

APPLICATION FOR MODIFICATION ORDER**Wildlife and Countryside Act 1981**

To: Lincolnshire County Council
 Of: County Offices
 Newland
 LINCOLN

The Holbeach parish council of Coubro Chambers, 11 West End, Holbeach, Spalding in the County of Lincolnshire hereby applies for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by adding the footpath from Langwith Gardens to Stukeley Hall Drive and shown on the map accompanying this application.

I attach copies of the following documentary evidence (including statements of witnesses) in support of this application:

11 evidence forms completed by witnesses showing use of the path over a period from 1970 to 2001

Copy of current O.S. map of area 1/25000 showing path marked in red.
 Copy of 1969 O.S. Map of area
 Copy of 1932 O.S. Map of Area
 Copy of 1904 O.S. Map of Area
 Copy of letter posted at each end of the path (APPENDIX D)
 Copy of letter confirming that paragraph 2 of Schedule 14 of the 1981 Wildlife and Countryside Act has been complied with
 APPENDIX E

Dated 18th day of January 2002

Signed G. Warrington
 (designation of signatory)
 Coubro Chambers
 Parish Council

Finally, in submitting your application, the parish council might perhaps make reference to the case of R v Oxfordshire County Council and another ex parte Sunningwell parish council (1999) in which it was held that, although evidence as to the status or reputation of a footpath (ie that it is or is not considered a public right of way) is admissible, evidence as to the state of mind of the users is not part of the test of "user as of right". This means that, if users of a footpath did not consider that they were exercising public rights when using that footpath, that does not mean that the evidence of use must be discounted. On the contrary, user "as of right" does not require that the public actually believe that they are using a right of way. Although this case actually relates to different legislation I understand that the principles apply equally to an application under the Wildlife and Countryside Act 1981, and therefore may help to counter the fact that a number of the user forms previously forwarded to the County Council indicated that the users did not believe the footpath to be a public right of way.