

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods Countryside Strategic Manager
Date:	11 July 2024
Title:	Applications for Definitive Map Modification Orders to record bridleway and restricted byway rights, and to amend the particulars of the Definitive Statement Parish of Headley
Reference	DMMO 1034 - 1041

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Purpose of this Report

1. The purpose of this report is to assist the Countryside Strategic Manager in determining whether to accept eight applications for Definitive Map Modification Orders to variously record public bridleway rights, restricted byway rights and amend the definitive statement for recorded public rights of way situated near Broxhead Common, in the parish of Headley.

Recommendation(s)

2. It is considered that the evidence submitted in support of the applications is insufficient for it to be inferred that an Order (or Orders) should be made, and it is therefore recommended that the applications are refused.

Executive Summary

3. This report concerns eight applications for Definitive Map Modification Orders ('DMMOs'), submitted in 2009 by a member of the public ('the Applicant') under Section 53 of the Wildlife and Countryside Act 1981, to add additional public rights to the definitive map and amend the particulars in the definitive statement for existing routes. All of the applications concern routes situated to the east of Broxhead Common (CL147) and to the south and west of Headley Park. The Applicant has made multiple applications to record public rights of way in this locality since the early 1990s, and the applications under consideration are supported by evidence and copies of Secretary of State decisions linked to those earlier applications.
4. In addition to the evidence associated with the above-mentioned cases, the Applicant has also submitted further evidence unearthed during the determination of one of those cases (an order for a DMMO that was not confirmed by the Secretary of State following an inquiry in 2011) as support for these eight applications. Some individual documents are relied upon in support of more than one application, and these are discussed in the main body of the report and excerpts included in

Appendix 2. Other items (including photographs, press cuttings and correspondence) are considered to be of little to no relevance to the determination of the applications, and due to the large volume of evidence submitted (over one hundred documents), some of these items are not discussed specifically in the report. They have however been made available for inspection by the decision-maker prior to determination of the applications.

5. With regard to the more substantive evidence covered in this report, officers are of the view that the threshold for making a DMMO has not been reached in respect of any of the eight applications. It is therefore recommended that they are all refused.

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 -
 - (a) the coming into operation of any enactment or instrument, or any other event, whereby—
 - (i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;
 - (ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or
 - (iii) a new right of way has been created 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
 - (b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path
 - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -
 - (i) that a right of way which is not shown 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;
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
 - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification

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.

RELEVANT CASE LAW

Section 53 (3)(c)(i) states that a modification order should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows 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. The discovery of evidence by the surveying authority engages the provisions of section 53(3) and the 'event' specified in section 53(3)(c).

Burrows v SSEFRA [2004] EWHC 132 (Admin)

The court held that "a definitive map can be corrected, but the correction... is dependent on the 'discovery of evidence'. An inquiry cannot simply re-examine the same evidence that had previously been considered when the definitive map was previously drawn up. The new evidence has to be considered in the context of the evidence previously given, but there must be some new evidence which in combination with the previous evidence justifies a modification".

The Queen on the application of Dorset County Council [2005] EWCH 3405

"The Secretary of State and the interested party submit that modification on the ground in question may indeed be made where there is the discovery by the authority of evidence; however, that the reinterpretation of evidence previously before the authority is not a ground for modification and that the claimant's case was based upon the interpretation of evidence previously before the authority which is not the discovery of evidence. The Secretary of State and the interested party further submit that this interpretation is consistent with authorities, including the decisions of the Court of Appeal in R v Secretary of State for the Environment ex parte Simms and Burrows [1991] 2 Queen's Bench 354, per Purchas LJ at 380, who refers to the discovery of new evidence, per Glidewell LJ at page 388, who refers to the finding of some information which was previously unknown, and per Russell LJ at 392; Fowler v Secretary of State for the Environment & Devon County Council [1992] 64 Property and Compensation Reports 16 per Farquharson LJ at 22, who referred to fresh evidence; and Trenchard v the Secretary of State [1997] EWCA Civil 2670 per Pill LJ, referring to further evidence becoming available and approving a definition of discovery as connoting a mental process in the sense of the discoverer applying his mind to something previously unknown to him. In my judgment, the Council has wholly failed to show that it has discovered any evidence. What it has done is to reinterpret the evidence that had been before it all along. I cannot see that that can arguably come within section 53(3)(c)(i). There must be a discovery, but there has been none. One does not discover a different interpretation and if one could do so, the process of mind changing could go on indefinitely. ..."

Description of the Application Routes

(Applications are listed under their individual reference numbers. See Location Map - Appendix 1 for details. All existing rights of way referred to are situated in the parish of Headley)

6. **1034** - (L-VV-N/L-M) – Application to record a bridleway between L, VV N (approximately 650 metres in length), commencing at the junction of Footpath 3 and Bridleway 47 and proceeding in a south-easterly direction over an enclosed, metalled access road that runs past Headley Wood Farm to a junction with Frensham Lane; and to amend the definitive statement entry for Bridleway 47 to widen the path and remove references to gates between L and M.

7. **1035** - (UU-C) - Application to record a public bridleway (approximately 1,150 metres in length) commencing at a junction with Picketts Hill (C102) near Picketts Hill Farm, and proceeding generally westwards on an alignment shown as an unenclosed track on historic OS maps, past Headley Park Cottages, and bearing northwards to a junction with route claimed under applications 1036 and 1037.
8. **1036** - (A-B-C-D-E-F-G-H-I-J/K) - Application to record a restricted byway (approximately 2,160 metres in length), commencing at a junction with Picketts Hill (C102) and proceeding southwards over a track running through Bottomfield Copse for approximately 850 metres, bearing sharply north-westwards and then south-westwards over open pasture, crossing onto Broxhead Common and merging with the current line of Bridleway 4, continuing south-westwards on Bridleway 4 to its junction with Bridleway 5 and splitting at this point to continue over both bridleways to their respective junction with Broxhead Farm Road (B3004).
9. **1037** - (B-O-R-Q) - Application to record a bridleway (approximately 930 metres in length) commencing at a junction with the route claimed in application 1036 and proceeding generally south-westwards, crossing Bridleway 54, bearing southwards, and generally south-eastwards around the perimeter of land occupied by a copse and a nursery (referred to as 'Free Piece' on historic OS maps), to a junction with Bridleway 46.
10. **1038** - (S-AA-T-U-V-X/T-W-Y/Z-AA/V-W) - Application to record bridleway rights commencing at a junction with Bridleway 54 near Picketts Hill, bearing south-westwards, past a short spur bearing northwards to Picketts Hill, and then splitting into two routes running parallel in a southerly then south-easterly direction, just inside the eastern boundary of Broxhead Common to a junction with Bridleway 46. The most westerly of the two routes continues onward in a south-easterly direction to a junction with Bridleway 4. The routes are connected by a short east-west link between Points V-W).
11. **1039** - (D-ZZ-L) - Application to upgrade Footpath 3 (which runs between a junction with Bridleway 54 and Bridleway 47) to a bridleway.
12. **1040** - (B-C-D) - Application to record a bridleway between a junction with the northern junction of application 1038, and bearing southwards to a junction with Bridleway 54 and Footpath 3 (approximately 340 metres in length). *NB the entire length of this route coincides with part of what has been claimed in application 1036.*
13. **1041** - (F-XX) - Application to amend the definitive statement entry for Headley by widening part of Bridleway 4, and removing references to gates on Bridleways 4 and 54.

Issues to be decided

14. The primary issue to be decided is whether there is evidence that justifies a modification to be made to the definitive map and statement. In circumstances where an application seeks to add a route not already recorded on the definitive map, it is necessary to demonstrate that public rights can be 'reasonably alleged' to subsist (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 seeks to amend the status of a route that is already recorded on the definitive map.

15. 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'.
16. Any changes to the definitive map must reflect public rights that already exist. It follows that a change must not be made simply because it would be desirable, or instrumental in achieving another objective. Therefore, before an Order 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.
17. Historical documentary evidence has been examined to see whether it indicates the existence of 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 any rights that are found to exist, even if they are not claimed by the applicant.
18. If an application is approved and an Order is to be made, then where appropriate the alignment of the route, its status and width, 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.
19. 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.
20. 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 Applications

21. The applications were submitted in August 2009 by a member of the public living in the Headley area ('The Applicant'). Due to a backlog of applications the matter was not taken up for investigation at the time.
22. The applications follow earlier applications for DMMOs submitted by the Applicant during the 1990s and 2000s to record public rights on (or near to) Broxhead Common, all of which were initially refused by the County Council. These refusals were appealed by the Applicant to the Secretary of State, but were ultimately unsuccessful. References to other legal orders under the Highways Act 1980,

confirmed by either the County Council or the SoS, are also referred to in the applicant's evidence and are appended to this report.

23. The Applicant states, in a letter accompanying their submission, that two of the applications are re-submissions of previous appeals and explains that they are supported by a large file of evidence which had already been delivered to the County Council prior to their submission. Correspondence on file indicates that much of this evidence was adduced in support of the applicant's case at a public inquiry held in 2009 (reference FPS/Q1770/7/70) and was re-submitted along with additional evidence as a basis for these eight applications.
24. The Applicant has provided a wide range of material, such as old commercial and Ordnance Survey maps, correspondence from and to the Applicant involving the County Council and Headley Parish Council, photographs taken by the Applicant, press articles and decision letters from earlier legal proceedings (including DMMOs and orders to divert and create public rights), as well as documents relating to the registration of Broxhead Common under the provisions of the Commons Registration Act 1965. The weight that can be given to this evidence is variable. Where evidence is of material relevance to the determination of the applications, it is included in Appendix 2, but a full list of the evidence is included in the Applicant's 2009 summary document at Appendix 3.
25. Much of the evidence and correspondence relied upon by the Applicant has been considered through the course of previously determined applications for DMMOs. To varying degrees, this evidence and information is relevant to the applications now under consideration, along with various decision letters issued by the SoS in determining some of those applications. This material is considered in this report.

Documentary Evidence

(Refer to Appendix 2 for images)

Early maps and plans

26. Taylor's Map of Hampshire (1 inch to 1 mile) – 1759 (Fig. 1)

Taylor's map shows sections of various routes shaded ochre running across or around the area between Headley Park and Broxhead Common. Headley Park itself is shown surrounded by a series of vertical black lines, suggesting the boundary of the property. A route runs southwards from Headley Park's western boundary (roughly Point D), bearing south-westwards towards the current site of Broxhead Farm. Another route runs south-eastwards from the site of Sleaford Farm towards Headley Wood Farm (roughly between Points V and F). A road corresponding with Picketts Hill (C102) can be seen heading westwards towards Sleaford, and there are the beginnings of a route heading south and north from this road (around Point Z). The map is not particularly clear, with large areas apparently not having been surveyed, making it difficult to be confident as to the existence of any of the claimed routes.

27. Geometric Survey of Alice Holt and Woolmer Forests - 1787 (Fig. 2)

This small-scale map shows an area roughly 13km (north/south) by 7km (east/west) incorporating Alice Holt and Woolmer Forest, as well as the area around Broxhead Common. A footnote on the map states that the survey is based upon a perambulation of the area undertaken in 1638. The legend shows 'Forests and Lodges' coloured pale green, whilst 'Admitted Freehold Property' is shown by pale yellow shading (this includes the area of land that incorporates all of the claimed routes). Several routes in the locality are shown by parallel pecked lines, which the legend describes as 'Roads' (including one heading south-westwards from Point B towards Broxhead Common), although it does not differentiate public from private routes. Elsewhere on the map, some routes appear to be marked as public highways through specific annotation (eg 'Great Way to Blackmoor') or white colouring (eg Cradle Lane to the north-east of Broxhead Common), but neither scenario applies to any of the routes that are the subject of the applications.

28. Milne's Map of Hampshire (1 inch to 1 mile) – 1791 (Fig. 3)

Milne's map is easier to interpret than Taylor's, both tidier in its appearance and more geometrically accurate. It shows by grey shading the extent of Headley Park, bounded by the River Wey on its eastern side. The road running past Linstead Farm (Point N) and Headley Wood Farm (Point VV) can clearly be seen. One other route, shown by parallel pecked lines, can be seen running south-westwards from the north-western corner of Headley Park (Point B) towards Broxhead Common.

29. Ordnance Survey 'Old Series' maps – 2-inch drawing (1808) / 1 inch map 1st Edition (1816) / 1 inch map 2nd Edition (1840) (Fig.4)

Both the 2-inch drawing and the published map show a route running southwards along the western boundary of Headley Park before bearing south-westwards towards Broxhead Common (roughly B-C-D-G-H-J), representing a change of alignment when compared with the route on earlier maps. Unenclosed routes are also shown between V-F and C-UU on both plans. A later edition, published after the construction of the turnpike road between Petersfield and Farnham (now the A325) shows a similar picture insofar as the area affected by the applications is concerned.

29. Greenwood's Map of Hampshire (1 inch to 1 mile) – 1826 (Fig. 5)

Greenwood shows the route running southwards from Headley Park from Point B, and another route which appears to terminate around the southern extent of Bridleway 46 (at the junction with Broxhead Farm Road). Several other tracks are shown criss-crossing both the land to the west of Headley Park and Broxhead Common, including the route between V-F. The unenclosed route running to Picketts Hill Farm between C-UU is also shown.

30. Headley Tithe Map and Award – 1847 (Fig. 6)

The approach of the tithe commissioners in this instance appears to have been not to allot parcel numbers to major public roads (these appear to have been included in an overarching 'Commons and Wastes' entry at the end of the award, which accounts for 120 acres of land), whilst routes that do have parcel numbers appear to have been in private ownership.

The route between Headley Wood Farm (Point VV) and Point E is shown as an enclosed route in the ownership of John Petar, the then owner of Headley Wood House, and is described as a 'Lane'. A continuation of this route runs north-westwards, shown as an unenclosed track to Sleaford terminating at Point V, and a

route roughly corresponding with A-B-C-UU is also shown – neither of these routes has a parcel number attached to them, suggesting that, for tithable purposes, they were considered indistinguishable from the parcel of land through which they ran, but there is no trace of any route running southwards from Point B.

31. Binsted Enclosure Award – 1852 (Fig. 7)

The applicant has referred to the 1852 Binsted Enclosure Award in their list of supporting documents. The enclosure was split into two maps, one showing an area that corresponds with what is now Kingsley parish. The plan shows both the parish boundary and the area to be enclosed by a red boundary line. Some of Headley parish is also shown, including the route running between A-B-C-UU. The appearance of the route on the map demonstrates that it physically existed at the time, but because it lay outside the area covered by the Award, and because there is no annotation on the map which might otherwise provide some insight into the route's status, this document provides no support to the application, and aside from identifying the presence of Route A-B-C-UU on the map, the Applicant does not draw any further inferences from the document.

Ordnance Survey Maps

32. Ordnance Survey County Series (1869 – 1939) (Figs. 8-13)

The Ordnance Survey ('OS') produced four large-scale County Series maps of the area during the late nineteenth and early twentieth century. The first of these (1869) was accompanied by a Book of Reference, in which descriptions of areas of land were recorded, along with their acreage. The majority of the claimed routes fall within a large parcel of land situated between Broxhead Common and Headley Park, which is described as '*Rough pasture, furze etc*'. However, although various tracks are shown crossing the land by parallel pecked lines (including the lines of BW54 and BW 4), the alignment of most of the claimed routes are not reflected on the map. The roadway F-L-VV-N (plot '257') is described in the Book of Reference as an 'Accommodation Road', and is distinct from other routes which are recorded as 'Public Road' (including Pickets Hill – '170', and Cradle Lane - '175').

The second edition map (1897) shows a largely unchanged landscape, other than the annotation of some of the tracks as 'FP', and the depiction of two new tracks to the north of Headley Park (one of which is also labelled 'FP'). The area of land described as 'Free Piece' is also shown for the first time.

The third edition map (1910) shows further minor change in the area, with one route (approximately AA-O) disappearing and another appearing for the first time (heading roughly south-westwards from B through O, on a line that is reminiscent of that shown on the one-inch maps of the 18th and early 19th century). An Object Name Book (which provided information relating to place or building names) was also produced around the same time as the third edition map, with a note also indicating that revisions were made in 1939. In this document Broxhead Common is listed as '*a large common situate N.W. of Lindford.*' A subsequent annotation inserted the word '*public*' between the words '*large common*'.

The fourth edition map (1939) shows a number of additional tracks had by this time been established on the land between Headley Park and Broxhead Common, including a route circumventing 'Free Piece' (O-R-Q) but again, most of the new routes do not coincide with application routes.

The County Series maps, whilst reflecting the changing nature of the land over the course of the late nineteenth and early twentieth centuries, do not provide any indication of the existence of public bridleways in the locality of Broxhead Common. All that can be inferred from the depiction of those paths that are shown is that they physically existed at the time of the survey – they do not provide an indication of status.

33. National Grid Series (1962 – 1974) (Figs. 14-15)

The 1962 map (6 inches to 1 mile) shows a largely unchanged picture when compared with the 1939 County Series map – a number of tracks are shown criss-crossing an area labelled 'Broxhead Common'. Some are labelled 'FP', but of these routes some were by this point recorded on the definitive map as bridleways, and so this map is unlikely to be a reliable indicator of status or whether a route was public or private. The route between C-UU can be seen running east from Headley Park, crossing two footbridges on its way to Picketts Hill Farm, where a route (apparently gated) runs through the farmyard to meet the road.

The 1974 map (1:2,500) more closely reflects the landscape that can be seen today, with a large area of land fenced between Broxhead Common to the west and Free Piece to the east. The delineation of this fencing appears to have informed the claimed route running between S-AA-T-W, but there is no track marked on the map which corresponds to either this route or U-V-X to the west (or the link between V-W). The track running between Z-AA can also be seen for the first time. The map also shows further fencing to have taken place further to the south, where the diverted alignment of Bridleway 46 can be seen running alongside fence lines down to Broxhead Farm Road. There has been some realignment of the cluster of tracks shown around Point S.

34. OS Explorer Map – 2004 (Fig. 16)

This map, produced at a comparatively small scale (1:25,000), provides little detail of any routes crossing the area in question, but pecked lines indicate the physical existence of some of the claimed routes. Existing rights of way are annotated on the map in Ordnance Survey's standard notation for footpaths and bridleways.

Other evidence from the 20th Century

33. Finance Act Records – 1910 (Fig. 17)

The application routes fall within three main hereditaments – 378, which covers Headley Park; 1359, which covers the land between Headley Park and Broxhead Farm Road; and 396, which covers Headley Wood Farm.

In respect of 1359, a reduction of £635 was granted in recognition of public rights of way running through the land. The entry in the valuation book does not refer to a specific route but it is noted that two routes were recorded through this parcel on the First Definitive Map in 1951 (Footpaths 3 and 4 – see Fig.18)

Hereditament 396 includes a £25 reduction for 'public rights of way or user' which, in lieu of any other routes being shown across the land on any contemporary maps, presumably related to the access road running past Headley Wood Farm ('Linstead Lane').

Hereditament 378 includes a £300 reduction for 'public rights of way or user'. Under the heading in the valuation book 'Fixed Charges, Easements, Commons

Rights and Restrictions' two routes are listed - '*public footpath from Broxhead Common to Headley Wood Farm*' and '*accommodation road from Broxhead Common towards Lindford*'. Elsewhere, under the heading 'Restrictions', '2 footpaths' are listed, with a value of £300. The public footpath appears to relate to the route that was subsequently recorded as Footpath 3. The applicant contends that the accommodation road refers to the route running southwards from Point B through C and D and beyond into hereditament 1359, and whilst this cannot be said with certainty, it is plausible given that Lindford lies to the south of Headley Park. In any event, the reference to 'accommodation road' indicates that the route was used for private access. Given that only one public route is specifically mentioned in the valuation book (and its alignment is described), the meaning of the other references to footpaths elsewhere in the record is unclear. Consequently, it is considered that little weight can be attributed to this evidence.

34. Hampshire's Definitive Map of Public Rights of Way – 1951-1964 (Figs 18-21)

The first definitive map of public rights of way, published in 1951, shows three public footpaths crossing the area through which the application routes run. Footpath 3 is shown commencing at a junction with Frensham Lane at Linstead Farm, proceeding past Headley Wood Farm in a north-westerly direction through Free Piece and on to Picketts Hill. Footpath 4 is shown running south from a junction with Footpath 3 at Point D, bearing south-westwards at Point F and running on to split at Broxhead Farm (I), with Footpath 5 continuing on to Point J while Footpath 4 continues to Point K. The second edition map of 1958 shows an identical picture.

By the time the third definitive map was published in 1964, additional rights had been recorded in the shape of Bridleway 46 and 47 (the latter involving a partial upgrade of Footpath 3) and the upgrade of Footpaths 4 and 5 to bridleway. That part of Footpath 4 running north from the junction with Bridleway 46, and the section of Footpath 3 which continued north-westwards from the junction with Footpath 4 (running through D-P-O-S) has by now been renumbered as Footpath 54.

35. Sales Particulars for Headley Wood Farm – 1962 (Fig. 22)

In 1962 Headley Wood Farm was put up for sale at auction. Spread across 16 lots (which are shown colour-coded on an accompanying plan) the land for sale includes what is now Headley Park, Headley Park Cottages, Bottomfield Copse and part of Broxhead Common. The various lots encompass all of the eight application routes.

The applicant highlights the section in the sale document entitled 'Rights of Way', and draws particular attention to the following passage:

'Lots 7, 9, 10 14 – Lot 7 is sold with the benefit of rights of way (in common with all others having or to whom there may be granted the like rights) [applicant's emphasis] for all purposes over the track in Lot 14 between the points marked A and B on the Sale Plan and over the track or roadway between the points marked B, C and D in Lot 9 and D and E in Lot 10 and for agricultural and forestry purposes only over the track or roadway over Picketts Hill Farm to the public road between the points marked J and H on the Sale Plan subject to the purchaser of Lot 7 paying a fair proportion calculated according to user of the costs of maintaining and renewing the said tracks or roadways.'

The applicant appears to infer that the reference '*in common with all others having or to whom there may be granted the like rights*' is indicative of the subsistence of a public right of way. However, the particulars clearly refer to private rights of way that

attach to the particular lot that is for sale ('Lot 7 is sold *with the benefit* of rights of way') and the reference to 'all others' is a reference to any other parties who may have been granted 'like rights' (ie a private right of their own). Nowhere in the sale documents is there acknowledged a pre-existing public right of way that crosses any of the lots for sale.

36. Letter from Headley Wood Farm Manager to Clerk of Headley Parish Council – 17th June 1964 (Fig. 23)

This letter was written by M R Porter, the then Manager of Headley Wood Farm, to a Mr J McGhee (although the letter does not make this clear, by reference to other evidence reviewed it is apparent that Mr McGhee was at that time the Clerk to Headley Parish Council). Mr Porter's letter responds to one sent by Mr McGhee (which has not been seen) apparently in response to an enquiry about the Farm's proposals for new fencing on Broxhead Common. Mr Porter explained that the proposals were primarily to tackle issues with littering by the public, but also included provision for a picnic area and an area for the grazing of sheep and cattle. At the end of the letter Mr Porter refers to 'the public footpaths' which he has shown on a hand-drawn sketch based on the 'footpath map at the Alton RDC [Rural District Council] Offices'. He concludes by saying '*anyone wishing to ride or walk along the tracks from A to B and C or D and E could continue to do so*' (see Appendix 2, Fig. 23).

It is difficult to infer much from Mr Porter's statement without having seen the letter to which he was replying. It does not appear to be conducive to a deemed dedication of public rights by the landowner. Further, it is not known what public use was actually being made of the routes at the time, or what use was subsequently made of them in the wake of this statement.

Orders and Applications to modify the Definitive Map – 1973-2011

37. Public Path Diversion Order (1973) – Parts of Bridleway 47 and Footpath 3 (Appendix 4)

This Order, confirmed by the County Council in 1973, diverted part of Bridleway 47 which ran over the Headley Wood Farm access road between Points L-VV-N to its current alignment running through L-M-YY. It also diverted part of Footpath 3 from an alignment running north-westwards from Headley Wood Farm between VV-ZZ to its current alignment running between ZZ-L. The evolution of the routes can be charted on the Definitive Maps published between 1951 and 1964 (see Figs.18-20 at Appendix 2).

38. Public Path Diversion Order (1992) – Parts of Bridleways 4 and 46 (Decision Ref: FPS/Z1700/4/20) (Appendix 5)

Confirmed by the Secretary of State following a public inquiry, this Order provided for the diversion of Bridleway 46 between its junction with Broxhead Farm Road and its junction with Bridleway 54 at Point E, and for the subtle realignment of two sections of Bridleway 4 between F-K.

39. Definitive Map Modification Order and Public Path Creation Order - Bridleway 54 - (1997) Decision Ref: FPS/Z1700/7/51) (Appendix 6)

These Orders were made together and considered in tandem by the Secretary of State. Both orders provided for the upgrade of Footpath 54 to bridleway status. One of the orders was a DMMO, made under the provisions of the Wildlife and Countryside Act 1981, based upon evidence of use by local equestrians. The application for the DMMO (made by the same applicant as those application that are now under consideration) had been refused by the County Council, but an order had been made following a successful appeal by the applicant. A creation order had also been made under Section 26 of the Highways Act 1980, on the basis that such a route should be created in the interests of the public (although if it transpired that the DMMO was confirmed, this order would be superfluous).

The applicant's case for the DMMO was that errors had been made during the preparation of the early definitive maps, in particular the disregarding of representations made by Headley Parish Council that the whole line of Footpath 3 should be upgraded to bridleway, which resulted in part of Footpaths 3 & 4 (as the route was then recorded) being under-recorded as footpaths, and not bridleways. They also relied on some evidence of use by local equestrians. Ultimately the Inspector found that that the documentary and user evidence did not support the assertion that bridleway rights had been dedicated. He also found that the mistakes alleged by the applicant had not occurred on that part of the route recorded as Footpath 54 (although he left open the possibility that they may have occurred on those sections of Footpath 3 other than the Order route section). As a consequence, the DMMO was not confirmed. The Inspector did however determine that the creation order should be confirmed, resulting in the upgrade of the route to bridleway status.

40. Application for a Definitive Map Modification Order to record Footpath 3 as a bridleway (2001) (Decision Ref: GOSE 108/2/HAMP/4) (Appendix 7)

This application for DMMO, again made by the applicant for the present applications, was submitted to the County Council in 1996. This was refused, and the applicant appealed the decision to the SoS.

The 1996 application revisited areas that had been discussed in the 1997 public inquiry into the status of Footpath 54 (see paragraph 39). The applicant again advanced arguments that mistakes had been made by the County Council in its treatment of the historic line of Footpath 3 and of representations by Headley Parish Council (who seemed to have been confused about the status of the route) that the route should be upgraded to bridleway. They also provide five user evidence forms and letters of support.

The County Council countered by pointing out that this line of reasoning had not been accepted by the Inspector at the 1997 inquiry, and that any confusion on the part of Headley Parish Council regarding the status of Footpath 3 would have been dispelled at various stages of the process of compiling the definitive map, through publicity and notification of the changes that had been made during the draft stage of producing the map.

In a letter to the applicant dated 12th October 2001 the Government Office for the South-East ('GOSE') conveyed the SoS decision that the appeal should be refused. The Inspector appointed to determine the appeal did not consider that the evidence showed that any procedural mistakes had been made, and that the user evidence fell far short of what would be required to show a presumption of dedication.

41. Application for a Definitive Map Modification Order to record public bridleways at Broxhead Common – (2007) (Decision Ref: NATROW/Q1770/529A/05/64) (Appendix 8)

Another application for a DMMO was submitted by the Applicant to the County Council in 1999. The County Council refused the application in 2005 and the applicant appealed this decision to the SoS. The route in question generally corresponds with that which is now claimed as part of Application 1038 (S-AA-T-U-V-X with a spur between Z-AA with sections T-W-Y and V-W now claimed in addition to the original route). The application was based on user evidence, and the applicant also alluded to the depiction of part of the route on the tithe map, Greenwood's map of 1826 and the Ordnance Survey maps of 1868 and 1910.

The County Council 's position was that the land over which the application route ran had been leased to it by the landowner in 1978, and the lease provided a revocable permission for the purposes of air and exercise, which would preclude any presumption of dedication. The Inspector agreed, and refused the appeal, also noting that copies of the historic evidence referred to by the applicant, which had not actually been submitted, were in any event unlikely to have altered the outcome.

42. Definitive Map Modification Order to record public bridleways between Cradle Lane and Bridleway 54 - (2011) (Decision Ref: (FPS/Q1770/7/70R) (Appendix 9)

A further application was made by the Applicant to record bridleway rights in the locality in 2000, this time between Cradle Lane and Bridleway 54. Part of the application coincides with the routes now claimed between B-P and B-O as part of Application 1037.

The determination of the application followed a somewhat convoluted route, initially submitted to the County Council in 2000 and refused by it in 2007. This decision was successfully appealed to the SoS, who directed that an order should be made in a decision letter of January 2008. The resulting order was made by the County Council in October 2008, and attracted seven objections, including from the County Council itself. An inquiry was held to determine the Order in September 2009, with the appointed Inspector subsequently determining that it should not be confirmed. The applicant challenged this decision by way of judicial review, and the SoS ultimately consented to it being quashed. Another inquiry was held in June 2011 to reconsider the opposed order.

The inquiry considered both historic documentary evidence (including much which is discussed earlier in this report) and user evidence by local equestrians. In summarising the documentary evidence, the Inspector concluded that *'none of the maps submitted in this case provides the required quality of evidence from which it could be concluded, on the balance of probabilities, that public equestrian rights had been dedicated over the Order route at some point in the past'*, noting that only some of the maps considered actually showed the entirety of the route, and even those that did show it all did not provide evidence of status. They also concluded that the user evidence was insufficient to raise a presumption of dedication.

Other Legal Proceedings

43. Decision of the Chief Commons Commissioner – Broxhead Common (CL147) – 1974

The Commons Registration Act 1965 introduced a new statutory registration scheme for common land. The process allowed for proposals to register land, which were to be submitted by the beginning of 1970. A subsequent period, ending in July 1972 was allowed for objections to any disputed registrations, which were to be resolved by a legally qualified commons commissioner.

In April 1974, the Chief Commons Commissioner (Mr GD Squibb QC) held a hearing over three days into objections relating to the registration of multiple rights of common on both sides of the Sleaford-Lindford Road (which had been known locally as 'Broxhead Common' for centuries). The Chief Commissioner issued his decision letter in November 1974¹, ultimately deciding to confirm some of the registrations of rights but refusing to confirm others. Some of these registrations were the subject of subsequent court proceedings (although as that is not pivotal to the determination of the DMMO applications it is not discussed further here), with the upshot being the cancellation of the provisional registration of a large area of land to the east of the Sleaford-Lindford Road (often referred to as the '80 acres'), the majority of which lies between the routes of Applications 1037 and 1038.

The Applicant makes numerous references to the 1974 decision letter in their submission, drawing on statements made by the Chief Commissioner that (it is asserted) support the notion that the land had been used in a way that would be required to establish a claim for a public right of way. However, as was held by the Secretary of State in the 2011 DMMO proceedings (see paragraph 42 of this report and the SoS decision letter at Appendix 9), there was no indication in the Chief Commissioner's findings that the public had been using any particular route in the locality that would be consistent with the use of a public right of way (as opposed to the exercising of a right of common), and no indication that such use was on horseback.

Analysis of the Evidence

Each of the eight applications is considered in turn, with an assessment of the evidence identified by the applicant as being supportive of their case.

Application 1034

Application for the restoration of the original line of BW47 to the historical route through Headley Wood Farm and the widening of the path and removal of gates on the existing route (L-VV-N/L-M)

44. The applicant's supporting statement highlights various inquiries into modification and public path orders concerning BWs 4, 5 and 46, which the applicant cites as evidence of repeated attempts to resolve obstruction issues resulting from the enclosure of a large area of land in the 1960s. It also refers to a statement of an officer of the County Council at a public inquiry into a public path diversion order concerning BWs 4 & 46 in 1991, which acknowledged that the order routes had

¹ Copy of the full decision letter available on the website of the Association of Commons Registration Authorities - <https://acraew.org.uk/sites/default/files/uploads/Hampshire/BROXHEAD%20COMMON%20-%20WHITEHILL%20AND%20HEADLEY%20NO.CL.147.pdf>

been obstructed for many years, apparently reflecting frustration experienced by the public.

45. The applicant asserts that the landowner applied for a diversion order in 1973 to 'prevent' the line of BW 47 following the route through Headley Wood Farm, the historical route shown as a road on the Tithe Map. The applicant also asserts that the diverted path is now enclosed at a width too narrow for equestrians, and also contains four unauthorised gates (although only two are referenced in this application). It is alleged that *'local people regretted the 1973 application but at the time did not object as they were given to understand that any objection would be futile'*, and reference is also made to the fact that local people could not have foreseen the withdrawal of permissive access by the same landowner in 1989. The applicant now claims that BW 47 should be returned to its original alignment through Headley Wood Farm and should be made more accommodating to the public by removing the gates and trebling the width of the bridleway where it runs between the fields.

Conclusions on Application 1034

46. There are three issues to consider in this application – the possible existence of bridleway rights between Points L-N), whether the gates at points L and M are unauthorised, and whether a greater width should be recorded in the description of Bridleway 47. The answer to all three turns upon the diversion order, made under the Highways Act 1959 and confirmed in 1973 (see Appendix 4). It diverted BW 47 from a route running between L-N to its current alignment running through L-M-YY. None of the other evidence referenced by the Applicant is directly relevant to this matter.
47. Dealing firstly with the status of the route running between L-VV-N – the effect of the 1973 diversion order will have been to extinguish all public rights on this route as part of the diversion process that established the current line of BW 47 between L-M-YY. It therefore follows that any evidence pointing to the existence of public bridleway rights on this route before 1973 is now irrelevant. As a consequence, there is no basis on which to argue public rights still subsist on this route. The statutory process to be followed in the course of making and confirming a public path diversion order involved widespread consultation, and the Applicant's assertions that local people chose not to object to the order at the time has no bearing on the validity of the order that was made. It follows that this aspect of the application must be refused.
48. In relation to gates and width on L-M, a DMMO can only be made if there is evidence to show that particulars recorded in the definitive statement require modification. If gates are present on a route that are not referenced in the statement, or if the available width of a route is less than what is set out in the statement, then this will be a matter for enforcement under the County Council's powers under the Highways Act 1980. It is not something which can be remedied through an application for a DMMO.
49. The schedule to the 1973 diversion order (insofar as it relates to the section between L-M) reads:

'A bridleway commencing at a field gate on the south side of the existing bridleway approximately 240 yards west of Headley Wood Farm and running

south-westwards along an unenclosed path on the headland on the east side of a field for 195 yards, through a bridlegate and down a slope...'

Widths for the diverted section further south are provided and have been recorded in the definitive statement. But because the order does not provide a width for the section running between L-M, none has been recorded on the statement. As the Applicant has not advanced an evidence-based argument for increasing the available width, it follows that this part of the application should be refused. The gates at L and M are also not recorded in the statement, but because they are referenced in the 1973 order they were recorded as lawful limitations to use at the time the order was made, and are not therefore 'unauthorised', as is asserted by the Applicant. If the gates were present in the statement, there would be no evidential basis on which to remove them. There is actually a clear case for adding the gates to the definitive statement now, on the basis that they were mistakenly omitted in 1973.

50. In light of the above, it is recommended that Application 1034 should be **refused**.

Application 1035

Application to record a bridleway between Picketts Hill Farm and Headley Park Cottages (UU-C)

51. This application seeks to record a bridleway based on the route's appearance on various small-scale maps produced throughout the 19th century, and references within the Finance Act 1910 documents. The Applicant's supporting statement also highlights that the route is shown on the map included with the particulars of sale for Headley Wood Farm in 1962.

52. The Applicant also states that the route was shown as a road or way on the Headley Tithe Map (1847), the Enclosure Award for Binsted (1855), Greenwood's map (1826) and Ordnance Survey drawings and maps dating from the early nineteenth century. Other than highlighting their physical appearance on these maps, the applicant draws no further inferences.

53. A route is shown on the tithe map commencing at a junction with Picketts Hill (Point A) and heading south-eastwards through a junction with Application Route 1036 at Point B, proceeding eastwards from Point C. From here the route continues across Headley Park to meet Picketts Hill Farm (Point UU). It is noticeable that the route is not defined within the curtilage of the farm and is not shown continuing through the farmyard to rejoin Picketts Hill, suggesting that the route was not considered to be a 'through route', but instead a private accommodation road serving the farm. The applicant highlights the fact that the route is indistinguishable from other public roads by virtue of its ochre shading, but this shading has been applied to all roadways, both public and private, which is consistent with the practice of showing areas of land that were unproductive, and therefore not subject to a tithe payment. Although most of the roadways on the plan are not labelled, the application route is (438a), and the Award lists it as a 'Lane' in the ownership of John Petar. Several other 'lanes' are listed in the award, all falling within private ownership. A further category within the 'Commons and Wastes' section at the end of the Award entitled 'Roads and Rivers' (accounting for 120 acres) appears to account for the public road network. In light of this, it is considered that the Tithe evidence points more towards the route having been private, rather than a public route.

54. The application route is shown on the Binsted Enclosure Map of 1852 in similar fashion to the 1847 Tithe Map – variously shaded ochre and uncoloured, the route is shown as an unenclosed route running from Picketts Hill eastwards across Headley Park and terminating in the curtilage of Picketts Hill Farm (but as with the Tithe Map, not through the farm to meet the road). The route is not labelled in any way (unlike other routes, such as Footpath 48 to the north which is described in the Award as ‘Trotsford Lane’) and lies outside a redline boundary which appears to delineate the extent of the Award. As such, no inferences can be drawn as to status, as the route was not included in the area being enclosed and would therefore have been outside the commissioners’ remit.
55. The maps produced by the Ordnance Survey and Greenwood in the early 19th century evidence the physical existence of the route running westward from UU to meet tracks crossing Broxhead Common. The alignment of the route is shown on a more generic curving alignment between C-UU, perhaps a result of the smaller scale of the maps (1 inch to 1 mile). The Ordnance Survey Old Series (c1810) shows the route at UU running to the north of Picketts Hill Farm and not running through it, but Greenwood’s map a few years later reflects the position shown on the Tithe and Enclosure maps - possibly the route had been relocated prior to 1826. Again, these maps provide only neutral evidence in respect of the application, given that they do not provide a clear picture of the route providing a connection between two other public highways and do not provide evidence of status.
56. The application route fell entirely within parcel 378 on the Finance Act map of 1910. A deduction was claimed by the landowner for ‘public rights of way or user’, and a public footpath is specifically referenced running between Broxhead Common and Headley Wood Farm (which lies some way to the south of the application route). An accommodation road is also referenced running from Broxhead Common to Lindford, but there is no evidence of a public right of way being identified between UU-C.
57. Perhaps most instructive are the 1962 sale documents for Headley Wood Farm. As discussed at paragraph 35 above, the applicant has inferred that the reference to the lots being sold with the ‘benefit of a right of way’ translates to the subsistence of a public right. As discussed in paragraph 35, officers do not agree. Application route 1035 is shown as forming part of a way running between Picketts Hill and Picketts Hill Farm, annotated on the sale map as A-B-C-D-E-S-J-H (see Appendix 2, Fig. 22). The sale documents reference some of this lettering on page 23:

“Lots 17 and 18 are sold with the benefit of a right of way on foot only over the roadway and track between the points A, B, C, D, E and S on the Sale Plan across the bridge near the point S and along the banks of the River on Lot 7.”

Officers would draw the same conclusions as at paragraph 35 – the fact that it was considered necessary to convey a right of way on foot as part of the sale indicates that there was no pre-existing public right of way route at the time of the sale.

Conclusions on Application 1035

58. In this application it is necessary to consider whether it can be reasonably alleged that bridleway rights subsist on the route between UU-C. Because of the way the applicant has split the routes in their application, the physical continuation of the route west of Point C does not form part of this specific application, but it has nevertheless been considered.
59. It is considered that the evidence adduced in support of this application does not amount to a reasonable allegation that public rights subsist on the application route.

At best it demonstrates physical existence of a route in the shape of various maps dating back to the early nineteenth century. But the Finance Act and 1962 sale documents appear to point away from public status.

60. It is therefore recommended that Application 1035 be **refused**.

Applications 1036 & 1040

Application to record restricted byway rights between Picketts Hill and Broxhead Farm Road (A-B-C-D-E-F-G-H-I-J/I-K)

Application to record bridleway rights between SU 8112 3831 and Headley Bridleway 54 (B-C-D)

61. For some reason, there is an overlap between Applications 1036 and 1040. Application 1040 seeks to record bridleway rights on a section of a route on which the applicant has also claimed restricted byway rights in Application 1036. It is not clear why the applications have been made in this way, but because of the overlap in evidence, they have been considered together.

62. Application 1036 seeks to record a route (which coincides with parts of Headley Bridleways 4 and 54) as a restricted byway. The applicant advances the same arguments as in Application 1035, asserting that the route is shown on various small-scale maps throughout the 19th century, is referenced as an 'accommodation road' in the 1910 Finance Act documents, and is subject to a right of way conveyed in the 1962 sale particulars for Headley Wood Farm. The applicant's supporting statement highlights that the route is shown on the map included with the particulars of sale for Headley Wood Farm in 1962. The Headley Tithe and Binsted Enclosure maps have also been examined (the route is not shown on either).

63. The Ordnance Survey drawings and maps dating from the early nineteenth century show a route commencing at around Point B, as a continuation of another route previously claimed by the applicant but ultimately refused by the Secretary of State in 2011 (FPS/Q1770/7/70R – see discussion at paragraph 42, and the SoS decision letter at Appendix 9). From Point B the route heads south then south-westward on an alignment that roughly corresponds with the remainder of the application route down to Points J and K. The later, larger-scale Ordnance Survey County Series maps produced between 1868 and 1939 continue to show a route on the same alignment, although by the second edition map (1895) no route is shown between Points A-B. Although not present on the earlier small-scale maps, the tangential route taken between F-G-H can be traced on the County Series maps, albeit alongside various other tracks in the area.

64. The 1962 sale catalogue for Headley Wood Farm states that:

'Lot 7 is sold with the benefit of a right of way for all purposes over a track between the points K, L, M, N & P on Lot 14 to the public road.'

This reference may account for the rather circuitous alignment claimed by the applicant between F-G-H. Insofar as the document supports the application itself, again, the conclusion reached is the same as for Application 1035 – this is a reference to a private right being conveyed as part of the sale of Lot 7. This is consistent with the reference in the 1910 Finance Act documents to the route forming part of an 'accommodation road'.

65. Part of Application route 1036 was recorded on the first Definitive Map (1951) as Headley Footpaths 4 and 5 (see Appendix 2 Fig.18) and subsequent changes to have upgraded the route to bridleway status. The prior existence of a right of way on the Definitive Map will have implications for the evidential threshold that must be reached for the requested order to be made.
66. The same evidence and arguments are advanced by the Applicant in support of Application 1040. Reliance is placed upon the same small and large-scale maps of the nineteenth century and the sale particulars of 1962, but it is the Finance Act evidence, which is given the greatest weight by the applicant, on the basis that it described the application route as an 'accommodation road'. As discussed earlier in this report, this description indicates the route was used for private purposes, not public.

Conclusions on Applications 1036 & 1040

67. In consideration of the fact that parts of the claimed route were originally recorded on the definitive map as a footpath and are now recorded as bridleways (D-E-F and H-I-J/I-K), for an order to be made to record restricted byway rights it must be shown that such rights subsist 'on the balance of probabilities' on those parts of the application route. For the other sections not already recorded, the lower test of a reasonable allegation that such rights subsist is engaged (A-B-C-D and F-G-H).
68. The above notwithstanding, it is not considered that the evidence adduced is sufficient to even raise a reasonable allegation that public rights subsist on sections A-B-C-D and F-G-H, or that higher rights subsist on Sections D-E-F and H-I-J/I-K.
69. Although the maps listed above provide evidence of the physical existence of tracks crossing to the west of Headley Park and to the east of Broxhead Common, none of them are indicative of public rights subsisting the tracks shown. As with Application 1035, the evidence of the Finance Act 1910 and the 1962 sale documents point away from the routes being public rights of way.
70. In light of the above conclusions, it is recommended that both Application 1036 and Application 1040 be **refused**.

Application 1037

Application to record bridleway rights around the edge of Free Piece (B-O-R-Q)

71. The first part of the application route running between B-O coincides with an earlier application (ref 694) to record public bridleway rights from Point O north-westwards across Picketts Hill to Cradle Lane (that part of the route that does not coincide with this application is shown by a blue dotted line on the location map). The order that was made as a result of this earlier application was refused in 2011 (see discussion at paragraph 42, and the SoS decision letter at Appendix 9) and officers have found the Inspector's decision letter of some assistance in evaluating the evidence adduced in support of this application.
72. The application route follows the perimeter of a distinctive parcel of land, annotated on various maps as 'Free Piece'. The Applicant highlights various historic maps that show Free Piece and cites these as support for the application. However, some of these maps do not show a route at all (notably the 1787 Survey of Alice Holt and Woolmer Forest and the 1846 Headley Tithe Map, which show the outline of Free Piece but do not show any path corresponding with the application route), and other

maps which do show routes running through Free Piece do not show the same alignment as that which has been claimed (eg the 1810 OS Old Series map and Greenwood's map of 1826). The 1910 Finance Act documentation is referenced, but as discussed earlier in the report, this does not describe specific routes, and the lack of an identifiable route on contemporary maps means that the deduction allowed for rights of way is unlikely to have referred to a path running around Free Piece.

73. It is not until the Ordnance Survey County Series Map of 1939 that a track can be seen skirting the boundary of this parcel of land. As discussed above, the depiction of a route on an Ordnance Survey map does not, in isolation, provide evidence of status. The route is also shown on later Ordnance Survey maps of 1962 and 1974, but again, this demonstrates little beyond the physical existence of a path (this point was made by the Inspector in their 2011 decision letter).
74. The applicant refers to other documents tendered as evidence in support of the application, including the letter from Michael Porter (see Appendix 2, Fig. 23), which as discussed at paragraph 36, is considered to carry little weight. A further letter from Mr Porter written to the applicant on 27th January 1989 and headed 'Track by Tree Nursery' states that '*as from the 1st February 1989 the above track, which has been used by riders to gain access to bridleway 46 on Broxhead Common, will closed [sic] permanently.*' Whilst it appears that this could be a reference to Application Route 1037, the letter provides no insight into what arrangements had been in place up until this time, and whether access was permissive or 'as of right' and the extent to which the route had been used.
75. Other evidence provided by the applicant (including a photograph purportedly taken looking south-west from Point B, and a newspaper cutting from 1895 containing an interview with a retired judge who was a former resident of Headley Park, in which he discusses walking in the local area) does not provide any assistance in determining whether any public rights subsist on the application route.

Conclusions on Application 1037

73. Although the applicant has cited a wide array of evidence in support of this application, it is only the Ordnance Survey evidence of the mid-20th century that provides any tangible evidence of a physical path corresponding with the application route, and this does not provide any indication of status. The other evidence either shows the outline of Free Piece with no route around the edge or does not show Free Piece at all (and as a consequence does not show anything conforming to the application route).
74. Although the letters from the Headley Wood Farm manager, Michael Porter, indicate that the route was receiving some use from the 1960s onwards, they do not provide sufficient insight into the level of public usage or the nature of any arrangement that provided for such access, prior to the route being closed in 1989. It is therefore not possible to infer from this isolated correspondence whether the public had acquired a right of way through long use.
75. In light of the above conclusions, it is recommended that Application 1037 be **refused**.

Application 1038

Application to record bridleway rights east of Broxhead Common (S-AA-T-U-V-X/T-W-Y/Z-AA/V-W)

76. The route that is the subject of this application is substantially similar to one claimed by the Applicant in 1999, refused by the County Council in 2005 and by the Secretary of State on appeal in 2007 (see discussion at paragraph 41 of this report and the SoS decision letter at Appendix 8). The 1999 application sought to record all sections of the route that is claimed in Application 1038, save for the connection between T-U and the link between W-Y, which were not previously claimed. The applicant now asserts that the historic documentary evidence they have identified adds support to their earlier user evidence-based application.

77. The 1999 application hinged solely upon user evidence, and although the Inspector's appeal decision refers to the applicant citing four nineteenth century maps as showing part of the route between S-U, copies of these maps were not provided. The Inspector states (at paragraph 44 of the decision letter) that:

"From the details provided, this documentation alone would not demonstrate that this route was considered to be a highway. If the Appellant's interpretation of these maps is correct, they could be used to support the other documentary or user evidence."

78. Later in the decision letter (paragraph 47), the Inspector highlights the changing nature of the landscape in relation to the tracks that cross Broxhead Common and the surrounding area. He summarises a series of aerial photographs and OS maps dating from the Second World War onwards by stating that, whilst they show numerous worn tracks, it is inconclusive as to whether this was evidence of the physical existence of the application routes themselves.

79. In light of the fact that the 1999 application based on user evidence was refused, in order for the present application to be accepted and an order made, it is necessary to either identify evidence of an express dedication from the documentary sources or show that there is a synergy between both the documentary and earlier user evidence, such that presumed dedication can be inferred.

80. The Applicant advances a wide array of documents as support for the application, many of which are discussed earlier in this report (other sources are discussed by the Applicant but officers have not identified their direct relevance to the application route and so they are not discussed here):

- Taylor's Map of Hampshire – 1759
- Geometric Survey of Woolmer and Alice Holt Forests - 1787
- Milne's Map of Hampshire – 1791
- Ordnance Survey 'Old Series' Map – 1810
- Greenwood's Map of Hampshire – 1826
- Headley Tithe Map – 1847
- Binsted Enclosure Map and Award - 1855
- Finance Act Map and Field Book – 1910
- Sale Particulars for Headley Wood Farm – 1962
- Report of the Chief Commons Commissioner - 1974
- Various OS and other small-scale maps – late 19th and early 20th century

81. Put simply, officers have not been able to identify this application route on any of the above documents until the late 20th century. In some instances, short sections

of parts of the application route happen to coincide with tracks shown on some maps, but it is clear in each instance that the route shown is quite different to the application route, and in each case any overlap is fleeting.

82. The fact that the delineation of the application route follows the existing perimeter fencing between S-AA-T-W-Y (which is shown for the first time on Ordnance Survey maps published during the latter part of the 20th century) suggests that the Applicant has sought to rely on the existence of numerous other tracks crossing Broxhead Common as a basis to reopen their refused 1999 application. However, none of the documentary sources provide any assistance to support the previous user evidence - the user evidence was arguably a stronger basis on which to allege rights actually subsisted on the application routes, but this was considered and deemed insufficient in 2007.
83. The applicant places some reliance on the findings of the Chief Commons Commissioner ('CCC') in 1974 in determining whether rights of common subsisted on the land through which Application 1038 runs. In particular, it is submitted that the report demonstrates that the public had, at one point in the past, uninterrupted access to the land as of right. This matter was considered as part of the public inquiry into the applicant's application to record public rights between Cradle Lane and Bridleway 54 (which lies immediately to the east of this application route and coincides with Points O-B) in 2011 (see paragraph 42/Appendix 9). In his decision letter, the Inspector summarised the position as follows (references here to the 'application route' relate to the 2011 inquiry route):
 20. "[The Applicant's] case regarding the documentary evidence was based on the proposition that the land to the west of [the application route] had historically formed part of Broxhead Common and as such was a place to which the public would have had resort. It was argued that the claimed route would have provided a means by which the public could have accessed that part of the common prior to it being fenced. The argument relied upon findings of the Chief Commons Commissioner (the 'CCC') as part of his determination as to whether rights of common existed over land to the west of [the application route].
 21. The CCC found that rights of common did exist...and were attached to two nearby properties. The remaining claims to common rights on the land were not upheld, the CCC noting that *'The evidence ranged far and wide. It was not confined to what had been done by the applicants, but covered the actions of a large number of other persons, some named and some described in such vague terms as 'people from the village of Lindford', 'all the cottagers', 'plenty of people', dozens of people in the village', 'local people', and 'anybody'. The CCC held that what had been proved was that there had been 'intermittent, sporadic and promiscuous use by the general body of inhabitants which does not support the individual claimed at all.'*
 22. It was submitted that was of great significance as it demonstrated that the 1974 evidence of use of the land to the west of the [application route] was too general in nature to give rise to rights of common but was the kind of use that was required to establish a claim for a public right of way so long as it was confined to linear routes.'
 23. I am not persuaded by the line of argument. Although the CCC heard evidence of use by *'the general body of inhabitants'* there is no indication in the CCC's report that those inhabitants were engaged in the exercise of linear access along defined routes on the common or over the claimed route. In addition, there is no evidence within the report that the activities described to the CCC took place on horseback. The CCC report is not evidence that in 1974 or prior to that date the *'general body of inhabitants'* were engaging in linear access on horseback over the common to link with the Order route or vice versa."

The Inspector's findings in 2011 as to the evidential weight that can be attached to the CCC's 1974 report also apply with regard to Application 1038. The CCC's decision provides very little support to the proposition that the application route has been used as a bridleway, not least because the majority of the application route does not appear to have existed as a logical route until the fencing of the land in the latter part of the 20th century.

Conclusions on Application 1038

84. As stated above, officers have not identified any documentary source which would be sufficient, alongside the previously considered user evidence, to meet the 'reasonably alleged' test. The route is not shown on any of the historic maps and plans, and other routes (or parts of them) that *are* shown in proximity to the application route (the status of which are unclear) do not provide support to the proposition that public rights have been acquired on the application route itself. It seems probable that such public use as there was on the application route only commenced after the land was fenced, when it provided a natural desire line for users. This does not appear to have occurred until the latter part of the 20th century, and such use as there was from this time onwards has been considered (and deemed insufficient) by the Secretary of State.
85. It is therefore recommended that Application 1038 be **refused**.

Application 1039

Application to upgrade Headley Footpath 3 to bridleway status (D-ZZ-L)

86. This application represents a fresh attempt by the applicant to secure an upgrade to bridleway status of Headley Footpath 3, it having been the subject of their earlier application for a DMMO in 1996 (which was refused by the County Council in 1997, a decision that was upheld on appeal by the Secretary of State in 2001 – see paragraph 40). It also follows a separate, unsuccessful attempt by the Applicant around the same time to secure higher rights through an application for a DMMO, determined by the Secretary of State in 1997 (Ref: FPS/Z1700/7/51, see paragraph 39). This is the third attempt by the Applicant to upgrade part of Footpath 3.
87. The applicant's case in both the above-mentioned proceedings related to perceived irregularities in the process followed by the County Council surrounding the publication of the Third Definitive Map in 1964, which resulted in Footpath 3 not being upgraded to a bridleway, something which they maintain should have occurred. They cite various exchanges of correspondence involving Headley Parish Council and the County Council, and the holding of two public hearings in the mid-1960s.
88. The applicant revisits the 1960s proceedings in this application, recounting the exchanges of correspondence, and their interpretation as to how this correspondence should have been handled and what should have resulted from it. However, this commentary and interpretation does not provide an evidential basis for reopening the matter. It is apparent that everything cited by the Applicant was considered throughout both proceedings that took place in the 1990s. The Inspector overseeing the inquiry in 1997 stated that *'there does not appear to be any basis for [the Applicant's] claim that the second review had not been conducted properly.'*

89. In addition to the discussion of the 1960s proceedings, the Applicant advances the 1787 Geometric Survey, the Finance Act 1910, and the 1974 report of the CCC as evidence to support the proposition that the route should be upgraded to bridleway status. They also highlight the fact that the OS Name Book refers to Broxhead *Public Common*.
90. It is clear from the SoS decision in 1997 that a wide array of documentary evidence was considered at that time, including the 1847 Tithe Map, commercial and OS maps. None of this was held to carry much weight by the Inspector, and they observed that the Finance Act map was of little use without the supporting documentation of the valuation books. Although these have now been identified, as discussed above, the entries documenting claimed deductions do not provide clear evidence as to which routes the deductions relate, and do not provide a basis to argue that that higher rights subsisted on Footpath 3.
91. The 1787 Geometric Survey does show a route running north-south to the east of Broxhead Common, but this does not correspond with any part of Footpath 3.
92. The weight that can be attributed to the 1974 CCC report (or lack thereof) is discussed in the assessment of Application 1038 above.
93. Very limited weight can be attributed to the evidence of the OS Name Book. Not only does the reference to a 'public common' not provide any evidence from which it could be inferred that a route should in fact be considered a bridleway as opposed to a footpath (again, the treatment of the CCC evidence and the relevance of the existence of rights of common to the status of a right of way applies), but the area covered by the parcel referred to as Broxhead Common does not include any part of Footpath 3, which runs to the east of the area.

Conclusions on Application 1039

94. In order for a previous enquiry into the status of a way to be reopened, it is necessary to show that there has been a discovery of evidence that was not available or considered at the time of the initial decision (see the discussion in 'Relevant Case Law' above). Insofar as their criticisms of the 1964 proceedings are concerned, the Applicant has not advanced any evidence which would provide a basis to argue, on the balance of probabilities, that the review process in 1964 was flawed, and their application appears to seek to relitigate those proceedings (which have been ruled as subsequently robust on two different occasions by two different Inspectors appointed by the SoS). For an order to be made it will therefore be necessary for it to be shown that there is documentary evidence which, when considered alongside previously available evidence, demonstrates on the balance of probabilities that Footpath 3 should be upgraded to bridleway status.
94. None of the evidence advanced by the Applicant does this. The route is not shown on the 1787 Geometric Survey and the Finance Act evidence provides no indication that Footpath 3 was actually regarded as a bridleway at the time. The evidence relating to the status of Broxhead Common does not have any relevance to the existence of public rights of way.
95. In light of the above conclusions, it is therefore recommended that Application 1039 be **refused**.

Application 1041

Application to widen Headley Bridleway 4 from its junction with Bridleway 47 to SU 8098 3740 (F-XX) and removal of three gates on Bridleways 4 and 54 (Points O, E and F)

Widening of Headley Bridleway 4

96. In 1992, the Secretary of State confirmed a public path diversion order (made by Hampshire County Council) to reroute parts of Headley Bridleways 4 and 46. The width recorded in the order for the diverted route of Bridleway 4 is 3 metres.
97. The Applicant now seeks the widening of the northernmost 250 metres of Headley Bridleway 4. In their supporting statement they say that the landowner fenced in the route to a width of 3 metres in 2008, but that this was a *'minimum width'*, and that the historic line of the path had been used by the public *'since time immemorial'*. The request is made on the grounds that it is clear to see the line actually used from photos (taken shortly before this application was submitted) which give some indication of the line that was originally used and based on historic use since the land was fenced in the 1960s.
98. Regardless of the historic use of the route now recorded as Bridleway 4, the diversion order had the effect of extinguishing any pre-existing rights on the route's old alignment and creating a new right of way with a specified width of 3 metres, which is properly recorded in the definitive statement. The widths shown on older documentary evidence are therefore no longer relevant, as the link with this evidence (and any pre-existing rights) was broken by the diversion order confirmed in 1992.

Removal of gates on Headley Bridleways 4 and 54

99. The Applicant also seeks the removal of three gates, situated on Headley Bridleway 54 (Point O), at a junction of Bridleways 4, 46 and 54 (Point E) and at the junction of Bridleways 4 and 47 (Point F).
100. To warrant the making of a DMMO to remove a gate(s), it is necessary to show that each gate is recorded as a limitation in the definitive statement. If it is not, then the gate would need to be the subject of an application to be licenced under the provisions of the Highways Act 1980, or removed through enforcement action.
101. If a gate *is* recorded in the definitive statement, then in order for a DMMO to be made to remove it from the statement, there must be supporting evidence that shows that the gate was wrongfully recorded when the path was first recorded on the definitive map and statement.

Gate at Point O

102. In the case Bridleway 54 the gate at Point O was recorded on the definitive statement when the path was first recorded on the definitive map (first as part of Headley Footpath 3, and then latterly as part of Headley Footpath 54). The statement entry reads:

'From Road C.102 south-eastwards along sandy track, through gateway and along grass and sandy track between fences to junction with No. 46.'
103. The Applicant's case with regard to this gate is that *'it is not needed for the ingress or egress of livestock'* and *'does not come under the criteria for the protection of woodland and is 'a public nuisance and should be removed'*. The gate is recorded in the definitive statement, and the Applicant has advanced no evidential basis for the gate being removed from it, the suitability of the gate, and whether or not it is

desirable, are not relevant matters (it should be noted that officers in the Area Access Team have confirmed that the presence of the gate *is* currently justified for livestock purposes).

Gate at Point E

104. The gate situated at the junction of Bridleways 4, 46 and 54 (Point E) has (according to the Applicant) been in situ since the 1994 creation order to upgrade Footpath 54 to bridleway status (confirmed by the Secretary of State in 1997). Again, the Applicant states that the gate is not justified for the protection of woodland and so there is no legitimate reason for it having been authorised.
105. As this gate is not recorded in the definitive statement entries for any of the three paths that meet at Point E, there is no basis on which to make a modification to the definitive statement. As a result, it may therefore have been arguable that the gate in situ is an unlawful obstruction, but this is not a matter that can be addressed via a DMMO.
106. The Applicant indicates that the gate was erected around the time the creation order was confirmed. However, it can be seen from the Ordnance Survey 25 inch to the mile maps of 1895, 1909 and 1939 that at this location the through route has been crossed by a fence line, and so it seems likely that a gate has been in situ at this location since the late nineteenth century and was apparently overlooked during the preparation of the definitive map and statement in the early 1950s.
107. However, officers have reviewed the 1994 creation order and it clearly refers to the existence of a gate at Point E in the description of the new bridleway:

“...through woodland for 60 metres then continuing through woodland for 176 metres to a junction with Headley Footpath No. 3 then south for 232 metres to a gate then continuing for 8 metres to a junction with [Headley] Bridleway No. 4.”

Gate at Point F

108. The Applicant also requests the removal of the gate at the junction of Bridleway 4 and 47 (Point F) on the basis that it is a significant obstruction for horse-riders and there is no legal requirement for it. Again, this gate is not recorded on the definitive statement for either Bridleway 4 or 47 and so, again, there is no basis to modify the statement. However, as with the creation order for Bridleway 54, the order that diverted these two paths clearly references field gates as limitations at Points F and XX.

Conclusions on Application 1041

109. As discussed above, there is no evidential basis for any modification to be made to the definitive statement to either modify the width of Bridleway 4, or to remove the gate attributed to Bridleway 54. The other two gates were lawfully recorded in orders confirmed by the Secretary of State, and so would be properly reflected in the statement entries for the paths in question (this notwithstanding, the gates are not currently reflected in the statement entries and so there is no basis for a DMMO to be made in any event).
110. Although currently missing from the statement, the gates recorded as part of the legal orders confirmed in 1992 and 1997 should have been recorded. This oversight can be remedied, and the statement updated to include the references to the gates that are cited in the confirmed orders.
111. In light of the above findings, it is recommended that Application 1041 be **refused**.

Conclusions

112. For a change to be made to the Definitive Map, there must be evidence to show that the public rights can be reasonably alleged to subsist, or, where a route is already recorded on the Definitive Map, that they can be shown to subsist on the balance of probabilities.
113. In the case of these applications, only some of the application routes are depicted on the documentary evidence identified by the Applicant, and where they are depicted, the evidence is not sufficient to demonstrate that the routes shown were public.
114. Some aspects of the applications seek to either reverse the effects of legal orders that have modified the Definitive Map and Statement, or to make modifications based on issues that are not related to matters of evidence (such as the suitability of gates or widths). This is not an appropriate use of the DMMO process, which is confined to matters of evidence.
115. Previous decision letters issued by the Secretary of State have been instructive in setting out the Applicant's previous attempts to record public rights at (or near to) Broxhead Common. Where those applications have been 'resubmitted', it is not considered that there has been a discovery of evidence that would justify the making of a DMMO in respect of those applications.
116. In light of the above conclusions, it is recommended that applications 1034-1041 be refused.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal does not link to the Strategic Plan 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 1034-1041
Parish of Headley

Location

Countryside Access Team
Universal Services
Hampshire County Council
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.