

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date:	11 January 2012
Title:	Proposal to make a Definitive Map Modification Order to upgrade part of Hartley Wintney Footpath 46 to a bridleway
Reference:	3556
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary:

- 1.1. A proposal by two landowners, to dedicate bridleway rights on Hazeley Heath, has raised questions about the status of an old lane which horse riders use to gain access to the Heath. The riders have used this route for many decades, and there is some documentary evidence of historic rights higher than that of a footpath. To ensure a legal continuation of the dedicated bridleways, it is recommended that a definitive map modification order be made to 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: -
 - b) the expiration... 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 –
 - (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.

3. Claimant:

- 3.1. There is no formal claimant in this case, although a resident of Mattingley has submitted evidence of use by horse riders without making a formal application for a map modification order. The County Council is under a duty to make amendments to the definitive map on the discovery of evidence that a right of way is not recorded.

4. Landowner:

- 4.1. There is no registered, or known, owner of the route in question. The current and past owners of Hare's Farm do not claim ownership of the lane, or have any knowledge of who owns it.

5. Description of the Route (please refer to the map with this report):

- 5.1. The path runs from a public road known as Hare's Lane, on the north side of Hare's Farm (point B), and runs south-westwards for approximately 420 metres to Hazeley Heath (point A). It is a sunken lane, bounded by mature hedges set about six metres apart, with a useable path or track 2.5 metres in width down the middle. At the end of the lane, where it joins Hazeley Heath, there are three bollards that prevent vehicular access to the Heath, but which let through walkers, cyclists and horse riders. There are signs of extensive use by horse riders over the whole length of the lane.

6. Background to the claim:

- 6.1. This report should be read in conjunction with the previous report to this committee dealing with the dedication of bridleway rights over Hazeley Heath. The route that is the subject of this report enables horse riders to gain access to Hazeley Heath from the east, and without it equestrian access would be severely limited from this direction.
- 6.2. There is no registered or known owner of the lane, therefore it is not possible for the County Council to establish bridleway rights through a dedication agreement. Although the lane is currently used by horse riders, and there is no immediate threat to the continuation of that activity, it makes sense to secure rights for cyclists and horse riders now so that there is a continuous bridleway between Hazeley Bottom, Arrow Lane and Hare's Lane.
- 6.3. In circumstances such as this, there are two courses of action open to the County Council to upgrade the lane from footpath to a bridleway. This can be done either by making a definitive map modification order based on evidence of use and/or documentary evidence, or it could be achieved by using the County Council's compulsory powers to create a bridleway under s.26 Highways Act 1980. The officers have looked at the history and use of this route and have come to the conclusion that the public has already acquired bridleway rights. It is, therefore, appropriate to make a definitive map modification order to record those rights.

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 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. 1810 Ordnance Survey Map 1 inch to 1 mile

This is the first map which clearly shows the route in question. It appears as parallel solid lines connecting Hares Lane with Hazeley Heath. A short distance into the Heath the track divides into several different directions, with no one route being dominant.

8.2. 1826 Greenwoods Map 1 inch to 1 mile

This map shows the route in very much the same manner as the earlier Ordnance Survey map of 1810.

8.3. 1844 Hartley Wintney Tithe Map and Award 6 inches to 1 mile

This is a good quality map which shows topographical features in some detail. The track is shown by roughly parallel lines with no solid lines across the route that would indicate the existence of a gate. The section under consideration has been given the parcel number 499 which is listed in the Award under "*Commons, Roads and Waste*" and is called "*Bryants Lane*". What is now Hare's Lane is listed under the same category and is known as "*Hulfords Lane*".

8.4. 1870 Ordnance Survey County Series Map 25 inches to 1 mile

This is the first large-scale survey of the English countryside. The map shows all topographical features in great detail. The boundaries of the lane are shown by solid lines leading from "*Hare's Farm*" in the east to

connect with “*Hazeley Heath*” in the west. The lane appears to be gated at its eastern end, close to Hare’s Farm. The enclosed lane is included in parcel number 116 which also applies to a wide track which runs north-westwards across the Heath. The Book of Reference describes this parcel as a “*Road*”. These documents strongly suggest that the lane is a vehicular route, but does not help in determining whether it is public or private.

8.5. 1895 Ordnance Survey County Series Map 25 inches to 1 mile

There is very little change in the way that the lane is physically depicted. The only variations are that it is annotated “*Hare’s Lane*”, together with the present day lane of that name, and the gate across the lane at Hare’s Farm has disappeared.

8.6. 1908 Ordnance Survey County Series Map 25 inches to 1 mile

This document shows the lane in exactly the same manner as the previous map of 1895.

8.7. 1940 Ordnance Survey County Series Map 25 inches to 1 mile

The only difference from the previous two Ordnance Survey maps is that it is no longer annotated as part of Hare’s Lane. That name is now restricted to its present day extent of the public road.

8.8. 1964 Definitive Statement

The description of Footpath 46, contained in the definitive statement, stems from the original survey in the early 1950s and runs as follows:

“From U242 south westwards along gravel lane enclosed 10 feet wide between banks and hedges, then along grass track between banks, then along gravel track unenclosed across Hazeley Heath...”

8.9. Analysis of historic evidence

The old maps show a prominent topographical feature which has been in existence since, at least, 1810 connecting, what is now known as, Hare’s Lane with Hazeley Heath. The Tithe Map and the 1870 Ordnance Survey map describe this route as a road, but no document assists in determining whether this was a private road or a public road. The only evidence of a physical barrier is a gate at the eastern end on the 1870 OS map. Thereafter there are no obvious barriers to use. Given the width and character of the lane, it would have been useable by horses and carts.

9. Witness Evidence:

9.1. The County Council has received 24 user forms which detail use of this route by local horse riders. For a visual representation of this evidence please see the bar chart at **Appendix 1** with this report. There are other users of the same route, but not everyone has provided the required information, therefore their evidence has been omitted.

9.2. The earliest recorded use starts in 1963 with a local farmer, Mr Hazell, and builds up over the years, with all but one of the users still riding the route in 2010 when the evidence was submitted. Frequency of use varies between eight times a year (G Hazell) and every day (C Savill)

with the vast majority of riders using the lane one to three times a week. Not one of the 24 users report being stopped or obstructed in their use of the lane, other than by the occasional fallen tree.

10. Consultations with Other Bodies:

10.1. Hartley Wintney Parish Council

Is aware of the proposal and offer no objections.

10.2. Hart District Council

Site meetings have been held with officers of the District Council to discuss the establishment of bridleways across the Heath and along this lane. The officers are supportive of the proposal to upgrade the status of the path to that of a bridleway.

10.3. Councillor D Simpson – local member

Is aware of the proposal.

10.4. Mr D Large of Hare's Farm

"In principle we are glad to see this change of use of this path, as it will update the path to a level for which it is currently used; a lot of horse riders and cyclists use it, and therefore such a change will be much appreciated by all in the area. I think that, historically, this path has been used by horse riders for centuries. My main concern is not so much in the change of use, but in the types of transport that currently use the path. There are a number of motorised vehicles that use this path; mainly quad bikes during the muddier times in the year. Whilst it is clearly a great area to use these types of vehicle, it is very annoying and also illegal. We have faced this issue since we have owned this property, which we bought in 2004. Mr Large goes on to suggest that a gate, erected on Hare's Lane as part of a traffic management scheme, be moved the other side of his property. This is not relevant to the bridleway proposal, but the officers will take this up with Hampshire Highways."

10.5. The Ramblers

No comment

10.6. The British Horse Society

The local area representative has written the following:

"I would like to proffer my whole hearted support on behalf of the British Horse Society, to the earliest implementation of phase 1 of the bridleway dedications across Hazeley Heath. I hope that the delays in implementation of phases 2 and 3 are completed at the earliest possible time."

10.7. The Cyclists' Touring Club

"I support the addition of bridleway routes in the area so that they can be used by horse riders and cyclists. It is important that the proposed changes also reflect the needs of cyclists, which may slightly vary from those of local horse riders. This would be particularly important if it were necessary to prioritise the routes in the timetable for upgrade. Although I

understand the rationale behind any decision to dedicate first those that can easily be used as bridleways without improvements, I hope that any route identified as a high priority by either horse riders or cyclists would not be neglected. In other words, ease of making the route accessible as a bridleway should obviously be an important criterion, but not necessarily the only one. I am sure you will agree that it is important that users gain maximum benefit from this additional access based on the principle of creating routes that meet modern needs.”

11. Conclusions:

- 11.1. The route in question has existed as a physical feature for, at least, 200 years. In that time it has always formed an access to Hazeley Heath from Hare’s Lane.
- 11.2. The historic documentary evidence, and the physical characteristics of the lane, suggest that the route is an ancient public highway of some description. It was, at least, a bridleway or, possibly, a road.
- 11.3. There is documented, uninterrupted use of the route by horse riders for 48 years, and it remains in use, to this day, without any obstructions to that activity.
- 11.4. The only physical restrictions on the lane are the bollards at its western end which have prevented vehicular access onto the Heath, for an unknown period, but probably several decades.
- 11.5. Any landowner must have been aware that the public were using the lane on horse back to gain access to the Heath, and there is no evidence that steps were taken to curtail that activity.
- 11.6. It is not appropriate to make an order under s.31 Highways Act 1980 (20 years use) to record higher rights because there has not been a bringing into question of the public’s right to use the path, or a formal application for an order.
- 11.7. However, the combination of documentary and user evidence does point to the acquisition of public bridleway rights through a common law dedication.

12. Recommendation:

- 12.1. That a definitive map modification Order be made to record the route A-B, as shown on the attached map, as a public bridleway for the full width of the lane between boundary features.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as ‘Surveying Authority’, has a legal duty to 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.	

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>
Claim ref: 1097	Room 200
Hazeley Heath	Mottisfont Court
User evidence file	High Street
Correspondence file	Winchester
	SO23 8ZF