

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	10 February 2016
Title:	Application for a Definitive Map Modification Order to record a restricted byway at Rope Yarn Lane, Stoke, in the Parish of St Mary Bourne
Reference:	7176
Report From:	Director of Culture, Communities and Business Services

Contact name: Harry Goodchild

Tel: 01962 846044

Email: harry.goodchild@hants.gov.uk

1 Executive Summary

- 1.1 This is an application, made under Section 53 of the Wildlife and Countryside Act 1981, to record a restricted byway over Rope Yarn Lane in the village of Stoke. If the application is successful, the route would be made available for use by the public in non-motorised vehicles. The claim is supported by historic documentary and recent user evidence which the applicant believes indicates that the route was once a full public carriageway.
- 1.2 It is considered that the evidence submitted in support of this application is sufficient for it to be inferred that, on the balance of probabilities, the route was dedicated as a public carriageway and that this should be reflected on the definitive map. It is therefore recommended that the application is accepted and a Definitive Map Modification Order made to record the route as a restricted byway.

2 Legal framework for the decision

WILDLIFE AND COUNTRYSIDE ACT 1981 - Section 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 that event.

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

b) the expiration... of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;

- c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –
 - i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way [to which this Part applies]
 - ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description
 - iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 – Section 67: Ending of certain existing unrecorded public rights of way

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—
 - (a) was not shown in a definitive map and statement, or
 - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.
- (2) Subsection (1) does not apply to an existing public right of way if—
 - (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
 - (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
 - (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
 - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
 - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if—
 - (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
 - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
 - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—
 - (i) was reasonably necessary to enable that person to obtain access to the land, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.

3 Claimant

3.1 The application was made in 2012 by **Mrs Pauline Wood**, a resident of Stoke.

4 Landowner

- 4.1 The route itself has no recorded owner, but according to Land Registry records the majority of the land on each side of the route has been owned by **Mr Gordon Sheerman** of Hilliers Farm, Stoke, since 2004. Through his ownership of these parcels of land, it could be argued that Mr Sheerman has acquired a common law presumption to the ownership of the majority of the route. For a distance of just under 100 metres, the land abutting the eastern side of the claimed route is owned by **Peter and Elaine Frogley**, residents of Binley. Mr and Mrs Frogley did not respond to the consultation.

5 Description of the Route (please refer to the map attached to this report)

- 5.1 The claimed route is shown between A-B on the Committee Plan. Commencing at a junction with Slade Bottom Road and Doiley Bottom (both of which are metalled 'U' roads recorded on the List of Streets), Rope Yarn Lane proceeds in a south-easterly direction for approximately 420 metres before turning due south for a further 100 metres to a junction with Binley Bottom, recorded as a 'C' Road on the List of Streets. The route consists of a firm, earth surface which, for most of its length, shows signs of use by four-wheeled vehicles. The route is bounded on both sides by trees and hedgerows, save for entrances to adjoining fields and farm buildings at various points along its length.

6 Background to the claim

- 6.1 The claim is supported by user evidence from eight local people who have used the route on foot, horseback, bicycle and on horse-drawn vehicles. However, officers have also discovered a substantial amount of historical evidence during the investigation, and it is this evidence which forms the main basis of the recommendation in this report.
- 6.2 The route was also the subject of a recent investigation during the project 'Promoting Access to Hampshire's Heritage' (PATHH), which was initiated by the Hampshire Countryside Access Forum. Volunteers involved in the investigation of Rope Yarn Lane were of the view that there was sufficient evidence to support the recording of the route as a public right of way, but Mrs Wood's application of 2012 pre-empted any further action by the PATHH group.
- 6.3 The claimed route has recently been blocked at both ends by Mr Sheerman, apparently due to concerns over possible conflict between access to his land and use by members of the public. Mr Sheerman has cited concerns over the implications for managing the route should it be opened up to the public. However, such issues cannot be taken into account when determining whether or not public rights have been acquired.

7 Issues to be decided

- 7.1 The issue to be decided by this committee is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on route A-B.
- 7.2 Under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, case law has decided that the burden of proof associated with Map Modification Orders is 'on

the balance of probabilities’, so it is not necessary for evidence to be conclusive or ‘beyond reasonable doubt’ before a change to the Definitive Map can be made. The primary issue to be decided by this Committee is whether there is clear evidence to show that public rights subsist or are reasonably alleged to subsist.

- 7.3 If Members are satisfied that this is the case, they are also asked to consider whether any of the exemptions contained in Sections 67(2) and (3) of the Natural Environment and Rural Communities (NERC) Act 2006 apply to those rights. Although not claimed in this case, evidence discovered as part of this investigation may point to the route having once been a full vehicular highway, and if exemptions under NERC can be shown to apply, the County Council would be under duty to recognise those rights by making an order to record the route as a byway open to all traffic.
- 7.4 Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, Members must be satisfied that public rights have come into being at some time in the past. This might be the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness or documentary evidence).
- 7.5 Historic and documentary evidence has been examined to see whether the past history and use of the route point to it having public rights as a result of dedication in the distant past. Any such rights are not lost merely through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist, even if they are now neither used nor needed. This evidence must be looked at as a whole, it being unlikely that a single document or map will provide sufficient evidence to justify a change to the Definitive Map. The County Council is under a duty to record such rights as are found to exist, even if they are not claimed by the applicant.
- 7.6 The originals of many of the documents referred to in this report are only available in public record offices, but copies of most documents are available for inspection in the offices of the Countryside Access Team. Members are invited to inspect these, or the originals, when considering this report.

8 Documentary Evidence

Information on the background and evidential weight which should be attached to particular historical sources is included at Appendix 1, which should be read in conjunction with this section.

8.1 Early maps and plans

8.1.1 Isaac Taylor’s Map of Hampshire – 1759 (1 inch to 1 mile)

This map shows Stoke and the two roads that meet the claimed route at its northern and southern ends. The claimed route is shown in the same way as these roads (and others in the locality now recorded as public) with the key denoting it as a ‘road inclos’d with hedges’. Many other routes now known to be public are omitted from Taylor’s map, and so it appears likely that at the time the map was produced, Rope Yarn Lane was considered to be a route of strategic importance within the local highway network.

8.1.2 Thomas Milne's Map of Hampshire – 1791 (1 inch to 1 mile)

Milne's map also appears to support the application. Rope Yarn Lane is depicted by parallel solid lines, which the key lists as an '*enclosed road*', and it is shown in identical fashion to other roads that now carry full vehicular rights.

8.1.3 Ordnance Survey Map – 1808 (2 inches to 1 mile)

The claimed route is shown by solid parallel lines of a similar width to other roads in the locality, and thus appears to be part of the local highway network.

8.1.4 Ordnance Survey Map – 1810 (1 inch to 1 mile)

This map is based upon the earlier 1808 drawing but the detail is generalised to accommodate the map's reduced scale. The claimed route is shown by solid parallel lines and appears to have been of equal significance to Binley Bottom, Slade Bottom Road and Doiley Bottom, its junction with the latter two roads now shown as part of a more obvious crossroads to the north-east of Stoke. The claimed route seems to offer a means of avoiding a more circuitous route running through the centre of the village.

8.1.5 Christopher Greenwood's Map of Hampshire – 1826 (1 inch to 1 mile)

Though many of the roads shown on the earlier OS map are shown, the claimed route does not appear on Greenwood's map, nor does a significant section of the road to the north of the crossroads leading to Newbury (Doiley Bottom), which is shown terminating in the middle of arable land without connecting to any other highway. Greenwood's map is often characterised as being plagiarised from the earlier OS map of 1810, and so the discrepancy between the two in this instance is unusual. The absence of the claimed route from the map limits the usefulness of the map in supporting the application, but the absence of another road which is also shown on preceding maps offers some mitigation. It is conceivable that a survey of the area was not fully completed prior to the publication of the map.

8.1.6 Tithe Map and Award – 1841

On the map all parcels of land, including roads (which are distinguished from other land by light brown shading) are numbered and listed in the Award, where there is a separate section for 'Roads and Waste'. No number appears on Rope Yarn Lane itself, but the route is shown in the same way as roads that are numbered, and so it is likely that it was considered to be part of an adjoining road, although it is not clear which one. It may have been covered by a parcel number on the road immediately to the north leading to Newbury (Doiley Bottom), but this area of the map has been badly damaged and as a result a large section of this route is missing. To the south Rope Yarn Lane runs into the road now recorded as Binley Bottom, which in turn meets the road running through the centre of Stoke (now Stoke Lane). The parcel number '530', which is written where these two roads converge, is listed in the 'Roads and Waste' section – it is possible that this parcel number covered both routes. On the balance of probabilities, it is likely that Rope Yarn Lane is included as part of one of these routes, and it is shown in exactly the same way as other routes which are listed as roads in the award. As such this document appears to support the application.

8.2 **Estate plans and sale documents**

8.2.1 Survey of Earl of Portsmouth's Estate – 1785 (6 inches to 1 mile approx)

This colour map covers an extensive area of the old St Mary Bourne parish which includes the Stoke area. The claimed route is shown by parallel solid lines and is coloured light brown, in the same way as other routes which are now public roads. Land parcels are annotated with numbers which, in the absence of a schedule, probably indicates ownership by the Earl of Portsmouth, but the roads are not numbered. There are no lines drawn across Rope Yarn Lane which suggests that at the time this map was produced there were no gates, barriers or other obstructions present on the route.

8.2.2 Sale Particulars – Estate at Stoke – 1859

The lands listed in this document, for sale at auction by Frederick Ellen of Andover, spread north-eastwards from Stoke village. Rope Yarn Lane is depicted on the accompanying map in the same way as other routes now recorded as public roads, which are shaded brown and clearly distinguishable from land parcels, which are variously shaded yellow, pink, blue and green. Lot Twelve, which situated adjacent to the road now known as 'Binley Bottom' (C145), which runs into the claimed route, is listed as being "*situate on the road leading from Stoke to St Mary Bourne and Binley*". There is no obstruction apparent between this Binley Bottom and Rope Yarn Lane, and so it appears likely that two roads were considered to have the same status.

8.2.3 Sale Particulars – Stoke House Estate - 1891

This document lists fields and buildings comprising the Stoke House Estate to be sold at auction, again by Frederick Ellen and Son, spread across twenty-two lots. The document includes two plans, one showing all lots, the other giving an enlarged view of Lot One. The schedule to this lot does not refer to any abutting roads (though there are several), but the enlarged plan shows Doiley Bottom, Binley Bottom and Rope Yarn Lane shaded light brown, with the land parcels abutting these roads shaded green and pink. On the smaller scale plan showing all lots (which are shaded various colours) every road, including the claimed route, is unshaded. On both plans, all land parcels are numbered, with the corresponding number described in an accompanying schedule – none of the roads shown on the plan are so numbered, suggesting that they were not considered to be within the ownership of the estate at that time. Part of Lot Eighteen is abutted on both sides by Binley Bottom (which runs into the claimed route) and the schedule states that the lands in this lot "*abut upon good roads*". The smaller scale plan shows the continuation of the road to the north of the four-way junction with Doiley Bottom labelled '*From Newbury*', the road leading south from Rope Yarn Lane labelled '*to St Mary Bourne*', and the road heading east (Binley Bottom) labelled '*To Binley*'. Rope Yarn Lane provides a link between all of these routes, and this document appears to depict it as part of the local highway network.

8.2.4 Sale Particulars – Estate at Stoke including Slade Bottom Farm and Stoke Farm - 1899

This document details lands situated to the north and north-east of Stoke forming part of Slade Bottom Farm and Stoke Farm, for sale at auction by Mr Allan Herbert of Andover. Although none of the lands for sale abut the claimed route, the plan does show the local highways as being separate from them. All of the lands for sale are coloured whilst roads are unshaded and annotated with their destination. At the point where the claimed route (including its continuation into

Binley Bottom) and Windmill Hill converge to the south of Stoke, the ongoing route is annotated '*To St Mary Bourne*', whilst the northern-most extent of Doiley Bottom that is shown on the plan is labelled '*To Newbury*' – Rope Yarn Lane offered the most direct route between these two points.

8.2.5 Sale Particulars – Stoke House – 1911

This document lists those lands and buildings being sold at auction by Frederick Ellen and Son. The accompanying plan shows that Lot Two includes several parcels under the general heading of 'Windmill Farm' (situated a little to the north of Stoke House, some 300 metres west of the claimed route), including the fields either side of the claimed route. Rope Yarn Lane itself is not shaded, indicating that it does not form part of the lands that are being sold. The plan shows the route as being open at both ends and in a similar fashion to other roads in the locality. As on the preceding sale plan, the road leading south from Stoke is annotated, this time reading "*To St Mary Bourne and Andover*" – for those travelling south from the north of the parish, the claimed route would have provided the most direct means of reaching this road without taking a more roundabout route through the centre of Stoke village.

8.2.6 Summary of estate plans and sale documents

None of the above documents depict the claimed route as being part of the estate or land to be conveyed. In every case the land that forms part of the private estate is shown by a distinctive colour and/or parcel number, whilst the claimed route is shown uncoloured, unnumbered or shaded in identical fashion to other routes that are now public roads. It is reasonable to infer that in each case, the author of the plan intended to depict these routes as forming part of the public highway network, which in turn is suggestive of the claimed route's reputation at the time.

8.3 Ordnance Survey large-scale maps

8.3.1 Ordnance Survey County Series 1st Edition - 1871 (25 inches to 1 mile)

Rope Yarn Lane is shown by solid parallel lines with a width varying between 6 and 10 metres, and there are no lines across the track to indicate the existence of gates or other barriers. The route appears to have the same significance as other roads in the locality, particularly when viewed in comparison to the other roads it meets to the north-east of Stoke (as with the 1810 OS map). A parcel number, '337', is written halfway along the route between its boundary lines. A plot (described in the Book of Reference as '*House and Garden*') is shown abutting the western side of the route, but appears to fall outside the extent of the highway.

This map (and subsequent large-scale Ordnance Survey mapping) has been used to calculate the width of the highway between boundaries defined by solid line features.

8.3.2 Ordnance Survey County Series - Book of Reference – 1871

The first edition of the County Series is the only OS map to have an accompanying book that describes every land parcel depicted. The parcel number written within the boundaries of the claimed route (which is annotated *Rope Yarn Lane*) is '337', the listing for which in the Book of Reference is '*Road*'. This indicates that the surveyors at the time regarded the claimed route as having the same status as other public roads (including Binley Bottom, which is now

recorded as a public road and which is annotated on this map in the same way as the claimed route).

8.3.3 Ordnance Survey County Series 2nd edition – 1895 (25 inches to 1 mile)
There is no change in the depiction of the route when compared with the earlier map of 1871.

8.3.4 Ordnance Survey County Series 3rd edition – 1908 (25 inches to 1 mile)
Rope Yarn Lane is shown in identical fashion to the 1st and 2nd editions.

8.3.5 Ordnance Survey National Grid Series Map – 1976 (1:2,500)
Rope Yarn Lane is shown as an enclosed 'Track', with the width still shown as varying between 6 and 10 metres. The route still appears to have no gates or barriers. Pecked lines at each end indicate a change of surface when compared with the adjoining roads, suggesting that these have by now been metalled.

8.3.6 Summary of Ordnance Survey evidence
All three large scale County Series maps show Rope Yarn Lane in identical fashion to other routes in the locality that are now public roads. In addition, the claimed route is described in the 1871 Book of Reference in identical fashion to other local highways. After the Second World War the claimed route obviously declined in importance because it was labelled 'Track' on the 1976 map and was distinguishable from the metalled roads by pecked lines which indicated a change in surface material.

8.4 Highway Board Minutes and other administrative records

8.4.1 Minutes of Whitchurch Highway Board – 1863
21st April 1863

"The Surveyor was directed to report the names of all the Highways (except Turnpike Roads) and their length in each of the thirteen highway parishes comprising the district, dividing such highways into three classes in each parish, namely:

- 1) *Roads of primary importance*
- 2) *Roads of secondary importance*
- 3) *Driftways which have never been formed into roads"*

30th June 1863

The Surveyor produced a Schedule of Highways as requested at the April meeting. St Mary Bourne Parish was broken into its six Tithings, including the Tithing of Stoke. The Surveyor included three roads of primary importance, two roads of secondary importance and six 'driftways'. Each road is briefly described and given a length in miles, furlongs and poles.

8.4.2 The roads listed in the Schedule either carry names that are no longer in use, or alternatively are not named and are simply identified by way of a description ("*Road leading from Little London*", for example). One such road is "*Newbury Road by Doiley Wood*", listed as a road of primary importance for which the given length is two miles and three furlongs (660 yards), the longest road in the Tithing. Doiley Wood is clearly identifiable near the northern boundary of the parish, with

the road now recorded as *'Doiley Bottom'* ('U5') commencing adjacent to this area and running generally southwards to a junction opposite Rope Yarn Lane. At this point the road's length totals only 1.73 miles, and given the fact that Rope Yarn Lane offered the most obvious onward route from this point, and that other possible routes connecting with this junction have been identified on the schedule as being other roads, it seems probable that the *"Newbury Road by Doiley Wood"* included Rope Yarn Lane as part of its length. This is supported by the sales particulars from the period, some of which annotated this route as the road *"From Newbury"* and *"To St Mary Bourne"*. This cannot be said with certainty however, as it has not been possible to identify the overall road's southern terminus based on the length given in the Schedule.

8.4.3 St Mary Bourne Vestry Minutes – 1863

Following the above undertaking on the part of the Whitchurch Highway Board, the Vestry met on 2nd May 1863 to:

"...consider the best means to be adopted respecting the public and private roads.

It was the unanimous decision of the meeting that there are some roads which it is desirable to relieve the Parish of the expense of repairing and it was resolved that [there] be a committee to inquire what are the roads it is desirable to relieve the Parish of the expense of repairing and to report the same to a future vestry."

At the subsequent Vestry meeting on 30th May 1863, the Committee presented their report, in which:

"It was hereupon moved and seconded:

That Rope Yarn Lane ought not to be repaired at the expense of the Parish.

Upon a show of hands this motion was lost."

This evidence makes it clear that at this time Rope Yarn Lane was acknowledged to be a publicly maintainable highway and supports the proposition that it was included in the Schedule of Highways described at 9.4.2 as part of the *'Newbury Road'*, further reinforced by the subsequent inclusion of this road in the Schedule of Highways as a 'road of primary importance', ie a route which would have been maintained by the parish.

8.4.4 Quarter Sessions

Officers have conducted a search of Quarter Session records, Roadway Proceedings and other relevant material and have found no evidence that public rights have ever been extinguished on the claimed route.

8.4.5 Summary of Highway Board and Vestry Minutes

It is apparent from documentary evidence which followed this period that Rope Yarn Lane's significance as part of the local highway network had diminished by the early 20th century, but the evidence from this period offers strong support to the view that the route was once a full public road. The 1863 Schedule of

Highways for the parish provides a comprehensive record of those routes that were considered publicly maintainable at that time, and although Rope Yarn Lane is not specifically mentioned in this schedule, its depiction on contemporaneous documents indicates that it formed part of the road to Newbury. The fact that only two months prior to the production of this Schedule, it had been held that the route should be maintained at the expense of the parish appears to support this proposition. There is no evidence in the minutes that the Whitchurch Highway Board ever repaired any roads other than those that were publicly maintainable - the fact that Rope Yarn Lane was held to be maintainable at the expense of the parish at a public meeting offers strong support to the application.

8.5 **County/District Highway and Planning records – 1929–1946**

8.5.1 Highways Handover Map (Whitchurch Rural District Council) – 1929

This map was prepared by Kingsclere and Whitchurch Rural District Council to show those routes that it considered publicly maintainable highways at the time responsibility was transferred to the County Council. This map purports to show public footpaths as well as carriageways, but the claimed route is not highlighted. It can be inferred that the County Council, acting as the Highway Authority, did not consider Rope Yarn Lane to be a publicly maintainable highway at the time the responsibility was handed over from the Rural District, or accepted that the Rural District Council did not consider it to be so. However, this document was not subject to public scrutiny, and so may not be a comprehensive record of public highways in the locality at this time, because it is not known how much research into public rights took place when it was compiled.

8.5.2 Minutes of County Roads and Bridges Committee – 1934

The minutes for 26th November 1934 are headed “*Maintenance of Unclassified Roads*” and state:

“The Committee have now completed their examination of this question; each unclassified road has been inspected, its traffic conditions and its geographical and geological conditions studied, with a forecast of future developments of traffic and building. This survey has been made in conjunction with the District Surveyor and the proposals laid before the District Councils concerned and their views obtained. A record has been made of the present condition, width, length, and other details of each road, and a map prepared of each district showing the nature of the present surfaces and where an improvement of a present surface appears likely to be needed, of the nature of the improved surface proposed.”

The map is described in the next paragraph.

8.5.3 Unclassified Roads Estimates Map – 1933

The map referred to at 8.5.2 shows numerous roads in the Stoke area (including Binley Bottom and Doiley Bottom) variously shaded to indicate existing and suggested surfaces. Rope Yarn Lane is not shaded, and so it would appear was not considered to be an unclassified road at this time.

8.5.4 1933 Highway Maintenance Notebooks

It is believed that these notebooks, arranged by district but compiled by the County Surveyor, are a companion to the map described in the preceding

paragraph. They describe in tabular form the publicly maintainable highways by number, brief description, nature of surface and by length. A road described as *Stoke – Gangbridge* is included amongst a list of roads with the heading *A34 Litchfield to Gangbridge via Binley*, which from the given length of 617 yards is identifiable as the road now known as Windmill Lane. Rope Yarn Lane is not listed, nor is any route which matches its description.

8.5.5 Joint Planning Scheme Map (Kingsclere and Whitchurch District) - 1937

In 1933 Joint Planning Committees were established in Hampshire to implement the requirements of the Town and Country Planning Act 1932. The Committee for North West Hampshire included representatives from the County Council and Andover, Kingsclere and Whitchurch and Winchester Rural District Councils. Each rural district set up its own planning sub-committee which produced draft plans detailing proposals which included new streets, the widening of existing roads, building lines, land use and development densities. These plans also show existing highways which were placed into three categories: classified roads (shown by brown colouring), highways repairable by the inhabitants at large (shown by orange colouring) and highways over which the public had a right of way (shown by yellow colouring). The map produced by the Kingsclere and Whitchurch sub-committee covering the Stoke area shows Stoke Road, Windmill Lane, Doiley Bottom and Binley Bottom shaded orange to indicate that they were highways repairable by the inhabitants at large. Rope Yarn Lane is shaded yellow, indicating that it was considered to be a public right of way, but not a route maintainable at public expense.

8.5.6 Highways Maintenance Map (Kingsclere and Whitchurch Rural District Council) – 1946

This map was prepared by the County Highways Surveyor to show those routes that were considered to be publicly maintainable. The claimed route is not shaded, indicating that that the County Surveyor did not consider it to be his responsibility. Again, this was an internally produced document that was not subject to public scrutiny, and it is not known what material was examined when decisions were made regarding maintenance liabilities.

8.5.7 Summary of local government records

There are several documents produced by local authorities in the period 1929-1946 which show the status of public 'highways' in the St Mary Bourne area. Three of those documents dating from that period - the 1929 Handover Map, the 1933 Notebooks and the 1946 Maintenance Map - do not record the claimed route as a publicly maintainable road or other highway, and yet the Joint Planning Committee document, also published during this period, records Rope Yarn Lane as a highway over which the public had a right of way. It is therefore necessary to consider how the documents were produced in order to determine what weight to give each piece of evidence.

8.5.8 The 1929 Handover Map was drawn up by the Rural District Council as a record of what they considered to be publicly maintainable highways and passed to the County Council on transfer of responsibility. There is no record of any public involvement or consultation as part of that process. Similarly, the 1933 Notebooks were part of an internal exercise by the County Surveyor to determine future maintenance liability, although the Unclassified Roads Maintenance Map of 1933

which followed was made by the County Council, in conjunction with the District Surveyor, and laid before the District Councils to obtain their views. The 1946 Maintenance Map was also an internal document, produced by the County Surveyor, as a record of those routes that were considered to be publicly maintainable. Again, there is no record of public involvement or consultation in the drawing up of these documents. Essentially, the documents handed over by the Rural District Councils were taken on trust and no further work was carried out to establish what rights existed (or not as the case may have been).

- 8.5.9 The process by which the Planning Schemes of the North West Joint Planning Committee was much more democratic, involving local meetings with Parish and District Councillors, advertisements in local newspapers, meetings with local landowners and consideration of objections. On that basis this particular document must be given greater weight when considering the status of the claimed route. It demonstrates that, as late as 1937, the Joint Planning Committee (which included representative of the County Council, the highway authority at the time) considered Rope Yarn Lane to be part of the public highway network and there was no dissent to this classification from the parish council, district council or local landowners.

8.6 Evidence post-definitive map

8.6.1 Letter from Mr A Prior to Ordnance Survey – 2nd December 1986

In this letter Mr Prior, a resident of Stoke, highlights a perceived error on the OS Landranger map of the area, a copy of which he had recently purchased. He states that the claimed route is shown on the map as a ‘road generally more than 4m wide’, when *“in fact the right of way is a public bridleway and thus unmetalled.”*

Forwarding the letter to the County Council for comment, the OS stated that Mr Prior was inaccurate in stating that the route was shown on the map as a ‘road generally more than 4m wide’, and that it was in fact a road *less* than 4m wide. It did however acknowledge that he had identified an error which would be remedied on future editions.

In its reply to Mr Prior, the County Council wrote of Rope Yarn Lane: *“It is not recorded on the 1959 or 1964 Definitive Maps as being a Public Right of Way. Furthermore, I have checked with the County Surveyor and he has no record of it ever being a publicly maintainable highway.”* The letter went on to invite Mr Prior to provide evidence of use if he believed that the route should be recorded as a bridleway, though it appears this avenue was not pursued further.

8.6.2 Letter from Trail Rider’s Fellowship to Hampshire County Council – 4th February 1996

This letter, written by the then local representative of the Trail Rider’s Fellowship (a motorcycling user group) to the Rights of Way Manager, recounts use of a number of routes in Hampshire by members of the TRF including Rope Yarn Lane. The letter opens:

“In order to avoid any question of stealth or secrecy regarding the vehicular use of certain highways I write to inform the authority of some of the lanes ridden by the TRF.....Please note that there has been no recorded challenge to use on

those ways listed below and so the use will continue nec vi, nec clam, nec precario [without force, secrecy or permission].”

Motorised vehicular use of the route in recent years is considered further in Section 9.

8.6.3 St Mary Bourne Parish Minutes – 2007-2008

During the investigation the County Council was provided with a letter from Ms Lorraine Cousins, who was St Mary Bourne Parish Clerk between 2001 and 2009. In the letter Ms Cousins states that on a number of occasions she contacted officers of Hampshire Highways with regard to maintenance matters on Rope Yarn Lane, which had been raised either at parish council meetings or by members of the public. According to Ms Cousins, on each occasion officers agreed to undertake the maintenance work required and she also forwarded photocopied extracts from the St Mary Bourne Parish Minutes to demonstrate this. An extract from 8th January 2008 reads: *“Rope Yarn Lane – The Clerk reported to the meeting that the lane had been cleared of a fallen tree by the highways Department to the satisfaction of local users.”*

8.6.4 Summary of Post-Definitive Map Evidence

Whilst the above evidence offers no conclusive proof as to Rope Yarn Lane’s status, it does provide further insight into the way the route has been used in recent years. It is clear that during this period it has been regarded by various classes of user (and, it would appear, even by departments of the County Council), as a public route.

9 User Evidence

- 9.1 Mrs Wood’s application was accompanied by evidence of use from eight people dating back to the 1960s, providing an insight into how the route has been managed during the latter part of the 20th century. Officers have not undertaken interview witnesses or source additional user evidence due to the strength of the documentary evidence, but it is likely that further evidence of use of this lane could be found. The evidence consists of user evidence forms, all completed in 2012, which are detailed from 9.3.
- 9.2 Submissions have also been received from members of motorised user groups who responded to officer consultation on the application by providing evidence of their use (and anecdotal accounts of use by others) of Rope Yarn Lane on motorcycles since the 1990s. This evidence is considered at 9.11.
- 9.3 **Mrs Lucia Evans**, a resident of Stoke, identified Rope Yarn Lane as a safe, off-road route she used with her children for walking and riding, and provided evidence of use between 2005 and 2012 on foot (300 times per year), horseback (300 times per year) and by bicycle (150 times per year). She never encountered any obstructions on the route or any challenge, and saw no signs indicating that the route was not public. She reported seeing other people using the route on foot, horseback and bicycle.

- 9.4 **Mrs Caroline Froude**, also a resident of Stoke, used the route 50 times per year on foot between 2010 and 2012, primarily for the purposes of walking her dog. She also rode the route twice per year on bicycle. She reported no obstructions, notices or challenges to her use.
- 9.5 **Mrs Susan Gibson**, apparently misreading the instructions on her form, gave no start and end dates for her use of Rope Yarn Lane, stating instead that she used it between January and December, but also stated that she walked the route 'every day' whilst walking her dog. She reported seeing local people and strangers on foot and on horseback as well as the landowner. She saw no signs or obstructions, and was never challenged.
- 9.6 **Mr Robin Mackenzie** provided a statement in addition to his form, and claimed use on foot, horseback, bicycle and with a vehicle. His family moved to Valley Farm in Stoke in 1962, and for 21 years he was Master of the local Foxhound Hunt, the vine and Craven. In all the time he was organising Meets and seeking permission to cross private land he never once sought such permission to use Rope Yarn Lane. His family kept ponies and rode up or down the lane on a daily basis for over 50 years. Like many other local residents he also frequently walked his dogs along the lane with no problems, with the only obstruction he recalled being a fallen tree following a severe storm.
- For a number of years Mr Mackenzie also owned Rowe Farm in Gangbridge Lane (situated about half a mile to the south-east of the claimed route). He stated that he regularly used Rope Yarn Lane when moving implements and straw from this farm to the dairy unit at Valley Farm and to the barns at Priors Farm, which he also rented.
- 9.7 **Mrs Sue Prior** lives on Windmill Lane, a few hundred metres from the claimed route, and gave evidence of use on foot at a frequency of 150 times per year since 1978. She also stated that she rode a horse-drawn vehicle along the route 50 times per year since 1995. She saw other people using the route on foot, horseback, bicycle and with a vehicle (both locals and strangers). Her use was never challenged and she never encountered signs or any obstructions to her use.
- 9.8 **Mr Christopher Wilson** used the route on foot 100 times per year without challenge between 2006 and 2012 for recreational purposes. He also saw other local people using the route.
- 9.9 **Mrs Pauline Wood** enjoyed unchallenged use of the route 50 times each on foot and on horseback every year from 1962. She reported seeing locals and strangers using the route on foot and on horseback, as well as the landowner.
- 9.10 **Miss Penny Wood** gave evidence of use dating from 1967 on foot and on horseback. Miss Wood's stated date of birth is 1967, and so it assumed that her early use of the route was in the company of her family. This notwithstanding, Miss Wood continued to walk the route 20 to 30 times per year until 2012, and her use on horseback continued on a weekly basis until 1983. She recalled seeing strangers and local people using the route on foot. Her use was never challenged, and the only obstruction she recalled was due to a fallen tree following a storm.

- 9.11 Evidence has also been forwarded to the County Council on behalf of the local Trail Rider's Fellowship group detailing use of Rope Yarn Lane by motorcyclists in recent years. The evidence is comprised of a list of users and dates of use during the period 1993 – 2004. The level of use fluctuates - in some years there are several instances of use by one or more users, in other years there was no reported use at all. In total, the report documents eighteen separate instances of use of Rope Yarn Lane by motorcycles throughout the entire period. The report concludes that riders used the route before 1993 and after 2004, but did not record this use, although it would have been of a similar frequency.
- 9.12 During the initial consultation on the application, an email was received from **Mr Gareth Watson**, a resident of Four Marks, Hampshire. Mr Watson lived in St Mary Bourne between 2000-2002 and during that time he often walked along Rope Yarn Lane with his wife, as well as riding his bicycle and motorcycle along it. He stated that occasionally he still used the route on a motorcycle when on a circular route from Four Marks via the Wayfarers Walk near Beacon Hill. He does not recall the route ever being closed and encountered no signage or objection during the period of his use.
- 9.13 Summary of User Evidence
From the user evidence provided it is apparent that the claimed route has been used by members of the public on foot, bicycle, horseback and with vehicles (motorised and non-motorised) without challenge or interruption for over fifty years. Whilst the evidence of use on foot, horseback and bicycles is strong, the evidence of vehicular use is less so, with much of it being anecdotal.

10 The Landowner

- 10.1 Although he is not the registered landowner, Mr Sheerman owns the lands abutting the route from the east and west and has been managing the route since the commencement of his ownership. Mr Sheerman opposes the application, and early in 2015, following reported incidents of fly-tipping and issues with dogs attacking his livestock, he placed obstructions at both ends of the route, which effectively brought public use to a halt.
- 10.2 Mr Sheerman disputes that Rope Yarn Lane was ever a public right of way due to its narrow width, which would not allow walkers to pass horses and wagons without climbing up the steep banks either side of the lane, and also points out the problems that would be encountered in the event that two horse-drawn carriages met, given the lack of passing places along the route. He believes that the route's only historic use was as a cart track serving as an access to adjacent farmland. Mr Sheerman also states that during his tenure, neither the Parish Council nor the County Council has maintained the route, and repairs during this time have been carried out by him, including the removal of fly-tipping along the route.
- 10.3 Mr Sheerman has also provided letters of support from local people and businesses in which they highlight conflict between public and private access that would be brought about if the route was recorded as a public right of way. Issues

raised include the narrow width of the route and the likely increase in crime. One letter, written by someone who grew up in the nearby village of Binley, states that during this time he understood the route to be private and that he had never seen it used by members of the public.

Officer's Comment: As set out in Section 7, this matter must be determined based upon evidence, and questions of suitability or desirability are not relevant factors in making this decision. The strength of the historic evidence suggests that the route was dedicated as a public right of under common law at some point during the 18th or 19th century (or even earlier), meaning that this claim is not reliant upon evidence of public use in recent years. It follows that any dispute regarding the strength of the user evidence is of little relevance in this case.

11 Consultations

11.1 The following people and organisations have been consulted on this application:

The Ramblers, Auto Cycle Union, British Driving Society, British Horse Society, Byways and Bridleways Trust, Cyclists' Touring Club, Open Spaces Society, St Mary Bourne Parish Council, Basingstoke and Deane Borough Council, County Councillor Tom Thacker, Hampshire County Council (Hampshire Highways and the Area Countryside Access Manager).

11.2 St Mary Bourne Parish Council

"It is the opinion of the parish council, and many residents in the Bourne valley, that the lane is an ancient and well-established public highway in existence well before the Highways Act of 1835, thereby making it a highway maintainable at public expense. This is supported by the evidence given by Mr Colin Piper, your former rights of way map review officer, in a letter which he wrote on 24th June 2008. That letter was written to the neighbouring landowner, Mr Gordon Sheerman, at his request to support a planning application which he was making to Basingstoke and Deane Borough Council."

11.3 The Ramblers

"The Ramblers strongly support this application."

The grounds for supporting the application are:

- 1. Rope Yarn Lane has been extensively and frequently used by parishioners of St Mary Bourne and others as a footpath and bridleway for a long time, in excess of 20 years.*
- 2. Ownership of Rope Yarn Lane appears, as far as it has been possible to determine, to rest with the Parish.*

You may be aware that an adjacent landowner has recently blocked Rope Yarn Lane by means of straw bales, piles of aggregate, etc. This egregious action

seems to be an attempt to claim ownership of the Lane. The evidence seems to point against this claim.

Even if the landowner should succeed in establishing ownership, which seems unlikely, this should not affect the dedication of the Lane as Restricted Byway on the grounds of extensive prior use of the Lane by the public.

I note in earlier letter from Colin Piper of Hampshire County Council to a Mr Sheerman (who I assume is the landowner in question), that conversion of the Lane to a Restricted Byway would not prevent him from driving vehicles down the lane, on the grounds of prior access by public vehicles. I do not believe that the Lane has ever been used for motor vehicles; certainly not recently, as it is unsuitable. The landowner has further made it more inaccessible, even to his own vehicles, by the nature of his blockages which cannot be easily removed. The Ramblers oppose any vehicular access to Rope Yarn Lane.”

11.4 Cyclists’ Touring Club

The CTC supports the application on the grounds that it will provide a useful addition to the rights of way network. The representative observes that when she first came to Winchester the claimed route was shown as a yellow road on 1:50,000 OS mapping, although subsequent editions showed it as a white track without any ORPA (Other Route with Public Access) designation.

11.5 The British Horse Society

The BHS supports this application.

11.6 The British Driving Society

The BDS supports this application.

11.7 County Councillor Tom Thacker

Councillor Thacker is aware of the application

No other comments have been received.

12 Conclusions to be reached from the evidence

12.1 The route has existed as a physical feature since at least 1785, when it was shown on the estate map made for the Earl of Portsmouth. It appears on a large number of commercial and Ordnance Survey maps and is depicted on both in a way that makes it indistinguishable from other routes which are now public roads. Similarly, on a number of sale documents dating as late as the early 20th century the claimed route is shown as falling outside the ownership of the property for sale. Officers have discovered no evidence which points to the route ever having been within private ownership, nor have they seen any evidence to suggest that the route has ever been gated or obstructed. No evidence has been found in Quarter Session records to indicate that public rights have ever been extinguished on Rope Yarn Lane.

- 12.2 The evidence from the 1863 Schedule of Highways for St Mary Bourne Parish, prepared by the surveyor of Whitchurch Highway Board, appears to offer support for the application, given that Rope Yarn Lane appears to have formed part of the ‘Newbury Road’ referred to in the schedule. Much stronger support is provided by the Vestry Minutes from the same year, which recorded the decision taken at a public meeting that Rope Yarn Lane should continue to be maintained at the expense of the parish.
- 12.3 The evidence viewed suggests that by the early 20th century, Rope Yarn Lane’s significance as part of the local highway network had diminished, as indicated by its absence from the County Council’s 1929 Handover Map and 1946 Maintenance Map. However, any rights which existed prior to this time will not have been lost merely through disuse, and in any event, it is clear that the route was still considered to be public around this time, as it was depicted as a route over which the public had a right of way on the Joint Planning Scheme map of 1937.
- 12.4 The user evidence supports the documentary evidence in depicting the claimed route as part of the local highway network. There is evidence of use by members of the public on Rope Yarn Lane on foot, horseback, bicycle and in vehicles without interruption or challenge since at least the early 1960s. The volume of evidence provided which covers vehicular use in recent years is relatively low, and it is debatable whether this evidence would, in isolation be sufficient to support the acquisition of restricted byway rights. If the claim hinged upon user evidence alone it would be necessary to conduct further research off such use in recent years. However, the quality and quantity of the historic documents which support the view that Rope Yarn Lane was a public road outweigh any shortfall in this evidence.

13 Natural Environment and Rural Communities Act 2006

- 13.1 There remains to be considered whether motorised vehicular rights have been extinguished by the NERC Act 2006. They will have been unless one of eight exceptions contained within Sections 67(2) and 67(3) of the Act applies. These exceptions are set out in Section 2 and are examined in turn below.
- 13.2 Section 67(2) – rights for mechanically-propelled vehicles will not have been extinguished on an existing public right of way if:
- (a) ***it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles.***
- Notwithstanding the anecdotal reports of use by motorcyclists during the period 2001 – 2006, there is little evidence of use of the route by the public in motor vehicles during this period, and even the small amount of user evidence received makes it apparent that the majority of use of the route during this period was on foot, horseback or by non-motorised vehicles.
- (b) ***immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section***

36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense).

The route was not recorded on the Definitive Map on 2nd May 2006, nor was it recorded on the List of Streets on this date.

- (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 route 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 constructed as a road specifically for motorised vehicles. There is clear evidence that the route was in use as a public carriageway prior to the introduction of motorised vehicles.

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

There is evidence that the route existed before mechanically-propelled vehicles became commonplace, so it cannot be said that public vehicular rights were *created* as a result of use by such vehicles. They are more likely to have been created as a result of use by horse-drawn vehicles.

- 13.3 The exceptions in Section 67(3), which require that the application to record the route as public be made to the County Council prior to 20th January 2005, do not apply in this case.

14 Conclusions

- 14.1 There is evidence that the claimed route has existed as an unobstructed physical feature in the landscape since at least the end of the 18th century.
- 14.2 There are numerous documents which, when taken as a whole, indicate that the route formed part of the local public highway network throughout the 19th century, but also that the route's significance diminished by the early 20th century.
- 14.3 The route has been used by members of the public on foot, horseback, bicycle and in motorised and non-motorised vehicles within living memory.
- 14.4 The documentary evidence and, to a lesser degree, the user evidence, demonstrates that, on the balance of probabilities, the claimed route was once a vehicular highway. The provisions of the NERC Act 2006 have extinguished rights for mechanically propelled vehicles, and none of the exemptions within the Act can be applied.

15 Recommendation

- 15.1 That authority is given for the making of a Definitive Map Modification Order to record a restricted byway with a width varying between 6 and 10 metres, on a route shown between A – B on the Committee Plan.

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

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
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 determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.	

Section 100 D - Local Government Act 1972 - background documents

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

Document

Claim Reference: CR/975

Location

Countryside Access Team
 Castle Avenue
 Winchester
 SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

2. Impact on Crime and Disorder: N/A

3. Climate Change:

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.