

HAMPSHIRE COUNTY COUNCIL

Officer Decision Record

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|-----------------------|----------------------------------------------------------------------------------------------|
| Decision Maker | Jonathan Woods – Countryside Access Group Manager |
| Title | Application for a Definitive Map Modification Order to record public Bridleway in Abbots Ann |
| Reference | 1151 |

Tel: 01962 840043

Email: ben.marsh@hants.gov.uk

1. The decision:

- 1.1. That authority is given for the making of a Definitive Map Modification Order to record a Bridleway, 3.5 to 6 metres in width, from U60 Manor Close to C65 Duck Street (as shown marked with a red line on the attached plan).

2. Reason(s) for the decision:

- 2.1. Hampshire County Council has a duty to determine applications made under Section 53(5) Wildlife and Countryside Act 1981. An analysis of the available documentary and user evidence, having regard to the relevant legislation and case law (set out in the background report), has concluded that there is sufficient evidence for both a statutory presumption of dedication and inference of dedication under common law principles, and a public bridleway should therefore be recorded on the Definitive Map and Statement.

3. Other options considered and rejected:

- 3.1. N/A

4. Conflicts of interest:

- 4.1. None.

5. Dispensation granted by the Head of Paid Service:

- 5.1. N/A

6. Supporting information:

6.1. Full Officer Report

6.2. Location Map – Appendix A

6.2. Documentary Evidence - Evaluation of Historical Documents – Appendix B

6.3. User Evidence Chart – Appendix C

Approved by:

Date:

10.06.2021

Jonathan Woods – Countryside Access Group Leader

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

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Hampshire safer and more secure for all: | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| Maximising well-being: | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| Enhancing our quality of place: | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| OR | |
| This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as ‘surveying authority’, has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981. | |

Section 100 D - Local Government Act 1972 - background documents

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

Document

Claim Reference: 1151

Location

Countryside Access Team
Castle Avenue
Winchester
SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

2. Impact on Crime and Disorder: N/A

3. Climate Change:

How does what is being proposed impact on our carbon footprint / energy consumption? N/A

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

This report does not require impact assessment but, nevertheless, requires a decision because the County Council, in its capacity as the 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.

HAMPSHIRE COUNTY COUNCIL

Decision Report

| | |
|-----------------|--------------------------------------------------------------------------------------------------------------------------|
| Decision Maker: | Jonathan Woods – Access Group Manager |
| Date: | 11 June 2021 |
| Title: | DMMO 1151 - Application for a Definitive Map Modification Order to record a public bridleway in the Parish of Abbots Ann |
| Report From: | Director of Culture, Communities and Business Services |

Contact name: Ben Marsh

Tel: 03707 790363

Email: ben.marsh@hants.gov.uk

Purpose of this report

1. The purpose of this report is to assist the Countryside Access Manager in determining whether the available evidence is sufficient for a Definitive Map Modification Order to be made recording a public right of way in the parish of Abbots Ann.

Recommendation

2. That authority is given for the making of a Definitive Map Modification Order (“DMMO”) to record a Bridleway, with a variable width of 3.5 to 6 metres, from U60 Manor Close to C65 Duck Street (as shown marked with a red line on the attached plan).

Executive Summary

3. This is an application made by a resident of Abbots Ann (the “Applicant”) in 2015 under Section 53 of the Wildlife and Countryside Act 1981 (“WCA”), to record a Bridleway from U60 Manor Close to C65 Duck Street.
4. The application is supported by user and historic evidence that the Applicant believes sufficiently demonstrates that a public right of way should be recorded. Having considered the supporting evidence and taken additional research of historical documentary evidence into account, officers consider that there are sufficient grounds to add the route to the Definitive Map and Statement (“DMS”) as a Bridleway.

Legal framework for the decision

5. WILDLIFE AND COUNTRYSIDE ACT 1981

Section 53: Duty to keep definitive map and statement under continuous review.

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

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

(3) The events referred to in sub-section (2) are as follows: - c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

i) that a right of way which is not shown on 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 [to which this Part applies].

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.

6. 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.

7. 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 circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

Case Law

8. **Ali v Secretary of State for the Environment and Rural Affairs (2015) – ‘interrupted use due to locked door’**

The case of Ali v Secretary of State for the Environment and Rural Affairs (<https://www.bailii.org/ew/cases/EWHC/Admin/2015/893.html>) concerns a path between two properties in Frinton-on-Sea. The landowner challenged the Secretary of State's decision to confirm an order made under section 53(2) of the WCA, arguing that the use of the path had been interrupted due to a door that had been locked over the Christmas period.

9. The High Court upheld the Inspector's decision and dismissed the appeal. Although it was accepted that the door had been locked over the Christmas period, as the path was used for the purpose of getting to the local shops and businesses which were closed over the Christmas period, it was held that the acts of the landowner were not sufficient to bring to the attention of the public who used the route that they had no intention to dedicate.
10. The judgement referenced the Godmanchester case, where it was accepted that an interruption of use at some point during the relevant 20year period, will defeat an argument based on user 'as of right' under Section 31(1) HA during that period. The judgement also referenced Merstham Manor Ltd v Coulsdon and Purley Urban District Council (1937), stating that traditionally one day per year is the norm, but also emphasised that this may depend on the facts of the particular case whether this is enough to amount to a sufficient interruption, which was also the view taken by the Court of Appeal in Lewis v Thomas (1950).

Issues to be decided

11. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are 'reasonably alleged' to subsist over the claimed route, which is not currently recorded as a right of way.
12. Under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, case law has decided that the burden of proof associated with a DMMO 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 DMS 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.

13. If a right of way is considered to subsist, or is 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 DMS 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.
16. 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.

Description of the route

17. The claimed route is shown on the map attached to this report as [Appendix A](#). Commencing at U60 Manor Close, the route travels in a southerly direction for approximately 605 metres, to where it terminates at C65 Duck Street.



18. Figure 1 above shows a view looking south along the claimed route from where it commences at U60 Manor Close. Figure 2 shows a view looking north where the route terminates at C65 Duck Street.

Background to the application

19. The claimed route is located to the southeast of the village of Abbots Ann in the parish of the same name, approximately three kilometres to the southwest of the market town of Andover in the borough of Test Valley. In 2015 an application to add the routes to the DMS was submitted to the County Council.

Consultations with other bodies

20. In addition to the landowners, the following people and organisations have been consulted in relation to this application: The Ramblers, Open Spaces Society, Byways and Bridleways Trust, British Horse Society, Trail Riders Fellowship, Cycling UK, Abbots Ann Parish Council, Test Valley Borough Council, Cllr David Drew (Test Valley Central). Comments received are provided below:

21. The Ramblers

"I can confirm that Andover Ramblers have used the proposed bridleway many times over the years without any sign that the route should not be used. Not every time has been formally recorded but I have a record that either the whole of the route or part of it was walked on 30 Apr 2014, 18 Aug 2014, 23 Aug 2014 and 3 Feb 2016. Please note that on these occasions the walk continued from the proposed track to Path Abbots Ann 4 along what appeared again to be well trodden 'dog walker' paths. Again there were no signs to say the routes should not be used. Please see the attached photo which records the use on GPS. If it doesn't prejudice the initial claim it may also be worth covering these paths".

22. Parish Council

"The Parish Council strongly support the case made by Dr John Moon and consider that the evidence supplied clearly shows that public rights exist over the well-used Old Coach Road and recommend that you find in favour of this application".

23. British Horse Society

"The BHS welcomes all new bridleway additions as they provide safe off road access for equestrians, cyclists and walkers. We trust that should the bridleway be created then the surface and width are suitable for all users and that there is clear visibility on exit at both ends of the route onto the highway".

24. No other responses were received.

The Landowner/s

25. The Winchester Diocesan Board of Finance (the “Diocesan Board”) own the land over which most of the claimed route travels. The Diocesan Board have responded to the application and have refuted that a public right of way exists. The points raised in their response is discussed within this report at paragraph 75.
26. The northern most section of the claimed route is unregistered.

Documentary Evidence

27. Documents held in archives, whether Hampshire Record Office, the National Archives, or online archive collections, are marked by an ‘A’. Please refer to Appendix B for a brief background and introduction to each type of document.
28. Survey of manor of Abbots Ann the estate of Thomas Pitt - 1739¹ (A)
The Applicant has submitted what they have suggested is an extract from the 1739 map, a survey of manor of Abbots Ann and Little Ann the estate of Thomas Pitt. They note that the map was used in a village exhibition and that they did not possess the original. Having viewed the original map, and considering the typeface used, it appears that the map submitted by the Applicant is a more recent map with annotations taken from the 1739 map.

On the original map, the claimed route is located within parcel 1 which is annotated as “Parsonage Field”. The northern section of the claimed route is within a thin strip of land between two other boundaries, “Bulberry” to the west and “Glebe” to the east. Where the southern section of the claimed route travels is shown on the plan as being allotments at this time.

29. Taylor’s Map of Hampshire – 1759² (A)
The claimed route is shown on its present alignment, in a manner comparable to the symbology of other primary carriageways in the locality and connecting with routes now recorded as public highways at either end. Taylor’s map therefore provides some support to the application.

¹ Hampshire Record Office (Reference [37M85/19/OT/2](#))

² Old Hampshire Mapped (www.oldhampshiremapped.org.uk)

30. Abbotts Ann Enclosure Award – 1775³ (A)
The Applicant has submitted a transcript of the Abbotts Ann Enclosure Award of 1775 commenting that the award refers to land allocated to Thomas Burrough and to a drove providing access to his land. The description does not however confirm the precise location of the route, how far the “drove” extends to the south along the claimed route, nor whether the route was public or private.
31. Map of the Manors and Parish of Abbotts Ann and Little Ann – 1779⁴
The claimed route is recorded as being within parcel 141. The northern section of the claimed route is shown within a thin strip of enclosed land between parcels 140 and 159.
32. Paterson’s British Itinerary – 1785⁵
The claimed route is shown comparable to the symbology of other carriageways in the locality, suggesting it provided a link between other public highways.
33. Abbotts Ann Tithe Map – 1842⁶ (A)
The enclosed northern section of the claimed route is shown on the tithe map, but as with the preceding maps of the 18th century, it is not clearly delineated beyond this section, and the accompanying award records the apportionment as ‘parsonage field and barn’, indicating that the route was not considered to be a public highway at the time.
34. Map of the Red Rice Estate - 1844⁷ (A)
The claimed route is shown within a parcel of land shaded red and annotated as Glebe and is annotated with “Reverend Samuel Best”. The claimed route is separated from the fields with a line to the north and dashed line to the south, providing a clearer indication of a through route. However, this document provides no indication that the route may have been considered to be public.
35. Map of Roads within the Parish of Abbotts Ann – Andover Highway District – circa 1850 - 1900
The map shows parish roads and former turnpike roads, and includes keys giving road names and names of expired turnpikes. The claimed route is not recorded on the map.

³ Hampshire Record Office (Reference [Q1/18](#) pages 175 - 203)

⁴ Hampshire Record Office (Reference [17M63/12](#))

⁵ Old Hampshire Mapped (www.oldhampshiremapped.org.uk)

⁶ Hampshire Record Office (Reference [21M65/F7/1/2](#))

⁷ Hampshire Record Office (Reference [17M63/16](#))

36. OS County Series 1:2,500 – 1873

The claimed route is shown on the first edition of the Ordnance Survey County Series Map, the associated reference for the claimed route is 152 and the corresponding description records the route as 'road', which will reflect the physical characteristics of the route as they appeared to the surveyor.

37. Photograph – circa 1900

The Applicant has submitted a photograph dated circa 1900 which shows the northern end of the claimed route looking south, there is a field gate to the east of the claimed route. The claimed route does not appear to be gated at this time and it appears to be in use by wheeled vehicles, as demonstrated by numerous tracks on the surface of the route.

38. Bartholemew's "Half Inch Maps" of England and Wales – 1902⁸ (A)

The claimed route is shown as an uncoloured carriageway. The map legend notes that 'uncoloured roads are inferior and not to be recommended to cyclists. The continuation of the claimed route to the north, over what is now Church Road, Mill Lane, and Abbots Ann Byway 13 are also shown as similar uncoloured carriageways on the map.

39. Finance Act Maps - 1910⁹ (A)

The claimed route is shown on the Finance Act Map of 1910, the route is enclosed within taxable landholdings referenced plots 155 and 156, indicating that at the time, it was not considered to be within land held by a ratings authority (as was often the case with public carriageways). The corresponding book of reference, which might have provided an indication as to the existence of a lesser status of public right of way, was not sourced.

40. Maintenance Map 'Handover' Map - 1929¹⁰ (A)

The claimed route is not recognised as a public highway on the Local Government Act Handover Map of 1929.

41. Maintenance Map Andover Division - 1946¹¹ (A)

The claimed route is not recognised as a public highway on the Maintenance Map of 1946.

42. Parish Map – Abbots Ann Parish Council - 1950s

The claimed route is not shown on the Abbots Ann Parish Map as a public right of way.

⁸ National Library of Scotland (www.maps.nls.uk)

⁹ The National Archives Reference [IR125/4/180](#))

¹⁰ Hampshire Record Office ([H/SY3/6/3](#))

¹¹ Hampshire Record Office([H/SY3/3/24/2](#))

43. Definitive Map and Statements – Andover Rural District - 1957¹² (A)
The claimed route was not recorded on the first Definitive Map and Statement.
44. Letter from T P de Paravicini – History of the Old Coach Road - 1980
Letter details that Mr Paravicini's father, the Rector of Abbots Ann between 1903 and 1929, had locked gates at each end of the Old Coach Road on one day a year between 1916 and 1929 and his successor the Reverend Stedman had done the same between 1929 and 1940. The letter goes on to state that Reverend Stedman's successor, P Kingsford Venner, allowed the gates to fall into disrepair, and so the route remained ungated from some time in the 1950s.
45. OS Planning Map 1:2500 - 1974¹³
The claimed route is shown on this map as a track, annotated as "THE OLD COACH ROAD".
46. Letter from T P de Paravicini – felling of dead elms - 1981
Letter reiterates the claim that Mr Paravicini's father had locked gates at each end of the Old Coach Road on one day a year.
47. Photograph of the northern end of the claimed route - 1981
The claimed route does not appear to be gated at this time, there appears to be a drop in the curb to allow access to the track.
48. Abbots Ann Parish Footpaths Map – 2000¹⁴
The Abbots Ann Parish Paths partnership have produced a map of footpaths within the parish. The claimed route is recorded as a track/private road.
49. Solicitors Letter – 2000
The Applicant has submitted a solicitor's letter detailing that a search has been completed and that the Coach Road was designated on 5 March 1979 as 'prospectively maintainable highway'. The letter states that "this means that the public have all the rights over it that they have over any other highway, but it is not at present maintained by the County Council".

¹² Hampshire Record Office ([H/CL1/2/2](#))

¹³ Old Maps (www.old-maps.co.uk)

¹⁴ www.hants.gov.uk/rh/walking/abbotsann.pdf

50. Abbotts Ann Conservation Area Character Appraisal – 2005¹⁵

The Abbotts Ann Conservation Area Character Appraisal published by Test Valley Borough Council states that the claimed route is a main entrance into the village, the route is recorded as “*The Old Coach Road - this quiet route into the village from the south bordered by trees and hedgerows is an un-metalled track today but was previously an important route into the village from Salisbury (prior to construction of the A343 trunk road)*”.

51. Higher Level Stewardship Scheme Agreement– circa 2010

A permissive right of way was granted under Higher Level Stewardship Scheme Agreement (“HLS Agreement”) which the landowner has suggested covers the claimed route. Although the HLS appears to provide a permissive route from the claimed route to Abbotts Ann Footpath 4, it does not appear to include the claimed route.

52. Combined Landowner Deposit – 2015

On 4 June 2015 the County Council received a CA16 Combined Deposit from Winchester Diocese (dated 2 June 2015), the deposit made under the Highways Act 1980 and Commons Act 2006, entitle landowners to deposit documentation with the County Council to prevent public rights being recorded over their land. The CA17 notices were displayed on site dated 29 July 2015.

53. OS 1:10000 Raster Mapping - 2021

On the current OS Raster Mapping the claimed route is annotated as “The Old Church Road (Track)”.

Analysis of the Documentary Evidence

54. 18th Century

The documentary evidence from the 18th Century includes two estate maps dated 1739 and 1779, these suggest that the northern section of the claimed route was used to access Parsonage Field. Although Parsonage Field was allotted to the Reverend Thomas Burrough as part of the enclosure award of 1775 and the northern section of the claimed route is referred to as “drove”, it is not considered to have been set out as a public highway, or that it was a through route. The claimed route is also shown on two early commercial maps, Taylor’s Map of Hampshire 1759 and Paterson’s British Itinerary 1785. These maps indicate that the claimed route was used as a through route but do not confirm status.

¹⁵ Test Valley Borough Council - [Abbotts Ann Conservation Area](#)

55. 19th Century

The documentary evidence from the 19th Century includes the Abbots Ann Tithe Map dated 1842, the claimed route is contained within a parcel named Parsonage Field, it does not appear that the route is acknowledged as a public highway on the plan or award. The Map of Red Rice Estate dated 1844 and OS County Series Map 1873 provides a little more detail in defining the claimed route as a through route. Although the OS County Series Map records the claimed route as a “road”, and this indicates that the public were using the route as a carriageway at the time the OS surveyed, it does not confirm status as a public road, and the Map of Roads within the Parish of Abbots Ann circa 1850 – 1900 confirms that the highway Authority did not record the route as a parish road.

56. 20th Century

The claimed route is enclosed within taxable landholdings on the Finance Act Map 1910 and is shown in a way that is consistent with public carriageway status. The claimed route has not been recorded as a public right of way by Abbots Ann Parish Council on the Parish Map prior to the first DMS being published and therefore was also not recorded on the DMS by Hampshire County Council in 1957.

The photos circa 1900 and 1981 indicate that the route had been well used, although they do not confirm status or whether any public rights existed, the photo circa 1900 also gives some indication that the track was used by wheeled vehicles. Bartholemew’s commercial map of 1902 has recorded the claimed route as a carriageway but suggests that the surface is not recommended to cyclists.

On the OS Planning Map 1974 the claimed route is described as a track and annotated as “The Old Coach Road”. Although it is sometimes claimed that a named highway is a public highway, it is not considered that there is evidence to support such an assertion in this case - on the current OS raster mapping the name has changed to “The Old Church Road”.

The letters of T P de Paravicini dated 1980 and 1981, although somewhat anecdotal, provide an account of the history of the route, confirming that in the first half of the 20th Century the claimed route had a “good gravel surface” and also refer to the route as a “road”. The letters assert that between 1903 and 1940 that gates were locked at each end of the claimed route on one day per year to preserve the privacy of the road.

It appears that the person who is reported to have locked the gates may not have been the freehold owner of the land over which the claimed route travels at the time the gates were locked to prevent public rights being dedicated. In any case, in consideration of the case law precedent in *Ali v Secretary of State for the Environment and Rural Affairs*, officers do not consider that the landowner locking the gate on Good Friday was sufficient to bring to the attention of the public who used the route that they had no intention to dedicate.

57. 21st Century

The Abbots Ann Footpath Map dated 2000 is not considered to hold much evidential weight, apart from confirming that the claimed route is a track. The Test Valley Borough Council Conservation Area Character Appraisal dated 2005 details that the claimed route was previously an important route into the village, but again this evidence is also anecdotal. The Solicitors letter dated 2000 states that the public have all the rights over the claimed route that they have over any other highway, however, being recorded on the List of Streets as 'prospectively maintainable' does not confirm that there is any public right of way over the route.

The claimed route does not appear to form part of the HLS Agreement and the permissive rights within the agreement do not appear to cover the claimed route. The CA16 Combined Deposit from Winchester Diocese dated June 2015, however, this will only protect the land from dedication from the time of submission, and only after a subsequent statutory declaration has been submitted confirming that no further ways have been dedicated. The County Council have no record of the subsequent declaration being submitted.

58. Conclusion

There is no documentary evidence of any express or formal dedication over the claimed route. Regarding inference of dedication at common law, although the evidence indicates that the public had used the route as a road during the late 18th and early 19th Century, it is not considered that there is sufficient evidence to imply through long use, that the landowner had intended to dedicate a public highway. The application must therefore be determined upon the user evidence that has been put forward.

User Evidence

59. The application is supported by evidence of use from 89 local residents collected on user evidence forms. County Council records have also revealed a further 6 user evidence forms in relation to the claimed route that were submitted in 1980. The user evidence is summarised on the chart at Appendix C. The chart is by necessity a generalisation but provides an insight into the evidence which has been put forward in support of the application.

60. The user evidence covers a period of 96 years from 1919 until the application was submitted in 2015 and the volume of use by each user has ranged from 3 times per year to 14 times per week. Most users have used the route for recreational purposes, apart from two users that have reported to have used the route for farming and one user that keeps a horse in an adjacent field.
61. All users have reported to have used the claimed route on foot, 11 users have reported to using the route on a bicycle, 8 users have reported to have used the route on horseback, and 5 users have reported to have used the route in a vehicle.

Analysis of the Evidence under s31, Highways Act 1980

62. 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

Physical nature of the route

63. The claimed route is a linear route and well-established path, it is capable of being a right of way at common law.

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

64. There does not appear to be an identifiable date whereby the use of the claimed route has been effectively challenged. Where there is no identifiable date, Section 31 Highways Act, provides that the date that an application for a modification order is made should be used as the date at which use was brought into question. The relevant period of use will therefore be 1995 to 2015.

Twenty years use without interruption

65. The user evidence provides that the use has covered a period of use for pedestrians, horse riders, and cyclists that covers 20years use.

Use without force, stealth, or permission

66. *Force – to be as of right, use must not be as the result of the use of force.* The available evidence confirms that there were no fences, locked gates, or other intentional obstructions along the claimed route and the public appear to have enjoyed uninterrupted access along the route during the relevant period.
67. *Stealth – to be as of right, use must be open and of the kind that any reasonable landowner would be aware of, if he they had chosen to look.* The available evidence is of a volume whereby the landowner should have been aware of the use.
68. *Permission – use as of right should not be using the way with any kind of licence or permission.* The landowner has suggested that the northern section of the route was under a HLS Scheme, however it does not appear that this was the case.

Use by the public

69. *The use must be of a volume 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.*
70. The volume of use is of a volume capable of coming to the attention of the landowner and consists of enough users to reflect the rural setting. During the relevant period nine users have reported to have used the route on a bicycle, which amounts to approximately two cyclists per day using the route. Seven users have reported to have used the route on a horse, which amounts to approximately 6 equestrians per week using the route. Officers therefore consider that there is also enough use by cyclists and equestrians to reflect the bridleway rights that have been claimed.

Analysis of the evidence under Common Law

71. This matter can also be considered under common law where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The users must be able to show that it can be inferred from the conduct of the landowner that they had intended to dedicate the route as a public right of way of the type that has been applied for.

72. This is required 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 use is not fixed under common law and depends on the facts of the case. The use 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.
73. Unlike under Section 31, twenty years use by the public is not necessary. However, in any event the total period of use covers every year over a period of 96 years from 1919 until 2015. Notwithstanding the anecdotal evidence of locked gates between 1916 and 1940, there is no evidence to suggest use was ever challenged or restricted after this time, and as stated by Mr Paravicini in his letter of 1980, gates that were previously in place on the route fell into disrepair in the 1950s and were not replaced. It is therefore considered that this, coupled with a volume of public use that would have come to the attention of the landowner, would be sufficient for a deemed dedication at common law to be inferred.

Actions of the Landowner

74. The Diocesan Board submitted a response to the application dated 14 October 2014 detailing that they do not regard the claimed path as a public right of way and that it has never been registered or intended to be a public right of way. The Diocesan Board provided the following objections to the claim:
- i) A permissive right of way was granted under an HLS Agreement to join Abbotts Ann Footpaths 5 and 4.
 - ii) Access was prevented to a dog walker and explained that it was not a right of way on 11th March 2014.
 - iii) A Combined Landowner Deposit was submitted to the County Council in August 2015.
 - iv) A right of agricultural access for the adjoining landowner granted by deed.
 - v) Letter dated 13 November 1981 stating that gates were locked annually to prevent creation of a public right of way.
 - vi) The Land Registry Title shows ownership with no registered public rights of way over the land.

A further email dated 19 August 2019 was received from Carter Jonas, the Agent for the Diocesan Board the following objection to the application was submitted:

- vii) A CA16 declaration and map was received by Hampshire County Council on 4 June 2015 preventing the designation of any new rights of way over the land in question for 20 years. As this is before the date of July 2015 when the application to register the bridle path was made my client will not accept the designation of the bridle path to the definitive PROW map.

A review of the objections to the claim by the landowner will now be provided:

First point of objection – HLS Agreement

- 75. The HLS Agreement has already been discussed in paragraph 52 and does not appear to relate to the claimed route. The landowner has stated that the HLS agreement joins Abbotts Ann Footpaths 4 and 5, however it only appears to join the claimed route to Footpath 4. The Diocesan Board also do not appear to own all of the land necessary to enter into an agreement to provide a permissive right of way to join footpaths 4 and 5. An email was sent to the Diocesan Board's agent on 8 April 2021 requesting further evidence of the HLS agreement, however no response was received.

Second point of objection – Access was prevented to a dog walker

- 76. The Diocesan Board have stated that access was prevented to a dog walker on 11 March 2014 and that they explained that it was not a right of way. None of the users that have reported to use the route have stated that they have ever been told not to use the route by the landowner, officers therefore do not consider that this challenge was effective in conveying to the public at large that the road was not for public use. In any case, if the challenge were to be deemed effective, this would change the date that rights were brought into question back from 2015 to 2014 and would not affect the conclusions made under statute or common law principles.

Third and seventh point of objection - Combined Landowner Deposit

- 77. The submission of the landowner deposit in 2015 does not become effective until a subsequent declaration has been received. The Diocesan Board's agent have stated that the Diocesan Board have submitted a combined statement and declaration, however the County Council only appears to have received the statement, and this has no legal force unless the accompanying declaration is received. In any case, if the deposit were deemed effective, this would change the date that rights were brought into question from 30 July 2015 to 4 June 2015 and would not materially affect the conclusions made under statute or common law principles.

Fourth point of objection – Right of access granted by deed

78. Officers consider this information to be immaterial, since it bears no relationship to the public's use of the route

Fifth point of objection – letter regarding locking of gates

79. The letter dated 1980 which details that a gate was locked at each end of the claimed route between 1903 and 1940 has been discussed in paragraphs 45, 47, and 57. It appears that the person who is reported to have locked the gates may not have been the freehold owner of the land over which the claimed route travels at the time the gates were locked to prevent public rights being dedicated. Although one user of the route at this time appears to have been aware that the gates were shut on Good Friday each year, due to the case law precedent in *Ali v Secretary of State for the Environment and Rural Affairs*, officers do not consider this to have been an effective interruption. In any case if the interruption of use were deemed to be effective it is outside of the period that was considered for a statutory presumption of dedication under Section 31 (1995 – 2015) and would also not affect the conclusions made under common law principles.

Sixth point of objection – Land Registry Title

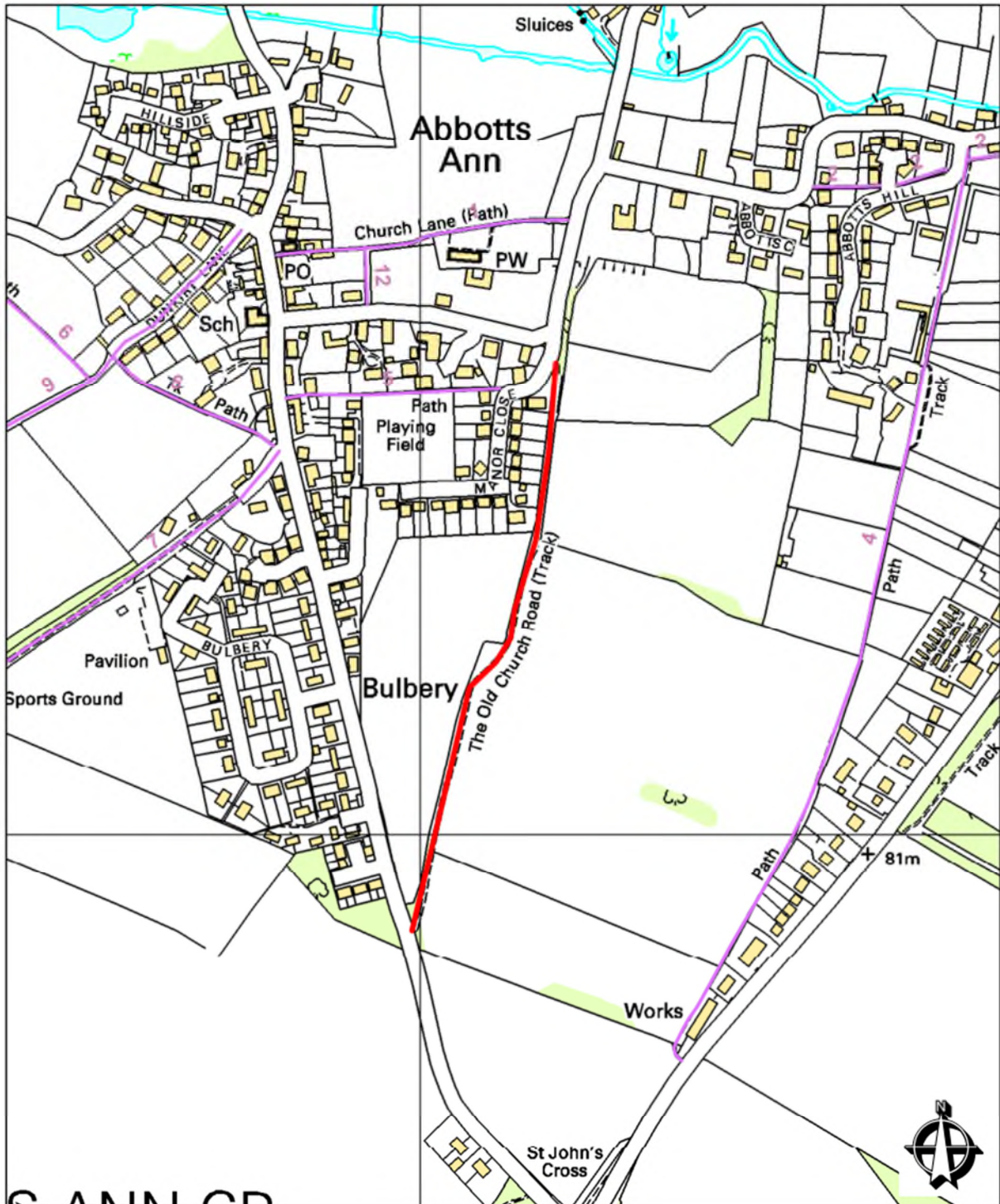
80. The Land Registry Title shows ownership with no registered public rights of way over the land. Officers consider this information to be immaterial because the Land Registry is not legally conclusive evidence of the existence of public rights of way. The only document that provides this certainty is the Definitive Map, and even then, this is without prejudice to the ability to apply for modifications to be made to the map if it is considered to be in error.

Conclusions

81. The available documentary evidence is insufficient to indicate that there had been a formal or implied dedication of the claimed route, it does however substantiate that a way has existed on the ground corresponding with the claimed route since the 18th Century.
82. The user evidence provides a reasonable allegation that a public bridleway subsists, and that on the balance of probabilities, there is evidence of use over a sufficient period, for both a statutory presumption of dedication and inference of dedication under common law principles. Officers therefore recommend that the claimed route should be added to the Definitive Map as a Bridleway.
83. The claimed route has been measured using ArcMap geographical information system, with Ordnance Survey Mastermap and aerial photography from 2013 and has been found to have a variable width of 3.5 – 6 metres. The route should be recorded with no limitations.

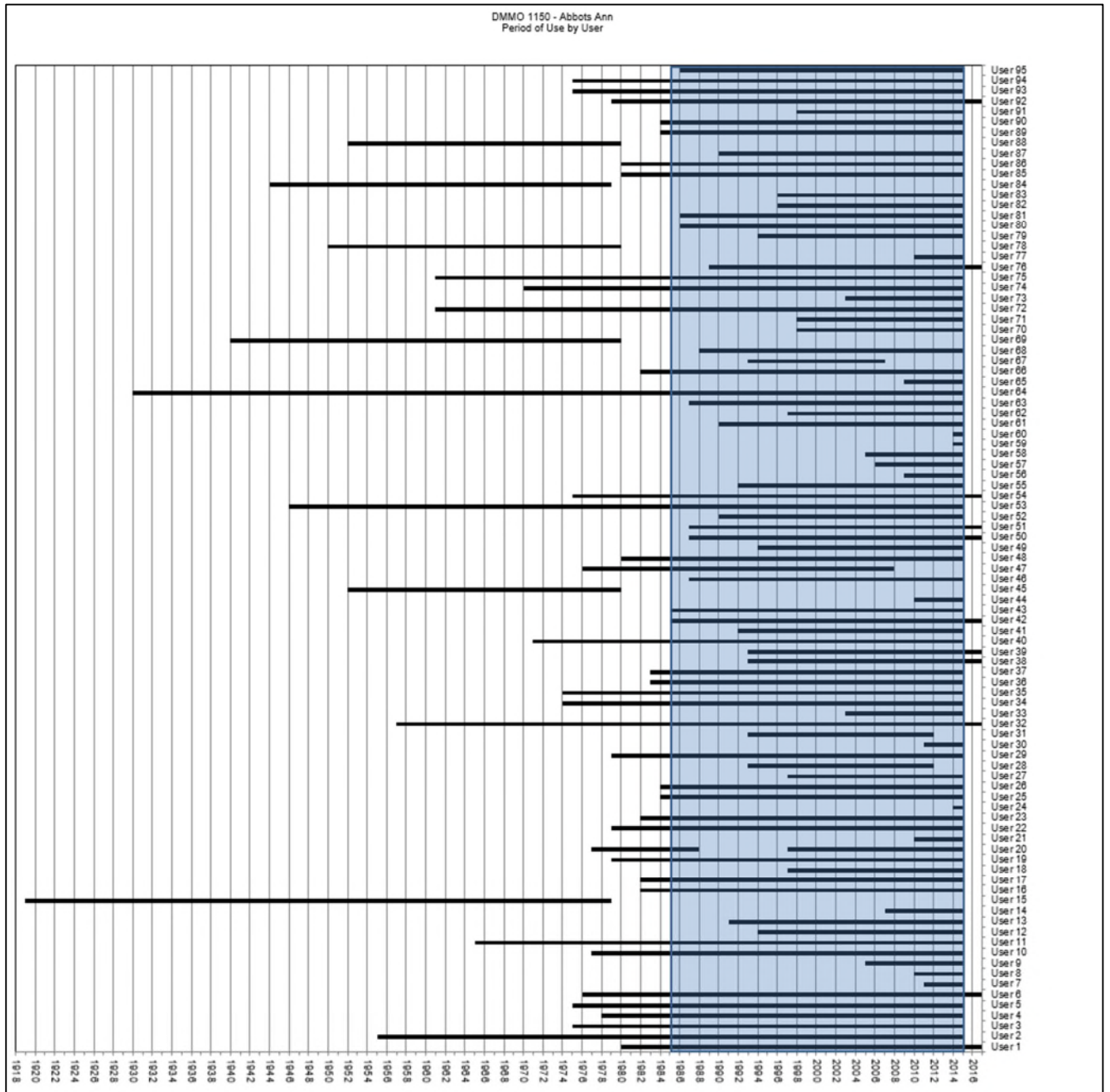
Appendix A – Route Map

CR 1151 Abbotts Ann Map to show claimed route

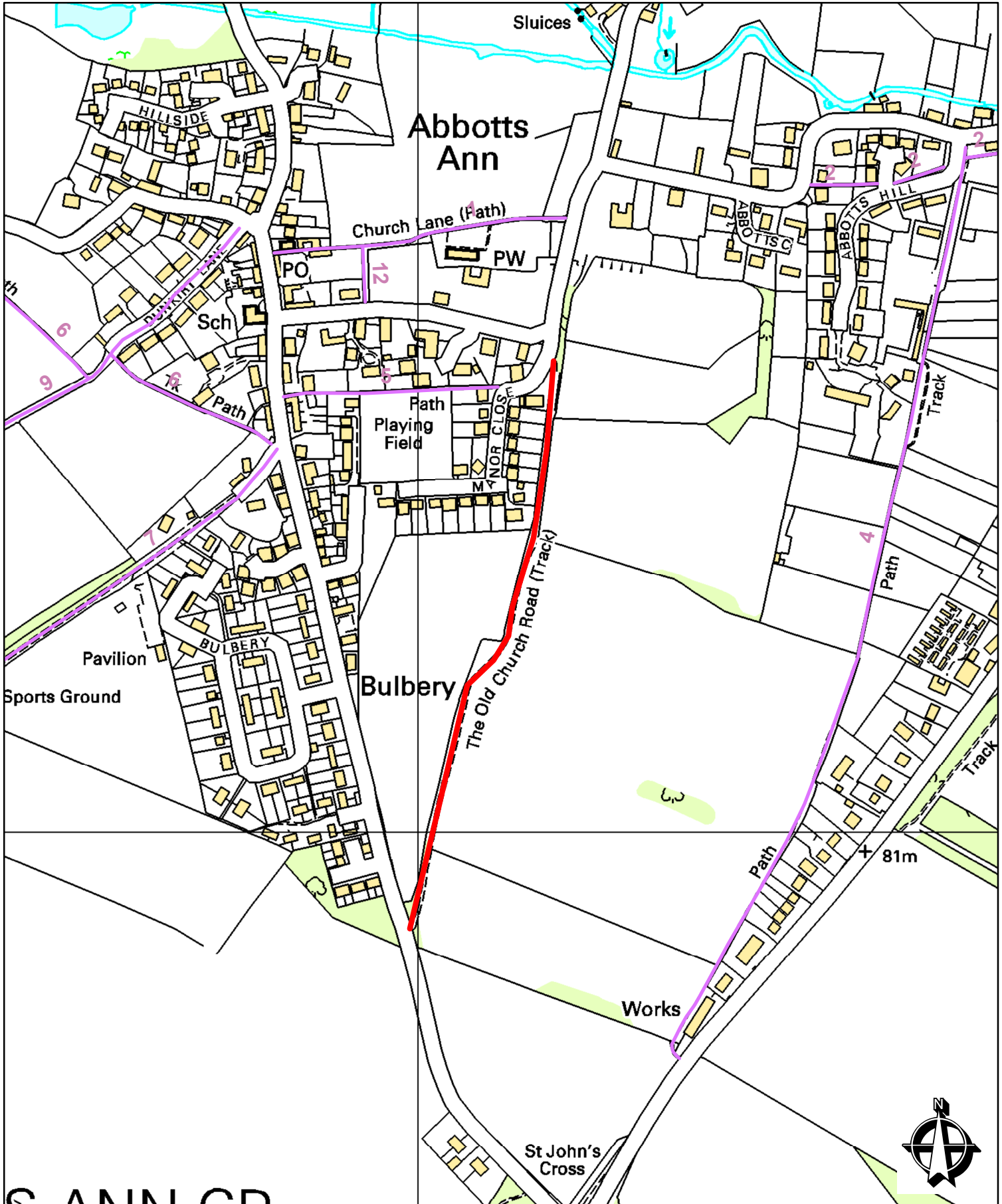


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Appendix C – User evidence chart



CR 1151 Abbots Ann Map to show claimed route



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Appendix B - 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.