



CITY OF
YORK
COUNCIL

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

STATEMENT OF CASE APPENDICES

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Appendix 1

Copies of orders

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

THE COUNCIL OF THE CITY OF YORK

WILDLIFE AND COUNTRYSIDE ACT 1981

**DEFINITIVE MAP AND STATEMENT FOR THE FORMER EAST RIDING OF
YORKSHIRE NOW SITUATED INSIDE THE AREA OF THE COUNCIL OF THE
CITY OF YORK**

**PUBLIC FOOTPATH DUNNINGTON 22
MODIFICATION ORDER 2021**

Janie Berry
Director - Legal & Governance
City of York Council
West Offices
Station Rise
York
YO1 6GA

THE COUNCIL OF THE CITY OF YORK**WILDLIFE AND COUNTRYSIDE ACT 1981****DEFINITIVE MAP AND STATEMENT FOR THE FORMER EAST RIDING OF YORKSHIRE NOW
SITUATED INSIDE THE AREA OF THE COUNCIL OF THE CITY OF YORK****PUBLIC FOOTPATH DUNNINGTON 22
MODIFICATION ORDER 2021**

This Order is made by the Council of the City of York under Section 53(2)(b) because it appears to the authority that the Definitive Map and Statement for the former East Riding of Yorkshire now situated inside the area of the Council of the City of York require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i). This is due to 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.

The authority has consulted with every local authority whose area includes the land to which the Order relates. The Council of the City of York hereby order that:

1. For the purpose of this Order the relevant date is 10 May 2021.
2. Definitive Map and Statement for the former East Riding of Yorkshire now situated inside the area of the Council of the City of York shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Public Footpath Dunnington 22 Modification Order 2021.

THE COMMON SEAL of THE COUNCIL OF THE CITY OF YORK was hereunto affixed

this 25 day of JUNE 2021

in the presence of:



An Authorised Officer



No. In Seal Register: 12777

SCHEDULE
PART I

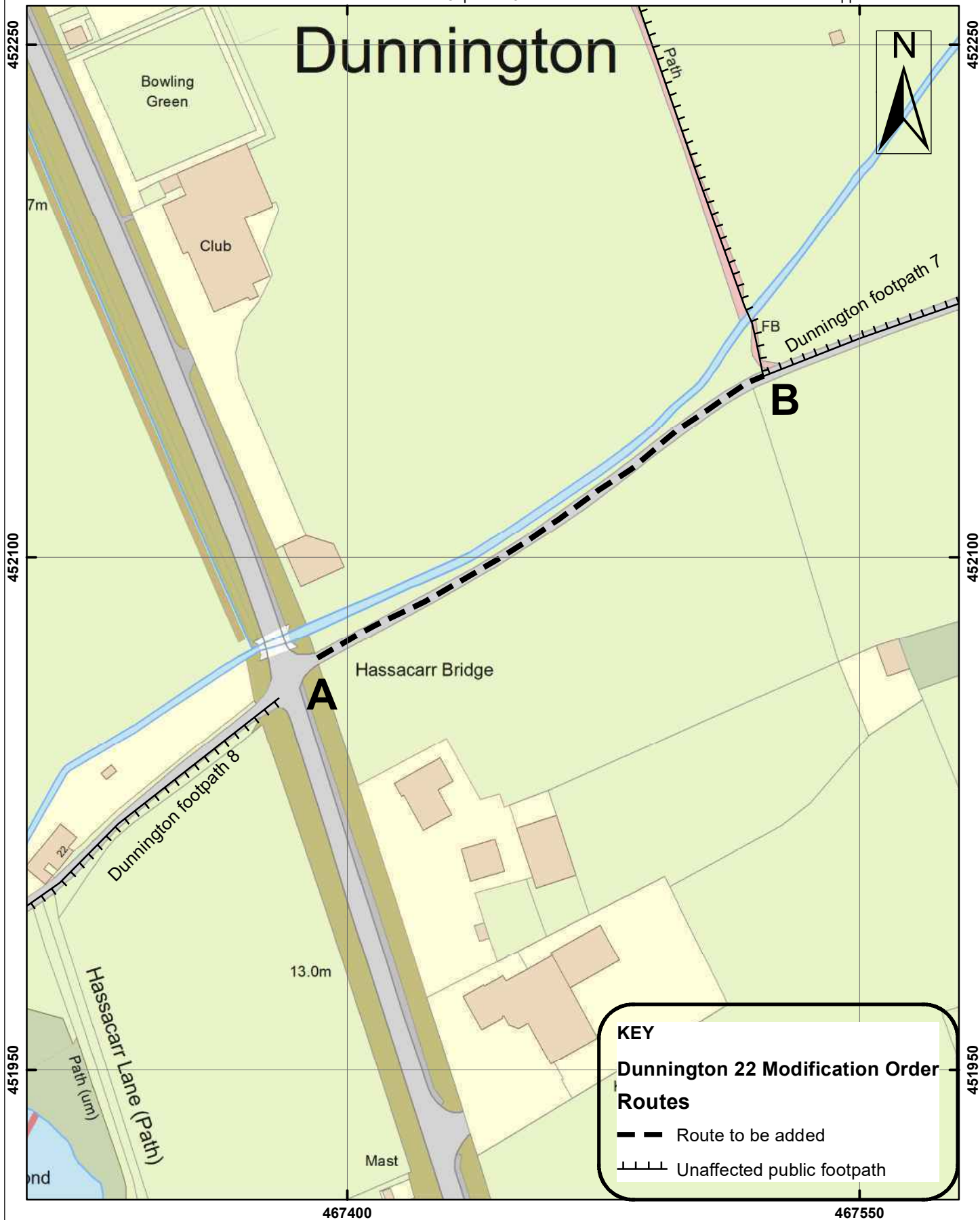
Modification of Definitive Map
Description of path to be added

<u>Section of public footpath as shown on the attached Map</u>	<u>Description</u>
Indicated on the Order Map and marked as A - B	Starting at grid reference (GR) SE 6739 5207 (POINT A) at its junction with the maintainable highway known as Common Road the 3 metre wide crushed stone surfaced public footpath heads generally north east along the south side of the drain for approximately 155 metres to GR SE 6752 5215 (POINT B) its junction with Public Footpath Dunnington 7.

PART IIModification of Definitive Statement
Variation of Particulars of path

Path No.	Grid Reference End Points	Description	Nature of Surface	Length (Km)	Width (M)	Lawful Obstructions And Conditions
14/22	SE 6739 5207 to SE 6752 5215	Starting at grid reference (GR) SE 6739 5207 at its junction with the maintainable highway known as Common Road the 3 metre wide crushed stone surfaced public footpath heads generally north east along the south side of the drain for approximately 155 metres to GR SE 6752 5215 its junction with Public Footpath Dunnington 7.	Crushed stone (SE 6739 5207 to SE 6752 5215)	0.155km (SE 6739 5207 to SE 6752 5215) Total: 0.155km	3m (SE 6739 5207 to SE 6752 5215)	Field gate (SE 6739 5207)

Dunnington



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Scale 1:1,500

Drawn By: LRG

Date: 17/5/21

Public Rights of Way

Reference:

Drawing No.

Contains Ordnance Survey data © Crown copyright and database right 2021

THE COUNCIL OF THE CITY OF YORK

WILDLIFE AND COUNTRYSIDE ACT 1981

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No. In Seal Register: 12777

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PART I

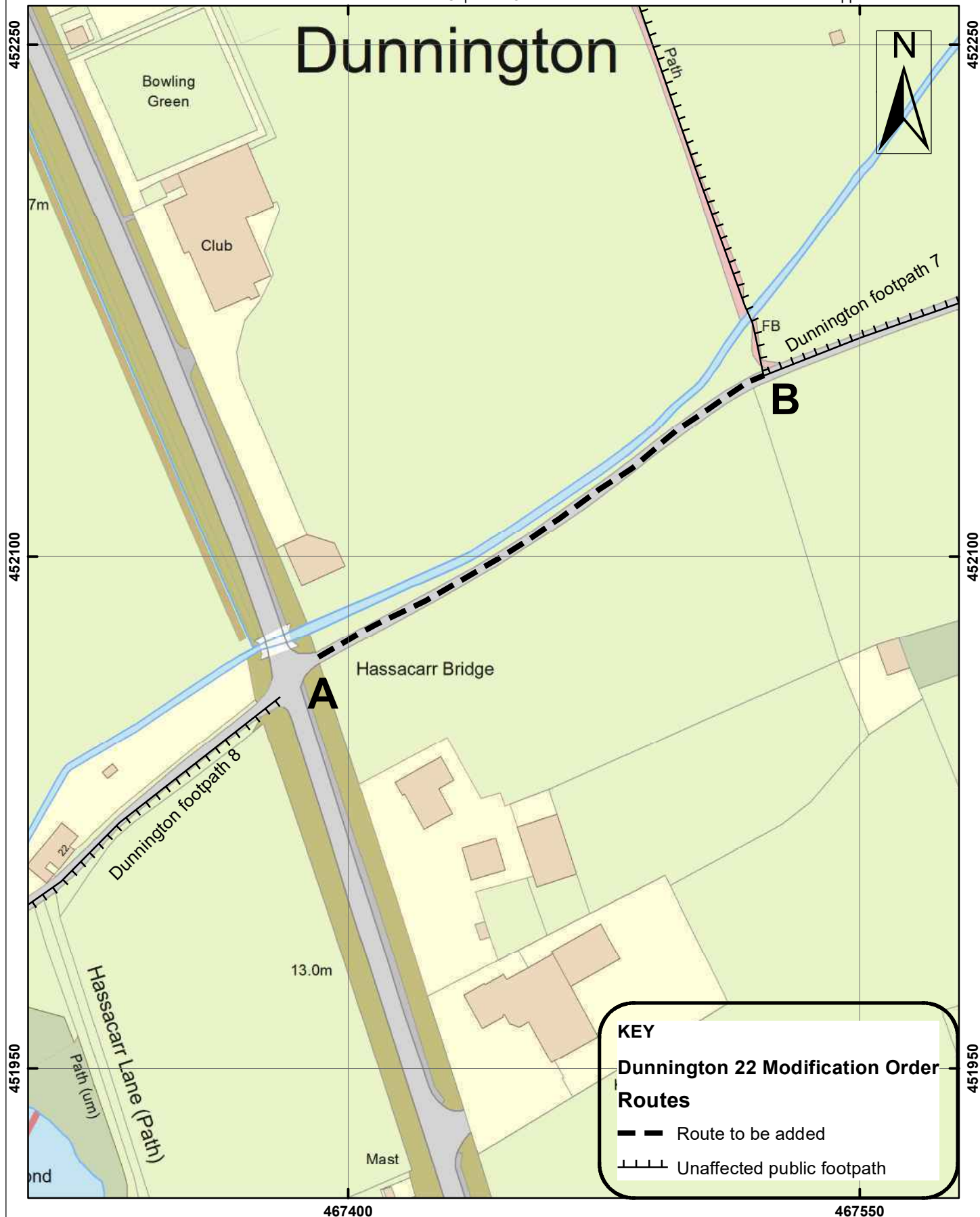
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PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Scale 1:1,500

Drawn By: LRG

Date: 17/5/21

Public Rights of Way

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SCHEDULE
PART I

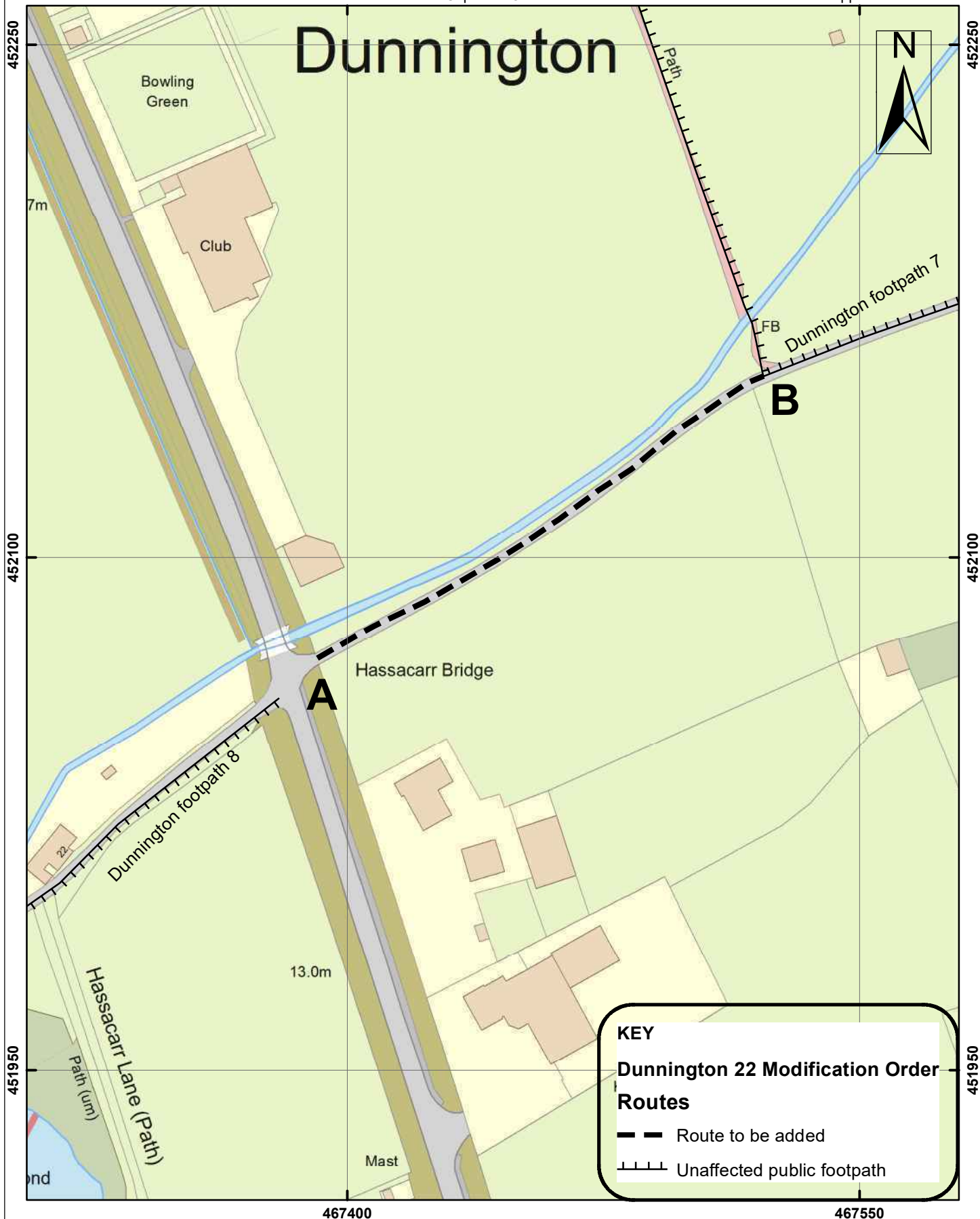
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Telephone: 01904 551550

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Scale 1:1,500

Drawn By: LRG

Date: 17/5/21

Public Rights of Way

Reference:

Drawing No.

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Appendix 2

List of objectors, objections and representations

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

NAME AND ADDRESS OF ALL PERSONS MAKING OBJECTIONS OR REPRESENTATIONS

Mr Graham Jewitt
Hollymead
43 Common Road
Dunnington
York
YO19 5PA

Ms Jacqueline Chainey
The Old School
7 School Lane
Heslington
York
YO10 5EE

Mrs Janet Dobson
Strawberry Cottage
39 Common Road
Dunnington
York
YO19 5NZ

Ms Rebecca Kaye
2 Norseway
Stamford Bridge
York
YO41 1DR

Dunnington Parish Council
Jessica Bedford (clerk)
15 Wistowgate
Cawood
Selby
YO8 3SH

Archived: 16 December 2021 15:35:24

From: [Julie Bone](#)

Mail received time: Wed, 11 Aug 2021 11:58:08

Sent: Wed, 11 Aug 2021 12:49:01

To: rightsofway@york.gov.uk

Subject: Public Footpath Dunnington 22 Modification Order 2021 Common Road to Dunnington Footpath 7

Sensitivity: Normal

Attachments:

[Letter - 11-8-21 DMMO 22.pdf](#) 

⚠️ This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir/Madam

Please find attached letter from Dunnington Parish Council in respect of the above.

Regards

Julie

Julie Bone

Dunnington Parish Council Clerk

Tel: 01904 672199

Dunnington Parish Council

43 St James Close
Rawcliffe
YORK
YO30 5WL

Rights of Way Officer
City of York Council
West Offices
Station Rise
YO1 6GA

11 August 2021

Dear Sir/Madam

Public Footpath Dunnington 22 Modification Order 2021
Common Road to Dunnington Footpath 7

I refer to your letter dated 22 July 2021 in respect of the above matter.

I would confirm that since this application was made by Dunnington Parish Council in February 2004 the route has been used on a continuous and regular basis by members of the public as a means by which to access two existing public footpaths.

The matter was discussed at the Parish Council meeting on 14 June 2021 when it welcomed the determination of the route as a public footpath and, by a majority vote, it was agreed to continue to fully support the application.

I would therefore confirm that Dunnington Parish Council wishes to express its continued support in respect of this matter and looks forward to modification of the definitive map and Statement for the area by adding the route as a public footpath.

Yours faithfully



Julie Bone
Parish Clerk
Dunnington Parish Council

2 Norseway

Stamford Bridge

York

YO41 1DR

Public Footpath Dunnington 22 Modification Order 2021 – Common Road to footpath 7

Objection stated by Rebecca Kay dated 16th August 2021

I have kept horses and other livestock for a period of 30+ years in the first field to the left of the track as you look up from Common Road to 39, Strawberry Cottage. I have permission to use the route to the field by the past and present owners of Strawberry Cottage and by Graham Jewitt. I visit the field at least twice a day, often more when weather conditions dictate the animals require extra attention, therefore I can give an accurate statement regarding the access of this track.

The vicinity of the track to Dunnington & Grimston Sports Club, which has an extremely small parking area of its own, together with theft and vandalism and access for agricultural vehicles, has deemed it necessary to close the gate entering the track from Common Road at various times during each year as detailed below:

- Annual Dunnington Galas/Fayres held in the summer on the sports field until 2014 – gate entering track closed early morning to stop overflow of parked vehicles entering the track. Gate was closed for the full weekend.
- Annual firework display and bonfires held on the field opposite the sports club up until around 2012 – gate closed to deter parking and for animal safety due to close proximity of fireworks and the risk of livestock escaping.
- The owners of Strawberry Cottage had a period of time away from home a couple of years ago which resulted in me taking the action of closing the gate occasionally late on an evening and opening it early morning for added security.
- Gate closed as a precaution when the field I rent is cut for hay as large agricultural machinery requires access at short notice. The field was not used for hay this year as sheep have grazed it earlier than usual.
- A spate of thefts of poultry from my field around 3 years ago encouraged me to close the gate regularly overnight.

In addition to me closing the gate, the landowner, Graham Jewitt often closes it when moving his sheep from field to field and he runs his animals up the track rather than using a trailer, and often then leaves the gate closed overnight. Also, at least twice a year Graham gives me prior warning that he intends to close the gate on a Saturday morning until Sunday night. This period of time is favourable as it does not hinder the postman, etc, that may need access to Strawberry Cottage.

I feel the main concern I have with regards to making this section of the track a public right of way is due to the fact numerous vehicles attend events at the sports club, and these will overflow and restrict the access which will cause issues with regards to vehicles requiring passage to Strawberry Cottage. Also, with respect to animal welfare, access is required at all times, but as the parking facilities for such a popular sports club as Dunnington & Grimston is so small, this may be put in jeopardy by the people and their families that use the sports facilities.

In the past I have had to divert cars needing a parking place, especially when cricket matches are being played, as the away teams usually have a large following, therefore, if the track is deemed a right of way drivers will naturally assume anybody can use it for parking, as has been the case in other areas of this village. If vehicles are parked in the way at the entrance to the track or further down where the large beck runs alongside, then the access is completely affected as this is the only means of reaching either the cottage or the animals.

Please see the photographs below showing the track when the gate is closed:





The picture above shows the parking problem for the sports club. On cricket days it is much worse than this as the main carpark is attached to the cricket ground so drivers avoid parking there due to the risk of their cars being struck by a ball.

Should you wish me to elaborate on any of the points I have mentioned or require any further information please do not hesitate to contact me.

Regards

Rebecca Kay

Archived: 16 December 2021 15:26:16

From:

Mail received time: Mon, 16 Aug 2021 08:55:06

Sent: Mon, 16 Aug 2021 09:45:27

To:

Subject: Re: PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER

Sensitivity: Normal

Attachments:

[Footpath objection.docx](#) 

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Good morning

Please find attached my letter of objection. Could you please confirm receipt, thank you.

Regards

Rebecca Kay

----- Original Message -----

From: "Grindley, Lauren" <Lauren.Grindley@york.gov.uk>

To: "rebecca721kay@btinternet.com" <rebecca721kay@btinternet.com>

Sent: Tuesday, 27 Jul, 21 At 16:29

Subject: PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER

Ms R. Kay

BY EMAIL ONLY

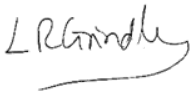
Dear Ms Kay,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

I am writing to you to tell you that, due to a technical mix up, the wrong version of the order map was sent to you as part of the

above modification order. Please find enclosed with this letter a copy of the notice with the correct map attached and accept my apologies for the inconvenience. If you have any further queries please get in touch.

Yours sincerely,



Lauren Grindley | Definitive Map Assistant

rightsofway@york.gov.uk

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

www.york.gov.uk | facebook.com/cityofyork | [@CityofYork](https://twitter.com/CityofYork)

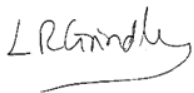
On 25 June 2021 the Council of the City of York sealed a definitive map modification order recording a public footpath from Common Road to Dunnington public footpath 7 (SE 6739 5207 to SE 6752 5215). Please find enclosed a copy of the notice and map for your information. You may download a copy of the order from <https://www.york.gov.uk/PROWNotices> which includes a map showing the order route.

Making representations to support or refute the order.

If you would like make representations to oppose or support the order you must do so in writing and send them to the Rights of Way Officer, City of York Council, West Offices, Station Rise, York, YO1 6GA or email them to rightsofway@york.gov.uk **between 22 July 2021 and 3 September 2021.**

Please note any representations you make will be made available for public inspection and will be sent to the secretary of state in the event the order is opposed and the objections are not withdrawn.

Yours sincerely,



Lauren Grindley | Definitive Map Assistant

rightsofway@york.gov.uk

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

www.york.gov.uk | [facebook.com/cityofyork](https://www.facebook.com/cityofyork) | [@CityofYork](https://twitter.com/CityofYork)

NOTICE OF THE MAKING OF A DEFINITIVE MAP MODIFICATION ORDER**THE COUNCIL OF THE CITY OF YORK****WILDLIFE AND COUNTRYSIDE ACT 1981****DEFINITIVE MAP AND STATEMENT FOR THE FORMER EAST RIDING OF YORKSHIRE NOW SITUATED
INSIDE THE AREA OF THE COUNCIL OF THE CITY OF YORK****PUBLIC FOOTPATH DUNNINGTON 22****MODIFICATION ORDER 2021**

The above Order, made on 10 May 2021, if confirmed as made, will modify the definitive Map and Statement for the area by adding a public footpath between Common Road and Dunnington
public footpath 7 (SE 6739 5207 to SE 6752 5215).

A copy of the Order as made and the Order Map may be seen free of charge during normal office hours at City of York Council, West Offices, Station Rise, York, YO1 6GA until 3
September 2021. Copies of the Order and Map may be purchased there at a cost of £1.50, or can be downloaded free from our website www.york.gov.uk/DefinitiveMap.

Any representation or objection relating to the Order must be sent in writing to “the Rights of Way Officer, the Council of the City of York, West Offices, Station Rise, York,
YO1 6GA”, no later than 3 September 2021, stating the grounds on which it is made.

Please note that objections/representations cannot be treated as confidential and will come into the public domain. Copies of any objections or representations received will
be disclosed to interested parties, including the Planning Inspectorate where the case is referred to it for determination.

If no representations or objections are duly made to the Order, or to any part of it, or if any so made are withdrawn, the Council of the City of York, instead of submitting
the Order to the Secretary of State or part of it if the Authority has by Notice to the Secretary of State so elected under paragraph 5 of Schedule 15 to the Wildlife and Countryside Act 1981 may itself confirm the Order or that part of the Order. If the Order
is submitted to the Secretary of State for the Environment, in whole or in part, any representations or objections which have been duly made and not withdrawn will be sent with it.

Dated: 22 July 2021.

Janie Berry

Director - Legal & Governance

City of York Council

West Offices

Station Rise

York

YO1 6GA





 <p>CITY OF YORK COUNCIL</p> <p>West Offices, Station Rise, York, YO1 6GA Telephone: 01904 551550</p>	PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021		
	Scale 1:1,500	Drawn By: LRG	Date: 17/5/21
	Public Rights of Way	Reference:	Drawing No.
	Contains Ordnance Survey data © Crown copyright and database right 2021		

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Archived: 16 December 2021 15:12:20

From:

To:

Subject: RE: Dunnington 22 Public Footpath Modification Order 2021

Sensitivity: Normal

Dear Ms Kay,

Thank you for your reply maintaining your objection, it will be sent with your original objection when the case is sent to the Secretary of State for a final decision.

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

www.york.gov.uk | facebook.com/cityofyork | @CityofYork

From: REBECCA KAY <rebecca721kay@btinternet.com>

Sent: 13 October 2021 15:26

To: Grindley, Lauren <Lauren.Grindley@york.gov.uk>

Subject: Re: Dunnington 22 Public Footpath Modification Order 2021

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon

Thank you for taking the time to explain your previous letter to me. I must say, I was completely taken aback by the tone and it did make me wonder what had happened to 'freedom of speech' and the right for individual's opinions to be heard. But as you have now explained in your third paragraph that you attempt to get objections withdrawn, now I understand why such a letter was written by you.

Since Mrs Dobson met with Mr Varley, the case has become clearer, and I understand that the order refers to a period of time around 2003. This actually makes my response even more resolute due to the fact at that time very few walkers used that stretch of track unlike they do now. At that time Mr Jewitt was more proactive in his deterrence, and actually secured a notice to the gate that I previously mentioned, clearly stating it was a private road. I lived in Dunnington all my life and have only recently moved, and I have memories of the previous owner, Bill Walker, who was extremely determined in his policing of the track, and nobody used that particular section as it was common knowledge it was not a right of way.

Therefore, I am writing to advise that I do not withdraw my objection and I want it to stand as per my letter dated 16th August 2021.

I would also like to mention that in your previous letter to me you commented that there was no actual evidence to substantiate my points regarding the lack of car parking space at the sports club, and my concerns the vehicles would overflow to the track. I actually attached a recent photo of Common Road showing the numerous cars parked on the verges wherever possible, so without obtaining registration numbers and names of drivers I wonder what more evidence you require?

Finally, I wonder why you have not acknowledged in any form the fact that I have locked the gate on numerous occasions for different reasons, and the fact Mr Jewitt also locks the gate at least twice yearly usually starting on a Saturday, to be then reopened early Monday morning in case the postman requires access? I would be interested for your reason for this, as you went to such lengths with regards to the carparking issues, but nothing was mentioned at all in response to the main part of my letter, ie, the dates and reasons the gate has been locked previously by myself and Mr Jewitt.

Regards
Rebecca Kay

----- Original Message -----

From: "Grindley, Lauren" <Lauren.Grindley@york.gov.uk>

To: "rebecca721kay@btinternet.com" <rebecca721kay@btinternet.com>

Sent: Tuesday, 12 Oct, 21 At 12:17

Subject: Dunnington 22 Public Footpath Modification Order 2021

Dear Ms Kay,

Please find attached a letter of apology and explanation of the next stages of the process following a meeting with Mrs Dobson.

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

www.york.gov.uk | [facebook.com/cityofyork](https://www.facebook.com/cityofyork) | @CityofYork

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Archived: 16 December 2021 14:47:25

From: [Jacqueline Chainey](#)

Mail received time: Mon, 23 Aug 2021 10:00:00

Sent: Mon, 23 Aug 2021 10:59:04

To: rightsofway@york.gov.uk

Subject: FAO Lauren Grindley, Definitive Map Assistant: Public Footpath Dunnington 22 Modification Order 2021

Sensitivity: Normal

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

The Old School
7 School Lane
Heslington
York YO10 5EE

Rights of Way Officer
City of York Council
West Offices
Station Rise
York YO1 6GA 23 August 2021
Dear Sir/Madam

Re: Public Footpath Dunnington 22 Modification Order 2021

As a former student occupant of Strawberry Cottage for several years in the 1990s, I write to refute the above order.

Whilst occupying Strawberry Cottage, situated at the end of Footpath 7 but not shown on the map, the gate to Common Road was closed and locked several times per year by Mr William Walker, resident of Hollymead in Common Road and the then owner of the land. On the death of Mr Walker, the property and land was inherited by his nephew, Mr Grahame Jewitt, who has continued the practice of closure and locking of the gate. The purpose of this action was, and indeed is, to control the use of the track to Strawberry Cottage and prevent it from being claimed as a Right of Way.

Whilst now resident in Heslington, I visit Strawberry Cottage frequently to assist in the maintenance of the garden. There has been a noticeable increase in the number of people using the track from Common Road to walk their dogs which has, unfortunately, resulted in an unpleasant increase in dog mess. Given that this is a track over privately owned land leading to a private residence, should the track be designated a Right of Way in future, I would not like to think that dog sitting services might decide to drive up the track to unload their dogs and then take them across the fields to the Community Woodland in Hagg Wood for exercise. Such activity occurs regularly in Heslington where dog sitting services arrive in large vehicles to park at the Outgang and then set loose their many dogs on the track to the woods and fields. This kind of action is entirely possible and would cause considerable inconvenience and nuisance to those legitimately travelling to Strawberry Cottage, eg, farm vehicles tending to stock in adjacent fields; delivery vehicles; refuse collectors; visitors, etc.

I believe these to be relevant points and, as such, I refute the proposed Modification Order.

Yours faithfully

Jacqui Chainey

--

Jacqueline A Q Chainey

Archived: 16 December 2021 15:08:10

From:

To:

Subject: RE: PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Sensitivity: Normal

Dear Mrs Chainey,

Thank you for your email, it is very insightful and helpful for us to understand more about the history of the route and I will add this to the evidence for the case.

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

www.york.gov.uk | facebook.com/cityofyork | @CityofYork

From: Jacqueline Chainey <jaqchainey88@gmail.com>

Sent: 25 October 2021 10:12

To: Grindley, Lauren <Lauren.Grindley@york.gov.uk>; Varley, Russell <Russell.Varley@york.gov.uk>

Subject: Fwd: PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Lauren Grindley

Further to my email message of 23 August 2021 and following a conversation with Russell Varley, Friday 15 October 2021, I am now writing with further information to support my refutation of the above order.

Firstly, I was resident in Strawberry Cottage between 1994 and 1997 whilst a full-time student with the University of York. My neighbour in the adjoining cottage, then known as Field House, was an elderly widow, Mrs Noreen Murray.

Secondly, Mr William (Bill) Walker, resident of Hollymead, Common Road, the owner of the land over which the track to Strawberry Cottage passes, was regular in his habit of closing the gate from Common Road to protect the track from becoming a public right of way. When he intended to close and secure the gate, he would inform myself and Mrs Murray so that we would not be inconvenienced and indeed we never were. I believe he also informed Mrs Thompson, who lived in the cottage on the track leading to the Hassacarr Nature Reserve.

It is important to note that Mr Walker was active on his land both day and night tending to his stock and he was, therefore, available to challenge those persons who had no business with either Mrs Murray or myself. He was not concerned about local people going for a walk or exercising their dogs. He was, however, concerned about anyone he regarded as suspicious. He acted as unofficial custodian of Strawberry Cottage - he had known the owner, Frank Dobson, since he was a schoolboy working on the farm - and occasionally queried people's presence.

On one memorable occasion, my partner (now husband) and I arrived at the cottage in a large white Transit van to deliver some furniture we had collected from our family. Concerned as to what might be taking place, Mr Walker arrived within moments to check out the situation and who was there. As I usually drove a red Nissan Micra at that time, he had wondered if something untoward was taking place. Far from feeling we were being constantly monitored, we found such concern most reassuring.

Thirdly, whilst I was resident in Strawberry Cottage, Rebecca (Becky) Kaye kept her horses in the field opposite just as she does now. Mr Walker would also inform Becky when he intended to close the gate. During my residency, she was married to Gary Kaye and lived at Undergate Farm in Dunnington. I knew both Becky and Gary, would occasionally call at their farm to buy eggs and often met with Becky when she was visiting her horses. Other than my immediate neighbours - Mr Walker, Mrs Murray, Mrs Thompson, and Becky and Gary Kaye - I knew no one else in Dunnington and spent much of my time studying either on campus or at Strawberry Cottage.

Far from "spurious ", I offer the above additional information as further evidence of the fact that the gate to the track leading to Strawberry Cottage was regularly secured to protect it from being designated as a public right of way and that the track was controlled even when the gate was open.

Kind regards

Jacqueline Chainey

--

The Old School
7 School Lane
Heslington
York YO10 5EE

Archived: 16 December 2021 15:33:38

From: rightsofway@york.gov.uk

Sent: Thu, 26 Aug 2021 09:00:13

To: [Janet Mary Dobson](#)

Cc: rightsofway@york.gov.uk

Subject: RE: Public Footpath Dunnington 22 Modification Order 2021

Sensitivity: Normal

Dear Ms Dobson,

Thank you for your email regarding your objection to the proposed Dunnington footpath, I will be in touch again after the consultation period has ended (3rd September).

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

www.york.gov.uk | [facebook.com/cityofyork](https://www.facebook.com/cityofyork) | [@CityofYork](https://twitter.com/CityofYork)

From: Janet Mary Dobson <janet.dobson22@gmail.com>

Sent: 25 August 2021 12:12

To: rightsofway@york.gov.uk <mail_prow@york.gov.uk>

Subject: Public Footpath Dunnington 22 Modification Order 2021

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

For the attention of Lauren Grindley, Definitive Map assistant:

Please find attached my representations about the Public Footpath Dunnington 22 Modification Order 2021.

Yours sincerely,

Janet Dobson

REPRESENTATIONS RE. PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

I am the owner and occupier of Strawberry Cottage, which is not on your consultation map but is situated at the top of Dunnington Footpath 7 as shown on the map.

The proposed new public footpath (which is on Mr. Jewitt's land, not mine) provides the only vehicular access to my home for regular services such as dustcart and post-van and emergency services such as ambulance and fire-engine. It is therefore essential to my welfare and safety and that of any future residents that it remain unobstructed at all times. It is also the only means of access by farm vehicles and machinery to my two fields on the north side of Footpath 7, which are visited daily to tend to livestock.

The stretch of path from Common Road to the start of Footpath 7 has not historically been a right of way. My late husband, who was born in this cottage in 1940 and grew up here, recalled that it was little more than a cart-track when he was a boy, with a farm gate at either end. Apart from visitors to this house, there were few if any pedestrians except farm-workers entering the fields.

Today, there is a gate only at the Common Road end. It is normally left open and Mr Jewitt does not try to prevent walkers from going through it and walking up the path to Footpath 7. However, he does lock it occasionally to make the point that the land is in his ownership and he has the right to stop access to those who cause damage or behave in an anti-social way. He gives me advance notice of when he is going to lock it and is ready to open it if anyone needs to get to my house.

Footpath 7 has long been a recognized right of way, with pedestrians passing the allotments, over the footbridge, up the path on my land and across the fields to Bell's farm (as was) and Hagg Lane, though originally there was little recreational walking. In more recent times, there has been a big increase in people going for walks or exercising dogs, particularly since Hagg Wood became Community Woodland (a campaign I supported). I am happy to see people enjoying a walk past my house to the wood or Hagg Lane. The majority behave reasonably and responsibly.

Unfortunately a minority do not. They seem to think that a public right of way means a public right to use the space in any way they choose. For example, some dog walkers treat Footpath 7 as a dogs' lavatory and watch their dog leave a mess not far from my front gate. Others treat the path across Mr Jewitt's field as a dogs' exercise area and let their dogs off the lead to race around where his sheep are grazing.

My fear is that the designation of the proposed new public right of way will result in such individuals thinking there is a public right to park on it before setting off for a walk, making it impossible for other vehicles to pass en route to my home. This possibility is not far-fetched. Walkers already park close by the gate on the grass verge next to Common Road.

I do not relish the prospect of having to police it in order that Council and emergency services and other vehicles can reach me. If this modification order is confirmed, I would be grateful to know what steps the Council proposes to take to prevent my fears being realized.

Janet Dobson
Strawberry Cottage, 39, Common Road, Dunnington, York YO19 5NZ
12 August 2021

Hollymead
43 Common Road
Dunnington
York YO19 5PA

Dear Ms L Gindley

Re your reference 200401 Dunnington. Re The Definitive Map Modification footpath from Common Road to Dunnington Footpath No7.

Our family has owned the land over which this footpath is proposed since 1951. The original gate at Common Road end was in place when my late uncle WILLIAM WALKER bought the property from HAROLD TESSELMAN who worked the land as a market garden. The gate was replaced with a galvanized one in the 1990's and had the original sign replaced 'PRIVATE ROAD NO PUBLIC RIGHT OF WAY'. I have since replaced this sign twice due to it being vandalised, remnants of the last sign are still on the gate.

I acknowledge that people walk this as a shortcut to Dunnington No7 footpath when the gate is open and have no objection for law abiding people to enjoy this as a permissive footpath, but we have always closed and padlocked this gate several times each year for 24 hours or more to stop it being deemed as a Right of Way. To control its use. When the gate is locked and people are observed trespassing after climbing the gate, when challenged we receive a very poor response and have problems with vandalism, trespass, crop damage and dog fouling.

This track is access only to STRAWBERRY COTTAGE and FARMLAND.

Yours sincerely G.N. 

Appendix 3

Notice of Advert

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

NOTICE OF THE MAKING OF A DEFINITIVE MAP MODIFICATION ORDER**THE COUNCIL OF THE CITY OF YORK****WILDLIFE AND COUNTRYSIDE ACT 1981****DEFINITIVE MAP AND STATEMENT FOR THE FORMER EAST RIDING OF YORKSHIRE
NOW SITUATED INSIDE THE AREA OF THE COUNCIL OF THE CITY OF YORK****PUBLIC FOOTPATH DUNNINGTON 22
MODIFICATION ORDER 2021**

The above Order, made on 10 May 2021, if confirmed as made, will modify the definitive Map and Statement for the area by adding a public footpath between Common Road and Dunnington public footpath 7 (SE 6739 5207 to SE 6752 5215).

A copy of the Order as made and the Order Map may be seen free of charge during normal office hours at City of York Council, West Offices, Station Rise, York, YO1 6GA until 3 September 2021. Copies of the Order and Map may be purchased there at a cost of £1.50, or can be downloaded free from our website www.york.gov.uk/DefinitiveMap.

Any representation or objection relating to the Order must be sent in writing to "the Rights of Way Officer, the Council of the City of York, West Offices, Station Rise, York, YO1 6GA", no later than 3 September 2021, stating the grounds on which it is made.

Please note that objections/representations cannot be treated as confidential and will come into the public domain. Copies of any objections or representations received will be disclosed to interested parties, including the Planning Inspectorate where the case is referred to it for determination.

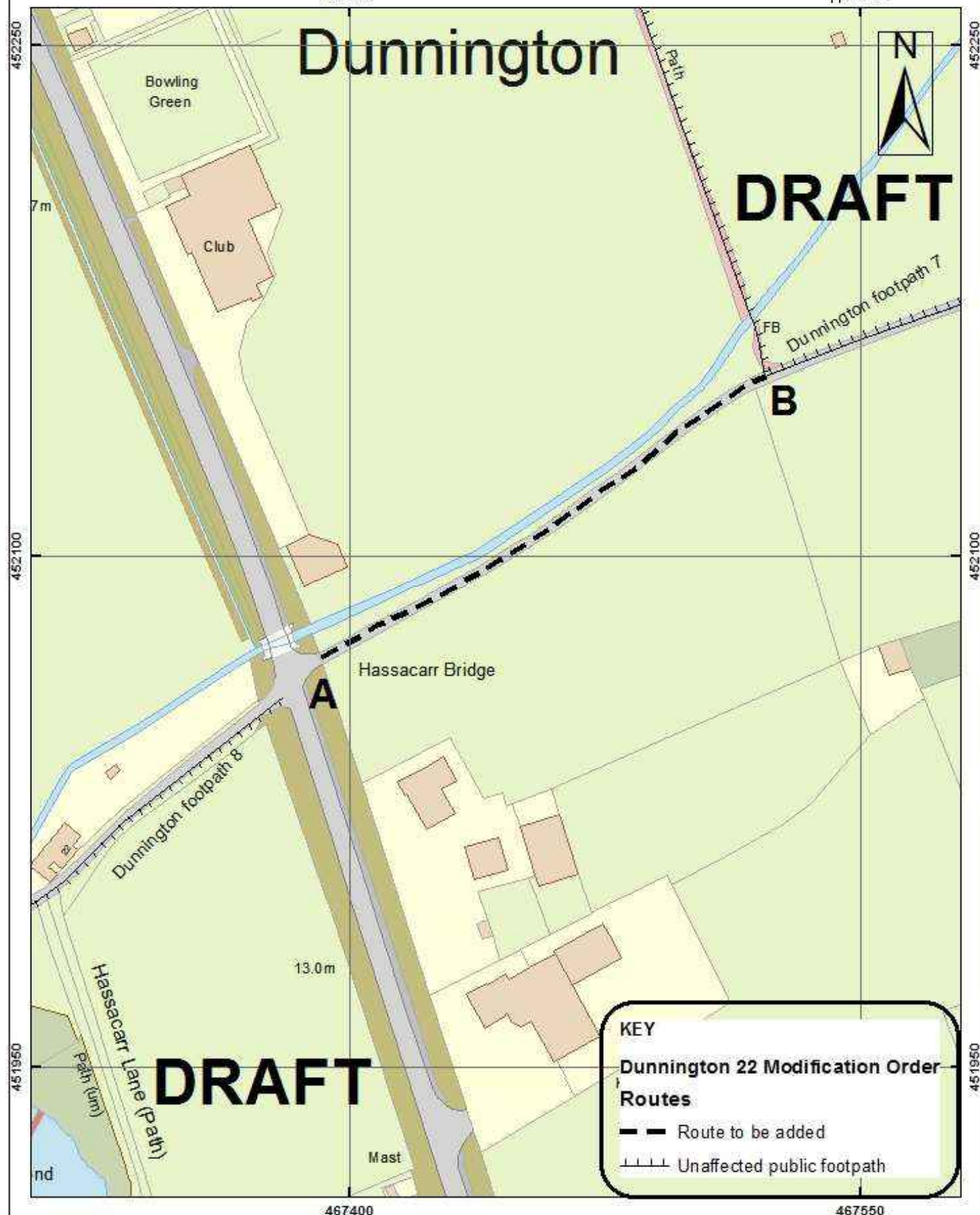
If no representations or objections are duly made to the Order, or to any part of it, or if any so made are withdrawn, the Council of the City of York, instead of submitting the Order to the Secretary of State or part of it if the Authority has by Notice to the Secretary of State so elected under paragraph 5 of Schedule 15 to the Wildlife and Countryside Act 1981 may itself confirm the Order or that part of the Order. If the Order is submitted to the Secretary of State for the Environment, in whole or in part, any representations or objections which have been duly made and not withdrawn will be sent with it.

Dated: 22 July 2021.

Janie Berry
Director - Legal & Governance
City of York Council
West Offices
Station Rise
York
YO1 6GA

Dunnington

DRAFT



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Scale 1:1,500

Drawn By: LRG

Date: 17/5/21

Public Rights of Way

Reference:

Drawing No.

Page 41 of 248

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Notice of the making of a Definitive Map Modification Order
The Council of the City of York
Wildlife & Countryside Act 1981
Definitive Map and Statement for the Former East Riding of Yorkshire
now situated inside the area of the Council of the City of York
Public Footpath Dunnington 22 Modification Order 2021

The above Order, made on 10 May 2021, if confirmed as made, will modify the definitive map and statement for the area by adding a public footpath between Common Road and Dunnington public footpath 7 (SE 6739 5207 to SE 6752 5215).

A copy of the Order as made and the Order Map may be seen free of charge during normal office hours at City of York Council, West Offices, Station Rise, York, YO1 6GA until 3 September 2021. Copies of the Order and Map may be purchased there at a cost of £1.50, or can be downloaded free from our website www.york.gov.uk/DefinitiveMap.

Any representation or objection relating to the Order must be sent in writing to "the Rights of Way Officer, the Council of the City of York, West Offices, Station Rise, York, YO1 6GA", or by emailing rightsofway@york.gov.uk, no later than 3 September 2021, stating the grounds on which it is made. Please note that objections/representations cannot be treated as confidential and will come into the public domain. Copies of any objections or representations received may be disclosed to interested parties, including the Planning Inspectorate where the case is referred to it for determination.

If no representations or objections are duly made to the Order, or to any part of it, or if any so made are withdrawn, the Council of the City of York, instead of submitting the Order to the Secretary of State or part of it if the Authority has by Notice to the Secretary of State so elected under paragraph 5 of Schedule 15 to the Wildlife and Countryside Act 1981 may itself confirm the Order or that part of the Order. If the Order is submitted to the Secretary of State for the Environment, in whole or in part, any representations or objections which have been duly made and not withdrawn will be sent with it

Dated: 22 July 2021

Janie Berry
Director - Legal & Governance

Appendix 4

Certificate of notice

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

STATEMENT

I am an employee of City of York Council. I certify that, in accordance with the requirements of the Wildlife and Countryside Act 1981 notices have been published, served, posted on site, and made available at a local office.

I also certify that the necessary consultations with other local authorities and statutory undertakers have been carried out.

Signed 

Date: 20 June 2022
Russell Varley
Definitive Map Officer

Rights of Way
City of York Council
West Offices
YORK
YO1 6GA

Appendix 5

Undertaking confirmation of notice

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

CONFIRMED/NOT CONFIRMED PROCEDURE

The OMA undertakes that in the event the enclosed order is confirmed a notice to that effect will be duly published and served on the relevant prescribed bodies, statutory undertakers and all previously notified parties.

In the event that the enclosed order is not confirmed the OMA undertakes to serve notice of this on the relevant prescribed bodies, statutory undertakers and all previously notified parties.

Appendix 6

User evidence statements

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms.		
Christian Name (s) :		
Age: (If over 21, you may insert "Over 21")		
Address: M. BARKER 16, YORK ST DUNNINGTON YORK YO19 5PN		
Occupation: FARMER'S MARKET TRADER		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? 29 years.		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 29 years.		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) OCC.		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) Pleasure		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

/

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? * Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:

/

Any Further Information which you consider to be relevant:

/

* Delete as appropriate

Signature : *A. Bance*

Date : 03.09.03

Signature of Person
Taking the Statement : *J. Gardner*

Date : 3-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>BELL</u>		
Christian Name (s): <u>DAVID ALAN.</u>		
Age: (If over 21, you may insert "Over 21") <u>61</u>		
Address: <u>46 CEDAR GLADE</u> <u>DUNNINGTON</u> <u>YORK YO19 5PL</u>		
Occupation:		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 K 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>		
Width of path (If defined) : <u>Approx. 6 ft</u>		
How many years have you known of the existence of this path ? <u>50</u>		
Over what period have you used the path ? <u>30</u> (Please specify how many years and dates e.g.: 20 years - 1970 - 1990)		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	*Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? <u>MONTHLY</u> (e.g.: weekly; monthly; occasionally)		
For what purpose did you / do you use the path ? <u>PLEASURE</u> (e.g.: work, pleasure, recreation, to get to shops)		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>—</u>		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : Da Bul

Date : 08/09/03

Signature of Person Taking the Statement : J. Gordon

Date : 8-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * <u>Mr</u> Mrs. Miss. Ms.	
Christian Name (s): <u>John Berry, Janet Berry, Ken Slater</u>	
Age: (If over 21, you may insert "Over 21") <u>18, over 21</u>	
Address: <u>14 Common Road, Airmington</u> <u>York, YO19 5NG</u>	
Occupation:	
Name or route of Path: <u>Access from Common Road to PLOTSMENTS / STRAWBERRY COTTAGE</u>	
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>	
Parish of: <u>DUNNINGTON</u>	
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic	
Do you regard the route to be a Public Right of Way ? * Yes / No	
Is the path well defined ? * Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>	
Width of path (If defined) : <u>Approx. 6 ft</u>	
How many years have you known of the existence of this path ? <u>12</u>	
Over what period have you used the path ? <u>12 years</u> (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>1991 - 2003</u>	
Have you used the path: i) on foot ? * <u>Yes</u> / No ii) on horseback ? * Yes / No iii) by motor vehicle ? * Yes / No iv) by cycle ? * <u>Yes</u> / No	
How often did you / do you use the path ? <u>Daily</u> (e.g.: weekly; monthly; occasionally)	
For what purpose did you / do you use the path ? <u>Pleasure</u> (e.g.: work, pleasure, recreation, to get to shops)	
Have you ever been prevented from, or challenged when, using the path ? * <u>Yes</u> / No If "Yes" please give details <u>verbal abuse, claiming the land was private property</u> <u>telling me to get off the land.</u>	
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>One side of the path, sign on gate saying "private property, no public right of way."</u>	

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * Yes / No

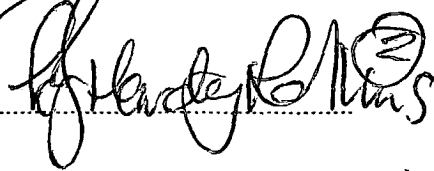
If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : 

Date : 20/09/03

Signature of Person Taking the Statement : 

Date : 26 9 03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Ms. Mr. BIELBY		
Christian Name (s): RONALD		
Age: (If over 21, you may insert "Over 21") 75		
Address: FLAT G, CHERRY TREE COURT DUNNINGTON, YORK, YO19 5QU.		
Occupation: RETIRED GARDENER		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS/STRAWBERRY COTTAGES		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes No If "Yes" How? Gravel/Stone surfaced pathway		
Width of path (if defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? SINGLE CHILDHOOD		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) SINCE 1936		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly, monthly, occasionally)		
For what purpose did you / do you use the path ? GOING TO SCHOOL, (e.g.: work, pleasure, recreation, to get to shops) RECREATION, PLEASURE.		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. FIELD GATE, ALWAYS OPEN. ROAD TO STRAWBERRY COTTAGES, SIGN ON GATE, "PRIVATE ROAD NO PUBLIC RIGHT OF WAY" RECTES		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

FRANK DOBSON, STRAWBERRY COTTAGES,
GRAHAM JEWETT, BUNGALOW, COMMON
ROAD, (OBJECTOR)
Owner

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:

Any Further Information which you consider to be relevant:

Used occasionally going to and from school as alternative to path alongside garden piece, also travelling from Habbacar Nature Reserve on garden piece path to green just for walks in more recent times.

* Delete as appropriate

Signature: R. Bielby

Date: 10th Sept 03

Signature of Person Taking the Statement: Asaina Amegb

Date: 11th September 03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. BOLAM		
Christian Name (s): JOHN		
Age: (If over 21, you may insert "Over 21") 52		
Address: HAGG FARM INTAKE LANE DUNNINGTON YORK YO195NY		
Occupation: BUILDER		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 to 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : Approx. 6 ft		
How many years have you known of the existence of this path ? 25		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 1988 - 2003 15 YRS		
Have you used the path: i) on foot ? * Yes / No ii) on horseback ? * Yes / No DAUGHTER iii) by motor vehicle ? Yes / No iv) by cycle ? Yes / No		
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) OCCASIONALLY		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) RECREATION		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details VERBALLY ABUSIVE ENCOUNTER FROM OCCUPANT OF ADJACENT BUNGALOW.		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* ~~Delete as appropriate~~

Signature : 

Date : 22. 9. 2003.

Signature of Person
Taking the Statement :



Date : 22. 9. 08

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss Ms. <u>BRADFIELD</u>		
Christian Name (s): <u>MERYN</u>		
Age: (If over 21, you may insert "Over 21") <u>OVER 21</u>		
Address: <u>16L YORK STREET, DUNNINGTON, YORK</u> <u>YO19 5PN</u>		
Occupation: <u>PROFESSIONAL</u>		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 K 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>		
Width of path (If defined) : <u>APPROX. 6 ft</u>		
How many years have you known of the existence of this path ?		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>9 yrs 1994 - DATE</u>		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	*Yes / No
	iii) by motor vehicle ?	*Yes / No
	iv) by cycle ?	*Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>3 TIMES WEEKLY</u>		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>PLEASURE</u>		
Have you ever been prevented from, or challenged when, using the path ? *Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

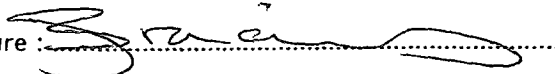
Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * ~~Yes~~ / No

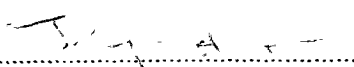
If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : 

Date : 3/09/03

Signature of Person Taking the Statement : 

Date : 3-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>C LINE</u>		
Christian Name (s): <u>DOROTHY</u>		
Age: (If over 21, you may insert "Over 21") <u>65</u>		
Address: <u>70 CEDAR GLADE</u> <u>DUNNINGTON, YORK, YO195PL</u>		
Occupation: <u>RETIRED</u>		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>		
Width of path (If defined) : <u>APPROX. 6 ft</u>		
How many years have you known of the existence of this path ? <u>18 years</u>		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>18 years 1965 - 2003</u>		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	*Yes / No
	iii) by motor vehicle ?	*Yes / No
	iv) by cycle ?	*Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>Daily</u>		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>pleasure / recreation this small piece of footpath leads to two other walks.</u>		
Have you ever been prevented from, or challenged when, using the path ? *Yes / No If "Yes" please give details <u>Very threatening man who was aggressive towards me - treating me like a child. I thought he was going to jump over me with his hand Rover</u>		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>No obstructions until a notice was put on a gate recently</u>		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

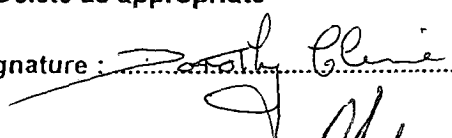
unknown

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

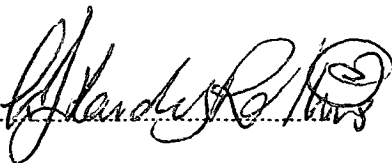
Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : 

Date : 2 / 10 / 03

Signature of Person
Taking the Statement :



Date : 2.10.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. MS. EVANS - HILL		
Christian Name (s): SADE - MARIE		
Age: (If over 21, you may insert "Over 21") 17		
Address: 8 ST MONICAS CLOSE, MELBOURNE, EAST YORKSHIRE YORK YO42 - 6QW		
Occupation: CATERING ASSISTANT		
Name or route of Path: ACCESS FROM COMMON ROAD TO ALLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? BRICK / STONE LINED PATHWAY		
Width of path (If defined) : APPROX. 6 FT		
How many years have you known of the existence of this path ? 3		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 2000 - 2003		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) OCCASIONALLY		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) PLEASURE, & RECREATION		
Have you ever been prevented from, or challenged when, using the path ? If "Yes" please give details YES I WAS VERBALLY ATTACKED BY WHO I PRESUME IS THE OWNER, HE'S OFFENSIVE AND RUDE		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. THERE WERE NO SIGNS FROM THE PREVIOUS OWNER OF THE PROPERTY PLUS HE WAS QUITE HAPPY FOR THE PUBLIC TO WALK THE PATH.		

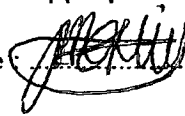
Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

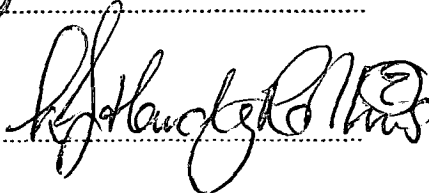
Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature: 

Date : 18-09-03

Signature of Person
Taking the Statement :



Date : 18-09-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>FAIRBURN.</u>		
Christian Name (s): <u>WALTER EDWARD</u>		
Age: (If over 21, you may insert "Over 21") <u>Over 21.</u>		
Address: <u>BLUE HALL COTTAGE</u> <u>HULL ROAD</u> <u>DUNNINGTON YORK YO195CP</u>		
Occupation: <u>RETIRED</u>		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? <u>Good / Stone surfaced pathway</u>		
Width of path (If defined) : <u>Approx. 6 ft</u>		
How many years have you known of the existence of this path ? <u>7 years</u>		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>7 years 1996 - 2003</u>		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>Several times weekly.</u>		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>Pleasure recreation.</u>		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details <u>Have not used path since 2003 sign put up</u>		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * Yes/ No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

In the seven years I have used the path no one has said at anytime it was private land.

* Delete as appropriate

Signature : *[Signature]*

Date : *20/09/03.*

Signature of Person Taking the Statement : *[Signature]*

Date : *20.9.03*

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. <u>(Mrs)</u> Miss. Ms. FAIRBURN		
Christian Name (s): SUSAN		
Age: (If over 21, you may insert "Over 21") OVER 21		
Address: BLUE HALL COTTAGE HULL ROAD DUNNINGTON YORK YO19 5LP		
Occupation: RETIRED		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 to 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : Approx. 6 ft		
How many years have you known of the existence of this path ? 7 years		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 7 years 1996 - 2003		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) several times weekly		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) pleasure recreation		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details Have not used path since (PRIVATE) sign put up.		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : Sm. Zingher

Date : 20.9.03

Signature of Person

Taking the Statement : [Signature]

Date : 20.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. GRIFFITHS		
Christian Name (s): COLIN ROY		
Age: (If over 21, you may insert "Over 21") OVER 21		
Address: HALL GARTH PADDOCKS, HULL ROAD, DUNNINGTON, YORK.		
Occupation: RETIRED		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 to 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? Broad / Stone surfaced pathway		
Width of path (If defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? 5 YRS		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 1998 - 2003		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) WEEKLY		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) PLEASURE		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. PRIVATE		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

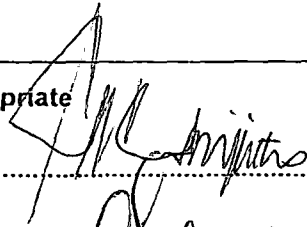
Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

I am sure that 99.9% of people who use the path are decent and responsible people. It is surely unreasonable to prevent us using the path after many, many years of trouble free use.

* Delete as appropriate

Signature : 

Date : 20.9.03

Signature of Person Taking the Statement : 

Date : 20.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. HARDY-ROLLINS		
Christian Name (s): KEVIN		
Age: (If over 21, you may insert "Over 21") 47		
Address: CHERRY TREE FLD 40 YORK ST DUNNINGTON YORK		
Occupation: BUYER		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 to 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : Approx. 6 ft		
How many years have you known of the existence of this path ? 12		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) FROM 91 - TO PRESENT		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) DAILY		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) PLEASURE / TO GET TO SHOPS		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. NEWLY ERECTED PRIVATE SIGN ON OPEN GATE.		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? ~~*Yes~~/ No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : *[Signature]*

Date : 15.9.03

Signature of Person
Taking the Statement : *[Signature]*

Date : 15.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: <u>Mr</u> Mrs. Miss. Ms. <u>JOHNSON</u>		
Christian Name (s): <u>CLIFFORD</u>		
Age: (If over 21, you may insert "Over 21")		
Address: <u>8 - CHURCH LANE. DUNNINGTON</u> <u>YO19 5PS</u>		
Occupation: <u>RETIRED</u>		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO ALLOTMENTS / STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 K 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: <u>*Footpath / Bridleway / Byway Open to All Traffic</u>		
Do you regard the route to be a Public Right of Way ? <u>* Yes / No</u>		
Is the path well defined ? <u>* Yes / No</u> If "Yes" How? <u>Brick / Stone surfaced pathway</u>		
Width of path (If defined) : <u>Approx. 6 ft</u>		
How many years have you known of the existence of this path ? <u>35</u>		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>1968 - 2002</u>		
Have you used the path:	i) on foot ? <input checked="" type="checkbox"/> ii) on horseback ? iii) by motor vehicle ? iv) by cycle ?	* Yes / No * Yes / No * Yes / No * Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>MONTHLY</u>		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>PLEASURE</u>		
Have you ever been prevented from, or challenged when, using the path ? <u>* Yes / No</u> If "Yes" please give details <u>TOLD PRIVATE ROAD.</u>		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : J. Gardner

Date : 8/9/03

Signature of Person Taking the Statement : J. Gardner

Date : 8-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. ROBERT PHILIP LANE		
Christian Name (s) :		
Age: (If over 21, you may insert "Over 21") 54		
Address: Dunnington Sports Club Common Road Dunnington Wetherby		
Occupation: Manager Sports Club		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (if defined) : Approx. 6 ft		
How many years have you known of the existence of this path ? By word of mouth at least 20 years		
Over what period have you used the path ? 8 years (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 95-03		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	*Yes / No
	iii) by motor vehicle ?	*Yes / No
	iv) by cycle ?	*Yes / No
How often did you / do you use the path ? Daily (e.g.: weekly; monthly; occasionally)		
For what purpose did you / do you use the path ? Walking Dogs - access to public footpath (e.g.: work, pleasure, recreation, to get to shops)		
Have you ever been prevented from, or challenged when, using the path ? *Yes / No If "Yes" please give details Driven at by owner and threatened to take action if didn't go		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. None till six months ago		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

GRAHAM WALKER.

BILL WALKER WHO LEFT HIM THE PROPERTY WHEN HE DIED SADDLY. HE WAS MY NEAREST NEIGHBOUR, A NICE MAN WHO DID NOT MIND ANYONE USING THE PATH.

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? ~~Yes~~ No

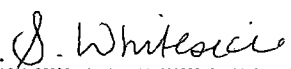
If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:

Any Further Information which you consider to be relevant:

* Delete as appropriate

Signature : 

Date : 15.9.03

Signature of Person Taking the Statement : 

Date : 15.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms.		
Christian Name (s): IONA MARTIN.		
Age: (If over 21, you may insert "Over 21") OVER 21.		
Address: 22 DEERSTONE WAY. DUNNINGTON.		
Occupation: RETIRED.		
Name or route of Path: ACCESS FROM COMMON ROAD TO ALLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? 17 yrs.		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 17 yrs. 1986 →		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) weekly.		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) pleasure.		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

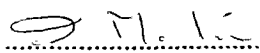
Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : 

Date : 26.9.03

Signature of Person

Taking the Statement : 

Date : 26.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. MS. <u>MIDDLE</u>									
Christian Name (s): <u>PETER</u>									
Age: (If over 21, you may insert "Over 21") <u>OVER 21</u>									
Address: <u>MEADOWCROFT</u> <u>HULL RD</u> <u>DUNNINGTON YORK</u>									
Occupation: <u>ELECTRICIAN</u>									
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>									
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>									
Parish of: <u>DUNNINGTON</u>									
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic									
Do you regard the route to be a Public Right of Way ? * Yes / No									
Is the path well defined ? * Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>									
Width of path (If defined) : <u>Approx. 6 ft</u>									
How many years have you known of the existence of this path ? <u>20 YEARS</u>									
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>(20 years) 1993 - 2003</u>									
Have you used the path:	<table style="width: 100%;"> <tr> <td>i) on foot ?</td> <td><u>Yes</u> / No</td> </tr> <tr> <td>ii) on horseback ?</td> <td>Yes / <u>No</u></td> </tr> <tr> <td>iii) by motor vehicle ?</td> <td>Yes / <u>No</u></td> </tr> <tr> <td>iv) by cycle ?</td> <td>Yes / <u>No</u></td> </tr> </table>	i) on foot ?	<u>Yes</u> / No	ii) on horseback ?	Yes / <u>No</u>	iii) by motor vehicle ?	Yes / <u>No</u>	iv) by cycle ?	Yes / <u>No</u>
i) on foot ?	<u>Yes</u> / No								
ii) on horseback ?	Yes / <u>No</u>								
iii) by motor vehicle ?	Yes / <u>No</u>								
iv) by cycle ?	Yes / <u>No</u>								
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>WEEKLY</u>									
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>PLEASURE DOG WALKING</u>									
Have you ever been prevented from, or challenged when, using the path ? * <u>Yes</u> / No If "Yes" please give details									
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>PRIVATE LAND SIGNS ERECTED OVER LAST SIX MONTHS</u>									

Name and Addresses of Owners (and Tenants, if tenanted) if known:


NOT KNOWN

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate.

Signature : 

Date : 20.9.03.

Signature of Person
Taking the Statement :



Date : 20.9.05

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>MIDDLE</u>									
Christian Name (s): <u>SANDRA</u>									
Age: (If over 21, you may insert "Over 21") <u>OVER 21</u>									
Address: <u>MEADOWCROFT</u> <u>HULL ROAD</u> <u>DUNNINGTON</u> <u>YORK</u>									
Occupation: <u>RETIRED</u>									
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>									
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>									
Parish of: <u>DUNNINGTON</u>									
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic									
Do you regard the route to be a Public Right of Way ? * Yes / No									
Is the path well defined ? * Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>									
Width of path (if defined) : <u>Approx. 6 ft</u>									
How many years have you known of the existence of this path ? <u>8 yrs</u>									
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>1995 - 2003</u>									
Have you used the path:	<table style="width: 100%;"> <tr> <td>i) on foot ?</td> <td>* Yes / No</td> </tr> <tr> <td>ii) on horseback ?</td> <td>* Yes / No</td> </tr> <tr> <td>iii) by motor vehicle ?</td> <td>* Yes / No</td> </tr> <tr> <td>iv) by cycle ?</td> <td>* Yes / No</td> </tr> </table>	i) on foot ?	* Yes / No	ii) on horseback ?	* Yes / No	iii) by motor vehicle ?	* Yes / No	iv) by cycle ?	* Yes / No
i) on foot ?	* Yes / No								
ii) on horseback ?	* Yes / No								
iii) by motor vehicle ?	* Yes / No								
iv) by cycle ?	* Yes / No								
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>most days</u>									
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>Pleasure & Dog Walking</u>									
Have you ever been prevented from, or challenged when, using the path ? * Yes / <u>No</u> If "Yes" please give details									
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>PRIVATE LAND SIGNS ERECTED OVER LAST SIX MONTHS</u>									

Name and Addresses of Owners (and Tenants, if tenanted) if known:

NOT KNOWN.

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? ~~Yes~~ (No)

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:

Any Further Information which you consider to be relevant:

* Delete as appropriate

Signature: [Signature]

Date: 20.9.03

Signature of Person

Taking the Statement: [Signature]

Date: 20.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
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- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>NIELD</u>														
Christian Name (s): <u>JAMES</u>														
Age: (If over 21, you may insert "Over 21") <u>33</u>														
Address: <u>20 MANOR DRIVE</u>														
Occupation: <u>FORKLIFT DRIVER</u>														
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTSMENTS / STRAWBERRY COTTAGE</u>														
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>														
Parish of: <u>DUNNINGTON</u>														
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic														
Do you regard the route to be a Public Right of Way ? * Yes / No														
Is the path well defined ? *Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>														
Width of path (if defined) : <u>Approx. 6 ft</u>														
How many years have you known of the existence of this path ? <u>25</u>														
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>25</u>														
Have you used the path: <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">i)</td> <td style="width: 40%;">on foot ?</td> <td style="width: 30%;">*Yes / No</td> </tr> <tr> <td>ii)</td> <td>on horseback ?</td> <td>*Yes / No</td> </tr> <tr> <td>iii)</td> <td>by motor vehicle ?</td> <td>*Yes / No</td> </tr> <tr> <td>iv)</td> <td>by cycle ?</td> <td>*Yes / No</td> </tr> </table>			i)	on foot ?	*Yes / No	ii)	on horseback ?	* Yes / No	iii)	by motor vehicle ?	*Yes / No	iv)	by cycle ?	* Yes / No
i)	on foot ?	*Yes / No												
ii)	on horseback ?	* Yes / No												
iii)	by motor vehicle ?	*Yes / No												
iv)	by cycle ?	* Yes / No												
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>Occasionally</u>														
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>Pleasure</u>														
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details														
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.														

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : Wield

Date : 3-9-03

Signature of Person
Taking the Statement : J. Gardner

Date : 3-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.



Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. TODD		
Christian Name (s): JOSEPH		
Age: (If over 21, you may insert "Over 21")		
Address: 14 HINDER CROFT		
Occupation: WAREHOUSE SUPERVISION		
Name or route of Path: ACCESS FROM COMMON ROAD TO ALLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 to 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No		
If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (if defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ?		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 30 yrs		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	*Yes / No
	iii) by motor vehicle ?	*Yes / No
	iv) by cycle ?	*Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally)		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) PLEASURE		
Have you ever been prevented from, or challenged when, using the path ? *Yes / No		
If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. NONE		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : J. Jodel

Date : 2/9/03

Signature of Person
Taking the Statement : J. Gardier

Date : 3-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. WARD		
Christian Name (s): JAMES		
Age: (If over 21, you may insert "Over 21") OVER 21		
Address: 6 CHURCH LANE DUNNINGTON		
Occupation: RETIRED		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? Since 1966		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 1966 - Present		
Have you used the path:	i) on foot ? ii) on horseback ? iii) by motor vehicle ? iv) by cycle ?	* Yes / No * Yes / No * Yes / No * Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) Weekly		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) Pleasure		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details Shouldered at to get off road		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. 		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? * Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : *[Signature]*

Date : 8 8 03

Signature of Person
Taking the Statement : *J. Gardner*

Date : 8-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
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- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. WHITESIDE		
Christian Name (s): SHIRLEY		
Age: (If over 21, you may insert "Over 21") 55		
Address: DUNNINGTON SPORTS CLUB COMMON ROAD, DUNNINGTON.		
Occupation: CATERER - SPORTS CLUBS		
Name or route of Path: ACCESS FROM COMMON ROAD TO ALLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 to 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? 8 YEARS		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 95 - 03		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) TWICE DAILY		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) RECREATION - WALKING DOGS ACCESS TO MY ALLOTMENT		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details TOLD TO GET OFF PRIVATE PROPERTY VERY RUDE & ABUSIVE		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. SIGN GONE UP IN LAST SIX MONTHS SAYING NO PUBLIC ACCESS - ONE END ONLY		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

THINK IT IS GRAHAM WALKER
HIS UNCLE WHO LEFT HIM PROPERTY WAS BILL WALKER
HE NEVER MENDED ANYBODY USING PATH

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? *Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:

Any Further Information which you consider to be relevant:

* Delete as appropriate

Signature : S Whiteside

Date : 15.9.03

Signature of Person
Taking the Statement : [Signature]

Date : 15.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>CHINE</u>		
Christian Name (s): <u>Geoffrey William</u>		
Age: (If over 21, you may insert "Over 21") <u>63yrs</u>		
Address: <u>70 CEDAR GLADE, DUNNINGTON, YORK YO19 5PL</u>		
Occupation: <u>RETIRED</u>		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>		
Width of path (if defined) : <u>Approx. 6 ft</u>		
How many years have you known of the existence of this path ? <u>OVER 18 yrs.</u> <u>1965 - 2003</u>		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>18 yrs. DAILY</u> <u>1965 - 2003</u>		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>DAILY</u>		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>RECREATION / Exercise / Pleasure</u>		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>AT PUBLIC RIGHT OF WAY APPROX 150 YARDS DOWN THIS LANE</u> <u>WHERE IS SIGNS - NO OBSTRUCTION AND OPEN ALL THE TIME BUT</u> <u>RECENTLY A SIGN WAS PLACED ON AN OPEN GATE.</u>		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

NOT KNOWN

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? * Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:

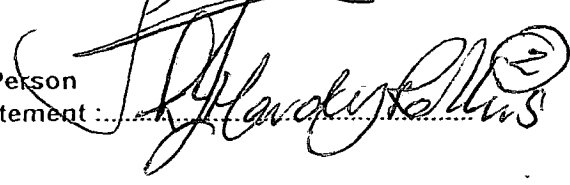
Any Further Information which you consider to be relevant:

IT IS WITHIN MY KNOWLEDGE THAT THIS LAND HAS BEEN USED AND ENJOYED BY RESIDENTS OF DUNMINGTON FOR OVER 50 years AS A RIGHT OF WAY TO THE EXISTING 'RIGHT OF WAY' AND COTTAGES FURTHER ALONG THIS PATH.

* Delete as appropriate

Signature: 

Date: 27th October 2003

Signature of Person Taking the Statement: 

Date: 2 - 10 - 03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>WILSON</u>													
Christian Name (s): <u>SIMON JOHN</u>													
Age: (If over 21, you may insert "Over 21") <u>31</u>													
Address: <u>11, WHITE LANE DUNNINGTON</u>													
Occupation: <u>CHEF</u>													
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>													
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 K 522676</u>													
Parish of: <u>DUNNINGTON</u>													
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic													
Do you regard the route to be a Public Right of Way ? * Yes / No													
Is the path well defined ? *Yes No If "Yes" How? <u>Gravel / Stone surfaced pathway</u>													
Width of path (If defined) : <u>Approx. 6 ft</u>													
How many years have you known of the existence of this path ? <u>22 yrs.</u>													
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>22 yrs 81-03.</u>													
Have you used the path:	<table border="0"> <tr> <td>i)</td> <td>on foot ?</td> <td><input checked="" type="radio"/> Yes / <input type="radio"/> No</td> </tr> <tr> <td>ii)</td> <td>on horseback ?</td> <td>* Yes / No</td> </tr> <tr> <td>iii)</td> <td>by motor vehicle ?</td> <td>* Yes / No</td> </tr> <tr> <td>iv)</td> <td>by cycle ?</td> <td>* Yes / No</td> </tr> </table>	i)	on foot ?	<input checked="" type="radio"/> Yes / <input type="radio"/> No	ii)	on horseback ?	* Yes / No	iii)	by motor vehicle ?	* Yes / No	iv)	by cycle ?	* Yes / No
i)	on foot ?	<input checked="" type="radio"/> Yes / <input type="radio"/> No											
ii)	on horseback ?	* Yes / No											
iii)	by motor vehicle ?	* Yes / No											
iv)	by cycle ?	* Yes / No											
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>DAILY.</u>													
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>PLEASURE</u>													
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details <u>A LADY CAME OUT & TOLD ME IT WAS A PRIVATE ROAD.</u>													
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>WOODEN FENCE FROM ALLOTMENTS, CONCRETE WAY FORWARD SIGN ACROSS FIELD, NEWLY PLACED "NO PUBLIC RIGHT OF WAY" SIGN ON GWS GATE WOODEN BOX FOR MILK DELIVERIES.</u>													

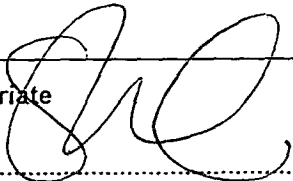
Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * Yes / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : 

Date : 3/9/03.

Signature of Person
Taking the Statement : J. Gardner

Date : 3-9-03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. WRIGHT		
Christian Name (s): CHARIS		
Age: (If over 21, you may insert "Over 21") 32		
Address: 38 Carlew glen Dunnington		
Occupation: Painter		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? 25		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 25		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	*Yes / No
	iii) by motor vehicle ?	*Yes / No
	iv) by cycle ?	*Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) (Occasionally)		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) Pleasure		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * Yes / No

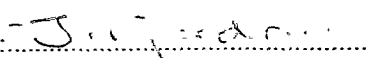
If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

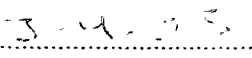
Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : 

Date : 

Signature of Person
Taking the Statement : 

Date : 

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss Ms. <u>WRIGHT</u>		
Christian Name (s): <u>COLLETTE</u>		
Age: (If over 21, you may insert "Over 21") <u>OVER 21</u>		
Address: <u>HALL BARTH TADDOCKS</u> <u>HOLL ROAD</u> <u>DUNNINGTON, YORK YO19 5LP.</u>		
Occupation: <u>HOUSE WIFE</u>		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 to 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? <u>Good / Stone surfaced pathway</u>		
Width of path (If defined) : <u>Approx. 6 ft</u>		
How many years have you known of the existence of this path ? <u>5 yrs</u>		
Over what period have you used the path ? <u>1998 - 2003</u> (Please specify how many years and dates e.g.: 20 years - 1970 - 1990)		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>WEEKLY</u>		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>Shops, Pleasure walking, Dog</u>		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>PRIVATE PROPERTY</u>		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

—

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? * ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:

Any Further Information which you consider to be relevant:

The People who use this path are mature and responsible. It is difficult to understand why the owners want to stand in our way after all these years.

* Delete as appropriate

Signature: C. Wright

Date: 20.9.03

Signature of Person Taking the Statement: [Signature]

Date: 20.9.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.

Appendix 7

Location map

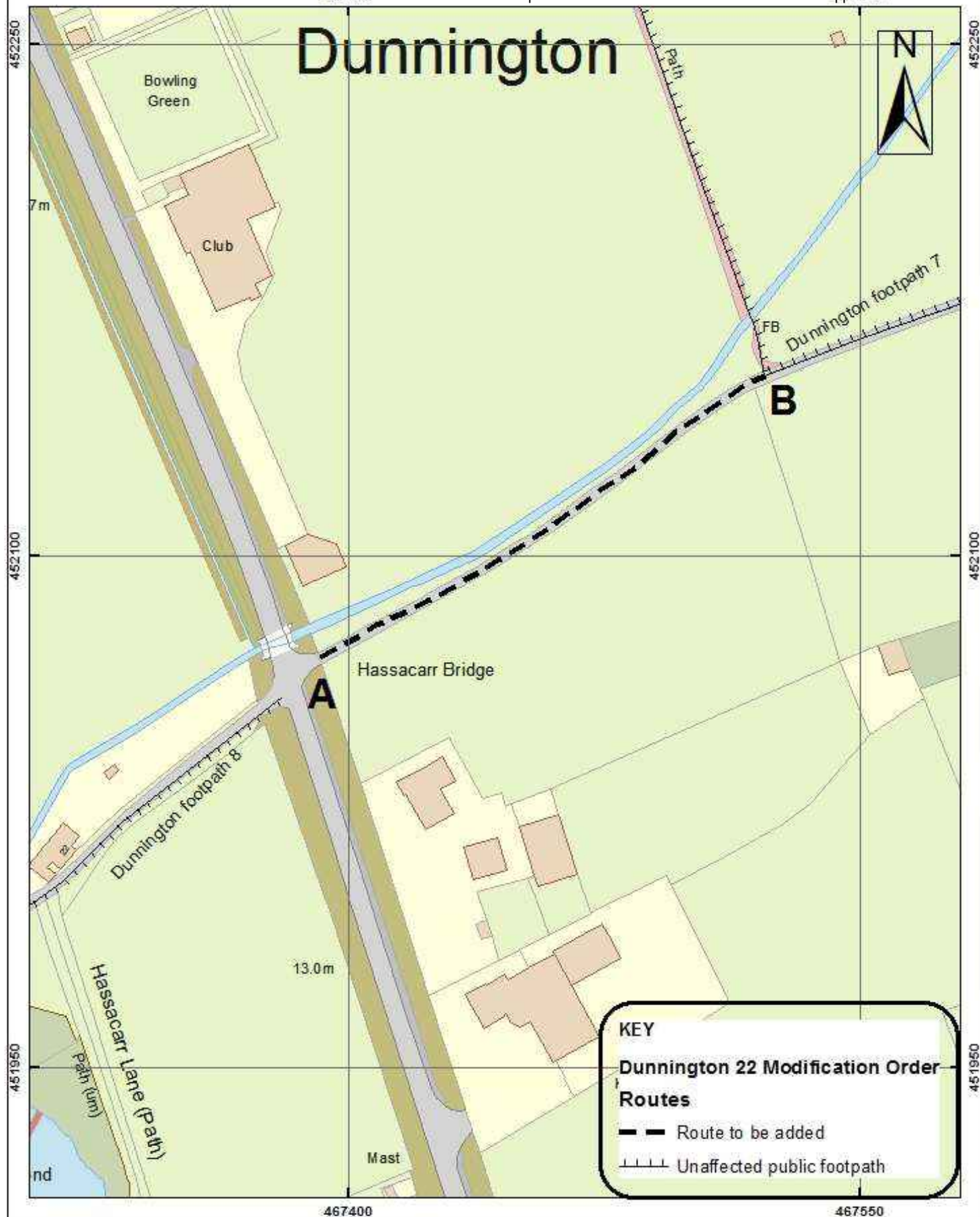
STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

467400

Location map

Appendix 7

Dunnington



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Scale 1:1,500

Drawn By: LRG

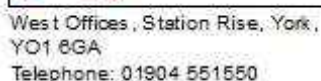
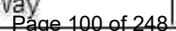
Date: 17/5/21

Public Rights of Way

Reference:

Drawing No.

Contains Ordnance Survey data © Crown copyright and database right 2021



200401 Dunnington Common Road to FP 7
Location

Date: 17/12/21

Drawing No.

Contains Ordnance Survey data © Crown copyright and database right 2021

Appendix 8

Applicant details

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

NAME AND ADDRESS OF APPLICANT

Dunnington Parish Council

Of 22 Hunters Close

Dunnington

York

YO19 5QH

As of 2022 the Parish Clerk is now

Jessica Bedford

15 Wistowgate

Cawood

Selby

YO8 3SH

Appendix 9

Confirmation of Support

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

CONFIRMATION OF SUPPORTING THE CONFIRMATION OF THE ORDER

Following the Decision Session – Executive Member for Transport (City of York Council) the OMA is supporting the confirmation of the order.

Appendix 10

Health and Safety questionnaire

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Health and safety at the site questionnaire

The Inspector will visit the site and will need to know what safety equipment and protective clothing to bring. The following questions indicate the type of information the Inspector will need about the site. Please supply any additional information on a separate sheet of paper.

1. Is the site uneven or does it present any other known risks? Is special footwear or any other Personal Protection Equipment required?

The route follows a gravel access track in Dunnington. Normal outdoor clothing and shoes will be adequate. The route runs beside a stream ditch so normal water safety measures should be observed.

2. Is there any likelihood of exposure to pets or other animals which may present a risk to the safety of the Inspector?

The OMA does not think there is a likelihood of exposure to animals other than daily dog walkers on route as any farm animals nearby would be on the other side of the fence.

3. Is the site remote and/or can it be seen from other highways or rights of way?

The site is not remote it is in the villages of Dunnington very easily accessed from the A1079 and Common Road highway.

4. Does the site have a good mobile phone signal or is there easy access to a public telephone should the emergency services be required?

There is adequate mobile telephone coverage.

5. Is the right of way easily accessible? Will arrangements for access by the Inspector need to be made in advance?

As the route is between a highway and another public footpath. No arrangements for access to the order route will be necessary.

6. Are there any dangerous pieces of equipment or substances stored at any point along the right of way?

None that the OMA are aware of.

7. If there is any other relevant information which the Inspector should be aware of that is not covered in this questionnaire?

Appendix 11

Inspection Place

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

LOCATION WHERE THE DOCUMENTS CAN BE VIEWED

City of York Council
West Offices,
Station Rise,
YORK
YO1 6GA

01904 551550

Opening Hours

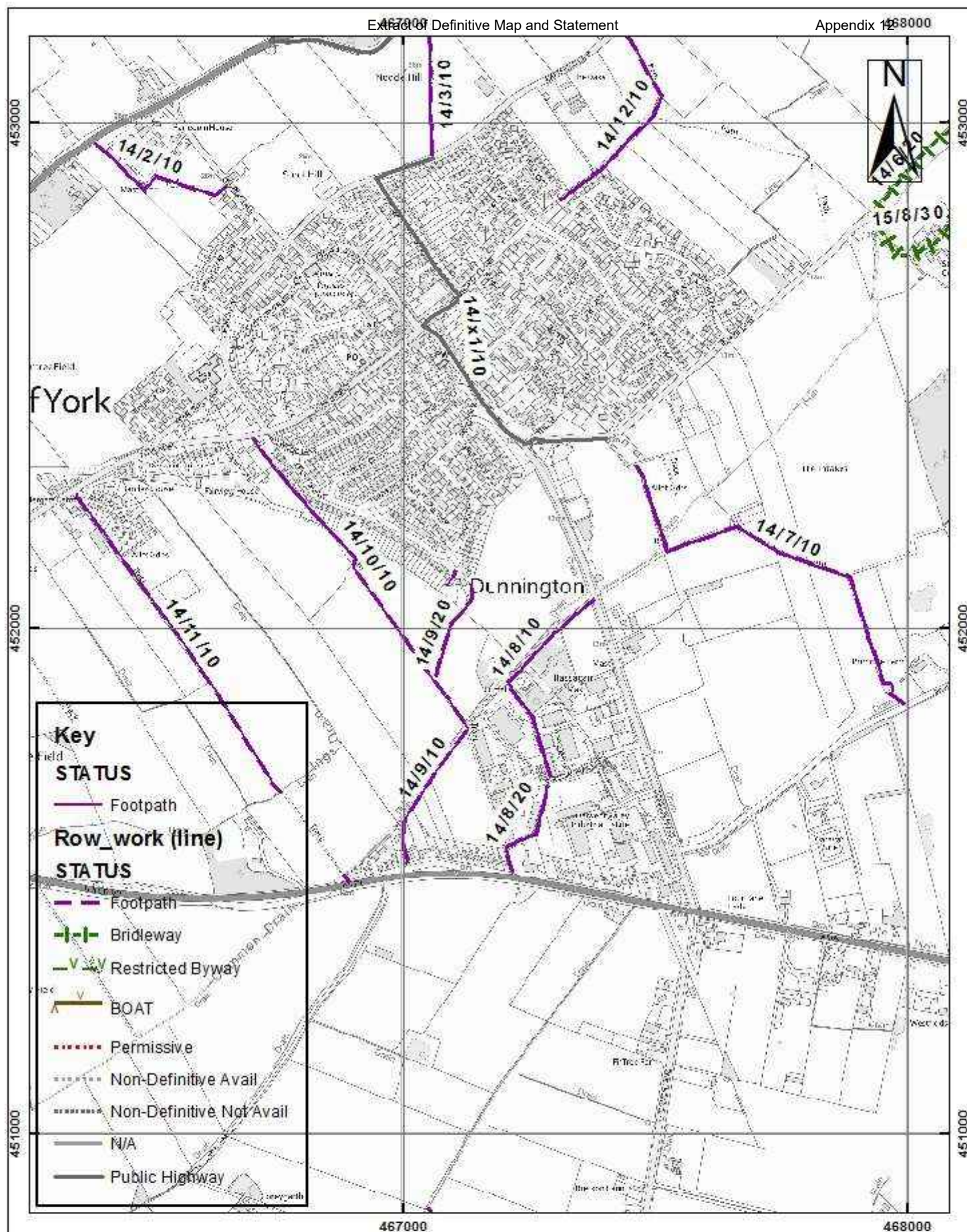
Monday	8.30 am to 5.00 pm
Tuesday	8.30 am to 5.00 pm
Wednesday	8.30 am to 5.00 pm
Thursday	8.30 am to 5.00 pm
Friday	8.30 am to 5.00 pm
Saturday	Closed
Sunday	Closed

Council of the City of York
West Offices,
Station Rise,
YORK
YO1 6GA

Appendix 12

Extract of Definitive Map and Statement

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

Extract of Definitive Map for Dunnington

Scale: 1:10,000

Drawn By: LRG

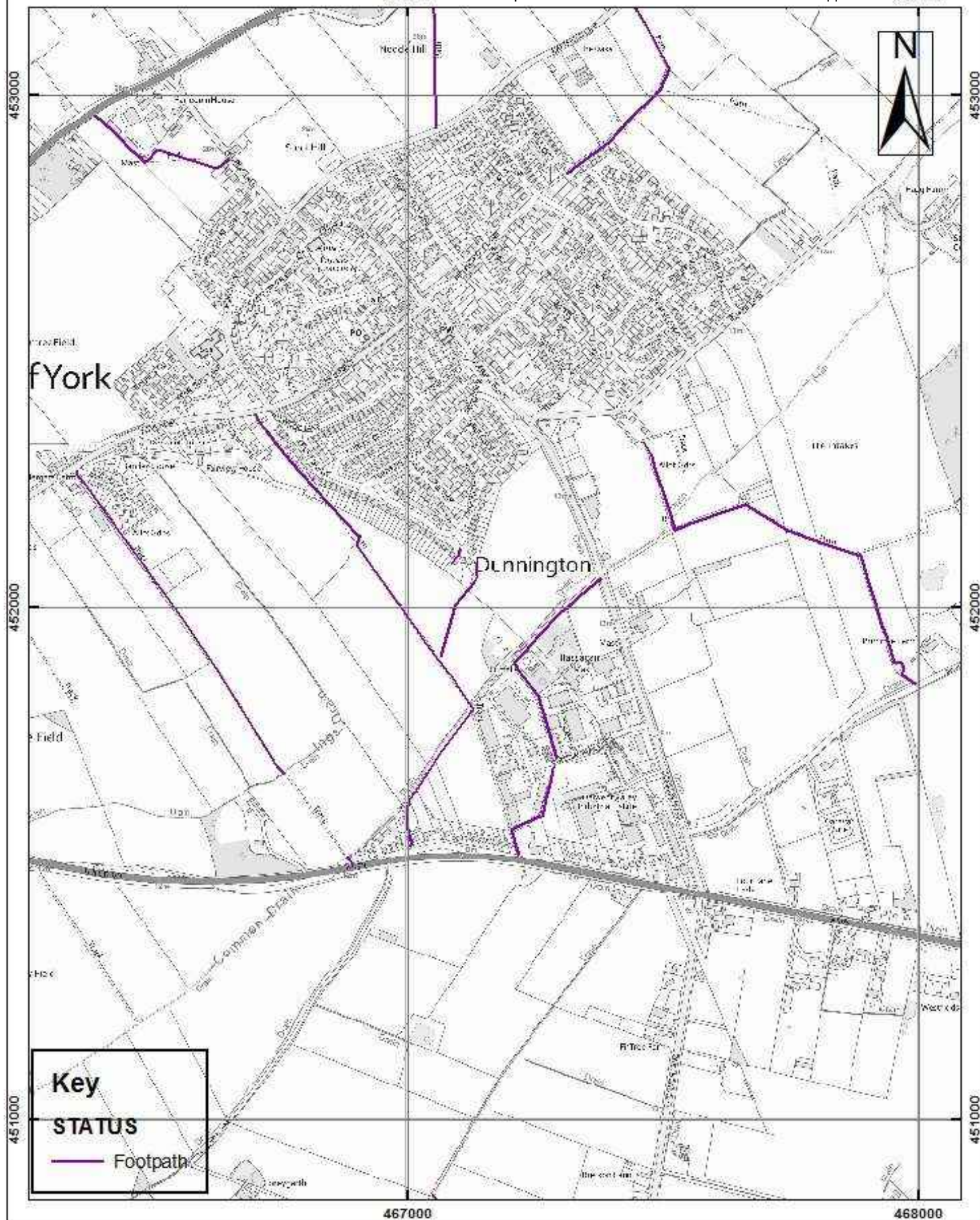
Date: 17/12/21

Public Rights of Way

Reference:

Drawing No.

Contains Ordnance Survey data © Crown copyright and database right 2021



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

Extract of Definitive Map for Dunnington

Scale 1:10,000

Drawn By: LRG

Date: 17/12/21

Public Rights of Way

Reference:

Drawing No.

Contains Ordnance Survey data © Crown copyright and database right 2021

**National Parks and Access to the Countryside Act 1949
Countryside Act 1968**

Relevant date – 30 July 1971

Public Rights of Way

Parish - Dunnington

Former East Riding of Yorkshire now situated inside the area of the Council of the City of York.

Statement as respects public rights of way shown on the Definitive Map for the former East Riding of Yorkshire now situated inside the area of the Council of the City of York.

Right of Way No.	Type	Position	Remarks and limitations affecting the public right of way thereover
1	Footpath	Commences on Dunnington Lane and leads in a north westerly direction to the York - Stamford Bridge Road at a point approximately 130 yards north of Hope Cottage.	
2	Footpath	Commences on Church Balk at a point approximately 165 yards north west of the junction with Stockhill Lane and leads in a south westerly direction for approximately 35 yards then in a north westerly direction across Stockhill to the York - Stamford Bridge Road at a point approximately 150 yards north of the entrance to Holtby Manor.	As diverted by the Diversion of Highways (County of York, East Riding) (No. 2) Order, 1965.
3	Footpath	Commences on Eastfield Lane and leads in a northerly direction to the York - Stamford Bridge Road.	
4	Bridleway	Commences on Eastfield Lane and leads in a north westerly direction by Dunnington Hall to the York - Stamford Bridge Road at Mill Hill.	
5	Footpath	Commences at the bend at the northern end of Eastfield Lane and leads in a northerly direction to the York - Stamford Bridge Road at Holtby	
6	Bridleway	Commences at the north end of Intake Lane and leads in a north easterly direction along Ox Calder Way, also north westerly to Eastfield Lane	Formerly C.R.B.
7	Footpath	Commences south of Intake Lane near to Hollytree Cottage and leads by Nursery Cottage across the Intakes to Hagg Lane.	
8	Footpath	Commences at Hassacarr Bridge at Common End and leads in a generally southerly direction to the York - Hull Road at the Windmill Inn	
9	Footpath	Commences at the south eastern corner of the Paddocks Estate and leads southwards to the railway; and continues from a point approximately 35 yards to the south east southwards over the railway in a generally southerly direction to the York - Hull Road at Blue Hall.	As diverted by the Diversion of Highways (County of York, East Riding) (No. 1) Order, 1966. The Stopping up of Highways (County of York, East Riding) (No. 2) Order, 1968. The Stopping up of Highways (County of York, East Riding) (No. 3) Order, 1969 and the Diversion of Highways (County of York, East Riding) (No. 1) Order, 1966 (Variation) Order, 1969.

**National Parks and Access to the Countryside Act 1949
Countryside Act 1968**

Relevant date – 30 July 1971

Public Rights of Way

Parish - Dunnington

Former East Riding of Yorkshire now situated inside the area of the Council of the City of York.

Statement as respects public rights of way shown on the Definitive Map for the former East Riding of Yorkshire now situated inside the area of the Council of the City of York.

10	Footpath	Commences in York Street opposite the Poplars and leads in a south easterly direction to no. 9.	
11	Footpath	Commences in Dunnington Lane and leads in a south easterly direction along Pit Lane and Poor's Land	Formerly C.R.B.
12	Footpath	Commences approximately 300 yards north east of the junction with Garden Flat Lane and leads in a north easterly direction for approximately 300 yards then north westerly to Eastfield Lane. Known in part as Peter Croft Lane.	
13	Footpath	Commences at the north eastern end of path no. 14 and runs in an easterly direction for approximately 670 yards and northwards for approximately 250 yards.	
14	Footpath	Commences on the Elvington Road opposite Tillmire Drain and runs generally in a north easterly direction along the south east side of Howden - Jury drain to join path no. 13.	
15	Footpath	Commences at the eastern boundary of Rabbit Warrens approximately 400 yards south of White Carr House and runs in a generally western direction to Common Lane near Priest Lane.	
16	Footpath	Commences on the York - Hull Road west of Grimston House and follows the Heslington parish boundary in a south easterly direction to Grimston Grange.	
17	Footpath	Commences at Short Turn in Elvington Lane and leads generally in a south westerly direction to Grimston Grange.	
18	Footpath	Commences at the north side of York Road approximately 80 yards west of Coneygarth Lane and leads north westwards for approximately 20 yards.	
19	Footpath	Commences on the north side of York Road approximately 60 yards west of Scoreby Lodge and leads in a north westerly and northerly direction to Cottage Plantation.	

Appendix 13

Initial consultation replies

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Archived: 21 December 2021 10:56:24

From: [David or Enid Nunns](#)

Mail received time: Fri, 8 Nov 2019 17:22:33

Sent: Fri, 8 Nov 2019 17:22:14

To: [Varley, Russell](#)

Subject: 200401 Dunnington Common Road to FP.7

Sensitivity: Normal

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

We support this claim.

The route starts on Common Lane, opposite to the start of FP.8, continuing approximately half way along the track to meet FP.7.

It appear to have been used by the public for many years.

I believe the former MP Frank Dobson lived in the cottage at the end of the track.

David Nunns
York Ramblers

Archived: 21 December 2021 10:56:48

From: [Catherine Shawyer](#)

Mail received time: Tue, 19 Nov 2019 18:46:37

Sent: Tue, 19 Nov 2019 18:47:02

To: [Varley, Russell](#)

Cc: [Parish Council Dunnington](#)

Subject: Application to Record a Footpath between Dunnington Footpath 7 and Common Road

Sensitivity: Normal

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr Varley

I would like to express my support for an order to be made to record this route as a footpath on the definitive map. This email is building on the initial request submitted by Dunnington Parish Council in 2004 and in addition to any other evidence of use data you already have.

I have lived in Dunnington for 23 years and must confess that I have only recently become aware that this route is not already a footpath. At all times when I have used this route I have never found an access gate closed or encountered any access issues.

I have walked the route many times over those years and believe it makes sense that the route is designated as a footpath as it links up with other paths around the village. If paths link up, this means, of course, that walks can be circular rather than linear and therefore walks can be more varied. If walks are more attractive because they are more varied, this should encourage more people to undertake them. Given various concerns currently in society, such as decreased levels of physical activity, increasing levels of social isolation and increasing mental ill health, I believe it is important that existing opportunities for people to walk freely are protected and indeed, if possible, increased. I do understand that land is often owned by individuals and perceived by them as an asset which needs to be protected, but people walking up and down what is already in effect a hard surface, single track road are not going to cause damage. For dog walkers, and I am indeed a dog owner, there is already a dog bin at the end of this route on Common Road. In all the time I have used this route I have never seen discarded dog bags or indeed any other litter.

Given what I have written here and any further new evidence of use data which results from a recent notification being placed on the website of Dunnington Parish Council that you are now looking into this application, as well as the historic evidence of use you already have, I hope that in the very near future, City of York Council will make an order to record this route as a public footpath on the definitive map.

Thank you for your attention to this matter.

Kind regards

Mrs Catherine Shawyer
4 Petercroft Lane
Dunnington
YO19 5NQ

Archived: 21 December 2021 10:57:10

From: [Pat Berger](#)

Mail received time: Wed, 20 Nov 2019 12:57:37

Sent: Wed, 20 Nov 2019 12:57:25

To: [Varley, Russell](#)

Subject: Designate a public right of way.

Sensitivity: Normal

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

I would like to support the parish council in designating a public right of way between footpath 7 and footpath 8. I use this path on a regular basis. I know if you wish to return to the village you have the alternative of walking on Common road. It is not a pleasant experience these days a complete disregard of the "30" sign coupled with a deluge from the large sheets of water that gather is not my idea of fun. Also you have the option of a continuation of your walk by crossing the road to Hassacarr.
Hoping for a successful outcome.

Pat Berger (Mrs)

Archived: 21 December 2021 10:57:30

From:

To:

Subject: RE: Designate a public right of way.

Sensitivity: Normal

Attachments:

02.Completing your UES.pdf 00401 Dunnington UES.pdf

Dear Mrs Berger,

Thank you for your email regarding the path between Common Road and footpath 7. Please could you complete and return the attached user evidence statement? I have attached our guidance notes for completing a user evidence statement for your reference.

Kind regards

Russell Varley | Definitive Map Officer

t: 01904 553691 | e: russell.varley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

www.york.gov.uk | facebook.com/cityofyork | [@CityofYork](https://twitter.com/CityofYork)

From: Pat Berger <patberger54@gmail.com>

Sent: 20 November 2019 12:57

To: Varley, Russell <Russell.Varley@york.gov.uk>



Subject: Designate a public right of way.

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

I would like to support the parish council in designating a public right of way between footpath 7 and footpath 8. I use this path on a regular basis. I know if you wish to return to the village you have the alternative of walking on Common road. It is not a pleasant experience these days a complete disregard of the "30" sign coupled with a deluge from the large sheets of water that gather is not my idea of fun. Also you have the option of a continuation of your walk by crossing the road to Hassacarr.
Hoping for a successful outcome.

Pat Berger (Mrs)

Archived: 21 December 2021 10:58:02

From:
To:
Subject: RE: Application to Record a Footpath between Dunnington Footpath 7 and Common Road
Sensitivity: Normal
Attachments:
[200401 Dunnington UES.pdf](#)  [2.Completing your UES.pdf](#) 

Dear Mrs Shawyer,

Thank you for your email regarding the path between Common Road and footpath 7. Please could you complete and return the attached user evidence statement? I have attached our guidance notes for completing a user evidence statement for your reference.

Kind regards

Russell Varley | Definitive Map Officer
t: 01904 553691 | e: russell.varley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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From: Catherine Shawyer <catherineshawyer@gmail.com>
Sent: 19 November 2019 18:47
To: Varley, Russell <Russell.Varley@york.gov.uk>
Cc: Parish Council Dunnington <parish.clerk@dunningtonparishcouncil.org.uk>
Subject: Application to Record a Footpath between Dunnington Footpath 7 and Common Road

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr Varley

I would like to express my support for an order to be made to record this route as a footpath on the definitive map. This email is building on the initial request submitted by Dunnington Parish Council in 2004 and in addition to any other evidence of use data you already have.

I have lived in Dunnington for 23 years and must confess that I have only recently become aware that this route is not already a footpath. At all times when I have used this route I have never found an access gate closed or encountered any access issues.

I have walked the route many times over those years and believe it makes sense that the route is designated as a footpath as it links up with other paths around the village. If paths link up, this means, of course, that walks can be circular rather than linear and therefore walks can be more varied. If walks are more attractive because they are more varied, this should encourage more

people to undertake them. Given various concerns currently in society, such as decreased levels of physical activity, increasing levels of social isolation and increasing mental ill health, I believe it is important that existing opportunities for people to walk freely are protected and indeed, if possible, increased. I do understand that land is often owned by individuals and perceived by them as an asset which needs to be protected, but people walking up and down what is already in effect a hard surface, single track road are not going to cause damage. For dog walkers, and I am indeed a dog owner, there is already a dog bin at the end of this route on Common Road. In all the time I have used this route I have never seen discarded dog bags or indeed any other litter.

Given what I have written here and any further new evidence of use data which results from a recent notification being placed on the website of Dunnington Parish Council that you are now looking into this application, as well as the historic evidence of use you already have, I hope that in the very near future, City of York Council will make an order to record this route as a public footpath on the definitive map.

Thank you for your attention to this matter.

Kind regards

Mrs Catherine Shawyer
4 Petercroft Lane
Dunnington
YO19 5NQ



Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Mr & Mrs Jewitt
43 Common Road
Dunnington
York
YO19 5PA

Our Ref:
Date: 25 September 2019
Email: rightsofway@york.gov.uk

Dear Mr & Mrs Jewitt,

Section 53 Wildlife and Countryside Act 1981 – Application to record a public right of way between Common Road and footpath 7 Dunnington, York.

Thank you for your time on the telephone earlier today. Please find enclosed the promised guidance material. In addition I have included a copy of the letter sent to your previous address in Old Earswick for your records.

As I said on the telephone, now we have an up to date address, you will be kept informed about anything that happens on this case. If you want to have copies of any information please let me know and I will organise that for you.

Please get in touch if you have any further queries and I look forward to talking to you again in the future.

Yours sincerely

A handwritten signature in black ink, appearing to read 'RV', followed by a small mark.

Russell Varley
Definitive Map Officer

Archived: 21 December 2021 11:20:05

From: [REBECCA KAY](#)

Mail received time: Tue, 28 Apr 2020 12:58:23

Sent: Tue, 28 Apr 2020 11:50:51

To: [Varley, Russell](#)

Subject: Re: 200401 Dunnington - Common Road to FP7

Sensitivity: Normal

Attachments:

[Right of way objection.docx](#) 

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Good afternoon Russell,

Thank you for your recent emails but I think they referred to case number 199712 near Hagg Wood, which is not of particular interest to me. However, I'm concerned that I miss the opportunity to object to the track from Common Road up to Strawberry Cottage being completely made a right of way, although I haven't seen any notices as yet. In view of this I've attached a statement confirming that I do regular close the gate to the track throughout the year and my reasons for doing this, together with a couple of photos.

I would ask that my comments be placed on file and be taken into account as a formal objection against 200401.

Many thanks

Rebecca Kay

On Friday, 29 November 2019, 11:19:46 GMT, Varley, Russell <russell.varley@york.gov.uk> wrote:

Dear Ms Kay

Thank you for your phone call this morning. Here is the guidance I promised. As I said on the telephone, CYC haven't yet decided whether to make an order at this stage. If an order is made then a full consultation will be done which includes notices at each end of the route, an advert in the paper as well as writing to everyone who is connected to the case.

I have put your email address on the consultation list for this case so you will receive the documentation as soon as it is available.

Kind regards

t: 01904 553691 | e: russell.varley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service

Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA

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29 Cedar Glade

Dunnington

York

YO19 5PL

Determination of DMMO application 200401 Dunnington – Common Road to footpath 7

Objection stated by Rebecca Kay dated 28th April 2020

For over 30 years I have kept horses and other livestock in the first field to the left of the track as you look down from Common Road to Strawberry Cottage. I originally rented the field from Mrs Murray when Strawberry Cottage was divided into two properties. Following her death the property was returned to a single residence and my rental agreement was with Frank and Janet Dobson who were the owners, and now just with Janet Dobson since her husband's recent death. I have been given permission to use the route to the field by the past and present owners of Strawberry Cottage and by Graham Jewitt.

I visit the field at least twice a day, often more when weather conditions dictate the animals require extra attention, therefore I can give an accurate statement regarding the access of this track. I have felt the need to close the gate at different times during the year to prevent access and to also deter outsiders from wandering from Common Road down the track. This is because I find a field with horses in, especially cute miniature shetlands as these now are, attract attention, especially from children and also from the travelling community. I also store food stuff and equipment that I need for all of the animals on site, which has 'gone missing' on occasions.

The location of the track is immediately adjacent to Dunnington & Grimston Sports Club which often results in an overflow of vehicles entering the track in search of parking due to the fact the sports club has very little parking space of its own. When larger sporting events are held at the club, especially cricket matches in summer, I close the large gate at the entrance to the track early in the day to avoid the risk of vehicles parking down it. This is because in summer the field is cut for hay which is ruled by good weather, so we need to be able to have access for the tractor and equipment at short notice so can't risk being hindered by abandoned vehicles as the track is narrow with a steep drop to the side due to it running alongside the beck.

Dunnington Gala was held in summer for many years at the Dunnington & Grimston Sports Club. It was an extremely popular event but car parking was at a minimum, so again, to deter unwanted vehicles blocking the track and also to prevent outsiders wandering down the track and discovering the horses kept in the field, I always closed the large gate at the entrance from Common Road to stop access. The gala wasn't held for a few years, and then was replaced by Dunnington Fayre and was again held at the sports club until 2014, when it was then transferred to land down Intake Lane, so the gate was definitely closed by myself up to 2014 for this event alone, once a year.

Also, a bonfire and firework display was held in the past on the field opposite the sports club, again I always closed the gate because of unwanted vehicles, but also as an extra precaution in case livestock were spooked by the fireworks and got out of their enclosures. The closed gate prevented any loose animals getting on to Common Road and then onto the A1079.

In recent years Mr & Mrs Dobson have had their main residence in London and have used Strawberry Cottage for short breaks. Unfortunately, a few years ago Mrs Dobson became very poorly resulting in them spending very little time at their Dunnington address. As I park directly outside their cottage when I attend my horses, they asked me to keep an eye on the property for them. However, they were targeted by thieves approximately 2-3 years ago and had a large quantity of heating oil stolen, and on another occasion had their outbuildings broken into. A further theft occurred when Mr Dobson was alone in the house, an intruder walked into his kitchen and stole personal items, one of which was his wallet. In view of these events and the fact they had specifically asked me to look after their property in their absence, I regularly closed the main gate, and still do, at around 8.00pm on an evening and open it again when I feed the horses before I go to work, between 6.15am and 7.00am, depending on the time of year. It takes 2 minutes to close the gate and it gives me extra piece of mind when I go home knowing the gate is closed, but I always ensure it is opened early before I leave for work the next day so that the postman and refuse lorries can still access the track to Strawberry Cottage.

I have also experienced thefts and vandalism at the field where my animals are kept in the past, so it is beneficial for me to close the gate as an extra precaution. My sons have had livestock stolen from enclosures that only people could have opened and closed and it is likely that the thieves used a vehicle to put them in.

In addition to these instances, my fence was driven into by a vehicle a few years ago and one of the horses escaped but luckily stayed near the other horse that remained in the field. The fence had to be completely replaced and one of the allotment holders said he had seen a strange vehicle going down the track that morning. I reported this incident and Farm Watch notices were then displayed and this in turn also encouraged me to close the gate on an evening to deter unwanted visitors.

I have attached two photos showing the gate when closed and as you will see it has a large padlocked chain. Ramblers and dog walkers don't usually access the track at the times I close it because as I previously mentioned, it is closed late evening, and then opened early on a morning before I leave for work so the postman/refuse lorry isn't affected. However, since we have been experiencing the lockdown and there are now many more people taking their 'one hours exercise' at all times of day, I have not restricted their access at all. This is also due to the fact Mrs Dobson is staying at Strawberry Cottage indefinitely due to the lockdown and so would contact me if there was a problem with any of the animals. It may sound as though I am over cautious/protective towards the livestock we keep in the field, but over the past 30 years I have had so many incidents causing me to either contact the police, contact the local primary school as some children were actually seen in the field on a number of occasions or we've had livestock stolen/killed and property taken so this is why I take these precautions.

In addition to me closing the gate at certain times during each year I am also aware that Graham Jewitt, who owns the track, has need to close the gate onto Common Road throughout the year for occasions such as when he moves his sheep between his fields and it is easier to run them down the track rather than collect them by trailer. He also gives me prior warning when he intends to lock the gate on a Saturday evening until early Monday morning, which occurs approximately twice a year.

Please do not hesitate to contact me should you require any further information.

Regards

Rebecca Kay

Archived: 21 December 2021 14:58:13

From: [Mark Warters](#)

Mail received time: Mon, 9 Dec 2019 09:48:08

Sent: Mon, 9 Dec 2019 09:47:58

To: [Varley, Russell](#)

Cc: [Cllr. M. Rowley](#); [Simpson, Shirley](#); [Benton, Cindy](#); [Parish Council Dunnington](#); [Kexby Parish Council](#)

Subject: Re: Determination of 3 definitive map modification order applications in Osbaldwick and Derwent Ward

Sensitivity: Normal

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Morning Russell,

I have no objections providing all legal processes with regard to proposers and land owners have been followed and all parties have had the opportunity to fully present their cases, which to date does not appear to be the case.

Please indicate if this is CYCs final position regarding these PROWs and that PROW officers will be available early in the new year to explain the position to members of the public in Dunnington and Kexby.

Thanks,
Mark.

Regards,

Cllr. Mark Warters

T: [01904 413370](tel:01904413370)

On 6 Dec 2019, at 16:08, Varley, Russell <Russell.Varley@york.gov.uk> wrote:

Good afternoon councillors

Please find attached three decision reports relating to an applications to record a public rights of way on the definitive map within your ward. These reports will be placed before Cllr D'Agorne and a senior officer (the Director of Economy and Place or the Assistant Director of Transport, Highways and Environment) who will determine whether the council will make an order to record these ways.

If you have any comments to make please could you let me have them by 16 December 2019 in anticipation of the meeting the following day? If you have any questions about the applications please get in touch with me.

Many thanks

Russell Varley | Definitive Map Officer

t: 01904 553691 | e: russell.varley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service

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<199712 Kexby Hagg Wood Forestry track 19.docx>

<199712 Kexby Hagg Wood Triangular Field 20.docx>

<200401 Dunnington determination report.docx>

Archived: 21 December 2021 14:58:36

From: [Mark Warters](#)

Mail received time: Tue, 10 Dec 2019 09:05:47

Sent: Tue, 10 Dec 2019 09:05:41

To: [Varley, Russell](#)

Cc: [Cllr. M. Rowley](#); [Simpson, Shirley](#); [Parish Council Dunnington](#); [Kexby Parish Council](#); [Benton, Cindy](#)

Subject: Re: Determination of 3 definitive map modification order applications in Osbaldwick and Derwent Ward

Sensitivity: Normal

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Dear Russell,

Thank you for the explanation of process, I'll ask the PCs to publicise this.

I look forward to you and or other PROW officers further highlighting this when we get another public ward meeting organised in Dunnington.

Thanks,
Mark.

Regards,

Cllr. Mark Warters

T: [01904 413370](tel:01904413370)

On 9 Dec 2019, at 10:16, Varley, Russell <Russell.Varley@york.gov.uk> wrote:

Good morning Cllr Warters

Thank you for your email. You asked about whether these reports were our final position on these applications. These reports only relate to CYC deciding whether an order needs to be made for each application, nothing more. Any orders that do get made will be widely publicised and anyone has the opportunity to provide evidence supporting or refuting the order. As a consequence these cases tend to take on a life of their own and what the final position of anyone involved in the case may not be decided until the final day of a public inquiry or hearing. Ultimately all parties involved go where the evidence leads. I have attached a process chart that shows all the stages an application needs to pass through before a final decision is reached. At the moment all three cases in your ward are between step 4 and step

Kind regards

Russell Varley | Definitive Map Officer

t: 01904 553691 | e: russell.varley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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From: Mark Warters <mark@markwarters.co.uk>

Sent: 09 December 2019 09:48

To: Varley, Russell <Russell.Varley@york.gov.uk>

Cc: Cllr. M. Rowley <Cllr.mrowley@york.gov.uk>; Simpson, Shirley <Shirley.Simpson@york.gov.uk>; Benton, Cindy <cindy.benton@york.gov.uk>; Parish Council Dunnington <parish.clerk@dunningtonparishcouncil.org.uk>; Kexby Parish Council <KexbyPC@outlook.com>

Subject: Re: Determination of 3 definitive map modification order applications in Osbalwick and Derwent Ward

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Morning Russell,

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Please indicate if this is CYCs final position regarding these PROWs and that PROW officers will be available early in the new year to explain the position to members of the public in Dunnington and Kexby.

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Mark.

Regards,

Cllr. Mark Warters

T: [01904 413370](tel:01904413370)

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Transport, Highways and Environment) who will determine whether the council will make an order to record these ways.

If you have any comments to make please could you let me have them by 16 December 2019 in anticipation of the meeting the following day? If you have any questions about the applications please get in touch with me.

Many thanks

Russell Varley | Definitive Map Officer

t: 01904 553691 | e: russell.varley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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<199712 Kexby Hagg Wood Triangular Field 20.docx>

<200401 Dunnington determination report.docx>

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<01.Overview of the DMMO process.pdf>

Appendix 14

All persons notified

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Auto Cycle Union Ltd
ACU House
Wood Street
RUGBY
CV21 2YX

Access and Rights of Way Dept.
The British Horse Society
Abbey Park
Stareton
KENILWORTH
CV8 2XZ

Byways and Bridleways Trust
Burgate Farm
Harwood Dale
Scarborough
YO13 0DS

Open Spaces Society
25A Bell Street
HENLEY ON THAMES
RG9 2BA

The Ramblers
3rd Floor
1 Clink Street
LONDON
SE1 9DG

The British Driving Society
Hoste House
Whiting Street
Bury Saint Edmunds
IP33 1NR

Cyclists' Touring Club
Parklands
Railton Road
GUILDFORD
GU2 9JX

Dunnington Parish Council
43 St. James Close
Rawcliffe
York
YO30 5WL

Mr G. Jewitt & Ms P. Jewitt
43 Common Road
Dunnington
York
YO195PA

Mrs J. Dobson
39 Common Road
Dunnington
York
YO195NZ

Mrs J. Bedford
15 Wistowgate
Cawood
Selby
York
YO8 3SH

Mr G. Jewitt & Ms P. Jewitt
43 Common Road
Dunnington
York
YO195PA

All persons notified

Owner/Occupier
41 Common Road
Dunnington
York
YO19 5NZ

Appendix 14

The Ramblers (York)
BY EMAIL ONLY
den3mil3@talktalk.net

British Horse Society
BY EMAIL ONLY
ccburgatebovey@gmail.com

Byways and Bridleways Trust
BY EMAIL ONLY
bbt@bywaysandbridlewaystrust.org.uk

York Cycling Campaign
BY EMAIL ONLY
yorkcyclecampaign@gmail.com

The Ramblers
BY EMAIL AND RECORDED DELIVERY
Pathorders@ramblers.org.uk

British Horse Society
BY EMAIL AND RECORDED DELIVERY
access@bhs.org.uk

Byways and Bridleways Trust
BY EMAIL AND RECORDED DELIVERY
notices@bywaysandbridlewaystrust.org.uk

Ms R. Kay
BY EMAIL ONLY
rebecca721kay@btinternet.com

Mr J. Dundon
BY EMAIL ONLY
jim_dundon@hotmail.co.uk

Councillor Rowley
BY EMAIL ONLY
cllr.mrowley@york.gov.uk

Councillor Warters
BY EMAIL ONLY
mark@markwarters.co.uk

J. Chainey
BY EMAIL ONLY
The Old School
7 School Lane
Heslington
York
YO10 5EE
jaqchainey88@gmail.com

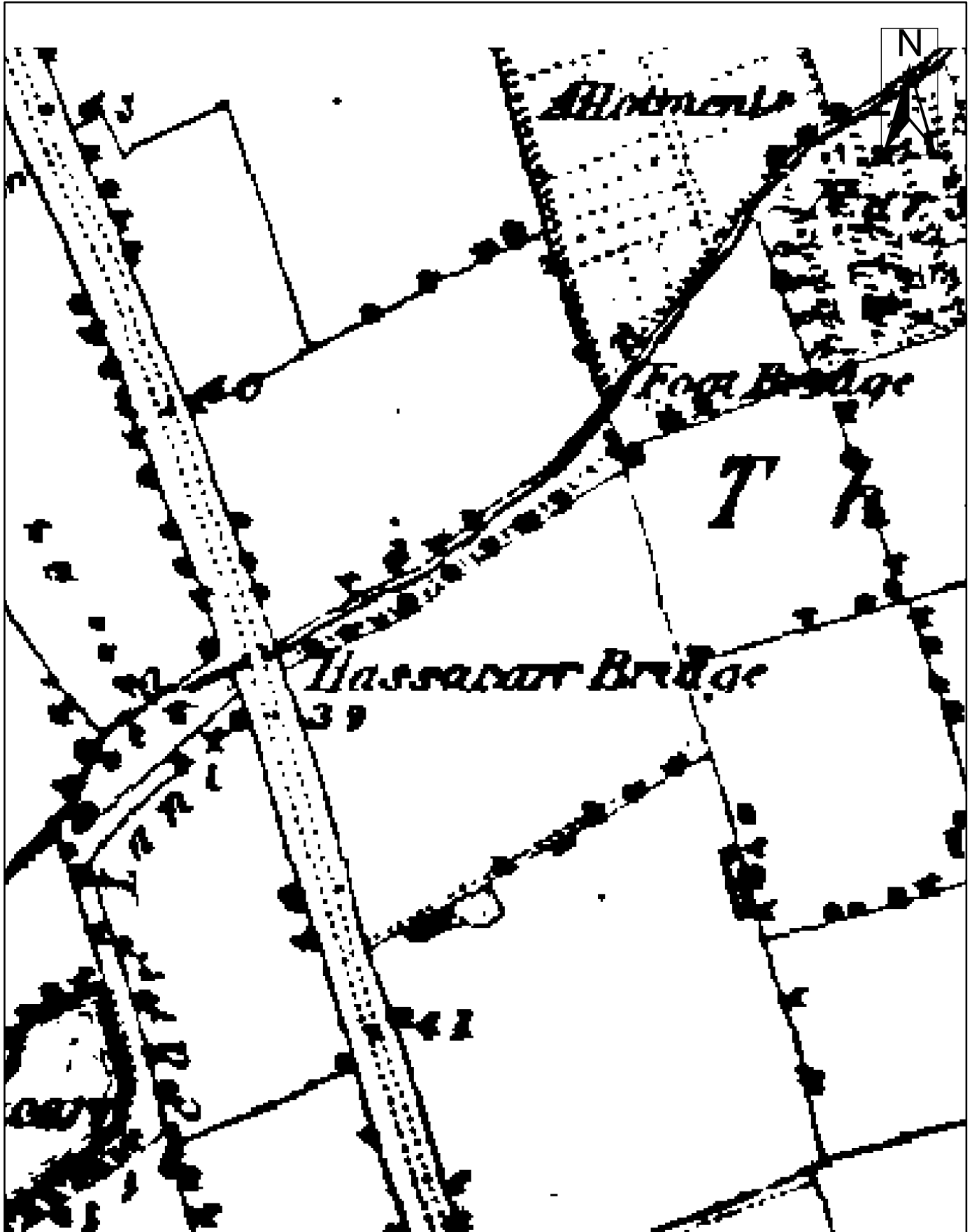
J. Dobson
BY EMAIL AND RECORDED DELIVERY
Strawberry Cottage
39 Common Road
Dunnington
York
YO19 5NZ
janet.dobson22@gmail.com

Andrew Dykes
BY EMAIL ONLY
andrew.dykes@dunningtonparishcouncil.gov.uk

Appendix 15

OS maps

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

1854 OS map 6 inch

Scale 1:2,000

Drawn By:

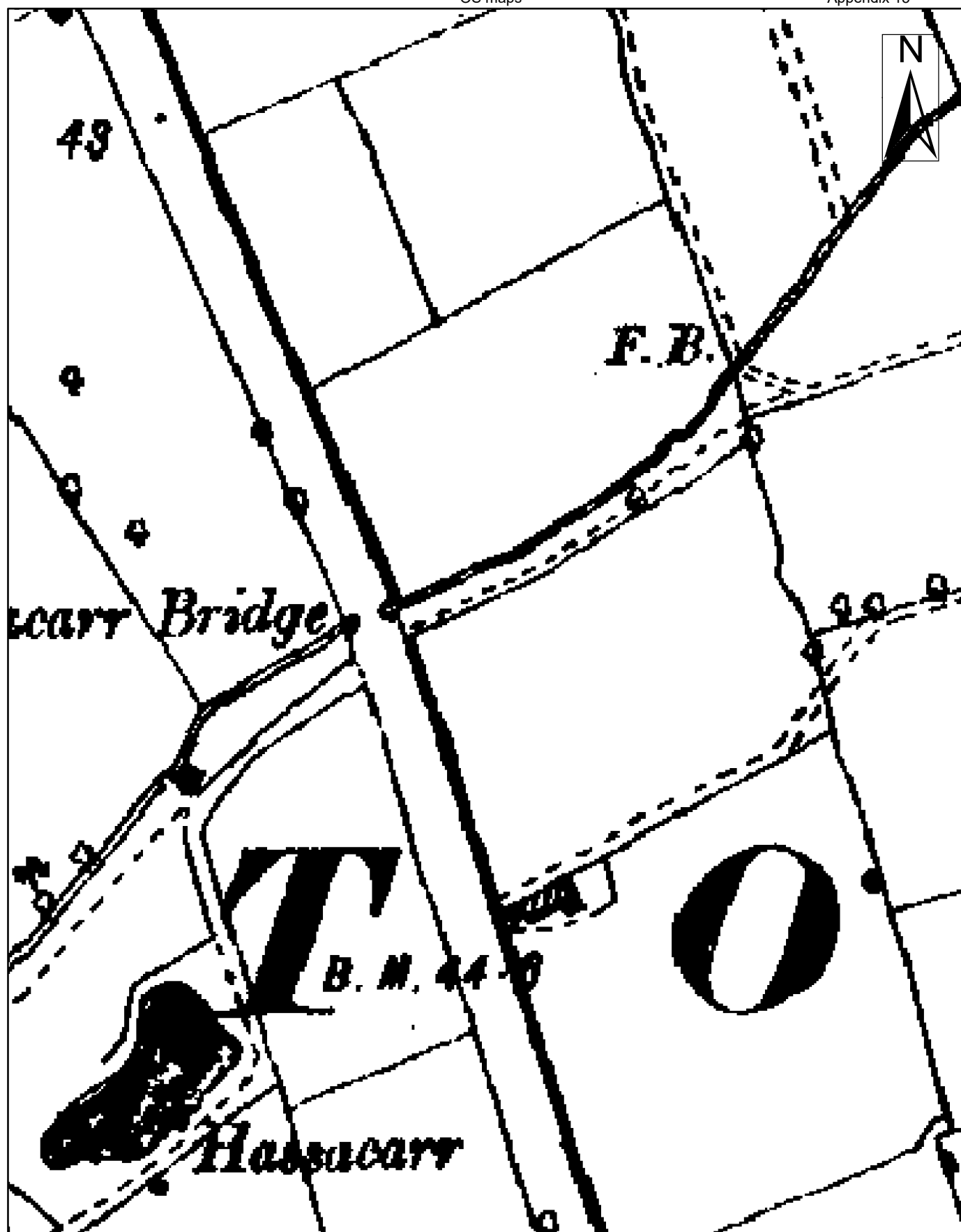
Date:

Public Rights of Way

Reference:

Drawing No.

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

1893 OS map 6 inch scale

Scale 1:2,000

Drawn By:

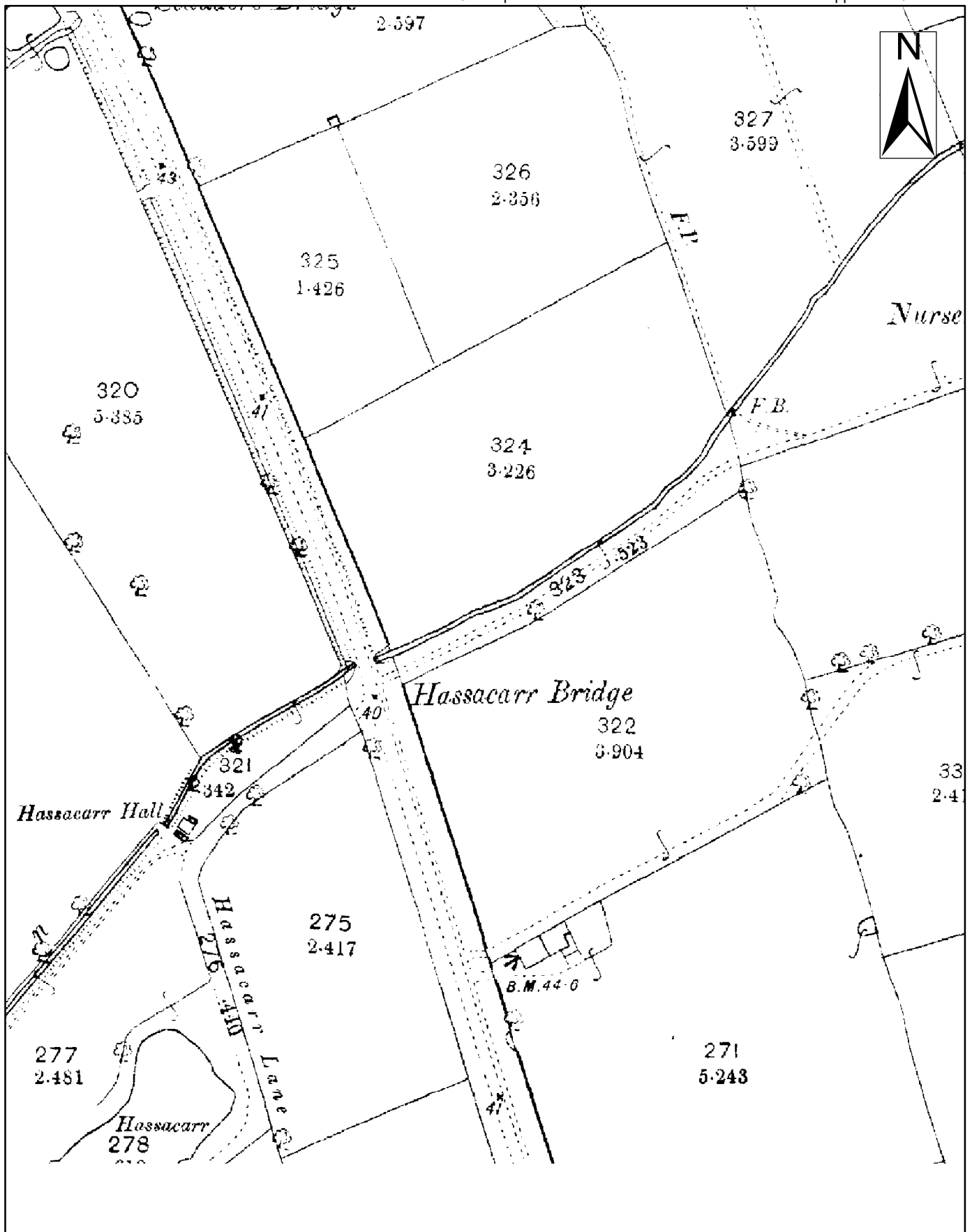
Date:

Public Rights of Way

Reference:

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

1893 OS map 25 inch

Scale 1:2,000

Drawn By:

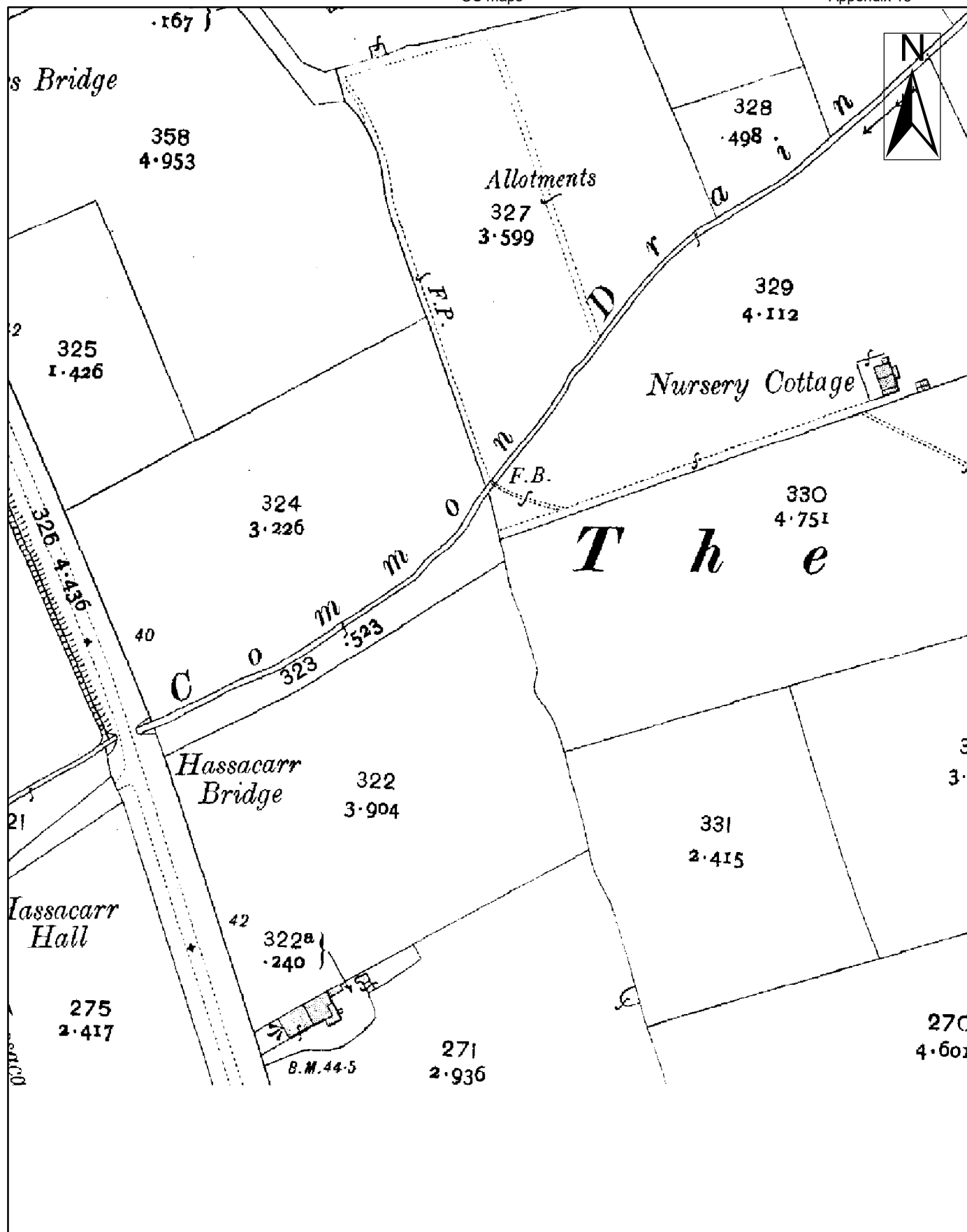
Date:

Public Rights of Way

Reference:

Drawing No.

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

1910 OS map 25 inch

Scale 1:2,000

Drawn By:

Date:

Public Rights of Way

Reference:

Drawing No.

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

1958 OS map 1:10000

Scale 1:2,000

Drawn By:

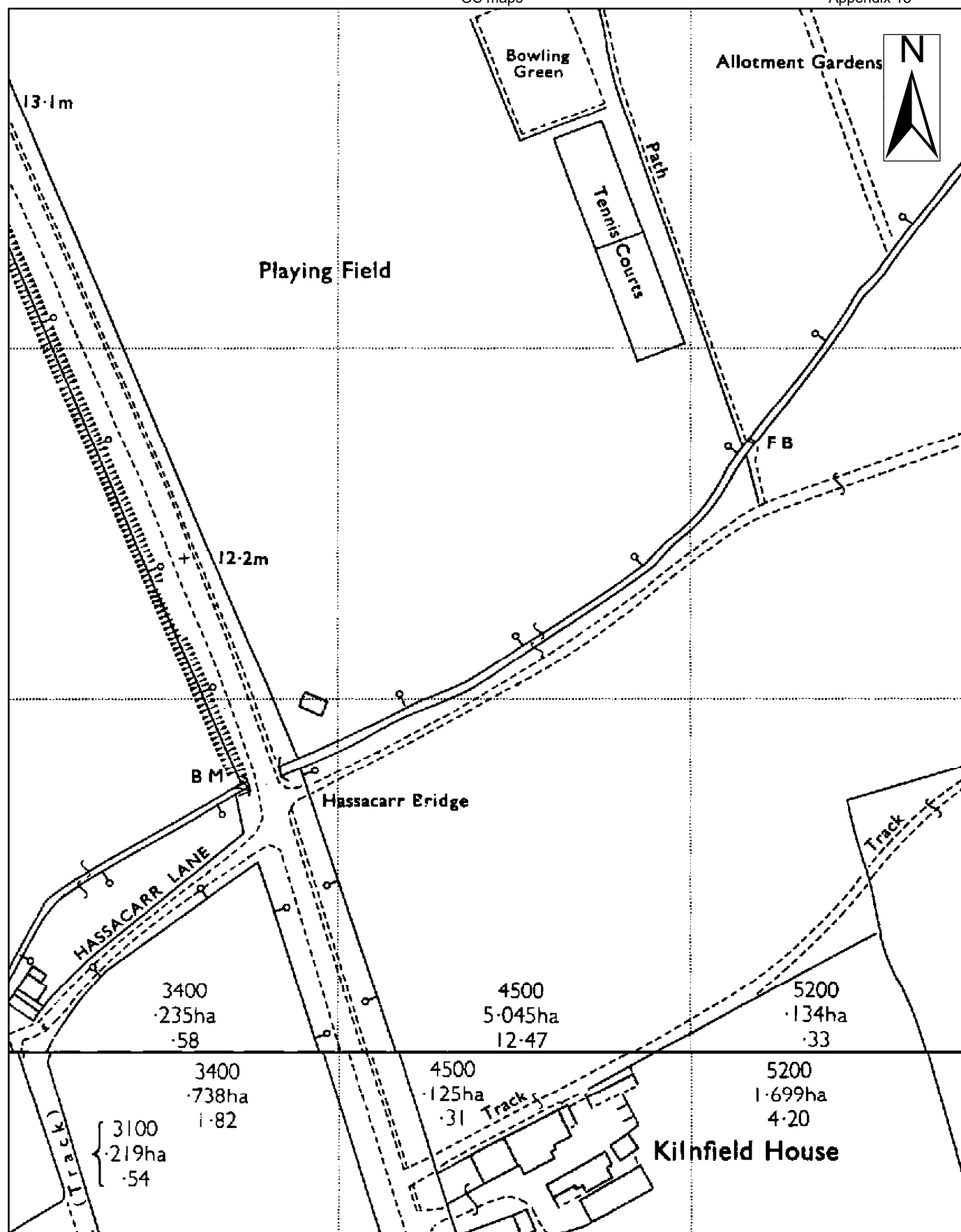
Date:

Public Rights of Way

Reference:

Drawing No.

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

1970 OS map 25 inch

Scale 1:1,500

Drawn By:

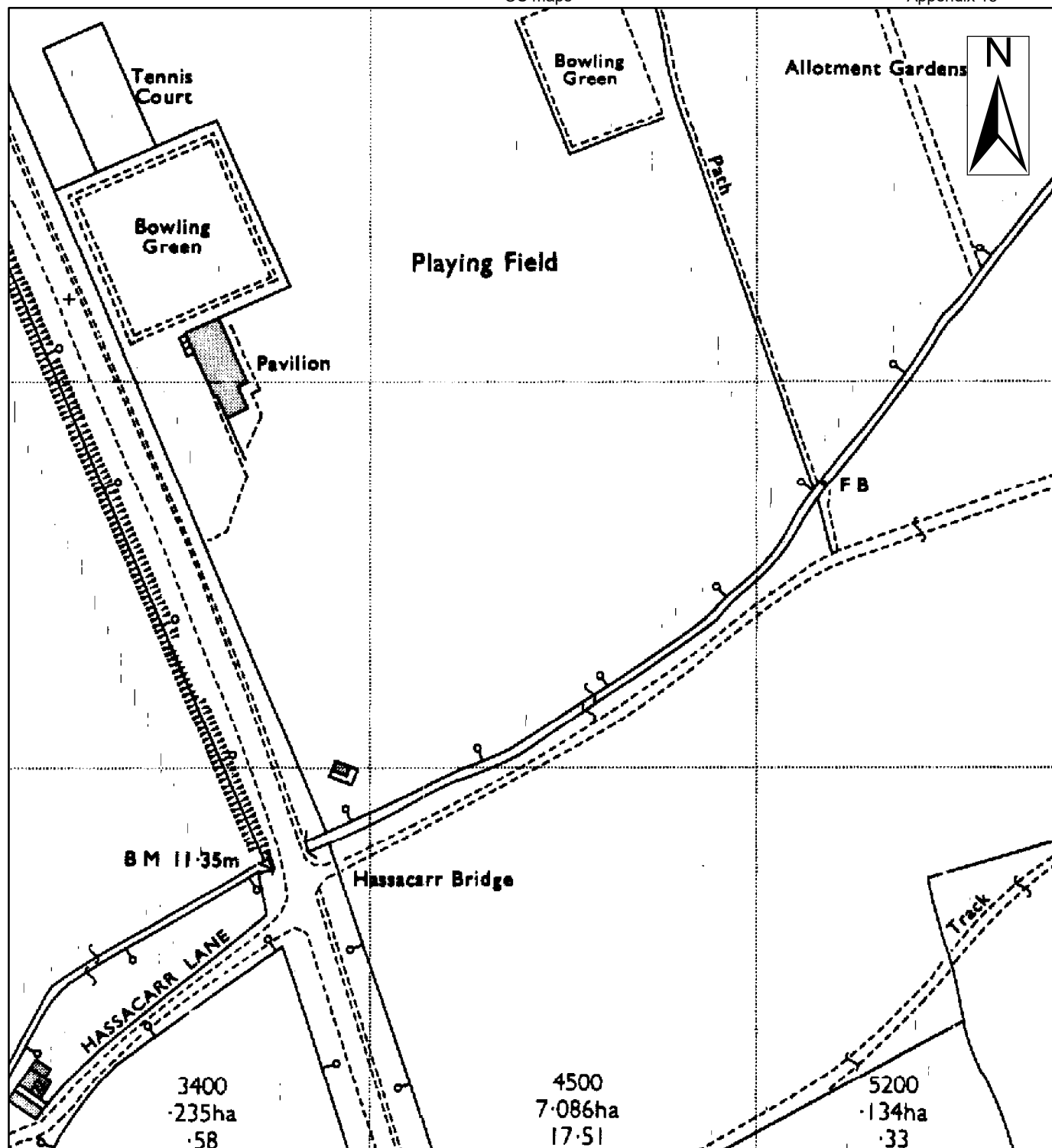
Date:

Public Rights of Way

Reference:

Drawing No.

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

1975 OS map 25 inch

Scale 1:1,500

Drawn By:

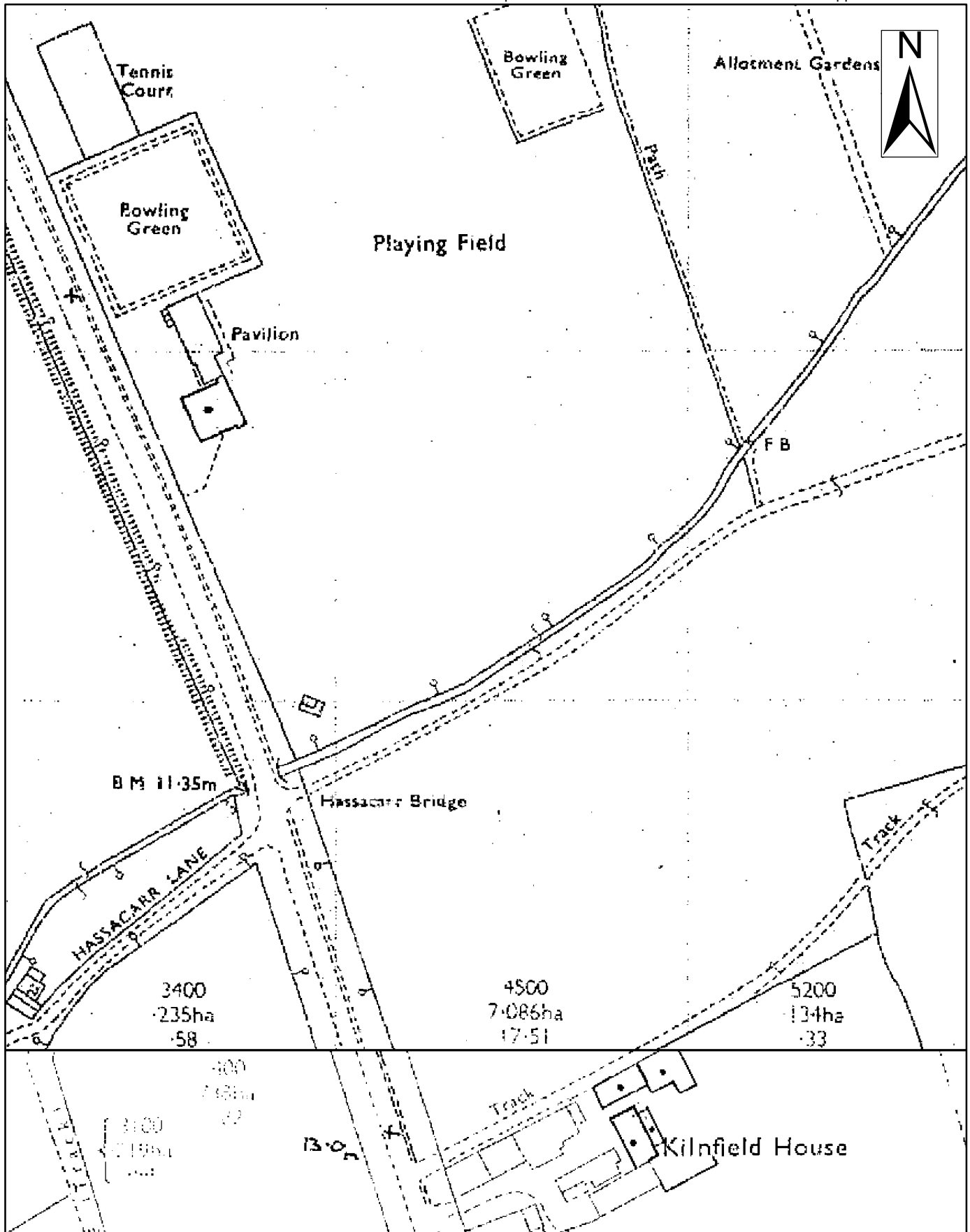
Date:

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Telephone: 01904 551550

1978 OS map 25 inch

Scale 1:1,500

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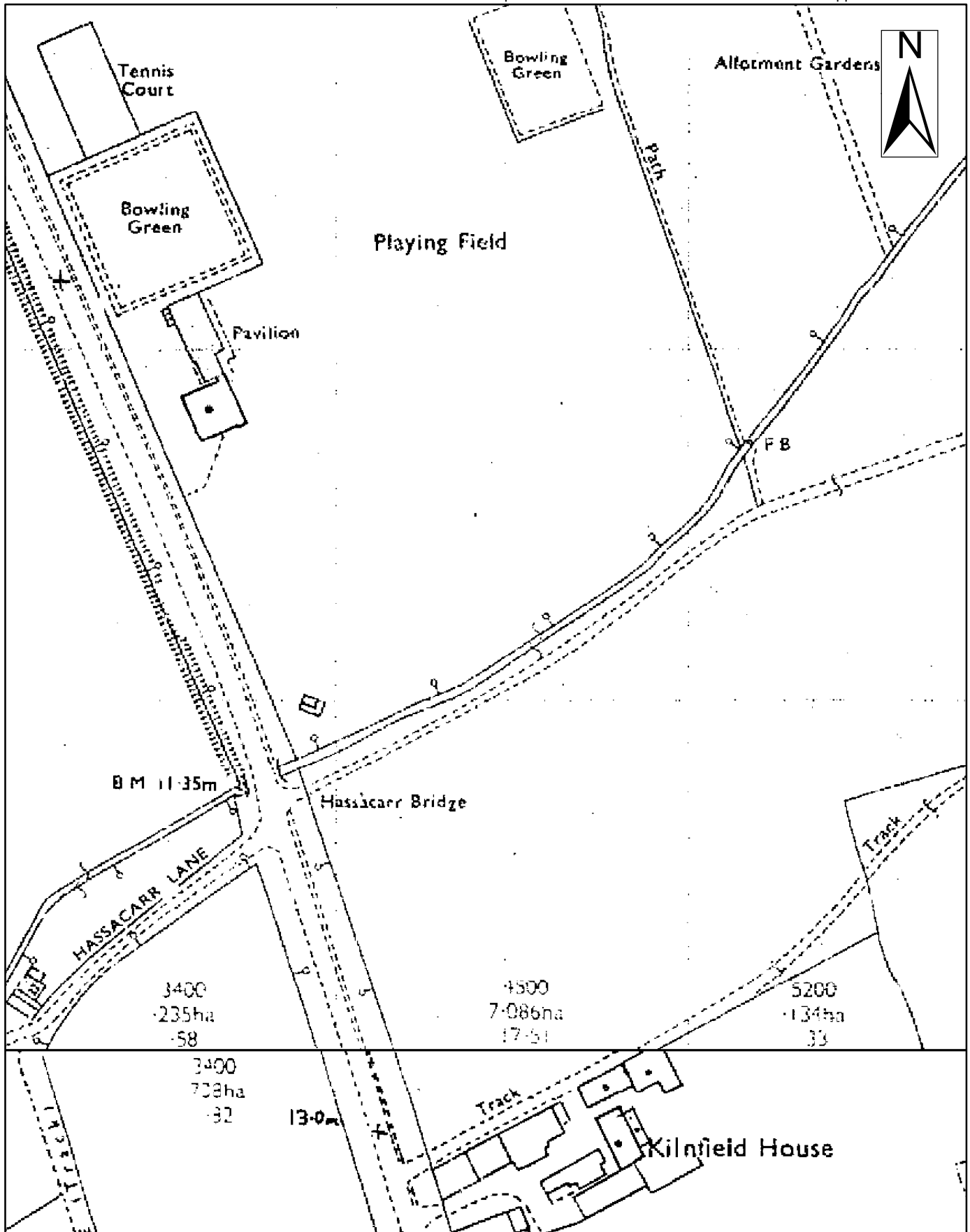
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Telephone: 01904 551550

1980 OS map 25 inch

Scale 1:1,500

Drawn By:

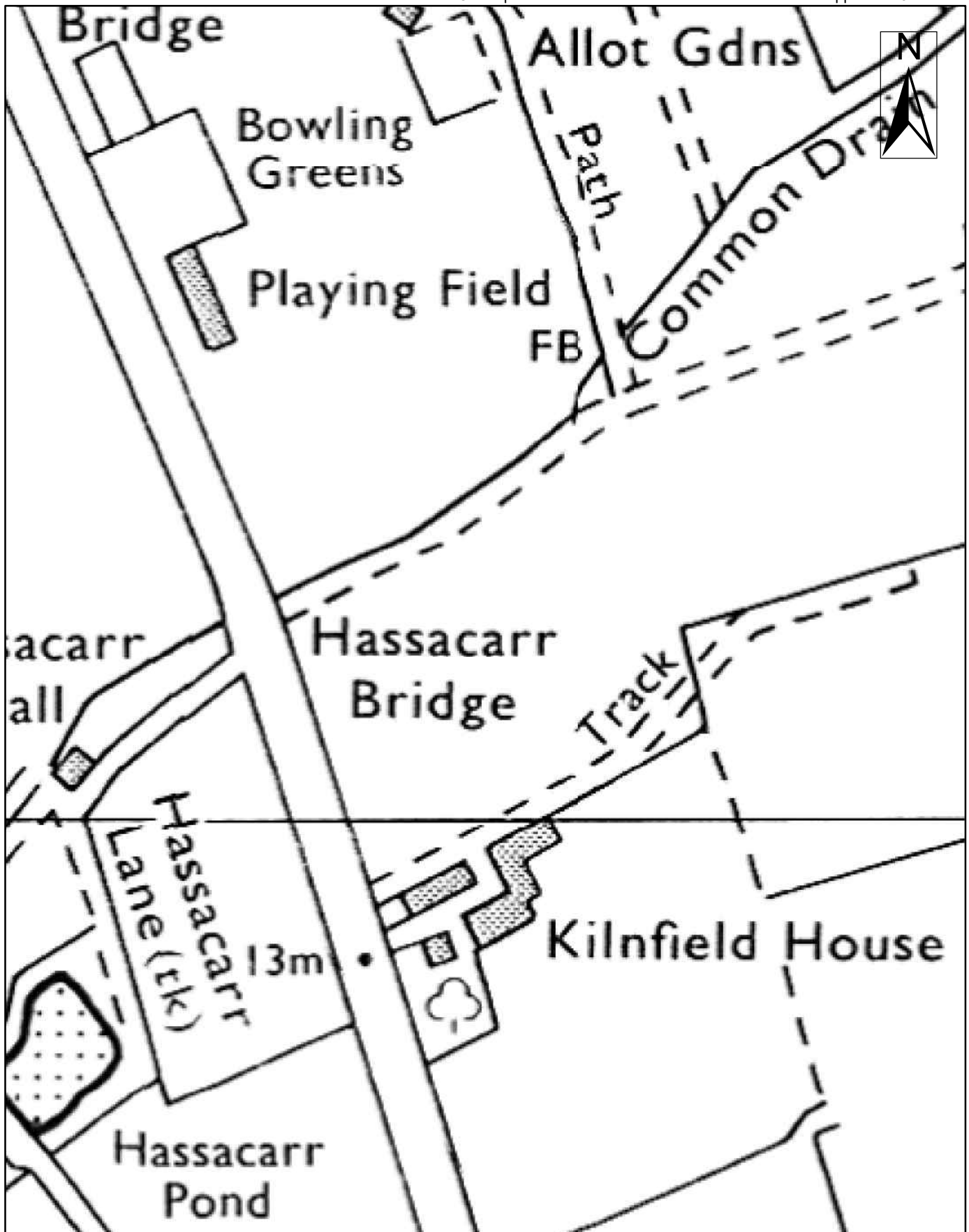
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1984 OS map 1:10000

Scale 1:2,000

Drawn By:

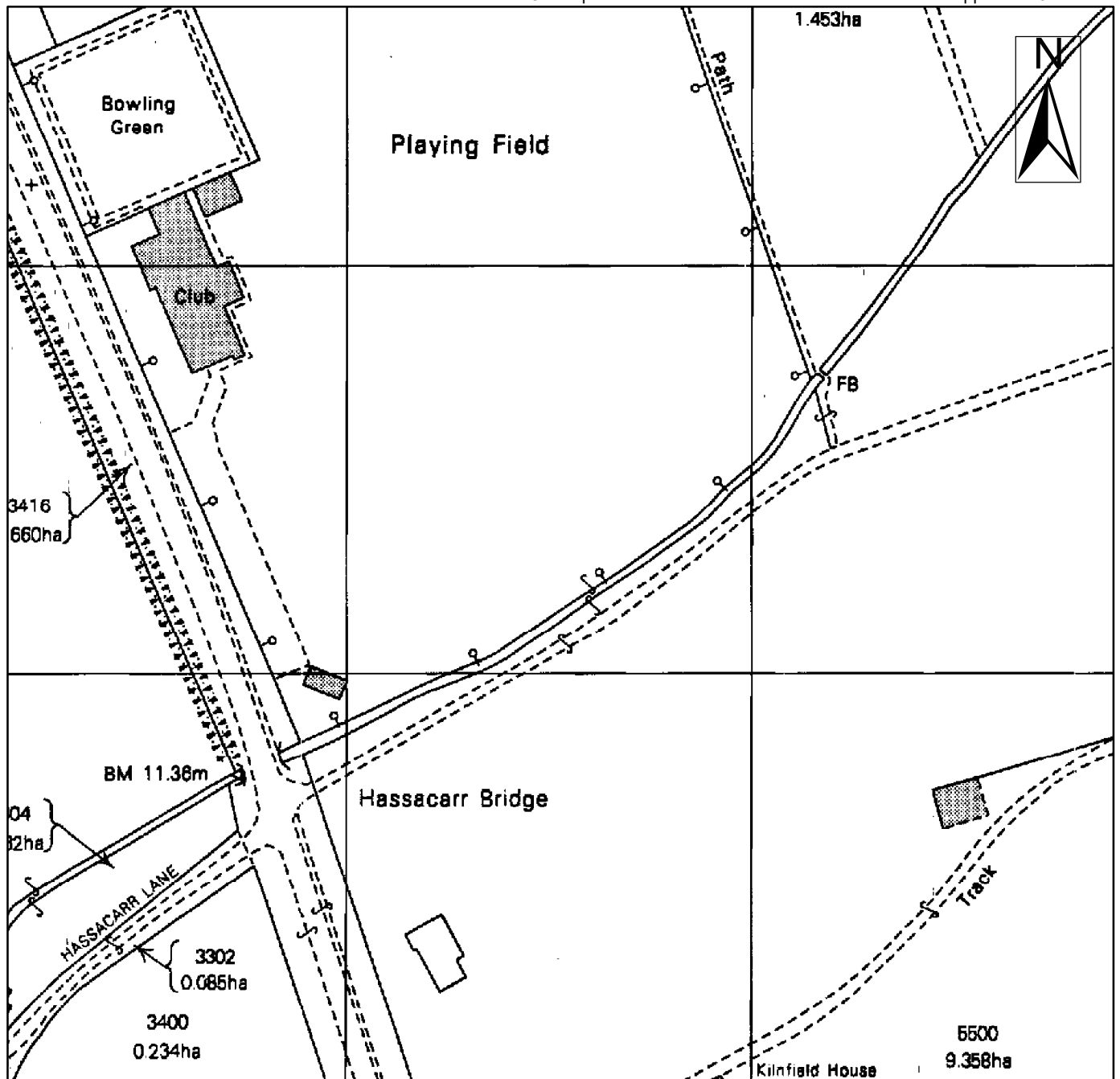
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1990 OS map 25 inch

Scale 1:1,500

Drawn By:

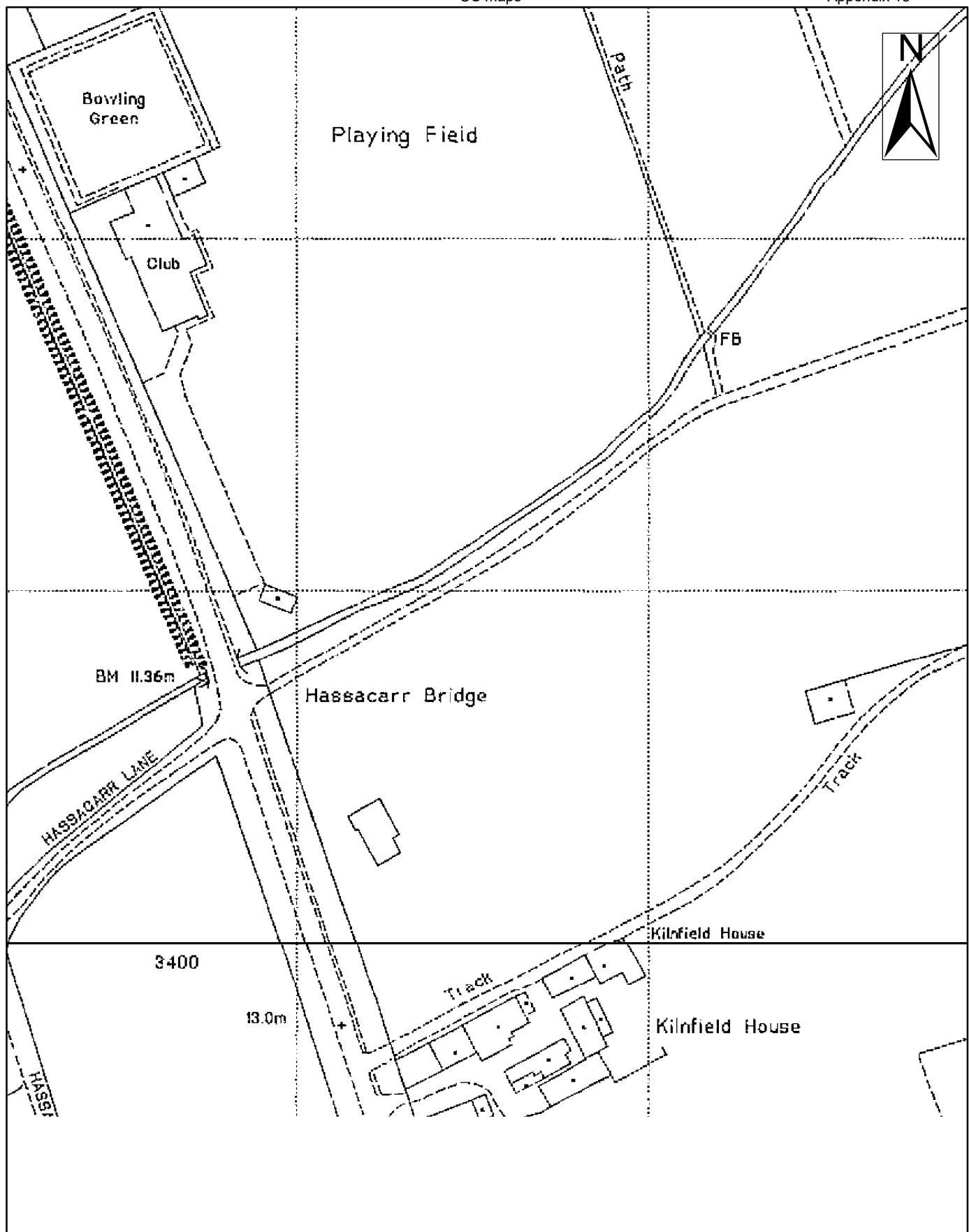
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Telephone: 01904 551550

1995 OS map 25 inch

Scale 1:1,500

Drawn By:

Date:

Public Rights of Way

Reference:

Drawing No.	
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Appendix 16

CYC aerals

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

2002 aerial

Scale 1:1,750

Drawn By:

Date:

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

2007 aerial

Scale 1:1,750

Drawn By:

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

2014 aerial

Scale 1:1,750

Drawn By:

Date:

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West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

2017 aerial

Scale 1:2,000

Drawn By:

Date:

Public Rights of Way

Reference:

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467400

CYC Aerials

467550 Appendix 16

452250

452100

451950

452250

452100

451950

467400

467550



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

2020 Aerial

Scale 1:1,750

Drawn By: LRG

Date: 22/12/21

Public Rights of Way

Reference:

Drawing No.

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Appendix 17

Photos of route

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

1.

Taken in September 2010 by the previous Definitive Map Officer looking from Common Road east down the order route.



2.

Taken in September 2010 from the order route looking east towards public footpath Dunnington 7.



3.

Taken September 2010 standing on the order route looking east.



4.

Taken September 2010 of the gate at the start of the order route from Common Road.



5.

Taken September 2010 of the gate at the start of the order route from Common Road.



6.

Taken September 2010 of the gate at the start of the order route from Common Road.



7.

Photo of gate from Common Road submitted with Ms Kay's objection August 2021, it is not clear however when this photo was taken.



8.

Photo of gate from Common Road submitted with Ms Kay's objection August 2021, it is not clear however when this photo was taken.



9.

Photo taken on Common Road submitted with Ms Kay's objection August 2021, it is not clear however when this photo was taken.



10.

Taken on survey site visit walking along the order route east from Common Road May 2021



11.

Taken on survey site visit walking along the order route east from Common Road May 2021



12.

Taken on survey site visit walking along the order route east from Common Road May 2021



13.

Taken on survey site visit walking along the order route east from Common Road May 2021



14.

Taken on survey site visit walking along the order route east from Common Road May 2021



Appendix 18

CYC Determination report

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



TRANSPORT DECISION - DEFINITIVE MAP MODIFICATION ORDER DETERMINATION

Application to be determined – 200401 Dunnington – Common Road to footpath 7 DMMO application to record as public footpath A-B on the map below

Evidence supporting the application	Evidence refuting the application
25 user evidence statements alleging use between 1936 and 2003. 9 users claimed 20 years use or more.	One of the affected land owners claims that a gate on the route has always carried a sign stating “private road no public right of way”.
	One of the affected land owners claims that the gate mentioned above was closed several times a year to prevent public rights being acquired of the route.
The route first appears on Ordnance Survey maps in 1971.	
DMO Comment on the evidence as a whole	
There is sufficient evidence to meet the statutory test to make an order.	
Consultation responses	
The Ramblers responded to the consultation supporting the making of the order. The parish council also replied stating that the route had been in constant use since they made the application 2004.	

Have the relevant parish councils been consulted? (delete as appropriate)	Yes
Does the current evidence meet the statutory test for making the order? (delete as appropriate)	Yes
Will the order route be the same as the application route? (Attach a map showing the proposed order route) (delete as appropriate)	Yes
What status will the route have? (delete as appropriate)	Footpath
Officer recommended determination- (delete as appropriate)	Make the order
Officer recommended stance towards confirmation- (delete as appropriate)	Support confirmation

Implications					
Crime & Disorder		Equalities		Other	
Human Resources		Legal		Highways	✓
Financial		ICT		Property	

Affected Wards					
All wards		Acomb		Bishopthorpe	
Clifton		Copmanthorpe		Dringhouses & Woodthorpe	
Fishergate		Fulford & Heslington		Guildhall	
Haxby & Wigginton		Heworth		Heworth Without	
Holgate		Hull Road		Huntington & New Earswick	
Micklegate		Osbalwick & Derwent	✓	Rawcliffe & Clifton Without	
Rural West York		Strensall		Westfield	
Wheldrake					

Osbalwick and Derwent Ward Councillor Comments	
Cllr.	Martin Rowley
I have objection to this request.	
Cllr.	Mark Warters
<p>I have no objections providing all legal processes with regard to proposers and land owners have been followed and all parties have had the opportunity to fully present their cases, which to date does not appear to be the case.</p> <p>Please indicate if this is CYCs final position regarding these PROWs and that PROW officers will be available early in the new year to explain the position to members of the public in Dunnington and Kexby.</p>	

Executive Member for Transport Comments	
Cllr.	A. D'Agorne


Having considered the available evidence and the comments of ward councillors I am happy to support the making of the order.

Senior Officer Comments

James Gilchrist

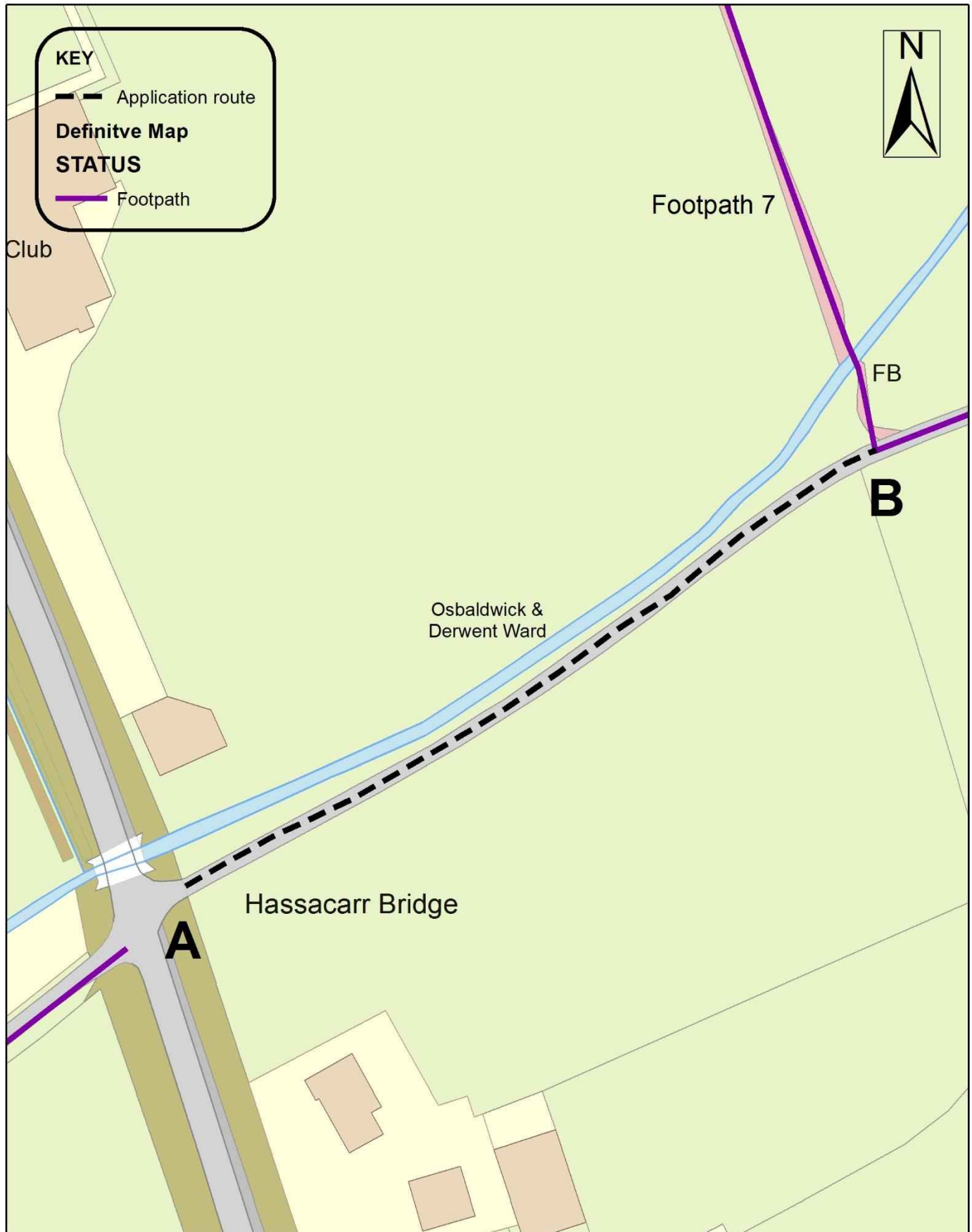
Assistant Director

Having considered the available evidence and the comments of the Executive Member for Transport I am happy for the order to be made, moving the process on to the next stage.

Senior Officer Decision		Make the order	
Decision Date:		17 December 2019	
Decision made by:	James Gilchrist, Assistant Director Transport Highways and Environment		
Contact details:	01904 551550 rightsofway@york.gov.uk		
On behalf of:	Neil Ferris, Corporate Director of Economy and Place		
To be implemented by:	Russell Varley, Definitive Map Officer		
On completion- signed off by:		Date:	17.12.19
			
James Gilchrist			
Assistant Director Transport, Highways and Environment			

Officer responsible for the report:

Name:	Russell Varley	Telephone No.	01904 553691
Position:	Definitive Map Officer	e-mail	russell.varley@york.gov.uk
Team:	Transport Service		



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

200401 Dunnington - Common Road to footpath 7

Scale 1:1,000

Drawn By:RJV

Date:6/12/19

Public Rights of Way

Reference:

Drawing No.

Contains Ordnance Survey data © Crown copyright and database right 2019
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Appendix 19

Objector evidence

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



Mr G Jewitt
Hollymead
43 Common Road
Dunnington
York
YO19 5PA

Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Our Ref: 200401 Dunnington
Date: 29 September 21
Email: rightsofway@york.gov.uk

Dear Mr Jewitt,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Thank you for your letter objecting to the above order. Having had the time to examine it I can confirm that it meets requirements of the legislation and is therefore duly made. This means that the council is now required to submit the opposed order to the Secretary of State who will appoint an inspector reach a final decision about whether to confirm (bring into effect) this order.

In order to prepare the case for submission, my colleague and I are hoping that you would consent to be interviewed about your experience of the route, its history as you understand it, and some points within your objection.

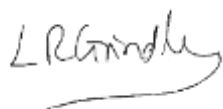
The interview can be conducted in person or via virtual meeting software like Zoom or Teams. The interview will be an informal conversation and we are happy to do it at a place of your choosing, such as your home. Alternatively, I can make arrangements for you to come to the council's offices at a mutually convenient time if that is your preference. If there are particular features along the route you wish to draw our attention to I would ask that these are taken care of with a separate site meeting held either before or after the interview.

You will be interviewed by my colleague Russell Varley and I will be present to take notes. I would encourage you to have someone with you during the interview and we are happy for this to be your legal representative if you felt you would like them to be present.

The notes of the interview will be included with all the other case documentation when it is submitted to the Secretary of State. As such, they will be available for anyone to inspect.

If you are willing to be interviewed or have any questions about the interview please get in touch with me at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Grindley', with a long horizontal flourish extending from the end of the signature.

Lauren Grindley.

Definitive Map Assistant.



Mrs J. Dobson
Strawberry Cottage
39 Common Road
Dunnington
York
YO19 5NZ

Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Our Ref: 200401 Dunnington
Date: 28 September 21
Email: rightsofway@york.gov.uk

Dear Mrs Dobson,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Thank you for your letter objecting to the above order. Having had the time to examine it I can confirm that it meets requirements of the legislation and is therefore duly made. This means that the council is now required to submit the opposed order to the Secretary of State who will appoint an inspector reach a final decision about whether to confirm (bring into effect) this order.

In order to prepare the case for submission, my colleague and I are hoping that you would consent to be interviewed about your experience of the route, its history as you understand it, and some points within your objection.

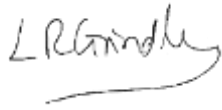
The interview can be conducted in person or via virtual meeting software like Zoom or Teams. The interview will be an informal conversation and we are happy to do it at a place of your choosing, such as your home. Alternatively, I can make arrangements for you to come down to the council's offices at a mutually convenient time if that is your preference. If there are particular features along the route you wish to draw our attention to I would ask that these are taken care of with a separate site meeting held either before or after the interview.

You will be interviewed by my colleague Russell Varley and I will be present to take notes. I would encourage you to have someone with you during the interview and we are happy for this to be your legal representative if you felt you would like them to be present.

The notes of the interview will be included with all the other case documentation when it is submitted to the Secretary of State. As such they will be available for anyone to inspect.

If you are willing to be interviewed or have any questions about the interview please get in touch with me at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Grindley', with a long horizontal flourish extending from the end.

Lauren Grindley.

Definitive Map Assistant.

Archived: 22 December 2021 13:16:33

From:

To:

Cc:

Subject: Site meeting/interview Dunnington

Sensitivity: Normal

Dear Mrs Dobson,

To confirm, my colleague Russell Varley (cc'ed) and I we will be meeting you at your home Monday 11th October at 11am. Please get in touch if you have any questions,

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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Interview with Mrs Dobson 11/10/2021

Next stages of process:

- The crucial issue is whether the footpath has been walked by the public without impediment for twenty years or more
- The occasional closure and locking of a gate which blocks access to the path may be taken to prove that it is not a right of way, provided this is done at times of day and in a manner which make it clear that the route is private
- Issues such as parking, security and dog-fouling are not relevant to determining this matter
- The current case began in 2003 and the relevant 20-year period for which evidence is required is 1983-2003.
- The case evidence will be written up and sent to the Secretary of State who will then decide whether the case will go to written representations, a public inquiry or a public hearing
- Queries about a kissing gate at Common Road end of route on the side, this depends on the use of the route during the 20 years (statutory period)
- Landowners would be responsible for a sign saying Private Road (like the sign at the start of Hassacar Lane public footpath opposite)
- Council have a legal obligation to pay 25% of the cost of a kissing gate/furniture of route or the council would fit gates/stiles to British standard but are **not** required to do this as a duty
- If recorded as a right of way the Council maintain the surface of the route to the standard for a footpath only
- Found the reply to Ms Kay's objection intimidating, the wording of this was discussed and will be rephrased as it was not intended to be a warning or intimidating, will write a letter of apology and try to set out the objection/inquiry process in clearer terms

History and experience of route:

- Visiting Mother-in-law at the cottage since 1967
- Cottage was tenanted and let out to postgraduates from the 1980s until 1997 then acquired the other cottage (and now live in both) in 2003
- Mrs Dobson stayed at the cottage at least once a year throughout the entire period 1967-2021, even when it was tenanted.
- The track was surfaced (more than just grass) but not to the standard it is now
- Didn't meet anyone when using the track in the 1970s, not many pedestrians then
- Graham challenged Joe (Mrs Dobson's son) when he used the route stating that it wasn't a right of way before he explained who he was (This was potentially in 2006 but need to clarify this).

- Bill Walker (Graham's uncle) died in 2001 and Graham took over the land and property in 2001 and put the sign up on the gate 'private property no public right of way'
- There were originally gates on both ends of the route and the track was more like a 'cart track' historically
- The open space at the front of the cottages was expanded for the bin lorries, oil tankers etc. to turn round, concerns about this seeming like a parking area for walkers.
- Mrs Dobson hasn't challenged anyone on the route but her son recently challenged someone straying off footpath 7 in Mr Jewitt's field

Archived: 22 December 2021 13:24:40

From: [Janet Mary Dobson](#)

Mail received time: Fri, 22 Oct 2021 11:43:03

Sent: Fri, 22 Oct 2021 12:32:27

To: [Grindley, Lauren](#)

Cc: [Joe Dobson](#)

Subject: Re: Dunnington 22 meeting notes

Sensitivity: Normal

Attachments:

[Meeting about footpath.docx](#) 

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Ms. Grindley,

Thanks for your prompt reply about the timetable. I attach my response to your notes and the issues discussed in our meeting. Please treat it as supplementary evidence.

Best wishes

Janet Dobson

On 13 Oct 2021, at 10:47, Grindley, Lauren <Lauren.Grindley@york.gov.uk> wrote:

Dear Mrs Dobson,

Thank you for your email. I would not anticipate the case being sent to the Secretary of State before the end of this year as there are 2 more cases to be sent ahead of yours.

Kind regards,
Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant
t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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From: Janet Mary Dobson <janet.dobson22@gmail.com>

Sent: 13 October 2021 10:12

To: Grindley, Lauren <Lauren.Grindley@york.gov.uk>

Cc: Joe Dobson <joejdobson@gmail.com>

Subject: Re: Dunnington 22 meeting notes

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Dear Ms. Grindley,

Many thanks for meeting us and sending me your notes. I would like to request some amendments, which I will send as soon as I've had the chance to discuss them with Joe and confirm his agreement.

Please could you tell me the deadline by which you plan to submit 'evidence gathered' to the Secretary of State.

Thank you.

Janet Dobson

On 12 Oct 2021, at 12:41, Grindley, Lauren <Lauren.Grindley@york.gov.uk> wrote:

Dear Mrs Dobson,

It was helpful to meet with you yesterday, please find attached my notes from our talk.

If you need any more information please get in touch,

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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Strawberry Cottage,
39, Common Road,
Dunnington
York YO19 5NZ

21 October 2021

Dear Ms. Grindley,

**Meeting between Russell Varley, Lauren Grindley, Janet Dobson and
Joseph Dobson on 11/10/2021 to discuss the Public Footpath
Dunnington Modification Order 2021**

Thank you to Russell Varley and yourself for coming to meet us and for your willingness to answer our questions as well as ask them. It was very helpful.

You have since sent a note of the meeting divided into two sections: the first covers some of the answers given to what we asked and the second covers some of my responses to Mr. Varley's questions. I would like to request that you make the following additions and amendments. I have added some explanation as to why I think it important to record them.

Section headed 'Next stages of process'

Additional bullet points:

- *The crucial issue is whether the footpath has been walked by the public without impediment for twenty years or more*
- *The occasional closure and locking of a gate which blocks access to the path may be taken to prove that it is not a right of way, provided this is done at times of day and in a manner which make it clear that the route is private*
- *Issues such as parking, security and dog-fouling are not relevant to determining this matter*
- *The current case began in 2003 and the relevant 20-year period for which evidence is required is 1983-2003.*

Some of this was news to me and others who have responded to the Council's invitation to make representations. It means that people who expressed their objections in good faith are now told these are irrelevant.

The most concerning aspect is that people who might have submitted useful information on the 1983-2003 period did not know it was needed – there appears to be no mention of it in any of the letters or notices issued by the Council. Since the Council and the Department have to assess the balance of probability that the path met the criteria for being a Right of Way in 2003, accurate knowledge is required about pedestrian accessibility, closure of gates and the attitude and actions of the landowner prior to that date.

On your final bullet point about the reply to Ms. Kay's objection, it was not just that the wording was intimidating but it seemed to convey an incorrect picture of the process – I understand this has now been remedied.

Section headed 'History and experience of route'

Additional bullet point to be inserted as the third point:

- *Mrs Dobson stayed at the cottage at least once a year throughout the entire period 1967-2021, even when it was tenanted.*

I rambled over a lot of historical ground but one thing I emphasized was that during the last 54 years, I have spent time at the cottage every year. This is important when evaluating any evidence I may give relating to knowledge of the path and the landowners, particularly in the critical 1983-2003 period.

On the point about Bill Walker dying and Grahame Jewitt taking over, it's a bit pedantic but I don't remember exactly which year Grahame put a new sign on the gate or its precise wording. I do remember it being there and vandalized and the furore surrounding it.

Please amend the penultimate point beginning: 'Parking area at the cottages....' It is NOT a designated parking area and I never refer to it as such for obvious reasons!! Amendment:

- *The open space at the front of the cottages was expanded for the bin lorries, oil tankers etc. to turn round, concerns about this seeming like a parking area for walkers.*

The evidence

You kindly gave me copies of user evidence forms - 25 in all though 3 were incomplete (photocopying problem), leaving 22 for me to read. 12 said they had only used the path in the period since 1990. I do not know what volume or quality of evidence you need to establish the facts of this historical situation but the information on the forms seems a bit thin in some respects.

There were one or two oddities. For example, when asked about their purpose in using the path, two people (Forms 10 and 25) said they used it to get to the shops – one even lived in York Street where the village shops are located. There was very little evidence about the attitude and actions of the landowner – William 'Bill' Walker – before 2001.

I could only find three mentions of this. One said (Form 4) that "He was quite happy for the public to walk the path" but as the person concerned only walked the route occasionally in 2000-3 and Bill died in 2001, it seems improbable that she knew whether he was happy or not. Two more people (Forms 9 and 13), who were both at the same address and did know Bill, said he was "a nice man who did not mind anyone using the path".

It is true that Bill Walker was a nice man and a good friend but he could be a nasty, indeed fearsome, one if he saw anyone trampling his crops, worrying his sheep or otherwise abusing the privilege of access to *his* land. He kept a close eye on the path and did not hesitate to intervene if he saw any behaviour of which he disapproved or anyone who seemed out of place. He had a grandstand view of the path from his house and must have watched it quite a lot – he always seemed to know when any of our family had arrived at the cottage because he had observed the station taxi driving up there.

Obviously I cannot speak for him but, having known him for over thirty years and spent hours talking to him in his kitchen, I would be astonished if he thought anyone had a right of way on *his* path apart from the occupants of Strawberry Cottage. And I would have expected him, as an astute character, to take any steps he thought necessary to protect his own rights in the matter.

There are other people well-placed to give more first-hand information on this. One is Ms. Jacqueline Chainey, who lived at Strawberry Cottage 1994-7 and who, along with her then neighbour Mrs Noreen Murray, must have spent more time on and in the vicinity of the path than any other user throughout those three years. She showed me her letter of objection and I was mystified when she received a response from the Council which totally ignored the first paragraph concerning the closure and locking of the gate by Bill Walker. The Council's letter only dealt with the issues considered irrelevant to determining a public right of way and in effect encouraged her to withdraw her objection.

Another person who knew Bill Walker well, from childhood in fact, and has been using the path every day to tend to livestock since the end of the 'eighties is Ms. Rebecca Kay. Her letter of objection received a similar response. As she had focused on gate closures post-2003, not knowing that the period of interest was before that date, her submission was not directly relevant in the same way as Ms. Chainey's. However, her letter makes it clear that the path was seen by both her and Mr Jewitt as a route that could be barred in appropriate circumstances and not one to which anyone had automatic right of access. This was a view that both carried over from earlier years. In addition, her evidence is valuable in giving specific examples of the kinds of situation in which both Bill Walker and Grahame Jewitt wanted to be able to take immediate action to prevent usage.

I assume you will be interviewing more people who can give you an insight on these matters. Please treat this letter as supplementary evidence, providing first-hand knowledge that Mr Walker observed the path and its users, intervened on occasions and *did* mind who used it.

I wish you well in a difficult task.

Yours sincerely,

Janet Dobson

Archived: 22 December 2021 13:25:04
From:
To:
Cc:
Subject: RE: Dunnington 22 meeting notes
Sensitivity: Normal

Dear Mrs Dobson,

Thank you for your amended notes, I have added the points to reflect our discussions, especially changing the wording of the parking area as I understand this might have seemed like I was implying it was a parking area when it definitely isn't. I have added the rest of your letter as supplementary evidence for the case and I will be in touch in due course.

Kind regards,
Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant
t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

City of York Council | Rights of Way/Transport Service
Directorate of Economy and Place | West Offices, Station Rise | York YO1 6GA
www.york.gov.uk | facebook.com/cityofyork | @CityofYork

From: Janet Mary Dobson <janet.dobson22@gmail.com>
Sent: 22 October 2021 12:32
To: Grindley, Lauren <Lauren.Grindley@york.gov.uk>
Cc: Joe Dobson <joejdobson@gmail.com>
Subject: Re: Dunnington 22 meeting notes

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Ms. Grindley,

Thanks for your prompt reply about the timetable. I attach my response to your notes and the issues discussed in our meeting. Please treat it as supplementary evidence.

Best wishes

Janet Dobson

On 13 Oct 2021, at 10:47, Grindley, Lauren <Lauren.Grindley@york.gov.uk> wrote:



Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Mr G. Jewitt
Hollymead
43 Common Road
Dunnington
York
YO19 5PA

Our Ref: 200401 Dunnington
Date: 19 October 2021
Email: rightsofway@york.gov.uk
Tel: 01904 553860

Dear Mr Jewitt,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Please find enclosed my typed up notes from our discussion regarding the above order.

Unfortunately, the legislation only allows the Secretary of State to consider objections based on evidence that indicates whether a public right of way exists over the route. They cannot take in account factors such as desirability or security implications.

To withdraw or maintain your objection/If you wish to withdraw your objection you must do so in writing (by letter or email) clearly stating that you are withdrawing/maintaining it. If you choose to seek independent legal advice regarding this order, please pass this letter on to your legal representative.

The notes from the interview on 14/10/21 will be included with all the other case documentation when it is submitted to the Secretary of State where an Inspector will review the case and come to a final decision whether to confirm the order (confirm means bring it into effect).

If you have any further questions please get in touch,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L R Grindley'.

Lauren Grindley.

Definitive Map Assistant.

Notes from Landowner interview with Mr Jewitt 14/10/21

Next stages of the process

- Asked to withdraw objections, if not withdrawn then the case will be assembled and sent to the Secretary of State and they will decide on the next course of action: Written representations, a public inquiry or a public hearing where the Inspector makes the final decision about the order.
- Landowner can exercise 'right to be heard' and demand a public inquiry

Ownership/history of land:

- Family owned farm since 1951 - track was arable land then
- There were originally wooden field gates on both ends of the order route with the one nearest the road being locked as children played near the dike
- Mr Jewitt moved into the current farmhouse (no. 43) and took ownership of the land in 2001, the land there was historically a market garden for vegetables
- The old wooden gate at the far end of order route and at the start of public footpath 7 had replaced a fence
- Mr Jewitt can remember the land from the 1960s and there was never any pedestrian usage of the route in the 1960s/70s/80s, it has only become a busy walkers route in the last 7/8 years
- The metal field gate currently at Common Road (which is recorded in the order) has been there since the early 90s (a gate was added to the start of Hassacar Lane opposite at the same time)
- The original sign on the previous wooden field gate was a 'railway type' very small embossed metal sign saying 'private road' that you could be seen looking from Common Road down the order route
- The new sign which replaced this one was nailed onto a wooden backboard saying 'private road no public right of way' and has been there since 2003 but has been vandalised at least 3 times
- The gate at Common Road has often been closed from Saturday evening to Monday mornings since before Mr Jewitt owned the land, he doesn't mind responsible people using the route but has challenged irresponsible people trespassing/climbing over the gate telling them it is private land.
- Historically people used to cross the Sports field diagonally from the village to get to the footbridge to join public footpath 7.

Archived: 22 December 2021 13:29:58

From: [Jacqueline Chainey](#)

Mail received time: Mon, 25 Oct 2021 09:12:24

Sent: Mon, 25 Oct 2021 10:11:43

To: [Grindley, Lauren](#); [Varley, Russell](#)

Subject: Fwd: PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Sensitivity: Normal

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Dear Lauren Grindley

Further to my email message of 23 August 2021 and following a conversation with Russell Varley, Friday 15 October 2021, I am now writing with further information to support my refutation of the above order.

Firstly, I was resident in Strawberry Cottage between 1994 and 1997 whilst a full-time student with the University of York. My neighbour in the adjoining cottage, then known as Field House, was an elderly widow, Mrs Noreen Murray.

Secondly, Mr William (Bill) Walker, resident of Hollymead, Common Road, the owner of the land over which the track to Strawberry Cottage passes, was regular in his habit of closing the gate from Common Road to protect the track from becoming a public right of way. When he intended to close and secure the gate, he would inform myself and Mrs Murray so that we would not be inconvenienced and indeed we never were. I believe he also informed Mrs Thompson, who lived in the cottage on the track leading to the Hassacarr Nature Reserve.

It is important to note that Mr Walker was active on his land both day and night tending to his stock and he was, therefore, available to challenge those persons who had no business with either Mrs Murray or myself. He was not concerned about local people going for a walk or exercising their dogs. He was, however, concerned about anyone he regarded as suspicious. He acted as unofficial custodian of Strawberry Cottage - he had known the owner, Frank Dobson, since he was a schoolboy working on the farm - and occasionally queried people's presence.

On one memorable occasion, my partner (now husband) and I arrived at the cottage in a large white Transit van to deliver some furniture we had collected from our family. Concerned as to what might be taking place, Mr Walker arrived within moments to check out the situation and who was there. As I usually drove a red Nissan Micra at that time, he had wondered if something untoward was taking place. Far from feeling we were being constantly monitored, we found such concern most reassuring.

Thirdly, whilst I was resident in Strawberry Cottage, Rebecca (Becky) Kaye kept her horses in the field opposite just as she does now. Mr Walker would also inform Becky when he intended to close the gate. During my residency, she was married to Gary Kaye and lived at Undergate Farm in Dunnington. I knew both Becky and Gary, would occasionally call at their farm to buy eggs and often met with Becky when she was visiting her horses. Other than my immediate neighbours - Mr Walker, Mrs Murray, Mrs Thompson, and Becky and Gary Kaye - I knew no one else in Dunnington and spent much of my time studying either on campus or at Strawberry Cottage.

Far from "spurious", I offer the above additional information as further evidence of the fact that the gate to the track leading to Strawberry Cottage was regularly secured to protect it from being designated as a public right of way and that the track was controlled even when the gate was open.

Kind regards

Jacqueline Chainey

--

The Old School

7 School Lane

Heslington

York YO10 5EE

Archived: 22 December 2021 13:32:18

From:

To:

Subject: RE: Dunnington 22 Public Footpath Modification Order 2021

Sensitivity: Normal

Dear Ms Kay,

Thank you for your reply maintaining your objection, it will be sent with your original objection when the case is sent to the Secretary of State for a final decision.

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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From: REBECCA KAY <rebecca721kay@btinternet.com>

Sent: 13 October 2021 15:26

To: Grindley, Lauren <Lauren.Grindley@york.gov.uk>

Subject: Re: Dunnington 22 Public Footpath Modification Order 2021

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon

Thank you for taking the time to explain your previous letter to me. I must say, I was completely taken aback by the tone and it did make me wonder what had happened to 'freedom of speech' and the right for individual's opinions to be heard. But as you have now explained in your third paragraph that you attempt to get objections withdrawn, now I understand why such a letter was written by you.

Since Mrs Dobson met with Mr Varley, the case has become clearer, and I understand that the order refers to a period of time around 2003. This actually makes my response even more resolute due to the fact at that time very few walkers used that stretch of track unlike they do now. At that time Mr Jewitt was more proactive in his deterrence, and actually secured a notice to the gate that I previously mentioned, clearly stating it was a private road. I lived in Dunnington all my life and have only recently moved, and I have memories of the previous owner, Bill Walker, who was extremely determined in his policing of the track, and nobody used that particular section as it was common knowledge it was not a right of way.

Therefore, I am writing to advise that I do not withdraw my objection and I want it to stand as per my letter dated 16th August 2021.

I would also like to mention that in your previous letter to me you commented that there was no actual evidence to substantiate my points regarding the lack of car parking space at the sports club, and my concerns the vehicles would overflow to the track. I actually attached a recent photo of Common Road showing the numerous cars parked on the verges wherever possible, so without obtaining registration numbers and names of drivers I wonder what more evidence you require?

Finally, I wonder why you have not acknowledged in any form the fact that I have locked the gate on numerous occasions for different reasons, and the fact Mr Jewitt also locks the gate at least twice yearly usually starting on a Saturday, to be then reopened early Monday morning in case the postman requires access? I would be interested for your reason for this, as you went to such lengths with regards to the carparking issues, but nothing was mentioned at all in response to the main part of my letter, ie, the dates and reasons the gate has been locked previously by myself and Mr Jewitt.

Regards
Rebecca Kay

----- Original Message -----

From: "Grindley, Lauren" <Lauren.Grindley@york.gov.uk>

To: "rebecca721kay@btinternet.com" <rebecca721kay@btinternet.com>

Sent: Tuesday, 12 Oct, 21 At 12:17

Subject: Dunnington 22 Public Footpath Modification Order 2021

Dear Ms Kay,

Please find attached a letter of apology and explanation of the next stages of the process following a meeting with Mrs Dobson.

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) | Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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Archived: 11 July 2022 11:39:06

From:

To:

Subject: RE: DMMO order Common Road to public footpath 7

Sensitivity: Normal

Dear Ms Chainey,

Thank you for the information included in your reply, I will add it to the Statement of case appendices and be in touch again in due course.

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) Definitive Map Assistant
t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap
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From: Jacqueline Chainey <jaqchainey88@gmail.com>

Sent: 06 July 2022 16:13

To: Grindley, Lauren <Lauren.Grindley@york.gov.uk>

Subject: Re: DMMO order Common Road to public footpath 7

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Dear Lauren Grindley

Thank you for your message and in response to your query with regard to Mr Walker's closure of the gate across his land.

The gate would be closed at least one day, sometimes two, occasionally longer at a time. Closures could be up to four times per year but no more than that. There was no set pattern but as and when Mr Walker felt it necessary. This did not inconvenience myself or my neighbour or Becky Kaye as we were always informed in advance.

I hope this is helpful and with my apologies for the delay in response, I have been away from home.

Kind regards

Jacqui Chainey

--

Jacqueline A Q Chainey

On Mon, 27 Jun 2022 at 10:26, Grindley, Lauren <Lauren.Grindley@york.gov.uk> wrote:

Dear Ms Chainey,

I am emailing you as the Statement of Case for the order from Common road to public footpath 7 is currently being written and the appendices assembled. In your objection (attached) you mention Bill Walker and I hope you can offer some clarification regarding his ownership of the route from Common Road to Strawberry Cottage. When Bill Walker told you he was going to close the gate can you remember how long this was typically for? For example, was it a few hours, a day a week or longer?

I look forward to hearing from you,
Kind regards,
Lauren Grindley

Lauren Grindley (she/her) Definitive Map Assistant
t: [01904 553860](tel:01904553860) | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap
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--
Jacqueline A Q Chainey BA (Joint Hons)
Treasurer
PCC of Bossall

Archived: 11 July 2022 11:38:30

From:

To:

Subject: RE: PUBLIC FOOTPATH DUNNINGTON 22 FROM COMMON ROAD

Sensitivity: Normal

Good morning Ms Kay,

Thank you for the information included in your reply. I can confirm I have added the email of 13/10/2021 to the Statement of Case appendices.

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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From: REBECCA KAY <rebecca721kay@btinternet.com>

Sent: 01 July 2022 16:01

To: Grindley, Lauren <Lauren.Grindley@york.gov.uk>

Subject: RE: PUBLIC FOOTPATH DUNNINGTON 22 FROM COMMON ROAD

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon

Apologies for the delay in replying to your emails.

Firstly, when I was originally asked to provide a statement regarding my own knowledge of the track in question, I was not advised of the time period in which you were particularly interested in. As you will see from my statement I refer to Bill Walker's nephew, Graham Jewitt, who now owns the property and track, but I did then send another email to you dated 13/10/2021 which you do not seem to be referring to. Please confirm you have this email, otherwise I will send you a copy.

With respect to whether or not Bill Walker advised me he was going to close the gate, then I must state he never did. I think I will have rented the field for a number of years whilst Bill Walker was still alive and owned the track, but I solely dealt with Mrs Murray, who lived in part of Strawberry Cottage at the time and offered me the field originally as she was an old family friend. With respect to the gate, I feel sure the one that is on the track now is the same one that Bill Walker installed and it was occasionally locked when I visited the horses' field. I never questioned this or thought it was unusual as I was used to the gate being locked when I visited Mrs Murray, which I had often done previously with my Mother when I was of school age, (1977-

1984 approx), but this is probably too early to be relevant. I had very few dealings with Bill Walker at the time in which I think you are interested in, but I do know he was known for stopping walkers from using this section of the track, and to be honest very few people would use that part of the track at that time.

Let me know if you need a copy of my email dated 13/10/2021.

Regards

Rebecca Kay

----- Original Message -----

From: "Grindley, Lauren" <Lauren.Grindley@york.gov.uk>

To: "rebecca721kay@btinternet.com" <rebecca721kay@btinternet.com>

Sent: Monday, 27 Jun, 22 At 10:21

Subject: RE: PUBLIC FOOTPATH DUNNINGTON 22 FROM COMMON ROAD

Dear Ms Kay,

I apologise for emailing you again but I hope you can offer some clarification regarding Bill Walker's ownership of the route from Common Road to Strawberry Cottage. When Bill Walker told you he was going to close the gate can you remember how long this was typically for? For example, was it a few hours, a day a week or longer?

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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From: Grindley, Lauren

Sent: 24 June 2022 12:10

To: rebecca721kay@btinternet.com

Subject: PUBLIC FOOTPATH DUNNINGTON 22 FROM COMMON ROAD

Dear Ms Kay,

I am emailing you as the Statement of Case for the order from Common road to public footpath 7 is currently being written and the appendices assembled. In your objection (attached) you submitted photos of the gate on this route. If you can remember, please could you tell me when these photos were taken?

I look forward to hearing from you,

Kind regards,

Lauren Grindley

Lauren Grindley (she/her) Definitive Map Assistant

t: 01904 553860 | e: lauren.grindley@york.gov.uk | w: www.york.gov.uk/DefinitiveMap

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Appendix 20

Post consultation user correspondence

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Mrs Dorothy Cline
70 Cedar Glade
Dunnington
York
YO19 5PL

Our Ref: 200401 Dunnington
Date: 14 October 2021
Email: rightsofway@york.gov.uk

Please note if this person no longer lives at this address you can ignore this letter

Dear Mrs Cline,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

In 2003 you completed a user evidence form for an application Dunnington Parish Council made to get the track between Common Road and the allotments recorded as a public footpath. I have enclosed a copy of your form for reference. As the form you filled in did not include a map I would be grateful if you could draw the route you used and described in your form on the enclosed map. Once you have marked the route you used and added your name in block capitals, please return it to me using the enclosed postage paid envelope or alternatively by emailing a photo of the map to rightsofway@york.gov.uk.

Please could you return the map to me by Friday 29th October 2021. If you have any questions about this letter or its contents please get in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Grindley'.

Lauren Grindley
Definitive Map Assistant

*map returned
19th Oct 2021*



D 14

Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. CLINE		
Christian Name (s): DOROTHY		
Age: (If over 21, you may insert "Over 21") 65		
Address: 70 CEDAR GLADE DUNNINGTON, YORK, YO195PL		
Occupation: RETIRED		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTSMENTS / STRAWBERRY LOPAS		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? *Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (if defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? 18 years		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 18 years 1965 - 2003		
Have you used the path:	i) on foot ?	*Yes / No
	ii) on horseback ?	*Yes / No
	iii) by motor vehicle ?	*Yes / No
	iv) by cycle ?	*Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) Daily		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) pleasure / recreation this small piece of footpath leads to two other walks.		
Have you ever been prevented from, or challenged when, using the path ? *Yes / No If "Yes" please give details Very threatening man who was aggressive towards me - treating me like a child. I thought he was going to hit me. I have since had a letter from his landowner.		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. No obstructions until a notice was put on a gate recently		

Name and Addresses of Owners (and Tenants, if tenanted) if known:

unknown

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path ? * ~~Yes~~ / No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path :

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : *Pauline*

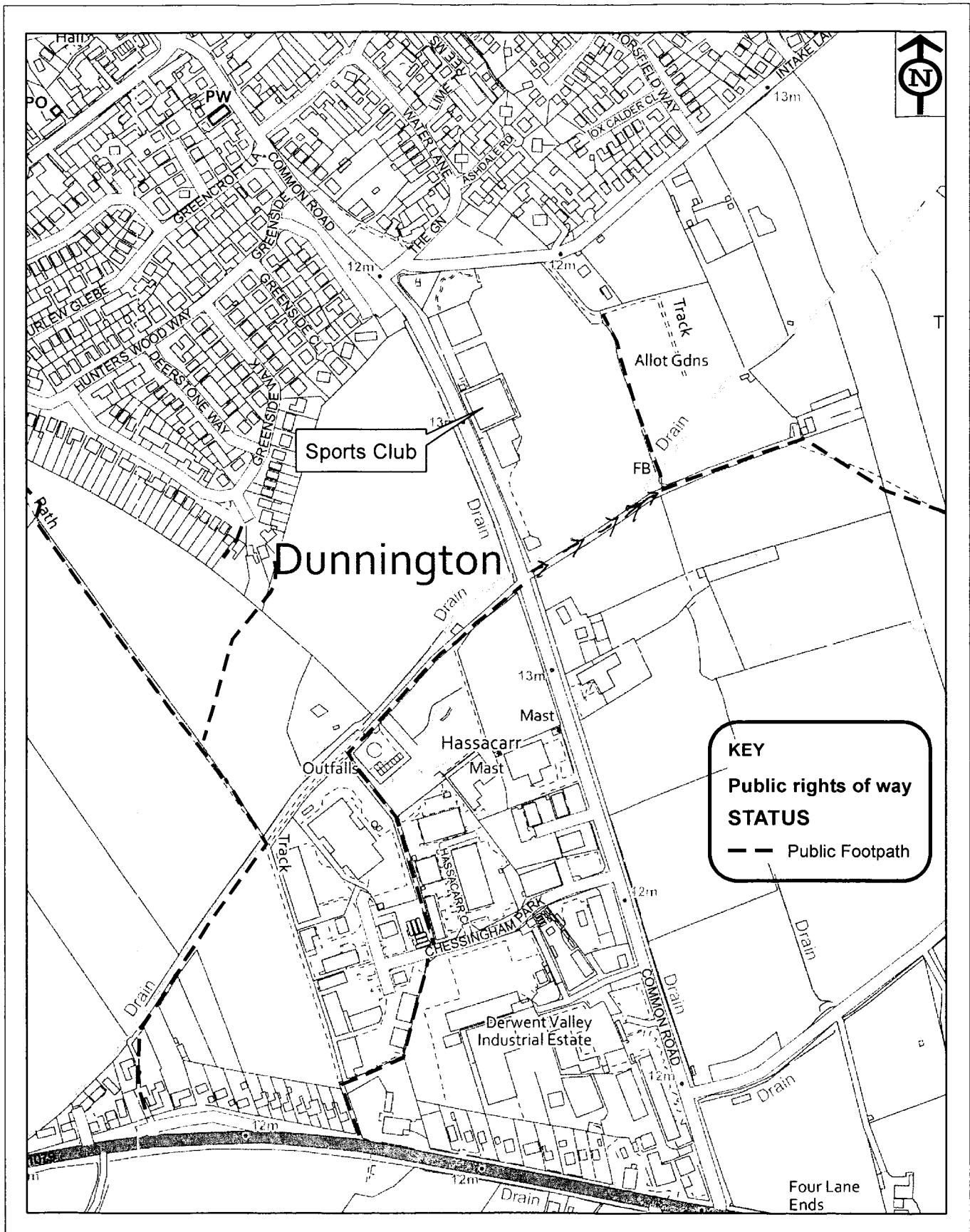
Date : *2/10/03*

Signature of Person
Taking the Statement : *Handy*

Date : *2.10.03*

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

Route I used:

→ → → →
(add a sample of the line you used on the map)

Print name here DOROTHY CLINE

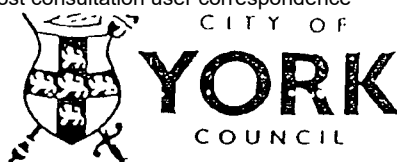
Scale 1:5000

Drawn By: RJV

Date: 13/10/21

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D1



Public Rights of Way - User Evidence Form

Surname: * Mr. Mrs. Miss. Ms. <u>CLINE</u>		
Christian Name (s): <u>SCOTT WILLIAM</u>		
Age: (If over 21, you may insert "Over 21") <u>63yrs</u>		
Address: <u>70 CEDAR GLADE, DUNNINGTON, YORK YO19 5PL</u>		
Occupation: <u>RETIRED</u>		
Name or route of Path: <u>ACCESS FROM COMMON ROAD TO PLOTS/STRAWBERRY COTTAGE</u>		
National Grid References, at each end of the path, or other means of identifying the route : <u>521674 K 522676</u>		
Parish of: <u>DUNNINGTON</u>		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? <u>BRICK/STONE SURFACED PATHWAY</u>		
Width of path (If defined) : <u>APPROX. 6 FT</u>		
How many years have you known of the existence of this path ? <u>OVER 18yrs.</u> <u>1965 - 2003</u>		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) <u>18yrs. DAILY</u> <u>1965 - 2003</u>		
Have you used the path: i) on foot ? * Yes / No ii) on horseback ? * Yes / No iii) by motor vehicle ? * Yes / No iv) by cycle ? * Yes / No		
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) <u>DAILY.</u>		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) <u>RECREATION / EXERCISE / PLEASURE</u>		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land. <u>A PUBLIC RIGHT OF WAY APPROX 150 YARDS DOWN THIS LANE</u> <u>WHICH IS SIGNED - NO OBSTRUCTION AND OPEN ALL THE TIME BUT</u> <u>RECENTLY A SIGN WAS PLACED ON AN OPEN GATE.</u>		



Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Mr Geoffrey Williams Cline
70 Cedar Glade
Dunnington
York
YO19 5PL

Our Ref: 200401 Dunnington
Date: 14 October 2021
Email: rightsofway@york.gov.uk

Please note if this person no longer lives at this address you can ignore this letter

Dear Mr Cline,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

In 2003 you completed a user evidence form for an application Dunnington Parish Council made to get the track between Common Road and the allotments recorded as a public footpath. I have enclosed a copy of your form for reference. As the form you filled in did not include a map I would be grateful if you could draw the route you used and described in your form on the enclosed map. Once you have marked the route you used and added your name in block capitals, please return it to me using the enclosed postage paid envelope or alternatively by emailing a photo of the map to rightsofway@york.gov.uk.

Please could you return the map to me by Friday 29th October 2021. If you have any questions about this letter or its contents please get in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L R Grindley'.

Lauren Grindley
Definitive Map Assistant

Name and Addresses of Owners (and Tenants, if tenanted) if known:

NOT KNOWN

Have you ever been employed by, or a tenant of, the owner of the land affected by the claimed path? ~~Yes~~ No

If "Yes" give dates of employment or tenancy and particulars of any instructions you may have received regarding the claimed path:


Any Further Information which you consider to be relevant:

IT IS WITHIN MY KNOWLEDGE THAT THIS LAND HAS BEEN USED AND ENJOYED BY RESIDENTS OF DUNNINGTON FOR OVER 50 YRS AS A RIGHT OF WAY TO THE EXISTING 'RIGHT OF WAY' AND CONTIGUOUS FURTHER ALONG THIS PATH.

* Delete as appropriate

Signature: 

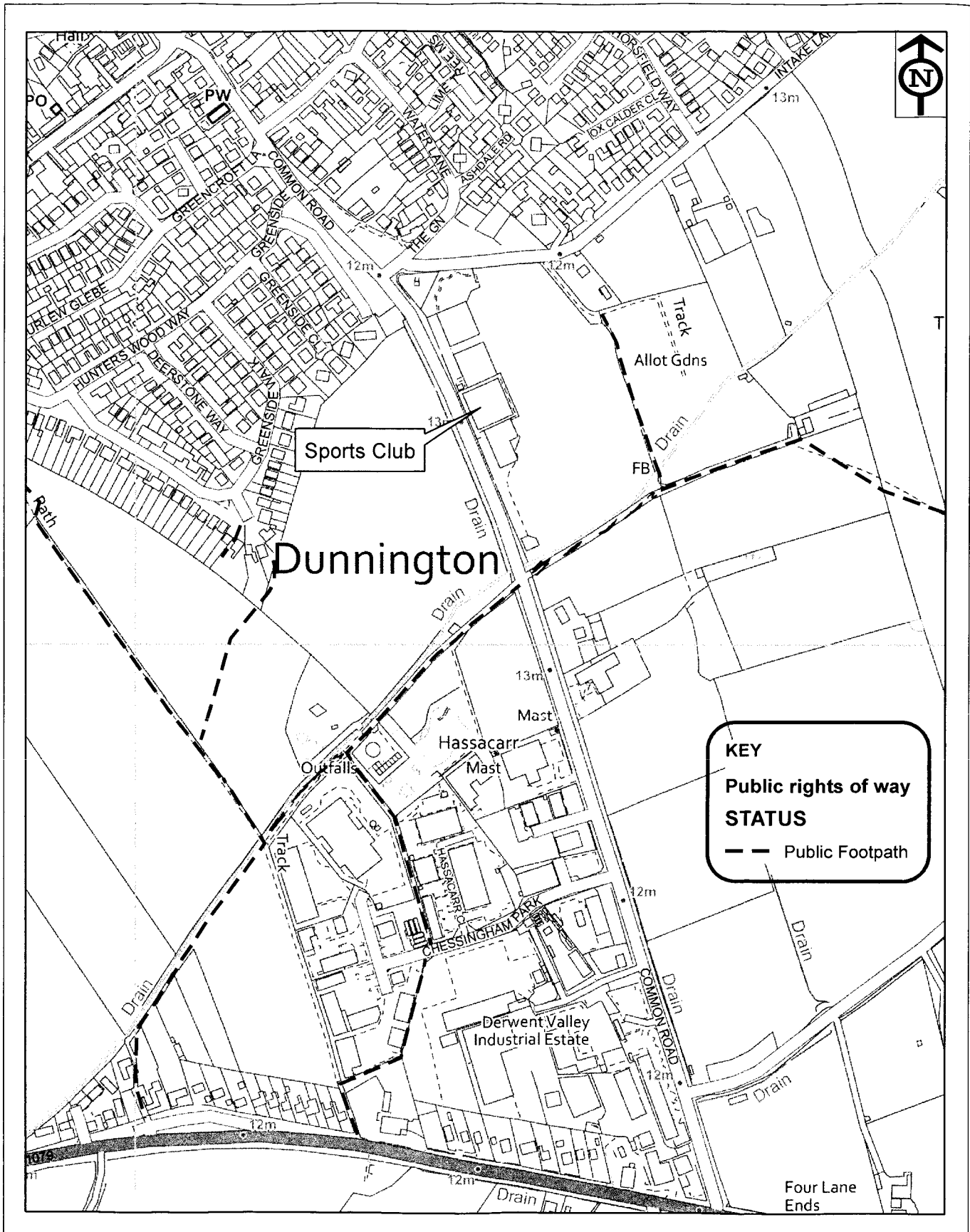
Date: 2nd October 2003

Signature of Person Taking the Statement: 

Date: 2.10.03

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

Route I used:

(add a sample of the line you used on the map)

Print name here..... *CLINE, C.W.*

Scale 1:5000

Drawn By: RJV

Date: 13/10/21

Contains Ordnance Survey data © Crown copyright and database right 2021





Mr Chris Wright
38 Curlew Glebe
Dunnington
York
YO19 5PQ

Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Our Ref: 200401 Dunnington
Date: 14 October 2021
Email: rightsofway@york.gov.uk

Please note if this person no longer lives at this address you can ignore this letter

Dear Mr Wright,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

In 2003 you completed a user evidence form for an application Dunnington Parish Council made to get the track between Common Road and the allotments recorded as a public footpath. I have enclosed a copy of your form for reference. As the form you filled in did not include a map I would be grateful if you could draw the route you used and described in your form on the enclosed map. Once you have marked the route you used and added your name in block capitals, please return it to me using the enclosed postage paid envelope or alternatively by emailing a photo of the map to rightsofway@york.gov.uk.

Please could you return the map to me by Friday 29th October 2021. If you have any questions about this letter or its contents please get in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Grindley'.

Lauren Grindley
Definitive Map Assistant

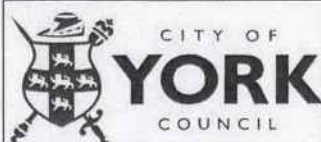
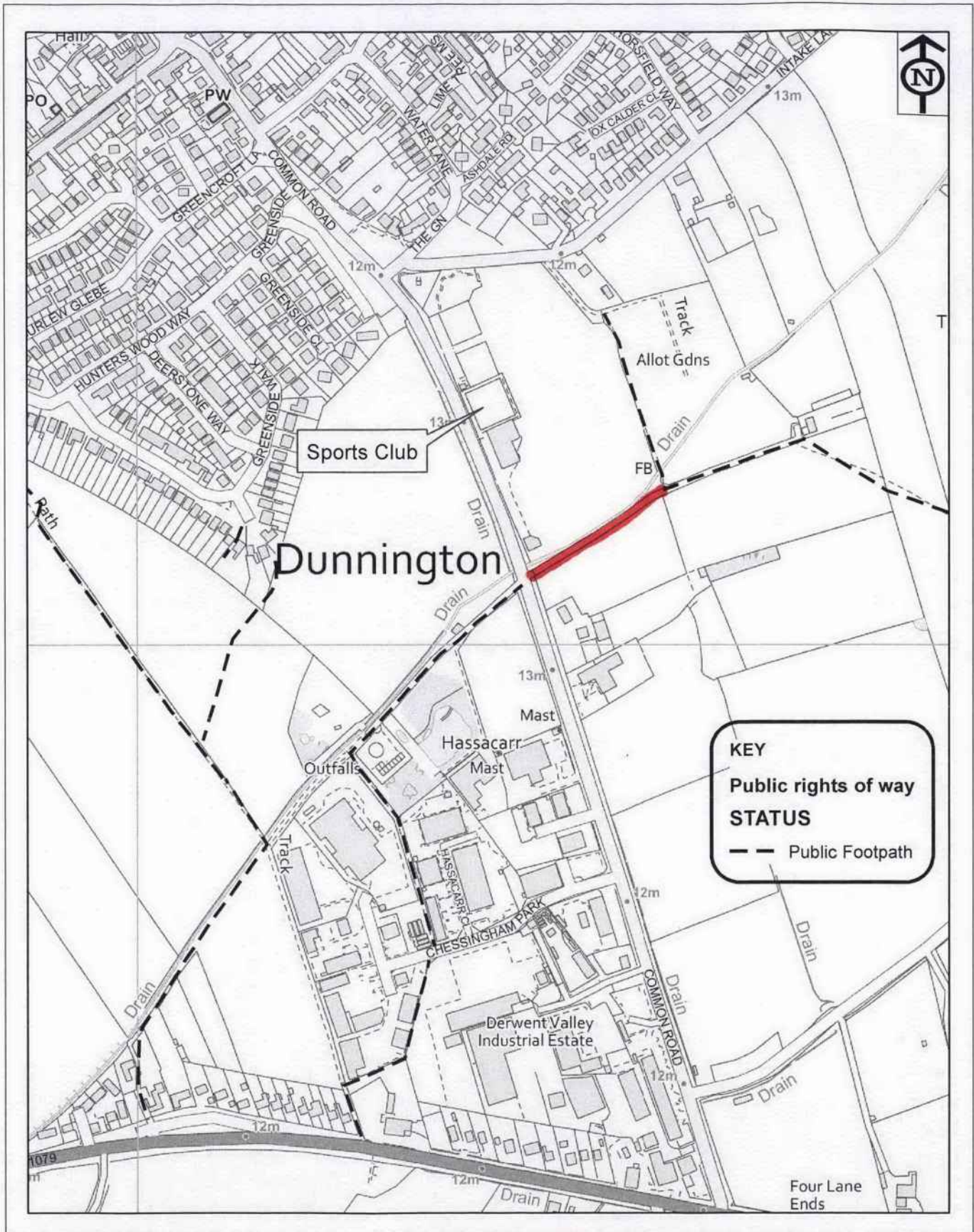


CITY OF
YORK
COUNCIL


019

Public Rights of Way - User Evidence Form

Surname: * Mr. Miss Ms WRIGHT		
Christian Name (s): CHRIS		
Age: (If over 21, you may insert "Over 21") 32		
Address: 58 Carleton glen Dunnington		
Occupation: Pensioner		
Name or route of Path: ACCESS FROM COMMON ROAD TO PLOTMENTS / STRAWBERRY COTTAGE		
National Grid References, at each end of the path, or other means of identifying the route : 521674 K 522676		
Parish of: DUNNINGTON		
Type of Path: *Footpath / Bridleway / Byway Open to All Traffic		
Do you regard the route to be a Public Right of Way ? * Yes / No		
Is the path well defined ? * Yes / No If "Yes" How? Gravel / Stone surfaced pathway		
Width of path (If defined) : APPROX. 6 ft		
How many years have you known of the existence of this path ? 25		
Over what period have you used the path ? (Please specify how many years and dates e.g.: 20 years - 1970 - 1990) 25		
Have you used the path:	i) on foot ?	* Yes / No
	ii) on horseback ?	* Yes / No
	iii) by motor vehicle ?	* Yes / No
	iv) by cycle ?	* Yes / No
How often did you / do you use the path ? (e.g.: weekly; monthly; occasionally) Occasionally		
For what purpose did you / do you use the path ? (e.g.: work, pleasure, recreation, to get to shops) Recreation		
Have you ever been prevented from, or challenged when, using the path ? * Yes / No If "Yes" please give details		
Please give details of any Stiles, Hand Gates, Field Gates, Bridges, Notices, Direction Signs, Waymarking Signs, Obstructions, etc encountered on the path; or signs about the path or land.		



West Offices, Station Rise, York,
YO1 6GA
Telephone: 01904 551550

Route I used:  (add a sample of the line you used on the map)

Print name here CHRIS WRIGHT

Scale 1:5000

Drawn By: RJV

Date: 13/10/21

Contains Ordnance Survey data © Crown copyright and database right 2021

Any Further Information which you consider to be relevant :

* Delete as appropriate

Signature : _____

Date :

Signature of Person Taking the Statement: J. J. Jackson

Date : 3.4.2020

PLEASE NOTE

- 1) ALL sections of this form must be completed. Failure to do so will reduce the value of your evidence.
- 2) Please complete the form in clear printing or block capitals using black ink.
- 3) *Under highway legislation a path must have been used, in the belief that it is a public right of way, for a minimum of twenty years before public rights are established.*
- 4) You may be interviewed by an Officer of the Authority, and/or asked to give evidence at a Public Inquiry if a dispute should arise over the claimed path.



Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Mr Walter E. Fairburn
Blue Hall Cottage
Hull Road
Dunnington
York
YO19 5LP

Our Ref: 200401 Dunnington
Date: 8 November 2021
Email: rightsofway@york.gov.uk

Dear Mr Fairburn,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Thank you for returning the map of the route relating to the above order. As the order has been objected to the council is now required to submit the case to the Secretary of State who will reach a final decision about whether to confirm (bring into effect) this order.

To prepare the case for submission, my colleague and I are collecting more evidence and are hoping that you would consent to an informal interview about your use and experience of the route and its history as you understand it.

The interview can be conducted in person at a place of your choosing, such as your home or via virtual meeting software like Zoom or Teams. Alternatively, I can make arrangements for you to come to the council's offices at a mutually convenient time if that is your preference.

You will be interviewed by my colleague Russell Varley and I will be taking notes. I would encourage you to have someone with you during the interview. The notes taken will be included with all the other case documentation when it is submitted to the Secretary of State. As such, they will be available for anyone to inspect.

If you are willing to be interviewed or have any questions please get in touch with me (by letter or email) at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Grindley'.

Lauren Grindley.

Definitive Map Assistant.

Rights of Way Team City of York Council



Mr Chris Wright
38 Curlew Glebe
Dunnington
York
YO19 5PQ

Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Our Ref: 200401 Dunnington
Date: 8 November 2021
Email: rightsofway@york.gov.uk

Dear Mr Wright

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Thank you for returning the map of the route relating to the above order. As the order has been objected to the council is now required to submit the case to the Secretary of State who will reach a final decision about whether to confirm (bring into effect) this order.

To prepare the case for submission, my colleague and I are collecting more evidence and are hoping that you would consent to an informal interview about your use and experience of the route and its history as you understand it.

The interview can be conducted in person at a place of your choosing, such as your home or via virtual meeting software like Zoom or Teams. Alternatively, I can make arrangements for you to come to the council's offices at a mutually convenient time if that is your preference.

You will be interviewed by my colleague Russell Varley and I will be taking notes. I would encourage you to have someone with you during the interview. The notes taken will be included with all the other case documentation when it is submitted to the Secretary of State. As such, they will be available for anyone to inspect.

If you are willing to be interviewed or have any questions please get in touch with me (by letter or email) at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L R Grindley'.

Lauren Grindley.

Definitive Map Assistant.

Rights of Way Team City of York Council



Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Mr G. Cline
70 Cedar Glade
Dunnington
York
YO19 5PL

Our Ref: 200401 Dunnington
Date: 22 November 2021
Email: rightsofway@york.gov.uk

Dear Mr Cline,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Thank you for returning the map of the route relating to the above order. As the order has been objected to the council is now required to submit the case to the Secretary of State who will reach a final decision about whether to confirm (bring into effect) this order.

To prepare the case for submission, my colleague and I are collecting more evidence and are hoping that you would consent to an informal interview about your use and experience of the route and its history as you understand it.

The interview can be conducted in person at a place of your choosing, such as your home or via virtual meeting software like Zoom or Teams. Alternatively, I can make arrangements for you to come to the council's offices at a mutually convenient time if that is your preference.

You will be interviewed by my colleague Russell Varley and I will be taking notes. I would encourage you to have someone with you during the interview. The notes taken will be included with all the other case documentation when it is submitted to the Secretary of State. As such, they will be available for anyone to inspect.

If you are willing to be interviewed or have any questions please get in touch with me (by letter or email) at your earliest convenience.

Yours sincerely,

A handwritten signature in blue ink that reads 'L R Grindley'.

Lauren Grindley.

Definitive Map Assistant.

Rights of Way Team City of York Council



Economy and Place Directorate

West Offices
Station Rise
York YO1 6GA

Mrs D. Cline
70 Cedar Glade
Dunnington
York
YO19 5PL

Our Ref: 200401 Dunnington
Date: 22 November 2021
Email: rightsofway@york.gov.uk
Tel: 01904 553860

Dear Mrs Cline,

PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Thank you for returning the map of the route relating to the above order. As the order has been objected to the council is now required to submit the case to the Secretary of State who will reach a final decision about whether to confirm (bring into effect) this order.

To prepare the case for submission, my colleague and I are collecting more evidence and are hoping that you would consent to an informal interview about your use and experience of the route and its history as you understand it.

The interview can be conducted in person at a place of your choosing, such as your home or via virtual meeting software like Zoom or Teams. Alternatively, I can make arrangements for you to come to the council's offices at a mutually convenient time if that is your preference.

You will be interviewed by my colleague Russell Varley and I will be taking notes. I would encourage you to have someone with you during the interview. The notes taken will be included with all the other case documentation when it is submitted to the Secretary of State. As such, they will be available for anyone to inspect.

If you are willing to be interviewed or have any questions please get in touch with me (by letter, email or phone) at your earliest convenience.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'L R Grindley'.

Lauren Grindley

Definitive Map Assistant

Rights of Way Team City of York Council

Appendix 21

Pre application Landowner correspondence

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

Cc PROW

Ext 1374 - David Holdsworth

Our Ref: DH/PROW/DUNNINGTON

7 November 2003

Dear Mrs Wilson

Access from Common Road to Allotments/Strawberry Cottage

Thank you for your letter dated 18 October 2003 regarding Dunnington Parish Councils intention to apply for a Definitive Map Modification Order for the above location. Thank you also for the user evidence forms you have submitted.

In order for City of York Council to begin the Definitive Map Modification Order process we must first have received an official application, for which I have enclosed the necessary forms.

The pink form is the application itself, which should be completed and returned to this office, with the exact route to which you refer marked upon the plan attached to it. The green form must be served on the owners of the land crossed by the path. The yellow form should be used to record who the green form has been served upon and submitted to this office with the pink application form. I apologise for the complexity of this matter but these forms were devised by Central Government, not this authority.

I recognise your concerns regarding this issue and your wish to address the issue as soon as possible. However these forms are essential before any such applications can be determined.

If you have any questions regarding the above please feel free to contact me on 01904 551374.

Yours sincerely



David Holdsworth
Assistant Public Rights of Way Officer
Public Rights of Way Unit
Network Management

Mrs Sue Wilson
22 Hunter Close
Dunnington
York
YO19 5HQ

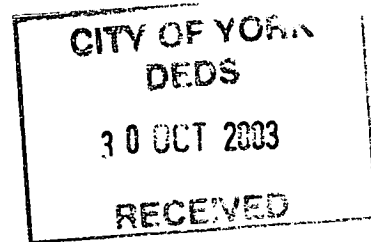
DUNNINGTON PARISH COUNCIL

Clerk: Mrs Sue Wilson 22 Hunter Close Dunnington York YO19 5QH
Tel: 01904 481120
E-mail address: suewilson.dpcclerk@amserve.com

Chairman: Cllr Malcolm Johnson Lodge Farm Elvington Lane Grimston York YO19 5ND
Tel: 01904 489554

Miss Alison Newbold
Public Rights of Way Officer
Public Rights of Way Unit
Network Management
Environment & Development Services
9 St. Leonard's Place
YORK
YO1 7ET

102306

18th October 2003

Dear Miss Newbold

REF: AN/PROW/DUNNINGTON**Access from Common Road to Allotments/Strawberry Cottage**

Thank you for your letter of 18th June and the advice contained therein. In taking this advice the Council now applies for a Definitive Map Modification Order to add the route as a public footpath to the Definitive Map and Statement. In support of this we enclose 25 completed User Evidence Forms from individual residents of Dunnington. Further such statements can be obtained if you wish.

The Council would be grateful if early consideration could be given to this matter as there is growing evidence that the current dispute is causing inconvenience and is becoming heated. It is therefore in need of formal resolution. If there is anything else please let me know.

Yours sincerely

pp. Sue Wilson (Mrs)
Clerk

cc.

APROWO

Parish File

Ext 1338 – Alison Newbould

Our ref AN/PROW/Dunnington

18 June 2003

Dear Mrs Wilson

Access from Common Road to Allotments/Strawberry Cottage

I refer to your letter dated 4 June 2003 regarding the creation of a permissive path from Common Road to the Allotments in Dunnington, which has been passed to me, as Robin Carr now only works on a consultative basis for the Authority.

I am not sure what has been discussed previously with Robin, so I shall endeavour to give you a full answer as to how a landowner may go about creating a permissive path.

Firstly, a permissive path (sometimes termed a 'concessionary' path) is a path that the landowner permits the public to use, with the intention that it should not become a public right of way. He may well erect notices to that effect and perhaps close the path once a year.

To ensure that the public does not acquire a right of way, as might happen if a notice was removed/torn down and not replaced, the owner can also take advantage of the alternative procedures laid down in the Highways Act 1980 section 31(5), whereby the owner can place a notice with the Authority that the way is not dedicated as a highway. This is sufficient evidence, without proof to a contrary intention, to negative the intention of the owner of the land to dedicate the way as a highway.

With regards to the above, in this particular case, I can find no record of any of the above having taken place.

As well as, or instead of, erecting notices as above, the landowner may also enter into a formal agreement with the Authority. Such a way is sometimes referred to as a 'licensed' path: the agreement or licence might provide for the way to remain available to the public for a stated period, eg 5 years.

Continued/...

Mrs S Wilson
Clerk to Dunnington Parish Council
22 Hunters Close
Dunnington
YORK
YO19 5QH

- 2 -

Because a permissive path is not a public right of way, it is not, in general, subject to rights of way law. Therefore, unless the landowner enters into a formal agreement with the Authority, the matter is not something that the Authority would get involved with. In addition, the Parish Council has no powers that enable it to enter into a permissive rights agreement with the landowner. It is basically up to the landowner as to whether he creates a permissive path or not.

By far the best route to take to safeguard public rights along this path is to apply for a Definitive Map Modification Order to add the route to the Definitive Map and Statement. As mentioned in your draft letter to Mr Jewitt, members of the public have used the route for many years and public rights have probably come into being through 20 years use. In fact, a member of the public, concerned that the route has recently been gated, has already requested an application form to apply for a Definitive Map Modification Order to add the route to the Definitive Map as a public footpath.

If the application is forthcoming and it is proved that public rights exist then no permissive agreement may be entered into. Indeed, if the Authority discovers evidence to suggest that a public right of way, which is not shown on the Definitive Map and Statement, subsists or is reasonably alleged to subsist the Authority is duty bound to investigate and if required make a modification to the Definitive Map and Statement. In other words, even if an application is not submitted, the Authority has a duty to investigate the route and add it to the Definitive Map and Statement if rights are proven to exist.

In conclusion, the draft letter, to which you refer to in your letter is not suitable in that firstly the Parish Council cannot enter into an agreement with the landowner to create a permissive path. In addition a request for an application has already been made by a member of the public to add the route to the Definitive Map and Statement as it seems probable that public rights have already been established through 20 years use and finally, a route cannot be permissive if it is proved that public rights already exist along it.

I hope the above information is of assistance, but should you wish to discuss the matter further, please do not hesitate to contact me directly on telephone (01904) 551338.

Yours sincerely

Alison Newbould
Public Rights of Way Officer
Public Rights of Way Unit
Network Management

DUNNINGTON PARISH COUNCIL

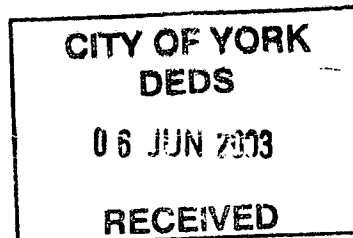
Clerk: Mrs Sue Wilson 22 Hunters Close Dunnington York YO19 5QH
Tel: 01904 481120

E-mail address: suewilson.dpcclerk@amserve.com

Chairman: Cllr Malcolm Johnson Lodge Farm Elvington Lane Grimston York YO19 5ND
Tel: 01904 489554

Mr R Carr
Public Rights of Way Officer
Public Rights of Way Unit
Highway Regulation
City of York Council
9 St. Leonard's Place
YORK
YO1 7ET

098596



4 June 2003

Dear Mr Carr

Access from Common Road to Allotments/Strawberry Cottage

I enclose a draft letter to Mr Jewitt. Can you please advise the Parish Council if this is an appropriate way of starting the permissive right of way process.

Yours sincerely

A handwritten signature in cursive script that reads "Sue Wilson".

Sue Wilson (Mrs)
Clerk

VAT Registration Number UB222

-Draft Copy-

Mr Jewitt
Common Road
Dunnington
York

June 2003


Dear Mr Jewitt

Access from Common Road to Allotments/Strawberry Cottage

The Parish Council is aware of, and has discussed, the access problems which have recently arisen between Common Road and your property as well as the allotments and Hagg Wood. We are anxious that any dispute is avoided and the Parish Council only supports the establishment of a permissive right of way rather than seeking an application for a Definitive Map Modification Order.

Our view however is that access has been established by many years of use by Dunnington Parishioners who are quite prepared to provide user evidence if this proves necessary. The Parish Council would much prefer to settle this issue by completion of a permissive right of way agreement with you. Please let us know how you would wish to proceed.

Yours sincerely


Sue Wilson (Mrs)
Clerk

CC PROWO, Parish File

Ext 1374 – David Holdsworth
Our Ref – PROW (R) 025/Dunnington

Date

Dear Mrs Wilson

**Wildlife and Countryside Act 1981
Application for Definitive Map Modification Order
Claimed Public Footpath – Common Road to Dunnington Allotments
Parish of Dunnington**

I write to acknowledge receipt of the completed application forms to make an order to add the above way to the Definitive Map. With these and the previously received user evidence forms we can now begin the Definitive Map Modification Order Process.

The first stage of this process is for the City of York Council to determine whether the user evidence provided is sufficient to make the order on the grounds of 20, or more, years use under Section 53 of the Wildlife and Countryside Act 1981.

If it is determined that this is the case then we will begin a period of consultation with local interest groups. A report will then be placed before the relevant Planning and Transport Area Sub Committee seeking approval to make the order.

On making the order the Council is required to advertise the order on site, in the local press and in the *London Gazette*. The advertisement allows for a period of time within which any objections/representation can be submitted.

If, following the expiry of this period, objections are still outstanding the matter is referred to the Secretary of State for consideration. If it is deemed necessary by the Secretary of State the matter may be required to be resolved at a public inquiry.

City of York Council receives a number of applications each year to modify the definitive map, as well as applications to extinguish, create or divert existing paths.

The process by which this is achieved can often be lengthy and complex. As a result the Public Rights of Unit has developed a backlog of cases waiting to be resolved.

Mrs Sue Wilson
Clerk: Dunnington Parish Council
22 Hunter Close
Dunnington
YORK
YO19 5ND

Last year we managed to secure additional funding to employ the services of a specialist rights of way consultant to tackle the back log of outstanding applications. This helped ease the workload considerably. However, the funding for this work has now ceased and the work has stopped, leaving many (approximately 20) applications at various stages of completeness and still outstanding.

As a result of this I regret that I am unable to offer any guarantee of when this particular application may be resolved. But you may be assured that it will receive attention as soon as resources are made available.

In the meantime, any additional evidence or information relating to this claimed path that the Parish Council may be able to provide would further assist us in our efforts.

I will continue to keep you informed of our progress in this matter.

Yours sincerely

David Holdsworth
Assistant Public Rights of Way Officer
Public Rights of Way Unit
Network Management

cc PROWO
Parish File

Ext 1374 – David Holdsworth

Our Ref PROW (R) 025/Dunnington

15 January 2004

Dear Mrs Wilson

**Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Claimed Public Footpath – Common Road to Dunnington Allotments
Parish of Dunnington**

Thank you for the completed Definitive Map Modification Order Application forms received by this Department on 13 January 2004.

Following receipt of the completed forms we have been contacted by the owner of 43 Common Road who has identified himself as the owner of the land over which the claimed way runs.

The Parish Council were required to serve notice of the application on the owner of this land. Unfortunately this notice was served on the owner of 39 Common Road, Strawberry Cottage, who was believed to be the land owner.

In order to comply with the Wildlife and Countryside Act 1981 the notice of the making of a Definitive Map Modification Order application has to be served on the owner of the land over which the way runs. Failure to do this could prejudice any future success of the application.

To this end I have enclosed another set of forms as well as the originals for reference. The owner of the land on which the notice of the making of an application needs to be served is as follows:-

Mr Jewitt
43 Common Road
Dunnington
YO19 5NG

/Continued

Mrs S Wilson
Clerk Dunnington Parish Council
22 Hunter Close
Dunnington
YORK YO19 5ND

2.

In addition to this I noted that on the forms the claimed route was described as running from Common Road to a junction with the Minster Way. The claimed route does in fact run from Common Road to a junction with Public Footpath Dunnington No 7 and not the Minster Way.

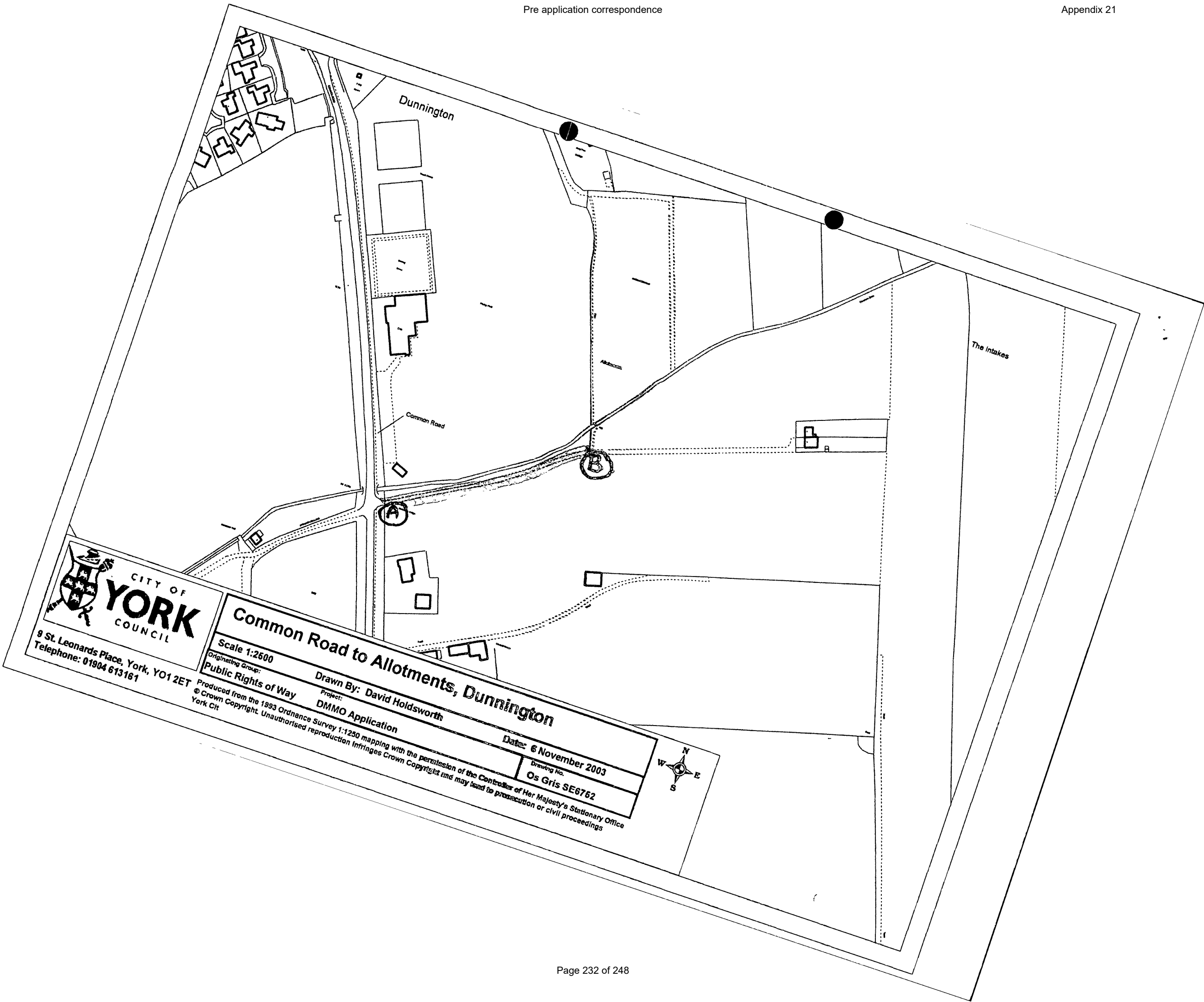
Please return the completed forms to this office to enable us to begin the order making process. In the meantime if you have any questions regarding the above do not hesitate to contact me on 01904 551374.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Holdsworth', followed by a period.

David Holdsworth
Assistant Public Rights of Way Officer
Public Rights of Way Unit
Network Management

Encs



cc PROWO

Ext – 1374 David Holdsworth

Our Ref – DH/PROW (R) 025/Dunnington/5003

8 March 2004

Dear Ms Dobson

**Wildlife and Countryside Act 1981
Application for Definitive Map Modification Order
Claimed Public Footpath – Common Road to Dunnington Allotments
Parish of Dunnington**

Thank you for your letter dated 24 February concerning the above matter.

I would firstly like to make a few points of clarification regarding the Parish Councils application for the above order. The application is to add to the route in question to the Definitive Map as public footpath, not bridleway or by way open to all traffic. The Definitive Map is the legally conclusive record of all public rights of way. If the application were to succeed and the order confirmed, the only legal access under the National Parks and Access to the Countryside Act 1949 would be on foot. I can only assume that the forms served on yourself were misleading and I would like to assure you that there is no question of vehicular rights coming into being over this section of track.

Another minor point of clarification is that the footpath to which the claimed route will connect is not the Minster Way but is in fact public footpath Dunnington No.7. This was an error in the original application forms we received from the Parish Council and which were also incorrectly served on yourself.

I acknowledge your concerns relating to the disturbance of livestock. These have been placed on file. I should also like to give you a brief overview of the procedure for dealing with an application such as this.

The first important thing to note is that claiming this route as a public footpath does not seek to create any new rights but rather to record rights that are already believed to exist.

Public rights can come into existence if a route has been used un interrupted for a period of 20 years or more. This is what the Parish Council are claiming. To determine whether or not this is case evidence must be considered both for and against the claim.

Continued.../...

Mrs Dobson
Strawberry Cottage
39 Common Road
Dunnington
YORK
YO19 5NZ

-2-

City of York Council's role is to decide whether there is enough evidence to make the required Definitive Map Modification Order and report to the Planning and Transport Area Sub Committee. The committee then make the final decision whether or not to make the order. If the order is made there is a period of public notification during which anybody can officially object. If, following the conclusion of this period objections are still outstanding, the matter is referred to the Secretary of State for determination. The Secretary of State may decide that a public inquiry is necessary to resolve the issue.

The Definitive Map Modification Order process is time consuming and lengthy. City of York Council already has a back log of similar cases awaiting resolution. To fully process an order from receipt of an application to its conclusion can often take from six months to a year.

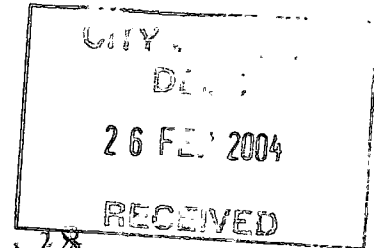
I hope you find this information useful. I have written a similar letter to Mr Jewitt explaining the situation and will continue to keep him informed of the progress of the application. If you require any further information please do not hesitate to contact me on 01904 551374, on email at david.holdsworth@york.gov.uk or at the above office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Holdsworth', with a long, wavy horizontal line extending from the end.

David Holdsworth
Assistant Public Rights of Way Officer
Public Rights of Way Unit
Network Management

**STRAWBERRY COTTAGE
39 COMMON ROAD
DUNNINGTON
YORK YO19 5NZ**



100000

Director of Environment & Development Services
City of York Council
9 St Leonard's Place
YORK YO1 2ET

24 February 2004

F.A.O. Public Right of Way Officers

Dear Sir

Application for a Modification Order - Dunnington

The Clerk to the Dunnington Parish Council sent us a notice, dated 9 January 2004 of an application to you to make the track between Common Road, Dunnington and Minster Way a footpath, bridleway and by-way open to all traffic. I understand that you have already been informed that we are not the owners of the land over which the track passes. It is owned by Graham Jewitt as part of his property at 43 Common Road, Dunnington.

However I should like to put on record the concerns over the years of Mr Jewitt and his predecessor and uncle, Bill Walker about disturbances to their sheep in the field adjoining the track caused by some dogs which are not under control of their owners who use the track although it is not a public right of way.

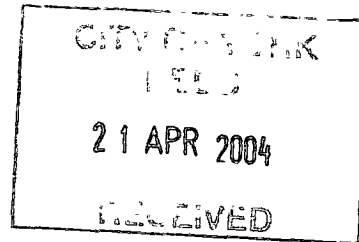
From our own point of view as owners of the continuation of the track which forms part of the Minster Way, we can see no case whatever for the track over Mr Jewitt's land being classified as a by-way open to all traffic. It leads only to our own house so any vehicle not visiting us has no legitimate reason for using the track. To classify the track as a by-way open to all traffic could result in vehicles being parked on it in such a way as to prevent access by emergency services, postal, refuse collection services and other legitimate visitors to our house. It is also the case that at present crime is deterred by the fact that any vehicle using the track has to justify its presence. I hope this will be borne in mind when you consider this application.

Yours sincerely

Janet Dobson

21/4
SW16th April 2004

Mr D Holdsworth
Assistant Public Rights of Way Officer
Public Rights of Way Unit
Network Manager
City of York Council
9 St Leonards Place
York YO1 7ET



Dear Mr Holdsworth

**Re: Wildlife and Countryside Act 1981
Application for Definitive Map Modification Order
Claimed Public Footpath – Common Road to Dunnington Allotments
Parish of Dunnington**

Thank you for your letter of 8th March 2004

The original gate at Common Road end of the track was in place before my late uncle, William Walker, bought the property in 1951 from Harold Tesseyman who worked the land as a market garden.

This gate has been locked on several occasions each year since, and on each occasion for a period of over 24 hours. This was to prevent anyone claiming a right of way to the track. This has generally been done when the owners of Strawberry Cottage were not in residence so as not to cause any inconvenience. The last weekend the gate was locked we observed people trespassing on 5 occasions after climbing the gate. When we attempted to advise them of the situation we received a poor response.

I have since spoken to Dunnington Parish Councillor Gary Kay, Undergate Farm, York Road, Dunnington, who has lived in Dunnington all his life. He has acknowledged that the gate has been in place for as long as he can remember.

Yours sincerely

Mr G Jewitt

43 Common Road
Dunnington
York YO19 5NG

cc PROWO

Ext – 1374 David Holdsworth

Our Ref – DH/PROW (R) 025/Dunnington/5001

8 March 2004

Dear Mr Jewitt

**Wildlife and Countryside Act 1981
Application for Definitive Map Modification Order
Claimed Public Footpath – Common Road to Dunnington Allotments
Parish of Dunnington**

Thank you for letter dated 23 February regarding the above matter. I have noted your comments and your letter has been placed on file.

In your letter you stated that there has always been a gate at the end of the track with a sign stating that the track is not a public right of way. It would be helpful if you could provide us with any information or records relating to the date the gate was first installed, times it was locked and for how long the sign was/has been present.

As you are aware Dunnington Parish Council have applied for a Definitive Map Modification Order to add the above route to the Definitive Map. The Definitive Map is the legally conclusive record of all public rights of way. The routes shown on it are classed as highway and as such protected by a range of highway law. I must stress that this application does not seek to create new rights to use the track in question but rather to record rights believed to exist already.

Under section 53 of the Wildlife and Countryside Act 1981 if a route has been used uninterrupted for 20 years it is deemed to have been dedicated to the public. This is what the Parish Council are claiming for the route in question. The role of City of York Council is to decide whether or not there is sufficient evidence to prove that the route has acquired public rights. In order to do this the council has to consider the evidence for and against the claim. Once all the evidence has been considered a report is placed before the relevant Planning and Transport Area Sub Committee with a recommendation to make, or not make a Definitive Map Modification Order. The decision then rests with the committee.

Continued.../...

Mr G Jewitt
43 Common Road
Dunnington
YORK
YO19 5NG

-2-

If an order is made it is advertised in the press and on site. There then follows a period of time within which anyone can make an official objection. If, when this period expires there are still objections outstanding the matter is referred to the Secretary of State. If it is deemed necessary the Secretary of State may decide to hold a public inquiry to resolve the issue. I have endeavoured to give you a brief overview of the order process. I shall provide you with more detail of each stage at the appropriate time.

The Definitive Map Modification Order Process is often time consuming and lengthy. City of York Council already has a back log of similar cases awaiting resolution. To fully process an order from receipt of an application to conclusion can often take from six months to a year. As a result of this and the limited resources available to the Public Rights of Way Unit I am unable to offer any guarantee of when this application may be resolved. However, you may be assured that it will receive attention as soon as resources allow.

I hope that you find the above information useful. I will continue to keep you informed of the progress of the application. In the meantime if you have any questions please do not hesitate to contact me on 01904 551374, on email at david.holdsworth@york.gov.uk or at the above office.

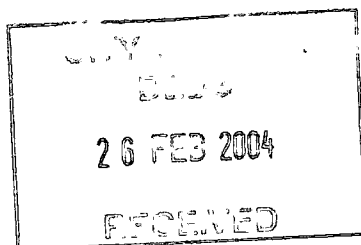
Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Holdsworth', followed by a small horizontal dash.

David Holdsworth
Assistant Public Rights of Way Officer
Public Rights of Way Unit
Network Management

23rd February 2003

Public Rights of Way
City of York Council
9 St Leonards Place
York YO1 2ET



814611

Dear Sir

Re: Modification Order at 43 Common Road, Dunnington YO19 5NG

Regarding the Modification Order adding footpath from Common Road, Dunnington to the junction with Public Footpath No 7 received on 16th February 2004.

This land has been in the ownership of our family since 1951. There has never been a Public Footpath, the only access is to Strawberry Cottage and farmland. There has always been a gate at the Common Road end with a clear sign stating 'PRIVATE ROAD NO PUBLIC RIGHT OF WAY', which is secured and closed several times each year. At the East end the Public Right of Way it is well sign-posted. The majority of people abide by the Law, but a minority trespass on this land allowing dog fouling and on several occasions that I am aware of chase my livestock in the adjacent field.

If the Parish Council wishes a Public Footpath to join Common Road with Public Footpath No 7, the obvious route would be along the boundary of Dunnington Playing Field and not on Private Property.

Yours faithfully

Mr G Jewitt

43 Common Road
Dunnington
York
YO19 5NG

Appendix 22

1968 Aerial Photography

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021





Appendix 23

1971 Aerial Photography

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



Aerial Photography

Appendix 23

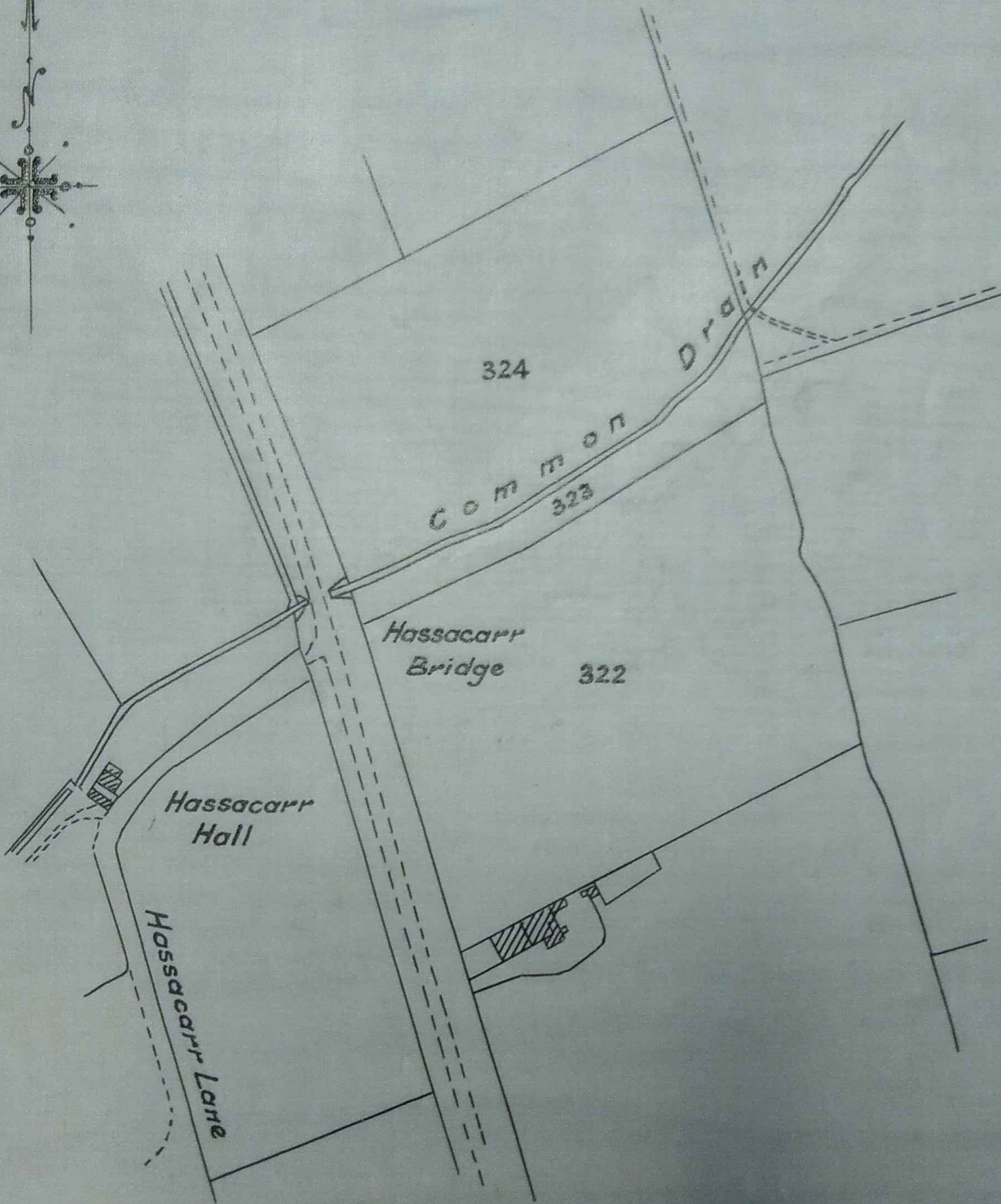
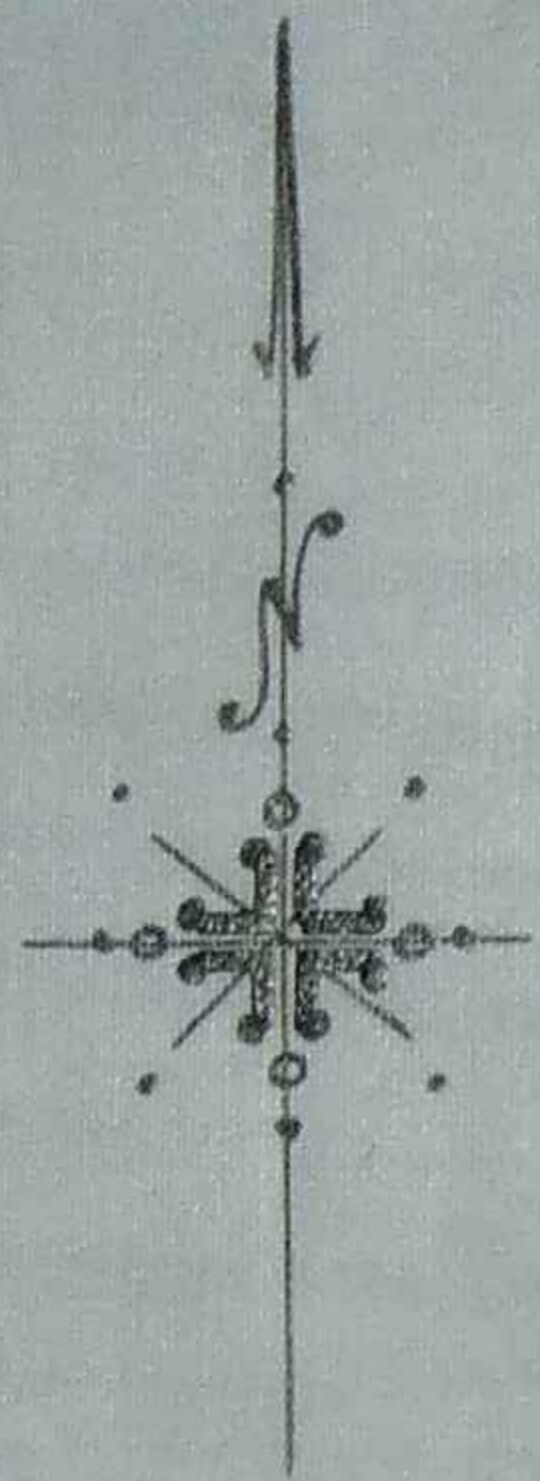
Appendix 24

1910 Smiths Gores Plan

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

YORKS CLXXV. 5

DUNNINGTON



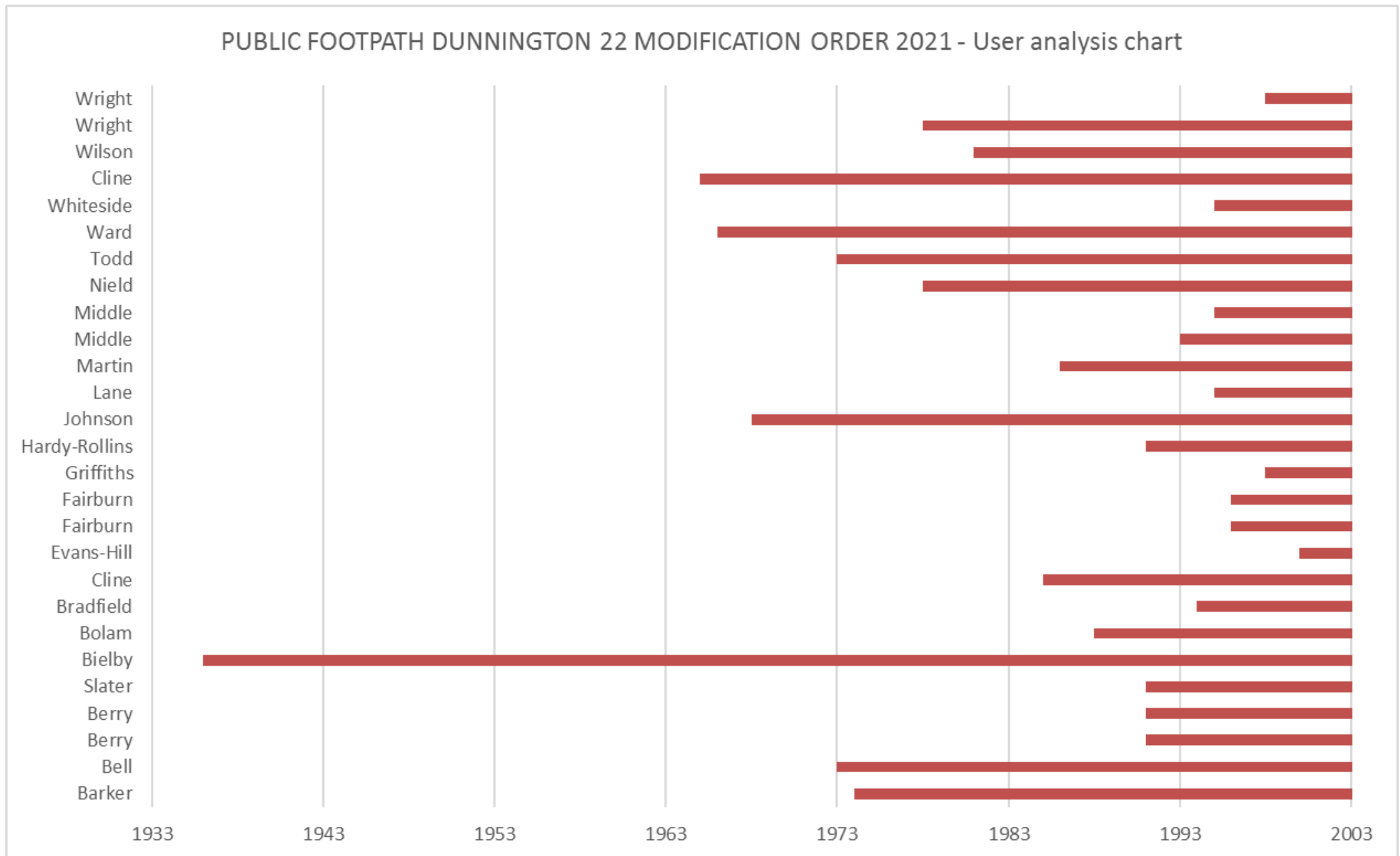
Scale 1/2500



Appendix 25

User Chart

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021



Appendix 26

Case Law

STATEMENT OF CASE OF THE COUNCIL OF THE CITY OF YORK PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021

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accused assaulted him, it is no corroboration of his evidence that B says that he also was the victim of a similar assault though both say it on oath. At the same time we think a jury may be told that a succession of these cases may help them to determine the truth of the matter provided they are satisfied that there is no collaboration between the children to put up a false story. And if the defence is one of innocent association by the accused with the children, *Rex v. Sims*,⁷ subsequently approved on this point by the House of Lords in *Harris v. Director of Public Prosecutions*,⁸ shows that such evidence can be given to rebut the defence.

This appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Registrar, Court of Criminal Appeal; Director of Public Prosecutions.*

C. J. E.

⁷ [1946] K.B. 531; 62 T.L.R. 431; 31 Cr.App.R. 158; [1946] 1 All E.R. 697.

⁸ [1952] A.C. 694; [1952] 1 T.L.R. 1075; 36 Cr.App.R. 39; [1952] 1 All E.R. 1044.

FAIREY v. SOUTHAMPTON COUNTY COUNCIL.

1956
Jan. 24.

Highway—Right of way—Footpath over private land—Uninterrupted user by public for more than 20 years—Owner's objection to use by public other than local residents in 1931—No intention to dedicate thereafter—Whether right to use land "brought into question"—Effect of Rights of Way Act, 1932—Whether retrospective—Rights of Way Act, 1932 (22 & 23 Geo. 5, c. 45), ss. 1, 2.
Statute—Retroactive effect—Procedural Act—Act giving right of prescription—Not procedural—Whether retrospective as to end of period of user—Intention of Act—Rights of Way Act, 1932.

Lord Goddard
C.J.,
Hilbery and
Stable J.J.

C. A.

1956
May 14, 15;
June 19.

Denning,
Birkett and
Parker L.J.J.

In 1954 a landowner applied to quarter sessions for a declaration that no right of way existed over a path on his land shown as a public path on a map prepared by the local authority. Quarter sessions found that the path had been used by the public without interruption or objection from 1885 to 1931, though there was no sufficient evidence on which an intention to dedicate or not to dedicate could be presumed at common law; that on an occasion in 1931 the then owner had objected to the use of the path by the public other than local residents; and that thereafter he and the

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present landowner successively had turned such persons off the path and by so doing had shown an intention not to dedicate the path as a highway; but they determined that a public right of way was deemed to have been dedicated by section 1 of the Rights of Way Act, 1932,¹ and dismissed the application.

The landlord appealed to the Divisional Court, which held (1) that the right of the public to use the land was "brought into question" within the meaning of section 1 (6) of the Rights of Way Act, 1932,¹ when a landlord for the first time refused to allow the public to use a way which they had been using without

¹ Rights of Way Act, 1932, s. 1:
"(1) Where a way, not being of such a character that user thereof by the public could not give rise at common law to any presumption of dedication, upon or over any land has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, such way shall be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way, . . .

"(3) A notice by the owner of the land over which any such way passes inconsistent with the dedication of the way as a highway, placed before or after and maintained after the commencement of this Act in such a manner as to be visible to those using the way, shall, in the absence of proof of a contrary intention, be sufficient evidence to negative the intention to dedicate such way as a highway, and where a notice has been placed in the manner provided in this subsection and is subsequently torn down or defaced, notice in writing by the owner of the land to the council of the county and of the borough or urban or rural district council in which the way is situate that the way is not dedicated to the public shall, in the absence of proof of a contrary intention, be sufficient evidence to negative the intention of the owner of the land to dedicate such way as a highway.

"(5) In the case of land in the possession of a tenant for a term of years or from year to year let on lease, any person for the time being entitled in reversion to the land shall, notwithstanding the existence

of any such tenancy, have the right to place and maintain such notice as aforesaid, but so that no injury is done thereby to the business or occupation of the tenant.

"(6) Each of the respective periods of years mentioned in this section shall be deemed and taken to be the period next before the time when the right of the public to use a way shall have been brought into question by notice as aforesaid or otherwise."

S. 2: "(1) Nothing in this Act shall affect any proceedings pending at the commencement of this Act, and where in respect of any way a court of competent jurisdiction decides in proceedings so pending, or has before the commencement of this Act decided, that the way is not a highway, this Act shall not apply except as respects enjoyment of the way after the date of the decision. (2) Nothing in this Act shall operate to prevent the dedication of a way as a highway being presumed on proof of user for any less period than twenty years or to prevent the dedication of a way as a highway being presumed or proved under any circumstances under which it can be presumed or proved at the time of the passing of this Act."

S. 4: "The person entitled to the remainder or reversion immediately expectant upon the determination of a tenancy for life or pour autre vie in land shall have the like remedies by action for trespass or an injunction to prevent the acquisition by the public of a right of way over such land as if he were in possession thereof."

interruption for over 20 years, and that it was not necessary, to bring the case within the Act, for the member of the public whose right was questioned, to insist that he had a right of way; and (2) (Stable J. dissenting) that the Act of 1932 was a procedural Act which took effect retrospectively and it was no objection that the period of 20 years after which the public was deemed to have acquired a right terminated before the Act came into force. On appeal by the landowner:—

Held, (1) that the landowner, by taking steps in 1931 to stop the public using the way, had "brought into question" their right to use it within the meaning of section 1 (6) of the Act of 1932.

Per Denning L.J. For the right of the public to be "brought into question" the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use a way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. Further, to prove that he had no intention to dedicate a way, there must be evidence of some overt acts on his part such as to show the public who used the way—here, the local residents—that he had no such intention.

(2) That the Act of 1932, like the Prescription Act, 1832, was not merely procedural, for it affected the substantive law by giving and defining rights; but that the Act by its terms was clearly intended to operate retrospectively; and that, since 20 years' enjoyment of the way had been had as of right by the public before 1931, it was by section 1 (1) of the Act a highway, although the Act came into operation only in 1934.

Cooper v. Hubbuck (1862) 12 C.B.N.S. 456 and *Jones v. Bates*, 54 T.L.R. 648; [1938] 2 All E.R. 237 considered.

Decision in *Attorney-General and Newton Abbot Rural District Council v. Dyer* [1947] Ch. 67; 62 T.L.R. 632; [1946] 2 All E.R. 252 approved.

Decision of Divisional Court affirmed in the result.

CASE STATED by appeals committee of Hampshire Quarter Sessions.

On December 29, 1954, application was made by the appellant, Sir Richard Fairey, pursuant to section 31 of the National Parks and Access to the Countryside Act, 1949, for a declaration that on May 11, 1953, no public right of way existed over a path at Bossington in the County of Southampton delineated on a provisional map prepared by the respondents, the Southampton County Council, pursuant to section 30 of the Act.

The appeals committee heard the application on May 3 and 4, 1955, and found the following facts: On May 11, 1953, the council prepared a draft map pursuant to section 27 of the Act and on November 13, 1953, the landowner objected to the inclusion therein of the path in question. After his objection

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had been heard the council prepared the provisional map. The path in question began at a point in the public highway opposite Bossington farm and terminated at a stile on the boundary between lands owned by the landowner and lands of the British Transport Commission adjacent to Horsebridge station. Further paths gave access from the stile to Horsebridge station and through it to the public highway. Throughout living memory the lands over which the path ran had belonged to the owner for the time being of Bossington House. In 1885 the estate belonged to one Deverell and in or about 1931 it descended to John Deverell. In 1937 the appellant purchased the estate and remained the owner and occupier thereof. The path existed as a farm convenience prior to the construction of the railway in 1860. Since 1885 the path had been used by members of the public without interruption both (i) to obtain access to Horsebridge station and Horsebridge village and beyond, and to places beyond the western end of the path or vice versa and (ii) for the purposes of recreation, such as, for example, a circular walk from Houghton in the evenings through the meadows and round by the highways. Some of the persons so using the path were strangers to the locality but many were known to the owner for the time being either as his tenants or his employees or as neighbouring residents. (Persons in the last three categories are hereinafter referred to as "local residents.") In so far as the path was used for recreation it was so used mainly by such local residents; user in category (i) above was more frequent by local residents than by strangers to the locality. Between 1885 and 1931 the public use of the path was nec vi nec clam nec precario nor was it interrupted, and during that period the owners for the time being of the land raised no objection to the use of the path by the persons and in the manner referred to above; nevertheless quarter sessions were not satisfied, on the evidence before them, that an intention to dedicate on the part of such owners could be presumed at common law nor had they sufficient evidence of an intention on the owners' part before 1931 not to dedicate the path as a public highway.

On an occasion in 1931 the then owner, John Deverell, had objected to the use of the path by the public other than local residents. From 1931 until 1937 John Deverell, and at all material times since 1937 the appellant, made no attempt to prevent local residents from using the path, but if any other member of the public was seen thereon by either of them he was told that he had no right to be there. Both thereby showed

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an intention not to dedicate the path as a highway for the use of members of the public at large. There was no evidence that any member of the public questioned the right of either John Deverell or the appellant thus to prevent the use of the path.

It was contended by the appellant that a public right of way over the path should not be deemed to have been dedicated under section 1 of the Rights of Way Act, 1932,¹ in that (a) the right was not brought into question within the meaning of section 1 (6) of the Act until 1953 when the appellant objected to the inclusion of the path in the map prepared by the respondents; and (b) that during the period of 20 years immediately preceding 1953 the owners of the land for the time being had shown an intention not to dedicate.

It was contended by the respondents (a) that the right of the public to use the path was brought into question by John Deverell in 1931 when he told users other than local residents that they had no right to use the path; (b) that during a period of more than 20 years immediately before the time in 1931 when the public right to use the path was brought into question (i) the public at large had used the path as of right and without interruption, and (ii) that there was no sufficient evidence that there was no intention to dedicate the path as a highway; (c) that therefore the path must in accordance with section 1 of the Rights of Way Act, 1932, be deemed to have been dedicated as a highway.

The appeals committee were of opinion that the period of 20 years referred to in section 1 (6) of the Rights of Way Act, 1932, meant, on the facts, the period immediately before the first occasion in 1931 when it was proved to their satisfaction that the owner for the time being had objected to the use of the path by persons who were not local residents. They accordingly determined that a public right of way was deemed to have been dedicated by virtue of section 1 and dismissed the application.

The landowner appealed.

Percy Lamb Q.C. and *J. P. Widgery* for the appellant. Two questions arise in this appeal: (1) What is the meaning of the words "brought into question" in section 1 (6) of the Rights of Way Act, 1932? (2) Does the Act take effect retrospectively? On the first question it is submitted that on the phraseology of section 1 (6) of the Act, and on the facts found, the right of the public to use the way was not brought into question in 1931 and quarter sessions were wrong in so holding. The words "brought

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"into question" connote two parties, and therefore a mere statement by a landowner that a way over his land is not a right of way is not sufficient to bring the right of the public to use the way into question within the meaning of section 1 (6) of the Act. [Reference was made to the Prescription Act, 1832.]

The case finds that from 1885 to 1931 the pathway in question was used by the public without objection, but quarter sessions were unable to make the common law presumption of dedication and therefore there was no common law highway in existence. In 1931 and thereafter John Deverell, the then owner, and subsequently the appellant, showed an intention not to dedicate the pathway, and there was no evidence that any member of the public ever questioned their right to prevent him from using the pathway. Yet quarter sessions decided that the right of the public to use the pathway had been brought into question in 1931 when John Deverell prevented the public from using the path and that a statutory highway was thereby created. Quarter sessions were wrong in so holding.

[HILBERY J. "Notice as aforesaid" in section 1 (6) may bring the right of the public into question. A notice does not connote two parties.]

If a notice is put up by a landowner denying the public the use of the path and nobody asserts a contrary right, then the public right is not brought into question. Until there is evidence before the court of one party asserting a right and another party asserting the contrary, the right of the public cannot be brought into question. All that John Deverell did in 1931 was to assert his right and that assertion was not questioned by any member of the public. On the facts found here, the only time that the public right to use the path was brought into question was in 1953 when the new right of way was claimed by the county council and included in the map prepared by them pursuant to section 30 of the National Parks and Access to the Countryside Act, 1949, and the appellant gave notice of objection.

[LORD GODDARD C.J. If the public had been using the pathway for 20 years and the owner then said that there was no right of way, that is bringing the public right into question.]

If this first argument is wrong, then it is submitted that the Act is not retrospective so as to cover a period of 20 years which began and determined before the Act came into force. The decision in *Attorney-General and Newton Abbot Rural District*

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*Council v. Dyer*² is erroneous. Although the 20-year period can commence at any time, it must determine after the Act came into force, that is to say, after January 1, 1934. A landowner ought not to be affected by an Act which is not expressed to be retrospective.

[LORD GODDARD C.J. referred to the Prescription Act, 1832.]

I know of no case under that Act where it has been held that the period of user could commence and determine before the Act came into force. It is contrary to all the canons of construction to hold that the Act of 1932 is retrospective. In *Attorney-General and Newton Abbot Rural District Council v. Dyer*² Evershed J. over-simplified the Act in holding that it was substantially a procedural Act which was not intended to create new rights. It does create new rights in the sense that it affects the rights of the public and of landowners. The Act may be in part procedural, but it is not wholly so. An Act which is in part procedural but which in part creates or destroys rights ought not to be construed retrospectively unless that is expressly so stated: see Maxwell on Interpretation of Statutes, 10th ed., p. 113. The general statement of the law by Sargant J. in *In re Hale's Patent*³ is applicable here.

Finally, section 2 (1) of the Act supports the submission, as the insertion of that subsection clearly shows that the Act is to affect matters arising only after the date when the Act came into operation, namely, on January 1, 1934. The appeal should be allowed.

J. Scott Henderson Q.C. and *M. G. Polson* for the county council. On the first point raised in the appeal, the starting point of the Act is that the public must have been using the way as of right for a period of 20 years. If that is proved, then section 1 (6) comes into play. By the terms of that subsection any notice which satisfies the requirements of section 1 (3), which deals with notice, will bring the right of the public to use the way into question, so that the right may be questioned by a "Private" notice, or "Trespassers will be Prosecuted," each of which satisfies the terms of section 1 (3). But the public right may be brought into question in an infinite number of other ways.

[He was stopped.]

As to the second point, the right of the public to use the way can be questioned at any time. Reliance is placed on section 1 (6) of the Act.

² [1947] Ch. 67; 62 T.L.R. 632;
[1946] 2 All E.R. 252.

³ [1920] 2 Ch. 377, 386; 36 T.L.R.
832.

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[STABLE J. If the words "right of the public" are construed as being a right conferred by the Act of 1932, then it could not have come into being in 1931.]

It over-simplifies the position to say that the Act conferred a new right. Its purpose was to give members of the public a right to continue in the enjoyment of a right which they had hitherto enjoyed: see *Jones v. Bates*, per Scott L.J.⁴ It is an Act which enables the public to prove their right. On the facts found in the present case, members of the public, at least so far as local inhabitants were concerned, continued to use this way at all times. Section 1 (6) and section 1 (3) when read in conjunction are clear enough to indicate that their right of user could be questioned at any time by any act on the part of the owner which showed an intention not to dedicate, for example, by closing the way, by posting a notice, by bringing an action for trespass against a member of the public, or by stopping the public from using the path, as John Deverell did in 1931. Those are all acts which bring the right of the public to use the path into question and they may be done at any time. [Reference was made to section 4 of the Prescription Act, 1832.]

As to the effect of section 2 (1), the purpose of its insertion was to give a landowner an opportunity to take legal proceedings between the date when the Act was passed and the date when it came into force, so that the court might determine whether a right of way existed or not. In the present case the appellant did not take legal proceedings and he cannot rely on section 2 (1).

[STABLE J. It is an extraordinary position that a man who starts litigation retains his rights but that he who does not loses them.]

That is implicit in the policy of the Act.

[HILBERY J. Section 2 (1) tacitly recognizes that the arbitrary rules laid down by the Act affect the rights of landowners retrospectively and therefore gives them a right to take proceedings to prove whether the ways in question are rights of way or not.]

[Reference was made to *Merstham Manor Ltd. v. Coulsdon and Purley Urban District Council*.⁵]

Percy Lamb Q.C., in reply, referred to *Attorney-General v. Antrobus*.⁶

⁴ [1938] 2 All E.R. 237, 244; 54 T.L.R. 648.

⁵ [1937] 2 K.B. 77; 52 T.L.R. 516; [1936] 2 All E.R. 423.

⁶ [1905] 2 Ch. 188; 21 T.L.R. 471.

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LORD GODDARD C.J. This is a case stated by the quarter sessions for the county of Southampton, to whom the appellant applied for a declaration that on May 11, 1953, no public right of way existed over a path at Bossington in the County of Southampton, which path was delineated upon a provisional map prepared by the respondents pursuant to section 30 of the National Parks and Access to the Countryside Act, 1949.

It is unnecessary to say more than that under the Act the county council have to prepare a map on which is shown what they consider to be the rights of way, and the landowner, or any other person aggrieved, can object and say that a path or road shown on the map as a public right of way is not a public right of way. If the county council do not accept the objector's contention the matter goes to quarter sessions. [His Lordship stated the facts and continued:] I say in passing, because the question does not arise immediately in the present case, that "local residents," even limited in the way that quarter sessions have said that it was understood, that is, to "tenants, employees" and neighbouring residents," is a very wide term and it might some day have to be decided whether, if people in so large a category were allowed to use the path without interruption, that was not a user by the public.

I now turn to the Act. [His Lordship read section 1 (1), (3) and (6) of the Rights of Way Act, 1932, and continued:]. For the purposes of the first matter which we have to consider in the case, those are all the provisions of the Act which need be mentioned. The justices have found that it was not until after 1931 that an attempt was made by the then owner of the land to prevent persons using the land. If he saw strangers on the land whom he did not want to be there he met them, challenged their right to be there and told them that they were not entitled to be there, and such people, being in a law-abiding country, accepted what he told them and went away. The first question we have to decide, therefore, is whether quarter sessions were right in holding that 1931 was the time when the right of the public to use the way was brought into question. Mr. Lamb has contended that one can only bring a matter into question if an assertion made on one side is disputed on the other; but I do not think that it is necessary, to bring a case within that provision in section 1 (6) of the Act, to say that when the owner denies to a person that there is a right of way that that person should thereupon insist that there is and perhaps proceed to try to assert his right by walking across the land or registering in

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some way his disagreement with what the owner has said. It seems to me that the owner raises the question by challenging the right of a person to walk along the road. If he says: "You have no right to be here," turning him off his land, he is raising the question that that person has no such right. He can certainly do it by putting up a notice which will raise the question, but it seems to me that he can do it also by telling a person to get off his land.

Therefore, the position is that for more than 20 years—in fact for over 40 years—the public used this way as a right of way. In 1931 and thereafter the question was raised whether the public had the right to use the way because the owner not only endeavoured to, but did, turn people back. By so doing, it seems to me that he brought the right of the public to use the way into question. I do not think that it is necessary for a member of the public to say: "I will bring an action against you," or "I will force my way or assert my right in some other way." The owner brings the right into question by refusing to allow the public the right to use what they had used for some 40 years. Therefore, I think that quarter sessions were right in holding in the present case that the material time when the right was brought into question was some time in 1931. No attempt has been made to give the exact month, nor does it matter; 1931 is the critical year, and if sessions were right in that, Mr. Lamb agrees that the appeal fails subject to the point whether the Act is retrospective.

We have listened to an interesting discussion on whether this Act is retrospective or not. It has been argued that although the 20-year period may begin before the Act came into force, it must determine after it has come into force because, it is said, the Act must not be construed retrospectively as it affects the rights of the landowner. Speaking for myself, I agree with the decision of Evershed J. in *Attorney-General and Newton Abbot Rural District Council v. Dyer*.¹ In that case Evershed J. held² that the Act was retrospective, that is to say, the fact that the time both began and ended before the Act came into force was immaterial for this purpose. It has always been held that a procedural Act does or may act retrospectively, and one test of whether an Act is a procedural Act is whether it is an Act which is mainly concerned with evidence. The Act under consideration is in many respects similar to the Prescription

¹ [1947] Ch. 67; 62 T.L.R. 632; ² [1947] Ch. 67, 87.
 [1946] 2 All E.R. 252.

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Act, 1832, which provided, as its preamble shows, that owing to the difficulties of proving user from time immemorial, certain changes in the law were desirable and, instead of a person who asserted that he was entitled to an easement over land or light or water having to give evidence from which the court could infer a grant or user from time immemorial, the Act substituted the prescriptive periods of 20 years in some cases and 40 years in others. That seems to me to be the object of the present Act. The long title, which does not help, is: "An Act to amend the "law relating to public rights of way; and for purposes connected "therewith." There is no preamble, but it seems to me that the main object of the Act is to substitute a definite period, namely, 20 years' user by the public, for the necessity of proving the fact of long user and so forth, from which common law dedication can be presumed. That being so, I think it is no objection to say, when the law has laid down that 20 years is the period over which the public are to be deemed to have acquired a right of way, that the 20 years would have terminated before the Act came into force. Section 1 (6) provides: "Each "of the respective periods of years mentioned in this section "shall be deemed and taken to be the period next before the "time when the right of the public to use a way shall have been "brought into question . . ." The material time is the period next before the time when the right of the public shall have been brought into question. The Act does not use the words "when "the right of the public to use the way shall have been brought "into question after the commencement of this Act." It simply provides that when it has to be determined whether there is a way or not, all one has to find is whether for 20 years before the landowner asserted in one way or another that there was no right of way, the public had used it as of right.

Considerable argument has been based on section 2 (1) of the Act, which provides: "Nothing in this Act shall affect any "proceedings pending at the commencement of this Act, and "where in respect of any way a court of competent jurisdiction "decides in proceedings so pending, or has before the com- "mencement of this Act decided, that the way is not a highway, "this Act shall not apply except as respects enjoyment of the "way after the date of the decision." One can give illustrations of the way in which the Act may act unevenly, perhaps harshly, against some people and not against others, but I think that that subsection is one which was intended to give landowners before the Act came into force—it was passed on July 12, 1932, but did

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not come into operation until January 1, 1934—the opportunity of beginning an action in order to have the question of the existence or non-existence of a right of way determined. If they chose then to bring an action for a declaration that no right of way existed over the land or an action for damages for trespass, and could obtain a decision that at the time they issued the writ there was no right of way, then this Act was not to take away the right established in the action; but if they did not bring the action, then it seems to me that the Act will apply and they have to take their chance of whether it can be proved, as it was in the present case, that the public had established a right of way 20 years before the matter was raised.

For these reasons, I think that the court of quarter sessions came to a right decision.

HILBERY J. I am of the same opinion and for the same reasons.

STABLE J. I agree with the judgment delivered by my Lord on the first point as to whether by warning people off his land in the way he did the landowner was bringing the right of the public to use the way into question, and I have nothing to add on that point. As regards the retrospective effect of the Act, I have come to an opposite conclusion, and as the matter is one of far-reaching importance, I think that I should state the conclusion at which I have arrived.

The law, as I understand it, is as stated by Sargant J. in *In re Hale's Patent*,³ where he says⁴: “No doubt the general law “is that, while rights are not statutorily altered retrospectively, “procedure is, apart from indications to the contrary, altered “retrospectively; but where rights and procedure are dealt with “together in the way in which section 8 of the [Patents and “Designs] Act of 1919 deals with them, the intention of the “legislature would seem fairly clear—namely, that the old rights “are still to be determined by the old tribunal under the Act of “1907, and that only the new rights under the substituted section “are to be dealt with by the tribunal thereby substituted for the “Treasury.”

On the findings of the justices in the present case, on some date in 1931 the then owner of the land took action, and when I say “took action” I do not mean took legal proceedings, but took steps to assert that there was no public right of way over

³ [1920] 2 Ch. 377; 36 T.L.R. 832. ⁴ [1920] 2 Ch. 377, 386.

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this land; and it is agreed that if this matter had been litigated in 1931, on the findings of the justices in this case, he would have been successful in establishing that he was entitled to the enjoyment of his park without any interference whatsoever by the public. In 1932 the Rights of Way Act was passed, and the successful contention of the respondents here is that the passing of that Act destroyed the right the owner enjoyed in 1931 to use his land without interference by the public and created a new right in the public to pass over that land. I need only refer to the opening words of section 1 of the Act: "Where a way, not being of such a character that user thereof by the public could not give rise at common law to any presumption of dedication, upon or over any land has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, such way shall be deemed to have been dedicated . . ." Subsection (6) of section 1 provides the terminal date of that 20 years, and it is on the construction of that subsection that it seems to me that this matter depends. [His Lordship read section 1 (6) and continued:]

If the prohibition by the appellant's predecessor in title and the appellant's prohibition of the public to use this land is regarded as a continuing matter then it was, as I think it should be, in operation when and after the Act came into force, but what is said here is that one has to go back to 1931 when the prohibition was first brought into force; in other words, that the terminal date of the 20-year period may be a date prior to the passing or the coming into operation of this Act.

Section 1 (3) provides: "A notice by the owner of the land over which any such way passes inconsistent with the dedication of the way as a highway, placed before or after and maintained after the commencement of this Act," is a notice as aforesaid which brings the right into question. That postulates that a notice, posted before the Act came into force, must be maintained after the Act comes into operation. If the only notice given by the owner in the present case was the notice referred to in section 1 (3), and if he had been sufficiently astute to pull it down immediately before the Act was passed into law, there would have been no terminal date to which the 20 years could run.

The other matter which appears to me to be remarkable is that section 2 (1) provides that nothing in the Act shall affect any proceedings which have been taken before the Act came into force or where proceedings are so pending. The result of that

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is this, that if in 1931, when the owner warned the public off, somebody had said: "You cannot do that, we have a right here," and he had brought an action, he would have been protected by that section. The only reason, presumably, why he did not bring an action was the finding by the justices that no member of the public asserted the existence of a right, no doubt for the very good reason that at that time no right existed for the public to assert. It does seem to me an extraordinary result where a number of landowners are in identical situations that those who do not choose to litigate because nobody asserts a contrary right should lose their rights whereas those against whom the contrary right is asserted and who do start litigation are protected. I would only add that it seems to me that the conclusion I have reached is reinforced by subsections (1) and (5) of section 1 and also by section 4 of the Act, which provides: "The person entitled to the remainder or reversion immediately expectant upon the determination of a tenancy for life or pour autre vie in land shall have the like remedies by action for trespass or an injunction to prevent the acquisition by the public of a right of way over such land as if he were in possession thereof." I understand that that is an entirely new right conferred on reversioners, and one asks oneself what is the use of giving them that right if retrospectively any rights they had had been extinguished in 1931 when (a) there was no adverse right and (b) there was no machinery by which the reversioners could have protected the then existing position.

For these reasons, in my view, the Act operates in this way: the starting-point of 20 years can be any time before the coming into force of the Act; the terminal date must be a date after the Act came into operation.

Appeal dismissed.

E. M. W.

The landlord appealed.

[*Note.*—The submissions in the Court of Appeal as to the date at which the right of way had been "brought into question" were substantially the same as those in the Divisional Court and accordingly are not reported. The submissions on the quality and effect of the Act of 1932 were developed, with citations of cases not before the Divisional Court, and, as summarized below, supplement the submissions in that court.]

Percy Lamb Q.C. and *J. P. Widgery* for the landowner. The Act of 1932, the title of which is prayed in aid, is not substantially

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procedural, for it creates a public right where none existed before it came into force. It gives and defines rights: compare Lush J. in *Poyser v. Minors*,¹ on the distinction between "procedure" and the law which "gives or defines the right."

An Act is not to be construed to have retrospective operation, "unless such a construction appears clearly in the terms of the Act, or arises by necessary and distinct implication": *West v. Gwynne*.² The dicta of Wright J., in *In re Athlumney, Ex parte Wilson*,³ that "a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment"; and that if the language "is fairly capable of either interpretation it must be construed as prospective only" are applicable here: see also *National Real Estate and Finance Co. v. Hassan*.⁴

Though section 2 (1) of this Act expressly saves rights in pending actions, it does not follow that Parliament thereby intended that as a whole it should operate retrospectively. In *In re Hale's Patent*⁵ Sargant J. said that where rights and procedure were dealt with together, the old rights were to be determined under the old Acts and only the new rights were to be dealt with by the substituted tribunal.⁶ That statement of general principle (on which Stable J. founded his dissenting judgment in the present case) is relied on as showing that so far as rights are affected this landowner's right in 1931 ought to be determined according to the law then in being, though inasmuch as the Act is procedural it may operate retrospectively. On the construction given to this Act by the majority in the Divisional Court a "notice . . . placed before or after and maintained after the commencement of this Act" could not avail this landowner; nor would the right given to the reversioner by section 4 be of any use to him. In *Cooper v. Hubbuck*⁷ Willes J.,⁸ considering the very similar language of the Prescription Act, 1832, said that it created a right in land just as much as if it had been given by grant.

[DENNING L.J. Lord Goddard C.J. suggested that that Act was procedural.]

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³ [1898] 2 Q.B. 547, 552.⁷ (1862) 12 C.B.N.S. 456.⁴ [1939] 2 K.B. 61, 74; 55 T.L.R.⁸ Ibid. 468.

570; [1939] 2 All E.R. 154.

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Unfortunately *Cooper v. Hubbuck*⁹ was not cited to the court. [*Lauri v. Renad*¹⁰ was also referred to.] The decision of Ever-shed J. in *Attorney-General and Newton Abbot Rural District Council v. Dyer*¹¹ that this Act was substantially procedural was erroneous. The effect of procedural changes on rights was discussed in *Colonial Sugar Refining Co. Ltd. v. Irving*,¹² in which the Privy Council said that the right of appeal to that committee was a right which could not be taken away without express words. *Director of Public Prosecutions v. Lamb*,¹³ where a regulation in clear language changed the punishment for an offence between the committing of the offence and the charge, is distinguishable.

[BIRKETT L.J. Are not the rules applicable to the criminal law different? At Nuremberg the lawyers argued for days on retrospective effect.]

There is authority that penal statutes are not to be construed retrospectively, and no person has a vested right in punishment. [*The Ydun*¹⁴; Maxwell on Interpretation of Statutes, 10th ed., p. 277, and Pratt and Mackenzie on The Law of Highways, 19th ed., p. 24, on "express dedication of a highway" were also referred to.] To construe this Act retrospectively would be to take away a right of property without compensation; and that is contrary to all the canons of construction.

J. Scott Henderson Q.C. and *M. G. Polson* for the council. The true question is not whether the Act is procedural, but what is its intention; this Act shows an intention to apply to past as well as to future user: in *Jones v. Bates*¹⁵ Scott L.J.¹⁶ said that this Act intended to bring the English law into line with the more sensible Scots law. The difference of language between section 1 (6) of this Act and the very similar language of section 4 of the Prescription Act, 1832, by which the words "shall have" "been or shall be" in the latter Act have now been altered to "shall have been," is prayed in aid as showing Parliament's intention that the period of 20 years' user may be in the past as well as in the future. [*Colls v. Home and Colonial Stores Ltd.*¹⁷ was also referred to.] In the present case this landowner has not been deprived of a right. He allowed the public to enjoy

⁹ 12 C.B.N.S. 456.

¹⁰ [1892] 3 Ch. 402, 420-421; 8 T.L.R. 637.

¹¹ [1947] Ch. 67; 62 T.L.R. 632; [1946] 2 All E.R. 252.

¹² [1905] A.C. 369, 372-373; 21 T.L.R. 513.

¹³ [1941] 2 K.B. 89; [1941] 2 All E.R. 499.

¹⁴ [1899] P. 236; 15 T.L.R. 361.

¹⁵ [1938] 2 All E.R. 237; 54 T.L.R. 648.

¹⁶ [1938] 2 All E.R. 237, 244-245.

¹⁷ [1904] A.C. 179; 20 T.L.R. 475.

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a right and the length of the enjoyment has crystallized the public right. *Attorney-General and Newton Abbot Rural District Council v. Dyer*¹⁸ was correctly decided. As against *Colonial Sugar Refining Co. v. Irving*,¹⁹ *Rathbone v. Munn*²⁰ and *Theo. Conway Ltd. v. Henwood*²¹ decided that a right of appeal was a mere matter of procedure. This Act does not create new rights but it provides a method of procedure for establishing inchoate rights which have accrued. The passing of this Act did not destroy the right which the landowner had in 1931; if this matter had been litigated in 1931 the landowner would have succeeded. There is nothing in the language of this Act which is ambiguous; it deals with evidence and is substantially procedural, and it must be construed retrospectively.

Lamb Q.C. in reply. The words "shall have been" in section 1 (6) refer to the 17-month period between the passing and the coming into force of the Act, during which the landowner could put up a notice to stop the 20 years running. A notice would be nugatory if the Act is retrospective to a period which started and finished before the Act was passed, because the notice could not then affect the acquisition of the right by the public. [*Folkestone Corporation v. Brockman*²² was also referred to.]

Cur. adv. vult.

DENNING L.J. There is a footpath at Bossington in Hampshire, which is used by the country folk as a way to get to Horsebridge station and Horsebridge village, and also as a walk round from Houghton. For 46 years from 1885 to 1931 this footpath was used by members of the public as of right without interruption. Some of the persons so using it were strangers to the locality, but it was mainly used by local residents. The case finds that since 1931 the landowner "made no attempt to prevent local residents from using the said path, but if any other member of the public was seen thereon by the landowner, he was told that he had no right to be there." In 1953 the county council showed the footpath in their map as a footpath over which the public had a right of way. The owner thereupon objected and took the matter to quarter sessions. They decided that there was a public right of way along the path. Quarter sessions said that, if they had been asked to determine the matter at common law, they would have held that there was no public

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right of way along the footpath, because they were not satisfied that there was any intention by the owner to dedicate it as a highway: but quarter sessions went on to hold that the public have acquired a right of way under the Rights of Way Act, 1932. The owner appealed to the Divisional Court, which decided against him by a majority. He now appeals to this court.

The Rights of Way Act, 1932, has introduced a new means by which the public may acquire a right of way, in addition to the old means of dedication, which, be it noted, is still preserved: see section 2 (2). The new means of acquiring it is by prescription for 20 years. The old common law prescription for a right of way had to run from time immemorial, that is, from the time when Richard Coeur de Lion came to the throne in A.D. 1189. The new statutory period of 20 years has no fixed starting point, but only a finishing point. The public must have used the way as of right for the period of 20 years next before their right to use it was "brought into question." We have now to consider how the period of 20 years is to be calculated.

The thing to do is to find the finishing point and then count back 20 years. This means that in this case we have to find the time when the right of the public to use the way was first "brought into question by notice as aforesaid or otherwise" within section 1 (6) of the Act. Those words are obviously taken from the similar words in section 4 of the Prescription Act, 1832, which was considered by the Court of Common Pleas in *Cooper v. Hubbuck*.¹ In that case Willes J. said that² "in order to 'have the claim 'brought in question' there must be at least 'enough in the proceedings to apprise the parties that the claim 'was advanced, so that there might be an opportunity of 'litigating it.'" Applying those observations to this case, I think that in order for the right of the public to have been "brought into question," the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance, by putting a barrier across the path or putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice: the local council may bring an action in the name of the Attorney-General against the landowner in the courts claiming that there is a public right of way:

¹ (1862) 12 C.B.N.S. 456.

² Ibid. 468.

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or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way.

But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in some other way makes it clear to the public that he is challenging their right to use the way.

Applying this test, I ask myself: when did the landowner here make it clear to the public that he was challenging their right to use the way? Quarter sessions held that he did so in 1931, when he objected to the use of the path by persons who were not local residents. We do not know what evidence was before them on that point. If the landowner merely turned back one stranger on an isolated occasion, that would not, I think, be sufficient to make it clear to "the public" that they had no right to use it. He ought at least to make it clear to the villagers of Bossington, Houghton and Horsebridge. They were the members of the public most concerned to assert the right, because they were the persons who used the path. They knew—better than the landowner himself—how long they had used it. They were the persons to tell. It was no good the landowner speaking to a stranger who would know nothing of the public right and would not be concerned to assert it. This view is supported by a case which was decided nearly a hundred years ago—*Reg. v. Broke*³—about a footpath at Ipswich. Sea-faring men proved that they had used the path without interruption for a great many years for the purpose of their calling. The landowner sought to rebut the public right by proving that he had turned back all persons who were not sea-faring men: but it was held that that was not sufficient for the purpose. Pollock C.B. said⁴ that the user by the sea-faring men was a user by the public and that long user by them gave the public a right of way. If the landowner wished to deny the public right, he ought to have made it clear to the sea-faring men that they used it by his leave and not as of right. So, here, the landowner ought to have made it clear to the villagers. We have no information on this point, but I think we ought to assume that quarter sessions had sufficient evidence before them to support their finding. We ought to assume that in 1931 when the landowner turned back strangers, he did it in so open and notorious a fashion that it was made clear, not only to strangers, that they

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³ (1859) 1 F. & F. 514.

⁴ Ibid. 515.

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had no right to use the path, but also to local residents, that they only used it by tolerance of the owner. If so, he did bring the right into question in 1931, as quarter sessions have found.

In this connexion I would also mention the finding of quarter sessions that in and from 1931 the landowner, by turning off strangers, showed an intention not to dedicate the path as a highway for the use of members of the public at large. This raises the same point. In my opinion a landowner cannot escape the effect of 20 years' prescription by saying that, locked in his own mind, he had no intention to dedicate: or by telling a stranger to the locality (who had no reason to dispute it) that he had no intention to dedicate. In order for there to be "sufficient" evidence that there was no intention "to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large—the public who used the path, in this case the villagers—that he had no intention to dedicate. He must, in Lord Blackburn's words, take steps to disabuse those persons of any belief that there was a public right: see *Mann v. Brodie*.⁵ Such evidence may consist, as in the leading case of *Poole v. Huskinson*,⁶ of notices or a barrier: or the common method of closing the way one day a year. That was not done here; but we must assume that the landowner turned off strangers in so open and notorious a fashion that it was clear to everyone that he was asserting that the public had no right to use it. On this footing there was sufficient evidence to show that there was no intention to dedicate.

I think, therefore, that we should accept the findings of quarter sessions that the landowner brought the public right into question in 1931 and thereafter showed a sufficient intention not to dedicate the path as a highway. Even so, there is found to be 20 years' user by the public as of right before 1931: and the question is whether that is sufficient to give a statutory right to use the footpath. The difficulty is that the Rights of Way Act, 1932, was not passed until July 12, 1932, and did not come into operation until January 1, 1934. The 20 years' user before 1931 took place before the Act was passed. Can the public acquire a right of way by 20 years' user before the Act? Is the Act retrospective to that extent?

I must say at once that to my mind this Act of 1932 is not a procedural Act. It affects the substantive law in the following respects: it creates a new statutory right to a highway by prescription in addition to the old right by dedication. It reverses

⁵ (1885) 10 App.Cas. 378, 386.

⁶ (1843) 11 M. & W. 827.

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the burden of proof: for whereas previously the legal burden of proving dedication was on the public who asserted the right (*Folkestone Corporation v. Brockman*⁷), now after 20 years' user the legal burden is on the landowner to refute it. It gives reversioners a right to interfere and gives the public a right of way if they do not interfere: whereas previously reversioners had no right to interfere and the public could acquire no right of way against them. It is interesting to notice that the courts held that the Prescription Act, 1832, did not relate to pleading or procedure only: see *Cooper v. Hubbuck*,⁸ *per* Willes J. Neither does this Act.

Seeing that this Act does affect the substantive law, it is not to be given a retrospective operation unless such a construction appears very clearly on the terms of the Act or arises by necessary and distinct implication. I think, however, that such is the case here: the whole tenor of the Act is to establish a public right by 20 years' user; and the wording of section 2 (1) carries with it the necessary and distinct implication that, except as therein stated, the Act applies to enjoyment of the way before the commencement of the Act. This was the view of Evershed J. in *Attorney-General and Newton Abbot Rural District Council v. Dyer*,⁹ and I agree with him.

Mr. Lamb pointed to the fact that Parliament allowed an interval of 17 months between the time when the Act was passed (July 12, 1932) and the time when it came into operation (January 1, 1934); and he asked: was not that period given so as to enable any landowner (who did not intend to dedicate a path as a highway) to put up a notice saying that his property was private, and that there was no right of way over it? I agree that that was the object of the interval; but I think the object is substantially achieved. If a notice were put up before 1933, it would have this effect: if the 20 years had not then run, the notice would prevent a public right being acquired; whereas if it had already run, the notice would serve as an emphatic assertion that the path had heretofore been used by tolerance of the owner and not by right of the public; and the longer it remained there without challenge the more effective it would be to prove the correctness of his assertion. If it was challenged before the end of 1933, the landowner could get the matter resolved by the courts under the law as it stood before the Act: see section 2 (1). If it was not challenged until after 1933, the new law applied;

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⁷ [1914] A.C. 338; 30 T.L.R. 297.⁸ 12 C.B.N.S. 456, 468.⁹ [1947] Ch. 67, 89; 62 T.L.R.

632; [1946] 2 All E.R. 262.

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My conclusion is, therefore, that the Act is retrospective. Once the 20 years' enjoyment has been had as of right by the public, then whether the 20 years' enjoyment was before or after the Act, the way is by the Act a highway; and the landowner cannot escape from that position by saying that he never intended to dedicate it as a highway. I would dismiss the appeal.

BIRKETT L.J. This appeal from a decision of the Divisional Court raises important questions affecting landowners and the members of the public under the provisions of the Rights of Way Act, 1932. [His Lordship stated the facts, and continued:] The main purpose of the Rights of Way Act, 1932, was to simplify the procedure when it was sought to establish a way as a public highway. It does not profess to alter the general law as to the manner in which public rights are deemed to have come into existence. The important change is in the length of time which is enough to establish the intention. If the way can reasonably be presumed to have been dedicated as public, then proof of public user for 20 years past is now enough, if the user has been "as of right," without interruption, and it is not proved by the landowner that the intention to dedicate the way was not continuous during the 20 years: *Jones v. Bates*¹⁰; *Merstham Manor Ltd. v. Coulsdon and Purley Urban District Council*.¹¹

Section 1 (6) of the Act of 1932 provides that the 20-year period shall be deemed to be the period next before the time when the right of the public to use a way shall have been brought into question by notice or otherwise. This subsection differs from the corresponding provision in the Prescription Act of 1832, which required the periods of 20 and 40 years therein mentioned to be "next before some suit or action" in which the right was questioned. Therefore if today a member of the public is turned back from a footpath, on the ground that there is no right of way, and action is taken to assert the public claim, the period of 20 years necessary to be proved will be up to the date of the act of turning back, and not up to the time that the action to assert the public right is taken.

In the present appeal it is found that members of the public were turned back in 1931, and the same thing happened at

¹⁰ 54 T.L.R. 648; [1938] 2 All E.R. 237. ¹¹ [1937] 2 K.B. 77; 52 T.L.R. 516; [1936] 2 All E.R. 422.

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intervals after that date. The evidence made it clear that from 1885 to 1931 the public had been using this footpath "as of right," without interruption, and on that evidence the footpath is deemed to have been dedicated under section 1 (1) of the Act of 1932, for there was no evidence at all that within that period there was no intention to dedicate the way. The act of the landowner in turning members of the public back in 1931, in my opinion, was "bringing the right into question," because if there had been user as of right for 20 years without interruption, and then steps were taken to stop members of the public from using the way on the ground that the public had no rights there at all, then this is clearly an occasion "when the right of the public to use the way shall have been brought into question by notice as aforesaid or otherwise": section 1 (6). There is no fixed method laid down by the Act by which the right is to be brought in question. The words "or otherwise" leave the matter at large. A barrier or a notice would, of course, bring the right into question; but when the landowner takes steps to stop members of the public using the way, for my own part I do not think there can be any clearer way of bringing the right into question. After 1931 the landowner showed an intention not to dedicate the path as a public highway; but his act then was unavailing. Forty-six years had passed between 1885 and 1931, and no evidence was given to show that in those years there was an intention not to dedicate the way as a public highway. Everything therefore turns in this appeal on whether the 46 years ending in 1931 are within the words of section 1 (1) of the Act of 1932.

The Act, although passed into law on July 12, 1932, did not come into force until January 1, 1934, and the requirement of a period of 20 years of which the subsection speaks was fulfilled in the present case before the Act was passed in 1932. This raises the important question whether the Act is intended to be retrospective in its operation. The rule is now well established that an Act is not to have retrospective effect, save in matters of procedure, unless the Act makes it plain that it is to have retrospective effect.

In the Divisional Court the view was taken that this Act dealt only with procedure, and the decision in *Attorney-General and Newton Abbot Rural District Council v. Dyer*¹² was followed. It is not always easy to maintain this clear distinction between Acts dealing with procedure only and Acts which create rights; and the Rights of Way Act of 1932, I should have thought, was

¹² [1947] Ch. 67.

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more than an Act dealing with procedure only, as the Prescription Act of 1832 was held to be in *Cooper v. Hubbuck*.¹³ Section 2 (2) of the Rights of Way Act, 1932, makes it quite plain that the new procedure under the Act is an *additional* method of establishing the dedication of highways, and does not abolish or alter the existing methods. In any cases where for any reason the Act has no application, the existing law can be used in the same way as it was used before the Act was passed. Thus, for example, if evidence of public user for five years is enough in all the circumstances of the case to prove the landowner's intention to dedicate, there is no need to prove the use for 20 years. The essential test is: what is the intention of the statute? In my opinion, while I think that the statute was not confined merely to procedure but was dealing with rights, I yet think that the intention of the statute was that it should be retrospective in its operation. Section 58 of the National Parks and Access to the Countryside Act, 1949, amended the Rights of Way Act, 1932, by deleting the concluding words of section 1 (1) and the whole of section 1 (2). The purpose of this was to make the period of 20 years apply in all cases, but in doing so there was in section 58 (2) of the National Parks Act a saving in favour of proceedings pending at December 16, 1949, and also for cases then decided by courts of competent jurisdiction. Similarly, section 2 (1) of the Act of 1932 is a transitional provision to prevent possible conflict between the old and the new law in cases already decided, or in cases in course of being decided when the Act came into force on January 1, 1934.

I am therefore of opinion that the period of 20 years laid down by the Act is not to be reckoned from January 1, 1934, but that any way used uninterruptedly and as of right for a period of 20 years can be claimed as a public way, whenever the period of 20 years occurred, subject to the provisions of the Rights of Way Act, 1932.

I agree with the conclusion of the Divisional Court that the footpath in question is a public way as claimed by the Southampton County Council, and that this appeal ought to be dismissed.

PARKER L.J. I have come to the same conclusion. Before the appeals committee of quarter sessions the only point taken on behalf of the appellant was that the 20-year period to be considered was that next before the proceedings in question, and that by reason of the action taken by the appellant and his predecessor

¹³ 12 C.B.N.S. 456.

since 1931 there was shown an intention during that period not to dedicate the footpath in question. I will assume that such action was sufficient evidence that there was no intention to dedicate, since the contrary was not argued, but it is to be observed that no action was taken in regard to a considerable section of the public, namely, "local residents" as described in the case, but only in regard to strangers. The question, however, remains whether, as the respondents contend, the right of the public to use the footpath had not been brought into question at an earlier date, namely, in 1931, when such action was first taken. The appeals committee and the Divisional Court held that this contention was right, and, accordingly, subject to the point hereinafter referred to, it is clear that as a result of what had happened between 1885 and 1931 the footpath pursuant to section 1 (1) of the Act is deemed to have been dedicated. I agree with this conclusion. It seems to me clear that from 1885 to 1931 the public were asserting a right to enjoy this footpath, so that if in 1931 steps were taken to warn off persons asserting such a right, such action was clearly bringing into question that right. The question is largely one of fact and, the appeals committee having so found, there is no reason to disturb that finding.

Before the Divisional Court, however, and before this court, the appellant raised a more formidable point, namely, as to the retrospective operation of the Act. The Act was passed on July 12, 1932, and came into operation on January 1, 1934. It clearly applied to a 20-year period occurring wholly after January 1, 1934. It was conceded that it applied to a 20-year period commencing before and ending after January 1, 1934, but it was denied that it could apply to a 20-year period occurring, as in the present case, wholly before January 1, 1934. To support this, strong reliance was placed on the well-known principle that an Act is *not* to be construed so as to have retrospective effect, except in regard to matters of procedure only, unless the Act is clearly intended to have that effect.

It is sufficient to cite two passages from the authorities. In *In re Athlumney, Ex parte Wilson*¹⁴ Wright J. said this¹⁵: "Perhaps no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is

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¹⁴ [1898] 2 Q.B. 547.¹⁵ Ibid. 551-552.

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In *In re Hale's Patent* ¹⁶ Sargant J. said ¹⁷: "No doubt the
 "general law is that, while rights are not statutorily altered
 "retrospectively, procedure is, apart from indications to the
 "contrary, altered retrospectively; but where rights and pro-
 "cedure are dealt with together in the way in which section 8
 "of the Act of 1919 deals with them, the intention of the legis-
 "lature would seem fairly clear—namely, that the old rights are
 "still to be determined by the old tribunal under the Act of
 "1907, and that only the new rights under the substituted
 "section are to be dealt with by the tribunal thereby substituted
 "for the Treasury."

The Divisional Court (Stable J. dissenting) held that the Act applied where, as here, the 20-year period was wholly before the commencement of the Act. In arriving at his conclusion, Lord Goddard C.J. (with whom Hilbery J. agreed) said ¹⁸: "It has always been held that a procedural Act does or
 "may act retrospectively, and one test of whether an Act is
 "procedural is whether it is an Act which mainly deals with
 "evidence. The Act under consideration is in many respects
 "similar to the Prescription Act, 1832, which provided, as its
 "preamble shows, that owing to the difficulties of proving user
 "from time immemorial, certain changes in the law were desir-
 "able and, instead of a person who asserted that he was entitled
 "to an easement over land or light or water having to give
 "evidence from which the court could infer a grant or user from
 "time immemorial, the Act substituted the prescriptive periods
 "of 20 years in some cases and 40 years in others. That seems
 "to me the object of the present Act." In other words, they
 treated the Act as a procedural Act, and, in doing so, came to the same conclusion as Evershed J. in *Attorney-General and Newton Abbot Rural District Council v. Dyer*, ¹⁹ who said ²⁰:
 "In the first place, it is to be borne in mind that the Act of
 "1932 is substantially a procedural Act, in the sense that it is
 "designed, not to create new rights or new causes of action, but
 "rather to simplify and render more easy the means of making
 "good claims of a well-established kind."

¹⁶ [1920] 2 Ch. 377; 36 T.L.R. 832.

¹⁹ [1947] Ch. 67.

¹⁷ [1920] 2 Ch. 377, 386.

²⁰ Ibid. 88.

¹⁸ Ante 448; [1956] 1 All E.R.
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Mr. Lamb, for the appellant, has urged with considerable force that this Act, though it admittedly in part deals with matters of procedure, nevertheless, to use the words of Lush J. in *Poyser v. Minors*,²¹ "gives or defines" legal rights. That was indeed the view of Stable J. in the present case. For my part, I think that that conclusion is right, and, without going into the matter in detail, I am content to adopt what was said by Willes J. in *Cooper v. Hubbuck*,²² in dealing with the Prescription Act, 1832, which, as Lord Goddard C.J.²³ pointed out in the present case, the present Act resembles in many respects. Willes J., with whom Erle C.J. and Byle J. concurred, in considering section 4 of the Prescription Act (which was similar to section 1 (6) of the Act of 1932), said²⁴: "The section in question is the last of those which deal with the creation of the right. It is not a section relating to pleading or procedure only, but has for its object to appoint the terminus of the period of prescription which by the previous sections was to confer a right. This it does by reference to the commencement of 'some suit or action wherein the claim or matter, &c., shall have been or shall be brought in question.' The effect, therefore, is that, immediately upon the bringing of such suit or action, the enjoyment, if within the previous sections as to length and otherwise, shall ripen into a right." This case was unfortunately not before the Divisional Court; nor was it referred to in *Attorney-General and Newton Abbot Rural District Council v. Dyer*.²⁵

That, of course, does not dispose of the matter, because the question remains whether, even though the Act gives or defines legal rights, the intention is clear that it should have a retrospective operation. If so, it should be so construed, even if the consequences may in certain cases appear unjust or hard. In order to ascertain the intention, it is, I think, legitimate to consider not only the language used in, but the object of, the enactment.

In *Jones v. Bates*²⁶ Scott L.J. discussed at some length the purpose of the Rights of Way Act, 1932, in these words²⁷: "Before discussing the evidence and judgment below, I want to consider what the law now is since the passing of the Rights of Way Act, 1932, which the judge had to apply. The new Act, as

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²¹ (1881) 7 Q.B.D. 329, 333.²² 12 C.B.N.S. 456.²³ Ante 448.²⁴ 12 C.B.N.S. 456, 467.²⁵ [1947] Ch. 67.²⁶ [1938] 2 All E.R. 237.²⁷ Ibid. 244-245.

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“ stated in its long title, was an amending Act. Before the Act,
“ the law applicable was the common law. The main alteration
“ is effected by section 1, which gives a new statutory effect to
“ mere proof of actual user as of right and without interruption.
“ At the time of the passing of the Act, the main outline of the
“ law affecting proof of a public highway, whether a carriage-
“ road, a bridle-path or a footpath, had been drawn quite clearly
“ by judicial decisions. Whereas in Scotland proof of 40 years’
“ user as of right, and without interruption in the enjoyment of
“ the right, *ipso facto* established the legal conclusion that the
“ way was public by prescription, in England no such convenient
“ rule of law had been evolved by our courts. Our legal theory
“ had always been—at any rate within the last century or two—
“ that the sole origin of a public highway was dedication to the
“ public use by the owners of the land over which it ran, and in
“ consequence that, in case of dispute, the public right could be
“ established only by such evidence as would justify an inference
“ of fact that the way had at some date, known or unknown,
“ been so dedicated. The corollary followed that, on this as on
“ all other issues of fact, the tribunal had to decide, once there
“ was some affirmative evidence before it of user, whether or not
“ on balance it was sufficient to establish dedication. That
“ decision if given by a High Court judge sitting alone, was open
“ to revision by a Court of Appeal, but not if given by a county
“ court or other court, whose decision on fact was made final by
“ statute. Whichever jurisdictional mode of deciding questions
“ of fact happened to have been invoked in the particular case,
“ the task of the tribunal of fact was not limited to deciding the
“ necessary questions of user—Was it of right? Was the exercise
“ of the right interrupted? How long had it continued? These
“ findings would in Scotland have sufficed for the decision of the
“ legal issue. In England, however, the tribunal had to deal
“ with such difficult investigations as the state of the title of the
“ owners and whether there was an owner who could dedicate,
“ and consequently sometimes even the time when the dedication
“ —usually quite imaginary—had in fact taken place. Above all
“ the other difficulties, the tribunal had solemnly to infer as an
“ actual fact that somebody or other had in fact dedicated. It
“ was often a pure legal fiction, and yet put on the affirmant of
“ the public right an artificial onus which was often fatal to his
“ success. The practical result of the English rule of law was
“ that in many cases, although quite a formidable body of
“ evidence was available to demonstrate what I will call the

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" Scottish premises, the public claimant failed on the additional English requisites. I infer from its terms that the Rights of Way Act, 1932, was passed for the definite purpose of getting rid of these extra difficulties of proof, and of assimilating our English legal position to the more sensible one obtaining north of the Tweed." Accepting his analysis, as I do, I would not expect to find any limitation on its operation.

Turning to the language used, it is to be observed that section 1 (6), which defines the 20-year period, introduces no limitation as to the time when the right of the public to use the way shall have been brought into question. Indeed, the words " by notice as aforesaid," which are clearly a reference back to subsection (3) and cover therefore a notice " placed before . . . and maintained after the commencement of this Act," point to a period ending before the commencement of the Act.

Again, it seems to me that the necessary implication from section 2 (1) is that the Act is retrospective in operation. It was suggested that that subsection was necessary in order that the new provisions as to evidence (see section 3) should not apply to pending actions, and that this was its only effect. I cannot accept this argument, which appears to ignore the latter part of the subsection, where it says that in regard to decisions given before the commencement of the Act, and in regard to decisions given in actions pending at the commencement of the Act, " this Act shall not apply except as regards enjoyment of the way after the date of the decision." These words, as it seems to me, can only be explained on the basis that the Act, except to that extent, was intended to be retrospective. Indeed, that was the view of Evershed J. in *Attorney-General and Newton Abbot Rural District Council v. Dyer*.²⁸

I appreciate that, as Stable J. pointed out,²⁹ this interpretation may in certain circumstances produce consequences which are hard and even extraordinary, but in my judgment the language of the Act taken as a whole is sufficiently clear to rebut the presumption. Accordingly, I would dismiss the appeal.

Appeal dismissed.

Leave to appeal to the House of Lords granted.

Solicitors: *Ashurst, Morris Crisp & Co.; Theodore Goddard & Co. for G. Andrew Wheatley, Winchester.*

M. M. H.

²⁸ [1947] Ch. 67, 89.

²⁹ Ante 452.

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HOUSE OF LORDS

SESSION 2006–07

[2007] UKHL 28

on appeal from: [2005] EWCA Civ 1597

OPINIONS
OF THE LORDS OF APPEAL
FOR JUDGMENT IN THE CAUSE

R (on the application of Godmanchester Town Council)
(Appellants) v. Secretary of State for the Environment, Food and
Rural Affairs (Respondent) and one other action

R (on the application of Drain) (Appellant) v. Secretary of State
for the Environment, Food and Rural Affairs (Respondent) and
one other action

Appellate Committee

Lord Hoffmann
Lord Hope of Craighead
Lord Scott of Foscote
Baroness Hale of Richmond
Lord Neuberger of Abbotsbury

Counsel

Appellants:
George Laurence QC
Miss Ross Crail
(Instructed by J J Pearlman with Zermansky & Partners,
Leeds)

Respondents:
Timothy Mould QC
David Blundell
(Instructed by Treasury Solicitor)

Interveners

Edwin Simpson
(Instructed by Blandy & Blandy, Reading)

Hearing dates:
8, 9 and 10 May 2007

ON
WEDNESDAY 20 JUNE 2007

HOUSE OF LORDS**OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT
IN THE CAUSE**

**R (on the application of Godmanchester Town Council) (Appellants)
v. Secretary of State for the Environment, Food and Rural Affairs
(Respondent) and one other action**

**R (on the application of Drain) (Appellant) v. Secretary of State for
the Environment, Food and Rural Affairs (Respondent) and one
other action**

[2007] UKHL 28

LORD HOFFMANN

My Lords,

1. These two appeals are test cases brought before the House for a ruling on the effect of the presumption in section 31(1) of the Highways Act 1980:

“Where a way over any land... 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.”

2. The main issue in both appeals is over the nature of the evidence which will be sufficient to demonstrate that there was no intention to dedicate. Although the point can be put in a variety of ways, it seems to me to turn in the end on the meaning of the word “intention”. The respondent landowners say that intention is a state of mind, with all the subjectivity which that implies. In principle, the owner himself is the person best qualified to give evidence about his own state of mind. Such evidence could be confirmed by acts done during the relevant period, such as putting up notices or barriers or recording his intentions in letters or memoranda. In evaluating such acts, no distinction can be drawn between those which would have come to the attention of users of

the way and those which would not. What matters is the owner's state of mind and not what users of the way would have thought about it.

3. The contrary view is that the term intention is being used in an objective sense. It means what users of the way would reasonably have thought to be the owner's state of mind, which may or may not coincide with his actual state of mind. Similarly when one speaks of the intention of the parties to a contract, one means what a reasonable person, possessed of the background knowledge available to the parties, would have understood what they meant by using the language in which they expressed their agreement. Likewise, adverse possession by a squatter is said to require an *animus possidendi*, an intention to possess. But, as Slade J said in the leading case of *Powell v McFarlane* (1977) 38 P & CR 452 (approved as a "remarkable judgment" by the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, per Lord Browne-Wilkinson at p. 432):

"In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world."

4. Before I say anything about the facts of this appeal, I must put section 31(1) into its wider setting. It is derived from section 1(1) of the Rights of Way Act 1932, which in turn built upon foundations laid by the common law. As has often been explained, English law differs from civilian systems such as the law of Scotland by having no doctrine of acquisition of rights, public or private, by long user: see *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335, 349. Instead, it treats user since time immemorial, that is to say, since 1189, as raising an irrebuttable presumption that the right had a lawful origin in grant to a predecessor in title or dedication to the public at large. As the reign of Richard I slipped further into the remote past, that presumption had to be supplemented by the judicial invention of others. In the case of claims to private easements such as rights of way, juries were told that user since time immemorial could be inferred from evidence of user for a long time, but that this could be rebutted by evidence that the easement could not have existed in 1189. As that was often quite easy to prove, the presumption had to be further supplemented by directions that the jury could in such a case infer the existence of a more recent grant which had been lost. This remained the

law until it was reformed by the Prescription Act 1832, to which I shall return later.

5. In the case of a public right of way, a lawful origin had to be found in dedication by the landowner at some unknown date in the past. Such dedication was analogous to the lost modern grant of a private easement. Juries were told that they could find such a dedication on evidence of user openly and as of right by members of the public and were often encouraged to do so. The reason for juries and judges being willing to make and accept findings that there had been a dedication or a lost modern grant was of course the unfairness of disturbing rights which had been exercised without objection for a long time. In Scottish law, this policy was given effect by the more logical method of allowing such user to create the right. But in England the policy of the law was not openly acknowledged. Instead, juries were told that in order to uphold the public right, they had to find as a fact that there had been an act of dedication accompanied by the necessary *animus dedicandi* on the part of the landowner: see *Poole v Huskinson* (1843) 11 M & W 827.

6. As a matter of experience and common sense, however, dedication is not usually the most likely explanation for long user by the public, any more than a lost modern grant is the most likely explanation for long user of a private right of way. People do dedicate land as public highways, particularly in laying out building schemes. It is however hard to believe that many of the cartways, bridle paths and footpaths in rural areas owe their origin to a conscious act of dedication. Tolerance, good nature, ignorance or inertia on the part of landowners over many years are more likely explanations. In *Jones v Bates* [1938] 2 All ER 237, 244 Scott LJ said that actual dedication was “often a pure legal fiction [which] put on the affirmant of the public right an artificial onus which was often fatal to his success.” In *Jaques v Secretary of State for the Environment* [1995] JPL 1031, 1037 Laws J called it an “Alice in Wonderland requirement.”

7. Nevertheless, juries and other tribunals of fact did frequently find that such acts of dedication had taken place, no doubt for the reason I have suggested. So much so that in *Folkestone Corporation v Brockman* [1914] AC 338 it was argued that, in the absence of evidence of facts inconsistent with such a dedication, they were obliged to make such a finding. But this submission was rejected by the House of Lords and it became settled that user was no more than evidence from which dedication could be inferred. It was open to the jury to ascribe the user to toleration or some other cause. Since, as I have said, some other cause

was in real life more likely, it became difficult to predict when or for what reason a jury would have sufficient sympathy with the users of the highway to find that there had been a dedication.

8. English judges were embarrassed by the fictions of lost modern grant, *animus dedicandi* and the like (“a bad and mischievous law, and one which is discreditable to us as a civilized and enlightened people” said Cockburn CJ in *Bryant v Foot* (1867) LR 2 QB 161, 179) and looked enviously north of the border (see Lord Blackburn in *Mann v Brodie* (1885) 10 App Cas 378, 386.) The law of private rights of way and certain other easements was reformed by the Prescription Act 1832 and since this provided a model for the 1932 Act, it is helpful to see how it worked. Starting from the common law, namely that user since 1189 would establish the easement, it provided in section 2 that a claim to such an easement which had been “actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years” should not be defeated by evidence which showed that it had arisen at some earlier date. This meant that it could no longer be defeated by showing that it had arisen after 1189.

9. Section 4 provided that the “full period of twenty years” should be taken to be the period next before the proceedings in which the claim shall have been “brought into question”. If the statute had said no more, it would have been possible for a landowner to defeat a claim under the Act by the simple expedient of interrupting the enjoyment of the easement. The time which had necessarily to elapse between the interruption and the commencement of proceedings by the dominant owner to vindicate his right would automatically have prevented the latter from proving enjoyment without interruption for the 20 years “next before” the proceedings. Section 4 therefore went on to provide that “no act or other matter shall be deemed to be an interruption” unless it had been submitted to or acquiesced in for one year after the party interrupted had had notice thereof. That meant that if the servient owner barred the way, the dominant owner had a year within which to commence proceedings and claim the benefit of the statute.

10. The 1932 Act followed the same pattern, but with two important variations. First, section 1(1) contained the proviso which allowed the presumption of dedication to be rebutted by “sufficient evidence that there was no intention during that period to dedicate such way”. There was no such proviso in the 1832 Act. Other subsections in section 1 of the 1932 Act provided that specific acts would be treated as sufficient evidence to negative the intention to dedicate. By section 1(3) (now

section 31(3) and (5) of the 1980 Act), a notice inconsistent with dedication, placed and maintained “in such a manner as to be visible to those using the way” will be sufficient. If the notice is torn down, notice in writing to the county and borough or rural district council that the way is not dedicated to the public will be sufficient. By section 1(4) (now section 31(6) of the 1980 Act) a landowner may deposit with the county council and the borough, urban district or rural district councils a map of his land and a statement indicating which ways he admits to have been dedicated as highways. He may then at any time within the next 10 years make a statutory declaration that he has not dedicated any additional ways and that will be sufficient evidence to negative his intention to have dedicated any such ways. The process may be repeated by further statutory declarations at intervals of not more than 10 years.

11. The other difference was that the 20 year retrospective period did not, as in the 1832 Act, run from the commencement of the proceedings contesting the highway, with a year’s grace period which did not count as an interruption. Instead, it ran from when the right to the way was “brought into question”, without any grace period. That suggests that the draftsman, with the example of section 4 of the 1832 Act before him, thought that if he ran the period back from the date when the right was brought into question, no grace period would be needed.

12. That, my Lords, is the common law and statutory background against which the dispute over the meaning of the term “sufficient evidence that there was no intention...to dedicate” in section 31(1) must be resolved. The help which may be obtained from the pre-1932 cases is limited. As the onus was on the claimant to prove dedication and there was no need for the landowner to prove facts inconsistent with dedication, the courts were not concerned to pin down very precisely what would be sufficient to show inconsistency. There are, however, some indications that the judges were looking at how the matter would have appeared to users of the way.

13. In *Trustees of the British Museum v Finniss* (1833) 5 Car & P 460, 465 Patteson J told a jury:

“If a man opens his land, so that the public pass over it continually, the public, after a user of very few years, would be entitled to pass over it, and use it as a way; and if the party does not mean to dedicate it as a way, but only to give a licence, he should do some act to show that he gives

a licence only. The common course is, to shut it up one day in every year, which I believe is the case at Lincoln's Inn."

14. This suggests that what matters is the impression given to members of the public. Likewise in *Barraclough v Johnson* (1838) 8 Ad & E 99, 105, Littledale J said:

"A man may say that he does not mean to dedicate a way to the public, and yet, if he had allowed them to pass every day for a length of time, his declaration alone would not be regarded, but it would be for a jury to say whether he had intended to dedicate it or not. The facts may warrant them in believing that the way was dedicated, though he has said that he did not so intend: and, if his intention be insisted upon, it may be answered that he should have shewn it by putting up a gate, or by some other act."

15. In *Regina v Broke* (1859) 1 F & F 514, 515, a trial on indictment for stopping up a highway, the landowner claimed to have instructed his servants to allow only seafaring men and pilots to use the path and to turn back anyone else. Pollock CB said:

"Even supposing these instructions to have been given and acted on, yet, unless it can be proved that they were communicated to the persons who used the path, and that they did so by virtue thereof, and not of right, their user was a user by the public, and the right of way has been gained, if the user has been continued long enough."

16. It is true that there is no express statement that intention had to be negated by overt and notorious acts. But then, as I have said, intention did not have to be negated at all. And there is no case in which a jury was directed to have regard to an act which one might call private, in the sense of something which would not have come to the attention of users of the way.

17. The first consideration of the matter after 1932 was the decision of the Court of Appeal in *Fairey v Southampton County Council* [1956] 2 QB 439. This was an application to quarter sessions (under section 31

of the National Parks and Access to the Countryside Act 1949) by the owner of Bossington House in Hampshire for a declaration that a footpath over his land was not a public highway. The evidence was that it had been used uninterruptedly from 1885 to 1931 by inhabitants of the nearby villages of Bossington, Houghton and Horsebridge. As from that date, a new owner of the estate had challenged users who were not near neighbours and turned them back. Quarter sessions found that the challenges had brought the public right to use the path into question and that the relevant 20 year period for the purposes of the Act was therefore 1911 to 1931. As there had been qualifying user during this period, the public right of way was established.

18. The landowner appealed by case stated to the Divisional Court. One ground of appeal, which is not relevant to this case, was that if quarter sessions were right about the relevant 20 year period, the Act could not apply because it was not retrospective. The other ground was that the challenges did not bring the right to use the path into question. The landowner said that it was not brought into question until he objected in 1953 to the inclusion of the path in the definitive map. But he relied on the challenges as evidence to negative an intention to dedicate during the 20 years ending in 1953.

19. The Divisional Court rejected both arguments and the landowner appealed to the Court of Appeal. The leading judgment was given by Denning LJ. He dealt first with what amounted to bringing the right into question. Although the passage is a long one, I think that it should (with one or two excisions) be quoted in full:

“I think that in order for the right of the public to have been ‘brought into question’, the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance, by putting a barrier across the path or putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice: the local council may bring an action in the name of the Attorney-General against the landowner in the courts claiming that there is a public right of way: or no one may do anything, in which case the

acquiescence of the public tends to show that they have no right of way.

But whatever the public do, whether they oppose the landowner's action or not, their right is 'brought into question' as soon as the landowner puts up a notice or in some other way makes it clear to the public that he is challenging their right to use the way.

Applying this test, I ask myself: when did the landowner here make it clear to the public that he was challenging their right to use the way? Quarter sessions held that he did so in 1931, when he objected to the use of the path by persons who were not local residents. We do not know what evidence was before them on that point. If the landowner merely turned back one stranger on an isolated occasion, that would not, I think, be sufficient to make it clear to 'the public' that they had no right to use it. He ought at least to make it clear to the villagers of Bossington, Houghton and Horsebridge. They were the members of the public most concerned to assert the right, because they were the persons who used the path. They knew – better than the landowner himself – how long they had used it. They were the persons to tell. It was no good the landowner speaking to a stranger who would know nothing of the public right and would not be concerned to assert it...I think we ought to assume that quarter sessions had sufficient evidence before them to support their finding. We ought to assume that in 1931 when the landowner turned back strangers, he did it in so open and notorious a fashion that it was made clear, not only to strangers, that they had no right to use the path, but also to local residents, that they only used it by tolerance of the owner."

20. That was sufficient to dispose of the case, since there was no dispute that there had been qualifying user in the 20 years before 1931. As a statement of what amounts to bringing the right into question, it has always been treated as authoritative and was applied by the inspectors and the Court of Appeal in these cases. But Denning LJ then went on to consider the finding of quarter sessions that the landowner's conduct in 1931 and thereafter had demonstrated an intention not to dedicate the path as a highway:

"In this connection I would also mention the finding of quarter sessions that in and from 1931 the landowner, by

turning off strangers, showed an intention not to dedicate the path as a highway for the use of members of the public at large. This raises the same point. In my opinion a landowner cannot escape the effect of 20 years' prescription by saying that, locked in his own mind, he had no intention to dedicate In order for there to be 'sufficient evidence that there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large - the public who used the path, in this case the villagers - that he had no intention to dedicate. He must, in Lord Blackburn's words, take steps to disabuse those persons of any belief that there was a public right: see *Mann v Brodie* (1885) 10 App Cas 378, 386. Such evidence may consist, as in the leading case of *Poole v Huskinson* (1843) 11 M & W 827, of notices or a barrier: or the common method of closing the way one day a year. That was not done here; but we must assume that the landowner turned off strangers in so open and notorious a fashion that it was clear to everyone that he was asserting that the public had no right to use it. On that footing there was sufficient evidence to show that there was no intention to dedicate."

21. These observations on the meaning of "evidence that there was no intention to dedicate" were obiter dicta. They were not necessary for the decision and the other two members of the Court (Birkett and Parker LJ) did not mention the point. But there are obiter dicta and obiter dicta. These were no throw-away lines. This was a learned and carefully prepared reserved judgment (including reference to authorities which had not been cited by counsel) by one of the greatest English judges on a matter close to his heart: a village dispute in his own county of Hampshire.

22. For over forty years, Denning LJ's statement of the law remained unchallenged. It was cited in text books and applied in judgments of lower courts (see, for example, Walton J in *R v Secretary of State for the Environment, ex parte Blake* [1984] JPL 101, 102, Pill J in *O'Keefe v Secretary of State for the Environment* [1996] JPL 42, 58-59 and Laws J in *Jaques v Secretary of State for the Environment* [1995] JPL 1031, 1035-1037). This last case, although following the *Fairey* case, contains some puzzling dicta. Laws J said that the effect of the proviso was that —

“even if use of the required quality was proved, the status of right of way would not be established if the landowner demonstrated an intention not to dedicate.”

23. That is plainly true. But the judge then went on:

“The logical relationship between the two parts of the subsection entailed that proof of an intention not to dedicate could be constituted by something less than proof of facts which had to have made it clear to the public that they had *no* right to use the way: otherwise, once the interested public had established their case under the first part of the subsection, there would be no room for the operation of the second part.”

24. This, I am afraid, I do not follow at all. The evidence which will satisfy the proviso is not something less than enjoyment as of right but something different. For example, there may be a notice which says “No right of way. Trespassers will be prosecuted.” Nevertheless, for upwards of twenty years members of the public may have ignored the notice and used the way, openly and apparently in the assertion of a right to do so. Their user will satisfy section 31(1) but the landowner, even on the most objective test, will have satisfied the proviso. (It may be that putting up the notice also brought the right to use the way into question, in which case, as in the *Fairey* case, the public would succeed if they could prove another 20 years user before the notice went up. But that is another matter.) The potential contradiction imagined by Laws J may be due to the view held, at the time of his judgment, that enjoyment as of right required a subjective belief by the users that they had the relevant right – a view which was rejected in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335. Even so, there need not be any contradiction. The users and the landowner may simply differ in their opinions as to whether the right exists or not.

25. In *R v Secretary of State for the Environment, ex parte Cowell* [1993] JPL 851, 857 Staughton LJ, after noting that Denning LJ’s requirements of overt and notorious acts were dicta, went on to say that although “that was not said in the section itself”, it “seemed a sensible rule.” If that might seem less than wholehearted assent, Staughton LJ’s view had become firmer three years later when he presided in the Court of Appeal in *Secretary of State for the Environment v Beresford Trustees* (31 July 1996, unreported) and concurred in the judgment of

Hobhouse LJ. With characteristic precision, Hobhouse LJ said of the phrase “sufficient evidence that there was no intention during that period to dedicate it”:

“This is not a subjective test. The absence of intention must be objectively established by overt acts of the landowner.”

26. He went on to cite the passage in the *Fairey* case as authority. This time, the application of the objective test was undoubtedly *ratio decidendi*. The issue was whether the proviso had been satisfied and the inspector who conducted the inquiry had found that there was not “sufficient evidence of overt acts by the owners to show the public at large that there was no intention to dedicate.” This finding had been set aside by the judge but was restored by the Court of Appeal. The case was not reported, presumably because the law reporters thought that it laid down no new principle.

27. The first sign of dissent was in *R v Secretary of State for the Environment, ex parte Billson* [1999] QB 374, 395, where Sullivan J said that the dicta of Denning LJ went too far. In his opinion, all that was required was that evidence of the owner’s intention be “overt and contemporaneous”. But he was not required to “publicise his intention to users of the way.” A purely private act would do. Writing a letter to oneself and putting it in a locked drawer was described as a “far-fetched hypothetical example” but there is no suggestion that it would not in principle be sufficient. The judge was not referred to the *Beresford* case, no doubt because it had not been reported.

28. In *R v Secretary of State for the Environment, Transport and the Regions, ex parte Dorset County Council* [2000] JPL 396, Dyson J took the new doctrine to its logical conclusion. After examining the authorities (again, without citation of the unreported *Beresford* case) he said:

“On the face of it, the language of the proviso is straightforward. All that is required is that there be sufficient evidence of lack of intention to dedicate. Coming to the matter untutored by previous authority, one may be forgiven for thinking that what Parliament intended was that the tribunal of fact simply decide as a

matter of fact whether there is or is not sufficient evidence of intention to dedicate...I accept that as a matter of fact the tribunal of fact will rarely, if ever, find that there is sufficient evidence of lack of intention to dedicate in the absence of overt and contemporaneous acts on the part of the owner. I do not, however, think that such a requirement can be spelled out of section 31(1) as a matter of construction.”

29. I do not understand why, if Dyson J is right in saying that “intention” in section 31(1) refers to the landowner’s actual state of mind, it would be rare for a tribunal of fact to find evidence of lack of intention unless there was proof of overt and contemporaneous acts. Who better to give evidence of the owner’s state of mind than the owner himself? It is true that if he was asserting some improbable state of mind, one might look for corroboration. But there is nothing improbable in not having an intention to dedicate. It is the conclusion that the owner did intend to dedicate which is improbable: a “pure legal fiction”, an “Alice in Wonderland requirement.”

30. In these appeals, the Divisional Court and Court of Appeal followed the construction given to section 31(1) by Dyson J in *R v Secretary of State for the Environment, Transport and the Regions, ex parte Dorset County Council* [2000] JPL 396 and disapproved of Denning LJ’s statement of the law in the *Fairey* case. This time, the unreported *Beresford* case was cited, but Auld LJ said ([2006] QB 727, 740) that it was “not a reasoned decision as to the meaning of the proviso so as to bind this court.” Like Dyson J, Auld LJ thought (at p. 753) that in practice overt and contemporaneous acts evidencing lack of intention to dedicate would be required:

“In most cases, no doubt, the fact-finder will look for overt, in the sense of objectively identifiable contemporaneous acts or declarations, if only to guard against any risk of abuse by landowners who might seek to rely on retrospective acts or declarations after the expiration of the relevant 20-year period.”

31. Again, I cannot see why it should be an abuse for a landowner to say, after the expiry of the 20-year period, that although he did nothing to stop the public from using the way, this was due to tolerance, ignorance or inertia and without any intention to dedicate it as a

highway. Such evidence would be an inherently plausible account of his state of mind. The only objection is that allowing the presumption to be defeated by such evidence would make nonsense of the Act.

32. My Lords, in my opinion the law as stated by Denning LJ in the *Fairey* case and by Hobhouse LJ in the *Beresford* case was correct and the Court of Appeal was wrong. I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way, would reasonably have understood the landowner’s intention to be. The test is, as Hobhouse LJ said, objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in *Mann v Brodie* (1885) 10 App Cas 378, 386, to “disabuse [him]” of the notion that the way was a public highway. The Court of Appeal said that this would involve reading words into the Act; placing a gloss on the statute. But, outside the criminal law and parts of the law of torts, it is common to use the word intention in an objective sense, as in the intention of Parliament, the intention of the parties to a contract and, even in Latin, the *animus possidendi* which a squatter must have to acquire a title by limitation.

33. It should first be noted that section 31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It requires “sufficient evidence” that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner’s consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J in *Billson’s* case) it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience.

34. Such a construction is in my view supported by reading section 31 as a whole. The primary example of an act which would negative an intention to dedicate is the erection and maintenance of a notice inconsistent with dedication “in such manner as to be visible to persons using the way”: section 31(3). If the notice is torn down or defaced, notice to “the appropriate council” will have the same effect: section 31(5). If any overt act would do, why should the notice have to be given to “the appropriate council”? A notice to an inappropriate council, or to

the landowner's solicitor or friend, would be just as good. In the Court of Appeal, Auld LJ said that a notice to the appropriate council would be unlikely to come to the attention of the public using the way and this was an indication that, in general, the landowner's intention did not have to be communicated to users of the way. I disagree. A notice to the council under section 31(5) is plainly regarded as second best and is only allowed when the original notice has been torn down or defaced, just as substituted service is allowed only when there is good reason to dispense with personal service. It is true that users of the way are not very likely to call at the County Council offices to ask whether any notices under section 31(5) have been lodged, but a well-advised defender of rights of way, such as the Ramblers' Association, will know where to look and be able to draw such notices to the attention of users. The fact that in certain defined circumstances one can resort to a method less likely to come to the attention of users of the way is no basis for concluding that in general it does not matter whether the landowner's intention can come to their attention or not.

35. The same point may be made about the elaborate provision for maps, statements and statutory declarations in section 31(6). What would be the point of all this if Parliament was using the word "intention" in a subjective sense which could be proved by any relevant evidence? And why did Parliament, by Schedule 6, paragraph 4 of the Countryside and Rights of Way Act 2000, insert a new section 31A (not yet in force in England) into the 1980 Act to establish a register of the maps and statements deposited under section 31(6) and require that it should be available for inspection free of charge? Surely to make such alternative methods of rebutting the presumption available to the public, so as to approximate as far as possible to the primary method of rebuttal.

36. Then there is the problem of the interruption of continuous user before the commencement of proceedings which, as we saw, the 1832 Act for private rights of way solved by providing a year's grace in which to bring the proceedings. The 1932 Act dispensed with a grace period by calculating the 20 years back from the date on which the right was called into question. The scheme contemplated by Parliament was that once users of the way were made aware that their right to use the way was challenged, they should not be able to gain an advantage from subsequent use of the way and the landowner should not be able to gain an advantage by subsequent prevention of use. What happened after the way was called into question was irrelevant to the operation of the Act. On the Court of Appeal's construction, however, the well-advised landowner, facing the possibility of a claim to a right of way based on many years' enjoyment, will make a private declaration that he has no

intention to dedicate and will lodge it in a safe place. Only afterwards will he close the way or otherwise call the right into question. The effect will be to make it impossible for the claimants to prove the full 20 years user ending when the way was closed, because the owner will be able to satisfy the proviso in respect of the final period after he made his declaration.

37. My Lords, I think it is most unlikely that Parliament intended that the 1932 Act could be capable of being defeated by so simple a device, leaving the claimants to the arbitrary and illogical rules of common law, preserved by section 31(9). In the *Fairey* case Denning LJ, turning to the proviso after his discussion of bringing the right into question, said that it raised the same point. In general, that seems to me to be right. I do not say that all acts which count as negating an intention to dedicate will also inevitably bring the right into question. For example, I would leave open the question of whether notices or declarations under section 31(5) or (6) will always have this effect. I should think that they probably would, because their purpose is to give notice to the public that no right of way is acknowledged. But we need not decide the point. I do not even say that acts which would indicate to reasonable users of the way that the owner did not intend to dedicate will inevitably bring the right into question, because one cannot foresee all cases. But the Act clearly contemplates that there will ordinarily be symmetry between the two concepts. Thus section 31(3) provides that an appropriate notice will be sufficient evidence to negative the intention to dedicate and section 31(2) provides that the right may be brought into question “by a notice such as is mentioned in subsection (3) below or otherwise”. The notice will therefore both negative intention to dedicate and bring the right into question, while the words “or otherwise” contemplate other ways of bringing the right into question (like barring the way, permanently or once a year) which would also in my view be sufficient to negative an intention to dedicate.

38. I am not particularly troubled by the thought that this would leave little scope for the operation of the proviso. It is true that acts negating an intention to dedicate would also, by calling the right into question, throw the inquiry back into an earlier period. If there was no rebutting evidence during that period, the right would be established (as in the *Fairey* case) and the proviso would not apply. But the 1932 Act began as a private member’s bill in the House of Commons which underwent considerable amendment in the House of Lords, including the insertion of the provision for calculating time backwards. I would not expect such an Act to be particularly elegant in the way its parts meshed together, but the general purpose seems to me clear enough and was

given effect by the construction adopted by Denning LJ in the *Fairey* case.

39. My Lords, that leaves two alternative submissions put forward by Mr Laurence QC for the appellants, with which I can deal very shortly. The first was that “during that period” in the proviso meant during the whole of that period. The intention not to dedicate had to be continuously manifested. There is authority against this construction (see, for example, Walton J in *R v Secretary of State for the Environment, ex parte Blake* [1984] JPL 101, 104, saying that proof of lack of intention to dedicate for 17 of the 20 years would be “fatal to the applicant’s case”) and I do not think that it can possibly be right. The proviso negatives the effect of the enjoyment of the right for the period during which there was no intention to dedicate. If that leaves less than 20 years of unrebutted enjoyment, the claim fails.

40. The other submission was that notices under sections 31(3), (5) and (6) are an exhaustive statement of the way in which an intention to dedicate may be rebutted. But section 31(2) speaks of the right being called into question by a notice “or otherwise” and it is hard to imagine an act which called the right into question and did not also evidence an intention not to dedicate.

41. That brings me to the facts of the two appeals. Both arise out of applications to the surveying authority under section 53 of the Wildlife and Countryside Act 1981 to modify the definitive map and statement by adding a right of way not shown on the map. One application was by Godmanchester Town Council to add a public footpath around three sides of the perimeter of Monk’s Pit, Godmanchester. This was a former gravel pit, rectangular in form, which had become a small lake. The map already showed a footpath along one of its sides and the application was to add a path which completed a circuit round the lake. The other was to add a footpath across land belonging to the Yattendon Estate at Aldworth in Berkshire. In both cases an inspector appointed under Schedule 15 of the Wildlife and Countryside Act 1981 found that there had been qualifying user for upwards of 20 years before the right had been called into question. The chief issue in each case was whether the proviso had been satisfied.

42. In the *Godmanchester* case, the Church Commissioners, as landowners, relied upon the erection of a sign and works done on the footpath as evidence of lack of intention to dedicate. The inspector

rejected these as ambiguous or insufficient. But the owners also produced a letter to the local planning authority, written during the 20 year period, in which they complained of pedestrian trespass “around those parts of the pit which are not designated as a public footpath.” Such a letter would not have come to the attention of users of the path or satisfied any of the alternative methods of negating intention to dedicate in section 31. The inspector, following Dyson J in the *Billson* case and Sullivan J in the *Dorset* case, nevertheless held that the letter was sufficient and her decision was upheld by the Court of Appeal. For the reasons I have given, I think that this was wrong and the decision must be quashed.

43. In the *Yattendon* case there were two inquiries. The first inspector found that the right of way was brought into question by the erection of signs in 1992. The estate owner relied upon three kinds of evidence as negating an intention to dedicate before that date. They were, first, an earlier sign nailed to a beech tree, secondly, challenges by estate employees to people using the way and thirdly, a clause in an agreement granting an agricultural tenancy of the relevant land, by which the tenant covenanted to warn and keep off unauthorised persons from trespassing, to give notice to the owner of any continued acts or trespass and not to allow any footpaths to be created. The inspector accepted the first two categories as sufficient evidence of lack of intention to dedicate and said nothing about the effect of the tenancy agreement. He therefore refused to confirm the county council’s order adding the footpath to the map.

44. The applicant then applied for judicial review to quash the inspector’s decision on the ground that he did not address his mind to the question of whether the notices and challenges, which he had treated as evidence of lack of intention to dedicate, had also brought the right into question, requiring an investigation of an earlier 20 year period. The Secretary of State conceded that the decision could not stand and by consent it was quashed and a new inquiry ordered.

45. At the second inquiry, another inspector also found that the right of way was brought into question by the erection of signs in 1992. The earlier notice or notices had been insufficient for this purpose. The same was true of the challenges.

46. When she came to consider whether there was lack of intention to dedicate, she rejected the signs as insufficient and said nothing about the challenges. This may be because she took the view that if they were

insufficient to bring the right into question, they would also be insufficient to be sufficient evidence of lack of an intention to dedicate. That would, in my opinion, be a consistent view to take. But, again following the *Billson* and *Dorset* cases, she said that the clause in the tenancy agreement was sufficient.

47. I rather doubt whether, even on the principle applied by the Court of Appeal, the clause could be regarded as sufficient. The fact that landlord and tenant have signed a common form agreement containing such a clause says very little about their actual states of mind. But I think that it was wrong in principle to take the tenancy agreement into account, because it would not have been available to users of the right of way. The *Yattendon* decision must therefore also be quashed.

48. The appellants ask that both cases be remitted to the Secretary of State with a direction to confirm the orders adding the footpaths. In each case, the only ground upon which the inspector held the presumption under section 31(1) to be rebutted was inadmissible. But I do not think that this would be fair. In the *Yattendon* case the first inspector held the presumption rebutted on other, admissible grounds and both landowners may have conducted their cases on the assumption that little other rebutting evidence was needed because, on the law stated by Dyson J and Sullivan J, their private declarations were sufficient. The Secretary of State, or an inspector appointed by him, is the statutory decision-making authority and I do not think that the House should substitute its own decision.

49. Nevertheless, the landowners may consider, in the light of the opinions of your Lordships and the evidence which they have adduced at the earlier inquiries, that it would serve no purpose to demand a further inquiry and I draw attention to the power of the inspector under section 250(5) of the Local Government Act 1972 (as applied by paragraph 10A of Schedule 15 to the Wildlife and Countryside Act 1981) to award costs.

50. In the result, I would quash both decisions and remit the cases to the Secretary of State to decide in accordance with the opinions of the House. Since writing this opinion, I have had the opportunity of reading in draft the opinion to be delivered by my noble and learned friend Lord Hope of Craighead and I entirely agree with his observations on the public dialogue by which users and landowners may respectively assert and deny the existence of a right of way.

LORD HOPE OF CRAIGHEAD

My Lords,

51. Commenting on the history and meaning of the Rights of Way Act 1932, Sir Lawrence Chubb, who was an environmental campaigner all his life and was knighted for his services to the English countryside, observed that in legal theory all highways, including public footpaths and bridleways, must have originated by one of two methods. They must either have been created under some statutory authority or have been dedicated by some owner. He conceded however that relatively few footpaths or bridleways have ever been deliberately or expressly granted by any definite act or deed on the part of a landowner: *Journal of the Commons, Open Spaces and Footpaths Preservation Society* (October 1932), vol 2, 244, 247. Such altruistic acts are not unknown. But, almost without exception, English landowners are jealous of their right to exclude the public from their private property. Given the numbers a public way may attract, and the tendency of some members of the public to drop litter wherever they go, who can blame them? For completeness, it should be added that a public way may be acquired by prescription. But in *Mann v Brodie* (1885) 10 App Cas 378, 386, Lord Blackburn said that in England it is in practice never necessary to rely on prescription since time immemorial. Deemed dedication is all that is needed to achieve this.

52. Deemed dedication may be relied upon at common law where there has been evidence of a user by the public for so long and in such a manner that the owner of the fee, whoever he is, must have been aware that the public were acting under the belief that the way has been dedicated, and the owner has taken no steps to disabuse them of that belief. The 1932 Act, which the Highways Act 1980 replaced, was enacted to clarify the law. No definite time was required at common law for a dedication to be inferred. In *Mann v Brodie*, 386, Lord Blackburn observed that a very short period of public user would often satisfy a jury. For the statutory presumption to apply, however, a full period of 20 years is required: section 31(1). Unlike the period which is needed for prescription, which can be measured between any dates however long ago for which evidence is available, this period must be calculated retrospectively from the date when the right of the public is brought into question: section 31(2).

53. The common law has not laid down fixed rules as to what the owner may do to disabuse the public of the belief that the way has been dedicated for use by the public. The statute clarifies the law in this respect too. The erection and maintenance of a notice which is inconsistent with the dedication of the way as a highway which is visible to persons using it will, in the absence of proof of a contrary intention, be sufficient evidence: section 31(3). If it is torn down or defaced, a notice to the appropriate council that the way is not dedicated as a highway will have the same effect: section 31(5). So too will the deposit with the council by the owner of a map and a statement indicating which ways, if any, he admits to have been dedicated as highways, so long as this is backed up every ten years by a declaration that no additional way has been dedicated in the meantime: section 31(6). The appropriate council is, in effect, the guardian of the public interest in these matters. In country areas, it is the council of the county in which the way or the land is situated: section 31(7).

54. Thus a balance is struck between the interests of the public and those of the landowner. The landowner knows that he can resist claims that a way across his land is a public way so long as he takes the steps that are mentioned in these subsections. But erecting a notice or lodging the relevant documents with the council may come too late if there is sufficient evidence of inaction on the landowner's part for a period of 20 years, calculated retrospectively from the date when he takes this step, to bring about the public right by presumed dedication. This is because the date as from which the calculation is to be made is the date when the right of the public is brought into question. If no-one seeks to assert that the way is a public way, *cadit quaestio*. But if there is a challenge, the right of the public to use the way will be taken to have been brought into question as soon as the landowner seeks in the ways the statute mentions to negative the intention to dedicate. The same will be true of other acts, or of some other course of conduct, by which the landowner seeks to exclude the public. The steps which the statute mentions are not to be taken as exhaustive of those that may be taken for this purpose: see the words "or otherwise" at the end of section 31(2). Whatever he does, time will have begun to run against the landowner from the beginning of the period of 20 years calculated backwards from the first such act or from the start of that course of conduct.

55. On the other hand, for so long as the landowner takes his first step to exclude the public within the 20 year period and keeps doing this in a way that continues to negative his intention to do so, he will be protected from presumed dedication under the statute. There will, in terms of the proviso to section 31(1), be "sufficient evidence that there

was no intention during that period to dedicate it.” It will be sufficient for this purpose that the situation which the proviso contemplates has arisen at any time within the 20 year period. Time ceases to run against the landowner as from that point. Irrespective of when this occurs, the period that the statutory presumption requires will have been interrupted. If it starts running again, a full 20 years will be needed thereafter before the requirement will be satisfied. So all the landowner need do is ensure that no 20 year period goes by without his taking overt acts to challenge the use of the way by the public.

56. The central question in these appeals is how that intention is to be demonstrated. Mr Simpson said that the words of the statute should be taken literally. An absence of intention was enough. So it was not necessary for the landowner to reveal his intention to anybody. In other words, contrary to what Denning LJ said in *Fairey v Southamptton County Council* [1956] 2 QB 439, 458, he could keep his intention locked up in his own mind. I do not think that this extreme view finds any support in the authorities. But in *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374, 395 Sullivan J said that the proviso did not require the landowner to publicise his intention *to users* of the way (my emphasis). In *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, 407 Dyson J went further. He said that he would not place any gloss on the proviso at all and that, in disproving an intention to dedicate, the owner need not bring home to the users that there was no right to use the way. Their approach was adopted in this case by both the Divisional Court and the Court of Appeal. In the Court of Appeal Auld LJ said that the proviso is concerned with intention and its proof, not with communication of that intention to members of the public [2006] QB 727, 752, para 63. He added this explanation:

“To construe it as requiring the latter or even proof of overt and contemporaneous acts falling short of such communication would be to read words into it which would have been clearly included if that had been intended, and which would run counter to the operation of section 31 read as a whole.”

In para 64 he said that there was no statutory threshold as to sufficiency of evidence for the purpose of the proviso.

57. In my opinion this is to take too narrow a view of the purpose and effect of the proviso. Like the whole of the subsection of which it forms part, it was drafted against the background of the common law. The express exclusion of 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” demonstrates this point. So too does the use of the phrase “actually enjoyed by the public as of right and without interruption”, which can only be understood by referring to what is required for this purpose by the common law. As for the proviso, the essential point is that the presumption of dedication at common law involves a dialogue between the landowner and the public. It is conducted by acts on the part of the public which indicate an assertion of its right to use the way and, if he wishes to deny the public that right, by acts on the part of the landowner to indicate the contrary. As Lord Blackburn said in *Mann v Brodie* (1885) 10 App Cas 378, 386, he must take steps to disabuse the public of the belief that the way has been dedicated to public use. Whether the steps that he has taken to communicate this fact to the public are sufficient for that purpose is, of course, a question of fact for the Inspector. But the landowner must communicate his intention to the public in some way if he is to satisfy the requirements of the proviso. That was the position prior to the 1932 Act, and I can find nothing in that Act or in the 1980 Act to indicate that it was Parliament’s intention that such a fundamental rule should be departed from.

58. Scott LJ in *Jones v Bates* [1938] 2 All ER 237, 247 saw this point, as did Denning LJ in *Fairey v Southampton County Council* [1956] 2 QB 439, 457. Scott LJ said that the main object of the 1932 Act was to get rid of the onerous fiction of proving an actual dedication. There is no indication in his opinion that he thought that it was its intention to alter the nature of the evidence that would be relevant to show whether there was an intention to dedicate or not to dedicate, as the case may be. Denning LJ said that the landowner must make his position clear to the members of the public most concerned to assert the right:

“They were the persons to tell. It was no good the landowner speaking to a stranger who would know nothing of the public right and would not be concerned to assert it.”

There are indications elsewhere in section 31 that support this view. The notice referred to in section 31(3) must be “visible to persons using the way.” A notice which is put up somewhere else, or which remains

in the landowner's workshop, will not do. This is because it will not be effective to communicate the landowner's intention to those who wish to assert the right to use the way unless they can see it. The elaborate process of depositing a map and other documents with the appropriate authority that section 31(6) describes would be a pointless exercise if all that was needed was for the landowner to send a letter which gave expression to his intention to his estate agent or his solicitor.

59. For these reasons, as well as those given by my noble and learned friend Lord Hoffmann whose speech I have had the advantage of reading in draft and with which I am in full agreement, I would allow the appeals and make the orders that he proposes.

LORD SCOTT OF FOSCOTE

My Lords,

60. The issue in these two appeals, as my noble and learned friend Lord Hoffmann has said, is whether the respective landowners, respondents in the two appeals, have shown "sufficient evidence" (s.31(1) of the Highways Act 1980) that they had no intention during the relevant 20 year period to dedicate as public footpaths the paths over their land claimed by the appellants to have achieved that status by 20 years' public user. Section 31(1) speaks of a "deemed" dedication brought about by the requisite 20 years' user unless there is "sufficient evidence" that there was "no intention during that period to dedicate ...". The emphasis in section 31(1), regarding the means whereby a path may achieve the status of a public path, is on dedication. Dedication by the landowner was the common law means whereby a public right of way could be created. Scott LJ in *Jones v Bates* [1938] 2 AER 237 was very scornful about common law dedication. He described dedication as "usually quite imaginary", "often a pure legal fiction", and expressed a clear preference for prescription on the Scottish model where public user of the requisite quality for the requisite period would impel the legal conclusion that the path was public whatever the landowner might say or prove about his intention (see pages 244–245). He was not, however, joined in these strictures by his Court of Appeal colleagues and, for good or ill, dedication by the landowner remains the basis on which paths used by the public can attain the status of public paths. What section 1(1) of the Rights of Way Act 1932, now section 31(1) of the 1980 Act, did was to provide a

means whereby the insufficiency of positive evidence of the intention of the landowner to dedicate a path as a public way could be sidestepped. If the path had been used by the public as of right and without interruption for twenty years before the right of the public to use the path had been “brought into question”, it was to be “deemed” to have been dedicated unless the landowner could show “sufficient evidence that there was no intention” to dedicate. The onus was shifted to the landowner. But the basis of the public status bestowed on a path by public user remained after 1932, and remains, dedication. Prescriptive user alone is not necessarily enough.

61. The particular issue in each of these appeals, where there has been the requisite quality of public user of the path in question for the requisite period, concerns the nature of the evidence about his intentions that the landowner must show in order to displace the deemed dedication brought about by the twenty years’ user. Section 31(1) simply speaks of “sufficient evidence” and the Act contains no guide as to what might be sufficient. There are two questions. First, can an intention held *in pectore* by the landowner and disclosed to no-one ever constitute “sufficient evidence” for section 31(1) purposes? If the answer is ‘No’, must “sufficient evidence” (other than evidence made sufficient by subsections (3), (5) or (6) of section 31) consist of acts which, objectively viewed from the standpoint of the users of the path, demonstrate the intention of the landowner that they should not use the path?

62. To answer these questions one must, in my opinion, start with the law about dedication of highways as it stood immediately before the enactment of the 1932 Act. It is said that the Prescription Act 1832 provided a model for the 1932 Act. This is no doubt correct but analogies drawn from the rules about prescription of private easements can, if applied to dedication of paths as public rights of way, go astray. For example, private easements, under common law, are private rights in rem and can only be created by grant. Hence the need, until statutory intervention came to assist, for the fiction of a lost modern grant to be invented. The creation of a public right of way, by contrast, is brought about by dedication of the way as a public way by the landowner. The dedication need not be formal. Sufficiently unequivocal conduct by the landowner evincing his intention to dedicate will suffice. There must also be acceptance of the dedication by the public, evidenced by their use of the path. So long user of the path by the public with the owner standing by and acquiescing in the user is consistent with there having been a dedication and its acceptance by the public. It can be taken, in

the absence of evidence to the contrary, to justify the inference of the requisite dedication.

63. These very different approaches to the creation of private rights of way on the one hand and public rights of way on the other hand lead, post the advent of the Prescription Act 1832 enabling private easements to be acquired by 20 years' use as of right, to two important differences between them. First, user for the acquisition by prescription of private rights of way has to be, among other things, *nec precario*, ie as of right, not by permission of the landowner. User to justify the inference of dedication of a public right of way, on the other hand, has to be user of such a character and in such circumstances as to justify the inference that the landowner *had* given permission, not merely temporarily but on a permanent basis, for the user. Second, the inference of dedication brought about by long public user is not conclusive. Where private rights are concerned, however, sufficiently long user of a sufficient quality creates, by prescription, the right. Where public rights are concerned, the user is no more than evidence from which the dedication can be, but does not always have to be, inferred.

64. The merely evidential character of long public use was emphatically confirmed by this House in *Folkestone Corporation v Brockman* [1914] AC 338. The issue was whether a particular roadway had been dedicated as a public highway. The evidence was that from 1827 or thereabouts the roadway had been used by members of the public on foot without interruption, openly and to the knowledge of the landowner or his agents. But the justices, dealing with objections by local householders to being required to meet the expenses of certain street works—objections based on their contention that a dedication of the roadway should be inferred, in which case the costs would fall on the inhabitants at large—had held that there had been no dedication. The decision had been upheld by the Divisional Court but reversed in the Court of Appeal. Lord Kinnear, giving the first speech in the House, cited a passage from Lord Blackburn's speech in *Mann v Brodie* 10 App Cas 378 at 386:

“... where there has been evidence of a user by the public so long and in such manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which

those who have to find that fact may find that there was a dedication by the owner, whoever he was”.

Lord Kinnear then continued, at 352:

“The points to be noted are, first, that the thing to be proved is intention to dedicate, and secondly, that while public user may be evidence tending to instruct dedication, it will be good for that purpose only when it is exercised under such conditions as to imply the assertion of a right, within the knowledge and with the acquiescence of the owner of the fee.”

At 354 after emphasising that “... the question is whether the facts are sufficient to raise the presumption ...”, he said:

“I think it fallacious to assume dedication on a partial view of the evidence, and only after that has been done to inquire whether conflicting facts are strong enough to dislodge a conclusion already reached”.

And at 355:

“ ... the presumption cannot be held to be established in law at any intermediate stage of the proof, or until the whole facts and circumstances have been fully considered ...”

and at 356:

“The question is one of fact, turning upon probabilities of conduct”.

65. Lord Atkinson, at 361, summed up the argument for a dedication that had been put forward by counsel for the respondent thus:

“Proof of open, uninterrupted, and continuous user raises a praesumptio juris in favour of dedication. If evidence be not produced to rebut this presumption, it must prevail. ... In the present case there was such evidence of user, no rebutting evidence was produced, the justices were therefore bound in law to find that this way was dedicated to the public, and their decision to the contrary was a decision made without any evidence to support it, and consequently invalid in point of law”.

This argument was rejected. The House held that the inference of intention to dedicate drawn from long and uninterrupted user as of right was an inference of fact and that the justices were not bound to draw the affirmative inference. The House allowed the appeal.

66. My Lords, the state of the law as explained by the House in *Folkestone Corporation v Brockman* was the law addressed by the 1932 Act and I do not believe that the remedial provisions introduced by that Act can be properly understood otherwise than against the background of the pre Act state of the law.

67. Section 1(1) of the 1932 Act seems to me to have set itself firmly to reverse *Folkestone Corporation v Brockman*. The Act, in effect, accepted the arguments of counsel for the respondent, as recorded by Lord Atkinson, that the House had rejected. Under section 1(1), and now its successor, section 31(1) of the 1980 Act, there are two questions of fact, not, as the House held in 1914, only one. The first question is whether the way has been “actually enjoyed by the public as of right and without interruption for a full period of 20 years.” The language was plainly borrowed from section 2 of the Prescription Act 1832 but the meaning of “as of right” must be interpreted in the context of dedication, not prescription. If the first question can be given the answer ‘yes’, there will be a “deemed” dedication, something more, in my opinion, than the pre 1932 evidentiary presumption of an intention to dedicate referred to by Lord Kinnear and Lord Atkinson in the *Folkestone Corporation* case. The statutory conclusion, the “deemed” dedication, stands unless the specified statutory condition of escape, “sufficient evidence that there was no intention to dedicate”, is satisfied. That is the second question of fact.

68. Evidence merely that the landowner lacked any intention to dedicate, eg. that he had never given dedication a moment’s thought,

will not suffice. Counsel on both sides accepted that that was so and that the statutory requirement was not simply for evidence of the absence of an intention to dedicate but was for evidence of a positive intention not to dedicate. I think that must be right. Evidence “sufficient” to displace the statutory deemed conclusion of dedication should at least establish a positive intention. Lord Kinnear in the *Folkestone Corporation* case had referred to “the probabilities of conduct” ([1914] AC at 356) on which the question would turn. If that was so in the pre 1932 Act days—and counsel accepted that there was no pre 1932 case that suggested the contrary—*a fortiori* it must have remained a requirement under the Act.

69. The issue on which these appeals turn, therefore, is whether evidence of an intention not to dedicate can ever (unless it be evidence made sufficient under subsections (3), (5) or (6) of section 31) be sufficient unless it demonstrates the intention to the public at large or, at least, to the users of the path in question. Acts blocking passage along the path by, for example, the padlocking of gates would be likely to be sufficient. Regular challenges to users of the path might suffice. But expressions of intention never disclosed or circulated privately would not, in my opinion, be “sufficient”. The reason they would not is that they would do nothing to curb the public user of the path, or to disabuse users of the path of any belief that they had a right to use it, or to make clear to those users who did not care or give a thought to whether or not they had a right to use the path that they were trespassers. In *Fairey v Southampton County Council* [1956] 2 QB 439 Lord Goddard CJ in the Divisional Court and Denning LJ (as he then was) in the Court of Appeal referred to various ways in which a landowner might demonstrate his opposition to the use by the public of the path over his land. Denning LJ referred at 458 to “... evidence of some overt acts on the part of the landowner such as to show the public at large – the public who used the path, in this case the villagers – that he had no intention to dedicate.” This requirement of overt acts such as to demonstrate to the public that the landowner had no intention to dedicate seems to me consistent with the nature and quality of the “sufficient evidence” required by the Act to rebut a deemed dedication brought about by twenty years uninterrupted public user.

70. Lord Hoffmann has discussed in his opinion what, for section 31(2) purposes, would constitute bringing the right of the public into question. I am in respectful agreement with what he has said and would only add that the bringing of the public right into question could, in my opinion, be done not only by the landowner but also by a member of the public or by the local authority. A member of the public might apply to

the court for relief of some sort that would bring the right into question, or a prosecution brought by a local authority against the landowner for, eg. allowing a stile to fall into disrepair, might, if the landowner disputed that there was any public right of way, be similarly regarded. There is, in my opinion, no necessary symmetry between acts that bring the public right into question and acts of the landowner to demonstrate that he does not intend dedication.

71. For these reasons, supplemental to those of Lord Hoffmann with which I am in full agreement, I would allow these appeals and make the orders that he proposes. Having had the advantage of reading the opinions of my noble and learned friends Lord Hope of Craighead and Lord Neuberger of Abbotsbury I want to express also my agreement with the reasons they have given for coming to the same conclusions.

BARONESS HALE OF RICHMOND

My Lords,

72. I have had the advantage of reading in draft the opinion prepared by my noble and learned friend, Lord Hoffmann. I agree with it so completely that it is a work of supererogation for me to add anything more. On the main issue, two points have weighed most heavily with me.

73. One is the wording of the so-called proviso itself: “. . . unless there is sufficient evidence that there was no intention during that period to dedicate it”. If the private thoughts of the landowner were enough, the section need only have read “. . . unless there was no intention. . .” The section is calling for sufficient manifestation of the landowner’s intention during the relevant time.

74. The other point is that the section tells us what the landowner’s intention is deemed to have been unless he shows us to the contrary. There are many contexts in which references to the intentions of the parties are to their intentions as objectively understood by an informed but impartial outsider. If the public enjoy the way as of right and without interruption for 20 years, the statute tells us what an objective outsider is to assume – that the landowner intends to dedicate it as a highway. To

rebut that, the landowner has to do something which the objective outsider would understand to mean that he had no such intention. I agree that (leaving aside the specific means provided for in the section) the objective outsider would not so understand unless the landowner did something to bring his intention to the notice of the public who might use the way. But I also agree that it is what the public should reasonably understand from the landowner's actions which count, rather than their subjective wishful thinking or belief.

75. In agreeing that both these cases should be remitted to the Secretary of State to decide, I am remembering only too well that the reasons given when one is reaching one result on the facts may be quite different from the reasons given when one is reaching another. Points which have been discarded in the former case may assume more importance in the latter and vice versa. Facts which were not considered in one context, because they did not have to be, may deserve further and better consideration in the light of the law as it has now been explained. Much of the evidence in these cases is relevant to more than one point – to whether the user is ‘as of right’, to whether it was ‘without interruption’, to whether the right has been ‘brought into question’ and to whether there is ‘sufficient evidence that there was no intention’. All the relevant evidence should be considered as a whole, rather than allocated to one issue or another. I would not myself feel confident that there can be only one answer in either of these cases.

76. I agree, therefore, that these appeals should be allowed, the decisions quashed and the cases remitted to the Secretary of State for him to decide. This will, of course, include him deciding in accordance with the statutory procedures as well as with the opinions of the House.

LORD NEUBERGER OF ABBOTSBURY

My Lords,

77. I have had the benefit of reading in draft the opinions of my noble and learned friends, Lord Hoffmann and Lord Hope of Craighead. For the reasons they give, I too would allow these appeals and remit the cases to the Secretary of State. The issues raised are of some significance, and I will therefore briefly explain my reasons.

The main issue: the meaning of “intention”

78. The main issue in these appeals is whether, as the appellants contend, the intention referred to in what I will call the proviso to section 31(1) of the Highways Act 1980 has to be communicated contemporaneously (i.e. during the twenty years referred to in the section) to members of the public using the way. For a combination of reasons, I am clearly of the view that the answer is yes.

79. First, the whole tenor of section 31, whether it is dealing with establishing presumed dedication (enjoyment “as of right”), or rebutting presumed dedication (“without interruption” and the provisions of subsections (3) to (6)) is directed towards observable actions from which presumptions may be made or rebutted. It is true that communications with the local authority under sections 31(5) and (6) are not with members of the public, but a local authority would be obliged to retain the documents there referred to, and to permit members of the public to inspect them.

80. Secondly, one of the purposes of section 1 of the Rights of Way Act 1932 (the original ancestor of section 31 of the 1980 Act) was to get rid of a landowner’s ability to rely on the argument that he treated the users of the way as “tolerated trespassers” to defeat a claim of presumed dedication based on long user – see *R v Oxfordshire County Council ex p Sunningwell Parish Council* [2000] 1 AC 335 at 353B-E. In my opinion, if a landowner can say, after twenty years public use of a way as of right, that he had no subjective intention to dedicate, although there was no contemporaneous communication of that intention, this purpose would be effectively neutralised.

81. Thirdly, as Lord Hoffmann’s analysis of the cases prior to the 1932 Act shows, the common law appears to have required some form of act or statement communicated to users of the way, so that evidence of the subjective uncommunicated intention of the landowner would not have been enough (or even admissible) to rebut a presumption of dedication. It would be surprising if section 31(1) of the 1980 Act, which uses the language and concepts of the common law relating to highways, changed the law radically, and in a direction inconsistent with its purpose, so as to enable a landowner to rely on an intention of which the users of the way were not merely unaware, but could have no means of becoming aware.

82. Fourthly, the notion that a subjective intention is enough to defeat a presumed dedication under section 31(1) leads to difficulties. Despite the submission of Mr Simpson, for the interveners Yattendon Estates Ltd, to the contrary, it would be unattractive and surprising, as Mr Mould QC, for the Secretary of State, accepted, if a landowner could simply rely, after the expiry of the twenty years, on his statement (e.g. at an inquiry such as those held in the present cases) that he had no intention to dedicate. To meet that point, the courts have developed a theory which appears to me to be unjustified, whether it is a principle of law or a practical rule. That theory is that, in the absence of some contemporary overt act or statement, a fact-finding tribunal cannot, or is unlikely to, find a sufficient intention not to dedicate merely on the basis of the landowner's subsequent statement to that effect (see e.g. per Auld LJ in this case in the Court of Appeal at [2006] QB 727 at paragraph 64). Why should that be so? It would not be justified by the statutory wording, even if it had the meaning that the respondents allege. In many, I suspect most, cases it would be easy to believe that a landowner would not want to have a highway, even it is only a public footpath, over his land. Further, in the light of the way the proviso to section 31(1) is expressed ("sufficient evidence that there was no intention"), it appears to me that, on the respondents' case, a landowner could defeat a claim simply on the basis that he was unaware of the effect of the main part of section 31(1).

83. Fifthly, the cogent and clear analysis of Denning LJ in *Fairey v Southampton County Council* [1956] 2 QB 439 at 458, quoted by Lord Hoffmann, clearly indicates that the intention referred to in the proviso to section 1(1) of the 1932 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks, and it was followed and applied in cases identified by Lord Hoffmann by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section 1(1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.

84. Sixthly, I turn to the crucial question of the effect of the words of the proviso to section 31(1). I do not agree with the Court of Appeal that construing the word "intention" in the section as carrying with it the notion of communication involves placing an unjustifiable gloss on the statutory wording. At least outside the criminal law, the word is often used by lawyers in a way which carries with it a requirement to communicate, as well as to possess, the relevant intention. Indeed, sometimes, an uncommunicated intention is irrelevant, as when one

speaks of the intention of the parties when construing a contract. Further, the proviso does not require “no intention” but “sufficient evidence that there was no intention”. If the respondents were correct, there would have been no need for that longer phrase. The notion that the “evidence” referred to in the proviso must be contemporaneous and communicated is further supported by the fact that a very similar phrase (including both “evidence” and “intention”) is used at the end of section 31(3) to describe the effect of a notice erected on the way.

85. Seventhly, the provisions of section 31(3) to 31(6) seem pretty extraordinary if an uncommunicated intention suffices to satisfy the proviso. Why bother with such potentially time-consuming and expensive procedures if, for instance, a simple and clear letter from the landowner to his solicitor, confirming that he has no intention to dedicate, will do?

86. Eighthly, Mr Laurence QC, for the appellants, raised the spectre of a landowner being able to defeat a claim under section 31(1), if the respondents are correct, by sending such a letter, and only some time thereafter calling the right into question by challenging its use. If such a device worked, it would be another reason for allowing this appeal. It may be that the point can be answered by the letter being treated as an act calling the right into question under section 31(2). However, to treat such a private declaration as having that effect seems to me to fly in the face of the natural meaning of the expression “brought into question”.

Other issues: the meaning of “during”, and manifesting the intention

87. The second question is whether the phrase “during that period” in the proviso to section 31(1) means “during the whole of that period”, as the appellants argued, or “at some point during that period”, as was contended by the respondents. As a matter of ordinary language, it is clear that the phrase could easily bear either meaning. In the present context, it appears to me clear that it has the latter meaning.

88. First, the former interpretation would lead to wholly unrealistic results. It would mean that signs referred to in section 31(3) (combined, where appropriate, with the documents referred to in section 31(5)), and the documents referred to in section 31(6), would be ineffective unless they were in place for the whole of the twenty year period. Mr Laurence was forced to concede that it would therefore be necessary to imply

some sort of period of grace, based on reasonableness, but that is not warranted by the wording of the section, and it would be a recipe for uncertainty and dispute.

89. Secondly, it is clear that an interruption of the user at some point during the relevant twenty year period, such as the landowner locking a gate and preventing access, will defeat an argument based on user “as of right” under section 31(1) during that period. Traditionally, one day a year is the norm – see for instance *Merstham Manor Ltd v Coulsdon and Purley UDC* [1937] 2 KB 77 at 85. However, it may depend on the facts of the particular case whether this is enough to amount to a sufficient interruption; that was the view taken by the Court of Appeal in *Lewis v Thomas* [1950] KB 438. Whatever the position, it is clear that, to be effective, the interruption need not last long in the context of twenty years in order to defeat user as of right. It would be inconsistent if the sign contemplated by section 31(3), or any other action or communication invoked as evidence of lack of intention, had to be in place for the whole of the twenty years.

90. This is not the occasion to discuss how long a sign would have to be present, or when the documents referred to in sections 31(5) and (6) would have to be lodged, during the twenty years relied on in any particular case. It is conceivable that one day in twenty years would be enough in a particular case, and it even may be the case, I suppose, that it would be enough as a matter of principle, but it may well be that what constitutes a sufficient period will depend on the facts of the particular case – see the discussion in *Lewis*.

91. It is fair to add that this conclusion can, at any rate at first sight, be said to sit a little uneasily with the procedures set out in sections 31(5) and (6). They appear to contain somewhat elaborate requirements if all that is needed is, for instance, the erection of a notice for a relatively short period under section 31(3). The answer, I think, is this. A landowner who wishes to protect his position over many decades may be concerned that he or his successors will forget to keep checking that a section 31(3) notice remains intact, and that, following a defacing of a notice, he may let twenty years uninterrupted use occur. Such a landowner may be glad to be able to protect his position by taking advantage of section 31(5). As to section 31(6), it appears to be aimed primarily at large estates, and enables a landowner to protect himself, *inter alia*, in relation to potential rights of way which he may not even know are in the process of being acquired under section 31(1).

92. Finally, there is the appellants' argument that the only means by which a landowner can bring himself within the proviso are those contained in section 31(3) to (6). That is simply not what section 31 provides as a matter of language, it is inconsistent with the words "or otherwise" in section 31(2), and it does not seem to me to lead to a sensible result. I can see no reason why a landowner who has made his objections sufficiently clear orally to those using the way should be debarred from contending that he has thereby sufficiently manifested his lack of intention to dedicate to bring himself within the proviso. Again, this is not the occasion to consider how often or to how many people or with what words the objection would have to be made to bring the case within the proviso.

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 21;
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THE QUEEN, ON THE PROSECUTION OF THE NATIONAL LIBERAL LAND COMPANY, LIMITED v. THE INHABITANTS OF THE COUNTY OF SOUTHAMPTON.

Bridge—County, Liability of, to repair—Bridge not built in existing Highway—Acquiescence by County, Evidence of—Statute of Bridges (22 Hen. 8, c. 5)—Indictment—Practice—Verdict of Acquittal—Motion for New Trial by Prosecution.

Upon the trial of an indictment against the inhabitants of a county for the non-repair of a bridge built by private owners, but not built in an existing highway, the true effect of the evidence as to the dedication to and the adoption of the bridge by the county is always a question for the jury. The fact that such a bridge is of public utility and is used by the public is not necessarily conclusive against the county on the question of liability, user and utility being only elements for consideration in determining that question; but there need not, in addition to evidence of public user and public utility, be proof of an overt act amounting to a formal adoption by a body capable of representing and binding the county.

Reg. v. Inhabitants of the County of Southampton (17 Q. B. D. 424) in part dissented from.

Where a verdict of not guilty has been returned upon an indictment for non-repair, a new trial will not be granted; but under very special circumstances the Court may order all proceedings upon the judgment to be suspended, so as to give an opportunity for the question to be again raised upon a fresh indictment.

Ree v. Wandsworth (1 B. & Ald. 63) approved.

MOTION on behalf of the prosecutors for a new trial of an indictment against the inhabitants of the county of Southampton for non-repair of the eastern half of a bridge over the river Itchen. The facts of the case are fully set out in the report of a previous motion for a new trial (17 Q. B. D. 424), but a short summary of them, so far as they are material to the present report, is given here.

In 1882 the prosecutors acquired land situated on the left bank of the river Itchen, in the county of Southampton, and being desirous of connecting it with the town of Southampton on the right bank, they built a bridge over the river. On the county side of the river the bridge adjoined building land of the prosecutors, but it was not approached on that side by any public highway. In 1883 the bridge was opened for traffic together with a new road over the building land called Cobden

Avenue, which had been constructed in connection with the bridge; on the other side the bridge was connected with an old highway, which ran into the town. The bridge and the new road were dedicated simultaneously to the public by a public ceremony on the day of the opening. The bridge, which was extensively used by the public, having fallen into disrepair, the defendants were indicted for its non-repair upon an indictment containing four counts; the first for non-repair of the whole bridge; the second for non-repair of the approaches at both ends; the third for non-repair of the eastern half of the bridge; and the fourth for non-repair of the eastern approach. At the trial, before Stephen, J., at the Bristol Winter Assizes, 1886, the learned judge directed a verdict for the defendants upon the first, second, and fourth counts, but left the case to the jury upon the third count, and a verdict of guilty was found upon that count.

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Cross rules nisi for a new trial were obtained by the parties, but upon argument before a Divisional Court, consisting of Wills and Grantham, JJ., the rule obtained by the Crown was discharged, while the rule of the defendants for a new trial of the third count of the indictment was made absolute. It is not necessary here to set out the grounds of the judgment of the Divisional Court, which is reported at 17 Q. B. D. 424, but for the purposes of the present report it is enough to say that as regards the third count the judgment of the Court proceeded upon the ground that, the bridge not having been built in an existing highway, the user by the public of the bridge was not evidence of acquiescence by the county in its building and dedication.

A fresh trial of the third count of the indictment took place at the next Bristol assizes, before Mathew, J., when a verdict of not guilty was returned. The prosecutors now moved for a new trial on the grounds (among others) (1) that the judge wrongly directed the jury that they ought to acquit the defendants unless they had accepted the dedication of the bridge with the intention

(1) Other points arose in the case judgment of the Court, the facts and besides those here reported. But, in arguments in regard to them are as much as they are not noticed in the omitted.

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of keeping it in repair, and that he wrongly left the question of the obligation to repair the bridge to the jury, whereas such question was upon the evidence a question of law, and not of fact. As the summing-up of Mathew, J., to the jury met with the unanimous approval of the Court as containing a correct exposition of the law upon the question, it is here reported at length.

MATHEW, J. Gentlemen of the jury, the defendants in this case are the inhabitants of the county of Hants. That somewhat vague and indeterminate description is the one by which the present defendants are prosecuted, and the prosecutors, who, we now are informed, are the National Liberal Land Company, insist that the inhabitants of the county accepted a gift of this bridge from them, the Land Company, with the obligation, from the time they accepted it, to keep that bridge in repair. Now that is the case which is sought to be made out by the prosecutors against all the inhabitants of the county. The inhabitants of the county say, "We never took upon ourselves any such burthen, and you cannot point to any act of any constituted authority that, under any statute, or by usage, or by any other understanding, could be fairly said to represent us as a body, and you cannot shew that we ever accepted the gift of the bridge with the consequent liability to keep it in repair." Upon the evidence which has been given each party has claimed the verdict as matter of law.

Now, gentlemen, the law upon the subject is certainly left in some degree of uncertainty. The whole law of dedication to a community is a difficult topic to deal with, because it is not easy where a community does not act through properly constituted representatives to prove the assent of every individual, or the assent of such a majority of all the individuals as to lead to the conclusion that the general body agreed. In my view of the law the wiser and safer course is to put to you, as shrewd men of business, the question whether you think there has been any such action on the part of the inhabitants of this county as to indicate that they accepted this gift with the consequent burthen—the inhabitants generally, the occupiers, the persons

here indicted as those on whom that burthen is sought to be cast. The question is one which has perplexed lawyers but may give you very little trouble.

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Now, gentlemen, what is the history of this property? I can well understand a case being presented to a jury where for a long time the necessity had been felt of constructing a bridge in a particular locality and where public meetings had been held indicating the necessity for such communication, and where applications had been made to quarter sessions and other public bodies to aid in the construction of a bridge, and where some one had stepped forward, after objection had been made that the expenditure would be too great—some man of public spirit, and said, “Now I will build the bridge.” I can suppose the jury saying under such circumstances that there was a public demand for it, and a man of public spirit found the money to build the bridge, and he did that for the public benefit, and the public took it with the understanding that they would be liable for the repair of it. In such a case as that, (I do not say that it would be the law,) I should not be surprised, if the inhabitants after some years had refused to bear their burthen, that the jury said, “We are satisfied after what took place with reference to the erection of this bridge that it was to public munificence that the county owed the bridge, and it was accepted on behalf of the public on the understanding that the man who found the money to build it should not be left under the obligation of keeping it in repair.” As I say, I can understand that, but is this a case of that sort? Now you have heard the inhabitants of the county twitted with their ingratitude to the Liberal Land Company. Here was 17,000*l.* worth of iron handed over to this ungrateful county and the county took it, and then when called upon to lay out a few pounds in painting, it declines to do it. Gentlemen, do you really think that the Land Company had any regard to the county in the construction of that bridge? It is all very well to bring down an eminent politician, and to ask the great man to hand over the bridge to the mayor of Southampton. The mayor of Southampton is not one of the present defendants. He is mayor of the town of Southampton, a county of itself, and a different county from this. Certain minds of an ingenuous

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character might at first be disposed to infer that what was being done was done purely from public spirit, and from no private motive. But what do we know about it now? We know now why that bridge was built. The National Liberal Land Company had bought an estate on the other side of the river. We are not told what they gave for it, but we know what it is worth now. That estate, probably consisting of green fields, was cut off from Southampton and from the rest of the neighbourhood by that intervening river, the Itchen, and the first thing to do to bring those pastures into the character of a building estate, was to connect them with the town of Southampton and coax the city across the river into the meadows on the other side. For that reason, and for that reason only, I should think (it is entirely for you) the 17,000*l.* was paid. That is a good round sum, and the estate must have been acquired under favourable circumstances to admit of that expenditure, and you will have very little doubt I should think that it was the fact that the bridge was put there which gave the property the value of 300*l.* an acre, which is said to be its present price. Those are the circumstances under which this bridge came into existence, and I asked the learned counsel to point out to me any case in which a bridge, having been built for purely private purposes in the first instance, and where there was nothing more than the fact that the public used it afterwards, it was held that there had been a dedication to and an acceptance by the public, and although many cases were referred to, I am not aware of any such authority.

Now, gentlemen, that being so, and those being the circumstances under which the bridge came into existence, it is said, "Why did not some one object to what this company were doing, if the inhabitants of the county were not afterwards to repair the bridge?" But why should any one object? The individuals who lived in the neighbourhood had the convenience of a bridge. It was to be a free bridge, and it was desirable, of course, that the estate should communicate readily with the town. It is said that the navigation was interfered with. What proof is there that it was interfered with, so that anybody would be likely to prosecute this company for what it was doing? It is said that

the company would have been indicted unless the whole county agreed, because the approach to the Hard on the eastern side of the river was interfered with. But steps were left for anybody who wanted to go to the Hard just as before. What evidence of assent of the whole body is there? That assent is sought to be proved by user, but you will ask yourselves how the county could have prevented user. It is said that this road brings Southampton into easy communication with Chichester and Portsmouth. Is that the reason why the bridge was put there? People had been living there for centuries without it: do you think there was on this account any anxiety on the part of the county to have a bridge there? It is nonsense, it appears to me (but it is entirely for you), to say that any such motive induced the making of that bridge. What object had this company in bringing the county nearer Portsmouth and Chichester? None. They wanted to bring their estate nearer Southampton. They appear to have known perfectly well what this structure involved, and from the first to have had considerable anxiety to get the county to accept it. But they also appear to have had considerable doubt as to how the county was to be got at. They applied to the justices in quarter sessions, who I am by no means clear would in law represent the county, but there is very strong evidence that the sessions did not undertake the repair of this structure. The quarter sessions did nothing in the world to lead the land company to suppose they would accept the burthen, and the company had early intimation that the county did not, as far as quarter sessions could decide the matter, undertake the burthen of these repairs. You know shortly after the solemn dedication of this bridge the embankment on one side of it began to give way, that there was what is called a settlement, and that was within a few months almost after the bridge was constructed. No one can predict to what extent the settlement of a structure of that kind may go, or what may take place after it has been standing for some time. In this case there was a subsidence, and we do not know what it cost to set it right, but it was set right by those who are suggested to be the real owners of the structure, namely, the land company who built the bridge. Since then, there appears to have been a further settlement. Now what took place with reference to that

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is worth adverting to. This company placed itself in communication with the surveyor of the county. The surveyor had certain powers under an Act of Parliament which has really no bearing on the question of liability whatever. It was one of the conditions of being allowed to build the bridge that they should have his sanction under that Act of Parliament, and they applied for his sanction, and he does appear to have superintended the erection of the bridge in a certain sense, but he never was satisfied about these approaches, and never gave a final certificate in respect of them. The people who tell you that they have dedicated the bridge to the public, and that the public have accepted it, go on discussing with him what final steps are to be taken, and they do some repairs long after the period at which the bridge is thrown open and, as they say, the repairs taken from their shoulders and put on to the shoulders of the public. What is the explanation of this? If they are right they might have said, even if the bridge fell, "We are entitled to come down upon you, the county, not only to repair, but to keep the bridge standing, which is what you had undertaken to do when you accepted the dedication from us." But then there was something more. A few months after this bridge had been thrown open and presented with its three coats of paint to the mayor of Southampton, it wants a new coat of paint, or rather two coats. That requires an expenditure of 100*l.* or thereabouts, and we are told that the expenditure, under very favourable circumstances, would require to be renewed every two years; but the witness was not prepared to say it might not be in a much less time, because this bridge is in an unusually exposed position, and so close to sea-water that the process of rust and corrosion may go on very rapidly. Not a word was said at the opening ceremony of any such liability. The county might well think twice before they accepted a bridge with an obligation of that sort upon the inhabitants, who found their way to and from Southampton previously without this bridge, and without any inconvenience as far as we can see. Why should the county carry this burthen? What was the consideration? The county was not obliged to come to the aid of the company. The erecting of this bridge might be an accommodation to people coming from a distance, but it would be far more convenient to

those who expected to buy or occupy land on this estate. Gentlemen, I do not know that I can assist you further. You must give your own view about it. Do you believe the inhabitants of this county ever took to this bridge, and are under any obligation to repair it? If you think they are, you will say they are guilty on the third count of this indictment. If you think that is not made out to your satisfaction, you will acquit them.

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*Charles, Q.C. (J. V. Austin, and Selater Booth, with him), shewed cause. First, there can be no new trial at the instance of the prosecution, the proceeding being a criminal one, and having terminated in a verdict of acquittal. Secondly, the Statute of Bridges (22 Hen. 8, c. 5), contemplates only bridges built and broken in existing highways; in such cases acquiescence by the county in the dedication of the bridge is presumed, for its building obstructs the traffic, and the obstruction might be treated as a nuisance, and be the subject of an indictment, if the county thought fit to take proceedings: see per Bayley, J., in *Rex v. St. Benedict*. (1) But where the bridge is not built in the line of an existing highway, affirmative evidence of acquiescence, other than that of public user, must be given by the prosecution in order to impose upon the inhabitants the liability to repair. The county authority is the proper body to signify the assent of the county to undertake the repair of a bridge; this, at any rate, is the view taken by the legislature in s. 21 of the Highways and Locomotives Act, 1878 (41 & 42 Vict. c. 77), which provides that under certain circumstances existing bridges which have been erected without the superintendence of the county surveyor, as required by 43 Geo. 3, c. 59, s. 5, may be accepted by the county authority on behalf of the county. In the cases where acquiescence has been presumed from public user of a bridge of public utility, the bridge has been built in a highway: *Rex v. West Riding of Yorkshire* (2); *Rex v. Bucks* (3); *Rex v. Kent* (4). Mathew, J., was right in telling the jury that public use is not public adoption, and the law is correctly laid down in his summing-up.*

(1) 4 B. & Ald. 447.

(3) 12 East, 192.

(2) 2 East, 342.

(4) 2 M. & S. 513.

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Rigby, Q.C. (Bucknill, Q.C., Pitt Lewis, Q.C., and A. Glen, with him), for the prosecution. The whole question of dedication and acceptance is one of fact for the jury, but the only question left to them by the judge was that indicated in the judgment of the Divisional Court, whether there had been an adoption by the county. It was never explained to the jury that acquiescence by the county need not necessarily be a formal act, and that from the public user of a bridge of public utility they might, if they pleased, infer an acceptance by the inhabitants. To say that there must be affirmative evidence of adoption beyond that of public user and public utility is contrary to the rule laid down by Lord Ellenborough, C.J., in *Rex v. West Riding of Yorkshire*. (1)

LORD COLERIDGE, C.J. This is a case which presents some considerable difficulty, but we have come to the conclusion that it may be decided on one very clear point, whether the verdict was obtained in consequence of the misdirection of the learned judge at the trial. The course of litigation has been somewhat remarkable. The prosecutors, for the purpose (as was admitted) of developing a valuable property which was separated from Southampton by the river Itchen, and for the purpose of inducing the inhabitants of Southampton to cross the river and build upon the estate, connected it with the town by the bridge in question. The bridge was built very carefully, and the sum expended upon it was considerable. When it was finished there was in form a most solemn dedication of the bridge to the public at the opening ceremony (although what was done did not amount to a dedication in law), and it was handed over to the mayor and town council of Southampton; since its opening there has been a considerable user by the public of the bridge, using the word "public" in a somewhat limited sense. User by the public has in all cases been treated as an element in determining the liability of the county to repair a bridge; but the word "public" in this connection must not be taken in its widest sense; it cannot mean that it is a user by all the subjects of the Queen, for it is common knowledge that in many cases it is only the residents in the

neighbourhood who ever use a particular road or bridge. In the present case, however, there is no doubt abundant proof of the user of the bridge by, and of its utility to, the public, confining the meaning of that word to that portion of the public which used it.

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The bridge having fallen into disrepair, an indictment for its non-repair was presented by the prosecutors against the inhabitants of the county of Southampton, which was tried in the first instance before my brother Stephen at the Bristol Assizes; and after his summing-up the jury returned a verdict of guilty upon the third count, which was a substantial part of the indictment. Both parties being dissatisfied with this result, cross-motions for a new trial were made to a Divisional Court, consisting of my brothers Wills and Grantham, with the result that the prosecutors' rule was discharged, but that of the defendants was made absolute. The case was accordingly tried a second time before my brother Mathew, the trial being confined to the third count of the indictment, and upon his summing-up the jury returned a verdict of acquittal. The prosecutors now question this second verdict, and the summing-up under which it was obtained, and move for a second new trial.

The first question which presents itself for consideration is whether under any circumstances there can be a new trial of this indictment, the proceeding being a criminal one in form, and having resulted in a verdict of acquittal. To this technical argument (I do not use the word in any depreciatory sense) we accede, and we think that the true view is to be found in the judgment of Lord Ellenborough in *Rex v. Wandsworth* (1), where a new trial was refused in a very similar case to the present. In that judgment the law seems to be admirably expressed, and it contains the true rules which govern the practice of this Court upon such applications. If we thought that there ought to be further proceedings in this case we should not grant a new trial, but, following the example of Lord Ellenborough in the case to which I have just referred, we should suspend all further proceedings upon the judgment, so as to give an opportunity for a fresh indictment to be brought against the defendants. We should

(1) 1 B. & Ald. 63.

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refuse the rule in form, but give in substance that for which the prosecutors are applying. But we do not propose to take that course in the present case, because upon the important question of substance which was argued before us we are of opinion that the verdict was right and should be sustained.

We think that in all these cases it must always be a question for the jury as to what is the true effect of all the evidence before them as to dedication and adoption, for in every case there must be dedication and adoption in a certain sense; and in the present case it seems to us upon reading the summing-up of my brother Mathew that he endeavoured, and with complete success, to lay down correctly to the jury the law upon the case submitted to them. The opinions which have been given by the learned judges before whom this case has already come seem to be conflicting. I do not stay to inquire whether my brother Stephen at the first trial intended to lay it down as a legal proposition that, granting the building of a bridge by a private person, and that the bridge when built is of utility to, and is used by, the public, those facts would be conclusive against the county on the question of its liability to repair; the learned judge is understood so to have laid down the law, and if he did so, we are of opinion that his view was not correct. Such a view would involve what we conceive to be the unsound proposition that a bridge built by an individual merely for his private purposes would at once become repairable by the county upon its turning out to be of public utility as evidenced by public user. If on the other hand the learned judges in the Divisional Court really did say that, granting the same premises, there must in addition to evidence of public user and public utility be some proof of an overt act amounting to a formal adoption by a body capable of representing and binding the county, then we think that their judgment cannot in its breadth be sustained. To say that public user supplemented by public utility is no evidence to fix the county with the liability to repair is too broad.

In all these cases, therefore, the question is one of evidence for the jury. Utility is but one element to be considered in determining the question of liability, and it is for the jury to say in each particular case whether the amount of utility is sufficient

to satisfy that element, and further whether the amount and character of the user are sufficient to transfer to the county the burden of repair.—It may be that a bridge built by a private individual for his private ends becomes in time of great utility to the public, and is largely used by them, and it would be for the jury in such a case to say whether under the circumstances the public utility and user of the bridge were sufficient to bind the county to repair it; the evidence may or may not be sufficient to fix them with liability, but it is for the jury to decide. That we understand to be the way in which my brother Mathew laid down (and it is certainly the way in which he intended to lay down) the law to the jury; we have carefully examined his summing-up, and are unable to extract from it any propositions which are not law, or which are calculated to mislead the jury. The learned judge informs us that he is not dissatisfied with the verdict, and as a satisfactory verdict was returned after a correct statement of the law by the judge, the rule for a new trial must be discharged.

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During the argument of the present case several old cases of great authority have been cited to us which contain very important expressions used by Lord Coke, Lord Holt, Lord Mansfield, Lord Ellenborough and other eminent judges, more especially in the cases of *Rex v. West Riding of Yorkshire* (1); *Rex v. Inhabitants of Kent* (2) and *Rex v. Inhabitants of Glamorgan* (3), and we do not desire to intimate the slightest doubt of the correctness of the law laid down in those cases, which we take to be this; that if a private bridge has been built by a private man for his private ends, and it turns out in course of time to be useful to the public and to be used by the public (in the sense of the word which I have explained) those facts are strong and cogent (although not necessarily conclusive) evidence upon which a jury would be warranted in finding, and a judge would be justified in telling them that they might or ought to find (though not as a matter of law but as fact) adoption of the bridge by the county in the sense that I have explained, and consequent liability of the county to repair. We also think that the law laid down in those cases is all the stronger if the bridge

(1) 2 East, 342.

(2) 2 M. & S. 513.

(3) 2 East, 356 (n).

1887 about which the dispute arises is part of an existing highway, and has its termini in the highway; the argument for the prosecutors would be much more cogent in such a case, for if the bridge were not useful to and used by the public, it would be a nuisance if built in the public highway.

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We hold therefore that there has here been no misdirection, and that the law is to be found stated with substantial correctness in my brother Mathew's summing-up.

GROVE, J., POLLOCK, B., and HAWKINS, J., concurred.

Rule discharged.

Solicitor for prosecution: *F. A. A. Rowland.*

Solicitor for defendants: *H. Sowton, for T. B. Woodham, Winchester.*

W. J. B.

July 6.

THE QUEEN, ON THE PROSECUTION OF STEPHEN BURN, *v.* THE MAYOR, ALDERMEN, AND BURGESSES OF POOLE.

Highway—Municipal Corporation—Liability to repair—Urban Sanitary Authority—Highway Act, 1835 (5 & 6 Wm. 4, c. 50)—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 144—Form of Indictment—Amendment.

An indictment against a municipal corporation for non-repair of a highway alleged that the highway was in decay, and that the corporation, "acting by the council as the sanitary authority for the urban district," ought to repair and amend the same, &c.; but there was no allegation to shew how the defendants were liable, nor did the indictment conclude with the words "against the form of the statute."

At the trial the judge intimated his willingness to make any amendment within his power; but no amendment was in fact made. A verdict having been found for the Crown:—

Held, first, that the indictment was bad, and that the defendants were entitled to judgment non obstante veredicto.

Secondly, that even assuming the necessary amendments to be made, the defendants were entitled to judgment, there being nothing in the Public Health Act, 1875, to make the urban sanitary authority liable to indictment for non-repair, in the same sense as that in which the parish or other persons liable *ratione tenuræ* were liable.

Quære, whether an indictment would lie if the preliminary steps before magistrates, required by 5 & 6 Wm. 4, c. 50, s. 20, were taken.

Two indictments,—the substance of which appears in the judgment,—were preferred against the corporation of Poole, as the

