

HAMPSHIRE COUNTY COUNCIL

Officer Decision Record

Decision Maker	Jonathan Woods – Countryside Access Group Manager
Title	DMMO 1156 and DMMO 1236 - Applications for Definitive Map Modification Orders to record bridleways in the parishes of Longparish, Wherwell, and Barton Stacey.
Reference	DMMO 1156 and 1236

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Email: ben.marsh@hants.gov.uk

1. The decision:

1. Applications referenced 1156 and 1236 were both made under Section 53 of the Wildlife and Countryside Act 1981. Application 1156 is to record a public Bridleway from B3048 Longparish Road to U60 Old Micheldever Road in the parishes of Longparish and Wherwell.
2. Application 1236 is to record a public Bridleway, from Bridleway 12 to the junction of Restricted Byway 8 and U54 Newton Stacey Lane, in the parish of Barton Stacey.
3. Whilst investigating the claims, officers have also discovered historical documentary evidence which indicates that higher rights subsist over the claimed routes and that a right of way also subsists over the land in between the claimed routes.
4. Having considered the supporting evidence provided within the background report, it is deemed that there is sufficient evidence to make Definitive Map Modification Orders, recording the following public rights of way:
 - a. A Restricted Byway, 8 metres wide, from SU 3936 4403 southeast of Blake's Bushes to SU 4065 4207 B3048 Longparish Road (this includes the upgrade of sections of Footpath 14a, 20 and 36 to Restricted Byway).

- b. A Restricted Byway, 8 metres wide, from SU 4132 4105 B3048 Longparish Road to SU 4132 4105 (This includes upgrading a section of Bridleway 12 from SU 4132 4105 to 4130 4109 to Restricted Byway).
- c. A Restricted Byway, 8 metres wide, from SU 4130 4109 Bridleway 12 to SU 4137 4097 junction with Restricted Byway 8 and U54 Newton Stacey Lane. A ford should be recorded where the route crosses the River Dever.

It is not considered that there is sufficient evidence to record a public right of way of a higher status over the section of claimed route 1156 that travels from SU 3936 4403 southeast of Blake's Bushes to U60 Micheldever Road (over a section of Footpath 36).

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.

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. Appendix A - Location Map
- 6.3. Appendix B – Historic Evidence Guide

Approved by:

Date:

6 January 2022

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: CR/1004

Location

Countryside Access Team
Castle Avenue
Winchester
SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

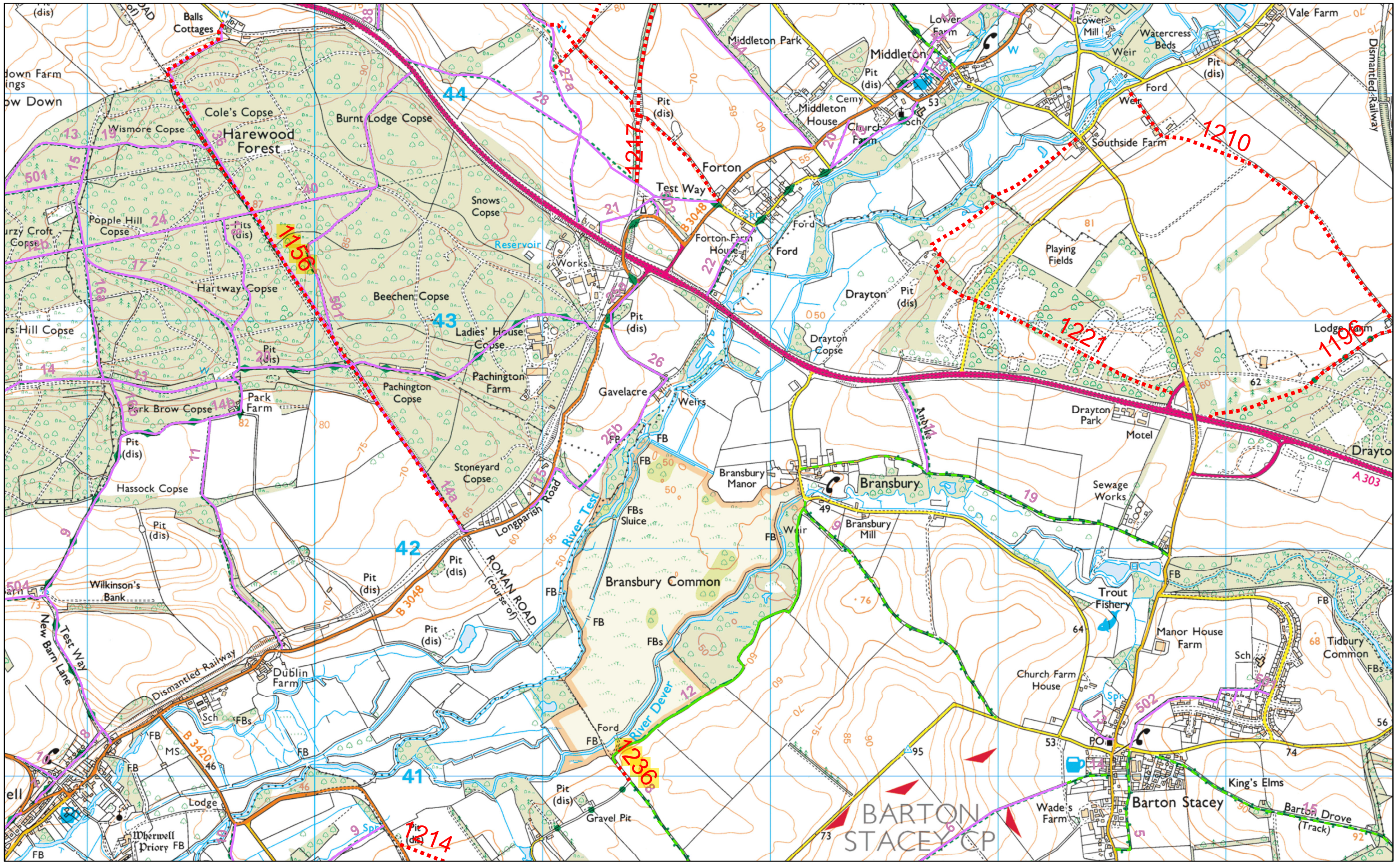
2. Impact on Crime and Disorder: N/A

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.



Map to show location of Definitive Map Modification Order application referenced 1156 in the parishes of Wherwell and Longparish and application referenced 1236 in the parish of Barton Stacey



- Legend**
- Definitive Map Modification Applications
 - By-way open to all traffic
 - Bridleway
 - Footpath
 - Restricted byway

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods – Access Group Manager
Date:	Tuesday 6 January 2022
Title:	DMMO 1156 and DMMO 1236 - Applications for Definitive Map Modification Orders to record bridleways in the parishes of Longparish, Wherwell, and Barton Stacey.
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 (“DMMO”) to be made recording public rights of way in the parishes of Longparish, Wherwell, and Barton Stacey.

Recommendation

2. That authority is given to make the following DMMOs to record public rights of way in the parishes of Barton Stacey, Longparish, and Wherwell:
 - a. A Restricted Byway, 8 metres wide, from SU 3920 4430 southwest end of Blake’s Bushes to SU 4065 4207 B3048 Longparish Road (this includes the upgrade of sections of Footpath 14a, 20 and 36 to Restricted Byway).
 - b. A Restricted Byway, 8 metres wide, from SU 4132 4105 B3048 Longparish Road to SU 4132 4105 (This includes upgrading a section of Bridleway 12 from SU 4132 4105 to 4130 4109 to Restricted Byway).
 - c. A Restricted Byway, 8 metres wide, from SU 4130 4109 Bridleway 12 to SU 4137 4097 junction with Restricted Byway 8 and U54 Newton Stacey Lane. A ford should be recorded where the route crosses the River Dever.

Officers do not consider that there is sufficient evidence to record a public right of way of a higher status over the section of claimed route 1156 that travels from SU 3920 4430 southwest end of Blake’s Bushes to U60 Micheldever Road (over a section of Footpath 36).

Executive Summary

3. Applications referenced 1156 and 1236 were both made under Section 53 of the Wildlife and Countryside Act 1981. Application 1156 is to record a public Bridleway from B3048 Longparish Road to U60 Old Micheldever Road in the parishes of Longparish and Wherwell, the application was submitted by a resident of Andover. Application 1236 is to record a public Bridleway from Bridleway 12 to the junction of Restricted Byway 8 and U54 Newton Stacey Lane in the parish of Barton Stacey, the application was submitted by the Ramblers Association (Andover Group).
4. The applications are supported by historic evidence that the Applicants believe demonstrate that public rights of way should be recorded. Having considered the supporting evidence and taken additional research into account, officers believe that public rights subsist in addition to those applied for, and that there are sufficient grounds to add the claimed routes to the Definitive Map and Statement ("DMS") as Restricted Byways.
5. During the investigation of the above mentioned claimed routes, historic documentary evidence was also discovered in relation to the existence of other public rights of way in the locality, and which, the County Council is also obliged to consider. The evidence for the existence of these paths is also examined within this report.

Legal framework for the decision

6. 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.

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.

8. Natural Environment and Rural Communities Act 2006

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

But this is subject to subsections (2) to (8)

(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 if –

- (a) before the relevant date, an application was made under section 53(3) 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 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

Issues to be decided

9. The primary issue to be decided is whether there is clear evidence to show that public rights subsist over the claimed routes.
10. Under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, case law has decided that the burden of proof associated with DMMOs 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.
11. If a right of way is considered to subsist, then the route, status and width of that way must also be determined, and authority for the making of an Order to record that right on the DMS should be given.
12. Where a DMMO 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.
13. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order.
14. 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 routes

15. The claimed routes are located in north-west Hampshire in the rural parishes of Longparish, Wherwell, and Barton Stacey, to the south of the market town of Andover in the borough of Test Valley. A map showing the location of the routes is provided labelled Appendix A.
16. Both routes follow the course of a historic Roman road which travels from Winchester to Mildenhall (42 miles). The claimed route in relation to application 1156 commences at B3048 Longparish Road and travels north-westwards through Harewood Forest for 2.42 kilometres, it then travels north-eastwards for 348 meters to where it terminates at U60 Old Micheldever Road.
17. The claimed route in relation to application reference 1236 commences at Barton Stacey Bridleway 12 and travels south-eastwards for 108m to where it terminates with the junction of Barton Stacey Restricted Byway 8 and U54 Newton Stacey Lane.

Background to the applications

18. In 2015 an application (reference 1156) was submitted to the County Council, to add a Bridleway to the DMS within Harewood Forest, which would upgrade several public Footpaths that run contiguously along the parish boundary between Wherwell and Longparish. The Applicant is aware that the claimed route is over the course of a Roman road and believes that higher rights over the route have existed in the past and should be recorded.
19. In 2018 an application (reference 1236) was submitted to the County Council, to add a Bridleway linking Barton Stacey Bridleway 8 to Restricted Bridleway 12. The Applicant believes that the omission of this route from the DMS is an administrative error, which they seek to correct.
20. The evidence provided by the applicants is discussed below in addition to other evidence that has been discovered.

Consultations with other bodies

21. 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, Roman Roads Research Association, Highways England, Longparish Parish Council, Wherwell Parish Council, Barton Stacey Parish Council, Goodworth Clatford Parish Council, Andover Town Council, Test Valley Borough Council, and Cllrs Andrew Gibson and Roy Perry. Comments received are provided below:

22. Barton Stacey Parish Council

"The PC have no problem with this application".

23. Roman Roads Research Association

"As an organisation, we would certainly welcome any move to recognise parts of the course of a Roman road as public rights of way – far too many of our Roman roads in Britain are inaccessible.

We have little specific information about the particular length of road in question in and near Harewood Forest. That said, it is part of the road that linked the major town of Venta Bulgarum (Winchester) with the small town of Cunetio (Mildenhall) and then Corinium (Cirencester). The road may well have originated as a campaign or supply route during the initial Roman conquest, however this will probably never be proven. Certainly, it was a major trade route throughout the Roman period, and its maintenance will probably have been the responsibility of the aediles (town councillors) of the towns along its route, rather than it having been an Imperial responsibility. The section between Winchester and Mildenhall is quite unusual in Britain, in that almost all its line is still represented by modern roads and paths, with just a couple of very short gaps.

The implication of this is that the road probably remained in use in its entirety, at least for foot traffic, until relatively recently, probably until the Enclosures of the late 18th early 19th centuries, although it would need some local research in the places where there are gaps to confirm this. The line as it crosses the R. Test appears to be one of those gaps. The modern path, even though it deviates from the assumed Roman line, could represent continuity, having moved off the Roman line as the Roman road became worn out, and so could be seen as the Roman road's successor, or even as representing continuity of use in a sense. Alternatively, the Roman road itself may have deviated from the straight alignment as it crossed the river (a not uncommon occurrence), unfortunately LiDAR imagery doesn't make it clear one way or the other. North of the Forest as far as the A303 however (where it is also followed by a parish boundary), I would suggest that continued use of the road at least as a path since the Roman period is almost certain".

24. The Ramblers

"DMMO 1236 - As this is sponsored by the Ramblers, we obviously fully support the application.

"DMMO 1156 –

- I note this is a redesignation of footpaths not a new PROW.*
- The existing footpaths are very narrow in places, especially the north end of WW14A and 20 where they are bordered on both sides by fences/hedges. Ramblers have put much work into keeping it wide enough for just walkers. It will need improvements to make it usable by both riders and walkers. I would suggest we would be looking for a width of at least 3 metres.*
- The existing used footpath is off the designated line (WW20 and north end of LP36). This would be a useful opportunity to either get it back on the designated line or adjust the designated line to reflect reality. Given part of the push for these changes is the existence of the old Roman Road it would seem appropriate to move the actual walked route back on to that with regard to WW20".*

25. No other responses were received.

The Landowner/s

26. Representations from landowners and other interested parties have been received from:

- a. Householder – Old Micheldever Road
- b. Householder – Longparish Road
- c. Wherwell Estate
- d. Middleton Estate
- e. Govett Farms

27. Representations supporting the applications are provided below, objections will be discussed later within this report:

28. Householder - Old Micheldever Road

"Thank you for sending details of the proposed changes to the public footpath through harewood forest. This would be great for me as I regularly use the path already and to be able to legally cycle or ride a horse on the path would be a great improvement to my immediate surroundings.

I do have one observation which may be worthy of consideration. Anybody using the proposed bridleway on a bike or on horseback would be forced to use the A303 to complete a journey....which would make the trip extremely dangerous. The actual course of the old roman road would be far more suitable (if the landowner would agree to the changes required) as it could easily terminate in Cowdown lane (almost). As the plan stands only people who live in the Old Micheldever road will really benefit from the change (thats where I live!) there is also a strip of land which could be used to extend the Old Micheldever road to Cowdown lane which may be in Council ownership which runs adjacent to the A303 slip road".

29. Householder – Longparish Road

"I believe the route runs down the side of my property and it would be lovely to see it useable again. I understand there would be a cost to get proper river crossings put in, but I think this would be justifiable due to the benefit it would be to the local area".

30. Govett Farms

Govett Farms have contacted the case officer and stated that as landowner they support adding a public right of way over claimed route 1236.

Documentary Evidence

31. The documentary evidence considered as part of this report is detailed below. Where documents are held in archives, such as the Hampshire Record Office, National Archives, or online, details of the source are provided within the footnotes. Appendix B also provides a brief background and introduction to typical source material considered in rights of way claims.

32. The Laws of the Twelve Tables Circa – BC 451¹

The Laws of the Twelve Tables were core legal principles codified into a referable system that stood at the foundation of Roman law. Table 7 included rights and crimes related to land, and required that a public road be a minimum of 8 feet in width where straight and twice that width where curved. The public were also given the right to pass over private land where a road was in disrepair.

33. The Gallic Wars – Julius Caesar - Circa 58-49 BC²

The Gallic Wars is an account by Julius Caesar of the Gallic Wars. Book 5, chapters 12-15 describe the ethnography of ancient tribes in Britain:

“The interior portion of Britain is inhabited by those of whom they say that it is handed down by tradition that they were born in the island itself: the maritime portion by those who had passed over from the country of the Belgae for the purpose of plunder and making war; almost all of whom are called by the names of those states from which being sprung they went thither, and having waged war, continued there and began to cultivate the lands”.

34. The Agricola - Tacitus - circa 98³

The Agricola is a book by Roman Historian Publius Cornelius Tacitus on the life of his father-in-law Gnaeus Julius Agricola, Roman General and Governor of Britain during the first century AD, and which also covers the ethnography of ancient Britain. Paragraphs 11-12 detail that the inhabitants of Britain “were formerly governed by kings, but at present are divided into factions and parties among their chiefs”.

Tacitus also discusses whether Britain was first inhabited by indigenous people or migrants and makes some deductions about the origin of different tribes:

“Thus, the ruddy hair and large limbs of the Caledonians point out a German derivation. The swarthy complexion and curled hair of the Silures, together with their situation opposite to Spain, render it probable that a colony of the ancient Iberia possessed themselves of that territory...”

¹ Yale Law School (<https://www.avalon.law.yale.edu>)

Ancient Roman Statutes: A translation with introduction, commentary, glossary, and index by Allan Chester Johnson, Paul Robinson Coleman-Norton and Frank Card Bourne 1961

Roman Statutes Vol 2 London Institute of Classical Studies by Michael H Crawford 1996

² The Internet Classics Archive (www.classics.mit.edu)

³ The Germany and Agricola by Tacitus – The Oxford Translation Revised (www.gutenberg.org)

35. The Geographia – Claudius Ptolemy 150⁴

The Geographia is an atlas compiling the knowledge of the 2nd Century Roman Empire. It includes the Prima Europe tabula or First Map of Europe, which shows the islands of Britain and Ireland and details the ethnographic areas and the principle Roman settlements within them. No original copies of the work survive from the Roman period, however, a copy published in 1486 is held at the National Library of Wales.

36. Maximum Price Edict – Diocletian – 301⁵

The Edict of Maximum Prices was cut into heavily moulded marble panels in 301AD under the Roman emperor Diocletian. The edict was excavated in several fragments in Aphrodisia, a small ancient Greek Hellenistic city about 30km west of the modern-day city of Denizli, Turkey. The edict provides prices for more than 1,200 products, including raw materials, labour and services, transport, animals, and slaves. Section XIX for clothing refers to “28 – *cover from Britannia first quality*”, “29 – *cover from Britannia second quality*”, and “48 – *Hooded cloak from Britannia*”.

37. De condicionibus agrorum - Siculus Flaccus – Circa AD 500⁶

Siculus Flaccus was a Roman land surveyor. He recorded the distinction between three different classifications of roads, which would have complemented one another to create a road system:

“Public roads (viae publicae), constructed at state expense, bear the names of their builders and they are under the charge of commissioners (curators viarum), who have the work done by contractors; for some of these roads, the landowners are required, too from time to time, pay a fixed sum”.

“There are in addition local roads (viae vicinales) which after branching off from the main highway (via publica), go off across the country and often lead to other highways (viae publicae). They are built and maintained by the communities (pagi), who usually see that the landowners provide the workforce, or hand to each landowner the job of looking after the stretch of road going over his land... There is free movement along these public roads”.

“Finally, there are ways leading across private estates that do not afford passage to everyone, but only those who need to reach their fields”.

⁴ The National Library of Wales (www.library.wales)

⁵ New English translation of the Price Edict of Diocletianus by Antony Kropff 2016 (www.kark.uib.no)

⁶ IntraText Digital Library (<http://www.intratext.com>)

A concise Dictionary of Greek and Roman Antiquities by Sir William Smith and Francis Warre Cornish 1898 page 666 (<https://www.archive.org>)

The Roads of Roman Italy: Mobility and Cultural Change by Ray Lurance 1999 pages 59-61

38. The Code of Justinian – 533⁷

The Code of Justinian, although issued in 533, long after Britain had ceased to be part of the Empire, is largely made up of material from classical times. It is in three parts, the third is the Digest, an anthology of the writings of the prominent jurists of the first to third centuries, in 50 books. Titles 7-11 of Book 43 deal with public roads, mostly taken from the commentary by Domitius Ulpian. Ulpian, who died in 223 was writing about the law which applied in Italy but is accepted to have applied in Britain⁸.

In Title 7 (paragraph 1), Ulpian in discussing public roads, distinguishes military roads (*viae militares*) from local roads (*viae vicinales*). In Title 8 (paragraphs 20-25) Ulpian again distinguishes between the hierarchy of different types of road and presents a summary of the legal view of public and private rights (*servitudes*):

“We call a road public if its land is public. For our definition of a private road is unlike that of a public road. The land of a private road belongs to someone else, but the right of driving along it is open to us. But the land of a public road is public, bequeathed or marked out, with fixed limits of width by whoever had the right of making it public, so that the public might walk and travel along it. Some roads are public, some private, some local. We mean by public roads what the Greeks call royal, and our people, praetorian and consular roads. Private roads are what some call agrarian roads. Local roads are those that are in villages or lead to villages”.

39. Laws of King Ine and King Wihtred – 694 to 695⁹

King Ine was king of Wessex from 689 to 726, his code of laws (*leges Inae*) include - *“If a man from afar, or a stranger, goes through the woods off the highway and neither calls out nor blows a horn, he may be considered a thief, to be slain or to be redeemed”*. King Wihtred reigned over Kent from 673 to 725, his code of laws include - *“If a man from a distance or a foreigner goes off the track, and he neither shouts nor blows a horn, he is assumed to be a thief, to be either killed or redeemed”*. The laws of Ine and Wihtred evidence that there were laws governing long distance travel or that a general law already existed.¹⁰

⁷ Translation by S P Scott 1932 (www.droitromain.univ-grenoble-alpes.fr/Anglica/D43_Scott.htm#VIII)

The Roads of Roman Italy: Mobility and Cultural Change by Ray Laurence 1999 pages 61-62

⁸ Rights of Way Law Review 2009 – Highway Law before 1066 by Christopher Jessel

⁹ English Historical Documents by Dorothy Whitelock 1979

History of English Law by Sir Frederick Pollock & Frederick Maitland 1895

¹⁰ Rights of Way Law Review 2009 – Highway Law before 1066 by Christopher Jessel

40. Royal itineraries of Anglo-Saxon monarchs – 700 to 1066¹¹

David Hill has studied the royal itineraries of the Saxon Kings. The kings had visited Winchester, Cirencester, and Gloucester. Hill does not define the routes that they had taken or the sequence of places that they had visited, however the Roman Road would have provided a direct route and a reasonable surface which would have been desirable as the kings took their households with them, which required up to 20 wagons¹².

41. Charter of Headbourne Worthy – King Æthelwulf - 854¹³

In the early medieval period, large ecclesiastical establishments such as the Bishopric of Winchester owned vast tracts of land, the extent of which were recorded within charters. Clauses defined the boundary lines using marker points which the boundary line ran between. The Charter of Headbourne Worthy was written by King Æthelwulf in AD 845 to the church of St Peter and Paul in Winchester. The boundary clauses refer to the line of the Roman Road from Winchester as a street (*straet*) in the location of Fullflood (*fulan flode*) and Harestock (*heafod stoccan*).

Straet was a term used by Anglo-saxon boundary surveyors to describe routes of roman origin the word being derived from the Roman *via strata* – a road with a paved or metalled surface. Further along the course of the road it is described as *herepath* (*herpaðe*) which indicates that the route formed a military route between *burhs*. The charter for Crux Easton, which has been reliably dated to 809 was written in Latin with landmarks in Old English, in this case, the Ridgeway is referred to as a public highway (*via publica*), and in the next reliable charter, dated to 931, it is termed *herepath*. The term *herepath* therefore not only informs the routes function but also its status as a public highway.

42. Charter of Stoke (St Mary Bourne and Hurstbourne Priors) – King Edward 900¹⁴

This charter grants ten hides at Stoke in exchange for land in Wiltshire for services rendered to King Edward at Hurstbourne. The boundary to the estate circumnavigates Harewood Forest where it makes use of a way (*weg*) and then crosses another two ways. The continued course of the Harroway is used for a short stretch as the boundary in this location. The perambulation then proceeds northwest and is referred to as 'boundary way'. It is likely that the charter refers to the course of the Roman Road as a way or path leading through Harewood Forest.

¹¹ An Atlas of Anglo-Saxon England by David Hill 1984

¹² A Geographical Synthesis of the Road Network of Medieval England and Wales by Brian Hindle 1973

¹³ The Electronic Sawyer (www.esawyer.lib.cam.ac.uk) – Charter 309

The Ancient Ways of Wessex Travel and Communication in an Early Medieval Landscape by Alexander Langlands 2019

¹⁴ The Electronic Sawyer (www.esawyer.lib.cam.ac.uk) – Charter 359

43. The Burghal Hidage – circa 915¹⁵

The Burghal Hidage identifies *burhs* (Anglo-Saxon fortified settlements), that Alfred the Great and his successors had built as protection from the Danes. The document lists 33 *burhs* including Winchester, Chisbury, and Cricklade, which are situated along the route of the Roman Road.

44. Leges Edwardi Confessoris - 1070¹⁶

The Laws of Edward the Confessor refer to a collection of laws and customs, purporting to represent English law in the time of Edward the Confessor, as recited to King William I (William the Conqueror). The laws reference four Roman roads, Ermine Street, Watling Street, Ickneild Street, and Fosse Way, as being under the king's peace.

45. Leges Henrici Primi – Circa 1115¹⁷

The Laws of Henry I is a legal treatise that records the laws and customs that were extant during the reign of King Henry I. The laws include a legal definition of *via regia* or royal way as a route that runs from '*burh* to *burh*'. The laws also include the crime of *stretebroche*, whereby it is an offence to obstruct or damage a highway punishable by a fine of 100s to the king¹⁸.

46. Royal itineraries of John, Henry III, Edward I, and Edward II – 1199 to 1327¹⁹

There have been numerous studies of the itineraries of medieval kings, including Stenton's 'The Road System of Medieval England' Economic History Review (1936) and Hindle's 'A Geographical Synthesis of the Road Network of Medieval England and Wales' (1973). A useful further thesis is provided by Edward's - The Transport System of Medieval England and Wales – a geographical synthesis (1987). The studies provide evidence that the kings had journeyed between Winchester and Marlborough and indicate that they had used claimed routes 1156 and 1236 (apart from the small section to the north of route 1156 which leads from the line of the Roman road to U60 Old Micheldever Road).

¹⁵ The Burghal Hidage: The Establishment of a Text by David Hill

¹⁶ Roman Roads in Britain by Thomas Codrington 1905

Geographical Review Vol 11 Jan 1921 (www.jstor.org/stable/207864?)

¹⁷ Leges Henrici Primi – Translation by L J Downer 1972

¹⁸ Writing the Map of Anglo-Saxon England by Nicholas Howe 2008

¹⁹ Itinerary of King Edward the First by Henry Gough 1900

Itinerary of Edward I: Index- Society collection, volume 135 1977 by E Spufford

The Road System of Medieval England Economic History Review by Sir Frank Stenton 1936

A Geographical Synthesis of the Road Network of Medieval England and Wales by Brian Hindle 1973

The Transport System of Medieval England and Wales – A geographical Synthesis by James Edwards 1987

National Archives (www.nationalarchives.gov.uk)

47. Close Rolls 15 Henry III – 1231²⁰

Patent and Close Rolls are letters expressing the sovereign's will on a variety of matters of public interest from the reign of King John to present day. The rolls and other sources give a tolerably complete account of the fair of St Giles Down, which was probably the first and one of the largest fairs in England. Merchants travelled not just from the surrounding counties of Berkshire, Buckinghamshire, and Wiltshire, but from Spain and France. Close Roll 15, of Henry III's reign, details that some of those merchants came from Gloucester, it is likely that they would have brought wool or iron goods to the fair and that they would have used the Roman Road.²¹

48. Kitchin and Jeffry's Map of Hampshire – 1749²²

This is the earliest map that has been sourced that details the course of the Roman Road as a carriageway, maps did not show a greater level of detail prior to this. Claimed route 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236 are shown comparable to the symbology of other routes in the locality which are now principal public carriageways. The section in between the claimed routes that traverses the River Test is also shown in the same way.

49. Taylor's Map of Hampshire including the Isle of Wight - 1759²³

Claimed route 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236 are shown on the course of the Roman Road in a manner comparable to the symbology of other routes which are now principal public carriageways in the locality. The section in between the claimed routes that traverses the River Test is also shown in this way. The route from Winchester past Andover is labelled the "Ikineld Way". At the north-western extremity of the map the continuation of the route meets 'Hampshire Gate' at the county boundary with Wiltshire. By its scale when compared to other routes, Taylor's map shows the route to be one of the most prominent in north-west Hampshire.

50. The Winchester and Andover Turnpike Trust - 1762²⁴

The Winchester and Andover Turnpike Trust was approved by parliament in 1762 and covered the road that follows the course of the Roman Road out along the modern A272 but then travels to the north-west along the modern A3420 joining the line of the modern A3057 into Andover.

²⁰ The National Archives C 54/42-43

Internet Archive (www.archive.org)

²¹ A history of the County of Hampshire: Volume 5 by William Page 1912 (british-history.ac.uk)

²² Old Hampshire Mapped (www.oldhampshiremapped.org.uk)

²³ Old Hampshire Mapped (www.oldhampshiremapped.org.uk)

²⁴ Hampshire Record Office ([HRO 61M85](#), [HRO Q26/1/4](#))

51. Archaeologia Volume 1: Journal of the Society of Antiquities - 1770²⁵

The Society of Antiquaries of London is a learned society charged by Royal Charter of 1751 with 'the encouragement, advancement and furtherance of the study and knowledge of the antiquities and history of this and other countries. Archaeologia was the society's first journal and mainly contained papers delivered at their meetings.

Paper 12 by Smart Lethieullier Esquire begins on page 56 and provides a description of several Roman Roads including a description of the course of the Roman Road from Marlborough to Winchester, the section from Chute Park to Winchester is described as follows: *"...and then to Sir Philip Meadows' park, at the entrance of which it re-assumes its S.E. direction, and for some way makes a delightful walk, planted on both sides, and being uncovered, appears to have been made of fine gravel, though none such is near this place. From this park it descends to a bottom; then up a hill, leaving Tangley church a furlong to the S.W. near which it passes through an entrenchment of about two acres and a half, with deep ditches, probably a Castellum or Mansio for the sake of travellers, and conveniently situated, being about midway, i.e. fourteen miles, from each station; from hence it goes through Hetherden directly out into Charlton Common, lately enclosed, along by Easton Town Farm, where a little beyond the gate that turns into the house, it crosses the road I have before described, between Silchester and Old Sarum, from thence, through a common field, it goes three quarters of a mile N.E. of Andover, out into the Downs; then into Wherwell woods, through which it is a bridle way; after which half a mile to a ford, cross the River Tees or Test, called Cold Harbour, and thence for seven straight miles straight cross the Downs to Winchester, entering it at the North-gate. This road is some places seven foot above the surface, and of a good breadth".*

The description provided by Smart Lethieullier Esquire is strong evidence that in 1770 the course of the Roman Road as it travelled through Wherwell Woods (relating to claimed route 1156) was being used as a bridleway. The route is described as crossing the Test at a location three quarters of a mile from the crossroads with the Port Way and 7 miles from Winchester. The text also gives a description of the surface of the road where it is uncovered in Chute Park, being of gravel which is not found there.

²⁵ Internet Archive (<https://www.archive.org>)

52. Andrews and Drury's New Travelling Map of the Country - 1776²⁶

Claimed route 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236 are shown comparable to the symbology of other principal carriageways in the locality. A route is clearly defined from Winchester travelling along the course of the Roman Road into Wiltshire. The section in between the claimed routes that traverses the River Test is also shown comparable to the symbology of other principal carriageways in the locality.

53. Milne's One Inch Map of Hampshire – 1791²⁷

Claimed route 1156 and the section in between the claimed routes that traverses the Test, are not shown on this map, which indicates that there may have been some decline in use over this section or that Milne didn't survey that area, since the route is shown on later maps. Claimed route 1236 is shown on this map, as per the map explanation, as an enclosed road, at its northern terminus there is also an enclosed road shown running west to meet with the B3420. This map shows the Andover to Winchester turnpike road branching from the route of the Roman Road to the north-west along the modern A3420 providing the main route to Andover, the route is coloured sepia and is as described within the map explanations as a turnpike road. Milne's One Inch Map also provides a small-scale map of the city of Winchester and shows a toll gate, the Swan Lane Toll Gate, on the turnpike road just outside the North Gate.

54. Cary's Map of England, Wales, and part of Scotland Map (Sheet 15) – 1794²⁸

The Map shows claimed route 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236, and the section in between the claimed routes that traverses the River Test, as per the map explanations, are shown as unenclosed roads (*bye roads*). A route is clearly defined from Winchester to Andover and on to Tangley and beyond, the route is annotated "Ickneild Way". This map shows the Andover to Winchester turnpike road branching from the route of the Roman Road to the north-west along the modern A3420 providing the main route to Andover, the route is coloured sepia and is as described within the map explanations as a turnpike road.

²⁶ The University Library of Bern (<https://www.biblio.unibe.ch>)

²⁷ Old Hampshire Mapped (<http://www.oldhampshiremapped.org.uk>)

²⁸ David Rumsey Map Collection (<http://www.davidrumsey.com>)

55. Ordnance Survey 'Old Series' One Inch Old Series Map – 1810²⁹

Claimed route 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236 are shown comparable to other carriageways in the locality, the key provided by Dr Richard Oliver (see footnote), describes the symbology used to record the routes as “Other roads”. The section in between the claimed routes is not shown to the south of the river, but is shown to the north, continuing south from the forest to the River Test.

56. Greenwood's One Inch Hampshire Map – 1826³⁰

Claimed route 1156 is not shown on this map. Claimed route ref 1236 is shown comparable to other secondary carriageways in the locality, and in identical fashion to the routes it connects to at either end – routes recorded as Barton Stacey Restricted Byway 12 and Bridleway 8 today. The map legend records these routes as “Cross Roads”, such roads are generally credited with providing connections between turnpike roads, other roads, and settlements. As Greenwood used his own surveyors rather than copying other maps his maps are considered to be well made. The map was used for sale to the travelling public and it is unlikely to show routes that the public could not use.

57. Longparish Tithe Map – 1841³¹

Claimed route 1156 is recorded on the Longparish Tithe Map as a thin apportionment over the course of the Roman Road and annotated as “120”. The corresponding apportionment records the route as “Half of old Roman Road” and “Wood” under cultivation type.

58. Barton Stacey Tithe Map – 1842³²

Claimed route 1236 is shown on the Barton Stacey Tithe Map as a road and annotated as “362”. Within the corresponding apportionment, the route is detailed under ‘the roads’ and was not taxable. Claimed route 1156 is not within the parish of Barton Stacey and the section in between the routes is not shown across the river valley.

²⁹ Old Hampshire Mapped (<http://www.oldhampshiremapped.org.uk>)

Cassini Maps – Keys and Legends (www.cassinimaps.co.uk)

³⁰ Old Hampshire Mapped (<http://www.oldhampshiremapped.org.uk>)

³¹ Hampshire Record Office ([21M65/F7/147/1](#) and [21M65/F7/147/2](#))

³² Hampshire Record Office ([21M65/F7/12/1](#) and [21M65/F7/12/2](#))

59. Ordnance Survey 25 Inch to the Mile 'County Series' Map – 1873

Claimed route 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) is shown on the map as a track following the “Remains of ROMAN ROAD from Winchester to Cirencester” and annotated “203”, the corresponding in the corresponding area book as “Road”. Claimed route 1236 is also shown as a track, it is not annotated with a parcel number, but runs past parcel “157” which is recorded in the corresponding area book as “House and Garden”. The section in between the claimed routes that traverses the River Test is shown with faint pecked lines indicating that it is the course of a historic route, but it does not have its own distinct parcel number.

60. Wiltshire Archaeological and Natural History Magazine Volume 21 1884³³

The Wiltshire Archaeological and Natural History Society was founded in 1853. The Society publishes a county journal called the Wiltshire Archaeological and Natural History Magazine. Canon J E Jackson's article within volume 21 (page 337-8) provides an account of excavations completed circa 1734.

On page 337-8 of Volume 21, Canon J E Jackson details an account of excavations completed circa 1734: *“Sir Philip Meadows who made the park got leave to take in the Roman way and make it the boundary of his park. Here it makes a grand terrace walk, and the road is constructed in a remarkable manner. The basis of the causeway, being a high bed of flint the natural product of the country, is therefore no curiosity; the upper stratum indeed has much of the marvellous which the Romans affected in all their works, it being a beautiful gravel and whence brought is not easy to be imagined, as no parts of the country produce any such material. This, when Sir Philip made his park, being uncovered, made one of the noblest terrace gravel-walks possible in Europe. But the third or middle stratum of the causeway is marvellous and perfectly incomprehensible. I [says the old writer] was first shown to take notice of it by the present Sir Sidney. By the thickness of the bed of it and its extent in length as I have at times observed it, I cannot but imagine here are thousands of loads: and nothing like it in this or any other country that I can ever hear of. It has the likeness of the cinders and ashes of a blacksmith's forge”.*

61. London and South Western Railway Hurstbourne to Fullerton Line Railway Plan and book of reference 1881³⁴

Claimed route 1156 is recorded within a plot annotated as “141” and is recorded to have been owned at the time by William Henry Iremonger. The related Book of Reference records the plot as containing “Occupation Road and Waste”, which indicates that the Railway Company did not consider the route to be a public road at the time.

³³ Wiltshire Archaeological and Natural History Magazine Volume 21 (www.archive.org)

³⁴ Hampshire Record Office ([DP/A16/1](#) and [DP/A16/2](#))

62. Bartholemew's 'Half Inch Maps' of England and Wales – 1902³⁵
 Claimed routes 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236 are shown on the map as “Secondary Class Road (Good)”, the routes are uncoloured, which the legend records as “inferior and not to be recommended to cyclists”. The section in between the claimed routes is not recorded on the map as a physical feature, but there are dashed lines which denote the course of the Roman Road.
63. Finance Act Maps 1910³⁶
 Claimed routes 1156 and 1236 are not shown as enclosed within taxable landholdings.
64. Maintenance Map 'Handover' Map - 1929³⁷
 Claimed routes 1156 and 1236 are not recorded as a highway repairable at public expense on the Local Government Act Handover Map of 1929. The railway bridge is annotated to the north with a red cross which the reference records as “Railway bridge approach – repaired by District council under agreement with railway Company”.
65. Andover Division Highways Map - 1933³⁸
 The Andover Division Unclassified Roads Estimate Map shows claimed route 1236 as being surfaced with a water bound limestone, which in the future should be changed to water bound gravel. The map confirms that claimed route 1236 was maintained by the highway authority.
66. Defence Act and Defence Regulation 16 – 1939 to 1957³⁹
 The correspondence in relation to Emergency Powers (Defence) Acts of 1939 and 1940 and Defence Regulation 16 was viewed. In the locality of Longparish RAF Station, the only highway stopped-up was the Middle Way. There is no record of either of the claimed routes being stopped up.
67. Maintenance Map Andover Division - 1946⁴⁰
 Claimed route 1156 is not recorded as a highway maintained at public expense on the Maintenance Map of 1946. Claimed route 1236 is recorded as a public highway (carriageway) maintained at public expense.

³⁵ National Library of Scotland (www.maps.nls.uk)

³⁶ The National Archives (References [IR125/4/189](#), [IR125/4/264](#), [IR125/7/552](#), [IR125/7/556](#), [IR125/7/579](#), [IR125/7/585](#), [IR125/7/587](#))

³⁷ Hampshire Record Office ([H/SY3/6/3](#))

³⁸ Hampshire Record Office ([H/SY3/7/2](#))

³⁹ Hampshire Record Office ([H/CL5/HY65](#))

⁴⁰ Hampshire Record Office([H/SY3/3/24/2](#))

68. Parish Maps – Longparish Parish Council, Wherwell Parish Council and Barton Stacey Parish Council – 1950s

The Longparish Parish Map shows the section of claimed route 1156 within the parish as a footpath. To the north of the woods the route is shown as continuing along the route of the Roman road. Wherwell Parish Map shows the section of claimed route 1156 within the parish as a footpath. Barton Stacey Parish Map does not show claimed route 1236 as a public right of way this is due to its characterisation on the Maintenance Map as a carriageway.

69. Definitive Map and Statements – Andover Rural District - 1957⁴¹

To the south of claimed route 1236 is shown on the first DMS as Barton Stacey Restricted Byway 8. Claimed route 1236 is shown as Road U54. The section in between the claimed routes is not recorded as a public right of way or highway. Claimed route 1156 is shown on the DMS (apart from the small section to the north of route to U60 Old Micheldever Road). The route is shown as Wherwell Footpaths 14 and 20 and Longparish Footpath 36. To the north of claimed route 1156 is shown as Footpath 36, continuing along the north-westerly alignment of the route of the Roman road to the Road A303 at Pavey's Grave.

70. London Penzance Trunk Road (Andover By-Pass Side Roads) Order - 1965

The London Penzance Trunk Road (Andover By-Pass Side Roads) Order dated 1965 stopped-up the northern section of Longparish Footpath 36 from a point to the southwest of Blake's Bushes up to U60 Old Micheldever Road at Pavey's Grave. The Order sets out a "new highway", from a point at the northern edge of Harewood Forest southwest of Blake's Bushes to U60 Old Micheldever Road. An explanatory note states that the plans show the routes of new highways but not their width or constructional details.

71. Letter from Ministry of Transport and Dedication by Trustees of R H Read Settlement - 1967

The dedication by Trustees of R H Read Settlement dated 1967, dedicates a 'highway' from Longparish Footpath 36 to U60 Micheldever Road, terminating to the north of Braeside U60 Micheldever Road.

⁴¹ Hampshire Record Office ([H/CL1/2/2](#))

72. OS Archaeology Division – Roman road from Moody’s Down Farm to Hampshire Gate - 1967⁴²

The record provides remarks about the portion of Roman road from Moody’s Down to Hampshire Gate. The first remark states “*At Worthy Down a slight turn to the north-west is made and the same line is then rigidly followed through Moody Down Farm to Conholt Park*”. The information is recorded on the authorities of the authors Ivan Magary (Roman Roads in Britain 1955), Thomas Codrington (Roman Roads in Britain 1905), and C F Wardale Ordnance Survey Recorder.

The second remark states “*From Moody Down Farm northwest to the Hampshire Gate on the Hants/Wilts border near Conholt Park the alignment is marked by modern roads and tracks. Although evidence at the crossing of the Test is now wanting, evidence on either side suggest it was crossed on the main alignment*”. This information is recorded on the authority of C F Wardale Ordnance Survey Recorder.

73. Common Land – CL72 and CL223 - 1967

Within the section of land through the river valley in between the two claimed routes are two registered commons, CL72 and CL223, both registered commons are named as Bransbury Common, the registrations are divided by the course of the Roman Road. The Countryside and Rights of Way Act 2000 allows a public right of way on foot over most registered commons.

74. OS Archaeology Division – County and 6inch Map Strips annotated with surveys of Roman road 1973-1974⁴³

Ordnance Survey ‘County’ and ‘6inch’ Maps annotated with survey data from 1967. The surveys confirm that the agger (embankment built on each side of a Roman road) is visible over some parts of claimed route 1156. The agger running through Harewood Forest to the northeast of Adders Corner is recorded as being 8metres wide and 1metre high.

The OS records also include a plan from an archaeological excavation with notes from Alan Muncaster dated 1974 that state: “*The course of the Roman road has been proved by probing to the south of claimed route 1236 but there is no trace over the claimed route 1236. There is no trace over section travelling north from claim 1236 across the floodplain to the River Test, the annotations however state that the river is “significantly, only that fordable in the area where the alignment crosses” and “the ford where the Roman road crossed the Test was called ‘Welford’. It became partly disused about the 13th Century*”. To the south of the

⁴² Roman Roads Research Association (www.romanroads.org)

Historic England – Ordnance Survey recorders (www.nrhe-to-her.esdm.co.uk)

⁴³ Roman Roads Research Association (www.romanroads.org)

B3048 Longparish Road towards the River Test the agger is recorded to have been visible across the field".

75. Landowner Deposit - 1997

In 1997 the County Council received several deposits from the landowners of land over which claimed route 1156 travels, the deposits are referenced 351, 350, and 169. The deposits made under the Highways Act 1980 and Commons Act 2006, prevent the acquisition of public rights based on long use from the time of submission, but has no relevance any use prior to this.

76. INSPIRE Land Registry Map 2021⁴⁴

Part of claimed route 1156 within Harewood Forest and the whole of claimed route 1236 are unregistered on Land Registry. The tracts of unregistered land indicate that the claimed routes are ancient highways.

77. List of Streets – 2021

Claimed route 1156 and the section in between the claimed routes are not recorded on the List of Streets. Claimed route 1236 was added to the list on 8 December 2021 following discussions with Highways Department, the route is shown as unclassified road U54 as part of reference 74U54 EE 05 which was originally added to the List of Streets in 1981. Highways Department have confirmed that claimed route 1236 had not originally been digitised as the hand-drawn plan did not clearly show this section but have now added it due to the description for the 'end of the road' having an indicative grid reference located where claimed route 1236 meets with Barton Stacey Bridleway 12.

⁴⁴ Inspire Index Polygons spatial dataset (www.use-land-property-data.service.gov.uk)

Analysis of the Documentary Evidence

78. Iron Age – 800 BC to AD 43

The Agricola by Tacitus, Geographia by Ptolemy, and The Gallic Wars by Caesar provide evidence of the ethnographic geography of the iron age tribes in Britain as recorded by Roman and Greek historians. This contemporary evidence along with more recent archaeological information in relation to the distribution of coins and pottery provides a good indication as to the extent of the territories of different groups, which included the Atrebates in eastern Hampshire and Berkshire, the Belgae in parts of Western Hampshire and Wiltshire, and the Dobunni to the northwest of the Avon. Julius Caesar who came to Britain in 55 and 54 BC referred to the tribal groups as '*civitas*,' meaning a community with their own laws.⁴⁵

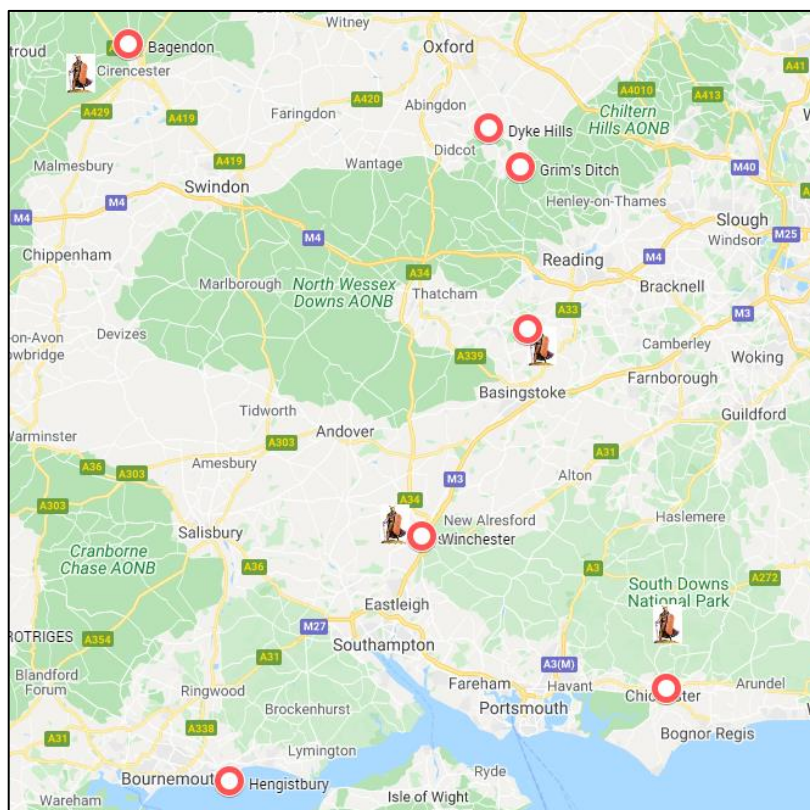


Figure 1 – Map showing location of Iron Age oppida and tribal groups on modern base map. A larger interactive map can be viewed at www.google.com/maps.

Major Iron Age settlements were enclosed fortified towns called *oppida* and are regarded as indicators of political centralisation, industrial growth, and craft specialisation. Caesar gave a description in his account of the attack and subsequent capture of the stronghold of Cassivellaunus (possibly Wheathampstead in Hertfordshire), observing that *oppida* were '*fenced by woods and marshes*'. In total there are approximately twenty sites in England that have

⁴⁵ A concise Dictionary of Greek and Roman Antiquities by Sir William Smith and Francis Warre Cornish 1898 (www.archive.org)

Rights of Way Law Review 2009 – Highway Law before 1066 by Christopher Jessel

been termed 'oppida', which include settlements at Winchester and Bagendon to the north of Cirencester.⁴⁶

79. Roman Period - AD 43 to 410

Following the Roman invasion, England was divided into communities (*civitates*), the majority of the administrative capitals of each *civitas* occupying or being built near a former Iron Age oppidum. The Roman Road over which the claimed routes travel, connects two *civitas* capitals, that of the Belgae at Winchester (*Venta Belgarum*) and the Dobunni at Cirencester (*Corinium Dobunnorum*), and on to the Roman fort and colonia at Gloucester (*Glevum*).

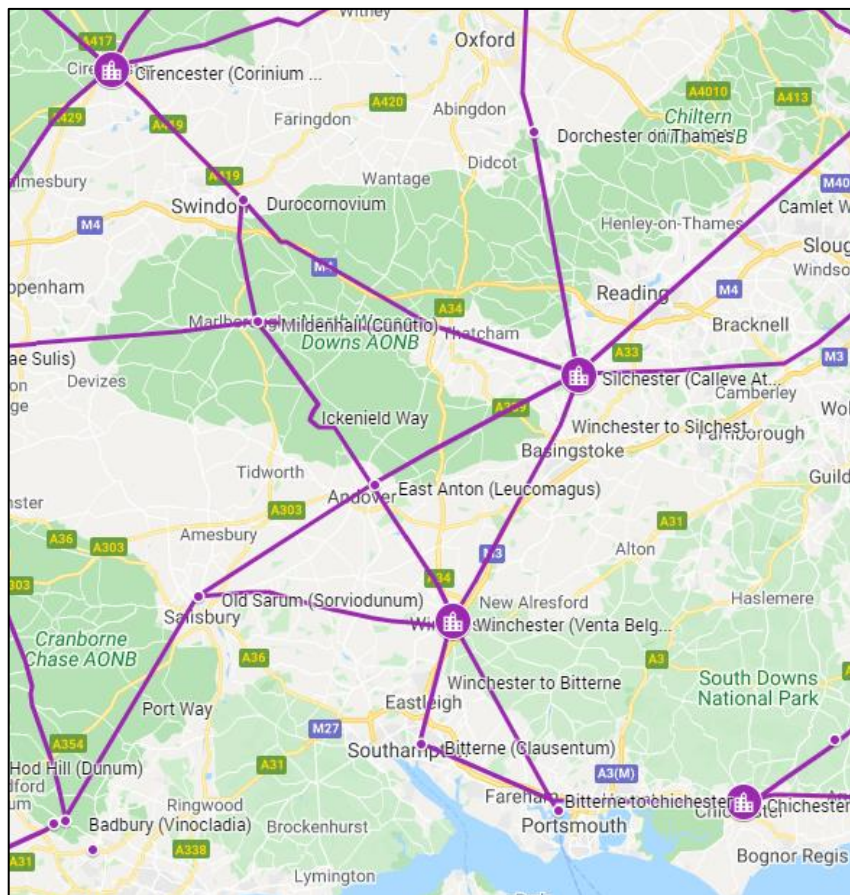


Figure 2 – Map showing location of Roman *Civitas* Capitals, Colonia, and Roman Road network, on modern base map. A larger interactive map can be accessed at www.google.com/maps.

The route was also an important trade route linking key settlements and industrial areas such as the iron mining and smithing sites at Weston under Penyard (*Ariconium*) and Monmouth (*Blestium*).⁴⁷ Excavations in Winchester have also revealed that it was an industrial centre for wool processing⁴⁸, this considered with the Maximum Price Edict of Diocletian, indicates that the Roman Road may have been used to transport wool from other parts of the country to Winchester

⁴⁶ Opida – English Heritage 2011 (historicengland.org.uk)

Atlas of Hampshire's Archaeology – Hampshire County Council (hants.gov.uk)

⁴⁷ The Forest of Dean Iron Industry 1st to 4th Centuries AD by Bryan Walters 1992

⁴⁸ Winchester - A City in the Making by Ben Ford, Steven Teague, Martin Allen, and Sophie Lamb - 2010

and that garments made here were then transported to Bitterne, Portchester, and the other channel ports, for export to mainland Europe⁴⁹. The unfortified Roman town at Andover (*Leucomagus*) also grew up around the junction of this and another major Roman Road that travels from Old Sarum (*Sorviodunum*) to Silchester (*Calleve Atrebatum*).

The OS Archaeology Division surveys record the width of the agger of the Roman road to be 8 metres wide and 1 metre high through Harewood Forest. Margary also records the agger as being 27feet wide (8.2metres) from Moody's Down to the River Test and 27feet wide beyond Hatherden and Tangle, he also recorded the height of the road to be 4-5feet (1.5metres) high near Worthy Down⁵⁰. Canon J E Jackson's account of excavation to the Roman road in Wiltshire Archaeological and Natural History Magazine Volume 21 and the article from Smart Lethieullier Esquire to Mr Gale in Archaeologia Volume 1, record that the road was constructed on a high bed of flint, with a middle layer of cinders and ash, and was topped with imported gravel.

In consideration that the agger of the Roman road is over three times the width specified in the Laws of the Twelve Tables for a public road, its construction was significant and the road was surfaced with imported gravel, and that it formed an important trade route, it is likely to have been created at state expense and maintained by commissioners (curators viarum) or county/town councillors (civitas/aediles) and would have been a public road (viae publicae). Officers consider that the Roman Road over which the claimed routes travel, was used as a public carriageway during the Roman period.

The OS Archaeology Division surveys also record that the southern tributary of the River Test is only fordable in the area that a direct alignment crosses, and states that the ford where the Roman road crossed the Test was called Welford. The OS surveys also record that the agger of the Roman road had been surveyed travelling south from Harewood Forest to the River. The article by Smart Lethieullier Esquire to Mr Gale in Archaeologia Volume 1 also records the ford as being half a mile from Harewood Forest (Wherwell Woods), which is also an accurate distance for a crossing using a direct alignment. Officers therefore consider that, in all probabilities, the Roman Road followed a direct alignment across the River Test and its tributary the River Dever and that it is probable that this southern tributary of the Test was crossed as a ford.

⁴⁹ The Oxford Classical Dictionary (www.oxfordre.com)
Britannia: A History of Roman Britain by Frere Sheppard – 1987
Roman Roads in Britain by Ivan Margary 1955
Roman Roads in Britain by Thomas Codrington 1905
⁵⁰ Roman Roads in Britain by Ivan Margary 1955

80. Early medieval period – C.410 to 1066

In the Anglo-Saxon period England was divided into separate kingdoms, including Sussex, Kent, Mercia, and Wessex. Wessex covered much of southern England the kingdoms heartland being the counties of Dorset, Somerset, Wiltshire, and Hampshire. Although this period is sometimes referred to as the 'dark ages', a period about which archaeologists have less knowledge, due to the political prominence of Wessex during the early medieval period, some documentary evidence has been sourced from this period.

The Roman administration had set the foundation for the early notion of a 'highway' and there is evidence that use of most Roman roads continued into the early medieval period, the studies into the itineraries of the Anglo-Saxon monarchs indicating that long distance travel continued. The laws of King Ine of Wessex and King Wihtred of Kent confirm that there were laws governing long distance travel between the kingdoms. The laws of Henry I also evidence that by the eleventh century all highways enjoyed a degree of protection and the laws of Edward the Confessor record that several Roman roads became the responsibility of the state (including the Fosse Way which the Roman Road over which the claimed routes travel meets at Cirencester).

During the reign of Alfred the Great, fortified towns (*burhs*) were built as a defensive measure against the growing threat of the Danes, many of which utilised Roman or Iron Age sites due to the pre-existing road network and fortifications. *Burhs* also provided for the control of the economy and promotion of trade and constituted administrative and spiritual centres. The Saxons referred to a Roman settlement as a *caester*, the Roman towns of *Venta Belgarum* and *Corinium Dobunnorum* becoming *Venta Caester* and *Coryn Caester* before eventually being corrupted to Winchester and Cirencester.

It is probable, due to the location of the *burhs* recorded in the burghal hidage, that the route of the Roman Road continued to be used as an important trade route providing a direct link between *burhs* at Winchester and Chisbury and for long-distance travel between Cirencester and Winchester and the channel ports. The Charters of Headbourne Worthy and Stoke evidence that at a local level the route from Winchester to Andover was also used as a *herepath* indicating that the route was used as a public carriageway. It is also probable that the route from Winchester to Chisbury and on to Cricklade, in providing a route between *burhs*, was regarded, as per the Laws of Henry I, as a royal way (*via regia*). Officers consider that on the balance of probabilities, use of the Roman Road, over which the claimed routes travel, had continued as a public carriageway during the early medieval period.



Figure 3 – Map showing location of Saxon *burhs* (shown in blue) and other towns (green), and Roman Road network on modern base map. A larger interactive map can be accessed at www.google.com/maps.

81. Medieval period – 1066 to 1485

At the time of the Norman conquest, the principal urban centres in Hampshire were Winchester and Southampton. The itineraries of the medieval monarchs and Patent and Close Rolls indicate that the course of the Roman road had continued to be utilised for long-distance travel, at least for the royal households and merchants. The parish boundaries of Longparish and Goodworth Clatford are also likely to have been established within this period, this is also a good indication that the road was still in use when the boundary was fixed, as disused Roman roads do not appear to have had much longevity as boundary features in the landscape.⁵¹

The OS Archaeology Division surveys state that the Roman road through the river valley became partly disused about the 13th Century, officers have been unable to establish why the Ordnance Survey have stated this, in consideration of the available evidence, it appears probable that this occurred within the 18th Century.

⁵¹ Roman Roads in the Changing Landscape of Eastern England by James Albone 2016

82. Georgian Period – 1714 to 1837

The earliest cartographic evidence that details the claimed routes is Kitchin and Jeffry's Map of Hampshire, published in 1749. The earlier maps of this period including Kitchin and Jeffry's Map, Talor's Map of Hampshire 1759, and Andrew's and Drury's New Travelling Map 1776, show the course of the Roman Road as being comparable to other carriageways. The commercial maps evidence that the claimed routes physically existed on the ground, although they do not confirm status, they indicate that the course of the Roman Road was being used at the time as a principal route. Being sold to the public, they would be unlikely to show routes that the public could not use.

Following the approval by parliament of the Winchester and Andover Turnpike Trust in 1762 and the subsequent turnpike road from Andover to Winchester being built/improved and maintained, use of the course of the Roman Road including over the claimed routes appears to have reduced. The commercial maps of Milne 1791, Cary 1794, and Greenwood 1826, and OS Old Series Map 1810, record the claimed routes as being secondary routes, i.e., 'bye road', 'other road', and 'cross road'. Milne and the Ordnance Survey have not shown some of the section in between the claimed routes, but it is notable that the OS map shows the route north of the Test to the forest. The paper by Smart Lethieullier Esquire provides evidence that in 1770 that the route had continued to be used at least through Harewood Forest as a bridleway.

83. Victorian Period – 1837-1901

Claimed route 1236 is shown on the Barton Stacey Tithe Map comparable to other roads, was not taxable, and is listed in the apportionment under '*the roads*', which is strong evidence that the route was being used as a public road at the time. Claimed route 1156 is also shown comparable to other roads on the Longparish Tithe Map, however, the corresponding apportionment is recorded as '*half of old Roman Road*' and '*Wood*'. Claimed route 1156 is shown as a track on the OS County Series Map 1873 and is recorded as "Road" in the corresponding area book.

The London and South Western Railway Hurstbourne to Fullerton Line Railway Plan and book also indicate that route 1156 was a road but an 'occupation road' which indicates that claimed route 1156 was being used as a road but that at the time it was not considered to have public rights or full carriageway rights. It does not appear that section in between the claimed routes was in use during this period, however no evidence that this section has been legally stopped-up has been found.

84. 20th Century (1901-2000)

Both claimed routes are shown as secondary class roads on Bartholemew's Map of England and Wales 1902. The Andover Division Highways Map 1933, Maintenance Map 1946, and DMS 1957, record claimed route 1236 as a publicly maintainable unclassified road. The Longparish and Wherwell Parish Maps record claimed route 1156 as a Footpath. It does not appear that section in between the claimed routes was in use during this period.

85. During the Second World War Harewood Forest was used as an ammunition depot by the RAF. Section 16 of the Defence Act 1842 gave principal officers of her Majesty's ordnance powers to stop up or divert any public or private footpaths or bridle-roads. Officers have only been able to find evidence that the Road C87 Middle Way was stopped-up. It does not appear the stopping-up of any highways took place in relation to the claimed routes. It appears that Longparish Footpath 36 and Wherwell Footpaths 14 and 20, were not recorded on parish maps or the DMS until after the war.

86. The London Penzance Trunk Road (Andover By-Pass Side Roads) Order 1965 was made under Section 9 of the Highways Act 1959, the Order was advertised in the London Gazette on 9 April 1965.⁵² The order extinguished Footpath 36 north of Blakes Bushes to the A303, following the dedication by Trustees of R H Read Settlement 1967 the path was routed to U60 Micheldever Road, terminating to the north of the property Braeside. Officers consider that the extinguishment had also stopped up any unrecorded higher rights over the course of the Roman Road between the northern extent of Harewood Forest and the A303.

⁵² The London Gazette (www.thegazette.co.uk)

87. Conclusions in consideration of documentary evidence

It is considered that claimed routes 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236 and the section of Roman road in between them through the river valley, have been used as a public road with full carriageway rights from around the 2nd or 3rd Century. The use over all routes appears to have reduced to bridleway following the approval by parliament of the Winchester and Andover Turnpike Trust in 1762.

By the time the Definitive Map and Statement were recorded in 1957 use over claimed route 1156 is likely to have been mostly pedestrian. Use over claimed route 1236 appears to have continued at least as a bridleway until present day. Use over the section in between the claimed routes appears to have ceased in the early 1800s.

Officers therefore consider that there is satisfactory evidence for the inference of dedication of a vehicular highway at common law through long use over the course of the Roman road, including claimed route 1156 (apart from the small section to the north of route to U60 Old Micheldever Road) and 1236, and the section in between the claimed routes.

Officers do not consider that there is sufficient evidence to record a public right of way of a higher status over the section of claimed route 1156 that travels from SU 3936 4403 southeast of Blake's Bushes to U60 Micheldever Road (over a section of Footpath 36).

88. Effect of part 6 of the Natural Environment and Rural Communities Act 2006

As referred to in paragraph 8 above, the rights of way provisions in the Natural Environment and Rural Communities Act 2006 ("NERC") curtail the future scope for establishing public rights of way for mechanically propelled vehicles where these are based on either evidence of historic use, or dedication for use, by vehicles that were not mechanically propelled. Officers will now consider the effect of NERC and whether the routes should be recorded on the DMS as Byways Open to All Traffic ("BOAT"), or Restricted Byways.

89. Subsection 67(1) of NERC effectively extinguishes public rights of way for mechanically propelled vehicles over every highway not already shown on the Definitive Map as a BOAT, subject to the exceptions set out in Subsections (2) and (3).

90. Subsection 67(2)(a) excepts ways that have been lawfully used more by motor vehicles than by other users, in the five years preceding commencement (2006). There is no evidence to suggest that this was the case, and this exception therefore does not apply.

91. Subsection 67(2)(b) excepts ways that are immediately before commencement both recorded on the List of Streets as being maintainable at public expense and not recorded on the Definitive Map and Statement as a right of way. This exception therefore does not apply.
92. Subsection 67(2)(c) excepts ways that have been expressly created or constructed for motor vehicles. There is no evidence to suggest that a public right of way for mechanically propelled vehicles was expressly created by primary or secondary legislation, or by an instrument. In consideration that there must be 'express words in order', this exemption does not apply.
93. Subsection 67(2)(d) excepts ways that have been created by the construction of a road intended to be used by mechanically propelled vehicles. The Roman road was not constructed as a road intended to be used by mechanically propelled vehicles, it is therefore deemed that this exception does not apply.
94. Subsection 67(2)(e) excepts ways that had been in long use by mechanically propelled vehicles before 1 December 1930, when it first became an offence to drive 'off-road'. There is no evidence that confirms an earlier creation of vehicular rights (through use by non-mechanically propelled vehicles, by express dedication, or by some other means), it is therefore deemed that this exception does not apply.
95. Subsection 67(3) contains transitional arrangements, which except those highways that are the subject of an outstanding definitive map modification application for a BOAT made before the relevant date, which under Subsection (4) means 20 January 2005 in England. The applications were made after the relevant date and are for Bridleways, this exception therefore does not apply.

As none of the exemptions apply, officers consider that public rights of way for mechanically propelled vehicles have been extinguished over claimed routes 1236 and 1156 and the section in between them. All routes should therefore be recorded as Restricted Byways.

User Evidence

96. The applications are not supported by user evidence, the officer recommendation is therefore made on consideration of the documentary evidence.

Objections

97. Objections were received from The Wherwell Estate and The Middleton Estate.

Regarding the section of land in between the claimed routes, owned by the Wherwell Estate, the landowner has stated in summary that their position is that *"...on the basis of the evidence of which we are aware, they will object to any Definitive Map Modification Order which may be made"*. Govett Farms have also contacted the case officer and stated that they do not support adding a public right of way over the section in between the claimed routes.

Regarding claimed route 1156, The Middleton Estate have contacted the case officer and stated that they will object to any additional public rights over their land.

Conclusion

98. Officers consider that there is sufficient evidence to add several public rights of way to the DMS in the parishes of Barton Stacey, Longparish, and Wherwell. It is therefore recommended that authority is given to record the following public rights of way:

- a. A Restricted Byway, 8 metres wide, from SU 3936 4403 southeast of Blake's Bushes to SU 4065 4207 B3048 Longparish Road (this includes the upgrade of sections of Footpath 14a, 20 and 36 to Restricted Byway).
- b. A Restricted Byway, 8 metres wide, from SU 4132 4105 B3048 Longparish Road to SU 4132 4105 (This includes upgrading a section of Bridleway 12 from SU 4132 4105 to 4130 4109 to Restricted Byway).
- c. A Restricted Byway, 8 metres wide, from SU 4130 4109 Bridleway 12 to SU 4137 4097 junction with Restricted Byway 8 and U54 Newton Stacey Lane. A ford should be recorded where the route crosses the River Dever.

Officers do not consider that there is sufficient evidence to record a public right of way of a higher status over the section of claimed route 1156 that travels from SU 3936 4403 southeast of Blake's Bushes to U60 Micheldever Road (over a section of Footpath 36).

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.