

# **HERTFORDSHIRE COUNTY COUNCIL**



## **Rights of Way Service**

Modification Order Application  
Investigation Report

Leaf Way, St Albans

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### Application Details

An application has been made to record a byway open to all traffic (BOAT) in St Albans. The application route ('the route') runs between the rear of properties on Vesta Avenue, Tavistock Avenue, Vesta Lodge and St Adrian's School playing field, with connections to Vesta Avenue, Tavistock Avenue and St Albans Public Footpath 46. An extract of the 2015 Definitive Map is attached. It shows where the route is, labelled Point A to Point E.

This application was made by Norma Hrycia on 16<sup>th</sup> April 2006. The application was subsequently deemed not to have been made in the prescribed form and elements of the accompanying documentation were returned to the applicant. The application remained on file, however there was no further response from Mrs Hrycia. In January 2007 a HCC Rights of Way officer discussed the application with two local residents who wished to pursue the matter further. They were advised to resubmit the application in the prescribed form and obtain further evidence of use, although the only documentation subsequently submitted was one user evidence form (details in section 11 below).

### Background information

The application was prompted by development work in the immediate vicinity of the route which caused disruption to use and brought into question the public and private access rights, together with land ownership issues. This investigation is not concerned with land ownership or private access issues and is solely regarding whether unrecorded public rights of way exist over the route.

### Description of Route

The route is located in the St Julians area of St Albans. The immediate area largely comprises 1930s housing and local shops, and the route dates from this period.

The application commences at a junction with Vesta Avenue adjacent to a row of shops (point A on the accompanying plan) and heads SE between Costcutter and number 21 for approximately 60m to point B on the plan. The route here is a mix of natural and broken up hardcore, bounded by a combination of lap fencing, walls and bushes. The route then turns E, curving to SE between the rear fence line of properties on Vesta Avenue and Tavistock Avenue to the N & NE and the boundary fence of Vesta House to the S/SW. After approximately 40m the route surface turns increasingly to granite chippings before reaching two metal cylinders set in the ground approximately 2m apart, adjacent to number 2 Leaf Way. Adjacent to the frontage of number 2 the surfacing changes to tarmac and remains so for the rest of the route, providing a means of vehicular access to properties on Leaf Way. Continuing SE the route has a spur heading 60m NE between numbers 42 and 44 Tavistock Avenue to join that road (points C & D on the plan). The route continues SE from point C for 85m to a junction with St Albans footpath 46 adjacent to number 7 Leaf Way (point E on the plan). There is road name signage on both sides of the route at point D stating "Leaf Way Private Road" along with a dead end symbol, based on its style and condition this appears to have been installed relatively recently. There is no other signage on the route.

Width varies between approximately 4.5 and 6.5m.

## Documentary Evidence

For each investigation, we check 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

The following historical documentary sources have been investigated but do not provide evidence with regard to the application route either because they pre-date the housing development (sources 1 – 7), or contemporary records exist but none have been found which refer to the application route (8, 9):

1. **Dury and Andrews' Map, 1766**
2. **Inclosure records 1799/1804**
3. **Bryant's Map, 1822**
4. **Tithe map for Cheshunt, 1842**
6. **Railway and canal plans**
7. **Inland Revenue Documents**
8. **Definitive Map Records**
9. **Highway Diversion/Extinguishment Records**

### 10. Ordnance Survey maps

Date: Various

Ref: HALS

#### **10.1 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 20<sup>th</sup> 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 2<sup>nd</sup> 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.

### **10.2 What is shown by these documents in the area of the application route?**

On the 1st and 2nd edition OS 1:2500 scale maps the area was depicted as fields, with a footpath running generally East-West across the immediate vicinity of the route, joining another footpath at its western end running approximately along the course now followed by part of Vesta Avenue. An OS map of 1:2500 scale dating from the 1930s held by HCC is the first edition produced since the houses were built, and depicts the section of route running from between numbers 21 & 23a Tavistock Avenue and between numbers 42 & 44. The area behind the gardens of the houses on Tavistock Avenue is depicted as open with no depiction of any route on the ground or any fencing in of a route. OS 1:10000 scale mapping dating from the 1970s depicts the route bounded on both sides.

### **10.3 Investigating officer's comments**

These maps confirm physical existence of at least part the application route going back to the 1930s and all the route since at least the 1970s, but provide no evidence as to public rights.

## 11. Contemporary Evidence of Use

### **11.1 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.

### **11.2 Summary of Evidence**

An unspecified small number of user evidence forms were supplied at the time of the modification order application but these were returned to the applicant due to a significant number of defects in the documentation. At the time of writing only one user evidence form is on file in support of the application. This was supplied by a resident of Tavistock Avenue who cites use of the route between 1987 and 2009 to access schools and shops. Frequency of use varied between at least weekly to daily on foot and monthly on a bicycle. The evidence cites a width of approximately 5m but claims that this has been narrowed in places by development encroaching on it. The user had been challenged by the developer, who had closed off part of the route adjacent to number 5 Leaf Way during building work in 2004. The user did not see any notices. The route is open and available for use although the bollards adjacent to number 2 Leaf Way prevent vehicular through use between Tavistock Avenue and Vesta Avenue.

### **11.3 Investigating officer's comments**

The user who provided evidence claims 20+ years continuous use up to the date of application (2006). The user reported challenge by the developer of properties on Leaf Way (who is not the registered landowner of any section of the route).

## **12. Other relevant evidence**

### *Landownership & Private Rights of Way*

Only one section of route is registered, that between points A & B on the plan. This section of route provides access to an electricity sub-station adjacent to point B. There is no registered landowner for the remainder of the land crossed by the route and at the time of production of this report have been unable to locate any further landowners or any successors in title. A number of properties on Leaf Way claim a private right of access over part of the route. Any existing private rights of access are unaffected by this application.

There are no section 31 deposits in relation to the land over which the application route passes.

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

*Please note any evidence submitted following the consultation will be appended to this report and included for consideration at the decision meeting.*

