

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Order Application
Reasons for the Decision

Sarratt 36 & 37 Upgrade

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Date: September 2017

Application Details

An application has been made to upgrade parts of Sarratt Footpath 36 and Sarratt Footpath 37 to Byway Open to All Traffic (BOAT) status. These routes are located approximately 1km west of the village of Sarratt in the Three Rivers District of Hertfordshire. An extract of the 2010 Definitive Map is attached. It shows where the route is and it is labelled Point A to Point C.

This application was made by Dr P Wadey on 09/01/2006. Included with the application were extracts of maps by Dury & Andrews, Bryant, Ordnance Survey (1822, 1898) and the Chenies (Buckinghamshire) Tithe map. Also included were 7 user evidence forms, a chronology of events relating to the route and a sheet of additional information containing reminiscences and additional comments relating to use.

In a letter to Dr. Wadey dated 10 September 2013 HCC confirmed that the application complied with paragraphs 1 and 2 of Schedule 14 of the Wildlife and Countryside Act 1981.

Description of Route

The application relates to routes that are currently recorded on the Definitive Map of Rights of way as Sarratt Public Footpaths (FP) 36 and 37. The application route runs between the junction of the southern end of FP36 and the eastern arm of FP37 at the county boundary by the gated ford on the River Chess. The application route then heads along FP37 in a generally easterly direction for approximately 185 metres to a junction with Sarratt FP59. The application route continues generally E then NE for a further 285 metres to a junction with Moor Lane, Sarratt Bottom. There is a gate at this location stating 'VALLEY FARM PRIVATE ROAD'; this appears to be currently usually open to allow vehicles through. The application route is largely surrounded by pasture land, towards the W end and south of the route there are watercress beds. The route on the ground is formed of a concrete track varying between 10 and 15ft in width bounded by verges and a mixture of hedge and fencing, running along the River Chess valley bottom. FP37 forms part of the Chess Valley Walk between Chesham and Rickmansworth stations. The Hertfordshire/Buckinghamshire county boundary runs along the north bank of the River Chess in the vicinity of the application route.

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/leisure/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
- The decision relating to that document

Where there are no records for the document listed, this will just be recorded as "No records found."

Matters that may affect the decision

The application route is currently recorded, without prejudice to any existing higher rights, as a public footpath. The application made was to upgrade public footpath to the status of a BOAT. As the application is to record a BOAT, consideration will need to be given to the effect of the Natural Environment and Rural Communities Act 2006 ('NERC'). NERC introduced legislation which automatically extinguishes all public mechanically propelled vehicle ('MPV') rights, unless they were exempted by one of the exceptions provided.

The Department for Environment Food and Rural Affairs summarised the five exceptions in subsection 67(2) as follows:

67(2)(a) – excepts ways that have been lawfully used more by motor vehicles than by other users, e.g. walkers, cyclists, horse riders and horse-drawn vehicles, in the five years preceding commencement. The intention here is to except highways that are part of the 'ordinary roads network'.

67(2)(b) – excepts ways that are both recorded on the "list of streets" as being maintainable at public expense and are not recorded on the definitive map and statement as rights of way. This is to exempt roads that do not have clear motor vehicular rights by virtue of official classification but are generally regarded as being part of the 'ordinary roads network'.

67(2)(c) – excepts ways that have been expressly created or constructed for motor vehicles

67(2)(d) – excepts ways that have been created by the construction of a road intended to be used by mechanically propelled vehicles.

67(2)(e) –excepts from extinguishment ways that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive 'off-road'.

In addition, section 67(3) excepts highways that are the subject of an application under the Wildlife and Countryside Act 1981 for a definitive map modification order made before 20 January 2005 (19 May 2005 in Wales).

Where there is evidence that a route was a vehicular highway, then under NERC the continued existence of any MPV rights will depend on whether any of the exceptions provided is met. This matter is considered further in section 7 of this document.

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

- **Dury and Andrews Map, 1766 – Ref: HALS – CM26**
No evidence found relating to the application route.
- **Bryant’s Map, 1822 – Ref: HALS – CM88**
No evidence found relating to the application route.
- **Inclosure records**
No records found.
- **Highway Diversion/Extinguishment Records**
No records found.
- **Railway and canal plans**
No records found relating to the application route.
- **Highways Maintenance Records**
No records found relating to the application route.

1. Chenies (Buckinghamshire) Tithe Map & Apportionment 1838

Date: 1838 1st class Ref: Supplied by applicant

Sarratt Tithe Map and Tithe Apportionment

Date: 1840 1st class Ref: HALS

1.1 Why we consider these documents important

A ‘tithe’ was literally a ‘tenth’ of the produce of the land and was paid in kind to finance the Church (crops were stored in ‘tithe barns’). The tithe surveys were carried out under the Tithe Commutation Act of 1836 to reform this system to an easier money payment. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid.

In 1837 the Act was amended to allow maps produced to be either 1st class or 2nd class. They did not have to be made from an original survey. 1st class maps are legal evidence of all matters which they portray, and were signed and sealed by the commissioners. They had to be at a scale of at least 3 chains to the inch. 2nd class maps were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. Both 1st and 2nd class maps have been accepted by the courts as evidence. Unfortunately the proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, was not strictly adhered to.

The tithe process received a high level of publicity. This ensured the documents were an accurate record of the agricultural landscape at this period of history. 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. Non-titheable land deemed to be unproductive could be excluded from the process. No tithe was therefore payable on roads and so it was in the interest of the landowners for these to be shown correctly. Taken together with corroborative evidence, highways that are coloured yellow or sienna can indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the productivity of land and so the calculation of tithe rent.

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

The Chenies tithe map depicts Holloway Lane (the route from Chenies village to the ford on the county boundary where the application route commences). On the Hertfordshire side of the county boundary there is a short section of route depicted heading NNE along the course

of the currently recorded FP36 and annotated 'to Sarratt'. There is no depiction of a route following the course of what is now recorded as FP37 (the application route). The route 'to Sarratt' is coloured yellow in both Buckinghamshire and Hertfordshire. The route in Buckinghamshire is annotated 'S' at the Chenies end and 'V' at the ford/county boundary, and is listed in the Tithe apportionment under 'Public Roads & Footpaths' as 'Hollow Way Lane'.

The Sarratt tithe map depicts the application route as a dashed line running on or very closely to its current course. The application route runs through apportionments 203 and 208 which are named in the Tithe award as 'Common Moor' and 'Common meadow' respectively. Both parcels of land are listed as being 'meadow'. There is no evidence in the Sarratt tithe apportionment specifically referring to the application route. There is no depiction of the section of what is currently recorded as FP36 heading NNE to what is now Valley Farm (although this route is depicted from this point northwards coloured sepia).

The depiction by means of a dashed line corresponds with the status of a footpath as shown in the key of conventional signs to be used in tithe plans (although as noted above, these were not strictly adhered to). When considering the Sarratt tithe map as a whole there are many routes depicted in this manner which are now recorded on the DM as public footpaths. In addition, public roads crossing open land such as the village green are depicted coloured sepia.

After the consultation period ended the applicant submitted further evidence regarding the tithe documentation, in the form of case law. In *Commission for New Towns and Another v J. J. Gallagher Ltd (2002)* it was argued that there might be a cartographic convention, adopted by at least some map makers in the 18th and early 19th centuries, which involved not marking a non-metalled highway (or, presumably, private road) when it crossed a common or a heath.

HCC considered this point and re-examined the tithe documentation in the light of it. Further examination shows that the Sarratt tithe map does not appear to follow the convention suggested in the above Case Law, as Dawes Common nearby to the NE of the application route is clearly depicted as crossed by a sepia coloured route (now part of the public highway Dawes Lane). In addition, the extent of Dawes Common is depicted in the manner of common land as shown in the key of conventional signs to be used in tithe plans, whereas the land crossed by the application route is not so depicted.

1.3 Decision

HCC decided that the Chenies tithe map provides evidence that the public road in Buckinghamshire continued into Hertfordshire but the way the route is depicted suggests it continued along what is now recorded as FP36 rather than along FP37.

The Sarratt tithe map provides evidence of the application route running very closely to or on its current course, but does not provide clear evidence that it was a public road as it is depicted as a dashed line.

In view of the above HCC decided that the tithe documentation provides no evidence supporting the application to change the currently recorded status of footpath.

2. Inland Revenue Documents

Date: 1910

Ref: HALS IR1/463

2.1 Why we consider these documents important

The Finance (1909-1910) Act 1910 was passed in order that a tax could be levied on any increase in the value of land when it changed hands. In order to ascertain the value of all land as at 30th April 1909, a survey was carried out assessing each piece of land. The OS 2nd Edition Plans (usually from 1898) were used as the base maps and annotated. Details were recorded in field books and valuation books. These books included a column which allowed a deduction in tax if a public right of way crossed the land. Every property was given a plot or 'hereditament' number which was then referred to in the valuation books and maps. Hereditaments were coloured on the maps to identify land holdings. Not all land was coloured.

Once a provisional valuation of a property had been reached, landowners were given the opportunity to appeal. The whole process was carried out under statutory authority by the Valuation Department of the Inland Revenue and there were criminal sanctions associated with the falsification of evidence. It would have been negligent to omit such land from the survey, including private roads, which might have had value. However, it was not a criminal offence not to deduct tax if a right of way did cross your property. Consequently, the resultant records carry a high level of evidential weight as to the routes which they show to exist, but are unlikely to be good evidence that rights of way do not exist.

Where a route is shown uncoloured on the plans and excluded from the taxable land this provides very strong evidence of it being public highway. Usually this will be of vehicular status unless there is other contemporary evidence to indicate otherwise. Where footpaths and bridleways cross privately owned land these may be recorded as a reduction to the tax. However, where routes cross large hereditaments it can be difficult to establish which route is considered to be the right of way without additional details.

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

The application route is depicted on the underlying OS mapping by means of double pecked lines, running through OS parcels 249 and 253 (see section 4 for more information). The application route is coloured as part of hereditaments Sarratt 10 and Chenies 81. Sarratt 10 is listed in the accompanying valuation book as being part of Sarratt Bottom Farm, which covered an area of over 100 acres. There is a deduction of £50 for Public Rights of Way or User relating to Sarratt hereditament 10 but as the hereditament is crossed by several other currently recorded public rights of way it is not possible to determine what if any of this sum is attributable to the application route.

Chenies hereditament 81 also covered an area of over 100 acres and had a deduction of £100 for Public Rights of Way or User. This hereditament is also crossed by several other currently recorded public rights of way and it is not possible to determine what if any of this sum is attributable to the application route.

2.3 Decision

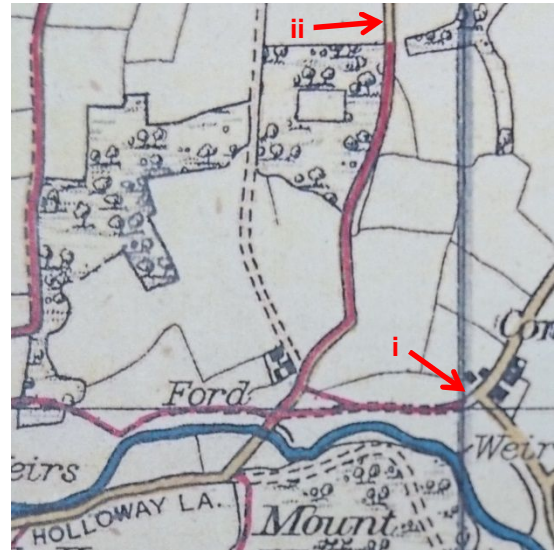
HCC decided that the Inland Revenue documentation provides no evidence supporting the application to upgrade a FP to BOAT.

3. Watford Fieldpath Association Map

Date: 1938/1950 Ref: RoW

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

Not uncovered at the time of the investigation, this document depicts the application route as a 'footpath' (although this term seems to have been used for all routes considered rights of way regardless of status). The map also distinguishes public roads with a brown colour and states that "All uncoloured paths and tracks are believed to be private". The eastern extremity of the application route is not hidden by the overlying red 'footpath' line and is clearly uncoloured (i). Conversely, the route of Sarratt FP 36 heading N from the county boundary at the ford to Rosehall Farm is depicted with solid boundaries and coloured brown (ii, overlaid by the red footpath line at the south end). This shows Holloway Lane in Buckinghamshire continuing as a public road along what is now the course of Sarratt Footpath 36.



3.2 Decision

HCC decided that this document supports the view that the application route was a private road at the time with a public footpath running along it.

4. Definitive Map Records

The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement to show and describe the public rights of way in the county. The Map is conclusive evidence of what it shows, but is without prejudice to what is not shown.

The process resulting in today's Definitive Map and Statement consists of several stages which are dealt with below:

- a) the Parish Survey
- b) the Draft Map, Provisional Map and first Map and Statement (1953)
- c) the Special Review (following the Countryside Act 1968)

4a Definitive Map Records – Sarratt Parish Survey

Date: 1953 Ref: RoW

4a.1 Why we consider these documents important

Under the National Parks and Access to the Countryside Act 1949 the county council was required to show all public paths which were defined as "footpaths", "bridleways" and "roads used as public paths". This last term was never properly defined and has resulted in much confusion ever since. There was no requirement to record public vehicular highways.

In Hertfordshire each parish carried out a survey of the paths which were believed to be public. Sometimes additional surveys were carried out by the Ramblers' Association or the Youth Hostel Association; or comments were made by them on the parish's survey. The surveys once completed were sent to the County Council for collating and publishing as the Draft Map.

4a.2 What is shown by these documents in the area of the application route?

The application route was initially numbered 17 in the Sarratt Parish Survey, which comprised a much longer route described as running south-east from Dawes (Dars) Common down what is now Dawes Lane to Sarratt Bottom, then north-west to the point where the currently recorded Sarratt FP37 meets Moor Lane at the former location of the Coach & Horses pub. From Dawes Common to this point the route was identified as a bridleway with a gravel surface (N.B. this section is currently all purpose highway and is not recorded on the Definitive Map (DM)). From the pub the application route is then described as running generally W past F.P.36 (adjacent to where the application route meets the county boundary at the River Chess) and gives it the status of a footpath. It is described as undefinable across the pasture land. The parish Survey goes on to then describe the remainder of the currently recorded course of Sarratt FP37 running W along the N of the Chess towards Limeshill Wood and the county boundary.

4a.3 Decision

HCC decided that the Parish Survey documentation provides no evidence supporting the application to upgrade a FP to BOAT.

4b Definitive Map Records – Draft, Provisional and First Definitive Map

Date: Ref: RoW

4b.1 Why we consider these documents important

The parish surveys were collated into the Draft Map and Statement. Notices were published advertising that the Draft Map and Statement had been produced so that the public (including landowners) could object to what was included or to what was omitted. Hearings were held to consider these objections and recommendations were made based on the evidence presented.

The Draft Map and Statement was amended following the hearings to produce the Provisional Map and Statement. As before, notice of the production of the Provisional Map and Statement was advertised but this time only landowners, lessees and tenants could apply to the quarter sessions court to amend the map – the public could not. The map and statement were then amended to reflect the court's finding.

Please note that these records vary across the county as a full sequence of Draft Map and then Provisional Map has not always been kept.

After the amendments to the Provisional Map and Statement were made, the First Definitive Map and Statement for Hertfordshire was produced. The Map and Statement together provide conclusive evidence of the existence of those public rights of way shown at the 'relevant date' of 1953; i.e. the information shown was correct at that date.

4b.2 What is shown by these documents in the area of the application route?

FP37 is depicted as it is now (although alterations have been marked on the Draft map relating to FP36 and FP 59, both of which have junctions with the application route). The application route is depicted on the 1st Definitive Map as a dashed line running between the county boundary at the ford and a junction with Moor Lane (there is no clear distinction between the courses of what are now FP36 and FP37 at this point due to the width of the lines used to show the course of the routes). The application route is annotated "37" and runs along a track depicted on the underlying OS mapping. The section of Sarratt 37 between Dawes Common and the junction with Moor Lane designated as bridleway in the Parish Survey has also been marked with a dashed line which has subsequently been crossed out. In the accompanying Statement Sarratt 37 is described as commencing at Dawes Common as a bridleway, as in the Parish Survey, but a handwritten note states that the 'BR pt now county rd'.

FP36 (course amended) and FP59 (added) were subject to changes made following representations by the Watford Fieldpath Association during the process of producing the 1st Definitive Map. It is notable that the designation of the adjacent application route was not challenged during this process, despite it being in an area of scrutiny.

4b.3 Decision

HCC decided that the documentation provides no evidence to support upgrading the application route to BOAT.

4c Definitive Map Records - Special Review

Date: 1968 - 84

Ref: RoW

4c.1 Why we consider these documents important

The Countryside Act 1968 created the new designation right of way to be recorded - a "byway open to all traffic". This was the first time that vehicular rights were recorded on the Definitive Map. It also required county councils to carry out a Special Review to reclassify all "roads used as public paths" as either "footpaths", "bridleways" or "byways open to all traffic". In Hertfordshire the Special Review was started in 1977. This was later extended to include all the amendments to the network made by diversions since the first Definitive Map. It also showed if applications had been made to add or amend details of routes. Copies of the Special Review Draft Map showing all these changes were published, inviting objections from the public. Due to the number of objections received and not resolved, the Secretary of State ordered the abandonment of the Special Review in Hertfordshire in 1984. The Definitive Map and Statement was amended to show all changes which did not have outstanding objections, and these were shown on the Definitive Map and Statement produced in 1986.

4c.2 What is shown by these documents in the area of the application route?

The application route is depicted on the Special Review map by as a dashed line denoting public footpath. Footpaths 36 and 59 in the vicinity are also depicted by the same style of dashed lines. The status of FP36 and FP37 were considered at the time of the Special Review for re-categorisation as bridleways following representations by the British Horse Society, but this proposal was rejected. The files do not contain more detailed information as to why this decision was reached.

4c.3 Decision

Although the application route was considered for re-categorisation as part of the Special Review process it was considered that there was insufficient evidence and the status of the application route remained that of footpath.

HCC decided that the Special Review documentation provides no evidence to support the application.

5. Ordnance Survey maps

Date: 1870 to date

Ref: RoW, HALS

5.1 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 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 Ordnance Survey 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. Ordnance Survey 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.

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

The application route is depicted as a double pecked line on the OS 1st Edition 1:2500 scale map running through land parcels 250 and 253. These are both listed in the accompanying field book as 'Pasture'. The OS 2nd Edition 1:2500 map depicts the application route in the same manner although the land parcel numbers have changed to 249 and 252. There is no annotation of the route on the underlying mapping (unlike what is now the section of Sarratt FP37 to the W of the application route which is depicted on the underlying mapping with double pecked lines and annotated as FP).

The application route is also depicted by double pecked lines on OS 1:10000 mapping dating from the 1870s to the 1950s.

5.3 Decision

HCC decided that the documentation provides good evidence of the existence of the application route but no evidence supporting the application to change its status.

6. Contemporary Evidence of Use

6.1 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.

6.2 Summary of Evidence

A total of 16 witnesses have submitted evidence forms in support of this application, citing use across all users dating between 1929 and the submission of the forms in 2016. Of the 16, 4 claim 20+ year's continuous use other than on foot. One witness cited 21 years use on bicycle and one witness cited 7 years use by car (although this was in a professional capacity). Six witnesses gave quantifiable evidence regarding width of the application route, quoted figures varying between 6ft and 10ft (approximately). Twelve of the 16 witnesses refer to a closed gate at the ford (at point A on the attached plan). One of the 20+ years witnesses refers to being verbally challenged. Notices challenging use are referred to by 5 of the 16 users.

Evidence forms were also submitted by 6 people opposed to the application. Of these, all referred to notices discouraging use by the public except on foot and that the route was obstructed in the vicinity of the ford by a gate and/or blocks.

It has not been possible to determine the date the gate was erected at the ford, although one supporting witness cited 1970. One user submitted a chronology of the application route from 1807 to 2001 which dated the padlocking of a gate at the ford sometime between 1972 and

1974. The application route is also gated at the Moor Lane end (point C on the plan) but there is no clear evidence of when this was installed or of it ever being closed.

A total of five supporting and six opposing witnesses refer to the existence of notices, primarily at the Moor Lane end of the route. These stated 'Private Road'. No firm evidence of when these were said to be erected has emerged but one witness suggested sometime in the 1980s. One witness reported being challenged when using the route on bicycle.

6.3 Decision

Section 31 of the HA 1980 states that for public rights to accrue over a route there should be evidence of use as of right over a period not less than 20 years. Such evidence of use raises a presumption that public rights have been dedicated by the landowner, unless the landowner can show that he had no intention to dedicate the route during the period in question. Section 31(2) states that the 20 year period is calculated retrospectively from the date of challenge. As the date of challenge for this case has been determined as 1974 the relevant period of use is 1954 - 1974.

The application was to record a Byway Open to All Traffic (BOAT), however only one witness claimed twenty+ years use in a vehicle. As such, the total vehicular use claimed is insufficient for HCC to record the application route as a BOAT. Of the 16 user evidence forms supporting the application, only 2 witnesses used the route other than on foot during the relevant period of 1954 – 1974, one on horseback and one using a bicycle. HCC therefore decided that there is insufficient evidence of 20 years' use of the application route during the relevant period to make an order to change the existing public right of way on foot.

HCC also decided that there is sufficient evidence to show that the landowner had no intention to dedicate a public right of way under section 31 of the HA 1980, through their actions in maintaining gates and notices.

7.0

Conclusion of Decision

HCC has concluded that no new historical evidence has emerged which would call into question the decision on the status of this route taken at the time of the Special Review investigation. As such, HCC decided that the historical documentary evidence did not show that public highway rights over and above those currently recorded exist between points A-C on the Decision Plan.

HCC also decided that there is insufficient evidence to raise a presumption of an intention to dedicate a Byway Open to All Traffic (BOAT), and that there is also insufficient evidence to show that public rights higher than those of footpath which are currently recorded have been acquired, either under statute or common law.

As a consequence of the above decisions, the question of whether exemptions to the NERC Act apply in this case does not arise.

HCC decided that on the basis of the above that there is insufficient evidence to make a modification order under section 53 of the Wildlife & Countryside Act 1981.