

HERTFORDSHIRE COUNTY COUNCIL
Countryside & Rights of Way Service



Modification Order Application
Investigation Report

Drovers Path (NH326)
Doebridge Farm to Sandon 23 (NH162)

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Date: June 2024

Application Details

Two applications have been made to record rights of way in the parish of Sandon in north Hertfordshire.

NH326: Drovers Path, Sandon. Application to record Drovers Path as a restricted byway at Green End, Sandon. Labelled points 1-2 on the application plan.

NH162: Doebridge Farm to Sandon 23. Application to record a footpath from Doebridge Farm to Sandon Footpath 23. Labelled points 3-4 on the application plan.

An extract of the 2015 Definitive Map is attached which shows where the routes are.

The Drovers Path application was duly made by Bridget Wheeler on 05/05/2020. Evidence submitted in support of the application was:

Bryant's Map of Hertfordshire, 1822

Sandon Tithe Map, 1841

Sandon Inclosure Map, 1842

Commons Act Map, 1899, extract

OS maps 1878, 1897, 1923, 1968

43 user evidence forms

The Doebridge Farm application was duly made by Mark Westley on 04/02/2004. It referred to the Sandon Inclosure Award of 1842 and 19th century OS maps. The application was made before Winchester and NERC Act so copies of the evidence were not required.

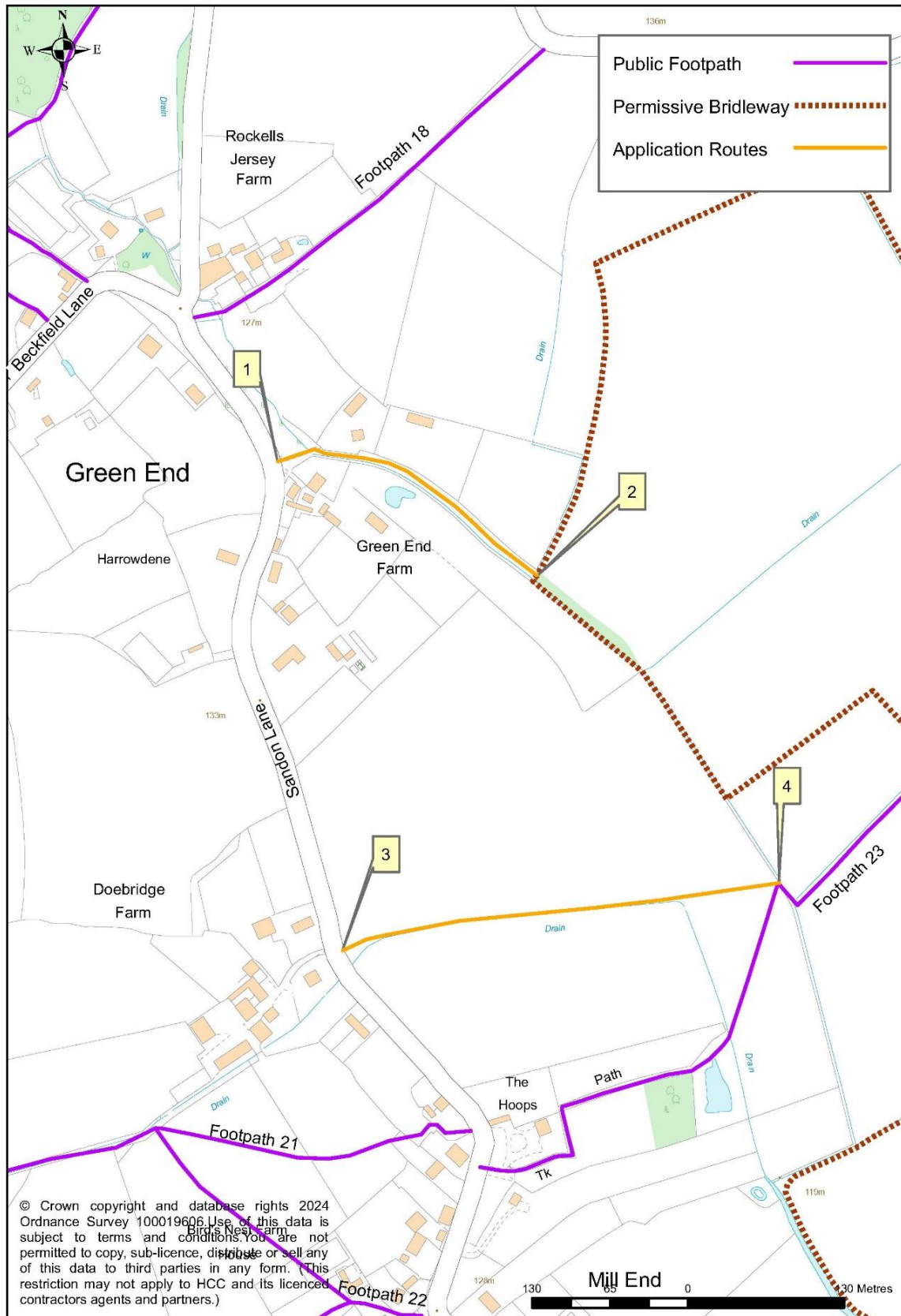
Description of Route

The routes are located in Green End, Sandon in North Hertfordshire. It is a very rural area that is generally flat, with mostly arable land and few houses. The nearest town is Buntingford, a small market town to the southeast.

The Drovers Path route commences at point 1 from Sandon Lane heading east along the driveway of the property Carriers, as a part metalled track (plate 1). At the gate of the property, the route turns slightly southeast to follow a stream (plate 2). The route continues as a natural surface path between a fence to the north and the stream to the south (plates 3&4). There is vegetation including some large old oak trees alongside the route (plate 5). At point 2 the route is crossed by a drain leading into the stream at the corner of an arable field (plate 6).

The Doebridge Farm route commences at point 3 from Sandon Lane opposite the driveway to Doebridge Farm, heading east (plate 7). There is a wide opening to the field which has been used by farm vehicles (plate 7). After about 30 metres the route joins a deep drainage ditch on its southern side (plates 8&9). A 7 metre wide grassy strip where the application route runs has been left uncropped alongside the ditch (plate 10). Where the ditch turns sharply to the south, the application route continues east to join footpath 23 (plate 11). It crosses land that is cropped to meet footpath 23 (plate 12). There is a wide gap in the hedge where footpath 23 passes through the boundary (plate 13). The application route meets footpath 23 at point 4, around where there is a zigzag marked by two wooden waymark posts (plates 14&15).

Application Plan



Photographs of the Application Routes

Drovers Path route



Plate 1



Plate 2

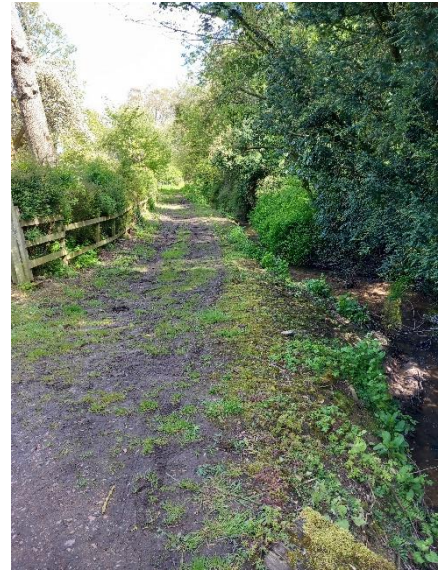


Plate 3



Plate 4



Plate 5

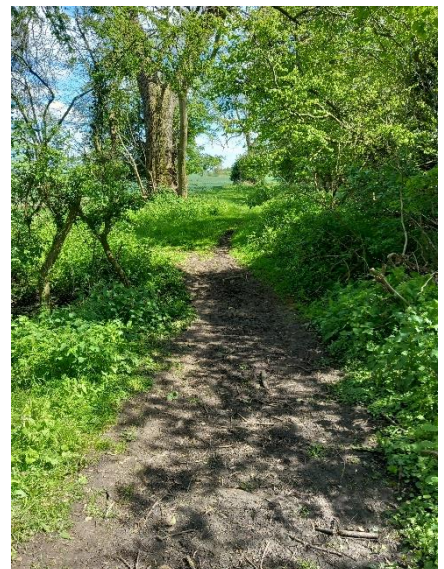


Plate 6

Doebridge Farm route



Plate 7



Plate 8



Plate 9



Plate 10



Plate 11

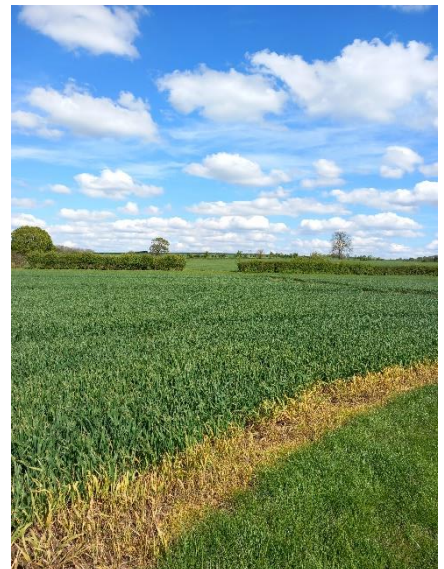


Plate 12



Plate 13



Plate 14



Plate 15

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 Countryside and Rights of Way Service (CROW). The documents are listed below with a reference number (if it has one) and where you can find it.

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.

For further information contact:

Hertfordshire Archives and Local Studies (HALS) - <https://www.hertfordshire.gov.uk/hals>
Countryside and Rights of Way Service (CROW) - www.hertfordshire.gov.uk/row or 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 Government's Information website and view the Planning Inspectorate's Guidance Booklet for Definitive Map Orders: Consistency Guidelines at

<https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines>

No records for the following historical documents listed have been found with regard to the application route.

- **Dury and Andrews map, 1766**
No evidence found relating to the application routes
- **Highway Diversion/Extinguishment Records**
No records found relating to the application routes
- **Railway and canal plans**
No records found relating to the application routes
- **Highways Maintenance Records**
No evidence found relating to the application routes
- **Aerial Photographs**
No evidence found relating to the application routes

Arrows have been added to the document extracts to denote the start and ends of the application routes. The Drovers Path route (points 1 and 2) is shown by purple arrows. The Doebridge Farm route (points 3 and 4) is shown by red arrows.

1. Bryant's Map

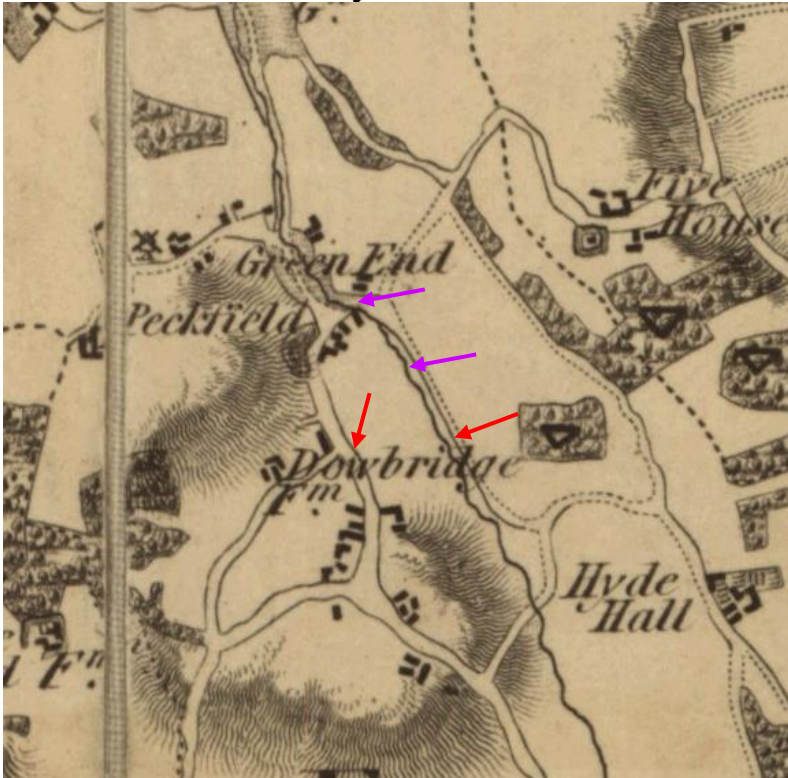
Date: 1822

Ref: HALS - CM88

1.1 Why we consider this document important

Andrew Bryant's 1822 map of Hertfordshire was again drawn from an original survey. Its depiction is much more accurate (like an Ordnance Survey map) rather than being schematic. 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 likely to be public unless there is strong contemporary evidence which shows that routes are private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.

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



This map shows Green End with Beckfield to the west, Dowbridge (Doebridge) Farm to the south and Hyde Hall to the southeast. Sandon Lane runs from the north into Green End and points 1-2 form a junction with it on the eastern side. Points 1-2 are shown as 'lanes and bridle ways', with a solid and pecked line, enclosed on the western side next to the waterway and open on the eastern side. The route continues southeast of point 2 towards Hyde Hall.

Points 3-4 are not shown on this map.

1.3 Investigating Officer's comments

This map provides evidence for the existence of the application route between points 1-2 and further southeast. It is shown as 'lanes and bridle ways' in the same way as Beckfield Lane which is a public road today. This map provides no evidence for points 3-4.

2. Sandon Tithe Map and Tithe Apportionment

Date: 1841

Ref: HALS DSA4/90/2

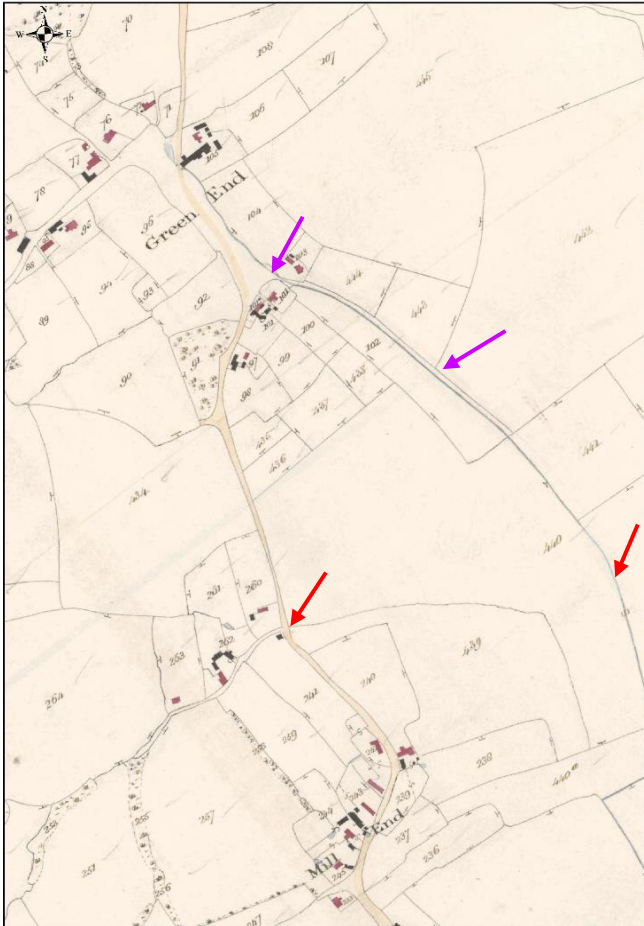
2.1 Why we consider these documents important

A 'tithe' was literally a 'tenth' of the produce of the land and was paid in kind to finance the Church (crops were stored in 'tithe barns'). The tithe surveys were carried out under the Tithe Commutation Act of 1836 to reform this system to an easier money payment. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid.

In 1837 the Act was amended to allow maps produced to be either 1st class or 2nd class. They did not have to be made from an original survey. 1st class maps are legal evidence of all matters which they portray, and were signed and sealed by the commissioners. They had to be at a scale of at least 3 chains to the inch. 2nd class maps were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. Both 1st and 2nd class maps have been accepted by the courts as evidence. Unfortunately the proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, was not strictly adhered to.

The tithe process received a high level of publicity. This ensured the documents were an accurate record of the agricultural landscape at this period of history. Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights. Non-titheable land deemed to be unproductive could be excluded from the process. No tithe was therefore payable on roads and so it was in the interest of the landowners for these to be shown correctly. Taken together with corroborative evidence, highways that are coloured yellow or sienna can indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the productivity of land and so the calculation of tithe rent.

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



These documents show points 1-2 as a narrow plot of land that follows the waterway and is not given a hereditament number. It is not part of plot 102 because there is a boundary marked along the western side of the waterway, and it is not braced into the same plot. Points 1-2 are not coloured. The plot of land continues further southeast of point 2 to the next field boundary, but remains a cul de sac. Sandon Lane is coloured sienna but Beckfield Lane is shown uncoloured in the same way as points 1-2. Points 3-4 are not shown on this document. This application route would approximately follow the boundary between plots 439 and 440 but it is not marked. In the award, plot 439 is called 'In Bury Mead' and is described as arable and plot 440 is 'In Bury Mead' and is described as arable and pasture.

2.3 Investigating Officer's comments

These documents provide evidence that points 1-2 were not productive land but does not provide evidence for the status of the route.

These documents provide no evidence for points 3-4. It was normal not to show footpaths on the Tithe Map as they did not affect the productiveness of the land.

3. Sandon Inclosure Records

Date: 1842

Act ref: 1801, 1821 and 1836 General Inclosure

Award and Maps ref: HALS QS/E84 & QS/E85

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 19th 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 was the legal process of carrying out the physical changes. It 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 powers the commissioners had and, if available, they should be read in conjunction with the Inclosure Award and Inclosure Map, which recorded the inclosure process.

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?

Relevant sections of Enclosure Acts:

1836: 52: 'And be it further enacted, That all and every the Clauses, Provisions, and Enactments contained in the said Act of the Forty-first Year of the Reign of King George the Third and of the First Year of the Reign of King George the Fourth, or such of them as are applicable to an consistent with the Purposes and Object of this Act, shall and may be in full Force and Effect for carrying into effect the Allotments, Division, Inclosures and Exchanges hereby authorized to be made, as fully and effectually as if such Clauses, Provisions, and Enactments had been herein repeated and re-enacted, and have been made Part of this Act, with such Alterations and Variations as would adapt them and render them applicable to the Object and Purposes of this Act.'

1801:

10: 'And be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required to set out and appoint such private Roads, Bridleways, Footways, Ditches, Drains, Waterways, Watering Places, Quarries, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds and Land Marks, in, over, upon, and through or by the Sides of the Allotments to be made and set out in pursuance of such Act, as he or they shall think requisite, giving such Notice and subject to such Examination, as to any private Roads or Paths, as are above required in the Case of publick Roads, and the same shall be made, and at all Times for ever thereafter be supported and kept in Repair, by and at the Expençe of the Owners and Proprietors for the Time being of the Lands and Grounds directed to be divided and inclosed, in such Shares and Proportions as the Commissioner or Commissioners shall in and by his or their Award order and direct.'

11: '...and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which shall not be set out as aforesaid, shall for ever be stopped up and extinguished, and

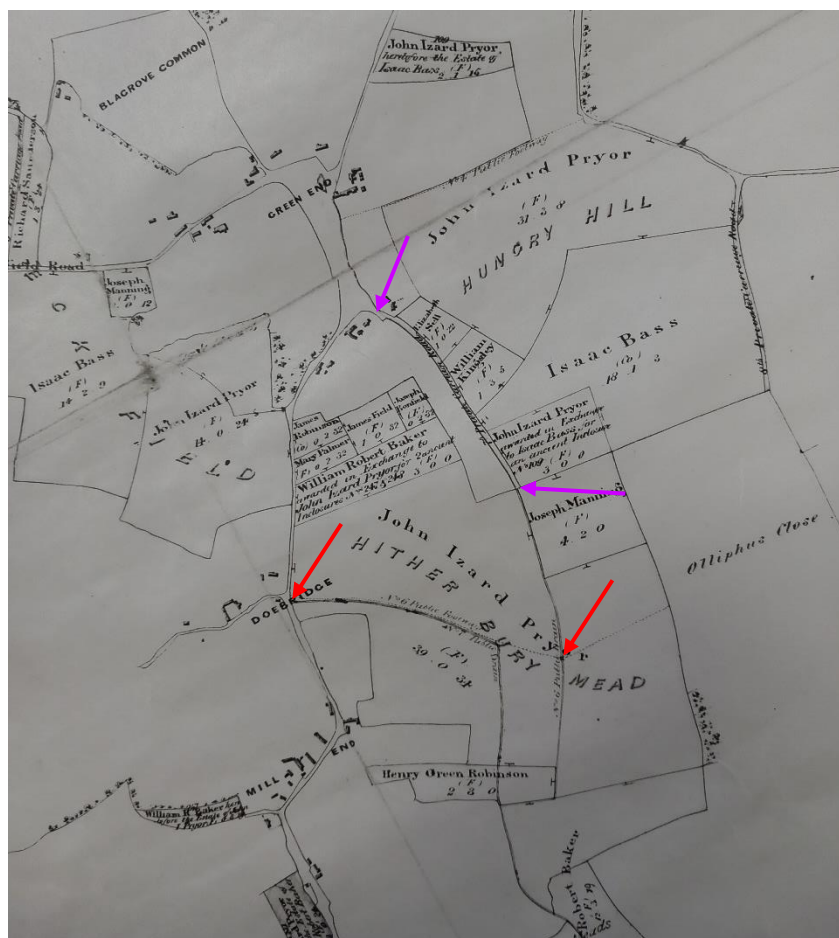
shall be deemed and taken as Part of the Lands and Grounds to be divided, allotted, and inclosed, and shall be divided, allotted, and inclosed accordingly...

This Inclosure was made under the 1836 Inclosure Act, which encompasses the 1801 and 1821 Acts. There are no provisions relevant to rights of way in the 1821 or 1836 Acts. Under the 1801 Act, section 10 gives the commissioner the power to set out private roads and footways, and section 11 stops up all roads not set out in the award.

Relevant sections of the Award:

No.7. ONE other Private Carriage Road and Driftway of the width of twenty feet commencing at Green End and proceeding in a south eastward direction along the course of the ancient Road to the north west corner of an allotment to Joseph Manning in Hither Bury Mead Which said road I do hereby direct and award shall be maintained and repaired by and at the expense of the under mentioned Owners of allotments adjoining and the Owner or Owners thereof for the time being and in the following proportion that is to say commencing at Green End Elizabeth Sell eighty two yards, William Kingsley eighty two yards Isaac Bass eighty two yards and Joseph Manning eighty two yards.

No.6. From Five Houses to Ave Bridge. ONE other Public Footway commencing at an ancient Inclosure called Olliphus Close belonging to William Robert Baker and proceeding in a westwardly direction over Hither Bury Mead to Ave Bridge.



The Inclosure Award sets out 6 public carriage roads, 8 private carriage road and driftways, 6 public footways and 8 public drains.

Points 1-2 are set out in the award as the 7th private carriage road and driftway with a width of 20 feet. The award says that this road goes 'along the course of the ancient Road'. The maintenance is split evenly between the four adjacent landowners, Elizabeth Sell, William Kingsley, Isaac Bass and Joseph Manning. On the map it is shown from Green End heading southeast and is annotated '7th Private Carriage Road'. The allotments to these owners share the maintenance of the fences onto the 7th private carriage road and say that they 'shall be made and maintained by the owner or owners of this Allotment for the time being'.

Points 3-4 are set out in the award as the 6th public footway. No width is specified for the footway. On the map it is shown following the course of the 7th public drain and crossing the 6th public drain, and it is annotated '6th Public Footway'. The footway meets what is now footpath 23 near to point 4, but without the zigzag that is now at the field boundaries – this is slightly different to the route shown in the application plan. The footway continues along the course of Sandon footpath 23 but stops at the field annotated Olliphus Close, although footpath 23 continues today. The allotment that this footway runs through is the 5th freehold allotment to John Izard Pryor, which is described as 'ONE other plot of land in Hither Bury Mead subject to the public footway and public drains hereinbefore awarded over and through the same'.

All of the public carriage roads that are set out in the award are now adopted public roads, including Beckfield Lane.

The private carriage roads set out in the award do not have a consistent status today, some are footpaths, some are bridleways and some are not recorded.

The public footways set out in the award, other than the application route, are all recorded on the Definitive Map as footpaths.

3.3 Investigating Officer's comments

These documents provide evidence that points 1-2 were set out as a private carriage road and driftway, to be maintained in equal parts by the four neighbouring landowners. It is implied that the private rights belong to only these four landowners as it is used to access their land. 'Driftway' gives the right to drive animals on the route, but this was also likely to be a private right for the four named landowners. The reference to the 'ancient road' is supporting evidence that a public road previously existed along this route. However, section 11 of the 1801 Inclosure Act stopped up and extinguished all existing roads that were not set out in the Award. This means that public rights over this route that may have existed before 1842 were extinguished, and only the private rights set out remained at this time.

These documents provide evidence that points 3-4 were set out in the award as a public footway, with a slight difference to the application route where it meets footpath 23. Part of the footway that was set out is now footpath 23. According to case law "*Andrews 2*" *R v SOSEFRA, ex p Andrews* [2015] EWCA Civ 669, the 1801 Inclosure Act granted commissioners the power to set out new public footways, so this footway was legally set out.

4. Sale Particulars

Date: 1857, 1879, 1888, 1920

Ref: see below

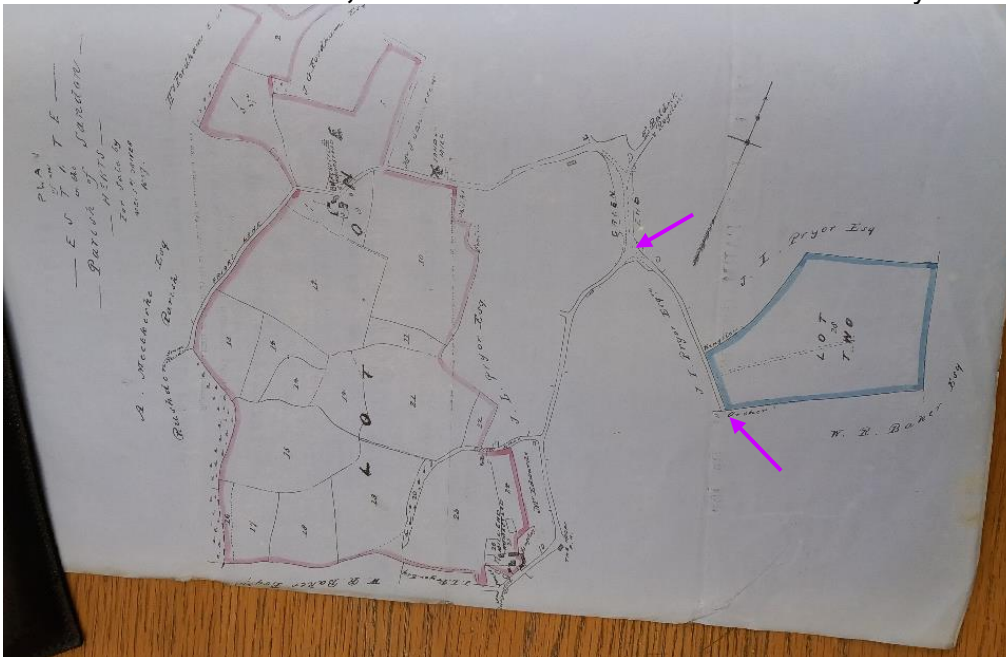
4.1 Why we are considering these documents

These were produced for the sale of part or the whole of an estate. They give details of buildings, land use, and the extent of land to be sold. They usually contain a map (often based on an Ordnance Survey plan), although they rarely give evidence of rights of way. They can show if a route was considered to be owned by a particular landowner. They may also show if the landowner considered the route to be public. In some cases, land may be described as being bounded by public roads. Generally they provide background information, usually as to the ownership of the land; they can show the existence of a route and occasionally they can provide supporting evidence as to the status of right of way that exist.

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

Sale of Beckfield Farm, 1857

Ref: HALS DE/Ry/B394



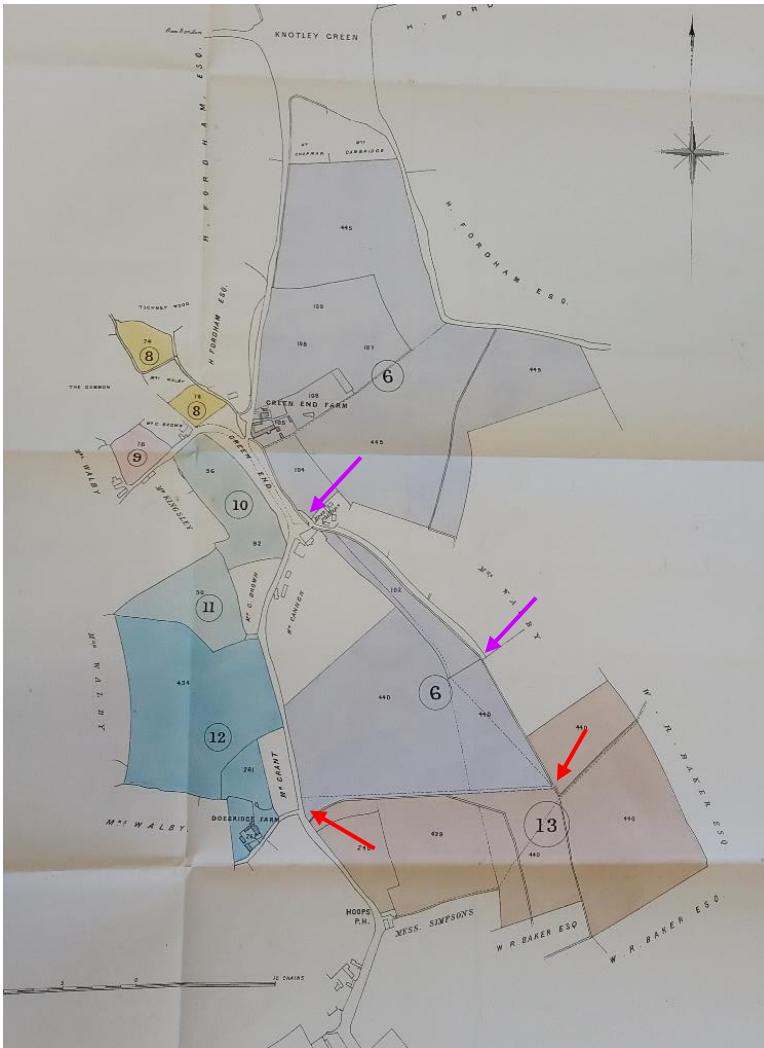
This document is for the sale of Beckfield Farm and a plot of land next to points 1-2 marked 'Lot Two'. Points 1-2 are shown on the plan, and it is not coloured so it is not included in the sale of the neighbouring plot which is lot 2 in the sale. There is no mention of the route in the description.

Sale of Land at Hither Bury Mead (no plan), 1879 Ref: HALS DE/Ry/B397

This document is for the sale of the plot of land just south of point 2. The description says that the plot is 'approached by a private road' which refers to the application route at points 1-2.

Sale of Green End Farm, 1888

Ref: HALS DE/Ry/B399



This document is for the sale of Green End Farm as lot 6. On the plan, points 1-2 are not coloured as part of the estate for sale, although neighbouring land was for sale. Points 1-2 are shown in the same way as known public routes. Points 3-4 are shown by a pecked line within lot 6. Footpath 23 is shown in the same way within lot 13. There is no mention of the application routes in the descriptions.

Sale of Land at Green End (no plan), 1920

Ref: HALS DE/Ry/B149

This document is for the sale of a plot of land neighbouring points 1-2 called Hungry Hill at Green End, as lot 2 in the sale. The description says that the plot is 'approached by a Lane leading from Green End'.

4.3 Investigating Officer's comments

These documents provide evidence for the physical existence of the application routes. The 1879 sale alleges that points 1-2 were a private road. In the documents with plans, points 1-2 are not coloured so it was not considered to be part of the estate.

5. Ordnance Survey maps

Date: 1878, 1897, 1923, 1968

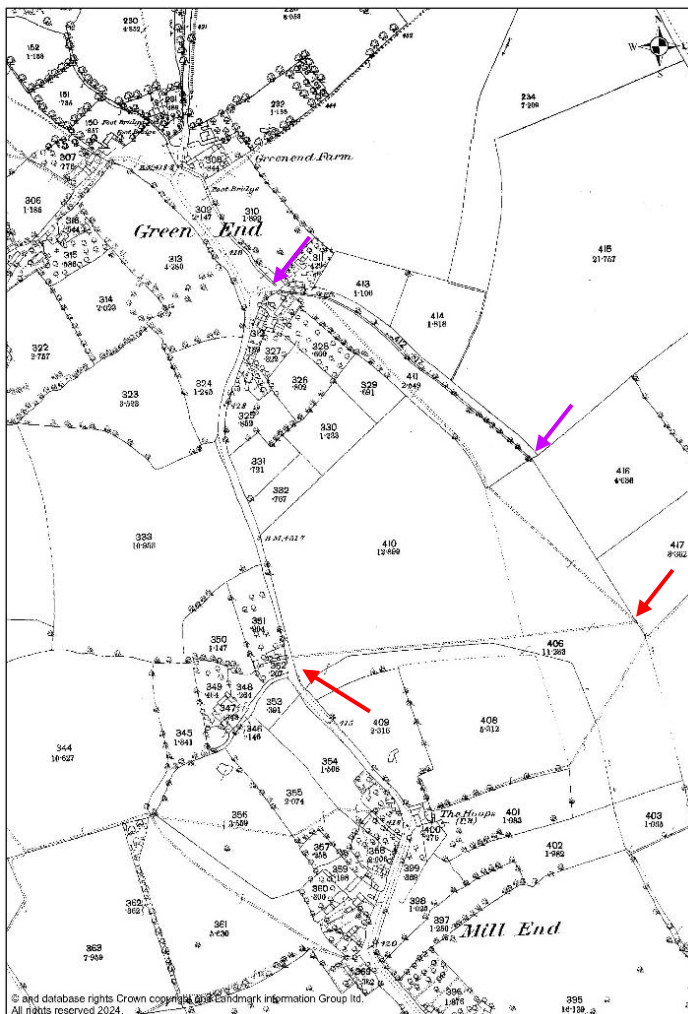
Ref: Hertfordshire VIII.11, Barkway TL33 (1968)

5.1 Why we consider these documents important

The original surveys were carried out by Royal Engineers at the time of the Napoleonic wars in order to better plan the transportation of ordnance around the country. It was only in the early 20th century that the OS evolved to become a public service that sold its mapping information to the public. Since the 1960s this mapping information has included public rights of way, which are derived from each county's Definitive Map.

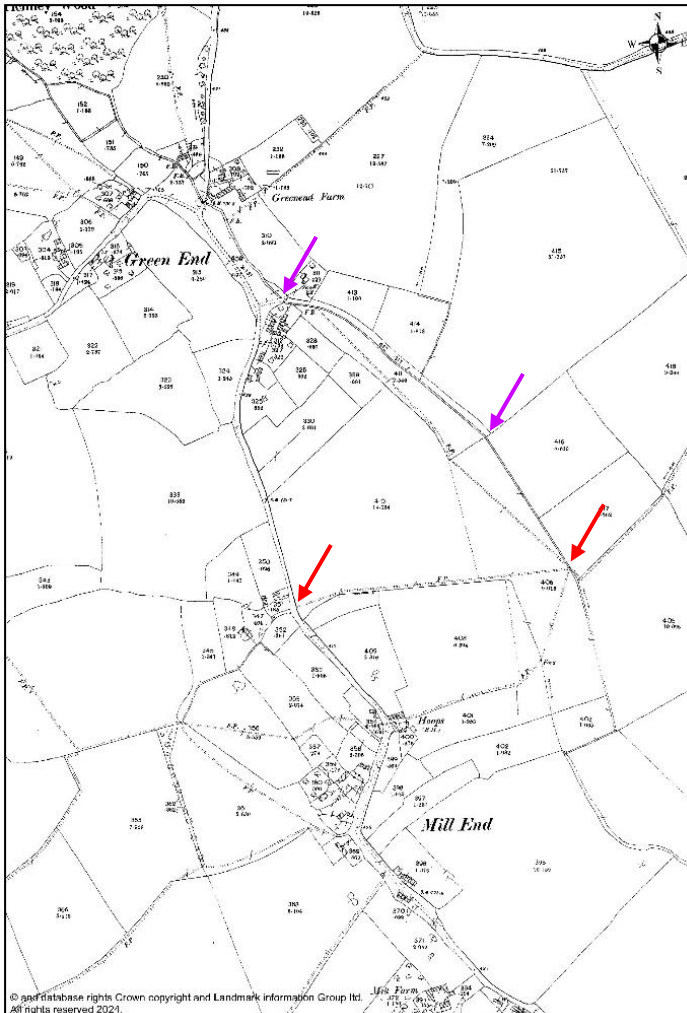
The Ordnance Survey has produced a series of topographic maps at different scales notably the one inch, six inch and 1:2500. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways etc. However, the disclaimer which has been added to all editions since the 2nd edition maps (circa 1897/8 in Hertfordshire), along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way.

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



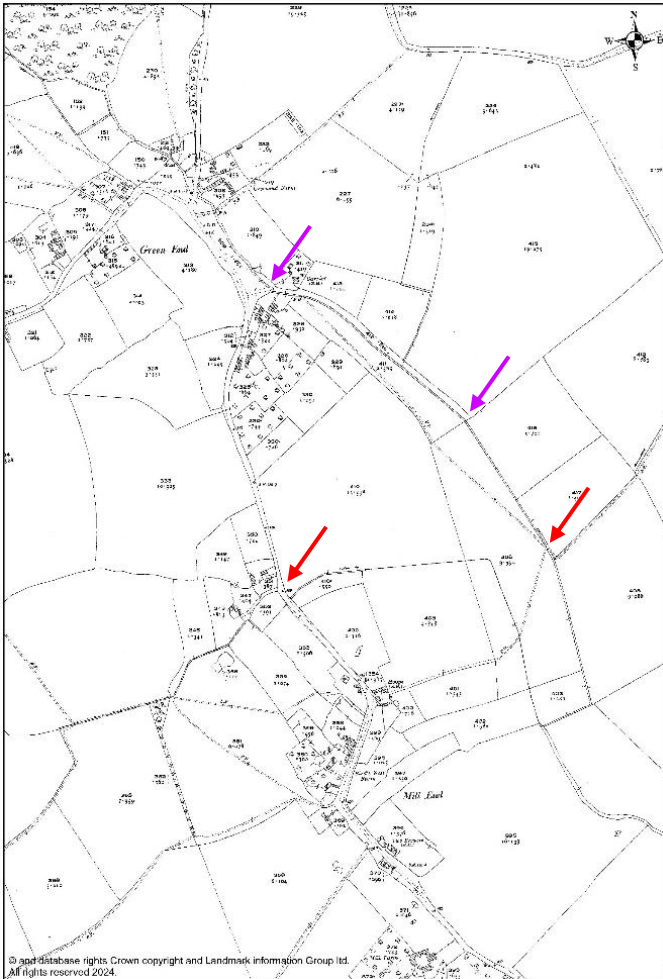
First Edition 1878 – Points 1-2 are shown between solid lines connected at point 1 to Sandon Lane. A waterway and trees run down the west side of the strip of land, and are

braced into the same plot. The strip of land is numbered 412 which is described as 'pasture' in the reference book. The strip of land continues beyond point 2. Points 3-4 are shown by double pecked lines that go straight across from Sandon Lane to footpath 23, following the field boundary part of the way. It is along the bottom of and braced into plot 410 which is described as 'arable' in the book of reference. There are no annotations on the double pecked lines, but neither are there annotations on known public footpaths such as footpath 23.



Second Edition 1897 – Points 1-2 are shown in almost the same way as in the first edition, but there is now a gate at point 2. There are also no trees as they were not shown on the second edition.

Points 3-4 are shown by double pecked lines annotated F.P. (footpath), it is now less straight at the western end and lines up with the driveway to Doebridge Farm (better reflecting the route set out in the inclosure award). The field boundary that the route follows is now shown as a drain flowing in an eastward direction.



1923 Edition – Points 1-2 are shown in the same way as the second edition, with the gate at point 2.

Points 3-4 are no longer shown by pecked lines, only the drain is shown.

1968 Edition, 1:25000 (provided by applicant) – Points 1-2 are shown next to the waterway and enclosed on one side. There is no longer a gate at point 2.

Points 3-4 are not shown, only the drain is shown.

5.3 Investigating officer's comments

These documents show that points 1-2 physically existed as a narrow plot of land used for pasture following the waterway and it did not have the appearance of a road. There was a gate at point 2 between 1897 until after 1923.

These documents show that points 3-4 physically existed, probably as a footpath, until some time between 1897 and 1923.

6. Commons Act Map

Date: 1899

Ref: Submitted by applicant

6.1. Why we are considering these documents

This document was submitted by Bridget Wheeler in support of her application to record the application route between points 1 and 2.

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

This document shows the common land and town and village greens in the area, which are shaded onto the OS base map. The application route between points 1 and 2 is shown on the base map, connecting at point 1 to Green End Common.

6.3 Investigating Officer's comments

This document provides no further evidence than is provided by the OS maps which are considered in section 5.

7. Inland Revenue Documents

Date: 1909-1910 Ref: HALS IR2/63/1 & IR1/66a

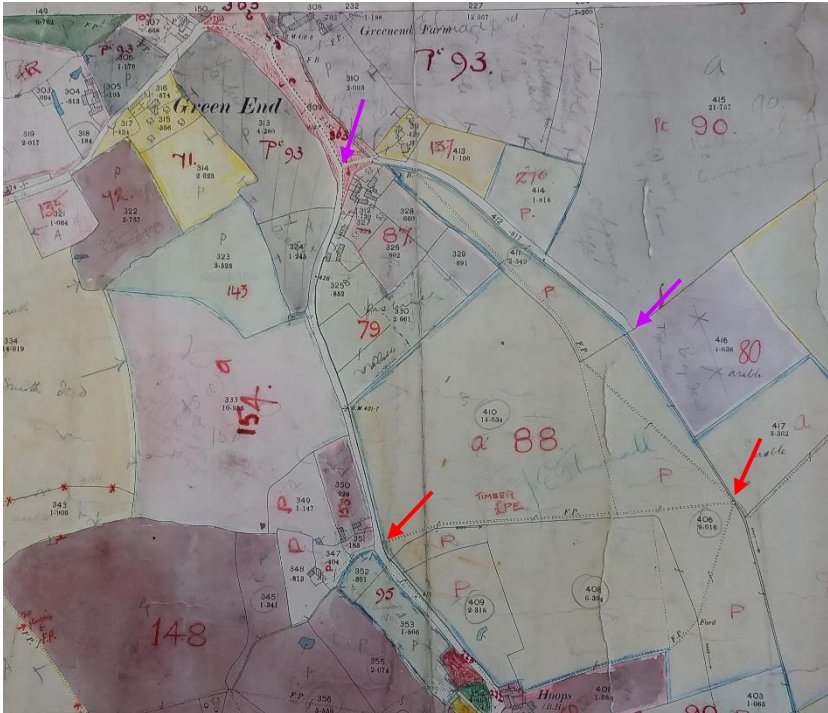
7.1 Why we consider these documents important

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?



Points 1-2 are uncoloured on the map and not included in a hereditament. This may be because it was considered to be a public road or may be because it was in shared ownership.

Points 3-4 are marked on the OS base map by parallel pecked lines and labelled F.P. for footpath. It runs through hereditament 88. In the book of reference plot 88 is described as 'land' and 'Bury Mead and Doe Bridge'. There is a £50 tax deduction for public rights of way or user in this plot. However, other routes are marked F.P. on the base map running through plot 88, including part of footpath 23 and another F.P. that runs south parallel to points 1-2 to join footpath 23. There is no information to tell which public rights of way or user the deduction was for.

7.3 Investigating Officer's comments

These documents provide evidence that points 1-2 were either a public highway or in shared ownership. There is evidence that the owner of plot 88 considered there to be public rights of way across their land, as there were tax deductions, however the deductions may not be for points 3-4 as other public rights of way cross this land.

8. 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:

- the Parish Survey
- the Draft Map, Provisional Map and first Map and Statement (1953)
- the Special Review (following the Countryside Act 1968)

8a. Definitive Map Records – Sandon Parish Survey

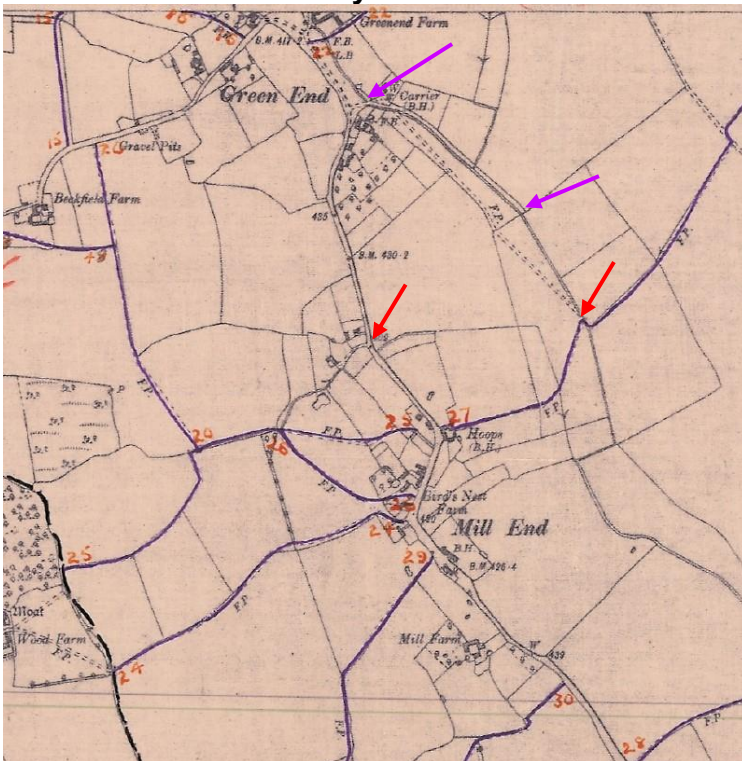
Date: 1951

Ref: ROW

8a.1 Why we consider these documents important

Under the National Parks and Access to the Countryside Act 1949 the county council 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.

8a.2 What is shown by these documents in the area of the application route?

Neither of the application routes are shown on the parish survey map nor mentioned in the surveys or correspondence. The Ramblers' survey commented on the poor maintenance of the paths in the parish.

8a.3 Investigating officer's comments

This document provides no evidence regarding the application routes.

8b. Definitive Map Records – Draft, Provisional and First Definitive Map

Date: 1953

Ref: ROW

8b.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

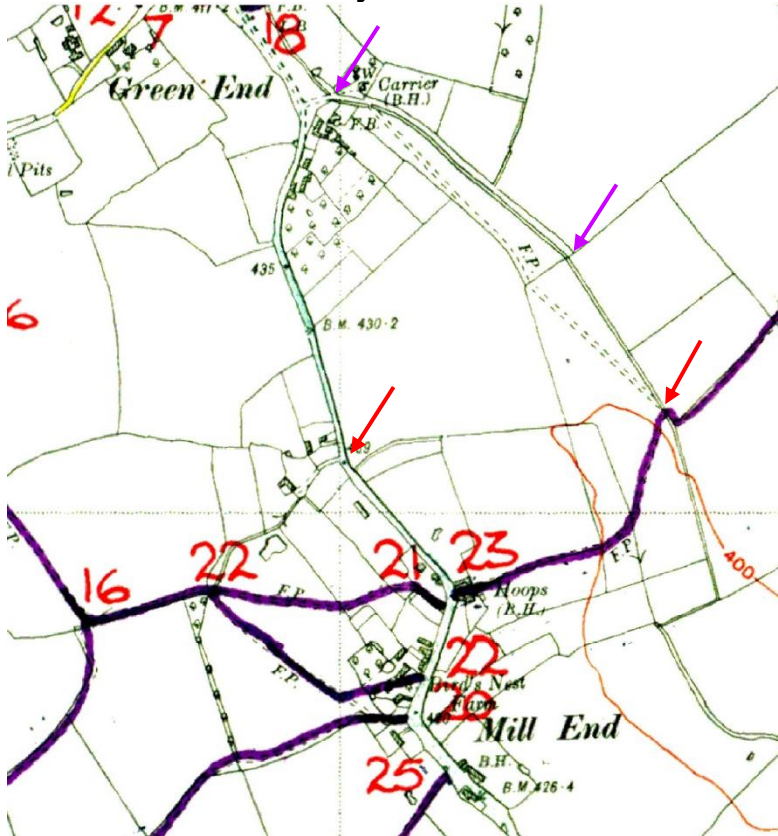
public (including landowners) could object to what was included or to what was omitted. Hearings were held to consider these objections and recommendations were made based on the evidence presented.

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.

8b.2 What is shown by these documents in the area of the application route?



Neither of the application routes is shown on the First Definitive Map and there is no correspondence in our records regarding Sandon.

8b.3 Investigating officer's comments

This document provides no evidence regarding the application routes.

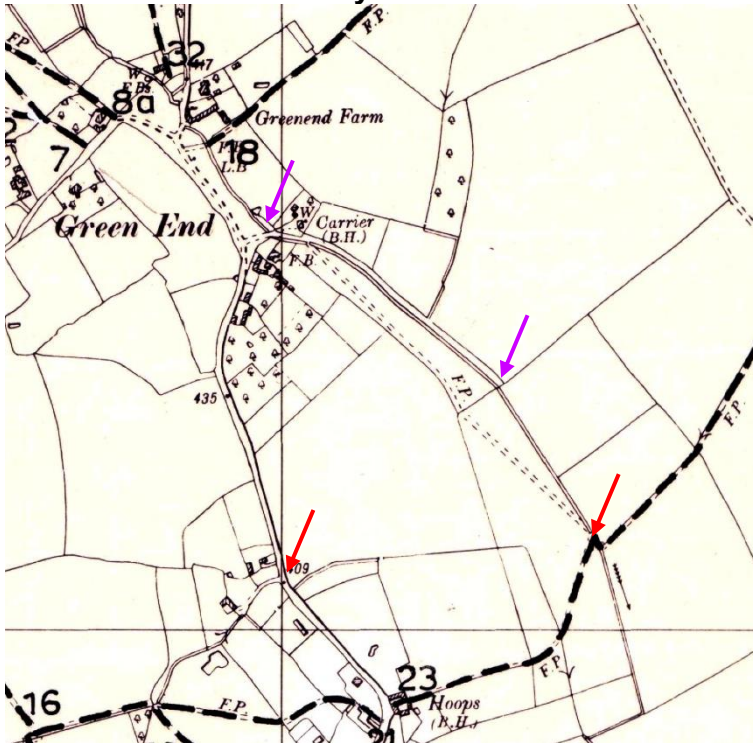
8c. Definitive Map Records - Special Review

Date: 1980s

Ref: ROW

8c.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.

8c.2 What is shown by these documents in the area of the application route?

Neither application route is marked on the special review map, nor are they mentioned in the correspondence from the special review in Sandon.

8c.3 Investigating officer's comments

These documents provide no evidence regarding the application routes.

9. Highways Maintenance Records

Date: 2004

Ref: Provided by neighbouring landowner

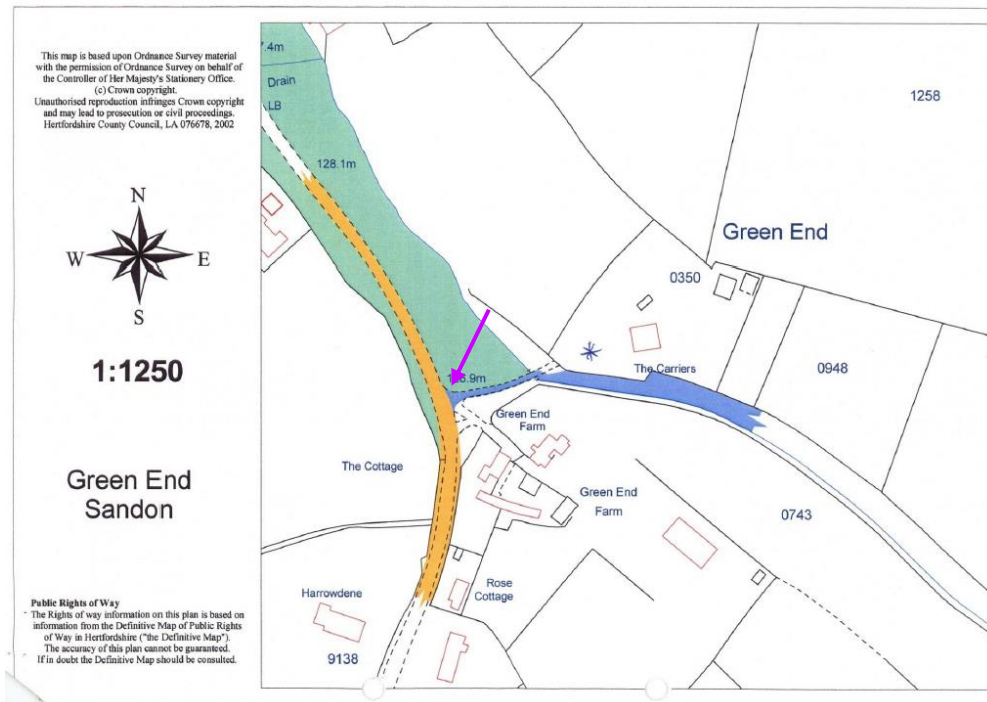
9.1 Why we consider these documents important

Maintenance of a route by the public is strong evidence that it is a highway, although it should be noted that not all highways are automatically maintainable at public expense. 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.

Any highways established after the Highways Act 1835 needed to be 'adopted' to show they were liable for repair at public expense. The Public Health Act 1925 required every urban authority to prepare a list of the streets within their district which were maintainable by the inhabitants at large. The Highways Act 1959 required the council of every borough and urban district to keep up to date a list of the streets within their area which were highways maintainable at public expense. Under the Highways Act 1980, the County Council is required to keep up to date a list of the streets within Hertfordshire which are highways maintainable at public expense. There are no rules or regulations about what information is required, or how it is to be presented or amended. The County Council holds this information as part of the Hertfordshire Roads Gazetteer, which is itself part of the Hertfordshire Roads Management Database. It is a record of what is maintainable, not necessarily what is maintained. It should be noted that whilst the information is referred to as the "List" of Streets, it is not held as a paper list but kept electronically.

If there is evidence that the application route was a vehicular highway, consideration of whether or not a route was recorded on HCC's List of Streets has to be given due to the effect of the Natural Environment and Rural Communities Act 2006 ('NERC'). NERC introduced legislation which automatically extinguishes all public mechanically propelled vehicle ('MPV') rights, unless they were exempted by one of the exceptions provided. One of these exceptions applies to routes that were recorded on HCC's List of Streets immediately before 2nd May 2006. Where there is evidence that a route was a vehicular highway, then under NERC the continued existence of any MPV rights will depend on whether this or any one of the other exceptions provided is met.

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



The highway boundaries plan shows highway maintainable at public expense in orange, registered common land in green and highway not maintainable at public expense in blue. It shows the application route from point 1 in blue and a zig-zag line indicates that it continues south east. The accompanying letter from HCC Land Charges department says that 'there is no information that the spur road leading to Carriers was ever adopted'. The letter explains that the categorisation of points 1-2 as highway not maintainable at public expense is based on it being uncoloured on the 1910 Inland Revenue map.

9.3 Investigating Officer's Comments

These documents show that according to HCC Land Charges' records, points 1-2 are highway not maintainable at public expense. The information from HCC Land Charges is based on the information available at that moment, and may vary based on further research.

User Evidence

10. Contemporary Evidence of Use

10.1 Why we consider the evidence important

Evidence is generally provided through the completion of evidence questionnaires by users and from information provided by the owner of the land. User evidence may support historic evidence of a right of way. However, where there is no historic evidence of a route it is possible for a public right of way to come into existence if it can be shown that members of the public have used it 'as of right' without interruption (usually) for a period of 20 years. In order for the public's use of a route to have been 'as of right' it must have been:

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

Unless there is historic evidence of rights as well, legislation requires there to be evidence of 20 years' use which ends with a 'date of challenge' (section 31 of the Highways Act 1980). The 'date of challenge' is the date at which the landowner challenges the use of the route e.g. by putting up a notice. Where there is no evidence that use has been challenged, section 31(7B) of the Highways Act 1980 specifies that the date of application should be used as the end of the 20 year period.

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

Under Section 31, after a period of 20 years use, it is presumed that a right of way has come into existence. Where a landowner can produce evidence to show that they have taken steps to prevent the accrual of new public rights of way through use of a route by the public, no such right will be dedicated. Such steps must be overt and make the public aware of the landowner's intentions. They can include placing and maintaining notices on site stating that the route is not public or that it is used with permission; by erecting and locking gates; or by telling people seen using the route that it is not public, etc.

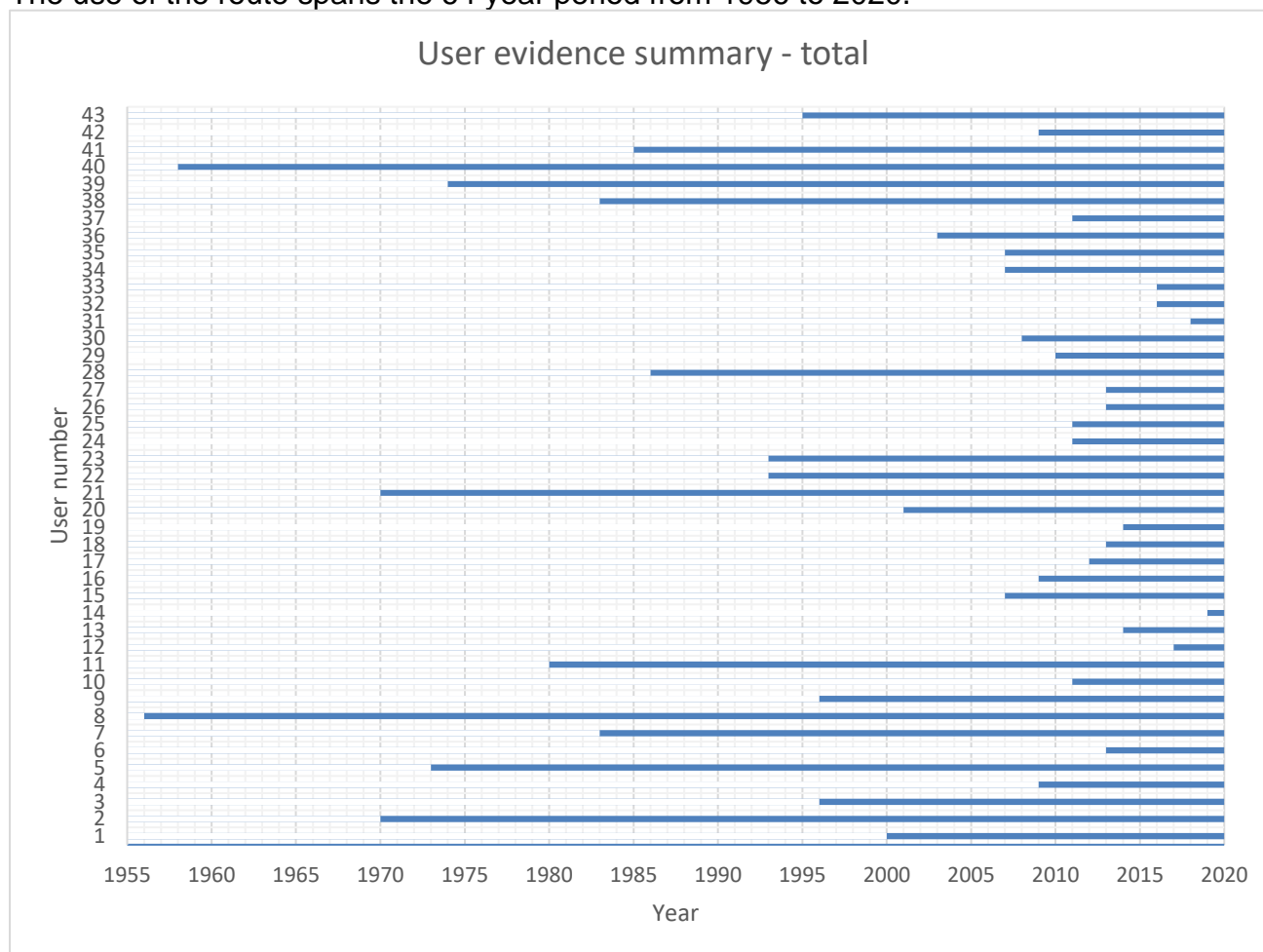
In addition to placing notices on site, section 31(6) of the Highways Act 1980 (following on from the Rights of Way Act 1932) allows landowners to deposit a map and statement with the County Council showing the public rights of way across their land. Following this, declarations need to be made regularly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

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

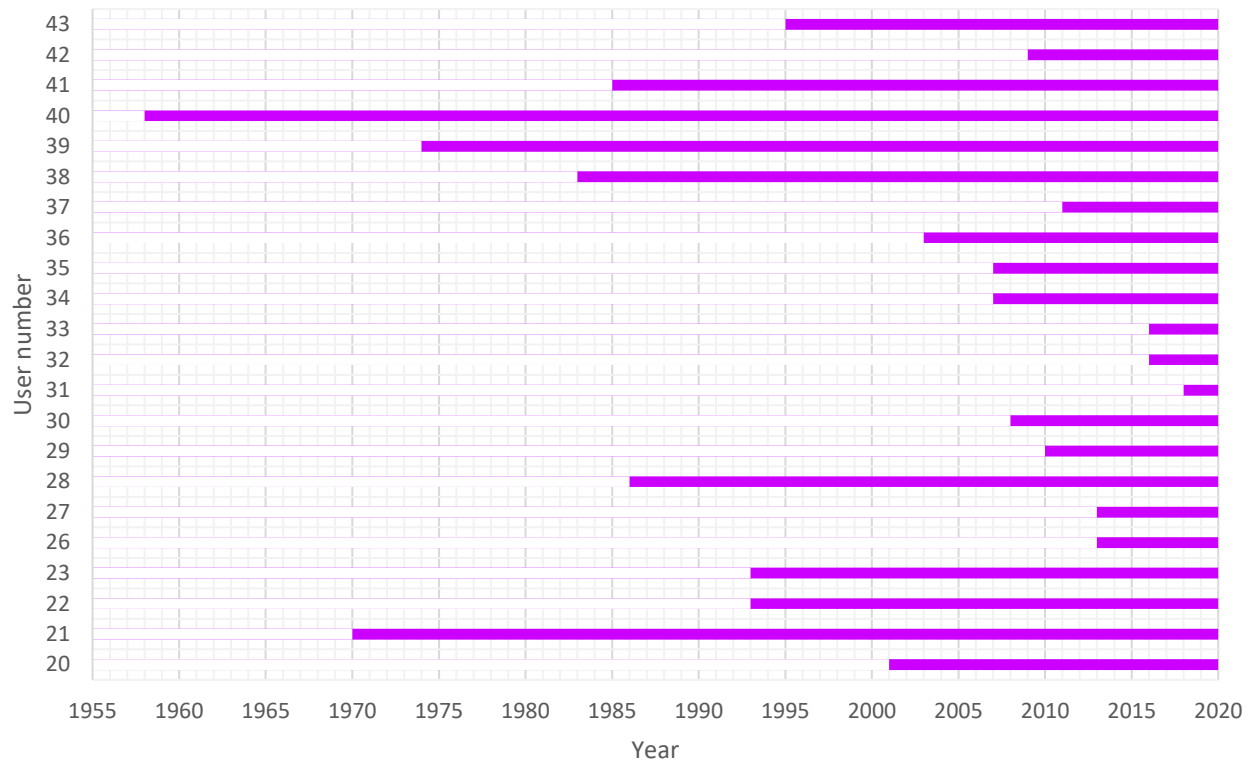
10.2 Summary of Evidence

All of this evidence analysis applies to the Drovers Path application route only (points 1-2). 43 user evidence forms were submitted in support of the Drovers Path application route. 2 of the user evidence forms had multiple users, but for the purposes of the investigation they are counted as one user because they were signed by only one person.

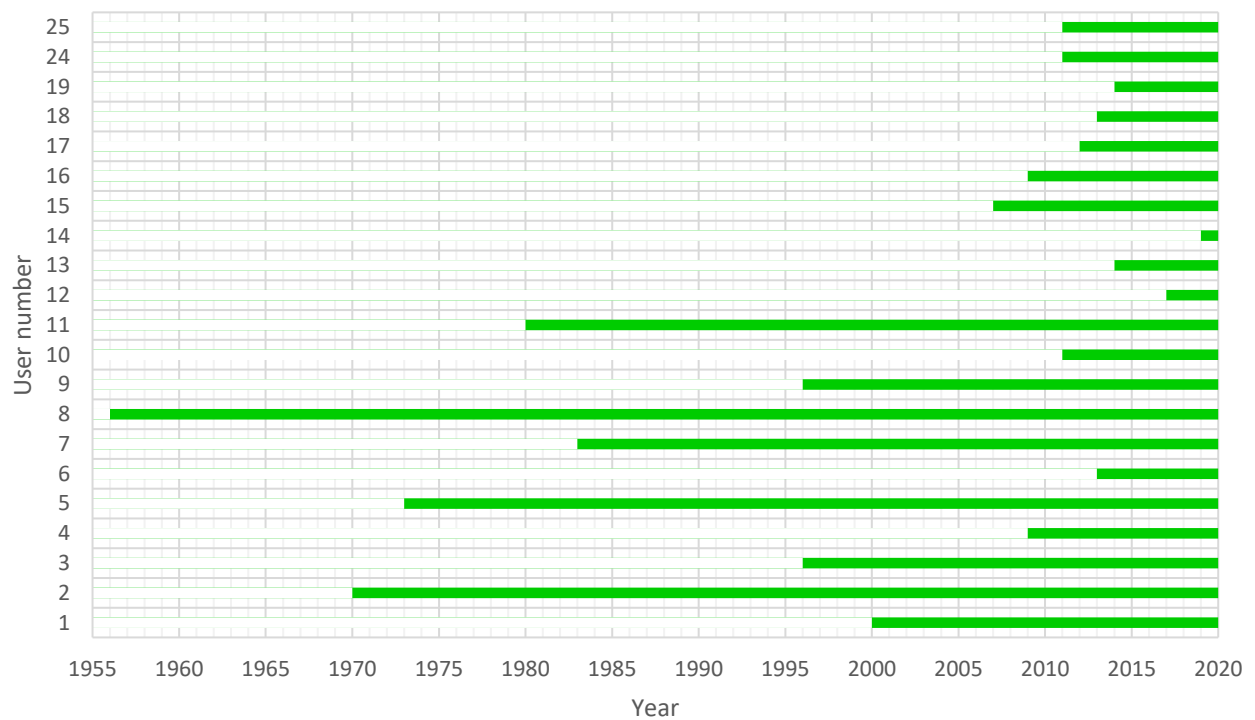
The use of the route spans the 64 year period from 1956 to 2020.



Footpath use - foot only



Bridleway use - horse and bicycle



Method of use

22 users used the route on foot only (footpath rights).

2 used the route on horseback only. 12 used the route on foot and on horseback. 5 used the route on foot, on horseback and on bicycle, including one who also used it on a tractor. 2 used the route on foot and on bicycle. This totals 21 users on a mix of foot, horseback and bicycle (bridleway rights).

Frequency of use

Of the users on foot only, 4 used daily, 11 used weekly, 6 used monthly and 1 used yearly. Of the users on foot, horseback and bicycle, 2 used daily, 17 used weekly and 2 used monthly.

This totals 6 daily users, 28 weekly users, 8 monthly users and 1 yearly user.

Obstruction

None of the users came across any obstructions on the route.

Challenge

None of the users have been challenged for using the route.

Permission

None of the users have been given permission to use the route, or been employed by the owner (the ownership of the route is currently unknown).

Notices

None of the users have seen any notices on the route.

Width

The user evidence form used did not ask about width. The application form claimed a width of 2.5m for the first 400m, then 4m.

10.3 Investigating officer's comments

The evidence of use from users in support of the Drovers Path application route (point 1-2) spans the 64 year period from 1956 to 2020. There has been frequent, open use on foot, horse and bicycle. There has been no challenge of use on the route, therefore the 20 year period of use to be assessed runs backward from the date of the application, so the period of use to be assessed is 2000 to 2020. In terms of public rights of access, the route is a cul de sac, as it meets a permissive bridleway at point 2.

Additional Evidence submitted after consultation

Please note any evidence submitted following the consultation will be included in this report for consideration at the decision meeting.

User number	Type of use	Frequency of use	Period of use	Obstructions	Notices	Have you ever been employed by or a tenant of the owner?	Challenge	Permission	Comments
1	Foot Horse Bicycle	Weekly	2000 – 2020	No	No	No	No	No	
2	Foot Horse	Monthly	1970 – 2020	No	No	No	No	No	
3	Foot Horse	Weekly	1996 – 2020	No	No	No	No	No	
4	Foot Horse	Weekly	2009 – 2020	No	No	No	No	No	
5	Foot Horse Bicycle	Weekly	1973 – 2020	No	No	No	No	No	
6	Foot Horse	Weekly	2013 – 2020	No	No	No	No	No	
7	Foot Horse Bicycle	Daily	1983 – 2020	No	No	No	No	No	
8	Foot Horse Bicycle Tractor	Monthly	1956 – 2020	No	No	No	No	No	
9	Foot Horse Bicycle	Weekly/ Monthly	1996 – 2020	No	No	No	No	No	
10	Foot Horse	Weekly	2011 – 2020	No	No	No	No	No	

User	Type	Frequency	Period	Obstructions	Notices	Employed	Challenge	Permission	Comments
11	Foot Horse	Weekly	1980 – 2020	No	No	No	No	No	
12	Foot Horse	Weekly	2017 – 2020	No	No	No	No	No	
13	Horse	Weekly	2014 – 2020	No	No	No	No	No	
14	Foot Horse	Weekly	2019 – 2020	No	No	No	No	No	
15	Foot Horse	Weekly	2007 – 2020	No	No	No	No	No	
16	Foot Horse	Daily	2009 – 2020	No	No	No	No	No	
17	Horse	Weekly	2012 – 2020	No	No	No	No	No	
18	Foot Horse	Weekly	2013 – 2020	No	No	No	No	No	
19	Foot Horse	Weekly	2014 – 2020	No	No	No	No	No	
20	Foot	Daily	2001 – 2020	No	No	No	No	No	
21	Foot	Monthly	1970 – 2020	No	No	No	No	No	
22	Foot	Weekly	1993 – 2020	No	No	No	No	No	Believes it is an unregistered lane used as FP and for small farm machinery. Maintained with ride on mower.
23	Foot	Daily	1993 – 2020	No	No	No	No	No	Asked neighbours and nobody

User	Type	Frequency	Period	Obstructions	Notices	Employed	Challenge	Permission	Comments
									seemed to own it. Livery stables in Mill End and permissive bridleway at Hyde Hall increased use by horses.
24	Foot Bicycle	Weekly	2011 – 2020	No	No	No	No	No	
25	Foot Bicycle	Weekly	2011 – 2020	No	No	No	No	No	
26	Foot	Weekly	2013 – 2020	No	No	No	No	No	
27	Foot	Weekly	2013 – 2020	No	No	No	No	No	
28	Foot	Monthly	1986 – 2020	No	No	No	No	No	
29	Foot	Weekly	2010 – 2020	No	No	No	No	No	
30	Foot	Monthly	2008 – 2020	No	No	No	No	No	
31	Foot	Weekly	2018 – 2020	No	No	No	No	No	
32	Foot	Monthly	2016 – 2020	No	No	No	No	No	
33	Foot	Weekly	2016 – 2020	No	No	No	No	No	
34	Foot	Monthly	2007 – 2020	No	No	No	No	No	
35	Foot	3 or 4 times a year	2007 – 2020	No	No	No	No	No	

User	Type	Frequency	Period	Obstructions	Notices	Employed	Challenge	Permission	Comments
36	Foot	Monthly	2003 – 2020	No	No	No	No	No	
37	Foot	Weekly	2011 – 2020	No	No	No	No	No	
38	Foot	Weekly	1983 – 2020	No	No	No	No	No	
39	Foot	Weekly	1974 – 2020	No	No	No	No	No	
40	Foot	Weekly	1958 – 2020	No	No	No	No	No	
41	Foot	Daily/ Weekly	1985 – 2020	No	No	No	No	No	
42	Foot	Daily	2009 – 2020	No	No	No	No	No	
43	Foot	Weekly	1995 – 2020	No	No	No	No	No	