

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Jonathan Woods <i>Countryside Service Strategic Manager</i>
<b>Date:</b>	18 March 2021
<b>Title:</b>	Application for a Definitive Map Modification Order to record a restricted byway between Cranbourne Lane and Wessex Close Parish of Basingstoke

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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 record a restricted byway in the parish of Basingstoke.

#### **Recommendation(s)**

2. That authority is given for the making of a Definitive Map Modification Order to record a bridleway with a variable width of between 2.5 and 6 metres, as shown between Points A and B on the attached plan. The gates near point B and the barrier at the southern boundary of the school grounds should be included in the Order as limitations.

#### **Executive Summary**

3. This is an application made by a member of the public ('the applicant') in 2008 under Section 53 of the Wildlife and Countryside Act 1981, to record a restricted byway between Cranbourne Lane and Wessex Close in Basingstoke. The application is supported by historic documentary evidence and user evidence that the applicant believes demonstrates that a public right of way should be recorded along the claimed route.
4. Having considered the evidence submitted with the application, and undertaken additional research of historic documentary evidence, it is considered that there are sufficient grounds to record a bridleway along the claimed route. The evidence does not demonstrate that restricted byway rights subsist along the claimed route.

#### **Legal framework for the decision**

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

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

a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

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: -

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path

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

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

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

a) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

b) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

#### PRESUMED DEDICATION AT COMMON LAW

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

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

5. The claimed route commences at the end of Cranbourne Lane (Point A). It continues along a metalled path under a subway and between two staggered barriers into the grounds of Cranbourne Business and Enterprise College (hereafter referred to as Cranbourne School). The route continues through the school grounds and through gates at the school boundary, terminating at the southern end of Wessex Close (Point B).

6. The length of the claimed route is approximately 310 metres.

7. The land over which the claimed route runs, the grounds of Cranbourne School, is owned by Hampshire County Council.

#### **Issues to be decided**

8. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are 'reasonably alleged' to subsist. Case law has decided that the burden of proof associated with Map Modification Orders is 'on the balance of probabilities', so it is not necessary for evidence to be

conclusive or 'beyond reasonable doubt' before a change to the Definitive Map can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, an order should be made so that the evidence can be tested at a public inquiry. Officers do not consider that there is such a conflict in this case.

9. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, it must be demonstrated that any change to the map is supported by evidence. This might be proved by historic documentary evidence or by evidence of use in the recent past.
10. If a right of way is considered to subsist or reasonably alleged to subsist, then the route, status and width of that way must also be determined, and authority for the making of an Order to record that right on the Definitive Map should be given.
11. Where a Map Modification Order is made, the process allows for objections to the Order to be made. Further evidence could potentially be submitted for examination along with an objection. In these circumstances, the County Council cannot confirm the Order, and the matter would need to be referred to the Secretary of State.
12. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order. In the event of an application under Section 53 being refused, the applicant has the right to appeal against the County Council's decision to the Secretary of State, who may direct the County Council to make the order that is sought.

### **Background to the Application**

13. In March 2008, a local campaign leaflet stated that two borough councillors had received an email from Cranbourne School stating that they had been "concerned for some time about the path that runs through the middle of the school site and the risk that this poses to our students".
14. The leaflet invited residents to submit their views to the County Council and five letters were received by the Rights of Way team at this time. The letters outline residents' use of the claimed route dating back 75 years, and their concern that the path may be under threat of closure. One letter also included a photograph of the blue finger post near the boundary of the school grounds (this is discussed in more detail at paragraph 48).
15. Following the distribution of the campaign leaflet, user evidence forms were gathered, and the application was submitted in order to respond to the perceived threat that the claimed route may be closed. Due to a backlog of applications the matter was not taken up for investigation at the time. Each of the people who wrote the five letters described above also submitted a user evidence form providing more information about their use of the claimed route. All user evidence forms are examined at paragraph 41.

16. The applicant submitted the following evidence in support of the application:
- a. 80 user evidence forms and maps outlining witnesses' use of the claimed route.
  - b. Ordnance Survey one-inch map of England and Wales (1970)
  - c. A contemporary online Ordnance Survey map which shows the claimed route.

## Consultations

17. The following people and organisations have been consulted on this application: Basingstoke and Deane Borough Council, the British Horse Society, the Byways and Bridleways Trust, Cycling UK (the CTC), the Open Spaces Society and the Ramblers. Additionally, the County Council Members for Basingstoke Central, Councillor Michael Westbrook, and for Basingstoke South East, Councillor Gavin James, have been made aware of the application. Where responses were provided, these are set out below.

### 18. The Ramblers

*I have no direct experience of this route and do not have access to the original submission. Nevertheless it seems clear that an expectation of being able to use this route exists, as evidenced by provision of a subway. The Ramblers support this DMMO application.*

### 19. Cycling UK

*Cranbourne lane has always been open to the public and is a popular route. It links Winchester road to the Viables roundabout and places beyond. I am not sure at what date it was closed to motor traffic through the underpass which goes below the Ringway south. The latter was built in the late 1970s or in the 80s. To-day Cranbourne lane is heavily used by pedestrians and cyclists as it is a convenient link in a network of urban paths. (...) Cranbourne lane is clearly shown on old maps as a through road. (...) It would therefore appear that Cranbourne lane has a long history and been well used in the past. It would have provided people from local villages such as Farleigh, Cliddesden and Ellisfield with a **direct route** into town. (...) I am delighted that at long last Cranbourne lane is being considered for inclusion on the definitive map as a restricted byway, although sad that it has taken so long to get to the "top of the pile". This is an important strategic cycling and walking route used by a lot of people to-day. Historically it was much more important and used at least since the eighteenth century and probably long before that.*

### 20. Basingstoke and Deane Borough Council Member, Councillor Andrew McCormick

Cllr McCormick responded to the consultation to express his support for the application.

### 21. Basingstoke and Deane Borough Council Member, Councillor Jack Cousens

*The path in question is well used by residents of Brookvale & Kings Furlong as well as by residents from further afield. (...) I would like to see the pathway remain open to the public and its access and use to be continued as it currently is.*

22. Hampshire County Council Member, Councillor Michael Westbrook

*The route is well used by the public, I indeed walk or cycle this route regularly myself. I have also over the last year, supported via my members grant, a defibrillator for Cranbourne School which lies adjacent. One of the reasons for supporting this was that it would be accessible to the public who frequent this route therefore making it of community benefit.*

23. Hampshire County Council Member, Councillor Gavin James

*Having been to see it, I would agree that it is a much used route by cyclists and pedestrians, and on the day I went a really slow runner as well! Vehicle access would only be of benefit to the School, who would have control of the gates anyway, so it seems appropriate to take the steps to secure the rights of local people using it as a walk through especially as we look to encourage walking and cycling.*

Statements of Residents

24. During the consultation, ten local people contacted the investigating officer to support the application. Most individuals were invited to complete a user evidence form to enable their comments to be analysed within the investigation<sup>1</sup>, although no completed forms were returned. The statements made by the residents have been paraphrased below:

- a. *As a school pupil at Cranbourne School in the 1970s, I regularly saw members of the public using the claimed route. After leaving the school, I continued to use the claimed route on a daily basis.*
- b. *The claimed route is my commuting route, either as a pedestrian or a cyclist, and restricting it would make my journey impossible [and] force me back to my car.*
- c. *I regularly cycle along the claimed route. The gate is always open and there are no signs asserting that the route is not a public right of way.*
- d. *The route is quiet and therefore good for families and provides the most direct route compared to the alternatives.*
- e. *I have lived in the area since the 1950s and the route has always been a public right of way. I have used the route regularly throughout my life and there have never been any signs saying that the route isn't public.*
- f. *Cranbourne Lane has always been used by pedestrians, cyclists and vehicles until it was blocked up. The public should not be penalised because the school was built on a public footpath.*

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<sup>1</sup> Exceptions were made when two witnesses made statements later on in the investigation after the consultation deadline had passed and when the user evidence forms had already been analysed. The comments made by these two witnesses are included in this summary nonetheless.

- g. *The alternative pedestrian access is a long detour and closing the claimed route would contradict messaging about encouraging the public to walk and cycle rather than driving.*
- h. *I believe the route is permissive access because of the bypass and the vehicle barrier which does not extend over the pavement. The main gate of the school has never been closed. Members of school staff have always greeted me whilst using the route, rather than challenging me.*
- i. *I have been using the route regularly since 1987 and it is the safest option for pedestrians.*
- j. *I have regularly cycled and occasionally walked the claimed route since 1982. It has never been blocked, nor have there been any signs displayed which asserted private property or prohibited cycling. I have seen other people walking and cycling along the route, which is the safest way into the town centre.*

### **Documentary Evidence**

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

#### **25. Taylor's Map of Hampshire (1759) (A<sup>2</sup>)**

The map shows the claimed route as part of one of the roads into Basingstoke town centre. The route is depicted with pecked lines, which the legend describes as an unenclosed road. This document appears to show that the route was being used as a road at the time the map was produced.

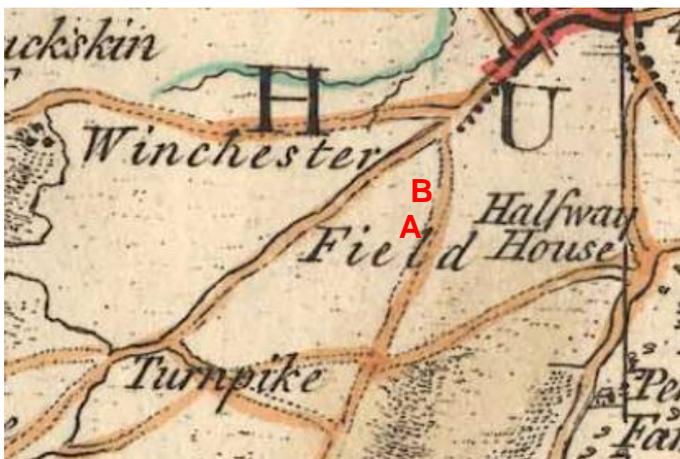


Figure 1 - Taylor's Map of Hampshire (1759)

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<sup>2</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/taylor4/ty65.htm>

## 26. Basingstoke Enclosure Map (1788) (A<sup>3</sup>)

The claimed route is shown as part of a road leading to Basingstoke. The road is shown in the same character as the current Winchester Road and A30 – as a route depicted with solid lines and with no parcel number which would correspond to ownership in the accompanying Enclosure Award. This may reflect that the route was a public road at the time the award was agreed.

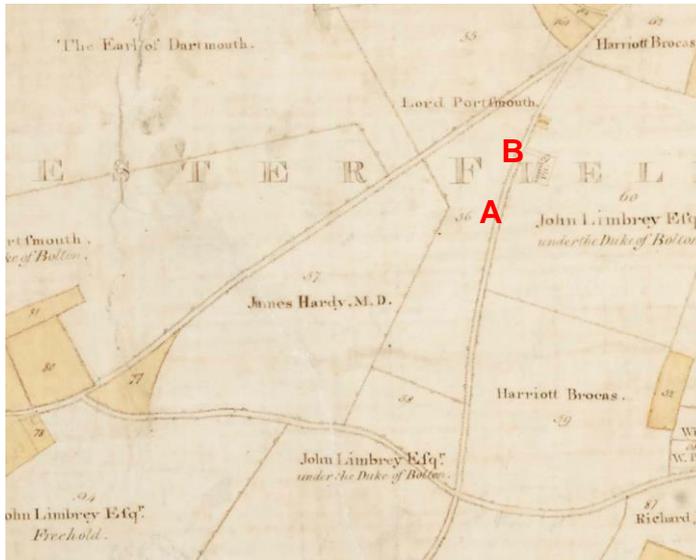


Figure 2 - Basingstoke Enclosure Map (1788)

## 27. Ordnance Survey Old Series (1810) (A<sup>4</sup>)

As on the enclosure map, the claimed route is shown as part of one of the roads leading to Basingstoke. The road is shown in the same character as Winchester Road and the A30, which reflects that the route was being used as a road at the time the map was produced.

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<sup>3</sup> Hampshire Record Office Reference number – Q23/2/3/1. Not to be reproduced without permission.

<sup>4</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/ordnce6/oss27.htm>

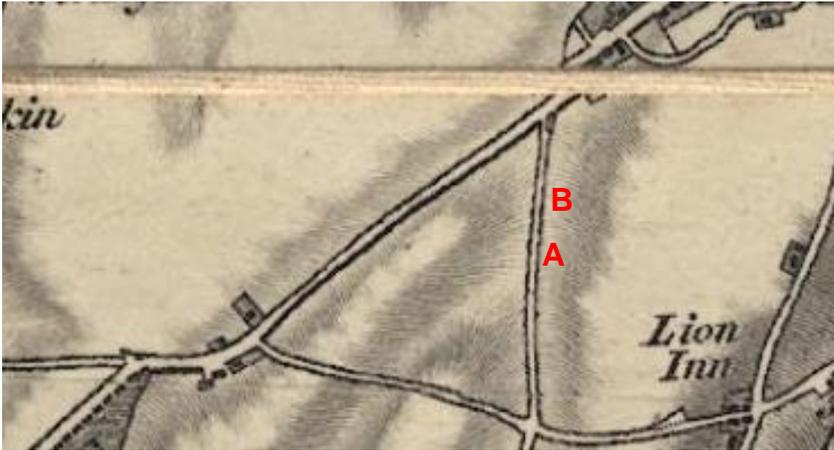


Figure 3 - Ordnance Survey Old Series (1810)

## 28. Greenwood's Map of Hampshire (1826) (A)<sup>5</sup>

The map shows the claimed route as part of a road joining one of the main roads into Basingstoke. The route is depicted with solid black lines, which the legend denotes as being a 'cross road'. The depiction of the route is consistent with other maps produced at this time which appears to reflect that the claimed route was a public road.

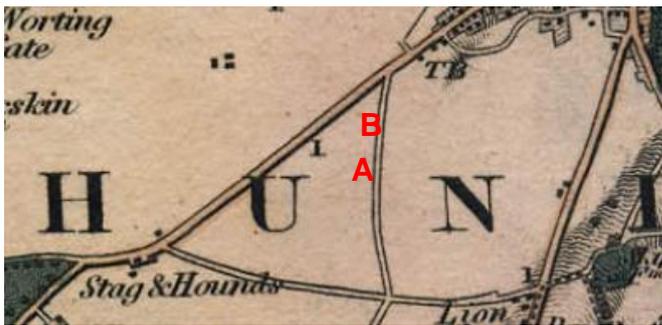


Figure 4 - Greenwood's Map of Hampshire (1826)

## 29. Basingstoke Tithe Records (1841) (A)<sup>6</sup>

The claimed route is within the area covered by the Basingstoke tithe. The depiction of the route is the same as that shown on the enclosure map: the route is part of a road to Basingstoke, it is the same character as Winchester Road and the A30 and the road has not been annotated in any way, indicating that it was not privately owned when the tithe map was produced.

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<sup>5</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.geog.port.ac.uk/webmap/hantsmap/hantsmap/grnwood2/grw75.htm>

<sup>6</sup> Hampshire Record Office Reference numbers – 21M65/F7/13 Not to be reproduced without permission.

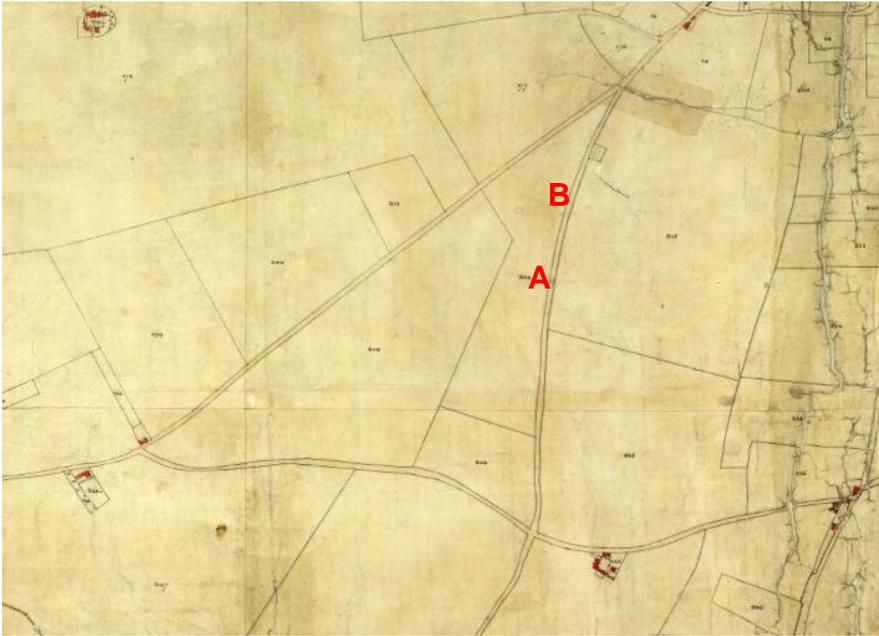


Figure 5 – Basingstoke Tithe Records (1841)

### 30. Ordnance Survey Maps - County Series (25 inches to 1 mile) – c.1873 – 1932 **(A)<sup>7</sup>**

Four maps were published by the Ordnance Survey at a scale of 25 inches to 1 mile between c.1873 and 1932.

Each of the maps shows the claimed route as part of a road connecting Viables Farm and Cliddesden with Basingstoke. There is a considerable difference between the first and fourth editions of the map: the development of Basingstoke begins to gather pace by the 1932 edition, with the creation of the Basingstoke and Alton Light Railway (which was later dismantled) close to the claimed route and more buildings appearing on the map, including a large number of buildings along Cranbourne Lane which are labelled 'Viables Nurseries' and 'Cranbourne Nursery'.

These maps reflect the depiction of the route on previous maps and suggest that the claimed route was being used as a public road at the time the maps were produced.

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<sup>7</sup> Available from the National Library of Scotland  
<https://maps.nls.uk/geo/find/#zoom=15&lat=51.25284&lon=-1.10957&layers=101&b=1&z=1&point=51.26283,-1.08620>

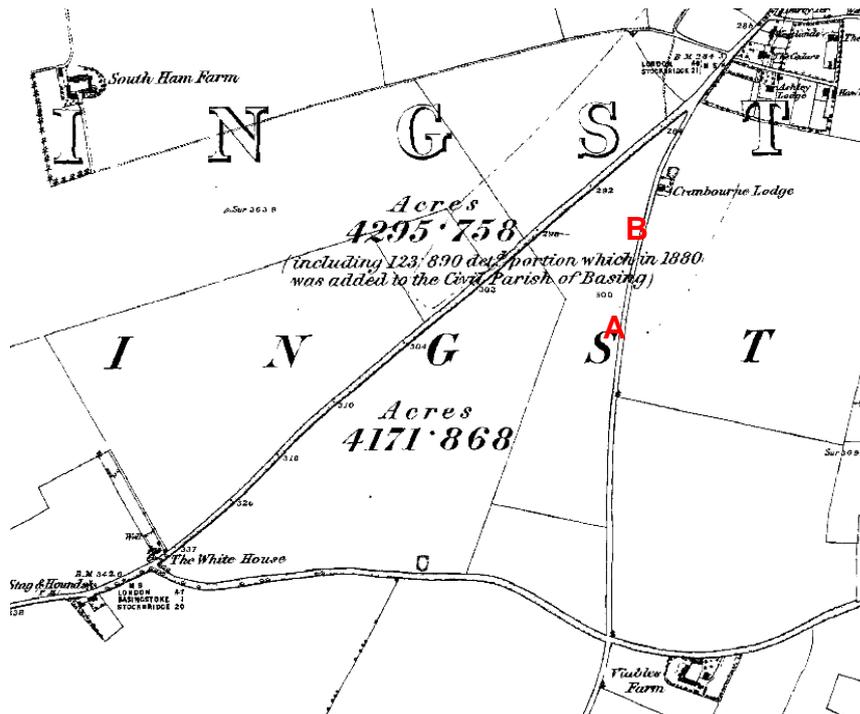


Figure 6 - Ordnance Survey County Series First Edition (c.1873)



Figure 7 - Ordnance Survey County Series Fourth Edition (1932)

### 31. Basingstoke Rural District Council Highway Handover Map (1929) (A)<sup>8</sup>

Unusually, the Basingstoke Rural District has been split into subdistricts on this map, and no highways have been annotated within the area containing the claimed route. Elsewhere on the map, only roads have been annotated- no rights

<sup>8</sup> Hampshire Record Office Reference number – H/SY3/6/4 Not to be reproduced without permission.

of way of a lesser status have been included. These maps were produced for the purpose of showing which highways were being maintained by the Rural District Council at the time that responsibility for highways changed to the County Council, it is therefore surprising that no highways have been annotated here.



Figure 8 - Basingstoke Rural District Council Highway Handover Map (1929)

### 32. Highways Maintenance Map, Basingstoke Division (1946) (A)<sup>9</sup>

As with the Highways Handover Map, this is not a typical example of a highways maintenance map, which would usually show all highways (including public rights of way) being maintained by the County Council. Whilst this map, unlike the handover map, shows some routes annotated, this only includes major roads (such as the A30) and more minor roads have not been annotated. There is therefore no annotation along the claimed route. This map is neutral evidence of the claimed route being a public road at the time the map was produced.

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<sup>9</sup> Hampshire Record Office Reference number – H/SY3/3/24/3 Not to be reproduced without permission.



Figure 9 - Highways Maintenance Map, Basingstoke Division (1946)

### 33. Basingstoke Parish Map (c.1950) (A<sup>10</sup>)

Parish maps were prepared by Parish Councils for County Councils when the first Definitive Map was being prepared; the map was produced to inform the County Council of the rights of way in each parish in order for the Draft Definitive Map to be produced.

The parish map shows the claimed route annotated with a red line, which in contrast to the preceding Handover and Maintenance Maps, the legend denotes as a publicly maintainable highway. The A30 and A33 roads are also depicted in the same way.

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<sup>10</sup> Held by Hampshire Countryside Service



Figure 10 - Basingstoke Parish Map (c.1950)

#### 34. Basingstoke Development Map (1966) (A<sup>11</sup>)

The map shows the planned development of Basingstoke. The claimed route is shown on the basemap within a parcel of land which the legend denotes as a secondary school. Pedestrian routes are depicted by black pecked lines and no such route has been annotated through the school grounds.

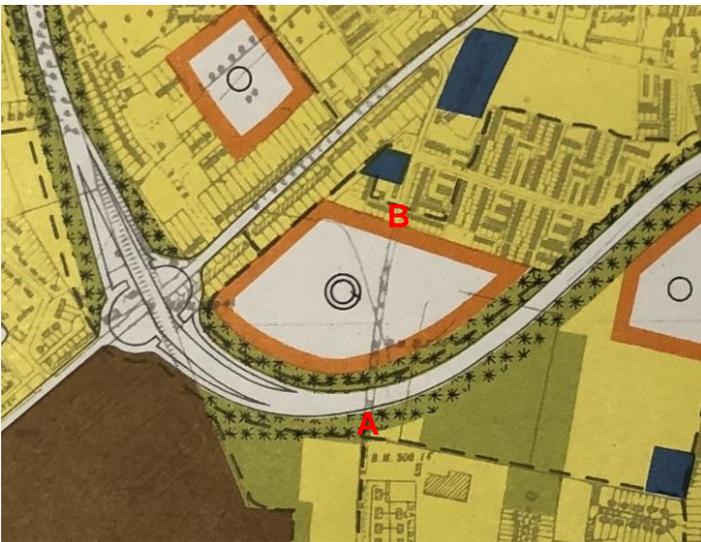


Figure 11 - Basingstoke Development Map (1966)

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<sup>11</sup> Held by Hampshire Countryside Service

35. Extract from *The London Gazette* (4 February 1972) (A)<sup>12</sup>

The extract is a press notice advertising that the County Council was applying to the Magistrates Court to secure an extinguishment of part of Cranbourne Lane. The distances cited indicate that the distance to be stopped up is the section of the road that was impacted by the creation of the Southern Ringway and the building of Cranbourne School (the point between the northern end of Cranbourne Lane and the main entrance to the school grounds). Despite searches, the Order accompanying this press notice has not been discovered. However, given the subsequent local development it seems highly likely that the Order was made prior to the Southern Ringway and Cranbourne School being constructed.

**BASINGSTOKE BOROUGH COUNCIL**  
*Highways Act 1959—Section 108 12th Schedule*

Notice is hereby given that the Basingstoke Borough Council being the Highway Authority for the highway hereinafter mentioned intend to apply to the Magistrates' Court sitting at Basingstoke on the 29th February 1972 at the hour of 10.30 in the forenoon for an Order under section 108 of the Highways Act, 1959 authorising the stopping-up of part of Cranbourne Lane from a point 117 yards north of Horwood Gardens to a point 94 yards south of Culver Road (a distance of 325 yards) on the grounds that the said road is unnecessary due to the construction of the Southern Ringway.

The effect of the proposed Order is shown on the plan deposited at the offices of the Council at the Municipal Buildings, London Road, Basingstoke where it may be inspected free of charge between the hours of 10 a.m. and 4 p.m. weekdays (excluding Saturdays).

(452) R. J. Purvis, Town Clerk.

Figure 12 - Extract from *The London Gazette* (4 February 1972)

36. List of Highways Maintainable at the Public Expense (2020)

The Hampshire County Council list of highways maintainable at the public expense ('the list of streets') shows that the part of the claimed route through the school grounds is not considered to be a publicly maintainable highway. However, the section between the southern boundary of Cranbourne School and the northern end of Cranbourne Lane is a publicly maintainable highway which the register describes as 'Cranbourne Lane Footpath and Cycle Track'. It has not been possible to ascertain when this route was added to the list of streets and whether any legal right for the public to use the route (including the subway) was granted at this time.

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<sup>12</sup> Available from the online archives of The London Gazette.

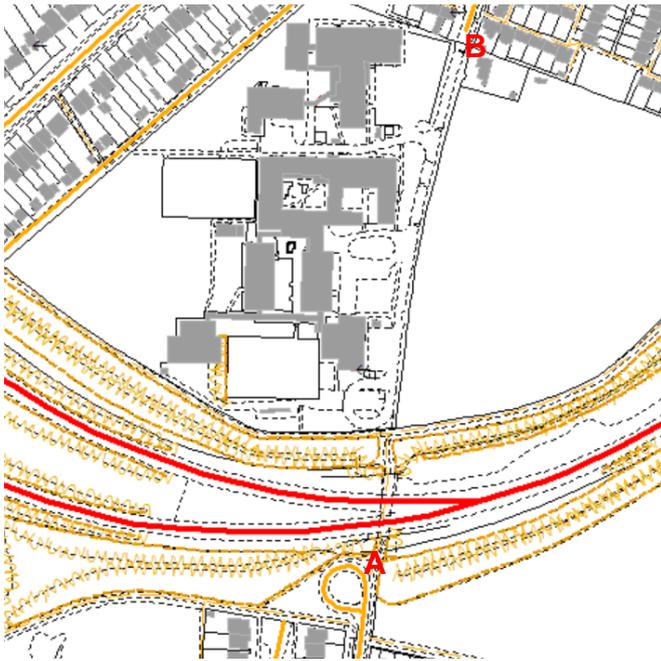


Figure 13 - Screenshot from Hampshire County Council GIS showing status of highways maintenance responsibility

## Analysis of Documentary Evidence

37. The claimed route is first shown on Taylor's map of Hampshire in 1759. The documentary evidence, including the Basingstoke enclosure map of 1788, the Basingstoke tithe map of 1841, and the parish map of the 1950s, demonstrates that the claimed route was a vehicular highway.
38. The Basingstoke Development Map of 1966 shows the plan for the area much as it is now, with paths around the perimeter of Cranbourne School and the Southern Ringway bisecting the old Cranbourne Road; the path through Cranbourne School is shown on the basemap but has not been annotated (unlike the adjacent cycle routes), indicating that there was no intention for the route to be available for public use following the construction of the school.
39. A press notice from 1972 indicates that the County Council sought a Legal Order to stop up the highway along Cranbourne Road in 1972 to facilitate the creation of the Southern Ringway. The Southern Ringway bisected Cranbourne Lane and the northern section became Wessex Close. Despite searches, the legal Order to stop up Cranbourne Lane in 1972 has not been discovered and it appears to be missing from the County Council records. However, the Basingstoke Development Map and the extract from the London Gazette are deemed to be sufficient for it to be concluded that the highway which formerly existed along the claimed route was legally stopped up at the time the Southern Ringway was constructed, and to enable Cranbourne School to be built. Furthermore, the Planning Inspectorate's Consistency Guidelines<sup>13</sup> state that a

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<sup>13</sup> See paragraph 2.14, Section 2, Page 4:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/805945/Full\\_version\\_February\\_2016\\_consistency\\_guides\\_revised\\_note\\_may\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805945/Full_version_February_2016_consistency_guides_revised_note_may_19.pdf)

'presumption of regularity' may be "invoked where there is a lack of evidence on whether proper legal procedures were followed". In this case, it seems probable that the route was lawfully stopped up, despite the legal Order not having been located during this investigation.

40. As no historic documentary evidence relates to use of the route following 1972 and the likely stopping up of the highway, this case will rely on the user evidence supplied by the applicant.

### **User Evidence**

41. The application was supported by the evidence of 80 people, who completed user evidence forms. The dates of use are summarised on the chart at Appendix 3. The table is, by necessity, a generalisation, but it provides an insight into the evidence which has been put forward in support of the application.
42. The evidence charts public use of the claimed route from 1960 up until 2008 (one form was dated 2009, but this is an outlier).
43. Use of the claimed route varies, with 37 witnesses claiming use of the route solely on foot, two witnesses claiming use solely by bicycle, 26 witnesses claiming use on both foot and bicycle. Additionally, 13 individuals stated that they used a vehicle along the route, as well as either use on foot or by bicycle. Many of the witnesses who had used a vehicle indicated (either at this point on the evidence form, or further on) that such vehicular use had taken place prior to the road being stopped up in the 1970s. There was no reported first-hand equestrian use of the route although one person reporting seeing an equestrian on the route.
44. Witnesses stated how often they used the route and the responses demonstrate that claimed use of the route appears to have been very frequent. The most commonly reported use of the route was daily or weekly usage. One witness stated that they used the route twice a day, which was the most regular claimed use, and another claimed to use the route four to five times a year, which was the least regular.
45. A wide range of reasons why witnesses had used the claimed route were provided. These included visiting family and friends, for commuting, for the school run, to access to the nearest chemist, doctor's surgery or shops, for access to the town centre and train station, for exercise, to get to church, and because the claimed route provides a safer and more direct route than the alternatives.
46. All witnesses had seen other people using the route; this was mostly on foot or bicycle, with five witnesses stating that they had seen vehicles using the claimed route and one person stating that they had seen an equestrian on the route. One of the witnesses who referred to a vehicle using the claimed route stated that this was prior to the school being built.
47. 47 users acknowledged the presence of a gate along the claimed route, but all confirmed that this was never locked.

48. A range of signage along the route was acknowledged by 10 witnesses. This signage includes “to the town centre”, “CCTV in operation”, “cycle path”, signs for Cranbourne School, “no vehicles”, a speed restriction sign, and “keep dogs off the field”. None of this signage appears to discourage pedestrians or cyclists from using the route, and signposting the path as a route to the town centre seems to encourage use of the route. A blue fingerpost located near the subway points north through the school grounds to ‘Town Centre and Cranbourne College’, with a bicycle symbol; this sign was still on display when a site visit was conducted in July 2020.
49. There do not appear to be any permanent obstructions along the claimed route, although two users reported temporary obstructions of flooding and the construction of the subway.
50. The majority of witnesses answered ‘no’ to questions about whether they were tenants, employees or relatives of the landowner. However, two witnesses were members of staff at Cranbourne School.
51. No witnesses reported being challenged or seeking permission to use the claimed route. One individual stated that the route was public as it exists on council-owned land and they are a taxpayer. Another witness stated that the claimed route was “part of [Cranbourne Lane]. In 1966 we were informed by the council when the road was closed the path would not be affected”.
52. Five users stated they had private rights to use the claimed route, including for access to their properties, access to the school and to visit friends. From these descriptions, it does not appear that such use of the route constitutes a private right.

### **Summary of user evidence**

53. Analysis of the evidence of 80 witnesses indicates that use of the claimed route has been largely by pedestrians and cyclists between 1960 and 2008, when the application was submitted. There is some reported use by vehicles, although this appears to have taken place prior to part of the road being stopped up in 1972. There are no first-hand reports of use of the claimed route on horseback.
54. Use of the claimed route has been frequent and of a considerable volume. The witnesses used the route for a wide variety of reasons and, with two exceptions, none of the witnesses were employees, tenants, or relatives of the landowner.
55. Whilst many witnesses acknowledged the presence of a gate along the route, nobody stated that this was ever locked, and no witnesses had ever been challenged whilst using the path or sought permission to use the route. Two temporary obstructions were reported, but the nature of these was not to prevent pedestrians or cyclists from using the route.
56. 10 witnesses acknowledged a range of signage along the claimed route, although none of these signs stated that the route was private or not to be used by the public. One of the signs stated ‘to the town centre’ and this was still visible when a site visit was undertaken in July 2020.
57. Five of the 80 witnesses stated that they had a private right to use the claimed route.

## **Actions of the landowners**

58. The land over which the claimed route runs, the grounds of Cranbourne School, is owned by Hampshire County Council.
59. Neither the School nor the County Council appear to have taken any steps to prevent the public from using the claimed route, or to indicate that the route was not public.

## **Analysis of the Evidence under Section 31, Highways Act 1980**

60. For Section 31 of the Highways Act 1980 to operate and give rise to a presumption of dedication, the following criteria must be satisfied:
- the physical nature of the path must be such as is capable of being a right of way at common law
  - the use must be 'brought into question', i.e. challenged or disputed in some way
  - use must have taken place without interruption over a period of twenty years before the date on which the right is brought into question
  - use must be *as of right*, i.e. without force, without stealth and without permission
  - use must be by the public at large
  - there must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

### 61. Physical nature of the route

A public highway must follow a defined route. As the claimed route is linear, follows a tarmacked path and links two public highways, it does follow a clearly defined route and is therefore capable of being a right of way at common law.

### 62. The bringing into question of the public's right to use the path

The public's right to use the path does not seem to have been brought into question at any stage prior to the application being submitted in 2008. In the absence of any prior event that called use into question, the application itself can be said to have done so, giving a relevant period of 1988 – 2008.

### 63. Twenty years' use without interruption

10 users stated that they used the path for the entirety of the relevant 20-year period of 1988-2008. The usage chart clearly demonstrates that the route has been in use continuously from 1960 until the time the application was submitted in 2008. However, until 1972 the claimed route was part of the through road between Winchester Road and the A30 and use before 1972 was therefore 'by right' not 'as of right' and thus does not count towards meeting the test. Nonetheless, use of the route since 1972 has been 'as of right' until the time the application was submitted in 2008.

### 64. 'Without force, stealth or permission'

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

The Planning Inspectorate's *Definitive Map Order Consistency Guidelines* describe the use of force as including "the breaking of locks, cutting of wire or passing over, through or around an intentional blockage, such as a locked gate." No users stated that there were any obstructions in place

intended to prevent use of the route. Witnesses do not appear to have used any force to access the claimed route; whilst there is a gate in position at one end of the route, no witnesses report that this has ever been locked.

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

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

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

None of the users stated that they had sought permission to use the route.

#### **65. Use by the Public**

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

The volume of user evidence forms, the regularity of use, and the breadth of reasons for accessing the route (including for leisure, to run errands, for making social visits and for commuting) are sufficient to demonstrate that the path has been used by the public and in a sufficient volume that use of the route would have come to the attention of the landowner.

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

With two exceptions, none of the users indicated that they were related to, employed by, or a tenant of the owner or occupier of the land in question. Two witnesses were employees of Cranbourne School.

### **Conclusions under Section 31, Highways Act (1980)**

67. Analysing the evidence reviewed above, the conclusion reached is that the provisions of s31 of the Highways Act (1980) have been satisfied: that the public have enjoyed use of the claimed route as of right and without interruption for a period of 20 years.

### **Analysis of the evidence under Common Law**

68. This matter can also be considered at common law. For a claim to succeed at common law, the onus is on the applicant to show that the owners were aware of, and acquiesced in, the use of a route by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied from a sufficient period of public use without secrecy, force or permission, and the acquiescence of those landowners in that use. This is required in order to meet the two pre-conditions for the creation of a highway - that is dedication and

public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law, and depends on the facts of the case. The user must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as putting up a physical barrier, erecting notices stating that the route is not a public right of way of the type being claimed, or turning people back. The more notorious the use, the easier it will be to infer dedication.

### **Conclusions under Common Law**

69. Unlike Section 31, the total period spanned by the user evidence can be considered. The evidence indicates that there has been regular, unchallenged use of the claimed route by pedestrians and cyclists since 1960 until the submission of the application in 2008. Use of the route was without force, without secrecy and without permission.
70. Following the apparent stopping up of the vehicular highway in 1972, there is no evidence that the landowner has taken any actions to restrict access to the claimed route; this suggests that they acquiesced in public use of the path.
71. It is considered that the evidence of use of the claimed route is sufficient for a deemed dedication to be inferred at common law during the period 1972 - 2008.

### **Comments by the Landowners**

72. The affected landowners are Hampshire County Council, who own Cranbourne School. Cranbourne School did not provide a formal response to the consultation but indicated that they opposed the application.
73. Basingstoke and Deane Borough Council were also consulted, as they own the land which abuts part of the route (they own the cycle path around the southern perimeter of the school). The Borough Council issued the following statement:  
*I have circulated this consultation to appropriate teams within the Council and they are unable to give any evidence as to the footpath's use. Our Property Services and Open spaces teams have confirmed that we do not own the area of land concerned and therefore cannot verify its uses. It is not HCC adopted highway. Our planning team believe that it is within the curtilage of the school grounds and they are probably best placed to confirm its use. Also, if it does become part of the definitive map, there may be issues with regard school security, but this is outside of our remit.*

### **Conclusions**

74. As set out earlier in the report, for a change to the Definitive Map to be made, it must be on the basis of evidence which shows that the subsistence of a public right of way is 'reasonably alleged'. Documentary evidence clearly demonstrates that the claimed route was a vehicular highway and part of a road into Basingstoke town centre. However, it appears that the road was stopped up in 1972 when the Southern Ringway was built. This terminated the existing public rights of access (which would have given rise to either a status of restricted byway or byway open to all traffic along the claimed route).

75. The user evidence demonstrates that local people have enjoyed using the claimed route without force, without secrecy and without permission since 1960. The use of the route appears to have been frequent and of a considerable volume, and witnesses have used the route on foot and by bicycle. Whilst Cranbourne School have indicated their opposition to the application, they do not appear to have taken any steps to restrict use of the route. For these reasons, the user evidence was sufficient to meet the tests set out under s31 of the Highways Act (1980) and under the provisions of common law.
76. The recommendation is therefore that authority is given for the making of a Definitive Map Modification Order to record a bridleway between Points A-B on the location map, with a variable width of between 2.5 and 6 metres, which is the physical extent of the metalled track. The gates located near Point B, and the barrier at the entrance to the school opposite the subway should be noted in the Order as limitations, as these appear to have been present during the relevant period when the public have acquired a right of way.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

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

**Section 100 D - Local Government Act 1972 - background documents**

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

Document

Claim Reference: DMMO 1010

Location

Countryside Access Team  
Castle Avenue  
Winchester  
SO23 8UL

## **EQUALITIES IMPACT ASSESSMENT:**

### **1. Equality Duty**

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

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

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

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

### **2. Equalities Impact Assessment:**

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

## Appendix 1 - Evaluation of Historical Documents

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

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

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

### Early Commercial Maps

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

### Inclosure Maps and Awards

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

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

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

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

### **Tithe Maps and Awards**

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

### **Ordnance Survey Maps and Records**

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

Additional help in determining the status of a path can be found in other Ordnance Survey Records: the first edition County Series Map was accompanied by a Book of Reference, which identified 'Roads' (and sometimes even 'Public Roads' or 'Occupation Roads'); the object name books (some have survived for the third edition, circa 1909) relied on local knowledge (for example, the Overseer of Highways) to describe features, including public roads; boundary books can record

public highways where they also form parish boundaries and levelling records may also refer to roads and other features.

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

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

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