

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	17 April 2019
Title:	Application for a Definitive Map Modification Order to record Byways Open to All Traffic 19 & 47 as bridleways Parish of Buriton
Reference:	
Report From:	Director of Culture, Communities and Business Services

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Purpose of this Report

- 1 The purpose of this report is to assist Members in determining whether to accept an application to record two byways open to all traffic as bridleways, both of which fall within the Parish of Buriton.

Recommendation

- 2 It is recommended that the application be refused.

Executive Summary

- 3 This is an application, made by Buriton Parish Council ('The Applicant') under Section 53 of the Wildlife and Countryside Act 1981, to record two Byways Open to all Traffic ('BOATs') in the parish of Buriton as bridleways. If successful, the application would 'downgrade' both routes by removing vehicular rights (both motorised and non-motorised) that are currently recorded, thus restricting future use to pedestrians, cyclists and horse-riders. The application is supported by historic documentary evidence which the Applicant believes demonstrates that errors were made, both when the routes were recorded on the first definitive map in the 1950s, and during the reclassification of the routes during the early late 1980s.
- 4 Having considered the evidence in tandem with current guidance and relevant case law, it is considered that there are insufficient grounds for the making of an order to record these routes as bridleways.

Legal framework for the decision

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

(2) As regards every definitive map and statement, the surveying authority shall:

b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows: -

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

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...

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

5 Both routes are situated to the east of the village of Buriton, and are shown running between Points A-B (BOAT 19) and C-D (BOAT 47) respectively. Both routes are recorded on Hampshire County Council's List of Streets Maintainable at Public Expense ('List of Streets') as 'adopted unmetalled' highways, and link at each end to other routes which are also recorded on the List of Streets and/or the Definitive Map as public vehicular highways.

6 **BOAT 19** is also known locally and recorded on successive Ordnance Survey maps as 'The Milky Way'. It proceeds south-eastwards from the southern end of BOAT 18 ('Mead Lane') through areas of woodland known as Cockshot Wood and The Miscombe, to meet Sunwood Lane (U216), which is recorded as 'adopted metalled' on the List of Streets. The definitive statement for the Milky Way reads:

"From Mead Lane to Road U.216

From south end of Mead Lane, U.216 (unmetalled) southeastwards along earth track through Cockshot Wood to junction with Dean Barn Road U216."

BOAT 47 forms a link running north-south between Ditcham Lane (also recorded as U216) and Sunwood Farm. It is recorded in the definitive statement as:

"From Road U.216 at Sunwood Farm to Road U.216 at the Old Chalk Pits

From U.216 northwards, along a 10 ft. wide unmetalled publicly repairable highway, to join Road U.216 at the Old Chalk Pits."

Issues to be decided

7 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that the two highways described above should be shown on the definitive map at a different status.

8 Case law has decided that the burden of proof associated with Map Modification Orders is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map can be made.

- 9 Any changes to the Definitive Map must reflect public rights that already exist. It follows that decisions as to whether to amend the Definitive Map must not be taken for reasons of desirability or suitability. Therefore, before an Order changing the Definitive Map is made, the County Council must be satisfied that the requested modification is supported by the evidence.
- 10 DEFRA's [Rights of Way Circular 1/09](#) sets out the requirements for considering applications seeking to delete a right of way from the definitive map, or record a route at a lower status:

“The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:

- *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
- *the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;*
- *the evidence must be cogent.”*

- 11 Circular 1/09 reflects the decisions of the courts in during recent years. In *Burrows v Secretary of State for Environment, Food and Rural Affairs* (2004) the court held that an application to modify the status of a way could not simply re-examine the same evidence that had previously been considered when the definitive map was first drafted – there had to be some new evidence, which when considered with the other evidence, justified the modification. In the case of *R v. Secretary of State for the Environment, ex parte Burrows and Simms* (1991), it was recognised that the term ‘discovery’ could apply to scenarios where a mistaken decision has been made and its correction becomes possible because of the discovery of information which may or may not have existed at the time the definitive map was being prepared. In *Trevelyan v Secretary of State for the Environment, Transport and the Regions* (2001), the Court of Appeal held that an Inspector considering an opposed order to delete a right of way from the definitive map had to start with the presumption that the right of way existed, and that evidence of some substance had to be produced to outweigh this initial presumption. In *Trevelyan*, Lord Phillips MR stated that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive

evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

- 12 Circular 1/09 also states that use of a way subsequent to its first being recorded on a definitive map cannot be seen to be ‘as of right’, as rights that cannot be prevented cannot be acquired. It is not possible for a right of way to be acquired through long use when use of the way is by virtue of it having been shown on the definitive map. Consequently, in this case the decision as to whether to modify the map must turn solely on evidence leading up to (and including) the drafting of the first definitive map - after that time vehicular use of the application routes would have been ‘by right’, as a result of their legal status.
- 13 Both routes were recorded on the first definitive map of 1955 as RUPPs (‘Roads Used as Public Paths’). RUPP was a classification set out in Section 27 of the National Parks and Access to the Countryside Act 1949, ascribed to every ‘highway, other than a public path, used by the public mainly for the purposes for which footpaths and bridleways are so used.’ The classification caused confusion, as it left the question of vehicular rights open-ended. As a result, Section 54 of the Wildlife and Countryside Act 1981 required every surveying authority to review all RUPPS shown on its definitive map and make orders to reclassify them to either BOAT, bridleway or footpath. As discussed in the [Planning Inspectorate’s Rights of Way Advice Note No.12](#), in *Stevens v Secretary of State for the Environment* (1998), Mr Justice Sullivan considered a challenge to a decision to confirm a reclassification order under Section 54. He ruled that the depiction of a RUPP on a definitive map was not in itself evidence of the existence of any public vehicular rights over such a way, and whether the public enjoyed any vehicular rights over a RUPP was deliberately left open by the 1949 Act. He stated that:

“The fact that the track was classified as a RUPP tells one that it was used mainly for one or other of those purposes [i.e. for the purpose for which footpaths or bridleways are so used] ... it does not mean that there were any additional rights over the track. Such rights would have to be proved to exist by dedication or by prescription.”

- 14 In determining this application, it will be necessary for consideration to be given to what evidence was available at the time of the original survey, and whether any ‘new’ evidence which was not previously available at the time has been ‘discovered’ which now warrants a change to the definitive map. It will also be necessary to bear in mind that the depiction on the first definitive map of the routes as RUPPS will not in isolation be conclusive evidence as to their status as vehicular highways, and regard will need to be had to other available evidence when determining the application.

Background to the Application

- 15 The application was submitted in 2016. Due to a backlog of applications the matter was not taken up for investigation at the time, and in January 2018 the Applicant made representations to the Secretary of State asking that they direct the County Council to determine the application (under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981). In August 2018, the Secretary of State

directed that the County Council should determine the application by 10 February 2019. It is acknowledged that this deadline has not been met, and officers are grateful to the Applicant for their patience.

- 16 According to the Applicant, the application (and subsequent representations to the Secretary of State) followed multiple attempts to restrict motorised vehicular access along BOAT 19, on account of conflict between users and environmental damage on what is a historic sunken lane with narrow steep-sided banks. This the Applicant sought to do by applying to the County Council for a Traffic Regulation Order, but to date the relevant area officers have not agreed that such a restriction is warranted (it should be noted that, whilst these concerns explain the Applicant's reasons for seeking a change to the definitive map, matters relating to suitability or desirability have no bearing on whether an order should be made to modify the status of the routes).
- 17 As stated at 6.7, both routes were recorded on the first definitive map as RUPPS. They were subsequently reclassified to BOAT status, along with seven other RUPPS in the parish, by a Section 54 reclassification order, which was confirmed in 1991. The details surrounding this process are discussed later in this report.

Documentary Evidence

All the evidence discussed below was submitted by the Applicant in support of its application, unless stated otherwise.

18th and 19th century evidence

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

Taylor's map shows neither of the application routes.

- 19 Thomas Milne's Map of Hampshire – 1791 (1 inch to 1 mile)

No route is shown in the proximity of BOAT 47, but a route corresponding with BOAT 18 is shown running southward from Pitcroft Lane to meet Buriton Hanger, through which an enclosed route runs on an east-west alignment. Where two routes are shown running parallel on subsequent maps (the Milky Way and Coulters Dean Lane), Milne shows only one. The route that is shown runs through the woodland, and so it is possible that the route depicted is the Milky Way. It proceeds eastward from the centre of Buriton to (and beyond) the county boundary, continuing into West Sussex.

- 20 Survey of the Manor of Buriton – 1793

This plan was produced to show the extent of the ownership of Lord Stawell, covering the 'Manor of Weston, West Mapledurham and Durford' as well as showing the boundaries of the 'Manor and Borough of Petersfield'. No route corresponding with BOAT 47 is shown on the map, but Pitcroft Lane and Mead Lane are shown as enclosed routes, with the latter terminating at its current junction with Buriton Hanger, and apparently gated. The Milky Way continues as an uncoloured route running through the hanger, which the schedule accompanying the map describes as being in the ownership of Lord Stawell. At its eastern end it passes through another gate and converges with the route now

known as Sunwood Lane. The Applicant asserts that this plan indicates that the Milky Way was a private estate road in 1793, but given the absence of a legend, or any other contextual information relating to the plan, officers consider that this document is of little assistance in determining the route's status.

21 Ordnance Survey 'Old Series' – 1 inch drawing (1806) and the 1 inch to 1 mile map (c1810)

The 1 inch drawing that preceded the published map shows both BOATs 19 and 47 as routes with solid boundaries. Pitcroft Lane (which appears to be gated) and Mead Lane are also shown in this way, with the latter annotated to show the existence of a '*Direction Post*' just to the north of its junction with BOAT 19. The Milky Way runs through Buriton Hanger and is shown fenced against the eastbound Sunwood Lane, instead forming one open, continuous route running southward and then westward along what is now Coulters Dean Lane. The Applicant contends that a gate is shown on the plan at the junction of Mead Lane and the Milky Way, but due to the poor quality of the document, this cannot be ascertained. The published map of 1810 shows no gates on any part of Pitcroft Lane, Mead Lane or the Milky Way, the latter being shown as an enclosed way. The direction post is again shown near the southern end of Mead Lane, at a point where the now recorded BOAT forms a junction with Footpath 1 (although the footpath is not shown on the 1810 map).

BOAT 47 is shown on both the 1806 drawing and the final version of the map as part of a continuous route between Ditcham Farm and Sunwood Farm, with the southern end forming an open junction with an eastbound route which leads from Sunwood Farm into West Sussex.

As pointed out by the Applicant, this document provides no conclusive evidence as to the status of either route.

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

Greenwood's map shows both routes in similar fashion to the OS map of 1810, enclosed by solid parallel lines which the legend describes as 'cross road' (which in this context is generally taken to mean a point where two roads cross).

23 Buriton Tithe Map and Award – 1841

Tithes apportioned a monetary rent charge in lieu of tithe payments in kind that had previously been payable to the church. The purpose of the process was not to identify public highways, although many tithe documents include useful information relating to them.

The Buriton award includes a list of roads, and records Pitcroft Lane and Mead Lane as '*Lane*' under the State of Cultivation column. Both routes are given their own individual plot numbers in the same way as other land parcels shown on the map, and both are recorded as being in the ownership of John Bonham Carter. The Milky Way is also recorded in this section of the award, but has no individual plot number ascribed to it, and is shown by bracings to form part of Cockshot Wood and Ditcham Hanger (State of Cultivation – '*Wood*'). The route appears to be gated at its junction with Sunwood Lane, which is itself recorded in the award as '*Occupation Road to Sunwood*'.

The Applicant describes the Tithe Award as a 'bench-mark document', and states that at this time, the Milky Way could only connect with privately owned 'occupation roads' and did not connect with a public carriageway. Officers do not consider that this is a safe assumption – Mead Lane (BOAT 18) is recorded in the award as '*Lane*', not '*Occupation Road*', and the fact that it was privately owned does not automatically mean that the way was not public (many of the other roads in the award which are now public are listed in the Award as being in private ownership).

Further to the east, BOAT 47 is shown braced with the surrounding woodland (in similar fashion to the horseshoe-shaped route which is now metalled highway) and is also listed as '*Wood*' under State of Cultivation.

NB – the Applicant has also provided a type-written extract from the Tithe Award, produced in 1933 "...for the purpose of assisting the Parish Council of Buriton in the preparation of a map and schedule of all the rights of way in the Parish...". It is therefore apparent that the Tithe Award was available at the time of the initial survey of rights of way, pursuant to the requirements of the 1949 Act.

24 Buriton Parish Vestry Minutes – 1856-1857

The Applicant has provided an extract from the Buriton Vestry Minutes relating to the route now variously recorded as Dean Barn Lane and Coulters Dean Lane (also recorded as Buriton BOAT 25):

"It was decided that the road commencing from the Cross-roads at Faggs to the Lime Kiln in the Ditcham Estate at Coulters Dean, should be considered a Parish Road."

The Applicant observes that this route was listed in the *Roads* section of the Tithe Award, and infers that the above minute, made approximately 15 years later and declaring the route to be public, demonstrates that it cannot be presumed that all the routes within the *Roads* section of the Tithe Award were vehicular highways. This re-emphasises the point made at 8.1.6 that the tithe evidence does not provide any clear-cut evidence in respect of the public highway network. The Vestry evidence is silent on the status of BOATs 19 and 47, although it does indicate that by 1856 the route at the eastern end of the Milky Way was acknowledged to be a '*parish road*' (this term was generally used at the time to indicate vehicular status).

25 Ordnance Survey County Series Maps – 1869-1932 (25 inches to 1 mile)

Four large-scale maps were produced by the Ordnance Survey covering the area during the late nineteenth/early twentieth century. The Milky Way is labelled on each map and is shown as an unenclosed track running through Cockshot Wood (as are several other tracks). The route is variously shown as being gated and ungated during this period at its junction with Mead Lane (which is also labelled) and at its eastern junction with Sunwood Lane. BOAT 47 is unobstructed at both ends and is shown in the same way as Sunwood Lane and Ditcham Lane – surveyed as part of the surrounding woodland, rather than being a separate parcel.

Officers would agree with the Applicant's view that no status can be inferred from the depiction of any of these routes on this map.

26 Summary of 18th and 19th century evidence

The Tithe Award of 1841 forms a key part of the Applicant's case for downgrading BOATS 19 & 47. However, as the Applicant acknowledges, the purpose of producing this document was not to record the status of highways. In any case, it is apparent from early 20th century parish minutes that this evidence was available during the preparation of the first definitive map, and so could not now be considered 'new evidence'. The other evidence discussed in this section, whether available to the decision-makers or not, provides little support (if any) for the application, as it simply records the routes as features in the landscape or (in the case of the Vestry minutes) provides no direct evidence relating to either route.

20th Century Evidence

27 Buriton Parish Council Minutes - 1896-1908

The Applicant has submitted a number of extracts from the parish minutes of the late 19th century, in which the poor state of repair of the Milky Way was discussed:

15th January 1897 - Milky Walk or Milky Way

The bad state of this Road was a matter for discussion. Councillor Radford stated that it was a High Road from Buriton to Guards Corner and Coulters Dean that the outlets for running off the surface water were higher than the Road and for a long distance the Road was practically impassable, proposed that the Rural District Council be written to asking them to do something towards the improvement of the same. Seconded by Councillor Gibbert and carried unanimously.

20th April 1897 - Milky Way

A discussion took place respecting the repair of the Milky Way. Mrs Cave, the Rural District Councillor for Buriton stated that the case had two or three times been before the Rural District Council but at present nothing had been done beyond two of the Members having been deputed to view the same. Mrs Cave stated that Mr Cave would readily find the material if the Rural District Council would supply the labour, after some discussion it was resolved that Mrs Cave should ask the Rural District Council if they would undertake the repair of the Road on the foregoing terms.

15th May 1897 - Milky Way

The Chairman on behalf of Mrs Cave the Rural District Councillor stated that the Rural District Council had decided to do nothing towards the repair of the Milky Way. He further considered that something should be done to the road as in addition to Ditcham House there were twelve cottages the tenants of which and their families would use the road to a very great extent if it were put into passable condition. Mr Councillor Sharp stated that the road was classified by Mr Durman the late surveyor to the Highway Board as a fourth class road and he now moved that the Rural District Council be written to, to know whether or not they contemplated doing any repairs to the same and subject to their rely that the Clerk be directed to complain to the County Council of the neglect or inaction of Petersfield Rural District Council in relation thereto, further that in the event of so doing that the Petersfield representative on the County Council Bonham Carter be written to asking him to support the application of this Council, this resolution was duly seconded and having been put to the Council it was carried unanimously.

15th June 1897 - Milky Way

The Clerk read a letter from the Rural District Council from which it appeared that they did not propose doing anything further to this road than that body had done in the past. The Council did not consider this a satisfactory reply and the Clerk was now directed to take all necessary steps with a view to laying the matter before the County Council.

14th July 1897 - The Milky Way

The Clerk reported on the further correspondence with the Rural District Council who stated that they did not intend doing more to the Milky Way than had been done. He the Clerk now asked that a small Sub-Committee ought to be appointed to work up evidence to lay before the County Council enquiry if such should be held. He further stated the Parish Map ordered was not yet to hand and that it was necessary to have this prior to making complaint to the County Council. Proposed by Mr Gilbert, seconded by Mr Morris that a Sub-Committee of four be appointed to confer with the Clerk on the subject. Resolved that Councillor Mrs Cave, H S Sharp, G Radford and H R Bone be appointed on Sub-Committee.

15th November 1897 - Milky Way

Mrs Cave again drew the attention of the Council to the state of repair of the Milky Way stating that they had given notice to again bring the matter forward at the next meeting of the Rural District Council. The Sub-Committee appointed having stated that at present they had not met, it was after some discussion arranged to meet on Saturday 20th at Ditcham House at 2pm.

Saturday 20th November - *The object of the meeting was to enquire into the condition of the road known as the Milky Way and to report to the Council any information they may be able to obtain respecting the utility of this road provided it be kept in a proper state of repair. Mrs Cave doubted whether the District Council when they came to their decision respecting the Milky Way were aware that within the last ten years, twelve new cottages had been built at Park Barn, Downley, and Guards Corner, all in Buriton Parish and that the inhabitants of these cottages numbered between fifty or sixty men, women and children who were practically cut off from their Parish Church, schools and shops unless they walked by a road two or three miles longer. Moreover, funerals are sometimes obliged to pass along Milky Way and the nurse at St. Joseph's Cottage, when visiting such people on the hill is both delayed and fatigued in consequence of the state of the road.*

Messrs Bone, Radford and Sharp supported Mrs Cave's views and considering the fresh information now laid before the Sub-Committee they recommended that the Buriton Parish Council should request Mrs Cave to bring the matter a second time before the District Council in the hope that they may reconsider their former decision.

15th December 1897 - Milky Way

Mrs Cave reported that she now entertained some hopes of this road being repaired, the question was to be dealt with by the Rural District Council the following day.

15 January 1898 - Milky Way

Mrs Cave, the Rural District Councillor reported that the Rural District Council had sanctioned the repair of this road and that the work was now in hand. This report was considered highly satisfactory and it was unanimously resolved that a vote of thanks be recorded on the Minutes to Mrs Cave the Rural District Councillor for her efforts in getting the Rural District Council to repair the Milky Way also to the Chairman for generously supplying metal etc free of charge.

The Applicant points out that the concern of the parish in these minutes relates to pedestrian, and not vehicular use. Whilst this may be true, some references in the minutes also suggest that the Milky Way was an all-purpose highway – it is repeatedly referred to as a ‘road’ throughout the extracts, with councillors also referring to the route as *‘the High Road from Buriton to Guards Corner and Coulters Dean’* and as a *‘Fourth Class Road’*. There is no contemporaneous evidence to corroborate any of the assertions made in these extracts, but they provide an insight into the route’s reputation at the time which, in the view of officers, does not necessarily precludes vehicular status.

It is apparent from correspondence involving the Parish Council that these minutes were inspected during the preparation of the schedule of rights of way in the 1930s, and during the preparation of the definitive map in the early 1950s.

28 Bartholomew’s Half Inch Map of England and Wales – 1902

This map is referred to by the Trail Rider’s Fellowship in its response to the consultation on this application (see 9.5). By narrow solid lines, the map shows Mead Lane as an *‘Indifferent Road (Passable)’* but does not show the Milky Way. It does however show BOAT 47 on its current alignment (also as *‘passable’*) providing a direct link between Sunwood and Old Ditcham. The hairpin section of Sunwood Lane is not depicted. Bartholomew’s Maps contained disclaimers relating to rights of way (similar to those of the Ordnance Survey maps dating from the late 19th century), and so based on this evidence alone it cannot be said with certainty what the status of the route was at the time. The TRF suggests that, given the absence of the alternative route from the map, it could be inferred that at the time, BOAT 47 was considered by the mapmaker to be the primary route.

29 Sales Particulars – Ditcham Park Estate – 1921

These particulars were produced when the estate was sold in 1921. The plan shows several lots for sale in the vicinity of Cockshot Wood and The Miscombe.

The Applicant highlights the statement in the particulars that Ditcham House (now Ditcham Park School), which is situated approximately half a mile to the south of Miscombe Wood, *“is approached from Petersfield on the north side by a Private Road rising from the Parish Road”*. They suggest that the ‘parish road’ referred to would have been the present B2146 Petersfield to Harting road, presumably to illustrate that at the time, BOAT 47 formed part of the ‘private road’. Officers have interpreted this evidence differently.

The map shows two sections of the road network at this location as forming part of Lot 1. The track running north-eastwards from Ditcham Lane towards the B2146 is labelled ‘Lot 1 - 63’, and the hairpin route to the east of BOAT 47 as ‘Lot 1 - 64’. Both routes are shaded red. In the particulars Lot 63 is described as *‘Carriage Drive (Old Ditcham Farm)’* and Lot 64 *‘Carriage Drive’ (The Miscombe)’*. This indicates that both routes were considered to be private, as indicated by the following description: *“A right of way for all purposes as at present enjoyed over the private road, Plan No 63 on Lot 1, is reserved to the Owner for the time being of this Lot....”*

In contrast, the north-south route of Ditcham Lane (between the Miscombe and Old Ditcham Farm), BOAT 47 and Sunwood Lane (between Sunwood Farm and Coulter's Dean) are all shaded orange. To the east the B2146 is shaded the same way, as are Coulter's Dean Lane and Milky Way further to the west – none of these routes are given a plot number on the plan. It could therefore be inferred from this evidence that the two application routes, by association to other routes coloured the same way (all of which are now public vehicular highways) were considered to be public roads at the time.

30 Sales Particulars – Ditcham Park Estate – 1924

The area for sale includes Ditcham House and the area of Ditcham Wood to the north. As with the 1921 particulars, the track linking the B2146 and Ditcham Lane, and the hairpin section (which is labelled A-B-C) are coloured red, with Sunwood Lane and the section of Ditcham Lane that links the two 'red routes' shaded orange. BOAT 47 and the northern half of Ditcham Lane are unshaded.

The Applicant states that the private road network shown on the particulars is consistent with the roads 'taken over' by the county in 1939 (this is discussed later in this report). However, the particulars state that *"The property is sold subject to the following Right of Way on payment of a proportionate part of the cost of upkeep:- Over the roadway marked A-B-C on the plan in favour of the owners for the time owing of the Woodlands and the Farms known as Coulter's Dean and Sunwood Farm..."*

The two routes shaded red are labelled with plot numbers, which the schedule in the particulars describes as 'Carriage Drive (Old Ditcham Farm)' and 'Carriage Drive (Miscombe)'. No other sections of the road network at this location have plot numbers (shaded or otherwise). It would therefore appear that the routes shaded red were considered private at the time of sale and, by process of elimination, the orange routes public. It could therefore be inferred that, in lieu of any publicly recorded highway running over the hairpin at this time, BOAT 47 provided a public through route between Ditcham Lane and Sunwood Lane. This would be consistent with the subsequent dedication of highway rights over these routes in 1939 (see 8.2.9).

31 Sales Particulars – Buriton Estate – 1927

Mead Lane and Milky Way are included in the land for sale. Neither are shaded differently to the rest of the land for sale, whilst other routes (including the main routes through Buriton) are shaded brown. The Applicant points out that the lack of brown shading on Mead Lane and the Milky Way indicates that neither was considered to be a public road. This may be so, but applying this rationale would put this evidence at odds with the sale documents of 1921, which shows the Milky Way shaded brown. It may be that the shading on this plan shows strategically significant routes (which arguably Mead Lane and Milky Way would not be), but there is no legend on the map, nor any explanation in the particulars to clarify the purpose of the shading, and unlike the earlier sale documents it is not possible to draw any firm conclusions based on a comparison of the routes and the sale particulars. It is therefore considered that little weight can be attributed to this document.

32 Highways Handover Map – Petersfield Rural District – 1929

This map was prepared by Petersfield RDC to show those routes that it considered to be publicly maintainable highways at the time responsibility was transferred to the County Council (under the provisions of the Local Government Act of the same year). The map purports to show public footpaths as well as carriageways.

Both the Milky Way and BOAT 47 are annotated on the plan by dotted black lines, which the legend describes as *'Public Footpath – Not Repaired'*. This indicates that at the time this document was produced, the RDC considered both routes to be public highways which it was not responsible to repair. In contrast, Mead Lane and the western part of Sunwood Lane (near Coulters Dean) are shown by dotted blue lines, which marks them out as unmetalled carriageways repairable by the RDC.

The Applicant attributes some significance to the annotation of the application routes on this document as 'footpaths', and it could be said that at the time, the RDC considered neither route to be carriageways. However, it should be borne in mind that this was an internal working document which was not subject to public scrutiny - little is known about how it was compiled, and the researches undertaken as part of its preparation. It was also solely concerned with maintenance responsibilities and is therefore unlikely to be a comprehensive record of public rights in the locality at the time (and this may have been even more pertinent to two routes for which the RDC apparently claimed no responsibility). The depiction of the Milky Ways at odds with the RDC's apparent admission in the late nineteenth century that it was responsible for the maintenance of the Milky Way (see 8.2.1).

The map also includes additions in pencil, made ten years later in 1939, which show a continuous line drawn over Old Ditcham Lane and Sunwood Lane (including the hairpin to the east of BOAT 47) and annotated 'taken over 13/6/39' (see 8.2.9 for further discussion).

33 Buriton Parish Minutes – 1929-1941

In 1929 the Forestry Commission blocked a number of routes in the Buriton area which the Parish Council considered to be public, and so a list of public rights of way was drawn up in the minute book under the heading *'Foot and Bridle Paths'* and *'Foot Paths'*. The list, compiled on 23rd September 1929, includes the Milky Way under the former heading, and BOAT 47 under the latter (*"...where Ditcham carriage drive enters Miscombe Wood then south to Sunwood Farm"*). The Applicant considers that this categorisation is indicative of each route's status at the time.

In 1934, Buriton Parish Council drew up a map and schedule of rights of way, pursuant to the provisions of the Rights of Way Act 1932. The minutes record that these documents were deposited at the local school for public inspection, and that the routes listed therein were accepted by the RDC in March 1935.

The list transcribed in the parish minutes includes the following entries:

Route No.18 (Mead Lane)
Route No.19 (Milky Way)

Bridle Road & Public Carriageway
do [Ditto]

*Route No.23 (Petersfield-Harting Road
to Old Ditcham Farm)*

Bridle Road

In contrast to the earlier characterisation of the Milky Way in 1929 ('Foot and Bridle Paths'), by its association to Mead Lane the 1934 schedule lists the route as an all-purpose highway. However, it is apparent that the '*Public Carriageway*' part of the entry has been added at a later stage, as it is in a different coloured ink (although apparently the same handwriting). Notwithstanding its description as a 'Foot Path' in 1929 (and its depiction as such on the Handover Map), BOAT 47 isn't included in the schedule at all - the description of 'Route 23' refers to a route terminating at Old Ditcham Farm, nearly half a mile to the north.

34 Buriton Parish Council – Schedule of Public Rights of Way – 1934

The Applicant has also provided a copy of the typed 1934 schedule of rights of way that was placed upon deposit (which is now held by Hampshire Record Office). It appears that the schedule was thoroughly researched, as evidenced by references to the Buriton Inclosure Award and historical entries in the parish minutes.

In contrast to the list recorded in the parish minutes of the same year, the schedule records Mead Lane and the Milky Way as '*Bridle Roads*', as follows (again, BOAT 47 is not included):

Route No.18 – Bridle Road

Mead Lane

Cowhouse Road [now Pitcroft Road] to junction with Milky Way (Route No. 19). Road unobstructed throughout.

Route No. 19 – Bridle Road

Milky Way

Commences at south end of Mead Lane (Route No. 18) and proceeds south-eastwards through Cockshott Wood to junction with public highway from Dean Barn to Gard's Corner (Ditcham) and Sunwood Farm.

Road unobstructed throughout and trimmed and repaired from time to time by Petersfield Rural District Council.

Route No. 23 – Bridle Road

Petersfield – Harting Road to Old Ditcham Farm &c

Commences in the old droveway from the Petersfield – Harting Road and proceeds due south to Old Ditcham Farm where it joins the public carriage road from Old Ditcham to Sunwood Farm &c as marked on the map.

- 35 A copy of the 1934 schedule was also discovered in the County Council's parish files, which contains documents and correspondence relating to rights of way matters in Buriton parish dating back to the mid-20th century. The schedule appears to be an identical copy of the same document. The Council's copy includes additions and corrections made in blue ink which do not appear on the copy provided by the Applicant. And has apparently been updated subsequent to 1934, as the front page includes a typed subheading - '*Copy – 1.8.1949*'. Some of the alterations in blue ink are dated, and refer to changes that occurred during

1935 and 1936 (such as the replacement of stiles on some routes). There are also alterations to the status of Mead Lane and the Milky Way, both of which are recorded as follows:

Route No. 18 – Bridle Road & public carriageway
Mead Lane

Route No. 19 – Bridle Road & public carriageway
Milky Way

It is not known who made these alterations and when (they are undated), but it would appear that they are linked to the corrected entries in the parish minutes (see 8.2.7) and probably date from the period between 1934 (when the schedule was first drafted) and 1949 (when the copy was submitted to the County Council). Both dates would place this document before the publication of the first definitive map.

Other, unedited entries in the schedule are also instructive, either through references to the application routes, or the terminology used (emphasis added in bold):

- i. The entry for Route No.1 (now Buriton Footpath 1) concludes “...*the path then enters the Milky Way which is a **public highway**.*”
- ii. The entry for Route No. 2 (Footpath 2) concludes “...*the route then continues through the Hanger and emerges on to New Barn Road [now U216 Dean Barn Lane] which is a **public highway**.*”
- iii. The entry for Route No.21 (Bridleway 21) begins “*Commences on the **public road** from Dean Barn to Sunwood Farm at the corner near Coulters Dean Farm...*”.
- iv. The entry for Route No. 22 (Footpath 22) describes the route as “...*emerging on to Harris Lane [Clanfield Bridleway 17] which is a **Bridle Road**.*”

The following can be inferred from the 1934 schedule:

- The status of ‘Bridle Road and Public Carriageway’ ascribed to Mead Lane and the Milky Way in the copy of the schedule in the County Council’s possession mirrors that set out in the parish minutes of 1934, and it appears that the Parish Council revisited and revised the status of the routes after the schedule was originally drafted.
- The description for Route No.23 (Bridleway 23) describes the route running southward from Old Ditcham Farm as a ‘public carriage road’ that runs to Sunwood Farm. In view of the information contained in the sales particulars of the 1920s, and the fact that the hairpin route was not dedicated as highway until 1939, it is quite possible that the ‘*public carriage road*’ connecting to Route No.23 included BOAT 47.
- In the context of a document dealing with a range of public highways, the Parish Council misapplied the term ‘Public Highway’, using it as a narrow definition to describe a particular class of highway. However, in doing so it

appears to have used the term to describe carriageways (see example 'ii' above), in which case the reference in 'i' to the Milky Way as a 'public highway' would suggest carriageway status. The description is also distinct from other examples, where routes are said to terminate upon 'Bridle Roads' (see example 'iv' above).

- Example 'iii' indicates that the route between Dean Barn and Sunwood Farm (now 'Sunwood Lane') was considered to be a public road prior to the dedication of 1939. This is consistent with the description of the access to Ditcham House in the 1921 sales particulars as being "*approached from Petersfield on the north side by a Private Road rising from the Parish Road*" (see 8.2.3), and indicates that at the time, BOAT 47 was not isolated from the rest of the public highway network prior to 1939, as is asserted by the Applicant.

36 Dedication of Roads at Ditcham – 1939

Officers have located dedication agreements dating from 1939, entered into by the County Council and local landowners for the dedication of highway rights on the routes to the north and west of Sunwood Farm (as detailed in the pencilled annotation that was added to the 1929 Handover Map). The dedication plans relating to the section of Sunwood Lane heading westward from Sunwood Farm, and the north-south section of Ditcham Lane, show narrow shaded areas running along both sides of the road, indicating that the landowners were dedicating extra land for use as a highway, as opposed to full highway rights over the entire route. This suggests that at the time, the main part of each route was already considered to carry full highway rights.

However, the third dedication (by Colonel Ebenezer Pike) included the entire length and breadth of the hairpin section east of BOAT 47, with one exception - a section forty-eight metres in length where the route intersected the line of the BOAT itself. It can therefore be inferred that the dedication expressly excluded the extent of what is now recorded as BOAT 47 because it was already considered to be full highway, thus rendering a further dedication of highway rights unnecessary.

These dedications provide further insight into the simple annotation on the 1929 Handover Map and indicate that the road network at this location (including BOAT 47) was already considered to be an all-purpose highway prior to 1939. This evidence compliments the position set out in the sale documents of 1921 and 1924, and appears to rebut the application insofar as it affects BOAT 47.

37 Highways Maintenance Map (Hampshire) – 1946

This map is not cited by the Applicant but has been inspected by officers as it provides an updated picture of those routes considered to be publicly maintainable by the County Council, subsequent to the handover process in 1929. Routes are annotated with coloured solid or dashed lines and labelled with road numbers which are recognisable today (for example, C200 Nursted Lane is recorded as '200', U206 Kiln Lane is '206' etc).

Mead Lane, the Milky Way and BOAT 47 are numbered '216' and shown by a dashed orange line, which a subsequent memorandum from the County Surveyor

clarifies is the notation for 'unmetalled roads'. The footpaths and bridleways set out in the Parish Council's 1934 schedule of rights of way are also annotated, using the same notation that was subsequently used on the definitive map (purple lines for footpaths, green lines for bridleways), and nearby Bridleways 21 and 23 are shown on their current alignments. It is possible that these annotations were added at a later date, and subsequent correspondence indicates that the classification ascribed to the Milky Way may also have been added after 1946 – see 8.2.12).

This document marks a departure from what was shown on the 1929 Handover Map, with the County Council recognising both application routes as 'unmetalled roads' that were distinct from footpaths and bridleways (which were also shown on the map) before the publication of the first definitive map.

38 Buriton Parish Council Minutes – 1943 – 1950

The status of the Milky Way was again discussed by the Parish Council during the 1940s, as reflected in the below extracts.

4th January 1943 – Public rights of Way Milky Way No.19 on Parish Map

Attention was called to the obstruction of this bridleway caused by the felling of trees by the Ministry of Supply Home Grown Timber Department. The Clerk was instructed to inform the Highway Surveyor and ask for the removal of the trees.

16th April 1943

The Clerk reported that he had written to the Highway Surveyor as instructed at the last meeting....it was pointed out that although there had been a long spell of fine weather the bridleway was still obstructed...

11th May 1943

Correspondence with the Divisional Highway Surveyor was read and it was reported that the work of clearing the timber was in progress and that the way would be cleared in a day or two.

6th July 1943

The Clerk reported that in response to representation by the Highway Authority the Ministry...had had the obstructing timber removed from this bridleway in May last.

5th January 1948

A letter dated December 27th was received from the Footpaths Secretary of the Southern Federation of the Ramblers Association calling attention to fallen tree at Milky Way and requesting the Parish Council to take steps to have the obstruction removed. Mr Legg stated that Mrs Abel Smith, the landowner concerned has already had the tree removed. Clerk to reply accordingly.

5th July 1948 – Public Rights of Way – Parish Map

The Rural District Council had borrowed the Parish Map in order to check it with the District and County Maps of Public Rights of Way in accordance with the Parish Council's suggestion.

4th July 1949 – Public Rights of Way National Parks & Access to the Countryside Bill

A letter dated 30th May from the County Secretary was received pointing out that this Bill makes it the duty of the County Council as the Highway Authority to prepare a statutory map showing all public rights of way. A map of the parish accompanied the letter and the Parish Council were asked to state whether they were in complete agreement with the rights of way marked thereon. Clerk instructed to deal with the matter.

12th March 1950 – National Parks and Access to the Countryside Act 1949 – Survey of Rights of Way

This Act requires County Council to carry out a survey of all lands in their area over which public rights of way are alleged to exist....In his letter dated 14th February the County Surveyor stated that in view of the comprehensive nature of information contained in the map and schedule of public rights of way prepared by the Buriton Parish Council in 1934 which was submitted to the County Council in 1949 a further statement will not be called for. The County Surveyor however requested that this map and schedule be formally submitted to the Annual Parish Meeting and any amendment which may be reported to him and the schedule returned with or without modification. The County Council would then arrange to carry out the survey.

The county Surveyor called attention to the fact that Mead Lane is a public unmetalled highway and any other claim is therefor superfluous. He also stated that Milky Way (route No.19 on the Parish Council Map) is incorrectly described as a public carriageway and should be amended to Bridle Road. Resolved that in the opinion of the Council the existing map and schedule comprise the correct record of public rights of way in the Parish of Buriton and, subject to further consideration regarding the status of the Milky Way, the map and schedule be submitted to the Annual Parish Meeting for approval and forwarded to the County Council for the purpose of the survey being carried out by them.

17th April 1950

The Clerk read his letter to the County Surveyor dated 21st March 1950. The Clerk reported that the map of rights of way sent to the County Surveyor had been duly endorsed and signed by the Chairman and returned. Copies of the Minutes of the Council and the Parish Meeting relating to the survey had also been sent and the County Surveyor had been asked to state what evidence existed to refute the Parish Council claim the Milky Way (route No.19 on the Map) is a highway. A representative of the County Surveyor had called and informed the Clerk that since the County Council became the highway authority the route had been scheduled in their records as a bridle road but he would consider any evidence to the contrary which either the Rural District Council or the Parish Council may possess. Minutes of the Parish Council of 1897 and 1898 disclosed by the Parish Council and the Rural District Councillor for the Parish, the Rural District Council carried out repairs in that year. Flints for the surface were supplied free of charge by Mr L.T. Cave Chairman of the Parish Council and owner of Ditcham Park. The Clerk was instructed to send a copy of these minutes to the County Surveyor.

39 National Parks and Access to the Countryside Act 1949 - Correspondence

As is evident from the minutes from the 1940s, as part of the preparations for drafting the first definitive map all parishes in Hampshire were asked to submit an Ordnance Survey plan showing all the routes that they wished to be included on the map, and their status (footpath, bridleway or RUPP). Buriton Parish Council's

map (dated 1st August 1949) shows footpaths coloured blue and bridleways coloured green, but does not show any RUPPs. Both Mead Lane and the Milky Way are shown as bridleways, as is the entire route between Old Ditcham Farm and Sunwood Farm (incorporating what is now BOAT 47). Given that the published definitive map for the parish ultimately recorded nine RUPPs, it appears that there was further discussion as to the status of some of the routes put forward on this map - it is possible that the Parish Council initially overlooked which of its routes might be of a status other than footpaths or bridleways.

The below correspondence from 1950 provides an insight into the preparation of the map for the Buriton area:

Letter from Buriton Parish Council Clerk to the County Surveyor – 28th March 1950

"Your letter of the 14th February was considered by my Council on the 13th instant and I enclose an extract from the minutes from which it will be seen that the existing map and schedule were held to be a correct record of the public rights of way in the Parish of Buriton subject to a) the designation of Mead Lane being changed from Bridle Road to Unmetalled Highway and b) to further consideration of the status of Milky Way (No.19 on the map). I shall be obliged if you will let me know what evidence exists to refute the Parish Council's claim that Milky Way is a highway. This route appears to be a continuation of Mead Lane linking up with the unmetalled highway from Dean Barn and Coulters Dean Farm to Sunwood Farm, Ditcham and thence to Petersfield-Harting Road...."

Letter from County Surveyor to Buriton Parish Council Clerk – 18th April 1950

"...Milky Way has always been recognised, both by this authority and the Petersfield Rural District Council as a bridle way only, but from an inspection on the site my representative agrees that this route does indeed appear to be a continuation of Mead Lane linking up with U216 between Coulters Dean and Sunwood Farm.

I am arranging for it to be recorded in future as an unmetalled public highway..."

Memorandum from Divisional Surveyor to County Surveyor – 20th April 1950

"In reply to your memo of the 18th inst., as instructed the length of unmetalled highway from the south end of Mead Lane, Buriton, to its junction with U216 between Coulters Dean and Sunwood Farm, Ditcham has been added to Group U216, Mileage .38, and my maps altered accordingly."

Letter from Buriton Parish Council Clerk to County Surveyor – 25th April 1950

"...With regard to 'Milky Way' my Council will be glad to know that this road will henceforth be recorded as an unmetalled public highway but they submit that it always has been and that it is not correct to say that the Petersfield Rural District Council recognised it as a bridle way only. I send you extracts from the minutes of the Parish Council of 1897 and 1898 which tend to support this view. Since those days employees of the Rural District Council have carried out work on this road of a type not usually done in the case of a bridle way."

The Applicant contends that the Parish Council, having hitherto regarded the route as a bridleway, changed its mind about the status of the route in 1950 based solely upon the parish minutes of the late nineteenth century, and in doing so it misdirected itself. It certainly appears that the minutes from 1897 and 1898 were influential, and officers note the reference in the letter of 25th April 1950 to the RDC having carried out works on the route since that time "of a type not

usually done in the case of a bridleway.” However, putting to one side the issue of whether or not the Parish Council drew the correct conclusions from this evidence, it is clear that it was fully considered at the time the first definitive map was prepared, and so does not constitute ‘new evidence’.

40 First Definitive Map – Petersfield Rural District (1955)

Both routes are shown on the first definitive map for the area (along with Mead Lane, the eastern end of Pitcroft Lane and various others) by dotted green lines, marking them out as RUPPs, and distinct from bridleways, which are shown by solid green lines.

41 Reclassification of RUPPs – 1986 - 1992

On 20th November 1986 a brief report was presented to the Rights of Way Sub-Committee, seeking approval for the making of a reclassification order under Section 54 of the Wildlife and Countryside Act 1981. It concerned nine RUPPs in the parish, all of which are listed in the report underneath the following text:

“There are nine RUPPs in Buriton and all are county unclassified roads. The Parish Council have indicated that they would wish RUPPs 18 and 19 to be downgraded to bridleways but they are county unclassified roads, have vehicular usage and are signed ‘Cart Track to.....’ and therefore must be reclassified to BOAT...East Hampshire District Council agree all RUPPs in Buriton be reclassified to BOAT.”

The resulting reclassification order, made in 1988, sought to reclassify all nine routes. It did not attract any objections in respect of BOATs 19 and 47, but objections were received in respect of RUPPs 32 and 46, necessitating a referral to the Secretary of State for determination. In his decision letter, dated 11 September 1992, the Inspector appointed by the Secretary of State confirmed that the Order had been submitted for confirmation *“in respect of two of the nine public paths therein addressed. The remainder were confirmed unopposed on 10 April 1991.”*

It is not clear what other researches were undertaken during the reclassification process, but taken at face value, officers would agree with the applicant that the 1986 report is a little lightweight. However, the reclassification process itself was open and consultative, as evidenced by the objections made to the reclassification of RUPPs 32 and 46 (it is clear from correspondence on file that the Parish Council played an active role in this process and took part in the resulting inquiry). Although the Parish Council was apparently reluctant to see RUPPs 18 and 19 reclassified to BOAT status, no objection was made to the reclassification order by it or anyone else, in respect of these two routes, or RUPP 47.

42 Summary of 20th century evidence

As with the earlier evidence of the 18th and 19th centuries, most of the 20th century evidence submitted in support of the application was available at the time the first definitive map was prepared. Other evidence which may not have been widely available at the time (1939 highway dedications, sales particulars, Bartholomew’s map) either appears to be neutral or provides positive evidence of full highway status. It is not clear what researches were undertaken during the reclassification

process, but the Section 54 order-making process was consultative, providing the opportunity for objections, and it is reasonable to assume that all the evidence available during the early 1950s was available to the County Council in 1986.

Consultations

43 The following people and organisations have been consulted on this application: The Ramblers, Auto Cycle Union, British Driving Society, Byways and Bridleways Trust, South Downs Harness Club, Cyclists' Touring Club, Open Spaces Society, Trail Riders Fellowship, Land Access Recreation Association, All Wheel Driving Club, East Hampshire District Council, County Councillor Robert Mocatta, and officers of Hampshire County Council (Hampshire Highways and the Area Countryside Access Manager). Responses received are detailed below.

44 Local South Downs Harness Club Representative

I understand that both BOATS 19 and 47 used to be driven, but because of the damaged caused by off-road vehicles and lack of maintenance these routes became too dangerous to drive although they are ridden.

BOAT 19 is known locally as the Cart Track and looking at historic maps they indicate both these BOATS were routes that would have been used by horse drawn vehicles.

Carriage drivers cannot continue to use these BOATS without major repairs (and cost). As horse drawn vehicles have very little off-road access (good or bad) we would not wish to lose the right to use them if historic evidence should prove that these routes were indeed used by horse drawn vehicles.

45 County Councillor Robert Mocatta

Councillor Mocatta supports the application and has stated that in his view neither route should be recorded as a BOAT.

46 Land Access Recreation Association - Local Representative

"I do not see how this application can lead to an Order being made that will satisfy the applicant for the following reasons:

a) it was the Parish that would have put this route down as a RUPP at the inception of the DM&S post the '49 Act.

*b) The presumption of regularity must apply**

c) this route was reclassified back when it was recorded as a RUPP. The Parish/OMA [Order Making Authority] were content that the evidence before them justified a BOAT decision. I do not know if the evidence was weighed by the OMA and an unopposed Order sealed or if the matter was heard by a Lord Chancellor's Inspector. Either way we return to my point b) above.

*d) *case law has it that there must be new and cogent evidence (that is to say evidence that was not before the authority at the inception of the DM&S and during the RUPP reclassification process). I am not aware that the applicant has*

submitted any evidence to show that the two aforementioned processes were flawed, misled or ignorant of the facts.”

47 Trail Riders' Fellowship

“At this distance in time from the reclassification (33 years) of the BOATs, and about 65 years since the surveying and recording of the RUPPs, there has to be cogent evidence of a mistake being made in each process, capable of overturning the strong presumption that the definitive map and statement was and is correct.

Nobody knows what the path surveyors, and the surveying authority, knew at the time. We can only form an opinion from the records that survive, and in our view those records do not provide the essential cogent, direct, evidence of mistake that is essential for this application to proceed. The application evidence robustly supports the presumption that the decisions to record as RUPP then BOAT were properly made.

The recording of BOAT 19 as a “fourth class road” and reference to it in parish council minutes (15.1.1897) as a “High Road” (in the context of it being a through route comprising BOAT 18 & 19), is consistent with carriageway status to the extent that the decisions to record it as RUPP and then reclassify as BOAT were properly made. BOAT 47 and 19 are shown on pre-WW1 Bartholomew’s Maps as roads.

Where Bartholomew’s shows BOAT 47, it does not show the present-day tarmac road that comprises the hairpin turn. The application relies on “handover map” evidence which indicates that the hairpin road was “taken over 13.6.1939”. Handover maps were produced prior to 1939 to facilitate the transfer of maintenance functions from rural district councils to county councils in 1929. Exhibit 16 [copy of the Handover Map in the Applicant’s submission] would post – date that handover exercise. We note that the index to evidence dates [the Handover Map] as “1930” and observe that date to be inconsistent with the annotation on the map which indicates BOAT 47 having been taken over in 1939....The logical conclusion is that BOAT 47 provided the only publicly maintained carriage road to travel the hillside until the hairpin road was taken over in 1939. The depiction of BOAT 47 on Bartholomew’s is consistent with the application evidence and the decisions to record as RUPP and BOAT.

BOAT 19 and 47 are on through routes that comprise carriageways leading to public places. The through route presumption applies – BOAT 19 and 47 are presumed to have the same status as the carriageways that form the through route.

The Trail Riders Fellowship would robustly oppose an order or orders made on the basis of these applications, and respectfully asks Hampshire County Council to reject the applications.

48 No other comments have been received.

Comments by the Landowners

- 49 The affected landowners have been consulted on this application but have provided no relevant evidence (although one landowner has responded to confirm that they do not believe the routes are currently suitable for vehicular traffic).

Conclusions

- 50 As set out earlier in this report, for an Order to be made to downgrade both routes to bridleway status, there must be a discovery of new evidence, which must be cogent, and of sufficient substance to displace the presumption that the current depiction of the routes on the definitive map is correct. It is considered that the evidence submitted in support of (or reviewed as part of the further investigation into) this application falls into one of two categories.
- 51 The first category of evidence includes that which was available during the preparation of the first definitive map, and includes the Tithe Award, the Handover Map, and parish minutes and correspondence dating from between the late 19th and mid-20th centuries. It is this evidence upon which the Applicant places the greatest reliance. However, because it was reviewed during the drafting of the first definitive map, this evidence alone is insufficient to warrant the making of an Order – to do so would in effect be a re-examination of the evidence, which is not possible in the wake of the *Burrows* case. There must be a discovery of new evidence which, when considered alongside this original evidence, is sufficient to justify the making of an order to modify the definitive map.
- 52 The second category of evidence includes documents which may not have been known to the decision-makers at the time but which, when considered alongside the originally available evidence, are insufficient to warrant the making of an order to downgrade BOATs 19 & 47. This evidence provides no clear indication that either route was *not* vehicular (and the sale documents and 1939 dedication of highway rights appear to rebut the application insofar as it relates to BOAT 47) and thus falls short of constituting the ‘*evidence of some substance*’ described by Lord Phillips in the *Trevelyan* case.
- 53 In light of the above, it is considered that the tests set out in Section 53 of the Wildlife and Countryside Act 1981, by recent case law, and recognised in current DEFRA guidance, have not been met. There has been no ‘discovery of evidence’ sufficient to overturn the initial decision that vehicular rights subsist on BOATs 19 & 47. It is therefore recommended that the application is refused.

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

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

Other Significant Links

Links to previous Member decisions:	
	Date

Section 100 D - Local Government Act 1972 - background documents

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

DocumentLocation

Claim Reference: Case File (CR/1168)

Countryside Access Team
 Castle Avenue
 Winchester
 SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

2. Impact on Crime and Disorder: N/A

3. Climate Change:

How does what is being proposed impact on our carbon footprint / energy consumption? N/A

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

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