

Form of application for Modification Order

Wildlife and Countryside Act 1981

Definitive Map and Statement of Public Rights of Way for the County of Norfolk

To: Norfolk County Council

Of: County Hall, Martineau Lane, Norwich, Norfolk, NR1 2SG

I/We, Helen Chester, Norfolk County Access and Bridleways Officer
of The British Horse Society, Access Department, Abbey Park, Stratton, Kenilworth,
Warwickshire, CV8 2XZ
hereby apply for an Order under Section 53(2) of the Wildlife and Countryside Act
1981 modifying the Definitive Map and Statement for the area by (please delete as
required):

~~deleting the footpath / bridleway / restricted byway / byway open to all traffic
from _____ to _____~~

~~adding the footpath / bridleway / restricted byway / byway open to all traffic
from Great Ellingham FP4 to Attleborough Road, the route known as Swamp Lane
in the Parish of Great Ellingham.~~

~~upgrading/downgrading to a footpath / bridleway / restricted byway / byway open to
all traffic/
the footpath / bridleway / restricted byway / byway open to all traffic
from _____ to _____~~

~~varying/adding to the particulars relating to the footpath / bridleway / restricted byway
/ byway open to all traffic
from _____ to _____
by providing that~~

and shown on the map accompanying this application.

I/We attach copies of the following documentary evidence (including statements of
witnesses) in support of this application:

List of Documents

Tithe Map for Great Ellingham
OS first edition map
Bartholomews map
Inland Revenue Valuation Act map
IR127/9/531
MAF map 73/28/85
Inspire land registry map

Dated: 23rd May 2021

Signed.....*H.C. Chester*.....



Ordnance Survey 1:25000 scale map extract showing application route

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

7. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

8. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

'In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."