

# HERTFORDSHIRE COUNTY COUNCIL



## Rights of Way Service

### Modification Order Application **Decision Report**

Field north of Lady Meadow, Kings Langley

Author: Helen Denton

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## Application Details

An application has been made to record a public footpath around the field north of Lady Meadow in Kings Langley. An extract of the 2015 Definitive Map is attached. It shows where the route is and it is labelled points 1-4.

This application was made by Lloyd Moore of Lady Meadow in June 2015. It sought to rely upon the evidence of 20 user evidence forms and was submitted with all forms enclosed.

## Description of Route

The application route runs around a field that lies between Shendish Manor and Rucklers Lane, to the south of Hemel Hempstead and west of Nash Mills. For years the field was owned by a local farmer who ploughed it for agricultural purposes. In recent years the field has been sold and the current owner has allowed the field to return to its natural state.



Point 1 looking west

The field has two recorded footpaths running through it, Kings Langley 17 and 19, as shown on the attached plan. Both Footpaths 17 and 19 have evidence of horse use, although the application route does not. The plan annexed to Mr Moore's application shows the application route leading off Footpath 17 as soon as Footpath 17 enters the field. If the application route was accessible at this point it is not now, as it is overgrown by brambles. Instead, the public now access the application route some metres along Footpath 17, at point 1 on the plan. The route then heads in an easterly direction around the field's southern, western and northern boundaries until it joins Footpath 19 at point 4.



Looking west towards point 3

The application route has a natural surface which is muddy in wet weather. Between points 1 and 2 it runs parallel to the rear boundaries of the properties on Lady Meadow. Four of these properties have garden gates that open onto the path. The path is narrow between these points, but it widens out from point 2. At point 3 the application route meets other unrecorded paths that head into the woodland of Shendish Manor and the field to the west of the application route field. Near point 4 the mound referred to by several witnesses limits the width of the path, which passes between the mound and the northern boundary of the field. The application route then joins Footpath 17.

## 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/](http://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 <https://www.gov.uk/guidance/object-to-a-public-right-of-way-order> 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
- HCC's decision.

Investigation into the following historical documents has not provided evidence with regard to the application route:

- Dury and Andrews' county map, 1766 (ref: HALS CM26)
- Bryant's county map, 1822 (ref: HALS CM88)
- Tithe records for Kings Langley, 1836 (ref: HALS DSA4/64/2)
- Highway diversion/extinguishment records (ref: HALS)
- Highway maintenance records (ref: RoW)
- Records for the first Definitive Map, 1950s (ref: RoW)
- Ordnance Survey maps (HALS).

### **Aerial photographs**

Date: 1970, 1980, 1990, 2010

Ref: RoW

#### 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.

The aerial photographs held by HCC are vertical photographs, that is the camera points straight down at the ground and the photographs show the landscape in plan. Vertical photography is used in cartography, land-use planning, archaeology, environmental studies, and other fields. Vertical aerial photographs are also used in GIS (Geographic Information Systems). HCC have undertaken aerial photography surveys of the county approximately every 10 years since the early 1970s.

### What the documents show

The 1970 aerial photo shows that the field has been ploughed and is free of the scrubland that exists today. Footpaths 17 and 19 are clearly visible across the field. There is some evidence of the application route, although shadows from the trees around the southern boundary obscure the area where the route lies, meaning that it is difficult to tell how well-used it was at that time.



The photo from 1980 is much clearer. The field is still ploughed, but Footpaths 17 and 19 are clearly well-used. Parallel tracks run around the perimeter of the field which may be a walked line, tractors marks or a combination of both.

The 1990 photo again shows a ploughed field with clear tracks showing where Footpaths 17 and 19 lie.

The perimeter of the field is a wide unploughed margin, although the photo does not show any evidence of use of this margin as a public right of way.

The 2010 aerial photo shows that the field is no longer cultivated and scrubland has grown up, especially in the south western corner and across the middle. Footpaths 17 and 19 are still clearly well-used, and now the application route can be seen running around the perimeter and through the scrubland.



### Decision

HCC decided that the aerial photos show that the field was once cultivated and more recently has been left to lie fallow. The definitive footpaths have clearly been used and maintained throughout the period shown in the photos. The application route appears to have been consistently left as wide field margins, and HCC decided that the 2010 photo provides supporting evidence that it was used at that date, although it cannot be determined whether that use was public or private in nature.

## **Contemporary Evidence of Use**

### 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.

Evidence of public use of a route is first provided with the completion of user evidence forms (UEFs) by the people who have used the path. Below is a summary of the evidence we have received, including a table showing the information provided in the UEFs.

#### Evidence of use of the application route

The application was accompanied by 20 UEFs, although the forms of 2 witnesses suggest that they have not used the application route in its entirety. Of the remaining 18 witnesses, 11 have attested to 20 years' use up until the date of the application in 2015. All witnesses have used the route on foot, most on a daily basis.



Stile and gate near point 1

Many witnesses refer to a gate and/or stile where Footpath 17 enters the field just south of point 1, which appears to have been in position for many years. None said that this hindered their use of the path. Several also refer to a 'private' notice near point 3 on the plan, although it is not clear if this relates to the field through which the application route runs, or the adjoining field to the west.

Many witnesses mention speaking to the previous owner of the land, Mr Porter. All say that he was pleasant to speak to and did not object to them using his field. Some say that when he ploughed the field he would leave a margin of around 3 metres in width for public access.

The majority of the witnesses say that the application route used to be around 3 metres wide, although it has narrowed since the land was sold to the present owner, as she does not cultivate it and has allowed it to return to scrubland.

User no.	Years of use	Manner of use	Comments
1	1978-2015 (37 years)	Foot, 1-6 times per year	Has used path since childhood. Would meet previous owner who never challenged use. Path used to be wider but has narrowed through lack of maintenance.
2	1970-2014 (44 years)	Foot, daily	Notice on Rucklers Lane saying "footpath, no horses" since 1970. Gates on entrance to field near point 1 which don't hinder access.
3	1995-2015 (20 years)	Foot, daily	Gates on entrance to field near point 1 which don't hinder access. Width approx. 3-4 metres.
4	1996-2015 (19 years)	Foot, daily	'Private' notice on fence near point 3 2014-15. Would meet previous owner who never challenged use. Width 1-3 metres, but has narrowed as become overgrown.
5	2006-2015 (9 years)	Foot, daily	Gates on entrance to field near point 1 which don't hinder access. Width 0.5-2 metres.
6	1996-2015 (19 years)	Foot, monthly	Gate near point 2 and at top of Ladymeadow. Path wide enough for 2 people to walk side by side.
7	1976-2015 (39 years)	Foot, daily	Has met previous landowner on a number of occasions. Stile near point 2 for at least 20 years. Width 0.5 to 2 metres.
8	2004-2015 (11 years)	Foot, monthly	Stile and gate near point 1 have been present for a long time. Width 3 metres by stile.
9	1991-2015 (24 years)	Foot, daily	'Private' notice on fence near point 3 in 2014-15. Would exchange pleasantries with the previous owner. When the field was ploughed the path was around 3 metres wide; now it is overgrown and narrowed to approx. 1 metre.
10	2001-2015 (14 years)	Foot, daily	Notice on gates and waymarks saying "footpath, no horses". Would meet previous owner who never challenged use. Near point 1 a stile was replaced by a gate, next to a metal barred gate which was occasionally locked. Wouldn't hinder access. Couldn't use route when Shendish Manor carried out works as they used the field to dump rubbish. Width approx. 3 metres.
11	1988-2015 (27 years)	Foot, daily	Stile and gate near point 1 have been present for a long time. Width 0.5 to 1 metre between hedges.
12	1995-2015 (20 years)	Foot, daily	Used application route even when lived in Bricket Wood until 2001.
13	1986-2015 (29 years)	Foot, daily	'Private' notice on fence near point 3 2014-15. Would exchange pleasantries with the previous owner, who would plough the path for public use. When the field was ploughed the path was around 3 metres wide; now it is overgrown and narrowed to approx. 1 metre.

14	2006-2015 (9 years)	Foot, daily	Witness may have walked route in field to west of field through which application route runs. Refers to gate which has always been present, and says route is wide enough for 2 people to walk side by side.
15	1998-2015 (17 years)	Foot, 3 times per week	Gate on public footpath near point 1. Width 0.5 to 1 metre.
16	1991-2015 (24 years)	Foot, daily	'Private' notice on fence near point 3 2014-15. Stiles at points 1 and 2. Would exchange pleasantries with the previous owner, who would leave a 3-4 metre wide path for public use.
17	1978-2015 (37 years)	Foot, daily	Gate present for many years near point 1. Width depended on time of year and upgrowth, but much clearer in previous owner's time.
18	1980-2015 (35 years)	Foot, daily when had dog	Width 6 feet.
19	2009-2015 (6 years)	Foot, daily	Gate and waymarks near point 1. Witness may not walk around whole field. Width varies but approx. 2 metres.
20	1979-2015 (36 years)	Foot, daily	Previous owner would permit use. Width enough to walk with 2 dogs. Not clear whether witness walks existing footpaths or application route.

#### Evidence from landowners and other parties

Evidence has been received from the previous owner, Mr Porter, and the current owner, Mrs McWilliams, along with two supporters of Mrs McWilliams, Mrs Rowberry and Mrs Vaughan. Mr Porter wrote to HCC in June 2015 and said that he harvested crops in the field but was happy to let people walk around the perimeter as long as they did not walk on the crops. He said he would leave a path around the edge of the field for that purpose. He expanded upon that evidence in January 2016 to say that he gave permission for the people whose Lady Meadow properties backed onto the field to use the application route between 1 and 2 so that they could access Footpaths 17 and 19 from their gardens. He said this was a gesture of neighbourly goodwill and he would not have extended that permission anyone walking along the section of the application route between points 2 and 4. This evidence is disputed by the property owners who completed UEFs, who say that they did not receive permission from Mr Porter.



Gates on route between points 1-2

Mr Porter sold the land to Mrs McWilliams in 1998. Mrs McWilliams wrote to HCC in July 2015 and disputed the applicant's claim that the public have used the application route for over 20 years, stating that until 1999 it was arable land that was ploughed and planted with crops each year. She said that since she has owned the land she has maintained the definitive footpaths. In 2008 she offered the residents with garden gates licences to use the path, mainly for the purpose of maintaining their boundaries, although these have apparently been turned down.

In October 2015 Mrs McWilliams made a landowner deposit to HCC under section 31(6) of the Highways Act 1980 and section 15(C) of the Commons Act 2006. In the deposit Mrs McWilliams admitted to the existence of Footpaths 17 and 19, but stated that no other public rights of way exist across her land.

Mrs McWilliams and her supporters all state that the majority of people that they see on the land are walking on the definitive footpaths. She has erected notices saying “private land, please keep to the footpaths”, all of which have been removed. She says that the entrance to the application route at point 1 is blocked with brambles and that people don’t use it. She has turned the applicant from the application route before and says that he mows the field behind his house.

Mrs McWilliams’ supporters confirm Mrs McWilliams’ evidence that to their knowledge the public have not used the application route. Mrs Vaughan states that the private notices were erected on the land in 2008 by herself, Mrs McWilliams and Mrs Rowberry, and that the field gate on the Rucklers Lane entrance was padlocked at the same time.

### Decision

In order to assess whether there has been sufficient evidence of use to raise a presumption that public footpath rights have accrued between points 1-4 on the plan, HCC first has to establish the date use was ‘challenged’ by the landowners (see above). Mr Porter does not appear to have ever challenged use of the field during his ownership of it. Instead, the first clear and overt challenge appears to have occurred from Mrs McWilliams in 2008 when she and Mrs Vaughan and Mrs Rowberry put ‘private’ notices on the land and invited local residents who wanted to use the path to sign licences. HCC therefore decided that the date of challenge was 2008.

Section 31 of the HA 1980 states that for public rights to accrue over a route there should be evidence of use as of right over a period not less than 20 years. Such evidence of use raises a presumption that public rights have been dedicated by the landowner, unless the landowner can show that he had no intention to dedicate the route during the period in question. As the date of challenge for this case is 2008 the relevant period of use is 1988-2008. 8 users have attested to walking the application route for at least 20 years up until 2008. HCC therefore decided that there is sufficient evidence to reasonably allege that public footpath rights have accrued over the application route.

### **Conclusion**

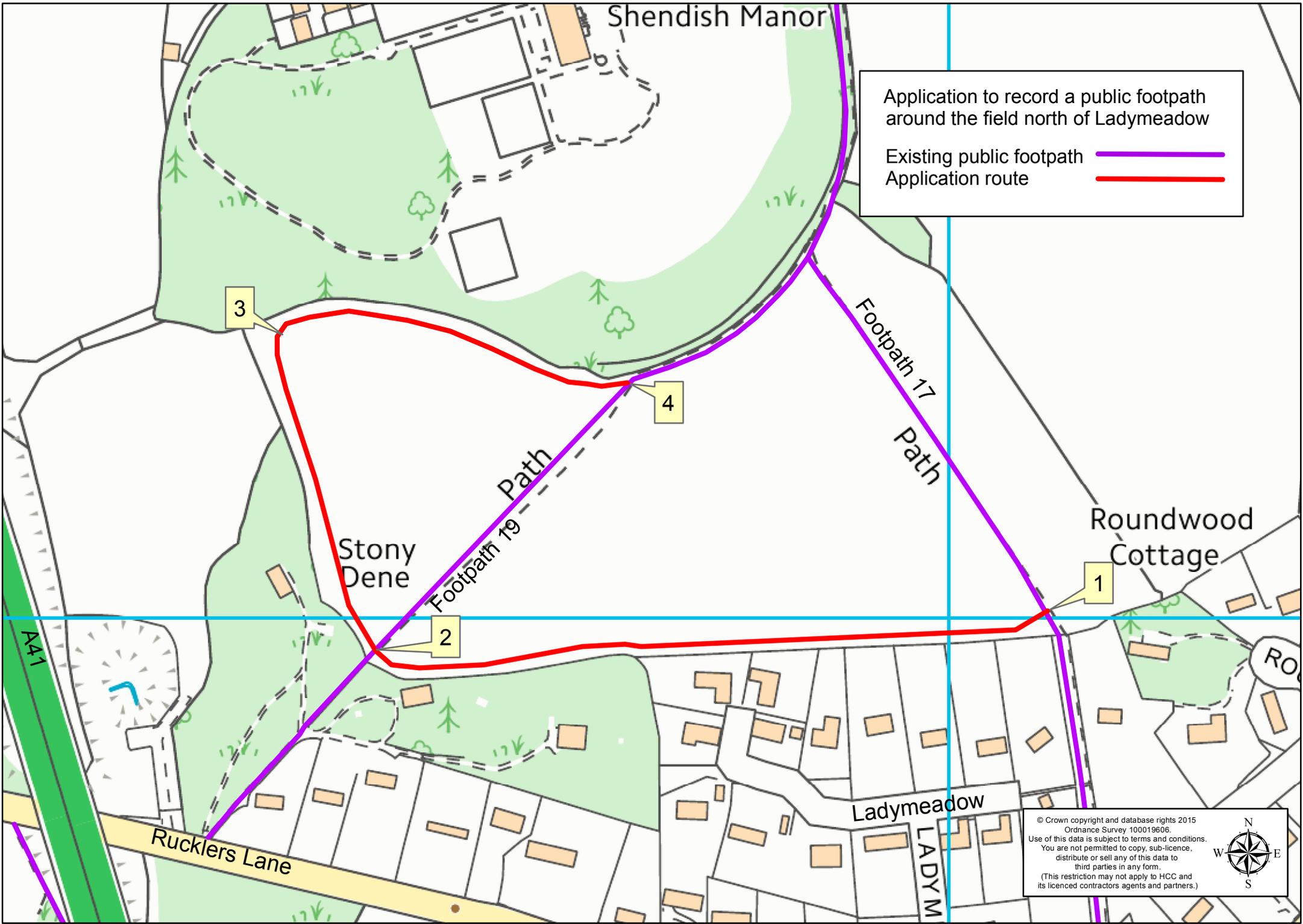
The courts have given guidance on how evidence is to be considered when determining applications to record public rights of way on the Definitive Map and Statement. In the case of *Fortune and Others v Wiltshire Council and another* [2012] EWCA Civ 334, Lewison LJ commented on the way in which the available evidence should be assessed:

“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 taken together, rather than on one individual piece of evidence. There was no historic evidence in respect of this particular application route and so HCC's decision is based on the evidence of use by the public and the landowners' response to that.

HCC decided that there is sufficient evidence of use of the application route by the public during the period 1988-2008 to reasonably allege that a public footpath has accrued through long user. 8 witnesses attest to using the application route during the 20 year period of 1988-2008. During that 20 year period there is no indication that the landowners' actions were sufficiently overt to bring home to the public that they did not intend to dedicate a public right of way. HCC also decided that the witness evidence and the site photos show that the width of the footpath is 2 metres between points 1-2 and 3 metres between points 2-4, and that there are no limitations. The route is not a publicly maintainable highway.



Shendish Manor

Application to record a public footpath around the field north of Ladymeadow

Existing public footpath 

Application route 

3

4

1

2

Footpath 19 Path

Footpath 17 Path

Stony Dene

Roundwood Cottage

Ladymeadow

Rucklers Lane

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