

## HAMPSHIRE COUNTY COUNCIL

### Officer Decision Record

|                        |   |
|------------------------|---|
| <b>Decision Maker:</b> | Jonathan Woods<br><i>Countryside Service Strategic Manager</i>  |
| <b>Date:</b>           | 18 March 2021   |
| <b>Title:</b>          | Application for a Definitive Map Modification Order to upgrade Chawton Bridleway 4 to a Restricted Byway<br>Parish of Chawton |

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#### 1. The decision:

- That the application for a Definitive Map Modification Order (DMMO) to upgrade Chawton Bridleway 4 to a public restricted byway be accepted.
- That authority is given for the making of a Definitive Map Modification Order to upgrade Chawton Bridleway 4 to restricted byway status. In accordance with the width set down by the Chawton Inclosure Act (1740-1741), the width of the route will be 66-yards between Points B and C, as shown on the Report Plan. The rest of the route will be a variable width of between 26-75 metres wide (as shown on historic Ordnance Survey mapping).

#### 2. Reason(s) for the decision:

- The application, which relies on historic documentary evidence, was submitted in 2006 by two residents of Winchester.
- A considerable volume of documentary evidence has been reviewed during this investigation and at least 33 historic sources are referenced within the decision report. The evidence clearly demonstrates that the claimed route formed part of what was previously an all-purpose public road, which fell out of regular use when the adjacent turnpike road (now the A31) was established.
- The Inclosure Award from 1740-1741, supported by other contemporaneous maps, demonstrate that the width of the route was '12 rods' (66 yards). Whilst the route does not appear to have been in regular public use as a road in recent years, no records of the stopping up of the higher rights or the unusual width have been found.
- The Natural Environment and Rural Communities Act (2006) appears to have extinguished any motorised vehicular rights that may have existed along the claimed route; the status of the route should therefore be a restricted byway.
- If the above recommendation is approved and the resulting Order successfully confirmed, officers will consult upon a proposal to extinguish a significant portion of the historic width, as it is considered that it is not needed for public use.

### **3. Consultations:**

The following people and organisations have been consulted on this application: East Hampshire District Council, Chawton Parish Council, the British Horse Society, the Southern Carriage Driving Club, the Byways and Bridleways Trust, Cycling UK (the CTC), the Open Spaces Society, the Ramblers, and the Countryside Service Area Manager. The County Council Member for Alton Rural, Councillor Kemp-Gee has been made aware of the application.

Two consultations were conducted, the first when the case was initially taken up for investigation in 2014 and the second when the investigation was relaunched in 2020. In 2020, consultees were advised that the evidence in favour of accepting the application appeared to be strong and that, if the investigation concluded that the application should be accepted and an Order made, the County Council would be likely to seek to follow the DMMO with a Public Path Order to extinguish much of the width. Where previous consultation comments were made, consultees were supplied with these and invited to amend them if they wished to do so. Where responses to either consultation were provided, these are set out below.

#### The CTC

The CTC offers no objection to the application, although they observe that the route gets wet and is likely to need some surface and drainage improvements if it is to be regularly used by carriage drivers. The representative of the CTC also advised that any bollards installed along the route must be clearly visible, otherwise they represent a hazard to cyclists: "*The easiest way to do this is to have bollards of a certain height and to paint them white and to keep them regularly re-painted.*"

#### The British Horse Society & Southern Carriage Driving Club

The representative for both of the above organisations confirmed that they support the application, and expressed a hope that the route will be properly protected from unauthorised motorised vehicles that may access the route from the adjoining BOAT. They also stated that their organisations would object to an extinguishment if the remaining width is less than 5 metres. They discussed management issues, including the surface of the route, the possibility of signage and the need for bollards to be installed which would not create a barrier for carriage drivers.

#### The Ramblers

The Footpath Secretary for the area notes that there appears to be evidence that the route has been used by wheeled traffic in the past, and cites a reference to this in Cochrane's book 'Lost Roads of Wessex'. On this basis he states that there appear to be no grounds to oppose the upgrade.

#### The Countryside Service Area Manager

The Area Manager has observed that the designation of the route as a Restricted Byway will improve connectivity of the network for horse-drawn vehicles, though the fact it links with a BOAT may necessitate the installation of barriers to prevent access by users of motor vehicles.

#### Chawton Parish Council

The Parish Council submitted a substantial document containing research into the provenance of the claimed route, and their comments regarding the application, which they oppose.

In summary:

- a. The Parish Council challenges the evidence submitted by the applicant.
  - i. The Parish Council agrees that there was clearly an Alresford-Alton highway roughly along this route until the 1740s. Although the original order of road establishment was possibly by Henry III in the 1200s, the Chawton Enclosure Act 1740/1 does account clearly for a highway on part of the route (upper side of Chawton Common) to be 12 rods wide (60m). This is shown and supported by various historic maps, notably Thomas Knight's maps. However, the 1740/1 Act does not mention the road from Read's Close to Northfield Lane (adjacent to Ridgefield) and they have noted this. Consequently, when using the Act as evidence for the upgrading of Chawton Bridleway 4, only the section from Brick Kiln Farm to Read's Close can be considered. The section of Chawton Bridleway 4 running from Read's Close east to Northfield Lane was purposefully excluded in the 1740/1 Act and the Act is, in fact, evidence against upgrading this section.
  - ii. The Act is clear evidence that the road from Read's Close to Northfield Lane was purposefully left to be unmaintained from 1740/1. The highway was purposefully left to fall into disrepair and to be extinguished. Therefore, the route should not be upgraded at this point and the 1740/1 Act is very clear evidence against upgrading the route.
  - iii. The route is notably absent on Milne's Hampshire 1791 because it was extinguished. This was one of the finest and up to date maps of the time.
  - iv. The creation of the railway from 1861 seemingly further led to the diminished usage of this highway (partially eating into it at the eastern end) and the route is shown only as a path (adjacent to the deer pale) on the OS 1-inch 1885 map, the OS 1-inch 1895 map, the OS 25-inch 1896 and the OS 6-inch 1897. The highway is not recorded at all from 1902 onwards.
  - v. The current bridleway which runs along this route should be accounted for as a new right of way created in the 1950s. This is supported by the fact that the route of the current bridleway differs from the pre-1900 route, notably at Chalk Dell Cottages and by the current Brickiln Farm.
  - vi. The route was reclassified from a footpath to a bridleway in 1953. This further suggests that the highway was reborn as a new path then upgraded to bridleway.
- b. The Parish Council are concerned about the possibility of Bridleway 4 being upgraded to a restricted byway in the future.
  - i. If the DMMO is successful, then it must immediately be followed by an extinguishment order for the majority of the width, as a 66-yard-wide route is not in the public interest.
  - ii. Upgrading the status of the route would cause it to be vulnerable to misuse by motorised vehicles. This would pose a risk to pedestrians and equestrians.
  - iii. Bollards and signage would be needed to prevent motorised use, and hawthorn or similar should be planted to deter entry into Chawton

- Park Woods. A substantial fence or barrier should be placed between the route and the motocross track at Brick Kiln Farm
- iv. The termination point of the route should be considered and residents' views sought, as the 90-degree road bend is dangerous.
- c. The Parish Council believe that the status of Chawton Byway Open to All Traffic 9 (located beyond the termination point of the claimed route) should be downgraded.
- i. The Parish Council provide an extract from the London Gazette (25 April 1952) which they state shows that the route was extinguished at this time. They also cite document reference numbers for two documents held at the National Archives which they believe would provide further evidence of this.

County Councillor Kemp-Gee (Local Member, Alton Rural)

Councillor Kemp-Gee referred to the submission made by Chawton Parish Council and stated that:

*"The amount of research that has gone into this is very considerable and having weighed up the evidential case presented by the Parish Council, I have concluded that I must support Chawton Parish Council in their objection to upgrading Chawton Bridleway 4 to a Restricted Byway."*

#### 4. Comments by the Landowners

Consultation letters were sent to seven landowners whose properties are affected by the application, either directly or indirectly. Where responses were received, these are set out below.

The owners of Brick Kiln Farm and the land which makes up the estate of the late Mr Sawkins

One of the landowners telephoned the investigating officer in response to the consultation. They stated that they had no strong feelings regarding the application but they would like a boundary fence to be erected between the public right of way and their land holding to prevent trespass. They explained that there is an occasional problem with pedestrians and motorbikes straying from the right of way and trespassing on the adjacent land; the landowner intends to erect signs to prevent this. The landowner also stated that they wished for the character of the route to remain unchanged. They expressed uncertainty that the claimed route is in the correct place, as their family has lived in the area for around 100 years and has no knowledge of the existence of higher rights.

The owners of one of the properties at Chalk Dell Cottages

The landowners responded to the consultation to make the following points:

- To express their concern about use of the route by motorised vehicles and their belief that such usage would increase if the application were accepted. They outlined their doubts that the installation of bollards could restrict access for motorised vehicles whilst still enabling horse-drawn vehicles to access the route. They stated that illegal use of the route would "churn up the surface making it unusable for its intended purpose".
- The landowners stated that they were "*at a loss to understand why [the application] is being considered at all given the significant work and expense involved in making the route fit for purpose, which would fundamentally alter the rural character of the location.*"
- Changing the route to a restricted byway would have a detrimental effect on the safety of current route users.

- Changing the surface of the route would make it less attractive, and would be detrimental to the environment. Changes to the surface would be necessary in order to facilitate use by horse drawn vehicles.
- Enforcement action against illegal use of public rights of way is a matter for Hampshire Constabulary and the landowners are “not confident that this would be effective (...) It is unacceptable and impractical to expect adjacent residents or members of the public to report abuses when they occur.”. The landowners would like “clear guarantees with regards to who would take full responsibility for abuses of the restricted byway due to motorised vehicles.”
- Maintenance of the route would be costly, and landowners’ efforts at route maintenance are ‘minimal’.
- The landowners have concerns about the status of the route possibly being upgraded further in the future, especially as some land close to the route is currently being considered for development.
- The landowners stated that they were ‘baffled’ that the status of a route could be changed on the basis of historic documentary evidence without taking the contemporary setting into account. They questioned whether a different County Council department could investigate the case in a different way to review the modern context.
- *In conclusion, we feel that it would be an expensive exercise to establish and maintain a restricted byway on this route, which would be detrimental to the current recreational users and neighbouring properties, open to abuse by motorised vehicles, with very few new beneficiaries, based seemingly on a historic technicality and the whims of one individual.*

#### The owners of one of the properties at Chalk Dell Cottages

The landowners outlined their objection to the application. They stated that they did not understand the benefits to local people of upgrading the status of the route. Furthermore, illegal use of the route by motorised vehicles is already a problem along the route and there is insufficient enforcement. The landowners also expressed doubts that bollards could be installed to enable horse-drawn vehicles to access the route whilst preventing access to motorised vehicles.

#### The owners of Chawton Park Farm

A representative of the landowners responded to the consultation to outline their clients’ opposition to the application. The main points are summarised thus:

- A DMMO widening the existing right of way would be unlawful under s53 of the Wildlife and Countryside Act (1981). The representative states that the tests outlined in the legislation do not apply to this case because the route is already a public bridleway.
- The evidence is “of insufficient detail and scale to confirm the width, route or location of the asserted highway” and should not be relied upon for making a DMMO.
- Making the DMMO would contravene the landowners’ rights to protection of property and respect for a private life and home under the Human Rights Act (1998). There is no public benefit which would merit such a contravention.
- The landowners are sympathetic towards non-motorised vehicles seeking a safer route, but state that “such considerations are not material to the determination (...) of the evidence” and must be discounted.
- The applicant failed to serve notice on the landowners and first heard of the application in December 2014.

- The consultation exercise appears to be a forgone conclusion.

Forestry England

Forestry England opposes the application. The substance of their objection is summarised below:

- Despite the fact that evidence has been provided by the applicant, they feel the issues and detrimental impacts that this proposal could create, would far outweigh any benefit brought by the upgrade, and even so, this benefit would only be enjoyed by a very minor few, those being carriage drivers.
- Changing the route to a restricted byway would “undoubtedly increase illegal activity” by motorised vehicles. These vehicles may stray from the route and access the adjacent ancient woodland; this would be detrimental to the woodland and also to the safety of members of the public accessing it lawfully under the Countryside and Rights of Way Act (2000).
- It may be necessary for some trees to be felled along the route.
- The upgrade would be ‘huge waste’ of the Country Council’s and Forestry England’s ‘time, money and effort’.

**5. Other options considered and rejected:**

N/A

**6. Conflicts of interest:**

None.

**7. Dispensation granted by the Head of Paid Service:**

N/A

**8. Supporting information:**

- Full Officer Report
- Location Map

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| <b>Approved by:</b>   | <b>Date:</b> |
| <hr/> <b>18 March 2021</b>  |              |
| <b>Jonathan Woods – Countryside Service Strategic Manager</b>                 |              |
| <b>On behalf of the Director of Culture Communities and Business Services</b> |              |

## CORPORATE OR LEGAL INFORMATION:

### Links to the Corporate Strategy

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

### 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:<br>DMMO 1010 | Countrywide Access Team<br>Castle Avenue<br>Winchester<br>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.**