

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	28 September 2011
<b>Title:</b>	Proposal to make a definitive map modification Order to upgrade Chilworth Footpath No.4 (Roman Road) to a restricted byway
<b>Reference:</b>	2728
<b>Report From:</b>	Director of Culture, Communities and Business Services

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#### 1. Executive Summary:

- 1.1. An investigation into the history of a recorded footpath known as Roman Road, in Chilworth Parish, has revealed documentary evidence that it was an ancient public highway for all types of traffic. These public rights do not appear to have been legally extinguished, other than by a recent piece of legislation which will have extinguished rights for motorised vehicles only. This still leaves public rights for cyclists, horse riders and horse-drawn vehicles that are not currently recorded on the definitive map. It is proposed that a definitive map modification Order be made to recognise and record these higher rights.
- 1.2. The purpose of this paper is to set out the facts of the case to enable this Committee to determine whether the public has acquired higher rights on the existing public footpath. If it is considered that the public has acquired higher rights, then the status, route and width of the path must also be determined. Members' authority is required for the making of a Map Modification Order to record those rights on the definitive map.

#### 2. Legal framework for the decision:

##### 2.1. WILDLIFE AND COUNTRYSIDE ACT 1981:

s.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 the occurrence 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 –

(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.

## 2.2. 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.

## 2.3. NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006:

s.67 Ending of certain existing unrecorded public rights of way:

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement –
  - a) was not shown in a definitive map and statement, or
  - b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway. But this is subject to subsection (2) –
- (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 1 December 1930

**3. Claimant:**

- 3.1. There is no claimant in this case. The investigation was initiated by the Hampshire Countryside Access Forum as part of a project to identify 'lost ways' that are needed for contemporary public access.

**4. Landowners:**

- 4.1. Willis Fleming Enterprises Limited (Sections A-B-C and D-E-F)

c/o Steed & Steed Solicitors  
6 Gainsborough Street  
Sudbury  
Suffolk  
CO10 2ET

- 4.2. Secretary of State for Transport (Section C-D)

c/o Highways Agency  
Federated House  
London Road  
Dorking  
Surrey  
RH4 1SZ

- 4.3. The Wilky Group Limited (Interest in sections A-B-C and D-E-F)

c/o Charles Russell LLP  
Buryfields House  
Bury Field  
Guildford  
Surrey  
GU2 4AZ

**5. Description of the Route (A-B-C-D-E-F on attached Map 1):**

- 5.1. Roman Road is a long, straight track which runs south-eastwards from Manor Road, in Chilworth Village, to connect with the Chilworth Road (A27) via a length of adopted public road in Southampton. The large majority of the track (1,240 metres) lies in Chilworth Parish with the remainder (170 metres) in Southampton City district. That part in Chilworth is recorded as a public footpath (Chilworth Footpath No.4) and that part in Southampton has recently been recorded as a restricted byway.
- 5.2. For its entire length the width of Roman Road is defined by earth banks set about 12 metres apart with a used track, of some description, running down the centre. The section between A-B consists of a severely pot-holed dirt track with vegetation encroaching from the sides. Between B-C-D-E there is a firm, three metre wide, gravel track which runs in tunnels underneath the M27 and provides access to a dwelling called 'Cosy Cot', a Water Works and adjoining woodland. At E Roman Road is bisected by adopted public roads called Heatherlands Road and Hadrians Way. The section between E-F is a five metre wide track, partly tarmac, partly gravel, which provides access to several dwellings on both sides of Roman Road.

- 5.3. The whole length of Roman Road is used by walkers, cyclists and horse riders for recreational activity. There is evidence that it is also used by cyclists commuting between Southampton and Chilworth Science Park. There is very little, or no, use by vehicles of section A-B, with some use by vehicles along B-C-D-E primarily to gain access to Cosy Cot and the Water Works. There have been problems with the dumping of rubbish in this locality which Test Valley Borough Council has sought to control. The section between E-F is frequently used by vehicles going to and from the houses on both sides.

## **6. Background to the claim:**

- 6.1. In recent years a volunteer-led project called 'Discovering Hampshire's Lost Ways' has identified a number of routes around the county where the research carried out for the Countryside Access Plans showed a need for public access and where there is also evidence for the existence of a public right of way, or higher rights on an existing path. Two of these routes are in Chilworth Parish and are known as Roman Road and Lordswood Lane. It is proposed to bring a report on the public status of Lordswood Lane to the Regulatory Committee at a later date.
- 6.2. Although Roman Road is currently being used by the public on foot, bicycle and horse back, it is only by recording rights on the definitive map that the future of the path, as a public right of way, can be secured. The Countryside Access Forum has asked the Definitive Map Team to bring forward some of these routes for consideration by Members so that they can be recorded on the definitive map, if the evidence supports the existence of higher public rights.
- 6.3. Please note that this report deals exclusively with historic evidence and does not take into account user evidence. It is considered that the documentary evidence provides a compelling case for the existence of higher rights and therefore user evidence has not been sought from the public. Roman Road is not a 'roman road' but probably derives its name from its physical characteristic, that is it runs in a straight line for some considerable distance. The route is actually a 19<sup>th</sup> century Turnpike Road which will become apparent when considering the historic evidence.

## **7. Issues to be decided:**

- 7.1. The issue to be decided by this committee is whether there is evidence to show, on a balance of probability, that higher public rights than that of a footpath subsist over the route known as Roman Road shown on the map attached to this report.
- 7.2. 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, Members must be satisfied that higher public rights have come into being at some time in the past. This might be the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence).
- 7.3. Historic and documentary evidence has been examined to see whether the past history and use of the path points to it having bridleway or vehicular rights

as a result of dedication in the distant past. Any such rights are not lost merely through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist, even if they are now neither used nor needed (subject to any statutory extinguishment under the Natural Environment & Rural Communities Act 2006). This evidence must be looked at as a whole, it being unlikely that a single document or map will provide sufficiently cogent evidence to justify a change to the definitive map. The County Council is under a duty to record such rights as are found to exist.

- 7.4. Evidence forms and statements taken from those who have used the path, or have knowledge of it in living memory, can show that higher rights have been acquired as a result of a recent dedication at common law, or a deemed dedication under s.31 Highways Act 1980. It may not be necessary to examine this type of evidence if the historic and documentary evidence shows that higher rights were dedicated in the past and still subsist, although the user evidence may add credibility to the earlier evidence of dedication. This type of evidence is also useful in determining the width of the path.
- 7.5. The burden of proof in these matters is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive 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, Members should make an Order so that the evidence can be tested at a public inquiry. However, this is not a step which should be taken simply to avoid making a difficult decision. Officers do not consider that there is such a conflict here.
- 7.6. The originals of many of the documents referred to in this report are only available in public record offices, but copies, transcripts or photographs of most documents are available for inspection in the offices of the Countryside Access Team, as are witness evidence forms and statements. Members are urged to inspect these, or the originals, when considering this report.

## **8. Documentary Evidence:**

### **8.1. 1755 Map of Manor of Chilworth**

Despite the map's age the features shown are easily recognisable compared to the modern landscape. The old village of Chilworth is represented by individually drawn houses and a church with the surrounding fields given individual names. The extent of the Manor is shown by a red line and this closely resembles the old parish boundary shown on Map 2. On this map all 'highways' are shown by blue colouring. From the old village there is a major 'highway' running south-eastwards in a fairly straight line. About half a mile from the village the 'highway' divides in two, both routes continuing in straight lines to the manor/parish boundary and beyond. One of these routes is annotated "*The Road from Portsmouth to Salisbury*". This route does not appear on any other subsequent map and is no longer visible on the ground. The other route follows the line of Roman Road.

### **8.2. 1759 Taylor's Map**

This is a small-scale map which shows only major features in the landscape. Chilworth Church is shown by a picture drawing, and to the south of that there is a 'highway' depicted by pecked parallel lines and coloured brown. This route

runs south eastwards from the church to an area of land called 'Stoneham Common' and corresponds to the alignment of Roman Road.

8.3. 1791 Milne's Map

Another small-scale map upon which the houses and church of Chilworth village are clearly shown by symbols with a 'highway' running through the middle on the south side of the church. This highway continues south eastwards in a straight line to a cross-roads on the north side of 'Stoneham Common'. This closely corresponds to the route of Roman Road.

8.4. 1810 Ordnance Survey Map (1 inch to 1 mile)

This map also shows a 'highway' running south eastwards from Chilworth village by a combination of pecked and solid lines. It forms a cross-road with a north-south highway that is recognisable as the old Southampton to Winchester Road. From this map it can be said with certainty that this 'highway' is Roman Road because it runs along the southern side of an enclosed rectangle of land which appears in exactly the same position on Map 2 just north of point C.

8.5. 1823 Turnpike Act

The preamble to this legislation describes it as "*An Act for repairing the Roads...from the Hundred at Romsey, through Chilworth, to the River at Swaythling...*" This description can only refer to the route shown on all the previous maps as there is no other 'highway' that fits that description. This indicates that major work was probably carried out shortly after this date to upgrade the road to turnpike status.

8.6. 1826 Greenwood's Map

This map shows Roman Road and the surrounding landscape in very much the same manner as the earlier Ordnance Survey map of 1810.

8.7. 1842-46 North Stoneham Tithe Map

At this date North Stoneham Parish included the south-eastern half of Roman Road (D-E-F). This large-scale map shows Roman Road, the main Southampton-Winchester Road and Chilworth Road (A27) all by parallel solid lines, although Roman Road is twice the width of Chilworth Road. Roman Road has been given the parcel number '1' which the Tithe Award describes as 'Old Roadway' in the ownership and occupation of John Fleming. Chilworth Road has not been given a parcel number and, where it crosses the Chilworth parish boundary, it has been annotated "*To Chilworth*". This map would therefore suggest that Chilworth Road was in use as a public road and that Roman Road was a private road. However, this evidence is at odds with later documentation which shows that Chilworth Road was not formed until 20 years later and therefore Roman Road was the only route available to the public at that time.

8.8. 1852 Map of Hampshire showing the Turnpike Roads

Although this is a small-scale map showing the whole of the county, Roman Road is clearly indicated as the turnpike road running between Romsey and South Stoneham. The single solid line on the map runs through the middle of the houses in Chilworth village and continues south eastwards, in a straight line, to a cross-roads at the old Southampton to Winchester Road.

#### 8.9. 1864 Lease of land at Chilworth

This agreement is for the lease of land now occupied by the Clump Inn and the playing field behind the pub situated immediately north of point A. The plan, which forms part of the agreement, shows the features surrounding the land and this includes, on the south side, Roman Road. The route is shown by solid lines and annotated "*Old Romsey Road*". There is no line across the entrance that would indicate the existence of a gate or other such obstruction. On the north side of the Clump Inn the route of Chilworth Road (A27) is shown and annotated "*To the Southampton and Winchester Turnpike Road*". This map would suggest that both routes were in operation at this date as part of the public highway network.

#### 8.10. 1865-1867 Ordnance Survey Map (25 inch to 1 mile)

This is the first large-scale survey of the English countryside which shows all topographical features in great detail and in colour. The extent of Roman Road is shown by a combination of solid and pecked lines set about 12 metres apart, down the middle of which runs a track, coloured brown, with a width of about four metres. It forms a perfectly straight line through the landscape which is heavily wooded on both sides. There are no solid lines across the width of Roman Road to indicate the existence of a gate or other barrier. This map also shows Chilworth Road (A27) by a similar combination of solid and pecked lines. The way that Chilworth Road is drawn on the map indicates that it is a late addition to the survey. It is conventional to write names of buildings etc. so that they avoid obscuring topographical features, but in this case there are several names which appear within and under the road features. This would indicate that Chilworth Road has only just been built and surveyed.

(Please note that **Map 2** attached to this report is derived from the above map and published at a smaller scale in about 1870. This document clearly shows the route of the old turnpike road and the 'new' alternative.)

#### 8.11. 1867 OS Book of Reference

This is the only Ordnance Survey map which has an accompanying book of reference which describes every parcel of land. The north western half of Roman Road (A-B-C-D) lies within Chilworth Parish and has been given the number 121 which the book of reference describes as an "*Occupation Road*". The south eastern half of Roman Road (D-E-F) falls with North Stoneham Parish at this date and has been given the parcel number 131 which the book of reference describes as a "*Public Road*". There are no other routes which connect with Roman Road so it is difficult to reconcile the differing descriptions of the two halves.

#### 8.12. 1867 Chilworth Common Enclosure Map

Chilworth Common lies on the south and east side of Chilworth Village. Roman Road is shown by straight and parallel solid lines bisecting the northern part of Chilworth Common. The south-eastern end of the road, where it crosses the old Chilworth parish boundary is annotated "*to Southampton*". The route is not numbered indicating that it was not part of the enclosure process. Chilworth Road (A27) is also shown on this map and it too is annotated "*to Southampton*". This map suggests that both routes were available, as public highways, at this date.

8.13. 1867-68 Quarter Sessions

On 14 December 1867 two Justices of the Peace viewed a new highway that had been “...*lately made by John Fleming Esquire...*” in Chilworth and North Stoneham Parishes. They signed a certificate that it was in good Order and therefore suitable for adoption by the local highway authority. Although there is no map with this document, it is fairly obvious from the description contained on the certificate that it refers to Chilworth Road (A27). The certificate was presented to the Quarter Sessions in 1868 and the highway became publicly maintainable from that date. There is no mention in this document of any change to the status of Roman Road. Any public rights that existed over Roman Road could not have been extinguished before this date because the alternative route was not an adopted public highway.

8.14. 1870 Turnpike Act

This legislation introduced the following change to “*Maintenance of certain highways*”. It states:

*“With regard to any highway which, within seven years previous to the passing of this Act, has ceased, or which hereafter may cease to be a turnpike road, the cost of maintaining so much thereof as passes through any highway district...shall, after the 31 December 1870, or after the date of the said highway ceasing to be a turnpike road, whichever shall last happen, be a charge on the common fund of such highway district...”*

This means that turnpike roads became publicly maintainable highways when they ceased to be turnpikes. This legislation is particularly relevant in this case when considered in conjunction with paragraph 8.16 below.

8.15. 1872 Letter from Pink Arnold

It is believed that Pink Arnold represented the Fleming Family and this letter is addressed to a firm of solicitors. It reads:

*“...the Road as we understood was properly handed over to the Parish and as the Vestry of South Stoneham gave no notice of objection after holding a meeting to consider the matter and the public has continued to use the Road for now upwards of 4 years since certificate was enrolled we cannot understand what grounds there can be on the part of the public for now objecting to repair the Road.”*

By this date responsibility for highways had been transferred from North Stoneham Parish to South Stoneham Rural District Council. The letter must relate to the Chilworth Road (A27) and confirms that it had been in use by the public for four years. This casts doubt on the contents of the North Stoneham Tithe Map of 1842-46.

8.16. 1875 Turnpike Act

On 11 August 1875 Parliament passed: “*An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts*”. Schedule 6 to this Act states that: “*The Acts specified in the sixth schedule annexed hereto shall continue in force until the first day of November 1876, and no longer...*” and listed in that Schedule is the 1823 Act which gave authority for the turnpiking of Roman Road (see paragraph 8.5). Therefore Roman Road ceased to be a turnpike road in 1876.

8.17. 1879 South Stoneham Rural District Council

The minutes record that, on 13 March 1879, the Rural District Council came to an agreement with the County Surveyor that both bodies would contribute 50% towards the costs of maintaining 'disturnpiked' roads. The RDC were to supply a schedule of routes in the district that were 'disturnpiked' between 1870 and 1878. It has not been possible to locate this schedule in the archives.

8.18. 1881 Didcot-Newbury Railway Plan

This document sets out the proposal to build a railway between Southampton and Newbury passing through Shirley and Chilworth. The plan shows the alignment of the railway with parcel numbers for every plot of land crossed by the line. The proposed railway runs north to south and bisects Roman Road between points B and C. The track has been given the parcel number '11' in Chilworth Parish and parcel number '39' in North Stoneham Parish, both of which are described in the accompanying book of reference "*Occupation Road*" owned by John Fleming and others.

8.19. 1890 South Stoneham Rural District Council

The minutes read as follows:

*"A letter dated the 23rd instant was read from Messrs Pink and Arnold stating that the Private Road at Stoneham Common leading from the Southampton and Romsey Road into the Southampton and Winchester Road was getting out of repair and that this Board, in getting gravel from the pit, used the Road more than anyone else and that under the circumstances they considered the Road should be taken over by the Parish. The Clerk was instructed to inform Messrs Pink and Arnold that the Board would be prepared to take over the Road if the requisite formalities were complied with and the Road put into a good state of repair to the satisfaction of the District Surveyor."*

No further correspondence on this matter has been discovered in the archives.

8.20. 1895 Ordnance Survey County Series Map (25 inches to 1 mile)

This map shows Roman Road by parallel solid lines set about 12 metres apart, with a used track of varying width running down the middle. At both ends of the road there is a solid line across the width of the track indicating the existence of a barrier or gate of some description. The land on both sides of the road mostly consists of dense woodland, although at the south eastern end there are three buildings which show the start of development in the area. Access to these houses, and the 'Old Clay Pits' behind them, is via Roman Road.

8.21. 1908 Ordnance Survey County Series Map (25 inches to 1 mile)

There is very little change in the depiction of Roman Road and the adjoining land compared to the earlier map of 1895. Both ends of the lane are still gated.

8.22. 1929 Handover Map

This document shows those highways that were considered to be publicly maintainable on transfer of responsibility from the Rural District Council to the County Council. Roman Road is not coloured, therefore it was not considered to be a publicly maintainable highway at this date.

8.23. 1930 Map of Pinelands Estate, Bassett

This document shows the proposed development of a triangle of a land at the south eastern end of Roman Road (north and east of point F). Although part of this land is now situated within Southampton City, the plan is relevant because Roman Road has been annotated “*To Romsey*” indicating that it was considered to be a through route at this date.

8.24. 1940-41 Ordnance Survey County Series Map (25 inches to 1 mile)

This map shows Roman Road in a very similar manner to the earlier Ordnance Survey maps. However, this time the ends of the lane are not gated and there has been extensive development of the land at its south eastern end (between points D-E-F).

8.25. 1946 Highways Map

This is an internal document intended to show which highways are considered to be the responsibility of the County Council. The extent of Roman Road, in Chilworth, has been coloured yellow which the legend describes as ‘*Private Streets*’. Roman Road has been annotated “*See correspondence file*” but it has not been possible to trace this document.

8.26. 1946-47 Minutes of Chilworth Parish Council

30 September 1946: Old Roman Road

Mr Bateman reported that Mr and Mrs Vane, an elderly couple, each of nearly 80 years of age, were unable to obtain deliveries of milk and bread owing to the bad state of the road, due mainly to war traffic.

The Clerk was instructed to ascertain who was responsible for getting the road made usable, and to request that necessary steps be taken to put it in proper repair.

25 March 1947: Roads and Footpaths

The Clerk reported that he had seen the Estate Agents, who disclaimed any responsibility for the state of the Old Roman Road... They had suggested that it was probably a matter for the frontagers and further, that the cause of the present state was the hard usage these roads had received from army vehicles during the war.

Resolved: To write to Messrs Pink and Arnold, asking if compensation had been received from the Military Authorities for the damage done to these roads and, if not, would they please apply for same and utilise the sum received for necessary repairs. At the same time, it was to be stated that the Council considered that the estate, nevertheless, were liable for keeping the estate roads in useable condition where they had not accepted same to be public footpaths.

16 April 1947: Roads

Letter read from the Clerk to Messrs Pink and Arnold, complaining of the state of...the Old Roman Road, and the difficulties and dangers arising there from to old people and schoolchildren. Also stating that, as much of the disrepair is due to military vehicles, compensation might be sought and applied to remedy the condition of the road surfaces.

Reply from Messrs Pink and Arnold, on behalf of the Fleming Estate, read stating that they accept no liability and that in any case the Old Roman Road is a private road over which the general public have no rights. The frontagers are responsible for maintenance respectively. No claim had been made

against the War Department, but a copy of the Council's letter had been forwarded to the District Claims Officer. Considerable discussion arose over this matter, but it was finally decided that little could be done by the Council other than to provide evidence of military damage if the War Department required it.

4 June 1947: Roads

Letter from Messrs Pink and Arnold dated 28 May read. There appeared to be a certain amount of wear on the Old Roman Road in the developed area, and the agents had been informed that this road was re-surfaced by the military in August 1943. Forms of claim against the War Department were enclosed for completion, but the Estate Agents considered the possibility of substantiating the claims to be very slender.

8.27. 1948 Sale Particulars of the Romandene Estate

The Romandene Estate consists of "93 freehold building plots" on the south side of Roman Road, what is now Hadrian Way, Pine Walk etc. The Schedule to the sale particulars contains the following information:

*" Clause 6(i): No requisition or objection shall be made as to :- The title of the Vendor to a right of way over the Old Roman Road" and*

*"Clause 13(c): A right (so far as the original Vendors can legally grant the same) of way at all times and for all purposes over the road known as Old Roman Road..."*

These clauses suggest that there is some doubt regarding the ownership of Roman Road and whether the vendors have the right to grant access to prospective purchasers.

8.28. 1960-62 Ordnance Survey National Grid Map (1/2500 scale)

There is very little change in the way that Roman Road is shown on this map compared to the earlier edition of 1940. It is still bounded by solid lines set about 12 metres part with a worn or made-up track running down the middle. There are no barriers across the width of the road that would indicate the existence of a gate or other type of barrier.

8.29. 1969-72 Minutes of Chilworth Parish Council

17 March 1969 - Roman Road

Mr. Colenso called attention to the very bad state of the small part of this road between Hadrian Way and Heatherlands Road. The Chairman said that although Hadrian Way and Heatherlands Road had been resurfaced by the County Council at the expense of the frontagers, the Roman Road would be, it was understood, the subject of improvement by the Ministry of Transport at the same time as other major schemes in the locality, and that County Council had therefore taken no action. As a result of this the portion forming a link between two reconstructed highways had been left in a deplorable condition. Resolved to make representations to the County Council and the Ministry with a view to having some immediate improvement made to this portion of the Roman Road.

14 April 1969 - Roman Road

The Clerk was instructed to ask the County Surveyor when the Roman Road would be re-surfaced etc. If a firm date could not be given, to ask that

temporary repairs be made to they very bad surface at its junction with Hadrian Way and Heatherlands Road.

29 May 1969 - Roman Road

Letter (6.5.69) to the County Surveyor and his reply (12.5.69) read in which he stated that the Ministry of Transport will not now provide a surfaced carriageway to Roman Road when the South Coast Road is constructed. They would not close Hadrian Way but continue it over the South Coast Road with a bridge. It was accepted that Roman Road is an ancient highway, but in respect of the section immediately north through the woodland it was the County Surveyor's opinion that it was closed legally when the old turnpike road, now A27, was constructed.

He had suggested to the Romandene Residents' Association that they might like to use any surplus money to pay the county road contractor to surface the square of the road between Hadrian Way and Heatherlands Road, but they did not agree, and the County Council could not spend money on private streets with the risk of being accused of accepting liability. He could arrange for the Divisional Surveyor to do the work at cost price.

Mr. Myers recommended that this section be left in its present condition as this slowed down crossing traffic which could easily be involved in accidents. This was agreed.

29 January 1970 - Roman Road

The County Surveyor had written, advising that this was a private road and had not been adopted as publicly maintainable; he was therefore unable to take action to improve the surface for the short length between Hadrian Way and Heatherlands Road.

As this road was shown on the Definitive Map as a footpath, the Clerk was instructed to ascertain if the Parish Council could contribute to the repair of the section under review.

18 March 1970 - Roman Road

Mr. Myers stated he had been in touch with the County and it appeared that they intended to adopt it, having disposed of the 'Ancient Road' objections made by some of the residents. Frontage measurements had been taken and they hoped to get going in two or three year's time.

The matter of the bad surface on the section of road between Hadrian Way and Heatherlands Road was again discussed, and it was decided to obtain estimates for doing repairs to this small length from Messrs. Ballie and Edwards and from the Divisional County Surveyor.

18 March 1970 - Roman Road

Although Hadrian Way and Heatherlands Road have been re-surfaced and improved by Street Works, there remains a bad patch in Roman Road by which those other two roads are connected, and although representations have been made to the County Council who are the Highway Authority that this should be re-surfaced, they will not assist, presumably because there are no immediate frontagers at this spot on whom they could levy the cost, and we were met with the usual theme – no funds available! We are still endeavouring to get the County Council to carry out what are really only minor works.

21 May 1970 - Roman Road

An enquiry had been made to the Divisional Surveyor as to what the cost of the re-surfacing the bad length between Hadrian Way and Heatherlands Road would be. He had replied that as this was a matter of principle, he had referred

it to the County Surveyor. No information having been received from the County Surveyor, the Clerk was instructed to remind him that a reply was awaiting.

23 June 1970 - Roman Road

Letter (20.5.70) read from Col. A. Murray, County Councillor enclosing a letter (18.5.70) he had received from the County Surveyor, explaining the position of the County Council regarding the repairs requested in respect of the state of Roman Road at its intersection with Hadrian Way and Heatherlands Road. A copy of the County Surveyor's letter is attached to and forms part of these minutes.

Mr. Myers stated that the Romandene Residents' Association had been disbanded, there were no funds now available.

Following discussion, it was resolved to write to Col. Murray stating that the Parish Council considered that the answer was to approach local frontagers for contributions to the cost of improving the section of Roman Road under review and failing their support, the County Council should then do the work.

7 October 1971 - Roman Road

Mrs. Punnett enquired if steps could be taken to stop motor traffic using this road leading from Hadrian Way to Manor Road. Could it be made a Bridleway?

The Vice-Chairman suggested that an Order would be required, similar to that at Farley Mount, but observed that Roman Road was only a footpath according to the Definitive Map. It was resolved to investigate with the County Council whether Roman is a Footpath or an Ancient Highway.

2 December 1971 - Roman Road

Mr. Myers has informed the Council on the contents of a letter (1.12.71) he had sent to the Clerk of the County Council wherein after referring to the 'ancient highway' claim in respect of the length from the City Boundary at Chilworth roundabout to Hadrian Way, he had asked for advice on the most appropriate method of effecting vehicular restriction on the remaining portion shown on the Definitive Map as a footpath (No. 4) which terminated at Manor Road, Chilworth. It seemed that this might carry vehicular rights, in which case the only procedure would be to seek a traffic restriction order. A reply from the County Council was awaited.

25 May 1972 - Old Roman Road

Mr. Myers advised the Council in some detail of correspondence that had passed between himself and Mr. Whittle of the Clerk's Department, Hants County Council. Mrs. Punnett observed that the Council should seek a traffic restriction Order, and it was agreed that the Clerk should write to the County Council asking for such an Order to be made.

27 July 1972 - Roman Road

The Clerk reported that he had applied to the County Council for a Traffic Restriction Order in respect of part of the Roman Road (Footpath No. 4) in accordance with the recommendation of Mr. W.R. Myers the local Footpath Representative, who had been in communication with Mr. Whittle of the County Council. Resolved that a letter of thanks be sent to Mr. Myers for the trouble he has taken in this matter.

### 5 December 1972 - Roman Road

The Chairman reported that a meeting had been held that morning at Chilworth Hall, when officials of the County Council, the Southampton City Council and the Police had been present, and the proposals were thoroughly discussed. The Chairman explained the purpose of the meeting was to consider the closing to vehicular traffic of the whole length of Roman Road from Manor Road to the Roundabout. The Vice-Chairman of the Parish Council stated this was not the Parish Council's requirement, only the length of Manor Road to Heatherlands Road being so proposed. After some lengthy discussion in which the Police registered strong objections to that section of Roman Road from the Roundabout to Heatherlands Road being closed, it was agreed the section the Parish Council had asked for i.e. Manor Road to Heatherlands Road should be so designated and the County Council had already agreed to this.

Proposed a gate should be fixed at the Manor Road entrance with bollards at the Heatherlands Road end and that the only property affected was 'Cosy Cot'. The Police agreed with this arrangement and it was also decided to enquire from Southampton City Council the status of that section of Roman Road from Heatherlands Road to the Roundabout.

## **9. Analysis of historic documentary evidence**

- 9.1. From the mapping evidence it can be said that Roman Road is an ancient public highway that has been in existence since, at least, 1755 and probably existed for many centuries before that. Until the middle of the 19<sup>th</sup> century it was the only road from Romsey, through Chilworth to Stoneham and Swaythling. It was turnpiked and improved in the 1820s and the route that we see today is a result of that work. It was set out as a straight line, defined by earth boundary banks and ditches set 40 feet (12.2 metres) apart with a raised track down the middle. The physical characteristics of Roman Road confirm that this must have been the route that was improved as a result of the turnpike legislation.
- 9.2. There is some doubt as to when Chilworth Road (A27) was formed. The North Stoneham Tithe Map and Award of 1842-46 suggests that it was in place by that date, but all other documents suggest it was about 20 years later, in the 1860s. Perhaps the original route was a minor track across the commons which was improved by the landowner in advance of its adoption as a public highway in 1868. However, there is no reference in any of the documents from that period that the public rights on Roman Road were ever legally extinguished. Roman Road was disturnpiked in 1876 by a specific clause in an Act of Parliament passed in 1875, and all disturnpiked roads became the responsibility of the local highway authority by a general Act of Parliament passed in 1870.
- 9.3. Following the adoption of Chilworth Road (A27), in 1868, Roman Road appears to have fallen into decline, been gated at both ends and incorporated into the Fleming Estate. Its depiction on all documents between 1881 and 1929 is consistent with its use as a private road. These documents include the railway plan of 1881, correspondence between agents and the highway authority and the 1929 Handover map.
- 9.4. After 1929 the character of Roman Road seems to change again with the start of development of the south eastern end for housing. Heavy use of the lane by

military vehicles during the Second World War triggered a debate about its status, condition and responsibility for upkeep. This was continued in later decades with the development of adjoining land and the construction of the M27. The parish council and the residents wanted improvements to the surface of the lane but no body or authority would take responsibility for its maintenance.

- 9.5. It was generally acknowledged that Roman Road was an ancient public highway but, according to the County Surveyor, it was closed legally when the A27 was constructed and therefore the highway authority was not responsible for its upkeep. However, there is no indication that anyone researched the background and history of the road. The opinion of the County Surveyor is totally at odds with the documentary evidence and the legislation from the late Victorian period. There is a legal record of the new road, the A27, being adopted by the highway authority, but no similar record of rights on Roman Road being extinguished.
- 9.6. Given that the status of Roman Road could not have been legally altered before the alternative road was adopted, that is 1868, then it would be expected that a record of the extinguishment would be available. The administrative records from the late Victorian period are usually accessible, comprehensive and accurate. If the route was the subject of a legal Order it would normally be expected to be available in public record offices, but none has been found. In the absence of a legal extinguishment of public rights it must be assumed that full public rights still exist over Roman Road.

## **10. The Landowners:**

### **10.1. Willis Fleming Enterprises Limited**

The solicitor representing the landowner was sent a draft of the report on 5 April and invited to comment but, to date, no response has been received.

### **10.2. Highways Agency**

The Highways Agency has responded to provide with a description of the route but have not otherwise commented on the public status.

### **10.3. The Wilky Group Limited**

The agent for the landowner was given a draft of the report on 27 April and invited to comment but, to date, no response has been received.

## **11. Consultations with Other Bodies:**

### **11.1. Chilworth Parish Council**

The Parish Clerk has responded to say:

*(This matter) was considered at our Parish Council meeting and the members wish to advise you that it is their express wish that Roman Road remains as a designated 'Footpath'.*

### **11.2. Test Valley Borough Council**

The Planning Policy and Transport Service has responded to say:

*"The Council's Cycle Strategy identifies (Roman Road) as a proposed off-road cycle route and upgrading to a bridleway or restricted byway would enable this*

*route to be used by cyclists. The Council has aspirations for the delivery of a Forest Park in the area. The upgrade to allow cyclists and horses would be compatible with this, enabling more integrated access to the area by a wider number of modes of transport. Therefore there is no objection to the proposal to upgrade the footpath from a planning policy perspective, although this is without prejudice to any comment which may be made by the local elected members."*

11.3. Southampton City Council

The Rights of Way Section of the City Council has provided the following information:

*"The status of (Roman Road) within the city boundary was recently researched as part of a Definitive Map review exercise for the ward of Bassett. That research, and subsequent consultation, resulted in a Definitive Map Modification Order being made on 28 April 2010 to record the route as a restricted byway. It was previously not shown on Southampton's map. No objections were made to the Order and it was therefore confirmed on 30 June 2010."*

11.4. Councillor R Perry (local member)

No comment

11.5. Forestry Commission

*"The Forestry Commission has no interest in the footpath over Roman Road so I will leave the Willis Fleming Estate and other interested parties to comment on that route."*

11.6. Ramblers Association

*"...whilst the Southampton Group use both footpaths on a regular basis, we have no documentary evidence to support upgrading Footpath 4 to either a bridleway or restricted byway. If you do find sufficient evidence to support such an upgrade, then Southampton Ramblers would have no objection to such a change to the definitive map."*

11.7. Cyclists' Touring Club

The Chairman of CTC South Hampshire has written to say:

*"The addition of Roman Road to the Definitive Map as a restricted byway would provide a useful additional link for cyclists, allowing users to avoid a section of the busy A27. Roman Road has been used for many years informally by cyclists, and Southampton City Council has recently upgraded the section of Roman Road within Southampton as a restricted byway on the basis of user evidence from cyclists. To my knowledge, the use by cyclists of the section of route in Chilworth Parish has not been restricted despite its footpath status. The CTC very much welcomes this initiative to upgrade Roman Road formally so that it can be used in its entirety by cyclists."*

11.8. British Horse Society

*"The British Horse Society would expect an historic track to have a consistent status along its entire length, so we would support an order for the parts of those paths which fall within the jurisdiction of HCC to be shown on the definitive map for Hampshire as restricted byways."*

11.9. LARA

No comment

11.10. Mr R Martin – local resident

*“...Southampton have recently re-designated the section of the road that is in Bassett as a Restricted Byway. We...would have no objection if the main section of Roman Road that is within Chilworth was similarly designated: in fact we would welcome it if that were so and the road east of Hadrian Way was signed at the section to the west of Hadrian Way is. I wrote several years ago suggesting that Roman Road would make a better cycleway than the one that was eventually built alongside the Chilworth Road.”*

11.11. Professor J Shearer – local resident

*“This (eastern) section is in daily use by local residents for vehicular access and pedestrian access to their properties...In addition many people walk, cycle, horse-ride and drive along it daily. The western part is different....it is in daily use by pedestrians, cyclists and horse-riders. Some workers from the Science Park use it to get to work. Many people use it for access to the woodland to exercise their dogs. As far as I am aware we have enjoyed unrestricted and unchallenged access along the whole length of Roman Road certainly since June 1986, and, I understand, for as long as anyone can remember prior to that.”*

**12. Conclusions:**

- 12.1. Roman Road was an ancient public road that was turnpiked and improved in 1823, or shortly thereafter.
- 12.2. The route fell into decline as a result of the construction of an alternative road and its adoption as a public highway in 1868.
- 12.3. Roman Road ceased to be a turnpike road in 1876, but under the legislation at the time it retained full public highway rights and was still a publicly maintainable highway.
- 12.4. The evidence from the end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> centuries points to its use as a gated, private road.
- 12.5. Before 2006 there is no evidence that public rights on Roman Road had ever been extinguished. Therefore, at that date, it was still a public right of way for all types of traffic.
- 12.6. The public right of way extends to the full width of the ancient lane which is defined by boundary banks.

**13. Natural Environment and Rural Communities Act 2006:**

- 13.1. There remains to be considered whether the ‘motorised’ element of the right of way with vehicles has been extinguished by this Act. It will have been, unless one of five exceptions contained in the Act applies. These exceptions are set out on page 2 of this report.
- 13.2. It seems unlikely to officers that any of these exceptions are applicable:

- (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 .***

There is little evidence of use of the section A-B-C-D-E by the public in motor vehicles. It is far more likely that the predominant use of this section is by non-motorised traffic. Section E-F has been extensively used by vehicles, but the vast majority of that use is to gain access to adjoining properties. It is debatable that this type of use can be considered to be by the public. Even on a pragmatic interpretation of this exception, the nature of the way is such that it is clearly not part of the current normal highway network.

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

The routes were not shown on the List of Streets on 2nd May 2006.

- (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.***

No evidence was discovered during officers' investigations that the claimed routes came into being as a result of an express dedication for mechanically propelled vehicles or by statute for the same purpose.

- (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.***

The route was originally constructed for use by non-motorised vehicles.

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

The route existed before mechanically propelled vehicles became commonplace, so it cannot be said that the public vehicular right of way was *created* as a result of use by such vehicles. It is more likely than not to have been created as a result of use by horse-drawn vehicles.

- 13.3. The exceptions in s.67(2) do not apply, therefore, rights for the public in mechanically propelled vehicles will have been extinguished by the above legislation. Public vehicular rights will have been converted into private vehicular rights to enable those owners of adjoining land to gain access to their properties. This leaves public rights for cyclists, horse riders and horse-drawn vehicles over Roman Road. This type of right of way is known as a restricted byway.

#### **14. Recommendation:**

- 14.1. That a Definitive Map Modification Order be made to upgrade Chilworth Footpath 4, as shown on the attached map between points A-B-C-D-E and E-F, to a restricted byway with a width of 12.2 metres.

**ORPORATE 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>	Yes
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	No
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as 'Surveying Authority', has a legal duty to amend the definitive map on the discovery of evidence that a right of way which is shown on the definitive map and statement as a highway of a particular description ought to be there as a highway of a different description.</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.)**

<u>Document</u>	<u>Location</u>
File x 2 -	Room 200
Chilworth Archive Evidence	Mottisfont Court
Chilworth Correspondence	High Street Winchester SO23 8ZF