

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods <i>Countryside Strategic Manager</i>
Date:	21 May 2020
Title:	Application for a Definitive Map Modification Order to record a public footpath from the A337 to Wainsford Road Parish of Hordle

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Purpose of this Report

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

Recommendation(s)

2. That the application should be refused.

Executive Summary

3. This is an application made by a member of the public ('the applicant') in 2009 under Section 53 of the Wildlife and Countryside Act 1981, to record a footpath in Hordle. The application is supported by user evidence that the applicant believes demonstrates that a public right of way should be recorded on the basis of long-term use of the claimed route.
4. Having considered the evidence submitted with the application and undertaken additional research of historic documentary evidence, it is considered that there are insufficient grounds to record a footpath along the claimed route.

Legal framework for the decision

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

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

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

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

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

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;

HIGHWAYS ACT 1980 - Section 31: Dedication of way a highway presumed after public use of 20 years.

- a) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- b) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

PRESUMED DEDICATION AT COMMON LAW

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

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

5. The claimed route commences at a junction with the A337 near Efford Bridge (point A on the attached plan), continuing in a northerly direction past Efford Farm Cottages, along a track and through woodland to a junction with Wainsford Road (Road U446, point D on the attached plan).
6. The length of the claimed route is approximately 1300 metres.
7. Eight landowners whose properties are affected by the application were identified and consultation letters were sent to them. Where responses were received, these are discussed at paragraph 42. Previously, the land in this area was owned by the Ministry of Agriculture, Farms and Fisheries (MAFF, later the Department for Environment, Food and Rural Affairs - DEFRA), which acquired the land in the 1950s to develop a research station. By 2010, DEFRA no longer owned any land which was affected by the claim.

Issues to be decided

8. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are 'reasonably alleged' to subsist. 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. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, an order should be made so that the evidence can be tested at a public inquiry. Officers do not consider that there is such a conflict in this case.
9. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply

because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, it must be demonstrated that any change to the map is supported by evidence. This might be proved by historic documentary evidence or by evidence of use in the recent past.

10. If a right of way is considered to subsist or reasonably alleged to subsist, then the route, status and width of that way must also be determined, and authority for the making of an Order to record that right on the Definitive Map should be given.
11. Where a Map Modification Order is made, the process allows for objections to the Order to be made. Further evidence could potentially be submitted for examination along with an objection. In these circumstances, the County Council cannot confirm the Order, and the matter would need to be referred to the Secretary of State.
12. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order. In the event of an application under Section 53 being refused, the applicant has the right to appeal against the County Council's decision to the Secretary of State, who may direct the County Council to make the order that is sought.

Background to the Application

13. The application was initially submitted to the County Council in 2008 by a member of the public. There were a number of parts of the application which had not been completed and the application was therefore not compliant with Schedule 14 of the Wildlife and Countryside Act (1981). As a result, it was returned to the applicant for amendment. The application was accepted by the County Council in March 2009 but due to a backlog of applications the matter was not taken up for investigation at the time.
14. The pre-investigation correspondence does not indicate why the application has been submitted, but the user evidence forms refer to access being restricted around 2001 and the character of the route changing, with part of the route being incorporated into private gardens or obstructed by a new building.
15. Following the initial submission of the application, one of the individuals who completed a user evidence form wrote to the County Council to withdraw their evidence in November 2008. There is also a record in the case file stating that another individual telephoned to withdraw their evidence at around this time. When the case was taken up for investigation and a letter sent to the applicant, she responded to state that she would like to withdraw the application. The applicant was advised that the County Council has a duty to determine applications following a presentation of evidence and therefore the application cannot be withdrawn.
16. Correspondence in the case file from around 2009, and recent comments made by the landowner suggest that a local agreement regarding access was reached following the initial submission of the application. This will be discussed in more detail in due course.

Consultations

17. The following people and organisations have been consulted on this application: Hordle Parish Council, New Forest District Council, New Forest National Park Authority, the Ramblers and the Open Spaces Society. Additionally, the County Council Member for New Milton North, Milford and Hordle, Councillor Carpenter, has been made aware of the application. Where responses were provided, these are set out below.

18. Hordle Parish Council

Hordle Parish Council responded to the consultation with their support for the claimed route. Due to the restrictions as a result of the Coronavirus epidemic, Parish Councillors stated that they were not able to review the route on the ground but that the route appeared to provide a network benefit and safety improvement, as it would link to other paths and also take path users off the main road. One councillor stated that it would be beneficial if the path could be used by cyclists, as “the main roads [are] generally not safe for cycling, particularly for families”.

Documentary Evidence

Documents held in archives, whether Hampshire Record Office, the National Archives, or online archive collections, are marked by an ‘A’

Where held, images of documentary sources are contained within Appendix 1.

Where images are annotated with letters A-D, these correspond with the letters shown on the Report Plan.

19. Milne’s Map of Hampshire (1791) (A¹)



Figure 1 - Milne’s Map of Hampshire (1791)

¹ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/milne1/mln32f.htm>

The map shows a route bearing north, then north-west from the main road out of Lymington; this route is shown as two solid lines, which the legend denotes as an enclosed road. The road follows a somewhat similar alignment to the claimed route, although it is not possible to be certain of the precise alignment. Moreover, the possible presence of the route on the map does not mean that the public had the right to use the road. This map is neutral evidence of the existence of the claimed route.

20. Ordnance Survey Old Series (c.1817) (A)²



Figure 2 - Ordnance Survey Old Series (c.1817)

Similar to the depiction on Milne's Map of Hampshire, the map shows a route leaving the main road and bearing north. However, unlike the depiction on Milne's Map, the route is a cul-de-sac and there is no onward connection to Wainsford Road; this may be as the area towards Wainsford Road was not surveyed. This map does not appear to support the application, as the alignment of the route does not match the claimed route, there is no evidence that there were public rights of access along the claimed route, and the route is shown as being a cul-de-sac.

21. Greenwood's Map of Hampshire (1826) (A)³

² Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/ordnce6/oss7xf.htm>

³ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate www.geog.port.ac.uk/webmap/hantsmap/hantsmap/grnwood2/grw42.htm



Figure 3 - Greenwood's Map of Hampshire (1826)

The depiction of the route is the same as the depiction on the Ordnance Survey Old Series: a minor route bear north from the main road in the vicinity of Efford Farm; the route is a cul-de-sac and there is no onward connection to the Wainsford Road, although this may be because the area was not surveyed.

22. Ordnance Survey Maps - County Series (6 inches to 1 mile) – 1871 – 1947 (A⁴)

Five maps were published by the Ordnance Survey at a scale of 6 inches to 1 mile between 1871 and 1947. On each of these maps, a route is shown which largely matches the alignment to the claimed route, with the exception of a small deviation at the southern end. Significantly, on each edition of the map, there is a solid line across both the northern and southern ends of the route, which may indicate the presence of a gate. The northern part of the route (from around point C to point D on the report plan) is depicted by a pair of parallel pecked lines, which the characteristic sheet⁵ denotes as an unfenced road. The southern part of the route (Point A to near point C on the report plan) is depicted with solid lines in a style consistent with the depiction of a third-class road on the characteristic sheet.

The Ordnance Survey surveyors marked what they observed on the ground; therefore although a route may be shown as a road, this means that there was a route on the ground at the time the area was surveyed, it does not necessarily mean that there was a public right of way along the road (for example, the individuals using the route may have been doing so in exercise of a private right). The road in question may have been a private access road for Efford House, and Efford Farm, which were the only buildings along the route at that time.

⁴ Available for the National Library for Scotland. <https://maps.nls.uk/view/102343188>

⁵ Available from the National Library for Scotland: <https://maps.nls.uk/view/128076783>

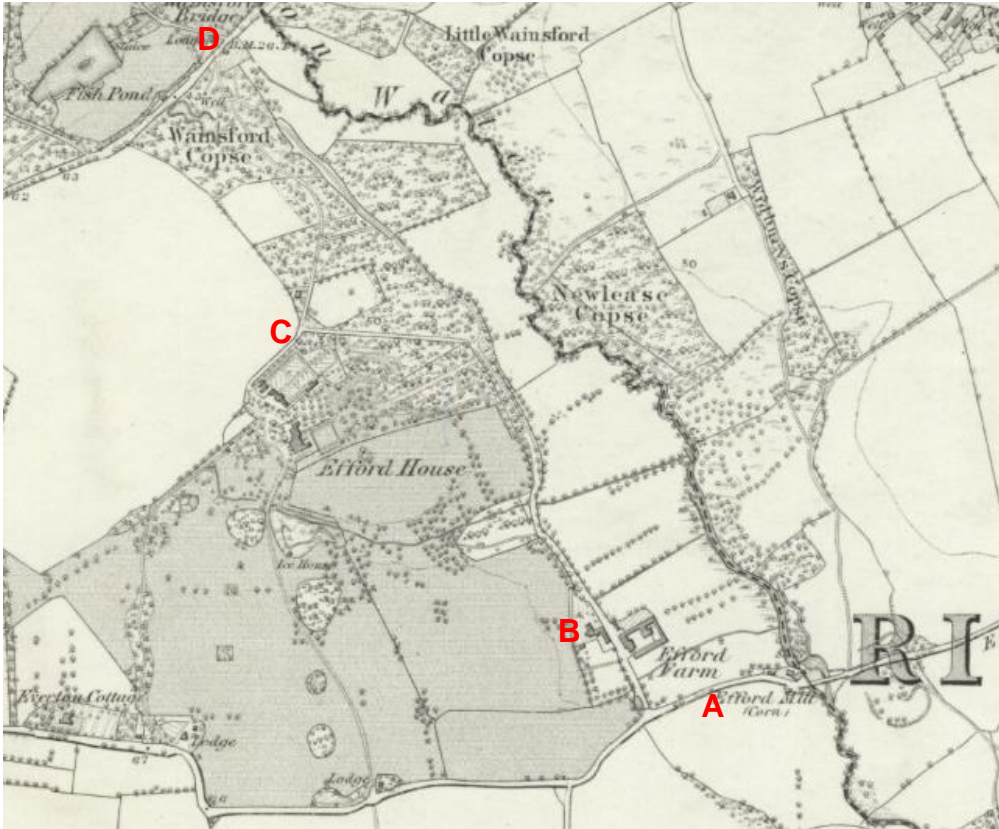


Figure 4 – Ordnance Survey County Series - First Edition (1871)

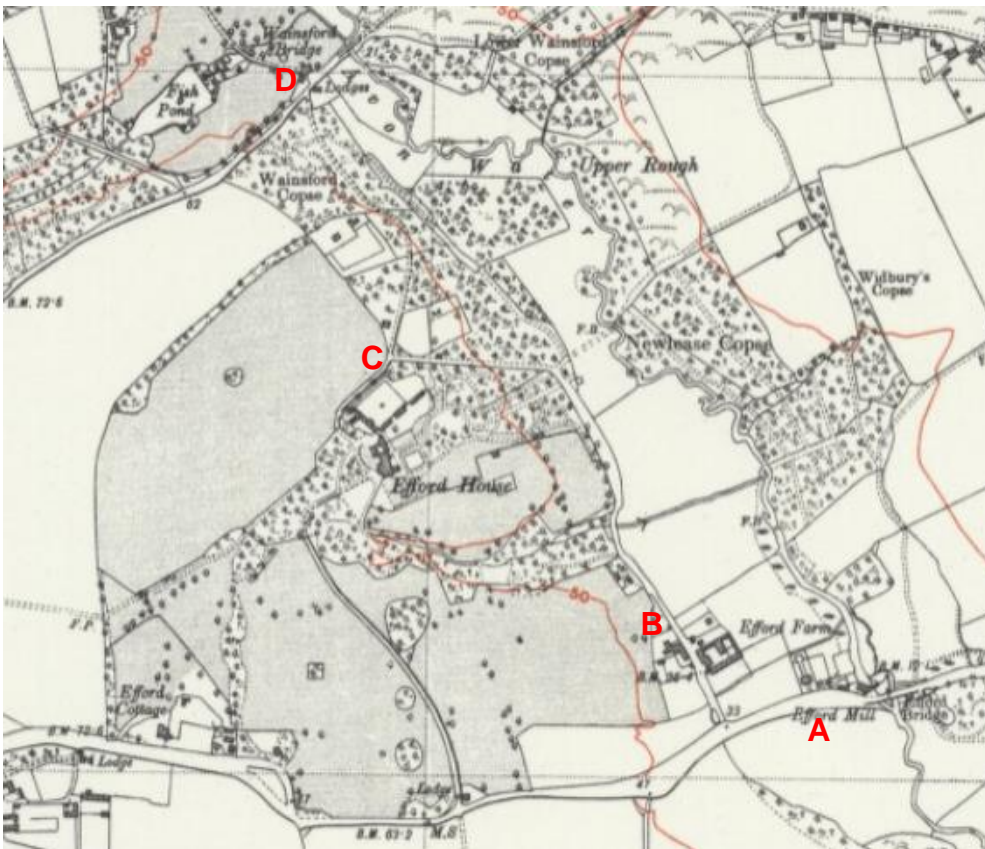


Figure 5 - Ordnance Survey County Series - Fifth edition (1947)

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

Parish Map (c.1950)

Parish maps were prepared by Parish Councils for County Councils when the first Definitive Map was being prepared; the map was produced to inform the County Council of the rights of way in each parish in order for the Draft Definitive Map to be produced. On the Hordle Parish Map, the claimed route, whilst shown on the base map, has not been annotated, indicating that the Parish Council did not consider it to be a public right of way at the time the map was produced.

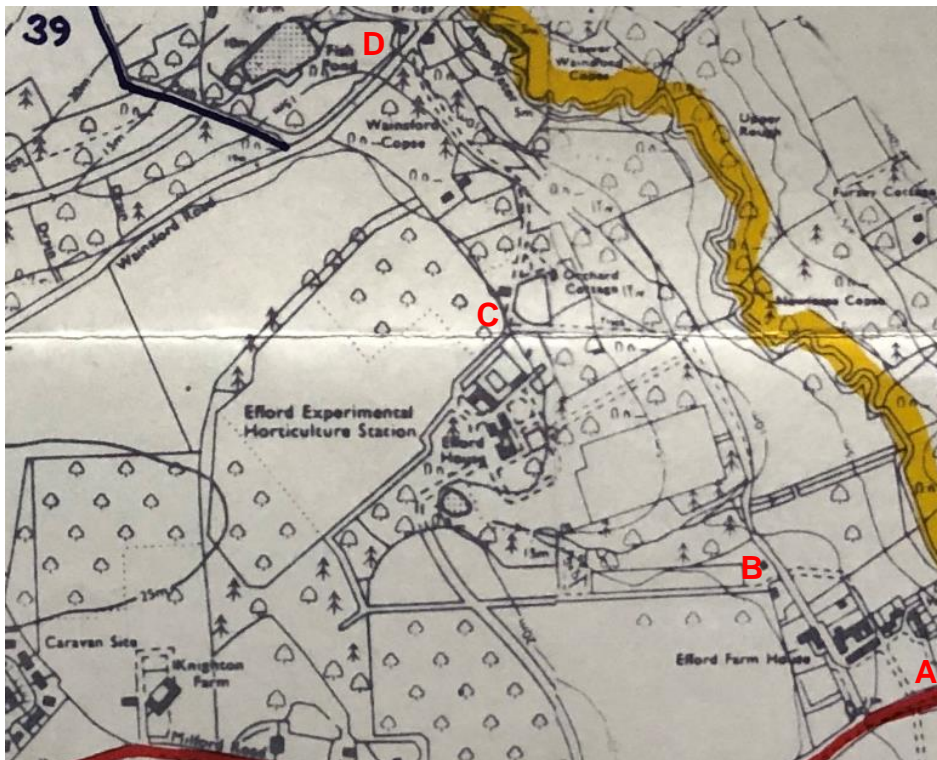


Figure 6 - Parish Map for Hordle (c.1950)

Third Definitive Map (A)⁶

On the third (c1958-1964) Definitive Map, the claimed route is not shown. This is consistent with the footpath never having been recognised as a public right of way.

Analysis of Documentary Evidence

24. With the exception of the southernmost part of the route, the first appearance of the claimed route on a map is on the 1871 Ordnance Survey map. However, there is no evidence that the route has ever been considered a public right of

⁶ The Third Definitive Map is held by Hampshire Countryside Service and is available to view by appointment.

way and the Parish Council did not nominate the route for inclusion on the first Definitive Map.

25. There is nothing within the documentary evidence reviewed which suggests that the public have ever had a right of access along the claimed route.

User Evidence

26. The application was supported by the evidence of six people, who completed user evidence forms. The dates of use are summarised on the chart at Appendix Three. The table is, by necessity, a generalisation, but it provides an insight into the evidence which has been put forward in support of the application.
27. The evidence charts public use of the claimed route from 1965 up until 2003.
28. Following submission of the application, three individuals who completed user evidence forms withdrew their support for the application, including the applicant. Their evidence will therefore carry significantly less weight, and so it has not been taken into account in the analysis below and their years of use have been marked in red on the usage chart.
29. Of the remaining three forms, the range of use is from 1965 to 2003. The forms indicate that access to the route was restricted in 2001; this year will therefore be taken as the 'calling into question' of the public's right to use the route under the provisions of section 31 of the Highways Act 1980. In the 20 years leading up to 2001, only one of the three users used the route for the duration.
30. One user claimed use of the route on foot, on a bicycle and with a vehicle, one user stated that they only used the route on foot, and the third individual claimed use on foot and on bicycle. Use of the route appears to have been frequent, with individuals stating that they used the route "regularly", "daily", and 20-30 times each year.
31. Two of the three users stated that they did not always follow the same route, and the maps attached to the user evidence form reflect this: the individuals have marked a large number of routes, suggesting that they tended to roam around the area. Two users have also marked routes which include the addition of cul-de-sac deviations.
32. Two users state that the route involved passing through gates, which were unlocked, and all users deny that there have ever been any signs or notices along the path.
33. Two users describe obstructions along the route, including barbed wire fences, a gate, and one of the landowners incorporating part of the route into their garden.
34. Significantly, two of the three users state that they were tenants and/or employees of the former landowner (the Ministry of Agriculture, Fisheries and Food – MAFF). The third user denied being a tenant or employee of the landowner, although during the landowner consultation (see paragraph 42), two landowners state that this particular individual, now deceased, was both a tenant and an employee of MAFF. A similar question on the User Evidence Form asks completers whether their use of the route has been in exercise of

a private right, to which one user answered in the affirmative and stated that the route was how they got to work.

35. Two users state that they were challenged by the landowner when using the route

Summary of user evidence

36. Of the six user evidence forms completed, three individuals subsequently withdrew their support for the application and their evidence has therefore not been taken into account.
37. The remaining three forms were completed by tenants and employees of the former landowner. They all used the claimed route regularly, although they also refer to obstructions along the route and to landowners challenging them when using the path. Users state that, in 2001, the landowner began to take steps to prevent use of the routes.
38. Numerous other routes drawn by the three individuals who were tenants and employees differ from the claimed route, with a large number of spur routes annotated on the plan, suggesting that users had been roaming.
39. In all, the user evidence is very weak: firstly due to the low number of forms submitted, half of these then being withdrawn and with all of the remaining individuals being tenants and/or employees of MAFF, who owned the land during the relevant period of use. Additionally, as described at paragraph 31, the forms which were not withdrawn show a large number of routes annotated on the user evidence plan; this dilutes the strength of that use which took place on the claimed route.

Actions of the landowners

40. A landowner deposit under the provisions of section 31(6) of the Highways Act (1980) was deposited with the County Council in March 2001. This deposit affects the southernmost part of the route, surrounding Efford Farm House.
41. In response to the landowner consultation, landowners stated that there are 'Private – No access' signs displayed along the claimed route. These are discussed further at paragraph 42. Additionally, landowners state that the route is obstructed variously by trees, vegetation, a driveway and a stable block. Planning permission for the latter was granted in 2014 and it is therefore outside of the period of interest relating to the application (the submission of which acts as a cut-off date for consideration of landowner actions); the New Forest National Park planning report⁷ acknowledges that "A local resident has raised concerns that the stable building is obscuring a footpath. There are no public rights of way within this part of the site."

⁷ Available at https://publicaccess.newforestnpa.gov.uk/online-applications/files/58799EB4AFF722DCB622F28C1279FC4/pdf/14_00467-OFFICER_S_REPORT-380697.pdf

Comments by the Landowners

42. Eight landowners whose properties are affected by the application have been identified and consultation letters were sent to them. Six landowners responded to the consultation to outline their objection to the application on the following grounds:

- Of the six user evidence forms submitted with the application, two individuals have withdrawn their evidence, three individuals are former employees and tenants of the Ministry of Agriculture, Farms and Fisheries (MAFF), who were the former landowners, and the final form was completed by somebody who keeps a horse locally.
- MAFF, who had owned the land since 1951, sold it to current owners in 1999 with a covenant that there was no public Right of Way over any part of the land.
- Part of the route is now obstructed by a stable block and driveway. New Forest District Council granted planning permission for both of these projects.
- The claimed route passes through several private gardens and all landowners confirm that there has been no public access during their ownership (which dates back to the 1950s in one case). One landowner states that the claimed route presents a security concern as it runs through their garden, and that they would have noticed people using the route.
- All properties along the route display 'Private' signage, such as this:



Whilst there are no precise dates available about when these signs were erected, one landowner states that the sign outside their property was in place when they purchased the property in 1992 and it appeared to have “been there for a considerable number of years before that”.

- The claimed route has “never been anything other than private land, with absolutely no public access”.
- Most of the claimed route has been overgrown for “several decades”.
- Part of the claimed route is blocked by a barbed wire fence.
- The claimed route is surplus to requirement, as there are other public rights of way in the area.

Analysis of the Evidence under Section 31, Highways Act 1980

43. For Section 31 of the Highways Act 1980 to operate and give rise to a presumption of dedication, the following criteria must be satisfied:

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

Each of these points will be examined below in relation to the three user evidence forms which were not withdrawn.

44. Physical nature of the route

A public highway must follow a defined route. The claimed footpath follows a linear route and is therefore capable of being a right of way at common law. It is worth noting that the claimed route may not necessarily be the route used by witnesses, as some landowners state that parts of the route are unavailable as they are obstructed.

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

The public’s right of use the path appears to have been brought into question in 2001 when the landowners began to take active steps to restrict access, including obstructing the route.

46. Twenty years’ use without interruption

All three users indicated that they used the route during the 20 years leading up to the event which called into question the public’s right to use the claimed route (see above). However, only one user used the route for the duration of the period.

47. 'Without force, stealth or permission'

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

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

Whilst users acknowledge the presence of gates along the route, these were not locked. Further, users acknowledge the presence of barbed wire but to not discuss whether they removed this obstacle.

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

The accounts of users of the path indicate that access to the land was open and without secrecy.

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

None of the users stated that they had sought permission to use the route. However, the three users were employees and tenants of MAFF and therefore may have had a right of access for the purposes of work or accessing their properties; to this end, one user confirms that they had a private right to use the route.

48. Use by the Public

Use must be by the public, and that should be reflected in its volume and the breadth of the type of users.

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

Whilst six forms were submitted, three were subsequently withdrawn. The three remaining forms is not a sufficient volume of use to demonstrate that the claimed route has been widely used by the public.

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

Two of the three users indicated that they were tenants and/or employees of MAFF, the former landowner of the claimed route. Two landowners have stated that the third individual who completed a user evidence form was also a tenant and employee of MAFF. It would therefore appear that the use of these individuals was not 'as of right'.

Conclusions under Section 31, Highways Act (1980)

51. Analysing the evidence reviewed above, the conclusion reached is that the provisions of s31 of the Highways Act (1980) have not been satisfied. The three individuals whose user evidence forms were analysed appear to have

been tenants and/or employees of MAFF, who were the landowners during much of the relevant 20-year period. Additionally, the landowners have taken steps to prevent the route becoming a public right of way, including erecting gates and barbed wire fence, building over part of the route, and one of the landowners lodging a deposit with the County Council under the provisions of s31(6) of the Highways Act (1980). These considerations aside, the number of users is insufficient to demonstrate that the public at large have used the route, and the use of the claimed route has been diluted by witnesses annotating routes on their user evidence plans which appear to show that they used a large number of different routes and paths in the area.

Analysis of the evidence under Common Law

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

Conclusions under Common Law

53. As the three individuals who completed forms were tenants and employees of the former landowner, their use of the claimed route during MAFF's ownership does not constitute use of the route by the public and therefore is outside of the scope of common law. Since the land was sold, the new owners have taken steps to restrict access to the land, including displaying signs which state that the land is private. One of the landowners states that at least one of these signs has been in place for a number of years before 1992. Additionally, a landowner deposit under the provisions of s31(6) of the Highways Act was made with the County Council in 2001, protecting the land from claims for public rights of way after this date; this affects the southernmost part of the route. Two users acknowledged that they had been challenged by a landowner whilst using the route. Finally, as described at paragraph 44, the three individuals whose forms were analysed each annotated a large number of different routes and paths on their maps; this dilutes the strength of evidence for the claimed route.

Conclusions

54. As set out earlier in the report, for a change to the Definitive Map to be made, it must be on the basis of evidence which shows that the existence of

a public right of way is 'reasonably alleged'. Documentary evidence demonstrates that a route which largely matches the alignment of the claimed route has been in existence since around 1871, however, there is no evidence which shows that the route has ever been considered a public right of way.

55. Six user evidence forms were submitted with the application but three of these were subsequently withdrawn. The remaining three forms were from individuals who were either tenants or employees of MAFF (the former landowner); this is the primary reason why their use is insufficient to meet the tests under s31 of the Highways Act and under the provisions of common law. Additionally, landowners have taken steps to prevent access to their land, including challenging people using the route and erecting gates and signage. One landowner has also lodged a deposit with the County Council under the provisions of s31(6) of the Highways Act. Finally, the strength of use for the claimed route has also been diluted by the witnesses marking a large number of routes on their user evidence maps.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes/no
People in Hampshire live safe, healthy and independent lives:	yes/no
People in Hampshire enjoy a rich and diverse environment:	yes/no
People in Hampshire enjoy being part of strong, inclusive communities:	yes/no
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as ‘surveying authority’, has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.	

Section 100 D - Local Government Act 1972 - background documents	
The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)	
<u>Document</u>	<u>Location</u>
Claim Reference: Hordle DMMO 1017	Countryside Access Team Castle Avenue Winchester SO23 8UL

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

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

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

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

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

2. Equalities Impact Assessment:

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

Appendix 1 - Evaluation of Historical Documents

Under Section 32 of the Highways Act 1980, any court or tribunal determining the existence of public highway rights is required to take all evidence tendered into consideration before determining whether a way has or has not been dedicated as a highway, giving such weight to each document as it considers is *“justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it was produced.”*

The Planning Inspectorate’s Definitive Map Orders Consistency Guidelines have the following to say on the analysis of evidence:

“There is a distinct and important difference between the ‘cumulative’ and ‘synergistic’ approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g. three commercial maps by different cartographers, all produced within the same decade or so) could be regarded as mere repetition. Thus, their cumulative evidential weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind. “

Early Commercial Maps

A number of map-makers (such as Isaac Taylor, Thomas Milne and C & J Greenwood) were producing small-scale maps (often one inch to the mile or less) during the 17th – 19th centuries. These were often sponsored by local landowners, and purchased as works of art rather than aids to navigation. The quality of surveying varied, and prior to 1800 was generally poor compared with similar scale Ordnance Survey maps produced from 1808 onwards. Although in isolation they do not prove the status of the roads and tracks shown on them, when considered alongside other evidence they can be helpful in identifying the status, location, and early origin of a route.

Ordnance Survey Maps and Records

The first maps of Hampshire produced by the Ordnance Survey and commercially available date from the early 19th century and were a great improvement on contemporary maps of a similar genre. The most useful series of maps are the 1:2,500 County Series maps, produced at intervals between the late 1860s and the 1940s. These maps provide an accurate picture of the landscape at the date of survey, and carry strong evidential weight, but it should always be borne in mind that the surveyors mapped physical features and not legal rights. These maps cannot be taken in isolation as evidence of the legal status of the paths and tracks shown on them.

Additional help in determining the status of a path can be found in other Ordnance Survey Records: the first edition County Series Map was accompanied by a Book of Reference, which identified ‘Roads’ (and sometimes even ‘Public Roads’ or

'Occupation Roads'); the object name books (some have survived for the third edition, circa 1909) relied on local knowledge (for example, the Overseer of Highways) to describe features, including public roads; boundary books can record public highways where they also form parish boundaries and levelling records may also refer to roads and other features.