

# **HERTFORDSHIRE COUNTY COUNCIL**

## **Countryside & Rights of Way Service**



### **Modification Order Application Investigation Report**

Wash Lane, Potters bar and South Mimms

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Date: 28<sup>th</sup> October 2020

## **Application Details**

Applications have been made to record on the Definitive Map, as a Byway Open to All Traffic ("BOAT"), Wash Lane which is on the boundary between Potters Bar and South Mimms in Hertsmere. An extract of the 2015 Definitive Map is attached. It shows where the route is, and it is labelled point 1 and point 6 on the attached plan.

The two applications relate to different sections of Wash Lane. Both applications were made by Dr P D Wadey of the British Horse Society:

1. HTM/154/MOD - Application dated 28<sup>th</sup> February 2003 to record a BOAT along Wash Lane between Potters Bar Bridleway 75 and Swanland Road (points 1 and 4 on the plan). This application was supported by:
  - An extract of the first edition one-inch 1822 Ordnance Survey Map;
  - The Hertsmere Borough Council (Wash Lane, South Mimms) (Restriction of Driving) Order 1984;
  - 12 user evidence forms demonstrating equestrian use of the Application Route; and
  - the Applicant's statement in support of the application.
  
2. HTM/163/MOD - Application dated 8<sup>th</sup> April 2005 to record a BOAT along Wash Lane between Potters Bar Bridleway 75 and, what is now, South Mimms Bridleway 71 (points 4 and 6 on the plan). This application was supported by:
  - An extract of the first edition one-inch 1822 Ordnance Survey Map;
  - The Hertsmere Borough Council (Wash Lane, South Mimms) (Restriction of Driving) Order 1984;
  - 9 user evidence forms demonstrating equestrian use of the Application Route; and
  - the Applicant's statement in support of the application.

Both applications were submitted in the prescribed form. On 9<sup>th</sup> April 2012 the applicant certified that they had served notice of the applications on the owners of the land crossed by the Application Route.

On 24<sup>th</sup> May 2018 the applicant applied to the Secretary of State for Environment, Food and Rural Affairs, under Schedule 14 to the Wildlife and Countryside Act 1981, asking the Secretary of State to direct HCC to determine the 2003 application to record a BOAT along Wash Lane between Potters Bar Bridleway 75 and Swanland Road. A direction decision was issued to HCC on 2<sup>nd</sup> October 2018 directing HCC to determine the application.

In accordance with HCC policies, the two applications are being processed simultaneously. For simplicity Wash Lane, between Swanland Road and South Mimms Bridleway 71 and Footpath 56, is referred to below as "the Application Route".

## **Description of Route**

Wash Lane is located south east of South Mimms village, in the borough of Hertsmere, with the M25 motorway to the south and the A1(M) motorway to the west. The South Mimms motorway service area is immediately west of the Application Route. There is open arable farmland to the north and east sides of the Application Route.

Common land CL216, Wash Lane Common and Bridgefoot, is registered parallel to the Application Route between points 4 and 6 on the plan.

The Application Route is approximately 900 metres long, metalled to varying widths along its length, from the junction with Swanland Road, at point 1 on the plan, running generally east then south east, to join South Mimms Bridleway 71 and Footpath 56 at point 6 on the plan, north of the M25 motorway. The Application Route is signed as part of the National Cycle Network route 12 running from Enfield Lock to Peterborough along the 'Great North Way'.

Wash Lane is surfaced to approximately 5 to 6 metres wide between points 1 and 3 on the plan. There are no barriers on this section of the Application Route as the Lane provides access to a number of properties.



Photo taken between points 1 and 2 on the Application Route, looking west towards point 1 and junction with Swanland Road.

Point 2 on the plan marks the junction with Potters Bar Footpath 43 to the north, on the west side of Bridgefoot Lodge.



Photo taken south east of point 2 on the Application Route, looking north west towards point 2 – junction with Footpath 43 by Bridgefoot Lodge.

There is a gate across the Application Route at point 3 on the plan, with a gap on the western side between 1 and 2 metres wide.



Photo taken south east of point 3 on the Application Route, looking north west at the gate, with gap, across the Application Route.

Between points 3 and 4 on the plan, the Application Route is surfaced to approximately 4 to 5 metres wide. There are collapsible bollards across the surfaced width of the route at point 4 on the plan – previously there had been large double gates slightly north of point 4. A gate and wooden bollards restrict access across the common land on the eastern side of the surfaced route. Potters Bar Footpath 44 and Bridleway 75 meet the Application Route at point 4, from the east.



Photo taken south east of point 4 on the Application Route, looking north west at the collapsible bollards with adjacent gate and junction with Footpath 44 and Bridleway 75.

The Application Route continues south east. The width of the surfaced route between points 4 and 5 on the plan is approximately 3 to 4 metres. The land on either side of the surfaced route is registered common land (CL216). The boundary on the western side of the Application Route is a mixture of hedgerow and wooden fencing. On the eastern side of the surfaced route the land falls gently away to the wider open area of common land.





Photo taken between points 4 and 5, looking at the Application Route, north west towards point 4. Fence and hedge on the western side of the surfaced route and bank gently falling away on the eastern side.

Just to the north of the bridge at point 5 on the plan, there is an access point to the Application Route from the South Mimms Service area – to the rear of the Ramada hotel and Pizza Express restaurant. There is an information board about Wash Lane Common providing a little historical background and wildlife information.



Photo taken between north west of point 5 on the Application Route, looking north west at the access from South Mimms Service area.



Photo taken between at point 5, the bridge, looking north west long the Application Route.

The bridge at point 5 on the plan has a surfaced width of 3 to 4 metres with approximately 2 metres of grass on either side, between the parapets.

As the Application Route continues south west to point 6 on the plan, the surfaced width reduces from between 3 to 4 metres to between 2 to 3 metres, with vegetation growing up on either side.



Photo taken between points 5 and 6 on the Application Route, looking north west towards point 5 along the narrowest section of the surfaced route.

At point 6 on the plan the Application Route joins South Mimms Footpath 56 and Bridleway 71 from the west. The northern boundary of the M25 motorway (point Y on the plan) is approximately 50 metres south of point 6 on the plan.



Photo taken looking south east at point 6 on the Application Route and its junction with Footpath 56 and Bridleway 71.

The Lane now physically ends at point 6. The Lane between points 6 and Y has become overgrown and impassable (left hand side of the photo).

## Documentary Evidence

For each investigation, we check at least 10 primary sources of information for any historic evidence relating to the application route. You can view the documents listed below at Hertfordshire Archives and Local Studies (HALS) or at the Countryside and Rights of Way Service (CROW). The documents are listed below with a reference number (if it has one) and where you can find it.

Where the document shows information relevant to the area of the application route, it is listed with the following information:

- the document's name, date and where it can be found (location and reference);
- why we consider the document important when making our decision;
- what is shown by the document in the area of the application route;
- investigating officer's comments.

For further information contact:

Hertfordshire Archives and Local Studies (HALS) - <https://www.hertfordshire.gov.uk/hals>  
Countryside and Rights of Way Service (CROW) - [www.hertfordshire.gov.uk/row](http://www.hertfordshire.gov.uk/row) or 01992 588433 to make an appointment.

If you would like more information about documents and how they are important in investigating public rights of way, please go to the Government's Information website and view the Planning Inspectorate's Guidance Booklet for Definitive Map Orders: Consistency Guidelines at <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines>

No records for the following historical documents listed have been found with regard to the application route:

- **Inclosure records**
- **Railway and canal plans**
- **Highway diversion and extinguishment**

In 1965 Potters Bar, including South Mimms, was transferred into Hertfordshire from what was formerly Middlesex (now Greater London).

In 2008 South Mimms split from Potters Bar and became a separate parish.

### 1 Dury and Andrews Map

Date: 1766

Ref: HALS - CM26

#### 1.1 Why we consider this document important

Dury and Andrews' 1766 county map of Hertfordshire describes itself as 'a Topographical map of Hartford-Shire, from Actual survey; In which is Expressed all the roads, lanes, churches, noblemen and gentlemen's seats, and every Thing remarkable in the County'. It is a map made from an original survey, although it is a schematic map (like the London Underground map) rather than one to scale. In this way its level of accuracy does not



match modern Ordnance Survey maps, but it is useful evidence for the existence of routes in the 18th century. The Planning Inspectorate's Consistency Guidelines state that "Overall, the evidential value of the older maps can be significant in helping to determine the location of a way, and can be helpful in determining the status of a route, especially in conjunction with later maps." Dury & Andrews' map shows the basic layout of roads but details like field boundaries were probably decorative. The "explanation" (or legend) lists 'Roads' in 3 categories – "open", "one side enclosed by a Hedge", and "enclosed by Hedges". It does not appear to show routes which, at the time, were thought to be footpaths or bridleways. The map was produced to be sold to members of the public which mean that it is likely the routes shown were public rather than private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.

## 1.2 What is shown by this document in the area of the application route?



The land between Ridge Hill and Chipping Barnet and east of "Durham Park" (Dyrham Park), including "South Mims", was outside of Hertfordshire in 1766 and so it is not detailed on the Map. However, the Map shows a road running from London Colney, Ridge Hill, south through South Mimms to Chipping Barnet. The Application Route forms part of this longer route. It is likely that this was a significant route between St Albans and London, as it was mapped outside of the Hertfordshire county boundary.

The Application Route is shown as "Open Roads", indicated by the arrows on the above photo, linking "South Mims" village with Chipping Barnet.

The Mimms Brook is shown running in a generally north east/south west direction and follows the Application Route approximately between points 4 and 5 on the plan and continuing south west and around "Durham Park". Dury & Andrews Map shows the bridge over the Brook at point 5 on the plan.



### 1.3 Investigating Officer's comments

The Map shows the Application Route in full, as "Open Roads", running between settlements. This suggests that the Application Route was considered to be a public vehicular road at the time.

## 2. Bryant's Map

Date: 1822

Ref: HALS - CM88

### 2.1 Why we consider this document important

Andrew Bryant's 1822 map of Hertfordshire was again drawn from an original survey. Its depiction is much more accurate (like an Ordnance Survey map) rather than being schematic. This may be due to survey equipment (theodolites) becoming commercially available in the 1790s. The "explanation" (or legend) lists "Turnpike and Mail Roads", "Good Cross or Driving Roads" and "Lanes & Bridleways". It is unlikely that it shows routes which, at the time, were thought to be footpaths. Like Dury and Andrews' map, Bryant's map was sold to members of the public and cost 3-4 guineas. The commercial nature of the map means that routes shown are likely to be public unless there is strong contemporary evidence which shows that routes are private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.

### 2.2 What is shown by this document in the area of the application route?



Like the earlier Dury & Andrews Map, Bryant's Map has left largely unrecorded the area of Middlesex between Ridge to the west and "Durham Park" to the south. Like the earlier Map, "South Mimms" is labelled with a route running through South Mimms, between Ridge Hill (in the direction of St Albans) and Chipping Barnet (in the direction of London). The Application Route forms part of this longer route and is depicted on the Map as "Good Cross or Driving Roads" (approximately points 1 to 4 on the plan) and "Lanes and Bridle Ways" (points 4 to 6 on the plan).

Mimmshall Brook is shown running adjacent to the Application Route between points 4 and 6 on the plan and it shows where the Brook crosses under the Lane at point 5 on the plan.

The Map shows an “Intended New Road” depicted by parallel pecked lines. This road starts in the north west at the junction between Blackhorse Lane, Blanche Lane and St Albans Road and runs in a south easterly direction, along Wash Lane (approximately between points 2 and 4 on the plan) and joins Dancers Hill Road (by Dancers Hill Cottages) opposite Kitts End Road on the west side of Wrotham Park. The ‘intended road’ was not built.

### **2.3 Investigating Officer’s comments**

The Map provides evidence of the physical existence of the Application Route in full and provides evidence of public vehicular rights between points 1 and 4 on the plan and at least bridleway status between points 4 and 6 on the plan.

### **3 Ordnance Survey (OS) maps**

Date: 1822 one-inch Map

Ref: CRoW – copy submitted by applicant

1896 and 1936 1:2,500

National Library of Scotland  
<https://www.nls.uk/>

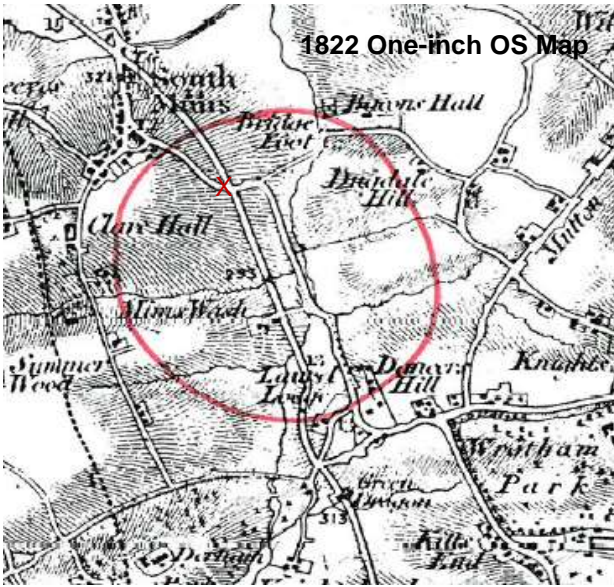
### **3.1 Why we consider these documents important**

The original surveys were carried out by Royal Engineers at the time of the Napoleonic wars in order to better plan the transportation of ordnance around the country. It was only in the early 20th century that the OS evolved to become a public service that sold its mapping information to the public. Since the 1960s this mapping information has included public rights of way, which are derived from each county’s Definitive Map.

The Ordnance Survey has produced a series of topographic maps at different scales notably the one inch, six inch and 1:2500. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways etc. However, the disclaimer which has been added to all editions since the 2nd edition maps (circa 1897/8 in Hertfordshire), along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way.

### **3.2 What is shown by these documents in the area of the application route? 1822 one-inch scale**

This Map shows the Wash Lane from St Albans Road at point X on the plan (prior to the Barnet Bypass, Swanland Road, being built), joining with Dancers Lane to the south east. The Application Route is depicted in full between solid parallel lines in the same manner as the section of St Albans Road running parallel to the west, and other surrounding roads. St Albans Road appears to be a more direct route between London Colney, to the north west, and Chipping Barnet, to the south east.



The Applicant notes that the OS Map shows the Application Route as a physical entity in 1822.

**1896 1:2,500 scale**



This edition of the OS Map shows St Albans Road joining Wash Lane at point X on the plan. This Map predates Swanland Road being built.

The Map shows the Appliation Route in full depicted by parallel pecked lines within solid parallel lines. The Brook is coloured blue and passes under the Application Route at point 5 on the plan – the bridge is shown. South east of point 5 the parallel pecked lines run through the surrounding open land (now part of CL216). The route continues south east towards Dancers Hill.

There are no solid lines across the Application Route which might indicate that the route was gated at that time.

### **1936 1:2,500 scale**



This edition of the OS Map shows the “Barnet Bypass Road” (Swanland Road), creating the junction between the Application Route and Swanland Road at point 1 on the plan.

The Map shows the Application Route, in full, annotated “Wash Road” and depicted by parallel pecked lines within a wider geographic feature which includes “Mymms Wash”. The Map shows the bridge carrying the Application Route over the Mimmsshall Brook at point 5 on the plan. There are no solid lines across the width of the Application Route which might indicate that the route was gated at that time.

### **3.3 Investigating officer’s comments**

The one-inch scale map provides evidence of the physical existence of the Application Route in 1822. In addition to evidence of physical existence, the 1:2,500 scale maps also provide evidence that there were no gates on the Application Route in 1896 and 1936. OS maps do not provide evidence of public highway status.

## **4. South Mimms Tithe Map and Tithe Apportionment**

Date: 1842                                      Ref: HALS CD 6/210 box 2

### **4.1 Why we consider these documents important**

A ‘tithe’ was literally a ‘tenth’ of the produce of the land and was paid in kind to finance the Church (crops were stored in ‘tithe barns’). The tithe surveys were carried out under the Tithe Commutation Act of 1836 to reform this system to an easier money payment. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid.



In 1837 the Act was amended to allow maps produced to be either 1st class or 2nd class. They did not have to be made from an original survey. 1st class maps are legal evidence of all matters which they portray, and were signed and sealed by the commissioners. They had to be at a scale of at least 3 chains to the inch. 2nd class maps were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. Both 1st and 2nd class maps have been accepted by the courts as evidence. Unfortunately the proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, was not strictly adhered to.

The tithe process received a high level of publicity. This ensured the documents were an accurate record of the agricultural landscape at this period of history. Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights. Non-titheable land deemed to be unproductive could be excluded from the process. No tithe was therefore payable on roads and so it was in the interest of the landowners for these to be shown correctly. Taken together with corroborative evidence, highways that are coloured yellow or sienna can indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the productivity of land and so the calculation of tithe rent.

#### **4.2 What is shown by these documents in the area of the application route?**

The Application Route is shown running between South Mimms village, to the north west, and Dancer Hill, to the south east. St Albans Road is shown running adjacent to the Application Route from their junction at point X on the plan, prior to Swanland Road being built. The bridge over the Mimmshall Brook is shown at point 5 on the plan. Mimms Wash is shown, coloured blue, and labelled next to the Application Route.

The Application Route, like the other routes through the parish, is coloured sepia, between solid parallel lines and has no plot number. A number of the sepia routes, at the edges of the parish are labelled, e.g: Trotters Bottom road is labelled at the west edge of the parish as "From Boreham Wood"; Crossoaks Lane is labelled "From Ridge"; Earls Lane is labelled "From Shenley"; and St Albans Road and Blackhorse Lane, at the north edge of the parish are labelled "From St Albans". None of the sepia routes have a plot number. St Albans Road, at the centre of South Mimms village is annotated "turnpike".

The Tithe Award does describe lanes within the description of plots 631 and 755; privately owned and occupied. Both lanes are shown numbered on the Tithe Map although 631 is uncoloured and 755 appears to be coloured sepia.

There are no lines drawn across the Application Route which would suggest that the route was gated at any point and the adjoining plots would generally only be accessible via the application route: 123, 135, 136, 137, 147, 148, 312, 313 and 329 which are described as meadows and farm buildings.

#### **4.3 Investigating Officer's comments**

The purpose of the Tithe process was to determine who owned the private land within a parish so that the tax payable to the Church could be calculated. It therefore follows that land which was not documented in the Tithe Award by way of a plot number, was exempt from the Tithe process, implying that it was public. The Application Route is shown in the

same manner as the surrounding public roads, therefore providing evidence of the Application Route as a public road.

## **5. Inland Revenue Documents**

Date: c. 1910

Ref: HALS IR1/521 and IR1/524 (copies not originals)  
IR2/53/2

### **5.1 Why we consider these documents important**

The Finance (1909-1910) Act 1910 was passed in order that a tax could be levied on any increase in the value of land when it changed hands. In order to ascertain the value of all land as at 30th April 1909, a survey was carried out assessing each piece of land. The OS 2nd Edition Plans (usually from 1898) were used as the base maps and annotated. Details were recorded in field books and valuation books. These books included a column which allowed a deduction in tax if a public right of way crossed the land. Every property was given a plot or 'hereditament' number which was then referred to in the valuation books and maps. Hereditaments were coloured on the maps to identify land holdings. Not all land was coloured.

Once a provisional valuation of a property had been reached, landowners were given the opportunity to appeal. The whole process was carried out under statutory authority by the Valuation Department of the Inland Revenue and there were criminal sanctions associated with the falsification of evidence. It would have been negligent to omit such land from the survey, including private roads, which might have had value. However, it was not a criminal offence not to deduct tax if a right of way did cross your property. Consequently, the resultant records carry a high level of evidential weight as to the routes which they show to exist, but are unlikely to be good evidence that rights of way do not exist.

Where a route is shown uncoloured on the plans and excluded from the taxable land this provides very strong evidence of it being public highway. Usually this will be of vehicular status unless there is other contemporary evidence to indicate otherwise. Where footpaths and bridleways cross privately owned land these may be recorded as a reduction to the tax. However, where routes cross large hereditaments it can be difficult to establish which route is considered to be the right of way without additional details.

## 5.2 What is shown by these documents in the area of the application route?



At the time of the Inland Revenue, South Mimms was within the county of Middlesex and the division of Edmonton.

The Inland Revenue documents which are held at HALS are the working copies which the valuation officers annotated at the time of the survey. The OS base map shows and labels geographical features in the area surrounding the application route such as Mimms Wash on the east side of Wash Lane, Bridgefoot to the north east and Dancers Hill to the south. The “Barnet By Pass” and “Service Station” have been annotated onto the plan in pencil running in a north easterly direction to the Application Route at approximately point 1 on the plan.

The Application Route is shown in full on the base map depicted by parallel pecked lines within solid parallel lines, forming part of the route between St Albans Road (point X on the plan) and Dancers Lane to the south east. The width between the solid parallel lines is shown excluded from hereditaments along its full length between St Albans Road and Dancers Lane. Without a hereditament number there is no corresponding entry in the Inland Revenue book of reference.

The plan indicates that the main access to hereditament 1993 Bridgefoot Lodge (point 2 on the plan), at that time, was via the Application Route. The private track running between Bridgefoot Lodge and Bridgefoot House is shown on the basemap as a less significant geographic feature – similar to the cross field footpaths in the area.

Hereditament 2446 is shown on the plan, either side of the Application Route between points 4 and 6. The book of reference describes 2446 as Manorial Waste at Watery Lane. Hereditament 2446 includes most of the land which is now registered as common land CL216. However, part of CL216, which runs on the western side of the Application Route between points 4 and 6 on the plan, is shown uncoloured and unnumbered as part of Wash Lane.

The south western end of Potters Bar Bridleway 75 is shown joining the Application Route from the east, at point 4 on the plan, and it is also excluded from surrounding hereditaments.

The Application Route is shown in the same manner as St Albans Road and Dancers Lane which are known public highways.

### **5.3 Investigating Officer's comments**

The significance of land (i.e. the Application Route) being shown excluded from hereditaments on the working copy of the IR plan is generally accepted to mean that it was considered to be a public road at the time the plan was drawn up. The land is excluded because, as a public road, it was not considered to be within private ownership and therefore there was no responsibility for a private landowner to pay tax on it.

## **6. Definitive Map Records**

The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement to show and describe the public rights of way in the county. The Map is conclusive evidence of what it shows, but is without prejudice to what is not shown.

The process resulting in today's Definitive Map and Statement consists of several stages which are dealt with below:

- the Parish Survey
- the Draft Map, Provisional Map and first Map and Statement (1953)
- the Special Review (following the Countryside Act 1968)

### **Definitive Map Records –**

**The parish surveys in Hertfordshire took place in the 1950's. Potters Bar and South Mimms were not in Hertfordshire at that time.**

#### **6a. Definitive Map Records – Draft, Provisional and First Definitive Map**

Date: Potters Bar, 1953 and 1964

Ref: CRoW (copy)

##### **6a.1 Why we consider these documents important**

The parish surveys were collated into the Draft Map and Statement. Notices were published advertising that the Draft Map and Statement had been produced so that the public (including landowners) could object to what was included or to what was omitted. Hearings were held to consider these objections and recommendations were made based on the evidence presented.

The Draft Map and Statement was amended following the hearings to produce the Provisional Map and Statement. As before, notice of the production of the Provisional Map and Statement was advertised but this time only landowners, lessees and tenants could apply to the crown court to amend the map – the public could not. The map and statement were then amended to reflect the court's finding.



Please note that these records vary across the county as a full sequence of Draft Map and then Provisional Map has not always been kept.

After the amendments to the Provisional Map and Statement were made, the First Definitive Map and Statement for Hertfordshire was produced. The Map and Statement together provide conclusive evidence of the existence of those public rights of way shown at the 'relevant date' of 1953; i.e. the information shown was correct at that date.

### **6a.2 What is shown by these documents in the area of the application route?**

The Potters Bar 1953 Definitive Map did not include record the Application Route as a public right of way. However Footpaths 43, 44 and (what is now recorded as) South Mimms Footpath 56 (labelled as 57 on the Potters Bar map) are shown, and described, joining the Application Route:

Footpath 43 – "... ending at rails on the north side of Wash Road immediately west of Bridgefoot Lodge."

Footpath 44 – "... Path ends at wooden footbridge over ditch adjacent to stile on east side of Wash Road."

Footpath 57 – "Starts at west side of Wash Road ½ mile from junction of Wash Road and Barnet Bye-pass..."

Potters Bar published a reviewed Definitive Map in 1964. The later Map records the same information with regards to the Application Route and the Definitive Statements for Footpaths 43, 44 and 57 were unchanged.

### **6a.3 Investigating officer's comments**

The Potters Bar Definitive Map does not provide evidence of the Application Route as a public right of way. The Definitive Statement provide evidence that Footpaths 43, 44 and 57 joined the Application Route at points 2, 4 and 6 on the plan. Its description, "Wash Road", and its junction with the public rights of way, provides supporting evidence of the Application Route as a public road.

## **6b. Definitive Map Records - Special Review**

**Date: 1977**

**Ref: CRoW**

### **6b.1 Why we consider these documents important**

The Countryside Act 1968 created the new designation right of way to be recorded - a "byway open to all traffic". This was the first time that vehicular rights were recorded on the Definitive Map. It also required county councils to carry out a Special Review to reclassify all "roads used as public paths" as either "footpaths", "bridleways" or "byways open to all traffic". In Hertfordshire the Special Review was started in 1977. This was later extended to include all the amendments to the network made by diversions since the first Definitive Map. It also showed if applications had been made to add or amend details of routes. Copies of the Special Review Draft Map showing all these changes were published, inviting objections from the public. Due to the number of objections received and not resolved, the Secretary of State ordered the abandonment of the Special Review in Hertfordshire in 1984. The Definitive Map and Statement was amended to show all changes which did not

have outstanding objections, and these were shown on the Definitive Map and Statement produced in 1986.

**6b.2 What is shown by these documents in the area of the application route?**

By the time of the Special Review, Potters Bar had become part of Hertfordshire and South Mimms had not yet become a separate parish.

The M25 motorway is shown hand-drawn onto the OS basemap, crossing Wash Lane immediately south of point 6 on the plan, north of Dancers Hill.

The Application Route is not recorded as a right of way but the Potters Bar Footpaths 43, 44 and 57 are shown joining the Application Route. Potters Bar Bridleway 71 is shown linking Footpath 57, on the north side of the M25, with the Lane on the south side of the motorway. Bridleway 71 was created by the 1971 M25 Side Roads Order – see paragraph 6.2 below.

The statement for Potters Bar Bridleway 71 reads “Commences from Wash Lane and runs N westward alongside the A1178 and through culvert to rejoin Wash Lane.”

**6b.3 Investigating officer’s comments**

The Special Review Map does not provide any evidence of the Application Route as a public right of way. The Special Review Statement provides evidence that Footpaths 43, 44 and 57 and Bridleway 71 joined the Application Route at points 2, 4 and 6 on the plan. The description of the Application Route as “Wash Road” and “Wash Lane”, and its junction with the public rights of way, provides supporting evidence of the Application Route as a public road.

**7. Highways Records**

Date: 1967 – 2006

Ref: HCC CRoW

**List of Roads 1967**

**The London ‘D’ Ring Road (A1 – A111 Section Side Roads) Order 1971**

**The London – Edinburgh Trunk Road (South Mimms Improvement) Side Roads Order 1972**

**The Hertsmere Borough Council (Wash Lane, South Mimms) (Restriction of Driving) Order 1984**

**The Hertsmere Borough Council (Wash Lane, South Mimms and Dancers Lane, Barnet) (Restriction of Driving) Order 2000**

**The List of Streets immediately before 2<sup>nd</sup> May 2006**

**Extent of Highway 2019**

## **7.1 Why we consider these documents important**

Maintenance of a route by the public is strong evidence that it is a highway, although it should be noted that not all highways are automatically maintainable at public expense. However it is important not to confuse 'maintainable' (i.e. duty to maintain) with maintained (i.e. works done). It should also be noted that lack of maintenance of a route does not necessarily mean a route is not highway.

The Highways Act of 1555 provided that parishes and their inhabitants had the responsibility for maintaining all existing public highways. The physical work was to be done by the inhabitants and each parish had to provide an unpaid parish surveyor who was obliged to keep a detailed account of public monies expended. This situation remained largely unchanged until the 1835 Highways Act, which allowed parishes to combine into larger groups for maintenance purposes. Under the Highways Act 1835 pre-existing highways continued to be maintained at public expense. Any highways established after that date needed to be 'adopted' to show they were liable for repair at public expense. The Highways Act of 1862 allowed parishes to combine into Highway Districts under Highway Boards. In 1868 highway administration in Hertfordshire was entirely parochial, except for the turnpike roads, corporations and the Local Boards of Heath. The Justices of the Peace decided to divide Hertfordshire into 8 Highway Districts; 7 of these were established but Hemel Hempstead was not. These Highway Boards were dissolved between 1880-1899. The Highways and Locomotive (Amendment) Act 1878 allowed highway authorities to apply to the county authority (Quarter Sessions) for an order to declare highways as Main Roads, which would then have half the maintenance expenses paid for by the county authority, unlike the 'ordinary' or local roads which were still the responsibility of the highway authority. The Local Government Act of 1888 introduced elected County Councils, which took over "main" roads, while after the Local Government Act 1894 new Urban and Rural District Councils took over all other roads. Responsibility for maintenance of these roads was handed over to the County Councils in 1929. Records from the minutes of the vestry council or Highway Boards accounts from this period can provide evidence of a route being maintained and is therefore strong indication of public highway. Most routes referred to in this manner are now part of the county's road network.

The Public Health Act 1925 required every urban authority to prepare a list of the streets within their district which were maintainable by the inhabitants at large. The Highways Act 1959 required the council of every borough and urban district to keep up to date a list of the streets within their area which were highways maintainable at public expense. Under the Highways Act 1980, the County Council is required to keep up to date a list of the streets within Hertfordshire which are highways maintainable at public expense. There are no rules or regulations about what information is required, or how it is to be presented or amended. The County Council holds this information as part of the Hertfordshire Roads Gazetteer, which is itself part of the Hertfordshire Roads Management Database. It is a record of what is maintainable, not necessarily what is maintained. It should be noted that whilst the information is referred to as the "List" of Streets', it is not held as a paper list but kept electronically.

If there is evidence that the application route was a vehicular highway, consideration of whether or not a route was recorded on HCC's List of Streets has to be given due to the effect of the Natural Environment and Rural Communities Act 2006 ('NERC'). NERC introduced legislation which automatically extinguishes all public mechanically propelled

vehicle ('MPV') rights, unless they were exempted by one of the exceptions provided. One of these exceptions applies to routes that were recorded on HCC's List of Streets immediately before 2nd May 2006. Where there is evidence that a route was a vehicular highway, then under NERC the continued existence of any MPV rights will depend on whether this or any one of the other exceptions provided is met.

**7.2 What is shown by these documents in the area of the application route?**

The **List of Roads 1967** includes an entry for Wash Lane in the Potters Bar Urban District. Wash Lane is given the road number F.208 and the OS grid reference is (E) 523 (N) 199 which corresponds to the general area around point 6 on the plan. The index accompanying the List of Roads categorises the roads, including trunk and principle roads, road classes and unclassified roads. 'F' is categorised as 'All other Unclassified Roads (old District unclassified Roads and Private Streets).

<b>POTTERS BAR URBAN DISTRICT</b> Hertfordshire County Council, Highways Dept., ('P' Section) Tel: Hertford 4242 Extn 458.		<b>CODE 28.</b> Sheet 4 of 4 Sheets DATE: Oct 1967 Issue 2.	
Road Name:	Road Number	O.S. Kilometre Grid Ref:	
		Eastings	Northings
Wash Lane	F.208	523	199

**The London 'D' Ring Road (A1 – A111 Section Side Roads) Order 1971**

This is the Side Roads Order (SRO) relating to the M25 in the Potters Bar area. The motorway severed Wash Lane and created the southern termination point, at approximately point Y on the plan, where previously Wash Lane had run into Dancers Lane to the south west. The distance between point 6 (the junction of the Application Route with the Footpath and Bridleway) and point Y (the northern boundary of the M25) is approximately 50 metres.





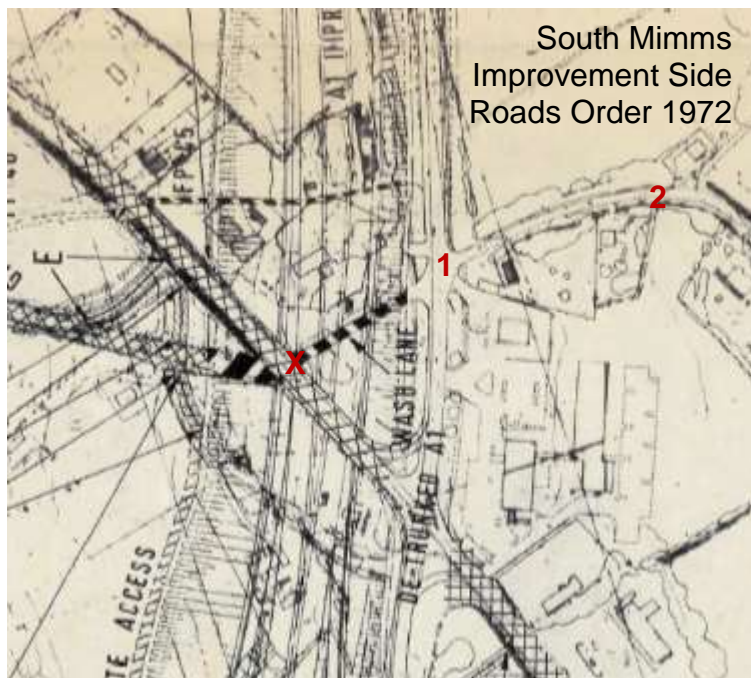
The SRO was made by the Secretary of State for Environment pursuant to powers under section 9 Highways Act 1959 and section 27 Local Government Act 1966 and authorised changes to highways in relation to the M25.

Schedule 1 of the SRO set out changes made by it in the locality of Potters Bar, relating to the Application Route:

- improving Wash Lane – from the north M25 boundary, at point Y on the plan, north west for approximately 25 metres (shown by cross hatching)
- stopping up South Mimms Footpath 57 from its junction with St Albans Road (unclassified) in a north-easterly direction for 90 yards (shown by zebra hatching)
- stopping up Wash Lane where it crosses the motorway (shown by zebra hatching)
- creating new highways:
  - a new footpath (now recorded as part of South Mimms Footpath 56), marked “B” on the SRO plan and shown by stippling, running generally south west along the northern boundary of the M25; and
  - a new bridleway (now recorded as South Mimms Bridleway 71), marked “C” on the SRO plan and shown by stippling, from approximately point 6 on the plan, under the M25 and east along the southern boundary of the M25 to join Dancers Lane.

**The London – Edinburgh Trunk Road (South Mimms Improvement) Side Roads Order 1972** improved the A1 by creating the current motorway; downgrading Swanland Road from a trunk road (labelled on the SRO plan as “De-trunked A1”).

The SRO was made by the Secretary of State for Environment pursuant to powers under section 9 Highways Act 1959, section 27 Local Government Act 1966 and section 3 and 62 of the Highways Act 1971 and authorised changes to highways in relation to the A1 trunk road.



Section 9 of the Highways Act 1959 relates to the powers of the Minister as respects side roads which cross or join trunk roads, section 9(1)(a)(i): “to stop up, divert, improve, raise, lower or otherwise alter a highway that crosses or enters the route of the trunk road or is or will be otherwise affected by the construction or improvement of the trunk road”.

The SRO stopped up various highways to facilitate the trunk road improvement. The sections of Wash Lane and Greyhound Lane, between points X and 1 on the plan, were stopped up to facilitate the A1(M). The junction between the de-trunked Swanland Road and Wash Lane was retained (point 1 on the plan):

- Greyhound Lane – stopped up from its junction with St Albans Road (B650) westwards for 33 yards,
  - Replaced with new highway ‘E’- which is the current alignment of Greyhound Lane and its junction with St Albans Road; and
- Wash Lane – stopped up from its junction with St Albans Road (B650) to its junction with the A1 Trunk Road, a distance of 70 yards.

Both applications are supported by **The Hertsmere Borough Council (Wash Lane, South Mimms) (Restriction of Driving) Order 1984**. The Order was made on 29<sup>th</sup> August 1984 by Hertsmere Borough Council pursuant to arrangements with HCC under section 1 of the Road Traffic Regulation Act 1967, as amended by Part IX of the Transport Act 1968, and after consultation with the Police in accordance with the 1967 Act. The Order came into operation on 19<sup>th</sup> October 1984.

Article 1 of the Order states:

‘Save as provided in Article 2 of this Order, no persons shall cause any vehicle to proceed in the length of road specified in the Schedule to this Order.’

Article 2 sets out a number of circumstances where vehicles will not be prevented from using the road, including:

- for the conveyance of persons, goods or merchandise to or from any premises situated on or adjacent to that length of road;
- for the purposes of agriculture in connection with land adjacent to that length of road or for the conveyance or haulage of timber felled upon that land;
- laying, erecting, altering, repairing utilities
- delivering or collecting post
- for police, fire brigade or ambulance purposes.

The Schedule is as follows:

Wash Lane, South Mimms – From a point 20 metres north of the entrance to Wash Cottage for a distance of approximately 630 metres in a southerly direction.

Wash Cottage was on the west side of the Application Route, to the south west of point 4 on the plan. The Inland Revenue plan at paragraph 4.2 shows the former location of Wash Cottage. The distance between the former double gates, near to point 4 on the plan, and the northern boundary of the M25, near point Y on the plan, is approximately 630 metres.

The applicant comments that the 1984 Order prohibits vehicle use of the Application Route. If the Application Route were only a footpath or bridleway, such an order would not have been needed to prohibit vehicles, it would already be unlawful to drive a motor vehicle on it by virtue of section 34(1)(b) Road Traffic Act 1988. This is evidence that there was a right to use the Application Route in a vehicle at the time the order was made. In the absence of a stopping up order, there remain such rights.

The applicant understands that the depiction of the Application Route on the Definitive Map as a BOAT will not have the effect of undoing the traffic regulation order on this piece of road, so there should be no material change in the use of the route.

### **The Hertsmere Borough Council (Wash Lane, South Mimms and Dancers Lane, Barnet) (Restriction of Driving) Order 2000**

The Order was made on 30<sup>th</sup> October 2000, by Hertsmere Borough Council, pursuant to arrangements with HCC under section 1 of the Road Traffic Regulation Act 1984 and after consultation with the Police in accordance with the 1984 Act. The Order came into operation on 20<sup>th</sup> November 2000 and revoked the, earlier, 1984 Order.

Article 3 of the Order states:

‘Save as provided in Article 4 of this Order, no person shall cause any vehicle other than a pedal cycle to proceed in the lengths of road specified in the Schedule to this Order.’

Article 4 sets out a number of circumstances where vehicles will not be prevented from using the road, very similar to those circumstances set out under Article 2 of the 1984 Order described above.

The Schedule to the Order, in respect of Wash Lane, is as follows:

Wash Lane, South Mimms – From the junction with Swanland Road to the junction with the northern end of Bridleway 71 Potters Bar. *[South Mimms had not yet split from Potters Bar at that time.]*

This Order therefore affects the whole Application Route between points 1 and 6 on the plan but not the section of the Lane between points 6 and Y on the plan.

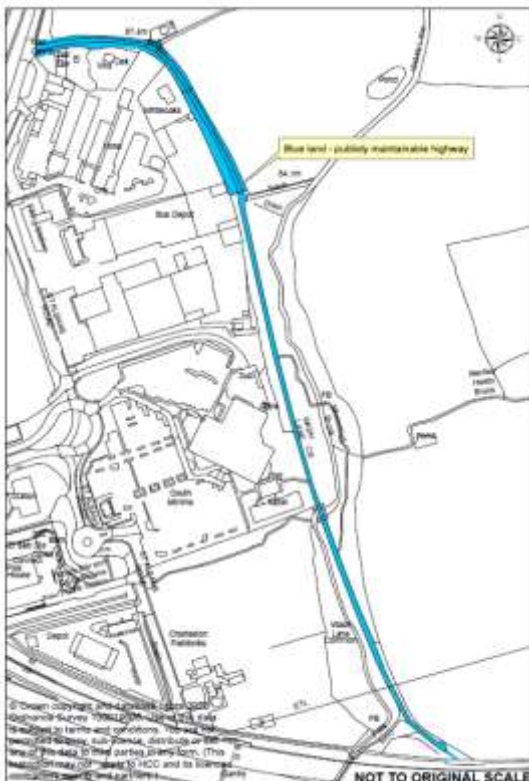
**The List of Streets immediately before 2<sup>nd</sup> May 2006** records the Application Route, in three segments, as follows:

- Points 1 to 4 on the plan: Wash Lane, Swanland Road to Gate, [road ID] 4U823/10, [Owner] Hertfordshire, [Agent] south west: Hertsmere District, Local Access, [road class] Unclassified.
- 
- Points 4 to 5 on the plan: Wash Lane, Gate to bridge, [road ID] 4U823/20, [Owner] Hertfordshire, [Agent] south west: Hertsmere District, Local Access, [road class] Unclassified.
- Points 5 to (approx.) Y on the plan: Wash Lane, Bridge to end near M25, [road ID] 4U823/40, [Owner] Hertfordshire, [Agent] south west: Hertsmere District, Local Access, [road class] Unclassified.

Extent of Highway 2019

HCC's Highway Boundaries & Land Charges team provided a record of the extent of the publicly maintainable highway on the Application Route. The evidence is taken from the Inland Revenue records (see part 4 above); the department has not found any highway adoption records.

Below is an illustrative plan showing, coloured blue, what is currently considered to be highway maintainable at public expense. Please note that, for simplicity, this plan only reflects current information regarding the Application Route and the section between points 6 and Y on the plan.



### **7.3 Investigating Officer's comments**

The Highways records held by HCC provide evidence of the Application Route as a public vehicular road and that immediately before 2<sup>nd</sup> May 2006 the Application Route, and the additional stretch of Wash Lane between points 6 and Y on the plan, were recorded as highway maintainable at public expense, notwithstanding that the 2000 prohibition of driving order continues to prohibit the use of vehicles on the Application Route.

## **User Evidence**

### **8. Contemporary Evidence of Use**

#### **8.1 Why we consider the evidence important**

Evidence is generally provided through the completion of evidence questionnaires by users and from information provided by the owner of the land. User evidence may support historic evidence of a right of way. However, where there is no historic evidence of a route it is possible for a public right of way to come into existence if it can be shown that members of the public have used it 'as of right' without interruption (usually) for a period of 20 years. In order for the public's use of a route to have been 'as of right' it must have been:

- without force (e.g. not breaking down a fence to access the route)
- without secrecy (e.g. not just using the route when landowners were away)
- without permission (i.e. not having the permission of the landowner).

Unless there is historic evidence of rights as well, legislation requires there to be evidence of 20 years' use which ends with a 'date of challenge' (section 31 of the Highways Act 1980). The 'date of challenge' is the date at which the landowner challenges the use of the route e.g. by putting up a notice. Where there is no evidence that use has been challenged, section 31(7B) of the Highways Act 1980 specifies that the date of application should be used as the end of the 20 year period.

Under common law a right of way can also come into existence in less than 20 years if it can be shown that there was dedication of the route by the landowner and acceptance of the route by the public.

Under Section 31, after a period of 20 years use, it is presumed that a right of way has come into existence. Where a landowner can produce evidence to show that they have taken steps to prevent the accrual of new public rights of way through use of a route by the public, no such right will be dedicated. Such steps must be overt and make the public aware of the landowner's intentions. They can include placing and maintaining notices on site stating that the route is not public or that it is used with permission; by erecting and locking gates; or by telling people seen using the route that it is not public, etc.

In addition to placing notices on site, section 31(6) of the Highways Act 1980 (following on from the Rights of Way Act 1932) allows landowners to deposit a map and statement with the County Council showing the public rights of way across their land. Following this, declarations need to be made regularly to the effect that no additional ways have since



been dedicated. It should be noted that making such deposits and declarations will not affect pre-existing rights.

Below is a summary of the evidence we have received, including a table showing the information provided in the user evidence forms.

### 8.2 Summary of Evidence

The two applications to record the Application Route, in two parts, as a BOAT were supported by user evidence forms which were completed by members of the public who have used the route. These evidence forms are summarised in two tables and two charts below.

- 12 user evidence forms were submitted with the application for the route between points 1 and 4 on the plan.
- Nine evidence forms were submitted with the application for the route between points 4 and 6 on the plan.
- A total of 13 individuals supplied user evidence. Where the user has not submitted an evidence form for that part of the Application Route, a line has been left greyed out in the relevant table below.

Table describing user evidence in relation to the Application Route between points 1 and 4 on the plan:

User	Start year	End year	Type of use	Frequency	Structures	Additional Comments
1	1976	2000	Horse	Monthly	-	
2	1996	2003	Horse	Weekly in spring & summer	Large green gate and small barrier	
3	1978	2003	Horse	Weekly	-	
4	1999	2002	Horse	Fortnightly	Gate near junction with BR75 with gap for pedestrians and riders to pass through. Barrier near Bridgefoot Lodge - iron scaffold pole.  Barrier near Bridgefoot Lodge can usually be passed on foot or horseback but recently (2002) a concrete drainpipe, about 2 foot in diameter, placed across the gap making it difficult/dangerous for horses.	Used by some vehicles for access/ delivery to the properties along the Lane.
5	1998	2003	Horse	Monthly	No	
6	1985	2003	Horse	Weekly	Gates across path but opening at side for horses.	
7	1983	2003	Horse	Weekly	User thinks this part of the route has a pole across and ends with a	

					metal barrier but there is access for a horse to pass by.	
8	1980	2003	Horse	3-4 times yearly 1980-1985, monthly 2000-2003	Pole across path	
9	1995	2003	Horse	Weekly	Yes - no details provided	
10	1978	2003	Horse	Monthly	No	
11	1975	1979	Horse/ bicycle	Monthly	No	
12	1962	1972	Horse	Fortnightly	No	

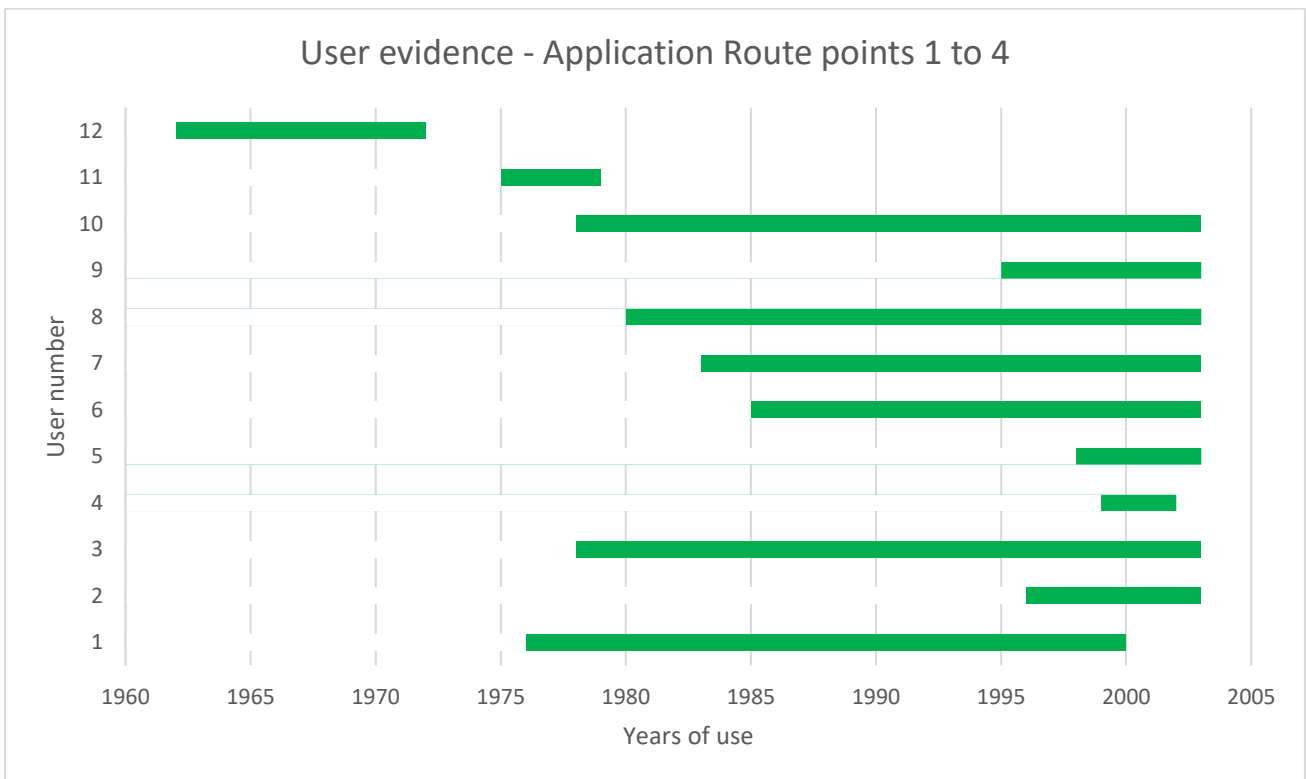
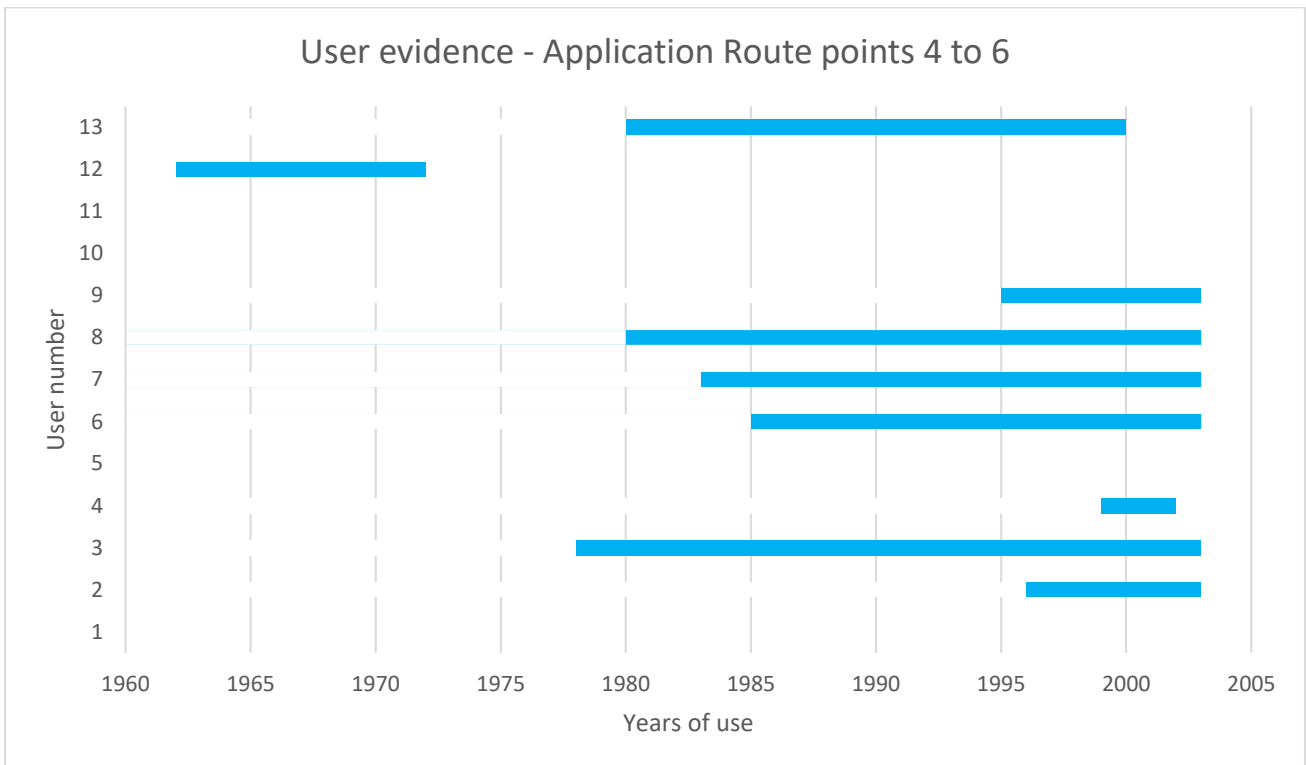


Table describing user evidence in relation to the Application Route between points 4 and 6 on the plan:

User	Start year	End year	Type of use	Frequency	Structures	Additional Comments
2	1996	2003	Horse	-	No	
3	1978	2003	Horse	Weekly	No	
4	1999	2002	Horse	Fortnightly	No	Wash Lane forms the only access to BR75 and the only link from the end of BR71 to start of BR75

6	1985	2003	Horse	Weekly	No	
7	1983	2003	Horse	Weekly	There is a pole across the path which you can ride around and further down a metal barrier with an access space for horses to pass through	
8	1980	2003	Horse	3-4 times yearly 1980-1985, monthly 2000-2003	Pole access across path	
9	1995	2003	Horse	Weekly	No	
12	1962	1972	Horse	Fortnightly	No	
13	1980	2000	-	Monthly	No	



The user evidence relates to the period from 1962 (the earliest evidence of use provided by User 12) until the date the evidence forms were completed in 2003.

The user evidence relates to use of the Application Route on horseback. User 11 also provided evidence of use of the Application Route between points 1 and 4 on bicycle. User 13 did not supply evidence of how they used the Application Route.

In relation to the Application Route between points 1 and 4 on the plan:

- Five users provided evidence of weekly use (3, 6, 7, 9, and 2 – who described their use as weekly in Spring and Summer);

- Two users provided evidence of fortnightly use (4 and 12);
- Four users provided evidence of monthly use (1, 5, 10 and 11); and
- User 8 described their use as 3-4 times yearly between 1980-1985 and monthly between 2000-2003. They didn't describe the frequency of their use between 1985 and 2000.

In relation to the Application Route between points 4 and 6 on the plan:

- Four users provided evidence of weekly use (3, 6, 7, 9);
- Two users provided evidence of fortnightly use (4 and 12);
- One user provided evidence of monthly use (13);
- One user did not provide evidence of the frequency of their use (2); and
- User 8 described their use as 3-4 times yearly between 1980-1985 and monthly between 2000-2003. They didn't describe the frequency of their use between 1985 and 2000.

None of the Users have provided evidence of having been given permission to use the Application Route or having been challenged whilst using the Application Route. No evidence of notices has been provided.

Six users (2, 4, 6, 7, 8, and 9) refer to structures on the Application Route. Details of the structures have generally been described in relation to the Application Route between points 1 and 4 on the plan, although users 7 and 8 reiterated their comments in the evidence forms relating to points 4 to 6 on the plan. The structures are described as a gate with horse access to the side and a barrier/scaffold pole with horse access to the side. User 4 provides more detailed information: a gate near Bridleway 75 (point 4 on the plan) with a gap to the side; and a barrier formed of an iron scaffold pole near Bridgefoot Lodge (point 3 on the plan). User 4 also describes that the barrier near Bridgefoot Lodge could usually be passed on foot or horseback but [in 2002] a concrete drainpipe, about 2 foot in diameter, was placed across the gap making it difficult/dangerous for horses.

None of the users have provided evidence of the width of the Application Route as this question was not included in the evidence forms submitted with the application.

### **8.3 Investigating officer's comments**

The user evidence submitted in support of the applications does not suggest that use of the Application Route has been challenged, although the concrete pipe next to the barrier at point 3 on the plan, in 2002, made it more difficult for horses to pass this point. The charts above demonstrate that prior to 2003 (when the user evidence was collected):

- four of the users (3, 7, 8 and 10) had been using the Application Route, between points 1 and 4, on horseback, for an uninterrupted period of 20 years; and
- three of the users (3, 7 and 8) had been using the Application Route, between points 4 and 6 on the plan, for an uninterrupted period of 20 years.

HCC currently has no user evidence for the two-year period between the evidence being collected in 2003 and the date of the second application (8<sup>th</sup> April 2005), relating to the route between points 4 and 6 on the plan. However, there is no indication that use was interrupted in, or has not continued since, 2003.

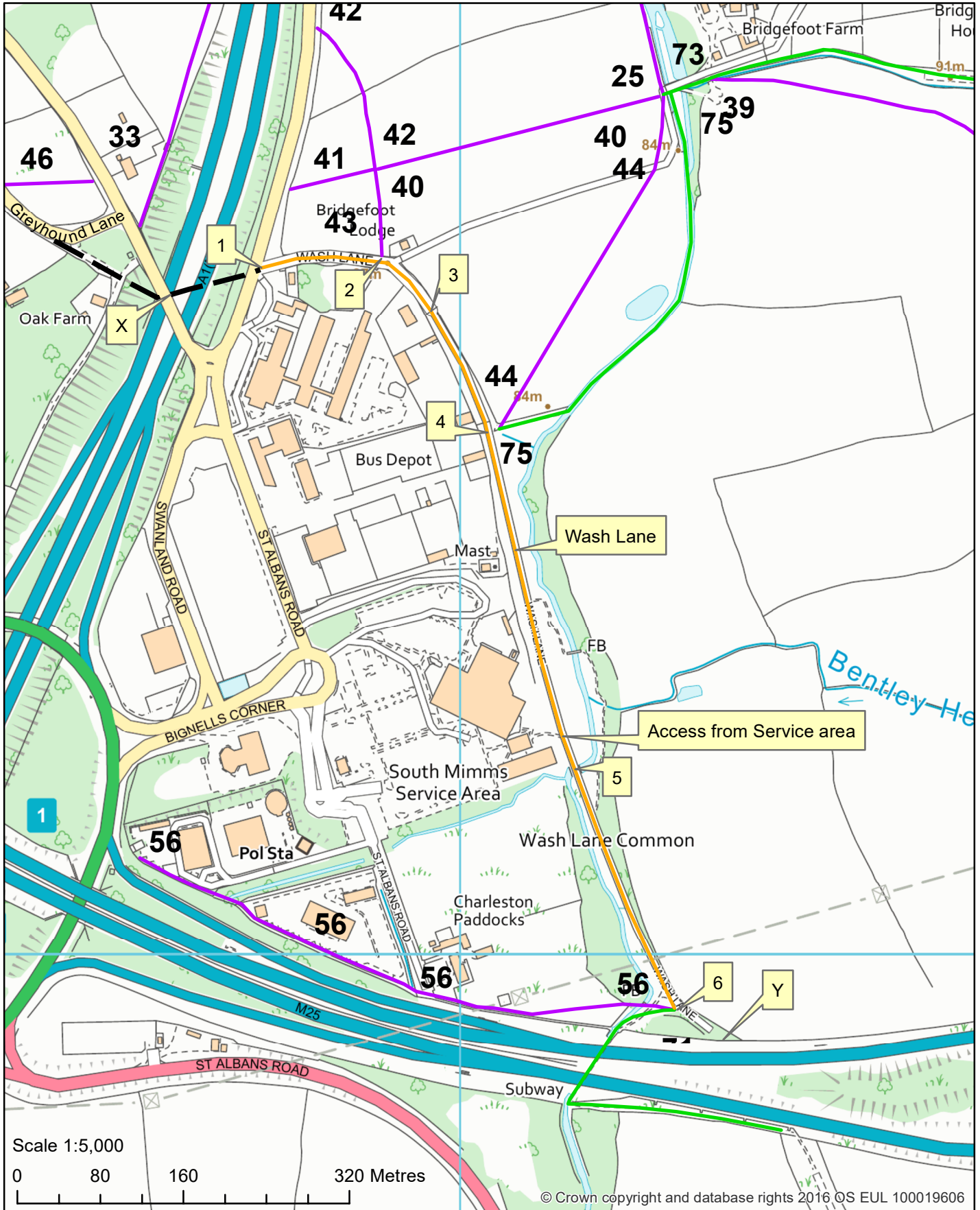
### **Additional Evidence Submitted after consultation**

*Please note any evidence submitted following the consultation will be appended to this report and included for consideration at the decision meeting.*



**Investigation Plan  
HTM/ 154 + 163/MOD**

**Application to record a Byway Open to All Traffic along Wash Lane, Potters Bar**



- Public Footpath —
- Public Bridleway —
- Application route —
- Former route of Wash Lane (X - 1) and Greyhound Lane - - -

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