Public Document Pack

Delegated Officer Decision

Scan here to access the public documents for this meeting

The attached report will be taken as a Delegated Officer Decision on:

Tuesday 27 October 2026

Ref:	Title	Officer	Page No.
	Application to modify particulars of the Definitive Map or Statement for Byways Open to All Traffic Cold/5 and Cold/26 (application to correct alleged mistakes in Byway Widths recorded in Definitive Map Modification Orders WB074, WB075 and MOD291)	**Jon Winstanley**	1 - 28

This page is intentionally left blank

Report for Determination of
Schedule 14 Wildlife and Countryside Act 1981

Application to correct alleged mistakes in Byway Widths recorded in Definitive Map Modification Orders WB074, WB075 and MOD291

Author:	Stuart Higgins, Definitive Map Officer, West Berkshire District Council ("the Council")
Parish Affected:	Cold Ash
Ward Affected:	Chieveley and Cold Ash
Ward Councillors:	Paul Dick and Heather Codling
Portfolio Holder:	Nigel Foot
Service Lead: Environment	Jon Winstanley
Applicant:	Mr & Mrs Fenner, The White House ("TWH"), Bucklebury Alley, Cold Ash, Thatcham RG18 9NH
Date Application Received:	23rd September 2026
Date Council received certificate from Applicant stating that the landowners had been notified of the application:	24th September 2026, but there is uncertainty about ownership: the land is outside Land Registry general boundaries. THE COUNCIL contacted Bucklebury Estate (who have claimed ownership in the, and four parties who have Caution Against First Registration of some of the affected land.
Route Description (see plans A1 & A2):	Sections of Byway Open to All Traffic Cold Ash 5, and Byway Open to All Traffic Cold Ash 26, alongside The White House
Landowners affected by Application:	The land lies outside His Majesty's Land Registry (HMLR) red general boundary lines

WB074: '*West Berkshire District Council (Byway Open to All Traffic Cold Ash 5 (part) Width) Definitive Map Modification Order 2023*'. An order made by West Berkshire Council on 19th September 2023, and confirmed by an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs on 13th March 2025. No High Court Appeals were made against the order during notification of confirmation.

WB075: '*West Berkshire District Council (Byway Open to All Traffic Cold Ash 26 (part) Width) Definitive Map Modification Order 2023*'. An order made by West Berkshire Council on 19th September 2023, and confirmed by an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs on 13th March 2025. No High Court Appeals were made against the order during notification of confirmation.

MOD291: '*Byway 5 Cold Ash in the District of Newbury, Modification Order 1995*'. An order made by the County Council of the Royal County of Berkshire on 13th February 1995, and confirmed by the County Council of the Royal County of Berkshire on 18th April

1995. No High Court Appeals were made against the order during notification of confirmation.

ROW/3334428 & ROW/3334432[1]: PINS Order Decision (relates to two separate Orders considered together): Dated 13th March 2025. Relates to two 3rd February 2023 Schedule 14 WCA81 applications from a third party, requesting order to record the areas hatched in blue as the widths for two lengths of BOATS Cold/5 and Cold/26. Led to the making and confirmation of WB074 & WB075 above.

ROW/3347492[2] PINS Appeal Decision. Dated 25th July 2025. Relates to a PINS Appeal lodged by Mr & Mrs Fenner against THE COUNCIL's refusal to make a Sch14 WCA81 application to modify the DMS to show a BOAT width different (narrower) to that shown in MOD291. Mr & Mrs Fenner's original application was dated 5th December 2023, and was refused by THE COUNCIL on 30th May 2024.

BOAT = Byway Open to All Traffic
DMMO = Definitive Map Modification Order
DMS = Definitive Map and Statement
HMLR = His Majesty's Land Registry
PINS = Planning Inspectorate (appointed to deal with DMMOs by Department of Environment, Food and Rural Affairs (DEFRA)
TWH = The White House
WCA = Wildlife and Countryside Act 1981

1. BACKGROUND

1.1 The Council received a Schedule 14 WCA81[3] application, with supporting rationale/evidence (Appendix A), from Mr & Mrs Fenner of The White House, Bucklebury Alley, Cold Ash RG18 9NH on 23rd September 2026, requesting that the Council make an Order '*to correct mistakes in Byway widths reported in Council orders WB074 and WB075, and in MOD291 – based on new and historical evidence which shows that the recorded widths are legally incorrect* "*to enable the landscaping to continue within its historical context*".

1.2 The application was accompanied by a rationale (see A1-A4), and ten listed reference documents (APP1-APP10), including maps.

1.3 The applicants summarize the aim of their application:

> *"We require, as is the purpose of this Application, that the Council recognize and honour the red line boundaries to our property as shown in the Ground Survey Plan to property attached, consistent with the legal boundaries to the property and consistent with the Agreement the Council made with us in 2016, protective of same."*

1.4 In their cover letter dated 23rd September 2026, the applicants state,

[1] https://assets.publishing.service.gov.uk/media/67e68db0085277e9961b2008/ROW3334428+ROW3334432_order_decisions.docx
[2] https://assets.publishing.service.gov.uk/media/68b7f6f13f3e5483efdba902/ROW_3347492_s14_appeal_decision.docx
[3] https://www.legislation.gov.uk/ukpga/1981/69/schedule/14

"We have discovered that factually incorrect claims to byway width have been made in Orders and submission to the Planning Inspectorate.

In order to rectify, we are making a new DMMO Application to correct the mistakes in the Orders."

1.5 Taken together, the application appears to be seeking a DMMO to record BOAT widths extending out only as far as the line the applicants have marked in red felt tip on map APP 10, for lengths of BOAT currently defined in three confirmed Definitive Map Modification Orders: MOD291, WB074 and WB074 .

Obligations on THE COUNCIL

1.6 Under Schedule 14 WCA81, the Council, as the Surveying Authority, is obliged to investigate the matters stated in the application and to decide whether or not to make an order. The applicant has a formal right of appeal (to PINS) if the Council does not decide to make an order. The applicant also has a power to make representations to PINS should the Council fail to determine the application within one year of the applicant certifying to the Council that the landowners/occupiers were notified about the application.

1.7 The Council must take into consideration the legal criteria set out in legislation and case law described below. It is a quasi-judicial procedure. Opinions on the security, practicality, desirability or suitability of the route being a public right of way for any particular party are not relevant considerations; it should be an evidence-based decision, using the 'balance-of-probabilities' standard of proof. There are also various governmental guidance documents to take into account referred to below.

1.8 If an Order is made it will be advertised in a local newspaper and on site for a period of six weeks. Parties with an interest in the land and prescribed user groups would be notified by mail and anyone will have the opportunity to object to the Order and provide evidence/arguments.

1.9 Following any six-week advertising period, the Council would be able to confirm any Order if there are no objections or representations. Otherwise, the Order would have to be submitted to PINS for determination.

Current (2019) Definitive Map and Statement (Appendix B)

1.10 The most recent (2019) publication of the Definitive Map shows Public Rights of Way as stylized approximate centre-lines[4] on a relatively small scale (1: 10,000) map. These map lines do not indicate width: there is an accompanying Definitive Statement for particulars such as width to be recorded.

1.11 The 2019 Definitive Statement itself (see extracted pages B2 & B3) has no entry in the 'Width' column for BOATs Cold/5 or Cold/26, and no other specific reference to width.

1.12 The 2019 Definitive Statement 'Notes' entry for BOAT Cold/5 states

[4] Note that the Public Rights of Way were drawn digitally to appear on a map of scale 1:10,000. The zoomed in maps often show a discrepancy at large scale. The map used in Application (W2) is from 2013 and has since been centred more accurately

'*Previously RPP 25. MOD 229 refers. Part previously BW2 Bucklebury. Parts share width with BWs 22 and 22A Hermitage (parish boundary changes April 1991). MOD 291 refers'*[5].

1.13 In 2025 PINS Appeal Decision ROW/3347492, where MOD291 is referred to as 'the 1995 Order', the Inspector concludes,

> *"41 […] I consider the 1995 Order is conclusive evidence of the existence of public byway rights over the area shown coloured brown."*

1.14 The 2019 Definitive Statement 'Notes' entry for BOAT Cold/26 states,

> *"MODs 23 and 24 refer. Previously RPP 3 Bucklebury (parish boundary changes April 1991). MOD279 also (FP to Byway - 1994).*"

1.15 The quoted DMMOs MOD23/24 and MOD279 do not refer to a width.

1.16 WB074 & WB075, DMMOs confirmed by PINS in 2025, in effect supercede the 2019 DMS and are the 'Definitive' record for the sections of Cold/5 and Cold/26 that they refer to.

2. Legislation

2.1 Relevant extracts from section 53 WCA81:

> *"(2) As regards every definitive map and statement, the surveying authority shall—*
>
> > *(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
> >
> > *(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.*
>
> (3) The events referred to in subsection (2) are as follows— […]
>
> > (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows— […]
> >
> > > *(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.*
>
> *(4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to—*

[5] RPP=Road Used As Public Path. MOD=Definitive Map Modification Order. BW=BOAT

(a) the position and width of any public path, restricted byway or BOAT which is or is to be shown on the map; and

(b) any limitations or conditions affecting the public right of way thereover.

2.2 If the criteria are met, the requested order would be made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(iii) of the Act: The Council needs to be satisfied that the evidence shows that particulars contained in the statement require modification.

2.3 The burden of proof to be applied will be the balance of probabilities. PINS guidance states:

> *2.3.11. Once all of the evidence has been individually assessed, the 'balance of probability' test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act, involving careful assessment of the relative values of the individual pieces of evidence and the evidence taken together. It is the infinitely variable nature of this assessment which makes WCA 81 case decisions unique.*

2.4 During a Court of Appeal judgement in 2000[6], Lord Justice Roch stated that he would read the word 'particulars', '*as referring to the details such as the position, width of the public path or BOAT and any limitations or conditions affecting the public right of way thereover'*[7].

Section 32 Highways Act 1980

2.5 section 32 of the Highways Act 1980 states that:

> *A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.*

Paragraph 12(3) Schedule 15 WCA81

2.6 Paragraph 12(3) of Schedule 15 WCA81 states that '*the validity of an order shall not be questioned in any legal proceedings whatsoever'*, except by means of a High Court appeal within 42 days of notification that the order was confirmed.

2.7 This means that the validity of DMMOs MOD291, WB074, WB075 themselves cannot now be questioned, although suitable evidence to show that the DMS needed modifying could lead to new orders being made.

---

[6] Paragraph 37 of Masters v Secretary Of State For Environment, Transport & Regions [2000] EWCA Civ 249 (31 July 2000): http://www.bailii.org/ew/cases/EWCA/Civ/2000/249.html

Section 56 WCA81 (DMS is 'conclusive evidence')

2.8 A relevant extract from section 56 WCA81 states,

> *'56 Effect of definitive map and statement*
>
> *(1)A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely—* […]
>
> > *(c) where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic;*

Discovery of Evidence

2.9 Paragraphs 53(3)(c)(iii) & 53(4)(a) WCA81 indicate that an order should be made to modify the DMS if the 'discovery of evidence' (when considered with all other relevant evidence available) shows, on the balance of probabilities, that particulars in the DMS require modification.

2.10 DEFRA Circular 1/09[8] - Rights of Way Circular (1/09) Guidance for Local Authorities (Version 2 October 2009 – the latest version) gives the follow statement in relation to deletion of public rights of way from the Definitive Map, which is in the same subparagraph used for adding a width description to the Definitive Statement (Section 53(3)(c)(iii) WCA81). It states,

> *"4.33 The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement* […] *will need to fulfil certain stringent requirements. These are that:*
>
> > • *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
> >
> > • *the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;*
> >
> > • *the evidence must be cogent.*
>
> *While all three conditions must be met they will be assessed in the order listed. Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified."*

2.11 Since the 2009 DEFRA Circular 1/09, in the 2010 Kotarski[9] case, Mr Justice Simon has concluded that discovery of a drafting error following 'recent research' would satisfy the requirement for 'discovery of evidence' in section 53 WCA81:

[8] Corporate cover and copyright page for consultations (publishing.service.gov.uk)

[9] Kotarski & Anor v Secretary of State for Environment, Food and Rural Affairs [2010] EWHC 1036 (Admin)

24. The precondition for the exercise of the statutory power of review is the discovery of evidence which (when considered with all other relevant evidence) shows that particulars contained in the map and statement require modification. The discovery that there is a divergence between the two is plainly the discovery of such evidence, and it is unnecessary that it should be characterised as 'new evidence.' It is sufficient that there was the discovery of what the Inspector described as 'a drafting error', which was itself the result of what the Court of Appeal in ex. p. Burrows and Simms characterised as 'recent research.'

25. I note that this approach is consistent with (a) the general approach of the Court of Appeal in ex. p. Burrows and Simms referred to in paragraphs 13 above and 'the importance of maintaining an authoritative map and statement of the highest attainable accuracy'; (b) a generally beneficial purpose that there should be powers to make definitive maps and statements consistent when they are found to be inconsistent; and (c) the decision of Potts J in Mayhew v. Secretary of State for the Environment (1993) 65 P & CR 344 at 352-3, in which he specifically rejected the argument that the s.53(3)(c) modifications should be restricted to cases where 'new evidence' had been discovered.

Hood Case (1975)

2.12 In Paragraph 899 of R v Environmental Secretary, ex parte Hood [1975]1 QB 891, Lord Denning M.R. stated

'The definitive map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living. Such evidence might well have been lost or forgotten by 1975. So it would be very unfair to reopen everything in 1975. In the present case there is no evidence whatever to justify any change in the original classification'.

2.13 The principle behind Lord Denning's comments is that what is shown on a Definitive Map (or DMMO) cannot be overridden by simply pointing to a lack of current knowledge about why it was recorded as it was: i.e. it may be that some information is lost in the mists of the time. Note that Lord Denning's quote refers to a period of 23 years, and that the equivalent period in the current case is 31 years (the period between MOD291 and the recent application), i.e. eight years more.

Trevelyan Case (2001)

2.14 There are also parallels with the case Trevelyan v Secretary of State for the Environment, Transport and the Regions [2001] EWCA Civ 266, where Lord Phillip, Mr stated,

'38. Where the Secretary of State or an inspector appointed by him has to consider whether a right of that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence

existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.

39. These considerations are reflected in guidance published by the Secretary of State for Environment (Circular 18/90) and the Secretary of State for Wales (Circular 45/90) after a decision of the Court of Appeal in Burrows and Simms:

> *In making an application for an order to delete or downgrade a right of way, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded.'*

DEFRA Circular 1/09[10] - Rights of Way Circular (1/09) Guidance for Local Authorities Version 2 October 2009

Deletion or downgrading of ways shown on the definitive map and statement

4.30 The procedures for identifying and recording public rights of way are comprehensive and thorough. Authorities will be aware of the need to maintain a map and statement of the highest attainable accuracy. Whilst the procedures do not preclude the possibility that rights of way may need to be downgraded or deleted, particularly where recent research has uncovered previously unknown evidence or where the review procedures have never been implemented, it is unlikely that such a situation would have lain undiscovered over, what is in most cases, many decades without having been previously brought to light.

4.31 Once prepared, and until subsequently revised, the definitive map and statement is conclusive evidence in rights of way disputes. Authorities are under a duty to make an order modifying the definitive map and statement where they have evidence that a public right of way should be downgraded or deleted. They may discover evidence themselves or evidence may be presented with an application to modify the map and statement.

4.32 Notwithstanding the clear starting point in relation to the possible deletion or downgrading of ways described in paragraphs 4.30 and 4.31, the powers in section 53(3) of the 1981 Act include the making of orders to delete or downgrade rights of way shown on the definitive map and statement in cases where evidence shows that rights did not exist at the time when they were first shown on the map. In making an order the authority must be able to say, in accordance with Section 53(3) (c) (ii) or (iii), that a highway of a particular description ought to be shown on the map and statement as a highway of a different description; or that there is no public

[10] Corporate cover and copyright page for consultations (publishing.service.gov.uk)

right of way over land shown in the map and statement as a highway of any description.

4.33 The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with "higher" rights to a way with "lower" rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that: • the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made. • the evidence must be of sufficient substance to displace the presumption that the definitive map is correct; • the evidence must be cogent. While all three conditions must be met they will be assessed in the order listed. Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified.

4.34 Applications may be made to an authority under section 53(5) of the 1981 Act to make an order to delete or downgrade a right of way. Where there is such an application, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the right of way should be downgraded or deleted. The authority is required, by paragraph 3 of Schedule 14 to the Act, to investigate the matters stated in the application; however it is not for the authority to demonstrate that the map reflects the true rights, but for the applicant to show that the definitive map and statement should be revised to delete or downgrade the way.

2.15 The above legislation and legal cases all emphasise the significance to be given to the Definitive Map and Statement (and confirmed DMMOs) when considering modification 'on the balance of probabilities'.

3. Consultation

3.1 The Council consulted Cold Ash Parish Council on 5th October 2026. The Parish Council responded on 14th October 2026, stating:

"Cold Ash Parish Council notes its previous position of remaining neutral between the parties and allowing the disputed legal and evidential matters to be tested through the statutory process; notes the Planning Inspectorate decisions of 13 March 2025 and 25 July 2025; and, having reviewed the September 2026 application and supporting material, advises West Berkshire Council that CAPC has not seen new primary evidence which appears materially to alter the evidential position considered by PINS. CAPC therefore sees no current evidential basis to depart from the findings reached through those independent decisions, while recognising that the statutory determination of the present application remains a matter for West Berkshire Council."

3.2 The Council observed that the applicants had not notified Bucklebury Estate about the application. Bucklebury Estate, and the applicants themselves, asserted during the 2024/2025 PINS cases that Bucklebury Estate own 'the byways'. This is unproven, and any possible boundaries undefined, so THE COUNCIL asked the applicants to notify

Bucklebury Estate. They refused to do this, so THE COUNCIL informed Bucklebury Estate on 5th October 2026.

3.3 The eastern BOAT verge, west of The White House, is subject to four Land Registry 'Caution Against First Registration' entries. THE COUNCIL notified the four cautioners using their last known email addresses:

> 20th April 2017: John Anthony O'Toole, Connemara, Drove Lane, Cold Ash RG18 9NL
>
> 5th May 2017: Jonathan Mark Rosier & Janet Elizabeth Rosier, Sunny Mead, Drove Lane, Cold Ash RG18 9NL (Mr Rosier acknowledged, 6th October 2026)
>
> 4th May 2017: Derek Gordon, Faraway, Drove Lane, Cold Ash RG18 9NL
>
> 4th May 2017: Alan John Lindsay, Kermas, Drove Lane, Cold Ash RG18 9NL

3.4 Comments were received from Gareth Bailey, Richard Batten, Bucklebury Estate, Lower Drove Lane East Residents Association Limited, Doug White and Tim Wood. The contents of these has been duly noted and will be forwarded as part of the background documentation accompanying this decision report.

4. THE COUNCIL Response to the Application rationale

4.1 The applicants make various points, concluding under '*Wrong on at least three counts*', that,

> '*Not only are the Council's measured widths factually incorrect, the Council has ignored the legal boundary to the property identified in the mereings, and ignored the boundaries to the property evidenced in the Title Plan 1966".*

4.2 Finally, the applicants summarize the aim of their application:

> *"We require, as is the purpose of this Application, that the Council recognize and honour the red line boundaries to our property as shown in the Ground Survey Plan to property attached, consistent with the legal boundaries to the property and consistent with the Agreement the Council made with us in 2016, protective of same."*

4.3 The applicants refer to the widths recorded in WB074 and WB075 as being THE COUNCIL's 'claimed widths'. These widths are actually 'conclusive evidence' widths recorded in confirmed DMMOs WB074 and WB075. They apply only to part of the lengths of BOATs Cold Ash 5 and Cold Ash 26. MOD291 covers the intervening area of BOAT.

4.4 The final bullet point in the applicants' rationale is,

> *"Given the legal property boundaries evidenced in the Finance Act (4ft beyond the line of "Root of hedge") and in the Title Plan 1966, there is no lawful reason why the shading on the map attached to MOD291 should overlap onto, or include any part of the Titled property."*

4.5 The content of MOD291 was considered in detail in the 2025 PINS MOD291 Appeal Decision (ROW/3347492), which stated:

> *"41 […] I consider the 1995 Order is conclusive evidence of the existence of public byway rights over the area shown coloured brown."*
>
> *&*
>
> *"50. I do not consider there is any cogent evidence of sufficient substance to indicate that, on the balance of probabilities, the extent of the appeal route shown in the 1995 Order[11] is incorrect. There is no evidence of legal events after 1995 to amend the appeal route. As there is insufficient new cogent evidence of sufficient substance to displace the presumption that the DMS is correct, there is nothing to justify the making of a DMMO to amend the DMS"*

4.6 The reference documents in Mr & Mrs Fenner's September 2026 application are each examined below.

"1. Legal Boundary" & "2. The Finance Map 1910 (National Archives)" (APP 2)

4.7 This is an extract from the 1910 Finance Act map (drawn on 1912 Berkshire County Series 1:2500 scale Map (sheet 35.7)), which is referred to in WB074 & WB075.

4.8 The applicants state that,

> *"The block of land upon which my property sits was mered to the Parish Boundary. The boundary feature that was mered is what is recorded on the OS Survey. That feature is hedgerow, and the boundary line shown on the Finance Act 1910 is the line of "Root of Hedge". The legal boundary to the property stands four feet beyond the line of "Root of Hedge" and includes the banks in which the hedgerow is growing."*

4.9 This argument about mereings was raised by Mr & Mrs Fenner during the PINS cases ROW/3334428 & ROW/3334432, and ROW/3347492.

4.10 PINS Decision ROW/3334428 & ROW/3334432[12], states:

> *"11. In more recent submissions Mr Fenner stated that the Finance Act 1910 maps identified Mereings to the boundaries for Bucklebury Parish and the Property Rights of the landowners of the Parish. He attested that the Mereings show that landowners have the 'right to claim four feet beyond root of hedge in making their boundary and may use the land for whatever purpose they choose.'*
>
> *12. The parish boundary is depicted as four feet from the root of a hedge on the OS maps, however it does not necessarily follow that the ownership of any property that is bounded by a hedge in the parish, extends four feet from the root of a hedge. Nevertheless, even should that attestation be proven to be correct in this instance, it is the case that land being privately owned does not prevent public rights being*

[11] MOD291 is referred to as 'the 1995 Order' in the PINS Appeal
[12] Paragraphs 11 & 12

acquired across it, indeed many public rights of way run across land in private ownership."

"38. Mr Fenner in his objections, considered that as the hedgerows were not physically depicted on the Finance Act Map, the map therefore did not show the true contours of the lane. He suggested that the width of the byways surveyed at the time would have included the hedges, meaning that the useable width was less than the solid lines indicated. Mr Fenner maintained his view that the Mereings indicated his landownership extended four feet from the boundary hedge, suggesting this meant that any hedge to hedge boundary presumption would be invalid.

39. The root of a hedge commonly sat on the boundary of a property, which is why the administrative boundary for the parish was described on OS mapping as four feet from the root of the hedge. Therefore, whilst the physical depiction of hedges is not shown on the mapping of the time, it is reasonable to assume, in the lack of any persuasive evidence before me of an alternative, that the solid lines depicted on the OS maps form the centre of the hedge. It would seem illogical for the surveyor to calculate a parish boundary from the root of a hedge but not use the same method for property boundaries in the locality. Hedgerows are common boundary features, however they are living features which grow. As the hedge grows outwards, this does not reduce the legal width of the highway it grows out onto, and as highlighted earlier in this decision, any ownership of land across the highway, does not preclude public rights crossing it."

Applicants state that the widths quoted in WB074 & WB075 do not tally with measurements their surveyor has "Measured at source from the Original Map held at Kew"

4.11 The applicants assert that, "*measured at source from the Original Map held at Kew*", the 1910 Finance Act map measure significantly narrower than the measurements given for the 1910 FA map width in WB074 & WB075.

- For Cold/5 the applicants state a width between boundaries of 3.75 metres, '*with a flared width of 6.25m at the entrance*'. WB074 states a width of 5.6m-7.1m (for the part of Cold/5 that it relates to).

- For Cold/26 the applicants state a width between boundaries of 2.5m-3.5m, "*with a flared width at the entrance of 6.25m*". WB075 states a width of 4.5m-8.5m (for the part of Cold/26 that it relates to).

4.12 Without a clear definition, presumably 'the flared width' of 'the entrance' refers to the widest part of the application route, which lies within the length of BOAT/s recorded by MOD291.

4.13 PINS considered the width measurements based on the uncoloured lane width shown on the 1910 Finance Act. Paragraphs 41-43 of PINS Report ROW/3334428 & ROW/3334432[13].

[13] Paragraphs 11 & 12

"41. As the depiction of the byways has been congruous with other mapping throughout the historic record, and including the Finance Act 1910 map, I concur with the Council that it was appropriate to use the Finance Act records, which used the 1912 OS map as a base, to define a width for the routes in question. I am satisfied that, on the balance of probabilities, the widths depicted on the Finance Act 1910 map are representative of what was considered the legal highway and available for public use, both at that time and in the preceding century, when dedication would have taken place.

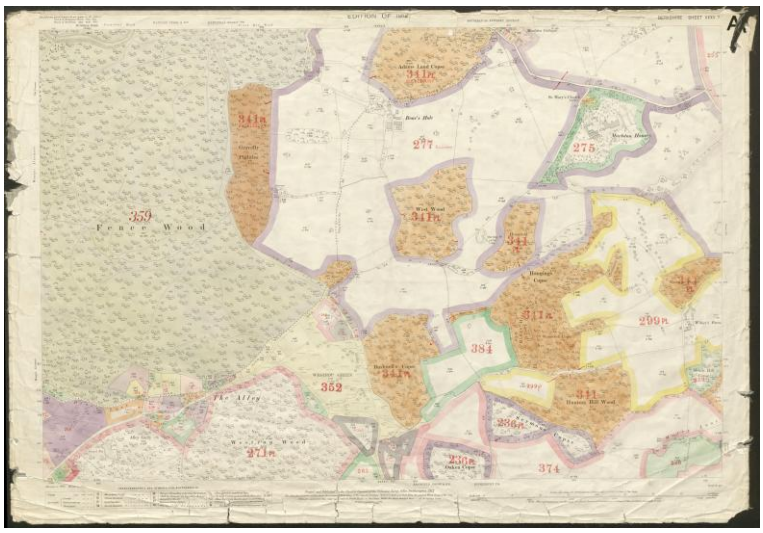
42. The Council determined the widths of the Order routes by scaling off measurements taken from the Finance Act 1910 map and used the hedge to hedge principle, which applies where the boundary features were laid out with reference to the highway. The widths ascertained using this method were, for Byway 5, between points A-B, varying between 5.6 and 7.1 metres as shown uncoloured on the Inland Revenue Valuation Plan prepared under the Finance Act 1910 and for Byway 26, a width varying between 4.5 and 8 metres between points X-Y as shown uncoloured on the Inland Revenue Plan prepared under the Finance Act 1910.

43. The objector commented that the OS map used for the Finance Valuation was on a scale of 25 inches to the mile and that it was accurate at best to plus or minus 12 feet in any direction, giving it no meaningful value in determining the widths of the byways. Whilst I accept that there may be positional discrepancies on a two dimensional map, this will have little effect on the relative position of one feature to another on the ground, such as boundary hedging. As such it does not detract from the usefulness of the OS maps to define the width between two features.

44. I consider the methodology used by the Council both reasonable and logical and whilst the mapping does not and cannot provide an exact width, it does assist in ascertaining the likely widths that were available at the time the routes were dedicated as highway."

4.14 The widths recorded in WB074 & WB075 were carefully measured from geo-rectified scanned copies of the 1912 Ordnance Survey Berkshire County Series 1:2,500 maps ((sheet 35.7) for the case in hand), and cross-referenced with measurements taken from a digitized copy of the scanned original held at the National Archives, Kew, relative to the scale bar at the bottom of the map sheet.

4.15 The scanned copy of the 1910 FA map held at National Archives shows that it is drawn on the 1912 OS County Series Map, 1:2,500 scale, Berkshire (sheet 35.7).

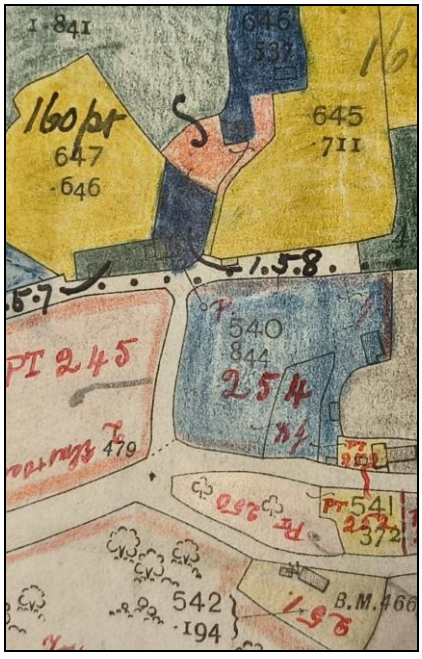


4.16 This confirms what is stated on the National Archives website research guide on the 'Valuation Office Survey 1910-1915' (paragraph 3.1):

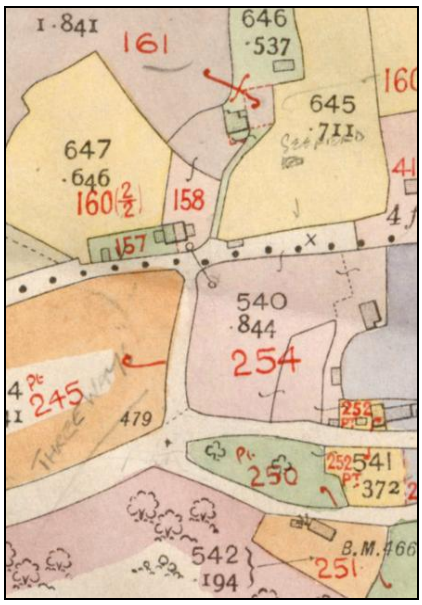
> *"The plans are printed Ordnance Survey map sheets, annotated by the Valuation Office surveyors, and act as a visual index to the field books. The surveyors marked the plans with plot numbers, referred to as assessment numbers, which act as a means of reference to the field books."*

4.17 The uncoloured area on the 1910 FA map(s) is the full area between the solid basemap lines of the 1912 OS County Series map sheet.

4.18 Extract from Working Copy of the 1910 Finance Act map, held at Royal Berkshire Archives (produced on a 1912 OS 1:2500 scale Berkshire County Series map, (sheet 35.7)):



4.19 Extract from the 1910 Finance Act map held at National Archives, Kew (produced on a 1912 OS 1:2500 scale Berkshire County Series map, (sheet 35.7)):



4.20 The base map on both of the above maps can be seen to be identical as would be expected.

4.21 Royal Berkshire Archives holds an 'original' of the paper 1912 OS Berkshire County Series base map.

Cold/5 & Cold/26 measurements, as measured by THE COUNCIL at Royal Berkshire Records from paper originals on 6th October 2026

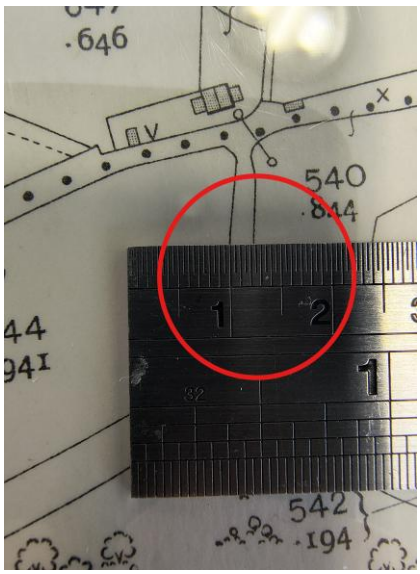
4.22 In response to the September 2026 application, THE COUNCIL has measured the paper 1910 Finance map sheet, and the paper 1912 Ordnance Survey 1:2,500 scale Berkshire County Series map (sheet 35.7), both held at the Royal Berkshire Archives in Reading.

4.23 The images below show a steel ruler laid on the relevant map sheet. The top of the ruler shows numbered centimetres, split into 20ths of a centimetre (i.e. half millimetres).

4.24 A map scale of 1:2,500 means that each millimetre on the map equates to 2.5 metres on the ground (1mm x 2500 = 2500 millimetres = 250cm = 2.5 metres).

Cold/5

4.25 COLD/5. THE COUNCIL measurement, paper original of 1912 Ordnance Survey 1:2,500 scale Berkshire County Series map (sheet 35.7) held at Royal Berkshire Archives:

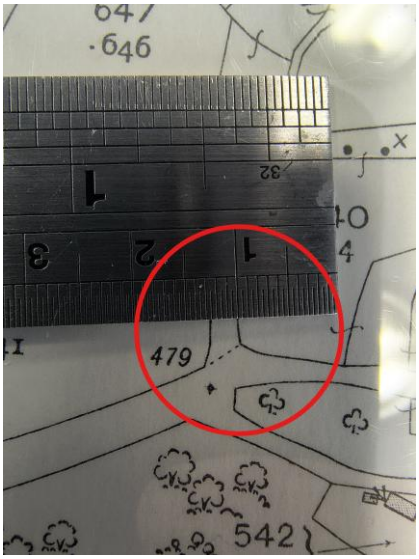


Measurement 1: Cold/5 (approx. mid-section):

Width just under 2.5mm mark,
(2.5mm equates to 6.25 metres on the ground)

WB074 recorded width is 5.6m to 7.1m. This tallies with Measurement 1.

4.26 COLD/5. THE COUNCIL measurement, paper original of 1912 Ordnance Survey 1:2,500 scale Berkshire County Series map (sheet 35.7) held at Royal Berkshire Archives:

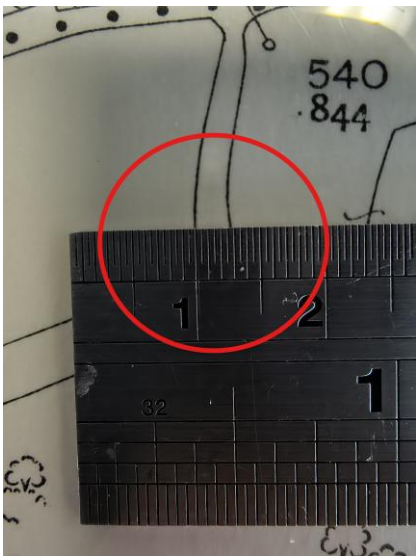


Measurement 2: Cold/5 (just north of point where eastern lane boundary turns east down northern edge of Cold/26)

Width just over 2.5mm mark,
(2.5mm equates to 6.25 metres on the ground)

WB074 recorded width is 5.6m to 7.1m. This tallies with Measurement 2.

4.27 COLD/5. THE COUNCIL measurement, paper original of 1912 Ordnance Survey 1:2,500 scale Berkshire County Series map (sheet 35.7) held at Royal Berkshire Archives:



Measurement 3: Cold/5 (southern end of eastern lane boundary where it turns east along northern edge of Cold/26)

Width between 2.5mm and 3mm marks,
(2.5mm equates to 6.25 metres on the ground,
3mm equates to 7.5 metres on the ground)

WB074 recorded width is 5.6m to 7.1m. This tallies with measurement 3.

4.28 COLD/5. THE COUNCIL measurement, paper original of 1910 Finance Act map, held at Royal Berkshire Archives, annotated on a 1:2,500 scale Ordnance Survey Berkshire County Series map (sheet 35.7):



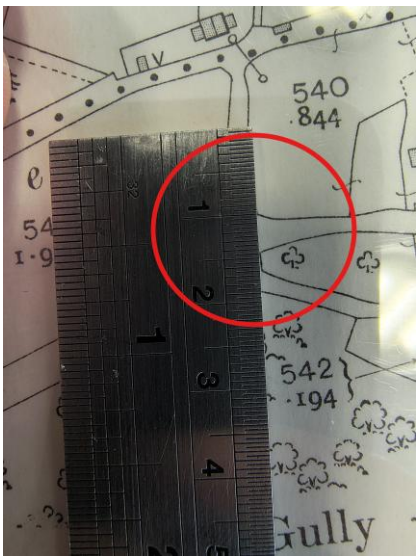
Measurement 4: Cold/5 (approx. mid-section)

Width just under 2.5mm mark,
(2.5mm equates to 6.25 metres on the ground)

WB074 recorded width is 5.6m to 7.1m. This tallies with Measurement 4.

Cold/26 paper measurements, as measured by THE COUNCIL at Royal Berkshire Records fro paper originals on 6th October 2026

4.29 COLD/26: THE COUNCIL measurement, paper original of 1912 Ordnance Survey Berkshire County Series map (sheet 35.7) held at Royal Berkshire Archives:

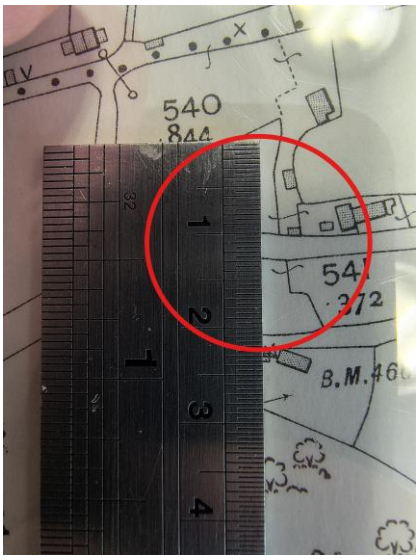


Measurement 5: Cold/26 (western end, where northern lane boundary turns north along eastern edge of Cold/5)

Width just under 4.5mm mark,
(4.5mm equates to 11.25 metres on the ground)

WB075 recorded width is 4.5m to 8.5m, although Measurement 5 is west of the WB075 area, in the MOD291 brown shaded area.

4.30 COLD/26. THE COUNCIL measurement, paper original of 1912 Ordnance Survey 1:2,500 scale Berkshire County Series map (sheet 35.7) held at Royal Berkshire Archives:

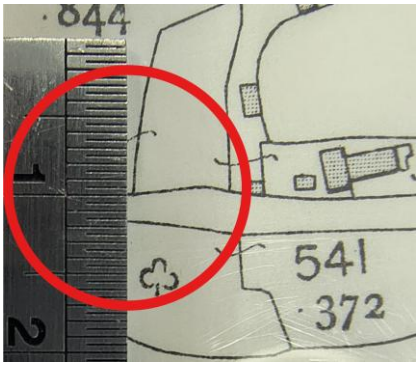


Measurement 6: Cold/26 (section east of narrowest section)

Width between 2.5mm and 3mm marks,
(2.5mm equates to 6.25 metres on the ground,
3mm equates to 7.5 metres on the ground)

WB075 recorded width is 4.5m to 8.5m. This tallies with Measurement 6.

4.31 COLD/26. THE COUNCIL measurement, paper original of 1912 Ordnance Survey 1:2,500 scale Berkshire County Series map (sheet 35.7) held at Royal Berkshire Archives:

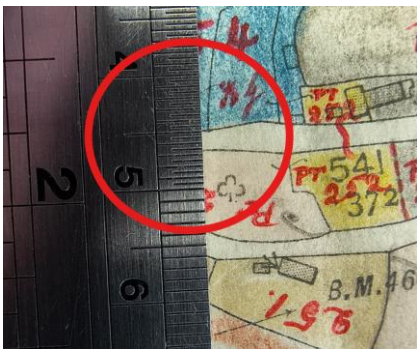


Measurement 7: Cold/26 (narrowest section)

Width between 1.5mm and 2mm marks,
(1.5mm equates to 3.75 metres on the ground
2mm equates to 5 metres on the ground)

WB075 recorded width is 4.5m to 8.5m. This tallies with measurement 7.

4.32 COLD/26. THE COUNCIL measurement, paper original of 1910 Finance Act map, held at Royal Berkshire Archives, annotated on a 1:2,500 scale Ordnance Survey Berkshire County Series map (sheet 35.7):



Measurement 8: Cold/26 (narrowest section)

Width between 1.5mm and 2mm marks,
(1.5mm equates to 3.75 metres on the ground,
2mm equates to 5 metres on the ground)

WB075 recorded width is 4.5m to 8.5m. This tallies with Measurement 8.

4.33 The measurements taken from the paper 1:2500 scale maps held at Royal Berkshire Archives are consistent with the width measurements recorded in WB074 & WB075.

HMLR Title Plans BK45709 (APP 3) & BK51829 (APP 4)

4.34 The applicants state that the two HMLR title plans (APP 3 and APP 4 – see below) are "a match" and "the same" as the 1910 Finance Act Map:

- *"The Finance Map 1910 property boundaries are a match to the Title Plan 1965 and Title Plan 1966 Property boundaries."*
- *"Measured widths from the Finance Map 1910 and Title Plan 1966 are the same. Boundaries haven't changed."*

4.35 These statements are considered in the two sections on APP3 & APP4 below, on those HMLR title maps.

4.36 The Chartered Surveyor letter (APP 6) states that the 1910 Finance Act map and title register plan BK51829 (APP 4 (1966)), "*closely correspond*" and have a "*close correlation*" with each other and "*with the physical features on the ground*". This is considered in the section on APP6 below.

"3. OS Map & Title Plan 1965 (BK45709) (HMLR)" (APP 3)

4.37 This HLMR map (for the property Holly Lodge, south of TWH) is drawn on the same 1912 OS base as the 1910 Finance Act plan, and shows the red general boundary for Holly Lodge, south of BOAT Cold/26.

4.38 This same map was considered and included in the Council's submission for PINS Order Decision cases ROW/3334428 & ROW/3334432. THE COUNCIL's own copy is reproduced in Appendix Z of the current report.

"4. OS Map & Title Plan 1966 (BK51829) (HMLR)" (APP 4)

4.39 This is the HMLR Title Plan for Faraway, the property immediately north of The White House. Faraway was built in a plot of land that was once within the curtilage of TWH.

4.40 This same map was considered and included in THE COUNCIL's submission for PINS Order Decision cases ROW/3334428 & ROW/3334432. THE COUNCIL's own copy is reproduced in Appendix Y of the current report.

4.41 The PINS Order Decision ROW/3334428 & ROW/3334432 commented on a 1968 Land Registry map:

> *"27. A 1968 land registry map shows a more curved south west corner for The White House, suggesting a driveway has been constructed and by 1982, the OS map at a scale of 1:2500 shows verges to both byways around the edges of The White House property. The eastern verge for Byway 5 terminates where it meets the neighbouring property to the north. The solid boundary line for The White House runs inside of the verges, matching the red line boundary on the submitted Land Registry documents for the house, which depicts the verges outside of the property boundary. The current Ordnance Survey Master map also shows the verges."*[14]

4.42 THE COUNCIL had submitted this '1968' map to PINS as part of the ROW/3334428 & ROW/3334432, and ROW/3347492 cases. THE COUNCIL's copy is attached to this report as Appendix W. The map is a HLMR Title Plan (BK71548) originally produced in 1968 for the property 'Vines', a residence around 130 metres north of TWH. This '1968 map' uses the same[15] base map as the '1966' Land Registry map reproduced as APP 4.

4.43 There are subtle changes to mapping around the plot now containing TWH (and Faraway), between the 1912 OS map/1910 FA map, 1960s HMLR plans, 1982 base map (as shown in MOD291) and modern OS Mastermap, as might be expected. It appears there was originally a hedge in the early 20th century, before TWH and then Faraway were built and given gardens, with fencing/wall erected, as well as more modern hedges in at least two different phases/positions in places.

"5. RAF Aerial Photograph 1955 (English Heritage)" (APP 5)

4.44 This photograph appears to indicate a hedge along the western boundary of TWH. The southern boundary is obscured by tree shadow.

4.45 Based on the highlights/shadows, the western hedge appears to correspond with solid bold map lines west of TWH as might be expected, but is not clear enough to show precise alignments or the ground beneath at the time.

4.46 The 1955 aerial photograph postdates the 1910 Finance Act documents, and therefore has no weight in countering WB074 or WB075.

4.47 As PINS Orders Decision ROW/3334428 & ROW/3334432, which concluded that the uncoloured area on the 1910 Finance Act map formed part of the highway, observed,

> *Paragraph 35 "*[…]*This information is helpful in building a picture of how the byways have physically altered in contemporary times, but given the ancient nature of these highways, is less helpful in ascertaining historical widths, as it is clear that the highways predate the photographs by* [over 100 years]*"*

[14] Background data for the current Ordnance Survey Mastermap shows that the solid and dashed map lines between the BOAT and The White House were last updated on 19th April 2004 (over 22 years ago)

[15] Albeit, the 1968 plan is the same but has had the property "Vines" added to it

4.48 The 1955 aerial photograph does nothing to counter what was recorded on the 1995 DMMO, MOD291, which was recorded in relation to the 1982 OS base map, rather than the 1910 Finance Act map.

"6. Report from Chartered Surveyor" (APP 6)

4.49 This is a letter dated 14th Sept 2026 from Andrews Eades Chartered Surveyors.

4.50 The letter states that the Council 'claims' the BOAT width '*between The White House and Byway*' to be the uncoloured land on the 1910 Finance Act map. It should be noted that WB074 & WB075, which describe the width in relation to the 1910 Finance Act map, are conclusive evidence of the particulars that they contain: the stated widths are not 'claimed' as such.

4.51 The 1910 Finance Act map is not referred to in MOD291: MOD291 shows the relevant BOAT width extending out to the Ordnance Survey map solid-line boundaries shown on 1982 1:2500 scale OS mapping[16].

4.52 The surveyor states that in his opinion *"the hedgerow and bank lie outside the limits of the byway and form part of Mr Fenner's property",* and that "*the hedgerow and associated bank do not fall within the extent of the byway*". He states that this is based on measurements he has taken from the original Finance Act Map at The National Archives, and a comparison of "*those measurements with the physical layout of the land on the ground*", and measurements scaled from Land Registry Title BK51829, which he says all have a "*close correlation*".

4.53 The surveyor does not substantiate his comments, and does not question the BOAT widths recorded in WB074, WB075 or MOD291. His opinion would appear to be about where the current (September 2026) physical features lie in relation to the 1910 Finance Act boundary and 1966 HLMR base map plan, which is a separate matter.

"7. THE COUNCIL, Stuart Higgins' "Claim to Width"" (APP 7)

4.54 This is a map produced by THE COUNCIL on 24th February 2023 in response to two 3rd Feb 2023 Schedule 14 WCA81 DMMO applications, requesting orders to record the areas hatched in blue as the widths for two lengths of BOATS Cold/5 and Cold/26. The map also showed the MOD291 BOAT area (shaded brown) for reference.

4.55 The February 2023 Sch14 applications led to the making and confirmation of WB074 and WB075. Note that the confirmed widths in WB074 and WB075 do not necessarily reflect the areas hatched blue, but explicitly refer to the uncoloured lane width shown on the 1910 Finance Act map.

4.56 It does not indicate any reason why the particulars of MOD291, WB074 or WB075 should be modified, on the balance of probabilities.

"8. Council Orders WB074 and WB075" (APP 8)

4.57 This is a copy of the Notice of Confirmation for WB074 and WB075, stating that those two orders came into force on 13th March 2025. No High Court application was

[16] Used as the base map on the MOD291 order map – in 1995 the 1982 paper OS base map was the latest OS mapping available

lodged against the orders during the 42-day notice period, meaning that now, '*the validity of an order shall not be questioned in any legal proceedings whatsoever*.'[17]

4.58 It does not indicate any reason why the particulars of MOD291, WB074 or WB075 should be modified, on the balance of probabilities.

"9. Map attached to MOD291" (APP 9)

4.59 This same annotated map was submitted by Mr & Mrs Fenner as part of their 2024 PINS Appeal submission to PINS, where it featured as Appendix 7a.

4.60 APP 9 is a copy of the MOD291 order map with annotations added by the applicants, indicating what the applicants consider to be 'hedgerow' and areas they consider 'incorrectly shaded area'.

4.61 This claim has already been considered in the 2025 PINS MOD291 Appeal Decision (ROW/3347492), which stated:

> *"41 […] I consider the 1995 Order is conclusive evidence of the existence of public byway rights over the area shown coloured brown."*
>
> *&*
>
> *"50. I do not consider there is any cogent evidence of sufficient substance to indicate that, on the balance of probabilities, the extent of the appeal route shown in the 1995 Order[18] is incorrect. There is no evidence of legal events after 1995 to amend the appeal route. As there is insufficient new cogent evidence of sufficient substance to displace the presumption that the DMS is correct, there is nothing to justify the making of a DMMO to amend the DMS"*

4.62 The 2026 application gives no new evidence or reason to amend the width shown in MOD291.

"10. Ground Survey Plan to property" (APP 10)

4.63 This is a OS Mastermap base map (dated September 2022, produced by a company called Total Geomatics). A red line has been drawn in felt tip along the pecked OS base map line representing the change in ground surface.

4.64 PINS MOD291 Appeal Decision (ROW/3347492):

> *"45. The appellant considers the dashed[19] lines shown on the OS basemaps indicates the property boundaries and the area between the dashed and solid lines indicates banks and hedges, which are part of their property boundary. I consider the dashed lines indicate the extent of the surfaced carriageway and the solid lines indicate property boundaries. The area between the solid and dashed lines are verges. They appellant also asserts that the area between the dashed lines is the extent of the byways, and the byways exist only in the surface of the track. The*

[17] Paragraph 12(3) Wildlife & Countryside Act 1981: https://www.legislation.gov.uk/ukpga/1981/69/schedule/15
[18] MOD291 is referred to as 'the 1995 Order' in the PINS Appeal
[19] Note that on the Applicant's reference document APP10 "Ground Survey Plan to Property", lines referred to as 'dashed' in PINS Appeal ROW/3347492 actually appear as solid lines beneath the red felt tip line.

evidence before me does not support these assertions and the 1995 Order clearly shows the verges are part of Byway 5. Highways are not limited to made up surfaces and can also include verges between the carriageway and property boundaries"

4.65 For comparison with map APP 10, on 29th September 2026, THE COUNCIL produced a copy of its own 'live' Ordnance Survey Mastermap for the area, at the same scale (see Appendix H).

4.66 The THE COUNCIL mapping software shows that the solid and pecked OS Mastermap lines west and south of TWH were last updated on 19th April 2004 (i.e. over 22 years ago). They do not reflect the current boundary structures or verges, which were significantly altered during works by TWH over the period 2015-2017.

4.67 Note that the red felt tip line does not reflect the HMLR general boundary line for TWH (Title Plan BK200203[20]), which can be seen in Appendix X. The HMLR red general boundary line runs along the inner/solid map line, whereas the applicants' red felt tip line on APP 10 has been drawn along the outer line relative to TWH (along the dashed line in Appendix H map).

4.68 It does not indicate any reason why the particulars of MOD291, WB074 or WB075 should be modified, on the balance of probabilities.

**** PLANNING INSPECTORATE DECISIONS ON SAME MATTER IN 2025 ****

4.69 The applicants have made similar assertions and arguments during the PINS Order Decision process (**ROW/3334428 & ROW/3334432**) that led to the confirmation of WB074 & WB075, and also during the PINS Appeal process (**ROW/3347492**) relating to the applicants' failed request for a DMMO to reduce the BOAT width shown on MOD291. The applicant's representations in both those PINS cases effectively asserted that the BOAT widths should be recorded as extending only as far as the applicants' red felt tip line on map APP 10.

5. Conclusion

5.1 MOD291, WB074 & WB075 are confirmed Definitive Map Modification Orders that are conclusive evidence of the particulars that they contain.

5.2 The application and accompanying rationale and documents have been considered in detail and do not show, when considered with all other relevant evidence available, that (on the balance of probabilities) the Definitive Map and Statement needs modifying in relation to the BOATs shown in MOD291, WB074 & WB075.

See Indexed Appendices

[20] Note that this document was considered and submitted to PINS as part of the 2025 PINS Appeal/Order decision cases

This page is intentionally left blank

2026 Application to revise Byway widths recorded in WB074, WB075 & MOD291

A1	Application Cover Letter, 23rd September 2026
A2	Application
A3-A5	Application rationale
APP 1	Application Map
APP 2	“2. The Finance Map 1910 (National Archives)”
APP 3	“3. OS Map & Title Plan 1965 (BK45709) (HMLR)”
APP 4	“4. OS Map & Title Plan 1966 (BK51829) (HMLR)”
APP 5	“5. RAF Aerial Photograph 1955 (English Heritage)”
APP 6	“6. Report from Chartered Surveyor”
APP 7	“7. WBC, Stuart Higgins’ “Claim to Width””
APP 8	“8. Council Orders WB074 and WB075”
APP 9	“9. Map attached to MOD291”
APP 10	“10. Ground Survey Plan to property”
B1	2019 Definitive Map Summary Sheet
B2-B3	Extract sheets from 2019 Definitive Statement
Appendix C	Copy of 1995 Definitive Map Modification Order MOD291
Appendix D	Copy of 2023 Definitive Map Modification Order WB074
Appendix E	Copy of 2023 Definitive Map Modification Order WB075
Appendix F	PINS Order Decision ROW/3334428 & ROW/3334432, 13th March 2025
Appendix G	PINS Appeal Decision ROW/3347492, 25th July 2025
Appendix H1	WBC's 1:100 scale live Ordnance Survey Mastermap, 29th Sept 2026
Appendix W	WBC copy of HMLR Title Plan for Vines, BK71548 (1968 base map)
Appendix X	WBC copy of HMLR Title Plan for White House, BK200203
Appendix Y	WBC copy of HMLR Title Plan for Faraway, BK51829 (1966 base map)
Appendix Z	WBC copy of HMLR Title Plan for Holly Lodge, BK45709

This page is intentionally left blank

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank