

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Order Investigation Report

Marsh Lane, Stanstead Abbots

Author: Helen Denton

Date: 19th May 2012

Application Details

An application has been made to record a two footpaths south of the Maltings Industrial Estate, off Marsh Lane in Stanstead Abbots. An extract of the 2010 Definitive Map is attached. It shows where Routes A and B are and they are labelled points 1-4.

This application was made by Mr and Mrs Patmore of Marsh Lane, Stanstead Abbots on 30th August 2002. It was submitted in the prescribed form.

Description of Route

The application route is split into two routes, Route A and Route B. The witness evidence in section 11 below shows that whilst everyone who supplied user evidence forms used Route A, only around half used Route B.

At the time of the application both routes were accessed via Marsh Lane, which is an unmade residential road leading off Roydon Road in the village of Stanstead Abbots. Route A runs through traditional meadowland, with a small copse on part of it, whereas Route B runs around a fishing lake which is now fenced off to public access.



Route A is a narrow circular track around the perimeter of the meadow. At point 1 is a gap in the hedge with a handwritten sign that reads "please clean up after your dog". There is a sheep wire fence barring access into the meadow, but this has been curled up so that it is possible to step over it. Approximately 5 metres to the west of this entry point a wooden gate has been erected in the fence, although this has now been fenced off.

The witness evidence forms suggest that it was once possible to access Route B via a bridge at point 4. This bridge was removed in 2002. There is a deep ditch between Marsh Lane and the fishing lake and it is not now possible to access Route B this way. Access can be gained via French & Jupps' buildings on the Maltings Industrial Estate, but through a gate that is padlocked. It was not possible to access the route for further inspection at the time of the site visit.



Documentary Evidence

For each investigation, we check at least 10 primary sources of information. 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/leisureculture/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.

You will find each document 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 are no records for the document listed, this will just be recorded as "No records found."

1. Dury and Andrews Map

Date: 1766

Ref: HALS - CM26

1.1 Why we consider this document important

Dury and Andrews' 1766 county map of Hertfordshire, describes itself as 'a Topographical map of Hartford-Shire, from Actual survey; In which is Expressed all the roads, lanes, churches, noblemen and gentlemen's seats, and every Thing remarkable in the County.'. It is a map of Hertfordshire made from an original survey, although it is a schematic map (like the London Underground map) rather than one to scale. It shows the basic layout of roads but details like field boundaries were probably decorative. The "explanation" (or legend) lists 'Roads' in 3 categories – "open", "one side enclosed by a Hedge", and "enclosed by Hedges". It does not appear to show routes which, at the time, were thought to be footpaths or bridleways. The map was produced to be sold to members of the public which mean that it is likely the routes shown were both public and publicly maintainable.

1.2 What is shown by this document in the area of the application route?

Roydon Road and Marsh Lane are shown. Marsh Lane is shown as a through-route to Hoddesdon. The application routes are not shown.



1.3 Investigating Officer's comments

The application routes are not shown, but this is unsurprising as Dury & Andrews did not usually show footpaths.

2. Bryant's Map

Date: 1822

Ref: HALS - CM88

2.1 Why we consider this document important

Andrew Bryant's 1822 map of Hertfordshire was again drawn from an original survey. Its depiction is much more accurate (like an Ordnance Survey map) rather than being schematic. This may be due to survey equipment (theodolites) becoming commercially available in the 1790s. The "explanation" (or legend) lists "Turnpike and Mail Roads", "Good Cross or Driving Roads" and "Lanes & Bridleways". It is unlikely that it shows routes which, at the time, were thought to be footpaths. Like Dury and Andrews' map, Bryant's map was sold to members of the public and cost 3-4 guineas. The commercial nature of the map means that routes shown are usually public and publicly maintainable, unless there is strong contemporary evidence which shows that routes are private.



2.2 What is shown by this document in the area of the application route?

The scale of Bryant's map is small and there is not much detail shown in the area of the application route. Roydon Road and Cats Hill is shown, but the application routes are not.

2.3 Investigating Officer's comments

The application routes are not shown, but like Dury & Andrews' map this is not unusual, as Bryant did not tend to

show footpaths.

3. Stanstead Abbots Tithe Map and Tithe Apportionment

Date: 1840

Ref: HALS DSA4/97/2

3.1 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. 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. 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. In some cases highways are coloured yellow or sienna to indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the calculation of tithe rent.



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

Roydon Road and Marsh Lane are shown, although the latter is shown as a much shorter route than today, ending just beyond the houses on Marsh Lane near point 1. The application routes are not shown, but the plots that they would pass through are numbered 429, 430 and 431. Plot 429 is garden land in the ownership of Daniel Hankin. Plot 430 is orchard in the ownership of Daniel Hankin and occupation of William Mason. Plot 431 is land known as The Meads in the ownership and

occupation of Daniel Hankin.

3.3 Investigating Officer's comments

The application routes are not shown on the tithe map and are not referred to in the award. This is not unusual for footpaths, however, as the existence of a footpath across a plot of land does not usually detract from its agricultural use.

4. Highway Diversion/Extinguishment Records

No records have been found.

5. Stanstead Abbots Inclosure Records

Date: 1872

Award and Maps ref: QS/E/62.

This inclosure post-dates the 1845 General Inclosure Act and so no private act was necessary.

5.1 Why we consider these documents important

Enclosure was the process of physically changing the landscape to benefit the development of modern farming practices as technology improved. It was popular from the late medieval period to the 19th century and carried out on a parish-by-parish basis. As it changed the layout and size of fields it also changed the routes of roads and rights of way.

Inclosure could be carried out by agreement, but where this was not possible an Act of Parliament was needed to grant the powers to make the desired changes. Through time such Acts became more popular than agreements. Prior to 1801 these powers were granted to each parish individually by private Acts of Parliament. In 1801 the first General Act was passed which could be used by any parish. Further General Acts were passed in 1836 and 1845. However, private Acts continued to be obtained if the required powers were not granted by the General Acts. They are important evidence to show us what could and could not be done.

Inclosure was recorded through an Award and a Map. The Award is the written record of the changes that were made. It lists the lands that were given to each landowner, the roads and rights of way that were stopped up and those that were set out, or created. The Map (which was not legally required until 1845) shows pictorially the changes made.

As inclosure was a detailed legal process with powers granted by Parliament, it can give us conclusive evidence of a right of way.

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

The majority of the area over which the application routes lie is outside the area of inclosure and is not therefore shown. Roydon Road south of Marsh Lane is shown. Marsh Lane is shown in the same manner as the tithe map. A small area of the land over which the application routes would pass is shown. It is numbered 1, which the accompanying award states is part of the residue of Stanstead Marsh purchased by Thomas Jowell Buxton from Henry Cox Wilkinson. No highways are shown crossing this plot.



5.3 Investigating Officer's comments

As the majority of the land over which the application routes lie is not shown on the map no comments can be made as to whether public rights of way existed over it at the time of inclosure. It can be said, however, that over plot 1 adjacent to Marsh Lane no highways were stopped up or created under inclosure.

6. Railway and Canal Plans

There are no railways or canals in the area.

7. Inland Revenue Documents

Date: 1909-10

Ref: HALS IR1/329, IR2/69/1

7.1 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

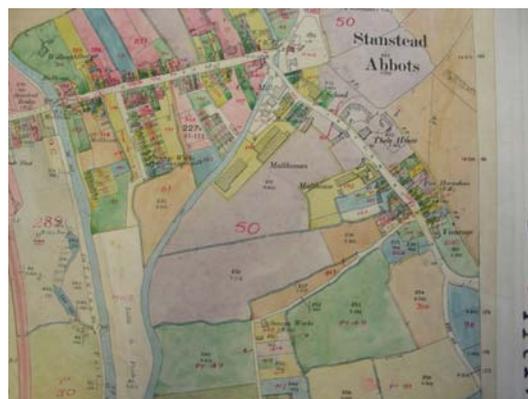
Plans (usually from 1898) were used as the base maps and annotated. Details were recorded in field books and valuation books. These books included a column which allowed a deduction in tax if a public right of way crossed the land. Every property was given a plot or 'hereditament' number which was then 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.

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

Roydon Road is shown, as is Marsh Lane, in the same manner that it is shown on modern maps. The application routes are not shown. The land over which they pass is split into two plots, numbered 50 and 413. Plot 50 is a large plot to the east and west of Roydon Road. It is described in the award as Thele Farm in the ownership of J Buxton and the occupation of B Hunford. There is a deduction of £100 for public rights of way. Plot 413 is allotments, again in the ownership of J Buxton, but in the occupation of "various". There are no deductions for public rights of way.



7.3 Investigating Officer's comments

The application routes are not shown on the Inland Revenue map. This is not unusual in the case of routes of a lower status. Plot 50 has a fairly large deduction for public rights of way, but as the hereditament is large this is not unusual. It cannot be said whether part of the deduction relates to the application routes, as there are no notes in the valuation book. There are no deductions for public rights of way for plot 413, which is compatible with the land being used for allotments.

8. Highways Maintenance Records

No records have been found.

9. 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)

9a Definitive Map Records – Stanstead Abbots Parish Survey

Date: 1950s Ref: RoW

9a.1 Why we consider these documents important

Under the National Parks and Access to the Countryside Act 1949 the county 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.

9a.2 What is shown by these documents in the area of the application route?

The area of land over which the application routes run is shown on the Parish Survey map, but the application routes themselves are not shown and are not referred to in the accompanying paperwork.

9a.3 Investigating officer's comments

The application routes do not appear to have been considered for inclusion on the first Definitive Map at the time of the Parish Survey. This does not necessarily mean that no routes existed, just that they were not discussed by the parish.

9b Definitive Map Records – Draft, Provisional and First Definitive Map

Date: 1953 Ref: RoW

9b.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 crown 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.

9b.2 What is shown by these documents in the area of the application route?

The land over which Route A runs is annotated on the Ordnance Survey map used by the first Definitive Map as "allotment gardens". No public rights of way are recorded.

9b.3 Investigating officer's comments

Much of the land over which Route A runs was being used for allotments at the time which may explain why the existence or not of public rights of way appears not to have been considered.

9c Definitive Map Records - Special Review

Date: 1968-1972 Ref: RoW

9c.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.

9c.2 What is shown by these documents in the area of the application route?

The application routes are not shown on the accompanying Special Review map or referred to in the accompanying documentation.

9c.3 Investigating officer's comments

The application routes were not considered as part of the Special Review. This does not necessarily mean that no routes existed, just that they were not included within the Review.

10. Ordnance Survey maps

Date: 1880, 1898, 1920-1, 1938-9, 1973 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 20th century that the OS evolved to become a public service that sold its mapping information for the benefit of 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) 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?

The OS maps show the area over which the applications routes run. The first edition reference book unfortunately only gives plot acreage rather than land description. The land is marked as allotment gardens on the 1938 map, but by the 1972 edition reference is made to there being a gravel pit in the vicinity. None of the maps show any paths crossing the land.

10.3 Investigating officer's comments

The use of the land appears to have changed over time but the Ordnance Survey have never shown paths crossing it, suggesting that no permanent paths had come into existence.

11. User Evidence

11.1 Why we consider the evidence important

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'. 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). This can be shorter under common law where use is sufficient and obvious to the owner that it is happening. The 'date of challenge' is the date at which the landowner challenges the use of the route (see section 12. Landowner Challenge to Public's Use of a Route, below). Where there is no evidence that use has been challenged, the Natural Environment and Rural Communities Act 2006 specifies that the date of application should be used as the end of the 20 year period.

User evidence is generally provided through the completion of evidence questionnaires. Below is a table summarising the forms we have received.

11.2 Table

15 user evidence forms were presented with the application. All witnesses used the application routes on foot; no other type of use is apparent. Many witnesses also described the football posts that lay in the middle of Route A and how this area of land was frequently used by the Scouts and by other people for social events.

Several witnesses refer to the removal of a bridge and the erection of a wire fence and notice. This appears to have happened in early to mid 2002 on Route B, at point 4 on the plan. No witnesses referred to obstructions or challenges on Route A.

Witness No.	Years used Route A	Years used Route B	Challenges, notices, obstructions (Route B)	Width of route
1	1979-2002 (23 years)	0	No comments made	2 feet
2	1989-2002 (13)	0	No comments made	2 feet

	years)			
3	1981-1999 (18 years)	1981-1999 (18 years)	No	3 feet
4	1977-2002 (25 years)	0	No comments made	2 feet
5	1982-2002 (20 years)	1982-2002 (20 years)	"Private fishing" notice, still there	1-2 feet
6	1982-1990 (8 years) 1999-2002 (3 years)	1982-1990 (8 years) 1999-2002 (3 years)	"No public right of access" signs and wire fence by bridge June-Aug 2002	2 feet
7	1980-2002 (22 years)	0	No comments made	1.5 feet
8	1981-2002 (21 years)	1981-2002 (21 years)	"No public right of way" and "private fishing" signs; wire fence erected and bridge removed 2002	1-2 feet
9	1979-2002 (23 years)	0	No comments made	3 feet
10	1978-2002 (24 years)	1978-2000 (22 years)	Notice put up but unreadable; bridge removed and fence added April or May 2002	1.5-2 feet
11	1980-2002 (22 years)	0	No comments made	1.5-2 feet
12	1980-2002 (22 years)	1980-2002 (22 years)	No	2-3 feet
13	1987-2002 (15 years)	1987-2002 (15 years)	"Private signs" at western entrance to lake; early 2002 bridge removed and barbed wire erected	2 feet
14	1979-2002 (23 years)	1979-2001 (22 years)	Bridge removed and fence put up	3 feet
15	1977-1986 (9 years)	1977-1986 (9 years)	No comments made	Didn't say

11.3 Investigating officer's comments

Route A has received more use from the public, with evidence of 10 separate periods of 20 year use, in comparison to Route B, for which there is evidence of 5 separate periods of 20 year use. Use of Route A never appears to have been formally challenged, and there is evidence to suggest that the land over which it runs was used as a general recreation area by the Scouts, children and people in the locality (a village green application was made by the Parish Council in 2005 but it was not duly made and so was not accepted; no further application has been received since). Use of Route B appears to have been challenged in early to mid 2002, when the bridge at point 4 was removed and a barbed wire fence and notices erected.

12. Landowner Challenge to Public's Use of a Route

Date: 2002

Ref: RoW

12.1 Why we consider the evidence important

Landowners can take steps to prevent the accrual of new public rights of way through use of a route by the public. 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 would not affect pre-existing rights.

12.2 What is shown by the documented evidence in the area of the application route?

The user evidence forms show that in early to mid 2002 the bridge at point 4 was removed and replaced with a barbed wire fence and notices to the effect that public access was not allowed. Witness evidence suggests that the landowners carried out these works. The Land Registry title documents show that most of the land has been owned by French & Jupps Ltd of The Maltings, Roydon Road, Stanstead Abbots, since 1998. No section 31 deposits have been made in respect of the land.

12.3 Investigating officer's comments

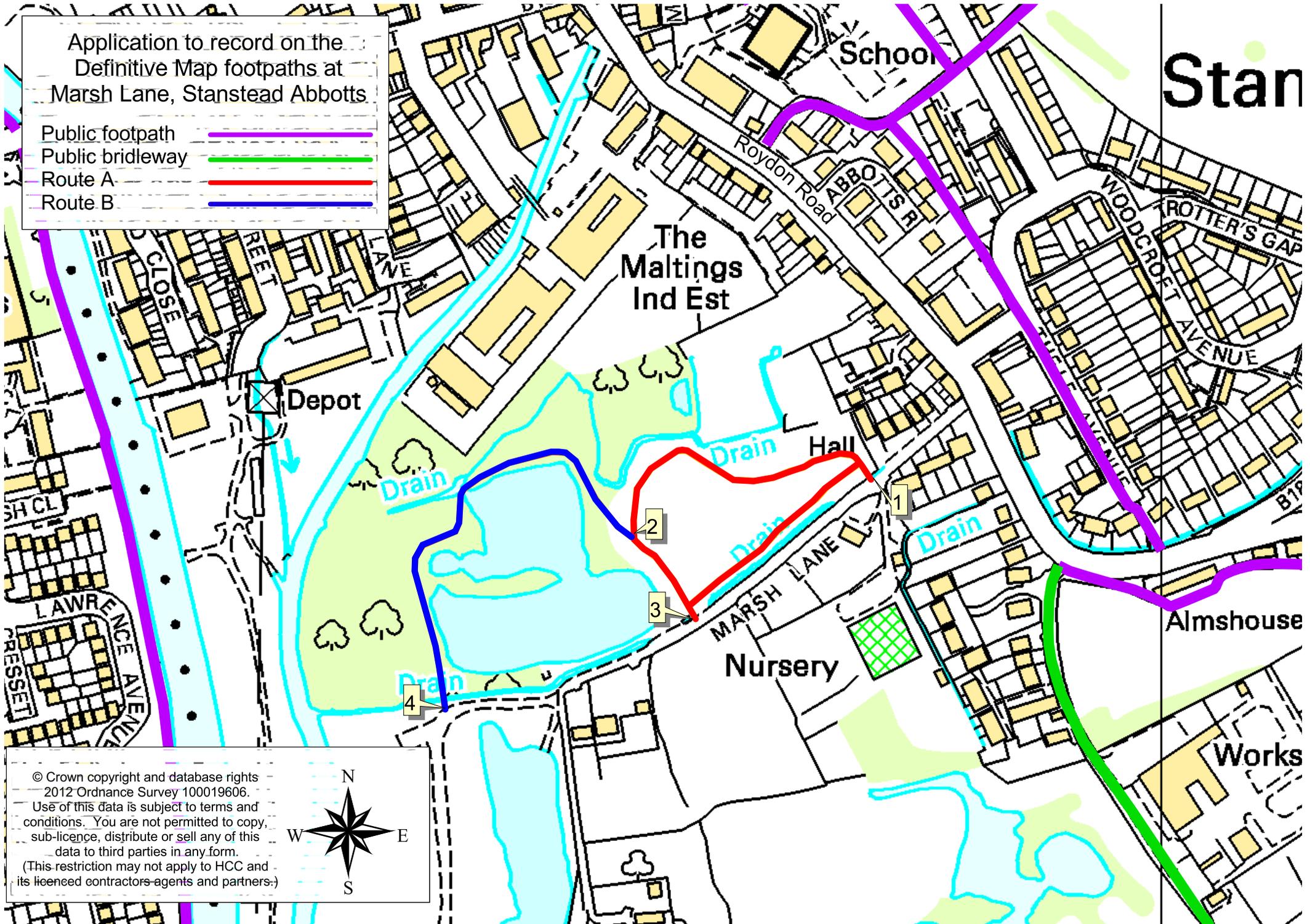
Whilst French & Jupps purchased the freehold in 1998 they challenged public use of Route B in 2002. Therefore, when considering the evidence of use of the route, it would seem that 2002 would represent the date of challenge for Route B at least.

Additional Evidence Submitted after consultation

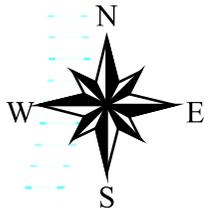
Please note any evidence submitted following the consultation is to be listed here (for consideration at the decision meeting).

Application to record on the
Definitive Map footpaths at
Marsh Lane, Stanstead Abbots

- Public footpath 
- Public bridleway 
- Route A 
- Route B 



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Stan

Almshouse

Works

School

The Maltings
Ind Est

Depot

Nursery

Hall

MARSH LANE

Roydon Road

ABBOT'S R

WOODCROFT AVENUE

ROTTER'S GAP

CLOSE

RETT

AVE

LAWRENCE AVENUE

RESSET

SH CL

B19

Drain

Drain

Drain

Drain

Drain

2

3

1

4