



Order Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: 21 February 2017

Order Ref: FPS/M1900/7/81M

Hertfordshire County Council

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the **Hertfordshire County Council (Ardeley 3, 52 and 53, Great Munden 65, 66 and 67 and Walkern 43) Modification Order 2012**.
 - The Order is dated 20 January 2012 and proposes to modify the Definitive Map and Statement by the addition of a length of restricted byway along part of The Old Bourne and upgrading a length of bridleway to the status of restricted byway in the Parishes of Ardley, Great Munden and Walkern as detailed in the Order map and schedule.
 - In my interim decision of 1 September 2015, I proposed to confirm the Order subject to modifications. The reasons that led me to my conclusion were set out therein.
 - In accordance with paragraph 8(2) of schedule 15 to the 1981 Act notice has been given of my proposal to confirm the Order subject to modifications.
 - 3 objections and representations were submitted to the proposed modifications.
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Decision

1. I confirm the Order subject to modifications:

In part I of the schedule within the section headed 'Description of Path to be added' delete the words 'restricted byway' and substitute the word 'bridleway' wherever it occurs.

In part I of the schedule delete the section headed 'Description of Path to be upgraded'.

In part II of the schedule delete the abbreviation 'RB' (restricted byway) and insert 'BR' (bridleway) wherever it occurs.

In parts 1 to 5 of the Order map delete the restricted byway notation shown A-B, C-D-E-F-G and F-H-I-J-K-L and substitute a bridleway notation as a route to be added.

In parts 1 to 5 of the Order map delete the restricted byway notation between B and C (the grey shading to remain unchanged in the maps part 2 to 5).

Preliminary Matter

2. None of the parties requested a public inquiry or hearing. I have therefore considered this case on the basis of the written objections and representations forwarded to me.

Background and Reasons

3. In my interim decision of 1 September 2015, I proposed to confirm the Order subject to modifications. The reasons which led me to my conclusion were set out in my interim decision.

4. Since the Order as proposed to be modified would affect land not affected by the Order as submitted, I was 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.
5. In my interim decision I concluded that Lye Lane and The Old Bourne should be recorded as being of bridleway status. I have considered the further submissions on this matter but am satisfied, on the balance of probabilities, that the Order route should be recorded as a bridleway for the reasons set out in my interim decision.
6. Dr Wadey submitted the case of Robinson Webster (Holdings) Ltd v Colin & Sandra Agombar [2010] EWHC 510 (Ch). The case concerned the assessment of the Finance Act 1909-1910, tithe apportionments and other evidence with regard to highway status. However, the case is of limited assistance in dealing with instances where the status of the highway is at issue. The court held that in Finance Act maps and schedules, land not falling within the hereditament of any private individual, but shown as part of the general road network is a most powerful indication that the land was at that time thought to be in public ownership and vested in and maintained by the District Council, which was the highway authority. The case also considered that a Tithe schedule recording land as being in the occupation of the parish officer is evidence that the land is a public highway within the responsibility of the parish officers. In my view this case is factually distinct from the Order route, as the Order route is not unambiguously shown as part of the general road network as distinct from a water course, is not consistently shown as excluded from private hereditaments and is not consistently shown on a Tithe schedule as in the occupation of the parish officers. Nonetheless, the Finance Act and Tithe evidence is consistent with the Order route as a public highway, but ambiguous as to its status as a carriageway or as a bridleway. For the avoidance of doubt, I do not suggest that each piece of evidence should only be assessed on its own. There is a clear synergy between the different strands of evidence, but overall there remains no clear evidence of public vehicular use of Order route.
7. Andrew Savile raised the issue of Victoria Bridge and the practical problems associated with public use of a way that would appear to have been abandoned for many years. However, I am unable to have regard to such matters as the sole issue before me is the existence and status of a public right of way.
8. For the above reasons and those set out in my interim decision I consider that the Order route should be recorded as being of bridleway status.

Conclusion

9. Having regard to all matters raised in the written representation, I conclude that the Order should be confirmed subject to the modifications that have been advertised.

Michael R Lowe

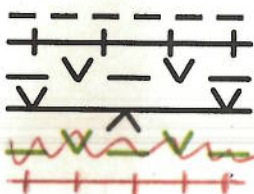
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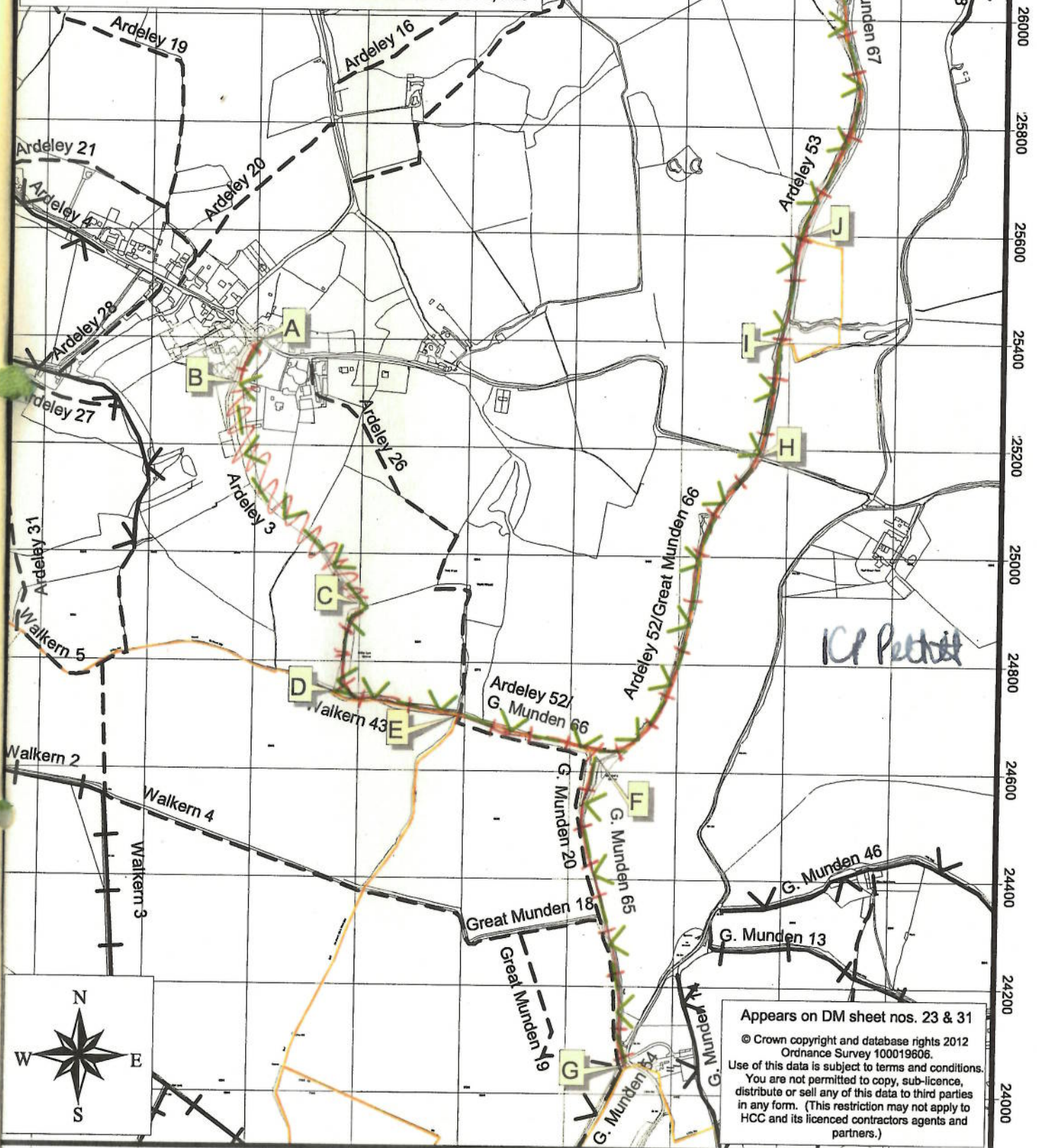
This Plan forms part of the Hertfordshire County Council (Ardeley 3, 52 and 53, Great Munden 65, 66 and 67 and Walkern 43) Modification Order 2012

Part 1

Existing footpath
Existing bridleway
Existing restricted byway
Public byway open to all traffic
Restricted byway to be added/
bridleway to be upgraded to
restricted byway
Parish boundary



200 0 200 400 metres
Scale 1:10,000



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