

# Case Decision

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## **Definitive Map Modification Order Case 375**

## **Alleged public right of way between Public Footpath 754 and Public Bridleway 1 at Cranwell**

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**Summary of Decision: Not to make a definitive map modification order to record a public footpath running between Public Footpath 754 and Public Bridleway 1 in Cranwell**

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## **The Modification Order Case**

1. The Modification Order Case was initiated by Lincolnshire County Council on 27 August 2014 to investigate the missing link in the public rights of way network between Cranwell and Byard's Leap Public Bridleway 1 and Public Footpath 754. This route will be referred to hereafter as "the alleged footpath". Plan ref. DMMO/375/Cranwell/CDP ("the Plan") attached shows the route of the alleged footpath by a broken black line between points A-B-C-D-E.

## **Requirements and tests of the legislation**

2. Section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act") requires the County Council as the Surveying Authority for Lincolnshire to keep the Definitive Map and Statement under continuous review.
3. The main issue is whether the evidence demonstrates that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over the land in the area which the map relates, to require the making of a definitive map modification order under section 53(3)(c)(i) of the 1981 Act to add the right of way to the Definitive Map and Statement.

## **Documentary Evidence**

4. Historical documents may provide evidence supporting that a public right of way had been created or dedicated in the past. If a public right of way is shown to have been dedicated or created, then the public right of way will continue to exist indefinitely<sup>1</sup> unless it is shown to have been stopped up, extinguished or diverted by virtue of a statutory provision such as a public path diversion or extinguishment order made under the Highways Act 1980 or the Town and Country Planning Act 1990, for example.
5. The Definitive Map and Statement for the area of the former Rural District of East Kesteven, the legal record of public rights of way for the area, was drawn up in the 1950s. The Definitive Map shows public bridleways such as Cranwell and Byard's Leap Public Bridleway 1 with a green line and public footpaths with a purple line. The alleged footpath is not shown by these line styles in the Definitive Map, and it is not listed in the Statement accompanying the Map. Cranwell and Byard's Leap Public Footpath 754 was formally recorded in the Definitive Map and Statement by virtue of the making and confirmation of a Modification Order in 1990. However, the alleged footpath has been drawn in red biro on the Definitive Map. This annotation has no legal significance because a route cannot be recorded as a public right of way in the Definitive Map by arbitrarily drawing a line on it in this manner. A public right of way could only have been added to the Definitive Map and Statement by the evidence-led statutory process which before the Wildlife and Countryside Act 1981 ("the 1981 Act") would have been by way of a review of the Definitive Map and Statement under the National Parks and Access to the Countryside Act 1949 or the Countryside Act 1968, or by a modification order made and confirmed under the 1981 Act after its commencement. No review of the Definitive Map and Statement had been completed under the previous legislation, nor has a modification order been made under the current legislation (the 1981 Act) in relation to the alleged footpath. This means that this route is not legally recorded as a public right of way in the Definitive Map and Statement.
6. The Provisional and Definitive Statements for the former Rural District of East Kesteven, which formed part of the statutory process used to draw up the Definitive Map and Statement, do not include the alleged footpath.
7. The 1968 Draft Revised Map for the area of the former Rural District of East Kesteven also shows public bridleways such as Cranwell and Byard's Leap Public Bridleway 1 with a green line and public footpaths with a purple line. The alleged footpath has been marked on the map in black biro and is numbered '3'. It is accompanied by an annotation stating, '*add nos 3, 4 and 12*'. The Statement accompanying the Draft Revised Map records the alleged footpath as '*3 C.R.F. Browns Farm – Green Lane*'. The acronym 'C.R.F.' means '*public carriage or cart road or green lane mainly used as*

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<sup>1</sup> The judgement *Dawes v Hawkins (1860)* held that '*it is also an established maxim, once a highway always a highway: for the public cannot release their rights, and there is no extinctive presumption or prescription*'

*a footpath*'. However, this map never achieved "definitive" status, and no information has been discovered outlining the evidential reasons why the former Kesteven County Council thought it to be a public right of way.

8. The paper working copy map for the period 1984 to 2004 erroneously shows the alleged footpath as a public footpath. This map should have only shown those public rights of way recorded in the Definitive Map as amended by any modification orders such as the one that was made and confirmed in respect of Cranwell and Byard's Leap Public Footpath 754 in 1990. This error may have led to the route being erroneously recorded in the Ordnance Survey leisure maps of the time, i.e., the 1987 Pathfinder Map, 1991 Landranger Map and the 1999 Explorer Map, and the 2005 Philip's Street Atlas of Lincolnshire. It may also have led to the signposting of the route as a public footpath by the County Council in the past, but this alone would not have led to the dedication of the route as a public right of way, as only the landowner can expressly or impliedly dedicate public rights of way over their land and the signage alone does not prove that the alleged footpath has been subject to sufficient qualifying public use to give rise to the deemed dedication of a public right of way under section 31 of the Highways Act 1980.
9. The alleged footpath is not shown on any of the 19<sup>th</sup> century commercial maps including the 1814 Ordnance Survey Drawing, 1824 Ordnance Survey Old Series, 1828 Bryant's Map, 1830 Greenwood's Map and 1856 Ordnance Survey First Series.
10. The 1846 Tithe Apportionment and Map for Cranwell records the section of the alleged footpath between points A-D on the Plan as Plot 41, a "Green Lane" with state of cultivation as "Pasture". Between points D-E on the Plan there are recorded nine numbered plots (42, 42a, 42b, 42c, 42d, 42e, 42f, 42g and 42h) described as "Cottage and Garden" or "Garden" with state of cultivation as "Arable". These are coloured white in the same way as other fields and parcels of cultivated land. The Tithe Map appears to colour "public roads" in beige and "green and pasture lanes, orchards and woods" in blue. Plot 68 which relates to Cranwell and Byard's Leap Public Bridleway 1 is shown as blue and described as "Green Lane". Other examples are Plot 27a shown as blue and described as "Pasture Lane", and Plots 7 and 156a shown as blue and described as "Plantation", but these are not recorded as public rights of way in the Definitive Map and Statement or highways in the List of Streets.
11. The Ordnance Survey County Series Maps spanning 1887 to 1956, Scale 1:25,000 or about 2½ Inch Map of 1949 and 1953, and One Inch Seventh Series Map of 1954, all show a "footpath" between points A-E on the northern boundary of the field plot 64 which corresponds to the Tithe Apportionment Plots 41, 42 and 42a-h. However, it should be noted that the surveyors of the maps were not tasked with identifying the rights which might have existed over the routes shown in them as their purpose was simply to map the geography of the landscape. All Ordnance Survey maps, except for the first editions of the County and One Inch Series maps, carry a disclaimer stating, *'the representation on this Map of a Road, Track or Footpath, is no evidence of the existence of a public right of way'*, or words to that effect. Therefore, these maps

alone do not provide evidence demonstrating that the footpath shown in them is subject to a public right of way over the alleged footpath.

12. The 1909-10 Finance Act Map is an Ordnance Survey County Series Second Edition Map that has been colour-washed to show the individual hereditament subject to the increment value duty. The alleged footpath is shown as a “footpath” in the underlying Ordnance Survey County Series Map. However, there are no deductions for public rights of way for Hereditament Numbers 102 and 123 subject to the alleged footpath, nor are there any deductions for public rights of way for the parish as a whole.
13. The 1923 Plan of Thorold Lot 3 shows the alleged footpath as a “footpath”, however the base map used is the 1905 Ordnance Survey County Series and cannot be relied on to indicate a public right of way (see paragraph 11). The 1946 Particulars and Plan of “Old Hall” Farm, Cranwell show a spur of the alleged footpath at the western end where it joins to Cranwell and Byard’s Leap Public Bridleway 1, but the alleged footpath is not shown in its entirety.
14. The c.1929 Highways Handover Map shows part of the alleged footpath as a cul-de-sac shaded yellow to denote that it might have been a highway maintainable at public expense at that time. However, the alleged footpath is not included in the 1990 Highways Maintenance Area Atlas or the 2016 or 2025 versions of the List of Streets maintained under section 36(6) of the Highways Act 1980.
15. The aerial photo of 1971 does not clearly show the alleged footpath. The aerial photos from 1999 and 2003 that are available to the County Council and Google Maps aerial photograph of 2025 show use of the alleged footpath between points D-E on the Plan, but it is not possible to see the remainder of the alleged footpath due to the trees. The most recent aerial photograph is consistent with the current status of a permissive path between points D-E on the Plan.
16. In summary, the documentary evidence alone is insufficient to *reasonably allege* that a public right of way exists over the alleged footpath.

## **User Evidence**

17. Under section 31(1) of the Highways Act 1980 (the “1980 Act”), a route may be deemed to have been dedicated as a public right of way if it has been subject to sufficient public use and enjoyment, as of right and without interruption for a period of 20 years immediately prior to the date when the status of the way was brought into question, unless there is sufficient evidence on the part of the landowner showing a lack of intention to dedicate it as such during this period. A public right of way arising by this manner is known as “statutory dedication”.
18. Should the case for statutory dedication fail, then common law dedication may be considered. There is no fixed period of use required for common law dedication, but

it is generally accepted that the level of public use of a route should be greater where shorter periods are relied on. The evidence must demonstrate that there has been sufficient use of the route by the public at large and as of right to show that it has been accepted by the public and that the landowner had intended to dedicate it as a public right of way either expressly or impliedly. The person or people who had owned the land throughout the period of use relied on must have had the legal capacity to dedicate the route as a public right of way, and their actions or acquiescence towards people using the way are important in establishing if a public right of way has arisen by common law dedication.

**Statutory dedication – section 31(1) of the 1980 Act**

19. It is important to identify when the public's right to use the route was brought into question so that the 20-year statutory term can be calculated retrospectively from that date. For the right of the public to use the alleged footpath to have been brought into question, the landowner must have challenged it by some means sufficient to have brought home to the public that their right to use the way is being challenged, so that they are informed of the challenge and have a reasonable opportunity of meeting it.<sup>2</sup> The landowner can challenge the public's right to use the route by putting a barrier across it, locking a gate or by putting up a notice forbidding the public to use the path, for example. Not every user needs to be aware of the challenge, but by whatever means are employed it must be sufficient to make it likely that some of the users of the alleged footpath are made aware that the landowner has challenged their right to use it.<sup>3</sup>
20. The case was initiated in 2014 by the County Council due to the discovery that it was erroneously recorded as a public footpath in the paper working copy map. In December 2017 or January 2018 metal net fencing, barbed wire and signs stating "not a public footpath" were erected at points A and D on the plan. Seven user witnesses reported that they stopped using the alleged footpath because of the barbed wire and fencing. This demonstrates that the installation of the barbed wire, fencing and notices across the alleged footpath in December 2017 was sufficient to have brought home to the public that their right to use the way had been brought into question. Calculating 20 years retrospectively from December 2017 gives rise to the statutory term December 1997 to December 2017. This period will be referred to hereafter as "the relevant statutory term".

**Comments on the user evidence**

21. The evidence of use of one user has been totally discounted due to omissions in the evidence form by which it was not possible to ascertain when they had used the alleged footpath, or the extent of the route used. Therefore, the evidence of eight

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<sup>2</sup> Lord Denning in *Fairey v Southampton CC (CA)* [1956] 2 All ER 843

<sup>3</sup> Mr Justice Dyson in *R v Secretary of State for the Environment, Transport and the Regions ex parte Dorset CC* [1999] EWHC Admin 582, para 17

users and partial use of six users can be taken into consideration in determining if a public right of way has arisen by statutory dedication.

User and enjoyment by the public at large

22. The user evidence shows the alleged footpath was predominantly used to connect the village with the “green lane” to the west. Reasons for use include dog walking, leisure, recreation, pleasure, keeping fit, nature learning and reporting for the parish council.

User on foot

23. The user evidence suggests that there was qualifying public use (i.e., *user as of right and without interruption*) by eight users of the alleged footpath on foot spanning the relevant statutory term. Where the alleged footpath has been used by different people for individual periods of less than 20 years, but their use taken together covers the start and end periods of the relevant statutory term, and overlaps, it can be taken as an instance of 20 years’ use or more.<sup>4</sup> Combining the periods of qualifying public use of one pair of users makes another one instance of qualifying use of the alleged footpath on foot spanning the relevant statutory term. This means that there are nine instances of qualifying pedestrian use of the alleged footpath spanning the relevant statutory term.
24. A further four users claim qualifying public use of the alleged footpath on foot for parts of the relevant statutory term. These periods of use are 2000-2017 (two users) and 2015-2017 (two users).
25. The user evidence suggests that the alleged footpath was subject to pedestrian use in part or in whole by nine users throughout the first three years of the relevant statutory term (1997-1999), thereafter varying between 11 and 12 users over the rest of the relevant statutory term.
26. Frequency of pedestrian use of the alleged footpath varies with one user claiming to have used it 3-4 times a week, one user 2-3 times a week, two users 1-2 times a week, three users weekly, one user twice a month, two users monthly, one user 2-3 times a year and three users ‘regularly’ or ‘variable’.

Interruptions and evidence of an intention not to dedicate the alleged footpath as a public right of way by the landowners

27. In the judgement *Fairey v Southampton County Council* [1956] 2 All E.R., Lord Denning stated that for there to be sufficient evidence that there was no intention to dedicate the route as a public right of way, there must be evidence of some contemporaneous, overt and objective acts by the landowner such as to show the public at large, namely the people who used the path, that they had no intention to dedicate. This view was

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<sup>4</sup> *Davis v Whitby* [1974] 1 All ER

upheld by the judgement *R (Godmanchester Town Council and Drain) v Secretary of State for Environment, Food and Rural Affairs* [2007] UKHL 28.

28. The alleged footpath was blocked by the landowner of “Oxenford Farm” between July and October 1998. Fences were placed in front of the footpath closest to the property (point A on the Plan) and soil was removed from in front of a stile causing a long drop from the stile to the ground. The landowner had also challenged Parish Councillors and the County Council footpath officer whilst using the alleged footpath in September 1998. At the time, the landowner was instructed to clear the obstructions as the alleged footpath was considered to be a public footpath. The route was again blocked by fencing in May 2002. These incidents were recorded in the Parish Council minutes and County Council’s path file for the route and noted on the user evidence forms of three users. Five users stated they used to wave or chat to a previous landowner and were not challenged at this time.
29. Section 31(6) of the 1980 Act suggests that where a landowner deposits a highways statement and map with the local highway authority detailing the public right of way or highways (if any) which exist over their land and then follows this up by a highways declaration lodged within the prescribed period stating that no additional highways or public rights of way have been dedicated to the public since the date of deposit of the statement and map, the highways declaration together with the highways statement and map may, in the absence of proof of a contrary intention, provide sufficient evidence demonstrating that the landowner had no intention of dedicating any highways or public rights of way across their land between the dates of the documents.<sup>5</sup>
30. The Crown Estate Commissioners deposited a highways statement and map and statutory declaration during the relevant statutory term. This is for the part of the alleged footpath between points D-E on the Plan. The highways statement and map were dated 2 October 2012, and the statutory declaration was dated 17 October 2012.
31. Crown land comprises land owned directly by the Crown and land held by the Crown Estate. According to section 327 of the 1980 Act, Crown land is exempt from statutory dedication (section 31 of the 1980 Act). Therefore, any claim for a public right of way across land which is, or was at the relevant time, Crown land, cannot rely on the 20-year user provisions in section 31 of the 1980 Act.
32. The Crown Estate owned the land between points D-E on the Plan until 2013, which is within the relevant statutory term.

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<sup>5</sup> Paragraph 13 of the Department for Environment, Food and Rural Affairs’ [Commons Act 2006: landowner statements, highways statements and declarations form - GOV.UK](#) dated December 2013 and paragraph 3 of the Rights of Way review Committee’s [Practice Guidance Note 2 – Deemed Dedication of Public Rights of Way: Section 31\(6\) of the Highways Act 1980](#) (Third Edition) dated December 2007

33. In September 2017, Beeswax Dyson Farming Limited erected a sign stating *'this path is not a public right of way. Walkers are allowed to use it by permission of the landowner in accordance with the details below'*. This permissive path relates to points D-E on the Plan. The permissive path was closed between 26 October 2022 and 11 December 2022 and again in November 2023. It is not known when or if the permissive path has been re-opened. In their Landowner Evidence Form, they stated that the permissive path route is *'used by the public on a daily basis for uses such as dog walking'*.
34. The deposit of the highways statement and map together with the lodging of the highways declaration document in 2012, the Crown Estate Commissioners land ownership, and the blocking of the alleged footpath by the landowner in 1998 and 2002 all provide sufficient evidence to demonstrate that the landowners had no intention to dedicate the alleged footpath as a public right of way during the relevant statutory term. As such, a public right of way cannot be shown to have arisen by the presumption of dedication.

#### **Dedication at Common Law**

35. As the user evidence fails to satisfy statutory dedication, dedication at common law is considered. There is no record of the path being expressly dedicated so whether dedication is implied is assessed.
36. The process that should be employed to assess whether implied common law dedication of a public right of way has arisen is outlined by Mr Justice Ouseley at paragraph 10 of the judgement *Slough Borough Council v Secretary of State for Environment, Food and Rural Affairs* [2018] EWHC 1963 (Admin):

*'the dedication is found at or before the start of the period of use, as the more probable justification for the subsequent use, rather than trespass or tolerance. In effect, the decision-maker works back through the evidence of use to determine whether proper inference from it is that the use began with a dedication. But drawing that inference requires no set period of use to be examined, but rather the whole period of use has to be considered, to see if dedication is the more probable explanation for the use, than trespass or toleration.'*

37. An 8-year period has been identified extending from April 2004 (when "Mr B" purchased "Oxenford Farm") to October 2012 (when the deposit of the Highways Statement by the Crown Estate was made). Prior to this period, there had been numerous attempts to block the alleged footpath in 1972, 1986, 1987, 1990, 1994, 1996, 1998, 1999 and 2002 when "Mr A" owned the farm. The 8-year period will be referred to hereafter as "the relevant common law term".



User on foot over the relevant common law term

38. There are 11 instances of qualifying public use (i.e., by the public at large and *as of right*) of the alleged footpath spanning the relevant common law term. There is a further one user who has reported qualifying public use of the alleged footpath for a period covering part of the relevant common law term (2004-2009). All use was on foot.
39. The user evidence shows that 12 users had used the alleged footpath from the beginning of the relevant common law term, reducing to 11 in 2010 until the end of the relevant common law term in 2012.
40. Frequency of the alleged footpath during the relevant common law term varies with one user claiming to have used it 3-4 times per week, one user 2-3 times per week, two users 1-2 times per week, two users weekly, one user fortnightly, two users monthly, one user two or three times a year and two users '*variable*'.
41. Whilst there is no statutory minimum level of public use required to raise implied dedication at common law, the judgement *Mann v Brodie* [1885], a Scottish public highway case heard by the House of Lords in May 1885, held that the number of users must be such as might have been reasonably expected if the road in dispute had been an undoubted public highway. Given that the basis of the implied dedication arises from a landowner's acquiescence to factual public use of a route *as of right*, there must have been a sufficient level of open use of the alleged footpath by the public throughout the term identified to show that had the landowner been observant or present they would have been aware of that use and that they had acquiesced with it. This means that the level of use required to give rise to implied dedication at common law is lower for a route located in a rural setting or small village compared to an urban area where use would be expected to be greater, for example.
42. Generally, most of the use would originate from the local area, which is the case here as all the people who completed user evidence forms resided in Cranwell village. When taking into account the size of Cranwell village (the population was 2,876 in 2001, 2,827 in 2011 and 3,060 in 2021) and that the route is located on the edge of the footprint of the village, one would have expected to have seen evidence of greater usage of the route over the common law term 2004-2012 than just the 12 people (or 0.424% of the population of the parish when taking the 2011 census data into consideration) and the frequencies at which they had used it during this period to *reasonably allege* that a public right of way has arisen by implied common law dedication. It should also be noted that the then owner of Oxendale Farm had blocked the route after they had realised that it had been erroneously signposted as a public footpath and prior to its sale to the current owners, so this would demonstrate they had not intended to dedicate the route as a public right of way albeit at a later date.

## **Decision**

43. **That a Definitive Map Modification Order under section 53(3)(c)(i) of the 1981 Act should not be made.**
44. The decision is made on the grounds that there is insufficient evidence to demonstrate statutory or common law dedication by the landowners and insufficient public user to demonstrate acceptance by the public to give rise to common law dedication as a public right of way.

**Signed:**



**Name:** Andrew Pickwell

**Position:** Senior Definitive Map Officer

**Dated:** 30 May 2025



**Cranwell claimed public right of way between North Road/Willow Lane and Green Lane**

Ref: DMMO/375/Cranwell/CDP

Date: 21.01.2025

Scale: 1: 2,500 @ A4

- Legend**
- Application Route
  - Public Footpath
  - Public Bridleway