

HAMPSHIRE COUNTY COUNCIL

Officer Decision Record

Decision Maker:	Jonathan Woods <i>Countryside Service Strategic Manager</i>
Date:	15 October 2020
Title	Application for a Definitive Map Modification Order to record a restricted byway from the end of The Dean to the Fulling Mill Parish of New Alresford

Tel: 0370 779 0383

Email: Jennifer.holden-warren@hants.gov.uk

1. The decision:

- That the application for a Definitive Map Modification Order (DMMO) to record a public restricted byway from The Dean to The Fulling Mill in the parish of New Alresford be accepted.
- That a DMMO should be made to record a restricted byway between The Dean and The Fulling Mill (as depicted on the New Alresford enclosure map), with a width of 30 feet.

2. Reason(s) for the decision:

- The application, which relies on historic documentary evidence, was submitted in 2008 by New Alresford Town Council. There is sufficient evidence to demonstrate that the claimed route was previously a public highway called The Pinglestone Road. No record of the stopping up or extinguishment of this route has been discovered.
- The route is clearly depicted on a number of maps and is shown on the New Alresford tithe and enclosure maps; the Pingelstone Road is described in the enclosure award as a public road with a width of 30 feet.

3. Consultations:

The following people and organisations have been consulted on this application: Winchester City Council, Old Alresford Parish Council, Natural England, the Environment Agency, the British Horse Society, the Byways and Bridleways Trust, Cycling UK (the CTC), the Open Spaces Society and the Ramblers. Additionally, New Alresford Town Council, as the applicant, was notified when the case was taken up for investigation and invited to submit any additional comments or evidence. The County Council Member for Itchen Valley, Councillor Porter has been made aware of the application. Where responses were provided, these are set out below.

The CTC

Whilst I do not have documentary evidence of historic use, there seemed to be a view [in the early 1980s] that the historic route actually went along the river. If I remember rightly, someone rode a horse and carriage along the route at irregular intervals and I think I remember seeing a photo in the Hampshire Chronicle at the time showing this. I appreciate

this is circumstantial but there was certainly a view locally that it was an old road, which presumably fell out of use because cars of the era would flood their engines when they drove through

The British Horse Society

The British Horse Society supports the DMMO application to record the route between the end of The Dean to the Fulling Mill in New Alresford which joins on to RB6. There is photographic evidence to show that this route has been used within living memory by horse drawn vehicles.

Winchester City Council

The Natural Environment and Recreation Team responded to the consultation to say that the land to the east of point A is mitigation land as part of a housing development (Planning Reference 15/02890/FUL). The City Council also stated that Ordnance Survey maps show the claimed route as part of the Wayfarer's Walk and an historic map from 1867 shows a path from The Dean to the Old Fulling Mill.

The Ramblers

As the route leads from the end of The Dean to the Fulling Mill it must have been a 'horse-and-cart' route in the past

Consultation letters were sent to four landowners whose properties are affected by the application, either directly or indirectly. One response was received: a land agent acting for the Church Commissioners stated that their ownership extended to 'mines and minerals' at this location and they are therefore unaffected by the application.

4. Other options considered and rejected:

N/A

5. Conflicts of interest:

None.

6. Dispensation granted by the Head of Paid Service:

N/A

7. Supporting information:

- Full Officer Report
- Location Map

Approved by:

Date:

15 October 2020

**Jonathan Woods – Countryside Service Strategic
Manager**

**On behalf of the Director of Culture Communities and
Business Services**

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
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.)

Document

Claim Reference:
DMMO 980

Location

Countryside Access Team
Castle Avenue
Winchester
SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

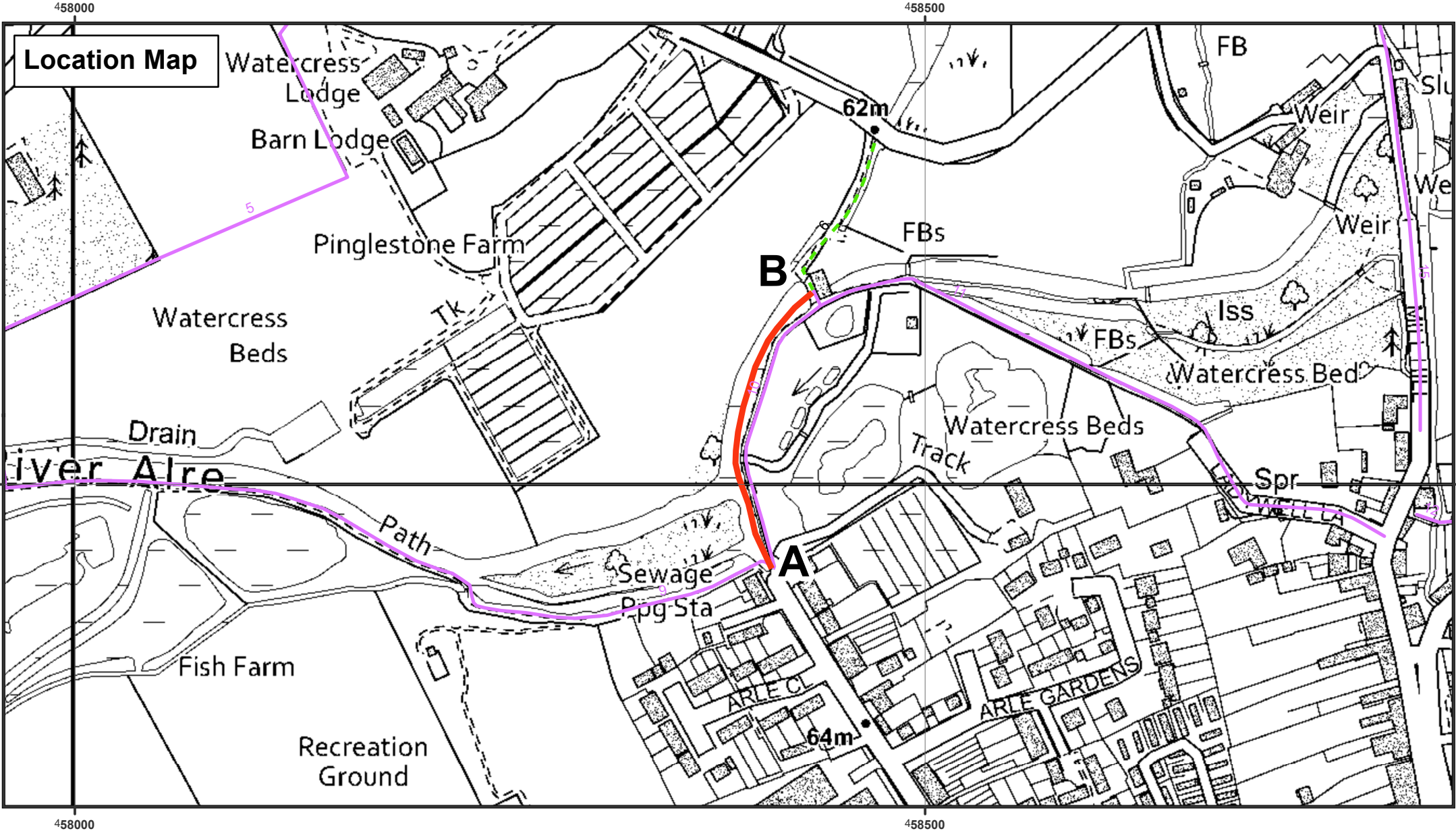
2. Impact on Crime and Disorder: N/A


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.



 **Hampshire**
County Council

Application for a Map Modification Order to record a restricted byway from the end of the The Dean to The Fulling Mill - Parish of New Alresford

LEGEND

- Claimed route
- Public Footpath
- - - Public Restricted Byway

Countryside Access Team
Culture, Communities & Business Services
Castle Avenue
Winchester, SO23 8UL

1:3,000

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AMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods <i>Countryside Service Strategic Manager</i>
Date:	15 October 2020
Title:	Application for a Definitive Map Modification Order to record a restricted byway from the end of The Dean to the Fulling Mill Parish of New Alresford

Contact name: Jennifer Holden-Warren, Map Review Officer

Tel: 0370 779 0383

Email: Jennifer.holden-warren@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to assist the Countryside Service Strategic manager in determining whether to accept an application for a Definitive Map Modification Order to record a restricted byway in the parish of New Alresford.

Recommendation(s)

2. That authority is given for the making of a Definitive Map Modification Order to record a restricted byway with a width of 30 feet as shown between Points A and B on the attached plan. The route will commence at a junction with The Dean (public road U184) and terminate at a junction with Restricted Byway 6 in the parish of Old Alresford.

Executive Summary

3. This is an application made by New Alresford Town Council ('the applicant') in 2008 under Section 53 of the Wildlife and Countryside Act 1981, to record a restricted byway from the end of The Dean (public road U184) to the Fulling Mill in New Alresford, a route which runs through the River Alre. The application is supported by historic documentary evidence that the applicant believes demonstrates that a public right of way should be recorded along 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 sufficient grounds to record a restricted byway 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;

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

Section 66: Restriction on creation of new public rights of way

(1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—

- (a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or
- (b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.

(2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

Section 67: Ending of certain existing unrecorded public rights of way

(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—

- (a) was not shown in a definitive map and statement, or
- (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

(2) Subsection (1) does not apply to an existing public right of way if—

- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
- (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
- (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
- (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.

(3) Subsection (1) does not apply to an existing public right of way over a way if—

- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
- (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
- (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—
 - (i) was reasonably necessary to enable that person to obtain access to the land, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.

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

5. The claimed route commences at the end of The Dean (public road U184) where the road joins the River Alre. There is a steep step from The Dean into the river. The route continues in a northerly direction along the riverbed, which mostly consists of loose gravel, to The Fulling Mill. The claimed route

terminates at the parish boundary and at a junction with Restricted Byway 6 in the parish of Old Alresford.

6. The length of the claimed route is approximately 180 metres.
7. The riverbed over which the claimed route runs is owned by two residents of Old Alresford, and by the owners of The Fulling Mill, which is at the northernmost end of the route.

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 submitted in 2008 by New Alresford Town Council. Due to a backlog of applications the matter was not taken up for investigation at the time.

14. The applicant submitted the following evidence in support of the application:
- a. Four editions of the Ordnance Survey 'County Series' maps, published between 1871 and c.1909.
 - b. A copy of the New Alresford Enclosure map and award.

Consultations

15. The following people and organisations have been consulted on this application: Winchester City Council, Old Alresford Parish Council, Natural England, the Environment Agency, the British Horse Society, the Byways and Bridleways Trust, Cycling UK (the CTC), the Open Spaces Society and the Ramblers. Additionally, New Alresford Town Council, as the applicant, was notified when the case was taken up for investigation and invited to submit any additional comments or evidence. The County Council Member for Itchen Valley, Councillor Porter has been made aware of the application. Where responses were provided, these are set out below.

16. The CTC

Whilst I do not have documentary evidence of historic use, there seemed to be a view [in the early 1980s] that the historic route actually went along the river. If I remember rightly, someone rode a horse and carriage along the route at irregular intervals and I think I remember seeing a photo in the Hampshire Chronicle at the time showing this. I appreciate this is circumstantial but there was certainly a view locally that it was an old road, which presumably fell out of use because cars of the era would flood their engines when they drove through.

17. The British Horse Society

The British Horse Society supports the DMMO application to record the route between the end of The Dean to the Fulling Mill in New Alresford which joins on to RB6. There is photographic evidence to show that this route has been used within living memory by horse drawn vehicles.

18. Winchester City Council

The Natural Environment and Recreation Team responded to the consultation to say that the land to the east of point A is mitigation land as part of a housing development (Planning Reference 15/02890/FUL). The City Council also stated that Ordnance Survey maps show the claimed route as part of the Wayfarer's Walk and an historic map from 1867 shows a path from The Dean to the Old Fulling Mill.

19. The Ramblers

As the route leads from the end of The Dean to the Fulling Mill it must have been a 'horse-and-cart' route in the past

Documentary Evidence

Documents held in archives, whether Hampshire Record Office, the National Archives, or online archive collections, are marked by an 'A'. Please refer to Appendix 1 for a brief background and introduction to each type of document. Images of maps are annotated with letters which correspond with letters on the Report Plan.

20. New Alresford Enclosure Map (1807) (A¹)

The claimed route is shown on the map and labelled 'The Pinglestone Road', there is a solid line at either end of the route. The road is depicted in sepia, which is also used for roads which are currently part of the highways network, including The Dean, the High Street, Broad Street and Ladywell Lane. On the claimed route, there is no parcel number which would correspond to ownership in the accompanying Enclosure Award. The river at the southern end of the claimed route is shown as being much wider at its southern end than it currently is. The northern termination point of the Pinglestone Road is clearly depicted as being the northern riverbank. There are routes on the map which follow an identical or very similar alignment to New Alresford Footpaths 9, 10 and 11 and these are coloured in sepia and two of the routes have been named ("Abbotstone Foot Way" and "The Causeway Foot Way").

The Pinglestone Road is described in the enclosure award as a "*public carriage road or highway of the breadth of thirty feet commencing at the north end of the street in New Alresford aforesaid called The Dean and following its usual direction north and north-eastward over Broad Marsh to the lands in the parish of Old Alresford at the Fulling Mill there and called the Pinglestone Road*".

The enclosure evidence indicates that the claimed route was considered to be a public road at the time the New Alresford enclosure was agreed, and that the width of the route as set out in the award was thirty feet.

¹ Hampshire Record Office Reference number – Q23/2/93. Not to be reproduced without permission.



Figure 1 – New Alresford Enclosure Map (1807)

21. Ordnance Survey Old Series (1855) (A)²

The Dean and the route leading to the Fulling Mill are clearly depicted on the map, but there is no indication that there is a route through the river or a ford. However, Ordnance Survey surveyors marked what was visible on the ground, rather than depicting routes along which the public had a right of passage, the absence of the claimed route from this map is therefore not evidence against its existence. This document is neutral evidence that the claimed route was a public right of way at the time the map was produced.



Figure 2 - Ordnance Survey Old Series (1855)

² Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/ordnce6/oss43f.htm>

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

The claimed route is not shown on this map. However, as with the Ordnance Survey Old Series Map, the omission of the route from the map is not proof that there was no public right of way here at the time that map was made, as the surveyors showed what was visible on the ground. This document is therefore neutral evidence of the existence of the claimed route at this time.



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

23. New Alresford Tithe Records (1843) (A)⁴

The claimed route is within the area covered by the New Alresford tithe. The section of river where the claimed route is located is shown as a parcel numbered 145, which the accompanying award document describes as 'Roads [and] waste'; there is an illegible mark following this description. There is no owner listed in the award, suggesting that the parcel was not in private ownership at this time. The Dean, the footpath beside the river, and the track between the Fulling Mill and Abbotstone Road are coloured sepia and do not have parcel numbers, which is consistent with their depiction on the earlier enclosure documents as public highways.

This document provides limited support to the assertion that the claimed route was historically considered to be a public road, as the route is listed as 'roads and waste' and does not appear to have had an owner but, unlike the enclosure evidence, the route is not depicted as a continuation of The Dean.

³ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/grnwood2/grw74f.htm>

⁴ Hampshire Record Office Reference numbers – 21M65/F7/167 Not to be reproduced without permission.



Figure 4 – New Alresford Tithe Map (1843)

144	The Sub of the Town Gardens etc	33	0	0
145	Roads waste etc	22	3	10
146	The Turnpike house Garden Gate etc			16

Figure 5 - New Alresford Tithe Map (1843)

24. Ordnance Survey Maps - County Series (25 inches to 1 mile) – 1871 – c1909 (A)⁵

Four maps were published by the Ordnance Survey at a scale of 25 inches to 1 mile between 1871 and c1909.

On each edition of the map, the claimed route is shown as part of the river and it is labelled 'ford'. Whilst, as previously described, Ordnance Survey maps are not legal documents or proof of the existence of a public right of way, this map corroborates what the tithe and enclosure evidence shows: that the claimed route appears to have been considered as a public route at this time.

The second edition of the map shows that the ford was approximately between 2.7 and 17 metres wide.

⁵ Available from the National Library of Scotland

<https://maps.nls.uk/geo/find/#zoom=14&lat=51.09218&lon=-1.18150&layers=101&b=1&z=1&point=51.09241,-1.17079>

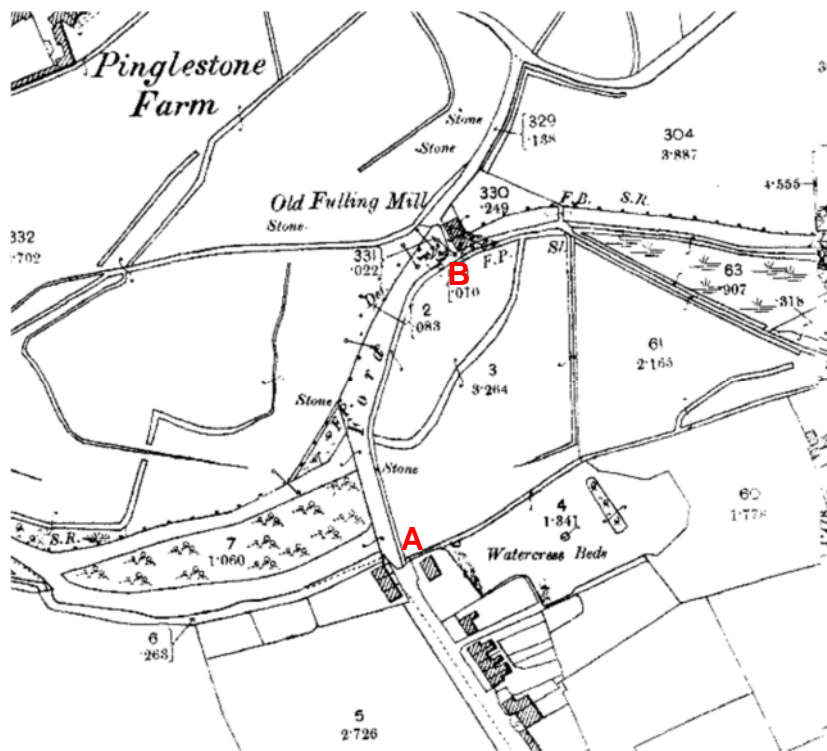


Figure 6 - Ordnance Survey County Series Second Edition (1896)

25. Alresford Rural District Council Highway Handover Map (1929) (A)⁶

The claimed route has not been annotated on this map, indicating that it was not considered to be publicly maintainable at the time the map was produced. This may reflect that the route was not in regular use by this time. The footpath beside the river (New Alresford Footpath 10) is depicted with a red pecked line, indicating that it was a public footpath repaired by the District Council. The track between The Fulking Mill and the Abbotstone Road (Old Alresford Restricted Byway 6) is also depicted in this style.

⁶ Hampshire Record Office Reference number – H/SY3/6/1 Not to be reproduced without permission.



Figure 7 – Alresford Rural District Council Highway Handover Map (1929)

26. Highways Maintenance Map, Winchester Division (c.1946) (A)⁷

The claimed route has not been annotated on this map, which shows the routes that the County Council were maintaining at this time. However, no public rights of way except for roads have been shown on the map.

This map shows that the County Council were not maintaining the route at the time the map was produced, but it does not disprove that a public right of way existed at this time, as indicated by the tithe and enclosure evidence and the Ordnance Survey County Series maps. Other routes in this locality which are currently footpaths have been omitted from the map, including Footpaths 9, 10 and 11 (which run alongside the river); Restricted Byway 6 in the parish of Old Alresford has also not been included. This further reinforces that the map is, at best, neutral evidence for the existence of an historic right of way along this route.



⁷ Hampshire Record Office Reference number – H/SY3/3/24/11 Not to be reproduced without permission.

Figure 8 - Highways Maintenance Map, Winchester Division (c.1946)

27. New Alresford Parish Map (c.1950) (A⁸)

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.

The claimed route has not been annotated on the parish map, although New Alresford Footpaths 9 and 10 have been included. This indicates that it was not considered that the claimed route was a public right of way at the time the map was produced. Alternatively, it may suggest that the Town Council did not consider it appropriate or necessary to include the claimed route on the map, as it runs through a river and there is a pedestrian alternative alongside it.

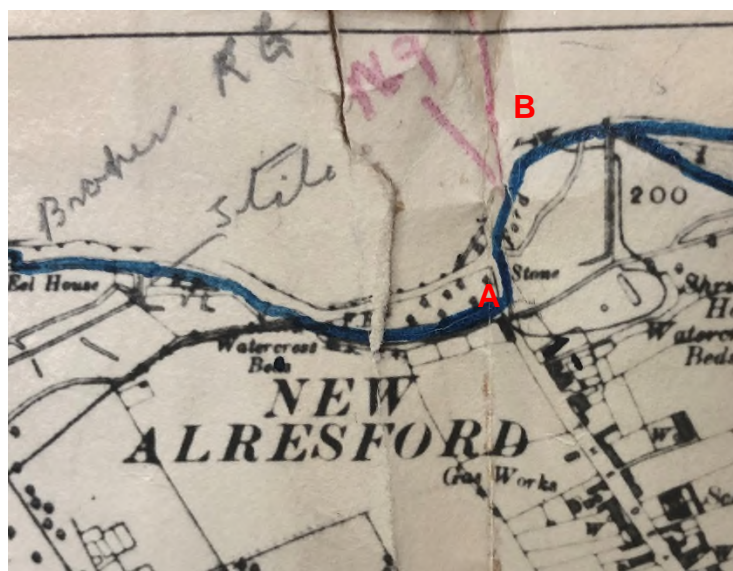


Figure 9 – New Alresford Parish Map (c.1950)

28. Documents relating to The Pinglestone Road ('The Alf White Papers') (1975-2006) (A⁹)

Hampshire Record Office holds a collection of papers which belonged to the late Mr White, who was a former clerk to the New Alresford Town Council. The papers (amounting to around 150 documents, mostly correspondence, council papers and newspaper clippings) detail the discussions about whether the Pinglestone Road was a former ancient highway, who was responsible for maintenance, (including ensuring access to the route was open), and whether the public had a right of passage along the road.

There are several documents of particular interest:

- A letter dated 3 May 1976 from the County Council to New Alresford Town Council stating the claimed route is “an ancient highway”.

⁸ Held by Hampshire Countryside Service

⁹ Hampshire Record Office Reference number – 14A13/1

- In 1980, there was an obstruction at one end of the route which prevented vehicular access. Mr White wrote to the Town Council, who raised this with Hampshire County Council, stating that they were concerned that the obstruction was an unlawful obstruction of the highway and they wished to retain the Pinglestone Road as a public right of way. The County Council were unwilling to remove the obstruction, as *“the highway would still be impassable to all but the most rugged of cross-country vehicles”*, and removal was also cost prohibitive. Correspondence between Mr White, the Town Council and the County Council to discuss the matter continued for five years; other interested parties, including The British Horse Society and the local Member of Parliament, also entered the discussion. The obstructions were eventually removed but Mr White remained dissatisfied (his letters suggest an obstruction of some description remained in place) and he escalated the matter to the Local Government Ombudsman. Following this, the County Council agreed to carry out works at each end of the Pinglestone Road to make the route more accessible to equestrians, whilst not encouraging motorised vehicles to use the route. The works were carried out and the completion was marked by an organised ride through the ford by local equestrians; Mr White undertook the journey by horse and cart and a photograph of him doing so appeared in the local newspaper.
- A letter dated 8 May 2006 from the Highways Department of the County Council to New Alresford Town Council. The letter sets out the challenges of maintaining the route, as it is a Site of Specific Scientific Interest, and any improvements would be likely to cause motorised vehicles to start using the route. Additionally, improvement works were felt to be cost prohibitive. The letter concludes by asking the Town Council to consider “whether the time has now come to extinguish this section of highway, whilst of course retaining the riverside footpath”.
- A local newspaper article from 2006 discussing the history of the route and the Town Council’s desire to ‘re-open [the] ancient road’. The article also mentions that there is local opposition to the scheme.

29. *The Alresford Articles Journal, issue 2 (2013)* ¹⁰

This document, published by the Alresford Historical and Literary Society, includes a comprehensive article relating to the Pinglestone Road. The article, which cites a range of sources (including The Alf White Papers, as reviewed above), examines the history of the route. The main points are as follows:

- The Pinglestone Road commences at the junction of Old Alresford Restricted Byway 6 and the Abbotstone Road and continues along the track, through the river along an ‘elongated ford’, to The Dean.
- The Pinglestone Road has probably been in use ever since the town was established in the 12th century, but that use gradually declined after the advent of the motor car.
- The article cites and includes a scan of a letter from Hampshire County Council to the clerk of New Alresford Parish Council in 1976, which states

¹⁰ Available online <http://www.alresfordhistandlit.co.uk/Alresford%20Articles%20No.2%20Book%20rev14.pdf>

that the route from the Fulling Mill to The Dean is “an ancient highway”. The obstruction issue in the 1980s is also discussed in detail.

- In 2004, the County Council removed the ramp leading from The Dean into the river, and bollards were installed to prevent access. A Town Councillor took up the campaign to keep the route open and the bollards were removed in 2006 although the ramp was not replaced, partly due to costs and to prevent motorised vehicles from using the route.
- The route is still used by a horse and cart once a year at the Watercress Festival.

Analysis of Documentary Evidence

30. The documentary evidence demonstrates that the claimed route, which is first shown on the New Alresford enclosure map in 1807, appears to have been a public road.
31. The enclosure map and award, which are legal documents, set out the claimed route as a public highway called The Pinglestone Road with a width of thirty feet; the route is depicted in the same style as The Dean and Ladywell Lane (both currently vehicular highways). Similarly, the tithe map and award of 1843 shows this section of river under the ‘roads and waste’ section of the award and without a named owner, suggesting that it was a public route, which is supportive of the earlier enclosure evidence.
32. Whilst the claimed route does not appear to be shown on Greenwood’s Map of Hampshire (1826) or the Ordnance Survey Old Series Map (1855), this cannot be taken as proof that the route was not a public right of way at this time. These maps were intended to show features on the ground, rather than any public rights of access which subsisted over them. Additionally, these maps are a fairly small scale and the claimed route may not be a sufficiently large feature to be depicted on the map.
33. The claimed route is shown on all four editions of the Ordnance Survey county series maps as a section of river labelled ‘ford’. These maps were published between 1871 and c.1909 and therefore demonstrate that this part of the river was being used as a ford during this time. Conversely, the route is not shown on either the Highways handover and maintenance maps, and the parish map, indicating that the route was not being publicly maintained and was not considered by the Town Council to be a public right of way by the mid-twentieth century. However, the omission of the claimed route from the parish map may have been because the route, being a river, is not a ‘typical’ example of a public right of way and the Town Council may have omitted it for this reason, feeling that it didn’t warrant inclusion on the Definitive Map, and because there is also an adjacent footpath.
34. The Alf White papers and an article in the Alresford Historical and Literary Society journal demonstrate that there have been discussions about whether the route is a public right of way since 1976. During these discussions, the County Council confirmed that the route was “an ancient highway”. The County Council undertook some works to the route in the 1980s following a complaint about the route being escalated to the Local Government Ombudsman. The

papers and article also show that there is use of the route by horse-drawn vehicles within living memory.

35. No record of an Order to stop up or otherwise extinguish the route has been discovered.
36. On the basis of the documentary evidence, the claimed route should be added to the Definitive Map of Rights of Way, as it was previously used as a ford and public highway, and it does not appear to have been formally extinguished. A consideration of the Natural Environment and Rural Communities Act (2006) is set out below to consider the status of the route.
37. The Order route should follow the alignment set out in the enclosure award, as this is the earliest date at which the public appear to have had a right to use the route. As stipulated in the enclosure award, the width of the route should be 30 feet. The Order route should terminate on the northern riverbank near The Fulling Mill, as depicted on the enclosure map; this will form a junction with Old Alresford Restricted Byway 6.

Analysis of the Evidence under Natural Environment and Rural Communities Act (2006)

38. As the documentary evidence shows that the claimed route was previously a public road (The Pinglestone Road), there remains to be considered whether motorised vehicular rights have been extinguished by the Natural Environment and Rural Communities Act (NERC). Such rights will have been extinguished unless one of eight exceptions contained within Sections 67(2) and 67(3) of the Act applies. These exceptions are set out and examined in turn below.

Section 67(2) – rights for mechanically-propelled vehicles will not have been extinguished on an existing public right of way if:

- (a) ***it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles.***

No evidence has been discovered (or put forward) to indicate that the predominant use of The Pinglestone Road during this period was by motorised vehicles.

- (b) ***immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense).***

The route was not recorded on the Definitive Map on 2 May 2006, nor was it recorded on the list of highways maintainable at public expense (“list of streets”) on this date.

- (c) ***it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles.***

There is no evidence to indicate that The Pinglestone Road was expressly created as a right of way for use by motor vehicles. There is evidence to show that the route physically existed prior to the advent of the motor vehicle.

(d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.*

Again, there is no evidence to indicate the basis for the route's creation was to provide a way for mechanically propelled vehicles. The route is shown on numerous documents dating back to the early-19th century.

(e) *it was created by virtue of use by such vehicles during a period ending before 1st December 1930.*

Following (c) and (d), there is no evidence available documenting use of the route by motor vehicles leading up to 1930.

The exceptions in Section 67(3), which require that the application to record the route as public be made to the County Council prior to 20th January 2005, do not apply in this case.

Conclusions under Natural Environment and Rural Communities Act (2006)

39. As the criteria set out above have not been satisfied, any motorised vehicle rights that may have previously existed along this path will have been extinguished by the powers of the NERC Act. The apparent status of the route is therefore a restricted byway.

Comments by the Landowners

40. Consultation letters were sent to four landowners whose properties are affected by the application, either directly or indirectly. One response was received: a land agent acting for the Church Commissioners stated that their ownership extended to 'mines and minerals' at this location and they are therefore unaffected by the application.

Conclusions

41. 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'.

42. Documentary evidence demonstrates that the claimed route was considered a public road (The Pinglestone Road) during the nineteenth and early twentieth centuries. After this time, it appears to have fallen out of popular use (most likely due to the advent of the motor car) and the route was no longer considered to be publicly maintainable by 1929. When the Definitive Map of Rights of Way was being drafted, there was no attempt by the parish council to add the route to the map.

43. Whilst the route does not appear to have been in regular use by the public in recent years, no record of the stopping up of the route exists.
44. The Natural Environment and Rural Communities Act (2006) will have extinguished any motorised vehicular rights that may have existed along The Pinglestone Road, as the criteria set out in s67(2) have not been satisfied. The status of the route should therefore be a restricted byway. There is no indication within the documentary evidence that the route should be subject to any limitations (for example, gates).

The recommendation is therefore that a restricted byway should be recorded between points A and B on the attached plan, as the documentary evidence demonstrates that the route has previously been a public right of way for all purposes. The Order route should follow the approximate alignment set out on the enclosure map, commencing at The Dean and terminating on the northern riverbank near The Fulling Mill. The width of the route should be thirty feet, as set out in the enclosure award.

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.)

Document

Claim Reference: DMMO 980

Location

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.

Inclosure Maps and Awards

Inclosure is the name given to the process whereby land was taken out of a communal, or common farming system, and allotted to individuals who subsequently retained sole ownership of their individual parts of it. It had a major impact on the landscape, as large open fields previously cultivated in strips or blocks were divided by hedges into separate units, and waste or common land was similarly fenced or hedged and improved by its new owners. During this process account had to be taken of the public roads and other highways crossing the land being inclosed. As a consequence, Inclosure evidence is one of the few historic sources that can provide conclusive evidence of the status and location of highways.

From the mid 18th century, most inclosures took place with the approval of Parliament, under the authority of commissioners, or latterly a Valuer, who could

vary the existing highway network and set out new or additional highways, within the parameters of their statutory powers. The process was refined during the nineteenth century, with two general acts (1836 and 1845) bringing together the most commonly used clauses and applying these to each local act (unless otherwise stated).

Documents evidencing informal inclosure agreements between landowners also survive. These do not have parliamentary authority and any changes to the highway network brought about by such agreements do not have legal force in the same way as changes made by Inclosure Commissioners appointed by Parliament. The documents can, nevertheless, be good evidence of the reputation of highways or the intention of landowners to dedicate paths for public use.

Tithe Maps and Awards

The Tithe Commutation Act 1836 completed a process that had been going on piecemeal for some years, and required the payment of tithe (i.e. local taxes payable (usually) to the church or its representative) to be converted from a percentage of the produce of land, to a money payment, in order to calculate and record the titheable value of land detailed maps were drawn up for each parish. These are valuable pictures of land use and ownership at the relevant time (usually between 1838 and 1845). The way in which roads and tracks are recorded on the map and in the award can be helpful in determining their status (public roads, were often untitheable, because they did not have a value for agriculture and might be recorded in the 'Roads and Waste' section of the award). These maps have a high evidential value, because they were part of a statutory process which was open to public scrutiny. However, they were not prepared with a view to recording the existence or status of public highways and, in the past, their significance for rights of way has been overstated. It is impossible to apply a general set of interpretative rules for all tithe maps: different maps treat public highways in different ways and each must be studied and evaluated individually if any reliable conclusion is to be drawn from them.

Quarter Sessions and Petty Sessions Records

The Court of Quarter Sessions, and Magistrates (acting either independently or in Petty Sessions) used to carry out many administrative functions, including the maintenance and protection of highways. Minutes of proceedings, or papers lodged with either Sessions (although in Hampshire far fewer records survive for the business of the Petty Sessions or Magistrates than for the higher court) can provide strong evidence of the existence and status of highways. Stopping up and diversion orders made by the Quarter Sessions have the legal effect stated in the order in the same way as orders made by the County Council and Magistrates now do.

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.

Maintenance Maps (the 1929 'Handover' Map & 1946 Maintenance Map)

Handover Maps were prepared by the Surveyor of each district within Hampshire when responsibility for the maintenance of rural, unclassified roads was transferred to the County Council (as prescribed in the Local Government Act of 1929). The maps must be given some weight because they are good evidence of what the highway surveyor considered to be publicly maintainable. Having said that, it is not known how rigorous were the inquiries that resulted in the colouring that appears on the maps, and it should also be borne in mind that they were internal documents that were not subject to public scrutiny. Further, the maps were a record of maintenance responsibility, not public rights – a route left uncoloured on the Handover Map may nevertheless have been in public use.

The Maintenance Maps were produced as internal working documents to provide an updated picture of local highway network maintenance responsibilities after the Second World War. They add weight to a body of evidence where they are consistent with it, but great care needs to be taken before attributing too much importance to them where they contradict earlier evidence of the use and status of a path.