

# **HERTFORDSHIRE COUNTY COUNCIL**



## **Rights of Way Service**

Modification Order Application  
Decision Report

Redbourn Recreation Ground, off Blackhorse Lane

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Date 30<sup>th</sup> September 2014

### Application Details

An application has been made to record a public footpath across the Recreation Ground off Blackhorse Lane in Redbourn. An extract of the 2010 Definitive Map is attached labelled "Investigation Plan" ("IP"). It is labelled points 1 to 5 and shows the route as applied for as well as an additional route for which evidence has been supplied.

This application was made by Mr & Mrs Bartlett on 7<sup>th</sup> June 1996 in the prescribed form.

### Description of Route

Redbourn is situated in the St Albans District of Hertfordshire, east of the M1 motorway. It is north west of St Albans, south of Luton and south west of Harpenden.

Within Redbourn, Blackhorse Lane runs from Dunstable Road on the north side of the town.

The Application Route runs from Blackhorse Lane, from a point approximately 150 metres south west of Dunstable Road (point 1 on the IP). The Application Route is not currently accessible through from the hedge line at point 1 on the IP, however there is access to the Recreation Ground available at point 5 on the IP where there is a wooden kissing gate in the hedge line. At the time of the site visit (May 2014) the kissing gate was broken. At point 5 there is a sign advising the public of the penalties associated with dog fouling. There is also a fingerpost next to the gate indicating pedestrian access to the Recreation Ground.

The Application Route from point 1 continues north west for approximately 190 metres across the Recreation Ground first to the south west of the boundary of a property called Stoneleigh and then continuing across the Ground with the Recreation Centre on the east side to point 2 on the IP. At point 2, the Application Route runs south west for approximately 90 metres to the south west corner of the mound of earth which is covered with vegetation. The Application Route runs north over the mound and joins Redbourne Footpath 16 at point 3 on the IP. The surface of the Application Route across the Recreation Ground is flat and the grass is closely maintained. There is no distinct path across the Recreation Ground between points 1 and 3 but there is a clear worn track of a maximum of 1 metre wide over the mound to point 3 on the IP. There are no signs at point 3 on the IP.

The route shown on the IP between points 3 & 4 is a route which was not shown in the application form but for which user evidence has been provided. Points 3 to 4 is a continuation of the Application Route from point 2 north west for approximately 50 metres to join Redbourne Footpath 16, approximately 100 metres north east of point 3. Like the Application Route across the Ground, there is no distinct path on the ground but there is a wide gap in the northern boundary of the Recreation Ground of approximately 3 – 4 metres where the ground is worn. The same sign as on the gate at point 1 is on display at point 4 and there is a dog waste bin.

### 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/](http://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:

- 1. Dury and Andrews Map, 1766 – Ref: HALS – CM26**  
No evidence found relating to the application route.
- 2. Bryant's Map, 1822 – Ref: HALS – CM88**  
No evidence found relating to the application route.
- 3. Tithe map for Redbourn 1845 – Ref: HALS – DSA4\_ 79\_ 2**  
No evidence found relating to the application route
- 4. Ordnance Survey Maps, 1878 – 1976 - Ref: ROW**  
No evidence found relating to the application route.
- 5. Inclosure records**  
No records found.
- 6. Inland Revenue records, 1909-1910 – Ref: HALS – IR1/239a and IR2/59/1**  
No evidence found relating to the application route
- 7. Highway Diversion/Extinguishment Records**  
No records found.
- 8. Highways Maintenance Records**  
No records found
- 9. Railway and canal plans**  
No records found.
- 10. Definitive Map Records, 1952 – 1984**  
No evidence found relating to the application route.

## 1. Aerial Photographs

Date: 1973 – 2000

Ref: ROW

### **1.1 Why we consider these documents important**

Aerial photographs may confirm the physical existence of a route at the time the photographs were taken. They may also provide evidence relating to any physical features on the route such as signs or structures. Greater evidential value may be placed on aerial photographs where the date and time at which the photographs were taken is known and an accurate record of the position and orientation in relation to the relevant route is provided. An aerial photograph cannot provide evidence of what rights might exist over a route; it can only provide evidence that a route and its physical characteristics existed on the ground at the date the photograph was taken.

### **1.2 What the documents show**

1973: Dunstable Road and Blackhorse Lane are clearly visible. Hillbury Farm is shown to the east of the land crossed by the Application Route. There is no indication of a path crossing the land which could indicate the routes depicted on the IP.

1983: This photograph shows that the land has been cultivated. There is an uncultivated strip of land around the field, including a strip from the southern edge of the field (at approximately point 5), following the field edge to the north west corner of the Hillbury Farm buildings and stopping short of the northern boundary of the field. This may have been a farm track. The raised mound at point 3 on the IP is shown adjoining the land. The photograph does not indicate a route between points 2 and 3 on the IP or from point 1 on the IP.

1990: This photograph indicates a track across the field on the north side of Blackhorse Lane, through points 1, 2 and 4 on the IP. There may be an indication of a route around the mound, approximately on the line of the application route between points 2 to 3.

2000: This photograph indicates the route from point 5 on the IP adjacent to the boundary of Stoneleigh, north west to join the Application Route (between points 1 and 2 on the IP) west of the Recreation Centre and continuing to point 4. There is no obvious path shown across the Recreation Ground to point 3 on the IP but there is a visible path over the raised mound. There may be an indication of a route following the western edge of the Recreation Ground.

### **1.3 Decision**

HCC decided that the aerial photographs provide some evidence that part of the application route physically existed since 1990 (and possibly from 1983) but provides no evidence of a public highway.

The 1990 photograph indicates a physical route between Blackhorse Lane and Footpath 16 between points 1, 2 and 4 on the IP. By 2000, the physical route appears to have changed as the gaps in the hedge became blocked. The 2000 photograph appears to indicate a physical route between points 5, 2 and 4 – as well as a path over the raised mound at point 3 on the IP.

## 2. Contemporary Evidence of Use

### **2.1 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.

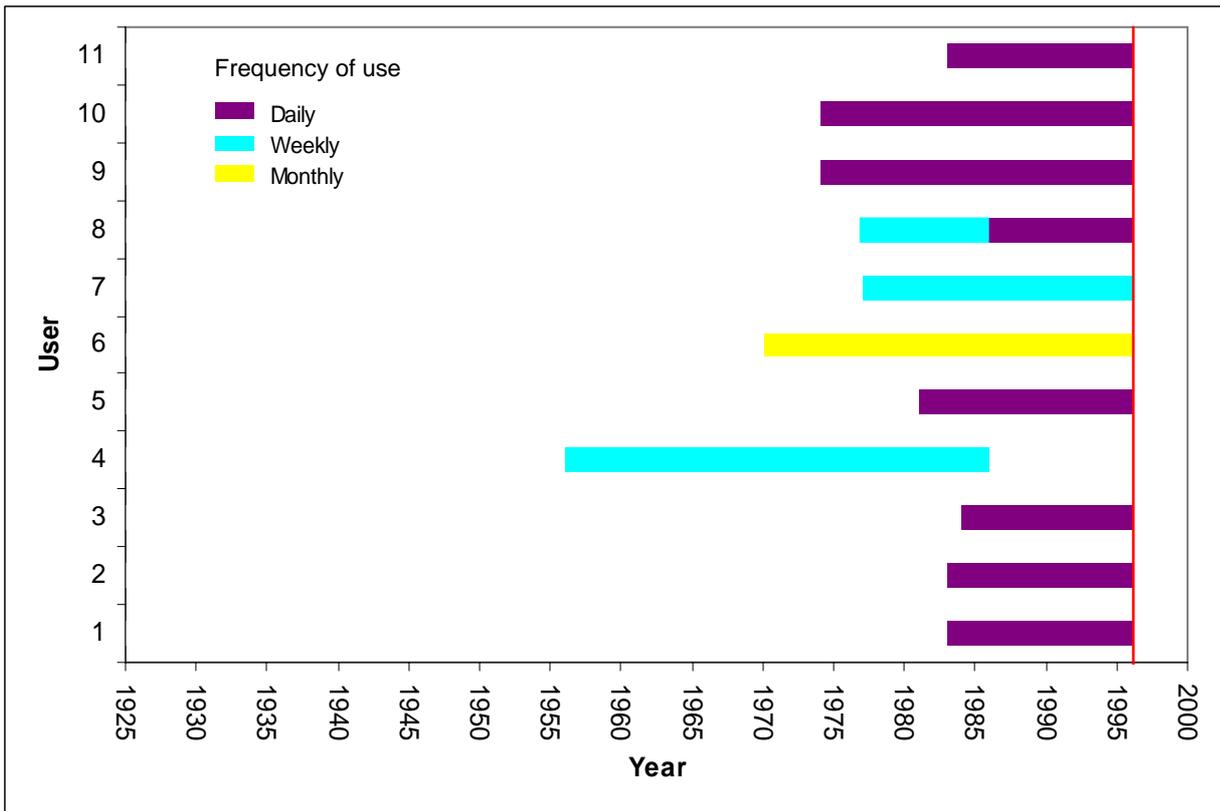
Under Section 31, after a period of 20 years use, it is presumed that a right of way has come into existence. Where a landowner can produce evidence to show that they have taken steps to prevent the accrual of new public rights of way through use of a route by the public, no such right will be dedicated. 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.

### **2.2 Summary of Evidence**

No section 31(6) deposit has been made in relation to the land crossed by the application route.



The red line on the graph represents the obstruction of the Application Route by the landowner in 1996 (when the hedge on Blackhorse Lane was blocked up). The application was made later the same year.

All the user evidence submitted with the application relates to use on foot.

User Number	no of years used	Start Yr	End yr	Type of Use	frequency	notices	permission	challenge	obstruction	width	additional comments
1	13	1983	1996	Foot	daily	Obstruction of route by landowner in May 1996 – all gaps in the hedge on Blackhorse Lane were blocked. A notice was then erected stating that the path had been in use for 20 years and was not to be blocked.				1m	Field was never cultivated during use, just used for grass which was cut twice a year. Parish Council erected kissing gate at point 5. User was told that if Jarvis gets permission to build then there will be no public access from

								Blackhorse Lane. Form includes points 1 to 4 and a perimeter route on the S and W edges of the field.
2	13	1983	1996	Foot	daily	Obstruction of route in May 1996 – all gaps in the hedge on Blackhorse Lane were blocked. A notice was then erected stating that the path had been in use for 20 years and was not to be blocked.	1m	Points 1 - 3 only
3	12	1984	1996	Foot	daily	Obstruction of route in May 1996. Recreation Centre staff obstructed access to field. Also in 1996, notice erected stating 'Please do not obstruct this opening. This path has been in use for more than 20 years'	'Path - 1m, Field - several metres'	Refers to a recent (1996) diversion to the path due to blocking up of entrance to field. No further details. Used points 1 to 4 and a perimeter route on S and W edges of field when sports pitches were in use.
4	30	1956	1986	Foot	weekly	An old bicycle frame obstructed the entrance to the route off Blackhorse Lane. A notice off Blackhorse Lane was erected early 1996 - perhaps aimed at dog walkers but user does not recall the details.	1 metre	Points 1 - 3 only. Moved out of area 1986 - November 1995
5	15	1981	1996	Foot	daily	Apr/May 1996 groundsmen obstructed the entrance to the route with barbed wire, old bike etc. User used another gap in the hedge during this time (no details provided). At the Blackhorse Lane opening, a notice was erected stating 'Do not obstruct this footpath, this has been in use for more than 20 years' - approximately March-May 1996	1 metre	Refers to opening opposite No 13 Blackhorse Lane. Used points 1 to 4 and perimeter route on S and W edges of field.
6	26	1970	1996	Foot	monthly	Entrance to footpath obstructed with branches etc (no date given). User does not recall any notices.	2 (no units given)	Not in area 1969 - 1970. Points 1 to 3 only.
7	19	1977	1996	Foot	weekly	Early May 1996 - wood and barbed wire obstructed entrance at Blackhorse Lane. Apr 1996 - entrance from	3 feet	Point 1 to 3 only.

						Blackhorse Lane 'Please do not obstruct this footpath has been in use for over 20 years'. User does not recall any notices.		
8	19	1977	1996	Foot	daily 1986 - 1996, weekly 1977 - 1986	Early May 1996 - wood and barbed wire obstructed entrance at Blackhorse Lane. 1996 - entrance from Blackhorse Lane 'Please do not obstruct this footpath has been in use for over 20 years'. User does not recall any notices.	1 metre	Point 1 to 3 only.
9	22	1974	1996	Foot	daily	May 1996. Obstructions put in place by Parish Council. Removed shortly afterwards by persons unknown. User does not recall any notices.	1 - 1.5m	Opposite 13 -15 Blackhorse Lane. Points 1 to 3 only. Met the owner, no one said anything to the user.
10	22	1974	1996	Foot	daily	May 1996. Obstructions put in place by Parish Council. Removed shortly afterwards by persons unknown. User does not recall any notices.	1 - 1.5m	Opposite 13-15 Blackhorse Lane. Points 1 to 3, then 2 to 4 later. Met the owner, no one said anything to the user.
11	13	1983	1996	Foot	daily	User does not recall any obstructions or notices.	3 feet	Point 1 to 3 only. Doesn't specify an end date for use. Does not recall obstruction but is aware that path was closed.

A total of 11 user evidence forms were submitted with the application. These relate to evidence dating from 1956 until the application was made in 1996.

All of the users provided evidence relating to the application route between points 1 and 3 on the IP. Four (users 1, 3, 5 and 10) provided evidence relating to the route between points 2 and 4 on the IP. Three (users 1, 3 and 5) provided evidence relating to a perimeter route around the south and west edges of the Recreation Ground field.

Eight of the users (users 1, 2, 3, 5, 8, 9, 10 and 11) provided evidence of daily use, two (users 4 and 7) provided evidence of weekly use and one (user 6) provided evidence of monthly use.

10 of the 11 users referred to the obstruction of the Application Route at point 1 on the IP in May 1996. This is consistently described in the evidence forms as the blocking up of all the gaps in the hedge on Blackhorse Lane with items including branches & wood, an old bicycle

frame and barbed wire. The users generally considered the obstruction to have been put in place by the landowner/employees of the landowner, however two users considered that it may have been done by the Parish Council. It appears from the evidence forms that the obstruction was not in place very long and soon after a notice was erected (it is not specified by whom) stating that the path should not be obstructed because it had been in use for twenty years. This notice was referred to by seven of the users.

The width of the Application Route is generally estimated as 1 metre, however a few of the users indicated that it may be wider.

Access to the Application Route from point 1 on the IP is no longer available. The evidence forms do not include information about the alteration of access from point 1 to point 5 on the IP. User 1 marked the site of the 'proposed' kissing gate onto the plan in the form -being point 5 on the IP. It therefore appears likely that the kissing gate was erected and point 1 was permanently blocked up, after the application to record the footpath had been made.

Subsequent to the application, Hertfordshire County Council received correspondence in opposition to the application. A summary of the comments received is provided below:

In a letter dated 22<sup>nd</sup> August 1996, the previous owner of Hillbury Farm wrote to St Albans District Council Estates Department stating that *'up until the time that Jarvis Builders took over Hillbury Farm [approximately 1986] there were no public rights of way across my property. Indeed the area shown was arable land, sown to corn crops, the footpaths shown on your plan [probably referring to the plan submitted with the application] would have virtually flattened the crop. We maintained the hedge in a stock proof fashion and any trespassers would have been politely shown the way out.'*

A letter from Redbourn Recreation Centre dated 23<sup>rd</sup> October 1997 stated that *'I am given to understand by various residents of the village... that the land was regularly ploughed right up until the time that it became the property of the Jarvis Group and that prior to this if people were walking across it they were indeed trespassing on private land. The area over which the disputed footpath runs, lies partly over District Council land and partly over that owned by Jarvis's. Both areas are regularly is use by children... for football matches, with the owners consent... The use of the land by responsible dog walkers has never been discouraged by the Centre but a small minority... do not stick to the 'so called footpath'. A 'kissing gate' was installed by the Parish Council to enable access to the land after the Centre had opened because the substantial hedge that borders Blackhorse Lane was constantly being broken down to allow access.'*

A letter from Redbourn Parish Council dated 11<sup>th</sup> November 1997 stated that *'The Parish Council is opposed to the claim that definitive status be given to the path and does not agree that the path has been used locally for the prescribed amount of time. The photographs [referring to aerial photographs] clearly show the path was not in use in 1973 or 1982...'*

A letter from a St Albans District Councillor dated 24<sup>th</sup> November 1997 provided further background in formation and commented on the footpath application: The resident farmer at Hillbury Farm had raised pullet chicken for the restaurant trade. The open field subject of the application was cultivated for barley crops by another local farmer and no footpath was permitted through the middle of the barley field. The resident farmer did establish a cart track

from his chicken sheds to the north west of the field to deposit chicken dung. This rough raised area still exists but at no time was a footpath established across the barley field.

Subsequent to the application, correspondence on file suggests that Jarvis Homes (whilst not acknowledging the existence of a public footpath across their land) would have been prepared to dedicate a footpath crossing their land if St Albans District Council would do the same on their own adjoining land. This footpath would run between points 5, 2 and 4 on the IP. However, in 1997 the District Council were not prepared to concede a footpath on their land and intended to oppose the application.

### **2.3 Additional Evidence Submitted after consultation**

Letters were received from 19 local residents relating to the current access to the Recreation Ground.

Redbourn Parish Council, St Albans City and District Council and the Recreation Centre Manager all wrote to object to the application and express their concern about the effect of the application route on the Recreation Ground and its business. The Recreation Centre and the Parish Council are happy to permit public access except for private functions.

No evidence relating to the application was submitted in response to the consultation.

### **2.4 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 - 3 and 4 on the IP, HCC first has to establish the date use was 'challenged'. Both the users and the Recreation Centre Manager refer to obstruction at point 1 in 1996. HCC therefore decided that the date of challenge was May 1996 and the relevant period of use is therefore 1976-1996.

Of the 11 user evidence forms that were presented with the application, only 3 witnesses can attest to using the application route for the full 20 year period of 1976-1996, with a further full 20 year use provided by combining the use of 2 people. During that 20 year period there is no evidence that use has been with force, in secret or with permission.

However, this use has been challenged by the previous owner of part of the land crossed by the Application Route (see the extract of the letter above), who suggests that until (approximately) 1986, the land was sown to crops, the hedge on Blackhorse Lane was maintained in a stock proof fashion and trespassers would have been shown off the land. This is corroborated by the Aerial Photograph of 1983 and the St Albans District Councillor in his letter of 24<sup>th</sup> November 1997.

Following an assessment of this evidence HCC decided that there is insufficient evidence of a presumption that public rights have accrued under section 31 of the HA 1980. There is also insufficient evidence that a right of way could be reasonably alleged to subsist or has been acquired under common law.

