

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	16 July 2014
Title:	Application for a Definitive Map Modification Order to record footpaths at Dean Hill in East Dean Parish
Reference:	5982
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary:

- 1.1. East Dean Parish Council has made applications to record two routes as public footpaths. The claims are based, primarily, on historic documentary evidence, supported by witness statements from long-term residents of the parish. Although the paths have not been used by the public since 1939 if it is found, on a balance of probability, that rights existed before the war and were not extinguished by legal order, then the County Council will be under a duty to make an order to record them on the Definitive Map.
- 1.2. During the investigation it was discovered that there was historic, documentary evidence for the existence of other paths in the locality, not claimed by the parish council, but which, nonetheless, the County Council is obliged to consider in its capacity as 'Surveying Authority'. The evidence for the existence of these paths is also set out and analysed in this report.
- 1.3. The purpose of this paper is to set out the facts of the case to enable this Committee to determine whether public rights of way exist over the land in question. If it is considered that the public has acquired a right, or rights, of way, then the status, route and width of the path(s) must also be determined. Members' authority is required for the making of a Map Modification Order to record those rights on the Definitive Map.
- 1.4. It is recommended that an Order be made to record one of the claimed routes, in its entirety, as a public footpath; part of the second claimed route as a restricted byway, with the remaining part of the route refused. It is also recommended that an Order be made to record several other routes in the locality as public footpaths.

2. Legal framework for the decision:

2.1. WILDLIFE AND COUNTRYSIDE ACT 1981:

S.53 Duty to keep definitive map and statement under continuous review

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

b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

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

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

(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

2.2. PRESUMED DEDICATION AT COMMON LAW:

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

3. Claimant:

3.1. East Dean Parish Council
c/o The Clerk
14 Barley View
North Waltham
Basingstoke
Hampshire
RG25 1HU

The application for route D-E-X-F-G-H was made on 24 August 2005.

The application for route A-B-C was made on 26 October 2005.

4. Landowners:

4.1. Parts of A-B-C, D-E-F, E-L, J-K and M-K-F all within area shown by brown cross-hatch on attached map:

Harving Limited
Dean Hill Park
West Dean
Salisbury
Wiltshire
SP5 1EZ

Parts of D-E, J-K, M-K, F-L-H and F-G-H on the north and east side of Dean Hill Park:

Mr R Newton
East Dean Manor
East Dean
Hampshire
SP5 1HB

Parts of F-G-H, F-L-H and N-O all on east side of Dean Hill Park:

Dean Hill Barn Farms Ltd
East Dean
Hampshire
SP5 1HJ

Part of A-B on north side of Dean Hill Park:

Mrs C Howkins
Manor Farm Bungalow
East Dean
Hampshire
SP5 1HU

Part of N-O on north side of railway line

Mr S Collins
Swiss Cottage
East Dean
Hampshire
SP5 1HJ

Part of N-O railway crossing

Network Rail
Room 101
Suite 2
General Offices
Waterloo Station
London
SE1 8SW

5. Description of the claimed routes (please refer to attached map):

- 5.1. The paths under investigation all lie within East Dean Parish and run southwards from the West Dean-Lockerley road to the high ground overlooking the Dun Valley. None of the routes still exist in their entirety. The land occupied by Dean Hill Park, shown by brown cross-hatching on the map, is surrounded by a three metre high security fence that was originally erected by the Admiralty in 1939.

- 5.2. Claimed route A-B-C: This path runs southwards from the public road, along an existing track, for 100 metres to the security fence on the northern side of Dean Hill Park. The track provides access to Manor Farm Bungalow on its east side. From the security fence there is no trace of the old path running due south, in a straight line, across Dean Hill Park and then up through woodland on the north face of Dean Hill. Between B-C there is a pronounced bank, which forms the boundary between Wiltshire and Hampshire, with a dip, or hollow, on one side which is possibly the track of the old footpath.
- 5.3. Claimed route D-E-F-G-H:
This was a sunken track which, before 1939, wound its way southwards from the public road, up the slope of Dean Hill, to connect with a farm track and public footpath at point H. Section D-E-F can still be traced on the ground, although it is heavily overgrown with vegetation and obstructed in several places by fences. Section F-G has been ploughed out and is no longer visible on the ground. Section G-H is still a used track that provides private, vehicular, access to fields.
- 5.4. Other routes: There are several other historic routes which have been investigated as part of the research into the claims. The only parts that are still visible on the ground are the access points at J (long-standing steps and pedestrian gate constructed by Mr. Newton in 1996 specifically for the car park) and M (wide gap in fence/hedge which provides vehicular access to church car park). Section B-L also still exists as a track within the security fence of Dean Hill Park, whilst E-L is overgrown. There is no trace of F-L-H and N-O which, for the most part, run across cultivated land.

6. Background to the claim:

- 6.1. In 1939 a large area of land on the border of Wiltshire and Hampshire was requisitioned by the Admiralty for use as a munitions depot. It was known as Dean Hill Royal Naval Armaments Depot and, from 1942 onwards, explosives were stored there before being transported by rail to Gosport. In Hampshire, the major part of the site lies in East Dean Parish, with a small part in West Tytherley Parish. The depot extends westwards into West Dean Parish in Wiltshire.
- 6.2. The depot remained in operation until 2004, but was then declared surplus to requirements and sold in 2006. The site is now run by a private company which lets the numerous outbuildings and bunkers for use as studios, workshops and storage, and is known as Dean Hill Park. Before the land was sold by Defence Estates, the Parish Council submitted its application to record two routes as public rights of way. The applications were made in the belief that the footpath closures, made in 1939, were temporary and conditional on use of the land for military purposes.
- 6.3. The research into the claimed routes has revealed historic, documentary evidence for the existence of other, unclaimed, paths which consistently appear on most maps and plans. These routes have also been considered as part of the investigation as the County Council has a duty

to consider evidence for the existence of a public path that is not shown on the definitive map.

7. Issues to be decided:

- 7.1. The issue to be decided by this Committee is whether there is evidence to show, on a balance of probability, that public rights of way exist over the routes shown by dashed and dotted purple lines on the attached map.
- 7.2. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an order changing the Definitive Map is made, Members must be satisfied that public rights have come into being at some time in the past. This might be in the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence).
- 7.3. Historic and documentary evidence has been examined to see whether the past history and use of the paths points to them having footpath, bridleway or vehicular rights as a result of dedication in the distant past. Any such rights are not lost merely through disuse. Unless stopped up by due process of law any rights previously dedicated will still exist, even if they are now neither used nor needed (subject to any statutory extinguishment under Natural Environment and Rural Communities Act 2006). This evidence must be looked at as a whole, it being unlikely that a single document or map will provide sufficiently cogent evidence to justify a change to the Definitive Map and Statement. The County Council is under a duty to record such rights as are found to exist.
- 7.4. Evidence forms and statements taken from those who have used the path or have knowledge of it in living memory can show that higher rights have been acquired as a result of a recent dedication at common law, or a deemed dedication under s.31 Highways Act 1980. It may not be necessary to examine this type of evidence if the historic and documentary evidence shows that higher rights were dedicated in the past and still subsist, although the user evidence may add credibility to the earlier evidence of dedication. This type of evidence is also useful in determining the width of the path.
- 7.5. The burden of proof in these matters is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive before a change to the Definitive Map can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, Members should make an order so that the evidence can be tested at a public inquiry. However, this is not a step which should be taken simply to avoid making a difficult decision. Officers do not consider that there is any such conflict here.
- 7.6. The originals of many of the documents referred to in this report are only available in public record offices, but copies, transcripts or tracings of most documents are available for inspection in the offices of the Countryside Access Team, as are witness evidence forms and

statements. Members are invited to inspect these, or the originals, when considering this report.

8. Documentary Evidence:

8.1. There are a significant number of maps and other documents which show, or describe, multiple routes across the landscape. **Appendix 1** entitled 'Evaluation of Historical Documents' describes each type of evidence and the weight to be attached to them. In an attempt to focus on the key pieces of evidence and their relevance to specific sections of path, a table has been compiled which appears in paragraph 12.4.

8.2. 1791 Milne's Map

This is a small-scale map which is not particularly helpful in determining the existence of minor rights of way. The area of land between the West Dean-Lockerley road and Dean Hill is described as 'Open Fields' with no paths or tracks shown across it. The only feature of significance is a short section of enclosed track which corresponds to section D-E on the attached plan.

8.3. 1793 Canal Plan

This is a small-scale map showing the route of a proposed canal running roughly parallel to the West Dean-Lockerley road with topographical features on both sides. The start of the track running southwards from point D is shown by parallel solid lines, but the extent of the map is limited and gives no indication of how this route proceeds or anything about its status.

8.4. 1809 Draft Articles of Agreement for the Inclosure of Commonable Lands in East Dean

These draft articles were drawn up in 1809, and there appears to be no surviving corresponding award. They were designed for the inclosure of the commonable lands of East Dean, the open fields of which were shown in the 1791 map made by Milne referred to in paragraph 8.2. The articles allow for the setting out of '*such public and private roads through and over and by the sides of such allotments*' as were thought necessary. Because there is no award, the actual positions of any public roads set out are not known, but it is possible that the effects of this inclosure led to the route D-E-X having the reputation of being a parish or public road from 1836 onwards (see table at paragraph 12.4). This would have allowed public access to the newly inclosed allotments, on a publicly maintained route.

8.5. 1811 Ordnance Survey 1 inch to 1 mile map

This map shows a substantial, unenclosed track roughly on the same alignment of claimed route D-E-F-G-H, and connecting with other tracks on top of Dean Hill. There are other tracks across the site, but these do not correspond with the lettered routes and do not re-appear on later maps other than Greenwoods below.

8.6. 1826 Greenwood's Map

This is another small-scale map that shows a track roughly following claimed route D-E-F-G-H. There are two other tracks which cross the land, but these do not bear any similarity with the claimed routes or later historic paths. The depiction of a track on these small-scale maps indicates that it was a significant highway, but does not differentiate between private and public routes.

8.7. 1836 Salisbury, Romsey & Southampton Railway

This railway line was intended to run east to west, along the valley, on the south side of the West Dean to Lockerley Road. The plan which shows the proposed route includes topographical features on both sides of the line, and the accompanying book of reference describes the use and ownership of each parcel of land affected by the proposed railway. The northern sections of the two claimed paths are shown on this plan, that is A-B and D-E. A-B is shown by double pecked lines and annotated number 6. The book of reference describes this parcel as 'Occupation Road' but there is no owner listed. D-E is shown by double solid lines and annotated number 19. The book of reference describes this parcel as 'Parish Road' with no entry under ownership. This railway line was not proceeded with. However, these documents suggest that A-B had no public status at this date and that D-E was a public road.

8.8. 1839 East Dean Tithe Map

This is a large-scale plan which shows the landscape in some detail. Field boundaries are shown by either solid or pecked lines. The only feature of relevance is a track, or road, on the alignment of section D-E which is shown by parallel solid lines. However, it does not continue beyond point E; it leads to a field which would suggest that it was for private access only, or may reflect a route set out at inclosure to give public access to allotments, as discussed at paragraph 8.4.

8.9. 1843 Bishopstoke to Salisbury Railway

This proposed railway was intended to run along the same alignment as the previous scheme of 1836, and claimed routes A-B and D-E are shown on the plan and book of reference. They are both shown on the plan in the same manner as before, and with the same reference numbers. In the book of reference, A-B is still described as 'Occupation Road' with the landowner being 'Sir John Barker Mill' and the occupier 'William Langridge'. D-E is described as 'Road' with the owner being the 'Surveyor of Highways' and the occupier being 'The public'. This railway line was not proceeded with. However, these documents suggest that A-B had no public status at this date and that D-E was a public road.

8.10. 1854 School opened

The County Record Office holds documents which detail the history of the East Dean School. In 1854 a school was built just behind the Church. It started with 13 children and peaked at 41 pupils in 1904. The school closed in 1922 due to declining numbers. Witness accounts later on in this report mention use of the claimed paths by children going to and from the school. The existence of the school and church, at the

same location, would explain use of footpath route M-K-F-L-H, and perhaps F-G-H, by those people who lived in communities south of East Dean village.

8.11. 1856 Southampton, Bristol & South Wales Railway

This proposed railway line also runs east to west along the valley, but on a more northerly route than the two previous schemes. It is more or less on the same alignment as the present day railway. The plan is only relevant for the land east of point Y where the line is south of the West Dean-Lockerley road. In the locality of point N the land north of the line has been given parcel number 34, which the book of reference describes as 'Arable field and footpath'. The land south of the line has been given the parcel number 33 which the book of reference describes as 'Arable field and public footpath'. These documents strongly suggest that there was an existing public footpath in the locality of route N-O before the railway was built.

8.12. 1876 Ordnance Survey County Series 25 inch Map

This is the first large-scale survey of the English countryside which shows all topographical features in great detail.

Claimed route A-B-C: This path is not shown on this map. There is a field boundary which runs north-south, roughly on the alignment of the footpath, but there is no sign of a path or track of any description.

Claimed route D-E-F-G-H: This route is shown as a substantial track, about three metres wide, bounded by solid line features between D-E, and then continuing as an unenclosed track snaking across open countryside and terminating at a group of outbuildings annotated 'Deanhill Barn'. The track is gated at its northern end (point D). On the south side of the track, between points E and F, there is a 'Chalk Pit'. There is no other track which leads to Deanhill Barn, and therefore the claimed route is the only form of vehicular access to the buildings.

Other routes: E-L and N-O do not appear on this map. However, J-K and M-K-F-L are all shown by parallel pecked lines, as are parts of L-H and L-B. L-H takes a different route from that claimed to get to Deanhill Barn and L-B only goes part way before terminating at a field. To the east of those paths there is another path that runs south from the West Dean road, but it terminates at a belt of trees and does not connect with any other feature.

This map also shows the 'National School' situated immediately behind the 'Church' at point M.

8.13. 1895 Ordnance Survey County Series 25 inch Map

Claimed route A-B-C: Shown by parallel pecked lines running in a dead straight line across a large field and then through the woodland of 'Dean Hill'. Annotated 'F.P.' for footpath.

Claimed route D-E-F-G-H: Shown by parallel solid lines between D-E and parallel pecked lines for the rest of the route. Not annotated; gated at its northern end. The chalk pit is now described as 'Old Chalk Pit'. As on the 1876 map, this is the only form of vehicular access to Deanhill Barn.

Other routes: The following paths are not shown on this map; E-L, J-K and N-O. M-K-F-L-H is shown by parallel pecked lines and annotated 'F.P.' for footpath, although its southern end is slightly to the west of point H. Route L-B only goes part way before terminating at a field.

This map also records the existence of a 'Beer House', the 'Brewers' Arms', between points A and D, and a 'School' situated immediately behind the 'Church'.

8.14. 1906 Sales Particulars of the Norman Court Estate

The plan that accompanies these sales particular is '*compiled from*' an Ordnance Survey map base and shows a path from point A southwards, by means of parallel pecked lines; a path from D southwards, by parallel pecked lines; and a path from M running southwards, by parallel pecked lines.

8.15. 1908 Ordnance Survey County Series 25 inch Map

Claimed route A-B-C: Shown by parallel pecked lines in a dead straight line across a large field and through the woodland on Dean Hill. The path is annotated 'F.P.' for Footpath.

Claimed route D-E-F-G-H: This is shown by a combination of parallel solid and pecked lines, set approximately 3 metres apart. There are no lines across the route, which would indicate the presence of gates, and it is not annotated with any description. The 'Chalk Pit' is still in place between E and F.

Other routes: The following routes are all shown by parallel solid lines and annotated 'F.P.' for Footpath J-K, E-L, M-K-F-L-H and N-O. L-B is partially shown as on earlier maps, but the western end still only leads to a field.

This map also records the existence of the pub, school and church.

8.16. 1910 Sales Particulars of the East Dean Estate

This plan, accompanying the sales particulars, is an Ordnance Survey map, and shows the route A-B-C by parallel pecked lines, braced into the surrounding plot; D-E-X-F-G-H to Deanhill Barn, with a line across it at the start, possibly indicating a gate, between parallel solid lines to point E and thereafter by parallel pecked lines; route M-K-F-L-Z between parallel pecked lines; and a route approximating G-L-B between parallel pecked lines.

8.17. 1920s Photograph of Dean Hill landscape

The date of this photograph is not known, but it is estimated to have been taken in the 1920s. From the topographical features it is fairly obvious that the image was taken on route E-F, approximately half way between the two points, and looking west-south-westwards towards Dean Hill in the distance. In the foreground route E-F appears as a sunken track obviously used by vehicles due to the combination of ruts and ridges of grass. This evidence does not demonstrate that E-F was public, but it does show the character of the route as a substantial track, used by vehicles.

8.18. 1924 Ordnance Survey County Series 25 inch Map

Unfortunately the extent of this 4th edition survey does not include the whole site, but it does show the landscape west of point F.

Route A-B-C: The first 100 metres running south from the road is depicted as a wide track bounded by solid lines. From the end of the track it continues southwards as a narrow path across a large field and through woodland depicted by parallel pecked lines and annotated F.P. for Footpath. It connects with, what is now called, Footpath 12 at point C.

Route D-E-F: Also appears as a track bounded by solid lines and continues towards F as an unenclosed, sunken track. The Chalk Pit is shown by symbol but not annotated.

Route J-K: whole route shown by parallel pecked lines and annotated F.P. for Footpath.

Route M-K: only a short section appears on this map, the rest is off the edge. Shown by parallel pecked lines and annotated F.P. for Footpath.

Route E-L: most of route shown by parallel pecked lines and annotated F.P. for Footpath.

Route L-B: most of route shown by parallel pecked lines, but stops short of point B and only leads to a field at the top of Dean Hill. Not annotated as a footpath or track on the map.

8.19. 1928 Draft Conveyance of Land in East Dean

This small map from a conveyance shows the start of path D-E between solid lines, with a line across it, possibly indicating the presence of a gate.

8.20. 1929 Handover Map

This document shows those highways that were considered to be publicly maintainable on transfer of responsibility from the Rural District Council to the County Council. The legend includes the depiction of public roads, bridleways and footpaths.

Route D-E-X is shown by a solid blue line which the legend describes as *'Public Highways (Carriageways), Repairable by District Council and metalled'*. It terminates at the entrance to the old chalk pit. The continuation of this route, along X-F-G-H, is not shown as a public highway of any description. However, routes A-B-C, M-K-F-L-H, J-K and E-L are all shown by dotted black lines which the legend describes as *'Public Footpaths, Repairable by District Council'* and *'Not repaired'*. The interpretation that the officers place on these descriptions is that the footpaths were publicly repairable by the District Council, but they hadn't actually been repaired by the authority within the memory of the surveyors. Routes L-B and N-O are not shown on this document as public highways of any description.

8.21. 1933 Sales Particulars of the Lockerley Hall Estate

The plan on which the lots for sale are shown appears to be based on an Ordnance Survey map and is very similar to that used for the East Dean Estate sold in 1910, and described at paragraph 8.16. On this plan, the

route A-B-C is shown, but is here annotated 'F.P.' for footpath. The other three paths mentioned in the previous paragraphs are shown in similar ways, but there is an additional path between parallel pecked lines running from E-L, marked F.P. The path M-K-F-L-Z is marked F.P. and an additional path corresponding to J-K is shown by parallel pecked lines, marked F.P. This map base was felt by the auctioneers to be sufficiently accurate to use for the location of plots, and shows that for the Ordnance Survey some of these ways had the reputation of being footpaths. This accords closely to the view of the County Surveyor, in preparing the Handover Map, some four years previously, where they were considered to be public footpaths.

8.22. 1936 Map of public rights of way in East Dean Parish

In 1932 Parliament passed the Rights of Way Act which was intended to simplify the law relating to the proof or disproof of disputed highways of all kinds. One of the consequences of that legislation was that Romsey and Stockbridge Rural District Council requested all parish councils within their area to submit maps showing public rights of way in their parishes. From the minutes of the Rural District Council, it is known that, in 1936, East Dean Parish Meeting submitted a map showing those routes that were considered to be public rights of way. The original document has not been found, but please see paragraph 8.23 below which describes a tracing of a similar document, made by the Rural District Council in 1953, and sent to the County Council to assist in the compilation of the first Definitive Map.

8.23. 1937 Minutes of Romsey & Stockbridge Rural District Council

The following minutes record a dispute regarding a footpath in East Dean. From the description it must refer to that part of route N-O on the north side of the railway line. There is no other path shown on maps of this era that fit the facts.

“The Clerk read a letter calling the attention of the Council to an alleged encroachment of a public footpath at East Dean, which ran from the Lockerley-East Dean road between properties owned by Mr L Coombs and Mr G R Southwell, over the railway line, and on to the Downs, by the erection of a timber and galvanized iron fence some 3 feet from the line of the old hedge on one side belonging to Mr Coombs which with the overhanging bushes on the other side, almost completely blocked the passage of the footpath. A sub-committee...was appointed to inspect with the Highway Surveyor and report.”

The minutes go on to record site visits, correspondence and debate. After four months the matter was resolved by Mr Coombs agreeing to remove the obstruction and the Highway Surveyor was instructed to serve Notice on Mr Southwell to cut back the hedge. These minutes provide strong evidence that, in 1937, the route running southwards from point N was considered by the Highway Authority to be a public footpath and this was not disputed by the landowners.

8.24. 1939 Correspondence between the Civil Engineer in Chief of the War Department and Romsey & Stockbridge Rural District Council

This is the first document relating to the acquisition of land for military purposes. On 8 February the 'Lands Branch' wrote the following to the Clerk of the Rural District Council:

"Referring to the recent interview at which Mr. E W Hughes explained our proposals concerning Dean Hill, as we anticipate that work on the construction of the railway connection at the eastern end of the site to be acquired will commence within the next 2 months, I should be glad if you could confirm which of the footpaths shown in brown on the enclosed plan are admitted public footpaths."

On 14 February 1939 Treasury warrants were issued for the compulsory purchase of land at Dean Hill.

The response from the Clerk to the Rural District Council, dated 17 February, was as follows:

"I return herewith your plan duly marked showing the public highways on that part of the land which the Admiralty propose to acquire and which is situated within this district. The highway marked in red is a delegated road repairable by my Council, and those marked in blue are claimed as public footpaths on the map deposited with the District Council by the East Dean Parish Meeting, under the Rights of Way Act 1932."

The plan referred to was obviously returned to the Ministry and is therefore not in the Hampshire Record Office. The map referred to is probably very similar to the one described in paragraph 8.21. The reference to the 'delegated road' most probably refers to section D-E-X as there is no other likely road within the area of land purchased by the Admiralty that falls in the Rural District Council area.

8.25. 1939 Correspondence from War Department to East Dean PC

On 26 April the 'Lands Branch' wrote the following to East Dean PC:

"With reference to our meeting last month I now enclose a plan which indicates in dark red the position of the access which it is proposed to give as an alternative to the footpaths in the parish of East Dean at present crossing the site from the main road to the south side of the site which will be stopped up by the Admiralty scheme. The access will lead from the main road near the Southern Railway Level Crossing gatekeeper's house across the Admiralty sidings via a level crossing, thence proceeding in a westerly direction as shown until it joins up with one of the paths coloured blue on your plan. I shall be glad to be informed in due course that the East Dean Parish Meeting raise no objection to what is proposed."

The map attached to the letter shows the proposed, alternative, path running on a zig-zag route between points Y and Z on the map attached to this report.

In a further letter, dated 2 May, the War Department wrote the following:

"I have to acknowledge the receipt of the Resolution of the East Dean Parish Meeting dated 11 May 1939 approving the closing of the existing

public footpaths crossing the site which the Admiralty are acquiring in the parish of East Dean and the provision of the alternative footpath as indicated in dark red on plan No.968/39. I should be grateful if you would convey to the inhabitants of East Dean at their next parish meeting my appreciation of their co-operation in this matter.”

8.26. 1940 Correspondence between the County Councils Association and Hampshire County Council

A letter dated 21st March 1940 was sent by the Secretary of the County Councils Association to the Clerk of Hampshire County Council, enclosing an extract from the report of a meeting on 13th March 1940 of the War Emergency Committee. The meeting dealt with *‘the supply of information to county councils with regard to stopping-up or diversion orders made by Government Departments’* which was originally raised at the first meeting of the War Emergency Committee. It is clear from the report that the County Councils Association wished to have copies of Orders made by the Secretary of State for Air under the Stopping-Up or Diversion of Highways (Defence Regulations, 1939, No. 16) *‘for the stopping up or diversion of highways and for prohibiting or restricting rights of way’*. This particular question was said to affect *‘the Air Ministry to a greater degree than other Departments’*. With the *‘very considerable’* programme of constructions connected with the war, swift action was necessary to prevent access to sites via *‘highways and footpaths’*. It had *‘been the practice of the Department to avoid publication of the Orders made, because they supply, in convenient form, particulars which would enable disaffected person to identify a number of Royal Air Force Stations and Establishments, identification of which would otherwise be much more difficult to obtain and confirm’*. Where Orders had already been made, it was proposed to provide individual county councils lists *‘giving particulars of all roads etc., within the jurisdiction of each, which have been stopped up by order of the Secretary of State’*. Those lists would be marked *‘Confidential’*, for the reasons set out. It was anticipated that *‘Orders made in future will not be so numerous as in the past...and they will accordingly arrange for copies of such Orders to be sent under confidential cover to the county councils’*. These lists and Orders were not to be published, but were to be available for inspection on request.

8.27. 1940 Property Conveyance

On 20th June the Admiralty completed the purchase of 65 acres of land in the ownership of William Ashley Nicholls of East Dean Farm. The land was compulsorily acquired under the Defence Acts of 1842 to 1935, and the Naval Works Act of 1895. Although there is reference in the conveyance to *‘roadways’* at section D-E, this document can have no bearing on the existence, or otherwise, of public rights of way. It is a private transaction between two parties, that has no relevance to public rights of way.

8.28. 1941 Property Conveyance

On 21st November the Admiralty completed the purchase of another large parcel of land, on the east side of the site, in the ownership of Richard Woolley of Salisbury. The transaction was carried out under the

same legal framework described above. There are references to private rights of way within the conveyance, but this has no bearing on public rights of way.

8.29. 1952 Letter from East Dean Parish Meeting to County Surveyor

The letter, with attachments, relates to the compilation of the first definitive map of public rights of way for Hampshire. The covering letter, written by the Chairman of the Parish Meeting and dated 21 April, reads:

“Enclosed please find map showing footpaths in the parish of East Dean, duly corrected and brought up to date, and signed together with statement.”

At the end of the Statement, or description of the rights of way in East Dean, is written the following note:

“All the above are footpaths only. Paths marked on map as cancelled are not now available due to closure by Admiralty and one made available as alternative by Admiralty vide (see) their letter 4602/39/214a of 22 May 1939, is not accessible owing to private land intervening, but No.5 above provides facilities.”

The last reference is to the alternative path that was offered by the Admiralty in 1939 (see paragraph 8.24) but was not established due to other parties' ownership. The map shows roughly, what is now Footpath 9 (then called 5) and the two 'cancelled' paths; that is N-O and Y-Z. There are no paths shown within the security fence.

8.30. 1953 Correspondence between HCC, R&SRDC and the Admiralty

In a letter dated 22 January the Clerk to Romsey & Stockbridge Rural District Council wrote the following to the County Surveyor:

“...I enclose as promised a tracing from the map deposited by the East Dean Parish Meeting under the Rights of Way Act 1932, showing the footpaths which existed prior to the acquisition of land by the Admiralty in East Dean Parish, also the alternative right of way granted from point 'A' to 'B'. I also enclose copies of the only correspondence I am able to trace in connection with the rights of way over the land acquired by the Admiralty.”

The map attached to this letter shows by red lines footpaths between points A-B, E-F, E-L, M-K-F-L-H and L-B and N-O. Those footpaths between points A-B, E-L, M-K-F-L and L-B have been annotated with red crosses which the legend describes as 'Footpaths Closed'. The section of path between points E-L-Z are shown as closed, but the section outside what became the RNAD between points Z and H, then connecting on to the present Footpath 10, is not closed. The part between Z and H is presently unrecorded on the Definitive Map, though it does not run over the land purchased for the RNAD. The fact that two footpaths start at point E may suggest that the parish council regarded section D-E as a public general purpose highway, which had been its reputation in the 19th century. The current recorded Footpath No.9 from the road to 'Dean Hill Barn Farm' is also shown by a red line as the 'alternative' footpath offered by the Admiralty. Footpath 9 (from the West Dean to Lockerley Road south east towards Dean Hill Barn Farm) is

marked Y on the map attached to this report, and is annotated 'A' and 'B' in red letters on the tracing.

The correspondence referred to in the letter consists of the following:

“Replies from Parish Councils regarding Rights of Way etc.

All Roads and paths crossing the R.N. Establishment have been closed; but a right of way has been granted from point A at the Railway Crossing to point B where it joins the old rights of way to Dean Hill Barn from the East Dean-Lockerley Road...”

In a letter dated 26 January the County Surveyor wrote the following to the Admiralty:

“I gather that in February and March of 1939 there was correspondence between yourselves and the Clerk to Romsey and Stockbridge Rural District Council concerning rights of way over land acquired by the Admiralty in the parish of East Dean. So far as I can discover, however, there does not appear to be any formal closing order affecting these paths, and I propose recording them on the Draft Map now being prepared under the above act. Should the R.N. Establishment cease to exist as such, the rights of way would then be restored to the public on the original line. I shall welcome your observations on this matter, and suggest that the whole question of rights of way crossing Naval Establishments might well be discussed at this stage between representatives of the County Council and yourselves.”

A meeting did take place because, on 1st May 1953, the County Surveyor wrote the following letter to the Admiralty Land Surveyor:

“I understand that Mr Baldwin, in the course of his visit to this office on April 16th, promised my representative a plan showing public rights of way at East Dean, as recognised by the Admiralty. Since the Draft Map for this area is almost completed, awaiting this information, I should be glad if you would treat the matter as urgent.”

The reply from the Admiralty is dated 29th May and it says:

“I was at East Dean this morning and I enclose a print indicating the line of the right of way across a level crossing through Admiralty property. The right of way continues southward on a new line as roughly indicated by a broken red line on the plan. I trust this is the information you require.”

The 'print' shows a footpath roughly on the alignment of the present day Footpath No.9 between points Y-O-H. There is no record of a wider discussion between HCC and the Admiralty regarding those paths closed as a result of the compulsory purchase of land in 1939.

8.31. 1959 Stopping-up Order in West Dean, Wiltshire

The catalogue of the National Archives at Kew show that, in 1959, an Order was made to stop-up a public right of way across Dean Hill Royal Naval Armament Depot in the Parish of West Dean. There is no other entry in the catalogue for the rest of the site in Hampshire, at any date.

8.32. 2005 sale catalogue:

The Royal Naval Armaments Depot closed on 31 March 2004 and the property was put up for sale by informal tender the following year. The property included 156 hectares of land, employment accommodation and storage space in 24 underground bunkers. The information pack that accompanied the sale catalogue includes a fax, dated 21 October 2005, from Defence Estates to Bond Pearce; the agents for the sale. It includes the following information:

“I attach copies of the evidence on the existence of public rights of way at Dean Hill prior to MoD acquiring the land and fencing off the depot in 1940. These documents were handed to me yesterday by the chairman of East Dean Parish Council in support of the application made on 24 August 2005...If public rights of way existed at the time MoD acquired the land, and MoD was aware of them, then I believe MoD would have had them stopped-up, but there is no evidence on our terrier plans of any stopping-up orders for these paths. A short section of path is however shown as stopped-up and diverted near West Dean, but this path is not an issue. It is possible that Hampshire County Council may have records of stopping-up orders at Dean Hill and I will check with them. The possibility that there could be public rights of way running through the centre of the depot will be of great concern to bidders. Some will not bid and others will reduce the level of their bids.”

9. Witness Evidence:

9.1. The Parish Council has submitted documentary evidence in the form of letters from elderly residents in which they give their recollections of how the land was used.

9.2. Mr C. Arthur of East Dean:

In a book entitled ‘Memoirs of Dean Hill’ Mr Arthur recalls his youthful days in the area from 1935 onwards. In one paragraph he writes:

“Another favourite haunt during the summer months was the Six Beeches area. This was very popular with all the local courting couples, especially on Sundays. Many times we missed Sunday School to cycle up the old chalk road at the rear of the Transfer Sheds and then to creep through the woods to watch the antics of these couples hoping to improve our knowledge of life. It was an ideal site for picnics as well; whole families would meet there to play games, fly kites or just sit and admire the splendid views. How little did we know in those days that in a short while, men and mighty machines would descend on Dean and shatter the peace and quietness by tearing the heart out of our lovely hillside and creating the ‘Admiralty Dump’ as it was known locally.”

9.3. Mr R Dodd of East Dean

“Prior to the construction of the depot, there were several footpaths and a byway that led from East Dean to Dean Hill. Having grown up in the village, in a family that has lived in the vicinity for generations, I am in no doubt whatsoever that these were public rights of way. I was told by my parents, my grandfather and other old residents who often reminisced about the days before the depot was built.

My late mother lived in the adjoining village of Lockerley before moving to East Dean and often talked of walking between the villages as a girl, before the war. A favourite route was by way of Painshill and over Dean Hill, to enjoy the views before descending the footpath at the back of East Dean Church. Her father, Will Gray, who attended East Dean School and later worked in the fields, spoke of cycling down the hill on the old lane to the Brewers Arms. As a boy, I questioned my grandfather on this...and was told that it was a route from Manor Farm up to Deanhill Barn that had been blocked by the Admiralty. He said that although it was not surfaced – just chalk and flint – it was a road.

Bet Hext of Newman's Cottage...told me that there had been several paths onto the hill. On one such footpath, she said, water was routinely carried up to the cottage on Dean Hill. This water was carried in buckets on a shoulder yoke from the vicinity of the manor, where steps at the roadside edge were known as 'the donkey steps'. I last spoke to (Fred Collins) in 2001 when he told me that his home, Swiss Cottage was built in 1924 and that another public footpath ran alongside the garden, over the railway and then up to a wood on Dean Hill called Shepherd's Bush where, as a young man, he had done much of his courting. Others, including my late father, who was born locally and worked on the construction of the depot, also confirmed the existence of these paths."

9.4. Mrs S Hawkins of East Dean

"I remember the following that may be of interest:

1. A path/track starting opposite Manor Farm which went via the area known as 'Six Beeches' up to the farm on top of the hill (now designated Dean Hill Barn Farm).

2. A footpath opposite East Dean Manor up to the farm on top of the hill, where my mother lived in a farm cottage circa 1920, which was used by her to collect deliveries of milk and provisions.

3. Over a road-side stile near Swiss Cottage in East Dean, passing over the railway line and also up to the farm on top of the hill. This path would have crossed the area near the access from the main railway line to the Dean Hill site."

9.5. Mr R Hillier of Lockerley:

"I am a descendant of Mr E Hillier (my grandfather) who used to farm at Manor Farm for many years before the MoD compulsorily purchased most of his land. I was recently asked if I could remember anything about a track that started opposite Manor Farm entrance, this track led to a chalk pit where my grandfather used to dig and haul chalk for various jobs on the farm, the track then continued to the top of the hill to Dean Hill Farm, which was used by farm workers going to work on this farm. It was also used by other people going for walks over the hills, which would indicate that it was a public right of way."

9.6. Mr W Nicholls of Ontario, Canada

"I am aged 78 and have lived at the house known now as East Dean Manor but formerly known as East Dean Farm...I lived at this house from 1933 until moving away in 1961, however it remained in the family

until I sold it in 1989. Whilst I lived at East Dean Manor during the period 1933 to 1940 I remember access between X and Y being available to the public. The old cart track was known as the 'Old Chalk Road', and was used by the public as access to the top of the hill. The road was used by people on foot and horseback and was accessible by cart. I always understood from local tradition that it was of Roman origin giving access to the Roman Camp on the crest of the hill."

9.7. Mrs K Parsons of West Dean

"Between the years 1920-1926 two children living in a cottage near the Six Beeches on Dean Hill came to West Dean School. They used a footpath which joined the road at some point east of the village."

9.8. Mr D Watkins of Landford

"I am aged 82 and lived at the house now known as East Dean Manor, but formerly known as East Dean Farm...East Dean Manor was my family home from 1933 until my marriage in 1961, however I was a constant visitor to my Mother who lived there until 1986. Whilst I lived at East Dean Manor during the period 1933 to 1940 I remember access between X and Y being available to the public to get to the top of the hill, usually on foot or horseback although the road was accessible by cart. My Father owned the land traversed by the track. I remember access to the road being cut off by the Ministry of Defence which compulsorily purchased the land from my father in 1940 and constructed a fence across the road, effectively closing it to the public from that time onwards."

10. The Landowners:

10.1. Harving Limited

A response on behalf of the landowner was received in 2007 and is attached in full as **Appendix 2**, plus a letter dated 22nd August 2012, sent by Wilsons solicitors, on behalf of Mr. Parry. All six documents referred to in the 2007 submission are described within paragraphs 8 of this report. The landowner takes the view that the evidence points to any public rights on claimed route D-E-F-G-H being legally extinguished on acquisition of the site by the Admiralty in 1939. The landowner does not believe that there is any evidence to substantiate an allegation for the existence of a public footpath on route A-B-C and, in any event, any public rights would have been similarly extinguished through the acquisition process.

10.2. Dean Hill Barn Farms Ltd

Mr Peter Holt, a Director of the Company, has written the following:

"As some of the claimed paths that you mention do indeed cross land owned by Dean Hill Barn Farms Ltd, we would appreciate being notified of any further debate relating to these paths, and request that we should be consulted on any proposals brought forward that would attempt to re-instate them legally or otherwise. Thank you for bringing the matter to our notice and we will endeavour to discuss any developments constructively."

10.3. Mr Richard Newton of East Dean Manor

“I am writing in response to your consultation regarding reinstatement of possible former rights of way over land that I own or have an interest in. I refer to the capital letters defining the various routes on your map.

D-E: I am happy to support this route to the extent that it affects me and agree the evidence for it is very strong.

J-K: This route is shown on the 1929 Handover map as a public footpath (not repaired) but not included in the map deposited under the Rights of Way Act 1932. It is not included in the communication from Romsey & Stockbridge RDC in 1953 specifically showing the footpaths which existed prior to the acquisition of the land and were closed by the Admiralty.

The map required under the 1932 Act was deposited in 1936 and therefore provides stronger evidence of which routes were rights of way in 1939 than does the 1929 map and therefore, on the balance of probability, it seems most likely that this route was not a right of way in 1939.

Anecdotal evidence from long-standing village residents...suggests that this route was only used to transport supplies from East Dean Farm (now East Dean Manor) up the hill to Dean Hill Barn, and not as a right of way. It will be seen that the route is only of use for East Dean Farm, as all other properties would find the alternative routes from A, D or M etc. nearer and more convenient. It therefore seems more likely that it was or became simply a private route from the farm and it could provide no other practical purpose.

M-K: I am happy to support this route to the extent that it affects me and agree that the evidence for it is very strong. Although I own the freehold of the Church Car Park, the Church has a 999 year lease and will presumably need to be consulted.

F-G-H: This route is not included in either the 1929 map or the 1932/1936 deposition so the evidence for this route does not look credible and it is unlikely to have been a right of way in 1939. It is clearly a longstanding and much used track, but presumably a private route.

F-L-H: I am happy to support this route to the extent that it affects me and agree that the evidence for it is strong. Peter Holt at Dean Hill Barn Farm has full control over this land due to a farm tenancy, so the reinstatement of the route would be of more direct interest to him.

I have no interest in land affected by the other routes.”

10.4. Mrs C Howkins of Manor Farm Bungalow

“When I bought the property in 2001 there was no indication that a footpath existed, or had existed, on the track adjacent to my property. In 2009, when I bought the track off the MoD, neither myself nor my solicitor had any awareness of this track’s existence as a footpath. In both cases, had I known, I would not have bought. Since I am a single lady I regard my safety and security as paramount to my happy retirement in this village. Having a footpath pass so close to my home would expose the privacy of my garden and my stable and tack room not

only to the ramblers, but to others whose intentions may not be so innocent. The property opposite has been burgled twice.”

11. Consultations with Other Bodies:

11.1. Test Valley Borough Council

No comment

11.2. Councillor Andrew Gibson – local member

Councillor Gibson has been consulted and is aware of the issues.

11.3. The Ramblers

The Footpath Secretary for the Romsey Group has written to say:

“My group wish to support the claims made by East Dean Parish Council. We also welcome an order to record paths that existed before 1939, in East Dean. If these paths are successfully put on the definitive map they will be an excellent amenity to the parishioners of East Dean, and lovers of the countryside where access has previously been lost on Dean Hill.”

11.4. Natural England

The Land Use Adviser has written to say:

“These footpaths cross the Brickworth Down and Dean Hill Site of Special Scientific Interest. However, it is Natural England’s advice that the reinstatement of these footpaths will not be detrimental to the interest features of the SSSI, and as such we have no objection to the proposals. If the rights of way in question included byways or routes which would allow use by traffic other than pedestrians, then we may have concerns about the impact on the site, however we advise that access on foot will not present a problem.”

12. Analysis of Evidence:

12.1. There are two key issues that need to be addressed for all routes under consideration. Firstly, were there any public rights of way in existence when the Admiralty acquired the land by compulsory purchase in 1939 and, secondly, if public rights of way did exist what steps, if any, were taken to legally extinguish those rights?

12.2. It is unusual in this case to have access to two important documents which shed light on the existence of rights of way in the years leading up to the second world war. The Handover Map of 1929 covers most of the County and shows publicly maintainable highways, but not every map records rights of way information. The Handover Map for East Dean and surrounding areas is fairly typical in that it shows very few routes that are now recorded as rights of way. However, it does show public footpaths over Dean Hill only 10 years before occupation by the Admiralty. The second key document is the map, prepared by East Dean Parish, under the 1932 Rights of Way Act. The officers are not aware of any surviving maps from this process, and indeed we do not have the original document which records those routes that East Dean Parish Council

considered to be public rights of way. What we do have is a tracing of the original made in 1953, by the Rural District Council, to assist in the compilation of the first Definitive Map. How much reliance can be placed on this tracing? What can be said is that the document was produced by a reputable body, it is professionally done, and its validity was not challenged by any party at the time. For those reasons this evidence is taken at face value as if it is the original document, and it provides evidence just three years before occupation of the land by the Admiralty.

12.3. The recommendations in this report are based on the documentary evidence only. Whilst the witness statements provide interesting background to the use of the land by the inhabitants of the locality, most of the information is hearsay evidence from relatives and friends who are now deceased. The paths have not been used by the public for 73 years, and it would be unsafe to rely on evidence of use at such a distance.

12.4 Analysis of the evidence for routes:

The following table sets out the evidence and its application to the routes shown on the attached plan.

Document	A-B-C	D-E-X	X-F	F-G-H	J-K	M-K-F-L-H	L-B	E-L	N-O
1836 Rail-way plan	Occupation Road	Parish Road	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1843 Rail-way plan	Occupation Road	Public Road	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1856 Rail-way plan	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Public footpath
1876 OS 1st edition	No	Yes – track	Yes – track	Yes – track	Yes – path	Yes – path	Partly path	No	No
1895 OS 2nd edition	Yes – FP	Yes – track	Yes – track	Yes – track	No	Yes – FP	Partly path	Yes – FP	Yes – FP
1908 OS 3rd edition	Yes – FP	Yes – track	Yes – track	Yes – track	Yes – FP	Yes – FP	Partly path	Yes – FP	Yes – FP
1924 OS 4th edition	Yes – FP	Yes – track	Yes – track	N/A	Yes – FP	N/A	Partly path	Yes – FP	N/A
1929 Handover Map	Yes – Public Footpath	Yes – Public Road	No	No	Yes – Public Footpath	Yes – Public Footpath	No	Yes – Public Footpath	No
1953 tracing of 1936 Parish RoW Map	Yes – Footpath Closed	No, but must be at least FP	Yes E-X-F Footpath	No	No	Yes – Footpath Closed	Yes – Footpath Closed	Yes – Footpath Closed	Yes – Footpath Closed
1937 RDC Minutes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Public Footpath
PUBLIC STATUS	Public Footpath	Public Road	Probably not RoW	Probably not RoW	Probably Footpath	Probably Footpath	Probably Footpath	Public Footpath	Public Footpath

12.5. The first claimed route A-B-C:

This route is described as an Occupation Road, and therefore private, on the railway plans of 1836 and 1843, and does not appear on any map as a footpath before 1895. However, the Ordnance Survey maps of 1895, 1908 and 1924 all show it as a footpath. More importantly it is described as a public footpath by the Rural District Council on the 1929 Handover Map, and by the Parish Council on the tracing of the 1936 Parish Map. The combination of these five documents, all made in the 41 year period between 1895 and 1936, strongly suggest that this route was a public footpath in 1939.

12.6. The second claimed route D-E-F-G-H:

This route, or something similar, consistently shows up on the early small-scale maps. A map of 1791 shows it providing access to East Dean's open fields. This indicates that it was a substantial feature in the landscape, but these maps do not draw a distinction between public and private roads. Of more assistance are the railway plans of 1836 and 1843. The maps are limited in their extent and only cover section D-E which is shown on both maps and described in the book of references as either a 'Parish Road' or a 'Road' which is occupied by the public and the responsibility of the Surveyor of Highways. The Ordnance Survey large-scale maps of 1876, 1895, 1908 and 1924 all show the complete route as a substantial track, but do not tell us how much, if any, is public. The Handover Map of 1929 depicts the section D-E-X as a Public Carriageway repairable by the District Council and there is a reference by the Rural District Council, in the correspondence of 1939, to a 'delegated road repairable by my council'.

12.7. The combination of the two railway maps, the Handover Map and the letter of 1939 provide persuasive evidence for D-E to be considered an all-purpose public highway. What is less clear is the southern extent of this highway. There is no evidence that it was a through route that connected with another public road. If it only led to Deanhill Barn, then that would suggest its usage was primarily private to enable owners and occupiers to gain access to the property. It is also possible that it was set out at inclosure to allow access to the new allotments in the former open fields, though the absence of an award means it is not known whether it was public or private. The Handover Map is the only document which provides evidence of its extent and that has it terminating at the entrance to the chalk pit at point X. It would seem likely therefore that the purpose of the public road was to provide access to the pit for the highway authority to extract material to repair the local road network.

12.8. There is hearsay evidence that the local population used the track between X-F-G-H to gain access to Dean Hill, and this seems entirely plausible as the track provided a less steep route than the alternative paths. However, the maps are not particularly helpful on the subject of status. Undoubtedly the track was capable of being used by all types of traffic, there were no barriers or physical obstructions along the route to stop it being used, but there is nothing to say whether it was public or private with the slight exception of the Parish Map of 1936 which shows

X-F only as a public footpath. On balance it is considered that there is insufficient evidence from which it would be safe to conclude that a public right of way existed over X-F-G-H.

12.9. Additional historic route M-K-F-L-H:

This route appears on all maps from 1870 onwards and appears to have been a primary route for pedestrians from the Church and School to the footpaths at the top of Dean Hill. The southern end varies its alignment somewhat before 1908 but becomes fixed thereafter. Of more significance is that both the 1929 Handover Map and the 1936 Parish Map record this route as a public footpath. These documents provide strong evidence for the existence of public footpath rights by 1939.

12.10. Additional historic route J-K:

This path appears as a footpath on three of the four Ordnance Survey large-scale maps made between 1876 and 1924, it being omitted on the second edition of 1895. It is shown as a public footpath on the 1929 Handover Map, but not the 1936 Parish Map. On a balance of probability it is considered that this route was a public footpath in 1939.

12.11. Additional historic route E-L:

This path appears on the Ordnance Survey maps of 1908 and 1924. It is also recorded as a public footpath on the 1929 Handover Map and the 1936 Parish Map. It is therefore considered that this was a public footpath, in 1939, which provided a link from the public road to connect with the north-south footpath.

12.12. Additional historic route L-B:

Only part of this path appears on Ordnance Survey maps, the western end is consistently missing as the path terminates at the edge of a large field and does not continue to meet the footpath at point B. It is recorded as a public footpath on the 1936 Parish Map, but not the 1929 Handover Map. It is considered that the evidence for the existence of a public right of way is very much in the balance.

12.13. Additional historic route N-O:

This route is described as a footpath, or public footpath, in the 1856 railway book of reference. It is shown on the 1908 Ordnance Survey map, but not the other two editions that cover this area. It is also described as a public footpath on the 1936 Parish Map, but not the 1929 Handover Map. The deciding factor in this case is the minutes from 1937 of the Rural District Council which clearly describe this route as a public footpath when there was a dispute about its obstruction. It is therefore considered that this was a public footpath in 1939.

12.14. Evidence of a legal extinguishment of public rights of way

12.14.1 As background, the material provided to the County Councils Association (discussed in paragraph 8.25) makes clear that the county councils were keen to have copies of any Orders made so that their records of rights of way could be kept complete, and circumstances such as those that form the context of this application could be avoided. Once the war was over, and defence

installations were no longer needed, such material would be vital in the task of ascertaining what ways were public, and providing certainty for landowners and users. This correspondence relates to the Royal Air Force in particular, and refers to Orders made by the Secretary of State under different legislation to that employed by the Admiralty to make a compulsory purchase of Dean Hill. However, it is also clear that the War Emergency Committee accepted the reasoning behind the request from the county councils for copies, or at least notification of the existence of affected highways and paths, and were willing to provide information, though not through open publication. No evidence of any such surviving Orders or lists has been found during this investigation.

- 12.14.2 There is no provision under the Defence of the Realm Act 1842 for any particular procedure to be followed or any order to be made to extinguish rights of way over military land. East Dean Parish Council had already agreed in May 1939 that the paths across the land to be acquired be ‘closed’, with the provision of an alternative path. The correspondence about the forthcoming use of the land for Admiralty purposes and two conveyances relating to that land have survived, so it is not unreasonable to expect to find such an Order, if one had been made. The Admiralty were negotiating an agreement for an alternative route in the spring of 1939, though the actual sales of the land used for the RNAD did not complete until June 1940 and November 1941, suggesting that the alternative route had no connection with whatever public rights were already in existence across these land holdings. It is important that an alternative path was provided for the parish to use, skirting the land that became the RNAD, Dean Hill. Section 16 of the Defence of the Realm Act states that *‘it shall be lawful for the principal officers of Her Majesty’s ordnance...to stop up or divert any public or private footpaths or bridle-roads, and to treat and agree with the owner or owners of such lands, buildings, hereditaments, or easements...either for the absolute purchase thereof, or for the possession or use thereof during such time as the exigence of the public service shall require’*. Further, Section 17 of the same Act provided that *‘whenever any footpath or bridle-road shall be stopped up as aforesaid, another path or road shall be provided and made in lieu thereof respectively, at the expense of the ordnance department, and at such convenient distance therefrom as to the principal officers of Her Majesty’s ordnance for the time being shall seem proper and necessary’*. Section 17 thus makes provision that when a path is stopped up, another should be provided in its stead. In 1939 there is correspondence between the Admiralty, Romsey and Stockbridge Rural District Council and East Dean Parish Council regarding the existence of public rights of way across the site to be acquired. On 26 April the Admiralty talked about footpaths *“which will be stopped-up by the...scheme”* and later on 2 May *“approving the closing of the existing public footpaths”* (both paragraph 8.20), but there is no suggestion in the letters of this period that the prescribed legal process, involving

Sections 16 and 17, was put into effect. The 1953 correspondence between the County Council, Romsey and Stockbridge Rural District Council and the Admiralty (see paragraph 8.29) indicates that even shortly after the end of the war, the County Surveyor could not discover any formal closing order. However, given that an alternative path was provided, it could reasonably be supposed that one path was stopped up, since Section 17 suggests an alternative actually *be provided* for each individual path stopped up. The question that then follows is, which one? The most likely candidate appears to be that shown as N-O on the plan, because it is at a '*convenient distance*' from the alternative from East Dean Footpath 9, the route provided in lieu.

- 12.14.3 The 1953 tracing of the map made in response to the Rights of Way Act 1932 (see paragraph 8.29) provides support for this view. It shows routes described in the legend as '*Footpaths*', and indicates which sections were closed by means of crosses. Several paths were shown, and two (E-H and M-B) are closed, but have sections which are open and without crosses. The legend describes these crossed sections as '*closed*', not '*extinguished*' or '*stopped-up*', which would have been the correct legal term for routes that no longer had any existence.
- 12.15. The land for the construction of the depot was acquired by compulsory purchase in 1940 and 1941. The conveyances between the Admiralty and the local landowners are only concerned with the transfer of property and private rights and have no relevance or bearing on public rights of way. The officers have discovered legal orders, from this period, affecting military airfields and are familiar with the format of the notices. Nothing similar has been found for Dean Hill. Whatever public rights existed in 1939, they remained untouched by the conveyance documents.
- 12.16. In 1953 the County Surveyor entered into correspondence with the Admiralty concerning the existence of public rights of way across its land. This was in relation to the compilation of the first definitive map for Hampshire. The County Surveyor observed that "*there does not appear to be any formal closing order affecting these paths*" and proposed recording them on the draft map (see paragraph 8.29). There then followed a limited debate about the existence of rights of way, which culminated in the 'alternative' path offered by the Admiralty being recorded as a public footpath. There is no evidence that the Admiralty provided proof that the original paths had been legally extinguished in 1939.
- 12.17. As part of this investigation, the officers have conducted a search of the archives held at the County Record Office in Winchester, but this has not revealed any evidence of a legal Order relating to the closure of footpaths in East Dean. There are numerous legal orders to extinguish or close footpaths across proposed airfields during the Second World War, but nothing for Admiralty sites. A search has also been conducted of the catalogue of the National Archives at Kew in London. This has revealed the existence of an order to close a public road at West Dean in Wiltshire (see paragraph 8.30), but nothing similar for Hampshire.

- 12.18. When the depot was put up for sale there was further correspondence concerning the closure of the rights of way which was prompted by the parish council claim. Defence Estates acknowledged that they had no evidence of any stopping-up Orders for these paths (see paragraph 8.31) and suggested that Hampshire County Council would hold these records. The sale proceeded without this issue being resolved.
- 12.19. The conclusion that can be drawn from the above information is that, whilst the Admiralty undoubtedly had the power to extinguish public rights of way over land acquired for military purposes, there is no formal evidence that it exercised that power. There are two possible alternatives. The first is that, at most, the Admiralty may have exercised its power to legally extinguish one path, N-O on the plan, because an alternative path (now Footpath 9) was provided, probably under the procedure outlined by Sections 16 and 17 of the Defence of the Realm Act. But no documentary evidence of a legal extinguishment under these sections, in the form of an Order, has been found, though one was searched for only eight years after the end of the war. Alternatively, it is possible that the Admiralty relied upon an informal agreement with the Parish Council which enabled it to close the paths in return for an alternative route to the east. There is clear documentary evidence in the correspondence of early 1939 (paragraphs 8.23 and 8.24) that the Parish Council was asked to agree that the affected paths be closed, and the Council did so. In either case, in the absence of any extinguishment Order giving details of affected paths, it is reasonable to allege that any public rights of way that existed in 1939 are still public rights of way in 2014.

13. Conclusions:

13.1. Before the construction of the Royal Naval Armaments Depot there existed a number of public rights of way over land occupied by the Admiralty in 1939.

13.2. There is strong evidence to consider the following routes as public rights of way in 1939:

A-B-C = public footpath

D-E-X = public road

M-K-F-L-H = [probably] public footpath

E-L = public footpath

N-O = public footpath

On a balance of probability it is considered that the following routes were public rights of way in 1939:

J-K = public footpath

L-B = public footpath

It is considered that there is insufficient evidence to consider the following route as a public right of way in 1939:

X-F-G-H

- 13.3. There is no actual evidence that the above routes were legally extinguished as a result of the military acquisition of the site. This follows consideration of all available material, including a search of the County Archives and the catalogue of the National Record Office in Kew.
- 13.4. There is evidence of compulsory purchase of private land and the extinguishment of private rights of way, but these documents have no relevance to the existence of public rights of way. Indeed, the powers granted to officers of the Ordnance by the legislation under which the land was compulsorily purchased gave them power to extinguish public rights of way, but there is no evidence that these rights were exercised for this purpose.
- 13.5. The public rights of way that existed before the construction of the armaments depot are still public rights of way and should therefore be recorded on the definitive map, subject to the provisions of the Natural Environment and Rural Communities Act 2006 (below).

14. Natural Environment and Rural Communities Act 2006:

14.1. This legislation will have extinguished public rights for mechanically propelled vehicles over those routes not recorded on the definitive map on 2 May 2006, unless one of eight exceptions contained in the Act applies. This is relevant to section D-E-X which is portrayed as a public road on several documents before 1939.

14.2. It seems unlikely to officers that any of these exceptions are applicable.

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

Section D-E-X has not been used by vehicles since 1939.

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

The route was not shown on the List of Streets on 2nd May 2006.

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

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

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

The route was not originally constructed as a road for motorised vehicles.

- (e) ***It was created by virtue of use by such vehicles during a period ending before 1st December 1930.***

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

- 14.3. The exceptions in s.67(2) do not apply, therefore, rights for the public in mechanically propelled vehicles over section D-E-X will have been extinguished by the above legislation. This leaves public rights for walkers, cyclists, horse riders and horse-drawn vehicles. This type of right of way is known as a restricted byway.

15. Recommendations:

- 15.1. That an Order be made to record route D-E-X, as shown on the attached map, as a restricted byway with a width of 3.0 metres.
- 15.2. That an Order be made to record the routes A-B-C, J-K, M-K-F-L-H, E-L, N-O, and L-B as shown on the attached map, as public footpaths, all with widths of 1.8 metres.
- 15.3. That the application to record route X-F-G-H as a public right of way be refused.

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

Hampshire safer and more secure for all:	
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as 'Surveying Authority', has a legal duty to amend the definitive map on the discovery of evidence that a right of way, which is not shown in the map and statement, subsists or is reasonably alleged to subsist.	

Section 100 D - Local Government Act 1972 - background documents

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

<u>Document</u>	<u>Location</u>
Claim reference 884	Room 0.01
2 x Files -	Castle Avenue
Historic and user evidence	Winchester
Correspondence	SO23 8ZF

IMPACT ASSESSMENTS

1. Equalities Impact Assessment:

1.1.

2. Impact on Crime and Disorder:

2.1.

3. Climate Change:

3.1. How does what is being proposed impact on our carbon footprint / energy consumption?

3.2. How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report does not require impact assessment but, nevertheless, requires a decision because the County Council, in its capacity as the 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.