

## REGISTER OF APPLICATIONS - MODIFICATION ORDERS

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### DETAILS OF APPLICATION

File Name:	Piccotts End Lane, Hemel Hempstead
Date application received:	6 <sup>th</sup> January 2016
Name of Applicant:	Dr P D Wadey
Intended effect of application:	Add BOAT, RB & Upgrade FP to RB

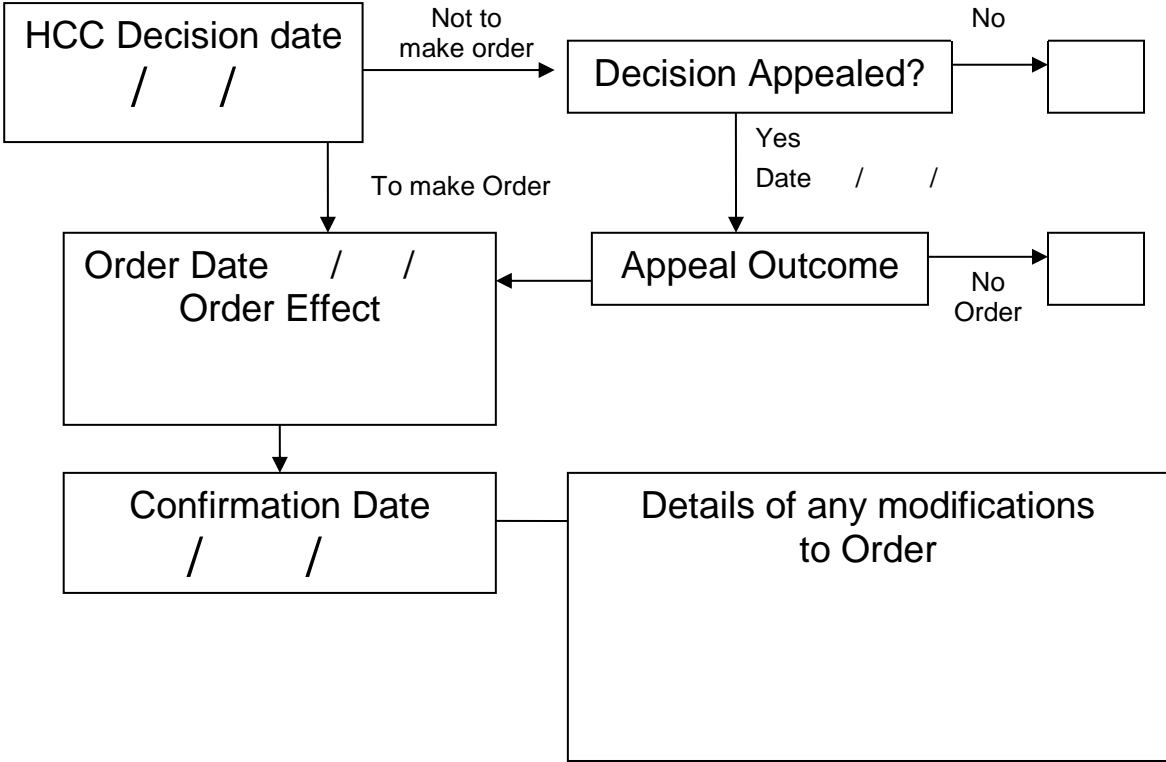
### LOCATION OF APPLICATION

District:	Dacorum	Parish:	Hemel Hempstead
Nearest	City: Town: Village:	St Albans Hemel Hempstead Piccotts End	
	Grid References	or	Definitive Map path reference
Start Point (A)	TL 0535 0872		
End Point (F)	TL 0646 0942		

### ADDRESS OF PROPERTIES ON THE APPLICATION ROUTE

<p>65-110 Clamore, Hemel H. 8-15 The Ridings, Hemel H. 24-38 Camborne Drive, Hemel H. 1-5 Eldrig Turn, Hemel H. 21-25 Katrine Square, Hemel H. Rainbow, Piccotts End Lane, HP2 6JH. Sunnymeads, Piccotts End Lane, HP2 6JH. Rolyn, Piccotts End Lane, HP2 6JH. The Old Farmhouse, Piccotts End Lane, HP2 6JH. 3-9 Piccotts End Lane, HP2 6JH.</p>			
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**REGISTER OF APPLICATIONS - MODIFICATION ORDERS**  
**DETERMINATION (DECISION) OF APPLICATION**



**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order Application**

**For a route known as Piccotts End Lane from Hemel Hempstead 22 FP to  
Aycliffe Drive in Hemel Hempstead  
to be shown as a Byway**

Applicant's Reference: EC827

**3 Jan 16**

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

OS County series map	Hertfordshire 33 – 4 & 33 – 8
Modern Definitive Map sheet(s)	66

1. My name is Phil Wadey. I am the applicant for the order. My rights of way experience stems from having 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, and from my being a trustee of the Open Spaces Society.
2. This application is made because, on the cut off day,
  - a. The effect of s.53(1) and (2) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949, still exists on the cut-off date, and hasn't been a highway of a different description in between, and is not shown in the definitive map and statement at all is to extinguish all rights on that route. (This applies if the route is determined to be a footpath or bridleway.)
  - b. The effect of s.53(3) and (4)(a) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949 is to extinguish the bridleway rights and vehicular rights on a route shown in the definitive map and statement as a footpath.
  - c. The effect of s.54A Wildlife and Countryside Act 1981 (as inserted by Sch 5 para 4 of the Countryside and Rights of Way Act 2000) on a route that carries public mechanically-propelled-vehicular rights and is not already on the definitive map as a highway of any description, is to prevent it from being recorded. (This applies if the route is shown to be a highway other than a footpath, bridleway or restricted byway.)

#### THE APPLICATION ROUTE

3. The application route runs from Piccotts End Lane (metalled county road) at its junction with Hemel Hempstead 28 FP to Washington Avenue (county road) thence to Aycliffe Drive (county road). The application also covers a spur from this route generally northwards to the point on Washington Avenue that is today (3 January 2016) on the List of Streets.
4. The application route is shown on the plan below from point A (junction with Hemel Hempstead 28 FP and Piccotts End Lane) to B (position of gate) to C (junction with Hemel Hempstead 9 FP) to D (junction with Hemel Hempstead 31 FP) to E (junction with Washington Avenue). The application route from A to D is not currently shown on the definitive map of rights of way, the section from D to E is recorded as part of Hemel Hempstead 31 FP and the section E to F is shown as part of Hemel Hempstead 31 FP, part as Hemel Hempstead 134 FP and a few metres closest to Aycliffe Drive that is unrecorded. The spur from Piccotts End Lane (point E) to Washington Avenue (point W) is unrecorded.
5. The route's width is as shown uncoloured on the Inland Revenue Valuation Plan.



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

#### DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

6. 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.

7. 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."

8. While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights.

9. Dury and Andrews' Map of Hertfordshire (1766).

- a. An original is held by the Hertfordshire Archives and Local Studies (HALS) under reference CM 26.
- b. This was made for sale to the public, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished.



*Extract from Dury and Andrews' Map (1766) showing the Key.*

- c. The application route (A to F) is shown in the manner of a 'Road enclosed by Hedges'. This is evidence in favour of the proposition that the application route was considered to have vehicular rights in 1766.



*Extract from Dury and Andrews' Map (1766) showing the application route.*

# 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:

- Adding the byway open to all traffic from the junction of Piccotts End Lane and Hemel Hempstead 28 FP (Point A) to the junction with Hemel Hempstead 31 FP (Point D);
- Upgrading to a restricted byway the footpath from Hemel Hempstead 31 FP (Point D) to the point where Hemel Hempstead 134 FP turns southwards near Aycliffe Drive;
- Adding the restricted byway from Hemel Hempstead 134 FP to Aycliffe Drive (Point F);
- Adding the restricted byway from Piccotts End Lane (Point E) to Washington Avenue (Point W);

and shown on the map accompanying this application.

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

- Dury and Andrews' Map of Hertfordshire, 1766.
- Bryant's Map of Hertfordshire, 1822.
- Ordnance Survey 1<sup>st</sup> edition 25" extract from map Hertfordshire 33 – 4 and 8.
- Ordnance Survey Book of Reference for Parish of Hemel Hempstead.
- IR126/8/108 and 112 Inland Revenue Valuation plans, The National Archives.
- Index Map for Hertfordshire Main and County Roads, c.1927
- MAF73/18/33 Ministry of Food plan, The National Archives
- Hertfordshire County Council Land Charges map, circa 1980.
- Hertfordshire County Council Gazetteer, 2016.
- INSPIRE land index polygon map, 2016.
- The Stopping Up of Highways (County of Hertford) (No 2) Order 1969
- 8 statement from users of the route.
- Applicant's statement.

Dated: 4 Jan 16

Signature: 

Applicant's Reference: EC827