

Central Bedfordshire Council

Decision by the Assistant Director - Highways under Delegated Powers
14/11/2016

The determination of an application made under Section 53 of the Wildlife and Countryside Act 1981 to upgrade Hyde Footpath No. 14 to a byway open to all traffic, and the addition of a section of Hyde Bridleway No. 6 and Hyde Footpath No. 9 to the Definitive Map for Central Bedfordshire and the addition of a Restricted Byway in Kimpton to the Definitive Map for Hertfordshire.

Report of David Leverington - Rights of Way Team Leader

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Purpose of this report

1. To determine whether either a byway open to all traffic (“BOAT”) should be added to the Definitive Map and Statement over the route occupied by Hyde Footpath No. 14.
2. To determine whether addition sections of Hyde Bridleway No. 6 and Footpath No. 9 should be added to the Definitive Map and Statement to connect the existing bridleway to Chiltern Green Road and the existing footpath to the aforementioned bridleway.

RECOMMENDATIONS

The Assistant Director - Highways is asked to:

1. **Approve the making of an order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 to add an addition section of Hyde Bridleway No. 6 to the Definitive Map and Statement between points X-Y under Section 53(3)(c)(i) of the Act as there is sufficient evidence to reasonably allege that a bridleway subsists between these points.**
- 2 **Approve the making of an order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 to add an addition section of Hyde Footpath No. 9 to the Definitive Map and Statement between points M-N under Section 53(3)(c)(i) of the Act as there is sufficient evidence to reasonably allege that a footpath subsists between these points.**
3. a. **Approve the making of an order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 to modify the**

Definitive Map and Statement for Central Bedfordshire to change the status of Hyde Footpath No. 14 to a restricted byway between points A-B-C under Section 53(3)(c)(ii) of the Act as there is sufficient evidence to show, on the balance of probability, that the path shown on the map ought to be shown as a highway of a different description. The restricted byway would have a width as defined by the western hedge and centreline of the lane (generally between 2 and 5 metres).

- b. Approve the making of an order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement for Hertfordshire under delegated powers by adding a restricted byway in the parish of Kimpton to that map between points A-B under Section 53(3)(c)(i) of the Act as there is sufficient evidence to reasonably allege that a restricted byway subsists between these points. The moiety of the restricted byway would have a width as defined by the eastern hedge and centreline of the lane (generally between 2 and 5 metres).**

Issues

3. Mr. Kevin Marshall of the Trail Riders' Fellowship applied to the former Bedfordshire County Council in October 2002 to modify the Definitive Map and Statement by upgrading Hyde Public Footpath No. 14 to a byway open to all traffic ("BOAT") on the ground that that it is currently recorded incorrectly as a footpath.
4. No parallel application has been made to upgrade the restricted byways in Hertfordshire to BOATs.
5. In December 2008, Ms. Sharon Phipps, a horse rider who rides Footpath No. 14, submitted 13 user evidence forms from fellow riders. Ms. Phipps did not submit an application to modify the Definitive Map - merely the user evidence forms and consequently these can only be taken as supplementary evidence towards the original 2002 application.
6. Hyde Footpath No. 14 is the central section of an ancient lane, known historically as Gypsy Lane or Little Cutts Lane. The northern section of Gypsy Lane connects the southern end of Chiltern Green (point Z) with Footpath No. 14 (point A) and is formed from a section of adopted metalled highway, called Farris Lane. At point A Farris Lane turns aside to the south-west letting Gypsy Lane continue south-

eastwards and then south-westwards astride the county boundary for about a kilometre to terminate on the Hyde-Wheathampstead parish boundary (point C). Between points A and C Footpath No. 14 runs along a narrow lane bounded on either side by banks and hedges. The width of the lane varies between approximately 4 metres and 10 metres wide, although encroachment by trees has reduced the useable width in many places.

7. Hertfordshire County Council's Definitive Map records the section of Gipsy Lane between points B and C as being occupied by Wheathampstead Restricted Byway No. 5 within its half of the lane. A restricted byway is a relatively new class of public right of way for walkers, riders, cyclists and drivers of non-mechanically propelled vehicles (e.g. horse and cart). The public do not have a right to use mechanically-propelled vehicles ("MPVs") on a restricted byway. Between points A and B the lane has no recorded status on the Hertfordshire side.
8. From point C southwards, Wheathampstead Restricted Byway No. 5 occupies the full width of the Gipsy Lane within Hertfordshire for approximately 500 metres to a point where the lane becomes a metalled road. This road continues southwards for approximately 450 metres until it joins the B562 Kimpton Bottom Road near Bower Heath. Gipsy Lane, in its entirety, is approximately 2.5 kilometres long and connects the villages of Chiltern Green in Bedfordshire with Bower Heath in the Hertfordshire.
9. Mr. Marshall's application related to only the upgrading of the central section of Gipsy Lane occupied by Hyde Footpath No. 14. I have, however, investigated the status of rights of way along the entire length of Gipsy Lane as the evidence suggests that this has historically been a through-route and was therefore likely to have had a particular status over its entire length.
10. Mr. Marshall's submission was supported by several maps as evidence of the alleged historic existence of a public vehicular right of way. These maps were:
 - An extract from the Ordnance Survey 25" (2nd Edition) 1898 map;
 - An extract from the 1820–21 Bryant's map of Hertfordshire;
 - An extract from the Dury and Andrews map of 1766;
 - An extract from the Bartholomew's 1/2":1 mile map of 1957;
 - An extract from the Ordnance Survey 1" map (revised July 1928).
11. Mr. Marshall also included testimonials from 17 people whom have stated that they have driven a motorcycle along Hyde Footpath

- No. 14. Since submitting his application, Mr. Marshall has emigrated and as a consequence Mr. Andy Gerrard has taken over Mr. Marshall's application on behalf of the Trail Riders' Fellowship.
12. Hyde Bridleway No. 6 is recorded as running from a point 45 metres to the south of Chiltern Green Road (point Y on the map at Appendix A) in a south-easterly direction along a track on the western edge of Chiltern Green to its junction with Farris Lane on the Bedfordshire-Hertfordshire border at point Z. The bridleway and the connecting strip to Chiltern Green Road is surfaced with aggregate and is used as the principal access for the eight or so properties located on the western edge of the green. The bridleway is signposted from the junction of this track with Chiltern Green Road and is likely to be used by both walkers and horse riders unaware of the fact that the bridleway does not begin at the road junction but further down the track. Chiltern Green is a deregistered village green which is currently recorded as common land.
 13. Hyde Footpath No. 9 runs north-eastwards from East Hyde to terminate at the historic boundary of the southern tip of Chiltern Green where it bulged out to the west (point N on the plan at Appendix A). The recorded line of Bridleway No. 6 runs along the current metalled access track to Laburnam Cottages which lies approximately 17 metres from the margin of the green (point M on the plan). The gap M-N between Footpath No. 9 and Bridleway No. 6 is approximately 17 metres.

Legal and Policy Considerations

14. The legal and policy considerations for this report are detailed at Appendix B. The legal issues are made complex by the effect of the Natural Environment and Rural Communities Act 2006 ("*the 2006 Act*") on claims for BOATs and by the fact that for part of the route Gipsy Lane is recorded as being a footpath in Central Bedfordshire and a restricted byway in Hertfordshire.
15. Section 66 of the 2006 Act extinguished all unrecorded public MPV rights unless excluded or exempted under a number of strict criteria (see Appendix B.6). The application by Mr. Marshall exempts the section of lane within Central Bedfordshire between points A-B-C on the plan at Appendix A from having any unrecorded public MPV right from being extinguished pending the determination of his application.
16. If the application is determined and an order *not* recognising public MPV rights is confirmed then any unrecognised MPV rights would be extinguished under Section 66 at that time.
17. The section of Gipsy Lane in Hertfordshire between points A-B, and its continuation southwards in Hertfordshire, was not the subject of a modification application under the 1981 Act. Consequently any

unrecorded public mechanically-propelled vehicular rights over this land have been extinguished by the 2006 Act. In 2015 Hertfordshire County Council received an application to have the eastern (Hertfordshire) half of Farris Lane between points Z and Hyde Lane added to the Definitive Map and Statement for Hertfordshire as a restricted byway despite it being recorded as an unclassified local road in Central Bedfordshire; this though does not affect the current claim.

18. The historic evidence considered in Appendix C strongly suggests that, historically, a public vehicular route existed over the 2.5 km route between Chiltern Green Road in the north and Kimpton Bottom Road in the south. The effect of the 2006 Act has been to reduce the length of any potential BOAT carrying public MPV rights down to approximately 1000 metres – but only within the Bedfordshire half of Gipsy Lane along Footpath No. 14. MPVs would not be able to proceed into Hertfordshire as the lane is a restricted byway in this county. The Council has a duty under the 1981 Act to record the public rights that the evidence indicate subsist irrespective of whether there is a need for a route of that particular status or not.
19. Once a definitive map modification order is made it is open to public scrutiny and objection. If any objection is not withdrawn the Council must forward the objection and order to the Secretary of State for Environment, Food and Rural Affairs who will appoint an independent objector to determine whether the order should be confirmed. The Inspector can modify the order by changing the status of the order route depending on his interpretation of the evidence, e.g. if the order is to add a BOAT the Inspector could downgrade this to a restricted byway. Conversely, if an order was made for a lower status – such a restricted byway, an objection could see the Inspector potentially upgrading this to a BOAT if they considered the evidence showed MPV rights existed.
20. Consent has been given by Hertfordshire County Council for Central Bedfordshire Council to make a modification order to modify the Definitive Map and Statement for Hertfordshire as part of this proposal.

Option for consideration

21. The prospect of making a potentially unpopular and opposed definitive map modification order to add a half-width dead-end BOAT to the Definitive Map therefore needs to be considered. Should the order for a BOAT be confirmed, the future network management options include:
 - a) subsequently applying to the Magistrates' Court for a court order to stop up public MPV rights over the BOAT on the basis that the route is unnecessary whilst reserving restricted byway rights to match the status of the remainder of the lane in Hertfordshire or
 - b) making a permanent traffic regulation order under the Road Traffic Regulation Act 1984 to restrict use to non-MPV traffic.

22. The alternative is to **not** make an order to record a BOAT with public MPV rights but **instead** to make an order for a lesser status of highway. Making an order to record a restricted byway would be neglecting the Council's duty, as Surveying Authority, but would avoid having to apply to the Magistrates' Court to stop up public MPV rights over any BOAT so added. Whilst being more accepted, both locally and politically, it would prejudice the rights of the applicant. The applicant currently only has a right of appeal under the 1981 Act if the Council determines not to make any order; if an order of a lower status is made there is no right of appeal. The applicant could, however, either object to the order made on the ground that the evidence shows that higher (MPV) rights exist or could apply for judicial review of the Council's decision on the basis that it had erred in law. Moreover, not recording public MPV rights removes the opportunity for the Magistrates' Court to consider whether the BOAT is unnecessary which is one of the court's functions - not the Council's.
23. However, having regard to all of the above issues, it probably is expedient for the Council to consider the recommended alternative of the addition of a restricted byway to the Definitive Maps of both Central Bedfordshire and Hertfordshire.

Evidence

24. The evidence relating to the subsistence of public rights of way is detailed in Appendices C, D and E. The following sections merely summarise the main findings.
25. Early historic maps dating from 1765 onwards continuously depict Gipsy Lane, along which Footpath No. 14 runs, as a route between Chiltern Green in Bedfordshire and Bower Heath in Hertfordshire. It is given the status variously as "*cross road*" (a secondary road), "*lane*", "*fenced ordinary metalled road*", or "*fenced minor road*".
26. The later large-scale Ordnance Survey maps of c.1884 onwards place the county boundary as running along the "*C.R.*" which stands for "*Centre of Road*" - again indicating its physical nature but unfortunately not its status. These maps also identify a small chalk pit dug into the road close to where the lane leaves Bedfordshire suggesting it may have become disused as a thoroughfare by this date.
27. The 1910 Finance Act tax assessment leaves the entire length of Gipsy Lane uncoloured on the valuation map, suggesting it was not liable for tax. The other public roads in the area are also left uncoloured suggesting that these shared a similar tax status with Gipsy Lane. This is consistent with the colour scheme used on the similarly dated private Hyde Estate plan which shows Gipsy Lane in a similar manner to other public roads. Indeed, the Hyde Estate did not apply to the Land Registry to claim ownership to the lane until 2007.

28. Correspondence between the various Parish Councils and County Councils in the 1930s and 1950s indicates that Bridleway No. 6 over Chiltern Green was maintained to some degree by either local Parish Council or by the Hyde Estate, rather than by the former County Council, and was used by cars and lorries. Vehicular use appears to have been in a private capacity (deliveries and visiting), rather than “as of right”. Furthermore, correspondence from the County Council in 1937 records that the Council did not consider the track across the southern half of Chiltern Green to be publicly maintainable as a carriageway at this time.
29. User evidence was provided by 17 motorcyclists and 13 horse riders. The 2006 Act prevents use by post-1930 mechanically-propelled vehicles from being taken into account when considering whether a public right for mechanically-propelled vehicles exists. Consequently the motorcyclists’ statements have not been taken into account beyond indicating that a physical route existed during the period of use.
30. The submitted evidence of equestrian use suggests that horse riders have used Footpath No. 14 for at least 40 years. Many of the riders are associated with, or know of riders from Greenacres Equestrian riding school situated on the northern edge of Harpenden which has used the footpath as one of its regular “riding out” routes since its inception in the 1960’s.
31. None of the horse riders recall in their statements either seeing any prohibitive signs or being prevented from riding the footpath by the actions of The Hyde Estate which owns the surrounding land (and has laid claim to the title for the lane south of point A), or of being given permission to ride along the footpath. There is also no landowner deposit under S.31 of the Highways Act 1980 recording any non-intention to dedicate higher rights along the lane.
32. The user evidence suggests that members of the public consider Footpath No. 14 to be public a right of way for at least horses. However, the historic documentation suggests that higher rights subsist over Footpath No. 14 and potentially over the nearby Bridleway No. 6. Based upon the evidence summarised above and described in Appendices C, D and E a public right of way for mechanically-propelled vehicles can be established on the balance of probability to subsist along the route of Footpath No. 14 between points A-B-C. This right – a byway open to all traffic (“BOAT”) - would subsist over the entire width of the lane and not just over the Bedfordshire half of the lane. However, with the exception of the section of lane occupied by Footpath No. 14, this right has been extinguished by the 2006 Act to leave only the possibility of public rights for non-mechanically-propelled vehicles over the remainder of Gipsy Lane and Bridleway No. 6.

33. Whilst there is sufficient evidence to “*reasonably allege*” that right of way for non-mechanically-propelled vehicles subsists over the route of Bridleway No. 6 between points X-Y, the evidence for upgrading the existing bridleway to a higher status must meet the stricter evidential test of “*balance of probability*”. There is insufficient evidence to demonstrate on the balance of probability that a right of way for non-mechanically-propelled vehicles subsists along the route of Bridleway No. 6 owing to the inconsistent nature of the mapping at this location and the entries within the Parish Council minutes.
34. Based on the evidence primarily relating to the drafting of the Definitive Map (Appendix E) a public bridleway, however, can be reasonably alleged to subsist between points X-Y which would connect Bridleway No. 6 to Chiltern Green Road. The omission of this short section from the Definitive Map appears to have been a drafting error in c.1963-4.
35. In a similar manner, the evidence for the subsistence of the short section of Footpath No. 9 between points M-N comes from the Draft Map of Rights of Way which connected the footpath to Bridleway No. 6. The omission of this short section of footpath from later maps appears to have also been a drafting error.

Consultations

36. The earlier representations received from local councils and local residents are detailed at Appendix F. These all present the view that vehicular use of Gipsy Lane has been minimal since the 1950s. What usage there has been appears to have either been farm and residential traffic over the green or, in recent years, motorcycle use of the footpath. The representations and Parish Council and County Council documents corroborate the use of Footpath No. 14 by horse riders.
37. Both locally and politically there is a significant degree of opposition to public mechanically-propelled vehicular rights being recorded over Hyde Footpath No. 14 - especially since the 2006 Act has rendered the potential BOAT both narrow and a dead-end at the county boundary.
38. However, the proposal to record a restricted byway along Footpath No. 14 and both sides of Gipsy Lane has met universal approval as shown in the more recent responses to a two-part consultation carried out in July and September 2016 consultation. These responses are also included at Appendix F.

Reasons for decision

39. Historic evidence have continuously shown Gipsy Lane as a through route since c.1765. The records record the route as a lane or minor road. User evidence from horse riders suggests that equestrian usage

has been for over 40 years. However this equestrian use on a public carriageway would not gain any additional public rights.

40. Given the proposed management options of seeking to stop up MPV rights if a BOAT is added to the Definitive Map, the proposal is to shorten the process by only recording non-MPV rights by adding a restricted byway to the Definitive Map instead.
41. The route over Chiltern Green appears to have been privately maintained, or maintained by the local parish rather than the highway authority. Vehicular use also seems to have been in a private capacity rather than by the public at large. Maps from the early part of the Definitive Map drafting process also indicate that Bridleway No. 6 was initially connected to Chiltern Green Road but due to a drafting error the northernmost 45 metres was omitted from the 1964 Definitive Map. A similar error omitted the short 17 metre section of Footpath No. 9 from the Definitive Map. The proposal also seeks to redress these omissions.

Council Priorities

42. Central Bedfordshire Council, as the Surveying Authority for the Definitive Map, has a duty to ensure that the map and statement are kept up to date.
43. The proposals would support the following Council priorities:
 - Enhancing Central Bedfordshire.
 - Delivering great residents' services
 - Creating stronger communities
 - An efficient and responsive Council

by providing the best value for money access over a historic lane and preventing its degradation by not including MPV rights. This would facilitate and encourage non-motorised sustainable use of the lane by cyclists and equestrians.

Corporate Implications:

Legal Implications

44. The Council has a statutory duty under the Wildlife and Countryside Act 1981 ("the 1981 Act") to keep the Definitive Map and Statement up-to-date. Any decision in respect of this application would merely be to record (or not) existing rights and would not to create new rights or extinguish existing ones. The 1981 Act requires the Council to weigh the evidence differently depending on the circumstances; with the more lenient test of "*reasonable allegation*" being used for adding a path where none is recorded, with a stricter test of "*balance of probability*" being required to alter the status of an existing path. The Natural Environment and Rural Communities Act 2006 has also affected the

status of the routes investigated by removing unrecorded public mechanically-propelled vehicular rights from those sections not subject to the original 2002 BOAT application.

45. If a definitive map modification order is made, notice of this is advertised and posted on-site. There then follows a statutory objection period. Whilst local residents, parish councils and pressure groups are opposed to the recording of a BOAT, they all seem supportive of the recording of a restricted byway that excludes use by motorised vehicles.
46. If any objections are received and not withdrawn the Council cannot confirm the orders itself and would have to forward them to the Secretary of State for the Environment, Food and Rural Affairs who appoints an independent Inspector to determine whether the orders should be confirmed or not. The Inspector will come to their own view on the status of the public right of way along Gipsy Lane – and may modify the order to record a higher BOAT status - and whether the proposed additional sections of footpath and bridleway should be added.

Financial Implications

47. The Council, as Surveying Authority, has a statutory duty to investigate and modify the Definitive Map and Statement where necessary.
48. The Council will have to advertise a modification order in the local press and, as the order is likely to receive objections, may have to pay for the hire of an appropriate venue for a public inquiry/hearing. It is possible that Counsel might have to be appointed if the case goes to a public inquiry at potential cost of around £3,000.
49. If the order is confirmed some vegetation clearance work on the section of path that is currently a footpath would be required. This is estimated to be less than £800. A suitable structure and signage may needed to be installed at the Farris Lane junction which could cost between £500 and £1100 depending on route status. All costs would be met from the existing Rights of Way Team budget.

Equalities Implications

50. It has been determined in court cases that Modification Order determinations have no Human Rights implications. When the Council determines a Modification Order application made under the primary legislation of the Wildlife and Countryside Act 1981 it is exempted from having to adhere to Section 6(1) of the Human Rights Act 1996 when coming to its decision.
51. The recommendations in the report would not affect the diversity of those entitled to use the right of way and would not directly impact on

the use of the way by any section of the public. If the recommendation is approved, however, some degradation of the route's surface may occur, reducing access for less capable walkers. Maintenance inspections and the possibility of restricting non-motorised traffic could mitigate this possible issue.

Community safety

52. If the recommendations were approved, the possibility of non-mechanically-propelled vehicle-pedestrian, non-MPV-vehicle-horse and pedestrian-horse/cycle interactions could arise on what is a narrow single-track lane. It should be noted, however, that pedestrian-horse/cycle interactions are already likely to occur through the current unofficial equestrian use of the lane. Additionally, slow non-MPV vehicles exiting out of the proposed restricted byway onto Farris Lane could deposit mud on a tight bend which has road safety implications. The possibility of restricting non-MPV traffic by any mechanism would go some way to mitigating these possible issues.

Conclusions

53. Historic and user evidence indicates that Hyde Footpath No. 14 which runs along part of Gipsy Lane is incorrectly recorded on the Definitive Map and Statement and should have a higher status. That status probably is a byway open to all traffic (BOAT) which carries public mechanically-propelled vehicular ("MPV") rights. The effect of the Natural Environment and Rural Communities Act 2006 was to extinguish mechanically-propelled vehicular rights over most of Gipsy Lane to leave a half-width dead-end BOAT. Consequently, it is proposed that a lower status of restricted byway which is accessible to non-mechanically-propelled vehicles be recorded instead to mirror the status of the adjoining parts of Gipsy Lane in Hertfordshire.
54. One of the Hertfordshire sections of Gipsy Lane has no recorded status. Hertfordshire County Council has therefore consented to delegate powers to Central Bedfordshire Council to add a restricted byway to the Hertfordshire side of the lane to enable the full width of the lane to be used by the public.
55. The nearby Hyde Bridleway No. 6 is legally a dead-end as it stops 45 metres short of Chiltern Green Road. Precursors to the first Definitive Map show the bridleway connecting with the road. Consequently it appears the omission of this short section was a 1960s drafting error which should be rectified.
56. The connecting Hyde Footpath No. 9 is legally a dead-end as it terminates at the historic boundary of Chiltern Green (point N) rather than connecting to the nearby Bridleway No. 6 at point M. A precursor

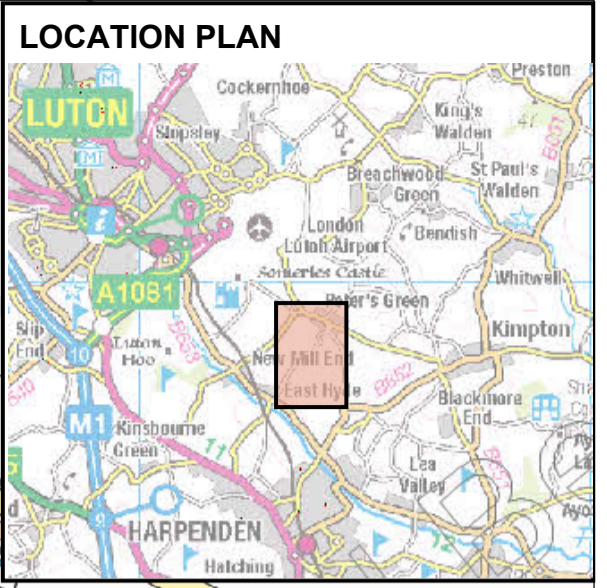
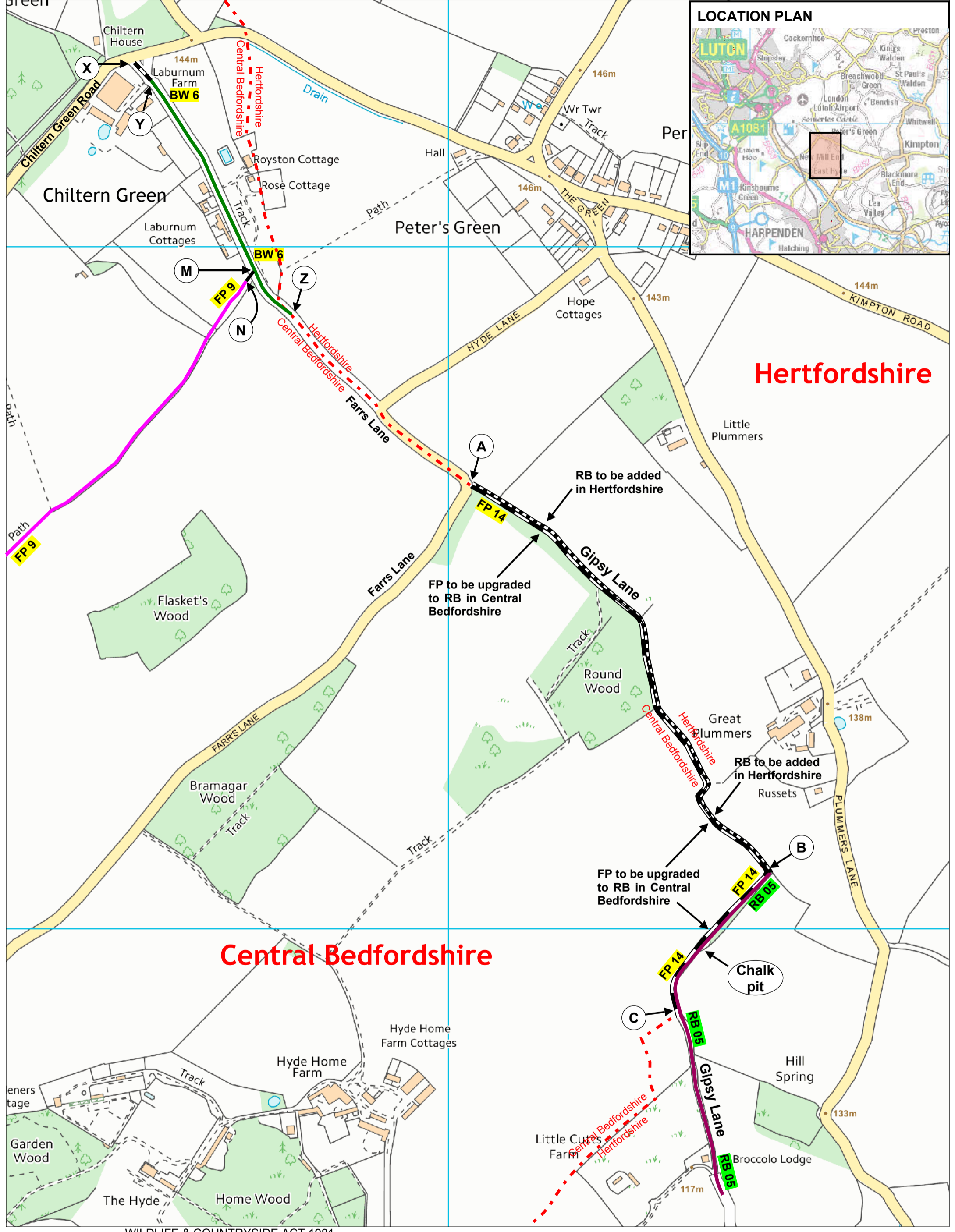
to the first Definitive Map (the Draft Map) shows the footpath connecting with Bridleway No. 6. Consequently it appears the omission of this short section was a 1960s drafting error which should also be rectified.

Appendices

- Appendix A – Plan of proposals
- Appendix B – Legal and Policy Considerations
- Appendix C – Historical Evidence
- Appendix D – User Evidence
- Appendix E – The Definitive Map Process
- Appendix F – Consultation Responses

Background Papers

None

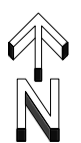


WILDLIFE & COUNTRYSIDE ACT 1981
Proposed upgrading of Hyde Footpath No. 14 to a Restricted Byway and the addition to the Definitive Map of a new part of Hyde Bridleway No. 6, Footpath No. 9 and a Restricted Byway in Kimpton (Hertfordshire)

Footpath No.14 to be upgraded to restricted byway	A B C
Part of Bridleway No.6 to be added	X Y
Part of Footpath No. 9 to be added	M N
Restricted byway to be added in Kimpton (Hertfordshire)	A B

Unaffected footpath	
Unaffected bridleway	
Unaffected restricted byway (in Hertfordshire)	

Date: 04 March 2016
 Scale: 1:5000@A3
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 Central Bedfordshire Council.



Legal and Policy Considerations

- B.1. Section 53(5) of the Wildlife and Countryside Act 1981 (*“the 1981 Act”*) permits any person to apply to Central Bedfordshire Council for an order to modify the Definitive Map and Statement under subsection 53(3) of the 1981 Act if they consider these are wrong and need correcting.
- B.2. Section 53(2) of the 1981 Act places a duty on the Council, as the Surveying Authority, to modify the Definitive Map and Statement upon the occurrence of certain events detailed in Section 53(3) of the 1981 Act. Section 53(3)(c) gives details of some of the events which require the Council to modify the Definitive Map and Statement:
- “53(3)(c) The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-*
- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies;*
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description...;”*
- B.3. As Hyde Footpath No. 14 and Bridleway No. 6 are already shown on the Definitive Map and Statement Section 53(3)(c)(ii) has to be used to modify the status of the existing paths. This utilises a higher civil standard of proof – that of *“balance of probability”* rather than the lower standard of *“reasonable allegation”* which is applicable to the proposed addition of additional parts of Bridleway No. 6 and Footpath No. 9 (between points X-Y and M-N respectively).
- B.4. The judgment of *Wills J. in Eyre v New Forest Highways Board (1892 - JP517)* (the *“Tinkers Lane”* case) has demonstrated that it is possible for public rights to be acknowledged (and hence added to the Definitive Map) along a route where supporting cogent evidence is absent. In his summing up of the *“Tinkers Lane”* case Wills J. stated:
- “...what would be the meaning in a country place like that of a highway which ends in a cul-de-sac, and ends at a gate on to a common? Such things exist in large towns... ..but whoever found such a thing in a country district like this, where one of the public, if there were any public who wanted to use it at all, would drive up to that gate for the purposes of driving back down again?... ..it is just an observation that if you think Tinker's Lane was a public highway, an old and ancient public highway, why should it be so unless it leads across that common to some of those places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a highway unless it was to pass over from that side of the country to this side of the country... ..it would take a great deal to persuade me that it was possible that that state of*

things should coexist with no public way across the little piece of green...".

The clarification in law of such a “through-route” assumption therefore supports the recording of a highway connecting other highways where there is no evidence for part of the route if this would otherwise have to be recorded as a dead-end.

- B.5. The alignment of a consistent route over Chiltern Green is hard to pinpoint, although it is clear that a consistent route between Chiltern Green Road (point X) and Farris Lane (point Z) has existed since at least 1924¹. When addressed with trying to ascertain a single route of a private easement James L.J. stated in the case of *Wimbledon and Putney Commons Conservators v Dixon*, 1875, that:

“...If from one terminus to another, say from a gate here to the end of a road 200 yards off, persons have found their way from time immemorial across a common, although sometimes going by one track and sometimes by another; I am not prepared to say that a right of road across the common from one terminus to another may not be validly claimed...”.

The most likely route for this right of way is along the alignment occupied by Bridleway No. 6.

- B.6. Section 67 of the Natural Environment and Rural Communities Act 2006 (“*the 2006 Act*”) has the effect of extinguishing unrecorded public mechanically-propelled vehicular rights unless certain criteria are met.

67 Ending of certain existing unrecorded public rights of way

- (1) *An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—*

- (a) was not shown in a definitive map and statement, or*
- (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.*

But this is subject to subsections (2) to (8).

- (2) *Subsection (1) does not apply to an existing public right of way if—*

- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,*
- (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),*
- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for*

¹ As evidenced by the Ordnance Survey 1:2500 scale map of 1924.

mechanically propelled vehicles,

- (d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
 - (e) *it was created by virtue of use by such vehicles during a period ending before 1st December 1930.*
- (3) *Subsection (1) does not apply to an existing public right of way over a way if—*
 - (a) *before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*
 - (b) *before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*
 - (c) *before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—*
 - (i) *was reasonably necessary to enable that person to obtain access to the land, or*
 - (ii) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.*
- (4) *“The relevant date” means—*
 - (a) *in relation to England, 20th January 2005;*
 - (b) *in relation to Wales, 19th May 2005.*
- (5) *Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies—*
 - (a) *was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*
 - (b) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,*

the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.
- (6) *For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.*
- (7) *For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant*

whether the person was, immediately before commencement, in fact—

(a) exercising the existing public right of way, or

(b) able to exercise it.

(8)+ (9) (omitted)

- B.7. The cases of *Winchester College, Warden & Fellows of & Anor R (on the application of) v Food & Rural Affairs [2007] EWHC 2786 (Admin)* and *Winchester College & Anor, R (on the application of) v Secretary of State for Environment, Food and Rural Affairs [2008] EWCA Civ 431* were based on the legal challenge of whether a definitive map modification order application for a byway open to all traffic (“BOAT”) met the criteria to be considered to be exempt from extinguishment under Sections 67(3)(a) and (b) and 67(6) of the 2006 Act. The cases hinged on whether the applications met the all the requirements of Paragraph 1 of Schedule 14 to the 1981 Act. Namely:

Form of applications

- 1 *An application shall be made in the prescribed form and shall be accompanied by—*
 - (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and*
 - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.*

Notice of applications

- 2 (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.*
- (2) *If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.*
- (3) *When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.*
- (4) *Every notice or certificate under this paragraph shall be in the prescribed form.*

- B.8. Regulation 8 of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (“*the 1993 Regulations*”), which were made

under Schedule 14 (and other provisions), describes the prescribed form of an application and provides that:

8 (1) *An application for a modification order shall be in the form set out in Schedule 7 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.*

- B.9. Schedule 7 contains the prescribed form of the application for a modification order and specifies that the applicant attaches “...copies of the following documentary evidence (including statements of witnesses) in support of this application...”.
- B.10. Mr. Marshall’s (the applicant) 2002 modification application was supported by several photocopied map extracts as evidence of the alleged historic existence of a public vehicular right of way as well as 15 statements of use by fellow riders. The location map was a photocopied extract of a 1:25,000 scale map and thus complies with the recent judgment of Supperstone J. in *The Queen (on the application of) Trail Riders' Fellowship and David Leonard Tilbury v Dorset County Council [2012] EWHC 2634 (Admin)*. Which was subsequently upheld in *R (on the application of Trail Riders Fellowship and another) v Dorset County Council [2015] UKSC 18* by the Supreme Court. The claim map indicated the claimed route by yellow highlighting. Notice of the application was served on the Farm Manager of Hyde Home Farm who passed it on to Cluttons who acted (at that time) as the land agents for S. G. Hambros Trust Company Ltd. - The Hyde Estate.
- B.11. In my opinion, Mr. Marshall’s application meets the criteria set out in Schedule 14 to the 1981 Act to be considered a valid application. Any unrecorded public vehicular rights are thus exempted from extinguishment as per Section 67 of the 2006 Act for the purposes of the application.
- B.12. The documentary evidence suggests that a public right of way for mechanically-propelled vehicles (“MPVs”) subsisted from Little Cutts Farm in the parish of Wheathampstead in Hertfordshire over Wheathampstead Restricted Byway No. 5 and along Hyde Footpath No. 14 and then along Fars Lane and thence over Chiltern Green to Chiltern Green Road (points C-B-A-Z-Y-X). However, as the sections of potential byway to the north and south of Footpath No. 14 were not included in Mr. Marshall’s 2002 application these cannot be exempted under Section 67(3) of the 2006 Act. I cannot find any evidence to show that these sections meet the criteria for exemption under any of the other sections of Section 67 of the 2006 Act and consequently must conclude that as of 2nd May 2006 (the commencement date for Section 67 of the 2006 Act) public mechanically-propelled vehicular rights have been extinguished between points X-Y-Z and over the Hertfordshire side of Gipsy Lane between points A-B-C and its continuation southwards as Wheathampstead Restricted Byway No. 5.
- B.13. The 2006 Act may have extinguished public mechanically-propelled vehicular rights but the 2006 Act would not have any impact on the subsistence of public non-mechanically-propelled vehicular rights. Such rights can be

recorded on the Definitive Map and Statement as a “restricted byway” - a new classification of public right of way for non-mechanically-propelled vehicles introduced by the Countryside and Rights of Way Act 2000.

- B.14. Subsection 67(2)(e) of the 2006 Act (see above) addresses the issue of user evidence relating to use of a way by mechanically-propelled vehicles. Any motorised use after 1930 cannot count towards the acquisition of public vehicular rights. As such, all of the testimonials provided by the applicant have to be disregarded when establishing whether public mechanically-propelled vehicular rights subsist over Footpath No. 14.
- B.15. A highway can be created either by statute or can be dedicated by the landowner. Dedication of a highway may be:
- a) “Express” - where the owner openly declares that he is dedicating the way as a public highway;
 - b) “Deemed” - where public user is for a period of 20 years or more. This is regulated by Section 31 of the Highways Act 1980 (“the 1980 Act”);
 - c) “Inferred” - where user has been sufficient to infer that the way has been dedicated as a public highway at common law.
- B.16. Where a highway has been dedicated, the dedication must be accepted by the public. This is usually demonstrated by their use of the route.
- B.17. Section 31 of the 1980 Act describes how a highway may be deemed to have been dedicated by the landowner - as indicated by long use of the way by the public. It states:
- “1) *Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
 - 2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question...*
 - 3) *Where the owner of the land...*
 - (a) *has erected... ..a notice inconsistent with the dedication of the way as a highway...*

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.
 - 4) *In the case of land in possession of a tenant... ..[the owner] shall, notwithstanding the existence of the tenancy, have a right to place and maintain such a notice...*
 - 5) *Where a notice... ..is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in absence of proof of a contrary intention, sufficient evidence to negative the intention of... [the*

landowner] ...to dedicate the way as a highway.

- 6) *An owner of land may at any time deposit with the appropriate council...a map... and... statement indicating what ways (if any) over the land he admits to having been dedicated as highways... to the effect that no additional way... has been dedicated as a highway since the date of the deposit... [and is] sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway...*
- (7A) *Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.*
- (7B) *The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.*
- 8) *Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over land as a highway if the existence of a highway would be incompatible with those purposes...*
- 9) *Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less than 20 years..."*

B.18. It is important to determine that use of a way by the public has been “as of right”, which has been defined, as in the judgment of Pill J. in *O’Keefe v. Secretary of State for the Environment (1996)*, as being “...*nec vi, nec clam, nec precario*...” which equates to “...without force, without stealth and without permission...”. Use of land by the permission of the owner or on the basis that the user is visiting or in the employment of the landowner would generally mean that the use was not “as of right”.

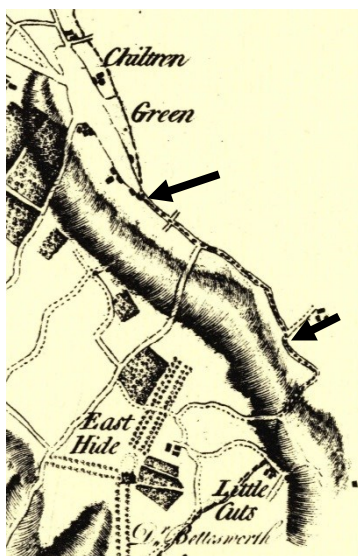
B.19. For a way to be deemed to have been dedicated under the terms of Section 31 the following applies:

- It must have been enjoyed by the public at large and not, for example, only by tenants or employees of the landowner or residents of a particular street. Use must be of sufficient frequency to amount to enjoyment by the public; use by one or two people once or twice a year would not suffice.
- Use of the way must be as of right and not merely with the landowner’s permission.
- Use must be without interruption, i.e. without physical challenge by the landowner or someone acting lawfully on the landowner’s behalf.
- Use must be for a full period of 20 years counted backwards from the date on which the right of the public to use the way was brought into question.
- The owners must be capable of dedicating a public right of way across the land.

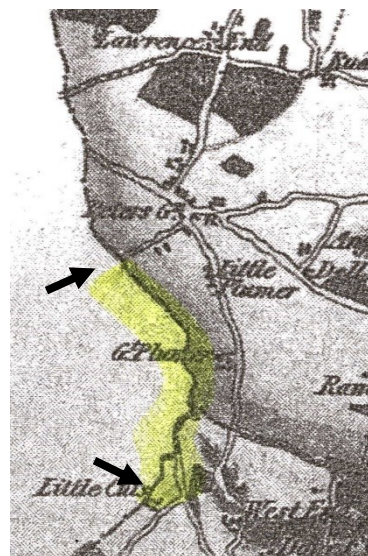
- There must not be sufficient evidence to indicate that the landowner had no intention to dedicate a public right of way over their land. Any evidence of a non-intention to dedicate should be overt and contemporaneous with the use and does not have to be continuous throughout the 20 years of use.
- B.20. A dedication at common law does not require a calling into question or for there to be any specific period of public user. At common law, the question of dedication is one of fact. Public user is no more than evidence, and is not conclusive evidence. Any presumption that public user is the result of a previous dedication can be rebutted.
- B.21. At common law a high way cannot be extinguished except by a legal order. Consequently any subsisting public rights would endure, irrespective of the passage of time or any recording of a lesser status along the route.

Historical Evidence

- C.1. Jefferys' Map of the County of Bedfordshire of 1765. This map is generally recognized as the first significant printed map of Bedfordshire and shows how the early road network looked before the proliferation of canals, railways and the wholesale re-designing of Bedfordshire by Acts of Inclosure. The map shows a lane running along the current route of Gipsy Lane. The lane is portrayed as being a mixture of enclosed, part enclosed and open roadway, as shown by pecked and solid lines. Several other lanes can be seen connecting with Gipsy Lane: one from the east from the homestead at Great Plummers; one from the south-west leading to East Hyde and another from the west leading from Hyde Farm Cottages.
- C.2. Andrew Dury and John Andrews' map of 1766. This map is entitled "A topographic map of Hertfordshire from an actual survey; in which is expressed all the Roads, lanes, Churches, Noblemen and Gentlemen's seats and everything remarkable in the County; together with the Divisions of the Parishes". The map shows roads as: enclosed by hedges; open on one side; or open on both sides. No differentiation appears to be made between private and public roads. The map shows a fenced road running between Chiltern Green in Bedfordshire and Bower Heath in Hertfordshire along the route of Gipsy Lane.
- C.3. Bryant's Maps. A. Bryant produced maps of the counties of Hertfordshire in 1822 and of Bedfordshire in 1826. Bryant defined six categories of road using three different widths of parallel lines, these were: Turnpike and Mail roads; Good Cross and Driving roads; and Lanes & Bridle Ways. The major four types of road were drawn with a thickened shaded line on one side. Lanes & Bridle Ways were drawn with lines of equal weight on either side (or pecked if not fenced or hedged). Bryant must have realised that using the same symbol for Lanes and Bridleways which have differing statuses could be confusing as he has used the annotation "Bridle Way" or "Bridle Road" at least 18 times over the map of Bedfordshire. Other annotations include occasional road names, or "Footway", or even "Private Way".



Jefferys' 1765 map of Bedfordshire



Bryant's 1822 map of Hertfordshire



Bryant's 1826 map of Bedfordshire

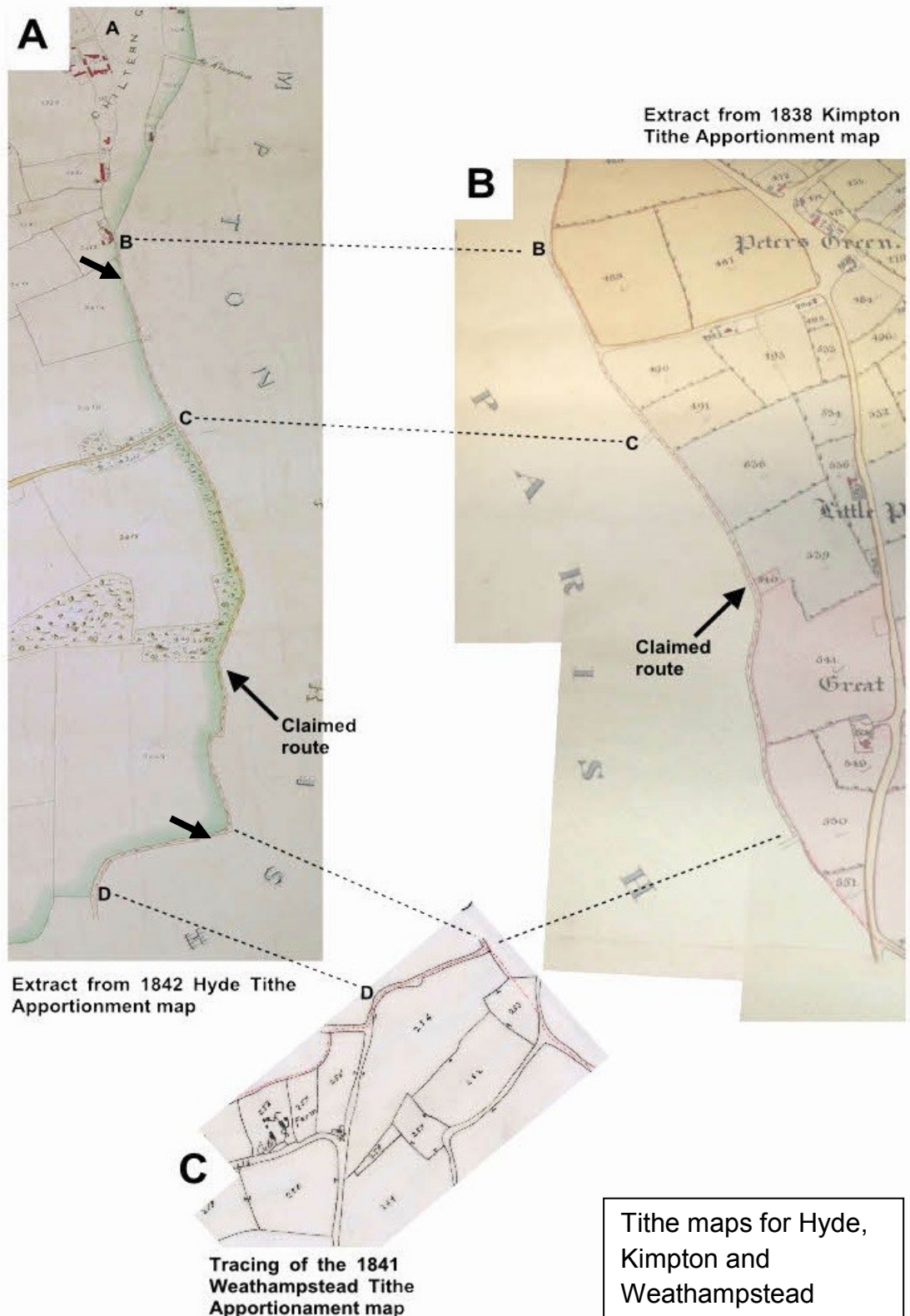
- C.4. Bryant's Map of the County of Hertfordshire of 1822. This map shows Gipsy Lane running northwards from the road junction near Dane Farm at Kimpton Bottom to and then, for a small distance, along the parish boundary before entering Bedfordshire at which point its continuation is not depicted. The road appears to be depicted in an identical manner to other roads known to be public carriageways although its exact status is unclear.
- C.5. Bryant's Map of the County of Bedfordshire of 1826. This map clearly shows, according to the key, a "*lane & bridleway*" running southwards from Chiltern Green along the County Boundary and into Hertfordshire. The lack of the annotation "*Bridleway*" on the "*lane & bridleway*" here suggests that this route was considered by Bryant to be a lane with associated vehicular rights. The lane is depicted on the map as then turning south-westwards towards Hyde Mill and becoming a "*good cross or driving road*" at Great Cutts Farm.
- C.6. Greenwood's Map of the County of Bedfordshire of 1825. This is another comparatively large-scale county map. This map depicts Gipsy Lane as a "*cross road*" (secondary road) running just inside the county boundary between Chiltern Green and Great Cutts Farmstead. The junction to Danes End Farm is omitted possibly as this is in Hertfordshire although other junctions into Hertfordshire are present. Farris Lane is also depicted in an identical manner to Gipsy Lane suggesting that these two roads had the same status.
- C.7. The Ordnance Survey 1" Map of c.1834. The "Old Series" maps were the product of the earlier comprehensive surveying at a scale of 2":1 mile by the Board of Ordnance. This was the first country-wide Ordnance Survey map and was published at the 1":1 mile scale. The map shows a wide range of features, including field boundaries and at least three styles of road can be discerned: "*Turnpike and Main roads*", "*Ordinary roads*", and "*Minor roads*". These can all be either fenced or unfenced as indicated by solid or double-pecked lines respectively. Gipsy Lane is depicted on this map as running from the southern tip of Chiltern Green to its junction with the B562 Harpenden-Kimpton Road as either a "*fenced ordinary metalled road*" or a "*fenced minor road*". Its status is difficult to ascertain owing to the width of the county boundary symbol running along the road at this point. Gipsy Lane is depicted continuing northwards over the green at Chiltern Green as an "*unfenced minor road*".



Ordnance Survey 1" Map of c.1834

- C.8. Schmollinger's Map of the County of Bedfordshire of 1837. This map was engraved by Moules English Counties by W. Schmollinger and portrays major and ordinary roads but does not depict bridleways or footpaths. Other noted features on the map are villages and churches. The map depicts a road running south-eastwards close to, and then across the County Boundary into Hertfordshire. This map also shows Farris Lane branching off from Gipsy Lane and running towards West Hyde.
- C.9. Deposited Railway Plan. Before a new railway could be built in the mid 19th century Parliamentary approval was required in the form of a private Act. As part of the process leading up to the granting of a private Act the proposed route of the railway had to be surveyed and plans produced. The plan for a railway passing just to the north of Chiltern Green depicts the green in its entirety. Chiltern Green Road is depicted on the plan but there is no track shown running southwards over the green to Farris Lane.
- C.10. Parish Tithe Apportionments. Tithe was a system of taxation where one tenth of the annual produce of the land was given to the church. The Tithe Commutation Act of 1836 allowed all tithes to be converted into a fixed money rent. The tithe apportionment (the division of taxes between the landowners and tenants) was a well publicised statutory document providing conclusive evidence relating to tithes. Strictly the tithe map is only an explanation of the apportionment and is not a statutory document. It can, however, indicate the position of some public rights of way and the position of public roads. Tithe was due on all cultivated land, arable, pasture and woodland, and so lands not tithable were shown including wasteland and definite roads. It is important to recognise that, whilst tithe maps are good evidence for the route of a road, they may not always reveal its status. Roads on some tithe maps may be coloured sepia to indicate their public status but this can vary from map to map (see maps overleaf).
- C.11. Kimpton Tithe Apportionment of 1837 and Map of 1838. This map shows the parish/county boundary running along the centre of Gipsy Lane. The lane is left uncoloured in direct contrast to the other public roads which are coloured yellow on the map and appear to have a red edging. None of the roads or lanes are numbered, unlike the surrounding fields which are both numbered and coloured to show tithe apportionment and ownership. The difference in colouration would appear to suggest that Gipsy Lane in Kimpton parish was regarded differently to other public roads in 1838.
- C.12. Weathampstead Tithe Apportionment of 1841. The copy of the tithe map viewed was uncoloured and so any differentiation between Gipsy Lane and other public roads was not apparent. The lane appears to be free from tithe as no tithe apportionment numbers are present along its length. Other roads on the map also do not have apportionment numbers indicating that they were also not considered for valuation.
- C.13. Hyde Tithe Apportionment of 1842. This map clearly shows a lane running from the southern extremity of Chiltern Green along the county boundary and into Hertfordshire along the current course of Footpath No. 14. Several of the roads are coloured on this map. Those roads known to be public, including Farris Lane, are coloured an orange hue. Gipsy Lane, however, appears to be coloured pale yellow and is depicted as being slightly narrower. Those roads crossing the county boundary into Hertfordshire are left uncoloured – the Kimpton road from Chiltern Green is annotated with the words "To Kimpton". The east-west Kimpton road which bisects the green at Chiltern Green is depicted but is left uncoloured. All the fields shown on the map are numbered, and therefore have been in some

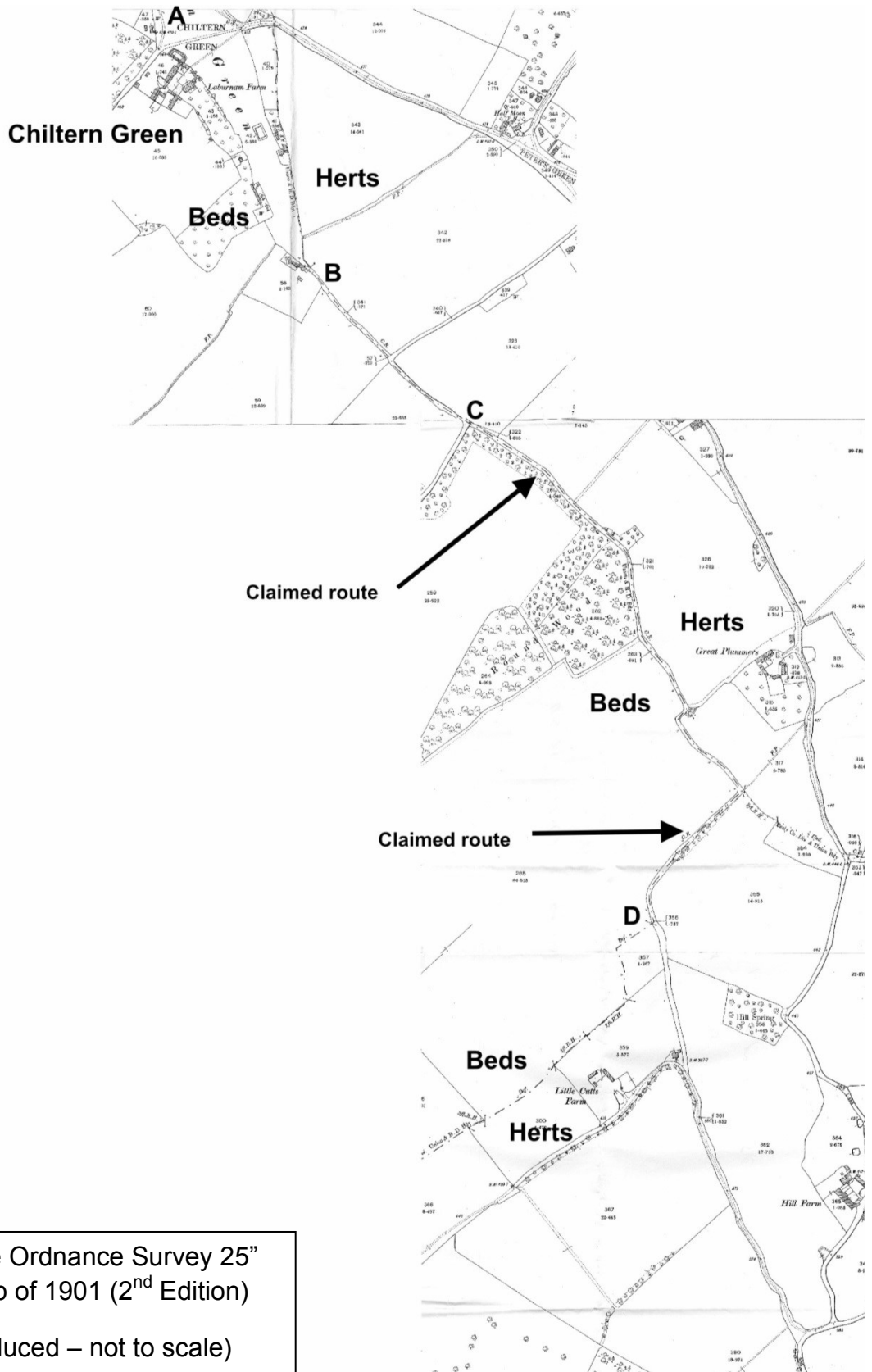
way apportioned for tithes. Chiltern Green is notable in that it does not have an apportionment number. Similarly none of the roads known to be public or Gipsy Lane have apportionment numbers indicating that they were not tithable.



C.14. Weller & Bartholomew's Map of the County of Bedfordshire of 1866. This map clearly shows, according to the key, a minor road running south-eastwards from

Chiltern Green along the County Boundary and into Hertfordshire before turning south-westwards. Two lanes are shown branching off Gipsy Lane. One in Hertfordshire which heads towards East Hyde, and one in Bedfordshire, Farris Lane, which also heads towards East Hyde.

- C.15. The Ordnance Survey 6" map of 1884 (1st Edition). This map shows Gipsy Lane as a road in a manner similar to the parallel route which runs between Peter's Green and Bower Heath through Little Plummers and Great Plummers. The county boundary runs along Gipsy Lane for much of its length and is annotated with "C.R." which is the standard Ordnance Survey abbreviation for "Centre of Road" to show the boundary runs along the centre of the road at this point. Close to the point where the lane leaves Bedfordshire a small quarry is annotated with the words "Old Chalk Pit". Two large ponds are visible on the southern half of the green as is a fenced-off area on the eastern side of the green suggesting that any through-route was constrained to the western side of the green. Two tracks are depicted on the map crossing the green. These are the Kimpton Road and a short length of track from Laburnum Farm to the eastern side of the green. It should be noted that the Ordnance Survey published their maps with the disclaimer that the depiction of a road or track on a map is not evidence of the existence of a public right of way. This map therefore only shows the physical character of the lane and tracks in question.
- C.16. The Ordnance Survey 25" map of 1901 (2nd Edition). (shown overleaf) This map shows Gipsy Lane as a 6-11 metre wide, closed-in track (solid lines rather than pecked lines). The county boundary is depicted as running down the centre of the lane and is again annotated "C.R." for "*Centre of Road*" and relates to the position of the county boundary at this point. The more major public roads on this map appear to have a thickened line on one side. Gipsy Lane, in contrast, is depicted with lines of equal weight and does not show a central used section of road (depicted by pecked lines), although this may just suggest that the entire width of the lane was used. The lane does have its own field numbers and acreages but does not seem to be tied (bracketed) to any adjacent land. A small quarry or excavation, the chalk pit, is again depicted on the map across almost the entire width of the lane not far from its southern end. Two tracks are depicted on the map crossing Chiltern Green; these are the Kimpton Road and a short length of track from Laburnum Farm to the eastern side of the green. No road or track is shown running between the Kimpton Road and Farris Lane. Two large ponds are depicted on the southern half of the green as is a fenced-off, or hedged, area on the eastern side of the green.
- C.17. The 1910 Finance Act. The enactment of the 1910 Finance Act required that all lands be surveyed for tax purposes. The tax assessors recorded land valuations in a Valuation Book referenced to an accompanying map. The map and Valuation Book were statutory documents produced to ensure that taxation on the land could be fairly, and accurately, apportioned. These documents were available for public scrutiny and appeal and misrepresentation of land holdings was a criminal offence. Public roads were not taxable and hence were not included in the survey. To this end public roads usually are shown as uncoloured. The assessments of land value under the 1910 Finance Act have been divided into tax districts and, as such, there are three separate sets of valuations for lands adjoining Gipsy Lane. The records for land value assessments in Hertfordshire relate to valuations for the tax districts of Kimpton and Harpenden Urban which includes Wheathampstead parish, whereas those in Bedfordshire relate solely to Hyde parish.

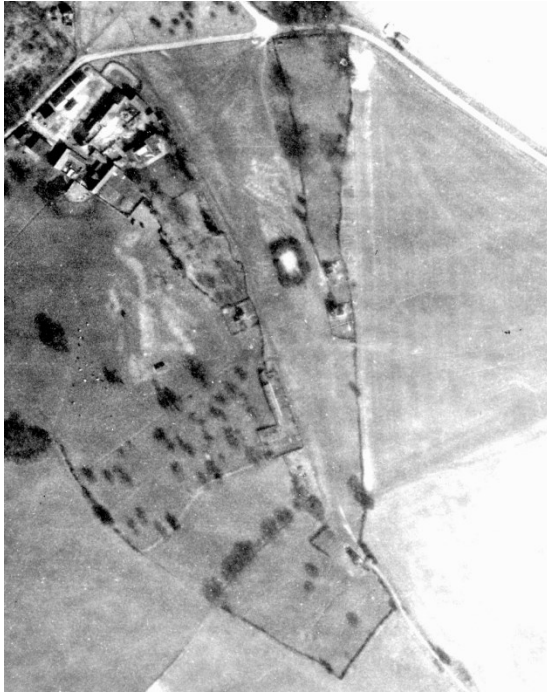


The Ordnance Survey 25" map of 1901 (2nd Edition)
(reduced – not to scale)

C.18. In Hertfordshire the 1910 Finance Act map depicts the county boundary in yellow on that part of the map where land in Hertfordshire is included in the Bedfordshire valuation. With the exception of one small section of Gipsy Lane, the entire length between Chiltern Green and the B562 Harpenden-Kimpton Road is uncoloured. It is my opinion that the small coloured section is coloured due to a drafting error and corresponds to a section of public road. All the other

public roads in the vicinity of Peter's Green and Bower Heath are also uncoloured. Public roads were left uncoloured as they were considered by the tax assessors to have no tax value. South of Little Cuts Farm, Gipsy Lane runs entirely in Hertfordshire and is bounded on either side by colour-bounded hereditaments (taxable property capable of being passed to an heir). The lane here also remains uncoloured.

- C.19. In the 1910 Hyde valuation, Chiltern Green is recorded as being a "village green" in the ownership of Lady Wernhu and records a rebate for public rights of way of £258 which was a considerable sum for such a small area. The lands abutting Gipsy Lane to the south of the village green, which include various woods, Laburnum Farm and East Hyde Farm, are recorded as being in the ownership of the Trustees of the Ames Estate (now the Hyde Estate). This large area of land records a combined rebate for public rights of way of £200. The entire length of Gipsy Lane is uncoloured, indicating it was not liable for tax. The other public roads in the area are also left uncoloured suggesting that these shared a similar tax status with Gipsy Lane in that they were non-taxable under either Section 35 of the 1910 Act relating to rating authorities or under Section 25(4) of that Act for land used for the purposes of "*streets, roads, paths... and other open areas for the use of the public...*"
- C.20. The 1919 Hyde Estate Map. This map appears to be based on the earlier 1901 25":1 mile Ordnance Survey map and uses pink shading to mark the extent of the Hyde Estate. Public carriageways are coloured yellow, irrespective of whether they run through or outside the Estate. Gipsy Lane is coloured yellow in a similar manner to these roads and is shown as running from the southern tip of Chiltern Green to Bower Heath suggesting this was considered a public road by the owners of the estate. Private estate roads are also depicted on the map (and identified in the accompanying schedule). However, these private roads are coloured pink in the same manner as the abutting estate grounds.
- C.21. The Ordnance Survey 25" map of 1924 (3rd Edition). This map uses double-pecked lines to depict a track crossing the southern portion of Chiltern Green along what is approximately the current line of Bridleway No. 6. Another track, leading to the east side of the green from Laburnum Farm, is also shown, as are two ponds – one central to the green and one abutting Laburnum Farm. The width between the pecked lines indicates that these were cart tracks rather than either footpaths or a bridleways.
- C.22. Aerial photographs of 1954 and 1969 both show a number of routes across the grassed area of the southern half of Chiltern Green (see below). In 1954 the route of Bridleway No. 6 appears to be an unsurfaced grassed track which has a junction with Chiltern Green Road close to the now infilled Laburnum Farm pond. By 1969 this track had been surfaced as indicated by the white colour of the track (arrowed). Two other distinct grassed tracks also have a junction with Chiltern Green at the green's north-eastern corner. One of the tracks joins Bridleway No. 6 at Laburnum Cottages, the other runs past Royston and Rose Cottages to join Farris Lane.



1954 Aerial photograph of Chiltern Green 1969 Aerial photograph of Chiltern Green

- C.23. The Kimpton Parish Council minutes for are retained by the parish and have not been investigated. The Hertfordshire Archives index for Wheathampstead Parish Council highlighted only a few entries, none of which appeared to be connected with highways or rights of way along the county boundary.
- C.24. The Hyde Parish Council minutes contain four significant entries relating to rights of way; these are:
- a. June 9th 1937 – the clerk was instructed to write to Bedfordshire County Council’s Surveyor about the poor state of repair of three footpaths and requesting the repair of a footpath from the gate of Laburnum Farm and beyond the cottage to the Lane [most likely Farris Lane].
 - b. September 15th 1937 – a letter received from the County Surveyor saying that Bedfordshire County Council was not responsible for the repairs detailed above.
 - c. March 9th 1938 – local workmen were asked to tender for footpath repair work at Chiltern Green.
 - d. June 8th 1938 – a report that the Chiltern Green footpaths are now repaired.
 - e. A letter written by the clerk of Hyde Parish Council to the Deputy County Surveyor in May 1951 refers to a cart way across Chiltern Green between Laburnum Farm and Farris Lane. The letter states that “...*this was originally a footpath and in 1933 the Parish Council repaired the footpath with clinkers at the request of the occupants of Laburnum Cottages. Since then, however, the ‘footpath’ has gradually been made into a cartway through tradesmen taking their vehicles along to the cottages and by milk lorries and other heavy vehicles going across the Green to and from Farris Lane... ..my Council would be glad if you could assist them by advising whether it is their responsibility to carry out repairs... ..of what is now virtually a road...*”.
 - f. The minutes of Hyde Parish Council suggest that the Parish Council maintained a footpath across Chiltern Green in the late 1930s.

- C.25. A record in the notes made by the Deputy County Surveyor on inspecting the roads taken over by the County Council from Luton Rural District Council in April 1930 states that “...*East Hyde Road – (to Chiltern Green): ? Make arrangement with Herts. respecting the half length along which the county boundary runs near Chiltern Green.[this may be Farris Lane] Mr. Pickering does not metal road across Chiltern Green. He has put a small quantity of ashes on it but does not consider it his liability – the estate have usually done it...*”. This road is most probably the metalled track used by Bridleway No. 6.
- C.26. Quarter Sessions. No records have come to light in either the Bedfordshire Quarter Sessions or the Hertfordshire Quarter Sessions relating to the stopping-up of any public rights over Chiltern Green or along Gipsy Lane.
- C.27. District Highway Records. The indexes for the highway records for both the St. Albans Rural District and the Hitchin Rural District were checked and nothing concerning Gipsy Lane was discovered. Similarly, nothing came to light when the indexes to the records of the Bedfordshire Highways Boards were examined.
- C.28. The County Surveyor for Hertfordshire wrote to the County Surveyor at Bedfordshire County Council in January 1956 concerning what is now Wheathampstead Restricted Byway No. 5. The County Surveyor stated “...*This part of a road used as a public path (CRB) recorded on my Council’s Draft Map... ..I shall be glad to know whether you have considered that this track comes under the category of an ancient green lane within the meaning of the Highways Act 1835, or that it has been scheduled on your Draft Map as a road used as a public path (C.R.B.)...*”. The term “C.R.B.” is short for “Cart Road used as Bridleway” and does not preclude the existence of vehicular rights.
- C.29. In response, in February 1956, the Bedfordshire County Surveyor wrote to the County Surveyor of Hertfordshire stating that “...*in relation to Gipsy Lane... ..the short length... ..across Chiltern Green... ..is alleged to be a carriage road mainly used as a footpath.....[the section to the south] is already established an unclassified County road, half the width of which is maintained by this County and the other half by Hertfordshire. The remaining length... ..I would treat as an ancient green lane as it has not been scheduled or included in any other category on our Draft Map...*”.
- C.30. Hertfordshire County Council has a record of all the highways maintainable at public expense (List of Streets) as of 1st May 2006. Wheathampstead Restricted Byway No. 5 is not recorded on this list and is thus not exempted from the effects of Section 67 of the 2006 Act.
- C.31. Land Registry Documentation. A 2005 Land Registry search has shown that the land is unregistered. Unregistered land can simply mean that the land has not been changed ownership since it became compulsory to register land ownership changes under the Land Registration Act 1925 which, for Bedfordshire, was in approximately 1966. It should be noted, however, that many public roads are also unregistered. In October 2007 The Hyde Estate formally claimed Title to the lane containing Footpath No. 14 with the Land Registry.
- C.32. List of Streets. With the exception of the small metalled section of Farris Lane to the north of Footpath No. 14, neither Central Bedfordshire Council nor Hertfordshire County Council have any record of any of the route between Chiltern Green Road and Little Cutts Farm on their respective Lists of Streets.

User Evidence

- D 1. Mr. Marshall submitted 17 testimonies from motorcyclists to the effect that they have used a motorcycle along the route of Footpath No. 14. I wrote to those motorcyclists whom had given a contact address requesting further details of their use of the route. Of the three responses received: one could not remember using the footpath in question; one had used it infrequently since 1996; and the other had used it on several occasions between 2000 and 2002. The third respondent also alleged that the route was on the List of Streets.
- D 2. The Natural Environment and Rural Communities Act 2006 prevented use by mechanically-propelled vehicles after 1930 from being taken into account when considering whether a public right for mechanically-propelled vehicles exists. Consequently the 17 testimonies have to be disregarded for the purposes of this report, beyond providing evidence that the route was usable at this time.
- D 3. In April 1973 the Auto-Cycle Union (South Midland Centre) wrote to Bedfordshire County Council regarding the overgrown state of Gipsy Lane. The Union stated that *"...This road was at one time used a great deal by members of the Dunstable & District MCC but in recent years has become overgrown... ..members of the Berkhamstead Club as well as some from the Trail riders fellowship have passed through... ..and... ..carried out some clearance work last winter. It is now a pleasant ride – a fact noted by the horse riders who now make extensive use of it..."*.
- D 4. Ms. Sharon Phipps, a horse rider who rides Footpath No. 14, subsequently submitted 13 user evidence forms from fellow riders. Ms. Phipps did not submit an application to modify the Definitive Map - merely the user evidence forms and consequently these can only be taken as supplementary evidence towards the original 2002 TRF application.
- D 5. The submitted evidence of equestrian use suggests that horse riders have used Footpath No. 14 for at least 40 years, see table overleaf. Many of the riders are associated with, or know of riders from Greenacres Equestrian riding school situated on the northern edge of Harpenden which has used the footpath as one of its regular "riding out" routes since its inception in the 1960s.
- D 6. Three of the riders who submitted evidence forms considered the route to be a BOAT. The other 14 considered it to be a bridleway. Their impressions of the status of this route are, however immaterial. None of the riders recall either seeing any prohibitive signs or being prevented from riding the footpath due to closure of the route or challenges by The Hyde Estate, their agents or tenants.
- D 7. A break down of the evidence shows that three riders had a significant break in their use of the route, but have at least 16 years continuous use prior to 1996. Another four riders have between 8 and 15 years of continuous use; and five riders have more than twenty years continuous use of the footpath on horse back.

User evidence submitted by Ms. Sharon Phipps

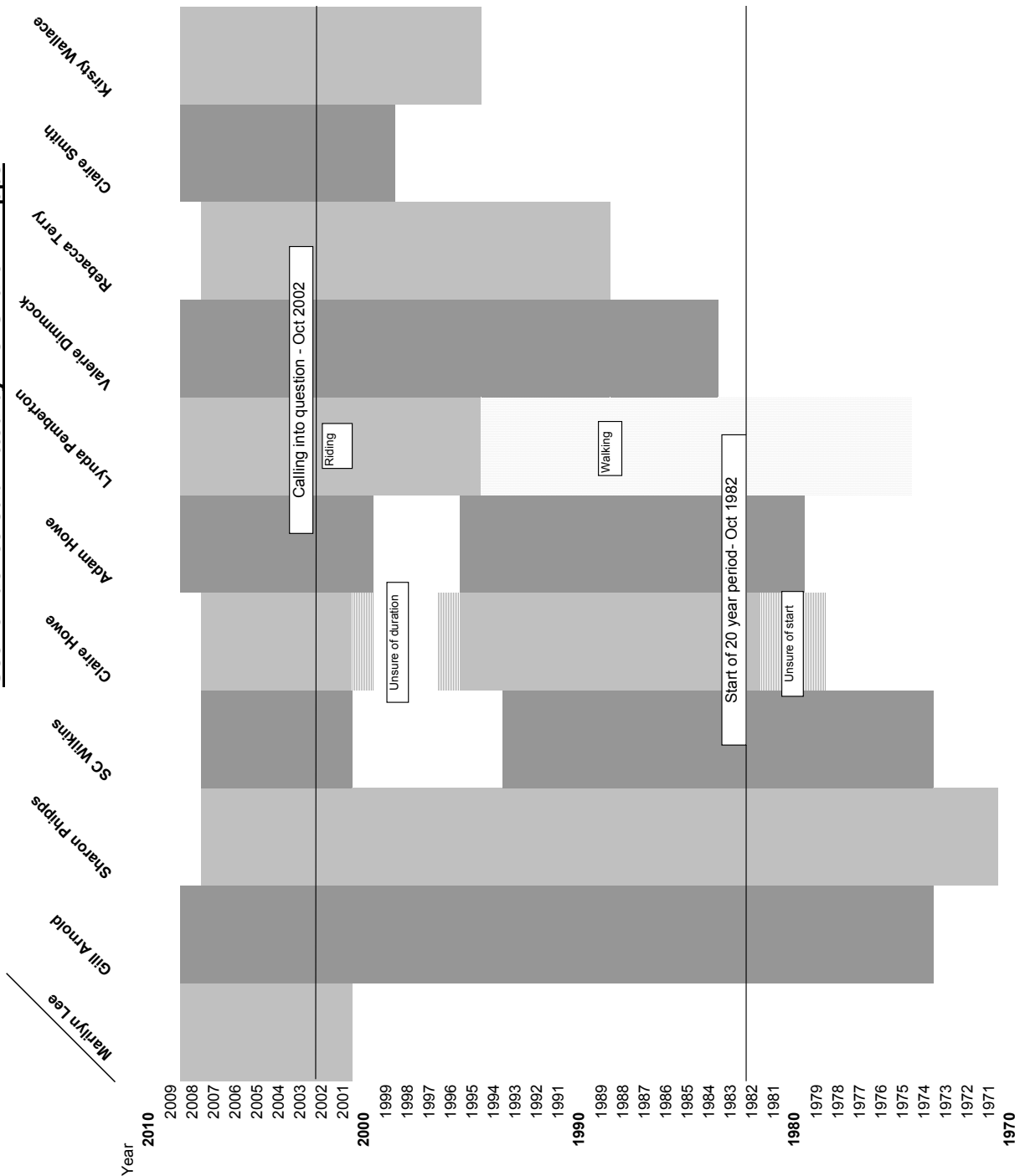


Table of equestrian user evidence

D 8. In order to deem that a right of way has been dedicated under Section 31 of the 1980 Act, public use of a route has to be counted back for 20 years from the date that the public’s right to use the path was brought into question, see Section D 10 below. During the 20 year period public user must have been “as of right” - that is without force, stealth or force. I am unaware of any challenge to the users and use by horseback is unlikely to be “stealthy”. It is possible, however, that some degree of use has been by agreement between the local riding school “Greenacres” and the Hyde Estate but nothing has

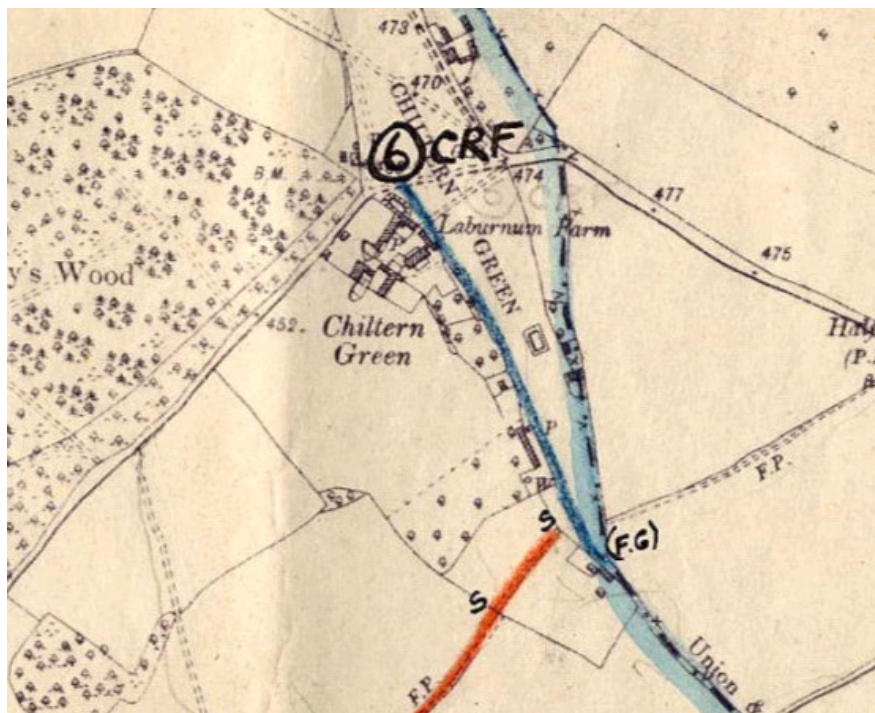
been forthcoming from either the users, Greenacres, or the Hyde Estate to support permissive use. There must also be no evidence to show that the land owner had no intention to dedicate a right of way. The latest 2007 judgment in the Godmanchester¹ series of court cases has shown that any non-intention to dedicate a highway must be contemporaneous with the user, and sufficiently overt to bring home the lack of intention to the users of the path. This effort is also likely to call the public's right to use the way into question. This does not appear to have happened as none of the horse riders have commented on such a challenge to their use.

- D 9. For a way to be deemed to have been dedicated, the path has to be of such a character that dedication could be inferred at common law. As the route between points A-B-C is a green lane there appears to be no physical or legal restriction from a dedication at common law. The small chalk pit at the southern end of the footpath has existed for over a century and appears not to inhibit contemporary equestrian use of the route as evidenced by the user statements. The route is also wide enough for the majority of its length for use by horses not to constitute a nuisance - which would preclude the route being of such a character that dedication could be inferred.
- D 10. Hyde Footpath No. 14 has been signposted as such at point C since c.1963 which was when Bedfordshire County Council had its first major signposting campaign. This was likely to be the first time the public status of the route would have been made publicly visible on the path - thus calling into question the right of horse riders to use the footpath. The right of members of the public to use Footpath No. 14 was again called into question in 2002 by Mr. Marshall's application, which in the absence of any challenge to user can be considered a valid calling into question under Section 31(7A) and (7B) of the 1981 Act. There is insufficient documented public equestrian use of the footpath for the 20 years prior to 1963 to deem that the route has been dedicated in this earlier period. However there is sufficient evidence of public equestrian use between 1982 and 2002 for the Council to deem that a bridleway had been dedicated by the owners of the land if it can be shown that no higher rights already exist..
- D 11. Although the level of equestrian use along Gipsy Lane is sufficient to deem that the Hyde Estate has dedicated the way as a bridleway, the historical documentary evidence discussed within this report and appendices has already shown that public mechanically-propelled vehicular rights can be considered, on the balance of probability, to subsist over Gipsy Lane. If this is the case, then the Hyde Estate has no capacity to dedicate a lower right than that which already exists.

¹ R (on the application of Godmanchester Town Council) (Appellants) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) and one other action and R (on the application of Drain) (Appellant) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) and one other action

Definitive Map Evidence

- E 1. In 1949 the National Parks and Access to the Countryside Act started a process to record all public rights of way. The first part of this process in Bedfordshire involved the parish councils recording those rights of way considered by the parish to be public. Under the 1949 Act public rights of way were to be recorded as either “footpath”, “bridleway”, or “road used as public path” (“RUPP”).
- E 2. In Hyde, the parish survey was carried out in 1951 and a “C.R.F.” (Public Carriage or Cart Road mainly used as a Footpath) with a clinker surface was recorded as running across the southern half of Chiltern Green between the C212 and Farris Lane. The terms “C.R.F.” and “C.R.B.” originated from the conflicting guidance issued in 1949 by the Commons, Open Spaces and Footpaths Preservation Society to accompany the enactment of the 1949 Act. This guidance stated, at Section 3(m) of the document, that “...*Highways which the public are entitled to use with vehicles but which, in practice, are used mainly by them as footpaths or bridleways should be marked on the map ‘C.R.F.’ or ‘C.R.B.’...*”. No public right of way was claimed by the Parish Council along the remainder of Gipsy Lane where it runs along the county boundary. Footpath No. 9 is recorded as terminating at the historical edge of Chiltern Green – rather than connecting to the CRF.



Extract from 1951 Hyde Parish Council survey map

- E 3. In 1951 Wheathampstead Parish Council undertook a similar survey within their parish and claimed that portion of Gipsy Lane in Hertfordshire as a “...*Green Lane, mainly used as bridleway...*”. The term “green lane” is also referred to in the guidance issued by the Commons, Open Spaces and Footpaths Preservation Society in relation to the status of ways to be recorded. This stated at Section 3(c) that “...*All highways which the public*

have a right to use with vehicles, e.g., public cart roads and lanes, including green (i.e. unmetalled) lanes, but which are mainly used as footpaths or bridleways..." ought to be recorded. This was recorded on the parish survey map as "...G.L. 5" (Green Lane No.5). This section of path was then given the designation "C.R.B." (Public Carriage or Cart Road mainly used as a Bridleway) until a special review of the Definitive Map was carried out in the late 1970s and early 1980s. At this time there was reference to the path being reclassified as a bridleway, however, this path was eventually recorded on the 2000 Definitive Map for Hertfordshire as a "RUPP" (Road used as Public Path) - which is a highway other than a footpath or bridleway which is mainly used for the purposes that footpaths and bridleways are used. Such a path may, or may not have vehicular rights.

- E 4. Once all the parish survey maps had been gathered and their information collated a Draft Map for Bedfordshire was published in 1953. This map showed Bridleway No. 6 running from Chiltern Green Road (C212) across Chiltern Green and ending close to Farris Lane. Footpath No. 9 is shown passing through a stile onto Chiltern Green to connect with Bridleway No. 6. No right of way was shown along the county boundary. The Draft Map was available for public scrutiny and comment and the County Council received representations from landowners, tenants, organisations and the public at large who contended that there were omissions from or errors on the Draft Map.

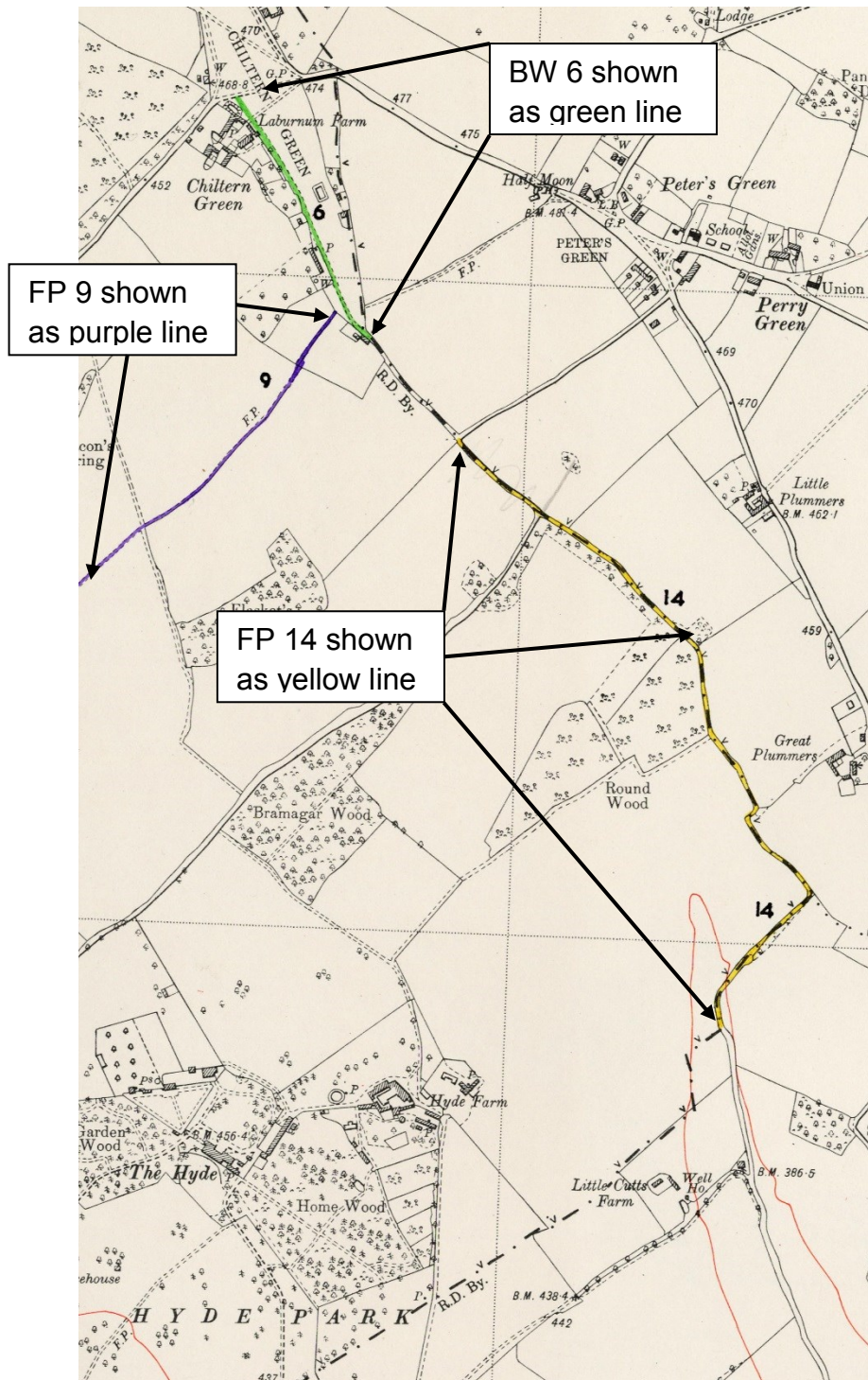


Extract from the 1953 Draft Map of Public Rights of Way



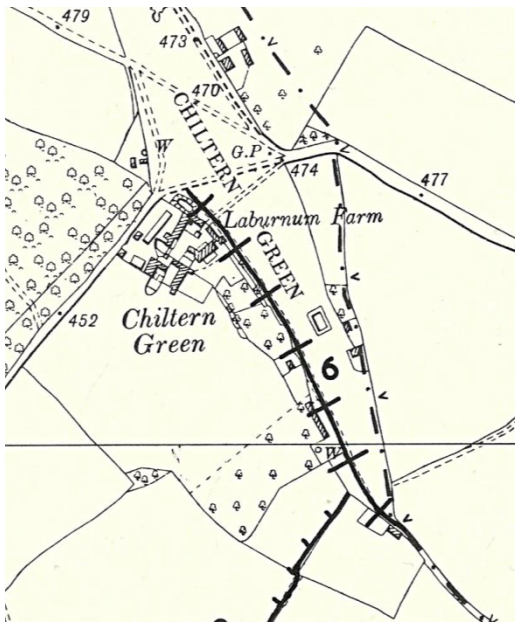
Enlargement of the Draft Map showing the junction of Footpath No. 9 and Bridleway No. 6

- E 5. The South Bedfordshire Preservation Society objected to the omission from the map of a public right of way on foot along the southern part of Gipsy Lane which follows the county boundary. In 1954 a barrister, Mr. W. A. Sime Q.C., was appointed to hear these representations at Hearings which took place around the county between September 1954 and September 1956. The South Bedfordshire Preservation Society provided evidence to support its contention that a public footpath subsisted along the “green lane” which runs along the county boundary. In October 1956 Mr. Sime produced a report in which he summarised his findings and recommendations including the addition of Footpath No. 14 to the map.
- E 6. The Schedule of Modifications to the Draft Map of Rights of Way was published in the London Gazette on 21st September 1962 as well as in the local papers and recorded the addition of Hyde Footpath No. 14 but does not record the deletion of the easternmost part of Footpath No. 9.
- E 7. Footpath No. 14 is depicted on the non-statutory explanatory map, the Modified Draft Map, running along the county boundary between Farris Lane and the Hyde-Wheathampstead parish boundary. The yellow colouration indicates that the footpath is an “additional footpath” to those originally shown on the Draft Map. Hyde Bridleway No. 6 is depicted on this map in green for an “original bridleway” connecting to Chiltern Green Road at point X. These paths run along the lines shown on the map at Appendix A between points A-B-C and X-Y-Z respectively.
- E 8. The Modified Draft Map shows a gap between the north-eastern terminus of Footpath No. 9 and Bridleway No. 6. Had the legal process been correctly followed, there would have been an entry in the Schedule of Modifications to recorded the deletion of this short section of footpath and the Modified Draft Map would accordingly have annotated the deleted section of footpath with red cross-hatching (“---|---|---|---”) which it does not.

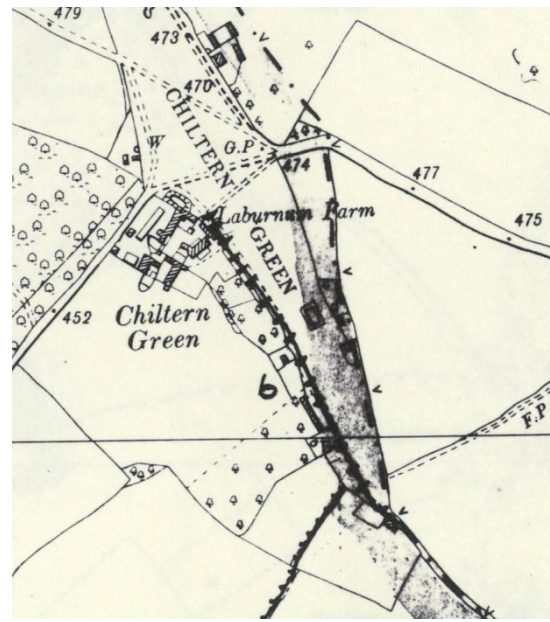


Extract from the 1963 Modified Draft Map

- E 9. Bridleway No. 6 and Footpath No. 14 were subsequently included on the Provisional Map which was published in March 1963. The Statement for Footpath No. 14 describes the footpath as following the route of an “agricultural roadway”. Bridleway No. 6 is also shown on the Provisional Map as crossing Chiltern Green from its junction with the metalled road to the south to its junction with the C212 Chiltern Green Road as shown overleaf.



1963 Provisional Map



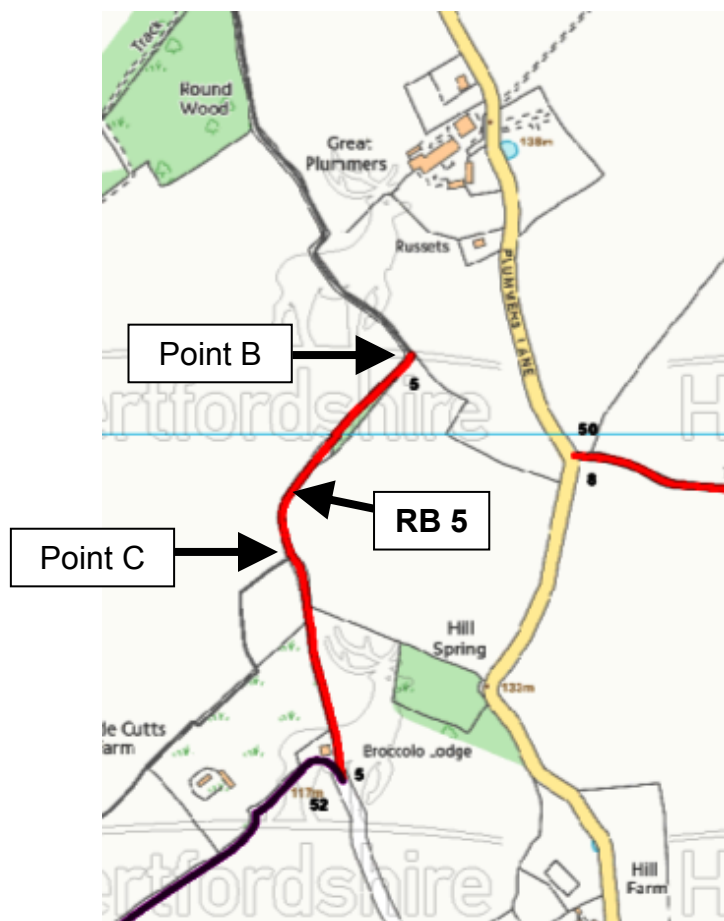
1964 Definitive Map (working copy)

- E 10. Bridleway No. 6 and Footpath No. 14 were recorded on the Definitive Map and Statement which was published in March 1964. However, the northern end of Bridleway No. 6 has been omitted from this map – stopping some 45 metres short of Chiltern Green Road. The northernmost section of Footpath No. 9 is also omitted in a similar manner to the Modified Draft Map and consequently does not connect to Bridleway No. 6.
- E 11. The Definitive Statement for Footpath No. 9 states “...*The path is a Footpath F.P. It starts at west corner of Spinney (O.S. No. 254) and runs N.E. across Laburnum Farm, emerging on to Chiltern Green at a point near Laburnum Cottages. Width of Path 3 feet. Grass surface. Stile over fence between O.S. Nos. 60 and 60a and second stile at exit on to Chiltern Green. No other obstructions...*”. Whilst this statement clearly identifies the footpath as exiting onto Chiltern Green it does not record it having a junction with the adjacent Bridleway No. 6 nor with Footpaths Nos. 7 and 8 at its western end.. However neither Footpath No. 7 nor Footpath No. 8 with which Footpath No. 9 has a junction record a similar connection. Consequently the precision of the statement’s wording should not be relied on. It should also be noted that the reference to “Laburnum Farm” here means the general farmland rather than the farm house *per se*.
- E 12. The Definitive Statement for Bridleway No. 6 states “...*It starts at Laburnum Farm and runs across Chiltern Green... ..Average width 7 feet, clinker surface...*”. Laburnum Farm is the first building next to the Chiltern Green Road and provides an ideal descriptor as to where the bridleway should connect to the adjacent public carriageway. Indeed, the bridleway is currently signposted from the edge of Chiltern Green Road. The fact that on the Definitive Map the bridleway is shown starting from the map’s annotation “Laburnum Farm” I think was a misunderstanding of the cartographer and is at odds with the earlier drafts of the Modified and Provisional Maps which depict the bridleway leaving Chiltern Green Road at Laburnum Farm.

- E 13. The Definitive Statement for Footpath No. 14 states “...*The path is a F.P. It starts at County Road 309 follows the route of an agricultural occupation roadway south easterly along the north east side of a spinney and then along the fringe of Round Wood. Then it proceeds to the south west of Great Plumbers Farm to the County Boundary, at a point north of Little Cutts Farm...*”.

The Definitive Map for Hertfordshire

- E 14. In c. 2007 Hertfordshire’s Wheathampstead RUPP No. 5 was reclassified under Section 47(2) of the Countryside and Rights of Way Act 2000 as a restricted byway - this section of the 2000 Act only being commenced in May 2006 and is shown by the red line on the map below. Between points B and C both Hyde Footpath No. 14 and Wheathampstead Restricted Byway No. 5 occupy Gipsy Lane (see map at Appendix A).
- E 15. The Definitive Statement for Hertfordshire describes Wheathampstead Restricted Byway No. 5 as “...*Commences from Cold Harbour - Kimpton Road NW of Dane Farm thence N to Parish boundary thence N and NE along boundary to Kimpton Parish boundary...*”.



Extract from Hertfordshire County Council’s on-line version of the Definitive Map for Hertfordshire showing Wheathampstead Restricted Byway No. 5 (arrowed).

Consultation Responses

Recent Consultations (July and September 2016):

- F.1. It should be noted that the earlier comments received pre-dated the commencement of the Natural Environment and Rural Communities Act 2006 and related to the proposed addition of a BOAT. The more recent comments relate to the amended proposal that a restricted byway be added to the Definitive Maps of Central Bedfordshire and Hertfordshire.
- F.2. The local representative of the Trail Riders fellowship, the applicant, has stated, “...*We acknowledge that the motorcycle accessible routes surrounding this claim to a BOAT, have changed (to our detriment) considerably, since the initial claim was submitted. That being the case, the TRF does not and will not object to your proposal...*”
- F.3. Savills acts as the land agent for the Hyde Estate. The Estate is aware of but has not commented on the current proposal, but was against the recording of any mechanically-propelled vehicular rights in 2003-6.
- F.4. The Rathbone Trust Company Ltd. which owns the Common of Chiltern Green were consulted but have not responded.
- F.5. The Murchie family of Laburnum Farm were consulted but have not responded.
- F.6. Mrs. Angela Simpkins, a Definitive Map Officer for Hertfordshire County Council has stated “...*Your current proposal to record a restricted byway affects Kimpton parish and would join Wheathampstead restricted byway 5 in Hertfordshire. I have spoken to the access officers for these parishes and both are in favour of a restricted byway being recorded on Gipsy Lane, in Hertfordshire...*” Moreover, Mrs. Ros Emrys-Roberts, the Definitive Map Team Leader at Hertfordshire County Council, has stated “...*I am happy for you to be **given delegated authority**, but would be grateful to be kept informed about the decision, and please could I see the draft of the order before it is sealed? I can confirm that HCC has a discovered evidence file which shows that we have evidence of use back in 2002 but no application appears to have been received. Nor was any of the route recorded on our List of Streets at 2nd May 2006...*” This authorisation reaffirms an earlier, 2012, statement by the Team Leader Access and Rights of Way at Hertfordshire County Council: “...*Please accept this email as my written authorisation to process the Modification Order for Hyde Footpath No. 14, to the extent that it affects the county of Hertfordshire...*”
- F.7. St. Albans City and District Council responded, stating “...*I confirm that we have received no comments to your proposal to upgrade by means of a definitive map modification order...*”
- F.8. Wheathampstead Parish Council responded, stating “...*regarding recommendation for upgrade of FP14 to a Restricted Byway rather than a BOAT. I confirm that Wheathampstead Parish Council has no objections...*”
- F.9. Kimpton Parish Council has responded, stating “...*Kimpton Parish Council supports the upgrade of FP14 to a restricted byway and in the tidying up of*

the sections around Chiltern Green. We fully support the view that FP14 should not be upgraded to a BOAT as we do not want motorised vehicles using this right of way. With regard to the rights of way sections around Chiltern Green... ..Could we ask Central Bedfordshire to look at the gap [across the southern tip of Chiltern Green] between the SW end of Kimpton FP47 and point M on your map. On a good year, this is walkable: last summer it simply ended in a dense patch of nettles. Walkers either struggle through the nettles or wander around either side to find an alternative route. Again we think that this must surely have been a mistake on the Definitive Map...

- F.10. In response the apparent missing gap between the SW end of Kimpton FP47 and point M, I have not managed to find any maps which record Kimpton FP 47 extending across the county boundary to connect to Hyde Bridleway No. 6. This is maybe because when these maps were recorded there was a view that Chiltern Green was public open space and so no walking rights needed to be recorded over it. Indeed, the law changed in 2005 to allow pedestrian access over common land; consequently is less imperative to record rights of way over common land these days – although this does allow such routes to be overlooked when it comes to being maintained.
- F.11. The Regional Access & Bridleways Officer, Eastern for the British Horse Society responded, stating “...*The BHS supports the upgrade of Hyde FP 14 to Restricted Byway...*” Similarly, the Central Bedfordshire British Horse Society Officer has stated, “...*I do appreciate that you are not particularly seeking comments from user groups as it is Central Bedfordshire’s policy only to do so when user rights are being diminished, but I am moved to write to you on behalf of The British Horse Society to say that we strongly support the claim (as you know we did supply some user evidence to support upgrading). The British Horse Society represents all equestrians, both riders and carriage drivers, and I note that the upgrade to a Restricted Byway will permit use by both categories of equestrian – the carriage drivers will particularly benefit as there is a significant shortage of public rights of way accessible to them...*”
- F.12. Dr. Phil Wadey, the ex-Chairman of the British Horse Society and one of its historical research advisors, has also responded, stating “...*I would be happy for you to record in Appendix F that I find the historical evidence case for vehicular rights immediately before NERC to be conclusive (meaning that Gypsy Lane must be a byway of one sort or the other), and that I leave it to the council to determine the effect of any NERC exemptions. The correction of earlier mistakes in respect of the bridleway and the footpath is a perfectly legitimate and appropriate change to make at the same time, although these could be put in a separate order so that they are not delayed by objections into Gypsy Lane itself...*”
- F.13. Brian Worrell representing the British Driving Society (for carriage drivers) stated “...*We will be very supportive of the upgrade to an RB, if not a BOAT...*”
- F.14. The chairman of the Bedfordshire Ramblers Footpaths Committee has responded, stating “...*Pat McNiff..., a Ramblers Local Footpath Officer [has] confirmed to me that he supported your proposals. I agree with Pat and also support your proposal to upgrade Hyde Public Footpath No. 14 to a Restricted*

Byway to match the corresponding portions in Hertfordshire plus the Bridleway and Footpath additions described in your letter and indicated on your map. The upgrading of Hyde Public Footpath No. 14 to a Byway Open to All Traffic would not be supported by The Ramblers...

- F.15. The Chiltern Society responded, stating “...We support the increase in rights that would come with upgrading this path from a footpath to a Restricted Byway. This will open up a new route for cyclists and equestrians with little negative impact for walkers given the current state of the path... However, if the order is prepared for a BOAT we will need to review the proposal in more detail before we decide whether to support or oppose. We need to make sure that a balance is struck between the current and potential users...”
- F.16. Mrs. Gillian Web, representing the Greenacres Equestrian Centre situated to the south of Gipsy Lane in Harpenden, stated “...I am replying to this letter on behalf of Diana Cornish [one of the owners of the equestrian centre] who is unfortunately ill in hospital at present. I keep a horse at Greenacres and have been a friend of Diana Cornish for very many years. The application to upgrade Hyde Public Footpath No 14 to a Byway Open to All Traffic was initiated by the Hertfordshire branch of the British Horse Society [actually by the TRF in 2002] and as a very longstanding (since 1970), member of the committee and local access officer I coordinated the evidence forms. We are all absolutely delighted with your clear letter and excellent map showing the upgraded routes on the Herts/Beds border. It will be circulated to the Access and Rights of Way Officers of the British Horse Society and all those who ride at Greenacres...”
- F.17. Mr. John Barnes, a local right of way activist, responded, stating “...Thank you for your letter of 13 September 2016 regarding the upgrading of Hyde footpath 14. I am in agreement with the action you propose and wish you every success...”
- F.18. Cllr. Kevin Collins, Central Bedfordshire Council ward member, has stated, “...I am comfortable with your proposals; the main feedback I remember from the parish [Hyde Parish Council] is that they would resist modification to record a BOAT, which appears to be in line with your thinking...”

Older (2004 – 2006) consultations:

- F.19. Cluttons Chartered Surveyors acted as the agents for: S. G. Hambros Trust Company Ltd. - The Hyde Estate and also for Ms. B. Murchie of Laburnum Farm in 2003-6. Mr. Minty is a tenant farmer at Hyde Home Farm, East Hyde which is part of the Hyde Estate. Neither Cluttons Chartered Surveyors, nor any of their clients, have provided any information regarding the status of public rights across Chiltern Green or along Gipsy Lane but had made clear their opposition to the addition of a BOAT to the Definitive Map.
- F.20. Mr. Mark Lenthal of 2 Laburnum Cottages has been a central contact for all residents on the affected half of Chiltern Green. In a substantial dossier, dated 12th October 2004, Mr. Lenthal contended that public bridleway rights do not follow just the current line of Bridleway No. 6 but either encompass the whole width of the green or would have run in straightest line between Farr’s Lane

and Dane Street which lies at the eastern extremity of Chiltern Green. Such a line would have run along the west side of Worms Croft Hedge (shown on many of the old maps) and to the east of the existing pond. The current route of Bridleway No. 6 just skirts to the east side of the now infilled bunded pond shown on the 1901 25":1 mile Ordnance Survey map. This pond was apparently infilled by the Murchie family some time after 1965 when they bought Laburnum Farm. Mr. Lenthal contends that the track depicted on the 1924 25":1 mile Ordnance Survey map was comprised of flattened grass according to local residents and was moved slightly after the pond was filled in.

- F.21. Mr. Lenthal also stated that the Murchie family dug roadside ditches in the late 1980s to prevent gypsies from camping on the green although they did leave a footbridge at the north-eastern corner for pedestrian use. The planting of trees and erection of fencing by the remaining pond prevent use of the green at this point with users having to deviate around the western side of the green to head either north or south.
- F.22. Mr. Lenthal also reported that up until the 1980s, the vehicular access to all dwellings in the southern half of green was predominantly from the north eastern tip of the green – adjacent to Dane Street. Some evidence of metalling is alleged to remain there. Access from this point to the relevant house was then by taking a direct line across the green. Mr. Lenthal alleges that the Farris Lane end of the green (point B on Appendix 1) was little used as this was mired by farm traffic. Mr. Lenthal states that horse-riders would likely have ridden down the eastern hedge boundary to get to Farris Lane from Kimpton Road.
- F.23. Mr. Lenthal also reported that the present metalling of the track is only about 12 years old and that prior to this it was mainly compacted clay or earth. Greenacres Riding Stables, based in Hertfordshire, tend not to use metalled track but ride across the green. Increased use of track is due to Bedfordshire County Council signing it as a bridleway and due to encroachment onto the green by one of the cottages. Mr. Lenthal contends that bridleway rights ought to exist over the entire width of the Green and that there is not a recent history of vehicular use over the green (except by owners and farmers).
- F.24. Mr. Lenthal submitted a second much more detailed dossier, dated 26th October 2006, on behalf of all the residents of Chiltern Green. A number of points made within that dossier have been incorporated into this report.
- F.25. W.J. Abraham & Son of Great Plummers Farm owns land that abuts Gipsy Lane to the east. Mr. R. Abraham stated in a letter, dated 8th September 2004, *"...As far as I am aware, having lived or worked here for almost 60 years, there is no historical evidence for change of use from a footpath to byway, written or otherwise..."*.
- F.26. Mrs. W Manning of Ramridge Farm, Kimpton, was also contacted as a local land owner. In a letter, dated 31st August 2004, Mrs. Manning stated that *"...I have lived in the area for 27 years... [FP 14] has been constantly used as a bridle-path joining onto the Herts RUPP 5. Even local people, farmers and game keepers included, consider it a bridlepath..."* Mrs. Manning also stated that she was opposed to any upgrading to a BOAT as the local riding stables,

Greenacres at Batford in Hertfordshire, use it for safe off-road riding and the width of the footpath is, in her opinion, too narrow for safe vehicular use.

- F.27. Greenacres Equestrian Riding School, which allegedly uses the lane for its rides, was asked to comment on the proposals and on its use of the lane in February 2011. No response was received following this earlier consultation.
- F.28. Defra was also consulted on the issue of the conflict between the Definitive Maps of Hertfordshire and Central Bedfordshire Councils. Unfortunately Defra has declined to comment in case an answer risks prejudicing any future decision of the Secretary of State as any order made is likely to be objected to.

Early consultations with local councils

- F.29. Kimpton Parish Council has been consulted and a member of the council has telephoned the author to state its opposition to any upgrading and to complain about current motorcycle use of the footpath.
- F.30. Hyde Parish Council was consulted and, in a letter dated 3rd September 2003, the clerk stated that “...*there is no recollection of this footpath ever having any other status within living memory, nor have I, as Clerk, been able to trace any record of this being the case...*”.
- F.31. Wheathampstead Parish Council was consulted was consulted in July 2003 but did not respond.
- F.32. The former South Bedfordshire District Council was consulted in July 2003 but did not respond.
- F.33. North Hertfordshire District Council has also been consulted and, in a telephone conversation, a Council Officer stated that they had no information concerning the status of Hyde Footpath No. 14.
- F.34. Hertfordshire County Council (“HCC”) has been consulted and provided Bedfordshire County Council with extracts from its records regarding the history of Wheathampstead RUPP No. 5 which is the southwards continuation of Hyde Footpath No. 14 along Gipsy Lane. Subsequent consultations with Hertfordshire County Council relate to its List of Streets and whether it would grant delegated powers to add a BOAT to the Hertfordshire Definitive Map. HCC Officers have verbally agreed in principle to this request and subsequently formally responded in writing to this effect.

Comments on representations

- F.35. The representations received from local councils and local residents all present the view that vehicular use of Gipsy Lane has been minimal since the 1950s. What usage there has been appears to have either been farm and residential traffic over the green or, in recent years, motorcycle use of the footpath. The representations and Parish Council and County Council documents also corroborate the use of Footpath No. 14 by horse riders.