

## **APPENDIX 2**

### **WILDLIFE AND COUNTRYSIDE ACT, 1981**

Section 53 Duty to keep the Definitive Map and Statement under continuous review.

(2) As regards every definitive map and statement, the surveying authority shall:

(a) as soon as reasonably practical after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in sub-section 3; and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

(3) The events referred to in sub section (2) are as follows:-

(b) the expiration, in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that

the way has been dedicated as a public path or restricted byway;

(c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows:

(i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A a byway open to all traffic;

(ii) 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.

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description ,or any other particulars contained in the map and statement require modification.

## APPENDIX 3

### HIGHWAYS ACT, 1980

Section 31. Dedication of way as a highway presumed after public use for 20 years.

Where a public way over 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 actually been enjoyed by the public as of right and without interruption of a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during this period to dedicate it.

For Section 31(1) Highways Act, 1981 to operate and give rise to a presumption of dedication the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a public right of way
- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over the period of twenty years before the date on which the right is brought into question
- use must be *as of right* i.e. without force, without stealth or without permission and in the belief that the route was public
- there must be insufficient evidence that the landowner did not intend to dedicate a right of type being claimed
- use must be by the public at large

## **APPENDIX 4**

- 1.1 The case concerning *R v Secretary of State for the Environment, exp Billsan* 1999) dealt with an application which had been made to register a public bridleway across common land, which was the subject of a deed of access. It was held that the public's enjoyment of the tracks was by licence and not "as of right", even though the public genuinely believed that it was "as of right".
- 1.2 This distinction between "as of right" and "by right" was further clarified at the Supreme Court *R (on the application of Barkas) (appellant) v N. Yorkshire County Council and another (Respondents)* in 2014. Here permissive paths were granted by the Local Authority as it had appropriated land as an open space under the Housing Act 1985. It was held the public were using the land for recreational purposes within the meaning of the Commons Act 2006. So their use as "by right" and not "as of right". The public could not claim to have been exercising a right that would be associated with a village green.
- 1.3 A more general principle arises where a landowner of such land could not reasonably be expected to know whether the public are exercising a permissive right, or asserting one "as of right".

## **APPENDIX 5**

### **DEDICATION UNDER COMMON LAW**

No minimum period of use is required, but the claimants must show that it can be inferred by the landowner's conduct, that he or she had actually dedicated the route. User of right, is not of itself necessarily sufficient, nor mere acquiescence by the owner. Under statute, twenty years, if proved to have been uninterrupted will be sufficient to show presumed dedication.

Under common law it is still possible that use was due to the landowner's tolerance rather than because that landowner had intended to dedicate. Consequently there needs to be evidence that the landowner (or owners) for whatever period is being considered, not only acquiesced to that use but either directly or indirectly took measures to facilitate public use.

Obviously this means the landowners have to be identified and evidence that they wished to have the route dedicated to the public.

For the right of way to be established, it needs to be shown that it has been used openly as of right and for so long a time that it must have come to the knowledge of the owners that the public were so using it as of right.

As a matter of proof at common law, the greater the length of user that can be demonstrated the stronger the inference of dedication will usually be. Furthermore acceptance of that dedication by public use evidently a necessary requirement to establish such a dedication.