

## HAMPSHIRE COUNTY COUNCIL

### Officer Decision Record

<b>Decision Maker</b>	Jonathan Woods – Countryside Strategic Manager
<b>Title</b>	Application for a Definitive Map Modification Order to record public footpath rights between Wych Lane and Gosport Footpath 510 - Bridgemary, Gosport (CR/976)

**Tel:** 0370 7797652

**Email:** harry.goodchild@hants.gov.uk

#### **1. The decision:**

- 1.1. In 2006, a member of the public submitted an application to Hampshire County Council for a Definitive Map Modification Order (DMMO) to have a route connecting Wych Lane and Nobes Avenue (as well as two spurs linking the route to Fisher Road) in Bridgemary, Gosport, as public footpaths, based on evidence of long use by the public without challenge. The routes in question run through land within the ownership of Hampshire County Council (HCC) and Gosport Borough Council (GBC). Part of the application route has since been dedicated by GBC.
- 1.2. Having reviewed the available evidence (discussed in the accompanying Background Report), it is considered that there are sufficient grounds to record that part of the route not already dedicated on the Definitive Map as a public footpath.
- 1.3. It is therefore recommended that authority be given for the making of a Definitive Map Modification Order to record a public footpath between Wych Lane and Gosport Footpath 510, with a width of 2.8 metres and staggered barriers recorded at SU 5821 0285 and SU 5825 0286.

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

- 2.1. Hampshire County Council has a statutory duty to determine applications made under Section 53(5) Wildlife and Countryside Act 1981.
- 2.2. An analysis of the available evidence, set out in the accompanying background report indicates that, on the balance of probabilities, the public has acquired a public right of way over the claimed route.

#### **3. Other options considered and rejected:**

- 3.1. N/A

**4. Conflicts of interest:**

4.1. N/A

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

5.1. None

**6. Supporting information:**

Location Map  
Appendix 1 – Highway Boundary Map (excerpt)

<b>Approved by:</b>	<b>Date:</b>
_____ (signature)	<b>06/10/2021</b>
<b>Jonathan Woods – Countryside Strategic Manager</b>	
_____	
<b>On behalf of the Director of Culture Communities and Business Services</b>	

**CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	no
Corporate Improvement plan link number (if appropriate):	

## **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

Reference: CR/976

### 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**

458000

458500

Location Map

HOLDROOK  
Primary  
School

Bridgemary  
School

PW

PW

A

B

458000

458500



Hampshire  
County Council

Application for a Map Modification Order to record  
a public footpath between Wych Lane and Nobes  
Avenue - Bridgemary, Gosport

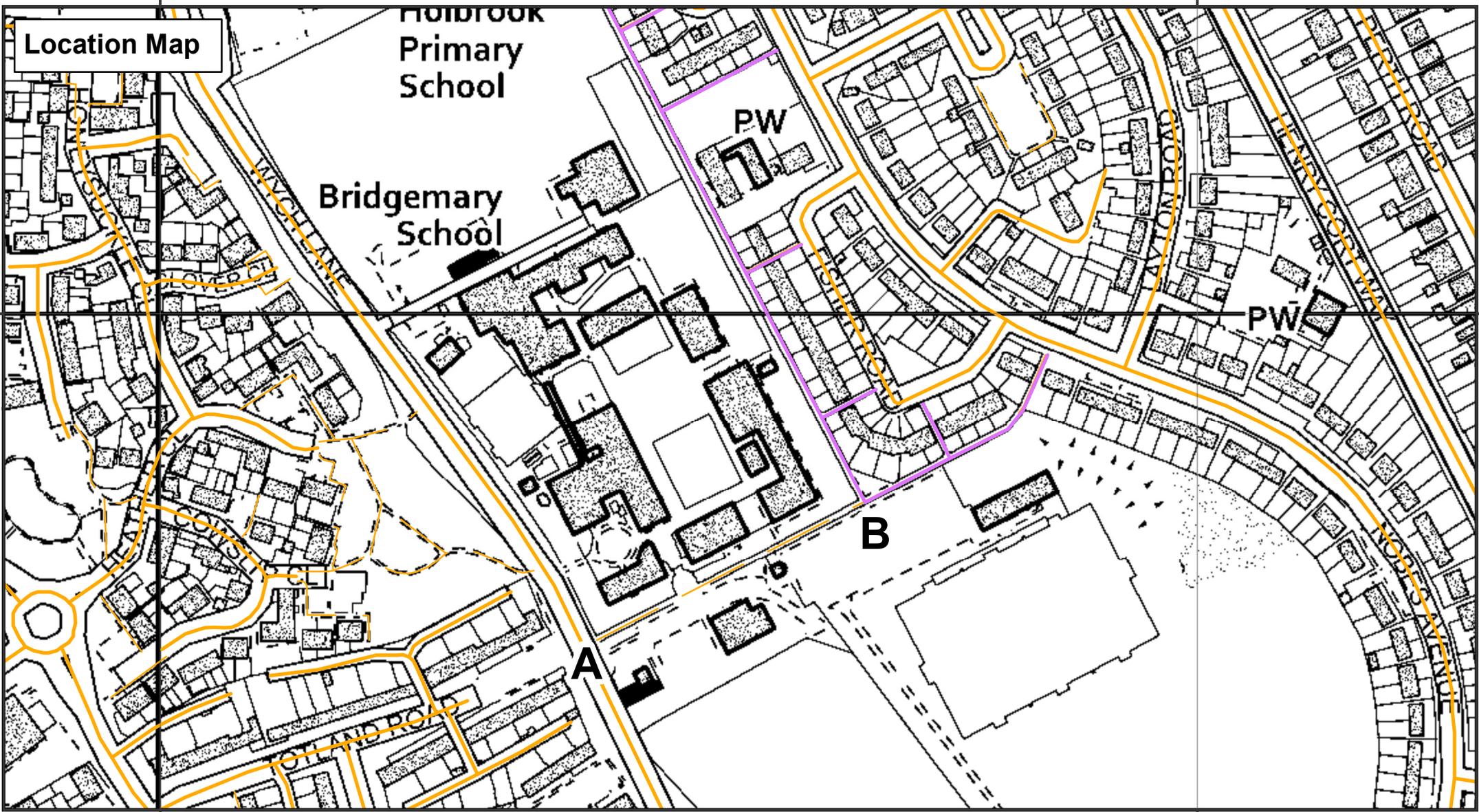
LEGEND

-  Public Footpath
-  Adopted Highway  
(recorded on List of Streets)

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

1:2,500

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# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Jonathan Woods <i>Countryside Strategic Manager</i>
<b>Date:</b>	6 October 2021
<b>Title:</b>	Application for a Definitive Map Modification Order to record public footpath rights between Wych Lane and Nobes Avenue - Bridgemary, Gosport (CR/976)

**Contact name:** Harry Goodchild – Map Review Manager

**Tel:** 0370 7797652

**Email:** harry.goodchild@hants.gov.uk

### Purpose of this Report

1. The purpose of this report is to assist the Countryside Access Strategic in determining whether to accept an application for a Definitive Map Modification Order to record a public footpath in the parish of Gosport.

### Recommendation(s)

2. That authority is given for the making of a Definitive Map Modification Order to record a public footpath with a width of 2.8 metres, as shown between Points A and B on the attached plan, with staggered barriers at SU 5821 0285 and SU 5825 0286.

### Executive Summary

3. This is an application made by a member of the public ('the applicant') in 2006 under Section 53 of the Wildlife and Countryside Act 1981, to record a public footpath in Bridgemary, Gosport. 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.
4. Having considered the evidence submitted with the application, and undertaken additional research of historic documentary evidence, it is considered that there are sufficient grounds to record a footpath along the claimed route.
5. In response to the application, a section of the application route was voluntarily dedicated as public footpath by Gosport Borough Council (GBC) in 2020 (now recorded as Gosport Footpath 510). This report therefore focuses on the remaining section of the path, shown running between A-B on the Location Map. All references to 'the claimed route' in this report relate to this section.

### Legal framework for the decision

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

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

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

b) .... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order

make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows: -

(a) the coming into operation of any enactment or instrument, or any other event, whereby—

(i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;

(ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or

(iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path

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

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

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

#### PRESUMED DEDICATION AT COMMON LAW

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

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

6. The claimed route forms part of a pedestrian link between Wych Lane and Nobes Avenue, and runs between the grounds of Bridgemary School and its playing fields. It is metalled and is approximately 2.8 metres wide, with staggered barriers situated at the junction with Wych Lane, and a further 40 metres to the east of this point. A 'No Cycling' sign, shown in photographs of the route submitted by the applicant to be situated at the junction with Wych Lane, no longer appears to be present. The length of the claimed route is approximately 145 metres. The route is recorded on the list of streets maintainable at public expense.

*Google Street image showing the western end of the route from Wych Lane (Point A)*



7. The route runs through land owned by Hampshire County Council (HCC), which is held on a long lease by The Kemnal Academy Trust (TKAT), which runs Bridgemary School.

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

8. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are 'reasonably alleged' to subsist. Case law has decided that the burden of proof associated with Map Modification Orders is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, an order should be made so that the evidence can be tested at a public inquiry. Officers do not consider that there is such a conflict in this case.
9. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, it must be demonstrated that any change to the map is supported by evidence. This might be proved by historic documentary evidence or by evidence of use in the recent past.
10. If a right of way is considered to subsist or reasonably alleged to subsist, then the route, status and width of that way must also be determined, and authority for the making of an Order to record that right on the Definitive Map should be given.
11. Where a Map Modification Order is made, the process allows for objections to the Order to be made. Further evidence could potentially be submitted for examination along with an objection. In these circumstances, the County

Council cannot confirm the Order, and the matter would need to be referred to the Secretary of State.

12. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order. In the event of an application under Section 53 being refused, the applicant has the right to appeal against the County Council's decision to the Secretary of State, who may direct the County Council to make the order that is sought.

## **Background to the Application**

13. The application for a DMMO was submitted by a local resident in 2006, in the immediate aftermath of a decision by the Regulatory Committee of Hampshire County Council to extinguish the path on the basis of anti-social behaviour, upon application from the then headteacher of the school. Following significant local opposition to the extinguishment proposals, the decision was subsequently rescinded. Further discussion of the circumstances surrounding this issue is included later in this report.
14. Due to a backlog of applications, the application was not taken up for investigation immediately upon receipt. When it finally was in 2016, officers approached GBC and the Estates team within HCC to explore the possibility of a voluntary dedication of public rights. This course of action was subsequently agreed by both HCC (in May 2016) and GBC (June 2017). Through these discussions, it was also determined that other routes in the immediate vicinity, which are also recorded on the List of Streets (all of which are on GBC-owned land) should also be dedicated as public footpaths. Authority was given for this dedication under delegated powers on 20 June 2017.
15. The GBC dedication was completed in June 2020. However, the HCC dedication encountered complications on account of the leasehold of the TKAT. TKAT also needed to be a signatory to the deed, and although initially signalling that it was content to be so, the Trust stated that it could only consent to the dedication following approval from the Department for Education (DoE). Due to the lack of response from the DoE it was subsequently agreed that, in the interests of expediency, the County Council should revert to completing its investigation into the DMMO and, if appropriate, recording the remaining link on HCC land via legal order. The section still to be recorded is shown on between A-B on the Location Map.

## **Consultations**

16. GBC and those with a landowner/leasehold interest in the land (ie HCC and TKAT) have been consulted on this application. Additionally, the County Council Member for Bridgemary, Councillor Stephen Philpott, has been made aware of the application.
17. When the decision was taken to abandon the proposed dedication, TKAT indicated that it was content for HCC to make a DMMO to record the route instead, but it has also stated that it has concerns about the proximity of the path to the school, and that it will be submitting a planning application to facilitate

measures to improve school security. It has been explained to TKAT that issues such as suitability, desirability, safety and security are not relevant to the question of whether public rights have been dedicated.

18. The Property Services team of HCC, in its capacity as freehold owner of the land, has indicated that it does not object to the application.

### **Documentary Evidence**

19. Ordnance Survey County Series Map (25 inches to the mile) - 1945

The map shows no sign of the claimed route, and the entire area of Bridgemary undeveloped.

20. Ordnance Survey National Grid Series Map (1:10,000) – 1963

The map shows that significant development had taken place in the area since the Second World War. A large housing estate is now present either side Nobes Avenue, with some development also having taken place on Wych Lane. Bridgemary School is now in situ, The claimed route is now shown on its current alignment linking the two roads, running through the grounds of the school, which is also now in situ. The route is shown by solid parallel lines, indicating that it was fenced or hedged against the grounds of the school on either side. The map indicates that the route was un gated.

21. Highway Boundary Map (see Appendix 1)

By virtue of an agency agreement between HCC and GBC established under the provisions of the Local Government Act 1972, adopted highways in Gosport were maintained by GBC from the mid-1970s until 2005, when responsibility was handed back to HCC. Although no original adoption plan relating to the claimed route has been located, the route is shown coloured on the working plans maintained by GBC, along with other adopted highways which now appear on the list of streets.

22. Highway Extinguishment Proceedings

On 5 January 2005, a [report](#) was presented to the County Council's Regulatory Committee, requesting authority for an order to be made under Section 118B of the Highways Act 1980, upon application from Bridgemary School, to extinguish the claimed route, it having been determined that public rights subsisted on the route (albeit not recorded on the definitive map). The application followed numerous instances of anti-social behaviour on the footpath which was having an adverse impact on the running of the school. Authority for the making of the order was granted. However, the decision proved to be controversial, and on 23 July 2008 a further [report](#) was brought to the Committee requesting that the decision be rescinded. The following excerpts from the report provide further context:

*2.1 After the meeting on 5 January further consultation took place with the Borough Council, the School and the Police and on 10 February 2006 the Borough Council wrote to the County Council stating they did not consider that*

*the proposed closure of the footpath "is an appropriate or effective solution and objects to it..."*

*2.2 On 8 March 2006 the Local County Council Member wrote a letter reinstating his objection to the closure and also stating his wife the Borough Councillor also objected.*

*2.3 At a meeting on 17 March 2006 the Local Member presented a petition with 400 signatures objecting to the closure.*

*2.4 On 19 July 2006 a survey over 12 hours was carried out which logged 251 pedestrian movements, confirming the high level of use of the path.*

*2.5 Given the level of local opposition to the proposed path closure, the School accepted that the closure of the path through the Special Extinguishment Order was not likely to be successful.*

A decision on the matter was deferred to enable officers to clarify further points that had been discussed at the meeting. The matter was returned to the Committee on 15 October 2008, with the recommendation to rescind the original decision repeated. The minutes from that meeting include the following passage:

*Councillor D. Wright attended the meeting for this item as Local Member and drew attention to the extensive local opposition which now existed to the proposed closure of the path, which represented a vital and well-used link between two parts of the Bridgemaury Community. Effective liaison between the school and the Police had led to a reduction in the extent of aggressive or disruptive behaviour and the problem was now seen to be under control. The school had recently been granted planning permission for a community building which provided for access to be gained from the footpath in question.*

The [minutes](#) from the meeting of 15 October 2008 record that the resolution of the Committee was to rescind the earlier decision of the 5 January 2005, on account of "the evidence of public opposition to closure, and the measures adopted by the school" .

### 23. CHALIST (List of Streets)

The County Council's 'Chalist' database, which contains information relating to routes recorded on the list of streets maintainable at public expense (as required under Section 36(6) Highways Act 1980), shows the claimed route recorded as an adopted footpath.

### **Analysis of Documentary Evidence**

24. The available evidence indicates that the claimed route was constructed sometime between the Second World War and the early 1960s, and has therefore provided a pedestrian link between Wych Lane and Nobes Avenue for at least sixty years.

25. The claimed route's adoption at some point during the time that GBC had responsibility for highway maintenance functions, and its subsequent inclusion on the list of streets, provides particularly strong evidence in favour of a

presumption of a public right of way on foot. It is considered that this fact alone would be sufficient for a deemed dedication at common law to be inferred.

26. The reports to the Regulatory Committee between 2005 and 2008 indicate the high level of public use of the route, with 251 people observed using the route during a 12 hour period on a single day. Such intensive use, coupled with the significant opposition to the proposed closure of the route, lends further weight to the inference that this route has been dedicated for public use.

### **User Evidence**

27. The application was supported by user evidence forms completed by 13 people, detailing use dating back to the late 1940s. None of these users, many of whom used the path on a daily basis, report ever having been challenged, seeing notices that were inconsistent with the route's reputation as a footpath, or encountering any obstruction when using the route. No further investigation into this evidence has taken place in light of the considerable strength of the documentary evidence and survey carried out in 2006.

### **Actions of the landowners**

28. Although the actions of the school in applying for an extinguishment indicate its desire to put a stop to public use of the route, they are also a tacit acknowledgement of pre-existing public rights. In any event, the adoption of the path at some point during GBC's management of the highway network (an arrangement which HCC was presumably party to) will have met the necessary conditions for a dedication at common law, and the two pre-conditions for the creation of a highway - that is dedication and public acceptance of that way by use, have been met. Any subsequent attempt to prevent use of the route will have no bearing on this fact.

### **Conclusions**

29. The user evidence submitted in support of the claim, the survey that was carried out by HCC officers in 2006 and the strong public reaction in the wake of the attempt to extinguish the path all provide strong supporting evidence that the route is heavily used by the public.
30. The route's adoption at some point during the time that GBC had responsibility for highway maintenance functions, and its inclusion on the list of streets provides strong evidence in favour of at least a public right of way on foot, and is sufficient for a deemed dedication at common law to be inferred.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

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

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

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

Document

Claim Reference: Case File (CR/976)

Location

Countryside Access Team  
Castle Avenue  
Winchester  
SO23 8UL

## **EQUALITIES IMPACT ASSESSMENT:**

### **1. Equality Duty**

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

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

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

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

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

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



27

29

COMPILATION DATA

Levelled	1957
Boundaries	Dec 1970
(a) Oct 1950	
(b) Nov 1970	

(a) Surveyed.  
(b) Revised.

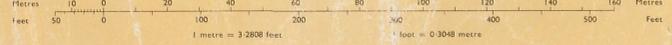
HEIGHTS are given in METRES above the Newlyn Datum. Bench Mark Latt which may contain laser levelling information, also particulars of bench marks which have been shown, are obtainable from the Director General, Ordnance Survey.

The representation on this plan of a road, track or path is no evidence of the existence of a right of way.

The alignment of tunnels where shown is approximate.

SYMBOLS

- Antiquity (site of)
- Change of boundary (mering)
- Culvert
- Direction of water-flow
- Electricity Pylon
- Electricity Transmission Line
- Regulation Station
- Traverser Station (permanent)
- Bench Mark
- Surface Level
- Revision Point (mentally fixed)
- Revision Point & Bench Mark coincident



ABBREVIATIONS

B.H.	Beer House	F.S.	Fire Station	M.P.U.	Mail Pick-up	S.Br.	Signal Bridge
B.M.	Bench Mark	G.P.	Guide Post	M.S.	Mile Stone	S.D.	Signal
B.P.	Boundary Post	G.V.C.	Gas Valve Compound	N.T.	National Trust	S.L.	Signal Light
B.S.	Boundary Stone	H.	Hydrant or Hydraulic	N.T.L.	Normal Tidal Limit	S.L.	Sluice
C.	Cran	L.B.	Letter Box	N.T.S.	National Trust for Scotland	S.P.	Signal Post
C.L.	Club House	L.B.Sta.	Lifeline Station	P.	Pillar, Pole or Post	S.Sta.	Signal Station
Ch.	Chimney	L.C.	Level Crossing	P.C.	Public Convenience	T.C.B.	Telephone Call Box
Cn.	Castan	L.G.	Level Crossing	P.C.B.	Police Call Box	T.C.P.	Telephone Call Post
D.F.	Drinking Fountain	L.H.	Lifting House	P.H.	Public House	Tk.	Tank or Truck
E.P.	Electricity Pillar or Post	L.T.	Lighting Tower	P.O.	Post Office	Tr.	Traverse station
E.T.L.	Electricity Transmission Line	L.W.	Landing	P.	Pump	W.	Well
F.A.	Fire Alarm	M.H.W.	Mean High Water	P.P.	Police Telephone	W.B.	Weighbridge
F.A.P.	Fire Alarm Pillar	M.H.W.S.	Mean High Water Springs	R.H.	Road House	W.P.	Wind Pump
F.B.	Filter Bed, Foot Bridge	M.L.W.	Mean Low Water	R.P.	Road Post	W.P.	Water Post
F.B.M.	Fundamental Bench Mark	M.L.W.S.	Mean Low Water Springs	S.	Stone	W.Z.	Water Post
F.S.	Fire Station	M.P.	Mile or Mooring Post	S.B.	Signal Box	W.T.	Water Tap

NATIONAL GRID REFERENCE

The grid lines form part of the National Grid and are at 100-metre intervals. To give a reference defining the position of a point to within 10 metres proceed as follows:

EXAMPLE: F in a playing field



TIN MILLS REFERENCE

For further information refer to the Projection for Ordnance Survey and to the National Reference System.

EX. M.P.L.S. OF SECONDARY MERINGS

B.B.	Centre of Bank	C.S.	Centre of Stream, etc.
C.B.	Centre of Bank	D.	Deelected
C.C.S.	Centre of Crossed Stream	E.C.	Edge of Kerb
D.	Centre of Drain, etc.	F.L.W.	Fence, Wall
C.R.	Centre of Road, etc.	H.	Foot of Hedge

