

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Order Application

Reasons for Decision Report

Mansdale Road, Redbourn

Author : Carole Young

Date: December 2015

Application Details

An application has been made to add a footpath from a junction with Redbourn Footpath 21 to join Redbourn Bridleway 23 (Flamsteadbury Lane), as can be seen on an extract of the 2010 Definitive Map below. The map shows where the route is and it is labelled Point 1 and Point 2.

This application was made by Enid Hoy on 5th March 1998

Description of Route

The Application Route is south of Luton on the western edge of Redbourn and to the east of the M1 motorway. The Application Route commences in a cultivated field from a junction with Redbourn Footpath 21 behind the south west corner of the garden of 30 Mansdale Road (plate 1). The route then continues generally north east (plate 2) and then north north west around the perimeter of the field (plates 3 & 4) to join Redbourn Bridleway 23 (Flamsteadbury Lane) behind the south west corner of the garden of number 12 Mansdale Road, currently obstructed by post and rail fencing (plate 5).





Plate. 1



Plate. 2



Plate. 3



Plate. 4



Plate. 5

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/

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.

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
- Investigating Officer's comments

Please note that where there is no evidence found relating to the application route, this has just been recorded as "no evidence found..." or where there are no records for the document listed, this has been recorded as "No records found."

The following historical documents have been looked at but do not provide evidence with regard to the application route:

Dury and Andrews Map, 1766 – Ref: HALS – CM26

Bryant's Map, 1822 – Ref: HALS – CM88

Tithe Maps for Redbourn and Flamstead

Inland Revenue Documents

Parish Survey and Definitive Map records

The following historical documents were not investigated:

Inclosure records – No records found

Highway Diversion/Extinguishment Records

Railway and canal plans

1.0 Ordnance Survey Maps

Date: 1878 - 1971 Ref: ROW

1.1 Why we consider these documents important

The original surveys were carried out by Royal Engineers at the time of the Napoleonic wars in order to better plan the transportation of ordnance around the country. It was only in the early 20th century that the Ordnance Survey (OS) evolved to become a public service that sold its mapping information to the public. Since the 1960s this mapping information has included public rights of way, which are derived from each county's Definitive Map.

The OS has produced a series of topographic maps at different scales notably the one inch, six inch and 1:2500. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes. OS maps show features that physically exist and may label routes as footpaths and bridleways etc. However, the disclaimer which has been added to all editions since the 2nd edition maps (circa 1897/8 in Hertfordshire), along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way.

1.2 What is shown by these documents in the area of the application route?

OS maps from 1878 to 1971 were examined. The maps from 1878 and 1898 showed nothing in the area. The maps from 1924 and 1971 showed a pecked line along the route of Footpath 21. The 1924 map shows Footpath 21 running along a field boundary but by 1971 the hedge or fence had been removed. None of the maps showed the Application Route.

1.3 Decision

Hertfordshire County Council (HCC) decided that none of the maps examined showed the Application Route.

2.0 Aerial Photograph

Dated: 1970 - 2000 Ref: HALS/ROW

2.1 What is shown by these documents in the area of the application route?

1970 - Footpath 21 cannot be seen. Markings can be seen around part of the field headland in the area of the Application Route.

1980 – There is a faint mark on the photograph in the area of Footpath 21. There are markings around the field headland in the area of the Application Route which look like a beaten track.

1990 – It is not possible to see Footpath 21 or the Application Route on this photograph.

2000 – Footpath 21 has been reinstated through the crop. There is no headland visible in the area of the Application Route.

2.2 Decision

The 1970 and 1980 photographs show markings around the headland which could be the Application Route. It is not clear that Footpath 21 had been reinstated. Neither the Application Route nor Footpath 21 is visible on the 1990 aerial photograph. The 2000 photograph shows Footpath 21 reinstated and there is no visible use of the Application Route.

HCC decided that the aerial photographs provide some supporting evidence of the existence of the Application Route but provides no evidence of public rights.

3.0. Contemporary Evidence of Use

3.1 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.

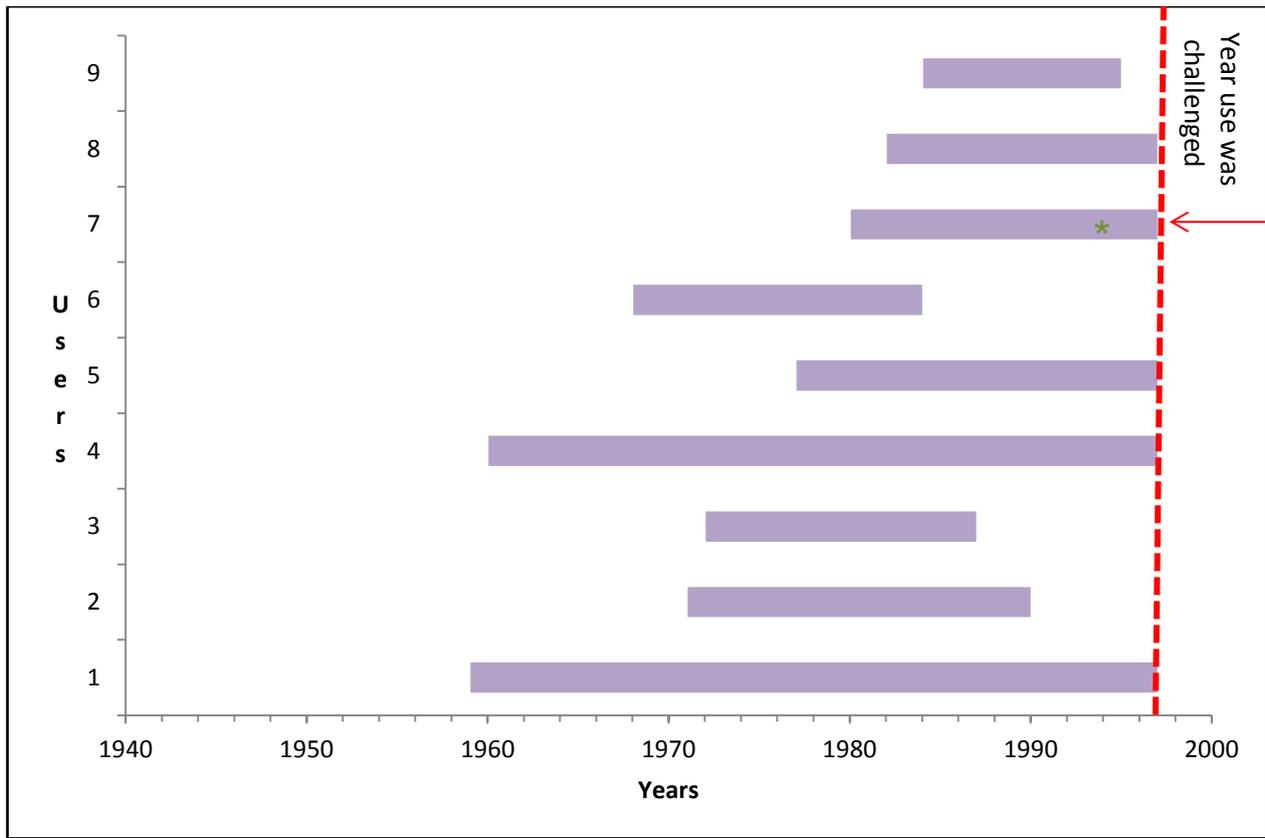
Under common law a right of way can also come into existence in less than 20 years if it can be shown that there was dedication of the route by the landowner and acceptance of the route by the public.

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.

Below is a summary of the evidence we have received, including a table showing the information provided in the user evidence forms.

3.2 Summary of Evidence



* User 7 also used the Application Route for 14 years between 1939 and 1952.

User	Width of Route	Type of use	Frequency of Use	Period of Use	Total Use –	Comments	
				From	To	Years	
1	2ft (used to be tractor width)	foot	countless	1959	1997	38	Used route to get to Gaddesden Lane and rambling generally. No stiles, gates or notices. Never been challenged until 1997 after fence obstruction, told by landowner that it was never a path. Never given permission. Designated path 21 was always cropped and ploughed until very recently and field edge path was used. Known route as a public path for 37 years.
2	2ft	foot	100 times a year	1971	1990	19	Used route for dog walking. No stiles, gates or notices. Never been challenged, never given permission. Known route as a public path for 26 years.
3	2-3ft	foot	daily	1972	1987	15	Used route for dog walking. No stiles, gates or notices. Never

							been challenged, never given permission. Known route as a public path for 30 years.
4	6ft	foot	3-4 times a year	1960's	1997	30+	Used route to go from church to Flamstead area and for pleasure. No stiles, gates or notices. Never been challenged, never given permission. Known route as a public path for about 20 years.
5	Single FP between hedge and field.	foot	2x week	1977	1997	20	Used route to get to Lybury Lane and beyond from St Mary's churchyard. Used route for pleasure walking. No stiles, gates or notices. Never been challenged, never given permission. Known route as a public path for >20 years.
6	2-3ft	foot	Too numerous to count	1968	1984	16	Used route for pleasure, dog walking and to get to work. No stiles, gates or notices. Often saw farmworkers as a child but was never challenged and never given permission. Known route as a public path for approx 16 years.
7	1-2ft	foot	Regularly, then 4-5 times a year	1939 1980	1952 1997	13 17	Used route for leisure walks. No stiles, gates or notices. Never been challenged, never given permission – see note.
8	3ft	foot	weekly	1982	1997	15	Used route for dog walking. No stiles, gates or notices. Never been challenged, never given permission. A fence was put across road end of it and a path made across the middle of the corn field. For the last 10 years there was no marked path across the middle of the field so people walked round the edge. Known route as a public path for 15 years.
9	4ft	foot	daily	1984	1994/5	11	Used route for dog walking. No stiles or gates. Never been challenged, never given permission. Since 1984 I have always used the footpath around the perimeter of the field. Path has now gone and now is across the middle of the field (approximately 75 yards further into the field). There was a notice in Flamsteadbury Lane "Private Road to Flamsteadbury" and then approx. 4 years ago "and Cricket School" was added. There was also a notice in Gaddesden Lane which read

							“footpath” which I took to mean around the outside of the field. Known route as a public path for 13 years.
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The parish council submitted a letter in September 1998 to St Albans District Council stating that the Application Route was used because the definitive footpath 21 was ploughed much of the time. The parish council supported the application but was more concerned that the definitive footpaths were properly maintained.

Highways Act 1980 section 31(6) deposits - a map and statement were first deposited with the County Council on 20th March 1998, subsequent deposits were made 11th May 2001 and 1st June 2015.

Landowner statement summary

The land has always been used for arable crops or the occasional one year grass ley. The land has been ploughed up every year right up to the hedge boundary. No headland has ever been left wide enough to indicate a permanent footpath. The arable crops are between 2’6” and 5’ high and are prone to falling over, making access along the field edge difficult if not impossible.

No public footpath signs have ever been in existence and ‘No Access’ signs have been erected to prevent unauthorised access to the land. This sign has been removed a number of times. There is a sign at the entrance to the farm at Flamsteadbury Lane reading “Private Road to Flamsteadbury and Cricket School”. A sign identifying a private road has been in place since the landowner can remember. Fencing has been erected along the drive to stop motorcycles and fly tipping.

The definitive footpath is always kept clear and sprayed off. In the 46 years the landowner has been at Flamsteadbury Farm, no right of way has been granted on the land adjacent to Mansdale Road. Any access taken by persons has been unauthorised.

Following consultation five responses were received, only one of these provided any evidence. This was from a local resident who said that people used to just wander anywhere across the field until the path was reinstated.

3.3 Decision

In order to assess whether there has been sufficient evidence of use to raise a presumption that public footpath rights have accrued on the application route between points 1 - 2 on the Investigation Plan, HCC first has to establish the date use was ‘challenged’. A section 31(6) deposit was first made by the landowner in March 1998. However, reference was made to fencing across the route in 1997 and the applicant was challenged by the landowner at this time. HCC therefore decided that the date of challenge was January 1997, and therefore the relevant period of use is 1977 - 1997.

Of the 9 user evidence forms (one form signed by two people) that were presented with the application, only 3 witnesses gave evidence that they had used the application route for the full 20 year period of 1977 -1997 on foot. The combined use of four people (users 6 + 8 and 2 + 7) covers another two periods of 20 years use during this period.

It is clear from the evidence that some people had used the Application Route as an alternative when the Definitive Footpath 21 was covered by the crop or ploughed and had not been reinstated across the field. In 1998 the parish council wrote that the Application Route was being used as an alternative because the definitive route had not been reinstated. Reference was made by one user to the Application Route disappearing in 1994 when the definitive route was reinstated; this is supported by the aerial photographs.

In the landowners statement he said that crops have been continually drilled across the Application Route and use has been challenged by 'No Access' signs and fencing across the Flamsteadbury Lane end of the route. It was also mentioned that the claimed route is not defined in any way or form. He states that "where people have taken unauthorised access to the land they do not follow any single route but walk anywhere across the whole field causing considerable crop damage". This was corroborated following consultation by a local resident who said that people used to just wander anywhere across the field until the path was reinstated.

Following an assessment of all the evidence HCC decided that there is insufficient evidence to raise a presumption of an intention to dedicate a footpath and therefore footpath rights have not accrued under section 31 of the HA 1980. There is also insufficient evidence that footpath rights have been acquired under common law.

Conclusion

HCC decided not to make an order.