



Order Decision

Inquiry Held on 13 June 2018

Site visit made on 12 June 2018

by Alan Beckett BA MSc MIPROW

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

Decision date: 25 July 2018

Order Ref: ROW/3184705

- 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 (Little Gaddesden 2, 3 and 27) Modification Order 2014.
- The Order is dated 11 April 2014 and proposes to modify the Definitive Map and Statement for the area by adding a footpath shown in the Order plan between points E and F, by deleting the footpaths shown in the Order plan between points C and D and between points A and B and by adding a footpath between points D – B – G. The effect of the Order is also described in the Order Schedule.
- There were 2 objections outstanding at the commencement of the inquiry.

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

Procedural Matters

1. I held a public local inquiry into the Order at the Village Hall, Great Gaddesden on 13 June 2018 having made an unaccompanied inspection of the routes at issue the evening before. I was not required to undertake a second site visit following the close of the inquiry.
2. At the inquiry, Hertfordshire County Council (the Council) was represented by Miss Scott of Counsel. Of the two statutory objectors, only Mr Westley was present at the inquiry; the other objector, the Art and Architectural Trust (the current owner of the land crossed by the routes shown E – F and E – B) did not appear nor was it represented at the inquiry. I am grateful to Miss Scott and Mr Westley for the helpful and courteous way in which they endeavoured to assist me in the course of the Inquiry.
3. At the inquiry, the claimed footpath (Little Gaddesden 27) was referred to as route 1; Little Gaddesden 2 was referred to as route 2 and Little Gaddesden 3 was referred to as route 3. I will follow this convention in this decision. The land crossed by routes E – F, E – B and F – B is known as Eddie's Field after a previous owner, Mr Eddie Nightall.

The Main Issues

4. Of the three routes which are the subject of this Order, two are already recorded in the definitive map and statement. With regard to Little Gaddesden footpaths 2 and 3 the Council's case is that there is no right of way over the route shown as A – B (footpath 2) or C – D (footpath 3) and that the correct line of these paths should be G – B and D – B respectively.

5. The third path subject to the Order (route 1) (F – E) is a route which is deemed to have been dedicated as a public footpath through long use. The main issue in relation to route 1 is whether the available evidence is sufficient to raise a presumption that the path has been dedicated as a public right of way.
6. In a case where there is evidence of claimed use of a way by the public over a prolonged period of time (as is the case in relation to route 1), the provisions of section 31 of the Highways Act 1980 (the 1980 Act) are relevant. Section 31 provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question, either by a notice or otherwise.
7. In relation to routes 2 and 3, section 53(3) (c) (iii) of the 1981 Act provides that an order to modify the definitive map and statement should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that there is no public right of way over land shown in the map and statement as a highway of any description. Section 32 of the Highways Act 1980 (the 1980 Act) 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 is appropriate, before determining whether or not a way has been dedicated as a highway.
8. What constitutes the ‘*discovery of evidence*’ in relation to section 53 (3) of the 1981 Act has been considered at length by the Courts. In *Mayhew v Secretary of State for the Environment [1992]*, Potts J had accepted that the term “evidence” used in Section 53 (3) (c) must be given its full and natural meaning and should not be restricted to “*new evidence*” or “*evidence not previously considered*”. In addition, “*to discover*” meant to “*find out or become aware*”; that “*discovery*” involved a mental process “*in the sense of the discoverer applying his mind to something previously unknown to him*”; and that the “*event*” in Section 53 (3) (c) was the “*finding out of some information which was not known to the surveying authority when the earlier definitive map was prepared*”.
9. In the *Trevelyan*¹ case, Lord Phillips MR held that “*Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists.*”
10. In *Trevelyan* the Court also quoted with approval guidance which had been published in Department of the Environment Circular 18/90. The guidance stated that it was for those who contended that there was no right of way to

¹ *Trevelyan v Secretary of State for Environment, Transport and the Regions [2001] EWCA Civ 266*

prove that the definitive map was in error and that a mistake had been made when the right of way was first recorded; it also stated that the evidence needed to remove a right of way from the record would need to be cogent, and that it was not for the surveying authority to demonstrate that the map was correct.

11. Circular 18/90 has been superseded by Defra Circular 01/09². Circular 01/09 says at paragraph 4.33 *"The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with "higher" rights to a way with "lower" rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:*
- *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
 - *the evidence must be of sufficient substance to displace the presumption that the definitive map is correct.*
 - *the evidence must be cogent.*

While all three conditions must be met they will be assessed in the order listed."

12. The main issues in relation to routes 2 and 3 are whether the evidence demonstrates that there is no right of way over A – B and D – C and whether the evidence demonstrates on a balance of probabilities that a public right of way subsists over G – B and D – B.
13. Although the routes were considered by the Council in numerical order, the applicant for E – F, Mr Godar raised his concerns that if the Order was not confirmed in relation to route 3 (D – C and D – B) but was confirmed in relation to route 1, the claimed footpath may then be recorded as a cul-de-sac at point E. To address this point I propose to give consideration to the paths at issue in the following order, route 2 then route 3 and then route 1.

Reasons

Route 2

14. Neither of the two statutory objections made to the Order were made in relation to route 2. The Council submits that the Order is tidying up a longstanding series of errors which have led to route 2 being incorrectly recorded on the definitive map and which would give proper effect to a public path diversion order which had been made and confirmed in 1962.
15. The 1962 diversion order identified the path as running *"alongside hedge north of and parallel with that part of the footpath to be extinguished, leading for a distance of 700 feet from Northchurch /Dagnall Road at a junction with F.P.3 of a width of four feet"*. The copy of the plan which illustrated the effect of the diversion shows that the new route was to run on the alignment G – B – F as described in the Order.

² Defra, version 2 October 2009

16. Although the diversion order was made and confirmed in 1962, the alignment of footpath 2 remained as it had been shown on the draft map of public rights of way. Route 2 was also shown on its previous alignment on the Draft Special Review map produced as part of the review conducted under the Countryside Act 1968. In July 1978, the owner of the land at that time, Mr Nightall wrote to the County Surveyor to point out that the alignment of route 2 and route 3 shown in the draft special review map did not correlate with the route shown in the 1962 diversion order.
17. Having consulted with the other local authorities in the area, the County Surveyor responded that the alignment of routes 2 and 3 would be corrected and recorded accurately on the draft revised map. However, rather than correcting the depiction of route 2 to show it on the alignment set out in the 1962 diversion order, the Revised Special Review map showed the commencement of route 2 further north on Ringshall Road. In 1986 the Council published a new definitive map which showed the junction of route 2 with Ringshall Road at a point opposite Beacon Road. Subsequent editions of the definitive map have shown route 2 as commencing opposite Beacon Road.
18. The Revised Special Review map and subsequent editions of the definitive map have incorrectly depicted the alignment of route 2 and do not reflect the alignment of the path set out in the 1962 diversion order. I concur with the Council that the current alignment of route 2 shown in the definitive map is erroneous and that there is no highway of any description over A – C – B and that the provisions of section 53 (3)(c) (iii) are satisfied. I also concur with the Council that the 1962 diversion order provides cogent and compelling evidence that a public footpath subsists over the route shown G – B and that the provisions of section 53 (3)(c) (i) are satisfied.
19. It follows that I conclude that the Order should be confirmed in respect of route 2 and that A – C – B should be deleted from the definitive map and G – B added in its place with consequential modifications being made to the definitive statement for route 2.

Route 3

20. The section of footpath 3 at issue (D – C) is shown on the definitive map to cross land which forms part of a property known as Blue Cottage. This route was not available at the time of my site visit however a path which runs on the alignment D – B was available. The alignment D – C was shown on the Council's first definitive map which has a relevant date of 20 June 1953.
21. It is the Council's case that the depiction of route 3 in the first definitive map was erroneous and the Order sought to correct that error and to give effect to earlier failed attempts to correct the route of the path; the Council submits that the evidence it had discovered demonstrated a long-standing acceptance that the true line of the path was D – B and that there was no public right of way through the grounds of Blue Cottage.
22. Mr Westley's case in objection to the route 3 element of the Order was that the available evidence which pre-dated the relevant date of the definitive map showed that historically a route on the D – C alignment had been an observable feature in the landscape; the body of evidence produced by the Council to support the modification of the definitive map post-dated the

- relevant date and did not, in Mr Westley's view, demonstrate that a mistake had been made when the definitive map had first been compiled.
23. No evidence was submitted from the survey undertaken by the parish council upon which the draft definitive map was based. It is known from correspondence between the Council and Mr Nightall's representatives in February 1956 that the *"particulars included in the draft map were taken mainly from only a small scale map supplied by the Parish Council and no information was at that time available as to the layout of certain lands in relation to the alleged route of the footpaths"*. It is not known which small-scale map was used by the parish council, whereas the map base used for the Draft Definitive Map is the 1949 revision of the six-inch Ordnance Survey map.
 24. The Draft map shows by means of a double-peck line annotated 'F.P.' a track or path running from Ringshall Road in a generally southerly direction which runs along the eastern boundary of what appears to be Blue Cottage although the property is not named on the map. Although the position of Blue Cottage is not shown on earlier maps considered, the line of footpath 3 shown in the Draft map was shown on Ordnance Survey 25-inch to 1-mile maps published in 1879, 1899 and 1922 by means of a double-peck line.
 25. The file of correspondence submitted by the Council shows that Mr Nightall objected to the depiction of footpath 2 on the draft map and sought clarification of the position of the paths crossing his land. Mr Nightall had prepared a plan showing the boundaries of properties in the vicinity of paths 2 and 3 (which were not shown on the base map used for the Draft map) on which the Council marked in blue the position of the paths shown on the Draft Map. On 29 February 1956 the Council wrote to Mr Nightall as per paragraph 23 above adding *"it is agreed from a site inspection that the line of footpaths 2 and 3 in the Parish of Little Gaddesden are as shown in black ink on the enclosed plan"*. In relation to route 3 the black ink line shown equates to D – B on the order plan. Further, the Council stated *"This small amendment will be rectified in the next stage of the survey since the error on the draft map was caused by the small scale maps used in the original survey"*.
 26. In June 1956 a Mr Haydon wrote to the Council with regard to Mr Nightall's objection to the depiction of footpath 2 and provided a sketch plan of the western part of that footpath where it joined Ringshall Road. In addition to showing the position of footpath 2, the sketch also shows the northern part of footpath 3 where it joins footpath 2 as running wholly outwith the boundaries of Blue Cottage with footpath 3 being annotated *"diverted when Blue Cottage was built"*. No evidence of a formal diversion order has been submitted in relation to route 3.
 27. The objection made by Mr Nightall to the depiction of footpath 2 was heard in June 1960; the position of footpath 3 was not raised at this objection hearing and other than the correspondence outlined above the question of the alignment of footpath 3 appears to have been forgotten.
 28. Although the County Surveyor had indicated to Mr Nightall's representatives that the position of route 3 would be corrected as part of the process under the 1949 Act, no such amendments were made and the route shown in the Draft map remained unaltered through the provisional and definitive map stages with the first definitive map being published in 1968.

29. In July 1978 Mr Nightall wrote to the Council querying the position of footpath 3 as shown on the Draft Special Review map then on public display. Mr Nightall stated that the plan attached to the 1962 diversion order of route 2 showed the junction of footpaths 2 and 3 to be around 70 yards (64m) from the Ringshall Road with route 3 running outside the boundary of Blue Cottage. In contrast, the Draft Special Review map showed the junction of the paths to be around 20 yards (18.28m) from Ringshall Road with route 3 as running through the grounds of Blue Cottage. Mr Nightall claimed that Blue Cottage had been fenced since 1926, that he had occupied the land since 1955 and that the path had always been outside the boundary of the property.
30. The Council considered that the 1962 diversion plan provided strong supporting evidence that route 3 was considered to run along the boundary of Blue Cottage. However, on this plan is a further annotation which reads '*approx line of F.P.3*' with the annotation referring to a line shown running through the grounds of Blue Cottage. This additional annotation is in a different manuscript from that which produced the plan and is likely to have been added at a later date, most likely by the Council in comparing the plan with the extant Definitive map.
31. Correspondence on this matter from the District Council was that route 3 was shown on the definitive map as running through the grounds of Blue Cottage; that the original owner of Blue Cottage stated that in 1948 when she first occupied the property there was no footpath running through the property and that there was no physical evidence of a path through the grounds. In responding to Mr Nightall the County Surveyor notes that there is no record of route 3 ever having been diverted but that it was accepted that footpaths 2 and 3 met at a point 70 yards (64m) south east of Ringshall Road and that the path would be recorded accurately on the revised map.
32. As noted above, the only modifications made to the position of routes 2 and 3 on subsequent editions of the definitive map were to move the junction of route 2 with Ringshall Road further to the north; the junction of route 3 and route 2 appears to have been adjusted to be around 20 yards (18.28m) from Ringshall Road and not the 70 yards (64m) which the County Surveyor had agreed to in the response to Mr Nightall.
33. The Council submitted that the documentary evidence demonstrated that since 1956 route 3 had not been considered to run through the curtilage of Blue Cottage and that it had been accepted that the route shown in the Draft map had been incorrectly marked. What Mr Westley says by contrast is that although site surveys which post-dated the publication of the draft map showed the available line to have been outwith the boundary of Blue Cottage, the only evidence which pre-dated the publication of the draft map had recorded a path or way consistently from at least 1879 on the draft map alignment.
34. As noted above, the six-inch base plan used for the Draft Map showed the route of footpath 3 by means of a double peck line as running along the eastern boundary of Blue Cottage. On the marked-up plan sent by the Council to Mr Nightall's representatives in 1956 there is a evident divergence between the blue line (as shown on the Draft map) and the black line (representing what was available on the ground at the time) which runs between the eastern boundary of Blue Cottage and the western boundary of Priory End.

35. If the blue line on the marked-up plan accurately reflects the line shown in the Draft map (and I have no reason to doubt that it does not), the only rational explanation for the discrepancy between what was shown on the Draft map (relevant date 20 June 1953) and what was found on the site inspection in 1956 is that over time, the boundary of Blue Cottage had been extended eastwards towards Priory End such that by February 1956 the position of footpath 3 as shown on the Draft map was within the curtilage of Blue Cottage whilst the line available on the ground remained on the revised eastern boundary.
36. Although the sketch plan made by Mr Haydon suggests that route 3 had been diverted when Blue Cottage was built, there is no record of such a diversion having been made (in contrast to route 2). No evidence was submitted as to when Blue Cottage was constructed or as to how or when its boundaries had changed. It is likely therefore that the route marked on the draft map and shown by OS mapping to have followed the same alignment for some 80 years was the route surveyed by the parish council and marked on its map. Whilst the Council has discovered evidence which demonstrates that since 1956 the route available on the ground has run between the boundaries of Blue Cottage and Priory End, this does not in itself demonstrate that the route surveyed by the parish council and initially recorded on the draft definitive map was placed there incorrectly.
37. The evidence discovered by the Council can be considered to be new in that it would not have been available to the surveying authority when the draft map was first compiled. I acknowledge that in the years following the publication of the draft map there was much debate about the position of route 3 and that at various points in time the Council had agreed that the route was incorrectly shown, however, the existence of a discrepancy between what the parish council sought to record as part of its survey and what was physically available in the years following that survey does not provide cogent evidence that an error was made when the route was originally recorded.
38. The OS maps from 1877 demonstrate that a path or way on the alignment of route 3 had been in existence for around 80 years prior to the parish survey and it is likely that the parish council sought to record a way which had been in use by the public for some considerable time. The development of the land crossed by route 3 in subsequent years and the sub-division of the land by fencing would not affect the public right of way which had been established through long use on the historic alignment.
39. The starting point when considering a proposal to delete any way from the definitive map is a presumption that the path subsists and that there was evidence to support its inclusion in the first place. The available evidence which pre-dates the draft map shows that a route on the alignment of that recorded in the draft map had been an observable feature in the landscape since at least 1877 and one which is likely to have been capable of carrying pedestrian traffic. Although OS maps are not evidence of the existence of public rights over any route shown, they do provide evidence in support of the existence through time of a route on the alignment shown in the draft map which the parish council of the day considered to be subject to a public right of way on foot.

40. Although there is evidence that subsequent to the publication of the draft map the alignment of the path available had changed there is no evidence to suggest that the diversion was carried out under any formal process. Although the Council has discovered evidence which had not been available to its predecessor when the draft map was first published, that evidence is insufficient to displace the presumption that there was a public right of way on the alignment shown in the draft map which subsisted at the relevant date of the map. No evidence has been submitted which demonstrates that the route shown in the draft map was not and could not have been a public right of way at the relevant date of the draft map. It follows that I am not persuaded that route 3 was erroneously recorded in the draft definitive map.
41. However, the position of the junction of route 3 with route 2 is erroneously shown on the current definitive map and should be amended. The available evidence demonstrates that during the various reviews of the definitive map the position of the junction of route 2 with Ringshall Road has moved further and further north, with the junction of route 3 with route 2 also moving north. There is no evidence that route 3 ever extended beyond the neck of land that provided access to Eddie's Field from Ringshall Road and although I am not persuaded that the initial recording of route 3 was erroneous, there is no evidence that route 3 has ever extended beyond a point on the correct alignment of route 2 that I will call point X.
42. I conclude that the provisions of section 53 (3) (c) (iii) are satisfied with regard to that part of route 3 shown C – X, but are not satisfied with regard to that part of route 3 shown between X – D. It follows that the Order should not be confirmed in respect of the deletion of route 3 between points X and D.
43. The Council's case was that the path shown as D – E – B was the correct line of footpath 3 as route 3 had been incorrectly recorded. As I am not persuaded that an error had been made when route 3 was initially marked on the definitive map, I am not persuaded that the route D – E – B is the correct route for footpath 3.

Route 1

The date on which the right of the public to use the claimed footpath was brought into question

44. The application made by Mr Godar to add route 1 to the definitive map and statement was made following the erection in 2003 of prohibitive notices at the entry points to Eddie's Field, together with a barrier a little way into the field from point E on the line of the claimed path.
45. In their written representations, the landowners submitted that verbal challenges had been issued to walkers "at least yearly" from 1985. There is however no contemporaneous evidence of such challenges being made and none of those who provided user evidence recalled any such challenged. If the challenges had been made as claimed, it is likely that they were not issued consistently or with sufficient frequency for knowledge of those actions to have become widespread amongst those using the path.
46. In the absence of any other event which brought into question use of route 3, I conclude that the relevant 20-year period for the purposes of section 31 (2) of the 1980 Act is 1983 – 2003.

Whether the claimed footpath was used by the public as of right and without interruption for a period of not less than 20 years ending on the date the public right was brought into question

47. The application was supported by 25 user evidence forms and an analysis of this user evidence demonstrates that at least 17 individuals made use of the claimed path every year during the relevant period. Of these individuals, 14 had walked route 1 throughout the relevant 20-year period.
48. I heard from six witnesses as to their personal use of the claimed route. Mrs Isherwood had first walked route 1 in around 1985 as part of a circular walk from home with her family and their dog. This walk involved leaving footpath 2 at point F crossing the field to E and then along the path between the close board fences to Alderton Drive. Mrs Godar had first used route 1 in 1983 when exploring the area on foot when looking for access to the Ashridge Estate. Mrs Godar had used the route twice daily as part of a circular walk from home taking in the path across Eddie's Field and the alleyway to Alderton Drive.
49. Mr Tannett had used route 1 since 1983 and recalled that the path had been a well-worn and obvious route through the grass at that time. The claimed path had formed part of a circular walk along Ringshall Drive, route 1 and the alleyway to Alderton Drive. When walking the route, Mr Tannett often saw other walkers following a similar route.
50. Mr Berry's evidence was that the path shown E – B had been unavailable between 1979 and around 2000 when the land was cleared of vegetation. Route 1 had been visible on the ground in 1979 and had been the obvious way of getting across Eddie's Field to the alleyway from footpath 2. Mr Berry had generally walked the path daily when exercising his dog; E – B had not been used as it had been very overgrown. Like Mr Tannett, Mr Berry had frequently seen others walking the same route; although he had seen people who might have been the owners camping in the field on one occasion, he had not been challenged about his use of the path.
51. Mr Buesst had been resident in the area since 1985 and had used the route frequently since that date as a means of access to and from the village from Alderton Drive; the path had always been a well-worn feature in the field and many people had used it. Mr Godar had been resident since 1983 and had used the circular walk taking in route 1 and the alleyway described by other witnesses. The route E – B had not been used as it had been very overgrown until the early 2000s. Route 1 had been the obvious way of crossing Eddie's Field as it had always been visible in the grass. Even when E – B had been cleared, Mr Godar had not used it as the route was less convenient than route 1.
52. None of the witnesses had been challenged as to their use of route 1 or the alleyway to Alderton Drive or had seen prohibitory notices on site prior to 2003. There were no physical structures on the path which prevented or challenged use prior to the barrier near E being erected in 2003. None of the witnesses had sought or been granted permission to use the path and all use had been in plain view of anyone who cared to watch. I conclude that use was without force, secrecy or permission and that there is no evidence that the claimed use had been interrupted in any way. The user evidence adduced is sufficient to satisfy the tests set out in section 31 of the 1980 Act and raises a

presumption of dedication of a public right of way over route 1 and over E – D between the close board fences.

53. The user evidence given to the inquiry is that the route shown on the Order plan as E – B was not used during the relevant 20-year period under consideration as it was so overgrown as to be unusable. The evidence before me is that even when the vegetation along that alignment had been cleared, E – B remained unused as it was of no convenience to those engaged in a circular walk from the village.

Whether there is sufficient evidence that there was during this twenty-year period no intention to dedicate the claimed footpath

54. I now turn to what is commonly called the proviso to section 31 (1) of the 1980 Act. The presumption of dedication raised by the user evidence is a rebuttable presumption; if there is sufficient evidence that during the 20-year period under consideration the owner demonstrated a lack of intention to dedicate a public right of way over the land the claim of the users will fail.
55. Whatever actions are cited by the landowner as evidence of his lack of intention those actions must have been overt and must have been directed against users of the path. The leading judgement on this matter is found in *R oao Godmanchester and Drain v SSEFRA* [2007] UKHL 28 which restored to prominence the findings of the court in *Fairey v Southampton CC* [1956] in which Denning LJ said *"In my opinion a landowner cannot escape the effect of 20 years' prescription by saying that, locked in his own mind, he had no intention to dedicate. In order for there to be 'sufficient evidence that there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who used the path, in this case the villagers – that he had no intention to dedicate. He must in Lord Blackburn's words, take steps to disabuse those persons of any belief that there was a public right: see Mann v Brodie (1885)"*.
56. No evidence has been submitted to show that the person or persons who owned the land prior to 1985 demonstrated a lack of intention to dedicate a public right of way. The Art and Architectural Trust submitted that verbal challenges had been given to users at least once per year from 1985. However other than this retrospective claim made in the objector's correspondence, there is no contemporaneous evidence of such challenges having been made during the relevant 20-year period; none of the user witnesses recalled being challenged as to their use of route 1. If such challenges had been made as an indication of a lack of intention to dedicate, the actions of the owners were not sufficiently overt to bring the owner's intention to the attention of path users.
57. There is no evidence before me that a statutory declaration under Section 31 (6) of the 1980 Act had been made by the owners of the land during the period under consideration, nor is there evidence of any form of communication between the owners and the relevant authorities questioning the existence of a right of way or complaining about the use of the path.
58. On the evidence before me, I cannot conclude that the claimed actions of the owners were undertaken in such a way as to make it obvious to the public that there was no intention to dedicate a right of way. Consequently, I consider the evidence of a lack of intention to dedicate is insufficient to satisfy the proviso to

Section 31 (1) of the 1980 Act and to rebut the presumption of dedication raised by the user evidence.

59. It follows that I conclude that the evidence adduced of use by the public is sufficient to satisfy the provisions of section 31 of the 1980 Act and that the Order should be confirmed in relation to route 1 and E – D, but not in relation to E – B.
60. I did not hear evidence of the use of E – B as shown on the Order plan. The evidence before me is that the route was overgrown and unusable until around 2000 and even once the vegetation had been cleared E – B remained unused as it was of no convenience to those members of the public undertaking a circular walk in the area. In the absence of evidence of use of E – B, an inference of dedication of that path at common law cannot be drawn.

Conclusions

61. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that as the evidence demonstrates, on a balance of probabilities that there is no right of way of any description over A – B and C – X, these ways should be deleted from the definitive map and statement. I also conclude that as the evidence demonstrates that a public right of way on foot subsists over G – B and F – E – D, these routes should be added to the definitive map.

Formal Decision

62. The Order is confirmed subject to the following modifications;

In the Schedule Part I:

Under the sub-heading 'Description of path or way to be deleted':

amend paragraph 2 to read "That part of Little Gaddesden Footpath 3 commencing at a junction with Little Gaddesden Footpath 2 at SP 9848 1421 (point C on the Order plan) and running generally south for approximately 25 metres to SP 9848 1419 (point X on the Order plan)."

under the sub-heading 'Description of path or way to be added':

amend paragraph 1 to read "A public footpath commencing at SP 9850 1390 (point D on the Order Plan) and running generally north for approximately 130 metres to SP 9850 1403 (point E on the Order Plan) then running generally north east for approximately 150 metres to a junction with little Gaddesden Footpath 2 at SP 9861 1414. Width: varying from 1 metre to 1.45 metres between SP 9850 1390 (point D on the Order Plan) and SP 9850 1403 (point E on the Order Plan) as shown shaded on part 2 of the Order Plan, 2 metres between SP 9850 1403 (point E on the Order Plan) and SP 9861 1414 (point F on the Order Plan). Limitations: None".

Delete paragraph 3

In the Schedule Part II:

Amend the proposed statement for Little Gaddesden 027 to read as follows:

"Commencing at a junction with Little Gaddesden FP3 at SP 9850 1390 and running generally N then NE for approx. 280m to a junction with Little

Gaddesden FP2 at SP 9861 1414. Width: varying from 1 metre to 1.45 metres between SP 9850 1390 and SP 9850 1403; 2 metres between SP 9850 1403 and SP 9861 1414. Limitations: None”.

Amend the proposed statement for Little Gaddesden 002 to read as follows:

“Commences at junction with Ringshall Road at SP 9846 1420 and runs generally SE for approx. 20 metres to a junction with Little Gaddesden FP3 at SP 9848 1419 then continues generally SE and E to a junction with Little Gaddesden FP27 at SP 9861 1414. Continues SE through Ashridge Park across FP5 at Witchcraft Bottom thence SE and the NE to junction with county road opposite Memorial Lodge at Little Gaddesden.

Amend the proposed statement for Little Gaddesden 003 to read as follows:

Commences at junction with Little Gaddesden FP2 at SP 9848 1419 thence generally SE through Ashridge Park to junction with FP5. Recommences from FP5 approx 170m SW of previous junction thence SE then S to west end of Ashridge House thence SW and SE along eastern boundary of Hardings Rookery to join Park Road at Birkhamstead Lodge. Width: Limitations:”

In the Order Plan Part 1:

insert point X;

delete the paths between points X and D and between points B and E.

annotate D – E as being part of Little Gaddesden FP27

In the order Plan part 2:

annotate D – E as being part of Little Gaddesden FP27

63. Since the Order as proposed to be confirmed would not show a way shown in the Order as made, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 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.

Alan Beckett

Inspector

APPEARANCES

For Hertfordshire County Council:

Miss R Scott of Counsel

Who called:

Mr G Harbour-Cooper

Definitive Map Officer

Mrs A Isherwood

Mr G Godar

Mrs S Godar

Mr A Berry

Mr W Tannett

Mr A Buesst

Objector (route 3):

Mr M Westley

Interested Party:


Mr C Beney

Inquiry Documents:

1. Graph showing period of use of route 1 by the public
2. Opening Statement on behalf of Hertfordshire County Council
3. Closing Statement on behalf of Hertfordshire County Council

THIS PLAN FORMS PART OF THE
HERTFORDSHIRE COUNTY COUNCIL
(LITTLE GADDESSEN 2, 3 & 27)
MODIFICATION ORDER 2014

PART 2

Depiction of variable width: 

Appears on DM Sheet No. 52

Not to scale



E

MAP NOT TO
ORIGINAL SCALE

Priory End

Little Gaddesden FP3-FP27

D

Priory Cottage

CPH/HTA

RIVE

Br
Co




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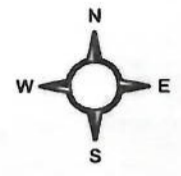
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 MODIFICATION ORDER 2014

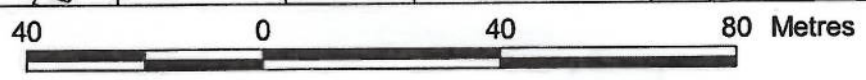
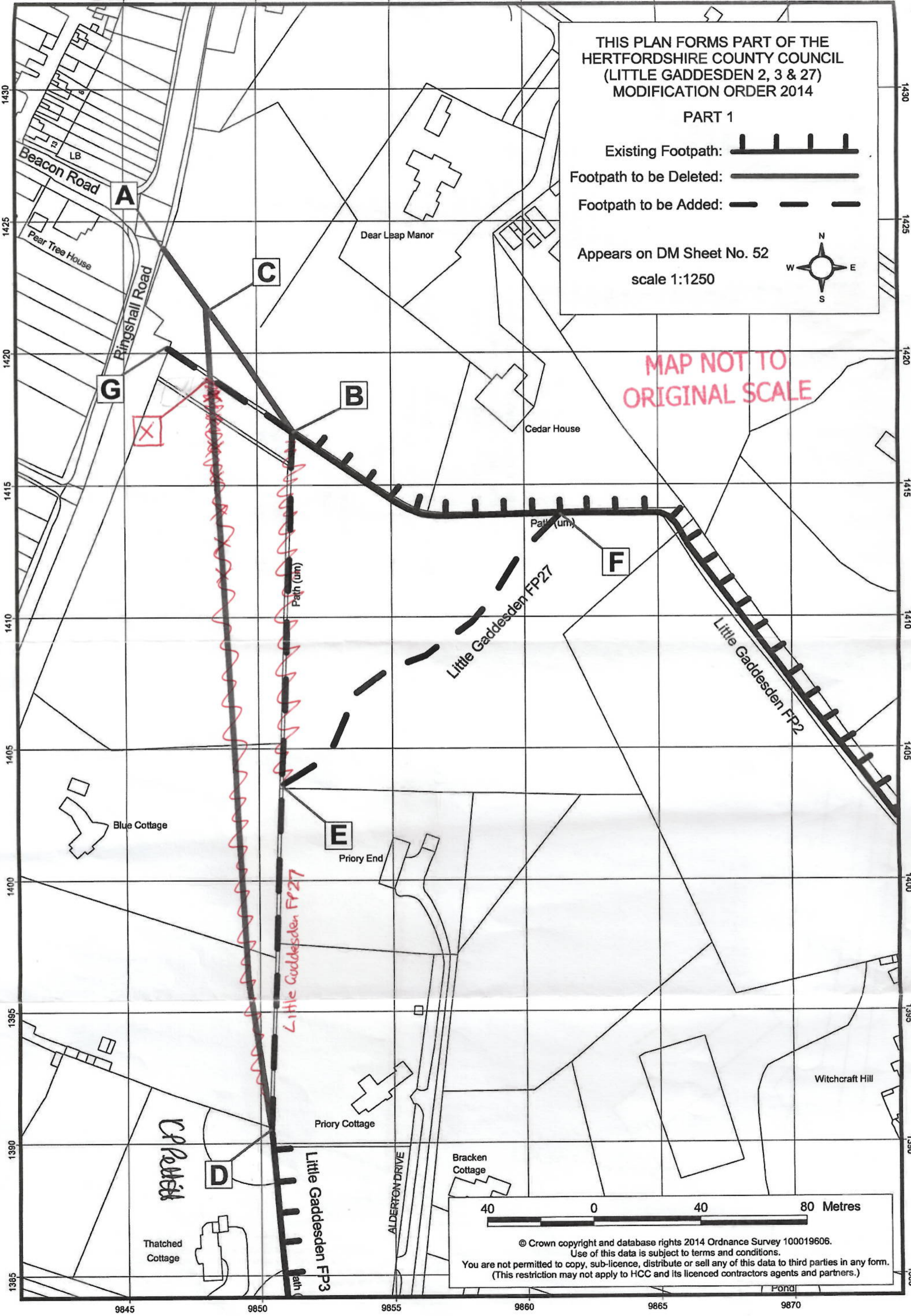
PART 1

- Existing Footpath: 
- Footpath to be Deleted: 
- Footpath to be Added: 

Appears on DM Sheet No. 52
 scale 1:1250



MAP NOT TO
 ORIGINAL SCALE



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