

Cold Ash Parish Summary of feedback, documents and records relating to Byways 5 and 26 - May 2023

Scope

In April 2023 Cold Ash Parish council was contacted by Stuart Higgins Definitive Map Officer from the Countryside team in West Berkshire Council with the following request:

West Berkshire Council has received two applications to make Definitive Map Modification Orders to record widths for two stretches of Byway Open to All Traffic in Cold Ash.

The attached plan shows the extent of the application areas hatched in blue (the brown area shows land featured in a 1995 order (MOD291) to record a Byway Open to All Traffic).

One application relates to the width of part of Byway Open to All Traffic Cold Ash 5.

The other application relates to the width of part of Byway Open to All Traffic Cold Ash 26.

I would be grateful for any evidence relating to the widths of these routes, including any photographs (especially prior to 1996) or recollections about the width/use of the lane, or any records

you might have relating to it.

As a result, a request for information was launched within the parish noting that there was a DMMO process underway by WBC and that no decisions from CAPC were needed.

Consultation with the parties involved, the council and local residents within the parish

After discussion at the last Cold Ash Parish Council meeting, April 25th, it was agreed to develop a summary document of feedback relating to the above request.

To ensure everyone had an opportunity to respond the following activities were conducted to solicit feedback:

- Discussions with CAPC Councillors
- CAPC Meeting April 25th Public participation
- Multiple Social media messaging requests and follow ups for feedback and documentation
- Discussions with local residents
- Flyer created and delivered to affected local residents
- Discussions with prior District Councillors involved
- Discussion with Stuart Higgins and Paul Hendry of WBC

For completeness copies of the above requests are included in Appendix A

Summary of conversations with Paul Hendry Countryside Manager WBC

- This issue has been around since 2015 and has been fraught at times with difficult conversations between parties and challenging communications at times
- I (Paul Hendry WBC Countryside Manager) decided to make a local determination using the complaints process as this was a much quicker option than going through the legal rights of way process.
- I determined that on the balance of evidence the 'verge' on byway 5 was not part of the highway over at least part of its length. This was based on what evidence I had at the time but was always challengeable.
- This was at stage 1 of the complaints process which allows review at stage 2 and then the Ombudsman
- The residents who were unhappy at my determination, escalated the matter to be progressed by the Ombudsman
- The Ombudsman reviewed the decision but said that as the residents had a legal route to have the decision reviewed, via magistrates, then he would not overrule the decision.
- Complaints were recently received about byway 26 which is an extension of byways 5 due to the byway being encroached upon by gorse, and it was claimed, confrontations with delivery drivers was occurring.
- I did not determine byway 26 in 2015 as it wasn't a substantive part of complaints.
- I advised the complainant to make a definitive map modification order (DMMO) and submit all evidence in his possession, this was completed
- The process involves consulting parishes and asking if they have any evidence to allow determination
- This then brings us to the CPC request for data.

Evidence submitted from Cold Ash residents 2023

Sent: 01 May 2023 20:27

Subject: Byeway 5 and 26

With reference to the meeting of the Paris Council last week, you asked for information relating to the two byeways under discussion. As I lived in that area from 1984 until 2008, and still visit regularly to visit friends and family, I feel my local knowledge is relevant.

I have attached a note with my recollections of the situation with regards to the encroachment and obstruction. I also have a lot of local knowledge of the area with regards to maps and local history and am happy to share this knowledge with the councilor responsible/

Best wishes

I lived in Drove Lane with my wife and two children from 1984 until 2008 when I used this section of Drove Lane every day by foot, jogging, walking our dog and cycling. In addition I used this section of Drove Lane on a daily basis by car. The lane was wide enough for vehicles to pass easily and quite often a car was parked there. It was used as an overflow parking space by residents for various reasons from time to time. There was room to park there and the refuse lorry and other vehicles could pass without difficulty.

The section of Drove Lane bordered by the White House was substantially reduced when the existing fence and hedge forming the boundary between The White House and Drove Lane was removed and replaced. I believe this to be in November 2015, although I cannot be absolutely certain about the date. The fence used to be inside the telegraph poles with the hedge inside the fence. The telegraph poles forming the boundary of the highway. The new fence and hedge has been sited outside the telegraph poles. In addition there has been further encroachment with additional plants and metal poles driven into the ground. This has reduced the width to a single track lane, causing inconvenience to the residents. e.g. vehicles cannot pass each other, so either forcing one to reverse around a blind corner or the other to reverse out into Bucklebury Alley. A traffic Hazard. It is also difficult for pedestrians and a car to pass each other, let alone a horse and van.

Since 2008 I have used this section of Drove Lane to visit family on a fairly regular basis. Further encroachment is taking place as no attempt is being made to cut the new hedging. I feel I should also mention that the encroachment by the White House has also caused encroachment on the other side of the highway which I have shown on the map.

23rd April 2023

From:
Sent: 04 May 2023 20:30
To: coldashpc@gmail.com
Subject: Byway 26

Hi Linda

Just responding to Pete Murray's request for evidence on the width of Byway 26.

We have used this path since moving into our house in 1998, when it was easily wide enough for two people to walk side by side, and in good enough condition to push a double buggy when I had small children (in order to avoid walking on the narrow dangerous bit of The Alley it runs parallel to).

The bit you can actually walk down now seems to have narrowed considerably and to have deepened into a gulley – my guess is due to water washing down it, which all ends up cascading across The Alley opposite Robin's Ridge – becomes very dangerous when icy.

Hope this helps

Google Maps Bucklebury Alley



Image capture: Mar 2010 © 2017 Google

Cold Ash, England
Street View - Mar 2010

Street View - Mar 2010



Currently shown: Mar 2010



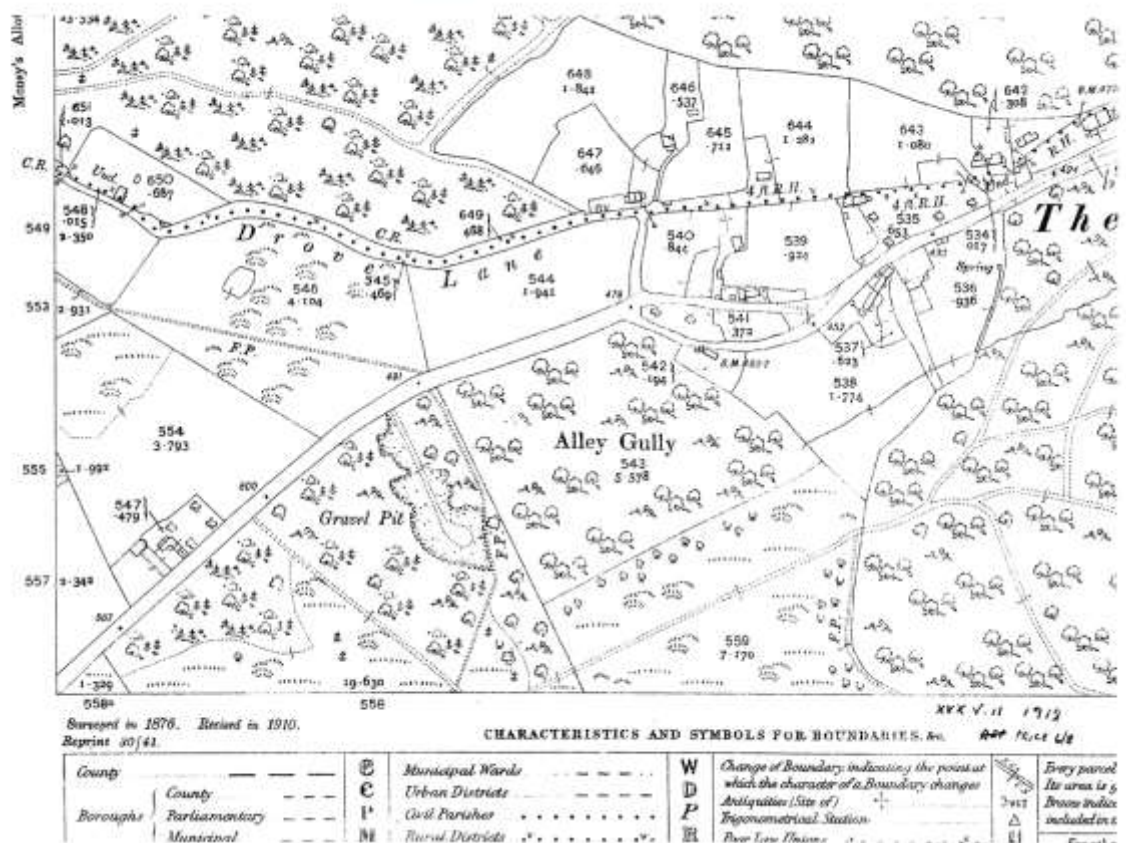
Good morning Peter

I have lived in the west end of Drove lane for more than 50 years and have become familiar with BOATS 5 and 26. You asked for copies of maps of these Byways and I attach a copy of the 1876 survey Revised in 1910 and issued with land parcel identifications as of 1912. There are older maps eg The 1842 Tithe map of Hampstead Norris showing the east end of Drove Lane as a "Road for Cattle" but I am unaware of what it shows for BOAT 26.

While the attached map enables comparison of the relative widths of the 2 BOATS and with Bucklebury Alley, due to mapping inaccuracies, only rough estimates of actual historical widths are possible.

Hope this is of some value.

Kind regards



2023, 19:05



Re: Drove Lane Dispute

14 April 2022 at 16:21

I thank you for preparing the document . we have noted and we agree with all the facts and statements provided so

This is the sixth year of suffering metal stakes and crime tape on the verge in Drove Lane . During this time we have approached our Parish Council and West Berks several times for help to resolve the situation, citing health and safety issues , encroachment and being an eyesore in an AONB , always unsuccessfully .

The original encroachment when the new fence was erected is well documented .

We confirm that we regularly parked in the lane from 1995 onwards , along with others prior to adapting our frontage , as shown in the photo dated May 2010 . This always left adequate room to pass .

Over the years , on a personal level , the situation has affected both our mental health and our quality of life .

This has not been helped by the owners challenging , harassing and filming , plus threatening police involvement , anyone including us , who stop for any reason on the corner of Drove Lane / Bucklebury Alley . This affects visitors , deliveries and tradesmen going about their business.

Our Daughter has been challenged , filmed and charged by the owner for alleged criminal damage when moving one of the rusty stakes that was overhanging the byway when visiting us . She was advised by her solicitor and fined £90 .

A few weeks later , on a Sunday , she had arranged to take us out to lunch .When parked on the corner (due to the serious potholes in the lane) she was aggressively challenged and when we intervened we were threatened and filmed . I stated that as chairperson of our Parish Council this did not exactly promote neighbourly harmony and we should all work together to peacefully coexist . This ruined her and our day .

We strive to help make Drove Lane a pleasant place to live and raise a family . We welcome and will help our neighbours at all times .

Widths are often calculated from old maps (but the DMMO officer will know this). Here is the width from the 1898/98 map from the National Library of Scotland website which holds the 25" OS maps.



Amanda May

I used to drive a pair of 16.3 hand horses around the village, I have years ago drive down byway 26. Now it is quite narrow to ride down as you may see me riding and leading through the village. If I ride and lead down Buckley I have to ride and lead using the road not byway 26.



Like Reply 1 w



Clare Beynon

Amanda May Dan Beynon using his wife's a/c 😊....really valuable historical evidence. I'd encourage you to contact stuart.higgins@westberks.gov.uk to fill in a Form E if you were prepared to.

Not to diminish the good work the parish council are doing, more to ensure your detailed account is captured



Like Reply 1 w



Tim Wood

Have already sent evidence form to Stuart H covering our period living down byway 26 since 2006.



Like Reply 1 w

We have only lived in Drove Lane in 2020 but do have historical maps and aerial imagery that show Drove Lane quite clearly, particularly the Google sourced imagery from 2017 which we've overlaid some measurements. The 2003 aerial photos actually indicate a car parked on Drove Lane opposite a property called Faraway. That latter example, combined with cars shown in the photos parked outside a second property called Sidney Lodge give quite a clear indication of the width of Drove Lane.

The 2017 photos are particularly useful because of their clarity and they very clearly show the fence line of The White House and how the verge & planting have intruded onto Drove Lane over the 6 years particularly.

I've also included excerpts of OS mapping from 1883 and 1913 both of which indicate Drove Lane in a manner matching Bucklebury Alley as it drops beyond it's connection with Drove Lane. What is interesting in the OS mapping is that there is no indication that Drove Lane is any different to Bucklebury Alley in terms of its role as a highway and multiple properties can be seen to have existed as far back as 1883 off of Drove Lane. OS mapping is largely considered accurate and that Drove Lane is indicated with solid rather than dashed or dotted lines does seem to lend weight to its position as a notable access route.

From the imagery available, our assessment is that Drove Lane, as it runs towards Sidney Lodge from Bucklebury Alley, is no less than 3.8m in width and has indicated in the 2003 photo, more likely in parts to be in well in excess of 4m in order for cars to park and pass along that stretch.

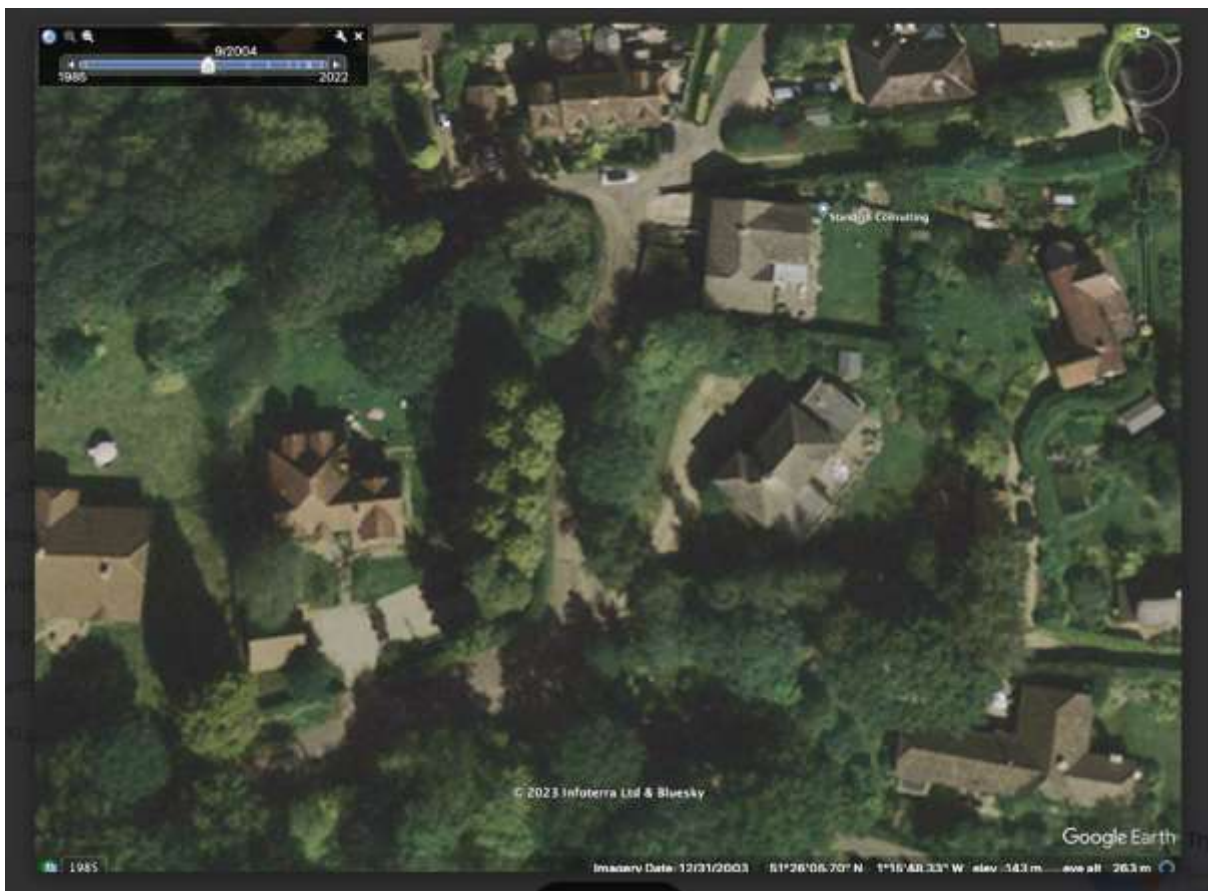
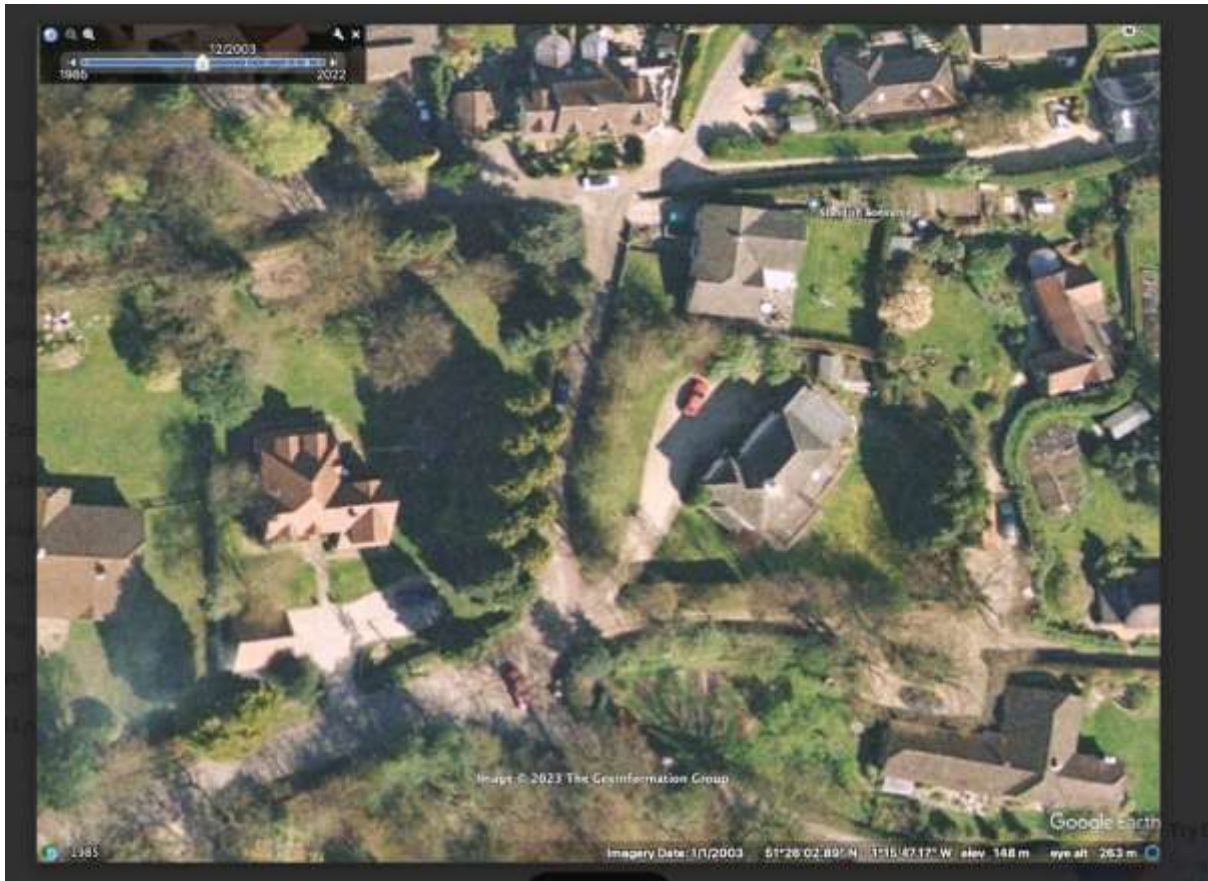
Although the subject of this particular action is to formally record the width of Drove Lane, we would like to suggest that Drove Lane being recorded as a Private Street on the WBC definitive map is not actually correct and that Drove Lane in this area is actually as much a highway as Bucklebury Alley. Mapping spanning well in excess of a century depicts Drove Lane in the exact same manner as Bucklebury Alley and other surrounding roads. Properties have existed along Drove Lane for as long, no records of any ownership of land on which Drove Lane sits exist and land registry is very clear where property boundaries sit on all adjoining properties along the section in question. We have included a couple of LR plans to show.

The image files are quite large - around 5-6Mb each. All available for download at the link below:

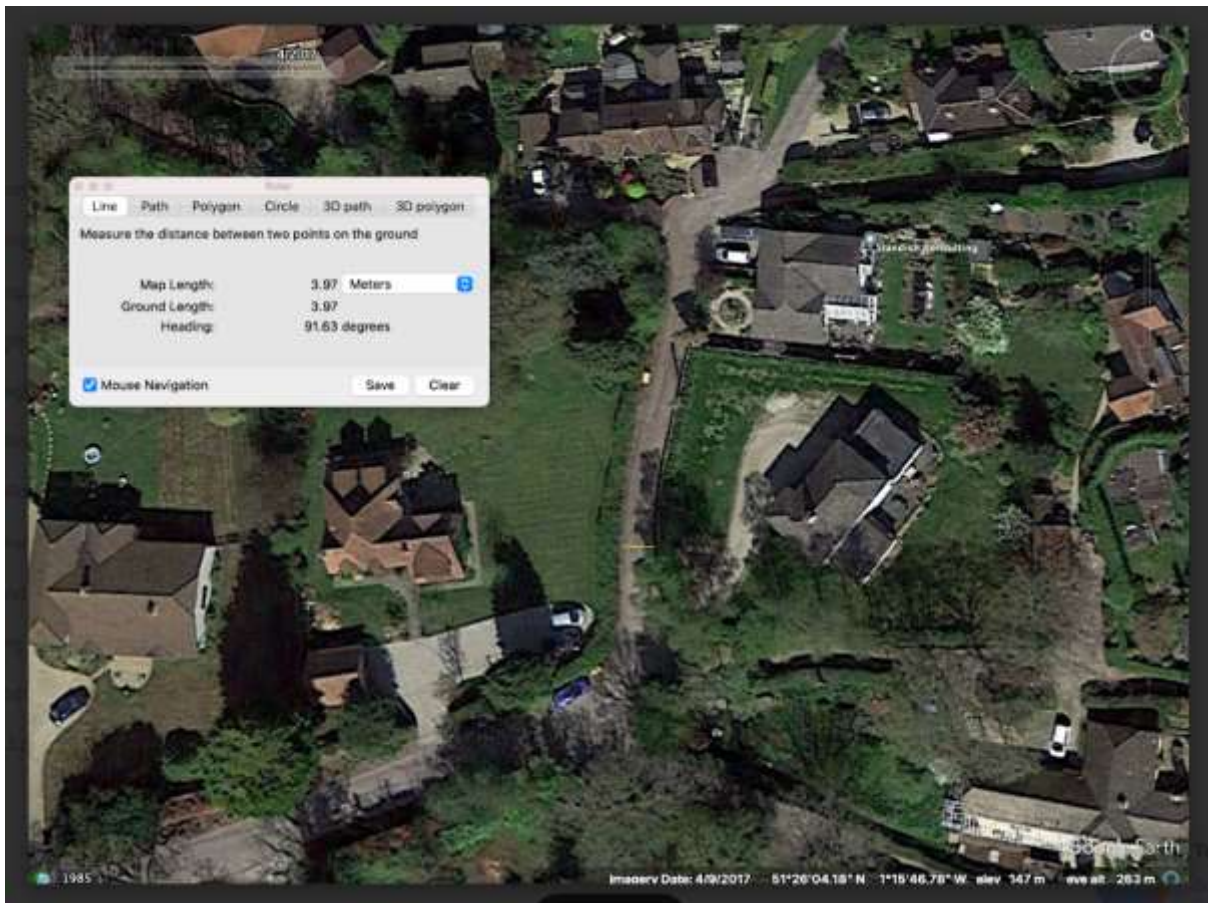
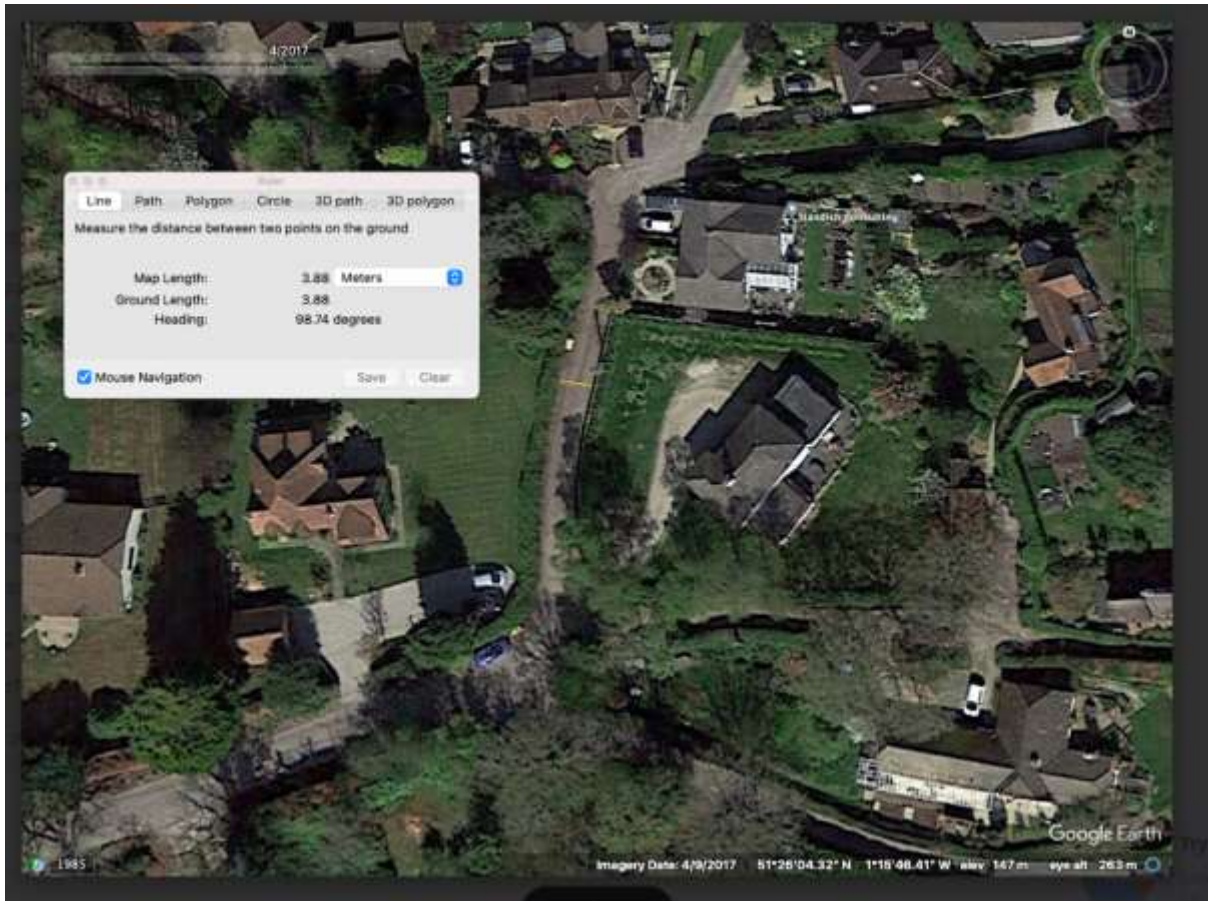
https://drive.google.com/drive/folders/1Q3Oy7mXNehgd9281BrLBSbwTG6jcO92Z?usp=share_link

.Kind regards,

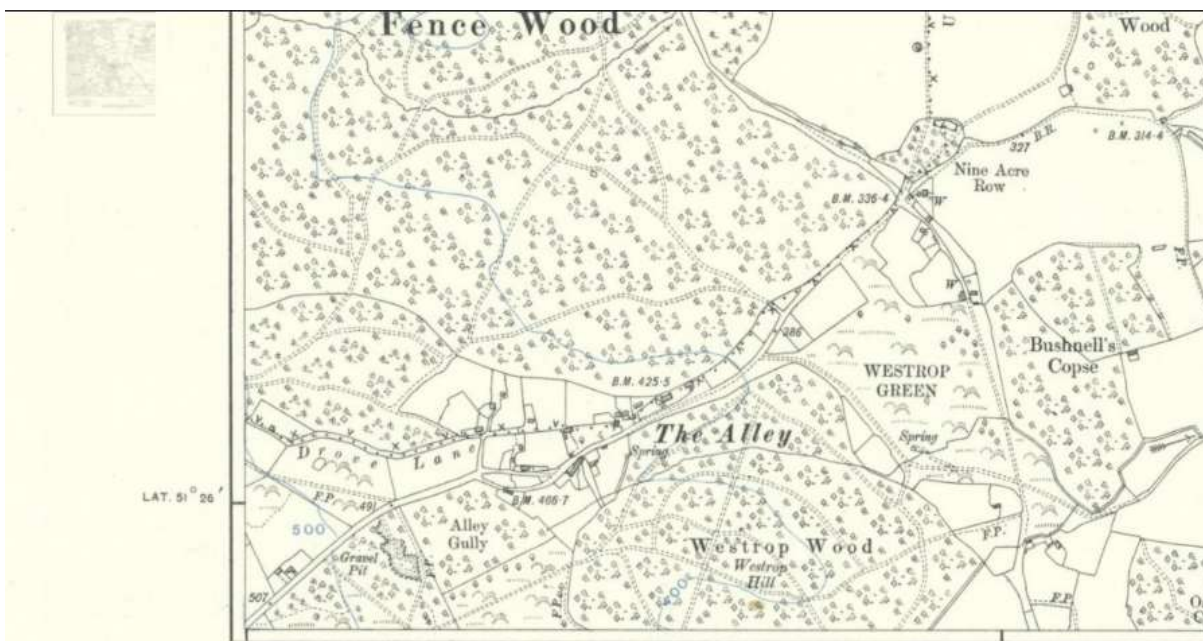
Photographs copied to the following pages











LAT. 51° 26'

LON. 1° 16' W.

1° 15'

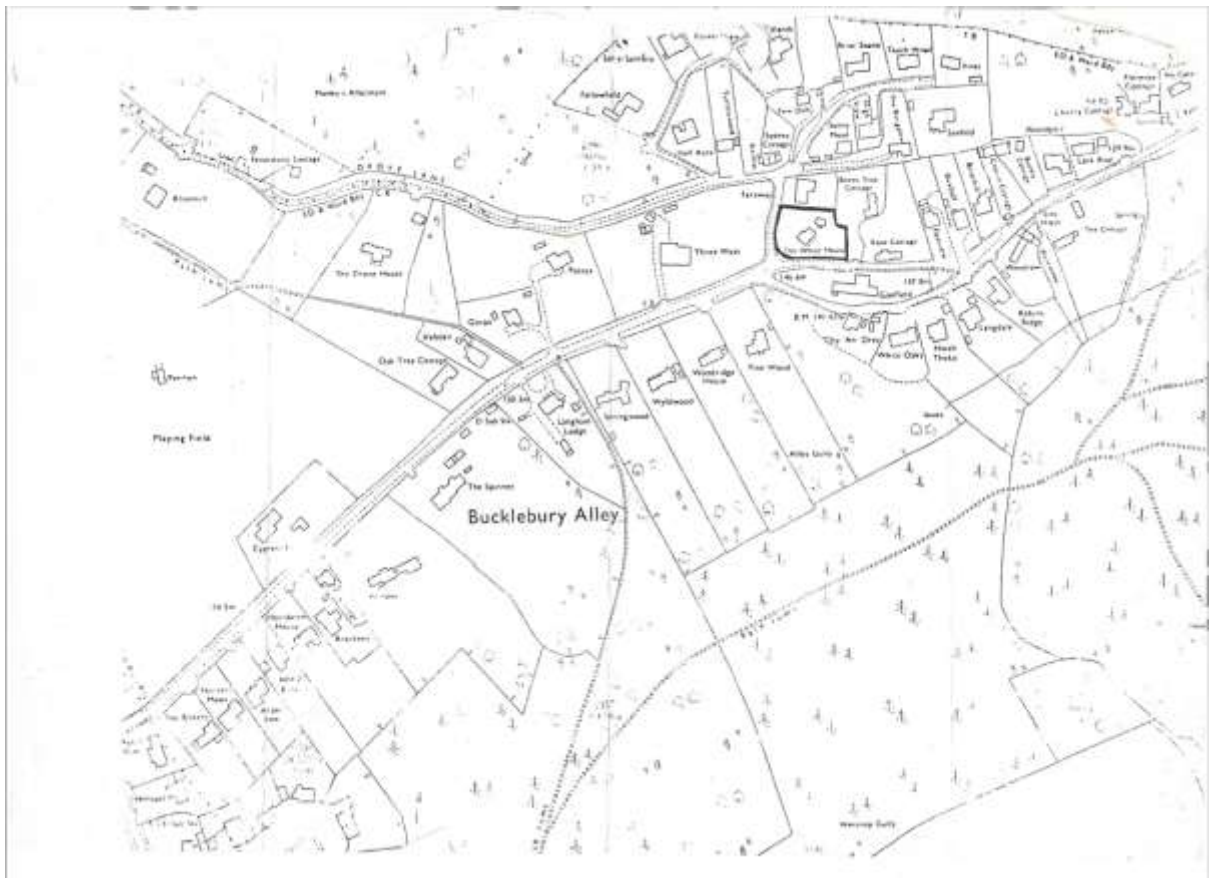
Surveyed in 1875-78. Revised in 1910.

CHARACTERISTICS AND SYMBOLS.

County Boundary	-----	Antiquities, Site of	+
Parliamentary Division Boundary	-----	Arrow, shewing direction of flow of water	→
Union Boundary	x x x x	Contours	Instrumental 200

Additional Photographs dated 1982 from private collections offered to CAPC





The land on which these byways stand is probably waste from the Manor of Bucklebury.

In 1930 Thake and Paginton conducted the sale of land belonging to the Hartley Estate.

I attach 2 items taken from the sales prospectus showing relevant plots and properties.

The map was reproduced from the Ordnance Survey by Permission of Agriculture and Fisheries & H.M. Stationary Office.

As such the dimensions of interest could feasibly be assessed by one skilled in the art.

I hope this may be helpful to your investigations.



LOT 18 <i>(Coloured Red on Plan.)</i>	
BRICK BUILT AND THATCHED COTTAGE	
<small>erected by Mrs. Green at 1s. 10. per week, including rates, on weekly tenancy, and containing 2 bedrooms up and 2 rooms down, together with garden and gravelled shed, F.C., and gravel garden, the area being about</small>	
28 perches	
SCHEDULE	
<small>O.S.M. No. 552 (P.)</small>	<small>Outings and Garden</small> 178
<small>A portion of the garden is let to Mr. A. Stacey, at 2s. per annum. This lot will be sold with the benefit of a right to draw water from the well on Lot 18. Land Tax 7s. 5d.</small>	
<hr/>	
LOT 19 <i>(Coloured Red on Plan.)</i>	
An Enclosure of Accommodation Land <small>commanding a delightful view, and forming a</small>	
SPLENDID BUILDING SITE	
<small>for the erection of a small house or cottage, the area being about</small>	
2 roods	
SCHEDULE	
<small>O.S.M. No. 540 (P.)</small>	<small>Pasture</small> 500
VACANT POSSESSION ON COMPLETION	
<hr/>	
LOT 20 <i>(Coloured Yellow on Plan.)</i>	
A BRICK BUILT COTTAGE	
<small>with detached road, together with garden and stable and thatched shed, the area being about</small>	
39 perches	
SCHEDULE	
<small>O.S.M. No. 540 (P.)</small>	<small>Garage and Garden</small> 214
VACANT POSSESSION ON COMPLETION	
0	

Residents' concerns raised regarding the DMMO process

During conversations with several residents' concerns were raised about the process to be used and also how information was to be gathered. For completeness I summarise those concerns here and start with a recent e mail exchange with a resident and my responses.

1: Can you confirm which residents have been contacted? And are residents still to be contacted? –
So far we have raised the issue at the CAPC meeting and requested via several social media channels inputs from residents. In addition several residents have already shared their views directly. My plan is to also walk the area and knock on residents doors to seek feedback too.

2: The council stated that they are to undertake a mission to ascertain the facts relating to this case - please confirm how you will confirm that these are in fact facts? **A fair question. I plan to record feedback as just that, feedback, unless materially backed by evidence such as photographs, maps or legal documentation it will not be presented as nor I suspect considered factual by WBC unless we do this.**

For Example Mr Fenner's 'speech' at the meeting was a complete fabrication and therefore should not be admissible. Claiming that it is an established hedge - when he planted it after removing the existing hedge. Claiming that they are protecting an area of outstanding natural beauty when they have ripped down hedges, planted gorse bushes and left unsightly and illegal metal stakes and red and white plastic tape for 8 years is not exactly protecting is it? **If included, this will be presented as feedback as stated above I have also spoken at length to the head of the planning departments and local district councillors involved in this ongoing case for the last few years as background.**

3: how will the council remain impartial in its evidence collection as the head of the parish council is directly related to the harassment of residents (such as refusing to allow carers to a terminally ill resident access), devaluing of property prices due to restricted access and unsightly approach to the area. **Our chair will declare an interest and therefore will not partake in nor sway any discussion regarding this matter, as indeed she did at the last CAPC meeting.**

Process concerns raised by residents

- Maps being used by the WBC are incorrect and should not be acted on.
- Scales used on Ordinance Survey maps are only accurate to +/- 3 M
- Whats on the ground is the definitive mark not the map
- A Resolution agreement in 2016 was reached covering the agreed baselines of banks, established ownership and banks were declared not part of the byeway. Is this not the councils position? Why is it seemingly changing its position on this agreement now?
- As the council is enacting this DMMO 291 process now it is effectively overturning its agreement in 2016 some 7 years later. Why?
- Historically (1900/1920) documents suggested DROVE LANE should have a width of 10ft. Whats the rational behind the council requesting that now be moved to 12ft?

Significant additional concerns were also raised regarding the behaviour of, and interactions between residents in the area. Clearly this is a controversial issue and as a result these interactions have, at times, been heated. Unfortunately, due to being outside the scope of this summary I have not included them in this document aside from the official minutes from the parish meeting on 25th April 2023.

WBC Existing photographs



2001,21Dec2001,Cold5 looking S



2008,8thMarch, Cold5 looking N

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph



2008,17thOct, looking N



2008,22ndSept, junction looking NE

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph



2009, 10thOct,Cold26 looking E



2009,10thOct,Cold26 looking W

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph



2015,2nd Feb,Cold26 looking W



2015,2ndFeb,Cold26 looking E

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph



2023,7th March, Cold5-26 junction looking N



2023,7thMarch, Cold26 looking E

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph



2023,7thMarch, Cold26 looking W



2023,20thApril, Cold5 looking S

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph



2023,20thApril, Cold5&26 junction, lookingNE



2023,20thApril, Cold5, looking N

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph



2023,20thApril, Cold26 looking E



2023,20thApril, Cold26 looking W

Photographs of Byways Open to All Traffic Cold Ash 5 & 26, with date and compass direction of view given for each photograph

Byway Open to All Traffic Cold Ash 26 (referred to as Bucklebury 5 on the 1950 Parish Claim map below, and then altered from Bucklebury 5 to 3 on the 1950 Parish Claim Schedule Sheet)



1

SCHEDULE SHEET No. X#3 3

PARISH of BUCKLEBURY Parish No. of path 5

RURAL DISTRICT of BRADFELD

Nature of Path (FP, BR, C.R.P. or C.R.B.) CRB

From The Cold Ash & Alley road, E To rejoin same road further E

Description of Path (Route, width, nature of surface, means of passage over boundaries, obstructions etc.) 6" Map XXXV. MH. Length 115 yds. 10-16 ft. wide. Grassy and unmetalled.

This is disused, except as means of access to a garden and a cottage. It is not used by vehicles, and is essentially a BR & FP. Unobstructed at present.

Grounds for believing path to be public. Has been used throughout living memory. Shown on Rocque's map, 1761.

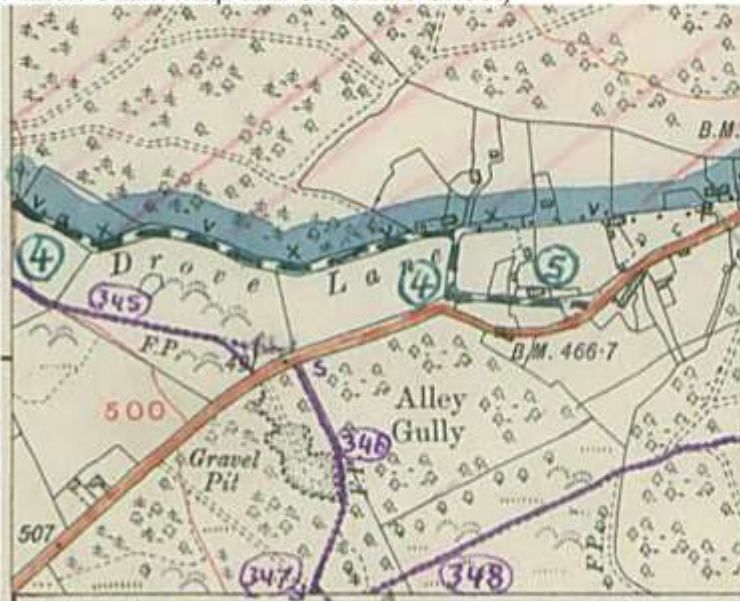
(Eg. Awarded, repaired at public expense, used by public without interference for 20 years, etc.)

Where documents are referred to the title of such documents should be mentioned and information given showing where they can be inspected.

Names and addresses of persons making survey	<u>N. Hedcock</u>	<u>E. Mackinnon</u>
	<u>Winchcombe Farm</u>	<u>Chapelrow House</u>

Date of survey 16/11 1950

Byway Open to All Traffic Cold Ash 5 (referred to as Bucklebury 4 on the 1950 Parish Claim map and Schedule Sheet)



SCHEDULE SHEET No. 2

PARISH of BUCKLEBURY Parish No. of path 484 ✓

RURAL DISTRICT of Bradfield

Nature of Path (F.P., B.R., C.R.F., or C.R.B.) GRB

From Continuation E of GRB 2 To the Cold Ash - Bucklebury Alley Rd.

Description of Path (Route, width, nature of surface, means of passage over boundaries, obstructions etc.) 6" Maps XXXV NW & XXXV NE. Length 610 yds. width 9-14 ft. Unmetalled. Passable for vehicles with care.

"Drove Lane" (continuation). The road runs E to the Alley, and then turns S to the metalled Cold Ash - Bucklebury Alley road. No obstructions. The lane is bad in many places, with pot-holes, and generally avoided by cars. Mainly used as BR & FP.

Grounds for believing path to be public.
(E.g. Awarded, repaired at public expense, used by public without interference for 20 years, etc.)
Where documents are referred to the title of such documents should be mentioned and information given showing where they can be inspected.

Well used by public throughout living memory. Shown on Rocque's Map of 1761.

Names and addresses of persons making survey

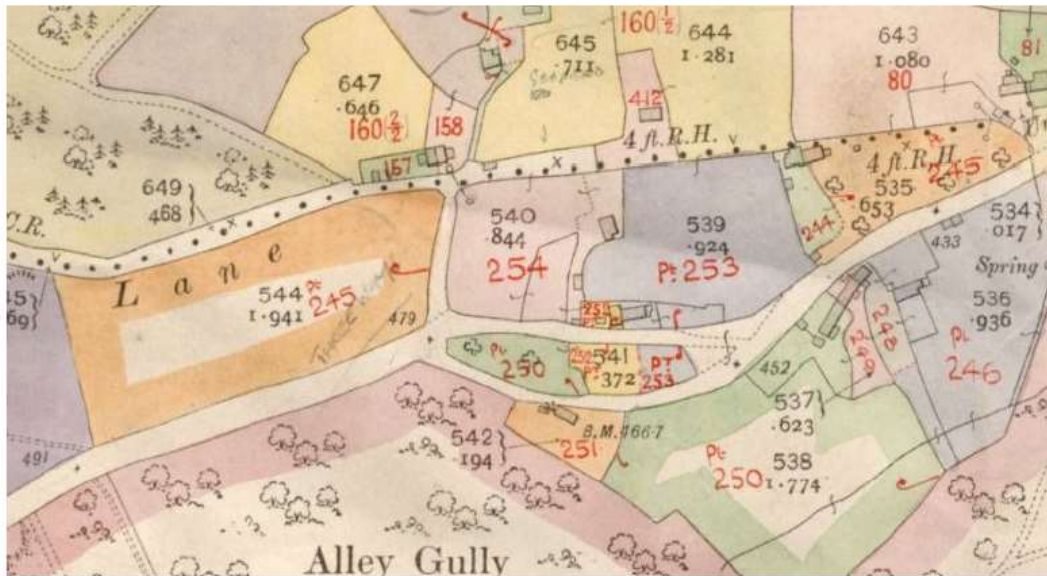
N. HADCOCK
Winchcombe Farm

N. MACKINNON
Chapelrow House

Date of survey

16/11 195 0

1910 Finance Act – Entries listed at Berkshire Record Office (land adjoining Byway Open to All Traffic applications)



No. of Apportionment	Owner	Occupier	Description of Property
245	Miss de Palatiano	no entry	Cottage and Garden
250	Miss de Palatiano	E Buckel	Cottage and Garden
252	Miss de Palatiano	A Blackmore	Cottage and Garden
253	Miss de Palatiano	I Seymore	Cottage and Garden
254	Miss de Palatiano	W Nichols	Cottage and Garden
254	Miss de Palatiano	W Nichols	Cottage and Garden

Byways Open to All Traffic Cold Ash 5 and 26

Brief history & selected reference documents – in relation to Definitive Map Modification Order applications to record widths for BOATs Cold/5 and Cold/26, received February 2023 – see **Drove Lane DMMO applications map** for reference

CRB = Carriage/Cart Road Used mainly as a Public Bridleway

RUPP = Road Used as a Public Path

BOAT = Byway Open to All Traffic

DMMO = Definitive Map Modification Order

These two lanes have physically existed for well over 200 years. They are clearly shown on maps at least as far back as 1808 (and noted in a 1950 Bucklebury Parish survey as appearing on the 1761 'Rocque' map). The routes are mapped as physical lanes/roads on 1842 Tithe maps, and the section of Drove Lane that lay within Hampstead Norreys (along southern edge of Fence Wood) was noted as being a 'Road for Cattle' on the 1842 Hampstead Norreys Tithe Commutation map.

1910 Finance Act exemption

The two routes were exempt from taxation under the 1910 Finance Act (i.e. they were excluded from colouration and separate to the adjacent plots of coloured land): the whole country was surveyed for taxing 'value increment duty' (a tax made on profit made when selling private land) and areas exempt from taxation were left uncoloured (private land subject to taxation under 1910 Finance Act was referenced and coloured). See the possible significance of this in part 11 of the Planning Inspectorate Consistency Guidelines: [Definitive map orders: consistency guidelines - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

1950 Parish Surveys carried out in preparation for the Definitive Map

In 1950, Bucklebury Parish Council surveyed the land for public rights of way during the Definitive Map compilation process, and listed the routes with CRB status (CRB = 'Carriage Road Used Mainly as a Bridleway'), which is type of RUPP ('Road Used as a Public Path'). BOAT Cold/5 was noted as being unmetalled with a width of 9 to 14 feet. BOAT Cold/26 was noted as being 'grassy and unmetalled' with a width of 10 to 16 feet. Note that these widths were not legally recorded on the Definitive Statement and are understood to indicate the used surface of the route visible at the time of the survey.

Definitive Map and subsequent DMMOs

The first Definitive Map and Statement for the area was published in 1961, and served as conclusive evidence that the public rights of way shown on it were in existence as of 3rd May 1954 (the Relevant Date). It included the two application routes, which were recorded as RUPPs. No width was recorded in the Definitive Statement; it was usual practice not to record a width for any public rights of way at that time. Nowadays, any DMMO must include a width.

The Countryside Act 1968 required RUPPs to be reclassified due to ambiguity about what public rights they carried, on a national scale.

In 1986, what is now 'BOAT Cold Ash 26' was re-designated from RUPP to BOAT (it was referenced as 'Buck/3' prior to parish boundary changes in 1991). (DMMO reference: MOD23/24)

In 1990, what is now 'BOAT Cold Ash 5' was re-classified from RUPP to BOAT (it was referenced as 'Buck/2' prior to parish boundary changes in 1991). (DMMO reference: MOD229)

In April 1991, parish boundary changes led to the routes in question transferring from Bucklebury Parish to Cold Ash Parish.

In 1994, it was noticed that BOAT Cold/26 had been inadvertently listed as a 'Public Footpath' in the republished Definitive Statement. It was therefore formally reclassified back to BOAT by means of a DMMO. (DMMO reference: MOD279)

In 1994, it was noticed that junction of BOAT Cold/5, BOAT Cold/26 and Bucklebury Alley had been inadvertently omitted from the republished Definitive Map. Therefore, in 1995, the junction of Cold/5, Cold/26 and Bucklebury Alley was re-recorded as a BOAT in a DMMO, with its area this time shaded in brown on the DMMO Map. This brown area extended between the solid lines around residences shown on Ordnance Survey mapping. (DMMO reference: MOD291)

Current width applications (received February 2023)

In February 2023 application were received to record a legal width for the two sections of BOAT shaded in blue the accompanying plan '**Drove Lane DMMO applications map**'. The brown area on the map shows what was recorded as BOAT in the enclosed 1995 DMMO 'MOD291'.

In recent years there have been questions about whether the verge area on either side of the metalled BOAT surface is part of the legal BOAT width, or adjacent to it. This has led to submission of the two applications for width DMMOs.

Fence-to-Fence/Hedge-to-Hedge presumption

In legal case law, there is a hedge-to-hedge, or fence-to-fence presumption relating to whether or a highway width includes all land on either side between boundaries (a BOAT is a form of highway).

This fence-to-fence/hedge-to-hedge presumption was considered by the Court of Appeal in the case: *Hale v Norfolk County Council* [2001] Ch 717. After reviewing earlier case law, Chadwick LJ stated: *32. Mr Justice Warrington and Mr Justice Goff were plainly correct, as it seems to me, to emphasise that the first question to be decided is whether the fence was erected (or the hedge established) in order to separate land enjoyed by the landowner from land over which the public exercised rights of way. In other words, did the landowner intend to fence against the highway? If that question is answered in the affirmative, then there is a presumption, which prevails unless rebutted by evidence to the contrary, that the land between the fence and the made-up or metalled surface of the highway has been dedicated to public use as highway and accepted by the public as such. It is unnecessary to prove an intention to dedicate; or to prove acceptance by actual user. Both dedication and acceptance will be inferred. And it follows that, where that question can be answered in the affirmative in relation to the fences or hedges on both sides of a made up or metalled surface used as a highway, there will be a presumption that the whole of the land between those fences or hedges has been dedicated to, and accepted for, highway use. That is the basis for the "hedge to hedge" presumption. 33. It seems to me much less clear that there is any foundation for a presumption of law that a fence or hedge which does, in fact, separate land over part of which there is an undoubted public highway from land enjoyed by the landowner has been erected or established for that purpose. It must, in my view, be a question of fact in each case. To take an obvious example: there could be no room for any such presumption unless the highway pre-dated (or was contemporary with) the fence or hedge. If it were unknown which came first, I can see no reason in principle for making an assumption — or adopting a presumption — that the landowner fenced against the highway rather than that the highway followed the line of the existing fence.*

Whether it is right to infer, as a matter of fact in any particular case, that the landowner has fenced against the highway must depend, as Lord Russell of Killowen, Chief Justice, observed in Neeld v Hendon Urban District Council (1899) 81 LT 405, on the nature of the district through which the road passes, the width of the margins, the regularity of the line of hedges, and the levels of the land adjoining the road; and (I would add) anything else known about the circumstances in which the fence was erected. If nothing is known as to the circumstances in which the fences were erected, the fact that the soil of a highway and the adjoining land on each side was once in common ownership and that the highway is separated from the adjoining land by continuous fence lines may well enable a court properly to infer that the landowner has fenced against the highway; that is to say, "that the fences may prima facie be taken to have been originally put up for the purpose of separating land dedicated as highway from land not so dedicated". But it is, I think, wrong to treat the remarks of Lord Justice Vaughan Williams in the Neeld case as authority for a presumption of law that, whenever it is found that a highway runs between fences, the fences were erected for that purpose.

In paragraph 45 of the same case, Hale LJ then considered the fence to fence presumption as follows:

... the presumption of dedication of all the land running between hedges or fences can only arise if there is reason to suppose that the hedge or fence was erected by reference to the highway: that is, to separate the land over which there was to be no public right of way from the land over which there was to be such a right. Where matters are lost in the mists of time, it must often be possible to draw such an inference from the layout on the ground. In a conventional road running between hedges or fences, even if the verges are of varying widths and shapes, this may well be the obvious conclusion. It is not surprising, therefore, that the cases regarded this as the prima facie position. But that is not the same as elevating this preliminary factual question into a presumption of law.

These are all elements to consider alongside evidence about history of each route.

Physical Suitability

In the Planning Inspectorate's Definitive Map Orders Consistency Guidelines ([Wildlife and Countryside Act 1981 - Definitive Map Orders: Consistency Guidelines - GOV.UK \(www.gov.uk\)](#)), it is stated

5.2.67. Where physical suitability of a route is argued, referring to gradient, width, surface, drainage, etc., there should be awareness that what may now be regarded as extremely difficult conditions may well have been relatively commonplace and frequently met by stagecoaches, hauliers and drovers in times past. Special arrangements were often in place to negotiate them.

It should also be noted that surfaces, landscaping and vegetation can change over time, but the original width of a highway will never reduce over time, regardless of whether it is used or usable or not, in line with the adage 'once a highway, always a highway', unless the width is reduced by means of a legal order.


Land Registry

Land Registry documents for residences on either side of the BOATs show general land ownership boundaries running up the solid boundary line on Ordnance Survey maps (i.e. the verges lie outside the general red line boundary shown at Land Registry).

West Berkshire Council, Public Rights of Way Team Definitive Map Officer: Stuart Higgins
,Email: Stuart.higgins@westberks.gov.uk 24th April 2023

Appendix A

Example of one of the Facebook posts to request information from the parish



Pete Murray
25 April at 21:02 · 🌐

CAPC has recieved a request from West Berkshire Council for any documentation, plans or facts concerning two applications to make Definitive Map Modification Orders to record widths for two stretches of Byway Open to All Traffic in Cold Ash.

Both applications relate to the width of part of Byway in **DROVE Lane Cold Ash known as Byway 5 and 26.**

I am gathering evidence and facts to summary CAPC findings to WBC.

If you have any evidence relating to the widths of these routes in DROVE LANE, including any photographs (especially prior to 1996) or recollections about the width/use of the lane, or any records

you might have relating to it that you would be willing to share it would be greatly appreciated.

Please let me know,


Many thanks in advance

Pete Murray CAPC Parish Councillor.

👍 Ivor McArdle, Richard Hanks and 1 other 11 comments


👍 Like 💬 Comment 📧 Send

Top comments ▼



Jenny Batten
Can you please provide an email address for this information to be sent to? ...

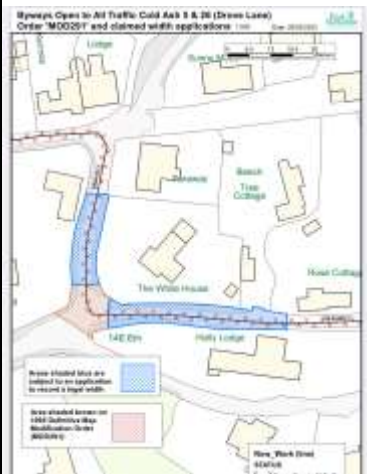
👍 Like Reply 1 w



Pete Murray Author

Local Flyer delivered to houses in the effective areas

Final request for any photographs or maps concerning Byeways 5 & 26 Drove Lane Cold Ash



Help us provide input for the Bye ways 5 & 6 investigation in Cold Ash by Monday 8th May!

Thank you to everyone who has already provided us with information and documents regarding the two applications to make Definitive Map Modification Orders for Byway 5 & 26 Open to All Traffic in Cold Ash. Your contributions have been very helpful.

However, we are still looking for any final inputs that could assist us with this request. If you have any evidence or records relating to the widths of Byway 5 and 26 in Drove Lane, including photographs or recollections about the use of the lane, please do not hesitate to contact us.

Your help will greatly aid our summary of findings to West Berkshire Council. Please contact Pete Murray CAPC Parish Councillor at Pete.murray@rocketmail.com or, our Parish clerk at coldashpc@gmail.com with any information you may have. Thanks!!