



## Order Decision

Inquiry opened on 27 July 2021

**by Mark Yates BA(Hons) MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 4 November 2021**

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### Order Ref: ROW/3222955

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Norfolk County Council (Cley-Next-the-Sea, The Hangs) Modification Order 2018.
- The Order was made by Norfolk County Council ("the Council") on 23 May 2018 and proposed to add three bridleways to the definitive map and statement.
- There were two objections and twenty-nine representations<sup>1</sup> outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.**

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### Procedural Matters

1. In light of the Covid 19 pandemic, the public inquiry into the Order was held as a blended event on 27-28 July and 10 August 2021 using the Microsoft Teams platform. Provision was also made for people to give their evidence by way of a laptop stationed at Cley Village Hall. I undertook an unaccompanied visit to the site and surrounding area on 12 July 2021. None of the parties considered that a further visit to the site was required.
2. I shall refer to the alleged public rights of way ("the claimed routes") as Routes 1, 2 and 3 and the specific points referred to below correspond to those delineated on the Order Map. The claimed routes can be briefly described as follows:
  - Route 1 commences from the junction with Old Womans Lane at point A and continues via points B, H, C and K through to the junction with Bridgefoot Lane at point D.
  - Route 2 commences from the A149 Coast Road at point J and passes point I and continues through to the junction with Route 1 at point B.
  - Route 3 commences from the junction with Route 1 at point H and passes points G, F and E and continues through to point K where it re-joins Route 1.
3. The Council has taken a neutral stance in relation to whether the Order should be confirmed. Whilst it is no longer asserted that the claimed routes should be recorded as bridleways, Mr Kind presented the case on behalf of The Ramblers in support of the routes being designated as public footpaths. The objection from the landowners<sup>2</sup> was pursued at the inquiry by Mrs Sharples. I shall address the objection made by Mr Witham in relation to the widths specified in the Order for the claimed routes later in this Decision.

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<sup>1</sup> All of the representations were made in support of the Order

<sup>2</sup> Mr A.H. Blount, Miss E.R. Blount, Mrs A.C. Atkinson and Mrs K.L. Nosworthy

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## **Main Issues**

4. The Order relies on the occurrence of an event specified in Section 53(3)(b) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows the expiration of any period such that the enjoyment by the public of the way during that period raises a presumption that it has been dedicated as a public path. The issue to now be determined when evaluating the evidence is whether it can be concluded on the balance of probabilities that the claimed routes have been dedicated as public footpaths.
5. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, as of right<sup>3</sup> and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
6. Mr Kind does not seek to rely on the documentary or user evidence in support of the dedication of public footpaths under common law.

## **Reasons**

### ***When the status of the claimed routes was brought into question***

7. In considering this issue, I have had regard to the House of Lords judgment in the *Godmanchester* case<sup>4</sup>. The comments of Lord Hoffman at paragraph 37 of the judgment are supportive of there being symmetry between acts that are sufficient to bring the status of the way into question and those that will demonstrate a lack of intention to dedicate a public right of way.

### *Routes 1 and 2*

8. It is generally accepted that the provision made in a higher-level stewardship agreement of February 2008<sup>5</sup> for permissive pedestrian access over Routes 1 and 2 and the placing of signage to notify the public of this arrangement served to bring the status of these routes into question. I take this event as the starting point for the consideration of these routes with the relevant twenty-year period being 1988-2008 ("the relevant period"). However, it may be necessary to consider an alternative period if there is evidence of some earlier action that was sufficient to demonstrate a lack of intention to dedicate a footpath and also bring the status of the route into question.

### *Route 3*

9. The parties assert that this route was brought into question by the lodging of a statement and map in March 2016 in accordance with Section 31(6) of the 1980 Act or the later application of November 2016 to modify the definitive map and statement. Whilst they do not view the 2008 stewardship agreement to be relevant, given that it did not make provision for permissive access in connection with Route 3, I still need to consider the impact of this agreement.

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<sup>3</sup> Without force, secrecy or permission

<sup>4</sup> *Godmanchester Town Council and Drain v Secretary of State for Environment, Food and Rural Affairs* [2007] UKHL 28

<sup>5</sup> This agreement was in place between 1 February 2008 and 31 January 2013 before it was replaced by an entry level stewardship agreement.

10. Section 31(6) sets out the procedure a landowner can undertake to demonstrate that they have no intention of dedicating any additional ways across their land. This involves depositing with the appropriate local authority a statement and plan showing any public rights of way acknowledged to exist followed by a statutory declaration within the required timeframe to declare that no additional ways have been dedicated over the land in question. I accept that this action would also be sufficient to bring the status of a way into question.
11. The details supplied by the Council are only supportive of the landowners depositing a Section 31(6) statement and plan. No statutory declaration has been provided in connection with the documents deposited in 2016. The landowners nonetheless view the map and statement to be sufficient to bring the status of Route 3 into question.
12. It seems to me from reading Section 31(6) that a landowner must submit a statutory declaration as well as the deposited plan and statement in order to demonstrate a lack of intention to dedicate any additional ways across the land. I find support for this interpretation at paragraph 53 of *Godmanchester*, where Lord Hope of Craighead outlines that a Section 31(6) deposit will demonstrate a lack of intention to dedicate if it is backed up by a statutory declaration. It is therefore unlikely that the depositing of a plan and statement alone will be sufficient to bring the status of a way into question. Nonetheless, the application submitted later in 2016 would have clearly been sufficient, in the absence of any other event, to bring the status of the route into question.
13. As outlined above, no provision was made for permissive access over Route 3 in the 2008 agreement, which was between the landowners and Natural England. However, the land crossed by this route was included in the agreement. A letter of 26 June 2008 from Natural England outlines that measures were put in place to inform the parish council and highway authority of this agreement and it was entered onto a national database of sites and a local access register. Signs and maps were placed on site and on the parish notice board.
14. It is evident that people walking Route 3 would have left or joined it via one of the permissive paths. Moreover, the plans erected at the entry points identified the locations of the permissive paths and public rights of way. Therefore, it should have been evident to a reasonable person looking at this plan that they were not permitted to walk along Route 3. Accordingly, I find on balance that the status of the route was brought into question by the 2008 agreement with the relevant period being 1988-2008. Again, I take this as the starting point for the consideration of statutory dedication in relation to this route.

***Evidence of use by the public***

15. The first issue to be determined for each route is whether the evidence is sufficient to raise a presumption of the dedication of a public footpath. Regard should be given to the extent of the use during the relevant period both in terms of the number of people using the routes and the frequency of this use. This use also needs to be considered in the context of the rural nature of the area and the relatively small populations of the surrounding villages.

16. One hundred and thirty<sup>6</sup> user evidence forms (“UEFs”) were initially provided in support of use of the claimed routes. Mrs Sharples makes some valid points about interpreting the information contained in these forms. An issue of particular concern with the UEFs is that they provide no scope for those people who used more than one of the claimed routes to specify the estimated frequency of their use of each route. There is also no distinction regarding the extent of the different elements of use for those people who used a route on foot and by cycle or horseback. Additionally, I recognise that the specified frequency of use is only an estimate and regard should be given to any significant breaks in use or changes in circumstances.
17. Whilst it is appropriate to exercise caution when interpreting the responses in the UEFs, they provide a useful source of evidence. Unless there is evidence that casts doubt on the credibility of a form or forms, they should be afforded a fair amount of weight. The UEFs comprise of four pages of questions and a page for any further information along with a plan for people to mark where they walked. The aim of the forms is to tease out relevant evidence. Nonetheless, there are clearly matters that can benefit from further clarification and eight people gave evidence at the inquiry in relation to their use of the claimed routes. This oral evidence was tested at the inquiry and should be afforded a significant amount of weight in the same way as the evidence of the witnesses called on behalf of the landowners.
18. A number of the additional people who submitted a representation in support of the Order provided some details in relation to walking in this locality. However, the limited information regarding the extent of this use means that little weight can be attached to these representations. Whilst the same is generally applicable to the evidence provided by Cley Parish Council, it is clear that the use by the parish councillors did not encompass points H, G and F.
19. I have examined the UEFs and noted the extent of the alleged use of the claimed routes and other relevant information in the forms. Mr Kind and Mrs Sharples have also carried out an analysis of this evidence and I have had regard to their findings. It is apparent that both parties have attempted to collate these figures in a reliable manner, and this is borne out by the relative similarities in the figures provided for Routes 1 and 2. In reaching my conclusions on the evidence of use, it has been necessary to disregard the use by horse riders. There will in some cases be doubt regarding the extent to which people used a route on foot and horseback.
20. There is nothing to suggest that the use was undertaken in secret. In terms of force, attention is drawn to the gap and gate at point D (addressed more fully in paragraphs 39-41 below). The evidence of the users is that they could go through the gap and no mention is made of any difficulty in gaining access at this point or the need to use force. Additionally, the need to open a gate is unlikely to constitute force. However, a number of people state that they were given permission by members of the Blount family, most notably by Mr Anthony Blount and his late mother (Polly Blount). The use by these people should be discounted from the assessment of the extent of the use made of the claimed routes as it would not constitute user as of right. There nevertheless remains a significant number of people who state that they received no permission to use the claimed routes.

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<sup>6</sup> The summary of the UEFs provided by the Council listed 129 forms but I note that two people were listed as user 33.

21. Whilst it is apparent that many local people have had some involvement with the Blount family, this is not necessarily indicative of them having permission to use the claimed routes. It seems that when asked members of the Blount family gave permission for people to cross their land. This is evidenced by the responses in a proportion of the UEFs mentioned above. However, there is nothing to suggest that permission was granted to other people to use any of the routes prior to the 2008 agreement. I find little merit in the suggestion that people who knew the Blount family would have understood that they had permission to use the routes.
22. It is asserted by the landowners that the significant use only occurred when permissive access was made available in 2008. Nonetheless, it is acknowledged that there was some earlier use, most notably of Route 1. There was no observed use of Route 3. Whilst I do not doubt the recollections of people who have been involved with the land regarding the extent of their observed use, this has to be weighed against the user evidence. Particular regard should be given to the oral evidence of those people who state that they used the routes and their estimates of the frequency of use for each route.
23. Details have been provided of shoots taking place in the woods near to parts of the A-B and B-I sections of Routes 1 and 2 and land crossed by Route 3. These shoots were estimated to take place every couple of weeks during the shooting season, which is between September and February. It is not apparent from the evidence that the shoots served to interrupt use for the purpose of Section 31 of the 1980 Act. Although it may have been the case that some people avoided walking in the area generally when the shoots were taking place. It appears that the shoots would have had more of a direct impact on a proportion of Route 3.

#### *Route 1*

24. A significant number of people have identified Route 1 as being a route they used. Mr Kind has provided the names of seventy-three people who he believes used the route without permission during the relevant period. This figure broadly corresponds with the number of users identified by Mrs Sharples. However, she goes on to outline the number of potential users for the different sections of the route and raises particular concerns about the extent of the use between points K and D. In her view, few people went through to point D.
25. The clear impression I gleaned from the user evidence is that Route 1 was the more frequently used of the claimed routes. This use generally corresponded with people walking a circular route in conjunction with existing highways. On some occasions it was used as part of a longer walk to the coast via Salhouse Footpath No. 1 or Route 2. It is apparent that Footpath No.1 was accessed either by Bridgefoot Lane or the K-E section of Route 3. Some people may have also made use of the small parking area located opposite to point D as the starting point for a walk. I find that over half of the users identified by Mr Kind used the route A-B-H-C-K-E. However, there remains evidence of widespread use by the remaining users of the whole of Route 1 and for many people it was the only route they used.
26. The user evidence is indicative of significant use between points A-B-H-C-K during the whole of the relevant period on foot. There is clearly less use of the remaining short section (K-D) and this is even more evident for the early part of the relevant period. Nonetheless, I consider on balance that this evidence is

still sufficient to raise a presumption of dedication over this section as well as the remainder of Route 1.

*Route 2*

27. Mr Kind identifies thirty-eight people who he considers provide support for pedestrian use of this route during the relevant period. This figure is similar to the number of forms identified by Mrs Sharples, but she draws a distinction between those people who have only marked the B-I section of the route on the map with their UEF.
28. A number of the maps have only the B-I section marked with no indication of use through to the entrance of the track at point J. In the absence of further clarification from the people concerned I must presume that the relevant users did not use the whole of the route. Therefore, this evidence cannot be taken to be supportive of use of the I-J section. Overall, I find that less than half of the relevant users indicate that they only used the B-I section.
29. I noted no apparent means of access in the boundary at point I and this appears to be supported by the 2007 aerial photograph. It is nevertheless noticeable that the 1999 and 2006 aerial photographs appear to show a gap in the hedge in addition to a defined track between points I and J. The bank to be negotiated at this point is fairly steep and involves coming directly onto the busy coast road where there is no footway. Whilst issues such as the safety and convenience of a way are not relevant considerations in relation to this Order, point I does not offer an appealing access point when compared with point J. Nor is any argument made in support of this route terminating at point I rather than point J.
30. When taken at face value, the UEFs provide evidence of fairly significant use of this route or, in some cases, a proportion of it. However, the evidence of the relevant users at the inquiry points to this route not being used as regularly as Route 1. This casts doubt on the extent to which it was used by the other users. Given the nature of the relevant question in the UEFs, it is not possible to reach any firm conclusion on the extent of the use of this route from the untested evidence. In situations such as this where there is some uncertainty regarding a particular matter, it would have been useful if further clarification had been sought from the users concerned.
31. I consider that the reasonable approach is to have regard to the evidence of the users of this route who spoke at the inquiry in assessing the likely extent of the use during the relevant period. Although it is worth noting that two people only used this route when they reached point B. There is a great variation in the extent of the claimed use of the routes. However, a number of people state that their average use was on a monthly or weekly basis. The oral evidence points to the use of Route 2 being much less than Route 1 and I do not find this surprising given that it is likely to have comprised part of a longer walk.
32. Whilst there are clearly doubts about the extent of the use of Route 2, a fairly significant number of people state that they used this route or part of it. I have also had regard to the likelihood that only a proportion of the stated use was applicable to Route 2. Nonetheless, I find on balance that the evidence is sufficient to raise a presumption of dedication over the whole of Route 2.

*Route 3*

33. Mrs Sharples considers the claimed use of this route to be very limited and she points to a number of issues involving the different sections of Route 3. In contrast, Mr kind identified twelve people who he believes have provided evidence of use in relation to the whole of this route.
34. Aside from the K-E section, I find the number of people who clearly marked this route on the map with their UEF to be low. Some of the maps provided are indicative of the person using a variety of routes in the area covered by Route 3. Further, there was a lack of evidence from the users who spoke at the inquiry in support of any significant use of the whole of Route 3.
35. None of the arial photographs provide any indication of the G-H section where it proceeds through an area of woodland. There is no sign of the F-G section on the 1999 photograph, but other tracks including parts of Route 3 are shown. An increasing network of worn paths or tracks are visible by the time of the 2006 photograph, including most of Route 3. Whilst the worn features could be representative of use by agricultural vehicles, such tracks could accommodate pedestrians. I therefore find no merit in the assertion that there was no available headland path for people to walk along when the land was cultivated. Nonetheless, the shoots that took place in the locality of Route 3 may have deterred people from using the route at times.
36. As outlined above in relation to the assessment of Route 1, a number of people have provided evidence of use of the K-E section. This section provided a link with Salthouse Footpath No. 1, and was used as an alternative to walking along the road from point D. The use of this section was also evident from the oral evidence of the users at the inquiry. For instance, it was clarified that there was a gap in the hedge at point E, which facilitated access at this point.
37. I am not satisfied on balance that the evidence is sufficient to support the dedication of a footpath over the whole of Route 3. However, the evidence of use of the K-E section is much more significant and would raise a presumption of the dedication of a public footpath. The issue raised in relation to Section 7 (5) of the Natural Environment and Rural Communities Act 2006 is not applicable given that I have taken the 2008 agreement as being the event that brought the status of this route into question.

***Whether the landowners demonstrated a lack of intention to dedicate any public footpaths***

38. In light of my conclusion above, there is no need for me to consider this issue in relation to the H-G-F-E section of Route 3.
39. It is apparent that throughout the relevant period there was a structure in place at point D. Mr Blount estimates that the present metal barrier replaced a wooden gate in the late 1970s or early 1980s. Therefore, the original gate sits outside of the relevant period currently under consideration. The issue to be determined is whether action was taken prior to 2008, such as the locking of a gate, which was sufficient to demonstrate that there was a lack of intention to dedicate a public footpath. On this issue, there is conflicting evidence between the users and some of the other witnesses. There is no evidence of note in support of there being a locked gate in place at any of the other entry points to the claimed routes during the relevant period.

40. Some of the users considered the purpose of the barrier was to prevent vehicles from entering the land and a number draw attention to the presence of a gap on the western side of the barrier which facilitated access for pedestrians. I also find it noteworthy that members of the Blount family granted permission to some people to use routes across their land presumably on the basis that access was possible. Regard should be given to the written testimony of Mr Blount in which he states that it was possible to lift the chain over the gate post when it was locked. This suggests to me that people could obtain access if they wished. Alternatively, people were able to pass through the gap at the side of the barrier. Mr Blount's assertion that he sought to block the gap on occasions is not supported by the users who spoke at the inquiry.
41. I am not satisfied that it has been shown that the public were unable to gain access at point D during the relevant period. Nor is there anything to suggest that the public interpreted the barrier to constitute a challenge to their use on foot. This issue should be considered in conjunction with the existence of a gap at the side of the barrier and the absence of any obstruction at the other entry points. It seems to me that it is more probable that when the barrier was closed people would have proceeded through the adjacent gap.
42. There is also evidence of a sign previously being in place beyond the gate, which is believed to have stated '*Game Reserve No Trespassers*', facing the direction of the road. Although the users do not generally recall such a sign, this wording does not explicitly make it clear that there was no intention to dedicate a public right of way. Furthermore, there is no evidence in support of similar signs being placed at other points in connection with the claimed routes. Therefore, people using Route 1 from the north would not necessarily have seen the sign at point D. For these reasons, I do not view this sign to be sufficient to demonstrate a lack of intention to dedicate a footpath.
43. Mrs Atkinson mentions occasional challenges being issued by her father (Mr Blount) to strangers seen in the locality of points C-D. However, this was hearsay evidence, and she could not recall seeing anyone on the land who she did not know. It is also uncertain whether Mr Bishop challenged people to any significant extent given that he acknowledges that he did not challenge local people or those from a neighbouring village. He had assumed that local people had permission to use the routes. When compared with the lack of any challenges acknowledged by the users, I do not find the evidence of Mrs Atkinson and Mr Bishop is sufficient to demonstrate that challenges were issued to such an extent to demonstrate there was a lack of intention to dedicate public footpaths in this locality.
44. I do not consider that the shoots documented in paragraph 23 above would demonstrate to the public that there were no rights of way across the land generally. This type of activity is a common occurrence in the countryside and occurred during the autumn and winter months when the use of the routes may not have been as widespread as the remainder of the year. It cannot be inferred that people avoided the shoots because they recognised that they did not have a right to be on the claimed routes.
45. Overall, I do not find on balance that the evidence is supportive of the landowners taking sufficient action to communicate to the public that there was a lack of intention to dedicate footpaths over the land in question during the relevant period.



### **Conclusions**

46. I have concluded on balance that the evidence is sufficient to raise a presumption of the dedication of three public footpaths, namely Routes 1 and 2 and the K-E section of Route 3. Additionally, I do not find that the landowners took sufficient action to demonstrate to the public that there was a lack of intention to dedicate these routes as footpaths during the relevant period. Therefore, I conclude on the balance of probabilities that three public footpaths subsist. The extent of the use of the remainder of Route 3 would not in my view support the dedication of a footpath under statute or common law. In light of the proposed changes to the status of the claimed routes and the omission of a section of Route 3, the required modifications will need to be advertised.

### **Width**

47. An approximate width is specified in the Order for the routes, which was calculated from an average of the widths estimated by the users in their responses to a question in the UEFs. The published guidance<sup>7</sup> advises against the use of approximate widths unless one is set out in the evidence. Additionally, I see no sound basis for including an average width based on the estimated widths supplied.

48. Due to the lack of evidence in support of the user corresponding with a particular width, I consider the appropriate approach is to include in the Order a reasonable width to accommodate the footpaths bearing in mind that they generally follow well established farm tracks. Subject to the issue below regarding point D, a width of 1.8 metres would provide a reasonable width for these footpaths and the Order should be modified accordingly.

### **Limitations**

49. In the absence of any evidence of there being a bridle gate at point D, this limitation should be removed from the Order. The evidence is clearly supportive of there being a vehicular barrier and adjacent gap at this point during the relevant period. In light of my conclusion that pedestrians are more likely to have proceeded through the gap when the barrier was closed, I agree with Mr Kind that a 1 metre gap should be recorded in the Order at point D.

### **Overall Conclusion**

50. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

51. I propose to confirm the Order subject to the following modifications:

- Delete all of the references to "*bridleway*" and insert "*footpath*".
- Delete "*approximately 3.3 metres*" from the end of each description in Parts I and II of the Order Schedule and insert "*1.8 metres*".
- Delete the text in relation to the H-G-F-E section of Route 3 from Parts I and II of the Order Schedule.

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<sup>7</sup> Planning Inspectorate Advice Note 16

- Delete "*Bridle gate*" after the heading "*Limitations and conditions*" at the end of Parts I and II of the Order Schedule and insert "*1 metre gap*".
  - Remove the H-G-F-E section of Route 3 from the Order Map.
  - Include the notation for a footpath on the Order Map rather than the notation for a bridleway in connection with the remaining routes and amend the map key accordingly.
52. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description and not show a section of way shown in the Order, I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **The Case in Support:**

Mr A. Kind For The Ramblers

He called:

Ms A. Chadwick  
Mr N. Cooke  
Dr M. White  
Mr P. Wraith  
Mrs J. Pigott  
Mr J. Webster  
Mrs E. Ford

### **Additional Supporters:**

Dr V. Holliday Chair of Cley Parish Council  
Mr T. Ambler  
Mrs R. Nicolle

### **For the Objectors:**

Mrs D. Sharples

She called:

Mr A. Smith Rural Business Advisor for Sentry Limited  
Mr B. Bishop  
Mr D. Glasspool  
Mrs A. Atkinson

### **Interested Party**

Mr L. Malyon For Norfolk County Council

## **DOCUMENTS TENDERED AT THE INQUIRY**

1. Statement of Dr White
2. Analysis of UEFs by Mr Kind
3. Statement of Ms Chester
4. Opening statement for the landowners
5. Analysis of UEFs by Mrs Sharples
6. Opening statement on behalf of The Ramblers
7. Aerial photograph extracts
8. Statement of Mr Ambler
9. Statement for Cley Parish Council
10. Email and statement of 26 July from Ms Zuck to the inquiry
11. Closing submissions for the landowners
12. Closing submissions on behalf of The Ramblers

