo area.
32. The route also has a tarmac surface suitable for all users, and negates the need to pass over FootpathNo 9's uneven crushed stone and grassed surface to reach the A64.
33. In contrast to the extinguishment order route, the creation order route also benefits from street lighting along its length making it more convenient to use during the hours of darkness. Furthermore, as the creation order route links the footpath with

the southern section of Askham Fields Lane, it provides a street lit route for the public all the way to the off-slip bus stop and Copmanthorpe.

***Whether it is expedient to create the footpath having regard to:***

*b) the effect which the creation of the footpath would have on the rights of persons interested in the land, taking into account the provisions as to compensation in Section 28 of the 1980 Act.*

34. The creation order route would have an effect upon the college with regard to the fact that it runs over land in their ownership. However the college as applicant, fully supports the creation of the path and compensation issues under the provisions of s 28 of the 1980 Act are unlikely to arise.

35. No objections were received from statutory undertakers.

**Consideration given to the provisions of a ROWIP**

36. The creation of the new footpath with its street lighting, firm, level surface, greater width and lack of path furniture, accords with the aims and ambitions of the ROWIP (currently under review) which identified the need to improve access for users with visual impairment or mobility problems. It was determined that such improvements would benefit all users of the network including dog walkers who expressed a need for routes that are street lit in the winter months.

**Extinguishment Order**

***The extent to which the footpath would, apart from the Order, be likely to be used by the public***

37. Evidence submitted during the DMMO process indicates that one of the common reasons for using the footpath was to access the off-slip bus stop. The OMA accepts that the need for the footpath to enable access to the bus stop still exists. That notwithstanding, the OMA contends that the creation order route provides a shorter and more commodious route. In the event the creation order route is brought into being the footpath will no longer be needed for public use and can be extinguished.

38. The objectors have suggested that the footpath is also extensively used by people travelling from Copmanthorpe to Askham Bryan and vice versa. However, there is a more direct route between the two villages (along the footway adjacent to Askham Fields Lane) and the OMA is not satisfied that extinguishing the footpath would have any significant impact on this particular section of the travelling public.
39. The objectors have argued that extinguishing the footpath would adversely affect recreational walkers. The OMA is of the view that whilst the A64 has many merits, a quiet location for a pleasant walk is perhaps not among of them. The OMA accepts that some recreational use of the footpath is made but would contend that such use will be extremely limited.
40. Additionally, should the orders not be confirmed the footpath would be required to be security fenced either side to its definitive width of 1 metre, to comply with the college's zoo license, thus creating a narrow and arguably less pleasant corridor for users.

***The effect which the extinguishment of the footpath would have on the rights of persons interested in the land, taking into account the provisions as to compensation in Section 28 of the 1980 Act.***

41. The college is the only land owner affected by the extinguishment and as applicants, fully support the extinguishment of the section of footpath and have waived their rights to compensation under section 28 of the 1980 Act.
42. No objections were received from statutory undertakers.

**Consideration given to the provisions of a ROWIP**

43. The ROWIP identified through consultation with the public that the preference of users, as far as possible, is to not have to walk along or cross busy roads as part of their journey. The provision of the alternative route allows for the extinguishment of the footpath and ends the necessity of having to walk along the busy A64 and A1237 off-slip for trips to and from Copmanthorpe shops etc and the off-slip bus

stop. The provision of the alternative route also means that users would not have to climb over the stile or traverse the rough verge at the path's southern end.

### **Concurrent Orders**

44. Section 118(5) of the 1980 Act provides that in considering the likely future use of the path proposed for extinguishment, account can be taken of whether a path proposed to be created would provide an alternative route.

45. Additionally, paragraph 5.54 of the Department of Environment, Food and Rural Affairs Circular 1/09 advises that account should be taken of the convenience of the route proposed compared to that which is to be extinguished.

### **Conclusion**

46. The OMA submits that the creation order route represents little material change from the current footpath alignment. Furthermore, the provision of a tarmac surface and street lighting will improve its utility for a great number of the public and represents an improvement in the rights of way network of the area. The provision of this alternative route allows for the extinguishment of the extinguishment order route.

47. Consequently, the OMA respectfully asks that the inspector confirms both the creation order and the extinguishment order.

### **Comment on the objections**

48. The 9 remaining objections are considered below. The full text of the objections can be found at Appendix 3: List of Objections. The OMA's comments on the objections can be found in the sub paragraphs following the objection.

- 1) Mrs Audrey Hollas
- 2) Mr David Marsh
- 3) Julian Sturdy MP
- 4) Mrs Sylvia Smith
- 5) Mr Chris Steward (former ward councillor)

- 6) John and Asha Boeing and Mark Donovan (joint objection)
- 7) Mr David Nunns (Local Ramblers representative)
- 8) Dr Darryn Mitchell
- 9) Ms K Ashbrook (General Secretary, Open Spaces Society)

49. The objection of Mrs Audrey Hollas was made on the following grounds:

- i. For safety reasons the Creation Order route should be wider than 2 metres as the bordering hedges will impinge onto the path to enable safe access.

OMA comment: The Creation Order route is already in daily use by pedestrians accessing the college. The college has a hedge maintenance programme to ensure hedges are cut when required, it is after all the main pedestrian access to the college. The width of 2 metres is considered as a general width for a new footway in lightly used streets *Manual for Streets* (Department for Transport (DFT) 2007). The DFT's *Inclusive Mobility* (2005) states that a clear width of 2000mm allows two wheelchairs to pass one another comfortably and should be regarded as the minimum width under normal circumstances, although where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The Creation Order route is currently used as the TTRO temporary diversion route. No reports of issues of safety have been reported by users of it in this respect. The college has no reports of the path not being wide enough due to overgrowth from the hedge.

- ii. The Extinguishment Order route could be re-fenced and therefore reopened.

OMA comment: The OMA accepts that this is a possibility but considers that the prospect of a 1 metre wide public footpath fenced to the degree required to maintain compliance with the college's zoo licence represents a significant loss in the path's amenity. Consequently rerouting it is the OMA's preferred solution.

- iii. The TTRO has been extended several times. The college has had too much leeway in this respect.

OMA comment: This is not a relevant objection under either s 118 or s 26.

- iv. Many parties expressed their views in a York Press article of 30<sup>th</sup> July 2018. People travel to use the footpath and Mrs Hollas has had to help walkers who have travelled to use the footpath and find that they can't.

OMA comment: The OMA accepts that the events Mrs Hollas describes may have occurred but it is not a relevant objection under either s 118 or s 26.

- v. The number and nature of objections demonstrate the weight of opinion against the Orders.

OMA comment: This is not a relevant objection under either s 118 or s 26.

50. The objection of Mr David Marsh was made on the following grounds:

- i. Approval for the closure would set a precedent for landowners to block PROW and claim danger in farm yards and fields to gain their extinction and diversion.

OMA comment: This is not a relevant objection under either s 118 or s 26.

51. The objection of Julian Sturdy MP of 1 Ash Street, Poppleton Road, York was made on the following grounds:

- i. It is not clear if the route would be safe for pedestrians.

OMA comment: The creation order route is already in daily use by pedestrians accessing the college. The route is currently used as the TTRO temporary diversion route. No reports of issues of safety have been reported by users of it in this respect. Consequently the OMA does not consider that there is any merit in this part of the objection.

- ii. It is a significant departure from the current route.

OMA comment: A number of routes were considered by the college and the creation order route is considered by the OMA to be the most commodious and convenient alternative to the footpath, particularly in light of the journeys the objectors highlight as the most important.

- iii. It would be less commodious.

OMA comment: With a width of 2 metres, the creation order route is more commodious than the footpath which would need to be fenced on both sides with

substantial fencing to its definitive width of 1 metre, in order to meet the requirements of the Zoo Licence.

- iv. The strength of feeling should be taken into consideration when coming to the decision.

OMA comment: There is no scope for taking this into account under the legislation.

52. The objection of Mrs Sylvia Smith was made on the following grounds:

- i. The PROW should stay where it has been for the last 40 years plus and be enjoyed by residents in the area and nearby villages and visitors from further afield.

OMA comment: This is not a relevant objection under either s118 or s26.

- ii. The objector spoke on camera/video in December and those comments still stand.

OMA comment: The OMA has neither seen nor possesses a copy of the video so cannot comment.

- iii. The college have walked right over the council, never answered to deadlines or spoke to villagers or the parish council.

OMA comment: this is not a relevant objection under either s 118 or s 26.

- iv. The footpath can easily be opened up and enjoyed once again.

OMA comment: The OMA accepts that this is a possibility but considers that the prospect of a 1 metre wide public footpath fenced to the degree required to maintain compliance with the college's zoo licence represents a significant loss in the path's amenity. Consequently rerouting it is the OMA's preferred solution.

53. The objection of former ward councillor Chris Steward was made on the following grounds:

- i. The route would be significantly longer as a proportion of journey time for people looking to travel towards the Buckles Inn.

OMA comment: Whether the creation order route would significantly increase the distance as a proportion of journey time depends largely on the start and end points of the specific journey. Travelling from Point A to the Buckles Inn via the creation

order route would add approximately 464 metres (an increase in distance of 28%) to the journey. This equates to an extra 7 minutes additional walking time based on an average speed of 4km per hour. It is argued that if undertaking a leisure walk the additional distance would not have a negative impact. If carrying out a circular walk and returning via the other 2 public footpaths that run north/south through the college site then this additional distance and time as a proportion of the journey time is reduced still further. The OMA accepts that some journeys will be longer as a consequence of the two orders but would contend, in the light of the objectors' own comments, that such use will be extremely limited.

- ii. There is an overall net loss to the community if the route were changed. If this is something that can be accepted on a PROW rerouting there would be soon few left.

OMA comment: The two routes in question are very similar in length. In the OMA's view the improvements that the creation order route offers over the footpath to be extinguished amount to an increase in the utility of the rights of way network around the college. Legislation relating to the diversion or extinguishment of PROW protects against loss of PROW.

54. The joint objection of John and Asha Boeing and Mark Donovan was made on the following grounds:

- i. The college has been allowed to capitalise and benefit by constructing and creating more obstructions to justify their applications to extinguish the footpath.

OMA comment: This is not a relevant objection under either s 118 or s S26.

- ii. The footpath was obstructed to prevent access to the wildlife park by non-paying public rather than seek to find a solution without obstructing the path. The college now seeks to justify their actions on the basis of 'perils' that they created themselves or are imaginary.

OMA comment: This is not a relevant objection under either s 118 or s 26.

- iii. The authority should not allow the college to stop up a footpath in advance of any legal sanction to do so, or place obstructions upon the footpath in the expectation that retrospective permission will be given. This sets an undesirable precedent.  
OMA comment: Any temporary circumstances that diminish the public use have been disregarded by the OMA in making its decision.
- iv. The college has been permitted to pursue three separate avenues to close the footpath. How many 'bites at the cherry' should the college be allowed at the expense of the public – the college being publicly funded. Is this an appropriate use of college funds?  
OMA comment: This is not a relevant objection under either s 118 or s 26.
- v. The Order was made with the full knowledge and expectation that that objections would be received and would therefore need escalating to the highway authority for resolution.  
OMA comment: This is not a relevant objection under either s 118 or s 26.
- vi. The history/background to the matter has not been taken into consideration when making the Order. The surrounding circumstances as well as the demeanour of the college should have a bearing on the decision.  
OMA comment: This is not a relevant objection under either s 118 or s 26.
- vii. Section 118 of the Highways Act 1980 states that regard must be had as to the likelihood that the path or way would be likely to be used by the public. The mere availability of 'alternative paths' alone cannot be a basis for extinguishment. The application must be still be able to stand on its own merits.  
OMA comment: The OMA has taken into account all the prescribed legal tests when making its decision. Although there are other means of accessing the various destinations accessed by the footpath, there is a need for a path between the estate road, the A64 and the off-slip bus stop as indicated by the application to add the route to the DM&S in the first instance and then by the number complaints received regarding its obstruction. The provision of the alternative creation order

route along with its intrinsic merits means that the extinguishment order route is less likely to be used and can be extinguished.

- viii. The footpath was formally recognised after due process after the production of evidence of long use by the public, which demonstrates that the footpath has been in use by the public. Extensive use is not a criteria for granting of a PROW, so it is inappropriate to imply that the lack of extensive use could be used as a criteria for concluding that the path is not now needed. The footpath was in active use until it was obstructed and would have continued to be used so the criteria for the closure has not been met.

OMA comment: Section 118(5) of the 1980 Act provides that in considering the likely future use of the extinguishment order route, account can be taken of whether a path proposed to be created would provide an alternative route. The need for the creation order route has been demonstrated and given its intrinsic benefits (more convenient and enjoyable for users), the extinguishment order route is less likely to be used. The orders can therefore be confirmed.

- ix. There is a TTRO in place due to expire on 15<sup>th</sup> November 2019, now in its 2nd extension. The TTRO is relevant to the considerations and the reasons form the basis of the college' desire to extinguish the footpath and is therefore of evidentiary value.

OMA comment: This is not a relevant objection under either s 118 or s 26.

- x. The college did not object to the DMMO application to add the footpath to the Definitive Map. The granting of the footpath was made after the grant of the zoo licence. If there were a danger to the public using the footpath then the college would have strenuously objected to the addition of the footpath. It is not clear why the security fencing and animal closures are so critical to the zoo licence such that their removal could result in the closure of the zoo. Permissions should be sought prior to the act requiring permission.

OMA comment: This is not a relevant objection under either s 118 or s 26.

- xi. Regarding the creation of the alternative right of way. The alternative route is not suitable or desirable. It ignores the recreational aspect of the footpath, it is adjacent to a very busy main access road into the college which is used by coaches, staff and student vehicles and all other visitors.

OMA comment: The OMA accepts that some recreational journeys will be longer as a consequence of the two orders but would contend that, if walking towards Copmanthorpe as a destination, the creation order route is more pleasant than first walking along the extremely busy and fast moving traffic on the A64 and then along the Copmanthorpe off-slip in to Copmanthorpe and vice-versa.

- xii. The college access road is not designed to carry the amount of traffic it does. It is too narrow and vehicles sometimes have to mount the pavement to pass each other. The 10mph limit is not adhered to. On a daily basis, numerous near misses and actual incidents occur many of which have been reported. There is a level of apathy and denial on the part of the college about the issues despite the young age profile of the establishment. Decision makers should spend a week observing traffic and motorist's behaviour.

OMA comment: The College does not have any record of incidents or near misses involving pedestrians using the creation order route. Being on private property, North Yorkshire Police does not have any records relating to the route either. The creation order route is currently being used as the TTRO diversion route. The OMA has not received any reports of incidents, near misses or reports of danger from walkers using the route whilst the TTRO has been in place.

55. Objection of David Nunns (on behalf of the Ramblers Association East Yorkshire & Derwent, York Group), was made on the following grounds:

- i. The creation order states that Rufforth with Knapton Parish Council have been consulted instead of Askham Bryan Parish Council. The requirements of s 26(3) of the Highways Act 1980 have therefore not been met.

OMA comment: There was a drafting error on the order. Askham Bryan parish council was consulted and a response was received. A request has been made to amend the order in this respect (see paragraph 60 below).

- ii. We believe that there is already a public footpath over this route since the access route was created in 1983, although it is not recorded on the definitive map. This matter should be considered separately for Footpath 9.

OMA comment: No application or evidence supporting this view has been received by the OMA. Ad hoc observation of the users of the college access road over a number of years indicates that the overwhelming majority of users are connected to the college. Such use would be by right rather than the required as of right use. In the OMA's view this makes it unlikely that public rights have been acquired over the creation order route.

- iii. The new route is not an alternative to the southern part of Footpath 9, with the college access road unsuitable for the traffic using it. Vehicles sometimes have to mount the footpath to pass at peak periods. Objector has personally felt unsafe using the path at peak times from motorists and student's behaviour.

OMA comment: There is a 10mph speed limit in place. The creation order route is in daily use by pedestrians accessing the college. The college does not have any record of any accidents or incidents involving pedestrians using the route. Being on private property, North Yorkshire Police does not have any records relating to the route either. The creation order route is currently being used as the TTRO diversion route. The OMA has not received any reports of incidents, near misses or reports of danger from walkers using the route whilst the TTRO has been in place.

- iv. It would not add to the convenience or enjoyment of the public or local residents compared to the southern part of Footpath 9. The route is less commodious

OMA comment: The OMA accepts that this is a possibility but considers that the prospect of a 1 metre wide public footpath fenced to the degree required to maintain compliance with the college's zoo licence represents a significant loss in the path's amenity. Consequently rerouting it is the OMA's preferred solution.

- v. The continuation along to the roundabout is not as pleasant as the existing route.

OMA comment: This is the personal opinion of the Ramblers representative and the OMA respectfully disagrees with it. Walking beside traffic travelling within a

speed limit of 30pmh would appear to be less unpleasant than walking adjacent to the national speed limit road of the A64. The continuation along to the roundabout using the existing route necessitates a 300 metre walk along the side of this busy fast moving road and off-slip

- vi. Regarding the Extinguishment Order, there was a well-worn path on the ground from the turning head on the old lane, past the BT box to Point B, with no wooden fencing to hinder cycles. The Planning committee were erroneously advised they could not consider the existence of the path because it was not recorded on the DM&S.

OMA comment: This objection is irrelevant under both s 118 and s 26. The granting of planning permission does not authorise the obstruction of a public right of way. The minutes of the planning meeting do not record any advice 'erroneously' given, as suggested in the objection.

- vii. We raised the matter of the wooden fence when looking at the DMMO as the fence was approved and the college did not erect a stile.

OMA comment: The path was not recorded on the DM&S at the time of the planning application. The college was unaware of the status of the route at the time as was the OMA. It was the erection of the security gates and fencing that triggered the DMMO application.

- viii. Once on the A64 you can walk to Copmanthorpe, and the old Roman Road, or to the start of the other 2 paths that run through the college and towards the Askhams or across the fields near to the Buckles.

OMA comment: The new alternative route will provide a link to all the above mentioned destinations and from Point C it is actually a shorter route to Copmanthorpe. Access through the college to the A64 is adequately served by the other 2 routes that run north/south through the college, the most westerly route being over ½ km from the Buckles Inn.

- ix. Belief that there is still an acceptable solution of providing access along or very close by the Definitive route.

OMA comment: The extinguishment order is made possible by the creation order route. The suitability of other routes through the campus were considered, but were dismissed due to factors such as unsuitable gradient, inconvenient surface and student safeguarding requirements.

- x. The grounds for the TTRO are spurious. We do not believe public safety is a reason to close the path while students and public visiting the park are not considered at risk. The college believe that their zoo license is at risk if the path is reopened, we do not believe this is the case.

OMA comment: This is not a relevant objection under either s 118 or s 26.

- xi. The path is needed for public use in spite of the existing footway alongside the new road to the college. The proposal is worse for the public and expediency suggests the path should remain.

OMA comment: The OMA does not accept this view. Rather, the OMA considers that the prospect of a 1 metre wide public footpath fenced to the degree required to maintain compliance with the college's zoo licence represents a significant loss in the path's amenity. Consequently rerouting it is the OMA's preferred solution.

56. The objection of Darryn Mitchell was made on the following grounds:

- i. I feel we are heading down a path where anyone can close a PROW on a whim. The council should be protecting the rights of way not eroding them by accepting spurious arguments for closure set forth by the college.

OMA comment: This is not a relevant objection under either s 118 or s 26.

- ii. The college has been allowed many bites at the cherry to ensure it gets its own way. CYC should ensure impartiality.

OMA comment: This is not a relevant objection under either s 118 or s 26.

57. The representation of Askham Bryan Parish Council was made as 'no comment to make'.

58. The objection of Kate Ashbrook, General Secretary, Open Spaces Society was made on the following grounds:

- i. There is no need for the additional path. It is on and alongside the busy road which is the entrance to and exit from the college, which is in constant use by vehicles. There is insufficient room for two vehicles to pass in places. It is unpleasant and dangerous for walkers and not a route recreational walkers would chose to take.

OMA comment: The creation order route is already in daily use by pedestrians accessing the college. The route is also currently used as the TTRO temporary diversion route. No reports of issues of safety have been reported by users of it in this respect. Additionally, walking beside traffic travelling within a speed limit of 10pmh would appear to be less unpleasant than the requirement of walking adjacent to the national speed limit road of the A64 which users of the extinguishment order route would be required to do when continuing their journey whether for recreational or utility purposes. Consequently the OMA does not consider that there is any merit in this part of the objection.

- ii. The Creation Order route would not add to the convenience or enjoyment of a substantial section of the public, or of people resident in the area, especially because of the existence of the path proposed for extinguishment, which serves a more useful purpose.

OMA comment: The OMA does not accept this view. Rather, the OMA considers that the wider and street lit creation order route is more convenient and enjoyable to use given that it also provides a shorter route for the majority of trips ie to the off-slip bus stop and onward into Copmanthorpe.

- iii. The Extinguishment Order route is needed for public use. The path has been obstructed and abused. Were it not for the obstructions, the path would certainly be needed and used, as reflected in the evidence provided for its addition to the definitive map.

OMA comment: The user evidence provided for the path's addition to the definitive map showed that the main use was to travel to the bus stop and to visit shops in Copmanthorpe. The Creation Order route provides a shorter and more

convenient route to these locations. The OMA accepts that the route could be opened up, however to do so and still comply with the requirements of the zoo license the path would be required to be security fenced to its definitive width of 1 metre so as to prevent unauthorised access to the wildlife park. This would arguably make it less pleasant to use and given the provision of the more convenient creation order route, means it would be less likely to be used. Consequently, rerouting it is the OMA's preferred solution.

### **Correction of Order**

59. During the consultation Askham Bryan Parish Council drew to the attention of the OMA that the incorrect Parish council was named as being consulted in the order.

60. The OMA confirms that Rufforth with Knapton Parish Council was incorrectly named on the creation order but that Askham Bryan Parish Council was correctly consulted and asks that the inspector change the name of the Parish council consulted on this Order from Rufforth with Knapton Parish Council to Askham Bryan Parish Council.

### **Conclusion**

61. The OMA's view is that both Orders meet the prescribed legal tests.

62. As a result the OMA respectfully asks the Secretary of state to confirm both orders concurrently made with the modification set out at paragraph 60.

The Council of the City of York  
September 2020