

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Reason for Decision

Deacon's Hill

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Date: 27th May 2015

Application Details

An application has been made to add bridleways to the Definitive Map in the area known as Deacon's Hill, (now also known as Woodcock Hill Village Green) in the south of Borehamwood, north of the M25 motorway. An extract of the 2010 Definitive Map below shows the routes 1 to 4 coloured red, green, blue and yellow.

This application was made by Dr P D Wadey on 27th October 1996 but not received in the prescribed form until 18th August 2001.

Description of Route

The Application Routes run over land which was registered as Woodcock Hill Village Green in 2008 (Plate 1.) The land lies between a housing estate to the north and east, the Elstree Railway Tunnel to the south west and the A411 Barnet Lane to the south. The entrance to the land from Vale Avenue (Route 4) is partially blocked by a motorbike inhibitor (Plate 2.) Route 4 runs south west then south to join Route 2. The continuation of Route 2 southwards (shown on the plan below by a dotted line) was not applied for, however some of the evidence forms provided with the application show this route.

The whole area is quite overgrown with tall vegetation and scrubby bushes (Plates 3 – 8). Route 3 links to Route 2 before it exits onto Carrington Avenue (Plate 9.), Route 1 runs from the western end of Route 3 along the western side of the land, looping back on itself to join Route 2.

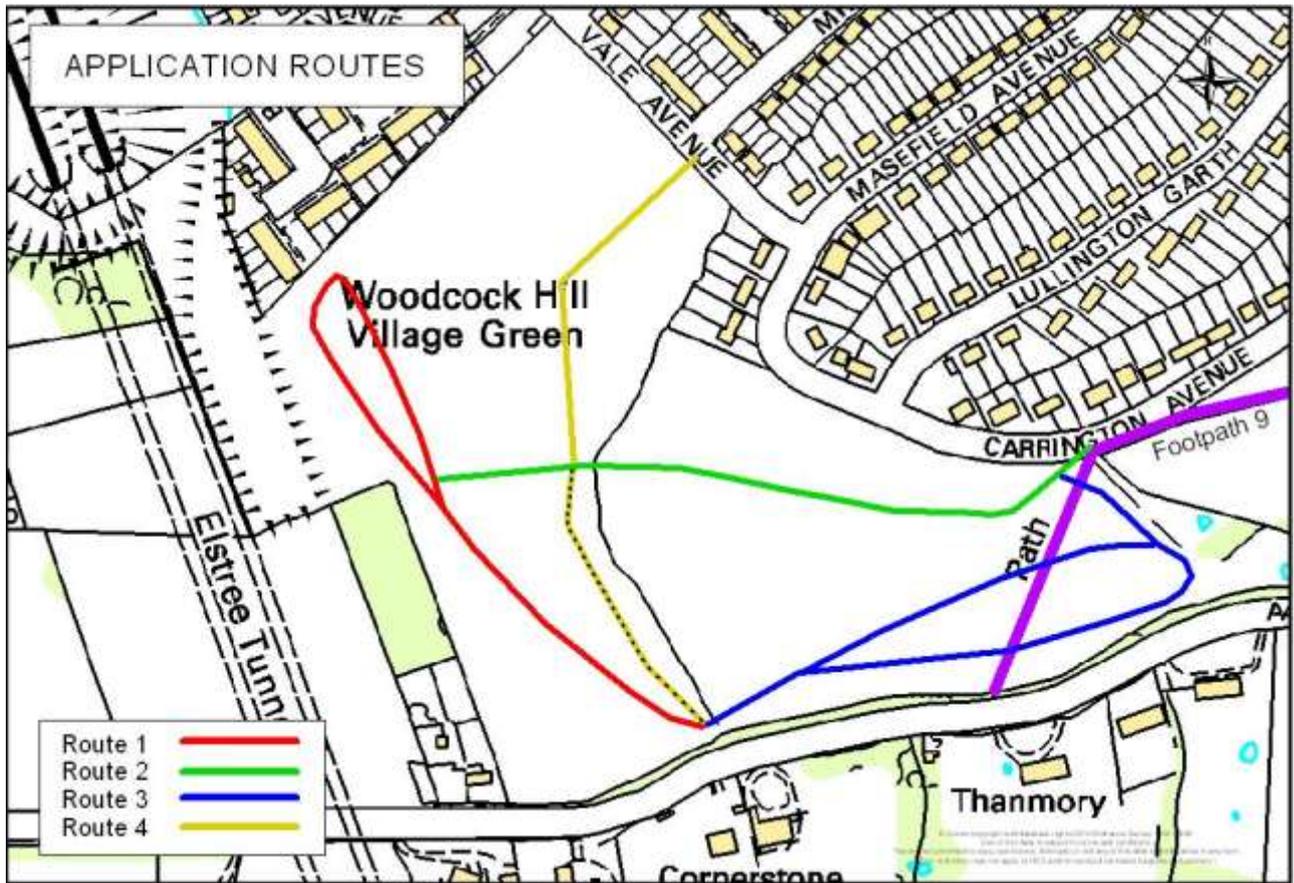


Plate.1



Plate.2



Plate.3



Plate.4



Plate.5



Plate.6



Plate.7



Plate.8



Plate.9

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 routes:

Dury and Andrews Map, 1766 – Ref: HALS – CM26

Bryant's Map, 1822 – Ref: HALS – CM88
Elstree Inclosure Award 1777 HALS ref QS/E24 Act date 1776 HALS ref 5888
Inland Revenue plans 1910
Highway Maintenance records
Ordnance Survey maps from 1871, 1898, 1914, 1935 and 1966.
Parish Survey and Definitive Map records

The following historical documents were not investigated:

Railway and canal plans
Highway Diversion/Extinguishment Records
Tithe Map

1.0 Aerial Photographs

Date: 1973 – 2000

1.1 Why we consider these documents important

Aerial photographs may confirm the physical existence of a route at the time the photographs were taken. They may also provide evidence relating to any physical features on the route such as structures. Greater evidential value may be placed on aerial photographs where the date and time at which the photographs were taken is known and an accurate record of the position and orientation in relation to the relevant route is provided. An aerial photograph cannot provide evidence of what rights might exist over a route; it can only provide evidence that a route and its physical characteristics existed on the ground at the date the photograph was taken.

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

1973 – 1990

Aerial photographs from this period clearly show a beaten track following lines similar to the Application Routes as well as a number of other tracks.

2000

This photograph still shows routes similar to the Application Routes as well as a number of other beaten tracks but they are not quite so distinct.

2010

This photograph shows that the area is no longer being used in the same way, scrub has started to take over the land and the Application Routes are not clearly defined.

1.3 Decision

Hertfordshire County Council (HCC) decided that these photographs show that routes similar to the Application Routes existed on the ground as beaten tracks, along with a number of other tracks, particularly between 1973 and 1990, however they provide no evidence as to whether they were highway and if so, what status.

2. Contemporary Evidence of Use

2.1 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.

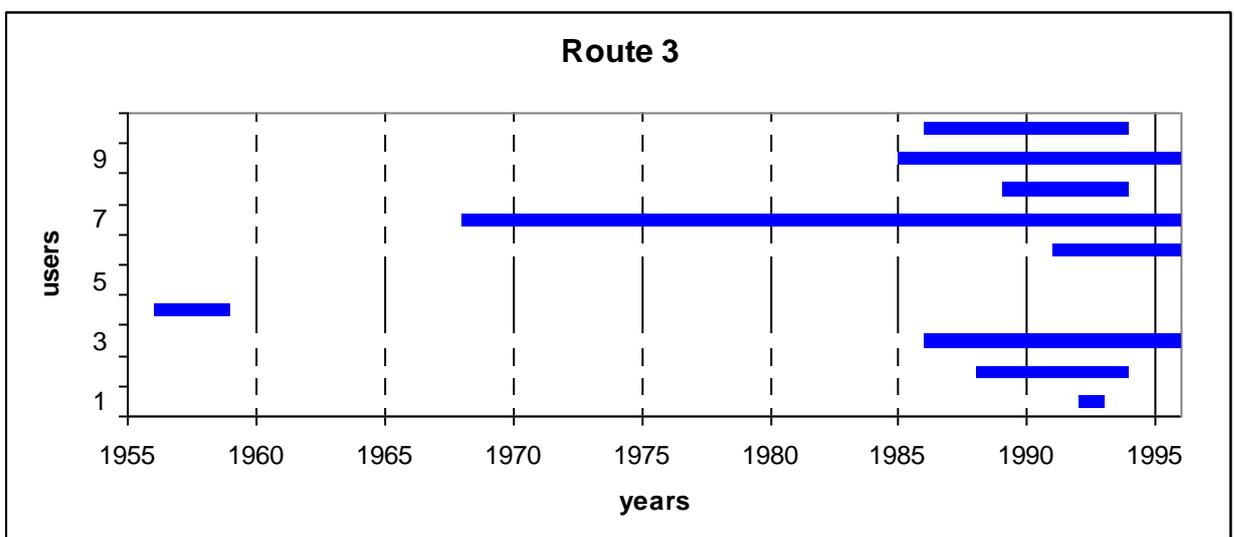
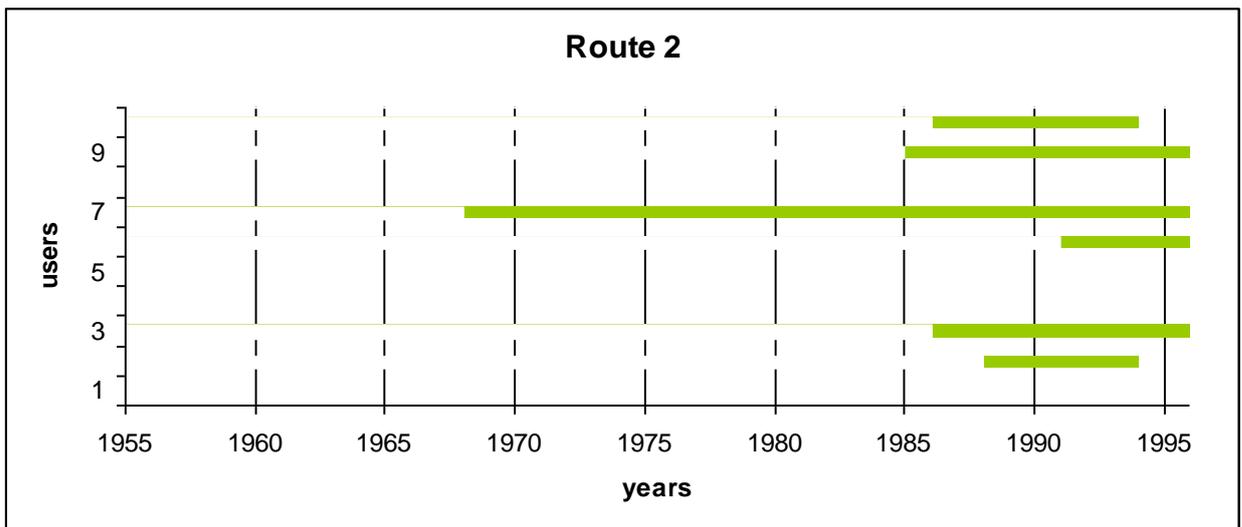
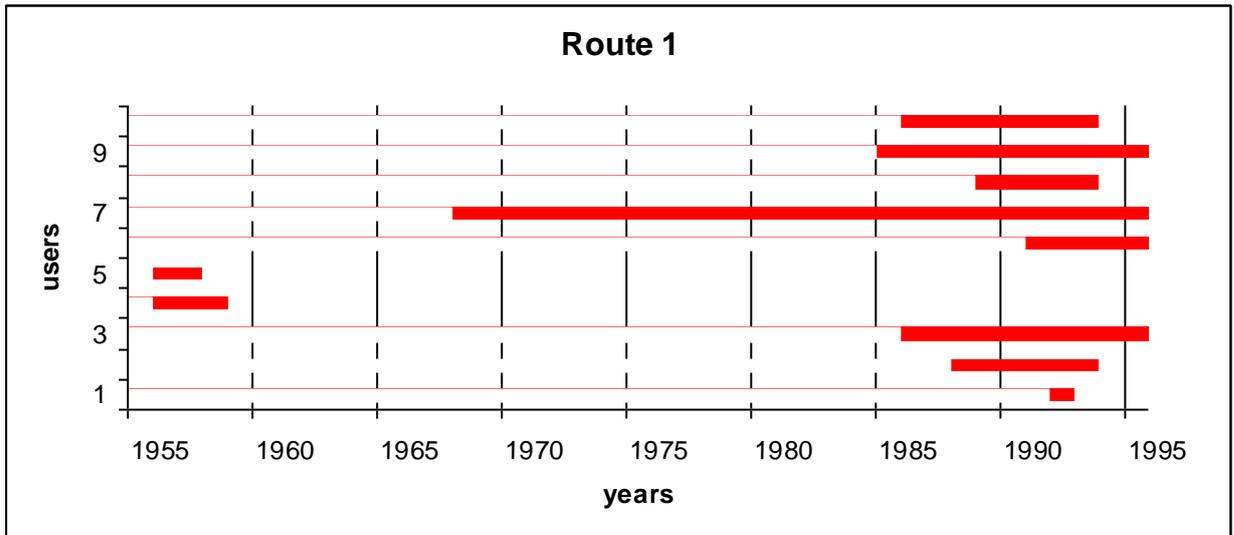
Under common law a right of way can also come into existence in less than 20 years if it can be shown that there was dedication of the route by the landowner and acceptance of the route by the public.

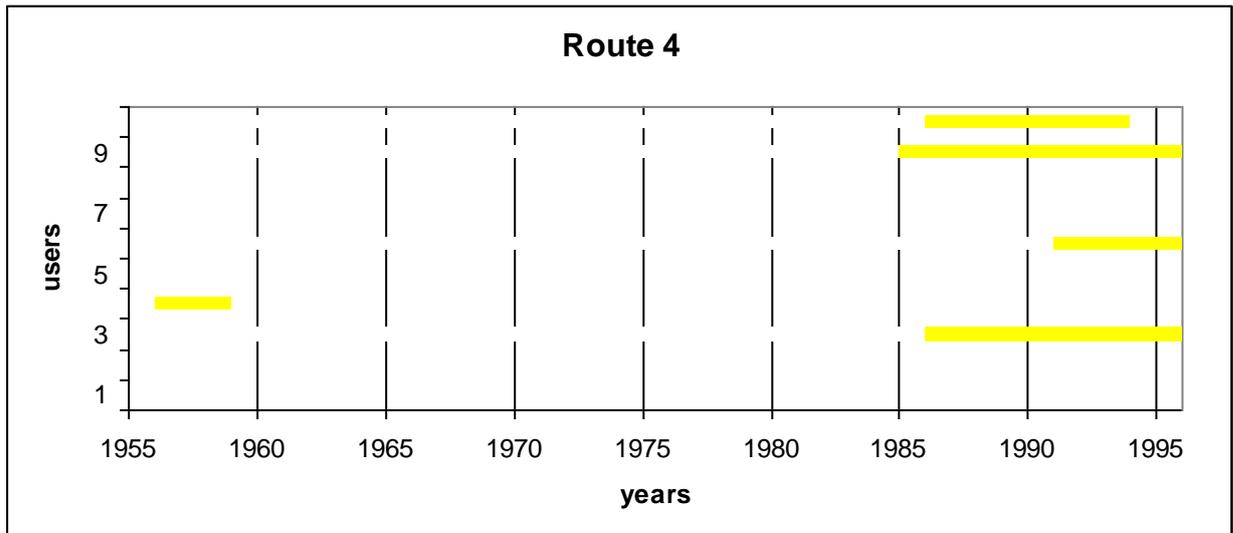
Under Section 31, after a period of 20 years use, it is presumed that a right of way has come into existence. Where a landowner can produce evidence to show that they have taken steps to prevent the accrual of new public rights of way through use of a route by the public, no such right will be dedicated. 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.

2.2 Summary of Evidence





All of the use is on horseback apart from user seven who also used routes 1-3 on foot.

User	Type of Use	Routes Used	Frequency of Use	Period of Use		Total Use –	Comments
				From	To	Years	
1	horse	1 & 3	monthly	1992	1993	1	Never saw notices, never received permission, never challenged by anyone and routes never obstructed.
2	horse	1, 2 & 3	weekly	1988	1994	6	Never saw notices, never received permission, never challenged by anyone and routes never obstructed.
3	horse	1, 2,3 & 4	weekly	1986	1996	10	Routes 1, 3 & 4 had a notice from March 1996 saying 'private land no entry'. Route 4 had free access for the last 5 years, before that intermittently fenced with wire on lower section. Never received permission, never challenged by anyone and routes 1-3 were never obstructed.
4	horse	1, 3 & 4	4 x a week	1956	1959	3	Routes 1 and part of routes 3 & 4. Never saw notices, never received permission, never challenged by anyone and routes never obstructed. <i>Use does not fall within the relevant period.</i>
5	horse	1	2 x week	1956	1958	2	Route 1. Never saw notices, never received permission, never challenged by anyone

							and routes never obstructed. <i>Use does not fall within the relevant period.</i>
6	horse	1, 2, 3 & 4	weekly	1991	1996	5	Saw a notice from March 1996 saying 'private land no entry'. Never received permission, never challenged by anyone and routes never obstructed.
7	horse & foot	1, 2 & 3	daily	1968	1996	28	Route 3 – has used Elstree Common for many years, mainly during the winter because the slope is well drained. It is a training area of great value.
8	horse	1 & 3	weekly	1989	1994	5	Never saw notices, never received permission, never challenged by anyone and routes never obstructed.
9	horse	1, 2, 3 & 4	weekly	1985	1996	11	Routes 1, 2, 3 & 4 - Saw a notice from March 1996 saying 'private land no entry'. Routes 1, 2 & 3 - never received permission, never challenged by anyone and routes never obstructed. Route 4 – path has been unobstructed for the last 5 years, prior to this period the northern half was sometimes blocked by a temporary wire fence.
10	horse	1, 2, 3 & 4	weekly	1986	1994	8	Never saw notices, never received permission, never challenged by anyone and routes never obstructed.

A section 31(6) deposit made in 2002 (six years after the date the application was received and 16 months after the application was made in the prescribed form) covers part of the land used by routes 1, 2 and 3. It also covers the route shown on some user evidence forms as a continuation of route 4, shown on the report plan by a dashed line.

1.3 Decision

HCC decided that there had been a challenge to the use of Application Route number 4 by the erection of notices stating 'Private Land No Entry' and intermittent fencing. The notices also affected the southern end of Application Route 1 and the western end of Application Route 3. HCC therefore decided that the date of challenge for Application Routes 1, 3 and 4 was the date the notices appeared – March 1996. Although intermittent fencing has been referred to on Application Route 4, it is not clear where or when this fencing appeared. No notices or fencing have been referred to on Application Route 2, therefore the date of challenge has been taken to be the date of the application, 27th October 1996. The relevant period of use is therefore 1976 – 1996.

The section 31 deposit would affect any user evidence given for the period after 2002, however as the application was made in 1996, there is currently no user evidence dated later than 1996.

Application Route 1

10 user evidence forms were received but only 1 of these showed daily use for 20 years. 2 of the forms showed use outside the relevant period and the remainder showed use for 10 years or less from 1985.

Application Route 2

6 user evidence forms were received but only 1 of these showed daily use for 20 years. The remainder showed use for 10 years or less from 1985.

Application Route 3

9 user evidence forms were received but only 1 of these showed daily use for 20 years. 1 of the forms showed use outside the relevant period and the remainder showed use for 10 years or less from 1985.

Application Route 4

5 user evidence forms were received but none of them showed use for 20 years. 1 of the forms showed use outside the relevant period and the remainder showed use for 10 years or less from 1985.

Conclusion

HCC decided that the statutory criteria in section 31 Highways Act 1980 has not been satisfied in that there has not been 20 years uninterrupted use by the public as of right of the Application Routes, nor have the Application Routes come into existence under Common Law.