



CITY OF  
**YORK**  
COUNCIL

**PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION  
ORDER 2021**

**PLANNING INSPECTORATE REFERENCE: ROW/3303087**

**PROOF OF EVIDENCE**

**PROOF OF EVIDENCE OF RUSSELL VARLEY DEFINITIVE MAP OFFICER  
OF THE COUNCIL OF THE CITY OF YORK**

**PUBLIC FOOTPATH DUNNINGTON 22 MODIFICATION ORDER 2021**

**PLANNING INSPECTORATE REFERENCE: ROW/3303087**

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

This proof of evidence should be read alongside the OMA’s statement of case which contains the substance of the OMA’s case for the confirmation of the Public Footpath Dunnington 22 Definitive Map Modification Order 2021 (“the Order”). One of the users of the route shown within the Order (“the Order Route”), Mrs Cline, agreed to appear as a witness after the OMA’s statement of case was submitted. Her statement is included with this proof. Further, this proof will address specific points raised in the statements of case received from Ms Jacqueline Chainey, Mrs Janet Dobson, Mr Graham Jewitt, and Ms Rebecca Kay.

**Additional user evidence statements**

1. As circulated to all parties on 17 May 2023, the four user evidence statements that had been misfiled with another case present a picture of use of the Order Route that closely matches the rest of the user evidence.
2. Consequently, the OMA considers this user evidence as simply adding to the evidence already available to the Inspector and no additional comments need to be made.

### **Creation of the playing fields and its impact on use of the Order Route**

3. In his statement of case, Mr Jewitt observes that before the creation of the playing fields, people used to cross this area to gain access to footpath 7 from Common Road. It was the establishment of the sports fields that caused users to divert on to the Order Route.
4. The Ordnance Survey maps included with the OMA's statement of case at appendix 15 (pages 146 and 147) show that the playing fields were established sometime between 1958 and 1970.
5. This means that the sports fields had been in existence for at least thirteen years before the start of the Statutory Period of use (1983 to 2003). Therefore, Mr Jewitt's observation does not affect the issue before the Inspector.

### **Evidential weight afforded to users living at the same address**

6. In her statement of case, Mrs Dobson questioned whether the evidence of people who share an address should be given as much evidential weight as those completing forms from a unique address.
7. It is for the Inspector to decide what evidential weight they afford to individual user forms.
8. That being said, in the OMA's view, where a household has shared responsibilities for the family dog, it is perfectly understandable that they will jointly and individually use the same walking routes. Therefore, in the OMA's view, use of the Order Route by people who may share a home does not reduce the evidential weight of that use.

### **Why did the OMA not interview all the objectors?**

9. Both Ms Chainey and Ms Kay submitted detailed and clear statements in objection to the Order. None of the points they raised needed the clarification that an interview might bring.

### **Locking the gate and preventing the acquisition of rights**

10. As set out in their statements of case, Ms Chainey, Mr Jewitt, and Ms Kay all make representations about Mr Walker locking the gate to prevent the public acquiring a right of way over the Order Route.
11. However, there is a lack of corroborating evidence. None of the users report encountering a locked gate during Mr Walker's ownership of the land. This is rendered into stark contrast by the consistency of their reports of the gate being locked by Mr Jewitt.
12. The 2002 aerial photograph shows the gate being open.
13. There is a lack of objective evidence to corroborate the statements made by the objectors.
14. Further, Mrs Dobson explains that the gate was not normally locked, and was often open because Mr Walker used it as a vehicle access.
15. As set out at paragraph 76 of the OMA's statement of case, the Courts have made it very clear that it is the responsibility of the person who has no intention to dedicate a public right of way ("PRoW") over their land to communicate that to the public.
16. It is not for the public to assess the character the way or of a land owner, who they were unlikely to have made the acquaintance of, and decide whether they would consent to a PRoW being established over the Order Route.

17. Without objective evidence, it is for the Inspector weigh the evidential strength of the statements made by the four objectors and the 31 statements made by those claiming use of the route.

## **Conclusion**

18. It remains the OMA's view that, on the balance of probabilities, Mr Walker never communicated to the public that he had no intention to dedicate the Order Route as a PRow.
19. Therefore, a public footpath over the Order Route was established through use by the public for more than 20 years.

The Council of the City of York  
May 2023