

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods <i>Countryside Access Group Manager</i>
Date:	2 February 2023
Title:	Application for a Definitive Map Modification Order to record a public footpath between Footpaths 19 and 20 in Pamber Green Parish of Pamber

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Purpose of this Report

1. The purpose of this report is to assist the Countryside Access Group manager in determining whether to accept an application for a Definitive Map Modification Order to record a public footpath in the parish of Pamber.

Recommendation(s)

2. That the application should be accepted and authority given for the making of a Definitive Map Modification Order to record a public footpath with a width of 2.5 metres as shown between Points A and B on the attached plan. The Order will be subject to the limitation of a gate at Point B.

Executive Summary

3. This is an application made by a member of the public ('the applicant') in 2020 under Section 53 of the Wildlife and Countryside Act 1981, to record a footpath in Pamber. The application is supported by user evidence that the applicant believes demonstrates that a public right of way should be recorded on the basis of long-term use of the claimed route, and also historic documentary evidence that the applicant believes demonstrates that the claimed route was previously considered to be a public right of way.
4. Having considered the evidence submitted with the application, and undertaken additional research of historic documentary evidence, it is considered that there are sufficient grounds to record a footpath along the claimed route.

Legal framework for the decision

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

- (2) As regards every definitive map and statement, the surveying authority shall-
- a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
 - (b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of those events [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.
- (3) The events referred to in sub-section (2) are as follows -
- (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -
 - (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;

HIGHWAYS ACT 1980 – Section 31: Dedication of way as highway presumed after public use for 20 years. (PART)

(1) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

PRESUMED DEDICATION AT COMMON LAW

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike a dedication under S.31 of the 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.

CASE LAW

Garland and Salaman v Secretary of State for Environment, Food and Rural Affairs and Surrey County Council [2020]¹

The judgement discusses the application of the case law decisions of *R v Secretary of State for the Environment ex parte Blake* [1995], and *R (Godmanchester Town Council) v Environment Secretary* [2008]. The former is also cited in 'Rights of Way – A Guide to Law and Practice'². The point of interest is the judgement relating to the landowner's intention when erecting gates and how members of public using a route would interpret such barriers. The court upheld the Secretary of State's conclusion "that users of the footpath would have understood the presence of the locked barriers to (...) prohibit and prevent the use of the Order route by motor vehicles."

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

5. The claimed route, which is located in the Parish of Pamber, commences at a junction with Footpath 19 (Point A on the attached plan), approximately 35

¹ [Garland & Anor v The Secretary of State for Environment, Food And Rural Affairs \[2020\] EWHC 1814 \(Admin\) \(10 July 2020\) \(bailii.org\)](#)

² By John Riddall and John Trevelyan. Fourth edition, 2007.

metres to the south of Pamber Forest. The claimed route continues in a south-westerly direction, past stable buildings and along a track between fields, to a gateway and a junction with Footpath 20 (Point B).

6. The length of the claimed route is approximately 130 metres.
7. The land over which the claimed route runs is owned by two residents of Bicester, who acquired the land in March 2019. The applicant has stated that the landowner inherited the land from a deceased relative. The land is currently in the process of being divided and sold, separately, to two individuals.
8. A site visit was conducted in December 2022. The Investigating Officer walked around the adjacent footpaths, then met one of the prospective landowners to walk the claimed route together. Photographs from the site visit are provided in Appendix 4.

Issues to be decided

9. The primary issue to be decided is whether there is evidence to show that public rights subsist, or can be 'reasonably alleged' to subsist along the claimed route. At least one of these tests must be satisfied for an Order to be made. In the case of an application that concerns a route not already recorded on the definitive map, it is simply necessary to demonstrate that the 'reasonably alleged' test has been met (in accordance with Section 53(3)(c)(i)). If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, an Order should be made so that the evidence can be tested at a public inquiry. A higher threshold must be met for an Order to be made in instances where the application concerns a route that already appears on the definitive map.
10. Case law has decided that the burden of proof associated with the confirmation of Definitive 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. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order if it is satisfied that the way subsists 'on the balance of probabilities'.
11. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, it must be demonstrated that any change to the map is supported by evidence. This might be proved by historic documentary evidence or by evidence of use in the recent past.
12. 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.

13. If an application is approved and an Order is to be made, then the alignment of the route, and the status and width of the way and any lawful limitations to use must also be determined. Authority for the inclusion of those particulars in the Order to change the definitive map and statement should also be given.
14. Where a Definitive Map Modification Order is made, the process allows for objections to the Order to be made. Further evidence could potentially be submitted for examination along with an objection. In these circumstances, the County Council cannot confirm the Order, and the matter would need to be referred to the Secretary of State for determination.
15. In the event that an application is refused, the applicant has the right to appeal the refusal to the Secretary of State under Schedule 14 to the 1981 Act, and they may direct the County Council to make the Order that is sought if they agree that the evidential threshold has been met. The Schedule 14 process allows for the introduction of additional evidence at appeal stage, and this could result in the County Council being directed to make an Order based upon evidence that was not before it at determination stage. The stance taken by the County Council in the event a decision not to make an Order is appealed will therefore depend upon the particulars of each case.

Background to the Application

16. The application was submitted in May 2020 by a member of the public. Due to a backlog of applications the matter was not taken up for investigation at the time. In 2021, the applicant appealed to the Secretary of State due to the County Council's failure to determine the application within 12 months of receipt. The County Council were subsequently directed to determine the application by November 2022.
17. The application consisted of the required forms and 25 user evidence forms, in addition to a supporting document, providing context for the application and copies of the Highway Handover Map (1929) and an Ordnance Survey Map (1894). The applicant stated that he has searched through the London Gazette "for any route alterations or stopping-up orders affecting this path. None were found."
18. In the supporting document, the applicant stated that he has used the claimed route for 35 years, and gives context to the change of access to the route:

"The previous landowner has never raised any objection to anyone using this route, in many cases having greeted them as they were doing so. Unfortunately she died a few years ago. The new landowners have also not raised objections until approximately April 1 2020, when suddenly without warning a chain was placed across the track at the junction with FP20, the step-through at the stables was blocked, and the gate was locked.

(...) The land is rented to a lady (...) who keeps horses in the fields. It is believed she instigated the blocking of the route.

It should be noted that the alternative access to the Forest using existing public rights of way is not practical. It is much further, involves five field boundary crossings (currently stiles in poor or dangerous condition), and, most importantly, is completely waterlogged for much of the year.”

19. When the application was taken up for investigation and the applicant notified, he provided the following additional comments:

“I have no further evidence to offer – I consider what was supplied to be very substantial. In the time that has passed the nearest alternative to the path, Pamber FP20/2 and FP23/2, has been improved by the Countryside Team to the extent of replacing stiles with gates. Unfortunately it remains unusable for most of the year, except by those in wellingtons, due to waterlogging. Due to the watercourses in the area this cannot be rectified except by a comprehensive drainage scheme, or a long boardwalk.”

Consultations

20. The following people and organisations have been consulted on this application: Pamber Parish Council, Basingstoke and Deane Borough Council, the Ramblers, the Open Spaces Society, and the Countryside Service Area Manager. Additionally, the County Council Member for Calleva ward, Councillor Rhydian Vaughan, has been made aware of the application. Where responses were provided, these are set out below. During the consultation, emails were also received from three members of the public who had earlier completed user evidence forms; these responses are discussed further at paragraph 54.

21. Councillor Rhydian Vaughan

“I am aware that some people have used this track on a reasonably regular basis. It seems to have been a short cut to Pamber Forest as the existing footpaths would have taken longer. Whether the owner had taken steps to block off this irregular access, and it was still being used I am unable to comment.”

22. Basingstoke and Deane Borough Council

“Since we do not own the land in question, we have no further comments.”

Comments by the Landowners

23. The land where the claimed route is located is owned by two residents of Bicester; the applicant states that they inherited it following the death of the previous landowner. The landowners responded to the consultation to ask the investigating officer to speak to the two individuals who will buy the land from them in due course. The consultation was subsequently shared with the prospective buyers, one of whom (Landowner A) responded to the consultation to outline their knowledge of the route as well as indicating that they are conditionally willing to allow the public permissive access to the route, whilst the second prospective landowner (Landowner B) indicated that they are opposed to the application.

24. Prospective Landowner A

"Having lived on new road for x9 years and since speaking to locals who have lived here far longer than myself, it is my belief that there is only x1 recognized footpath as shown by the purple line [the existing public footpaths on the consultation plan]. However from at least 2012 (ie when I moved here) – 2020, the former owner of the farm let locals walk straight up the middle of the track to the stables at the far end, at which point you had to duck under or climb over a number of different fences to rejoin the footpath at point A. I believe another factor in this happening was because the recognized footpath was unmanaged at that time and became overgrown, plus no proper gates/styles were in place, so people took the easier route. The [claimed route] is therefore not a recognized route but simply a gesture of goodwill. Personally once we have taken ownership of the fields and stables to the left of the track I have no issues enabling locals to revert to using the track, of which I will have shared ownership (especially in the winter when so muddy) but do not wish for it to become a recognized path, furthermore I do not wish to incur any additional costs associated with fitting additional gates etc.. and if locals abuse the goodwill and damage existing fencing/gates or dog mess becomes a nuisance we would revoke permission and insist that they must use the recognized path."

25. Prospective Landowner B

"I have given this matter a lot of thought and discussed with Wendy the issues that she and Lin experienced when allowing people to walk between the stables.

I would like the paths to remain as they are as there is no real need for a diversion even if the footpath is wet in winter (I am sure the responsibility falls with the local authority to ensure that the path is usable at all times, perhaps by improving the solidity of the path). I of course will fence the existing footpaths and maintain the boundary.

Wendy had a lot of trouble with the public feeding her ponies when they could wander straight up to the yards and I cannot afford to have this happening to my horse with a lack of teeth. He will choke on apples and carrots etc. and my horses will be hanging around the gate by the yard waiting to be fed by me! Fencer units and batteries were stolen from near the yards and she did have issues with dog fouling.

An extra path in my field will result in yet more fencing needed to keep dogs from straying in with the horses as people don't keep them on their leads.

I also feel it could be tricky to reverse allowing people access if we wanted to stop them using the path in the future. (...) I feel the yard will be more secure without people walking through the yards and all my horsey gear will be kept there."

Documentary Evidence

Documents held in archives, whether Hampshire Record Office or online archive collections, are marked by an 'A'

26. Pamber Tithe Map (1838) (A)³

The claimed route is within the area covered by the Pamber tithe. The claimed route is not depicted on the map, which does not appear to show minor routes, except for those which lead to dwellings. The area where the claimed route is located is Parcel 111, which the accompanying Tithe Award⁴ describes as 'Allotment Pamber Green', owned by Christopher Griffiths, and occupied by two individuals (one name illegible, the second name is George Follett); the state of cultivation is listed as furze.

This document provides neutral evidence for the existence of the claimed route as a public right of way at this time. Whilst the route is not shown on the map, no conclusions about its existence can be drawn, because other minor routes have not been shown.

27. Ordnance Survey Maps - County Series (25 inches to 1 mile) – c.1875 – 1911

Three maps were published by the Ordnance Survey at a scale of 25 inches to 1 mile between c.1875 and 1911.

On the first edition (c.1875), the claimed route is depicted with a parallel pair of pecked lines; there is no legend available for this map, but other Ordnance Survey map legends from this era use pecked lines to show minor, unenclosed routes, such as footpaths or bridlepaths⁵, and Ordnance Survey maps appear to be consistent in their notation of routes between different editions, and later editions describe this notation as a 'footpath'⁶. Other routes nearby which are today public footpaths are also depicted in this manner, including Pamber Footpaths 8 (although along a slightly different alignment), 19, 20, 21, 22 and 23. There are also routes to the south of Footpaths 19 and 20, and within Parcel 224 which are depicted with parallel pecked lines and which are not currently public rights of way. The claimed route crosses Parcel 227, which the accompanying book of reference describes as 'Arable'. The alignment of the route depicted is a very close match to the application route, albeit with a slight deviation to the east near to the southernmost point of the route.

The second edition (1896) is similar to the first edition: the claimed route is again depicted with pecked lines, in common with other routes which are today public footpaths. The southern section of Footpath 20, which forms a continuation of the claimed route, is here annotated 'FP', suggesting that it had the appearance of a route used by pedestrians at the time it was surveyed. Parcel 227, where the claimed route is located, is annotated 'Allotment Gardens'. The width of the claimed route (the distance between the pecked lines) is 2.5 metres.

The third edition (1911) matches the second edition, although the 'FP' annotation is here shown further along Footpath 20. A solid line is shown across the width of the route at Point B, which may indicate the presence of a gate.

³ Hampshire Record Office Reference number – 21M65/F7/185/2
Not to be reproduced without permission.

⁴ Hampshire Record Office Reference number – 21M65/F7/185/1

⁵ [Cassini Maps - Cassini Maps - Map Keys and Legends](#)

⁶ 'Ordnance Survey Maps – A Descriptive Manual' by JB Harley (published by OS in 1975)

These documents provide some support for the application. Whilst Ordnance Survey maps are not definitive proof of the status of a route and carry a disclaimer to that effect, the maps suggest that a pedestrian path was consistently present in this area in the late-19th and early-20th centuries. Furthermore, the inclusion of present-day public footpaths on the map and depicted in the same way as the claimed route adds some weight to the suggestion that the claimed route was previously considered to be a public right of way. The annotation of 'allotment gardens' on the second and third editions suggest that the claimed route could have been used for accessing the allotments.

28. Basingstoke Rural District Council Highway Handover Map (1929) (A)⁷

The map shows the claimed route depicted with a black pecked line, which the accompanying legend describes as a public footpath 'repairable by the District Council' but 'not repaired'. Other nearby routes which are currently public footpaths are also depicted in this style, including Pamber Footpaths 8, 9, 19, 20, 22, 23, and 24. Footpath 21 has not been annotated, indicating that it was not considered to be repairable by the District Council when this map was produced.

This map suggests that the claimed route was considered to be a footpath maintained at public expense at the time the map was produced, although it was not being maintained at this time.

29. Highways Maintenance Map, Basingstoke Division (c1946) (A)⁸

The claimed route has not been annotated on this map, although no other footpaths have been included in this locality and therefore no inferences about the omission of the route can be made.

30. Ordnance Survey Maps – 1:25,000 Outline Series of Great Britain (c.1948 – 1958) (A)⁹

Maps from this edition and covering this area were published in c.1948, 1958, and 1967. Each edition has been published in black and white, and colour; a selection of the maps are included in the appendix. The depiction of the route is very similar to the earlier Ordnance Survey maps: the claimed route is shown by a pair of parallel, pecked line. Footpaths 19 and 20 are depicted with single pecked lines labelled 'FP'.

These maps suggest that the claimed route had the appearance of a minor route at this time, which appeared to connect with other routes which are currently public footpaths.

31. Ordnance Survey Maps – 1:1,250 National Grid Maps, (1961–1970) (A)¹⁰

⁷ Hampshire Record Office Reference number – H/SY3/6/4

⁸ Hampshire Record Office Reference number – H/SY3/3/24/3

⁹ Available from the National Library of Scotland: [Map Finder - with Outlines - National Library of Scotland \(nls.uk\)](#)

¹⁰ Available from the National Library of Scotland: [Map Finder - with Outlines - National Library of Scotland \(nls.uk\)](#)

Two maps for this edition covering this area are available, published in 1961 and 1970. The 1961 map is the same as the 1:25,000 depiction, with the claimed route depicted with a pair of parallel pecked lines, and an 'FP' annotation appearing against the current Footpaths 19 and 20. However, the 1970 edition shows a single, solid line along the claimed route, which may reflect a change in character of the route at this time, such as the creation of an established field boundary. The nearby public footpaths are depicted by a single pecked line marked 'path' or 'Tk' (which is 'Track' according to the National Library for Scotland guide to Ordnance Survey abbreviations¹¹). The southern section of Footpath 20, between Point B and New Road, is here depicted with a pair of solid lines, whereas it was shown with pecked lines on the 1:25,000 editions. This may reflect that the character of the route changed at this time.

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

Parish Map (c.1950)

Parish maps were prepared by Parish Councils for County Councils when the first Definitive Map was being prepared; the map was produced to inform the County Council of the rights of way in each parish in order for the Draft Definitive Map to be produced. Three maps are available for Pamber. On each of these maps, the claimed route has not been annotated, but other routes which are currently public footpaths have been included. These maps suggest that the Parish Council did not consider the claimed route to be a public right of way at the time the maps were produced.

Objections Book

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

Definitive Maps (A)¹²

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

Other sources viewed

33. Parish File

The County Council maintains a file relating to countryside matters (including countryside management and rights of way) for each of the parishes in the county. These files date back to around the 1940s-50s and contain, amongst other things, correspondence, maps, and work orders. There are no documents relating specifically to the claimed route.

¹¹ [Abbreviations - Town Plans - National Library of Scotland \(nls.uk\)](http://nls.uk)

¹² Hampshire Record Office Reference numbers – H/CL1/2/3, H/CL1/2/29a and H/CL1/2/40

34. Aerial photographs

A number of aerial photographs have been taken over the area in question during the 20th and early 21st Century; all images are included in Appendix 2. Whilst the claimed route is not clearly visible on all of the images, they show the changes in the landscape since 1947. Full comments relating to each of the images are provided below, but to summarise: a clear line between Points A and B is first shown in 1971, which appears to be a field boundary, the buildings near Point A are first shown in 1991, when the surrounding field is subdivided (possibly for grazing). By 1995, a track appears to be visible between Point B and the buildings, and there is a field boundary to the north of the buildings towards Point A. With the higher-quality images available from 1999 onwards, it is sometimes possible to identify worn lines consistent with the alignment of Footpath 23; the lack of any similar worn path to the east of Point A along Footpath 19 may suggest that walkers using Footpath 23 to access Pamber Forest did so via the claimed route.

a) 1947 (National Library for Scotland)¹³

The claimed route is not visible on this image, which is in black and white and is relatively low quality (compared to modern photography standards). The field where the claimed route is located is much more open here, and it appears that a faint line is visible along the southern section of Footpath 20 (between Point B and New Road). There do not appear to be any traces of worn lines beyond Point B or around Point A (including the footpaths leading from Pamber Forest).

b) 1971 (Hampshire Record Office)

A distinct division in the field is clear on this black and white photograph. There is a clear line between Points A and B (and continuing beyond Point A to Pamber Forest), which may reflect the presence of a fence. There do not appear to be any worn lines in this area which correspond with the established public footpaths.

c) 1984 (Hampshire Record Office)

This image is consistent with the photograph from 1971.

d) 1991 (Hampshire Record Office)

These two colour photographs show a considerable change to the landscape. The buildings located near Point A are shown here for the first time, and the fields have been subdivided. There is a clear line between Points A and B, and the claimed route appears to be a well-established track, possibly metalled near to Point B. There is no indication of any worn, pedestrian paths.

e) 1995 (Hampshire Record Office)

The photograph from 1995 is not as clear as the 1991 images, but a route between Points A and B can be seen here. The route appears to be more established than on the earlier photograph, appearing to have a continuous

¹³ [View map: OS Air Photo, 6 inch to the mile \(1:10,560\), Sheet 41/65 N.W. - Ordnance Survey Air Photo Mosaics, 1944-1950 \(nls.uk\)](#)

and consistent surface between New Road and the two buildings near Point A. There is no indication of any worn, pedestrian paths.

f) 1999 (Google Earth)

This image is similar to the photograph from 1995, although it is higher quality. Enlarging the image around Point A shows a possible presence of a worn line along the route of Footpath 23, leading from Point A into Pamber Forest. There does not appear to be a similar worn line along Footpath 19. This may suggest that any pedestrians using Footpath 23 could have been using the claimed route to continue their journey.

g) 2000 (GIS)

Again, a clear route beyond Point B and the buildings is shown, with the route between the buildings and Point A being along a field boundary or fenceline. This image is less clear than the 1999 photograph, so it is not possible to see any indication of worn pedestrian routes.

h) 2005 (Google Earth)

This photograph appears to show a very thin, pale line, parallel to the fenceline between Point A and the buildings; this may be consistent with a worn path created by pedestrians. Worn lines are clearly visible along Footpath 19 and Footpath 23 (the latter appearing to terminate to the north of Point A, rather than at a junction with Footpath 19). There is no clear presence of a route to the west of Point A along Footpath 19; this may add weight to the suggestion that a worn pedestrian path is visible to the south of Point A, as people using Footpaths 19 and 23 may have continued along the claimed route, rather than along Footpaths 19 and 20.

i) 2008 (Google Earth)

On this image, the worn paths are less clear, although the eastern end of Footpath 23, leading into Pamber Forest from Point A, can be seen. The lack of any onward worn path along Footpath 19 may suggest that path users continued along the claimed route.

j) 2013 (GIS)

This image is also less clear, although the trace of a path along the alignment of part of Footpath 23, and part of the northern section of the claimed route between the buildings and Point A may be visible.

k) 2017 (GIS)

A worn line is visible along part of Footpath 23 closest to Pamber Forest, but no other worn lines can be seen here, including along Footpath 19, which could suggest that walkers used the claimed route to access Footpath 23 and Pamber Forest.

l) 2018 (Google Earth & GIS)

A very clear worn line for Footpath 23 can be seen on these images. As on the 2005 photograph, the route appears to terminate to the north of Point A, rather than at a junction with Footpath 19. No worn lines to the east of Point A are visible.

m) 2020 (Google Earth)

This photograph matches the images from 2018.

Analysis of Documentary Evidence

35. The claimed route has physically existed since at least c.1875, when it was first depicted on the First Edition of the Ordnance Survey County Series maps. On all except one of the Ordnance Survey maps examined, the claimed route is depicted by a pair of parallel pecked lines, which is generally the style used for the nearby routes which are today recorded as public footpaths. The exception is the 1970 edition of the 1:1,250, upon which the claimed route is depicted with a single solid line; this may suggest that the physical appearance of the route had changed by this time, and this is also reflected by the 1971 aerial photograph, which appears to match the 1970 Ordnance Survey map. The presence of a line across the width of the route at Point B on the 1911 County Series map may suggest that the route was gated at this time.
36. No inferences about the omission of the claimed route from the tithe map (1838) can be drawn, as no other minor routes appear to have been included on this map, except for those which led to dwellings.
37. The Highways Handover Map (1929) provides strong evidence in support of the application: the claimed route is annotated with a black pecked line, along with other current public footpaths in the area (except for Footpath 21, which has not been included here). The legend describes a black pecked line as a footpath repairable by the district council but not repaired. This document suggests that the claimed route was considered by the Urban District Council to be a publicly maintainable footpath. Whilst the route was not included on the Highways Maintenance Map (c.1946), no inferences about this omission can be made, because only vehicular highways appear to have been included on this map.
38. The evidence relating to the National Parks and Access to the Countryside Act 1949 demonstrate that the claimed route was not considered to be a public right of way when the First Definitive Map was created: the parish did not claim the route, no objection to the omission of the route was submitted and the path was subsequently not included on any of the editions of the Definitive Map. This is consistent with the route not currently being considered a public right of way.
39. The 15 aerial photographs available provide interesting evidence, showing the changes to the landscape between 1947 and 2020. They provide some evidence in support of the application, appearing to reinforce the claims within the user evidence that the route was used as a means of accessing Pamber Forest (a worn line can be seen on some photographs along the line of Footpath 23, but there is no sign of a continuation along Footpath 19, which may suggest that members of the public were using the claimed route).
40. In summary, the documentary evidence demonstrates that the claimed route may have previously considered to be a public footpath, which could have been gated at Point B. The apparent width of the route, scaled from the Second Edition of the Ordnance Survey County Series maps (1896) is 2.5 metres.

User Evidence

41. The application was supported by the evidence of 25 people, who completed user evidence forms. The evidence charts public use of the claimed route from

1980 up until 2020 when the application was submitted. The dates of use are summarised on the chart at Appendix 3. The table is, by necessity, a generalisation, but it provides an insight into the evidence which has been put forward in support of the application.

42. The user evidence forms were completed on a template the applicant downloaded from the Ramblers website and distributed via email to local residents. A copy of the distribution email was supplied to the investigating officer during the investigation.
43. The investigating officer noted that some of the responses to questions appeared to have been pre-completed, and sought clarification from the applicant, who responded: "I completed the template with suggested text which could be edited according to individual experience. Naturally, some people took the easy way out! I also supplied a non-completed form as well."

The questions for which the applicant provided a suggested response were:

Question	Answer provided by the applicant	Number of witnesses who used pre-completed response text (or very similar)	Number of witnesses who provided their own response.
The path runs from _____ to _____	SU 61405972 SU 61485982	25	0
Has the way always run over the same route? If not, give details and dates of any changes	Yes	17	8
Have there to your knowledge ever been any stiles or gates on the way? If so, state (with details of location) where the stiles or gates stood.	One gate at location SU 6145 5980	17	8
If you were working for any owner or occupier of land crossed by the way at the time when you used it, or were then a tenant of any such owner, give particulars and dates. If not, write 'No'	No	23	2 – Both responses were "I have never been a tenant, owner or occupier of the land crossed by the way."
If so, did you ever receive any instructions from him as to the use of the way by the public? If so, what were they?	Not applicable	19	5 (1 witness left this answer blank)

Have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back? If so, state when the interruption took place and give particulars.	Not until the route was barred, approximately 1 April 2020, when the gate was locked and a sign put up.	19	6
Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars and dates	No	20	4 (1 witness left this answer blank)
Have you ever known any locked gates or other obstruction to the way? If so, state when and give particulars.	No, not until recently - see above	21	4
Have you ever seen notices such as 'Private' 'No road' 'no thoroughfare' or 'trespassers will be prosecuted' on the route? If so, what did the notices say?	No, not until recently - see above	21	4
Have you ever asked permission to use the way?	No	21	4

44. All forms included a statement of "I hereby certify that to the best of my knowledge and belief the facts that I have stated are true", and all witnesses had signed their form underneath this statement. Therefore, the fact that some of the responses had been pre-completed is not considered to be decisive.
45. Analysis of the evidence of the 25 witnesses indicates that first-hand use of the claimed route has exclusively been by pedestrians, although one witness states that their use was on foot "but occasionally our young children have had their bicycles with them".
46. Use of the claimed route appears to have been frequent, with a range of six times per year to daily. The average number of times each witness claims use of the route per year is 129.

47. The witnesses used the route for a wide variety of reasons, including for walking, dog walking, exercise, to get to the pub, to go to Little London, for leisure, to tend horses, and for natural history.
48. None of the witnesses were employees, tenants, or relatives of the landowners, and no witnesses have ever been challenged by the landowners.
49. No witnesses had sought or been granted permission to use the claimed route. One witness stated "I often had conversations with the late Mrs Arnold and such a situation never arose, she knew we used that route and she never objected as far as I am aware". Two witnesses stated that they had never sought permission to use the claimed route because they assumed it was a public right of way, and a third witness stated that they had not sought permission and the claimed route "was always the natural way to get to the forest".
50. The majority of witnesses agreed that the path "has always run over the same route", but two witnesses provided responses which provide a little more context about why the claimed route appears to have been preferred to the existing public footpath to access Pamber Forest. One person commented that they were concerned about the electric fence on 'the other route', and another stated "When we first came to the area the public path was shown going through the field but it became totally impassable."
51. A range of responses was provided to a question asking whether there have ever been any gates or stiles along the route. The majority of witnesses stated that there was a gate at SU 6145 5980, with five witnesses also stating that there was a stile next to the gate, and two of these witnesses stating that the stile was "step through rails for walkers and dogs". Other answers include references to other stiles and gates (including those which are not part of the claimed route, such as at the entrance to Pamber Forest), and 'minor variations in paddock fencing'. No witnesses stated that there had been any obstructions along the claimed route prior to the gate being locked in April 2020, nor any signage along the route to restrict use before this time.
52. No witnesses reported ever having been challenged about their use of the route "until the route was barred, approximately 1 April 2020, when the gate was locked and a sign put up." One witness also stated that a gap in the fence was boarded up at this time, another witness stated that the barring of the route had coincided with the announcement of a lockdown during the Coronavirus restrictions, and a third witness stated that, when the route was barred, "a hand-written sign was put up denying entry".
53. The final question on the form asked witnesses if they had any further comments to make. Several responses were provided, which provide a little more context for the application; one person also attached a copy of an early Ordnance Survey map.
 - a. *"The keepers of the horses in the paddocks never complained to me about access. I have used the path that runs direct from Cottage Farm towards Pamber Forest (past the relatively new stables) for well over 30 years (although far less frequently during the past 10 years). And many others have also used that path because the official one to the East has often been inaccessible due to undergrowth. The late Mrs Arnold (of Cottage Farm) was perfectly happy with*

people using that route. I can only recall seeing discarded poo bags on about 2 occasions during the many years that I made use of that route."

- b. "The present coronavirus has been offered as a reason for preventing walkers from using the way leading past the stables. A further reason could be that the present owner of the land has plans to submit an application to build a number of houses on the land which was crossed by the way."*
- c. "The previous owner of this land, who passed away approximately 2 years ago, never objected to people using this right of way. In fact she was always very friendly. Problems have arisen since her step-son inherited the property."*
- d. "Over all these years I have met with the owner many hundreds of times with never a mention that I should not use the footpath. Our relationship was always most friendly."*
- e. "I tried the 'official way' and that was impassable without wellies; totally waterlogged when in the forest was dry!!"*

54. During the consultation, four individuals who had completed user evidence forms contacted the investigating officer to provide further comments in support of the application.

- a. The first witness stated that "the path in question has been used - to my knowledge - by myself and others for at least 30 years, until it was closed off by the new/present owner of the land" .*
- b. The second witness wrote:*

"I have lived in Pamber Green for 42 years and walked the route in contention daily, as did many other residents, until it was suddenly blocked off. This occurred after the landowner had died and her stepson inherited the property. At the time local residents had no idea why this path had been closed.

To my knowledge the original landowner, Evelyn Arnold, never objected to this path being used. I met her and chatted many, many times on the path while she was working close by and never once was anything said. In fact, Mrs Arnold made it easier for walkers to pass through couple of fences by making sure the gap was large enough. To my mind it was accepted that this was a long-standing right of way.

The footpath that goes around the edge of the field is useable in Summer but in Winter becomes impassable due to extremely wet conditions caused by the lack of maintenance of adjoining ditches. This means water runs out of what should be ditches into the field and down the footpath, eventually ending up in a stream at the bottom of the field. I actually believe this footpath is unsafe to use in Winter as it very easy to lose one's footing in the deep and slippery muddy conditions."
- c. The third witness wrote that he has used the route for 37 years, "at least twice each day whilst exercising out dogs in order to access the forest beyond. Over most of these years and on many, many occasions I regularly met up with the owner of the surrounding land (Mrs Evelyn Arnold) and never once was I questioned about my right to walk along these footpaths". He goes on, to state that since the route has been blocked by the new landowner, "we have been obliged to use a footpath which, for much of the year, is flooded and makes access a very risky business as the water flow over this land is not managed properly".*

- d. The fourth witness states that he and his family used the claimed route on a regular basis (“multiple times each week”) since 1984, describing it as a “straight extension” of Footpath 20 and stating that “there were of course many other local people, who we met and talked with, who also used this access to the forest during the same period.”

He also provided comments relating to the closure of the claimed route:
“The closure was a surprise as I believe, but do not have personal confirmation of this as a fact, that the previous owner, the late Mrs Evelyn Arnold, actually encouraged this to be the access route. Certainly we were never able to use the currently identified footpath route of 186/20/1 [Pamber Footpath 20] until after the closure of the subject direct route, by the new owner, and some effort by HCC having being made to make this footpath viable. Not least because, until then, its existence was barely identifiable as a footpath and the route was essentially impassable in a number of places, as it can be in periods of heavy rain to this day.”

55. During a site visit in December 2023, the Investigating Officer observed a gate at Point B (Gate X), a gate adjacent to the stables (Gate Y), and a gate near Point A (Gate Z). Photographs of these gates are included at Appendix 4, and the locations of the gates are shown on Location Map 2. There are wooden railings adjacent to each gate, and barbed wire has been fixed between the railing gaps at Gates X and Z. The landowner accompanying the Investigating Officer noted that concrete had been laid under the railings at Gate Y, and suggested that this had been done for the benefit of members of public going through the railings whilst using the claimed route. Five witnesses, including the applicant, were contacted to ascertain whether the gates had been present when the claimed route was in regular use by the public. The four responses received are summarised below:

a. Gate X (at Point B)

Witness A – Does not recall this gate, although suggested that it may have been present but always open. The ‘no public right of way’ sign was not there previously, nor at the other end of the track.

Witness B – This gate was not present when he used the route; it appeared when access to the route was blocked in April 2020. The signage here and at Gate Z appeared when the route was blocked.

Witness C – The gate was rarely closed in all the years he used the route. He only remembers it being closed “very occasionally, perhaps when horses were being loaded into horse boxes, to act as a barrier should things not go to plan”. The former owner, Mrs Arnold, “encouraged use of the route”. There were never previously any signs here.

Witness D –

“As far as I can remember there was not a gate at this point although the gate that is in situ does appear to have been there for some time. However if it was there I have never seen it closed which could account as to why it was not noticed. On recent inspection of the gate I noticed that the post (very poorly fitted) to which it is padlocked is fairly recent. Say within the last two or three years. Perhaps indication the post was put there specifically to enable the

present landowner to secure and block the track. You will notice that without this newly fitted post there would be nothing to which to secure the gate. The construction of wood and barbed wire to the right of the gate may have been present but because the gate (if present) was never closed this construction never had any impact on pedestrians using the track. (...) I first noticed the sign on Gate X about February/March 2020."

b. Gate Y (by the stables)

Witness A – This gate was "definitely there and usually closed, but one could get round the side"

Witness B – This gate was present, but it was locked for security purposes. There is a wide gap to the left "between two rails that one could step through... This gap was purposely created by Mrs Arnold, the then owner, to facilitate ease of access."

Witness C – Since it has been in place, it was not always shut but might be sometimes depending on what was being done around the stables. When the gate was shut, walkers would duck through the fencing on the left. The closure and locking of Gates Y and Z became a more regular occurrence some years ago, perhaps due to a horse box being stolen. Walkers then became used to ducking through the fences to the side of the gates. Nearby public footpaths had similar arrangements of duck-through rails and fences.

Witness D –

"This gate was often closed. However the step through rails to the right were always accessible and permitted easy access to the track. Even if the gate was closed and latched (not bolted) by a chain the rails were often easier to negotiate especially when there were dogs on leads. The rails were installed and maintained by the previous landowner."

c. Gate Z (near Point A)

Witness B – This was usually closed but not locked. It had a loose chain that could easily be unhooked to pass through. There was also a post and rail gap to permit walkers ease of access, this is now blocked with barbed wire, which happened when Gate X appeared; "obviously, it made using the route difficult if not impossible".

Witness C – Since it has been in place, this gate was "more often than not closed, particularly if there were horses in that paddock, but for many years not locked. When closed, we would sometimes go through the gate or, if horses were near the gate, duck through the fence". The gap next to the gate was closed relatively recently "I would say within the last year, but I can't say when. It was never previously like this.". There were never previously any signs here.

Witness D –

"The paddock from which the photo was taken of Gate Z regularly had horses in it so the gate was always locked when the field was in use. However the step through rails to the right of the gate were always maintained and allowed

easy access and egress to and from the paddock. There was never any barbed wire."

Summary of user evidence

56. The evidence of use provided by 25 witnesses indicates that local people have been using the route regularly and on foot in every year since 1980 until the application was submitted in 2020.
57. The trigger for the submission of the application, as reflected by the user evidence, was the barring of the route, when the gate was locked and a sign denying access was displayed. Prior to this, no witnesses reported any obstruction, signage, or challenge to the public's use of the claimed route.
58. Whilst there were gates along the route, these were not interpreted by the witnesses to be measures intended to prevent their use of the route. The clarification provided suggests that the gates were thought to be security measures to prevent theft, and safety measures to contain the horses, rather than gates erected to stop the public using the claimed route. The witnesses continued using the route by ducking through the adjacent railings when Gates Y and Z were closed. Witnesses suggest that the late former landowner, Mrs Arnold, was aware of the public's continued use of the claimed route and did not take any measures to prevent this, such as locking the gates or obstructing the gaps between the railings (as was done in 2020).
59. No witnesses were the landowners, tenants, or employees of the landowner, and nobody had sought or been granted permission to use the claimed route, although there was some belief that the former landowner, Mrs Arnold, encouraged use of the claimed route.

Actions of the landowners

60. The user evidence forms state that the claimed route was barred in April 2020, when the gate was locked and a sign denying access was put up. Prior to this, there is no evidence, either within the user evidence or within the comments supplied by the prospective landowners, that the landowner has taken any steps to restrict public access to the claimed route. The clarification from four witnesses in relation to the three gates along the route indicates that Gate X was usually open (although it is noteworthy that there is little clarity from the witnesses about when this gate first appeared), and Gates Y and Z were sometimes closed but not locked, and access along the route was via the adjacent gap between the railings, which was, at that time, unobstructed by the barbed wire currently present. The witnesses felt that the closing of gates was for the safety of the horses, and to prevent theft, rather than to stop people using the claimed route.

Analysis of the Evidence under Section 31, Highways Act 1980

61. For Section 31 of the Highways Act 1980 to operate and give rise to a presumption of dedication, the following criteria must be satisfied:
 - the physical nature of the path must be such as is capable of being a right of way at common law

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

62. Physical nature of the route

A public highway must follow a defined route. As the claimed route is linear and links two existing public footpaths, providing a more direct route to access Pamber Forest than the alternative access along Footpath 20, it does follow a clearly defined route and is therefore capable of being a right of way at common law.

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

The public’s right to use the path does not seem to have been brought into question at any stage prior to the route being barred in April 2020, giving a relevant period of 2000 – 2020. Whilst there appear to have been gates along the route during this period, these were not considered to be sufficient to bring into question the public’s right to use the path because they were not consistently closed or locked, witnesses did not perceive the gates to be installed for the purpose of preventing their use, and the public continued to access the claimed route.

64. Twenty years’ use without interruption

23 users stated that they used the path on foot during the 20 years leading up to the public’s right to use the claimed route being brought into question; 13 of these individuals claimed use of the route for the entire 20-year period of 2000-2020. The usage chart clearly demonstrates that the claimed route has been in use continuously from 1980 until 2020.

There is no evidence that the public’s use of the route on foot was interrupted prior to the locking of the gate and blocking of the railing gaps in April 2020.

65. ‘Without force, stealth or permission’

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

The Planning Inspectorate’s *Definitive Map Order Consistency Guidelines* describe the use of force as including “*the breaking of locks, cutting of wire or passing over, through or around an intentional blockage, such as a locked gate.*”

Prior to the gate being locked, there is no evidence that there were any obstructions in place which caused members of the public to use force to access the claimed route. Whilst there were gates present, these were not interpreted by path users to be for the purposes of preventing their use; the

gates do not appear to have been kept locked, and witnesses report that they went through the railings of the adjacent fence. Considering the judgement at paragraph 89 of the *Garland* case (see citation above), how members of the public interpret locked gates does have a bearing on whether the barriers demonstrate a lack of intention to dedicate. Because the gates were mostly unlocked and do not appear to have been erected for the purposes of preventing use of the claimed route by pedestrians, the public going around the gates is not considered to be use by force.

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

The accounts of users of the path indicate that access to the land was open and without secrecy. Evidence of the 25 witnesses demonstrates that use of the claimed route has been frequent, and, taking into account the rural setting of the route, the volume of use is considered sufficient for it to be considered that the landowner would have been aware that the public were using the path. Furthermore, three witnesses stated that they had often seen the previous landowner whilst using the route.

Permission – users as of right should not be using the way with any kind of licence or permissions.

None of the users stated that they had sought permission to use the route.

66. Use by the Public

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

13 of the 25 witnesses provided evidence of use for the duration of the relevant period from 2000 to 2020, and a total of 23 witnesses who claimed use during this time; the claimed use of two witnesses occurred prior to the commencement of the 20-year period.

The frequency of use was variable, ranging from 6-9 times a year, to daily use. The average number of times each user claims to have used the route in a year is 129.

The majority of witnesses are residents of Pamber Green; one person is a resident of Little London, two people are residents of Tadley, and one person did not disclose their address.

Taking all of these factors into account, including the rural setting of the claimed route, the evidence of use could reasonably be considered as representative of use by 'the public'.

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

None of the users indicated that they were related to, employed by, or a tenant of the owner or occupier of the land in question.

Conclusions under Section 31, Highways Act (1980)

68. Analysing the evidence reviewed above, the conclusion reached is that the provisions of s31 of the Highways Act (1980) have been satisfied: that the public have enjoyed use of this route as of right and without interruption for a period of 20 years. Use within the relevant period was not secretive or as a result of force, and appears to have been 'as of right'. There is no evidence to suggest that public access was physically obstructed prior to the locking of the gate in April 2020. Whilst gates were present and closed at times, these were considered by witnesses to be for safety and security, rather than to restrict public access; the public accessed the route via the adjacent railings, which could have been barred before 2020 if the landowner had wanted to prevent public access.

Analysis of the evidence under Common Law

69. This matter can also be considered at common law. For a claim to succeed at common law, the onus is on the applicant to show that the owners were aware of, and acquiesced in, the use of a route by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied from a sufficient period of public use without secrecy, force or permission, and the acquiescence of those landowners in that use. This is required in order to meet the two pre-conditions for the creation of a highway - that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law, and depends on the facts of the case. The user must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as putting up a physical barrier, erecting notices stating that the route is not a public right of way of the type being claimed, or turning people back. The more notorious the use, the easier it will be to infer dedication.

Conclusions under Common Law

70. Unlike Section 31, the total period spanned by the user evidence can be considered. The evidence indicates that there has been regular, unchallenged use of the claimed route by pedestrians since 1980 until April 2020. Use of the route was without force, without secrecy and without permission. Whilst the gate was locked in April 2020 and a sign denying entry was displayed, there is no evidence that the landowner took any actions prior to this to prevent use of the route. Such steps may include putting up signs to indicate that the land is private, erecting and locking gates across the entrance of the route, or making a landowner deposit with the County Council under section 31(6) of the Highways Act (1980); these steps would have communicated to the public that the landowner did not intend to dedicate the route as public. It is considered that the evidence of use of the claimed route is sufficient for a deemed dedication to be inferred at common law.

Conclusions

71. As set out earlier in the report, for a change to the Definitive Map to be made, it must be on the basis of evidence which shows that the existence of a public right of way is 'reasonably alleged'. Documentary evidence clearly demonstrates that the claimed route has physically existed since at least c.1875, and the claimed route is consistently depicted in the style of a footpath on the majority of the Ordnance Survey maps reviewed. The Highways Handover Map (1929) provides strong evidence in support of the application, demonstrating that the claimed route was considered to be a footpath 'repairable by the district council but not repaired' at the time the map was produced. The aerial photography reviewed also provides some evidence in support of the application, appearing to reinforce the claims within the user evidence forms that the claimed route was a means of accessing Pamber Forest: because much of the claimed route is an established track, no inferences about the availability of the route can be drawn from the photography, but many of the images show a worn path along the eastern end of Footpath 23, whilst there is no clear indication of a worn path along the continuation of Footpath 19 to the east of Point A, which appears to reinforce the notion that people accessing Pamber Forest did so via the claimed route, rather than via Footpaths 19 and 20.
72. The user evidence shows that local people have enjoyed using the claimed route without force, without secrecy, and without permission since 1980. The use of the route by pedestrians appears to have been frequent and of a reasonable volume, and, prior to the locking of the gates, blocking of the gaps between the railings, and display of 'no public rights of way' signs in 2020, the landowners did not take any steps to restrict use of the route during the relevant period. For these reasons, the user evidence relating to pedestrian use of the claimed route was sufficient to meet the tests set out under s31 of the Highways Act (1980) and under the provisions of common law.
73. In summary, the documentary evidence provides a 'reasonable allegation' that the claimed route was previously a public footpath which may have been gated at Point B. Whilst the user evidence demonstrates that local people have made use of the claimed route, it is considered that dedication of the route as a public right of way took place at some point prior to the creation of the Highways Handover Map (1929).
74. The recommendation is therefore that the application should be accepted on the basis of the historic documentary evidence, and a legal Order made to add a public footpath to the Definitive Map of Public Rights of Way, between Points A and B, as shown on the attached plan. The width of the route should be 2.5 metres, as shown on the Second Edition of the Ordnance Survey map. The route should be subject to the limitation of a gate at Point B.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

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

Section 100 D - Local Government Act 1972 - background documents

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

Document

Claim Reference: DMMO 1295 (Pamber)

Location

Countryside Access Team
Universal Services
Three Minsters House
76 High Street
WINCHESTER
SO23 8UL

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

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

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

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

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

2. Equalities Impact Assessment:

Hampshire County Council, in its capacity as 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981. It is not considered that there are any aspects of the County Council's duty under the Equality Act which will impact upon the determination of this Definitive Map Modification Order application.

CLIMATE CHANGE IMPACT ASSESSMENT:

Hampshire County Council declared a climate change emergency on 17 June 2019 and a Climate Change Strategy and Action Plan has since been adopted. The County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

The legislative framework for Definitive Map Modification Orders does not enable the decision maker to take into account any environmental concerns relating to an application and a climate change impact assessment has therefore not been carried out in relation to this application. The Countryside Access Team strives to reduce their environmental impact wherever possible.