

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Modification Order Application

Reasons for the Decision Report

Stanstead Abbots Footpath 7 Upgrade

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Application Details

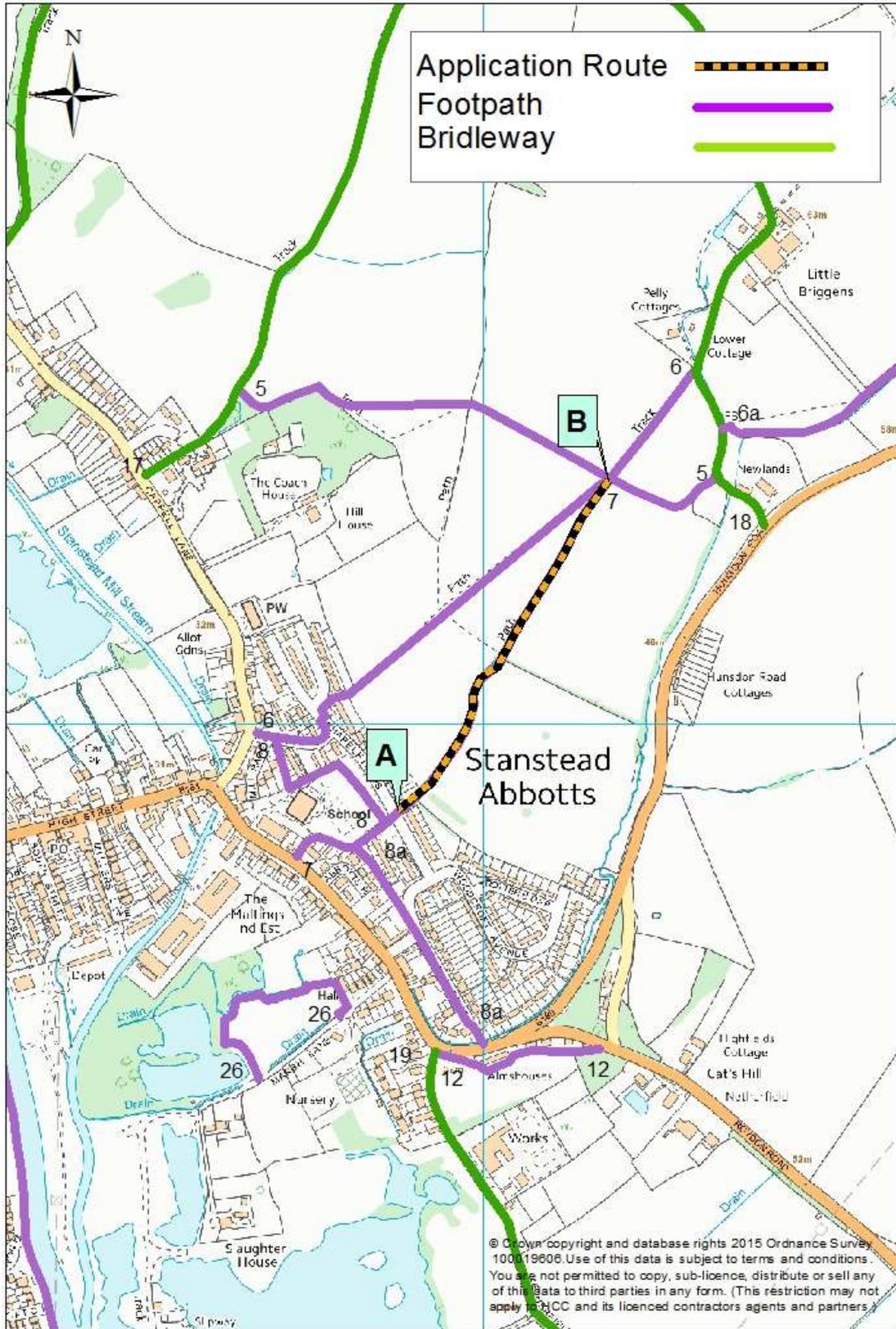
An application has been made to upgrade part of a footpath (currently recorded on the Definitive Map and Statement as Stanstead Abbots FP7) in the parish of Stanstead Abbots in East Hertfordshire to a bridleway. An extract of the 2010 Definitive Map is attached. It shows where the route is and it is labelled Point A-B.

The application was made by Mrs K Bullock and Mr R Brett on 19 April 1996. 27 User evidence forms were received with the application. The application made was for a route running between Points A-B, and ending at the junction with footpaths 5 and 6. The route will be referred to in this report as the Application Route.

Description of Route

The Application Route crosses farmland situated in Stanstead Abbots, a small village which is approximately 6 miles south east of the county town of Hertford. The Application Route begins from a road called Chapelfields (Point A), where it is currently signposted as a footpath with a sign saying, "No Horses". The Application Route then runs north-eastwards between houses, crossing a wide area of land with trees/hedges either side. It rises quite steeply for approximately 60 metres, and pedestrian steps have been installed on the route on the steepest part. The Application Route then continues along field headlands and crosses a field boundary generally north east to join footpaths 5 and 6 (Point B) where it meets an unsurfaced track leading to bridleway 18.

The current used width of the path varies between 2 metres and 4 metres, although no width is recorded for footpath 7 in the Definitive Statement. At the time of this investigation there was no evidence of equestrian use of the 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/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 are no records for the document listed, this will just be 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. Stanstead Abbots Inclosure map. Date: 1865. Ref: QS/E/62**
No evidence found relating to the Application Route.
- 4. Highway Diversion/Extinguishment Records**
No records found.
- 5. Railway and canal plans**
No records found.
- 6. Highways Maintenance Records**
No records found.

7. Ware Tithe Map and Tithe Apportionment

Date: 1845

Ref: HALS – PC35A

7.1 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.

7.2 What is shown by these documents in the area of the Application Route?



Part of the route of footpath 7 is shown coloured sienna running generally north east from its junction with the Roydon Road. The Roydon Road is also coloured sienna. Footpath 7 is shown bounded by solid lines between plots 267, 268 and 269 then between plots 258 and 268 bounded by a solid line on one side only until it meets the boundary of plot 258, depicted by a solid line. The Application Route commences a short

distance along the south east boundary of plot 268 and north west boundary of plot 258. It is not mentioned in the award for the adjoining plots. There is no depiction of the Application Route beyond plot 258.

7.3 Decision

HCC decided that this document provides little evidence to support the Application Route.

8. Inland Revenue Documents

Date: 1910

Ref: HALS IR1329/330

8.1 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.

8.2 What is shown by these documents in the area of the Application Route?

Part of the route of footpath 7 is shown on the Ordnance Survey base map from a junction with the Roydon Road between the School and Thele House. This section of the footpath is shown bounded on all sides by a solid line. It is part of hereditament plot number 50 coloured mauve. The award records the owner of this hereditament as J Buxton, a claim of £100 for rights of way or user is recorded. The Application Route from Point A is shown as a pecked line. The Application Route crosses a route which is shown in the same style as the Application Route and labelled FP. At this crossing point there is a solid line across the Application Route. The Application Route continues generally north east as a pecked line to Point B. The Application Route runs through hereditament 49. The award records the owner of this hereditament as J Buxton and a claim of £175 for rights of way or user is recorded.

8.3 Decision

The Ordnance Survey base map shows the Application Route running through hereditaments 49 and 50. There are deductions for rights of way for both of these hereditaments. Both of the hereditaments are extensive and contain several routes marked as footpath therefore it is unclear which rights of way are being claimed for in the award.

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: 1950

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?



Footpath 7 is marked blue and shown from a junction with Vicarage Lane (Roydon Road), then generally north east to Point A the start of the Application Route. Footpath 7 is shown following the field boundary to a junction with another footpath at this junction; a solid line is shown on the mapping which may represent a gate. The Application Route then continues as a field edge path to Point B. There is an amount of re-numbering present on the Parish Survey map; it would seem the Application Route was originally part of footpath 6.

9a.3 Decision

HCC decided that the Parish Survey map shows the Application Route between Points A and B as a part of (the route currently recorded as) footpath 7.

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

Date: 1953

Ref: ROW Office

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 Application Route is shown as part of Footpath 7.

9b.3 Decision

HCC decided that the Application Route existed as a right of way of footpath status.

9c Definitive Map Records - Special Review

Date: 1977

Ref: ROW Office

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 Route is shown as part of Footpath 7 on the Special Review Map. No challenges or objections were recorded at this time regarding this route.

9c.3 Decision

HCC decided that the Application Route existed as a right of way of footpath status.

10. Ordnance Survey maps

Ref: available in HALS

Date: 1898
1921
1938
1973

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 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.

10.2 What is shown by these documents in the area of the Application Route?

1:2500

1898 – Shows that section of the Application Route between points A –B as part of a longer route running from Roydon Road generally north east to Little Briggens. The map shows a pecked line running along the eastern side of the field boundary. The Application Route is not labelled although other routes in the vicinity are labelled FP. The Application Route continues generally north east shown in the same style however the field boundary is now on its eastern side.

1921 – As above

1938 - As above

1973 - Shows that section of the Application Route between points A –B as part of a longer route running from Roydon Road generally north east to Little Briggens. It shows a single pecked line to a junction where the Application Route crosses a route labelled as, 'path'. The Application Route continues generally north east as parallel pecked lines; at the eastern side of the route it is labelled, 'path' and continues in this style to point B.

10.3 Decision

HCC decided that the Ordnance Survey documentation provides good evidence of the physical existence of the Application Route but does not provide any evidence of public status.

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.

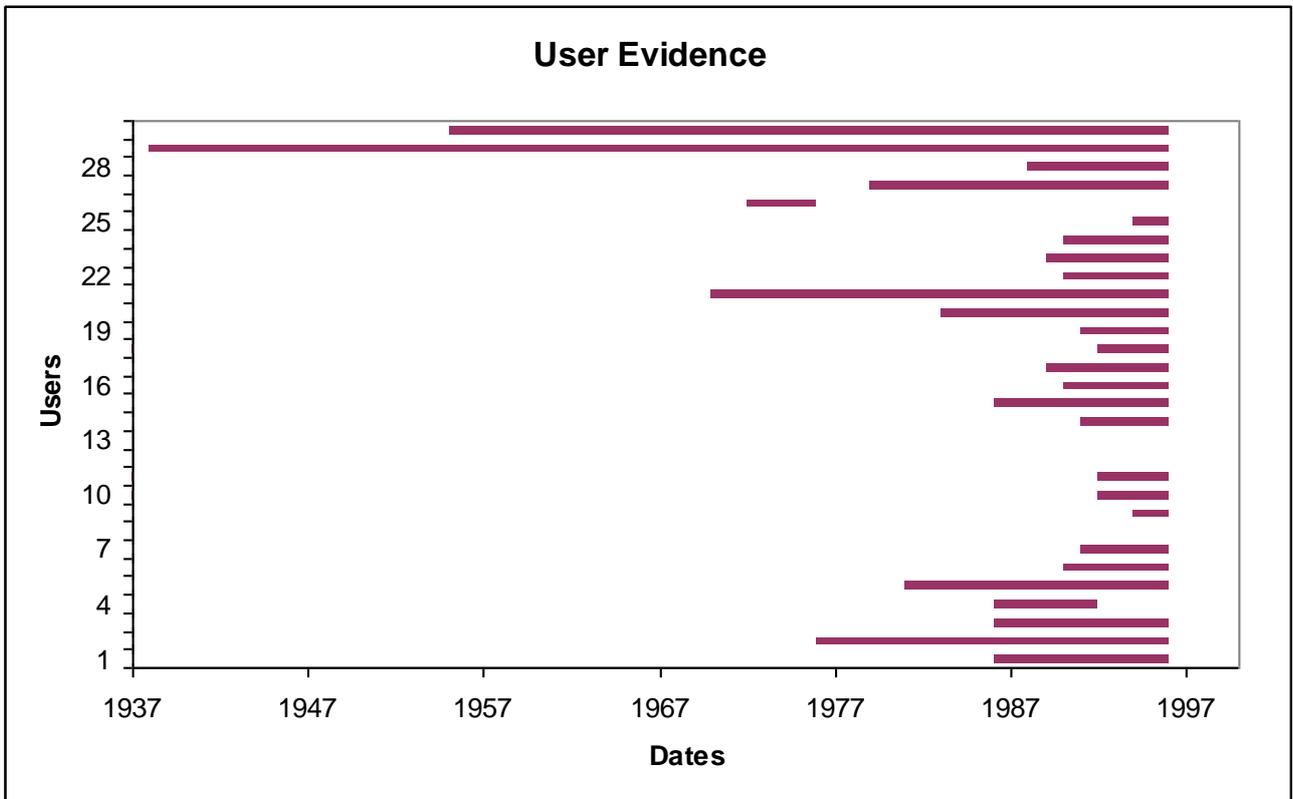
Under common law a right of way can also come into existence in less than 20 years if it can be shown that there was dedication of the route by the landowner and acceptance of the route by the public.

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.

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

11.2 Summary of Evidence



User:	Mode of Use	Years of Use	Frequency of Use	Comments
1	Equestrian	10	Weekly	User 1 used the route to avoid riding on a dangerous road. Saw a green Council sign "FP/BR to Stanstead Abbotts"
2	Foot	20	Monthly	Used for pleasure.
2	Equestrian	10	Weekly	
2	Cycle	6	Monthly	
3	Equestrian	15	Weekly	Used as a safe route back into Stan. Abbotts and their stables to avoid the Hunsdon Road. Had met the farmer who stated he had no objection to them being there.
4	Equestrian	6	Daily	Used for short hacks as it is a safe route avoiding a winding narrow lane.
5	Equestrian	5	Daily	A safe place to ride.
6	Equestrian	??	Daily	The farmer allowed me to use other fields and left straw bales for jumps.
7	Equestrian	2	Weekly	Used for hacking.
8	Equest/ Foot	4	Weekly	
9	Equestrian	4	Daily	Used for horse riding.
10	Equestrian	??	Monthly	

11	Equestrian	??	Weekly	Used for riding with friends and exercising the horse.
12	Equestrian	5	Weekly	Used as a bridlepath.
13	Equestrian	10	Weekly	It's a safer route
14	Equestrian	6	Weekly	It offers a safer route avoiding the lane from Hunsdon.
15	Equestrian	7	Daily	Much safer route than the Hunsdon road.
16	Equest/ Foot	4	Weekly	To keep off the main road
17	Equestrian	5	Weekly	To keep off the main road
18	Equest/ Foot	13	Weekly	A safe route as the Hunsdon road is like a race track. Always a cheery wave from the farmer. Had seen old damaged notices.
19	Equestrian	6	Daily	Too dangerous to use the road. Had seen signs but were not very clear.
20	Equestrian	6	Daily	The road is unsafe for horses. Farmer always says hello.
21	Equestrian	7	Daily	To keep off the Hunsdon road
22	Equest/Cycle	6	Weekly	To keep off the Hunsdon road
23	Equestrian	2	Weekly	To avoid accessing the bridleway from the Hunsdon road.
24	Equestrian	24 (4+17)	Monthly	Prevents having to ride along the Hunsdon road. Not used between '76-'79 as no horse then.
25	Equestrian	8	Monthly	Used to hack around Stanstead Abbots. 11/5/96 a sign appeared at the housing estate end.
26	Foot	58	Daily	Used the footpath to walk to school and Little Briggens. Was the occupier of the land, there was a sign saying 'No Horses' and a stile on the route until 11 years ago. It was never a bridleway only a footpath.
27	Foot	41	Daily	Used the footpath to walk to work as an employee of the landowner. There was a sign saying Public Footpath and a stile. Has never known this route to be a bridleway.

a) Rights of Way Act 1932 deposits

Date: 1934 and 1939

Ref: ROW Office

Rights of Way Act 1932 deposits made by Mr Cattell on behalf of Mr Buxton covering the Easneye Estate. Mr Buxton acknowledges that the Application Route between Points A and B is a public right of way of footpath status.

b) A Highways Act 1980 section 31(6) deposit

Date: 1999 and 2010

Ref: ROW Office

Highways Act 1980 section 31(6) deposits made by Mr Buxton on behalf of the Easneye Estate. These deposits show the public rights of way across the land. Mr Buxton acknowledges that the Application Route between Points A and B is a public right of way of footpath status.

Three letters were received by Hertfordshire County Council (HCC)

On 1st May 1996 the tenant farmer wrote stating that:

- Until 11 years ago (1985) there was a stile and fence across this entrance (to the footpath at Chapelfields) to our fields, which prevented access to horses and motorcycles.

- At no time has anyone been given permission to ride a horse or motorcycle on any part of this path either by myself or the landowner.
- Over the last few years illegal access by both of the above has been a problem.

14th May 1996 - A letter states that horses have only been using the footpath for the last few years, not 20 years.

A letter, not dated, states that horses have been seen on the footpath and surrounding fields.

27 user evidence forms were submitted for this case. Of the 27, 1 user claimed equestrian usage of 20 years or more with a break of 3 years, 25 were equestrian users using the route daily or weekly for less than 20 years. 4 users had seen signs, 2 of these stated they were for a footpath. 2 of the foot users had used the route for 41 and 58 years respectively. One is the tenant farmer/occupier of the land (see evidence below) the other was an employee of the farm, both of these users state the route has always been signed as a footpath. According to the tenant farmer no permission to ride on the route has ever been given by the landowner.

Following the consultation a letter was received reiterating the points above.

Comments were also received from an agent on behalf of the Easney Estate stating that:

- The Estate has always regarded the route as a public footpath
- Deposits made under the Rights of Way Act 1932 acknowledge that the route is a public footpath
- The documentary evidence is consistent with the public footpath status of the route
- There is insufficient quantity and quality of user evidence to raise a presumption of dedication
- The evidence is contested by those connected to the land
- The route has been well signed as a public footpath with a 'no horses' sign
- The evidence does not support a common law case

11.3 Decision

In order to assess whether there has been sufficient evidence of use to raise a presumption that public bridleway rights have accrued on the application route between points A - B on the Investigation Plan, HCC first has to establish the date use was 'challenged'. Reference was made to a stile and gate across the route until 1985; however at the time of application there was no other clear challenge. HCC therefore decided that the date of the application, 19th April 1996, would be used as the date of challenge and therefore the relevant period of use is 1976 - 1996.

Of the 27 user evidence forms that were presented with the application, only 3 witnesses had used the application route for the full 20 year period of 1976 -1996, however this was on foot. No witness had used the route for a full 20 years on horseback. The majority of use on horseback had started after 1985 when the stile and fence had disappeared.

Deposits made by the landowner under the rights of Way Act 1932 and Section 31 deposits made under the Highways Act 1980 show that the landowner acknowledges that the application route is a public footpath and therefore these documents do not show an intention to dedicate the route as a bridleway.

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

Conclusion

HCC decided not to make an order.