



Order Decision

Site visit on 3 April 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 23 May 2017

Order Ref: FPS/M1900/7/85

- 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 (Much Hadham 41 and 60) Modification Order 2016.
- The Order was made by Hertfordshire County Council ("the Council") on 1 April 2016 and proposes to modify the definitive map and statement in respect of rights of way in the parish of Much Hadham, as detailed in the Order Map and Schedule.
- There were ten objections and one representation 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 confirmed subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I undertook an unaccompanied visit to the site on 3 April 2017.
2. All of the points referred to below correspond to those delineated on the Order Map. It is apparent that there is a typographical error in two of the grid references specified in the Order which should be modified if the Order is confirmed.

Main Issues

3. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of events specified in Section 53(3)(c)(i), (ii) and (iii) of the Act. Therefore, I must be satisfied on the balance of probabilities that the discovered evidence shows:
 - (i) that a right of way which is not shown in the map and statement subsists;
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; and
 - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
4. The Order proposes to delete a section of Footpath 41 where it crosses a field between points B-C and place it onto a track between the same points. In doing so it is proposed to record the replacement section as a restricted byway. The Order also proposes to add a restricted byway to the definitive map and statement between the public road known as Bucklers Hall Road and the

junction with two recorded public rights of way¹ (points A-B). The other modifications proposed would arise as a consequence of the main provisions in the Order.

5. Having regard to the above, I shall consider whether the historical documentary evidence provided is sufficient to infer the dedication of a public right of way over the route claimed between points A-B-C ("the claimed route") at some point in the past and that a section of Footpath 41 should be deleted from the map and statement. 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.
6. 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 subsist, the appropriate status for the claimed route would be a restricted byway rather than a byway open to all traffic ("BOAT").

Reasons

Consideration of the evidence

7. The Council asserts that the claimed route is shown as one of the "*Roads enclosed by Hedges*" on the 1766 Dury and Andrews map of Hertfordshire. This commercial map is schematic in nature but it is stated to have been based on an original survey. In contrast, one of the objectors (Mr Franklin) disputes that the route is shown. From looking at the extract provided, it appears that the relevant highways shown on the later maps are generally depicted on this map and there is no apparent break in the network in the locality of the claimed route. However, the nature of the map means that there is a degree of doubt regarding the alignment of particular routes shown.
8. Bryant's 1822 map of Hertfordshire shows the claimed route as the direct continuation of Bucklers Hall Road and it links in turn with the present vehicular rights of way to the east (BOATs 45 and 46). These routes appear to fall within the "*Lanes & Bridleways*" category. Mr Franklin draws attention to particular routes shown which do not have public status. In response, the applicant (Mr Wadey) says that these routes are under investigation. This commercial map indicates that the claimed route was a direct link between the three vehicular highways in the locality. Whilst it provides no confirmation regarding the status of the routes shown, it is supportive of the claimed route being part of the local road network.
9. Mr Franklin has provided a copy of a plan by Lenny and Croft stated to originate from 1833. He says this plan is an earlier version of the tithe map, which these surveyors also produced. Whilst the provenance of this map is not clear, it is supportive of the claimed route being outside of the surrounding land parcels and linking with the vehicular highways in the area. I concur with the Council that the extent of the ponds in this locality does not appear to be much greater than the tithe map and I note the presence of a pond over the

¹ A public footpath and a byway open to all traffic

- continuation of Bucklers Hall Road to the west. The annotation shown on the tithe map below also appears on this map.
10. The claimed route is shown excluded from the tithed parcels of land on the Much Hadham tithe map of 1838 in the same manner as the present vehicular highways in the locality. The continuation of the route to the east by way of BOAT 45 is annotated as leading "*To Sawbridgeworth*" at the edge of the tithe map. In terms of the ponds shown, it appears that the water extended over a short section of the route. However, I agree with the Council that this would not necessarily have been a barrier to use. Regard also needs to be given to the later maps addressed below.
 11. The fact that highways were incidental to the tithe process 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. However, in this case the claimed route provides a clear link within the local highway network. Further, the map indicates that the route ultimately continued through to Sawbridgeworth. These factors mean that I consider that this map should be given a fair amount of weight in support of the claimed route being part of the local road network.
 12. Further support for the historical existence of the claimed route is found on the Ordnance Survey ("OS") First Edition map. This shows the claimed route in conjunction with the connecting vehicular highways. It is shown proceeding between the ponds depicted on the earlier tithe map. In the accompanying book of reference the claimed route is described as pasture (parcel 655) but the connecting vehicular highways are recorded as roads. The Council draws attention to routes converging at nearby Green Tye and Perry Green being described in the same way in the book of reference. However, Mr Franklin says that the bracing shown on the OS map extracts indicates that the relevant parcels at Green Tye and Perry Green did not include the roads but encompassed the land on either side. This is stated to be different to the position with parcel 655.
 13. The claimed route is shown on the subsequent Second and Third Edition OS maps and there is a clear defined track in place which continues past the ponds. In my view, no firm conclusion can be reached from the descriptive terms which appear in the book of reference for the First Edition map. The OS maps should be taken to be a reliable indication of the physical features present but not the status of the routes shown. Reference is made by the Council to the likely representation of a gate on the later OS maps. Nonetheless, as the Council points out the presence of a gate would not prevent a route from being a highway. Further, it appears that the solid line which could constitute a gate was located across BOAT 46.
 14. The claimed route is shown excluded from the taxable parcels of land on a map produced in relation to the 1910 Finance Act in the same way as the connecting vehicular highways. This provides a good indication of highway status, probably vehicular as footpaths and bridleways were usually dealt with by way of deductions in the accompanying 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.

15. It is apparent that the claimed route was not included in the twentieth century highway records as being maintainable at public expense. A parish survey map was produced during the 1950s to show the claimed public rights of way for inclusion on the original definitive map. The B-C section is shown on the parish map as part of a through route in conjunction with BOATs 45 and 46 under the category of "*Carriage Road Footpath*" and known as Brook Lane. This indicates that the relevant section of the claimed route was considered at the time to have the same status as the present BOATs. It is also indicative of this section proceeding over the track rather than crossing the field to the east. The track between points B-C was subsequently recorded as Footpath 41 on the original definitive map. There is no legal event to support the change to the alignment of this section which occurred on a later edition of the definitive map.

Conclusions

16. The claimed route is a feature of some antiquity and it is possibly shown on the Dury and Andrews map. It is nonetheless depicted on the Bryant map and the OS maps in the same manner as the connecting vehicular highways and it served as a direct link where these ways converged. This map evidence could be supportive of the claimed route being part of the local road network. However, the purpose of these maps was not to record highways and this will lessen their evidential weight.
17. I consider that some weight should be given to the depiction of the claimed route on the tithe map. The route is again shown as a link between the vehicular highways in the locality. It was part of the route annotated as ultimately leading to Sawbridgeworth. In my view, the tithe map provides support for the claimed route being viewed as a section of public road. The tithe map is supported to a certain extent by the earlier Lenny and Croft map.
18. Particular weight should be given to the exclusion of the claimed route from the surrounding parcels on the Finance Act map. The most likely explanation for the exclusion of the route is that it formed part of the local road network. However, it was not shown on the subsequent maintenance records. It is apparent that a section of the claimed route was considered at the initial stage of the definitive map process to form part of a through route with BOATs 45 and 46. The evidence also points to the section of the route which later became Footpath 41 following the defined track on site rather than proceeding through the adjacent field.
19. Having regard to my conclusions regarding the various pieces of documentary evidence, I find on balance that it is supportive of the claimed route being a section of ancient vehicular highway which formed a direct link with the connecting ways. These public rights cannot be abandoned by virtue of a lack of more recent use or public expenditure. The relatively recent signage to challenge such use would not impact upon any unrecorded public rights. In the absence of anything to show that the public vehicular rights have been stopped up, I conclude that the claimed route should be recorded as a restricted byway. I also find the evidence to be of such substance to displace the presumption that the definitive map is correct in terms of the section of Footpath 41 across the field and that this section should be deleted.

Other Matters

20. Some of the issues raised by the objectors, such as whether it is desirable or suitable for the claimed route to be recorded as a public right of way are not material to my decision.

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 modifications.

Formal Decision

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

- Delete "TL 4441 17773" from the sixth line of the third description in Part I of the Order Schedule and insert "TL 4441 1773".
- Delete "TL 4418 17774" from the fifth line of the fourth description in Part II of the Order Schedule and insert "TL 4418 1774".

Mark Yates

Inspector

**THIS PLAN FORMS PART OF THE
HERTFORDSHIRE COUNTY COUNCIL (MUCH
HADHAM 41 AND 60) MODIFICATION ORDER 2016**

Restricted Byway to be added to DM

Footpath to be deleted from DM

Extent of variable width to be added to DM

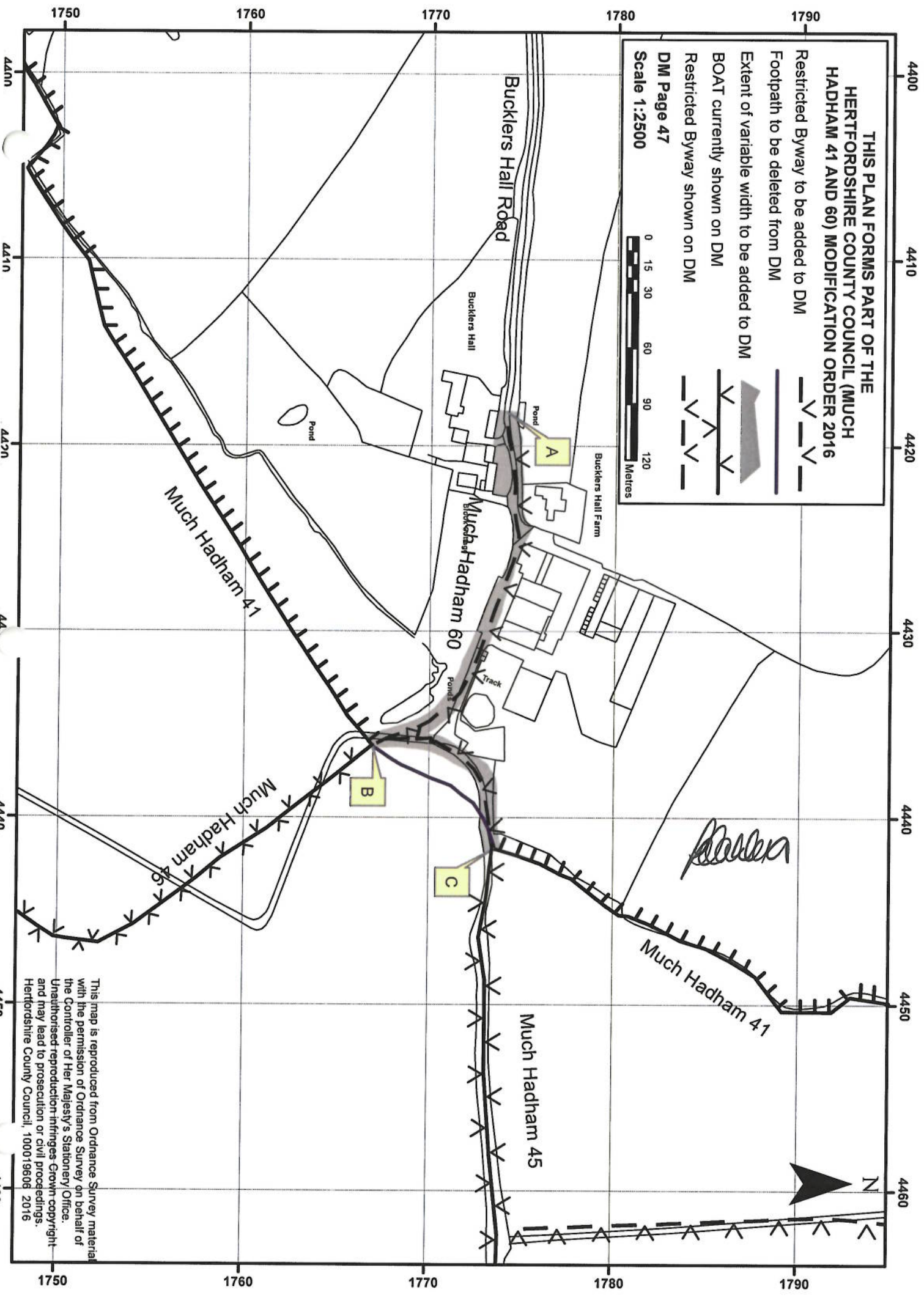
BOAT currently shown on DM

Restricted Byway shown on DM

DM Page 47

Scale 1:2500

0 15 30 60 90 120 Metres



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