

Appendix 6

Wildlife and Countryside Act 1981

**Application to record Fareham Footpath 3a as a restricted
byway**

Submission made by

Mr. William Tracy



HAMPSHIRE COUNTY COUNCIL
WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53(3)

This form has been prepared to allow you to give information about land which you may own or occupy and which may be affected by a claimed public right of way. Please be aware that the information you give may be disclosed to other interested parties including the claimants, and may be produced at any public inquiry which looks into the claim.

From the information provided by the claimant, the claimed path runs

From WARSASH

Grid ref. _____

To SWANWICK SHORE

Grid ref. _____

in the parish of _____

and is shown highlighted on the attached plan.

PLEASE READ THE ACCOMPANYING NOTES BEFORE YOU COMPLETE THE FORM.

1. Personal details

Name _____ Occupation RETIRED COMPANY DIRECTOR

Address William Tracy
Brooklands Quay
Swanwick Shore
SARISBURY GREEN
Hampshire SO31 7EF
Tel: 01489 570255 Day tel. no. _____

Date of birth 4th November 1949

2. Are you the freeholder of the land which this path crosses? YES NO Some of it.

Are you the freeholder of any land adjoining the path? YES NO

PLEASE MARK on the map the boundaries of the land you own. - in blue

When did you acquire the land? August 2000 and January 2003

3. Whether or not you are the freeholder do you occupy land crossed by or adjoining the path? YES NO

If you occupy the land as tenant, PLEASE MARK on the map the land which you lease or rent, and give the name and address of the freeholder.

When did you acquire your interest in the land? _____

4. A. Do you regard the claimed path as a public right of way? YES NO

B. Why? PUBLIC FOOTPATH - DEFINITIVE STATEMENT / MAP

5. What status do you believe the claimed path has (if any)?

Public footpath?

YES

NO

Public bridleway?

YES

NO

Public restricted byway

YES

NO

Byway open to all traffic?

YES

NO

Private way only - no public status?

YES

NO

6. Have you seen members of the public using the claimed path?

YES

NO

If 'yes', were they :

Were they :

local

YES

NO

on foot

YES

NO

strangers

YES

NO

on horseback

YES

NO

both

YES

NO

on a bicycle

YES

NO

with a vehicle

YES

NO

See additional information here with

7. Have you ever given permission to anyone to use the path or have access to the land crossed by the path?

YES

NO

If 'yes', when and to whom and for what purpose?

IN ACCORDANCE WITH MY OWNERSHIP AND PRIVATE RIGHTS - SEE ADDITIONAL INFORMATION HEREWITH

8. Have you ever stopped or turned back members of the public who were attempting to use the path?

YES

NO

If 'yes', please give details. SEE ADDITIONAL INFORMATION HEREWITH

9. Has anyone, to your knowledge, challenged public use of the path?

YES

NO

If 'yes', please give details.

SEE ADDITIONAL INFORMATION HEREWITH

10. Have you ever given instructions to any of your employees or agents to challenge public use of the path?

YES

NO

If 'yes', when and to whom ?

SEE ADDITIONAL INFORMATION HEREWITH

11. Are you aware of any private rights over the claimed path, such as rights of access for adjoining landowners? YES NO

If 'yes', please give details.

SEE ADDITIONAL INFORMATION HEREWITH

12. Have there ever been gates across the claimed path? YES NO

Are they still in place? YES NO

Have the gates ever been locked? YES NO

If 'yes', please give details.

SEE ADDITIONAL INFORMATION HEREWITH

13. Have you ever erected notices along the path? YES NO

If 'yes', when and what did they say?

SEE ADDITIONAL INFORMATION HEREWITH

Are they still there? YES NO

If not, when did they disappear?

SEE ADDITIONAL INFORMATION HEREWITH

14. Has the claimed path ever been blocked by obstructions such as hedges or fences? YES NO

Are they still there? YES NO

If not, when were they removed?

SEE ADDITIONAL INFORMATION

Who by?

15. Has any part of the path ever been ploughed or cultivated? YES NO

If 'yes', please give details.

NOT IN MY LIVING MEMORY

16. Have you ever maintained or made any improvements to the path? YES NO

If 'yes', please give details.

SEE ADDITIONAL INFORMATION HEREWITH

17. Has anyone, to your knowledge, carried out any maintenance or improved the path in any way?

YES NO

If 'yes', please give details.

SEE ADDITIONAL INFORMATION
HEREWITH

18. Are you aware of any documents which give evidence of the status of the path, e.g. title deeds, inclosure awards, tithe maps, railway plans etc. ?

YES NO

If 'yes', please give details.

SEE ADDITIONAL INFORMATION HEREWITH

19. Would you be willing to make your title deeds available for inspection?

YES NO

Registered Title number

SEE ADDITIONAL INFORMATION HEREWITH

If you have any other information, not given above, which you think is relevant to the claim, please give full details on a separate sheet.

SEE ADDITIONAL INFORMATION HEREWITH

I confirm that to the best of my knowledge and belief, the information given on this form is correct and complete.

SIGNED

[Signature]

DATE

12th June 2012.

This form has been completed by

NAME

N/A

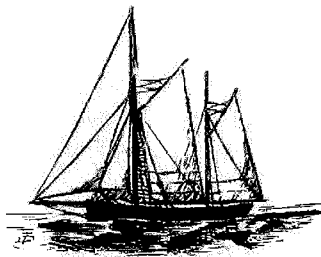
(if other than the person named in section 1)

Rights of Way Section, Countryside Access Team,
Hampshire County Council, Castle Avenue, Winchester, Hampshire.

SO23 8UL. Tel. 01962 847354

Hampshire County Council fully complies with the Data Protection Act 1998. The information you enter on this form will become part of the permanent records we keep on Rights of Way in Hampshire.

This does not affect your rights as a data subject.



COUNTRYSIDE SERVICE
15 JUN 2012
Passed to: <i>BS</i>

Our Ref: BQ/Corresp/8725

14 June 2012

Ms Sylvia Seeliger
Map Review Officer
Countryside Access Team
Hampshire County Council
Castle Avenue
WINCHESTER
SO23 8UL

Dear Ms Seeliger

Application to record Fareham Footpath 3a as a restricted byway

I enclose my completed Information Form, along with additional supporting items – all of which you will find self-explanatory.

Further to this, here is a summary of my position in the order in which various aspects appear within the Form, and which predominantly relate to the last 20 years or so:

1. I and others have stopped and challenged members of the public using the Footpath unlawfully.
2. There have been gates across both the driveway/path and footpath only sections.
3. At both ends, and along, the claimed restricted byway, and at some or all access points thereto, there have been notices/signs indicating that the way is a footpath only.
4. For decades, the Footpath was blocked by very substantial breaches of the embankment over and along which much of it now passes.
5. The design and construction of 'The Chinese Bridge' presents a clear statement to the public at large that the path is for walkers only, and is not intended for cycling or horse riding.

This is consistent with advice received in an email from Andrew Smith, your Head of Countryside, on 8 December 2009, viz that "erecting structures", as an alternative to the provision of locked gates (which is impossible here), is a type of step that can be "taken to show that, whilst the route may have been used by cyclists, the landowners had no intention to dedicate".

6. Prior to March 2001, the driveway/footpath section at the northern end of the claimed byway had effectively and essentially been impassable to all users for a period of between 10 and 20 years at least.

In his email referred to in 5. above, Mr Smith also mentions a situation such as this, and clearly infers that I may oppose an application "by showing that their [the cyclists] use had been interrupted by other reasons (which thereby prevent the accruing of a 20 year period)."

7. Even if these obstructions/barriers preventing and/or deterring unlawful use had not existed, the Footpath would have been impassable by the public at large on bicycles until a meaningful proportion thereof had purchased off-road machines – which would not have been until the mid 1990's at the earliest.
8. I have been asked whether I have ever improved or maintained the driveway/path, but I have no idea whatsoever as to the significance of this question – i.e. whether it counts for me, or against me. I asked for clarification of this in emails on 17 May and 22 May, but I still await responses to these, as well as to others from around the same time.

Brooklands Quay
Swanwick Shore, Sarisbury Green, Hampshire, SO31 7EF

Telephone: 01489 570255 Facsimile: 01489 570235

It is therefore necessary for me to emphasise that the work that I have indeed carried out has been in my own interests and for my own satisfaction, and, for the avoidance of any and all possible doubt, I have not performed this to invite or to encourage people to make, or for the benefit of people making, unlawful use of the driveway to my property, over which runs the Footpath.

My posi-
form
larr

I am content that lawful third party users (i.e. the walkers) have benefitted from my input, not least since I used to enjoy the amenity of the Footpath when I was much younger - and long before I moved here - but, I reiterate, this should have no prejudicial (against me) bearing on the matter whatsoever.

With regard to a matter such as this, the test, as you know, is as follows:

"Has uninterrupted, unchallenged and significant use actually been enjoyed by the public at large for a (claimed) period of 20 years?"

Further to this, and following on from the above, I would therefore make the following additional representations as to why the Footpath should not be upgraded to a restricted byway:

1. If, which is denied, it is accepted by you that a person or persons rode/scooted/pushed/carried a bicycle or bicycles over the whole length of the path when it was inconceivable that anyone did so, then one individual, or a few/negligible number of individuals, does not constitute the 'public at large'.

In other words, the "odd local (parishioner)", or a "handful" of them, is not sufficient because the number has to be "representative of"/proportionate to the local population - which, in the case here, is very considerable.

2. If, which is denied, it is accepted by you that persons rode bicycles over the very short section of Footpath between Passage Lane at Warsash and the Hamble ferry hard before the advent of mountain/off-road machines made this feasible, then, in addition to doubts as to whether these people constitute the 'public at large', this cannot possibly be used to justify a decision to confer a right to cycle on the remaining two miles of the Footpath.

In any event, this has never (since 1986, and throughout the 20 year period) been achievable because of the design and construction of 'The Chinese Bridge' and, moreover, cycling over the northern driveway/path section either did not take place at all, or never did so to anything like a sufficiently meaningful/qualifying extent, prior to the reinstatement/elevation thereof in 2001.

The legal principle must be the same as, or similar to, that which applies to matters of adverse possession/'squatters rights' - i.e. just because a person or persons has grounds to claim a corner of a farmer's field, for example, this does not give that person or persons the right to be granted title to the whole thereof.

3. Similarly, if it is accepted by you that persons rode bicycles along part of the Footpath, and returned from whence they came, then this, also, cannot possibly be used to justify a decision to confer the right to cycle on the remainder, not least since landowners remote from where unlawful use may be taking place (especially on a two mile path such as this) are neither in a position to challenge it, nor are necessarily aware, even, that it is doing so.

Furthermore, it is my very firm understanding that a 'way' has to be a way to and from somewhere, and it cannot possibly be that, for example, there and back encroachments onto a short length of a long path - a stub thereof, as it were - validates a claim for a public right of way over the whole two mile length thereof.

4. Whether or not, as it does in this case, there already exists a longstanding right of way for one user group, this should in no way add to the entitlement of other user groups to hijack the way for a different purpose.

A farmer may own a level field on the edge of a village which would be ideal for a cricket or football pitch, but this does not entitle the locals to hijack the land for either of those uses. The situation is no different here, and the fact that the way exists as a footpath already should have no bearing on the matter.

5. My understanding is that any challenge to the status of the Footpath can only be made in respect of the 20 year period, and claims in respect of any time preceding that (which are, in my view, spurious in any event) are invalid.

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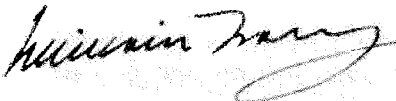
My position is that the Application should fail because, even discounting the barrier to cycling which is still formed by 'The Chinese Bridge', it cannot be argued that the period of use of the path as a whole by the public at large on bicycles was any longer than a little over 8 years.

This was from March 2001, when the reinstatement/elevation work at the northern end of the Footpath was completed, to the summer of 2009 when the intensity of challenge was escalated by some private landowners and the Council.

Furthermore, even throughout the period referred to, there not only existed signage, but those using the path unlawfully were also challenged by both landowners and walkers.

Lastly, I hereby place on record that I have been hampered in my ability to provide as much information as I would have liked as a result of the Council not having complied with requests that I have made during the course of the last two and a half years for background information and documents etc. relating to the Footpath.

Yours sincerely



William Tracy

Encs

cc: David Einton (Paris Smith)

**HAMPSHIRE COUNTY COUNCIL
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53(3)**

Application to record Fareham Footpath 3a as a Restricted Byway

Additional Information provided by William Tracy – 14 June 2012

6. Have you seen members of the public using the claimed path?

1. With regard to “members of the public using the claimed path ... with a vehicle”, I have only seen this on the driveway to my property – over which the public have a right of way on foot only, and hence it also being known as (part of) the path shown on the map/plan – once or twice a year on average. When challenged, occupants of the vehicles have invariably claimed that they believe that the drive leads to their intended destination and that they have made a mistake by driving upon it.
2. On about half a dozen occasions in 12 years, I have also seen a motorcycle of some kind being ridden through my property. I recall that I challenged such use on one or two occasions, as a result of which I did not note a repetition thereof by the person concerned.
3. I have also seen a very few (when compared to the number of cyclists) horses on the footpath. Their riders/leaders have invariably been those known to me, i.e. my longtime immediate neighbour exercising her private rights.
4. I would add here that all of the living rooms in my house (sitting room, dining room, kitchen and conservatory) front the footpath. I also overlook the footpath from upstairs in my house, where I work.
5. Following the theft of a very large outboard motor, bolted (and locked) to the back of a rigid inflatable boat parked in front of my property in 2009, I also installed CCTV cameras so as to be able to monitor and record movements on both the area in question, and access thereto by way of the driveway/footpath.
6. In all probability, I therefore see a more representative sample of what occurs on the footpath (based on the section thereof which passes over my driveway) than does anyone else.

7. Have you ever given permission to anyone to use the path or have access to the land crossed by the path?

7. It would have been helpful to have been given an indication of what is meant by “anyone” in this context, or, better still, to have had the meaning of the word here properly defined.
8. The public have a right to walk along/upon the driveway to my property, arising from which is the classification of all or part of the driveway as forming a short section (about 15% by length) of the footpath in question.
9. In connection with, and arising from, the ownership of my property, and in accordance with my private rights pertaining thereto, I have, of course, given permission to various of my family, friends, servants, employees and tradesmen etc. to use my driveway, and also to use the narrower extension of that in my ownership (which is of “path” width, and which forms part of the route marked on the plan) southwards to the boundary of my property, and to have access to the land in my ownership crossed by that.

10. Such permissions have been granted at various times in the period from August 2000 to the present day, but nothing relating thereto has any bearing whatsoever on "the path" or "the claimed path".

11. Other than in accordance with my ownership of, and private rights pertaining to, my property, I have never given anyone permission to ride or lead a horse, or to ride or push a bicycle or motorcycle, or to use a horse drawn vehicle, or to drive a motor vehicle, on any part of the route marked on the map/plan.

8. Have you ever stopped or turned back members of the public who were attempting to use the path?

12. I have attempted to stop and/or prevent some members of the public using the footpath (the driveway to and through my property) for the unlawful purpose of cycling, but such attempts have invariably brought forth verbal abuse and threats of violence – and therefore fears for my personal safety. As a result, I have, for the most part, ceased making such attempts.

13. As for cyclists "attempting to use the path", "attempting" does not come into it. If they choose to ignore the signs at the entrances to the footpath, then there is little else, or nothing, to stop them proceeding on their way.

14. Further to this, I quote from an email received from Mrs Liz Giles of the HCC Countryside Service on 27 February 2009: "*Cyclists using rural Public Footpaths is becoming an increasing problem and they seem to just totally ignore any signs we place on site.*"

9. Has anyone, to your knowledge, challenged public use of the path?

15. Without any guidance/definition as to what is meant by the words "anyone" and "challenged", it is difficult to interpret the meaning of this question. Also, in the context of this matter, it is not appropriate to "challenge public use" if those concerned are on foot. There is only justification to do so in the event of public **misuse** – i.e. predominantly by cyclists in this case.

16. Challenges that I have made, or know to have been made by others, are as follows:

- a. One or more of my neighbours has remonstrated with one or more cyclists, usually resulting in their being verbally abused and/or threatened with violence.
- b. Others to whom I have spoken, e.g. walkers, have reported both challenges and, invariably, the same responses thereto.
- c. I first made representation to Hampshire County Council with regard to the matter of cyclists, and their commencing to misuse the footpath, in a letter of 28 March 2001. This was within days of the Council having completed extensive works which resulted in it being rendered passable by significant numbers of cyclists for the first time ever (see **14.**, **16.** and **17.** below).

One principal reason for my making this representation was (and still is) that the third party (non HCC/private) owners have little or no control over the provision of preventative measures – i.e. none of us own land at the entrances to the footpath from the public highways, and therefore have no rights or powers to erect signage in these locations. It is only the Council that is in a position to do so. The representation referred to brought no satisfactory response.

- d. On 8 August 2003, I made representation to Fareham Borough Council suggesting that, in the interests of public safety and suchlike, the police should take action against cycling on the footpath. Again, this brought no satisfactory response.
- e. By early 2009, cycling on the footpath had become intolerable for residents and (many) walkers alike, and one of my neighbours, his two year old son having been very nearly run down on the footpath by a speeding cyclist, made representation to Hampshire County Council with regard to the escalated and escalating misuse. In short, this is what went on to bring us to where we are today.
- f. At around the same time, we also made representation to the police with regard to the misuse. This initially brought a much appreciated positive response, but the police subsequently bowed to pressure from the cyclists, on the grounds that they were not committing an offence by reference to the Road Traffic Act. In the intervening period, I have made further representation to the police that they should be treating the matter of cyclists misusing the footpath as antisocial behaviour, but this has once again brought no satisfactory response.

My position is that the police could and should have looked (and could and should still be looking) upon the misuse of the footpath as an offence by reference to Section 1 of the Protection from Harassment Act 1997. They have clearly chosen not to do so.

10. Have you ever given instructions to any of your employees or agents to challenge public use of the path?

- 17. I answer this question in the context of public misuse of the footpath, as opposed to legitimate public use by walkers.
- 18. I do not consider myself to be, or ever to have been, in a position to instruct any other person, whether employed by me or not, to challenge public misuse of the footpath (i.e. by cyclists) for fears of their being verbally abused and threatened with violence – i.e. having regard for their personal safety. (See 8. above).

11. Are you aware of any private rights over the claimed path, such as rights of access for adjoining landowners?

- 19. Here, I can speak only for the relatively short section of the claimed path from the northern boundary of Universal Marina to Swanwick Shore Road, and to the best of my knowledge.
- 20. Of the nine separately identifiable parts of this, seven are in the ownership of private individuals, all of whom enjoy full (for any purpose, and with or without vehicles etc.) rights of way over all, or greater or lesser parts of, most of the section referred to.
- 21. There were also private rights over the driveway enjoyed by several other properties (in Holly Hill and Crableck Lane) but, by reference to the terms under which they were granted, it is believed that these have lapsed. With regard to the two parts of this section where the ownership thereof is unknown to me, I have no idea as to any private rights pertaining thereto.

12. Have there ever been gates across the claimed path?

- 22. Taking this question as to be enquiring as to whether the driveway/footpath has been fully gated (i.e. completely barred), then, once again, it is inappropriate in the context of this matter. The reason for it being so has been repeatedly communicated to Hampshire County

Council at intervals over most, if not all, of the last eleven years – i.e. the driveway/footpath **cannot** be gated so as to prevent misuse by cyclists because the public have, since the date of the Definitive Statement/Map (c. 1953) had a right to **walk** along it. Prior to 1953, the driveway may well have been fully gated (i.e. completely barred).

23. I remember there being a 'seven eighths' gate outside the property known as Tidemark – on one of the sections of the driveway/footpath where the ownership is (now) unknown – although my belief is that it probably belonged to Brooklands (House), was not conveyed at some time in the past, and has therefore not become registered. Document 1 supports this view. I also remember seeing the gate both closed and open. It was still there about 12 years ago and what is believed to be one of its posts, or its post (and/or its predecessor's, in fact) remains in position to this day – see Photos 1, 16, 18 & 25.
24. The design of this gate was so as to prevent unauthorised **vehicles** entering upon the driveway at its northern end, whilst at the same time allowing walkers to do so legitimately. It is actually referred to in the Definitive Statement in that access to the footpath is described as being "*Through gap at side*" thereof.
25. I have evidence that a gate was in existence at this location for the best part of a hundred years, and possibly for longer, and that it has, in the past, been kept locked. In respect of a conveyance of a property out of the Brooklands Estate in August 1916, it was noted that it was necessary to hand over keys for both it and another gate (at the top of Crableck Lane) on completion – see **18.** below and Document 1.
26. Fifty eight years later, a gate at this location was still reported as being kept locked. In the auction particulars for my property dated 11 June 1974 appears this: "*There is also a right of way across Swanwick Shore Road by a driveway which follows the River Hamble to which access is obtained by a locked gate – owners of properties approached from this road have a key.*" See Document 2.
27. Near to the southern end of the footpath (i.e. at Warsash), there are the remains of a vehicle gate, and an apparatus at the side thereof designed in such a way as to allow walkers to pass (see Photo 2). A document disclosed by the Council states that the gate was erected in about February 1986 "*to prevent access by horses and vehicles*". It would have caused negligible inconvenience to cyclists using the ferry at the time since they were invariably, if not always, in the habit of pushing their machines along the very short section of path to and from the public highway (see 59. below). Sometime after 1986, when repairs to the footpath had been completed, access thereto was (re)narrowed/restricted, and, presumably, the issue of unlawful horse/vehicle access lapsed. For the reasons stated in **14.(2.)** and **14.(4.)** below, I do not believe that this gateway has any relevance when it comes to the unlawful cycling on the footpath that has taken place in recent years (i.e. since 2001).
28. The provision of similar gates by individual private owners of sections of the driveway/footpath at any time since misuse by cyclists became an issue (i.e. since 2001) would have clearly been largely futile. Not only would the 'gates' be located at greater or lesser distances from one end of the footpath or the other, but, on their own, they would have inevitably been ignored by most cyclists – who would merely dismount (if necessary) and pass through the opening intended to provide free access to walkers.
29. A few metres beyond the southern boundary of my property, there is a very old iron gate which can be seen to this day in the closed position (see Photos 3-5). To the side of this, there is also evidence of there having been a pedestrian gate of some kind, and I am sure that I remember there being a kissing gate arrangement at this location in the past. When this rusted/fell into disrepair, people then had little choice but to walk over the adjoining

marshland to bypass the whole thing and, in time, the ground was made up accordingly. The extent (width) of the old footpath (which passed through the pedestrian/kissing gate) can be seen in the photographs. The owner of this land is unknown – although my belief is that it probably belonged to Brooklands (House), was not conveyed at some time in the past, and has therefore not become registered.

30. Universal Marina re-erected a kissing gate arrangement across the footpath on its northern boundary in about June 2009 to replace a very old, and similar, structure at, or approximately at, the same location which had fallen into disrepair a few years previously. The 2009 gate, along with most, if not all, of the notices that have been affixed to it, have been vandalised at some time or other since then. See Photos 6, 7, 19 & 20.

13. Have you ever erected notices along the path?

31. I erected notices on my short section of the footpath, and one on my immediate neighbours' section (with their consent), in 2009, but they are no longer in place.
32. They did not "disappear", I took them down after a few weeks because they were repeatedly vandalised, as were/have been those erected by the Council.
33. Examples of what mine 'said' can be seen in some of Photos 8-24. This group shows a selection of both my, and the Council's, signs/notices.
34. Jointly/in conjunction/in agreement with the Council, I also repaired/replaced the sign at the entrance to the driveway/footpath at Swanwick Shore after it had (twice, as I recall) been vandalised or stolen. On the same basis, I also repaired and replaced signage belonging to the Council at one or two other locations. Most, if not all, of the signage that has been erected has been vandalised or stolen at one time or another (see Photos 8-13, 15-17 & 24).
35. There has been signage at the Swanwick Shore entrance to the driveway/footpath for a great many years and for as long as I can remember. Photos 25-27 illustrate what existed in the years from about 2001 to 2009, and also probably back to about 1980 and earlier. From the directions within the 1989 sale particulars of my house is the following: "*straight on into the private drive marked 'footpath only' [and] continue down this driveway along the Hamble River.*"
36. There have always been signs at the southern (Warsash) end of the footpath, which is controlled by the Council. I recall that there was once a traditional (fingerpost) sign but this was possibly replaced at around the time that the Passage Lane car park was provided and the line of the footpath altered/diverted in some way. Signs that replaced this (see Photo 28) were believed to be of the size that they were due to the Council's alleged policy of minimising signage 'pollution'/clutter, especially in countryside areas, which is understandable. On the Council's website, or in its leaflets/pamphlets etc., I remember reading that it was these kinds of signs that one was expected to look out for on paths and tracks. That they were maintained in place would suggest to the law abiding majority of the public at large that the Council has at no time been minded to dedicate the path as a right of way for any user group other than walkers. The design and construction of 'The Chinese Bridge' gives further support to this – see 14.(2) below.
37. As stated in 16.c. above, the third party (non HCC/private) owners of the footpath are disadvantaged when it comes to signage where it is most needed, i.e. at the entrances to the driveway/footpath section in the north and the footpath only section in the south. For example, the section of the driveway/footpath in my ownership lies about a quarter of a

mile from the northern entrance, and one and a half miles from the southern one (onto the footpath only section) at Warsash.

14. Has the claimed path ever been blocked by obstructions such as hedges or fences? (1)

Breaches etc.

38. Prior to 1986, the footpath was totally impassable, had been so for at about 30 years to my certain knowledge, and, from aerial photography, can be proved to have been so for more than 40 years in total – back to before 1946, in other words. See also the paragraph about Warsash in Document 3 which states that the footpath had last been passable sometime before 1939 (from 'The Hamble River and much about Old Bursledon' by Susannah Ritchie).
39. This is because there were multiple (at least five) breaches of the embankment between Crableck Yard (now part of Universal Marina) and Warsash, over and along which the footpath now passes. This section, which looks to be more than a mile in length, is believed to be owned in its entirety by Hampshire County Council.
40. See aerial photograph (29) dated 25 July 1985. This clearly shows the breach still remaining (centre top), a repaired section of the footpath to the left (with new culverts clearly visible where a short time previously there had been a breach) and a recently repaired breach at upper middle right.
41. The aerial photograph dated 12 October 1974 (30) shows the same three (actual) breaches, plus another between the two on the left, and a very large one to the south (upper middle right). In addition to the breaches themselves, the rusting and/or rotting remains of a large vessel (or perhaps two vessels) can be seen lying through the one in the centre of the photograph. Through the northernmost breach (on the left) would have once passed a 70' (x 15') former MTB (Motor Torpedo Boat) which, in the 1950's and/or 1960's, I remember being used as a houseboat at the Crableck Lane end of the 'lagoon' behind the footpath. I think that I recall that the people who lived aboard the MTB were named Ritchie, and so it occurs to me that perhaps Mrs Ritchie was, or was related to, the Susannah referred to in 38. above.
42. I know that these breaches were totally impassable because they presented something of a challenge to me and my friends when we were boys/in our early teens, and, even using pieces of driftwood that were to hand (plywood and odd lengths of planks etc.), we were unsuccessful in our attempts to get across the one or two that we could access. We were more successful in incurring our mothers' wrath when we arrived home plastered with very smelly Hamble mud.
43. Fundamentally here, I also quote from the Definitive Statement: "... *further breaches have occurred, and the footpath is now isolated for nearly a mile.*" This, by definition, and from aerial photographic evidence, must have been written sometime between the late 1940's (or early 1950's) and the time that the breaches had begun to be repaired in the 1980's (or, possibly, the 1970's) – after which time the length of footpath "*isolated*" would have gradually become shorter.
44. That the footpath was indeed very little used at all, even by walkers – and let alone cyclists – until after the reinstatement/elevation work of early 2001 was carried out (see 16.c., 50. and elsewhere) is borne out by photographs of my section of the driveway/footpath, lawn and river frontage in that there was only incomplete decorative (post and low chain) fencing in this location in the spring/summer of 2000 (Photos 31-33), and none at all on (or shortly before) 14 September 1989 (Photos 34-37). The private areas to the sides of the

driveway/footpath only had to be fully fenced, by palings three feet in height, after the 2001 work referred to was carried out, mass usage of the footpath by the public at large had commenced for the first time ever, and encroachment onto the wholly private areas became an issue as a result.

45. That the footpath and driveway/footpath sections were in very poor condition in the late 1950's/early 1960's is borne out by Document 4 and Document 5. Document 4 also bears out the deposition of debris referred to in 16. above. The small creeks and gullies mentioned would have been those existing within Crableck Yard (as it was then), between there and Universal (or Solent Shipyard as it may have been at the time), and just to the north of Universal. They were more or less as described, and nowhere near the scale of the breaches to the south of Crableck Yard referred to above. Photo 38 shows Crableck Yard in April 1968, and both the footpath, and one of the bridges over one of the "creeks and gulleys", can clearly be seen.

14. Has the claimed path ever been blocked by obstructions such as hedges or fences? (2)

The Chinese Bridge

46. The last of the breaches referred to was bridged in the late summer/early autumn of 1986, and the structure became known as 'The Chinese Bridge'. At both ends of this, and with regard to cyclists, there are large and, even for walkers, not very user-friendly concrete steps. It is also impossible, or next to impossible, to ride a bicycle over the bridge owing to wooden slats affixed across its surface at spacings of 6" or so (to prevent walkers from slipping and falling over), the gradients either side of the centre, and its relative narrowness (when it comes to mounting, setting off and dismounting).
47. See Photos 39 & 40. The size of the steps, and the obstacle that they present to cyclists (at both ends of the bridge), can be particularly well gauged from Photo 39, i.e. by reference to the sizes of the people and the bicycle (especially the height of the back wheel thereof).
48. This bridge was clearly designed and constructed for walkers only. Furthermore, it cannot have become the Council's intention to dedicate the path as a right of way for any other user group at any time in the 25 years since 1986, or at least not until very recently – else it would have modified the bridge accordingly long before now.

14. Has the claimed path ever been blocked by obstructions such as hedges or fences? (3)

Background to work carried out in 2001

49. With regard to the driveway, and therefore the section of footpath, between Brooklands Quay/Farm and Swanwick Shore, this was impassable to cyclists for a prolonged period or periods during, and quite possibly throughout, the 1980's, the 1990's, and from 1 January 2000 to March 2001.
50. That it was so in 1980 is evidenced by letters written in June 1980 by a Rights of Way Officer to "several private individuals" in which he or she stated "*Recent inspections have identified surface water collecting on the path on one particular 80 metre section. This is creating a very muddy section which is not helped by vehicles using this route. There is water running from the adjacent land, down the bank and onto the footpath.*" From this description, the 80 metre section can only be all or most of that which the Council reinstated and elevated in February 2001. That the footpath should become muddy, and that seaweed etc. should collect and rot upon it – brought in by every tide – is as natural a phenomenon as vegetation (i.e. a hedge).

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51. The photographs of this section (41-55) were taken in the autumn/winter of 2000/2001, and in February 2001.
 52. I had moved to Brooklands Quay in August 2000, and, in the eight months from then until the driveway/footpath was reopened in March 2001 after the work had been completed, I did not see one single bicycle movement thereover. Nor, for that matter, and understandably, were very many walkers seen – perhaps two or three per day, on average.
 53. Notwithstanding the ownership of the driveway and the existence of private rights, there was also not one single private vehicle movement over it during the same period – and I personally never once contemplated using the driveway, even in my Land Rover.
 54. The only vehicles that were seen to pass during this time were a Royal Mail delivery van and perhaps one or two others driven by a person or persons with questionable judgement. With regard to the Royal Mail van, the driver presumably considered that the risk of a puncture or punctures (from driftwood with protruding nails and suchlike), or getting stuck in the mud, was outweighed by the time that he saved by otherwise having to drive the ‘long way round’ from the bottom of Crableck Lane to Swanwick Shore Road. I am certain that he would not have done this had the vehicle been his own, as opposed to it being the property of a third party.

14. Has the claimed path ever been blocked by obstructions such as hedges or fences? (4)

Off-road cycling

55. Notwithstanding references to earlier dates/years above, nothing prior to the 1990’s is of any real relevance to the matter in any event. This is because the footpath was incapable of being used by cyclists before then – i.e. before the ‘invention’ and availability of mountain/off-road bicycles.
56. The first time that ‘mass produced’ off-road bicycles came onto the (US) market was in the 1980’s, but it was not until the “1990’s and the first decade of the 21st century” that “mountain biking moved from a little-known sport to a mainstream activity” (Wikipedia pages).
57. There is another (.uk) website that is even more specific: “the mountain bike saw little success during this time [the 1980’s], with it remaining a minor competitor in the wider bicycle market. It was not until the 1990s and early 2000s that mountain bike sales took off in a big way ...” (www.mountainbikes.me.uk/mountain-bike-history/).
58. The mountain/off-road bicycle has caused us to forget (or never to have known) how uncomfortable it was to ride on anything other than a metalled or very smooth surface on the machines that we all rode prior to the 1990’s. Moreover, to ride over a surface such as that which has existed on at least some, if not several or most, parts of the footpath throughout my living memory, would have resulted in a very high incidence of punctures and buckled (especially front) wheels etc. See Photo 56.
59. It would have been for this reason that cyclists taking the ferry between Warsash and Hamble were invariably, if not always, seen to push their machines along the very short section of the footpath between Passage Lane and the ferry hard.

14. Has the claimed path ever been blocked by obstructions such as hedges or fences?

Summary

- Between Universal Marina (as it is now) and Warsash, the footpath was breached (in several/many places), and was impassable as a result, between 1946 (or earlier) and 1986.
- Off-road cycling did not begin to take place until the 1990's.
- Between Swanwick Shore and Universal Marina, the driveway/footpath was effectively blocked and impassable throughout much, if not all, of the 1990's (and possibly the 1980's also), and cycling did not begin to become an issue until after it was reinstated/elevated in March 2001.

15. Has any part of the path ever been ploughed or cultivated?

60. Not in my living memory.

16. Have you ever maintained or made any improvements to the path?

61. In early 2001, I learned that the Council, without having properly consulted the owner, and not having done so at all (or even given notice) to those having private rights (or certainly not to me) announced that it would be entering upon the driveway/footpath to carry out work on the section between Brooklands Quay/Farm and Swanwick Shore.
62. I further learned that it was only proposing to reinstate and elevate the driveway over 2.5 metres of its 4 metre (approx.) width, but, given that rights of way thereover existed for both walkers and landowners (with or without vehicles and for any purpose in their case), this was clearly not a sensible course of action – not least having regard to the safety of walkers.
63. Accordingly, so as not to have my right of way rendered next to useless, I agreed to cover the cost of widening the reinstatement and elevation work so as to make the width of the elevated surface what it is today. This amounted to £3,995.00, which was invoiced on 14 March 2001, and paid on or about 16 May 2001.
64. The work that the Council were to carry out would also, however, have proved to be inadequate. This was because there was a further 70 metre section adjoining to the south running at more or less the same level where most, if not all, of the mud, seaweed, driftwood and general detritus from the river would have accumulated in lieu of where it had been doing so for many years previously. Accordingly, with the agreement of the owner(s) of this section, I arranged with the contractor to extend the driveway works over this additional distance at a cost to me of £6,051.25.
65. Even after this work was completed, a subsequent (very) high tide revealed a 'low spot' over a section further to the south, I also attended to this – probably at a cost of something in the region of £1,500.
66. In the eleven years since 2001, I have spent a considerable sum on maintaining the driveway, and, therefore, this section of the footpath, e.g. on the filling of potholes, the clearance of seaweed, driftwood and general detritus following high spring tides, the collection and disposal of dog mess, the collection and disposal of litter, and the clearance of at least one fallen tree and two tree limbs – one of which had fallen, and another which was considered dangerous to those passing beneath it. See Photos 57-60, and below.

67. Here is an appropriate place to describe the effects of high (spring) tides on the driveway/footpath before and after the reinstatement and elevation thereof. Prior to the work being carried out, the driveway/footpath flooded at high tide (twice a day) for the (usually) several days of spring tides. These occur twice a month. In other words, it did so on anything up to about 200 times per year – and hence the very considerable amount of seaweed, driftwood, general detritus and mud on the driveway/footpath throughout, or for long periods during, the years and decades prior to 2001.
68. It may be that this was cleared on an annual basis (in spring) when Brooklands Farm was still 'working' (to about 1968), but this task was possibly carried out less thereafter, and may have been abandoned altogether – on the basis that it amounted to 'fighting a losing battle'. The reason that the clearance would have taken place in the spring is that the driveway was less likely to flood, and to have flotsam and general detritus deposited on it, in summer than in winter. This is because spring high tides are lower in summer months, and storm/gale conditions (which are also more severe in winter) are rarer.
69. My understanding is that the task referred to had certainly been abandoned by the early 1990's when, after one or two token efforts, use of the driveway was abandoned by my predecessors – who improved the back alternative from Brooklands Quay and Brooklands Farm to the A27 (Bridge Road) at Sarisbury Green. This was then used exclusively by the owners and occupiers of these two properties (myself included) until after March 2001 when the reinstatement and elevation of the riverbank driveway was completed.
70. Since the work has been carried out, and because it involved the elevation of the driveway/footpath in the most vulnerable section, both flooding and deposition of seaweed, driftwood, general detritus and mud etc. now occurs less often – at and around the times of about four to six high spring tides per year. On the basis that these occur twice a day over several days, flooding now occurs on up to about 50 occasions per year – i.e. down from about 200 previously. This is consistent with what is reported on the web page: www3.hants.gov.uk/coastpage/ourrole/coastchange/kawgs/bunnykawg.htm
71. Following these tides, there is still a considerable amount of flotsam and general detritus (i.e. driftwood, bottles, plastic items, tins and seaweed etc.) deposited on the driveway/footpath, and I have this cleared following the periods of the high tides referred to – see Photos 61-63. I also keep clear the marshland to the side, upon which accumulates, as can be seen from the photographs, some of the debris which previously did so upon the driveway/footpath, i.e. prior to its elevation.
72. After the reinstatement and elevation of the driveway/footpath, usage increased from the negligible level referred to above, and continues to do so to this day. As a result, there has been a significant increase in the amount of littering over the length of the driveway/footpath between Brooklands Quay/Farm and Swanwick Shore and I have also had this attended to.
73. In the hope of alleviating this, I decided to provide a litter bin to the side of the section of the driveway/footpath in my ownership for public use. This was partially successful, but litter picking still had to be carried out on a regular basis.
74. In 2009, this matter was raised with Fareham Borough Council, who supplied a replacement bin for the (now rusted) one that I had had installed several years previously, and a new bin to be placed (with the landowners' consent) adjacent to the driveway/footpath between Brooklands Quay/Farm and Swanwick Shore. I had these bins reinstalled/installed, and have since had them emptied on a regular (weekly) basis. The contents are placed in an additional (undersized) wheelie bin supplied to me by Fareham Borough Council, and this is

emptied by that authority fortnightly. Whilst there is less litter and dog mess etc. left behind on the driveway/footpath than there might otherwise be, it is still necessary to pick up and dispose of such 'items' on a regular basis.

75. In June 2010, the rails of the footbridge across the head of the creek on my property required repair (after possibly having been vandalised) – see Photos 64 & 65. I had this carried out at my expense (Photo 66) and, a little later, I also had the surface of the footpath improved so as to make it less hazardous to walkers.
76. Over the length of the driveway/footpath, I also have the vegetation to the sides thereof trimmed, which would otherwise overgrow, and, as a public goodwill gesture, strimming the grassed area where there are seats at the Swanwick Shore end of the footpath is also carried out at my expense. This had not, or had only occasionally, been maintained previously, as a result of which the grass was impregnated with litter and dog mess. See Photos 67 & 68.
77. Potholes that appear on the driveway/footpath are filled and levelled by a contractor, at my expense, two or three times per year on average.
78. In the eleven years since March 2001, I would therefore estimate that I have spent something in the region of £33,000 on improvements to, and maintenance of, the driveway/footpath – about £11,000 on the former and £22,000 (at £2,000 per annum) on the latter.
79. For the avoidance of any doubt, I have carried out this work on the driveway primarily for aesthetic reasons, and with regard to preserving the value of my investment in both that and my property overall. Had I not done so, the condition/appearance of the driveway/footpath would have deteriorated substantially.
80. It should also be borne in mind that this driveway is, in fact, the official main entrance to my property – as evidenced by my postal address etc. In practice, however, most of my vehicle movements are over the back driveway to the A27 (Bridge Road) at Sarisbury Green, not least so as to minimise disturbance to walkers on the driveway/footpath. What is not, and never has been, intended, however, is for any of this work to be of any benefit to unlawful users, such as cyclists, in any way whatsoever.
- 17. Has anyone, to your knowledge, carried out any maintenance or improved the path in any way?**
81. The Council has carried out various works on the footpath during my lifetime, all bar one of which (that I can remember) are referred to elsewhere within these answers. The exception is the small (partial) bridge over the head of the creek on the southern part of my property which the Council provided sometime prior to my purchase thereof. This was the structure that required repair in June 2010 – see 75. above.
- 18. Are you aware of any documents which give evidence of the status of the path, e.g. title deeds, inclosure awards, tithe maps, railway plans etc.?**
82. Copies of Land Registry entries and old conveyances etc. that I have seen in the past contain references to private rights (only), and I do not recall seeing any references to public rights.
- 19. Would you be willing to make your title deeds available for inspection?**
83. HP264803 and HP598182.

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16. Has the tithe rent charge been legally apportioned in 16. No. respect of this Lot. (see note & general remarks).

17. It is assumed that the Vendor will sell by the plan on the particular of Sale which will include the Foreshore and Mudland rights and right of way over the Roads and Paths shewn on the plan. 17. The Vendor will not "convey" by plan. The plan if used must be limited to purposes of identification.

18. The purchaser will be entitled on completion to a Key to the Iron gate at the top of Crableck Lane in accordance with the arrangement made at the sale.

One key will be supplied. 2 Keys of gates at Crableck Lane & Crableck Cottage were handed over on completion 16/8/16. C. R. P. 100

> See further Notes as to Gate to Crableck Cottage

19. The Vendors Solicitors must take the necessary steps to obtain the I.V.D. (G) form.

The Vendor relies on his Contract.

The purchaser reserves the right to make such further Requisitions on or objections to title as may arise on the replies to these or after making the usual searches.

Charles W. ...

GENERAL REMARKS AND STIPULATIONS

(which shall be deemed to form part of the Conditions of Sale)

SITUATION

The property occupies a secluded, but readily accessible position on the Banks of the River Hamble with some 200-ft. frontage thereto and with extensive views over the River and Yachting. Lying about half a mile off the A27, it is within easy reach of an intersection of the M27 (at present under construction) and is about 6 miles from Southampton with trains to London (Waterloo) in 70 minutes. Fareham is about 6 miles distant, Portsmouth 14 miles and Winchester 20 miles.

DIRECTIONAL NOTES

From Southampton proceed East on the A27, over Bursledon Bridge and near the top of the Hill turn acute right by tennis courts into gravelled drive and proceed over cattle grids for about half a mile until reaching the Shore when the Residence is on the left hand side. There is also a right of way across Swanwick Shore Road by a driveway which follows the River Hamble to which access is obtained by a locked gate — owners of properties approached from this road have a key.

TENURE

The property is Freehold.

THE RESIDENCE

Is of particular interest to the Yachtsman with its long frontage to the River Hamble, and with its own Pontoon and Jetty. Originally a small Cottage some 200 years old, it was enlarged and added to in 1969 and has had considerable sums of money spent on modernization and improvements. The accommodation is mainly on one floor and is ideal for family occupation, offering spacious reception rooms with exposed oak beams, fine open fireplace to the lounge, teak window frames throughout and with fine views of the River from the reception rooms.

SUMMARY OF ACCOMMODATION

Four bedrooms, two bathrooms including private suite, two reception rooms, cloakroom, kitchen/breakfast room. Large games room in roof space. Annexe suitable for conversion into flat. Double garage. Excellent outbuildings and storage accommodation. Walled-in garden, rough pasture, foreshore, jetty and pontoon in all just over 2½ acres.

SERVICES

Main electricity and water, septic tank drainage. Oil fired central heating by warm air and skirting radiators with individual thermostats. Ample electric points. Telephone at present installed.

OUTGOINGS

Rateable Value £497. Current Yearly Rates £238.56.



Hamble foreshore before 1939

The riverside path leads to the ferry which connects Warsash and Hamble. It has progressed from costing one penny when passengers were rowed across, to 50p now that a motorboat operates. This path could be used from Warsash to Swanwick before the last war, but the embankment was breached, and was not repaired. Afterwards successive councils put off any action, so the gaps grew larger, and so did the sums of money required to repair the damage. The marsh inside the bank became a lagoon at each high tide, which conservationists welcomed because it attracts birdlife - at the same time it is the only good length of the Hamble to which walkers have access and an opportunity to enjoy an unrestricted view of the yachting. Work was started in 1980 on the restoration of the path and was then completed. It is in these seagrass meadows and verges that the name of the village originated - old papers relating to the surrender of Titchfield Abbey in 1537 gave it as Warish Asse Field, because donkeys were turned out to graze along the river bank.

Inland, the Warsash/Hook/Abshot area was sparsely populated and mainly concerned with strawberry growing and market-gardening, but this has now moved into glasshouse production of tomatoes, cucumbers and chrysanthemums, with some interesting developments in hydroponics -



Strawberry pickers at farm in Swanwick Lane

growing plants in water. The nurseries growing flowering plants have benefited from the increasing number of garden centres which need stocking. Hamble Le Rice, across the river from Warsash, is thought to have derived its official name - which appears on old maps and milestones - from the Norman French 'en le rys' indicating that it stood on a little hill. The ship interest is much in evidence in the church of St. Andrew, with many most interesting memorials. Benedictine monks from the Abbey of Tiron near Chartres, founded a priory here between 1109 and 1128, this being dissolved in 1390 with other French settlements, and the present church was built in the 15th Century by Winchester College - the early Bursledon records of baptisms, marriages and burials being recorded in the Hamble registers.

There is a very long path from the lychgate to the church door, which must be a trial to brides in all their finery, on wet and windy days, since there is no alternative to walking.

There are some notable houses, between the church and the Square is the Old White Hart (1563), the 17th Century Gun House, Copperhill Terrace also facing the Square, and another timber-framed brick-infilled house around which traffic has to edge its way down the main street. Fortunately this is too narrow for any 'heavies'.

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Along the edge of the river; before early closing and the turn of the tide

September 12, 2011

tags: Cormorant, Crableck, Drift wood, House boat, Lower Swanwick, Moody's Boat Yard, Mullet, Solent, Southampton Docks, Tide

This was a convenient way to 'somewhere' and back again. Every week, at 10 years old, I did the family shop at a grocery store at Lower Swanwick. I was to take this journey along the Hamble, from our houseboat at Crableck until we moved into a house 2 years later.

The Hamble flows from the Southampton water and is subject to a double tide; first the tide flows from English Channel into the Solent between the mainland and the Needles then it flows from the east around the opposite end of the island up the Solent from Portsmouth. While, this has a positive value to the Southampton Docks and the ships coming and going, the constant flux on the shoreline was trying for the vulnerable users

There was no clear path, any foot prints were washed away with the tide and covered with debris depending on the season and the wind direction. There were little bridges to thwart the creeks and gulleys that interrupted the route. They were made by other users over the years from drift wood and were rebuilt when buffeted by the tide as it ebbed and flowed. If the bridge was washed away I would have to leap across to the other side as I had no time or the ability for such a construction.

While, oblivious of the little interloper as she hurried on her way; a shy otter darted from view, a mullet; a stripped grey fish found in muddy shallows was watched by a cormorant poised on a nearby mooring. They tried to grab an existence in mud and sedge among the pockets of 'civilization' between Crableck yard and the A27.

For a journey not noted for its beauty there were some legendary nuggets that I will share sometime. For now there was farm along the way, with a painted cow shed that flanked the path, where yellow roses rambled gracefully – out of place and too handsome for a little girl to sully, by her gaze or touch, so she hurried by breathing in the perfume in huge gulps!

I later learned that this rather elegant converted 'cowshed' was the home of Mrs de Selincourt the mother of the novelist Aubrey de Selincourt.

Before reaching the final frontier – the A27 I had to go through Moody's Boat Yard – the home of the fibreglass yachts and modernity. My father, who built wooden boats referred to these shapeless products as bubble gum boats. All this was not my concern; the most ferocious of creatures was yet to be conquered – the A27. There was no fear of strangers then, safety was the aim – the little girl would screw up her last bit of courage to ask someone to see her across the road.

From now it was plain sailing the job was almost done: now I just had to get the shopping and make it back before the tide turned.

ADVERTISEMENT

Statement of Mr. W. Tracy of Brooklands Quay, Swanwick Shore, Sarisbury Green,
Southampton, SO31 7EF

In connection with an application to record Fareham Footpath 3a as a restricted byway.

1. I have lived at the above address, or within 500 metres of it, since 1952. As children and teenagers, we did not cycle on the parts of the path that were accessible because, as well as knowing that we were not meant to, it was too rough anyway. Bikes were not built for it in those days. If we were on bikes, we left them at one of the boatyards and then walked.
2. Cycling was never an issue prior to the off-road bike era, and it only became so here after the path was made passable over its whole length in early 2001. No-one was cycling along the footpath when I moved to my present address in 2000, or at any time before that in my living memory. I have not seen horses on the footpath, other than when being ridden or led by someone with private rights.
3. I remember seeing a gate across the path outside the property known as Tidemark, but there was, as there had to be, a gap at the side of it so as to allow walkers to pass. I am fairly sure that the gate that I first remember was quite ornate, and this was replaced by a more modern plain one in probably the 1960's or 1970's. When I moved here in 2000, and for some time before that, I think that the gate was pushed back against the wall. This was not an issue because the path was effectively impassable at all states of the tide, and there was also a sign that said 'Footpath Only'. The Swanwick Shore Road gate which is mentioned in some sales particulars dated 1974 will either be the first one that I remember, or its replacement.

Just to the south of here, there is an old wrought iron gate which can be seen to this day in the closed position. To the side of this, there is also evidence of what I am sure that I remember was a kissing gate arrangement to allow people to pass by on foot. There was also something similar, although in wood, and it may even have been a stile, just a little further south, on the northern boundary of what is now Universal Marina and at approximately the location of a modern replacement. I have already provided photographic evidence of what I say here, as I have also done of a gate with an arrangement at the side to allow pedestrians to pass which once existed close to the ferry hard at the southern end of the footpath at Warsash. It seems that the Council erected this in early 1986, and it has provided me with evidence that, as well as to bar vehicles, it did so to prevent what had been nothing more than the occasional incursion by horse riders onto the southern section of the path now that it was in the process of being repaired. A complainant suggests that "something must be done pretty soon to stop the use of the footpath by horses and their riders. It is a very great asset, this footpath, and it would be a tragedy if the horses were allowed to continue to use it to the detriment of the many people who use it for quiet walks." No reference is made to cyclists, which, in the context of what is said, very clearly infers that there were none.

4. Before early 2001, when the path was repaired, no-one was cycling along it because the northern section of it had weed, rubbish and mud all over it, deposited by the tide. It had been like this for up to 10 years, and possibly for longer. In response to a suggestion that cyclists were putting down planks and plywood so that they could get through, I can say that not only is this untrue, but it is

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also preposterous. This is because, from my own memory, I can say that a considerable length of the path was affected, and, looking at the quotation for the work that was carried out, it was 165 metres. This is supported by copies of photographs that I have previously submitted as evidence. In 2000/early 2001, there were hardly any walkers either, just two or three a day. In fact, so few people used the path at any time before 2001 that it was not even necessary for me and my predecessors to fence and/or gate our garden areas on either side of it. Again, I have provided photographic evidence of this. The first time that I saw a cyclist pass by was in March or April 2001, very shortly after the contractors completed the repair work.

5. Up until 2001, the path had been passable on foot to the south of Universal Marina, but only since 1986 when the last breach had been bridged. There had been several breaches, and these had existed for 40 or 50 years at least. I have many aerial photographs of them back as far as 1946, and have previously submitted two of these (from 1974 and 1985) as evidence. Most of the breaches were very wide, at least 2 or 3 metres deep, and very muddy – to the extents that they were dangerous. There was even a wreck of a ship lying in one of them. People were not putting planks and plywood down so that they could get across these with bicycles either – or crossing them at all for that matter, even on foot. This was because, other than by using specialist equipment perhaps, it was not possible to do so.
6. For a period in the mid 1990's, I walked this southern section more regularly than I did before, or have done since. This was because I had a back problem and my physiotherapist had advised me to walk for a couple of hours 2 or 3 times a week. When I was doing so, I am as sure as I can be that I did not see anyone cycling on the footpath, even though, except over the Chinese Bridge, it may have by then been theoretically possible (on an early off-road bike) to ride from Warsash to the vicinity of Universal and back again, the northern end of the path being unusable for the reasons stated in 4. above.
7. From 2001 the volume of cycling escalated through to 2009, and particularly in the 2 or 3 years before that. Starting within days of the first cyclists appearing on the footpath in 2001, I wrote several letters to Hampshire County Council saying that cycling on it was now going to be a problem generally, and would cause excessive wear and tear. For the most part I received replies from a very senior officer saying that there was nothing more to be done because cyclists on the footpath were committing a trespass against the landowner. I did not get an answer as to how bicycle use could be prevented or as to who should be responsible for making good damage caused by unauthorised users, and nor was I given or offered any advice or recommendations as to additional measures and options that were available to landowners.
8. By 2003, I estimated that I was seeing an average of 100 cyclists a day on the footpath, and I wrote to the Chief Executive at Fareham Borough Council suggesting better and more forceful signage, and police patrols, copying my letter to the appropriate officers at Hampshire County Council. This was not least because a cyclist had run over a dog, and I was worried about a walker, perhaps even a child, getting seriously injured or killed. I wrote to Fareham on this occasion because, after having been told what I was told in 2001, I did not know who else to turn to for help, but, again, I did not receive a satisfactory response.

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Despite all of my many letters and emails to Hampshire County Council, I did not receive a complete summary of the measures and options available to landowners until December 2009, more than eight years after I had first made representation about the unauthorised cycling – and even this was nine months after it had been raised again, for the third time. This came about after the toddler son of one of my neighbours was very nearly run down by a cyclist. The neighbour concerned began to have more first-hand experience of incidents like this after he moved to his house at the northern end of the path permanently and became more involved as a result. Up until then, I felt that I had been ploughing a lonely furrow, and it was gratifying to have someone else to help me.

One of the measures and options that I was very belatedly told about by Hampshire in December 2009 was that, if a claim such as this is made, a landowner should be in a position to show that he or she had made a Statutory Declaration under the Highways Act so as to protect his or her land. Despite previous requests for help, we had been left in ignorance about this for more than eight years, and this was the very first time that we were told about what landowners who wished to protect themselves are expected to have done. None of us are public rights of way experts, and it is only since 2009 that we have become more familiar with the law on the subject and have learned more about what would have been the better courses of action, rather than, as we should have been able, and chose, to do, rely on the Council to help us. It was around this time (2009) that I came to the conclusion that, for more than eight years, and for a reason or reasons best known to itself (about which we can still only speculate), the Council had been going out of its way to keep the 'trade secrets' to itself, and not to share them with us.

Another thing that even we living at locations along the path should have been advised to do, or at least been told about, a great deal earlier so as to protect ourselves – as well as the interests of the walkers, nature lovers and birdwatchers (almost all of the footpath passes through or alongside one or more of a Nature Reserve, Site of Special Scientific Interest, Site of Importance for Nature Conservation, and SPA/SAC Ramsar Site) – was to erect signs. It is probably on record that, before 2009, when the Council finally told us what it should have divulged eight years earlier, I never saw much point in doing this because cyclists who ignored the signs at the entrance to the footpath were not going to turn around, go back, and never return, if they then saw one or more similar signs a quarter of a mile from one end or one and a half miles from the other. It is Hampshire that has control over both ends, and everyone else's control is limited because of that. Neither is Hampshire an independent third party when it comes to this matter because it also owns the majority of the path, and we own the minority. In this respect we are partners, but we have not been treated by Hampshire as such. In early 2009, we were even told by a Council Rights of Way Officer that, although cycling was becoming an increasing problem on public footpaths, signs were a waste of time, and the officer made no mention whatsoever of the legal importance and significance of them (not only to us, but to Hampshire, the walkers, nature lovers, and birdwatchers also) in their own right.

10. I recall seeing the white 'Footpath Only' sign at the Swanwick Shore end of the path. I am fairly sure that it was there around the time that I moved here, and even more certain that it had been for a long time before that. I believe that it was erected by Fareham Council and, from correspondence that has been disclosed to me by Hampshire County Council, it seems that there was possibly a change in respect of the responsibility for the management of the footpath, and that

Fareham was once more involved with it (presumably on behalf of HCC) than it is now. Looking at my correspondence file, it would seem that the white 'Footpath Only' sign (which was metal, unsightly, and out of keeping) was definitely still there in 2000, and it was replaced by a new green sign made of wood shortly after the path was repaired. I see that I have a letter dated 29 June 2001 from Merrick Denton-Thompson, the Head of Countryside at Hampshire County Council, in which he says "I have to reiterate that this is a Public Footpath only", that "the general public have a right of way on foot only", and that the sign in question was to be removed and replaced by another which would likewise "make the public aware that the route is a Public Footpath only".

From this, it is abundantly clear that not only was the Council telling me that it was averse to seeing the path dedicated as anything over and above a public right of way on foot at this time, but that it also considered that the signage addressed the issue of cycling and other unauthorised uses that I had raised.

11. I do not recall seeing a pressed metal 'No Cycling' sign in 1979, but there may have been one. I firmly believe that cycling on the footpath was not an issue in those days because anyone who attempted it would not have been able to ride very far along it because of its general condition, the many breaches that had still not been repaired at this time, and the non-existence of off-road bikes. In other words, if there were people making the occasional foray onto the footpath on bicycles, it was over very little of it relative to its length, and the number doing so would have been very few indeed relative to the local population. Even over the 150 metres or so (a twentieth of the total length of the path) between Passage Lane and the ferry hard at Warsash, everyone, or certainly most people, pushed their bikes along that section (to and from the ferry) either because the path was rough and they did not have off-road bikes, or because they were more respectful of the path's status, and/or those walking along that short stretch, than cyclists are today.

If the pressed metal 'No Cycling' sign was there, it is inconceivable that it was erected by someone other than one of the landowners, and, in the highly unlikely event that it was not a Council sign, it could have been put up by one of a couple of private landowners along here who were particularly irascible. One of them had a sign on the gate into his house that said 'No Hawkers or Circulars' even though we in Holly Hill and Crableck Lanes were never troubled by either, and once, as Cubs or Scouts during 'Bob-a-job Week', I very well remember him arming himself with a stick and angrily referring to this sign as he chased us off his property. That he or the other gentleman who I remember erected the 'No Cycling' sign is also far less likely because they would have presumably had to have gone to the trouble of getting permission to do this from a third party, be that the Council or the owner of Tidemark at the time.

12. In 2009, after months of lobbying the Council to finally do something, additional signs were put up at Universal Marina and elsewhere, and I had green signs made and erected on the section of path in my ownership and on the approach to it from Swanwick Shore. All of these were, have been, and are still being, vandalised to greater or lesser extents, and two or three of the signs were sawn off or ripped from the ground and stolen. I have provided photographs of some of the signs in question.
13. If there had been a presumption by Hampshire to dedicate the footpath, or its section of it, for cycling and horse riding, the Chinese Bridge would not have been built (in September 1986) and

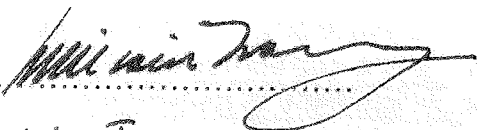
maintained (throughout the time since then) with fairly enormous steps at both ends. Again, I have already submitted two photographs that illustrate this.

14. Over the years, I have challenged many cyclists, mostly at weekends when there are more of them, but I have invariably been abused and threatened when I have done so. I have not given instructions to my staff to challenge cyclists, because I don't want to put them at risk, although they are aware that they can do this of their own volition.
15. I have looked at several old maps of this area. Any roads and tracks that are shown on the earlier ones seem to be more diagrammatic than accurately plotted, and the first one that looks reasonably reliable is that from 1791 by Thomas Milne. On this, there is no track or path shown running along the east bank of the river, and because the first Bursledon Bridge had only just been built, nothing much would have been going on around here at and before that time anyway. Neither is there a track or path along the riverbank shown on the map by C & J Greenwood of 1826, by which time the privately owned Brooklands and its estate, which are believed to date from 1798, are shown as wholly encompassing where the northern end of the footpath is today. Two other private estates, Holly Hill and Warsash House, are shown in way of where the middle part and southern end, respectively, of the footpath are today. I have my own copy of the 1867/1873 Ordnance Survey 25" sheet which features the Brooklands Estate from Bridge Road southwestwards to approximately where Universal Marina is today. On this, it seems clear that all of the tracks and paths in this area, including the one along the shore, served only the Estate and, more particularly in all probability, the Estate's by then well established farm and kitchen garden/orchards. These, in actual fact, were still being worked 100 or so years later, and I very well remember quite often seeing the farm's herd of dairy cows being driven to and from their grazing (before and after their milking times) along the shore path, through the old wrought iron gate referred to in 3. above, and over the private track through and beyond River Barn.

Moreover, the tracks and paths on the map, including the one along the shore, are shown as being fenced or gated at their ends and/or in other places. They also bear no resemblance whatsoever to the public roads shown on the map, or even to the small open (at one end), and named (although privately owned), dead end roads that served the southern (inland part) of the Brooklands Estate, and Holly Hill Estate (Holly Hill Lane and Crableck Lane).

16. Much of what I have said above is supported by copies of photographs (68 in number) and documents (5 in number) that I have previously submitted as evidence. Copies of the correspondence which is now referred to are available, but the Council expressed no interest in past written representations by landowners in the standard Request For Information form that it supplied – and which I returned on 12 June last year – and it has not invited me to submit copies at any time since.

Signed.



Dated.

4th January 2013

Interviewed by Sylvia Seeliger on 1st November 2012.



Hampshire County Council

ARTS, COUNTRYSIDE
AND COMMUNITY

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Enquiries to M. Denton-Thompson

My reference MDT/RoW

Direct Line 01962 846003

Your reference

Date 29 June 2001

E-mail

Dear Mr Tracy,

Improvements to Fareham Footpath No3.

I refer to your letter dated 16th May 2001. May I apologise for the delay in providing a full reply. The Countryside Service has had to respond to risk of foot and Mouth Disease and this has therefore occupied to time of many of the staff. Having now spoken to those involved in the matter I will go through the main issues which you have raised:-

Public Footpath No. 3 is recorded on the Definitive Map of public rights of way. The status of 'footpath' means that the general public have a right of way on foot only. During Mrs Giles's initial consultations in this matter it was confirmed that some of the properties and landowners of this section of footpath had private rights of access with vehicles

In a reply from Sir David Cooksey he confirmed his ownership of a section of the trackway and that he had made available an alternative private vehicular access through his land from Sarisbury to try to minimise the vehicle use of the footpath. This right was extended to the properties, Niort House and Brooklands Farm. The previous owner of Niort House, (now Brooklands Quay), a Mrs Maddison, was also contacted and confirmed her ownership and private access along the track. We were therefore aware early on of the need not to restrict in any way those private vehicular rights.

* see below

The extent of the Authority's ownership relates to the surface and so much of the soil below and the air above as is necessary for its control, protection and maintenance as a highway for the use of the public, in this case of pedestrian

* Almost all of this is incorrect

Director of Arts, Countryside and Community
Mike Wickenden CPFA

use. The provision does not otherwise affect the property rights of the owner, thus the sub-soil of the highway together with the minerals beneath the surface remain the property of the owner.

Prior to the commencement of the works Mr Burville, who was overseeing the contract, made available to you the specifications and where you made comment, adjustments were made to accommodate your requests. I would add at this point it has been the intention of Hampshire County Council to negotiate and accommodate matters raised by the property owners who were directly or indirectly affected by the proposed works, bearing in mind our duty as highway authority is to protect the public's right of access on foot.

If at any time you felt you were not consulted or given the opportunity to comment on the proposed works then this is unfortunate. Mr Burville confirms that you were given a copy of the specification and as a result adjustments were made to the intended width. He also confirms that additional drainage pipes were added following your discussions. Mr Burville further confirms that your office was notified of any site meetings he had arranged with the contractor so that you could be given the opportunity to attend and comment.

Hampshire County Council staff make every effort to work with adjacent landowners on matters such as this. Co-operation rather than confrontation is our prime objective. Therefore, I understand that Mr Burville and Mr Andrew Smith, the Council's Rights of Way Manager, agreed to meet you specifically to discuss your concerns prior to work being carried out. This meeting on 5th February 2001 was an opportunity for the HCC Officers to explain to you the work intended and for you agree any changes you required. I understand that this was done and that all were agreed on the work to be done. This work was then duly undertaken to the agreed specification. Mr Burville inspected the route after the completion of the work and in response to your concerns regarding the standard of the work done. As you say in your letter, Mr Burville considered that the route met the specification of the contract. As the project supervisor Mr Burville must decide whether the work done is to the agreed standard. I note that you disagree with his conclusions.

The County Council considers that the contractor has now rectified the problems that arose after the completion of the work and that there is no work outstanding. I have to reiterate that this is a Public Footpath only and the Council's liability for the maintenance is as a Footpath only. The additional works undertaken were agreed with yourself but we would not be responsible for damage done to the route by motor vehicles exercising private access. We would always look to those who are exercising that private right to repair damage caused at their own expense.

The trespass by vehicles you refer to would be a trespass against the owner of the sub-soil as described above, not the County Council as the highway authority.

Mrs Giles has informed me of your meeting on 26th April 2001, where I hope that most of the issues were discussed. She has also informed me that she has arranged for a sign to be made and displayed at the Swanwick Shore Road end to make the public aware that the route is Public Footpath only. Arrangements are also in hand to remove the old metal Fareham Borough Council sign.

I am grateful to you for being prepared to draw a line under this and for settling the invoice. Incidentally, I am sure that the County Treasurer would have been 'sufficiently independent' to act as a stakeholder. Your willingness to move on is appreciated and I am sure we can work together in the future despite or disagreements over this work. I believe that many of the difficulties we have had would not have arisen had we known that you were the new owner of Brooklands Quay and that the property had changed name. You would have then been a part of the original consultation and we would have therefore had plenty of time to discuss the proposed work with you.

I hope that you consider this to be a helpful response.

Yours sincerely



Merrick Denton-Thompson
Head of Countryside, Hampshire County Council.

** Merrick Denton-Thompson
drawing attention to
actual and potential
misuse of the Footpath
(including by cyclists).*

Fareham F.R. 3.



"WILLOW PATTERN" BRIDGE
FOR HAMBLE FOOTPATH

Army transport engineers will hoist a "willow pattern" footbridge into place on Wednesday Sept.17 to form the final link in a two-mile riverside walk from Warsash to Swanwick on the River Hamble.

The wooden bridge has been built by Technical Timber Ltd, of Romsey, and is similar in design to the traditional Chinese bridge shown on willow pattern plates.

It has been taken to Marchwood in sections and will be brought up-river on a self-propelled pontoon. Officers and men of 17 Regiment, Royal Corps of Transport, will assemble the bridge and use a crane to lower it into place.

Erosion of the river bank footpath over many years has made it almost unusable. Long sections have sunk to nearly water level. At one point, the river has breached its bank and formed a small lagoon, cutting the footpath completely. It is at this point that the wooden bridge will be placed, to carry the path over the lagoon.

Restoration work on the riverside walk was started several years ago by the Hampshire County Surveyor's Department, but the final 300 yard section has been re-built by youngsters working as a community project team.

They have used brick and rubble to form a firm base, topped with hoggins and surface dressing to re-make the footpath. Concrete filled sacks and blocks have been used to protect the banks of the river from further erosion. The £15,000 cost of the community project scheme has been met partly by the Countryside Commission and partly by the River Hamble Harbour Authority.

ends.

NB Editors: I have made arrangements for reporters/photographers to use a private jetty on the River Hamble. Please contact me for details.

Malcolm Ball,

September 15, 1986.

The Castle,
Winchester.
Tel. Winchester 54411
Ext. 380

Hampshire County Council.

RECREATION DEPARTMENT	
18 SEP 1986	
Passed to	<i>NEW</i>
Copies to	
Ack/Reply	

