



## Order Decision

Site visit on 6 December 2016

**by Mark Yates BA(Hons) MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 17 January 2017**

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### **Order Ref: FPS/Z1585/7/84**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Essex County Council Definitive Map Modification No. 598 Bridleway 11 Chappel and 64 Great Tey and Restricted Byway 28 Chappel (Colchester District) Order 2015.
- The Order was made by Essex County Council ("the Council") on 1 June 2015 and proposes to modify the definitive map and statement for the parishes of Chappel and Great Tey, as detailed in the Order Maps and Schedule.
- There were six objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. The Order proposes to record a restricted byway between points A-B-C-D-E-F on the Order Maps ("the eastern route"). This would involve the upgrading of an existing public footpath between points A-D (Footpath 4) and the addition of a new right of way over the remainder of the route. The Order also proposes to upgrade another footpath (Footpath 11) to bridleway status between points C-G-H ("the western route"). Reliance is placed on the 1897 Second Edition Ordnance Survey ("OS") map, which is attached to the Order, to define the widths for the different sections of the two routes.
2. The details provided indicate that all of the statutory formalities have been complied with in relation to the making of the Order.
3. I visited the site on 6 December 2016 accompanied by the interested parties in relation to the western route. I then walked a proportion of the eastern route alone.

### **Main Issues**

4. The Order relies upon the occurrence of events specified in Section 53(3)(c)(i), (ii) and (iii) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows that:
  - (i) a right of way which is not shown in the map and statement subsists;
  - (ii) sections of footpaths ought to be shown as highways of a different status and

- (iii) there is no public right of way over land shown in the definitive map and statement as a highway of any description, or any other particulars contained in the map and statement require modification<sup>1</sup>.
5. I shall consider whether the historical documentary evidence provided is sufficient to infer the dedication of public rights of way of a particular status over the routes claimed at some point in the past. The burden of proof to be applied is the balance of probabilities.
6. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.
7. The Council's view that none of the exemptions found in Section 67 of the Natural Environment and Rural Communities Act 2006 are applicable is not disputed. In the absence of anything to show that one or more of the exemptions apply, any unrecorded public rights for mechanically propelled vehicles are extinguished. Therefore, if public vehicular rights are shown to exist over either route, the appropriate status would be a restricted byway.

## **Reasons**

### ***Consideration of the evidence***

8. The earliest piece of evidence is an estate map believed to be a copy produced in around 1800 of an earlier map dating back to the seventeenth century. This map generally shows the claimed routes coloured brown in the same way as the present public roads in the area. However, there is no explanation in the key to the map in relation to the routes coloured in this manner. This colouring could be representative of the public roads but it could equally represent the roads in the area irrespective of their status. Mrs Rumfitt, on behalf of one of the objectors (Mrs Tippett), points to the depiction of other routes in this way which are cul de sacs and do not appear to form part of the local highway network. This issue is also stated to arise in relation to the tithe map, which is addressed in paragraph 11 below. In addition, it should be borne in mind that the purpose of this map was to identify the relevant landholdings within the estate. Such matters will serve to limit the evidential weight of this map.
9. A detailed map of the parish of Chappel, derived from a survey undertaken by William Cole in circa 1818, shows the claimed routes in the same manner as other routes in the area. It is apparent that the primary purpose of this document was to identify farms and parcels of land in the parish. The routes are described in the accompanying survey document as sections of named lanes. This document could again be supportive of particular lanes shown having public or private status. The word '*lane*' may be indicative of a route that was capable of being used by vehicular traffic.
10. It cannot be determined whether any parts of the claimed routes were depicted on the Chapman and Andre map of 1777. In contrast, the 1799 OS surveyor's drawings and 1805 First Edition OS map<sup>2</sup> show the claimed routes by way of solid lines in the same manner as the adjoining public roads. This is clearly

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<sup>1</sup> It is the second part that is relied upon by the Council, namely that particulars require modification in light of the other provisions in the Order.

<sup>2</sup> An enlarged Cassini copy of this map

- supportive of the physical existence of these routes when the land was surveyed. Whilst OS maps do not provide any clarification regarding the status of the routes shown, it is possible that the claimed routes formed part of the local highway network.
11. The 1840 tithe map for the parish of Chappel shows the claimed routes outside of the tithed parcels of land. Highways were incidental to the tithe process and this will usually serve to limit the evidential weight of these maps. The exclusion of a route from the surrounding parcels of land could be indicative of a public or private route as both would have impacted upon the productivity of the land being assessed. In the absence of a map key, the tithe map by itself will carry limited weight and needs to be assessed in light of the other evidence provided.
  12. A farm plan produced in 1842 shows a proportion of the western route leading out of Swanscomb Road. This is again supportive of the physical existence of this feature. However, it provides no indication regarding the status of the route. It is not represented as leading to a particular destination in the way that Swanscomb Road is annotated as the road to Great Tey.
  13. The 1875/79<sup>3</sup> First Edition OS map shows the claimed routes by way of solid lines. Whilst it appears that there are a number of trees located within or close to the western route, these are not evident on the later OS maps. The Second Edition OS map shows one of the lines denoting the boundaries of the eastern route to be emboldened. The Council says that this indicates it was maintained to a standard for vehicular traffic. This is not the case for the western route. In respect of the pecked lines representing footpaths leading into the western route, this does not necessarily mean that the lane shown had a higher status. It only indicates that the western route was enclosed by boundaries. The claimed routes continue to be shown on the OS maps from the latter part of the nineteenth century and early part of the twentieth century.
  14. A plan with the 1879 sales catalogue for Oak Farm shows sections of the claimed routes. The western route is annotated as an "*Occupation Road*". This indicates that the route was considered to serve as a means of access to particular parcels of land. Again the purpose of the plan was not to identify the status of the routes shown. However, the annotation is not supportive of the recognition of public vehicular rights over the western route. The western route is also shown uncoloured in comparison to the eastern route which is coloured. This could be due to the potential change in surface highlighted by the Council.
  15. A map produced for the purpose of the 1910 Finance Act shows the claimed routes excluded from the surrounding taxable parcels of land. This can provide a good indication of highway status, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books. However, there may be other reasons for its exclusion and it should be borne in mind that the existence of highways was incidental to this Act.

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<sup>3</sup> Different dates are specified in the reports and associated appendices produced by the Council for some of the maps.

16. The eastern route is shown on maps<sup>4</sup> produced in accordance with the Local Government Act 1929<sup>5</sup>. This Act provided for the transfer of maintenance responsibility for highways from the Rural District Councils to the County Councils. These maps would usually provide conclusive evidence of the highway authority's acceptance of its maintenance responsibility. In this respect, they will be supportive of this route being a highway but they would not ordinarily serve as a definitive record of the highway rights in connection with the ways shown. The eastern route is shown coloured brown on the composite plan, which from looking at the key indicates that it was considered to be an "*Other County Road*". This route is shown on the Rural District Council map as a "*District Road*". I accept that these maps could be supportive of the eastern route being part of the local road network. It is apparent that the western route is not shown on these maps.
17. The eastern route is not shown as a potential public right of way on the County Surveyor's map that was drawn up in relation to the 1932 Rights of Way Act. However, in light of its inclusion on the contemporaneous handover maps, this could suggest that it was viewed as a public road. The Council considers that the western route is only shown on this map as a footpath.
18. The eastern route is shown on the map titled "*35 Miles Round London*" of circa 1940/50. A reference on the map cover suggests that this map was intended to show roads rather than lesser classes of highways. The Council also says that routes shown on this map may have been derived from information obtained from the relevant local authorities. This map could provide some support for the route having the reputation of a vehicular highway.
19. A map was produced by Chappel Parish Council in the early 1950s in relation to the compilation of the original definitive map. This shows that the eastern route was not claimed as a public right of way (footpath, bridleway or road used as a public path). This is again consistent with the earlier highway records. The western route was claimed by the parish council as a footpath.
20. The draft definitive map with a relevant date of 1 January 1953 recorded the western route in the same manner as the parish map. However, the majority of the eastern route was later added to an amended map as a public footpath in light of an objection from an Officer within the Council. A proportion of the eastern route was subsequently recorded as part of Footpath No. 4 in the definitive map and statement. The western route has consistently been recorded in the map and statement as a footpath.
21. I do not consider that the additional sales particulars and conveyance provided assist in determining the status of the western route. They only appear to point to potential private rights over the route.

### **Conclusions**

22. It is apparent that the claimed routes are features of some antiquity. The depiction of the routes on the estate and OS maps in the same manner as the connecting public roads could be supportive of them forming part of the local highway network. However, the purpose of these maps was not to record highways. The tithe map could be indicative of each route being a public or private road. It is also apparent that cul de sac routes, which are not

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<sup>4</sup> A composite plan produced by the Council and a plan produced by Lexden and Winstree Rural District Council.

<sup>5</sup> Often referred to as 'handover maps'

- necessarily recorded as highways, are shown on some of the maps in the same manner as the claimed routes.
23. Some weight should be given to the exclusion of the two routes from the surrounding parcels on the Finance Act map. The handover maps show that the eastern route was considered by the relevant highway authorities to be maintainable at public expense. The keys to these maps could be supportive of this route being a vehicular highway. Its subsequent exclusion from the 1932 rights of way map and the map completed by the parish council in the early 1950s also indicates that the route was viewed as having a higher status than a footpath or bridleway. Clearly, the Council subsequently took the view that a proportion of the eastern route should only be recorded as a public footpath and a section should not be recorded at all.
  24. In respect of the western route, this was excluded from the handover maps and has subsequently been recorded as a public footpath. There is no actual evidence in support of bridleway status and the evidence in support of higher public vehicular rights is fairly limited. It is also annotated as an occupation road on the sales catalogue plan. Although this plan was drawn up in connection with the proposed sale of land, it is suggestive of a belief that the route was used for access purposes.
  25. Having regard to my conclusions regarding the various pieces of documentary evidence, I find on balance that the evidence as a whole is supportive of the eastern route being an ancient vehicular highway that subsequently fell into disuse. In the absence of anything to show that these rights have been stopped up, I consider that a restricted byway should be recorded over this route in light of the tests outlined in paragraph 4 (i) and (ii) above. However, I do not consider on balance that the western route should be recorded as a public bridleway or a restricted byway.
  26. The Council submits that if the western route is not found to carry higher public rights, the definitive statement should still be modified to record the varying width set down in the Order for this route. This width is disputed by some of the objectors. I accept that it is appropriate for me to give consideration to the proposed width for the western route. Bearing in mind my conclusions regarding the eastern route, I agree with the Council that the width of this route should be taken to correspond to the varying width between the historical boundaries shown on the 1897 OS map.
  27. Although the western route is a feature of some antiquity, it cannot be determined whether the historical boundaries were set out with reference to the current public footpath. It is equally probable that the route originated solely as a private road. Further, there is nothing to show that the width of this right of way extended over the full width of the original lane when the route was initially recorded on the definitive map or by virtue of use by the public. Therefore, I consider that the most appropriate width for the footpath should be recorded in these circumstances. Having regard to the type of user and the location of the path, I conclude that a width of 1.5 metres would be a reasonable width in this case. This should be taken to be the whole width of the path where it proceeds along the parish boundary.

### **Other Matters**

28. A number of issues have been raised which generally relate to the potential impact of the claimed routes and whether it is desirable for the claimed public rights to be recorded over these routes. However, such matters are not relevant to the tests that I need to apply.

### **Overall Conclusion**

29. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

30. I propose to confirm the Order subject to the following modifications:

- Delete all of the references to "*Bridleway*" and insert "*Footpath*".
- Delete the third description in Part 1 of the Order Schedule.
- Delete the eleventh to fifteenth lines in the second description in Part II of the Order Schedule and insert "*the path is 1.5 metres in total*".
- Delete the seventh to eleventh lines in the fourth description in Part II of the Order Schedule and insert "*The width of the path is 1.5 metres in total*".
- Delete the proposed bridleway from the Order Maps and amend the keys to the maps accordingly.

31. Since the confirmed Order would not show a way shown in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mark Yates*

**Inspector**



# Key

## Restricted Byway 28 Chappel

Add Route A - B - C - D - E - F

Section A - B - C - D is currently part of Footpath 4

## Bridleway 11 Chappel

Add Route G - H

This is currently Footpath 11

## Bridleway 64 Great Tey

Add G - H

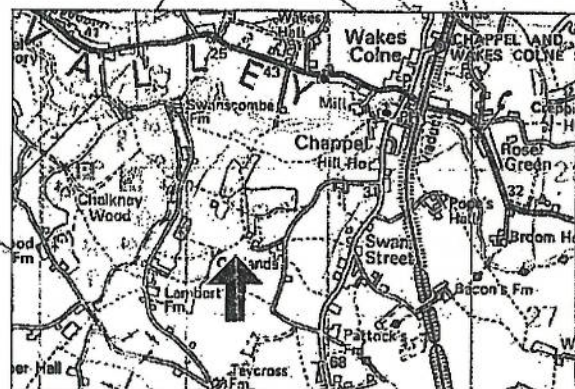
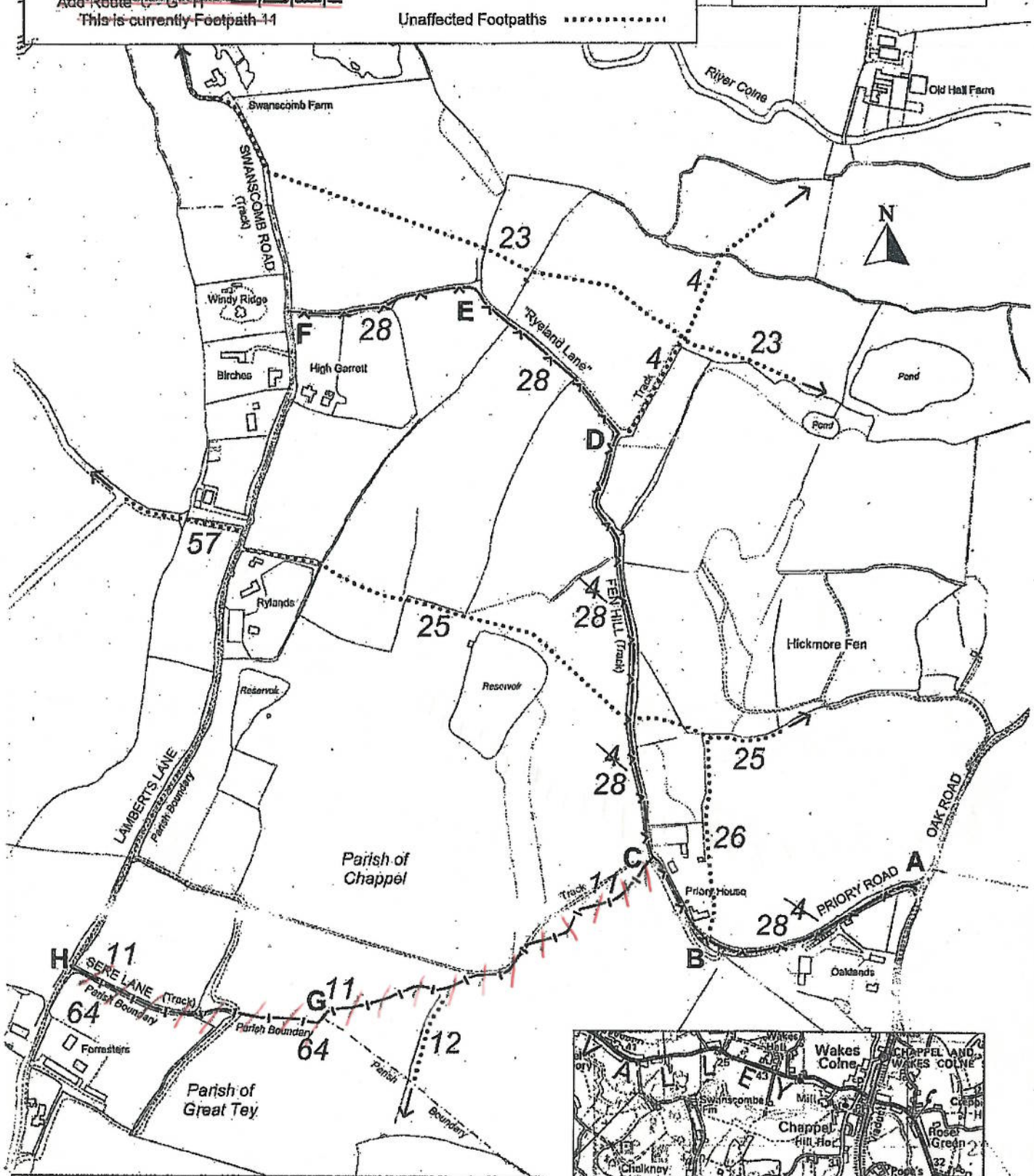
This section runs along the Chappel / Great Tey boundary and will be numbered in both parishes

Unaffected Footpaths



Essex County Council

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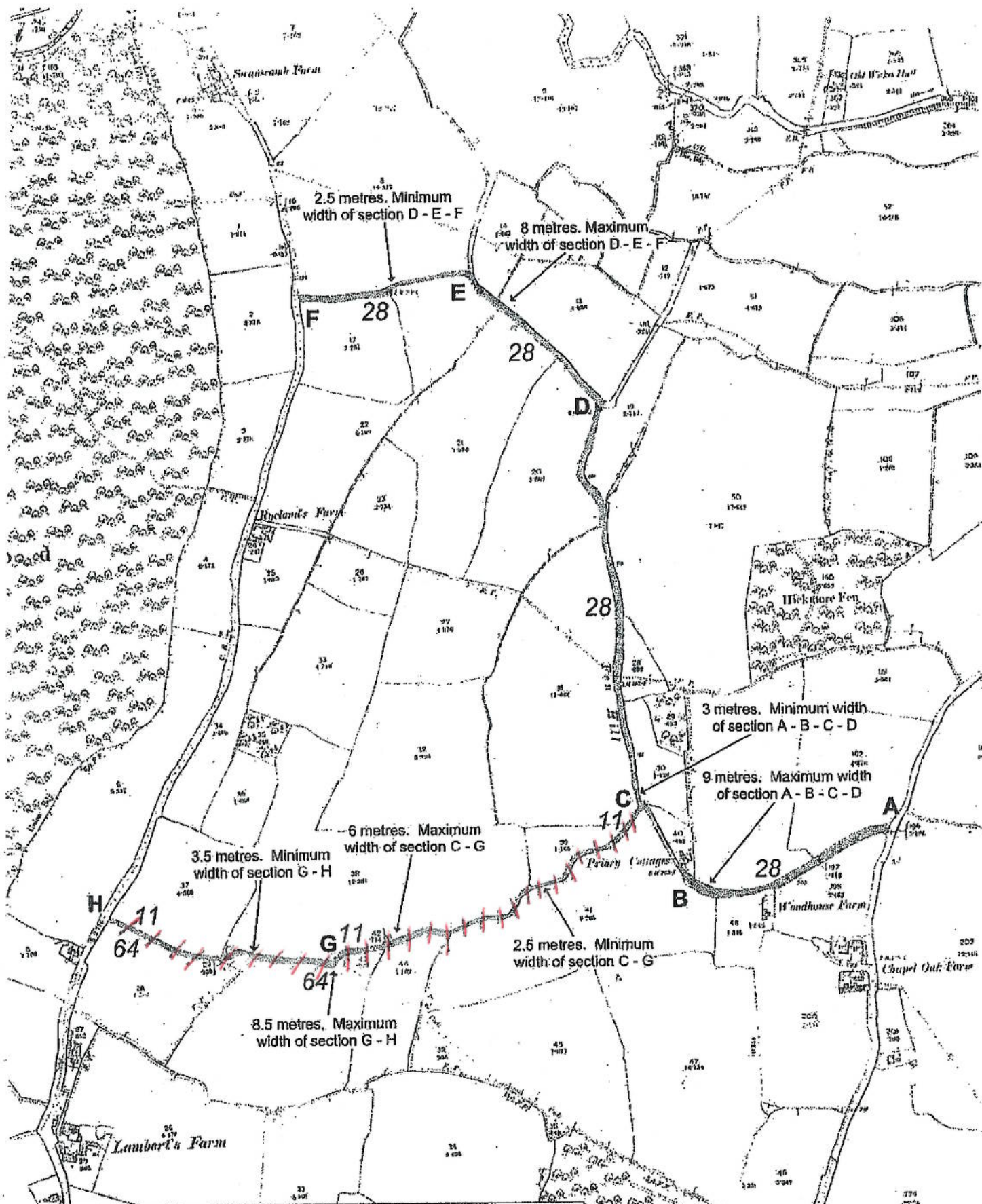


The Essex County Council Definitive Map Modification No.598


(Bridleway 11 & Restricted Byway 28, Chappel and  
Bridleway 64, Great Tey, Colchester Borough) Order 2015

Plan No. 1 of 2 Scale: Reduced to 1:4000 at A3 size  
Definitive Map Sheet TL82NE Grid Ref TL884,275 or 5884,2275





The Essex County Council Definitive Map Modification No.598  
 (Bridleway 11 & Restricted Byway 28, Chappel and  
 Bridleway 64, Great Tey, Colchester Borough) Order 2015  
 Plan No.2 of 2 Showing extent of paths with grey shading  
 on Ordnance Survey Map 1897 - 2nd Edition  
 Scale; Reduced to 1:4000 at A3 size Grid Ref TL884,275. or 5884,2275



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