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NOTICE OF MEETING

Meeting	Regulatory Committee
Date and Time	Wednesday, 6th December, 2017 at 10.00 am
Place	Ashburton Hall, The Castle, Winchester, SO23 8UJ
Enquiries to	members.services@hants.gov.uk

John Coughlan CBE
Chief Executive
The Castle, Winchester SO23 8UJ

FILMING AND BROADCAST NOTIFICATION

This meeting may be recorded and broadcast live on the County Council's website. The meeting may also be recorded and broadcast by the press and members of the public – please see the Filming Protocol available on the County Council's website.

AGENDA

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence received.

2. DECLARATIONS OF INTEREST

All Members who believe they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting must declare that interest and, having regard to the circumstances described in Part 3 Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore all Members with a Non-Pecuniary interest in a matter being considered at the meeting should consider whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, consider whether it is appropriate to leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with the Code.

3. MINUTES OF PREVIOUS MEETING (Pages 5 - 8)

To confirm the minutes of the previous meeting

4. DEPUTATIONS

To receive any deputations notified under Standing Order 12.

5. CHAIRMAN'S ANNOUNCEMENTS

To receive any announcements the Chairman may wish to make.

6. BRYAN HIRST RECYCLING LTD BULLINGTON CROSS SUTTON SCOTNEY (Pages 9 - 32)

To consider a report of the Director of Economy, Transport and Environment regarding three planning applications, two for variation of condition 3 (hours of operation) of planning permission 11/01427/CMAN and one for extension to site to provide car park (Retrospective) at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney

7. DOWN END QUARRY DOWN END ROAD FAREHAM (Pages 33 - 56)

To consider a report of the Director of Economy, Transport and Environment regarding planning application for continued use for wood waste sorting, storage and transfer; highways salt store; bin storage; storage and transfer of waste fridges freezers; parking of HGVs and construction and operation of a wood processing area, operation of wood shredder and screener, construction of additional wood storage bays and overflow wood storage areas at Down End Quarry, Down End Road, Fareham

8. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD PUBLIC FOOTPATHS AT ASHE HILL PARK ESTATE, OAKLEY (Pages 57 - 100)

To consider a report from the Director of Culture, Communities and Business Services regarding an application for a Definitive Map Modification Order to record public footpaths at Ashe Hill Park Estate, Oakley, Basingstoke.

ABOUT THIS AGENDA:

On request, this agenda can be provided in alternative versions (such as large print, Braille or audio) and in alternative languages.

ABOUT THIS MEETING:

The press and public are welcome to attend the public sessions of the meeting. If you have any particular requirements, for example if you require wheelchair access, please contact members.services@hants.gov.uk for assistance.

County Councillors attending as appointed members of this Committee or by virtue of Standing Order 18.5; or with the concurrence of the Chairman in connection with their duties as members of the Council or as a local County Councillor qualify for travelling expenses.

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Agenda Item 3

AT A MEETING of the Regulatory Committee of HAMPSHIRE COUNTY COUNCIL held at the castle, Winchester on Wednesday, 15th November, 2017

Chairman:

* Councillor Peter Latham

- | | |
|--------------------------------|----------------------------------|
| * Councillor Judith Grajewski | * Councillor Alexis McEvoy |
| Councillor Christopher Carter | * Councillor Russell Oppenheimer |
| * Councillor Charles Choudhary | * Councillor Stephen Philpott |
| * Councillor Mark Cooper | * Councillor Roger Price |
| Councillor Roland Dibbs | * Councillor Lance Quantrill |
| Councillor Jane Frankum | * Councillor David Simpson |
| * Councillor Marge Harvey | Councillor Roger Huxstep |
| * Councillor Keith House | Councillor Wayne Irish |
| * Councillor Gary Hughes | Councillor Michael Westbrook |

*Present

22. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Carter and Councillor Frankum.

23. DECLARATIONS OF INTEREST

Members were mindful that where they believed they had a Disclosable Pecuniary Interest in any matter considered at the meeting they must declare that interest at the time of the relevant debate and, having regard to the circumstances described in Part 3, Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter was discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore Members were mindful that where they believed they had a Non-Pecuniary interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, considered whether it was appropriate to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with the Code.

24. MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were reviewed and agreed

25. DEPUTATIONS

The deputation procedure was summarised and it was confirmed that six deputations had been received for the meeting.

26. CHAIRMAN'S ANNOUNCEMENTS

There were no Chairman's Announcements.

27. BOTLEY BYPASS LAND AT WOODHOUSE LANE AND NORTH AND EAST OF BOTLEY EASTLEIGH

Committee considered a report from the Head of Strategic Planning regarding an application for the construction of Botley Bypass.

Committee were shown a location plan where the proposed bypass would be going, along with elevations and plans for road improvements along Woodhouse Lane. Detailed diagrams showed new junctions and road changes, along with uncontrolled pedestrian crossings.

Consultations and representations were summarised and issues included flood risks, displaced traffic, noise and lack of signalled crossings.

The Committee received five deputations on this item. Gail Johnson from the British Horse Society stated that they were supportive of the scheme, but wished for safer equestrian access, including that of controlled crossings. There were concerns regarding the amount of traffic and the speed of vehicles, making crossing the road potentially dangerous if there were no controlled crossings. Access to cycle ways and verges was considered important for being able to reach quieter roads and public rights of way.

Councillor Eric Bodger from Curdridge Parish Council was strongly in favour of the scheme as the current route through Botley had seen many accidents, and the developments in Horton Heath were expected to make the traffic worse. Councillor Colin Mercer from Botley Parish Council stated that the majority of local residents were in strong favour of the scheme and it had been anticipated for a long time. The current pavements and the width of the road were felt dangerous for pedestrians, particularly with HGV lorries, of which there were approximately 500 movements per day.

Heather Walmsley, Holly Wood and Rob Ward spoke on behalf of the applicant. The benefits of the bypass were summarised and it was confirmed that controlled crossings had not been taken into account as policy requirements had not been met, but were not ruled out for the future if considered necessary. There had been no objection from consultees on air quality grounds or effects to ecological sites.

Finally, Hampshire County Councillor Rupert Kyrle addressed Committee in support of the proposals. He was hopeful that the bypass and reduction in through-traffic would improve access to the Botley centre and allow people to enjoy the historic village and what it had to offer.

During questions of the deputations, the following points were clarified:

- At the moment horses cross the road in one go, and a controlled crossing had been requested as part of the consultation.
- Installing a controlled crossing was not felt to be warranted for the number of users, and it was unsafe to install a crossing that is rarely used as traffic gets accustomed to ignoring it. It was also a priority that traffic is kept moving along the bypass. An independent audit process had confirmed that one was not needed at the moment.
- There would be minimal cost implications regardless of whether a crossing was installed now or in the future, and the County Council would likely pay for it in either circumstance.
- When considering whether controlled crossings are necessary, only existing and committed developments (those benefitting from planning

permission) can be considered as part of the analysis.

During questions of the officer, the following points were clarified:

- Night works listed under Condition 2 are in exceptional circumstances only, and the Condition will be amended to reflect this.
- The beneficial impact of the bypass was listed as 'moderate' for local businesses, but in reality this was difficult to quantify and could be more.

In debate, Members agreed that it was a well designed application. Some of the Committee was in agreement that controlled crossings were not needed at this stage and it was important to not set a precedent of pre-empting demand..

RESOLVED:

Planning permission was GRANTED subject to the conditions listed in integral appendix B, additional conditions contained within the Update Report, the amendment to Condition 2 and any additional conditions or amendments as necessary following receipt of final consultation responses.

Voting:

Favour: 13 (unanimous)

28. APPLICATION FOR DEREGISTRATION OF COMMON LAND - BLACKBUSHE AIRPORT

Committee received an information report from the Director of Culture, Communities and Business Services regarding land at Blackbushe Airport.

The Chairman informed that the County Council had received an application to de-register Common Land, to which the County Council had received qualifying objections and was therefore obligated to refer the application to the Planning Inspector pursuant to the Commons Registration Act 2014. There would be no debate as no decision was required whilst the Planning Inspector was to decide the application, however in the event the planning inspector decided to return the application to the County Council members of the committee should not prejudice their position by debating prematurely.

The Officer introduced the item and Committee was shown a location plan and aerial photograph from 2013 showing the area.

The Committee had one deputy on the item from local resident Maritsa Singer who expressed her objection to the application for deregistration.

RESOLVED:

Committee noted the report and information therein.

There was no vote on this item.

Chairman,

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	6 December 2017
Title:	A). Extension to site to provide car park (Retrospective) at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney SO21 3FN (No. 17/02238/CMAN) B). Variation of condition 3 (hours of operation) of planning permission 11/01427/CMAN at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney SO21 3FN (No. 17/02190/CMAN) C). Variation of condition 3 (hours of operation) of planning permission 09/02530/CMAN at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney SO21 3FN (No. 17/02192/CMAN) (Site Ref: TV246)
Report From:	Head of Strategic Planning

Contact name: David Smith

Tel: 01962 845891

Email: david.smith@hants.gov.uk

1. Executive Summary

- 1.1 The three planning applications are for an extension to the site area to provide an additional area of car park (Retrospective), and the variation of condition 3 (hours of operation) of planning permissions 11/01427/CMAN and 09/02530/CMAN at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney.
- 1.2 These applications are being considered by the Regulatory Committee as there is a high level of local interest and it involves extended opening hours including Saturday afternoons, Sundays and Public Holidays.
- 1.3 Key material planning issues raised are; effective extension of operational area, removal of trees, highways impacts and amenity issues associated with increased opening hours.
- 1.4 The proposed development is not an Environmental Impact Assessment development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2011](#).
- 1.5 It is considered that the proposal would be in accordance with the relevant policies of the adopted [Hampshire Minerals & Waste Plan \(2013\) \(HMWP\)](#).

It is considered that the proposal would not materially harm the character of the area either visually or in terms of nature conservation (Policies 3 and 5), or lead to pollution or adversely affect the amenity of local residents through noise and disturbance (Policy 10) and would be acceptable in terms of highway safety and convenience (Policy 12).

- 1.6 It is recommended that planning permissions be granted subject to the conditions listed in integral Appendix B.

2. The Site

- 2.1 The existing Bryan Hurst Ltd Metal Recycling Facility occupies 0.9 hectares (ha) and is an existing development approximately 2.2 kilometres (km) north of Sutton Scotney and 2.5 kilometres (km) north east of Barton Stacey. The site lies wholly within the A303/A34 interchange junction. The site is bordered to the south (the A303) and northeast (the link road) by existing tree screens and to the west (the A34) by a 5 metre high fence.
- 2.2 The nearest houses are about 400 metres from the site to the south (Orchard Cottage and Bullington House), 2,500 metres to the north (Firgo Cottages), 1,500 metres to the east (Upper Norton Farm) and 460 metres to the west (Tidbury Farm and Cottages). The River Dever, which is within the River Test Site of Special Scientific Interest (SSSI), is about 670 metres to the south of the site, although the former cress beds which flow into the River Dever are closer, being just over 500 metres away.
- 2.3 The site is accessed via the existing access onto the A303/A34 interchange. There is one access point onto the site.
- 2.4 The existing site is a metal recycling yard with a store building/office, tipping area and storage areas. The store building, constructed close to the site entrance, is a sheet steel clad industrial building measuring 32.4 metres by 15 metres by 7.5 metres high and includes office/amenity facilities. There are also two weighbridges set back from the site entrance and a portacabin weighbridge office.
- 2.5 The hours of operation are 0700 to 1800 Monday to Friday and 0800 to 1300 on Saturday, and there is no working on Sundays or Bank holidays.
- 2.6 Parking was originally sited in an area adjacent to the western side of the building. This was amended by subsequent permission so that car parking was moved alongside the southern boundary.
- 2.7 Car parking (the subject of the retrospective application A) is now sited on the parcel of land in the corner between the site access and the southern boundary, adjacent to the A303.

3. Planning History

3.1 The planning history of the site is as follows:

Application No	Proposal	Date Issued
09/02530/CMAN	Change of use from public house to recycling yard and construction of a store building/office, tipping area, storage areas and formation of car parks	24/03/10
11/01427/CMAN	Extension to existing scrap metal recycling yard	09/09/11
NMA/2012/0258	Non Material Amendment - to allow the handling of waste electrical and electronic equipment (WEEE)	07/09/12
17/02238/CMAN	Extension to site to provide car park (Retrospective)	To be determined
17/02190/CMAN	Variation of condition 3 (hours of operation) of planning permission 11/01427/CMAN	To be determined
17/02192/CMAN	Variation of condition 3 (hours of operation) of planning permission 09/02530/CMAN	To be determined

3.2 The site is identified in the adopted Hampshire Minerals and Waste Plan (2013) as a safeguarded site for metal recycling.

4. The Proposal

4.1 The proposal is for an extension to the site area to provide an additional area car park (Application A) and a variation to the existing working hours to allow increased hours for HGV access to service the County's network of Household Waste Recycling Centres (HWRCs) (Applications B and C).

4.2 The main focus of the proposal is the extension of the site outside of the original application site boundary, the consequent increase to the operational area, the removal of part of the mature tree screen, highway impacts and the amenity impact of the increased opening hours.

4.3 The proposed extension to the site, as shown on Drawing No. BHL/BUL/LAY/01, enlarges the site by approximately 500 sq. metres (0.05 Ha) and provides for 21 car parking spaces. The original permission provided for 8 car parking spaces.

4.4 The proposal for a variation to the existing operating hours is to allow HGVs to deliver containers from the network of HWRCs as necessary, which may include Saturday afternoons, Sundays and Public holidays. It also includes an amendment to start times for HGVs leaving the site to service the

HWRCS, from 0700 hours to 0600 hours. These changes are only for HGV movements to and from the HWRCs and do not involve any change to the hours of any other operations on the site.

- 4.5 The proposed development has been assessed under [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#); 11(e); Storage of scrap iron, including scrap cars and does not require an Environmental Impact Assessment as the site is not in a defined 'sensitive area' and the development is not likely to have significant environmental effects.

5. Development Plan and Guidance

- 5.1 The following plans and associated policies are considered to be relevant to the proposal:

[National Planning Policy Framework \(2012\) \(NPPF\)](#)

- 5.2 The following paragraphs are relevant to this proposal:

- Paragraph 11: Determination in accordance with the development plan;
- Paragraph 14: Presumption in favour of sustainable development;
- Paragraph 17: Set of core land-use planning principles which should underpin decision-taking;
- Paragraph 19: Support of sustainable economic growth;
- Paragraph 28: Support economic growth in rural areas;
- Paragraph 30: Support reductions in greenhouse gas emissions and reduce congestion;
- Paragraph 34: Sustainable transport;
- Paragraph 118: Conserving and enhancing the natural environment.

[National Planning Policy for Waste \(2014\) \(NPPW\)](#)

- 5.3 The following paragraphs are relevant to the proposal:

- Paragraph 1: Delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits by driving waste management up the waste hierarchy; and
- Paragraph 7: Determining planning applications.

[National Waste Planning Practice Guidance \(NWPPG\)](#) (last updated 15/04/2015)

- 5.4 The following paragraphs are relevant to the proposal:

- Paragraph 007 (Self sufficient and proximity principle);
- Paragraph 0047 (Expansion/Extension of existing facilities); and
- Paragraph 0050: (Planning and regulation).

[Hampshire Minerals & Waste Plan \(2013\) \(HMWP\)](#)

- 5.5 The following policies are relevant to the proposal:
- Policy 1 (Sustainable minerals and waste development);
 - Policy 3 (Protection of habitats and species);
 - Policy 4 (Protection of the designated landscape);
 - Policy 5 (Protection of the countryside);
 - Policy 10 (Protecting public health, safety and amenity);
 - Policy 11 (Flood risk and prevention);
 - Policy 12 (Managing traffic);
 - Policy 13 (High-quality design of minerals and waste development);
 - Policy 25 (Sustainable waste management);
 - Policy 26 (Safeguarding - waste infrastructure);
 - Policy 27 (Capacity for waste management development);
 - Policy 29 (Locations and sites for waste management);

[Test Valley Borough Revised Local Plan \(2011 - 2029\) \(2016\) \(TVBLP \(2016\)\)](#)

- 5.6 The following policies are relevant to the proposal:
- LHW4 – Amenity;
 - E8 – Pollution; and
 - T1 Managing movement

6. Consultations

- 6.1 **County Councillor Gibson:** was notified.
- 6.2 **County Councillor Porter:** was notified.
- 6.3 **Test Valley Borough Council:** Has no objection.
- 6.4 **Test Valley Borough Council Environmental Health Officer (EHO):** Has no objection.
- 6.5 **Bullington Parish Council:** Has objection due to the land not being in the operator's ownership, the felling of the trees, the effective expansion of the site and the amenity impact of the increased opening hours.
- 6.6 **Local Highway Authority:** Has no objection.
- 6.7 **Landscape Planning and Heritage (Landscape) (HCC):** Has no objection but asks for replacement planting if the opportunity exists.
- 6.8 **Landscape Planning and Heritage (Archaeology) (HCC):** Has no objection.

7. Representations

- 7.1 Hampshire County Council's [Statement of Community Involvement \(2014\)](#) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.

- 7.2 In complying with the requirements of the SCI, the County Council:
- Published a notice of the application in the [Hampshire Independent](#);
 - Placed notices of the applications at the application site; and
 - Consulted all relevant statutory and non-statutory consultees in accordance with [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#).
- 7.3 As of November 2017, a total of 9 representations to the proposal have been received, all objecting to the proposal. The main areas of concern raised in the objections relate to the following:
- Extending the site outside of the red- lined boundary of the original application into land outside of the current land ownership;
 - The removal of trees forming part of the original site screening to facilitate the creation of the car park;
 - The effective increase of the operational area by moving the car parking and creating additional space;
 - The highways impacts from the increased hours for HGV movements;
 - The amenity impact of increased opening hours and HGV movements e.g. noise; and
 - The history of non compliance with existing planning conditions.
- 7.4 The above issues will be addressed within the following commentary.

8. Commentary

Development Plan and Principle of the development

- 8.1 Application No. 17/02238/CMAN is for the extension of the site to create car parking for 21 cars. This application is retrospective. The previous permissions allowed for 8 parking spaces. These parking spaces were originally sited in the centre of the site to the west of the store building. This was later amended by NMA/2012/0258 and the parking spaces moved to alongside the southern boundary, between the access and the weighbridge.
- 8.2 There are now 25 staff based at the site, and to manage this increase in numbers and to keep staff cars away from the operational area in the interest of health and safety, the operator created a dedicated parking area in its current position. This involved the removal of a number of mature trees and the placement of a grid of 2m x 2m concrete panels.
- 8.3 It is accepted that the land used for this extension is not in the ownership of the operator, and is, in fact, owned by Highways England as part of the wider holding for the A303/A34 interchange. Land ownership is not a planning consideration when determining applications. The operator is required to serve a Certificate of Ownership – Certificate B on all persons that have an interest in the land. This has been undertaken and Highways England has made no comment on the application. If it was to have issues with the land being occupied unlawfully, then it has other legal remedies to address this matter.

- 8.4 The principle of some extension to the facility is considered to be acceptable under the policies of the [Hampshire Minerals & Waste Plan \(2013\)](#). The site was originally occupied by a public house and the surrounding land is associated with the highway. It is therefore considered that the land for the car park extension is effectively previously developed and is not considered to be 'countryside'. As such the extension of the site complies with Policy 5 (Protection of the countryside) and Policy 29 (Locations and sites for waste management) of the HMWP (2013).

Demonstration of need and capacity for waste management

- 8.5 Applications 17/02190/CMAN and 17/02192/CMAN are for variation of conditions to allow increased hours for HGVs to service the network of Household Waste Recycling Centres (HWRCs).
- 8.6 There are 26 HWRCs in Hampshire. The sites are open 7 days a week, except Christmas Day, Boxing Day and New Years Day. Bryan Hirst Limited (BHL) is contracted to service all 26 sites and remove the metal containers when full. The HWRCs notify BHL when the container needs to be changed. These callouts have occurred on Saturday afternoon and Sunday, and the current operational hours are limiting BHL's ability to provide this service.
- 8.7 The reason for requesting a 6am start for HGVs leaving the site is to allow the vehicles to service the HWRCs before they open at 9am during the working week. Currently, if a HGV leaves Bullington Cross at 7.15am (following the completion of daily vehicle checks). It can take between 1 hour and 1.5 hours to reach the furthest HWRCs and when factoring in the container change over time, this leaves a short window before the HWRC opens. This is a tight timeframe and assumes normal rush hour traffic. Allowing HGVs to leave from 6am, will provide sufficient time to carry out daily checks, travel and change over, before the HWRCs are open to the public.

Visual impact and landscape

- 8.8 Policy 13 (High-quality design of minerals and waste development) of the HMWP (2013) requires that waste development should not cause an unacceptable adverse visual impact and should maintain and enhance the distinctive character of the landscape and Policy 10 (Protecting public health, safety and amenity) protects residents from significant adverse visual impact.
- 8.9 The Recycling business, located as it is on a major road interchange, is screened from the surrounding roads by its perimeter fencing and by vegetation on its north/east boundary (adjacent to the link road), and the south boundary (adjacent to the A303). Due to the removal of mature trees to allow the creation of the car parking area, the southern boundary is now less dense and glimpsed views are possible from the A303. There are no significant visual impacts on public footways/bridleways. The County's Landscape Architect has commented on the robustness of the screening vegetation on the southern boundary, improvement of which would help to ameliorate views from the A303, and to the overall loss of vegetation cover

within the site. There is no objection from the Landscape team, but they would welcome any opportunity for replacement boundary planting.

- 8.10 With the addition of a suitable planning condition to require replacement boundary planting, the proposal is considered to be in accordance with Policies 13 (High-quality design of minerals and waste development) and 10 (Protecting public health, safety and amenity) of the HMWP (2013).

Ecology

- 8.11 Policy 3 (Protection of habitats and species) sets out a requirement for minerals and waste development to not have a significant adverse effect on, and where possible, should enhance, restore or create designated or important habitats and species. The policy also sets out a requirement for appropriate mitigation and compensation measures where development would cause harm to biodiversity interests.
- 8.12 Whilst the application to extend the site area is retrospective, the removal of trees did not require any form of planning consent and they could have been removed in any event.
- 8.13 Reference has been made to the County Ecologist's comments to Test Valley Borough Council on another of their applications on the possibility of dormice inhabiting the woody/scrub vegetation along the A303 and around the Bullington Cross junction. However, the Ecologist accepted that as the work had already happened there was nothing to gain from requiring any ecological survey work, and should there be any further removal of vegetation then survey work may be required or protected species legislation may come into force. The original Ecological consultation response to the application in 2009 made no reference to dormice, just to bats and house martins possibly occupying the old pub building, and this matter was resolved when the building was demolished.
- 8.14 In this case, there was no legal protection preventing the felling of the trees, and as this has already occurred, and there is no further removal planned, there is no ecological impact and therefore no conflict with Policy 3 (Protection of habitats and species) of the HWMP (2013).

Impact on amenity and health

- 8.15 Policy 10 (Protecting public health, safety and amenity) of the HMWP requires that any development should not cause adverse public health and safety impacts and unacceptable adverse amenity impacts.
- 8.16 The site already has the benefit of a Permit from the Environment Agency (EA) so issues involving impacts on amenity and health and potential pollution have been addressed by that Authority, and, as required by [National Waste Planning Practice Guidance](#) Paragraph 50, the County Council must assume these issues are adequately controlled. It should also be mentioned that the Plan associated with the Permit includes the car parking area subject of this application, so amenity impacts and pollution control from the effective increase in the operational area has already been taken into account by the EA.

8.17 Concern has been raised about noise impact, as metal recycling can be a noisy activity, however the site is significantly affected by the noise from traffic on the A34 and A303 and the nearest houses are over 400 metres away. The original application for the development of the site as a Metal Recycling Facility was accompanied by a Noise Report which concluded that the noise impact would be acceptable at the nearest houses. The current applications do not include any increase in working hours for treatment or processing of waste material and propose extended hours for the delivery of material to the site only. The potential for additional noise will therefore relate to engine noise from the HGVs and the placement of containers only. No objection has been raised by the Environmental Health Officer at Test Valley Borough Council. Therefore it is not considered there would be an adverse noise impact for local residents and the proposal is considered to comply with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013).

Potential pollution associated with the development

8.18 National Planning Practice Guidance states that Planning Authorities should assume that other regulatory regimes will operate effectively rather than seek to control any processes, health and safety issues or emissions themselves where these are subject to approval under other regimes ([Paragraph 050 Reference ID: 28-050-20141016](#)).

8.19 Planning and permitting decisions are separate but closely linked. Planning permission determines if a development is an acceptable use of the land. Permitting determines if an operation can be managed on an ongoing basis to prevent or minimise pollution.

8.20 As has been stated an Environment Agency Permit has already been granted for the operation at its current levels of activity. This adequately controls any potential pollution associated with the development.

Flooding

8.21 Policy 11 (Flood risk and prevention) relates to minerals and waste development in flood risk areas and sets criteria which developments should be consistent with relating to flood risk offsite, flood protection, flood resilience and resistance measures, design of drainage, net surface water run-off and Sustainable Drainage Systems.

8.22 The site lies within Flood Risk Zone 1, so has the lowest risk of flooding. The EA Permit has requirements for drainage systems and control of surface water run-off which satisfy Policy 11 (Flood risk and prevention) of the HMWP (2013).

Highways impact

8.23 Policy 12 (Managing traffic) requires minerals and waste development to have a safe and suitable access to the highway network and where possible minimise the impact of its generated traffic through the use of alternative methods of transportation. It also requires highway improvements to mitigate any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity.

- 8.24 The site clearly has very good connection to the main road network as it has direct access onto the A34/A303 slip roads. No objection has been raised by Highways England which is responsible for the junction, the visibility splays at the access meet relevant standards and the turning movements into and out of the site would not cause problems for traffic on the slip roads. This is consistent with comments on previous applications at this site, when it has raised no objection. In terms of the wider road network, the Highway Authority also raises no objection.
- 8.25 Objectors have disagreed with the Planning Statement's assertion that there will be no noise impact associated with HGVs passing residential properties. However, HGVs should not need to directly pass any of the nearest houses to access the main road network or the site, as, from the site, HGVs are able to access the A34 and A303 directly for all directions. As such, any impact from vehicle movements will be a relatively small part of the A34 and A303 traffic as a whole. There is an existing Legal Agreement in place to restrict all HGV movements to the A34, A303 and A30. The provisions of the Legal Agreement need to be repeated for these applications. It is therefore considered that the proposals would be acceptable in terms of highway safety and local amenity.

Other Considerations

- 8.26 A number of representations make reference to breaches of the conditions of the original permissions as grounds for refusing the current applications. Complaints have been received on 8 occasions since commencing operations in 2010, although 5 of those have been within the last 2 years.
- 8.27 Two of the complaints concerned HGVs not using the approved routes, however, this matter was addressed and the County Council has not been made aware of any repeats since 2012.
- 8.28 The subsequent complaints concerned the heights of stockpiles and working outside of approved hours. The operator has been challenged on these issues on each occasion, and has taken steps to address the matters raised or suggested operational reasons for the non-compliance. It is the operator's responsibility to operate within the conditions of its permission and if there are breaches of this permission it is for the County Council to consider how best to address these and whether it is expedient to take formal action.
- 8.29 The most recent complaints led to the submission of the applications currently under consideration.
- 8.30 It has also been suggested that the original landscaping scheme has never been completed, but this involved the creation of a bund and erection of the fencing along the A34 with planting on the bund. This work was completed in accordance with the approved scheme.
- 8.31 Mention is also made of end of life (ELV) vehicles being brought onto the site in contravention of the original permission, and the existence of cars, vans, buses and a helicopter being evidence of this. However, the operator states that all vehicles are de-polluted at another of their sites before the shells are brought to the Bullington Cross site for recycling. Either way there is no

restriction preventing ELV being brought to the site, and any related pollution concerns would be covered by the Permit issued by the Environment Agency.

Conclusions

8.32 It is considered that the proposal would not materially harm the character of the area either visually or in terms of nature conservation (Policies 3 and 5), or lead to pollution or adversely affect the amenity of local residents through noise and disturbance (Policy 10) and would be acceptable in terms of highway safety and convenience (Policy 12).

9. Recommendation

9.1 Subject to the Head of Law and Governance being authorised to draw up a Section 106 Agreement to transfer the obligations relating to lorry routing in the existing Section 106 Agreement for planning permission 09/02530/CMAN and all parties entering into the Section 106 Agreement with the County Council, then authority be delegated to the Director of Economy, Transport and Environment to grant:

- 1) Planning permission for extension to site to provide car park (Retrospective) (No. 17/02238/CMAN), subject to the conditions in Integral Appendix B1.
- 2) Planning permission for variation of condition 3 (hours of operation) of planning permission 11/01427/CMAN (No. 17/02190/CMAN), subject to conditions in Integral Appendix B.
- 3) Planning permission for variation of condition 3 (hours of operation) of planning permission 09/02530/CMAN (No. 17/02192/CMAN), subject to conditions in Integral Appendix B.

Appendices:

Integral Appendix A – Corporate or Legal Information

Integral Appendix B – Conditions

Appendix C - Location Plan

Appendix D – Car Park Extension Site Plan

Appendix E – Car Park Layout Plan

Appendix F- Working Activities Plan

Other documents relating to this application

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=18536>

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=18503>

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=18502>

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	No
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:	
The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for planning permission and requires determination by the County Council in its statutory role as the minerals and waste planning authority.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any CORPORATE OR LEGAL INFORMATION: documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

A). Extension to site to provide car park (Retrospective) at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney SO21 3FN (No. 17/02238/CMAN)

Hampshire County Council

B). Variation of condition 3 (hours of operation) of planning permission 11/01427/CMAN at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney SO21 3FN (No. 17/02190/CMAN)

C). Variation of condition 3 (hours of operation) of planning permission 09/02530/CMAN at Bryan Hirst Recycling Ltd, Bullington Cross, Sutton Scotney SO21 3FN (No. 17/02192/CMAN)
(Site Ref: TV246)

CONDITIONS

Conditions for application A - Extension to site to provide car park (Retrospective) (No. 17/02238/CMAN)

1. The site extension hereby permitted shall be used only for the parking of vehicles associated with activities on the adjacent land permitted under planning permissions 09/02530/CMAN and 11/01427/CMAN or any subsequent variation to these permissions.

Reason: To enable the Waste Planning Authority to adequately control the development and to minimise its impact on the amenities of the local area.

2. Within 3 months of the date of this consent a detailed scheme of landscaping for the southern boundary of the car parking area shall be submitted to and approved by the Waste/Mineral Planning Authority in writing. The scheme shall specify the types, size and species of all trees and shrubs to be planted; details of all trees to be retained; and details of fencing/enclosure of the site, phasing and timescales for carrying out the works, and provision for future maintenance. Any trees or shrubs which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The scheme shall be implemented as approved.

Reason: In the interests of visual amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste developments) of the Hampshire Minerals & Waste Plan (2013).

Plans

3. The development hereby permitted shall be carried out in accordance with the following approved plans: **BHL/BUL/APP/01, BHL/BUL/Lay/01**

Reason: For the avoidance of doubt and in the interests of proper planning.

Note to Applicants

1. This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts

Conditions for application B - Variation of condition 3 (hours of operation) of planning permission 11/01427/CMAN (No. 17/02190/CMAN) and application C - Variation of condition 3 (hours of operation) of planning permission 09/02530/CMAN (No. 17/02192/CMAN)

1. The development hereby permitted shall be begun before the expiration of three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 (as amended) of the Town and Country Planning Act 1990.

2. The layout and working at the site shall be as shown on Drawing No HIR/E3750/120B. Tyre storage shall only be as shown on Drawing No HIR/E3750/120B and there shall be no more than 1000 unprocessed tyres stored at the site.

Reason: To enable the Waste Planning Authority to adequately control the development and to minimise its impact on the amenities of the local area.

3. No heavy goods vehicles (HGVs are vehicles over 3.5 tonnes gross weight) except those servicing the Household Waste Recycling Centres shall enter or leave the site except between the following hours: 07.00-18.00 Monday to Friday and 0800-1300 Saturday.

Reason: In the interests of local amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

4. HGVs servicing the Household Waste Recycling Centres shall only enter or leave the site between the following hours: 06.00 - 18.00 Monday to Friday and 07.00 - 16.00 Saturday, Sundays and public holidays.

Reason: In the interests of local amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

5. No processing of waste shall take place and no processing plant or machinery shall be operated except between the following hours: 07.00-18.00 Monday to Friday and 0800-1300 Saturday. There shall be no processing of waste and no processing plant or machinery operated on Sunday or recognised public holidays.

Reason: In the interests of local amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

6. No outside stockpiles of waste and recyclable material, or skips and containers shall exceed a height of four metres.

Reason: To protect the amenities of the area in accordance with Policy 13 (High-quality design of minerals and waste developments) of the Hampshire Minerals & Waste Plan (2013).

7. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus ten percent. If there are multiple tankages, the compound shall be at least equivalent to the capacity of the largest tank, or the combined capacity of inter-connected tanks plus ten percent. All filling points, vents, gauges and site glasses must be located within the bund. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

Reason: To prevent pollution of the water environment and in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Mineral and Waste Plan (2013).

8. All areas where waste is stored, handled or transferred shall be underlain by impervious hard-standing with dedicated drainage to foul sewer or sealed tank.

Reason: To prevent pollution of the water environment and in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Mineral and Waste Plan (2013).

9. The Environmental Management Scheme approved for the main recycling yard shall apply to the extension areas for the duration of their operation.

Reason: To prevent noise, dust and odour disturbance to the residents of the nearest houses in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

10. There shall be no burning or composting of waste at the site.

Reason: To prevent noise, dust and odour disturbance to the residents of the nearest houses in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

11. Visibility splays of 2.4 metres by 90 metres at the junction of the access road with the public highway shall be maintained and shall be kept free of obstacles.

Reason: In the interests of highway safety in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

12. No vehicle shall leave the site unless it has been cleaned sufficiently to prevent mud and spoil being carried on to the public highway. In the event that mud and spoil from vehicles leaving the site are deposited on the public highway, measures shall be taken to clean the highway. In any event at the end of each working day the highway shall be cleaned to the satisfaction of the Waste Planning Authority.

Reason: In the interests of highway safety in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

13. Any changes to the existing lighting on site shall be agreed in writing with the Waste Planning Authority and shall be implemented as approved.

Reason: In the interests of the protection of fauna, landscape character and visual and local amenity in accordance with Policies 3 (Protection of habitats and species), 10 (Protecting public health, safety and amenity), 12 (Managing traffic) and 13 (High-quality design of minerals and waste developments) of the Hampshire Minerals & Waste Plan (2013).

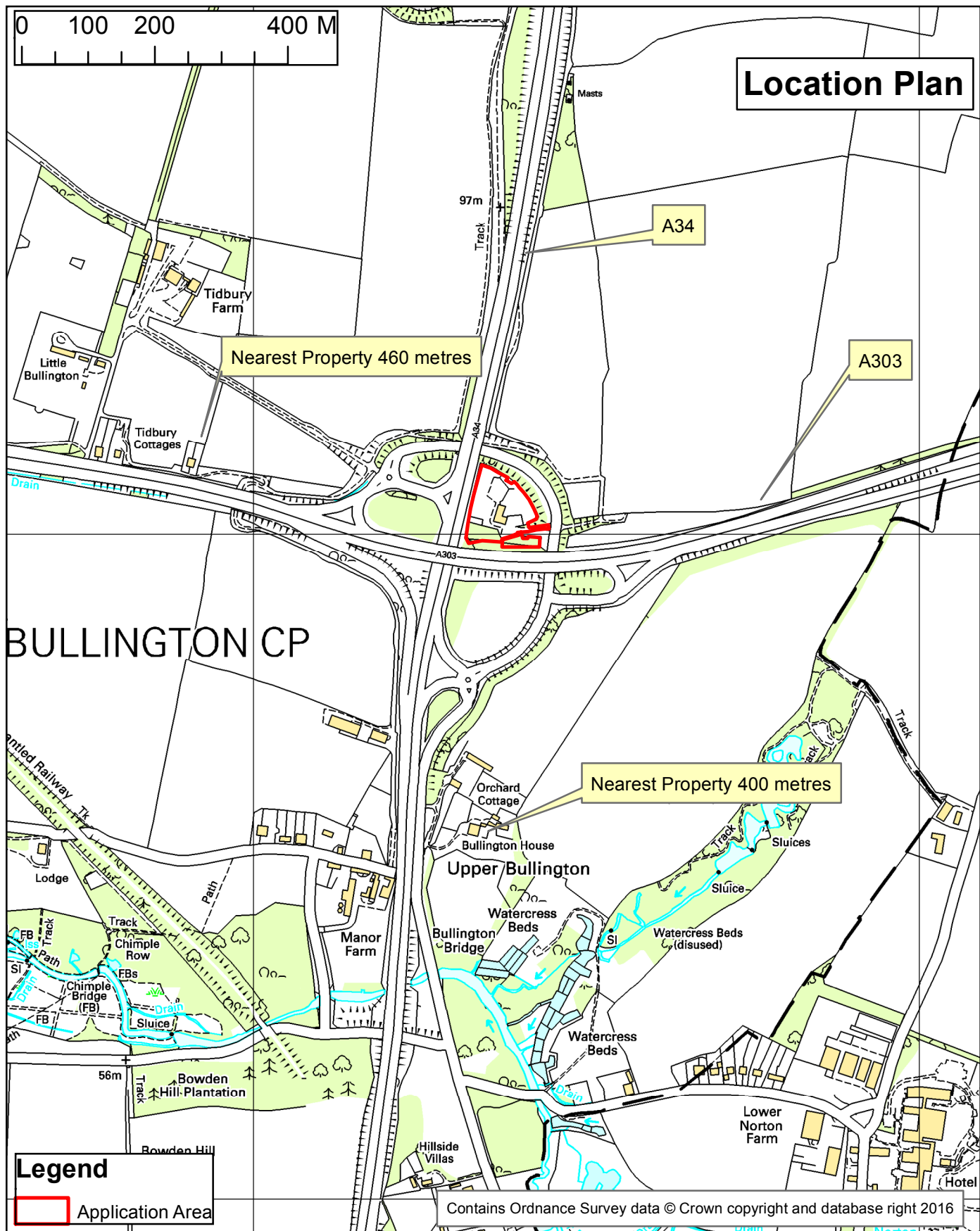
Plans

14. The development hereby permitted shall be carried out in accordance with the following approved plans: **BHL/BUL/VAR/01, HIR/E3750/120B.**

Reason: For the avoidance of doubt and in the interests of proper planning.

Note to Applicants

1. This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts.



TITLE: Extension to site to provide a car park (retrospective), variation of condition 3 (hours of working) of planning permission 11/01427/CMA and 09/2530/CMAN at Bryan Hirst Ltd, Bullington Cross, Sutton Scotney SO21 3FN

**APPLICATION NUMBERS: 17/02238/CMAN
17/02190/CMAN & 17/02192/CMA**

SITE REFERENCE: TV246

REGULATORY COMMITTEE

DATE: 6 December 2017

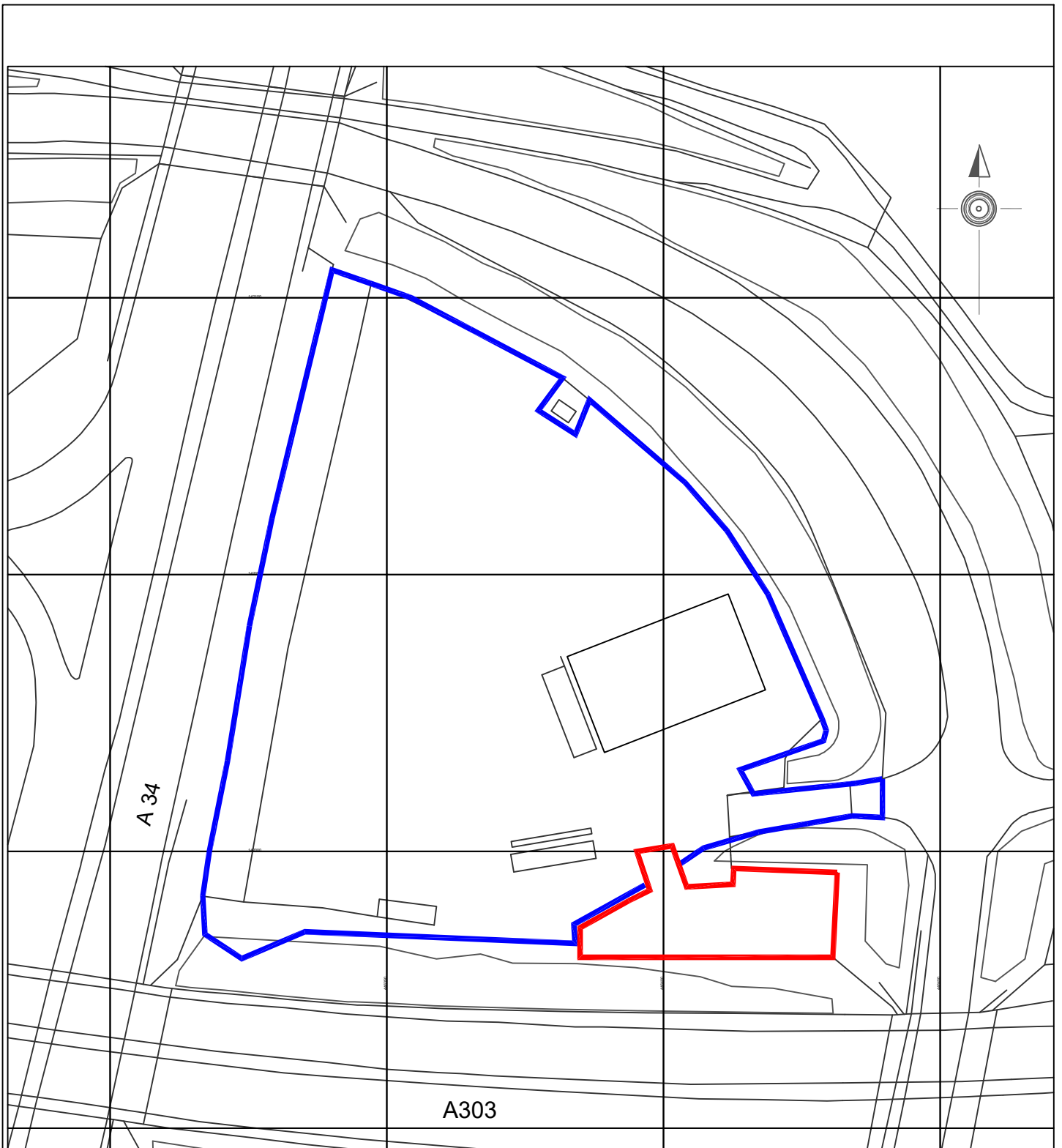
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**Hampshire
County Council**

Economy, Transport and Environment

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Client: **Bryan Hirst Limited**

Project: **Bullington Cross**

Sutton Scotney
Hampshire
SO21 3FN

PROPOSED EXTENSION

INTEGRATED SKILLS LIMITED

BELL HOUSE
32 BELL STREET
ROMSEY
SO15 8GW

TEL: 02380 737 983

EMAIL: ukinfo@integrated-skills.com
(www.integrated-skills.com)

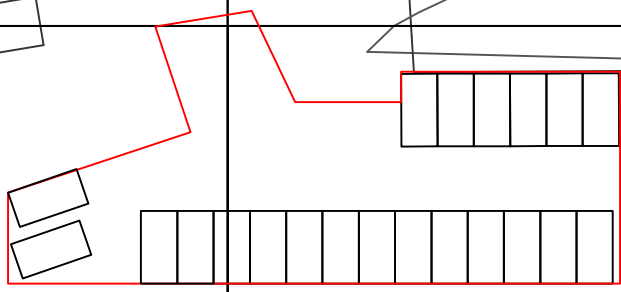
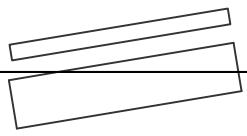
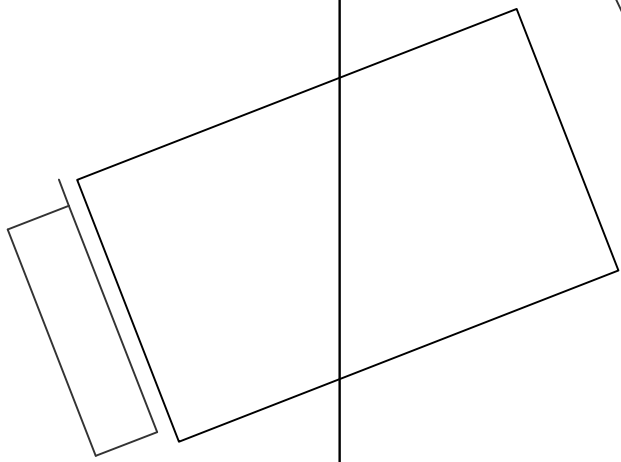
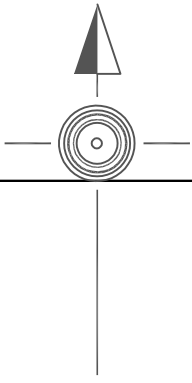
Date: **August 2017**

Scale: **1:1000**

Drm: **ARC**

Drg No: **BHL/BUL/APP/01**

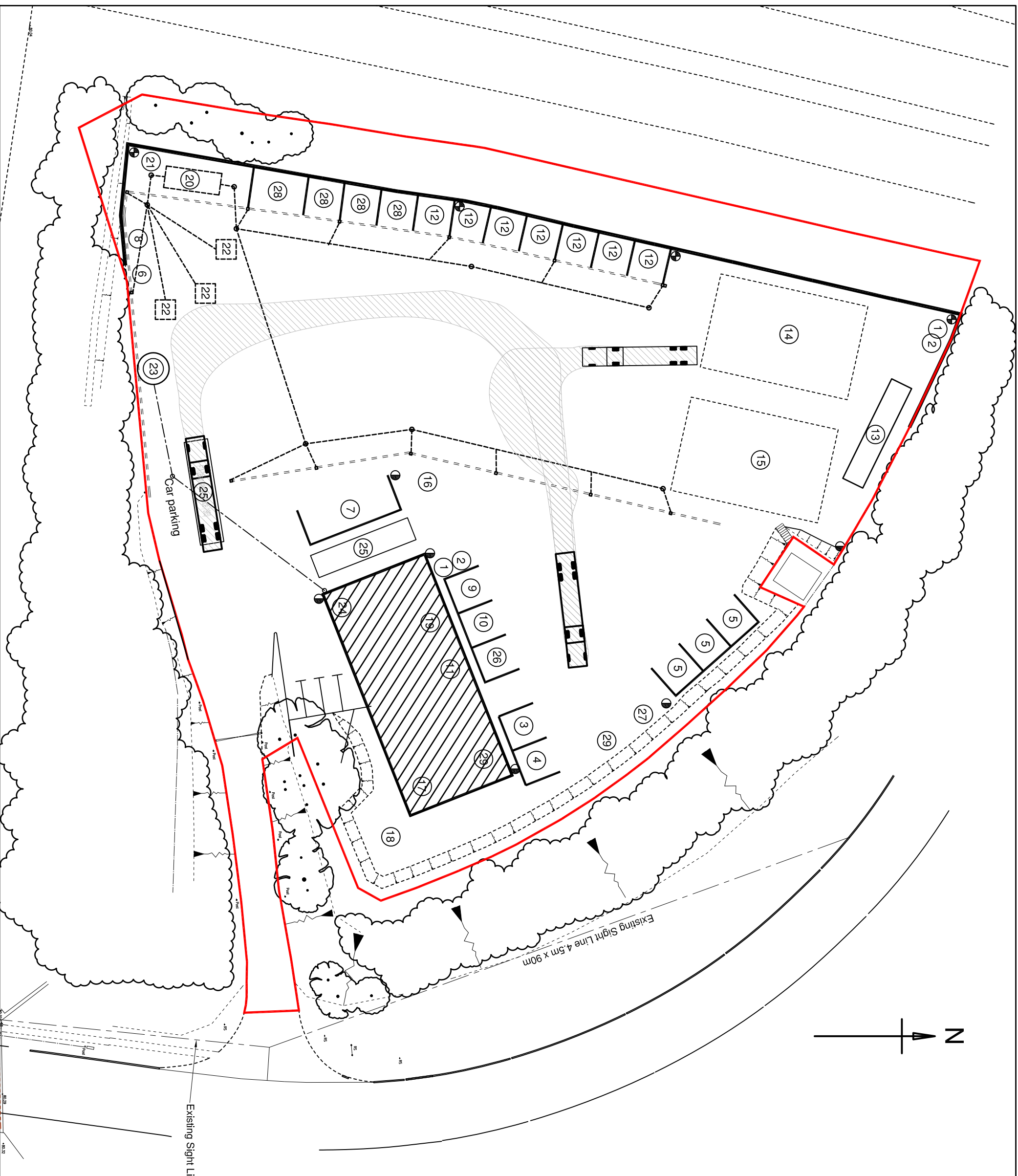
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4485001

Client: Bryan Hirst Limited	
Project: Bullington Cross Sutton Scotney Hampshire SO21 3FN CAR PARK LAYOUT	
INTEGRATED SKILLS LIMITED BELL HOUSE 32 BELL STREET ROMSEY SO15 8GW TEL: 02380 737 983 EMAIL: ukinfo@integrated-skills.com (www.integrated-skills.com)	
Date: August 2017	Scale: 1:500
Drm: ARC	Drg No: BHL/BUL/LAY/01

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NOTES

- 4.8m high flood lighting fixed to 5m high fencing.
- 3m high flood lighting free standing or fixed to building.
- 1 Fire point.
- 2 Spillage equipment.
- 3 Bunded fuel store.
- 4 Battery storage.
- 5 Bunded steel cuts and turnings (swarf).
- 6 Gas bottle storage.
- 7 Designated gas burning/cutting area.
- 8 Quarantine area.
- 9 Household cable.
- 10 Low grade armoured cable.
- 11 High grade armoured cable.
- 12 Various grades of metal.
- 13 Static Preston shear/bailer.
- 14 Tipping and sorting area non-processed.
- 15 Processed metals
- 16 Non ferrous tipping.
- 17 Tyre Shredding.
- 18 Tyre storage and processing.
- 19 Non ferrous store and sorting.
- 20 Class 1 full retention separator.
- 21 Sampling Point.
- 22 Soakaways.
- 23 Klargester biotdisc sewage treatment plant.
- 24 Offices.
- 25 Weighbridge.
- 26 Spare bay.
- 27 Container/skip storage.
- 28 Spare bay.
- 29 WEEE

Rev	Date	Details	By	Chkd
B	24.11.11	Updated and WEEE areas added.	SRC	
A	14.06.11	Updated to as constructed.	SRC	


BRYAN HIRST Ltd.

Site:-
Bullington Cross
Sutton Scotney
Hants SO21 3QG

Drawing Title:-
WORKING
ACTIVITIES
LAYOUT

Date: November 2009
 Drawn: SRC
 Scales: 1/500
 Checked:

Drawing No. **HIR/E3750/120 B**



Rogers Cory Partnership
 Civil, Structural and Architectural Consultants
 the old school old school road
 hook hants Hampshire RG27 5NJ
 t 01256 769269 e mail@rcpartnerships.co.uk
 f 01256 763048 w rcpartnerships.co.uk

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HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	6 December 2017
Title:	Continued use for wood waste sorting, storage and transfer; highways salt store; bin storage; storage and transfer of waste fridges freezers; parking of HGVs and construction and operation of a wood processing area, operation of wood shredder and screener, construction of additional wood storage bays and overflow wood storage areas at Down End Quarry, Down End Road, FAREHAM PO16 8TR (Application No. P/17/0908/CC) (Site Ref: FA025)
Report From:	Head of Strategic Planning

Contact name: Amy Dales

Tel: 01962 845461

Email: Amy.Dales@hants.gov.uk

1. Executive Summary

- 1.1 The planning application is for the continued operation of the existing permitted uses (wood waste sorting, storage and transfer; highways salt store and bin storage, storage and transfer of fridges and freezers, parking of HGVs) with the addition of wood processing, including an area for the shredding and screening of wood at Down End Quarry, Down End Road, Fareham.
- 1.2 This application is being considered by the Regulatory Committee at the request of the local member, Councillor Price.
- 1.3 Key issues raised are;
 - Potential for noise impacts from the addition of a wood shredder operating on site; and
 - The principle of permanent retention of the site as a waste facility and whether the applicant has demonstrated a special need.
- 1.4 The proposed development is not an Environmental Impact Assessment development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2011](#).
- 1.5 On balance, it is considered that the proposal would be in accordance with the relevant policies of the Hampshire Minerals and Waste Plan (2013) when taken as a whole and would:
 - deliver additional waste management capacity through the addition of a wood processing facility which would help to recycle waste at the highest

achievable level within the waste hierarchy, and reducing the volume of waste sent to landfill;

- have good transport connections to the sources of and/or markets for the type of waste proposed to be managed at the site and be suited to the isolated location of the application site;
- not cause an unacceptable adverse visual or landscape impact;
- have a safe and suitable access to the highway network and not have any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity; and
- not cause adverse public health and safety impacts, and/or unacceptable adverse amenity impacts.

1.6 It is therefore recommended that planning permission be GRANTED subject to the conditions listed in integral Appendix B.

2. The Site

2.1 The site occupies approximately three hectares and is located within the urban fringe area of Fareham. It lies adjacent to the M27 and is bound by the A27 to the west, the south coast railway line to the south and residential housing over 400 metres away to the east. It also lies adjacent to Downend Chalk Pit, Site of Specific Scientific Interest (SSSI).

2.2 Access to the site is from junction 11 of the M27 and Boarhunt Road then via the private haul road that runs to the north of the M27 and leads directly to Downend Road. The nearest residential properties are approximately 150 metres to the west of the site, although the highway access is less than 100 metres away from the nearest property (Calx Lodge).

2.3 The existing site consists of impervious concrete hardstanding with associated infrastructure and drainage to sealed lagoons. There are bunds along the southern and eastern perimeter of the site, and trees and established vegetation along the northern and western boundaries which have heights of between 5 metres and 6 metres above ground level.

3. Planning History

3.1 The relevant planning history of the site is as follows:

Application No	Proposal	Date Issued
P/98/1278/CC	Construction and operation of a green waste composting facility with ancillary site infrastructure and store	18/08/1999
P/10/1152/MW	Change of use to composite use for wood waste storage, sorting and transfer; highways salt store; and bin storage	26/07/2011
P/12/1029/CC	Variation of condition 2 of planning permission P/10/1152/MW (to allow a further period of time to operate the wood waste storage, sorting and transfer, highways salt store, and bin	30/01/2013

	storage	
P/13/0593/CC	Use of land at waste facility for parking of HGVs	25/02/2014
P/14/0301/CC	Variation of condition 3 of planning permission P/12/1029/CC to allow for continued operation of wood waste sorting, storage and transfer, highways salt store and bin storage	16/06/2014
P/14/0585/CC	Variation of condition 1 of Planning permission P/13/0593/CC to extend the timescale for permitted operations	03/03/2015
P/15/0477/CC	Variation of condition 5 of planning permission P/14/0585/CC (increase HGV movements)	10/09/2015
P/16/1313/CC	Continued use of site for wood waste sorting, storage and transfer; highways salt store and bin storage and retrospective permission for storage and transfer of waste fridges and freezers	13/02/2017

- 3.2 The site has a significant history of use for mineral extraction, waste treatment and disposal and more recently, waste transfer and HCV parking. The site is identified in the adopted Hampshire Minerals and Waste Plan (2013) as a safeguarded site for waste transfer.
- 3.3 The site was an extension to the previous Down End Quarry which lies adjacent to the west. The old quarry was backfilled by landfill and reinstated. Planning permission was then granted for the construction of a green waste composting facility for a temporary period expiring on 30 June 2011. Planning permission for the temporary retention of the site infrastructure and the substitution of a new use (wood waste sorting, storage and transfer; highways salt store and bin storage) on the site was granted on 26 June 2011 and later extended to 30 June 2019, with additional permission for the storage and transfer of fridges and freezers.

4. The Proposal

- 4.1 The proposal is for the continued operation of the existing permitted uses (wood waste sorting, storage and transfer; highways salt store and bin storage, storage and transfer of fridges and freezers, parking of HGV's) with the addition of wood processing, including an area for the shredding and screening of wood.
- 4.2 The proposal includes an increase to the throughput of the site from 35,000 to 50,000 tonnes of wood waste per annum. The current uses of the site generate an average of 118 vehicle movements per day which will increase to an average of 138 vehicle movements a day, a daily increase of 20 movements. The applicant will enter into a Legal Agreement with the Waste Planning Authority (WPA) to ensure access to the site by HGVs would continue to be via the private haulage route connecting the site to junction 11 of the M27.

- 4.3 There will be additional storage bays and overflow areas created for the storage of the wood being processed on site (see drawing: ES_TD_DOWNEND_100_001 Rev G).
- 4.4 The applicant states that the proposed wood shredder and screener will be sited in an enclosed walled area with a retractable roof in order to minimise any potential noise and dust impacts. The proposed wood processing area will be four metres in height, which will be below the height of the existing perimeter bunds. The new activities will be sited wholly within the existing site on the concrete hardstanding. The walled area will have rolling shutter doors on both the northern and southern sides, with the southern door remaining closed during the operation of the machinery.
- 4.5 The site currently operates each activity under different sets of working hours, which are as follows:
- The HGVs associated with permission P/15/0477/CC are permitted to enter or leave the site between 0700-1800 Monday to Friday, 0700-1200 Saturday, 0900-1300 Bank Holidays and not at all on Sundays;
 - The import and tipping of wood, and the importation of highway salt takes place between 0730-1800 Monday to Friday, 0730-1700 Saturday, and 0900-1300 Sundays and Bank Holidays; and
 - The removal of bins and mechanical sorting of wood and the operation of plant and machinery takes place between 0900-1600 Monday to Friday and not at all on Saturdays, Sundays or Bank Holidays.
- 4.6 The applicant is seeking the addition of wood shredding and an extension to working hours as follows:
- Proposed hours for wood shredding are between 0800-1800 Monday to Friday, 0800-1300 Saturdays and not at all on Sundays and Bank Holidays; and
 - The import and tipping of wood to be extended from 0900-1300 Sundays and Bank Holidays to 0900-1600 Sundays and Bank Holidays.
- 4.7 Under normal operation dust suppression in the form of a spray system will be utilised around the shredder and screener, with the retractable roof being used when weather is very dry and windy.
- 4.8 The proposed development has been assessed under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2011](#); 11(b) Installations for the disposal of waste and does not require an Environmental Impact Assessment (EIA). Screening under the EIA Regulations has been carried out on the proposed development and whilst the activity is identified under the Regulations, it has been concluded that the nature and scale of the proposal and the relationship of the application site to any defined sensitive sites means it is not deemed an EIA development requiring an Environmental Statement.

5. Development Plan and Guidance

5.1 The following plans and associated policies are considered to be relevant to the proposal:

National Planning Policy Framework (2012) (NPPF)

5.2 The following paragraphs are relevant to this proposal:

- Paragraph 11: Determination in accordance with the development plan;
- Paragraph 14: Presumption in favour of sustainable development;
- Paragraph 17: Set of core land-use planning principles which should underpin decision-taking;
- Paragraph 19: Support of sustainable economic growth;
- Paragraph 34: Sustainable transport;
- Paragraph 112: Soils; and
- Paragraph 118: Conserving and enhancing the natural environment.

National Planning Policy for Waste (2014) (NPPW)

5.3 The following paragraphs are relevant to the proposal:

- Paragraph 1: Delivery of sustainable development and resource efficiency; and
- Paragraph 7: Determining planning applications.

National Waste Planning Practice Guidance (NWPPG) (last updated 15/04/2015)

5.4 The following paragraphs are relevant to the proposal:

- Paragraph 007 (Self sufficient and proximity principle);
- Paragraph 0046 (Need); and
- Paragraph 0050: (Planning and regulation).

Hampshire Minerals & Waste Plan (2013) (HMWP)

5.5 The following policies are relevant to the proposal:

- Policy 1 (Sustainable minerals and waste development);
- Policy 3 (Protection of habitats and species);
- Policy 5 (Protection of the countryside);
- Policy 8 (Protection of soils);
- Policy 10 (Protecting public health, safety and amenity);
- Policy 12 (Managing traffic);
- Policy 13 (High-quality design of minerals and waste development);
- Policy 25 (Sustainable waste management);
- Policy 26 (Safeguarding - waste infrastructure);
- Policy 27 (Capacity for waste management development); and
- Policy 29 (Locations and sites for waste management).

Fareham Borough Local Plan - Part 1: The Adopted Core Strategy (2011)

5.6 The following policies are relevant to the proposal:

- Policy CS14 (Development Outside Settlements)

6. Consultations

- 6.1 **County Councillor Price:** Was notified.
- 6.2 **County Ecologist:** Was notified.
- 6.3 **Fareham Borough Council:** No objection, subject to EHO comments.
- 6.4 **Fareham Borough Council Environmental Health Officer (EHO):** Has no objection to continued use of site but requests either temporary permission for new activities or the use of a noise mitigation planning condition.
- 6.5 **Natural England:** Has no objection
- 6.6 **Environment Agency:** Was notified.
- 6.7 **Local Highway Authority:** Has no objection
- 6.8 **Lead Local Flood Authority (LLFA):** No Comment.
- 6.9 **Planning Policy (Hampshire County Council):** Has no objection.

7. Representations

- 7.1 Hampshire County Council's Statement of Community Involvement (2014) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.
- 7.2 In complying with the requirements of the SCI, the County Council:
 - Published a notice of the application in the Hampshire Independent;
 - Placed notices of the application at the application site;
 - Consulted all statutory and non-statutory consultees in accordance with The Town and Country Planning (Development Management Procedure) (England) Order 2015; and
 - Notified by letter all residential properties within 100 metres of the boundary of the site.
- 7.3 No public representations have been received in relation to the proposal.

8. Commentary

Principle of the development

- 8.1 Policy 1 (Sustainable minerals and waste development) of the HMWP (2013) states that the Hampshire Authorities will take a positive approach to minerals and waste development that reflects the presumption in favour of sustainable development contained in the NPPF.
- 8.2 Policy 25 supports development which encourages sustainable waste management and reduces the amount of residual waste currently sent to landfill. With the addition of a wood shredder and screener to the site, this proposal will increase the amount of wood waste being managed within Hampshire, and will reduce the haulage of wood to processing facilities further afield. As such the development is maximising opportunity to share infrastructure at an existing site and is driving waste to be managed at the highest achievable level within the waste hierarchy. It is therefore considered to be in accordance with Policy 25 of the HMWP (2013).

- 8.3 All of the existing permissions for the site are temporary and require the land to be restored to agriculture following their conclusion. As such, for planning purposes, the land is required to be considered as greenfield and it lies outside the settlement boundary for Fareham. Therefore, the site does not meet the definition of previously developed land in Part 2 of Policy 29 of the HMWP (2013) and instead must be considered in accordance with Part 3. Part 3 of Policy 29 supports development in locations other than those identified in Parts 1 and 2 where it can be demonstrated that the site has good transport connections and a special need for the location and the site is suitable for the proposal.
- 8.4 The site is an essential part of the infrastructure necessary to meet the waste management requirements of Hampshire via Project Integra. If the site was no longer available, an alternative would have to be sought in another location. This would be difficult to find on the basis of the benefits that the Down End site provides. These include: well established vegetation and bunds that provide good screening, a remote location from residential areas, direct access to the Strategic Road Network via a private haul road to junction 11 of the M27, and close proximity to the main sources of waste in Hampshire. It is therefore considered that the proposal is in accordance with Policy 29 of the HMWP (2013).
- 8.5 The addition of a wood processing facility at Down End Quarry will provide further capacity for non-hazardous recycling and recovery and will further improve the management of waste at the highest possible level within the waste hierarchy. As the proposed activity is on an existing waste management site it is considered to comply with Policy 27 (Capacity for waste management) of the HMWP (2013).

Development in the countryside

- 8.6 The site lies outside the settlement boundary defined within the Fareham Borough Local Plan, and as such is located within the Countryside. However, due to its proximity to the M27 and residential areas to the south the site is considered to lie within the urban fringe of Fareham. The proposal is requesting permanent retention of the site for waste use. This means that in order to meet Policy 5 (Protection of the countryside) of the HMWP (2013), the nature of the development must require a countryside or isolated location.
- 8.7 Paragraph 6.208 of the HMWP states that waste facilities tend to be located on historic landfill or former quarries where they are expected to be restored. However, it also states that there may be exceptions where the benefits from continued development at some locations are considered to be more sustainable than re-locating the development elsewhere. There are significant sustainability benefits associated with the retention of the substantial existing infrastructure on site, and embodied energy and resources associated with the site's original construction. As such, it is not considered appropriate to re-locate the development.
- 8.8 Furthermore, paragraph 6.205 of the HMWP (2013) recognises that recycling and recovery activities that predominantly take place in the open

are better suited to countryside locations by virtue of their potential for noise, odour and other emissions. The current and proposed uses for the site are for the transfer, storage and processing of waste which are recycling activities generally carried out outdoors. Therefore, subject to a condition that the site be restored if it is no longer required for waste use, the proposal is considered to comply with Policy 5 of the HMWP (2013).

Visual impact and landscape

- 8.9 Policy 13 (High-quality design of minerals and waste development) of the HMWP (2013) requires that waste development should not cause an unacceptable adverse visual impact and should maintain and enhance the distinctive character of the landscape and Policy 10 (Protecting public health, safety and amenity) protects residents from significant adverse visual impact.
- 8.10 The current operations on site are not visible from public viewpoints due to large bunds surrounding the eastern and southern boundaries, with the northern and western boundaries surrounded by mature vegetation and trees. The proposed wood processing facility will remain screened from view as it will be lower in height than the existing bunds and located close to the existing operational infrastructure on site. The development will not adversely affect the landscape character, appearance or function and is therefore considered to be in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) and Policy CS14 (Development Outside Settlements) of the Fareham Borough Local Plan Part 1 Core Strategy (2011).

Soil Protection

- 8.11 Policy 8 (Protection of soils) of the HMWP (2013) requires minerals and waste development to protect and, wherever possible, enhance soils. It also states that development should not result in the net loss of best and most versatile agricultural land. Since the land was restored, it doesn't appear to have ever been actively used for agricultural purposes and the site is now hard surfaced. In reality there is no loss of agricultural land and bearing in mind the site is safeguarded as a waste site in Policy 26 (Safeguarding – waste infrastructure) of the HMWP, officers are satisfied there is no conflict with Policy 8.

Ecology

- 8.12 Policy 3 (Protection of habitats and species) sets out a requirement for minerals and waste development to not have a significant adverse effect on, and where possible, should enhance, restore or create designated or important habitats and species. The policy sets out a list of sites, habitats and species which will be protected in accordance with the level of their relative importance. The policy states that development which is likely to have a significant adverse impact upon the identified sites, habitats and species will only be permitted where it is judged that the merits of the development outweigh any likely environmental damage. The policy also sets out a requirement for appropriate mitigation and compensation measures where development would cause harm to biodiversity interests.

8.13 The site consists of a large area of impervious concrete hardstanding which has negligible ecological value and there is no proposal to extend this. Down End Chalk Pit SSSI lies adjacent to the site and the vehicle access route runs through it, however, Natural England considers that the proposal will have no significant adverse impacts on designated sites and has no objection. The development is therefore considered to be in accordance with Policy 3 (Protection of habitats and species) of the HMWP (2013).

Impact on Amenity/ Noise

8.14 Policy 10 (Protecting public health, safety and amenity) of the HMWP requires that any development should not cause adverse public health and safety impacts, and unacceptable adverse amenity impacts. Also, any proposal should not cause an unacceptable cumulative impact arising from the interactions between waste developments and other forms of development.

8.15 The Fareham Borough Council Environmental Health Officer has stated that the current uses of the site are acceptable in terms of local amenity and can be approved.

8.16 The site was previously granted temporary permission for a green waste composting facility (see PP: P/98/1278/CC) that presented notable issues in relation to amenity impacts in the form of offsite odour. Although this permission expired in 2011 and the current operations on site have not lead to adverse amenity impacts, there are concerns over the impact of noise from the proposed wood shredder.

8.17 A Noise Impact Assessment was submitted with the application which states that “the noise levels associated with the wood shredding activity are unlikely to result in adverse impact at nearby sensitive receptors”. However, this conclusion is based on predicted noise levels rather than actual. It is therefore prudent to conduct another noise assessment once the proposed new activity is operational. If the results are higher than Lowest Observable Adverse Effect Level then mitigation measures will need to be put in place for the proposal to be in compliance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013), as such a condition is recommended to this effect.

Potential pollution associated with the development

8.18 National Planning Practice Guidance states that Planning Authorities should assume that other regulatory regimes will operate effectively rather than seek to control any processes, health and safety issues or emissions themselves where these are subject to approval under other regimes (Paragraph 050 Reference ID: 28-050-20141016).

8.19 Planning and Environmental Permitting are two separate systems. The need for an Environmental Permit is separate to the need for planning permission. Planning permission determines if a development is an acceptable use of land, permitting determines if an operation can be managed on an ongoing basis to prevent or minimise pollution to the environment. The granting of planning permission does not necessarily lead to the granting of an

Environmental Permit however the Environment Agency (EA) has a role to play in both systems.

- 8.20 The Environment Agency will monitor and enforce the Permit for the site. A number of mechanisms are put in place to monitor and ensure compliance such as audits, site visits, data analysis and compliance checks carried out by the regulator.

Highways impact

- 8.21 Policy 12 (Managing traffic) requires minerals and waste development to have a safe and suitable access to the highway network and where possible minimise the impact of its generated traffic through the use of alternative methods of transportation. It also requires highway improvements to mitigate any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity.
- 8.22 The increased throughput of the site will generate an extra 20 vehicle movements per day, taking the average daily movements from 118 to 138. The site is connected to the Strategic Road network via a private haul road to the M27, and the Highway Authority raises no objection to the proposal as it will not have a significant impact on the highway. The Section 106 Agreement originally entered into under permission P/13/0593/CC to require lorry routing via the haul road from junction 11 of the M27 will be repeated should it be resolved to grant permission. On this basis the proposal is therefore considered to be in accordance with Policy 12 (Managing traffic) of the HMWP (2013).

Conclusions

- 8.23 It is considered that the proposal would be in accordance with the Hampshire Minerals and Waste Plan (2013) and will:
- deliver additional waste management capacity through the addition of a wood processing facility which would help to recycle waste at the highest achievable level within the waste hierarchy, and reducing the volume of waste sent to landfill;
 - have good transport connections to the sources of and/or markets for the type of waste proposed to be managed at the site and be suited to the isolated location of the application site;
 - not cause an unacceptable adverse visual or landscape impact;
 - have a safe and suitable access to the highway network and not have any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity; and
 - not cause adverse public health and safety impacts, and/or unacceptable adverse amenity impacts.

9. Recommendation

- 9.1. Subject to the Head of Law and Governance being authorised to draw up a Section 106 Agreement to transfer the obligations relating to lorry routing in the existing Section 106 Agreement for planning permission P/13/0593/CC and all parties entering into the Section 106 Agreement with the County Council then authority be delegated to the Director of Economy, Transport and Environment to GRANT planning permission subject to conditions set out in Integral Appendix B.

Appendices:

Integral Appendix A – Corporate or Legal Information

Integral Appendix B – Conditions

Appendix C - Location Plan

Appendix D - Layout Plan

Appendix E – Haul Route Plan

Other documents relating to this application:

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=18373>

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	No
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No
OR	
<p>This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:</p> <p>The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for planning permission and requires determination by the County Council in its statutory role as the minerals and waste planning authority.</p>	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any CORPORATE OR LEGAL INFORMATION: documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

P/17/0908/CC
FA025

Hampshire County Council

Down End Quarry, Down End Road,
FAREHAM PO16 8TR
(Continued use for wood waste sorting,
storage and transfer; highways salt store;
bin storage; storage and transfer of waste
fridges freezers; parking of HGVs and
construction and operation of a wood
processing area, operation of wood
shredder and screener, construction of
additional wood storage bays and overflow
wood storage areas

CONDITIONS

Time Limits

1. The development hereby permitted shall be begun before the expiration of three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 (as amended) of the Town and Country Planning Act 1990.

Hours of Working

2. With the exception of the exportation of highway salt, no HGV's shall enter or leave the site and no plant or machinery shall be operated except between the following hours: 0730-1800 Monday to Friday, 0730-1700 Saturday and 0900-1300 Sundays and public/bank holidays. Exceptions to this are for the importation and tipping of waste wood from Household Waste Recycling Centre's (HWRCs) which may be delivered between 0900-1600 on Sundays and Public/Bank Holidays.

Reason: To ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

3. Notwithstanding condition 2 above, the processing/shredding of waste wood shall only take place between the hours of 0800-1800 Monday to Friday, 0800-1300 Saturdays and not at all on Sundays and public/bank holidays.

Reason: To ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

4. Notwithstanding condition 2 above, the removal of bins and mechanical sorting of wood (as defined under planning permission P/10/1152/MW) shall only take place between the hours of 0900-1600 Monday to Friday and not at all on Saturdays, Sundays and Public/Bank Holidays.

Reason: To ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

5. Notwithstanding condition 2 above, those vehicles parked overnight at the site in accordance with condition 9 shall not exit the site before 0700 hours Monday to Saturday and not all on Sundays.

Reason: To ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

Types of Waste

6. No waste other than waste wood and waste fridges and freezers shall be imported to the site. For the avoidance of doubt, no green waste shall be imported to the site.

Reason: In the interests of public amenity and to ensure that the development is in accordance with Policy 10 of the Hampshire & Minerals Waste Plan (2013).

Highways

7. Measures shall be implemented for the duration of the development to ensure that no lorry shall leave the site unless its wheels and chassis have been cleaned sufficiently to prevent mud being carried onto the highway.

Reason: To ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) and Policy 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

8. Vehicular access to and from the site shall be via Downend Road only as shown on drawing VES_TD_DOWNEND_100_005 Rev A. All HGV's travelling to and from the site shall use the haul road (edged in blue on drawing VES_TD_DOWNEND_100_005 Rev A) to Boarhunt Road/Junction 11 of the M27. No lorries shall turn left out of the site, and a 'no left turn' sign shall be erected and maintained at the site entrance.

Reason: To ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) and Policy 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

9. No more than 26 Heavy Commercial Vehicles shall be parked overnight at the site.

Reason: in the interests of the amenity of residents and to ensure the development is in accordance with Policy 10 of the Hampshire Minerals & Waste Plan (2013).

10. The area to be used for the parking of HGVs shall be marked out on site and these markings maintained for the duration of the operation.

Reason: To clearly delineate the area of land to be used for the parking of HGVs.

Noise, Dust and Odour

11. Within three months of the date of the installation of a wood shredder in accordance with this permission, noise monitoring shall be undertaken to compare the effects of the development with the predicted impacts within the

Wood Shredder Noise Assessment (dated 9 June 2017) submitted with the application. The scope and duration of the monitoring shall be agreed in writing with the Waste Planning Authority prior to implementation and the results of the monitoring shall be submitted to the Waste Planning Authority within one month of being carried out. If the results of the monitoring conclude that impacts are at or above Lowest Observable Adverse Effect Level (Noise Policy Statement for England, 2010) then mitigation measures shall be taken to reduce the impact to below this level.

Reason: In the interests of public amenity and to ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

12. No wood shredding shall be carried out until the construction of the 4 metre high solid concrete barrier and canopy shown on plan VES_TD_DOWNEND_100_003 is complete.

Reason: In the interests of public amenity and to ensure development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

13. Wood storage and transfer shall be undertaken in accordance with the 'Down End Wood TFS Haulage Procedure' note approved under planning permission P/14/0301/CC.

Reason: In the interests of public amenity and to ensure that the development is in accordance with Policy 10 of the Hampshire & Minerals Waste Plan (2013).

14. At all times during the operation of the site measures shall be taken, including use of water bowsers and water sprays, to ensure there are no dust emissions from the site.

Reason: In the interests of public amenity and to ensure that the development is in accordance with Policy 10 of the Hampshire & Minerals Waste Plan (2013).

15. All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturers' specification at all times, shall be fitted with and use effective silencers and shall be fitted with and use only white-noise type reversing alarms.

Reason: To minimise noise disturbance from operations at the site and to ensure the development is in accordance with Policy 10 of the Hampshire Minerals & Waste Plan (2013).

16. There shall be no overnight sleeping on site.

Reason: To protect the amenity of the nearest sensitive properties and to ensure the development is in accordance with Policy 10 of the Hampshire Minerals & Waste Plan (2013).

17. No loaded vehicles shall be parked overnight on the site.

Reason: To protect the amenity of nearby residents to ensure the development is in accordance with Policy 10 of the Hampshire Minerals & Waste Plan (2013).

18. No vehicle maintenance or vehicle cleaning shall take place on site.

Reason: To protect the amenity of nearby residents and to ensure the development is in accordance with Policy 10 of the Hampshire Minerals & Waste Plan (2013).

Storage

19. The storage of waste wood, skips and containers and fridges and freezers shall not exceed 4 metres in height.

Reason: To ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) and Policy 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

Protection of Water Environment

20. Salt shall only be stored within the building.

Reason: To ensure the development is in accordance with Policy 10 of the Hampshire & Minerals Waste Plan (2013).

21. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer or watercourse or discharging onto the ground. Associated pipework shall be located above ground where possible and protected from accidental damage.

Reason: To ensure the development is in accordance with Policy 10 of the Hampshire & Minerals Waste Plan (2013).

22. All areas where salt is stored or handled shall be underlain by impervious hardstanding with dedicated drainage to a sealed tank.

Reason: To ensure the development is in accordance with Policy 10 of the Hampshire & Minerals Waste Plan (2013).

Restoration

23. Should the site no longer be required for the permitted waste uses it shall be restored to agriculture in accordance with a scheme to be submitted to and agreed in writing by the Waste Planning Authority. The scheme shall be submitted within six months of cessation of the permitted uses. The scheme shall include details of:
- (i) the thickness and quality of subsoil and topsoil to be used and the method of soil handling and spreading, including the machinery to be used;
 - (ii) the ripping of any compacted layers of final cover to ensure adequate drainage and aeration, such ripping to take place before placing of topsoil;
 - (iii) measures to be taken to drain the restored land; and
 - (iv) details of proposed seeding.

Reason: To ensure satisfactory restoration and that the development is in accordance with Policy 5 and Policy 9 of the Hampshire Minerals & Waste Plan (2013).

Plans

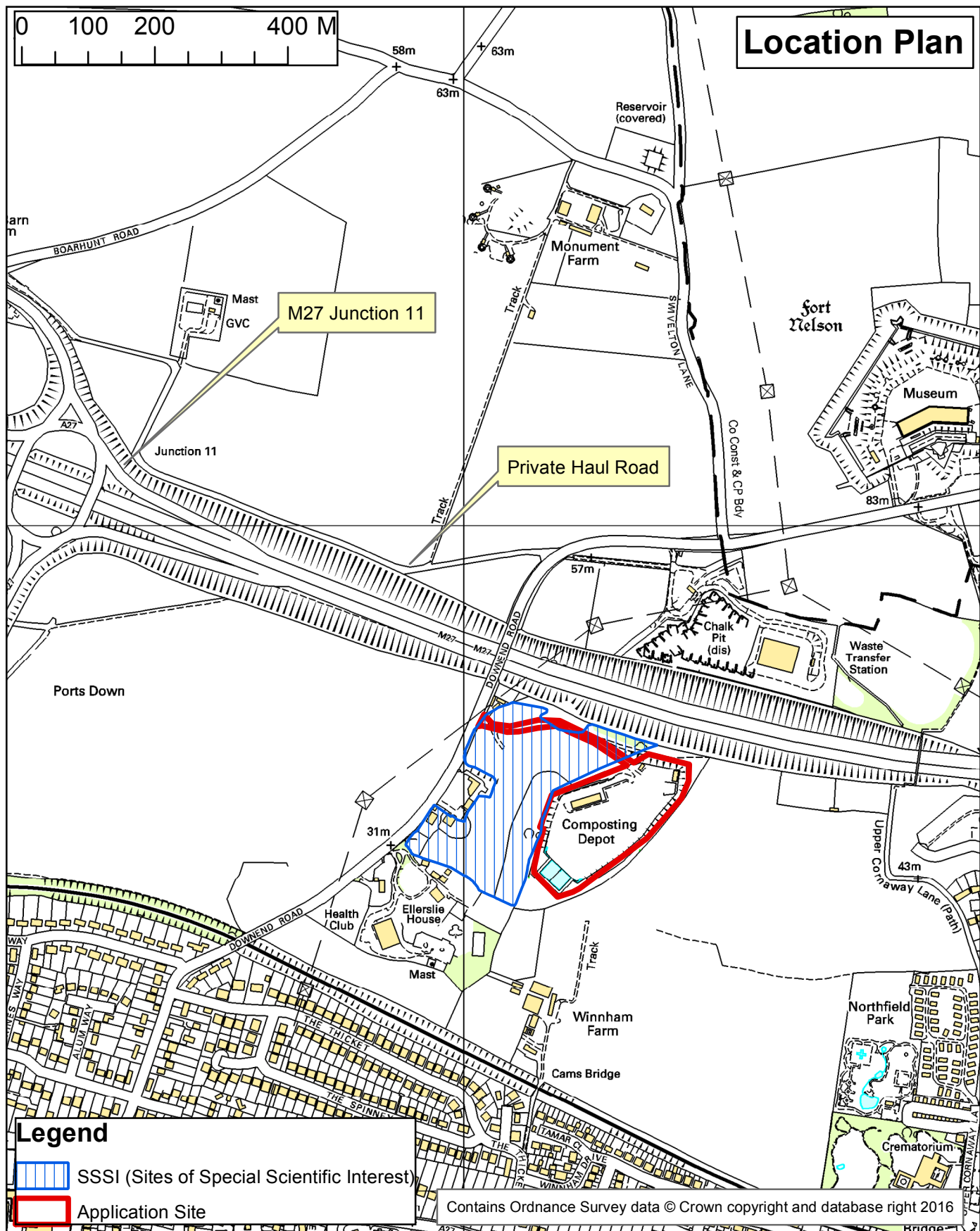
24. The development hereby permitted shall be carried out in accordance with the following approved plans: **VES_TD_DOWNEND_100_000 Rev A, VES_TD_DOWNEND_100_001 Rev H, VES_TD_DOWNEND_100_003, VES_TD_DOWNEND_100_004 Rev A**

Reason: For the avoidance of doubt and in the interests of proper planning.

Notes to Applicant

1. In determining this planning application, the Mineral/Waste/Local Planning Authority has worked with the applicant in a positive and proactive manner in accordance with the requirement in the National Planning Policy Framework (2012), as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
2. This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts.

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TITLE: Continued use for wood waste sorting, storage and transfer; highways salt store; bin storage; storage and transfer of waste fridges freezers; parking of HGVs and construction and operation of a wood processing area, operation of wood shredder and screener, construction of additional wood storage bays and overflow wood storage areas at Down End Quarry, Down End Road, FAREHAM PO16 8TR

REGULATORY COMMITTEE

DATE 6 December 2017

1:8,000



Hampshire
County Council



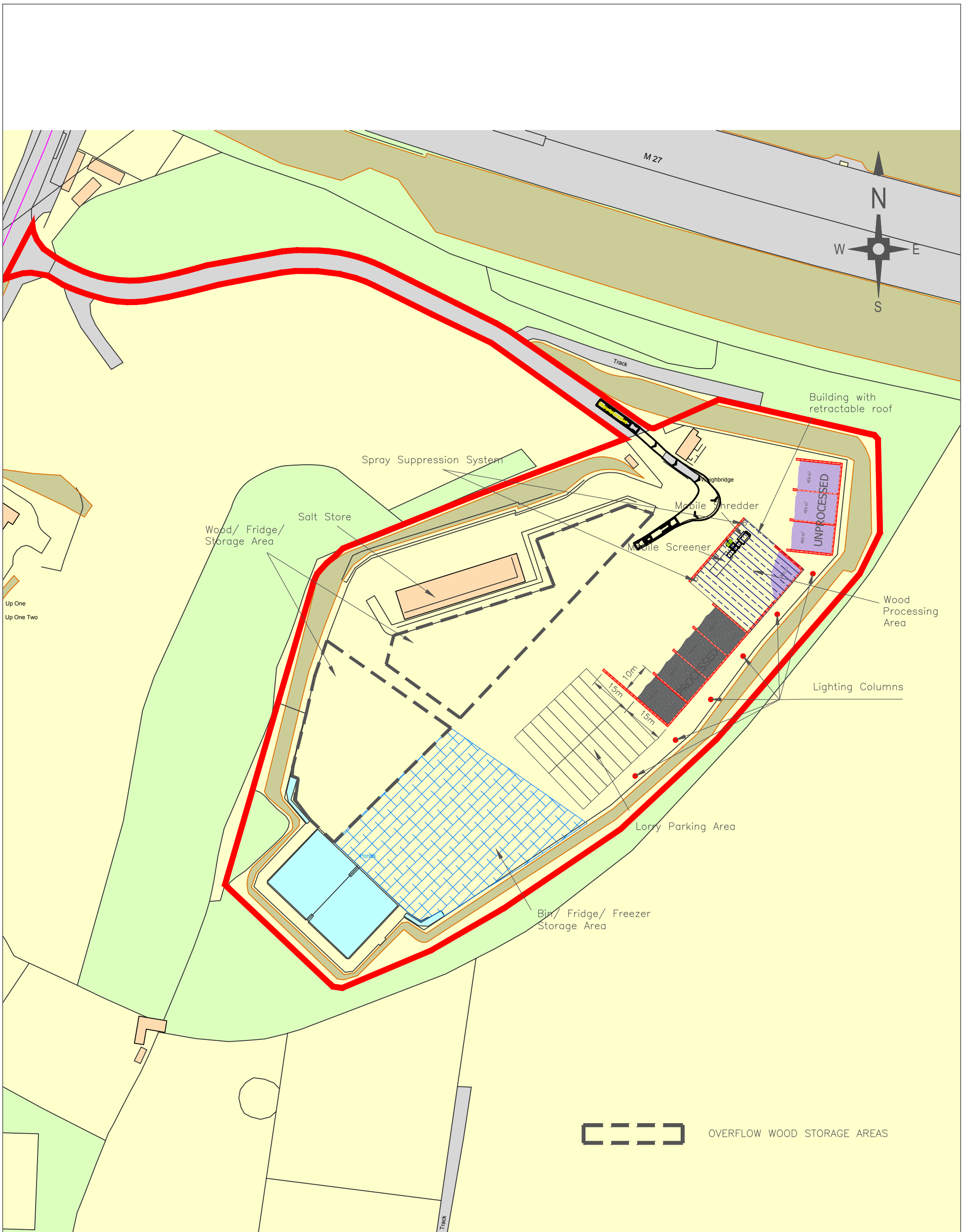
Economy, Transport and Environment

APPLICATION NUMBER: P/17/0908/CC
SITE REFERENCE: FA025

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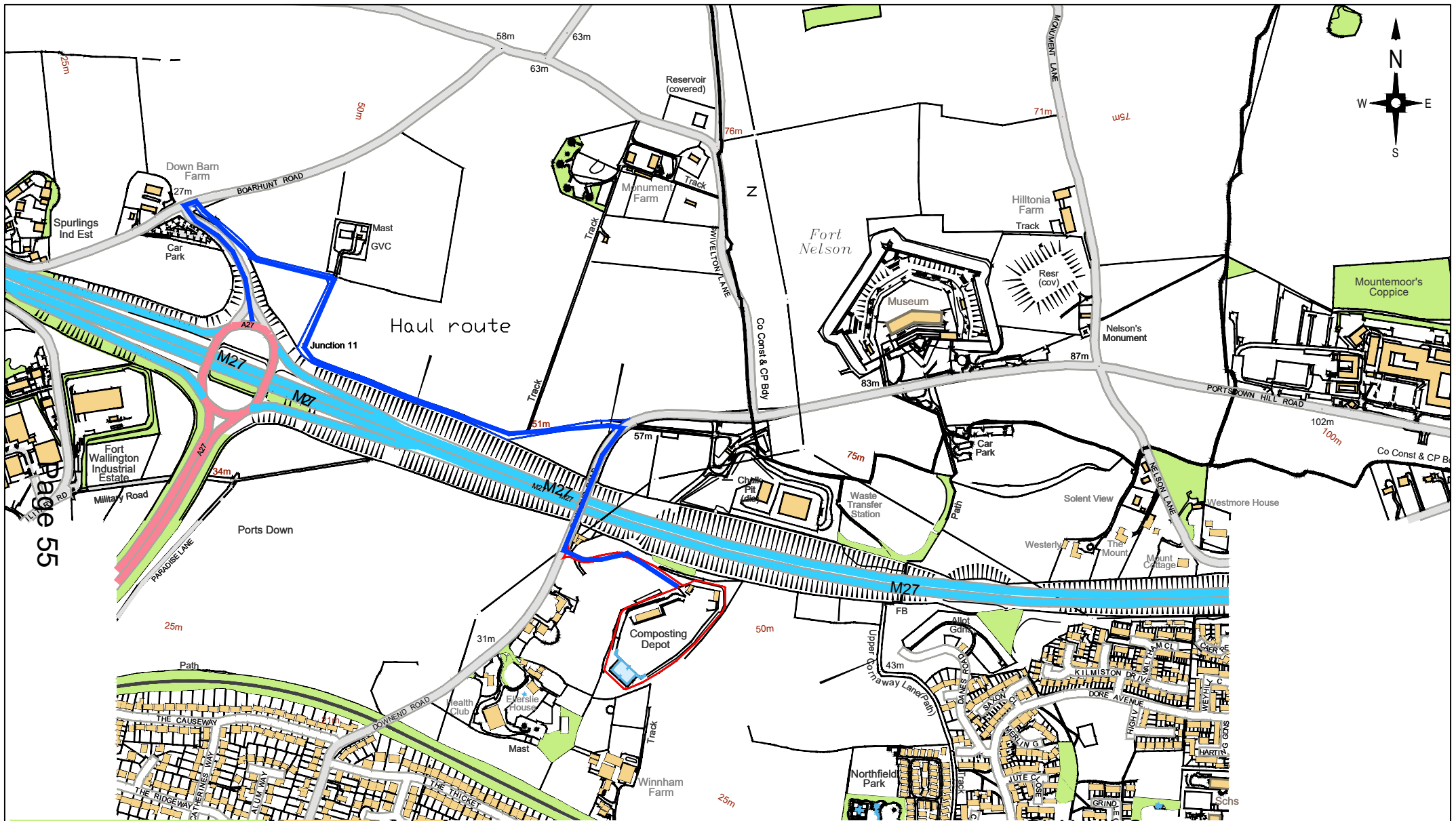


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<p>Design, Technology & Operations, 8th Floor, 210 Pentonville Road, London. N1 9JY Tel: 0207 812 5189</p>	Project	DOWN END QUARRY	H FOR PLANNING G NEW LAYOUT F BAYS LAYOUT E PLANNING ISSUE D BAYS LOCATION C POST REVIEW MOD B NEW LAYOUT A FIRST ISSUE	IR OD 19.06.17 IR RE 08.06.17 IR OD 06.06.17 IR RE 11.05.17 IR RE 09.05.17 IR RE 28.04.17 IR RE 04.04.17 IR RE 31.03.17	OD 19.06.17 RE 08.06.17 OD 06.06.17 OD 11.05.17 RE 09.05.17 RE 28.04.17 RE 04.04.17 RE 31.03.17	© Copyright Reserved		Scale	Sheet size	
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SITE BOUNDARY — AREA UNDER VEOLIA'S CONTROL —

PLANNING



Technical Direction,
7th Floor, 210 Pentonville Road,
London. N1 9JY
Tel: 0207 812 5185

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Project	DOWN END QUARRY	
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HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	6 December 2017
Title:	Application for a Definitive Map Modification Order to record public footpaths at Ashe Hill Park Estate, Parish of Oakley
Reference:	
Report From:	Director of Culture, Communities and Business Services

Contact name: Harry Goodchild

Tel: 01962 846044

Email: harry.goodchild@hants.gov.uk

1 Executive Summary

- 1.1 This is an application, made under Section 53 of the Wildlife and Countryside Act 1981, to record a number of routes running through the Ashe Hill Park Estate in Oakley as public footpaths. The claim is supported by user evidence which the applicant believes demonstrates that the public have acquired rights through long use without challenge.
- 1.2 It is considered that the evidence submitted in support of the application is sufficient for it to be inferred that, on the balance of probabilities, the majority of the claimed routes should be recorded on the Definitive Map. In respect of these routes, the application is recommended for acceptance (it is recommended that the other routes are refused).

2 Legal framework for the decision

WILDLIFE AND COUNTRYSIDE ACT 1981 - Section 53: Duty to keep definitive map and statement under continuous review

(2) As regards every definitive map and statement, the surveying authority shall:

b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows: -

b) the expiration... of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;

c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way [to which this Part applies]
- ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description
- 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.

HIGHWAYS ACT 1980 - Section 31: Dedication of way a highway presumed after public use of 20 years.

- a) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- b) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

PRESUMED DEDICATION AT COMMON LAW

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

3 Summary of Legal Tests

- 3.1 The primary issue to be decided by this Committee is whether there is clear evidence to show that public rights, which are not currently recorded, subsist or are 'alleged' to subsist, under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. Case law has decided that the burden of proof associated with Map Modification Orders is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, Members should direct that an order is made so that the evidence can be tested further at a public inquiry. Save for the case of one of the claimed routes, officers do not consider that there is such a conflict in this case.
- 3.2 If a right of way is considered to subsist or reasonably alleged to subsist, then the route, status and width of that way must also be determined, and authority for the making of an Order to record that right on the Definitive Map should be given.
- 3.3 Where a Map Modification Order is made by authority of this Committee, the process allows for objections to the Order to be made. Further evidence could potentially be submitted for examination along with an objection. In these

circumstances, the County Council cannot confirm the Order, and the matter must be referred to the Secretary of State for determination.

- 3.4 Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order as unopposed.

4 Claimant

- 4.1 The claim was submitted in February 2013 by a resident of Oakley, on behalf of an organisation known as the Oakley Footpath Sustainability Group.

5 Landowners

- 5.1 The network of paths to which this application relates run through the Ashe Hill Park Estate. For the most part, each section of path falls within the ownership of the property behind which it runs. As a result, there are in excess of one hundred landowners affected by the application. All have been consulted and many have made representations in response to the application (these are covered in further detail later in this report).

6 Description of the Routes (please refer to the maps attached to this report)

- 6.1 The routes that are now claimed were set out when the estate was built in the 1960s. All routes were surfaced at the time the estate was built but as they were never adopted as publicly maintainable highways, many are now in a poor state of repair. Further, due to issues relating to anti-social behaviour, a number of paths have been blocked off in recent years by adjacent landowners, and are now unavailable for use. Fifteen routes have been included in the application, all of which vary between 1.1 and 2.9 metres in width. As many of the routes intersect, for ease of reference, all junctions have been lettered on the Committee Plan, and the routes sub-divided as follows:

- Routes A-B-C and C-D - North of Meon Road
- Routes C-C2-E-G-H-I and E-F - North of Lyde Close
- Route H-J-K-L-O – South of Lyde Close
- Routes Q-R and P-P1-R-R1-U – South of Meon Road
- Route N-O-U-V-C1-D1 – West of Hoopers Way
- Routes S-T-X-Y, W-X and T-V – Between Medina Gardens and Blackwater Close
- Routes Z-A1-B1 and A1-C1 – South of Blackwater Close

7 Background to the Claim

- 7.1 The claimed routes have existed since the Ashe Hill Park Estate was built in the East Oakley area, with the first routes being built in the mid-1960s. The estate is comprised of four roads – Meon Road, Medina Gardens, Blackwater Close and Lyde Close. It was designed using the ‘Radburn’ principle, a planning system which, rather than providing footways next to roads, instead laid out paths running between houses. The system, which originated in North America and was used in a number of locations in the UK during the early 1960s, was successful in

segregating pedestrian and vehicular users, but it is now generally acknowledged to have been the setting for increasing levels of anti-social behaviour and crime in the locations where it was employed.

- 7.2 According to anecdotal evidence, Willett Homes, the developer of the Ashe Hill Park Estate, went into administration shortly after its construction. As a result, no formal agreement was ever reached to publicly adopt the claimed routes (officers have not been able to substantiate these reports). Three short sections on the estate have subsequently been adopted, and are recorded on the List of Streets Maintainable at Public Expense (C-E, H-I and P-P1-R-U).
- 7.3 In 2009, following incidences of anti-social behaviour (including dog-fouling, arson and vandalism) a number of residents on the estate opted to fence or gate their sections of the paths. Some owners have gone further, and have subsequently absorbed sections of the claimed routes into their back gardens as a result. There is evidence to suggest that, some years prior to this, some the paths in the Meon Road area (Routes A-B-C and C-D) were reportedly closed off, and although this prompted complaints to Basingstoke and Deane Borough Council, the closures appear to have remained in place.
- 7.4 The widespread closures of 2009 disrupted public access through the estate, and whilst welcomed by some local people, they also met with opposition by users of the paths. A number of witnesses report that to gain access to local shops, the school and the children's playground, they were subsequently forced to walk on estate roads that did not have footways. In 2012, a parish meeting was held specifically to discuss the issue, and was attended by a representative of Hampshire Constabulary and two officers from the County Council. An account of the meeting, provided by the applicant, is included at Appendix 1. At the meeting, arguments for and against the reopening of the routes were put forward, and those in favour of reopening the routes were advised that they could be claimed as public rights of way, if evidence could be put forward to substantiate that such rights had been acquired through long use.
- 7.5 The application now under consideration was received by the County Council in February 2013, and was supported by 51 user evidence forms. The application was taken up for investigation in October 2016, and approximately 120 letters were sent out to local residents to enable them to comment on the application and provide evidence as to how the routes had been used and managed over the years (some residents of the estate who own property affected by the application have also submitted user evidence in support of the claim). Many people living on the estate have expressed their opposition to the routes being reopened, citing fears of a return of the anti-social behaviour which brought about their closure. Consultation responses both in support of and in opposition to the application are summarised later in this report.

8 Issues to be decided

- 8.1 The issue to be decided by this Committee is whether there is evidence to show that, on the balance of probabilities, public rights subsist, or are reasonably alleged to subsist, on the routes shown on the Committee Plan.
- 8.2 Any changes to the Definitive Map must reflect public rights that already exist. It follows that an application to change to the Definitive Map must not be approved (or refused, as the case may be) simply because it would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing

the Definitive Map is made, Members must be satisfied that public rights have come into being at some time in the past. This might be proved by historic documentary evidence or by evidence of use in recent years.

- 8.3 User evidence has been examined to ascertain whether the use of the routes indicates that the public have acquired rights as a result of a deemed dedication in the near or distant past. Rights are not lost merely through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist, even if they are no longer used nor needed. The County Council is under a statutory duty to record any rights that are found to exist.

9 Documentary Evidence

9.1 Ordnance Survey Maps/Aerial Photography

9.1.1 National Grid Series Map – 1972 (see Appendix 3)

This map gives an insight into the development taking place in the Oakley area during the late 1960s/early 1970s. The Ashe Hill Park Estate had been built by this time, but the area to the west of Kennet Way (which now accommodates the local play area), the area to the north (where Anton Close and Dever Way are now situated), and the southern section of Itchen Close are all undeveloped. All of the claimed routes are shown on the map, most by solid parallel lines varying between 2 - 2.5 metres apart. All routes are shown to be open and unobstructed, save solid lines across the path between B-C, and at Point C itself, indicating barriers or obstructions of some description. Access is possible between C-D, but it is not clear where the path terminates, as it continues into the back gardens of properties on Hamble Close and Kennet Way. Point C is shown to be fenced against the area of open space to the north-east. Due to the lack of development on the adjacent land, the route running around the northern and eastern side of Lyde Close between Points C and J (and between H-I) did not exist as enclosed routes on the ground at this time (they were later created as a by-product of the subsequent development of those areas), although the path running from E to G (terminating at the north of 13 Link Way) is shown by a pecked line, indicating the existence of an unenclosed path.

9.1.2 National Grid Series Map – 1982 (see Appendix 4)

This map, published ten years later, shows development having taken place in those areas that were previously untouched (including the play area, which accommodates a path running westward to meet The Vale). As a result, enclosed paths are now shown to the south of Anton Close and Dever Way (C-G), and to the west of Itchen Close (G-J and H-I). The path between B-C is still shown to be blocked at two locations. No other permanent obstructions are indicated on the map.

9.1.3 Aerial Photography – 1971-2013

A large number of aerial photographs, taken both by the Ordnance Survey and for Google, have been viewed as part of this investigation. Given the varying scales at which they were taken, some of them are more instructive than others, but those that are produced at a sufficiently large scale are helpful in indicating whether certain sections of the claimed routes were open on a particular date.

9.1.3.1 Ordnance Survey - 1971

This photo reflects the position shown in the 1972 map (9.1.1). At this time the estate had existed for less than a decade, and this is reflected by the lack of trees and other vegetation in front and back gardens of the properties. As a result, an unrestricted view of a number of routes is possible. The routes between P1-J and E-G are unobstructed, and a number of walked paths on the undeveloped areas to the east and north of the estate can be seen leading to junctions with these routes from neighbouring estates. A-B-C is cut off from the rest of the path network by a fence or hedge at Point C. The long north-south route running between Blackwater Close and Hoopers Way (N-D1) is largely obscured by shadow, and it is not possible to infer anything regarding the route's availability, although Z-A1-B1-D1 can be seen is unobstructed.

9.1.3.2 Ordnance Survey - 1985

By now the estate had been complete for a number of years, and an increased amount of vegetation is shown in property gardens. The planting of hedges against some of the perimeter fences makes the delineation of some of the routes clearer, but a number of newly planted trees are by now well-established, obscuring some of the routes from an overhead perspective. The routes referenced at 9.1.3.1 can be seen and are unobstructed, but little can be said with certainty with regard to the remaining routes.

9.1.3.3 Google Earth – 1999, 2005 & 2008

The 1999 and 2005 photos were taken in bright conditions, and as a result, a significant portion of the estate is covered by shadow, making interpretation difficult. However, the 2008 photograph, produced with a better resolution and taken on an overcast day, gives a much clearer picture. Vegetation can be seen overhanging a number of the routes from adjacent properties, but those sections of routes which are visible are open.

9.1.4 Summary of Aerial Photography Evidence

Where it provides sufficient detail, the aerial photography evidence supports the accounts of witnesses, in that it shows an obstructed path network from the early 1970s, right up until the reported closures on the estate in 2009.

9.2 **Local Government Records**

9.2.1 County Council Highways Adoption Plans – 1970-1976

These plans, held by the County Record Office, show the routes which were to be publicly adopted by the County Council following the completion of the Ashe Hill Park Estate. The plans reflect the current situation with regard to the publicly maintainable highways in the area – the roadways on the estate are shown as having been adopted but, save for C-E and H-I and P-P1-R-U, none of the paths are set out for adoption.

9.2.2 Minutes of Oakley and Deane Parish Council – 1969-1992

The minute books of Oakley and Deane Parish Council, held by Hampshire Record Office, contain numerous references to the claimed routes. There are recorded instances of the parish either asking the district surveyor to carry out works on (or to facilitate public use of) various paths on the estate, enquiries regarding the possible adoption of the routes, and letters written to adjacent landowners requesting that obstructing vegetation be removed.

“24 July 1969

A report was given on the meeting with the District Surveyor, arising from which, the council decided to formally request the County Council to adopt the footways on the Willett Estate.

12 March 1970

The state of the footpaths on the Willett Estate was discussed and the Clerk was instructed to ask the Rural District Council if any permission for the maintenance of these paths was contained in the planning approval.

19 November 1970

The Clerk was instructed to ask if a guard rail could be placed at the junction of The Drive with the footpath from Blackwater Close [Point B1].

21 January 1971

Councillor Mrs Kirby of the Rural District Council read a letter from Hampshire County Council regarding the footpath in Lyde Close, and after detailed discussions it was agreed to consider this further at the next meeting with a view to arranging a meeting between the parish council and the owners of houses in Lyde Close.

25 March 1971

Councillor Richardson reported his discussions with residents in Lyde Close regarding the footpath. He stated that he had interviewed the owner of the house at each end of the footpath, both of whom had consulted their solicitors and were not prepared to dedicate their piece of land which constituted the footpath. In view of the fact it was essential to have the cooperation of these two owners to enable the scheme to proceed, it was decided that it was not possible to do anything further in this matter at this time.

21 April 1971

It was reported that the District Surveyor would erect a guard rail at the footpath junction of Blackwater Close and The Drive. It was reported that Councillor Richardson had obtained the approval of the owner for the provision of a safety barrier on the footpath junction with Lyde Close and it was decided to ask the District Surveyor to provide this barrier.

21 October 1971

Complaints were made regarding rose trees overhanging the footpaths in the Willett Estate and it was agreed that members would report to the next meeting the addresses of properties where this occurred so that letters could be sent to the owners.

25 March 1972

It was decided that in light of the increase in the number of children now using them, two footpaths be tarmacked on the Willett Estate and the District Surveyor be asked to do this work as soon as possible.

27 January 1983

RESOLVED – that following matters be raised...the use of the footpath between Lyde Close and Link Way by lorries [K-J].

13 September 1984

Footpaths – Kennet Way area – RESOLVED – that the Clerk be asked to write to the owner of 7 Lyde Close pointing out that he is responsible for the cutting back of the trees which are obstructing the footpath at the bottom of his garden [E-G].

11 October 1984

The Chairman explained that following the council's letter requesting the owner of a property to cut back the tree overhanging and causing an obstruction to the footpath at the rear of the property, the person concerned had advised that the path was not a public right of way and therefore he was not required to cut the trees. RESOLVED – that the Clerk be asked to write to the Borough council and the county Rights of Way department to ascertain the status of the series of footpaths in the state roads of Kennet Way.

13 December 1984

It was reported that a reply had been received from the National Association of Local Councils advising that the only way a resident could be required to cut back the tree was for the people who use the path to assert their private right of way which was being obstructed. Beyond this the council had no powers to take any further action. The Chairman agreed to advise the complainant.

9 July 1987

Members received a copy of a report prepared by the Chairman about the possibility of the paths in the Kennet Way area being adopted as public footpaths. RESOLVED – that the Clerk be asked to make an initial approach to the County Council to explore the possibility of the paths in the Kennet Way area being adopted as public footpaths.

14 April 1988

It was noted that the County Council would not be prepared to adopt the network of paths in the Kennet Way area unless the paths were firstly repaired at the expense of the present owners and because procedure to formalise adoption would be extremely complicated because of the number of owners involved. It was therefore agreed to consult the Hampshire Association of Parish Councils to seek further advice on the matter.

13 April 1989

Footpath – Frome Close to Lyde Close [J-H-I] – Mr Briggs reported that a large tree was overhanging this path and the Clerk was asked to send the standard letter to the owner of the adjoining property asking for the tree to be cut.

9 July 1992

Pathway from Lyde Close to Itchen Close [J-H-I] – The Clerk was asked to arrange for one of the litter wardens to clear the accumulation of rubbish along this path.”

9.2.3 Summary of Local Government Records

Whilst the adoption plans indicate that the routes were not adopted at the time of construction, the parish minutes indicate that the paths on the estate have been in regular use since the late 1960s. Notwithstanding the fact that various residents do not appear to have considered the routes to be public (as evidenced by their refusal to clear obstructions), the multiple attempts of the parish council to get the paths adopted (and their efforts to keep the routes clear) indicates that they were being used by the wider community, and this was not limited solely to residents of the estate.

9.3 Correspondence

9.3.1 Letter from residents of Meon Road to Basingstoke and Deane Borough Council – 22 October 1977

In 1977, a number of homeowners living on Meon Road wrote to Basingstoke and Deane Borough Council to complain about public access to the route running behind their properties (C-D). The letter, (a copy of which was forwarded to the County Council by a current occupant of Meon Road), reads as follows:

“We the undersigned residents of Meon Road, East Oakley, wish that the footpath at the rear of our properties be closed as a public right of way.

We all bought our properties when the corner adjacent to No.4 was closed to Anton Close (there was no indication that it would ever be opened) and the footpath was used only by the residents on either side of it. Since the new houses have been built in Anton Close and the corner of the footpath has been open the quality of life here has greatly deteriorated.”

The letter goes on to list a number of factors that have led to this deterioration, including the loss of privacy, dog-fouling, vandalism and anti-social behaviour by passing children. It continues:

“As the path is our property we do not intend to suffer these annoyances for much longer. We wish to close the ends of the path with gates, indicating private property, but leaving the path as access for the residents of the adjoining properties.”

The letter concludes by asking for confirmation that the residents are legally entitled to take this action. It is not clear whether they received any reply to their letter. However, a copy of a letter addressed to Nos 4, 5, 6, 7, 8 and 9 Meon Road from the Company Solicitor of New Ideal Homes (also forwarded by the occupant referred to above) dated 19th January 1978, agreed that *“as the footpath concerned is a private footpath I cannot see any objection to the residents taking such action as is necessary to protect themselves from trespassers.”*

This exchange corroborates the Ordnance Survey evidence of 1982 (see 9.1.2), and indicates that the area to the north of Ashe Hill Park had been developed several years earlier (resulting in the creation of enclosed paths between C and J). It also supports the depiction on the 1982 plan of an obstruction at Point C that prevented access eastwards towards Point E, and anecdotal evidence from local residents that they encountered obstructions at Point C during the early 1980s (see Section 10).

9.3.2 Letter from Basingstoke and Deane Borough Council (Compliance Team) – 23 March 2005

This letter, sent to a then resident of Meon Road (provided by the current owner of the property), refers to the ‘Encroachment/blockage of alleyway’ to the rear of the property. It confirms that:

“...the case was closed on 9th April 2002 with a recommendation that no further action should be taken in this matter. The opinion of the investigating officer was that while there was technically a breach of planning control, that the breach was not of a sufficient magnitude in this instance to be expedient to pursue any further.”

The letter does not offer any insight into when the route was initially closed, but it does confirm that access beyond Point C was still not possible in 2002. It also ties in with the earlier Ordnance Survey evidence (and anecdotal accounts by local users) that access to routes A-B-C and C-D was not possible from an earlier date.

9.3.3 Correspondence from a resident of Oakley to the Parish Council – 10th April 2008

This letter was provided by one of the users of the path network along with a user evidence form. It reads:

“Further to the proposed notice of closure of the alleyway behind the premises of Lyde Close on 26th April, I wish to express my surprise at the lack of communication to the residents from surrounding neighbourhoods that may use this alleyway. An unsigned notice placed suddenly at either end of the alleyway without details of who to contact to object is most annoying, and as I have searched the internet for more information on this closure and found nothing, I am writing to you to register my objection.

The estate was planned and built with alleyways for the public to use. Rightly or wrongly, the responsibility to maintain certain alleyways fell on the residents and is mentioned in their deeds of sale....

....the most important part of this particular alleyway is the section from the entrance of Hoopers Way through to Meon Road. The more senior residents of this area frequently use this part when going to the park or the shops and therefore every effort should be made to keep this part open and keep it maintained....”

9.3.4 Emails to Oakley and Deane Parish Council – April - June 2009

Along with a user evidence form in support of the application, one resident of the Ashe Hill Park Estate, also forwarded an exchange of emails between himself Councillor Cecilia Morrison, the then Borough Councillor for Oakley and North Waltham.

The emails confirm the introduction of obstructions on several routes, and therefore enable some of the closures to be pinpointed more or less to the exact date:

16th April 2009

“Whilst walking my dog today I encountered a fence panel, apparently by someone from 17 Lyde Close which has been installed to fence off the alleyway between Lyde Close and Link Way in Oakley. Can you confirm that this has been done with the permission of the District Council or Highways Authority and if not can you get someone to contact the people involved and ask them to remove it and reopen the alleyway please.

My understanding is that the people of Lyde Close cannot close their footpath because it has existed for more than 20 years.....unless a Local Authority, or Government Department, has agreed to this I believe that the Council should take steps to reopen this Right of Way otherwise this will set a precedent and many other footpaths in Oakley will be closed in future.

19th April 2009

“Today I noticed that another fence has been erected completely closing the footpath between Lyde Close and Link Way. This time by 22 Lyde Close. At least we can still walk to the shops and the park via the Hoopers Way footpath but for how much longer?

Pedestrians will be forced to walk up and down Lyde Close road which will eventually cause an accident, as there is no pavement, and someone will be injured....I hope you are able to persuade them to see sense and reopen this Public right of Way.

27th April 2009

“Walking the dog today I came up against another fence blocking the footpath between Meon Way [sic] and Hoopers Way. Now residents of Hoopers Way and Link Way can no longer use the footpath to reach the shops in Meon Way or go to the Kennet Way park.

Are you having any success in getting this illegal blocking of footpaths stopped?”

Councillor Morrison responded in full on 10th June 2009:

“I have received confirmation from Hampshire County Council Highways that to convert these footways into public adopted and maintained areas individual agreements would have to be obtained for each resident. This would be a lengthy and expensive task notwithstanding the fact that possibly not all residents would wish to agree (as happened in the 1970s when the County Council were willing to adopt the footways).

The only other course of action which could be taken is for the Parish Council to apply to Hampshire County Council Rights of Way who advise that there could be a possibility of establishing a Right of Way as the pathways have been in continuous use for over forty years....

...The Parish Council will be sending this information to all residents in the immediate area who may be affected by the present situation. If the Parish Council feels that there is a sufficient number of residents who feel strongly about the closure of these footways and after full consultation, then application could be made to Hampshire County Council Rights of Way.

If and when this process is completed and the Footways are designated as Rights of Way the Parish Council could then be responsible for upgrading and upkeep which would have some financial implications for the village.”

9.3.5 Article in Southern Daily Echo – 15th August 2009

This article, forwarded by a local resident, is entitled *“Dismay after residents act to block off footpath.”* It reads:

“A DECISION by people in Oakley to block off a footpath that has been open for more than 40 years has been met with dismay. Residents of Lyde Close took the decision following a spate of vandalism, drug-taking and dog-fouling on the footpath. Nearby residents use the alleyway, which runs behind the back gardens of people in Lyde Close, as a route to local shops and schools. Alex Mills, aged 17, lives in Hoopers Way, which joined the alleyway before it was blocked off. He said: “It makes it so much longer to get to the shops. It used to take a minute, now it takes ten. It has also upset the elderly people here, who now have to walk all the way round. It’s sad that it’s come to this.

People in Lyde Close blocked the alleyway by placing fences at each end as well as several in between. At Oakley and Deane Parish Council on June 9, a resident of Lyde Close defended the decision. The resident, who asked not to be named, said: ‘I’m one of the people who closed it and have lived there for 27 years. On the first day I moved in, I had potatoes thrown in my garden and since then I’ve had people trying to climb over my back fence, people picking fruit from my trees and recently a boy stood in the alley smoking cannabis from a bong. “The list is endless, we’ve asked for help from the police and all they say is ‘we’d like to close all the alleys in the area’.

The alleyway was created in 1966 as part of a network of paths that criss-cross the estate. After consulting solicitors, the Lyde Close residents decided they could legally close the path as they hold ownership of it under their house deeds and it was closed at the beginning of June. Oakley and Deane Parish Council will decide at its meeting today whether to apply for the path to be established as a public right of way, a process which could take up to five years."

9.3.6 Extract from January 2012 issue of 'Link' Magazine

The following extract is taken from a letter, written (and forwarded) by a local resident. IT appeared in the local 'Link' magazine in January 2012. It includes a reference to a further closure on the estate:

"I write in disgust at finding yet another alleyway closure in Oakley this weekend, this time blocking public access from the Dever Way entrance through to Itchen Close and onto Avon Park Road..."

9.3.7 Letter to Borough Councillor Diane Taylor – 26 June 2012

This letter, a copy of which was forwarded by the applicant, was written by a local resident at the time that access to the claimed routes was under particular scrutiny, and immediately prior to the parish meeting held in July 2012 (see 9.3.8):

"I have received a copy of your letter....regarding the Ashe Hill Park footpath problem. As I am away on holiday at the time of your meeting I am setting down my thoughts in the matter and trust they will be of value.

1. As Group Architect (1965-70) of the Basingstoke Development Group I am aware that my predecessor Alan McCulloch was instrumental in encouraging Willett Homes (the Developers for Ashe Hill Park estate) to include footways as natural desire lines. The reasoning being that the footways should safely and directly link dwellings to schools, shops etc rather than those conventionally tied to a roadway. The suggestion was accepted by the Developers and included in the design drawings – the same design drawings that received detailed planning approval. The proposal at the time was that 'The Drive' was to be a bus route hence the generous lay-bys in the Willett Homes area of the roadway.

2. During construction it must be remembered that it is a condition of the Highway Authority that roads and footways must be constructed to a certain specification level before they can be considered for adoption. It is my understanding that the roads and footways of Ashe Hill Park estate were fully adopted by the Authority before the Developers went into administration. In practice the Highway Authority has maintained the roads in The Drive and the roadways in Kennet Way and related culs-de-sac but, over the last 45 years, the Authority appear to have entirely ignored the existence of the 'desire line' footways.

3. The house owners who have blocked off the footways appear to have ignored the requirement of the deeds of their property. This in turn has and will cause problems of access for statutory and service providers. Each may have a statutory right of access to their cables, pipework and terminal points that might be located within the 'desire line' footways.

4. Clearly opinion varies on the rights of way for pedestrians. One thing that is certain however is that the desire line footways have been open continuously to the public for in excess of 40 years. If legally challenged opinion may well identify that all the existing footways carry an established right of way for pedestrians. An inspection of the deeds of the affected properties may be important to this issue.

5. The result of blocking-off the rear footways has generated in recent times the further problem of fly-tipping. Waste material that may well be attractive to vermin and resultant disease.”

9.3.8 Extract from September 2012 issue of ‘Link’ Magazine

This account, written by the applicant, recounts the events of a meeting held at the Newfound Sports Pavilion, Oakley, on 11th July 2012. It was reportedly published in the September 2012 edition of ‘Link’, and is included in its entirety at Appendix 1. It provides a concise summary of the history of the estate, and the various views held by residents of the parish, as well as providing a context for the application which is now under consideration.

9.3.9 Letter from Basingstoke and Deane Borough Council (Compliance Team) – 3 September 2012

This letter was forwarded to the County Council by a local resident during the consultation on the application. It appears to be a generic letter, addressed to a number of residents living on the Ashe Hill Park Estate. It explains that:

”...A number of residents are at this time seeking to ensure the pedestrian footpaths located to the side and/or rear of the properties in the immediate locality of Meon Road, Lyde Close, Medina Gardens and Blackwater Close provide free and unobstructed pedestrian passage – as we understand is required by covenants contained within the relevant properties Title Deeds.

The matter of closure and enclosure of stretches of the footpaths in question have also been brought to our attention...you are receiving this letter in order to confirm the footpath to the side and/or rear of your property was observed on 25 June 2012, as having been closed and/or enclosed by way of the erection of wooden fencing panels.

Although the stretch of footpath in question has been closed....this action has not generated a breach of planning control. However, should the stretch of footpath be used for residential purposes (if enclosed rather than closed off) at any time in the future this would generate a breach of planning control...

...Notwithstanding the planning status of the closure of the footpath...in recognition that we have been made aware of the Title Deed covenants which require the maintenance and provision of free pedestrian passage over the footpath(s) we would take this opportunity to invite you to voluntarily remove the fence panels which have resulted in the closure and...return the rear residential curtilage boundary fence line of your property to its original position. We would also advise that should the closure remain moving forward this may render you liable for any future civil actions....”

9.4 Conveyancing Documents

9.4.1 Officers have carried out a number of Land Registry searches on properties located on the Ashe Hill Park Estate. Many of these documents include a copy of the original Transfer between the developer and purchaser in the 1960s. In each case, this document sets out a number of private rights attached to the property, including, in the First Schedule:

“A pedestrian right of way at all times over the footpaths on the estate.”

The Second Schedule sets out the following:

“A pedestrian right of way in favour of the owners and occupiers for the time being of the remainder of the said estate at all times over the footpath coloured blue on the said plan.”

In all cases, the plan accompanying each document shows the area coloured blue as corresponding with the section of path running behind the property, also coinciding with a section of one of the claimed routes.

In the vast majority of cases, the following requirement appears in the Third Schedule:

“To maintain cleanse and keep in good order and condition and free from all obstruction the land shown coloured blue on the said plan, being the footpath subject to rights of way.”

It would appear that the requirement set out in the Third Schedule has, in a number of cases, not been complied with, but this is not something which has a bearing on whether the public have acquired a right of way over any of the routes, and is not a matter which falls within the jurisdiction of the County Council. However, the provision of a private right of way over the paths on the estate for residents of Ashe Hill Park does affect what evidence of use can be taken into account when determining this matter (discussed later in this report at 13.6).

9.5 Summary of Documentary Evidence

The above evidence is useful in identifying approximately how long certain paths have been available on the ground, and when access to others was withdrawn. The parish council minutes offer a clear indication that the routes on the estate were in general public use, and reflect its attempts to have the routes formally adopted. Officers have undertaken a thorough search of County and Rural District Council Highway and planning minutes, but have not been able to find any specific reference to the intended purpose of the claimed routes. The application must therefore be determined based upon the evidence of use put forward by local people.

10 **User Evidence**

- 10.1 The application was supported by evidence of use from fifty-seven local residents, in the shape of user evidence forms (accompanied by maps on which users highlighted the routes they had walked) and signed statements. For the purposes of this investigation, the evidence of seventeen of these witnesses has been discounted. Twelve of these users have been excluded because their use can be categorised as having been in exercise of a private right (this is explained in more detail later in the report). The remaining five users provided insufficient information about their use for it to be considered (eg no dates of use provided or no map showing the routes that were used). The dates of use of the remaining forty people is summarised in the chart at Appendix 2. The table is anonymised and is, by necessity, a generalisation. However, it provides an insight into the length of time the public can be said to have used the paths on the estate. A sample of some of the user evidence put forward is included from 10.7.

- 10.2 The evidence put forward indicates that there has been public use of the claimed routes since they came into existence in the mid 1960s (the earliest date given is 1966), around the time the Ashe Hill Park Estate was constructed. The bulk of use captured in the forms and statements commenced during the mid-1980s, with the majority of use continuing until 2009, when a number of the claimed routes were blocked off (although use of routes that were not blocked is still possible today). Use of the routes varies depending on each user's point of origin, and the purposes for which the claimed routes were used (eg school drop-offs, walking to the local shops/park and dog-walking).
- 10.3 Of the forty users, ten provided evidence of daily use of the paths. Eleven users put forward use of several times per week, and a further nine provided evidence of weekly use. Of the remaining ten users, three put forward use of at least once per month, two use of once a month, and two less than once month, with three users not recording a frequency of use on their forms. Most users state that they used the routes to avoid the estate roads while either dog-walking, visiting the local shops, or taking their children to and from school. All users report having seen other people using the routes.
- 10.4 Save for one user (who reported being told by a local resident that route C-D was not public during the 1970s), no witnesses reported that their use was ever challenged by anybody prior to 2009. Several witnesses recalled a gate or fence being installed on the path to the rear of Meon Road between A-B-C, and although recollections differ regarding the date this obstruction appeared, the general consensus is that this happened at some point during the early/mid-1980s.
- 10.5 Six users recalled seeing signage on the route running to the south of Lyde Close (O-K) immediately prior to the widespread closures in 2009. The notice apparently advised that the route was to be closed imminently. Three further users recalled seeing notices relating to dog fouling (it is possible that these users are recalling the same notice, as anecdotal reports indicate that the notice relating to the closure between O-K referenced this issue as a reason for the closure).
- 10.6 None of the users reported having to pass through gates, or climb over stiles to gain access to the routes prior to 2009. It can therefore be said that, with the exception of routes A-B-C and C-D (which were obstructed much earlier), the fences and/or gates erected in or around April 2009 brought public use of a number of the routes to a halt. No other obstructions are reported on the remainder of the routes, which are all still accessible.
- 10.7 **User A** (completed statement in 2016) has lived in Oakley since 1980, and moved to his present address on Hoopers Way in 1990. From this date, he used the route running from D1 to P1 (via Point U) to reach the park when taking his dogs for a walk. The frequency of his use varied, but increased in the winter months (probably daily) due to the extra shelter the route provided during bad weather. He also occasionally used the route running east from Point O. He often saw other people using the routes, including youngsters coming home from school and dog-walkers. He does not recall any closures or challenges to use prior to 2009.
- 10.8 **User B** (completed statement in 2016) moved to Avon Way in 1972. From that date, she used the claimed routes in the proximity of Lyde Close, Medina Gardens and Blackwater Close for the purposes of walking her dogs, (which she did twice daily) as they were ideal for keeping them off the roads. She used the routes around Lyde Close to take her daughter to school, the play area, and also to visit the local shops, and her husband used them to get the paper every day. The

routes were closed in 2009 with no prior warning – it is believed this was as a direct result of some anti-social behaviour which occurred around that time.

This witness's use was never challenged prior to 2009, but she does recall that the route round the back of Meon Road was blocked off around the early 1980s, first on the corner and then adjacent to Number 4 (Point C) - having used the route to visit a friend who lived in Hamble Close, she was unable to use it after this time. She also recalled that she couldn't get out through Anton Close before the other closures were implemented, although she cannot remember an exact date. All other routes remained available until the closures of 2009.

- 10.9 **User C** (completed statement in 2016) lives in Oak Close, where she moved with her parents as a child. Save for about 18 months when she lived in Basing, she has lived there continuously since 1967. As a result, she began using the claimed routes around the time the Ashe Hill Park Estate was built. When she was at school she made daily use of the routes running through the western half of the estate. She also used them when out with or visiting friends.

This witness's parents moved to Anton Close in 1985, and around that time she started using the route that linked Lyde Close and Anton Close to cut through (E-F), at least 5 times per week. She also occasionally made use of the east-west route that ran towards Itchen Close when taking the dogs for a walk (between O-K). Her use of the routes was never challenged by anyone, and she never encountered any obstructions prior to those that were introduced in 2009. She often saw other local people using the routes, including lots of school children and mothers with pushchairs.

- 10.10 **User D** (completed statement in 2016) moved to Frome Close in 1985, but prior to that her daughter went to school in Oakley, so she was familiar with the area before then. She has always owned dogs and the path network on the estate provided a means of walking them. She would do this twice daily, and the routes she used most frequently to do this were the paths to the north and south of Lyde Close. Other routes on the estate she would walk approximately 3 times per week, depending on dog walking routes. She would often see other dog walkers, mothers with prams and children walking home from school - both residents of the estate and people from further afield.

This witness believes that all of the routes were available when she first moved to the area, and initially she used all of them. She believes that the closures adjacent to properties in Meon Road occurred in around 1999, and the closure at Point F introduced shortly afterwards. She was never challenged by anyone when using the routes, and never encountered any obstructions prior to 1999, when the above routes were shut without warning.

- 10.11 **User E** (completed statement in 2017) moved to Itchen Close in 1983. At that time her eldest daughter attended Oakley School (which lies to the west of The Vale) and her youngest was at pre-school. She walked along the route which ran along the south side of Lyde Close through Kennet Way when taking them to school (I-P1). She walked this return journey twice per day on the morning and afternoon school runs. Her use of the route reduced after 1990 when her children left the school.

In 1983, when her family moved to the area, there was a greengrocer, newsagents and butchers resident in the shops at Meon Road, and for a while a mobile library parked on Kennet Way every week. The witness and/or her husband would often walk the above route to pick up supplies, although the closure of those shops

reduced the need to walk the route as frequently. Their daughter had friends who lived on Dever Way and Blackwater Close, and the paths on the estate were used to collect her, approximately once a week. The family would use the route running between N and D1 most weeks when walking the dogs, although the frequency varied.

10.12 **User F** (completed user evidence form in 2012) lives in Link Way, but is apparent from the details on her form that between 1990 and 2000 she lived on Meon Road (adjacent to Point O). She provided particularly detailed evidence of use of the path network dating back to 1966, as follows:

- Between 1966 and 1974, daily use on all of the routes west of (and including) N-D1,
- between 1974 and 2009, daily use of Route P1-J,
- between 2000 and 2009, daily use of Route J-C2 (as well as H-I and E-F),
- between 1966 and 2000, occasional use of Q-R (as well as the east/west spur connecting to it), and,
- between 1966 and 1990, occasional use of A-B-C and C-D.

This witness stated that she used the routes as a safe route to school and the local shops, a means of visiting friends, and for walking the dog. She also indicated that some of her use was in exercise of a private right, when she ran errands for neighbours or visited friends, and between 1990 and 2000 when she was resident of Meon Road, at which time she maintained a section of footpath “as instructed on house deeds”.

She was never challenged or prevented from using the routes until 2009, but also provided a copy of a letter sent to Oakley Parish Council in April 2008 indicating that a notice appeared on the route south of Lyde Close (O-K) in 2008 (see 9.3.3).

11 The Landowners

11.1 As reported above, a large number of landowners are affected by this application, primarily residents of Meon Road, Lyde Close, Medina Gardens and Blackwater Close. In the case of each of the landowner residing in the above roads, a section of one of the claimed routes passes through land within their ownership.

11.2 All affected landowners were consulted by letter when the application was taken up for investigation. Responses were varied, with many people having strong views on the subject, dependant on their own experiences. As word spread regarding the consultation, other local residents living outside the estate also submitted their thoughts on the application. Of thirty-three consultation responses received, twelve respondents were in favour of reopening the routes and seventeen were against the proposal, with four respondents not expressing a view either way.

11.3 Many of those residents who supported the reopening of the routes cited the safer, more convenient access to local amenities that the routes would afford, and highlighted the fact that pedestrian users have been forced to walk on roads with no footways at some locations (particularly on Kennet Way). Some respondents

who are residents of the Ashe Hill Park Estate also pointed out that access to their rear fences (and access by statutory undertakers to pipes and cables etc) is currently impossible due to the current obstructions.

- 11.4 Those who opposed the reopening of the routes made reference to a number of anti-social behaviour problems, similar to those which precipitated the closures in 2009.

Some of the other pre-2009 issues referenced in consultation responses included:

- wilful damage to property (both to rear fences and properties as a result of the throwing of various objects into gardens from the pathways, and in one case, the setting on fire of one resident's rear fence)
- evidence of illegal/anti-social behaviour, facilitated by the lack of street-lighting on the routes, and their 'rat-run' layout
- dog fouling and littering/fly-tipping

- 11.5 Some respondents who opposed the reopening of the routes highlighted practical concerns, such as the responsibility for maintenance, and fears that their council tax would have to increase if this cost was not to be covered by other means. Others indicated that the routes had been laid on for private and not public use, asserting that the capacity to close the routes was set out in the deeds to their property, and that the 2009 closures had been carried out following consultation with (and approval from) the local constabulary.

- 11.6 Residents of Medina Gardens have claimed that the section of the path running between U-V has been closed at regular intervals, as a rebuttal to any presumption that the public might have acquired rights through uninterrupted use. More detailed responses from these residents is set out between 11.6.1 and 11.6.4.

- 11.6.1 One resident wrote that:

"...since 1966 [the path] has repeatedly been blocked for five to seven days at a time – without complaints – for various maintenance works repeatedly every two to three years for cleaning/repair, various fence/erections/repairs, wood treatments of fence plus yearly for other maintenance such as tree pruning, weed and pest control....immediate neighbours have also regularly closed their sections. We always understood by doing this that no person could in the future claim any 'right of way'.

In a subsequent communication, the same resident also stated that:

"My family and I recall the original owners of 13 Meon Road permanently blocking their section of back path in 1970s. You will need to ask Basingstoke Council what it said or wrote to the original property owners....Council workers appeared mob handed one day with pick axes and crow bars and demolished the obstruction..."

The resident also indicated that her family "verbally explained to any user why the path was blocked and at the same time told them that 'we' legally owned the land and could legally block it. Some people were 'nice' about it and others, sadly, were abusive...". She also stated that "the closures happened outside of any maintenance projects."

11.6.2 Correspondence was also received from another resident of Medina Gardens which also indicated that U-V had been regularly closed. She was resident at the property between 1966 and 1971, and again since 1982. She states that *“on various occasions it has been blocked off eg when water meters were fitted, when new pipe work installed, and when maintenance work was carried out by ourselves and our neighbours. During these periods there was no pedestrian access.”*

11.6.3 Another resident of Medina Gardens, who has lived there since 1986, also wrote to state that:

“..in common with our immediate neighbours [we] actively ensured that no rights of way could be obtained by claims of unrestricted access for 20 plus years by non-residents of the Ashe Hill Park Estate.

This has involved us in regular closure of that part of the path...Hence the closure of the route by ourselves, both for regular routine maintenance and one off closures on varying occasions for e.g. tree felling/pruning and replacement of fences, throughout the period of 1986 – 2009. Referring to the area we own, we have regularly cleaned litter, dog mess and worse, repaired fences which had been vandalised and coped with the stress of a burglary when access was gained into our property from the said pathway.”

11.6.4 Another person living in Medina Gardens (resident since 1991), also speaks of regular closures:

“We were advised on exchange of contracts to ensure that the path was closed for at least one day a year in order to retain full legal title. In conjunction with our neighbours...and aware of our legal rights and responsibilities, we ensured that the path was regularly closed a number of times each year for maintenance, fencing and clearing up mess left, in order to retain absolute title to the land.

A number of anti-social behaviour issues experienced during their time at Medina Gardens are described, along with some detail regarding the usage of U-V:

“I monitored traffic throughout 2002 prior to submitting plans for my studio in 2003. The highest number of passers-by (audible footfall) was 5 a week in the spring and summer, mostly at night and negligible during the day and in other seasons.

Since 2005 I have worked at all hours in my studio in the garden. I can count on one hand the number of times a week I actually heard anyone on the path – and most incidents were at night.”

11.7 Evidence has also been provided by residents of (or close to) Meon Road, which supports evidence discovered during the course of the investigation that access between A-B-C and C-D has not been possible for significant periods of time (as discussed in Section 9).

11.7.1 A consultation response received from a resident of Anton Close, stated that:

“The footpath abutting the southern boundary of my property...was constructed as part of the Anton Close development in 1976. It was subsequently adopted as an integral part of the Anton Close ‘highway maintainable at public expense’. I have lived here since the beginning.

Originally, it connected with the footpath at the rear of properties in Meon Road. Meon Road residents closed the connection by erection of a fence about thirty-five years ago. Since then it has been a disused cul-de-sac."

Correspondence was also forwarded by a resident of Meon Road which indicates that the path between B-C has been overgrown for considerable period of time, and that his wife had *"lived in Oakley for 35 years and to her knowledge this pathway has always been overgrown and not used."*

11.7.2 A letter received from a resident of Lyde Close stated that:

"When I moved to Lyde Close in 1982 there was a significant footfall along the pathways at the rear of Lyde Close, Medina Gardens and Blackwater Close to the shops in Meon Road from people living in Hoopers Way, Link Close and The Drive area.

In the 1990's the main shops – the newsagents and grocery shop - closed. The only business now operating from this area are a hairdressers, beauty salon and a charity shop. The footfall along the pathways rapidly declined to be used only by dog walkers and people walking to and from the Kennet Way Park."

11.8 Responses to Landowner Submissions

11.8.1 Many of the representations received as part of the consultation on this application (both for and against) relate to questions of suitability, desirability and safety. Whilst these concerns are clearly well-founded, they are not issues that the can be taken into account when determining this application (as set out at 8.2).

11.8.2 Some residents have stated that their human rights will be affected if the routes are recorded as public. The Planning Inspectorate has published guidance on the subject of the Human Rights Act 1998 (Rights of Way Advice Note No.19). Whilst the Advice Note refers to the 1998 Act, its content also serves as a useful summation of the framework for determining Section 53 applications. It states that:

"In cases which involve proposed modifications to the definitive map and statement, the criteria are strictly limited to matters of fact and evidence. Section 53 of the 1981 Act imposes a duty on the surveying authority to make changes to the definitive record 'as soon as reasonably practicable' upon discovery of evidence which shows that a path or way is omitted or is incorrectly shown. In all cases the evidence will show that the event has already taken place, for example a footpath or bridleway has already come into existence after twenty years uninterrupted use by the public, or a track should have been recorded as a vehicular right of way based on evidence from the nineteenth century. The legislation confers no discretion on a surveying authority (or the Secretary of State) to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it."

11.8.3 Many consultees raised concerns regarding who would bear the cost and responsibility for bring the routes into a good standard of repair in the event the routes were recorded as public. Whilst this is a question that will be of particular relevance to the County Council in its capacity as highway authority (if and when the routes are recorded as public footpaths), it has no bearing upon the question of whether public rights have been acquired on the claimed routes.

- 11.8.4 The only responses which are strictly relevant to this matter relate to closures (or alleged closures) at Meon Road and Medina Gardens, and references to the volume of public use on the claimed routes. These matters are addressed in Section 13.

12 Consultations with Other Bodies

- 12.1 The following people and organisations have been consulted on this application: The Ramblers, Open Spaces Society, Oakley and Deane Parish Council, Basingstoke and Deane Borough Council, Hampshire Police, County Councillor Anna McNair Scott and consultees within Hampshire County Council (Hampshire Highways and the Area Countryside Access Manager). Responses or acknowledgements that have been received are set out below.

12.2 Oakley and Deane Parish Council

The Parish has no objection in principle but is concerned about the practicality of recording these footpaths, as each is 'owned' by the properties that back onto it, and some we know have been blocked off by home owners over the years.

12.3 District Councillors Diane Taylor, Rob Golding and Stuart Frost

Councillors Taylor, Golding and Frost are aware of the application.

12.4 County Councillor Anna McNair Scott

Councillor McNair Scot is aware of the application.

12.5 Hampshire Highways

Officers within Hampshire Highways are aware of the application, and of the recent history of the routes in question. They have also provided useful information regarding recent discussions regarding attempts to get the routes adopted as publicly maintainable highways.

12.6 Hampshire Police

The local Police Community Support Officer, Andrew Jones, is aware of the application.

13 Analysis of the evidence

- 13.1 There is evidence of public use of the claimed routes since their initial construction in the mid 1960s. With the exception of Routes A-B-C, C-D and U-V, there is no indication that public use of any of the routes was interrupted prior to 2009. The evidence of long use under both Section 31 of the Highways Act 1980 and common law is considered below.

13.2 Analysis of the evidence under Section 31, Highways Act 1980

For Section 31 of the Highways Act 1980 to operate and give rise to a presumption of dedication, the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a right of way at common law;

- the use must be ‘brought into question’, i.e. challenged or disputed in some way;
- use must have taken place without interruption over a period of at least twenty years before the date on which the right is brought into question;
- use must be *as of right*, that is, without force, without stealth and without permission;
- use must be by ‘the public’; and
- there must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

13.3 Physical nature of the route

All of the claimed paths are capable of being public rights of way at common law, given that they all follow well-defined, linear routes.

13.4 The bringing into question of the public’s right to use the path

The twenty year period is calculated retrospectively from the date when the right of the public to use the way (or ways) is brought into question. In assessing the routes that have been claimed in this instance, all fall into one of three categories - those that were either permanently obstructed in or around 2009, those that were obstructed (or allegedly obstructed) before this date, and those that are still available and in use today. Based on the accounts of local people, and various aerial photography images, most of the routes that are now obstructed were blocked in 2009. Known obstruction points are marked on the Committee Plan.

Consideration of each route under this criterion is set out below. In each case, the number of users who claim to have walked the route and the earliest recorded use is listed. In some cases, use of different sections of the same route varies dependent on the point at which users exited the route.

13.4.1 ***Route A-B-C (13 users, earliest evidence of use – 1966)***

The available evidence indicates that this route was blocked at various points not long after the estate was built. A line indicating an obstruction is apparent between Points B and C on the 1972 OS map, and at some point during the early 1980s a further line can be seen at Point C, as reflected on the OS evidence of 1982. The correspondence from the residents of Meon Road (9.3.1) indicates that the route had previously been blocked at Point C during the 1970s, prior to the construction of Anton Close, and the recollections of ‘User B’ also indicate that it was not possible to use A-B-C as a through route from a relatively early stage after the estate was built. It therefore appears likely that public use of A-B-C ceased within a decade of the path being constructed, and so **no twenty year period of user can be identified.**

13.4.2 ***Route C-D (14 users, earliest evidence of use – 1966)***

Use of this route over the years has apparently been limited by a number of obstructions, the earliest of which appears to have been introduced shortly after the Ashe Hill Park Estate was built. The 1972 OS map shows the route running northwards without obstruction to Point C, but access eastwards is blocked, with access only possible to the west, behind 3 & 4 Meon Road, perhaps indicating that access was only to adjacent properties. The 1982 map shows a new path

connecting with Anton Close between C-E, but the line at the junction of this path and C-D suggests an obstruction of some sort. The correspondence from local residents in 1977 (9.3.1) indicates that access at Point C had been opened up for a brief period, but based on the 1982 OS evidence, the route was apparently blocked again shortly afterwards. This is further corroborated by consultation responses and statements received during the investigation. Given the length of time the route appears to have been obstructed, **no twenty year period can be identified.**

13.4.3 **Route N-O-U-V-C1** (26 users, earliest evidence of use – 1966)

The user evidence indicates that this was the most heavily used of all the claimed routes. As has been discussed at Section 11, several of the adjoining landowners in Medina Gardens state that U-V was subject to regular closures when water meters were fitted, new pipe work installed, and when maintenance to the path and rear fences was carried out by local residents.

The question of interruption was considered in the House of Lords judgement on *R (on the application of Godmanchester Town Council v Secretary of State for the Environment, Food and Rural Affairs)* [2007], the authoritative case dealing with the proviso to Section 31. In his judgement on the matter, Lord Neuberger stated that:

"It is clear that an interruption of the user at some point during the relevant twenty year period, such as the landowner locking a gate and preventing access, will defeat an argument based on user "as of right" under section 31(1) during that period. Traditionally, one day a year is the norm...However, it may depend on the facts of the particular case whether this is enough to amount to a sufficient interruption; that was the view taken by the Court of Appeal in Lewis v Thomas [1950] KB 438. Whatever the position, it is clear that, to be effective, the interruption need not last long in the context of twenty years in order to defeat user as of right....."

The circumstances of and the intention with which the barring of the way takes place are also relevant - in *Lewis*, the court found that the locking of the gates was not to prevent public user, but had only been done at night, when there was no evidence that anyone actually used the route and the purpose of the locking was to prevent stock escaping. In *Fernlee Estates Limited v. City and County of Swansea v. National Assembly For Wales* [2001] the court found that a route which had temporarily been blocked during construction works had nevertheless been in public use for a full period of twenty years without interruption, save for instances of such a temporary works related nature as not to be significant.

In the context of this application, it is open to question whether closures of the sort that have been described could be considered a specific challenge to public use, particularly when considering the decisions of the courts in the above cases. When assessing whether the proviso of Section 31 has been satisfied, it is necessary to consider how the matter would have appeared to the user of the path. It is conceivable that the closures that have been described by residents would not necessarily be viewed by a member of the public as a challenge to their right to use the path, particularly if they appeared to be facilitating maintenance works (either by landowners or utility companies) – such a scenario would bear similarities to the *Lewis* and *Fernlee* cases. Closures were not advertised in advance, or supported by signage which explained the reason for the closures (which may have been a more effective means of communicating the landowner's intentions to the user, and which is often the case where public use of a route is with permission only). It has been stated that people encountering the obstructions were verbally informed of

the reasons for closure (see 11.6.1), but this is not reflected in any of the user evidence.

Of more significance is the fact that, to date, no objective evidence has been provided to substantiate claims that this particular route was regularly closed. The assertions of the landowners are at odds with the evidence of users of the route, who have indicated through user forms and statements that their use of the route was not interrupted prior to 2009, and it would appear that any closures that were implemented did not come to the attention of the public (or at least the witnesses who have contributed user evidence). Given the conflict in this evidence, officers consider that there is little option other than to conclude that the 'reasonably alleged' test has been met. It may be that, if an Order to record this route as public is made and subsequently opposed, further evidence relating to the alleged closures may come to light and could therefore be presented at an inquiry. In such an eventuality, the interpretation and application of relevant case law (including *Godmanchester* and *Lewis*) would be a matter for an Inspector.

The 2009 obstructions were permanent in nature and unquestionably came to the attention of the public, and can be said to have called public use into question, giving a relevant period of **1989 - 2009**.

NB - It should be noted that C1-D1 is still available on the ground, and is considered at 13.4.13. See 13.4.9 for further consideration of O-U.

13.4.4 **Route E-F** (14 users, earliest evidence of use – 1969)

Aerial photography shows this route being open as late as 2008, and user evidence indicates that access at Point E was blocked in a way that prevented access from all directions around the same time as other closures in the first half of 2009 - relevant period **1989 - 2009**.

13.4.5 **Route C-C2-E-E2-G-H** (25-28 users, earliest evidence of use – 1969)

As has been established earlier in the report, use of A-B-C and C-D appears to have ceased much earlier than on the other routes on the estate, and the obstruction at Point C would have effectively rendered C-C2 a dead end. However, access from Point E to Anton Close remained unaffected until much later (2009). The route between E2-G-H, which also provided access to Dever Way, seems to have been available until January 2012 (as documented by the letter to the Link magazine - see 9.3.6), when a new obstruction effectively brought use of the full extent of the route to a halt. Therefore, the public's use was called into question on C2-E-E2 in 2009 (relevant period **1989 - 2009**), and on E2-G-H in 2012 (relevant period **1992 - 2012**). It should be noted that the extent of the route used by witnesses varied, depending on the point which they exited onto either Anton Close or Dever Way (hence the variable number of users). The fact that C-C2 is (and has for a number of years been) a dead end does not diminish the fact that the path has been adopted, and so it is considered that the rights set out in this process should also be recorded.

13.4.6 **Route I-H-J-K** (10 users, earliest evidence of use – 1969)

This route is enclosed by fences between Points H and J before running through an open area between J and K (as referenced in the parish minute of 27 January 1983 at 9.2.2). It terminates at the junction with the south-eastern end of Lyde Close, where the ongoing enclosed route between Points K and O is blocked by a gate (see 13.4.7). I-H-J-K is still open and in use by the public today (H-I is

recorded on the List of Streets Maintainable at Public Expense). Accordingly, the public's right to use this route can said to have been called into question by Mr Johnson's application of 2013, giving a relevant period of **1993 - 2013**.

13.4.7 **Route O-L-K** (27 users, earliest evidence of use – 1969)

The physical closure of this route (at Points O and K) can be traced to an approximate date by virtue of the emails to Cllr Morrison between the April and June of 2009. However, it is apparent from the letters to the parish newsletter (9.3.3) that a notice had been erected at each end of the route in 2008 indicating that it would be closed. The minutes of Oakley and Deane Parish Council (9.2.2) recorded adjacent landowners' reluctance to clear overhanging vegetation or to enter into adoption agreements, but there is no evidence to suggest that use of the route was ever interrupted or overtly challenged prior to 2008, giving a relevant period of **1988 - 2008**.

13.4.8 **Route L-M** (17 users, earliest evidence of use – 1969)

This short link between the above route and Hoopers Way was reportedly blocked at Point L, sometime after the closure of O-L-K. Its use as a cut-through was effectively halted by the physical closure of O-L-K in 2009, and so it could be held that public use was called into question at the same time, giving a relevant period of **1989 - 2009**.

13.4.9 **Route P-P1-R-R1-U-O** (19-26 users, earliest evidence of use – 1966)

It is interesting to note that the full extent of this route is already recorded on the List of Streets, having been adopted by the County Council during the 1970s. The route between P1 and U is still available on the ground, but its use as a through route connecting with the rest of the estate was brought to a halt by the closure at Point U in 2009. There is a clear deterioration in the condition of the surface of the path to the east of Point R1, with a build up of moss and side vegetation reflecting the drop off in public use. Conversely, the western half of the route running between P-P1-R-R1 is still in use today. It is therefore considered that the public's right to use R1-U-O was brought into question in 2009 by the erection of fencing at Point U (relevant period **1989 - 2009**), and P1-P-R-R1 by the application of 2013 (relevant period **1993 - 2013**). The level of use varied depending on the point of exit.

13.4.10 **Route Q-R** (7 users, earliest evidence of use – 1966)

This route is still available today, and so public use on it can be said to have been called into question by the 2013 application (relevant period of **1993 - 2013**). An east/west path, now largely overgrown, intersects this route about halfway along its length and emerges next to the row of shops on Meon Road, but the route was not claimed in Mr Johnson's application and no evidence of use has been provided. Therefore, whilst it is probable that the route has received some public use, it has not been considered as part of this investigation.

13.4.11 **Routes S-T-X** (16 users) & **T-V** (14 users) - earliest evidence of use – 1966)

An obstruction introduced at Point T (reportedly around the same time as other closures) effectively brought use of both these routes to and end in 2009. There are no reports (or any evidence) of any closures on these routes prior to this date - relevant period **1989 - 2009**.

13.4.12 **Route W-X-Y** (11-16 users, earliest evidence of use – 1966)

This route is still open, and there is no evidence of an obstruction in the past, giving a relevant period (triggered by the application) of **1993 - 2013**.

13.4.13 **Route Z-A1-B1** (16 users), **A1-C1** (14 users) and **C1-D1** (26 users) - earliest evidence of use – 1966

Both these routes are also open and available for use, and do not appear to have been obstructed in the past (relevant period of **1993 – 2013**).

13.5 Twenty years' use without interruption

13.5.1 With the exception of A-B-C and C-D (which were initially obstructed during the 1970s and again in the early 1980s), none of the available evidence indicates that public use of any of the routes was interrupted within any of the relevant periods.

13.5.2 As detailed earlier in this report, some residents of Medina Gardens have stated that closures were implemented on that part of the route running between U-V. However, no substantive evidence has been provided to corroborate these assertions, which conflict with the evidence of use put forward. On this basis, it is considered that it can be 'reasonably alleged' that this route received twenty years' uninterrupted public use prior to 2009. As has been set out above, in the event that an Order is made and opposed, this question can be tested further at a public inquiry.

13.6 'Without force, stealth or permission'

Force – to be 'as of right', use must not be as the result of the use of force.

Although there are numerous accounts of anti-social behaviour carried out by people using the claimed paths, there is no evidence to suggest that members of the public ever had to resort to force in order to gain access to the routes themselves during the relevant periods.

Stealth – to be 'as of right', use must be open and of the kind that any reasonable landowner would be aware of, if he or she had chosen to look.

There is evidence to suggest that public use of all the routes has been open and without secrecy. The parish minutes covering the late 1960s to the early 1990s, and the account of the local resident at 11.7.2, indicate that the reputation of the routes was consistent with their being public highways.

Permission – users 'as of right' will not have used the way with any kind of licence or permission.

Twelve people who provided user evidence, including the applicant, are (or at least during the period of their use, were) residents of Ashe Hill Park Estate. The deeds relating to each property on the estate prescribe a private right for each owner to use all the paths running through it (see 9.4.1). This would mean that use of the claimed routes by these thirteen people has been *by right*, as opposed to *as of right*. Since it is not possible to *acquire* a right by doing something for which you already have a prescribed right, the use of these individuals has been discounted. Save for instances where they were visiting people living on the estate, there is no

evidence to suggest that use by the remaining users was subject to any kind of permission.

13.7 Use by the public

Use must be by the public, and that should be reflected in its volume and the breadth of the type of users.

The use must be of a volume that is capable of coming to the attention of a landowner. It should consist of enough users, and the number may reflect the setting of a path, such as whether it is in a rural or urban area and the type of use being claimed.

- 13.7.1 Some residents have expressed concerns about a 'broad brush' approach to evaluating the user evidence, and the possibility that a high volume of use on one route might be wrongly ascribed to another which in reality may have been used much less frequently. Many users did not break their use down for specific routes, instead providing an overall frequency on their forms and highlighting the routes they used on an accompanying map (although users who were interviewed and who gave statements were questioned about this in more detail).

It is conceded that, given the large number of routes in question, to obtain a definitive picture of the level of public use of each individual path is challenging. However, all user forms were accompanied by a map which gave each witness the opportunity to indicate the routes that they have walked. Unless there is any reason to question whether the use is accurately and honestly recalled, the evidence put forward must be taken at face value. Officers have sought to reflect the volume of use on each route as accurately as possible, as shown by the numbering next to each route on the Committee Plan. It is considered that all use on the claimed routes can be considered to have been representative of 'the public'.

- 13.7.2 The evidence of use put forward indicates that a number of the claimed paths have provided important links for people walking to and from the local school, local shops, and for the purposes of recreational walking (with or without dogs). The utility of some of the routes that provided access through the estate is reflected by the numbers of people who claim to have used them, with the bulk of use occurring on the main routes that connect Lyde Close and The Drive (running north-south between N-O-U-V-C1-D1), and the area to the east of the Ashe Hill Park Estate with Kennet Way (the east/west routes O-L-K, P-R-U and C-E-G-H). When considering the amount of daily use put forward, much of it coming from dog walkers who made a habit of varying their route through the estate, or from people who made the same journey several times per day (eg as part of the school run), on balance it is considered that 'the public' can be considered to have used all the claimed routes. It is also clear from the numerous references to the routes in Oakley Parish Council minutes dating back to 1969, that they were in regular use by the public.

Use of a way should not consist solely of a particular class of person, such as the employees of a particular employer, tenants of a particular landlord, or customers of a particular business, if it is to be recorded as public.

- 13.7.3 Aside from the use discussed at 13.6, no use was in the exercise of a private right. Although a small number of users cited visits to friends (who may or may not live on the estate or on the other side of it), the majority appear to have used them as a

means of crossing the estate to reach local shops, schools, and for the purposes of dog-walking or general recreation.

13.8 Summary of user evidence

Save for A-B-C and C-D (and notwithstanding the discussion at 13.4.3 regarding the alleged closures of U-V), the evidence of use indicates that local people have been walking the claimed routes in every year since 1966, with the bulk of use falling after 1980. Use has not been secretive or as a result of force, and apart from use by some local residents who benefit from a private right, has been 'as of right'. In the case of each route, there is no objective evidence to suggest that public access on foot was ever physically obstructed during the relevant periods.

13.9 Conclusions under Section 31, Highways Act 1980

It is considered that the requirements of Section 31 have been satisfied in this case, and that it can be reasonably alleged that the public have been using all routes except A-B-C and C-D 'as of right' for a full period of twenty years.

13.10 Analysis of the evidence under Common Law

This matter must also be considered under common law, where the onus is on the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way. This may be by an express act of dedication, or it may be implied from a sufficient period of public use without secrecy, force or permission, and the acquiescence of those landowners in that use. This is required in order to meet the two pre-conditions for the creation of a highway - that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law, and depends on the facts of the case. The user must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as putting up a physical barrier, erecting notices stating that the route is not a public right of way of the type being claimed, or turning people back. Establishing user is only one part of the equation, and it is also necessary to look at all the evidence, in particular the actions of the landowner. If the landowner does nothing, or at least nothing that is inconsistent with dedication, it could be reasonable to infer that dedication was intended.

Conclusions under Common Law

13.11 Although most of the routes were never adopted as publicly maintainable highways, it could be argued that in setting the routes out using the Radburn system, the developer of Ashe Hill Park Estate was providing routes *in lieu* of footways situated by the side of the road. If users were not expected to walk in the carriageway, these routes would provide the only viable means of walking into (or through) the estate. However, the upshot of setting the estate out in this way (coupled with the reported failure to secure public adoption of the routes at the time it was built) has apparently contributed to the perception of the routes as private alleyways by residents of the estate. The absence of any documentary evidence to verify this makes it necessary to consider the matter based on the evidence of public use in tandem with the actions (or inaction) of the landowners.

- 13.12 A-B-C and C-D aside, there is evidence from which a deemed dedication of public rights can be inferred at common law. Apart from anecdotal accounts received from several residents in respect of O-V, there is no evidence that has been submitted to the County Council to indicate that any landowner took steps to inform the general public that the routes had not been dedicated for use by pedestrians until very recently (2009). All remaining routes have been in continuous use since the late 1960s/early 1970s by a large number of local inhabitants, at a volume and frequency which was sufficient to come to the attention of adjacent landowners – as indicated by the letter to the County Council described at 11.7.2. Although some landowners appear to have indicated to the parish council that they believed the routes were not public when the matter was raised with them, crucially there is no evidence that this view has ever been widely communicated to public users of the paths.

14 Conclusions

- 14.1 The available evidence indicates that the claimed routes all came into existence between the mid-1960s and the early 1970s, and there is evidence of public use of all routes since their initial construction.
- 14.2 Save for routes A-B-C and C-D, the evidence put forward in support of the claimed routes is sufficient for it to be reasonably alleged that all have been used by the public as of right and without interruption for a full period of twenty years.
- 14.3 The available evidence is also sufficient for a common law presumption to be inferred (ie that the landowners intended to dedicate the claimed route as a public right of way).
- 14.4 Save for N-O-U-V-C1-D1 (2.5 metres wide), the width of the claimed routes is approximately 2 metres.
- 14.5 If Members agree with paragraphs 14.2 and 14.3 and consider that, on the balance of probabilities, it can be reasonably alleged that the public have acquired a right of way on the routes identified in this report, then they should direct that a Map Modification Order is made to record the routes as public footpaths.

15 Next Steps

- 15.1 Although not relevant to Members' decision as to whether or not an Order should be made, officers consider it useful to outline the possible next steps following the Committee meeting.
- 15.2 If Members agree that an Order should be made, notice of the making will need to be served on affected landowners, and advertised on site for a period of 42 days. If, during that period, any objections are received, the County Council will not be able to confirm the Order itself, and will have to refer the matter to the Planning Inspectorate for determination. The Inspectorate will then appoint an Inspector to determine the Order, with the likely outcome being the holding of a non-statutory public inquiry, which would enable witnesses who both support and oppose the application to give evidence. It is unlikely that any inquiry would take place before the summer of 2018.
- 15.3 If Members resolve not to make an Order, the applicant will nevertheless have a right of appeal to the Secretary of State, under the provisions of Schedule 15 to the Wildlife and Countryside Act 1981. This may result in the County Council being

directed to make the Order which is sought. Again, if this Order is subsequently opposed, the course of action outlined at 15.2 will result.

16 Recommendation

- 16.1 That a Definitive Map Modification Order be made to record the route shown between C-E-G-H-I as a public footpath with a width varying between 1.8 and 2.7 metres.
- 16.2 That a Definitive Map Modification Order be made to record the route shown between E-F as a public footpath with a width of 2.4 metres.
- 16.3 That a Definitive Map Modification Order be made to record the route shown between H-J-K-L-O as a public footpath with a width varying between 1.1 and 2.2 metres.
- 16.4 That a Definitive Map Modification Order be made to record the route shown between L-M as a public footpath with a width of 2.3 metres.
- 16.5 That a Definitive Map Modification Order be made to record the route shown between P1-R-R1-U as a public footpath with a width varying between 1.4 and 1.9 metres.
- 16.6 That a Definitive Map Modification Order be made to record the route shown between Q-R as a public footpath with a width varying between 1.8 and 2.1 metres.
- 16.7 That a Definitive Map Modification Order be made to record the route shown between N-O-U-V-C1-D1 as a public footpath with a width varying between 2.2 and 2.9 metres.
- 16.8 That a Definitive Map Modification Order be made to record the route shown between A1-C1 as a public footpath with a width of 2.3 metres.
- 16.9 That a Definitive Map Modification Order be made to record the route shown between Z-B1 as a public footpath with a width varying between 2.1 and 2.4 metres.
- 16.10 That a Definitive Map Modification Order be made to record the route shown between T-V as a public footpath with a width varying between 1.7 and 2.1 metres.
- 16.11 That a Definitive Map Modification Order be made to record the route shown between S-T-X-Y as a public footpath with a width varying between 2.1 and 2.4 metres.
- 16.12 That a Definitive Map Modification Order be made to record the route shown between W-X as a public footpath with a width varying between 2.4 and 2.6 metres.
- 16.13 That the application to record A-B-C as a public footpath be refused.
- 16.14 That the application to record C-D as a public footpath be refused.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as ‘surveying authority’, has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Claim Reference: 1116

Location

Countryside Access Team
 Castle Avenue
 Winchester
 SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment:

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Impact on Crime and Disorder:

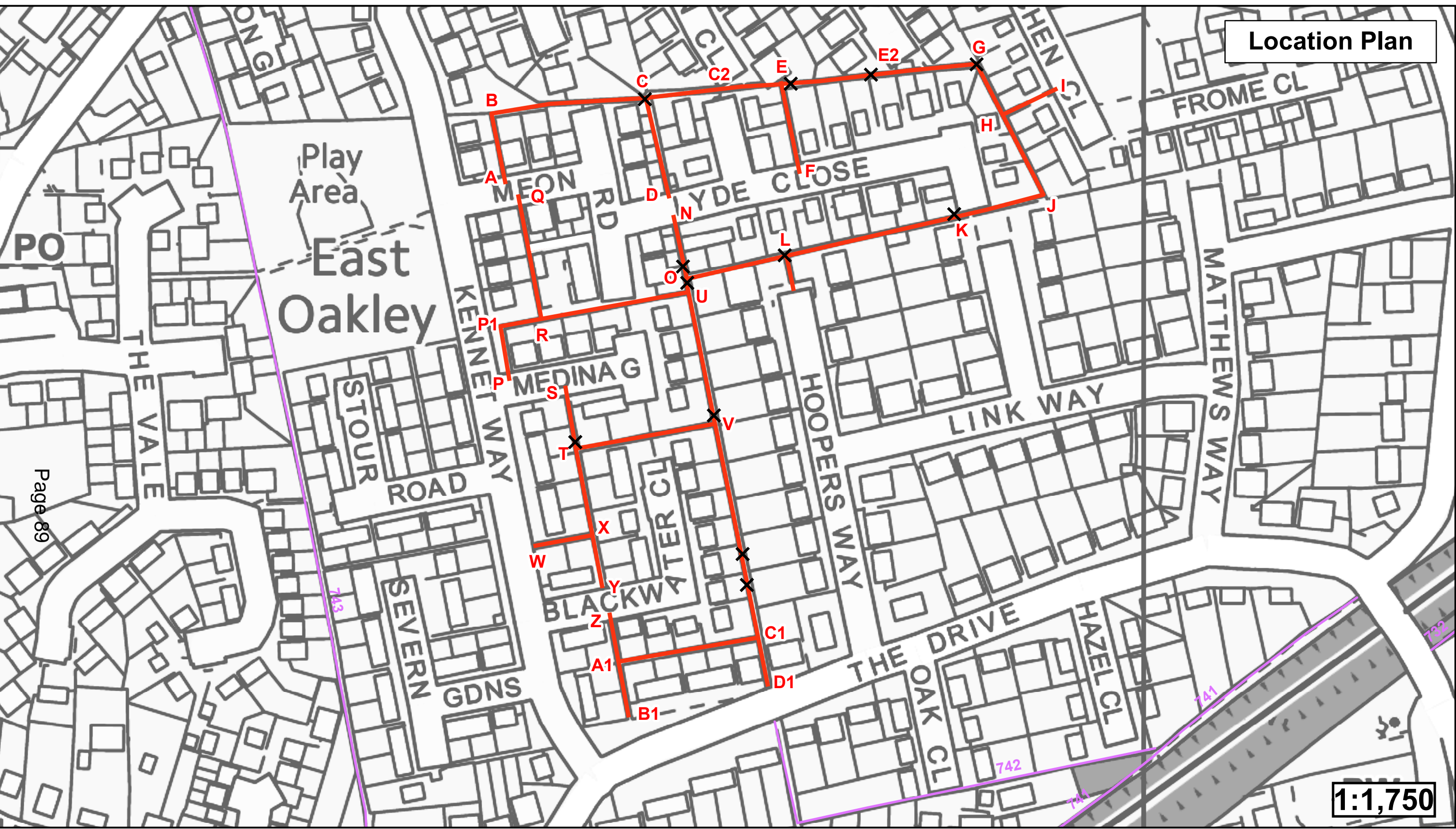
3. Climate Change:

How does what is being proposed impact on our carbon footprint / energy consumption?

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report does not require impact assessment but, nevertheless, requires a decision because the County Council, in its capacity as the 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.

Location Plan






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Application for a Map Modification Order to record public footpaths at Ashe Hill Park Estate

Parish of Oakley

LEGEND

	Public Footpath
	Routes Under Investigation
	Approximate location of obstruction

Countryside Access Team
 Culture, Communities &
 Business Services
 Castle Avenue
 Winchester, SO23 8UL



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Re: Ashe Hill park estate footpaths residents meeting

I attended the Ashe Hill Park residents meeting on the 11th of July at the Newfound Sports pavilion and thought I would pass on my notes and observations from the meeting for those unable to attend. The meeting took place one day after the August deadline for Link letters so apologies for this late update.

I attended the meeting as a resident and believer that there is still a place and need for the footpaths as without them we have lost safe routes of passage for young, old and those less able.

The meeting was organised and chaired by Borough Councillor Diane Taylor. Other attendees included two Hampshire County Council officers, the local beat officer, representatives of the Parish Council and our County Councillor.

The sports pavilion was a `full house` with standing room only (I would estimate 60+ people).

Councillor Taylor opened the meeting with some background history advising us that when the Ashe Hill Park Estate (Meon Rd, Blackwater Close, Lyde Close and Medina Gardens) was built back in the 1960's it was built to a design called the Radburn system, with footpaths rather than pavements where the pedestrian ways were segregated from vehicular routes.

Councillor Taylor explained that as soon as the homes were constructed the developer went into administration. In the late 1960s an offer was made by HCC to adopt the footpaths. This was rejected by owners. This meant the footpath network remained in the ownership of the residents whose deeds showed the footpath to be on their land.

This worked very happily until about three years ago when residents in Lyde Close agreed amongst themselves to make some footpath closures as they were fed up with anti-social behaviour such as dog fouling, vandalism and arson. There are now approximately 12 closures.

Councillor Taylor then asked for a show of hands from those wanting the footpaths closed and then from those wanting the footpaths reopened. The split was approx 50/50.

Residents that had made footpath closures were then asked if they could give their reasons so everyone could understand their issues. All of those that spoke cited similar reasons which were: dog fouling, antisocial behavior, noise, vandalism and one case of arson.

Residents wanting the footpaths opened then gave some of their reasons, which included: wheel chair users not feeling safe using the road, safe passage to the playing fields, there are services running under the footpaths such as water meters and phone lines, the older village residents did not feel safe walking down Kennet Way, extra distances now have to be walked to get around the village and footpaths that have been partially closed are now becoming an eye sore and in some cases a dumping ground.

The local beat officer, PC Barbara Bradley, then gave a police perspective advising that the footpaths made policing more difficult as the footpaths were like a rabbit warren giving escape routes for the trouble makers. She then gave the crime statistics explaining that crime had reduced, but this could be just down to the youngsters having grown up, as vandalism and anti-social behavior tends to occur in cycles.

Councillor Taylor then asked the two Hampshire County Council officers to give us some of the options that could be considered. One officer spoke about 'Adoption' of footpaths with all of the pros and cons associated, and the other spoke about 'Dedicated Rights of Way' and how an application is made.

In brief Steve Pellat, HCC Highways Manager, explained that adoption of a section of the footpath network, most probably the path parallel to Kennet Way, is a possibility but not a certainty. This would require the agreement of all residents who own a section of footpath and some funding may be necessary. It would not be an option for the entire network, and at this stage there would need to be a period of enquiries and investigations before any firm proposal could be made.

The second HCC officer, Colin Piper of the Countryside Service, explained that making some or all of the footpaths 'Rights of Way' could be a more viable option. This would be considered if a valid application is made and there is evidence of continuous public use over a period of 20 years. Once established, responsibility for keeping the pathways open would belong to Hampshire County Council. However, the cost of maintenance would not necessarily pass to HCC and may still remain the responsibility of pathway owners.

The officers then answered some questions and gave some interesting facts such as:

1. Residents who own a section of footpath should not worry unduly about being sued should someone slip or fall whilst walking down their section of footpath, as courts take into account 'Reasonableness' when assessing liability, i.e. is it reasonable for the footpath owner to carry out an hour by hour check?
2. Buyer beware!. Homeowners who are unhappy with the situation and the liability of owning a piece of footpath that has to be maintained and kept open should have read their deeds before purchasing their property.
3. When you purchase a property the deeds are also transferred to the new owner
4. Homeowners who have flouted their house deeds and closed a footpath need to consider that when they wish to sell their property this action could affect a sale
5. All Ashe Hill Park residents have a legal right of way over all of the footpaths. This means any resident can request the removal of a closure. If that request is ignored and civil action is taken the court would find against any resident who had made a closure.
6. If the council did adopt they would own and maintain the footpaths to a good standard

Time was now moving on so Councillor Taylor invited questions or ideas from those that had not spoken. I have kept this brief but these were the main questions or suggestions:

Q Should or could we make Kennet Way one-way with traffic calming bollards or make the road narrower and install a pavement as an alternative to reopening the footpath that runs parallel to Kennet Way?

A This idea was not generally supported

Q Why has the council maintained some footpaths on the estate if they were in private ownership, i.e. owned by the resident whose deeds showed the footpath was theirs?

A This was either done for safety or in error as footpath responsibility is not always straightforward

Q One resident felt unhappy that they had been served with an enforcement notice for shutting their section of the footpath and erecting a garden shed on the land that the footpath had occupied. Why had only they been targeted?

A It was explained that this was a breach of planning regulations which had been brought to the Borough Council's attention. The footpath may be in private ownership but this land is not part of the residential curtilage of the property meaning it can't be built on or used as part of the garden. Other breaches would also be addressed.

In closing the meeting Councillor Taylor summed up by stating the options, which were:

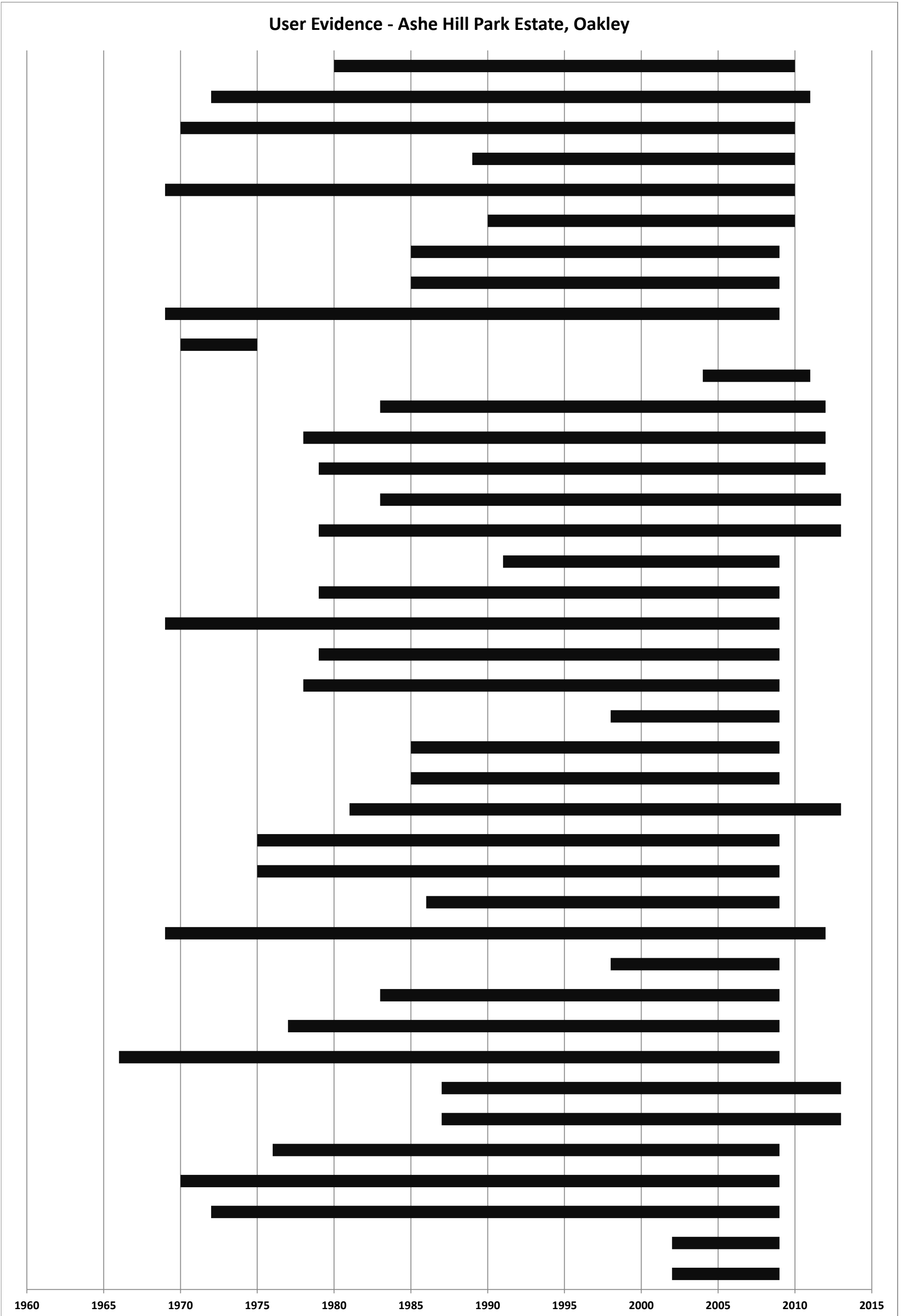
1. One or more of the main footways are adopted by HCC
2. The footways become Rights of Way
3. The footways are voluntarily re-opened and each section maintained by the owner as originally required in the house deeds
4. The footways are re-opened and maintained jointly by estate residents
5. The status quo is maintained, but with the risk of legal action and the uncertainty for those wishing to sell their homes

Councillor Taylor suggested that residents wanting the footpaths open could form a working group to explore the legal options via the civil courts or pursue the possibilities that had been explained at the meeting. She suggested that if anyone is interested in being part of such a group that they should make contact with her.

Councillor Taylor drew the meeting to a close at 9.30pm after an interesting enlightening evening.

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User Evidence - Ashe Hill Park Estate, Oakley

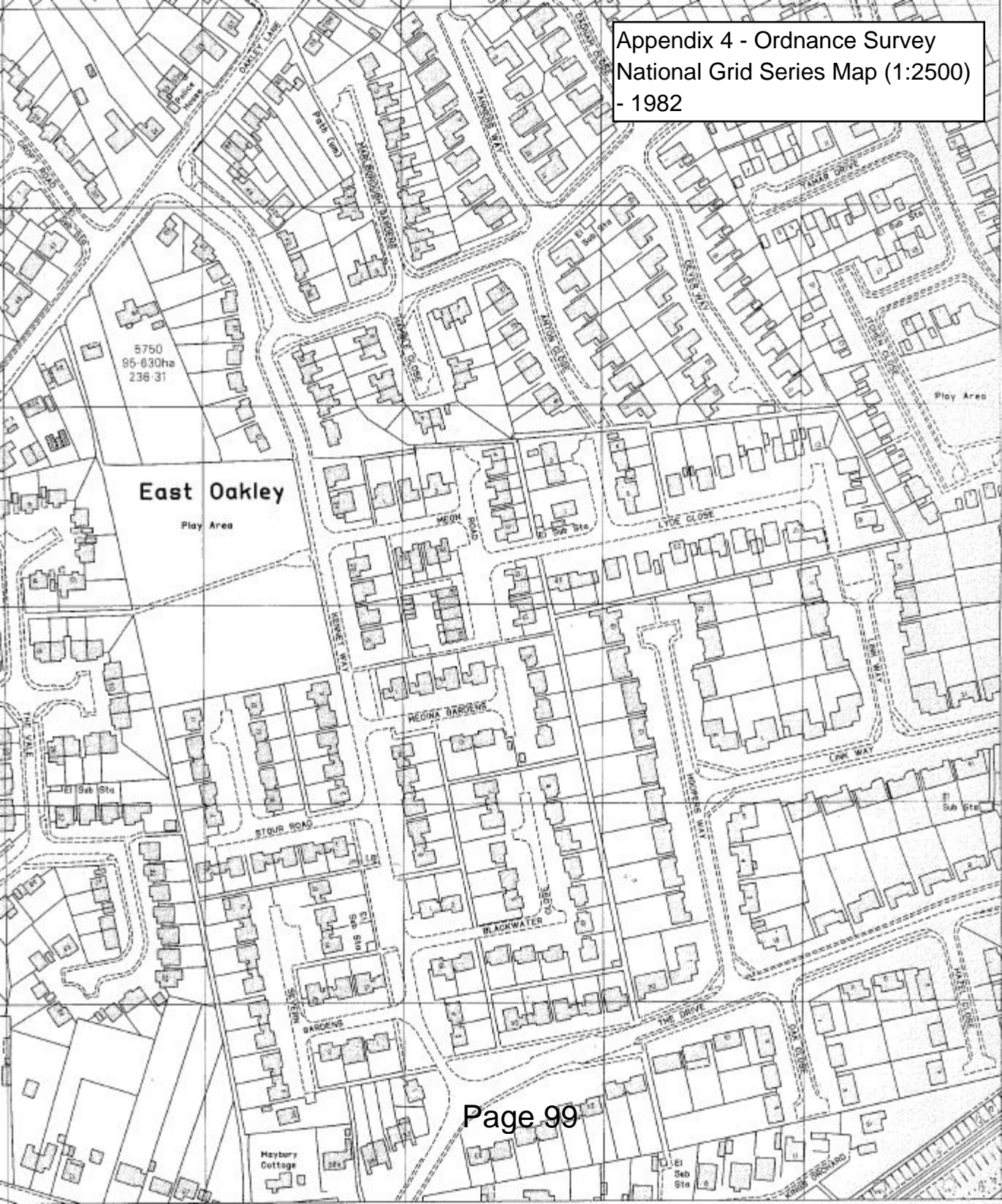


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East Oakley

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East Oakley

Play Area

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