

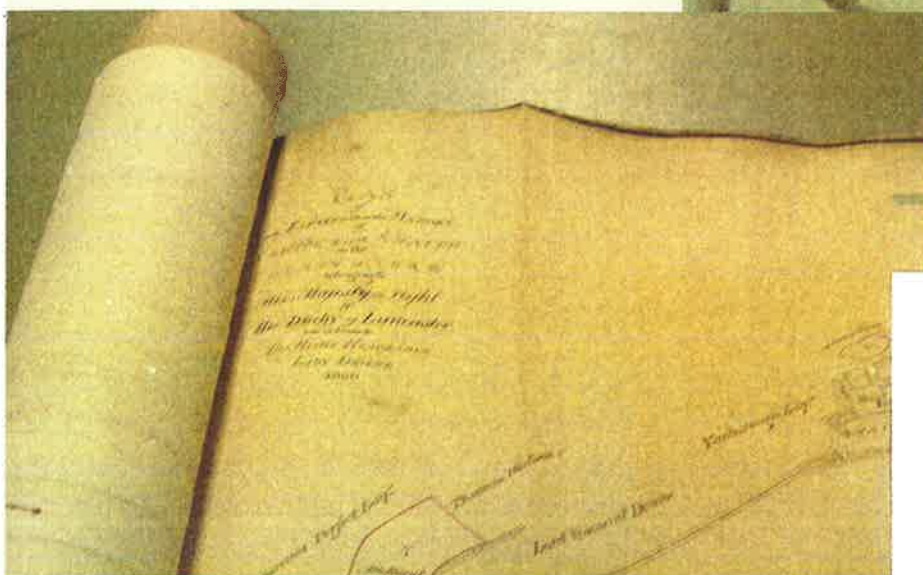
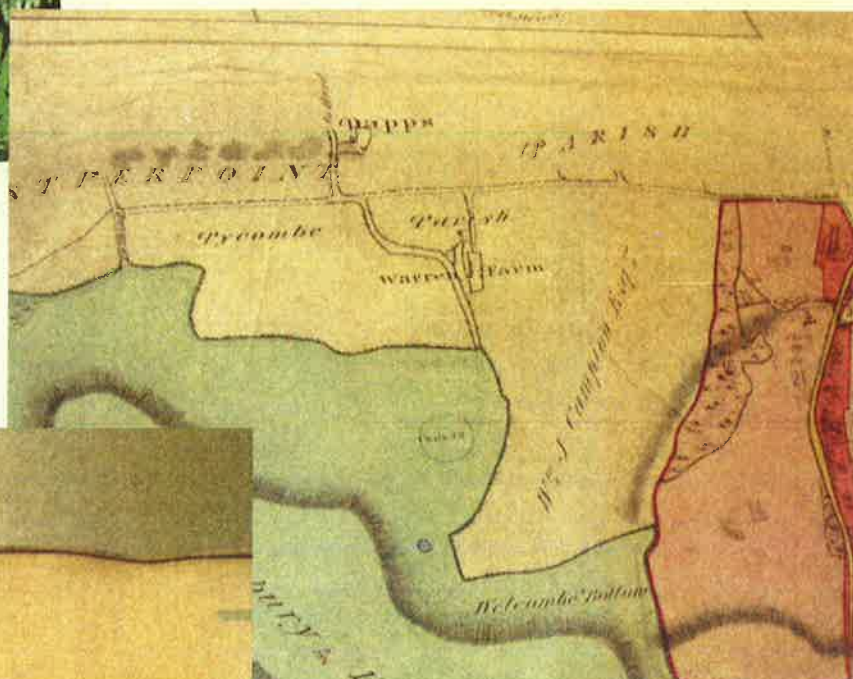


ramblers
at the heart of walking



FORGOTTEN

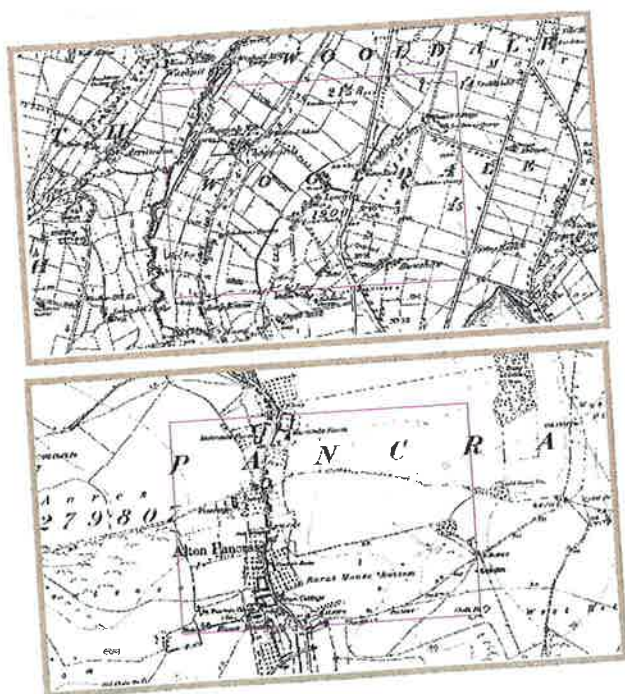
PATHS



ramblers
at the heart of walking

Well over 130,000 miles of public paths criss-cross England and Wales. This network has evolved across the centuries; many of the paths date from medieval times. They link villages, hamlets and roads and all have their own unique history, often reflecting the changing patterns of human interaction with the landscape. Millions of people, in town and country alike, are still using public paths every day.

But miles and miles of our public rights of way network are under threat of closure simply because they have never been legally recorded on a definitive map.



In 1949 Parliament decided that, in order that everyone may know which paths are public rights of way, they should be recorded on a definitive map. Definitive maps for England and Wales were therefore drawn up from 1949 onwards and are legal evidence of the existence of a right of way at the date of the map. All surveying authorities (county councils or unitary authorities with the exception of the Inner London boroughs) should hold a definitive map and update it regularly. Ordnance

Survey (OS) uses this information when showing rights of way (ROW) on its maps. But for one reason or another, many rights of way have never been registered on a definitive map and consequently are not 'proven' rights of way in a legal sense. We are calling these 'forgotten paths', although lots of them are still in regular use and far from 'forgotten' by those who use them, whereas many others have disappeared completely over time.

In the short term there may be problems in getting these 'forgotten paths' maintained; imagine trying to get an authority to keep a path open and in good condition if there is no legal proof that it is a public right of way!

In the long term, however, the problem is even more serious. The Countryside and Rights of Way (CROW) Act 2000 has brought in a deadline to have all paths recorded on the definitive map by 2026 – after this date it will simply be too late and any historic paths, ie ones which came into existence before 1949, that are not registered will be extinguished forever.

Introduction

How you can help

STAGE ONE: Researching and gathering evidence

Finding and identifying a forgotten path

Collecting evidence

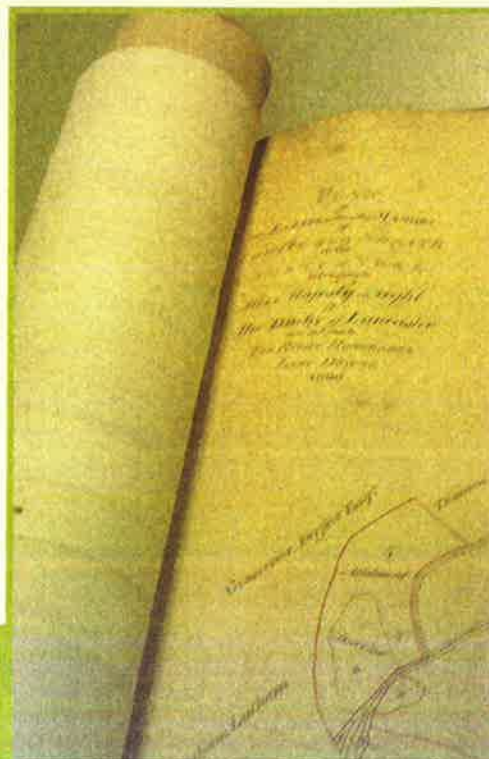
Where to look and what to look for

STAGE TWO: Making a claim for a path

FURTHER ADVICE

appendix

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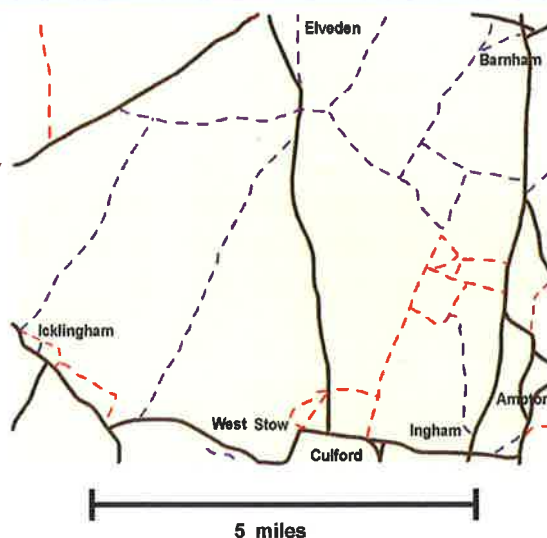
page eleven

You can make a difference!
A large number of rights of way have been added to the Suffolk definitive map between 1985 and 2005. Approximately 130 additions – about 105 miles – were mainly down to the efforts of Ramblers volunteers.

Paths need to be recorded on definitive maps if they are to be protected. This booklet suggests ways to track down any forgotten paths where you live and gives advice on how to look for evidence to prove that paths should be registered on the definitive map.

This is fascinating work which will appeal to people interested in local history, researching documentary evidence and preserving our unique heritage of paths for generations to come—or for that matter, to those who enjoy doing a bit of amateur detective work. The year 2026 is no longer that far off, and there is much to be done, so the more people we can involve and the sooner we start, the more paths we can save.

Part of north west Suffolk – showing the difference to the definitive map of the area made by the rescue of forgotten paths by Ramblers volunteers since 1985



----- Rights of way on original Definitive Map
----- Rights of way added to Definitive Map since 1985

This booklet explains the basics of how to start your search and, if you are successful in finding a forgotten path, how to apply to have it added to the definitive map. The process can, in some cases, be lengthy and complex but don't be put off by that—there is plenty of experience of this kind of work within the Ramblers.

The Ramblers thanks John Andrews, for many years Suffolk Area Footpath Secretary, for his substantial contribution to the production of this booklet.

Stage One:

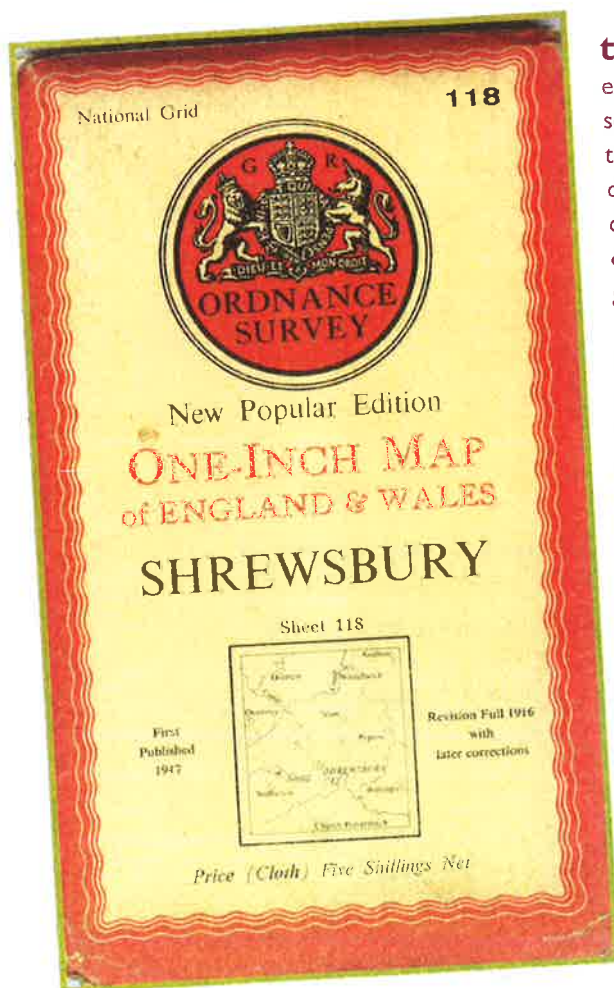
Researching and gathering evidence

TIPS

Finding and identifying a Forgotten Path

There are several possible starting points:

one The most likely reason for doubting whether the definitive map is complete is a paucity of rights of way shown on it – particularly in areas close to villages or towns. Try comparing what the definitive map shows with Ordnance Survey maps of the same areas dating from the early 20th century – you should be able to find these in your County Record Office. If, as is quite probable, you see paths marked on the early maps that are not now recorded as rights of way – then your first step could be to see if you can find anything about them in older documents.



two Another way is to explore the area on foot and see if you can find paths in use that are not on your up to date OS map. If they aren't, the chances are that they won't be on the definitive map either – go and check.

three The definitive maps of some authorities have curious and/or illogical features. You may find ROW on the map that appear to have gaps or stop suddenly for no apparent reason. Sometimes paths have been partially added to the definitive map when the whole path should have been included. It could be that a length of the path in one parish has been forgotten and it is possible that you could track down evidence to help put the rest of the path on the map.

four Maybe a path which you or others have previously used without hindrance is suddenly blocked or obstructed? This is more likely to happen to an unrecorded ROW, and the appearance of the obstruction could make it necessary to prove the public right before it can be removed.

What is a definitive map and statement? The definitive map and statement is a publicly available set of maps and documents which should show the routes of all public paths. The fact that they do not show all such paths is the reason for this project.

Before spending a lot of time on your first searches it would be sensible to contact your surveying authority to find out how many 'claimed' ROW they have listed in their files and what and where they are. Bear in mind that some volunteers have already been engaged in this task for years and there is no point in repeating work that others have already done.



Collecting evidence

Authorities are now required to keep, and make available for public inspection, a register of applications for definitive map modification orders that they have. Remember that it can take some time before amendments to the definitive map appear on the latest Ordnance Survey maps, as OS maps are published only every five years or so. Do not rely on OS maps as a source of accurate, up-to-date information about what is on the definitive map.

You need evidence to back up an assertion that any route is a public right of way and should, therefore, be on the definitive map. This evidence must not only show that a right of way exists; it must also indicate which type of right of way it is – a footpath or a bridleway, for example.

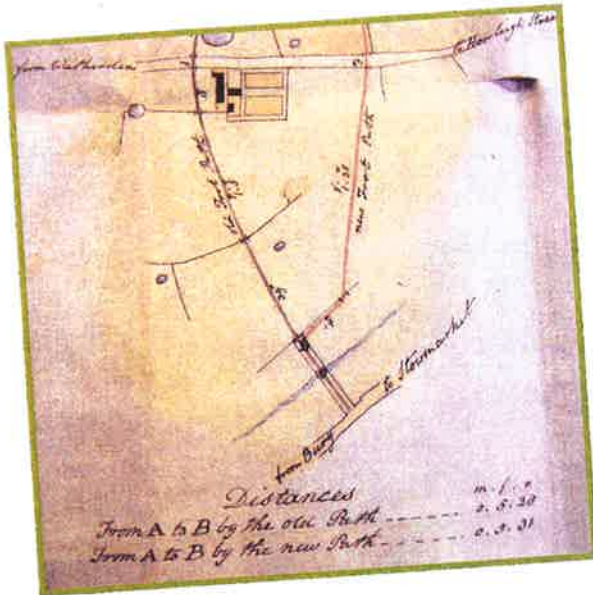
Much documentary evidence is open to interpretation and may well be vigorously contested. Different types of evidence carry different weight – some evidence is deemed stronger than others. It is usually the case that several pieces of documentary evidence will need to be found in each case – a single document will rarely stand as conclusive proof in its own right.



**See the appendix on page 11
for more information on
rights of way**

Where to look and what to look for

There is a wide range of documents which can contain the kind of evidence you need, but some are of much more importance than others. The following list is not exhaustive, but probably includes all those most likely to be of use. Be aware, however, that, for various reasons, you will rarely find all of them for any one path or area.



Plan showing the new route of a footpath at Haughley created by an 1815 Quarter Sessions Diversion Order – but not yet on the definitive map.

A. Containing potentially very good evidence – sometimes conclusive:

- 1 Highway orders
- 2 Inclosure Awards and maps*
- 3 Highway maintenance records
- 4 Deposited maps and plans

* there is currently a difficult legal issue about the evidence relating to footpaths and bridleways awarded by inclosure commissioners.

B. Often containing useful supporting evidence:

- 5 Tithe maps and apportionment schedules
- 6 Defence legislation orders
- 7 Road maps
- 8 Records associated with the Finance Act of 1910
- 9 Local authority records

USER EVIDENCE

In addition to using historic documentary evidence to show that a right of way came into existence in the past, it is also possible to claim a route on the basis of public usage. The law assumes that if the public has used a particular route 'as of right' for a period of at least twenty years (and in some circumstances for lesser periods), then the landowner intended to dedicate the way for public use.

Some paths are claimed solely on the basis of user evidence and other are claimed using a combination of user and documentary evidence.



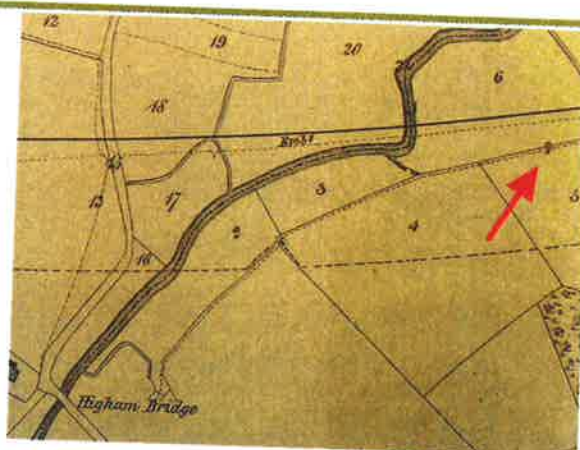
Evidence can be collected and submitted either by getting witnesses to complete an evidence form which contains questions about the details of the route and their usage of it, or by getting the witness to make a statutory declaration about their usage before a solicitor or commissioner for oaths.

More information about collecting evidence from users is given in the 'blue book', *Rights of Way: A guide to law and practice*. If, when researching a path, it is clear that current use is being made of it, then it will certainly be worthwhile backing-up your documentary evidence with that of users.

- 10 Estate and other private maps
- 11 Published Ordnance Survey maps and books
- 12 Other Ordnance Survey documentation

C. Items which can contain evidence of greatly varying strength, but it is largely a matter of luck whether you will find anything helpful:

- 13 Glebe Terriers
- 14 Manorial records
- 15 Records of private estates
- 16 Aerial photographs



Extracts from an 1843 railway plan and reference book showing a public footpath not on the definitive map

Parish of Migham		
Number	Description of Property	Owner or Registered Owner
1	Reverend Archd.	The Lord of the Manors
2	Field	John Thacker, Esq.
3	Field	ditto
4	Field	ditto
5	Field	ditto
6	Field	ditto
7	Field	ditto
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100	Field	ditto

Most of these will be kept in your local/county record office or by the surveying authority itself, but the original tithe maps (5), much of the 1910 Act documentation (8) and a lot of the OS material (10 & 11) are held in the National Archives at Kew. Your local Ramblers' Association footpath secretary may have useful documents too. Contact your local Ramblers Group to find out.

Stage Two:

Making a claim for a path

APPLYING

Once you've got your evidence, you need to submit it to the surveying authority, together with a map of the route, with a request to have the path in question added to the definitive map.

There are two ways in which this can be done. You can simply send in the papers with an informal request that it should be examined with a view to making an order if the authority agrees that the evidence is good enough. However, there are significant disadvantages in making a claim in this informal way.

The alternative is to submit a formal application following a clearly laid down procedure. This gives you important additional rights, but you do need first to discover the names and addresses of the owners of the affected land. Some local authorities will assist in this process. For more detail refer to the 'blue book' – *Rights of Way: A guide to law and practice* by John Riddall and John Trevelyan.

**Forgotten Path
volunteers often
carry on searching
for other paths and
collecting evidence
for these while they
are waiting to hear
the outcome of
claims already
submitted.**

Right: part of the prehistoric, later Roman, road known as the Icknield Way near Elveden – added to the definitive map on the basis of the evidence provided by a variety of old documents.

Making an application under

Please let us know whenever you make an application (our contact details are on the back cover).

1. Send in the two forms* that have to go to the surveying authority, i.e. the notice of application, together with a map of the route at a scale of at least 1:25,000, and the 'certificate' that you have served notice on all owners and occupiers of the land crossed by the alleged ROW, and send the prescribed notices to those owners and occupiers (NB If you can't find out the owner you can get highway authority approval to post a notice instead).

*Some authorities have their own standard format that they prefer people to use. Otherwise the specimen forms on pp 124 and 125 of the blue book will show you how to word them.

2. At some point – it may involve a long wait – the authority will tell you what it intends to do about your application. It may first discuss the evidence and/or give you an opportunity to make further comment



FOR A MODIFICATION ORDER

Schedule 14 of the Wildlife and Countryside Act 1981

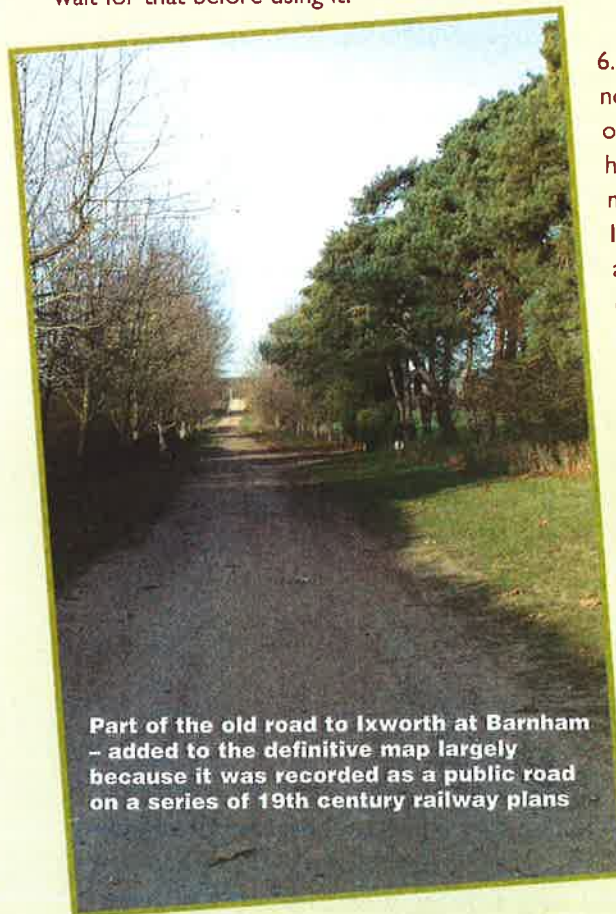
before reaching a formal decision. Authorities work in different ways: some give the decision-making responsibility to a committee and others delegate that power to officers.

3. If the authority decides that the evidence is good enough to make an order, it will be published in due course and will be the subject of public notices advising of the right of objection. If they don't make a decision within 12 months you can appeal to the Secretary of State (see 7 below).

4. If the authority refuses to make an order – and provided that you have made a formal application – you have a right of appeal to the Secretary of State. This sounds daunting, but only involves filling in a form and sending it to the Government Office for the North East which has been designated to deal with appeals for the whole of England (Welsh appeals should be sent to the Welsh Assembly Government in Cardiff), together with a summary of the reasons why

you believe the application should not have been refused. Take heart from the knowledge that many appeals succeed. If you are successful, the authority will be instructed by the Secretary of State to publish an order.

5. If there are no objections, then your efforts have succeeded and all that remains to be done is for the authority to 'confirm' the order and add the newly safeguarded right of way to the definitive map; but you don't have to wait for that before using it!



Part of the old road to Ixworth at Barnham – added to the definitive map largely because it was recorded as a public road on a series of 19th century railway plans

6. If, as is more often than not the case, there are objections – the authority has to refer the whole matter to the Planning Inspectorate, which will arrange for the holding of a public inquiry by an independent Inspector. In some cases – mostly when the issues are very straightforward or there is only one objector – the case is decided after an exchange of written statements. The inspector will hear – or read – all the evidence put forward by the various interested parties, and anybody else who has information to contribute, and then

publish a final decision on whether

or not the case has been proved to his or her satisfaction and whether the order should therefore be confirmed.

7. It is by no means uncommon for a surveying authority to take a long time to get round to examining the evidence and deciding on the application. If the application has not been determined within 12 months of the date of application – and provided that you have made a formal application – you have the right to ask the Secretary of State to direct the authority to come to a decision within a specified time limit. It has to be said that such requests do not always prove entirely successful, but, because the authority has to justify its inaction, they can help to move things along more rapidly than might otherwise have been the case.

appendix

one

What is a public right of way?

A right of way is a path that anyone has the legal right to use on foot, and sometimes with other modes of transport:

- 1 Public footpaths are open only to walkers
- 2 Public bridleways are open to walkers, horse-riders and pedal cyclists
- 3 Byways Open to All Traffic (BOATs) are open to all classes of traffic including motor vehicles, although they are used mainly as footpaths and bridleways and might not be maintained to the same standards as ordinary roads
- 4 Restricted Byways are a new category of public right of way which will be created, initially by the reclassification of ways currently shown on definitive maps as 'roads used as public paths'. A restricted byway will be a public right of way for walkers, pedal cyclists, those on horseback or leading a horse, and for non-motorised vehicles such as horse-drawn carriages. However, legislation that should come into force during 2006 may mean that very few additional byways open to all traffic will be added to definitive maps: instead, if vehicular rights can be shown to exist, the way in question will simply be recorded as a restricted byway. Look out in Ramblers publications for news of this important change in the law.

two

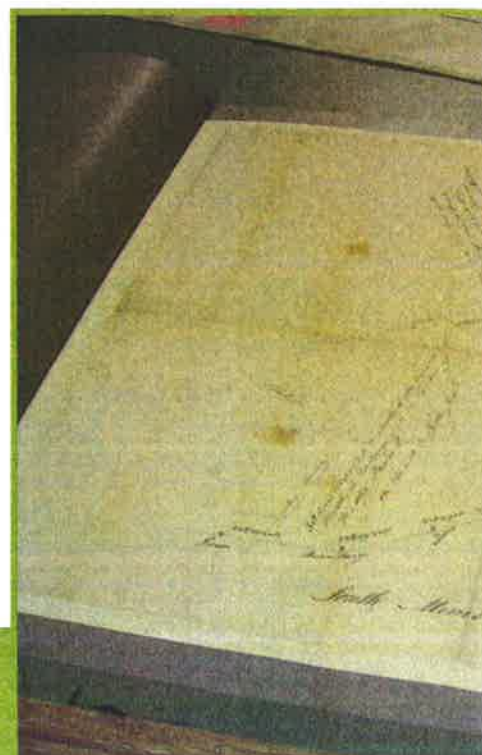
What are my rights on a public right of way?

You can walk it, stop to rest or admire the view, or to consume refreshments, providing you stay on the path and do not cause an obstruction. You can also take a pram, pushchair or wheelchair (though the surface of the path may not always be suitable), or a dog. However, you should ensure dogs are under close control.

three

How do I know whether a path is a public right of way or not?

The safest evidence is the official 'definitive map' of public rights of way – which is why we need to get as many paths registered on the maps as possible! These maps are available for public inspection at the offices of local highway authorities and of district councils. Information derived from definitive maps is shown by the Ordnance Survey on its Outdoor Leisure, Explorer, and Landranger maps.



Surveying authorities are under a duty to keep the definitive map and statement under continuous review, by updating them when a path has been altered (perhaps because it has been diverted) or adding on a new record of a path which was previously forgotten. This process involves making what is called a 'definitive map modification order' (DMMO). However, the DMMO procedure applies only to rights that already exist and need recording – it is not a means of creating new rights.

four

Are all footpaths rights of way?

No. There are many paths that the public is able to use but that are not legally rights of way and which do not enjoy the same protection. Paths crossing public parks and open spaces, commons and other sites to which the public has formal or de facto access may not necessarily be rights of way, though some of them are. Other paths, known as permissive routes, are open to the public because the owner has given permission for them to be used: often there is a notice on the path making it clear that the owner has no intention of dedicating the path as a right of way, and reserving the right to withdraw the permission.

Towpaths, paths across land owned by organisations such as the Forestry Commission and National Trust who have a policy of providing access, and off-road multi-user routes such as the National Cycle Network, are available for public use but may not be rights of way.

five

Who owns the paths?

The surface of the great majority of public ROW belongs to the highway authority. To be more precise – the authority owns the surface and the air above to a sufficient depth and height to enable it to control, protect and maintain the route. Below that (the sub-soil) it normally belongs to the owner of the adjoining land.

six

Which councils are responsible for paths?

The council that has principal responsibility for rights of way in a particular area, known as the highway authority, is either:

- 1 the county council
- 2 the unitary authority, or
- 3 the London or metropolitan borough council

These councils are also surveying authorities, having the duty to prepare and maintain the definitive map (except in Inner London).

