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| **Order Decision**Site visit made on 22 July 2025 |
| **by D M Young JP BSc (Hons) MPlan MRTPI MIHE** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 02 September 2025** |

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| **Order Ref: ROW/3340076** |
| * This Order is made under Section 53 (2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Hertfordshire County Council (Markyate 25 and Flamstead 58) Modification Order 2018 (“the Order”).
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| * The Order is dated 3 August 2018 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway as shown in the Order plan and described in the Order Schedule.
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| * There were three objections outstanding when the Order was submitted to the Secretary of State.
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| **Summary of Decision: The Order is Confirmed.**  |

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Preliminary Matters

1. The Order seeks to add a restricted byway along Green Lane from Windmill Road to Old Watling Street, Markyate (Order plan attached as Appendix A).
2. The application to add the route to the Definitive Map and Statement (DMS) was made by Dr P Wadey and is dated 23 March 2013. Following investigation by Hertfordshire County Council (the Order Making Authority (OMA)), it was considered there was sufficient evidence to show on the balance of probabilities that the Order route subsists as a restricted byway.
3. I carried out a site visit on 22 July 2025 where I walked along the Order route between points A-B-C.

The Main Issue

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a public right of way subsists.
2. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 (‘the 1980 Act’). This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
3. If statutory dedication is not applicable, I shall consider whether the evidence is supportive of dedication under common law.

**Legislative Framework**

1. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as appropriate, before determining whether a way has been dedicated as a highway.
2. The Natural Environment and Rural Communities Act 2006 (NERC) extinguished rights for mechanically propelled vehicles (MPVs) subject to certain exceptions set out in Section 67 of that Act. I will need to determine if any of these exemptions apply to the Order route.
3. My decision as to whether the Order should be confirmed, or modified, will be taken on the balance of probabilities.

**The Route**

1. The Order Route commences at Point A on Green Lane (Grid Ref: TL 0697 1609. The route has a tarmac surface to the entrance of the property called White Acres. Beyond this point the route has a natural surface and runs through a wooded area. From Point A the Order Route follows Green Lane and proceeds in a north-east direction for approximately 440 metres to Point B (Grid Ref: TL 0723 1643) where it turns to run north-west for approximately 95 metres to join Windmill Road at Point C (Grid Ref: TL 0716 1649).
2. The width of the route varies between 10 and 26 metres which reflects the area shown excluded from hereditaments on the 1910 Finance Act Map. There are no limitations on the route. The first 207m of Green Lane from its junction with Old Watling Street is already part of the ordinary road network.

**The Objections**

1. The objectors (Alan Kind, Andrew Dalton and Mario Costa-Sa) are all members or acting on behalf of the Trail Riders Fellowship (TRF), a campaign group which seeks to conserve the rights of motorcyclists to use Green Roads. The objections raise the following points:
* The Order route is on the Council’s list of streets and therefore the saving provision under Section 67(2)(b) of the 2006 Act is engaged pursuant to the judgment in *Trail Riders Fellowship v. SoS for Environment Food and Rural Affairs* [2017] EWHC (Admin) 1866.
* The Order route has been frequently used by MPVs for many years.
* The Order route forms part of the ordinary road network and has been used regularly by the objector and other motorcyclists since 1995.

Reasons

*Documentary evidence*

1. Dealing with the documentary evidence chronologically, the 1766 Dury & Andrews’ Map described itself as ‘*a Topographical map of Hartford-Shire, from Actual survey; In which is Expressed all the roads, lanes, churches, noblemen and gentlemen’s seats, and every Thing remarkable in the County*’ and showed the layout of roads. The “explanation” (or legend) lists ‘Roads’ in 3 categories – “open”, “one side enclosed by a Hedge”, and “enclosed by Hedges”. It does not appear to show routes which, at the time, were thought to be footpaths or bridleways. The map was produced to be sold to members of the public which mean that it is likely the routes shown were considered public rather than private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.
2. The Dury and Andrews’ Map shows Green Lane running from below the words ‘Wind Mill’ (Point C on the Order Plan to a bend (Point B) then running south-west past the north-west side of ‘Rainbow Hall’ to the junction with Watling Street. It is depicted as a ‘Road enclosed by Hedges’ in a similar manner to Watling Street and the road running west from the centre of ‘Marget Street’ now called Hicks Road.
3. Like the Dury and Andrews’ map, Bryant’s map of 1822 was drawn from an original survey. Its depiction is however more accurate (like an Ordnance Survey map) rather than being schematic. Bryant’s map was sold to members of the public and cost 3-4 guineas making it fairly expensive at the time. The commercial nature of the map means that routes shown are likely to be public unless there is strong contemporary evidence which shows that routes are private.
4. Bryant’s Map shows Green Lane (split over two sheets) and depicts it as ‘*Lanes and Bridle Ways*’ in the same way as other similar roads in the area such as Hicks Road to the north-west. The western end of Green Lane joins Watling Street which is depicted with bolder lines as a ‘Turnpike & Mail Road.’
5. The Flamstead Tithe Map and Tithe Apportionment, 1838shows Green Lane numbered as Plot 1098. Plot 1098 runs between and outside numbered plots on each side, continuing beyond the line of Green Lane and following what is now called Windmill Road. The Apportionment describes Plot 1098 on a page headed ‘Roads Wastes etc’ as: ‘*From the corner of Reddings Field (tithe plot 971) near the Pest House (tithe plot 968) to the Chester Turnpike Road near Dumersey Water*.’ The current ‘Old Watling Street’ is numbered as Plot 1086 and described as ‘Old Chester Turnpike’.
6. The London and Birmingham Railway (Watford to Dunstable) plans of 1845 show the south-western end of Green Lane is shown on the plans numbered as Plot 64 and is labelled ‘To Pepperstock’. The Book of Reference describes Plot 64 as ‘Public Highway’ and gives the owner as ‘*Surveyors of the highways*’. The remainder of Green Lane is not shown on the plans as the purpose of the plans is only to show the section of any routes that will be affected by the proposed railway line.
7. The Ordnance Survey (OS) produced a series of topographic maps at different scales notably the one inch, six inch and 1:2500. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes.
8. The whole of Green Lane including the Order route is shown as a road on the 1st edition (1878-1880) and all subsequent editions of OS mapping. The purpose of these maps was to show physical features on, and the contours of, the ground at the date of the survey. They do not distinguish between public and private rights of way and since 1888 have carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way.
9. The 1910 Finance Act was concerned with mapping lands for the purposes of taxation. Finance Act material consists of three documents, the Field Books, the Valuation Book, and the Increment Value Duty Plan. The Plan was based on an OS Map. The plans are annotated and show land divided into different plot numbers. These plot numbers correspond with entries in the field books. The landowner could claim tax relief for public rights of way and these deductions would be shown in the Field Books. Where a deduction was made, this would appear under public rights of user and in the entry under restrictions.
10. The Inland Revenue Map shows the whole of what is now called Green Lane, annotated as ‘Windmill Road’, uncoloured and excluded from the taxable land. The parish boundary is shown running along Green Lane coloured deep yellow. When considered with all available evidence, this Map provides strong evidence that the whole of Green Lane was a public highway with vehicular status at that time. At paragraph 11.7, the Planning Inspectorate’s ‘Definitive Map Orders: Consistency Guidelines’ states:

“*The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered…. if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion*”.

1. The Hertfordshire Main and County Roads Map shows Green Lane in full, numbered in red as application 573 (HCC11a). On 8th November 1926 the Rural District of Hemel Hempstead (Main Roads) Order was made; Green Lane is shown as record number 1170 transferring maintenance liability to Hertfordshire County Council (HCC) for 1 furlong 44 yards (241 metres) from Watling Street (HCC11b) The description reads “*From Main Road at south-east end of Markyate Steet Village towards Bonnor’s Farm and Pepperstock. Metalled portion only*”. This was later amended by a resolution of the HCC Highways Committee on 3 January 1930, record number 1233, which transferred maintenance liability to HCC for 2 furlongs 60 yards (457metres) from Watling Street (HCC11c). The description reads “*Road from Watling Street at south end of Markyate towards Small Grove Farm*”.
2. Parish surveys were carried out by parish councils under the provisions of the National Parks and Access to the Countryside Act 1949. The survey for Flamstead was also carried out in 1951. The extract (HCC 14b) shows the paths walked in red and the parish boundary in blue. Green Lane is covered by the blue line marking the boundary between the parishes of Markyate and Flamstead. The yellow shading on the Parish Survey for Markyate provides evidence that Green Lane was considered to be a public road.

*Conclusion on Documentary Evidence*

1. When taken together the Dury and Andrews’ and Bryant’s Maps indicate that the Order route had a higher status than a bridleway, most likely a public road. The Tithe Map and Apportionment and Railway plans and Book of Reference indicate the Order route was reputed to be a public road at the time with vehicular rights. The Main and County Road Map provides evidence that an application was made to transfer maintenance liability for Green Lane from the Rural District Council to HCC as a main road with vehicular status. In 1930 the HCC Highways Committee accepted maintenance liability for the first 457 metres of Green Lane from its junction with Watling Street.
2. The 1st edition OS map depicts Green Lane (including the Order Route) as a road and the Inland Revenue Map of 1910 shows the same area uncoloured and excluded from the taxable hereditaments. The Markyate Parish Survey 1951 shows the whole of Green Lane coloured yellow, the same as the other public roads in the area.
3. When taken together the above documentary evidence provides very strong evidence that the Order route was a public highway with vehicular rights.

**User Evidence**

1. Two user evidence forms (UEFs) were submitted during the consultation period. The first from Vernon Glashier believes that the Order route should be recorded as a Byway Open to all Traffic (BOAT) and provides personal testimony of his use of the route on a motorcycle once in 2012 and twice in 2013. Mr Glashier refers to use of the route by other motorcyclists and off-road MPVs since the 1980s. Margaret Peterson believes that the route should be recorded as a bridleway and states she used the route on foot every few months between 1948 and 1965.
2. A statement was provided by Peter Sandiford a local resident. He states that the Order route forms part of a historical ‘green lane’ and he has observed regular use since 1993 by MPVs, including motorcycles and off-road and farm vehicles, horse riders, cyclists and the occasional ramblers.
3. Four additional UEFs were submitted during the objection period all testifying to use of the route by motorcycle. Gavin Seiler (GS) and Chris Hall believe the route is part of the ordinary road network. Russell Segalov, and Paul Laver (PL) believe it should be a BOAT. Two of the users only used the route on a limited number of occasions in 20017 and 2018. GS and PL have used the route from 2017 and 2005 respectively. GS uses the route approximately once a year whereas PL uses it weekly. All four users refer to use of the route by other motorcyclists.

**Conclusions User Evidence**

1. Given the limited number of UEFs, the infrequency of use and differing periods of use, it is difficult to draw any meaningful conclusions from the user evidence. At best, it can be said that the use of the route is sometimes used by MPVs including motorcyclists in addition to more regular use by pedestrians and equestrians.

**NERC**

1. As I have concluded that the Order route has been shown, on the balance of probabilities, to carry public vehicular rights I need to consider the impact of NERC on them. This came into effect on 2 May 2006. From that date an existing public right of way for mechanically propelled vehicles (MPVs) was extinguished if it was over a way which, immediately before commencement of the 2006 Act, was not shown on the DMS, or was shown as either a footpath, bridleway or restricted byway.
2. Section 67(2)(b) extinguishes public rights for MPVs, if immediately before commencement, the route was not shown on the DMS but was shown on the List of Streets (LoS). The LoS from May 2006 shows the south-west section of Green Lane from “*Old Watling Street to Track by Grnfields*” as an unclassified road maintainable at public expense. Another short section of Green Lane has been digitised but contains no data other than the length and does not form part of the 2006 LoS and was not recorded as maintainable at public expense at that time. The remainder of Green Lane (including the Order Route) has not been digitised and is not shown on the 2006 LoS.
3. The Order route is not therefore shown on the LoS as highway maintainable at public expense and given its character cannot be considered part of the ordinary road network. Consequently, public vehicular rights were extinguished by NERC and the Order route should be recorded as a restricted byway.

**Conclusions**

1. The documentary evidence provides very strong evidence that the Order route was a public highway with vehicular rights. The user evidence is scant and is of less assistance but does indicate that the route is mainly used by pedestrians and equestrians with some sporadic use by MPVs. None of the exceptions in Section 67(2) of NERC are applicable in this instance.
2. Taking all these considerations in the round, I consider the synergy of evidence is sufficient to show, on the balance of probabilities, that the right of way described in the Order subsists and that the DMS therefore requires modification.

Other Matters

1. The law does not allow me to consider such matters as the desirability of the route in question or concerns regarding possible future use and management.

Formal Decision

1. The Order is confirmed.

D M Young

INSPECTOR

**Appendix A – Order Plan**

