



CITY OF  
**YORK**  
COUNCIL

**PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021**

**STATEMENT OF CASE**

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

**PLANNING INSPECTORATE REFERENCE: To be advised**

**Introduction**

1. This document comprises the Statement of Grounds and Statement of Case of the Council of the City of York for the order Public Footpath Dunnington 22 Modification Order 2021 (“the Order”). The Council is the order making authority (“the OMA”).
2. The Order is the subject of four objections. These comprise the affected land owner, (Mr Graham Jewitt), the owner of the adjoining property Strawberry Cottage (Mrs Janet Dobson), a tenant of land accessed via the Order Route (Ms Rebecca Kay) and a former tenant of the adjoining land owner (Ms Jacqueline Chainey). The OMA also received one letter of support for the Order from the applicant, Dunnington Parish Council. All the objections and representations received can be found at Appendix 2 page 17.
3. The OMA has been unable to secure the withdrawal of these objections and consequently is referring the Order to the Secretary of State for determination.

**Factual Background**

4. The route shown in the Order (“the Order Route”) runs from the publicly maintainable highway known as Common Road, Dunnington to public footpath Dunnington 7.
5. The OMA received the application to record the Order Route in January 2004. The applicant is Dunnington Parish Council. When the OMA determined the application it was supported by 25 user evidence forms giving the evidence of 27 people.
6. The application to sought add a public footpath to 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 (“the Definitive Map”).

7. The OMA made the Order on 10 May 2021 and the statutory consultation ran between 22 July 2021 and 3 September 2021 during which the four duly made objections and one letter of support were received by the OMA. All the objections and representations received can be found at Appendix 2 page 17.

### **Legal Framework**

8. Section 53(2) of the Wildlife & Countryside Act 1981 (“WCA 1981”) requires surveying authorities to keep definitive maps and statements under review. This provision states as follows:

*“As regards every definitive map and statement, the surveying authority shall –*

- a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- b) *as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”*

9. The OMA is the relevant “surveying authority”.
10. The Order was made on the grounds that an event set out in section 53(3)(c)(i) of the WCA 1981 had occurred. This provision states as follows:

*“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.”*

11. Section 55(3) of the WCA 1981 requires that for formerly excluded areas:

*“...the surveying authority shall prepare for that area a map and statement such that, when they have been modified in accordance with the provisions of the Part, they will serve as the definitive map and statement for that area.”*

12. As regards to relevant evidence, section 31(1) of the Highways Act 1980 (“HA 1980”) states:

*“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*

13. Section 31(9) expressly states that a highway (and so a public footpath) can be established at common law, as well as pursuant to the statutory test in section 31(1):

*“Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less than 20 years, or being presumed or proved in circumstances in which it might have been presumed or proved immediately before the commencement of this Act.”*

14. Therefore, in relation to user evidence, the requisite period for the purpose of meeting the requirements of s53(3)(c)(i) WCA 1981 can be either of the following:

- i. 20 years, such that the relevant tests set out in section 31 of the HA 1980 have been met (the “Statutory Test”)

or

- ii. A period of use such that an intention to dedicate the land as a public right of way can be demonstrated (the “Common Law Test”)

See: para 4.4 of Rights of Way Circular 1/09 and para 53 of Planning Inspectorate Advice Note 9.

## **The Evidence**

### *User evidence*

15. The Order is supported by 25 user evidence statements attesting to the use of the Order Route by 27 people between 1936 and 2003 (see appendix 6, page 47).
16. 10 of the 27 users claim use of the Order Route for a period of twenty or more years (see appendix 25, page 247 for a chart illustrating the use period).
17. All 27 people claim use of the Order Route on foot. Two forms purporting to give the evidence of four people indicated use of the Order Route on a bicycle as well.
18. Ten users claim to have used the Order Route on foot every day. Eight users claim to have used the Order Route every week. The remaining nine people used the Order Route less frequently. In addition to the use on foot, of the people who claim to have used the Order Route on a bicycle, three did so daily and one weekly.
19. Eight of the users report seeing gates when they were using the Order Route but no users report that the gates prevented access. It is not clear from the forms where the gates were positioned on the Order Route because the forms did not include a map.
20. Seventeen people reported finding signs on the Order Route. Where the users reported the wording of the sign it was noted as "Private Property No Public Right of Way" or as "Private Property" or "Private Land". The signs are reported within the evidence as having only appeared a few months before the application was made
21. Ten users report being challenged by a person they presumed was the land owner. Again the user forms indicate that these challenges were recent and appear to coincide with the erection of the sign mentioned above.
22. None of the users record ever having received permission from the land owner or a tenant to use the Order Route.

23. The width of the Order Route is consistently recorded as being approximately six feet. However, it is clear that the width of the Order Route on all the user evidence forms has been completed by the same person along with the question relating to how well defined the path was, the name of the route, the parish, and the grid references.

*Objector evidence*

24. For most of the time when the use of the Order Route is claimed by the user evidence it was owned by Mr William (Bill) Walker. From 2001 the land was owned by one of the objectors, Mr Graham Jewitt (Mr Walker's nephew).
25. The Order Route has been owned by Mr Jewitt's family since 1951 and his knowledge of it extends from the 1960s onwards.
26. His family farmed the land adjacent to the order route principally as a market garden.
27. Mr Jewitt moved into the farm house after he took possession of the land in 2001. Prior to 2001 Mr Jewitt regularly visited to assist his uncle.
28. Mr Jewitt's memory of the use of the Order Route is that, in his experience, it was not used until the 1990s. Mrs Dobson did not recall ever meeting pedestrians on the Order Route in the 1970s.
29. The metal field gate noted within the Order at point A on the Order Route was installed in the 1990s. This replaced the previous wooden gate.
30. There was a metal sign on that wooden gate that read "private road". Mr Jewitt does not recall a time when that sign was not there.
31. Mr Jewitt erected a sign on the metal field reading "private, no public right of way" in 2003 which is the sign shown in the photographs at appendix 17, page 164. Mr Jewitt reports that this sign has been vandalised at least 3 times since it was installed.

32. Mrs Dobson also recalled this sign being installed after Mr Walker died in 2001. Mrs Dobson also recalled that the sign was vandalised.
33. Mr Jewitt reports that the gate at point A on the Order Route was often closed by Mr Walker from Saturday evening to Monday morning. A practice he has continued since owning the land.
34. Ms Chainey also recalled Mr Walker closing and securing the gate at point A on the Order Route during the period she lived at Strawberry Cottage (1994-97). Further Ms Chainey adds that whilst there was not set pattern to the closures, it was for the purpose of preventing a right of way coming into being.
35. Ms Kay recalled being told by Mrs Murray (the owner of the field she rented) that Mr Walker closed the gate at point A on the Order Route. She also closed the same gate to prevent unauthorised access particularly during popular village events, to maintain safety during agricultural operations, and following a spate of thefts that happened after the application was made.
36. Mr Jewitt noted that before the land immediately north of the Order Route became the sports club, people would cut south east across there to gain access to footpath Dunnington 7 rather than using the Order Route.
37. Mrs Dobson used the Order Route to get to her mother-in-law's house (Strawberry Cottage) from 1967 and visited this house at least once a year from then to 2003 after which she resided permanently at Strawberry Cottage.
38. Mrs Dobson also noted that whilst the Order Route was always surfaced, for most of the period it was much more like a typical farm track than it is today.
39. Mrs Dobson knew Mr Walker well and knew he was very aware of who was using the Order Route and took steps to prevent access by those people he considered to be behaving in a way he disapproved of or seemed out of place.
40. Ms Chainey also cited a personal example when Mr Walker came to investigate her and her partner's activities because they had arrived in an unfamiliar vehicle.

41. Ms Kay also echoed the views of Mrs Dobson and Ms Chainey that Mr Walker was vigilant towards people using the Order Route. Ms Kay also noted that Mr Jewitt continued his uncle's practices and attitude.

*Documentary evidence*

42. The documentary evidence comprises maps (appendices 15 and 24, pages 139 and 245) and aerial photographs (appendices 16, 22 and 23, pages 152, 240, and 243).
43. From 1854 to 1958 the land over which the track runs was shown on the Ordnance Survey (OS) maps as a separate parcel of land. It was bounded by Common Drain to the north and a field boundary to the south. Sometimes a track is shown running through this parcel, at other times no track is shown. For example, a track is shown on 1893 25 inch map but it had disappeared by the time of the 1910 25 inch map.
44. From the 1970 25 inch map onwards the parcel through which the Order Route ran has been added to the field to the south with no boundary feature shown. Common Drain continues to border the field containing the track to the north. The depiction of the track as being at the northern edge of a larger field remains consistent in all the later maps. The last map being dated 1995.
45. In addition to the OS maps there is a Smiths Gore map dated 1910. This map appears to be a hand drawn or traced copy of the 1910 OS 25 inch map because the parcel of land over which the Order Route runs is shown but there is no track shown. This matches the 1910 OS map.
46. All the aerial photographs show the Order Route clearly. The aerial photographs from 2002 to 2020 are of sufficiently high resolution that small details can be picked out. The 2007, 2010, and 2020 photographs clearly show an open gate at point A on the Order Route. The angle of the gate indicate that the gate is hung off a gate post to the south of the Order Route.
47. No gate is visible in 2002. The 2017 photograph has been taken later in the day and the area of the gate is obscured by a shadow from a hedge or small tree.



## **Consideration of the evidence**

### *User and Objector evidence*

48. User and objector evidence can be considered under section 31 of the Highways Act 1980 (“the Statutory Test”) or under the Common Law Test.
49. The user evidence forms used at the time did not include a map. To rectify this failing, the OMA sent each person who had completed a user evidence form a copy of their form along with a blank map so that they could indicate where the route they used was situated.
50. The OMA received four marked maps in return from Mr Cline, Mrs Cline, Mr Fairburn and Mr Wright. These maps can be found with their respective user evidence forms.
51. The OMA has also attempted to conduct interviews with all the users who completed a form and the two affected land owners. Unfortunately, none of the users were willing to be interviewed. The notes from the interviews with Mrs Dobson (adjacent land owner) and Mr Jewitt (directly affected land owner) can be found at appendix 19, page 178.
52. Beyond confirming whether the people completing the forms had used the Order Route, the OMA also wished to interview the users to assess how the “assistance” provided by the width, definition of the path, the name of the route, the parish, and the grid references all being filled out for them affected their evidence.
53. Consequently, the evidential weight ascribed to the user evidence forms must be reduced to some extent because not everything contained within each form is that person’s evidence. However, the type of use, its period and frequency all appear to be that of the person completing most of the form meaning they do have some evidential value.

### **The statutory test**

54. Under section 31 of the Highways Act 1980 any route that is used by the public for a period of 20 or more years (“the Statutory Period”) becomes a public right

of way (“PRoW”) unless the land owner can demonstrate they had no intention to dedicate it as a PRoW.

55. The evidence of the users and of Mr Jewitt agree that a sign reading “private, no public right of way” was installed on the gate at point A on the Order Route in 2003 and it was this that lead to the Parish Council submitting their application in January 2004.
56. Mrs Dobson also remembers the installation of the sign after Mr Walker’s death in 2001.
57. The installation of the sign, being the most widely documented event that called the public’s right to use the Order Route into question, defines the relevant 20 year period under consideration for the statutory test as being 1983 to 2003.
58. During the Statutory Period Mr Walker owned the land from 1983 to 2001 and Mr Jewitt between 2001 and 2003.
59. All 27 users fall within the Statutory Period and all claim use of the Order Route on foot. Ten people claim use of the route for the whole of the Statutory Period. A chart showing this use can be found at appendix 25, page 247.
60. Four users report using the Order Route on bicycles, but three of those users’ evidence all came from the same form, diluting its evidential value. Consequently, there being nothing in the objectors’ evidence to contradict it, the OMA is content that if any rights have been established through use they are for pedestrians only.
61. Establishment of a PRoW through use requires a number of conditions to be met. First, the use must not be made by force. Second, the use must be open. Third, the use must be done without permission from the land owner. These three conditions taken together are referred to “as of right” use.
62. In addition to being as of right, the use must also be of sufficient quantity that the owner of the land is aware that the public are asserting a right of way over the Order Route.
63. Finally, the route must be used by the public at large, not a particular group.

*Use by force*

64. There is no suggestion in the evidence from the users that the Order Route was ever accessed by force. Both Mr Jewitt and Mrs Dobson remember the sign installed in 2003 being vandalised on a number of occasions but as the initial installation of the sign is what called the public's right to use the Order Route into question those actions fall outside the Statutory Period.
65. There is no evidence from any of the objectors that the public used force to gain entry to the Order Route prior to 2003.

*Use by stealth*

66. There is no suggestion in the evidence from the users or the objectors that any actions were taken to attempt to conceal the use of the Order Route.

*Use by permission*

67. There is no suggestion in the evidence from the users or the objectors that use of the Order Route was done with explicit permission.
68. The OMA is satisfied that there are 27 users who can claim as of right use and their combined use spanned for the whole Statutory Period.

*Frequency of use*

69. As set out at paragraph 18 above, the user evidence forms show that the Order Route was used by two thirds of the people on a daily or weekly basis.
70. This is somewhat contradicted by both Mrs Dobson and Mr Jewitt. Mrs Dobson does not recall ever meeting pedestrians on the Order Route during the 1970s although this falls outside the Statutory Period. Mr Jewitt's experience was that use of the Order Route by members of the public only became apparent to him in the mid 1990s.
71. It must also be noted that neither Mrs Dobson nor Mr Jewitt were resident adjacent to the Order Route during most of the Statutory period. Mrs Dobson's house was frequently let out to students such as Ms Chainey and she did not move into it full time until 2003 although she visited her house at least once a

year from 1967 to 2003. Mr Jewitt visited the land regularly to assist his uncle, Mr Walker, until taking on the land himself in 2001.

72. Taking the user evidence together with the objector evidence the OMA is satisfied that, on the balance of probabilities, there was sufficient use of the Order Route to make the owners aware that the public were asserting a right of way over the land.

*Use by the public at large*

73. The diversity of the user evidence is sufficient to demonstrate that, on the balance of probabilities, the Order Route was used by the public at large.
74. As a result, the OMA is satisfied that the Statutory Test set out in Section 31(1) of the Highways Act 1980 has been met and that, on the balance of probabilities, a right of way for pedestrians could exist over the Order Route.

*Evidence indicating a lack of intention to dedicate*

75. To prevent Section 31(1) of the Highways Act 1980 making the Order Route a PRoW there needs to be evidence that the land owner during the Statutory Period demonstrated to the public they had no intention to dedicate the Order Route as a PRoW.
76. Such a lack of intention can be demonstrated in many ways including, but not limited to, signs, locking of gates, challenging users of the Order Route, and making a deposit with the OMA under either Section 31(5) or Section 31(6) of the Highways Act to indicate they had no intention to dedicate any further rights of way across their land.
77. The *Godmanchester* case made it clear that, regardless of any steps the land owner takes to prevent dedication of a PRoW over their land, they must make it clear to the public that the action was being taken to prevent such dedication.

See: *R (Godmanchester TC ) v Secretary of State for the Environment, Food Rural Affairs* [2007] 4 All ER 273 at 289

78. The OMA has not received a deposit made under either Section 31(5) or Section 31(6) of the Highways Act to indicate the land owner had no intention to dedicate any further rights of way across their land.
79. The user evidence indicates that 17 people recall seeing a sign on the Order Route saying words to the effect of “private property, no public right of way”. This sign would be sufficient to indicate that the land owner had no intention to dedicate the Order Route as a PRoW.
80. However, examination of the user evidence forms, Mrs Dobson’s evidence, and Mr Jewitt’s evidence indicates that the sign referred to was the one installed by Mr Jewitt. This is the sign that challenged the public’s right to use the Order Route and so does not fall within the Statutory Period.
81. Mr Jewitt recalled there being a small sign on the previous wooden gate that read “private road”. This wooden gate was replaced by Mr Walker with the current metal gate during the 1990s. It is not clear if the sign was transferred to the new metal gate. None of the users report seeing this sign.
82. Regardless of whether the “private road” sign was transferred to the metal gate; OMA is not satisfied that a sign reading “private road” alone is sufficient to communicate to the public that Mr Walker had no intention to dedicate the Order Route as a PRoW. This is principally because it may be referring to where the maintenance liability for the Order Route rests. In addition, reference to it being a private road brings an implication that it applies to vehicles rather than pedestrians, nor does it specifically exclude use as a PRoW like the later sign.
83. Ten users report that they were challenged by someone on the Order Route and told that it was not a PRoW with some being forced to turn back.
84. Examination of the user evidence indicates to the OMA that the person most likely to have been challenging them was Mr Jewitt. This in turn means that, at the earliest, these challenges began in 2001. However, after examination of the user evidence forms it is the OMA’s view that the challenges are tied up with the erection of the sign. Therefore, they constitute another way the public’s right to

use the Order Route was called into question and therefore fall outside the Statutory Period.

85. It does not appear that Mr Walker challenged any of the people who completed user evidence forms. This is corroborated by the evidence of Ms Chainey who indicates that he only tended to challenge people he thought suspicious. Ms Chainey reports that he was not concerned about local people going for a walk or exercising their dogs.
86. In addition, Mrs Dobson recalled that Mr Walker would stop people using the Order Route if they behaved in a way he disapproved of or if they seemed out of place. This implies that Mr Walker was less likely to challenge a person he recognised as a Dunnington resident who simply walked along the Order Route.
87. Mr Walker's tolerant attitude towards local residents may also be supported by the user evidence. Only one person who completed a user evidence form (Miss Evans-Hill) did not reside in Dunnington and Miss Evans-Hill only used the Order Route occasionally after Mr Walker died.
88. As a result, it is the OMA's view that whilst Mr Walker may have frequently challenged people he considered suspicious, he was not in the habit of challenging people he recognised as being local residents. Therefore, the use of the Order Route by the people providing evidence was unchallenged and cannot be seen as Mr Walker having no intention to dedicate.
89. All four objectors report that Mr Walker was in the habit of closing the gate at point A on the Order Map from Saturday evening to Monday morning.
90. Ms Kay reports that this was done to prevent people parking on the Order Route during events that happened at the nearby sports club, during agricultural operations, and during the annual Bonfire Night celebrations.
91. In his objection Mr Jewitt states that he locks the gate several times a year but he does not recall how frequently Mr Walker did these closures. Ms Kay recalls that it happened at least twice each year.

92. Ms Chainey's recollection is that Mr Walker not only closed the gate but locked it on these occasions. Ms Chainey also states that this was done to prevent the Order Route becoming a PRoW. Ms Chainey's experience relates to the period 1994 to 1997 when she lived at Strawberry Cottage which places her experience during the Statutory Period.
93. None of the users ever report finding a locked gate across the Order Route. Further, none of the users report within the forms being aware of Mr Walker locking the gates regularly to prevent a PRoW being brought into being.
94. In the OMA's view there is no reason to doubt the recollections of the objectors that routine closing and securing of the gate at point A on the Order Route happened occasionally each year. It is also easy to envisage situations that could have led to the gate not always being locked on these occasions, sometimes being simply closed.
95. However, it is also the OMA's view that there is no reason to doubt the recollections of the users.
96. As the locking of the gate from Saturday evening to Monday morning seems to have only happened occasionally during the year it is likely that the 27 users simply never tried to use the Order Route when the gate was locked. Perhaps they did attempt to walk the Order Route on a Sunday and came across the gate only having been closed rather than secured. A gate that is easy to open and allows the continuation of the journey is unlikely to stick in anyone's memory.
97. Only Ms Chainey recalls the closing or locking of the gate being expressly for the purpose of preventing the dedication of a PRoW over the land. On the basis of the available evidence it is the OMA's view that Mr Walker did not communicate to the public that he was closing or locking the gate to prevent a PRoW being established over the Order Route.

98. As such the OMA considers that the locking of the gate falls foul of the test in the *Godmanchester* case, and this act cannot be seen as Mr Walker demonstrating to the public he had no intention dedicate the Order Route as a PRoW.
99. Consequently, the OMA is satisfied that, on the balance of probabilities, a public footpath has been established over the Order Route as a result of the Statutory Test.

### **The Common Law test**

100. Dedication of a PRoW at common law can happen in two ways: explicit dedication by the land owner, or inference of dedication through long, unopposed as of right use by the public. In both cases the public need to accept the route so dedicated. This is usually demonstrated by use of the route
101. The OMA has found no evidence of explicit dedication of the Order Route.
102. The user evidence, objector evidence, and documentary indicate that the Order Route has been in existence since at least 1851 with documented use happening since 1936.
103. That being said the OMA considers that, while the available evidence supports the existence of the Order Route as a public footpath under Statute Law, there is insufficient evidence to indicate dedication at Common Law on the balance of probabilities.

### **Documentary evidence**

104. The available documentary evidence for this Order consists of maps and aerial photographs. Such documents are only helpful in assessing whether a physical feature existed on the ground.
105. The track that the Order Route follows exists is not in dispute so the documentary evidence is of limited value and insufficient, on the balance of probabilities, to demonstrate that a PRoW exists.



### **Comment on the objections**

106. Four duly made objections were received from Mr Jewitt, Mrs Dobson, Ms Chainey, and Ms Kay. The full text of the objections can be found at Appendix 2 page 17. The OMA's comments on the objections can be found in the sub paragraphs following the summary of each ground for objection.

107. The objection of Mr Jewitt was made on the following grounds:

108. That the gate had a sign on it reading "private road no public right of way".

a) Following the interview with Mr Jewitt is clear that this is the sign he erected that called the public's right to use the Order Route into question and so falls outside the Statutory Period under consideration.

b) There was an earlier sign reading "private road" but the OMA does not consider it sufficient to prevent the dedication of a public footpath for the reasons set out at para 82.

109. That he has padlocked the gate several times a year to prevent it becoming a PRow.

a) Following the interview with Mr Jewitt is clear that he has locked the gate on many occasions, but these fall outside the Statutory Period under consideration.

110. That he has observed people climbing the locked gate.

a) Again it appears that this observation falls outside the Statutory Period under consideration.

111. The objection of Mrs Dobson was made on the following ground:

112. That designating the Order Route as a PRow will lead to people parking vehicles on the Order Route and obstructing the access to her property for everyone with a legitimate need to access it.

a) Whilst the OMA is sympathetic to these concerns, they are not ones that can be taken into account when deciding whether a PRow exists over the Order Route.

113. The objection of Ms Chainey was made on the following ground:

114. That Mr Walker closed and locked the gate at point A on the Order Route to prevent the Order Route becoming a PRoW.

a) As set out at paras 95 to 100 above, the OMA does not doubt that the gate was closed and locked on occasions. However, as Mr Walker does not appear to have communicated to the public the reason for the locking of the gate it cannot be seen as indicating he had no intention to dedicate the Order Route as a PRoW.

115. The objection of Ms Kay was made on the following grounds:

116. That the gate at point A on the Order Route has been closed several times a year for many years and for a wide array of reasons. Ms Kay's experience of the Order Route extending back to 1990s.

a) As set out at paras 95 to 100 above, the OMA does not doubt that the gate was closed and locked on occasions. However, as Mr Walker does not appear to have communicated to the public the reason for the locking of the gate it cannot be seen as indicating he had no intention to dedicate the Order Route as a PRoW.

117. That designating the Order Route as a PRoW will lead to people parking vehicles on the Order Route and obstructing access for everyone with a legitimate need to access it.

a) Whilst the OMA is sympathetic to these concerns, they are not ones that can be taken into account when deciding whether a PRoW exists over the Order Route.

### **Conclusion**

118. When taken together the evidence provided by all parties presents a consistent picture. It is acknowledged by all parties, including the objectors, that the Order Route has been used by the public during the Statutory Period.

119. Therefore, the question is, whether the actions taken, in the main, by Mr Walker and latterly Mr Jewitt were sufficient to indicate to the public that there was no intention to dedicate the Order Route as a PRoW.

120. These actions consist of challenging people on the Order Route, erecting a sign that indicated the Order Route was not a PRow and locking the gate at point A on the Order Map on occasions.
121. There is no doubt that when Mr Jewitt moved into the house adjacent to the Order Route he began challenging the people he saw on the route, locked the gate overnight, and erected a sign that explicitly stated the Order Route was not a PRow. Indeed, his actions were so successful they caused the Parish Council to submit the application that led to the Order being made.
122. The OMA is confident that Mr Jewitt's very effective actions are what called the public's right to use the Order Route into question and, as such, fall outside the Statutory Period.
123. When considering the period of Mr Walker's ownership, the OMA accepts that the gate was closed on occasions and that a person, particularly if they were in a vehicle, who appeared out of place was likely to be challenged.
124. That being said, the OMA is also of the view that a resident of Dunnington who simply walked the Order Route to get to Dunnington 7 would not be challenged by Mr Walker. This view being based largely on the attitude of Mr Walker reported by the objectors.
125. The OMA is also content, based on the evidence available, that Mr Walker did not communicate to the public that the reason for closing the gate at point A on the Order Route was to prevent its dedication as a PRow.
126. Consequently, the OMA considers that, on the balance of probabilities, a PRow for pedestrians has been established over the Order Route as a consequence of the provisions of Section 31 of the Highways Act 1980.
127. Therefore, the OMA respectfully asks the Secretary of State to confirm the Order as made.

The Council of the City of York

July 2022