

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Order Application
Reasons for the Decision

North Herts College, Hitchin

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Date: 24th March 2016

Application Details

An application has been made to record a public footpath around the perimeter of the playing field at North Herts College off Cambridge Road in Hitchin. The route applied for also includes pedestrian links from the perimeter path to Hitchin footpath 81 and to the rear of properties on Chaucer Way. An extract of the 2010 Definitive Map is attached labelled "Investigation Plan" ("IP"). It shows where the route is and it is labelled Point A to Point G.

This application was made by Mr S Chappell on 20th August 2014 and was submitted in the prescribed form. The application was supported by: 45 completed user evidence forms, a plan of the Application Route, land registry information and photographs of the land with the fences across the Application Route.

Description of Route

The Application Route is situated in the Purwell area on the eastern side of Hitchin (North Herts District). The train line runs to the south west of the land crossed by the Application Route. The village of Willian is to the north east.

The Application Route runs mainly around the perimeter of the playing field belonging to North Herts College, to the south east of the College buildings. Purwell Meadows local nature reserve abuts the north side of the playing field and Hitchin footpath 81 abuts the south west side. Chaucer Way abuts the south east side of the playing field.

The perimeter route links to footpath 81 at points A, B, C and D on the IP. At points E and F on the IP, the perimeter route links to the metalled path at the rear of the properties on Chaucer Way, however the metalled path is not currently recorded as a public highway. The perimeter route is currently inaccessible via the gaps in the hedge line (points A – F) as metal fences have been erected across the gaps. The applicant identified the location of bins for the disposal of dog waste at points B, C, D and E on the IP as well as two other points on the College grounds.

The Application Route from point A leads onto the College land adjacent to a car park.

The route from point A continues south east following the boundary. The Application Route between points B, C and D is raised on an earth bank above the level of the playing field. Between points B and C the perimeter route runs between the south west boundary of the field and an acoustic fence.

The Application Route continues from point C south east to point D then north east to points E and F before turning north and north west following the field boundary to the north of the all-weather pitch to point G. From here the Application Route runs south west adjacent to the all-weather pitch to point B.

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."

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 for Hitchin 1844 – Ref: HALS – DSA4/53/2

No evidence was found relating to the Application Route. The land crossed by the Application Route is shown on the south west side of the River Purwell. The land is shown divided into separate strips, each with its own plot number. No routes are shown between or across the strips of land.

4. Railway plans 1844 – Ref: HALS - R338

No record

5. Inclosure Awards for Hitchin 1877 – Ref: HALS - QS/E/37 and 1886 Ref: QS/E/38

No record.

6. Ordnance Survey maps 1881 – 1973 – Ref: HALS

No evidence found relating to the Application Route.

7. Inland Revenue Documents 1909-10 – Ref: HALS

No evidence found relating to the Application Route.

The Application Route crosses various hereditaments (plots). None of the plots crossed by the Application Route have a deduction for public rights of way recorded in the Inland Revenue reference book. This includes plot numbers 949, 3979 and 3981 which are crossed by routes shown on the OS basemap by parallel pecked lines (these routes correspond to the footpaths which were subsequently stopped up by the 1965 extinguishment order described below).

8. Definitive Map Records, 1953 – 1984 – Ref: ROW

Hitchin Parish Survey and First Definitive Map: show public footpaths in the area of the Application Route labelled 81, 82 and 88. However, none of these routes correspond directly to the Application Route (and they are no longer recorded on the DMS).

Special Review: shows footpath 81 in the area of the Application Route at a location slightly further south west of footpath 81 as shown in the Parish Survey and First Definitive Map. Footpath 81 as shown in the Special Review is the same as footpath 81 now shown and labelled on the IP. Footpaths 82 and 88 are no longer shown.

The Definitive Map records provide no evidence relating to the Application Route.

9. Highway Diversion, Creation and Extinguishment Records

Date: 1965

Ref: ROW

9.1 Why we consider these documents important

Most orders diverting or extinguishing rights of way were made under the Highways Acts. The orders could be made by certain courts, which up until the mid-part of the 20th century were the Quarter Sessions courts and were held 4 times a year. The Quarter Sessions courts were superseded by the magistrates' court in 1972. Certain orders can now also be made by other authorities, such as a governmental department or local highway authority. Orders relating to highways can also be made under other Acts of Parliament, such as the New Towns Acts, the Housing Acts, the Town and Country Planning Acts or the Defence Acts. Side roads orders are made under the Highways Acts to deal with changes to the local highway network following the construction/improvement of a road. These can be made by the government minister in respect of trunk roads, or by the highway authority in respect of all other highways.

In all cases, these legal orders affect the public highway rights by creating, diverting and extinguishing them. As these are legal documents they provide conclusive evidence of those matters actually decided, but are not conclusive in relation to other matters.

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

In 1965, an extinguishment order was made by the Minister of Housing and Local Government under the Acquisition of Land (Authorisation Procedure) Act 1946 and Town and Country Planning Act 1947. The order relates to land at Hitchin College and footpaths 81 and 82 as shown on the first Definitive Map.

The order extinguished 'part of the footpaths leading from the Hitchin - Great Wymondley road across the site of the proposed Hitchin College of Further Education to Cambridge Road in the Rural District of Hitchin being those parts shown coloured red on the map.'

The order map shows the footpaths to be extinguished in red (footpaths 81 and 82) and the 'proposed new footpath' in blue. The blue footpath relates to what is now recorded as Hitchin footpath 83 as shown and labelled on the IP.

9.3 Decision

HCC decided that the extinguishment order stopped up the footpaths which crossed the land at Hitchin College in order to enable the College to be built. Footpath 81 - which provides access to the Application Route via points A, B, C and D on the IP - was recorded on the

Definitive Map as a result of the extinguishment order. However, the extinguishment order itself provides no evidence relating to the Application Route.

10. Aerial Photographs

Date: 1972 – 2010 Ref: HALS/ROW

10.1 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 signs or 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.

10.2 What the documents show

1972: shows the College buildings, playing field and surrounding land prior to the development of Chaucer Way or St Michaels Road. There are a few faint lines crossing the playing field which could indicate lines worn by use, however they are not very clear. The faint lines lead from a point north west of point A generally east across the playing field towards Purwell Meadows north of point F. There also appears to be a faint line approximately between points E and F, however this line runs into the field linking E and F in an arch rather than a direct route. There are various other markings on the playing field but these are not of a linear nature.

The land which is now covered by housing on the north east side of St Michaels Road is shown as fields, prior to development.

1980: shows the College buildings, playing field and surrounding land with the development of Chaucer Way and housing north east of St Michaels Road. A line can be seen running from point E on the IP (Chaucer Way) where the access appears worn, north east across the playing field in the direction of the College buildings towards approximately point G. A second faint line can be seen running adjacent to the south west boundary of the playing field; however this line is not sufficiently clear to describe it as running between specific points on the field. There are various other marking on the playing field but these are not of a linear nature.

The photograph shows that by 1980 Byron Close, Burns Close and Browning Drive had been completed and Coleridge Close was partly under construction. Gibson Close had not been built.

1990: this photo varies from the 1980 photo because a line can be seen crossing the playing field from point E on the IP (Chaucer Way) but running north west across the field to the access route to the sports hall, north west of point A on the IP. There are no other lines shown crossing the playing field.

The photograph shows that by 1990 Coleridge Close had been completed but Gibson Close had not been built.

2000: the playing field appears well worn generally but there are no clear linear routes crossing the field. The entrances to the playing field at points D, E and F look particular well-

worn and point B less so. The access to Purwell Meadows (approximate location marked onto the IP) also appears to be worn. Gibson Close had been built.

2010: this photograph shows games pitches and goal posts across the playing field (prior to the development of the all-weather pitch). Like the 2000 photograph, there are various indications of general use of the field but no clear linear lines crossing it.

10.3 Decision

HCC decided that the earlier photos, dating between 1972 and 1990, show worn linear routes crossing the playing field, however, these linear routes do not provide evidence of the Application Route. The routes shown are different on each photo and do not provide evidence that a particular linear route was in use over that period of time, albeit that the later 2000 photo indicates that some of the access points into the playing field were well used at that time. The most recent aerial photograph provides no evidence relating to the Application Route.

Development of the land on the south west boundary of the College was started by 1980 and was completed after 1990.

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

Landowner evidence

There are no section 31 deposits affecting the land crossed by the Application Route.

The landowner has provided comments on the application and acknowledges that for many years members of the public have accessed the playing field through holes in the hedge and fence which surround the field but that a right of way across the playing field would leave the College unable to guarantee the safeguarding of students and staff. The landowner states that in 2014 the holes in the hedge were blocked up (which supports the evidence provided by the users) for the following reasons:

- Rubbish left on the playing field by the public
- Dog excrement left on the sports pitches by the public presenting a safety concern to the College students
- Use of the field at night by motorcycles, without lights, and on more than one occasion nearly colliding with members of staff
- Anti-social behaviour by members of the public on the playing field (such as consumption of alcohol)
- Damage to the fence, goal posts and playing surface of the all-weather pitch.

The landowner also provided evidence of notices which were erected by HCC between 1982 and 1991. These state that the “College grounds and premises are for the authorised use of authorised persons only No dogs, golf practice, vehicles or trespassers are allowed Offenders may be fined up to £100 Local Government (Misc Provision) Act 1982”. One of these signs was placed north west of point A on the IP, at the entrance to the college rear car park. The second notice was on the side of the AstroTurf just off the sports hall car park.

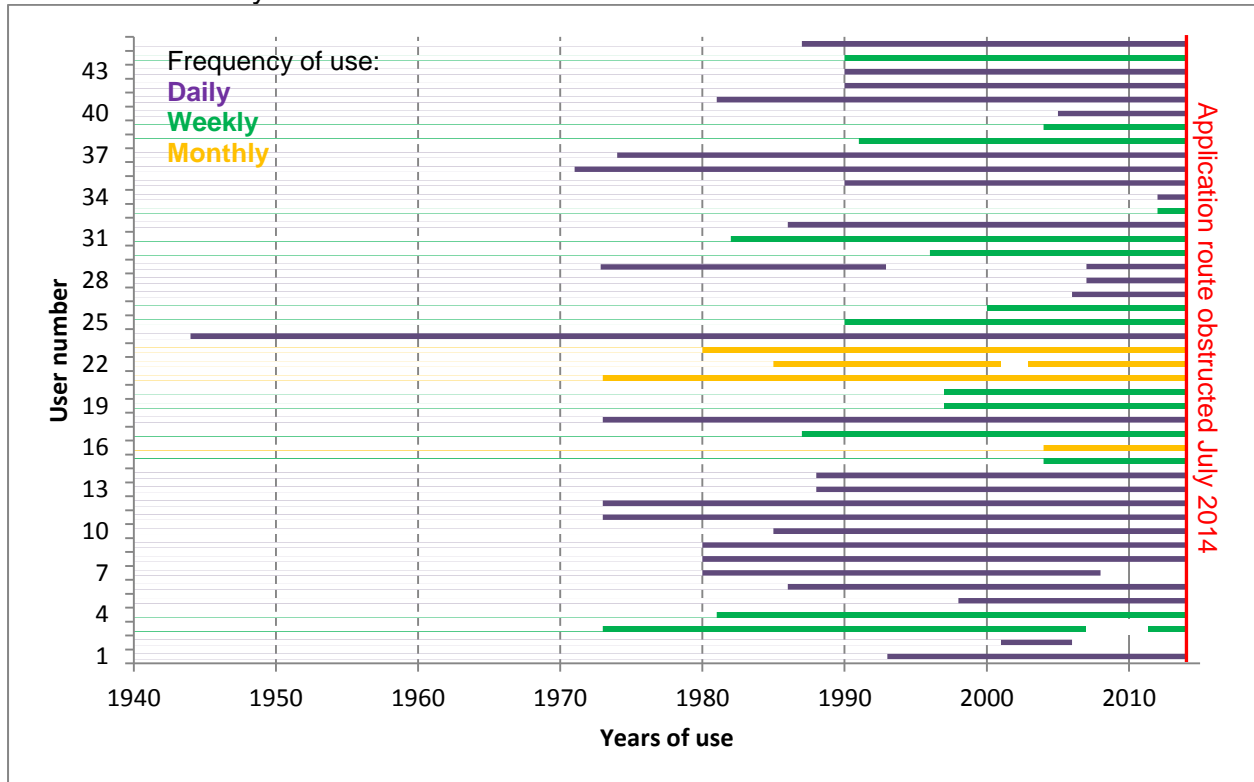
In 2008, the College erected further notices stating that “Dog walkers are prohibited from using this site” but such notices were torn down within 24 hours of being erected. The position of these notices was along the south west boundary of the field and along the boundary with Purwell Meadows. Notices were placed at points A, B, D and near G on the IP. Around this time, the College also repaired damage to the chain-link fencing caused by members of the public, and commented that this had been going on for many years.

Employees of the College also stated that, at least since 2005, staff would routinely challenge members of the public when the saw them on College premises. Speaking to

members of the public going onto the field was a relatively frequent occurrence and the staff would often feel intimidated by the reaction of the person being challenged.

User evidence:

This is a summary chart of all the user evidence received:



User	Type of use	Frequency of use	Period of use	Comments
1	foot	daily	1993 - 2014	Entrance to field via point A, coming from Browning Drive. Perimeter route used for dog walking and walking with grandchildren. Occasional access to Purwell Meadows.
2	foot	daily	2001 - 2006	Entrance to field possibly via point B. Perimeter route used for dog walking and walking with grandchildren.
3	foot	weekly	1973 - 2014	Entrance via point E NW around field and S to FP near Coleridge Close point B. Not used 2007 - 2011 Has not been given permission personally but refers to a piece in the Comet newspaper giving permission for the public to use the playing field (approx. 25-30 years ago). Refers to gate onto Chaucer Way which was shut 1 day a year (likely point E)
4	foot	weekly	1981 - 2014	Route used directly points B to E. Route moved slightly south when all-weather pitch was built
5	foot	daily	1998 - 2014	Perimeter route used around N side of

				field between points B to C.
6	foot	daily	1986 - 2014	monthly bicycle use 1990 – 2014. Used perimeter route via point B, Campbell Close for work, pleasure and dog walking.
7	foot	daily	1980 - 2008	Perimeter route accessed via various points. Says route has not always followed the same path but not specified where it has changed. One reason for use was to attend college. Dog bins removed on 12th Aug 2014
8	foot	daily	1980 - 2014	Route described as variable depending on activities. Access to Purwell Meadows also. Used for dog walking and walking with grandchildren.
9	foot	daily	1980 - 2014	Perimeter route accessed via point B for dog walking and walking with grandchildren. Route not always followed same path
10	foot	daily	1985 - 2014	No plan attached to evidence form to identify route used
11	foot	daily	1973 - 2014	Entrance to perimeter route via point E. Structure from Chaucer Way in 1973 but not specified, did not deter use. Used mainly for dog walking but also access to town (route not marked on map)
12	foot	daily	1973 - 2014	Entrance to perimeter route via Chaucer Way point E for dog walking. Also used direct route between points E and B for access to town and station. Ref to gate at Chaucer way preventing use a long time ago and obstruction by hedges when playing field was 'created'. Field has been accessible for last 40 years. Not used 1991 - 1996
13	foot	daily	1988 - 2014	Used direct route from Chaucer Way point E to point B
14	foot	daily	1988 - 2014	Use of perimeter route for dog walking. Likely via Chaucer Way point E
15	foot	weekly	2004 - 2014	Used direct route points C to point F
16	foot	monthly	2004 - 2014	Completed two forms - one relating to more general recreational use. Used route from point C NW through sports hall car park. Route taken changed to avoid all-weather pitches.
17	foot	weekly	1987 - 2014	Route used to avoid FP81, directly between Chaucer Way point F and point B. Route taken changed to avoid all-weather pitches.
18	foot	daily	1973 - 2014	Access via point F. Either N perimeter route from to point G and then to Cambridge Road, or SW perimeter route to Cambridge Road
19	foot	weekly	1997 - 2014	Used direct routes from point B north to

				car park, point B to point E and point C to point E.
20	foot	weekly	1997 - 2014	Direct routes used from point B north to car park/ sports centre and from point B to centre of field (for general recreation)
21	foot	monthly	1973 - 2014	Direct route from Chaucer Way point E to College via point G.
22	foot	monthly	1985 - 2014	Map not marked up. Cycled in field 1994 - 1999. Moved away 2001 - 2003.
23	foot	monthly	1980 - 2014	Used direct route from Coleridge Close point B, NE via point G to Purwell Meadows.
24	foot	daily	1944 - 2014	Perimeter route used from Chaucer Way for dog walking. Years of use not provided but User refers to use from 6 years of age as well as a gate in place 35 years ago and the obstruction of the route by metal fencing in 2014.
25	foot	weekly	1990 - 2014	Used three routes: Cambridge Road (through the College) via point G to point E; point E to gate onto Purwell Meadows and point E to point B. Also use on bicycle weekly 1993 - 2014. User states that the main Chaucer Way entrance to the field (point E) was purpose built to connect to the estate.
26	foot	weekly	2000 - 2014	Use on bicycle monthly 2000 - 2014. Two route used from point A NE either side of sports hall- neither of which relates to the Application Route
27	foot	daily	2006 - 2014	Entrance to field via point B for jogging and dog walking. Used perimeter route back to point B.
28	foot	daily	2007 - 2014	Used for dog walking on no set route. Also used route from Coleridge Close point B direct to point F.
29	foot	daily	2007 - 2014	Used entrance to field via point A direct to point F and circular route around all-weather pitch via point B. Used land from 1973 but not used at all between 1993 and 2007
30	foot and bicycle	weekly on foot monthly on bicycle	1996 - 2014	Entrance to field via points A and B directly NW to Cambridge Road and used entrance via point C NE to Purwell Meadows
31	foot and bicycle	weekly	1982 - 2014	Entrance to field via point A for walks, sports activities and access to the all-weather pitches. Route across field not specified.
32	foot	daily	1986 - 2014	Use of perimeter route and circular route around all-weather pitch for dog walking. It is not clear which entrance was used. Use described as "variable - depending on activities". Access to Purwell Meadows also.

33	foot and bicycle	weekly	2012	-	2014	Entrance via Coleridge Close point B, NE direct to Purwell Meadows or direct from point B to point E.
34	foot	daily	2012	-	2014	Entrance via point B NE direct to Purwell Meadows or continuing around N perimeter route to point E Chaucer Way
35	foot	daily	1990	-	2014	Use of perimeter route to access Chaucer Way, local shops and pub – but map not marked up to show this not clear which entrances used.
36	foot	daily	1971	-	2014	Three routes used via point E: to St Michaels Road via S side of field, to Cambridge Road via N side of field and to Purwell Meadows near point G. Gate at E was never locked. When user moved to area there was no access to the playing field other than via Cambridge Road or St Michaels Road. User states that the local residents association met with the College management who agreed to add a gate from the garages on Chaucer way onto the field. It was agreed that the gate would never be locked. It was agreed that local residents could use the field and dogs could be exercised. The field could also be used to access Purwell Meadows. The College agreed to fund and install dog bins and pay to have them emptied. A low level fence has always separated the field from Purwell Meadows.
37	foot	daily	1974	-	2014	Entrance via point E Chaucer Way for dog walking. Perimeter route used back to point E. Reference to a gate but no further details provided.
38	foot	weekly	1991	-	2014	Entrance and exit via point B Coleridge Close. Part perimeter route used around E side of field and back to point B on E side of all-weather pitches only. Also refers to a diagonal route to Chaucer Way.
39	foot and bicycle	weekly	2004	-	2014	Entrance via either point A or B direct to point E Chaucer Way.
40	foot	daily	2005	-	2014	Use by bicycle weekly 2005 - 2014. Entrance via point B, N to approx. point G then S, E and N around all-weather pitches and continuing around NE perimeter of field to exit via point C.
41	foot	daily	1981	-	2014	Use of perimeter route via point C for dog walking.
42	foot	daily	1990	-	2014	Use of perimeter route via point B Coleridge Close. Access to Purwell Meadows near point G and Chaucer Way at point F. Access for dog walking and attending evening courses at College.

				Refers to a small stile into Purwell Meadows. Presence of dog bins suggests that dogs can be walked in the field.
43	foot	daily	1990 - 2014	Use of perimeter route via point B Coleridge Close. Access for dog walking and attending evening courses at College, short cut to Purwell Estate and Purwell Meadows (route not marked onto map). Refers to a small stile into Purwell Meadows. Presence of dog bins suggests that dogs can be walked in the field.
44	foot	weekly	1990 - 2014	Use of perimeter route via point B Coleridge Close for dog walking. Also used field as a cut through to sports centre and Cambridge Road once a fortnight (route not marked onto map) Use by bicycle monthly 1990 - 2014 Refers to a small stile into Purwell Meadows. Presence of dog bins suggests that dogs can be walked in the field.
45	foot	daily	1987 - 2014	Use of perimeter route via point F for dog walking and going to work.

A total of 45 user evidence forms were submitted with the application. The user evidence relates to the period from 1944 until the time when the access to the playing field was obstructed by the erection of metal fencing in July 2014.

The user evidence summarised above relates to local residents who have used various routes across the playing field, including the Application Route, primarily on foot. A large number of the users have provided evidence relating to various other routes across the playing field but which were not included in the application. In addition to this, many of the users refer to general recreational use of the playing field.

Use of the playing field for general recreation

The evidence of general recreational use of the playing field has not been included in the summary above because the application has been made to record a specific public right of way. A public right of way is a legally recorded right for the public to pass and repass on a specific linear route - it does not give the public a right to recreational use of an area of land.

Bicycle use

Six of the 45 users (Users 6, 22, 25, 26, 40 and 44) have provided evidence of bicycle use between 1990 and 2014. However, only User 44 provided evidence of using the Application Route on bicycle. User 25 used only part of the Application Route between points B and E and User 40 used only parts of the Application Route between points B and G & F and C.

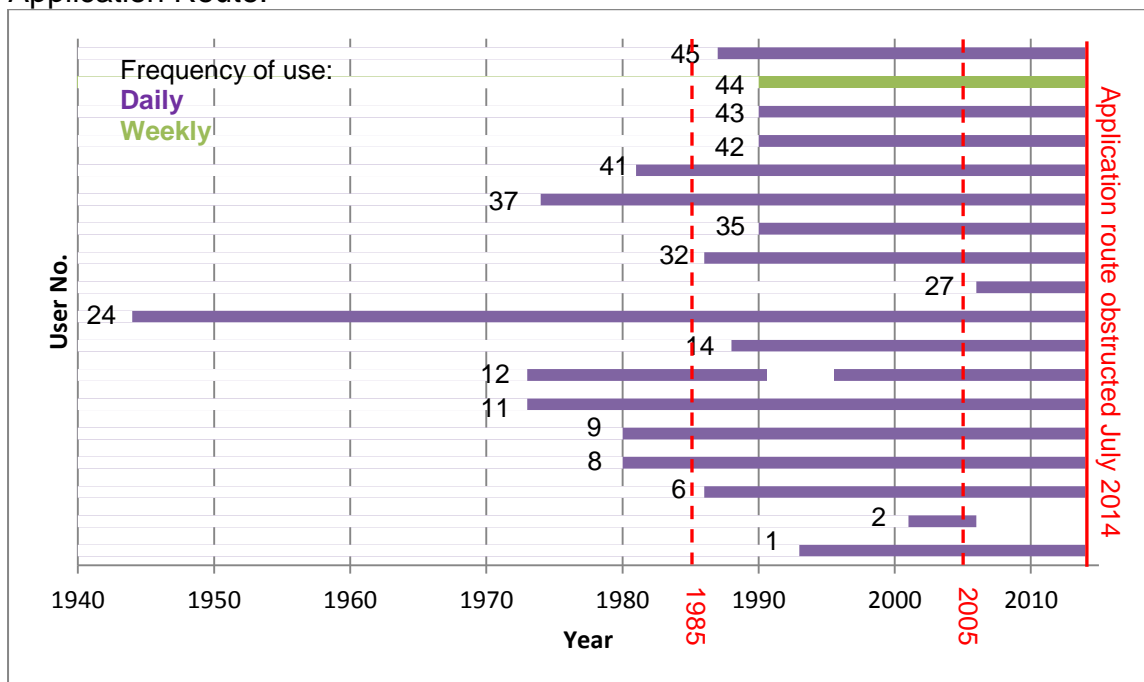
Prior to the erection of the metal fencing in July 2014 none of the users provided evidence of been challenged whilst on the playing field. User 36 refers to an agreement between the local residents association and the College management (soon after 1973) that the gate from point E Chaucer Way would never be locked and that local residents could use the field and dogs could be exercised on it. The College Principal said he would install dog bins around the

perimeter of the field. However, User 3 refers to the gate onto Chaucer Way being closed one day a year and an article in the Comet newspaper (date unknown) described in 2015 as 25 – 30 years ago (i.e. approximately between 1985 - 1990) which gave permission for the playing field to be used by the public. The User has subsequently added that the newspaper article appeared after the completion of the Cottage Meadow Housing Estate. Land Registry records show that the later properties to be constructed at Coleridge Close and Campbell Close were sold by the developer Wimpey Homes Limited in 1982, earlier than properties in Gibson Close which were sold by a different developer, McLean Homes Limited in 1992. A number of the users considered that the presence of dog bins on the playing field implied that use by the public was accepted. Five of the users refer to a change to the routes they used crossing the playing field (Users 4, 7, 9, 16 & 17). This appears to be as a result of the all-weather pitch being built in (approximately) 2011.

Three users (Users 4, 28 and 29) refer to notices on the playing field but these all relate to the use of dog bins.

The Application Route

The chart below relates to those users who specifically provided evidence of use of the full Application Route:



Of these 18 users, only User 44 provided evidence of weekly use of the Application Route and the remaining 17 users provided evidence of daily use of the Application Route.

One user indicated that they accessed the Application Route at point A on the IP. Seven users indicated that they accessed the Application Route at point B on the IP. Six users indicated that they accessed the Application Route at point E on the P, two users accessed the Application Route at points C and F respectively and two users were unclear about where they accessed the Application Route.

The only structure which has been referred to on the Application Route is a gate at point E on the IP. A gate post is still present but no evidence has been presented to suggest when it was removed or by whom.

A large number of the users did not provide evidence relating to the width of the Application Route, some of these users stated that the width was undefined because the Application Route runs around an open field. The general estimated given is between 1 and 2 metres with but narrower around the edge of the all-weather pitch and at the gaps in the perimeter hedge (points A – F).

Of these 18 users, only User 9 refers to a change in the route, however, no specific details have been given.

Other routes around the playing field

In addition to the Application Route, there were approximately 20 other routes crossing the playing field identified in the 45 users. 19 of these routes have been identified by only one, two or three users. However there is one further route between points B and E on the IP which has been identified by 7 users (Users 4, 12, 13, 19, 25, 33 and 39).

Route between points B and E

In relation to the route between points B and E on the IP, five users (Users 4, 19, 25, 33 & 39) have used the route weekly and two users (Users 12 & 13) have used the route daily. All of the users have used the route on foot but Users 33 and 39 also used the route on bicycle. Only User 4 refers to a change to the route crossing the playing field when the all-weather pitch was built.

11.3 Decision

In order to assess whether there has been sufficient evidence of use to raise a presumption that public footpath rights have accrued on the application route, HCC first has to establish the date use was 'challenged'. Access to the application route was blocked in 2014 which prompted the application to be made. Prior to this, a new all-weather pitch was built on the playing field in 2011 which affected the application route and evidence has been given by the College stating that notices prohibiting dog walkers were erect at points along the application route and gaps in the fence were mended in 2008. The College also stated that members of the public found on College premises had been challenged since at least 2005. HCC therefore decided that the date of challenge was 2005, and therefore the relevant period of use is 1985 - 2005.

The Application Route

Of the 45 user evidence forms that were presented with the application, 6 witnesses gave evidence that they had used the application route daily for the full 20 year period of 1985 - 2005 on foot. The combined use of two people (users 12 + 14) covers another period of 20 years use during this period.

The Route between points B and E

Of the 7 witnesses who provided evidence of use of the route between points B and E, 1 witness gave evidence that they had used the route, weekly, for the full 20 year period of 1985 – 2005 on foot. The combined use of two people (users 12 + 13) covers another period of 20 years use during this period.


However, User 3 provides evidence that permission was given to the public by the College to use the playing field, in a newspaper article, approximately between 1985 and 1990. HCC decided that this permission interrupts the 20 year period between 1985 and 2005.


Following an assessment of all the evidence HCC decided that there is insufficient evidence to raise the presumption that the way has been dedicated as a public footpath and therefore footpath rights have not accrued under section 31 of the HA 1980. There is also insufficient evidence that a right of way could be reasonably alleged to subsist or has been acquired under common law.

Conclusion

HCC decided not to make an order.

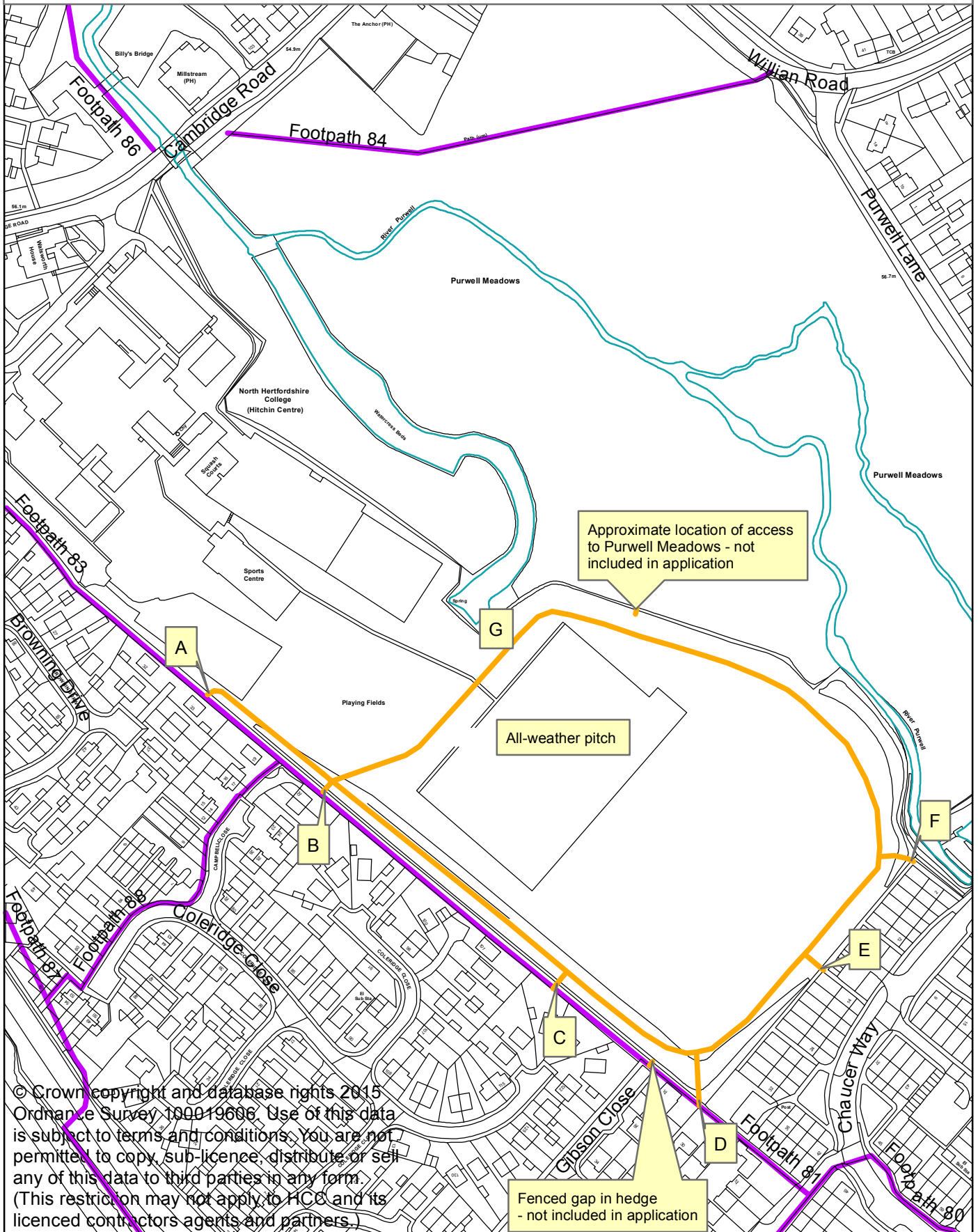
INVESTIGATION PLAN

Public footpath 

Application route 



Scale 1:2,500



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