

Public Document Pack



NOTICE OF MEETING

Meeting	Regulatory Committee
Date and Time	Wednesday, 14th November, 2018 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 3 - 4)

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. APPLICATION FOR A MAP MODIFICATION ORDER TO RECORD A BYWAY OPEN TO ALL TRAFFIC IN THE PARISH OF SWALLOWFIELD, AND A RESTRICTED BYWAY IN THE PARISH OF BRAMSHILL (Pages 5 - 74)

To consider a report from the Director of Culture, Communities and Business Services regarding an application for a MMO in Swallowfield and Bramshill.

7. COUNTY COUNCIL CONSULTATION RESPONSES - SHALE GAS (Pages 75 - 90)

To consider a report from the Head of Strategic Planning regarding County Council response to the following consultations:

1. Proposed changes to permitted development rights for non-hydraulic shale gas exploration; and
2. Proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime

8. MONITORING AND ENFORCEMENT UPDATE (Pages 91 - 100)

To consider a report from the Head of Strategic Planning, which provides information on work undertaken by Strategic Planning during the period July 2018 – October 2018.

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.

Agenda Item 3

AT A MEETING of the Regulatory Committee of HAMPSHIRE COUNTY
COUNCIL held at the castle, Winchester on Wednesday, 12th September, 2018

Chairman:

* Councillor Peter Latham

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

*Present

73. APOLOGIES FOR ABSENCE

Apologies were received from Councillors M. Cooper, Frankum, Harvey, Oppenheimer and Price. Councillor Irish attended as a deputy for Councillor Price.

74. 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.

75. MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were reviewed and agreed.

76. DEPUTATIONS

There were no deputations for this meeting.

77. CHAIRMAN'S ANNOUNCEMENTS

There were no Chairman's Announcements.

78. BURNHAM COPSE PRIMARY SCHOOL NEWCHURCH ROAD TADLEY

The Committee considered a report from the Head of Strategic Planning (Item 6 in the Minute Book) regarding a retrospective application for the permanent siting of a modular classroom for use as a pre-school and school room at Burnham Copse Primary School in Tadley.

A location plan was shown to Committee and the main features of the school were highlighted, along with access points and the areas used locally for parking and drop-offs. Bishopswood Road to the north was a cul-de-sac used for pedestrian access to the school, and also used during the day and out of hours to access the modular building, which was operational between 7:30 and 18:00 because of breakfast and after school clubs. The modular building was divided to accommodate nursery and pre-school along with clubs and often closed in the holidays if there was little demand.

The school was active in ensuring constant development and improvement with the travel plan and this was included as part of the conditions attached to the report.

There were no deputations on this item and no questions regarding the report.

RESOLVED:

Planning permission was granted, subject to the conditions listed in Integral Appendix B.

Chairman,

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	14 November 2018
Title:	Application for a Definitive Map Modification Order to record a restricted byway and a byway open to all traffic between Jouldings Lane and Well House Lane Parishes of Bramshill (Hampshire) and Swallowfield (Wokingham Borough)
Reference:	
Report From:	Director of Culture, Communities and Business Services

Contact name: Harry Goodchild

Tel: 01962 846044

Email: harry.goodchild@hants.gov.uk

1 Recommendation

- 1.1 That authority is given for the making of a Definitive Map Modification Order to record a byway open to all traffic varying between 7.9 and 13 metres in width, on the route shown between A – B on the location map.
- 1.2 That authority is given for the making of a Definitive Map Modification Order to record a restricted byway varying between 7.7 and 13 metres in width, on the route shown between B – D on the location map.

2 Executive Summary

- 2.1 This is an application, made under Section 53 of the Wildlife and Countryside Act 1981, to record a restricted byway and a byway open to all traffic between Jouldings Lane (Parish of Swallowfield) and Well House Lane (Parish of Bramshill). The claim is supported by historic documentary evidence and some recent user evidence.
- 2.2 It is considered that the evidence submitted in support of this application is sufficient for it to be inferred that, on the balance of probabilities, the route can be reasonably alleged to have been dedicated as a public carriageway, and that an order should be made to record the route on the Definitive Map.
- 2.3 The claimed route runs through Jouldings Ford, situated on River Blackwater, which also marks the county boundary between Hampshire and Wokingham Borough. Rather than each authority carry out its own investigation and make a separate order for its own section of the route, it has been agreed that Hampshire County Council will investigate the application and make any resulting order to cover the entirety of

the route. Authority for this approach has been granted by Wokingham Borough Council, and the matter has been delegated in full to the County Council, under the provisions of Section 101 of the Local Government Act 1972.

- 2.4 The recording of the route (or not as the case may be) on the List of Streets Maintainable at Public Expense in each respective administrative area has had an impact on the status that is legally capable of being recorded on the Definitive Map. This issue is discussed later in this report.

3 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 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....

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.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 – Section 67: Ending of certain existing unrecorded public rights of way

(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—

(a) was not shown in a definitive map and statement, or
(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

(2) Subsection (1) does not apply to an existing public right of way if—

(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),

- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
 - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
 - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if—
- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
 - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application...

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

- 4.1 The claimed route, shown running between Points A and D on the accompanying map, links two other routes that are metalled and recorded on the List of Streets Maintainable at Public Expense - Jouldings Lane in Swallowfield, in the Borough of Wokingham (Point A), and Well House Lane in Bramshill, Hampshire (Point D). The route running between A-B is recorded on Wokingham's List of Streets Maintainable at Public Expense, but the remainder of the route (ie from the northern extent of the ford, and the continuation of the route in Hampshire) is not.
- 4.2 The claimed route, which is approximately 345 metres in length, commences at a junction with the metalled section of Jouldings Lane (Point A). The route proceeds south-westward, between the boundaries of Jouldings Farm to the east and an arable field to the west. After a distance of approximately 50 metres, the route meets Jouldings Ford, which crosses the River Blackwater at the county boundary. Modern mapping shows the ford to be about 13 metres wide, but it is apparent from historical mapping that the ford has previously had a much wider splay (a width of 37 metres was originally suggested by the applicant). From the ford the route continues in a south-westerly direction along an earth, running between the boundaries of adjacent properties. Historically the route was bounded by a line of hedgerow and tree on earth banks, but during the last few years the section in Hampshire has been fenced on the eastern side. The ownership of the majority of the route is unregistered.

5 Issues to be decided

- 5.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on route A-D, and if so, at what status the route should be recorded.
- 5.2 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. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are reasonably alleged to subsist.

- 5.3 If it can be demonstrated that this is the case, consideration must also be given to whether any of the exemptions contained in Section 67 of the Natural Environment and Rural Communities (NERC) Act 2006 apply to those rights. If exemptions under NERC can be shown to apply, the county council would be under duty to recognise those rights by making an order to record the route as a byway open to all traffic (BOAT). In the event that no exemptions apply, the route may still be recorded as a right of way, and if vehicular rights can be shown to have been dedicated at some point in the past, the appropriate status for the route to be recorded at would be a restricted byway (enabling legal use by pedestrians, cyclists, horse riders and non-motorised vehicles).
- 5.4 Any changes to the Definitive Map must reflect public rights that already exist. It follows that decisions as to whether or not to amend the Definitive Map must not be taken for reasons of desirability or suitability. Therefore, before an Order changing the Definitive Map is made, the county council must be satisfied that public rights have come into being at some time in the past. This might be the distant past (demonstrated by historical documentary evidence) or in the recent past (demonstrated by witness evidence).
- 5.5 Historical documentary evidence has been examined to see whether depictions of the route point to it having acquired public rights as a result of a deemed dedication in the past. Any such rights are not lost through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist, even if they are now neither used nor needed. This evidence must be assessed holistically, it being unlikely that a single document or map will provide sufficient evidence to justify a change to the Definitive Map. The county council is under a duty to record such rights as are found to exist, even if they are not claimed by the applicant.

6 Background to the Application

- 6.1 The applications were submitted to the County Council in 2013, for and on behalf of the British Horse Society. Due to a backlog of applications, the matter was not taken up for investigation immediately. In 2016, the applicant made representations to the Secretary of State asking that they direct both Hampshire County Council and Wokingham Borough Council to determine the applications (under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981). In July 2017, the Secretary of State directed both councils to determine the applications (insofar as they affected the section of the route within their jurisdiction) by 21 March 2018 (but as per 2.3, responsibility for Wokingham's application has been delegated to Hampshire County Council).
- 6.2 The application was taken up for investigation and consulted upon in January 2018. During the consultation, representations were received on behalf of landowners adjacent to the application route, in opposition to the application. These representations offered a different interpretation to the conclusions of the applicant, as well as introducing some new evidence. In response to this submission, the applicant produced their own document which addressed these objections. One further round of submissions from each party ensued. Because of the lengthy

exchange of correspondence, and the discovery of further relevant information that resulted, the applicant agreed to a number of deferrals to allow these issues to be explored further, for which officers are grateful. The submissions of the objector are contained in Appendix 1; the responses from the applicant can be viewed on his website (with the original summary accompanying his application) at <http://www.craddocks.co.uk/apps/jouldings/index.htm>. Though weighty, the exchange of submissions illustrate of the extent to which the merits of this application have been debated prior to committee stage, and it may assist Members to review this extra material when considering this report.

- 6.3 Although the application was based solely on historical evidence, it is apparent that the route in question has been used by members of the public within living memory, primarily by horse riders. During the consultation a significant amount of user evidence was submitted to the county council by local equestrians. Officers have subsequently collected further user evidence forms or statements from users of the route. Both historic and user evidence is discussed further in this report.

7 Documentary Evidence

1.1. Early maps and plans

1.1.1. Map of Forests around Windsor – John Norden - 1607

This map, published on the website of the British Library, shows the forests around Windsor, and depicts a number of routes by faint pink lines. A route corresponding with Jouldings Lane can be seen leading north-eastwards towards 'Fareleyhill' (Farley Hill) from the county boundary (at which point an obscure annotation, suggested to be 'Jwiuoldes' by the applicant - possibly an early version of 'Jouldings' - can be seen). The depiction of other junctions with the county boundary on the map is inconsistent – the continuation of some are shown, others (which are now public roads) are not. The continuation of the claimed route south of point B is not shown, although it appears to be hinted at by a short pink stub that extends just south of the river. Notwithstanding any uncertainty about the route south of Point B, this map records the existence of a route leading to the river which appears to correspond with the location of Jouldings Ford.

1.1.2. Isaac Taylor's Map of Hampshire – 1759 (1 inch to 1 mile)

Taylor's Map of Hampshire actually shows the a route with solid boundaries matching the claimed route's location. The route is shown on both sides of the river, via a crossing which annotated 'Jouldins Ford', and is depicted forming a junction with a route crossing the common at Point D. The map's legend identifies the route as a 'Road inclos'd with hedges'. Taylor's map provides evidence of a through route at this location during in the mid-eighteenth century.

1.1.3. Rocque's Map of Berkshire – 1762-64

This map shows only section A-B of the application route, but nevertheless depicts it running south from Farley Hill to 'Jouldins Ford'. B-D is not shown, and none of the other routes which cross the River Blackwater in this area are shown extending

into Hampshire (although as established by Taylor's map of the same period, it is apparent that a route did continue south of the river at this time).

1.1.4. Ordnance Survey 'Old Series' – 1 inch drawing – 1806/1 inch to 1 mile map – 1810s

The Old Series map, and the 1 inch drawing that preceded it in 1806, show a continuous route with solid boundaries running between Farley Hill and Bramshill Common, crossing the river at '*Jouldens Ford*', of a significant width (when compared with other routes in the locality). The application route is shown linking Jouldings Lane and Bramshill Common at Well House Farm (annotated '*Well Ho. F.*'). From this point, two unenclosed routes (shown by pecked lines) fan out across the common – the first running in a south-westerly direction through a junction with Ford Lane and terminating at Riseley Mill, the second running south-eastward to meet the Bramshill Road near Eversley – both routes originate at a junction with the application route's southern end. Both the map and drawing provide evidence of a route crossing the Blackwater River, linking Jouldings Lane to other routes crossing the common.

1.1.5. Swallowfield Inclosure Award – 1814-17

This award empowered the appointed Commissioners to set out, divert and stop up public highways.

The south-western corner of the award map shows part of the route now recorded as Swallowfield BOAT 33 (the eastern end of which joins with Jouldings Lane to the north of the application route). The eastern end of the depicted section of this route is labelled '*To Bramshill*'. A public footway is also shown heading south from BOAT 33 towards the river, at which point the notation '*To Jouldings Ford and Bramshill*' indicates a route running eastward along the northern bank.

Jouldings Lane falls outside of the lands inclosed under the award, and is not shown on the award map, so this document offers only indirect evidence relating to the application route. However, the annotation on both the route now recorded as BOAT 33 and the footway to the south refer to onward journeys to Bramshill. In the case of BOAT 33, to reach Bramshill in a vehicle from this location would only be possible via the application route – the only other option would be to take a much more circuitous route, exceeding two miles, via Farley Hill. The label relating to the footway (*to Jouldings Ford and Bramshill* – emphasis added) may suggest that it was possible to reach Bramshill via the application route on foot (subsequent OS mapping shows a footbridge at this location, although it also shows one other route which would have provided such access. The applicant asserts that the use of destination labels on maps of this period are generally associated with public, rather than private, ways. In this case, other similar annotations on the inclosure map appear adjacent to routes which are now recorded as public. The Swallowfield Inclosure Award therefore offers some indirect evidence of the claimed route's reputation as a public way.

1.1.6. Christopher Greenwood's Map of Hampshire – 1826 (1 inch to 1 mile)

By its solid parallel lines, Greenwood's map shows the route as an enclosed feature (in contrast to the routes crossing Bramshill Common which are marked by pecked lines), and depicts it crossing the river at the county boundary into Wiltshire ('*Part of Wilts*'), as was the case at the time. It is shown in similar fashion to the public roads

crossing Thatchers Ford and New Mill Ford. As with these other two routes, the application route is shown extending northward beyond the county boundary (although being a map of Hampshire, Greenwood's map shows no other features in the neighbouring county).

The legend to the map marks the route out as a 'cross road' - the meaning of this term, and the weight that can be attributed to Greenwood's map in determining the existence of public ways in general, has been the subject of much debate in the past. The Planning Inspectorate's *'DMMO Consistency Guidelines'* state that:

"In modern usage, the term "cross road"/"crossroads" is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres."

The guidance goes on to caution that the evidential weight placed on Greenwood's map should be considered *"with the totality of all other relevant evidence."* When taken in context with other available evidence (both before and after the early nineteenth century), Greenwood's map provides some support to the application.

1.1.7. Map of Windsor Forest and vicinity – Henry Walter - 1823

This map (which was revised in 1856), shows that part of the application route lying in Wokingham. Jouldings Ford is annotated (*'Jouldins Ford'*). Other routes which ford the River Blackwater to the east and west of the claimed route are shown continuing into Hampshire, but no southward continuation of the claimed route itself is shown. However, this is also the case with Long Water Ford, situated a little over two miles to the east of Jouldings Ford, which provided a crossing point between Finchampstead and Eversley Cross and is now part of the B3016 Longwater Road. As a result of these inconsistencies, this document offers little support to the application beyond confirming the existence of the route north of the river, and that Jouldings Ford was known as such at this time.

1.1.8. Eversley Tithe Map and Award - 1837

The Eversley Tithe Map (which incorporated the parish of Bramshill) shows that part of the route that falls within Hampshire (C-D) as an enclosed route, shaded ochre. The plot number '665' is written within the boundaries of the route, which by solid lines is shown as being distinct from the river to the north, and Well House Lane to the south, suggesting the existence of gates. Well House Lane is not at this time detailed on the map, and in fact nothing falling within the area of Bramshill Common is shown, (presumably as it was not subject to tithing). A section in the award accompanying the tithe map is entitled *'Roads and Waste in the Parish of Bramshill'*, which describes number 665 as *'D^o through Swallowfield Ford'* ('D^o', or 'ditto', being a reference to the word *'Road'*, which appears in the foregoing entry).

Four other routes are listed in the *'Roads and Waste'* section of the tithe award. Three of these are now identifiable as public roads. The fourth – *'Road through Well House Farm Yard'* – is not currently recorded as public, but other evidence reviewed as part of this investigation suggests that it was considered to be so during the

nineteenth and twentieth century (see 7.2.7 and 7.2.13). On this basis, it could be said that all routes grouped in this section of the award were considered to be public.

Although the purpose of the tithe commissioners was not to record public or private ways, it is apparent that the other routes listed in the *'Roads and Waste'* section are all now (or, in the case of the route through Well House Farm, appear to have once been) considered to be public roads. The grouping of the application route with these other ways (as opposed to being excluded, as was the case with driveways or other private routes shown on the map), suggests that that the route was also considered to be a public road.

1.1.9. Swallowfield Tithe Map - 1838

The Swallowfield tithe map shows the application route lying north of the river, coloured ochre in the same fashion as other roads. It also annotates *'Jouldings Ford'*. The map does not extend far enough east or west to compare the depiction of the ford with Thatcher's Ford or New Mill Ford, and there is no detail shown south of the river. The Roads and Waste section of the award simply lists an aggregated area for the whole parish and does not list individual routes. Consequently, little weight can be attributed to this document in isolation, although it does establish the presence of a route leading to the ford on the north side of the river at the same time the Eversley award had established one to the south.

1.1.10. Bristol and Dover Direct Junction Railway – 1845

This plan shows the intended line of a railway proposed for construction (but ultimately never built). Parcels of land shown falling within (and some outside) the permitted 'line of deviation' are numbered, and listed in an accompanying book of reference. A section of the application route running south of the river (C-D) is shown, labelled '47' – the plan does not extend far enough north to include the Blackwater River and the continuation of the route to the north, though it does include the annotation *'Swallowfield Ford'*. The accompanying book of reference records parcel number 47 as a *'Parish Road'* and lists the owner/occupier as the *'Surveyor of Highways'*. Other routes in the immediate vicinity are variously described as *'Road'*, *'Occupation Road'* or *'Private Road'*. The application route terminates at a junction with two other routes that match the location of Well House Lane – these are labelled '41' and '51', and both are described as *'Road'*, and being in the occupation of Sir John Cope. It is not clear how these routes differ from other routes which are referred to as occupation or private roads – possibly it is indicative of a public highway crossing private land (in contrast to a public highway vested in the highway authority). It is also unclear how the railway company intended to accommodate these routes, which would have crossed the proposed line to the west of the claimed route – no bridge or 'at grade' crossing is specified in the plans at this location, and because no other information relating to the scheme has been discovered, it is not known how this issue would have been addressed (if at all). In his submission of April 2018, the applicant suggests a possible reason for this apparent discrepancy:

"The railway company would doubtless have wished to minimise its expenditure on bridges; the lord of the manor and owner of the common would doubtless have cared little for the preservation of public rights, the parish surveyor may not have known which tracks were public, and which carried vehicular rights..."

As observed by the objectors, a number of discrepancies are present in the plans. Some entries in the book of reference are not depicted on the plan, and the River Blackwater is erroneously annotated '*to Farley Hill*', as if it were a road. The applicant asserts that these errors are associated with a survey of the landscape, and given the importance attached to the correct categorisation of public highways (which may have had to be accommodated through the construction of bridges), it is less likely that a mistake would have been made in respect of the route's status.

Although questions remain about the status of routes crossing the common (with which the claimed route connected), on balance, it is considered that some weight can be attributed to this document. The depiction of a parish road on the plans was unlikely to have been undertaken without first consulting local highway officials, and the status ascribed to the claimed route is consistent with its depiction on the tithe evidence, produced less than a decade prior.

1.1.11. London Newbury and Bath Direct Farnborough Extensions – 1845

This plan, produced the same year as the Bristol and Dover scheme (above), shows a proposed line following a similar route. Unlike the Bristol and Dover scheme, the approach adopted by the surveyor in preparing these plans was to exclude anything outside the limit of deviation from consideration – no route or parcel falling outside this limit was given a parcel number (including some private access roads which terminate directly on the line of deviation).

The proposed line runs through the area of common lying to the south of the application route - recorded as 'Bramshill Common', being in the ownership of Sir John Cope. The claimed route meets the common at a point outside of the line of deviation, and so consequently, no direct inference can be drawn as to the route's status. Further, none of the various routes crossing the common at the time (including the tracks that are shown on the Bristol and Dover plans) are detailed on the plan, and so it is not known whether the railway company regarded these routes as public or private. As a result, and in the absence of any additional evidence relating to the scheme's progress through Parliament, it is unclear as to whether (and how) these routes were to be accommodated in the event the line was built.

It is considered that little can be inferred from this document regarding the status of the application route - it is not directly addressed on the plan, and the routes which provided a continuation across the common are not detailed on the plan, so it is unclear as to whether they were considered to be private or public. Given the scrutiny on other routes falling within the line of deviation, it is possible that no consideration was given to the status of the routes crossing the common (as suggested by the applicant at 7.1.10).

1.1.12. Swallowfield Inclosure Award – 1865

The inclosure map shows that part of the claimed route lying in what is now Wokingham Borough (A-B), and the ford itself is also labelled ('*Jouldings Ford*'). Made under the authority of Inclosure Acts passed between 1846 and 1862, this award did not set out this part of the claimed route as highway, as it was pre-existing at the time of the award. However, the inclosure commissioners also had powers to stop up or divert roads, and the award does not provide for either in the case of

Jouldings Lane. The award allots several parcels of land immediately abutting Jouldings Lane at Point A, identified on the inclosure map as parcels 83 – 86 (all of which are recorded as '*common of pasture and other commonable rights*'). In each case, the award stipulates a requirement for the allottee to fence their parcel of land '*Against the Road*' (ie Jouldings Lane).

The award required that both private and public routes be fenced. However, the applicant points out that Jouldings Lane was not set out in the award, and as the award inclosed waste which lay either side of Jouldings Lane, he asserts these wastes must have formed part of the highway, and that it follows that Jouldings Lane, which was not extinguished by the award, must have been regarded as a pre-existing public road.

The position with regard to the continuation in Hampshire is unclear – in some areas shown on the inclosure map, public routes are discontinued where they reach the edge of the map and continue outside the scope of the award, in others, no onward route is shown.

The 1865 inclosure award confirms the existence of the claimed route between A-B, and supports the notion that the route north of the river was considered to be a pre-existing public road at the time of the award.

1.2. **Ordnance Survey and 20th Century Evidence**

1.2.1. Ordnance Survey Boundary Remark Book – 1871

This document provides an enlarged view of the ford and also provides some detail of the route running between C-D, which at the time accommodated the parish boundary between Bramshill and Odiham (detached). The boundary coincides with a pecked line and the abbreviation 'CR' ('Centre of Road'). The applicant asserts that the parish boundary, like the claimed route, is likely to be of a great age, and the fact that the two coincide is consistent with the route being public. It is noted that other routes in Hampshire run along parish boundaries, but it cannot be said with certainty that this is the case with the claimed route. On balance, it is considered that little can be inferred from this evidence as to the route's status.

1.2.2. Ordnance Survey County Series Map and Book of Reference (First Edition) – 1871 (25 inches to 1 mile)

The route either side of the ford is shown as an enclosed way for most of its length, bounded on both sides by fences or hedges. A-B is shown by solid parallel lines varying between approximately 7.7 and 13 metres in width (the route further to the north is labelled '*Jouldings Lane*'). The parcel number '97' is allocated to the route, but the book of reference for Swallowfield has not been located. The route widens when it reaches the parcel comprising the ford, between B-C (annotated '*Jouldings Ford*'). The western part of the ford is bounded by a '*Foot Bridge*', shown by parallel lines between 1-2 metres apart. The width of the route through the ford is less clear, but an indicative route, marked by parallel pecked lines, is shown running through the centre of the ford. The width at this location has been calculated based on the

extent of the available route between the foot bridge and the boundary on the eastern side of the route south of the river (13 metres at Point C).

The continuation of the route between C-D is also shown by solid parallel lines. A broken black line running down the centre of this section of the route denotes the parish boundary between the parish of Bramshill and the hundred of Odiham (detached). On the Odiham side of this line, the route is annotated with the parcel number '11', which the relevant book of reference entry describes as 'Road'. The line is also labelled 'CR' (as per the Boundary Remark Book).

By single black lines, the route is shown to be gated approximately 40 metres south-west of the river, and again approximately 40 metres north-east of Well House Lane.

The OS evidence of the 1870s shows the route as an enclosed feature, described by the surveyor (in Hampshire at least) as having the appearance of a road.

This map (and subsequent large-scale Ordnance Survey mapping) has been used to calculate the width of the routes between boundaries defined by solid line features.

1.2.3. Ordnance Survey County Series Map (Second Edition) – 1896 - 1899 (25 inches to 1 mile)

The County Series map dating from the end of the 19th century records the route in similar fashion to the 1871 plan. The width of the route is unchanged, and the gates shown on the first edition are still in situ, although by this point there is no depiction of a footbridge crossing the ford.

1.2.4. Finance Act 1910

The Finance Act 1910 caused every property in England and Wales to be valued for the purposes of taxation, and the process to be followed was set out by legislation. The maps for the area show Section A-B of the claimed route as excluded from the adjacent hereditaments, which is consistent with its current status as a route recorded on the List of Streets. However, the remainder of the route between B-D comprises part of assessment unit 34, which also encompasses Bramshill Common. A deduction of £50 for rights of way across this unit appears in the accompanying field book, but the entry provides no further insight into the routes to which this deduction relates.

The list of land parcels assessed as part of unit 34 does provide some insight into the route's status. The list includes a number of small parcels, as well as the unenclosed common itself (parcel 21). However, it does not include the parcel number ascribed to the claimed route (parcel 7). Nor does it include Ford Lane (covered by parcel numbers 12 and 75). It therefore appears that these routes were not taken into account when the common was assessed. The applicant has identified examples elsewhere in the country where the practise of not specifically drawing out public highways that crossed commons was also employed (detailed in his April 2018 submission).

The exemption of the route from valuation between A-B indicates that it was vested in the highway authority (as opposed to being privately owned), and is suggestive

of the fact that at the time the route was considered to be public vehicular highway. The evidence is less clear with regard to B-D, but the presence within unit 34 of another public highway which was excluded from assessment would appear to counter arguments that the route was considered private at the time.

1.2.5. Ordnance Survey County Series Map (Third Edition) – 1911 (25 inches to 1 mile)

The Third Edition map depicts the claimed route in similar fashion to the second edition, although the northern gate has by now disappeared.

1.2.6. Ordnance Survey Name Book – 1896-1930

OS Name Books recorded the authority for the names that appeared on OS maps, commencing with the County Series Second Edition map. The authority given for the entries in the book for Swallowfield (which is dated May 1898 and also covers the parish of Finchampstead) is Mr Charles Gibbs, who at the time was the Assistant Overseer for Finchampstead.

An entry for Jouldings Lane is recorded: *“Applies to a parish road leading southward from the Fox & Hounds PH to Jouldings ~~Farm~~ Ford”*. The word ‘Farm’ has been crossed out and amended to ‘Ford’ in blue ink. This may have been done soon after the original entry (suggested by the fact that further annotations made in 1930, in green ink, state that no further changes were made during a review of that date). An entry is also recorded for Jouldings Ford: *“Applies to a Ford on the Blackwater River, close to Jouldings Farm.”*

The reference in the OS Name Book to a ‘parish road’ provides good evidence that local highway officials considered Jouldings Lane to be a public road. The correction to the entry for Jouldings Lane makes it clear that the route extended past Jouldings Farm all the way to the ford (and thus incorporated A-B). However, it provides no insight into the status of the route south of the county boundary.

1.2.7. Wokingham Rural District Council Highway Committee - 1923–1925

The minute book of the WRDC Highway Committee for the period 1923–25 records the following:

“The surveyor presented letters he had received from Mr D.C. Bright and Mr W.C. Coombe, with reference to the repair of Well House Farm Road, Eversley. After consideration of the same, on the motion of Mr Alexander, it was resolved to repair that portion of the road which is within this Rural District as far as the entrance to the meadow leading to the Farm.”

This entry appears to confirm that as late as the early part of the 20th century, a through route linked Well House Farm in Hampshire to Forges Lane in Wokingham (now apparently a spur of New Mill Road), via the Blackwater River. The route is shown on OS maps from the late 19th century and early 20th century. The minute book confirms that the highway authority north of the county boundary accepted maintenance responsibility for the section of the route lying within its jurisdiction. It also goes some way to explain the present anomaly between the recorded highways

on either side of the county boundary, which arose from the recording of the section lying in Hampshire as a public footpath on the first definitive map in the 1950s, whilst the route in Wokingham was recorded as a publicly maintainable highway. It is apparent that the respective highway authorities took a different view as to the extent of their responsibilities. However, this evidence is nevertheless suggestive of the existence of a continuous public road running through Well House Farm, and tallies with the inclusion of the route in Roads and Waste section of the Eversley Tithe Award of 1837. This lends weight to the proposition that those routes listed in the 1837 award (including the claimed route) were all public.

1.2.8. Highways Handover Map – Hartley Wintney Rural District – 1929

This map was prepared by Hartley Wintney Rural District Council to show those routes that it considered publicly maintainable highways at the time responsibility was transferred to the County Council (under the provisions of the Local Government Act of the same year). The map purports to show public footpaths as well as carriageways. Well House Lane is shaded to indicate that it was publicly maintainable up to Well House Farm, but the claimed route is not.

This was an internal working document which was not subject to public scrutiny - little is known about how it was compiled and the researches undertaken as part of its preparation. It was also chiefly concerned with maintenance responsibilities. It is therefore unlikely to be a comprehensive record of public rights in the locality at this time. Nevertheless, this document illustrates that at the time, the RDC did not consider the claimed route to be its responsibility to maintain.

1.2.9. Map showing publicly maintainable highways – Wokingham Rural District Council – (date unknown)

The map, provided by Wokingham Borough Council, provides a picture of public maintenance responsibility north of the county boundary (the date of its origin is unclear, but it has been drawn onto the OS National Grid series map of the 1960s/70s). The map shows Jouldings Lane shaded yellow (in keeping with other publicly maintainable highways) to a line depicting the then county boundary, at the edge of the ford. A second line is shown slightly to the south of this line, running through the centre of the River Blackwater, labelled "*centre line, new county boundary 01/04/91*". However, the extent of publicly maintainable highway does not appear to have been revised in line with the county boundary change, and so the extent of publicly maintainable highway terminates at the edge of the ford, rather than at the centre of the river, on the county boundary.

1.2.10. Highways Maintenance Map (Hampshire) – 1946

This map provided an updated picture of those routes held to be publicly maintainable by the county council. It reflects the position in 1929, with the claimed route being unshaded, whilst Well House Lane is shaded as far as farm. Again, whilst this document provides an indication of how the county council viewed its maintenance liabilities, it was not subject to public scrutiny, and it is not known what researches were carried out during its preparation.

1.2.11. Ordnance Survey One Inch Popular Edition - 1946

The OS map of 1946 shows the route by solid parallel lines, described in the legend as "*under 14 feet of metalling, Bad*" and "*not classified by M of T* [Ministry of

Transport]”. Whilst it records the route’s existence at this time, it offers no insight into its status.

1.2.12. National Parks and Access to the Countryside Act 1949

As part of the preparations for drafting the first Definitive Map of Public Rights of Way (as required by the 1949 Act), all parishes in Hampshire were asked to submit a plan showing the routes that they wished to be included on the map. The claimed route is not shown on the maps submitted by Bramshill Parish Council, and thus it was not included on the Definitive Map for the area, which was published in 1955. The reason for the route’s omission is unclear, and there is no reference to it in any of the parish correspondence held by the County Council.

1.2.13. Sale Particulars – Bramshill Estate - 1952

The map forming part of the sale particulars, produced when the Estate was sold in 1952, shows the claimed route running between two coloured plots listed for sale (Lot 7, which is coloured blue and listed as “*Well House Farm*”, and Lot 10, which is coloured pink and listed as “*Bottom Farm*”). Some of the shading on the plan is imprecise, and in some cases it has bled onto routes which are otherwise unshaded. Such is the case with the route between C-D - the area of the ford lying in Hampshire is unshaded, and although some shading has bled onto the route, it appears to be excluded from the area of land for sale (it has been given no parcel number). Other routes which provide private access to lots for sale (including driveways serving Smith’s Farm and Cordery’s Farm) are included.

Other routes which are unshaded include Well House Lane, Ford Lane and the road through Well House Farm – routes which are either now recorded as public roads or apparently were once considered to be (this evidence appears to reinforce the position with regard to the road through Well House Farm outlined at 7.1.8 and 7.2.7).

This document offers some support to the proposition that the claimed route was considered by the Bramshill Estate to be a public highway at the point of sale.

7.3 User Evidence

7.3.1 During the investigation, thirty-three user evidence forms were submitted by a member of the British Horse Society from the Wokingham area, charting use dating back to the 1960s. Some users who completed forms were subsequently interviewed and provided statements relating to their use. This evidence is briefly summarised below.

- The majority of users gave evidence of use on horseback (although some users claim to have used the route on foot and in a horse-drawn carriage). The earliest given date of use is 1965.
- Most users stated that they used the route once a week or more. The others provided evidence of use at a frequency between twice weekly to yearly.

- None of those providing evidence of use indicated that their use of the route had ever been challenged, or that their use of the route was on a permissive basis.
- With the exception of one user, nobody indicated that they had ever encountered any gates or stiles on the route.

7.3.2 Officers have also received correspondence from local trail riders who claim to have used the route on a motorcycle. Jouldings Ford is recorded on wetroads.co.uk, which claims to be an online guide to every UK ford, watersplash and tidal road, and relies on user contributions. The entry for Jouldings Ford (submitted in 2006) reads:

“Looks like a gravel/mud bottom. Its used regularly by horses, but right of way is unknown and probably doubtful. A woman came out of house on the south end and told me horses use it regularly and seemed friendly enough. Approach from the north is down a narrow dirt track in good condition. I would say it was approachable by most vehicles, but I am not sure about the ford though.”

Another (undated) submission reads:

“It is right on the border and the legal status is unknown as neither Hants or Berks want to claim it so as not to maintain it. My local motorcyle club and myself have used it for over 30 years without being challenged. However, it is for experienced off roaders only as it is always deep with a muddy bottom. The exits cannot be seen from either side and it has been known for some to follow the river by mistake! After heavy rain it can get VERY deep and FAST flowing. Even 4x4s can get into trouble.”

Further investigation and interviews would be necessary to enable more weight to be placed upon any of the above information. However, it does offer an insight into how the route has been used since the latter part of the twentieth century.

7.3.3 The evidence provided indicates that the claimed route has been in regular use by the public since the 1960s. If this evidence were to be relied upon (in lieu of the historic documentary evidence) then it would only give rise to bridleway rights, as it provides insufficient evidence of vehicular use.

2. Consultations

2.1. The following people and organisations have been consulted on this application: The Ramblers, Auto Cycle Union, British Driving Society, Byways and Bridleways Trust, Cyclists’ Touring Club, Open Spaces Society, Trail Riders Fellowship, All Wheel Driving Club, Bramshill and Swallowfield Parish Councils, Basingstoke and Deane Borough Council, County Councillors Stuart Munro and David Simpson, Hampshire County Council (Hampshire Highways and the Area Countryside Access Manager).

2.2. The Ramblers

“The route leads to a ford, very like Thatcher’s Ford further along the lane, and as such it is unlikely to be used by Ramblers in its present form. If it were designated

as a walking route it would need a footbridge. If it had a FB, then it could be a useful route because it connects with the lane to the north of the river. However, there are 3 good FB over the river nearby: at New Mill, Well House Farm, and just to the north of Thatcher's Ford.

Overall, it might seem reasonable to support an ROW on the marked route, but only if it were also viable to build a bridge over quite a wide stretch in the river."

2.3. Trail Riders' Fellowship

The TRF supports the application, and has indicated that some of its members used the route during the 1990s and early 2000s.

No other comments have been received.

3. **Natural Environment and Rural Communities Act 2006**

3.1. There remains to be considered whether motorised vehicular rights have been extinguished by the NERC Act 2006. They will have been unless one of the exceptions contained within Section 67 of the Act applies. These exceptions are set out in Section 2 and are examined in turn below. In the event that none of the exemptions can be shown to apply to this route, the highest status at which the route can be recorded is restricted byway.

3.2. Section 67(2) – rights for mechanically-propelled vehicles will not have been extinguished on an existing public right of way if:

(a) ***it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles.***

There is no evidence to indicate that motorised use accounted for the 'main lawful use' by the public during the period 2001-2006.

(b) ***immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense).***

The route was not recorded on the Definitive Map of either Hampshire County Council or Wokingham Borough Council on 2nd May 2006, nor was it recorded on Hampshire's List of Streets on this date. However, Jouldings Lane was recorded on Wokingham's List of Streets as far south as Jouldings Ford (Point B) on this date, and so in respect of A-B, this exception applies.

(c) ***it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles.***

The claimed route has existed since as a physical feature since at least the early part of the 17th century, and as such, public rights over it cannot be said to have come into existence as a result of an express dedication of rights for mechanically propelled vehicles, or under statute.

- (d) ***it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.***

The route was not constructed as a road specifically for use by motorised vehicles. There is evidence to suggest that the route was in use as a public carriageway prior to the advent of the motor vehicle.

- (e) ***it was created by virtue of use by such vehicles during a period ending before 1st December 1930.***

There is evidence that the route existed as a public highway before mechanically-propelled vehicles became commonplace, so it cannot be said that public vehicular rights were *created* as a result of use by such vehicles. They are more likely to have been created as a result of use by horse-drawn vehicles.

- 3.3. The exceptions in Section 67(3), which require that the application to record the route as public be made to the County Council prior to 20th January 2005, do not apply in this case.

4. Comments by the Landowners

- 4.1. Through two submissions made by Dr Karen Jones of counsel, the landowners who abut the section of the route lying within Hampshire (C-D) object to the application. In summary, the objectors' position is that the documentary evidence does not support the proposition that the application way is public:

- It is asserted that much of the documentary evidence has either a neutral effect, or actually points away from the claimed route having been public.
- It is also asserted that for a considerable period of time, the Bramshill Estate was in settlement, meaning that it would not have been possible for any rights to have been dedicated over the application way.
- The objectors also cast doubt on whether the public could be said to have acquired a right of way through use in recent years, citing interruptions to use which would have occurred during times of heavy flooding. The landowners residing on the south side of the river have also provided witness statements which assert that they have never seen members of the public using the route.

As highlighted earlier in this report, the full scope of the submissions both on the part of the objectors and the applicant are available either as appendices to this report, or online.

- 4.2. The owners of Jouldings Farm, which abuts section A-B of the claimed route, support the application, and have provided statements detailing their own use of the

route on horseback as well as their observations of use by members of the public on horseback dating back to the early 1990s.

5. Conclusions

- 5.1. In assessing whether or not it is appropriate to make an order, Members must consider whether public rights subsists, or are 'reasonably alleged' to subsist on this route. There is disagreement between the parties as to whether the test is met in this case (as set out in their submissions). Whether or not an order (if made) would be confirmed is another matter, and this would be subject to a different legal test, but on balance it is considered that there is sufficient evidence for the 'reasonably alleged' test to be met – there is evidence which positively identifies parts of the claimed route as public, and there appears to be no clear cut evidence which would warrant the refusal of the application (such as an extinguishment order).
- 5.2. There is evidence that the claimed route has existed as an unobstructed physical feature in the landscape since at least the beginning of the 17th century, and there are numerous documents which, when taken as a whole, support the proposition that the route formed part of the local public highway network. Some documents explicitly refer to at least part of the way as public (ie the Bristol and Dover railway evidence in Hampshire, and the OS Name Book in Wokingham), whilst other documents provide an indication as to status (Bramshill Estate sales particulars, Eversley Tithe Award and Finance Act evidence).
- 5.3. If the claimed route could be said to have been public, the evidence suggests that by the early 20th century its significance as part of the local highway network had diminished, as indicated by its omission from documents maintained by the highway authorities at the time. However, user evidence indicates that the route has been used by the public on horseback and in vehicles within living memory.
- 5.4. There is documentary evidence to suggest that the claimed route was once a public vehicular highway. The provisions of the NERC Act 2006 will have extinguished rights for mechanically propelled vehicles between B-D, which would limit any rights to be recorded on this section to restricted byway status. However, the exemption set out in s67(2)b within the Act applies to A-B, which can be recorded as a byway open to all traffic. There is no evidence to suggest that public rights on the route were extinguished prior to the enactment of the NERC Act 2006.
- 5.5. The user evidence which has been submitted would be supportive of bridleway status only. However, officers consider that the historic evidence, which would be supportive of carriageway status, is sufficiently strong to meet the 'reasonably alleged' test.
- 5.6. The width of the route, as measured on the Ordnance Survey maps of the late 19th century, varies between approximately 7.7 and 13.7 metres. It is also apparent that the route was gated at two locations (as shown on the 1st and 2nd editions of the OS County Series maps), and these should be reflected in any order that is made.

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JOULDINGS FORD

STATEMENT OF OBJECTIONS TO THE APPLICATION MADE BY MR H CRADDOCK TO RECORD "JOULDINGS LANE" AS A BYWAY OPEN TO ALL TRAFFIC OR A RESTRICTED BYWAY

Executive Summary

The historic case

1. The Applicant alleges an historic public carriageway having been in existence from the 18th Century. The evidence in support is in large part based on maps which do not show the status of any route. This evidence is of no weight in differentiating between public and private ways.
2. The evidence of status that exists indicates that any public rights did not extend south over the Blackwater River and can be summarised as follows:
 - The current maintenance records record the Application Route as publicly maintained but only as far as Jouldings Ford. South of this the records show a route that is not publicly maintained.
 - The Object Name Book (ONB) evidence includes one book that expressly describes Bramshill Common as only being crossed by 'public footpaths' another ONB refers to 'public paths'. Neither describe a public carriageway. The Common includes the southern section of the Application Route (AR).
 - These entries were not amended following what appears to have been a detailed investigation by Ordnance Survey of the public rights across the Common. This evidence is not in accord with, and is strong evidence against, this section of the AR being a continuation of the public carriageway to the north as claimed.
 - This position is further illustrated by the Finance Act evidence. The 1910 Finance Act evidence shows the two sections of AR north and south of the river completely differently. The route to the north of the river is shown as excluded

from hereditaments, the route to the south (even where enclosed) is incorporated into hereditaments. In addition, broken brace marks used to demarcate out the road north of the Ford are not present south of the river. This is positive evidence that the parties (landowner and surveyor) did not believe that the southern section of the AR was a continuation of any public carriageway to the north.

- Other evidence indicates that Jouldings Farm/Ford was considered to be the termination point of any rights. The ONB that describes Jouldings Lane as a parish road, only does so as far as Jouldings Farm (this was amended in 1930 to Jouldings Ford). This description of a route only to the Farm is impossible to reconcile with a through route. A description of it continuing to the Ford (as amended) is in itself difficult to square with such a through route. A route that did not continue to the south is, however, in accord with the remaining ONB entries referred to above.
 - The 1865 Enclosure Award, shows Jouldings Ford as a termination point. This is in contrast to all other public ways which are shown with a destination off the map.
 - The tithe map, when compared to known through routes crossing the River, does not show the AR continuing across the Ford.
 - This position of any public rights terminating at the Ford/Farm area is also pointed to by maps such as the Map of Windsor Forest and Vicinity, which shows the AR stopping at Jouldings Ford, with other known public ways indicated as continuing to named destinations off the map.
 - The only evidence to support a public route south of the River is the 1845 Railway records. These can be given little weight in themselves; they show the 'parish road' joining private routes. There are also many errors apparent on the face of the plans. The lack of accuracy is not surprising given that the plans were not subject to scrutiny (the railway was never built and no act of parliament passed).
 - Further railway plans from the 1890s, which appear of good quality, do not show the southern section of the AR as a public way.
3. Overall, it would be an error in principle merely to extend a public carriageway south with no evidence of its status; it is not possible to know now the exact reasons why a parish north of the river adopted a route many years ago. In the absence of clear evidence that any public carriageway rights continued south over the Ford, it would not be a correct approach merely to assume the continuation of those rights.

4. In this case, however, the position is particularly clear cut. There is positive evidence that public rights have not been considered historically to continue south of the Ford. If an Order were to be made for the whole AR to be a public way, this would be in conflict with the majority of evidence and would be a clear error.

Common Law dedication

5. In addition, the existence of any historic public way relies on the landowners having intended to dedicate a public carriageway across their land. In the case of Bramshill Common, there is direct evidence contained in the ONB entries and re-enforced by inter alia the Finance Act evidence, that the long term landowners did not wish to dedicate and did not believe any public carriageway had been dedicated over the Application Route. It is very difficult to see how any common law dedication can be inferred to have occurred in light of this evidence.

Strict settlement

6. Finally, there is also a strong likelihood that the land to the south comprising the Bramshill Estate (which included Bramshill Common), was held under strict settlement. This was the norm for Estates, and initial enquiries at the Hampshire Archive suggest that the land comprising the Bramshill Estate was held in this way.
7. Under a strict settlement the tenant for life lacked capacity to dedicate any rights. This was a bar to many claims to rights of way from the 18th to the early 20th centuries. Certainly, the existence of such settlements should be investigated prior to the making of any Order.

Overall conclusion on historic case

8. The case based on the documents can be judged now. When viewed objectively, the case for a public carriageway over the Application Route is very thin and insufficient to support a successful claim. No Order should be made.

User evidence

9. User evidence has been produced by the Applicant at a very late stage. The landowners have not been sent the redacted forms until very recently and indeed

some evidence has been produced for the first time today. The landowners have not been afforded any or any proper opportunity to investigate these allegations. They should be afforded a fair opportunity to do so prior to any decision being made by the Council with regard to the current application.

10. At this stage it is apparent, even on a preliminary examination, that the evidence has been gathered on forms where the route has been pre-completed. Witnesses should give their own evidence of the route claimed to avoid collusion or the leading of evidence. The failure of the Applicant to gather such independent evidence greatly devalues the weight that can be given to the forms in support of the current application.

***Dr Karen Jones
Tanfield Chambers
2-5 Warwick Court
London WC1R 5DJ
3rd April 2018***

IN THE MATTER OF

JOULDINGS FORD

**STATEMENT OF OBJECTIONS
TO THE APPLICATION MADE BY MR H CRADDOCK
TO RECORD "JOULDINGS LANE" AS A BYWAY OPEN TO ALL TRAFFIC
OR A RESTRICTED BYWAY**

Introduction

1. The River Blackwater is the county boundary between Hampshire to the south and Berkshire to the north. The application route extends either side of the river through land that has been subject to different historical ownership and use.
2. To the north of the application route there is a road called Jouldings Lane, maintainable at public expense, which connects the County's road network and gives access to Jouldings Farm.
3. Jouldings Farm is located on the north bank of the River Blackwater and there is a feature named Jouldings Ford adjacent to Jouldings Farm. The ford is a feature associated with the farm.
4. It is confusing when the Application refers to the application route using the name "Jouldings Lane". All the maps are clear that Jouldings Lane is the public road to the north of the application route in Berkshire. There is no reference in any of the documents to Jouldings Lane being the name of the application route at any point south of point B. As will be seen from the discussion below, the land south of point B was within Bramshill Common, part of the Bramshill Estate.
5. Jouldings Lane to the north of the application route has been maintained as a public road whereas the application route between points B and D has not been treated as a public right of way of any kind. It is understood that the tarmac road surfacing terminates at Jouldings Farm and does not continue to Jouldings Ford. As the historical evidence will show, Jouldings Farm and Ford were treated as the termination point of any public rights. The

evidence does not support any public carriageway continuing south along the application route.

6. The Application is one of 22 similar applications made by the Applicant. His list of pending applications including this one can be seen at <http://www.craddocks.co.uk/apps/index.htm>.

The Bramshill Estate

7. From 1699 through to 1935, the land to the south of the River Blackwater was part of the Bramshill Estate belonging to the Cope Family. Sir John Cope purchased the Bramshill Estate in 1699, and his descendants occupied the premises for over 300 years until 1935 when it was sold to Baron Brocket. The earliest dated reference provided by the Applicant is 1759. The ownership by the Cope family covers all of any relevant period.
8. During much of the 19th Century and into the 20th century (from a time to which much of the evidence relates), the owner was Sir Anthony Cope. The Estate comprised in excess of 5000 acres and was closely managed. The land over which the application route falls was part of Bramshill Common which was a private forest belonging to the Bramshill Estate.
9. There are extensive documentary records regarding the Bramshill Estate and the Cope family at the Hampshire Records Office. Enquiries indicate that the Bramshill Estate was subject to strict settlement during the period of occupation by the Cope family. A tenant for life of land subject to strict settlement would not have had the capacity to dedicate any highway. The point is not expanded on here, but it is a point that should be investigated further prior to the making of any order, as it would likely be determinative of the matter.
10. In this statement of objections we first introduce new evidence that was not included with the Application, which makes clear that no public right of way exists. We then consider the documents relied upon by the Applicant and explain why they also do not support the Application. It should be noted that we have discovered further railway records. For ease of comparison, these are not discussed with the new evidence, but with the other railway records that have already been put forward by the Applicant.
11. We have obtained better copies or full extracts of a range of evidence and this is discussed below. However, of particular relevance are the following documents which have not been submitted by the Applicant.

NEW EVIDENCE RELEVANT TO THE APPLICATION

The Object Name Book Evidence

12. The Applicant is selective in the extracts he relies upon from the OS Name Books. There are references to Jouldings Lane and Jouldings Ford and also Bramshill Common, over which the southern section of the application route runs, in several OS Name Books. When all of these entries are examined, this leads to a different conclusion on the status of the application route to the one put forward by the Applicant.

OS Name Book OS 35/311

Date: entered 1898; revised 1930

National Archives OS 35/311

13. This is the OS Name Book for the parishes of Finchampstead and Swallowfield referred to by the Applicant. It also includes pages for Bramshill parish. For Finchampstead and Swallowfield parishes the information was collected and entered in 1898, and revised in 1930. For Bramshill parish the information was collected and entered in 1909, and revised in 1930. The relevant pages are included in full as Appendix 1 and extracts can be seen below.

14. Page 2 of Appendix 1 is the cover page and the list of names for the parishes of Finchampstead and Swallowfield (and Eversley). It includes Jouldings Farm, Jouldings Lane and Jouldings Ford.

15. The entry on page 3 of Appendix 1 (page 1 of the document) for **Jouldings Lane** states "Applies to a parish road leading southward from the Fox & Hounds "P.H." to Jouldings ~~Farm~~^{Ford}", in black ink with the revision in green ink. The Application (Illustration xxi) contains only the quoted text and does not include the explanation on the top of the page that the names in black ink were collected and entered in May 1898 and revised in green ink in September 1930. The Applicant's Illustration xxi appears to be in black and white, making the difference in the colour of the ink hard to discern. The following illustration shows the whole page in colour together with enlarged sections of the relevant parts.

Illustration O1: Entry in the OS Name Book OS 35/311 for Jouldings Lane

Names revised September 1930
Names collected & entered by H S Beale Sept 1898
W B & L (1174)-58211-25000-5-03
Names as altered & initialled in red by J. Johnson in May 1978
O. S. 21.

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
<i>Great Copse</i>	Great Copse	Mr. C Gibbs As above Finchampsstead See Form 230 attached See O.S. 1/2500 of XLVI. 9	XLVI	Q	✓	Applies to a wood, containing Forest trees, situate about 10 chains S.W. of Little Copse. See old N.P. of Finchampsstead Parish, p. 12.
<i>Hornes Copse</i>	Hornes Copse	As above See Form 230 attached See O.S. 1/2500 of XLVI. 9	XLVI	Q	✓	Applies to a small wood, of Forest trees, adjoining Great Copse on the W. See old N.P. of Swallowfield Parish, p. 12.
<i>Woodbury</i>	Woodbury	As above See Form 230 attached See O.S. 1/2500 of XLVI. 9 M.W. Simmons P.C. & D.W.S.	XLVI	Q	✓	Applies to a gentleman's residence, with ornamental park etc, etc, situate about 12 chains, S. of the Fox & Hounds "P.H."
<i>Jouldings Lane</i>	Jouldings Lane	As above See Form 230 attached See O.S. 1/2500 of XLVI. 9	XLVI	Q	1.4 ✓	(New Name) Applies to a parish road leading southward from the Fox & Hounds "P.H." to Jouldings Farm. See old N.P. of Swallowfield Parish, p. 11.
<i>Westwood Copse</i>	Westwood Copse	As above See Form 230 attached See O.S. 1/2500 of XLVI. 9	XLVI	Q	1.2 ✓	Applies to a wood of Forest trees, situate about 1/4 mile, E. of the Fox & Hounds "P.H." See old N.P. of Finchampsstead Parish, p. 11.

Names revised September 1930
Names collected & entered by H S Beale Sept 1898
W B & L (1174)-58211-25000-5-03
Names as altered & initialled in red by J. Johnson in May 1978
O. S. 21.

Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
	Sheet	Plan	Trace	
	XLVI	Q	1.4 ✓	(New Name) Applies to a parish road leading southward from the Fox & Hounds "P.H." to Jouldings Farm. See old N.P. of Swallowfield Parish, p. 11.
	XLVI	Q	1.2 ✓	Applies to a wood of Forest trees,

16. This is evidence that in 1898 the parish road from the Fox and Hounds public house extended south only to Jouldings Farm, not to Jouldings Ford. This is consistent with the parish road being only for access to Jouldings Farm. It is also consistent with the ford being a private feature associated only with Jouldings Farm and not a through route connecting with Bramshill Common. It was only subsequently, in 1930, that the entry was revised to record that the parish road extended to Jouldings Ford.
17. Despite the relevant OS map showing the application route south of the River, the OS Name Book does not describe it at any point as continuing south of the River.
18. In addition, the entries for Jouldings Ford do not suggest it was on or part of a parish road. The entry on page 4 of Appendix 1 (page 3 of the document) for **Jouldings Ford** dates to 1898 and states "Applies to a ford on the Blackwater River, close to Jouldings Farm". This is consistent with the ford being a feature associated with Jouldings Farm.

19. Page 21 of the document (page 5 of Appendix 1) is a corresponding sheet for Bramshill parish and dates to 1909. It has an entry for **Jouldings Ford** which states "A ford in Blackwater River situate 17 chains N.W. of Well House Farm".
20. It is surprising, if the Ford had been on a parish road, that it was not described as such in either entry.
21. Overall, the entries for this OS Name Book, even when viewed in isolation, suggest that any parish road did not continue south of the river. This is confirmed by entries in the remaining relevant OS Name Books.

OS Name Book OS 35/309

Date: 1909-1910

National Archives OS 35/309

22. This is the OS Name Book for the parishes of Heckfield and Bramshill (i.e. it includes the southern section of the application route). The information was collected and entered by the Ordnance Survey in 1909. The relevant pages are included in full as Appendix 2.
23. The entry for Bramshill Common on page 2 of the Appendix includes a note added in red ink in 1909 to say:

"The public have rights only on the public paths".

The use of this terminology does not suggest that there were any public carriageway rights over the Common.
24. The entry for Bramshill Common describes the land as "A large wooded common (private)" amended to "A forest unenclosed" with the comment "This Common does not appear in Common (Inclosure) Award (see correspondence attached)". It then summarises the correspondence which is attached to the OS Name Book kept at the National Archives and which is contained in Appendix 2.
25. It is apparent from the correspondence that Ordnance Survey was making detailed enquiries to establish what public rights, if any, existed over Bramshill Common. The replies were from the people who would be expected to know and to give an accurate answer: Mr Edwards, the Clerk of the Parish Council (and Assistant Overseer), Rev Mosley the local

vicar and Sir Anthony Cope the owner. The replies give the position as it was in 1910 and also with knowledge of the local area going back at least to the 1868 Enclosure, which is apparent from the replies of at least the parish clerk and the vicar, and most probably before then. The Cope family would have had direct knowledge going back to 1699.

- 26. It would seem unlikely that, with such an investigation underway, the entry with respect to public paths in this OS Name Book and indeed in the one discussed below, would not have been amended if incorrect.

OS Name Book OS35/2786

Date: 1909

National Archives OS35/2786

- 27. This is a second OS Name Book for the parishes of Heckfield and Bramshill (i.e. the southern section of the application route). The information was collected and entered by the Ordnance Survey in 1909. The relevant pages are included in full as Appendix 3.

- 28. Bramshill Common is described (see pages 4 & 5 of Appendix 3) as:

"A common on which the **public have the right of way on footpaths**. The property of Sir Anthony Cope..... [our emphasis]

[In red ink] Grazing and certain public rights (see correspondence to 5 SE)"

Illustration O2: OS Name Book OS35/2786 recording that the public have the rights of way on footpaths only on Bramshill Common

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
Bramshill Common (pc)	Bramshill Common	Anthony W. Cope, Esq (Agent) Bramshill House Bramshill Hants See OS form 231 att. 9.	XI	4	3	A common on which the public have the rights of way on footpaths. The property of Sir Anthony Cope Bart, Bramshill House, Bramshill, Hants. Grazing & certain public rights (See correspondence to 5 S.E.)
Hazeley Heath (pc)	Hazeley Heath	See OS form 231 att. 9.	XI	4	6	Described in Page 20.

- 29. This entry is in direct conflict with public carriageway rights extending over the southern part of the application route.

Conclusion on evidential value of the OS Name Books

- 30. The correspondence in the OS Name Books shows that public rights over the common were investigated thoroughly by the OS, involving correspondence with the local vicar, the clerk to the parish council and the landowner Sir Anthony Cope.

31. In combination, the records show that tenants of the Bramshill Estate around the common were allowed to turn their stock out onto it but that only public footpaths were considered to exist across the Common. The Common included the enclosed section of the application route south of Jouldings Ford (see for example the Finance Act records), as well as the unenclosed section at the southern end of C-D.
32. All of the OS Name Book evidence is consistent in showing that any 'Parish Road' terminated at Jouldings Ford/Farm. The entries are not consistent with a public carriageway continuing south onto the Common.

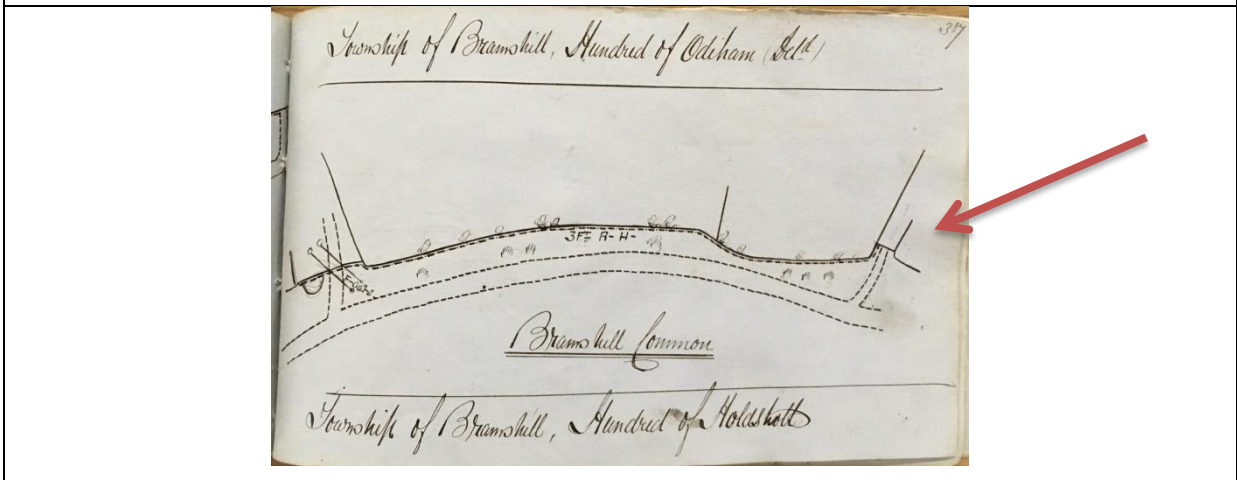
OS Boundary Remark Book OS 26/4687

National Archives OS 26/4687

33. The Applicant refers to this document as recording the county boundary between Bramshill and Swallowfield. More correctly, the document records the parish boundary, apparent from the cover page of the document (page 2 of Appendix 4). The Applicant relies in illustration xiii to a reference to "Swallowfield or Jouldings Ford" but there is no evidence of a road here, let alone its status. If the ford is the feature marked by the two solid lines, as the Applicant suggests, there is no information as to its width other than it can be said it is extremely narrow.
34. Of more relevance is the depiction in the OS Boundary Remark Book of the southernmost end of the application route. As will be apparent from the examples in Appendix 4 (see pages 3 and 4) of the map makers custom to mark field gates with 2 oblique parallel lines and the words "F-Gate", the southerly end of the application route is solid fenced against Bramshill Common. This is not consistent with it being a road of any description, still less a road of public status. It is evidence to corroborate the fact that there were no public rights over Bramshill Common.
35. The private road to Smiths Farm, shown on the left hand side of page 37 of the document in the illustration below, has a field gate to Bramshill Common. It is not a public road. The fact that the application route, by comparison, is shown solid fenced against Bramshill Common is strong evidence that it was not considered a public route.

Illustration O3: OS Boundary Remark Book showing application route fenced towards its southern end (identified with a red arrow).

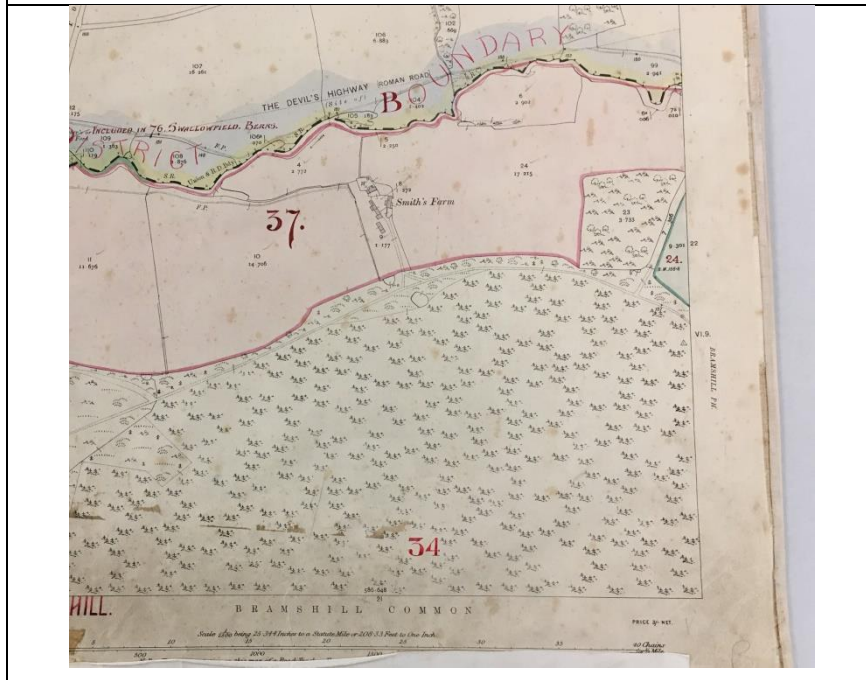
Other examples of the F-Gate notation are shown in Appendix 4.



The Finance Act evidence

36. The application route formed part of Bramshill Common, which was a forested shooting estate belonging to the Bramshill Estate. This can be most easily seen from the Applicant's Illustration xviii and also the following "zoomed out" image of IR 125/4/23 which identifies assessment reference No 34 as Bramshill Common. It includes the narrower section to the north over which the application route lies to Jouldings Ford, with Smith's Farm (reference No 37) to the West and Well House Farm (reference No 24) to the East. The application route lies over this part of Bramshill Common.

Illustration O4 : showing Bramshill Common is assessment reference 34 and extends north to include the application route



37. The Valuer's Field Book (National Archives IR 58/5143) is attached as Appendix 5 with the relevant pages for assessment reference No 34 which is Bramshill Common. The description for the land is "Shooting" and the owner is Sir Cope.
38. Although there are deductions for rights of way, the application route is shown, even where enclosed, as included within the hereditament south of the River. This does not point to it being considered a public carriageway. This is re-enforced by the application route north of the River being demarcated out by broken brace marks. These do not appear on the application route south of the River, even where the application route is enclosed.
39. This evidence can be summarised as follows:
- The application route is not excluded for its full length – the southern section (even enclosed) was part of hereditament 34 owned by the Cope family (owners since the 1690s).
 - The section north of the river is excluded AND is also shown with broken brace marks.
 - In sharp contrast, the broken brace marks used north of the river are not used on the southern section of the application route, even where the application route is enclosed.
 - It is clear that the section of the application route north of the river was considered to be of a different status to that south of the river. Certainly, it is difficult to see how, if the application route south of the river had been considered a public carriageway, it would

have been included and not excluded from the hereditaments for the reasons set out in the Consistency Guidelines.

40. Overall the Finance Act evidence does not support the Applicant's case for a public carriageway running the full length of the application route south of the river. What it does support is that the surveyor concurred with the Cope family's understanding of access rights as shown by the OS Name Book evidence (see above).

Other new evidence

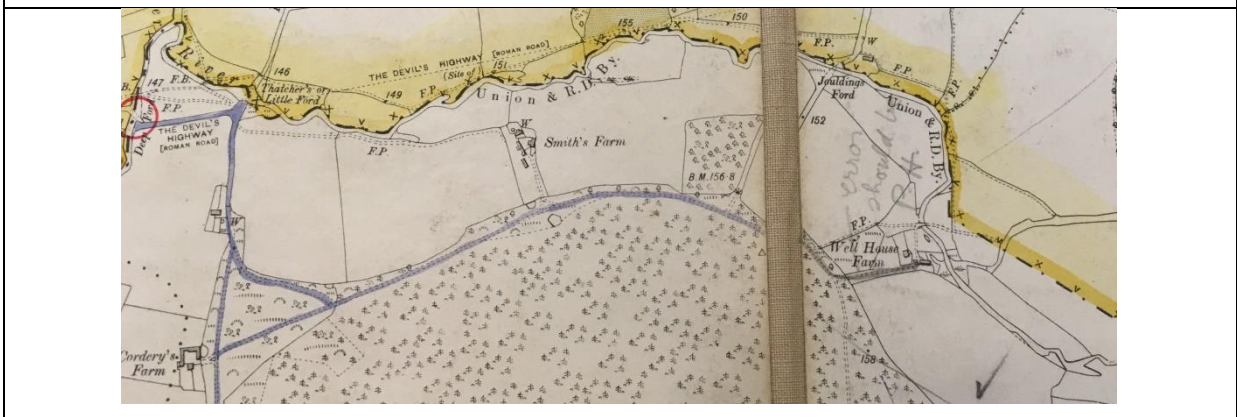
Hartley Wintney Rural District Handover Map (Hampshire side of the R. Blackwater)

Date 1929

Hampshire Records Office H/SY3/6/9

41. Up to 1929 the rural districts were responsible for the upkeep of the public roads and paths in their district. In connection with the Local Government Act 1929, when responsibility transferred to county authorities, they produced the so-called handover map. It was intended to be a definitive record produced by the local authorities of the highways, carriageways and footpaths that were public. Copies of the cover, index and relevant pages are at Appendix 6 and an extract of the relevant map page is in the illustration below.

Illustration O5: The Handover Map is evidence that the application route is not a public road



42. The public roads are highlighted blue on the document. Well House Lane is highlighted blue. The application route is not highlighted. This is powerful evidence that those tasked in the early 20th C. with investigating and describing the public roads in the parish, concluded that the application route was not of public status.

43. There is a short section of double dotted lines leading north from Well House Lane but that section is not public: the dotted lines then stop and the application route is fenced across the route, which would further indicate that there is no route and no public use.
44. The document is also evidence that the only use of the name "Jouldings Lane" is for the parish road network to the north of the application route.

Hartley Wintney Rural District Handover Map (Berkshire side of the R. Blackwater)

Date 1929

45. This was the equivalent handover map for Wokingham rural district. It has been provided by the Case Officer at Hampshire County Council and a copy is at Appendix 7. It indicates that in 1929 Jouldings Lane was publicly maintainable to the point where it terminated at Jouldings Ford (point B) and no further. This is consistent with the amendment in 1930 to the OS Object Name Book, which extended Jouldings Lane to the ford when it had previously just been to the farm. It is also consistent with the Wokingham adopted highways map relied upon by the Applicant at Illustration xxx.
46. It is noteworthy that the Wokingham Handover Map, in common with the labelling of Jouldings Lane on all the other maps, labels Jouldings Lane as the road extending south from the Fox & Hounds Public House to Jouldings Farm. There is no such label for the application route south of the river, which is evidence that the application route is not a through route and has no public status.

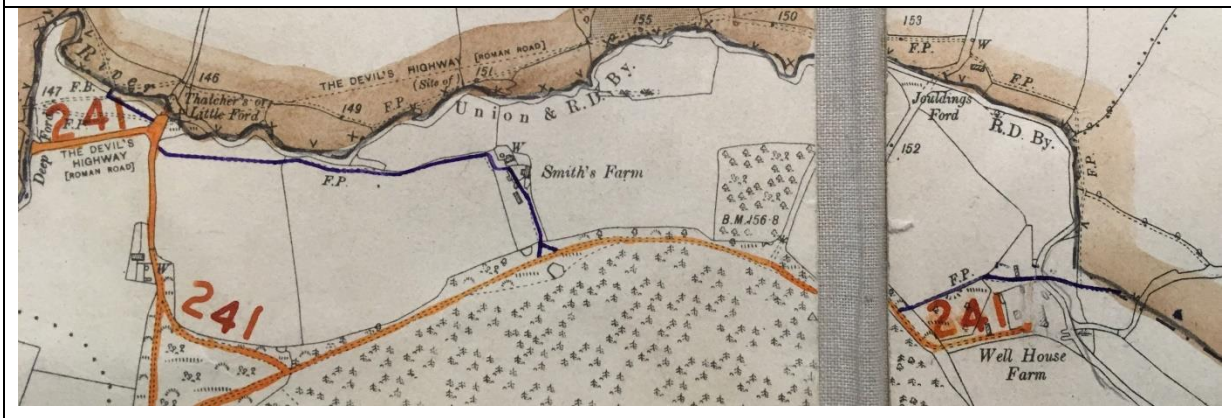
County of Southampton Highways and Rights of Way - Hartley Wintney Division

Date 1946

Hampshire Records Office H/SY3/3/24/5

47. In 1946 the County produced a maintenance map as a comprehensive and definitive record of all the public roads and rights of way in the county. A copy of the section relevant to the application route is at Appendix 8. The map records Well House Lane as a public carriageway (in orange) together with various local footpaths (in blue) but the application route is not a public route of any kind. Again, the map shows a short section of double dotted lines and a fence blocking the application route.

Illustration O6: Maintenance Map 1946 is evidence that the application route is not a public road



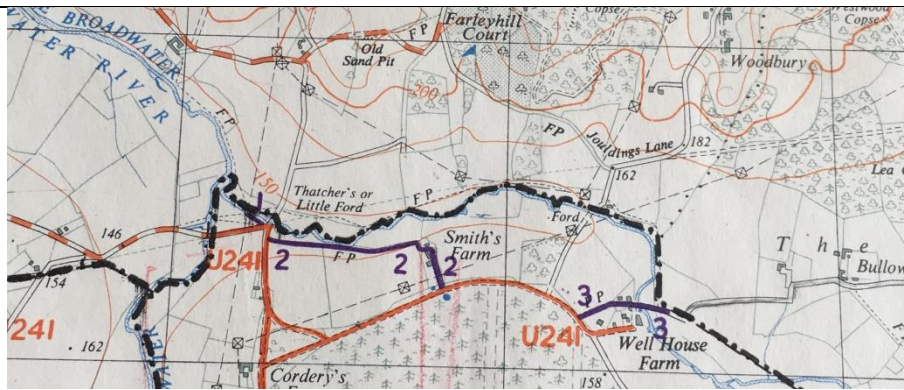
Bramshill Parish Records – general comments

48. Bramshill Parish keeps historic records for the parish, including documents relating to all the public rights of way in the parish. A search of these records has revealed that there is no evidence for a public right of way over the application route.

Definitive Map 1949

49. The Bramshill Parish Records include a copy of the Definitive Map dated 1949 for the land south of the River Blackwater. It records all the public rights of way in the locality. Well House Lane is shown as a public road together with public footpaths in the locality but the application route is not a public route of any kind. Again, the map shows a short section of double dotted lines and a fence blocking the application route.
50. It is notable that the map labels "Jouldings Lane" as continuing in a westerly direction towards Farley Hill Court, not in a southerly direction, and is further evidence that Jouldings Lane is part of the road network to the north and does not include the application route south of the River Blackwater.
51. The map is attached as Appendix 9 and an extract is at Illustration O7.

Illustration O7: Definitive Map 1949 is evidence that the application route is not a public road

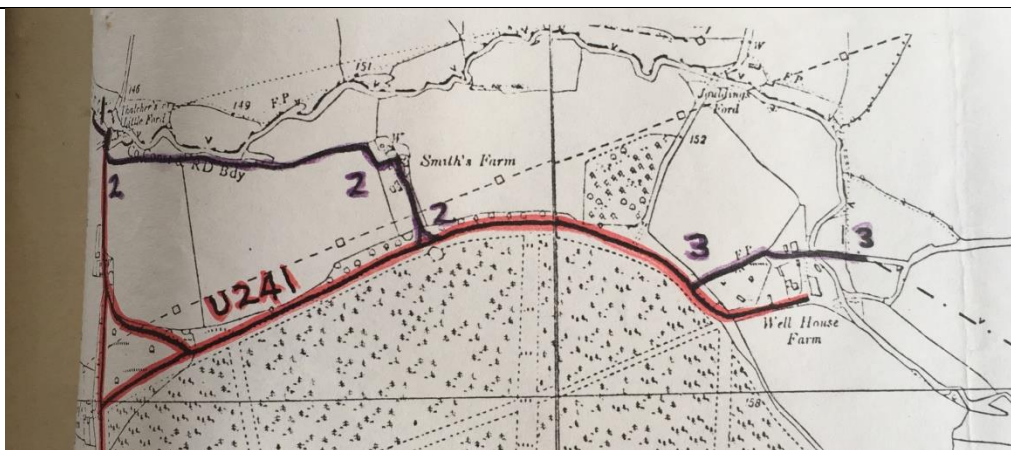


Parish Map of county roads and footpaths 1972

52. The Bramshill Parish Records include a parish map showing all the public rights of way in Bramshill Parish, with a date stamp for 1972. Well House Lane is shown as a public road together with the various public footpaths. The application route is not a public route of any status. Again, the map shows a short section of double dotted lines and a fence blocking the application route.

53. The map is attached as Appendix 10 and an extract is at Illustration O8.

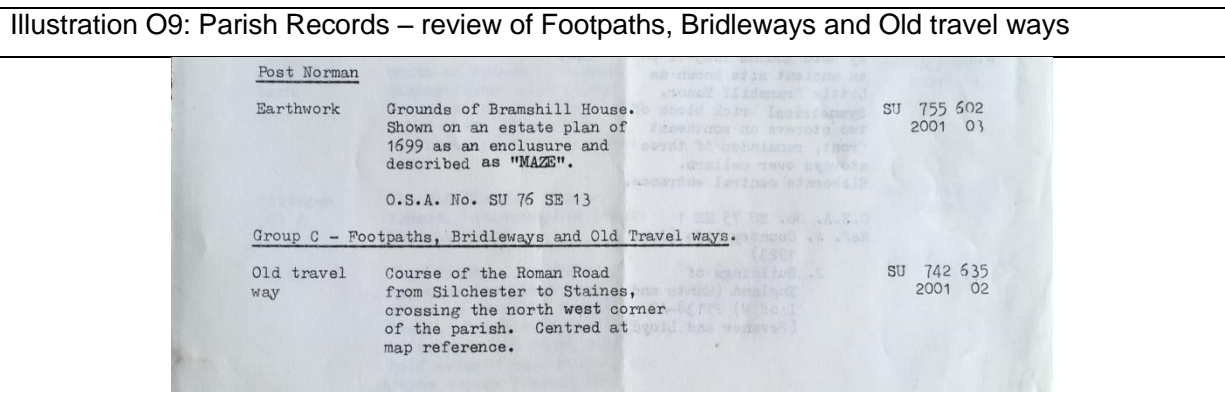
Illustration O8: Parish Map 1972 is evidence that the application route is not a public road



List of buildings and features of local interest

54. The Parish records include a letter from Hart District Council dated 1991 with a list of buildings and features of local interest, as part of a consolidation of such features, and invites the Parish to add anything of relevance (including footpaths, bridleways etc).

- 55. The section headed "Group C – Footpaths, Bridleways and Old travel ways" lists the Devil's Highway but does not list the application route. The correspondence in the record relates to an ancient monument called Cudbury Clump but, again, there is no reference in the records to the application route.
- 56. If it was felt that there were any public rights of way that were relevant to the Parish and which were not recorded, it can be expected that they would have been raised as part of this review.
- 57. The letter and table are included at Appendix 11 and an extract is at Illustration O9.



Highways and Sanitation Boards Minutes 1880-1930

- 58. There is a comprehensive record of the Highways and Sanitation Boards Minutes of the Rural District at the Hampshire Records Office. It is understood that the Case Officer at Hampshire County Council handling this application has reviewed all of the minutes, which extend from the 1880s to the 1930s, to see if there is any mention of a parish road or other public right over the application route. It is understood that there is not. The fact that there is no reference at all to the application route is evidence that it was not a parish road and no public rights exist.

SPECIFIC COMMENTS ON THE REMAINING EVIDENCE

Early map evidence - Taylor's and early OS maps 1759 – 1817 (OS 1")

(Applicant's Nos 4, 5, 6)

- 59. The maps are small scale.

60. There is no legend provided nor provenance for Taylor's Map.
61. OS maps – the case law is that they are only evidence of physical existence not status.
62. Further, even on a cursory examination of the 1806 and 1817 extracts provided, it is apparent that the maps show a multitude of routes not just public ways – see for example the numerous routes shown across Bramshill Common.

Conclusion on evidential value

63. At most these early maps can only be evidence of physical existence of a route approximating the application route and not public status.

1814-17 Swallowfield Inclosure Award A-B

(Applicant's No 7)

64. The Applicant acknowledges that the Swallowfield Inclosure Award does not set out any part of the claimed route. The application route was not part of the land enclosed. As such, the Award cannot have created any rights over the application route.
65. As evidence the Award lacks clarity / appears erroneous. A footpath is clearly shown continuing south to the west of a line thought to correspond with the route to Jouldings Farm. However, Jouldings Ford is not marked as continuing south along the route but towards the east north of the river.

Conclusion on evidential value

66. The Award is confused with respect to routes outside its ambit (as acknowledged by the Applicant). It provides no reliable evidence relating to the application route.

Greenwood's Map 1826

(Applicant's No 8)

67. The map is small scale and it is difficult to resolve the application route with any accuracy.
68. In any event, appearance on Greenwood's map is not determinative of any public status – private routes were shown as well:

'Public and private roads were not differentiated. A cursory examination of Greenwood's maps will show that the term 'cross road' seems to have been a catch-all phrase to mean roads other than turnpike roads.'

(Nineteenth and early twentieth century non-OS maps – Yolande Hodson RWLR 3 p129-138)

Conclusion on evidential value

69. Greenwood's map provides limited evidence as to the existence of the application route and no evidence as to status of the application route.

Map of Windsor Forest and vicinity (1823 – revised 1856)

(Applicant's No 22)

70. There is no legend or provenance for this map. It provides no evidence in support of public status.

71. Jouldins Ford is marked on the edge of the map but without any road shown as continuing or any further destination marked.

72. This is to be contrasted with other roads shown continuing off the map and with destinations (eg see the route marked to 'Eversley' on the extract provided in Illustration xxxi in the Application). This does not suggest that there was a through route at Jouldins Ford.

Conclusion on evidential value

73. The map is of limited importance but supports the other evidence that there was no through route at Jouldins Ford (as it was spelled then).

Eversley Tithe Award 1837 C-D

(Applicant's No 22)

74. Tithe records are not indicative of a route's public or private status - the records show where a crop could or could not be grown.

75. As such, the appearance under 'Roads and Waste' is not indicative of public status. This is recognised in the Planning Inspectorate Consistency Guidelines:

8.12 Both public and private roads had the capacity to diminish the productivity of land for the assessment of tithe. It follows therefore that the inclusion of a road under the heading 'roads and waste' is not, in itself, good evidence that it was public....

76. A larger extract in illustration O10 shows the entrance to Smiths Farm a short distance to the west, similarly shown as an enclosed route and coloured ochre. It is a private road.

Illustration O10: Tithe map showing other private roads are coloured ochre and enclosed



- 77. There are other 'Roads' described in the award that are private roads, for example the road "through Well House Farm yard". Not all the roads in the parish are public roads and it is consistent with this that the application route is also a private road.
- 78. The award map shows the application route fenced and gated at a point nearing its southern end and possibly also at the northern end.
- 79. Elsewhere on the tithe map, roads that cross the river are clearly depicted as continuing through the river. For example, at Thatchers Ford and Great Ford the road is shown continuing even though they are at the edge of the map. In contrast the application route is not shown continuing. This is evidence that the ford at Jouldings Farm is not part of a through route.

Illustration O11



Fords with roads through them:
Thatchers Ford; Great Ford

Fords with no roads through them:
Jouldings Ford

80. The Applicant refers to Well House Lane as being a public road. This is misleading; Well House Lane is not shown on the tithe map. The application route is shown as not connecting with any road.

Conclusion on evidential value

81. The tithe records provide no positive evidence in support of the application route being a recognised public carriageway. The records show a gated route joining the Common. The application route is not shown as continuing across the Ford, in contrast to other public roads. This is not suggestive of the application route being a through route or public carriageway and ties in with the other evidence of the application route stopping at Jouldings Ford.

Bristol and Dover Direct Junction Railway 1845

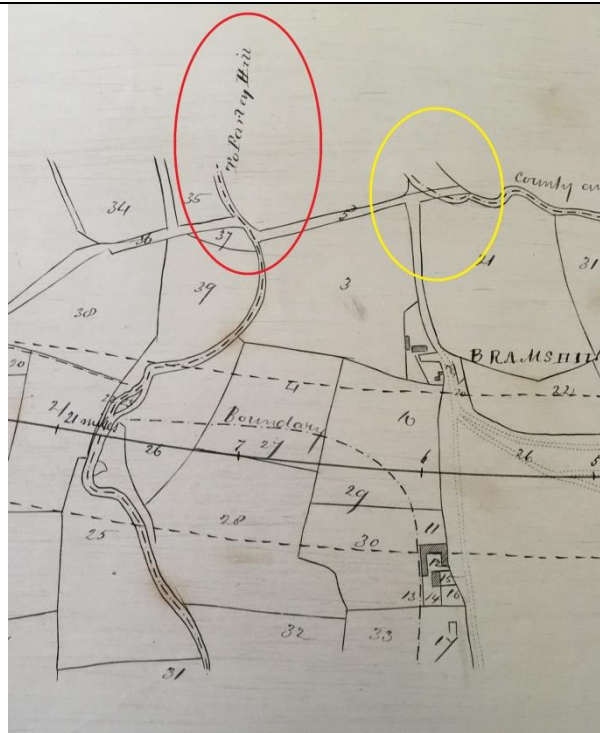
(Applicant's No 10)

82. The Bristol and Dover Direct Junction Railway was never built and searches made at the House of Lords Archive Library suggest that the deposited plan is the only document: there was no corresponding Act of Parliament, nor minutes or evidence gathered in connection with the proposal, so there was no opportunity to correct the mistakes in the deposited plan. This necessarily reduces the weight that can be given to this evidence.
83. As will be seen, the deposited plan contains a number of mistakes which preclude any reliance on it so far as public rights of way are concerned.
84. A set of the relevant plan maps, inclination maps and book of reference for Bramshill Parish are included as Appendix 12. The following are examples of mistakes in the plan map that relate to roads and public rights of way in the parish of Bramshill.

Mistake 1

85. In the north west of the parish there is a direction marker "To Farley Hill", circled red in the illustration below. The "road" to which it relates is not a road, it is the River Whitewater. A potentially more appropriate place for the direction marker would be Thatchers Ford circled yellow in the illustration, although the direction of the ford crossing would have to be changed: currently it is shown east-west and it would have to be corrected to north-south.

Illustration O12



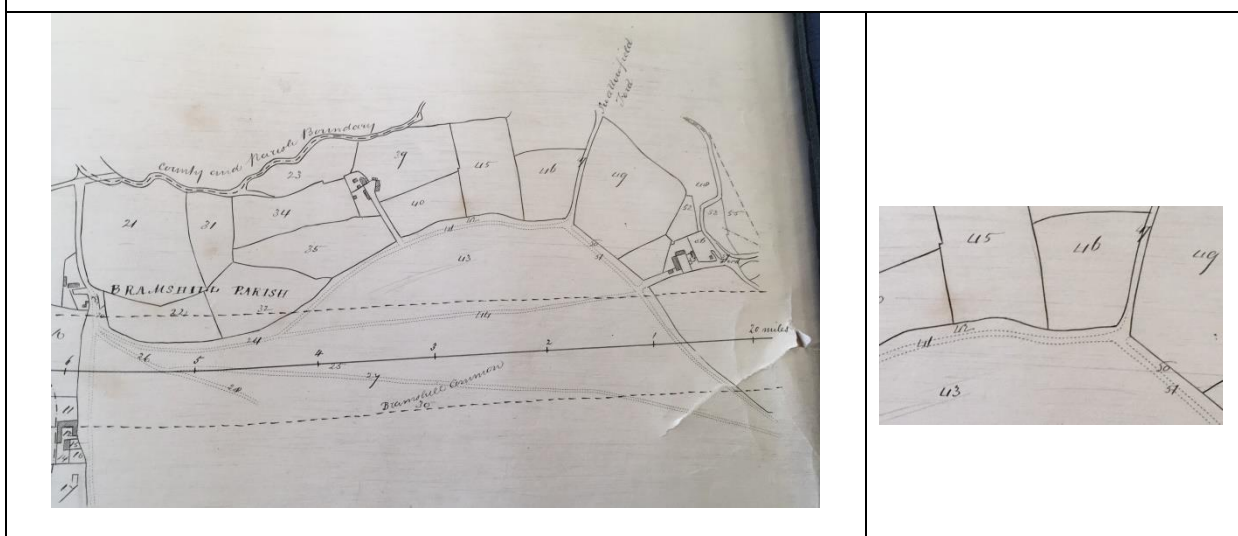
Mistake 2

86. There is a parish road (19) in the book of reference for Bramshill Parish that does not appear on the map.

Mistake 3

87. If parcel 47 was a Parish road, as the Applicant suggests, it is depicted as connecting to two other roads (41 and 51) on Bramshill Common (25, 30, 42, 50), see the book of reference at pages 7 and 8 of Appendix 12 and the extract from the map in the following illustration O13.

Illustration O13: Bristol and Dover Direct Junction Railway deposited plan



88. Roads 41 and 51 are both private roads for which both the owner and the occupier are recorded as Sir John Cope, the owner of the Bramshill Estate, with no lessees or reputed lessees.
89. Parcel 47 is relied upon by the Applicant because it covers part (but not all) of the application route and is described as a parish road. The description of parish road is clearly a mistake. It would make no sense to have a parish road that did not connect with any other parish roads. It is known from other documents in these Objections that Bramshill Common was a private common belonging to the Bramshill Estate and over which the roads were private: this is consistent with both the owner and occupier for the Bramshill Common and its roads being recorded in the book of reference as Sir John Cope with no lessees or reputed lessees. The fact that the "parish road" connects only with a private common and private roads suggests it is an error.
90. It is perhaps not surprising that the error was made in respect of parcel 47 because it lies outside the limit of deviation and would not have attracted much scrutiny from the surveyor.
91. The error would have been corrected if there had been an opportunity to do so. There are a number of other private roads on Bramshill Common: as well as 41 and 51, there is 26, 27, 28, 43 and 44. All of these are private roads for which the owner and occupier is recorded in the book of reference as Sir John Cope with no lessees or reputed lessees. There is also the occupation road (24) owned by Sir John Cope which served Smiths Farm. Virtually all of these roads lie within the limit of deviation and several are crossed by the proposed railway line itself, yet none of them are provided for in the inclination map. The

Bramshill Estate would no doubt have given evidence if there had been the opportunity to do so and the errors would have been picked up at the same time.

Conclusions on evidential value

92. Overall, this evidence is of limited if any weight in supporting the current application. The poor quality of the records is typical of many schemes from this time when the boom in planned railway construction led to a lack of surveyors and poor quality, unreliable surveys.

Wokingham and Basingstoke Railway Deposited Plan 1896

New evidence not provided by the Applicant

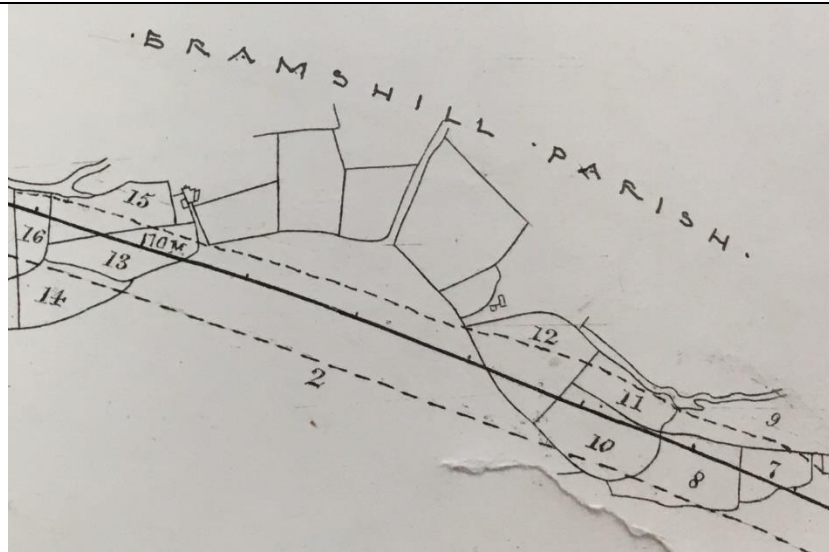
Date 1896

Hampshire Records Office DP 103

93. There was another railway called the Wokingham and Basingstoke Railway that was proposed across Bramshill Common in a very similar location to the Bristol and Dover Direct Junction Railway. The deposited plan is also held at the Hampshire Record Office. Copies of the relevant plan map, inclination map and book of reference for Bramshill Parish are included as Appendix 13.

94. The application route is shown on Map No 3 (page 3 of Appendix 13). It is not labelled and it is not described as a public road, even though other public roads in the area are described as public. This suggests it was a private feature. It may be said that because it is outside the limit of deviation it was of less interest to the surveyor, but it is apparent from the plan that if it was a road it could only lead to Bramshill Common. Bramshill Common is cut east to west by the proposed railway and the route would be blocked, both by the route of the proposed railway and the limits of deviation. Examination of the map of inclination (page 4 of Appendix 13) shows that no provision is made for a road crossing of any kind in this position, even though the nearby and separate parish roads to the East and West are described and provided for. This is very strong evidence that the application route was not a public road and corroborates the fact that the reference in the Bristol and Dover Direct Junction Railway plan was a mistake.

Illustration O14: Wokingham and Basingstoke Railway Deposited Plan 1896



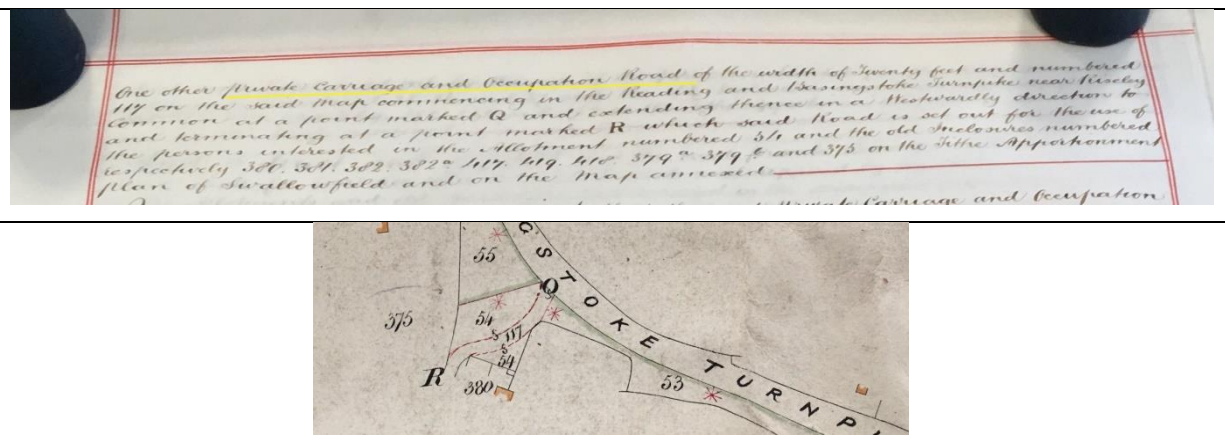
95. The book of reference (page 5 of Appendix 13) describes the owner of Bramshill Common being Sir John Cope with no lessees and no occupiers (described as "In hand") which corroborates that Bramshill Common was a private forest owned by the Bramshill Estate.

Swallowfield Inclosure Award 1865

(Applicant's No 11)

96. The Applicant refers to some parcels Nos 83 and 86 adjacent to the application route and relies on the requirement to fence "Against the Road" in the book of reference to say that the application route in this section is a public road. However, the inclosure award does not distinguish between private and public roads in this way. Reference is made to the private road between points Q and R which also has a requirement to fence "Against the Road".

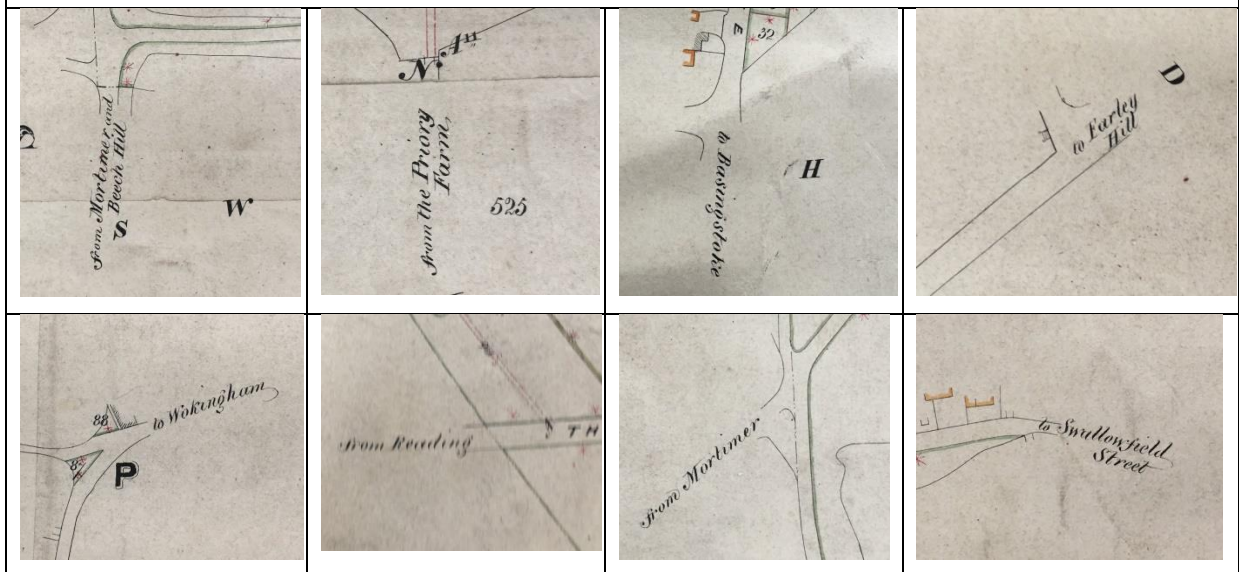
Illustration O15: Swallowfield Inclosure Award 1865



51	"	"	9	On the south and	and other commenda			
53	"	1	9	against the Road	rights in respect of			
54	"	1	2	against the Roads	numbers 380. 381.			
				eastward and	386. 388. 393. 395.			
				against the Road	398. 376. 413. 421.			
					414. 177 and 183.			
								13 3 29 Fee

- 97. Accordingly the fencing requirement is not evidence of the status of the road.
- 98. Furthermore the inclosure award does not set out any of the application route from B to D.
- 99. It is noteworthy that Jouldings Ford does not have a direction marker and is not described a through route. This is to be contrasted with every point on the award map where a route continues to a destination, when the map uses a direction marker combined with an extension for the lines delineating the road. Examples are given in the following illustration.

Illustration O16 : the use of direction markers on through routes



- 100. These records again point to Jouldings Ford as a destination, and not as part of a through route.

OS Boundary Remark Book 1871

(Applicant's No 12)

- 101. The Boundary Remark Book is covered in the new evidence section above.

102. There are also statements from the Applicant which require comment. The Applicant refers to the application route between C and D as being a "road" which was "sufficiently significant to mark the parish boundary". We do not agree. Any features can delineate a parish boundary and, for example, reference is made to the Applicant's Illustration xiv which shows the same parish boundary extending along a fence line.

103. It is also noted that the parish boundary is marked along the "Centre of Road". There is no evidence whether this was a private or public road. Indeed, OS records carry disclaimers to that effect.

104. Although it is not clear from the copy exhibited by the Applicant, a better copy demonstrates that the application route is fenced at the point where it meets the open part of Bramshill Common.

Illustration O17 : Application route fenced across its width near Bramshill Common



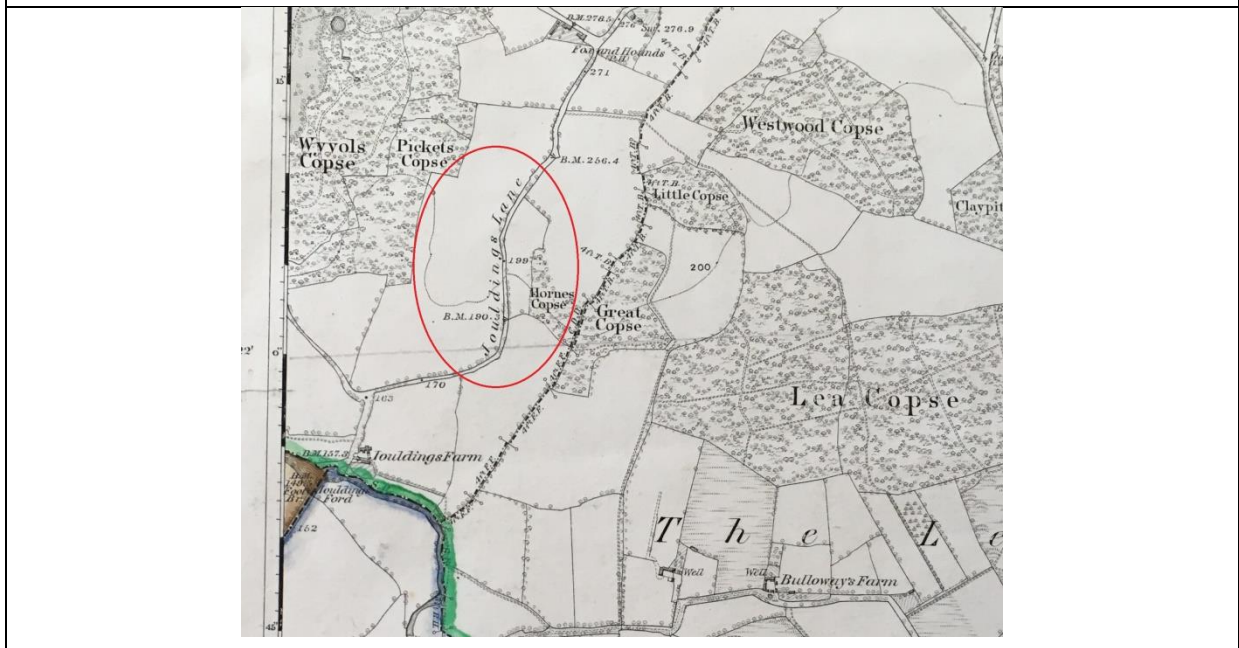
105. As well as showing the application route as enclosed, it also shows a section at the southernmost extent which crosses an open part of Bramshill Common. It is established that there are no public rights of way across Bramshill Common.

OS Map Six Inch 1871

(Applicant's No 13)

106. It can be seen from the Illustration xvi supplied by the Applicant, and more clearly from the larger extract below, that the name Jouldings Lane is used to describe the public road that extends south from the Fox and Hounds public house, but not any part of the application route.

Illustration O18



107. Although difficult to see in the Applicant's Illustration xvi, inspection of the original shows that the application route has a fence across it in at least two locations: a short distance south of the river and adjacent the name "Jouldings Ford"; and near its southerly extent where the two dotted lines marking a track on Bramshill Common terminate.

108. It is hard to resolve the position of the foot bridge marked close to Jouldings Ford but it is believed to be a temporary feature and neither this foot bridge nor the foot bridge shown a short distance to the west in the Applicant's Illustration xvi exist today.

109. At the southerly end of the application route, the track is marked by two dotted lines across an open part of Bramshill Common. As has been shown elsewhere, there were no public rights across Bramshill Common.

No 14 OS Map Twenty five inch 1896 and 1899

(Applicant's No 14)

110. The comments relating to the OS Map Six Inch 1871 apply here too.

111. In addition, the fences across the application route are more apparent on this map. They can be seen a short distance south of point C, a short distance north of point D and possibly also approximately midway between C and D.

112. The same point about the section of track on Bramshill Common marked by two dotted lines applies.

Finance Act documents 1909-10

(Applicant's No 15)

113. These have been addressed in the section on New Evidence.

114. The fences across the application route can be seen in the Applicant's Illustration xviii.

OS Map Six Inch 1911

(Applicant's No 16)

115. The same comments apply here as for the 1896 & 1899 Maps at No 14 of the Application.

OS Name Book 1898-1930

(Applicant's No 17)

116. These have been addressed in the section on New Evidence.

OS one inch 1945

(Applicant's No 18)

117. This reference gives no evidence of the status of the application route, other than it is incorrect for the Applicant to say it depicts "over 14ft of metalling, but in bad condition". The legend describes it as "Under 14ft of Metalling, Bad, not classified by M. of T."

Bramshill Estate Sale 1952

(Applicant's No 19)

118. The local footpaths are recorded correctly on the Estate sale plan (Applicant's Illustration xxvi) but there is no description either on the plan or elsewhere to suggest the application route was either a carriageway or of public status. A private route running between plots would be unlikely to be demarcated, with the normal presumption being that adjacent owners owned to the middle of the road.

119. The fence across the application route towards its southern extent is apparent on the plan.

120. The text of the sale particulars is more informative (Applicant's Illustration xxviii). The description of Bottom Farm (previously Smith's Farm) which says "The Homestead is nicely situated in the middle of the land, which is bounded on the North by the River Blackwater and **lies between the River and the Parish road on the South** [Well House Lane]" (our emphasis). Bottom Farm extends right up to the application route which forms its boundary to the East. If the application route was also a Parish road you would expect it to have said so.

CONCLUSION

121. The application route extends into two counties on opposite banks of the River Blackwater. It is no surprise therefore that the history of the land in each County is different.

122. There is no credible reference to a public through route anywhere in the documents.

123. To the north of the river, the parish road system of Berkshire permitted access to Jouldings Farm. There the land ownership was more divided and the land owners distanced themselves from the roadways. At some point the list of streets to the farm was extended the short distance to the ford (although in practice that section is not so surfaced or maintained).

124. The position south of the river was very different. For over 300 years the land formed part of the Bramshill Estate, occupied by the Cope family most likely in strict settlement. There is not one document that describes the application route as a public road, apart from a deposited railway plan that has been shown to be unreliable being of poor quality and containing errors. Indeed there is positive evidence that the application route has not been considered as a public carriageway; inter alia the Ordnance Survey undertook detailed enquiries with the express purpose of establishing whether any public rights existed. The conclusion was clear. There were no public carriageways.

125. In the circumstances the Application should be refused.

Additional points

Width

126. The Applicant seeks a width of, in some places, 37 metres. There is no basis for such an excessive width. Leaving aside the issue of its public or private status, the evidence is of a much narrower feature.

Bridge

127. The Applicant seeks to accommodate a footbridge crossing. There is scant reference to a footbridge and the evidence is that any such feature was private.

Fences and gates

128. It is apparent from many of the references and maps that there were fences and gates across the application route. Leaving aside the issue of the public or private status, the fences and gates are long standing historical features that apply to the application route.

3 April 2018

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Ref: ULZC/BRA170.U1

Jouldings Lane DMMO Application – Objector Statement in response to Applicant’s comments of April 2018

Summary of additional comments

(To be read in conjunction with statement of objection and Executive Summary dated 3rd April 2018)

Introduction

1. This additional submission addresses the major issues raised by the Applicant’s written comments dated April 2018, which helpfully clarified a number of points. Detailed comments on specific points raised by the Applicant are contained in Appendix 14 (attached to this submission).
2. To assist a copy of the Executive Summary of the Objector’s case, submitted in April 2018 upon which the Applicant’s latest comments were made, is included here at Appendix 15. Appendix 16 contains statements from the local landowners, including the Objector, whose family have lived on the relevant property for many years.
3. Given the comments in the Applicant’s latest submission, it is worth clarifying that it is for the Applicant to establish that a public right of way of the claimed status exists, not for the Objector to disprove this.
4. In this case, for the Application to be accepted as is and an order made for the addition of a BOAT and restricted byway, the Applicant would have to sustain a reasonable allegation that the AR was a public carriageway for its entire length.
5. The case for a public carriageway is based not on evidence of use, but on historic documents. These documents can be assessed prior to making an Order to ascertain if the case for the existence of an ancient public carriageway along the AR is made out. It is the Objector’s assessment that it is not and this is discussed below.
6. The landowners dispute the user evidence that has been submitted. However, taken at its highest, it can only support a claim to a bridle road; it does not provide any relevant evidence with regard to the existence or non-existence of an ancient public carriageway and does not support the width claimed by the Applicant.

Assessing the historic evidence

7. ‘Restoring the Record’ is relied upon by the Applicant in assessing the weight to be given to various evidence.
8. As stated in the sales literature produced for ‘Restoring the Record’:

‘the author is Dr Phil Wadey who has been an access and bridleways officer for the British Horse Society since 1992, including 14 years as Regional officer for the East of England. He has made over 150 applications for paths to be recorded. He is a Past Chairman of the British Horse Society, and is currently Vice Chairman of the Open Spaces Society.’

The book is not an independent academic text. Further, as highlighted in our previous submission and below, the Applicant’s assertions re the import of various documents does not accord with the Consistency Guidelines issued by PINS (applied by Planning Inspectors). *Restoring the Record* does not provide a sensible basis upon which to assess the evidence.

The Applicant’s case for a public carriageway – the documentary evidence

9. The Applicant must establish on the evidence that there was a public right of way along the entire AR. It is not sufficient to postulate potential scenarios. It is not, as asserted by the Applicant (see for example bullet 4 at A3 of the Applicant’s further comments), for the Objector to prove that the way was private.

The evidence of status A-B

10. The Objector’s primary case is that the Applicant has not provided evidence establishing any form of public right south of point B. Indeed, B has consistently been treated as the end point for any parish road in a series of documents. This is summarised in the Objector’s Executive Summary of 3rd April 2018 and is discussed in more detail in the body of the original submission and below.
11. However, for completeness sake, it should be noted that the nature of any public rights even over the AR north of the Ford is not clear. The Applicant assumes that the recording of the section A-B as publicly maintainable unequivocally establishes the AR between A and B as a public highway of carriageway status (see p26 of the Applicant’s original submission). This assertion is at odds with PINS Guidance (see para. 6.9 of the Guidance). The inclusion of a route on the handover maps and list of streets documents, does not ‘conclusively demonstrate public highway rights’. Certainly, such records do not on their own prove that any such maintained section was a public carriageway (Please also see the DETR Guidance compiled following assertions made by off road user groups (App. 17)). There are no records of actual maintenance upon which the Applicant could rely.
12. The Applicant gives significant weight to the exclusion of the AR from hereditaments between A and B in the Finance Act documents. Finance Act evidence has inherent

limitations; it was not the main purpose of the legislation to record public ways and generally such evidence can only be supportive of public status as opposed to establishing it. Exclusion of a way might import the route being a public way possibly a carriageway, but not necessarily so.

11.9 Documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value; this is particularly important where a deduction for a public right of way is shown in the Finance Act records but its line is not apparent. It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation.

13. Looking at the surrounding evidence, the Object Name Book entry relied on by the Applicant, refers to the route as a parish road to Jouldings Farm/Ford. The term 'parish road' could refer to a non-vehicular road, such as a bridleroad. This is also true of the Swallowfield Inclosure Award – even if referring to a public road, which is not accepted, there is no evidence that such a route was a carriageway and not a road of lesser status.
14. Overall, although there is some evidence that the A-B section of AR had some reputation as a road maintainable by the parish, its status is unclear.

Evidence of status B-D – the evidence for the continuation of public rights

OS and commercial maps

15. The Applicant asserts that the appearance of portions of the AR on various OS and commercial maps, imports public carriageway status. The Objector has already addressed this point; such an assumption cannot be made; mere physical existence is not evidence of public versus private status.
16. *Fortune* is cited by the Applicant in his latest submission to argue that weight should be given to Greenwood's Map in establishing a public road of some status (section III H). This is ill founded. The Objector has already referred to an article by Yolande Hodson, a leading expert, illustrating the limitations of Greenwood's Map (see paras. 67-69 of the Objector submission). In *Fortune*, there was a large body of evidence establishing public status, to which the map evidence was seen as supportive. In this case there is no such body of evidence.

17. Taking this evidence at its highest, the appearance of a route on OS and commercial maps cannot be given little if any weight in establishing public status (see for example the quote from Ridley at H4 of the Applicant's further comments)

Eversley Tithe map

18. The appearance on the Tithe map under roads and waste is also relied upon by the Applicant. It was not the purpose of such records to show public or private ways but lands subject to tithe. Non-titheable private as well as public routes were excluded. It would be extremely unusual for such documents to yield any useful information as to public versus private status.
19. The Consistency Guidelines deal specifically with the categorisation of roads and that the inclusion of a road under the heading 'roads and waste' is not, in itself, good evidence that it was public (see 8.12 of the Consistency Guidelines). Indeed, in this case, a private road is listed. The Applicant's assertions re the weight of this evidence are ill founded; the tithe records do not provide evidence of a public way as claimed.

The Railway records – Bristol and Dover 1845; London, Newbury and Bath Direct Farnborough Extension 1845

20. The Applicant's case for this continuation south of B relies most heavily on the Bristol and Dover railway records from 1845 in which the AR is described as a parish road. The scheme was never completed. However, the poor quality of the Bristol and Dover documents is exemplified by the clear inaccuracies highlighted in the Objector's statement and accepted by the Applicant (K 4). The Applicant argues despite this that the records should be given significant weight. This is not sustainable given the obvious errors.
21. The Applicant suggests that the AR continues onto "Road edge of Common, Level unaltered" at 20 miles 5¾f on the section. There are a number of reasons why that confirms, contrary to the Applicant's case, that the AR was not a public carriageway. Firstly, the description of "Road" on the section is to be distinguished from, for example, the "Public Road" at 21 miles 2f; secondly, in order to get to the private road in question it was necessary to travel along a number of other private roads in the ownership of Sir John Cope, suggesting that the AR was also private; and thirdly, there are no bridges provided for by the Railway which as the Applicant explains, precludes the AR from having public carriageway status.
22. With regard to the second set of railway plans referred to by the Objector, the incorrect title was cited. The correct title for the records as shown in the Objector's original submission and appendices is the London Newbury and Bath Direct Farnborough Extension from 1845 (Hampshire Archive ref: DP103) and not Wokingham and Basingstoke.

23. The London Newbury and Bath Direct Farnborough Extension railway lies closer to the AR than the Bristol and Dover. Examination of London Newbury and Bath Direct Farnborough Extension records does not reveal the inaccuracies apparent on the Bristol and Dover Plans. For both these reasons, the London, Newbury and Bath Direct Farnborough Extension records should be given significant weight. The Objector reiterates the points raised in the original comments [see paras. 93-93 of the Objector comments]. There was no provision for any road crossing in either of the Railway records for the AR or its continuation across the common on what is now Well House Lane. Provision is made for parish roads to the East and West in the London and Newbury records. There is also no provision for any bridges a requirement if the AR or its continuation (Well House Lane) had been a public carriageway.
24. Overall, this is very strong evidence against the AR being considered a public road continuing onto and around the common as claimed.

Finance Act evidence

25. The Finance Act evidence is discussed above with respect to the AR north of the Ford. However, in contrast to the Applicant's assertions, it is not for the Objector to show that the route was private but for the Applicant to establish public status. In any event, the lack of consistency in treatment of the AR in the FA records north and south of the Ford does not indicate a common understanding or acceptance of a public carriageway running the length of the AR. In his latest submission, the Applicant seeks to explain this anomaly away but his assertions are pure supposition and records from other areas (eg Cornwall) are irrelevant. Taken at its highest for the Applicant, the Finance Act evidence is equivocal. In reality it actually points away from a through route existing along the whole AR.

Bramshill Estate Plan

26. The Bramshill Estate Sale document from the early 1950s is relied on by the Applicant. The Objector repeats his comments at para. 118 – 120 of his submission of April 2018. On sale of an Estate, there would have been no need for the allotment of a private road to one plot of another as ownership and associated access rights would be shared between the lots by presumption or inference of law.
27. The plan itself is very roughly coloured and imprecise. When the whole plan is examined, it is apparent that routes that are private or public non-vehicular were excluded between different hereditaments (for example, the uncoloured track between lots 11 and 7, from the end of Well House Lane and continuing south-east from Well House Farm). On examination, this evidence does not support the Applicant's assertions.

28. It should also be noted that the Objector's family has lived on the property since the 1940s and can evidence that the AR has at no stage been considered a public vehicular route in their time of ownership (see Appendix 16).

The cul de sac issue

29. The major plank of the Applicant's argument appears to be there is evidence that the northern section of the AR was a public way (publicly maintainable) and, as a matter of law, a public right of way in the countryside cannot be a cul de sac (*Eyre* is cited). As such, the continuation of any public rights should be assumed.
30. This is not correct. *Eyre* was a case very much on its own facts. It was not a case concerning assessment of public rights in light of historic documents as here but one where there was evidence of contemporaneous use of two roads used in the nature of highways. The issue was whether the user across a very small piece of common could be inferred to be use of a highway and whether this situation had existed pre-1835 (thus placing a maintenance responsibility on the highway board).
31. The comments cited by the Applicant are very specific to the facts of that individual case. In any event, whether a route is a cul de sac or not is a question of evidence and not law (e.g. *Roberts v Webster (1967) 66 LGR 298*).
32. Looking at the evidence in this case, as previously stated in the executive summary of 3rd April 2018, various documents refer to any public right terminating at or around Jouldings Farm/Ford.
33. The ONB record cited by the Applicant describes the end point of the parish road as at Jouldings Farm (subsequently amended to Ford). The cessation of such rights at this point is consistent inter alia with the entries in the other Object Name books, consistent with the very apparent change in the way the AR is shown on the Finance Act documents and consistent with the clear limits shown on the maintenance records.
34. The individual documents suggest termination of any public rights at B. In addition, the synergy between the contents of these varied records, produced by different bodies, adds significantly to their evidential value.
35. As discussed above, there is no reliable or consistent evidence that any public rights that did exist continued across the Ford and south of the River. This lack of evidence is likely fatal to the claim. However, in this case, there is in fact a significant body of positive evidence that any public rights did not continue south of the river.
36. It is not possible now to assess the reason for the cul de sac likely stemming from events some 200 years ago, and it is not a requirement for the Objector to do so. The evidence is

that one existed. However, amongst other explanations connected with land ownership, or a simple error on the part of the northern parish, it is perfectly credible that a river could be the end point of a public way, e.g. to water stock.

The common as a public terminus

37. The Applicant in seeking a change to the definitive records, bears the burden of proof in establishing all the elements necessary to establish a public way.
38. The Applicant has postulated that the AR was used to access Bramshill Common. Any access associated with exercise of a right of common, would be an ancillary private right and would not be use supportive of public status.
39. No public right to wander could have existed across the common at the time (see for example the comments in *Eyre* p 518 middle column – Appendix 17). As such the common is not, in itself, a terminus sufficient to support a claim to a public way over the AR.
40. Point D, the terminus of the AR, is on Well House Lane, some way to the south of the gate leading onto the common. The evidence from both sets of 1845 Railway documents, is that Well House Lane was not considered a public road in 1845 – it is described as a private road in one set of documents and in neither set of railway records is there any provision for works which would have been necessary to accommodate a public way on the AR or on Well House Lane. As such, even if the majority of the AR had been used to access the common as postulated by the Applicant, there is no evidence in this case of its continuation to a public terminus point and indeed evidence against it. This is fatal to the current claim.

Width

41. Comments have already been made on this by the landowner; the width claimed is unsustainable on the evidence. Where there is a very wide area between fences, it is not possible to argue that the fences have been erected with reference to the highway. Indeed, a much narrower useable width is marked on the large scale OS maps.

Gates

42. The Objector notes the Applicant's acceptance of the existence of two gates between C and D.

Bridge

43. It is not for the Objector to establish a private bridge but the Applicant to establish the public status. In any event, there is no evidence for an enduring footbridge, a prerequisite to any claim.

User evidence

44. Taken at its highest, the user evidence is only supportive of a public bridleway at a much narrower width than currently claimed.
45. Statements from the landowners are contained in Appendix 16. The Objector disputes the user evidence. In addition, it should be noted that there is evidence of significant periods when any use would not have been possible during the relevant period. Use or non-use is a question of fact; the cause of any non-use is not the issue (*R (Roxlena) v Cumbria CC [2017] EWHC 2651 at para 73*). These periods of non-use would have amounted to an interruption to user for the purposes of s31 Highways Act and thus have prevented acquisition of any rights.

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24th September 2018*

LIST OF APPENDICES

Appendix 14	Specific comments on the Applicant's second submission
Appendix 15	Objector's Executive Summary dated 3 rd April 2018
Appendix 16	Landowner statements
Appendix 17	<i>Eyre v New Forest Highway Board (1892)</i>

APPENDIX 14

SPECIFIC COMMENTS ON APPLICANT'S SECOND SUBMISSION

Many of the points made by the Applicant are addressed in the main text above. In any event, it should not be taken that where a point is not addressed by the Objector, the Objector agrees with the Applicant.

Using the Applicant's numbering:

I. Summary

A2. The Objector has clarified the position with respect to the incorrectly titled Wokingham and Basingstoke Deposited Plan in the main text – the correct title is the London, Newbury and Bath Direct Farnborough Extension. The Bristol and Dover Railway Scheme documents contain many errors, and this does not appear to be denied by the Applicant. This undermines the reliability of those documents.

In contrast the London, Newbury and Bath Direct Farnborough Extension records appear of good quality. Neither set of records supports the existence of a public carriageway along the AR and continuing over Bramshill Common.

A3. Bullet 1 – Ownership of the relevant land by the Cope family pre-dated the earliest record produced by the Applicant. As such, there is no evidential basis for the Applicant's assertion. In any event, the issue of settlement is in addition to the arguments already made.

A3 Bullet 2 and 3 – The Applicant is selective in his use of OS records, only relying on records that support his case and not on those that do not. This is not legitimate. The points re the ONB have already been addressed.

Bullet 4 – It is for the Applicant to establish the public nature of the AR not for the Objector to show its private nature.

Bullet 5 – This is addressed above.

Bullet 6 The Objector disagrees re the import of the tithe records as discussed above. It would be a fundamental mistake at odds with the evidence and case law (as highlighted in the Consistency Guidelines), to import any weight to the 1837 tithe documents in determining whether or not the AR was a public way.

Bullet 7. This statement is at direct odds with the evidence.

A4 These points are addressed above in the main text.

A5 –The case for an historic public carriageway is based on documents. The reasonableness of the claim to an historic route can be assessed at this stage and does not require an Order to be made and an Inquiry to ensue as discussed above.

I. [General comments](#)

A - These points relate to the assessment of user evidence. The user evidence does not support a reasonable allegation that the route was an ancient public carriageway. This is based solely on documents and the case for this can and should be assessed now.

B – The *Eyre* case is discussed in the Objector’s latest submission.

C - Terminus ad quem

These points have been addressed in the Objector’s latest submission. The arguments put forward by the Applicant are based on generalities and assumptions which do not concur with the actual evidence in this case.

D – Historical context

The contents of this section are pure supposition and irrelevant to determination of the matter. It should be noted that access to exercise grazing rights is a private right ancillary to the grazing rights; such access could not give rise to the acquisition of any public right of way.

The statements regarding the maintenance records assume one County was right and the other was wrong regarding maintenance responsibility.

I. [Comments on the statement of objection](#)

B – The Bramshill Estate

The comments made by the Applicant are supposition and not based on the evidence upon which the Application must be determined.

The Objector believes that the Applicant has failed to make out his case on the evidence submitted to date. As such, further evidence on settlement has not been as yet submitted.

C [Object Name Book Evidence](#)

C1 – 2 The Objector would draw the Applicant’s attention to the consistency guidelines regarding preparation of maintenance records. As records are subject only to an administrative process, many changes could readily occur with no check and no proper decision process being followed and no express dedication.

C3. This is supposition.

C4-7 These points have been addressed in the earlier submission. There is a synergy of evidence from various sources indicating that any public rights did not extend south of the Ford.

C8. There is no evidence that these routes are ancient public carriageways. Indeed, Well House Lane, the supposed public terminus for the AR, was described in the 1845 Railway records as a road in private ownership and no provision was made for any accommodation works which would have been required if a public road.

D Finance Act Evidence

The comments made are supposition. In any event, there is a difference in the way different portions of the AR is treated by the surveyor suggesting an understanding that the status differed south of B. Further, the evidence of other routes cited by the Applicant indicates that the 1929 handover map represents a very comprehensive list of the public roads in the area, both north and south of the county boundary. The omission of the AR south of B from those records adds to the evidence that any public rights that might have existed terminated at the Ford.

D7 – Evidence from Cornwall is not relevant.

E Other New Evidence

E1- E4 – It is correct that claims to add routes for the first time to the definitive records mean that, by definition the records now do not record the way. However, the Applicant has produced no evidence to suggest that the AR was even considered to be a public way of any kind during the definitive map process. Further, although the handover maps were produced in 1929 they represent evidence of the long term reputation of the way with the RDC who would have been responsible for the area from the latter part of the 19th Century.

The assertion that the way may have been considered a full road and thus not mappable as part of the definitive map process, has no evidential basis. In addition, it is noticeable that UCRs are marked on the definitive map and the AR is not so marked. Further, the Objector's family, who have lived on the relevant land since the 1940s, can evidence that the AR did not have the reputation of being a public carriageway or any right of way south of Joulding's Farm.

The obvious conclusion is that the AR did not have the reputation of being a public thoroughfare of any kind at the time the definitive records were prepared.

E5 – E6 The comments made are supposition. The key and only relevant point is that the Applicant can produce no evidence to support public maintenance or even the acceptance of public maintenance responsibility south of the River.

F Early map evidence

F1 The index for Taylor's map is not produced. No evidence is produced as to the purpose or quality of Taylor's maps. In any event, it is small scale and appears schematic.

F2. This is incorrect – the road network shown on the early OS maps (and as far as one can tell) on the Greenwood map, is of a different pattern of routes across the common to that on later maps. Well House Lane, the supposed 'public destination' of the AR, is not shown.

F3 – The fact of a way being enclosed is irrelevant to status. Even on a cursory examination the early maps clearly show private routes – see for example the route to Smiths Farm and other cul de sacs to fields such as near Heckfield Bridge and west of Thatcher's Ford.

G Swallowfield Inclosure Award

This Inclosure Award is some distance away. It is of very limited if any relevance. Where the footpath crosses the River at this point it is labelled "To Bramshill". When the footpath heads east it is labelled "To Jouldings Ford and Bramshill". It then continues a short distance past Jouldings Ford to Well House Farm where it crosses another footbridge to Bramshill. The route of these footpaths is apparent from any of the maps at, for example, Appendices 6, 8, 9, 10 of the previous Objector submission. It is noticeable that the destination is Jouldings Ford and Bramshill, which might suggest two different end points. Certainly there are alternative routes to Bramshill that do not involve use of the AR and the other routes being footpaths are consistent with the labelling.

H Greenwood's Map

The Objector has already commented citing from articles by Yolande Hodson a leading expert. In addition, in this case even on a cursory examination, Greenwood's map does not appear of high quality and appears to copy the earlier OS map.

The case law cited is fact specific. All the cases indicate that maps such as Greenwood's, can at most be given very little weight in establishing public status.

In *Fortune* there was a large body of evidence of public status, to which the maps were supportive. In this case, there is no such evidence. Indeed, the only evidence for a parish road continuing south of the Ford also shows it joining a private way which is in conflict with the AR being a public route.

J Eversley Tithe

This evidence is discussed in the main text above and the previous Objector submission.

J8. Not all fords are public.

K Bristol and Dover Railway Plans 1845

This evidence and issues discussed in this section are addressed in the main text above and the previous Objector submission. This and the London Newbury and Bath Direct Farnborough Extension records, do not support public carriageway status and in fact are evidence against such status.

L Wokingham and Basingstoke Railway Plan – London, Newbury and Bath Direct Farnborough Extension

These records are discussed in the main text. They provide very cogent evidence against the AR being a public carriageway.

M Swallowfield Inclosure Award

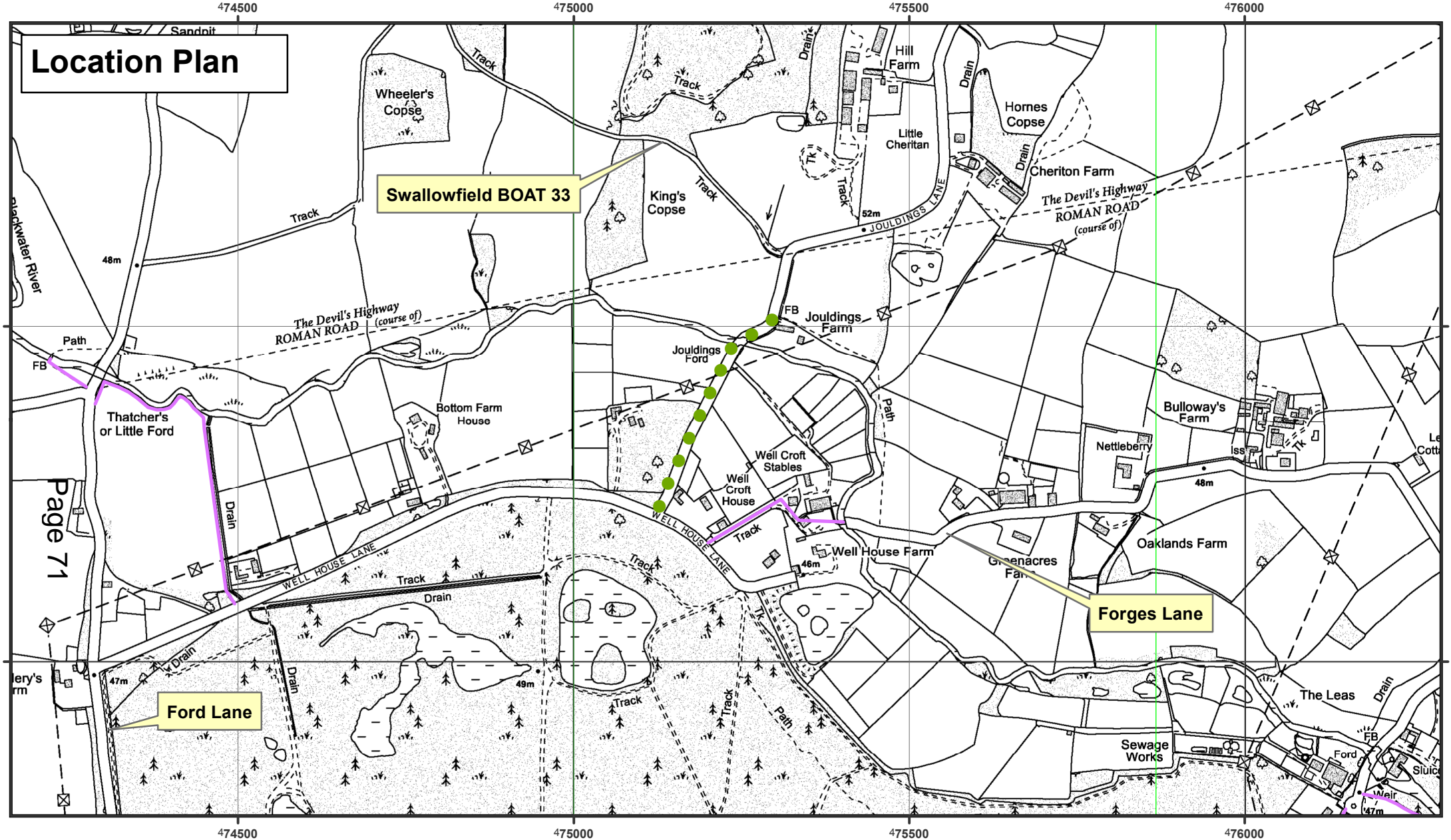
The Objector invites the Council to examine the original documents. Comments have been made above.

N OS Boundary Remark Book 1871

The Applicant seeks to argue these documents have a weight which is simply at odds with relevant law and practice. CR in the context of a parish boundary could easily have applied to a private road.

O-U

Any points relevant to status have been addressed in the main text above.



Location Plan

Swallowfield BOAT 33

Ford Lane

Forges Lane

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Application for a Map Modification Order for a byway open to all traffic/restricted byway between Jouldings Lane and Well House Lane, Parishes of Bramshill and Swallowfield

LEGEND

- Public Footpath
- ● ● ● Routes Under Investigation

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

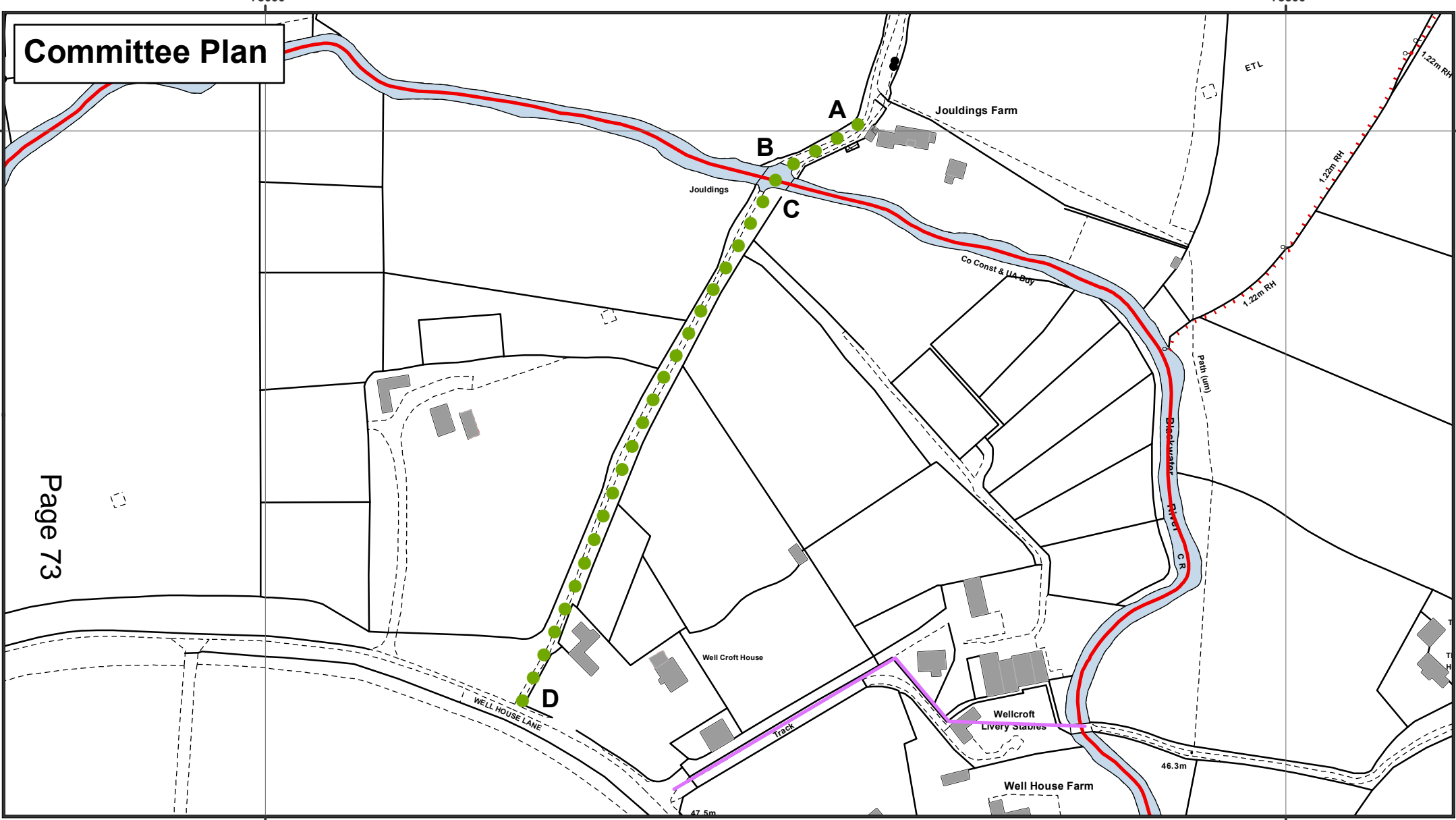
DRAWN: HG
DATE: 30.10.18
SCALE: 1:7,500

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Committee Plan

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Application for a Map Modification Order for a byway open to all traffic/restricted byway between Jouldings Lane and Well House Lane, Parishes of Bramshill and Swallowfield

LEGEND

- Public Footpath
- ● ● ● Routes Under Investigation

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

DRAWN: HG
DATE: 30.10.18
SCALE: 1:2,500

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HAMPSHIRE COUNTY COUNCIL Decision Report

Decision Maker:	Regulatory Committee
Date:	14 November 2018
Title:	County Council response to the following consultations: <ol style="list-style-type: none">1. Proposed changes to permitted development rights for non-hydraulic shale gas exploration; and2. Proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime
Report From:	Head of Strategic Planning

Contact name: Lisa Kirby-Hawkes

Tel: 01962 845795

Email: lisa.kirby-hawkes@hants.gov.uk

1. Recommendation

- 1.1. That members of the committee note the contents of the response to the consultation on proposed changes to permitted development rights for non-hydraulic shale gas exploration.
- 1.2. That members of the committee note the contents of the response to the consultation to proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime.

2. Executive Summary

- 2.1 The Government issued 2 consultations relating to shale gas development in July 2018. These are of interest to Hampshire as the County has existing conventional oil and gas resources and the potential for shale gas and oil.
- 2.2 This report sets out the responses made by the County Council to these consultations.

3. Consultation on the proposed changes to permitted development rights for non-hydraulic shale gas exploration

- 3.1 The consultation¹ related to proposed changes to permitted development rights for non-hydraulic shale gas exploration. It was issued by the Ministry of Housing, Communities & Local Government.
- 3.2 Permitted development relates to activities which do not require formal planning permission from the Local Planning Authority (Minerals and Planning Authority – such as Hampshire County Council). Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015². The Order sets out both what is allowed under each permitted development right, and any exclusions, limitations and conditions that apply to comply with the legal duty to mitigate the impact of development granted under permitted development. Where a proposed development does not fall within the permitted development limits, this means that an application for planning permission needs to be made to the local planning authority. Permitted development only covers the planning aspects of the development. It does not remove requirements under other regimes (e.g. environmental licencing and permitting or environmental legislation).
- 3.3 The consultation commenced on 19 July 2018 for 14 weeks, ending on 25 October 2018 and covered the following areas:
1. Whether to introduce a permitted development right for non-fracturing shale gas exploration development;
 2. Definition of non-hydraulic fracturing shale gas exploration;
 3. Development not permitted;
 4. Development conditions and restrictions;
 5. Prior approval;
 6. Time-limited or permanent permitted development right;
 7. Public sector equality duty.
- 3.4 The consultation sought views on the principle of granting planning permission for non-hydraulic shale gas exploration development through permitted development rights and asked a number of associated questions relating to locational limitations, conditions that might be applied and whether any permitted development right should be permanent or temporary only.
- 3.5 The proposed changes only related to shale gas exploration. The exploratory phase of oil and gas extraction seeks to acquire geological data to establish whether hydrocarbons are present, which in the case of shale gas may involve drilling an exploration well and conducting seismic surveys. This is then followed by a (testing) appraisal stage, and then a production stage.

¹ Proposed changes to permitted development rights for non hydraulic shale gas exploration: <https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>

² Town and Country Planning (General Permitted Development) (England) Order 2015: <http://www.legislation.gov.uk/ukSI/2015/596/contents/made>

Any permitted development right would not apply to the appraisal and production operations of shale gas extraction.

- 3.6 The proposed changes do not relate to any other stage of development (appraisal or production) or proposals which do not include hydraulic fracturing (fracking).
- 3.7 By law, development which is likely to have significant effects on the environment requiring an Environmental Impact Assessment would not be permitted development³.
- 3.8 County Council officers considered the contents of the consultation, discussing the implications of the proposed changes nationally and prepared a response to the question set in the consultation document as set out in Appendix B. The County Council's response can be summarised as follows:

The County Council does not agree with the proposed changes to permitted development rights for shale gas exploration. We have indicated that the definitions of PD should be left as they currently are. We have also indicated that we believe that the timing of any change to permitted rights is premature as the industry is in its infancy. Changes to permitted development rights for conventional oil and gas were not immediate and followed a passage of time as the industry developed and was established.

- 3.9 In an associated covering letter, we have also re-iterated our plea to the Government departments to keep us informed of the timing of any subsequent consultations relating to oil and gas (including shale) issues in advance of publication. We have made this point in a number of previous responses as the departments have historically released documents without any prior warning. As Minerals Planning Authorities, we will largely be the first point of contact for local communities, interested parties and local press when they wish to find out more about oil and gas issues and Government consultations. The flurry of documents and consultations issued in recent years relating to oil and gas development has often taken place without prior notice given to Minerals Planning Authorities about the timescales for their publication. This has often meant that local interest groups and the local press have seen sight of the documents or announcements around the same time as Minerals Planning Authority and will immediately contact the relevant authority with their enquiries. We have made the point that this was particularly the case with this round of consultations which resulted in extensive correspondences being sent to our elected members and officers. We have requested that the Government departments provide us with a briefing note in advance of key consultations or announcements so that we can react more speedily to the enquiries received and brief members as necessary.

³ The Town and Country Planning (General Permitted Development) (England) Order 2015: <http://www.legislation.gov.uk/uksi/2015/596/article/3/made>

4. Consultation on the proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime

- 4.1 The consultation⁴ related to proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime. It was issued by the Department for Business, Energy & Industrial Strategy.
- 4.2 Planning permission is currently required for each phase of oil and gas development from the relevant Minerals Planning Authority (MPA). An operator must seek planning permission under the Town and Country Planning Act 1990 for the extraction of hydrocarbons from the local Mineral Planning Authorities (MPA) (or from the Secretary of State for Ministry of Housing, Communities & Local Government on appeal or if a planning application is called-in by him for his determination).
- 4.3 The County Council is a MPA and determines any oil or gas proposal within its administrative area against the relevant policies of the adopted Hampshire Minerals and Waste Plan (2013)⁶ as well as its associated oil and gas supplementary planning document (2016)⁷. The Plan and associated guidance include robust policies and guidance relating to all issues associated with proposals for onshore oil and gas development. Policy 24 (Oil and gas development) is of particular relevance as it relates to the three different phases of oil and gas development (exploration, appraisal and production) for both conventional and unconventional oil or gas developments.
- 4.4 Under the current planning regime, any shale gas production proposal would need to go through the same permitting and permissions process as other onshore oil and gas production phase projects. The planning system controls the development and use of land in the public interest and this includes ensuring that the new development is appropriate for its location, taking account of the effects (including cumulative effects) such as pollution, visual impact, transport movements and flood risk among many others.
- 4.5 The Government considers that major shale gas developments which are at the production phase would be most suitable for inclusion in the Nationally Significant Infrastructure Project regime as these could be of a scale to be considered nationally significant. Planning applications for production projects which do not meet the criteria to be considered nationally significant

⁴ Criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime: <https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

⁵ Town and Country Planning Act 1990: <https://www.legislation.gov.uk/ukpga/1990/8/contents>

⁶ Hampshire Minerals and Waste Plan (2013): <http://documents.hants.gov.uk/mineralsandwaste/HampshireMineralsWastePlanADOPTED.pdf>

⁷ Oil and gas development Supplementary Planning Document (2016): <http://documents.hants.gov.uk/planning-strategic/HMWPOilandGasDevelopmentinHampshireSPDFinalFeb2016.pdf>

will still be subject to the planning process under the Town and Country Planning Act 1990.

4.6 The Planning Act 2008⁸ created a planning process for Nationally Significant Infrastructure Projects in fields of development including energy, water, waste water, road and rail transport and hazardous waste disposal. Nationally Significant Infrastructure Projects are major infrastructure developments of a type and scale defined under the Planning Act 2008. The Nationally Significant Infrastructure Project regime is bespoke in three main ways:

- **Establishes the need:** If an application for development consent demonstrates that it meets the national evidence base and 'need' in planning policy terms set out in the National Policy Statement, that national need does not need to be revisited again during the examination nor in determining the application.
- **Timescales:** The Planning Act 2008 sets out prescribed timescales for the examination and determination of applications for development consent. This means, in effect, that decisions must be made within one year of commencement of the examination, unless one or more of the relevant deadlines are extended by the Secretary of State. There are extensive requirements on applicants to consult with local authorities, communities and statutory consultees at the pre-application stage as set out in the Planning Act 2008. There is the opportunity for local authorities, statutory bodies and other interested parties to participate in the examination of an application. Members of the public can also take part in the examination stage if they register as an interested party.
- **Single application:** Finally, if a Development Consent Order is granted, it can incorporate other powers which cannot be included in a planning permission under the Town and Country Planning Act 1990. For example, powers for the compulsory acquisition of land.

4.7 The Act provides the legal framework for applying for, examining and determining applications for Nationally Significant Infrastructure Projects; taking into account any National Policy Statements where necessary. The final decision for granting development consent rests with the relevant Secretary of State, for matters relating to the field of energy this would be the Secretary of State for BEIS.

4.8 For projects falling within scope of what is defined in the Planning Act 2008 as a Nationally Significant Infrastructure Project, this becomes the only route for obtaining planning consent. The Planning Act 2008 defines the type and scale of infrastructure developments considered to be nationally significant.

4.9 Proposals considered under as a Nationally Significant Infrastructure Project would be considered against relevant National Policy Statements. In making decisions on such applications, the Secretary of State must also have regard

⁸ Planning Act 2008: <https://www.legislation.gov.uk/ukpga/2008/29/contents>

to any local impact report submitted by a local authority, and any other matters which the Secretary of State considers are both important and relevant to any decision. There are currently designated National Policy Statements which are grouped into fields including an overarching field of energy⁹.

- 4.10 Under the Planning Act 2008, an operator wishing to construct a Nationally Significant Infrastructure Project must submit a development consent application to the Secretary of State. As part of this process, the operator will need to have assessed any likely significant impacts of the proposed project. For such projects, where an application is accepted, the Secretary of State will appoint an 'Examining Authority' to examine the application in accordance with any relevant National Policy Statement. The Examining Authority will be arranged by the Planning Inspectorate and will be either a single Inspector or a panel of between two and five Inspectors. The examination will take into account any information and have regard to any local impact report submitted by the local authority as well as representations from statutory bodies, non-governmental organisations and other interested parties including the local community. Once the examination has been concluded, the Examining Authority will reach its conclusions and make a recommendation to the Secretary of State, who will make the decision on whether to grant or to refuse consent.
- 4.11 The Government sought views on the potential timing and the criteria for major shale gas production projects to be included in the Nationally Significant Infrastructure Project regime. The industry is still in the exploration stage in the UK and this initial consultation is focused on preparing for a potential future production phase. The consultation document describes the context for the consultation and provides an overview of the current application process as well as the potential future application process were shale gas production projects to be included in the Nationally Significant Infrastructure Project regime.
- 4.12 This proposed change would mean if individual infrastructure projects meet the relevant thresholds set out within the Planning Act 2008, then the Secretary of State automatically becomes the decision-maker for determining an application for development consent. This would mean that Hampshire County Council would no longer be the determining authority for any shale gas production proposals within its administrative areas as these would be determined by the Planning Inspectorate.

The consultation asked if there was agreement with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime and what criteria should be used to determine the schemes that would fall within the regime (number of well sites, volume of recoverable gas, requirements for associated equipment etc.).

⁹ fossil fuel electricity generation (EN-2), renewable energy (EN-3), gas supply infrastructure and gas and oil pipelines (EN-4), electricity networks (EN-5); and nuclear power generation (EN-6).

4.13 The Government considers that current shale gas exploration and appraisal stage projects are of a smaller scale and are more appropriate for consideration under the Town and Country Planning Act 1990 as at present so are not impacted by the proposed changes

4.14 The County Council's response can be summarised as follows:

The County Council does not agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime. This is based on the following areas:

- *The purpose of the planning system being to contribute to the achievement of sustainable development;*
- *The Government has previously stated its commitment to passing new powers and freedoms to local areas so that power can be exercised, close to the people who are affected by decisions, rather than distant from them. This was most demonstrated by the introduction of the Localism Act in 2011; The Government indicated that the Localism Act contained provisions to make the planning system clearer, more democratic, and more effective;*
- *Local government plays a crucial role as it is directly responsible for important public services. It makes sure that other services work together effectively for the good of the community. With councillors elected by and accountable to local people, local government provides democratic leadership. Local authorities are best placed to understand the requirements, concerns and nature of their communities and to take forward sustainable planning decision-making. Proposing to take the ability to determine applications of local community interest away from Local Planning Authorities contradicts the principles of localism.*

4.15 County Council officers considered the contents of the consultation, discussing the implications of the proposed changes nationally and prepared a response to the questions set in the consultation document as set out in Appendix C.

5. Next steps

5.1 The County Council submitted its response to both consultations on 24 October 2018.

5.2 Following the close of the consultations, the Government will consider the replies and issue its response.

5.3 With regards to the consultation on the proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime, as secondary legislation would be required in order to implement any proposed changes, the Government intends to

undertake a further consultation. This further consultation would build on the evidence from this initial consultation and be accompanied by a full impact assessment.

6. Further information

- 6.1 More information on oil and gas development can be found on our website¹⁰. This includes links to our oil and gas Frequently Asked Questions document¹¹.

7. Conclusions

- 7.1 That members of the committee note the contents of the consultation response in relation to the proposed changes to permitted development rights for non hydraulic shale gas exploration.
- 7.2 That members of the committee note the contents of the consultation response in relation to proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime.

Appendices:

Integral Appendix A – Corporate or Legal Information

Appendix B - Response to the consultation on the proposed changes to permitted development rights for non-hydraulic shale gas exploration

Appendix C - Response to the consultation proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime

¹⁰ Oil and gas information: <https://www.hants.gov.uk/landplanningandenvironment/strategic-planning/oil-gas-development>

¹¹ Oil and gas development in Hampshire: <https://www.hants.gov.uk/landplanningandenvironment/strategic-planning/oil-gas-development>

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 requires noting by the Regulatory Committee 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 documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

Consultation: Permitted development for shale gas exploration

<https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>

Consultation: Inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime

<https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

Appendix B:

Submitted response to the consultation on Permitted development for shale gas exploration

Question	County Council response
<p>1 a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No</p> <p>b) If No, what definition would be appropriate?</p>	<p>No.</p> <p>The County Council does not agree with the Government's proposal to give permitted development rights for shale gas exploration. The definitions of PD should be left as they currently are.</p>
<p>2 Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right? Yes/No</p>	<p>No. The County Council does not agree with the proposal to give permitted development rights for shale gas exploration.</p> <p>The Council believes that the timing of any change to permitted rights is premature. The industry is in its infancy. Changes to permitted development rights for conventional oil and gas were not immediate.</p> <p>If it is the Government's intention to review PD rights for shale, it needs to be consistent with the provisions already in place for conventional oil or gas developments as set out under Schedule 17 of the Order. It should not be a blanket approach as proposed.</p>
<p>3 a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following? Yes/No</p> <ul style="list-style-type: none"> • Areas of Outstanding Natural Beauty • National Parks • The Broads • World Heritage Sites • Sites of Special Scientific Interest 	<p>Yes. If the Government is minded to include permitted development rights for shale exploration, the Council agrees that the list set out under question 3 a) should be applied.</p>

	<ul style="list-style-type: none"> • Scheduled Monuments • Conservation areas • Sites of archaeological interest • Safety hazard areas • Military explosive areas • Land safeguarded for aviation or defence purposes • Protected groundwater source areas 	
	b) If No, please indicate why.	N/A
	c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?	No.
4	What conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development?	<p>The County Council considers that the following conditions and restrictions should be applied:</p> <ul style="list-style-type: none"> • no trees on the land are removed, felled, lopped or topped and no other thing is done on the land likely to harm or damage any trees, unless the mineral planning authority have so agreed in writing; • before any excavation (other than a borehole) is made, any topsoil and any subsoil is separately removed from the land to be excavated and stored separately from other excavated material and from each other; • within a period of 28 days from the cessation of operations unless the mineral planning authority have agreed otherwise in writing; • any structure permitted and any waste material arising from other development so permitted is removed from the land; • any borehole is adequately sealed; • any other excavation is filled with material from the site; • the surface of the land on which any operations have been carried

		<p>out is levelled and any topsoil replaced as the uppermost layer, and</p> <ul style="list-style-type: none"> the land is, so far as is practicable, restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting.
5	Do you have comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?	The County Council considers that the potential considerations noted by way of example could all be of relevance (e.g. transport and highways impact, contamination issues, impact on water resources, air quality and noise, visual impacts, proximity of occupied areas, setting in the landscape, public consultation) and if included would make the process similar to applying for full planning permission. Therefore, the proposed changes would be redundant as the process would be as onerous as a planning application for both applicant and MPA.
6	Should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent?	If it is the Government's intention to go forward with the changes to permitted development for shale gas exploration, this should only be for 2 years. This will ensure that in the event unexpected impacts are associated with the activities, these can then be dealt with through the planning process.
7	Do you have any views the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equalities Act 2010?	No. Minerals can only be worked where they are found and as such the activities are unlikely to impact specifically on people with protected characteristics.

Appendix C:**Submitted response to the consultation on the inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime**

Question		County Council response
1	Do you agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime?	No.
2	Please provide any relevant evidence to support your response to Question 1.	<p>The County Council does not agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime.</p> <p>The purpose of the planning system is to contribute to the achievement of sustainable development. As set out in the NPPF (2018), at a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.</p> <p>The Government has previously stated its commitment to passing new powers and freedoms to local areas so that power can be exercised, close to the people who are affected by decisions, rather than distant from them. This was most demonstrated by the introduction of the Localism Act in 2011. It clearly stated when bringing forward the act that it would allow greater freedom and flexibilities for local government and this was considered to be vital in achieving a shift in power back to the local level which the Government wanted to see.</p> <p>When bringing forward the Act, the Government acknowledged that there were some significant flaws in the planning system. It stated that 'planning did not give members of the public</p>

		<p>enough influence over decisions that make a big difference to their lives. Too often, power was exercised by people who were not directly affected by the decisions they were taking. This meant, understandably, that people often resented what they saw as decisions and plans being foisted on them. The result was a confrontational and adversarial system where many applications end up being fought over’.</p> <p>The Government indicated that the Localism Act contained provisions to make the planning system clearer, more democratic, and more effective.</p> <p>Local government plays a crucial role as it is directly responsible for important public services. It makes sure that other services work together effectively for the good of the community. And with councillors elected by and accountable to local people, local government provides democratic leadership. Local authorities are best placed to understand the requirements, concerns and nature of their communities and to take forward sustainable planning decision-making. Proposing to take the ability to determine applications of local community interest away from Local Planning Authorities contradicts the principles of localism.</p>
3	<p>If you consider that major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, which criteria should be used to indicate a nationally significant project with regards to shale gas production? Please select from the list below:</p> <p>a. The number of individual wells per well-site (or ‘pad’)</p> <p>b. The total number of well-sites within the development</p>	<p>In the event that the Government consider major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, the County Council considers that the following criteria should be applied to indicate a nationally significant project with regards to shale gas production?</p> <p>h) A combination of criteria encompassing the following:</p> <p>a) The number of individual wells per well-site (or ‘pad’)</p>

	<p>c. The estimated volume of recoverable gas from the site(s)</p> <p>d. The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)</p> <p>e. Whether the well-site has/will require a connection to the local and/or national gas distribution grid</p> <p>f. Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants</p> <p>g. Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc</p> <p>h. A combination of the above criteria – if so please specify which</p> <p>i. Other – if so please specify</p>	<p>b) The total number of well-sites within the development</p> <p>d) The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)</p> <p>g) Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc</p>
4	<p>Please provide any relevant evidence to support your response(s) to Question 3.</p>	<p>In the event that the Government consider major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, the County Council considers that the criteria identified under question 3 should be applied. This is based on the following:</p> <p>The number of wells per well site and the total number of well-sites within the development is an important consideration because it will determine the scale of the development.</p> <p>The estimated production rate is also important as it guides the scale and timescales of the development as well as potentially other associated impacts e.g.</p>

		<p>HGV movements.</p> <p>Connections to other infrastructure should also be considered as it means that the site will interact with other utilities and provisions.</p>
5	<p>At what stage should this change be introduced? (For example, as soon as possible, ahead of the first anticipated production site, or when a critical mass of shale gas exploration and appraisal sites has been reached).</p>	<p>Although the Council does not agree with the proposed change, if the Government is minded to introduce the change it should take place once a critical mass of shale gas exploration and appraisal sites has been reached.</p>
6	<p>Please provide any relevant evidence to support your response to Question 5.</p>	<p>Change following a critical mass of shale gas exploration and appraisal sites being reached will provide an opportunity for local authorities to continue determining proposals for exploration and appraisal. It will also ensure that industry development takes place before such a significant change. It will also provide an opportunity to review / reflect on historic planning process applications to date nationally. It will be important that Government supports local authorities financially in the processing and determining of applications until such a change takes place.</p>

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	14 November 2018
Title:	Monitoring and Enforcement Update
Report From:	Director of Economy, Transport and Environment

Contact name: David Smith

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1. Recommendation

1.1. That the contents of this report are noted.

2. Executive Summary

2.1. This report is to provide information to the Regulatory Committee on the Monitoring and Enforcement work undertaken by Strategic Planning during the period July 2018 – October 2018.

2.2. Officers have been actively ensuring compliance with minerals and waste permissions granted by Hampshire County Council, investigating any complaints received as well as taking enforcement action where it is expedient to do so.

2.3. The report details the number of complaints on authorised and unauthorised sites, and the outcome of negotiations, including, when necessary, enforcement action undertaken.

2.4. The report also details the routine monitoring of chargeable and non-chargeable sites and development control work dealing with Planning Condition (Article 27) applications and Non-Material Amendments.

3. Complaints

3.1. The majority of the complaints received during the period July 2018 – October 2018 refer to unauthorised development (11 sites) and breaches of operational planning conditions on existing mineral and waste sites (5 sites). Enforcement action was initiated on 1 site to secure planning control although planning applications are to be submitted putting further action on hold on 3 of the sites. A further 8 planning applications were submitted to address issues raised by complaints or routine monitoring. The remainder were enquiries made about general site operations, fly-tipping, odour and waste related development that were dealt with in-house or referred to either the Environment Agency (EA) or Local Planning Authorities as non-County matters.

4. Enforcement Actions

4.1. In the 3 month period to the end of October 2018, there was one Planning Contravention Notice and one Breach of Condition Notice served, with all other matters either addressed through the planning system or remedied through negotiation.

Table 1: Enforcement action undertaken between July – October 2018

Site	What enforcement action has been undertaken and why
Land to the west of Blackstocks Lane, Up Nately, Hook, RG27 9PH	A Planning Contravention Notice was served to investigate concerns about the importation and storage of waste on land outside Certificate of Lawful Use area and the burning and importation of Construction & Demolition waste within Certificate of Lawful Use area.
Manor Farm Recycling Facility, Pennington, Lymington, Hants, SO41 8QZ	A Breach of Condition Notice was served requiring a reduction in the height of stockpiles on site to the permitted 3 metres.

4.2. The following provides an update on enforcement activities previously reported to the committee.

Table 2: Update on enforcement activities

Site	Update
Courtwood Farm, Fordingbridge	Following the withdrawal of planning application (16/11544) and continued complaints, a Breach of Condition Notice was drafted. However, a further planning application was submitted (17/10612) to address issues on site. This was refused by Committee on 24 January 2018 and enforcement action was authorised. An Enforcement Notice was served on 31 January 2018 requiring the site to operate under conditions 4 (HGV numbers), 7 (operating within the building) and 9 (no outside sorting of waste) of the original permission. The applicant appealed against the Enforcement Notice (and the refusal of the planning application) on the grounds that it should be granted permission, that our requirements are unreasonable and that we have not allowed sufficient time for them to comply with the Notice. We

	are currently awaiting confirmation from the Planning Inspectorate that the Appeal is valid and notification of the timetable for the Appeal.
Down Barn Farm, Boarhunt Road, Fareham	<p>Planning permission was granted in 2009 for the Use of the site for hardcore /concrete recycling solely for the applicant (P/09/0396/MW) Three subsequent applications have been submitted to retrospectively vary several aspects of the operation (the sole use, HGV numbers and layout) (P/17/1104/CC, P/17/0471/CC and P/16/0299/CC) but these have all been refused. The applicant has since employed a Planning Consultant to address the reasons for the refusals. In the meantime, Officers noted that the site was operating outside of their permitted hours. Consequently, a Breach of Condition Notice was drafted requiring the site to operate only within the hours permitted by the permission. There have no further reports of such contraventions, although the application is still being prepared.</p>
Newlands Farm, Tanners Lane, Fareham, PO14 2HT	<p>A Planning Contravention Notice (PCN) was served to investigate concerns about the importation, storage and treatment of waste. Following discussion the landowner expressed a desire to submit an application to regularise the situation, but uncertainty over the timetable for the Stubbington By-Pass (which runs through the site) complicated their plans. Therefore, whilst enquiries about the By-pass timetable were made, the operation ceased, the plant and machinery were removed and the materials started being cleared. This clearance work ceased so an Enforcement Notice was served. A planning application was subsequently submitted (P/17/0664/CC) for a temporary permission, but Highways require the land sooner than expected, so the application was withdrawn and the Enforcement Notice was re-served with a 6 month compliance period. Compliance with the requirements of the Notice is being monitored, with site clearance due for completion by 1 March 2018.</p> <p>Reports had indicated that activities may have restarted on the site, but following investigations it was determined that the work was the operator clearing materials already in use on the site as screening bunds and hardstanding.</p>
Carousel Dairy (Basingstoke AD Plant), Manor Farm, Farleigh Wallop,	<p>Following complaints and further investigation it was determined that there were breaches of the conditions setting out the hours that lorries could access the site. A Breach of Condition Notice (BCN) was served to cease the activity and prevent future breaches. A Planning application was subsequently submitted</p>

Basingstoke	<p>(16/00322/CMA) to address the issue and clarify the permitted times and vehicle numbers. This was approved by the committee in July 2016 with an increase in vehicle movements permitted for an initial trial period of one year. Proactive site management and regular Liaison Panel meetings appear to be improving the situation and monitoring of the traffic movements is ongoing using the vehicle number plate recognition system. The application to make the vehicle increases permanent was considered at the September 2017 meeting of the Committee when it was resolved to grant permission for another 1 year period to allow for further monitoring which will be done through continued ANPR monitoring (17/01876/CMA)</p> <p>Monitoring of the ANPR data has continued throughout the year and a further application to make the vehicle increases permanent has been submitted.</p>
Land to the rear of Peacocks Nursery, Ewshot	<p>Following refusal of a second planning application (16/03156/HCC) enforcement action was authorised by Regulatory Committee on 22 March 2017. An Enforcement Notice was served on 22 April 2017 to come into effect 24 May 2017. This EN was appealed (on the grounds that it should be granted planning permission) and the Appeal was heard on 12 December 2017.</p> <p>The Decision was received on 16 January 2018 and the Appeal was upheld (Decision Notice included under 'Appeals' tab of application above). Consequently the operation has planning permission for a temporary period of 20 months with 4 months to complete restoration.</p> <p>The schemes required to be submitted for approval have been agreed and the operator is in the process of setting up the site in accordance with the approved plans.</p>
Homestead Farm, Penton Copse, Andover	<p>Following appeals against three Enforcement Notices the enlarged waste handling replacement building and site offices and the extension to the site area now have planning permission. As a result of subsequent site inspections an application was submitted for changes to the layout of the site, relocation of the office building and an extension to the waste handling building. The change to the layout and relocation of the office building were approved, however a further application is required to address the extension of the waste handling building and associated operational matters. This further application is being prepared, although has been delayed due to other enforcement issues on</p>

	another, nearby site.
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4.3. Further information on the full suite of enforcement powers available to the County Council as Minerals and Waste Planning Authority (including powers to service PCNs, BCNs and ENs) are included in the County’s Enforcement and Site Monitoring Plan. This can be found on the Strategic Planning website at: <http://documents.hants.gov.uk/planning-strategic/HampshireCountyCouncilPlanningEnforcementandSiteMonitoringPlanJuly2016.pdf>.

4.4. The following table provides information on the joint enforcement activities which have been undertaken with the Environment Agency, the Police and District Planning Authorities.

Table 2: Update on joint enforcement activities with the Environment Agency, the Police and District Planning Authorities

Site	Joint working with	Update
Whitehouse Field, Goodworth Clatford	Test Valley Borough Council, Environment Agency, HCC Highways	<p>In late 1990s, planning permission was granted by Test Valley Borough Council (TVBC) for construction of an extension to the existing golf course. This involved the importation and tipping of inert materials as an engineering operation. This work continued for approximately 10 years until the then operator left the site in 2010 and TVBC considered the development completed. Several years later the operator of Homestead Farm bought the land. He claimed that surveys of the site had shown that the development had not been fully completed and stated his intention to restart work. His argument is that the levels survey agreed under the permission is so vague and contradictory that there is potentially up to 6 metres of fill required (approx. 450 000 tonnes of material).</p> <p>The authorities do not accept that this is authorised and have liaised closely to ensure that if and when work does start the appropriate enforcement action can be taken. Following legal advice from Counsel, it has been decided that the best way forward is for TVBC to enforce against any work as a breach of the original permission, with the EA looking to prosecute for tipping without a Permit. HCC Highways are also involved as part of the site access is highway land historically used by locals as a small car park, and the</p>

		new landowner has been fencing and blocking it off. HCC Highways have therefore taken legal action to secure clearance of the fences and blockades and maintain access. There has been no further work on site whilst the landowner attempts to address Permitting issues with the Environment Agency.
Selborne Brickworks	Natural England and Police's Wildlife Crime Team	Further reports of digging holes and burying waste adjacent to settlement ponds on the Brickworks site. Investigation found no evidence of tipping or of removal of clay off site so this was not a County Planning matter. However, this area is a known habitat of Great Crested Newts (a protected species). The landowner was prosecuted in the past for similar destruction so knows he cannot undertake such works without approval of Natural England (NE). The Police and NE started a prosecution, in which the Enforcement Officer is involved as a witness, and the case was due to go to Court last month, but has been adjourned.
Importation, storage and burning waste at Trampers Lane, North Boarhunt	Environment Agency (EA)	Gathering of evidence complicated by existence of mobile home park on the site and lack of available witnesses. The landowner pleaded guilty to charges brought by the EA and received a £3,000 fine for the deposit of trommel fines, but investigations into the importation and burning of general skip waste continues.
Importation, storage and burning of waste at Mill View Farm, Old Mill Lane, Denmead	Environment Agency	Part of an investigation by the EA's Crime Investigation Team. The prosecution is continuing.

5. Site Monitoring

- 5.1. Chargeable sites – under the [Town and Country Planning \(Fees for Applications and deemed applications\) \(Amendment\) \(England\) Regulations 2006](#) the County Council is able to charge fees for the monitoring of quarries and landfill sites in the County. Fees are charged for a set number of monitoring visits, the number of visits being dependent on the stage of operations at each site; whether operational, in aftercare or inactive. The number of visits is agreed with each operator and is in line with an assessment of each site made by the County Council. Active sites are

charged at £397 per visit for between four and eight visits per year. Sites in aftercare are charged at £397 for one visit per year. Inactive sites are charged £132 for one annual visit.

- 5.2. There are 28 active sites, 12 in aftercare and 5 dormant sites liable for chargeable visits. The County Council also undertakes monitoring of 2 active sites for South Downs National Park Authority.
- 5.3. During this period all chargeable visits were undertaken, bringing in approximately £9,000 in fees.
- 5.4. Non-chargeable sites – these include waste processing sites, wastewater and treatment works and metal recyclers. These vary from the large Energy Recovery Facilities (ERF) and Materials Recovery Facilities (MRF) to the smaller scale recycling and transfer facilities and updating existing wastewater treatment works. The larger developments attract much attention in their locality and require regular monitoring to ensure that the local amenity is not impacted, whereas the smaller, built developments require monitoring during construction and implementation, but once up and running need less regular attention and resources dictate these sites only get further visits should complaints be received. Matrix working arrangements have been made with Waste & Resource Management that their officers undertaking visits to waste sites operating under the County's waste contract also look at planning issues to provide greater coverage.

6. Liaison Panels

- 6.1. During this period Liaison Panel meetings were held for the following sites: -
 - (a) Basingstoke AD Plant, Carousel Dairy, Farleigh Wallop.
 - (b) Yokesford Industrial Estate, Michelmersh.
 - (c) Lee Lane Recycling Facility, Nursling.
 - (d) Humbly Grove Oilfield.
 - (e) Plumley Wood Quarry, Somerley.
 - (f) Frith End Sandpit, Kingsley.
 - (g) Bushywarren AD Plant, Herriard.
 - (h) A303 Recycling Facility, Longparish.
 - (i) Roke Manor Quarry, Romsey.
 - (j) Mortimer Quarry, Mortimer West End.
 - (k) Forest Lodge Home Farm Quarry, Hythe

7. Development Management

Planning Condition (Article 27) applications:

- 7.1. Where conditions of new permissions require details to be submitted and approved for the proper implementation and control of the development, Article 27 applications are required. Under the [Town and Country Planning \(Fees for Applications and Deemed Applications, Requests and Site Visits\) \(England\) Regulations 2012](#), a fee per submission is required for the

discharge of any details submitted. Following the recent planning fee increase this will now be £116 per submission.

7.2. During the period, Article 27 applications were received and approved or are being determined for 24 planning permissions, totalling £2,784.

7.3. As detailed in the last update, following adoption of the Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the [Town and Country Planning General Regulations 1992](#), enforcement updates now also include information on Article 27 applications for County Council developments and any breaches of planning control.

Non-Material Amendments (NMAs):

7.4. Non-Material Amendments (NMAs) are minor changes to the operation of authorised sites that can be agreed by an application for non-material amendment if the change has no substantial impact on the local amenity. Such an application requires a fee but does not involve general consultation and determination by Committee.

7.5. Over the period four NMAs were determined:

- The A303 Recycling Facility, Drayton Road, Barton Stacey SO21 3QS - erection of minor additional fixed plant to PP 17/02024/CMAN;
- Roke Manor Quarry, Old Salisbury Lane, Shootash Romsey - Changes to the layout and phasing;
- The Anchorage Children's Home, North Road, Dibden Purlieu SO45 4PG - Change of entrance path location; and
- New Milton County Junior School, Old Milton Road, New Milton BH25 6DS - NMA to increase school footprint, omission of path, adjustment to external play spaces, external fencing lines and cycle store location, addition of a new footpath to the north of the building, new footpath linking the Pre-School hard play area to the existing New Milton Junior School footpath, and minor adjustment to the entrance path layout.

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	yes

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.)

DocumentLocation

None

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