

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Application Decision Report

Berkley Avenue to Park Avenue, Waltham Cross

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Date: 24th May 2013

Application Details

An application has been made to record a footpath along an alleyway between Berkley Avenue and Park Lane, Waltham Cross. An extract of the 2010 Definitive Map is attached. It shows where the route is and it is labelled points 1-2-3.

The application was made by Mrs Spenceley, Mrs Morris and Miss Tate and sent to HCC on 29th June 2001. It was incomplete at first but the applicants corrected it when advised by the County Council, and dated it 18th July 2001. There is a clear chain of communication relating to this over the course of 5 weeks, and according to the case of *R (on the application of Maroudas) v Secretary of State for Environment Food and Rural Affairs* [2010] EWCA Civ 280 this is sufficient for an application to be duly made.

Description of Route

The application route is in the urban area of Waltham Cross, which is north of London. It links Park Lane and Berkley Avenue. The application route is a metalled alleyway of between 3 to 9 metres in width that leads from Berkley Avenue (see point 1 at Plate 1), past some privately-owned garages and past The Plough public house through to Park Lane (point 3). Two gates now exist on the route, at points 2 and 3, and more details about these are given in section 12 below.

Documentary Evidence

For each investigation, we check at least 10 primary sources of information. You can view the documents listed below at Hertfordshire Archives and Local Studies (HALS), at the Rights of Way Service (ROW) or at The National Archives in Kew (TNA). The documents are listed below with a reference number (if it has one) and where you can find it.

For further information contact:

- Hertfordshire Archive and Local Studies (HALS) - 01438 737333 (or 01923 471333 from area codes 01923 and 020); www.hertsdirect.org/services/leisculture/heritage1/hals.
- Rights of Way Service (RoW) - 01992 555279 to make an appointment.
- The National Archives (TNA) - 020 8876 3444; <http://www.nationalarchives.gov.uk>.

If you would like more information about documents and how they are important in investigating public rights of way, please go to the Planning Inspectorate's website and view their Guidance Booklet for Definitive Map Orders: Consistency Guidelines. See <http://www.planningportal.gov.uk/planning/countryside/rightsofway/rightsofway> which also gives details about related articles and case law.

You will find each document 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

Please note that where there are no records for the document listed, this will just be recorded as "no records found."

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 of Hertfordshire made from an original survey, although it is a schematic map (like the London Underground map) rather than one to scale. It 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 both public and publicly maintainable.

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

Dury & Andrews' map shows Waltham Cross to be a small village comprising a main road running north-south lined with properties on either side. That main road has four roads leading into it from the west and east, the most southerly western one of which is probably Park Lane. The properties lining the main road have large gardens/fields behind them. The western boundary of the field directly south of Park Lane is shown to be a similar shape to the application route. However, the application route itself is not shown.

1.3 Decision

HCC decided that Dury & Andrews' map does not provide any evidence about the application route.

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 usually public and publicly maintainable, unless there is strong contemporary evidence which shows that routes are private.

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

Bryant's map shows Waltham Cross in the same way that Dury & Andrews did. Park Lane is shown, as are the buildings lining the main road through the village. However, Bryant does not show the field boundaries backing onto the properties, and the boundary along with the application route runs is not shown.

2.3 Decision

HCC decided that Bryant's map does not provide any evidence about the application route.

3. Cheshunt Tithe Map and Tithe Apportionment

Date: 1842 Ref (map): HALS DSA4/30/2
Date: 1841 Ref (award): HALS DSA4/30/1

3.1 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. 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. 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 can³ 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. In some cases highways are coloured yellow or sienna to indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the calculation of tithe rent. Their absence from a map does not therefore necessarily mean they did not exist.

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

As with Dury & Andrews' and Bryant's county maps above, the tithe documents predate the construction of the properties in the immediate area of the application route. The application route is again not shown on the tithe map. The area over which it now runs is a field boundary similar in shape as the application route. This boundary divides three plots, numbered 571, 572 and 577. All are described in the accompanying award as meadows in the ownership and occupation of Richard Dyson (plots 571 and 577) and Joseph Hunt (plot 572).

3.3 Decision

HCC decided that the tithe documents do not provide any evidence about the application route.

4. Cheshunt Inclosure Records

Act: date: 1799 ref: D/EBU/T31
Award: date: 1806 ref: D/P29/26/3
Map: date: 1799 ref: PC419

4.1 Why we consider these documents important

Enclosure was the process of physically changing the landscape to benefit the development of modern farming practices as technology improved. It was popular from the late medieval period to the 19th century and carried out on a parish-by-parish basis. As it changed the layout and size of fields it also changed the routes of roads and rights of way.

Inclosure could be carried out by agreement, but where this was not possible an Act of Parliament was needed to grant the powers to make the desired changes. Through time such

Acts became more popular than agreements. Prior to 1801 these powers were granted to each parish individually by private Acts of Parliament. In 1801 the first General Act was passed which could be used by any parish. Further General Acts were passed in 1836 and 1845. However, private Acts continued to be obtained if the required powers were not granted by the General Acts. They are important evidence to show us what could and could not be done.

Inclosure was recorded through an Award and a Map. The Award is the written record of the changes that were made. It lists the lands that were given to each landowner, the roads and rights of way that were stopped up and those that were set out, or created. The Map (which was not legally required until 1845) shows pictorially the changes made.

As inclosure was a detailed legal process with powers granted by Parliament, it can give us conclusive evidence of a right of way.

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

The area of the application route is outside the area of inclosure.

4.3 Decision

HCC decided that the inclosure documents do not provide any evidence about the application route.

5. Great Eastern Railway Plans

Date: 1862 Ref: HALS R660-664

5.1 Why we consider these documents important

Before compulsory purchase powers were introduced, proposed canal or railway developments had to either have the consent of all affected landowners or a private act of Parliament passed to authorise the purchase of land. Before a Private Act could be passed, plans had to be produced showing the strip of land the route of proposed railway/canal would cross. Land either side of the route would be shown up to the "limit of Deviation". All land was plotted, and details given in a Book of Reference. This included details of landownership and land use.

Under the Railway Clauses Consolidation Act 1845 (from s46) strict requirements were laid out about how to deal with public and private roads crossing railways including widths, arch heights and gradients as shown in the plans and cross sections. Requirements for how to deal with footpaths and bridleways are also given.

There was a high level of public consultation required on the proposed plans before they were considered by Parliament. This led to a high level of accuracy of those plans. Although it was not the primary purpose of railway plans to record rights of way, these plans provide good evidence of their existence. Arguably, those plans which went ahead and completed the parliamentary process have greater evidential weight than those which did not.

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

The application route is outside the area that was surveyed for the railway line.

5.3 Decision

HCC decided that the railway plans do not provide any evidence about the application route.

6. Highway Diversion/Extinguishment Records

No records have been found that relate to the application route.

7. Inland Revenue Documents

Date: 1909-10

Ref: HALS IR1/460; TNA IR 58/39147, IR 58/39169

7.1 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.

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

On the OS basemap the terrace properties on Park Lane east of point 3 had been built, although the land over which Raglan Avenue and Stirling Avenue now lies was a nursery. The boundary line that is a similar shape to the application route and shown on the tithe map is also shown on the OS basemap used for the Inland Revenue plans. There is marked on the basemap a double pecked line from a point near point 3 on Park Lane in a generally southerly direction to the southern boundary of plot 1464, several hundred metres south of the application route. The first section of this pecked line echoes the line of the application route between points 2 and 3 on the plan, and runs through plots 3649 and 1464. However, it is not clear whether this double pecked line or the solid boundary marks the line of the application route.

There are no reference books available for Cheshunt; instead, the field books are available in the National Archives. These show that plot 3649 was land fronting a nursery in the ownership of Colonel R B Calvin and occupation of Thomas Hamilton, while plot 1464 was Park Lane Nurseries in the occupation of J. Hamilton. The owner of plot 1464 is not noted in the field book. Neither plot claimed a deduction for public rights of way.

7.3 Decision

HCC decided that whilst a route in the area of the application route is depicted with double pecked lines on the OS basemap, it is not referred to in the Inland Revenue documentation as a public right of way. As such, HCC decided that the Inland Revenue documents do not provide any evidence about the application route.

8. 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:

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

8a Definitive Map Records – Cheshunt Parish Survey

Date: 1953 Ref: RoW

8a.1 Why we consider these documents important

Under the National Parks and Access to the Countryside Act 1949 the county 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.

8a.2 What is shown by these documents in the area of the application route?

The Ordnance Survey basemap upon which the Parish Survey is recorded predates the construction of Raglan Avenue and Stirling Avenue, and instead shows the nurseries that existed prior to the housing estate. The application route itself is not marked on the map as a right of way nor referred to in the Parish Survey documentation.

8a.3 Decision

HCC decided that the Parish Survey documents do not provide any evidence about the application route.

8b Definitive Map Records – Draft, Provisional and First Definitive Map

Date: 1953 Ref: RoW

8b.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.

8b.2 What is shown by these documents in the area of the application route?

The Ordnance Survey basemap upon which the first Definitive Map is recorded predates the construction of Raglan Avenue and Stirling Avenue. The application route itself is not marked on the map as a right of way nor referred to in the documentation.

8a.3 Decision

HCC decided that the Definitive Map documents do not provide any evidence about the application route.

8c Definitive Map Records - Special Review

Date: 1968 Ref: RoW

8c.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.

8c.2 What is shown by these documents in the area of the application route?

Raglan Avenue, Stirling Avenue and Berkley Avenue had replaced the nurseries by the time the Special Review took place. However, the application route appears not to have been considered as part of the Review. It is neither marked on the map as a right of way nor referred to in the paperwork.

8c.3 Decision

HCC decided that the Special Review documents do not provide any evidence about the application route.

9. Ordnance Survey maps

Date: 1872-84, 1898, 1914, 1968-72

Ref: HALS

9.1 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) 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 maps show the evolution of the local landscape over the course of nearly 100 years. The OS maps show that a route of sorts has existed since the late 19th century, although it is depicted in different ways on different editions. The first edition (1872-84) pre-dates the construction of the nurseries. It shows most of the application route as an enclosed track that leads off Park Lane. Near point 1 the enclosed track joins a route shown as double pecked lines that lead in a westerly direction from the high street to point 1 before turning south. The application route itself is braced to the adjoining plot, a field numbered 272. The name book describes this plot as "pasture, trees etc".

The second edition OS map (1898-99) shows the nurseries for the first time. By this time the application route is no longer shown as a track, but as a field boundary only. By the third edition (1914) the double pecked line adjacent to the nursery buildings in the approximate position of the application route appears, echoing that drawn on by the Inland Revenue surveyor in 1909 (see section 7 above). Finally, the fourth edition (1968-72) shows the local area as it is now, following the construction of Berkley Avenue, Raglan Avenue and Stirling Avenue. The application route is depicted in the same manner as the current OS map. A solid line across the route marks the point at which the route joins Park Lane at point 3.

9.3 Decision

HCC decided that only the 1968-72 edition shows that the application route existed. As OS maps can only provide evidence of a route's existence rather than its highway status, the 1968-72 edition only shows that the route existed, not that it had public rights of access.

10. Highways Records

Date: 16th July 1968

Ref:

RoW

10.1 Why we consider these documents important

Maintenance of a route by the public is strong evidence that it is a public highway. 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. The Highways Act of 1862 allowed parishes to combine into Highway Districts under Highway Boards and after 1878 Highway Boards could amalgamate with Rural Sanitary Authorities. The Local Government Act of 1888 introduced elected County Councils, which took over "main" roads, while after the Local Government Act 1894 new Rural District Councils took over all other roads. Responsibility for maintenance of these roads was handed over to the County Councils in 1929.

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. 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.

A "List of Streets" of the highways maintainable at public expense is required under the Highways Act 1980. This list is held by the County Council as part of the Hertfordshire Roads Gazetteer, which is itself part of the Hertfordshire Roads Management Database. There are no rules or regulations about what information is required, or how it is to be presented or amended. It is a list of what is maintainable, not necessarily what is maintained.

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

Berkeley Avenue was adopted pursuant to a recommendation made by the Urban District of Cheshunt (UDC) on 18th September 1950. The highway adoption plan shows the application route in full as being "pedestrian access only to Park Lane" (indicated by the red arrow) as part of future development. There are no records that show the application route being dedicated as part of that future development.

Eighteen years later on 16th July 1968, an agreement was made between the then owners of the land, Willowside Developments Ltd, and UDC to transfer the extent of the application route between points 2 and 3 from Willowside to UDC. The agreement was made "pursuant to powers contained in the Highways Act 1959", although the specific section of that Act is not stated. The agreement has been sealed by Willowside, the sellers, but not by UDC. It has, however, been dated, sent to the Inland Revenue and stamp duty paid upon it.

The Charges Register of the Land Registry title for the extent of the application route owned by Wallwood Investments Ltd (that between points 2 and 3 on the plan) refers to the agreement dated 16th July 1968. It states that "the land tinted pink on the filed plan was dedicated to the Council as part of the highway". The land tinted pink on the filed plan is that part of the application route between points 2 and 3 on the plan.

Currently no part of the application route is recorded as public highway on the Hertfordshire Gazetteer.

10.3 Decision

HCC decided that the 1950 highway adoption plan shows that UDC intended that the application route should be a pedestrian access between Berkley Avenue and Park Lane. However, there is no evidence that the application route was ever dedicated when the land north of Berkley Avenue was developed. However, when the 1968 agreement was completed, that part of the application route between points 2 and 3 was dedicated as highway by the then owners, Willowside Developments Ltd, under the Highways Act 1959. The 1968 agreement referred only to the land being dedicated as highway. It did not describe the status of that highway, e.g. whether it should have a lower status than all-purpose highway. This is confirmed by the Land Registry title documents which refer to the land tinted pink being "highway". Although UDC have not sealed the copy of the agreement held by HCC, it is dated and contains an Inland Revenue stamp showing that stamp duty was paid on the agreement. HCC decided on the balance of probabilities that the 1968 agreement was valid and that the area of the application route between points 2 and 3 was transferred from Willowside to UDC to be held as highway. HCC decided that the status of the highway dedicated under the 1968 agreement was all-purpose highway as there was no reference in the 1968 agreement to the dedicated highway being of a lower status.

11. User Evidence and Landowner Challenge to Public's Use of a Route

11.1 Why we consider the evidence important

❖ *User evidence*

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'. 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). This can be shorter under common law where use is sufficient and obvious to the owner that it is happening. The 'date of challenge' is the date at which the landowner challenges the use of the route (see below). Where there is no evidence that use has been challenged, section 31 of the Highways Act 1980 specifies that the date of application should be used as the date of challenge.

❖ *Landowner evidence*

Landowners can take steps to prevent the accrual of new public rights of way through use of a route by the public. 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 would not affect pre-existing rights.

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

❖ *Landowner evidence*

The modification order application was made in response to a gate that was erected and locked across the application route at point 2 on the plan on or before October 2000. This was erected by the owners of the garages adjacent to the application route. Soon after this gate was erected the then owner of the public house on Park Lane, The Plough, erected a further gate and fencing at point 3. On 13th August 2001 HCC received a letter from one of the owners of the garage forecourt, Mr Cade, stating that he and the users of the garages were opposed to the application route being recorded as a public right of way.

❖ *User evidence*

Accompanying the modification order application were three user evidence forms, one of which was completed by a married couple. Of these four witnesses, none could provide evidence of use of more than 13 years. Accompanying the application was a petition of 56 names, two of whom had both signed the petition and completed a user evidence form at the time the application was made. Of the remaining 54 names on the petition, 27 witnesses claimed to have used the application route for over 20 years. Those 27 witnesses were contacted for further evidence, but only two responded. Both of those witnesses claimed 20 years' use of the application route before it was closed. The response of these latter witnesses means that in total only two witnesses alleged use of the route of more than 20 years' duration.

11.3 Decision

In order to assess whether there has been sufficient evidence of use to raise a reasonable allegation that public footpath rights have accrued between points 1-2-3 on the plan, HCC first has to establish the date use was 'challenged' by the landowners (see above). The earliest evidence of a challenge to public use of the application route is in 2000 when the adjoining landowners erected and locked the gate at point 2. HCC therefore decided that 2000 should be used as the date of challenge.

Section 31 of the HA 1980 states that for public rights to accrue over a route there should be evidence of use as of right over a period not less than 20 years. Such evidence of use raises a presumption that public rights have been dedicated by the landowner, unless the landowner can show that he had no intention to dedicate the route during the period in question. As the date of challenge for this case is 2000 the relevant period of use is 1980-2000.

Following an assessment of the witness evidence, HCC decided that there is no presumption that public rights have accrued under section 31 of the HA 1980. Of the six witnesses who provided evidence with the application, only two can attest to use over the relevant 20 year period. Whilst 27 of those who signed the petition claimed to have used the route for the entire 20 year period, HCC decided that although the petition did provide some evidence of use, it could only be given very limited weight as it did not contain sufficient details of that use. Although further evidence was sought from the people who had signed the petition, insufficient evidence was forthcoming. HCC therefore decided that there is insufficient evidence to raise a presumption that public rights have accrued over the application route.

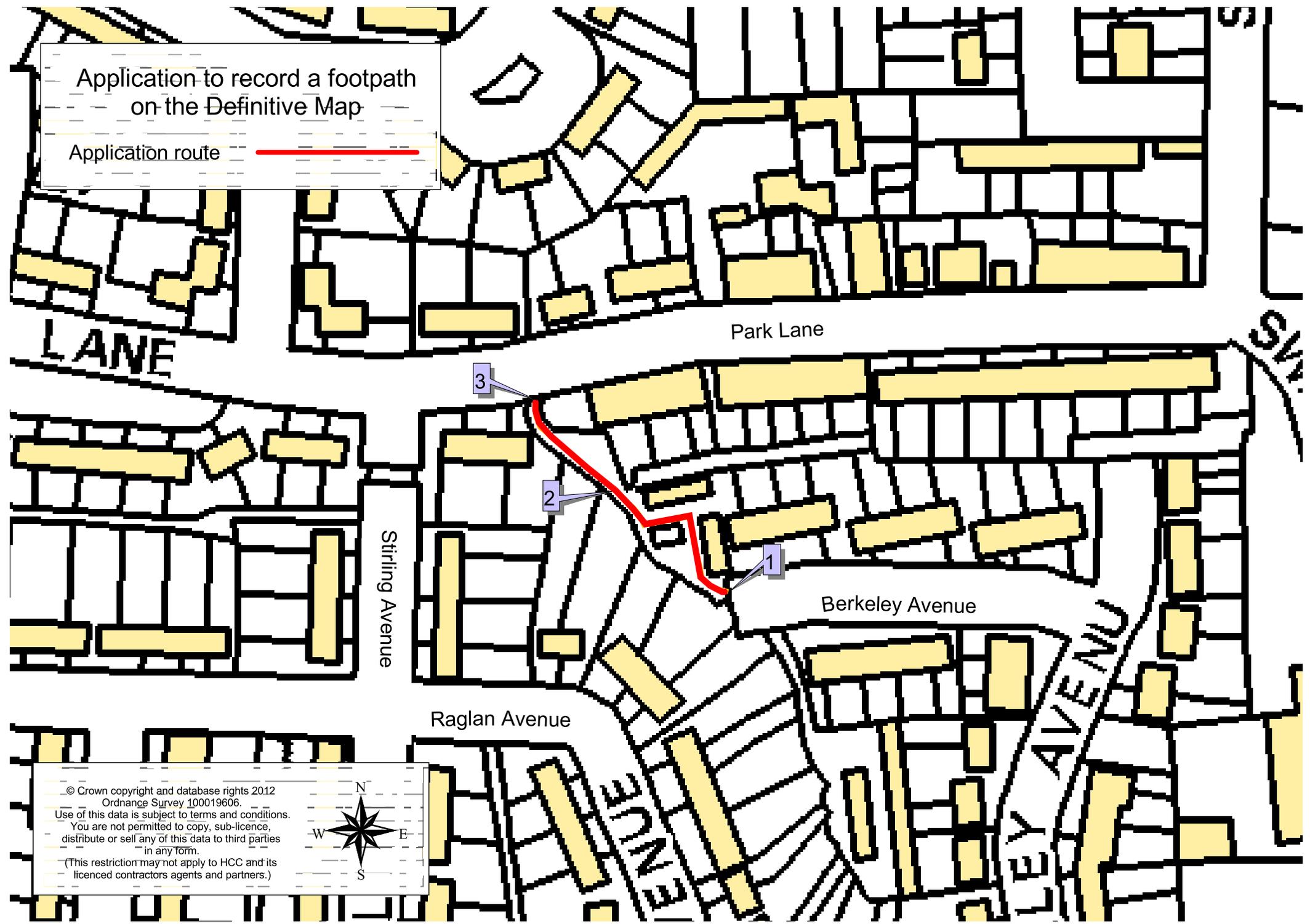
Decision

HCC decided that there is insufficient evidence of use of the application route by the public during the period 1980-2000 to raise a presumption that public rights have accrued through longer user. There is no evidence of dedication of the application route at common law.

HCC decided that the 1968 agreement transferred the application route between points 2 and 3 to the Urban District of Cheshunt to be held as highway, and on the balance of probabilities the status of that highway is all purpose highway. HCC decided therefore that in respect of the part of the application route between points 2 and 3 on the plan, although the route is highway, it does not fall within one of the categories capable of being recorded on the Definitive Map and Statement.

Application to record a footpath
on the Definitive Map

Application route 



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