

Land North of A507, West of A10 Buntingford

784-B077665

Rebuttal / Clarification Proof of Evidence of Peter Blair on Right of Way 36

In Respect of 'Outline planning application for development of up to 600 dwellings (C3), up to 60 units of elderly accommodation (C3), Mixed Use Local Centre (including flexible use E, F and Sui Generis), First School, informal and formal open space, associated works and infrastructure including a new access from the A507 and pedestrian bridges over the A10, with all matters reserved except for access.'

At Land North of A507, West of A10 in Buntingford

Date: 24/08/2026 | Tetra Tech Ref: 784-B077665

PINS Ref: 6008238 | LPA Ref: 3/24/0966/OUT

Final

On behalf of Hallam Land Management Ltd

Volume 4: Rebuttal (Clarification) in relation to RoW36 in Response to the Evidence of Mr Richard Lewis



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PoE P Blair Vol 4 Rebuttal

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1.0 Introduction

- 1.1.1 This Rebuttal Proof of Evidence responds to and offers clarification on one point raised by Mr Lewis within his Proof of Evidence.
- 1.1.2 There is a Public Right of Way (PRoW), known as Right of Way (RoW) 36, which is designated as a footpath and which extends from the A10 in the west to Bowling Green Lane.
- 1.1.3 A land registry search shows that the Freman college own the land adjacent to and under the RoW36.
- 1.1.4 As a headline clarification, the application does not propose to revise the dedication of the RoW36 from a footpath to a bridleway RoW36 to allow use by cyclists, but it does seek to upgrade the existing right of way (as a footpath) to improve the surfacing and add lighting for pedestrians and those with limited mobility. A route width of 1.8 or 2m would be suitable for that purpose.

2.0 Rebuttal

- 2.1.1 Mr Lewis contends that the proposals are unacceptable because the Appellant cannot guarantee to upgrade RoW36 to a pedestrian / cycleway, because the council cannot undertake works on 3rd party land without landowner agreement.
- 2.1.2 Although not proposed, the Appellant has also confirmed that they would be prepared to support the authorities should they wish to upgrade the route to include cycling. The plan produced to show the footpath upgrade (in the HSOCG) actually features a 3m wide route with a minor reduction to 2.7 metres at one location and that would also be suitable for accommodating shared pedestrian and cycle use.
- 2.1.3 The criticism by Mr Lewis has been that because the land over which the existing RoW36 passes is owned by The Freman College, there is no certainty that the landowner would agree to allow the widening and upgrade works to be undertaken and that such agreement is said to be necessary under a Section 278 agreement.
- 2.1.4 The appellant has received legal advice that the route is maintainable at public expense and so the Authority can undertake such works under a S278 agreement on the basis that irrespective of whichever party owns the subsoil, the Authority is permitted to undertake works on a PRoW, see **Rebuttal Appendix 1**.
- 2.1.5 If Mr Lewis retains his position that the route cannot be upgraded after having considered this clarification, then I anticipate that may be on the basis of questioning the width of the existing PRoW.
- 2.1.6 That in itself may be the subject of legal representations, but I set out below evidence in relation to the matter:
 - 1. The route is a PRoW, see Appendix L in the HSOCG.

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2. In the Definitive Map and Statement (Ref Appendix L in the HSOCG, page 6), the entry for RoW36 does not specify the route width. It does describe it as travelling “*along the north edge of playing fields and the north edge of Greenways estate*”.
 3. In the Rights of Way Improvement Plan (page 7 of my appendices) reference 10/120 records the suggestion for East Hertfordshire to upgrade the footpath to a pedestrian/cycleway. The key actions of that Plan record general support for such actions too. Note the suggestion to upgrade has been made even without the proposed development and the additional level of demand.
 4. Historic documents and maps e.g. CD17.6m show that the route has been in existence since the earliest of those maps in the early 1800s. The path was present well before the school, the recreation ground and the rear fences of the houses.
 5. Land Registry shows that the route is on land owned by Freman college, having been sold to it by either the parish council or a local family. The conveyance to Freman college and the previous ownership does not influence the status of the route, see **Rebuttal Appendix 2**.
 6. Historic maps record it with the name Broad Baulk which does not define a width but does give the impression of something wider than a typical footpath.
 7. There is a hedge to hedge or fence to fence presumption that the land between fences is comprised in the right of way, so long as it is likely that the fences were erected against the right of way, irrespective of whether the route is metalled.
 8. It is apparent from the historic mapping that the way existed before the current adjacent uses and therefore there should be a safe presumption that the fences erected in establishing those current adjacent uses will have been set up to the boundary of the PRoW.
 9. The fence is clearly in evidence along the northern side of the route between the A10 highway land and Bowling Green Lane. The fences of the rear gardens of properties (through which some residents have introduced gates) are clearly in evidence for the western half of the southern side of the route with the eastern half being hedge line and shrubs and trees in a buffer zone between the PRoW and the recreation ground.
 10. It is also clear from the historic and recent mapping that the route has been consistently illustrated generally as a straight line of consistent width.
 11. Where that PRoW is better defined, i.e. between the school fence and the rear fences of the properties, topographical survey mapping shows that the way has one spot width of 3.8m but is typically over 5metres wide, see **Rebuttal Appendix 3**.
 12. Based on historical mapping there should be a clear presumption that the same typical width continues throughout.
 13. On the ground, the width of the PRoW is currently less well defined where it is bounded on the south side by the recreation ground buffer zone. There are places where it is possible to see a hedge line and the topographical survey shows 3 lengths of hedge between the PRoW and the recreation ground. Two of those hedges align with the rear
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fence boundary of the adjacent houses, which reinforces the illustrated straight mapped route as continuing through at a consistent width to Bowling Green Lane. A central section of hedge line along the recreation ground frontage seems to step in to narrow the PRow to around 3.2 metres. That is inconsistent with the mapped corridor alignment. These are all illustrated on the attached topographical survey where I have also shown dimensions.

14. Referring again to the definitive statement which describes RoW36 as being *“along the north edge of playing fields and the north edge of Greenways estate”*, that would describe the full width of the corridor between that southern fenceline / hedge line straight alignment and the Freman College fence on the north side to be PRow.

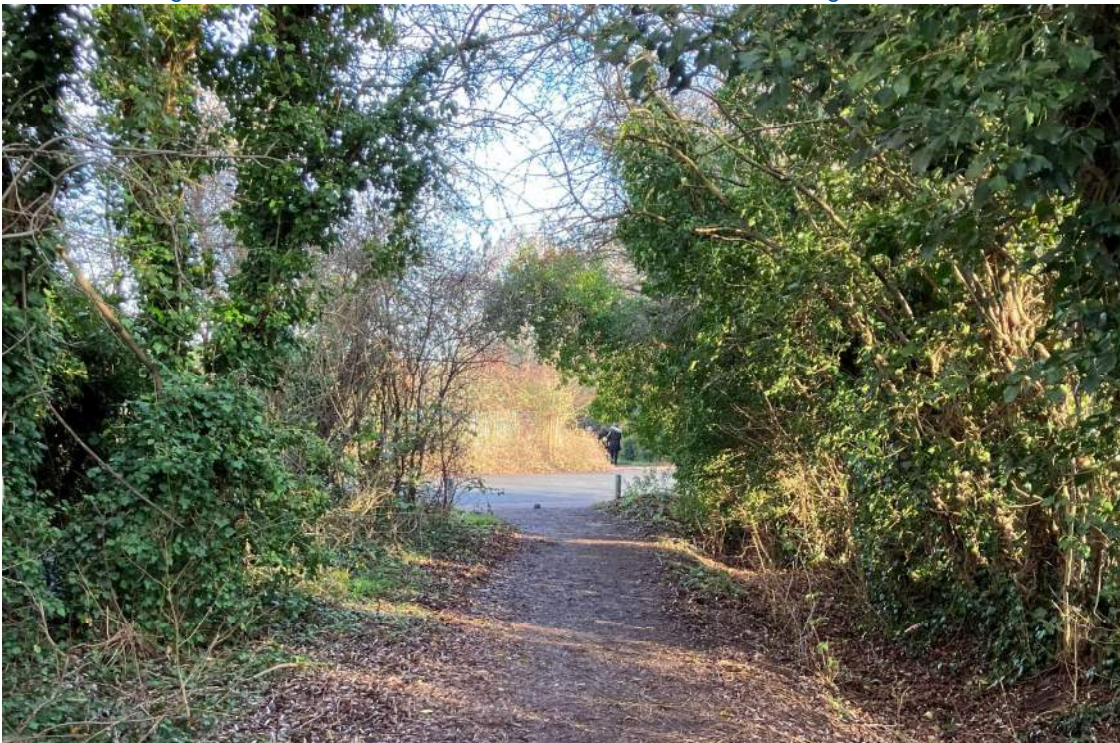
2.1.7 I consider that the evidence shows that the route is highly likely to be of a typical width of around 5 or more metres, of generally straight alignment and as defined by the school fence on the northern side and the rear fence boundaries on the south side and a projection of that line through the two hedge line sections at the recreation ground through to Bowling Green Lane. I cannot say why there is a third hedge line section which steps in, but even if that was taken to define a narrower right of way corridor, it would still be 3.2m wide over that section, which is more than enough to accommodate the footway upgrade and a future pedestrian / cycleway.

2.1.8 There are three other observations which are of interest. The first two relate to the potential vehicular use of the way in its current situation. There are double gates from the school playing fields leading directly onto the lane (see **Figure 1**) and at the Bowling Green Lane where RoW36 emerges, there are demountable bollards and a dropped Kerb (see **Figure 2**). In terms of existing destinations which the ROW serves, there is the countryside, a link through to Skipps Meadow, residential properties (through which some residents have introduced gates) and then several unsurfaced tracks through to the recreation ground and then the connection to Bowling Green Lane. The ROW therefore connects the rural area west of the A10, Skipps Meadow, residential properties, the recreation ground and Bowling Green Lane.

Figure 1: Double gates onto RoW36



Figure 2: De-mountable Bollards where RoW36 meets Bowling Green Lane



- 2.1.9 The third observation is intended to show both the width of the PRow and highlight how the perception of the width of the PRow may be hampered by overgrown vegetation. **Figure 3** below shows an image extracted from Google Earth 2010 looking west into RoW36 from Bowling Green Lane where the vegetation either side of the Way has not been fully trimmed back, but even in that state, it shows the PRow to be of considerably wider than it has appeared to be, over recent months.

Figure 3: RoW36 at Bowling Green Lane in 2010 (Google earth imagery)



3.0 Summary

- 3.1.1 The purpose of this Proof is to clarify and respond to the point made by Mr. Lewis where he believes that the Appellant cannot guarantee to upgrade the RoW36 to a pedestrian / cycleway, because the Authority cannot enter a Section 278 agreement because they say they need landowner agreement.
- 3.1.2 The key points in response are that the proposals do not propose or rely upon upgrading the route to a pedestrian / cycleway, rather they propose to improve the footway and support the potential future upgrading to a pedestrian / cycleway, if that is something which the Authority wish to advance.
- 3.1.3 It is understood that irrespective of which party owns the sub soil, the Authority have the right to upgrade rights of way which are maintainable by them. RoW36 is such a route.
- 3.1.4 The width of the way is not defined in the register, but its southern edge is and historic mapping (over centuries), along with the presence of fence lines and hedge lines on the ground suggest

that the way is typically at least 5m wide over the length between the A10 highways land and Bowling Green Lane.

3.1.5 The footpath improvements need only be 1.8 to 2m wide as a footway which would also support those with limited mobility, but the appellant proposes typically 3m, which could support use by pedestrians, and cyclists if the Authority choose to advance that. The Appellant has offered funding to enable them to do that.

3.1.6 The Right of Way Improvement Plan (ROWIP) suggests an upgrade to a pedestrian / cycleway in this location, even without the proposed development demand. The ROWIP core actions suggest that the Authority should be taking that opportunity. Indeed, the Public Sector Equality Act would support it.

Rebuttal Appendices

Rebuttal Appendix 1 – Legal Advice

HALLAM LAND MANAGEMENT LIMITED (THE "APPELLANT")

LAND NORTH OF A507, WEST OF A10, BUNTINGFORD (THE "SITE")

PUBLIC RIGHTS OF WAY ENHANCEMENTS – BUNTINGFORD FOOTPATH 036 ("FOOTPATH 36")

ADVICE

1 INTRODUCTION

- 1.1 We understand that you require advice regarding Footpath 36 in connection with the proposed redevelopment of the Site pursuant to East Hertfordshire District Council planning application reference 3/24/0966/OUT, which is currently the subject of an appeal under PINS reference 6008238 (the "**Development**", "**Application**" and "**Appeal**", respectively).
- 1.2 Specifically, you require advice on whether works to Footpath 36 required in connection with the Development and to be carried out pursuant to an agreement under section 278 of the Highways Act 1980 (a "**S278 Agreement**" and the "**HA 1980**" respectively) can proceed without the 'underlying landowner' being party to that agreement.
- 1.3 We understand that this issue remains in dispute between you, as Appellant, and Hertfordshire County Council in its capacity as highway authority ("**HCC**") and is identified in paragraph 10 of the Highways Statement of Common Ground ("**HSoCG**").
- 1.4 In addition, you have asked us to advise on the following:
- 1.4.1 whether the fact that Footpath 36 is maintainable at the public expense means it is 'adopted';
 - 1.4.2 whether HCC has the power to undertake the necessary improvement works (including surfacing, widening and lighting) in connection with the Development and whether HCC can authorise the Appellant to carry out those works pursuant to a S278 Agreement;
 - 1.4.3 considering that there is no definitive recorded width for Footpath 36, but hedgerows exist on either side of it, whether it is reasonable to assume that Footpath 36 could be widened within those boundaries.

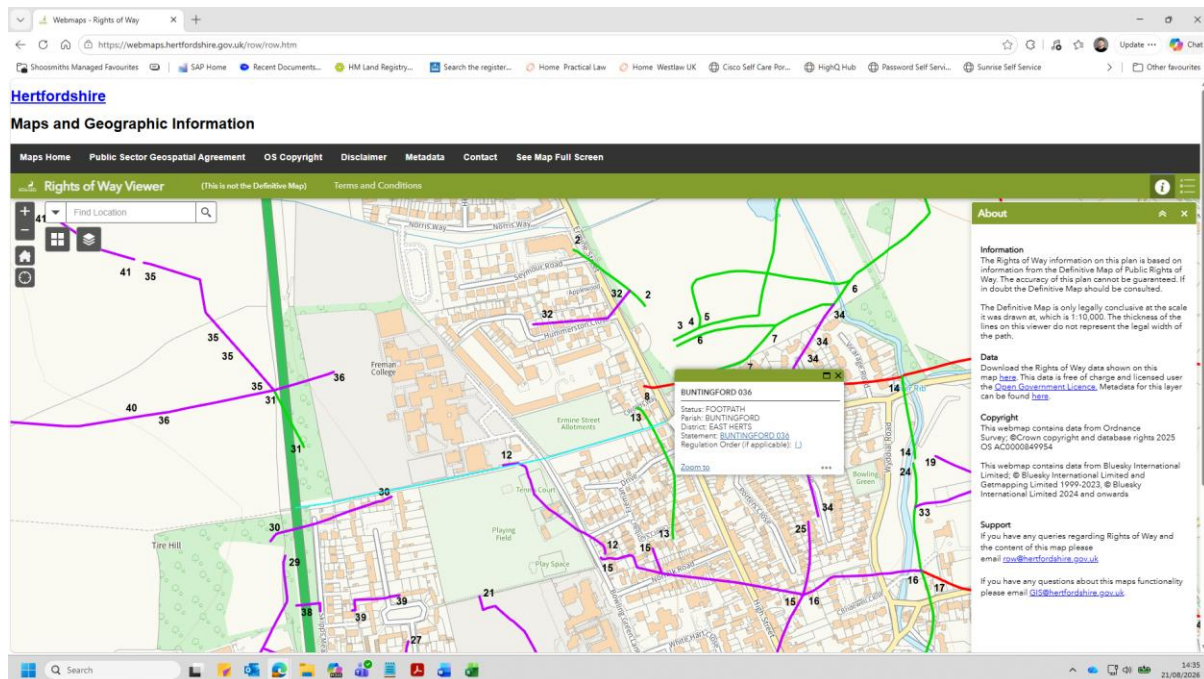
2 WHAT AND WHERE IS FOOTPATH 36?

- 2.1 Footpath 36 is included in HCC's Definitive Map & Statement of Public Rights of Way in Hertfordshire 2015 (kept pursuant to the Wildlife and Countryside Act 1981 and dated 4 December 2015) and is described therein as follows:

"Commences at former A10 Trunk Road (Buntingford High St) at N end of Buntingford thence W along E side of allotment gardens, thence through gardens crossing FP35 along N edge of playing fields and N edge of Greenways Estate and W to the Parish Boundary and a junction with Cottered FP40 on a footbridge over the A10 Buntingford Bypass at TL 3550 2981."

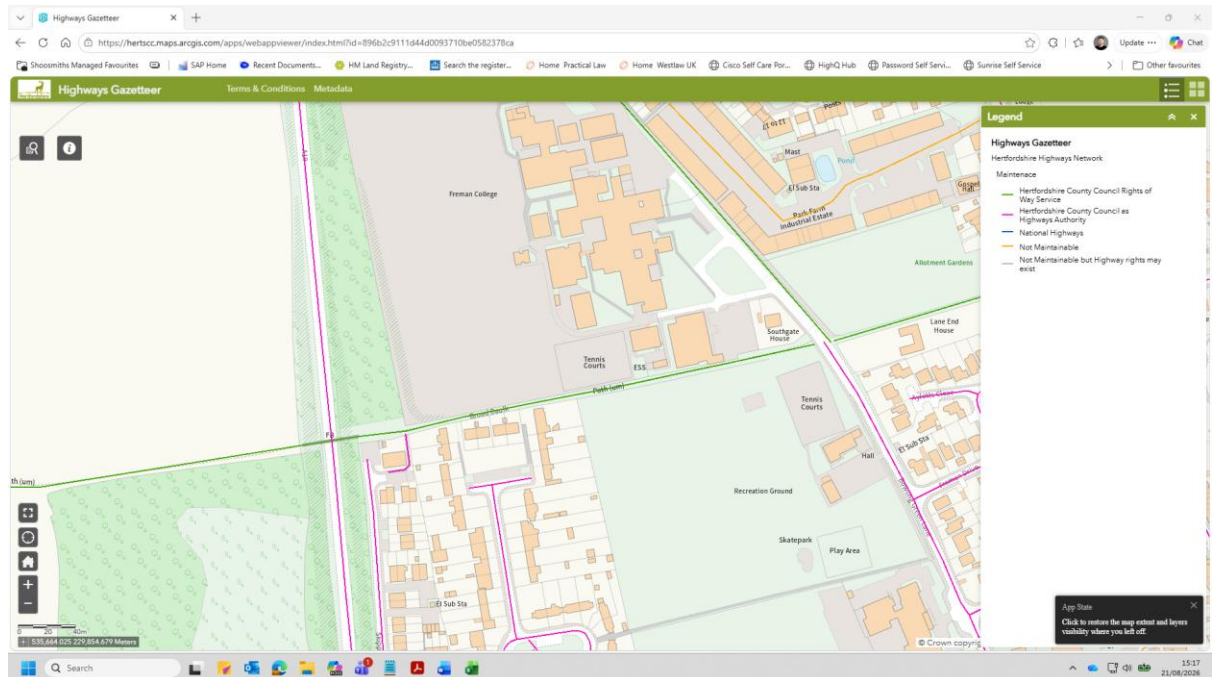
- 2.2 The Definitive Map & Statement lists Footpath 36's status as "FP", shorthand for footpath.

- 2.3 The following extract from HCC's Rights of Way Viewer shows the location and path of Footpath 36 in light blue:



- 2.4 The description of Footpath 36 in the Definitive Map & Statement does not specify the width of Footpath 36 nor record any limitations affecting it. In the absence of this confirmation, the general principle in law is that a footpath extends between any hedges or fences adjoining the footpath. Considering this, it is reasonable to presume that Footpath 36 could be widened within the boundaries of any hedges or fences adjoining it, specifically to the inside edge of any fences adjoining Footpath 36 and the inside edge of the trunk of any hedge adjoining Footpath 36 where there is no fenceline.
- 2.5 Please note that this presumption is not a presumption of law and is rebuttable, albeit we have seen no evidence to contradict it. It must be considered whether any hedge was grown to separate the adjoining land from the footpath. That factor would likely lead a court to determine that the land between the hedge and the footpath is part of the footpath.
- 2.6 The existence of Footpath 36, its status as a public right of way over which the public can pass and re-pass on foot and it being maintainable at the public expense are not in dispute in the Appeal. Regardless, for clarity, it is clear that Footpath 36 is a public right of way and the available evidence also indicates that it is maintainable at the public expense:
- 2.6.1 **Public Right of Way** – Footpath 36 is recorded on HCC's Definitive Map and Statement as a public footpath. Pursuant to section 56 of the Wildlife and Countryside Act 1981, the Definitive Map and Statement are conclusive evidence of the existence and status of the public right of way unless and until modified by a legal order. We are not aware that Footpath 36 has been modified, diverted or extinguished since 4 December 2015.
- 2.6.2 **Maintainable at the public expense** – Under section 36(6) of the Highways Act 1980, HCC is required to maintain a list of the streets within its area which are highways maintainable at the public expense and make that list available for public inspection. HCC publishes a "Gazetteer of adopted roads" on its website, which states that it shows *"all the highways maintained at public expense"* and includes *"roads, rights of way and cycle paths"*.

The Gazetteer includes Footpath 36 and identifies it as being maintained by HCC's Rights of Way Service, as shown below:



The terms "adoption" and "adopted" are not used in the Highways Act 1980. They are commonly used as shorthand for a highway being maintainable at the public expense, which is the relevant statutory concept.

3 HCC'S STATUTORY POWERS

- 3.1 HCC has powers under the HA 1980 to carry out works on highways maintainable at the public expense which would allow it to surface, widen and light Footpath 36. These powers are no different to those that HCC can exercise in relation to a carriageway. HCC can also enter into an agreement with the Appellant under S278 HA 1980 to enable the works to be executed at the Appellant's expense.
- 3.2 The aforementioned powers include a broad power of improvement under section 62(2) and specific powers under section 76 and 97 to level a highway maintainable at the public expense and provide lighting for the purposes of any highway for which HCC is the highway authority respectively.
- 3.3 Whilst the term "improvement" is not materially defined in the Highways Act 1980, it should be given its ordinary meaning. In our view, works to surface, widen (within its limits, see above) and improve the usability of Footpath 36 would plainly constitute improvements to the highway and we are not aware of any statutory restriction in the HA 1980 that would prevent HCC from carrying out these works. Such works would increase the accessibility, convenience and functionality of the route for lawful users and are therefore capable of falling within HCC's powers under section 62(2).
- 3.4 Please note that HCC would be unable to widen Footpath 36 beyond its presumed boundaries (see above) unless exercising compulsory powers.
- 3.5 S278 HA 1980 allows highway authorities to enter into agreements with developers for the execution of works on a highway or a public right of way at the developer's expense, provided

the highway authority is satisfied that the works will be of benefit to the public and they are works that the highway authority could carry out themselves.

- 3.6 It is common ground that the proposed enhancements to Footpath 36 will provide benefits to existing and future residents of Buntingford and the Development – see paragraph 4.1 of the HSoCG – and, as demonstrated above, the proposed works to Footpath 36 are works that HCC could carry out itself. Under any S278 Agreement, HCC can appoint the Appellant as its agent to carry out the works on HCC's behalf.

4 DOES THE LANDOWNER NEED TO BE PARTY TO A S278 AGREEMENT?

- 4.1 Where a highway is publicly maintainable, the relevant land is vested in the authority that is for the time being the highway authority for the highway. In the case of Footpath 36, this is HCC.
- 4.2 The interest vested is a legal interest equivalent to a freehold interest, albeit one which is determinable on the highway in question ceasing to be highway - see *Tithe Redemption Commission v Runcorn Urban District Council* [1954] W.L.R. 518 (“**Runcorn**”).
- 4.3 The width of that interest is as discussed above. The vertical extent of that interest was recently discussed by the Supreme Court (citing Runcorn) in *London Borough of Southwark and another v Transport for London* [2018] UKSC 63. Lord Briggs confirmed at paragraph 9 of the judgment that the vertical extent of the interest vested in the highway authority is as follows:

“That slice of the vertical plane included, of course, the surface of the road over which the public had highway rights, the subsoil immediately beneath it, to a depth sufficient to provide for its support and drainage, and a modest slice of the airspace above it sufficient to enable the public to use and enjoy it, and the responsible authority to maintain and repair it, and to supervise its safe operation.”

- 4.4 Considering the above, it is clear that HCC have a legal interest in Footpath 36, equivalent to a freehold interest in all extents except for duration, which sits between the freehold interest of the owner of the subsoil below Footpath 36 and the airspace above it. We understand from a brief check of Land Registry mapping that the freehold owner of the subsoil below and airspace above Footpath 36 is Freman College.
- 4.5 As HCC have said robust interest in Footpath 36, they can exercise the statutory powers detailed at paragraph 3 above without reference to Freman College in the same way as they can for any carriageway that is maintainable at their expense and Freman College do not need to consent nor be party to any S278 Agreement relating to Footpath 36.

5 CONCLUSION

- 5.1 In conclusion, Footpath 36 is a public footpath which is maintainable at the public expense. Although the terms “adopted” and “adoption” are commonly used as shorthand, they are not legal terms. The relevant statutory concept is that Footpath 36 is ‘maintainable at the public expense’.
- 5.2 Considering Footpath 36 is maintainable at the public expense, HCC has statutory powers under the HA 1980 to carry out works to Footpath 36, including surfacing, widening within its lawful limits and lighting.
- 5.3 On the basis of the authorities considered above, HCC also holds a legal interest in Footpath 36 equivalent to a freehold interest sufficient to enable it to exercise those powers without requiring the separate consent or participation of the owner of the underlying subsoil and airspace. Accordingly, provided the proposed works remain within the lawful extent of Footpath

36, Freman College do not need to be party to, or separately consent to, the S278 Agreement. HCC can enter into a S278 Agreement with the Appellant to enable the works to be conducted at the Appellant's expense and to appoint the Appellant as HCC's agent to carry out the works on HCC's behalf.

- 5.4 The principal practical qualification is width. In the absence of a recorded definitive width, Footpath 36 extends between the relevant physical boundaries, namely the adjoining hedges or fences, unless contrary evidence is produced. If works are required beyond that extent, further consideration should be given to landowner consent, dedication etc.

Shoosmiths LLP

Date: 25 August 2026

Rebuttal Appendix 2 - Land Registry Plans



Official copy of register of title

Title number HD509363

Edition date 16.08.2011

- This official copy shows the entries on the register of title on 24 OCT 2025 at 10:26:42.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 23 Jun 2026.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Leicester Office.

A: Property Register

This register describes the land and estate comprised in the title.

HERTFORDSHIRE : EAST HERTFORDSHIRE

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Freman College, Bowling Green Lane, Buntingford (SG9 9BT).

NOTE: The land tinted green on the title plan is not included in the title.

- 2 (12.11.2009) The land has the benefit of the rights granted by a Deed dated 17 December 1969 made between (1) The Parish Council of Buntingford and (2) The County Council of the Administrative County of Hertford.

NOTE:-Copy filed under HD496110.

- 3 (12.11.2009) The land has the benefit of the rights granted by but is subject to the rights reserved by a Conveyance of the land in this title and other land dated 3 February 1970 made between (1) Barclays Bank Limited and Evelyn Poulton and (2) The County Council of the Administrative County of Hertford.

NOTE 1:- The matters contained in the Agreements dated 18 October 1957 and 4 January 1949 referred to in the Conveyance do not require entry in the register.

NOTE 2:- Copy filed under HD496110.

- 4 (13.06.2011) The land has the benefit of the rights granted by but is subject to the rights reserved by a Transfer of the land in this title dated 6 June 2011 made between (1) Hertfordshire County Council and (2) The Governing Body of Freman College.

NOTE: Copy filed.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (16.08.2011) PROPRIETOR: FREMAN COLLEGE (Co. Regn. No. 7686458) of Freman College, Bowling Green Lane, Buntingford SG9 9BT.
- 2 (16.08.2011) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (12.11.2009) The parts of the land affected thereby are subject to the rights granted by a Lease of an electricity substation site dated 6 November 1992 referred to in the schedule of leases hereto.

NOTE: Copy lease filed under HD496110.

End of register

☒ Postcode
 ☐ Title number

Postcode

or

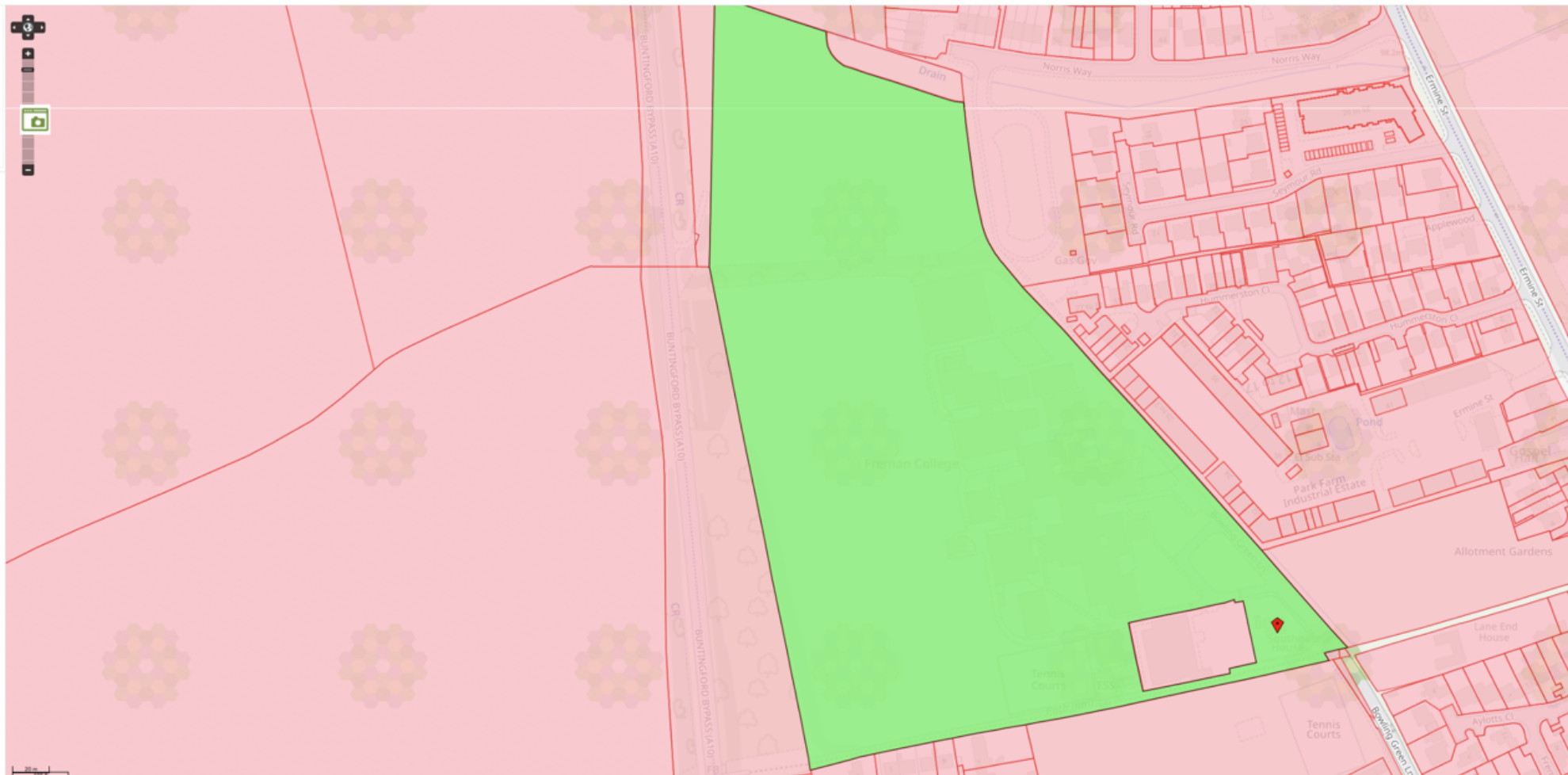
Street name only

Town or Locality

Search Reset

Titles (1 of 1 loaded)

Title number	Estate information	Address
HD509363	Freehold	SOUTHGATE HOUSE BOWLING GREEN LANE BUNTINGFORD SG9 9BT FREMAN COLLEGE BOWLING GREEN LANE BUNTINGFORD SG9 9BT



Rebuttal Appendix 3 – Topographical Survey and Measurements

N

0510152025m

SCALE 1:500

Key:

Fence

Vegetation/Trees/Hedges etc

Dimensions along RoW36

