

**HERTFORDSHIRE COUNTY COUNCIL
Access & Rights of Way Team**



**Modification Order Application
Reasons for the Decision**

Bridleway from Ashwell 2 to Bygrave 13

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Application Details

An application has been made to record a bridleway in the parish of Caldecote and Newnham on the Definitive Map of Rights of Way for Hertfordshire from Ashwell restricted byway 2 to Bygrave bridleway 13. An extract of the 2015 Definitive Map is attached labelled 'decision plan'. It shows where the route is and it is labelled points 1 to 6 and includes two further points – X and Y.

This application was made by Mr M H Westley, of the East Herts Footpath Society, on 4 February 2004 with all the relevant details to comply with the requirements of paragraphs 1 and 2 of Schedule 14 of the Wildlife and Countryside Act 1981. The application was submitted with the following supporting evidence:

- Order of the Justices, 1843, Hertfordshire Archives
- The Ordnance Survey 1st Edition Map, Hertfordshire Archives
- Applicant's statement

Description of Route

The application route is located in the parish of Caldecote and Newnham in the north of Hertfordshire. The village of Newnham is located approximately 700 metres to the south west of point 1 of the application route. The nearest town to the application route is Baldock approximately 3 kilometres to the south. The application route crosses land forming part of Newnham Manor Farm.

The application route runs from a junction with Ashwell restricted byway 2 (point 1) south through trees, crossing the parish boundary, for approximately 90 metres to cross over Cat Ditch at point 2. From point 2 the application route continues generally south for approximately 550 metres through a strip of trees dividing arable fields to cross a farm track at point 3. Point X on the plan marks the southerly extent of one of the sections of bridleway reserved in the 1843 stopping up and diversion order.

From point 3 the route continues south south west through trees and into an arable field for approximately 300 metres to point 4. From point 4 the route continues east south east for approximately 370 metres to point 5. From point 5 the route continues south east to the south west of Bygrave Plantation for a further 180 metres to a junction with Bygrave bridleway 13 at the parish boundary.

Point Y on the plan marks the junction between an old road and Newnham Road. The old ran between Newnham Road and Bygrave parish via point X and is shown on some of the older documents (Newnham Manor sales particulars, Bryant's Map and Newnham Tithe Map). The old road was stopped up by the 1843 stopping up and diversion order.

The surrounding landscape to the application route is rolling arable farmland divided by hedge lines and tree plantations. The application route has a natural surface throughout.

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 Rights of Way Service (ROW). 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>
Rights of Way Service (RoW) - www.hertfordshire.gov.uk/row or 01992 555279 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>

Investigations into the following documents have not provided evidence with regard to the application route. Where a document provides no evidence relating to the application route this has been recorded as "no evidence found", and where the type of document listed does not exist for this area, this has been recorded as "no records found."

1 Inclosure records

No records found.

2 Railway and Canal Acts and Plans

No evidence found. The Great Northern Hitchin to Cambridge branch line (extension to Cambridge 1847) passes approximately 2 kilometres to the south of the application route which is not within the limit of deviation of the plans.

3 Dury and Andrews Map

Date: 1766 Ref: HALS - CM26

3.1 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.

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

Dury and Andrews map of 1766 depicts a section of Hertfordshire in the north west of the county between Cambridgeshire in the east and Bedfordshire in the west. The most northern settlement in this section is Hinxworth with the larger settlement at Ashwell to the south east. ‘Newenham’ is located between Ashwell to the north east, ‘Bigrave’ to the south east and Baldock to the south west.

At the time of the investigation the Officer commented they considered that the public road known today as Ashwell Road to be depicted in the style of ‘open roads’ connecting Baldock, Bigrave and Ashwell. There are 2 routes depicted in the style of ‘open roads’ connecting Newenham and Bigrave.

The landowner comments that if the routes stopped up under the 1843 Order (see section 7) were vehicular highways then they would have been shown on Dury & Andrews map and is therefore good evidence that the application route did not exist at that time.

At the decision meeting, Dury & Andrews Map was re-evaluated and HCC considers that a road between hedges is shown running from the south east side of Newenham and to Bigrave village. The road is likely to follow that part of the application route between points 4 and 6.

3.3 Decision

HCC decided that Dury and Andrews Map does provide evidence relating to the application route between points 4 and 6 that it was considered to be public vehicular highway.

4. Papers Relating to the Sale of Manor of Newnham

Date: 1793-1808

Ref: HALS – DE/X58/E6

4.1 Why we consider this document important

In 1808 the Manor of Newnham was sold by Philip Yorke to Samuel Mills. The papers contain the particulars of sale of the manor including a scale plan, a tenancy agreement for a farm in the neighbouring parish of Radwell, notices to quit and a conveyance between Philip Yorke and Samuel Mills.

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

The undated estate plan, cross referenced with the sale particulars, contains a scale plan of the Manor of Newnham bordered by Caldecott and ‘Ashwell Lordship’ in the north, Bygrave in the south east and Radwell in the south west.

Points 4 to 6 of the application route is depicted in part as a small section of a longer route, running from Caldecott to Bygrave (passing to the north east of point Y and linking Newnham Road with point 4 of the application route). This is the same road as was shown on Dury & Andrews Map. The route is depicted as an unnumbered linear feature bordered by two solid lines and labelled 'to Bygrave' in the south east and 'from Caldecott' in the north west. The application route between points 1- X is also depicted along a similar road like feature with point X connecting to a road labelled 'to Sandon' in the east (the route which crosses the application route at point X is part of a road which was later stopped up in the 1843 Order). At point 1 the feature vanishes at the boundary with the 'Ashwell Lordship'. Points X-3-4 however is not depicted along a similar feature and instead follows what appears to be field boundaries between plots 129, 118, 126, 122 and 121.

The public road known today as Caldecote Road is depicted as an unnumbered linear feature in the north west of the map connecting to the settlement at Newnham and labelled 'from Caldecott' and 'to Newnham'. The public road known today as Newnham Road is also depicted as an unnumbered linear feature connecting to the road known today as North Road (A507) labelled 'to Baldock'.

The accompanying book of sales particulars names these plots as Long Goldsmer (129), Longlands (118), Middle Shott (126), Nine Acres (122) and Gravel-pit Hill (121). The book contains all lots included on the map to be sold by auction. It does not include a list of public highways. Only plots 112 (Hullock Pitt Hill) and 130 (Great Close) are described as 'with road'. Plot 112 is shown on the plan with a road running on its western boundary defined between one solid and one pecked line. Plot 130 is shown on the plan with a road running through the centre of the plot defined by parallel pecked lines. There are other plots shown on the plan which include routes on the boundary or the plot or running through the middle but which are not described as 'with road' in the book of reference. The Timber growing upon the estate was to be included in the purchase.

The landowner comments that the sale particulars are not a good source of evidence as to status since these documents would have been produced to identify property for sale, not to identify public highways. The application route between points X-4 is not shown at all.

4.3 Decision

HCC decided that the sales particulars provide some evidence of the physical existence of the application route between points 1 and X but no evidence of highway rights although it joins a route (a road stopped up in 1843) labelled 'to Sandon' at point X.

The sales particulars do not provide any evidence of the existence of the application route between points X-3-4 as this section is only depicted as field boundaries.

The sales particulars provide evidence of the physical existence of the application route between points 4-6 which is likely to be highway as it forms part of a longer route which is labelled 'from Caldecott' and 'to Bygrave' and is likely to be the same road which was shown on Dury & Andrews Map.

5. Bryant's Map

Date: 1822

Ref: HALS - CM88

5.1 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.

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

Bryant's map of 1822 depicts the settlement at Newnham just to the east of the great north road known today as the A1. To the north of Newnham is the settlement at Hinxworth, with Ashwell to the north east and Bygrave to the south east.

The application route is depicted in the style of 'Lanes and Bridleways' from the boundary of Cashio Hundred at point 1 to the stream known today as Cat Ditch at point 2. The route depicted continues south west (joining the Caldecote to Bygrave road – running to the north east of point Y) where it then turns south east along this road towards the parish boundary with Bygrave. Part of this route, to the Bygrave parish boundary, appears to follow the application route between points 4 and 6.

The landowner comments that the alignment of the route shown on Bryant's map does not appear to meet the alignment of the application route. The depiction of the route as being interpreted as a 'lane and bridleway' by Bryant does not mean that it is suggestive as being a public carriageway. The map does not show any route between approximately points 2 and 4.

5.3 Decision

HCC decided that Bryant's Map shows the physical existence of the application route between points 1 and 2 and 4, 5 and 6 and provides evidence of it being at least bridleway status. The alignment of the road on Bryant's Map between point 2 and Y appears to differ from that shown on earlier maps. This map does not provide clear evidence of the application route between points 2 and 4.

6. Ordnance Survey 1st edition 1 inch to 1 mile map

Date: 1833 Ref: HALS – No.10 – sheets 45, 46, 47 & 48

6.1 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. The 1st edition 1 inch to 1 mile map provides an accurate and to scale picture of the landscape at the time; with physical features such as rivers and woods and human features such as settlements, railways and roads. It cannot however be used to provide evidence of public highway.

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

The Ordnance Survey 1st edition 1" to 1 mile map depicts part of the application route from a junction with the route known today as Ashwell restricted byway 2 at point 1, crossing the stream known as Cat Ditch at point 2 then south to point 4 on the plan. The route shown on the map continues south and south east to join Bygrave Restricted Byway 14 (as now recorded) to the west of Bygrave village and does not show the application route between points 4-6. The application route between points 1 and 4 is depicted as a linear feature bounded by solid and dotted lines.

The landowner comments that the map appears to depict the route on a similar alignment to the Application Route but the map does not identify the status of the route.

6.3 Decision

HCC decided that the Ordnance Survey 1st edition 1" map provides evidence of the physical existence of the application route, between points 1 and 4 on the plan, at the time the map was surveyed in 1833. The Ordnance Survey Map however does not provide evidence of whether the routes shown were public or private.

7. Highway Diversion, Creation and Extinguishment Records

Date: 1843

Ref: HALS LSR30/102&102A

7.1 Why we consider these documents important

Most orders diverting or extinguishing rights of way were made under the Highways Acts. The orders could be made by certain courts, which up until the mid-part of the 20th century were the Quarter Sessions courts and were held 4 times a year. The Quarter Sessions courts were superseded by the magistrates' court in 1972. Certain orders can now also be made by other authorities, such as a governmental department or local highway authority. Orders relating to highways can also be made under other Acts of Parliament, such as the New Towns Acts, the Housing Acts, the Town and Country Planning Acts or the Defence Acts. Side roads orders are made under the Highways Acts to deal with changes to the local highway network following the construction/improvement of a road. These can be made by the government minister in respect of trunk roads, or by the highway authority in respect of all other highways.

In all cases, these legal orders affect the public highway rights by creating, diverting and extinguishing them. As these are legal documents they provide conclusive evidence of those matters actually decided, but are not conclusive in relation to other matters.

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

The notice of Order of the Justices of the Peace assembled at Quarter Sessions in St Albans on 19th October 1843 stopped up and diverted certain public highways within the parish of Newnham.

The Order stopped up and diverted roads in Newnham including the road from point X to the parish boundary, the Caldecott to Bygrave road and the road from point Y north east towards Ashwell. The road from point X east to the parish boundary was described as unnecessary, the road from point Y to Ashwell was diverted onto what is now the Ashwell Road and bridleway rights were reserved on parts of the application route.

The Order stopped up part of the application route to cart traffic but reserved rights for a public bridleway of a width of 8 feet between points 1 and point X]and furthermore between points 4, 5 and 6:

“An order or orders for stopping up a certain public highway lying and being in Newnham, within the Liberty aforesaid, branching out of the Public Highway which leads from the Weigh-bridge on the Great North Road into the village of Newnham, and commencing at a point marked A on a certain Map or Plan hereinafter mentioned or referred to, and leading thence through or over Lands of Samuel Mills, Esquire, called Upper and Lower Goldsmer, in the occupation of Thomas Hine, and along the west and north sides of the latter to a point marked B on the said Plan, which road up to such last mentioned point is marked or coloured red thereon, and proceeding thence in a northwardly direction along the west side of a field called Lower Cat Corner to a point marked C on the said plan, adjoining the Parish of Ashwell in the said County of Hertford, and from B to C coloured blue in the said Plan, containing in length from A to C one thousand three hundred and seventeen yards or thereabouts, and from B to C two hundred and fifty-eight yards or thereabouts, and being of a mesne width of four yards or thereabouts, reserving nevertheless a Public Bridle-way, of the width of eight feet, along so much of the said Highway as lies between the letters B and C aforesaid, and is coloured blue on the said Plan.”

“Also for stopping up as unnecessary a certain other Public Highway in Newnham aforesaid, containing in length one thousand two hundred and seventy-nine yards or thereabouts, and of a mesne width of four yards or thereabouts, commencing at a point marked F on the aforesaid Plan, and proceeding in an eastwardly direction through or over land of the said Samuel Mills, called Upper Goldsmer and Noman’s Land, in the occupation of the said Thomas Hine, to a points marked G, and up to such point coloured red on the said Plan, and thence over or by the side of a field also of the said Samuel Mills, in the occupation of the said Thomas Hine, called Round Fours, to a point marked H, where it adjoins the Parish of Bygrave in the said County, so much of the last described highway as runs over the said field called Round Fours being coloured blue on the said Plan, reserving a Public Bridleway of the width of eight feet along so much of the said last described Highway as lies between the points denoted by the letters G and H, and is coloured blue on the said Plan.”

The section of the application route from point X and point 4 is depicted on the plan of the diversion, annotated between letters G and B, bounded on two sides by dashed lines but not mentioned in the diversion order.

The order of the justices of the peace on 19 October 1843 stopped up part of the application route to cart traffic. The order however preserved two public bridleways of a width of 8 foot along two sections of the stopped up road – points 1 to a point south of point 2 and between points 4-6. The justices viewed the proposed diversions and bridleways. Whilst the order made no mention of the middle section of the application route from a point south of point 2 and point 4 the application route is shown in full on the diversion plan. It is possible that this may have been because the application route (from a point south of point 2 and point 4) was considered to be part of a public highway which was not required to be stopped up as it is unlikely that the justices of the peace would have created two dead-end bridleways.

The landowner comments that the reservation of Bridleway rights has been identified by HCC as creating cul-de-sac routes. There was no mention in the notice of Order of the section of the application route between points X and 4 (B-G on the stopping up plan). The Order therefore provides no evidence to suggest that this part of the application route was considered to be public.

7.3 Decision

HCC decided that had the application route been considered unnecessary, it would have been stopped up by the Order. Bridleway rights were reserved on sections 1 – X and 4 – 6 and the Quarter Session plan shows how these were connected.

The Quarter Session Order provides evidence of the physical existence and public bridleway status of the application route between points 1 - X and 4 - 6, 8 feet in width and with no limitations. The Order also provides supporting evidence of how these were linked.

8. Newnham Tithe Map and Tithe Apportionment

Date: Newnham 1842 Award – 1847 Map

Ref: HALS Map DSA4/72/2
Award: DSA4/72/1

8.1 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.

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

The Tithe Map of Newnham produced in 1847 depicts the small parish with numbered fields and woodland, the stream known today as Cat Ditch in blue, and routes through the parish are coloured yellow.

The roads known today as Newnham Road and Caldecote Road are depicted as linear features, coloured in yellow, bounded by solid and pecked lines. Newnham Road is unnumbered and is labelled 'From Baldock' at its south western extent at the boundary of the parish.

The application route is depicted in its entirety between points 1 and 6, unnumbered and coloured yellow. The application route is labelled 'To Ashwell' in the north (at point 1 on the plan). From point 6 on the plan the yellow route continues in a south westerly direction (following what is now recorded as part of Bygrave Bridleway 13 and Restricted Byway 14) and is labelled 'From Baldock' at the boundary of the parish.

The application route between points 1 and 3 is depicted bounded by 1 solid line and 1 dashed line and the section of the application route between points 3 and 6 on the plan is depicted bounded by 2 parallel dashed lines. The application route runs between plots 29, 30, 32, 35, 36 and 37. Each of these plots is described as 'arable' in the Award.

The Tithe Map of Newnham depicts some of the changes to the public roads which were brought about as a result of the stopping up and diversion Order outlined in section 7 above. The Tithe Map however also depicts part of some of the routes described to be stopped up in the order from 1843 (see section 7) in yellow in a similar style to the application route. This includes a route (from point X) around the northern and western edge of the field known as Long Goldsmer connecting to the road (at point Y) known today as Newnham Road.

The accompanying Tithe Award produced 5 years earlier in 1842 categorises the land use in the parish into the following areas; arable land, meadow or pasture land, wood land, roads and wastes, gardens belonging to houses and glebe belonging to the Vicar. The largest category of land use in the parish was arable land with a combined total area of 49 acres. The total amount of Roads and Wastes in the parish totalled 16 acres.

The Award does not contain a list of roads and waste in the Parish. Only one plot (17) describes a 'Lane and Field'. The owner of the plot is recorded as Samual Mills Esq and the plot is shown as a field with an uncoloured set of pecked lines running for a short distance into the field.

There is evidence that the following routes which are coloured yellow on the Map have, at some point, been considered to have public status:

- The (current) public roads Newnham Road, Caldecote Road and part of Ashwell Road (the continuation of Ashwell Road was shown in the 1863 Ashwell Inclosure)
- Part of Bygrave bridleway 13 and restricted byway 14 which are now recorded on the Definitive Map
- Roads stopped up by the 1843 Order
- Routes with bridleway rights reserved by the 1843 Order
- There is a yellow route linking the north eastern extent of Ashwell Road (as shown on the Tithe Map) south east to a road which was stopped up in 1843 (the road from point Y north east towards Ashwell). The Tithe Map shows this route on a different alignment to earlier documents. A similar route on a different alignment is shown on the Newnham Manor sales particulars and on Bryant's Map - from the north eastern

end of Ashwell Road east to the road stopped up in 1843, west of point X. This yellow route links two routes with public status.

The final yellow route shown on the Tithe Map is the application route between points X-4. Whilst the earlier documents have not provided evidence of public status of this part of the application route, it links two routes which have reserved bridleway rights under the 1843 Order.

The landowner comments that the Tithe Map depicts a route on a similar alignment to the application route, however, the Tithe Map on its own is insufficient to determine whether or not the route is public. The Tithe Commissioners did not have the remit to identify whether or not land was public highway, although in some Tithe Apportionments public roads and private roads are listed. In this case the routes depicted are not numbered or listed and there is therefore no evidence available to identify their status. The routes depicted on the Tithe Map could therefore, be private or public.

The landowner notes that the Tithe Award was made in 1842, prior to the stopping up and diversion Order, whilst the Tithe Map is dated 1847, after the Order. It is noted that the Map shows some of the changes made by the Order, but not others, suggesting that it cannot be treated as a reliable source of evidence for the existence of routes shown or their status.

8.3 Decision

HCC decided that the Tithe documents show the physical existence of the application route and provide supporting evidence of its public status. The application route is depicted, coloured yellow, as other public highways including Newnham Road and Caldecott Road.

9. Ordnance Survey 1:2,500 scale maps

Date: 1877 & 1898 Ref: HALS

9.1 Why we consider these documents important

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.

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

The OS 1st edition from 1877 depicts the village at Newnham in the west with open fields to the east. Between points 1 and 3 on the plan a land boundary is shown but the application route is not depicted. The parish boundary with Ashwell is shown at point 1 on the plan, a stream crosses at point 2 and between points 2 and 3 the land is open field - plot numbers 53 and 55, which the accompanying book of reference describes as 'Arable'. There is no depiction of the application route between points 3 and 6 on the plan which crosses plot 55 – also described as 'Arable'. A chalk pit is shown within Gravelpit Hill close to where the

application route would run. At point 6 the application route would meet the route known today as Bygrave bridleway 13 with the parish boundary down its centre and labelled C.R. to indicate that the parish boundary is in the centre of the road.

The OS 2nd edition from 1898 depicts a broadly similar picture to the 1st edition although the stream which the application route crosses at point 2 is now labelled 'Cat Ditch' and the parish boundary at point 1 is now labelled as being '4 ft R.H.' meaning it was 4 foot from the root of the hedge. There is no land boundary shown on the map between points 1 and 2.

The landowner comments that these OS maps provide no evidence of the existence of the application route. It can reasonably and properly be assumed that the route did not exist as a physical feature at that time.

9.3 Decision

HCC decided that the 1st and 2nd edition OS maps provide no evidence of the application route which appears to have fallen into disuse sometime between 1847 when the Tithe map was produced and 1877 when the 1st edition was produced.

10. Inland Revenue Documents

Date: 1910 Ref – Map IR1/25a,b IR1/36a,b,c – Book IR2/56/1

10.1 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.

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

The application route falls entirely within hereditament 8 coloured in green on the Inland Revenue Plan. The accompanying field book describes hereditament 8 as being part of land owned by John Mills and described as 'Cottage and premises' with a total area of 463.1.15 acres. Plot 8 contains no deductions for public rights of way though part of (what is now recorded as) Caldecote and Newnham footpath 5 is shown annotated 'FP' on the OS basemap and crosses hereditament 8 for a short distance. (Footpath 5 also crosses hereditament 33 for which there is a £15 deduction for rights of way.)

The landowner comments that the application route is not depicted on the map which proves again that the route did not exist at that time as a physical feature. If the route was depicted it would be shown within Plot 8 coloured green. This evidence gives a good indication that the area of land where the application route is located was privately owned and the route was not in existence at that time.

10.3 Decision

HCC decided that the Inland Revenue documents provide no evidence of the application route.

11. 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)

11a. Definitive Map Records – Newnham Parish Survey

Date: 1951-1954 Ref: ROW

11a.1 Why we consider these documents important

Under the National Parks and Access to the Countryside Act 1949 the county council was required to show all public paths which were defined as "footpaths", "bridleways" and "roads used as public paths". This last term was never properly defined and has resulted in much confusion ever since. There was no requirement to record public vehicular highways.

In Hertfordshire each parish carried out a survey of the paths which were believed to be public. Sometimes additional surveys were carried out by the Ramblers' Association or the Youth Hostel Association; or comments were made by them on the parish's survey. The surveys once completed were sent to the County Council for collating and publishing as the Draft Map.

11a.2 What is shown by these documents in the area of the application route?

The Newnham Parish Survey and Schedule recorded four Rights of Way in the parish. The application route was not included on the map and schedule although it was noted in a survey by the Ramblers Association on 20th October 1951 which stated the following:

'Another matter which may concern Newnham Parish is that upon enquiry from, a resident at Newnham, and from many old residents of Radwell and Baldock whilst in the Compasses P.H.... is an old public right of way to Ashwell, passing between Hullockpit Hill and Bygrave Plantation, connecting by Arbury Bank. There was general agreement that a right of way did exist, but owing to ploughing in sections it could not be used. Here it would be necessary to have access to old maps, dating back a very long while.'¹

In addition to this the parish correspondence provides some further insight on Rights of Way at Manor Farm in the parish of Newnham at the time of the survey. J.E. Page of the Ramblers Association made the following comments in a letter to the county surveyor:

'When I interviewed the young farmer at Manor Farm, who I believe was an R.D.C. councillor, (his name escapes my memory) he was then most definite that he was not going to show any F.P. on the map. (I believe he farms all the Parish of Newnham).

I informed him that by Act of Parliament he was required to do so. It will be seen that all the paths shown serve a useful purpose, and No. 2 is a continuation of Right of Way from road to or from Ashwell.

The farmer does not permit local people to wander over his grounds if they wish, for recreational purposes where ground is not ploughed, but he has not given thought that Rights of Way permits usage by other than local people and a village without Rights of Way from one village to another would be unique.

I don't think that I need comment any more on the Rights of Way in Newnham excepting that there is not one to connect with the village of Bygrave and I feel that there must be one in existence and used to this day. I believe that more of the few inhabitants in Newnham are employed locally, and it would definitely be very difficult to get evidence, and detrimental to such people.'

The adjoining Ashwell parish survey to the north included C.R.F No. 2 which is known today as Ashwell restricted byway 2 terminating at point 1 and the parish boundary with Newnham. The parish survey from 1951 by the Ramblers Association and the Ashwell Parish Council noted that the route 'should continue to parish boundary for a further 150-200 yards, but has been ploughed up'.

The adjoining Bygrave parish survey to the south east makes no mention of the application route where it joins Bygrave bridleway 13 at point 6.

11a.3 Decision

HCC decided that the comments of the Ramblers Association refer to the historical existence of the application route as a public right of way. However, as the application route

¹ Newnham Parish Surveys p.5

was not included in the parish survey, these documents do not provide evidence of public status.

11b. Definitive Map Records – Draft, Provisional and First Definitive Map

Date: 1954 - 1955

Ref: ROW

11b.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 quarter sessions 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.

11b.2 What is shown by these documents in the area of the application route?

There are no records of any Draft Map Objections in Newnham. The 1st Definitive Map depicts Ashwell 2, terminating at the parish boundary with Newnham and point 1 of the application route, but no right of way continuing into the Newnham parish.

11b.3 Decision

HCC decided that the Draft and First Definitive Map records provide no evidence of the application route.

11c. Definitive Map Records - Special Review

Date: 1979 - 1984

Ref: ROW

11c.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.

11c.2 What is shown by these documents in the area of the application route?

A letter from the Ramblers Association to the County Surveyor in 1979 raised concerns about 'gaps in the footpath system in the Newnham Parish'. One of the 'gap's' raised concerns part of the application route which the letter describes as: 'the ancient trackway passing Arbury Banks in a south-westerly direction (RUPP 2 in Ashwell Parish on map TL 23 NE) comes to an abrupt halt at Newnham Boundary.' The letter suggested that the continuation of the 'ancient trackway' (Ashwell 2) should join the road south of Newnham village instead of along the alignment of the application route which connects to Bygrave Bridleway 13 south and east of the village of Newnham.

The County Surveyor wrote to Caldecote and Newnham Parish Council in response to the letter and asked the parish council for their views on the matter. There is no record of the parish council's response.

The Special review map removed the dead-end section of the adjacent Ashwell 2, making it connect to Ashwell Road via RB 3. Following public consultation however, the Ramblers Association objected to this omission on 18 July 1984 and the section of the path was put back on the Definitive Map.

11c.3 Decision

HCC decided that the Special Review provides no evidence of the application route.

User Evidence

12. Contemporary Evidence of Use

No user evidence has been submitted and no Section 31 of the Highways Act 1980 deposit exists for the land crossed by the application route.

Conclusion

The landowner submits that there is insufficient evidence to show that the application route subsists or is reasonably alleged to subsist because the OS maps do not provide evidence of status, the private maps show only sections of the application route and the two sections of bridleway retained in the stopping up and diversion order must have had independent utility. The "cul-de-sac" bridleways are consistent with the representation of the route in the Newnham Manor sales particulars. The Tithe Map shows a route on a similar alignment to the application route but the landowner considers it to be unreliable source of evidence. The landowner has also drawn attention the existence of a well at approximately point 4 on the plan which may offer an explanation why public access to that point had a purpose.

HCC has not been able to determine the position of the well.

Taken as a whole therefore, the landowner considers that the route is not deemed to be reasonably alleged to exist as a public right of way. However, HCC has to consider guidance including that provided by the courts in the case of *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334.

In the *Fortune* case, Lewison LJ said, at paragraph 22

“In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB directed the jury in *R v Exall* (1866) 4 F & F 922:

It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.”

HCC’s decision is therefore based on the assessment of all the evidence, which has been taken all together rather than relying on an individual document. This conclusion explains the decision made.

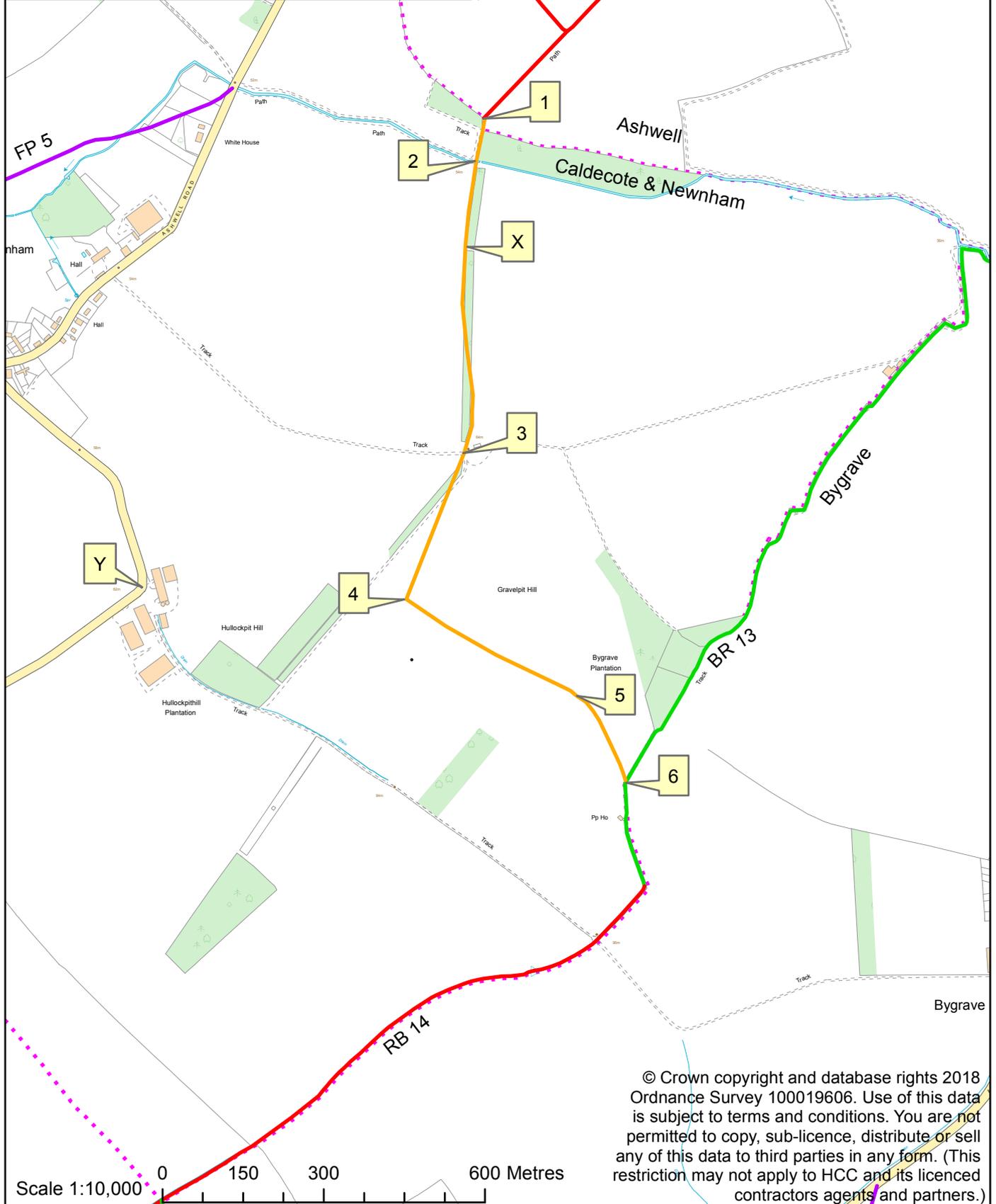
The earliest historical document which provides evidence of the public status of the Application Route is the 1766 Dury & Andrews’ Map, however the Map provides evidence in relation to the application route between points 4-6 only. The later documents, Newnham Manor sales particulars (1793-1808) and Bryant’s Map (1822), also provide evidence relating to points 4-6 of the application route. The sales particulars provide evidence that points 4-6 of the application route is likely to have public status and Bryant’s Map provides evidence of public status in relation to the application route between points 1-2 and 4-6. The 1843 stopping up and diversion Order provides evidence of bridleway status on the application route, 8 feet wide, but relates only to points 1-X and 4-6. The only document which shows the application route in full is the 1847 Tithe Map which provides evidence of the physical existence of the route in full and supporting evidence of public status. HCC has not seen any evidence that the bridleways which were reserved in the 1843 Order were later stopped up.

HCC therefore decided that there is sufficient evidence to make an order to record a bridleway between points 1 and 6 on the attached decision plan. The width of the bridleway will be recorded as 8 feet as set out in the stopping up and diversion order. In the absence of other evidence, it is assumed that the width recorded in the stopping up and diversion order would be consistent along the length of the bridleway. There will be no limitations recorded on the bridleway. HCC will be liable for the maintenance of the bridleway as the evidence of the bridleway is historic.

NH/163/MOD
Bridleway application Ashwell RB 2 to Bygrave BR13

Decision Plan

- Bridleway Decision route ————
- Footpath ————
- Bridleway ————
- Restricted Byway ————
- Parish Boundary - - - - -



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