

## **Wildlife and Countryside Act 1981**

### **The Definitive Map and Statement of Public Rights of Way in Hertfordshire**

To: Hertfordshire County Council  
Of County Hall  
HERTFORD  
SG13 8DN

I, Dr Philip David Wadey of 12 Home Close, Corsham, Wiltshire SN13 0BE hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by:

Upgrading to bridleway the footpath (Graveley 18) from High Street Graveley to Graveley 15 FP, known as Milksey Lane,

Upgrading to bridleway the footpath (Graveley 15) from the road known as Ashwell Common to a junction with Milksey Lane (Graveley 18) and on to the junction with the track below,

Adding the bridleway from Graveley 15 FP to Graveley 14 BW

and shown on the maps accompanying this application.

I attach copies of the following documentary evidence (including statements of witnesses) in support of this application:

- 67 User evidence forms
- IR 126/4/104 Inland Revenue Valuation Plan, The National Archives.
- MAF73/18/1 Ministry of Food Valuation plan, The National Archives
- Hertfordshire County Council Land Charges map, circa 1980.
- Applicant's statement.

Dated: 2 Jul 14

Signature:

Applicant's Reference: EC705

**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order Application**

**To record Milksey Lane (Graveley 18), Graveley 15 and a track between  
Graveley 15 and Graveley 14 in the Parish of Graveley as Bridleways**

Applicant's Reference: EC705

**2 Jul 14**

Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map	Hertfordshire XII – 7
Modern Definitive Map sheet(s)	21

1. My name is Phil Wadey, and I have been a volunteer access and bridleways officer for the British Horse Society since 1992, including 14 years as the Society's regional access officer for the East of England. I am the applicant for the order, on behalf of the Society. Some of the user evidence has already been supplied to the county council by the Society's other volunteers.

### THE APPLICATION ROUTE

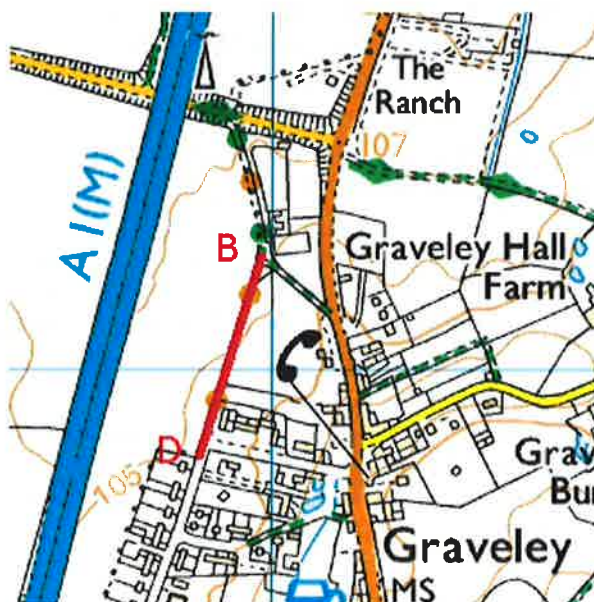
2. The application routes can be considered in three sections.
  - a. From the county road just east of the A1(M) [Point A] generally SSE to a junction with Milksey Lane [Point B], as shown on Plan 1.
  - b. From Graveley 15 (Green or Turf Lane) [Point B] along Milksey Lane to High Street, Graveley [Point C], as shown on Plan 2.
  - c. From the junction with Milksey Lane [Point B] along Graveley 15 (Green or Turf Lane) to a junction with Ashwell Common [Point D], as shown on Plan 3.



*Ordnance Survey 1:25000 scale map extract showing application route (Plan 1)*



*Ordnance Survey 1:25000 scale map extract showing application route (Plan 2)*



*Ordnance Survey 1:25000 scale map extract showing application route (Plan 3)*

#### DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

3. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.
4. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, 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 famously 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."

## 5. Inland Revenue Valuation.

a. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’, and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

“No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.”

We note that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]”

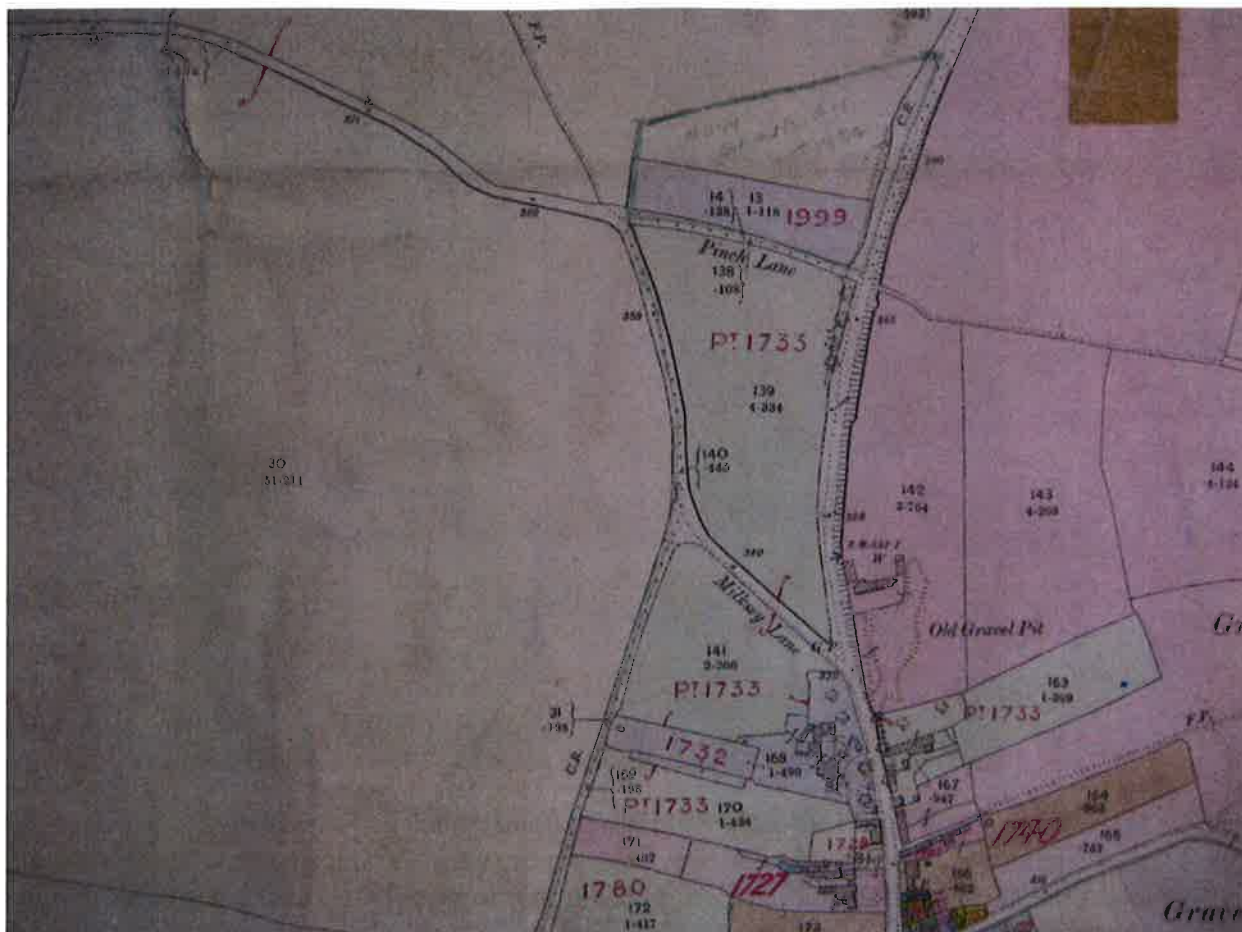
All land had to be valued unless it was exempted by the Act. As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

b. The extract below is from the records that were passed from the IR Valuation Offices to The National Archives at Kew.

c. The National Archives document reference is IR 126/4/105. The extract below clearly shows the application route as a white road, separate from the adjoining hereditaments.

d. A green line has been used for the parish boundary which unfortunately masks the fact that the routes are all shown as white roads. It can be seen more clearly on an enlarged version of the plan.

e. As this land is not held by a local authority or government department for any other known reason, this suggests it is highway. As no valuation was taken, this strongly suggests it is a vehicular highway. Had it only been a bridleway, the Inland Revenue would have valued the land and allowed a deduction instead, since this would have resulted in a greater tax levy. Had it been held by a rating authority for another purpose there would be some evidence of that holding, yet none has been found.



*Extract from the Inland Revenue Valuation Map*

6. Ministry of Food National Farm Survey (1941-42).

a. These records are held at The National Archives in Kew. They are maps prepared in conjunction with the individual farm records of the National Farm Survey conducted by the (then) Ministry of Food (subsequently the Ministry of Agriculture, Fisheries and Food). The maps show the extent of each farm, or other agricultural holding, with its boundaries. The area of each farm is indicated on the map by the use of a colour wash, and its code number is added in black ink. The relevance of these records is that where a vehicular highway route runs between holdings, it is excluded from the holdings. (We have found no instances of non-vehicular routes being given the same treatment, save for routes for which applications for upgrading on the definitive map are in hand.)

b. The National Archives document reference is MAF 73/18/12. The extract below shows the application route. It falls outside holdings and is excluded.

c. This is exactly the same depiction as, for example, part of High Street Graveley.

d. The main point is that the route was excluded from the holding rather than forming a farm track within the holding. This suggests it was not part of the landholding at the time of the survey.



*Extract from the Ministry of Food Farm Survey Map*

7. Land Charges Map (c. 1980).

a. In the 1980s Steve Vaughn photographed the highways maps held by the County Council's land charges section which were based on the circa 1970 Ordnance survey mapping. They show the routes that the county council then regarded to be county roads. The originals of these records should still be available from the appropriate part of the County Council. At the time they were taken, they were housed at The Old Court House, St Albans Road East, Hatfield AL10 0ES.

b. The relevance of these records is that where a route is coloured yellow and numbered, it was considered by the county council to be a vehicular highway maintainable at the public expense. This means that a formal stopping up order (or perhaps a magistrates' court order ceasing the public maintainability) is needed if the route no longer has that status. Failing the finding of such an order, the highway should be publicly recognised by inclusion on the definitive map and statement.

c. Part of Graveley 15 is shown as county road 5U132.

d. Milksey Lane and the unrecorded track are shown as county road 5U238.

e. This is evidence in favour of the proposition that these parts of the application routes was considered to be a vehicular highway maintainable at the public expenses in approximately 1980.



*Extract from the County Council's Land Charges Maps circa 1980*

### CONCLUSIONS

8. The evidence produced for the application route suggests that vehicular rights existed at the times the various pieces of evidence were created. While no single piece is conclusive of highway status, the fact that every standard piece of evidence leans towards vehicular rights means that, on the balance of probabilities, such rights existed prior to the commencement of the Natural Environment and Rural Communities Act 2006, except perhaps in the case of Milksey Lane where a stopping up order is believed to exist.

9. The antiquity of the route shows that all three highways existed prior to 1835. They will therefore be highways maintainable at the public expense, and so should be added to the List of Streets maintained by the Council under s.36(6) Highways Act 1980 where they are not already listed.



### USER EVIDENCE

10. Evidence is attached to establish that bridleway rights have been established by virtue of twenty years' use of the route without force, payment or secrecy. It is not necessary for any particular user to have used the route for 20 years, only that there is overlapping user such that the public have used it for the required period. (*Whitworth v. Secretary of State for Environment, Food and Rural Affairs* [2010] EWHC 738 (admin) at para 46.) Alternatively this is evidence that the route has been dedicated at common law.

11. None of those giving evidence have seen any indication to show that the route is not dedicated as a highway.

12. In respect of the route from A (county road just east of the A1(M)) to B (Milksey Lane), the Society has collected 25 statements of user.

13. In respect of the route from B (Graveley 15) along Milksey Lane to High Street, Graveley (Point C), the Society has collected 20 statements of user.

14. In respect of the route from B (Graveley 15) along Graveley 15 to Ashwell Common (Point D), the Society has collected 22 statements of user.

### REQUEST

15. The applicant requests that an order be made for bridleway status based on the user evidence and documentary evidence supplied.

P D Wadey PhD LLB MIPROW  
Historic Research Advisor  
The British Horse Society