

JOULDINGS FORD

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

Executive Summary

The historic case

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

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

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

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

Common Law dedication

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

Strict settlement

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

Overall conclusion on historic case

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

User evidence

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

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

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

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

IN THE MATTER OF

JOULDINGS FORD

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

Introduction

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

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

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

The Bramshill Estate

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

NEW EVIDENCE RELEVANT TO THE APPLICATION

The Object Name Book Evidence

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

OS Name Book OS 35/311

Date: entered 1898; revised 1930

National Archives OS 35/311

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

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

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

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

Names revised September 1930
Names collected & entered by H S Beale Sept 20 1898
W B & L (1174)-58211-25000-5-03
Names as altered & initialled in red by J. Johnson in May 1978
O. S. 21.
Sheet XLV S.W.

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

Names revised September 1930
Names collected & entered by H S Beale Sept 20 1898
W B & L (1174)-58211-25000-5-03
Names as altered & initialled in red by J. Johnson in May 1978
O. S. 21.
Sheet XLV S.W.

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

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

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

OS Name Book OS 35/309

Date: 1909-1910

National Archives OS 35/309

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

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

The use of this terminology does not suggest that there were any public carriageway rights over the Common.

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

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

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

OS Name Book OS35/2786

Date: 1909

National Archives OS35/2786

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

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

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

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

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

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
Bramshill Common (pc)	Bramshill Common	Anthony W. Cope, Esq (Agent) Bramshill House Bramshill Hants See OS form 231 att. (7)	XI	4	3	A common on which the public have the rights of way on footpaths. The property of Sir Anthony Cope Bart, Bramshill House, Bramshill, Hants. Grazing & certain public rights (See correspondence to 5 S.E.)
Hazeley Heath (pc)	Hazeley Heath	See OS form 231 att. (7)	XI	4	6	Described in Page 20.

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

Conclusion on evidential value of the OS Name Books

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

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

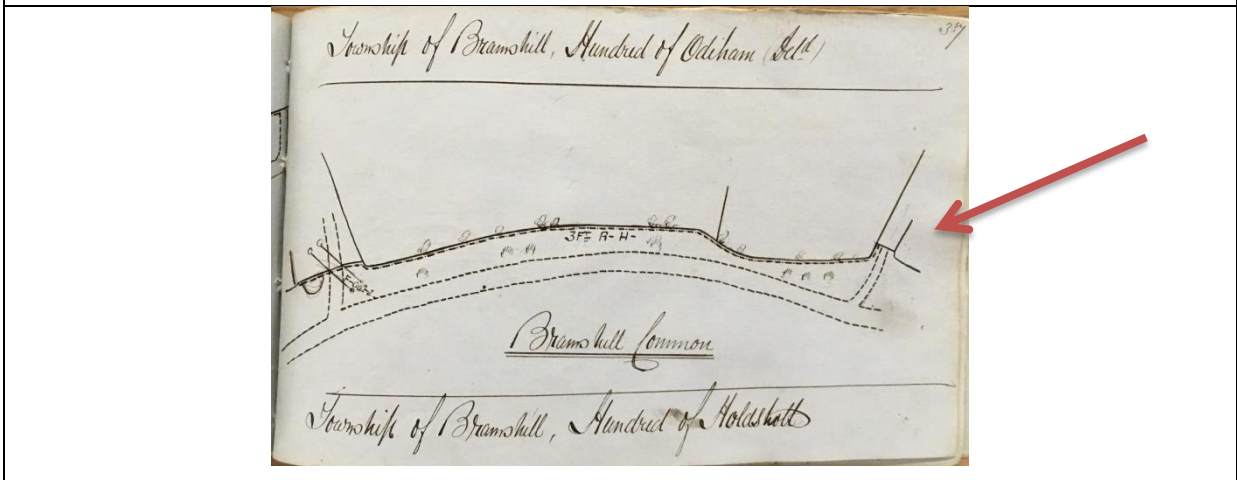
OS Boundary Remark Book OS 26/4687

National Archives OS 26/4687

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

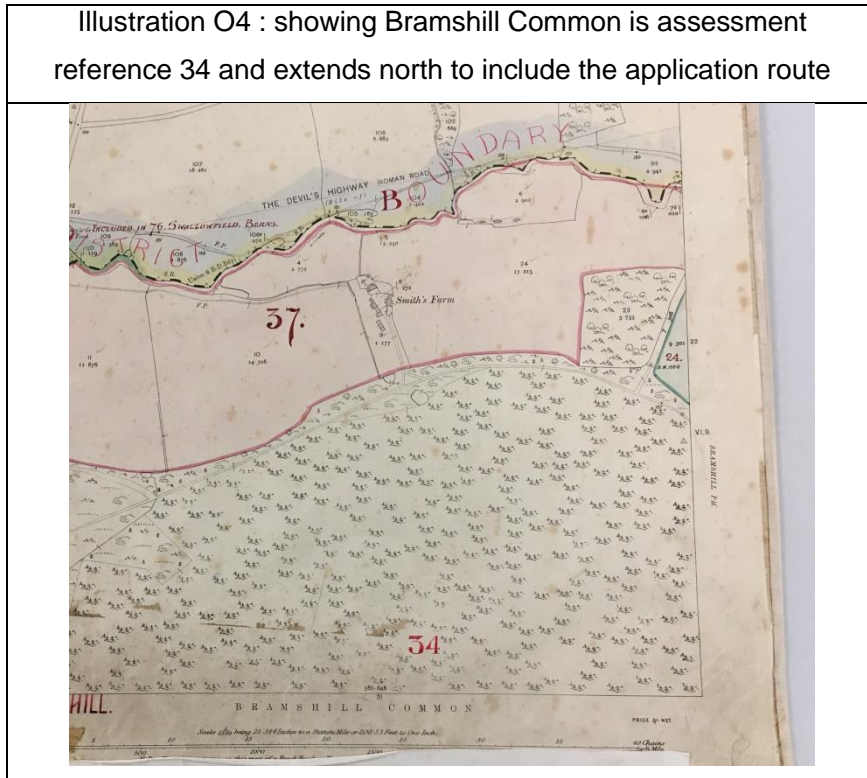
Illustration O3: OS Boundary Remark Book showing application route fenced towards its southern end (identified with a red arrow).

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



The Finance Act evidence

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



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

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

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

Other new evidence

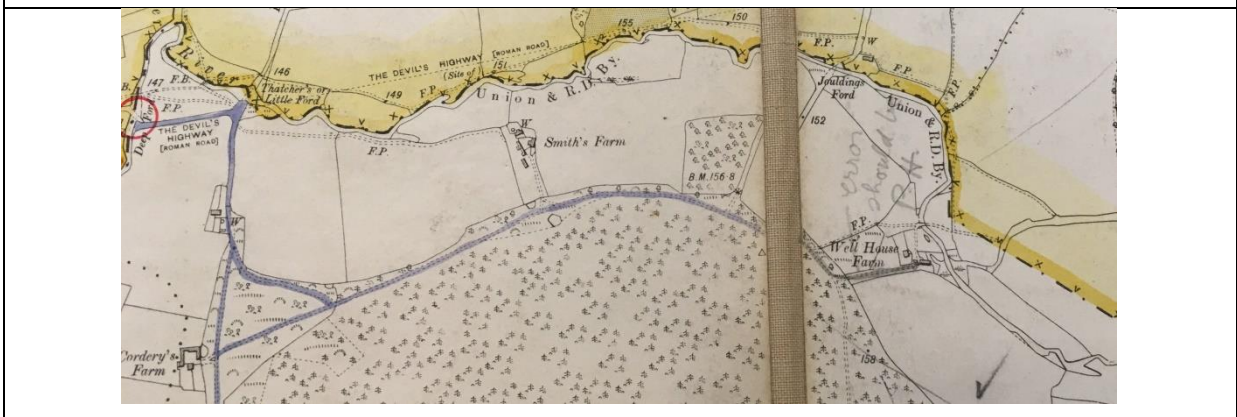
Hartley Wintney Rural District Handover Map (Hampshire side of the R. Blackwater)

Date 1929

Hampshire Records Office H/SY3/6/9

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

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



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

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

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

Date 1929

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

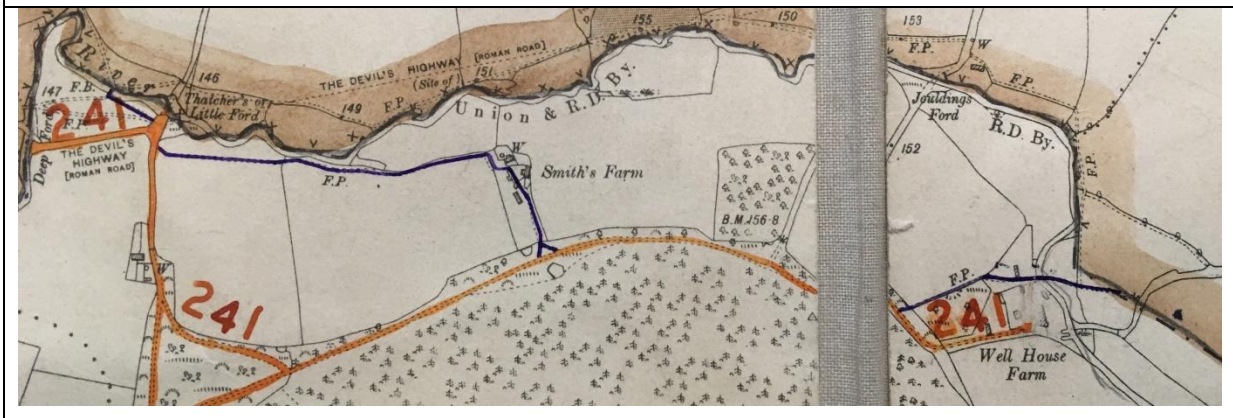
County of Southampton Highways and Rights of Way - Hartley Wintney Division

Date 1946

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

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

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



Bramshill Parish Records – general comments

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

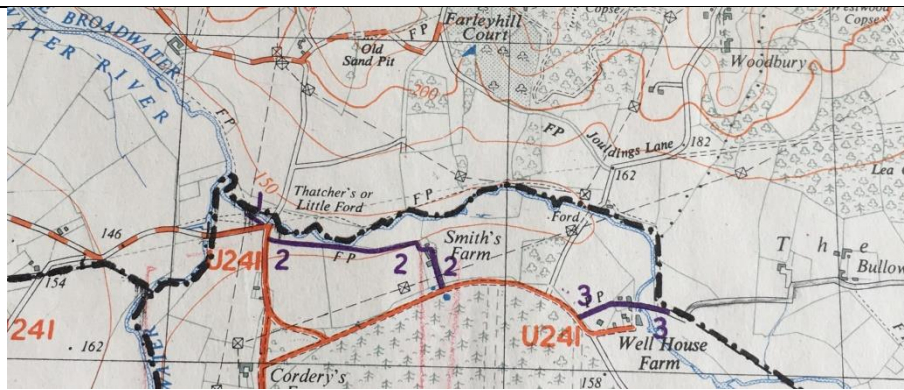
Definitive Map 1949

49. The Bramshill Parish Records include a copy of the Definitive Map dated 1949 for the land south of the River Blackwater. It records all the public rights of way in the locality. Well House Lane is shown as a public road together with public footpaths in the locality but the application route is not a public route of any kind. Again, the map shows a short section of double dotted lines and a fence blocking the application route.

50. It is notable that the map labels "Jouldings Lane" as continuing in a westerly direction towards Farley Hill Court, not in a southerly direction, and is further evidence that Jouldings Lane is part of the road network to the north and does not include the application route south of the River Blackwater.

51. The map is attached as Appendix 9 and an extract is at Illustration O7.

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

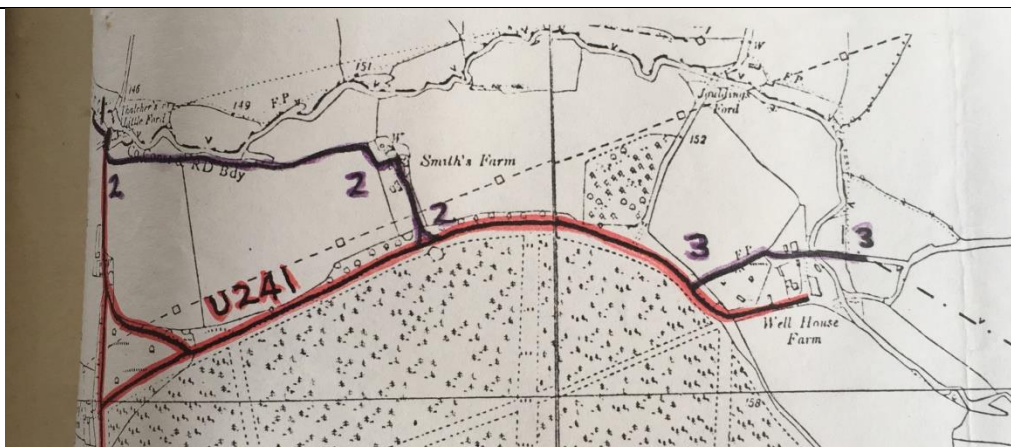


Parish Map of county roads and footpaths 1972

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

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

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

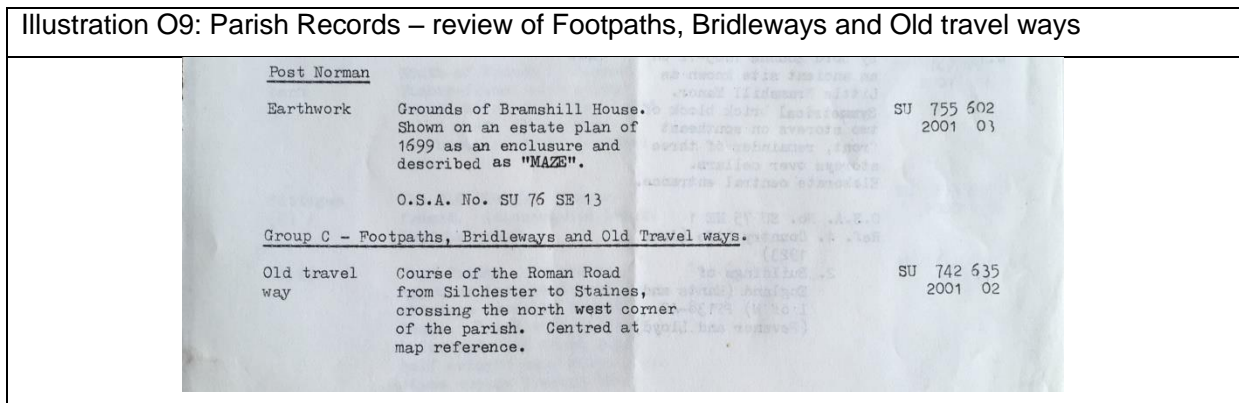


List of buildings and features of local interest

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

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

Illustration O9: Parish Records – review of Footpaths, Bridleways and Old travel ways



Highways and Sanitation Boards Minutes 1880-1930

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

SPECIFIC COMMENTS ON THE REMAINING EVIDENCE

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

(Applicant's Nos 4, 5, 6)

- 59. The maps are small scale.

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

Conclusion on evidential value

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

1814-17 Swallowfield Inclosure Award A-B

(Applicant's No 7)

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

Conclusion on evidential value

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

Greenwood's Map 1826

(Applicant's No 8)

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

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

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

Conclusion on evidential value

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

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

(Applicant's No 22)

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

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

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

Conclusion on evidential value

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

Eversley Tithe Award 1837 C-D

(Applicant's No 22)

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

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

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

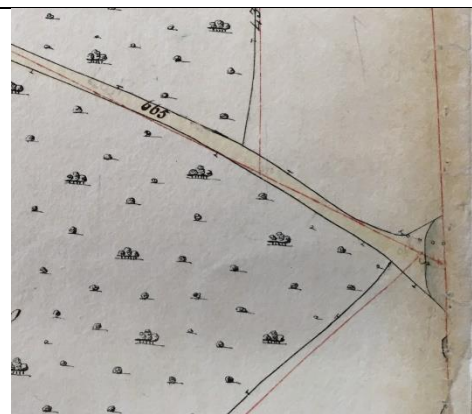
76. A larger extract in illustration O10 shows the entrance to Smiths Farm a short distance to the west, similarly shown as an enclosed route and coloured ochre. It is a private road.

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



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

Illustration O11



Fords with roads through them:
Thatchers Ford; Great Ford

Fords with no roads through them:
Jouldings Ford

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

Conclusion on evidential value

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

Bristol and Dover Direct Junction Railway 1845

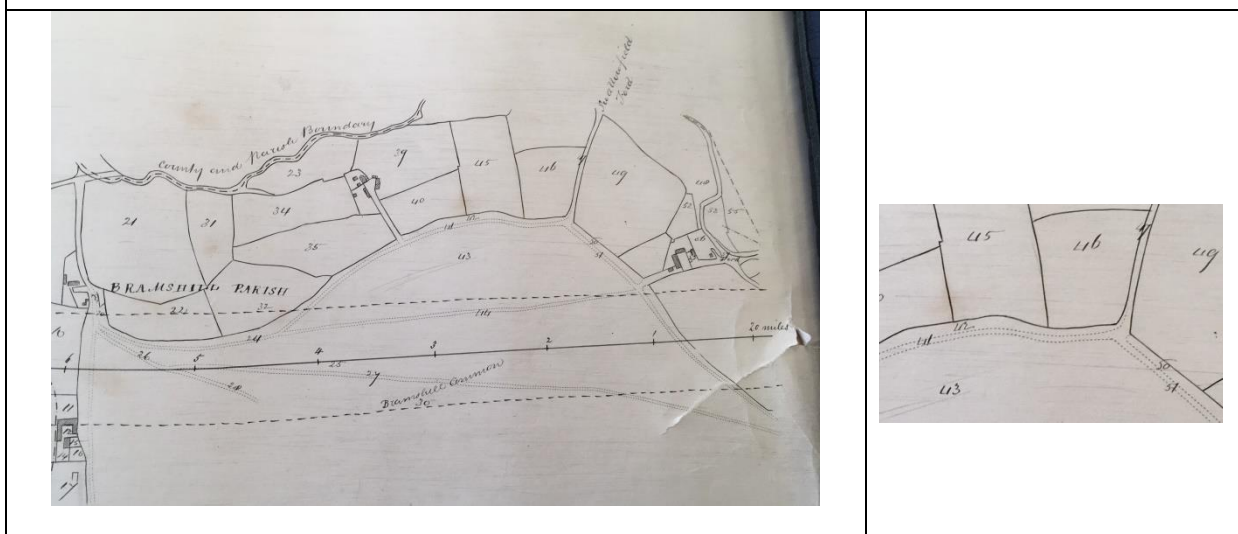
(Applicant's No 10)

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

Mistake 1

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

Illustration O13: Bristol and Dover Direct Junction Railway deposited plan



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

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

Conclusions on evidential value

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

Wokingham and Basingstoke Railway Deposited Plan 1896

New evidence not provided by the Applicant

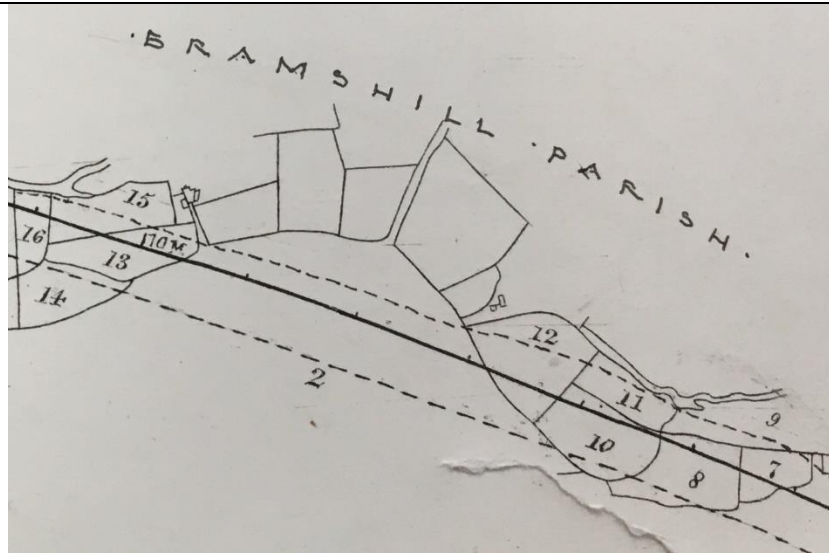
Date 1896

Hampshire Records Office DP 103

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

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

Illustration O14: Wokingham and Basingstoke Railway Deposited Plan 1896



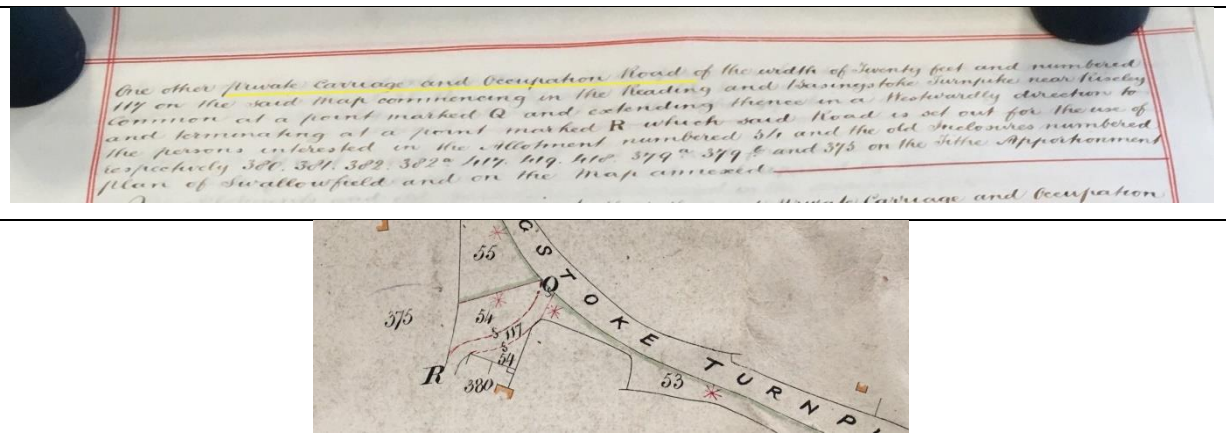
95. The book of reference (page 5 of Appendix 13) describes the owner of Bramshill Common being Sir John Cope with no lessees and no occupiers (described as "In hand") which corroborates that Bramshill Common was a private forest owned by the Bramshill Estate.

Swallowfield Inclosure Award 1865

(Applicant's No 11)

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

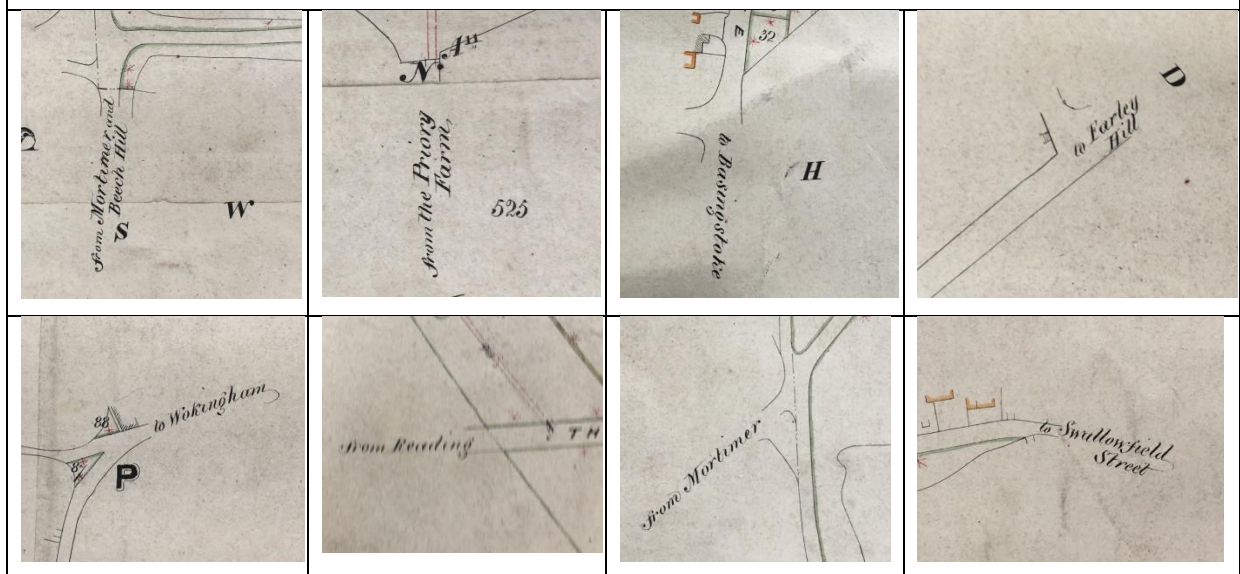
Illustration O15: Swallowfield Inclosure Award 1865



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

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

Illustration O16 : the use of direction markers on through routes



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

OS Boundary Remark Book 1871

(Applicant's No 12)

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

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

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

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

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



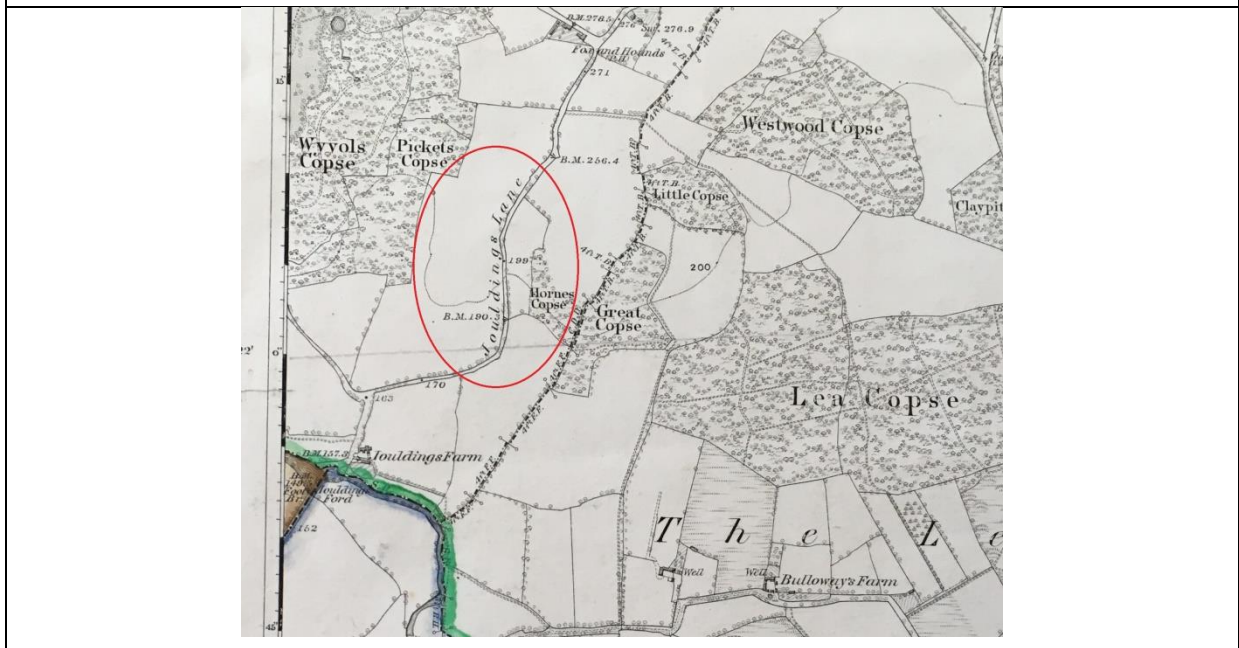
105. As well as showing the application route as enclosed, it also shows a section at the southernmost extent which crosses an open part of Bramshill Common. It is established that there are no public rights of way across Bramshill Common.

OS Map Six Inch 1871

(Applicant's No 13)

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

Illustration O18



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

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

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

No 14 OS Map Twenty five inch 1896 and 1899

(Applicant's No 14)

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

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

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

Finance Act documents 1909-10

(Applicant's No 15)

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

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

OS Map Six Inch 1911

(Applicant's No 16)

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

OS Name Book 1898-1930

(Applicant's No 17)

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

OS one inch 1945

(Applicant's No 18)

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

Bramshill Estate Sale 1952

(Applicant's No 19)

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

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

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

CONCLUSION

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

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

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

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

125. In the circumstances the Application should be refused.

Additional points

Width

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

Bridge

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

Fences and gates

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

3 April 2018

**Taylor Wessing LLP
5 New Street Square
London
EC4A 3TW**

Ref: ULZC/BRA170.U1

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

Summary of additional comments

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

Introduction

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

Assessing the historic evidence

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

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

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

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

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

The evidence of status A-B

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

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

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

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

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

OS and commercial maps

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

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

Eversley Tithe map

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

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

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

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

Finance Act evidence

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

Bramshill Estate Plan

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

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

The cul de sac issue

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

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

The common as a public terminus

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

Width

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

Gates

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

Bridge

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

User evidence

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

*Dr Karen Jones
Tanfield Chambers
2-5 Warwick Ct
London
WC1R 5DJ
24th September 2018*

LIST OF APPENDICES

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APPENDIX 14

SPECIFIC COMMENTS ON APPLICANT'S SECOND SUBMISSION

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

Using the Applicant's numbering:

I. Summary

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

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

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

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

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

Bullet 5 – This is addressed above.

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

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

A4 These points are addressed above in the main text.

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

I. General comments

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

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

C - Terminus ad quem

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

D – Historical context

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

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

I. Comments on the statement of objection

B – The Bramshill Estate

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

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

C Object Name Book Evidence

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

C3. This is supposition.

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

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

D Finance Act Evidence

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

D7 – Evidence from Cornwall is not relevant.

E Other New Evidence

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

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

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

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

F Early map evidence

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

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

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

G Swallowfield Inclosure Award

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

H Greenwood's Map

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

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

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

J Eversley Tithe

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

J8. Not all fords are public.

K Bristol and Dover Railway Plans 1845

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

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

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

M Swallowfield Inclosure Award

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

N OS Boundary Remark Book 1871

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

O-U

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