

**Definitive Map Modification Application**

**Trimdon Station Walkway- Add footpath  
over former Railway line between  
Trimdon Station and Footpath 4 (Ref  
5/22/033)**

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**Report** of Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change and Paul Darby, Corporate Director of Resources

**Electoral division(s) affected:**

Trimdon and Thornley

**Purpose of the Report**

- 1 To determine an application to modify the Definitive Map and Statement to add a footpath between Trimdon Station and Footpath 4 along the route of a former railway line.
- 2 The path runs from Station Road Trimdon Station in a westerly direction over a former railway line to join footpath 4 Trimdon Foundry and a permissive path continuing to Trimdon Grange (Appendix 2: Document A).

**Executive summary**

- 3 The application to add the path to the Definitive Map and Statement was submitted by Mrs Jean Lamb in November 2022 and is based on unrestricted use of twenty plus years. This application was prompted by the erection of fence blocking access to steps at the east end of the claimed path from Station Road. The Station Road fence was erected at the end of April /beginning of May 2022 by the Council's Clean and Green team.
- 4 The application route starts on Station Road Trimdon Station (Deaf Hill) at steps which lead down to an enclosed path that passes Moor View Bungalow boundary, and thence provides access to a section of private road, the route continues westerly, passing Station House, and the entrance to Willow Tree Bungalow, then continues through a second enclosed section, post and wire fence on the south side and solid timber

fence on the north side, then out over a grassed and tree covered area of land, at the western end joining the line of footpath 4 and connecting to a permissive path running to Trimdon Grange (**Documents A and B**).

- 5 The closure of the steps was undertaken by Green and Clean and was done as a response to a report of anti-social behaviour and a request from a Parish Council, a local County Councillor and the Safer Communities Officer.
- 6 Consultation letters were sent to the residents of the three properties /landowners located along the route, as well as the Parish Council and Local Councillors, the Ramblers & Open Spaces Society. The Open Spaces Society responded in support, there was no response from the Ramblers. Objections were received from the residents of Station House, Moor View Bungalow, Willow Tree Bungalow, and the Parish Council. The Parish Council objects to the first section of the path but is supportive of the latter section, between the Willow Tree Property and Footpath 4.

## **Background**

- 7 An application was submitted in November 2022 by a local resident Mrs Lamb, after fences were erected blocking access to steps at Station Road and an enclosed passageway that mark a section of the claimed route. The steps had been in existence for many years and occupy a piece of land that is included within the boundaries of the Public Highway (dedication dated 7/04/1974) although the steps themselves and land from the bottom of the steps are in the ownership of Station House.
- 8 The path had come to the attention of Rights of Way (RoW) on two previous occasions, once in 2005 (Referenced Parish letter to RoW Appendix 5 pp.1) and again in 2008 when local users of the path contacted RoW after a section of Garden fence at Station House was extended over part of the original path line (Appendix 2: Document H). This was discovered several months after the current application was accepted, during removal of paper archives at County Hall.
- 9 The application was not formally made in 2008 (i.e. no application form was submitted), the response of the RoW officer (2009) was that as pedestrians could bypass around the extended fence line, it was deemed not a priority issue. The number of evidence forms (14) and consistency of the evidence may have been deemed insufficient meaning the issue of the legal status of the route was not resolved at that time, but the evidence was kept on file in light of further form submissions (Appendix 5).

- 10 The 2022 closure of access to the steps was undertaken by Green and Clean Team as a response to reports of anti-social behaviour by residents. The closure was supported by a Police Community Support Officer (PCSO), and the local Councillor Ms Hovvels, and the Parish Council.
- 11 Section 31(6) of the Highways Act 1980 provides the detail of how a public right of way can be established, by virtue of a concept known as 'presumed dedication'. This allows for a public right of way to be established where a defined way has been actually enjoyed by the public at large (from the wider community) as of right and without interruption for a full period of 20 years unless there is sufficient evidence that there was no intention during that period by the landowner to dedicate. Under Section 31(6) of the Highways Act 1980, the 20 years of use must be calculated back from the date the way is brought into dispute/question.
- 12 Although the fencing of the steps in 2022 has prompted the current application, as the first known obstruction to the path was 16 years ago (2008), when the owners of Station House extended their garden fence, then that is the earliest date when the way was brought into question, for the purposes of Section 31. It is unclear what prompted to Parish interaction with RoW in 2005 as the Council has no further records regarding that contact. The current application must therefore focus on the use of the path over a 20-year period ending in 2008 i.e. 1988 – 2008 which necessarily involves consideration of the route as it was then, on a straight line from the steps through the now extended garden of Station House (Appendix 2: Document A). The original route was highlighted on the application map by yellow dashes, along with the line of the route walked since 2009 highlighted in red. This post 2008 route cannot be recorded as a public footpath because it has not been used by the public for a full 20-year period, use being from 2008 – 2022 only.
- 13 The applicant and users however have stated that they would be happy with the current line of the route (with the post 2008 deviation) if access is restored to and from the steps at Station Road. That cannot be achieved in the context of this application and therefore if the order is eventually approved RoW would consider diversion of the route onto the post 2008 line.

## **Legal Framework**

- 14 Under the provisions of Section 53 of the Wildlife and Countryside Act 1981, the County Council as Surveying Authority has a duty to keep the

Definitive Map and Statement under review and is required to make a Modification Order under Section **53 (3)(c)(i)** on 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 to which this part applies.

- 15 Section 31 of the Highways Act 1980 provides the detail of how a public right of way can be established, by virtue of a concept known as 'presumed dedication'. This allows for a public right of way to be established where a defined way has been enjoyed by the public at large (from the wider community) as of right and without interruption for a full period of 20 years unless there is sufficient evidence that there was no intention during that period by the landowner to dedicate.
- 16 If at any time the landowner has prevented the use of the route, by erecting notices stating that the path was not public, locking gates across the path e.g., once a year, or the lodging of a deposit to the Council under Section 31(6) of the Highways Act 1980, that could amount to an interruption as well as bringing the way into question. The 20 years of use must be calculated backwards from the date the way is brought into dispute/question.
- 17 As of right means without force, without secrecy and without permission.

Section 32 of the Highways Act 1980 deals with documentary evidence and provides that *'a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.'*

Once a highway comes into existence, it can only cease to be a highway in certain circumstances, such as by way of a formal stopping up procedure. The fact that the highway may have fallen into disrepair and/or disuse has no impact upon its continuing status as highway.

- 18 The Human Rights Act is of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be

interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others.

Section 17 of the Crime and Disorder Act 1998 imposes a duty on the Council to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder (including anti-social behaviour) and the misuse of drugs, alcohol and other substances.

Section 149 of the Equality Act 2010 imposes a public sector equality duty which requires Public Authorities in carrying out their functions to have due regard to the need to achieve the following objectives:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share.
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

It is not considered that the assessment of this application raises any specific Public Sector Equality duty matters.

- 19 Should Members resolve in principle that a Modification Order be made in accordance with the above legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and anyone, including the landowners, will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who may hold a Public Inquiry before deciding upon whether to confirm the Modification Order.

## **Evidence and Previous Contact 2008-9 (Appendix 5)**

- 20 Fourteen user evidence forms were submitted in 2009, however, these were not pursued further, no questioning of the respondents was undertaken, nor any statements by users made. One of those former respondents did submit a user evidence form regarding the recent application.
- 21 Two forms mention a sign stating Private Land, but do not elaborate as to where this was, and one states the sign saying Private Land had 'appeared',

suggesting it was new. Out of those fourteen forms submitted 8 used the route for recreation (walks, dog walks, walking with children) the remainder 6 forms stated access to shops, or home.

- 22 The forms have been included in Appendix 5, mainly as corroboratory evidence of earlier public use of the route, and the obstruction of the original path line.

## **User Evidence 2022 Key Summary**

- 23 As part of the current application, 30 user evidence forms were submitted, and of those, 13 users were interviewed in order to produce witness statements (Statements in Appendix 6). Use of the route dates back over twenty years, when dated retrospectively from 2008 (this is the December 2008 date of the Parish Clerks letter: Appendix 5). Another fourteen years use has accrued over a different alignment of the route (where it goes around the extended fence of Station House), since then (2008 -2022) but as there has not been a full 20-year use of that route (it does not satisfy the necessary legal tests for recording and accordingly, this report focusses on the pre 2008 route).

### **Years of use** (All forms have been numbered for reference Appendix 4)

- Out of a total of 30 completed forms 9 users (form no. 1,11,18,19, 21, 22,23,27,28) had less than 20 years use on foot on the pre 2008 alignment, citing use between 17-18 years. Post 2008 all respondents cited use of 14 years, except users no.21, who had had only used the path on the current alignment for 12 years.
- 3 users did not include the dates covering years of path use.
- 18 Users cited use of the route over twenty plus years, the longest users cited use being between 30 and 60 years (calculated retrospectively from 2008), and use of 14 years from 2008 to 2022 on the current line.
- No user had ever been challenged and told they could not walk the path. No user reported seeing signage prohibiting use, or that it was not for the public. However, one user mentions a rights of Way sign but couldn't remember where, no user had ever sought permission to use the route either pre or post 2008, nor had any been informed that they needed permission to use the route at any point, or that it was in any way a permissive route.
- The main stated use of the path was recreation, including dog walking and exercise, other users also cited access to services such as the Doctors, or former café at the Grange, and the Pub. At least 2 users mentioned cycling on the route pre-2008, and 2 also mentioned using some of the route on horseback. Several users cited use of the path as an alternative way to the Grange to avoid the main road and traffic. Despite the two mentions of cycling/riding (in the past) the main use is and has been predominately on foot.

## User Statements

- 24 The user statements recount users experience of why, when and how they used the route (Appendix 6).

## Corroboratory Documentary Evidence Images Appendix 2.

- 25 Whilst the main evidence supporting this path is user evidence, mapping evidence on a series of Ordnance Survey Maps shows the path was observed by map surveyors. However, it must be remembered that Ordnance Survey only show what is physically surveyed and is not a record of public rights.

In addition, by way of a dedication agreement dated 7 March 1974 made under the provisions of the Highways Act 1959, the area of the steps leading down from the former railway bridge at Station Road West were created as public highway.

### **Second Edition 1896, Fourth Edition 1939. (Appendix 2: Documents C, D).**

- 26 The 1896 Second Edition Ordnance Survey the settlement at Deaf Hill (north of Railway) and Trimdon Foundry had started to properly develop. The communities developed essentially because the growth of local industry namely Collieries, and the Foundry. By this period the Station is shown and named on the map. A Footpath annotation is shown running alongside the rail line from the bridge end at Station Road marked by a dotted line and further west by double lines and annotated 'FP'. There is a Wagonway in situ but the land to the east side is populated with allotment gardens and terraced housing.<sup>26</sup>
- 27 The 1946 Edition shows further development of the of the settlements at Deaf Hill and Trimdon Foundry, the waggonway is no longer shown although there is little change to the railway and the annotation denoting a path is still shown.
- 28 In the 1990's all the route and the rest of the former line between Trimdon Grange and Wingate was annotated as suitable for use a cycle path, however this is not shown on subsequent editions (Appendix 2: Document H).
- 29 Historic Images show former steps and passage under the Bridge, as well as a cinder path (?) running on the line of claimed route. Recollections of the past recounted on Trimdon Times site mention the application route as The Black Path (Appendix 2 Documents E, F, G, Trimdon Times website <https://snippets.trimdon.com/mining-and-work/trimdon-motor-services-t-m-s/>).

## Heritage Trail

- 30 Several path users have made mention of the path being a part of a project called the Heritage Trail. In 2016 a group was established called Friends of the Heritage Trail and they set about commissioning a feasibility study undertaken by Sustrans with a view to creating a walking & cycling link

between the villages Trimdon Grange, Trimdon Station, Wingate, utilising the old rail route. The Sustrans report, looks at issues such as the steps and consideration of installing a ramp. Drainage was installed on land to the west of Willow Tree, and the group continued until 2018 but the project was apparently shelved due to cost reasons. The project was mentioned by several users, therefore, there was a perception amongst some villagers that the path had already been dedicated.

- 31 The applicant has supplied links to the Parish Council minutes (<https://trimdon.com/?s=minutes>) from 2016 onward, those minutes discuss progress of the Heritage Walk scheme plus work needed to improve the land.

### **Objections Brief Summaries & Officer Response (Full Objection letters in Appendix 3)**

- 32 **Moor View** – The objection focuses on anti-social behaviour incidents the property has been subject to, removal of the disputed fences, since reinstated (Appendix 3).
- 33 **Station House** - The first three pages of objection consist of a critique of the officer, with quotes allegedly alluding to a telephone conversation, about not going out to meet the resident on site. To clarify, there is no obligation for officers to meet on site with objectors, the decision to accept the application was based on what was considered sufficient evidence of use, it was only after sufficient evidence was submitted that the application was accepted.
- 34 The officer cannot take account of suitability of the route nor proposed alternatives. This was explained to the objector. It is understandable that the process can generate upset and strong feelings, officers are not un-empathetic. The officer can only look at whether the alleged claim of public rights subsist.
- 35 The actual objection to the application focuses on incidents of anti-social behaviour related to use of the path. They also mention interruption of the path line in 2008-9 and the twenty years use rule, suggesting the application is invalid because use of the path post 2008-9 amounts to 14 years rather than the required twenty, however it was explained to the objector that there was enough evidence submitted referencing use of twenty years up to 2008-9 to validate the application (Appendix 3: pp 9 -18).
- 36 The objector also twice mentions that the previous property owner, including a letter from him at the end of their objection, this states that a two-meter gap was left to allow permissive access to the steps. However, there is no evidence that this path was in any way permissive, there was no indication given to the public that the path was permissive. It was never signed as such nor closed on occasion, and no user was ever told that it was permissive and there was no section 31(6) deposit, effectively notice to the surveying authority that there is no intention to dedicate a right of way over the land in question. Historically the step section of the route is included within the public



Highway, so already has public rights, and have been subject to past maintenance by the Council, which appears to indicate acknowledgement (albeit by the Council) of public use. The former property owners letter goes on to state that there were complaints about the fencing and RoW sent someone out, but after that no further issues (Appendix 3: pp 19).

- 37 The current landowner also states that the land is privately owned, however the majority RoW in the County (as indeed in the country) are located on private land, and this has no bearing on the determination of public rights over such land. Issues such as lack of lighting are also mentioned, and that the steps themselves are in a poor condition. However, they state they have no objection to the addition of the remainder of the route from Willow Tree toward the Grange and offer an alternative suggested route by passing the steps.
- 38 **Willow Tree-** The focus as with the previous objections, is a list of anti-social behaviour; The owner lists various incidents that have allegedly happened and has also queried why the officer has not met them on site (as stated by the previous objector). Before an application is accepted a review of evidence submitted is undertaken, however, if it is not sufficiently compelling or not sufficient quantity the application would have been rejected. Whilst unpleasant and stressful anti-social behaviour can be, this is report can only assess the potential existence of public rights over the route in question (Appendix 3:20).
- 39 Parish Council - the Parish Councils oppose the first section of footpath from the steps at Station Road and the enclosed section at the bottom of the steps, whilst they are in favour of adding the section of path running from Willow Tree to footpath four (Appendix 3, pp 5).
- 40 **Police Community Support Officer** – The letter is in support of the householder objections and was submitted by the former area PCSO who was involved in the request for the blocking the route. The letter first states that the application map is incorrect, however does not explain in what way it is incorrect. The objection attests to various criminal activity and the route being used as a rat run prior to closure. The letter also states that the issue was an item on the agenda at monthly PACT meetings, and the closure of the steps had the support of a significant number of villagers (Appendix 3, pp24). However other than the three householders whose properties boundaries lie adjacent to the route, and the PCSO, there have been no other objections from concerned villagers (Appendix 3: pp 24).
- 41 All objections concern anti-social behaviour incidents, but none of the objections definitively deny the existence of the claimed route, nor indeed past public use of the route.

## Assessment of the Evidence

### 42 1974 Deed of Dedication

Applying Section 32 of the Highways Act, it is considered that the area of the steps from Station Road West are already highway as a result of the 1974 dedication agreement. There is no record of any stopping up order in respect of this (Appendix 7).

#### **Map evidence.**

In accordance with Section 32 HA, it is considered that historical mapping is no more than corroboratory evidence in that it shows what was on the ground at any particular time rather than the status of the route.

#### **Date when the route was called into question.**

It is considered that the earliest date when the route was called into question was in 2008 when the then owner of Station House extended their garden fence which effectively obstructed the alignment of the route used by the public at that time. Accordingly, for the purposes of Section 31 of the Highways Act, the relevant 20 year period is from 1988 to 2008.

**User Evidence** – The evidence shown in the forms is considered to be reliable, and believable. The number of user forms submitted is also deemed sufficient to trigger the statutory presumption contained in Section 31 of the Highways Act 1980 (as stated above paragraph 11). In particular, there are 18 users who have walked the route for at least a continuous period of 20 years prior to 2008. In addition, the earlier user evidence from 2008 indicates that a further users walked the route for a continuous period of at least 20 years prior to 2008. The user evidence shows use of the route over many years, more than the statutory twenty years (prior to 2008) as required by legislation, and statements made by a selection of users add weight to this.

Whilst a small number of users refer to cycling, this is insufficient to establish bridleway status.

**As of right** – there is no suggestion that the public users of the route did so in secret or used force. None of the users say that they had been given permission. However, one of the landowner objectors does assert that permission was given. This issue is examined in more detail below.

#### **Permissive Use**

- 43 Use has been predominantly for all users on foot and all users say that they were never challenged. None of the 2022 user forms attest to any specific signage stating that use of the route was not as of right, or that it was in any way permissive. However, two forms from 2009 did mention a sign stating Private Land. The objectors do not mention this signage. It is unclear when or where this signage existed but in any event such signage this merely indicated the land was privately owned, it does not tell the public anything

about rights of way over such land. Accordingly, such signage would not operate to either bring the way into question, render the use anything other than as of right or amount to a contrary intention to dedication. Whilst the objection from Station house claims the route was permissive both during and before the current owner's ownership, no specific information has been provided as to the basis for this. In particular, of who is said to have been given permission, when this way or by what means. Notwithstanding the evidential conflict here (users say no permission was given whilst landowner says it was), the case law is clear that for permission to be effective, the landowner must take some objective action designed to let the public know that permission has been given. For example, a sign stating that the route is by permission would have been sufficient but there is no evidence that any such sign was in place at any time. To indicate the owners' lack of intention to dedicate the route as a public right of way a sign would need to deny the existence of a public right of way and be sufficiently overt in communicating this message to members of the public.

### **Challenges to Use**

- 44 No user has reported ever being challenged about their use of the route. All objections focus specifically on recent criminal activity occurring, which was not a reason for interruption/diversion of the route in 2008-9. In fact, the former landowner does not dispute that the route was publicly accessible, and neither do any of the objectors.

### **Human Rights Act, Crime & Disorder & Public Sector Equality Duties**

- 45 It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.

With regard to the Crime and Disorder Act duty, it is of note that many of the objectors refer to crime, disorder and anti-social behaviour which was suffered by the residents in close proximity to the route prior to the informal closure in 2022. However, whilst regard has been had to the possibility that the recording of this footpath may well see a return of these issues, such matters as the desirability, suitability of the footpath or crime/ASB do not form part of the legal tests for recording of a footpath set out in the primary legislation in play here, namely the Wildlife and Countryside Act 1981 and the Highways Act 1980, together with the case law under it.

With regard to the Public Sector Equality duty, it is of note that two of the objectors have raised the issue of impact of the route on their mental health should it be formally recorded as a public footpath. However, this is not a protected characteristic under the legislation. Whilst regrettable, it is considered that any such impacts are likely to result from inappropriate public use of the route following its recording rather than the legal recording itself. Furthermore, such impacts would not amount to a sufficient reason to refuse the application given the legal tests in the primary legislation against which

the application must be assessed. It is also of note that the relevant duty in play here is one which merely requires the Council to have due regard to the need to eliminate harassment & victimisation. Due regard has been given to this but as the issue under consideration in this report is whether to record the route as a public footpath, not the potential impacts from future inappropriate use by the public, it is considered that there are no applicable measures at the present time.

## **Conclusion and Recommendation**

- 46 After assessment of all the submitted user evidence, it is considered that the route under investigation leading from Station Road westerly to PROW 4 has sufficient evidence for the presumption of dedication under section 31 of the Highways Act 1980 to apply. It can be reasonably alleged that a Footpath exists with over twenty years use by pedestrians prior to 2008, therefore fulfilling the requirements of 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
- 47 It is therefore recommended that a Modification Order be made under the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement a public footpath along the applied for route from Station Road to Footpath 4.

With regard to the route which has been used post 2008, it is considered that there is insufficient evidence of use as it has not continued for at least 20 years and accordingly, it is recommended that the Council decline to make a modification order to add a footpath to the Definitive Map & Statement in respect of that route.

## **Other useful documents**

**Appendix 2** Location, Images of route supplied by users and mapping.

**Appendix 3** Consultation Responses, and images supplied by Landowners.

**Appendix 4.** User Evidence 2022

**Appendix 5** User Evidence 2009

**Appendix 6** Statement of Path Use

**Appendix 7** Highways Deed of Dedication

## **Author(s)**

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## **Appendix 1: Implications**

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### **Legal Implications**

the application has been assessed against relevant legislation and case law and should the Modification Order be made as recommended, it is likely to result in objection which will necessitate referral to the SoS for confirmation

### **Finance**

the area of the steps is already highway maintainable at public expense. The remainder of the footpath to be recorded are not publicly maintainable.

### **Consultation**

See Appendix 3

### **Equality and Diversity / Public Sector Equality Duty**

See main report.

### **Climate Change**

N/A

### **Human Rights**

See main report.

### **Crime and Disorder**

See main report.

### **Staffing**

No impact

### **Accommodation**

N/A

### **Risk**

N/A

### **Procurement**

N/A