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DEFINITIVE MAP MODIFICATION ORDERS

'Half a footpath' recorded on eastern shore of Lake Buttermere

After a lengthy campaign by Ramblers volunteers to add a Buttermere footpath to the definitive map, the Planning Inspectorate has determined that the evidence supports the addition of only part of the path.

Tony Rogers, formerly joint Area Footpath Secretary of Lake District Area, made an application to record the footpath running along the eastern shore of Lake Buttermere in 2005. Evidence supporting the application was submitted by 34 witnesses, many of whom stated that they had used the alleged right of way for more than two decades.

Under s 53(3)(c) WCA 1981, a surveying authority must make an order adding a public right of way to the definitive map if there is sufficient evidence of public use 'as of right', provided there is no (or insufficient) overt and contemporaneous evidence that the relevant landowner had no intention of allowing a public right of way to be acquired.

The surveying authority, Lake District National Park Authority (LDNPA), rejected the application to record the right of way, having determined that user was by permission, and therefore not 'as of right'. But an appeal of the authority's decision under the provisions of Sch 14 WCA 1981 was successful, resulting in a direction from the Secretary of State which instructed the authority to make a DMMO to add the path to the definitive map.

The alleged right of way crossed three land ownerships, and each landowner's conduct toward the public using the way had been different during the relevant period. The National Trust and LDNPA, two of the landowners in the case, did not oppose the application, but the third landowner, Mr Richardson, did—it was his assertion that user was by permission that persuaded LDNPA to reject the application in the first instance.

Following the Secretary of State's direction LDNPA was under an obligation to make an order to record the path, but it was not obliged to support the order once made. In light of its own determination that the public used part of the claimed route by permission, the authority decided to make two orders in respect of the path: one to add the 'non-controversial' section of the path over its own and the National Trust's land, which it would support in the event of an Inquiry, and an order to add the 'controversial' section of

path over Mr Richardson's land, which it would not.

When the Orders were made objections were received to both. Order A, the 'non controversial' section, was determined by written representations and confirmed by the Planning Inspectorate with minor modifications. As expected, Order B drew an objection by Mr Richardson, who instructed a lawyer and requested a Public Inquiry. Given the authority's neutral stance, the Ramblers' Association instructed John Trevelyan to present the case for the unsupported order, and Inspector Barney Grimshaw held the Inquiry on 29 July 2008.

The Inquiry heard that a permissive path agreement had been formally negotiated between the landowner and LDNPA in 1983. This was a documented and uncontested fact, so 1983 was taken as the date on which the public's right to use the way was called into question, making the relevant period 1963–1983.

Of the 34 people who had completed witness forms attesting to use of the path, six appeared at the Inquiry to give evidence. In addition, a statement from a local Fell and Rock Climbing Club was presented which stated that many of its 1150 members had used the alleged right of way since 1952. The user evidence was not contested by the objectors to the Order and the Inspector was satisfied that the requirement of user throughout the relevant period was met.

User must be 'as of right', without force, secrecy or permission, to raise the presumption that a right of way has been dedicated. It was established that user was of the requisite frequency and duration, but the question of whether it was 'as of right'—and particularly whether there was permission—was keenly contested at the Inquiry. Following the Lords' opinions in *R (Godmanchester Town Council and Dr Leslie Drain) v SOSEFRA*, the granting of permission or any other evidence that speaks to the question of whether there was an intention to dedicate must be communicated to path users to be capable of ousting a right of way claim; it is not enough for a landowner to simply say that he did not intend to dedicate a right of way.

None of the witnesses who appeared in support of the Order believed their use of the way was by permission and none recalled being challenged or seeing signs which stated use was permissive. It was reported that the 34 people who completed user evidence forms responded in the negative to the standard question about the presence of signs indicating no right of way,

although some did recall the presence of signs without recalling what the signs said.

Jonathan Carroll, for the landowner, called Mr and Mrs Richardson themselves, together with a former employee and friend of the couple, who claimed signs saying use was by permission were present at two locations on the path throughout the relevant period. A number of other people local to the area or familiar with the path submitted written statements which either corroborated the landowners' claim about signs or indicated that there was a general understanding that user was with permission.

The Inspector determined that the conflicting evidence respecting the presence or otherwise of signs giving permission was, on balance, more supportive of the objectors' case that user was not 'as of right'. The claim accordingly failed at statute and common law.

Ref: Lake District National Park Authority (Footpath 220050, along north-eastern shore, Buttermere, Buttermere & Brackenthwaite Parish – Order A) Definitive Map Modification Order. Planning Inspectorate ref: FPS/Q9495/7/15; and Lake District National Park Authority (Footpath 220050, along north-eastern shore, Buttermere, Buttermere & Brackenthwaite Parish – Order B) Definitive Map Modification Order. Planning Inspectorate ref: FPS/Q9495/7/16. Decisions issued 13.08.08

Inclosure Award conclusive evidence of existence of highway

Staffordshire CC made this order under s 53 of WCA 1981 to add a bridleway at Eccleshall from Offleyhay Lane to Cash Lane. Objections were placed and were determined by Inspector Martin Elliott who visited the site on 24 June 2008.

The objectors sought to invoke the Human Rights Act 1998; but, since the 1981 Act did not permit personal considerations to be taken into account and was concerned with the determination of existing rights and so was lawful as provided by s 6(2) of the 1998 Act, the Inspector concluded that this was not a matter for him, as neither was their reference to the Crime and Disorder Act 1998, s 17, which did not concern the Secretary of State.

The order was based on an Inclosure Award—the Eccleshall Inclosure Award 1845, which set out a number of public footpaths across the commons and wastes called Offley Hay. Its third schedule described a 'public footpath 4ft wide leading from Road B in a northeastwardly direction along the north east side of allotment

number 26 hence southeastwardly along the south east side of allotments number 14, 13 and 11 to Road E.' The award indicated that the public carriage roads, highways, bridleroads and footpaths were to be set out in accordance with the relevant Act. Footpaths set out by the Award were to be kept in repair by the owners and occupiers of the land over which they passed. The Award described a route, identified on the Inclosure-map, corresponding with the order route. The route was also identified—as a footroad—on the map which accompanied a Justices' Certificate of Completed Highways dated 31 August 1843.

The CC said that given the preamble to the Act showed that the Inclosure Commissioner had been given power to lay out footpaths, this was evidence sufficient to show that a right of way should be added to the definitive map and statement. The Award was conclusive evidence of the way's subsistence. The certificate by itself had no evidential effect, and it pre-dated the Award, but it may be that the footpath was in existence before the Award; and the fact that all the other ways shown in the certificate had been added to the definitive map supported the case that the order route was public. Though it may be the case that there was no modern-day evidence of the way's existence 'on the ground', any rights continued to exist on the 'once a highway, always a highway' principle unless extinguished, even if omitted from later maps.

The objectors accepted that the Inclosure Award showed that a path might well have existed, but they thought it was more likely to have been stopped up, probably by an order of Quarter Sessions. That the CC had found no such order was no evidence that none had been made. That one had was more likely, they said, because: while the other paths in the Certificate had been added to the definitive map, this had not been; it was not shown on any subsequent maps, so it must be assumed to have ceased to exist through some legal order; if it had fallen into disuse there would be some remnant or memory of it. In short, the CC had failed to satisfy the burden of proof.

In the Inspector's view, the Inclosure Award was evidence of a legal event which conclusively showed the existence of a public footpath.

The existence of the footpath as awarded was rebuttable only by evidence of a stopping-up order, said the Inspector. The objectors' unsupported assertion that the way may have been stopped up was not sufficient to outweigh the Award's evidence. In the absence of a stopping-up order he must conclude that none was made. It

was accepted that there was no physical evidence or memory of a path and that the route was not previously shown on the definitive map; but there was nothing to suggest that its exclusion was the consequence of a stopping-up order. It appeared that it had fallen out of use some time after Inclosure. But lack of use would not have deprived the public of its right to use it.

Neither did non-depiction on subsequent maps show that the way had been stopped up. Maps were produced to record topographical features noted by the surveyor, and did not necessarily provide evidence of public rights. The absence of any track on a map could mean merely that at the time of the survey there was no evidence of such a route on the ground, or that the feature on the ground was not a feature that the surveyor was required to record, or that the scale of the map was insufficient to show the feature.

The Inspector found that other matters raised by the objectors—security, health and safety, protection of hedgerows, liability for a water-main, and the assertion that the way served no useful public purpose—were irrelevant to his decision.

He therefore confirmed the order, modified so as to make the width not 1.5m, but 1.219m, ie the awarded 4ft.

Ref: The Staffordshire County Council (Public Footpath from Offleyhay Lane to Cash Lane, Eccleshall Parish) Modification Order 2006. PINS ref: FPS/D3450/7/26, order decision issued 11.09.08

More paths saved on Drain/Godmanchester principle

Cambridgeshire CC made two orders under s 53(2)(b) of WCA 1981 to add three FPs at Dullingham: ‘order A’, adding FP 26 from Stetchworth Road to FP 6, and FP 27 from FP 26 to Ley Road; and ‘order B’, adding FP 28, from Brinkley Road to FP 6. Two objections were received; Inspector Barney Grimshaw opened a public inquiry on 27 August 2008, at which the CC was represented by Sue Rumfitt of Sue Rumfitt Associates, and the objectors by Nigel Farthing of Birketts Solicitors, Ipswich.

The evidence in support was almost entirely of user. In the summer of 2003 work began on the site to establish a stud-farm. This obstructed the routes, and users realised that their right to use them was being challenged. This triggered the applications for the definitive map modification orders. The Inspector found that 2003 was the date of calling into question for the

purposes of s 31(2) of HA 1980. In doing so he dismissed contentions by the objectors that a previous planning application, made in 1990, called the way into question then, and so that should be the date. He found that neither the 1990 application nor the recent one included any details which precluded the continued existence of the paths: indeed, a public footpath could follow the route of a private vehicular access or a planned belt of trees. Neither application aroused significant public concern. It was the physical obstruction in 2003 which brought each ways’ status into question.

91 user evidence forms (UEFs) contained evidence of the order A routes. The objectors argued that it would have been difficult for users to have accessed the route from Ley Road at point D as claimed, since it was obstructed there by a thicket and ditch. It did indeed appear from their testimonies that users had followed a route slightly different from that shown on the order map—around this thicket and avoiding the ditch—and the Inspector agreed with the CC that the order if confirmed should be modified to reflect this.

From the evidence, FP 26 was the most used section of the route added by order A. Almost all the witnesses had used it for the relevant 20 years, some for much longer, many weekly or more often, and many reported seeing others.

Mr J Harrison said that during the 1960s he replaced a culvert near point B. This meant that there was a ditch for some weeks, interrupting the user-period. The Inspector noted that very few users mentioned this ditch, which did not appear to have significantly interrupted use of the way; anyhow, Mr Harrison’s evidence was that the ditch was part of drainage-works, not to prevent access. He found it was not the kind of interruption that prevented the presumption of dedication.

It was less easy to determine the amount of use of FP 27. There were many users but use was far less frequent than that of FP 26. Nevertheless, a considerable number of people claimed to have used the route throughout the 20-year period; at least 60 had done so, and even if many of them used it only infrequently, this still represented a substantial amount of use. And some of them did use it frequently. This was enough to raise the presumption of dedication, found the Inspector.

67 UEFs were submitted in connection with use of the order B route, FP 28. Over 50 claimed to have used it monthly or less often, with only a few claiming more frequent use. Some said

they saw others using it. The overall picture indicated that the route was in regular use throughout the material period. Nobody said their use had been interrupted or challenged. Overall the evidence indicated use in such a manner as to raise a presumption of dedication.

Turning to the issue of whether there was sufficient evidence of lack of intention to dedicate, the Inspector noted that apart from the replacement of a culvert mentioned above, the only evidence relating to this was the planning applications, ploughing of the routes, and possible challenges to users. In particular the objectors claimed that the planning applications of 1990 and 2002 would not have been made in the way they were if there was intention to dedicate further footpaths across the land. Concerning this, the Inspector said that ‘in the light of the House of Lords judgment in the *Godmanchester* case, it is my view that in order to ... negative a presumption that a route has been dedicated as a public right of way, actions by landowners to indicate a lack of intention to dedicate must be sufficient for a reasonable user of the route to understand what the owner was intending.’ As mentioned earlier, these proposals were not necessarily inconsistent with the existence of the claimed paths; and it further appeared that the great majority of users did not seem to have interpreted the applications as indications that their use was no longer to be tolerated.

Mr Harrison testified that when he farmed the land (1987–2003), fields were ploughed as close to the edge as machinery would allow, except where there were recorded rights of way. He argued that this showed he knew or believed there was no public right of way wherever he ploughed, and that he had no intention of dedicating any. He added that he instructed his employees to challenge users, though acknowledged that he had never challenged any himself; neither did he produce substantive evidence of specific challenges made by others. The Inspector noted that users of these routes had agreed that the fields had been ploughed to the edge, though not necessarily every year; and that some had added that the path soon became reinstated as a result of use.

Again taking *Godmanchester* into account, the Inspector found that neither the ploughing nor the alleged challenges satisfied the landowner’s proviso. It was not uncommon for rights of way to be ploughed; and here the users did not seem to have been inconvenienced by the ploughing and were certainly not prevented in their use by it.

The Inspector took into account certain documentary evidence which the CC described as evidence of repute that to some extent reinforced the user-evidence: OS maps of 1885 and 1901; parish council minutes of 1895, which referred to ‘carting of the material for the footpath from the Church round to the Dullingham Ley Road’, and made subsequent similar references; and evidence from the parish survey of 1951. The Inspector found that while the OS evidence confirmed the physical existence of parts of the claimed routes over a considerable time, the evidence generally was of no assistance in determining the routes’ status.

Finding that the criteria of s 31(1) of HA 1980 were satisfied, the Inspector proposed to confirm order A subject to a modification—to be advertised in accordance with Paragraph 8(2) of Sch 15 to WCA 1981—to take into account the realignment of FP 26 at the Ley Road end; and to confirm order B without modification.

Ref: The Cambridgeshire County Council (Public Footpaths No 26 and No 27 Dullingham) Definitive Map Modification Order 2006—referred to as ‘order A’. PINS ref: FPS/E0535/7/21, interim decision issued 03.10.2008. The Cambridgeshire County Council (Public Footpath No 28 Dullingham) Definitive Map Modification Order 2006—referred to as ‘order B’. PINS ref: FPS/E0535/7/22, order decision issued 03.10.2008

Note: In the Editor’s view, before the Lords’ *Godmanchester* ruling, when ‘intention’ seemed to mean a literal or subjective intention, the 1990 planning application might well have been found to be evidence of no intention to dedicate, though the Inspector could still reasonably have found that public use was not called into question until the physical obstruction in 2003. So the orders could have failed as the evidence of use during the 20-year period ending in 2003 would have been scuppered by the instance of evidence of no ‘intention’ to dedicate seven years into it—an example of how such an interpretation of the proviso in s 31(1) of HA 1980 ‘would make nonsense of the Act’, as Lord Hoffmann put it in his Opinion.

Path saved by walks-diary entries and a nonagenarian

Cambridgeshire CC made an order to add a footpath, FP 21, to the definitive map and statement at Stetchworth, following an application based on long user. It would run from Mill Lane, a

metalled cul-de-sac road, to FP 2. The landowner and other people objected; Inspector Peter Millman held a public inquiry.

The CC argued, and the objectors did not disagree, that the date of calling into question for the purposes of s 31(2) of HA 1980 was 1996. A letter of October 1996 from Dr Roger and Mrs Janet Moreton of the Ramblers stated that on trying to use the route they 'found the gate at [point B] locked and wound round with barbed wire, and the space at the side blocked up, making passage impossible.'

As it happened, the CC had no record of receiving or replying to this letter, which led the objectors (most ridiculously) to question the letter's authenticity. The CC said that records of complaints received since 1996 had been scanned and stored on disks which had since corrupted and that the Moretons, with whom CC staff were long-acquainted, were (without doubt) trustworthy, and the Inspector found that the letter was nothing other than a genuine contemporaneous record of an obstruction not previously encountered. However, the Moretons' diary showed that they had not walked that way since November 1994, so it was possible that the route had been blocked as early as then.

The objectors provided evidence of interference with the route before 1996 by its narrowing and by the digging out of a ditch; and one of them said that this was 'an obvious attempt to stop walkers using the route.' But the Inspector noted that none of the user-witnesses appeared to have noticed these actions, or to have reacted to them as challenges. He concluded that 1996 was the date of challenge, though would consider 20 years' use prior to 1994 as well.

Taken at face value the CC's user evidence forms showed that 17 people used the way for the full 20-year period 1976–1996, with a further 16 using it for more than 10 of the years. The objectors produced evidence from those who lived by the way or who owned it or worked near it, saying that they had never seen anybody use it, or that it was obstructed during the material time. The user evidence was not capable of being given *very* much weight, said the Inspector, since it contained too little information about frequency of use or whether use was by permission. At the same time he noted that some of the users also said that they had used it in the 1960s, 1950s, 1940s and 1930s, and he found that Mrs Moreton's diaries, of which she provided extracts dating from 1975 to 1994, provided strong evidence—being a contemporaneous record made at a time when it could not have been known that there was going to be a dispute—that the order

route was usable and used between those dates, especially given the Moretons' practice of reporting obstructions to the CC.

The objectors referred to various other gates, sometimes locked, and obstructions. The Inspector found that given the position of these, it was possible to reconcile their existence with the user evidence. The obstructions may well have prevented the route being shown to exist over its full claimed width, but they did not interrupt the use. He found that there was probably enough use over 20 years to count as use by the public. Given his findings about the obstructions and the lack of any evidence of the existence of a sign inconsistent with the dedication of the way as a highway, he concluded that the way had been dedicated, though not to the order width.

For completeness the Inspector considered the common law test. None of the map evidence strongly supported dedication. Some of the user evidence forms showed at least some use since the 1930s right through to the 1990s, and though it was a modest amount of use it must be presumed that the landowner was aware of it. No action was taken to prevent use or to show that it was merely tolerated, so dedication must be presumed.

The objectors called an old man, born in 1916, who had lived and worked in the area for more than 90 years. He clearly stated, however, that the way had been a public footpath before the Second World War. Regrettably, he forgot to take his hearing aid to the inquiry, so it was not possible to ask him why the evidence he gave turned out to be the opposite of what the objectors said it would be. But the little weight that could be given to it nonetheless supported the existence of a footpath.

For these reasons the Inspector confirmed the order with a modification to show the width as 2m wherever it was given as 10m.

Ref: The Cambridgeshire County Council (Public Footpath No 21 Stetchworth) Definitive Map Modification Order 2007. PINS ref: FPS/E0535/7/24, order decision issued 12.11.2008

Path linking with Pilgrim's Way added to map with the help of Drain/ Godmanchester

Kent CC made an order to add a public footpath linking the Pilgrim's Way with Paddlesworth Road along a route known locally as Marsh Lane, Snodland. At the start of the inquiry, which was conducted by Inspector Alan Beckett and held on

29 October 2008, there were three outstanding objections.

It was common ground between the parties that use of the claimed path was brought into question in September 2001 by the erection of a post and rail fence at a point which had, until that date, provided an unobstructed connection to the Pilgrim's Way. The Inspector was satisfied that use of Marsh Lane was brought into question at that date.

Eight individuals had submitted user evidence forms (UEFs) describing their use of the route and five of these, plus one other person, appeared at the inquiry. Four individuals who appeared at the inquiry demonstrated continuous use of the path throughout the 20-year period that ended in 2001. The remaining, untested user evidence demonstrated use of the path by a number of local residents for various periods between 1946 and 2001.

For the objectors, it was argued that whilst use had been made of the path, the quantity and frequency of the claimed use was insufficient to suggest that the public had been asserting the existence of a right of way.

The Inspector accepted the objectors' submission that the level of use as stated both in the untested evidence and in the oral evidence was limited in terms of both numbers and frequency, but he was of the view that use of the route was not limited to the six individuals who had appeared at the inquiry, or who had completed forms. Three of them had used the route in the company of others. Mrs Wilson walked with friends and family; Mr Thornewell participated in walks organised in association with the local parish council; and Mr Preston used Marsh Lane as an individual and as a training route with an athletics team. They all spoke of having seen or met other users on the route.

In addition, the claims that other users were seen on Marsh Lane had been given some support by the objectors who had stated that, when possible, they had challenged people on the way. In the period 1987–2002, Mr Trevor Lingham who had operated a haulage business from Paddlesworth Farm, said that he would challenge people approximately once a week during the summer. Mr Martin Lingham also stated that he had challenged walkers, cyclists and four-wheel drive users 'on many occasions' between 1993 and 2001. However, none of the witnesses who appeared at the inquiry had experienced such challenges.

The Inspector observed that the path was in a predominantly rural setting, relatively isolated from nearby villages. He considered therefore that

the claimed use was of a level and frequency likely to be encountered on a path of this nature, not providing access to village amenities. Taking the evidence of use as a whole, he was of the view that it was of the required quality to satisfy the provisions of s 31 of the 1980 Act.

The documentary evidence submitted showed that Marsh Lane had always been open at its junction with Pilgrim's Way prior to 2001, and Ordnance Survey mapping from 1908 showed that a gate had been present at the southern end of the path near Paddlesworth Farm. Witness evidence indicated that prior to 2001 such a gate had existed but that it had been usually left propped open, and that on those occasions when it was closed it was possible to walk round it.

None of the witnesses attested to have sought permission to use the path from, or been given permission by, the owner or tenant of the land, although the objectors claimed that Mr Trevor Lingham had informed Mrs Preston on a number of occasions between 1988 and 2002 that the route was not a right of way, but that she could use the path with the tenant's permission. Mr Trevor Lingham said that this conversation had occurred in 2000, although Mrs Preston dated it December 2007. The Inspector gave greater weight to Mrs Preston's recollection of the matter because a letter on the same subject had been sent to her by David Lingham in January 2008.

The objectors also sought to argue that use of the route occurred when a nearby footpath was obstructed by crops and was with the implied permission of the current tenant's father. They suggested that he would have turned a blind eye to the use in preference to seeing people walking through an arable crop. However whilst there was evidence of complaints about the state of the field path there was no evidence to suggest that use of Marsh Lane ceased when the alternative was unobstructed. The Inspector therefore did not accept that use of Marsh Lane had been with permission.

Neither did he accept that that use of the path by Mrs Preston very early in the mornings was evidence that her use of the path was secretive. It was simply a function of her exercising her dogs before she went to work. He appreciated however that the topography of the site meant that most of the path was not immediately overlooked, but the evidence was of open use of the path in full view of Paddlesworth Farm and anyone working there, as opposed to use occurring it when it was apparent that no-one was looking. He concluded therefore that use of the route was not conducted in secret.

The objectors claimed that continuous use of the path had been interrupted by the growth of vegetation in the sunken portion of the lane between 1988 and 1990 and again in 1998, and by haulage trailers which had been parked at the southern end of the track. The Inspector did not accept that the parking of trailers would constitute an interruption to the public use of the path. Firstly, the evidence in support of the Order was that they did not obstruct passage; Mr Hayes recalled having seen Mr Lingham's trailers parked on the track but had not experienced any difficulty in walking past them. Secondly, if use had been prevented, it would have been of a transient nature. Finally, the primary reason for parking the trailers in the land was not to prevent public access but to store empty trailers.

None of the witnesses who claimed to have used the path recalled occasions when it was so overgrown that they could not walk along it and any growth of vegetation was not the result of a deliberate action on the part of the tenant or owner. It more likely reflected the fact that prior to 2001 the northern section of Marsh Lane was not used by Mr Lingham for vehicular access. The Inspector was not therefore persuaded that the vegetation growing on the path interrupted public use during the relevant 20-year period.

Prior to 1985 the Holborough Estate had used Marsh Lane as a stand for guns during the pheasant season. Beaters had been stationed at each end of the lane to prevent access along the path. Whilst access to Marsh Lane would have been restricted on shooting days, the shoot would not have permanently deprived the public of access to the path. The Inspector considered that the action of placing beaters at each end of the path was an acknowledgement by the estate that members of the public were likely to use the path.

The Inspector's conclusion was that although the body of user evidence was limited in quantity it was sufficient to demonstrate that use of the claimed footpath occurred throughout the 20 year period prior to September 2001 and that such use was as of right and without interruption. It was sufficient to raise a presumption of dedication under Section 31 of the 1980 Act.

The Inspector then turned to examine the intentions of the owner of the land over that period. In the case of *Hywel James Rowley and Cannock Gates Ltd v SSTR* (2002), Elias J had accepted that positive acts taken by a tenant in accordance with the exercise of his rights over the property to exclude strangers could be considered to reflect the intentions of the owner unless there was evidence which established that the owner had a contrary intention.

In the present case, Paddlesworth Farm formed part of Lafarge Cement UK PLC's Holborough Estate which Mr Lingham farmed under a tenancy agreement as his father and grandfather had done. The Inspector was presented with no evidence as to the intentions of the freeholder with regard to public use of Marsh Lane and in the absence of evidence to the contrary, he considered that the actions of the tenant could be taken to reflect the intentions of the freeholder.

However, the House of Lords in *Godmanchester and Drain* had held that the terms of an agreement between landlord and tenant were insufficient for the owner to take advantage of the proviso to s 31(1) of the 1980 Act. The terms of the agreement were a private matter between the parties, and would not ordinarily be brought to the attention of the public. Consequently, the clause in Mr Lingham's tenancy agreement which required him to 'prevent the acquisition of any rights of way private or public or easements over any part of the premises' was insufficient evidence to demonstrate a lack of intention to dedicate.

It was submitted on behalf of Mr Lingham that the judgment of Lord Hope in the *Godmanchester* case indicated that the provisions of s 31 HA 1980 envisaged a dialogue between the public and the owner of the land crossed by the claimed path. Lord Hope had said '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 owner to indicate the contrary.' The objector's view was that the level of use claimed had to be taken into account when assessing the response made by the landowner. In this case usage was low and therefore the proportionate response, as made by Mr Lingham, was sufficient in the circumstances to demonstrate his intentions. On other parts of the farm where more obvious trespass had occurred, such as the breaking of fences by equestrians forcing access from a bridleway onto an adjacent footpath, Mr Lingham had repeatedly repaired his fences and advised horseriders not to ride over the footpath.

The Inspector was not persuaded that this was the interpretation which should be put on the *Godmanchester* judgment. The 'dialogue' spoken of by Lord Hope referred to the interplay between users and owners; for an owner to take advantage of the proviso his part of the 'dialogue' was to

provide an unambiguous response to use when it occurs on his property.

The most common way that the tenant's intentions could have been brought to public attention would have been by the erection on the path of a notice or notices denying the existence of a right of way. However, there was no evidence that such notices were erected during the relevant period. At the time of the Inspector's site visits one sign was seen but it appeared from the entry in the farm diary dated 20 February 2002 that this notice post-dated the diary entry as, having noted that walkers using Marsh Lane had been challenged, the entry asked whether a sign was needed on the gate. The Inspector observed that since Paddlesworth Farm was not the centre of Mr Lingham's operations during the relevant period, it was all the more important for action to have been taken to protect his interests over a route which was physically open and available for use, without him having to be present on site. Despite the size of the farm, the small number of staff who were engaged in farming the property and the practical difficulties in providing personal challenges to use, there was no evidence that prohibitive notices were displayed prior to 2002, nor was there evidence that either Mr Lingham (as the tenant) or Lafarge Cement UK PLC (as the freeholder) had made a suitable statutory declaration under s 31(6) of the 1980 Act.

The Inspector said that he had no reason to doubt that attempts were made to communicate

the intentions of the tenant to some users, but he did not consider that these were sufficient to bring to the attention of the wider public a lack of intention to dedicate. He therefore concluded that there was insufficient evidence to rebut the presumption of dedication raised by the user evidence.

His overall conclusion was that the evidence was sufficient to show use of the way on foot by the public as of right and without interruption throughout the period between 1981 and 2001. This was sufficient to raise an initial presumption that the way has been dedicated as a public footpath.

There was little evidence to suggest that prohibitive notices had been erected on Marsh Lane at any time during the relevant period. There was no corroborative evidence that the challenges to use said to have been made took place, or that they brought it to the attention of the wider public using the path that there was no intention to dedicate. For these reasons he considered that the tenant did not demonstrate a clear lack of intention to dedicate a right of way; the initial presumption raised by the user evidence is not rebutted.

The order was confirmed.

Ref: Kent County Council (Footpath MR594, Snodland) Definitive Map Modification Order 2007. PINS ref: FPS.W2275/7/47, order decision issued: 25.11.08.

PUBLIC PATH ORDERS

Stopping-up order under planning legislation not confirmed where not necessary

Broxbourne BC made this order under s 257 of TCPA 1990 to stop up a section of FP 18 Cheshunt. Objections were received and the written representations were determined by Inspector Mr Mark Yates who visited the site on 22 July 2008.

In July 2003 the BC had granted planning permission for 88 houses and 42 flats, with parking. FP 18 presently proceeded partly over a road, Columbia Road, within the development. It was not suggested that the stopping up was necessary in relation to the properties, now built, but the BC said it was necessary to stop up the way on account of outstanding works relating to Columbia Road. The Inspector accepted that Columbia Road was part of the development, though the planning permission did not include

specific details regarding works to be done on the development's roads.

The objector had pointed out that the outstanding works were minimal, while the BC disputed that they were substantially complete. In January 2005 the BC stated in a letter that the works were, in fact, minor work to the block paving, and the provision of a wearing course, bollards and tactile paving. In March 2007 in another letter they added that works in connection drainage and signage were also required.

On the site-visit the Inspector noted that Columbia Road had been constructed and that vehicles were using it. A block paving plateau had been built where FP 18 crossed Columbia Road, and a trench had been dug across the block paving with part of the paving replaced by a tarmac strip. The objector, citing *Hall v Secretary of State for the Environment* (1998), argued that planning permission was spent when the paving was first laid, and that it could not be resurrected. The

Inspector agreed that it was clear that the plateau as originally completed had been disturbed by works done subsequently, and found that any works still to be done in connection with it were repair-works, not works to do with construction of the road. The tactile paving and bollards were to facilitate, not obstruct, the passage of pedestrians, and so were not reliant on the stopping-up of the footpath; and the drainage-works and signage were to be located away from FP 18.

The Inspector concluded that it was not necessary to stop up the footpath, and so that the order was incapable of being confirmed.

Ref: The Council of the Borough of Broxbourne Public Footpath No 18 (part) (Cheshunt) Public Path Stopping Up Order No 1 2004. PINS ref: FPS/W1905/5/2, order decision issued 11.08.2008

Sinuous river-bank route substantially less convenient than direct route over grazing-land

Norfolk CC made this order under s 119 of HA 1980, in the interests of the owner of the land crossed by the way, to divert BR 10 Tharston. The Ramblers and the OSS objected and Inspector Martin Elliott determined the matter by written representations, making site visits in April 2008. The existing bridleway ran northwards from Long Lane, skirting the buildings of Horsenford Farm and then heading north-eastwards across farmland to join the B1135, Low Tharston. The alternative way would begin at a point rather further to the west and would head north-north-westerly then roughly north-easterly, though in a much meandering manner since it would go along the banks of the River Tas.

The Inspector accepted that the diversion was in the owner's interests. It would add to the privacy of the farmhouse (the OSS pointed out that the way and the farmhouse had co-existed for a long time, but the Inspector found that this did not show that privacy was not an issue currently affecting the landowner). It would also enable the landowner to cultivate (as a garden) land over which the bridleway passed. It was less clear how the diversion would facilitate, as claimed, the management of grazing on land on which ran the remainder of the path, unless the landowner wanted to fence it off; but on balance the Inspector concluded that diversion was expedient as cited.

In an attempt to demonstrate that the proposed route would not be substantially less convenient to the public, the CC argued that the existing way followed no distinct route across the grazing land, while the alternative would have a

prescribed width of 3m, sufficient for walkers and horses to pass easily; and the extra length of 215m was not unreasonable in the overall 1025m, especially given that walkers on bridleways were usually well-prepared serious ones not concerned about distance. The additional length provided more off-road riding for equestrians. This, said the OSS, did not outweigh the inconvenience that the diversion would have for other users—and this way seemed to be used more by pedestrians than equestrians—and the sinuous nature of the proposed route, compared with the far straighter existing one, would add to the inconvenience, involving many changes in direction on a surface which was more prone to overgrowth (which would be kept less in check by grazing). It was less firm, too, and would be far less convenient for cyclists.

The Inspector agreed with the CC that ordinarily an increase of 215m on a relatively isolated rural path would not render a way substantially less convenient, but the situation here was different: the alternative route, following the river, meandered a good deal, while the existing route, though indistinct, was direct. The alternative forced the user to take an unnatural and indirect line which, given the open aspect of the land, would be difficult to follow; three of the meanders represented substantial deviations from the line of travel. Equestrians would find this difficult to follow as well, whatever extra off-road riding it provided. He concluded that this sinuous and indirect route was substantially less convenient than the existing one.

The CC said that the alternative route was at least as attractive as the existing one, with similar if not better views. The OSS disagreed. Though the river had scenic value, there were river views from other parts of the bridleway, while the existing one also provided views of interesting features, including Horsenford Farm, which was on a statutory list of buildings of architectural or historical interest. To this the CC replied that there were many such farmhouses, and that the part mainly visible from the bridleway was an extension, and that the parish council which had not objected clearly did not share the objector's views. The Inspector observed that it was not clear whether the parish council's comments were about the route in general or the views of the property in particular, and so would accord the point no weight. But generally he found that the quality of the views would not be diminished, though he did not accept that they were improved either. Concerning arguments about wildlife, he said that the habitats through which each route passed were similar.

Thus he concluded that the diversion would not have an adverse effect on enjoyment of the route as a whole. He also found that the tests concerning the repositioning of the point of termination were met, the proposed new point being substantially as convenient, and possibly safer in terms of visibility by drivers of vehicles.

But because of his finding that the alternative route was substantially less convenient to the public, he declined to confirm the order.

Ref: The Norfolk County Council Tharston (Bridleway number 10 (part)) Diversion Order 2007. PINS ref: FPS/X2600/4/7, order decision issued 08.09.2008

High level of use leads to extinguishment order rejection

Leicestershire CC made this order under s 118 of HA 1980 to extinguish part of FP C41 at Fox Covert, Wistow. Objections were placed and Inspector Alan Beckett determined the matter by written representations and a site visit.

FP C41 went from Kilby to Fleckney and was a means of communication between the two. The path ran mainly east-north-east to west-south-west. At point A it diverged into a loop, heading east-north-easterly to point C, and then headed south-easterly to rejoin the main path at B. It was this loop, A-C-B, which was to be extinguished, leaving the public to walk the shorter length A-B. Both routes, said the CC, had been claimed under the survey done under NPACA 1949, and the landowner regarded it as anomalous to have two paths so close together and had requested closure of A-C-B.

Two local residents, Messrs Szerszynski and Jones, objected. They claimed that A-B, the length to be retained, was never used by walkers; it was A-C-B that was used. Mr Jones had been walking A-C-B for over 20 years, and had never seen anyone on A-B in all that time. Mr Szerszynski, who lived at Coleman Road, Fleckney, where that end of C41 terminated, said that his neighbours were unaware that A-B was a

footpath at all. A-C-B in his view benefited walkers and the landowner too: walkers did not have to cross a ploughed field at this point, and the landowner did not have to reinstate. If a path had to be extinguished, said the objectors, it should be A-B, and A-C-B should be retained.

The CC said that while this was the objectors' preference, A-B was shorter and could just as easily be used as A-C-B. They questioned the objectors' submissions about non-use; their Rights of Way Officer had noted soil compaction, which suggested some people used it. What was in question was whether A-C-B was needed for use; given that A-B existed, it was not.

At the time of the Inspector's visit, the line over which most of the path ran had been ploughed and harrowed. He found that while on all other parts of C41 where it crossed arable land there were obvious signs of use through re-establishment of the line, there was no evidence whatsoever that the public had used A-B. During his visit, several people were out walking, by themselves or with dogs; they all used A-C-B, which showed signs of regular and heavy use, being well-worn, with many footprints. The Inspector found that this evidence showed that the objectors' claims were, in all probability, more accurate assessment of the use of the two sections that the CC's.

The combined evidence of use of A-C-B and non-use of A-B led the Inspector to conclude that likely future use of A-C-B would be extensive and regular were it not for the order. While A-B was available as an alternative, there appeared to be no desire or demand by the public to use it. Given the extent of current use of the order route and, apart from the order, the likely high level of future use, he found that it was not expedient to confirm the order.

For these reasons he did not confirm it.

Ref: The Leicestershire County Council (Footpath C41 (part) at Fox Covert, Wistow) Public Path Extinguishment Order 2005. PINS ref: FPS/M2460/4/12, order decision issued 16.10.08

FROM PARLIAMENT

From Hansard

National Rights of Way Casework Team (column 932; 13 October 2008)

Gordon Banks: To ask the Secretary of State for Environment, Food and Rural Affairs what assessment he has made of the performance of the National Rights of Way Casework Team against its targets for reviewing representations.

Huw Irranca-Davies: Defra regularly reviews the performance of the National Rights of Way Casework Team and has recently acknowledged that the new transport work for the Department for Transport being carried out by the Government office north east is having an impact on the rights of way casework. Officials are discussing, with Government office north east, the problems of meeting targets for the issuing of decisions on Schedule 14 appeals and what needs to be done to ensure the level of service is improved.

Gordon Banks: To ask the Secretary of State for Environment, Food and Rural Affairs what guidance he has given to (a) the National Rights of Way Casework Team and (b) surveying authorities on how to determine whether modifications to the definitive map of rights of way have been made as soon as reasonably practicable.

Huw Irranca-Davies: Section 53(2)(a) of the Wildlife and Countryside Act 1981 requires modifications to the definitive map and statement, the legal record of all rights of way to be made, 'as soon as reasonably practicable'. Defra has issued no guidance as to what timeframe 'as soon as reasonably practicable' constitutes, as every case will be judged by individual circumstances. If a person believes that a highway authority is not fulfilling its duties under section 53(2), he can challenge its actions through the local government ombudsman, who has the power to investigate complaints of maladministration.

Gordon Banks: To ask the Secretary of State for Environment, Food and Rural Affairs how many people are assigned to the National Rights of Way Casework Team.

Huw Irranca-Davies: There are three people who work full time and one person who works part time on the National Rights of Way Casework Team.

National Rights of Way Casework Team (column 1488; 16 October 2008)

Gordon Banks: To ask the Secretary of State for Environment, Food and Rural Affairs how many representations the National Rights of Way Casework Team has received since its inception; what the (a) longest, (b) shortest and (c) average period between the receipt of a representation and the issue of a decision on that representation has been; how many decisions have been issued more than 12 months from the date of receipt of the

representations; and what the longest time is a representation has remained without the issue of a decision.

Huw Irranca-Davies: The National Rights of Way Casework Team has received 71 representations (direction requests) since its inception. The requested information on representation handling times can be provided only by reviewing all the 71 case files and therefore can be provided only at a disproportionate cost.

Gordon Banks: To ask the Secretary of State for Environment, Food and Rural Affairs how many appeals have been made to him under Schedule 14 of the Wildlife and Countryside Act 1981; how many appeals have been allowed; what the (a) longest, (b) shortest and (c) average time taken for a decision to be issued is; and what the longest time an appeal has remained without the issue of a decision is.

Huw Irranca-Davies: Prior to the establishment of the National Rights of Way Casework team in July 2005, work was carried out under Schedule 14 of the Wildlife and Countryside Act 1981 by the regional Government offices. There are no detailed central records of the Schedule 14 work carried out by those offices and the information requested could be gathered only at a disproportionate cost. However, as a guide a report estimated that the regional Government offices collectively received between 50 and 70 Schedule 14 appeals every year prior to 2005. Since 2005, the National Rights of Way Casework team has determined 150 appeals, of which 76 have been upheld. The additional information on appeal handling times can be provided only at a disproportionate cost.

Rights of Way (column 619; 27 October 2008)

Gordon Banks: To ask the Secretary of State for Environment, Food and Rural Affairs what functions the National Rights of Way Casework Team had at its establishment; what additional functions it has been given since its establishment; and how many people have been assigned to the team in respect of these additional functions.

Huw Irranca-Davies [holding answer 23 October 2008]: The functions undertaken by the National Rights of Way Casework Team from its establishment, and still to date, are direction requests (representations) and Schedule 14 Appeals, under the Wildlife and Countryside Act 1981, and Orders which the Secretary of State for

may decide to make under Section 247 of the Town and Country Planning Act 1990 for stopping up or diversion of rights of way in relation to proposed planning development. There are no additional people assigned to the functions of the Rights of Way team, although one person who is engaged part time in this work is also engaged in other national transport casework which is now undertaken by Government office for the north east.

Rights of Way (column 605; 13 January 2009)

Mr. Grogan: To ask the Secretary of State for Environment, Food and Rural Affairs how much land has been designated under section 16 of the Countryside and Rights of Way Act 2000; how much of this has been designated for the use of (a) walkers, (b) cyclists, (c) horse riders and (d) other equestrians; and at what locations land has been so designated.

Huw Irranca-Davies: Section 16 of the Countryside and Rights of Way Act 2000 (CROW) allows voluntary dedication by land owners and long leaseholders of public access rights over their land. To date 156,246 hectares of land has been dedicated in this way for public use on foot. The same section allows a voluntary dedication to extend the CROW rights to include a right for the public to ride horses or cycles as well as a right of access on foot. To date there has been

only one dedication of this kind, which created access rights for horse riders over 0.25 hectares of land in East Riding of Yorkshire. As yet there has been no such dedications of cycling rights. Detailed information on the locations of the areas of land affected by dedications to date for access on foot cannot be provided, except at disproportionate expense, but the areas of land will normally be displayed as part of the open access land shown on Natural England's countryside access website.

Rights of Way: North West (column 606; 13 January 2009)

Mr. Hoyle: To ask the Secretary of State for Environment, Food and Rural Affairs how much land under the Countryside and Right of Way Act 2000 has been allocated to (a) walkers, (b) cyclists and (c) horseriders in (i) Chorley, (ii) Lancashire and (iii) the North West. [245065]

Huw Irranca-Davies: The access land mapped under the Countryside and Rights of Way Act 2000 (CROW) for public use on foot includes 1,752 hectares in Chorley, 37,941 hectares in Lancashire and 278,860 hectares in the North West of England. CROW created no new general rights of access for horse riders or cyclists, and there is no central record of any voluntary extension of the access rights over the land in question to include cyclists or horse riders.

DEPARTMENTAL AND PLANNING INSPECTORATE NEWS

Publication of statements of case, proofs of evidence and supporting documents

The following letter was sent by Yvonne Oddy of the Planning Inspectorate's Rights of Way Section to interested parties on 27 October 2008.

'Since the introduction of the Hearings and Inquiries Procedure Rules in October 2007 we have received a lot of feedback concerning the accessibility of statements of case, proofs of evidence and supporting documents.

To address this we are going to run a pilot scheme for six months where we will be publishing all statements of case, proofs of evidence and supporting documents on the Inspectorate's website, (www.planning-inspectorate.gov.uk) where we currently publish the start notices and decisions. Whilst the pilot is running we will continue to send out copies of the statements, proofs and summaries only to the

parties to Orders. All supporting documents will be sent to the relevant order making authority to put on deposit.

This will be implemented for all new Orders with the start date of 3 November 2008. It will not apply to modifications to Orders proposed by Inspectors where the initial start date for the Order is before the 3 November 2008, even if the modification is proposed after that date.

The effectiveness of this initiative will remain under constant scrutiny and in any event will be reviewed at the end of the six month pilot scheme.

The latest updated version of our guidance booklet, Definitive Map and Public Path Orders in England, is on our website and is dated November 2008. Please note that as the publication of statements and proofs on our website is only a pilot scheme it has not been referred to in the booklet.'

Combined orders

The following letter was sent by Defra to all local authorities in England on 4 December 2008.

‘This letter concerns surveying authorities, who have the power to make combined orders under the Public Rights of Way (combined orders) (England) regulations 2008: SI 2008/442

The current Regulations

Many of you will be aware by now, that there has been some controversy over the prescribed form of combined orders, as set out in the current combined order regulations, SI 2008/442. The concern is that the form of order provided for in these regulations, does not enable the way in which the definitive map and statement are to be modified to be set out in the combined order, as it would be in a definitive map modification order or legal event modification order under SI 1993/12. Moreover, contrary to the advice that we mistakenly issued in July this year, the regulations do not enable surveying authorities to modify the form of any combined order they make so as to include this.

Nevertheless, any combined order made under SI 2008/442 will still enable a surveying authority to modify the map and statement, at the time of consolidation of the definitive map and statement, in line with the changes effected by the combined order. Moreover, from a legal standpoint, the current regulations fulfil their function adequately (in terms of permitting combined orders to be made) and Defra is firmly of the view that orders made on this basis are perfectly sound as long as the form of order is adhered to, either strictly or ‘substantially to the like effect’, in other words, they have not been modified to set out the way in which the definitive map and statement are to be modified.

Amending regulations

We have been consulting practitioners in surveying authorities about whether there is a need to amend SI 2008/442. They tell us that the regulations would be greatly improved by the addition of provision, in the form of order, for setting out the way in which the definitive map and statement is to be modified and so we have decided that we will amend the regulations accordingly. However, such regulations will not come into effect before the next common commencement date, which will be the beginning of April 2009.

In the interim

Until the new regulations come into effect, there are two options open to surveying authorities. They can make combined orders under SI 2008/442, which will be legally sound, provided they have not been modified to set out the way in which the definitive map and statement are to be modified. Alternatively, they can continue to make separate orders, as they did before the combined orders regulations came into effect.

Objections to combined orders already made

We are aware that a number of combined orders have been the subject of objections from the Byways and Bridleways Trust. We understand that some of these are objections to the form of the legal event modification order element of the order. Although the legislation governing definitive map modification orders and public path orders (and analogous orders) provides for these orders to be objected to and, if opposed, submitted to the Secretary of State, the legislation does not provide for orders made under s.52 in consequence of events in s.53(3)(a) of the Wildlife and Countryside Act 1981 (commonly referred to as legal event modification orders) to be objected to in this way.

There is therefore no legal basis for an objection to the legal event modification order element of a combined order. The legislation provides only (in s.53A(7)) that the order may be challenged in the usual way, though the Courts, on the grounds that it is not within the powers of this Part of the Act (Part III of the Wildlife and Countryside Act 1981), or that the requirements of this Part of the Act or of the regulations had not been complied with. Any objection to the legal event modification order element of a combined order has no basis in law and the Secretary of State has no jurisdiction in relation to orders objected to in this way.

Consequently, we will be returning any combined orders to surveying authorities, where the sole ground of objection is to the legal event modification element of the order. Where such a combined order conforms to the form of order set out in SI 2008/442, surveying authorities may simply confirm the order as unopposed. Where such a combined order has been modified to set out the way in which the definitive map and statement are to be modified, as indicated in the advice that we mistakenly issued in July, then surveying authorities have two options. One is to remake the order from scratch, adhering to the

form of order prescribed in SI 2008/442. The other is to detach the legal event modification element of the order, leaving only the public path (or analogous) order element of the combined order, which may then be confirmed, enabling a separate legal event modification order to be made, as was the practice before the introduction of combined orders; sections 53A, subsections (3) and (4), enable a surveying authority to do this without having to repeat any of the statutory procedures already undertaken.

Guidance

We will be revising the combined orders guidance and publishing this revised version once the amending regulations are made. In the meantime if you require clarification of anything in this letter, or require further guidance on combined orders for any reason please email the following address: recreation.access@defra.gsi.gov.uk

Yours sincerely

Dave Waterman

Recreation & Access Policy'

All change at Defra: ministerial re-shuffle

Following the Government re-shuffle announced by the Prime Minister at the beginning of October 2008, the Minister with responsibility for matters relating to rights of way and access is now Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs. His responsibilities include the following: marine environment and Marine Bill, fisheries, rural affairs, Rural Development Programme for England (RDPE), natural environment policy, Natural England, land management, national parks and AONBs, coastal and wider access, countryside & rights of way, inland waterways and British Waterways, sustainable rural communities, Commission for Rural Communities, biodiversity, ecosystem services, forestry, flooding, water (including Nitrates Directive), coastal erosion, soil, GMOs/nanotechnology, chemicals and pesticides, departmental administration, better regulation.

ARTICLES

Provisions as to the removal of unwelcome signs

Many readers will be familiar with the fact that s 57 of the National Parks and Access to the Countryside Act 1949 makes it an offence for any person to place or maintain on or near any way shown on a definitive or revised definitive map as a footpath, bridleway or restricted byway a 'notice containing any false or misleading information likely to deter the public from using the way'—a 'misleading notice'.

It may be that the term 'misleading notice' has become so familiar that highway authorities and others have come to think that any undesirable notice has to be 'misleading' before they can take action about it. At any rate we know of one or two anecdotal examples of this. For example we heard a couple of years ago that a notice had gone up somewhere in East Anglia requesting people to avoid using one footpath (it went near the owner's house) and use another instead, with, if we recall correctly, some ill-natured formula suggesting that to do otherwise was disrespectful of the owner's privacy. The highway authority was loath to take action—since, they said, whatever else the sign was, it was not 'misleading'.

It may not be well known even in rights-of-way circles that s 69 of the Road Traffic Regulation Act 1984 empowers the traffic authority to require the owner or occupier of any land on which there is 'an object or device (whether fixed or portable) for the guidance or direction of persons using the roads' to remove it. The authority can remove it themselves and recover costs if the owner or occupier when so required fails to comply. 'Road' is defined as 'any length of highway or of any other road to which the public has access.' What is meant by 'the guidance and direction of persons' is not defined, but would appear to include any purported instruction or unwelcome 'advice' to the public.

So this is a useful power, not least because its use is not confined to signs on definitive footpaths, bridleways or restricted byways, or ones which mislead; and footpath workers and highway authorities may like to note it.

The definitive Map—some experiences in north-west Buckinghamshire, by David Bradnack, Ramblers Footpath Secretary

Buckinghamshire CC has updated its definitive map, and David has compared it in detail with the

situation on the ground in nine parishes in the north west of the county. He writes as follows.

'I have noted about 80 places where there are discrepancies between what is on the ground and what is on the map, and/or where consideration should be given to something other than straightforward maintenance (plus another half dozen too trivial even for me to pursue). I do mean places, rather than paths; on several paths there are quite a number of different places to be considered.

A number of places are counted in more than one category below.

For remedial action

In only half a dozen places did I consider there was straightforward obstruction that needs to be remedied. It seems to me that in three of these cases the route could not be made attractive on the strict line as shown on the Definitive Map. One of these is on a path that is little used, for reasons outside the control of the occupier. Two of the paths would merely benefit slightly from a little clearing of vegetation.

Faulty mapping by the authorities (in the plural).

By omission, in eight cases where rights seem to be assumed, but have been recorded neither by the highway authority nor by the Ordnance Survey.

By commission, in six places involving miscopying and 14 cases involving diversions where what is on the map is clearly not what was intended on the ground. In many cases, involving the district council, the diversion map seems to be not much better than a sketch on the back of an envelope, but the proposed route has been plotted with slavish precision regardless of the features that are actually on the ground. If you defend these paths as on the map, you are not defending where people want to walk, nor where they have walked through the ages; you are defending cartographic incompetence.

In four places paths have been drawn on, or very nearly on, public roads, leading to doubt as to what exactly is meant.

In three places buildings have been erected on the line of the path, presumably with planning permission, without an adequate alternative route being provided.

Dead end paths

There are a number of dead end paths. One stops at the parish boundary; three are effective dead ends at unsuitable roads. Four lead/led to buildings no longer reasonable destinations for the public (three of them, while not strictly dead ends, lead/led from two directions to the same building, without making a sensible circuit).

None of these paths offer sensible there-and-back walks, though I am aware that a claim is in for one such route elsewhere, where it is sensible as a dog walk (though I would wish the route could continue to join the network).

In all but one of these cases, moving just one end of the path would integrate it nicely into the path network.

In one case moving the other end as well, to connect with the adjacent path in a different place, would make a much better route, apparently all in the same property.

New opportunities

There are two opportunities for new paths along disused railways (presumably needing to be created, not claimed), one more useful than the other.

Paths over arable fields

A particular concern are the ten routes across arable fields that are not shown as straight lines. Both the RA and the CC are on record as requiring farmers to re-instate paths exactly on the correct line, so the correct line should be one they can reasonably be expected to follow exactly.

There are (at least) three places where the path is so close to the field edge that in practice its status is ambiguous and a well maintained field-edge path may be preferable to a crossfield path liable to ploughing.

Natural evolution

In 28 places the routes of the paths have changed from what is on the map, by natural evolution. There is no evidence that the changes have been forced on an unwilling public, or that they are recent. Indeed in two cases there is evidence that the route actually walked may have diverged from what was put on the DM even before the map was prepared circa 1951. Ickford BW 3 is recorded both with a 'Diversion by...' [the place where the route on the ground still diverges from the mapped route] and as 'open throughout except ...' [at a completely different place].

The routes use long-established fence crossings that are not exactly where shown on the DM. In four cases the actual route needs fewer fence crossings, in two it is significantly more direct. In two it is significantly easier to find the route, and in one it avoids walking on the graves of the village forefathers.

In no case would I say the route on the ground is less pleasant than the one on the map, and in a number it seems to me significantly better.

It should not be assumed that the routes of the paths were surveyed at the time the DM was prepared. They were surveyed by the Ordnance

Survey some decades earlier (apparently as long ago as 1898 in at least one parish). In claiming the rights of way, parish amateurs will have established which paths were deemed public, and if these were shown on the OS map, will have coloured them in. They may or may not have checked that the OS map showed the paths exactly as they knew them on the ground and were claiming them; it takes a certain level of cartographic pedantry to doubt the accuracy of the OS map. In inking in the paths where they were shown on the OS map, they may or may not have been consciously asserting the routes that were used before the war, rather than those currently in use. This is not to claim anything with certainty, just to suggest that if you champion the route of the path as shown on the definitive map rather than the route on the ground, you may be championing a route that fell out of use during the Second World War, or even earlier, rather than the route that the present generation of walkers have been using all their lives. Further research may throw more light on the matter.

Case Studies

In the parish of Shabbington (at SP 665 065) the OS map has long shown FP 9 going diagonally across a large field. The latest definitive map shows a smaller field taken out of one corner of the large one, with the hedge crossing the path at an angle, then turning through about 45 degrees to go alongside the path for about 30 metres, then turning again to go back over the path. When I described this to an 'old style' rambler, his reaction was that 'the farmer should not be allowed to get away with it'.

Why do ramblers so readily blame farmers? It is nothing to do with the farmer. The smaller field was fenced off on behalf of the parish council to make a sports field. They took careful note of the line from the stile at one side of the field to the gate at the other, and took their fence up to that line and not over it. The stile happens to be about ten metres from the place marked on the DM, and has been for many years. Ten metres at the field edge means five metres in the middle of the field, enough for the path to appear on the 'wrong' side of the fence on the DM.

At SP 762 276 the Ordnance Survey map on which Winslow FP 4 was originally plotted circa 1954 had a black line denoting a hedge, with a pecked line to the south of it, showing a path/track. By the time of the next survey, circa 1970, the hedge had become decrepit, and fences had been erected each side of it, shown by the Ordnance Survey as two solid lines. When the rights of way information was transferred to the

new OS base map, the path was drawn between the two lines/fences, where it is comprehensively blocked by the decrepit hedge.

A little further east, the path was apparently immediately next to the farmhouse. The farmhouse has been extended over the path, presumably with planning permission, but no provision was made to move the path. There is a suitable alternative route just outside the garden, but an unofficial diversion has been waymarked further away, where it gets the run-off from a manure heap.

From SP 770 278 north-eastwards, Winslow FP 7 has been diverted and is shown going over the bays of a car park where the cars have to be parked, using the vehicle exit not the pedestrian one, going roughly in the same direction as the road but not exactly on it, entering the sports field at an indeterminate point where there is a high fence, turning to go nearly parallel with a side road but not on it, and with no exit through the sports field fence, going parallel with but not on a tarmac path, then going straight ahead across the front doorsteps of houses when there is a curving road with ample footway nearby. For most of the way this far, the intention must have been that the public would use the public road and not need a separately recorded footpath. The route is then recorded continuing properly on a real path towards a new road, but it turns away a few metres before reaching the road, although a physical path connection has been constructed. From here the diversion plan showed the path curving vaguely, presumably behind housing, but it is now shown as a straight line beside a straight fence. It goes to a road, where there is kissing gate on to the road, but the path is shown on the DM as continuing 50 metres in the field, parallel with the road, to a place where there is no gate or stile. The intention here seems to have been to go along the back fence of the last house and then forward to the road—but the last house was not built!

[The editor would welcome readers' comments on David's findings. Do they accord with your own experiences? And what is the remedy?]

Burley Bridge

Keith Wadd, Ramblers West Riding Area Chairman, reports on the long-running campaign for a bridge over the river Wharfe at Burely-in-Wharfedale.

'The case for a bridge over the River Wharfe at Burley in Wharfedale is that it will provide walkers from Leeds, Bradford and other parts of West Yorkshire with an excellent

throughout-the-year route into the Nidderdale AONB, including the beautiful Washburn valley. There are good rail and bus services to Burley, and the bridleway to the bridge site from Burley crosses the by-pass via an underpass. When the bridge is built, Burley will almost certainly be a popular starting and finishing point for walks.

There has been a campaign for a bridge across the Wharfe at Burley for over 100 years. In 1999, the Burley Bridge Association (on which West Riding Area is represented) obtained planning permission for a footbridge on the weir just upstream from the stepping stones at Burley, and this planning approval was renewed in 2004. Further progress, however, was thwarted by the refusal of the landowner to agree to a right of way to link the bridge with the nearby bridleway, and the refusal of the local authority to proceed with a path creation order.

In July 2005, West Riding Area of the Ramblers agreed to re-apply for planning permission for a bridge over the stepping stones route. Draft plans for a bridleway bridge were drawn up by Hutchinson, Whitlam Associates, Consulting Civil and Structural Engineers, sent to interested parties and put on exhibition at Burley. Discussions took place with the rights of way sections of the two local authorities (Bradford MBC and North Yorkshire CC).

As a result of the feedback on the draft plans, changes were made to the sides of the bridge and the decking. In May 2008 the revised plans were sent to the local authorities for pre-planning comments which have now been received.

Because of the Environment Agency (EA) requirement that the bridge should be higher than 'a once in a 100 year flood', the bridge is of necessity a large structure, and extends into the

flood plain at the north side of the river. The EA has confirmed that the bridge would have to be this height above the river irrespective of whether it is a footbridge or bridleway bridge. The decision to prepare plans for a bridleway bridge was made because of a local authority preference for a 'multi-user' bridge, and advice that it would be likely to attract more funding.

Money for this project will come from various sources. For example, a £5000 bequest from the Chippendale Foundation was specifically for a bridge at Burley.

Both Harrogate BC (planning authority for north side of river), and Bradford MBC want an ecological and biodiversity survey. This is likely to cost about £1600.

In addition, Harrogate BC wants details of the hard landscaping of the bridge and approach ramp, enhanced details of the construction and appearance of the approach ramp, sections of the river channel and flood plain, photomontages of the bridge *in situ*, and enhanced details of the proposed works for compensatory storage. This is likely to cost up to £7,000.

It is hoped that funding for the actual construction of the bridge, and maintenance, will come from public subscription and from grants. The local authorities will be providing advice and support with the fund raising, but no money.

Burley Bridge Association has generously agreed to match Ramblers expenditure on a 50/50 basis.'

West Riding Area and Keith are keen for the project to continue; not only has there already been a substantial input in terms of volunteer time and money but a bridge across the River Wharfe will be a valuable asset for walkers throughout the West Riding.

NEWS

Code of Good Shooting Practice

In 2008 the British Association for Shooting and Conservation (BASC) published a new edition of its Code of Good Shooting Practice. The code sets out the framework that enables shoot managers, guns, gamekeepers and their employers to deliver sustainable shooting whilst paying attention to the management of habitat and avoiding nuisance to others. The code contains the following useful information in respect of public highways and horses and walkers:

The public highway

- Shoot managers and Guns must ensure that shooting does not obstruct, cause danger or alarm

to users of the public highway, including roads, bridleways, footpaths and other rights of way.

- Guns should note that to shoot across a footpath or bridleway that is in use by walkers or riders may constitute a public nuisance or wilful obstruction. There may also be a liability in negligence if it is known that people are on, or likely to be on, the path.

- In particular, care should be taken when siting Guns near roads. Section 161 of the Highways Act 1980 (England & Wales) makes it an offence to discharge a firearm within 50 ft of the centre of a highway with vehicular rights without lawful authority or excuse, if as a result a user of the highway is injured, interrupted or endangered.

- Information signs, if appropriate, should be erected on shoot days on footpaths or bridleways.
- The siting of release pens and feeding of game near highways should be avoided. Game managers should collect and dispose of road casualties where possible.

Horses and walkers

- Shoot managers and Guns must have special regard to the safety of riders and their horses. Noise from gunfire, beaters working in cover adjacent to bridleways or falling shot can alarm horses and endanger riders.
- Where possible shoot organisers should liaise with local riders or yards, informing them when shoots are taking place.
- Shooting or beating should be paused to allow horses or other rights of way users to pass.
- All Guns should be made aware of bridleways and other rights of way as well as any fields in which horses are kept. Drives should be organised with this in mind.

The full code can be downloaded from www.basc.org.uk/content/codeofgoodshootingpractic. Hard copies can be obtained from the Countryside Alliance by e-mailing your address and the number of leaflets you require to: info@countryside-alliance.org

The Sustainable Communities Act 2007

This Act, which received Royal Assent on 23 October 2007, has, so far, received little publicity, but it may hold the key to improving local facilities including rights of way. According to the guide to the Act, which can be read in full on the Department of Communities and Local Government website at

<http://www.communities.gov.uk/documents/localgovernment/doc/682894.doc>,

the aim of the Act is to promote the sustainability of local communities.

The Sustainable Communities Bill was a Private Members Bill, sponsored by Nick Hurd MP, and Lord Marlesford. The Bill was supported by the Government and main English political parties. It was the result of a five year campaign led by a coalition of 85 national organisations.

The guide says that the Act ‘begins from the principle that local people know best what needs to be done to promote the sustainability of their area, but that sometimes they need central government to act to enable them to do so. It provides a channel for local people to ask central government to take such action. It also provides a new way for local authorities to ask central government to take action which they believe would better enable them to improve the

economic, social or environmental well-being of their area. This could include a proposal to transfer the functions of one public body to another.

The scope of the Act is very broad, covering economic, social and environmental issues. It does not limit the type of action that could be put forward, provided the action is within that broad scope. It is for local people to decide what they think needs to be done to promote the sustainability of their area.

The Act provides a simple process by which ideas generated by local communities are fed through their local authority and a body known as the ‘selector’ (probably the Local Government Association) to central government. It will not be possible for all suggestions to be put direct to central government, so local authorities and the selector will have a ‘short-listing’ role. The government will consult the selector and try to reach agreement on which of the proposals on the short-list should be implemented. The government will respond to all of the suggestions that are short-listed by the selector, and will publish an action plan setting out how it will take forward the suggestions that it adopts.

As well as enabling local communities and local authorities to make suggestions for government action, the Act also ensures that communities are better informed about the public spending in their area. New ‘Local Spending Reports’ will provide quick and easy access to information about where public money is spent. This should enable local authorities, their partners and communities to take better-informed decisions about the priorities they choose to pursue to promote the sustainability of their local community.

Copies of a broadsheet on a campaign to make sure the Act is implemented are available from Local Works (Unlock Democracy), Freepost, 6 Cynthia Street, London, N1 9BR or visit: www.localworks.org or www.unlockdemocracy.org.uk

The Fortieth Anniversary of the Countryside Act 1968

Although unremarked in many quarters, 2008 was the fortieth anniversary of the passing of the Countryside Act 1968 which, amongst other things, required all highway authorities to signpost public rights of way at their junction with metalled roads. The OSS issued a celebratory news release, commenting on this important legislation and pointing out that this was in every sense a landmark Act, which was won by the joint

pressure of amenity and rambling organisations. In addition to giving highway authorities a legal duty to signpost paths and to waymark them where necessary, it also gave cyclists the right to ride bicycles on bridleways, provided they give way to walkers and horse-riders.

But the Act was just as important for what it did not include. It marked the end of a long campaign by the Country Landowners' Association and National Farmers' Union to 'rationalise' country paths by destroying their wandering and historic character in favour of straight-line, field-edge routes convenient to the mass-production, high-intensity farming then in vogue. This scheme was seen off by a committee, appointed by the responsible minister Arthur Skeffington (the Footpaths Committee, reporting to the Ministry of Housing and Local Government and the Welsh Office). The committee said: 'We approach suggestions of a 'system' and a 'carefully planned network' with great caution because much of the value and charm of footpaths lies in their waywardness'. The OSS comments that such observations are just as relevant today when we value our history and culture more than ever.'

OBITUARIES

Essex Area of the Ramblers' Association has suffered two enormous and sad losses in the last six months. In August, we learnt of the death of John Dowding, who had, for many years, served as Essex Area Footpath Secretary. John had been a research chemist by profession, but it was in his life beyond work that he made such an enormous contribution to the communities in which he lived.

In his early twenties he became the youngest councillor on Burnham-on-Crouch Council. He went on to become chairman of the council and a JP, and then Mayor of Burnham. He was chairman of the carnival committee, member of the ratepayers' association, of the Branchline Standing Conference and of many other organisations. However, for the last 30 years his main preoccupation was the Ramblers. As Essex Area Footpath Secretary he was at the forefront of the Area's rights of way work, leading a large team of local footpath workers, attending public inquiries, liaising with the county council and CPRE, leading walks and surveying paths, most recently the Stour Valley Way.

His last home was in Nayland, over the county border in Suffolk. He continued his footpath work in Essex, but was fully involved in village life, attending meetings of the parish council, community council and conservation society, running a book stall at the parish fête, and

Natural England Stakeholder Group

The Natural England Stakeholder Group looking at the issues and difficulties surrounding recording those historic rights of way which are not yet shown on the definitive map has now met three times. You can read the minutes of its meetings by visiting the Natural England website at:

http://www.countryside.gov.uk/LAR/Access/DLW/unrecorded_row.asp

Sources of information

The National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968 are now both available on the OPSI website (<http://www.opsi.gov.uk/acts.htm>) in their original form as pdf files.

Also, please note that the fifth cumulative supplement to the fourth edition of the blue book (to 3 January 2009) is now available on the BBE website at:

<http://www.ramblers.co.uk/files/BB4%20cumulative%20supplement%20at%202009.01.03.pdf>

supporting the Village Players and various other local musical, historical and archaeological societies and events.

His dry sense of humour, great knowledge and enthusiasm will be sorely missed in the Ramblers and beyond.

And then on 1 January this year, Fred Matthews, who had been a long-serving Footpath Secretary for the West Essex Group, and President of Essex Area, died. Until he had a stroke in 1997, Fred had been organising up to 200 walks a year. He wrote many guide books about walking in Essex to encourage people to explore the county and he then devised a number of longer routes with his colleague Harry Bitten: the Three Forests Way, the Centenary Walk, the Harcamlow Way, the Essex Way, and St. Peter's Way. He was also, until 1997, the coordinator of the annual Essex 100 mile walk. He worked tirelessly for the provision of safe crossings on rights of way cut by major roads and was instrumental in securing the adoption of road crossing guidelines by Essex County Council, which led to the inclusion of several extra bridges for non-motorised users over the A120 and A130 bypasses and in new road schemes generally throughout Essex.

Fred's hard work and perseverance will also be very greatly missed.