

HERTFORDSHIRE COUNTY COUNCIL



Rights of Way Service

Reasons for Decision

Broadmeads, Ware

Author: Andrea Trendler

Date: 15 July 2013

Application Details

An application has been made to add a footpath running from Broadmeads northwards to join Ware Town FP18 (the towpath running along the south side of the River Lee in Ware). An extract based on the 2010 Definitive Map is attached. It shows where the route is and it is labelled Point A and Point B etc.

This application was made by Mrs P Ballam on 22 March 2011. It was brought up to the prescribed form on 7 July 2011 and was accompanied by one user evidence form and letters/emails from 4 local residents giving details of their use of the application route. By the time of the investigation, further evidence forms had been received and the evidence comprised 21 user evidence forms and 2 letters with some details of use.

Description of Route

The application route is located in the centre of Ware, to the south of the River Lea. It runs from Broadmeads (public road) (Point A on the plan) northwards for approximately 55 metres along an access road serving garages for the Broadmeads flats to join Ware Town Footpath 18 (the towpath) which runs along the south bank of the River Lea (Point B on the plan). Currently, this route is not available due to locked gates at both ends and signs stating 'Private Road No public right of way.'



1. Sign at Broadmeads road entrance



2. View from Broadmeads to towpath (flats on left and garages on right)



3. Towpath gate looking to Broadmeads (garages on left and flats on right)



4. From pavement (near flats) looking to Broadmeads road entrance.

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 is no evidence found relating to the application route, this has just been recorded as "no evidence found..." or where there are no records for the document listed, this has been recorded as "No records found."

HCC decided that 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**
- 2. Bryant's Map, 1822 – Ref: HALS – CM88**
- 3. Tithe map for Ware Town 1845 – Ref: HALS – PC35A**
- 4. Railway and canal plans**

No records were found for the following documents:

- 5. Inclosure records**
- 6. Highway Diversion/Extinguishment Records**

The River Lea navigation records were not consulted.

7. Inland Revenue Documents

Date: 1911

Ref: HALS – IR1/303a – map

HALS – IR2/73/1 – valuation book

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?



The Inland Revenue map for Ware is based on the 2nd edition 1898 Ordnance Survey Map. Amwell End is shown as an uncoloured road, running generally north from the railway line to Ware bridge. On the west side of Amwell End there is an unnamed, uncoloured road which runs westwards along the south side of plots 1563, 683, 490 and part of 502. This unnamed road follows the line of Broadmeads, the current public road. There is no route shown running northwards from this unnamed road to the 'Towing Path' which runs along the south side of the River Lee. The Inland

Revenue books show that plots 489, 490 and 502 were owned and occupied by H Ward and sons. Their land use is described as 'meadow' and they are all called 'Broadmead.' There

are no deductions for 'public right of way or user.' The approximate position of the application route is shown by Points A and B on the map above.

7.3 Decision

HCC decided that the Inland Revenue documents do not provide any evidence relating to the application route. There were no public routes across the meadow land between the unnamed road and the tow path along the river. The approximate position of the application route would be through plot 502. However, there are no routes going northwards from the public road (now Broadmeads) towards the tow path and the plots to the north (489, 502 and 490) were privately owned and have no deductions for public rights of way.

8. Highways Maintenance Records

Date: Ref: www.hertsdirect.org

8.1 Why we consider these documents important

Maintenance of a route by the public is strong evidence that it is a public highway. However it is important not to confuse 'maintainable' (i.e. duty to maintain) with maintained (i.e. works done). It should also be noted that lack of maintenance of a route does not necessarily mean a route is not highway.

The Highways Act of 1555 provided that parishes and their inhabitants had the responsibility for maintaining all existing public highways. The physical work was to be done by the inhabitants and each parish had to provide an unpaid parish surveyor who was obliged to keep a detailed account of public monies expended. This situation remained largely unchanged until the 1835 Highways Act, which allowed parishes to combine into larger groups for maintenance purposes. The Highways Act of 1862 allowed parishes to combine into Highway Districts under Highway Boards and after 1878 Highway Boards could amalgamate with Rural Sanitary Authorities. The Local Government Act of 1888 introduced elected County Councils, which took over "main" roads, while after the Local Government Act 1894 new Rural District Councils took over all other roads. Responsibility for maintenance of these roads was handed over to the County Councils in 1929.

Under the Highways Act 1835 pre-existing highways continued to be maintained at public expense. Any highways established after that date needed to be 'adopted' to show they were liable for repair at public expense. Highway Boards accounts from this period can provide evidence of a route being maintained and is therefore strong indication of public highway. Most routes referred to in this manner are now part of the county's road network.

A "List of Streets" of the highways maintainable at public expense is required under the Highways Act 1980. This list is held by the County Council as part of the Hertfordshire Roads Gazetteer, which is itself part of the Hertfordshire Roads Management Database. There are no rules or regulations about what information is required, or how it is to be presented or amended. It is a list of what is maintainable, not necessarily what is maintained.

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

No records were found for the maintenance of the application route. The "List of Streets" currently records Broadmeads running from the school entrance east to Amwell End

(ID 3U829/10) as maintainable by Hertfordshire County Council as Highway Authority. The application route is not recorded on the “List of Streets.” However, it is recorded in the Hertfordshire Roads Gazetteer (ID 3U829/20) as ‘Not Maintainable’ i.e. it is maintained privately.

8.3 Decision

HCC decided that the highway maintenance records provide no evidence relating to the application route. The “List of Streets” confirms that Broadmeads (from the school to Amwell End) is a public road maintainable at public expense. However, the application route is recorded as not maintainable at public expense in the Hertfordshire Roads Gazetteer.

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 – Ware 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?

The Parish Survey records the towpath along the River Lee as Ware Footpath 18 but there is no reference on the map or the survey to any route running south from the towpath to the road in the area of the application route.

9a.3 Decision

HCC decided that the Ware Parish Survey provides no evidence relating to the application route.

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 Draft Definitive Map and the First Definitive Map show that the towpath along the south side of the river Lee was recorded as Ware Footpath 18. However, there is no route shown running south from this.

9b.3 Decision

HCC decided that the 1st Definitive Map process provides no evidence relating to the application route.

9c Definitive Map Records - Special Review

Date: about 1980

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 Special Review shows that Ware Footpath 18 was recorded running along the south side of the river Lee but that there were no paths running south from this in the area of the application route.

9c.3 Decision

HCC decided that the Special Review process provides no evidence relating to the application route.

10. Ordnance Survey maps

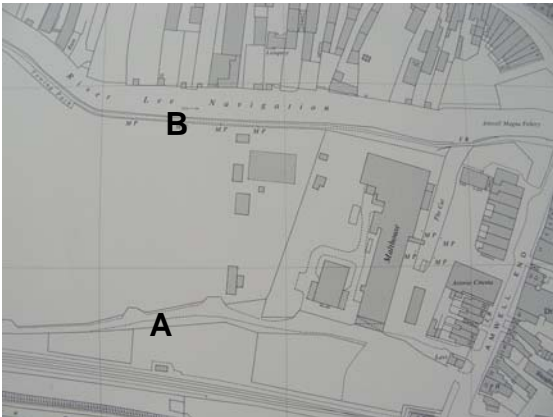
Date: 1963 and 1973

Ref: HALS (Local Studies)

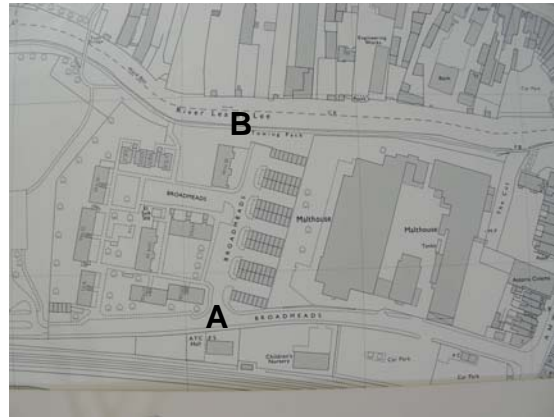
10.1 Why we consider these documents important

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) states that the representation of any track or way is no evidence of a public right of way.



1963 OS map



1973 OS map

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

The 1964 OS map (surveyed 1963) shows the ‘Towing Path’ (Ware FP18) along the river but no route to the south and only meadow land in the area now occupied by Broadmeads flats. The 1974 OS map (revised November 1973) shows the flats and garages with the access route from Broadmeads (public road) but there is no link shown between the access road to the garages and the ‘Towing Path’.

10.3 Decision

HCC decided that the 1963 OS map provides no evidence for the existence of the application route. The 1973 OS shows a route from Broadmeads (public road) along the access road to the garages but there is no link with the towpath. HCC decided that the 1973 OS map does not provide evidence for the existence of the full length of the application route.

11. Aerial photographs

Date: 1980 and 1990

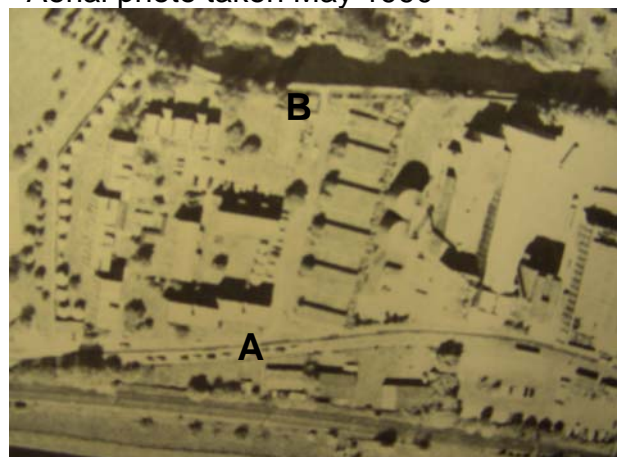
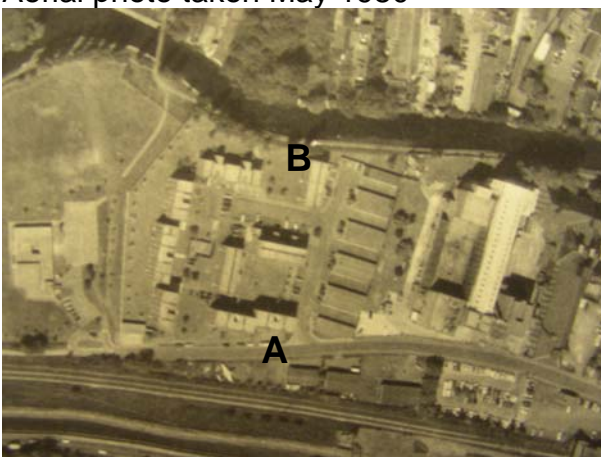
Ref: RoW

11.1 Why we consider the evidence important

Hertfordshire County Council has commissioned aerial photographs of the county at 10 year intervals. These photographs show what physically existed on the land at the time the photographs were taken. However, it is sometimes difficult to interpret particular features due to the time of year and the level of detail e.g. trees in full leaf obscuring routes.

Aerial photo taken May 1980

Aerial photo taken May 1990



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

The 1980 photograph clearly shows part of the application route running from Broadmeads (at Point A) past the garages. Although there is no visible path linking this route with the towpath (Point B), the access between the garages and the towpath does not seem to be blocked. The 1990 photograph is not so well focused but you can see the access at Broadmeads, the route past the garages and a clear path/gap where this joins the towpath (top right of Point B).

11.3 Decision

HCC decided that both photographs provide some evidence of the existence of the application route from Broadmeads, running between the flats and the garage blocks to the towpath. However, there is a difference at the towpath end: it is not until the 1990 photograph that a definite 'gap/path' linking the access route to the towpath is shown. These photographs do not provide any evidence of highway status.

12. Contemporary Evidence of Use

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

12.2 Summary of Evidence

The landowner has not made any deposit under section 31(6) of the Highways Act. No documentary evidence has been received from the landowner.

However, when the route was inspected in March 2013, there were signs/notices stating 'No public right of way' at the vehicle entrance (Point A) and the towpath entrance (Point B). These notices appear to be new (the sign at the towpath end is fixed to new fencing) and so they may have been erected at the same time as the gates in 2011. (See Photos 1 & 3).

The table below is compiled from the user evidence forms received, plus some additional emails and phonecalls to individuals.

User No	No of yrs used	Start Yr	End yr	Type of use	Frequency	Permission	Challenge	Notices	Obstruction	Width	Inquiry	Additional comments
1	37	1974	2011	Foot	W	No	No	No	Yes	1.5m	Yes	Electronic gates from Dec 2010/Jan 2011. (Phonecall -from Broadmeads used road, from towpath used pavement).
2	42	1969	2011	Foot Bicycle	D D	No	No	No	No	1-3m	Yes	Used on foot/bicycle to work daily. Tenant at Broadmeads for 1yr. 1972 (Email - used pavement flats side, also used road. Width 1m pavement, 3m road. Barrier near river)
3	55	1956	2011	Foot Bicycle	W W	No	No	No	No	4ft+	Yes	(Email - used road. Width of 4ft or more).
4	38	1973	2011	Foot Bicycle	W W	No info	No	Yes	Yes	about 1m	Yes	Sign Residents Only when fence and gates put up 2011 onwards. Broadmeads residents 1973-1977.
5	41	1970	2011	Foot	M	No	No	No	No	6ft	No	(Phonecall - used pavement on flats side. Width 6ft).

User No	No of yrs used	Start Yr	End yr	Type of use	Frequency	Permission	Challenge	Notices	Obstruction	Width	Inquiry	Additional comments
6	15	1996	2011	Foot	M	No	No	No	No	no info	No	
7	20	1991	2011	Foot Bicycle	M M	No	No	No	No	3ft+	No	Staggered bars to stop motorbikes. No obstruction until gates went in in 2011.
8	20	1991	2011	Foot Bicycle	D M	No	No	No	No	4ft+	No	(Email - used road. Width of 4ft or more).
9	19	1992	2011	Foot	W	No	No	Yes	Yes	5-6ft	Yes	Notices on fence and gates (put up 2011) Private Property. (Phonecall - barrier near towpath, then pavement garage side. Width 5-6ft.
10	10	1995	2005	Foot	D	No	No	No	No	6ft	Yes	(Phonecall - used pavement on flats side. Agreed width of about 6ft).
11	44	1968	2012	Foot Bicycle	D M	No	No	No	No	6ft	Yes	(Email - used access road. Width 6 ft, though staggered barrier).
12	24	1983	2007	Foot	D	No	No	Yes	No	4ft	Yes	No public right of way sign. Staggered barrier by river path before 1983 until at least 2007.
13	21	1990	2011	Foot	M	No	No	No	Yes	no info	Yes	Large iron gates across the entrance - it was a surprise!
14	31	1980	2011	Foot	W	No	No	No	Yes	1.5m	Yes	A gate 2011 - still in place (Phonecall - mostly used pavement on garage side, though other pavement/road occasionally. Width c.1.5m).
15	31	1980	2011	Foot	M	N	No	No	Yes	no info	No	Gates Feb 2011.
16	14	1997	2011	Foot	D	No	No	Yes	No	no info	Yes	Notice - Private.
17	20	1991	2011	Foot Bicycle	D W	No	No	Yes	No	4ft	Yes	Staggered metal bars in circle on map - at river path entrance. (Phonecall - used road. Width about 4ft.)

User No	No of yrs used	Start Yr	End yr	Type of use	Frequency	Permission	Challenge	Notices	Obstruction	Width	Inquiry	Additional comments
18	9	2002	2011	Foot	W	No	No	Yes	No	no info	Yes	Notice on garage 'Parking for residents only' Metal posts in circle - map. Gates erected Feb 2011.
19	40	1971	2011	Foot	W	No	No	No	Yes	1.5-2m	No	(Email - walked on pavement on flats side. Width 1.5-2m)
20	42	1968	2010	Foot	D W	No	No	Yes	No	no info	Yes	
21	27	1984	2011	Foot	W	No	No	No	No	4ft+	Yes	(Phonecall - used pavement on either side and sometimes road. At least 4ft.)

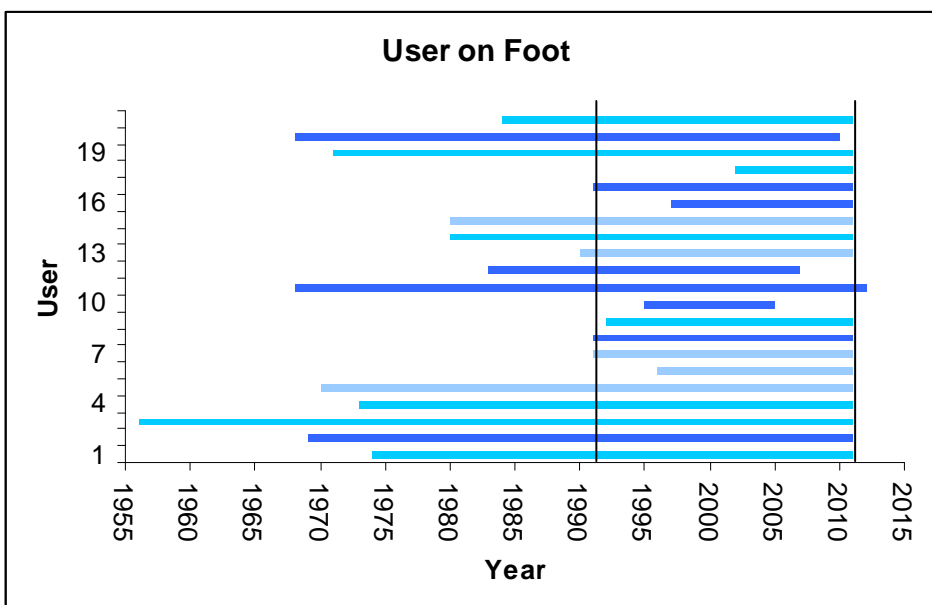
Letters

Two letters were received in support of the application:

One couple said they had used the route regularly from 1970-1987 and “were never challenged by any of the residents and we do not recall seeing any signs saying that it was not a ‘Right of Way’. Our understanding was that the public had every right to walk through Broadmeads.”

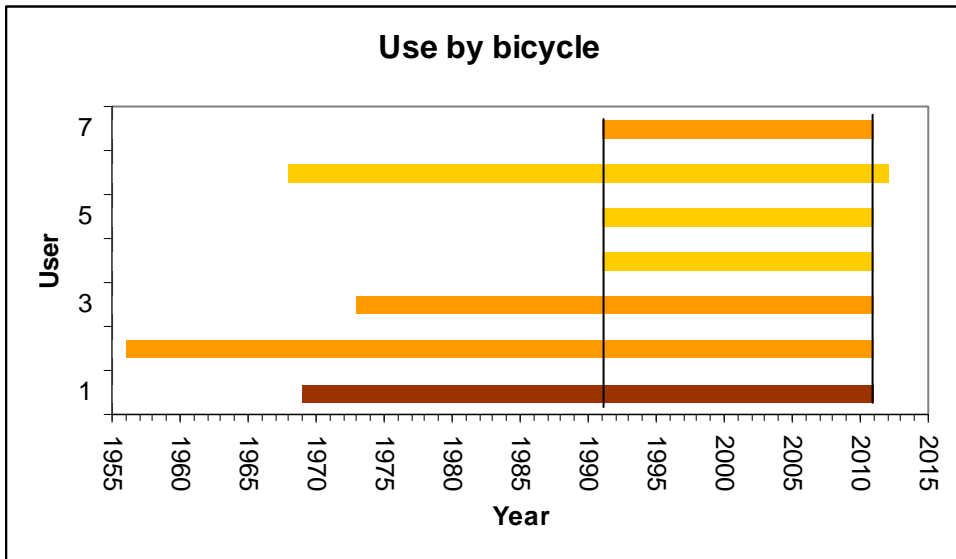
The other letter from their son stated that he was born in Ware in 1972 and used the route regularly both on foot and bicycle until the family moved away in 1987.

The following graphs show the use of the application route based on the information given in people’s user evidence forms.



Frequency of use	
	Monthly
	Weekly
	Daily

Frequency of use	
	Monthly
	Weekly
	Daily



24 people used the application route on foot (21 user evidence forms, plus letters from 3 people). 14 used the route for the full 20 year period (1991-2011) and of these 4 used it daily, 6 weekly and 4 monthly. A further 2 periods of 20 years use is provided by combining 4 other users. People were able to walk freely, using either the road or the pavements on the flats/garage side and sometimes they varied the line of their route depending on which direction they were going.

7 people (Users 2, 3, 4, 7, 8, 11 and 17) also stated that they used the route by bicycle for the full period of 20 years and of these 1 used the route daily, 3 weekly and 3 monthly.

7 people (Users 2, 7, 9, 11, 12, 17 and 18) mentioned that there were off-set barriers near the junction with the towpath and one person (User 12) mentioned a 'No Public Right of Way' sign during their period of use (1983-2007) which they thought was near the garages.

Additional Evidence Submitted following consultation

1. Various emails were sent by a member of the public objecting to the application. Their submission was mainly a complaint that HCC had not followed the legislation in processing the application. However, they submitted a 2009 Google map showing the front entrance to Broadmeads with a sign clearly visible stating 'Broadmeads – Private Road – No Public Right of Way.' They also alleged that the application was not for a clearly defined route i.e. the application plan showed an obvious 'fixed point' of entry at the towpath (Point B on the Investigation Plan) but the entry from Broadmeads (Point A on the Investigation Plan) was a random point in the middle of the access road and that people varied their route between these.

2. Letter dated 24 June 2013 from a Broadmeads resident objecting to the application. Stated that they had lived there for 10 years and that the Private Property sign at Broadmeads entrance and the towpath had been there throughout, though the towpath sign was always being vandalised. They approved of the fencing/gates as they were concerned about anti-social behaviour that they had witnessed.

3. Notice from East Herts District Council dated 13 March 2009 giving the council's refusal of planning permission for the fencing at Broadmeads on the north side (towpath) and the south side (Broadmeads road) 'by reason of its height, design and siting'.

4. The solicitor acting for Broadmeads (Ware) Management Limited (BWML) submitted a covering letter dated 28 June 2013 citing the application of the legislation and case law with 20 statutory declarations. The statutory declarations were made by residents (or relatives of residents) of Broadmeads, Ware and were dated between August 2011 and June 2013. Each statutory declaration was accompanied by a series of exhibits including landownership details, photographs of the route and area showing signs, minutes of the management company AGM etc. The following is a summary of their statements – please also see the BWML 'Table of Evidence' from which the information is derived on page 18 of this report.

Please note that the statutory declarations refer to a plan of the flats which labelled the entrance at the **towpath as Entrance A** and the entrance at **Broadmeads public road as Entrance B**. This is the reverse of the labelling used in HCC's earlier Investigation Report. To avoid confusion, the entry Point and location are given on each occasion below.

There was general agreement on many points (the numbers in brackets refer to the number of people as shown in the attached 'Table of Evidence'):

- Everyone (20) knew that it was a private estate (not maintained by the council) and that it had no public right of way through it.
- Everyone (20) stated that the signs at entrances A (towpath) and B (Broadmeads road) were in place throughout their occupation, though occasionally they were vandalised and had to be replaced.
- Everyone (except one relative) said they knew about or took part in closing access at A and B at least once a year (usually at Christmas and sometimes on other occasions) and 4 people took a direct part in this.
- Half (10) said they knew of members of the public being challenged when walking through the estate and 5 people recounted where they had challenged members of the public themselves.
- 14 residents specifically mentioned Mr P (now deceased - who lived on the estate and carried out maintenance work) in connection either with the annual closure of the entrances at A and B and/or his proactive challenging of members of the public.
- A significant number (7) were either Directors or knew about the Management Committee meetings where the issues of replacing vandalised signs were discussed/minuted.
- 6 people knew or were aware of entrance D which was used until entrance A (towpath) was opened up in the mid 1980s. They refuted that people could have used entrance A before this time.

Further evidence was supplied by several of the residents of which the main points are summarised below:

Resident 1 who lived at flat 49 in Block 5 adjacent to entrance A (towpath) stated that this gate required planning permission which was applied for in January 2010, granted in April 2010 and work started in October 2010, with the lock being activated on 15 January 2011. The gate at A (Broadmeads road) was approved under Permitted Development

Rights and did not require planning permission. He noted that the planning application received no objections. He supplied several instances of when he had challenged individuals himself. He assisted Mr P (now deceased, who lived on the estate and did maintenance work) with closing the entrances at A and B. He supplied copies of the Management Company AGM minutes for 1988, 1989, 1992, 1995, 2002 and 2004 which mention signs and having to replace them following vandalism. Photographs showing the signs at A and B dated 1985, 1996, 2006 and 2008 were submitted as well as other undated photographs.

Resident 4 – her son was commissioned to undertake a professional tree survey at Broadmeads in March 2001. One of his photographs includes a sign stating ‘Broadmeads - Private Road - No Public Right of Way’.

Resident 6 – lived at flat 48 in Block 5 adjacent to entrance A (towpath). She was on the Management Committee 2007-10 and was involved in closing the gates at Christmas in 2009 and 2010 and included a photograph of the notice prepared for this purpose.

Resident 9 – lived at flat 81 in Block 8 near entrance B (Broadmeads road access), was a Director of the Management Company and was personally involved with closing the gate at B (towpath) several times a year since the 1990s. She recounted instances of challenging members of the public and contacted local schools to inform them of issues re parking problems and youths in the area.

Resident 12 – particularly recalls the gates being closed on 9, 10 and 11 November 2005. On 2 May 2006 a lorry from Farecla (next door property) backed on the sign at the front entrance (A). The driver admitted responsibility and a new sign was erected on 9 May. The Directors decided to enclose the estate because of increasing difficulties with issues involving members of the public.

Resident 15 – recalls AGM meetings referring to damaged signs which were replaced at the Committee’s expense. Saw Mr P challenging individuals on numerous occasions and assisted during the Christmas closure of the gates on 2 or 3 occasions.

12.3 Decision

In order to assess whether there has been sufficient evidence of use to raise a presumption that public footpath rights have accrued between Points A and B on the plan, HCC first has to establish the date use was ‘challenged’ by the landowners (see above). BWML erected gates on the route at Points A and B at the end of 2010 but the gates were not locked until January 2011. HCC therefore decided that 2011 is the date of challenge.

Section 31 of the HA 1980 states that for public rights to accrue over a route there should be evidence of use as of right over a period not less than 20 years. Such evidence of use raises a presumption that public rights have been dedicated by the landowner, unless the landowner can show that he had no intention to dedicate the route during the period in question. As the date of challenge for this case is 2011 the relevant period of use is 1991-2011.

The evidence provided by BWML (landowner) shows that they did not intend to dedicate as they had erected notices at Point A and B (Broadmeads public road and the towpath) stating

'No public right of way' throughout the relevant period. The Minutes of BWML AGM meetings between 1988-2004 refer to maintaining and replacing notices at Point A (Broadmeads public road). Residents had individually challenged members of the public walking through the estate between Points A and B and in addition these entrances had been closed at least once a year (usually at Christmas), with residents actually challenging people using the application route.

An assessment of the user evidence showed that there were 24 people who had used the route and 14 of these were during the relevant period 1991-2011. Seven of 24 referred to staggered barriers at the towpath entrance. Seven people referred to notices on the route. The notices were reported as saying 'Private Property', 'Residents Only' etc. and one person specifically mentioned a notice which stated 'No public right of way'.

HCC decided that there is sufficient evidence to show that the landowner (BWML) had no intention to dedicate a public right of way under section 31 of the HA 1980.

Conclusion

HCC decided not to make an Order for a public right of way.

BWML 'Table of Evidence' taken from the 20 statutory declarations made between 2011-2013

Details referred to in statutory declaration Y = Yes - = no mention * = relative of resident

Detail	1	2	3	4	5	6	7	8	9	10	11*	12	13	14	15	16	17	18	19	20	Total Yes	
Dates of residency e.g. 1992-2013	92-13	99-13	74-10	77-94 05-13	99-12	97-11	75-13	81-11	89-11	78-11	04-12	93-11	86-11	86-11	00-11	94-12	84-13	84-13	00-13	91-13		
Private estate and no right of way	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	20
Signs at A and B throughout (from mid 1980s)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	20
Photos of signs attached/referred to	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	-	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	19
Knew of closure once a year	Y	Y	Y	Y	Y	Y	Y	-	Y	-	Y	Y	-	Y	Y	Y	Y	Y	Y	Y	Y	17
Took part in closure once a year	Y	-	-	-	-	Y	-	-	Y	-	-	-	-	-	Y	-	-	-	-	-	-	4
Knew of others challenging public	Y	-	Y	-	-	Y	Y	-	Y	-	-	Y	-	Y	Y	Y	-	-	-	Y		10
Named Mr Penn re closure/challenging public	Y	Y	Y	-	Y	Y	Y	-	Y	-	-	Y	-	Y	Y	Y	Y	Y	-	Y		
Directly challenged members of public	Y	-	-	-	-	-	-	-	Y	-	-	Y	-	-	Y	Y	-	-	-	-	-	5
Involved as Director/knew of meetings when signs were mentioned	Y	-	-	-	Y	-	-	-	Y	-	-	Y	-	-	Y	-	Y	Y	-	-	-	7
Aware of/knew early 80s entrance at D	Y	-	Y	Y	-	-	-	Y	Y	Y	-	-	-	-	-	-	-	-	-	-	-	6