



# Appeal Decision

by A Behn Dip MS MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 12 May 2023

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## Appeal Ref: ROW/3312084

- This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Suffolk County Council (the Council) not to make an order under Section 53(2) of that Act.
- By application dated 25 June 2021, Ms Amy Kemp (the applicant) claimed that relevant footpaths should be upgraded on the definitive map and statement for the area to bridleway status and that an unrecorded route should be added to the map and statement as a bridleway.
- The application was refused by the Council and the applicant was formally notified on 31 October 2022.

**Summary of Decision: The appeal is allowed.**

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## Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal on the basis of the papers submitted. I have not visited the site, but I am satisfied that I can make my decision without the need to do so.
  2. In writing this decision I have found it convenient to refer to points marked on the Council's plan, and I therefore attach a copy of this plan.
  3. The applicant requests that the Secretary of State directs the Council to make a Definitive Map Modification Order to upgrade the footpaths A-B-C (FP4), B-Y-D-E-X-G (FP8) and H-I (FP11 and part of FP12) to bridleways, and to record the route E-F as a bridleway.
  4. At its committee meeting on the 31 October 2022 the Council resolved not to make an Order to record any of the routes as bridleways. They concluded that the historical evidence was insufficient to raise even a reasonable allegation of higher public rights than the footpath status already recorded for the majority of the claimed routes. The Council also concluded that the user evidence, despite its sufficient volume was unable to show dedication had taken place due to the predominantly permissive nature of the use.
  5. Additionally, it seems that the application included another route, commencing north of point C and travelling eastwards towards Gorleston Road. The Council do not appear to have considered this route in their investigations. On 26 May 2022, the Council forwarded a map to the applicant as a check that the routes to be considered were correctly shown on that map, which was confirmed by the applicant to be the case. This map did not include the route to Gorleston Road.
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6. The determination of whether an Order should be made to add this particular route to the definitive map still resides with the Council who need to investigate this part of the application.
7. Having regard to the above, it is appropriate to consider the appeal only in light of the routes outlined in paragraph 3 above.

### Legal Framework

8. The original application was made under Section 53(2) of the 1981 Act which requires the surveying authority, (in this case Suffolk County Council) to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
9. Where no public right of way is presently recorded, Section 53(3)(c)(i) of the 1981 Act specifies that an Order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that *"a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist..."*.

As made clear in the High Court in the case of *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw* [1994], and later clarified in the case *R v Secretary of State for Wales ex parte Emery* [1998] this involves two tests:

- **Test A:** Does a right of way subsist on the balance of probabilities?
  - **Test B:** Is it reasonable to allege that a right of way subsists? For this possibility to be demonstrated it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. If there is a conflict of credible evidence, but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, then it is reasonable to allege that one does.
10. At this stage, I need only be satisfied that the evidence meets Test B, which is the lesser test. Both of these tests are applicable when deciding whether or not an order should be made, but even if the evidence shows only the lesser test is satisfied, that is still sufficient to justify the making of the modification order requested by the applicant.
  11. In relation to Test B, the Court of Appeal recognised in *R v Secretary of State for Wales ex parte Emery* [1998] that there may be instances where conflicting evidence was presented at the schedule 14 stage. Roche LJ held that *"...The problem arises where there is conflicting evidence...In approaching such cases, the authority and the Secretary of State must bear in mind that an order...made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the order under Schedule 15 when conflicting evidence can be heard, and those issues determined following a public inquiry."*
  12. Where it is proposed that an existing way should be upgraded from footpath to bridleway status, Section 53(3)(c)(ii) of the 1981 Act specifies that an Order should be made following the discovery of evidence which, when considered with all other relevant evidence, shows that *'a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a*

*different description*'. The evidential test to be applied is the balance of probabilities.

13. For documentary evidence, section 32 of the Highways Act 1980 (the 1980 Act) requires consideration of any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
14. For user evidence, section 31 of the 1980 Act is relevant. This requires consideration as to whether a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. If this is the case the way is 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 20 years is calculated retrospectively from the date when the right of the public to use the way was brought into question.
15. Alternatively, if the case is not made out under statute, the evidence may be considered under the common law. In this case the issues to be addressed would be whether, during any relevant period, the owners of the land in question had the capacity to dedicate a public right of way; whether there was express or implied dedication by the owners, and whether there is evidence of acceptance of the claimed route by the public.

### **Main Issues**

16. Use of the current footpath routes by equestrians does not appear to be in dispute, but more so whether use was with or without permission and whether an intention not to dedicate was sufficiently demonstrated.
17. For the claimed route that is not currently recorded on the definitive map and statement the issue is whether such use gave rise to a presumption of statutory dedication under the provisions of the 1980 Act, or an inference of dedication at common law. The focus in this case appears to be whether use was by force and whether an intention not to dedicate was sufficiently demonstrated.

### **Reasoning**

#### ***Documentary evidence***

##### *Oulton Inclosure Award Map 1803*

18. A short section of the routes commencing from point A and point H are illustrated but both end in cul de sacs. Points G-X are denoted as a single pecked line.

##### *Oulton Tithe Map and Apportionment 1843*

19. A route is shown between points A-B, depicted by two solid lines and labelled as pasture. Route H-I is shown as a single pecked line.

##### *County Maps – Hodskinson's Map 1783, Bryant's Map 1824/5, Greenwoods Map 1825*

20. Route H-I is depicted on all three maps; as an open road on *Hodskinson's*, a lane or bridleway on *Bryant's* and a cross road on *Greenwood's*. The route commencing

at point A is again depicted as a short cul de sac route, albeit it does extend to point B on Bryant's Map.

*Ordnance Survey 1 inch map 1937*

21. Points A-B are depicted by two solid lines and Route H-I is depicted by two pecked lines.

*Ordnance Survey County Series 1884, 1885 and 1905*

22. Points A-B are predominantly depicted by two solid lines, with a single pecked line denoting points B-C. Points B-Y are shown by two pecked lines. Points Y-D do not seem to be depicted. The section D-E-X-G is denoted as a footpath and Route H-I is shown initially between two solid lines and then by a solid line and pecked line.

*Production and reviews of the Definitive Map*

23. All of the routes in question are shown as public footpaths, with the exception of the claimed route E-F where no right of way is shown.

*Aerial photos*

24. A series of aerial photos were submitted in evidence, dating from 1945 to 2021. Points X-D are clearly shown as a worn route in all images. For the claimed right of way between E-F, aerial maps from 1999 onwards clearly show a worn path or track matching the approximate alignment of the route.

*District Council Agenda Item 2007*

25. The Parish Council submitted a copy of a 2007 Agenda from Waveney District Council's Lowestoft Development Control Committee, which included an agenda item about upgrading Footpaths 4, 8 and 7 to bridleway status. This approximates to the claimed routes A-B-C, and B-Y-D-E-X-G.

*Conclusions on documentary evidence*

26. There is clear physical depiction of sections A-B and H-I on the historic mapping dating back to the 1800's that could be interpreted as roads or tracks. The commercial county maps suggest that these routes may have held public status however as the maps were not produced to establish rights of way, it is not necessarily evidence that these routes historically held a higher status than the footpath status they currently hold. The maps alone, hold limited weight.
27. The aerial photos that depict points X-D and Route E-F are evidence of the physical existence of those parts of the route but not evidence of public status. The agenda item from the Development Control Committee supports evidential use of two of the routes by equestrians.

***Statutory Dedication***

28. I consider that the appropriate approach is to consider the claimed bridleway Route E-F separately to the claimed upgrades, and accordingly this route will be addressed later in the decision.

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

29. It is accepted that the date of the formal application is the only definable source for bringing into question the public's right to use routes A-B-C, B-Y-D-E-X-G, and H-I. The relevant period twenty-year period is therefore 2001-2021.

*User Evidence*

30. Twenty-seven user evidence forms ('UEFs') were submitted in support of use of the claimed routes and telephone interviews were conducted with 13 of these users. All UEF's used the same map, and the information related to general use of all of the claimed routes.
31. The Council and Howes Percival LLP (HPL), who are acting for Persimmon Homes and are primarily concerned with Route E-F, point to problems in interpreting UEFs involving use of more than one route, as the information given is quite general with little detail individual to specific routes.
32. I accept that the submission of a single UEF where a person is claiming to have used more than one route causes problems when assessing the extent of their use of each route. Questions will invariably arise when the use of multiple routes is stated to have occurred on a regular basis. Nonetheless, given that this was a matter of concern for the Council as well as HPL, little attempt seems to have been made to clarify by interview or written questionnaire, the extent of the use of the different routes. Therefore, at this stage, the written evidence of use needs to be taken at face value unless there is substantive evidence which means that a different conclusion should be reached on a particular matter.
33. Use of the routes appears significant with many people stating daily or weekly use. The earliest utilisation dates back to the 1950's with many UEF's stating use in excess of twenty years. Use was generally recreational by nature, often as part of a wider circuit, and most refer to having seen others using the routes, mainly on foot or horseback.
34. There does not appear to have been any obstruction of the routes during the relevant period until very recently, albeit obstruction is unlikely to have occurred in relation to these routes, as they correspond with rights of way already holding public footpath status.
35. Nine users specifically stated permission for use was given by a landowner. The Council stated that another 3 users assumed use was allowed either through word of mouth or by lack of challenge, however I do not necessarily agree that these 3 were using the routes 'with permission', as consent had not been given directly to them. A further 15 users indicate use was without permission.
36. Only one challenge was evidenced, being from a park ranger. No details were given of where or when this challenge occurred, but as the country park seems to be a fairly recent addition to the area, it is reasonable to assume it was within the last few years.

*Conclusions on user evidence*

37. There is evidence of extensive daily use of the routes in question for many years, with nearly two thirds being 'as of right' (without force, permission, or secrecy). It appears that any permission given to ride across the land was verbal and

predominantly given several decades ago in the 1980's. No signs appear to have been erected to inform other users that use on horseback was with permission of any landowner and until very recently there were no obstructions to use of the routes. Overall, I consider that the user evidence is sufficient to support the dedication of public bridleways for routes A-B-C, B-Y-D-E-X-G, and H-I.

### *Landowner Evidence*

#### *Route A-B-C (FP4)*

38. Mr Hodgkin has owned land in the area since 1997 including the northern section of Route A-B-C and is opposed to the upgrade, advising there is a notice that states 'Footpath only- No bikes horses or vehicles' as well as a 'footpath' sign presumably erected by the Council. He also advises of the erection of a 10-foot gate on this section of the route to block vehicular traffic, due to the development of housing and the country park. His tenants who have a livery yard are not allowed to access Route A-B-C from Hall Lane but do so from a property further south along the route. He states he has not successfully turned other riders back from using this route.
39. Mr Warnes who owns land northeast of section A-B also opposes the upgrade of this section and recalls the existence of the same sign as mentioned by Mr Hodgkin. Mr Warnes also mentions a section of fencing partially blocking this section to discourage use of anyone other than pedestrians.
40. The user evidence claims the gate was only erected in 2021 and the general view was that its purpose was to prevent vehicular traffic, as a gap was left to the side which allowed other users through.
41. Mr Rudd, a Valuer for the Council, who own the land where the country park is sited advised that they purchased the land in 2019. Although they initially erected a bridle gate at point A1, the long handle for the gate was then later removed to discourage the regular use by horse riders. He noted that since the removal of the long handle, wire has been cut from the fence next to the gate allowing continued access to horses. It was noted by a Council Officer on their site visit, that the country park had incorporated riding routes within it, notably with a cul de sac riding route that terminated at point A1 where a gap allowed exit onto Route A-B-C (Footpath 4).

#### *Route H-I (FP11 and part FP12)*

42. The Diocese of Norwich own the southern section of Route H-I as well as adjoining land and object to the upgrade of this route. They state that they have owned the land for over 500 years and reference a notice that states 'Car park for church users only – Thank you'. They also state that access is restricted every time there is a wedding.
43. Mrs Corbin owns land adjacent to Route H-I and has done since 1955 and the mid 1980's. She states that this route is used daily by walkers, equestrians, and a few cyclists, and is in favour of the upgrade.
44. Mr Ayers a landowner adjacent to Route H-I is also in favour of the upgrade and has known the area for 49 years. He recalls daily use by pedestrians, equestrians, and cyclists as well as by vehicles accessing adjacent properties.

*Route B-Y-D-E-X-G (FP8)*

45. The only notable information submitted regarding Route B-Y-D-E-X-G is that at Point G there is a very rusty aged sign placed at low level, that the Council Officer noted on their site visit. The sign is only attached on one side, facing Woods Lane, and is believed to have been in situ for many decades. Many of the letters have worn away or fallen off, but from what remains, the sign states 'Footpath only – no Roadway.' None of the UEF's mention this sign and the applicant states that the sign was illegible long before the relevant twenty-year period, with a thick covering of algae that has only recently been removed to make it readable.

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

46. I do not appear to have full ownership records before me for the lands over which Routes A-B-C, B-Y-D-E-X-G, and H-I sit, and it is unclear quite who owns or owned which pieces of land, however the Council in their report advise that all landowners were consulted, and I have no reason to believe otherwise.

47. For Route A-B-C, the northern section between A-B is opposed by the current landowner, and an adjacent landowner. However, measures taken to prevent equestrian use were only very recent, with gating and signs being erected at a similar time to the application being submitted. There is no evidence before me of a lack of intention to dedicate for points B-C.

48. For Route B-Y-D-E-X-G, the only lack of intention to dedicate that I can determine from the information before me is a very old sign at point G, placed extremely low to the ground and facing outward towards the road. It would not necessarily have been observed by equestrians approaching from the direction of B-Y-D-E-X because of its singular facing and close proximity to ground level. It is also almost illegible, and I have no reason to doubt the applicant in her comment that until recently the sign was also thickly covered in many years' worth of grime.

49. For Route H-I, I see no evidence of intention not to dedicate, indeed the majority of landowners adjacent to the route are in support of upgrading the footpath to a bridleway. I accept the notice referred to by the Diocese of Norwich, however the notice refers to the car park being for use by visitors to the church only and does not specifically demonstrate that there was no public right of way for equestrians.

50. Overall, apart from those users that were given direct permission, there is no significant evidence of any action being taken by any landowner in specific response to use by equestrians.

*Conclusions on statutory dedication for routes A-B-C, B-Y-D-E-X-G, and H-I.*

51. It is undisputed that there has been significant use by equestrians over the footpaths in question for an exceptionally long period of time.

52. The Council and HPL suggest that the user evidence forms may be too generalised to form a true reflection of use over each individual route, however the forms must be accepted at face value in the absence of further testing.

53. The Council are of the opinion that the user evidence is insufficient to show dedication, due to the predominantly permissive nature of the use. However, I do not necessarily agree this to be the case, as use by a higher proportion of those submitting UEF's was stated not to be with permission of a landowner.

54. Moreso, those 9 that did have verbal permission were generally given that consent in the 1980's and it seems that land ownership may have changed hands for parts of land over which permission may have been given. There is also uncertainty as to how much of each route, or indeed how many of the routes, any permissions would have applied to, as the history of land ownership of most of the routes is not before me.
55. There is also limited evidence of any landowner taking positive action that was sufficient to demonstrate a lack of intention to dedicate higher public rights over the routes.
56. Having regard to these and all matters raised in the written representations I conclude the available evidence shows, that on the balance of probabilities, routes A-B-C (FP4), B-Y-D-E-X-G (FP8) and H-I (FP11 and part of FP12) should be of a higher status and that the Definitive Map and Statement for the area should be amended to show these routes as having bridleway status.

### ***Common Law***

57. I have concluded that the written evidence is sufficient to raise a presumption of dedication under statute for these routes, however this would not prevent a case alternatively being made for the dedication of said routes at common law.

### **Route E-F**

58. Route E-F commences at point E on the attached plan, at its connection with Route B-Y-D-E-X-G (FP8) and runs generally north to south through a field to join up with Church Lane at Point F. HPL, acting for Persimmon Homes, are primarily concerned with the route E-F across 'The Field'. They appear to have owned the land in part since 2013 and in full since 2019.
59. Route E-F was not depicted on historical mapping and was not physically apparent on the ground in the aerial photo of 1945, however from 1999 onwards aerial photos show a clearly definable route following the line claimed.

### ***Statutory Dedication***

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

60. For route E-F the date of the status of the route being brought into question is problematical. Accordingly, it is appropriate to examine the landowners actions to establish a possible bringing into question date.
61. The applicant mentioned Heras fencing and concrete blocks being placed across the field entrance at Point F in 2019 making the field inaccessible. This is supported by an image provided by HPL from that year and aligns with their clients purchase of the northern section of the field. However, should the twenty-year period be calculated from that date, as 1999-2019, the claim may fail due to The Diocese of Norwich depositing a map and statement under Section 31(6) of the Highways Act 1980 in 2010 for the southern section of the land, which was then purchased in 2013 by the client of HPL. Albeit the deposit was not duly followed up by a declaration, the Council hold that although the process was not completed, the



deposit of a map and statement does show a lack of intention to dedicate at this time.

62. HPL submitted in evidence an Inspector's report following a 2008 non-statutory Inquiry into a 2006 Town or Village Green Application (TVG). From this document it was suggested that an alternative date where the status of the route might have been brought into question would be 1992 when a steel gate was erected at Point F. According to the TVG Inquiry of 2008, this had 'upset horse riders'. If 1972-1992 is used as the relevant period, the claim may fail due to the interruption of the field being secured and used for grazing between 1987-1989, albeit the evidence before me seems to suggest the northeast corner rather than the entire field was used.
63. Accordingly, as also suggested the twenty-year period could also be taken from 1967-1987. There is evidence of use for this period, although it is much less than for a more contemporary period, and without specific detail of use of this route, may prove more difficult to substantiate.

#### *User evidence*

64. The 2008 Inquiry document clearly indicates that there was significant use of The Field by walkers and equestrians, with most users referring to a track running on the alignment of E-F. The Inspector in this instance concluded that the only use of the field during the relevant period of which there was any substantial evidence was use of the north-south path by walkers, dog walkers and horse riders. She held repeatedly that the user evidence presented with the application and at Inquiry was representative of 'a right of way type user' rather than a village green user' and that the 'nature of use was limited to passing and repassing on foot, and to an extent horse, over the defined track from east of the works site to meet FP8 and its use accords with a right of way'.
65. The route and usage described in the 2008 Inquiry report is supportive of and correlates with the user evidence forms submitted in 2021 and the applicant's further comments. However, I do concur with HPL that the UEF's contain evidence of more generalised use of all of the routes, rather than specifically relating to this particular route. HPL also comment that none of the UEF's mention the fencing that was clearly in place in this area over a number of years.

#### *Landowner evidence and whether the landowner demonstrated a lack of intention to dedicate*

66. A statutory declaration was submitted by Mr Fane the site manager for The Field until 2004. He states that a gate was installed in 1992 at point F and in 1993 the fencing on the land was reinforced and some corrugated iron sheeting was also placed across the entrance at Point E. A stockade was also built at that time in a gap in fencing that ran east to west across the field. Mr Fane commented that although regular repairs were undertaken, the fencing was often cut shortly after. He also referenced signs that were erected advising there was no public right of way, which then disappeared shortly afterwards.
67. Mr Fane stated that on the few occasions he saw people on the Field when he was visiting the site, he would challenge them, although I note that in his 2008 evidence, Mr Fane stated that he 'would not run up to people to challenge them' but would do so if they walked up to where he was walking.

68. It is clear from the evidence before me that the landowner made several documented attempts to secure the land at this time. Evidence of Mr Fane, which was submitted in the TVG Inquiry of 2008, clearly referenced informal use of the track in the 1990's and that the measures were put in place to stop such use as well as other forms of incursions onto the site. In 1998 Mr Fane's documentation for the TVG Inquiry referred to the continued use of the site as footpaths by the public and that any attempts made previously to fence the area were unsuccessful and future attempts to fence might not be justified. The gate that was erected and padlocked in 1992 was apparently unpadlocked by 1998 and had disappeared by 2004.
69. An image of point F in 2009 seems to show no fencing at that time however further images from 2011 and 2012 show fence posts and some wire fencing / Heras fencing at that location, albeit with what appears to be an unfenced gap to the side.

*Conclusions on statutory dedication for Route E-F*

70. The applicant feels that access across E-F was never an issue until 2019. She advises that the gate in situ until 2004 had a gap at the side that allowed access, and that this was also the case for fencing in situ from 2011. She believes use was not impeded until July 2019.
71. The Section 31(6) deposit made in 2010 may protect the southern section of the land until 2020, but without the associated Declaration being made it is unclear as to whether the unfinished process affords such security. I accept the evidence of Mr Fane that substantial attempts were made in the early 1990's to secure the land from the establishment of public rights.
72. It is undisputed that grazing took place on the land in the late 1980's and that there was sleeper and wire fencing erected although it is unclear if this interrupted use in any way.
73. Given the potential for the status of the route E-F to have been brought into question in 2019, along with the evidence which suggests that access was not available for the whole of the relevant twenty-year period, there is doubt as to whether dedication under statute could be found, as could also be the case for the earlier twenty-year periods suggested. Overall, there appears to be no clear twenty-year period to establish dedication by statute.

***Common Law Dedication***

74. Although statutory dedication may be doubtful, there is a large body of evidence stating use of this route over a number of years, which is reinforced somewhat by the comments of the Inspector from the TVG Inquiry.
75. There appears to be a timeframe between 2004 when the steel gate disappeared and 2010 when the Section 31(6) was deposited, where the user evidence when taken in conjunction with the lack of cogent evidence to show that the landowner took any action between these dates to deter such use, could potentially give rise to an implication of the dedication of a bridleway at common law.
76. I recognise the comments of HPL that the general nature of the evidence submitted in the UEF's is lacking in information specific to this route. I also accept their comments that there appears to be an absence from the forms of any reference to

the fencing in this area and accordingly I consider further testing is needed to clarify matters pertaining to use of this specific route.

## **Conclusions**

*Routes A-B-C (FP4), B-Y-D-E-X-G (FP8) and H-I (FP11 and part of FP12)*

77. I find there to be some uncertainty regarding particular matters that cannot be resolved from the written submissions before me. Nonetheless, a significant amount of evidence has been provided in support of use of these routes, which, when taken at face value, is largely credible. Albeit some of the evidence provided indicates use by permission, there is little clarity on exactly what routes and how much of them, were covered by any permission granted. There is a larger proportion of users that do not indicate use by permission and there is a lack of evidence to show landowners took any substantive action not to dedicate.
78. On the balance of probabilities, I conclude that there is sufficient evidence to demonstrate that rights of way at bridleway status subsist for routes A-B-C (FP4), B-Y-D-E-X-G (FP8) and H-I (FP11 and part of FP12).

*Route E-F*

79. I have firstly had regard to the potential for the route to have been dedicated under statute. Whilst I recognise that this may not be applicable, there is the potential for this route to have been dedicated at common law.
80. The evidence provided both in support and against the route is all very credible, however there are conflicts of evidence for certain timeframes that cannot be resolved from the written submissions. Some further testing is necessary to fully illuminate important details that would assist in resolving the conflicts that are apparent.
81. As set out in the legal framework above, in order to justify the making of a definitive map modification order to add a public right of way under sub-section 53(3)(c)(i) of the 1981 Act it is necessary only to provide sufficient evidence to 'reasonably allege' the existence of a public path.
82. Where there is a conflict of credible evidence but no incontrovertible evidence that a way cannot exist, then the answer is that a public right of way has been reasonably alleged to subsist. Since that is the threshold that must be reached in order to make (though not confirm) an order, I conclude that the evidence is sufficient to reasonably allege that a right of way exists.

## **Other Matters**

83. A number of matters have been raised by some of the opposers of the application. These mostly relate to the desirability, suitability, financial burden, and safety concerns likely to arise if the footpaths were to be upgraded. Whilst I recognise all of the above as very genuine concerns, the legal criteria on which this case must be determined does not allow consideration of such matters.

## **Overall Conclusion**

84. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be allowed.

### **Formal Decision**

85. The appeal is allowed and in accordance with Paragraph 4(2) of Schedule 14 of the 1981 Act, Suffolk County Council is directed to make an Order under Section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for the area by upgrading the existing footpaths to bridleway status and by adding a public bridleway as shown between points E-F on the plan attached.
86. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

*A Behn*

**Inspector**

