

**Definitive Map Modification Order 388 Footpath 48 Frinton and Walton
(Tendring District) Order 2008**

Essex County Council Statement of Case

1. This Order is made under section **53 (2) (b) Wildlife and Countryside Act 1981** because it appears to the County Council that the definitive map and statement require modification in consequence of the occurrence of an event specified in section **53 (3) (c) (i)** namely the discovery of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown on the map and statement subsists or is reasonable alleged to subsist, over the route shown on the order plan. This evidence consists essentially of user evidence, which in the view of the County Council fulfils the requirements for statutory deemed dedication as set out in **s 31 Highways Act 1980**.

2. Documentary evidence has additionally been referred to ascertain if there is any evidence that the owners had at the time the application route, a sea wall, was constructed, or at any subsequent time, intended to dedicate a right of public passage over it, and whether the public had accepted that right of passage by using the way.

3. The relevant subsections of **Section 31 Highways Act 1980 and Section 32 Highways Act 1980** state:

- (1) Where 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, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice such as is mentioned in subsection (3) or otherwise.
- (3) where the owner of the land over which any such way as aforesaid passes-
- (a) has erected in such a manner as to be visible to people using the way a notice inconsistent with the dedication of the way as a highway; and
- (b) has maintained the notice after 1 January 1934, or any later date on which it was erected

The notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

- (5) where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.
- (7)for the purposes of subsections (5) ... the 'appropriate council' is the council of the county...

Section 32 Highways Act 1980 states:

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

The Site

4. The Order route, shown as **Document 1**, an annotated copy of the Order plan, comprises a significant length of the sea wall adjoining Walton Mere and Walton Channel. The route commences in the north from Footpath 31 at Foundry Dock; (labelled **point A** on the plan) and travels in a generally southerly and south easterly direction along the western boundary of a caravan park until it reaches a sewage works. It then passes alongside undeveloped land in the ownership of Tendring District Council, the southern extent of which is labelled **point B** on the plan.

It is not understood that there are any objections to this specific section of the Order route, with the exception of that made by the Ramblers Association, which will be discussed in the County Council's response to objections below.

5. The remaining section of the Order route continues to the rear of residential properties to **point C** and in some cases crosses land in the ownership of these properties. This was not appreciated by the County Council at the time that the Order was made. It is to this part of the route that the remaining objections relate.

6. The original application route continued south along the sea wall, adjacent to an industrial area, to a point opposite the car park in Mill Lane at **point D**; but this section of the application was subsequently withdrawn. The route is not currently fully available for public use, nor does it appear to have been for some years.

Background to the Application

7. In August 2008 the County Council were made aware of a number of complaints that had been made to Frinton and Walton Town Council regarding the erection of a steel fence and gate near to Point A in the plan shown as **Document 1** at Foundry Dock.

8. Correspondence from that applicant, attached as **Document 2 a-d** indicates how the matter was raised at a public session of a Town Council Meeting; and that members had a recollection of the route being used by the public for more than sixty years. The matter was raised at subsequent meetings before a unanimous resolution was reached that the Town Council should co-ordinate the application; rather than deciding which of the local residents who had raised the matter with them should be responsible doing so.

9. Mr Richmond, Clerk to Frinton and Walton Town Council may be called to give evidence on any further detail of this process which may be of assistance to the inquiry. He has produced copies of the minutes of the Parish Council meetings which took place on 18 August 2005, 8 September 2005, 20 October 2005 and 1 December 2005, (attached as **Documents 3 a-d**) together with copies of articles that appeared in the Frinton and Walton Gazette on 26 August 2005 and 27 October 2005, attached as **Documents 4 a and b**.

10. The decision of the Town Council to make the application did therefore go through full democratic process and was well publicised locally. Each local resident would have had an equal opportunity to involve themselves; be it to comment on the extent of the route that was actually included in the application, or to give evidence of their use of the path.

11. That is not to say that those residents over whose land the Order route runs did not have the right to be individually informed of the application; and this did not occur. When the application was submitted on 15 February 2006, the preoccupation appeared to be very much with the obstruction at the northern length of the path.

Perhaps as a consequence of this, only two persons were served notice of it. A copy of the Form C, accompanying the application, is attached as **Document 5**. One of the individuals upon whom notice was served, Mr Speight (now deceased) was co-owner of land near to Foundry Dock where the obstruction was located, The other person upon whom notice of the application was served, Mr Eagle, did not own any land over which the application route runs, but owns land further to the north.

12. Although the remaining owners were not served notice of the application; on the advice of the County Council, site notices were placed at either end of the application route, which at that time ran south to Mill Lane. These notices would not, therefore, have been placed in particularly close proximity to the objectors' residences. These notices raised a response from the executors of the late Mr Carter, who had owned Walton Mere. They wrote to us on four occasions between 26 October 2006 and 23 January 2007 enquiring as to the nature of the application and the timelines for determining it.

13. The application was not investigated immediately following its receipt. Essex County Council have a programme of priorities for undertaking the definitive map review, which basically covers the County in alphabetical order of district. A copy of this, together with the criteria for departing from it, is attached as **Document 6**.

14. When the application was submitted in February 2006, officers were investigating cases in Rochford District. As Tendring was next to be investigated in the programme, the Town Council did not invoke **S 130(6) Highways Act 1980**, to argue that their application should be considered out of turn in compliance with criteria 1. It is understood that the obstruction that prompted the application was removed shortly after the submission of the application.

15. The fact that the application was not investigated immediately does not mean, as the objectors have suggested verbally to officers, that the applicants had significant amounts of additional time to collate evidence in support of their application. No new evidence was submitted after the application had been received; the case was merely filed until the time came to investigate it in the summer of 2007.

The applicants therefore had approximately six months between the time that the matter came to their attention, in late August 2005 and the submission of their application in February 2006, within which to adduce their evidence. This is directly comparable to the time between the 10 June 2008, when Mrs Kirrage first made contact with the County Council regarding the Order, and 27 March 2009, when the order was submitted to the Secretary of State.

16. Moreover, the applicant's means of collating evidence to publicise to local residents that they had opportunity to complete evidence forms relating to their use of the path. This means that even if the applicant Town Council had continued to collate evidence following submission of the application; this should have increased further the chances of the objectors discovering what was intended.

17. The allegation of procedural unfairness is not, in the view of the County Council borne out. While the failure of the Town Council to advise these residents individually at the application stage is regrettable, there is no reason to ascribe sinister motive to the omission and no evidence to support the allegation that the applicant Town Council were acting in any way covertly. The applicant was clearly responding to concerns expressed by their electorate, which include these local residents.

Decision on the Application

18. The evidence taken into account in reaching the decision to allow the application, and the analysis of that evidence is set out in the decision report which is attached as **Document 7**, and the County Council essentially has nothing to add to this analysis. The original user evidence forms, both from 1978 and more recently in 2005 are attached as **Document 8**.

19. The report also explains in full the reasons that the section of the original application route that was subsequently withdrawn was not included in the eventual order, and the fact that such a decision can only be made on evidential grounds,

Investigations into Land Ownership

20. It became evident in the course of the investigation that not all of the owners had been specified on Form "C" or had been identified by the County Council. The Environment Agency's comments that the defence remained vested in the riparian owner (singular); taken together with the information provided by Mr Carters' executors' that he had owned Walton Mere, and their high level of their initial interest in the matter, had led the officer to believe that the extent of their interest in the application route was far greater than in fact proved to be the case.

21. The matter of ownership was discussed in detail with Mr John Halls, (co-owner of the Foundry Dock Company and member of the applicant Parish Council) and a record of that conversation is attached as **Document 9**.

22. It was the genuine belief of the officer at the conclusion of this telephone call that all owners had been identified, as Mr Hall had been specifically questioned regarding ownership of each section of the route in turn, and had answered with apparent certainty.

23. When Tendring District Council's interest in part of the route was discovered, the situation almost seemed to be approaching where the numbers of claimed landowners was exceeding the available land.

24. It should, in normal circumstances, be a relatively simple matter to resolve such uncertainties, at least as far as any registered land is concerned, by undertaking a land registry search; first by requesting an index map search, which would reveal the any registered title numbers within the area searched, and then by obtaining office copies of the register in respect of those titles. In the officer's recollection, however at the particular time that the case was being investigated, such an undertaking was not as simple as should otherwise have been the case.

25. The Land Registry deals first and foremost with matters connected with conveyancing transactions, where the land being bought and sold, usually a single title number, is very clearly defined and identifiable. The experience at this time was that Land Registry staff seemed to have exceptional difficulty in coping with any index map search request which did not entirely fit into this preconceived notion of how things ought to be. While conveyancing staff did not seem to encounter any problem with the service at that time, index map search requests that were submitted in connection with a highways enquiry came to be returned to us (often after considerable delay) with increasing regularity. Reasons cited included the plan being of the "wrong" scale; ordnance survey grid references being insufficiently precise; a "bend" in the line meaning that they were unable to identify the search area; insufficient clarification of the search area; the line defining the search area being too wide; or too narrow; too many title numbers within the search area or the boundaries of the search area not corresponding to lines on the ordnance survey base map.

26. A recent example of such a rejected search enquiry is attached as **Document 10**. It is by no means unusual to have an isolated search request rejected in this way; what was unusual at this time was that it seemed to be happening on each and every occasion.

27. Eventually the staff member responsible for undertaking index map searches relating to highways enquiries sought and found alternative employment (hopefully where they were to encounter more constructive and co-operative working situations) and they were not replaced for some time. While there were remaining staff able to undertake Land Registry searches, it was not part of their ordinary duties.

28. Given the length and nature of the application route, the prevailing difficulties in obtaining Land Registry searches at this time, and the fact that a considerable number of owners had already been identified through detailed questioning, the decision not to undertake a Land Registry index map search was a conscious one.

The officer was 95% certain that all owners had in fact been identified as a result of local consultations, particularly in view of the wide publicity given to the application by the applicant Town Council. It was felt that the remaining 5% risk of error or omission could be addressed by obtaining a dispensation from the Secretary of State under **paragraph 3 (4) of Schedule 15** of the Act. A copy of this dispensation is attached as **Document 11**.

29. In retrospect it is clear that the decision not to take a Land Registry Search was a misjudgement on the officer's part; but it is easy to be wise in retrospect. The fact that this was a misjudgement was not necessarily obvious at that time.

30. The Order was formally served on 5 June 2008 and a telephone call was received from Mrs Kirrage on 10th June 2008 complaining that they had not been consulted regarding the Order, despite owning part of the affected land. All local residents similarly affected were sent a copy of the Order on 11 June 2009.

31. A subsequent e-mail enquiry was received from one resident on 23 June 2008 saying that he had not received this material and a copy of the Order and report was sent on the 25th June 2008. Hence all affected residents were served with the relevant material within the statutory objection period.

32. Advice Note 21, issued in June 2009 and attached as **Document 12** sets out the position as regards procedural irregularities with regard to definitive map modification and other orders. This clarifies that the appropriate remedy for the applicant's failure to serve notice of it on all affected owners, is to challenge the County Council's decision to allow the application, through the judicial review process.

33. It should be noted that in the event of any such challenge, a significant element of the County Council's defence would be that as a result of the 1978 evidence, the matter was noted for investigation when Tendring District was reached in the review, in any event; irrespective of the intervention of the Schedule 14 application.

It is considered that this evidence is sufficient to reasonably allege the existence of a public right of way along the route, and as such the County Council were under a statutory obligation to make an Order adding the route to the definitive map as a consequence. The issue of whether or any intervening application was properly made would therefore have no impact on this decision to make the Order.

34. Since a direction had been received from the Secretary of State that notice need not be served on owners and occupiers, there is no factual breach of the requirements of **Schedule 15** to consider. It is acknowledged that these owners did not have the full 42 days following service of the Order within which to lodge their objections to it, but many did nevertheless lodge their objection within the requisite time period; evidence that they have not been substantially prejudiced by the slight time delay. It is for this reason that the County Council decided that it would serve no useful purpose to repeat the process of serving the Order. An extended period was allowed following the expiry of the statutory objection period, before the Order was submitted to the Secretary of State, to allow objectors to formulate and develop their case and to redress any prejudice that may have been caused.

35. While it is easy to understand that these objectors feel aggrieved at the lack of earlier specific consultation; and the reasons why they are aggrieved, this does not affect the evidence upon which the decision to make the Order is founded; and upon which the Secretary of State's determination on the Order must be based. It cannot, as objectors suggest, constitute good reason to change the contents of the Order. Either the Order is valid on procedural grounds or it is not. The County Council maintain that it is; and even if the Secretary of State does not agree, and declines to confirm the Order on those grounds, the only consequence would be that an identical order would be made and served, unless intervening evidence is discovered to change the county council's view of the nature of the public rights along this section.

Response to objections

36. A total of seven objections were made to the order within the statutory objection period, an eighth having been withdrawn. A list of these is attached as **Document 13**. Whilst it is understood that local residents have subsequently solicited additional support for their cause in their immediate area, it is only those objections received within the statutory objection period, which will here be considered.

37. The objection from the representative of the Local Ramblers Association, being of a slightly different nature to the remaining ones will be considered first.

38. The objection draws attention to a structure currently in situ along on the northern, otherwise uncontested section of the route. This is not specified in the Order as a "limitation" in the definitive statement. This is because while some of witness evidence does mention a stile, it is considered to be more probable than not that not that dedication of the route as a public footpath precedes the erection of any such structure. Only three of the witnesses giving evidence in 1978 mention a stile, one of whom says it was erected "only recently". The other two give differing accounts of its location placing it alternatively at the sewage works and by Foundry Dock.

39. This evidence is not considered sufficiently cogent to conclude with certainty that such a structure existed at any particular point along the route in 1958. This is taken to be the presumed date of dedication; as it occurred twenty years prior to the earliest known calling into question. Some documentary evidence may be interpreted as suggestive of an earlier dedication, but is non-specific of the date at which this may have occurred.

40. It is not understood that the objector is actually stating that any stile should be included on the order as a limitation to which dedication is subject; and certainly he has produced no evidence to this effect.

41. The purpose of the objection appears to be more to ensure that if the Order is confirmed the existing structures along the route should be either licensed or removed. The County Council accepts this necessity, but struggles to equate the relevance of the law relating to structures on public rights of way more generally to the evidence as to whether or not such a public right of way exists at all in this particular case. Unless the objector is able to satisfactorily explain such a connection, the Secretary of State is requested to disregard the objection, as a matter that cannot be taken into account in the determination of the Order.

42. The remaining objections come from local residents who live in close proximity to the route. Some do not own any part of it, and their objections are on amenity ground only, which cannot be taken into account in the determination of the Order. Other objectors own part of the land over which the Order route runs, and state that as owners, they have demonstrated sufficient evidence of lack of intention to dedicate it as a public footpath, both by erecting signs and by turning people away from the route, over many years.

43. It is understood that this group of objectors object only to the section of the path that passes by their properties and have suggested a modification to the Order which encompasses Saville Street and part of the adjacent land owned by Tendring District Council. A plan setting out their proposed modification is attached as **Document 14**.

44. The view of the County Council is that any modification to the Order must be supported by evidence. A significant number of witnesses giving evidence in 2005 in support of the Order stated that they used the route as far as "the sewage works" suggesting that they used some variation of the Order route. However, as this variation did not form any part of the original application, none of these witnesses have indicated on a plan the route that they took from there, and as such we currently have no user evidence specifically supporting this claimed alternative, as opposed to any other that could have been taken at this point.

45. Tendring District Council were advised of these developments as the proposed modification would affect land in their ownership if it were accepted. They responded by sending a set of photographs of the site, attached at **Document 15**.

This indicates that the particular route detailed on the proposed modification was overgrown and unavailable at the time that the photographs were taken in November 2007.

46. While there is at present no evidence of public use of the specific route proposed by the objectors as an alternative to that shown in the Order; it is very possible, given the numbers of users who state that they left the sea wall at the sewage works, that evidence could be adduced of some sort of alternative path in the vicinity.

47. The difficulty, from the objector's point of view, is that providing evidence that an alternative public right of way exists in the vicinity would not necessarily negate the existence of one along that section of the order route to which objections have been raised.

48. While the County Council are open minded as to whether such an alternative may, or may not, on the evidence exist; this is unconnected with the issue of whether or not public rights exist along the contested section of the application route. Any proposed alternative route is therefore potentially additional to, not instead of, the section of the order route to which they object.

49. The objectors do not appear to contest that the route has been used by the public; complaining in general of the effect that such use has had in the past on their enjoyment of their properties.

50. Assuming that public use of this section during each of the requisite twenty year periods of 1985-2005 and 1958-1978 is accepted as common ground between the parties, we must then consider whether the evidence that the objectors have produced of a lack of intention to dedicate is sufficient to rebut the presumption of dedication.

51. The objectors' raise the point that their ability to demonstrate such a lack of intention to dedicate has been and is constrained by their legal requirement to reserve a three foot right of way over the sea wall for the benefit of the coastguard. This is evidenced by a conveyance dating from 1914 relating to numbers 13, 14 and 15 Canada Cottages and attached as **Document 16a**. Similar conveyances, or plans attaching to them are attached as **Document 16 b and c**.

52. Essex County Council would comment on this evidence as follows:

(i) Although a right of way for the coastguard is shown in the conveyance there is nothing within the document to suggest that the right of way is exclusive to the coastguard. In fact the depiction of a "footpath" on the plans; clearly distinguishable from the private rights of way also shown; may be suggestive that dedication of the route as a public footpath had already taken place at this time. The "T" marks on such documents are usually indicative of a requirement to fence, which means that households may have been required to fence against the route at this time.

(ii) Even if the right of way were shown to be exclusive to the coastguard there is nothing in that situation that necessarily fetters or limits the possibility of public rights subsequently coming into being through the operation of Section 31 Highways 1980.

(iii) There is no apparent constraint on owners fitting lockable gates and providing the coastguard with a key; or alternatively placing a notice on the site indicating that the right of way were exclusive to the coastguard if this was their belief.

53. The second point raised by the objectors is that they have on many occasions erected signs indicating this section of the route to be private property, but that these have been subsequently torn down. They enclose a copy of a receipt dated 18 July 2008 to evidence this. Additionally it is claimed they have remonstrated with users, pointing out that the route is private property.

54. The receipt dated 18 July 2008 post dates both of the relevant twenty year periods from 1985-2005 and 1958-1978 and cannot therefore be used to evidence a lack of intention to dedicate the route within those periods.

55. **Section 31 (5) of the Highways Act 1980** sets out the appropriate course of action if, as the objectors state, previous notices have been removed in the manner claimed. We have no record of any notice being lodged with us pursuant to **section 31 (5)** or **section 31 (6) Highways Act 1980** in respect of this route.

56. The matter of what constitutes sufficient evidence of a lack of intention to dedicate a route was discussed in the House of Lords in the case of **Godmanchester Town Council, R (on the application of) v. Secretary of State for the Environment, Food and Rural Affairs [2007] UKHL 28** (attached as **Document 17**) where it was concluded that there could only be "sufficient evidence" that a landowner had no intention to dedicate a path as a public way if the landowner performed overt acts so that the relevant audience, namely the users of the way, would reasonably have understood his intention.

57. There is no evidence from any of the users form submitted either in 2005 or 1978 that users had been made aware of any challenge to their use of this particular section of the path by the owners. Those users who stated that they had used the route beyond the sewage works were sent a questionnaire specifically relating to that section, and those that were returned are attached as **Document 16**.

58. Although there are not a great number of these users returning forms, both Mr Rayner and Mr Hurchings have stated their use to extend through both potentially relevant twenty year periods; from 1958-1978 and 1985-2005. Mr Meadows and Mr Strange have each used the route throughout the whole of the latter period; Mr Strange with some frequency for the last thirteen years.

59. None of these users report any evidence of any signs along this section, or of being turned back. This comment also applies to witnesses giving evidence relating to their use of the whole of the original application route in 1978; specific questions relating to these issues were asked on the longer evidence forms.

60. The objectors' explanation of this is that the signs were torn down or defaced by **some** users of the route (presumably not those giving evidence) with the consequence that they were not present at the times when those users giving evidence were actually using the path.

61. While this is a possible explanation; the County Council is not absolutely convinced it is an entirely plausible one. It would question whether an ordinary citizen, when following a path they had used for some years and encountering such a notice, would typically respond by tearing it down, and saying no more about it, or rather leaving it be and reporting the sign to who they believed to be the responsible authority; questioning whether or not whoever had erected it had any right to do so.

62. Conversely, if landowners had gone to the time, trouble and expense of erecting a notice and it was subsequently torn down, it seems unusual that they would simply tolerate this situation, and allow public use to continue unaffected; rather that escalating the situation by, for example complaining to the police and/or the local council; or erecting a more impenetrable barrier that may or may not have included access for the coastguard.

63. There is no corroborative evidence of anything of this nature happening which could assist in identifying an intervening "calling into question" which may have occurred between 1978 and 2005.

64. There is also some inconsistency in the evidence relating to how long the signs are stated to have remained on the site. Paragraph 3 of the letter of 23 September 2009 (attached as **Document 19**) specifies the wording of the signs and states that "these have invariably been ripped down almost immediately." Two sentences later it is stated "Nevertheless they have been there on and off for significant periods of time over the years." This account makes it extremely difficult to build up a coherent picture of what did actually occur.

65. Whatever did happen, it did not seem to have had the effect of communicating to users of the way either that their right to use it was being challenged, or that there was no intention on the part of the owners to dedicate the route as a public footpath.

66. The County Council therefore submit that the requirements of Section 31 Highways Act 1980 relating to statutory deemed dedication have been fulfilled in relation to all parts of the route shown in the Order and respectfully request it be confirmed without modification.

**Definitive Map Modification Order 388 Footpath 48 Frinton and Walton
(Tendring District) Order 2008**

Documents attaching to Essex County Council Statement of Case

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1	Annotated copy of Order plan	1
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3	Copies of Parish Council minutes 18 August 2005, 8 September 2005, 20 October 2005 and 1 December 2005	6-10
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Essex County Council comments on Objections

The County Council feels that it is expedient for the purposes of determining the order to group the objectors into three.

1. Residents of Saville Street: Mr Shillston, Mrs Everett, Mr and Mrs Kirrage and Mr and Mrs French

1.1 These objectors own the land over which part of the route runs; a fact which was not appreciated by either by the Town Council on submitting the application or the County Council in the course of determining it. Consequently they were not consulted prior to making the Order; nor was notice of making the order served on them on the day that notice appeared in the press; 5 June 2008. Notice was served all residents of this street some six days later on 11 June 2008; allowing them thirty seven days in which to lodge any objections to the Order rather than the forty two days specified in paragraph 3 (1) (c) of Schedule 15 of the Wildlife and Countryside Act 1981.

1.2 The County Council did consider re-serving the Order as a consequence. However, in view of the fact that the Secretary of State had, on 23 May 2008 issued a dispensation in accordance with paragraph 3 (2) (b) (i) of Schedule 15; the relatively short time period within which the error was identified and rectified and the fact that objections had in fact been received from residents of this street, indicating that the objectors had not been procedurally disadvantaged, it was decided that the expense of commissioning a further press advertisement was not, in these particular circumstances justified.

1.3 The County Council could explain at some length the efforts that it did make to identify owners of the land, and the reasons why it believed at the time that the relevant owners of this particular section of the Order route was John Fowlers Solicitors in their capacity as executors to the late Mr Carter. However, it does not believe that this would necessarily be a productive use of time. At the end of the day an error was made, for which the County Council have apologised, and have tried to remedy as far as possible by allowing the objectors plenty of time to adduce evidence in support of their objection subsequent to the expiry of the statutory objection period and prior to submitting the matter to the Secretary of State.

1.4 The objectors do not object to the majority of the length of the Order route (which is in fact unopposed) but only that section affecting land in their ownership. They have produced a number of indentures which specify a right of way for the coastguard along the sea wall, and argue that because of their obligation to preserve that right they have been prevented from physically barring the route as they would otherwise have done. They state that they have nevertheless frequently displayed notices inconsistent with the existence of public rights along the route which have been repeatedly torn down.

They would favour a modification to the Order showing a route accessing the sea wall via the end of Saville Street; as is advertised in some walking leaflets.

1.5 The County Council would respond that whether or not the right of way shown on the indentures was exclusive to the coastguard at the time that these documents were drawn up (and these show the Order route as "footpath" in contrast to private rights of way that are shown crossing the properties; furthermore the property owners appear to be required to fence against the route) this would not prevent public rights from coming into being subsequently under the provisions of S 31 Highways Act 1980 or through dedication at common law.

1.6 Section 31 (5) Highways Act makes specific provision for the contingency of notices being torn down through the lodging of a notice to this effect with the appropriate council. There is no evidence that any such notice was received by Essex County Council within either of the twenty year periods from 1958-1978 or from 1986-2006. The notice that was erected in July 2008, after the order had been made and served, would clearly be outside of the relevant time frames and would therefore have no effect on the operation of Section 31.

1.7 The County Council would have no objection in principal to the order being modified as suggested by the objectors provided (i) that the existence of the alternative route is supported by evidence; and (ii) that the existence of public rights over the relevant section of the order route is discounted; again on the basis of the evidence.

1.8 The County Council have not specifically addressed with these objectors the matter of whether or not they wish to exercise their right to be heard; but would be content for this matter to be resolved through the written representations procedure if the Secretary of State considers this to be appropriate.

2) Mr W Webb on behalf of the Ramblers Association

Whether or not there are structures on the route and whether or not these are licensed are not issues that are relevant to the evidence as to whether or not public rights exist along the route. The issue would only be relevant within the recording process was if there were any suggestion that these were limitations to which dedication was subject. According to the evidence the structures are recent and are therefore not lawful limitations. The County Council are aware that in the event of this Order being confirmed, the matter of these structures must be addressed with the Environment Agency. However it does not believe that this is a matter that can be legitimately considered in the context of whether or not the Order should be confirmed. The County Council therefore requests that this objection be disregarded accordingly.

3) Residents of North Street: Mrs R Taylor and Mr and Mrs F Parker.

These objections are made purely on amenity grounds, and the County Council requests that the Secretary of State disregards them accordingly except insofar as each represents evidence that the path has been well used by the public in the past.