

REGISTER OF APPLICATIONS - MODIFICATION ORDERS

DETAILS OF APPLICATION

File Name:	Vera Lane
Date application received:	5 December 2016
Name of Applicant:	Dr P D Wadey
Intended effect of application:	Add an additional RB connection from Pennyfathers Lane to Welywn 34

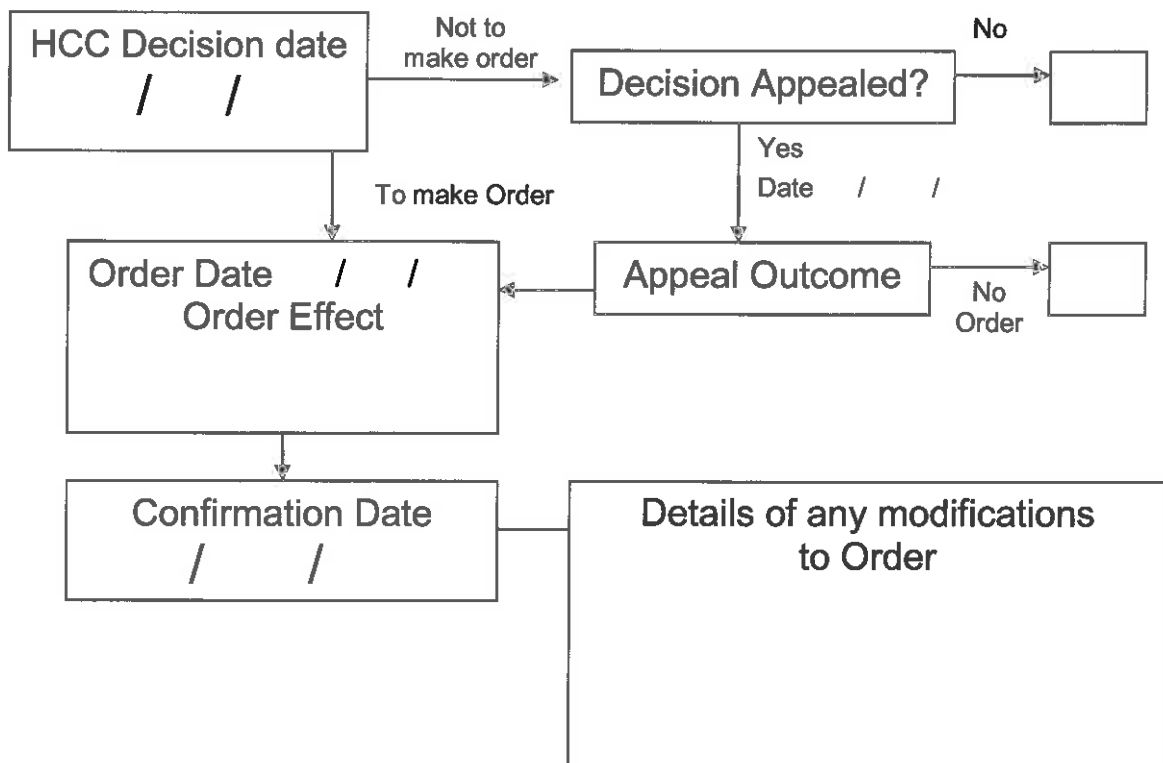
LOCATION OF APPLICATION

District:	Welwyn Hatfield	Parish:	Welwyn
Nearest	City:	St Albans	
	Town:	Welwyn Garden City	
	Village:	Digswell	
	Grid References	or	Definitive Map path reference
Start Point (1)	TL 2555 1588		
End Point (2)	TL 2561 1589		

ADDRESS OF PROPERTIES ON THE APPLICATION ROUTE

--	--	--	--

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.: EC743

Your ref.: WH

5 Dec 16

Dear Mrs Emrys-Roberts,

**Wildlife and Countryside Act 1981
Application for a definitive map modification order
Welwyn: Vera Lane, Welwyn 34, Welwyn 33, Welwyn 38**

Please find enclosed an application for a definitive map modification order to record restricted byways in Welwyn parish.

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.

Once the Deregulation Act 2015 is brought into force, I should be grateful for a further letter confirming that the application passes the Preliminary Assessment Test in accordance with para 1 of Schedule 13A to the 1981 Act.

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 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:

Adding the restricted byway from Pennyfather Lane (Point A) to Welwyn 33 (Point B),

Upgrading to a restricted byway the 'footpath' from Pennyfather Lane (Point C) to Burnham Green (Point D)

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, HALS.
- Bryant's Map of Hertfordshire, 1822, HALS.
- DSA4/113/2 Tithe Map of Welwyn, 1837, HALS.
- IR126/8/76 Inland Revenue Valuation plan, The National Archives.
- Hertfordshire County Council Gazetteer, 2015.
- INSPIRE land index polygon map, 2015.
- Applicant's statement.

Dated: 5 Dec 16

Signature: 

Applicant's Reference: EC743

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 Vera Lane, from Pennyfathers Lane to Welwyn 34 to be shown as Restricted Byway

For Welwyn 34, from Pennyfathers Lane to Welwyn 33, to be shown as Restricted Byway

For Welwyn 33, from Welwyn 34 to Welwyn 38, to be shown as Restricted Byway

For Welwyn 38, from Welwyn 33 to the registered common at Burnham Green, to be shown as Restricted Byway

Applicant's Reference: EC743

5 Dec 16

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

OS County series map	Hertfordshire 28 – 4
Modern Definitive Map sheet(s)	44

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.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.

c. 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.)

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 ROUTES

4. Application route EC743A runs from a junction with Pennyfathers Lane (a county road) at Point A on the Plan below, to Welwyn 34 at Point B.

a. This route is not currently shown on the definitive map of rights of way for Hertfordshire.

b. This route was shown in the Hertfordshire County Council gazetteer on 14 Mar 2015 as route 0U1324/10 with a length of 77m, and stated to be 'not maintainable'.

5. Application route EC743 runs from a junction with Pennyfathers Lane (a county road) at Point C on the second plan below, to the registered common at Burnham Green at Point D.

a. This route is shown on the definitive map of rights of way for Hertfordshire as routes Welwyn 34, 33 and 38, each of which is currently recorded at footpath status.

6. The routes' width is as shown uncoloured on the Inland Revenue Valuation Plan.



Ordnance Survey 1:25000 scale map extract showing application route EC743A

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

7. 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.

8. 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."

9. 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.

10. Dury and Andrews' Map of Hertfordshire (1766).

a. An original is held by the Hertfordshire Archives and Local Studies (HALS) under reference CM 26.

b. 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.



Extract from Dury and Andrews' Map (1766) showing the Key.

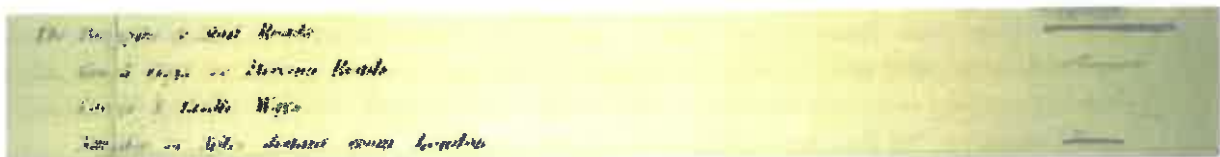
c. The route (EC743A, and EC734 from Point B eastwards) is shown in the manner of a 'Road enclosed by Hedges'. This is evidence in favour of the proposition that the application route was considered to have vehicular rights in 1766.



Extract from Dury and Andrews' Map (1766) showing the application route.

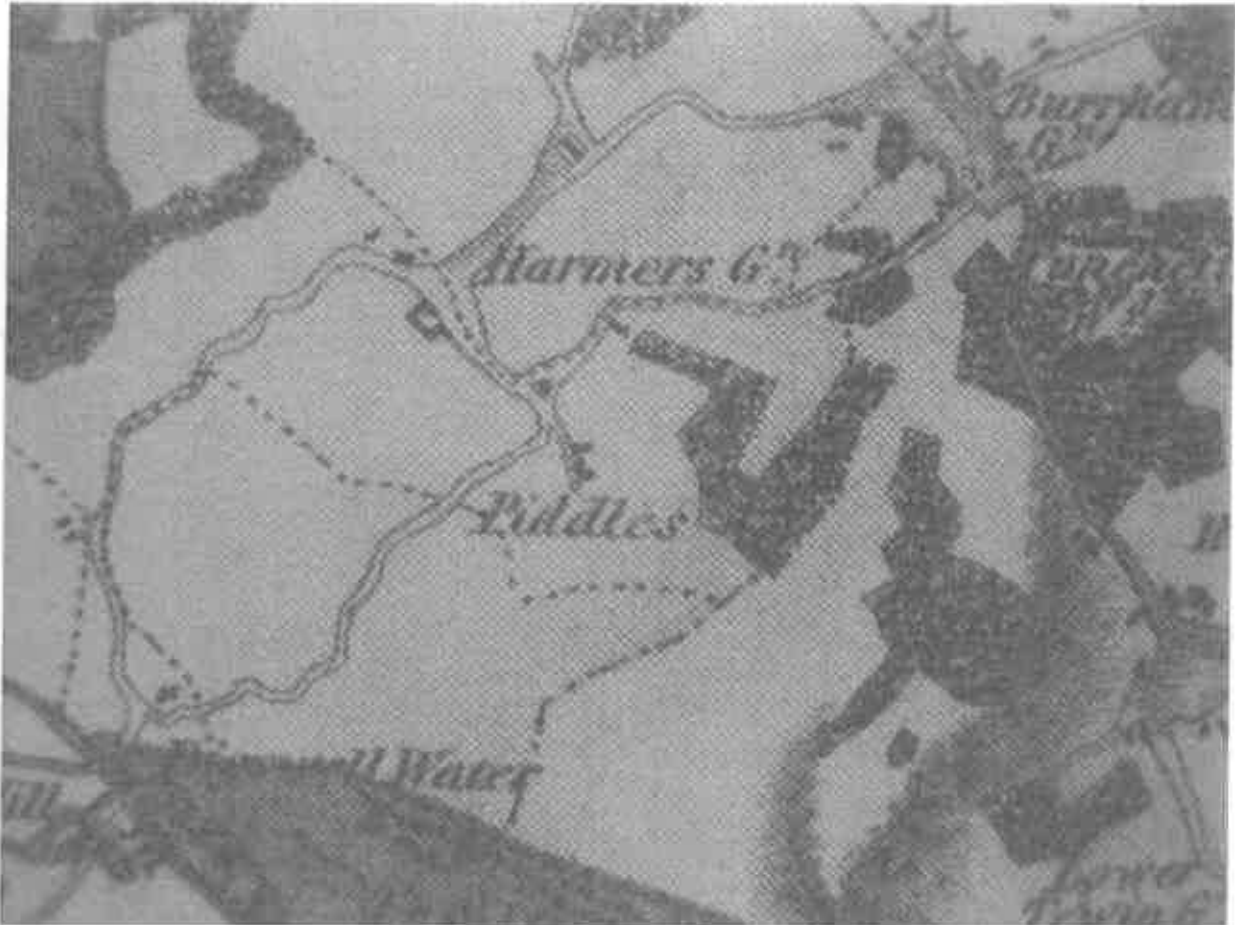
11. Bryant's Map of Hertfordshire (1822).

- a. An original is held by the Hertfordshire Archives and Local Studies (HALS) under reference CM 88.
- b. 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. The routes are shown in the manner of 'Lanes and Bridleways'. 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. Tithe map for Welwyn (1837)

- a. The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.
- b. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.
- c. The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). 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, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status.

d. The tithe map of Welwyn is held at the Hertfordshire Archives under reference DSA4/113/2. It is a second class map and so is only conclusive of matters of relevance to the tithe commissioners.

e. The map shows the application route, for its whole length. There is no apportionment number on any section of the route. This indicates that no tithe was assessable. The route is depicted in the same way as the public vehicular highways that it connects to.

f. This depiction is consistent with the route being a public vehicular highway at the time of the assessments.



Extract from the Tithe Map for Welwyn Parish.

13. Inland Revenue Valuation.

a. 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.]”

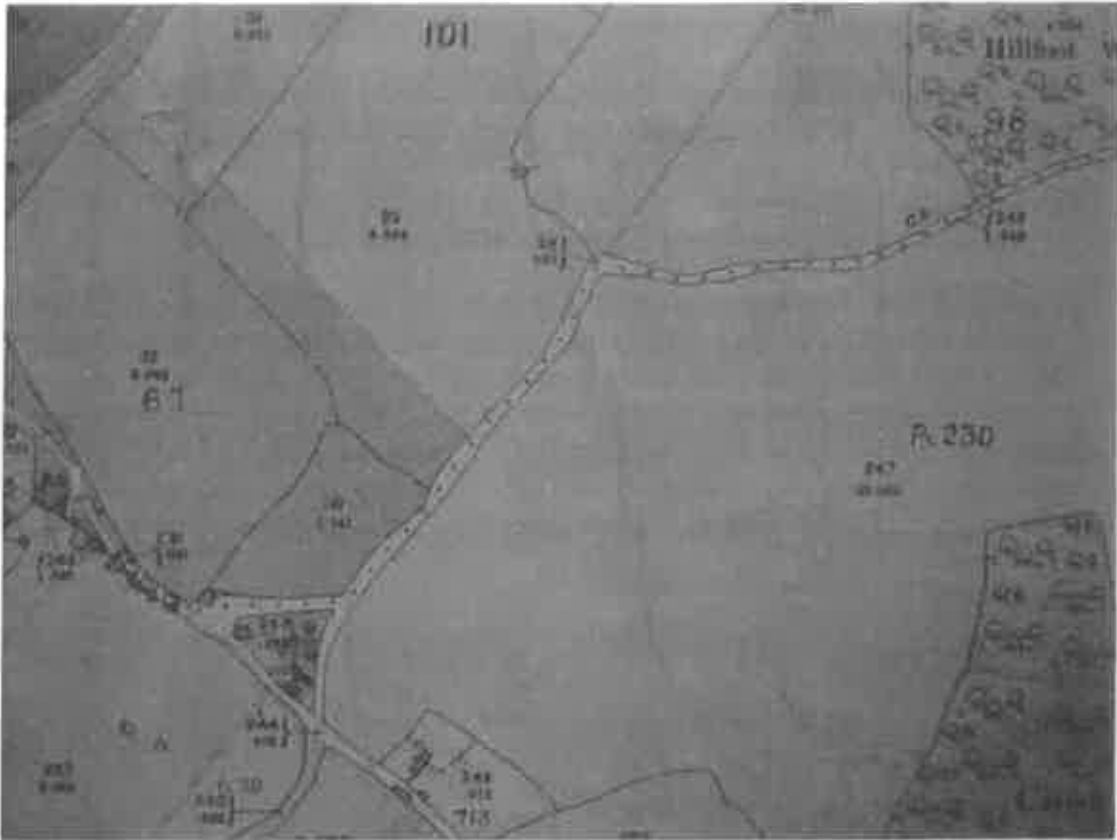
All land had to be valued unless it was exempted by the Act. As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, 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.

b. The extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew.

c. The National Archives document reference is IR 126/8/76. The extracts below clearly shows the application routes as white roads, separate from the adjoining hereditaments.

d. As this land is not held by a local authority or government department for any other known reason, this suggests it is highway. As no valuation was taken, this strongly suggests it is a vehicular highway. 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.

e. 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 1 from the Inland Revenue Valuation Map IR126/8/76



Extract 2 from the Inland Revenue Valuation Map IR126/8/76

14. HCC Gazetteer (2015).

- a. The Hertfordshire County Council online Gazetteer incorporates the list of streets maintainable at the public expense maintained pursuant to the Highways Act 1980.
- b. The application route EC743A (Vera Lane) is shown as route 0U1324/10. It is shown as not being maintainable by the Hertfordshire County Council.
- c. Unless there has been a recent change to the Gazetteer, this suggests that the route was not recorded on the relevant date for saving mechanically propelled vehicular rights under the Natural Environment and Rural Communities Act 2006. As the route would be a cul-de-sac for motor vehicles, it seems most likely that there would be very little public use of the route by vehicles, such use being mainly by people visiting one of the adjacent properties. It seems likely then that any mechanically propelled vehicular rights will have been extinguished, leaving the route as a restricted byway but with private rights for frontagers.



©Crown copyright and database rights 2011 Ordnance Survey 100019606
Use of this data is subject to terms and conditions

Vera Lane Digswell Welwyn [show on map]

Section description Pennyfathers Lane to north side of house 5

Section ID 0U1324/10 [show on map]

Class Not Allocated

Hierarchy No Code Allocated

Length 77m

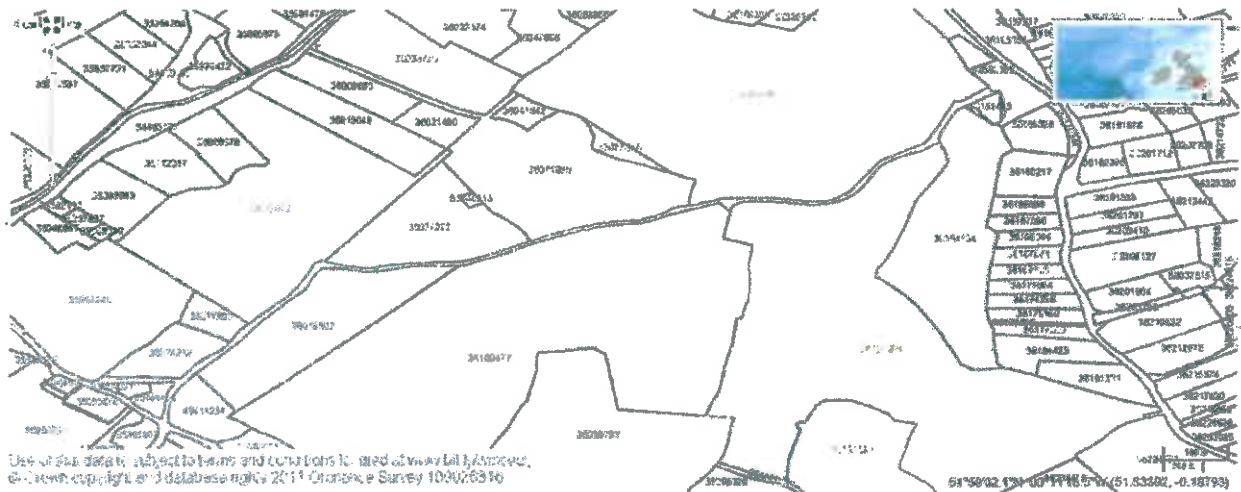
Area MW: 0-Welwyn Hatfield Area

Maintenance Not Maintainable

Extract from the County Council's online gazetteer showing route 0U1324/10

15. INSPIRE (2015).

- a. The Land Registry INSPIRE Index Polygons Service is a Web Mapping Service which provides map images of HM Land Registry's INSPIRE index polygons. The INSPIRE index polygon dataset contains only freehold registrations, and the polygons indicate the location of registered land. The publicly accessible dataset is found at <https://data.gov.uk/dataset/land-registry-inspire-view-service-and-metadata>
- b. The application routes are shown separate from any registered landholding. This characteristic is typically found for vehicular highways of ancient origin.
- c. The applicant draws the conclusion that this supports the view that the application routes are vehicular highways of ancient origin.



Extract from the INSPIRE mapping showing application routes unregistered

CONCLUSIONS




16. All the evidence produced for the application route suggests that vehicular rights existed at the times the various pieces of evidence were created. While no single piece is conclusive of highway status, the fact that every standard piece of evidence leans towards vehicular rights means that, on the balance of probabilities, such rights existed prior to the commencement of the Natural Environment and Rural Communities Act 2006.

REQUEST

17. The applicant requests the surveying authority to add the routes to the definitive map as restricted byways. (In the event that motor vehicular rights have not been extinguished, the applicant notes that the route EC743A 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 as a byway open to all traffic.)

**P D Wadey
Applicant**

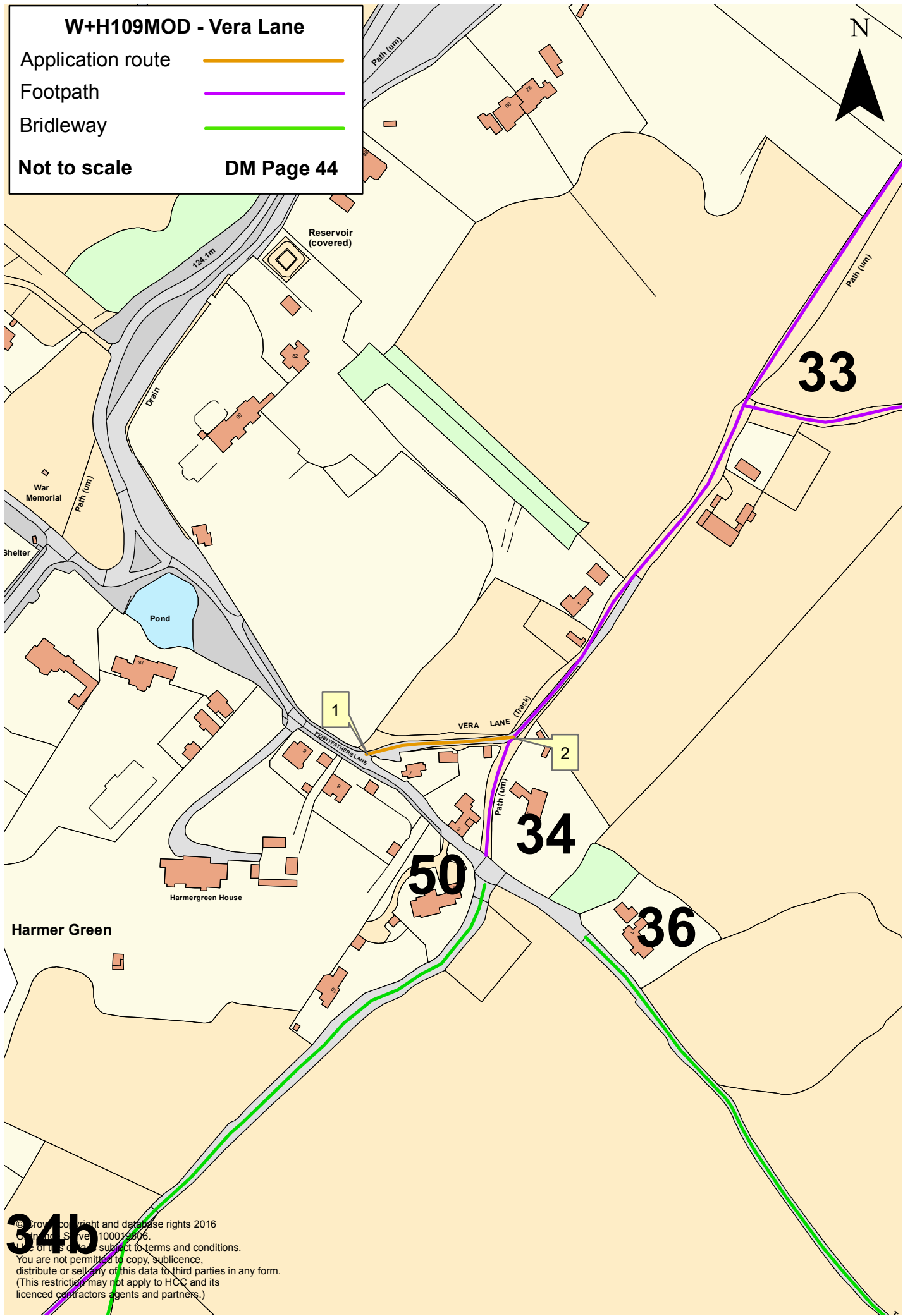
W+H109MOD - Vera Lane

- Application route 
- Footpath 
- Bridleway 

Not to scale

DM Page 44

N



34b

© Crown copyright and database rights 2016
Ordnance Survey 100019306.
Use of this data is subject to terms and conditions.
You are not permitted to copy, sublicense,
distribute or sell any of this data to third parties in any form.
(This restriction may not apply to HCC and its
licenced contractors agents and partners.)