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| **Order Decision** |
| Inquiry opened on 8 July 2025 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 September 2025** |

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| **Order Ref: ROW/3340095** |
| * 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 (Heydon) Modification Order 2023.
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| * The Order is dated 15 February 2023 and proposes to modify the Definitive Map and Statement (DMS) 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 Norfolk 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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Procedural Matters

1. I held a public inquiry into the Order at the Wood Dalling Village Hall, Prospect Lane, Wood Dalling, Norwich commencing on 8 July 2025.
2. I made an unaccompanied site visit on the afternoon of 7 July 2025. During the inquiry, on the afternoon of 9 July 2025, I made a further site visit. On this occasion I was accompanied by both supporters of and objectors to the Order together with representatives of the Order making authority (OMA), Norfolk County Council.
3. The Order was made following a successful appeal by the applicant. Therefore, the OMA decided to take a neutral stance at the inquiry with regard to the confirmation of the Order. The case in support of the Order was made by the applicant.

The Main Issues

1. The OMA made the Order under Section 53(2)(b) of the 1981 Act which requires the expiration of any period such that enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path.
2. In this case the standard of proof to be applied is the balance of probabilities.
3. The evidence in support of the Order is composed of claimed use by the public as a footpath. Accordingly, I need to determine whether presumed dedication has arisen under the tests set out in section 31 of the Highways Act 1980 (the 1980 Act). This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
4. In the event that the requirements for a presumption of dedication under the 1980 Act are not met, I will need to consider whether there is sufficient evidence for an inference of dedication at common law.
5. Although the case in support of this footpath rests primarily on the user evidence, some documents have been submitted. With regards to documentary evidence, Section 32 of the 1980 Act requires that I take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate.

Reasons

*Background*

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.
2. The Order seeks to add to the DMS a public footpath commencing at point A on the Order map which is on a track where it leaves Heydon Road. At point B the route passes through large metal gates, the properties either side are known as Corpusty Lodges. The Order route proceeds in a south easterly direction to point C where it turns in a southerly direction then passes through large metal gates at point D where it meets the road known as The Street. The properties either side of the gates at point D are known as Church Lodges. The Order route is also known as Corpusty Drive. Heydon Hall is a private residence, the hall and the surrounding land form part of the larger Heydon estate, the estate own the land over which the Order route runs and object to the Order.

*Documentary Evidence*

1. The Order was made under section 53(3)(b) of the 1981 Act and does not rely on documentary evidence. The previous submission of documentary evidence as part of the application was referred to by the applicant, however, these were not relied upon at the inquiry. The 1807 and 1836 Plans of Roads indicate that previously existing public rights along a route between points A and D were stopped up. Later maps show the alignment of the middle section of the route changed between 1841 and 1885 to what is now the Order route. The objector states it was shortly after the stopping up in 1836 that the lodges and gates were built at each end of the route (points B and D). They consider this was to mark the entrances to the park.
2. Further documents including a statutory declaration, an article produced by the Ramblers’ Association and various photographs have been considered and are referred to below.

*User Evidence*

1. The application for a modification order was supported by 55 user evidence forms (UEFs). At the inquiry I heard evidence from 9 individuals, each of whom had completed a UEF. In addition, one further individual in attendance at the inquiry gave evidence in support of the Order.

*Date of bringing into question*

1. For the purposes of a statutory presumption of dedication under section 31 of the 1980 Act it is necessary to establish when the right of the public to use the route was first brought into question. A bringing into question arises when at least some of the users are made aware that their right to use a way is being questioned. It is common ground that the gates at Corpusty Lodges (point B) were locked in 2017. The applicant considers this to be the date the route was first brought into question. It is not clear how long the gates were locked for, but it was this action which made some users query their rights and prompted the modification order application to be made in April 2018.
2. The objectors suggest various earlier dates which could be considered as a bringing into question. They refer to the erection of signs, permissions given to tenants and residents of the estate, occasions when the route was closed to the public for a limited time, the locking of gates one day a year and a period when they were locked overnight. I consider, and this is discussed below, that these events may demonstrate that use was either contentious, if it was in contravention of the landowner’s overtly expressed intentions, or by permission. The interpretation of the wording of the signs is discussed below. These events may also demonstrate a lack of intention to dedicate. However, I do not consider they are sufficient as a bringing into question. This is because either a date of challenge cannot be sufficiently identified or because the event may not have alerted enough users that their use was being challenged.
3. I consider the ‘bringing into question’ to be 2017, the relevant 20-year period is therefore 1997-2017.

*Use as of right*

1. If a presumption of dedication is to be raised, use by the public during the relevant period must be shown to have been enjoyed as of right, without interruption, and to have continued throughout the full 20 years. Use ‘as of right’ is use by the public that is not by force, does not take place in secret and is not by permission. In this case there is no suggestion that any use was undertaken in secret.
2. Use can be permissive if undertaken in consequence of specific permission having been granted by the landowner. Use will also be permissive if it is undertaken in the exercise of an implied right. There is evidence from the objectors that the estate owners gave permission to all tenants and residents of the estate to walk the route. An express or implied right would also have been given to those working on the estate. From the 55 UEFs, 10 people lived or worked on the Heydon estate, their use should therefore be disregarded when assessing whether the overall level of use is sufficient to demonstrate use by the public.
3. The wife of the previous estate owner made a written statement in 2022, she specifically mentions two families who were previous tenants who had since bought their houses from the estate. She states they were given permission to use the route. One witness at the inquiry was named in the statement and two further witnesses, who also gave evidence at the inquiry, are related or live with those named. However, when giving evidence all three denied ever being a tenant of the estate.
4. As well as granting permission to some individuals, I heard evidence at the inquiry of signage at or near to Church Lodges (point D). The notices, referred to as the ‘welcome’ signs, may indicate that use could be construed as permissive. The interpretation of the wording on the signs is in dispute, as well as the area to which the signs apply. This is discussed below.
5. Use by force does not necessarily require the use of physical force in the sense of breaking down gates or moving obstructions or the like. Use in the face of a clear prohibition by the landowner will amount to contentious use and thus use which is not as of right. In this case there is evidence that a sign was displayed on the route at Corpusty Lodges (point B). This sign may establish that use was contentious and may also demonstrate a lack of intention to dedicate so as to engage the proviso to section 31(1) of the 1980 Act (‘the proviso’). As the evidence in relation to the presence and effect of the sign is the same when considering contentious use and the proviso I shall deal with the issue now.

*Presence of the signs*

1. In a written statement a previous tenant of Corpusty Lodges (point B), residing there between 1967 and 1995, recalls ‘Private’ signs on all the gates/lodges to the estate going back to the 1950’s, as does the wife of the previous estate owner. Another former tenant of Corpusty Lodges, between 2004 and 2018, also in a written statement, refers to a sign stating, ‘Private No through Road’.
2. At the inquiry I heard evidence from a local resident, he had visited and been familiar with the estate from 1961 and lived on the estate from 1991. He recalled ‘Private’ signs at Corpusty Lodge and Church Lodge (point B and D), and stated he was sure there have always been signs there. At the inquiry the former estate manager and farm manager both referred to ‘Private’ signs at Corpusty Lodges. They were both working for the estate from the late 1980’s. I have also seen two photographs; one is undated and shows a sign on the brick pillar to the right of the track (point B). There is some vegetation to the front of the property to the right of the track, which may have partly obscured the sign. The other photograph is within a document dated 2008, it shows signs on both pillars either side of the route (point B). It is not possible to read the wording of the signs on either photograph.
3. Most of the user witnesses stated they could not recall or did not notice a sign at Corpusty Lodge (point B). However, one witness who had used the route from 1976 recognised the sign on the right-hand pillar from the photograph and stated that it was visible most of the time. In 2017 the witness checked, and the sign was visible. Another witness referred to visible ‘private’ signs at point B, however they could not be sure if they were present prior to 2006. One further witness, who used the route from 2013, stated they believed the wording ‘No through road’ was meant for vehicles.
4. I am required to conclude on a balance of probabilities whether the ‘private’ sign referred to in the preceding paragraphs was present as claimed by the objectors within the period 1997 to 2017. There is clear, cogent and consistent positive evidence that a sign was present on Corpusty Lodge, at point B, throughout the relevant 20-year period, and probably dating back much further. At some point, possibly around 2006, it would seem that the sign was replaced and the wording on the sign changed from ‘Private’ to ‘Private No through Road’. There is no direct evidence of the absence of the sign, a number of the user witnesses cannot recall a sign being present although some did recall the private sign. I consider that it is possible the sign may have been partly obscured by vegetation at some point. During this time a person viewing the lodges from the road (point A) may not have had a clear view of the sign. However, I consider that a person walking the route and passing directly between the brick pillars would most likely have seen the sign. On a balance of probabilities, I conclude a sign was present as contended by the objectors and would have been seen by a reasonably observant user of the route.
5. There is also evidence of signs at Church Lodges (point D), this is considered by the objectors to be the main entrance to the estate parkland. The sign on the brick pillar to the side of the track at point D stated *‘Private Visitors are welcome to walk in the Park but do so at their own risk. Dogs must be kept on leads.’* A similar sign, although not identical, was placed on a fence just beyond point D adjacent to a cattle grid. This was referred to at the inquiry although this second sign is not on the Order route. The sign stated *‘Private Visitors are welcome to walk in the Park. Please stick to the road. Dogs must be kept on leads. No entry when livestock are out.’*
6. At the inquiry I heard from the objector’s witnesses; the previous farm manager, estate manager and a long-term resident who all stated the sign at point D had been in place throughout the relevant period. I have also seen photographs; undated photographs of Church Lodges and the signs submitted at the inquiry, a photograph dated 2008 which shows the notices referred to, however, the wording is not legible, and a 2009 google street view photograph of the sign at point D. All of the user witnesses at the inquiry referred to a sign at Church Lodges, although some initially stated they had not seen a sign, under cross examination they accepted from the photographic evidence that there was a sign. On a balance of probabilities, I conclude a sign was present at point D throughout the relevant period and would have been seen by a reasonably observant user of the route.

*Effect of the signs*

1. Having concluded that the signs were present at the relevant time it is necessary for me to consider their legal effect having regard to the wording and context. With regard to the sign at Corpusty Lodges (point B), for the objectors’ argument to succeed I would have to conclude that the sign was sufficient to inform a reasonable person reading it that to continue along the Order route would be in contravention of the landowner’s overtly expressed intentions.
2. Similarly, with regard to the sign at Church Lodges (point D) for the objectors’ argument to succeed I would have to conclude that the sign was sufficient to inform a reasonable person reading it that to continue along the Order route would be with the landowner’s permission. In most, if not all cases, action by the landowner which would render use contentious or with permission will also sufficiently demonstrate a lack of intention to dedicate.
3. The judgment of Lord Hoffman in *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs [2007]UKHL 28* sets out the test to be applied when considering the evidence in relation to the proviso. He states, *“I think that upon the true construction of section 31(1), "intention" means what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. The test is, as Hobhouse LJ said, objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood the landowner’s intention”.* In my view, the same approach is to be taken when considering whether the use was ‘as of right’ in light of the signs.
4. The test I should apply to the evidence is whether the landowner has made known their opposition to use of the Order route as a public right of way, in such a way that a reasonable user would have seen the signs and understood the landowner’s intention. The subjective opinion of any individual user is not a material consideration, and it is not relevant that some user witnesses believed the Order route was not in the park.
5. I have concluded that the signs were present during the relevant period and would have been seen by a reasonable user. The issue now is what that reasonable user would have understood from the wording on the signs.
6. The use of the single word ‘Private’ (point B) can in some circumstances be potentially equivocal. However, in this case the context must be considered. The sign was on the brick pillar, immediately adjacent to the track at Corpusty Lodges. The large gates and lodges either side are typical of 19th century parks of this nature and Corpusty Lodges mark one of the entrances to Heydon Hall. The brick pillars either side of the track are large with decorative urns on the top, the large iron gates are attached to the pillars. I consider that entrances such as this were most likely designed to control access and serve as a clear boundary, demarcating the park’s perimeter. In this particular context I would find it difficult to accept that any reasonable person could see the sign on the pillar and conclude that it was not directed at use of the track as well as the other land beyond the gates. It is an unqualified assertion of privacy sufficient to render use as contentious.
7. At some point during the relevant period either an additional sign or a replacement sign stating “Private, No through Road” was present on the gate pillar. Although this sign refers to a road and could therefore be interpreted as being directed towards motor vehicles, the word ‘Private’ remains and I therefore reach the same conclusion as above.
8. The Church Lodge entrance (point D) is considered to be the main entrance to Heydon Hall. I have concluded that the ‘welcome’ sign, referred to at paragraph 26 above, was present during the relevant period and would have been seen by a reasonable user. The Church Lodge entrance is at the end of The Street; this is the centre of the village and is where many local residents and visitors to the area come to. There is a pub, tearoom, church, village green and many commercial units at The Street. There is also a car park, therefore the vast majority of visitors to Heydon Hall parkland enter through the Church Lodge gates at point D. For those visitors/residents wishing to return to point D, there is a popular circular route which takes users past the front of Heydon Hall. To access this route users enter a fenced area, there are two access points where there are cattle grids to the east of point C. At these points there is another sign stating *‘Private Visitors are welcome to walk in the Park. Please stick to the road. Dogs must be kept on leads. No entry when livestock are out.’*
9. The applicant contends that the first sign at point D welcomes visitors to walk in ‘the park’, however, they consider ‘the park’ to be the fenced area to the front of Heydon Hall, this does not include the Order route. As there are similar signs to the one at point D adjacent to the cattle grids, they believe that is the area to which all the signs relate. They state that no such signs were placed at the other end of the Order route at Corpusty Lodges (point B), or indeed anywhere else on the Order route.
10. At the inquiry I heard from many of the user witnesses that they believed the park to be the fenced area in front of Heydon Hall, the area beyond the cattle grids. I also heard from the objector’s witnesses that they considered the entrances to the park to be marked by the lodges and gates. However, as stated above I need to consider what the reasonable user would have understood from the wording on the signs.
11. As above with Corpusty Lodges, Church Lodges (point D) marks the entrance to Heydon Hall with large gates, brick pillars either side topped with decorative urns . In this context I consider that the reasonable person would believe they are entering the park at this point, especially as the sign is also at this point. In order to walk, either the Order route or the popular circular route, from The Street users would walk through the gates at point D and pass the sign. Therefore, I consider that a reasonable person would believe that the sign is applicable to any land or route beyond the sign (point D). Furthermore, I consider that the sign makes it clear that the landowner asserts their privacy, however, the sign then goes on to state that visitors are welcome to walk in the park on the condition that they do so at their own risk and that dogs must be kept on a lead. I consider that a reasonable person would interpret this welcome to mean they have permission to walk in the park.
12. The additional signage that is adjacent to the cattle grids is similar to the sign at point D, with the added request that visitors stick to the road and do not enter when livestock are out. I heard at the inquiry from the objectors that there would be no requirement for such a sign on the Order route as this is outside of the fenced area and livestock do not graze there. Additionally, there was no other sign at point C during the relevant period, which would suggest the permission given at point D, was not extended along the Order route. Furthermore, in a published article produced by The Ramblers’ Association in 2011, the Order route is described as a permissive path. Therefore, I conclude that the reasonable person would believe they had permission to walk the Order route.
13. As the majority of visitors to Heydon enter the park at point D and walk the circular route, an additional sign at point B may have been considered unnecessary by the landowners. During cross examination the objector stated visitors have permission to walk the circular route and the Order route, the sign as you enter the park informs the public.
14. The ‘Private’ sign at point B may seem contradictory to the ‘welcome’ sign at point D. Although most of the user witnesses claimed not to have seen the sign at point B, they were aware of the sign at point D and had used the route in both directions. However, as stated above, the subjective opinion of the users is not a material consideration, and my conclusion is based on what the reasonable person would believe if they approached the Order route from either end.
15. Having concluded that the signs were present during the relevant 20-year period, and were effective to render use contentious and permissive, I must find that any use which did take place within that period was not use ‘as of right’. On that basis it is not necessary for me to consider further the sufficiency of the use, as it is only use ‘as of right’ that is relevant to the issue.

*Conclusions on user evidence*

1. For the reasons given the use of the Order route within the relevant 20-year period was not such as to give rise to a presumption of dedication under section 31 of the 1980 Act.

*Whether there is sufficient evidence of a lack of intention to dedicate by the landowners (‘the proviso’)*

1. Evidence of a lack of intention on the part of the landowner to dedicate the Order route as a footpath would preclude any statutory presumption of dedication from arising. To constitute an effective demonstration of a lack of intention to dedicate the landowner, during the relevant 20-year period, must have acted in a way which would have brought home to users of the route that he did not wish it to become a public right of way. The requirement is only that the lack of intention is demonstrated ‘during’ rather than throughout the 20-year period.
2. I have explained earlier that acts undertaken by a landowner can be sufficient to both render public use contentious and to demonstrate a lack of intention to dedicate such as to allow reliance upon the proviso. For the reasons I have set out, I have found that the ‘Private’ sign at point B was sufficient to render use contentious. In addition, I have found that the ‘welcome’ sign at point D was sufficient to render the use permissive. Using the same facts and applying the same analysis, I conclude that the landowner has, during the relevant period, sufficiently demonstrated a lack of intention to dedicate the Order route as a public footpath such as to rebut any presumption of dedication that would otherwise arise.
3. Evidence of other events have been referred to by the objectors as demonstrating a lack of intention to dedicate. A previous tenant of Corpusty Lodges refers to locking the gates at point B on the instruction of the landlord. This was done for one day at least annually between 1967 and 1995, therefore prior to the relevant period, however this was with the intention to make it clear there was no public right of way. Another previous tenant of Corpusty Lodges refers to locking the same gates overnight between 2006-2018 at the request of the landowner. This followed an incident in 2006 when two youths ran into the gates on their motorbikes when attempting to take a cut through at night. Some witnesses at the inquiry recalled the incident and the subsequent closure of the gates, however, one witness claimed the gates were shut but not locked. Some user witnesses have stated they used the Order route in the evenings when returning from the village pub, therefore it is possible that some users were made aware of this closure.
4. In 1995 and 2001 deposits were made under section 31(6) of the 1980 Act on the instruction of the landowner. If these were carried out correctly, they would be sufficient evidence of a lack of intention to dedicate the route. However, errors occurred, and they were not legally executed. Despite this I consider that they clearly show the landowners intentions at the time.
5. A one-day closure of the whole park, therefore including the Order route, took place in 1996 for the funeral of the estate owner. The objectors claim it has also been closed on occasions for other family events. For a period in 2001 during the foot and mouth outbreak the whole park was closed, signs were displayed at all the entrances and the gates were closed. Some witnesses at the inquiry recalled the closure and some, when asked, stated that they would not have used the route during this time. I consider that the temporary closure during the outbreak would have been for reasons of disease control. Although the landowner was excluding the public from the Order route, the purpose of the closure was not to show their lack of intention to dedicate. The reasonable person would believe the route was closed to prevent the spread of the disease.
6. There is evidence of annual one-day closures between 2015 and 2018. During these closures signs indicated there was no public access and the gates were closed. Although each of these closures was for a limited time, and therefore a limited number of users would have been made aware, I consider this was carried out with the intention to prevent public access. Consequently, I consider the landowner has shown a lack of intention to dedicate and their actions were sufficient to bring this to the attention of a reasonable user.

*Conclusions on presumed dedication under section 31 of the 1980 Act*

1. Having regard to the above I am satisfied, on a balance of probability, that the Order route has not been sufficiently used as of right to give rise to a presumption of dedication and further, that any presumption which did arise would be rebutted by reason of the proviso.

*Common Law*

1. Although I have found that no statutory presumption of dedication arises it is necessary for me to also consider the position at common law.
2. For dedication to occur at common law by reason of public use, it would be necessary for the evidence to give rise to an inference that the landowner had in fact dedicated the Order route as a public right of way. As I have found that the actions of the landowner were sufficient to demonstrate a lack of intention to dedicate it would be contrary to suggest that the same evidence could be relied upon in support of dedication at common law.

Conclusions

1. I consider that use of the Order route within the relevant 20-year period was not use as of right, therefore the use does not give rise to a presumption of dedication under section 31 of the 1980 Act.
2. I consider that the steps taken by the landowner did amount to sufficient evidence of a lack of intention to dedicate.
3. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

1. I do not confirm the Order.

J Ingram

INSPECTOR

**APPEARANCES**

**In support of the Order**

Mr R Peacock (applicant) who called:

Mr S Waller

Mr R Smith

Mrs K Cotgrove

Mr G Hampton

Mr T Keeler

Ms S Marshall

Mr G Thorold

Mr B Levien

Mrs K Churches-Peacock

Ms A Ernestus

**Opposing the Order**

Mrs D Sharples, Solicitor Birketts LLP (representing the Bulwer-Long family)

who called:

Mr M Crane

Mr G High

Mr J Stiff

Mrs R Bulwer-Long

Ms H Crawford-Senior (representing Mr R Harrold)

**Remaining Neutral**

Mr L Malyon, Norfolk County Council

**DOCUMENTS**

1. Statement of Case and Proof of Evidence of Mr R Peacock
2. List of witnesses to be called by Mr Peacock
3. Statement of Case of Mrs R Bulwer-Long
4. Proof of Evidence of Mr M Crane
5. Proof of Evidence of Mr G High
6. Proof of Evidence of Mr J Stiff
7. Proof of Evidence of Mrs R Bulwer-Long
8. Proof of Evidence of Mr J Buller
9. Case law, R (on the application of the Ramblers’ Association) v SOS v Roxlena Limited, Cumberland Council [2025] EWHC 537 (Admin)
10. Heydon Park parkland management plan map book

*Submitted at the inquiry*

1. Opening statement by the OMA
2. List of appearances for the objectors
3. Opening statement by the objectors
4. Bundle including photograph of Church Lodges dated 19 September 2008, and 23 November 2015, photograph of signage also dated 23 November 2015, Article by Norfolk Area Ramblers’ Association titled ‘The Walk’
5. Letter dated 8 July 2025 from Mr R Harrold
6. Bundle of 5 photographs including photographs of Corpusty Lodges, Church Lodges and signage
7. Bundle including letter from Heydon Estate to Mr and Mrs Peacock dated 12 October 2015 and emails dated 22 October 2015
8. Closing statement by the objectors
9. Closing statement by the supporters

