

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date:	26 May 2010
Title:	Application to record a bridleway over Footpath 4, in the Parish of Overton
Reference:	1620
Report From:	Director of Culture, Communities and Rural Affairs

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EXECUTIVE SUMMARY**1) Executive summary:**

- 1.1. This is an application, made under section 53(3) of the Wildlife and Countryside Act 1981, to record Footpath 4 in the Parish of Overton as a bridleway. The claim is based on evidence from 24 local residents, 5 of whom have also provided detailed statements. They have used the path on horseback from the 1950s until 2008, when equestrians were excluded from the path. The claim is recommended for acceptance.

2) Legal framework for the decision:2.1. WILDLIFE AND COUNTRYSIDE ACT 1981: (53)

Duty to keep definitive map and statement under continuous review:

- (2) As regards every definitive map and statement, the surveying authority shall:
- b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
- (3) The events referred to in sub-section (2) are as follows: -
- b) the expiration... of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;
- c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -
- i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates,

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

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

2.2. PRESUMED DEDICATION AT COMMON LAW:

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

2.3. HIGHWAYS ACT 1980 s.31:

Dedication of way as highway presumed after public use of 20 years.

- (1) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

3) **Summary of issues to be decided:**

- 3.1. The primary issue to be decided by this Committee is whether there is evidence to show that the right of way subsists. The burden of proof in these matters is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive before a change to the Definitive Map can be made.
- 3.2. If a right of way is considered to subsist, then the route, status and width of that way must also be determined and authority is required for the making of an Order to record that right on the Definitive Map.

4) **Purpose of report:**

- 4.1. The purpose of this report is to set out the facts of the case to enable Members to determine whether the public has acquired a right of way through the provisions of Section 31 of the Highways Act 1980 and/or through a dedication at common law.

5) Claimant:

5.1. The application was made in 2005 by **Mrs. J. Crosbie Dawson**.

6) Landowners:

3.1 Until 1995 the land was owned by the **Portal Estate**, and since that time has been owned by **De La Rue**, of Basingstoke.

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

- 7.1. Overton Footpath 4 leaves the Kingsclere Road (the B3051) at point A, just to the north and east of Overton Footpath 5, leading from the Rural Study Field Centre. There is a way mark at the beginning of the path, which has a wooden finger post, indicating that it is a footpath. Affixed to the wooden post is a Hampshire County Council green sign. This says '*Footpath Walkers Only No Cycling No Horseriding*'. Footpath 4 runs in a north easterly direction parallel to a branch of the River Test. The pavement to Kingsclere Road has a tarmac surface, and the path continues from this as a wide track made up of hoggin and gravel, which is firm underfoot. The boundaries consist of bramble bushes, shrubs and trees. The track is 4 metres wide here. The track is of a consistent surface and fairly consistent width for 320 metres, until it passes a house to the north of the path known as Flashetts. The occupants of this property gain their vehicular access down this track, and the drive to the property is marked off by a gate.
- 7.2. The track continues in a south easterly direction, on a parallel course to the river, but is now reduced in width. It continues in the same direction, to reach Station Road (the C79) at Quidhampton at point B on the map. From Flashetts, the path is about 2 metres in width, between a hedge and boundary consisting of shrubs and trees. The surface is very similar to that of the section to Flashetts, gradually giving way to a more muddy surface in places. At point C, there is a timber bridge with a handrail on each side, placed over a ditch, to the south west of the narrowest section of the path. The width of the bridge here is 1.2 metres, and it constitutes a limitation on the route. The path then opens out again for a section that is close to the river, and there are well-grown trees on both sides. Here the path is 2.4 metres wide, and there is another wooden footbridge over another ditch, shown as point D on the plan. This bridge also has a wooden handrail on each side, and has a width of 1.2 metres, and is another limitation on the route. On the southern side of the bridge, it is clear that people have been walking or riding through the ditch, which is probably dry more often than it is wet, and this side path is 2 metres wide. A little to the south west, the path opens out to occupy a wide space, as it reaches Station Road. Here it is 11.2 metres wide, with a hoggin and gravel surface. An identical way mark with a similar notice to that where the path leaves Kingsclere Road is situated where the path meets Station Road, some metres from a metal kissing gate and metal railings. These have been erected to prevent access to Footpath 4 by horse riders. A wooden post and rail fence is situated to the north of the kissing gates. On the south side of the space occupied by the path, where there would otherwise be direct access to the river, wooden rails have been placed, behind a wooden bench. The total length of the path is 446

metres.

8) Background to the claim:

- 8.1. The land over which the claimed bridleway runs is part of an estate formerly belonging to the Portal family, and now in the ownership of De La Rue, a company which runs the paper-making mill nearby, as did the Portal Estate before it. There are settling ponds to the south of the path and the River Test, which are part of the management of the water requirements of the mill.
- 8.2. The path first appears on maps in about 1871, and it was marked as a footpath on later editions. It appears to serve the purpose of forming a short cut between Kingsclere Road and Station Road, and is one of the few places along the course of the River Test where the public can gain direct access. It appeared as Footpath 4 on the first Definitive Map of 1957, and is currently way-marked as a footpath.
- 8.3. Members of the public have been using the footpath on horseback (and with bicycles), with use dating from 1946, and the bulk of it occurring from the 1980s. That use was terminated in 2008 when the Parish Council, and also a member of the public, asked Hampshire County Council's Area Rights of Way Officer to do something to make it clear to the public that the route is a footpath only. The Officer put up signage and physical barriers to Footpath 4 on horseback in 2008, though it does appear that a previous Area Rights of Way Officer had already put up barriers at the eastern end in 2002. These apparently did not stop all equestrian access. It appears that no-one is currently riding on Footpath 4. The applicant made her claim in 2005 after the first sign indicating that horses should not be ridden on the footpath was put up in 2004, having taken advice from the British Horse Society.

9) Issue to be decided:

- 9.1 The issue to be decided by this Committee is whether there is evidence to show that the claimed route ought to be shown on the Definitive Map as a highway at a different status from the one at which it is currently shown.
- 9.2 Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, Members must be satisfied that public rights have come into being at some time in the past. This might be the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence).
- 9.3 Historic and documentary evidence has been examined to see whether the past history and use of the paths point to them having public rights as a result of dedication in the distant past. Any such rights are not lost merely through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist, even if they are now neither used nor needed. This evidence must be looked at as a whole, it being unlikely that a single document or map will provide sufficiently cogent evidence to justify a change to the Definitive Map. This type of evidence may disclose rights other than those claimed by the applicant, for example, they may show that the lane is an old road for vehicles, not merely a footpath or bridleway. The

County Council is under a duty to record such rights as are found to exist, even if they are not claimed by the applicant.

- 9.4 The burden of proof in these matters is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive before a change to the Definitive Map can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, members should make an Order so that the evidence can be tested at a public inquiry. However, this is not a step which should be taken simply to avoid making a difficult decision. Officers do not consider that there such a conflict in this case.
- 9.5 The originals of many of the documents referred to in this report are only available in public record offices, but copies, transcripts or tracings of most documents are available for inspection in the offices of the Rights of Way section. Members are urged to inspect these, or the originals, when considering this report.

10) Documentary evidence:

- 10.1. The early commercial one inch maps do not show Overton Footpath 4, and the first time it is shown on a larger scale map is in about 1871. (See Appendix 1 for an evaluation of historic documents.)
- 10.2. Ordnance Survey County Series 1:2,500 first edition, c.1871
A path shown by means of parallel pecked lines is shown on the first edition of the County Series map, leaving what is now the Kingsclere Road in a similar location to where it does today in a north easterly direction, and running parallel to the river Test. The profile of the river and its channels is a little different on this map, but its course is essentially the same as the current course. The path emerges on to Station Road in very much the same location as it does now. The path is braced into the surrounding land. As the path travels in a south easterly direction the southern boundary is formed by the bank of the river. The emergence of both ends of the path appears to be at solid lines, which may indicate gates or another kind of barrier. This map provides evidence that the way was in existence in the second half of the 19th century, though it cannot demonstrate whether the use that gave rise to it was public or private in nature, and there is some suggestion that there were barriers at both ends. There is no indication as to its status.
- 10.3. Ordnance Survey County Series 1:2,500 second edition, c.1895
The second edition map shows the path in a similar location and on a similar course as the earlier edition. On this map it is annotated 'F.P.' indicating that its reputation at this time was as a footpath. The junction with Kingsclere Road has a solid line across it, while the junction with Station Road seems to be open. This map attests to the continuing existence of the path, and gives an indication of its status in the annotation 'F.P.', though it still does not show whether that footpath was public or private in nature. One of the possible barriers seems to have disappeared.
- 10.4. Ordnance Survey County Series 1:2,500 third edition, c.1909
On this map, the path is again annotated 'F.P.' The junctions with the two roads are very similar to the depiction in the previous edition. This map is further good supporting evidence of the historical origin of the footpath.

10.5. Whitchurch Handover Map 1929 (HRO H/SY3/6/19)

This map was compiled when the maintenance liability for public highways was transferred from the districts to the County Council in 1929, and shows those highways thought by the County Surveyor to be publicly maintainable. It shows Footpath 4 by a green broken line, which the legend identifies as public footpaths (other than those by the side of carriageways) repairable by the parish council, and supports the status shown on the earlier Ordnance Survey County Series maps.

10.6. Ordnance Survey County Series 1:2,500 fourth edition, 1930s

The claimed bridleway leaves the Kingsclere Road in the same place as shown on the earlier maps. However, the profile of the road has been changed by the time of this edition and an area corresponding to a lay-by is shown. To the south of the path are watercress beds. It reaches Station Road at the same position, with apparently no barrier across it. This map is further supporting evidence of the existence of the path, now with both ends apparently open and easily accessible. However, this edition of the map gives no indication of the status of the route, though we know from earlier maps in the same series that it was considered to be a footpath.

10.7. First Definitive Map of Public Rights of Way 1957 (Hampshire Record Office H/CL1/2/11A)

This map shows Overton Footpath 4 leaving the B3051 and running north eastwards parallel to the northern bank of the River Test, and follows its course, turning south east to emerge on to the C79. It is shown by means of a solid purple line, indicating footpath status.

The Definitive Statement reads;

'From Road B.3051 to Quidhampton Mill Road, C.79

From B.3051, north of St Mary's Church, eastwards along side of watercress beds for 250 yards then southeastwards through trees, and across two footbridges to C.79 at Quidhampton Mill.'

10.8. Second Definitive Map of Public Rights of Way 1958 (HRO H/CL1/2/32a)

Overton Footpath 4 is shown in the same way.

10.9. Third Definitive Map of Public Rights of Way 1964

This map shows Footpath 4 in the same way as the two earlier maps.

10.10. Ordnance Survey National Grid Map 1:2,500 1970s

This map shows Footpath 4 branching out of the Kingsclere Road, running in a north easterly direction, parallel with the River Test. It is shown by means of two pecked lines and is annotated 'track'. Where it reaches the apex of the curve formed by the river, the track opens out and provides access for a property known as Flashetts Bungalow, so that the footpath for a short distance shares the entrance to this property. Alongside the house, the parallel pecked lines resume south of the boundary of the property's curtilage, and the path turns to the south east, again following the course of the river. It crosses a minor stream or outlet by means of a footbridge and continues south east through a wooded area, to emerge on to Station Road. Both ends of the path are apparently open. This is the first map that shows the current arrangement of the path and Flashetts House. The path was, at

this date, recorded as a public footpath on the three editions of the Definitive Map.

10.11. Documents provided by Hampshire County Council Area Rights of Way Officer, 1996 to 2009

- It is clear from a letter from Overton Parish Council, dated 25th June 1996, that the Council was aware of horses being used on Footpath 4. This letter refers to the provision '*some years ago*' by the County Council of '*a new fence at the eastern end to deter motor cyclists but at the same time allowing wheelchair access*'. This occurrence of use by horse riders was described as '*the latest problem*', showing that such use by equestrians had been going on for some time.
- The Area Officer, Mr. Michael Johnn, replied on 18th July suggesting the installation of a kissing gate along with a five foot wide gate with a radar lock. It is not definitely known whether this radar-locked gate was installed, though one witness refers to it in her user evidence form.
- The Parish Council wrote again on 18th July 1999, concerning the '*continued use*' of the footpath by horses and motorbikes (indicating that there had been no effective measure to stop it), and referring back to the 1996 correspondence. It was suggested that two staggered barriers at the Station Road end and one by the '*proposed new bungalow*' [presumably Flashetts House] might help.
- On 9th July 2002, the Area Officer wrote to the Parish Council stating that a disabled kissing gate had been installed at the Station Road end, with a post and rail fence to prevent equestrian use. The footbridges had been widened and the path levelled to facilitate wheelchair use. This seems to pinpoint the first concerted attempt to prevent use by horses, and could be considered to be a bringing into question of the public's right to use the footpath on horseback. However, it does not seem to have prevented use on horseback, as later correspondence shows.
- On 11th March 2005, the Area Officer was approached by a member of a group representing horse riders, suggesting a dedication of bridleway rights over the footpath. Mr. Johnn suggested making a claim or asking Portals for permission, and pointed out that the track had been '*upgraded*' to allow access by wheelchair users.

10.12. Letter from Tony Vines, Director of Group Property, De La Rue, to Hampshire County Council, 24th May 2005

This letter was sent after notices were served on the highway authority, shortly after a request for permission to use the bridleway was refused. De La Rue were aware that Overton Parish Council objected to '*this intensification of use*', and the letter was to register the company's objection to the application, and would not '*enter into an agreement voluntarily to permit this intensification of use*'. The company was aware that the footpath was '*already often used by horse riders*', and by bikes and motorcycles, which was felt to be almost inevitable in an urban area, but too expensive to practically prevent. Allowing horse riding on the path would increase footpath damage, to their own cost, and '*threaten*

increasing encroachment into such areas not forming part of the public path'.

10.13. Response from the then Area Rights of Way Officer, 1st June 2005

The then Area Rights of Way Officer, Michael Johnn, responded to a consultation on the application. He had *'always opposed this route as a bridleway and [had] tried to prevent horse riders from using it'*. He had put up the barriers across the entrance off Station Road, and there was a disabled kissing gate allowing access by wheelchair users from that end of Overton. The path to the east of Flashetts house had been widened with timber to allow wheelchairs to use it, and the surface had been improved with scalplings. Mr. Johnn understood that there had been some vandalism of a timber barrier across the path beside the kissing gate, that one of the footbridges had been destroyed, and that horse riders were openly using the route as a bridleway.

10.14. Letters of objection

Advertisement of the issue of the status of Overton Footpath 4 in the local parish newsletter prompted eight letters of objection, and one of support for a change to bridleway status, from members of the public, received during July and August 2005. The letters objecting express concern about the safety of the two groups of users on one narrow path, and the condition of the path if it were to be used more regularly by horse riders. Three correspondents report challenges, either made directly, or by means of the barriers and signs. A further expression of objection was received in March 2009 via Hampshire County Council's contact centre.

10.15. Material provided by the Area Countryside Access Manager, Northern Area, Countryside Service, Hampshire County Council, 2007-2005

The current Area Countryside Access Manager, Matt Beal, was formerly the Area Rights of Way Officer with responsibility for the parish of Overton. He received a report on 4th April 2007 from Overton Parish Clerk that the handrail on the bridge nearest to Station Road had been broken down. This barrier was the one that had been put up by the previous Area Rights of Way Officer in 2002. There was a further report that horse riders were using Footpath 4 on 13th March 2008, and it was understood that they had been gaining access by crossing the river. Mr. Beal's team was, on that day, *'erecting some post and rail fencing in order to restrict the access'*, and they were going to put up a sign at the Kingsclere Road end indicating to users that the route was a footpath only. Some of the railings were subsequently sawn in half in February 2009. A member of the public had also reported this damage to Hampshire County Council's contact centre. Mr. Beal has provided photographs of the signs reading *'Footpath Walkers Only No Cycling No Horseriding'*, the damage and the repairs to the rails, and the waymarks with and without the signage.

10.16. Fourth Definitive Map of Public Rights of Way 2008

The plan annexed to this report is based on this edition of the Definitive Map.

10.17. Letters in response to advertisement of investigation in parish newsletter 2009

An item in the parish newsletter informed parishioners in September 2009 that the investigation into the application was taking place and, as a result, a further ten communications were received, five in objection, citing conflicts in use and the condition of the path as factors, and five in support of use on horseback or with bicycles.

11) User evidence:

- 11.1. Seven completed user evidence forms were received with the application in 2005, with another 17 being provided after the investigation commenced. Five statements were also taken. Therefore, evidence of qualifying use from 24 people is disclosed.
- 11.2. This user evidence has been put into the form of a chart, which is Appendix 2 to this report. These charts are, of necessity, a generalisation, but may give a feel for the extent of the use claimed. One of the witnesses used the path on a bicycle, which use qualifies towards the acquisition of a public bridleway. One witness reports using the path almost daily, and frequency of use varies between 2 or 3 times weekly, weekly and between 15 and 30 times a year. All use by horse riders was ended in 2008 by the erection of a kissing gate and comprehensive barriers at the Station Road end. Barriers had been erected at this end of the path previously, in 2002, (with some fences at an unknown date before this) but this had not stopped use completely, as some witnesses say they gained access to the path via the river. A summary of the use put forward by witnesses in statements can be found at Appendix 3.
- 11.3. The earliest reported use of the path as a bridleway was in 1946, and there were three users up to 1960. By 1970 there were six users, with 12 users by 1980 and 15 by 1990. There were 20 users in 2000, and in 2005 when the first batch of forms were completed, there were 21 users. Eleven users attest to use between 2005 and 2008. There are 10 users who have put forward qualifying use for 20 years or more. The bulk of user seems to be between the years 1980 and 2005.
- 11.4. None of the users reported the presence of stiles, and nine referred to gates. One said that the route had a kissing gate on it, another that it was a 'radar' gate, and one user said the gate was locked. Three witnesses gave the impression that the gate had only appeared recently, and three described it as being designed to stop horses. Nineteen users referred to obstructions across the path, mentioning most commonly these barriers and gates, and more specifically kissing gates. No users report having to climb anything or having to use force to gain access to the footpath on horse back. Nineteen users also report seeing notices on the path, of which 13 mention the words 'No horses' or 'No horse riding'.
- 11.5. Only four users mention being stopped or challenged, but none of these challenges seem to have been by the landowner, or their representative. One user was '*shouted at by a local*', and two people were challenged by members of the public.
- 11.6. One user was a tenant of the Portal family between 1990 and 1995, and therefore his use during those years has been discounted. His wife also rode the path, and it is a question whether her use should also be discounted. Two other witnesses reported being tenants of the Portals

between 1941 and 1995, so use during the period of tenancy must also be discounted, and this is reflected in the user evidence chart.

- 11.7. Three witnesses have responded to the question as to whether the path was used in the exercise of a private right. These witnesses state that they were either visiting a person or persons living in a house on the path, or deliver pamphlets to it. Any use with a private right must be discounted, but it is probably more likely that the private rights being exercised by these witness would have been on foot or with a vehicle. In any event, it is unlikely that all occasions of use of the path would have been for visiting or delivery.
- 11.8. One witness reports that she sought permission from a Councillor when the path was first shut off for equestrian use. Another wrote to the Property Manager for De La Rue after the signs were put in place in 2005, to request permission to continue riding the route, which was not agreed. No other witnesses asked for permission, and one stated that he never thought about seeking permission.
- 11.9 All the witnesses report seeing other people on the path, and all of them say that they saw local people. Eleven users said that they saw strangers using the path, and all saw people walking the path. Nearly all of the witnesses saw people riding on horse back and bicycles, with only four seeing use with a vehicle, and one user said the vehicle was driving to Flashetts House.
- 11.10 There is a suggestion of fences at an even earlier date, but there is no indication of which year these were in place. The erection of both sets of barriers can be seen as events which bring the public's right to use the path into question, and both can be examined for the purposes of providing a relevant period for the purposes of section 31 of the Highways Act 1980. In relation to the erection of the barriers, there appears to be one relevant period of 1982 to 2002, and another of 1988 to 2008. Another twenty-year period of 1985 to 2005, associated with the making of the application, can also be considered.
- 11.11 It is not unreasonable to conclude that this use by the public on horse back of Overton Footpath 4 is capable of giving rise to a change in status to that of bridleway under section 31 of the Highways Act 1980, unless there is sufficient evidence that the relevant owners of the land did not intend to dedicate such a right to the public.

12) The Landowners:

- 12.1. Until 1995, the owner of the land over which Footpath 4 runs was the Portal Estate. The estate was managed at that time by Mr. P. Denee, who has given a statement.
- 12.2. Mr. Denee was the Director of Portals Property Limited for about ten years, having commenced employment as the resident agent. He was responsible during this time for the property interests of Portals. Footpath 4 was considered to be '*just a right of way*', with the first half a track leading to a house built adjacent to it. Formerly there was an iron-clad bungalow on the site. The tenant of this former property was not given any instructions with regard to public use of the footpath.

- 12.3. As far as Mr. Denee is able to recall, there were no way marks indicating the status of the path in the early 1980s, and he '*certainly gave no clear instructions to anyone about use of the path, and was aware that it was used by people on motorbikes and horses*'. He himself had received no specific instructions as to the management of public access to the path from his employers, whom he describes as a '*public company*', which was not aware of what use was taking place on Footpath 4.
- 12.4. No annual closures of the footpath to horse riders were made, and there were no signs indicating that use on horse back was with permission which could be terminated at any time. Mr. Denee says that no-one asked for permission to ride the footpath either.
- 12.5. Portals occasionally repaired the section of Footpath 4 which was known as the '*cinder track*', to Flashetts House, as the tenant used this part for vehicular access. Mr. Denee thought that Hampshire County Council put up gates on the Station Road end in about 2006 or 2007.
- 12.6. Some riders went into the river at the Station Road end in the summer, and Portals did nothing to stop them. People in the village saw the area around Flashetts, with its access to the River Test, as an amenity. People were generally unhappy that there is so little access to the river, and Flashetts is one place that they can get to it. It was the view of Portals that they could not allow people to walk their horses up the river, because of their liabilities. Because the company felt that the right of way was an important amenity for the village, nothing was done to stop riders using the footpath, and there was no member of staff to turn riders away.
- 12.7. In 1995, Portals sold the land to De La Rue, and it was then managed by the Director of Group Property Mr. Tony Vines, who has given a statement. All the Portals Estate management staff became redundant when this change took place, including the river bailiffs.
- 12.8. De La Rue has paper making interests, and consequently the land to the south of the River Test is of great importance to them since it is the site of the outfall pipes and settling ponds for the paper mill to the north. Because pure water is required for the making of bank notes, the company has to safeguard its water supply, and be able to discharge used and cleaned water. The land on the north side of the river was retained to protect it and the land to the south of it, and the northern land was '*managed by default*'. De La Rue carried out some maintenance work on the footpath, such as cutting back side growth and windblown trees, and hoggin was put down on the surface. This work was done in relation to the private right for motor vehicles exercised by the occupants of the house called Flashetts, the new house which had been built on the site to replace a '*ruined bungalow*', and which had been sold with the land it stood on. De La Rue staff, or contractors working on its behalf, may have put down some of the hoggin on other parts of the path while they were there working.
- 12.9. Mr. Vines did not see, or become aware of, any work done by Hampshire County Council on Footpath 4, in the 12 or 13 years since De La Rue purchased the land. De La Rue did not replace the concrete bridges on the path, and Mr. Vines was not aware when that happened. He did not receive any specific instructions from his employer as to how the footpath was to be managed for public access by horse riders. The land over which the footpath runs was not considered to be a part of the company's core

business, and *'there was no policy except to acknowledge the footpath's existence and carry out maintenance when required'*.

- 12.10. Mr. Vines states that he cannot *'confirm or deny that there have been horses on Footpath 4'*, though in a letter to Hampshire County Council of 24th May 2005, it was stated by him that the company knew *'that the footpath is already often used by horse riders and by bikes, both pedal and motorised, and this is almost inevitable in an urban area'*. De La Rue would prefer that the footpath should not become a bridleway, because of the likely increased frequency of use with consequent wear to the surface. Further, *'there is concern about users trespassing on De La Rue's private land including the river, which poses increased health and safety risks, as well as damage to the ecology'*.
- 12.11. Mr. Vines says that De La Rue has not carried out any actions to demonstrate that it does not intend to dedicate the way as a public bridleway and has made no deposits under section 31(6) of the Highways Act 1980. Neither have there been any annual closures of the way to horse riders, challenges to riders or other similar actions. Where the Parish Council or others have applied for regular access to the river from the south, these requests have been denied.

13) Consultations with other bodies:

- 13.1. The following persons and bodies have been consulted about the claim: Basingstoke and Deane Borough Council, Overton Parish Council, the local Member Councillor Anna McNair Scott, the Open Spaces Society, the Ramblers' Association, the British Horse Society, the British Driving Society, the Trail Riders' Fellowship, LARA, the Byway and Bridleway Trust, the Area Countryside Access Manager, Highways Management and Minerals and Waste. At the time of writing, the following responses have been received.
- 13.2. The Local Footpath Secretary of the **Ramblers' Association** responds that the Association can offer *'no evidence to either assist or contradict the claim'*, but it does *'not support the application because we believe that the path is unsuitable for use as a bridleway'*. Footpath 4 is described as being popular with walkers, but *'very narrow in places and regular use by riders would seriously affect the enjoyment of the path by others'*.
- 13.3. No other comments have been received.

14) Analysis of the evidence:

- 14.1. While some of the documentary evidence attests indirectly to use by horse riders of Overton Footpath 4, it does not prove, on the balance of probabilities, that any part of the path was a bridleway, and thus the application must turn on evidence of use on horseback in recent years.
- 14.2. For section 31(a) of the Highways Act 1980 to operate and give rise to a presumption of dedication, the following criteria must be satisfied:
- the physical nature of the path must be such as is capable of being a right of way at common law

- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over a period of twenty years before the date on which the right is brought into question
- use must be *as of right*, i.e. without force, without stealth and without permission
- use must be by the public at large
- there must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

14.3. Physical nature of the path

Dealing with the criteria as listed above, the path *is* of such a character that it is capable of being a right of way at common law, in that it is linear in nature, with a clear and defined route, and allows users to pass and re-pass. (Questions such as need, suitability and safety cannot be considered during this investigation, and do not assist in the determination of the question of what public rights can be said to subsist on the way.)

14.4. The bringing into question of the public's right to use the path

There are three events which could be said to bring the public's right to use the way into question, namely:

- The erection in 2002 of gates and a metal rail across the eastern end of the path, representing the first closing off of the path to horse riders, giving a relevant period of 1982 to 2002
- The application made by Mrs. Crosbie Dawson on 3rd May 2005, giving a relevant period of 1985 to 2005
- The erection of further rails at the eastern end of the path on 13th March 2008 which prevented any access by horse riders via the river, giving a relevant period of 1988 to 2008

All three periods may be considered. A reference at 7.11 to earlier fencing on the path cannot be considered, because there are no dates for this. Officers take the view that the application of 2005 for a change to the Definitive Map is not a consequence of the putting up of the gates and rail in 2002, and is a separate event. Therefore there have been three distinct events that have brought the public's right to ride Overton Footpath 4 on horseback into question, and this criterion has been satisfied.

14.5. Twenty years' use without interruption

There appears to have been use on horseback in every year between the earliest use in 1946 to 2009, when some of the user evidence forms were completed. The evidence in the forms and statements indicates that there were no permanent obstructions until 2002, and those that appeared then could be interpreted as a bringing into question of the public's right to use the path on horseback. It seems clear from the evidence of users that the barriers of 2002 did not effect an interruption to equestrian users, who gained access to the path via the river. Further, more effective, obstacles including a rail along the river bank, were erected in 2008, and these seem to have stopped all access to the footpath by horse riders. Of the 24

witnesses, 18 describe these barriers as obstacles, and three explicitly recognise that the barriers were there specifically to stop horses. Two witnesses describe logs and fallen trees on the route, but these would have been temporary, naturally occurring, obstructions, not put there deliberately by the landowner. Therefore, on balance, although there were obstructions which could be interpreted as interruptions to use, no *actual* evidence of interruption to horse riding on the way has been found in any of the three twenty-year periods.

14.6. 'Without force, stealth or permission'

To qualify, user must be without force, stealth or permission.

1. Force – to be as of right, use must not be as the result of the use of force. None of the witnesses reports having to climb, or jump, over anything to gain access to the path while on horse back. There appear to have been no permanent obstructions across the path, with clear and open access at both ends prior to 2002. The fitting of wooden railings along the river bank in 2008 closed the final gap for horse riders at the entrance to the path, though it seems that horse riders were able to get out on to Station Road, by means of a gap sawn in wooden railings put up by Hampshire County Council's rights of way team along the road on the south bank of the river. These railings were repaired on two occasions, and there appears now to be no access to horse riders either to Footpath 4 or to the river. Although these railings are not on the path, the gap on the south bank of the river afforded a means for riders to exit or enter Footpath 4 from or on to Station Road, and therefore the question of force, through the sawing through of the railings, arises. It is clear that the person who sawed through the railings cannot claim use arising from that action is as of right, but there is another issue as to whether those who used the gap created by such an action were also using force. There appears to be no case law to guide us on this, but a recent decision letter from a public inquiry indicates that the inspector took the view that stepping over a chain put across a path, which is analogous to stepping through a gap created by someone else, did not constitute use by force. Therefore, according to the user evidence put forward with this application, on balance it seems that force has not been used by riders to gain access to Footpath 4 in any of the three relevant periods.

2, Stealth – to be as of right, use must be open and of the kind that any reasonable landowner would be aware of, if he or she had chosen to look. All the witnesses who filled in forms or gave statements appear to have seen others while using the path on horseback, and these were mainly locals, and all saw walkers. Almost all saw people riding on horse back and on bicycles, so it appears that their equestrian use was quite open. This is also reflected in items in the Parish Newsletter, such as one published in February 2009, and correspondence between the Parish Clerk and the Area Rights of Way Officer. The fact that there is reference to an occurrence of horse riding in 1996 as being the '*latest problem*' indicates use was long-running, and there is no reason to believe that any of the use in the three relevant periods was by stealth.

3. Permission – users as of right should not be using the way with any kind of licence or permission. No witnesses appear to have sought permission to use the path before the first barriers to prevent access were put up in 2002. Three users were tenants of the Portal Estate for varying periods

before 1995, and their use must be discounted (and this is reflected in the user evidence chart). It is possible that the wife of one of these tenants should also have her use discounted. Three witnesses reported using the footpath in the exercise of private rights, though they did not say that there were visiting or delivering items on horseback, and it is more likely that they exercised those private rights on foot or with vehicles. It therefore appears that the bulk of use has been of the type that can qualify for the acquisition of public bridleway rights on this path during the three relevant periods.

14.7. Use by the public

Use must be by the public at large, and that should be reflected in its volume and the breadth of the type of users.

1. The use must be of a volume that is capable of coming to the attention of a landowner. It should consist of enough users, and the number may reflect the setting of a path, such as whether it is in a rural or urban area and the type of use being claimed. The number of users in each year needs to be considered. The user evidence chart shows that use on horseback commenced in 1946, but there were few riders before 1970. Use increased in the 1970s, with 9 users over the decade, 12 in the 1980s, 21 in the 1990s and 21 up till 2009, when the last forms were completed. In relation to the three relevant periods, it seems on balance that there were sufficient users in each, a fact supported by reports made by the Parish Council on several occasions that horse riders were regularly using the footpath.

2. Use of a way should not consist solely of a particular class of person, such as the employees of a particular employer, tenants of a particular landlord, or customers of a particular business, if it is to be recorded as public. It has already been noted above that three people were tenants of the Portals Estate and their use during the periods of their tenancies have been removed from the user evidence chart. The location of the claimed path is such that people will have come from the wider area around to ride it. Apart from the three tenants, all the rest of the witnesses say that they did not have any connection with the landowner, so their use qualifies as being by the 'public at large'. While it can be said that evidence taken from users living at a number of addresses might be felt to carry more weight than evidence from the same number of users living at one address, there is nothing to suggest that evidence should be taken from only one user at an address. Even though some of the witnesses come from the same address, officers feel that there are enough users to raise the assumption that a public right of way of horseback has been acquired over the path, on the balance of probabilities, and that the overall quality of the use is such that it is by the public at large in all three twenty-year periods.

14.8. What can be understood from this evidence is that local people have been using Overton Footpath 4 on horse back from the mid-1940s onwards, for recreational and exercise purposes. The bulk of public use falls from the 1980s until 2008, when all access was stopped by the erection of barriers suitable to prevent riders from gaining access to the river, which had been an alternative when rails and a kissing gate were put up at the east end of the footpath in 2002. *Prima facie*, the user evidence submitted with this application, on the balance of probabilities, indicates that the public have acquired a right to use Overton Footpath 4 as a bridleway, and this appears to be the case in each of the twenty-year periods considered, ie

1982 to 2002, 1985 to 2005 and 1988 to 2008. However, dedication of a public right of way will not be presumed if there is sufficient evidence that the landowners did not intend to dedicate the path as a public bridleway. Therefore, the evidence put forward by the current, and past, owners must now be examined.

14.9. Actions by landowners

The property manager of the current owners of the land, De La Rue plc, and the estate manager of the Portal Estate (the previous owner) have both given statements. The Portal Estate regarded Footpath 4 as '*just a right of way*, part of which was an access track to a property, and repairs were carried out to that section. The estate manager can recall no way marks on the path indicating the status, but was aware that horse riders and motorcyclists were using it. However, he gave '*no clear instructions to anyone about use of the path*', and he had himself not received any specific instructions from his employers as to public access to the path. They were a public company which was not aware of what use was taking place on the footpath. There were no annual closures of the path to equestrians, and no signs indicating that riders should not use the path, or were using it with revocable permission. The agent confirmed that no-one has asked for permission either. Riders went into the river at the east end, but nothing was done to stop them. Because the owner was aware that people in the village saw the river and access to it as a valuable amenity, nothing was done to stop riders using the footpath, with no staff instructed to turn them away. At the same time, Portals did not want to allow horses to walk up the river because of their liabilities.

14.10. In 1995, the land was sold to De La Rue plc, and their director of group property undertook the management of the land. The land around the river and the path was of great importance to the company, which makes bank note paper and therefore wished to protect the purity of the water used by safeguarding the supply. The land to the north of the river over which the path runs was retained to protect the river and the land to the south where the settling ponds are situated. De La Rue also carried out some maintenance on the footpath, cutting back vegetation and putting material on the surface. The property manager was not given any specific instructions as to how the footpath should be managed with regard to access by horse riders, partly because it was considered to be peripheral to the business concerns of the owner. '*There was no policy except to acknowledge the footpath's existence and carry out maintenance when required.*' The manager said he could not confirm or deny that there had been use on horses of Footpath 4, and the company did not wish the route to become a bridleway because more frequent use would lead to greater wear of the surface. However, in a separate letter, he did admit that the path was used on horses and bicycles. Further, the company was worried about the health and safety risks that would result from trespass on their land, including the river. De La Rue has not carried out any actions to demonstrate that it does not intend to dedicate Footpath 4 as a bridleway, either by the submission of a deposit under section 31(6) of the Highways Act 1980, or making annual closures, challenges to riders or the erection of barriers, gates or notices denying a right of the type now being claimed.

14.11. Three users report being challenged or shouted at by members of the public while using the path on horseback, and one reports that her mother-

in-law was challenged while using it with a bicycle. None of these reports can be connected to the landowner, either in person or through a representative, and so they do not constitute actions that demonstrated that the freeholder did not intend to dedicate a right for horse riding over the way. No users report being stopped, or being told that the path was not a public bridleway. This supports the view that the landowners did nothing to prevent public bridleway rights being acquired.

14.12. Members may find evidence that the path is a bridleway, and no evidence that the landowners didn't intend it to be one. The obstructions that were put in place in 2002 and 2008 were erected by Hampshire County Council staff, and were put in place as a result of the then Area Rights of Way Officers carrying out their duty to protect the right of way from misuse by persons other than those with the right to pass and repass on foot, and in response to requests from Overton Parish Council. These actions of the County Council, as a third party, do not contribute to the intention not to dedicate if they were not carried out on the specific instructions of the landowner, which they were not.

14.13. This application, with its accompanying evidence, would seem to give rise to an assumption that the public have acquired bridleway rights over Footpath 4, on the balance of probabilities, under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 (see the box at the start of this report) in each of the relevant periods. On balance, there is no evidence that can rebut this presumption.

14.14. Common Law

This matter can also be considered under common law, where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public on horseback. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied from a sufficient period of public use without secrecy, force or permission, and the acquiescence of those landowners in that use. This is required in order to meet the two pre-conditions for the creation of a highway, that is dedication and public acceptance of that way by use.

14.15. The length of time that is required to demonstrate sufficient user is not fixed under common law, and depends on the facts of the case. The user must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as putting up a physical barrier, erecting notices stating that the route is not a public right of way of the type being claimed, or turning people back.

14.16. There is evidence of user on which Members could find that a dedication has taken place under common law at some time before 1980. The estate manager of the Portal Estate was aware that use by horse riders was taking place, but nothing was done to stop it. It could therefore be said that before 1995 no actions were taken to rebut any suggestion of dedication of a bridleway over Footpath 4. It seems from a letter of 24th May 2005 that De La Rue were also aware of horse, bicycle and motorbike use since the land had been in their ownership, but it appears to be the case that they did not do anything either to rebut any suggestion of dedication. The use of

Footpath 4 by horse riders is the acceptance of that dedication, thereby satisfying the requirements of the common law.

15) Comments by the Applicant and Landowner:

- 15.1. At the time of the preparation of this report for the Regulatory Committee, no comments had been received, from either the applicant or the landowner.

16) Conclusions:

- 16.1 There is evidence under section 31 of the Highways Act 1980 that a right of way which is shown on the Definitive Map and Statement as a highway of one status should be shown as a highway of another status, on the route between points A and B on the map appended to this report.
- 16.2 Members may also consider that a common law dedication has taken place between 1980 and 2008.
- 16.3 Officers consider that the width of the path varies between 1.2 and 11.2 metres, as indicated by the shading on the map.

17) Recommendations:

- 17.1 That a Definitive Map Modification Order be made to record a bridleway over Footpath 4 in the parish of Overton, from a junction with the B3051 (Kingsclere Road) to a junction with the C79 (Station Road). The route is shown on the attached map as A to B.**
- 17.2 Officers recommend a width varying 1.2 and 11.2 metres, as shown shaded on the accompanying plan.**
- 17.3 The public bridleway rights have been acquired subject to two footbridges, shown marked C and D on the plan. At the footbridge marked D on the plan, the width of the bridge is 1.2 metres, and the public have acquired a right on horseback over a strip of 2 metres, adjoining the bridge, on its southern side.**

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Links to the Corporate Strategy	Yes	No
Hampshire safer and more secure for all		
Maximising well-being	✓	
Enhancing our quality of place		

Section 100 D - Local Government Act 1972 - background documents

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

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

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

<u>Document</u>	<u>Location</u>
File CR 873	Rights of Way Office Mottisfont court, High Street, Winchester, SO23 8ZF