

# HERTFORDSHIRE COUNTY COUNCIL



## Rights of Way Service

Modification Order Application  
Reasons for the Decision

North of Stonebury Farm

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Date 8<sup>th</sup> September 2017

### Application Details

An application has been made to record a footpath to the north of Stonebury Farm between the B1368 and Buntingford bridleway 23, in the parish of Hormead, east of Buntingford. An extract of the 2015 Definitive Map is attached and labelled Decision Plan (“the plan”). It shows where the route is and it is labelled points 1 to 3.

This application, which included a number of routes in Hormead, was made by Mark Westley of the East Herts Footpath Society on 16<sup>th</sup> September 2004. The application included a letter dated 16<sup>th</sup> September 2004 referring to the main evidence in support of the application for a footpath north of Stonebury Farm:

- the 1864 Little Hormead Inclosure Award
- Ordnance Survey maps and
- 1949 book “Herts & Bucks” by S.E. Winbolt.

### Description of Route

The Application Route crosses agricultural land, situated to the east of Buntingford and the A10 and immediately west of the B1368 on the south side of Hare Street.

The Application Route starts at the B1368 (point 1 on the plan) to the south of Hormead footpath 13 and Worsted Lane. The Application Route runs south west along a wide grass strip (approximately 4 and 6 metres wide) following the ditch on the south side of the field boundary for approximately 370 metres to point 2 on the plan.

There are physical signs of use between points 1 and 2 on the plan and close to point 2 there are permissive footpath waymark signs for routes north to footpath 13 and west along the field edge.

The Application Route turns south west at point 2 and runs across the arable field uphill for approximately 415 metres to join Buntingford bridleway 23 at point 3 on the plan. There are no physical signs of use of the Application Route between points 2 and 3 on the plan, nor of Bridleway 23. The position of point 3 is difficult to determine on the ground as it is within a large arable field and there have been earthworks around Stonebury Farm.

### 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 Archives and Local Studies (HALS) - Tel: 0300 123 4049

<https://beta.hertfordshire.gov.uk/services/libraries-and-archives/hertfordshire-archives-and-local-studies/hertfordshire-archives-and-local-studies.aspx>

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 Government's Information website and view the Planning Inspectorate's Guidance Booklet for Definitive Map Orders: Consistency Guidelines at

<https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines>

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

No records for the following historical documents listed have been found with regard to the application route.

**1. Highways Maintenance Records: Buntingford District Highway Board minutes 1868 – 1880, Ref: HALS BH1/1**

No evidence found relating to the Application Route

**2. Railway and Canal Plans**

**No records found.**

**3. Highway Diversion/Extinguishment Records**

**No records found.**

4 Dury and Andrews Map

Date: 1766

Ref: HALS - CM26

**4.1 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 made from an original survey, although it is a schematic map (like the London Underground map) rather than one to scale. In this way its level of accuracy does not match modern Ordnance Survey maps, but it is useful evidence for the existence of routes in the 18<sup>th</sup> century. The Planning Inspectorate's *Consistency Guidelines* state that "Overall, the evidential value of the older maps can be significant in helping to determine the location of a way, and can be helpful in determining the status of a route, especially in conjunction with later maps." Dury & Andrews' map 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 public rather than private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.

**4.2 What is shown by this document in the area of the application route?**

Little Hornead, Hare Street, 'Owles' and 'Stone Bury' are labelled on the map in the area of the Application Route. The B1368 is shown running north south to the east of Owles and Stone Bury and is described in the key as 'Road enclosed by Hedges'.

A route is shown leading south east from Owles to Stone Bury and then east to join the B1368 which roughly corresponds to the route of Buntingford bridleway 23. [The track between Owles and Stonebury has since been altered so that the track and bridleway diverge south east of Owles].

The Application Route is not shown on the map. There is no route shown crossing the fields to the north of Stonebury and west of the B1368. The fields are shown in the key as 'Arable, enclosed by hedges'.

#### **4.3 Decision**

HCC decided that Dury and Andrews Map does not provide evidence relating to the Application Route.

#### 5. Bryant's Map

Date: 1822

Ref: HALS - CM88

#### **5.1 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 likely to be public unless there is strong contemporary evidence which shows that routes are private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.

#### **5.2 What is shown by this document in the area of the application route?**

Little Hornead, Hare Street, 'Owles' and 'Stonebury' are labelled on the map in the area of the Application Route. The B1368 is shown running north south to the east of Owles and Stone Bury and is shown in the key as 'Good Cross or Driving Road'.

Like the earlier 1766 map, a route is shown leading generally south east from Owles to an area of land noted as a Heath or Common, north of Stonebury and then east to join the B1368 which roughly corresponds to the route of Buntingford bridleway 23. However, it appears that the route may have been moved to its current alignment - diverging from bridleway 23 south east of Owles.

The Application Route is not shown on the map. There is no route shown crossing the land to the north of Stonebury and west of the B1368.

#### **5.3 Decision**

HCC decided that Bryant's Map does not provide evidence relating to the Application Route.

## 6. Little Hormead Tithe Map and Tithe Apportionment

Date: 1839 and 1844

Ref: HALS DSA4/55/1 and DSA4/55/2

## Layston Tithe Map

Date: 1838

Ref: HALS DSA4/65/2

### **6.1 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 1<sup>st</sup> class or 2<sup>nd</sup> class. They did not have to be made from an original survey. 1<sup>st</sup> 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. 2<sup>nd</sup> class maps were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. Both 1<sup>st</sup> and 2<sup>nd</sup> class maps have been accepted by the courts as evidence. 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. Taken together with corroborative evidence, highways that are coloured yellow or sienna can indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the productivity of land and so the calculation of tithe rent.

### **6.2 What is shown by these documents in the area of the application route?**

The land crossed by the Application Route is on the west edge of Hormead Parish on the boundary with Layston parish. The B1368 and Worsted Lane are coloured sepia on the Tithe Map. Stonebury is shown and labelled.

The land crossed by the Application Route is divided into plots in Little Hormead – 143 ('Stones Cross'), 144 ('Stones Cross'), 145 ('Dan Acres') and 147 ('Westy Field').

The Application Route is not shown in full on the Little Hormead Tithe Map but the north eastern most section of the Application Route, west of point 1, follows a route shown on the map between double pecked lines separating plots 143 and 144 and leading to plot 145. There is no indication of the continuation of the Application Route on the south side of the boundary within plot 145 or running south west to point 3 through plot 147.

To the west of point 3 on the plan the Little Hormead Tithe Map shows a short section of a route depicted by a solid line and a parallel pecked line which is on the line of bridleway 23. However, the land connecting the Application Route with Bridleway 23 north of Stonebury is in the adjoining parish of Layston.

The Little Hormead Tithe Award does not include any information relating to the Application Route.

The Layston Tithe Map shows a sepia route linking Owles with Stonebury. Bridleway 23, in part, follows this route. The sepia route passes through plot 203 (described in the Layston Tithe Award as 'The Green') which joins Little Hormead at point 3 on the plan. The Layston Tithe Map does not show Bridleway 23 extending east from the sepia route across plot 203 to the Little Hormead parish boundary at point 3 on the plan.

### **6.3 Decision**

HCC decided that the Little Hormead Tithe Map provides evidence of the physical existence of the Application Route west of point 1 only. The documents do not provide any evidence of the status of the Application Route.

## 7. Little Hormead & Layston Inclosure Records

Date: 1864

Award and Maps ref: D/EH P28

### **7.1 Why we consider these documents important**

Enclosure was the process of physically changing the landscape to benefit the development of modern farming practices as technology improved. It was popular from the late medieval period to the 19<sup>th</sup> century and carried out on a parish-by-parish basis. As it changed the layout and size of fields it also changed the routes of roads and rights of way.

Inclosure was the legal process of carrying out the physical changes. It could be carried out by agreement, but where this was not possible an Act of Parliament was needed to grant the powers to make the desired changes. Through time such Acts became more popular than agreements. Prior to 1801 these powers were granted to each parish individually by private Acts of Parliament. In 1801 the first General Act was passed which could be used by any parish. Further General Acts were passed in 1836 and 1845. However, private Acts continued to be obtained if the required powers were not granted by the General Acts. They are important evidence to show us what powers the commissioners had and, if available, they should be read in conjunction with the Inclosure Award and Inclosure Map, which recorded the inclosure process.

The award is the written record of the changes that were made. It lists the lands that were given to each landowner, the roads and rights of way that were stopped up and those that were set out, or created. The map (which was not legally required until 1845) shows pictorially the changes made.

As inclosure was a detailed legal process with powers granted by Parliament, it can give us conclusive evidence of a right of way.

### **7.2 What is shown by these documents in the area of the application route?**

The Little Hormead & Layston Inclosure Award was drawn up pursuant to "The Acts for the Inclosure Exchange and Improvement of Land". The dates of the Acts referred to are not given, but by this point Parliament had passed the General Inclosure Act of 1845. The 1845 Act dispensed with the requirement to obtain a private Act of Parliament for each enclosed

parish as long as the Inclosure Commissioners agreed with the work that was to be done. In this case the Award makes reference to having been drawn up at the behest of the Commissioners.

The 1845 General Inclosure Act gave the Inclosure Commissioners the ability to “set out and make public Roads and Ways, and widen public Roads and Ways, in or over the Land to be inclosed, and stop up, divert or alter any of the Roads or Ways passing through the land to be inclosed”. The phrase “Roads and Ways” is taken to mean all classes of highways, including footpaths and bridleways.

The Little Hormead & Layston Inclosure Award stopped up a section of footpath running diagonally across Stones Cross [which is the field on the south side of Hormead footpath 13] from a junction with the B1368. This is described in the Award as “... the public footway commencing at the North east corner of Stone’s Cross and extending in a southwestwardly direction over the said Stone’s Cross to the North East corner of the old Inclosure numbered 145 on the said Tithe Plan and Map annexed.” The North East corner of the old Inclosure numbered 145 is between points 1 and 2 on the plan.

The Award also set out Public Footway No. V which connects to the footway which was stopped up as described above. The new footway is described as “One public footway of the width of four feet numbered V on the said Map commencing at the Turnpike Road leading from Cambridge to Ware [B1368 – point 1 on the plan] and extending thence in a Westwardly direction on the North side of the allotment numbered XLIII [Marrow Hill] to the North western angle thereof”.

The Inclosure Map shows the routes of stopped up footpaths and bridleways with red pecked lines and red writing and newly set out footpaths and bridleways are shown with black pecked lines and black writing. The Application Route is shown, depicted by a pecked black line running from a junction with the B1368 south of Worsted Lane and footpath 13, then running along the south side of the field boundary across the old enclosure labelled 145 and then running diagonally across Westy Field (plot XLIV) to the parish boundary with Layston. Only the section of the footpath which was set out by the Award is labelled on the Map. The remainder of the footpath is not referred to in the Award.

### **7.3 Decision**

HCC decided that the Little Hormead & Layston Inclosure Map shows the whole of the Application Route following the amendment of the route by the stopping up and setting out of a public footway. This provides strong evidence of footpath status with a width of 4 feet west of point 1 on the plan and supporting evidence of the reminder of the Application Route.

## **8. Inland Revenue Documents**

Date: 1909-1910

Ref: HALS IR1/113, IR1/114a, IR2/41/1

### **8.1 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 30<sup>th</sup> April 1909, a survey was carried out assessing each piece of land. The OS 2<sup>nd</sup> 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 this 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.

## **8.2 What is shown by these documents in the area of the application route?**

The land at Stonebury is shown within a large plot numbered 159 in Little Hornead. This is mainly land on the west side of the B1368 but also includes a smaller section of land on the east side of the B1368 adjacent to Bummers Hill.

The Application Route is shown on the 2<sup>nd</sup> edition Ordnance Survey basemap by parallel pecked lines which are annotated 'F.P.'. At point 3 on the plan the Application Route is shown linking to a route (on a similar line to Buntingford bridleway 23) which joins an uncoloured road running generally north to Owles. On the south east side of Stonebury Farm another route is shown on the basemap by parallel pecked lines annotated 'F.P.' running generally south. There are no annotations on the Map added by the Inland Revenue surveyor which relate to these routes.

The Book of Reference refers describes plot 159 as Land, Buildings and House at Stonebury. The size of the plot is recorded as 627 areas and a £20 reduction in tax is recorded for public rights of way across the plot.

## **8.3 Decision**

The route south from Owles is shown uncoloured on the map and this suggests that it was considered to be a public highway of vehicular status at the time the map was drawn up and is now recorded as part of Buntingford bridleway 23. The east-west section of bridleway 23 is shown on the Inland Revenue Map linking with the Application Route. It is not possible to identify what the £20 tax reduction related to. It is possible it could relate to the east – west section of bridleway 23 and the Application Route but it could also relate to other routes in plot 159.

HCC decided that the documents do not provide clear evidence that the Application Route was considered to be a public highway at the time the documents were drawn up.

9. "Herts and Bucks" by S.E. Winbolt published by Penguin Guides

Date: 1949

Ref: HALS H402160698, 942.5

**9.1 Why we are considering this document?**

This walking guide was referred to in the application by the applicant.

The forward in the guide states that it was intended as an introduction for travellers to the Herts & Bucks area and to encourage exploration of the countryside by walkers, cyclists and cars. There are ½ inch colour maps within the book which show principle roads, important footpaths and attractive roads.

There is no mention within the book whether the guide was drawn up following consultation with the landowner.

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

Route 11 – A Round E. from and to Buntingford

The latter part of the walk is described as "By a narrow lane from the village street you come to a post windmill, with a ladder to the door and a weather porch over it [early OS map show two windmills in Great Hormead on the north west side of the village]. From Gt. Hormead take road l. (S.W.) on to the Cambridge road, on which l. for a few yards, and then by path r. on to a lane. Here turn r. by Owles to Buntingford station." This is the only section of the walk which could refer to the Application Route, however it appears unlikely that this is the case.

**9.3 Decision**

HCC decided that the walking guide does not provide evidence relating to the Application Route.

10. 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)

10a. Definitive Map Records – Hormead and Buntingford Parish Surveys

Date: 1951-53

Ref: ROW

**10a.1 Why we consider these documents important**

Under the National Parks and Access to the Countryside Act 1949 the county council 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.

**10a.2 What is shown by these documents in the area of the application route?**

The Hormead Parish Survey Map does not include the Application Route. However, the parish survey file does include correspondence relating to a number of paths around Stonebury which were surveyed by the Youth Hostelling Association in May/June 1951. A plan showing these paths includes the Application Route which is numbered YHA10 and YHA10a. YHA 10a runs from the B1368 (point 1 on the plan) running along the south side of the ditch (to point 2 on the plan) and then running diagonally south west to YHA10 and continuing to the junction with the bridleway north of Stonebury (point 3 on the plan). YHA10A is labelled 'FP' and YHA10 is labelled 'CRF' (Cart Road used as a Footpath).

The Ramblers produced a report relating to various paths (footpaths and bridleways) around Stonebury, suggesting that they be included on the Draft Map. This includes a summary of a meeting in September 1952 between the chairman of Buntingford Parish Council and representatives of the Youth Hostelling Association and the Ramblers Association. It appears that the chairman of Buntingford Parish Council could provide evidence of the paths at Stonebury as rights of way and would seek corroborative evidence locally. The chairman considered that whilst Stonebury was mainly in Hormead, the paths had a useful purpose in serving other areas as Stonebury was a central link.

The report notes that the footpaths and bridleways around Stonebury had been omitted from the Draft Map by Hormead Parish Council when the ground survey was in progress. It appears that the owners were not supportive of the paths and suggested certain paths to be re-routed. It was explained by the Ramblers Association representative that the Parish Council was required under the 1949 Act to record all rights of way regardless of personal opinion. The report continues that local sources informed that the footpaths and bridleways were in daily use at the time.

Specific remarks are made in the report about YHA 10 and 10a:

No.10 CRF – 'The first 100 yards of this path in Buntingford Parish have been ploughed up and there is a diversion along the N. edge of field. Path enters Parish [point 3 on the plan] by gap and is a well-defined cart track bordered on either side by orchards as far as the old chalk pit... Used by local people to St Mary's Church and Little Hormead via PC's 12 [Hormead footpath 12] shewn on new 6" maps.'

YHA10a - 'This is a branch from No.10 N.W. to Stream [point 2 on the plan], along southern edge to Barkway Road, B.1368 [point 1 on the plan]. Ploughed up, but tracks were found along route. Shewn on old 6" maps, and 1" maps. Used by local people en route to Hare Street and later, when PC12 [Hormead footpath 12] could not be used, owing to lost footbridge, to Little Hormead via Worsted Lane.'

General comments about the paths around Stonebury include that they may be disputed by the owner at a later date.

In February 1953, Hormead Parish Council wrote to the County Surveyor to say that 'There are believed to be workmens paths used in the past by men working at Stonebury Farm, and

long since out of use. Some are farm cart tracks, over which there are no legal rights. We have no evidence to support the inclusion of any of these.'

HCC's notes show that the paths were not included in the Parish Survey as the Parish Council had no evidence to support their inclusion. It was decided to leave the paths off the Draft Definitive Map until evidence for their inclusion was received from the Ramblers Association.

In Buntingford, the Parish Council stated that the rights of way scheduled in the Survey had been used by the public for a period of at least 20 years and information had been taken from Ordnance Survey maps and local knowledge. Bridleway 23 was described as commencing from Owles Farm south east along Green lane and into Hormead Parish north of Dogkennel Wood *and towards Stonebury* [the description towards Stonebury looks like it was added later]. The Bridleway was surveyed in 1950 and 1951. The survey documents remark that Bridleway 23 was not shown in either the Westmill or Hormead parishes but the question was being fully dealt with in remarks on "Stonebury Footpaths and bridleways" (see comments above). A sketch map shows Bridleway 23 extending north east into Hormead parish from point 3 on the plan.

In correspondence dated 7 September 1952 the Clerk to the Council wrote to Buntingford Parish Council asking, with regard to Bridleway 23, "Is this shown to its full length on the draft map? It should continue B.R. to due N. of Stonebury Farm, just after taking the shape of a shallow V" [point 3 on the plan]. On 26 January 1953 Buntingford Parish Council confirmed the continuation of the Bridleway as described in the September 1952 letter.

### **10a.3 Decision**

HCC decided that the Buntingford Parish Survey provides evidence of the continuation of Bridleway 23 into Hormead parish. The Youth Hostel Association Survey provides evidence of the physical existence of the Application Route in 1951. However, Hormead Parish Council considered that there was no evidence to support its inclusion in the Parish Survey and so the documents do not provide evidence of public status.

### 10b. Definitive Map Records – Draft, Provisional and First Definitive Map

Date: 1953-55 Ref: ROW

#### **10b.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 quarter sessions 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 Map and then Provisional Map 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.

### **10b.2 What is shown by these documents in the area of the application route?**

The Ramblers Association objected to the Draft Map on the basis that various paths over the Stonebury Estate should be investigated for inclusion on the Map. On 2<sup>nd</sup> March 1953 the Ramblers Association wrote to the Clerk of the County Council suggesting that local testimony was available. In a letter dated 6 March 1953 the County Surveyor told the Clerk of the County Council that the paths at Stonebury would not be shown on the Draft Map pending further evidence as the Parish Council had already confirmed that it had no evidence to support the inclusion of the paths on the Map. The County Surveyor advised that the Ramblers Association should use the standard evidence form to obtain the necessary evidence to support the inclusion of the paths on the Map.

On 23 December 1954 the Clerk of the County Council wrote to the Ramblers Association asking if any completed evidence forms would be submitted as the Council was preparing to hold hearings relating to the objections to the Draft Map – with a view to sealing the First Definitive Map. A letter to the Clerk of the County Council from the County Surveyor dated 18 March 1955 suggests that evidence forms were not submitted by the Ramblers Association. There is no further correspondence on the Stonebury paths.

There was an objection to the Draft Map for which no evidence was provided and therefore when the First Definitive Map was produced the Application Route was not shown. Buntingford bridleway 23 is shown as a dead end up to the parish boundary at point 3 on the plan. No objection to the Draft Map was made regarding bridleway 23.

### **10b.3 Decision**

HCC decided that the Application Route was not recorded on the First Definitive Map and so these documents do not provide evidence in relation to the Application Route.

### 10c. Definitive Map Records - Special Review

Date: 1978+ Ref: ROW

#### **10c.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.

### **10c.2 What is shown by these documents in the area of the application route?**

The Application Route is not shown on the Special Review.

Buntingford bridleway 23 is shown as a dead end up to the parish boundary at point 3 on the plan. No application was made at the Special Review stage regarding bridleway 23.

### **10c.3 Decision**

HCC decided that the Special Review Map does not provide evidence in relation to the Application Route.

## 11. Ordnance Survey (OS) maps

Date: 1877 - 1975 (1:2,500 scale)

Ref: HALS/ROW

### **11.1 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 20<sup>th</sup> century that the OS evolved to become a public service that sold its mapping information to 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 2<sup>nd</sup> edition maps (circa 1897/8 in Hertfordshire), along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way.

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

1<sup>st</sup> edition – 1877-78:

Stonebury Farm is shown with routes running to/from the farm buildings from the east, west and north sides. The B1368 is shown to the east and Owles is shown to the north west. An old chalk pit is shown and labelled in the field to the south of the Application Route between points 1 and 2 on the plan.

The Application Route is shown in full. The Application Route is depicted on the south side of the ditch between points 1 and 2 by a pecked line running parallel with the ditch. At point 2 the Application Route is depicted by parallel pecked lines running south west across the field to point 3 on the plan where the lines continue into the adjoining parish approximately along the route of Buntingford bridleway 23.

2<sup>nd</sup> edition – 1897-98:

This map is much like the earlier map. The Application Route is shown in full. However unlike the earlier map, it is depicted by parallel pecked lines apart from a short section alongside the ditch. The Application Route is annotated 'F.P.'

3<sup>rd</sup> edition - 1921

The Application Route is shown in full depicted by parallel pecked lines along its length. The Application Route is annotated 'F.P.'

1975 edition:

The map shows only one route leading to Stonebury, from the B1368. The Application Route is not shown on this map and neither is the route of Buntingford bridleway 23 from Owles.

### **11.3 Decision**

HCC decided that the OS maps provide evidence of the physical existence of the Application Route between 1877 and 1921. OS maps are not capable of providing evidence of highway status.

## 12. Aerial Photographs

Date: 1970 - 2010      Ref: ROW/HALS

### **12.1 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.

### **12.2 What is shown by these documents in the area of the application route?**

1970:

The photograph shows the route of Buntingford bridleway 23 south and east from Owles to Stonebury. A worn track is shown from point 3 running generally north east to the B1368, however this is not on the same alignment as the Application Route and runs along the south side of the chalk pit to join the B1368 south of point 1 on the plan.

1980:

The photograph shows some indication of bridleway 23 at point 3 on the plan and there are indications of a route running north east from point 3. However like the earlier map, it appears that the route runs to the south side of the chalk pit. The appearance of the route looks likely to be caused by farm vehicles.

1990:

The photograph shows the route of bridleway 23 to point 3 on the plan and a route extending north north east from point 3. This is not on the same alignment as the Application Route between points 2 and 3 as it runs to the field boundary further west of point 2. Like the earlier photos there is also evidence of a route running north east towards the chalk pit.

2000:

The photograph shows what appears to be a wide, possibly surfaced path between points 1 and 2 on the plan. It appears that the surfaced path continues west of point 2 following the field boundary. This photograph shows no evidence of the cross field section of the Application Route between points 2 and 3.

2010:

Like the 2000 photograph a wide path is shown between points 1 and 2 extending further west of point 2 following the field boundary. This photograph also shows no evidence of the cross field section of the Application Route between points 2 and 3.

### **12.3 Decision**

HCC decided that the earlier photos between 1970 and 1990 provide evidence of a route at point 3 none of which are on the alignment of the Application Route. The later photos of 2000 and 2010 show the physical existence of a route along the line of the Application Route between points 1 and 2 on the plan. Aerial photos cannot provide evidence of a public highway.

### **Conclusion**

The courts have given guidance on how evidence is to be considered. In the Fortune case, 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 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.”

HCC’s decision is therefore based on the assessment of all the evidence, which has been taken all together rather than relying on an individual document. The conclusion explains the decision made.

The earliest historical document which provides evidence of the status of the Application Route is the 1864 Little Hormead & Layston Inclosure Award and Map which diverted a public footway which ran across the land to be enclosed at Stones Cross, and set out a public footway, at a width of 4 feet, along the Application Route west of point 1. The Inclosure Map showed the remainder of the Application Route running generally south west to the Little Hormead/ Layston parish boundary (point 3). The large scale 1:2,500 OS maps between 1877 and 1921 depict the Application Route in full and the Youth Hostelling Association surveyed the whole of the Application Route on the ground in 1951.

HCC therefore decided that there is sufficient evidence to make an order to record a footpath between points 1 and 3 on the enclosed plan. The width of the footpath will be recorded as 4

feet as set out in the Inclosure documents. In the absence of other evidence, it is assumed that the width recorded in the Inclosure Award would be consistent along the length of the footpath. There will be no limitations recorded on the footpath. HCC will be liable for the maintenance of the footpath as the evidence of the footpath is historic.

