

# **Modification Order Application Reasons for the Decision Report**

## **Tracks North and South of Cox Lane**



## **HERTFORDSHIRE COUNTY COUNCIL Rights of Way Service**

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Date: March 2018

## Application Details

An application has been made to add two footpaths to the Definitive Map and Statement running north and south of Cox Lane in Much Hadham, in the east of Hertfordshire: Route A to the north of Cox Lane and Route B to the south of Cox Lane. An extract of the 2015 Definitive Map is attached below. It shows where the routes are and it is labelled Point 1 to Point 6.

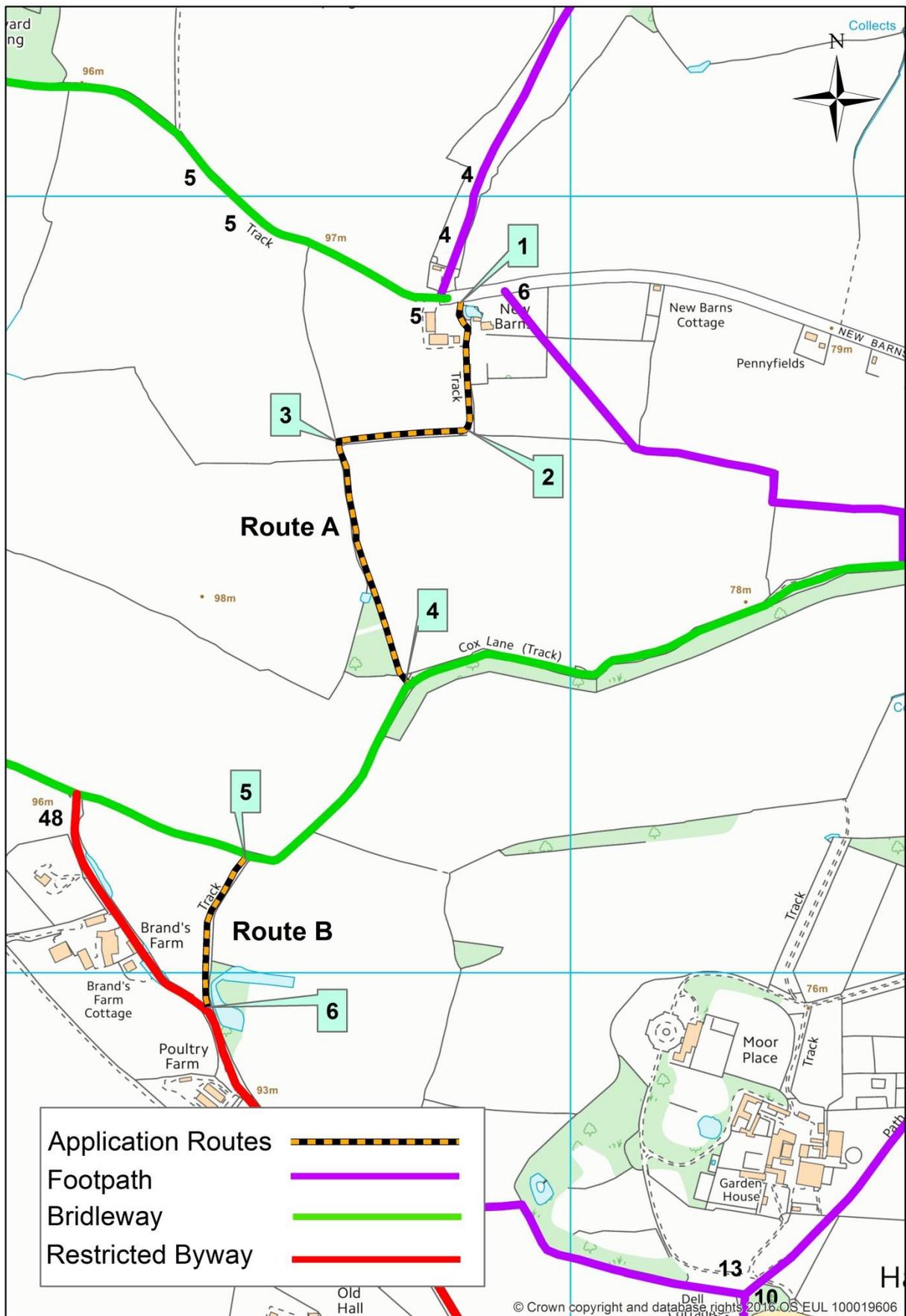
This application was made by Mr Martin Dillon on 21<sup>st</sup> March 2013. Nine user evidence forms have been supplied to support the application.

### Description of Routes

The application routes are in a rural area to the east of the A10 and south west of the town Bishop's Stortford. They follow farm tracks running through arable farmland to the west of Much Hadham.

Route A commences from point 1 on the Investigation Plan at the junction with New Barns Lane and Much Hadham Bridleway 5. The route follows a track running south (plate 1-taken in 2013) to the field boundary then following west along the north side of the field boundary (plate 2 – taken in 2013 looking north). The route then turns south following the track (plate 3 – taken in 2017 looking south) to join Cox Lane at point 4 on the Investigation Plan (plate 4 – taken in 2017).

Route B commences from point 5 on the Investigation Plan at a junction with Cox Lane (Much Hadham Bridleway 7). The route follows a track running generally south (plate 5 – taken in 2017) to join Much Hadham Restricted Byway 48 south east of Brands Farm (plate 6 – taken in 2017) at point 6 on the Investigation Plan.



Route A



Plate 1 taken in 2013 looking south



Plate 2 taken in 2013 looking north



Plate 3 taken in 2017 looking south



Plate 4 taken in 2017 looking south

Route B



Plate 5 taken in 2017 looking south



Plate 6 taken in 2017 looking south

## Documentary Evidence

For each investigation, we check at least 10 primary sources of information for any historic evidence relating to the application route. You can view the documents listed below at Hertfordshire Archives and Local Studies (HALS) or at the Rights of Way Service (ROW). The documents are listed below with a reference number (if it has one) and where you can find it.

For further information contact:

Hertfordshire Archives and Local Studies (HALS) - Tel:0300 123 4049

<https://beta.hertfordshire.gov.uk/services/libraries-and-archives/hertfordshire-archives-and-local-studies/hertfordshire-archives-and-local-studies.aspx>

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 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>

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

Investigations into the following historical documents have not provided evidence with regard to the application routes. Please note that where there is no evidence found relating to the application routes, this has just been recorded as "no evidence found, and where there are no records for the document listed, this has been recorded as "No records found."

1. Dury and Andrews Map, 1766 – Ref: HALS – CM26  
No evidence found relating to the application route.
2. Inclosure records  
No records found
3. Highway Diversion/Extinguishment Records  
No records found
4. Highway maintenance  
No records found

## **5. Bryant's Map**

Date: 1822

Ref: HALS - CM88

### **5.1 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.

### **5.2 What is shown by this document in the area of the application routes?**

Route A – There is nothing depicted on the map in the location of Route A.

Route B - A boundary feature is shown in the location of Route B.

### **5.3 Decision**

HCC decided that this map provides no evidence for the Application Routes.

## **6. Much Hadham Tithe Map and Tithe Apportionment**

Date: 1838

Ref: HALS DSA 4/45/2

### **6.1 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.

## **6.2 What is shown by these documents in the area of the application routes?**

This map shows Moor Place, New Barns and Brand's Farm. Cox's Lane is shown running west from Much Hadham.

Route A – This is not shown on this map.

Route B – Double parallel lines are shown along approximately one third of the length of the south eastern boundary of plot 591, these continue running south south west for a short distance. This area is next to a wooded area surrounding a pond. Part of this feature is in the same area as the southern section of Route B.

## **6.3 Decision**

HCC decided that for Route A there was no evidence.

HCC decided that for Route B there appears to have been a feature of some sort for part of the route although this map provides no evidence of status or public rights.

## **7. Great Eastern Railway, Ware, Hadham & Buntingford Railway, Buntingford Branch (Disused)**

Date: 1857/58

Ref: HALS R626

### **7.1 Why we consider these documents important**

Before compulsory purchase powers were introduced, proposed canal or railway developments had to either have the consent of all affected landowners or a private act of Parliament passed to authorise the purchase of land. Before a Private Act could be passed, the land affected would be specifically surveyed (rather than pre-existing maps being used), and plans produced showing the strip of land the route of proposed railway/canal would cross. Land either side of the route would be shown up to the "limit of Deviation". All land was plotted, and details given in a Book of Reference. This included details of landownership and land use.

There was a requirement in section 71 of the Highways Act 1835 that where the railway was to cross a vehicular highway, the railway company was to provide gates and employ someone to open and shut the gates. This was so that users of the highway were not exposed to danger or damage from the trains. Under the Railway Clauses Consolidation Act 1845 (from s46) strict requirements were laid out about how to deal with public and private roads crossing railways including widths, arch heights and gradients as shown in the plans and cross sections. Requirements for how to deal with footpaths and bridleways are also given. Bridges were generally only required for routes of bridleway status and above.

There was a high level of public consultation required on the proposed plans before they were considered by Parliament. This led to a high level of accuracy of those plans. Although it was not the primary purpose of railway plans to record rights of way, these plans provide good evidence of their existence. Arguably, those plans which went ahead and completed the parliamentary process have greater evidential weight than those which did not.

### **7.2 What is shown by these documents in the area of the application routes?**

The plans show the line that the proposed railway will take as a bold black line. It also shows a limit of deviation for the route of the new railway, which is shown by pecked lines either side of the proposed railway line.

Route A – This is not shown on this map as it is not within or close enough to the limit of deviation of the proposed railway line to have been surveyed.

Route B – This plan shows double parallel lines in the area of Route B, these continue running south south west for a short distance. Part of this feature is in a similar location to the southern section of Route B but is shown on the east side of the field boundary. Route B does not fall within the limit of deviation so is not recorded in the accompanying book of reference but is close enough to be plotted on the plan.

### 7.3 Decision

HCC decided that there was no evidence for Route A on this plan.

HCC decided that there appears to have been a feature of some sort on the other side of the field boundary on this plan however this plan provides no evidence for Route B.

## 8. Ordnance Survey maps

Date: 1879 - 1923 Ref: ROW – Landmark maps

### 8.1 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.

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

#### 1:2500

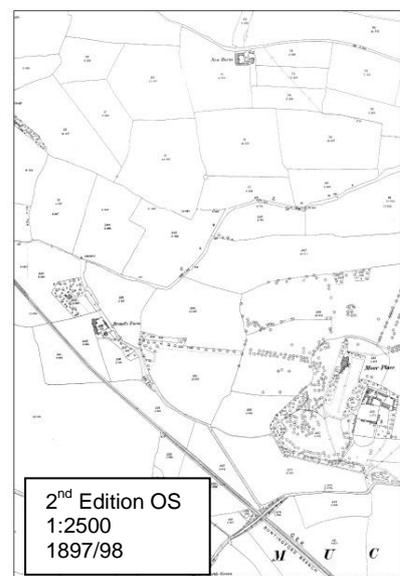
1<sup>st</sup> Ed 1879 OS

No marks indicating a track (made or unmade) are shown on this map in the location of the Application Routes.

2<sup>nd</sup> Ed 1897-98

As above.

1923 OS



As above

Current OS 1:25,000 (from GIS)

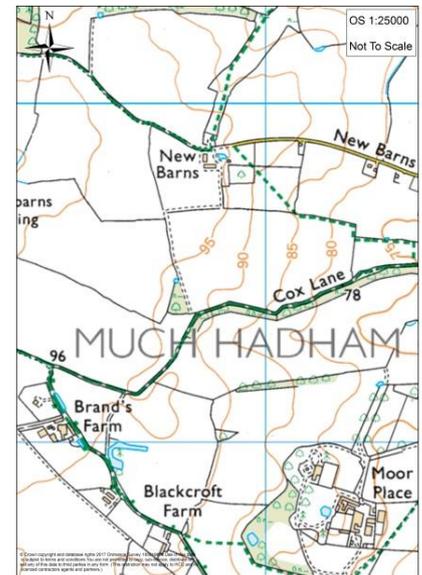
Route A – Shown as pecked and double pecked lines.

Route B – Shown by double parallel lines.

### 8.3 Decision

HCC decided that the 1879 – 1923 editions provide no evidence.

HCC decided that the 2017 (GIS) OS 1:25,000 clearly shows that tracks existed along the lines of the application routes however this provides no evidence of status or whether they are public or private.



## 9. Inland Revenue Documents

Date:1910

Ref: ROW IR1 26-4-199 & 26-4-203 HALS IR2/1

Current OS  
1:25,000

### 9.1 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.

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

Route A – falls within plots 205 and 234. Plot 205 covers approximately 132 acres and was owned by A. Chapman and occupied by Arthur Chapman, Joseph Williams and Abraham Chapman. Plot 234 covers approximately 189 acres and was owned by the Marquess of Salisbury and occupied by E & F Hurford(?). There is no depiction of the route on the OS

base map in either plot. £15 has been deducted for rights of way in plot 205; no deduction in tax has been given for public rights of way in plot 234.

Route B – Falls within plot 234 but is not depicted on the OS base map

### **9.3 Decision**

Route A – HCC decided that the route is not depicted on the OS base map therefore this document provides no evidence for the application route. It is not possible to determine which routes the rights of way deduction applied to but there are currently footpaths recorded on this land

Route B – HCC decided that the route is not depicted on the OS base map therefore this document provides no evidence for the application route.

## **10. Sales Particulars: Brands Farm**

Date: 1938

HALS: D/EX52/Z10

### **10.1 Why we are considering this document**

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 a right of way that exists.

### **10.2 Evidence found relating to the application routes:**

The plan accompanying these particulars appears to be based on an OS plan. It shows the land associated with Brands Farm coloured pink.

Route A – The southern part of this route would fall within plot 17, however no route is shown.

Route B – This would fall within plot 236 shaded pink, however no route is shown.

### **10.3 Decision**

Route A – HCC decided this document provided no evidence.

Route B – HCC decided this document provided no evidence.

## **11. 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)

### **11a. Definitive Map Records – Much Hadham Parish Survey**

Date: 1951

Ref: ROW

### **11a.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.

### **11a.2 What is shown by these documents in the area of the application routes?**

The Application Routes are not referred to in the parish survey.

### **11a.3 Decision**

HCC decided that this document provides no evidence for the Application Routes.

### **11b. Definitive Map Records – Draft, Provisional and First Definitive Map**

Date: 1953

Ref: ROW

### **11b.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.

### **11b.2 What is shown by these documents in the area of the application routes?**

The Application Routes are not shown on this map.

### **11b.3 Decision**

HCC decided that this document provides no evidence for the Application Routes.

**11c. Definitive Map Records - Special Review**

**Date: 1984**

**Ref: ROW**

**11c.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.

**11c.2 What is shown by these documents in the area of the application routes?**

The Application Routes are not shown on this map.

**11c.3 Decision**

HCC decided that this document provides no evidence for the Application Routes.

**12. Aerial Photographs 1970 - 2015/16**

**12.1 What is shown by these documents in the area of the application routes?**

**Taken Oct 1971 – June 1973 Run 41 - 8681**

**1:12000**

Route A – The northern part of the route (points 1-2) can be seen as a clear track, it then becomes less distinct.

Route B – It is not clear whether or not there is a track.

**1980**

Route A – the whole of this route is visible as a clear track (although the southern section is on a slightly different line).

Route B the whole of this route is visible as a clear track.

**1990**

Route A – the whole of this route is visible as a clear track.

Route B – the whole of this route is visible as a clear track.

**2000 and 2010.**

Route A – the whole of this route is visible as a clear track.

Route B – the whole of this route is visible as a clear track.

**2015/16**

Route A – there is no sign of the northern section of this route although the southern section is still very clear.

Route B – this route is still clearly visible.

**12.2 Decision**

HCC decided that in 1970 neither of the routes are clearly marked. By 1980 Route A is clearly visible with a small section at the southern end on a different alignment. Between 1990 and 2010 Route A is clearly visible on the application alignment but by 2015/16 the northern section of the route between points 1-3 has disappeared and a new route can be seen running north from point 3.

Route B is clearly visible on the 1980 aerial photograph and remains so still.

Whilst providing evidence of the physical existence of the routes the aerial photographs provide no evidence of public rights.



1980 Route A



1980 Route B



1990 Route A



1990 Route B



2000 Route A



2000 Route B

## User Evidence

### 13. Contemporary Evidence of Use

#### 13.1 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.

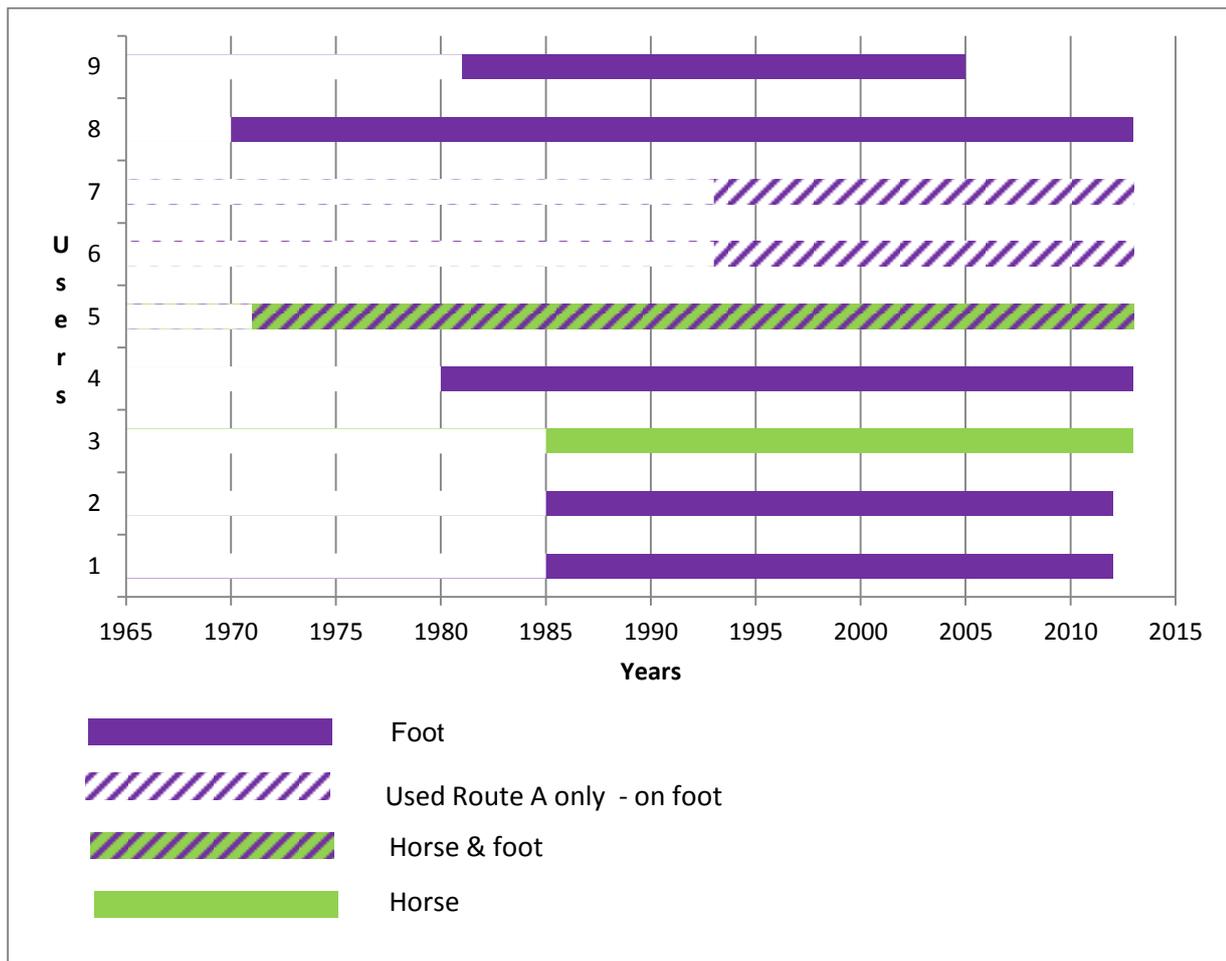
Under common law a right of way can also come into existence in less than 20 years if it can be shown that there was dedication of the route by the landowner and acceptance of the route by the public.

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.

### 13.2 Summary of Evidence



USER	NO. YEARS USED	START YEAR	END YEAR	TYPE OF USE	FREQUENCY	NOTICES	WIDTH	COMMENTS
1	27	1985	2012	foot	Weekly until 2010 then monthly	yes since spring 2012	3m approx	* points referred to on plans are points on the user evidence form plan Routes A + B - Used routes for pleasure. Sometimes passed other people. 2 locked gates (marked on plan at 2f ( <i>point 4 on the investigation report plan</i> ) & 3 ( <i>point 5 on the investigation report plan</i> )). Has heard there may be a third gate but has avoided walking that way this year (2012). Never challenged or given permission to use route.
1	26	1985	2011	bicycle	rarely			

**Evidence after consultation and further enquiries:**

Believes there may have been a metal gate near point 1 but it never blocked the path. It may have been at the side of the path. Does not remember a private sign anywhere near this gate. No gates at point 2 or 3 on plan. No gates at point 4 until a few years ago. No gates at points 5 or 6 until new ones installed a few years ago along with private signs. The gate at point 6 was later removed. Was never told that routes A or B were not public rights of way or private land. Cattle were kept in some of the fields north of New Barns Lane. No private signs that referred to any of these routes.

2	27	1985	2012	foot	A-C 3-4 times a week. C-D monthly or weekly	Yes since early 2012. A - "Moor Place Farm - No Entry" on a post, lasted a few months. B + C on gates "Chaldean Estate Ltd Moor Place Farm - No Entry" B till present. C till October 2012?	2.8m less on B-E	Routes A + B - Has always used routes openly and 'as of right'. Has met many other walkers, riders, walking groups, who were doing likewise. The track between B ( <i>point 5 on the investigation report plan</i> ) - E ( <i>the northern end of RB 48</i> ) does not dry out once wet and is often very muddy and difficult to walk. The section at X ( <i>part of RB 48 by Brand's Farmhouse</i> ) is not surfaced and is driven on by heavy farm machinery therefore it too is often very muddy, therefore the farm track A-B ( <i>points 6 - 5 on the investigation report plan</i> ) is particularly valuable especially in wet, icy or snowy weather. Locked gates at B + C + D ( <i>points 5 + 4 + south of 1 on the investigation report plan</i> ). Never challenged or given permission to use route.
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**Evidence after consultation and further enquiries:**

Has used routes A and B on foot since 1985. They are usual width, usual surface farm tracks. Never told not to be on the routes. 'Private' signs erected since Moor Place Estate sold. Remembers cattle in the fields east of the track and in the cattle shed west of point 1. There were no gates at points 1 or 2. On Route B gates and signs appeared for the first time after the Estate sale at junctions 5 and 6, forcing people to use Brands Lane which is often impassable for walkers after heavy rain. The gate and sign at point 6 were later removed. Route B is an important and useful route so walkers "squeeze around" the padlocked gate at junction 5 despite the "private" sign. A sign on an oak tree on east side of track warning of chemicals clearly referred to the adjacent field, not the track. Does not remember a gate at point 4. There was a gate further along on the west side of Route A leading into the wood. There was a wheeled gate near junction 1, but always passable. Does not remember any signs.

3	28	1985	2013	horse	weekly	no	5-6m	Routes A + B - User 3 commenced Route A from point west of buildings at northern end. Route not obstructed. Never challenged or given permission to use routes.
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USER	NO. YEARS USED	START YEAR	END YEAR	TYPE OF USE	FREQUENCY	NOTICES	WIDTH	COMMENTS
4	33	1980	2013	foot	4 times a year until 2004, then almost daily	No signs before 2012. On gate 3 notice "Chaldean Estate Limited Moor Place Farm - No Entry"	1-2.8m	* points referred to on plans are points on the user evidence form plan Routes A + B - Used routes for pleasure and dog walking. There were never any gates or obstructions until 2012. 3 gates mostly shut but sometimes open. Has squeezed past the gates when the hedges have been cut back. There is a gap to the west of gate 1 ( <i>south of point 1 on the investigation report plan</i> ) which makes it easy to bypass this gate. Never challenged or given permission to use route.

**Evidence after consultation and further enquiries:**

Does remember a metal gate on wheels which was occasionally across the track leading from New Barns Lane. When across the track it was not at point 1 but about a quarter of the way towards point 2. Does not remember this gate ever being locked and does not remember a sign 'Private Property – No Right of Way'. Never had to climb over or squeeze around gate. Cannot remember whether the gate could be opened but there was a gap between the edge of the gate and the track that you could walk through. Does not know why the gate was at times across the track.

Cattle were sometimes kept in the field and were prevented from escaping by an electric fence on the inside of the track, so that pedestrians and horse riders could continue to use the track.

Until gates erected in 2012, never saw gates at points 1,2,3,4,5 or 6 or signs stating the land was private or signs stating the use of the tracks was permissive.

On east of Route B near point 6 there is a sign stating 'Beware vermin Control in operation Keep dogs on leads and off private land'. The position of the sign makes it clear that the private land referred to is the field and not the track. The reference to dogs on leads makes it clear that dogs and their owners are expected to walk along the track. The sign does not contain any objection to them doing so.

5	42	1971	2013	foot	weekly/m onthly	Notices warning of 'vermin control' erected 2004-5 (marked 1 on map).	10-12ft used to be 8-10ft	Routes A + B - Used routes for pleasure, social, recreational. This route has been established by residents for decades. The family bought the land circa 1886, never objected, to their knowledge, until sold circa 2011. No obstruction until gates erected 2011-12. Gates were periodically locked. Never challenged or given permission to use route.
	6	1974	1980	horse	quarterly			
	5	1986	1991	horse	quarterly			
	11	2002	2013	horse	quarterly			

**Evidence after consultation and further enquiries:**

An auction was held 2004 – every gate on the Estate sold along with other equipment. After ownership changed in 2011 new gates started appearing at a number of sites along the few tracks that exist which had been unfettered for decades.

Route A – does not remember a gate a point 1. There was a gate half way between point 1 and point 2. Does not remember a gate at point 3 or 4.

Route B – A new gate was installed at point 5 soon after ownership changed about 2011. This was initially vandalised and later appeared to be rammed by a vehicle. New metal gate was often shut but walkers cut the hedgerow to circumvent it. Never been a gate at point 6. There was a 'Private Keep Out – Vermin Control in Operation' sign nailed to a tree. Historically the previous landowner had put up a handful of signs 'Private keep Out' in certain places often within gaps in hedges at the rear (west) of Moor Place House. This was clearly designed to request walkers to respect their privacy.

6	20	1993	2013	foot	weekly	no	8ft	Route A only - Used route for pleasure. The route has generally been used by many walkers in Much
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USER	NO. YEARS USED	START YEAR	END YEAR	TYPE OF USE	FREQUENCY	NOTICES	WIDTH	COMMENTS
								* points referred to on plans are points on the user evidence form plan Hadham without interference by the landowner until last year (2012). Obstructed by a gate at each end of the track from 2012 which prevented use of the route. Gates were mostly locked. Never challenged or given permission to use route.
7	20	1993	2013	foot	weekly	no	8ft	Route A only - Used route for pleasure. The route has always generally been used by many walkers in Much Hadham without interference by the landowner until last year (2012). Obstructed by a gate at each end of the track from 2012 which prevented use and were mostly locked. Never challenged or given permission to use route.
<b>Evidence after consultation and further enquiries:</b>								
Confirmed the existence of earlier gates across the route which children used to play on.								
8	43	1970	2013	foot	weekly	yes, between 2012 and 2013 along top of Cox's Lane "Private Property"	3-10m	Routes A + B - Used routes for walking dog. Has been walking the routes for 30 years. Never challenged or given permission to use route. Obstructed by three locked metal gates erected 2012 along track by New Barns. Can go round the side of the gate. A side gate for dog walkers would be great.
9	24	1981	2005	foot	daily	no		Routes A + B - Used routes for pleasure. Understands that there are now gates but there were no obstructions in their time when using. Never challenged or given permission to use routes.

**Witness evidence summaries of statements submitted after consultation**

Witness	Summary
10	I have known the area since 1967. Since 1967 signs have always been displayed stating that the land which Route A and Route B crosses is private. Gates and hurdles have always been in place to prevent access by the public and to keep cows and horses in. There has always been a hurdle at point 1 on Route A. There was a wooden gate between points 1 and 2, replaced by a metal gate in 2012. Post and rail fence blocking access completely at point 1 was erected 2012/13. There was a locked gate at point 4 where Route A joins Cox Lane from 1967 until the 1980s when it was replaced with a hurdle. Never saw anyone using Route A; if they did use it they must have jumped over the gates or pushed around the side.

	<p>Route A track has not always been in the same position. Southern section used to follow a route around the copse which was planted at the same time the route was changed, therefore straight line track did not exist between points 3 to 4 before the 1980s.</p>
<p>11</p>	<p>I have known the area since 2009. During this time Route A has been used occasionally (up to 5 walkers per day). The use of Route A has always been infrequent with no use at all on many days. There has always been a gate across Route A where it joins New Barns Lane which has mostly been kept closed and is normally locked. Users of Route A would get around gate by pushing back bushes and forcing their way around the side. I have seen walkers do this.</p> <p>Access to Route A has stopped now as the property has been made more secure.</p> <p>A few years ago a second more substantial gate was installed approximately 50 yards along track from New Barns Lane which is harder to get around. I was told it was to prevent access by the general public.</p>
<p>12</p>	<p>I have known the area since 1968. Since 1973 managed land which is crossed by Routes A and B. This land was inspected weekly, during that time only saw one walker on either of these routes.</p> <p>Throughout time there, there were a number of physical obstructions across routes A and B which were kept closed except at busy times or for special reasons.</p> <p>A copse was planted at the bottom of Route A in 1986 and it was only at that time that that section of the track was created for farm vehicles to cross or cattle droving. I cannot agree that Route A has been used continuously from 1970s as it was not in existence until 1986, before that it was simply part of the field. After 1986 there was an iron hurdle in place at point 4.</p>
<p>13</p>	<p>I have known the area since 1976. The Route A track used to follow a different route around the copse. The copse was planted when the route was straightened (between points 3-4 on the plan). By 1978 Brands Farm and New Barns Farm were run together and the Route A track was moved to a straight line between points 3-4 to make the access between the two parcels of land easier for farm workers. Hardstanding was put on Route A to allow access for farm vehicles.</p> <p>The track was rarely used before the 1980s. There was a wheeled hurdle gate with barbed wire blocking access to Route A at the entrance to New Barns Lane between points 1 and 2. As far as I am aware the hurdle was kept closed between 1982 and 2002 and was only opened for access during working hours on average one to two times a week. There was a sign in place on the hurdle stating that the land was private.</p> <p>Throughout the period of my knowledge there was also a "New Zealand" gate with barbed wire preventing access to route A at point 4 on the plan.</p> <p>The gates I have described were not always shut as farm vehicles needed access, therefore sometimes they would be open for weeks at a time; however the gate at point 1 was always closed for at least one month through the Christmas period when access was not needed. Anyone using Route A when the gates were closed had to find a way of forcing their way around the hurdles and gates to gain access.</p> <p>Occasionally if I saw walkers or horse riders I would remind them that the track</p>

	<p>was not public and they were on private property. I only saw horse riders when the gates were open. I made a particular point of telling horse riders they could not use the track as they had no right to and they made a mess of it.</p>
14	<p>I have known the area since 2009. Since this time there has always been a gate across the Route A track between points 1 and 2 which was kept closed most of the time from 2009 to 2012. From 2012 the gate has been closed permanently. To access route A would mean needing to break down bushes to get around the gate. In 2012 a second gate was installed at the entrance to New Barns Lane. There has been a sign on this gate since it was installed stating that the track is not a right of way.</p> <p>Horses used to be kept at Bluebell Farm. I have been told by the owners of some of these horses that they sometimes made walkers using track A aware that it was private land.</p>
15	<p>I have known the area since 2009. During this time there has always been a metal gate at point 1 of the Route A track. The gate has always been closed and blocked the entrance. In 2006 I rented property in New Barns Lane. Was told by the owner that we had no right to use the Route A track. During the three years that we rented this property we never saw anyone using Route A. In 18 years in area have always regard Route A as private property.</p>
16	<p>I have worked in area between 1981 and 2003. During this time only farm workers, their families and people employed or living on the farm estate had permission to use Route A track. During this period there was a cast iron gate on wheels with hooks at both ends approximately 15 feet down the Route A track from New Barns Lane, approximately where the track starts to turn left. The gate was there to stop walkers and horse riders accessing Route A. There was a metal sign on the gate that read "Private Property – no public right of way" and there was also a sign in the hedgerow on the left hand side of the Route A track. The gate was opened as and when required to allow farm vehicles to pass. The gate was mainly shut during the winter months. When work on the farm was very busy it would have been left open, but when not busy it would have been shut.</p> <p>Throughout my employment there was also a hurdle gate at the end of Route A where the track joins Cox Lane (point 4). This was kept closed at most times, unless the farm was busy. This gate was quite difficult to open and was only generally opened to allow access for farm vehicles. In the later years of my employment this gate was replaced with a removable barbed wire fence. A sign was in place at all times to inform the public that the land is private and there is no public right of way.</p> <p>The Route A track was occasionally used by walkers and horse riders without permission. I only saw riders when the gates were open. I put logs down on the ground to stop horses accessing the track and to stop vehicles driving through. I also put logs in gaps in hedges where people had forced their way through. This did deter some people. If I or my co-worker saw people using the track without permission, we told them they were trespassing on private property.</p>
17	<p>I have known the area since 1974 and have worked there since the 1980s. Throughout the entire period of my knowledge of the route there was a gate</p>

	<p>near the entrance to New Barns Lane which was set back a little and was by the farm buildings. I particularly remember the gate as it was unusual. It was a steel hurdle gate on wheels. I had to give it a good pull to open it. The gate was not always closed as farm vehicles and workers needed to get through. Bramble and nettles were by the side of the gate which made it difficult to slide the gate to one side to get through and it would not have been easy to get past it.</p> <p>As far as I was concerned the Route A track was only for farm use. I do not remember seeing people on it and I never saw any horse riders.</p> <p>Most of the fields around Route A were gated and fenced as cattle used to be kept on the fields and therefore they needed to be secured. I remember New Barns Farm used to be full of cattle and shut off. I cannot remember exactly when this was but it was during the last 15 years.</p>
18	<p>I have lived in area for approximately 21 years. From 1999 I became acquainted with Cox Lane and began to use it and the surrounding area of countryside on a reasonably regular basis at weekends.</p> <p>In 2003 we bought a dog; I then also began to use the area for dog walking purposes. I was aware there was a public footpath if one turned left at the top of Cox Lane, but there was no right of way if turning to the right (i.e. towards New Barns Lane). There was a metal gate blocking the way there at the point marked 4 on the plan. The gate was in the same position as the one there currently, although the current gate was installed some time later. That gate was usually shut, but was not always so. I cannot remember if it was locked when shut, but it might have been.</p> <p>There was a sign either on or near the gate, or both, saying that the land behind it was private property. I cannot now remember which, or exactly what it said. I can recall that it had a short message that was clear and visible to anyone approaching the gate from Cox Lane. The reason that I knew that the land and the path beyond was private property, with no right of way, was because of that sign. As I recall the sign was always there, as was a gate.</p> <p>Although I knew that what is marked as Route A on the plan was private property, and that I had no right to walk along it, I did so every now and then (rather than using the proper path which takes a wider loop via Brands Farm) and I am sure that on occasions I did so with other members of my family. I should say that if the gate was locked I would have simply climbed over it if I wanted to walk that way – so as to be able to take a short cut between Cox Lane and New Barns Lane.</p> <p>Until a few years ago the path followed exactly what is identified as Route A. My recollection is that there were gates at each side of the farm yard marked at the top of New Barns Lane, so one had to go through both sets of gates to reach the lane itself. I cannot now remember what these gates were like or if there was a sign saying private property; not least because I would rarely have approached Route A from that direction.</p> <p>I never made any attempt to hide the fact that I was using Route A but if I had seen farm workers in the area I would no doubt have not used it as I knew I was not supposed to do so and would have preferred to avoid the aggravation of a potential argument. Occasionally I would see other people up there when on Route A, usually fellow dog walkers.</p> <p>I did meet the former owner on one occasion and was told politely but firmly</p>

	<p>that I should not be there as it was private property. After a conversation we ended by them saying that they did not mind if I used the path occasionally. I cannot remember the date but it would have been between 2007 and 2009/10. Before this my use of the route was always without permission.</p>
19	<p>I have lived in the area since 2000. To the right of the top of Cox's Lane was a gate, and at the other end of the same 'path' where it joined New Barns Lane was also a gate. When both gates were open it was possible to travel this route, but my recollection is that it was private and so this was not always possible and probably never intended. More recently the path has changed and the gates become more prohibitive. Equally the path instead of turning right from Cox's Lane direction, was closed off, forcing users to carry on to beyond where New Barns Lane ended. These developments coincided with signs going up at various junctions saying that this was a permitted pathway provided by the landowner and could be taken away at any time or words to that effect. To the best of my recollection, the tracks (Route A) were not public rights of way.</p>

**Deposit made under under Rights of Way Act 1932  
Moor Place, Much Hadham**

**Date: 26<sup>th</sup> February 1934**

The land area of Route A is not included in this deposit. It is unclear whether or not the land area of Route B has been included as the boundary of the land included has been drawn over Route B.

**Section 31(6) HA Deposit Moor Place, Much Hadham**

**Date: 28<sup>th</sup> April 2008**

The Application Routes A and B have not been shown as public rights of way on this deposit.

**Section 31(6) HA Deposit Moor Place, Much Hadham**

**Date: 30<sup>th</sup> September 2015**

Part of Application Route A between points 1 and 2 is included within the landholding. It has not been shown as a public right of way. Route B is not included.

**Letter from Chaldean Estate Ltd**

**23<sup>rd</sup> April 2013**

This letter states that the track has been used permissively on a casual basis by local walkers.

**Letter from Chaldean Estate Ltd**

**12<sup>th</sup> August 2014**

This letter states that part of Application Route A from point 2 to 4 on the Investigation Plan was dedicated as a permissive path in June 2013. The letter states that the section between points 2 to 3 is now being re-routed to commence at a point approximately 210 metres further west along the track.

### 13.3 Assessing the evidence

In order to assess whether public rights have accrued over the application routes it is necessary to determine:

- the date that use of the application routes was first challenged by the landowner
- whether there is evidence of public use during the 20 year period ending at that date of challenge

- whether during that relevant period the landowner's actions would have caused the public to understand that the landowner had no intention to dedicate a public right of way

It would appear that the section 31 deposit was a clear date of challenge. The landowner deposit made under section 31(6) of the Highways Act 1980 dated 28<sup>th</sup> April 2008 does not show either of the application routes on the map accompanying the deposit. This shows that the landowner has no intention of dedicating these routes as public rights of way from the date the deposit was made. If there are no earlier acts made by the landowner to inform the public that they are not dedicating the application routes as public rights of way, then any evidence of public use would need to cover the 20 years prior to the date that the landowner deposit was made i.e. would need to cover the period from April 1988 to April 2008.

Nine users have given evidence of public use of the application routes. Users 1, 2, 4, 5 and 8 have used the routes on foot for 20 years counting back from 2008. User 9 has used the routes for 17 of the 20 year period and Users 6 and 7 have used Route A only for 15 years of the 20 year period. User 3 has used the routes for 20 years exclusively on horseback.

The users who supplied evidence when the application was made have made no mention of gates or signs until Chaldean took over the Estate in 2011. However when further enquiries were made after the consultation period user 1 believes there may have been a gate near point one but not obstructing the path, user 2 remembers there was a wheeled gate near point 1 but always passable and believes that there might have been a gate at point 5 but probably pushed open into the hedge. User 4 remembers a metal gate on wheels which was occasionally across the track leading from New Barns Lane between points 1 and 2, user 5 also remembers a gate between points 1 and 2 and user 7 remembers gates which children used to play on.

New witness statements collected by one of the current landowners after the consultation period, from a number of people who used to work, or walk, on the estate refer to gates being closed or locked and signs on some of the gates and in the hedge stating 'Private Land – No Public Right of Way'. A number of these statements also say that people were challenged when seen on the application routes and told that they were on private land. Eight of the ten new witnesses remember a gate between points 1 and 2 and the other two remember a gate at New Barns Lane. Five remember a gate at point 4; two say this gate was locked. Witness 16 has said that people pushed their way through hedges and logs had to be put down to stop up the gaps. Witness number 18 is very sure that it was known that the routes were not public rights of way and that the land was private. This witness has said they avoided using the routes if farm workers were in the fields as they did not want any conflict. They remember that there was a sign making it very clear that the routes were not public rights of way.

### **Decision**

HCC decided that the landowner deposit made on 28<sup>th</sup> April 2008 was a clear challenge to any public use of the application routes. Any use of the routes after this date could not accrue any public rights. Public rights can accrue after 20 years use of a route 'as of right' that is without using force, without using it in secret and using it without permission. The relevant 20 year period that needs to be assessed in this case is therefore between 1988 and 2008.

Evidence was provided by 19 people. During the relevant period nine users claim to have used application route A and seven users claim to have used application route B. This is quite a small number of users for routes close to a village the size of Much Hadham. Ten witnesses have given evidence of gates being closed and sometimes locked along the routes. Some of the users have revised their evidence and now state that some gates were present. The witnesses have also given evidence of notices informing the public that the land was private and that there was no public right of way. Some had worked for the Estate and had challenged people using the routes; another was a user of the routes but was aware that the routes were not public. This witness was challenged using one of the routes. Other witnesses had seen people pushing around the outside of the gates.

HCC decided that this evidence was sufficient to indicate that during the 20 year period 1988 to 2008 the landowner had demonstrated a lack of intention to dedicate the application routes as public rights of way. The witness evidence also indicates that some of the use of the routes was not 'as of right' as force seems to have been used by some of the users to get around or over gates and notices appear to have been ignored.

### **Conclusion**

A limited number of people have used the routes for the relevant 20 year period of 1988 to 2008. It is considered that not all of this use has been 'as of right' and the acts of the landowners and their employees during that period indicate their lack of intention to dedicate public rights of way. HCC therefore decided not to make an order to record the application routes A and B on the definitive map and statement.