



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: 23 November 2017

Order Ref: FPS/Z1585/7/84M1

- 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 proposed to modify the definitive map and statement for the parishes of Chappel and Great Tey, as detailed in the Order Maps and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

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

Procedural Matters

1. This decision should be read in conjunction with my interim decision ("ID"), dated 17 January 2017, with the numbers in square brackets representing particular paragraphs in the ID. I proposed to not confirm the part of the Order which intended to record higher public rights over an existing footpath (referred to as the 'western route'). Further, I proposed to record a width of 1.5 metres for this path. I accepted that the eastern route in the Order should be recorded as a restricted byway.
2. Three objections were submitted in response to the ID. The Council and Mr Kind¹ objected to the above modifications. The third objector (Mr Rudd) has commented on particular issues in relation to the western route. An additional party, Tees Law² ("Tees"), has made submissions in response to the objections. I have considered the objections following an exchange of written representations between the parties.

Main Issues

3. I outlined the relevant matters in relation to the Order, as made, in the ID [4-7]. The issue now is whether there is any new evidence or argument which has a bearing on the status and width of the western route. In considering these matters it will be necessary to revisit particular pieces of evidence I took into account when reaching my ID. No objections have been made to the unmodified part of the Order involving the eastern route.

¹ On behalf of the Essex Bridleways Association and the British Horse Society

² Representing Mrs Tippett

Reasons

4. The western route is a feature of some antiquity [8]. It is depicted on a wide range of maps in the same way as other routes that are now viewed as vehicular highways. I do not accept Mr Rudd's assertion that various maps have been modified and are incorrect. However, the value of these maps will generally be limited by the fact that they were not produced for the purpose of recording highways.
5. The Council has provided further information in relation to surveys undertaken by William Cole [9]. The contemporaneous records show the care taken by Cole to record particular features. He walked a proportion of the western route with others in 1806 and 1810 when recording the parish boundary. A 1990 publication titled "*Essex on the Map, The 18th Century Land Surveyors of Essex*" by Stuart Mason also outlines that Cole was a skilled surveyor.
6. The notes taken by Cole indicate that Lamberts Farm was bounded by Swanscomb Road and the western route. The Council seeks to draw an inference from the use of words such as "*lane*" and "*road*" in comparison to a reference to a route elsewhere as a "*chaseway leading to Florries Farmyard*". In this respect, the western route was historically known as "*Sear Lane*". However, Tees point to two instances where chaseways now correspond to highways of a different status. Reference is also made to the definition of chase as "*an area of unenclosed land formerly reserved for hunting*³". Overall, I take the view that the words "*road*" and "*lane*" will refer to a particular physical feature irrespective of whether it has public or private status.
7. Although the new documentation provides a greater insight into the work of Cole, it does not indicate that any additional weight should be given to his map of the parish when considering the status of the western route. The map provides no indication of the status of the particular routes shown.
8. The western route is shown on the 1827 Cary map as a "*parochial road*". It appears to me that the whole of this route is shown. However, it is apparent that the eastern route is not represented on this map to any significant extent. I take the representation of a parochial road to be indicative of a road within the parish and it may be supportive of the route forming part of the local road network. Nonetheless, there is nothing to suggest that the surveyor undertook any investigation into the status of the routes shown. It is therefore quite probable that some private roads would have been included on the Cary map.
9. Research undertaken by Mr Kind into the parochial roads shown on the Cary map points to them being more likely to be vehicular highways. This finding generally reflects the view expressed by the judge in paragraph 85 of the judgment in the case of *The Commission for New Towns & Anor v JJ Gallagher Limited 2002* ("*Gallagher*"). Whilst I accept that the Cary map would tend to be supportive of the western route being a vehicular highway, I do not find that this commercial map by itself carries a significant degree of evidential weight.
10. An 1838 estate map shows the western route linking with Swanscomb Road. Both are annotated as leading to or from a particular destination. The western route is annotated "*to Chappel*". Clearly this map was produced for the purpose of identifying land within the estate. However, the annotation of the western route in this way is suggestive of highway status, probably vehicular

³ Oxford English Dictionary (second edition, revised 2009)

given the nature of the connecting road network. This view is supported to some extent by paragraph 90 of the *Gallagher* judgment.

11. The Council has obtained requisitions on title ("requisitions") of 1928, 1932 and 1938 relating to subsequent conveyances involving Lamberts Farm. In response to a question regarding the roads fronting the property, the answer in the first two requisitions is that the roads are old parish highways. The third makes reference to an ancient highway. It may not be possible to be certain regarding the particular roads mentioned in the requisitions. However, the land conveyed in 1939 was bounded by Swanscomb Road and the western and eastern routes. I consider it likely that the western route was one of the described highways.
12. In response to another question in the 1938 requisitions, there is an acknowledgement of the existence of public footpaths. However, this question relates to the issue of rights affecting the land to be conveyed. The western route was outside of the land in question. In addition, there are other public footpaths now recorded over the relevant landholding.
13. Whilst the requisitions addressed particular matters prior to any transfer of the land in question, those involved would have used their best endeavours to ensure the information provided was correct. The issue of whether the adjacent roads were highways would be of critical importance to purchasers. Further, I concur with the Council that I should give greater weight to the requisitions in comparison to the documents advertising the sale of the land.
14. In terms of the reference to an occupation road on the 1879 sales catalogue plan [14], the Council points out that this document did not relate to land adjoining the western route. There is a reference to the western route in the sales particulars of 1932, which states "*Together with all the estate right and interest if any of the vender in the road...*". There is a similar provision in a 1939 conveyance for Lamberts Farm. However, these entries only relate to the potential for a right or interest to exist over the route. Further, I find there to be some merit in the Council's submission that this could have related to the potential ownership of the subsoil in respect of the relevant section of the western route, which passed between parcels conveyed in 1939.
15. I did not conclude that the Finance Act map was supportive of the western route being an occupation road. Whilst I accept that there are other potential explanations for the exclusion of a route from the surrounding hereditaments on this map [15], the depiction of a route in this way would usually be taken to provide support for the existence of a vehicular highway. The Council points to an example nearby where a private road and public footpath are shown within a particular hereditament. I am not convinced that much can be gleaned from the exclusion of a short cul de sac section leading out of the eastern route. However, aside from the annotation on the sales catalogue plan, there is no indication that the western route is a private road. No relevant private right of way is actually recorded over this route.
16. The western route was claimed during the 1950s [19] and was subsequently recorded as a footpath in the definitive map and statement. Minutes have been provided from meetings of Chappel Parish Council in 1953, which refer to issues involving a bridleway leading from Priory Road. However, it cannot be determined whether these references specifically related to the western route. Nor do I consider that I can draw any inference from the lack of recorded bridleways in the parish. Nonetheless, the later parish minutes from the 1970s

describe the western route as a bridleway or request that it is classified as a bridleway. In terms of the lack of evidence of use highlighted by Mr Rudd, the case in support relies upon the past dedication of higher public rights being inferred from the historical documentary evidence.

Conclusions

17. The historical map evidence could be supportive of the western route forming part of the local road network in conjunction with the eastern route and Swanscomb Road. Given the purpose of these maps, I am reluctant to place too much weight on them. However, the Cary map and 1838 estate map should be ascribed a fair amount of weight in support of the route being a public road. In contrast, I consider that limited weight should be placed on the sales particulars documents.
18. The requisitions provide support for the western route and the other routes abutting Lamberts Farm being viewed as ancient vehicular highways. Although the western route was not included on the handover map [16], it is apparent in relation to the eastern route, that routes could be removed from the highway records [23]. Further, there is no record of the western route being a private road. When set against these matters, I consider that significant weight should be attached to the exclusion of the route on the Finance Act map.
19. I find the new and old evidence to be supportive to a greater extent of the western route being an ancient vehicular highway rather than a public footpath. There is nothing to suggest that any of the exemptions found in the Natural Environment and Rural Communities Act 2006 are applicable [7]. It follows that I conclude on the balance of probabilities that a restricted byway subsists over the western route. This conclusion means that I shall propose revised modifications to those outlined in the ID. Further, I take the view that it is more likely that this highway was set out by reference to the historical boundaries evident on the maps and more accurately shown on the second Edition Ordnance Survey map. Therefore, the hedge to hedge presumption is applicable and the width of the route should be recorded in the manner set out in the original Order.

Other Matters

20. In light of my conclusions above, there is no need for me to address the technical points raised by the Council in relation to some of my original modifications. As outlined in the ID, the impact of the route being recorded with a higher status is not relevant to my decision [28].

Overall Conclusion

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

Formal Decision

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

- Delete all of the references to "*bridleway*" or "*public bridleway*" in relation to the western route and insert "*restricted byway*".
- Delete the references to "*BW*" in Part II of the Order Schedule and insert "*RB*".

- Show the western route on the first Order Map with the notation for a restricted byway and amend the key to the map accordingly.
23. Since the confirmed Order would show a way of a different description to that 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

Restricted Byway 28 Chappel

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

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

Residual Byway

Bridleway 11 Chappel

Add Route C - G - H

This is currently Footpath 11

Key

Residual Byway

Bridleway 64 Great Tey

Add G - H

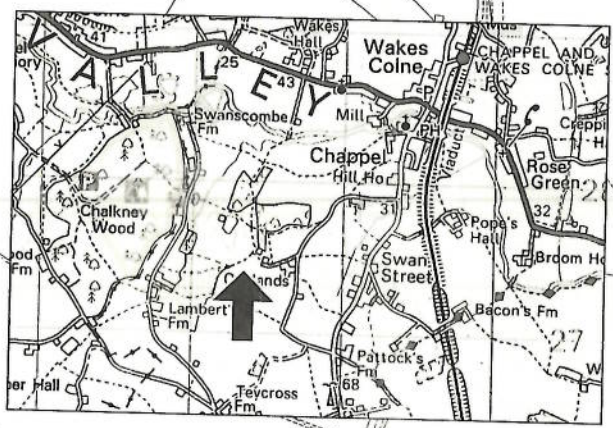
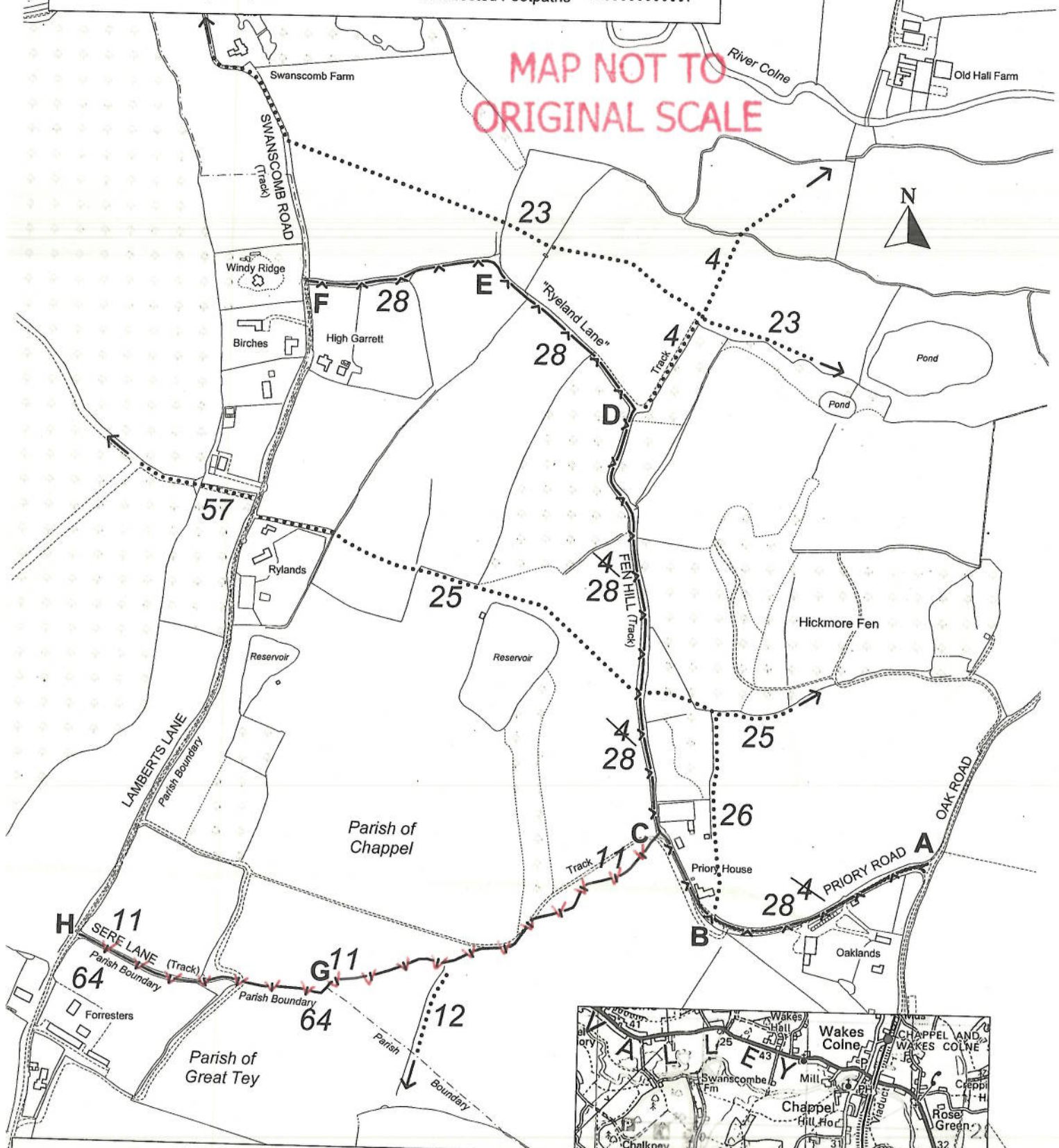
This section runs along the Chappel / Great Tey boundary and will be numbered in both parishes

Unaffected Footpaths

Essex County Council

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MAP NOT TO ORIGINAL SCALE

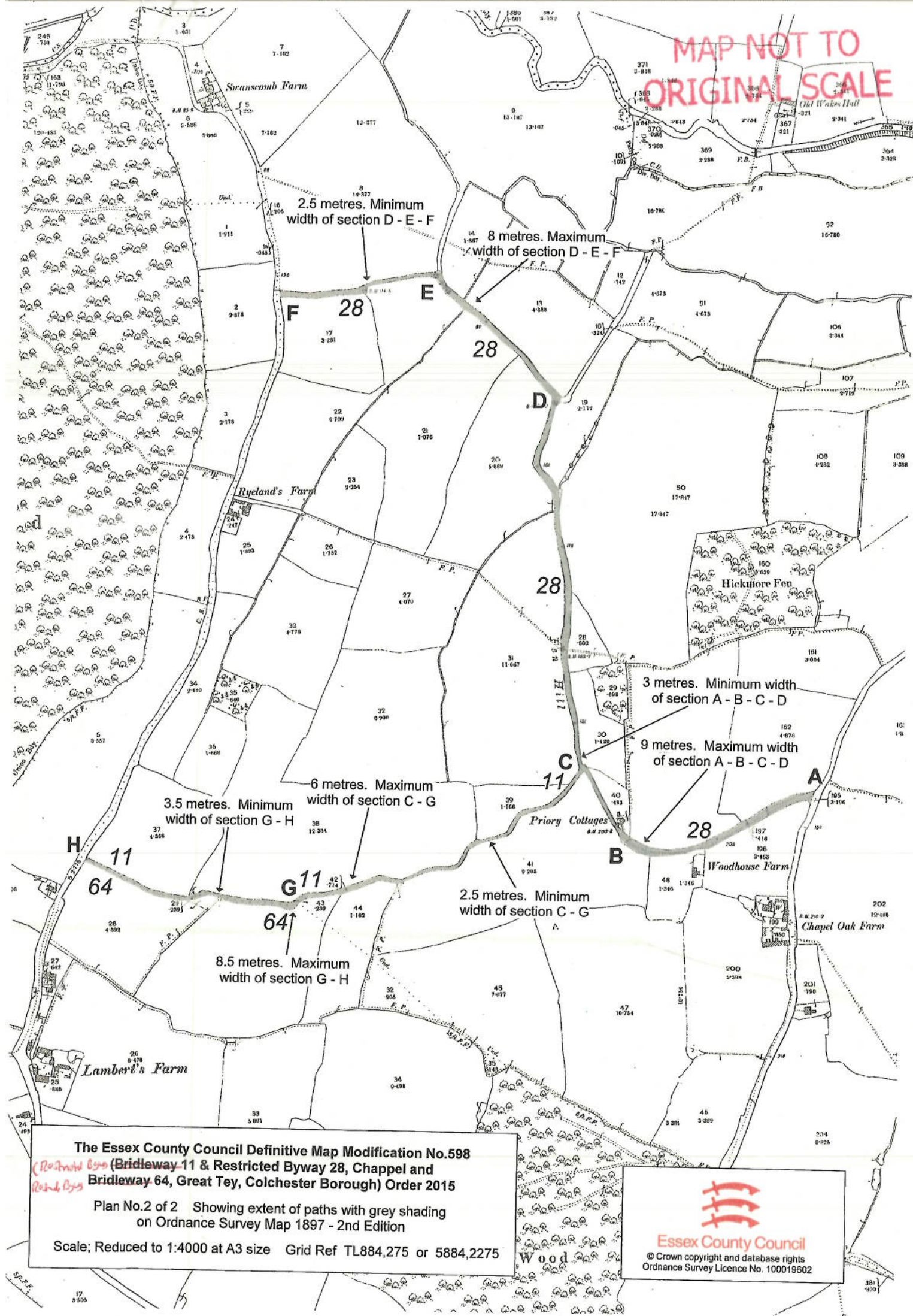


Residual Byway

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

MAP NOT TO
ORIGINAL SCALE



The Essex County Council Definitive Map Modification No.598

(Restricted Byway (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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