

**12 Home Close
Newlands Road
CORSHAM
Wiltshire
SN13 0BE**

Mr R Cuthbert
Definitive Map Team
Hertfordshire County Council
County Hall (CHN103)
HERTFORD
SG13 8DN

My ref.: EC518

Your ref.: EH 467

6 Aug 18

Dear Mr Cuthbert,

**Wildlife and Countryside Act 1981
Application for a definitive map modification order
Thundridge: Old Church Lane (part)**

Please find enclosed an application for a definitive map modification order to add public rights to the definitive map and statement for the area.

I would be grateful if you would kindly acknowledge receipt of this application, confirm by letter that it is fully compliant with the requirements of paragraph 1 to Schedule 14 of the 1981 Act, and advise which reference number you will be using to track the application.

I have been unable to determine all the owners and occupiers of the land crossed by the path. In particular, the land is unregistered at HM Land Registry. Please may I have permission to post notices as described in Schedule 14 to the 1981 Act? (An email will suffice.)

This application is made now, because the consultation on case EH/227 showed part of the investigation route as coincident with this present application route, and the name of the case indicated that only footpath status had been applied for. It is expected, therefore, that this application will be determined simultaneously with EH/227. However, if this is not the case, then when the application is prioritised, as well as letting me know the score, please would you send me a scan of the completed prioritisation form for my records.

I would be grateful if you would quote my reference number on all correspondence (whether by letter or email) as after making well over two hundred modification order applications, it helps me identify the required file quickly.

Yours sincerely,

Wildlife and Countryside Act 1981

The Definitive Map and Statement of Public Rights of Way in Hertfordshire

To: Hertfordshire County Council
Of County Hall
HERTFORD
SG13 8DN

I, Dr Philip David Wadey of 12 Home Close, Corsham, Wiltshire SN13 0BE hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by:

Adding the byway open to all traffic from Old Church Lane, Thundridge at the gate (Point U) to Thundridge 54 BW(Point V)

Adding to the particulars relating to the applied-for byway open to all traffic from Old Church Lane to Thundridge 54 BW by providing that the width is that shown excluded from the hereditaments on the Finance Act 1910 Valuation Plan and that there are no limitations or conditions on the use of the route by the public

and shown on the map accompanying this application.

I attach copies of the following documentary evidence (including statements of witnesses) in support of this application:

- Dury and Andrews' Map of Hertfordshire, 1766.
- Bryant's Map of Hertfordshire, 1822.
- Ordnance Survey 1st edition 25" extract from map Hertfordshire 29 – 4.
- Ordnance Survey Book of Reference for Parish of Thundridge.
- Bartholomew's Half-Inch Map of England and Wales, Sheet 25 (1903)
- IR126/4/222 Inland Revenue Valuation plan, The National Archives.
- Index Map for Hertfordshire Main and County Roads, c.1927
- MAF73/18/29 Ministry of Food Valuation plan, The National Archives
- Hertfordshire County Council Land Charges map, circa 1980.
- Hertfordshire County Council Gazetteer, 2018.
- Applicant's statement.

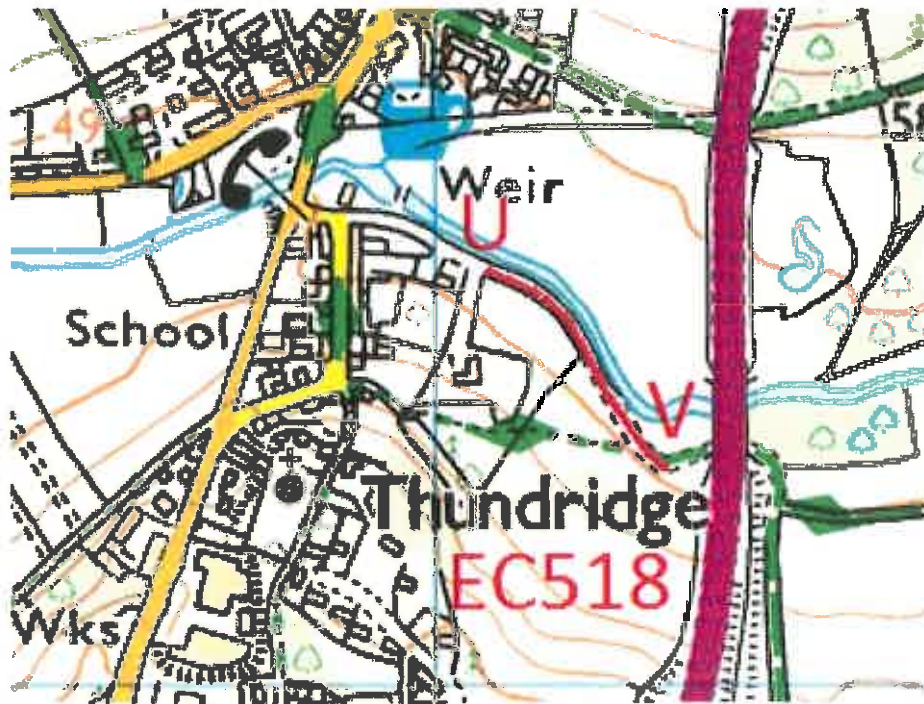
Dated: 6 Aug 18

Signature:

Applicant's Reference: EC518

Wildlife and Countryside Act 1981

The Definitive Map and Statement of Public Rights of Way in Hertfordshire



Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

**For a route from Old Church Lane (at gate) to Thundridge 54 BW in the
Parish of Thundridge to be shown as Byway Open to All Traffic**

Applicant's Reference: EC518

6 Aug 18

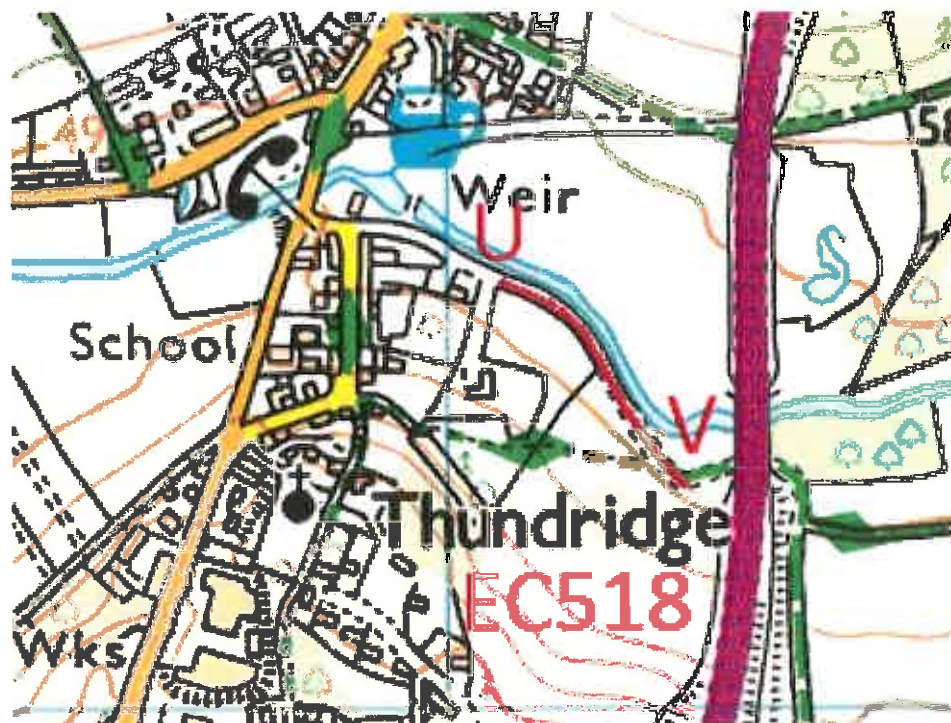
Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map	Hertfordshire 29 – 4
Modern Definitive Map sheet(s)	46

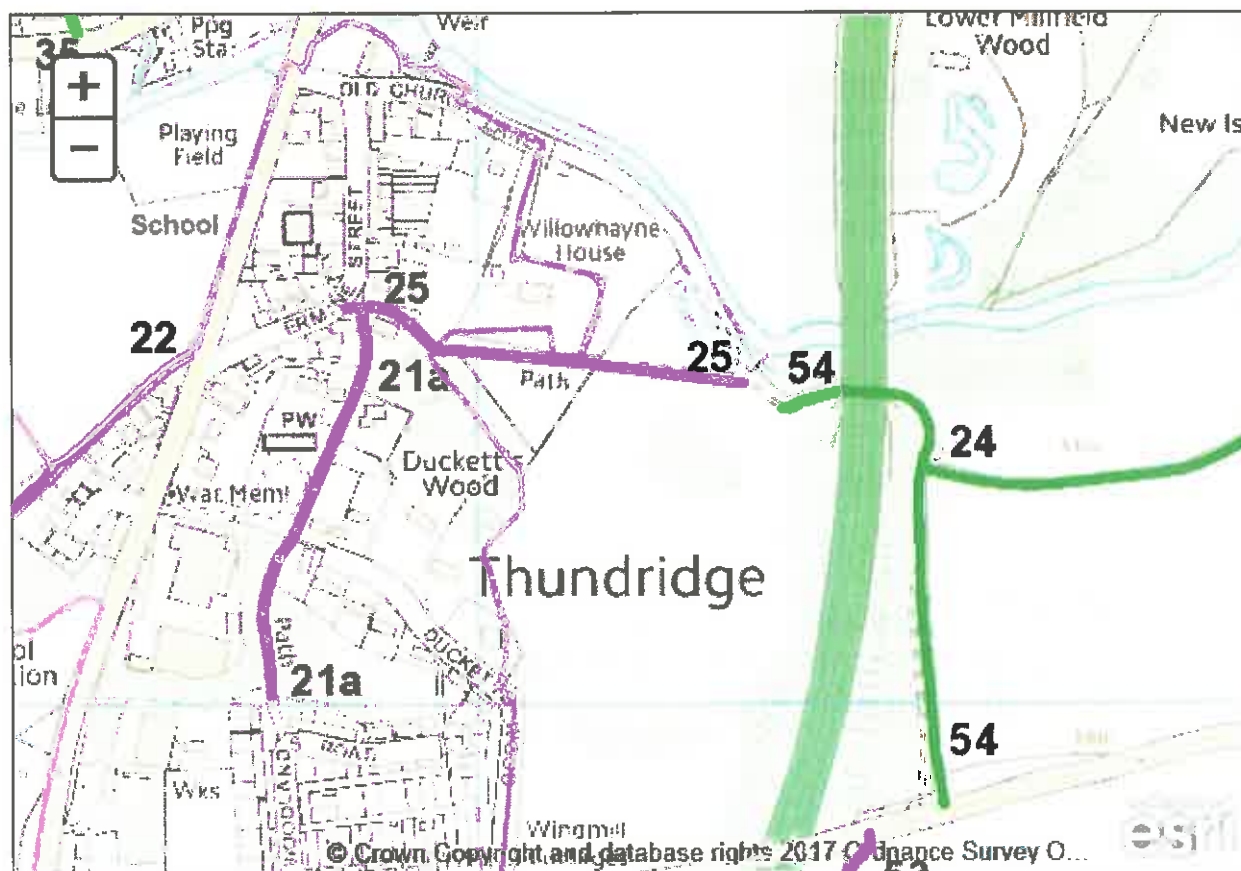
1. My name is Phil Wadey. I spotted that another application sought to put a footpath partially along a route I believe to carry higher rights, and so submit the evidence to influence that decision, and also a separate application in order to give me appellant rights should no order be made. My rights of way experience stems from having been a volunteer access and bridleways officer for the British Horse Society since 1992, including 14 years as the Society's regional access officer for the East of England, and from my being a trustee of the Open Spaces Society.
2. This application is made because:
 - a. On the cut off day, the effect of s.54A Wildlife and Countryside Act 1981 (as inserted by Sch 5 para 4 of the Countryside and Rights of Way Act 2000) on a route that carries public mechanically-propelled-vehicular rights and is not already on the definitive map as a highway of any description, is to prevent it from being recorded. (This applies if the route is shown to be a highway other than a footpath, bridleway or restricted byway.)
 - b. A separate DMMO application to Hertfordshire includes part of this route under an application for footpath status.
3. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981 because:
 - a. This application statement includes explanations as to how the evidence applies to the application route, and
 - b. The application contains one or more of the following forms of supporting evidence:
 - (1) Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
 - (2) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

THE APPLICATION ROUTE

4. The application route is shown on the plan below:
 - a. Point U in on Old Church Lane (public road) at a gate across the road.
 - b. Point V is the junction with Therfield 54, as shown on the definitive map of rights of way.
5. The application route is not currently shown on the definitive map of rights of way for Hertfordshire:
6. The application route is currently shown on the online Gazetteer:
 - a. Point U to Point V is shown as part of unclassified road 3U142/10.
7. The route's width is as shown uncoloured on the Inland Revenue Valuation Plan.



From Ordnance Survey 1:25000 scale map extract showing application route



Extract from Hertfordshire County Council's Online Webmap (5 Aug 18)



Control map I

- Salting route
 - Precautionar
 - Post Freezin
 - Cycleway
 - High Priority
 - Salt Bin
- Street lighting
 - Street light
 - Street light L
 - Part night lit
 - Private Street
 - Subway light
 - Lit sign
 - Safety Bollar
 - ☆ Beacon or Fl
 - ▲ Traffic signal

Click the map :

To log a highw

[©Crown copyright and database rights 2011 Ordnance Survey 100019606](#)
[Use of this data is subject to terms and conditions](#)

Old Church Lane Ware [\[show on map\]](#)

Section description Bridleway 054 (near A10) to Ermine Street

Section ID 3U142/10 [\[show on map\]](#)

Class Unclassified Road - U

Hierarchy L2 Local Access

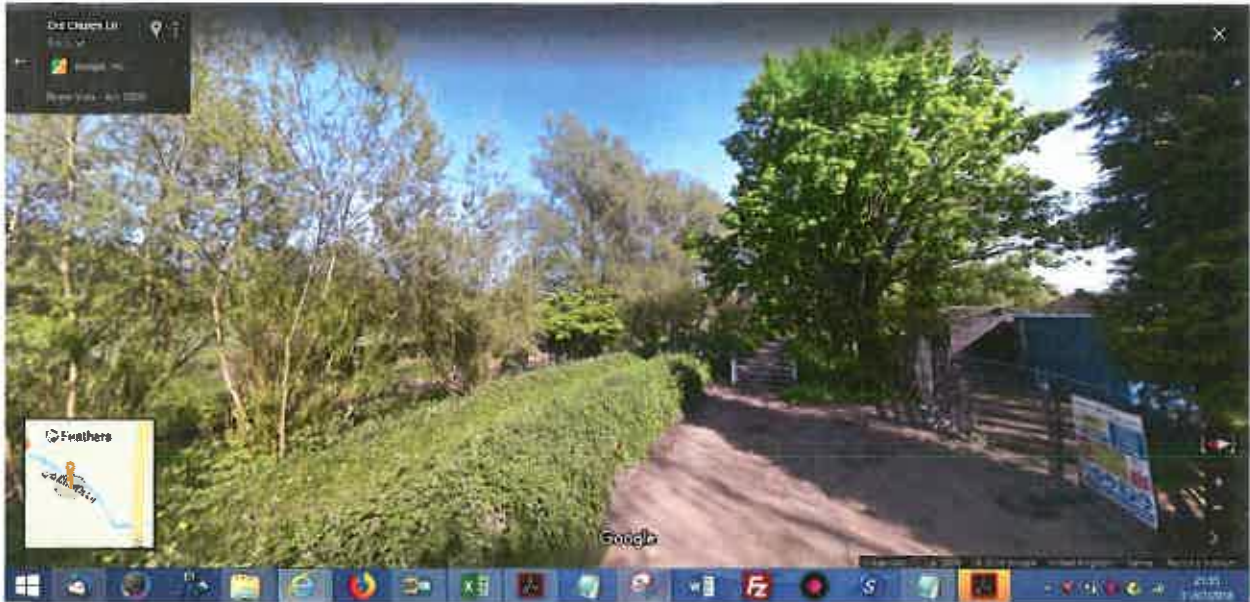
Length 391m

Area E: 3-East Herts District

Maintenance Hertfordshire County Council as Highway Authority

Extract from Hertfordshire County Council's Online Gazetteer (31 Jul 18)

8. Photograph 1 show the route from the position stated in the caption. This was taken from Google Streetview, and says that it was taken in 2009. It was taken from the internet on 31 Jul 18. It shows a gate, with gap to the side to allow the passage of walkers, riders and cyclists.



Photograph 1 from Point U looking generally East

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

9. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the ‘balance of probabilities’ test rather than ‘beyond reasonable doubt’ was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

10. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

‘In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

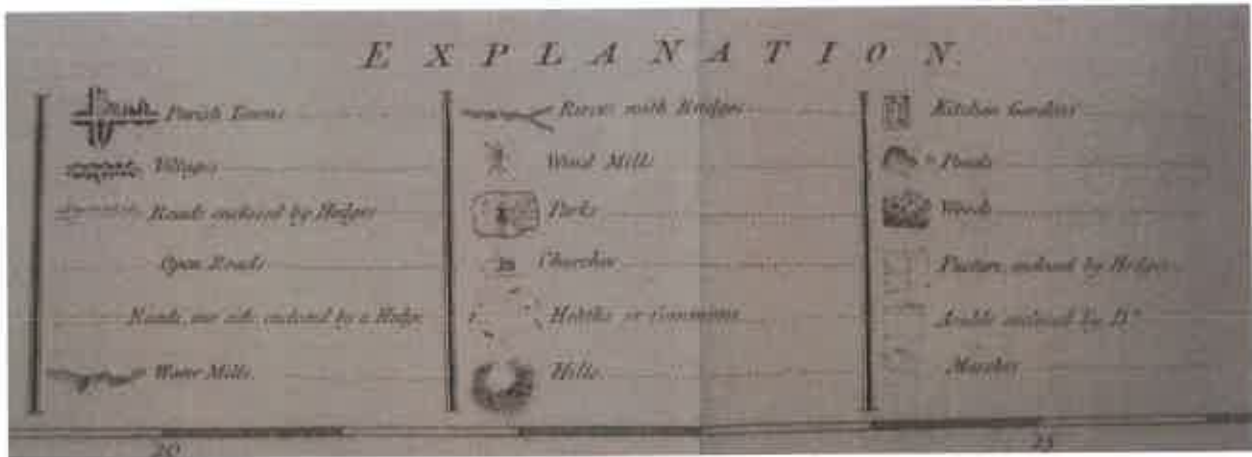
"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

11. While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights.

12. Dury and Andrews’ Map of Hertfordshire.

a. Date. This map was produced in 1766.

b. **Relevance.** The map was made for sale to the public, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished. This enables us to draw conclusions from how routes are shown. It did not usually show footpaths or bridleways.



Extract from Dury and Andrews' Map (1766) showing the Key.

c. **Archives.** An original map is held by the Hertfordshire Archives and Local Studies (HALS) under reference CM 26.

d. **Meaning.** The route is shown in the manner of a 'Road enclosed by Hedges'. It is shown in the same way as the public vehicular roads to which it connects.

e. **Assessment.** The depiction as a road is evidence in favour of the proposition that the application route was considered to have vehicular rights in 1766.



Extract from Dury and Andrews' Map (1766) showing the application route.

13. Bryant's Map of Hertfordshire.

- a. **Date.** This map was produced in 1822.
- b. **Relevance.** This was made for sale to the public, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished. This enables us to draw conclusions from how routes are shown.



Extract from Bryant (1822) showing the Key

- c. **Archive.** An original is held by the Hertfordshire Archives and Local Studies (HALS) under reference CM 88.
- d. **Meaning.** The route is shown in the manner of 'Lanes and Bridleways'.
- e. **Assessment.** This is evidence in favour of the proposition that the application route was considered to have at least equestrian rights and probably vehicular rights in 1822.



Extract from Bryant (1822) showing the application route

14. Ordnance Survey First Edition 25 inch.

- a. **Date.** OS sheet Hertfordshire 29 – 4 was published in 1879/1880. The Area Book for Thundridge was published in 1879.
- b. **Relevance.** The early first edition county series (25 inch) OS maps contain valuable extra information when cross referenced to the Books of Reference, often called simply the 'Area Books', that were published to go with them. These are indexed by parish.
- c. **Archive.** Copies of the first edition Ordnance Survey 25" maps are held by the British Library. As well as originals, they have created microfiche copies, which can be inspected by the public. Copies can also be viewed at <http://www.old-maps.co.uk> and some sheets are available from the National Library of Scotland at <http://maps.nls.uk/os/25inch-england->

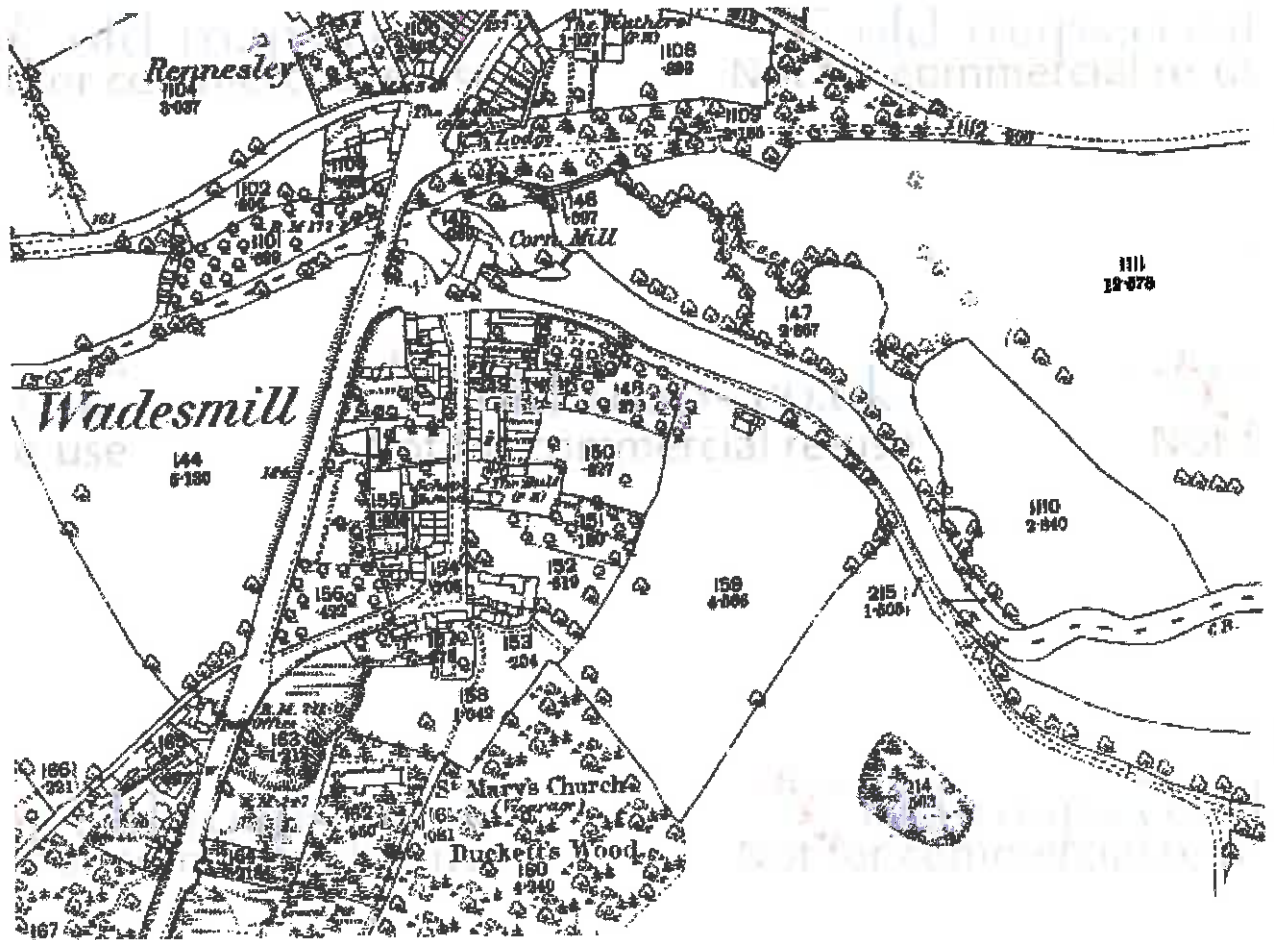
and-wales/index.html. The map and books of reference extracts below were obtained from old-maps.co.uk and the British Library, respectively.

d. Meaning.

(1) The application route is shown on the OS map as land parcel number 215 in Thundridge.

(2) In the entry for the Area Book for Thundridge there is a description for land parcel 215. The description reads, "Road".

e. Assessment. The showing of the route on the map and the description in the Area Book are evidence of reputation and appearance at the time the documents were compiled.



Extract from the Ordnance Survey first edition 25" map of the area, sheet Hertfordshire 29 - 4.

212	·511	Wood.	264	·256	Wood.
213	22·021	Arable.	265	7·418	Arable, &c.
214	·503	Wood.	266	17·694	Arable, &c.
215	1·505	Road.	267	9·320	Arable, &c.
216	10·888	Pasture.	268	5·655	Wood, &c.
217	11·758	Water.	269	15·520	Arable, &c.
218	7·790	Pasture.	270	9·315	Wood.

Extract from the Book of Reference to the Plan of the Parish of Thundridge

15. Bartholomew's Half-Inch Maps of England and Wales

- a. Date. This map was published in 1903.
- b. Relevance. The map was made for sale to the public, particularly for tourists and cyclists, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished.
- c. Archive. An original of Sheet 25 (Bedfordshire and Hertfordshire) is held by the National Library of Scotland (NLS) and can be viewed via http://maps.nls.uk/series/bart_half_england.html.
- d. Meaning. The application route is shown as an 'inferior' road. That is, according to the key, a road which 'is not to be recommended to cyclists'. The solid black dashes are the county boundary running along the route.
- e. Assessment.

(1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or 'inferior'. In addition, the application route was shown as this 'inferior' road rather than as a footpath or bridleway, and cyclists at the time of publication (1903) had no right to use bridleways, having been declared to be carriages by s.85 Local Government Act 1888, so it is appropriate that at least a little weight be given to this document as evidence of vehicular status.

(2) The PINS Consistency Guidelines suggest that little weight can be given to this source, However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

"Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways."

(3) The conclusion is that at least some weight must be given to this source.



Extract from Bartholomew's Map showing the application route as an 'inferior' road

<p>First Class Roads </p> <p>Secondary (Good) </p> <p>Indifferent (Passable) </p> <p>Footpaths & Bridlepaths </p>	<p><i>On all roads the sign indicates dangerous hills and where caution is required.</i></p> <p><i>The uncoloured roads are inferior and not to be recommended to cyclists</i></p> <p><i>NB The representation of a road or footpath is no evidence of the existence of a right of way</i></p>
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Extract from Bartholomew's Map showing the Key

16. Inland Revenue Valuation.

- a. Date. The valuation records were produced in the few years after 1910.
- b. Relevance. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads', and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

“No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.”

We note that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]”

All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:

“If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”

As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

c. Archive. The extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 126/4/222.

d. Meaning. The extract below clearly shows the application route as a white road, separate from the adjoining hereditaments.

e. Assessment.

(1) As this land is unvalued, this suggests it belonged to a rating authority. As it is not held by a local authority or government department for any other known reason, this suggests that it belonged to a highway authority. Had it only been a bridleway, the Inland Revenue would have valued the land and allowed a deduction instead, since this would have resulted in a greater tax levy. Had it been held by a rating authority for another purpose there would be some evidence of that holding, yet none has been found.

(2) The legislation is sufficiently clear that anyone arguing that white road status means something other than the route is a public vehicular highway must show which other exception from valuation the route falls under.



Extract from the Inland Revenue Valuation Map

17. Map of Main and County Roads.

- a. **Date.** This document relates to the period 1878 to about 1927.
- b. **Relevance.**

(1) Under s.15 Highways and Locomotives (Amendment) Act 1878, it was enacted that where it appears to any Highway Authority that any Highway within their District ought to become a Main Road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such Highway Authority may apply to the County Authority for an Order declaring such road as to such parts as aforesaid to be a Main Road and the County Authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and if satisfied that it ought to be a Main Road shall make an Order accordingly.

(2) The County Council created a map to use as an index to which routes had been taken over as Main Roads.

- c. **Archive.** This document is held by Hertfordshire Archives and Local Studies (HALS) under reference “Off Acc 732 (unboxed)”
- d. **Meaning.** The application route is shown on this map as Main Road number 675.

e. Assessment. This indicates that the application route was considered to carry vehicular rights, and was maintainable at the public expense, at the time the map was drawn up.



Extract from the Hertfordshire Main and County Roads Map (1927)

18. Ministry of Food National Farm Survey.

a. Date. The National Farm Survey was conducted in 1941-42 and the documents were compiled at that time.

b. Relevance. These records are maps prepared in conjunction with the individual farm records of the National Farm Survey conducted by the (then) Ministry of Food (subsequently the Ministry of Agriculture, Fisheries and Food). The maps show the extent of each farm, or other agricultural holding, with its boundaries. The area of each farm is indicated on the map by the use of a coloured outline or a colour wash, and its code number is added in black or red ink. The relevance of these records is that where a vehicular highway route runs between holdings, it is excluded from the holdings. (We have found no instances of non-vehicular routes being given the same treatment, save for routes for which applications for upgrading on the definitive map are in hand.)

c. Archive. These records are held at The National Archives in Kew under document reference MAF 73/18/29.

d. Meaning. The extract below shows the application route. It falls between holdings and is excluded.

e. Assessment. This provides supporting evidence that the parts of the application route that fell between land holdings was a vehicular route.



Extract from the Ministry of Food Farm Survey Map

19. County Council Land Charges Map.

- a. Date. Photographs of these County Council records were taken by Steve Vaughn in the early 1980s.
- b. Relevance. These highways maps were held by the County Council's land charges section and were marked-up copies of the circa 1970 Ordnance survey mapping. They show the routes that the county council then regarded to be county roads. The relevance of these records is that where a route is coloured yellow and numbered, it was considered by the county council to be a vehicular highway maintainable at the public expense. This means that a formal stopping up order (or perhaps a magistrates' court order ceasing the public maintainability) is needed if the route no longer has that status. Failing the finding of such an order, the highway should be publicly recognised by inclusion on the definitive map and statement.
- c. Archive. The originals of these records should still be available from the appropriate part of the County Council. At the time the photographs were taken, they were housed at The Old Court House, St Albans Road East, Hatfield AL10 0ES.
- d. Meaning. The application route is shown as unclassified county road number 3U142.
- e. Assessment. Prior to 2014, Hertfordshire County Council rarely put any footpaths or bridleways on the List of Streets maintainable at the public expense, even though many footpaths or bridleways are so maintainable. Therefore, this is evidence in favour of the proposition that the application route was considered to be a vehicular highway maintainable at the public expenses in approximately 1980.



Extract from the County Council's Land Charges Maps circa 1980

CONCLUSIONS

20. Each piece of evidence presented is either evidence of reputation of vehicular highway rights, or consistent with there being vehicular highway rights, or indicates that a civil servant thought that there were vehicular highway rights.

21. While each document could possibly be explained away by another reason, there is no other reason that explains what all of the documents show. It is therefore more likely than not that the explanation for the evidence as a whole is that public vehicular highway rights existed at the times that the various documents were compiled.

22. In examining the evidence as a whole, it will usually be found that the simplest explanation is the best. Suppose that there are three documents capable of being read as providing some evidence of highway status. Each of these documents might be able to be explained away by other reasons. The old map might have shown a private drive to a patron's residence, the tithe map may not have shown land held by the rector, and the Inland Revenue evidence may relate to land held by a rating authority in its local education authority role. However, it is unlikely that all of these alternative explanations to highway status will be true for the same path. In such circumstances, the explanation of what the evidence shows is much more likely to be highway status than that the route used to belong to a wealthy owner, was sold to the Church and then became a council-run school. In the absence of positive evidence that these diverse explanations are actually true (as opposed to mere possibilities), the single explanation of the facts that a highway existed is compelling.

23. As a result of the common law maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that vehicular highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.

24. The applicant requests the surveying authority to add the route to the definitive map as a byway. The type of byway – restricted or open to all traffic – will depend on the application of the Natural Environment and Rural Communities Act 2006. In the event that motor vehicular rights have not been extinguished, the applicant notes that the route is clearly more used by the public for walking and riding than by motor vehicle because of the presence of the gate, and so would meet the criterion for being recorded on the definitive map and statement.

Dr P D Wadey
Applicant