

|  |
| --- |
| **Order Decision** |
| Inquiry opened on 10 December 2024 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 13 March 2025** |

|  |
| --- |
| **Order Ref: ROW/3311608** |
| * This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Hertfordshire County Council (Little Berkhamsted 18) Modification Order 2021. |
| * The Order is dated 23 September 2021 and proposes to modify the Definitive Map and Statement for the area by deleting part of a bridleway and adding it on a different line as shown in the Order map and modifying the statement to include a section which is shown on the map but omitted from the statement and as described in the Order Schedule. |
| * There was one objection outstanding at the commencement of the inquiry. |
| **Summary of Decision: The Order is confirmed.** |
|  |

Application for costs

1. An application for costs was made by Mr and Mrs Moore against Hertfordshire County Council (HCC). This application is the subject of a separate Decision.

Procedural Matters

1. I will refer to various points and sections shown on the Order map in my decision, and I have appended a copy of it to the end of my decision for ease of reference. I have also appended a copy of the 1924 1:2500 Ordnance Survey (OS) map showing the field numbers referred to in my decision.
2. I made an unaccompanied site visit on 3 December 2024, where I walked most of Little Berkhamsted Bridleway 18 (LB18) and familiarised myself with the surrounding area. I was unable to walk sections A-B or B-C on this occasion. A second unaccompanied site visit was undertaken on 7 January 2025, where I viewed the Order routes from within the grounds of Breach House (No. 8 Little Berkhamsted Lane (LBL)), Rose Cottage (No. 14-16 LBL), and No. 12 LBL. I appreciate the property owners providing access to view the Order routes from their gardens.
3. For operational reasons, a virtual Inquiry was held to determine the Order rather than an in-person event. The presentation of evidence was completed on 12 December 2024, but some parties requested time to prepare their closing statements. It was also considered that there may not be sufficient time to hear them on the 13 December due to my requirement to finish by 3 pm. The inquiry was adjourned and resumed for closing statements on 21 January 2025.
4. Various spellings of Breach House, Berkhamsted, and Howe Green are used in the documents before me. I will use the current spellings unless quoting directly from documents where I will use the spelling used in that document.

**Preliminary Matters**

1. The decision by HCC to make the Order before me was made on 23 September 2021 at a committee meeting. An earlier decision to make the same Order was made on 12 February 2021 by HCC’s Countryside and Rights of Way Service (the CROWS). Mr and Mrs Moore challenged this decision with an application for a judicial review on two grounds. The first was that HCC had not discovered documents in accordance with section 53(3)(c) of the Wildlife and Countryside Act 1981 (the 1981 Act). The second was that the CROWS did not have delegated authority to make that decision under the delegated authority.
2. Permission to apply for judicial review was granted on 12 May 2021 on the grounds that the issues were clearly arguable and merited consideration at a full hearing. HCC agreed to withdraw their decision on the sole grounds that the CROWS did not have delegated authority.
3. None of the parties have advised that the second decision was challenged. Therefore, it is open to me to determine if the Order should be confirmed, taking into consideration the evidence before me.

The Main Issues

1. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of events under section 53(3)(c)(i) and 53(3)(c)(iii) which requires me to consider if, on the balance of probabilities, the evidence shows a public bridleway which is not shown in the definitive map and statement (DMS) subsists, that there is no public bridleway over land shown in the map as a highway of any description, and that other particulars contained in the map and statement require modification.
2. The main issue before me is effectively the clarification of the alignment of LB18 at its southern end and the addition of a description in the statement for the section north of Little Berkhamsted Bridleway 19 (LB19). It was accepted by the parties that a bridleway exists between LBL and the Hatfield-Hertford Road (the HHR).
3. Paragraph 4.33 of Defra’s Rights of Way Circular (1/09) Guidance for Local Authorities states *‘the evidence needed to remove what is shown as a public right of way from such an authoritative record as the DMS… 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 (DM) was surveyed and made.*
* *The evidence must be of sufficient substance to displace the presumption that the DM is correct.*
* *The evidence must be cogent.’*

1. In considering the evidence, I must have regard to the judgement in *Trevelyan v Secretary of State for the Environment, Transport, and the Regions* [2001] ECWA Civ 266 (*Trevelyan)*. In the judgement of Lord Phillips M.R. found

*‘Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a DM 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 into the balance, if it is to outweigh the initial presumption that the right of way exists.’*

1. I must also have regard to *Norfolk County Council v Secretary of State for Environment, Food and Rural Affairs* [2005] EWHC 119 (Admin) (*Norfolk*). Pitchford J found:

*‘(1) The question whether they are in irreconcilable conflict is a matter of fact and degree. In reaching a conclusion whether the statement can be reconciled with the map, a degree of tolerance is permissible, depending upon the relative particularity and apparent accuracy with which each document is drawn. Extrinsic evidence is not relevant to this exercise save for a comparison between the documents and the situation on the ground at or about the ‘relevant date’.*

*(2) At review, neither the map nor its accompanying statement is conclusive evidence of its contents. In the case of irreconcilable conflict between the map and the statement, there is no evidential presumption that the map is correct and the statement not correct. The conflict is evidence of error in the preparation of the map and statement which displaces the ‘Trevelyan’ presumption. Each should be accorded the weight analysis of the document themselves and the extrinsic evidence, including the situation on the ground at the relevant date, demonstrates is appropriate.’*

1. Given the above, the starting point is that the route in the DMS is presumed to exist. Therefore, anyone contending a mistake has been made needs to provide evidence to demonstrate that, on the balance of probabilities, an error has been made. An error could be demonstrated by establishing that the map and statement are in irreconcilable conflict. If they are, the evidence needs to be examined with appropriate weight given to the documents and the situation on the ground at the relevant date to resolve the conflict. If this is the case, when reviewing the evidence, neither the DM nor DS should be considered to be conclusive.
2. There may also be other evidence that indicates an error in the DMS. *McLeish v Secretary of State for the Environment, Food and Rural Affairs [2024] EWCA Civ 1562* considered the approach taken by an Inspector when determining an Order to modify the line of a path shown on the DM. The Inspector concluded an error had been made to the current DM as the result of copying errors with no intention to make a modification to this route. She also found evidence to indicate the original DM was not correct, as it showed the footpath running through a building. It was held that the Inspector had to reach a conclusion about the correct line of a path, on the balance of probabilities, without the presumption that the DM was correct when she found an error had been made, having had careful regard to all the evidence which was available.
3. Section 32 of the Highways Act 1980 (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 whether or not a way has been dedicated as a highway.
4. User evidence was submitted with the Definitive Map Modification Order Application (DMMOA). HCC is not relying on this evidence to support their case for confirmation of the Order. However, supporters of the Order considered this evidence needed to be taken into account. User evidence 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 has 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.

Reasons

***Background***

1. A DMMOA was made to HCC on 12 January 2020 to record a bridleway along the route shown as C-D-E-B on the Order map. The application was supported by user evidence forms (UEF) and a statement from the applicant. In total 169 UEF were submitted. Correspondence concerning the DMMOA indicated to HCC that there was a potential conflict between the DMS at the southern end of LB18. When investigating the DMMOA, HCC considered the evidence for adding the route applied for and possible errors to the DMS.
2. HCC considered there was sufficient evidence of errors in the Definitive Map and Statement, so they made the Order to record what they considered to be the correct route of LB18. The Order proposes to delete the section of LB18 depicted on the DM between LBL at TL 2905 0788 (point A) and TL 2897 0806 (point B) and add a section between TL 2907 0788 (point C) and TL 2897 0806 (point B). It also proposes to add a description to the DS for LB18 north of LB19 which is not recorded in the DS.

***Discovery of Evidence***

1. In accordance with section 53(3)(c) there must be ‘the discovery by the authority of evidence which (when considered with all other relevant evidence available to them)’ shows that an error has been made for an event to have occurred for the purposes of section 53(2)(b) of the 1981 Act.
2. As set out in *Kotarski v Secretary of State for Environment, Food and Rural Affairs v Devon County Council* [2010] EWHC 1036 (Admin) (*Kotarski*) a *‘precondition for the exercise of the statutory power of review is the discovery of evidence which (when considered with all other relevant evidence) shows that particulars contained in the DMS require modification. The discovery that there is a divergence between the two is plainly the discovery of such evidence, and it is necessary to that it should be characterised as ‘new evidence’’.*
3. If there is no ‘discovery of evidence’ or the evidence does not show the route is incorrectly recorded, there can be no event to have trigged the making of an Order. The evidence must be new in terms of not having previously been considered. It would not be acceptable to simply re-examine the same evidence considered when the DMS was first produced (*Burrows v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1232 (Admin).
4. In *Roxlena Limited v Cumbria County Council* [2019] EWCA Civ 1639 (*Roxlena)*, Lord Justice Lindblom held that ‘*In each case the occurrence of the specified ‘event’ is not simply the ‘discovery’ of the evidence in the sense of its being physically found. It also requires a consideration of that evidence, together with any other relevant evidence available to the surveying authority, which actually ‘shows’ the circumstance in subsection (c)(i), (ii) or (iii) - in effect, therefore, a composite event*.’ If evidence is discovered, it must also be considered along with any other evidence available.
5. The objectors argued there has not been a ‘discovery of evidence’, and they do not consider there to be an ‘irreconcilable conflict’ between the DM and DS. They considered the DS could be plainly read to describe the way shown on the DM having regard to the evidence of the state of the land at the relevant date. They believed HCC failed to read the DS with the necessary ‘degree of tolerance’ and considered extrinsic evidence when concluding that the DM and DS were in conflict.
6. The current 2015 DS states the southern end of LB18 *‘commences at Berkhamsted Lane at the extreme southern corner of O.S. 124 passing between* *Breach House and two cottages to the west across O.S. 124 till it reaches the bridleway gate in the fence by the pond’*. The description of LB18 continues to its junction with LB19, but it is not described north to the HHR. The same description was used in the first DS and all others in between. The original DS had two entries for LB18, a shorter initial entry that ended at the junction with LB19, which was struck through, and a longer replacement entry which described it continuing north of LB19 past Ashfield Cottage, Kennel House, and Howe Green House to the junction with the HHR. When the DMS was reviewed in 1988, the statement only included the shorter description, as does the current DS.
7. The current 2015 DM shows LB18 running between Rose Cottage and No. 12 LBL. The boundary between the two properties is obscured by the Definitive line, but LB18 appears to run between the property boundary and the pre-extension edge of the cottage. It continues north to the junction with LB19, then northwest past Ashfield Farm, Ashfield House, Kennel House, and Howe Green House to the HHR. The original DM produced in 1959 shows the southern end of LB18 further east away from the boundary with Rose Cottage. Numbers 10 and 12 LBL are not shown on the OS base map used in the original DM, but the line shown would run along what is now the boundary of Nos. 10 and 12 LBL passing through one of the cottages. The alignment first appears to change on the Special Review map produced in the late 1970s or early 1980s. The Special Review was abandoned, but this revised line is shown on the 1988 DM and all the DM’s since.
8. HCC has not found any documentation to indicate why the alignment changed and has no evidence of any legal events or Orders to amend the line shown on the DMS. HCC consider it possible that those producing the Special Review map amended the alignment to avoid it running through No. 10 LBL which had been shown on the OS base map since the 1980s, but there is no evidence that an investigation into its actual alignment was undertaken.
9. The objectors suggested the two cottages mentioned in the statement do not have to be read as Nos. 10 and 12 LBL, particularly as they were not shown on the OS base map. Furthermore, Nos. 10 and 12 LBL were originally in the same ownership as Breach House. They considered that *‘Breach House’* could refer to the Breach House Estate including Nos. 10 and 12 LBL rather than Breach House only. They considered the two cottages to the west could be Rose Cottage, particularly as it was allocated two numbers, or the two cottages could have been Rose Cottage and Danes Cottage. The objectors also considered the *‘extreme southern corner of O.S. 124’* to be the southwestern corner of No. 12 LBL at point A which is slightly further south than point C.
10. Supporters of the Order referred to property documents and census records that show Nos. 10 and 12 LBL have existed since 1926, and Rose Cottage has only ever been one dwelling, which was not numbered until after the DMS was produced. Aerial photographs from 1946 and 1947 also show the existence of Nos. 10 and 12 LBL. The supporters considered the description would have said *‘The Breach’* or *‘The Breach Estate’* if Nos. 10 and 12 were being included with Breach House and would have referred to Rose Cottage by name if it had been one of the two cottages.
11. Documents relevant to the layout of the land at the time of the production of the original DMS include the 1946 and 1947 Aerial Photographs, the Parish Survey and map, early drafts of the DS, a 1954 objection to LB18 being shown on the Draft map, a hearing report, site inspection report, and Decision in relation to the objection, other correspondence, UEF, and the original DMS.
12. The objection letter questioned the existence of LB18 south of LB19 and stated the southern end could not be the line shown on the Draft map because it took it *‘through the walled garden of Breach, and through the grounds of the western pair of cottages which has been built there for some twenty years’*. Documents from the production of the DMS refer to Rose Cottage, the drive of Breach House, fields, and the post office. I consider those determining the line to be shown on the DMS and the objector were aware of the layout of the land at the time.
13. Taking into account the investigation at the time, I consider Rose Cottage would have been referred to in the statement if LB18 ran between No. 12 LBL and Rose Cottage or between Rose Cottage and Danes Cottage. I also do not consider Breach House would have been mentioned if LB18 did not run alongside it. Any reasonable person reading the DS would take it to mean that LB18 went past Breach House and Nos.10 and 12 LBL. Therefore, I consider there is sufficient evidence, on the balance of probabilities, of an irreconcilable conflict between the DM and DS. The discovery that there is a difference between the DM and the DS is, in accordance with *Kotarski*, a discovery of new evidence.
14. Furthermore, the alignment of LB18 changes between the original and current DM without a legal event to amend it. I consider discovering a difference in the alignment between the original and current DM amounts to a discovery of evidence of an error in the current DM. The omission of a description of the full length of LB18 from the DS also amounts to a discovery of evidence of an error in the current DS. These changes appear to be drafting errors, but the variations between the original and current DMS are evidence that proper procedures were not followed when producing the current DMS. There is nothing to suggest these errors have previously been considered.
15. The line of LB18 shown on the original DM also ran through a building that had existed *‘for some twenty years’* in 1954 and is visible on the 1947 Aerial photograph. I consider this amounts to a discovery of evidence of an error in the line of LB18 shown on the original DM. This may have been noticed when the Special Review map was produced, but nothing indicates any consideration was given to its correct alignment in accordance with *Roxlena*.
16. I am satisfied there has been a discovery of new and cogent evidence of errors in the original and current DMSs. This evidence undermines the evidential value of both DMSs. As I consider there is irreconcilable conflict between the DM and the DS, there is no presumption that the map is correct. Therefore, I will need to consider all the available evidence to determine, on the balance of probabilities, the correct line of LB18.

***Documentary Evidence***

*Dury and Andrews’ County Map of Hertfordshire 1766*

1. On Dury and Andrew’s map of 1766, a route is shown running from LBL to Bedwell Park Farm and then to Essendon that corresponds largely with Bridleway 17. There is also a route shown which corresponds with the alignment of LB18 north of Ashfield Farm, but it continues east rather than south to LBL. LB19 and the southern end of LB18 are not shown.

*Plan of the Parish of Little Berkhamsted in the County of Hertfordshire 1820*

1. On the 1820 Plan of Little Berkhamsted, most of LB18 is shown running from Ashfield Farm to point B as an enclosed route labelled 312. The accompanying Book of Reference (BoR) describes this parcel as a *‘lane from Howe Green to Pump Field Common’* under the heading *‘Waste’* along with several other roads and lanes. It then widens into a field divided into four parcels by dashed lines and numbered 340 to 343. Parcels 340, 342, and 343 are described in the BoR as *‘part of Pump Field Common’,* but 341 has no description. These four parcels correspond with the grounds and properties currently occupied by Nos. 8 to 16 LBL and the walled garden. Breach House is within Parcel 345 and is described as *‘Cottage and Gardens’* in the BoR. Some of the grounds of Breach House are within field 344 which is described as *‘Long Meadow’*.
2. Parcel 343 largely corresponds with the Order route between point C and a point approximately halfway between points E and B. It would then continue through parcels 342 and 341 to reach point B. There appears to be a gate or similar structure at the southern end of parcel 343 where it joins LBL at point C. No gates are shown along LBL for parcels 340, 341, or 342.

*Little Berkhamsted Tithe Map and Award 1838*

1. A route corresponding with the line of LB18 is shown coloured sienna on the Little Berkhamsted Tithe map. Between the HHR and point B, it is shown as an enclosed route and is numbered 110 between the HHR and Howe Green and 136 between Howe Green and Point B. South of point B, the sienna route corresponds with the route shown on the Order plan between points B and C. This section is shown with a solid and dashed line suggesting there is no boundary along its western edge and is numbered 168. Numbers 10 and 12 LBL, the walled garden, and part of the grounds of Breach House would be within parcel 167, Rose Cottage within parcel 166, and Breach House within parcel 170. There are buildings coloured red within parcels 167 and 170; this normally indicates inhabited buildings on Tithe maps. The rest of the grounds of Breach House are within parcel 169. There is a line across LB18 between parcels 110 and 136 and at point B which are likely to indicate a change in ownership or possibly gates.
2. Plots 110 and 136 are listed in the Tithe Award under the heading *‘Roads and Wastes’* and are described as *‘Road leading from Woolmers to & over How Green’* and *‘Lane from the Green to Pump Field Common’*. Plot 168 is described as *‘Road running through Pump field* allotment’ owned and occupied by Thomas Daniell Esq., Plot 167 as *‘Pump field allotment’*, plot 166 as *‘Dwelling House, Garden and Pump field allotment’*,plot 169 as *‘Long mead’*,and plot 170 as *‘Cottage Tenements’*.
3. The purpose of tithe records was to identify titheable land that was capable of producing crops. They were not produced to record public rights of way, although they can sometimes be helpful in determining the location, existence, and status of such routes.

*Little Berkhamsted Inclosure Map and Award 1842*

1. The Little Berkhamsted Inclosure Award 1842 states the Commissioners did not consider it necessary to set out any new public roads or ways over the lands allotted, divided, and enclosed. All allotments *‘are made and awarded subject to all roads and rights of way legally existing’*.
2. LB18 is shown as an enclosed route and coloured sienna between the HHR Road and point B. It is then shown coloured sienna running along the eastern edge of parcel 42 with a solid and dashed edge suggesting there is no boundary along its western edge. This corresponds with the alignment shown on the Order map between points B and C. Numbers 10 and 12 LBL would be within parcel 42 but no buildings are shown. Rose Cottage and Breach House are both shown coloured red, with Rose Cottage within parcel 41 and Breach House in an unnumbered parcel. Parcels 41 and 42 are described as *‘allotment (in Pump Field)’*. The other routes shown coloured sienna on the Inclosure map are now public highways, with most being roads and one being a bridleway.
3. Parcel 42 is described in the Award as *‘one plot of land containing three Roods and nine perches situate in Pump Field and bounded on the north east and the east by a Road leading into the next mentioned Road on the south by a Road leading from the village of Little Berkhamstead into the London and Hatfield Road and on the west by the allotment to Sarah Ann Brooks’*. Parcel 41 also refers to *‘a road leading into the next mentioned Road’*. Therefore, both parcels describe section B to C as a road that leads into LBL.

*Schedule of Bridle Paths and Footpaths of Little Berkhampstead 1899*

1. The Schedule of Bridle Paths and Footpaths is dated 18 April 1899 and signed by the Chair on behalf of the Parish Council. It states, *‘these seven bridle and sixteen footpaths are the only bridle ways and footpaths in the Parish of Little Berkhampstead to the best of our knowledge and belief’*.
2. Under the heading *‘BRIDLE PATHS’,* three routes are described. LB18 is described as route 2 running *‘from Little Berkhampstead Lane, turning in between the two cottages, so straight to Ashfield Cottages, to Howe Green and out to the Hatfield-Hertford Road. (N.B. This becomes a lane from Howe Green to the Hatfield-Hertford Road).’* LB19 is described as route 3 *‘down Breach Lane to Breach Field, then across the field to the left and into bridleway No.2’*.
3. Numbers 10 and 12 LBL were not built until the 1920s, so they cannot be the cottages referred to in the 1899 Schedule. Breach House is shown on the 1820 plan of Little Berkhamsted and the Tithe Award and is referred to as a cottage in both. Rose Cottage is shown on the 1838 Tithe map. Therefore, the two cottages referred to are likely to be Breach House and Rose Cottage. However, without a map showing the route described in the 1899 Schedule, its alignment cannot be determined.

*Finance Act Records 1910*

1. On the 1910 Finance Act map, LB18 north of LB19 is excluded from the surrounding hereditaments. South of LB19, LB18 would run through hereditament numbers 241 and 133. Rose Cottage is within hereditament 138, and Breach House is within 136 and 137. The Field Books show no deductions are made for public rights of way or users for hereditaments 133, 136, 137 or 138. There is a deduction for parcel 241, but LB19 also runs through this hereditament.
2. Parcel 133 is described in the Field Book as *‘Park, Land’* with three named fields, *‘Seailes field, Bend Field, Seribes Field’*. Field number 124 on the OS base map is described as pasture. Hereditament 136 is a cottage and garden used as the post office, 137 is farm buildings and land, 138 is Rose Cottage, cottages and garden, meadow adjoining, and meadow know as *‘the Orchard’*, and 241 is described as *‘The Breech ~~Lane~~ Land’*.
3. The Finance Act 1910 imposed a tax on the increase in land value, which was payable when the land changed hands. The existence of public rights of way over land reduced its value and the liability for tax, so they were recorded in the survey. The exclusion of a route from the adjoining hereditaments could indicate public rights which were more likely to be vehicular. However, it could also be argued that private rights had the same effect on the land.

*Little Berkhamsted Parish Council Rights of Way Map 1934*

1. All of LB18 is shown with a thick brown line between LBL and the HHR. South of LB19, the line shown differs from the lines shown on the original and current DM. LB19 is shown coloured blue with a thinner line. Where routes are shown on the OS base map, the rights of way marked often deviate from them, including weaving in and out of enclosed tracks. This suggests poor drafting when producing this map.

*Definitive Map and Statement Records*

1. The Ramblers Association undertook a survey of the rights of way in Little Berkhamsted in February 1950 in cooperation with the Parish Council. LB18 is listed as Path 2, *‘Little Berkhamspead Lane, to Ashfield Cottage, Howe Green, and Hatfield-Hertford Road’*. It *‘commences from road between two houses, going through a wicket gate with farmgate alongside, down a wide cartway to farmgate which opens out on a grass field. Forward to hunting gate, with another hunting gate near left. Continue forward over very rough ground to further hunting gate which opens on to a narrow lane (at this spot see new path 19)’*. It also refers to three different scale maps stating, *‘the first length from L Berk’stead Lane to beginning of lane is not shown, but is used by local equestrians’*.
2. The start of the Bridle Road from *‘Berkhampstead Lane to Howe Green and Hatfield-Hertford Road’* is described in the Parish Schedule as running *‘through F.G. and W.G. between cottage and house (“Breach”) along broad track through F.G. to small meadow. Through H.G. in N.W. corner then continue over stubble field, through H.G. (with another H.G. on left) then by grass verge on W. of ploughed field to H.G. and narrow path with high hedges on either side.’*
3. There are two different Parish Survey maps showing LB18. The first shows it with a thick green line partly over and partly alongside the boundary between 12 LBL and Rose Cottage. Numbers 10 and 12 LBL are not shown on the OS base map, but if they were, the line would cover the full width of No. 12 LBL. On the second map, it is shown by a thinner line with a different alignment and terminus. It starts on LBL at a point which, if they were shown, would be close to the boundary between Nos. 10 and 12 LBL. It runs in a northwesterly direction to the boundary between Nos. 12 LBL and Rose Cottage, then crosses it and runs through a field that is now part of Rose Cottage. It continues into the field behind Rose Cottage before crossing the boundary into the field behind Breach House, where it straddles the boundary between two fields. The line of LB18 and other paths on both maps appear to be poorly drafted with lines straddling boundaries, passing in and out of enclosed routes, and deviating from routes shown on the base map.
4. A handwritten draft for the start of LB18 states it *‘commences at junction with Berkhamstead Lane ~~by Little Berkhamstead House then N along Breach Lane~~ W of Rectory thence NW & N to Spinney Houses NW & W to Ashfield Cottage’*. A typed early Draft DS states LB18 has the same wording with the omission of the struck-through section. The struck-through section is the start of LB19, and the Rectory is east of Breach House. Spinney House is not shown on the OS maps but is between LBL and Ashfield Cottages.
5. Following the advertisement of the production of the Draft DMS, a letter of objection dated 7 October 1954 was received on behalf of Mrs K. E. Cole-Hamilton, who had recently purchased Breach, Little Berkhamsted. She was surprised to find a path running through the property and considered this to be incorrect. Two maps were enclosed: a tracing from the 25-inch OS map outlining the property and a 6-inch OS map with two paths shown in red and green. Unfortunately, the map with the two paths marked is not available.
6. Mrs Cole-Hamilton had ridden in the areas since she was young but had only used the bridle path along Breach Lane (LB19) when riding from Little Berkhamsted to How Green. The letter states the *‘southern portion of the path certainly cannot run on the line shown, as you will see from the 25” map enclosed that this would take it through the walled garden of Breach, and through the grounds of the western pair of cottages which has been built there some twenty years, but since the Ordnance Survey.’* It went on to say that no route was shown on the OS map. It was accepted the marking of a path on an OS map is not evidence of a right of way, but they considered the absence of any track or path as clear evidence that no such path existed.
7. Mrs Cole-Hamilton went on to say, *‘the only evidence that can be adduced to the present existence of a bridle path is the recently erected fence at the back of the Breach property and in the fence on the northern boundary of O.S. 124 there are gates at the points marked A and B. These, however, are hunting gates, for the convenience of the local hunt, and used as a concession not as of right, by the hunt and other riders.’* On her map, the Breach property comprised Breach House, No. 10 LBL, the walled garden (which was labelled), and the lower half of field 124 behind Breach House to just north of the pond. Gate A was marked in a fence line just north of the pond southeast of point B.
8. HCC contacted the Parish Council concerning this objection and suggested they send some UEF. Seven forms were returned that referred to LB18 running from LBL to Howe Green via *“Breach”* and Ashfield Cottages, but no maps were received. Several people referred to hand gates *‘near Breach and bottom field’*, *‘on road, just below pond, entrance to Breach Lane’*, and *‘on roadside’*. One person stated LB18 ran from the Post Office that used to be at Breach House. Several people referred to Major Soames, who previously owned the land and never prevented them from using the bridleway.
9. One person also stated the *‘old bridleway was by Rose Cottage, and joined the footpath* (unclear) *Breach at the bottom of the Orchard, belonging to Rose Cottage opposite the pond in the field. I understand that the 1933 survey of footpaths etc. altered the Bridleway to the Breach footpath and no objection was raised within the time limit set for such objection to be lodged, therefore it was placed on the map’*.
10. A hearing was held on 30 May 1956 to hear the objections relating to LB18 concerning the alignment between LBL and LB19, and at Howe Green House. The hearing report states Mrs Cole-Hamilton’s representative suggested the line of the path ran through some cottages and gardens, but this was based on an inaccurate reading of a smaller map. The owner of Howe Green House stated he had used the path, and it did exist. He was not clear where the path came out at Little Berkhamsted, *‘but he thought it ran down the drive to Mrs Cole-Hamilton’s house “The Breach”’*. The 1954 UEF were referred to. Mrs Cole-Hamilton stated she had lived in *“the Breach”* for about two years and people used the path on foot and horseback *‘down the drive of her property, which is the narrow neck of land shown on the Ordnance Map as being the southern portion of O.S.124’* to join LBL. She had not turned anyone back. *‘She did not believe that people used the section of path through O.S. 125 as shown on the Draft Map’*.
11. The hearing report described the area. There was a gate into OS 125 but no sign of a path, gate, or gap in the hedge at its northern end or in the northern corner of OS 129. There was an unlocked gate at the northern end of the drive to Mrs Cole-Hamilton’s house and a defined path to a fence which runs across OS 124 by the pond with an unlocked bridle gate in it. The path is not defined north of here but there is a bridle gate in the northwest corner of OS 124 into OS 105. Mr Rawlinson, who lived at No. 12 LBL and was the gardener for Mrs Cole-Hamilton and Major Soames, stated *‘there is a gate at the north-west corner of O.S. 125 leading into the lane at that point, that he was well aware of the path, he had seen people using it on horse and on foot and that its true course was that it ran on the western side of O.S. 105 and 124, through the bridle gate in the fence by the pond, and out into Berkhamsted Lane down Mrs Cole-Hamilton’s drive’*.
12. The hearing report recommended the path be shown as ‘*leaving Berkhamsted Lane at the extreme southern corner of O.S. 124, passing between Breach House and the two cottages to the west, across O.S. 124 till it reaches the bridle gate in the fence by the pond, then running in a north-westerly direction along the hedge dividing 124 from 129 and 105 from 100 until it rejoins the line of the path shown on the Draft Map. The line on the Draft Map for this section of the path should be deleted’*.
13. A site inspection report of the area on 7 June 1956 provided additional details to those provided in the hearing report. Mrs Cole Hamilton stated *‘that people had used on foot and horse-back F.P. 18 coming out onto Berkhamsted Lane along the red dotted line’* shown on the plan. It stated I *‘made an inspection of the path along the dotted red line, a well metal* (Sic) *carriageway to Mrs Cole-Hamilton’s garage and kitchen garden, takes one to an agricultural gate which is unlocked, at the north-east corner of the cottage gardens, O.S.P. 123. From there a defined path comes to a fence which has been erected across O.S.P 124 by the pond. There is a bridle gate in this fence which is unlocked.’* It also reported that Mr Bowes showed the writer of the report the Little Berkhamsted Parish Award of 1842, which described LB18 as a road. He also produced the Tithe map of 1838 *‘which confirms this is the correct line’*.
14. The notice of the determination concerning the objection that LB18 *‘leading from Little Berkhamsted to Ashfield Cottage is not a public right of way’* found that it was, and should remain on the Provisional Map as on the Draft Map with the following exceptions, *‘at Little Berkhamsted the path should be shown leaving Berkhamsted Lane at the extreme southern corner of O.S.124, passing between Breach House and two cottages to the west, across O.S. 124 till it reaches the bridle gate in the fence by the pond’.* The line shown on the Draft Map for this section should be deleted.
15. Copies of the original Draft and Provisional DMSs are not available. Paragraphs 25 and 26 above describe how LB18 is shown in the original and current DMSs. At the Inquiry, a copy of the original DM was presented that showed LB18 further east than on the original DM. This is believed to be a hand-produced copy of the DM provided to the Parish Council and a copy was provided in the documents.
16. An extract from the Draft Revised Map produced for the Limited Special Review of Roads Used as Public Paths shows LB18 in the same position as on the original DM. The OS base map does not show Nos. 10 and 12 LBL.
17. Numbers 10 and 12 LBL are shown on the OS base map for the Special Review map produced in the late 1970s or early 1980s. LB18 is shown running along the boundary between Rose Cottage, 12 LBL and the walled garden. It also abuts the side of the building of No. 12 LBL suggesting it runs through its garden and the walled garden. The Special Review Statement only uses the shorter description of LB18 used in the original DS omitting the section north of LB19. The Special Review was abandoned in 1984, but HCC stated it was used as the base for the next DMS.
18. After the abandonment of the Special Review, HCC produced a new DMS in 1988 and has periodically reviewed producing new editions in 1989, 1991, 2000, 2005, 2010, and 2015. HCC stated they did not investigate all the rights of way shown in the DMS but updated it to show changes resulting from legal Orders made since the previous edition. They advised that, although care is taken, it is possible for errors to be included or perpetuated. The DM’s all show LB18 on the same line as shown on the Special Review map and the DS’s all use the shorter, struck-out description from the original DS omitting the section north of LB19.

*Ordnance Survey Maps*

1. An OS sketch map circa 1800 shows LB18 between Howe Green and LBL largely as an enclosed route with double solid edges. The very southern end is shown with a solid and dashed line suggesting there is no boundary along its western edge. Breach House is shown and LB18 runs directly along its western boundary corresponding with the route shown on the Order plan between B and C.
2. LB18 is not shown south of point B on the first edition 1800 1:2,500 OS map but would be within parcel 118. Rose Cottage is shown within parcel 107 and Breach House is within parcel 110. Numbers 10 and 12 LBL, Danes Cottage and the walled garden are not shown. The eastern boundary of the Pump field is not shown but several trees are shown on this alignment. The 1889 and 1924 1:2,500 OS maps are similar, but the trees are no longer shown, and the parcel numbers have changed. Rose Cottage is in parcel 126, Breach House is in parcel 123, and the field is now parcel 124. Breach House is also labelled *‘P.O.’* (Post Office) on the 124 OS map. The enclosed track north of B is no longer shown. The 1925 1:10560 and 1960-1971 1:10,000 OS maps show the same as the 1924 OS map but without OS parcel numbers.
3. The 1974 1:2,500 OS map shows Breach House as number 8, Nos. 10 and 12 LBL, Rose Cottage as number 14, and Danes Bungalow. The walled garden is also shown. The southern end of LB18 is not shown.
4. The 1990 Path Finder OS map shows LB18 as a bridleway with green dashed lines. It is not shown on the line recorded on the DM and runs through the grounds of Rose Cottage, and the fields shown as OS parcels 125, 129, 100, and 101 on the 1924 OS map before joining an enclosed track. Breach House, Nos. 10 and 12 LBL, Rose Cottage, Danes Bungalow, and the walled garden are all shown. The lines of public rights of way shown on the Path Finder maps are stated to be derived from the DM and a disclaimer states, *‘the representation on this map of any other road, track or path is no evidence of the existence of a right of way’.*

*Aerial Photographs*

1. Breach House, Nos. 10 and 12 LBL, Rose Cottage, and the walled garden are all visible on the Royal Air Force 1946 aerial photograph. Section C-E is an enclosed route that appears to be surfaced to the middle of the eastern boundary of the walled garden. There is a gap in the middle of the northern boundary of the walled garden, but there do not appear to be any gaps in the southern boundary or the northwestern corner of the walled garden. There does not appear to be any driveway in the garden of No. 12 LBL along section A-B. However, the western side of the walled garden is in the shadow of the boundary between Rose Cottage and No. 12 LBL. North of the walled garden, a route can be seen running across the field along section E-B of the Order route. The situation is the same on the 1947 aerial photograph.
2. Breach House, Nos. 10 and 12 LBL, Rose Cottage, and the walled garden are all visible on the 1970 aerial photograph. The enclosed route along section C-E is visible and appears surfaced to the southeastern corner of the walled garden. There appears to be a vehicle on it. There is a gap at point E and a worn line from there to point B largely corresponding with section E-B. There is a gap in the middle of the northern and middle boundary of the walled garden. There do not appear to be any gaps in the southern boundary or the western side of the middle and northern boundaries of the walled garden. There is a path from LBL to the front of No. 12 LBL, but this is not along section A-B. There does not appear to be a gap in the boundary at point A. The 1980 aerial photograph is largely the same, but there now appears to be a gate at point E and just north of point C.
3. An undated aerial photograph, before the extension of No. 12 LBL, shows the front boundary abutting LBL with no gap at point A. There appears to be a gate and path up to the front door of No. 12 and around the side, but this is not along section A-B. There are outbuildings abutting the walled garden, but there is space between their western edge and the boundary with Rose Cottage. Section C-E is visible as a wide enclosed route, surfaced to the southeast corner of the walled garden, with a gate across it just north of point C, and a car parked to the side near point D on one of the photographs.
4. Two undated aerial photographs, after the extension of No. 12 LBL but before the extension of No. 10 LBL, show the garden of No. 12 surfaced and most of the front hedge removed, but it remains at point A. Section C-E is visible as a wide, enclosed route, surfaced to the southeast corner of the walled garden, with a gate across it just north of point C, and a car parked to the side near point D.
5. The properties, walled garden and enclosed track along section C-E are all visible on the 1990 aerial photograph. Number 12 LBL has been extended to the west and the front boundary has been removed with cars parked in front of the cottage. The 2000, 2010, 2015, and 2019 aerial photographs show largely the same situation, but a clear worn line can be seen across the field behind Breach House on the approximate line of section E-B. Number 10 LBL appears to have been extended on the 2000 aerial photograph, and there appears to be a gate across section C-E just north of point C.

*Conveyance Plan 1961*

1. A plan of Breach House from a 1961 conveyance shows the extent of Breach House and its gardens. Gate posts are indicated just north of point C. Gaps are marked in the middle of its northern boundary and the southeast corner of the walled garden but not at other points in its boundary. LB18 is shown enclosed after point B and has an indicated width of 15’ 6”.

*Planning Documents*

1. A planning application plan of Breach House and Nos. 10 and 12 LBL is similar to the 1961 conveyancing plan, but there now appears to be a gap in the northwestern corner of the walled garden. There is no gap in the southwestern corner where it backs onto No. 12 LBL.
2. A plan attached to a planning application for the retention of a driveway at No. 12 LBL in 1982 indicates the driveway to be immediately in front of the house, which at that point had not been extended to the west. The driveway is not on the line of section A-B. Later planning documents indicate a planning application for a carport was granted in 1984 and a side extension in 1987.

*Site photographs and Google Earth Images*

1. A photograph of point C taken circa 1955 shows two posts, which are likely to be gate posts, but no gate is visible. If one existed at this time, it was open behind a boundary when the photograph was taken. The western post does not appear to be directly alongside the boundary hedge with No. 10 LBL, but the post is on the edge of the photograph.
2. Site photographs dated 26 January 2000 and Google Earth images between October 2008 and April 2019 show a field gate just north of LBL at point C with a small gap alongside and a public bridleway fingerpost that indicates Hertford Road is 1.5 miles away. In the 2000 photograph, another field gate can be seen further along the track near point E. The route is abutted by hedges, fences, and the side of 10 LBL. Cars can be seen in some of the photographs and images along section D-E, but they do not block the full width.
3. On the Google Earth image from September 2020, various signs have appeared on the gate, the gap appears to have been blocked, and the bridleway fingerpost has been removed. It is not possible to read the signs, but they appeared to be the same as those present on my site visits which stated, *‘Private Property No Trespassing’*, *‘CCTV in operation’*, and *‘Beware - Danger Protection Dogs Do Not Enter’*.

*Discovering Walks in Hertfordshire*

1. In Ron Pigram’s book Discovering Walks in Hertfordshire (2nd Edition 1985) walk 4, Stratton’s Folly describes a circular from Hertford. It passes through Little Berkhamsted and is stated to *‘leave the village by the path (signposted ‘Bridleway’) that starts from the wooden gates of Beech House - on the left side of the road as you climb up to the village and just beyond the first pair of white cottages after the lane make a slight right turn. Go between the two houses and over a gate into a field. Continue downhill passing through a wooden gate and along the length of a long narrow meadow. In the far left corner you will discover an elderly wooden gate at a tiny flat bridge*’. This appears to describe the Order route between point C and B and on to the junction with LB19. It also describes LB18 continuing to Howe Green, but the walk leaves it at Ashfield House and follows footpaths to Essendon. The map is not sufficiently detailed to determine the alignment of LB18.

*Survey of Public Rights of Way in Hertfordshire*

1. A survey of LB18 carried out in 1986 states it *‘passes between cottages, passing through two field gates thence NW and N passing W of pond and along field edge to junction with BR19 by footbridge’*. It is described as continuing to Ashfield Farm, Kennel Hall Farm, Howe Green, and the HHR. Sketch maps show the southern end and the section between Ashfield Cottages and the HHR. The southern end is not shown in sufficient detail to identify its alignment.

*Sketch Plan of Mr Michael Cole-Hamilton*

1. The grandson of Mrs Cole-Hamilton lived next door to her at No. 10 LBL between 1954 and 1960. He produced a statement and sketch map of the layout of Breach House and Nos. 10 and 12 LBL as he recollects it in the 1960s. This map shows a gate at points C and E and a small gap at point A. No gaps or gates are indicated in the north or south boundaries of the walled garden along section A-B. The plan shows a wide enclosed route between points C and E, but there is no driveway shown at No. 12 LBL. He is not clear on the position of the western boundary of No. 12 LBL but thinks it possible there was a side entrance. He recalls the once or occasional car parked parallel to the hedge of No. 12 LBL and does not recall any public use of Mrs Cole-Hamilton’s drive. He suggests the narrow neck of land and the driveway his grandmother stated people used is along the western boundary of No. 12 LBL between points A-B rather than section C-E. He also stated the paddock to the rear of Breach House was completely private. However, section A-B runs through the paddock.
2. Mr Cole-Hamilton’s statement suggests his grandmother owned No. 12 LBL, but other evidence shows she did not. He does not appear to have been involved in the hearing or site visit in the 1950s. Therefore, reference to the views of Mrs Cole-Hamilton and her solicitor are second-hand evidence. He also did not appear at the Inquiry, so there was no opportunity to test his evidence. This reduces the weight I can place on it.

***Conclusions on the Documentary Evidence***

*The Omission of a Description of LB18 North of LB19 from the Statement*

1. A route is shown on the current DM between LB19 and the HHR, this section is not described in the current DS. This section was shown and described in the original Definitive Map and Statement, and the documentary evidence indicates the existence of a bridleway. The only objection to this section during the production of the original DMS concerned the alignment shown on the Draft map at Howe Green House. This was clarified at a hearing on 30 May 1954 and the Provisional map and statement were modified accordingly.
2. No objections have been raised to the existence of this section of LB18 or its description in the Order. The only point made is that it could be numbered 19 not 18. However, the numbering of rights of way is an administrative decision for the Surveying Authority. Furthermore, the Order route is numbered 18 on all the DM’s at its northern end where it joins the HHR.
3. The description in the Order of LB18 north of LB19 sufficiently describes the Order route shown on the DM and is the same description used in the original DS. Therefore, I am satisfied that, on the balance of probabilities, the particulars contained in the DS require modification.

*The Alignment of LB18 between LBL and point B*

1. I consider the documentary evidence shows a bridleway exists between LBL and point B. The 1899 Schedule of Bridlepaths and Footpaths, 1910 Finance Act Records, handwritten draft statement, and most OS maps do not provide sufficient evidence to indicate the correct alignment of the Order route between LBL and point B. The 1954 UEF do not have maps, so are of limited assistance in determining the line used, although one person indicates it went to the Post Office that used to be in Breach House.
2. The 1934 Parish Rights of Way map and two Parish Survey maps from the 1950s show different alignments for LB18 and appear to be poorly drafted. Therefore, I do not consider these maps to be of assistance in determining the position of the Order route between LBL and point B.
3. The 1820 Parish plan shows a gate onto LBL at point C, none are shown at point A. LB18 north of point B is described as a lane and is listed under the heading *‘wastes’* with other public highways. On the 1838 Tithe map, most of LB18 was listed under the heading *‘Roads Wastes etc.’* as a road or lane, as were other public roads, suggesting it was considered to be a public highway. Section C-B corresponds largely with plot 168, a *‘Road running through Pump field allotment’,* but it was not listed under the heading *‘Roads Wastes etc.’* suggesting it was not considered to be a public highway at this time. Section B-A would be within Plot 167 *‘Pump field allotment’* but there is no indication of any way running through it.
4. Anyone using the route suggested to be a public highway on the 1820 Parish plan and the Tithe map is unlikely to have turned around and retraced their steps at point B. The most obvious route to use is likely to have been along section C-B to either pass through the gate onto LBL shown on the Parish plan or along the route described on the Tithe map as a road. I consider these plans suggest a route along section C-B with no route along section A-B.
5. The description of parcel 41 in the 1842 Inclosure Award as ‘*bounded… by a road’* would suggest that section C-B is not part of parcel 41. Describing it as a road which connects to LBL also suggests a public highway. Other routes coloured sienna on the Inclosure map are public roads or bridleways today. There are other routes shown uncoloured with double solid edges on the Inclosure map which, with the exception of part of Little Berkhamsted Bridleway 9 and LB19, are not public highways today. I consider the Inclosure Award is suggestive of public rights along section C-B of at least bridleway rights with no route along A-B
6. The Ramblers Survey and Parish Schedule describe the start of LB18 in detail, referring to it as running along a wide cartway or broad track between properties and then into a field with field gates at two points. The 1954 UEF describes gates in similar positions to the Schedules. Mrs Cole-Hamilton's map of her land indicates hunting gates just south of point B that coincides with the position of one of the gates indicated in the Schedules and UEF. The Ramblers referred to the first section not being shown on OS maps. The lack of detailed mapping from the early 1950s makes it more difficult to identify where they are describing on a map. However, aerial photographs from 1946 and 1947 show the situation on the ground around this time.
7. The 1940s aerial photographs show what appears to be a wide drive between points C and E. There does not appear to be a drive through the garden of No. 12 LBL along section A-B, although there are some shadows in this area. There appears to be a narrow path through the middle of the walled garden with a gap in the middle of its northern but not southern boundary. Aerial photographs taken in 1970 and 1980 show a wide drive along section C-E but not along section A-B. They also show several boundaries along section A-B which do not appear to have gates or gaps. Although the later aerial photographs postdate the original DMS, they indicate the situation on the ground remained largely unchanged from the 1940s until the extension to No. 12 LBL. There is sufficient width for a car to park here, but they do not indicate a driveway or vehicular access. Based on the aerial photographs from the 1940s, I consider the route described in the Ramblers Survey and Parish Schedule is more likely to be along section C-D-E-B rather than on the line shown on the current or original DM.
8. The objection letter from Mrs Cole-Hamilton stated LB18 could not run through the grounds of No. 12 LBL or the walled garden. The reports on the hearing and site inspection also suggest that LB18 did not run through the grounds of No.12 LBL or the walled garden. I consider this indicates that LB18 does not run along section A-B as shown on the current DM or along the line shown on the original DM.
9. The hearing and site inspection reports include several references to LB18 running along the driveway of Mrs Cole-Hamilton’s property including by her and Mr Rawlinson (No. 12 LBL). There was considerable discussion during the Inquiry about which drive this could be, with suggestions of it being along the southern end of section A-B, section C-E, or on the east side of Breach House. Documents were provided showing who owned the properties at this time. Some of these documents would not have been available at the time and could be described as *‘extrinsic’*. However, the owners would know the extent of the land they owned, and it appears other parties did too. Mrs Cole-Hamilton also produced a map showing the extent of her land which did not include No. 12 LBL. The site inspection report provides a detailed description of a route stated to be used on foot and horseback by Mrs Cole-Hamilton that was shown with *‘a dotted red line’* on a plan. This route was inspected and stated to be along *‘a metalled carriageway to Mrs Cole-Hamilton’s garage and kitchen garden’* to an unlocked gate *‘at the north-east corner of the cottage gardens, O.S.P 123’*. OS parcel 123 is an outbuilding behind Breach House abutting the east side of section C-E and the north-east corner of the gardens of No. 10 LBL abuts the west side. The aerial photographs show a wide driveway from point C to the rear of Breach house that continues into field 124, but there does not appear to be one at No. 12 LBL. I consider the driveway of Mrs Cole Hamilton’s house, and the route stated to be used and shown with a dotted red line on the plan to be along section C-E.
10. The hearing report recommended the LB18 be shown as ‘*leaving Berkhamsted Lane at the extreme southern corner of O.S. 124’*. There was considerable discussion at the Inquiry about whether this was point A or point C. The OS maps at this time did not show Nos. 10 and 12 LBL. Therefore, the most southerly corner of OS parcel 124 as shown on the maps is point A. However, Nos. 10 and 12 LBL did exist at this time and this area is referred to in the objection letter, hearing report, and site inspection report as two cottages, their grounds and gardens with the walled garden also being referred to. OS parcel 124 was also referred to as Field 124, suggesting the cottages and walled gardens were not considered to be the same parcel number. Section C-E provided access to OS Parcel 124, although it was described as being the driveway to Breach House or Mrs Cole-Hamilton’s property, it could also be described as part of OS parcel 124. If this were the case, the *‘extreme southern corner’* of the field would be point C, with point A being the southwestern corner of No. 12 LBL. I consider this view is supported by Mrs Cole-Hamilton’s description of her drive as *‘a narrow neck of land shown on the Ordnance Map as being the southern portion of O.S. 124.’* I consider this suggests the *‘extreme southern corner’* and the start of LB18 is more likely to be point C.
11. LB18 is described in the hearing recommendation as *‘passing between Breach House and the two cottages to the west, across O.S. 124 till it reaches the bridle gate in the fence by the pond’*. I consider the line this is describing is more likely to be section E-B, particularly as it then describes the section north of point B to LB19 as running alongside the hedge dividing the fields rather than across OS parcel 124. I do not consider the two cottages would have been Rose Cottage and No. 12 LBL, or Rose Cottage and Danes Cottage, as these were not referred to in the reports or objection letter.
12. The site inspection report indicates the line of LB18 is as shown on the 1838 Tithe Map and 1842 Inclosure map. The route shown on both of these plans is along section C-D-E-B.
13. Taking the objection letter, hearing report, and site inspection report together, with the situation on the ground as indicated by the 1940s aerial photographs and Mrs Cole-Hamilton’s map, I consider they indicate LB18 was found to be along section C-D-E-B. I consider the determination decision, original, and current DS all use a description which corresponds with this alignment. The original and current DM show different alignments, one along section A-B and the other on a different alignment through a cottage that existed in the 1950s.
14. Most aerial photographs, most OS maps, the 1961 conveyancing plan, planning documents, site photographs, Google Earth images, Discovering Walks in Hertfordshire, the 1986 path survey, and most of the UEF submitted with the DMMOA post-date the production of the Original Definitive Map and Statement in the 1950s. They show the route used and available on the ground as section C-D-E-B and indicate section A-B did not exist and would have been obstructed at various points. However, as these documents postdate the production of the DMS, I have given them extremely limited weight when determining the correct line of LB18.
15. Taken as a whole, I consider the evidence indicates, on the balance of probabilities, that LB18 exists on the route shown on the Order Plan as the ‘Bridleway to be Added’ along the line C-D-E-B.
16. I do not consider the evidence indicates, on the balance of probabilities, any public rights over the route shown on the Order Plan as the ‘Bridleway to be Deleted’ along the line A-B.

***User Evidence***

1. I have concluded in Paragraph 106 above that the documentary evidence shows, on the balance of probabilities, that LB18 runs along the route C-D-E-B. Therefore, it is not necessary for me to consider if the user evidence demonstrates a presumption of dedication arising from the tests set out in section 31 of the 1980 Act.
2. However, one person who gave evidence at the Inquiry had used LB18 prior to the production of the DMS in the 1940s until 1959. Another person had used it in the 1950s. Both were clear the route they used was C-D-E-B, and neither recalled being challenged when using this route. One stated that Major Soames would give them cake if he saw them. Neither had used section A-B or recalled the existence of a route there.
3. I consider the user evidence from these two people indicates the route used prior to and around the time of the first DMS was along the line C-D-E-B. This supports my conclusions on the documentary evidence.

Overall Conclusions

1. I consider there has been a discovery of cogent evidence of errors in the alignment of LB18 as shown on the original and current DM. I also consider there has been a discovery of cogent evidence of an error in the current DS. This discovery undermines the evidential value of the DMS.
2. Having considered all the available evidence, I have concluded, on the balance of probabilities, that a public bridleway exists on the line C-D-E-B. I have also concluded, on the balance of probabilities, that there is no evidence of a public bridleway on the line A-B. I have also concluded, on the balance of probabilities, that the particulars contained in the DS require modification to include a description of the route shown on the DM between LB19 and the HHR.
3. 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 the Council**

Jake Thorold 39 Essex Chambers Counsel for Hertfordshire County Council

Who Called:

Gavin Harbour-Cooper Senior Definitive Map Officer

**In Support of the Order:**

Richard Chaplin Local resident

Wayne Morris Local resident and owner of number 12

Rodney Pegg Local resident

Doreen Hills Local resident

Kate Nobel Local resident and owner of Danes Farm

Jocelyn Drummond Local resident

Sue Williams Local resident and owner of number 12

Claire Soutter Local resident

Mark Westly Ramblers Hertfordshire and Middlesex District and East Herts Footpath Society

Nigel Adams Former resident of Breach House

Anthony Barrett Local resident

Who Called:

Charles Marques Former resident of Breach House

**In Objection to the Order:**

Ashley Bowes Landmark Chambers Counsel for Mr and Mrs Moore

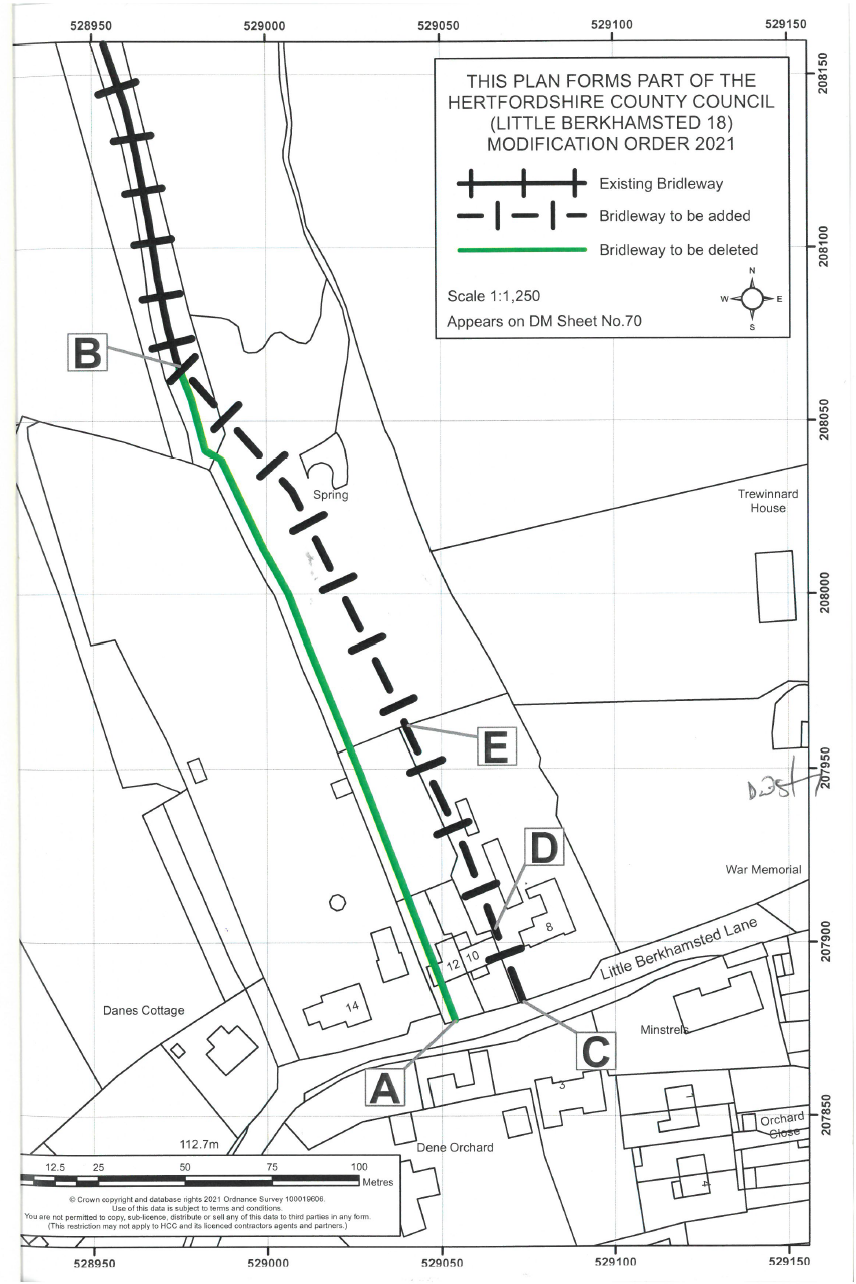
Who Called:

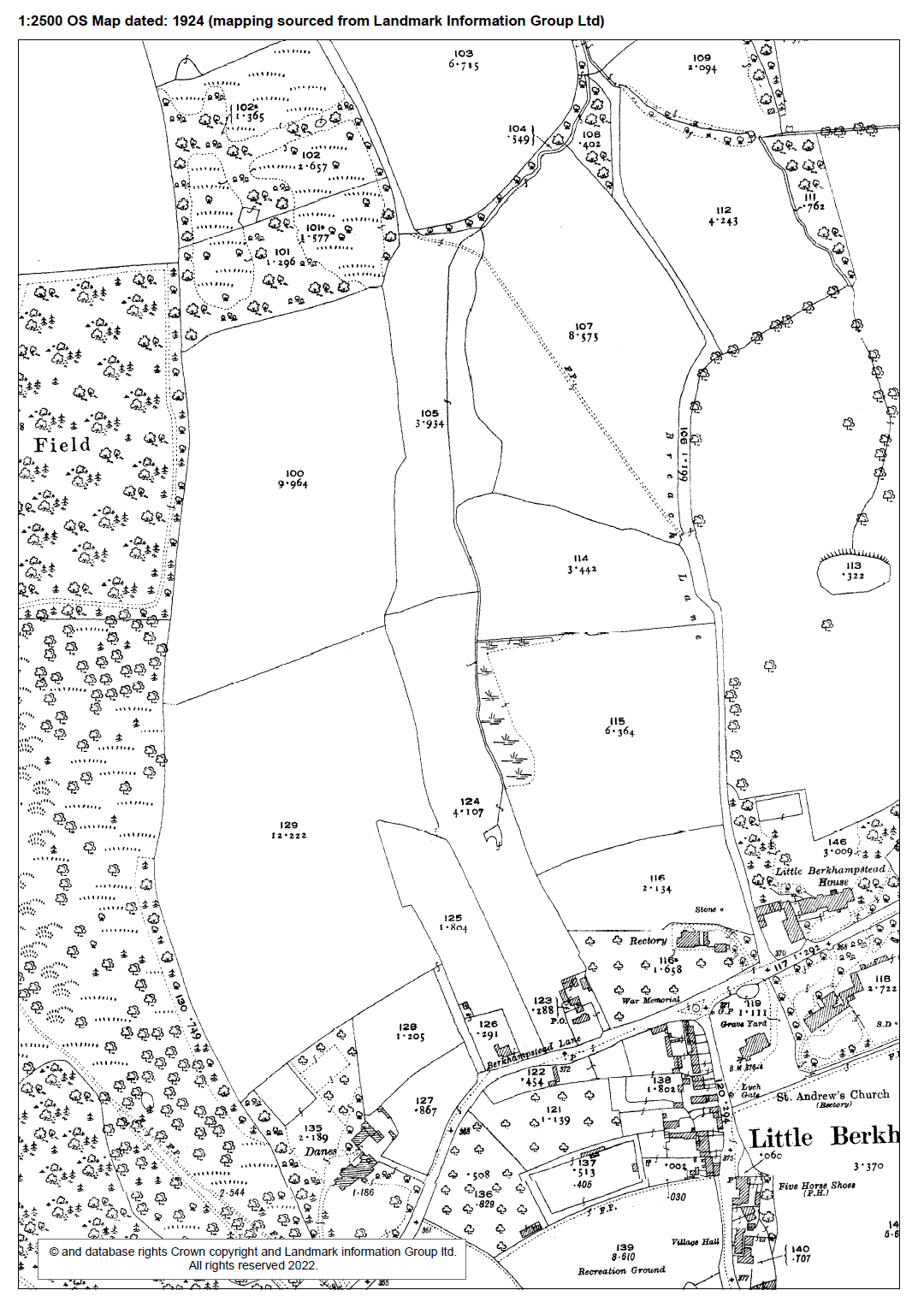
David Moore Owner of Breach House

**DOCUMENTS PRODUCED DURING THE INQUIRY**

1. Supplementary Statement of Case from Dr. P D Wadey
2. Full Copy of the 1899 Schedule of Bridle Paths and Footpaths of Little Berkhamstead
3. Additional Comments on the 1899 Schedule from Mark Westley
4. Additional Comments on the 1899 Schedule from Sue Williams
5. Additional Comments on the 1899 Schedule from Anthony Barrett
6. Additional Comments on the 1899 Schedule from Nigel Adams
7. Additional Comments on the 1899 Schedule from Lance Adams
8. The Queen (oao Norfolk County Council) v The Secretary of State for Environment, Food and Rural Affairs [2005] EWHC 119 (Admin)
9. McLeish v The Secretary of State for Environment, Food and Rural Affairs and Kent County Council [2024] EWCA Civ 1562
10. Closing Statement on Behalf of Mr and Mrs Moore
11. Closing Statement from Mark Westly, East Herts Footpath Society
12. Closing Statement on Behalf of Local Residents from Sue Williams
13. Closing Statement on Behalf of the BHS from Dr. P D Wadey (kindly read out in their absence but Sue Williams)
14. Closing Statement from Anthony Barrett
15. Closing Statement on Behalf of Hertfordshire County Council

**Order Map**

****

****