



## Order Decision

Site visit on 18 August 2019

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

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

**Decision date: 02 October 2019**

---

### **Order Ref: ROW/3214499**

- The 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.640 Footpaths 104 and 105 Thaxted Uttlesford District Order 2018.
- The Order was made by Essex County Council ("the Council") on 16 May 2018 and proposes to add two footpaths to the definitive map and statement, as detailed in the Order Map and Schedule.
- There was one objection outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

---

### **Procedural Matters**

1. Following the withdrawal of the sole objection, the scheduled public inquiry was cancelled. However, it still falls to me to review the evidence provided and reach a decision.
2. The route claimed ("the claimed route") is recorded in the Order as two distinct sections of footpath, namely Nos 104 and 105, as it encompasses a short section of the existing Footpath No. 90. If the Order is confirmed, Part II of the Schedule should be modified to specify the correct numbers of the sections of path.

### **Main Issues**

3. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, if I am to confirm the Order, I must be satisfied, on the balance of probabilities, that the evidence discovered shows that a right of way, which is not shown in the map and statement, subsists.
4. 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. This requires consideration of whether there has been use of a way by the public, as of right<sup>1</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.
5. Alternatively, an implication of dedication may be shown at common law if there is evidence from which it can be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. The evidence in support of the dedication of a right of way under common law may relate to a different period to that identified for the purpose of statutory dedication.

---

<sup>1</sup> Without force, secrecy or permission

---

## **Reasons**

### ***Statutory dedication***

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

6. The evidence is supportive of a mound of earth being placed across the eastern limb of the claimed route in the early part of 2017. Signage was erected around the same time to deny the existence of a right of way. One of the users (Mrs Eldred) says she was challenged in 2017 and others were aware of challenges being issued to people around this time. It is apparent that this action led to the submission of the application to add the claimed route to the definitive map.
7. I take the view that the action taken in 2017 served to bring the status of the claimed route into question. This means that the relevant twenty-year period to be considered is 1997-2017 ("the relevant period").

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

8. Thirty-six user evidence forms ("UEFs") were submitted in support of use of the claimed route. These provide evidence of use of the route on foot throughout the relevant period. The use documented in the forms largely occurred on a regular basis for recreational purposes, particularly dog walking.
9. There have been various proposals to alter the rights of way network in the area culminating in the diversion of Footpath No. 90 onto its present alignment in 1995. However, these proposals pre-date the period under consideration. Whilst reference has been made to the application being an attempt to frustrate development in the locality, the issue to be determined is whether the evidence is sufficient to raise the presumption of the dedication of the claimed route. Nothing is evident from my examination of the UEFs to suggest any collusion between the users in terms of the information included in the forms.
10. Submissions have been made regarding the lack of observed use of the claimed route or there being only limited use of the route. However, a lack of observed use does not signify that the route was not used. There is a substantial body of user evidence that is supportive of personal use and observed use by others during the relevant period. It is possible that this use increased once farming operations ceased in around 1997-1998 and the buildings were rented out to various parties. It is evident that some of the users saw the landowner (Mr Barnard) on occasions when using the route. I also share the Council's concerns about the quality of the evidence contained in the questionnaires submitted by the former objectors when set against the UEFs.
11. No issue has been raised regarding whether the user was as of right. However, I note that two of the users say they used the route with permission. Two others live at Claypitts Farmhouse and enjoy a private right of access over part of the western limb of the route. I have had regard to this evidence of permissive use when reaching my conclusion on the user evidence. There is nothing to suggest that the use of the claimed route was interrupted during the relevant period.
12. Having regard to the above and my assessment of the UEFs, I find on balance that the user evidence is sufficient to raise a presumption of the dedication of the claimed route. Therefore, the first part of the statutory test is satisfied.

*Whether any landowner demonstrated a lack of intention to dedicate the claimed route*

13. During the latter part of the relevant period Mr Barnard entered into an option agreement to sell the land for development. In terms of any clause in the agreement to prevent the grant of additional rights, this would not demonstrate a lack of intention to dedicate a public footpath. For this to occur there needs to have been some form of overt action undertaken by the landowner to inform the public that this was the case.
14. Some references were made in relation to the original objection to challenges being issued on occasions. However, the details provided lack sufficient information to conclude that action was taken to such an extent to bring it home to the public that there was a lack of intention to dedicate the claimed route. It is also contrary to the user evidence provided which is supportive of various measures to challenge use commencing in the early part of 2017.
15. I conclude on balance that the evidence is not supportive of action being taken which was sufficient to communicate to the public that there was a lack of intention to dedicate the claimed route during the relevant period.

*Conclusions*

16. I have concluded that the evidence of use raises a presumption that the claimed route has been dedicated. In addition, I found on balance that the landowner did not take sufficient 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 two sections of public footpath subsist. This conclusion means there is no need for me to address the issue of common law dedication.

**Overall Conclusion**

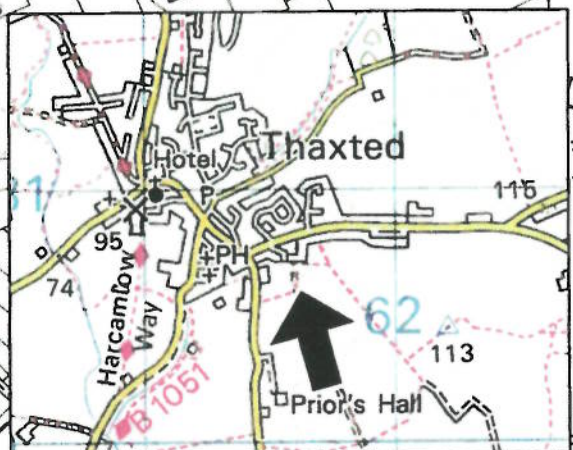
17. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications.

**Formal Decision**

18. I confirm the Order subject to the following modifications:
  - Delete "184" and "185" in Part II of the Schedule and insert "104" and "105".

*Mark Yates*

**Inspector**

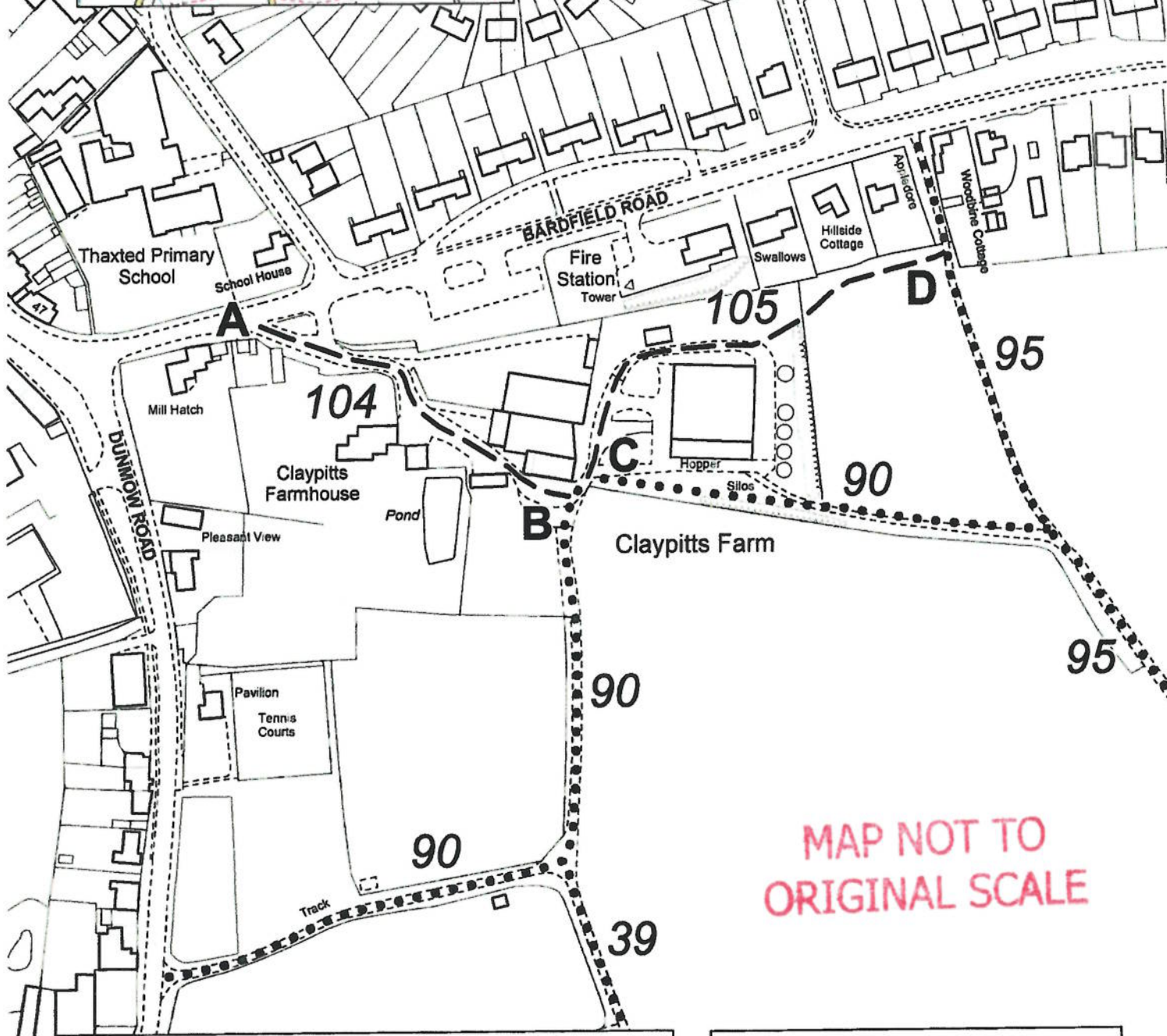


**Key**

**Footpath 104 Thaxted**  
Add Route A - B ————

**Footpath 105 Thaxted**  
Add Route C - D ————

Unaffected Routes .....



**MAP NOT TO ORIGINAL SCALE**

**The Essex County Council Definitive Map Modification No.640 (Footpaths 104 & 105 Thaxted, Uttlesford District) Order 2018**

Definitive Map Sheet TL63SW Scale 1:2000  
Grid Ref TL 615,308

**Essex County Council**

© Crown copyright and database rights  
Ordnance Survey Licence No. 100019602