

HAMPSHIRE COUNTY COUNCIL

Decision Report

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

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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 upgrade Chawton Bridleway 4 to restricted byway status.

Recommendation(s)

2. 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).

Executive Summary

3. This is an application, made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Chawton Bridleway 4 to a restricted byway. The applicants are two residents of Winchester. If the application is successful, the route, which runs through Chawton Park Wood and is currently a public bridleway, would be made available for use by the public in non-motorised vehicles.
4. The claim is supported by historic documentary evidence which the applicants believe indicates that the route was once a public carriageway, with a dedicated width of up to 66 yards.
5. It is considered that the evidence submitted in support of this application is sufficient for it to be inferred that, on the balance of probabilities, the route was dedicated as a public carriageway and should be recorded at a higher status than a bridleway. It is therefore recommended that the application is accepted and a Definitive Map Modification Order is made to record the route as a

restricted byway and amend the width (26-75 metres between Points A and B, and 66-yards between Points B and C).

6. If the recommendation is accepted, this report suggests that a Public Path Extinguishment Order under Section 118 of the Highways Act 1980 could be made to extinguish part of the newly recorded width on the grounds that it is not needed for public use. A separate consultation and decision would be taken regarding this potential course of action.

Legal framework for the decision

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

- (2) As regards every definitive map and statement, the surveying authority shall:
 - b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.
- (3) The events referred to in sub-section (2) are as follows: -
 - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows...
 - ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description
- (4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to—
 - (a) the position and width of any public path, restricted byway or byway open to all traffic which is or is to be shown on the map

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.

CASE LAW

Dawes v Hawkins (1860)

Dedication of a way to the public cannot be for a limited time, but in perpetuity. An ancient highway over a common was diverted by an adjoining landowner and a new road provided which the public used for over 20 years, after which the original road was re-opened to the public. However, public rights over the original road

were retained. “It is an established maxim – once a highway, always a highway; for the public cannot release their rights, and there is no extinctive prescription.”

Winchester College & Anor, R (on the application of) v Secretary of State for Environment, Food and Rural Affairs (2008)

Examined, amongst other things, the requirements for applications for Definitive Map Modification Orders in relation to the Natural Environment and Rural Communities Act (2006). The judgement established that a party must be prejudiced by an application not being in the correct form.

Fortune and Others v Wiltshire Council and Another, 2012

Lewison LJ acknowledged that, in historic cases dating back many years (or even centuries), “direct evidence will often be impossible to find” and it is inevitable that circumstantial evidence will often need to be taken into account. The judgement also cited the case of *R v Exall (1866)*, which stated that:

“It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.”

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

7. The claimed route, which is currently recorded on the Definitive Map as Chawton Bridleway 4, is shown as A-B-C on the plan at Appendix 2. From Point A the route proceeds in a generally south-westerly direction on a wide track, roughly three metres in width, through Chawton Park Woods. After just over a kilometre, the route crosses to the southern boundary of the woodland and runs alongside the northern boundary of an open area of land currently used as a motor sport park (Point B) for a further 850 metres until it meets Brick Kiln Farm Lane (Road U227) and Chawton Byway Open to All Traffic 9 (Point C), a route which is also recorded on the List of Streets as an ‘adopted unmetalled’ highway. This route continues westwards to Medstead.
8. The length of the claimed route is approximately two kilometres.
9. The land over which the claimed route runs is owned by Chawton Park Farm and the Forestry Commission. Five additional landowners have been identified as it is possible that an Order to record the claimed route may impact upon their property. This is discussed further at paragraph 68 below.

Issues to be decided

10. The primary issue to be decided is whether there is clear evidence to show that public rights 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.
11. 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.

12. Historic documentary evidence has been examined to see whether the history and use of the route point to it having public rights as a result of dedication in the distant past. Any such rights are not lost merely through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist, even if they are now neither used nor needed. This evidence must be looked at as a whole, it being unlikely that a single document or map will provide sufficient evidence to justify a change to the Definitive Map. The County Council has a duty to record such rights as are found to exist, even if they are not claimed by the applicant.
13. If a right of way is considered 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.
14. 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.
15. 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.
16. The Natural Environment and Rural Communities Act 2006 (NERC) extinguished any previously existing rights for mechanically propelled vehicles (subject to certain exemptions, none of which are met in this case), and so irrespective of any evidence that may give rise to the presumption that the route was once a full vehicular highway (and thus a candidate for Byway Open to All Traffic status), the provisions of the 2006 Act mean that the highest status to which the route can be recorded is a Restricted Byway.

Background to the Application

17. The application was submitted in 2006 by two residents of Winchester. Due to a backlog of applications the matter was not taken up for investigation at the time.
18. The claim is based upon a substantial body of historical evidence which, in the applicants' view, demonstrates that the route formed part of the main London to Southampton road until the opening of the Alton to Winchester Turnpike (now the A31), after which use of the claimed route steadily decreased.
19. The application is for the full historic width of '12 rods', or 66 yards (approximately 60 metres), for the major part of the way, which the applicants claim is confirmed by supporting evidence. If substantiated, this would in some

places confer highway status over the entire width of the parcel of land through which the claimed route runs, between its boundary features.

20. The applicants submitted the following evidence in support of the application:
- a. Ogilby's *Brittania Depicta* (1675)
 - b. Senex road book (early 18th century)
 - c. An estate map of Chawton (pre-1741)
 - d. An estate map of Chawton (1741)
 - e. Four estate maps (18th century)
 - f. Chawton Enclosure Award and Act (1740-41)
 - g. A document entitled *Perambulation of the parish of Medstead* (1744)
 - h. A document entitled *Roads in Chawton* (c.1754)
 - i. Taylors' 1" map (1755-1761)
 - j. Milne's map (1791)
 - k. Ordnance Survey 2" map (1808)
 - l. Charles Smith's Map of Hampshire (1808)
 - m. Ordnance Survey 'old series' map (1817)
 - n. Greenwood's Map of Hampshire (1826)
 - o. Pigot's Map of Hampshire (c.1836)
 - p. Chawton Tithe Map (1838-1840)
 - q. Railway Deposited plans for the Alton, Alresford and Winchester Railway (1860)
 - r. Ordnance Survey 6" map (1872)

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.

21. John Ogilby – 'Britannia Depicta' (1675) (A)¹

Ogilby's 'Britannia' map was the first national road atlas. It consisted of maps of seventy-three major roads and cross-roads, presented in a continuous strip-form. Local landmarks, any enclosure by walls and hedges, and the state of cultivation of the land either side of the road were recorded. On the strips showing the London-Southampton Road, a route is shown passing through Chawton Park Wood to 'Maysted' (Medstead) which appears to match the description of the claimed route. Although the presentational style of the map makes it difficult to infer the exact line or width of the route, it broadly supports the application.

22. Map of Chawton Parish (18th century, precise date unknown) (A)²

This early estate map is included with papers held in Hampshire Record Office relating to the estate of Mr Thomas Knight, though its author is not known. It appears to pre-date the 1741 inclosure of Chawton Common, as Northfield Lane (which was set out at inclosure) is not shown on this plan. The claimed route is not annotated but is significantly wider than all the other routes shown. Its

¹ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshiremapped.org.uk/hantsmap/ogilby/og51larg.htm>

² Available from Hampshire Record Office. Document reference, 39M89/E/B386

eastern end is narrower, enclosed between adjacent land holdings, before it opens out between Chawton Park Wood (referred to here as 'The Long Park') and an open area to the south (referred to as 'The Common') as it proceeds westwards towards Medstead. The entire route is shaded grey, including the section now known as Chawton Park Road. It is not clear whether the entire width of the shaded area in the more open section represents a road or simply an area which has been cleared to accommodate a narrower carriageway, but even before the route opens out, it is significantly wider than any of the other, smaller roads in the area, which are coloured sepia. As the map has no key it is not clear how the differentiation between these roads was arrived at, but it is apparent that all routes, including the claimed route, were part of the pre-Inclosure 'road' network.

23. Maps of Old Park Farm and New Park Farm – Edward Randall (1739 & 1741) (A)³

Apparently produced two years apart but presented in identical style and running seamlessly into one another, these two maps show the lands owned by Thomas Knight which lie to the north of the claimed route, with a split in the maps occurring to the south of Reed's Copse. On both maps, the road from Medstead, the claimed route and the road now known as Chawton Park Road are shown as one continuous route, annotated 'From Alresford to Alton'. Although it is not possible to infer a width, the 'road' is shown as being very wide and, significantly (and unlike the estate map described at paragraph 22), enclosed by a boundary for its entire length. Although produced for the landowner and therefore not subject to public scrutiny, that the maps show the route in this way provides good supporting evidence for the existence of the claimed route at this time.

24. The Inclosure of Chawton Common (1740-41), and Map of the Manor Farm of Chawton, part of the estate of Thomas Knight Esq, by Edward Randall (Senior) (1741) (A)⁴

In 1741, parts of Chawton Common and certain common fields in the parish of Chawton were inclosed by an Act of Parliament. Though the copy of the Act held at Hampshire Record Office is not itself accompanied by a map (which such Acts usually were), a map of the Manor Farm of Chawton, surveyed by Edward Randall around the same time, is contemporaneous with the Inclosure and clearly depicts much of the land referred to in the Act.

Most of the claimed route appears on the western end of Randall's map as forming part of 'The Road from Alresford to Alton' and is shown in the same way as other roads now recognised as public carriageways. The eastern junction with Chawton Park Road and Northfield Lane (newly created by inclosure) includes a large chalk pit within its boundaries, which is shown a few yards along the route towards Alresford, which may explain the wider appearance of the eastern end of the route on documents from this period. The map also depicts footways, which are shown as being separate to the road network.

³ Available from Hampshire Record Office. Document reference, COPY/562/3, COPY/562/4

⁴ Available from Hampshire Record Office. Document reference, COPY/682/1 and 6M63/9

The Inclosure Act itself, dated 1740-41, is described as *“an Act for confirming and establishing articles of agreement and an award for dividing and inclosing certain common fields, and a common called Chawton Common, in the parish of Chawton...”*. As part of the process of detailing the lands to be inclosed, the Act contains numerous references to the claimed route. Some of the plots abutting the claimed route which are referred to in the Act can be identified on Randall’s map, as well as on his 1739 map of New Park Farm (see paragraph 23). For example, the entry for *Chawton Common* (shown lying to the south of the claimed route on Randall’s plan and labelled *Late Chawton Common*) is described as *“abutting east to Read’s Coppice and Read’s Close (shown on both of Randall’s plans)... South to the lower Road upon the Common (what was to become the turnpike and eventually, the A31)... and North to the upper Road upon the Common (the claimed route).”* Reference is also made to *Whitedown Field* (shown on Randall’s 1739 plan immediately to the north of the route annotated ‘From Alresford to Alton’), which is described as *“abutting east to the highway leading from Alton to Winchester.”* The Act also sets out a requirement for the landowner, Mr Thomas Knight, to make fences against the said roads. The Act also deals specifically with highways:

“...so much of the said common Fields and Common as is herein after-mentioned shall be left uninclosed, and taken and used as common Highways, and as common Ways and Drovers to and from the several Allotments before-mentioned for Carriages and driving Cattle, and for all other Intents and Purposes as common Ways and Drovers are used and enjoyed...”

The Act also prescribes a width for the section of the track which up to that point was only fenced on its north side, which is consistent with the route’s depiction on Randall’s 1741 map and the Tithe Map of 1838:

“...the Highway at the upper Side of the Common leading from Alton to Alresford be Twelve Rods [66 yards] wide from the Corner of Reads Close to Red Hill...”

‘Red Hill’ can be seen at the western end of what is now recorded as Chawton BOAT 9 and on many maps dating from the 19th century, including the commercial maps produced by Taylor and Greenwood, and on the Ordnance Survey Old Series and County Series maps. It is possible that a width was not specified for the section of the route to the east because this was already well defined by existing boundary features. Finally, a clause at the end of the Act states that:

“And be it also enacted, that the Highways in the said Award...are hereby declared to be common Highways of the said parish of Chawton, in the said County of Southampton to all Intents and Purposes whatsoever.”

Whilst Randall’s 1741 map does not include a key to the routes shown on it, the scale and detail of the map, the fact it was produced for a major local landowner, and supportive evidence provided by the Inclosure Act means that the map carries significant evidential value. The Inclosure Act itself, approved by Parliament and subject to public scrutiny and appeal, is one of the few historic sources that can prove the exact status and location of highways, and the identification of the claimed route in this particular Act offers strong support for the application.

25. Perambulation of the Parish of Medstead (1744) (A)⁵

Describing the boundary of the adjoining parish of Medstead, this document refers to the claimed route in the following passage:

“Keeping along Rid (Red) Hill Coppice hedge about thirty three yards from the hedge having it on the right hand until they ran into the road leading from Alresford to Alton called Redhill Road over the rails...”

Although offering no description of the route, the text indicates its reputation at the time, and supports the application. The parish boundary, used as a reference point in the above passage, is reflected on commercial and Ordnance Survey mapping of the 19th century.

26. List of ‘Roads in Chawton’ – Edward Randall (c.1754) (A)⁶

This document was compiled by Edward Randall, surveyor to the Knight family and author of the above estate maps. No widths are provided for the roads listed, but their lengths are given. Among the list of eleven roads is a road ‘From Alton Butts toward Winchester’, with a given length of three miles, one furlong and eleven rods. Comparing this description with that in other documentary evidence indicates that it relates to the turnpike road (now the A31). Also listed is a road ‘From Alton Butts towards Medstead’, with a given length of two miles, seven furlongs and two rods. A comparison with other available evidence and the actual distance from The Butts to the parish boundary suggests that this description covers the road incorporating the claimed route. The total length of all the roads in Chawton is given as being ‘Five Miles, Six Furlongs and Twenty-Two Rods of Common High Road besides Turnpike’ (it is considered that in this context, the word *besides* is intended to mean ‘apart from’, rather than ‘physically next to’). It appears that every road identified on this list is recognised today as a public carriage road.

The evidential value of this document is significant. Not only is the entirety of the claimed route included in the description, but it is also named as a ‘Common High Road’, thus lending support to the application.

27. John Senex – Strip Maps of Roads in Hampshire (1757) (A)⁷

Senex’s map was essentially a reprint of Ogilby’s map of 1675, with the author stating it was “first performed and published by John Ogilby Esq. and now improved, very much corrected and made portable...”. His depiction of the claimed route is identical to Ogilby’s.

28. Isaac Taylor – ‘Map of Hampshire’ (1 inch to 1 mile) (1759) (A)⁸

Taylor’s map was published after the introduction of the turnpike road, which is shown running parallel to the claimed route. The claimed route itself is shown as being significantly wider than other roads in the locality, running between

⁵ Available from Hampshire Record Office

⁶ Available from Hampshire Record Office

⁷ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldsouthhampshiremapped.org.uk/hantsmap/senex1/sn54larg.htm>

⁸ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldsouthhampshiremapped.org.uk/hantsmap/taylor4/ty64.htm>

Northfield Road and 'Red Hill' in Medstead, which appears to match the description '*Roads inclos'd with Hedges*' on the map's legend.

29. 'The Measurement of Chawton Roads' (1761) (A)⁹

Inside the front cover of the Chawton Parish Council Vestry Minutes 1835 – 1966 is a hand-copied list entitled '*The Measurement of Chawton Roads, 1761*'. Again, eleven roads are listed, and each road has a length ascribed to it. Whilst some roads are described in a different fashion to Randall's list, it is apparent through comparison that they are the same eleven roads that made up the 1754 survey. The claimed route is identified as '*Road called Paceway Road*', and offers corroboration of its description in Randall's list as the road 'From Alton Butts towards Medstead' by having an identical length recorded against it (two and three-quarter miles and forty-two rods, which when broken down to include furlongs translates as two miles, seven furlongs and two rods – the exact length given on Randall's plan). The same translation, when applied to the road identified in Randall's list as 'From Alton Butts towards Winchester', makes it clear that the road referred to is the Shrave (A31), listed here as 'Turnpike Road towards Winton' [Winchester], with a given length of three miles and fifty-one rods (three miles, one furlong and eleven rods on Randall's list).

Although likely based upon the original list, this is a significant document as it is another early record of roads in Chawton. The description of the listed roads serves as clarification of the slightly vague descriptions in Randall's earlier list, and lends that document extra evidential weight. Again, it appears that every other route on this list is currently recorded as a public carriageway, a strong indication that the claimed route was also a public carriageway in 1761. This document therefore supports the application.

30. Daniel Paterson – 'British Itinerary' (1785 & 1807) (A)¹⁰

Paterson's 'British Itinerary' series was comprised of strip maps and road books, and was published throughout the late 18th and early 19th centuries. Like many other cartographers of the age, Paterson depicted 'direct roads' (main roads heading out of London) and 'cross roads'. The courts have accepted the description of 'cross roads' as meaning routes that were part of the public highway network which were available for use by travellers on horseback and in horse-drawn vehicles. The depiction of the claimed route fits this description, and so Paterson's publications of 1785 and 1807 appear to support the application. Both show a road between Chawton and Medstead which are consistent with the alignment of the claimed route, branching off Northfield Lane and running generally parallel to the turnpike road. As with Ogilby and Senex's maps however, due to the limitations of the mapping, little can be inferred about the exact line or width of the route.

31. Thomas Milne – 'Map of Hampshire', 1 inch to 1 mile (1791) (A)¹¹

⁹ Available from Hampshire Record Office, Reference 1M70

¹⁰ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshireremapped.org.uk/hantsmap/pater2/p037larg.htm>

¹¹ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshireremapped.org.uk/hantsmap/milne1/MLN65.htm>

According to the legend, the claimed route is shown as an ‘*Enclosed Road*’ running parallel to the turnpike (which is also identified in the legend), but the quality of the mapping makes it difficult to identify its exact delineation or width. The route’s eastern end turns due north to meet Chawton Park Road some distance short of the junction with Northfield Lane, a depiction which differs significantly from other maps of the time. In fact, the mapping of the area in general appears to be particularly different to that on other maps of the era, making this document of limited evidential value.

32. Andrews’ Map (1791) (A)¹²

The full title of this document is ‘A map of the country sixty five miles round London’. The map depicts the claimed route in sepia, enclosed with solid lines and continuing to Alresford; the claimed route is continuous with the current Chawton BOAT 9 and ‘Red Hill’ is identified along the route. No legend for this map is available but looking at other routes in the area (including the turnpike road running parallel), this style of depiction appears to reflect main roads.

This document suggests that the route was in regular use by the travelling public at the time the map was produced and was a means of travelling between Alresford and Alton, and beyond.

33. Charles Smith’s Map of Hampshire (1808)

The claimed route can be seen branching off Northfield Lane and running through Chawton Park Wood, with the road continuing on to Red Hill in Medstead. Though not as wide as the by now well-established turnpike to the south, it is nevertheless larger than many other minor routes in the locality that are now recognised as public carriage roads, and as such supports the application.

34. Ordnance Survey First Edition (Old Series) - 2” Drawing (1808) and 1” Map (c1810) (A)¹³

The claimed route is depicted on the 2” drawing and the 1” map as an enclosed road, shown in the same way as other public carriageways in the area. On both versions, most roads appear to have a standard, uniform width, and as such it is difficult to infer the width of the claimed route, which appears to be narrower than on other maps of the era. However, it is of at least the same width as other routes which are now recognised as public carriage roads. Whilst confirming it was a feature that existed on the ground, the drawing and map offer no insight as to the status of the route, but its depiction on both would suggest that it was a route of some significance, and as such these documents appear to lend limited support to the application.

35. Christopher Greenwood – ‘Map of Hampshire’, 1 inch to 1 mile (1826) (A)¹⁴

¹² Available from McMaster University online archive:
<http://digitalarchive.mcmaster.ca/islandora/object/macrepo%3A79329>

¹³ The Ordnance Survey Old Series is available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate
<http://www.oldhampshireremapped.org.uk/hantsmap/ordnce6/oss28.htm>
The OS drawings are available from Hampshire Record Office.

¹⁴ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate
<http://www.oldhampshireremapped.org.uk/hantsmap/grnwood2/grw85.htm>

Greenwood's map shows an enclosed route between Chawton and 'Medsted'. The applicant believes that the route is shown as a 'cross road', and the map's legend certainly supports that assertion for the western end of the route. However, upon entering Chawton Park Wood, the entire width of the route is shaded all the way to Chawton, shading which the map's legend describes as a 'Heath or Common'. This description is supported by the entry for the claimed route in the Tithe Map and Award for Chawton, which referred to the claimed route as 'Chawton Lower Common'. The fact that the route is now shown in this way (at least for part of its length) and not as a road is suggestive of the route's reduced significance in the local highway network following the creation of the turnpike in 1753.

36. James Pigot's Map of Hampshire (1836) (A)¹⁵

Due to the small scale of this map, its accuracy is debatable – Northfield Lane is not depicted, and the eastern end of the claimed route is not shown. However, a route which, although narrower than the turnpike to the south, appears to be of equal significance to other minor roads now recognised as public carriage roads, is clearly shown running through Chawton Park Woods. This appears to support the application.

37. Chawton Tithe Map and Award (1838-1840) (A)¹⁶

The map shows the claimed route in its entirety, numbered as plot 186. The description for this plot number in the accompanying award reads 'Chawton Lower Common', with 'Pasture' being listed as the State of Cultivation. No width is listed, but the route's boundaries at its eastern end reflect those shown on the 18th century estate map. To the west, the route is by now enclosed, as specified in the 1741 Inclosure Act. It is apparent from the route's description in the award that by this time the route's significance as part of the local highway network had faded, probably due to the recent opening of the turnpike road, and in isolation this document offers limited support for the application.

38. The Alton, Alresford and Winchester Line (London and South-Western Railway): (1854 – 1860s) (A)¹⁷

In 1854 plans were deposited for the 'Alton Extension Line' railway. In 1860, updated plans were submitted, this time as the 'Alton, Alresford and Winchester Line'. This railway was authorised in 1861 and opened in 1865. It is currently known both as the Mid Hants Railway and the Watercress Line.

Deposited railway plans were strip maps that had a solid centre line with two pecked parallel lines either side indicating the 'Limit of Deviation' (ie the furthest the line actually constructed could deviate from the centre line). The centre line of the Alton Extension Line, as originally proposed, encompassed the eastern end of the claimed route at its junction with Northfield Lane, with the proposed centre line bisecting the route. The original deposited plans for the Alton Extension Line (1854) show the eastern end of the claimed route, which is shown as being of a similar width to the earlier estate maps (although this width is not specified). A plot

¹⁵ Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldsouthhampshiremapped.org.uk/hantscat/html/colmakerf.htm>

¹⁶ Available from Hampshire Record Office.

¹⁷ Available from Hampshire Record Office.

number of 119 was given to this parcel, and the accompanying book of reference describes plot 119 in the following way:

<u>Plot No.</u>	<u>Description</u>	<u>Owner or Reputed Owner</u>
119	Sheep Walk, Chalk Pit and Public Way	Edward Knight/Surveyor of Highways

'Parish Road' is the description used for most roads in Chawton that are now recognisable as public. The fact that this description was not attributed to the claimed route suggests that it was not regarded in the same way, but that it was nevertheless recognised as a linear route. Given the scoring through of the word 'public', it would appear that the entry was revised at a later date, but it is not known why this was done. However, it is interesting to note that the entry of 'Surveyor of Highways' in the 'Owner' column was not removed.

Insofar as it depicts the claimed route, the plan deposited in 1860 for the Alton, Alresford and Winchester Line mirrors the one that was deposited in 1854. The claimed route is shown running alongside the proposed route of the railway line for approximately one mile before the line bears south, after which point the claimed route is no longer shown. The claimed route is once again annotated as plot 119, but this time the description in the Book of Reference differs from that in the 1854 version, with the route referred to as '*Sheep Walk, Pasture, Chalk Pit and Way*' – there is no reference to the route as 'public'. Similarly, the Owner is listed solely as '*Edward Knight*', and there is no mention of 'The Surveyor of Highways'.

An Act enabling this railway to be built was passed in 1861. It does not make reference to any roads that were to be diverted or stopped up (as was ordinarily the case), suggesting that in this instance it was not required. The railway was also subject to the Railway Clauses Consolidation Act 1845, and Section 53 of this Act provides for the substituting of any roads that are rendered impassable by the construction of a railway. Where this is necessary, any diversion is reflected on the deposited plan, but no such alterations are apparent on the plans of 1854 and 1860.

The railway evidence offers limited support to the application. Based on its description in both the Books of Reference of 1854 and 1860 as a 'Way', it is apparent that by this point in the mid-19th century it still survived as a linear route, and the plan shows it as being of a significant width. It is also apparent that its significance as part of the highway network at this time had diminished. This much is demonstrated by the somewhat ambiguous entry in the 1854 Book of Reference (there apparently being some confusion as to the route's status), followed by the more definite entry in 1860, by which time it was clear the route was not considered by the surveyors to be a public highway. However, as stated above, there is no evidence to suggest that any part of the claimed route was diverted or stopped up as a result of the building of the railway, which is perhaps unsurprising given that the railway did not eventually encroach over any part of it.

39. Ordnance Survey Maps - County Series, 25 inches to 1 mile (c1870 – c1937)

(A)¹⁸

Four maps were published by the Ordnance Survey at a scale of 25 inches to 1 mile between c1870 and c1937.

On the first edition of the map (c1870), the newly built Mid-Hants Railway is shown running close to the southern boundary of the claimed route at its eastern end. The claimed route itself is depicted as enclosed for its entire length, with a large chalk pit covering half of its width next to the junction with Northfield Lane. A pecked line running inside its northern boundary indicates a route that perhaps by this time was in use by the public (although the bracing on the plan indicates that this shared the same status as the land parcel that contained it). A short path leading from Chalk Dell Cottages across the width of the parcel to Northfield Lane (presumably a shortcut from and to Chawton village and the Shrave) is also shown in the same way. Vegetation shown across the width of the route towards its western end suggests that it had by this time become overgrown.

The second edition (c1895) is no different to the first edition, save for the altered annotation of the chalk pit (now reading '*Old Chalk Pit*'), which suggests that it was by that time disused. The width of the route between Points A and B (as shown by the solid boundary features) varies between 26 and 75 metres.

The third edition (c1909) is largely similar to the preceding maps, although there are two variations. On this version, the pecked line which apparently depicted an east-west route within the land parcel has disappeared (although the route cutting the corner between Northfield Lane and Chawton Park Lane remains). There is also a more prominent depiction of vegetation at the western end of the route. The trees are now shown as occupying the full width of the claimed route within this area, with a further section sprawling eastwards for roughly 250 metres along the route's northern boundary. This entire wooded area is enclosed with a pecked line, suggesting it had become well-established. There is no evidence of a route of any description.

The contrast between the fourth edition (c1937) and the third edition is significant, with the entirety of the claimed route now covered by vegetation (albeit this is sparser towards the eastern end). The short-cut at the eastern end is not shown. The chalk pit, still shown on this edition but now not annotated, is also covered with vegetation.

40. Chawton Manor and its Owners - William Austen-Leigh and Montagu George Knight (1911)

Written by William Austen-Leigh (nephew of Jane Austen) and his cousin Montagu George Knight, who was Lord of Chawton Manor during the late 19th and early 20th century, this book introduces the description of the claimed route as the 'Pace-way Road':

"...one of the parks of Chawton is said to be next to the Pass of Alton. In 1605 the accounts of John Knight contain the following item: 'Payd more to John Trymmer for hedging at Parke agaynst the passe way uppon the

¹⁸ Available from the National Library of Scotland

dytche.' An enclosure joining the old upper road, by Chawton Park, is still called 'Pease-way Close', and a continuation of this road in Medstead parish is known as 'The Pace-way.'

41. The Story of the King's Highway - Sidney and Beatrice Webb (1913)

This text provides contextual information regarding the enactment of the Statute of Winchester in 1285 (referred to in 'A Chronicle of Medstead', see paragraph 46).

The first statute to deal with roads, the Statute of Winchester ordered:

"...that highways leading from one market town to another shall be enlarged where as bushes, woods, or dykes be, so that that there be neither dyke nor bush whereby a man may lurk to do hurt within two hundred foot of the one side and two hundred foot on the other side."

The authors observe that the passing of this legislation introduced the idea of keeping a public highway open for free passage by the king and his subjects, as well as holding someone responsible for its maintenance, traditionally the inhabitants of the Manor through which it ran. The text may offer some explanation as to the significant width set out in the 1741 Inclosure Award.

42. Highway Surveyor's Handover Map (1929) (A)¹⁹

The 1929 'Handover Map' (which was produced when the responsibility for highways transferred from the Rural District Council to the County Council) shows the route now recorded as Chawton BOAT 9 as an 'unmetalled' road, and Brickiln Lane (the road which connects it to the A31) as 'metalled'. Both are shown as being maintainable at public expense. The claimed route is not annotated.

43. Highway Surveyor's Maintenance Map (1946) (A)²⁰

Maintenance maps were produced by the County Council to show all highways which were considered to be publicly maintainable at this time. Both Chawton BOAT 9 and Brickiln Lane are recorded in identical fashion to the Handover Map, but now the claimed route is shown as a narrow track on the line currently recorded as Chawton Bridleway 4, and is annotated '4 BW'. The map may have been updated following the completion of the first Definitive Map.

44. National Parks and Access to the Countryside Act – 1949

County Council records detailing representations made during the preparation of the First Definitive Map of Public Rights of Way show that an objection was made to the claimed route's inclusion on the map as a footpath by Lord Jeffreys of Burkham House, Alton. Copies of correspondence in the Chawton parish file show that lengthy discussions about the matter ensued involving Lord Jeffreys, Alton Rural District Council and the County Council. In one letter, dated 15th October 1952, the County Surveyor confirms to Lord Jeffreys that the County Council based the draft map on particulars received from the Urban, Rural District and Parish Councils, and that Lord Jeffreys would need to lodge a formal objection in order for any alterations to be made to it. Available records show that Lord Jeffreys objected to the proposed status of several routes in Chawton, including the claimed route, and following a public hearing, the status of these routes was changed. The claimed

¹⁹ Available from Hampshire Record Office.

²⁰ Available from Hampshire Record Office.

route was changed to a bridleway, and was recorded as such on the First Edition of the County Council's Definitive Map – this status has remained unchanged through successive publications of the map. The description of the route recorded on the accompanying Definitive Statement is vague:

'From U.227 northeastwards along track, then along grass track, enclosed between hedge and woods, and along 9 ft. wide earth track unenclosed through scrub to Road U.227 at Chalk Dell Cottages.'

It is not clear at which point a width of nine feet commenced, but no greater width is recorded for the route.

In the period leading up to the Second Review of the Definitive Map, representations were made to the County Council that another route (referred to as Bridleway 12 in correspondence) running through Chawton Park Wood should be added to the Definitive Map. This route is shown running parallel and interweaving with Bridleway 4 on a map in the parish file showing proposed changes, additions and deletions to the Definitive Map for the area. The file also contains a letter from the County Surveyor to the Divisional Surveyor, dated 14th December 1964, which clarifies the circumstances surrounding this request, as well as information relating to the original recording of Bridleway 4:

"...the new Bridleway No. 12 was added on representations from various persons since this is the true line. Bridleway No. 4 is a diversion carried out unofficially by the Forestry Commission just prior to the preparation of the original draft maps and was allowed to be shown on the diverted line. There have been continuous complaints, however, that the diversion has not been properly maintained, being impossibly narrow where the adjoining hedge had encroached and it is for this reason (partly I think as a means of forcing the Forestry Commission's hand to get a usable path) that the old route has been claimed and added to the map."

A note in the Chawton parish file confirms that following an objection by the Forestry Commission, Bridleway 12 was deleted from the draft map and never subsequently recorded on the final version.

The evidence relating to the claimed route's addition to the Definitive Map offers little support to the application. It does, however, serve as an interesting insight into what enquiries were made about how the route should be shown on the map at the time it was prepared. It would appear that the route's recorded status was based upon its reputation at the time, and that its delineation based upon the line that happened to have been made available on the ground - it seems that little or no research took place into the route's historic status.

In 1987, the eastern end of Bridleway 4 was diverted from its junction with Chawton Park Road and Northfield Lane, to a line slightly further to the south. As the diverted line still fell within the wider route shown on historic mapping, it is not considered that this diversion materially affects the validity or outcome of the application now under consideration.

45. Notices in the London Gazette (9 January 1953) (A)²¹

Three documents in the archives of the London Gazette have been discovered which are relevant to the claimed route; these are notices of Order making.

²¹ Available from the London Gazette archive, which is available on their website.

The first was published on 25 April 1952 and stated that, under the Town and Country Planning Act (1947), 'a length of road from Medstead to Chawton Park Brick Works' would be stopped up, 'requiring the provision of a new road repairable by the inhabitants at large'. This appears to relate to Chawton Byway Open to All Traffic 9 and is indicative that the route was still considered to be a public road at this time. If that is the case, then the 1952 Order will have broken the link between this route and the historic width set out in the 1741 inclosure process.

The second notice was published on 5 September 1952 and was confirmation that the stopping up had taken place.

The third notice was published on 9 January 1953 and provided for the upgrade of Chawton Footpath 4 to bridleway status. The description of the route reflects the alignment of the current Bridleway 4.

These notices provide interesting context to the history of the claimed route (which the evidence shows was continuous with Chawton BOAT 9), although they do not provide any evidence which directly supports the application. However, if any existing higher rights along the claimed route (or any width) had been formally extinguished, a notice would have appeared in the London Gazette or the Quarter Sessions records. No such notice has been discovered.

46. A Chronicle of Medstead - Lorents Rathbone (1966)

This publication provides a detailed insight into the history of the road incorporating the claimed route and its significance as a major link between London and Winchester. According to Rathbone, the road (which he says was variously known as the 'London Road' or the 'Royal Road') evolved through continued use by kings and bishops (and their households) between London, Farnham and Winchester. Prior to the construction of a weir at New Alresford in the 13th century, the author claims the road was part of the through route between London and Winchester. The author acknowledges that there has been some dispute as to the exact location of the Pass of Alton, but that this is made clear by a 13th century document referring to 'the Passus de Aulton between that Royal Manor and Alresford' (see below), and a 16th century perambulation of Medstead showing clearly that the 'Pase of Alton' crossed the parish boundary and was on the Royal Road.

According to the author, King John passed along the route four times between 1200 and 1215, whilst in 1264:

"...the wrath of King Henry III was aroused when he had casks of wine intended for cellars at Winchester, stolen. That year he set up a commission 'to enquire re the gravity of crimes committed daily in the Passus de Aulton between the Royal Manor and Alresford'. The commission decided that if the king would cut down his 95 acres of woodland, the other owners would follow suit."

As detailed at paragraph 41, the Statute of Winchester followed in 1285. Rathbone states that the distance prescribed in this legislation was due to it being (at the time) further than the maximum range that an arrow could travel.

The author observes that the Tithe Map of 1838 shows two ways to Alton were via Hessel Lane, Beech, and via the 'Old Royal Road' through Chawton Wood.

He ventures that the turnpike road was not always used due to the associated tolls, and that:

“...as late as the end of the 19th century, there are tales of men of Medstead, often with their wives or daughters riding pillion behind them, going to Alton through the wood.”

47. Lost Roads of Wessex - David and Charles Cochrane (1969)

The authors describe the route as being ‘very wide in true medieval fashion’, stating that in places there were ‘eight parallel trackways’. They also mention the brigandry along the route and refer to the clearance of the woodland either side of the highway, via a declaration made in 1262 (which the applicants cite as a possible reason for the unusual width of the route):

“The bishops and other magnates agreed that if the king were pleased to make a clearance of his wood they also would do the same and bring into cultivation all their woods upon the passus making a broad and good highway from Aulton to Alresford.”

The authors acknowledge the route’s decline after the creation of the nearby turnpike road, but also note that it was not entirely abandoned, and include a passage attributed to a famous naval officer, Sir George Rodney, who had developed an estate at Old Alresford in the early 1750s. Writing of the claimed route, he stated that:

“...since the turnpike road through Bishop Sutton took place, about the year 1753, [it] has been disused as the London Road. The Bishops copyhold tenants of Old Alresford and Medstead are obliged by their tenures to keep it in repair in distinct lots, and the several allotments are so particularly described in the court rolls of the manor as to ascertain and distinguish the identical spot (and the exact measure thereof) which every manor is to maintain.”

48. Chawton: Jane Austen’s Village - Rupert Willoughby (1998)

Willoughby’s book features a chapter entitled ‘The Pass of Alton’, which description the author claims was attributed to the claimed route until at least the 17th century. He identifies the route as the main road by citing its appearance on a 1741 estate map (where it is shown as ‘Road from Alresford to Alton’), as well as an identical depiction on the Chawton Tithe Map almost a century later. Concerns over safety along the route were such that throughout the 13th century, the Lord of St John maintained a gallows beside the old road as a deterrent (the site of which is marked to this day by ‘Gibbet Copse’). Willoughby ventures that the issues on the route may have been a contributing factor in the enacting of the Statute of Winchester by Edward I and his barons in 1285, which provided for the clearance of vegetation near routes such as the Pass of Alton to ensure there was no cover for would-be highwaymen.

Analysis of Documentary Evidence

49. The claimed route is first depicted in its entirety on Randall’s map of 1741, although it also appears on an undated estate map which appears to pre-date Randall’s map, and its eastern end appears on Ogilby’s map of 1675. It is clear from this evidence, and from various descriptions dating from as early as the

13th century, that this is a route of some antiquity, which was once a major part of the area's highway network.

50. Many of the commercial and estate maps of the 18th and 19th centuries show the claimed route in a way that indicates it was a public carriage road, but the most significant piece of evidence in this regard is the Inclosure Act of 1741, which set the route out as a 'common highway'. An Act of Parliament is one of the few historic instruments by which a highway can be said to have been expressly dedicated, and as such, is very strong evidence in support of the application.
51. The Inclosure Act prescribes a width of '12 rods' (66 yards) for that section of the route running between Red Hill and Reeds Close. Reeds Close is now identifiable as Reeds Copse (see Report Plan), and Red Hill is located at the western end of the current BOAT 9. This suggests that the western part of Chawton Bridleway 4 and all of Chawton BOAT 9 were expressly dedicated at this width. However, notice of a Legal Order from 1952 indicates that the 'road' of Chawton BOAT 9 was extinguished and replaced with a new road, thus breaking any linkage with the historic width. No such stopping up or extinguishment for the claimed route has been discovered.
52. The width set out in the Inclosure Act is consistent with the measurable width shown on the OS County Series maps of the late 19th and early 20th century for the relevant section of the route.
53. The route is variously described as a road in surveys of 1756 and 1761 and on contemporary maps. Whilst the term 'road' itself does not necessarily confirm the existence of a vehicular right of way, various documents which describe the claimed route as a 'road' also refer to other 'roads' now recognisable as public carriageways. There is no evidence to counter this view.
54. The books cited above (see paragraphs 40, 41, 46-48) offer mainly anecdotal evidence only and provide no definitive evidence of the route's delineation or its width. However, much of what is written appears to support the application, in as much as it confirms the existence of a major route passing through the area, and that it was regularly used by all classes of traveller. Given that the earliest available maps of the area show the claimed route to be the only route to Medstead which passes through Chawton Park Woods, it seems likely that the highway described in each of the books incorporated the claimed route. These sources therefore provide some support for the application.
55. There is limited support offered by the Ordnance Survey Old Series drawing and map from the early part of the 19th century, and the County Series maps show the wide nature of the land between the boundary features which was indicated in earlier documents. The gradual increase in the areas of vegetation on the later maps charts the route's apparent decline as a public road.
56. Highway rights are not lost through disuse, and officers have discovered no evidence of highway rights over this route ever having been formally extinguished. Before the advent of the turnpike road, the claimed route appears to have been the main highway between Alton and Alresford, and prior to the 13th century, appears to have been part of the main through route between London and Winchester. Even after the construction of the turnpike road, there

is evidence to suggest that the route was still used by those who could not afford to pay the tolls on the new road. By the middle of the 19th century, it is apparent that its significance as part of the highway network had faded – it is not shown as being a public highway on railway plans or OS mapping from the period, and by the time the route was recorded on the First Definitive Map in the 1950s, its reputation was that of a route primarily used by walkers and equestrians.

57. The evidence shows that part of the route was set out at a width of 66 yards in the Inclosure Act of 1741, and that width should be reflected in any Order. It is also reasonable to infer that the full width available between boundary features on the eastern part of the route, shown on Ordnance Survey County Series maps (26-75 metres on the Second Edition map), was also in use at the time of the 1741 Award, and this should also be recorded. During the last century the surrounding woodland has re-established itself to the extent that for many years (certainly since the First Definitive Map was compiled in the 1950s) the available width has been no greater than three metres or thereabouts. This will not have impacted upon any pre-existing rights, which will still subsist.

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

58. As the documentary evidence shows that the claimed route was previously a public 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 route 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 recorded as bridleway on the Definitive Map. However, it was not recorded on the list of highways maintainable at public expense (“list of streets”) in May 2006.

(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 claimed route was expressly created as a right of way for use by motor vehicles. There is evidence to show that the

route physically existed and was in public use well before 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 18th 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)

59. 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.

Consultations

60. 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.

61. 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.

62. 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.”*

63. 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.

64. 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.

65. 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.

66. 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.

67. 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.”

Comments by the Landowners

68. 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.

69. 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.

70. 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.*

71. 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.

72. 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.

73. 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’.

Comments on matters arising from the consultation

74. Many of the comments (for example, those relating to trespass and illegal use of the route by motorised vehicles, to the surface of the route and to the style and position of bollards) relate to the management of the route and therefore sit outside the legal framework for the determination of this application. Where possible, these will be taken into account by the Countryside Service Area Team in the event that the application is accepted.

75. Chawton Parish Council state that, because the section of the route between Reed’s Close and Northfield Lane (Points B-A) are not listed in the Inclosure Act, this section should not be subject to any upgrade. However, this is not borne out by the rest of the documentary evidence, which consistently shows the claimed route as being unusually wide, even beyond the section explicitly referenced in the Inclosure Act. The Parish Council also state that the Inclosure Act provides ‘clear evidence’ that this section of the route was ‘purposefully left to be unmaintained’. There does not appear to be anything within the documentary evidence to support this claim. Whilst the Inclosure evidence only shows a part of the route, it does not follow that the route was therefore a cul-de-sac. The Inclosure process simply specified, as part of the dividing up of the other lands in the parish, a minimum width for part of what was already a well-used main road.

76. Chawton Parish Council discuss other documents, citing these as reasons against accepting the application. However, none of the documents cited are sufficient to undermine the evidence of the Inclosure Act and the collective strength of other contemporaneous documents. For example, the route may not be shown on Milne’s Map of Hampshire (1791), which is a commercially produced map, but this does not alter the fact that the route appears to have been set out as a highway 50 years previously in a statute. The latter carries significantly more evidential weight. Furthermore, the route is clearly and prominently shown on two maps produced either side of Milne’s Map (Taylor, 1759 and the Ordnance Survey Old Series, 1808).

77. The comments made by the Parish Council regarding Chawton BOAT 9 (i.e. that it should be downgraded), are noted. The evidence reviewed for this investigation did not find any indication that a downgrade of this route is

warranted, but the Parish Council may submit an application for a DMMO if they believe that there is evidence which shows that such a downgrade should be undertaken.

78. Concerns about the possibility of the route being further upgraded to full vehicular status in the future were raised. Whilst this is outside the legal framework of this investigation, there is no indication in the evidence that motorised vehicular rights exist along the route, as the NERC Act (2006) will have extinguished any rights for motorised vehicles which may have existed (see paragraph 58).
79. One of the landowners expressed their surprise that a route could be upgraded on the basis of documentary evidence, regardless of any contemporary setting. The case of *Dawes v Hawkins (1860)* set a precedent of 'once a highway, always a highway'; that is, a public highway remains a public highway in perpetuity unless a legal event (such as an extinguishment Order) takes place. A right of way cannot be lost merely through lack of use.
80. The representative of the owners of Chawton Park Farm stated that upgrading the bridleway would be unlawful under s53 of the Wildlife and Countryside Act (1981). The relevant sections of this legislation are provided on page two of this report. Section 53(3)(c)(ii) specifically covers the eventuality of a route currently shown on the Definitive Map needing to be recorded as a different status, and s53(4)(a) states that any DMMOs made may also amend the 'position and width' of any public right of way. The County Council therefore considers that any Order to upgrade this route and/or amend the width would be lawful under the provisions of this legislation.
81. The representative states that the evidence is of 'insufficient detail and scale to confirm the width, route or location' of the route. Case law (*Fortune and Others v Wiltshire Council and Another, 2012*) states that evidence must be reviewed as a whole and that it is the collective strength of the evidence which must be considered. In this case, the collective strength of the evidence enables officers to be confident about the recommendation being proposed. The position of the route is clear based upon its repeated inclusion on maps and plans dating back to the 18th century. There is only one major route that has historically run through Chawton Park Wood, and it is clear from the Inclosure evidence (which formalised a pre-existing route) that this was particularly wide. The Inclosure evidence provides a clear authority for recording the recommended width of Points B-C, and the Ordnance Survey Country Series provides a sufficiently detailed basis of the width recommendation for Points A-B.
82. The representative claims that an upgrade would contravene their clients' Human Rights. This is a matter which is outside the legal framework for this decision; a position which is confirmed by the Planning Inspectorate's *Rights of Way Advice Note 19*²².

²² See paragraphs 34-37: <https://www.gov.uk/government/publications/rights-of-way-advice-note-19-human-rights-act-1998>

83. Whilst the applicant did not serve notice on the owners of Chawton Park Farm as part of the application process, the County Council consulted with the landowners during the investigation. The judgement in the case of *Winchester College & Anor, R (on the application of) v Secretary of State for Environment, Food and Rural Affairs (2008)* established that an application for a DMMO not submitted to the Surveying Authority in the correct form may be determined, provided no prejudice has occurred as a result of the application not being in the prescribed form. It is not considered that the landowners have been prejudiced by notice not being served on them when the application was made because they were consulted with during the investigation.
84. Forestry England express concern about the potential need for trees to be felled along the route. Whilst this is outside the scope of the legal framework, the County Council have assured Forestry England and others who shared this concern that, if an Order is made to upgrade the route, Countryside Service would seek to apply a 'light touch' and undertake the minimal amount of interference with the vegetation as would make the route passable. Moreover, the proposal to extinguish part of the width of the claimed route (see below) would also render any tree clearance unnecessary.

Proposal to extinguish part of the width of the claimed route

85. If the decision is taken to accept the application, the County Council will undertake a further consultation regarding extinguishing the majority of the width of the restricted byway, on the basis that it does not appear to be necessary for public use.
86. This consultation and potential subsequent decision would be undertaken prior to the making of any Definitive Map Modification Order relating to this route.
87. Responses received during the second consultation undertaken as part of the current investigation indicated that there would be support for such an extinguishment, should a prior Order be made.

Conclusions

88. Documentary evidence demonstrates that Chawton Bridleway 4 formed part of what was previously considered 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 part 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 record of the stopping up of the higher rights (or the unusual width) has been found.
89. The Natural Environment and Rural Communities Act (2006) appears to have extinguished any motorised vehicular rights that may have existed along the claimed route, 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), although these may be licenced by the County Council if it is deemed necessary.

90. The recommendation is therefore that Chawton Bridleway 4 should be upgraded to a restricted byway, as the documentary evidence demonstrates that the route has previously been a public right of way for all purposes. The width of part of the route should be 66 yards between Points B and C (as set out in the 1740-41 Inclosure award) and, on the basis that the public will have also historically enjoyed free passage over the full width of the remainder of the route, between 26 and 75 metres between Points A and B (inferred from large scale Ordnance Survey mapping), as illustrated on the attached plan.
91. If the above recommendation is approved and the resulting Order is successfully confirmed, officers will consult upon a proposal to extinguish a significant portion of this width, which it is considered, is not needed for public use.

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 975

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.

Estate Maps and Surveys

Prepared by landowners for their own estate management purposes, estate maps and surveys carry less evidential weight than maps which were prepared under statutory authority or subject to public scrutiny. However, they can be useful as they often contain more detail than other maps and have the advantage of having been prepared by, or for, people with an intimate knowledge of the land in question. They were frequently made immediately before, or after, a land transaction, such as a sale or enclosure.

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.

Railway and Canal Plans

Plans of the intended routes of railways (and, more rarely, canals) were deposited before Parliament at the same time as bills seeking authorisation for their construction. Plans and accompanying books of reference detailing the proposed line were required to provide details of the land to be crossed, including existing public highways. The process was open to public scrutiny and formed the basis of compulsory purchase and compensation payments. In consequence, they are normally regarded as good evidence of the status of highways crossed by the

proposed lines. Not all of the railways and canals were built and so many more plans survive than routes were eventually constructed. There are sometimes inconsistencies between different plans which must cast some doubt on their reliability, but in general these are seen as a good source of evidence for the existence and status of public highways.

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.

Finance Act Maps

The Finance Act 1909/10 imposed a land tax which necessitated giving a value to every landholding in the country. The value of a landholding was reduced if it was affected by a right of way. The maps and records can therefore, be used to identify rights of way where these crossed taxable land and on account of which the owner claimed a reduction in value. Land in the ownership of an authority entitled to levy a rate (such as a highway authority) was exempt from the tax and so roads and tracks shown on the maps to be excluded from a taxable landholding might be expected to be public vehicular highways (sometimes referred to as 'white roads' on account of their not being shaded in the same way as taxable hereditaments). The existence of routes of a lesser status (footpaths or bridleways) running through taxable land may be inferred by reference to the accompanying field books, which may record a deduction in respect of a right of way.

Documents and plans produced under the Finance Act can provide good evidence regarding the existence and/or status of a way, but it should be borne in mind that information relating to public highways was incidental to the main purpose of the legislation.

Highway Minutes

Minutes of the Turnpike Trusts, the local Vestry, Highway Boards, and Parish and District Councils can provide valuable evidence of the existence and status of highways and their management and these records have strong evidential weight.

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.

Private conveyancing documents and sales particulars

These might provide useful supporting evidence when considered alongside other documents, but generally carry fairly low evidential weight.