



## Order Decision

Inquiry held on 17 April 2018

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

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

**Decision date: 31 May 2018**

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### **Order Ref: ROW/3178520**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Essex County Council Definitive Map Modification No. 627 Footpath 57 Langham, Colchester District Order 2016.
- The Order was made by Essex County Council ("the Council") on 2 December 2016 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were two objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed subject to the modification set out below in the Formal Decision.**

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### **Procedural Matters**

1. I held a public inquiry into the Order on 17 April 2018 at the Langham Community Centre. I made an unaccompanied visit to the site on 16 April 2018 and I conducted a further visit accompanied by the interested parties following the close of the inquiry.
2. One of the objectors (Mr Ravest) draws attention to particular matters in relation to the Order. The Council's representative (Ms Morris) confirmed at the inquiry that the year of the making of the Order was corrected by the Attesting Officer soon after the error was discovered. The Council also requests that the fifth paragraph in the first page of the Order is modified to set out the title of the Order in full.
3. Overall, there is no apparent prejudice arising out of the above issues. The year of the making of the Order has been corrected and the other issue could be remedied by way of a minor modification should the Order be confirmed. Further, in terms of the length of the claimed route, the Council confirms that this is correctly stated in the Order. It is not material to my decision that the length of the route was incorrectly specified in the Council's report which considered the application to add the claimed route to the definitive map.
4. The failure of the Council to enter into discussions to try and resolve the objections, as advised in paragraph 4.23 of Defra Circular 1/09, is also not material to my decision.
5. The references to points A and B in this decision correspond to the points delineated on the Order Map.

### **Main Issues**

6. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered
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shows that a right of way, which is not shown in the map and statement, subsists. The burden of proof to be applied is the balance of probabilities.

7. 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 the way by the public, as of right 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.
8. An implication of dedication can arise at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

## **Reasons**

### ***Statutory Dedication***

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

9. The Council believes the status of the claimed route was first brought into question in early 2010, when Mr Ravest lodged a statement and statutory declaration in accordance with Section 31(6) of the 1980 Act. No public rights of way were acknowledged to exist over his land aside from the recorded sections of Footpaths 26 and 29.
10. There is a degree of symmetry between acts that constitute a lack of intention to dedicate a public right of way and action to bring the status of a route into question. Therefore, I accept on balance that it was the documentation lodged by Mr Ravest in 2010 which served to bring the status of the claimed route into question rather than the later obstruction of the route. This means the relevant twenty year period to be considered for the purpose of statutory dedication is 1990-2010 ("the relevant period").

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

11. Eighteen user evidence forms ("UEFs") were completed on behalf of nineteen people in support of use of the claimed route<sup>1</sup>. Seven of these people gave evidence at the inquiry in relation to their use<sup>2</sup> and two additional people spoke in support of use of the route.
12. I have carefully gone through the user evidence in light of the comments of Mr Ravest. In doing so I give the greatest weight to the evidence of the witnesses who spoke at the inquiry. It is apparent that the UEFs were supplied by the applicant for the Order (Langham Parish Council) and some were distributed by one of the users (Mr Smith). However, there is no evidence of collusion between the witnesses in relation to particular information included in the UEFs.
13. I am not concerned about the notation used by individuals to mark the route they used on the maps attached to the UEFs. The issue is whether the route identified generally corresponds to the claimed route. In this respect, there is uncertainty regarding the route used by Mrs Barnes and Mrs Tomlinson and this will need to be taken into account in weighing the evidence. Mr Ravest draws

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<sup>1</sup> Some of these people have completed an additional UEF

<sup>2</sup> The evidence of Mr Welham also encompassed the use by Mrs Welham

- attention to missing information in the UEFs completed by Mrs Blacklock and Mrs Dickie. Although the pages of the UEFs provided to me are out of order, the questions are answered. I address an issue arising out of these pages in paragraph 22 below. He also draws attention to Mr and Mrs Winter moving to a particular address in Langham in 2001. However, it has not been revealed where Mr and Mrs Winter lived prior to 2001 and how this impacted upon their use of the route from 1986 onwards.
14. There is written evidence in support of use of the claimed route dating back over a number of years. This evidence was endorsed by the users who spoke at the inquiry. I concur with the Council that the issue to be determined is the extent of the use during the relevant period and not whether each individual used the route during the whole of this period.
  15. A section of Footpath 29 was diverted away from the garden of the property known as Keepers Cottage in 2009. The diversion took the path around the edge of the property via point A. The user evidence is generally supportive of people previously using the claimed route in conjunction with a route across the corner of the adjacent school site to link with Footpath 29 to the south of Keepers Cottage. People have subsequently continued to the east of point A over a path that is now part of Footpath 29.
  16. It is not clear when access across the school site was prevented. An application was made to record it as a public footpath in 2005 but this was not taken forward. Mr Ravest says it was not possible to go onto the school site after a new fence was put up in 2006/7. Photographs taken in 2007 indicate that the present section of Footpath 29, to the south of Keepers Cottage, was available at that time.
  17. Mr Ravest believes there is a difference of around 10 metres between point A and the former entrance to the school site and this means that people did not previously leave or join the claimed route at point A. The Council says the two points are identical. One of the longstanding users (Mr Hemmings) has provided an aerial photograph in support of his view that the route used continued to the east of the point identified by Mr Ravest.
  18. The aerial photograph provided by Mr Hemmings shows a worn route across the school field. I am not satisfied that the entry point to the field can be identified on any of the aerial photographs to such an extent to precisely place it at point A or where Mr Ravest submits it was located. However, I note that the contemporaneous map with the 2005 application placed the entrance to the school site at point A.
  19. The evidence is generally supportive of people using a route in the past that did not continue to the east of point A. However, I am not satisfied it can be determined from the evidence that the eastern termination point of the claimed route has altered significantly over time. The confirmation of the Order would not lead to the creation of a cul de sac path bearing in mind the diverted position of Footpath 29 at point A. In terms of the position of the current fence adjacent to the school site, the second objector (Mr Stevens) accepts that it has not changed during the relevant period.
  20. The user evidence is supportive of regular use of the claimed route, including in some instances by groups of walkers. There may well have been use of other routes and rights of way in the area. For instance, Mr Stevens says that Mr Winter walks his dog over the land generally. Nonetheless, the evidence of the

users at the inquiry was supportive of consistent use of the claimed route during the relevant period. It is apparent that this use only ceased when Mr Ravest erected a fence across the route, which occurred after the end of the relevant period.

21. Mr Stevens draws attention to the presence of a four wheeled diesel pump near to point B during the first few years of the relevant period. Whilst none of the users mentioned the pump, there is nothing to suggest that people could not have walked around it. Mr Stevens acknowledges that a section of the claimed route from point B was available for the public to use between 1990 and 2007 as part of an unofficial diversion of Footpath 26. In such circumstances, the pump would not in my view constitute an interruption to the user. Further, there is nothing to suggest that the public were aware that this use was by way of permission.
22. The provision of a permissive path to the south of Keepers Cottage prior to the 2009 diversion only served to enable the public to continue to the east of the claimed route. In terms of the reference by Mrs Blacklock to the former occupier of Keepers Cottage (Mrs Page) granting permission for locals to use tracks in the area<sup>3</sup>, it is apparent that Mrs Page did not own land crossed by the claimed route.
23. Having regard to the above, I find on balance that the user evidence is sufficient to raise a presumption of the dedication of a public footpath. Therefore, the first part of the statutory test is satisfied.

*Whether any landowner demonstrated a lack of intention to dedicate a footpath*

24. Mr Stevens says he has erected signs worded to the effect of "*Private No Right of Way*" on occasions. None of the users recall seeing any such signage during the relevant period. In contrast, a few of them acknowledge that signage to deter access was evident from around 2014. In addition, Mr Stevens says he has challenged people when they strayed from the recognised rights of way. Although clearly a section of the claimed route on his land was made available for the public to use for a period of time. This assertion is also denied by the relevant users who spoke at the inquiry. There is nothing to indicate the gate that was located on the claimed route was ever locked.
25. There is clearly some evidence of action being taken to challenge people. However, bearing in mind the lack of corroborating evidence and the evidence of the users, there is doubt regarding whether action was taken during the relevant period to demonstrate a lack of intention to dedicate a public footpath. In this respect, I note the objections made to the closure of the school route and the later obstruction of the claimed route.
26. Overall I conclude on balance that the evidence is not supportive of any landowner taking sufficient action to communicate to the public that there was a lack of intention to dedicate a footpath over the claimed route during the relevant period.

*Conclusions*

27. I have concluded above that the evidence of use is sufficient to raise a presumption that the claimed route has been dedicated as a public footpath. In addition, I found on balance that the landowners did not take sufficient

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<sup>3</sup> This issue is also addressed in page 15 of the Council's report into the application

action to demonstrate to the public that there was a lack of intention to dedicate the route during the relevant period. Therefore, I conclude on the balance of probabilities that a public footpath subsists. In light of this conclusion, there is no need for me to address the user evidence in the context of common law dedication.

### **Other Matters**

28. I cannot consider the impact of the claimed route being recorded as a public footpath or whether there is a need for a footpath. The fact that the 2012 diversion was opposed by particular parties does not detract from my conclusions above.

### **Overall Conclusion**

29. 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 a modification.

### **Formal Decision**

30. I confirm the Order subject to the following modification:

- Delete the text within paragraph 5 in page 1 of the Order and insert *"This order shall take effect on the date it is confirmed and may be cited as the Essex County Council Definitive Map Modification No. 627 Footpath 57 Langham, Colchester District Order 2016"*.

*Mark Yates*

**Inspector**

**APPEARANCES**

**For the Council:**

Ms M. Morris

Legal Executive

She called:

Mr S. Gallup

Mr K. Hemmings

Mr J. Welham

Mr I. Sutherland

Mr R. Smith

Mr A. Stacey

Footpath Officer for Langham Parish  
Council

Mr B. Reynolds

Mrs J. Reynolds

**Additional Supporter:**

Mr P. Herbert

**Objectors:**

Mr I. Ravest

Mr P. Stevens

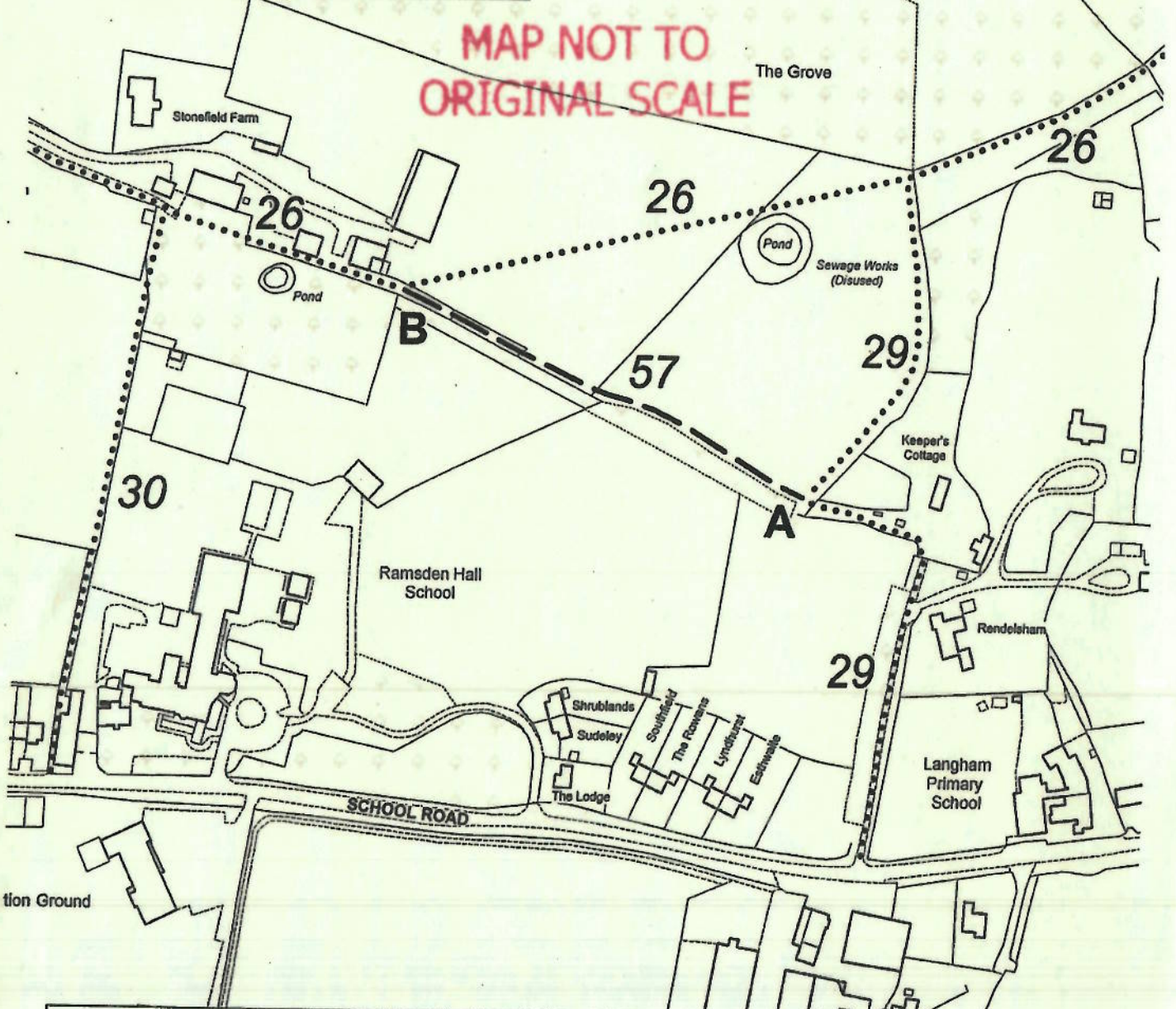
**DOCUMENTS**

1. Opening statement on behalf of the Council
2. Proof of evidence of Mr Stacey
3. Aerial photograph provided by Mr Hemmings
4. Closing submissions for the Council



**Key**  
**Footpath 57 Langham**  
 Add Route A - B **-----**  
 Unaffected Routes **.....**

**MAP NOT TO ORIGINAL SCALE**



**The Essex County Council Definitive Map Modification No.627 (Footpath 57 Langham, Colchester Borough) Order 2016**  
 Definitive Map Sheet TM03SW Scale 1:2500  
 Grid Ref TM 025,319 or 6025,2319

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