

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

REASONS FOR DECISION

Modification Order Application For:

Eddies Field

Author: Gavin Harbour-Cooper

Date: 23/01/2014

Application Details

An application has been made to modify the Definitive Map and Statement for Hertfordshire by recording a Footpath across land known as Eddies Field, nr Ringshall, Little Gaddesden. The application was made by Mr G Godar on 3rd November 2003.

The application route commences at the north west corner of Priory End, at a junction with a path currently unrecorded on the Definitive Map and Statement. This unrecorded path runs from the B4506 (Ringshall Road) generally east and south to Alderton Drive, part of which forms Little Gaddesden Footpath 2. From the north west corner of Priory End the application route continues generally north east for approximately 155 metres terminating at a junction with Little Gaddesden Footpath 3. The entire application route has a natural grassy surface and is unobstructed.

Documentary Evidence

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.

You will find each document 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 are no records for the document listed, this will just be recorded as "No records found."

Reasons for decision

The County Council's decision with regards to this application was based on all of the evidence available at the time of the decision meeting. As outlined in the investigation report, for every investigation at least 10 primary sources of documentary evidence are examined. The following documents, from the 10 primary sources, have been looked at but do not provide any evidence with regards to the application route:

1. Dury & Andrews

The area around Ringshall, Little Gaddesden is outside the area covered by this map

2. Bryant

The area around Ringshall, Little Gaddesden is outside the area covered by this map

3. Little Gaddesden Tithe Map

No records were found relating to the application route

4. Little Gaddesden Inclosure Map & Award

No records were found relating to the application route

5. Railway & Canal Plans (both proposed & built)

No Railways or Canals were planned or built in the vicinity of the application route

6. Finance Act 1910 documents

The application route is not shown on the underlying OS base map, there is a deduction for Rights of Way but the hereditament is too large to determine which path(s) this relates to

7. Private Estate Maps, Sales Particulars

No records were found relating to the application route

8. Parish Records/Highway Board Records

No records were found relating to the application route

9. Ordnance Survey

The application route has not been recorded on any available edition of OS Mapping

The following sources of evidence were found to provide evidence with regards to either the Application Route or the adjoining Public Rights of Way, being Little Gaddesden Footpath 2 and Little Gaddesden Footpath 3.

10. Highway Diversion & Extinguishment Orders (i.e. this includes QSRs...)

Date: 1962

Ref: RoW – DM3/120

10.1 Why we consider the document important

Several Acts of Parliament allow for the Diversion and Extinguishment of Public Rights of Way. These are legal orders which divert or extinguish public rights. They are legal documents and if confirmed by the Order Making Authority or Secretary of State they provide conclusive evidence of the matters detailed.

10.2 What the document shows

The Berkhamsted Rural District Council (Footpath No.2) (Parish of Little Gaddesden) Public Path Diversion Order No.1 of 1962 took effect on 25th May 1962. The County Council does not have a copy of the Confirmed Order, however, the County Council does have copies of; the Order plan, the notice of the making of the Order (which appeared in the London Gazette on the 20th March 1962) and the notice of the confirmation of the Order (which also appeared in the London Gazette on the 25th May 1962). The available Order documentation does not show or refer to the application route; it does however divert a relatively small section of Little Gaddesden Footpath 2 near the Ringshall Road and shows the northern section of Footpath 3.

With regards to Footpath 2 the Order extinguishes that section of the path running from the Ringshall Road generally south east for 720 feet to The Green, Little Gaddesden. The new footpath is located slightly to the north of the old route and runs adjacent to the boundary fence for 700 feet south east from the Ringshall Road. The confirmation notice shows that



the Order provided that the new path should have a width of 4 feet and that the existing gate should be moved to the new junction of the path and the Ringshall Road (Point C on the Order Plan).

Whilst not directly effected by the Diversion Order Little Gaddesden Footpath 3 is shown on the Order Plan. It has been recorded running along the boundary of Blue Cottage to a junction with Footpath 2, south east of the Ringshall Road and not as depicted as shown on the 1st Definitive Map.

This plan was sent to the County Council from the landowner at the time, Mr Nightall, as part of the Special Review process and has been subsequently annotated with the approximate line of Footpath 3 as shown on the 1st Definitive Map as a dashed line. (See Paragraph 13c for further information about the Special Review documentation).

10.3 Decision

HCC decided that the Highway Diversion and Extinguishment Orders provide no evidence with regards to the Application Route.

The Diversion documentation does, however, provide evidence relating to the position of Little Gaddesden FP2 & FP3. The documentation provides strong (but not conclusive) evidence that FP2 should be shown on the definitive map commencing at a junction with Ringshall Road (south of Beacon Road) and running generally east along the boundary fence line. It also provides strong supporting evidence that FP3 was considered to run along the boundary of Blue Cottage to a junction with FP2, south east of the road and not as recorded on the 1st Definitive Map.

11. Definitive Map Records

Date: 1950s & 1960s

Ref: RoW

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)

11a Definitive Map Records – Little Gaddesden Parish Survey

Date: c1950s

Ref: RoW

11a.1 Why we consider these documents important

Under the National Parks and Access to the Countryside Act 1949 the county was required to show all public paths which were defined as “footpaths”, “bridleways” and “roads used as public paths”. This last term was never properly defined and has resulted in much confusion ever since. There was no requirement to record public vehicular highways.

In Hertfordshire each parish carried out a survey of the paths which were believed to be public. Sometimes additional surveys were carried out by the Ramblers’ Association or the Youth Hostel Association; or comments were made by them on the parish’s survey. The surveys once completed were sent to the County Council for collating and publishing as the Draft Map.

11a.2 What is shown by these documents in the area of the application route?

The Application Route was neither identified nor recorded as a public right of way by the Parish Survey process.

11a.3 Decision

HCC decided that the Parish Survey documentation provides no evidence with regards to the Application Route.

11b Definitive Map Records – Draft, Provisional and First Definitive Map

Date: c1950s

Ref: RoW - DM3 Objection No. 127

11b.1 Why we consider these documents important

The parish surveys were collated into the Draft Map and Statement. Notices were published advertising that the Draft Map and Statement had been produced so that the public (including landowners) could object to what was included or to what was omitted. Hearings were held to consider these objections and recommendations were made based on the evidence presented.

The Draft Map and Statement was amended following the hearings to produce the Provisional Map and Statement. As before, notice of the production of the Provisional Map and Statement was advertised but this time only landowners, lessees and tenants could apply to the crown court to amend the map – the public could not. The map and statement were then amended to reflect the court’s finding.

Please note that these records vary across the county as a full sequence of Draft 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.



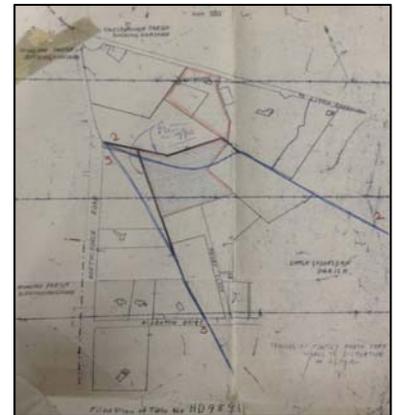
11b.2 What is shown by these documents in the area of the application route?

Following the publication of the Draft Definitive Map (left) the County Council received an objection to the depiction of Little Gaddesden Footpath 2. Below is an outline of the correspondence relating to the objection and its determination by HCC sub-committee.

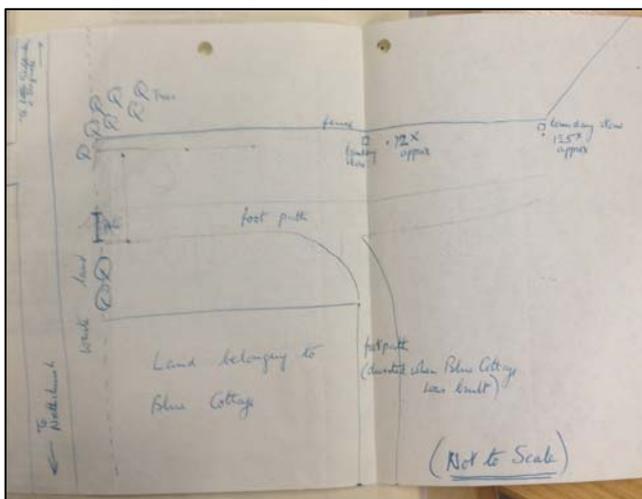
Following a request from the landowner at the time, Mr Nightall, the County Council confirmed the location of the Rights of Way located within his property. The County Surveyor confirmed the location of both Little Gaddesden

Footpath 2 and Footpath 3 (returning a copy of Mr Nightall’s original plan with the routes marked in blue) as recorded on the Draft Definitive Map, this correlated to the depiction of the routes as shown on the Parish Survey.

Mr Nightall queried the line of the paths, suggesting that FP2 should be shown running adjacent to the fence rather than through the field as shown on the Draft Definitive Map. Following an investigation (including site visit) the County Clerk confirms, in a letter dated 29th February 1956, that HCC is satisfied that the Draft Definitive Map is incorrect and that FP2 should be shown running adjacent to the boundary fence and that FP3 should be shown running adjacent to the boundary of Blue Cottage to a junction with FP2 and not through Blue Cottage to a junction with the Road. This is illustrated by a copy of the plan sent to Mr Nightall (showing the FPs) with the agreed lines of FP2 & FP3 shown marked in Black (right).



Subsequently a local resident, a Mr Haydon, wrote to the County Council with reference to a stopping up of highways Order which he believed effected part of Little Gaddesden FP2. He



also indicated that the landowner had diverted the line of FP to run along the fence line and that this diversion was outside the scope of the stopping up order. Whilst Mr Haydon queried the correct line of FP2 he seemed to agree with the County Council’s assertion that FP3 did not pass through the grounds of Blue Cottage, this is supported by a sketch map attached to his letter to the County Clerk dated 4th June 1956. This map showed FP3 running adjacent to the boundary of Blue Cottage and annotated with “footpath (diverted when Blue Cottage was built)”. The Clerk of the County Council replied on 13th

September 1956 outlining that it was Mr Nightall’s contention that the path was incorrectly recorded on the Draft Definitive Map, not that the path had been diverted. The County Council also confirmed in a letter dated 10th August 1956 that the stopping up order referred to by Mr Haydon affected a section of FP2 some distance in to the Ashridge estate, south

east of the section of FP2 covered by this investigation. The correspondence also included a plan with the line of both FP2 & FP3, as considered by the County Council, marked in purple. The purple lines on this plan correlate to the black lines marked on the plan sent to Mr Nightall in February 1956

The Parish Council made similar comments to Mr Haydon regarding the apparent diversion of FP2 in a letter dated 17th August 1956. Following correspondence with the County Clerk the Parish Council made a substantive reply on the 28th January 1957. In this they observe that they consider a diversion (of FP2) has taken place, but that the diversion wouldn't cause undue hardship on the public (although the Parish were unhappy that they were not consulted on the diversion). The County Clerks correspondence included a plan showing the presumed layout of both FP2 & FP3; whilst the Parish Council took exception to the position of FP2 they made no comment with regards to the County's position with regards to FP3.

On the 9th October 1956 Messrs Penny & Thorne (Berkhamsted based solicitors) acting on behalf of Mr Nightall formally object to the Draft Definitive Map with regards to Little Gaddesden Footpath 2.

The Clerk of the County Council, in a letter dated 1st February 1957, clarifies the County's position to the Parish Council; in that they consider the matter to be a disagreement between the Parish Council and Mr Nightall, with the Parish Council considering that a diversion had taken place and Mr Nightall considering that the Draft Definitive Map was incorrect.

It appears that prior to the hearing to determine his objection Mr Nightall entered into discussions with the Parish Council about making an application to the Rural District Council for a formal diversion of FP2. It appears that Mr Nightall and the Parish reached an agreement and the County Council therefore agreed to hear Mr Nightall's case first at the hearing.

The matter was heard at a hearing held in Little Gaddesden village hall on 24th June 1960, the sub-committee determined not to make an amendment to the Draft Map noting the following:

"Mr Bolton-King of Messrs. W. Brown & Co. appeared for Mr. Nightall, the objector, and contended that since 1956 certainly the route of F.P.2 which was actually used by the public was as shown on the Map produced.

Mr Bell, chairman of the Footpaths Committee of the Parish Council said that so far as the Parish Council was concerned they were quite prepared for this route to be diverted as suggested provided the gate was moved to the northern end.

It seemed quite clear that what Mr Nightall really requires is a diversion order and this was appreciated by Mr. Bolton-King and it also seemed that the Parish Council would have no objection to the District Council making the Order to divert the footpath as required.

RECOMMENDATION

That no alteration be made to the Draft Map and Statement."

The bulk of the correspondence outlined above relates to the alignment of Little Gaddesden Footpath 2, which after considerable discussion was determined to be diverted. The correspondence does however also include contemporary evidence relating to the alignment

of Little Gaddesden Footpath 3. Following the initial agreement by the County Council that FP3 should not be recorded running through Blue Cottage the matter was not discussed again. It would seem that the relevant parties agreed with the County Council's position and there was no need for further discussion. This inference is supported by the correspondence from Mr Haydon (showing FP3 running adjacent to the boundary of Blue Cottage and not through it) and the fact that the Parish Council made no comments with regards to the County Council's position on FP3. It appears that in the following period the correspondence solely related to the situation with FP2 and that the apparent alignment issue of FP3 was forgotten. The determination of Mr Nightall's objection appears to have been a formality and the matter of FP3 does not appear to have been considered.

11b.3 Decision

HCC decided that the Draft Definitive Map documentation provides no evidence with regards to the Application Route. It does however provide background information relating to the 1962 Diversion of Footpath 2 and evidence supporting the position that Footpath 3 was wrongly recorded on the Draft Map running through the property of Blue Cottage rather than adjacent to the boundary fence.

11c. Special Review

Date: 1984

Ref: RoW

11c.1 Why we consider the document 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.

11c.2 What the document shows

The application route is not shown on the underlying 1st Definitive Map and no amendments were proposed as a result of the Special Review. The Special Review documentation does, however, provide evidence relating to the alignment of Little Gaddesden FPs 2 & 3.



Draft Special Review Map:

The Draft Special Review map reflects the depiction of FPs 2 & 3 as shown on the 1st Definitive Map. Both Footpaths are shown commencing at a junction with Ringshall Road, south of an area labelled 'Laundry' then head generally south east and south respectively.

Special Review Objection/Correspondence:

In a letter to the County Surveyor, dated 27th July 1978, Mr Nightall responds to the advertising of the draft Special Review map showing Little Gaddesden FPs 2 & 3. Mr Nightall explains that the position of FPs 2 & 3, as shown on the draft map, do not correlate to their positions as shown on the 1962 Diversion Order Plan attached to his letter. He states that "...the junction of footpaths 2 & 3 is shown quite clearly to be some 60 – 70 yards from the gate in the fence at the roadside verge". He goes on to say that "Footpath 3 is shown diverging off to the south through the middle of Blue Cottage gardens. These gardens and fields have been fenced since 1926 and I have been in occupation since Oct 1955 and the footpath has been in the position shown on the enclosed map for the whole of this time." Mr Nightall's letter encloses a copy of The Berkhamsted Rural District Council (Footpath No.2) (Parish of Little Gaddesden) Public Path Diversion Order No.1 of 1962. The plan shows FP3 commencing at a junction with FP2 a distance south east of the Road and running outside the boundary of Blue cottage. It appears that someone, possibly the County Surveyor, has annotated the plan in pencil with the approximate position of FP3 as shown on the 1st Definitive Map.

The County Surveyor replied to Mr Nightall in a letter dated 1st August 1978. In this he states that even though the plan attached to the Diversion Order shows the FP3 commencing at a junction with FP2 approximately 70 yards from the road the County Council has no record that FP3 was ever diverted. The letter also confirms that the County Surveyor will be contacting both Dacorum District Council and Little Gaddesden Parish Council for further information.

The County Surveyor contacted both Dacorum District Council and Little Gaddesden Parish Council on the 2nd August 1978 requesting information relating to the correct alignment of FP3.

Dacorum District Council replied to the County Surveyor on 23rd October 1978. In their response they make 3 points.

- 1) That FP3 as shown on the Definitive Map (presumably this is the 1st Definitive Map) passes through Blue Cottage.
- 2) That the original owner of Blue Cottage, Mrs Corby, states that when she occupied the house in 1948 there was no path running through her property.
- 3) That at the present time there is no evidence of a path through the grounds of 'Blue Cottage'.

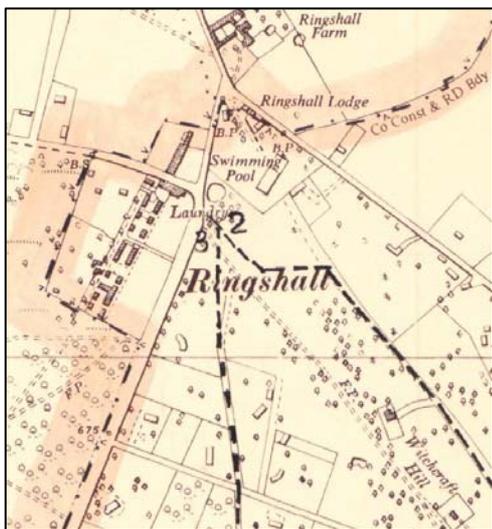
The annotation "Error in draftsmanship negative corrected" has been added by hand to the bottom of the page, it is most likely that this was done by a County Council Officer following receipt of the letter.

The County Surveyor replied to Mr Nightall on the 31st October 1978. In this reply the County Surveyor confirms that following the receipt of the District Council's response the County Council is satisfied that FP3 does commence at a junction with FP2 approximately 70 yards south east of the road and that the path will be recorded accurately on the draft revised map.



Special Review Correction sheet:

A copy of the Special Review correction sheet shows that the path was amended to show FP3 commencing from a junction with FP2 south east of the Road. However, FP3 was recorded commencing approximately 20 yards south east of the road rather than the 70 yards (64 metres) agreed in the correspondence between the County Council and Mr Nightall. The depiction of FP3 does not correlate with either the Diversion Order Plan or the details within the correspondence. This could be due to the OS base map being out of date and at a scale that does not show Blue Cottage and surrounding features in sufficient detail.



Special Review Map:

The depiction of both FP2 & FP3 appears to have been further altered on the Special Review map. Rather than correcting the error shown on the Correction Sheet it has been compounded. The point at which FP3 joins FP2 has not been altered from the correction map, however, the junction of FP2 and Ringshall Road has been moved north. In addition it appears that the accompanying statements weren't amended at all, remaining the same as recorded in the 1st Definitive Statement. Following the abandonment of the Review in September 1984 the Special Review Map (minus the routes which had outstanding objections) formed the basis of the following editions of the Definitive Map, which over the further editions have moved the junction of FP2 even further north to a junction with Ringshall Road opposite Beacon Road.

11c.3 Decision

HCC decided that the Special Review records provide no evidence with regards to the application route. However, when the Special Review Map is compared to the plan of the 1962 diversion order and Special Review correction sheet there are significant discrepancies. In light of this and the associated correspondence HCC decided that the position of the western termination of Footpath 2 and the northern termination of Footpath 3 have been recorded in error on the Special Review Map and subsequent editions of the Definitive Map.

12. Contemporary Evidence of Use

12.1 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.

The following is summary of the evidence we have received

12.2 Summary of Evidence

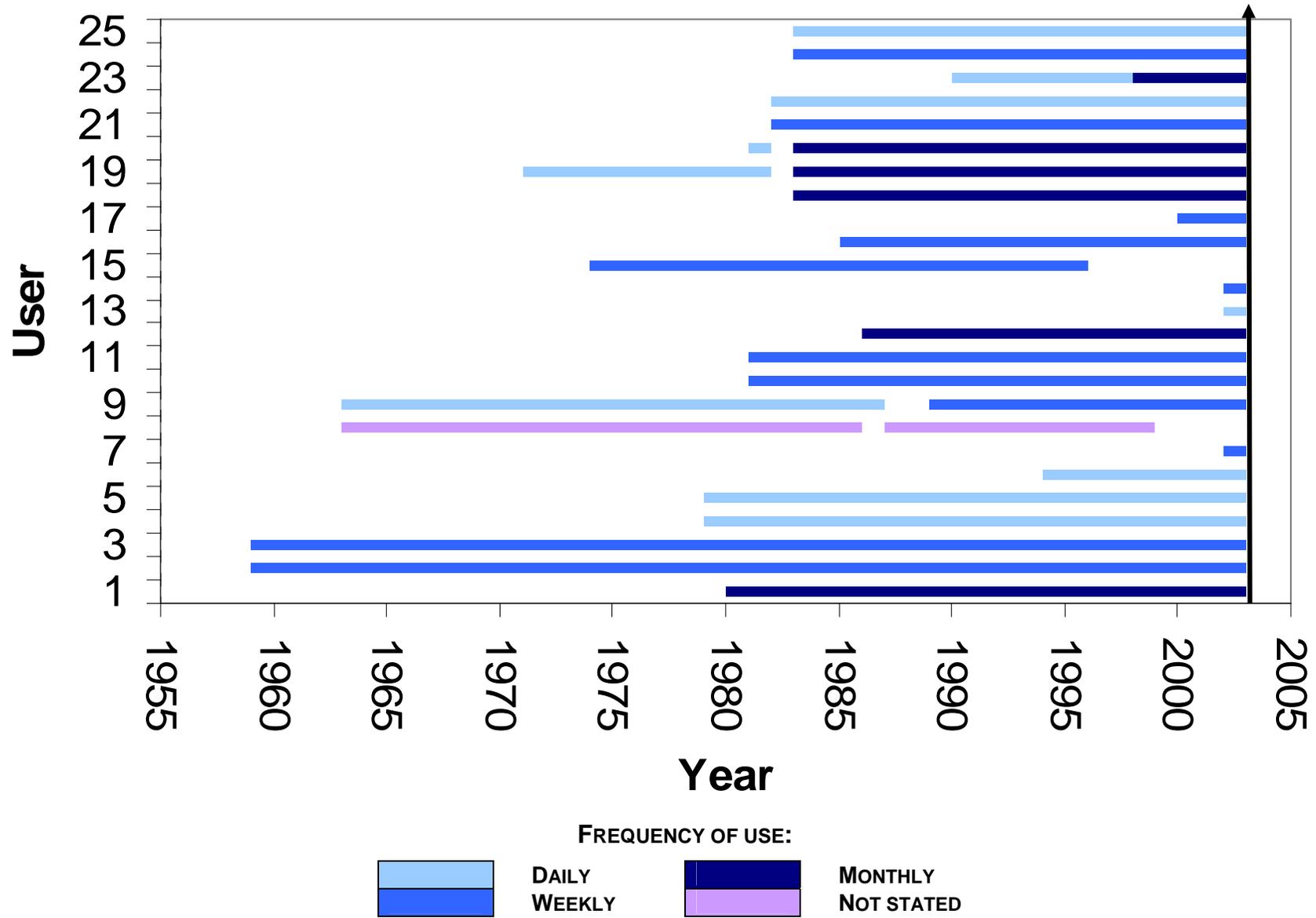


Table of User Evidence

User	Years of Use	Frequency of use	Mode of use	Comments
1	1980-2003	Monthly	On foot	Occasionally met earlier owner who didn't challenge use of route. Noticed signs indicating route was not a public right of way in 2003. Fence also appeared during this time but was quickly removed.
2	Late 1950's - 2003	Weekly	On foot	Used the route for dog walking. Noticed signs indicating that the application route was not a public right of way in the summer of 2003.
3	Late 1950's - 2003	Occasionally to 1989 then weekly	On foot	Used the route for dog walking. Noticed signs indicating that the application route was not a public right of way in the summer of 2003. Same evidence as User 2.
4	1979 - 2003	Daily	On foot	Used the route for dog walking. Has met landowner (<i>landowner not identified</i>) who did not challenge use. Noticed signs, erected in autumn 2003, wording of signs not specified.
5	1979 - 2003	Daily	On foot	Used the route for dog walking. Noticed signs, erected in autumn 2003, wording of signs not specified.
6	1994 - 2003	Daily	On foot	Use of application route has not been challenged and has not noticed any signs or obstructions.
7	2003	Weekly	On foot	Used the route for dog walking. Noticed signs indicating that the application route was not a public right of way in the summer of 2003.
8	1963 – 1987 1987 – 1999	"frequently"	On foot	Used the route for dog walking (except in 1987, when user was without a dog). States that "knew landowner well, he kept chickens in field at one time", use of route has never been challenged.
9	1963 – 1987 1987 – 2003	Weekly	On foot	Used the route for dog walking (except in 1987, when user was without a dog). Has met landowner (<i>unidentified</i>) and states that "He knew people used the field footpath & didn't mind", use of route has never been challenged.
10	1981 – 2003 June – Sept 1997	Weekly	On foot On bicycle	Used the route for dog walking and leisure. Met previous landowner (<i>identified</i>) who did not challenge use. Noticed signs indicating that the application route was not a public right of way in Aug – Sept 2003.
11	1981 - 2003	Weekly	On foot	Noticed signs indicating that the application route was not a public right of way in Aug – Sept 2003.
12	1986 - 2003	Monthly	On foot	Noticed 2 signs (wording not identified) approximately 1 month before date of the User Evidence Form (dated 12/11/03).
13	06/2003 – 11/2003	Daily	On foot	Met owners, who were camping in the field over which the application route runs, who asked witness to use the path around the edge of the field (<i>no date provided</i>). Noticed signs, erected in august 2003, asking people to use the paths around the edge of the field.
14	06/2003 – 11/2003	Weekly	On foot	Noticed signs, erected in august 2003, stating that the application route was not a right of way. Also states that a fence and branches were also placed across the path to prevent use at the same time.
15	1974 – 1996	Weekly	On foot	Used the route for dog walking. Use of the application route was never challenged and no signs were ever seen.
16	1985 – 200? *	Weekly	On foot	Noticed signs, in Oct 2003, identifying the landowner and asking people to keep to the footpath. Aside from

				the signs use of the application route has never been challenged.
17	2000 – 2003	Weekly	On foot	Used the route for dog walking and exercise. Noticed signs, in the summer of 2003, identifying the landowner and asking people to keep to the paths. Except for the signs use of the route has not been challenged.
18	1983 – 2003	Monthly	On foot	Used the route for dog walking. Use of the application route was never challenged and no signs were ever seen.
19	1971 – Present *	Monthly	On foot	Used the route for dog walking. Noticed signs, in the September 2003, identifying the landowner and asking people to keep to the designated footpath. Except for the signs use of the route has not been challenged.
20	1981 – 1982 1983 – 2003	- Monthly	On foot	Break in use is due to witness living abroad. Use of the route was for dog walking. Noticed signs, in the September 2003, identifying the landowner and asking people to keep to the designated footpath. Except for the signs use of the route has not been challenged.
21	1982 – 2003	Weekly	On foot	Used the route primarily for dog walking. Use of the application route was never challenged and no signs were ever seen.
22	1982 – 2003	Daily	On foot	Used the route for dog walking. Use of the application route was never challenged and no signs were ever seen.
23	1990 – 2003	Monthly (pre 1998) Daily (1998 – to date)	On foot	Used the route for dog walking. Use of the route was challenged on 2 occasions (<i>no date provided</i>) by people who claimed to be the owners. They stated that the field was private land and that the path ran down the side of the field (which was previously overgrown). Signs regarding privacy were put up and the application route was blocked (<i>no date provided</i>).
24	1983 – 2003	Weekly	On foot	Used the route for dog walking and leisure. Use of the application route was never challenged until Oct 2003 when signs were erected stating that the land was private and asking people to use the footpaths. At this time “2 uprights with cross bars” was placed across the application route (<i>location not identified</i>), these were only present for approximately 2 days.
25	1983 – 2003	Daily	On foot	Used the route for dog walking. Use of the application route was never challenged until Oct 2003 when signs were erected at the entrance and exit to the field stating that “the field was private and to adhere to the footpath”. At this time “a fence of wooden construction barred the way” this was located at the entrance to the field from the alley leading from Alderton Drive.

* for the purpose of this investigation the end date for the use of the application route by this witness is taken as the date of the User Evidence Form – in all cases this is 2003. Information in *italics* has been added by the investigating officer

No landowner deposits, made under either the Rights of Way Act 1932 or S.31(6) of the Highways Act 1980, have been found for the area encompassing the Application Route.

25 witnesses provided evidence of use of the Application Route all on foot. Of these 17 showed used of the Application Route for 20 years ending in 2003. 4 witnesses used the Application Route daily, 8 weekly, 4 monthly and 1 witness stated they used the Application Route ‘Frequently’. None reported any challenge to their use of the Application Route, such

as signs or verbal challenges from the landowner until signs were erected in 2003 and a barrier placed at Point A.

All witnesses provided evidence of a width in their User Evidence Form; all describe a width within the range of 30.48m (1ft) – 152.40m (5ft), however, when measured on site a reasonable width of 2 metres is available along the length of the Application Route and no evidence has been present to date which suggests that the Application Route has been enclosed at any point. None of the witnesses report the existence of any structures or limitations, until 2003 (when the landowner placed a barrier at Point A).

12.3 Decision

Where a way over any land (provided it is not of such character that use of it by the public could not give rise at common law to any presumption of dedication) has been actually used by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

In order to assess whether there has been sufficient evidence of use of the Application Route to raise a presumption that a right of way has been dedicated, HCC first has to establish the date use was 'challenged' (see section 12.1 above). HCC decided that in this case this occurred when the landowner erected signs and a barrier in September 2003 challenging the public's use of the route. The relevant period for this application is therefore 1983 to 2003.

HCC decided that the evidence of use outlined above was sufficient on the 'balance of probabilities' to show that the public at large had used the application route as of right (without force, without secrecy and without permission) for the relevant 20 year period ending in September 2003.

HCC also decided that the landowner has not provided sufficient evidence showing a clear lack of intention to dedicate the application route during the relevant period.

13. Conclusion

The County Council considers that the User evidence, as outlined above, is sufficient to show that on the balance of probabilities a public footpath subsists along the line of the Application Route and that a Definitive Map Modification Order should be made to record it. When made the Modification Order should record a width of 2 metres and no limitations.

The County Council also considers that the 1st Definitive Map objection documentation when considered with the FP2 Diversion Order and subsequent Special Review documentation shows that on the balance of probabilities both FP2 & FP3 are currently incorrectly recorded on the Definitive Map and Statement, which should be modified accordingly. The junction of FP2 and the Ringshall Road should be recorded approximately 36 metres south of its current location and the junction of FP2 and FP3 should be located 64 metres (70 yards) south east of the Ringshall Road rather than the 26 metres currently recorded.

Although the 1962 diversion order for footpath 2 provided for a 4 ft (1.21 metres) width a greater width has been available and used by the public since at least 1977 (as seen on the

OS mapping), HCC therefore decided that the Definitive Map Modification Order should record the width of FP2 as physically available (in addition to the 4ft provided by the diversion order). The physically available width has been measured on site at 3 metres, added to the 1.21 metres provided by the diversion order equals a total width of 4.21 metres. In addition the 1962 Diversion Order provided for the relocation of a gate to the, then new, junction of Little Gaddesden FP2 and Ringshall Road, this gate is still in-situ. The Modification Order should therefore record this gate as a limitation.

With regards to FP3, no documentary evidence has been found to indicate a width. However the section of FP3 running from Alderton Drive north has been enclosed on both sides since the construction of Priory Cottage. The physically available width for this section varies between 1 – 1.45 metres. This is not inconsistent with the width as provided for in the 1962 diversion of FP2. The remainder of the route has not been enclosed to date and as with FP2 a greater width has been available since at least 1977, again this has been measured on site at 3 metres.