

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Reasons for Decision

Ruthven Avenue to High Street Waltham Cross

Application Details

An application has been made to add a footpath between Ruthven Avenue and the High Street in Waltham Cross. An extract of the 2010 Definitive Map is attached ('Investigation Plan' at Appendix 1). It shows where the route is and it is labelled Point A to Point B.

This application was made by Mr D V Evans on 26 July 1994 accompanied by 20 user evidence forms. The Certificate of Service Notice dated 19 August 1994 brought the application up to the prescribed standard.

Description of Route

The application route runs from Sturlas Way through the car park for Wickes store to link with the High Street in the centre of Waltham Cross. The photographs below were taken on 31 January 2014. The access from Sturlas Way at Point A is a gap between some low level fencing and a gate which is shut to prevent vehicle access when Wickes is closed. (The gap is between the black car and the gate which is in front of the lamp post).



The gap is between the black car and the gate which is in front of the lamp post).

The line of the application route proceeds through the car park. It is not marked as a pedestrian walk way and it includes a change of levels, a fence and obstruction from parking bays. However, it is possible to walk along the adjacent access route for vehicles. There were no signs stating 'No public right of way'.



The adjacent photograph is looking towards Point B in the distance. South of Point B there are two access points to the High Street – one via steps and the other via a ramp. Although there is a gate on each, these were broken and it was difficult to move them.



The gate at the end of the ramp to the High Street was very difficult to move and there was no lock on it. Staff at Wickes said that it was not closed or locked when the store closed and this was later confirmed in writing by one of their managers.

Documentary Evidence

For each investigation, we usually check at least 10 primary sources of information for any historic evidence relating to the application route. However, these historic sources were not consulted in this case as the application route is just a short route in an urban area which has been redeveloped several times over the last 100 years and so the historic sources are largely no longer relevant. Although the High Street is old, Sturlas Way was created in the early 1970s and Wickes store was built in the early 1990s.

There is no evidence for the application route in the process leading to the first Definitive Map (1953) which recorded public rights of way and there is no record of it in subsequent editions of the Definitive Map.

The Ordnance Survey ("OS") map for 1968/1972 (below) shows a route marked by double pecked lines (highlighted green) starting near Ruthven Avenue (before the creation of Sturlas Way), and running eastwards around buildings (knocked down for the building of the Wickes store and car park) to link with the High Street. However, the OS maps have a disclaimer which states that the representation of any track or way is no evidence of a public right of way.



Contemporary Evidence of Use

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.

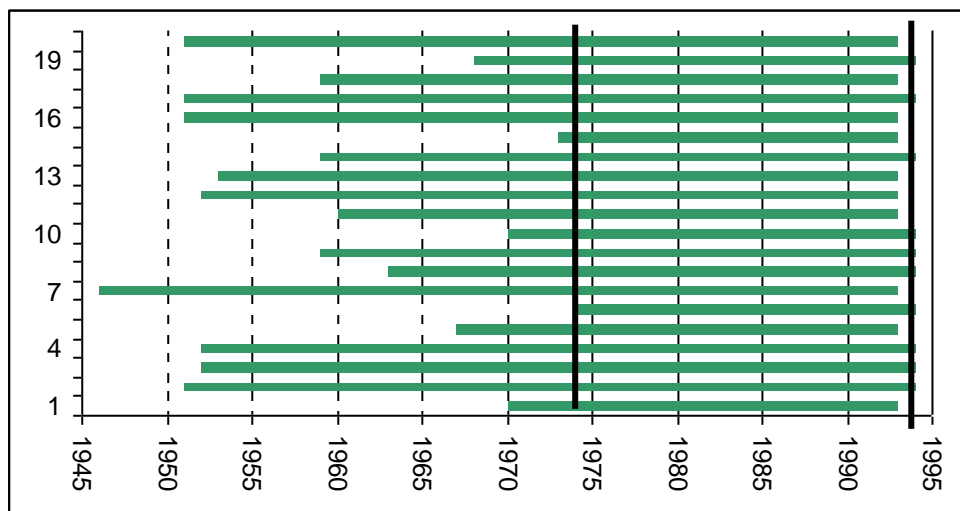
In addition to placing notices on site, section 31(6) of the Highways Act 1980 (following on from the Rights of Way Act 1932) allows landowners to deposit a map and statement with the County Council showing the public rights of way across their land. Following this, declarations need to be made regularly 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.

1.2 Summary of Evidence

User No	Yr of birth	No of years used	Start Yr	End yr	Type of use	Frequency	Permission	Challenge	Notices	Obstruction	Width	Inquiry	Additional comments
1	1917	23	1970	1993	Foot	D	No	No	No	No	5-6ft	N	To doctors, shops, bus stop. Only obstructed since Wickes built.
2	1923	43	1951	1994	Foot	D	No	No	No	No	5ft	Y	Doctors and clinic
3	1924	42	1952	1994	Foot	D	No	No	No	No	5ft	N	Doctors, shop and work
4	1916	42	1952	1994	Foot	D	No	No	No	No	5-6ft	N	Shopping, Post Office, bank. Only obstructed since Wickes built.
5	1931	26	1967	1993	Foot	D	No	No	No	No	5ft	N	Shops, clinic, church, bus stop
6	1946	20	1974	1994	Foot	D	No	No	No	No	5ft	Y	Shops, school, health centre, church, library, buses, friends etc. Obstructed since Wickes built.
7	1924	47	1946	1993	Foot	D	No	No	Yes	No	5ft	Y	Shops, bus, doctors, clinic. Obstructed by erection of Wickes spring 1994. Notice 'Please keep to footpath' on lamp post.
8	1936	31	1963	1994	Foot	D	No	No	No	No	5ft	N	Doctors, chemist, health centre.
9	1931	35	1959	1994	Foot	D	No	No	No	No	5ft	Y	Mainly shopping. Obstructed by Wickes.
10	1944	24	1970	1994	Foot	D	No	No	Yes	No	5-6ft	Y	Shops, work. Public footway notice. Wickes have shut gates.
11	1925	33	1960	1993	Foot	D	No	No	No	No	5-6ft	N	Shops, library, health centre.
12	1922	41	1952	1993	Foot	D	No	No	No	No	5-6ft	N	Doctors surgery, shops, clinic, bus, library. Locked gates at High St since Wickes.
13	1937	40	1953	1993	Foot	D	No	No	No	No	6-8ft	N	Shopping.
14	1924	35	1959	1994	Foot	D	No	No	No	No	5ft	Y	Shops, doctor, bus, bank, PO, schools, railway
15	1938	20	1973	1993	Foot	D	No	No	No	No	5-6ft	N	Doctors, shops, railway station. Only obstructed since Wickes.
16	1923	42	1951	1993	Foot	D	No	No	No	No	5-6ft	N	Shopping.
17	1910	43	1951	1994	Foot	D	No	No	No	No	5-6ft	N	Shopping. Footpath disappeared with building of Wickes.

User No	Yr of birth	No of years used	Start Yr	End yr	Type of use	Frequency	Permission	Challenge	Notices	Obstruction	Width	Inquiry	Additional comments
18	1930	34	1959	1993	Foot	D	No	No	No	No	5ft	Y	Shops, buses. Only obstructed with building of Wickes 1993-94.
19	1940	26	1968	1994	Foot	D	No	No	No	No	5-7ft	Y	Shops, station, bus etc. Gates locked at High St end Wickes car park.
20	1924	42	1951	1993	Foot	D	No	No	Yes	No	5ft	N	All reasons. Notice 'Please keep to footpath' midway along path.



The above user evidence chart shows that all 20 people used the application route on foot for the 20 year period prior to the date of the application i.e. from 1974-1994 without permission, secrecy or challenge. However, none of the 20 attached a plan of the route they claim to have used and only 8 of these indicated that they would be willing to attend a public inquiry to give evidence of their use and of these only 6 were born in 1930 or after i.e. most would be very elderly and some may have died.

The Investigating Officer tried contacting the applicant Mr D V Evans and instead spoke to his daughter Mrs Pauline Robbins. She informed us that her father had died on 30 May 1999. She knew about her father's application for the public footpath but thought that it was 'a lost cause.' She said that she did not wish to be informed of the outcome of the case and did not want any further contact. Of the 6 users with 20 years born in 1930 or after, none could be traced at the address they gave on their user evidence forms in 1994.

11.3 Decision

HCC decided that although there is some written evidence of use of the application route on foot for the 20 year period 1974-1994, there is no indication on a plan of the route they used apart from the applicant's hand drawn sketch. Also, there is no-one who would be able to give evidence about this at a public inquiry.

12. Other contemporary evidence

12.1 Correspondence from 1994 held by Broxbourne Borough Council

The Investigating Officer visited Broxbourne's offices to view several old planning files (ref. 7/439-93). These contained letters written in early 1994 from various people to the Director of Planning and Environment referring to 'a pedestrian right of way' over the site of the new Wickes store. Mr J W Young, Director of Planning and Environment acknowledged the concern and wrote to Wickes on 31 March 1994 as *"there is no clear pedestrian route through the site as this has been planted up in part.... Although there was no formal right of way across the site, there was always a strong pedestrian desire line as the residents to the west of Wickes needed to get to the subway on Monarchs Way, which provides access to the local school and health clinic."* The matter continued and a letter dated 12 September 1994 from Mr Young to Wickes states *"Despite repeated correspondence with Wickes Properties and the agents The Town Planning Consultancy and despite information that the above mentioned pedestrian way would be completed it still remains to be done."* It then says that a breach of condition notice may be issued but there is no further correspondence in the file. Staff in the Planning Department said that the matter may have been referred to their Enforcement Department but they had no further information about it.

12.2 Letter of 10 January 1995 from Geoffrey Delany (solicitor) acting for the landowner Pearl Assurance plc (land occupied by Wickes Building Supplies Ltd)

The letter states that they will be objecting to the application on behalf of their client. A subsequent letter of 19 January 1995 informs HCC that the land is in fact vested with PAT (Pensions) Limited and the objection will be lodged in their name.

12.3 Decision

HCC decided that the correspondence from 1994 shows that there was public desire for a pedestrian route through the Wickes site and this was recognised by Broxbourne Borough Council who tried to get Wickes to provide one. However, it would appear from what is currently evident on the ground that no specific pedestrian route was provided, although there is a permanent gap near Point A and the gates at the exits (south of Point B) to the High Street are not closed. Currently, when the Wickes store is open (Monday-Sat 7am-8pm and Sunday 9am-4pm) pedestrians can also use the vehicle access route near to Point A. In addition, the correspondence outlined in paragraph 12.2 shows the landowner's intention to challenge the claim for public rights.

13. Additional Evidence Submitted after consultation

Broxbourne Borough Council – responded on 1 October 2014 stating "The Council has no observations or evidence it wishes to offer."

Wickes – the manager confirmed receipt of the investigation report on 26 September 2014 but did not submit any further evidence.

14. Conclusion

While a route is open and available for use from Sturlas Way through the Wickes car park to link with the High Street in the centre of Waltham Cross, it does not follow the line of the application route. The whole area has been redeveloped several times over the last 100 years and residents to the west of the Wickes store now have an alternative route via Sturlas Way and Swan Road to access the town centre. The desire for the application route may have reduced as shown by the lack of people giving contemporary evidence. The Wildlife and Countryside Act 1981 s.53(3)(c)(i) test is that public rights subsist or are reasonably alleged to subsist. Only the applicant showed the application route on a plan. None of the other user evidence forms included any plan and since 1994 no further user evidence has been submitted in support of the application. In addition it has not been possible to contact any of the people who initially supplied user evidence forms in order to corroborate or clarify their evidence. At present there is insufficient evidence to show that there are public rights on the application route.

HCC has therefore decided not to make an order.