

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee		
Date:	11 September 2019		
Title:	CR1020 - Application for a Definitive Map Modification Order to record a public Bridleway from Corhampton Road to Droxford Footpath 1, and to upgrade part of Droxford Footpath 1 to a Bridleway – Parishes of Droxford, and Corhampton & Meonstoke		
Report From:	Director of Culture, Communities and Business Services		
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Purpose of this report

1. The purpose of this report is to assist Members in determining whether the available evidence is sufficient for public rights of way to be added to the Definitive Map in the parishes of Droxford, and Corhampton and Meonstoke.

Recommendations

2. That authority is given for the making of a Definitive Map Modification Order to record:
 - i) A Bridleway 9 feet in width, as shown between points A – B – C on the attached plan.
 - ii) A Footpath, 9 feet in width, as shown between points F – G on the attached plan.
 - iii) A Footpath 1.5 metres in width, as shown between points G – H on the attached plan.
3. And to remove the limitations (gates) from the Definitive Statement of Droxford Footpath 1.

Executive Summary

4. This is an application made by a resident of Bishops Waltham (the 'Applicant') in 2009 under Section 53 of the Wildlife and Countryside Act 1981, to record a public Bridleway from Corhampton Road to Footpath 1 in the parish Droxford, and to upgrade Droxford Footpath 1 to a Bridleway from SU 583 198 to Dundridge Lane.
5. The application is supported by user evidence that the Applicant believes demonstrates that a Public Right of Way should be recorded on the basis of

long-term use of the claimed route. The user evidence submitted indicates that other routes have been used by the public - whether a public right of way subsists over these routes has also been considered as part of this investigation.

6. Having considered the supporting user evidence and taken additional research of historic documentary evidence into account, it is considered that there are insufficient grounds to record all the routes as public Bridleways. However, there is sufficient evidence to recommend that a Bridleway is recorded over the route A – B – C, and that Footpaths should be recorded over routes F – G and G – H on the attached plan.

Legal framework for the decision

7. 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) show –

- 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.

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

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

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

9. PRESUMED DEDICATION AT COMMON LAW

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is

sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

Issues to be decided

10. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are 'reasonably alleged' to subsist, evidence to show that rights subsist will be required for the sections of the claimed routes that travels over the existing public right of way, and evidence that rights are reasonably alleged to subsist will be required for any sections of the routes which are not currently recorded as a right of way.
11. Under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, 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.
12. 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.
13. 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.
14. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order.
15. 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 (please refer to the map attached to this report)

16. The routes that are the subject of this investigation shall be referred to as Routes 1 to 5; a brief description of each route is provided below:

17. Route 1 is approximately 1440 metres long, commencing at B3035 Corhampton Road opposite Corhampton and Meonstoke Bridleway 3 (point 'A' on the attached map). The route then travels southwards for around 310 metres along a woodland track where it deviates at point 'B', and travels westwards along a gravel track for around 330 metres to Droxford Footpath 1 at SU 583 198. The route then follows the route of Droxford Footpath 1 for 800 metres, to where it terminates at U201 Dundry Lane (point 'C').
18. Route 2 is approximately 1445 metres long. It is similar to Route 1, however the route deviates westwards through the woods to the north of Route 1 (point 'D' on the attached plan) and meets Droxford Footpath 1 at SU 583 199.
19. Route 3 is approximately 1435 metres long. It is similar to Routes 1 and 2, however the route deviates westwards through the woods further north (point 'E' on the attached plan) and meets with Droxford Footpath 1 at SU 583 200.
20. Route 4 is approximately 1095m long. Commencing at the B3035 Corhampton Road (point 'F' on the attached plan), the route travels southwards from the highway boundary along a gravel track for approximately 18 metres to the junction of Corhampton and Meonstoke Footpaths 34 and 35 and Droxford Footpath 1 (point 'G') and then southwards along Droxford Footpath 1 to where it terminates at U201 Dundry Lane (point 'C').
21. Route 5 is approximately 195m long. Commencing at Corhampton and Meonstoke Bridleway 5 (point 'H' on the attached plan), the route travels southwards across an arable field along a line to the west of the legally recorded line of Corhampton and Meonstoke Footpath 37, to where it terminates at the B3035 Corhampton Road opposite Droxford Footpath 1 (point 'F').

Background to the application

22. The routes which form the subject of this investigation are located within the Meon Valley and fall within the parishes of Droxford, and Corhampton and Meonstoke.
23. Routes 1 to 4 all, in part, follow the recorded line of Droxford Footpath 1, which was recorded on the first Definitive Map in 1951 and is shown as a footpath. At the northern end of Footpath 1, the path terminates approximately 18 metres from the B3035 Corhampton Road, at the junction with Corhampton and Meonstoke Footpath 34 and 35. County Council records have revealed that the continuation of Footpaths 34 and 35, which historically provided links to Corhampton Down, were extinguished to the north of Corhampton Road during the 1960s, following a widescale review of the public rights of way within the Parish.

24. Route 5 commences at Corhampton and Meonstoke Bridleway 5, which skirts around the southern boundary of Bottom Copse. Route 5 travels across an arable field to Corhampton Road, on a line to the west of the legally recorded line of Corhampton and Meonstoke Footpath 37. Bridleway 5 and Footpath 37 also appear to have been created following the review mentioned above.
25. Under the provisions of Section 31(6) Highways Act 1980, the owner of the field to the north of Corhampton Road submitted a declaration to the County Council in 2008, stating that they had no intention to dedicate any further public rights of way over their land. A subsequent deposit was received in 2019.
26. In the latter part of 2008 the owner of the land adjoining the south of Corhampton Road erected fencing along the frontage to the road, which prevented horse riders from accessing Hazelholt Copse, and which in turn prompted the application to be submitted to the County Council.

Consultation with other bodies

27. In addition to the landowners, the following people and organisations have been consulted on this application: The Ramblers, Open Spaces Society, Byways and Bridleways Trust, Cycling UK, Winchester City Council, South Downs National Park Authority, Droxford Parish Council, County Councillor Rob Humby (Bishops Waltham), County Councillor Roger Huxstep (Meon Valley) and the Area Countryside Access Manager. Responses are included below.
28. The Ramblers
"Thank you for contacting the Ramblers re the above up-grade and claim Waltham group of the Ramblers cover Droxford parish and I have no real problem with this application. Usually my main concern is with the surface, but in this case Droxford FP1 has quite a firm surface as it is used to access properties along the track, and it is quite wide. As for the new claim section I am not so familiar with. Many years ago a member of our group led a walk along the proposed route as she was a local Droxford resident. I have not walked it since. A new link right of way would be most welcome. I see that 21 people have given evidence of use, and I presume this has been on a horse. A sign at Dundridge Lane, probably put up by the land-owner discourages horse riders. This has only appeared in the last year or so".
29. No other responses were received.

The Landowners

30. The previous owner of **Hazel Holt House** raised an objection to the application, which was received in August 2009, a summary of the grounds stated are provided below:
- i) The footpath is clearly signed on Dundry Lane as a footpath.
 - ii) The route is marked as a footpath on all OS maps.
 - iii) Use by horse riders has been occasional.
 - iv) Other bridleways in the area are very well used by riders, indicating that riders knew the path was a footpath.
 - v) Use of the track has been inconsistent; riders have, on occasion, ridden in the woods generally.
 - vi) It was their practice to tell people that the track past their house was only a footpath and not a bridleway.
 - vii) The route sought as a bridleway does not connect to the bridleway coming from the north, where it joins Corhampton Road; it is proposed to connect the requested bridleway to the gate of Steynes Farm.
 - viii) The riding public generally have not sought to use the route through Hazelholt as a bridleway because it is extremely dangerous for horses to cross the main Corhampton Road by Steynes Farm.
31. The owner of **North Lodge** and **Hazelholt Copse** has raised an objection to the application which was received in June 2009, a summary of the grounds stated are provided below:
- i) Members of their family and people working for them have confronted people riding in the woodlands and have asked them to desist.
 - ii) There is no documentary evidence to show that the claimed path is a public right of way.
 - iii) The area of Hazelholt Copse where the claimed route first crosses does not contain a path of any sort, let alone a bridleway.
 - iv) Formation of a bridleway through the woodland would be harmful to the commercial use of the woodland.
 - v) The track which runs north/south from the B3035 is not maintained as a path or bridleway and has never been improved or kept in good condition. It has, at times, been blocked off and for many years has not been used by anyone.
 - vi) The track which runs east/west abutting the golf course is used for work purposes only.
 - vii) The Applicant and other users would be safer if they did not cross the busy B3035. The safety of the users of the proposed bridleway is further compromised due to timber processing activities and the use of tractors.
32. The owner of **Hazel Holt House** has raised an objection to the application which was received in January 2019, a summary of the grounds stated are provided below:
- i) A "No bridlepath" notice has been erected at the southern end of Droxford Footpath 1 at Dundry Lane.

- ii) “Private” notices were erected in 1991 at various points, several users acknowledge the notices.
 - iii) A gate was installed across the route between 1991 and 1997 for a period of 2 to 6 months, which interrupted use as a bridleway and indicated that the landowner had no intention to dedicate a bridleway.
 - iv) There have been various challenges to the use, those who challenged riders informed them that there was a right of way on foot only.
 - v) Very few of the users have used the route for 20 years or more.
 - vi) Some of the claimed use (such as the assertion by one person of 250 times per year) is implausible.
 - vii) Part of the claimed way was effectively impenetrable prior to the gales of 2012, which materially thinned the woodland.
33. The tenant of **Hazel Holt House** has raised an objection to the application, they have provided that they have seen no evidence that would support that the route has been used as a public right of way since they moved to the house in 2011.
34. The owners of **St Clairs Farm** have raised an objection to the application which was received in January 2019, a summary of the grounds stated are provided below:
- i) There is no evidence of the existence of Footpath 37 on old maps and no historic or documentary evidence has been provided in support of the application.
 - ii) Footpath 37 was added to the First Definitive Map in 1951; appropriate consultations were carried out, therefore if bridleway rights existed at the time it would have been recorded as such.
 - iii) The use of Footpath 37 has not been prevented and the path remains open for public use on foot, we would question whether there has been an event which would constitute a calling into question of the public’s right to use the path.
 - iv) The number of different routes and potential spread of use diminishes the use of each route to an average of less than 0.5 people per day. Use less than 0.5 people per day is insufficient for a landowner to be aware of any use and therefore have opportunity to challenge it.
 - v) 2 users were given permission and therefore the use is not ‘as of right’.
 - vi) It is likely that the users come from local families which questions whether or not the claimed use is by the public.
 - vii) Several users observed “Private” signs making it clear that the land is not public and should not be used as such.
 - viii) St Clair’s deposited with the Council a map and statement under Section 31 of the Highways Act 1980 [this was received in 2008] demonstrating a clear lack of intention to dedicate further public rights on their land other than those which already exist.

Documentary Evidence

35. Definitive Map and Statements – Droxford Rural District – 1951
Droxford Footpath 1 is shown on the first Definitive Map published in 1951, the path is recorded as being a public footpath. Corhampton and Meonstoke Footpath 8 is recorded as meeting Corhampton Road opposite Steynes Farm, Footpath 8 had previously continued up the driveway of Steynes Farm until the route to the north of Corhampton Road was extinguished in 1983.
36. The Definitive Statement for Droxford Footpath 1 records the path as travelling from SU 5827 2010 Corhampton and Meonstoke 34 and 37 at Parish Boundary to SU 5829 1908 Road U201, Dundry Lane south of Hazel Holt Farm. The longer description is recorded as *'From Parish Boundary to junction with No. 3 Phrympt Copse from Parish Boundary at Hazelholt East Lodge, southwards along gravelled drive 9' wide, through double wire gates into Hazelholt Copse – through double wire gates at southern edge of copse, along track to Road U.201'*.
37. Non-Statutory Review of Public Rights of way
County Council records have revealed that a review of public rights of way was undertaken in the parish in 1958. The correspondence associated with this review provides the following relevant information in relation to the routes that are the subject of this application:
38. Letter dated 9 February 1960, from the County Surveyor to the Clerk of Droxford Rural District Council, which states that there had been increased riding by young children in the area.
39. Extract from the minutes of County Roads and Footpaths Sub-Committee held on 2 May 1963, which details that the Sub-Committee did not agree to the omission of a proposed Bridleway south of Bottom Copse which formed part of a previously agreed extinguishment, diversion and creation of public rights of way.
40. Letter dated 17 May 1963, from Corhampton Farms Ltd, to the Clerk of the County Council, which in reference to the proposed Bridleway between Bottom Copse and Road B3035, acknowledges that they had received a letter from the County Council indicating that Droxford Footpath 1 was being used as a Bridleway; *"...forms a direct link with the footpath which is, according to your letter, also used as a bridleway"*.
41. Extract from the minutes of County Roads and Footpaths Sub-Committee held on 30 May 1963, which details that the Sub-Committee had declined to reconsider the decision not to omit the proposed Bridleway south of Bottom Copse, which formed part of the agreed basis for the extinguishment, diversion and creation of public rights of way at St Clairs Farm. It is recorded that the County Surveyor pointed out that *"although it was not necessary to include this as a bridleway, since it would not form part of a continuous bridleway, it nevertheless formed a link between the footpath*

running along the boundary of Bottom Copse and the footpath running in a southerly direction from the opposite side of Road B3035”.

42. Letter dated 23 November 1963, between Corhampton Farms Ltd and the Clerk of the County Council, which provides that Corhampton Farms felt that the best way to meet the situation would be to have a Footpath connected with the Bridleway running along the boundary of Bottom Copse. In reference to the path, Corhampton Farms requested that it is “*directly opposite to the path through Hazelholt Copse, and in the same line as this path. This would ensure that it connected the road and bridleway at the narrowest point between them*”.
43. Extract from the minutes of the County Roads and Footpaths Sub-Committee held on 16 December 1963, which details that the Sub-Committee included a Footpath and excluded the proposed bridleway between Bottom Copse and the road. The Clerk is recorded to have reported that “*Corhampton Farms Ltd... were prepared to dedicate a footpath along the route shown on the plan laid before the Sub-Committee, this being in line with Footpath 1 and across the narrowest part of the land between Bottom Copse and the road*”.
44. Parish Maps – Droxford and Corhampton & Meonstoke – 1950
The preparation of the first Definitive Map started in the early 1950s, following the passing of the National Parks and Access to the Countryside Act 1949. Initial surveys were carried out by the Parish Councils, and the map provided by Droxford Parish Council, dated March 1950, shows a public right of way on the line that is now recorded as Droxford Footpath 1. It does not show any of the routes that deviate through Hazelholt Copse as being public rights of way. The map submitted by Corhampton & Meonstoke Parish Council dated May 1950 does not show Corhampton and Meonstoke Footpath 37. Corhampton and Meonstoke Footpath 8 travels to the east of Steynes Farm. The map does not show a route traveling south from Corhampton Road opposite Steynes Farm.
45. Online photographs
The website www.geograph.org.uk provides geographically representative photographs. For SU5819 there are twenty-two images, one of which provides a photo of the entrance to Droxford Footpath 1 at Dundridge Lane, the “No bridlepath” sign reported to have been erected is not present in the photograph, which is dated 4 April 2010, (<https://www.geograph.org.uk/of/1786337>).
46. Another photograph (also dated 4 April 2010) is of the route from Bottom Copse to Corhampton Road, which forms part of Route 4 (<https://www.geograph.org.uk/photo/1786407>). The related comment details that “*the footpath runs in a straight line from the B3035 to Bottom Copse, the woodland seen ahead. It may be objected that the subject coordinates given do not coincide with those of the path on the map; that is because the line of*

the footpath that has been created with weedkiller differs from that on the map. It does however run to the only obvious gap in the hedge”.

47. Aerial Photography 2004 to 2013

Most of the routes considered as part of this investigation cannot be seen on aerial photography due to them being obscured by vegetation. However, the imagery does clearly depict use of the path across the field to the north of Corhampton Road, and this commences opposite Droxford Footpath 1 and proceeds across the narrowest part of the land between Bottom Copse and the Road, and not along the legally recorded line of Meonstoke and Corhampton Footpath 37.

48. Ordnance Survey Maps 1910 to 1971

Ordnance Survey maps were produced to record topographical features and were not intended to record public rights of way. However, some of the routes under consideration are shown to have been in situ for a considerable period. The England and Wales Maps Six-inch edition of 1910 and 25-inch of 1909 show that a route was discernible on the ground over the line which Droxford Footpath 1 is recorded. Neither Footpath 37 or Route 5 across the field to the north of Corhampton Road are shown on these editions. A route travelling south of Corhampton Road opposite Steynes Farm is also not shown on these editions.

49. The OS National Grid map and 1:25000 map of Great Britain of 1961 show that a route was discernible to the south of Corhampton Road, commencing opposite Steynes Farm along the line of Corhampton and Meonstoke Footpath 8. A route travelling south of Corhampton Road through the copse (Routes 1 to 3) is not shown.

50. Hazelholt Copse has been managed as a commercial woodland, the area of land adjoining the south of Corhampton Road had been open pasture until 1960 when the woodland was extended north to the road. The route that travels south of Corhampton Road through the copse (Routes 1 to 3) does not appear to be defined on any maps until the 1971 edition of the OS National Grid map.

User Evidence

51. The application is supported by evidence of use from 29 local residents, collected on user evidence forms and supporting statements, this evidence is summarised on the chart at Appendix 1. The table is, by necessity, a generalisation, but it provides an insight into the evidence which has been put forward in support of the application.

52. The use documented on the user evidence forms commenced in 1973 and continues up until the application was submitted in 2009. All use appears to have been for recreational purposes, and use has ranged from 1 to 250 times per year. All the users have reported to have seen other pedestrians and horse riders using the route.

53. The overall volume of use provides that 6 users claim to have used the routes more than once a week, 9 users claimed use of between twice a month and once per week, and 14 users have used the routes less than twice per month.
54. Several users reported having seen “Private” notices along the route, and some of these witnesses reported that they thought that these signs related to the tracks that deviate east/west through the woodland (routes 1 to 3). Others felt that the notices indicated that the woods were private (as opposed to the public paths). Some users have reported that the signs went up within a couple of years of the application being submitted, others have stated that they have been there ever since they can remember.
55. Four of the users have stated that they were stopped by landowners and asked not to use the path, these users have reported that this took place immediately prior to the application being submitted in 2008. One user reported that “the guy who does the forestry” had given them permission to use the route that they had used.

Analysis of the evidence

56. There is no documentary evidence to indicate that there has been any formal dedication of the routes that are the subject of this report, the application must therefore be determined upon the user evidence that has been put forward. The evidence of long use under Section 31 of the Highways Act 1980 and common law is considered below.

Analysis of the evidence under Section 31, Highways Act 1980

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

58. Physical nature of the routes

The routes that are the subject of this investigation are all capable of being a right of way at common law. The routes all, to some extent, encompass Droxford Footpath 1, which is a surfaced gravel track. Although some of the routes deviate through the woods, these routes are well established paths, and all of the routes are shown on current Ordnance Survey maps as physical features.

59. The bringing into question of the public's right to use the path
In late 2008 the owner of the land adjoining the south of Corhampton Road erected fencing along the frontage to the road preventing horse riders from accessing the route travelling south through the woods. This event is deemed to have brought the use of routes 1 to 3 into question. There is no identifiable event that has brought routes 4 and 5 into question as it appears that the use of the routes has not been challenged. There is also no identifiable date whereby the use of Droxford Footpath 1 by horse riders has been effectively challenged. Several landowners have stated that the "private" signs were erected along the route (as acknowledged by users), the effectiveness of these signs is considered within paragraph 77 of this report. Where there is no identifiable event, Section 31 provides that the date of an application for a modification order is made should be used as the date at which use was brought into question. In regard to route 5, a Landowner Deposit was submitted to the County Council in 2008. The relevant period of use will therefore be from 1988 to 2008 for all routes.
60. Twenty years' use without interruption
Routes 1 and 2 - The user evidence submitted covers a period of use for horse riders that spans the 20-year relevant period from 1988 to 2008.
61. Route 3 - The evidence submitted for route 3 does not cover the 20-year relevant period from 1988 to 2008.
62. Routes 4 and 5 - The evidence submitted for routes 4 and 5 does not cover the 20-year relevant period in relation to horse riders. The evidence does however suggest that use by walkers has covered the 20-year relevant period. The photograph and related comments from the website www.geograph.org.uk, referred to at paragraph 44 of this report, reveal that in 2010 the line of the path walked across the field differed to that of the map. The owner of the field to the north of Corhampton Road has also confirmed that there is only one gap in the hedge on the northern side of the field and that the route across the field is the only route that has ever been available on the ground.
63. Three of the users have reported being verbally challenged. One user has stated that although challenged they were not told that they could not use the route. Another user has stated that they were told that the path was a footpath, and another user who used the route on horseback had been told that they were not allowed to use the route, however these challenges did not take place until 2008. None of the other users reported having been challenged when using the routes, it is therefore considered that these verbal challenges were ineffective in conveying to the public at large that there was no public right of way to equestrians or cyclists over the routes. Further, the dates the challenges are reported to have taken place means it is doubtful whether use of these routes had been called into question prior to 2008.

64. 'Use without force, stealth or permission'

65. *Force – to be as of right, use must not be as the result of the use of force.* One of the landowners has provided that prior to the gales of 2012 part of the route through the copse was effectively impenetrable, and so it is suggested that the use of force was used to access the route. This is not supported by the user evidence that has been submitted or by the historic OS maps, referred to at paragraphs 46-48 of this report. The user evidence indicates that there were no fences, locked gates, or other intentional obstructions, and the public appear to have enjoyed uninterrupted access along the routes.

66. *Stealth – to be as of right, use must be open and of the kind that any reasonable landowner would be aware of, if he or she had chosen to look.* Use of the claimed route has been open and without secrecy and of a type that would have been capable of coming to the attention of the landowner. The owner of the arable field to the north of Corhampton Road has asserted that the use of the route across the field has been insufficient for them to be aware of any use and therefore have opportunity to challenge it. However, the owner of the land immediately south of the road has acknowledged that they were aware of use of the route across the field by horse riders.

67. *Permission – users as of right should not be using the way with any kind of licence or permission.* Two of the users have reported that they were granted permission to use the route on horseback. One of these users has stated that they had requested permission in 2009, which is after the date established as being when rights were called into question. The other user has reported that they had been granted permission to use the route by 'the guy who does the forestry', however, the corresponding landowner has provided that they have told their employees to tell horse riders not to use the routes; therefore it is unclear as to whether any permissive access for equestrians or cyclists has ever been authorised.

Use by the public

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

68. Route 1 – The volume of use by horse riders over this route is approximately twice per day over the relevant period, which is considered sufficient to have come to the attention of the landowners. Although the route is somewhat remote where it deviates through the copse, the copse has been managed as a commercial woodland and the landowner has sheds on this particular route where they conduct their timber processing activities.

69. Routes 2 and 3 – The volume of use put forward on routes 2 and 3 by horse riders is approximately 3 times per week, which is considerably less than that of route 1. Although the previous landowner of Hazelholt Copse has stated that they were aware that riders had on occasion ridden in the woods generally, no timber processing or other activities have been conducted along these routes by the landowner. When considered alongside the lower volume of use, it is considered, on the balance of probabilities, that the use on these routes was not of a volume sufficient to have come to the attention of the landowner.
70. Route 4 and 5 – The volume of use for route 4 and 5 by horse riders is approximately 3 times per week, which is not deemed to have been sufficient to have come to the attention of the landowners. The user evidence in conjunction with the submissions from the landowners, does however indicate that the volume of use by pedestrians was sufficient and it had come to their attention.
71. *Use of a way should not consist solely of a particular class of person, such as the employees of a particular employer, tenants of a particular landlord, or customers of a particular business, if it is to be recorded as public.*
72. One of the landowners has suggested that ‘what is being asked for is not a public bridleway, but a private right to the convenience of those who stable their horses at Steynes Farm’. However this is considered not to be the case as Steynes Farm is not adjacent to any of the routes which are the subject of this application, and therefore none of the users would be exercising a private right. None of the users appear to have a particular connection to any of the landowners, and the use of the route also does not appear to have been restricted to a particular family or group of people.

Summary of user evidence

73. The evidence of use indicates that local people have used the routes that that are the subject of this application to travel between Dundry Lane and Corhampton Road on horseback since 1973 until the application was made in 2008. There is no evidence put forward by any users to suggest that public access has been physically obstructed. The volume of use put forward is considered to represent use by the public, however the use has not covered the full 20-year relevant period on all routes, and the spread of use over the various routes has also diluted the amount of use on each route and the likelihood of such use coming to the attention of the landowner.
74. Route 1 – The use by horse riders and pedestrians covers the full 20-year relevant period and is considered to be of a volume that should have come to the attention of the landowners.
75. Route 2 – The use by horse riders and pedestrians covers the full 20-year period but is not considered to be of a volume that would have come to the attention of the landowners.

76. Route 3 – The use by horse riders and pedestrians does not cover the full 20-year period and is not considered to be of a volume that would have come to the attention of the landowners.
77. Route 4 and 5 – The use by horse riders does not cover the full 20-year period and is not considered to have been of a volume that would have come to the attention of the landowners. The evidence of use by pedestrians does cover the full 20-year period and would have been of a volume that would have come to the attention of the landowner.

Actions of the Landowners

78. There is no evidence put forward by the applicant (or discovered by officers) to indicate that the current or previous landowners have ever expressly dedicated a public right of way over the routes which are the subject of this application. County Council records, as referred to in the 'Documentary Evidence' section of this report, reveal that discussions have taken place with the previous landowner of the field to the north of Corhampton Road, regarding the possible dedication of a public bridleway across the field, but these had not resulted in any firm offer to dedicate.
79. Several of the landowners have stated that "Private" notices were erected, which are reported to have been put up in 1991. Signs which indicate that land is private, do not necessarily indicate that there is no public right of way; many public rights of way pass along private access tracks. In this case, the track which the signs have been erected along is the route of Droxford Footpath 1. At the northern end where the footpath commences, "Private" signs have been erected either side of the public right of way, so the notices could not have been read as a blanket prohibition. When questioned about the ambiguity of the signs, the landowner stated that the signs were intended to imply that the track was private to vehicles.
80. The question of signage on an existing right of way was considered in *Burrows v SSEFRA (2004)*, whereby the interpretation of a 'Private Road – access only' notice adjacent to a public footpath was considered. A Nicol QC concluded that the "*adequacy or otherwise of the inference as an expression of the landowner's intention was a question of fact for the Inspector*". The intention of the person erecting the notice may therefore be inferred from how it was likely to be interpreted by those who saw it. In light of the decision in *Burrows*, it is not considered that the wording of the signs is adequate to indicate that there was no public right of way for cyclists or horse riders, to demonstrate a lack of intention to dedicate or prevent the acquisition of bridleway rights, or to have called such use into question at an earlier date.

81. A landowner has stated that a “No bridlepath” notice was erected at the southern end of Droxford Footpath 1 at Dundry Lane. The photograph from the website www.geograph.org.uk, referred to at paragraph 44 of this report, reveals that on 4 April 2010, no sign was present at the southern end of Droxford Footpath 1. The user evidence and the response from the representative of the Ramblers Society also indicate that this sign was erected after 2008, the date established as being when rights were called into question. It therefore cannot be said with any certainty that such a notice was in situ during the relevant period. Although it is considered that the wording of this sign would have adequately indicated that there was no public right of way for cyclists or horse riders, on the balance of probabilities, it is not deemed that the use of the route by equestrians or cyclists had been called into question at an earlier date.
82. Several landowners have asserted that a gate was installed across Droxford Footpath 1 for a period of 2 to 6 months between 1991 and 1997, which is purported to have interrupted the use of the route by horse riders. The County Council, as Highway Authority, has no record of ever providing authorisation for any gate on Droxford Footpath 1, the Highway Authority would also not have grounds for supporting such an authorisation, as gates can only be added to public rights of way for stock control purposes.
83. The Definitive Statement for Droxford Footpath 1, as referred to at paragraph 33 of this report, records that when the path was added to the Map in around 1952 that there were ‘double wire gates’ present along the route of the public right of way, located at the northern and southern edge of the Hazelholt Copse. These gates have since been removed from the footpath, allowing equestrians and cyclists to access the route. The Courts have decided (*Gloucestershire County Council v Farrow - 1985*) that if a right of way originally dedicated subject to a limitation is subsequently used for a 20 year period during which time it is free from the limitation, the highway is presumed to be rededicated free from the limitation or condition. This scenario would therefore appear to apply in this instance.
84. Notwithstanding, that the permitted gates have been removed, and the installation of the unauthorised gate would have been an action prohibited by statute, no evidence has been provided by the landowners to support that a gate was ever installed. None of the user evidence refers to a gate being erected along the footpath and it is therefore considered, on the balance of probabilities, that the use of the route by equestrians or cyclists had not been interrupted, or that such use had been called into question at an earlier date.

Conclusions under Section 31, Highways Act 1980

85. Route 1 – It is considered that the evidence of public use is sufficient for a deemed dedication of public bridleway rights over Route 1 to be inferred under Section 31.

86. Routes 2 – It is not considered that the evidence of public use is sufficient for a deemed dedication of a public right of way to be inferred under Section 31.
87. Route 3 - The evidence of use does not cover the required 20-year period and is therefore considered insufficient for a deemed dedication of a public right of way under Section 31.
88. Route 4 - The evidence of use by horse riders does not cover the required 20-year period and is not considered sufficient for a deemed dedication of a public bridleway under Section 31. However, it is considered that, excluding the part of the route that travels along Droxford Footpath 1, that the evidence of public use is sufficient for a deemed dedication of a public footpath over route 4.
89. Route 5 - The evidence of use by horse riders does not cover the required 20-year period and is therefore considered insufficient for a deemed dedication of a public bridleway under Section 31. It is considered that the evidence of public use is sufficient for a deemed dedication of a public footpath over the route.

Analysis of the evidence under Common Law

90. This matter can also be considered under common law where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied from a sufficient period of public use without secrecy, force or permission, and the acquiescence of those landowners in that use.
91. This is required in order to meet the two pre-conditions for the creation of a highway - that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law and depends on the facts of the case. The use must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as putting up a physical barrier, erecting notices stating that the route is not a public right of way of the type being claimed or turning people back.
92. Route 1 – Unlike under Section 31, the total period spanned by the user evidence can be considered. The evidence of use put forward covers every year over a period of 35 years from 1973 until 2008, is considered to be of a volume of use that would have come to the attention of the landowners, and that as the landowners have not taken any effective steps to prevent use of the route, that a dedication at common law has been inferred.
93. Route 2 – The evidence of use put forward covers every year over a period of 24 years, from 1984 until 2008, however, it is not considered that the volume of use put forward, would have come to the attention of the

landowner, or for them to have acquiesced with such use, or for a dedication at common law to have been inferred.

94. Route 3 – The evidence of public use over the route covers 14 years and therefore did not meet the requirements of Section 31. Although a claim may nevertheless succeed under common law, it is not considered that the volume of use put forward, would have come to the attention of the landowner, or for them to have acquiesced with such use, or for a dedication at common law to have been inferred.
95. Route 4 – The evidence of use over the route by horse riders covers 18 years. As the volume of use was not sufficient to come to the attention of the landowner, it is not considered that a dedication of a bridleway at common law can be inferred. The evidence of use by walkers is considered to have come to the attention of the landowner and it is therefore deemed that a dedication at common law can be inferred.
96. Route 5 – The evidence of use over the route by horse riders covers 18 years, as the volume of use was not sufficient to come to the attention of the landowner, it is not considered that a dedication of a bridleway at common law can be inferred. The evidence of use by walkers is considered to have come to the attention of the landowner and it is therefore deemed that a dedication at common law can be inferred.

Conclusions under Common Law

97. It is deemed that use of the route by the public has given rise to an inference of dedication of a public bridleway over Route 1 and excluding the part of the route that travels along Droxford Footpath 1, that the use has given rise to an inference of dedication of a public footpath over Routes 4 and 5.

Conclusions

98. The available evidence is sufficient to infer that there has been a route corresponding to Route 1 dating back to 1971 and is sufficient for it to be reasonably alleged that the public have used this route on horseback as of right and without interruption for a full period of 20 years. The available evidence is also sufficient for a common law presumption to be inferred (i.e. that the landowner intended to dedicate Route 1 as a public bridleway).
99. The available evidence is also sufficient for it to be reasonably alleged that the public have used Routes 4 and 5 on foot, as of right, and without interruption for a period of 20 years. The available evidence is also sufficient for a common law presumption to be inferred (i.e. that the landowner intended to dedicate Routes 4 and 5 as a public footpath).
100. The available evidence is considered insufficient for it to be inferred or reasonably alleged for any public right of way to subsist on any of the other routes.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	yes
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

Location

Claim Reference: Case File (CR/1020)

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:

See guidance at <http://intranet.hants.gov.uk/equality/equality-assessments.htm>

Insert in full your **Equality Statement** which will either state:

- (a) *why you consider that the project/proposal will have a low or no impact on groups with protected characteristics or*
- (b) *will give details of the identified impacts and potential mitigating actions*