

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Countryside Access Group Manager
Date:	13 October 2017
Title:	Proposal to make a Definitive Map Modification Order to correct the alignment of Steep Footpath 1
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 The Countryside Service has discovered that the depiction of Steep Footpath 1 on the current edition of the Definitive Map and Statement is at odds with the route that was originally claimed by the parish council during the drafting of the original map during the 1950s (and which is currently in use). Evidence suggests that a mistake was made in the production of the first edition of the map, and the discrepancy was repeated on subsequent versions. It is therefore recommended that a Definitive Map Modification Order be made to correct this error.

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: -

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

iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

3 Claimant

- 3.1 There is no claimant in this matter. This investigation has taken place because the County Council has become aware of an anomaly on the Definitive Map. The County Council has a continuous duty to keep the map and statement under review under section 53 (2)(b) of the Wildlife and Countryside 1981.

4 Landowners

- 4.1 The land over which the relevant section of Footpath 1 runs is owned by Mr and Mrs Saint of Lowwood, Ridge Common Lane, Steep. The narrow strip of land immediately adjacent to Lowwood (which accommodates the currently walked route) is unregistered, and the land adjacent to that is owned by Steep Parish Council. Both adjacent owners have been consulted on this issue.

5 Description of the Route (please refer to the maps attached to this report)

- 5.1 The currently recorded section of Steep Footpath 1 that is in question commences at the boundary between Lowwood and the adjacent field to the west (through which Footpath 1 continues towards Rothercombe Farm), shown at Point A on the accompanying plan. From this boundary, the path proceeds generally eastwards through the grounds of Lowwood (and the house itself) to meet Ridge Common Lane (Point B) – a length of approximately 105 metres. The route that is currently walked also commences at Point A, and proceeds south-eastwards along a grass path enclosed between hedges approximately 2.6 metres apart for a distance of 100 metres to meet Ridge Common Lane at Point C.

6 Background to the Investigation

- 6.1 The alignment of Footpath 1 was queried by both the owners of Lowwood and a local representative of The Ramblers during 2016. Both stated that they were under the impression that the route had been diverted onto its current alignment during the 1930s.
- 6.2 Officers undertook some preliminary research into the matter, whereupon it became clear that the location of this path, as shown on successive editions of the Definitive Map, did not correspond with the line claimed by Steep Parish Council prior to the publication of the first Definitive Map, nor did not correspond with the originally drafted definitive statement entry for the path.

7 Issues to be decided

- 7.1 The issue to be decided is whether there is evidence to show that the definitive map requires modification. More specifically, consideration must be given to whether or not an error was made in the preparation of the 1st edition of the Definitive Map of 1955, which now requires correction.
- 7.2 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 there is evidence to show that the route as shown on the current edition map is incorrect, and that a Modification Order should be made to correct the alignment of the route.

- 7.3 The burden of proof in these matters is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive before a change to the definitive map can be made.

8 Documentary Evidence

Maps and Plans

8.1 Steep Inclosure Award – 1866

Various parts of Steep were enclosed in 1866, and as part of this process existing highways stopped up and new one set out. A new footpath, set out by the commissioner in the award, starts out from the parish boundary on an alignment corresponding with the current line of Footpath 1, but then bears south-east on a private carriage road (leading to what is now Philsgate) before turning north-east along what is now the rear boundary of the plots situated on Ridge Common Lane. The path then takes another acute turn south-eastwards along the edge of a plot labelled 'Sandpit' on the enclosure map, running to meet Ridge Common Lane itself.

8.2 OS County Series 1st Edition (25 inches to 1 mile) – 1870

This map, produced a mere several years after the enclosure award, shows a path on an alignment which indicates that the route set out in the enclosure award had already been abandoned. The path, shown by pecked parallel lines, corresponds exactly with the currently recorded route of Footpath 1.

8.3 OS County Series 2nd Edition (25 inches to 1 mile) – 1897

The depiction of the path on the 2nd edition is identical to that on the 1st edition, save for the addition of a 'FP' annotation on the path.

8.4 OS County Series 3rd Edition (25 inches to 1 mile) – c1909

There is no change in the depiction of the route when compared with the 1st and 2nd editions.

8.5 OS County Series 4th Edition (25 inches to 1 mile) – c1932

A path is again shown on the same alignment as the preceding three maps, but now a route is also shown running along the southern boundary of Lowwood, which corresponds with that which is now in use.

Correspondence

8.6 Steep Parish Council/Petersfield Rural District Council – 1935

The following correspondence was unearthed in the County Record Office:

20th September 1935 – Steep Parish Clerk to Petersfield Rural District Council

"In the press report of a recent Rural District Council meeting reference was made to a suggested slight alteration in the direction of the footpath which has been used by the public across Allotment II on the Steep Enclosure Award and I wish to enquire if this matter is now sufficiently advanced for my council to safely conclude the altered position of the path on their Rights of Way map which is in course of preparation, if so I should be glad to know the exact position of the pathway as altered."

19th October 1935 – Rural District Council to Steep Parish Clerk

“Your letter has been put before my council and I am to say that as far as they know the alteration in the direction of this footpath is not yet sufficiently shown on the ground for you to be able to safely include it in your Rights of way map, but I am taking steps to have it done and then you will be safe in shewing the alteration on your map.”

Steep Parish Council Memo dated 14th December 1935

“The slight diversion of this footpath is now completed and gated stiles placed, and also a notice painted stating that it is a public footpath.”

National Parks and Access to the Countryside Act 1949

8.7 Steep Parish Survey – 25th July 1950

A survey of every path which the parish wished to be added to the first Definitive Map was undertaken in 1950. The description of Footpath 1 ‘as claimed’, is accompanied by an extract from the parish survey map which was eventually submitted to the County Council (see 8.8). The description reads as follows:

“A notice board ‘Public Footpath’ indicates the entrance at the eastern end of this path. For 100 yards or so the path runs between a hedge and a wire fence. It passes through a gap where there is one rail into an arable field...”

8.8 Steep Parish Map – 18th September 1950

The map produced as a result of the above survey, signed and dated by the parish chairman, was submitted to the County Council as part of the preparations for the production of the first Definitive Map. The map includes the heading *“Agreed Rights of Way Shewn Thus”*. The eastern end of Footpath 1, as claimed by the parish, is shown running on the currently walked line, to the south of Lowwood.

8.9 First Definitive Map and Statement – 1955

The First Definitive Map for the area was eventually published in 1955. The alignment of Footpath 1 is shown on the currently recorded route. However, the entry for the route in the Definitive Statement, is at odds with this depiction. It reads:

“Along grass path 6 ft. wide enclosed between hedges, westwards over stile into arable field, southwestwards along trodden path, over stile, along grass track, over stile into pasture, then southwestwards over rails into pasture, following hedge to Parish Boundary.”

Both the Definitive Map and Statement have remained unchanged through three further republications.

8.10 Ramblers Survey – 1979

The path was surveyed as part of a county-wide survey by the Ramblers Association. The description of the route by the surveyor reads:

“From wooden signpost (footpath) on C154...well defined West on grass (1.5 metres wide between hedges) for 100 metres to wooden stile....”

A footnote on the entry reads:

“The first 100 metres of this path is clearly marked on the ground and on the 1:50,000 map. It does not agree with marked route on 1;10,560 map.”

10 User Evidence

- 10.1 No specific evidence of use has been gathered in the consideration of this matter, though it is clear that path A-C is a well worn route and, based on correspondence listed above, has been in public use since the 1930s.

11 The Landowner

- 11.1 Both the saints and Steep Parish Council agree that the path should be shown running between A-C.

12 Consultations with Other Bodies

- 12.1 The following people and organisations have been consulted on this application: The Ramblers, Open Spaces Society, Steep Parish Council, East Hampshire District Council, County Councillor Russell Oppenheimer and the County Council's Area Countryside Access Manager.
- 12.2 At the time of writing, no objection has been received to the proposal. Steep Parish Council has responded to state that the proposal seems sensible. The local Ramblers representative previously provided evidence in support of a change to the map.

13 Analysis of the evidence

- 13.1 The first edition of the Definitive Map, dated 1955, provides the first legally conclusive evidence of the location of Footpath 1, unless it can be shown that a mistake was made on this map. It is considered that the alignment recorded on this map was incorrect because:
- a) a different alignment was claimed by Steep Parish Council in 1950, and
 - b) the recorded route does not accord with the written description that was published at the same time, which clearly describes the route running between A-C.
- 13.2 Although it is evidence that A-C has been in use since the 1930s, there is also evidence to suggest that public rights also subsist on A-B, and also on the alignment set out in the Steep Enclosure Award. Officers can find no evidence that any formal diversion has ever taken place in respect of the footpath running between Rothercombe Farm and Ridge Common Lane, and so it is conceivable that there are *three* routes on which public rights subsist.
- 13.3 For the avoidance of doubt, this report has focussed on establishing whether an error occurred during the drafting of the first Definitive Map, based on the submissions of the parish council at the time. Officers recognise that moving the line of the path from A-B to A-C does not necessarily acknowledge the possibility that public footpath rights also subsist on A-B or the route set out in the Enclosure Award, and no further researches have been carried out in respect of these two routes (other than what is listed above). However, any member of the public may make an application to record these rights if they so wish. Alternatively, the affected landowners could apply to extinguish these rights in due course.

14 Conclusions

- 14.1 Given that the 1955 map was hand drawn, and the pecked line shown on the Ordnance Survey maps since 1870 were still shown on the base map on which the Definitive Map was prepared, the most likely explanation for the discrepancy relating to Footpath 1 is that a cartographic error was made prior to its publication, which was subsequently repeated on future editions of the map. This notwithstanding, it is clear that the public have been walking A-C since the 1930s.
- 14.2 Officers consider that the correct course of action is to make a Map Modification Order to amend the Definitive Map so as to show Steep Footpath 1 on line A-C.

15 Recommendation

- 15.1 That a Definitive Map Modification Order be made to amend the Definitive Map so as to show Steep Footpath 1 on line A-C (see attached plan), the particulars described in the Definitive Statement for the route to remain unchanged.