

## HAMPSHIRE COUNTY COUNCIL

### Officer Decision Record

<b>Decision Maker</b>	Jonathan Woods <i>Countryside Service Strategic Manager</i>
<b>Title</b>	Application for a Definitive Map Modification Order to record a bridleway in East Woodhay Parish of East Woodhay
<b>Reference</b>	DMMO 1050

**Tel:** 0370 779 0383

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

#### 1. The decision:

- That the application for a Definitive Map Modification Order (DMMO) to record a bridleway in the parish of East Woodhay (see attached plan) should be partially accepted.
- That a DMMO should be made to record a restricted byway between Points A and C on the attached plan (commencing and terminating at junctions with Hatch House Lane). The width of the route should be a variable width of between 5.4 and 15 metres.

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

- The application, which relies on documentary evidence, was submitted in 2010 by a representative of The Open Spaces Society.
- The documentary evidence demonstrates that the claimed route has existed since 1761 when it was first depicted on Rocque's Map of Berkshire.
- The tithe documents provide possible evidence that the route may have been considered a public road in 1837 when the documents were produced. The route is also clearly shown on three editions of the Ordnance Survey County Series maps and described as a road in the book of reference which accompanies the first edition. Later maps, including the highways handover and maintenance maps, indicate that the route was not considered to be a publicly maintainable highway by 1929, and the documents relating to the National Parks and Access to the Countryside Act show that there was no attempt to claim the route as a public right of way when the first Definitive Map was produced during the 1950s.
- No Orders relating to an historic diversion, extinguishment or stopping up of this route have been discovered and it therefore appears that there is a reasonable allegation that a public right of way subsists along the alignment of the claimed route.
- The documentary evidence demonstrates that the claimed route has historically been of the same character and status as Hatch House Lane (which is a public road) and both Hatch House Lane and the claimed route appear to have been set out as public roads on the East Woodhay tithe map. The NERC Act (2006) will have extinguished any motorised vehicular rights that may have existed

along the claimed route, as the criteria have not been satisfied. The status of the route should therefore be a restricted byway.

- The modern-day county boundary is located along the centre of the claimed route between Points B and C, although documentary evidence, including the East Woodhay Tithe map (1837) which was pivotal evidence in this case, suggests that the boundary was historically located against the edge of the land parcel. The applicant notified West Berkshire Council of the application and West Berkshire Council agreed to Hampshire County Council conducting this investigation to cover the full extent of the route. The recommendation made above reflects the conclusion that the County Council should record the full extent of the route as a public right of way within Hampshire; this is following a review of the documentary evidence and consideration of how other authorities have handled similar issues. The investigating officer will discuss the matter of the county boundary with the decision maker when this report is presented, and the recommendation will be reviewed if needed.

### **3. Consultations:**

The following people and organisations have been consulted on this application: East Woodhay Parish Council, West Woodhay Parish Meeting, Basingstoke and Deane Borough Council, The British Horse Society, the Byways and Bridleways Trust, the CTC, the Open Spaces Society (who were also the applicant), the Ramblers, and the Countryside Service Access Northern Area Manager. Additionally, the County Council Member for Whitchurch and The Cleres, Councillor Tom Thacker, has been made aware of the application. Where responses were provided, these are set out below.

#### West Woodhay Parish Meeting

*If you look at the proposed route you can see clearly that there is a naturally formed ditch running down the middle which in the winter is full of water. To get rid of the ditch in order to reinstate the route would take some considerable engineering work as without good drainage the water would be left to run down the hill. During the winter months this hill frequently ices up and so would become extremely dangerous for horses, walkers and cars. The bridleway hasn't been used for at least 25 years, but most probably a great deal longer. It is extremely over-grown with trees and would be very costly for the council to clear. Clearing the wood to make way for the bridleway could potentially have a huge affect on the wildlife that will be living within at the moment. As the bridleway no longer exists and given the wet nature of the land it would be extremely costly for the council to make the ground stable for horses throughout the year.*

### **4. Comments by the Landowners**

Around half of the route is unregistered with the Land Registry (mostly the section between Points A and B, although small slivers of land between B and C also appear unregistered). All identifiable landowners were consulted, including those who own land abutting the route: three separate landowners were identified and consulted with. Where responses were received, these are provided below. Responses have been edited for clarity and some sections may have been summarised:

#### West Woodhay Farms, LLP

West Woodhay Farms own the majority of the claimed route located between Points B and C. Two maps were also supplied upon request following submission of the

comments below. These maps were a Land Registry title plan, and an estate plan; the latter is discussed within the Documentary Evidence review.

*"I have inspected part of the proposed bridleway and can see no evidence of a bridleway ever having existed. The presence of a long-standing and functional ditch running directly down the proposed bridleway would require significant works if the route was to be used without prejudice to the water course, in addition to the work needed to clear trees. This seems an unlikely choice for our forbears to have chosen for a route, as it would have required a number of awkward crossings of the ditch.*

*There is no record of any right of way in this area on the conveyancing map from when my great grandfather purchased the estate, but all other current rights of way are shown on the map. There is also no evidence of recent use of the route and the condition of the route would suggest that it could not have been used in recent years."*

### Landowner B

Landowner B owns land which abuts the claimed route. In addition to the comments below, the landowner provided several photographs of the claimed route, one of which is provided below and shows part of the route between Points A and B.



*"Over the past 20 years I have been living here and this route has never been used or managed as a public bridleway. My farm tenant has never seen this route being used as a public bridleway in the past 50 years whilst he has operated in this area. One of my former employees has lived here for over 40 years and has also never seen this route being used as a public bridleway. The route is not suitable for use due to tree growth and general undergrowth. The route is also a major stream conduit and escape for surface and groundwater when it rains and a substantial stream course 2-3 feet deep and 3-4 feet wide has been naturally carved out over the years. There is a drainage pipe near to Point A and a drainage ditch at Point C; these are important for highway drainage from the adjacent road. The trees along the route are important for preventing soil erosion and clearance of the trees would have a considerable detrimental impact.*

*The drainage infrastructure and annual maintenance liability burden of the route would be considerable and will also impact on the neighbouring land and the adjacent road. The trees along the route are also important and provide a habitat for owls and deer, as well as a wind break and shade for animals grazing the fields. Some of the trees are dead or diseased and may present a risk to the public.*

*A power line is located along the route.”*

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

N/A

**6. Conflicts of interest:**

None.

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

N/A

**8. Supporting information:**

- Location Map
- Full Officer Report
- Documentary Evidence

**Approved by:**

**Date:**

\_\_\_\_\_

**8 October 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**

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

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

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

Document

Claim Reference: DMMO 1050

Location

Countryside Access Team  
Castle Avenue  
Winchester  
SO23 8UL

## **IMPACT ASSESSMENTS:**

**1 Equalities Impact Assessment: N/A**

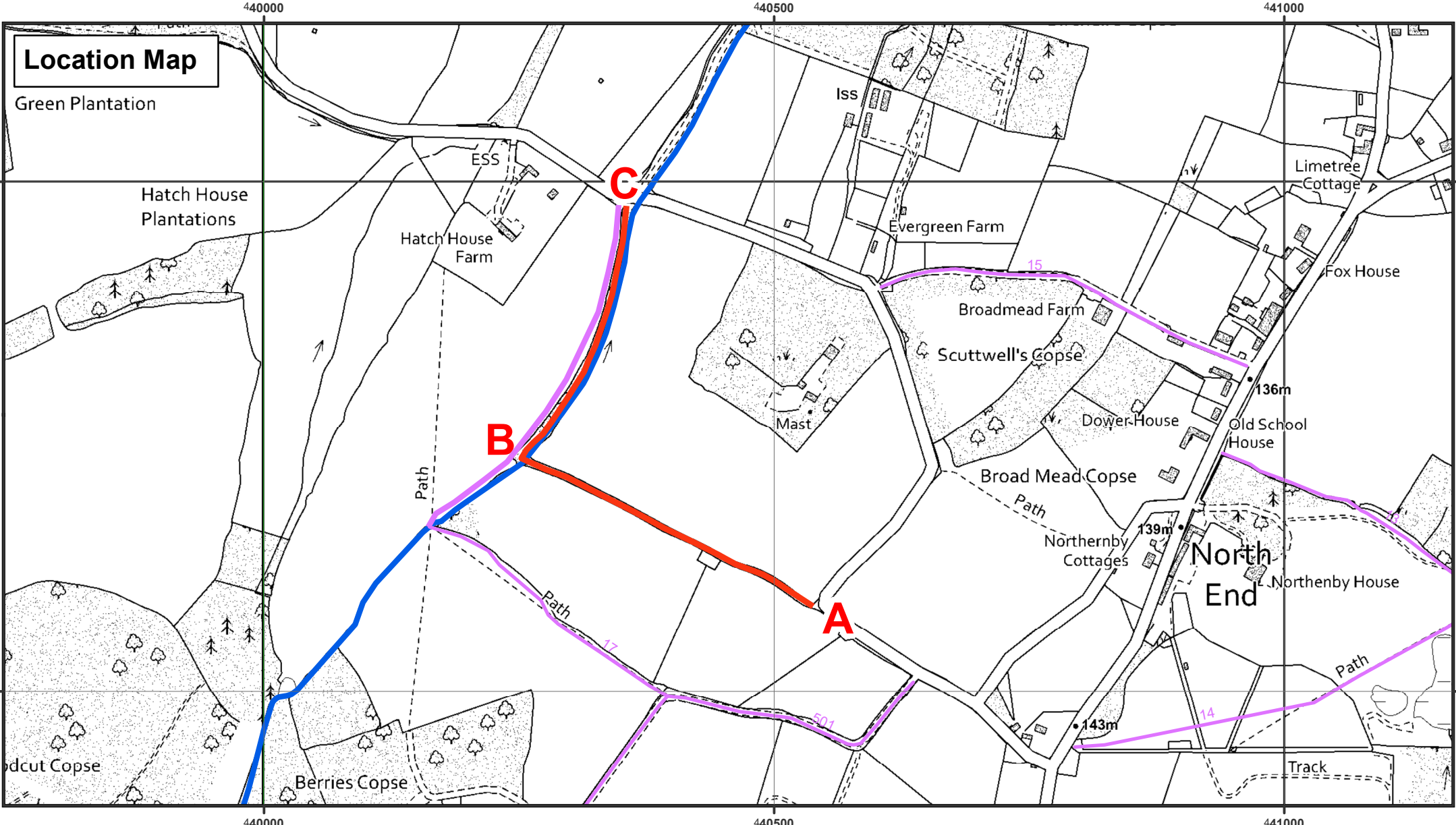
**2. Impact on Crime and Disorder: N/A**

**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.**



**Location Map**

Green Plantation  
 Hatch House Plantations

Hatch House Farm  
 Berries Copse  
 Woodcut Copse


ESS  
 Mast  
 Path  
 Path  
 Path

ISS  
 Evergreen Farm  
 Broadmead Farm  
 Scuttwell's Copse  
 Dower House  
 Broad Mead Copse  
 Northernby Cottages  
 Northernby House

Limetree Cottage  
 Fox House  
 Old School House  
 North End  
 Track

**Application for a Map Modification Order to record a bridleway from SU 403 629 to SU 405 625**

Parish of East Woodhay



**Hampshire**  
County Council

**LEGEND**

- Claimed route
- Public Footpath
- County boundary

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

**1:5,000**

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## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Jonathan Woods <i>Countryside Service Strategic Manager</i>
<b>Date:</b>	8 October 2021
<b>Title:</b>	Application for a Definitive Map Modification Order to record a bridleway in East Woodhay Parish of East Woodhay

**Contact name:** Jennifer Holden-Warren

**Tel:** 0370 779 0383

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

#### Purpose of this Report

1. The purpose of this report is to assist the Countryside Service Strategic Manager in determining whether to accept an application for a Definitive Map Modification Order to record a bridleway in the parish of East Woodhay.

#### Recommendation(s)

2. That authority is given for the making of a Definitive Map Modification Order to record a restricted byway with a variable width of between 5.4 and 15 metres, as shown between Points A and C on the attached plan.

#### Executive Summary

3. This is an application made by a representative of the Open Spaces Society ('the applicant') in 2010 under Section 53 of the Wildlife and Countryside Act 1981, to record a bridleway in East Woodhay. The application is supported by historic documentary evidence that the applicant believes demonstrates that a public right of way should be recorded.
4. Having considered the evidence submitted with the application, and undertaken additional research of historic documentary evidence, it is considered that there are sufficient grounds to record a restricted byway along the claimed route.
5. The modern-day county boundary is located along the centre of the claimed route between Points B and C, although documentary evidence, including the East Woodhay Tithe map (1837) which was pivotal evidence in this case, suggests that the boundary was historically located against the edge of the land parcel. The applicant notified West Berkshire Council of the application and West Berkshire Council agreed to Hampshire County Council conducting



this investigation to cover the full extent of the route. The recommendation made above reflects the conclusion that the County Council should record the full extent of the route as a public right of way within Hampshire; this is following a review of the documentary evidence and consideration of how other authorities have handled similar issues. The investigating officer will discuss the matter of the county boundary with the decision maker when this report is presented, and the recommendation will be reviewed if needed.

## **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: -

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

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

### NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

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

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

(a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or

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

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

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

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

(a) was not shown in a definitive map and statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

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

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

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

- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
  - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
  - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if—
- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
  - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
  - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—
    - (i) was reasonably necessary to enable that person to obtain access to the land, or
    - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.

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

6. The claimed route commences at a junction with Hatch House Lane (Point A on the attached plan), continuing in a north-westerly direction across an approximately eight-metre-wide parcel between two fields which is enclosed by established trees and vegetation. The route continues to the county boundary (Point B), then bears northwards to re-join Hatch House Lane (Point C).
7. The length of the claimed route is approximately 600 metres.
8. The county boundary is located along the centre of the route between Points B and C.
9. The part of the route between Points A and B is unregistered. The applicant made enquires with East Woodhay Parish Council, but it was not possible to identify a landowner for this section; to comply with the application requirements (Schedule 14 of the Wildlife and Countryside Act, 1981) the applicant displayed a notice on site which advised of the application.
10. Very small areas of the route between Points B and C are also unregistered, although the majority of this land is owned by West Woodhay Farms LLP.

**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. 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.

12. 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.
13. 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.
14. Where a Map Modification Order is made, the process allows for objections to the Order to be made. Further evidence could potentially be submitted for examination along with an objection. In these circumstances, the County Council cannot confirm the Order, and the matter would need to be referred to the Secretary of State.
15. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order. In the event of an application under Section 53 being refused, the applicant has the right to appeal against the County Council's decision to the Secretary of State, who may direct the County Council to make the order that is sought.

### **Background to the Application**

16. The application was submitted in 2010 by a representative of the Open Spaces Society. Due to a backlog of applications the matter was not taken up for investigation at the time.
17. The following documents were submitted by the applicant:
  - a. Rocque's Map of Berkshire (1761)
  - b. Ordnance Survey Map, 1 inch to the mile (1817)
  - c. Greenwood's Map of Hampshire (1826)
  - d. Extract from William Cobbett's Rural Rides (1826)
  - e. Map of West Woodhay belonging to the Revd John Sloper (1831)
  - f. East Woodhay Tithe Map (1837)
  - g. Ordnance Survey Map, 6 inches to the mile (1882)
  - h. Ordnance Survey County Series Map (1896)
  - i. Ordnance Survey Map, 1:2500 (1911)
  - j. Finance Act Map (1911)
  - k. Contemporary photographs of the route (2007)

### **Consultations**

18. The following people and organisations have been consulted on this application: East Woodhay Parish Council, West Woodhay Parish Meeting,

Basingstoke and Deane Borough Council, The British Horse Society, the Byways and Bridleways Trust, the CTC, the Open Spaces Society (who were also the applicant), the Ramblers, and the Countryside Service Access Northern Area Manager. Additionally, the County Council Member for Whitchurch and The Cleres, Councillor Tom Thacker, has been made aware of the application. Where responses were provided, these are set out below.

#### 19. West Woodhay Parish Meeting

*If you look at the proposed route you can see clearly that there is a naturally formed ditch running down the middle which in the winter is full of water. To get rid of the ditch in order to reinstate the route would take some considerable engineering work as without good drainage the water would be left to run down the hill. During the winter months this hill frequently ices up and so would become extremely dangerous for horses, walkers and cars. The bridleway hasn't been used for at least 25 years, but most probably a great deal longer. It is extremely over-grown with trees and would be very costly for the council to clear. Clearing the wood to make way for the bridleway could potentially have a huge affect on the wildlife that will be living within at the moment. As the bridleway no longer exists and given the wet nature of the land it would be extremely costly for the council to make the ground stable for horses throughout the year.*

#### **Comments by the Landowners**

20. Around half of the route is unregistered with the Land Registry (mostly the section between Points A and B, although small areas of land between B and C also appear unregistered). All identifiable landowners were consulted, including those who own land abutting the route: three separate landowners were identified and consulted with. Where responses were received, these are provided below. Responses have been edited for clarity and some sections may have been summarised:

#### 21. West Woodhay Farms, LLP

West Woodhay Farms own the majority of the claimed route located between Points B and C. Two maps were also supplied upon request following submission of the comments below. These maps were a Land Registry title plan, and an estate plan; the latter is discussed within the Documentary Evidence review.

*"I have inspected part of the proposed bridleway and can see no evidence of a bridleway ever having existed. The presence of a long-standing and functional ditch running directly down the proposed bridleway would require significant works if the route was to be used without prejudice to the water course, in addition to the work needed to clear trees. This seems an unlikely choice for our forbears to have chosen for a route, as it would have required a number of awkward crossings of the ditch.*

*There is no record of any right of way in this area on the conveyancing map from when my great grandfather purchased the estate, but all other current rights of way are shown on the map. There is also no evidence of recent use*

*of the route and the condition of the route would suggest that it could not have been used in recent years.”*

## 22. Landowner B

Landowner B owns land which abuts the claimed route. In addition to the comments below, the landowner provided several photographs of the claimed route, one of which is provided below and shows part of the route between Points A and B.



*“Over the past 20 years I have been living here and this route has never been used or managed as a public bridleway. My farm tenant has never seen this route being used as a public bridleway in the past 50 years whilst he has operated in this area. One of my former employees has lived here for over 40 years and has also never seen this route being used as a public bridleway. The route is not suitable for use due to tree growth and general undergrowth. The route is also a major stream conduit and escape for surface and groundwater when it rains and a substantial stream course 2-3 feet deep and 3-4 feet wide has been naturally carved out over the years. There is a drainage pipe near to Point A and a drainage ditch at Point C; these are important for highway drainage from the adjacent road. The trees along the route are important for preventing soil erosion and clearance of the trees would have a considerable detrimental impact.*

*The drainage infrastructure and annual maintenance liability burden of the route would be considerable and will also impact on the neighbouring land and the adjacent road.*

*The trees along the route are also important and provide a habitat for owls and deer, as well as a wind break and shade for animals grazing the fields. Some of the trees are dead or diseased and may present a risk to the public.*

*A power line is located along the route.”*

## **Documentary Evidence**

*Documents held in archives, whether Hampshire Record Office, the National Archives, or online archive collections, are marked by an ‘A’*

*Where held, images of documentary sources are contained within Appendix 1.*

### 23. Rocque's Map of Berkshire (1761) (A)<sup>1</sup>

The applicant provided a copy of Rocque's Map of Berkshire. John Rocque was appointed as topographer to George III and this map was produced for commercial sale. The long title of the document is:

*A Topographical Survey of the County of Berks, in Eighteen Sheets. In which is expressed His Majesty's Royal Palace at Windsor, its Parks and Forrest; the Seats of the Nobility and Gentry; Towns, Villages, Hamlets, Farms, Cottages, &c. with the Main and Cross Roads, Bridle Ways, Pales, Hedges, Hills, Valleys, Rivers, Brooks, Canals, Ponds, Bridges, Ferries, Wind and Water Mills, Woods, Heaths, Commons, and Greens, appertaining to each Parish, &c. To which is added, a geographical and historical index of all remarkable places in the said county; with their bearings and distance to the next market town, or well known place. The length, breadth, circumference, and content, in acres and square miles, of the county, the Windsor Forest, and of each Parish. [together with] A Map of the County of Berks reduced from an actual survey in 18 sheets, by the late John Rocque Topographer to His Majesty, 1762.*<sup>2</sup>

The section of the claimed route which runs along the county boundary is shown on the map (between Points B and C), and part of the section between Points A and B is also shown. Whilst the depiction of this area on the map is considerably different both to the present day and to the depiction on the Ordnance Survey Old Series of 1817 (being the next available map of this area), it is possible to be certain about the presence of the claimed route on this document. Firstly, because of the depiction of the county boundary, which is shown as a pecked line and is clearly visible running alongside the claimed route. Secondly, because of the nearby labels of 'Hatch House' and 'West Woodhay', in addition to the shapes of particular land parcels and the location of nearby woodland.

Whilst part of the claimed route is shown on this document, it does not provide evidence that a public right of way existed along it at this time. Nonetheless, the document demonstrates that the claimed route has physically existed since at least 1761 and it therefore provides some support to the application.

### 24. Ordnance Survey Old Series (c.1817) (A)<sup>3</sup>

The claimed route is clearly depicted on the map, identifiable by its location and the distinctive 'L' shaped alignment of the route. Whilst no legend was published with the Old Series, a legend has subsequently been compiled by Dr Richard Oliver (University of Exeter) and has been published on the Cassini website<sup>4</sup>. The legend shows that the Old Series depicted three types of roads: turnpikes or main roads, other roads, and unfenced roads. The claimed route is depicted as an 'other road', suggesting that it was an enclosed route of a lesser status than a turnpike or main road. Other routes nearby which are currently part of the public highways network, including Hatch House Lane (road U134) and North End Road (road U134), are also depicted in this way. However, part of the route leading to the present-day

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<sup>1</sup> Held by the Royal Collection Trust and available online: [Rocque, John : Strand - Rocques Map of Berkshire \(rct.uk\)](http://www.rct.uk/obj/1039231/rocque-john-strand-rocques-map-of-berkshire)  
A copy is also held by Berkshire Record Office.

<sup>2</sup> Taken from the British Antique Dealers' Association website: [John Rocque's large-scale map of Berkshire | BADA](http://www.bada.org.uk/John-Rocque-s-large-scale-map-of-Berkshire)

<sup>3</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate [OS Old Series Hampshire 1810s \(oldhampshireremapped.org.uk\)](http://www.oldhampshireremapped.org.uk)

<sup>4</sup> [Cassini Maps - Cassini Maps - Map Keys and Legends](http://www.cassini.org.uk/Cassini-Maps-Map-Keys-and-Legends)

Berries Farm (labelled 'Berrys F.' on the map) is also shown in this style, and the track is not currently a public highway.

Whilst Ordnance Survey maps are not proof of the status of the route, this document lends some support to the application insofar as it shows that the claimed route existed at this time and was considered to be of the same character and status as Hatch House Lane. The fact that the route is depicted as connecting with another apparent road may suggest that it was in use by the public at this time.

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

The depiction of the area largely matches that shown on the Ordnance Survey Old Series, although Greenwood's Map only covers Hampshire and the drawing therefore stops abruptly to the west of the claimed route, although the entire route has been depicted. On Greenwood's Map the county boundary is shown to the west of the claimed route, unlike the Old Series map, upon which it is depicted as running along the middle of the section of the route between Points B and C. Greenwood's map therefore shows the entire route as falling within Hampshire.

The route is clearly depicted as a route enclosed by solid lines, which the legend describes as a 'cross road'. As on the Old Series map, other nearby routes which are currently public highways are also depicted in this style, although part of the route to 'Berry Fm', which is currently not a public road, is also shown in this way.

This document provides limited support to the application: the map demonstrates that the claimed route existed at this time, and formed a connection between other routes which are now recorded as public highways, but it does not show whether the public had a right of access along it.

#### 26. Extract from William Cobbett's Rural Rides (1826) (A)<sup>6</sup>

The applicant provided a short extract from Rural Rides by William Cobbett, in which the author recounts a journey to Burghclere from Froxfield. The extract provides a description of the route and the surrounding landscape, referring to:

*cross-country roads, presenting us at every mile with ways of crossing each other; or forming a Y or kindly giving us a choice of three [routes] (...) We were in an enclosed country, the lanes very narrow, deep-worn and banks and hedges high.*

Whilst this description appears to match some of the physical characteristics of the claimed route, it is not possible to be sure that it was part of Cobbett's route. Moreover, even if it was known that Cobbett had ridden along the route, this would not be conclusive evidence that the route was a public right of way at this time.

#### 27. Map of West Woodhay belonging to the Rev. John Sloper (1831) (A)<sup>7</sup>

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<sup>5</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate [Greenwood's Hampshire 1826 \(oldhampshireremapped.org.uk\)](http://Greenwood's Hampshire 1826 (oldhampshireremapped.org.uk))

<sup>6</sup> Widely available. The extract reviewed for this investigation is available on Google Books: [Rural rides - Google Books](https://books.google.com/books?id=...)

<sup>7</sup> Available from Berkshire Record Office. Document ref [D/ELM/P4](#)

This document is held by Berkshire Record Office and a photograph was supplied by the applicant. The original document has not been reviewed during this investigation. The map was prepared for the Rev. John Sloper, who is listed in the East Woodhay tithe as being one of the local landowners at this time; he owned land immediately to the south of the claimed route between Points A and B.

This map is similar in style to a tithe map insofar as it is a basic line drawing showing land parcels and their names, and the nearby routes. The claimed route is depicted in full between Points B and C, but Points A-B are not shown, being out of the area depicted on this map. East of Point B is annotated 'To the Fields', and east of Point C (along Hatch House Lane) is labelled 'To East Woodhay'. This may suggest that the claimed route was used at this time primarily by landowners as a means of accessing their fields (perhaps particularly by Rev. Sloper, since he commissioned this map), whilst Hatch House Lane may have been the main route between East and West Woodhay. However, this map has not been created for the purposes of reflecting public rights of way and further inferences about the document cannot be drawn; for this reason, the document provides neutral evidence of the existence of the claimed route as a public right of way at this time.

## 28. Tithe Records (1837) (A)<sup>8</sup>

Tithe maps and apportionment awards were created following the Tithe Commutation Act (1836), which sought to update the historic arrangement of landowners making payments in kind to the church, instead requiring them to pay a monetary payment. The maps and awards were created to calculate the value of the land in order to ascertain how much money the landowner should contribute to the church.

The entire claimed route is shown within the area covered by the East Woodhay tithe and the route is clearly shown on the map, depicted as a route enclosed by solid lines and open-ended at Points A and C. This appears to suggest that the entire route was considered to be within East Woodhay parish at this time and therefore a part of Hampshire. No legend is included with the map, but a House of Commons document<sup>9</sup> produced by Lt Dawson in 1837 sets out a standardised symbology for tithe maps. The document shows that a 'bye or cross road' was depicted as a route enclosed by solid lines. Moreover, the route has not been allocated a parcel number and there is therefore no corresponding entry for this land parcel in the accompanying tithe apportionment.

The land parcels which abut the claimed route are described in the apportionment as follows:

Parcel no.	Name and Description	State of cultivation	Owner
367	Further Winnows	Arable	John Smith Butterfield
368	Coppice Ground	Arable	John Smith Butterfield
369	Little Ground and Rows	Wood	John Smith Butterfield
365	Old House Coppice	Wood	Rev. G Sloper

<sup>8</sup> Hampshire Record Office Reference numbers – [21M65/F7/72/2](#) and [21M65/F7/72/1](#)

<sup>9</sup> Available from the National Archives. Lt R K Dawson's Recommended Conventional Signs for use on Tithe Maps, House of Commons Sessional Papers 1837 (103) XLI 383.



366	Old House Ground	Arable	Rev. G Sloper
372	Old House Mead	Pasture	Rev. G Sloper

A summary is provided at the end of the apportionment, giving a total area for 'public roads' in the parish; as the route is not numbered and is depicted as an apparent road, it is possible that it has been included in this summary for public roads.

This document provides possible evidence that the claimed route was considered to be a public road at the time the East Woodhay tithe was agreed, and that all of the route may have been within Hampshire at this time.

#### 29. Ordnance Survey Maps - County Series (25 inches to 1 mile) – 1872 – 1911

Three maps were published by the Ordnance Survey at a scale of 25 inches to 1 mile between 1872 and 1911.

On the first edition (1872), the claimed route is depicted in the style of a road: it is enclosed by solid lines which are marked by trees and a pecked line denoting the county boundary is marked centrally along the width of the route between Points B and C. To the north of Point C, the letters 'C.R' are shown, indicating that the boundary was located along the centre of the road<sup>10</sup>. The claimed route is depicted as being open-ended at Points A and C and there is a pecked line shown across Hatch House Lane by Point A; this may indicate a change in parcel for the purposes of measuring the areas. Hatch House Lane has two parcel numbers: 72 near Point A and 45 between Points A and C; the claimed route is parcel number 39. All of these parcel numbers are contained in the accompanying book of reference and are listed as 'road'.

On the second edition (1900), the claimed route is depicted in the same style as the first edition, although the trees enclosing the route are no longer shown and there are pecked lines across the width of the route at Points A and C (the junctions to Hatch House Lane) and at Point B, which indicate that they were now to be considered distinct parcels. The third edition (1911) matches the depiction of the second edition; the only noticeable difference is that the pecked line across the width of the route at Point B is not included (although the lines at Points A and C are still shown on this edition).

The Ordnance Survey surveyors marked what they observed on the ground; therefore, although a route may be shown as a 'road', this means that although it had the appearance of a road, it does not necessarily mean that there was a public right of way along the route (for example, the individuals using the route may have been doing so in exercise of a private right). As such, the maps carry a disclaimer that the depiction of a route does not reflect public rights of access. However, as the route shown on these maps corresponds with the route shown on the East Woodhay tithe and earlier commercial maps of the area, the documents collectively provide some support for the proposition that there were public rights along the route at that time.

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<sup>10</sup> [View map: Conventional Signs and Writing Used on the 1/2500 Plans of the Ordnance Survey. ... - Ordnance Survey Characteristic Sheets \(nls.uk\)](#)

The apparent width of the claimed route (determined by the distance between the solid boundary lines on the first edition) is between 5.4 and 15 metres; this is consistent with the present-day width of the route.

### 30. Finance Act Map (1909-1910) (A)<sup>11</sup>

Two maps produced following the Finance Act (1910) show the claimed route. The first map was submitted by the applicant and a copy has been provided by West Berkshire Council; the original document, which is held in Berkshire Record Office, has not been reviewed during this investigation. This map shows the claimed route as uncoloured and none of the land parcels to the east of the county boundary have been annotated; this indicates that this plan was created to show only land holdings in Berkshire.

The second map was previously reviewed in the National Archives and shows the claimed route within a large parcel numbered '389' and outlined in pale grey. Between Points A and C, Hatch House Lane has also been included within this parcel, although the eastern part of the lane has been omitted from this and other land parcels. Where rights of way exist within land parcels, the accompanying field book would usually list a valuation deduction. Unfortunately, due to bomb damage during the Second World War, a vast number of field books for Hampshire are missing and it has not been possible to identify the book which accompanies this map (or to know whether it still exists).

In summary, these documents provide neutral evidence that the claimed route was a public right of way at this time. Further inferences cannot be drawn without reviewing the field book which would have accompanied the second map, although this would only show whether a deduction for a right of way had been made – it would not name or describe the routes.

### 31. Plan of the West Woodhay Estate (1920)<sup>12</sup>

This document was supplied by one of the landowners during the consultation. The map, which uses an Ordnance Survey basemap and therefore depicts the claimed route, shows the West Woodhay Estate outlined in maroon and shaded in pale red. The claimed route is not included within the shaded area, indicating that it was not a part of the estate at this time. This document provides neutral evidence relating to the status of the claimed route.

### 32. Kingsclere Rural District Council Highway Handover Map (1929) (A)<sup>13</sup>

Highway handover maps were prepared when responsibility for highways transferred from rural district councils to county councils under the Local Government Act (1929). The maps, which use one of the Ordnance Survey County Series maps as the base map, indicated which highways were maintainable by the County Council, and also indicated public routes which were not considered to be the responsibility of the highway authority.

The claimed route has not been annotated on this map, meaning that it was not considered to be a highway maintainable at public expense at the time the map

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<sup>11</sup> Held by Berkshire Record Office

<sup>12</sup> Supplied by West Woodhay Farms LLP.

<sup>13</sup> Hampshire Record Office Reference number – H/SY3/6/11

was produced. Hatch House Lane has been annotated with a solid blue line, which the map legend describes as a metalled public highway, repairable by the District Council. Other routes in the area which are currently public rights of way (such as East Woodhay Footpaths 15 and 17) have been depicted with pecked lines, suggesting that they were considered to be public footpaths, repairable by the District Council.

### 33. North West Hampshire Joint Planning Committee Maps (c.1935) (A)<sup>14</sup>

This map uses the same Ordnance Survey basemap as the Highways Handover Map and the claimed route is therefore clearly depicted, although it has not been annotated. No routes of a lesser status than that of a vehicular highway have been included on the map. As with the Highways Handover Map, this document indicates that the route was not considered to be a publicly maintainable highway at this time.

### 34. Highways Maintenance Map, Kingsclere and Whitchurch Division (1946) (A)<sup>15</sup>

Highway maintenance maps were produced following the responsibility for highways being transferred to county councils; the maps show the highways maintained by Hampshire County Council at the time.

As on the Highways Handover Map and the Planning Map, the claimed route is clearly shown on the Ordnance Survey basemap but it has not been annotated. Hatch House Lane is depicted with a solid orange line, which a later map legend (refer to the memorandum on page 12 of Appendix 2) describes as a 'U class road'. Nearby public rights of way have not been annotated.

This document shows that the claimed route was not considered to be a publicly maintainable highway at this time.

### 35. Documents relating to the National Parks and Access to the Countryside Act (1949)

The National Parks and Access to the Countryside Act (1949) required surveying authorities to record Rights of Way on maps, which were to be periodically updated (later legislation required the maps to be kept under continuous review). This legislation resulted in a number of key documents that can assist with tracing the history of Rights of Way.

#### Parish Map (c.1950)

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 (circa 1950) uses an Ordnance Survey map as the base map; the line of the claimed route is therefore shown as a pecked line marked 'FP'.

There are four parish maps for East Woodhay. The claimed route is clearly depicted on the basemap, but it has not been annotated on any versions of the

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<sup>14</sup> Hampshire Record Office Reference number – H/PL6/1/5

<sup>15</sup> Hampshire Record Office Reference number – H/SY3/3/24/6

map. Photographs of all maps are included in Appendix 2. On one version, there is a line towards Point B and the number 16 has been written and circled, although it is not clear what this refers to, and the route itself has not been annotated.

The parish map for West Woodhay has been supplied by West Berkshire Council. This map uses an Ordnance Survey map as the basemap and the claimed route has not been annotated.

These documents demonstrate that the claimed route was not considered to be a right of way by either parish at the time the Draft Definitive Map was being prepared.

#### Objections Book (A)<sup>16</sup>

The book of objections contains a record of all objections received when the draft definitive map was open to public scrutiny. It also contains records of objections and amendments made when the Definitive Map was open to periodic review. There is no mention in the objections book of the omission of the claimed route from the Definitive Map, although this only applies to the part of the route which is located in Hampshire. The corresponding book of objections for Berkshire has not been reviewed.

#### First Definitive Map for Hampshire (1957)(A)<sup>17</sup>

The claimed route is not shown on the first Definitive Map for Hampshire; this is consistent with the part of the route in Hampshire not having been recognised as a public right of way at this time.

#### Other sources viewed

##### 36. Parish File

The County Council maintains a file relating to countryside matters (including countryside management and rights of way) for each of the parishes in the county. These files date back to around the 1940s-50s and contain, amongst other things, correspondence, maps, and work orders. There is one letter within the East Woodhay Parish File which is of interest: in October 1961 Hampshire County Council wrote to Lord Portchester asking if he could help secure a response from East Woodhay Parish Council and Burghclere Parish Council regarding a rights of way matter. The letter states that the chairman of East Woodhay Parish Council “was not particularly co-operative” when the matter (relating to the classification of public rights of way) was first raised in 1957. This may indicate that public rights of way were not prioritised by the chairman of the parish council at this time. The route’s omission from the parish survey should be considered in this context.

## **Analysis of Documentary Evidence**

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<sup>16</sup> Held by Hampshire Countryside Service.

<sup>17</sup> Hampshire Record Office Reference number – H/CL1/2/11A Not to be reproduced without permission

37. The documentary evidence indicates that the claimed route has existed since at least 1761 when it was first shown on Rocque's Map of Berkshire. The route is also shown on other maps from this era, including the Ordnance Survey Old Series (c.1817) and Greenwood's Map of Hampshire (1826). On all of these early maps, the claimed route is depicted as a road, in a manner that is consistent with other routes that are now recorded as public highways. The legends on the Old Series Map and Greenwood's Map indicate that the route has been depicted as an 'other road' or 'cross road'. Whilst these early maps are not proof of any public rights which may have subsisted along the route, they show that the route physically existed and had the appearance of a road; Hatch House Lane (which is a public vehicular highway) is depicted in the same style as the claimed route on all three maps.
38. No inferences about the status of the claimed route can be drawn from the extract of Cobbett's *Rural Rides*, provided by the applicant. The text, published in 1826, describes land in the locality of the claimed route and it may or may not include a reference to the route itself. The applicant also provided an extract of a map held by Berkshire Record Office, a map of West Woodhay which belonged to Rev. John Sloper. Rev. Sloper is identified in the tithe records as a landowner of fields to the south of the claimed route. Whilst the map appears to show the claimed route as an apparent road, and as being of the same status as Hatch House Lane, the map was not produced for the purposes of reflecting public rights of way in the area and it is therefore not conclusive as to the status of the route.
39. The tithe map and apportionment of East Woodhay provide possible evidence that the claimed route was previously a public road. On the tithe map, the route is clearly depicted in the same style as Hatch House Lane and other nearby highways: it is a white route enclosed by solid lines. Whilst no legend is produced for this map, the Dawson convention (see above) describes this notation as a 'cross road'. The claimed route (and also Hatch House Lane and other public roads) is unnumbered, meaning that it does not correspond to an entry in the tithe apportionment and was therefore not considered tithable land; a summary at the end of the apportionment provides an area value for 'Public Roads' and the claimed route, since it is unnumbered and has been drawn as a road, is probably included in this.
40. The Ordnance Survey County Series maps (25 inches to one mile) also provide good evidence that the claimed route was considered a public road. The depiction of the route and the area is consistent with all earlier documents, being shown in the same style as Hatch House Lane and other nearby public roads. The book of reference for the first edition described the land parcels for the claimed route and Hatch House Lane as 'road'. Whilst Ordnance Survey maps are not legal proof of the status of a route, the depiction of the claimed route on these documents corroborates the evidence of the tithe map and apportionment, and earlier maps, all of which supports the proposition that the claimed route was a public road.
41. The applicant provided an extract from a Finance Act Map (1910) for the area to the west of the county boundary and the adjoining map to cover the Hampshire side of the border (held by the National Archives) has been

reviewed. Collectively, these documents provide neutral evidence for the existence of the claimed route as a public right of way as it has not been possible to review the field book which accompanies the plans.

42. Later documents, including the highways handover and maintenance maps, the planning committee map, and documents associated with the National Parks and Access to the Countryside Act (1949) demonstrate that the route was not being maintained at public expense by 1929 and that there was no view amongst the Rural District Council, the County Council or the Parish Council and Parish Meeting that the claimed route was a public right of way. This may suggest that the route had fallen out of regular use by this time.
43. In summary, whilst later documents show that the claimed route was not considered to be a public right of way, the route appears to have been depicted as a public road in the East Woodhay tithe map and apportionment; this corroborates other maps, including early commercial maps and those produced by the Ordnance Survey, which show the claimed route as being of the same character and status as Hatch House Lane.

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

44. As the claimed route is consistently shown throughout the documentary evidence as being of the same character as Hatch House Lane, there remains to be considered whether motorised vehicular rights have been extinguished by the Natural Environment and Rural Communities Act (NERC). Such rights will have been extinguished unless one of eight exceptions contained within Sections 67(2) and 67(3) of the Act applies. These exceptions are set out and examined in turn below.

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

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

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

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

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

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

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

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

Again, there is no evidence to indicate the basis for the route's creation was to provide a way for mechanically propelled vehicles. The route is shown on numerous documents dating back to the mid-18th century.

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

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

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

### **Conclusions under Natural Environment and Rural Communities Act (2006)**

45. As the criteria set out above have not been satisfied, any motorised vehicle rights that may have previously existed along this path will have been extinguished by the powers of the NERC Act.

### **Conclusions**

46. As set out earlier in the report, for a change to the Definitive Map to be made, it must be on the basis of evidence which shows that the existence of a public right of way is 'reasonably alleged'. Documentary evidence clearly demonstrates that the claimed route has existed since at least 1761. The tithe documents provide possible evidence that the route appears to have been considered a public right of way in 1837 when the documents were produced, and also that the entire route appears to have been in East Woodhay parish at this time. The route is also clearly shown on three editions of the Ordnance Survey County Series maps, and described as a road in the book of reference which accompanies the first edition. Later maps, including the highways handover and maintenance maps, indicate that the route was not considered to be a publicly maintainable highway by 1929, and the documents relating to the National Parks and Access to the Countryside Act show that there was no attempt to claim the route as a public right of way when the first Definitive Map was produced during the 1950s.

47. No Orders relating to an historic diversion, extinguishment or stopping up of this route have been discovered and it therefore appears that there is a reasonable allegation that a public right of way subsists along the alignment of the claimed route.

48. The documentary evidence demonstrates that the claimed route has historically been of the same character and status as Hatch House Lane, (which is a public road) and both Hatch House Lane and the claimed route

appear to have been set out as public roads on the East Woodhay tithe map. The NERC Act (2006) will have extinguished any motorised vehicular rights that may have existed along the claimed route, as the criteria have not been satisfied. The status of the route should therefore be a restricted byway.

49. The width of the route should be a variable width of between 5.4 and 15 metres; this is the apparent width depicted on the first edition of the Ordnance Survey County Series map, which is consistent with the present-day width. There is no indication within the documentary evidence that the route should be subject to any limitations (for example, gates).
  
50. The documentary evidence provides inconsistent evidence relating to the position of the county boundary. However, the entire route is shown on the East Woodhay tithe map and on Greenwood's map, suggesting that it was considered to be part of East Woodhay parish and therefore a part of Hampshire at this time. Whilst modern day maps indicate that the county boundary is currently located along the centre of the route between Points B and C, the recommendation is that, on the balance of probabilities, there is sufficient evidence from which to infer that the entire route should be added to the Definitive Map for Hampshire, rather than a separate Order being made for Hampshire and for West Berkshire.



**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

Location

Claim Reference: Case File (DMMO 1050)

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.

### 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.

### **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.

### **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.

Application for a Definitive Map Modification Order to record a bridleway in  
East Woodhay

Parish of East Woodhay

**APPENDIX 2 – Documentary Evidence**

Rocque's Map of Berkshire (1761) (A)<sup>1</sup>



<sup>1</sup> Held by the Royal Collection Trust and available online: [Rocque, John : Strand - Rocques Map of Berkshire \(rct.uk\)](http://www.rct.uk)

A copy is also held by Berkshire Record Office.

Ordnance Survey Old Series (c.1817) (A)<sup>2</sup>



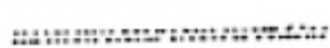
Turnpike or main roads



Other roads



Unfenced roads

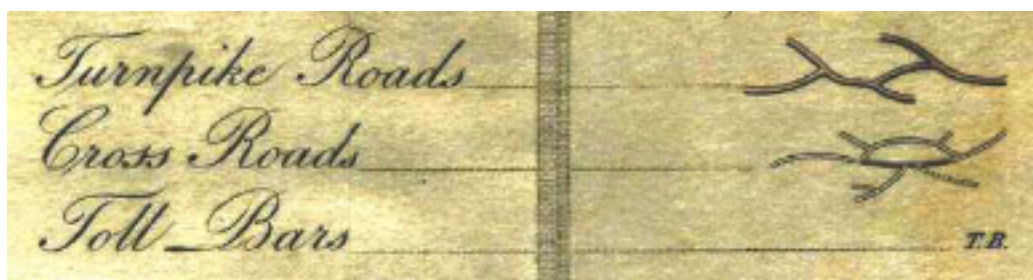


Extract from the legend to the Old Series compiled by Dr Richard Oliver (University of Exeter) and published on the Cassini website<sup>3</sup>. © Cassini Publishing Ltd & Richard Oliver.

<sup>2</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate [OS Old Series Hampshire 1810s \(oldhampshireremapped.org.uk\)](http://oldhampshireremapped.org.uk)

<sup>3</sup> <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

Greenwood's Map of Hampshire (1826) (A)<sup>4</sup>



<sup>4</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate [Greenwood's Hampshire 1826 \(oldhampshiremapped.org.uk\)](http://oldhampshiremapped.org.uk)

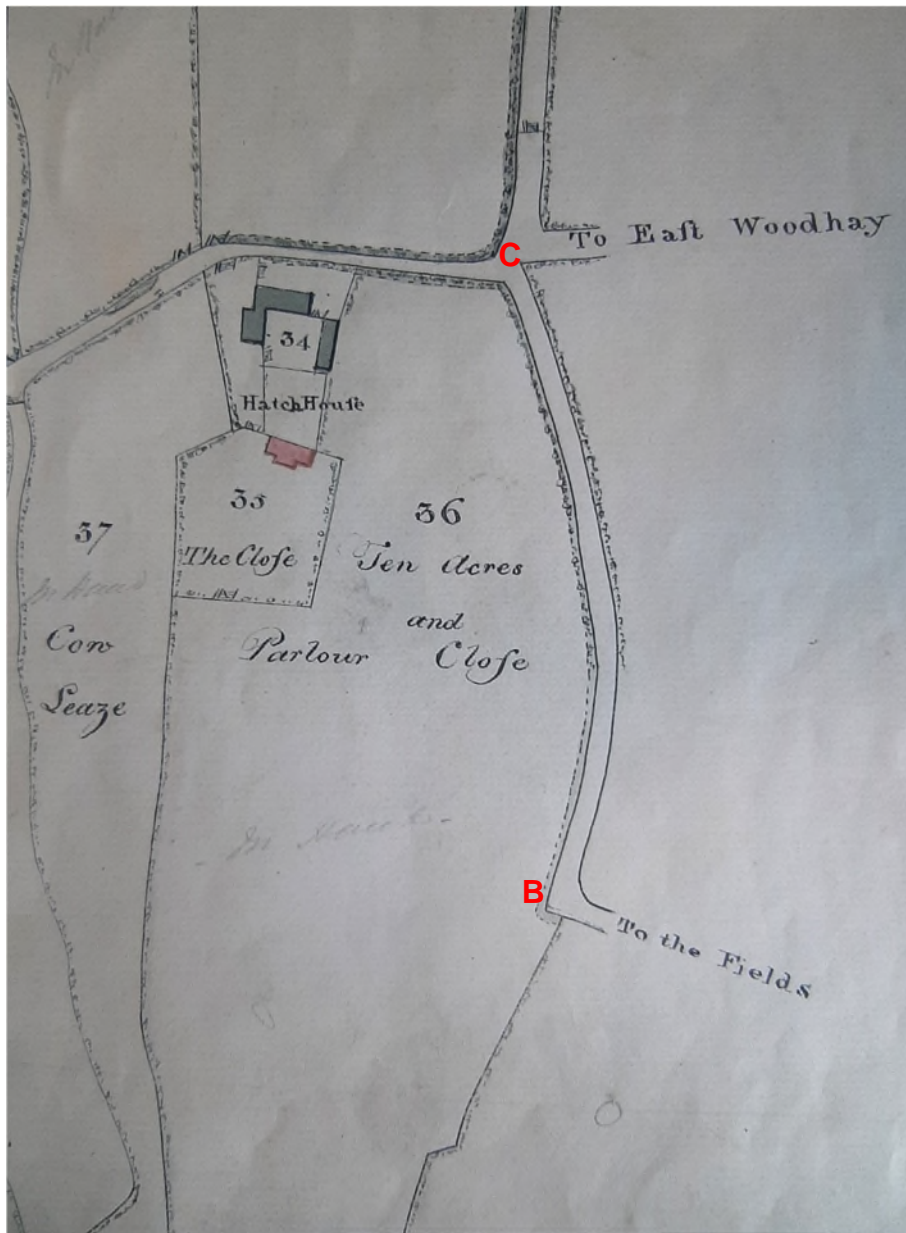


ed, but those also which we carried in little thin leather rolls, fastened on upon the saddles before us. Notwithstanding all that could be done in the way of dispatch, it took more than *three hours* to get our clothes dry. At last, about three quarters of an hour before sun-set, we got on our clothes again and set off: for, as an instance of real bad luck, it ceased to rain the moment we got to Mr. BLANDY'S. Including the numerous angles and windings, we had nine or ten miles yet to go; but, I was so anxious to get to BURGHCLERE, that, contrary to my practice as well as my principle, I determined to encounter the darkness for once, though in cross-country roads, presenting us at every mile, with ways crossing each other; or forming a Y; or kindly giving us *the choice of three*, forming the upper part of a Y and a half. Add to this, that we were in an enclosed country, the lanes very narrow, deep-worn, and banks and hedges high. There was no moon; but, it was star-light, and, as I could see the Hampshire Hills all along to my right, and knew that I must not get above a mile or so from them, I had a guide that could not deceive me; for, as to *asking* the road, in a case like this, it is of little use, unless you meet some one at every half mile; for the answer is, *keep right on*; aye, but in ten minutes, perhaps, you come to a Y, or to a T, or to a +. A fellow told me once, in my way from Chertsey to Guilford, "keep

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<sup>5</sup> Widely available. The extract reviewed for this investigation is available on Google Books: [Rural rides - Google Books](#)

Map of West Woodhay belonging to the Rev. John Sloper (1831) (A)<sup>6</sup>



<sup>6</sup> Available from Berkshire Record Office. Document ref [D/ELM/P4](#) Photograph provided by the applicant.

East Woodhay Tithe Records (1837) (A)<sup>7</sup>



*Summary*  
(continued)

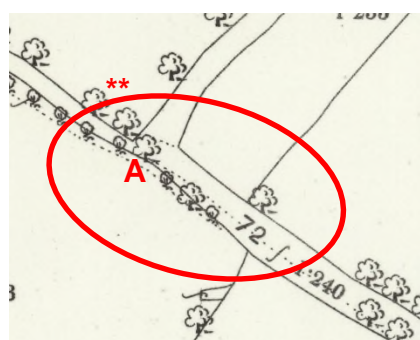
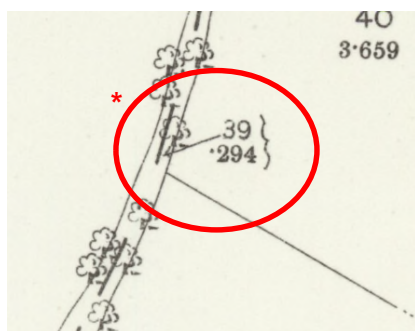
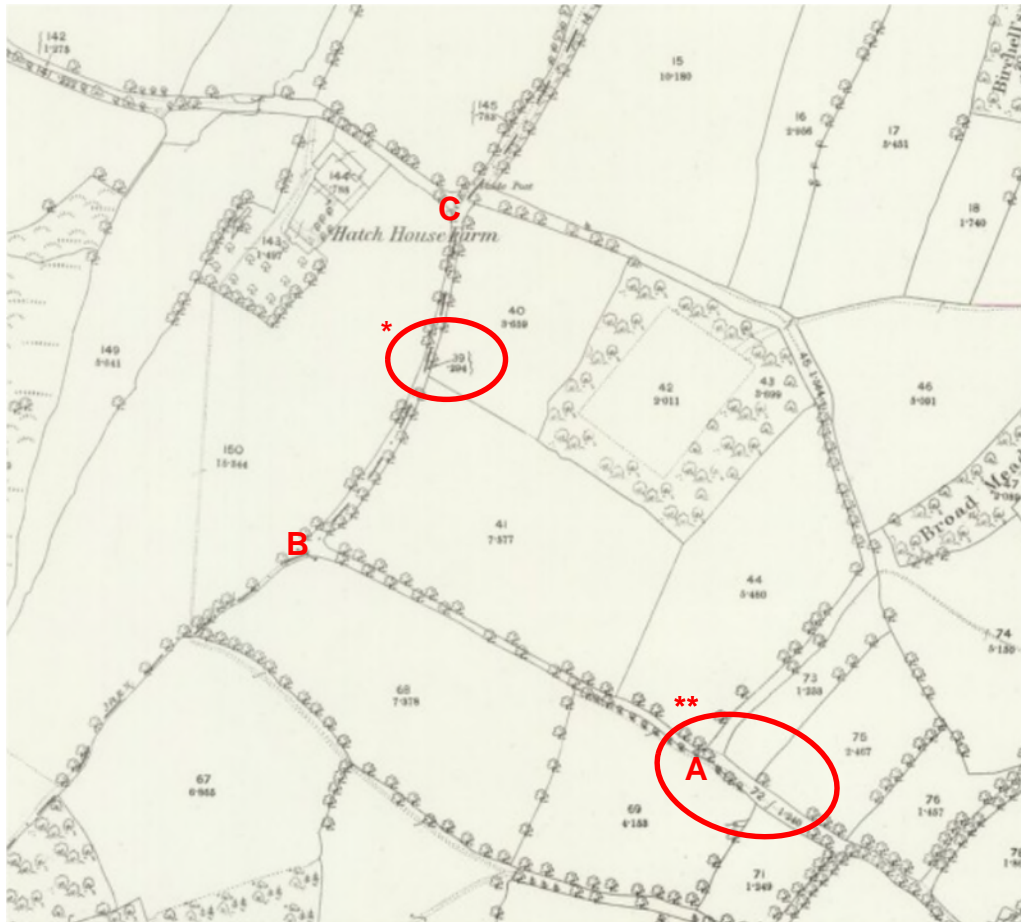
<i>Landowners</i>	<i>Total Preferents</i>	<i>Rent charge</i>
<i>Brought forward</i>	<i>A. R. P</i>	<i>L. S. D</i>
<i>Wright John</i>	48 21 . 2 . 26	1008 . 9 . 10
<i>The Reverend Thomas Douglas Hodgson Rector (Glebe)</i>	. . . 5	. . . 2
	43 . 5 . 19	13 . 4 . .
	48 65 . 2 . 10	1023 . 14 . .
<i>Public Roads</i>	100 . 2 . 19	
	49 66 . . . 29	

<sup>7</sup> Hampshire Record Office Reference numbers – [21M65/F7/72/2](#) and [21M65/F7/72/1](#)  
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Ordnance Survey Maps - County Series (25 inches to 1 mile) – 1872 – 1911

*Available from the National Library for Scotland. Copies also held by Hampshire Record Office. These photographs are taken from the Hampshire County Council Geographical Information System (GIS)*

Ordnance Survey Maps - County Series (25 inches to 1 mile) – First Edition, 1872



Document held by Hampshire Countryside Service

# PARISH OF EAST WOODHAY,

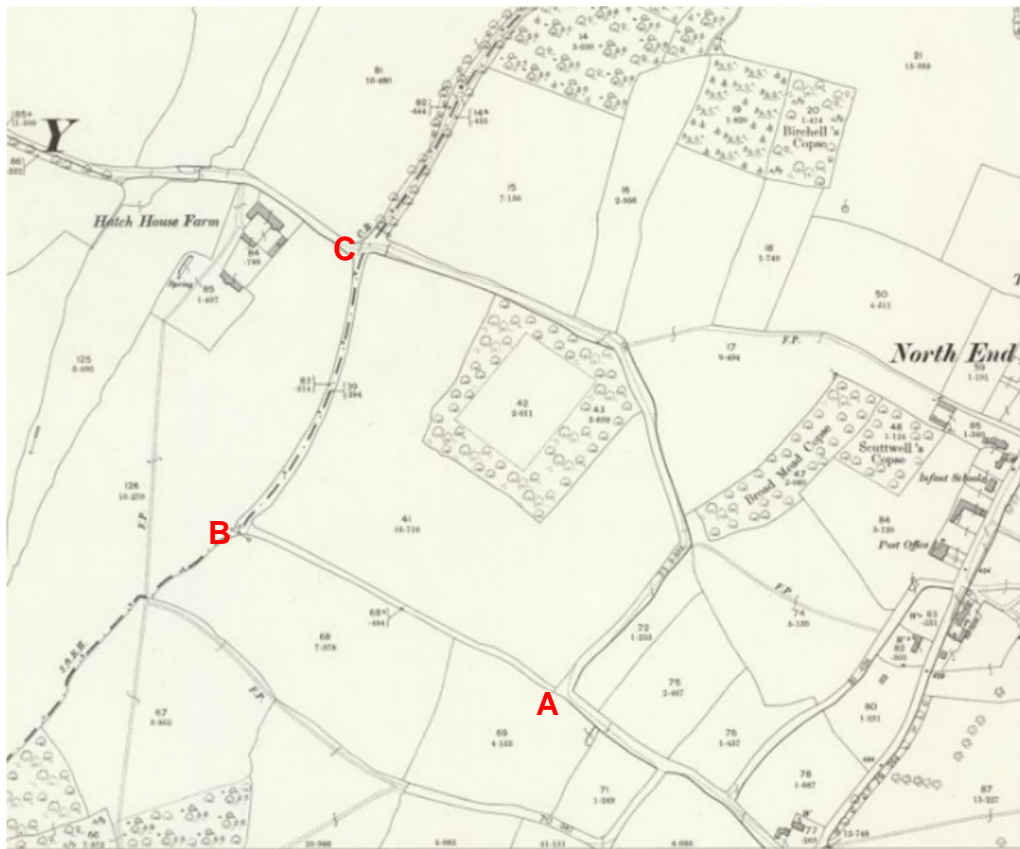
IN THE

## COUNTY OF HANTS—(NORTHERN DIVISION).

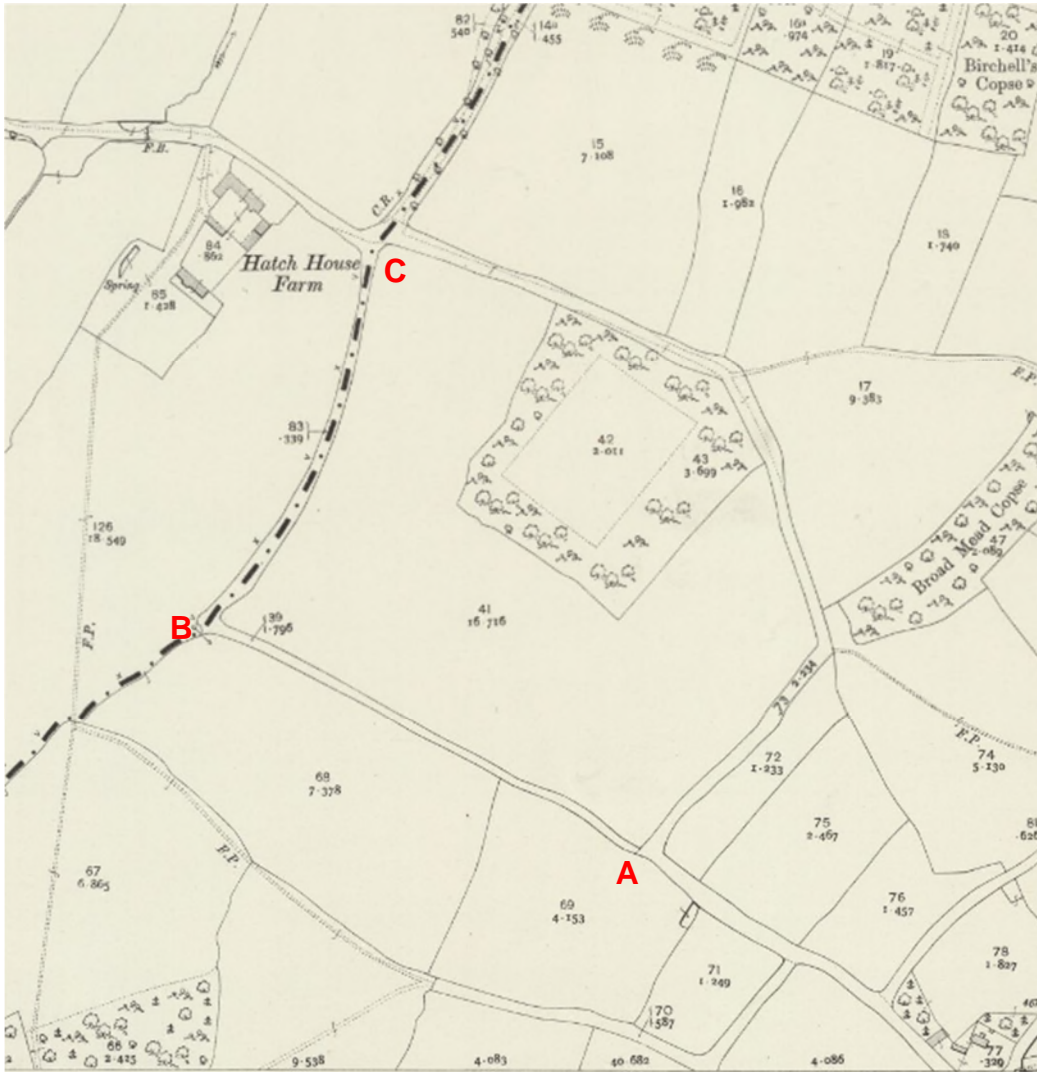
### HUNDRED OF EVINGAR.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	.419	Wood, &c.	38	10.825	Arable.
2	.457	Wood, &c.	39	.294	Road.
3	6.723	Pasture.	40	3.659	Arable.
4	3.105	Wood.	41	7.570	Arable.
5	2.887	Wood.	42	2.011	Arable.
6	5.844	Houses, yards, gar- dens, &c.	43	3.699	Wood.
7	33.558	Ornamental ground.	44	5.480	Arable.
8	.300	Houses, garden, &c.	45	1.564	Road.
9	8.484	Pasture, &c.	46	5.091	Pasture.
10	1.445	Road.	47	2.089	Wood.
11	.277	Furze, &c.	48	1.124	Wood.
12	19.460	Wood.	49	.566	Arable.
13	6.197	Wood.	50	4.511	Arable.
14	.455	Road.	51	2.090	Pasture.
15	10.170	Arable.	52	1.252	Pasture.
16	2.956	Pasture.	53	.246	Houses, &c.
17	5.445	Arable.	54	.425	Houses and gardens.
18	1.740	Pasture.	55	.175	Houses and garden.
19	.277	Pasture.	56	.812	Pasture.
20	1.414	Wood.	57	.105	House and garden.
21	.626	Pasture.	58	3.981	Houses, yards, gar- dens, &c.
22	2.719	Arable, &c.	59	1.191	Pasture.
23	.590	Pasture.	60	5.141	Road.
24	3.832	Pasture, &c.	61	14.571	Ornamental ground.
25	3.147	Pasture.	62	6.769	Arable.
26	.898	Pond.	63	1.106	Wood, &c.
27	2.496	Wood and rough pas- ture.	64	12.116	Ornamental ground, &c.
28	2.318	Wood.	65	.848	Stream.
29	.503	Pasture and wood.	66	7.572	Wood.
30	1.355	Pasture.	67	6.865	Arable.
31	5.042	Arable.	68	7.378	Arable.
32	1.517	Pasture.	69	4.153	Pasture, &c.
33	2.662	Pasture.	70	.597	Road.
34	1.333	Pasture, &c.	71	1.240	Pasture.
35	3.289	Arable.	72	1.240	Road.
36	16.052	Pasture.	73	1.233	Pasture.
37	6.474	Wood.	74	5.130	Pasture.

Ordnance Survey Maps - County Series (25 inches to 1 mile) – Second Edition, 1900



Ordnance Survey Maps - County Series (25 inches to 1 mile) – Third Edition, 1911



Finance Act Map (1910) (A)<sup>8</sup>



<sup>8</sup> Image one - Held by Berkshire Record Office. This photograph was supplied by the Rights of Way team at West Berkshire Council.  
Image two – Held by the National Archives. Document reference – IR 125/4/4

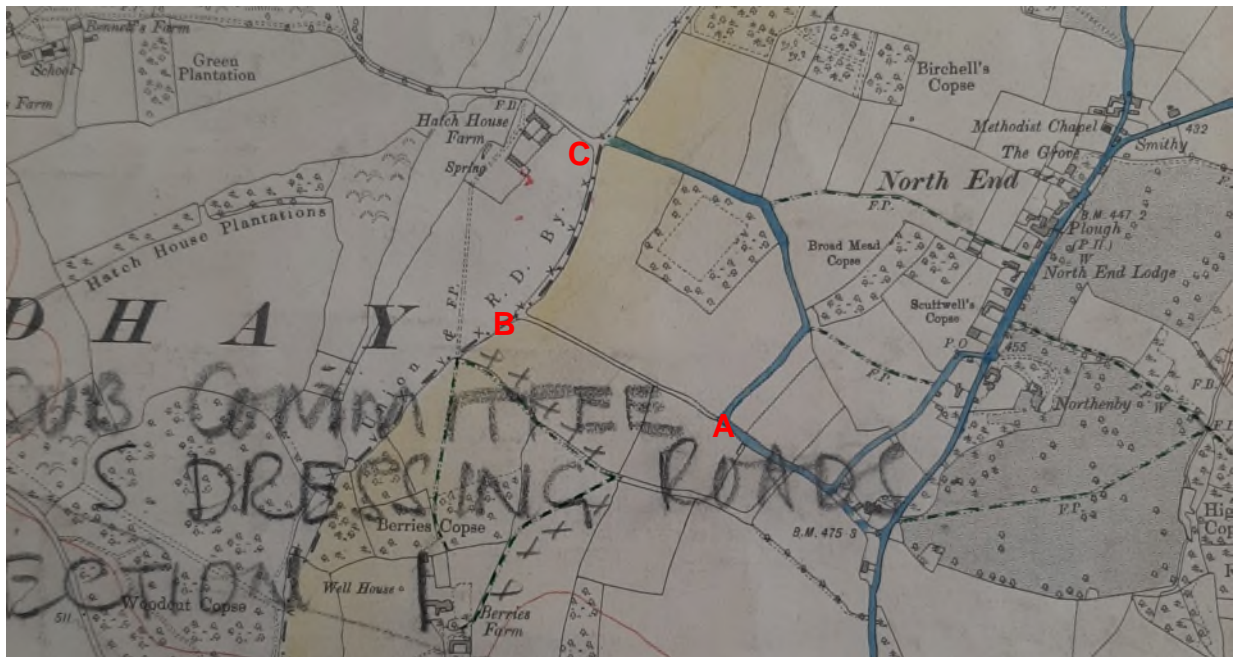


Plan of the West Woodhay Estate (1920)<sup>9</sup>



<sup>9</sup> Supplied by West Woodhay Farms LLP.

Kingsclere Rural District Council Highway Handover Map (1929) (A)<sup>10</sup>



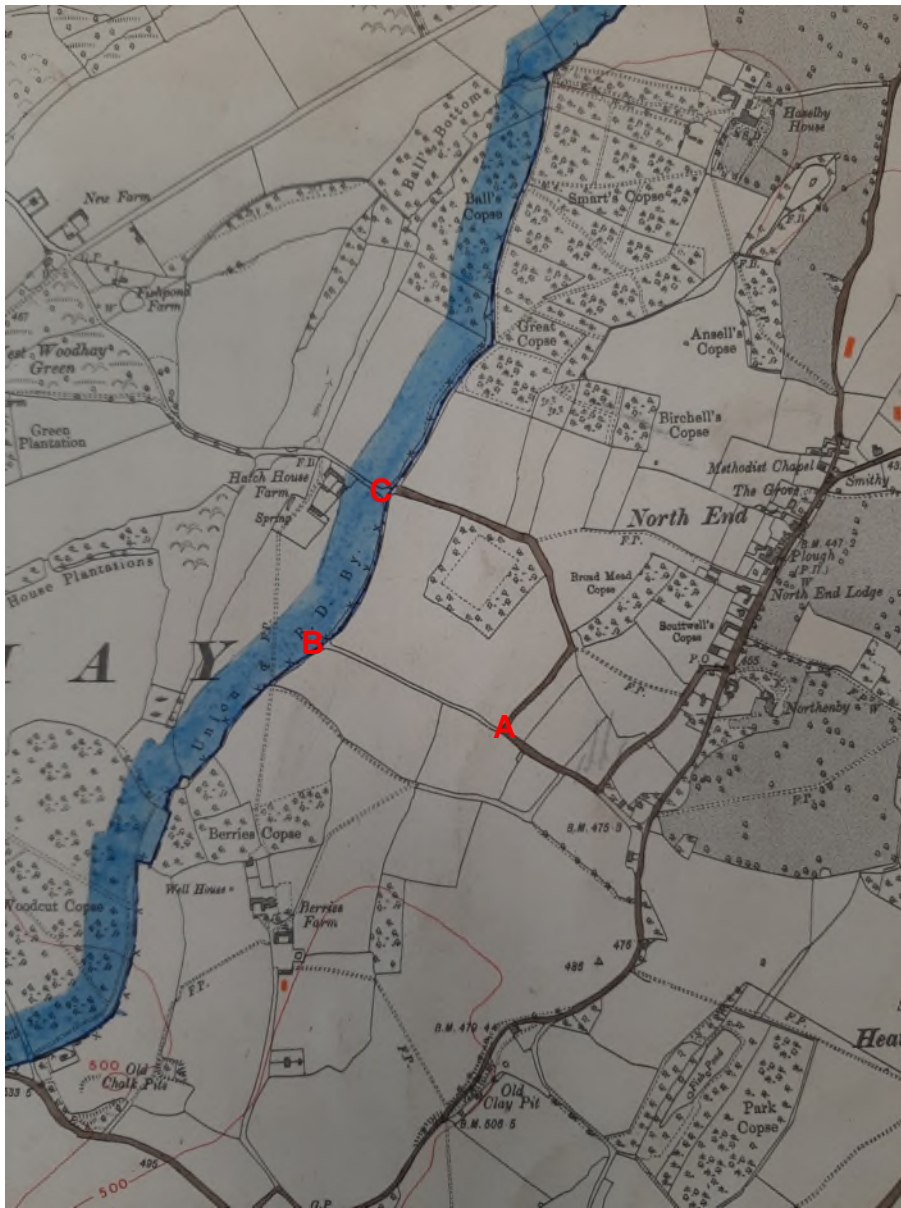
**LOCAL GOVERNMENT ACT, 1929.**

**REFERENCE.**

Boundary of District. ....	Yellow Band
<b>Public Highways (Carriageways) :—</b>	
<u>Repairable by District Councils :—</u>	
Metalled ....	<b>Firm Blue Lines</b>
Unmetalled (including those to which no repairs executed) .....	<b>Dotted Blue Lines</b>
<u>Repairable ratioue tenurae :—</u>	
Metalled ....	<b>Lines of Red Crosses</b>
Unmetalled ....	<b>Lines of Blue Crosses</b>
<b>Bridges on Public Highways (Carriageways) :—</b>	
Repairable by District Councils ...	<b>Red Circles 1/2-in. in diameter with name of bridge</b>
Repairable ratioue tenurae ...	<b>Blue Circles 1/2-in. in diameter with name of bridge</b>
<b>Public Footpaths (other than those at side of Carriageways) :—</b>	
<u>Repairable by District Council :—</u>	
(a) repaired by the District Council ...	<b>Dotted Red Lines</b>
(b) repaired by the Parish Council ...	<b>Dotted Green Lines</b>
(c) not repaired ...	<b>Dotted Black Lines</b>
Repairable ratioue tenurae ...	<b>Double Black Lines</b>

<sup>10</sup> Hampshire Record Office Reference number – H/SY3/6/11

North West Hampshire Joint Planning Committee Maps (c.1935) (A)<sup>11</sup>



<sup>11</sup> Hampshire Record Office Reference number – H/PL6/1/5

Highways Maintenance Map, Kingsclere and Whitchurch Division (1946) (A)<sup>12</sup>



<sup>12</sup> Hampshire Record Office Reference number – H/SY3/3/24/6

County Council Memorandum regarding the Highways Maintenance Map legend (1992) (A)<sup>13</sup>

**HAMPSHIRE**






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<p>Memorandum from:</p> <p style="text-align: center;">COUNTY SURVEYOR</p> <p>Please quote: RHS/GENERAL</p> <p>Your Ref:</p> <p>Ext: 6917</p>	<p>To:</p> <p style="text-align: center;">COUNTY COUNTRYSIDE AND COMMUNITY OFFICER RIGHTS OF WAY SECTION</p> <p>Date: 29 May 1992</p>
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**1946 MAP/COLOURING**

Following your request for information regarding the colouring of various highways on the 1946 series of maps. There is no legal interpretation on the colouring but it is considered by the Surveyors Department to be representative of the status of the roads.

A class roads		
B class roads		
C class roads		
U class roads		
U 'unmetalled' roads		
Private Streets		

COUNTRYSIDE AND  
COMMUNITY DEPARTMENT

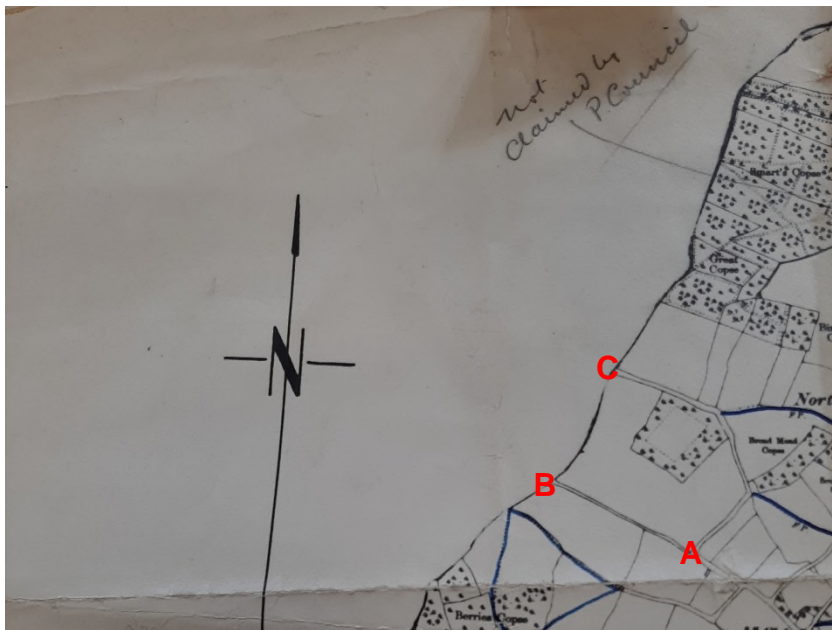
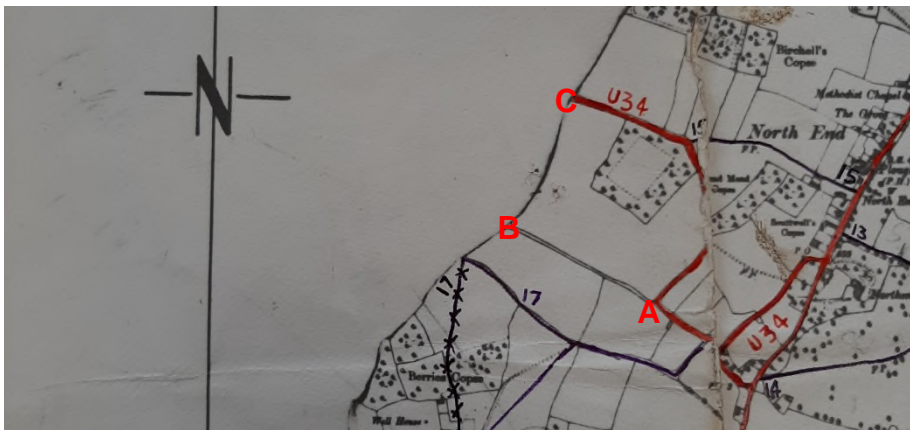
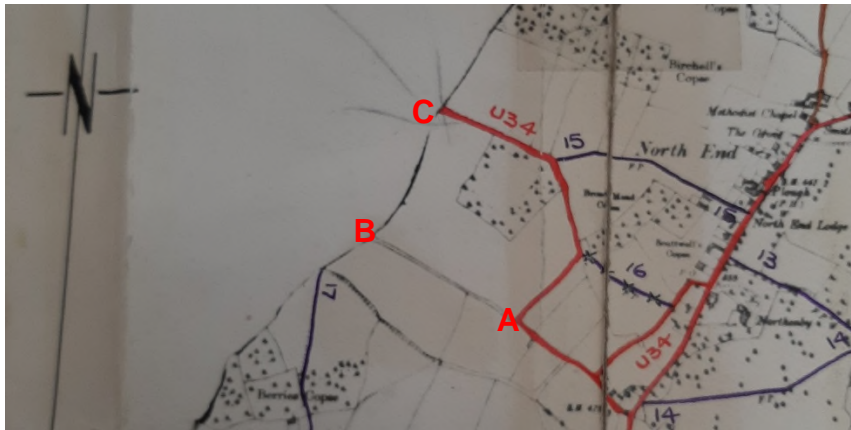
-2 JUN 1992

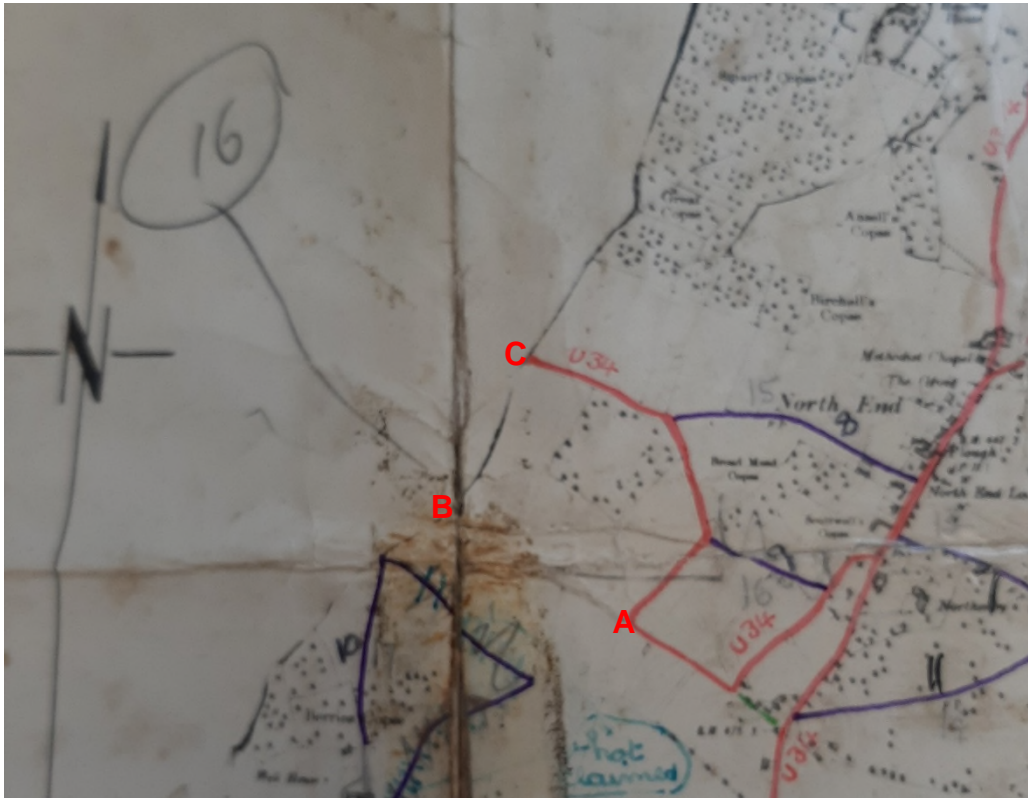
Passed to	
Copies to	
Ack to reply	

<sup>13</sup> Held by Hampshire Countryside Service

Parish Map (c.1950)

There are four parish maps for East Woodhay held by Hampshire County Council:

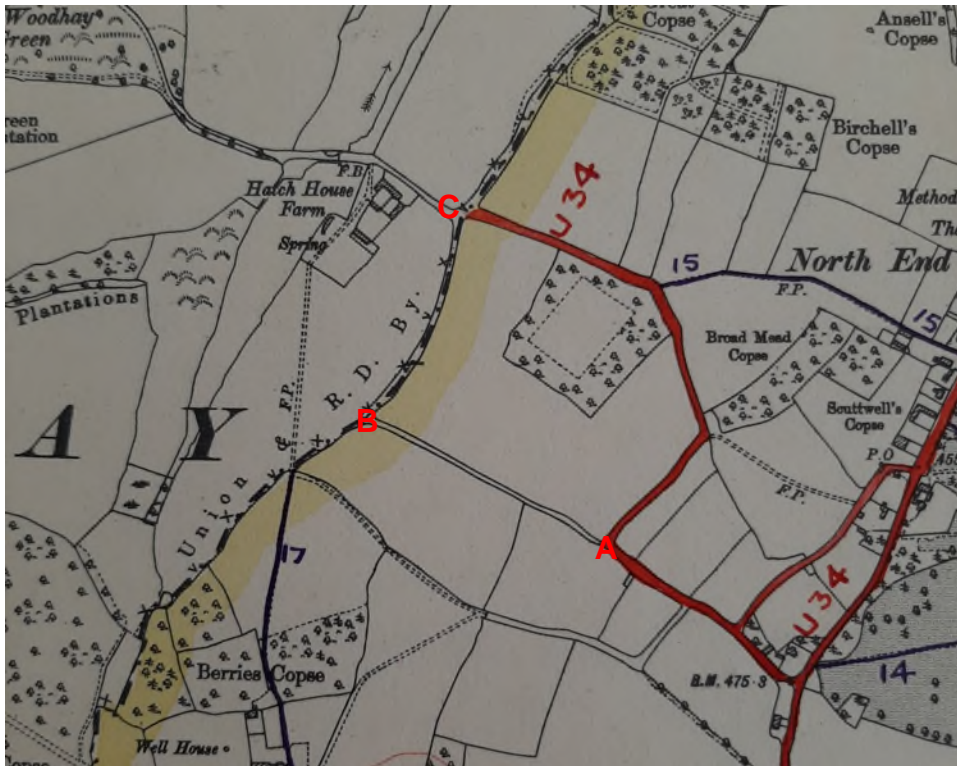




The Parish Map for West Woodhay was supplied by West Berkshire Council:



First Definitive Map (1957) (A)<sup>14</sup>



<sup>14</sup> Hampshire Record Office Reference number – H/CL1/2/11A Not to be reproduced without permission