

REGISTER OF APPLICATIONS - MODIFICATION ORDERS**DETAILS OF APPLICATION**

File Name:	Nettleden Road to Frithsden Lane
Date application received:	19 th October 2015
Name of Applicant:	Dr P D Wadey
Intended effect of application:	Add Restricted Byway from Nettleden Road to Frithsden Lane

LOCATION OF APPLICATION

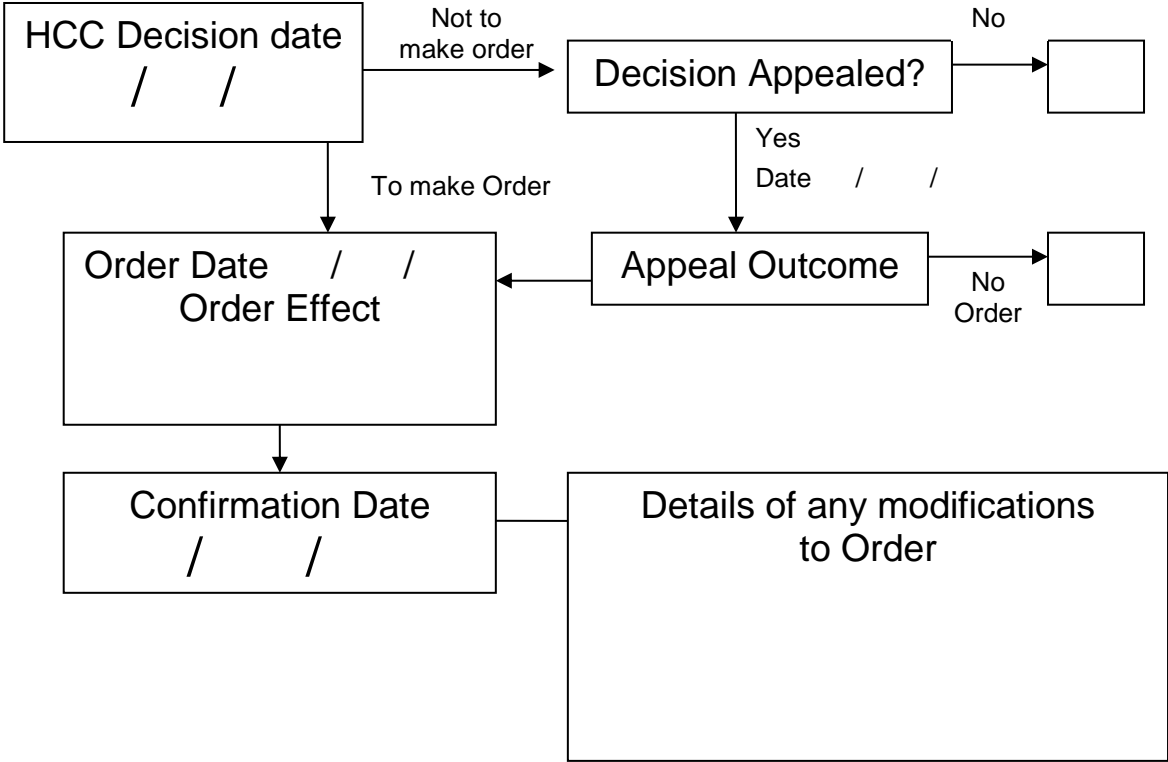
District:	Dacorum	Parish:	Nettleden with Potten End
Nearest	City: Town: Village:	St Albans Hemel Hempstead Nettleden	
	Grid References	or	Definitive Map path reference
Start Point (A)	TL 0195 1052		
End Point (B)	TL 0164 0982		

ADDRESS OF PROPERTIES ON THE APPLICATION ROUTE

October Cottage	Nettleden	Herts	HP1 3DQ
1-4 Roman Farm	Nettleden	Herts	HP1 3DA
Nettleden Farm	Nettleden	Herts	HP1 3DQ
Beechwood Farm	Nettleden	Herts	HP1 3DD
Frithsden Vineyard	Frithsden	Herts	HP1 3DD
Alford Arms	Frithsden	Herts	HP1 3DD
Little Manor	Frithsden	Herts	HP1 3DD
14-19 Roman Road	Frithsden	Herts	HP1 3DD

REGISTER OF APPLICATIONS - MODIFICATION ORDERS

DETERMINATION (DECISION) OF APPLICATION



Wildlife and Countryside Act 1981

The Definitive Map and Statement of Public Rights of Way in Hertfordshire

To: Hertfordshire County Council
Of County Hall
HERTFORD
SG13 8DN

I, Dr Philip David Wadey of 12 Home Close, Corsham, Wiltshire SN13 0BE hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by:

Adding the restricted byway from Nettleden Road, Nettleden, to Frithsden Lane.
and shown on the map accompanying this application.

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

- Dury and Andrews' Map of Hertfordshire, 1766.
- Bryant's Map of Hertfordshire, 1822.
- Ordnance Survey 1st edition 25" extract from map Buckinghamshire 35 - 8.
- Ordnance Survey Book of Reference for Parish of Pitstone, Buckinghamshire.
- IR 126/8/55 Inland Revenue Valuation plan, The National Archives.
- IR 126/8/106 Inland Revenue Valuation plan, The National Archives.
- Index Map for Hertfordshire Main and County Roads, c.1927
- MAF73/18/26 Ministry of Food Valuation plan, The National Archives
- MAF73/18/33 Ministry of Food Valuation plan, The National Archives
- Hertfordshire County Council Land Charges map, circa 1980.
- Hertfordshire County Council Gazetteer, 2015.
- INSPIRE land index polygon map, 2015.
- Applicant's statement.

Dated: 19 Oct 15

Signature:



Applicant's Reference: EC814

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

**For a route from Nettleden Road to Frithsden Lane in the Parish of Nettleden
to be shown as Restricted Byway**

Applicant's Reference: EC814

19 Oct 15

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

OS County series map(s)

Hertfordshire 26 – 14

Buckinghamshire 35 – 8

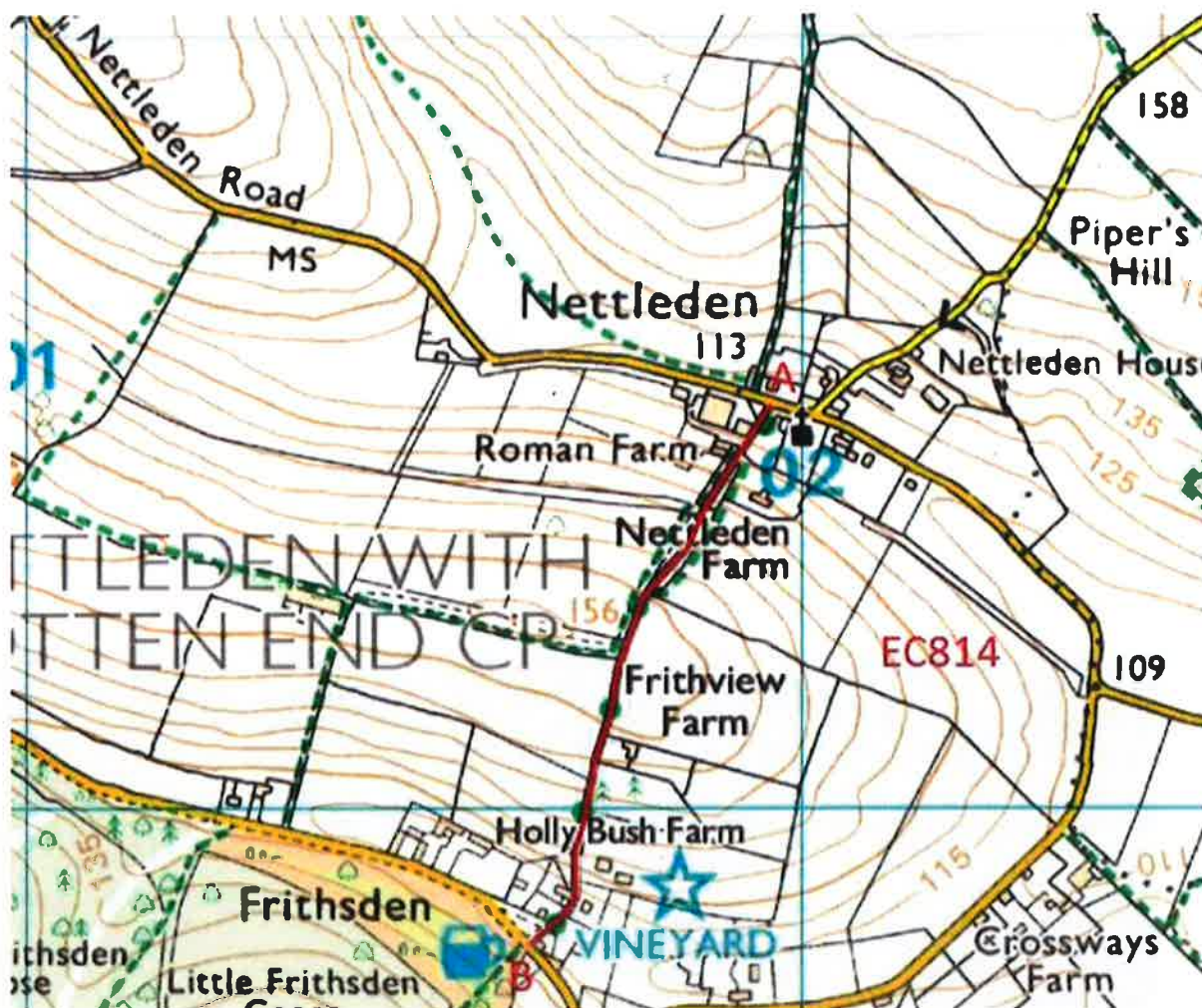
Modern Definitive Map sheet(s)

53, 65

1. My name is Phil Wadey. I am the applicant for the order. My rights of way experience stems from having been a volunteer access and bridleways officer for the British Horse Society since 1992, including 14 years as the Society's regional access officer for the East of England, and from my being a trustee of the Open Spaces Society.
2. This application is made because, on the cut off day,
 - a. The effect of s.53(1) and (2) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949, still exists on the cut-off date, and hasn't been a highway of a different description in between, and is not shown in the definitive map and statement at all is to extinguish all rights on that route. (This applies if the route is determined to be a footpath or bridleway.)
 - b. The effect of s.54A Wildlife and Countryside Act 1981 (as inserted by Sch 5 para 4 of the Countryside and Rights of Way Act 2000) on a route that carries public mechanically-propelled-vehicular rights and is not already on the definitive map as a highway of any description, is to prevent it from being recorded. (This applies if the route is shown to be a highway other than a footpath, bridleway or restricted byway.)

THE APPLICATION ROUTE

3. The application route runs from Nettleden Road, Nettleden (county road, C67/20) to Frithsden Lane (county road, 2U62/10). The application route is not currently shown on the definitive map of rights of way for Hertfordshire. It is shown on the plan below from point A (junction with Nettleden Road) to B (Frithsden Lane).
4. The route's width is as shown uncoloured on the Inland Revenue Valuation Plan.



Ordnance Survey 1:25000 scale map extract showing application route

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

5. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

6. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922: