

Losing unrecorded ways?

Our Hertfordshire local correspondent and executive committee member Chris Beney reports on a matter of concern.

The Countryside and Rights of Way Act 2000 has set a cut-off date of 1 January 2026, when all footpaths and bridleways that existed prior to 1949 and are not on the definitive map, will be extinguished and have all public rights removed.

Exceptions

There are some exceptions. But the fact that a claim under the Wildlife and Countryside Act 1981 (WCA) may have been made is not one of the exceptions and claims will not prevent this extinguishment.

The Department for Environment, Food and Rural Affairs (Defra) has indicated the intention to change the law by statutory instrument so as to except paths for which claims have been made, but not yet processed, from this guillotine; but we would be foolish to assume that such a law change is a certainty. Even if the law is changed, all we get is a little more time, which may be a mixed blessing.

New dedications needed

After 2026 all extinguished paths will require fresh dedications or a fresh 20-year period of unchallenged public use (eg 2026 to 2046) to be able to get onto the definitive map.

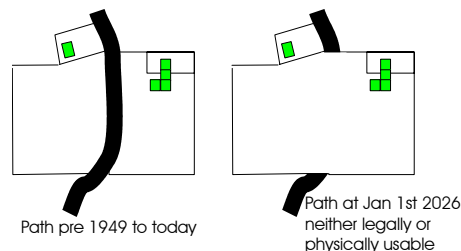
The Countryside Agency and Defra are working with other organisations to search for and record truly lost ways,

that is ways that no longer exist on the ground (or if they do exist are not seen as public) but which are in fact public footpaths, bridleways or byways.

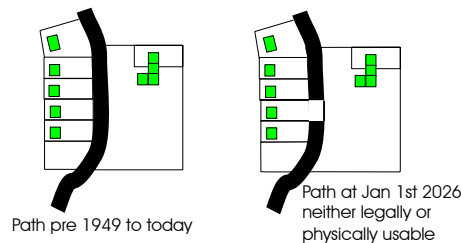
Significant funding is being made available for this work. But valuable though that work is, it is not aimed at paths that are in everyday use and are not lost at all, but are not yet on the definitive map: the unrecorded paths.

Loss of well-used paths

Below are examples of what could happen in January 2026 to well-used non-definitive public paths.



A (above): a farmer, who owns a field, fences off a path and there is nothing we can do about it.



B (above): a householder, who may or may not own the land, fences off a short length of path thus blocking it and there is nothing that we can do about it.

In both these cases, if people walk the remainder of these paths on 2 January 2026, they are trespassing.

Categories at risk are:

1. alleyways and short links between other ways,
2. paths and lanes, mostly unsurfaced,

3. some being farm tracks, whether or not on the list of streets,
4. short convenience ways across corners of land,
5. the numerous short links missing from the map, eg where a path joins a farm track just before that track joins a road and the definitive map stops at the farm track. If no action is taken, on 2 January 2026 a locked gate across the track would kill the path as a through route for ever.

Only ten years

Who will look for and claim these unrecorded ways? Not the Countryside Agency nor Defra it seems. It is not even clear if they have considered the sort of cases above, let alone estimated their number. It is possible that one-tenth of all public paths are at risk. With processing time for claims of well over ten years in some areas, that gives only about ten years from now to get all the claims in.

There is a legion of other issues regarding lost ways and their status after 2026. For example, because only paths which existed pre-1949 will be stopped up, there can be no actual list of such closed paths. That is because a list would be dependent on whether a path is pre-1949 or not, and that requires weighing evidence in the courts or at inquiries.

Identified

These unrecorded but well-used paths must be identified. Local knowledge is vital. A start would be for the definitive maps for each parish to be taken around local individuals and to meetings of local groups and clubs of all sorts, with all identified non-definitive routes written onto the maps. Such a scheme has recently started in south-west Hertfordshire.

Claims

Below are examples of well-used paths which were missing from the definitive map but are now put on it.



1941 path, user evidence only, negotiation and dedication by landowner, took about two years.



Over 200 years old, bridleway, user evidence plus historic, WCA claim, unopposed, took about one year (district council through agency agreement).



Over 100 years old, short bit missing off definitive map, obstructed by new owner, WCA claim opposed, took ten years, highway authority.

Photos: Chris Beney.