

The Ramblers' Association Top Ten



Here's a summary of ten important legal cases the Ramblers Association (RA) has brought. It's not an exhaustive list; it's simply intended to give a flavour of the ways the Ramblers has shaped rights-of-way law over the years.

Rubinstein v Secretary of State for the Environment (1987)

The Wildlife and Countryside Act 1981 altered the law so that rights of way could be *deleted* from the definitive map, if they had been put on in error. The RA was troubled by this, as it gave no clue as to how much or how little evidence need be produced; it might trigger the wholesale loss of paths; and, sure enough, councils started making deletion orders when the Act took effect. To stem the flow, the RA's then Chairman David Rubinstein brought an action in the High Court to challenge the deletion of Footpath No 7 at Kirkby Underwood in Lincolnshire. Mr Justice Taylor (later Lord Chief Justice) accepted the argument that, since the definitive map was conclusive evidence that a right of way existed when the map was finalised, paths could be deleted from it only in such rare circumstances as when land such as a cliff carrying a right of way had collapsed. The result was a three year moratorium on the deletion of paths until the decision was overturned by the Court of Appeal in *Burrows and Simms* (1990).

Trevelyan v Secretary of State for the Environment, Transport & the Regions (2001)

John Trevelyan, a long-standing RA volunteer and staff-member, brought this case on the RA's behalf to try to prevent the deletion of a stretch of the Ribble Way in Lancashire. Though we were unsuccessful on the facts of that particular issue, the Court of Appeal came up trumps in laying down the law about the sort of evidence that needs to be produced by a person seeking to delete a right of way. The Master of the Rolls ruled that when a tribunal determines an application to delete a right of way, it must start "with the initial presumption" that it exists. "Evidence of some substance must be put into the balance if it is to outweigh the initial presumption that the right of way exists".

R v Secretary of State for the Environment ex parte Bagshaw (1994)

Anyone with enough evidence that one exists can apply for a right of way to be added to the definitive map; if the council refuses, there is a right of appeal to the Secretary of State. Until Ron Bagshaw, a RA volunteer in Devon, brought this case, it was unclear what strength of evidence would satisfy the Secretary of State in determining such an appeal. *Bagshaw* established that the Secretary of State did not need to be satisfied, at this stage in the process, that a right of way existed – it was enough for the applicant to produce evidence such that 'a reasonable person ... could reasonably allege a right to way to subsist'. Later the Court of Appeal confirmed the correctness of this in another case brought by another RA member, Gordon Emery: *R v Secretary of State for Wales ex parte Emery* (1997).

R (on the application of Godmanchester Town Council & Drain) v Secretary of State for the Environment, Food and Rural Affairs (2007)



If the public use a path unchallenged for 20 years, the law deems it a public right of way – section 31(1) of the Highways Act 1980. To prevent this, a landowner must show that he has no intention of ‘dedicating’ – no intention of it becoming public.

For very many years it was understood that this meant that *users of the path* had to be shown that there was no intention to dedicate – by means of notices, locked gates, or oral challenges. But then in a case known as the *Dorset* case, a judge ruled that since the statute did not say anything about telling the users of the way that it was not public, a landowner could rely on evidence the public knew nothing about – telling his friends that he had no intention of it becoming public, writing letters to his lawyer to the same effect, or even producing a memorandum to himself. This was a departure from all

the recognized principles of the law on ‘presumed dedication’. For rights of way it had serious implications, as the date from which the 20 years are calculated backwards is the date when the public really are *physically* stopped from using a way: so a landowner could write a letter to his lawyer, wait six months, and then put up a ‘Keep out’ sign. The 20 years would date backwards from the date of the sign, not the date of the letter, so the 20 years’ use would be six months short, however much use there had been before the start of the period, and so an application to have the right of way recognized would fail.

This had got to be wrong; but the losing party in the *Dorset* case made no appeal. And then, applications for paths to be added to the definitive map began to founder: so RA staff monitored all the Secretary of State’s Inspectors’ decisions until we found a couple which turned on this point alone – one about a path claimed by RA volunteer Dr Leslie Drain, in Berkshire, the other about a path in Cambridgeshire claimed by Godmanchester Town Council – and challenged them in the Divisional Court. But the Divisional Court agreed with the judge in *Dorset*, and so did the Court of Appeal – the statute said nothing about communicating the lack of intention to members of the public.

RA staff were still sure this must be wrong. So we went to the House of Lords, the highest court in the land. There, Lord Hoffmann ruled that ‘it would make nonsense of the Act’ if the courts below were right. His Lordship also said that Lord Justice Denning got it right, back in 1956, and that the more recent interpretation in the *Dorset* case was wrong, and that ‘upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way, would have reasonably understood the landowner’s intention to be’. In this unanimous landmark ruling that a landowner’s actions have to be transparent, not covert, their Lordships thoroughly re-examined the law on how rights of way are established under section 31 of the Highways Act 1980, and so put the section back into full working order.

RA v Kent County Council (1990)

Section 116 of the Highways Act 1980 empowers the magistrates' court to extinguish rights of way, on the application of the highway authority, where the way is 'unnecessary'. It's an anachronistic procedure dating from the pre-council days, when counties were governed by committees of magistrates under the lord-lieutenants, and the RA believes it should be abolished now there is a more user-friendly system involving public inquiries or written representations with no risk of costs to the 'losing' party. That aside, until 1990 it was unclear as to what was meant by 'unnecessary'. So when Folkestone magistrates extinguished footpaths at Lydd in Kent despite objections by the Ramblers' Association on the grounds that the ways were necessary, we appealed to the Divisional Court of the Queen's Bench Division. Lord Justice Woolf (later Lord Chief Justice) ruled that it meant 'unnecessary for the sort of purposes which the justices would reasonably expect the public to use that particular way. Sometimes they will be using it to get primarily to a specific destination. Another reason for using a way of this sort can be for recreational purposes.' He went on to say that where there was evidence of use, it would be difficult for the magistrates properly to come to the conclusion that a way was unnecessary unless the public were, or were going to be, provided with a reasonably suitable alternative way. The court also held that the requirement to place notices which adequately described the effect of the proposed order at the ends of the path was obligatory, not discretionary, and that if inadequate notice was placed, that was sufficient to deprive the court of its jurisdiction to hear the application, except where there was some physical difficulty in placing the notice in exactly the right location. Lord Justice Woolf commented that the RA was 'performing a public service' in bringing this action.

Ashby & Dalby v Secretary of State for the Environment (1979)

Ken Ashby, a former chairman of the RA, and Andrew Dalby, its former secretary, brought this action on behalf of the RA, its first foray into the Court of Appeal. An order to divert a public footpath had been made under planning legislation, but not before the developer had gone ahead and built the development. The Court of Appeal ruled that an order to divert (or extinguish) a right of way under planning law cannot be made where the development is complete or substantially complete.

Hall v Secretary of State for the Environment (1998)

Chris Hall, a former Chief Executive of the RA and a past president, though by the time of this case a footpath secretary in Oxfordshire, set this case in motion. A developer had built a wall over a footpath, but without an order under the planning laws to divert it having been made. Some months later the council made such an order, and Chris objected. An order diverting a path under the planning laws is made on the legal footing that it is necessary in order to enable the development to be carried out; and it is settled law that such an order cannot be necessary if the development has already been carried out – see *Ashby and Dalby* (1979), above. To avoid the danger of the Inspector not confirming the order, the developer demolished the wall, and the order was then confirmed. This seemed unjust, so we took the matter to the High Court where the judge agreed with us and quashed the Inspector's decision as the legal requirements had not been met; the judge held that once development had taken place the planning permission relating to that part of the development was spent.

Stringer Street Steps (2002-07)



Stockport Metropolitan Borough Council repeatedly applied to the local magistrates' court to close Stringer Street Steps (pictured left: photograph courtesy of Stockport Heritage Library) and the linked Stringer Street on behalf of a commercial landowner, Nelson Tool Company Ltd. The closure applications were made on the ground that neither the steps nor the Street was needed for public use.

Local people objected and at the first hearing the district judge found that the steps were not public highway; concluding public rights could not be stopped up if they didn't exist in the first place. This conclusion led to a finding that Stringer Street was a cul-de-sac, so the District Judge granted the application to close Stringer Street on the basis that it was not needed for public use.

But Manchester and High Peak Area of the RA believed the steps (which had become overgrown and dangerous) were public and that Stockport MBC had for years been failing to fulfill its legal duty to keep them in a decent state of repair so the public could use them. Over eighty local residents signed a petition stating that if it were possible to use the steps they would do so.

The RA appealed the magistrates' court's decision in the Crown Court, instructing Stephen Sauvain QC to present the case. A local amateur historian had in the meantime uncovered evidence (in Stockport MBC's own records!) which proved the steps were public, so our appeal was combined with application for an order against the Council to repair the steps.

At the hearing the Council argued that the fact nobody used the steps proved they were not needed for public use, but District Judge Berg found that the reason nobody used the steps was because the Council's own neglect had made it impossible for anyone to do so, not because the steps were not needed for public use. "The Council cannot gain an advantage as a result of their own wrongdoing and rely on what flows from that wrongdoing to show an absence of use by members of the public, and because of that, assert that the route is therefore unnecessary," he said

He accused Stockport MBC of "a combination of ineptitude and indifference" and for "trying to have their cake and eat it." The RA was awarded over £30,000 in costs and an order was made against Stockport MBC requiring them to reinstate the steps.

The Chimney Steps case

This path at Ventnor on the Isle of Wight climbs a rocky fissure in the cliff face. Victorian postcards show its early use for pleasure to reach the downs and as part of a round walk to visit the local sights. But in the winter of 2001–2002, the Isle of Wight Council closed it – because of some ground movement in the road at the top. Then, unfortunately, when they repaired the road, the path’s ‘top landing’ and steps were removed, and not replaced. That prevented the path’s re-opening. RA volunteers on the Isle of Wight raised it with the highway engineers, who said that the path did not meet modern standards. It would cost £250,000 to make this possible, they said. After no progress was made through discussion, John Hague, Isle of Wight Area Footpath Secretary, sought central office advice, who obtained the view of an independent engineer whose advice was that the path could be made available at reasonable cost. The RA therefore served notice on the council under section 56 of the Highways Act 1980 with a view to getting the court to order the path’s repair. That happened, and the path and steps were back in use by July 2006, with the council paying £9000 of the RA’s costs.

Lower Beeding

Footpath 1702 at Lower Beeding in West Sussex is a beautiful path; much noted for its bluebells and other woodland plants, it is in the High Weald Area of Outstanding Natural Beauty. But for many years it was subject to flooding, both at bluebell-time and much of the rest of the time, making it an impassable mangrove-swamp of a path. Minor works to nearby malfunctioning drains would have put it right, but no action was taken despite repeated requests since 1971 to West Sussex County Council by Mrs Peggy Gledhill, an 83-year-old (though only 51 when this started) RA activist.

After years of being fobbed-off with excuses about funding, Peggy served the council with notice under section 56 of the Highways Act 1980, requesting them to admit the way’s public status and to put it into repair. They did the former but not the latter. The RA therefore instructed lawyers to bring the matter before the magistrates’ court. At a hearing in August 2003 the magistrates ordered the council to repair the path, giving them two years in which to do so. The path is now back in repair and well-drained, and the bluebells can be admired as well as ever.