

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Order Application
Investigation Report

Chandos Road to Barton Way

Author: Andrea Trendler

Date: 27 May 2015

Application Details

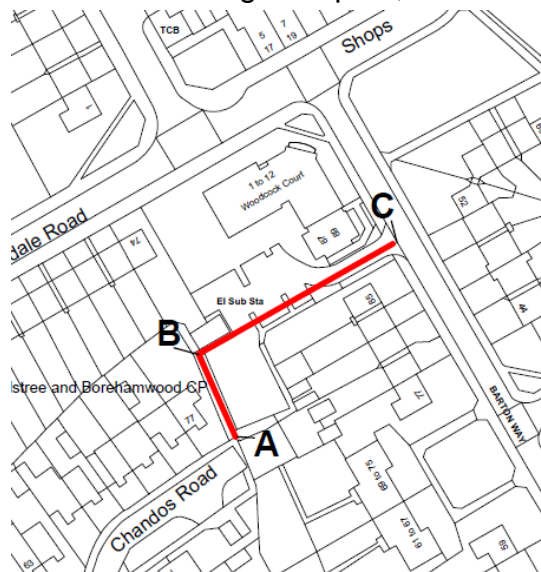
An application has been made to add a footpath from Chandos Road to Barton Way in Borehamwood in the parish of Elstree and Borehamwood. The application was made by Mr John Cartledge on 15 January 2002. It included 16 user evidence forms and was submitted in the prescribed form. A further 10 user evidence forms were provided in 2003.

Plan 1 shows an extract of the application plan submitted in 2002. Plan 2 is an extract of the investigation plan made in 2015 which shows how the site has altered as described below.

Plan 1- application plan, 2002



Plan 2 – investigation plan, 2015



Description of Route

The application route is located in Borehamwood, within the Borough of Hertsmere in the south of the county. Borehamwood lies to the north of the M25 between the M1 and the A1(M). The application route is to the north west of the centre of Borehamwood and links Chandos Road and Barton Way, providing access to nearby shops, a church and a synagogue on Croxdale Road. Without this link, residents of Chandos Road and the nearby streets would have to make a long detour to access these facilities.

The route starts at Point A to the east of No. 77 Chandos Road and runs north west to Point B and then turns north east to Point C on Barton Way.



Photo 1- Point A-B in 2008

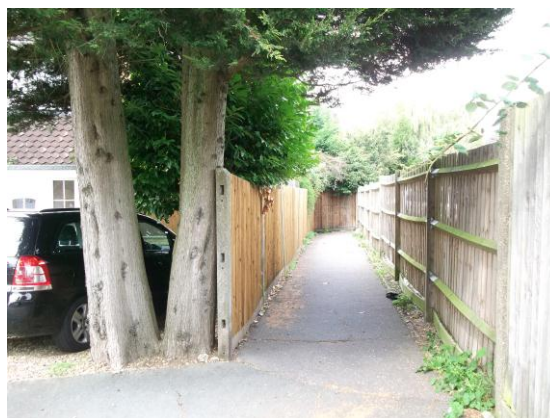


Photo 2 - Point A-B in 2014

In 2002 there was a squeeze point at B between an electricity sub-station and a row of garages (Photo 3). The route then continued in a straight line along an access road to the garages between The Woodcock public house and houses in Barton Way. In 2008 HCC was informed that the public house had burnt down and that the site (including the garages) had



Photo 3 - Point B in 2008



Photo 4 - Point B in 2014 (looking towards Point C)

residential planning permission. This affected the position of the application in HCC's waiting list. The Definitive Map Officer took photographs and was involved in meetings during 2008 for a potential dedication of a footpath along the application line within the development site. However, the dedication did not materialise and in 2009 the developers just left a wider gap at Point B but with a high concrete step up to a block paved path (Photo 4). Most of the line of the rest of the application route was obstructed by car parking places, though people could use the adjacent access road between the new flats and Barton Way (compare Photos 5 and 6).

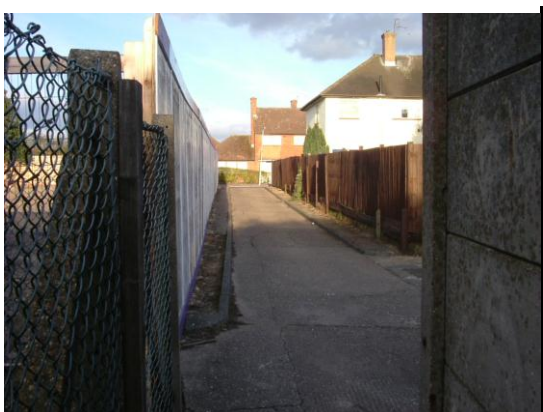


Photo 5 – application route along access Road to Barton Way (pub site on left) in 2008



Photo 6 – access road to Barton Way with cars blocking line of application route in 2014

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.

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.

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.

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

Please note that where there is no evidence found relating to the application route, this has just been recorded as "no evidence found..." or where there are no records for the document listed, this has been recorded as "No records found."

The following historical documents have been looked at but do not provide evidence with regard to the application route:

- 1. Dury and Andrews Map, 1766 – Ref: HALS – CM26**
No evidence found relating to the application route.
- 2. Bryant's Map, 1822 – Ref: HALS – CM88**
No evidence found relating to the application route.
- 3. Tithe map**
No records found for Borehamwood or Elstree.
- 4. Inclosure records**
Nearest inclosure award for Elstree dated 1777 – Ref: QS/E/24.
No evidence found relating to the application route.
- 5. Highway Diversion/Extinguishment Records**
No records found.
- 6. Railway and canal plans**
No records found.
- 7. Highway maintenance records**
No records found.

8. Inland Revenue Documents

Date: 1910 Ref: HALS IR1/482 – map IR2/3/1- award

8.1 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.



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

The base map is the OS 1898 2nd edition (see photo). It shows the railway across the bottom left corner with Theobald Street running parallel to the east of the railway. Tilehouse Farm is to the east of the junction of Theobalds Street and Red Street. The area of the application route is within plot 165 (orange area) in the open land/fields associated with Tilehouse Farm. There was no housing development within this area apart from the farm.

The Award records plot 165 as comprising Tilehouse Farm, various buildings, cottages, woods, agricultural land and sporting rights amounting to 297 acres. The application route is not shown on the map. There was a deduction of £150 for public rights of way but for other paths shown in the large plot 165.

8.3 Investigating Officer's comments

The Inland Revenue documents do not provide evidence for the existence of the application route.

9. 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)

9a Definitive Map Records – Elstree Parish Survey

Date: 1953

Ref: Row

9a.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.

9a.2 What is shown by these documents in the area of the application route?



The Parish Survey for Elstree included Borehamwood and was carried out in early 1953. The map (see photo) shows that the area of the application route was still open land associated with Tilehouse Farm. The nearest right of way was footpath 12 (red number) which ran from Theobald Street in a north easterly direction over open fields. There is no housing development which can be associated with the application route.

9a.3 Investigating officer's comments

The Parish Survey provides no evidence relating to the application route.

9b Definitive Map Records – Draft, Provisional and First Definitive Map

Date: 1953

Ref: RoW

9b.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.



9b.2 What is shown by these documents in the area of the application route?

The 1st Definitive Map, 1953 (see photo) does not show the application route. Barton Way has been laid out with some buildings, though nothing has been built on the corner plot at its junction with Croxdale Road (later the site of The Woodcock public house). Chandos Road has not been laid out at all.

9b.3 Investigating officer’s comments

The 1st Definitive Map provides no evidence for the application route.

9c Definitive Map Records - Special Review

Date: 1980s

Ref: RoW

9c.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.

9c.2 What is shown by these documents in the area of the application route?

The Special Review map for Borehamwood (see photo) does not show the application route, although by the 1980s the area was fully developed.

9c.3 Investigating officer's comments

The Special Review provides no evidence of the application route.

10. Ordnance Survey maps

Usually, we consider old Ordnance Survey maps but in this case they would not show any evidence relating to the application route as the area was not developed until after the 1950s. OS mapping from the 1950s onwards is already covered in section 9 as the Definitive Map process is based on OS mapping and the maps already included illustrate the development of the area. The recent changes (2002-2015) to the application route on OS mapping are illustrated and described on pages 2-3 of this report.

11. Contemporary Evidence of Use

11.1 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.

11.2 Summary of Evidence

User table

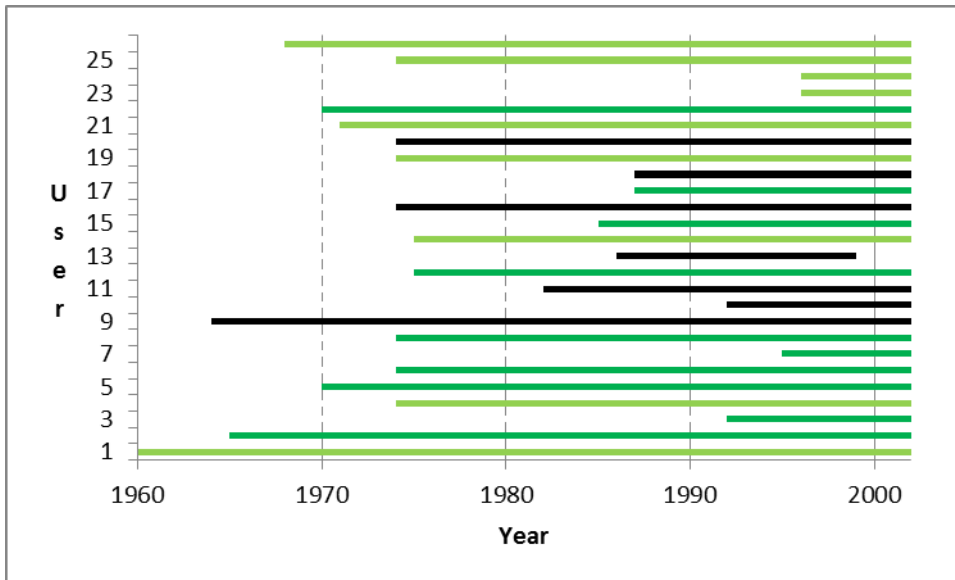
Key for frequency D = daily, W = weekly, M = monthly

User No	No of years used	Start yr	End yr	Type of Use	Frequency	Notice	Per-mission	Chall-enge	Obstruc-tion	Width
1	42	1960	2002	Foot	W	No	No	No	No	2m
2	37	1965	2002	Foot	W	No	No	No	No	2ft
3	10	1992	2002	Foot	W	No	No	No	No	2m
4	28	1974	2002	Foot	M	No	No	No	No	2m
5	32	1970	2002	Foot	W	No	No	No	No	9ft
6	28	1974	2002	Foot	W	No	No	No	No	2m
7	7	1995	2002	Foot	W	No	No	No	No	2m
8	28	1974	2002	Foot	W	No	No	No	No	2m
9	38	1964	2002	Foot	D	No	No	No	No	2m
10	10	1992	2002	Foot	D	No	No	No	No	2m
11	20	1982	2002	Foot	D	No	No	No	No	2m
12	27	1975	2002	Foot	W	No	No	No	No	2m
13	13	1986	1999	Foot	D	No	No	No	No	5ft
14	27	1975	2002	Foot	M	No	No	No	No	2m
15	17	1985	2002	Foot	W	No	No	No	No	2m
16	28	1974	2002	Foot	D	No	No	No	No	2m
17	15	1987	2002	Foot	W	No	No	No	No	2m
18	15	1987	2002	Foot	D	No	No	No	No	2m
19	28	1974	2002	Foot	M	No	No	No	No	2m
20	28	1974	2002	Foot	D	No	No	No	No	2m
21	31	1971	2002	Foot	M	No	No	No	No	2m
22	32	1970	2002	Foot	W	No	No	No	No	2m
23	6	1996	2002	Foot	M	No	No	No	No	2m
24	6	1996	2002	Foot	M	No	No	No	No	2m
25	28	1974	2002	Foot	M	No	No	No	No	2m
26	34	1968	2002	Foot	M	No	No	No	No	2m

Graph

Use by all 26 people was on foot and the colours indicate their frequency of use:

	Daily
	Weekly
	Monthly



All 26 people used the application route on foot, mainly to access the shops and places of worship and also to get to the station and town centre. Most of the users provided evidence that the width of the route was 2 metres and many referred to the pinch point of approximately 0.5 metres at Point B between the electricity sub-station and row of garages (see the investigation plan on page 2 and photograph 3 on page 3). None of the users provided evidence of notices or obstructions on the route and none referred to being challenged or having been given permission to use the route. Of the 26 users: 8 used the route daily, 9 weekly and 9 monthly.

11.3 Investigating officer’s comments

The user evidence submitted in support of the application does not suggest that use of the Application Route has been challenged. It appears that 20 of the users used the route for the 20 years immediately prior to the application in 2002.

Additional Evidence Submitted after consultation

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