
Warwickshire and West Midlands Association
of Local Councils

Protecting public rights of way

31st March 2022

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Open Spaces Society Case Officer

Introduction



-
- Welcome
 - Meeting etiquette
 - Introductions
-

Session 1

What we will cover



-
- What are public rights of way?
 - How do you know if a path is public or not?
 - Who has responsibility for public rights of way?
 - Why are public rights of way important?
-

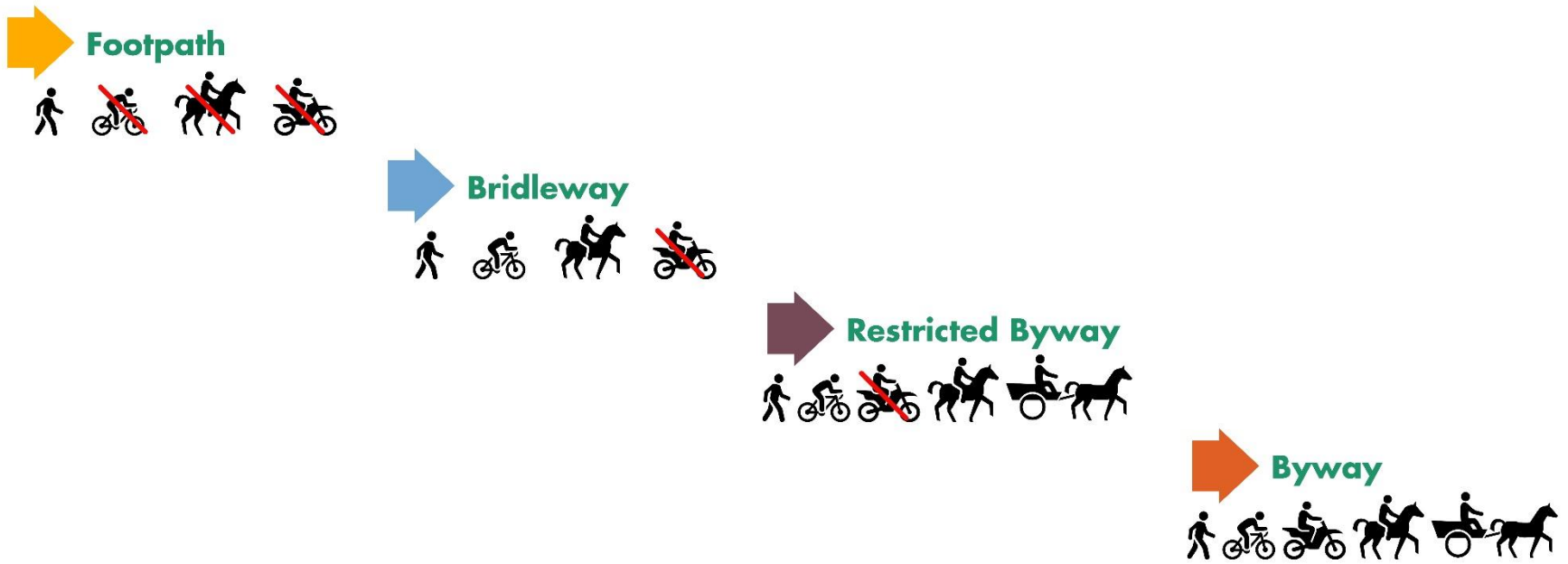
Public rights of way and highways



- Footpaths: for walkers
- Bridleways: for walkers, horse riders and cyclists
- Carriageways: for all, including motor vehicles (\approx roads)
...to which Parliament has added:
- Restricted byways: all except motor vehicles
- Cycle tracks: for walkers and cyclists

What are public rights of way?

■ Four classes:



Public rights (1)



-
- All of these ways are defined in law as ‘highways’ (as are roads)
 - The public has a legal right to use a highway — a right to ‘pass and repass’
 - The public may also make reasonable use — e.g. stop to look at view, take photos
 - ‘Reasonable accompaniment’: dog, pram, mobility scooter...
-

Public rights (2)



Right to use a
mobility scooter
— if practicable.

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How rights of way come into being



- ‘Dedication’ by the landowner – rarely express dedication – most accepted as being public beyond memory
- Dedication ‘presumed’ through long usage or historical documentary evidence
- Also, by creation agreements & statutory orders
- ‘Once a highway, always a highway’

Once a highway...



Ancient
trackway –
The Portway,
Shropshire

© Graham Bathe

The Definitive Map and Statement - background



- National Parks and Access to the Countryside Act 1949
- Every County Council required to survey all rights of way and record them on maps
 - Parish councils undertook initial surveys
 - Statements for each path to accompany maps
 - Draft – Provisional – Definitive Map stages
- Legally conclusive of rights shown on it

The Definitive Map and Statement - today



-
- Wildlife and Countryside Act 1981
 - All surveying authorities in England and Wales (except inner London) required to produce a Definitive Map and Statement (DMS), to keep it under continuous review and up-to-date
 - Anyone able to apply for modification of the DMS
-

Why does the DMS need to be reviewed?



- The DMS is legally conclusive of the ways shown in it
- But, ways can legally exist even though they are not shown
- Surveying authorities have a duty to make any such modifications as appear necessary, upon discovery of evidence, and as soon as reasonably practicable

What changes can be made? (1)



-
- A way may be added to the DMS because it has been used for a long period (20 years at statute) without interruption or permission
 - A way may also be added because of historical evidence of existence
 - A way may be upgraded if there is evidence of higher rights (user or historical)
-

What changes can be made? (2)



- A way may also be amended or, occasionally, downgraded or deleted if there is evidence that it was shown incorrectly
- Amendments may be made to the definitive map and/or statement
- Such changes effected by Definitive Map Modification Orders (DMMOs)
- Evidence-based - not suitability, need etc.

Path changes



-
- Public path orders (PPOs) – Diversions, creations and extinguishments
 - Make changes to existing public rights of way
 - Highways Act 1980
 - Reasons such as: security, privacy, amenity, need
 - Town and Country Planning Act 1990
 - To enable development to take place
-

Poll 1



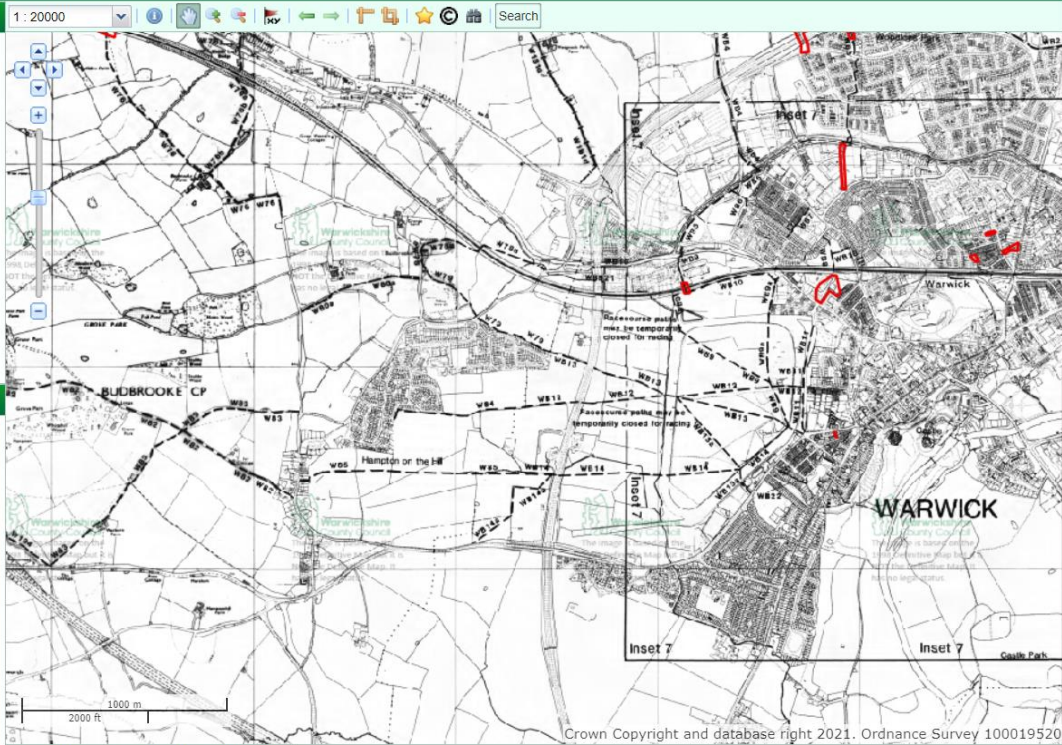
How to find out if a way is public (1)

Warwickshire Public Rights of Way

Layers

- Background Maps
- Administration Boundaries
- Rights of Way (1998 Definitive Map)
- Rights of Way (1998 Definitive Map)

1 : 20000



EPSG:27700 | X: 426007.90 | Y: 266256.50

Legend

Warwickshire County Council PUBLIC RIGHTS OF WAY

- PUBLIC FOOTPATH
- PUBLIC BRIDLEWAY
- RESTRICTED BYWAY
- BYWAY OPEN TO ALL TRAFFIC

N.B. Information changes and may go out of date quickly

Information based on image of 1998 Definitive Map. Legal queries should be referred to the Rights of Way team

Post-1998 Legal Change

Legal Disclaimer

The image is based on the 1998 Definitive Map but it is **NOT** the Definitive Map. It has no legal status. Do not rely on it to determine where paths exist. Paths are subject to legal change. The map was published at 1:10,000 scale. Viewing the data at a larger scale than this will not increase its accuracy. Rights of way may exist that are not shown on the Definitive Map whether under Common Law or the Wildlife and Countryside Act 1981. Warwickshire County Council cannot accept liability for any loss, damage or inconvenience caused by reliance on this map.

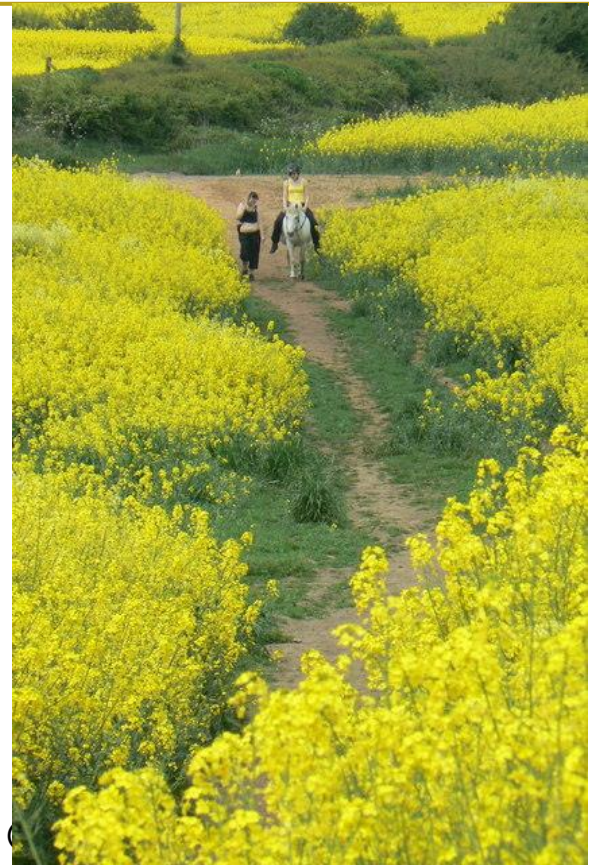
How to find out if a way is public (2)

- Ordnance Survey (OS) Explorer series – 1:25,000
- Authorities notify OS of any legal changes
- Map shows date when rights of way information last revised



Who owns the way (1)

- They cross private land



Who owns the way (2)



-
- In most cases the surface is considered to belong to the highway authority
 - The subsoil normally belongs to the owner of the surrounding land
 - Gates or stiles are the responsibility of the landowner

Character of a way (1)

- Most rural public rights of way are not sealed
e.g. stone, earth or grass...



Character of a way (2)



- Urban paths often sealed
- In this example, part of the footpath's width has been converted to a cycle track

Who has responsibility for rights of way?



-
- The highway authority (county council, or unitary authority – includes London or metropolitan borough councils)
 - May assign some responsibilities to other authorities e.g. district councils

What duties do highway authorities have (1)



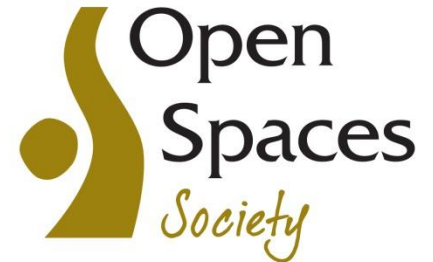
- To ‘assert and protect the rights of the public to the use and enjoyment’ of highways in their area
- To ‘prevent, as far as possible, the stopping up or obstruction’ of highways

(s130 Highways Act 1980)

- To ‘maintain the highway’ (applies to highways maintainable at public expense)

(s41 Highways Act 1980)

What duties do highway authorities have (2)



- Highway authority must erect and maintain signposts where rights of way leave a metalled road
- They must also provide signposts (waymarking) where it would otherwise be difficult to follow the route

(s27 Countryside Act 1968)

Signed from metalled highway



A clearly waymarked path

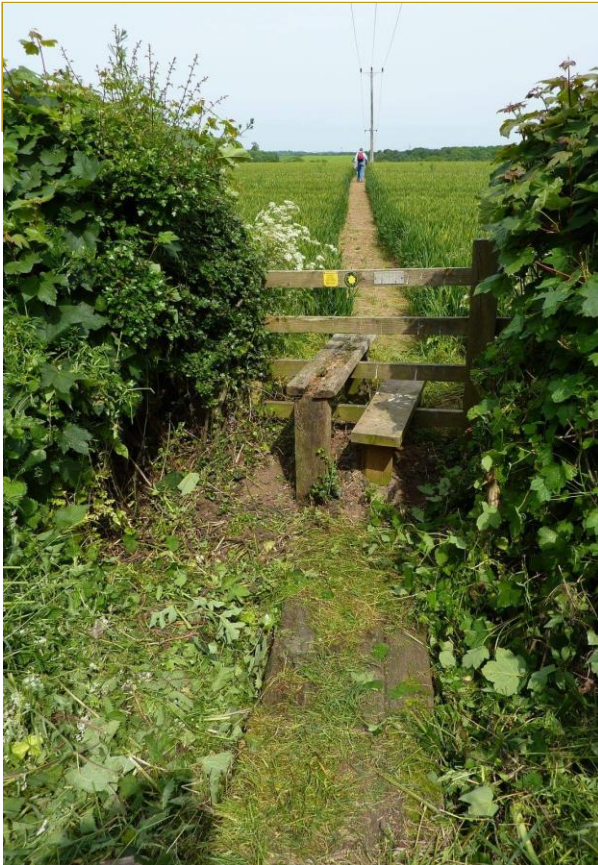


Stiles and gates (1)



-
- Rights of way may be dedicated subject to a limitation on the route
 - Otherwise, only the highway authority can give authority for the erection of stiles or gates
 - The owner has responsibility for their maintenance, but highway authority can contribute or do the work and charge for it
-

Stiles and gates (2)



© Melbourne Footpaths Group

Ploughing and cropping

- A farmer may plough and cultivate cross-field ways but must reinstate after two weeks



cc-by-sa/2.0 - by Simon Carey - geograph.org.uk/p/2630010



© Ramblers

© Simon Carey (cc-by-sa/2.0)

Obstructions



-
- Anything interfering with right to proceed along a public path is an obstruction, even if it is only partial, e.g.:
 - Barbed wire across it
 - Manure heap on it
 - Hedge overhanging
 - A way cannot be closed or diverted except by legal process, even temporarily
-

Misleading notices (1)



-
- Any notice which tries to deter you from using a right of way, e.g. 'Bull in field' when there is no bull, 'Private' signs erected alongside a path
 - They are unlawful on paths shown on the definitive map

Misleading notices (2)



Access to open country (1)



-
- In addition to the linear access provided by public rights of way, the Countryside and Rights of Way Act 2000 has provided access for walkers to one million hectares of open countryside in England and Wales
 - Land designated as 'mountain, moor, heath and down'
-

Access to open country (2)

- Access land waymark
- Shown on OS maps with a light yellow tint and orange border
- Access for walkers only
- Dogs must be on leads
March to end July
- Extended to create England Coast Path



Access to open country (3)



- Restrictions
 - General e.g. no camping
 - Temporary – for management reasons (28 days)
- Landowners can lift restrictions e.g. to allow cycling or horse riding
- Landowners can also dedicate new access land voluntarily

S.16 CROW Act 2000

Permissive paths



- Permissive, permitted or concessionary paths:
 - Not a public right of way
 - Landowner allows access – not a statutory right
 - Formal agreement (e.g. conservation scheme) or a local arrangement
 - Notices on site
 - May be conditions e.g. no dogs
 - May be shown on OS maps as broken orange lines

Role and importance of rights of way



- Mainly recreational use — walking, cycling, horse riding, horse drawn carriages, driving
- Access to the countryside — exercise, bird-watching, wildlife, 'getting away from it all' *etc.*
- Functional use — *e.g.* walking to village or railway station, access to isolated homes
- Health and wellbeing – physical and mental
- Benefits to the economy

Questions



-
- A review of any questions submitted over the 'Chat' function for this session

 - Delegates invited to ask their question will have their camera enabled by the host and will need to unmute their own microphones

Session 2



Protecting public rights of way:
the role and powers of local councils

What we will cover



- Why local councils have an important role in protecting rights of way
- Taking practical steps
- Using the law
- Having your say

Why local councils have an important role



- Value of good quality local paths
- Local councils have best knowledge of local paths and a voice to command attention of highway authority
- Cuts to highway authority budgets means they cannot fulfil their duties – local councils can make a big difference to the highway authority's ability to act

Form a committee



-
- Form a public rights of way committee
 - Meet regularly and co-opt local path users – benefit from their knowledge and experience
 - Liaise with highway authority – some may already have an initiative to support local councils e.g. training, supervision

Put public rights of way on the agenda!



-
- Make rights of way a regular item on your council agenda
 - Highlight the importance of rights of way
 - Health and wellbeing
 - Sustainable travel
 - Benefit to local economy
 - Encourage people to raise issues about them
-

Make regular inspections



-
- Carry out regular surveys of all paths in the parish or community
 - Obtain a copy of the definitive map from your highway authority
 - Invite willing councillors and/or volunteers to walk paths twice a year
 - Report any problems you cannot deal with to the highway authority
-

Undertake maintenance (1)



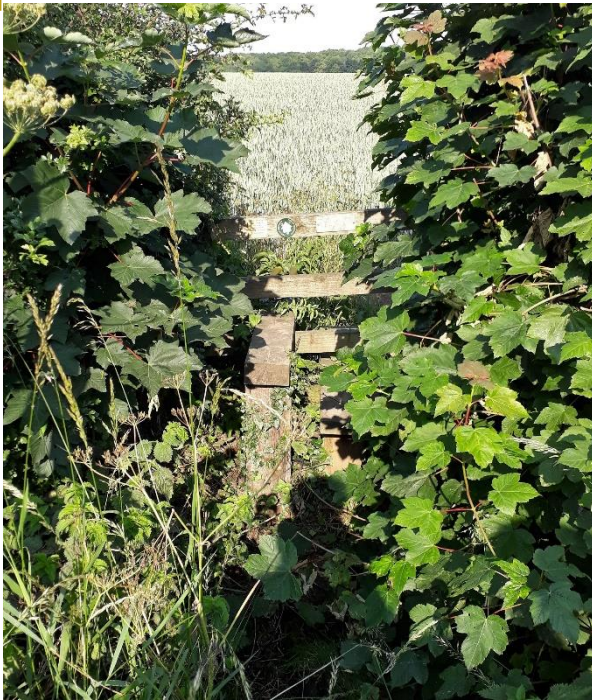
-
- Under section 43 of the Highways Act 1980 a local council may undertake maintenance of publicly-maintainable footpaths, bridleways and restricted byways
 - Clearing undergrowth or repairing path furniture (such as footbridges or steps)

Undertake maintenance (2)

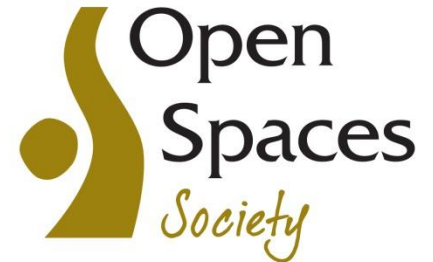


-
- Section 43 also provides that a highway authority may pay all or some of the costs
 - Agree an agency agreement with the highway authority about the work to be done by each and the sharing of costs
 - You can also help maintain signposts with consent of the highway authority
-

Undertake maintenance (3)



Undertake maintenance (4)



-
- Under section 50 of the Highways Act 1980, a local council may also maintain any privately-maintainable footpath or bridleway within its area, whether or not any other person has a duty to maintain
 - These powers under s43 and 50 do not affect the duty of any highway authority or other person to maintain the way
-

Check stiles and gates (1)



-
- Gates and stiles may need the highway authority's consent under section 147 of the Highways Act 1980
 - Check that stiles and gates are authorised, report to highway authority and seek their removal if they are not, or are no longer necessary
 - Should be safe and easy to use
-

Check stiles and gates (2)



- If unnecessary or difficult to negotiate they may be an unlawful obstruction

Check stiles and gates (3)

- Where a limitation is lawful, seek consent of landowner to improve, e.g. stile to gate



Try to resolve problems



-
- Talk to offending landowners and occupiers
 - Local councils will often know the landowner and an informal word might sort a problem, such as an out-of-repair stile, barbed wire or crops over a path, without the need to escalate it to the highway authority

Use the law to get results



-
- If a local approach is not successful, report the matter to the highway authority
 - The highway authority should always try to use persuasion or discussion to resolve an issue but can take enforcement action
 - If the highway authority fails to act, individuals and local councils can require them to do so
-

Highways out of repair (1)



-
- Section 56 of the Highways Act 1980
 - If a publicly-maintainable highway is ‘out of repair’ a local council, or an individual, can serve notice on the highway authority to act
 - Out of repair = the surface is defective or disturbed in some way
 - Example: a ditch dug across a path and not filled in
-

Highways out of repair (2)



-
- If the highway authority admits that the way is a highway maintainable at public expense (HMPE), but takes no action to repair it, you can apply to Magistrates' Court for an order requiring them to do so
 - If the court finds that it is HMPE out of repair, they should make an order requiring that the highway is put into repair
-

Highways out of repair (3)



Poll 2



A



B



C

Dealing with obstructions (1)



- Under section 130A Highways Act 1980, anyone may serve notice on a highway authority to deal with certain obstructions on a right of way and, if the authority fails to act, apply to Magistrates' Court for an order requiring them to do so.
- But, there is a much longer-standing and simpler procedure available to local councils...

Dealing with obstructions (2)



-
- You can require the highway authority to perform its duty to keep highways (of any kind) free from obstruction using a special power under section 130(6) of the Highways Act 1980

Section 130(6) Highways Act 1980 (1)



- If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—
 - (a) that a highway as to which the local highway authority have the duty has been unlawfully stopped up or obstructed, or

Section 130(6) Highways Act 1980 (2)



-
- (b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority,
- it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name
-

Using s130(6)



-
- Place details of the obstruction, and the intention to make a representation under s.130(6) on the agenda of a council meeting
 - Resolve to authorise the clerk to the council, or the chairman of the council, to make the representations on its behalf
 - Representation should be made in writing, making clear it is under s130(6)
-

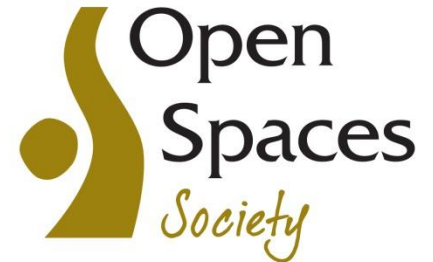
Case study: Send Parish Council



- In 1979 Send Parish Council took Surrey County Council to court for failure to take 'proper proceedings' to deal with an obstruction on a footpath
- The High Court granted a mandatory order, requiring the county council to deal with it
- The highway authority has a duty to act
- Powerful tool for local councils

(R v Surrey County Council, ex parte Send Parish Council 1979)

What if there is uncertainty about the status of a way?



-
- The highway authority is not obliged to act if ‘it is satisfied the representations are incorrect’
 - If the obstruction or encroachment is on a way that is shown on the DMS or the highway authority’s list of streets, it is unlikely that the highway authority can conclude the representation is incorrect
-

Dealing with obstructions (4)



-
- If a landowner is wilfully obstructing the path, the council (or an individual) can prosecute him or her under section 137 of the Highways Act 1980
 - A landowner who fails to comply with their requirements to reinstate a path after ploughing and cropping may be prosecuted under s134 and s137A respectively
-

Agree new paths



-
- Under section 30 of the Highways Act 1980, you have powers to enter into agreements with landowners for the dedication of new rights of way
 - For the benefit of local residents
 - Explore new opportunities for access in your council area

Make improvements



-
- Local councils also have various powers to improve rights of way with owner's consent:
 - ❑ Lighting (Parish Councils Act 1957, s.3)
 - ❑ Seats and shelters (Parish Councils Act 1957, s.1)
 - ❑ Notice of danger on or near footpath or bridleway (Road Traffic Regulation Act 1984, s.72)
 - ❑ General power to spend money in interests of its area or inhabitants (Local Government Act 1972, s.137(4) & sch. 12B)
-

Have your say (1)



-
- **Comment on proposals to alter routes**
 - ❑ Public rights of way can only be closed or altered through legal process and you will be notified and should be consulted
 - ❑ Changes may be proposed in connection with development (TCPA1990) or because it is in the landowner or public's interest (HA1980)
 - ❑ Gauge local opinion, discuss at council meeting, make a submission
-

Have your say (2)



-
- Powers of veto - for certain proposals your council's consent is required:
 - Stopping-up or diversion highways under s116 of the Highways Act 1980 (application of highway authority to Magistrates' Court)

Promote



-
- Publicise your local rights of way network so that people can enjoy them
 - Publish a book or leaflet of local walks, rides
 - Display a map in the parish showing the paths with their definitive numbers
 - Organise walks, get local people involved
 - Consider becoming a 'Walkers are welcome' town
-

Questions



-
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Session 3



Claiming rights of way, and
changes to rights of way legislation

What we will cover



- The 'cut-off date' for historic paths
- Applying for unrecorded rights to be added to the definitive map and statement
- The Deregulation Act 2015: a summary and current position
- Questions

The 2026 'cut-off' date



-
- The Countryside and Rights of Way (CROW) Act 2000 introduced a cut-off date for the recording of historic paths
 - On 1 January 2026 the DMS would have been closed to claims based on historical evidence
 - However, government has just announced that this deadline is to be abolished!
-

Unrecorded ways (1)

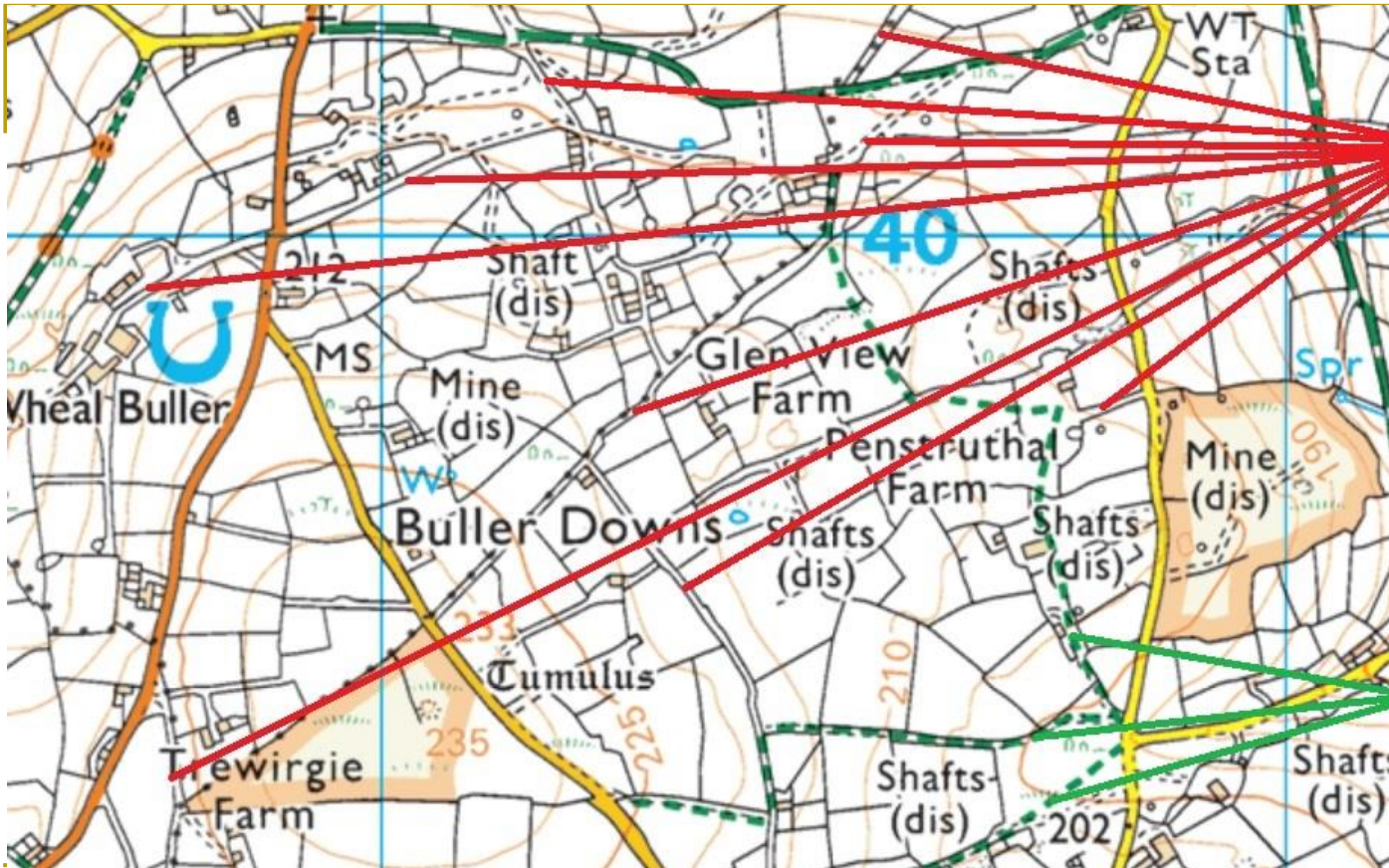


-
- Many 1,000s of historical ways remain unrecorded on the DMS
 - Missed or suppressed when DMS drawn up in 1950s
 - Public still has right to use historical ways
 - Unrecorded ways are at risk of being built over or abused
-

Poll 3



Unrecorded ways (2)



Unrecorded ways at risk

Near Helston, Cornwall

Footpaths on DMS

Unrecorded ways (3)



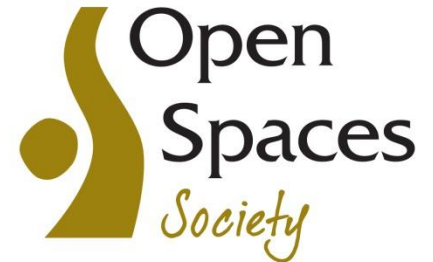
- Project 2026 – interactive map coordinated by the British Horse Society, working with the society and other user groups
 - <https://www.bhsaccess.org.uk/dobbin/Project2026Intro.htm>
- Don't Lose Your Way – Ramblers'
 - <https://dontloseyourway.ramblers.org.uk/>

What can local councils do?



-
- Research old records to see if there are routes which have been omitted from the definitive map
 - If a route has been used for 20 years without challenge or interruption, gather such evidence to claim the path as a highway
 - Submit applications for modification of the definitive map and statement
-

Historical evidence (1)



-
- Documentary evidence, with or without user evidence, is considered at common law
 - At common law it can be inferred that the way was dedicated to the public at some time in the past and that the public accepted that dedication

Historical evidence (2)



-
- Enclosure Award and Plan (Parliamentary and Legal process)
 - Quarter Sessions documents
 - Highways,
 - Deposited Plans (including Turnpike, Railways, Canals, Roads, Utilities)
 - Council records, including records from original DMS survey and any reviews
-

Historical evidence (3)



-
- Tithe Map and Award (Parliamentary and Legal process)
 - Finance Act 1910 Maps and Field Books
 - Historical mapping (large-scale and small-scale – Ordnance Survey, estate and commercial) and aerial photographs
-

User evidence (1)



-
- Under Statute (Highways Act 1980, s31) a presumption of dedication arises by:
 - 20 years use by public
 - Openly and without interruption
 - 'As of right': without force, secrecy or permission
 - 20 years' counted back from when the public's right was 'called into question' (e.g. locked gate or application for DMMO)
-

User evidence (2)



-
- Presumption to dedicate may be contradicted by sufficient evidence that landowner had no intention to dedicate – overt acts (e.g. notices)
 - Lack of intention to dedicate may also be demonstrated by landowner making statement and declaration under s31(6) Highways Act 1980 during relevant period
-

User evidence (3)



-
- Declarations have to be renewed every 20 years to remain effective
 - They are not retrospective – they protect against claims based on long user after the initiating deposit
 - Highway authorities have a statutory requirement to keep a register of deposits on website and in paper form
-

User evidence (4)



-
- User evidence can also be considered at common law
 - Must be able to show that it can be inferred from landowner's conduct that they intended to dedicate the route as a public right of way
 - Dedication may be express (e.g. by deed)
 - Dedication may also be implied by evidence of use 'as of right' – no fixed period
-

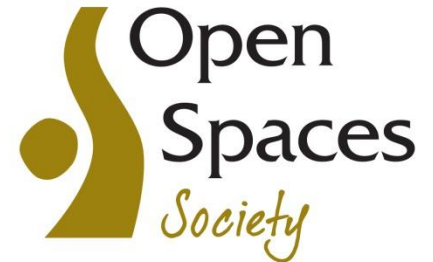
Making a claim (1)



- Applications for definitive map modification orders (DMMOs) are made under schedule 14 of the Wildlife and Countryside Act 1981
- Surveying authorities are required to keep a register of such applications
- They should be able to send you an application pack of prescribed forms* or you may be able to download from their website

(*Wildlife and Countryside Regulations 1993)

Making a claim (2)



-
- Make an application and send it, with the supporting evidence, to the authority
 - Notify the owners and occupiers of the land that is crossed by the way that an application has been made
 - Let the council know that you have notified the owners and occupiers
-

Making a claim (3)



-
- The surveying authority has a duty to determine your application
 - If they have not done so within 12 months of receipt you can ask the Secretary of State for a 'direction' to the authority
 - The authority may be directed to make a decision on your application within a specified timescale
-

Making a claim (4)



- When the authority determines your application you will be informed and consulted
- Decision report setting out evidence and how the authority has reached its decision and whether or not to make an order
- If the decision is to not make an order, as applicant you will have right of appeal to SoS

Definitive Map Modification Order (1)



-
- If an order is made – either by the decision of the authority or on appeal – it will be advertised
 - If no objections are received the authority can confirm the order itself and the way will be added to the DMS

Definitive Map Modification Order (2)



- If objections are received and not withdrawn the authority must submit the order to the SoS for confirmation
- An inspector appointed by Planning Inspectorate will decide whether or not to confirm the order by either: public inquiry, hearing or written representations
- Confirmed, modified, or not confirmed

Example DMMO route



- A recently added Restricted Byway in Norfolk

Resources and further training

- *Rights of Way – Restoring the Record* book, by Phil Wadey and Sarah Bucks (for more info see our website <https://www.oss.org.uk/restoring-the-record-2nd-edition/>)
- Restoring the Record training course <https://www.oss.org.uk/can-we-help-you/professional-training-courses/>

The Deregulation Act 2015



- The Deregulation Act 2015 received Royal Assent on 26 March 2015
- Part of the Act concerns public rights of way
- Intended to speed-up process for modifying DMS, reduce uncertainty for landowners and to protect certain routes from 2026 cut-off
- Uncertainty as to which, if any, of these elements will now be implemented

Landowners' 'right to apply' for public path orders



- Focus instead on implementation of 'right to apply' provisions, set out by CROW Act 2000 and amended by the 2015 Act
- Landowners will have a right to apply for public path orders, to extinguish or divert rights of way – currently a discretionary power of highway authority
- Implications for path users and authorities

Rights of way reforms – current position



- 2026 cut-off date for historic paths to be repealed
- Still important to get unrecorded, or under-recorded, ways added to the map
- ‘Right to apply’ for path changes going ahead, but no date for implementation
- Stakeholder working group advising

Questions



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Join us!



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- Website: www.oss.org.uk
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 - Write to us at: 25a Bell Street, Henley-on-Thames, RG9 2BA
 - Contact your OSS Local Correspondent (details on our website)
-