

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Countryside Access Group Manager
<b>Date:</b>	20 August 2019
<b>Title:</b>	Application for a Definitive Map Modification Order to record a footpath in Strafield Turgis Parish of Stratfield Turgis

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### Purpose of this Report

1. The purpose of this report is to assist the Countryside Access Group Manager in determining whether to accept an application to record a footpath in Stratfield Turgis.

### Recommendation(s)

2. That the application be refused.

### Executive Summary

3. This is an application made by a member of the Hampshire Countryside Access Forum in 2015 under Section 53 of the Wildlife and Countryside Act 1981, to record a public footpath in Stratfield Turgis. The application is supported by historic documentary evidence that the applicant believes demonstrates that a Public Right of Way should be recorded.
4. Having considered the evidence submitted with the application, and undertaken additional research of historic documentary evidence, it is considered that there are insufficient grounds to record a footpath along the route.

### 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: -

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 in 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 such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;

### **Description of the Route (please refer to the map attached to this report)**

5. The claimed route commences at a junction with Bottle Lane (point A on the attached plan), bearing north across a field to a junction with a private track (point B) then along the boundary of the cricket ground (which is now recorded as a village green) to a junction with the A33, Basingstoke Road (point C).

### **Issues to be decided**

6. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are 'reasonably alleged' to subsist. 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, an order should be made so that the evidence can be tested at a public inquiry. Officers do not consider that there is such a conflict in this case.
7. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, it must be demonstrated that any change to the map is supported by evidence. This might be proved by historic documentary evidence or by evidence of use in the recent past.

### **Background to the Application**

8. The application was submitted in 2015 by a member of the Hampshire Countryside Access Forum as part of the PATHH project ('Providing Access to Hampshire Heritage'). Due to a backlog of applications the matter was not taken up for investigation at the time.
9. The applicant submitted two Ordnance Survey maps (the second and third editions of the county series) and a copy of the tithe map and apportionment. These are discussed below, in addition to other evidence that has been reviewed.

### **Documentary Evidence**

#### **10. Stratfield Turgis Tithe Map and Award (1840)**

Tithe maps and awards were created following the Tithe Commutation Act (1836), which sought to update the historic arrangement of landowners making payments in kind to the church, instead requiring them to make a monetary payment. The maps and awards were created to calculate the value

of the land in order to ascertain how much money the landowner should contribute to the church. The southern part of the claimed route (from A-B on the attached plan) is shown as two parallel pecked lines which bear north and terminate at the junction with the private track which continues westwards to meet the main road. The length of the claimed route between points B and C is not shown on the map. On the tithe award, there is no reference to the existence of a path in the description of the parcel of land. It is likely that the tithe surveyors marked what they observed on the ground, and therefore marked that there was evidence of a walked path in this area. Without a corroborating reference in the tithe award, it is not possible to infer that there were any public rights along the route.

#### 11. Stratfield Turgis Enclosure Map and Award (1840)

Enclosure maps and awards were created when areas of land were exchanged between landowners to make more unified plots that were easier to manage. The claimed route is not shown on the Enclosure map for Stratfield Turgis, but elsewhere on the map, paths which existed at the time of the award are shown as dashed lines. It therefore seems likely that if a public path had existed at the time the map was drawn up, it would have been marked. There is no reference to the existence of a path in the description of the parcel of land.

#### 12. Ordnance Survey Maps - County Series (25 inches to 1 mile) – 1870 – 1931

Four maps were published by the Ordnance Survey at a scale of 25 inches to 1 mile between 1870 and 1931. On the first edition of the map (circa 1870), there is no indication of the claimed route. The second and third editions (circa 1895 and 1908), show a pecked line marked 'FP' along the claimed route. The Ordnance Survey surveyors marked what they observed on the ground; therefore although a route may be shown as a 'footpath', this simply means that it was a path used by pedestrians, and does not necessarily mean that there was a public right of way along the route (for example, the individuals using the route may have been doing so in exercise of a private right).

#### 13. Map showing exchange of land between the Duke of Wellington and J Simmonds under the Stratfield Turgis Inclosure– (circa 1900)

The map shows a proposal for an exchange of land between the Duke of Wellington and J Simmonds as part of the Inclosure agreement for the parish. Although the area of land where the claimed route lies is clearly shown, the claimed route is not visible. However, no other footpaths appear to be shown on the map, therefore the omission of the claimed route may not necessarily indicate that the route did not exist at the time the map was produced.

#### 14. Finance Act (1910)

The Finance Act of 1910 required all properties in England and Wales to be valued so that a tax could be charged on the increase in property value at any subsequent sale or inheritance. A tax deduction could be made if there was a public right of way within the property boundary. These records consist of maps, which show the property boundaries, and field books, which set out the tax owed and any deductions made for rights of way.

Unfortunately, the field book which accompanies this map was destroyed during the Second World War. Without the field book, it is not possible to interpret the map.

15. Basingstoke Rural District Council Highway Handover Map (1929)

Highway handover maps were prepared when responsibility for highways transferred from rural district councils to county councils under the Local Government Act (1929). The maps indicated which highways were maintainable by the council, and also indicated routes which were not considered to be the responsibility of the highway authority. Only roads have been marked on the map; no footpaths have been annotated. This is unusual – highway handover maps usually show responsibility for both roads and footpaths. As no footpaths have been annotated on the map, it is not possible to draw any conclusions about the omission of the claimed route from this map.

16. Highways Maintenance Map, Basingstoke Division (1946)

Highway maintenance maps were produced following the responsibility for highways being transferred to county councils; the maps show the highways maintained by the County Council at the time. The map uses the same OS base map as the 1929 Highway Handover map (see above). As on the handover map, no footpaths have been marked on the maintenance map.

17. Conveyance of several pieces of land for road-improvement purposes – July 1939

The map attached to the conveyance primarily shows the area to the south of the claimed route. The claimed route is not shown. This may simply be because it was outside of the area of focus, and the map was intended for conveyancing purposes, rather than recording rights of way, or it may be because there was no notable path at the time the map was produced.

18. Documents relating to the National Parks and Access to the Countryside Act (1949)

The National Parks and Access to the Countryside Act (1949) required surveying authorities to record Rights of Way on maps, which were to be periodically updated (later legislation required the maps to be kept under continuous review). This legislation resulted in a number of key documents that can assist with tracing the history of Rights of Way.

Parish Map

Parish maps were prepared by parish councils for county councils when the first Definitive Map was being prepared; the map was produced to inform the County Council of the rights of way in each parish in order for the Draft Definitive Map to be produced. The Parish Map (circa 1952) uses an Ordnance Survey map as the base map; the line of the claimed route is therefore shown as a pecked line marked 'FP'. Despite this, the path has not been marked as a footpath.

## Objections Book

The book of objections contains a record of all objections received when the draft definitive map was open to public scrutiny. It also contains records of objections and amendments made when the Definitive Map was open to periodic review. There is no mention in the objections book of the omission of the claimed route from the Definitive Map.

## Definitive Maps

On both the first (1954), second (1958) and third (c1958-1964) Definitive Maps, the claimed route is not shown. This is consistent with the footpath never having been recognised as a public right of way.

### 19. Commons Registration of Turgis Green (VG13) – 1970

In 1970, Turgis Green was registered as a village green. The application documents do not make reference to a path in the area. A memorandum dated 26 May 1967 from the County Surveyor to the County Council Solicitor states that “the highway is not affected by this application”. The description of the land on the commons registration document makes no reference to the claimed route, nor to any rights of way within the village green.

### 20. Stratfield Turgis Parish Meeting Minute book (1896-1976)

As Stratfield Turgis is a small parish, it does not have a full parish council. Instead, there is a parish meeting. The minute book covering all meetings held between 1896-1976 was reviewed in its entirety. The minutes cover a range of matters in the parish, with a heavy focus on the cricket ground adjacent to the claimed route. Aspects of the management of the cricket ground are covered in detail, including upkeep of the pavilion, painting of the gate, and cutting of the grass and hedge. There is no mention of the claimed route within the minutes.

In the meeting of March 1951, the drafting of the Definitive Map was discussed. The County Council had provided a map of the rights of way in the county and the meeting observed that a bridleway had been omitted. No reference to the omission of the claimed route was made.

## Other sources viewed

### 21. Parish File

The County Council maintains a file relating to countryside matters (including countryside management and rights of way) for each of the parishes in the county. These files date back to around the 1940s-50s and contain, amongst other things, correspondence, maps, and work orders. There are no documents relating to the claimed route within the parish file. There was, however, a letter from the parish meeting stating that a bridleway had been omitted from the Parish Map, as described above.

### 22. Contemporary Ordnance Survey maps – OS VectorMap

On contemporary Ordnance Survey maps, the claimed route is shown as a pecked line, which is described in the key as 'path' (note that this is different to the line for a footpath). The key also contains a disclaimer that presence of a route on the map does not necessarily reflect that it is a public right of way.

### **Analysis of Documentary Evidence**

23. The claimed route is clearly shown on both the second and third editions of the Ordnance Survey county series maps (circa 1895 and 1908). Additionally, the southern part of the route is also shown on the tithe map of 1840. However, there is no evidence that a public right of way has ever existed along the route and the path has been omitted from key maps which show rights of way or highways maintainable at public expense, including the highway handover and maintenance maps, and the parish map. The documentary evidence is therefore considered to be insufficient to infer that there is a public right of way along the claimed route.

### **Consultations**

24. The following people and organisations have been consulted on this application: the Open Spaces Society, the Ramblers, Basingstoke and Deane Borough Council, Stratfield Turgis Parish Meeting, the Hampshire County Council Countryside Service Area Access Manager. Additionally, the local elected member of the County Council, Cllr Vaughan, has been notified. Where responses were received, these are set out below.

#### 25. The Ramblers

*This is clearly a well-used, if currently unofficial, path which links up two other paths (Stratfield Turgis FP 2 and Hartley Wespall FP 19) and we strongly support the DMMO.*

#### 26. Basingstoke and Deane Borough Council

*I have had a look at the planning history and I do not have any comment to add on this concerning its use as all the applications refer this to a pathway as the OS maps do already. The application references are BDB/74147, BDB/23522 and BDB/21598 yet these only refer to the cricket ground. I cannot find any other planning history on the most southern part of the pathway (passing Wellington Cottage and Hartley House Cottage).*

#### 27. Stratfield Turgis Parish Meeting

The Parish Meeting provided a comprehensive response to the consultation. The following points were made:

- All maps of the recreation ground show a pecked line marked 'path' running across the northern end of the claimed route, adjacent to the cricket pitch.
- The parish meeting was notified of the existence of a possible unrecorded footpath (the claimed route) in the 1990s. The meeting was advised that there was a small gate at the southern end of the route, near the former

Cricketers public house on Bottle Lane (now a private residence); this opened onto a path which the chairperson of the meeting describes as an extension to Footpath 19.

- The southern end of the claimed route, from the cricket ground to Bottle Lane, was previously used by cricket players prior to the cricket pavilion being licenced to serve alcohol and the public house on Bottle Lane closing.
- The claimed route closely follows the parish boundary between Stratfield Turgis and Hartley Wespall parishes.
- Some maps of the area show a dotted line leading from the carpark of the Jekyll and Hyde public house at the northern end of the route towards the recreation ground. In the 1970s, there was a gate at the southern end of the pub car park.
- The parish meeting feels that “the application has some merit although on the other hand the field in front of Wellington Cottage is a designated SINC and the path would also pass directly in front of Wellington Cottage.
- The land in front of Wellington Cottage now belonging to Stratfield Saye Estate was enclosed in the 18th or 19th Century and the remaining portion given to the village as a tithe award. It is possible that both pieces of land were at one time part of the common grazing and therefore was freely available to cross.
- The 1866 Enclosure Act apparently split the land into two pieces, the larger being the recreation ground and the smaller the piece in front of Wellington Cottage which was given to the Duke of Wellington.

### **Comments by the Landowners**

28. The affected landowners have been consulted on this application, they made the following comments:

*The path will run past the frontage of one of our properties and will compromise the tenant’s enjoyment of the property. It is across land owner [sic] by the Estate and runs past the front of one of our properties. It would impinge on the private enjoyment of the tenants of the property. If people have been using the path on a regular basis then it would have, in theory, been trespass.*

### **Conclusions**

29. As set out earlier in the report, for a change to the Definitive Map to be made, it must be on the basis of evidence that demonstrates ‘on the balance of probabilities’ that a route should be recorded or amended.

30. If the County Council is presented with evidence that demonstrates that the public have enjoyed free and unchallenged use of the route for a period of 20 years or more, then there may be grounds to record the claimed route under the provisions of s31 of the Highways Act (1980).

31. Although the documentary evidence indicates that a path has been shown on maps of the area since the late 19<sup>th</sup> Century, there is insufficient evidence that there were ever any public rights attached to the path. For this reason, it is recommended that the application should be refused.



**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes/no
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes/no
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes/no
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes/no
<b>OR</b>	
<b>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.</b>	

**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

Location

Claim Reference: Case File (CR 1154)

Countryside Access Team  
Castle Avenue  
Winchester  
SO23 8UL

## EQUALITIES IMPACT ASSESSMENT:

### 1. Equality Duty

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 by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) 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 protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are 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 in which participation by such persons is disproportionately low.

### 2. Equalities Impact Assessment:

See guidance at <http://intranet.hants.gov.uk/equality/equality-assessments.htm>

Insert in full your **Equality Statement** which will either state:

- (a) *why you consider that the project/proposal will have a low or no impact on groups with protected characteristics or*
- (b) *will give details of the identified impacts and potential mitigating actions*