

# **HERTFORDSHIRE COUNTY COUNCIL**



## **Rights of Way Service**

### **Modification Order Investigation Report**

#### **Danesbury Park Road**

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Date: 18th April 2012

### Application Details

This application is to record a byway open to all traffic (BOAT) along Danesbury Park Road in Welwyn. An extract of the 2010 Definitive Map is attached. It shows where the route lies and is labelled points A, B, C, D, E, F.

This application was made by Codicote and Welwyn Parish Councils on 14<sup>th</sup> December 2010. It was submitted in the prescribed form with the applicants providing copies of the map and documentary evidence they wish to rely upon.

### Description of Route

The application route itself is a surfaced track that runs beside an old golf course before becoming an access road for private houses in Pottersheath. Points A-B-C-D-E is known on the Hertfordshire Gazetteer (see section 8 below) as Danesbury Park Road, whereas points B-F is known as North Ride.

The application route starts as two routes leading from two separate points off Codicote Road and North Ride near Welwyn village (points A and F on the plan) in a generally north westerly and northerly direction through the golf course until they converge at Danesbury Lodge (point B on the plan). From point B the route heads in a generally north easterly direction until it reaches Pottersheath Road at point E on the plan. A few metres south west of point C the route is crossed by Codicote Footpath 31, which runs from Pottersheath, becoming Welwyn Footpath 39 south of the application route.

### Documentary Evidence

For each investigation, we check at least 10 primary sources of information. You can view the documents listed below at Hertfordshire Archives and Local Studies (HALS) or at the Rights of Way Service (ROW). These are both at County Hall, Hertford. The documents are listed below with a reference number (if it has one) and where you can find it.

For further information:

Hertfordshire Archive and Local Studies (HALS): 01438 737333 (or 01923 471333 from area codes 01923 and 020)

[www.hertsdirect.org/libsleisure/heritage1/HALS](http://www.hertsdirect.org/libsleisure/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>. This link also details related articles and case law.

You will find each document listed with the following information:

- The document's name, date and where it can be found (location and reference)
- Why we consider the document important when making our decision
- What is shown by the document in the area of the application route
- Investigating officer's comments

Please note that where there are no records for the document listed, this will just be recorded as "No records found."

## 1. Dury and Andrews' Map

Date: 1766

Ref: HALS - CM26

### 1.1 Why we consider this document important

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

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

Welwyn and Codicote villages are shown, as is the Codicote Road that runs between them. Danesbury Park House at point B is also shown. A road enclosed by hedges leads north east past Danesbury Park House between points B-E. This route continues past Danesbury Park House to a point south east of B, until it joins a road enclosed by hedges heading directly south south east between point A and a point south of F near the Great North Road. The application route between A-B-F is not shown.

### 1.3 Decision

The application route is shown as a "road enclosed by hedges" between points B-E. A route is shown between A-B but it is unlikely to be the application route as the junction with the route heading towards Mardley Heath (which currently exists at point B) is shown lying some way south east of Danesbury Park House. Instead, the route at point A heads almost directly to point F rather than passing via point B. This suggests that at the time the route between A-B-F existed on an alignment that is different to the application route.

HCC decided that Dury & Andrews considered the route between B-E to be a public road, but that the map provides no evidence for the application route between points A-B-F as it is not shown.

## 2. Highway Diversion/Extinguishment Records

Date: 1801

Ref: HALS QS 110-114

### 2.1 Why we consider these documents important

Most orders diverting or extinguishing rights of way were made under the Highways Acts by the Quarter Sessions courts. Quarter Sessions were the legal courts held locally four times a year since 1388 and which were superseded by the magistrates' court in 1972. Cases were decided by justices of the peace who dealt with petty criminal cases, the supervision of lunatic asylums, the licensing of public houses and highway matters etc. Orders could also be made under other Acts of Parliament, such as under the New Towns Commission, the Housing Acts, the Town and Country Planning Acts or the Defence Acts etc.

In all cases, these are legal orders which can include diversion or extinguishments of public rights. As these are legal documents they provide conclusive evidence of those matters the court actually decided, but are not conclusive in relation to other matters.

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

The plan annexed to a diversion order dated 1801 shows the application route between points B-E and B-F. A route is also shown between A-B, although this is shown on an alignment similar to that shown by Dury & Andrews' county map (see paragraph 1 above). The plan shows all highways in the area as sepia coloured. Some, including the application route between B-E, are shown lined with hedges; whereas others, including the application route between B-F, are shown to be open to the land around them. The application route between B-E is shown in the same manner as other known public highways, whereas the route between B-F is not.

The diversion order diverted the application route between points A and D onto what is now Rabley Heath Road and Pottersheath Road. The order describes stopping up the application route between points A-D as follows:

*“that part of Highway lying part within the parish of Coddicote [sic] in the said County and part within the parish of Welwyn in the hundred aforesaid and lying between and leading from the Turnpike Road from Welwyn to Coddicote in the said County by Gill Hill to a certain Heath called Potters Heath and containing in length three hundred and fifty poles or thereabouts and in breadth thirteen feet or thereabouts and more particularly described in a plan hereunto annexed and lying between the letters J and D may without inconveniences to the Public be diverted into a certain new Highway by us authorised and directed to be made from the said Turnpike Road leading from Welwyn aforesaid to Coddicote aforesaid to a certain place called Rably [sic] Heath and from thence to Potters Heath aforesaid and to the Turnpike Road leading from Welwyn aforesaid to Stevenage in the same County”.*

A certificate signed by two justices of the peace is dated 1803 and confirms that the new highway leading south east from Potters Heath to the Welwyn-Stevenage Turnpike Road was built to a suitable standard.

## 2.3 Decision

The plan annexed to the diversion order shows the application route between B-E and B-F. A route is shown between A-B but it is on an alignment similar to that shown by Dury & Andrews' map above, and so is unlikely to be the application route. The route between B-F is not shown in the same manner as the route between A-B-E and the known public roads.

The order diverted the route between points A-B-D onto Rabley Heath Road. It should be noted that the route between A-B that was diverted is not on the same alignment as the application route. HCC decided that the diversion order means that public rights were extinguished over the application route between points B-D, whereas a public highway remained between points D-E. HCC decided that the diversion order shows that the application route between B-F existed at that time, but because the document did not consider this part of the route it provides no further evidence as to whether it was public or its status.

## **3. Codicote, Welwyn and Knebworth Inclosure Records**

Date: 1819

Act ref: HALS D/EL/E104

Award and Maps ref: HALS QS/E/22

### 3.1 Why we consider these documents important

Enclosure was the process of physically changing the landscape to benefit the development of modern farming practices as technology improved. It was popular from the late medieval

period to the 19<sup>th</sup> century and carried out on a parish-by-parish basis. As it changed the layout and size of fields it also changed the routes of roads and rights of way.

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

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

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

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

The parishes of Codicote, Welwyn and Knebworth were enclosed pursuant to “An Act for inclosing lands in the parishes of Codicote, Welwyn and Knebworth in the County of Hertford” dated 1810. There is a plan drawn onto the award where the award describes the parish boundary between Codicote and Welwyn. This plan seems to relate to the layout of the parish boundary rather than the routes that are stopped up or set out. The plan shows the application route between points A-B-D, whereas the application route between points D-E and B and F is not shown.

The award is not terribly clear in the routes that it sets out. It sets out only one bridleway and a handful of footpaths. Several public roads are set out, but none relate to the application route. The description of the line of the parish boundary states that it passes along Danesbury Park Road, and is described as “following the direction of an old road now stocked [stopped] up into and through a farm yard”, that farm yard being Potters Heath Farm.

### 3.3 Decision

The inclosure award shows the application route physically existed between points A-D but not between points D-E or B-F. The map is the earliest document that shows the route between A-B on its modern alignment, suggesting that it was constructed after 1801 (the date of the diversion order showing it on the old alignment) but before 1819. As reference is made to part of the route that is shown is described as being “an old road now stocked [stopped] up” this shows that this part of the application route was not considered to have any public rights of way. No public rights were set out over the application route by the inclosure process.

HCC decided that the inclosure award provides evidence that although the route between points A-D physically existed, it was not considered to be a public right of way. It provides no evidence for the application route between points D-E or B-F as they are not shown.

## 4. Bryant's Map

Date: 1822

Ref: HALS - CM88

### 4.1 Why we consider this document important

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

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

The application route between A and B is not shown, being depicted only as a field boundary. The application route between points B and E is shown as a "good cross or driving road" leading to Potters Heath Farm and St John's Lodge. A route is shown between points B-F (but on a different alignment from the application route) as a track that leads to the south west side of St John's Lodge (now Danesbury Park House at point B) rather than to the junction with the application route at B.

### 4.3 Decision

HCC decided that the only part of the application route that is shown is that between points B-E. This is shown on the map as a good cross or driving road as are other routes which are now known to be public roads. A route is shown between B-F but it lies on a different alignment to the application route, as it heads to Danesbury Park House itself rather than to point B. HCC decided that Bryant's map provides no evidence for the application route between points A-B or B-F as they are not shown.

## 5. Codicote and Welwyn Tithe Map and Tithe Apportionment

Codicote map	Date: 1842	Ref: HALS DSA4/32/2
Codicote award	1841	HALS DSA4/32/1
Welwyn map	1837	HALS DSA4/113/2
Welwyn award	1837	HALS DSA4/113/1

### 5.1 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 1<sup>st</sup> class or 2<sup>nd</sup> class. 1<sup>st</sup> 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. 2<sup>nd</sup> class maps were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. Unfortunately the proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, was not strictly adhered to.

The tithe process received a high level of publicity. This ensured the documents were an accurate record of the agricultural landscape at this period of history. Therefore, although the

process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights. Non-titheable land deemed to be unproductive could be excluded from the process. No tithe was therefore payable on roads and so it was in the interest of the landowners for these to be shown correctly. In some cases highways are coloured yellow or sienna to indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the calculation of tithe rent.

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

The application route is covered across two tithe maps for the parishes of Codicote and Welwyn. The land over which the application route between points A-B runs partly along the parish boundary but is mainly in Welwyn parish. It is not shown on either map, however. The section of the route between B-F, which lies in Welwyn parish, is shown on the Welwyn tithe map, but as double pecked lines rather than in the manner of the other highways shown. The application route between points B and E is shown on both the Codicote and Welwyn tithe maps as a route leading to what was Pottersheath Farm (near the junction with Welwyn Footpath 39) and Danesbury Park House from Pottersheath Road. It is shown on the maps coloured sepia in the same way as routes which are now known to be public roads.

### 5.3 Decision

HCC decided that the tithe documents provide no evidence of the application route between points A-B as it is not shown. HCC decided that the route between B-F existed at the time, but it is shown in a different manner to the known public roads. As tithe maps were not produced to deal with highways HCC decided that no conclusion can be made about whether it was public or its status. HCC decided that the route between points B-E is shown on the map in the same manner as other roads now known to be public, and so was likely to be considered a public road at the time.

## **6. Railway and Canal Plans**

There are no railways or canals in the area.

## **7. Inland Revenue Documents**

Date: 1910                                      Ref: HALS IR1/220, IR1/244a, IR2/23/1, IR2/25/1

### 7.1 Why we consider these documents important

The Finance (1909-1910) Act 1910 was passed in order that a tax could be levied on any increase in the value of land when it changed hands. In order to ascertain the value of all land as at 30<sup>th</sup> April 1909, a survey was carried out assessing each piece of land. The OS 2<sup>nd</sup> 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 application route between points A-B-F is shown on the Ordnance Survey basemap with double pecked lines, while that between B and E is shown as an enclosed route bounded on both sides. The whole route is included within larger plots: points A-B-E is part of plot 500; and points B-F is part of plot 506. Plot 500 is classed as “house, gardens, grounds, stabling” known as Danesbury, whilst plot 506 is classed as “lands”. Both are in the ownership of A M Blake, whilst the occupier of plot 500 is not marked and the occupier of plot 506 is John Foster. Both plots have large deductions for public rights of way of £150 each, although there is a note for each plot stating that the extent of taxable land is to also include several other numbered plots, meaning that the £150 deduction will not relate to just a single plot.

The OS basemap shows the path that is now recorded as Welwyn Footpath 39 with double pecked lines. The surveyor has written the word “public” over this path, south of Danesbury Park House. On the application route between points B-F has been noted the word “less”, along with a calculation that may relate to the size of the plot.

### 7.3 Decision

The application route is shown along its entire length, but is included within taxable hereditaments, all of which have large deductions for public rights of way. HCC decided that it is most likely that the whole of the application route was considered to be private.

HCC decided that whilst the deductions for public rights of way could relate to the application route, the fact that the path now recorded as Welwyn Footpath 39 was annotated “public”, whereas the application route was not, suggests that the latter was not considered a public route. However, it should be recalled that the surveyor would have obtained his information about rights of way from the landowner who was not legally obliged to declare public rights across his land. The fact that the application route is not noted as public, therefore, does not necessarily mean that public rights did not exist.

HCC decided that the word “less” and adjoining calculation annotated on the application route between points B-F relates to the size of the plot minus that acreage of Footpath 39, and that its position on the line of the application route is a coincidence.

## **8. Highway Records**

Date: 1940s to early 1990s

Ref: RoW

### 8.1 Why we consider the evidence 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?

Provided with the application was a package of papers detailing the history of the application route and any dealings with the landowners and local authorities. In 1946 the then owners of the application route, Welwyn Garden City Limited, contacted the County Council to ask if it would consider adopting the application route as a road. The question again arose in 1987 when a letter was sent by the County Council to local residents, advising that the route would need to be made up to the required standards before the adoption process could begin. It would appear, however, that the issue of adoption was not progressed further on either occasion.

In 1991-2 some bollards were placed on the route midway between points A and B and the route was narrowed near point B when the fence was moved. These obstructions were put in place by different landowners. A complaint was made to the County Council by local residents, who believed that their public rights to use the route were being infringed. The County Council initially declared in a letter dated 23<sup>rd</sup> August 1991 that “this section of [the application route] is not an adopted highway maintainable at public expense”. As a result, 34 user evidence forms (see section 12 below) were provided to HCC, which decided in a letter dated 7<sup>th</sup> April 1992 that the application route between A-B was “a highway over which the public has a vehicular right of way”. The bollards were removed quickly while the fence remained in place for nearly two years before a suitable position for it was agreed.

On 14<sup>th</sup> April 1992 Welwyn Hatfield Council responded to a local resident’s query regarding the golf course. They stated that the application route was a public right of way and that the then owner of the golf club, Mr Snowdon, did not want to prevent public use of it. The letter goes on to say that the District Council granted planning permission for the brick piers at point A, on the basis that public access was not restricted or obstructed.

In 2010 the issue of public access arose again, this time following complaints about the erection of signs on the route by the owners of Danesbury Hill House (see section 13 below). HCC found that the application route is a highway that is not maintainable at public expense. The reasons for this were that the application route had been used by the public 'as of right', but that the route did not exist as a publicly maintainable highway prior to 1835. The 1835 Highways Act stated that for any route constructed after the date of the act, it must be formally adopted by a highway authority to become publicly maintainable. This has never happened in the case of Danesbury Park Road.

### 8.3 Decision

In the early 1990s, following the provision of the user evidence forms, the County Council concluded that Danesbury Park Road between points A-B-E was an all purpose highway that was not maintainable at public expense. No assessment appears to have been made about North Ride between points B-F. This conclusion was confirmed in 2010. HCC therefore decided that the application route between points A-B-E is a public road, but that the highway records provide no evidence for North Ride between points B-F as its status was not assessed.

## **9. Sales Particulars**

Date: 1944

Ref: HALS RDC14/68/1-15

### 9.1 Why we consider the evidence important

Sales particulars advertise the sale of properties. They are not a legal record of the property that is being sold but as they advertise the property to potential purchasers they are often very accurate in their descriptions.

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

The Danesbury Estate was sold in 1944 and these sales particulars relate to this. The land to be sold is shaded different colours on the plan, with the application route being included within the land to be sold and coloured pink. The particulars state that the pink land "will be given on completion". They list Danesbury Park Road as a private road of 1100 feet in length, stating "The whole of the Danesbury Park Road is vested in the Estate but only a small area of land adjoining belongs".

### 9.3 Decision

The application route is shown in the same manner as the 2<sup>nd</sup> edition Ordnance Survey map used for the Inland Revenue plans. Danesbury Park Road between A-B-E is shown as a track with solid boundaries, whereas North Ride between B-F is shown as a track with boundaries open to the adjoining parkland. Both are included within the land to be sold. HCC decided that the application route between points A-E and B-F at the time was considered to be a private estate road.

## **10. 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)

### **10(a) Definitive Map Records –Codicote and Welwyn Parish Surveys**

Date: 1951

Ref: RoW

#### 10.1 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.

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

The application route is shown on the Ordnance Survey map used as a basemap for the Parish Surveys. The Surveys show Codicote Footpath 31 and Welwyn Footpath 39 but do not mark the application route as being a public right of way capable of being recorded on the Definitive Map. The statement for Codicote Footpath 31 as it exits onto the application route is described as “Thence to exit gap. Danesbury Park Road”, and the statement for Welwyn Footpath 39 reads “FP from Church Street Welwyn to Danesbury Park Road”, but in neither case is reference made to the status of Danesbury Park Road. The map for the Welwyn Parish Survey is not very clear, but the map for the Codicote Survey shows Codicote Footpath 31 as joining the application route at the junction with Danesbury Lane, rather than showing the footpath running along the application route towards Welwyn Footpath 39, as the current Definitive Map does.

#### 10.3 Decision

Both Codicote Footpath 31 and Welwyn Footpath 39 are described as joining Danesbury Park Road rather than running along it. HCC decided that this suggests that Danesbury Park Road had public rights of at least footpath status, if not higher, but no conclusion can be drawn as to what status these rights were.

### **10(b) Definitive Map Records – Draft, Provisional and First Definitive Map**

Date: 1951

Ref: RoW

#### 10.1 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.

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

Whilst the first Definitive Map shows both Welwyn Footpath 39 and Codicote Footpath 31 it does not show the application route as a public right of way. Unlike the Parish Surveys, however, the Definitive Map shows Codicote 31 running down Danesbury Park Road for approximately 140 metres before meeting Welwyn 39. The statement for Codicote Footpath 31 states that it “join[s] Danesbury Park Road W. of the ‘Old House’”, which is now 1 Danesbury Lane. The statement for Welwyn 39 states that it goes “through Danesbury Park to the E. of Danesbury to Danesbury Park Road S.W. of Pottersheath House”, which is now 6 and 8 Danesbury Park Road. No objections were made to the way the route is shown on either the Draft or Provisional Maps.

### 10.3 Decision

As the statements for both Codicote 31 and Welwyn 39 state that the paths join the application route HCC decided that this suggests that Danesbury Park Road was at the time believed to be public. HCC decided that the discrepancy in the terminus of Codicote Footpath 31 on the Parish Survey and 1<sup>st</sup> Definitive Map is most likely to be due to a mapping error as Codicote 31 is described as ending at the Old House rather than at Pottersheath House.

## **10(c) Definitive Map Records - Special Review**

Date: 1977-84

Ref: RoW

### 10.1 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.

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

Danesbury Park Road is listed in a section of documentation marked “County Road Removals” and is cross-referenced with Welwyn Footpath 39. However, there are no further details in any of the documents, and the application route is not shown on the Special Review

map. It may be that it was intended to remove from the Definitive Map that part of Codicote Footpath 31 that runs along Danesbury Park Road as the application route was considered to have higher public rights. However, as there is no further paperwork relating to the route it is difficult to draw any firm conclusions.

### 10.3 Decision

HCC decided that there is insufficient evidence to make a decision.

## **11. Ordnance Survey maps**

Date: 1881, 1898, 1923-24, 1970-72

Ref: HALS

### 11.1 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 20<sup>th</sup> century that the OS evolved to become a public service that sold its mapping information for the benefit of the public. Since the 1960s this mapping information has included public rights of way, which are derived from each county's Definitive Map.

The Ordnance Survey has produced a series of topographic maps at different scales notably the one inch, six inch and 1:2500. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways etc. However, the disclaimer which has been added to all editions since the 2<sup>nd</sup> 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.

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

The 1881 (1<sup>st</sup> edition), 1898 (2<sup>nd</sup> edition) and 1923 editions show the application route between B and E as a track bounded by solid lines, but the route between A-B-F as double pecked lines, which suggests that the latter part of the route was open to the surrounding fields. By the 1923-24 edition the route between A-B is enclosed on the south side, and by the 1970-72 edition the whole application route is shown as an enclosed track. The OS maps show how the section of the application route between points B-E was always an enclosed track whereas the sections between points A-B and B-F were at first unenclosed, becoming enclosed in later years.

### 11.3 Decision

HCC decided that the OS maps show that the application route existed before the first edition, but that because they show evidence of existence only, they are not evidence of the status that the route enjoyed. The OS maps can be used as evidence of the width of the route at the date the maps were produced (see section 14 below).

## **12. Witness Evidence**

### 12.1 Why we consider the evidence important

Witness evidence may support historic evidence of a right of way. However, where there is no historic evidence of a route it is possible for a public right of way to come into existence if it

can be shown that members of the public have used it 'as of right'. In order for the public's use of a route to have been 'as of right' it must have been:

- **without force** (e.g. not breaking down a fence to access the route)
- **without secrecy** (e.g. only using the route when landowners were away)
- **without permission** (i.e. not having the permission of the landowner).

Unless there is historic evidence of rights as well, legislation requires there to be evidence of 20 years' use which ends with a 'date of challenge' (section 31 of the Highways Act 1980). This can be shorter under common law where use is sufficient and obvious to the owner that it is happening. The 'date of challenge' is the date at which the landowner challenges the use of the route (see section 13. Landowner Challenge to Public's Use of a Route, below). Where there is no evidence that use has been challenged, the Natural Environment and Rural Communities Act 2006 specifies that the date of application should be used as the end of the 20 year period.

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

### 12.2 Table

The table below shows the evidence offered by witnesses, including the number of years that they have used the route, the manner in which they have used it and whether they have encountered any problems (notices, being turned back etc). It also details their belief of the width of the route.

<b>Witness No.</b>	<b>Dates and type of use</b>	<b>Evidence offered</b>	<b>Width of route?</b>
1	1974-2010 (horseback) 1984-2010 (vehicle) 2001-2010 (foot)	Mostly drives along application route between points A-B-Danesbury Lane as works on Danesbury Lane. Uses that route daily, but approx. 2-4 times returns home via the route between points B-F. Keeps horses and rides along the route as well. Occasionally met groundsmen at the golf course, but was never stopped. Refers to signs at point A which imply that there is only access to Danesbury Hill House.	3-4 metres
2	1970-2010 (foot) 1995-2010 (bicycle) 1970-1999 (vehicle)	Used the whole route in capacity as GP from 1970-1999. Rarely walked or cycled it, but drove it monthly.	No comment made
3	1974-2010 (vehicle) 1999-2010 (foot)	Used to drive the application route between A-B-Danesbury Lane to fetch hay for sheep and cattle. Since 1999 has moved house and now walks the route for pleasure. Continues to drive the route up to point E to go to work. States that before 1991 the route near Codicote Road used to pass between the oak tree and what is now a brick wall. Refers to aggressive signs at top and bottom of disputed section which were erected in September 2009.	2.8 to 3 metres
4	1990-2010 (foot)	Uses the application route between A-B-E. Uses the route weekly, mainly for running, although used it 5-6	No comment made

	2002-2010 (vehicle)	times a year prior to 2002. Has never encountered any problems using the route.	
5	1971-2010 (foot, horse, bicycle, vehicle)	Used the route between A-B-E, although frequency of use has varied. No longer lives in the area; not clear if used to live on the route.	2.5 to 7 metres
6	1972-2000 (foot, bicycle, horse and vehicle)	Used the route between A-B-E, generally weekly. Used the route to visit friends who lived on Danesbury Park Road.	Car's width
7	2005-2010	Uses the application route between A-B-E on foot on a monthly basis for recreation. Has never encountered any problems.	No comment made
8	1980-2010 (foot) 1990-2010 (horse/bicycle) 1996-2010 (vehicle)	Uses application route between A-B-E for pleasure. Walks and rides the route weekly and cycles and drives it monthly. Has not experienced any problems with use of the route.	Varies
9	1949-2008 (foot) 1955-2010 (vehicle)	Uses the application route between A-B-E, on foot three times per week and by vehicle weekly. Has never encountered any problems using the route.	No comment made
10	1993-2010	Used the route between A-B-E on foot and bicycle more than once a week. Never encountered any problems with use of the route.	Wide enough for most vehicles
11	1954-1993 (foot) 1993-2004 (vehicle)	Lived on The Avenue between 1954-93 and would walk between points A-B-C to visit friends. When moved away from the area would occasionally drive the route between points A-B-C-D-E to get to Codicote or Hitchin.	2 to 3 metres
12	1948-2004 (foot) 1954-1993 (bicycle) 1957-2004 (vehicle)	Used the application route between A-B-The Avenue between 1954-1993 and the route between A-B-E between 1993 and 2004. Would use the route several times per year for leisure or visiting purposes. Refers to changes to the route between points A and B when the golf course was built. Remembers a gate at point A in 1948/9, which was always open.	No comment made
13	2007-2010 (foot and vehicle)	Walks the route between points A-B-C-D-E weekly and drives it daily. Reports no problems.	2.75 to 7 metres
14	1987-2010	Used the route between A-B-The Avenue or B-F daily on foot and by car. Has met landowners but they have always been friendly.	16 feet (4.8 metres)
15	Over 30 years (foot and vehicle)	Photocopy of unsworn statutory declaration. Has used routes A-B-C-The Avenue and B-F since childhood without any problems. Refers to erection of gateposts around 1992 by owner of Chauffeurs Cottage [near point B], but they were removed.	No comment made
16	1978-2010	Uses the application route between A-B-Danesbury Lane.	No comment

	(vehicle)	Refers to notices at Danesbury Hill House (near point B) that appeared between 2008 and 2010 and concrete boulders that were erected in 1991 they were removed. She refers to disputes over the route's status with previous owners of the golf club.	made
17	1950-2009 (foot and vehicle) 1960-1980 (horse)	Used to live on Danesbury Lane and then used to drive and ride the route A-B-C weekly and walk it monthly. Now uses it infrequently as moved away. Makes no reference to any signs or changes in position/width of the route.	8 to 20 feet (2.4 to 6 metres)
18	2001-2010 (foot)	Uses the route weekly but doesn't specify extent of route used.	No comment made
19	1984-2010 (foot) 1975-2010 (vehicle)	Uses the application route between A-B daily on foot and weekly by car. Refers to signs that appeared between 21 <sup>st</sup> September 2009 and 27 <sup>th</sup> September 2009 stating the right of way may be denied in the future.	14 feet (4.2 metres)
20	1971	See users 20 and 21.	No comment made
20 & 21	1971-2010 (foot and vehicle)	Lives on The Avenue and has used the application route by car to reach property and Codicote many times. Would also use it to reach golf course for sledging when the course was just fields, or for dog walking and jogging. Now uses the route 5-6 times per month.	No comment made
22	1980-2010	Uses the route from Willow Walk (off Danesbury Park Lane, near point C) to point A. Uses the route with vehicle approximately 4 times per year. Has never encountered any problems using the route.	4 metres
23	1983-2010 (foot)	Walks from house on Danesbury Park Road in a circuit along the application route between points A-B-F. Partner has driven the route to access Codicote Road.	5 metres
24	1979-2010	Uses the route weekly by vehicle. Has never encountered any problems using the route.	4 to 5 metres
25	1978-2005 (foot, bicycle and vehicle)	Used the whole route when necessary; on foot and with vehicle daily and on bicycle weekly. Refers to concrete boulders that were in place for a short time when the golf club opened.	3 metres
26	1978-2005 (foot and vehicle)	Used the application route between A-B-E, walking it weekly and driving it daily. Refers to the concrete blocks that appeared for a short time when the golf club was opened. Has since moved away from the area so no longer uses the route.	3 metres
27	1980-1992	Used the route on foot, horse, bicycle and with vehicle between A-B-E. Rode the route daily, walked it weekly and drove it/cycled it monthly. Used the route to ride to Danesbury Woods as she ran a riding school. Refers to track narrowing at top when a house was built and the boundary fence narrowed the route. Also refers to the signs on the pillars reading 'golf course'.	Wider than a car
28	1960-2010 (foot and vehicle)	Has used the whole application route at various times. Uses it generally 10 times per year. Refers to signs saying "From Codicote Road to Danesbury Lodge.	No comment made

		Private land, no public right of way. Use of the roadway is permitted at user's risk. Permission for such is entirely at the landowner's discretion and may be withdrawn at any time without prior warning".	
29	1959-2010	Uses application route from point A rather than point F, but destination varies. Uses the route on foot and by vehicle monthly. Has never encountered any problems using the route.	No comment made
30	1961-1973 (foot) 1961-1985 (bicycle) 1961-2005 (vehicle)	Used to walk dog from The Avenue to points B and A and back. Would also cycle and drive same route. Walked the route weekly and cycled it monthly.	No comment made
31 & 32	1992-2010 (foot and vehicle)	Uses the route between A-B-E to reach parts of Welwyn. Uses the route perhaps every other month. Refers to signs erected in 2010 near Danesbury Hill House that stated that use of the road was by permission.	More than 6 feet (1.8 metres)
33	1980-2010 (foot) 1985-2010 (horse) 1980-2008 (vehicle)	Walks the entire application route weekly and drives along it monthly.	No comment made
34	1983-2010 (foot) 1995-2010 (bicycle)	Lives on North Ride and walks and cycles the route between A-B-F monthly for recreational purposes. Refers to the notices near the club house stating "private road no thoroughfare" in place between 2008 and 2010.	Used to be 2.5 metres; now 4 metres
35	1983-2010 (foot and vehicle)	Uses the application route between points A-B to a point beyond C. Drives the application route monthly and walks it every couple of months. Has never experienced any problems with use of the route.	5 to 6 metres
36	1987-2008 (foot) 1987-2001 (horse) 1987-2007 (vehicle)	Used the route between A-B-E by horse weekly until 2001 when the horse was sold, and by vehicle and foot monthly until the 'privacy' signs were erected and the golf course was built. Refers to signs erected in 2008 relating to the golf course, along with CCTV cameras.	4 metres
37	1948-2010 (foot and vehicle) 1958-1960 (horse)	Use the application route between A-B-F to head north to Danesbury Lane or the unadopted track north of Danesbury Lane. Drives the route 2-3 times per week and walks it once a week. Refers to a widening of the entrance to the route at Codicote Road (point A on the plan), and a narrowing of the route near point E when a fence was erected in the middle of the route. Also refers to "private land" and "No public right of way" signs at Danesbury Hill House.	12 to 16 feet (3.6 to 4.8 metres)
38	1961-2010 (foot and vehicle) 1980-1961	Uses the application route to reach property off Danesbury Park Road. Walks the route monthly and drives it 2-3 times per week. Refers to change in position near Codicote Road when the golf course was established	12 to 15 feet (3.6 to 4.5 metres)

	(bicycle)	and a limit in the width at the northern end when a fence was erected. Refers to recently-erected signs at Danesbury Hill House near point B that state "private property" and "no public right of way". States that there was an obstruction along the route between points A-B in August 1991 when tank trap bollards were erected. References to the previous owner of the golf club knowing the route was public, but that the current owners believe it to be private.	
39	2006-2010	Does not give an indication of which part of the route used, but walks it daily. Refers to barbed wire that was erected in April 2010 and CCTV cameras which deter from using the route.	No comment made
40	2000-2010 (foot and vehicle)	Uses the route between A-B-F to visit grandson. Walks the route weekly and drives it daily. Refers to a sign on a tree that said "No right of way" that first appeared on 10 <sup>th</sup> September.	4 metres
41	2000-2010 (foot and vehicle)	Uses the route between A-B-F, walking and driving it daily. Refers to a sign on a tree that said "No right of way" that first appeared on 10 <sup>th</sup> September.	4 metres
42	1990-2010 (foot and vehicle)	Uses the route between A-B three times yearly or so to visit friends and 3 times yearly to pick berries. Refers to signs near the old golf club. Also refers to concrete blocks near the Codicote Road junction	8 to 9 feet (2.4 to 2.7 metres)
43	1977-2010 (foot and vehicle) 1984-2010 (horse)	Walks the route from point A to Danesbury Park Road. Walks and drives the route monthly and rides it weekly. Refers to "private property" signs.	5 metres
44	1995-2010	Used Danesbury Park Road from Codicote Road on foot and by vehicle, using the route by car monthly.	No comment made
45	1959-1995 (horse) 1959-2010 (foot and vehicle)	Uses the route between A-B-E. Walks the route daily and rode it and drives it weekly. Refers to notices erected in September 2010 near Danesbury House that stated use was at the owner's permission.	3 to 6 metres
46	1968-2002 (foot and bicycle) 1983-2002 (vehicle)	Used the route between A-B up until 2002 when they moved house. Walked the route weekly, cycled it monthly and drove it daily. Refers to the "mill stones" [bollards] that were erected for a short period of time in 1991.	4 metres
47	1977-2002 (foot) 1987-2002 (bicycle) 1991-2002 (vehicle)	Used the route between A-B up until 2002 when they moved house. Extent of use varied depending on the year, but 1992-1998 rode or walked the route daily. Refers to an attempt to bollard the road in the mid 1990s, but the bollards were taken out within 24 hours.	4 metres
48	1968-2002 (foot and vehicle)	Used the route between A-B up until 2002 when they moved house. Would drive the route monthly.	No comment made
49	1973-1998	Used the route weekly between A-B up until 1998 when	4 metres

	(foot) 1982-1998 (bicycle) 1990-1998 (vehicle)	moved out of the area. Has encountered no problems with use of the route.	
50	1979-2010 (foot and vehicle)	Uses the whole route. Frequency of use is variable and depends on activities. Has used the route to visit family. Refers to "official" looking signs on Danesbury Park Road that stated "private residence" etc. – took photos of these on 21 <sup>st</sup> September 2010	No comment made
51	1983-2010 (foot and bicycle) 1991-2001 (vehicle)	Cycled the application route between points A-B-E. Would walk same route up to The Avenue. Would drive the route A-B-F between 1991 and 2001 to use the golf course. Has encountered no problems with use of the route.	4 metres
52	1998-2010 (foot)	Has walked the route between A-B-C-D-E around once or twice per year. Does not recall seeing any notices.	Between 1 and 2 cars wide
53	1997-2010 (foot and bicycle) 1990-2010 (vehicle)	Used the application route between A-B-C on a weekly basis. Refers to the "private" signs at Danesbury Park House that appeared in 2009/10.	5 metres
54	1997-2006 (foot and vehicle)	Used the route between A-B-C daily by vehicle and weekly on foot.	5 metres
55	2000-2010	Uses the application route by foot and bicycle/non-motorised vehicle on a monthly basis, horse on a daily basis, and motorised vehicle on a weekly basis. Has never encountered any problems.	25 feet (7.6 metres)
56	1968-1990s (foot) 1968-2009	Used the application route between A-B-F. Used to walk the route monthly but now drives it with the same frequency. Refers to a previous attempt at closure of the route and an obstruction in the early 1990s, but no further evidence provided. Also refers to the narrowing of the road near the club house by Mr and Mrs Glencross in the 1990s.	No comment made
57	1991-2010 (foot)	Incorporates the route between A and B when walking dog daily through the nature reserve. Has met two owners of the club house but was never turned away. Refers to notices at Danesbury Hill House in 2008/9 to 2010 that read "private road".	3 metres
58	2000-2010 (foot, horse, bicycle and vehicle)	Uses route from Codicote Road to go to Willow Walk or Potters Heath. No map attached. Walks the route four times per year and cycles it 2-3 times per year. Rides and drives it monthly. Believes the route to be a public road.	20 feet (6 metres)
59	1967-2010 (bar 1969- 1971)	Uses the application route between A-B-C to access property to and from work, but has also used the route northwards towards point E. Refers to signs at point A reading "private property" which were erected 2009-10.	10 feet (3 metres)
60 & 61	1967-2008	Used to live nearby and drove the lane many times as	No comment

	(foot and vehicle)	well as regularly using it for dog walking.	made
62	1957-2010 (foot) 1957-1964 (bicycle) 1978-1983 (car)	Used the route between points A-B-Willow Walk. Walked the route weekly, cycled it monthly and drove it daily. Refers to signs on Danesbury Park Road between 2009 and 2010 but does not state what the signs said.	No comment made
63	1962-2010 (foot) 1970-2010 (vehicle)	Uses the application route between A-B-Danesbury Lane for pleasure. Walks the route weekly. Refers to signs at Danesbury Hill House but can't remember what they said.	8 to 10 feet (2.4 to 3 metres)
64	1961-2010 (foot and vehicle)	Uses the application route between A-B-Danesbury Lane for work and pleasure. Walks the route weekly and drives it daily. Has never encountered any problems with his use of the route.	8 feet (2.4 metres)
65	1997-2010 (foot and vehicle)	Uses different sections of the entire application route at different times depending on destination. Walks A-B daily to access nature reserve. Refers to signs at Danesbury Hill House near Danesbury Hill House stating "no public right of way" and "private property", erected 2009-2010.	No comment made
66	1997-2010 (vehicle)	Drives the application route between points A-B on a daily basis and walks it and the route through to point F on a weekly basis. Refers to "private property" signs erected at Danesbury Hill House near point B in 2009-10. Enclosed copies of statutory declarations relating to the use of the route by previous owners of property.	4 metres
67	1968-2010	Mostly uses the application route between A-B-F. Walks the route weekly and drives it around 4 times per year. Enclosed photos of signs near Danesbury Hill House (near point B) reading "Golf course closed, private drive" and "Danesbury Hill House, private property".	4 metres

The above user evidence forms show that of the 67 witnesses, 38 have used the route with motorised vehicles (or MPVs, the acronym for the legal term 'mechanically propelled vehicles') for more than 20 years. Some people have mainly used the route by other means (foot, bicycle or horse) for over 20 years, but this number is very small in comparison to the MPV users. The application route between A-B has received the most use, followed by that between B-C, but even the lesser-used part of the route between B-F has evidence of 20 years' MPV use by 11 witnesses.

Many of the witnesses have noted what they believe to be the width of the route. This varies from between 1.8 and 7 metres, but the majority of witnesses believe the route to be around 4 metres.

Supplied with the application was a bundle of documents referred to in section 8 above, which dealt with residents' concerns over alleged obstructions of the route. As part of this complaint evidence of public use of the route had been collected from 36 witnesses and presented to the County Council, who had previously declared the route to be private. These user evidence forms were unfortunately lost some years ago, but a chart summarising this use has subsequently been provided to the County Council. This chart relates to use of the route

between points A-B, as the evidence was presented following the dispute over alleged obstructions on that part of the route. 11 of the witnesses summarised in the chart have subsequently supplied further user evidence forms that are referred to in the table in section 12.1 above. The summary chart shows that in 1991-2, of the witnesses whose evidence is not also presented in the table above, 12 had used the route for over 20 years, mostly by MPV.

### 12.3 Decision

The evidence presented by the user evidence forms and the separate chart from 1991-2 shows that in total 50 people have used the application route, mainly by MPV, for a period in excess of 20 years. The earliest periods of use date from the 1940s. HCC decided that it is clear that there has been extensive public MPV use of the route well in excess of 20 years, leading to a reasonable allegation that public MPV rights have accrued.

A number of the witnesses live on the application route and HCC considered whether such use should be considered of a public or private nature. The witness statements were provided for the purposes of asserting public rights and HCC concluded that witnesses considered their use as a public right. In considering the nature and character of the application route (in particular as a through-route serving multiple dwellings as part of a wider road network) together with asserted public use of the witnesses HCC decided that the witnesses' use of the application route was of a public nature.

## **13. Landowner Challenge to Public's Use of a Route**

Date: 1991, 2009, 2010

Ref: RoW

### 13.1 Why we consider the evidence important

Landowners can take steps to prevent the accrual of new public rights of way through use of a route by the public. Such steps must be overt and make the public aware of the landowner's intentions. They can include placing and maintaining notices on site stating that the route is not public or that it is used with permission; by erecting and locking gates; or by telling people seen using the route that it is not public, etc. If such steps are taken it may be that whilst the public may use a route for over 20 years, that use would not be 'as of right' (see section 12.1 above) and so public rights would not accrue.

In addition to placing notices on site, section 31(6) of the Highways Act 1980 (following on from the Rights of Way Act 1932) allows landowners to deposit a map and statement with the County Council showing the public rights of way across their land. Following this declarations need to be made regularly to the effect that no additional ways have since been dedicated. It should be noted that making such deposits and declarations would not affect pre-existing rights.

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

The Land Registry official copies show that the owners of Danesbury Hill House own the application route between point A and a point west of B. In 1991 the owners of Danesbury Hill House erected bollards near point B. At a similar time the developer of the land on the north side of the application route extended the fence near point B further into the road. The bollards were removed fairly swiftly although the issue of the fence took several years to resolve. Some years after this, in September 2009, signs were erected near Danesbury Hill House stating that the route was not a public right of way.

In addition to this, on 14<sup>th</sup> August 2010 the current owners of Danesbury Hill House made a section 31 deposit in which they state that there are no public rights of way across their land and that they do not intend to dedicate any.

Following the consultation for the definitive map modification investigation, the landowners provided the County Council with various papers that they allege shows that the route is not a public right of way. They state that:

- their clients own the freehold land over which the route runs;
- that a 1922 conveyance does not show the route at B as a through-route;
- that a fencing covenant imposed upon the land means that the route is not a public right of way;
- that vehicular access used to be impossible at point A;
- that proper enquiries regarding public rights of way were made at the time the landowners purchased the land; and
- that the local authority erected the road sign at point A without proper authority.

HCC's response to the landowners' evidence is:

- It is clear that the owners of Danesbury Hill House own the application route between A-B and have for some years attempted to show that it is a private drive. However, ownership of the land is irrelevant for this application.
- It would appear that the plan to the 1922 conveyance has been inaccurately copied from previous surveys, as the application route is shown as a through-route on plans that both pre- and post-date the conveyance.
- The private fencing covenant relates solely to the keeping of animals and has no evidential value to this application.
- A previous landowner has alleged that access was impossible by car, but the number of witnesses that dispute this suggests that access was possible.
- The application route has not historically been considered by HCC as a highway maintainable at public expense (and so recordable on the List of Streets) or a highway recordable on the Definitive Map and Statement. Accordingly, unless a special enquiry was made the conveyancing searches do not lead to the status of the application route as highway not maintainable at public expense being disclosed.
- Finally, the placing of the road sign at point A is not relevant to the application route's status.

### 13.3 Decision

HCC decided that the earliest evidence of the landowners' assertion of the lack of public rights over the application route dates from 1991 when the bollards were erected, and more recently with a section 31 deposit in August 2010 in which the landowners stated that there was no public right of way across their property. Section 31 of the Highways Act 1980 states that for public rights to accrue there must be 20 years of public use without force, secrecy or permission prior to the 'date of challenge', which is the date at which the use of the route is called into question. HCC decided that the earliest date of challenge in relation to the application route between A-B is 1991 when the bollards were erected. Of the 67 user evidence forms tabulated in 12.1 above, 22 have used the application route for the 20 years preceding 1991. This excludes the witnesses listed in the chart, as their evidence relates to use of the route between A-B only and does not provide evidence for use of the rest of the application route. However, HCC decided that the 22 separate witnesses who used the route prior to 1991 shows that public vehicular rights accrued prior to the date of challenge.

## 14. Conclusion

### The evidence

HCC decided that a route existed as early as 1766, the date of Dury & Andrews' county map. The route that existed at this time was not the modern application route, as the section between A-B lay on a different alignment and the section between B-F is shown on some early maps but not others. Public rights over the application route between B-D were extinguished in 1801, meaning that at that date the only section of the route that was public (bearing in mind that the extinguishment order did not refer to the modern route between A-B and B-F) was that section between D-E. That the highway rights were stopped up along B-D in 1801 is supported by reference to the old road having been stopped up under inclosure in 1819. It would appear that in the early and mid 20<sup>th</sup> century the application route was still considered to be private, as evidenced by the route being included within the taxable hereditament in the Inland Revenue records of 1909-10 and sold as a private road in the 1944 sales particulars. This is contradicted by the evidence provided by Bryant's map and the tithe documents, which suggest that highway rights might exist. However, HCC decided that the historical documentary evidence did not show either as a reasonable allegation or on the balance of probabilities that highway rights existed between A-D or B-F.

As the route did not exist as a highway in 1835, in order for it to become maintainable at public expense it would need to be "adopted" by the highway authority. It is likely that public rights started to accrue some time after the Second World War, as by the time of the first Definitive Map's Parish Survey, Codicote Footpath 31 and Welwyn Footpath 39 were shown to be meeting Danesbury Park Road rather than crossing it, which suggests that at least part of the application route between points B-D had public rights.

The fact that public rights accrued in the second half of the 20<sup>th</sup> century is supported by the user evidence. Of the 82 witnesses who have provided evidence of use of the route (from user evidence forms and the chart provided) 50 have used all or some of the application route for over 20 years, mostly by MPV. The majority of those witnesses have used the route between A-B-E, but a significant number have also used the route between B-F.

In relation to points A-B, the date of challenge (see section 12.1 above) appears to be 1991, when the bollards were erected between points A and B. The user evidence shows that prior to that date at least 22 witnesses had used the application route as of right for 20 years or more, and many more had used A-B for the same period.

HCC decided that the user evidence suggests on the balance of probabilities that pursuant to section 31 of the Highways Act 1980 public MPV rights have accrued over the entire application route between A-B-E and B-F. There is no record of the route ever having been adopted by the highway authority as a highway maintainable at public expense.

### Application of the legislation

Having decided that carriageway rights exist, the tests given in the legislation need to be applied to decide whether an order is required, and if so, what order should be made.

Section 66(1) of the Wildlife and Countryside Act 1981 defines a BOAT as "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used". This means that for a route to be recorded as a BOAT it must be used by MPVs, but must be mainly used by pedestrians and horse riders. In this case the application route is clearly

mainly used by MPVs. It is therefore not a BOAT capable of being recorded on the Definitive Map, but is instead a public vehicular road. As such HCC cannot make an order to record the application route on the Definitive Map as a BOAT and so no order can be made.

The issue of the Natural Environment and Rural Communities Act 2006 (the NERC Act) should briefly be addressed. Section 66 of this act has the effect of extinguishing all MPV rights over routes that are not yet recorded as vehicular highways, except under certain circumstances. One of those circumstances, dealt with in subsection 67(2)(a) of the NERC Act, is if a route is mainly used by public MPV traffic in the 5 years preceding 2<sup>nd</sup> May 2006. In this case, as the application route clearly was mainly used by MPVs between 2001 and 2006, its vehicular rights have not been extinguished under this act.

The Definitive Map modification investigation has confirmed HCC's previous findings that the application route is a public road that is not maintainable at public expense. This conclusion is based on the fact that the Highways Act 1835 stated that any public highway that came into being after the date of the act must be formally adopted by the highway authority to be publicly maintainable. The historic evidence suggests that the application route was extinguished in 1801 and still regarded as private in the early to mid 20<sup>th</sup> century. As such, there is insufficient evidence to suggest that public rights re-accrued before 1835. The County Council has not since 1835 formally adopted the highway and so it remains not maintainable at public expense.

## **15. Other Matters considered as part of this decision**

As the application route is a public vehicular road, the width of the route was also considered as part of the decision. Width can be gauged from highway records, Ordnance Survey maps, witness evidence and site measurements.

The user evidence detailed in the table in paragraph 12.1 shows that individual witnesses estimated the application route as being anything from 2 to 7 metres in width. The majority of witnesses judged the route to have a width of approximately 4 metres.

HCC first considered the width of the route at point A. It is important to remember that prior to 1991 this section of the route lay between the beech tree and the boundary wall of 17 Codicote Road. Its physical width at that time was therefore less than it is today. A plan relating to an application from the golf club for planning permission dated 1988 shows that width as being approximately 4 metres. This is supported by site measurements. Since 1991, however, the entrance to the route at point A south east of the beech tree has been surfaced with tarmac, with the result that the physical width of the route at point A is now 14.5 metres. 20 years have passed since the layout at Point A increased to 14.5 metres, and HCC decided that public rights have accrued over the wider width in that time.

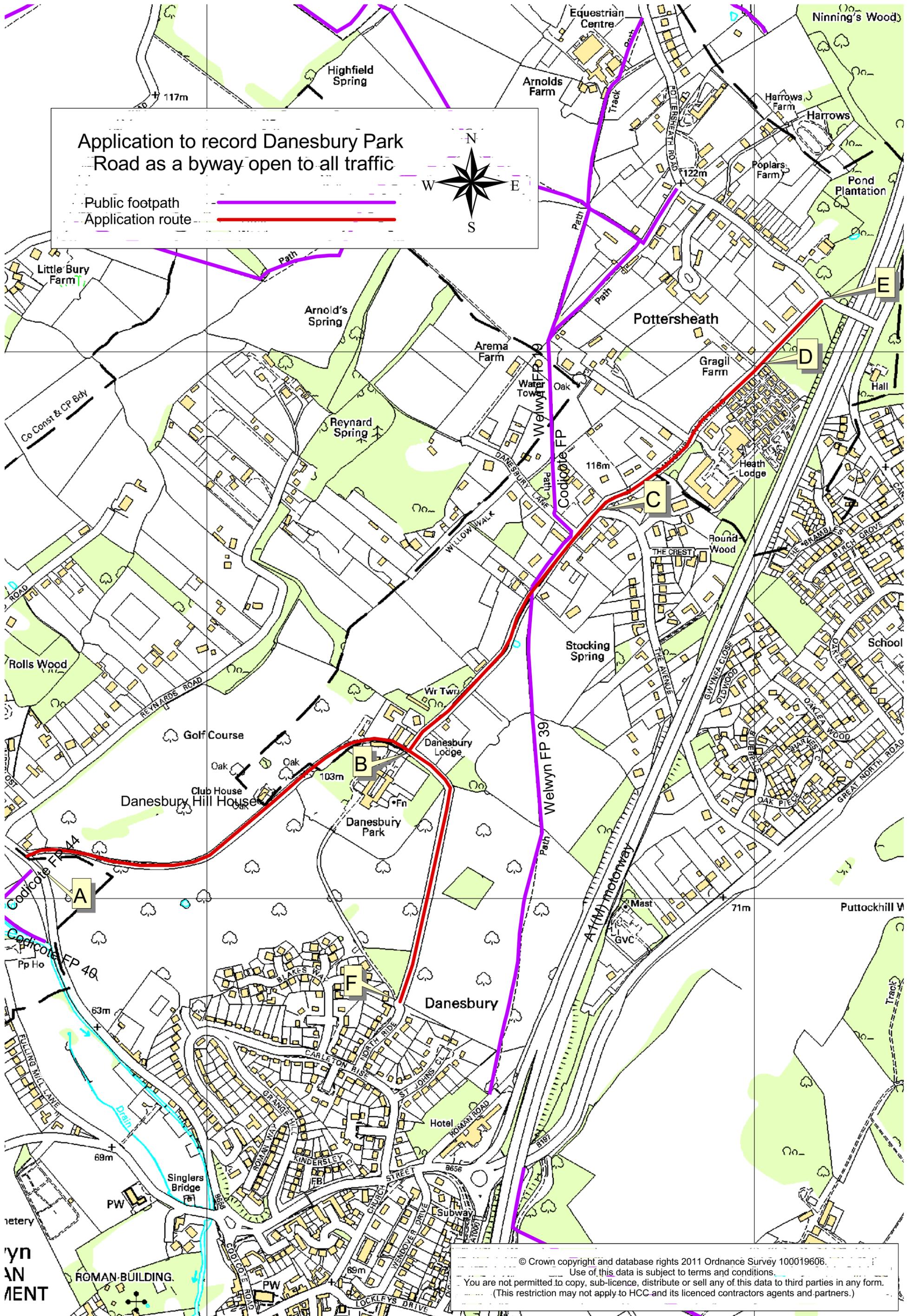
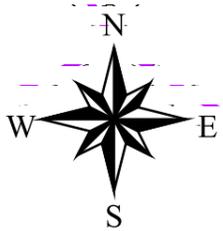
HCC then considered the width of the rest of the route in relation to measurements on the ground, the Ordnance Survey maps and evidence provided with the application. The Ordnance Survey map of 1970-2, which was published during the time that public MPV rights were accruing, suggests that the width of the application route varies depending on the section of the route in question. It is also likely that the southern boundary of the route between points A-B was not laid out in relation to the track, but instead laid out in relation to the field; this is confirmed by a letter from Mrs Hone dated 9<sup>th</sup> September 1991. HCC considers that the northern boundary was laid out in relation to the application route and so the northern verge is included in the width calculations.

Regarding the route between points A-B, in letters from HCC dated 11<sup>th</sup> December 1991 and 7<sup>th</sup> April 1992 Chris Tudor stated that the user evidence forms generally showed that the route was a single track, which meant that deciding whether the fence near B was an obstruction was difficult, as it was still passable by motor vehicle. On 1<sup>st</sup> May 1992 Miss Winser of HCC noted that as the route's legal width was not recorded only a reasonable assumption could be made based on user and Ordnance Survey evidence. She states on 2<sup>nd</sup> March 1993 that the kerbstones were likely to denote the extent of the highway, but unfortunately those stones are no longer in position, making a specific measurement impossible. A further letter from Miss Winser dated 23<sup>rd</sup> September 1993 refers to a surveyor's plan which was marked up by local residents according to where the agreed boundaries should have been. Mrs Hone then referred on 15<sup>th</sup> January 1994 to a width of 3.8 metres to the stone setts. HCC considers that the width of the route to the west of point B varies from 3.1 to 6.7 metres.

HCC decided that the evidence shows that the width immediately at point A is 14.5 metres. The route beyond point A to point B narrows to vary between 3.1 to 6.7 metres. Between points B-E the width is from 3 to 13.5 metres; and between points B-F from 3.1 to 13.5 metres. These measurements are supported between points A-B by the measurements taken on site.

# Application to record Danesbury Park Road as a byway open to all traffic

- Public footpath
- Application route



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