

Case Name: *Roxlena Ltd v The Ramblers' Association & Ors, R (On the Application Of)* [2026]
EWCA Civ 534 (07 May 2026)

Full case: [Read here](#)

Commentary: The Court of Appeal dismissed an appeal by Roxlena Limited against the decision of Lang J to quash an Inspector's refusal to confirm the creation of a series of footpaths by Cumbria County Council. This appeal concerned the interpretation of section 31(1) of the Highways Act 1981, which provides that: "Where a way over any land ... 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".

Background

In January 2021, Cumbria County Council created 18 new footpaths and bridleways over Hayton Wood, land belonging to Roxlena ('the Order'). Roxlena denied the existence of the public rights of way underlying the Order.

Following a public inquiry, the Inspector concluded that the Order should not be confirmed, because a four-month break in public use in 2001 due to a foot and mouth disease outbreak meant that the ways had not been "actually enjoyed" for the full period of 20 years. Although the ways in dispute were not formally closed by the Council during the 2001 outbreak, the Inspector concluded that because of the closure of inter-linking paths, in all likelihood the public did not use the disputed ways during this period.

Legal Analysis

Reviewing the relevant case-law, Lang J affirmed that there is a distinction between an "interruption" (which defeats the creation of prescriptive rights) and a mere "intermission". The former involves an overt act indicating that the right is disputed, whereas the latter entails a mere discontinuity or breach in time. Furthermore, Lang J held that the explanation for a period of non-use is relevant to determining whether that period constitutes either an interruption or intermission.

Contrarily, Roxlena submitted that section 31(1) simply requires a decision-maker to determine whether there has been a factual period of non-use, without regard to the reason for such non-use. Lewison LJ rejected this argument and upheld Lang's reasoning. He considered that "*in deciding whether it is consistent with the continued assertion of the claimed right the cause of the non-use is of critical importance*" [49].

Lewison LJ re-stated the general principles for applying section 31(1) at paragraph [60]:

- i. *Section 31 of the 1981 Act provides that a public right of way will be deemed to have been dedicated by 20 years continuous enjoyment of a way by the public.*
- ii. *"Continuous enjoyment" will be established by public "use" over the 20 year period. In the case of a footpath, such use will be by walking, in the case of a bridleway, by walking and riding, and so on.*

- iii. *The use in question must be "as of right", which is interpreted to mean without force, stealth, or permission. The question is objective rather than subjective, as to whether the public conduct presented itself as "as of right" rather than whether particular members of the public subjectively believed that they enjoyed the right in question.*
- iv. *For the presumption to arise, the public use over the 20-year period must be sufficient to bring home to the mind of the reasonable non-absentee landowner that the public are asserting a continuous right of enjoyment. Again, the question is "objective", as to how the use would appear to the putative reasonable landowner, not what the actual landowner believed.*
- v. *In considering whether the use is sufficient in this sense, the relevant question is whether the use over the period "taken as a whole" is sufficient, not whether the use in any particular sub-period is sufficient for that period seen in isolation.*
- vi. *As a corollary of the previous proposition, the "use" in question need not be "continuous", and "mere absence of continuity" or "intermission" does not stop time running to establish the 20-year period. The use in question need not be continuous throughout the 20-year period. However, an intermission in use may be relevant in considering whether, seen as a whole, the use over the 20 year period is sufficient. So, intermission in use is relevant, but not necessarily fatal.*
- vii. *In considering the effect on the mind of the reasonable landowner of an intermission in use, it will be relevant to consider any "explanation" for that intermission which would have been apparent, so as to consider whether the non-use in a given period is consistent with the public's assertion of a right in that period.*
- viii. *The question of whether the use is sufficient in the above sense is to be distinguished from the question of whether the "enjoyment" has been "without interruption" within the meaning of section 31(1). An "interruption" in this sense requires, not mere cessation of use, but "an obstruction", an "overt act", or an "interference with the enjoyment of the right".*

Applying these principles, Lewison LJ agreed with Lang J that the Inspector had asked herself the wrong question. Whether a gap in use is inconsistent with the continuing assertion of the claimed right should be a holistic and retrospective exercise, looking back over the 20-year period. In contrast, the Inspector only considered the landowner's objective state of knowledge during the four-month intermission. She therefore failed to consider the significance of the fact that after the ending of the four-month gap, the public use of the ways resumed and continued for a further eight or nine years before the existence of the way was brought into question.

Lewison LJ therefore concluded that the Inspector had erred in law and Lang J had been entitled to quash her decision. The question of whether the Order should be confirmed was remitted to the Secretary of State.