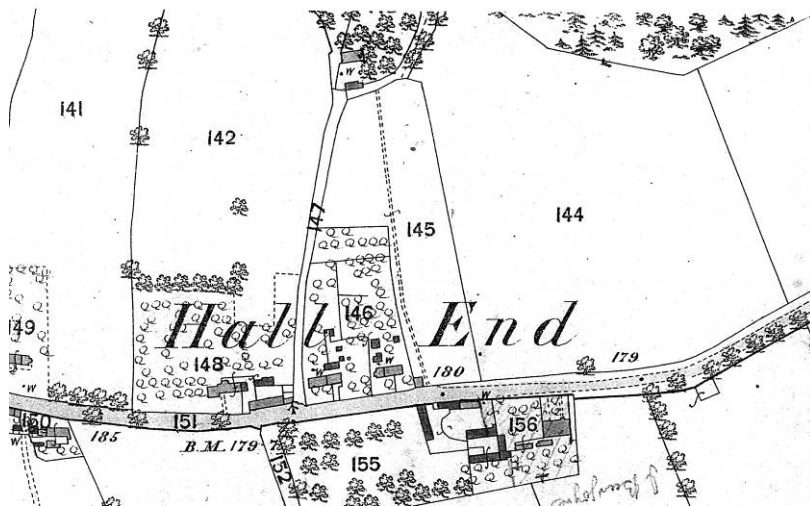


## Appendix E

### Historic Evidence

- E 1. The parish of Maulden underwent enclosure in 1797 by way of Parliamentary Act of Inclosure. The Inclosure Award and accompanying map do not record any public right of way over the line of what is now Footpath No. 28. This is because this land was already enclosed as a series of “closes” and thus not subject to further enclosure and the associated creation of public rights.
- E 2. The land in the early part of the 19<sup>th</sup> Century was owned by the Duke of Bedford. The Maulden Estate was sold at auction in 25 lots in June 1911. Lot 3 included the land over which Footpath No. 28 now runs. Although no mention was made of any public right of way this appears not to be unusual as only private access rights were recorded over the whole area to be auctioned off.
- E 3. Bryants’ Map of the County of Bedford of 1826 was a commercially produced map which was the most accurate of the (generally) post-Inclosure maps of Bedfordshire, being produced at a scale of 1½” : 1 mile. It records the lane occupied by Bridleway No. 24, although on a slightly different alignment but does not record anything along what is now Footpath No. 28. However, on a map of this scale, which was aimed more at users of horses and carriages, this does not preclude the path’s existence; only a handful of footpaths are identified across the entire county on this map.

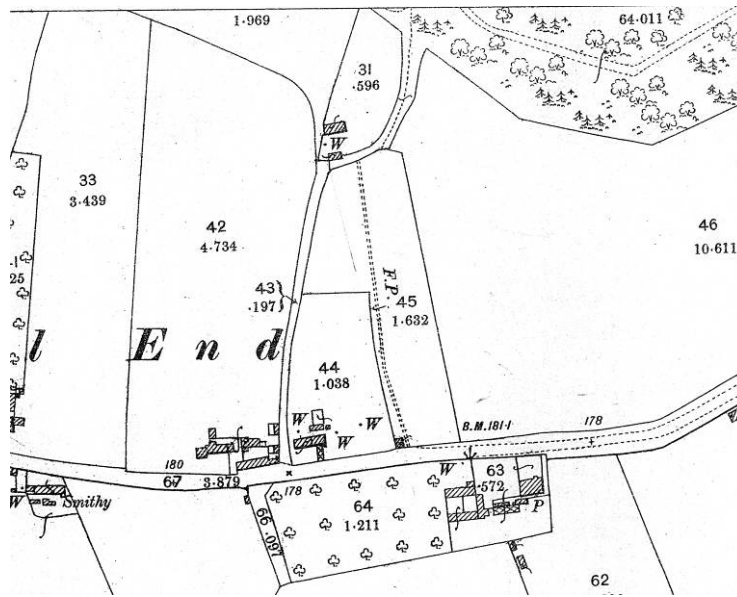


Ordnance Survey 25” : 1 mile map (1<sup>st</sup> Ed.) of 1883

- E 4. The Ordnance Survey 25” : 1 mile map (1<sup>st</sup> Ed.) of 1883 was the first large scale Ordnance Survey map of Maulden and depicts what is now the northern half of Footpath No. 28 as a double-pecked (“= =”) line. This indicated that the path was not enclosed by hedges or fences. The southern

half of the path was also unenclosed but ran close to the boundary of a large property adjoining the bridleway and Clophill Road. The path ran from the side of the old Pound northwards to its junction with Bridleway No. 24. The bracketing (“|”) indicates that the land to either side of the track were all incorporated in the same land parcel (No. 145). The date of this map predates the instructions to surveyors to classify the paths they found as footpath or cart track. The width of the pecking, however, is suggestive of a narrow footpath rather than a wide cart track.

- E 5. The Ordnance Survey 25":1 mile map (2<sup>nd</sup> Ed.) of 1901 again records the line of what is now Footpath No. 28 with double-pecked lines. The path is again bracketed with the adjoining land (now parcel No. 45). In addition, the track is annotated with “F.P.” for footpath.

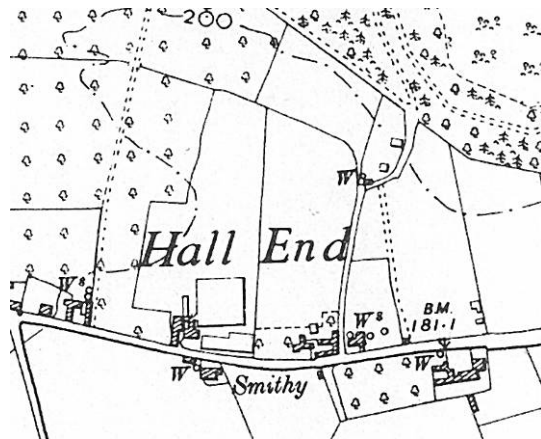


Ordnance Survey 25":1 mile map (2<sup>nd</sup> Ed.) of 1901

- E 6. The annotation “F.P.” was only added to Ordnance Survey maps produced from 1893 so that the public would not mistake the annotated route as a road traversable by horses or wheeled traffic. From 1893, the instructions to the surveyors of Ordnance Survey maps required that “...all footpaths over which there is a well known and undisputed public right of way... [and] ...private footpaths through fields... ...should be shown... ...mere convenience paths... ...should not be shown...”<sup>1</sup> and thus the indication, and annotation, of a footpath on these maps is indicative of there being a footpath of a permanent nature along the route shown. However, as the Ordnance Survey maps were not intended to conclusively record the existence of public rights they were, until recently, issued with the disclaimer “...the representation of any road, track or path on this map is no evidence of the existence of a right of way over it...”.

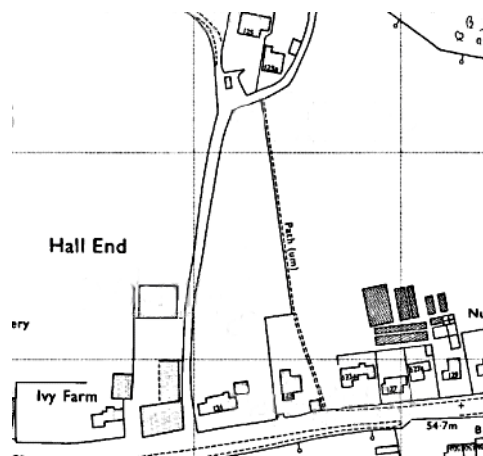
<sup>1</sup> Taken from: “*Ordnance Survey maps: a concise guide for historians*” by Richard Oliver, p.57.

- E 7. The 1910 Finance Act valuation survey was used to identify the extent of the taxable lands identified in the accompanying valuation book. Unfortunately no map is available in the local archives for land in question. The valuation book does not record deductions for public rights of way in the vicinity of Hall End.
- E 8. The 1925 Valuation Act survey, records the land in question as being owned by Mr. J. Izzard and used for market gardening.
- E 9. The smaller scale Ordnance Survey 6":1 mile map of 1938-50 records the bridleway as an enclosed track but does not record the presence of what is now Footpath No. 28.
- E 10. The smaller scale Ordnance Survey 6":1 mile map (Provisional Ed.) of 1947 shows the lane now occupied by Bridleway No. 24 as an enclosed track and also depicts what is now Footpath No. 28 with a double-pecked line for its northern half and a continuous and pecked line (" - - ") for its southern half.



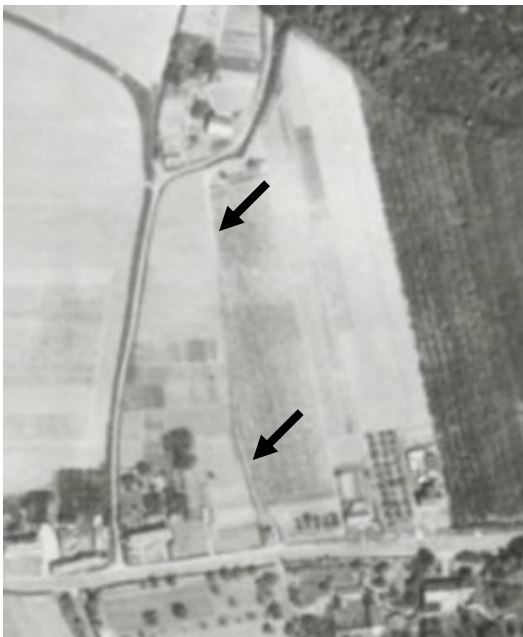
Ordnance Survey 6":1 mile map (Provisional Ed.) of 1947

- E 11. The Ordnance Survey 1:2500 map (4<sup>th</sup> Ed.) of 1975 shows what is now Footpath No. 28 as being a track unenclosed for its southern half and enclosed on its western side for its northern half. The path is also annotated "Path (um)" where "um" stands for unmetalled (unsurfaced).



Ordnance Survey 25":1 mile map (4th Ed.) of 1975

- E 12. The Ordnance Survey 6":1 mile map of 1991 records what is now Footpath No. 28 with a continuous and pecked line (" - - ") for its entire length indicating it was fenced/hedged on its western side.
- E 13. Aerial photographs taken in 1947 and 1976 show that a track existed at these times on the ground along the approximate route of Footpath No. 28. A later aerial photograph taken in 1986 suggest that at that time an alternative, and much wider route, was being utilised through the middle of the market garden.



June 1947



June 1976

Aerial photographs. The track now occupied by Footpath No. 28 is arrowed.

### Definitive Map History

- E 14. In c.1952 the former Bedfordshire County Council asked Maulden Parish Council to undertake a survey of all the paths it considered public as the first step towards creating a Definitive Map of Public Rights of Way under the National Parks and Access to the Countryside Act 1949.



Maulden Parish Council 1952 survey map of rights of way.

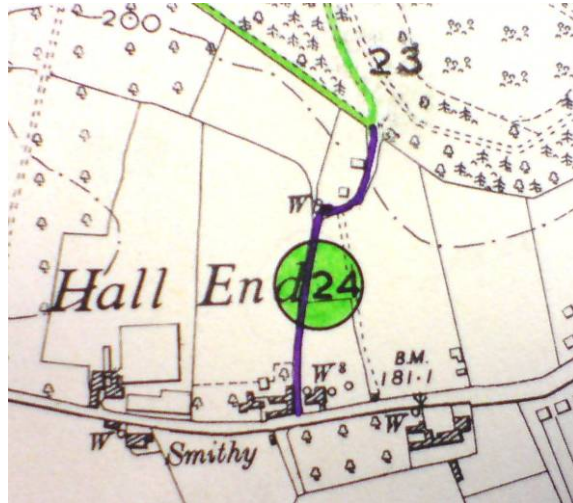
- E 15. Maulden Parish Council returned the survey map showing what is now Footpath No. 28 as a red line annotated with a “J”. The red line, however was crossed out with an “X” as shown above.
- E 16. In the accompanying survey statement, under Path No. 23 which was a bridleway, the footpath is described in an addendum as:  
“At the point near the bungalows occupied by Sharman and Izzard the bridleway No. 23 is joined by a footpath which leads from this point through the adjoining land in a southerly direction which [sic] it joins the main Clophill Road near the Hurdle Barn”
- E 17. Once all the local town and parish councils had returned their survey maps the results were collated and any other routes (such as Awarded paths) considered public by the County Surveyor were added. The former County Council then published its Draft Map of Public Rights of Way in April 1953.
- E 18. What is currently Bridleway No. 24 was depicted on the map as Footpath No. 24. The path was drawn running down the eastern edge of the lane. The depiction of the footpath to the side, rather than along the centre of the lane appears to have been the custom of the cartographer as many paths in the area are depicted in a similar manner.



Extract from the 1953 Draft Map of Public Rights of Way

- E 19. No footpath was depicted along the current line of Footpath No. 28. No objections appear to have been received to the path’s omission from the Draft Map.
- E 20. Footpath No. 24 (shown above) has its own entry in the Draft Statement as:  
“From bridle Road No. 23  
To: Maulden – Clophill Road (A507).  
The path is a: Footpath  
It starts: from Bridle Road No. 23 at a point near the bungalow occupied by Sharman & Izzard and leads through the adjoining land in a southerly direction directly and joins the main Clophill Road near the Hurdle Barn...”

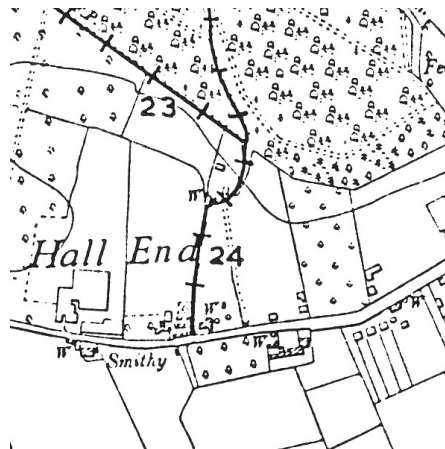
- E 21. Once the Draft Map was published, land owners and members of the public could object to errors on the map or omissions from the map. In 1954 the former County Council appointed Mr. W.A.Sime Q.C. to conduct a number of local hearings into the 1683 objections received county-wide to establish whether there was any evidential basis to recommend that the map be modified. Mr. Sime Q.C. made his recommendations in a report submitted in October 1956.
- E 22. The discrepancy between the route of Footpath No. 24 as indicated on the Draft Map and as described in the accompanying statement caused some confusion; as evidenced by a pencilled comment on the statement which reads
- “Telephoned Mr. H. Robinson 20<sup>th</sup> February 1956 in respect of planning question regarding path No. 24. He agreed that the route was as shewn on the Draft Map. F.L.Roberts 20/4/56.”
- E 23. During the telephone conversation between F. Roberts and Mr. Robinson it was agreed the legal route of Footpath No. 24 was along the lane now occupied by Bridleway No. 24. This is consistent with the requirements of the National Parks and Access to the Countryside Act 1949 which gives the map precedence in relation to the legal status and alignment of a right of way.
- E 24. In October 1957 Mrs. Izzard met with the County Surveyor’s assistant to discuss whether what is now Footpath No. 28 was a right of way. The County Surveyor responded to Mrs. Izzard in a letter, dated 21-10-57, stating “...The broken red line indicates the occupation way, which of course, is not a public path and therefore is not shown on the Draft Survey Map...”. The County Surveyor’s letter originated some seven years before the Definitive Map for Maulden was published, and only a year after Mr. Sime Q.C submitted his report to the former County Council on his proposed modifications to the Draft Map of Rights of Way – and six years before the changes were published statutorily. Consequently, the County Surveyor was correct in that the only official map at his disposal (the Draft Map) showed no public right of way over what is now Footpath No. 28 and no Awarded footpath. However, there is no record that the County Surveyor carried out interviews with users of the footpath to establish that a public right of way had become established through a recent dedication. For these reasons I consider little weight can be given to the County Surveyor’s 1957 letter in light of the later findings of the former County Council and independent Inspector to the 1995 modification order.
- E 25. In September 1963 the statutory Schedule of Modifications to the Draft Map was published. This embodied the recommendations made by Mr. Sime Q.C. in his earlier 1956 report. Maulden Footpath No. 24 was upgraded to a bridleway and the change depicted on the non-statutory Modified Draft Map. Unfortunately, the statement for the path was not changed and still recorded the status of the bridleway as a footpath. However, Section 56(1)(b) of the Wildlife and Countryside Act 1981 prescribes that the status of a path is recorded by the map – not the statement. Consequently Bridleway No. 24 is legally a bridleway rather than a footpath.



Extract from Modified Draft Map

The map's annotation of purple line with green circle signifies that the right of way was originally recorded as a footpath but has been upgraded to bridleway status.

- E 26. No right of way was recorded along the current route of Footpath No. 28 in the subsequent 1963 Provisional or 1964 Definitive Maps. Bridleway No. 24 was depicted as a bridleway on both maps. However, the Definitive Statement still erroneously records Bridleway No. 24 as a footpath passing along approximately the route of Footpath No. 28 through Mr. Bowers' property.



Extract from the 1964 Definitive Map  
(The cross-ticking "—|—|—" indicates bridleway status)

### Works to Bridleway

- E 27. Mr. Alan Bowers, whilst a resident of 125a Clophill Road, arranged to pay half the cost of re-surfacing works on the length of track over which Bridleway No. 24 runs. This was surfaced in c.June 1987, and may have included some degree of piping as three sections of ditch close to the Clophill Road end of the bridleway are piped. No other works to the surface or ditch are recorded for the main section of the bridleway, although recently some minor works have been undertaken by Mr. Tebbutt to prevent flooding

of the section of bridleway adjoining No. 125a Clophill Road to the north of Footpath No. 28.

### **Legal actions relating to Maulden Footpath No. 28**

- E 28. In 1989 the applicant, Mr. Alan Bowers purchased a plot of land off Clophill Road. His fencing of the land and locking of the access gate precipitated the application by a neighbour to the former County Council for the Definitive Map and Statement to be modified by the addition of public footpath.
- E 29. In October 1992 Mr. & Mrs. Izzard submitted an application to the former County Council claiming the existence of a public footpath over the land owned by Mr. Bowers.
- E 30. In September 1995 the former County Council made a Definitive Map Modification Order to add Maulden Footpath No. 28 to the Definitive Map. By this time, Mr. Bowers had already applied for and received planning consent to build his new house, No.123b Clophill Road, over the line of the footpath. Mr. Bowers objected to the modification order, which was made based on evidence of public use of the route, and the order was heard by an independent Inspector using a process based on exchanges of correspondence. The 1995 order was confirmed in August 1997 – by which time Mr. Bowers had almost completed building his new house.
- E 31. Mr. Bowers applied to the former Mid-Beds District Council for a diversion order under Section 257 of the Town and Country Planning Act 1990 (“the TCP Act”) in c.October 1995. The District Council resolved in February 1996 not to approve the application for a variety of reasons.
- E 32. After the 1995 modification order was confirmed, Mr. Bowers applied in c.November 1997 on the advice of the former County Council for an extinguishment order again under Section 257 of the TCP Act. This received a number of objections and, following a public inquiry (see Appendix F), the independent Inspector determined in May 1999 that the order should not be confirmed.
- E 33. Mr. Bowers then applied again to the former Mid-Beds District Council for an extinguishment order under Section 118 of the Highways Act 1980. An order extinguishing the footpath was made in September 2000 and again objected to by local residents and user groups. The order was not confirmed by an independent Inspector in August 2001 following a second public inquiry (see Appendix F).
- E 34. Following legal advice, the former County Council made a public path diversion order in July 2004 to divert Footpath No. 28 out of Mr. Bowers’ house onto a route down the western side of the property. Mr. Bowers and approximately 180 other people objected to the order and, following a third public inquiry, an Independent Inspector confirmed the diversion order in June 2006.
- E 35. In September 2004 Mr. Bowers submitted an application to extinguish Footpath No. 24 either under Section 118 of the Highways Act or at the Magistrates’ Court under Section 116 on the advice of the District Council. The former County Council decided that Mr. Bowers’ application should not



be processed until the (as then) current public path diversion order was completed and the route was open and available for use.

- E 36. In March 2007 Mr. Bowers pleaded guilty to five summonses for obstructing the line of the diverted path and was given a court order requiring their removal. Mr. Bowers was again prosecuted in April 2009, this time by the newly formed Central Bedfordshire Council unitary authority, for failure to comply with the 2007 court order.
- E 37. In October 2008 Mr. Bowers submitted an application to delete Footpath No. 28 on the ground that it ought not to be shown on the Definitive Map. However, Mr. Bowers did not supply any evidence to support his application until March 2009 just prior to the aforementioned court proceedings. The evidence supplied consisted of nine signed statements by people who knew Mr. Bowers or the previous owner of the land, Mr. Cecil Sharp, to the effect that the path was not a right of way. This application is the subject of this agenda item.
- E 38. Following the destruction of a brick storage building (known variously as “the Hurdle Barn” or “Pound”) next to the footpath in 2008, the line of the 2004 diversion order was modified by a variation order made and confirmed in 2010.
- E 39. In early 2012 Mr. Bowers submitted another six statements in support of his application to delete the footpath.