

**HERTFORDSHIRE COUNTY COUNCIL  
Countryside & Rights of Way Service**



**Modification Order Application  
Investigation Report**

**Preston BR 6 to Hitchin BOAT 28**

Author: **Brian Gillam**

Date: **26/10/2021**

## **Application Details**

An application has been made to modify the Definitive Map and Statement (DMS) to record a Restricted Byway from Preston Bridleway 6 and Charlton Road north to Hitchin BOAT 28. The application route is currently recorded as an Unclassified County Road (UCR) number 2 in Preston and is labelled as Hoar's Lane. An extract of the 2015 Definitive Map is attached. It shows where the route is, and it is labelled Point 1 to Point 7 on the Investigation Report Plan.

This application was made by Dr Phil Wadey on 22<sup>nd</sup> June 2013. The following documentary evidence was attached:

- Dury and Andrews' Map of Hertfordshire 1766.
- Bryant's Map of Hertfordshire, 1822.
- IR 126/4/92 Inland Revenue Valuation Plan, The National Archives.
- IR 126/4/95 Inland Revenue Valuation Plan, The National Archives.
- Index Map of Hertfordshire Main and County Roads, c. 1927.
- Hertfordshire County Council Rights of Way Survey, Hitchin RD, circa 1938.
- Hertfordshire County Council Land Charges map, circa 1980.
- Hertfordshire County Council Gazetteer, 2013.

## **Description of Route**

The application route is within the parish of Preston in North Hertfordshire district. The application route is to the west of Charlton Road – east of Great Offley and south-west of Charlton. The application route commences from a junction with Charlton Road just north of The Lodge, besides Preston 6 Bridleway (point 1 on the plan). The application route proceeds along the route of Hoar's Lane, running in a generally north direction to join Hitchin BOAT 28 to the north, Offley UCR 2 to the west and Temple Close and Preston UCR 3 to the east (point 7 on the plan).

The application route commences from a junction with Charlton Road (Point 1). The access is wide with trees and tall scrub located either side, with a partly tarmacked surface at the beginning of the application route (Point 1 & Photo 1). There is a signpost (Point 1 & Photo 2) displaying the application route as a Public Highway Hoar's Lane. The application route is a part of The Chiltern Way Extension (North Chiltern Trail). Additional signage at point 1 indicates The Chiltern Way Extension (North Chiltern Trail) continuing west on Bridleway 6. The application route proceeds north from point 1, continuing in that general direction and consisting of a natural surface. The width of the application route varies between 4 and 10.5 metres wide. The route continues north, encompassed by trees and scrubs either side (Point 3 & Photo 4). The application route proceeds passing small wire fencing, scrub to the west and a small drop off and arable fields to the east (Point 4 & Photo 5 & 6). The route continues in the same manner, still on a natural surface with scrub and trees located either side (Point 5 & Photo 7). The application route slowly bends round on a thin track with open fields east and tall scrub west (Point 6 & Photo 8). The route continues in this way until reaching a crossroads (Point 7 & Photo 9), end of the application route. At this point there is a small coppiced woodland west and open fields to the east. There is a waymark post signing Hitchin 28 BOAT to the north, Offley UCR 2 to the west and Preston UCR 3 to the east.



**Point 1 & Photo 1.**



**Point 1 & Photo 2.**



**Point 2 & Photo 3.**



**Point 3 & Photo 4.**





**Point 4 & Photo 5.**



**Point 4 & Photo 6.**



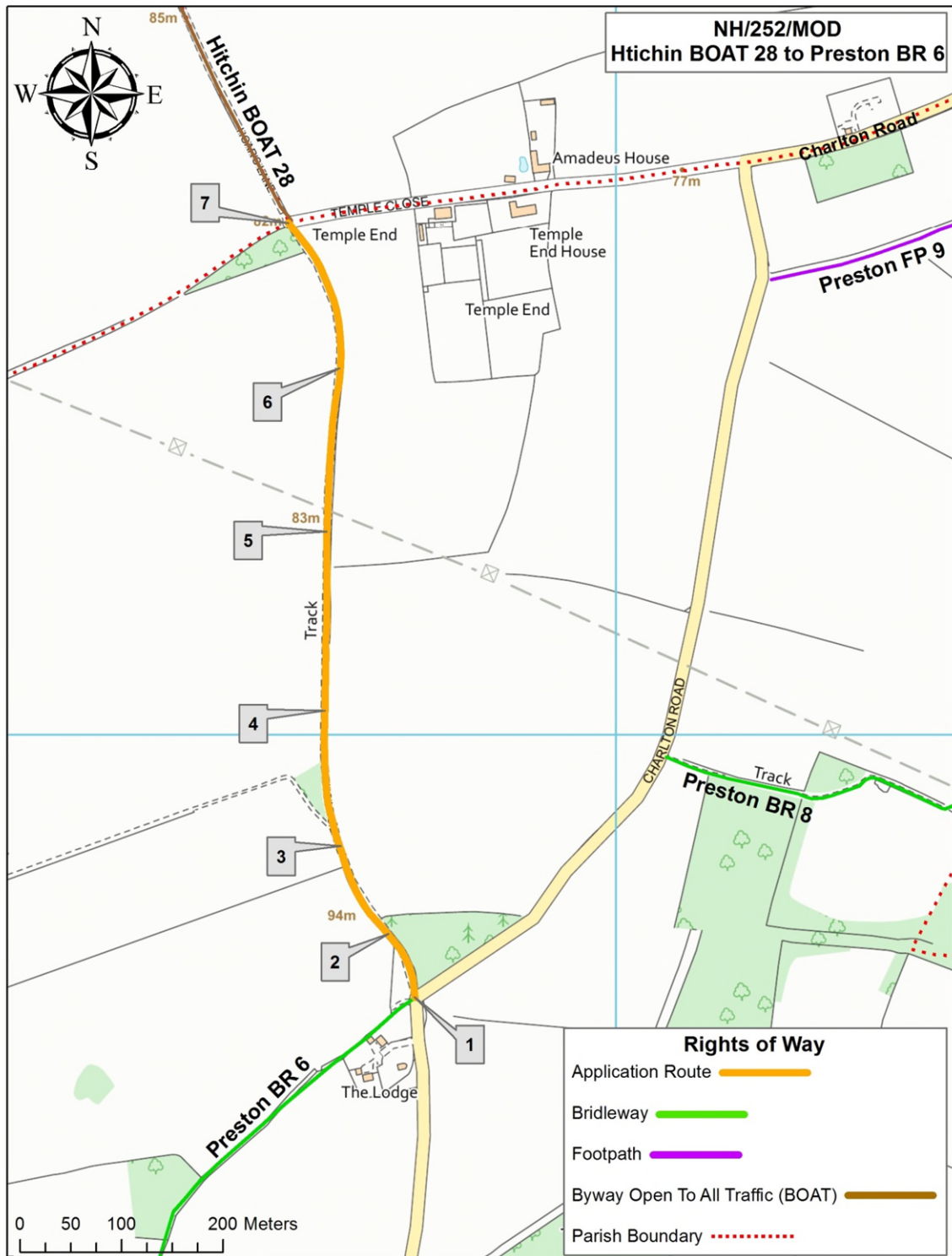
**Point 5 & Photo 7.**



**Point 6 & Photo 8.**



**Point 7 & Photo 9.**





## **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](http://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.

- 1. Inclosure records**  
No records found.
- 2. Highway Diversion/Extinguishment Records**  
No records found.
- 3. Highway Maintenance Records**  
No records found.

The approximate location of the application route is marked by a red arrow on the photographs throughout this investigation report.

#### 4. Dury and Andrews Map

Date: 1766

Ref: HALS - CM26

##### 4.1 Why we consider this document important

Dury and Andrews' 1766 county map of Hertfordshire describes itself as 'a Topographical map of Hartford-Shire, from Actual survey; In which is Expressed all the roads, lanes, churches, noblemen and gentlemen's seats, and every Thing remarkable in the County'. It is a map made from an original survey, although it is a schematic map (like the London Underground map) rather than one to scale. In this way its level of accuracy does not match modern Ordnance Survey maps, but it is useful evidence for the existence of routes in the 18th century. The Planning Inspectorate's Consistency Guidelines state that "Overall, the evidential value of the older maps can be significant in helping to determine the location of a way, and can be helpful in determining the status of a route, especially in conjunction with later maps." Dury & Andrews' map shows the basic layout of roads but details like field boundaries were probably decorative. The "explanation" (or legend) lists 'Roads' in 3 categories – "open", "one side enclosed by a Hedge", and "enclosed by Hedges". It does not appear to show routes which, at the time, were thought to be footpaths or bridleways. The map was produced to be sold to members of the public which mean that it is likely the routes shown were public rather than private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.

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

This map shows areas of Well Head, Ofley Holes, various open fields, the application route, the parish border of Offley, Temple Close, Maydencroft Lane and Charlton Road (as known today).





### **4.3 Applicant's Comments**

- a. This was made for sale to the public, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished.
- b. This map is a 'topographical map', which means that while destinations of routes are correct, there are sometimes inaccuracies in the exact line that a route takes. Here, there is route which clearly starts at Point A, by which appears slightly west of Point B. Nevertheless, the route A-B and its continuation correctly join up the end of Preston 6 with Hoar's Lane. The route is shown in the manner of a 'Road enclosed by Hedges'. This suggests that the route was considered to have vehicular rights in 1766.

### **4.4 HCC Decision**

HCC decided that the application route is depicted in the same manner as other adjoining roads in the area, including Charlton Road. The map key shows the application route as 'Road enclosed by Hedges', providing good evidence that it was believed the route was considered to be a public road with at least bridleway and possibly vehicular rights.

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

Date: 1822

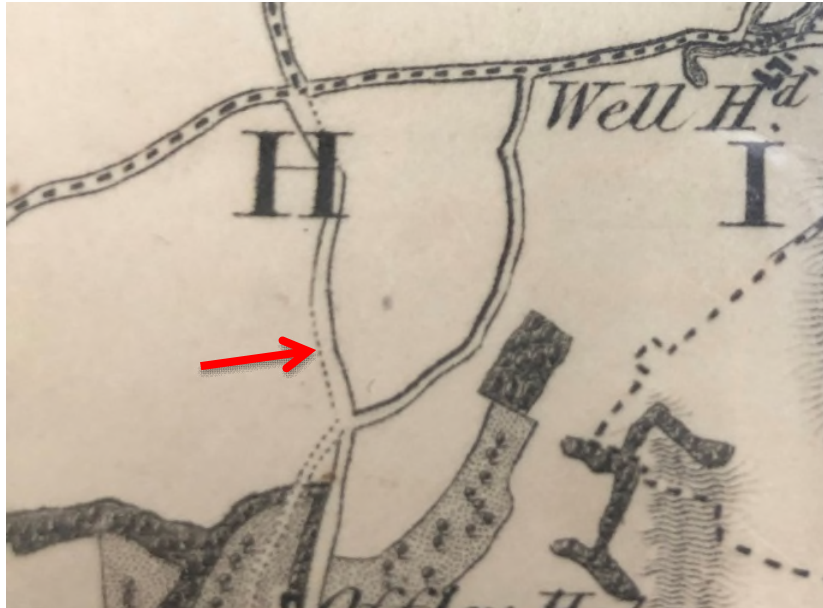
Ref: HALS - CM88

### **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 route?**

This map shows the application route, including areas of Well Head, Ofley Holes, the parish boundary of Offley, Temple Close and Charlton Road (as known today), open fields and small areas of woodlands.



### 5.3 Applicant's Comments

- a. This was made for sale to the public, and so is unlikely to show routes that the public could not use. It has a key in which different types of routes are distinguished.
- b. The route is shown in the manner of a 'Good crofs or driving road'. This suggests that the route was considered to have vehicular rights in 1822.

### 5.4 HCC Decision

HCC decided that the application route is depicted in the style of 'Good Crofs or Driving Roads' in the same manner as public routes in the area, including Charlton Road. This provides good evidence that the route was considered to be a public lane with a status of at least bridleway and possibly vehicular rights.

## 6. Hitchin Tithe Map and Tithe Apportionment

Date: 1844                      Ref: HALS 58875

### 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 route?**

The application route is depicted on the Hitchin Tithe Map, branching off Charlton Road and is coloured sienna from points 1-7. The application route is unnumbered between solid parallel lines and is surrounded by open fields, small sections of woodlands and numbered plots. Maydencroft Lane, Temple Close and Charlton Road (as known today), are all depicted in the same manner. Hitchin 28 BOAT is shown to the north of the application route between solid parallel lines with a dashed black line through the middle. The dashed black line is indicative of the parish boundary which is also shown on Maydencroft Lane and Temple close.





### **6.3 HCC Decision**

HCC decided that the Tithe Map provides evidence of the physical existence of the application route. From the map it appears that the main highways in the parish are coloured sienna and are not numbered. Land shown on the map without a plot number signifies that it was land not assessed for taxation under the tithe process. The way in which the application route is shown, coloured sienna and unnumbered, provides strong evidence of a public highway; possibly with vehicular status.

## **7. Ordnance Survey maps**

Date: 1878, 1898

Ref: HALS

### **7.1 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.

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

The 1878 Edition map depicts the application route from points 1 to 7, between solid parallel lines, lined by trees on either side and is labelled number 747 which refers to an entry in the OS Book of Reference. The surrounding area includes Charlton Road, Temple End, the parish boundary of Offley and small pockets of woodlands.

The 1898 Edition map shows the application route from points 1 to 7. The trees shown along the application route in the previous 1878 edition are now gone. The remainder of the route remains unchanged from the previous OS 1878 Edition.

The accompanying OS Book of Reference for Hitchin listed plot 747, however, there was no description or remarks describing the status of plot 747.



OS 1878 Edition map



OS 1898 Edition map

### 7.3 HCC Decision

HCC decided that the OS maps provided evidence of the physical existence of the application route branching off Charlton Road at its south end, to the parish boundary of Offley at Temple End, at its north end, since 1878. However, the OS maps 2<sup>nd</sup> Edition onwards have a disclaimer that they do not provide evidence of highway status, merely evidence of the physical existence at the time. The application route is depicted in the same manner as other known public highways in the area.

## 8. Hitchin Railway and Canal Plans

Date: 1890

Ref: HALS R640 & R641

### 8.1 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

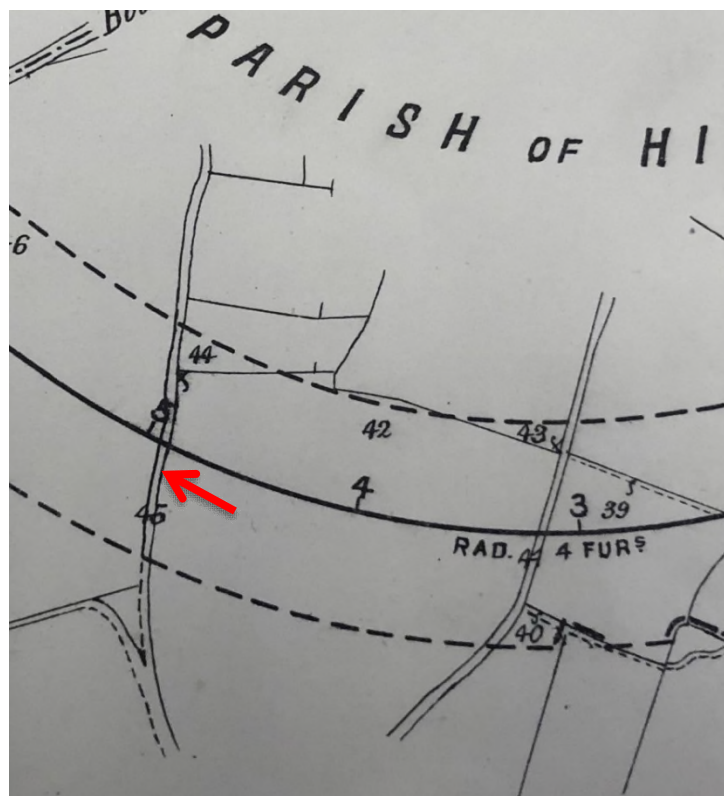
Act 1845 (from s46) strict requirements were laid out about how to deal with public and private roads crossing railways including widths, arch heights and gradients as shown in the plans and cross sections. Requirements for how to deal with footpaths and bridleways are also given. Bridges were generally 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.

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

The Hitchin railway plan depicts a proposed railway line crossing the application route between points 3 and 5 and Charlton Road, to the east, is depicted by solid parallel lines and it is also shown crossed by the railway. The plan shows the parish boundaries of Offley, Hitchin and Ippolitts. The application route is depicted by one solid line with a parallel pecked line between points 3 and 4, and by solid parallel lines between points 4 and 5. The application route is annotated number 45 in the parish of Hitchin which relates to an entry in the accompanying book of reference. Number 45 is listed as 'Road' and being owned by the Hitchin Local Board and having no lessees or occupier. Hitchin Local Board furthermore owned Charlton Road adjacent to the application route, which is shown in the same manner as the application route, listed as number 41 and is recognised as being a Road.

This infers that for the purposes of these plans ownership by the Hitchin Local Board indicates public status and therefore the extent of the Application Route shown is public.





*Hitchin Western Railway.*  
RAILWAY No. 2.  
Parish of Hitchin, in the County of Hertford.

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
37	Field	Robert Curling	... ..	Nicholas Stick
38	Field	Robert Curling	... ..	Nicholas Stick
39	Field and occupation road	Robert Curling	... ..	Nicholas Stick
40	Field and occupation road	Robert Curling	... ..	Nicholas Stick
41	Road	Hitchin Local Board		
42	Field	Robert Curling	... ..	Nicholas Stick
43	Field	Robert Curling	... ..	Nicholas Stick
44	Field	Francis Augustus Debné Radcliffe and his Trustees, viz: Reverend John Pardee and Albert Frederick Hurt	... ..	John Lewin Arthur Lewin
45	Road	Hitchin Local Board		
46	Field	Robert Curling	... ..	Nicholas Stick
47	Road and Parish boundary	Hitchin Local Board		

*Hitchin Western Railway.*  
RAILWAY No. 2.  
Parish of Hitchin, in the County of Hertford.

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
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41	Road	Hitchin Local Board		
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45	Road	Hitchin Local Board		
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### **8.3 Applicant comments**

The plans were submitted to the Parliamentary process in the same way as any other railway plans. The fact that the railway was not built is something that was decided (usually by whether enough money was raised) subsequently. This "not being built" status does not detract from the evidential value. Only if Parliament had actually said that the Act could not be granted because of inadequate survey could a lesser evidential deduction be made.

### **8.4 HCC Decision**

HCC decided the Railway Plan and Book of Reference provide good supporting evidence that the Application Route, where it crosses the proposed railway between points 4 and 5, was considered to be a public road at the time these Plans were produced. It is noted that while the proposed railway was not built, the Plans did go through the normal Parliamentary process and these Plans had to be accurate.

## **9. Inland Revenue Documents**

Date: 1910                      Ref: HALS IR1/137

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

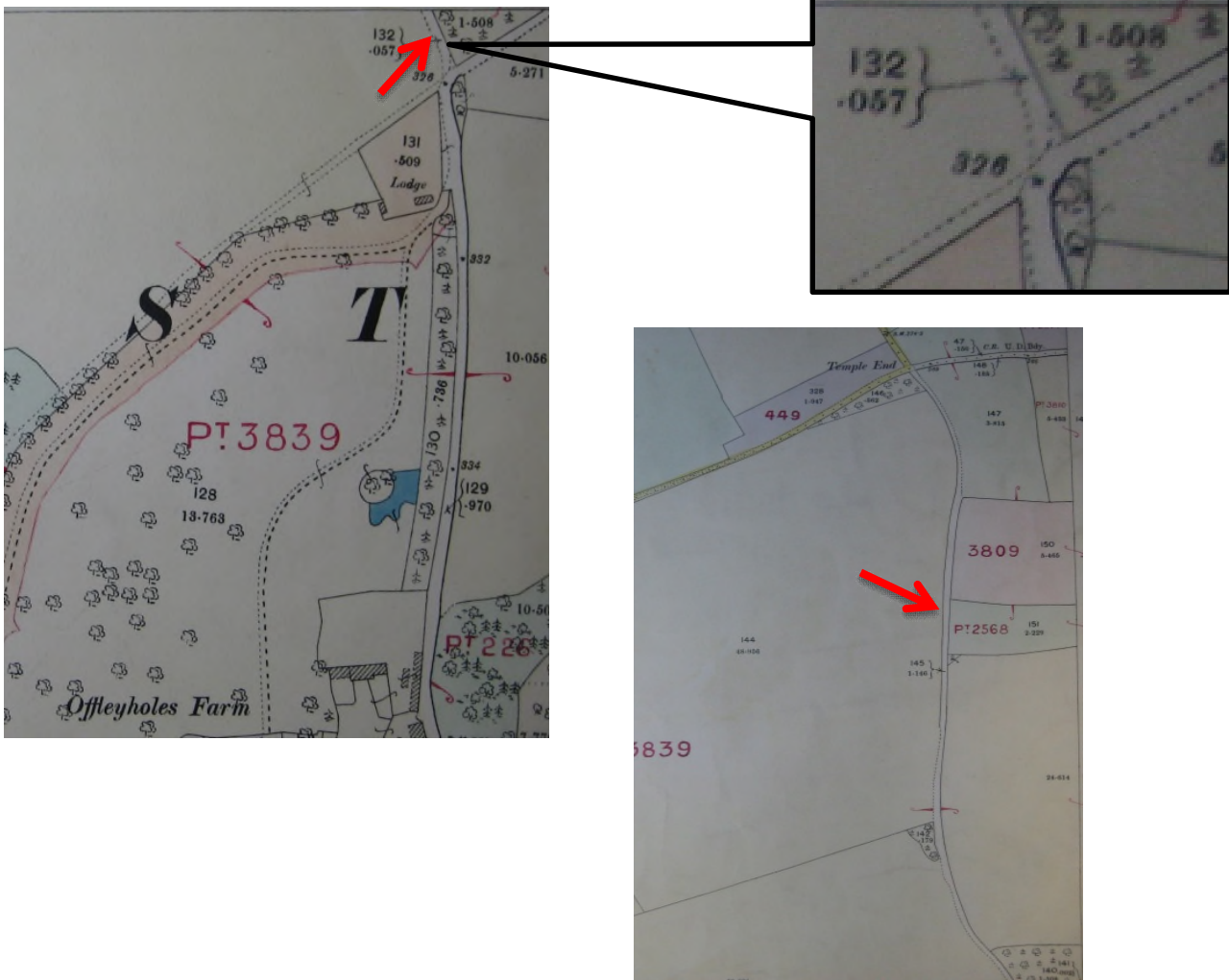
The Finance (1909-1910) Act 1910 was passed in order that a tax could be levied on any increase in the value of land when it changed hands. In order to ascertain the value of all land as at 30th April 1909, a survey was carried out assessing each piece of land. The OS 2nd Edition Plans (usually from 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 route?

The Inland Revenue plans depict the application route from points 1 to 7, branching off Charlton Road at point 1. The application route is shown uncoloured between solid parallel lines, excluded from numbered hereditaments (plots), i.e. excluded from the valuation of taxable land. Other routes in the area are depicted in the same uncoloured manner, including Charlton Road, Temple Close and Maydencroft Lane. The OS basemap shows the parish boundary line of Offley to the north at point 7 on the application route, coloured yellow.



## 9.3 Applicant's Comments

- The National Archives document references are IR 126/4/92 and IR 126/4/95. The extracts clearly show the application route as a white road, separate from the adjoining hereditaments. Most of the route falls on IR 126/4/92 (base map sheet Hertfordshire XI 8) with just a small portion on the other sheet (Hertfordshire XI 12).
- As this land is not held by a local authority or government department for any other known reason, this suggests it is a highway. As no valuation was taken, this strongly



suggests it is a vehicular highway. Had it only been a bridleway, the Inland Revenue would have valued the land and allowed a deduction instead.

#### 9.4 HCC Decision

HCC decided that as the application route is depicted in the same manner as other public vehicular highways in the area (as mentioned above), this is very strong evidence of the application route being a public highway. The nature of this survey being a public and legal process provides strong evidence of the status of routes at that time.

#### 10. Hertfordshire County Council Rights of Way Survey, circa 1938

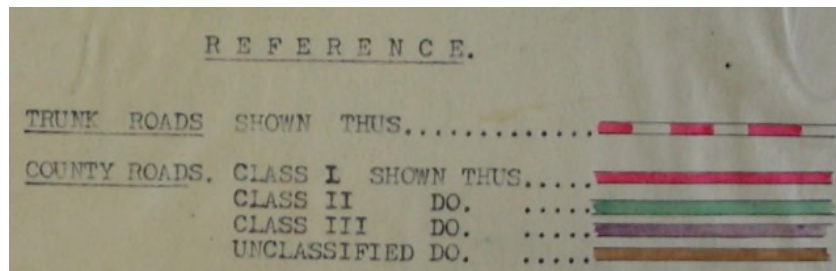
Date: 1938 Ref: HALS OFF ACC 288

A book of map sheets depicting a survey and footpaths and bridleways in Hitchin Rural West, circa 1938. The book contains a record of all the public highways recorded by Hertfordshire County Council at the time.

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

Extracts of the survey have been provided by the applicant. The key depicts county roads Class I, II and III, unclassified county roads are coloured brown, public footpaths are shown as red dots, public bridleways as blue dots and green lanes are green dots. The application route is depicted on the map shaded brown, indicating that the route was considered by the County Council to be an Unclassified County Road at that time.





## 10.2 Applicant's Comments

- a. The application route falls on two of the map sheets. It can be found on the bottom right of sheet 7 and a very small part is shown on the top right sheet 11.
- b. The application route is shown in the same way as other unclassified roads, such as the one at its southern end which is today an unclassified road. The key to the survey maps shows different symbols for footpaths and bridleways and even for 'green lanes', and so the applicant draws the conclusion that the application route carried vehicular rights.

## 10.3 HCC Decision

HCC decided that the depiction of the application route on the survey map is strong evidence that the application route was considered to be an Unclassified County Road by the highway authority at the time; possibly with vehicular rights when these documents were produced.

## 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 – Preston Parish Survey

Date: 1950

Ref: HCC RoW

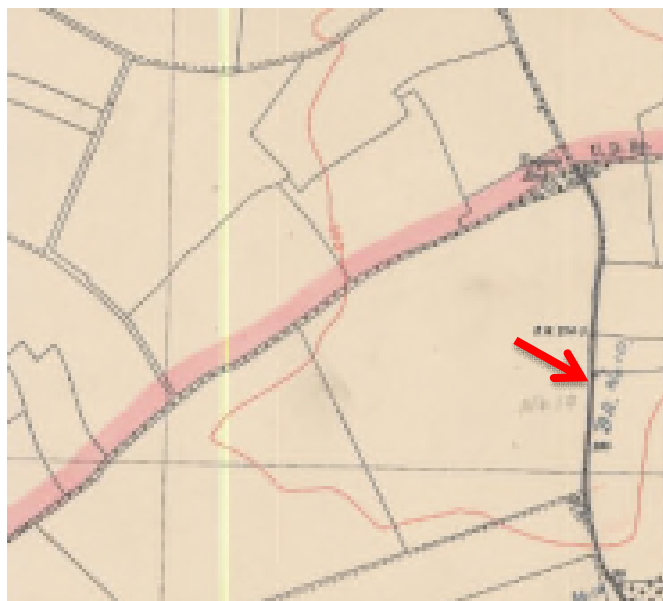
#### 11a.1 Why we consider these documents important

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 route?

The application route is shown from points 1 to 7 on the Preston Parish Survey. The route has been shaded grey in pencil with the annotation of 'BR No. 10' written beside. The parish boundary with Offley is shaded in light red to the north. Temple End, Hoar's Lane and numerous open fields are shown around the application route. An extract from the accompanying parish survey statement provides a description of the application route. However, there is a black line across the words 'This path actually is a continuation of Path 6'. Path 6 on the statement refers to bridleway 6 (point 1 on the plan). Written in red pencil are the words 'County Road (Not) Included on draft map' over the path destination description of the application route.



10. B.R. Starts at Offley Holes Charlton Rd. at the start of Path No.6. and ends at Temple End

*County Road (Not) Included on draft map.*

Commences at the end of Path No.6 - (~~this path actually is a continuation of Path 6~~) on the 3.10.52. W.A.P. Offley Holes - Charlton Rd. approx. 100 yds N. of Lodge. Continues in a Northerly direction along a cinder track following the W. boundary of small wood until it reaches the E. side of a small copse the path then continues through the W. boundary of 3 arable fields until it joins a green lane running E. to W. at Temple End on the Parish Boundary. It is a well defined track throughout.

-3-

### 11a.3 HCC Decision

HCC decided that the Parish Survey of Preston provides evidence that the application route was considered to be of at least bridleway status at the time of the survey. However, due to the words 'This path actually is a continuation of path 6' being crossed out and the words 'County Road (Not) Included on draft map', suggests there was some confusion on the final

status of this route and whether it should have been included. Subsequently, the path was never added in the final version of the parish survey, which suggests it was decided to be a County Road.

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

Date: 1953

Ref: HCC 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 route?**

The First Definitive Map depicts the application route from points 1 to 7 and is shaded yellow in parts. The First Definitive Map did provide information on the application route, but not as a category of Right of Way. The accompanying key for the First Definitive Map shows different colours associated with different types of roads/routes. The map key's description for routes coloured yellow is shown as being 'Unclassified Roads'. The application route is annotated as number 10 on the south-west sheet only; however, a description of number 10 is not found in the accompanying Offley, Preston and Hitchin statements, nor is this found on the north-west sheet.

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

HCC decided that the First Definitive Map provides evidence indicating that the application route was considered to be an Unclassified Road (UCR), rather than a status of highway which is recorded on the Definitive Map. The annotation of number '10' on the First Definitive Map is likely to be left-over from the Preston parish survey where the application route was initially labelled as Bridleway 10. The First Definitive Statement for Preston did not contain any description of a path numbered 10.





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

Date: 1977

Ref: HCC 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 route?

The OS basemap used for the Special Review shows the application route between points 1 and 7; however, the application route is not depicted as a public right of way. The Special Review Map records Hitchin BOAT 28 joining the application route at point 7 and Preston Bridleway 6 at point 1 on the plan.



### 11c.3 Applicants Comments

With respect, the statement "The Definitive Map Special Review provides no evidence in relation to the application route." is incorrect. It provides precisely the evidence that it carried full vehicular rights but was considered not to be of a category to go onto the definitive map. This is positive evidence of full vehicular rights.

### 11c.4 HCC Decision

HCC decided that the Definitive Map Special Review map provides no evidence in relation to the application route, however, the Special Review correspondence records indicate that the application route was not recorded as a public right of way because it was considered to be a highway of a status not shown on the Definitive Map. The southern termination of BOAT 28 would be expected to meet another public highway at the crossroads at point 7. Of the three options the application route is the main continuation to the Charlton Road.

## 12. Land Charges Map (c. 1980)

Date: 1980

Ref: Submitted by applicant

### 12.1 Applicant's comments

a. In the 1980s highways maps held by the County Council's land charges section were photographed. These maps were based on the circa 1970 Ordnance survey mapping. They show the routes that the county council then regarded to be county roads. The originals of these records should still be available from the appropriate part of the County Council. At the time they were taken, they were housed at The Old Court House, St Albans Road East, Hatfield AL10 0ES.

b. The relevance of these records is that where a route is coloured yellow and numbered, it was considered by the county council to be a vehicular highway maintainable at the public expense. This means that a formal stopping up order (or perhaps a magistrates' court order ceasing the public maintainability) is needed if the route no longer has that status. Failing the finding of such an order, the highway should be publicly recognised by inclusion on the definitive map and statement.

c. The application route is shown in the same way as other (vehicular) county roads and is numbered 5U112.

d. The applicant draws the conclusion that the county council previously considered the route to be a vehicular highway maintainable at the public expense.



## 12.2 HCC Decision

HCC decided that without access to the original document we cannot check its provenance or details (i.e. map key, date etc.) but it would appear to add some weight to the application route being considered to be a UCR by the land charges team at that time.

## 13. Section 31 Deposits

Section 31 deposits are deposit and declaration documents made by the landowner to show the clear intention not to dedicate any additional routes on their land. The

Countryside Rights of Way Act 2001 requires the landowner deposits to be available to the public.

There is a Section 31 Deposit running adjacent to the application route to the west. The deposit excludes the application route which is consistent with being public highway and not in the ownership of the estate.

## Additional Evidence and Comments submitted after consultation

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

## Evidence not in the report

As stated in my application, the route was shown in the List of Streets in 2013 as an unclassified county road, and not as a footpath or bridleway or restricted byway.

Find: 576 Previous Next Options

Search

Only search for those maintained by Hertfordshire County Council

**Control map layers**

- Salting routes and salt bins
- Reduced
- Precautionary
- Post freezing
- Salt bin
- Street lighting
- Street or subway light
- Part night lit street light
- Non operational street light
- Lit sign
- Safety bollard

Click the map to return the details of other streets.

To log a highway fault click [here](#).

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**Preston Unmetalled Unclass County Road UCR2 Preston [show on map]**

**Section description (track)** Pinnacle Hill To Temple End  
**Section ID** 5U100/10 [show on map]  
**Class** Unclassified Road - U  
**Hierarchy** No Code Allocated  
**Length** 776m  
**Area N:** 5-North Herts District  
**Maintenance** Hertfordshire County Council - Rights of Way Service

The terms used in the gazetteer are described [here](#).  
Return to the gazetteer [start page](#).

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## My views

I think this one comes down to demonstration of vehicular rights immediately before NERC. It is therefore necessary to look at the NERC exemptions and determine whether any have preserved the motor vehicular rights. I enclosed a copy of the List of Streets used by the council in c.1980 in which it was shown as a road. Above we see that the route was shown as county road 5U/100 in 2013. There would be no reason why the situation should have changed in the intervening years.

I conclude that the "not on the DM but was on the LOS" exemption applies.

This means that there are full motor vehicular rights, and so it is necessary to determine whether the route is a byway open to all traffic or a part of the ordinary road network. I think



the character of the route and balance of user of the route (more walkers and riders than motor vehicles) suggest that the route should be recorded as a byway open to all traffic.

## **Conclusion**

For the reasons given above, I believe that the route is a byway open to all traffic. Please would you check the NERC exemptions, and if my analysis is correct, make an order to add a BOAT to the definitive map. If you decide that the route is part of the ordinary road network, please make sure that the decision report says so in crystal clear terms, including citing the NERC exemption, so that that document can be retained should use of the lane by vehicles be challenged in the future.

## **Comments from GLASS (Green Lane Association)**

The route is shown in the List of Streets in 2013 as an unclassified county road, and not as a footpath or bridleway or restricted byway. I have used this UCR many times myself since the early 1980's

I would suggest you leave it as UCR as it currently holds full vehicular rights, failing that if you want to put it on the DM add it as BOAT, as it stands at the moment I object completely to RB as this would take away the vehicular rights that I and many others have enjoyed for many years, but I would not object to leaving well alone and saving costs or changing to BOAT.

## **Comments from TRF (Trail Riders Federation)**

It is apparent from the report that the road has been managed by the Parish and County Council as part of the ordinary road network since the 1950's, when the definitive map was first compiled.

Both the Parish and the County Council were subject of duties imposed by the National Parks and Access to the Countryside Act 1949 in respect of preparing the definitive map and statement in the 1950's. In particular, the Council was subject of a duty to record Roads Used as Public Paths ("RUPPs") where, in the council's opinion, a RUPP subsisted or was reasonably alleged to subsist.

The evidence in the investigation report demonstrates that the Council made a decision not to record a public path or RUPP in respect of the application route. The logical explanation for this is that the Council lawfully and properly concluded that the road could not meet the low test of being reasonably alleged to be a public path or RUPP. Put another way, the application route was so obviously an ordinary road, the Council decided that it did not warrant inclusion on the definitive map and statement.

TRF sees no evidence of mistake in the 1950's decision to determine that the application route was a County Road that was outwith the scope of definitive map legislation.

TRF contends that the application route does not consist of land that falls within the definition of public path/RB/BOAT, it being land that has the character of a carriageway that is mainly used by the public for the purposes of carriageway. Such ordinary roads may not be recorded on the definitive map and statement, which is to provide for the ascertainment of public rights of footpath, bridleway, or restricted byway.

This reflects the focus in the legislation on the rights of riders and ramblers. The 1981 Act only makes provision for protecting public pedestrian and equestrian rights where they are predominant. It does not have the effect of prejudicing or otherwise extinguishing public vehicular rights. As Lord Fraser of Tullybelton explained in *Suffolk CC v Mason* [1979] AC 705 the definitive map and statement “was ... simply not concerned with such rights” (731B), he continued:

*“That is also in my view the reason why the definitive map is not required to show ordinary roads over which of course there must be a public right of way on foot and on horseback. Such roads are entirely out-side the scope of the Act. A footpath at the side of a public road is expressly excluded from the definition of footpath in section 27 (6) [of the National Park and Access to the Countryside Act 1949 (“the 1949 Act”)] and it may well have been assumed that the right of way on foot along a public road was so clearly outside the Act as not to call for express mention” (731B-C).*

While *Mason* pre-dated the 1981 Act, Lord Fraser’s dicta are of continued application. The exclusion of footpaths at the side of public roads is retained in s.66(1) of the 1981 Act. *Mason* was discussed and approved in *R (Simms) v SSE/R (Burrows) v SSE* [1991] 2 QB 354. The purpose of the legislation (both the 1949 and 1981 Acts) was explained by Roch LJ in *Masters v SSETR* [2001] QB 151 at para.30:

*“... that county councils should record in definitive maps and statements ways, including what Lord Diplock (in Suffolk County Council v Mason [1979] AC 705, 710a) called “full highways or cartways” for the benefit of ramblers and horse riders so that such ways are not lost and ramblers and horse riders have a simple means of ascertaining the existence and location of such ways so that they may have access to the countryside. Parliament intended that “full highways or cartways” which might not be listed as highways maintainable at the public expense under the Highways Act 1980, should be included in the definitive map and statement so that rights of way over such highways should not be lost. Parliament’s purpose was to record such ways not to delete them.”*

Here, Hoar’s Lane is listed as a highway maintainable at public expense under s.31(6) of the Highways Act 1980.

The decisions and performance of the Parish and County Council in deciding that the application route was and still is an ordinary road, are entirely consistent with the case law and purposes of the definitive map legislation.

The Wildlife and Countryside Act 1981 imposed a duty on the Surveying Authority to keep the definitive map and statement under continuous review. The effect of the legislation was to require the authority to record BOAT’s where they discovered evidence that a BOAT was reasonably alleged to subsist either before or after the commencement date.

The authority cannot now discover that a carriageway exists over the application route, given that it properly determined the road to be an ordinary road (i.e. a public carriageway that was not a RUPP/public path) as far back as the 1950’s. At the commencement date of the Wildlife and Countryside Act 1981, the authority were aware of the road and its being managed as part of the ordinary road network.

Following the commencement date, the Authority would have to discover either evidence of mistake in its previous decision (that the road is ordinary road) or of significant change in balance of user and transformation of the character of the land that comprises the road.

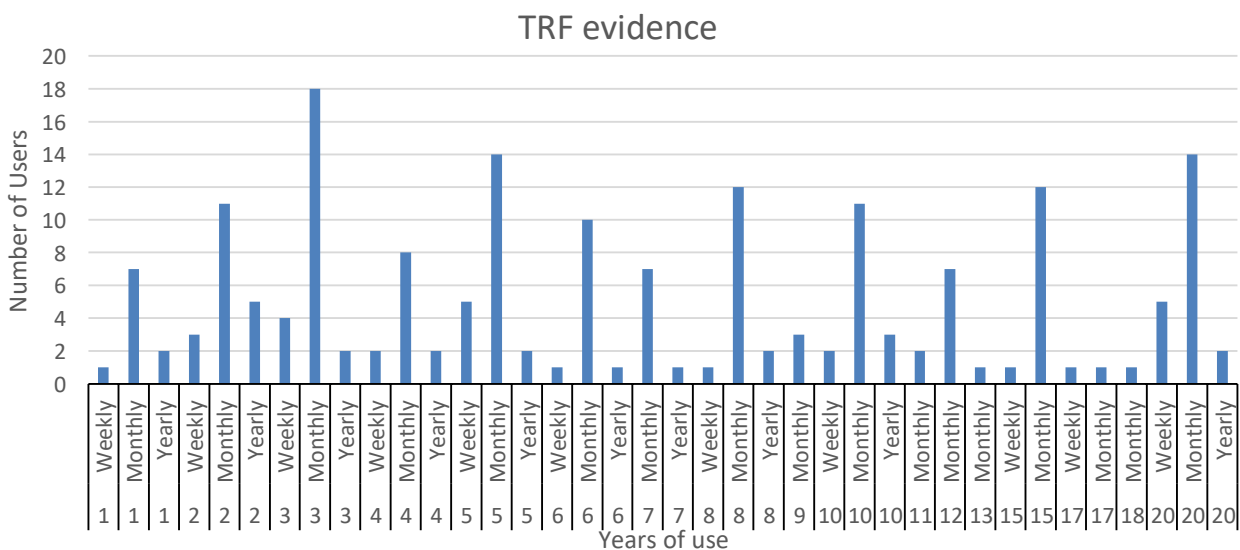
Again, TRF sees no evidence of mistake and no failure to satisfy the duty to keep the definitive map and statement under continuous review. Further, we see no evidence that the purposes for which the public use the carriageway has changed, or of transformation of the character of the road.

The status of the road has been preserved by the benefit of the LoS (*List of Streets*) exemption. Carriageway rights are unaffected by the extinction provisions of the NERC Act. The application for restricted byway should be refused, because the road remains a carriageway mainly used by the public for the purposes of carriageway.

We do not consider that the Council has the power to record BOAT in respect of the application route. There does not appear to be any evidence for the Council to discover that would trigger an event under section 53(3) of the Wildlife and Countryside Act, and so engage powers to make an order for BOAT/RB/path.

TRF has undertaken a localised gathering of user evidence and has obtained around 190 user evidence forms.

TRF recommends that the Council continue to manage the road as carriageway mainly used by the public for the purposes of carriageway and which comprises the ordinary road network, as it has successfully done so for 70+ years. We also recommend that an order is made in respect of the application to modify the definitive statements of rights of way joining the road, to record that they terminate on (or subsist on) "Hoar's Lane, as recorded on the list of streets maintainable at public expense" or similar. We say the Council can discover evidence that the definitive statement can be helpfully modified to more accurately record the position of the adjoining rights of way.



**Landowners Comments  
In response to the Investigation Report**

The Dury and Andrew' 1766 county map shown in paragraph 4 of the Investigation Report shows a route between Ofleys Holes and Well Head, however the route shown is not the application route, it is in fact Charlton Road.

For the avoidance of doubt, I have shown the application route in red on the insert below.  
Plan 2



**HCC Comments**

**After re-evaluating the Dury & Andrews' 1766 map, HCC agrees the red arrow depicted on the map provided was in the incorrect place. We have altered the red arrow in this document on page 8 of this Decision Report.**

Andrew Bryant's 1822 map does show the application route however we do not accept the applicant's comment in paragraph 5.3.b. that *'The route is shown in the manner of a 'Good crofs or driving road'. This suggests that the route was considered to have vehicular rights in 1822'*.

A 'driving road' in 1820's would have been referring to a route to 'drive' livestock, i.e. to move livestock between pastures or take them to market. There is no reason to suggest that there were vehicular rights.



**HCC Comments**

**See HCC Decision section 5.4**

Paragraph 7 of the Investigation report refers to the Ordinance Survey maps, whilst it is accepted that the application route is shown, we completely agree that this provides no evidence of a public right of way.

Paragraph 11c.2 refers to the OS base map used for the Special Review of Hertfordshire rights of way. This shows that the application route is not depicted as a public right of way, nor the remaining length of Unclassified Road 2 (for which the application route forms part), nor Unclassified Road 3 (both shown purple on Plan 3); however it does show Hitchin BOAT 28 and Preston Bridleway 6.



Paragraph 12 then goes on to refer to the 1980s County Council Highways map, this shows Unclassified Road 2 and 3 coloured yellow (purple arrows on Plan 4 and shown more clearly on Plan 5), Hitchin BOAT 28 is shown by the green arrow.

We believe that this simply means the application route is maintainable by the Council at Public expense. As a 'non-tarmac unclassified country road' it is maintained by the county Rights of Way Service, rather than Hertfordshire Highways (who maintain 'tarmac unclassified country road').

## HCC Comments

### HCC agrees that the application route is maintainable by The County Council

The historical data contained in the remainder of the Investigation Report generally points towards the application route being an Unclassified Country Road,

Countryside Rights of Way Act 2000 and the Natural Environment and Rural Communities Act 2006:



Our understanding of Section 54A of the Wildlife and Countryside Act 1981 (as amended by S47 of the Countryside Right of Way Act 2000) is that:

*(1) No order under this Part shall, after the cut-off date, modify a definitive map and statement so as to show as a byway open to all traffic any way not shown in the map and statement as a highway of any description.*

The 'cut-off date' was 1st January 2026, but this was changed to 20th January 2005 by S67 of the Natural Environment and Rural Communities Act 2006.

Therefore, we believe that, as implied in paragraph 11c.2 of the Investigation Report, the application route is not depicted as a public right of way and therefore it cannot be reclassified as a byway open to all traffic under the provisions of the Countryside Rights of Way Act 2000

### **HCC Comments**

**Section 54A of the Countryside and Wildlife Act 1981 was inserted by the CROW Act 2000, however, this section has still not been commenced. Meaning, it is not in force.**

The landowner has owned the land in excess of 45 years, during this time they have maintained the application route as if it were owned by them. As stated earlier in my letter, it is understood that a non-tarmac unclassified country road should be maintained by the Council's Rights of Way Service, but the landowners have mown the grassy track and cut the hedge along the section of the application route beside their ownership at their own cost.

The landowner has never known the application route to have been used for any mechanised vehicles, and have only ever seen walkers, cyclists and horse riders using the route.

Amending the status of the application route to become a BOAT would interrupt the agricultural use of my client's land beside the track as there is no physical barrier to prevent vehicles straying off the application route. It may also allow antisocial behaviour by providing access to undesired vehicles and also give an opportunity for fly-tipping on the on the land. If the amendment were approved my clients would likely have to make an investment, at significant cost, to install a barrier between the application route and their arable/cropping land.

### **HCC Comments**

**The application route was never required to be maintained by the landowner, due to the route being publicly maintainable by HCC. This is an evidential process which HCC has a duty to undertake, however, should the application route be added to the Definitive Map there are options for managing anti-social behaviour.**

### **Conclusion**

I can confirm that my clients own a section of land neighbouring the application route, but they have used, maintained and essentially occupied the section of the route immediately adjacent to their land for in excess of 45 years.

There is no requirement for the route to become a byway open to all traffic, the route is not presently used by motorised vehicles and we do not understand why this should now be necessary. Furthermore, we believe it may cause issues with their operation of arable cropping on their neighbouring land.

We believe that if the application route were historically used for similar purposes to Hitchin BOAT 28 it would have been classified as this in the 1980s County Council Highways Maps. We also do not believe there is provision under the Countryside Rights of Way Act 2000 to establish a new byway open to all traffic.

**The effect of section 67(1) of the Natural Environment and Rural Communities Act 2006 (“NERC”)**

Section 67(1) of NERC came into force on 2<sup>nd</sup> May 2006. NERC provides for the automatic extinguishment of any unrecorded public right of way for mechanically propelled vehicles (“MPVs”) which immediately before commencement of the section:

- (a) was not shown in a definitive map and statement; or
- (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway

Unless one of the exceptions set out in section 67(2) or (3) of NERC apply.

DEFRA has produced guidance on the interpretation of section 67 of NERC – Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways – A guide for local authorities, enforcement agencies, rights of way users and practitioners – Version 5 – May 2008 (“the DEFRA Guidance”).

The Order Route is not shown on the DMS and therefore rights for MPVs have been extinguished under section 67(1) unless one of the exceptions in NERC applies.

HCC is satisfied that one of the exceptions set out in subsections 67(2)(b) of NERC apply for the following reason:-

**Section 67(2)(b)**

Section 67(2) provides that section 67(1) does not apply to an existing public right of way if

"(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list (“the list of streets”) required to be kept under section 36(6) of the Highways Act 1980...”

The information forming HCC’s “List of Streets” is held within a large electronic database known as the Highways Management Database. Its primary use is for the administration and maintenance of the highway network. It is a comprehensive record of information and includes details of the highways maintainable at public expense as well as other information associated with highways, such as the location of all gullies and signs, the results of safety inspections and the recording of works. The List of Streets is generated by the database as a list and a map showing the highways maintainable at public expense. HCC has a record of what was shown on the List of Streets on 1<sup>st</sup> May 2006.

In *Fortune*, the Court of Appeal held that highway authorities had discretion as to the form in which they kept their list of streets. The question is not whether a route should have been shown on the list of streets on 2<sup>nd</sup> May 2006, but whether it was in fact so shown as at that date.

In this case the application route was shown on the List of Streets in 2006, and the application route therefore does meet this exception.



**HCC Conclusion**

Having considered the effect of section 67 Natural Environment and Rural Communities Act 2006 on the Application Route, HCC decided to make an order for a BOAT (Byway Open to All Traffic).