

REGISTER OF APPLICATIONS - MODIFICATION ORDERS

DETAILS OF APPLICATION

File Name:	Cheshunt FP26 part & FP65 Upgrade
Date application received:	26/07/17
Name of Applicant:	P D Wadey
Intended effect of application:	Upgrade to RB

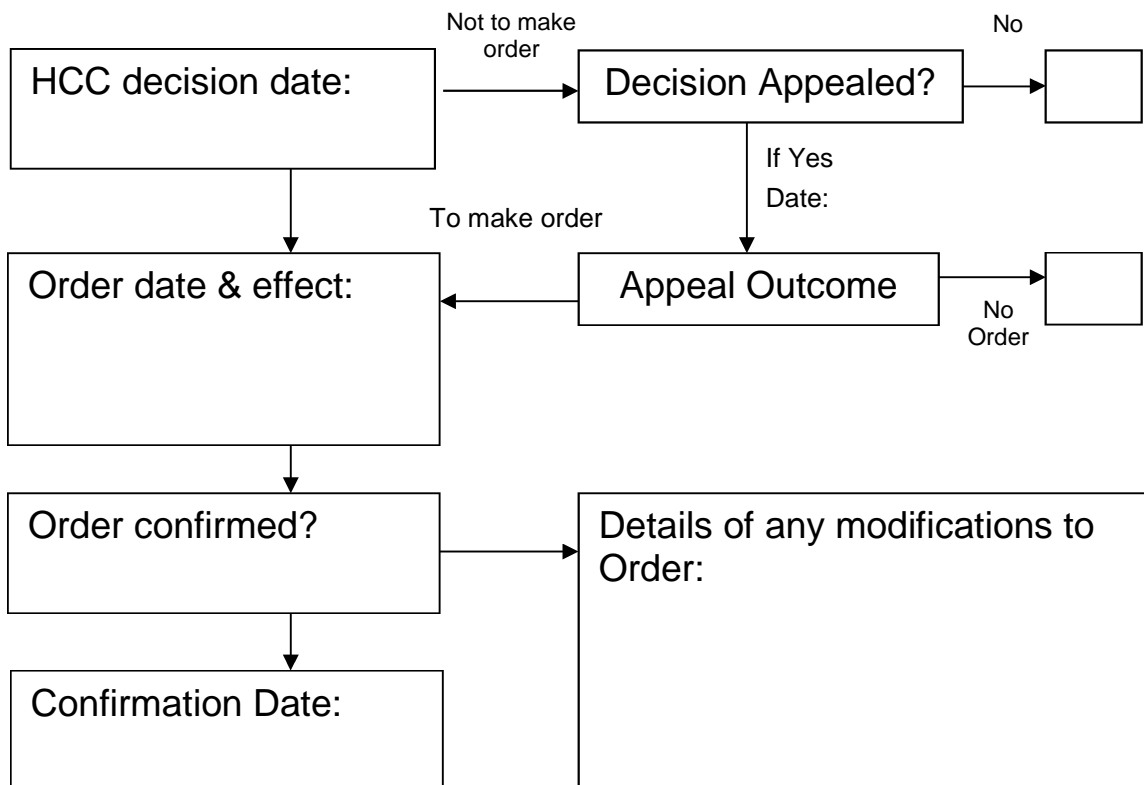
LOCATION OF APPLICATION

District:	Broxbourne	Parish:	Cheshunt	
Nearest	City:	St Albans		
	Town:	Cheshunt		
	Village:	Hammond Street		
	Grid References		or	Definitive Map path reference
Start Point (A)		Cheshunt FP26 & FP65		
End Point (B)				

ADDRESS OF PROPERTIES ON THE APPLICATION ROUTE

Hawthorn Bread & Cheese Lane Cheshunt EN7 6PE			
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DETERMINATION (DECISION) OF APPLICATION



**12 Home Close
Newlands Road
CORSHAM
Wiltshire
SN13 0BE**

Mrs R Emrys-Roberts
Definitive Map Team
Hertfordshire County Council
County Hall (CHN103)
HERTFORD
SG13 8DN

My ref.: EC606

Your ref.: BRX 5940D

26 Jul 17

Dear Mrs Emrys-Roberts,

**Wildlife and Countryside Act 1981
Application for a definitive map modification order
Cheshunt 26 (part) and 65 FP to be shown as RB**

Please find enclosed an application for a definitive map modification order to add public rights to the definitive map and statement for the area.

I would be grateful if you would kindly acknowledge receipt of this application, confirm by letter that it is fully compliant with the requirements of paragraph 1 to Schedule 14 of the 1981 Act, and advise which reference number you will be using to track the application. I shall then proceed to serve the statutory notices on the landowners and occupiers.

When the application is prioritised, as well as letting me know the score, please would you send me a scan of the completed prioritisation form for my records.

I would be grateful if you would quote my reference number on all correspondence (whether by letter or email) as after making well over one hundred and fifty applications, it helps me identify the required file quickly.

Yours sincerely,

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:

Upgrading to a restricted byway the footpath from Hammondstreet Road to Bread and Cheese Lane, Cheshunt

Adding to the particulars relating to the footpath/restricted byway from Hammondstreet Road to Bread and Cheese Lane by providing that the width is that shown excluded from the hereditaments on the Finance Act 1910 Valuation Plan and that there are no limitations or conditions on the use of the route by the public

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:

- Bryant's Map of Hertfordshire, 1822.
- Ordnance Survey 1st edition 25" extract from map Hertfordshire 36 - 15.
- Ordnance Survey Book of Reference for Parish of Cheshunt.
- Bartholomew's Half-Inch Map of England and Wales, Sheet 25.
- IR126/4/273 Inland Revenue Valuation plan, The National Archives.
- MAF73/18/36 Ministry of Food Valuation plan, The National Archives
- Applicant's statement.

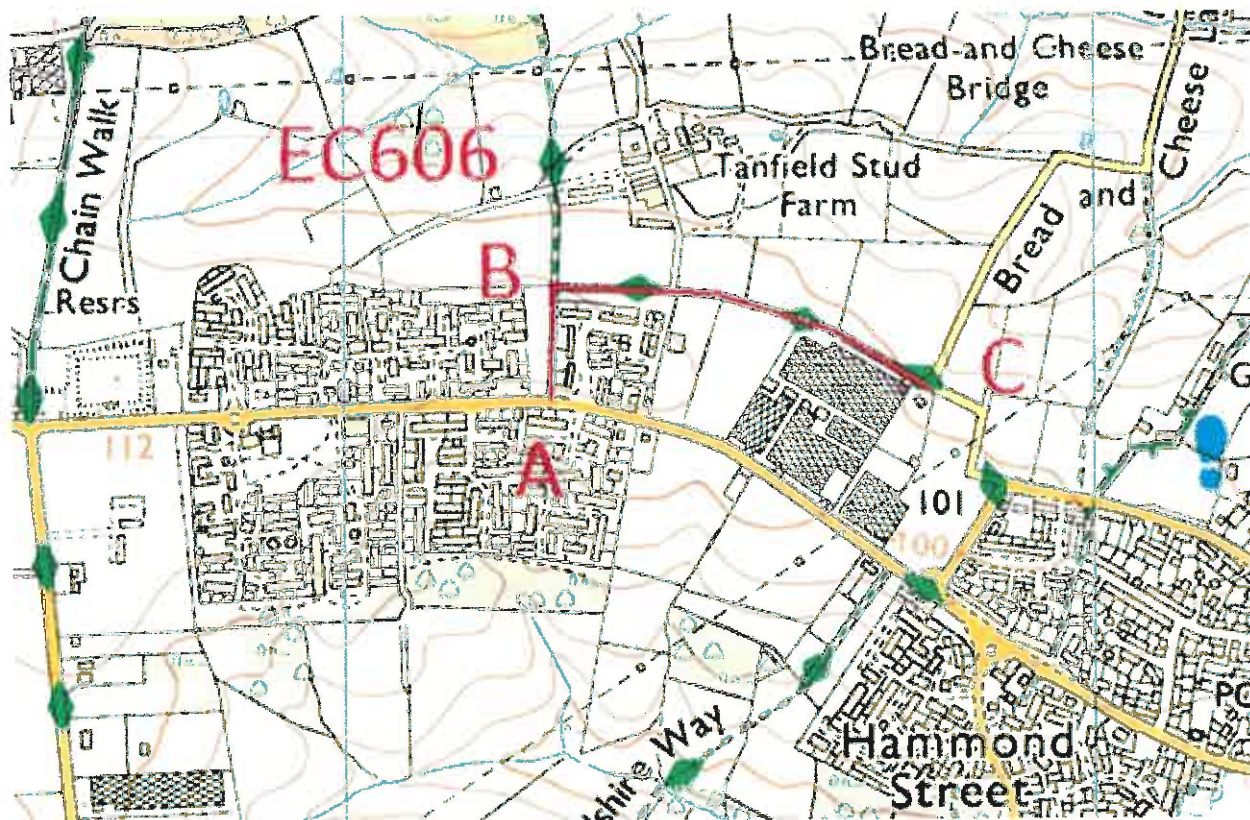
Dated: 26 Jul 17

Signature:

Applicant's Reference: EC606

Wildlife and Countryside Act 1981

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



Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

**For a route known as Cheshunt 26 (part) and Cheshunt 65 from
Hammondstreet Road (C54) to Bread and Cheese Lane in the Parish of
Cheshunt to be shown as a Restricted Byway**

Applicant's Reference: EC606

25 Jul 17

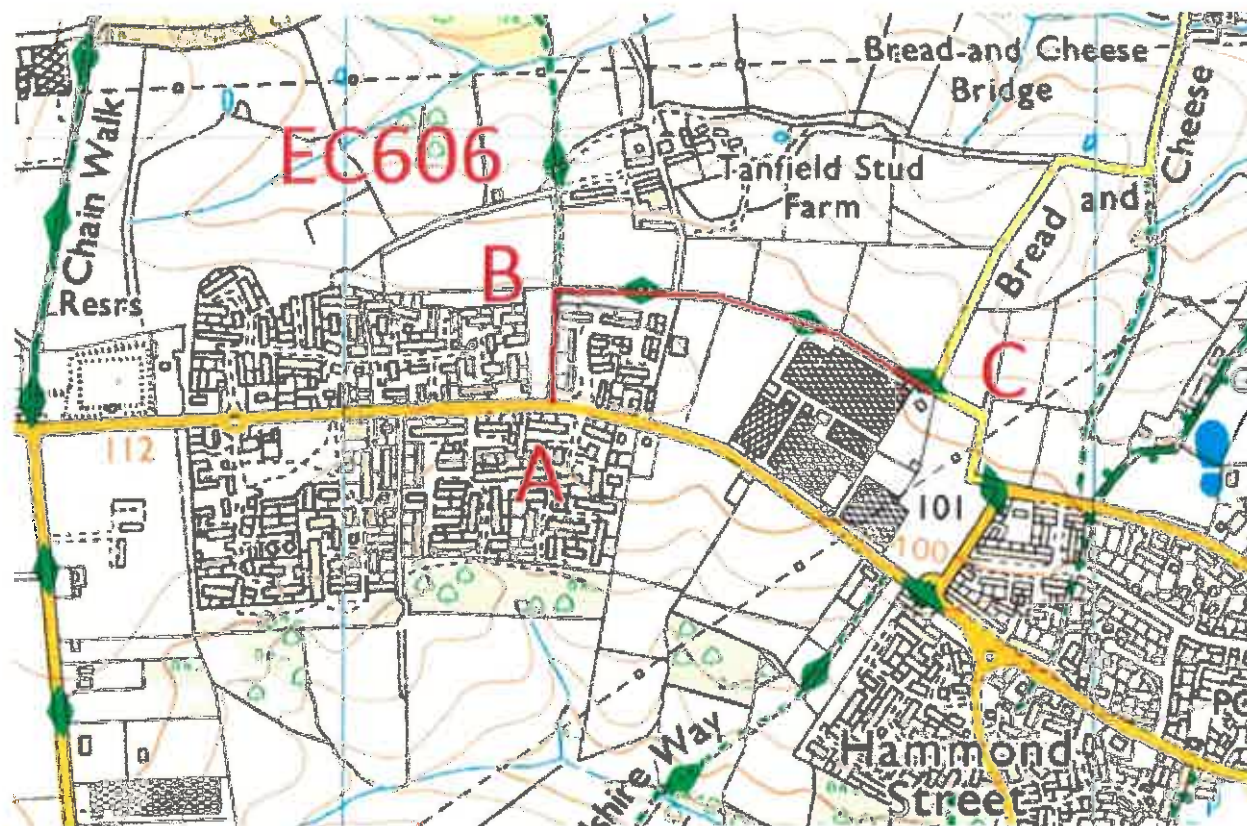
Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map	Hertfordshire 36-15
Modern Definitive Map sheet(s)	80

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(3) and (4)(a) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949 is to extinguish the bridleway rights and vehicular rights on a route shown in the definitive map and statement as a footpath.
3. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981 because:
 - a. This application statement includes explanations as to how the evidence applies to the application route, and
 - b. The application contains one or more of the following forms of supporting evidence:
 - (1) Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
 - (2) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

THE APPLICATION ROUTE

4. The application route is shown on the plan below as route A to B to C:
 - a. Point A is the junction of Hammondstreet Road (classified road C54) and Cheshunt 26.
 - b. Point B is the junction of Cheshunt 26 and Cheshunt 65.
 - c. Point C is the junction of Cheshunt 65 and Bread and Cheese Lane (public road).
5. The application route is currently shown on the definitive map of rights of way for Hertfordshire:
 - a. Point A to Point B is shown as part of Cheshunt 26 FP.
 - b. Point B to Point C is shown as Cheshunt 65 FP.
6. The application route is currently shown on the online Gazetteer as:
 - a. Point A to Point B is shown as Cheshunt 26 FP, section 031026_1.
 - b. Point B to Point C is shown as Cheshunt 65 FP, section 031065.
7. 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

8. 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.

9. 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:

"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."

10. While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the

route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights.

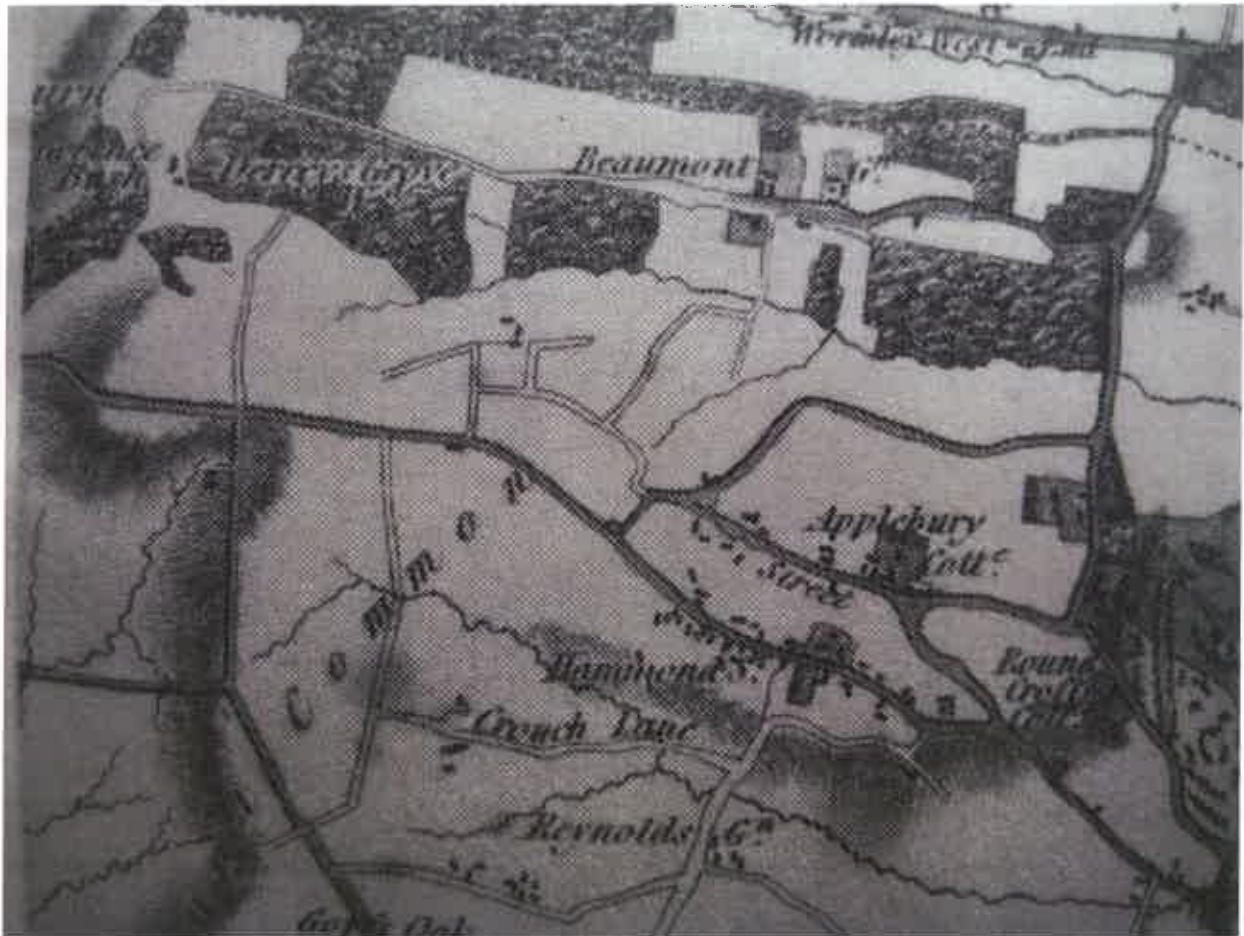
11. Bryant's Map of Hertfordshire.

- a. Date. This map was produced in 1822.
- b. Relevance. This was made for sale to the public, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished. This enables us to draw conclusions from how routes are shown.



Extract from Bryant (1822) showing the Key

- c. Archive. An original is held by the Hertfordshire Archives and Local Studies (HALS) under reference CM 88.
- d. Meaning. The route is shown in the manner of 'Lanes and Bridleways'.
- e. Assessment. This is evidence in favour of the proposition that the application route was considered to have at least equestrian rights and probably vehicular rights in 1822.

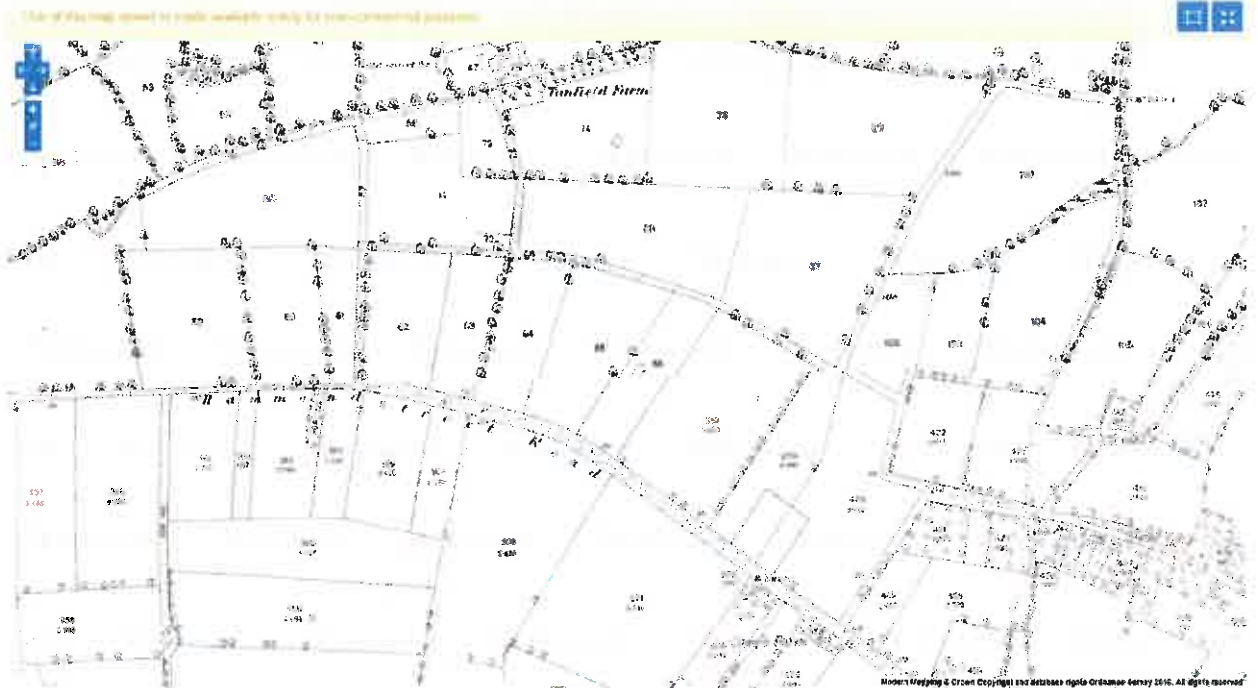


Extract from Bryant (1822) showing the application route

12. Ordnance Survey First Edition 25 inch.

- a. Date. OS sheet Hertfordshire 36 – 15 was surveyed from 1873-1880. The Area Book for Cheshunt was published in 1873.
- b. Relevance. The early first edition county series (25 inch) OS maps contain valuable extra information when cross referenced to the Books of Reference, often called simply the 'Area Books', that were published to go with them. These are indexed by parish.
- c. Archive. Copies of the first edition Ordnance Survey 25" maps are held by the British Library. As well as originals, they have created microfiche copies, which can be inspected by the public. Copies can also be viewed at <http://www.old-maps.co.uk> and some sheets are available from the National Library of Scotland at <http://maps.nls.uk/os/25inch-england-and-wales/index.html>. The map and books of reference extracts below were obtained from old-maps.co.uk and the British Library, respectively.
- d. Meaning.
 - (1) The application route is shown on the OS map as land parcel number 69 in Cheshunt.
 - (2) In the entry for the Area Book for Cheshunt, Township of Woodside, there is a description for land parcel 69. The description reads, "Road".

e. Assessment. The showing of the route on the map and the description in the Area Book are evidence of reputation and appearance at the time the documents were compiled.



Extract from the Ordnance Survey first edition 25" map of the area, sheet Hertfordshire 36 - 15.

10

PARISH OF CHESHUNT.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.	No. on Plan.
5	.696	Pasture, wood, &c.	56	.861	Pasture, &c.	10
6	1.649	Pasture, sheds, &c.	57	.203	Garden.	10
7	1.976	Pasture and wood.	58	5.442	Arable.	10
8	5.326	Pasture and wood.	59	4.401	Pasture.	10
9	6.606	Wood, &c.	60	2.794	Pasture.	11
10	3.138	Pasture and wood.	61	1.235	Arable.	11
11	9.494	Pasture, wood, &c.	62	2.923	Pasture.	11
12	23.012	Wood, &c.	63	2.184	Arable, &c.	11
13	11.488	Pasture.	64	2.512	Arable.	11
14	1.765	Pasture, &c.	65	3.701	Pasture, &c.	11
15	.974	Pasture, &c.	66	2.350	Pasture, &c.	11
16	13.367	Arable.	67	5.978	Arable.	11
17	.234	Wood.	68	5.211	Arable.	11
18	12.825	Pasture, &c.	69	1.379	Road.	11
19	.539	Farmsteading, &c.	70	.142	Garden.	11
20	9.357	Pasture.	71	3.568	Pasture.	11
21	.175	Road.	72	.993	Pasture, &c.	11
22	1.056	Pasture.	73	.347	Road.	11
23	13.562	Arable, &c.	74	3.635	Pasture, &c.	11
24	11.832	Pasture, &c.	75	1.107	Farmsteading, &c.	11

Extract from the Book of Reference to the Plan of the Parish of Cheshunt

13. Bartholomew's Half-Inch Maps of England and Wales

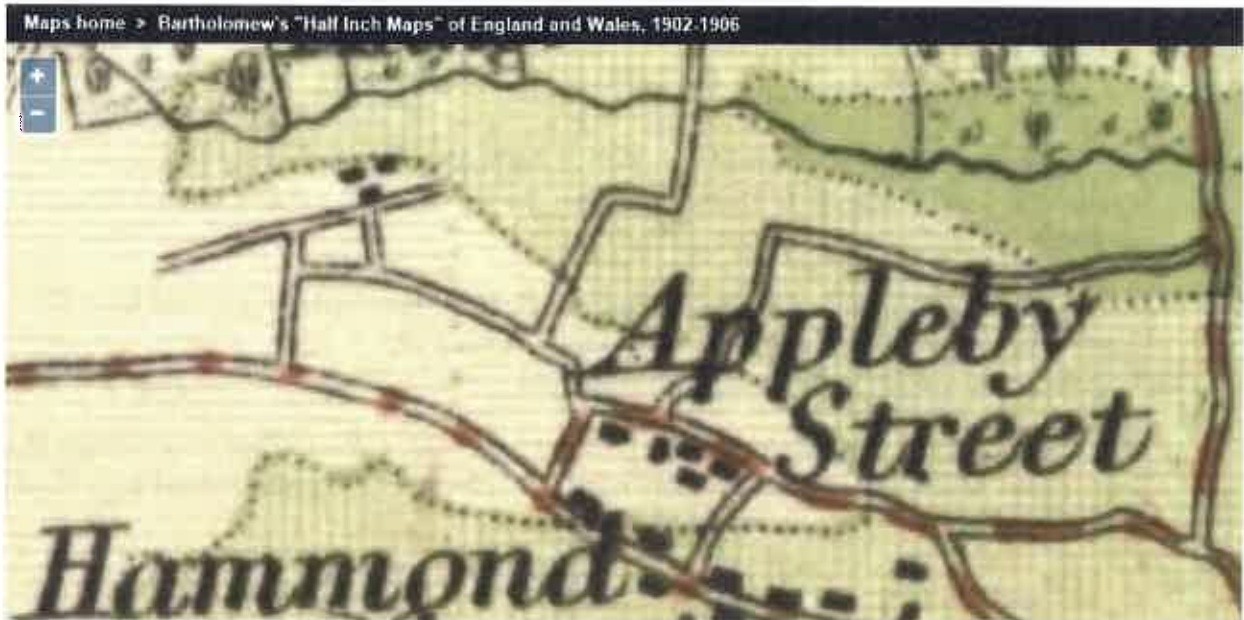
- a. Date. This map was published in 1903.
- b. Relevance. The map was made for sale to the public, particularly for tourists and cyclists, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished.
- c. Archive. An original of Sheet 25 (Bedfordshire and Hertfordshire) is held by the National Library of Scotland (NLS) and can be viewed via http://maps.nls.uk/series/bart_half_england.html.
- d. Meaning. The application route is shown as an 'inferior' road. That is, according to the key, a road which 'is not to be recommended to cyclists'. Bread and Cheese Lane, to which it connects, is also shown as an 'inferior' road.
- e. Assessment.

(1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or 'inferior'. In addition, the application route was shown as this 'inferior' road rather than as a footpath or bridleway, and cyclists at the time of publication (1903) had no right to use bridleways, having been declared to be carriages by s.85 Local Government Act 1888, so it is appropriate that at least a little weight be given to this document as evidence of vehicular status.

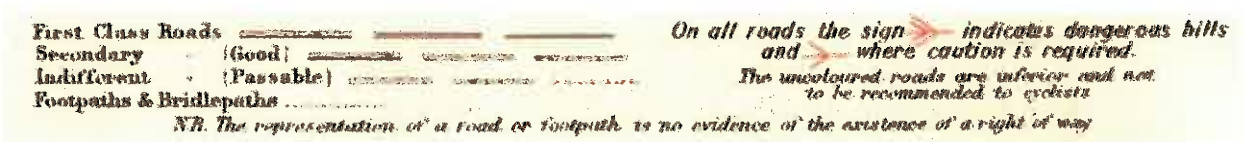
(2) The PINS Consistency Guidelines suggest that little weight can be given to this source. However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

"Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways."

(3) The conclusion is that at least some weight must be given to this source.



Extract from Bartholomew's Map showing the application route as an 'inferior' road



Extract from Bartholomew's Map showing the Key

14. Inland Revenue Valuation.

- a. Date. The valuation records were produced in the few years after 1910.
- b. Relevance. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads', and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

“No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.”

We note that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]”

All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:

“If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”

As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

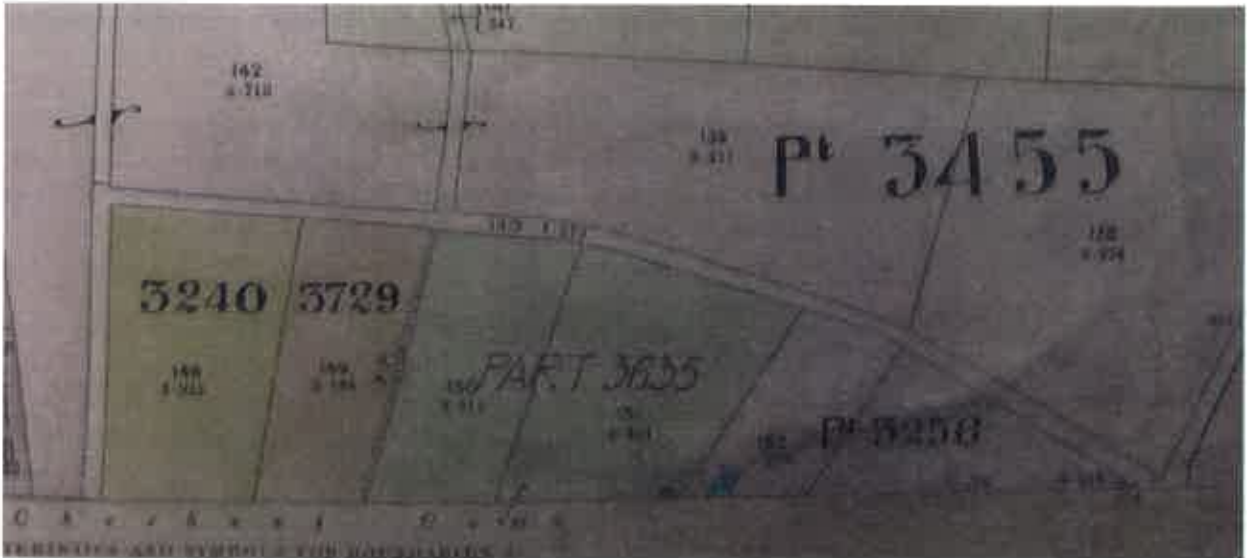
c. Archive. The extract below is from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 126/4/273.

d. Meaning. The extract below clearly shows the application route as a white road, separate from the adjoining hereditaments.

e. Assessment.

(1) As this land is unvalued, this suggests it belonged to a rating authority. As it is not held by a local authority or government department for any other known reason, this suggests that it belonged to a highway authority. Had it only been a bridleway, the Inland Revenue would have valued the land and allowed a deduction instead, since this would have resulted in a greater tax levy. Had it been held by a rating authority for another purpose there would be some evidence of that holding, yet none has been found.

(2) The legislation is sufficiently clear that anyone arguing that white road status means something other than the route is a public vehicular highway must show which other exception from valuation the route falls under.



Extract from the Inland Revenue Valuation Map

15. Ministry of Food National Farm Survey.

- a. Date. The National Farm Survey was conducted in 1941-42 and the documents were compiled at that time.
- b. Relevance. These records are maps prepared in conjunction with the individual farm records of the National Farm Survey conducted by the (then) Ministry of Food (subsequently the Ministry of Agriculture, Fisheries and Food). The maps show the extent of each farm, or other agricultural holding, with its boundaries. The area of each farm is indicated on the map by the use of a coloured outline or a colour wash, and its code number is added in black or red ink. The relevance of these records is that where a vehicular highway route runs between holdings, it is excluded from the holdings. (The applicant has found no instances of non-vehicular routes being given the same treatment, save for routes for which applications for upgrading on the definitive map are in hand.)
- c. Archive. These records are held at The National Archives in Kew under document reference MAF 73/18/36.
- d. Meaning. The extract below shows the application route. Most of it falls between holdings and is excluded. No route that had only footpath or bridleway status at the time of the survey has yet been found to be shown in this way.
- e. Assessment. This provides supporting evidence that the application route that fell between registered farm holdings was a vehicular route.



Extract from the Ministry of Food Farm Survey Map

CONCLUSIONS

16. Each piece of evidence presented is either evidence of reputation of vehicular highway rights, or consistent with there being vehicular highway rights, or indicates that a civil servant thought that there were vehicular highway rights.

17. While each document could possibly be explained away by another reason, there is no other reason that explains what all of the documents show. It is therefore more likely than not that the explanation for the evidence as a whole is that public vehicular highway rights existed at the times that the various documents were compiled.

18. In examining the evidence as a whole, it will usually be found that the simplest explanation is the best. Suppose that there are three documents capable of being read as providing some evidence of highway status. Each of these documents might be able to be explained away by other reasons. The old map might have shown a private drive to a patron's residence, the OS surveyor may have wanted to dash home on a Friday afternoon, and the Inland Revenue evidence may relate to land held by a rating authority in its local education authority role. However, it is unlikely that all of these alternative explanations to highway status will be true for the same path. In such circumstances, the explanation of what the evidence shows is much more likely to be highway status than that the route used to belong to a wealthy owner, was surveyed by someone who did not care, and then became a council-run school. In the absence of positive evidence that these diverse explanations are actually true (as opposed to mere possibilities), the single explanation of the facts that a highway existed is compelling.

19. As a result of the common law maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that vehicular highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.

20. The applicant requests the surveying authority to add the route to the definitive map as a byway. The type of byway – restricted or open to all traffic – will depend on the application of the Natural Environment and Rural Communities Act 2006. In the event that motor vehicular rights have not been extinguished, the applicant notes that the route is clearly more used by the public for walking and riding than by motor vehicle, and so would meet the criterion for being recorded on the definitive map and statement.

Dr P D Wadey
Applicant