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| **Order Decision** |
| Inquiry opened on 16 July 2024 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 4 September 2024** |

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| **Order Ref: ROW/3310191** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Hertfordshire County Council (Hoddesdon 73 and Brickendon Liberty 30) Modification Order 2018. |
| * The Order is dated 20 July 2018 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway as shown in the Order plans and described in the Order Schedule. |
| * There was one objection and two representations outstanding at the commencement of the inquiry. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. I will refer to various points shown on the Order plans in my decision. I have appended copies of them to the end of my decision for ease of reference.
2. I made an unaccompanied site visit on 15 July 2024 where I walked the full length of the Order route. I also made an accompanied site visit on 18 July 2024 with representatives of Hertfordshire County Council (HCC), the British Horse Society (BHS), and the objectors where we walked the Order route between J and D.
3. HCC took a neutral stance at the Inquiry and the case in support of confirming the Order was made by the BHS. The Footpath Secretary for Hertfordshire and North Middlesex Ramblers and East Herts Footpath Society also spoke in support of the Order.
4. The full length of the Order route runs from the junction of Hoddesdon Restricted Byway 21 (H21), Restricted Byway 23, Footpath 22, and Pembridge Lane. It crosses several other public rights of way (PROWs), meaning access is available at various points along the Order route. Each section of the Order route between the existing PROWs is capable of being used independently from the rest of the Order route. Therefore, I will need to consider the evidence for each section of the Order route between the existing public highways. The evidence before me may indicate public rights over some sections of the Order route but not others. If this is the case, I would need to modify the Order to reflect this. Should I take that approach, an interim decision would be made and advertised with scope for further submissions.

The Main Issues

1. The Order has been made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of events specified in Section 53(3)(c)(i) and (iii). This requires me to consider if, on the balance of probabilities, the evidence shows that a public bridleway subsists along the Order route and if changes are necessary to particulars recorded in the Definitive Statement. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
2. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in Section 31 of the Highways Act 1980 (the 1980 Act). This requires me to consider if the public have used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. I must establish the date when the public’s right to use the Order route was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowner to dedicate a public bridleway during this period.
3. Documentary evidence has also been submitted in support of the Order. Section 32 of the 1980 Act requires me to take into consideration any map, plan, or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining if a way has been dedicated as a highway.

Reasons

**Documentary Evidence**

*Tithe Maps and Apportionments*

1. The Broxbourne Tithe map 1839 shows section J to a point midway between G and F with double pecked lines running through plots 36 and 43. These plots are described as Broxbourne Wood and Cow Heath Wood in the Apportionment. Brickendon Liberty Footpath 13 (BL13) and Brickendon Liberty Footpath 20 are shown with single dashed lines although on slightly different alignments. Pembridge Lane is shown coloured sienna.
2. Section A to G of the Order route is not shown on the Hoddesdon Tithe map 1842. It would be within plots 1019 Hoddesdon Park Wood, 1085 High Field Wood, and 1088 Bramblers Wood. It would also cross Brickendon Liberty Restricted Byway 24 (BL24) which is shown with double solid edges labelled ‘Red Mills’ and ‘Elbow Lane’ with no plot number. Access to the plots on either side of BL24 is shown with short parallel pecked lines where the Order route crosses it.
3. The purpose of the Tithe records was to identify titheable land capable of producing crops. They are statutory documents which were in the public domain. They were not produced to record PROWs, although they can be helpful in determining the existence and status of such routes. Public roads are normally shown coloured sienna on Tithe maps.

*Eastern Counties Railway Extension, Waltham, and Broadwater Line Plans 1845*

1. The plans for the proposed Waltham and Broadwater Line railway show the Order route from just east of F to Spital Brook (between F and G) with parallel pecked lines labelled 2. Brickendon Liberty Bridleway 14 (BL14) is shown in the same way and is labelled 3 within the hamlet of Hoddesdon and 1 within the Parish of St. John’s. Hoddesdon Parcels 2 and 3 are described in the Book of Reference as ‘Public Bridleway’ with the owners listed as ‘Surveyors of Highways’ with no occupiers or lessees listed. Parcel 1 is described as ‘Private Road, and Waste Land, and Public Bridleway’ owned by the ‘Marquis of Salisbury, and Surveyors of Highways’. The cross section describes the Order route as a ‘Road’. This railway line was not constructed.
2. Proposed railways required an Act of Parliament to authorise the purchase of the land. Before an Act could be passed, a detailed survey of the land had to be produced showing the land the railway would cross and a Book of Reference provided details of the owners, occupiers, and land use. Legislation specified requirements of how public and private roads, bridleways, and footpaths crossed by the railway were to be treated.
3. The plans were produced to a high standard because they were deposited for public inspection and received a high level of public scrutiny by the parties involved. Landowners would not have wanted to cede ownership and Highway Authorities would not have wanted to take on additional maintenance responsibilities. Therefore, if a way was identified as being a public highway in the ownership of the ‘Surveyor of Highways’ it may be persuasive evidence of public rights and status. Not all railways were constructed, but the plans were still in the public domain. Plans for railways not constructed may not be as reliable as those that passed through the whole parliamentary process. Therefore, the weight attached to them will need to be determined alongside other evidence.

*Broxbourne Inclosure Records 1849-50*

1. The Order route between G and J crosses an area with no enclosures and the full length of the route is not shown. However, short sections of it are shown with parallel pecked lines where it leaves the road at J and where it crosses boundaries at point G and H.

*Broxbourne and Hoddesdon Open Spaces and Recreation Grounds Act 1890*

1. The Broxbourne and Hoddesdon Open Spaces and Recreation Grounds Act 1890 (the 1890 Act) intended ‘to provide Open Spaces and Recreation Grounds in the parishes of Broxbourne and Hoddesdon and to declare and define the rights of way through the Broxbornebury Estate’. Questions had arisen as to rights of way through the land. To avoid litigation and in the public interests the landowners had offered to promote the Bill in Parliament to settle any doubts.
2. Carriageways are shown with brown lines, bridleways with blue dotted lines, and footpaths with dotted red lines on the map, and are listed in the Third Schedule of the Act. Only section H to J of the Order route is within the area covered by the 1890 Act, but it is not shown as a PROW. The whole of the Order route is shown on the base map but there is nothing to indicate public rights over it.

*Finance Act 1910 Map and Records*

1. The Order route is shown within hereditaments 1521 and 1 in Hoddesdon and 132 in Broxbourne. There are no deductions for public rights of way within hereditaments 1521 or 1. There is a deduction of £250 for hereditament 132 but it covers 940 acres with other PROWs known to run through it. I consider there is nothing in the Finance Act records to indicate the existence of public rights over the Order route.

*Definitive Map Records and Documents*

1. A Ramblers Association report on the Hoddesdon parish survey dated 6 January 1953 referred to the whole of the Order route as the ‘central’ ride which passes through Hoddesdon Park Wood, Highfield Wood, Cowheath Wood, and Broxbourne Wood. The report stated that for ‘the last 13 years it has been open, have never been stopped, and is used by walkers, and equestrians - the latter from Hoddesdon Lodge Riding School’.
2. In a letter dated 27 March 1955 to the County Surveyor, the Engineer and Surveyor for Hoddesdon Urban District Council stated extensions to footpaths 20 and 21 are not necessary because ‘the area is already well served with public rights-of-way and there are adequate means of access to the old Roman road’.
3. None of the Order route was included in the Brickendon Liberty and Hoddesdon Parish Surveys 1950-53. The schedule for BL13 states ‘other paths through the woods may be public rights of way’. A letter dated 31 March 1953 from the Parish Council states they had discussed the parish paths, particularly in the Broxbourne Woods area with the Ramblers Association and ‘the Parish Council are satisfied that the paths shown on the survey map are the only ones which should be shown on the draft map’ and ‘there are no other public rights of way’.
4. The Order route is not shown on the first Definitive Map (DM) which has a relevant date of 1953.
5. On 24 July 1979, the Byways and Bridleways Trust (BBT) wrote to the County Surveyor about the Special Review of the DM. They stated the bridleway between Ermine Street (point E) and Pembridge Lane (point J) had been omitted from the DM and they had substantial evidence of public rights. They were informed HCC had no evidence for this route, so they submitted thirteen User Evidence Forms (UEF) on 7 February 1980. The letter accompanying the forms stated the route was obstructed by gates and felled trees in 1978.
6. An annotated amendment overlaid on the first DM shows bridleways and footpaths within Broxbourne Wood (section H to J) with the note ‘Broxbourne Wood Permissive footpaths and bridleways’. A memorandum dated 7 January 1982 from the County Planning Department to the County Secretary and County Surveyor entitled ‘Permissive paths and Bridlepaths on HCC sites Broxbourne Wood’ states ‘Notice is given under Section 31 of the Highways Act that the paths listed in the Schedule below and marked on the attached map are not dedicated as highways, but the public is permitted to use them for the time being.’ Section H to J of the Order route is shown coloured green on the attached map as a route for horses, walkers, and cyclists.
7. On 6 July 1984, the Hoddesdon Lodge Riding School wrote to the Rights of Way Officer after they realised section E to H of the Order route was not an ‘official bridleway’. They stated this section ‘is much used by local riders’ and ‘has been used by riders from these premises since 1911’ and by the letter writers since 1972. They subsequently submitted eight UEF.
8. On 21 January 1986, the BBT wrote to the County Surveyor to express disappointment that section E to J had not been included on the Draft Map. They stated horse riders were still using this section and the Countryside Management Service (CMS) who managed the wood recognised the use of the bridleway and had undertaken works on it. A shooting syndicate had started using the woods, prohibitive notices have been erected alongside it, and work on the bridleway undertaken by CMS had been destroyed. They were asked if a creation order could be made but the County Planning Officers responded to say they had no plans to promote one.
9. On 19 February 1986 officers from HCC undertook a site visit of section E to H of the Order route and photographs were taken. The file note refers to ‘a recently excavated ditch (late 1985)’ near point H marked by wooden post which previously had barbed wire on. A ‘recently erected’ sign stating ‘PRIVATE ESTATE KEEP OUT’ lay in the ditch at point H and there is another lying down near BL14 (point F). The photographs also show a blue bridleway sign painted on a tree at point H, but it is unclear which way the arrow points, and an open gate with no fencing on either side at point E. The gate is described in the file note as a ‘10 foot bridlegate’. Shallow wheel ruts can be seen in the track between points E and H.
10. Letters and memorandums in April and May 1986 show HCC considered making a modification order to record a bridleway between points E and H based on evidence of use submitted in 1984 and use referred to in the 1952 Ramblers Report. The termination point was queried, and a response stated it terminated at point H because the continuation over HCC land was permissive. The response from the Ramblers Association stated the path had been used by the public for many years. On their recent visit they saw the shallow ditch that had long existed at point H had been widened and deepened, and a notice alongside it stating, ‘PRIVATE ESTATE KEEP OUT’. They had not seen the notice before and there were none at the junctions with BL13 or BL14. The letter also stated the path has always been notoriously waterlogged in places and they found one section virtually impassable on foot during their recent visit.
11. The Agent for the Gascoyne Cecil Estates (now Gascoyne Estates) (GE) responded objecting to the proposed modification order because of the increased risk of fire and damage. They referred to considerable trespass along the track by horses and 4x4 drivers which had damaged it and made it impossible to carry out forestry operations. They had closed the track in 1985 to discourage trespassers but did not state how they had done this.
12. In 1988 HCC wrote to the BBT stating they did not consider there was sufficient evidence to make a modification to the DM and they would not be proceeding with a modification order.
13. A letter to the DM Officer from the GE Assistant Agent dated 16 April 1996 requested waymarking in Highfield and Cowheath Woods because the public were straying from the PROWs.
14. In 2005 the BHS contacted HCC about dedicating section H to J, which was already being used as a permissive bridleway. They referred to the H25 London Orbital Bridleway which could be rerouted to run along the Order route between E and J if the modification order proposed in 1986 was successful and the permissive path dedicated.

*Ordnance Survey Maps*

1. The Order route is shown with parallel pecked lines on the 1:2,500 1st edition (from the 1870s) and 2nd edition (circa 1897/8) Ordnance Survey (OS) maps, and the 1971 1:10,000 OS map. The recorded rights of way crossing it are shown in the same way except HL24 which is shown with double solid edges. Other tracks are also shown in the same way. There are lines across the Order route at points D, E, H, and J on the 1st edition, 2nd edition, and 1971 OS maps, and point F on the 2nd edition OS map which could indicate gates, fences, or ditches. A ford is labelled between points H and I on the 2nd edition OS map. On the 1971 OS map the Order route is labelled ‘*F.P.*’ between G and H, as is BL14.
2. The OS maps show the physical existence of the Order route and suggest public footpath rights over a short section of the Order route. However overall, I do not consider the OS maps provide evidence of public rights over the Order route.

*Commercial Maps*

1. Bartholomew’s half-inch map of 1906 shows the full length of the Order route with solid parallel lines with brown dots along it which continues along H21. Pembridge Road and BL14 are also shown in the same way. The key indicates this line style is for ‘indifferent roads (passable)’.
2. Bartholomew’s half-inch map of 1924 shows the full length of the Order route uncoloured with solid parallel lines in the same way as BL24, H21, and BL14. Roads are shown with double solid edges and ‘uncoloured roads are inferior and not to be recommended’.
3. Commercial maps were produced for sale to the public who would have expected them to show routes that were available for use and Bartholomew’s maps were primarily aimed at tourists and cyclists. The quality of commercial maps, and the weight that can be given to them varies. In *New Town v JJ Gallagher Ltd.* [2002] EWHC 2668 (ch) Neuberger J concluded not much weight can be placed on Bartholomew’s maps. However, when considered with other evidence, they can tip the balance in favour of public rights.

*Published Route Guides*

1. Sections of the Order route are included in published walk guides. Section F to A is part of walk number 53 in the Lea Valley Footpath Guide by David Lewer, first published in 1948. It is described as ‘a straight but undulating mile and a quarter through Highfield and Hoddesdon Park Woods. The two woods are divided by Ermine Street, an old Roman road’ (HL24).
2. Section J to E is part of walk forty in Fifty Week-End Walks in the Chilterns, Hertfordshire and Essex by John Mair published in 1952. The straight track is described as running through woods, open scrubland, and ‘a clearing where four paths meet’ at HL24. This clearing is the only one surrounded entirely by trees and you come into it ‘through a low archway of straggly beeches’.
3. The whole of the Order route is part of Walk 19, ‘Bread-and-Cheese’ in 20 Walks in Hertfordshire by Fairfield of the London Evening News published in 1955. Section A to D is described as ‘a clear, wide grassy track’ and a ‘beautiful track through the wood’. From point E it follows a ‘clear track…all the way to the road’.
4. A walk in the Woods, Broxbourne Woods National Nature Reserve published in 2017 shows section H to J as one of the ‘bridle routes for horses and bike riders & walkers’ and section A to D is shown as ‘other footpath’. There is nothing to indicate the paths were permissive.
5. These publications indicate the physical existence of the Order route, its use, and its reputation as a PROW. However, it is not clear how much investigation into the routes and their public status was undertaken when producing the guides.

*Broxbourne Wood Management*

1. There are two management plans, one for 2008 to 2028 and another for 2014-2019. The plans state Broxbourne Wood was purchased by HCC in 1975 to maintain its amenity and conservation value, allow informal recreation, and pursue economic forestry. Rides were opened in 1988/1989 and car parks created. New permissive paths were opened in 1992 and the main ride was widened and improved for wildlife conservation. They state the woodland is open to walkers, cyclists, and horse riders with the latter two groups allowed on certain tracks only. Public and permissive paths run through the woodland, but no maps identify them. Signs and banksmen are used to keep the public away from active forestry works.
2. Documents about the production of information panels and leaflets for the woods referred to section H to J of the Order route as a permissive bridleway, but it is not clear if these were produced. HCC Officers do not believe permissive terminology was used as it did not fit with the ‘plain English’ approach.

*Statutory Declarations*

1. The Woodland Trust (WT) deposited a notice and map with HCC on 7 June 1986 and Statutory Declarations in May 1993, May 1999, and March 2009 under section 31(6) of the 1980 Act. They owned section A to D of the Order route. They did not admit any public rights over the Order route and did not intend to dedicate further public rights over their land.
2. The Hatfield Estate deposited a map and statement on 6 February 2017 and a Statutory Declaration on 8 February 2017 under section 31(6) of the 1980 Act. It included land in the ownership of GE between points E and H. They did not admit any public rights over the Order route and had no intention of dedicating additional public rights over land in their ownership.

*Conclusions on the Documentary Evidence*

1. The documentary evidence indicates the Order route has physically existed for many years. The whole of the Order route is shown on OS maps from the late 1800s. However, most of these maps do not indicate the route's status or if it was public or private.
2. I consider the 1845 Railway Plan provides good evidence that the Order route between Spital Brook and just east of F was considered to be a public bridleway. Bartholomew’s maps suggest public rights along the Order route, but only limited weight can be placed on them. The route guides indicate the Order route had a reputation as a PROW and is likely to have been used by the public at this time. However, I consider only limited weight can be placed on them. The other documents do not provide evidence of public rights, or indicate no public rights exist. Some of the documents also suggest permissive rights over section H to J.
3. The published route guides, 1953 Ramblers Association Report, and 1845 railway plan indicate the reputation or use of the Order route as a PROW that will add to the user evidence considered below.
4. Overall, I am not satisfied that the documentary evidence is sufficient to show, on the balance of probabilities, the existence of public rights.

**User Evidence**

***Bringing into Question***

1. To bring into question the right of the public to use the Order route some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.

*Section A to D*

1. The WT has owned the land between A and D since 1982. They first submitted a Statutory Declaration in May 1993. HCC and the BHS considered this to be the date of challenge for this section of the Order route.
2. Several path users referred to kissing gates at points A and D which prevented access to horse riders and cyclists, but not walkers. Several people stated they were erected in 1991.
3. I consider the use of section A to D was first brought into question by the erection of kissing gates in 1991. Therefore, the relevant twenty year period of use for the purposes of statutory dedication is 1971 to 1991.

*Section D to G*

1. GE owns the land between D and H. They stated there has been a barrier across the Order route at point E since at least 1961. GE employees also referred to a bund, hedge, ditch, and ‘dragon’s teeth’ at E. Locked gates were erected across the Order route on either side of BL14 (point F) in 2015 to discourage the public from leaving the bridleway. Signs were also erected to discourage use in 2009, 2013, and 2015 including at points E, F, and G. The 2013 notices were erected when works were undertaken along the Order route between April and August 2013 to make it suitable for timber extraction. It is claimed that GE employees and contractors also challenged anyone using the Order route.
2. I need to consider how the notices would have been understood by members of the public. The signs erected in 2009 stated ‘These woods are private, please keep to the public rights of way’. Most of the people using the Order route considered it to be a PROW. Therefore, they are unlikely to have considered the 2009 notices were challenging their use of the Order route. Furthermore, none of the path users recalled seeing the 2009 notices. The 2013 notice stated, ‘Private Property No Public Access or Right of Way’ and the 2015 notice stated the central ride was not a PROW, requested people keep to the designated PROWs, and included a map of the recorded paths. The later notices made it clear that public use was being challenged and people using the Order route saw them.
3. Path users also referred to gaps to the side of the gates erected at point F and stated the barrier at E only crossed two-thirds of the track. Therefore, there was sufficient space to pass to the side of them. Path users did not recall other obstructions at these points. I do not consider these structures brought into question use by the public.
4. Lots of people were challenged by employees of the Bushcraft Company in 2015. One person was challenged in 1992 or 1993 during a pheasant shoot but no one else recalled being challenged along this section of the Order route before 2015. I do not consider a single challenge to be sufficient to bring to the attention of those using the Order route that their use was being brought into question.
5. The photographs taken during a site visit in 1986 show a sign stating ‘Private Estate Keep Out’ lying on the ground at point F, and a field gate at point E. Documents in HCC’s files indicate this notice was only there for a short time. Therefore, it is unlikely to have come to the attention of a sufficient number of users to bring to the attention of the public that their use was being challenged. The gate was open with a gap to the side within the width of the track. The gap appears wide enough to allow walkers, cyclists, and horse riders to pass. Therefore, the gate would not have prevented use even if it had been locked shut.
6. I consider use of section D to G was brought into question by the notices erected in 2013 with the relevant twenty year period being April 1993 to April 2013.

*Section G to J*

1. In addition to the notices and claimed challenges in paragraph 54, GE referred to various attempts to prevent access at point H. These included a ditch, hedges, wooden and wire fencing, felled trees, and notices. GE employees referred to regularly repairing and extending the fence due to vandalism and adding to a dry hedge. The ditch was widened and deepened on several occasions and path users stated this occurred in 1985, 2010, and 2014.
2. UEF were submitted for section G to J of the Order route in 1980 with additional forms for section J to E being submitted in 1984. Several of the forms and the covering letter from the BBT referred to a locked gate at point J and felled trees at point H which obstructed the Order route. These were stated to have been placed there in 1978. The 1986 site visit photographs show a recently dug ditch, notice stating ‘PRIVATE ESTATE KEEP OUT’, fence posts, and barbed wire at point H.
3. In my opinion, the submission of UEF from user groups that referred to obstructions indicated the public believed their right to use this section of the Order route was being challenged. Therefore, I consider the use of section G to J was brought into question in 1978 and the relevant twenty year period is 1958 to 1978.

***Analysis of Use***

1. To satisfy the requirements of Section 31, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowner, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works. I must also be satisfied there was sufficient use by the public to raise a presumption of dedication.

*Section A to D*

1. Twenty nine people used section A to D between 1971 and 1991. Four people used this section for the full twenty year period with the rest using it for shorter overlapping periods. Seventeen people used it on horseback, seven on a bicycle, and 16 on foot. Two people used it daily, 31 weekly, and 30 monthly.
2. The only challenge referred to along this section of the route was during a deer cull in 1997 after the relevant twenty year period. None of the path users requested permission, saw notices, or encountered obstructions. Use appears to be open, without secrecy or force during this period.
3. Overall, I consider there is sufficient evidence of use during the relevant period without interruption, permission, force, or secrecy to demonstrate a presumption of dedication over section A to D of the Order route.

*Section D to G*

1. Eighty one people used section D to F, and 75 people used section F to G between 1993 and 2013. Twenty seven people used section D to F and 26 people used section F to G for the full twenty year period with the rest using it for shorter overlapping periods. Thirty people were using section D to F and 28 people were using section F to G in 1993. Seventy five people were using section D to F and 71 people were using section F to G in 2013. The UEF show use of section D to G from 1920 with 44 people using section D to F and 48 people using section F to G before 1993. Fifty two people used section D to F on horseback, 38 on a bicycle, and 58 on foot. Fifty three people used section F to G on horseback, 39 on a bicycle, and 48 on foot. Six people used section D to F daily, 40 weekly, and 43 monthly. Section F to D was used by eight people daily, 41 weekly, and 39 monthly. People used the Order route on foot, horse, and bicycle as part of group or club rides and one person took a class of primary school children along it.
2. GE stated use before 2013 was low and did not come to their attention, so was not sufficient to demonstrate a presumption of dedication. They also stated they would not have seen anyone using it at the weekend or in the evening. However, a letter from GE in 1986 referred to trespass along the Order route and a 1996 letter from the Assistant Agent stated the public were straying from the PROWs. Some employees stated they saw people or signs of use, but others did not. One employee undertook pest control in the evenings. The UEF shows a significant amount of use which I consider to be sufficient to have come to the attention of the landowners. Letters from GE also indicate they were aware of public use.
3. None of the path users recalled obstructions that prevented use of section D to G until after 2013. Some users referred to the barrier at E but stated it did not obstruct the full width of the Order route or prevent use. One person said the same barrier was present on PROWs in the area. Path users stated there was a shallow ditch at point E which could be boggy but did not prevent use. Notices denying public rights over section D to G were not seen until 2013. All parties agreed the gates at point F were erected in 2015.
4. It was suggested force was used to pass obstructions at point E. Path users did not recall any other obstructions or wire fencing here but many referred to fences at point H being cut or broken down. To effectively interrupt use and prevent dedication, there must be some physical and actual interruption that prevents the enjoyment of the way, rather than acts that merely challenge the user while allowing use to continue. I do not consider there were any barriers or ditches at point E that effectively prevented public use on foot, horseback, or bicycle.
5. One person stated they were challenged in 1992 or 1993 whilst using section D to F of the Order route by a pheasant shoot. The shoot was occurring in woodland to the north. They were advised the shoot was occurring on private land and it was dangerous to be using the Order route. They believed the emphasis was on safety and shooting rather than a challenge to public use but did turn back. No one else was challenged by shooting parties. Some did hear shooting but believed it to be near Monks Green. One user did avoid using the woodland when they could hear shooting, but others continued to use the Order route.
6. I do not consider public use of the Order route was interrupted by shooting in the woodland. I also do not consider a single challenge to be sufficient to interrupt use. Furthermore, if this challenge occurred in 1992 or early 1993 it would have been outside of the relevant 20 year period.
7. Substantial works were undertaken along this section of the Order route to make it suitable for timber extraction between April and August 2013 which is likely to have prevented use of the Order route. However, I have already considered at paragraph 59 above that the date of challenge is April 2013. The notices denying public rights were erected as part of these works. Therefore, these works would not have interrupted use of the Order route during the relevant twenty year period.
8. GE referred to the poor condition of the Order route between D and G with deep ruts and boggy areas making it impassable for forestry vehicles. They considered anyone using it would have needed to find an alternative route off the line of the Order route. Therefore, use would have been interrupted during the winter and the amount of use would have been insufficient to raise a presumption of dedication. They also stated it became overgrown in the summer.
9. Those using this section of the Order route stated it was muddy. However, although vehicles would have found it impassable, it was still possible to use on foot, horse, and bicycle either by carefully making your way through or using the edges of the track. Some people did state that when it was very wet, they did not use the Order route or used an alternative parallel route, but most people used the Order route. In my experience, vehicles are more likely to be impeded by poor ground conditions than walkers, horse riders, or mountain bikers.
10. Photographs of a group walk in 2004 or 2005 show tall vegetation along parts of the Order route, but there were also clear wear lines within its width that people were walking along. Photographs taken by GE in 2012 and 2013 show some low-hanging vegetation but not enough to prevent use by walkers, cyclists, or horse riders. Overall, I am satisfied the condition of the Order route did not stop the public from using it, and use continued throughout the year to a level sufficient to raise a presumption of dedication.
11. Some of the path users referred to using other routes within the surrounding woodland. These included other woodland tracks and PROWs. One path user provided maps showing his use of the woodland over a month long period. They cycled along it ten times with most rides including section G to F with other tracks being used regularly. Although these rides occurred in 2019, they would reflect their rides during the relevant period. Other people provided maps produced by activity trackers of routes they used during the relevant twenty year period, which included the Order route and other tracks and PROWs in the woods. Path users described the different routes they used depending on the time available using the existing PROWs and other woodland tracks. Some people did use other routes to avoid muddy sections, but overall use of other routes appears to be in addition to the Order route for variety or to create circular walks. I consider the user evidence demonstrates use of a network of paths, which included the Order route, rather than general wandering.
12. Use of the Order route may have been interrupted when a gas pipe was laid across the Order route between E and F. One person recalled it being laid in the late 1950s or early 1960s. Therefore, use of the Order route would not have been interrupted by the laying of a gas pipe during the relevant twenty year period.
13. Forestry works were also claimed to have interrupted use of this section of the Order route. GE employees and contractors indicated active tree harvesting occurred in the 1960s and between March 1996 and 2006. GE claimed notices were erected denying public use when works occurred. A contractor stated they would cordon off areas when undertaking felling works. GE employees referred to safety notices rather than no PROW notices during forestry works and emails from 2016 referred to notices warning of forestry operations and asking people to keep to the designated paths rather than denying public rights. Employees and contractors stated they did not use the Order route for forestry operations before it was resurfaced in 2013 because of its condition.
14. Path users referred to having seen or heard forestry operations at various times during their use. However, they stated these works did not prevent use of the Order route because trees were not harvested along it. Any notices they saw concerning forestry operations were of an advisory safety nature and did not state there was no public access. In my opinion, cautionary signs advising of work would send a message to take care rather than indicating use was not permitted.
15. None of the path users recalled being challenged by forestry workers or seeing obstructions across the Order route during forestry works until 2013. Some users stated the forestry works had damaged the surface of the Order route making some sections more difficult, but not impossible, to use. I do not consider forestry works sufficiently interrupted use of the Order route during the relevant period.
16. GE also considered Foot and Mouth (F&M) restrictions would have interrupted use of the Order route for six weeks in 2001. They referred to a prohibition of use of all rural PROWs shown on the DM and most common land within Hertfordshire dated 2 March 2001. A copy of a notice used by HCC on PROWs was provided. The Order route was not recorded on the DM in 2001. Therefore, the prohibition would not have applied to the Order route and HCC are unlikely to have erected notices along it. I was not advised of any F&M notices erected along the Order route.
17. None of the UEF referred to F&M notices or closures along the Order route and none of the forms stated they stopped using the Order route at this time. Access to the Order route would have been possible from the western end without using a PROW. PROWs would have to be crossed to reach the eastern end of the Order route but there is no evidence notices were erected at junctions to inform the public they were prohibited from crossing the PROW.
18. Some of the witnesses at the Inquiry stated they chose not to use the countryside during F&M restrictions. However, others stated they used the Order route during this period. One user did not ride their horse along the Order route during F&M restrictions because the livery yard would not let them take horses out. However, they did walk the Order route with their husband, and he used it more often. Another person stated they were not aware of any F&M restrictions along the Order route, and they continued to use it. I consider there is sufficient evidence to show the public continued to use the Order route during the F&M restrictions and use was not sufficiently interrupted.
19. Questions were raised over the reliability of the user evidence, the ability of some users to read a map, and inconsistencies in the evidence. The UEF cover a period of 95 years between 1920 and 2015. With use covering such a long period of time, the condition of the route is likely to have changed and memories may not be as accurate as they would have been in the past. The 1955 Walk Guide and 1986 photographs indicate the surface was in better condition than in 2013. The evidence given at the Inquiry, and in the UEF provided a consistent description of the Order route, its condition, and changes along it. Those who admitted to being poor map readers accurately described the route they used and features along it. I consider the user evidence, accurately reflects people’s use and memories of the Order route.
20. I consider there is sufficient evidence of use of section D to G between 1993 and 2013 without interruption, force, secrecy, or permission to demonstrate a presumption of dedication over this section of the Order route.

*Section G to J*

1. Twenty nine people used section G to J between 1958 and 1978. Eight people used it for the full twenty year period with the rest using it for shorter overlapping periods. Eleven people were using it in 1958 and 26 people were using it in 1978. The UEF show use from 1920 and 11 people used this section before 1958. One person used it daily, nine weekly, and 13 monthly. Twenty five people used it on horseback, two on a bicycle, and 12 on foot. People used the Order route on group horse rides, and one person took a class of primary school children along it.
2. None of the path users requested permission to use this section of the Order route. Notices or obstructions challenging use were not seen until 1978. The person who submitted the 1980 UEF, did not recall any signs, notices, or obstructions challenging use when they used it between 1966 and 1976. They were alerted to issues on this section of the Order route in the late 1970s and early 1980s by friends. The ditch at point H was described as shallow prior to the end of 1985 and could be stepped over easily by walkers and horses. One person also referred to a wooden bridge over the ditch.
3. None of the path users recalled any interruptions affecting their use between 1958 and 1978. One person recalled forestry work in the 1950s followed by tree planting, but the works did not affect their use. Another stated no shooting occurred in the woods when they used it between 1966 and 1976. A letter from the BBT in 1986 reported a shooting syndicate had recently started shooting there. GE stated there was a license to shoot in the woods from the late 1980s until 1996. Therefore, shooting occurred after the relevant period.
4. GE considered use of this section was by force. They referred to fencing and hedging at H being intentionally damaged with wire fencing repeatedly cut and notices vandalised. However, these incidents all occurred from 1985 after the relevant twenty year period.
5. A 1982 memorandum from the County Planning Department and woodland management plans stated section H to J of the Order route was available for use on a permissive basis. However, they were written after the relevant twenty year period. There is no evidence of permission being granted prior to 1982.
6. I consider there is sufficient evidence of uninterrupted use during the relevant period without permission, force, or secrecy to demonstrate a presumption of dedication over section G to J of the Order route.

***Lack of intention to dedicate***

1. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware that they have no intention of dedicating a PROW. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.

*Section A to D*

1. The WT stated they have never given permission for anyone to ride in Hoddesdon Park Wood since they took ownership in 1982. They provided a network of footpaths for use by walkers on a permissive basis but have not advised how the public was notified of this permission. They stated unauthorised use by horse riders and motorbikes was a persistent problem that they had tried to prevent. However, they have not stated what actions they took or provided a date for the erection of the fence around Hoddesdon Park Wood. The user evidence indicated fences and gates were erected around Hoddesdon Park Wood in 1991. Maintenance records only show repairs to these fences and gates after 2012.
2. I do not find sufficient evidence to demonstrate a lack of intention to dedicate a public bridleway along section A to D of the Order route during the relevant twenty year period.

*Section D to G*

1. GE referred to a barrier at E since 1961 as well as bunds, hedges, ditches, and ‘dragon’s teeth’ to prevent use. Those using the Order route recalled the barrier at E and ditches, but stated the ditches were easy to navigate and the barrier did not cover the full width of the track. Photographs of the barrier support this. Path users believed they were there to prevent illegal vehicular access rather than bridleway use. I do not consider the barriers and ditches at point E sufficiently demonstrated the landowners lack of intention to dedicate a public bridleway.
2. GE claimed to have regularly challenged members of the public using the Order route. However, only one person recalled being challenged on this section of the Order route before 2015, in 1992 or 1993. There is also evidence of notices in 1986 and 2009. I have already concluded at paragraphs 55 to 58 above that the 1986 and 2009 notices, 1986 gate, and the single challenge to use in 1992 or 1993 were not effective in challenging use by the public. For the same reasons, I do not consider these actions sufficiently demonstrate the landowner's lack of intention to dedicate a PROW. The 1986 signs and gates were also outside the relevant twenty year period as were the 2015 gates and notices.
3. Letters from GE in 1986 and 1996 refer to the public trespassing on their land or straying from PROWs. However, these letters do not refer to any actions taken to indicate to the public that they could not use the Order route and do not state they had no intention to dedicate public rights.
4. Notices concerning forestry works appear to be of an advisory or safety nature and did not state no PROW. Therefore, they did not demonstrate a lack of intention to dedicate.
5. GE did not submit a Statutory Declaration until 2017. At the Inquiry, an employee stated they were informed one was also made in 1998. However, a copy of this has not been provided and there is no evidence that one was submitted to HCC in accordance with section 31(6) of the 1980 Act during the relevant twenty year period.
6. I do not find sufficient evidence to demonstrate a lack of intention to dedicate a public bridleway along section D to G of the Order route during the relevant twenty year period.

*Section G to J*

1. There is evidence of fences, hedges, and notices to prevent use of the Order route at point H by the landowners, but only from 1985. Therefore, these actions post-date the relevant twenty year period and do not provide evidence of a lack of intention to dedicate public rights between 1958 and 1978.
2. The 1982 memorandum from the County Planning Department stating routes over their land were permissive and were not dedicated as public highways, and the woodland management plans referring to permissive use also post-date the relevant twenty year period.
3. The landowners have not provided any evidence of actions taken to prevent dedication of PROWs over their land during the relevant twenty year period. There is no evidence of challenges, interruptions, obstruction, or permission prior to 1978. Therefore, I conclude there is insufficient evidence to demonstrate a lack of intention to dedicate a public bridleway by the landowners over section G to J of the Order route during the relevant twenty year period.

*Conclusions on Section 31*

1. I have found there is sufficient evidence of use as a bridleway of section A to D of the Order route as of right and without interruption between 1971 and 1991. I have also found there is sufficient evidence of uninterrupted bridleway use as of right of section D to G of the Order route between 1993 and 2013. Furthermore, I consider there is sufficient evidence of use as of right and without interruption of section G to J as a bridleway between 1958 and 1978.
2. I do not consider there is sufficient evidence of challenges, permission, or other actions by the landowners to demonstrate they had no intention of dedicating a public bridleway over any section of the Order route during the relevant twenty year periods.
3. I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that a public bridleway subsists over the whole of the Order route.

Conclusions

1. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**For Hertfordshire County Council**

Christopher Moss Counsel for Hertfordshire County Council

Brian Gillam Definitive Map Officer, Hertfordshire County Council

**In Support of the Order:**

Robin Carr For the BHS

Who Called

Lesley Quinn Path User

Melissa Waters Path User

Alison Ray Path User

Ann Reay Path User

Mark Coleman Path User

Margarett Grocock Path User

John Featherstone Path User

Catherine Mcilwham Path User

Alison Balfour-Lynn Path User

Fiona El-Beih Path User

Ed Fisher Path User

Mark Westley Footpath Secretary, East Herts Footpath Society, and Ramblers Hertfordshire and Middlesex District

**In Objection to the Order:**

Anthony Downs On behalf of Gascoyne Estates

Who Called

Gavin Fauvel GE Assistant Land Agent 1998-2003

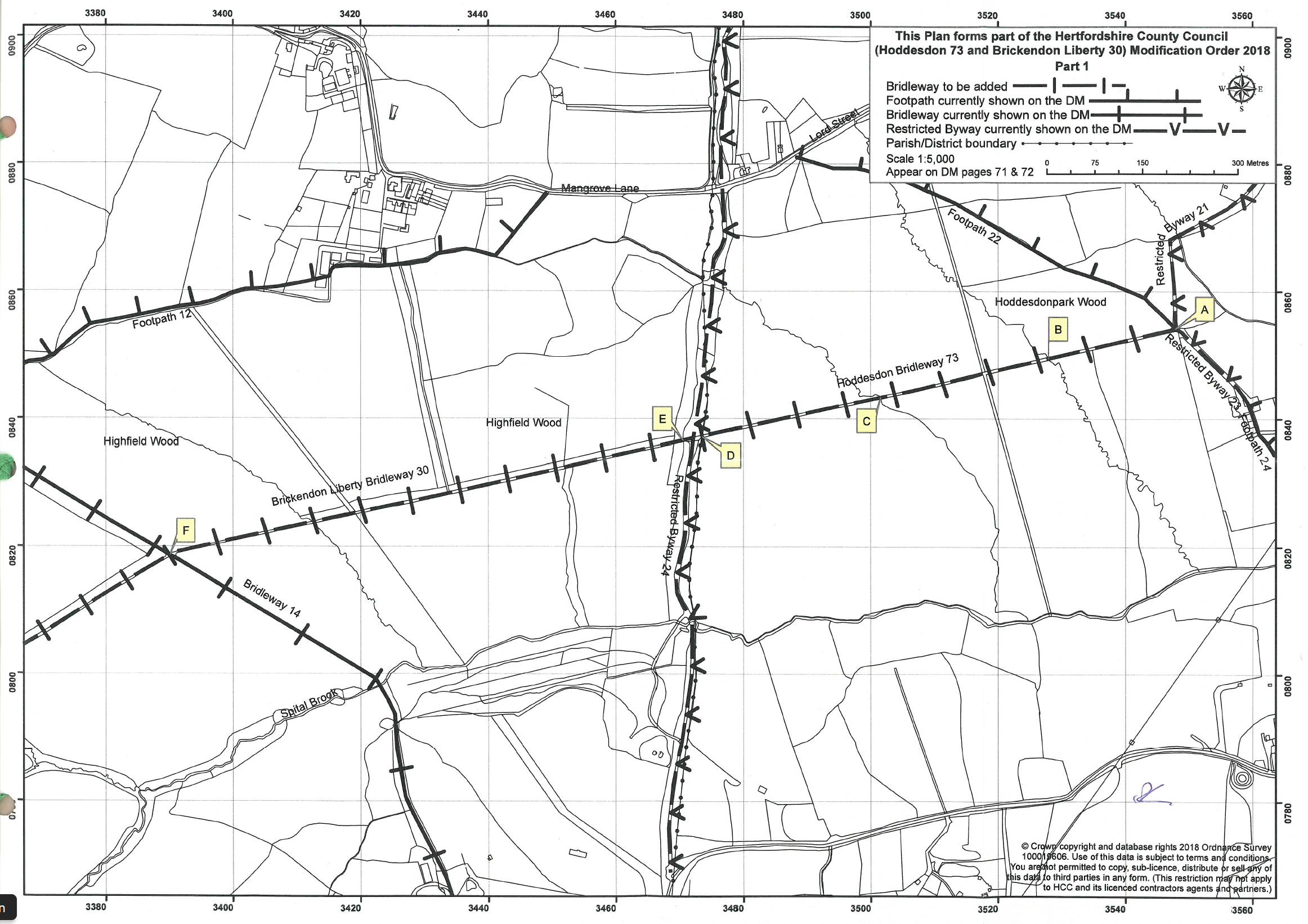
Barry Darbyshire GE Forestry and Park Foreman 1990-2022

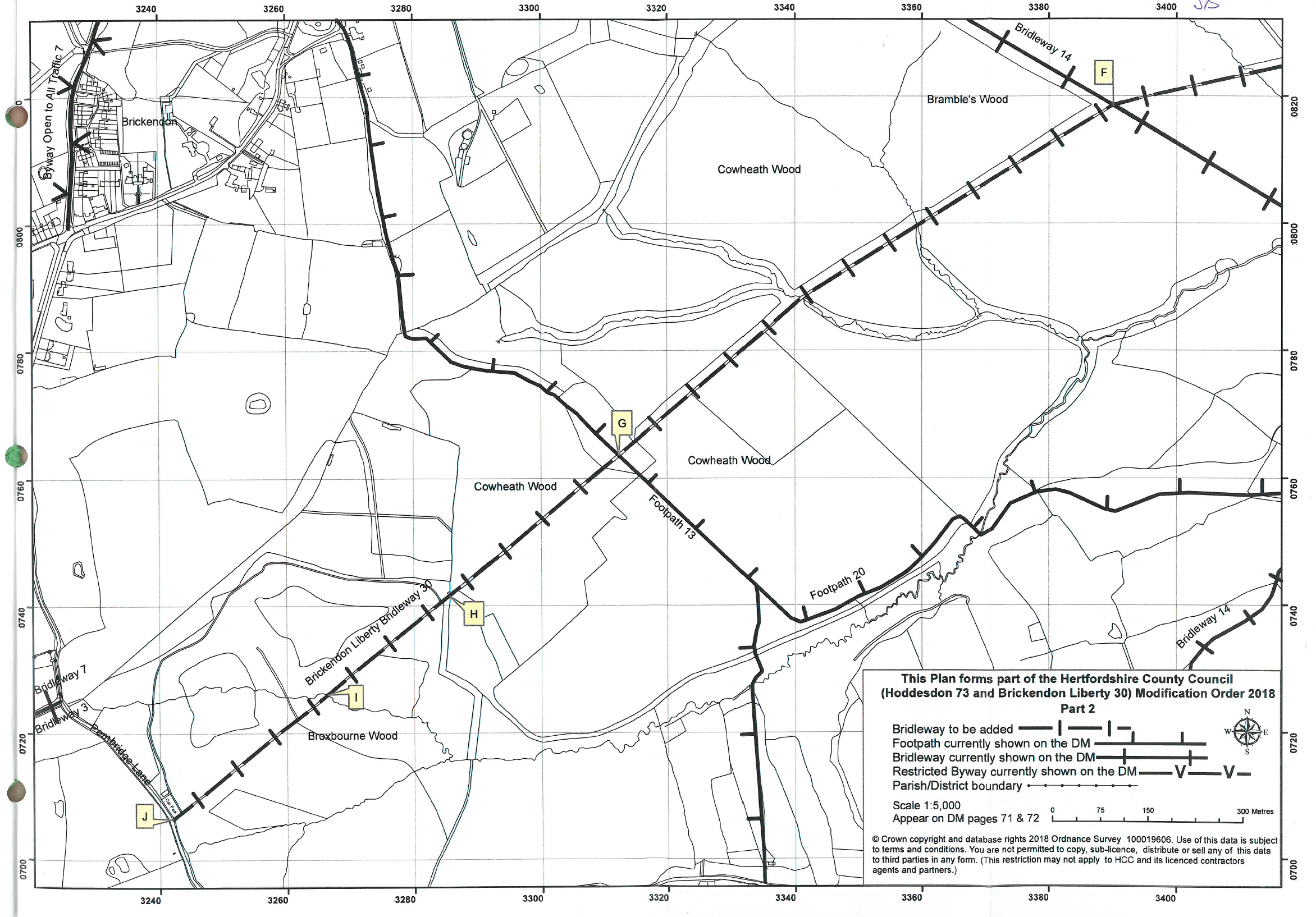
Rik Pakenham GE Forestry Consultant 2006-2018

**DOCUMENTS PRODUCED AT THE INQUIRY**

1. Hoddesdon Woods Investigation Plan
2. User Evidence Summary Charts
3. Landownership Map
4. Cadent Gas Pipeline Map and Photograph of Pipeline Marker
5. Witness Statement of John Featherstone
6. Statement and Background Documents of Mark Westley
7. Letter from Jocelyn Drummond
8. Photograph of No Access for Motor Vehicles Sign
9. Group Walk Photographs taken in 2004 and 2005
10. Hertfordshire County Council Foot and Mouth No Public Access Sign
11. Letter from the Assistant Agent to the Definitive Map Officer dated 16 April 1996
12. Closing Submissions for the Objectors
13. Closing Submissions for the British Horse Society
14. Closing Submissions for Hertfordshire County Council
15. Appeal Decisions for APP/E5330/X/22/3293510 and APP/E5330/X/23/3318421

**Order Plans**

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