THE DEFINITIVE MAP AND STATEMENT
A TALE OF UNFULFILLED PROMISES

1. In September 1947 the report of the Committee on Footpaths and Access to the Countryside (the 'Hobhouse Committee') was published. It recommended that all public rights of way should be surveyed and recorded on maps: 'We consider it essential that a complete survey shall be put in hand forthwith so that an authoritative record of rights of way in this country may be prepared before it is too late'.

2. The recommendation was put into effect through the enactment of sections 27 to 38 of the National Parks and Access to the Countryside Act 1949 (NPACA 1949). Under these provisions all county councils in England and Wales were given the duty of surveying and mapping all public rights of way in their area, classifying them as bridleways, footpaths or roads used as public paths (RUPPs).

3. The survey had to be undertaken in three stages: draft, provisional and definitive. The showing of a path on the definitive map was, and is, conclusive evidence that it was a public right of way at the date the map was prepared - (the relevant date). The survey was optional in London and in the county boroughs; county councils were also empowered to exclude built up areas from the otherwise compulsory survey.

4. Early hopes of a swift completion of the initial task of surveying and preparing maps were not realised as insufficient resources were made available by many councils. The compulsory survey in the counties was finally completed with the publication of the definitive map of North Bedfordshire in May 1982.

5. An attempt to speed up matters was made by Schedule 3 of the Countryside Act 1968 (CA 1968), particularly with the reviews which were supposed to be carried out once the initial (definitive) maps had been prepared. However, by requiring all disputes to be determined by the Secretary of State, central government took on a task to which it was not prepared to devote sufficient resources. Coupled with complications introduced by local government reorganisation in 1974, this led to a virtual breakdown of the system in the late 1970s, with thousands of objections awaiting determination by the Secretary of State, and some definitive maps, which had never been reviewed, still reflecting the position at the date of the original survey in the early 1950s.

6. The approach adopted by the Wildlife and Countryside Act 1981 (WCA 1981) to tackle these problems was to replace the procedure for county-wide surveys and reviews with a system of continuous amendments to the definitive maps existing at the commencement date of the Act (28 February 1983), and the gradual compilation of definitive maps in all areas (except Inner London) not previously surveyed.

7. However, where a survey or review was in progress at the commencement date, the new continuous amendment procedure did not begin to operate until that survey or review had been completed or abandoned. In such areas the procedures under the 1949 and 1968 Acts remained in force.

8. The initial working of the 1981 Act procedures was monitored by the then Countryside Commission through a research contract awarded to the Ramblers' Association. The findings showed that while the Act had been effective in breaking the log-jam caused by the 1968 Act procedures and the inactivity of the Department of the Environment in its handling of them, the resources devoted by most surveying authorities to bringing definitive maps up to date had been insufficient for there to be any prospect of all claims for modifications to definitive maps and statements being dealt with in the near future.

9. The 1981 Act failed to provide a solution to the problems of recording public rights of way on definitive maps; The major problem with footpaths and bridleways has always been one of identification. Lawyers began to specialise in complex and arcane law principles and many court cases were heard where judges tried to interpret the new legislation, while many surveying authorities were reluctant to progress 'path claims' when there were clear difficulties regarding interpretation and precedent. In spite of the immense and complex task facing local government, many authorities again failed to make the necessary investment in trained personnel and finance.

10. Following the passing of the 1981 Act the performance of local authorities in keeping their maps under review, particularly in relation to the reclassification of RUPPs, has been uneven – with some authorities having to cope with very large numbers of applications for modification orders. In March 1999 the government published a document entitled "Access to the Countryside: The Government's Framework for Action" (London: DETR March 1999), which indicated an intention to strengthen and develop the system of public rights of way with a view to enabling a more ready response to the changing requirements of recreational use, the needs of land managers and the development of sustainable transport. The then Countryside Commission also a series of recommendations as to how the rights of way network might be improved - "Rights of Way in the 21st Century: Conclusions and recommendations" (CCP 550). This was followed by a government consultation paper "Improving Rights of Way in England and Wales". From this emerged the Countryside and Rights of Way Act 2000 (CROW ACT 2000).

11. The CROW Act 2000 has been brought into force in stages and some parts remain unimplemented. It has removed the duty on surveying authorities to reclassify RUPPs and such roads are now shown as Restricted Byways. Immediately following the commencement of these provisions the Natural Environment and Rural Communities Act 2006, ss.66-71 (NERC ACT 2006) came into force: subject to certain specified exceptions, all existing rights for mechanically propelled vehicles on ways not recorded on the definitive map or recorded as footpaths, bridleways or restricted byways were extinguished.

12. The 2000 Act also introduces a number of measures that are designed, in the long run, to reduce the number of modification order applications. It introduces a proposed cut-off date for the recording on definitive maps of footpaths and bridleways created before 1949 and the extinguishment of certain ancient rights of way that have not been claimed by a deadline currently fixed as 1st January 2026. (CROW ACT 2000, s.53 – not yet in force).

13. This is an acknowledgement of the difficulty in establishing whether or not paths were used by the public in the absence of evidence from persons who can claim to have used the path during the relevant period. A number of claims to historic paths are made on the basis of map and other historical evidence alone even though there is no evidence of current usage of the path and, in some cases, even when there is no continuing physical presence of the path.

14. Claims to these historic paths will have to be made before the cut-off date and any existing right of way that was in existence before 1949 will be extinguished. There are a number of exceptions to these provisions (See CROW Act 2000 s54). These measures should, when fully in force, reduce the number of definitive map modification order applications after the cut-off date.

15. In 2001 the Countryside Agency sets up the Discovering Lost Ways (DLW) project to take forward the government's promise that definitive maps should be completed before the 2026 cut-off. The major project starts with a scoping study and research into the archives of four test counties. Over 200 case files relating to potential 'lost ways' are assembled and applications are made to add four routes to the definitive map in Cheshire.

16. In 2007 Natural England takes over from the Countryside Agency and reviews the Discovering Lost Ways project. It says that fundamental problems with the system for processing claims for historic paths and recording them on definitive maps means completing them by trawling through archives – and as a result the Discovering Lost Ways project as a whole – isn't viable.

17. In 2008 the Department of the Environment, Food and Rural Affairs (Defra), agrees the Discovering Lost Ways project should be closed down [Seven years and several million pounds wasted]

and that the processes for adding historic paths to definitive maps should be reviewed instead. A group with stakeholders from three key sectors – landowners/managers, rights of way users and local authorities is asked to come together to come up with reforms to speed up the process for claiming and adding paths to maps and to make it less controversial.

18. By 2010, after reaching consensus in a controversial area of rights of way law, the Stakeholder Working Group (SWG) presents its report "Stepping Forward" to ministers. It contains 32 recommendations, fully supported by Natural England, which sets out ways of capturing or preserving useful routes before or at the 2026 cut-off date and of improving the process of adding paths to the definitive map in the years leading up to the cut-off date.

19. In 2012 Defra carries out a public consultation on the SWG recommendations and other rights of way issues.

20. In 2013 the Government publishes the draft Deregulation Bill (a drive to remove bureaucracy) which includes the main recommendations of the SWG. The Bill is examined by a Joint Committee in the House of Commons and the House of Lords. User groups submit evidence to the Committee and recommend that the rights of way clauses (which they worked so hard to achieve consensus on with members of the SWG) should remain.

21. 2014: The Deregulation Bill is published and begins its passage through Parliament and user groups give evidence to the Bill Committee. With less than 12 years to go to 2026 it's important that the SWG recommendations in the Bill become law. If the recommendations don't improve the process for adding paths the Government will need to think again about the cut-off.

22. 2016: The user groups continue to sit on the SWG and to push for the recommendations to be adopted.

23. 2018: The earliest point at which the final form of the regulations are to be adopted.

24. Two external factors took control and prevented any government progress on rights of way matters: Brexit and Covid. Post Covid the Deregulation Bill becomes the Deregulation Act 2015 (the Dereg Act 2015). Section 21; Unrecorded rights of way: protection from extinguishment, says:

In the Countryside and Rights of Way Act 2000, after section 56 (cut-off date for extinguishment of certain unrecorded rights of way) insert:

'56A. Unrecorded rights of way, protection from extinguishment'.

There follows provisions for the saving of certain paths from extinguishment in certain conditions.

N.B. THIS SECTION IS PROSPECTIVE, THAT IS, IT HAS NOT BEEN BROUGHT INTO EFFECT.

25. Last year the Government undertook to ditch the 2026 cut-off and bring in the SWG recommendations as soon as possible.

26. Following the disastrous three Prime Ministers in three months episode, and the Chancellors spring budget, the new Environment Minister (Therese Coffey) has reneged on the promise of her predecessor and intends to go back to the position pre-SWG and to enact the cut-off date provision as soon as possible. Thus wasting many years of effort, money and promises.

There is scant consolation in that she will extend the cut-off date to 1st January 2031 to allow us to get all our claims in!

---

27. To sum up:
The Discovering Lost Ways project and its successor Stakeholder Working Group arose from two (then) givens:

That the definitive map and statement is in most places incomplete, and in some places seriously incomplete, as regards unrecorded 'historical' public rights of way. This has been known for nearly 50 years, because CA 1968 and WCA 1981 sought to make the situation better

That there is a statutory 2026 cut-off (from CROW 2000, not commenced) after which 'historical' routes not on the DMS 'pending' system will be extinguished. There will be exceptions and saving provisions but this paper takes 2026 at face value (to be extended to 2031). Not to take the provision at face value is to adopt Mr Micawber's maxim of 'something will turn up'. Nothing has for twenty three years and there is now just three years left.

28. There is also now a third given:

That since the start of SWG in 2009 the national financial climate has resulted in local authorities losing so much revenue that the reality is that their capability in 2023 is (mostly) considerably worse than in 2009, and is unlikely to recover much, soon, if ever, as regards the timescale of the DMS issue. Putsimply, few, if any councils have, or will have, the resources to process more and increasingly more (for a period) definitive map modification orders.

29. The issue of 'lost historical ways' (and its obverse of paths on the DMS that should not be) is not the only issue. There is a large - huge? - number of 'anomalies' on the DMS. These are typically 'the path on the ground is on the other side of the hedge compared to the DMS' , or, 'these two paths do not join up by 20 feet'. At the moment each such anomaly, even where the existence of the right of way is not challenged, has to be rectified by an evidential DMO. Similarly, map/statement contradictions require DMOs to cure, as does the recording of limitations or a correct width. This is a massive task and it is difficult to see how it can ever get done via the current system.

30. Of similar size and challenge is the inclusion of 'excluded areas' (under 1949 Act provisions) into the DMS. Using individual evidential orders to cure excluded areas, some 74 years after the 1949 Act surveys (everywhere else) will be a major task – perhaps monumental in some areas.

31. There is in most authorities a backlog of DMMO applications, and in some authorities this is a big backlog which, on current rates of clearance, will take decades to clear. Again, a 2026 saving provision might stop route loss, but would not in any way operate to cure the underlying problem.

32. A hard cut off in 2026 (2031) announced recently, will inevitably, lead to an overloading of the order-making machine. The voluntary and landowner sectors will make applications, and these will jam the front end of the process, with few if any additional resolved orders issuing from the back end. Again. It is a 2026 saving, but it hardly cures the problem soon, if at all. This is mainly a resource issue: 'no bucks, no Buck Rogers', with some 'political will' issues in parallel.

33. The LAF exists to advise (and hopefully thereby, to assist), local authorities in the execution of their statutory duties and powers. In order to do this effectively, the LAF requires cogent information from the authorities regarding their performance, their funding and personnel resources and full and frank explanation of the parameters that affect their workings, strengths and weaknesses in the organisation, opportunities, current problems, future threats and their strategies for dealing with their DMS issues.

34. To this end, I would like to invite other interested LAF members to join me in formulating a list of informations which the LAF can use to scrutinise, advise, assist and (where necessary) hold to account, the local authorities in this LAFs area.

John Hall
LAF member
25 April 2023 (Version 2).