

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Order Decision Report

Author: Ian England.

Date: 1 February 2012.

Application Details

This application is to record a footpath in the parish of Hatfield in the Borough of Welwyn and Hatfield. An extract of the 2010 Definitive Map is attached. It shows where the application route is.

The application was made by Mr Gerald Mears on 30 September 2010. The application was confirmed as duly made on 12 October 2010.

Description of Route

The application route is in the Oxlease area of Hatfield, south of the town centre. The application route is a tarmac path on a housing development built in the 1960's. The application route links Woods Avenue to Cedar Road, at the south end of the route at Woods Avenue there is a chain link gate which leads into the car park of the Oxlease Methodist Church. The application route then turns generally northwest across the car park and continues generally north between numbers 23 and 25 Cedar Road to join Cedar Road at another entrance which has gates installed, the application route between the two properties is approximately 4 metres wide and generally level. There are notices on the gates at each end of the application route, the notices state 'This car park and footpath are private property. There is no public right of way'.

The photographs below are the notices at either end of the application route; the notices seem to be contemporary with the construction of the church. The photographs were taken by a Hertfordshire County Council ("HCC") Officer.



Notice at Woods Avenue.



Notice at Cedar Road.

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) or at the Rights of Way Service (ROW). These are both at County Hall, Hertford. The documents are listed below with a reference number (if it has one) and where you can find it.

For further information:

Hertfordshire Archive and Local Studies (HALS)

01438 737333 (or 01923 471333 from area codes 01923 and 020)

www.hertsdirect.org/libisleisure/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 Consistency Guidelines.

See www.planningportal.gov.uk/planning/countryside/countryside

This link also details related articles and case law.

You will find each document listed with the following information:

- Document name
- Document date
- Where it can be found – location and reference
- Why we consider the document important when making our decision
- What it shows
- 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?

The area of the application route is annotated as Chantrey Green and shows the area to be open fields. The map does not show the area in enough detail to record footpaths.

1.3 Decision

HCC decided that this document provides no evidence of 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?

The area of the application route is annotated as Chantry Green and shows the area to be open fields. As is expected the map does not show the area in enough detail to record footpaths.

2.3 Decision

HCC decided that this document provides no evidence of the application route.

3. Hatfield Tithe Map and Tithe Apportionment

Date: 1838

Ref: HALS: DSA/4/47/2

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 can 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.

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

The area of the application route is clearly shown on the Tithe Map however there is no evidence shown of the existence of a right of way on the application route.

3.3 Decision

HCC decided that this document provides no evidence of the application route.

4. Highway Diversion/Extinguishment Records

Date: No records Ref: n/a

No records were found and therefore no conclusion can be drawn.

5. Inclosure Records

Date: n/a Act ref: n/a Award and Maps ref: n/a

No records were found and therefore no conclusions can be drawn.

6. Railway and Canal Plans

Date: n/a Ref: n/a

No records were found and therefore no conclusions can be drawn.

7. Inland Revenue Documents

Date: 1910 Ref: IR/1 369 a, b

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 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?

The area of the application route is clearly shown on the Inland Revenue Map. However there is no evidence shown of the existence of a right of way on the application route.

7.3 Decision

HCC decided that this document provides no evidence of the application route.

8 Highways Maintenance Records

Date: n/a Ref: n/a

No records were found and therefore no conclusions can be drawn.

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)

9(a) Definitive Map Records – Hatfield Parish Survey

Date: 1951 - 1953

Ref: ROW Office

9a1 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?

Woods Avenue and Briars Lane are shown on the Parish Survey map. The area of the application route is shown to be open fields with no depiction of a right of way.

9a.3 Decision

HCC decided that this document provides no evidence of the application route.

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

Date: 1953

Ref: ROW Office.

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 Maps and the Provisional Maps 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?

Woods Avenue and Briars Lane are shown on the 1st Definitive Map. The area of the application route is shown to be open fields with no depiction of a right of way.

9b.3 Decision

HCC decided that this document provides no evidence of the application route.

9c Definitive Map Records - Special Review

Date: 1968

Ref: ROW Office

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 Cedar Road Estate is shown on the Special Review map in its current form as is the Church at Oxlease. The application route is shown as an access to the church. There is no right of way shown on this map following the application route.

9c.3 Decision

HCC decided that the Ordnance Survey base map shows an access route to the church but this document provides no evidence that it was a public right of way.

10. Ordnance Survey maps

Date: 1883 - 1990

Ref: HALS Library

10.1 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 for the benefit of 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.

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

- OS 1898 The area of the application route is shown as open fields. There is no evidence of the application route depicted on this map.
- OS 1924 The area of the application route is shown as open fields. There is no evidence of the application route depicted on this map
- OS 1937 There is no evidence of the application route depicted on this map.
- OS 1972 The Cedar Road estate is shown on this map, a route is shown following the application route between Cedar Road and Woods Avenue.

10.3 Decision

HCC decided that the Ordnance Survey maps provide no evidence of the existence of the application route until 1975. Although a route is depicted on the Ordnance Survey map in 1975, this is only evidence that a route existed on the ground; it is no evidence that the route is a public right of way.

11.0 Acquisition of land for the Methodist Church.

These letters are from the Methodist Church records kept at HALS. Ref: NM5/F 1-3.
Dep: 4410.

List of documents

Letter dated 28 Nov 1957 from the Hatfield Development Corp. to the Methodist Church.
Extract from Methodist Church internal letter.
Letter dated 7 May 1958 from Mr Syborn (Architect) to Mr Bee (Methodist Church).
Letter dated 18 Feb 1959 from the Hatfield Development Corp. to the church Architects.
Letter dated 2nd Sept 1960 from the Methodist Church to their solicitors.
1961 conveyance.

11.1 Why we consider these documents important.

Letters which are held at HALS pre-dating the purchase of the land provide information as to why the strip of land subject to the application was acquired by the church in 1961.

A deed of conveyance gives details of the transfer of ownership of land together with any rights and obligations to which the land is subject. A conveyance is not required to record details of public rights of way but may contain information relating to such rights.

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

Letter dated 28 Nov 1957 from the Hatfield Development Corp. to the Methodist Church.

This letter deals with the proposed purchase of the site for the church. It states that (vehicular) access from Woods Ave. is unlikely to be approved in terms of the planning permission and suggests an access from the estate road (Oak Rd) to the north. This could be achieved by the addition of an access strip from Oak Road to the north west corner of the site.

Extract from Methodist Church internal letter.

This document comments on the letter of 28 Nov. 1957. It states that “I think it would be a great pity if there were no access (for pedestrians) from the road by the roundabout. I see the advisability of motors using the back road (Oak Rd).”

Letter dated 7 May 1958 from Mr Syborn (Architect) to Mr Bee (Methodist Church).

The letter states that the Development Corporation is anxious to agree the site that the church requires as the Corp. are negotiating the sale of the land behind the site for house building. The Corp. will insist on access to the site for vehicle traffic from Cedar Road.

Letter dated 18 Feb 1959 from the Hatfield Development Corp. to the church Architects.

The letter states that “the development on either side of the original access from Cedar Rd has been decided and the Corp. is legally committed to give effect to these decisions.” The letter further states that it is therefore necessary that the planning of the vehicular access extends to the western boundary of the access originally proposed.

Letter dated 2nd Sept 1960 from the Methodist Church to their solicitors.

This letter sets out the Church’s comments on the draft contract for the purchase of the site. It notes the access via the narrow strip between the plots marked HL324 and 323 as being the only means of vehicular access.

The 1961 conveyance is the document whereby the land over which the application route runs was sold by the Hatfield Development Corporation to the Methodist church for the purposes of building the church. It sets out various rights and obligations of the purchaser but there is no reference to public rights of way. The plan attached to the conveyance clearly includes the strip of land for the purpose of giving vehicular access to the church from Cedar Road. The inclusion of this strip in the conveyance is consistent with the information set out in the letters referred to above.

11.3 Decision

HCC decided that the 1961 conveyance provides evidence that the Methodist church owned the land from May 1961 but provides no evidence of public rights of way.

The correspondence pre-dating the 1961 conveyance provides no evidence of public rights of way. It does show however that discussions relating to the provision of a 20 foot wide access strip pre-dated the sale of the land in Cedar Road for housing. It also provides an explanation of why the strip of land over which the application route runs was included in the conveyance i.e. for the purpose of vehicular access to the church.

12. User Evidence

12.1 Why we consider the evidence important

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. only 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 section 12. Landowner Challenge to Public's Use of a Route, below). Where there is no evidence that use has been challenged, section 31 of the Highways Act 1980 (as amended by the Natural Environment and Rural Communities Act 2006) specifies that the date of application should be treated as the date of challenge.

12.2 What is shown by the User Evidence received in the area of the application route?

88 people sent signed a pre-printed objection letter. In relation to the application route, this stated:

*"This has been a Right of way from before the Church was built in 1961. Although the Church placed gates **and** notices up when the Church was built the gates have been left open and unlocked for some 30-40 years (Not locked annually). There were no restrictions or objections to the use of this thoroughway."*

Applicants were also asked to complete the following:

"I state that.

I and my family have had unhindered access to the Church thoroughfare.

Number of years using Right of Way

Name

Address"

Everyone who returned the pre-printed letter completed the above section, and the majority stated that they had used the Right of Way for more than 20 years. However most of the pre-printed letters are not specific as to the exact years the Right of Way was used.

In addition 22 people completed the User Evidence form produced by HCC. Of these, 16 had used the route for 20 years prior to the submission of the application in 2010.

7 of the users stated that there were notices on the application route.

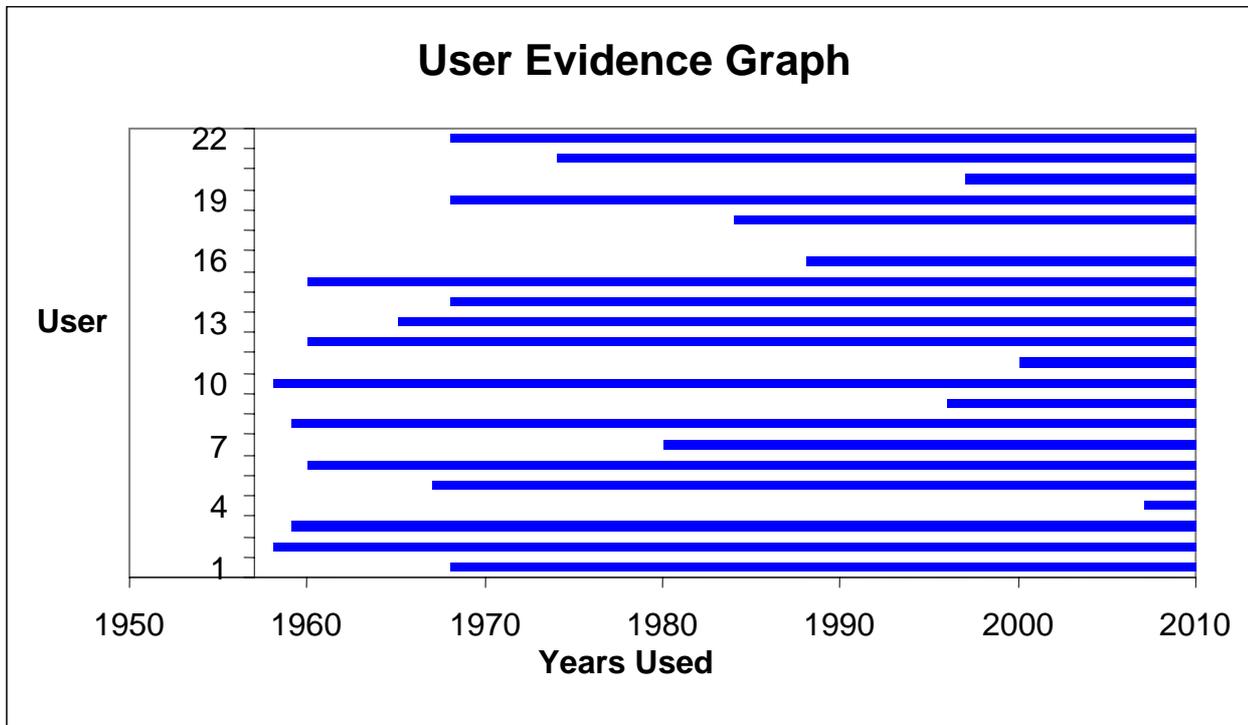
3 of the 7 stated that the wording of the notices was, 'No Public Right of Way'.

13 of the users stated that there were no notices on site.

14 users stated that the route was gated, and generally agreed that the gates had been installed when the church was built. The majority of these users stated that the gates were never locked.

Below is a table summarising the User Evidence forms received.

12.2 Table



User Evidence Table.

User	From	To	Years	Evidence of notices	What did notice say?	Was the route gated?
1	1968	2010	42	Yes		Yes. Between 1968 and 2010. Never locked.
2	1958	2010	52	N/A		Yes. On completion of Church building. Never locked.
3	1959	2010	51	Yes	This car park and footpath are private property there is no Public Right of Way	Yes. 1962 - 1968. Never locked.
4	2007	2010	3	N/A		NO
5	1967	2010	43	No		NO
6	1960	2010	50	No		Yes. Erected 50 Yrs ago. Never locked.
7	1980	2010	30	No		Yes. 1960. Never locked.
8	1959	2010	51	Yes	This car park and footpath are private property.	Yes. Never locked.
9	1996	2010	14	No		Yes. Locked on 20/8/2010.
10	1958	2010	52	No		NO
11	2000	2010	10	No		NO
12	1960	2010	50	Yes		A metal gate. Erected more than 40 Yrs ago.
13	1965	2010	45	No		NO
14	1968	2010	42	Yes	No Public Right of Way	Yes. Before 1968.

15	1960	2010	50	No	N/A. Never locked.
16	1988	2010	22	Yes	NO gates. They have now been closed???
17				No	NO
18	1984	2010	16	No	Yes. Always in place never locked.
19	1968	2010	42	No	Yes. Never locked.
20	1997	2010	13	No	Yes. Prior to 1997. Never locked.
21	1974	2010	36	Yes	Yes.40 Yrs. Never locked.
22	1968	2010	42	No	Yes. Approx.1962. Never locked.

12.3 Decision

HCC decided that the evidence showed that the date of challenge was 1961. The pre-printed letters stated that notices were put up when the church was built in 1961. This was confirmed by some of the user evidence forms which referred to notices stating “no public right of way”. This date is also consistent with the evidence provided by the landowner in section 13.2 below.

As the date of challenge has been identified as 1961, s31(2) of Highways Act 1980 provides that the relevant 20 year period needs to be calculated retrospectively from that date. Therefore in this case the relevant period of use is 1941-1961. HCC decided that there is insufficient evidence of user during this period to raise the statutory presumption of dedication under s31 (1) Highways Act 1980.

It is also possible for a public right of way to be established at common law. This requires the use of the way and the actions of the landowner to have been of such a nature that dedication of the way can be presumed to have occurred.

13. Landowner Challenge to Public’s Use of a Route

Date: 1965-2008. Ref: Case files ROW
 Date: 1961 HALS NM5F1-3

13.1 Why we consider the evidence important

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.

13.2 What is shown by the documented evidence in the area of the application route?

The records of the Methodist Church held at HALS contain the accounts of the church. There is an entry dated 4th September 1961, which shows the purchase of hardboard for site notice(s) at a cost of 8s and 2d.

Hertfordshire County Council has received documentary evidence from the Oxlease Methodist Church. This takes the form of minutes of the Church Meetings from various dates between 1983 and 2008. There is also a signed statement from Mr Bishop who was the Oxlease Property Steward from 1965 to 1982. These were attested as originals by D Dalziel, JP, on 14th December 2010.

Mr Bishop states that it was part of his remit to see that the Church gates were locked for at least one day per year. He carried this out each year on Boxing Day, as this was a day when no Church activity would take place.

The extracts from the various minutes are as follows;

25th Feb 1985.

It was agreed that the existing pair of gates in Woods Avenue are to be unlocked and opened before services by the duty steward.

31st October 1995.

It was noted that the gates to the premises had been closed on 1st July 1995 to ensure that the grounds do not become a right of way.

24th March 1998.

Jack Watkins reminded the meeting that the gates to the church ground should be shut for one day to prevent the Right of Way. The Chairman responded that this should be arranged as soon as possible and that the date of the closure be recorded.

30th June 1998.

To prevent the Right of Way to the path leading from Woods Avenue to Cedar Road and through our grounds, it has been agreed by the meeting that all gates will be closed on the 20th July 1998 and will remain closed for 24 hours. The Chairman has agreed to instigate this action.

15th October 1998.

The Chairman informed the meeting that it was not necessary to lock all gates for 24 hours to preserve our right of way. All that was required were display signs stating that "This is not a Right of Way".

9th January 2008.

JR: informed the meeting that the gates will be locked this Sunday following the evening worship.

13.3 Decision

HCC decided that the accounts showed the church purchased hardboard for site notice(s) in September 1961. Although it is not clear whether the site notice(s) are the ones referred to by the users in their evidence forms, nonetheless the accounts are consistent with the other evidence that notices were erected at this time.

HCC decided that Mr Bishop's actions i.e. closing the church gates at least once a year, usually on Boxing Day, between 1965 and 1982 provided evidence of an intention not to dedicate.

HCC decided that the Oxlease church minutes provided evidence that the church were aware that they needed to take actions to prevent a public right of way. This action took the form of locking or closing the gates on at least 6 occasions between 1985 and 2008. The church minutes also refer to the erection of notices stating this is not a public right of way. These actions clearly evinced an intention not to dedicate the application route as a public right of way.

14. Conclusion

HCC has taken the date of challenge as 1961 for the reasons set out above. On that basis, there is insufficient user evidence for the period 1941-1961 to raise a statutory presumption. In any event, even if the date of challenge is a later date, there is clear evidence that since 1961 the landowner has evinced an intention not to dedicate.