

REGISTER OF APPLICATIONS - MODIFICATION ORDERS

DETAILS OF APPLICATION

File Name:	Walkern 8b Upgrade
Date application received:	02/02/2017
Name of Applicant:	Dr P D Wadey
Intended effect of application:	Upgrade Walkern BR 8b to RB status

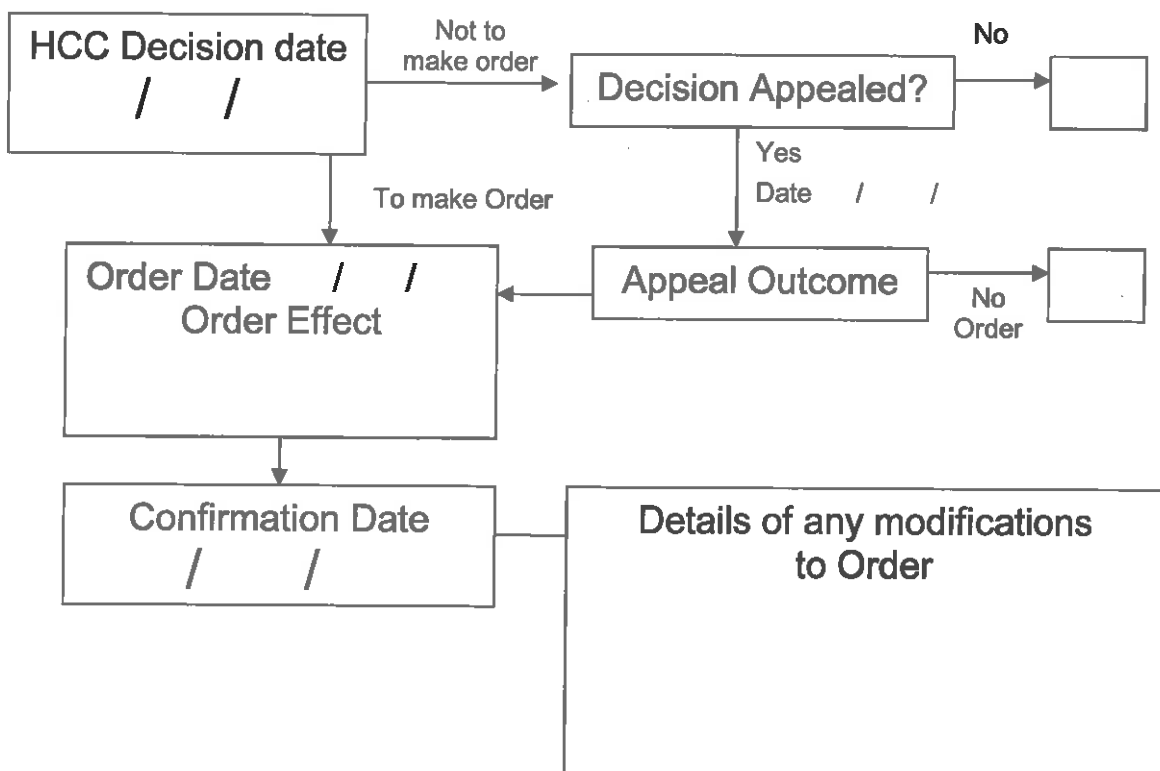
LOCATION OF APPLICATION

District:	East Herts	Parish:	Walkern
Nearest	City:	St Albans	
	Town:	Stevenage	
	Village:	Walkern	
	Grid References or		Definitive Map path reference
Start Point (A)			Walkern 8b
End Point (B)			

ADDRESS OF PROPERTIES ON THE APPLICATION ROUTE

9 Clay End, Walkern SG2 7JB	10 Clay End, Walkern SG2 7JB		
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DETERMINATION (DECISION) OF APPLICATION



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:

Upgrading to a restricted byway the 'bridleway' (Walkern 8B) from public road 3U50/10 to public road 3U4/10

adding to the particulars relating to the 'bridleway' (applied-for restricted byway) from public road 3U50/10 to public road 3U4/10 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, Hertfordshire Archives.
- Bryant's Map of Hertfordshire, 1822, Hertfordshire Archives.
- Ordnance Survey 1st edition 25" extract from map Hertfordshire 13 – 14, old-maps.co.uk.
- Ordnance Survey Book of Reference for Parish of Walkern, British Library.
- Tithe map of Walkern, Hertfordshire Archives.
- IR126/4/128 Inland Revenue Valuation plan, The National Archives.
- Applicant's statement.

Dated: 30 Jan 17

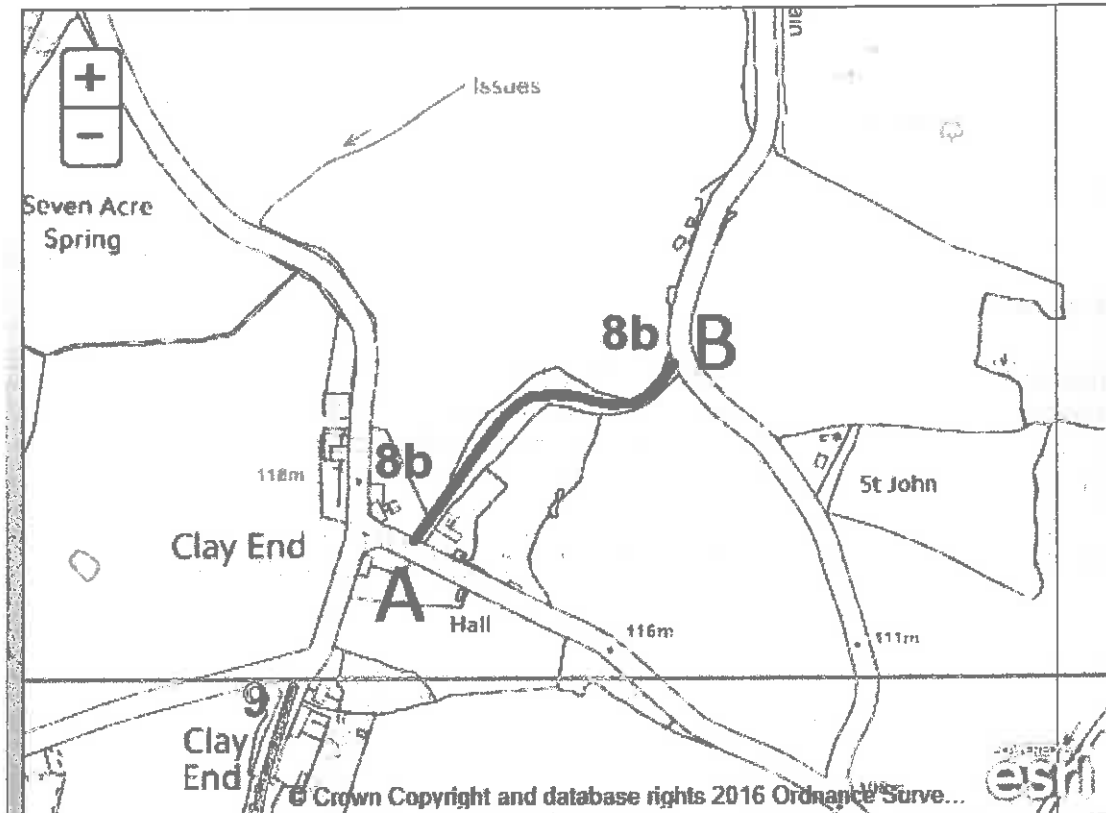
Signature:

Applicant's Reference: EC807

Wildlife and Countryside Act 1981

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

Rights of Way map



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

My ref.: EC807

Your ref.: EH 453

30 Jan 17

Mrs R Emrys-Roberts
Definitive Map Team
Hertfordshire County Council
County Hall (CHN103)
HERTFORD
SG13 8DN

Dear Mrs Emrys-Roberts,

**Wildlife and Countryside Act 1981
Application for a definitive map modification order
Walkern 8B BW to RB**

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 shall then proceed to serve the statutory notices on the landowners and occupiers.

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 one hundred 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

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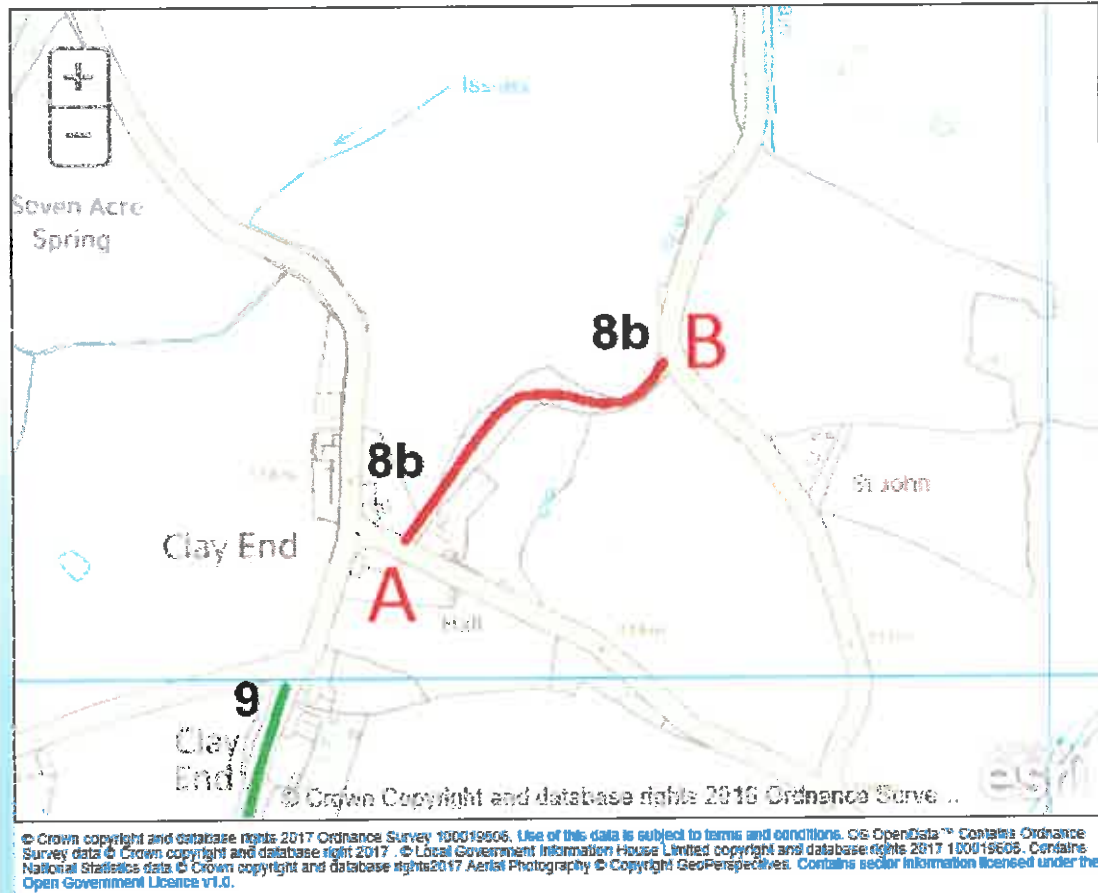
Applicant's Reference: EC807



Wildlife and Countryside Act 1981

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

Rights of Way map



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

My ref.: EC807

Your ref.: EH 453

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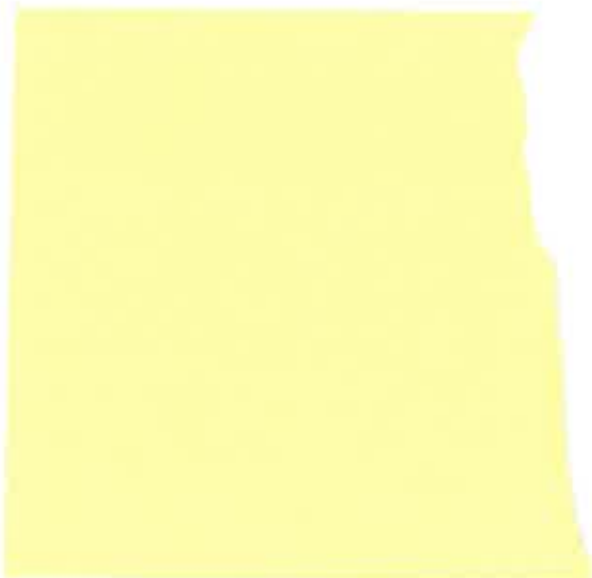
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When the application is prioritised, as well as letting me know the score, please would you send me a scan of the completed prioritisation form for my records.

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Yours sincerely,



Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

**For a route at Bassus Green known as Walkern 8B
to be shown as Restricted Byway**

Applicant's Reference: EC807

30 Jan 17

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

OS County series map

Hertfordshire 13 – 14

Modern Definitive Map sheet(s)

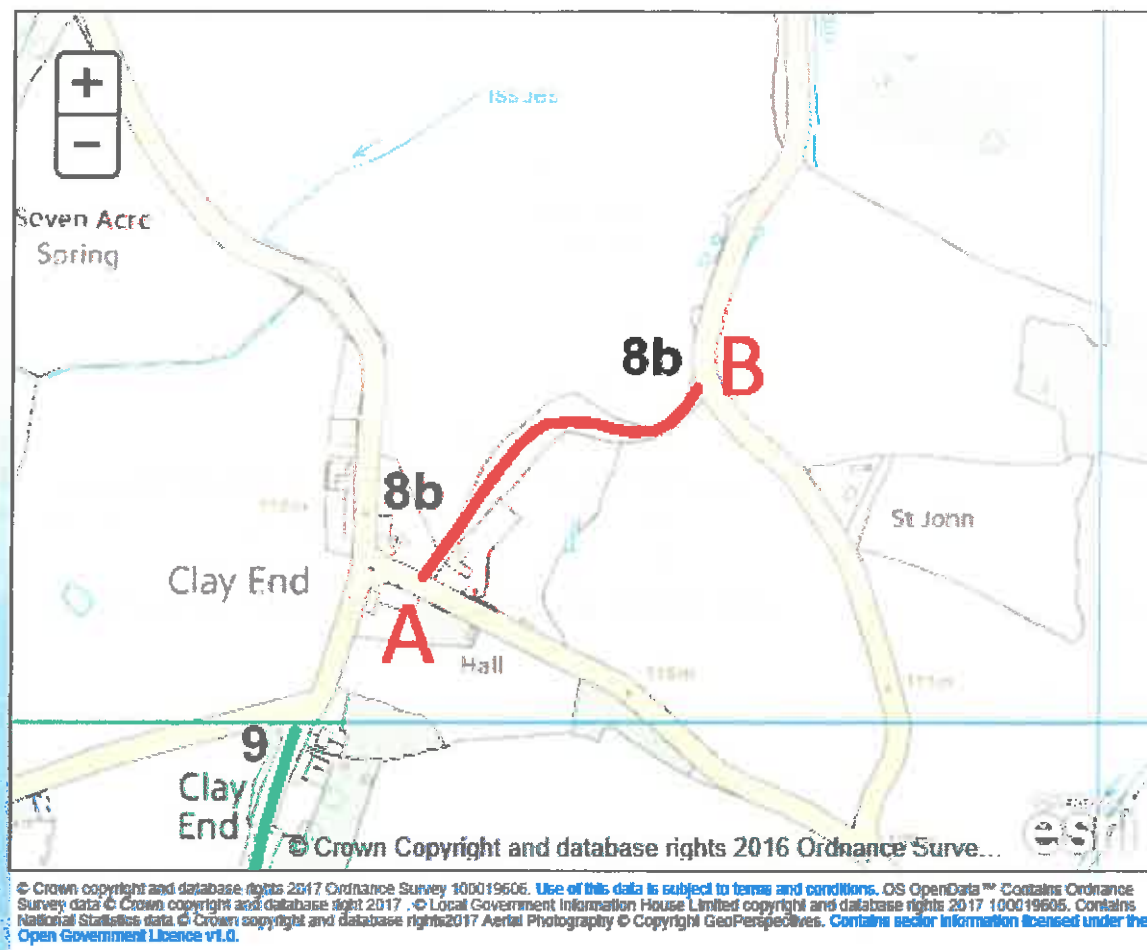
23

1. My name is Phil Wadey. I am the applicant for the order. 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, on the cut off day,
 - a. The effect of s.53(3) and (4)(c) Countryside and Rights of Way Act 2000 on a public highway that existed prior to 1949 is to extinguish the vehicular rights on a route shown in the definitive map and statement as a bridleway.
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) Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
 - (3) 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 A (public road 3U50/10) to Point B (public road 3U4/10).
5. The application route is currently (19 Jan 2017) shown on the definitive map of rights of way for Hertfordshire:
 - a. Point A to Point B is shown as Walkern 8B BW.
6. The application route is currently (19 Jan 2017) shown on the online Gazetteer as:
 - a. Point A to Point B is shown as Walkern Bridleway 008B, section ID 122008B, with maintenance by the Hertfordshire County Council Rights of Way Service.
7. The route's width is as shown uncoloured on the Inland Revenue Valuation Plan.

Rights of Way map



Hertfordshire County Council Webmap extract showing application route

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

8. 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.

9. 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."

10. 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.

11. Dury and Andrews' Map of Hertfordshire.

- a. Date. This map was produced in 1766.
- b. Reason. 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. This evidence has meaning because the application route 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.

12. Bryant's Map of Hertfordshire.

- a. Date. This map was produced in 1822.
- b. Reason. 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. This evidence has meaning because 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

13. Ordnance Survey First Edition 25 inch.

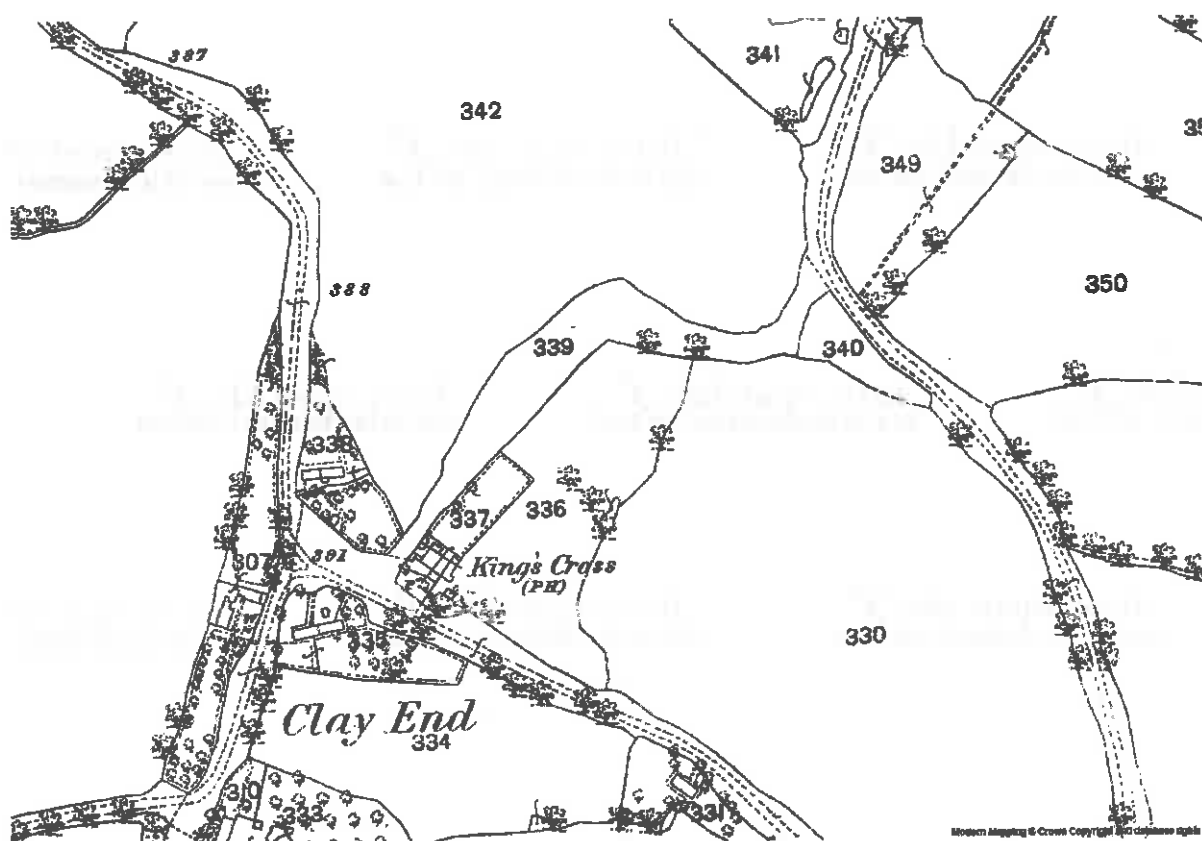
- a. Date. OS sheet Hertfordshire 13 – 14 was produced in 1878. The Area Book for Walkern was published in 1878.
- b. Reason. The early first edition county series (25 inch) OS maps contain valuable extra information when cross referenced to the Books of Reference, often called simply the 'Area Books', 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 www.old-maps.co.uk and the British Library respectively.

d. Meaning. This evidence has relevant meaning because:

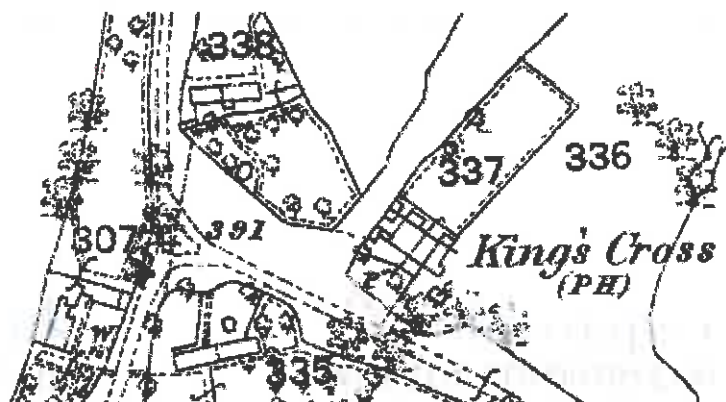
(1) The application route is shown on the OS map as land parcel number 339 in Walkern and a small part of land parcel 391.

(2) In the entry for the Area Book for Walkern there is a description for land parcel 339. The description reads, "Road". Land parcel 391 is described as "Garden &c".

e. Assessment. The showing of the route on the map and the description in the Area Book as 'Road' is evidence of reputation and appearance at the time the documents were compiled, namely that of a vehicular highway. The section labelled as 'Garden &c' could be explained by there being a track across what was otherwise a garden, and so provides no evidence either way for that section. The "&c" indicates that there was something else of note in addition to the garden.



Extract from the Ordnance Survey first edition 25" map of the area, sheet Hertfordshire 13 - 14.



Enlargement at Southern End

287	.315	Wood.	336	1.857	Pasture.
288	.063	Wood.	337	.333	Houses, gardens
289	9.432	Arable.	338	.442	Houses, gardens
290	9.702	Arable.	339	1.077	Road.
291	10.488	Arable.	340	.273	Arable.
292	5.202	Pasture.	341	.741	Pasture, &c.
293	1.146	Wood.	342	11.818	Arable.
294	1.004	Road	343	7.420	Arable.
399	.734	Arable, &c.	401	1.000	Arable.
390	.184	Water.	402	1.091	Arable.
391	.819	Garden, &c.	403	13.975	Wood, &c.
392	2.884	Pasture.			
393	18.738	Pasture, &c.		2992.223	
394	12.599	Arable, &c.			

Extracts from the Book of Reference to the Plan of the Parish of Walkern

14. Walkern Tithe map

a. Date. The tithe map was produced in 1839.

b. Reason.

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

(3) The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-

titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). 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, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status.

c. Archive and Reference. The tithe map and apportionment for Walkern are held at the Hertfordshire Archives under references DSA4/108/1 and DSA4/108/2 respectively.

d. Meaning. This evidence has meaning because the map shows the application route for its whole length. It is bounded by two solid lines and given no reference number. The public roads at either end are also shown as bounded by two solid line, with no reference number. No tithe was assessable against either plot.

e. Assessment. This is a second class map and so is only conclusive of matters of relevance to the tithe commissioners. It nevertheless provides useful information from which inferences may be drawn. The application route is shown in the same way on the tithe map as other public roads in the area. No tithe was assessed. This depiction is consistent with the application route being a public vehicular highway at the time of the assessments.



Extract from the Tithe Map for Walkern Parish.

15. Inland Revenue Valuation.

- a. Date. The valuation records were produced in the few years after 1910.
- b. Reason. 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 references are IR 126/4/128.
- d. Meaning. This evidence source has meaning because 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.



CONCLUSIONS

16. 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.

17. While each document could possibly be explained away by another reason, there is no other single 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.

18. 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.

19. 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, and so would meet the criterion for being recorded on the definitive map and statement.

Dr P D Wadey
Applicant