Appendix 1 **Agenda Item: 14**

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	7 October 2009
Decision Title:	Proposal to record a restricted byway over Footpath 13, in the parish of Rowlands Castle.
Decision Reference:	981
Report From:	Director of Culture, Communities and Rural Affairs

Contact name: Sylvia Seeliger

Tel: 01962 846349 **Email:** sylvia.seeliger@hants.gov.uk

EXECUTIVE SUMMARY

1) Summary of decision area:

1.1. An investigation into the history of a path in Rowlands Castle has revealed evidence that it carries higher rights than are currently recorded on the Definitive Map. It is considered that the public has acquired restricted byway rights through a common law dedication, and it is proposed that a Definitive Map Modification Order should be made to record this.

2) Legal framework for the decision:

2.1. <u>WILDLIFE AND COUNTRYSIDE ACT 1981: (53)</u>

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 -

i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates,

being a right of way [to which this Part applies]

ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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: (67): Ending of certain existing unrecorded public rights of way:

(1) An existing public right of way for mechanically propelled vehicles is extinguished

(a) was not shown in a definitive map or statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway. But this is subject to subsections (2) to (8)

(2) Subsection (1) does not apply to an existing public right of way if :

(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles

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

(c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles

(d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or

(e) it was created by virtue of use by such vehicles during the period ending before 1st December 1930

(3) Subsection (1) does not apply to an existing public right of way over a way if –

a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications to the

definitive map and statement so as to show the way as a byway open to all traffic

b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or

c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles –

i) was reasonably necessary to enable that person to obtain access to the land or

ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only

3) Summary of issues to be decided:

3.1. The primary issue to be decided by this Committee is whether a highway already shown on the Definitive Map and Statement as a footpath ought to be recorded at a different status. 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.

3.2. If Members are satisfied that the existing right of way ought to be shown at a different status, then the width of that way must also be determined and authority is required for the making of an Order to record that right on the Definitive Map.

4) Recommendations:

4.1. **That a Definitive Map Modification Order be made, under the County Council's duty to keep the Definitive Map and Statement under review, to record a restricted byway between the U219 (Wellsworth Lane) and the C27, Finchdean Road, shown on the attached map as A to B, on the curved route.**

4.2. **Officers recommend that route A to B has a width varying between 4.8 and 12.9 metres.**

MAIN REPORT:

1) Purpose of report:

1.1. The purpose of this report is to set out the facts of the case to enable Members to determine whether a public right of way shown on the Definitive Map and Statement at one status ought to be shown on the Map at a different status. If Members consider that the existing right of way ought to be shown at a different status, then the width of that path must also be determined and authority required for the making of a Modification Order to record that right on the Definitive Map.

2) Claimant:

2.1. A project called 'Discovering Hampshire's Lost Ways', initiated by the Hampshire Countryside Access Forum, has identified a number of routes around the county where the research carried out for the Countryside Access Plans has shown a need for public access and there is evidence for the existence of a public right of way. In this case, it is the status of a route that is already recorded that has been addressed. The Access Forum has asked the Definitive Map Team to bring forward some of these cases for consideration by Members, in order to record them on the Definitive Map, if the evidence supports the change of status.

3) Landowners:

3.1 The landowners are **Mr. M. Edney** and **Mrs. S. A. Ablewhite**, on behalf of their father **Mr. J. Edney**.

4) Description of the route (please refer to the map attached to this report):

The path is already recorded on the Definitive Map as Rowlands Castle Footpath 13. The path connects Wellsworth Lane (the U219) at point A, and Finchdean Road (the C27) at point B, both of which are public general purpose highways. It is 943 metres long. The Definitive Map shows the footpath on its correct alignment, which follows the line of Wellsworth Lane, as shown on the Ordnance Survey County Series maps, and **this is on a route which curves** (shown by a purple dotted line on the attached plan). The walked line beyond the house known as 'Great Wellsworth' is not on this curved line, but is straight. This straight line has only been in existence since about 1967. There is a gate across the path at point A, with a gap to the side with a wooden structure in it, for pedestrians to pass.

5) Background to the claim:

5.1. The public already has use of the straightened route for Rowlands Castle Footpath 13, to pass and re-pass on foot. The correct definitive line has had its hedges and fences removed and therefore not easily identifiable for

any walker wishing to use it.

5.2. Consultation with other bodies reveals that this straightened, but not definitive, path is heavily used by walkers, having a clear trodden route, with a gate with a gap to the side at its starting point.

6) Issue to be decided:

6.1. The issue to be decided by this Committee is whether there is evidence to show that the path ought to be shown on the Definitive Map as a bridleway, restricted byway or byway open to all traffic.

6.2. 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 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).

6.3. Historic and documentary evidence has been examined to see whether the past history and use of the paths point to them having public 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. 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. This type of evidence may disclose rights other than those claimed by the applicant, for example, they may show that the lane is an old road for vehicles, not merely a footpath or bridleway. The County Council is under a duty to record such rights as are found to exist, even if they are not claimed by the applicant.

6.4. 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.

6.5. The originals of many of the documents referred to in this report are only available in public record offices, but copies, transcripts or tracings of most documents are available for inspection in the offices of the Rights of Way section. Members are urged to inspect these, or the originals, when considering this report.

7) Documentary evidence:

7.1. <u>Isaac Taylor’s Map, 1759</u>

This is a commercially produced map printed at a scale of one inch to the mile. The northern end of Footpath 13 (Wellsworth Lane) is shown branching out of Finchdean Road, but no other part of the route is shown. That part which is shown is shaded brown and is between solid

boundaries, indicating that it was an enclosed road (according to the map's legend). It then just peters out, perhaps because it ran over land subject to common rights where there was a number of routes, or because the area was unsurveyed (see Appendix 1 for an evaluation of historic documents).

7.2. Thomas Milne's Map, 1791

Another commercially produced one inch map, this shows what may be Wellsworth Lane, between solid boundaries, leading away from a hamlet to reach the road to Finch Dean. However, the depiction of this route is on a more north-east to south-west orientation when compared to Taylor's map. The route is an enclosed road, according to the legend.

7.3. Ordnance Survey Old Series first edition, 1810

This map shows the whole of the path, between solid boundaries. Wellsworth Lane leaves a route that runs from the Finchdean Road to Rowlands Castle, passes through the hamlet of Wellsworth through a series of curves to meet the Finchdean Road.

7.4. Chalton, Catherington, Clanfield, Blendworth and Idsworth Inclosure Award Map (Hampshire Record Office 'HRO' Q23/2/15), 1816

Wellsworth Lane lies outside the area being inclosed by this award, but is shown on the award map. We are therefore not able to learn anything directly about its status from this document. Inclosure Commissioners generally had the power to reorganise the communication network serving the land being inclosed and could set out new routes specifically to serve the land. This information is strong evidence of the status of a route. The fact that it is shown on the map does give an indication of how it was viewed in the general context of the highway network of Rowlands Castle at the time of the inclosure. Roads, both public and private, are shown on the map, and are shaded in ochre. Wellsworth Lane is shown coloured ochre, between solid boundaries, with 'rows' of woodland on one side only or on both sides, for most of its length. It is shown running on the route found on the Ordnance Survey County Survey maps of the late 19th and early 20th centuries. It forms a direct connection between Wellsworth and Finchdean, via White Hill. Its depiction is similar to that of Dean Lane, also leading to Finchdean, which is now the C72.

7.5. Christopher Greenwood's Map, 1826

The depiction of the path on this map is similar to that on the Ordnance Survey Old Series first edition. Wellsworth Lane is, however, shown on a more angular course, looking almost like a zig-zag. It is between solid boundaries, which the legend indicates is a 'cross-road'.

7.6. Idsworth Tithe Map and Apportionment, 1838 and 1841 (HRO, 21M65/F7/128/1-2)

The route is shown coloured ochre on the tithe map, between solid boundaries, and without a plot number. It forms a direct route between Rowlands Castle and Finchdean. It is shown in the same manner as other routes in the locality that are now public highways. It is presumably included in the tithe apportionment under 'Roads and Waste', along with these other highways.

7.7. Ordnance Survey County Series Map, 1:2,500 first edition, *c.*1871

The route is shown between solid boundaries, running from the hamlet of

Wellsworth to the road at White Hill. Field boundaries dictate the curves in the lane. It carries the plot number 155, which is described in the book of reference accompany the map as 'public road'. This designation would have resulted after extensive enquiries by the surveyor in the local area. The route is ungated throughout.

7.8. Ordnance Survey County Series Map, 1:2,500 second edition, *c*.1895

The route is shown in the same manner as on the first edition.

7.9. Ordnance Survey County Series Map, 1:2,500 third edition, c.1909

As above.

7.10. Ordnance Survey County Series Map, 1:2,500 fourth edition

As above.

7.11. Catherington Rural District 'Handover' Map, 1929 (HRO H/SY3/6/5)

Wellsworth Lane is shown. The first section, from Woodhouse Lane, is shown in solid blue, indicating a metalled public carriageway repairable by the District Council. From Great Wellsworth north eastwards (the route in question) there is no colouring and it is crossed out by a series of red crosses. This type of route is found in the legend under the heading '*Public Highways (Carriageways)'* indicating that it was metalled, but repairable *ration tenurae*, that is by the landowner. The surveyor considered this route to the a public highway (or carriageway) that was not being maintained by the District Council.

7.12. Highways Maintenance Map, Petersfield Division, 1946 (HRO H/SY3/3/24/8)

The part of Wellsworth Lane that is the U219 is shown in solid orange, marked '196'. There rest is shown as a solid purple line, marked '13' in pencil. This indicates that it is a public footpath.

7.12 Map showing rights of way claimed by Rowlands Castle Parish Council early 1950s

This map from the early 1950s shows the way as a footpath, numbered '13'. An accompanying list indicates that it was claimed by the Parish Council under the Rights of Way Act 1932.

7.13 Definitive Map 1964

The 1964 edition of the Definitive Map shows the route as a public footpath, on the curving route. The Definitive Statement for it reads as follows:

'Rowlands Castle 13

Footpath

From Road U.219 at Great Wellsworth to Road C.72 at Whitehill (Wellesworth Lane)

From U.219 northwards along track 12 ft. between hedges to Road C.72 at Whitehill.'

7.14 Documents from Rights of Way Parish File (1966-1973)

Minute of a meeting of the Footpaths Sub-Committee, 20th February 1967

Rowlands Castle Footpath 13 had been subject to the erection of gates and stiles, and '*a number of complaints had been received from local*

inhabitants. It was RESOLVED: That the County Land Agent should look into the matter and, if necessary, take such action as was required to secure the removal of the obstructions across the footpath'.

7.15 Letter from Lady Cartwright-Taylor to County Land Agent, 28th April 1967

Lady Cartwright-Taylor refers to Wellsworth Lane, which she acknowledges '*was designated as a footpath in 1949…but it has been shown on Ordnance Survey maps since 1867 as a through lane with hedge or fence on both sides and open throughout*'. She states '*this way has now been closed by the man who farms the land on either side by erecting gates at each end, which are wired up and with stiles which can be negotiated only with difficulty. The hedge on the east side has been cut to the ground and cattle and sheep now graze over it. This has long been a popular walk for local residents with prams and dogs and was also, until its closure, well used by local horse owners as a ride…I think it is a pity that this lane should have been designated a footpath in the first instance, it should clearly have been given a "Bridlepath" rating*'.

7.16 Letter from the landowner to the County Land Agent, 22nd May 1967

The owner of the land over which Rowlands Castle Footpath 13 runs, wrote '*at present number 13 is fenced and hedged on both sides but it is too narrow for modern machinery to use. Therefore we have taken out one fence and one hedge thus necessitating provision of a gate and style at either end of it. This right of way is signposted as a footpath but is frequently used by vehicles and horses. The provision of a gate and style at each end would stop the misuse of the path*'.

7.17 Letter from County Land Agent to Lady Cartwright-Taylor, 24th May 1967

This letter informed Lady Cartwright-Taylor that a rights of way field officer had inspected Rowlands Castle Footpath 13. The County Land Agent stated '*the owner has every right to remove hedges which are on his land, and the status of this Right of Way is a Footpath only, it should not be used by equestrians or vehicular traffic*'. The owner was to make an application for authorisation of the stiles and gates to prevent the ingress and egress of livestock.

7.18 Letter from Lady Cartwright-Taylor to County Land Agent, 25th May 1967

It was the view of Lady Cartwright-Taylor that '*Although you say that the lane should not be used by equestrians the fact remains that it has been, without hindrance, for many many years and I should have thought that a legal right of way had now been established. I understand it is possible to have footpaths and bridlepaths re-designated and as this lane clearly should be a 'Bridlepath', I would be grateful if you could tell me what the machinery is for getting this done*'.

7.19 Memo from the County Surveyor to the County Land Agent, 31st May 1967

The County Surveyor reported to the County Land Agent that Wellsworth Lane was '*according to the Tithe Map and the Award Map…part of the Highway, although it is not at the present moment maintained. Permission cannot, therefore, be given for the erection of gates or stiles on this road*'. The County Surveyor suggested that the owner might make an application for a change in its status. The memo had a map attached to it showing the section of Wellsworth Lane that is the subject of this report as '*Highway*

(not maintained)'.

7.20 Minute of a meeting of the Footpaths Sub-Committee, 5th June 1967

An application was made by the landowner for consent for the erection of stiles and gates on Footpath 13, but consideration of this was deferred until the views of the County Surveyor on the question of the extinguishment of vehicular rights on this path were received.

7.21 Letter from County Land Agent to Lady Cartwright-Taylor, 6th June 1967

This letter informed Lady Cartwright-Taylor that the gates had been removed from Footpath 13, '*pending further investigation as to the status of this track as an ancient highway*'. The matter had been considered by the Rights of Way Sub-Committee, '*but as there does seem to be a possibility that vehicular rights are involved*' the matter had been referred to the Roads and Bridges Committee.

7.22 Letter from County Land Agent to the landowner, 9th June 1967

The landowner was thanked for removing the metal gate pending further investigation of the status of the track as an ancient highway, and he was also informed that the Roads and Bridges Committee would be referred to because of the possibility that the track carried vehicular rights.

7.23 Letter from County Land Agent to Clerk of Rowlands Castle Parish Council, 16th June 1967

The landowner had asked permission to erect a gate and stile at either end of Footpath 13, in the interests of agriculture. The County Land Agent said '*there seems to be strong evidence that this track should have the status of an ancient carriageway and I am referring the question to the County Surveyor for further consideration. It may well be in the public interest to have any highway rights extinguished leaving only bridleway rights*' and he sought the view of the Parish Council on this.

7.24 Letter from Lady Cartwright-Taylor to County Land Agent, 18th June 1967

Lady Cartwright-Taylor found that the gates had not been removed, and had the closures had been reinforced. She was unhappy that this was happening despite the matter having been referred to the Roads and Bridges Committee. A pencil note on her letter indicates that there had been a conversation with the landowner on 22nd June, in which he was told to remove the obstructions from Wellsworth Lane. The owner said he was taking advice on the matter.

7.25 Letter from the County Surveyor to Lt. Commander C. Maitland Dougall, 18th August 1967

The County Surveyor agreed that '*Wellsworth Lane is an ancient highway and that the gates are an obstruction across*'. He added that the farmer '*takes the view that this lane is little used and…he is considering making an application to the Justices for its reduction in status from a road to a bridleway. However, no application has yet been received and we shall continue to press for the gates to be removed*'.

7.26 Letter from Miss Gooderham to Clerk of Rowlands Castle Parish Council, 15th September 1967

This letter was in reply to one from the Parish Council seeking definitions of the different types of right of way. Miss Gooderham of the Rights of Way

Section noted that '*A Highway for all purposes gives the public the right to drive any vehicles without restriction*', but that '*difficulties of interpretation have been aroused where a Farm Accommodation Road which is kept in repair entirely by the Land Owner for his own purposes, also carries a public footpath or Bridleway*'. Miss Gooderham said, in the case of Wellsworth Lane that she '*always understood this to fall in the latter category*', but added '*in view of local claims that this is an all purpose highway*' [presumably meaning a publicly maintainable highway] she had referred the matter to the County Surveyor '*to investigate the status from any old records available*'.

7.27 Ordnance Survey National Grid Map, published 1970

The northern end of Wellsworth Lane is shown by parallel pecked lines between parallel solid lines. It is open to the Finchdean Road.

7.28 Documents from Rights of Way Parish File 1973-2002

Letter from Rowlands Castle Parish Clerk to National Farmers Union, 5th April 1978

This letter refers to the ploughing up of Wellsworth Lane by the landowner, and asks if anything could be done to '*minimise the practice and prevent the extinction of the public "Rights of Way"*'.

7.29 Letter from County Secretary to County Secretary East Hampshire District Council, 31st July 1978

This letter concerns itself with the matter of ploughing out Wellsworth Lane, and the writer points out that it is recorded on the Definitive Map as a footpath, information which would have been provided by the Parish Council in the early 1950s. The landowner had the right of ploughing out a footpath, subject to reinstatement. The County Secretary says '*the only unmetalled right of way one cannot plough is a RUPP* [Road Used as a Public Path]. *I have no evidence that this right of way should have been so classified on the first Map*', and then goes on to discuss the outcomes of RUPP reclassification, and comes to the conclusion that it would have been reclassified to bridleway had it been a RUPP, and would therefore still be subject to ploughing. He does say that '*it is interesting to note that this right of way was shown on the 1808 and 1870 Ordnance Survey Maps and the 1816 Enclosure Award map and the 1838 Tithe Map, in exactly the same position as it is now*'. The letter does not indicate what information was found in these documents to lead to the view that there was no evidence of a higher status. There is also no evidence from this letter that the correspondence of 1967, discussed at 7.14 to 7.26, had been seen or taken into account.

7.30 Letter from Rowlands Castle Parish Clerk to the Rights of Way Office, 3rd October 1978

The Parish Council had met with the Rights of Way Office to discuss '*the status of the Old Road from "Wellsworth to White Hill" and other footpath matters. It is understood that this road is designated as a "Road Used as a Public Path" and should be preserved as such and that the County Council intended placing a protection order on it and informing* [the landowner] *accordingly*'. The Parish Council wanted to know if this order had been made and, if not, when it would be.

7.31 Letter from Rights of Way Office to Rowlands Castle Parish Clerk, 10th October 1978

The Rights of Way Officer replied that it was the opinion of the County Secretary that '*although the path is shown on several old Ordnance Survey maps and on an Enclosure Award Map and Tithe Map as Wellsworth Lane, the status must remain as it is on the Definitive map, a footpath*'. Therefore the landowner would have the right to plough it and '*it will undoubtedly lose its identity as an old lane*'. The Officer has been hopeful he might find evidence to re-classify the route, but this was not the case.

8) User Evidence:

8.1 Seven completed user evidence forms were provided by the British Horse Society. All the users report having ridden along the straight line and not the line of Rowlands Castle Footpath 13, so their evidence is not directly relevant to the historic route which is the subject of this report. This evidence may, however, contribute to any future determination of public rights along the straight line on to which the public have been diverted.

9) The Landowner:

9.1 In a letter dated 4th June 2009, Mr. Martin Edney writes on behalf of his father Mr. John Edney. Mr. Edney's sister, Mrs. S.A. Ablewhite confirms, in a letter of 5th June, that she is '*in full agreement with his views in this matter*'.

9.2 Mr. Edney outlines that the farm was first rented in 1957 and purchased in 1962. A change in the maintenance of hedges came with the use of tractors and hedge trimmers, for which the track was too narrow, leading to the removal of the hedge on the east side. A decision was made in 1968, when potatoes started to be grown, to '*remove the one remaining hedge and straighten out the footpath for the necessity of cultivations, spraying and fertilising. Seventy per cent of the path remains on the original route and the general public have been walking this straight line without concern for forty years*'.

9.3 Mr. Edney cites a list provided by Rowlands Castle Parish Council indicating that the route was being claimed as a footpath, and refers to a meeting held on 3rd August 1950 which confirmed that '*the definitive route shown on the Highways Maintenance Map, Petersfield Division 1946) was a Footpath*'.

9.4 He understands that if the footpath is upgraded to a restricted byway, it will mean that '*at either end the access must be clear for a horse and cart to travel down'*, which he feels would be '*leaving it open for motorised vehicles to abuse the right of way and jeopardise the safety of walkers and horse riders*'.

9.5 Mr. Edney is willing to '*offer a permissive bridleway on the straight line as it is now*', and he believes '*that the Rowlands Castle Parish Council are happy for this to happen*'. The '*only other solution would be if Hampshire County Council would agree to downgrade the restricted byway to a bridlepath and record it as such, again on the straight line*'.

9.6 Mr. Edney also raises issues about the proximity of the nearest bridleway, and the difficulty of the road conditions between it and Wellsworth Lane. At

the northern end, the proposed restricted byway emerges on a '*very blind bend*', and Mr. Edney says that he '*cannot stress how dangerous this bend will be for horseriders crossing to or from the highway*'.

9.7 The owner of land adjoining Rowlands Castle Footpath 13, Mr. H. Jones, writes that his family has lived and walked in the area for the last 50 years. Mr. Jones's mother '*only ever knew the lane as a footpath and never saw it used by a vehicle…she remembers it being difficult to get a pushchair along it so it would have been impassable for vehicles*'. Mr. Jones's uncle, who is a local historian and '*only ever considered Wellsworth Lane to be a footpath*'. It is Mr. Jones's view that '*Wellsworth Lane has not had a reputation of being a public road for vehicles during the last 50 years, at least amongst the local people who are best placed to know*'.

10) Consultations with other bodies:

10.1 East Hampshire District Council

No comment at the time of writing.

10.2 Rowlands Castle Parish Council

A meeting was held on 6th July with Parish Councillors, the Rights of Way Warden and members of Parish Council staff, at which the background and process of this investigation was discussed, and the evidence that is being relied upon. The Parish Council is aware of the issues involved, and is keen to protect walkers, who are heavy users of the footpath. While they understand that the investigation must proceed on the evidence that is available, there was some discussion as to how the route could be managed were an order to be confirmed for higher status than footpath.

10.3 The Local Member

Both the previous local Member Councillor Eunice Byrom and the current Member Councillor Sam Payne have been informed.

10.4 Open Spaces Society

No comment received at time of writing.

10.5 Ramblers' Association

The local footpath secretary states:

'*Our group has used this Lane as a standard link in rambles northwards out of the centre of Rowlands Castle for over 25 years.*' He has no historical map-based evidence to offer, but has recently surveyed the path on the straight alignment. '*Any elevation to a higher-grade which included use by vehicular traffic would be opposed by the Group; it is considered that such use would be entirely inappropriate along this rural earth track.*' The local footpath secretary confirms that it is only motorised vehicle use that is opposed. Bridleway status also would not be opposed, but the Group has two concerns. The first is '*probable surface degradation caused by horse traffic*', if the track remains in its present state '*a satisfactory walking surface to cope with extended wet periods should be easier to maintain*'. Secondly, there is a '*difference between the obvious straight alignment on the ground and the series of four loops/kinks on the HCC-supplied map, presumably derived from the Definitive Map.* '

10.6 The British Horse Society

The County Access and Bridleway Officer writes:

'*I understand that up to the mid-1980s this was a typical unsurfaced highway, running between hedges about 5m apart. Remnants of these hedges can still be seen at each end, but they were grubbed out over much of the length. This is now a cross-field path, about 2m wide, running virtually straight…and not meandering as does the line shown for FP13…The path is currently managed by HCC as a footpath, part of the Staunton Way. There are locked gates at each end, with a narrow squeeze point for pedestrians at the end. This makes it inaccessible for riders, cyclists, wheelchair users, mothers with pushchairs, etc It is a pleasant path, well drained, and there seems no reason why it should not be available to wider sections of the public at large*.'

10.7 The British Driving Society

No comment received.

10.8 Trail Riders' Fellowship

No comment.

10.9 LARA

The Area Respondent comments:

'*I have nothing useful to add. I have never used the route or had cause to research it. It would be good to see rights properly recorded.*'

10.10 Cyclists' Touring Club

The representative for the Touring Club states:

'*I have no other evidence other than that identified by the DHLW project, although I have subsequently become aware that the alignment of the current footpath has been changed by the landowner. It would seem sensible to negotiate with the landowner so that the process results in only one route but that the route is a bridleway or restricted byway as appropriate.'*

10.11 Byway and Bridleway Trust

No comment.

10.12 Environment Department

No comment.

10.13 Hampshire Highways

No comment.

10.14 Countryside Access Manager

The Countryside Access Manager is aware of the investigation and has made contact with Rowlands Castle Parish Council because he will have to manage the route and '*deal with any misuse or issues that may arise from whatever the final outcome is'.*

11) Analysis of the evidence:

11.1 Representations of the path can be seen on the early commercial maps from the 18th century onwards. The tithe map suggests, by colouring, that it was a public highway, forming a direct route between Rowlands Castle and Finchdean and, in this, reflects what was shown on the earlier inclosure award map. It is shown in the same way that other routes which are now public general purpose highways are. Even recorded as a footpath, it connects two public general purpose highways, and the first part, as far as Great Wellsworth, is the U 219.

11.2 The first edition of the Ordnance Survey County Series mapping, dated 1871, describes it as a 'public road', indicating its reputation at the time. It is not known why the 1929 Handover Map shows the path as maintainable by the landowner, when the southern section of Wellsworth Lane was depicted as a metalled public carriage road. By 1946, it was considered to be a footpath.

11.3 The erection of gates across the path in 1967 gave rise to correspondence with the County Land Agent, and questioning of the status of Rowlands Castle Footpath 13. It was felt by a local resident at that time that the path should be at least a bridleway, and she expressed a wish to have this higher status recorded. The landowner admitted in that year that the route was frequently used by horses and vehicles. The County Land Agent asked the County Surveyor to research the status of the path as '*an ancient highway*' and the matter was referred to the Roads and Bridges Committee as it seemed that vehicular rights might be involved. From this correspondence it seems that the County Land Agent considered that there was '*strong evidence'* that Wellsworth Lane was an '*ancient carriageway*'. It also seems that the landowner accepted this, because he considered making an application to the Magistrates for a '*reduction in status from road to a bridleway*'. There is no evidence of such an application being made.

11.4 The ploughing out of Wellsworth Lane in 1978 gave rise to further correspondence about the status of the route. While it was acknowledged that it appeared on a number of old maps and other documents, the then County Secretary did not feel this was sufficient to warrant a change in its status. There is no information as to what research was done, and why it was felt that the evidence did not support such a change. There is also no evidence that the County Secretary was aware of the previous correspondence of 1967, where a view was taken that there *was* strong evidence of public carriageway rights. This is not helpful to the case that Rowlands Castle Footpath 13 carries higher rights, but the view that the evidence did not support a change in status should be considered in the context of an issue concerning the ploughing out of an old hedged feature and a possible prosecution for this.

11.5 Though this route appears to have been part of the local, all-purpose-highway network in the past, it has fallen out of use over time, as other routes became more dominant. Any such rights are not lost unless stopped up by due process of law.

11.6 Since this route was shown on the Definitive Map as a footpath on the 2nd May 2006, the motorised vehicular rights on it will have been extinguished by the provisions of the Natural Environment and Rural Communities Act ('NERC') 2006. Officers have considered the exemptions contained in this Act, under section 67(2) and 67(3), and there is no evidence that any of

these apply. The highest status it can be recorded at is restricted byway.

11.7 There is a discrepancy between the definitive line of Rowlands Castle Footpath 13 and the line that is walked by the public currently. This results from the removal of the hedges that defined the legal line of the Footpath 13 and encouragement of the public by the landowner to follow the straight alignment. The map and documentary evidence that exists is for the route on the definitive line, and it is on this line that Members are asked to make an order, if they are satisfied that the evidence supports a change of status.

11.8 There has been no application in this case. Evidence suggesting that Rowlands Castle Footpath 13 should be recorded as a restricted byway over the route A to B has been put forward by the 'Discovering Hampshire's Lost Ways' project organised by Hampshire Countryside Access Forum. Hampshire County Council has a duty to consider the evidence under section 53(2)(b) of the Wildlife and Countryside Act 1981.

11.9 Since the Access Forum has not made a formal claim, the Order is to be made under our independent duty to make amendments to the Map, as requisite. The authority for this is to be found in section 53 of the Wildlife and Countryside Act 1981.

12) Comments by the Landowner:

12.1 The representative of the landowner has made a submission, with the following points:

- Wellsworth Lane is a public footpath, on the definitive original route, rather than the straightened route.
- The Lane is privately owned, and was purchased from the Idsworth Estate in, as part of that Estate. The family of the previous owner of the land had owned this and since 1835, and it was in strict settlement, which raises a doubt as to the capacity to dedicate public rights over the route. It would be unlikely that the Idsworth Estate would have intended to dedicate a public carriageway.
- Any allegation of historic public vehicular rights must be based on implied dedication. This would have had to have been under common law, because of the lack of evidence of public vehicular use or public maintenance. Under common law, proof of dedication and acceptance by the public are required, but '*the long existence of a strict settlement and the consequent lack of capacity to dedicate militate strongly against that*'.
- The landowner's representative contends that this would be very difficult to establish in this case, where there is some '*apparent*' recent horse user evidence but no vehicular use.
- Even though the route is shown on maps, the maps themselves are '*not necessarily determinative as to status*'. It is felt that the route was more likely to be an accommodation road serving holdings occupied by tenants of the Idsworth Estate. These would have been private in nature, but were often described as public ways because they served different parcels and occupiers.
- Therefore, the term public road is '*not necessarily the same as a public carriageway*', and it may have had a lower status than a vehicular highway.
- The Handover map shows the Lane as not publicly maintainable.

- There were no objections to footpath status when the route was included on the first Definitive Map.
- There is no evidence of any public maintenance of the route.
- The available horseback user evidence relates to the straight route, and indicate that the Lane was gated at both ends.
- A neighbouring landowner confirms the lack of public vehicular use and the reputation of such use.
- Correspondence in 1967 indicates the writer saw the route as a bridleway, and complained that gates had been wired up, so it would have been difficult for users to negotiate these post 1967, and thus any twenty year period would have been 1947 to 1967.
- A member of rights of way staff in 1967 saw the route as an accommodation road repaired by the farmer, though also carrying a public footpath.
- Correspondence of 1978 discusses the reclassification of the footpath and an officer was hopeful of finding sufficient evidence to do this. These hopes were dashed by there being insufficient evidence.
- The County Secretary said in that year he had no evidence on which to reclassify the Lane, and any such reclassification would have been to bridleway.
- The landowner's representative submits that there is '*no sufficient justification, evidentially or legally, for any upgrade from public footpath status, let alone to public vehicular status*'.
- Any decision to upgrade the footpath would have to be on the original line, which would be difficult because there is no trace of that. '*Present boundary lines and privately-owned fenced-off property at the south end will be found to have incorporated some of the original route*'.
- The two routes hardly co-incide at all and there is no evidence for the parts of it that are not on the original line.
- Without prejudice, the following offer is made: that there be no recommendation or Order for restricted byway status at all on either of the two routes; that the width of dedicated bridleway is agreed, with the right to fence being reserved; agreement to a self-closing bridle gate and both ends, plus sufficient barriers to admit horses and walkers but not public vehicle; private vehicular rights along the lane be preserved; that the landowner is indemnified against any County Council administrative and advertising fees.

12.3 It is the view of officers that Wellsworth Lane, Rowlands Castle Footpath 13, was dedicated as a public carriageway at common law before 1810, the date of the first clear map evidence for the route on the definitive alignment. Therefore, it was not necessary for any holder of the Idsworth Estate, under strict settlement from 1835, to dedicate it as a public vehicular highway. Acceptance by the public of the route as a vehicular highway was indicated by its description in the Ordnance Survey County Series first edition 1:2,500 map of 1871 book of reference as a public road. This shows its reputation at that time, and was the result of careful research by the

surveyor. If the route had been an accommodation road, the surveyor could have recorded it as such. The Handover map records the route under the heading 'Public Highways (Carriageways)', indicating that it was seen as a public vehicular road, even though it was repairable by the occupier. The fact that Wellsworth Lane was claimed at footpath status at the time of the first Definitive Map does not mean that it does not have a higher status. There were no objections at this initial stage, but complaints were later received when the landowner put a gate and stile at the ends of the route that the footpath status did not reflect past depictions or use of it. Public maintenance of a specific route is difficult to demonstrate, especially where the maintenance responsibility lay with the occupier. The available evidence of equestrian use is not relevant, since it relates to the straight route. The adjoining landowner says there was no vehicular use, but the landowner in 1967 admitted that vehicles and horses used Footpath 13 '*frequently*', and stopping this use was probably part of his motivation for gating off the route. Though a member of rights of way staff saw the path as an occupation road, the then County Surveyor considered it to be an ancient public carriageway, and 1978 correspondence about a lack of evidence does not tell us what documents were examined, or whether the 1967 correspondence on the status of the path had been seen. It is open to the County as highway authority to enforce the legal line of Rowlands Castle Footpath 13 at any time. While the offer made by the landowner of a dedicated bridleway on the straight line is noted, it does not relieve the County of its requirement to act on evidence that indicates restricted byway rights on the original route. It is not possible to put forward a recommendation that does not take account of this evidence.

13) Conclusions

12.1 The historical evidence available for this route suggests the existence of a restricted byway, based on a common law dedication of public vehicular rights in a period between 1810 and 1929. Due to the effects of the NERC Act, these rights can only be recorded on the Definitive Map as a restricted byway on the route shown as A to B on the attached map, with a width varying between 4.8 and 12.9 metres, as set out in the Recommendation.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Links to the Corporate Strategy

	Yes	No
Hampshire safer and more secure for all	☐	☐
Maximising well-being	☐	☐
Enhancing our quality of place	☐	☐

OR

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as 'surveying authority' has a legal duty to determine application for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report.

(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)

Document	Location
HCAF Discovering Hampshire's Lost Ways CAP 9313	Rights of Way Office, Mottisfont Court, High Street, Winchester SO23 8ZF