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| **Order Decision** |
| Inquiry Held on 12 and 13 November 2024Site visit made on 13 November 2024 |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for the Environment, Food, and Rural Affairs** |
| **Decision date: 06 May 2025** |

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| **Order Ref: ROW/3322441** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (Debden Rural District Definitive Map and Statement)(Parish of Playford) Modification Order 2023.
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| * The Order is dated 30 January 2023 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Suffolk County Council submitted the Order to the Secretary of State for Environment, Food, and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is not confirmed.** |
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Preliminary Matters

1. Following the close of the inquiry, I undertook an unaccompanied site visit. During this visit I walked the claimed route in both directions. I also walked Footpath 5 from Church Road to Playford Mount returning via Bealings Road, Footpath 25 (Bransons Lane), and the route of Footpath 3 from Bransons Lane to a point approximately 65 metres south of Meadow Cottage.

Application for costs

1. At the Inquiry an application for costs was made by Mr A Parken against Suffolk County Council. This application is the subject of a separate Decision.

The Main Issues

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act, namely that a right of way which is not shown in the map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a public right of way subsists.
2. 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 (hereinafter the Highways Act). This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of 20 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.
3. In the event that statutory dedication is not applicable, it is necessary to consider whether the evidence is supportive of the dedication of a public right of way under common law. An inference of dedication can be drawn at common law from the actions, or lack of action, of a landowner and acceptance of the dedication by the public in the form of use of the route.

Reasons

*Background*

1. The claimed route runs for a length of approximately 338 metres in an easterly direction from Butts Road (Point A on the Order Map) to Church Road (Point B on the Order Map). It crosses a large, unenclosed, agricultural field that is defined at its southern end by the northern edge of the built up area of the village of Playford and is bounded by Butts Road to the west, Church Road to the east, and Bealings Road to the north. Butts Road, Church Road and Bealings Road are relatively narrow, rural, roads without footways or street lighting. Between the carriageway and the cultivated area, the field margins are between approximately 1 and 2 metres wide, generally slightly banked, and are a mix of coarse grasses and tall, self-seeded, ruderal and ephemeral plants with some well-established trees. At the southern end of the field, Butts Road and Church Road fall away to a much lower level and there are wider, steep, embankments with tree and vegetation cover between the carriageway and the field.

Statutory Dedication

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

1. It is common ground between the Order Making Authority and the objector that for the purposes of this Order, the status of the route was first called into question in October 2016, when the application for the claimed route to be added to the definitive map and statement was made. Whilst Playford Parish Council suggests that it has been trying to have the route added to the Definitive Map for some 40 years, there is no substantive evidence to support this prior to the Parish Council making the present application in 2016.
2. I therefore find that the relevant period for the purposes of Section 31 of the Highways Act is the 20 years preceding October 2016.

*Evidence of use by the public*

1. The application was supported by 8 user evidence forms (UEFs). Of these, only one has a plan attached (an extract from the Ordnance Survey map) showing the claimed route. A further three have a description of the claimed route. The remainder of the UEFs do not have this section of the form completed.
2. Of the three UEFs that contain a description, one has a description that contains features such as woodland, a bridge, and hedgerows, which are clearly not present on the claimed route. I saw during my site visit that this description corresponds with features which are present on Footpath 5 which runs from the east side of Church Road to a point on Bealings Road close to its junction with Holly Lane. Consequently, I do not consider that this UEF in fact relates to the claimed route.
3. The second describes the route as starting on “Butts Road opposite Nightingales Hill driveway to hardstanding by church”. Neither of these points corresponds to either Point A or Point B on the Order Map. The former is approximately 45 metres to the north of Point A and the latter approximately 30 metres to the south of Point B. They do, however, correspond with points where there are access points to the field. The route that this would describe would run diagonally across the field and is not the same as the claimed route.
4. The third uses a similar description “From Butts Road opposite Nightingales Hill to hardstanding by church (Playford)”. This is less precise regarding the commencement point, as the dwelling known as Nightingales Hill has a long road frontage, and the claimed termination point does not correspond with Point B on the map as set out above. I do, however, recognise that Point A is located opposite the south eastern corner of the curtilage of Nightingales Hill.
5. Of the 7 UEFs that relate to the claimed route, three relate solely to use outside of the relevant period and only one covers the whole of the relevant period. The author of that UEF appeared at the inquiry and gave evidence. They clarified that although they walked across the field, this was less frequently than once a month and they did not follow the same route each time. The other user evidence forms that relate to the relevant period claim no more than occasional use. This is repeated on those forms that claim use outside of the relevant period, with the greatest frequency being once a month.
6. A further 19 emails or letters in support of the Order were submitted following its submission for confirmation. Five of these were from people who had previously completed UEFs. Of the remaining supporters, one did not know the route existed but supports the idea of a path and another only claims use on a small number of occasions in 2022, which is outside of the relevant period. Three supporters claim use in the early 1990’s but that the use ceased when the field was ploughed. The objector’s evidence, which was not challenged, sets out that he ploughed the field following his acquisition of it in 1995. This would place these users outside of the relevant period. It is also clear from the UEFs and emails that following the objector’s acquisition of the land, and his change to the cultivation pattern, the previous occasional use diminished even further. The objector stated that at no time since he has owned the field has anyone objected to the claimed route being obstructed and no evidence has been adduced by the supporters to gainsay this. The objector has owned the field throughout the relevant period.
7. The majority of these emails and letters also claim, at best, occasional use. One claims weekly use from 2010 to 2016 ,although it is not clear whether this relates to the claimed route as it merely refers to “the path across the field from Butts Road to Church Road” and does not include a map. Aerial photographs from this time period show the field with two crops divided at a point to the north of the claimed route, which could be mistaken for a path. The only other letter claiming a regular use of approximately 30 times a year, from 2003 to 2016, also sets out that as the route was not evident on the ground the writer followed either furrows on the ground, other footprints, or tractor ruts, and also passed some way north of the claimed route.
8. Whilst there is some evidence that a small number of individuals may have walked across the field as a convenient short cut, the level and frequency of the use of the claimed route appears to be very small indeed and by no means regular. The evidence of use prior to the relevant period is vague and during the relevant period any use appears to have been at best occasional, by a small number of individuals, and it is by no means certain that this was over the claimed route.
9. Evidence from both the objector and from supporters indicates that prior to 1995, the previous owner of the field cultivated it in two parts with the split between the crops occurring on approximately the line of the claimed route. The witness statement of Mr Dunnett sets out that the field was cultivated in this manner for approximately 44 years prior to 1995. There is no evidence that would indicate how the field was used prior to the 1950’s other than the historic Ordnance survey maps which suggest that it may have been cultivated in two sections, with the division between these sections moving at some time between 1881 and 1904.
10. Whilst the gap in the crops might have had the appearance of a path or track, it equally could have been an agricultural practicality to allow access between the two crops.
11. The objector and the objector’s witness also state that they have never seen anyone using the claimed route. There was some discussion at the inquiry in respect of the amount of time that the objector and agricultural workers spent at the field in question and whether they would be aware of people using the claimed route when they were passing the field en route to other parts of the farm.
12. The objector and his employee clearly regularly spend time at the field as part of the agricultural operation, although it was accepted that this would be reduced at times when the field was not under a crop. Whilst it would be evident from trampling of crops if the field were being crossed regularly, when no crop is present it may be less obvious. At times when the ground is hard, due to frost or low temperatures, footprints would be less likely to be discernible. In addition, at the time of my site visit, there was no crop in the field, the soil was dry and friable, and my own footprints were not readily apparent. It is therefore possible that use of the route would not be readily apparent at times when there is no crop in the field and the objector, or his employee, are present at the field less frequently.
13. Nonetheless, even if there were regular use during the period when the field was not holding a crop, I would have expected there to be some indication in the field margins at the claimed commencement and termination points of the route such as compaction of the soil stifling the growth of vegetation, or a lowering of the bank at these points through wear. I saw no such indication. Although I recognise that my observations do not relate to use during the relevant period, prolonged and frequent use would result in some sign at the points the route would be accessed from the highway. At the inquiry a number of those giving evidence accepted that due to the cultivation of the field they were not certain of the precise location of the route. From those user evidence forms that do include a description of the claimed route, it appears more likely that people who were crossing were entering and leaving the field at points where there are existing field accesses. None of these accesses correspond with the claimed route.
14. The Order Making Authority’s witness accepted at the inquiry that the user evidence does not meet the standard for length of use.
15. From what I have read, and from what I heard at the Inquiry, I would agree that the evidence is insufficient to demonstrate that the claimed route has been actually enjoyed by the public as of right and without interruption for a full period of 20 years.

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

1. The objector has not at any time erected any signage asserting that there was no right of way, or any other signage inconsistent with the dedication of the claimed route as a highway. Nor has the objector challenged, or turned back, any person using the claimed route.
2. From the evidence of the Parish Council, the former landowner actively resisted the use of the route as a footpath. The objector’s evidence sets out that he has consistently cultivated the field in such a manner that the claimed route was ploughed or cultivated over.
3. Of itself, this would not necessarily indicate that there was no intention to dedicate the route. Nevertheless, there only needs to be evidence of a lack of intention to dedicate where there is sufficient evidence to show that the claimed route has been used by the public as of right and without interruption for 20 years. That is not the case here as the user evidence does not satisfy the use requirement of Section 31(1) of the Highways Act.
4. It is therefore not necessary to reach a conclusion on whether the landowner had no intention to dedicate the route as a highway.

Conclusions on Statutory Dedication

1. There is evidence that would suggest that during the relevant period people would walk across the field. However, from the user evidence, this was infrequent. It is also not at all clear whether these crossings were on the claimed route. The user accounts are vague as to the position and only one makes reference to a map. Several of the supporters of the Order who spoke at the inquiry accepted that they did not always follow the same route or were unclear as to its position.
2. In order for public rights to be established, it is necessary to show that the claimed route has been used by the public as of right for a period of 20 years, in this case from 1996 to 2016. Whilst it is clear that people have occasionally crossed the field during this period and have not been prevented from doing so, the evidence does not make it clear that these crossings were via the claimed route. On the contrary, it seems more likely that because the claimed route is not marked by any physical features at its start and end points that a number of different routes were taken wherever it was convenient to do so.
3. Consequently, I find that the case for a statutory dedication has not been made out.

Common Law

1. In proving a public right of way at common law, the burden of proof lies with those seeking to prove a way is public. It is for the claimant to prove that it can be inferred from the landowner's conduct that the landowner actually dedicated the route as a public right of way.
2. Much of the documentary evidence for the route comes from the historic Ordnance Survey mapping, three extracts from which have been provided. The claimed route first appears on the 1904 25 inch to the mile map as a double pecked line. Whilst a route across the field is shown as a double pecked line on the 1881 25 inch map, this route is located some distance to the north of the claimed route. The claimed route also appears on the 1927 25 inch map with an FP (footpath) annotation. The Ordnance Survey maps simply record a feature on the ground and the maps themselves at this time also carry a note that the representation on the map of a road, track, or footpath is no evidence of the existence of a right of way. The FP annotation is to show that the track shown is not suitable for wheeled vehicles.
3. It is common ground between the Order Making Authority and the objector that the Ordnance Survey mapping is not an indication of public rights and is not determinative of the presence of a public right of way.
4. The written submissions of one of the supporters and of the local County Councillor make reference to a map published in 2022 on East Suffolk District Council’s website showing the route as a public right of way. However, this map was not produced in evidence, and I can, consequently, give this little weight.
5. Reference was also made by the Parish Council to a letter dated January 1960 from a Mrs Violet Evans of Meadow Cottage sent to the Parish Council raising various matters amongst which there is reference to a right of way “across the field from Bransons Lane”, which years ago the writer understood was used by church goers, having been dug up. It was suggested at the inquiry that this reference could be to another field owned by the same landowner at that time (Field K, Shown on Exhibit AP2 in Mr Parken’s proof of evidence). The map in the evidence shows a dotted line that is on a generally similar line to the current defined route of Footpath 3. This runs north from Bransons Lane (becoming Footpath 1 where it passes into the adjoining parish) and then crosses Bealings Road and runs generally northward to near the church at Culpho.
6. I saw when I visited the site that the claimed route lies more than 200 metres south of the junction of Bransons Lane with Butts Road. To my mind this does not correlate with a description of a “right of way across the field from Bransons Lane”. Although this follows on from a paragraph relating to drainage ditches around what is most likely the field containing the claimed route, from the description in the letter, it is not at all certain that this reference is to the same route as the claimed route. This was conceded to in cross examination of the representative of the Parish Council.
7. This notwithstanding, the writer of the letter does not purport to have used the claimed route. Whilst they say that they understand that it was used by church goers, this is not the same as an unequivocal statement that it was in fact used. The use of the phrase “years ago” also suggests that this would have been some considerable time before 1960.
8. Much of the applicant’s position relies on the claimed route being shown on various historic Ordnance Survey Maps. As set out above, Ordnance Survey maps are not determinative of a public right of way.
9. The Parish Councils submissions to the Inquiry set out that until 1946 the land in question was owned by the Marquis of Bristol’s estate and assert that the route was probably used a great deal during this time. The Parish Council also assert that it is very logical to assume that the route has existed for hundreds of years. These assertions are simply not borne out by the evidence. The first time an annotation is shown on the Ordnance Survey maps is on the 1904 Edition. Prior to that, although a path or track across the field is shown, this is in a different location.
10. The only other documentary evidence adduced was the January 1960 letter from Mrs Evans of Meadow Cottage, which it was conceded at the Inquiry did not necessarily refer to the claimed route. Although it was stated that the Parish Council had been seeking recognition of the claimed route since the 1980’s, no documentary evidence was submitted to support this position.
11. The Order Making Authority also confirmed that the route was not claimed in the 1950’s when the Definitive Map and Statement were first compiled, nor was it claimed during a 1979 review process of the Definitive Map. It was not until 2016 that the route was claimed. These factors together with the lack of objection when the claimed route was ploughed over, and for the 20 years following, all strongly suggest that the claimed route does not have a meaningful local reputation as a right of way.
12. There is some user evidence, both from the UEFs and emails subsequently submitted to the Inquiry, of use both before and after the relevant period. However, this is vague and, at best, indicates infrequent use. In some cases, it is not clear whether or not they refer to the claimed route. The earliest use claimed dates from around 1970 and there is nothing in the evidence to indicate any use of the route by the public prior to 1970.
13. The applicant’s own evidence sets out that neither the current landowner, nor the previous landowner recognised that a right of way existed, and that the latter actively opposed the suggestion that it be recognised as such.

Conclusion on Common Law Dedication

1. Although I do not doubt that historically, people have on occasion walked across the field using various routes, on balance, I am not satisfied that the evidence is sufficient to infer the common law dedication of a footpath over the claimed route.

**Conclusions**

1. From what I have read and from what I heard at the Inquiry, I conclude that on the balance of probability there are not public rights on foot over the claimed route.

**Formal Decision**

1. I do not confirm the Order

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John Dowsett

INSPECTOR

**APPEARANCES**

FOR THE ORDER MAKING AUTHORITY

Mr Jonathan Lockington Solicitor - Suffolk County Council

Mr David Last Definitive Map Officer Suffolk County Council

FOR THE OBJECTOR

Mrs Deborah Sharples Solicitor – Birketts LLP

Mr Alan Parken Objector

Mr Mark Ellis Witness for the Objector

SUPPORTERS OF THE ORDER

Mrs Joan Metcalfe Playford Parish Council

Mrs Jill Morgan Local resident

Mr Timothy Llewellyn Interested party/former local resident

Ms Sally Herrington Local resident

Mr Colin Hedgeley Ward Councillor East Suffolk District Council

Ms Dorothy Thornborrow Local resident

Ms Jocelyn Saunders Local resident

Mr Marty Oliver Local resident

Mr Alan Walters Local resident

DOCUMENTS

ID1 Opening Statement of the Order Making Authority

ID2 Full copy of letter from Violet Evans of Meadow Cottage

ID3 Opening Statement of the Objector

ID4 Closing Statement of the Objector

ID5 Closing Statement of the Order Making Authority

ID6 Objector’s application for an award of costs

ID7 Extract from 1:25,000 Ordnance Survey Map (Published 1955 revised 1960)

ORDER MAP – COPY NOT TO SCALE

