



Order Decision

Hearing Held on 15 August 2017

Site visit made on 24 July 2017

by Helen Slade MA FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 September 2017

Order Ref: ROW/3167600

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as The Hampshire (Basingstoke and Deane Borough No. 49)(Parish of St Mary Bourne) Definitive Map Modification Order 2016.
- The Order is dated 27 October 2016 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding at the commencement of the hearing.

Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.

Procedural Matters

1. I carried out an unaccompanied site visit on Monday 24 July 2017 during the morning. I was only able to access the northern part of the route. The remainder of the route was barricaded at Point B (by a mound of soil and vegetation) and also at a point approximately one third of the way along when travelling south from Point A. There was a locked field gate at Point A.
2. Following the close of the Hearing, I carried out an accompanied site visit at 9.00 am on Wednesday 16 August 2017. Representatives of the Order Making Authority ('OMA') and supporters of the Order met Dan Sheerman at Point A and walked to Point B to meet Gordon Sheerman. On that occasion Mr Sheerman senior, the statutory objector, had unlocked the gate at Point A and removed the barricade at Point B. It was nevertheless not possible to easily walk the entire length of the Order route due to the growth of vegetation. I therefore declined to walk the whole length, but I am satisfied that I have seen as much of the route as is necessary to enable me to reach a conclusion on the matter.
3. During the Hearing, it became apparent that neither Gordon Sheerman nor Edward Batchelor (assisting him) had seen the appendices to the OMAs statement of case. These had been available on deposit at the Council Offices, but neither of them had made the trip to view them or to obtain copies of them. With the agreement of the parties present I adjourned the inquiry for 25 minutes to allow them time to look at the relevant papers.

The Main Issues

4. The Order has been made under Section 53(2)(b) in consequence of an event set out in Section 53(3)(c)(i) of the 1981 Act, which provides that the

Definitive Map and Statement should be modified where evidence has been discovered which shows that, when considered with all other relevant evidence available, a public right of way which is not currently shown in it subsists or is reasonably alleged to subsist over the land in question. At the confirmation stage of the Order I must be satisfied that the right of way subsists. In this case the Order is for a Restricted Byway, which carries rights for non-mechanically propelled vehicles.

5. Although user evidence was submitted with the application, the Order has been made solely on the basis of historical evidence. Section 32 of the Highways Act 1980 ('the 1980 Act') requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
6. Section 67(1) of the Natural Environment and Rural Communities Act 2006 ('the NERC Act') extinguished any existing public right of way for mechanically propelled vehicles on a way which, before 2 May 2006, was not shown in a Definitive Map or Statement, or was shown only as a footpath, bridleway or a Restricted Byway. This provision is subject to a number of specific exemptions which, if any one of them is satisfied, have the effect of preserving those rights. I must therefore examine the provisions of the NERC Act to determine whether or not any public rights for mechanically propelled vehicles which might be found to subsist have been exempted from extinguishment by any of the stated provisions.
7. I have had regard to the guidance provided by the Department for Environment, Food and Rural Affairs ('Defra') in Circular 1/09 on Public Rights of Way, and to relevant legal judgements.
8. The test I must apply is the balance of probabilities.

Reasons

Background

9. Pauline Wood submitted an application for a Definitive Map Modification Order to record the Order route as a restricted byway in July 2012. It was supported by eight user evidence forms. The OMA undertook research into the application and discovered historic documentary evidence which, it considered, supported the application. The Statement of Case provided by Hampshire County Council (the OMA) clearly indicates that the resulting Order was made solely on the basis of the documentary evidence, despite including copies of the user evidence 'for completeness'.
10. The first Order made in respect of this route was made on 23 February 2016 and received an objection from Gordon Sheerman. On submission to the Planning Inspectorate, the Order was found to be defective and returned to the OMA. The Order was remade in October 2016. Mr Sheerman's objection to the first Order was carried forward to the second, but was amplified by a letter from Edward Batchelor, in support of his objection, dated 15 July 2016. This date does not fall within either of the statutory notice periods for the two Orders. The letter from Mr Batchelor was sent in by Mr Sheerman during the second statutory notice period, but was not submitted directly by Mr Batchelor himself. I have therefore not treated Mr Batchelor as a statutory objector, but

he has continued, quite legitimately, to fulfil the role of assisting Mr Sheerman in his objection: by writing his detailed Statement of Case and presenting the arguments at the Hearing.

Examination of the Historical Documentary Evidence

11. Both the OMA and Mr Sheerman have submitted detailed Statements of Case, largely addressing the evidence in chronological order. I will therefore follow the same pattern, as far as is practicable, as I consider it helpful and logical.

18th Century documents

12. The earliest documentation which has been submitted dates from 1759 and consists of two maps. The map submitted by the OMA is attributed to Isaac Taylor and is stated to be at 1" to 1 mile approximately; that from Mr Sheerman is unattributed, but looks so similar that I can only conclude that it is from the same source originally. This map shows the Order route as a 'road inclosed with hedges' according to the key consulted by the OMA. Mr Batchelor expressed the view that the route was shown in rather a meandering fashion and not in the more purposeful way that other routes were shown. He also referred to a quote from a book which suggested that Taylor's maps ought to be treated with caution as he was prone to exaggerate features of importance to either himself (as an antiquarian) or to his subscribers.
13. My examination of this map shows that there are some routes which appear to have been incompletely mapped, and the way in which the Order route is shown, which is quite different from its more direct route as it appears on the ground, suggests that Isaac Taylor did not survey every path. Nevertheless, I am satisfied that the information shows that the Order route has existed on the ground as a feature since at least the time of this map.
14. Other maps submitted from this period included a Survey of the Estate of the Earl of Portsmouth (at 6" to the mile); several smaller scale maps by Andrews and Dury, and Cary; and a map by Milne at a similar scale to that of Isaac Taylor. Although the OMA are of the view that the depiction of the Order route demonstrates that it was a route of strategic importance in the local highway network, I agree with Mr Batchelor that its omission from the small scale maps, which clearly do show the more strategic routes, would not support that view. Nevertheless, I am satisfied that the absence of the route on the smaller scale maps does not indicate that the route did not exist on the ground. I agree with the OMA that the scale of the maps probably precluded its inclusion.
15. The Estate Map shows the route coloured brown and excluded from the surrounding fields in the same way as other roads, but there is no schedule to accompany the map to aid its interpretation. The purpose of the map is therefore not clear, but it would seem unlikely to have been produced in order to show highways. It is more likely to have been produced for agricultural and land management purposes. I am able to infer only that in 1785, when the map was produced, the Order route was in existence and appeared to run across land owned by the Earl of Portsmouth. The fact that other routes shown on this map are recorded as highways today does not necessarily mean that the Order route also falls into that category. Equally it does not show that the route was a private track. The evidence is neutral in this regard.

19th Century documents

16. The 19th Century heralded the birth of the Ordnance Survey ('OS') and the development of mapping for strategic purposes. The earliest OS mapping provided to me dates from 1808 and takes the form of the preliminary drawings, made from surveys and produced at the scale of 2" to 1 mile. The Order route is shown on this drawing and also appears on the more generalised 1" to 1 mile map produced from the drawings in 1810. The OMA explained that the OS was set up to provide maps for military purposes and in particular to facilitate the movement of ordnance around the country when needed.
17. The OMA considers that these maps again shows that the Order route was part of the local highway network and that it provided a means of avoiding a more circuitous route through the village of Stoke. Mr Batchelor considered that the map showed numerous privately owned farm tracks that still exist today and are not highways.
18. I accept that the OS would have been looking for routes which were suitable to transport ordnance and that prominence appears to have been given to suitable routes. But there is no indication that there was any distinction made between routes to which the public in general had access and routes which may have been private tracks. Suitability is likely to have been the over-riding factor and it is not unreasonable to infer that the Order route would have provided an easier route for military purposes, being more direct and bypassing the village. It is not possible to infer from this that the Order route was a highway.
19. The early part of the 19th Century saw a plethora of privately-financed county maps produced by a variety of cartographers. Mr Batchelor presented a number of relatively small-scale maps by Smith (1804), Baker (1825), Cary (1825), Greenwood (1826), Rowe (1830), Darton (1832), Dower (1839) and Wyld (1846). Some of these maps appeared to be based on the same plates, and only one of them was at a scale of anything approaching the earlier 1" to 1 mile scale of the OS (Dower's map was at 1.5 miles to 1 inch). Some of the maps show quite wide variations in the routes shown, or not shown, but none of them shows the Order route. The importance of roads in the vicinity may have fluctuated at times, but there are some surprising omissions. Greenwood's map does not show the complete line of the road now known as Doiley Bottom. Cary shows the main route out of Stoke going by a different route from Doiley Bottom (as does the Wyld map) in contrast to the Baker map of the same year. It is clear that there was no consistency of approach to the task of mapping the area. The only consistency is the absence of the Order route. This does not support the OMA view that the Order route was of strategic importance in the local highway network.
20. The Tithe Map and Award of 1841 shows the Order route and gives it a parcel number – 530. This is described in the Award as 'Roads and Wastes'. The OMA considers that it is shown unobstructed at its junction with Binley Bottom and that is it therefore part of the same route. In response to a query from Mr Batchelor as to the status of the Award plan (i.e. First or Second Class) the OMA was unable to say, but Mr Goodchild was of the opinion that it was not particularly important in terms of showing the detail. Nevertheless, there was no disagreement that it was not the primary purpose of the Tithe Map to show

highways, and thus the depiction on the map is not evidence of its status. I accept, nevertheless, that it is continuing proof of its physical existence.

21. Turning to a different sort of document, the OMA supplied details from the Sales Particular of the Stoke Estate dating from 1859. The OMA continued to pursue the view that the Order route, shown on the associated map, formed part of the direct route between Newbury and St Mary Bourne. However, this document bears examination of the descriptions of the various lots for sale.
22. The description of the location of Lot 11 (described as Peaked Piece and lying in the fork of the roads to Doiley Wood and Binley) states that it is bounded on two sides by the roads leading from Stoke to the Newbury Turnpike Road and to Cruxeaston. The turnpike road must refer to what is now the A343. The Order route does not strictly lead to Stoke, but goes around it (as pointed out by the OMA itself in relation to the OS drawing of 1808), and thus it seems to me that the description of the road from Stoke to the Newbury Turnpike in this case is a description of Doiley Bottom. This is significant when looking at the next document to which the OMA referred.
23. In 1863, the St Mary Bourne Vestry instigated an investigation into public and private tracks of which the parish might be relieved of the duty of maintenance. A committee was appointed to look into the matter, and it included the Earl of Portsmouth. The Order route, named for the first time in the evidence as Rope Yarn Lane, was specifically recommended by the committee to be no longer publicly maintained, but the motion in this respect was not passed. The OMA considers, not unreasonably, that this evidence is strong evidence that Rope Yarn Lane was considered to be a highway.
24. However, this is almost immediately contradicted by the evidence from the same year of a Surveyors report, commissioned by the Whitchurch Highways Board. The Surveyor was directed to report on the names of all the Highways (except Turnpike Roads) and their length in each of the thirteen highway parishes comprising the district, dividing them into three classes:
 1. Roads of primary importance
 2. Roads of secondary importance
 3. Driftways which have never been formed into roads
25. The list of highways, dated 1863 June 30th, lists three class 1 roads; two class 2 roads; and six class 3 driftways within the Tithing of Stoke in the Parish of St Mary Bourne. None of these routes obviously includes Rope Yarn Lane. I note however, that it does include Doiley Down Road in the Driftway class. One of the routes which the Vestry committee had proposed ought not to be repaired at public expensed was Doiley Down Drove. The motion was lost. It would seem likely to me that Doiley Down Drove is the road listed in the driftway section of the Surveyors report as Doiley Down Road (a drove being a driftway). Thus it seems to me that if Rope Yarn Lane was considered by the Vestry to be a highway, it would have been included on the list provided by the Highways Board Surveyor.
26. The OMA explains the absence by postulating that Rope Yarn Lane formed part of the route from Newbury Road by Doiley Wood and described as a route of primary importance. The OMA, not unreasonably, considers that if Rope Yarn

- Lane was repairable at public expense it must have been considered to be a highway.
27. Mr Batchelor disputed the OMA interpretation by challenging the measurement of 2 miles 3 furlongs and showing that it did not match the route suggested by the OMA.
28. I consider that there is another possibility, and that is that Rope Yarn Lane may have been considered to be a highway which did not conform to any of the classes which the Highway Board Surveyor was asked to record. If Rope Yarn Lane was considered to be a footpath or a bridleway, it would still be legitimate to repair it at public expense, but it would not be either a class 1, 2 or 3 route as set out above. I have already indicated that I do not think that the Order route was a route of strategic importance, and equally I do not consider that it formed part of the route from Stoke to the Newbury Road for reasons which I have expressed in paragraph 22 above. If it is right that the Vestry would not have been empowered to spend public money on any track that was not a highway, this seems to me to be a logical way of reconciling the apparent anomaly. It may have been a private track over which there were public footpath or bridleway rights. This would not be an unusual situation.
29. Whatever the truth of the situation I do not accept that the Order route formed part of the class 1 route described by the Highway Surveyor as being the road from Newbury Road by Doiley Wood. Thus the 1863 Vestry Minutes cannot be interpreted as showing that the Order route was a vehicular highway, although I accept that the Vestry minutes do indicate that it was likely to be a highway of some sort.
30. Moving on to OS maps from the later part of the 19th century, the 1866 edition shows the Order route and Rope Yarn Cottage. Mr Batchelor considers that the name of the cottage and the lane suggests a connection with the rope making industry and, in Mr Sheerman's statement, suggests that the lane may have been a rope walk, and not a highway.
31. I accept that the name suggests that there is a connection with the local rope-making industry, but not that the Order route was a rope walk.¹ Rope walks are usually found at the place of manufacture as far as I am aware and no evidence of rope manufacture in the village has been presented to me. I consider it much more likely that the surrounding fields were used to grow hemp or other crops used for making ropes. I do not find the name given to the lane is evidence that it cannot be a highway.
32. The 1873 edition of the OS maps came with an accompanying Book of Reference, and the OMA pointed out that Rope Yarn Lane is described as a 'road'. It is separated from the Binley Bottom road on the map by pecked lines and the OMA considers that it is therefore shown as a through route.
33. I note that the description appears to relate to all the roads in the parish since they all appear to be part of the same parcel number. I accept that this is good evidence that all the roads appear to have been treated by the OS in a similar fashion, but caution must be exercised in inferring that this also means that they are all highways. If there were no other information to gainsay this inference, I might be more ready to accept this as good supporting evidence,

¹ A long straight lane or building where the rope strands are laid out for formation into the rope itself.

but the results of the Surveyors report from only 10 years earlier do introduce a significant element of doubt about the Order route, particularly in terms of the existence of public vehicular rights.

34. A further set of sales particulars dating from 1891 were submitted by the OMA who considered that the Order route was shown excluded from the land for sale in the same way as other public highways. The notation 'from Newbury' and 'from St Mary Bourne' on the north western and south eastern extremities of the plan respectively was said by the OMA to support their contention that the Order route was part of a continuous route from one to the other. Mr Batchelor however considered that the sales particulars did not provide evidence of the public status of the Order route. He took the view that the roads would have been listed separately as they would not be viable agricultural land. Furthermore, land on either side of the Order route might have been bought by different people. Common law ownership to the centre line would have been assumed by the respective owners.
35. As pointed out by the OMA, the sales particulars actually indicate that the land on either side of Rope Yarn Lane was part of the same sale lot, and as the site visit indicated, the two parcels of land on either side are accessed by gates part way along Rope Yarn Lane. Whether that has always been the case was not clear, but since Rope Yarn Cottage was also positioned along the lane it would certainly be necessary to use the lane to access that property. The apparent prominence given to the Order route on the map in the sales particulars may have been nothing more than exaggeration of an access route to property that was for sale.
36. I consider that to infer from the notation that Rope Yarn Lane was part of the through route from St Mary Bourne to Newbury is rather a stretch of the imagination. Looking at other plots for sale I note that Lot 5 is described as abutting the high road to Newbury. Lot 5 is south of the Order route so it would be hard to see Rope Yarn Lane as part of that high road. Similarly, Lots 14 and 12 are also described as abutting the high road to Newbury, as is Lot 22. The location of these plots indicates that there was likely to be more than one 'high road to Newbury' since Lot 22, in particular, is not adjacent to the route past Doiley Wood. Nevertheless, none of these routes obviously includes Rope Yarn Lane.
37. The 1895 OS map introduces what is called 'shading' to some of the routes shown. From 1884 onwards, on these large scale plans, metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were shown with shaded or thickened lines on the south and east sides of the road. Although the OMA considered that the 1895 map showed the Order route in a similar fashion to the first edition, Mr Batchelor pointed out that the shading applied to the route from Gangbridge to Binley, and that the Order route was noticeably narrower than other routes depicted. I agree with Mr Batchelor that this indicates that Rope Yarn Lane was not, at that stage, considered to be the main route.
38. This does not rule out the potential for highway status of some sort, and neither does it rule out public vehicular rights on its own. But in conjunction with the earlier evidence from the Surveyor, I remain of the view that there must be some doubt about the existence of public vehicular rights. Furthermore, as pointed out by Mr Batchelor, from around this time the OS

started to include a disclaimer on their maps to the effect that the depiction of a route was not evidence of a right of way over it.

20th Century Documents

39. The mapping evidence from the OS and Bartholomews maps, into the 20th century, continues to show the Order route but, as stated by Mr Goodchild, in a manner reflecting its reducing importance and, presumably, use. Mr Batchelor produced the 1902 Bartholomew's map, on which the Order route is shown as not being even an 'indifferent' route according to the key; and the 1903 OS map at 1" to 1 mile which depicts the route as being of little importance – not as prominently as the single track roads in use today. Whether or not Mr Batchelor is correct in his interpretation of the key to this map, I accept that the route is shown as a minor route. A number of other maps produced by Mr Batchelor as part of Mr Sheerman's statement vary in whether they show the route or not, but in his opinion none of them show the route as being of any importance. The 1908 larger scale OS map at 1:2500 seems to show the route as in previous editions, and my views in relation to this map in terms of its evidential value are the same as those I have already expressed.
40. Sales plans from 1911 continue to show the route excluded from the land for sale, and the OMA maintained their view that it was part of a continuous route between St Mary Bourne and Newbury as it was the most direct route. In my view, this information might be taken to be of no greater significance than its depiction on previous sales documents. However Mr Scrase produced some late evidence in the form of a copy of one of the maps used as part of the process of assessing land tax in accordance with the provisions of the Finance Act 1910. Mr Scrase offered no interpretation of the evidence other than to direct me to guidance produced by the Planning Inspectorate on the value of such documents. The OMA explained that they had not examined the Finance Act documents due to the lack of financial and staff resources (the documents are held at the National Archives in Kew).
41. The Order route is shown excluded from the taxable hereditaments surrounding it. One of the reasons for the exclusion of land from tax was because it was considered to be land held by Rating Authorities. The ownership of highways which are publicly maintainable is generally considered to be vested in the Highway Authority and thus the exclusion of a linear route from the taxable hereditaments would suggest that it was publicly maintainable highway land.
42. The OMA did not appear to place much weight on the evidence of the Finance Act 1910, but Mr Scrase clearly believed that it was significant evidence. Mr Batchelor was not familiar with this type of document and could offer no comments on it.
43. The evidence from the Vestry Minutes shows that the Order route had been maintained at public expense, and the map provided by Mr Scrase suggests that, in the early part of the 20th century it may still have been acknowledged to be effectively in public ownership. I note that the land is currently not registered to an owner at the Land Registry, and Mr Sheerman's claim to ownership rests on the common law principle of *ad medium filum*. I find the Finance Act 1910 information helpful in suggesting that the Order route was considered to be a highway of some description, separated for land tax assessment purposes from the surrounding hereditaments. The route remains physically separated from the surrounding fields today, with all the

appearances of a sunken lane, and this accords with its depiction on the OS base map and the information superimposed by the Finance Act 1910 surveyors. The lack of a registered owner also supports the existence of highway rights, given the topographical situation.

44. In 1935/37, a planning scheme was drawn up for the area which includes the Order route. Both Mr Batchelor and the OMA produced documentation from this exercise, although it would appear that the OMA documents post-dated Mr Batchelors. The documents produced by the OMA are from a bound document, signed by the Chairman and the Clerk of the Joint Planning Committee, and show Rope Yarn Lane as a highway over which the public have a right of way. Mr Batchelor's map shows Rope Yarn Lane with no colour, but he submitted no key to accompany the map. The OMA subsequently produced an identical map from 1935, which did contain a key but shed no light on the status of Rope Yarn Lane. As it pre-dates the copy of the bound document submitted by the OMA I assume that it was a map used in the preparation of the final document, but not the final document itself. I therefore place more weight on the information provided by the OMA in the form of the bound and signed document. I note that there are other tracks marked on the Joint Planning Committee map with the same colouration at Rope Yarn Lane, and today these are shown as a mixture of public footpaths and un-coloured routes on the present day OS map at 1:25000.
45. Other later documentation produced by Mr Batchelor shows that Rope Yarn Lane was not listed amongst the highways handed over from Whitchurch Rural District to Hampshire County Council in 1929 and, consequently, it does not feature in the County Council's survey undertaken post-handover to estimate maintenance liabilities. Neither was it claimed as a public right of way during the process of producing the Definitive Map and Statement which followed the enactment of the National Parks and Access to the Countryside Act 1949. The OMA produced correspondence dating from 1986 from a Mr Prior who contacted the OS to highlight what he considered to be a mistake: Rope Yarn Lane was coloured as a road when he considered it was a bridleway. The OS acknowledged that they had incorrectly coloured Rope Yarn Lane as a road, but stated that they had not had any notification from Hampshire County Council of its public status.
46. The County Council subsequently wrote to Mr Prior to confirm this, but invited him to submit evidence of its status if he wished. Nothing appears to have been forthcoming until Mrs Wood submitted her application in 2012, although the status of the route was queried by the Parish Council in 2007, largely in relation to a fallen tree causing an obstruction. This was reported the following year as having been cleared, but Mr Sheerman claims it was he who cleared it and not the County Council, confirming in his view that the route was not a right of way and it was not being publicly maintained.

Use of the route

47. The OMA made it clear both in their statement and at the hearing that they were not relying at all on the user evidence which had been submitted. Apart from Mr Prior's anecdotal evidence mentioned above, the evidence of use consists of a letter from the Trail Riders Fellowship to the County Council in 1996, indicating that their members had ridden along Rope Yarn Lane at some point, and eight user evidence forms submitted with Mrs Wood's application.

48. In the light of the OMA's statement, Mr Batchelor pointed out that he had not addressed the user evidence in preparing Mr Sheerman's statement. Mr Sheerman himself was adamant that he had never seen anyone using the route, and not seen any signs of use by equestrians. He stated that due to attacks on his own horses, kept in the fields either side of the Order route, he had been very vigilant. He also stated that he had blocked the route because of problems with fly tipping, which the OMA acknowledged was a problem in that part of the county due to changes in waste disposal arrangements.
49. I am reluctant to place much weight on the user evidence as there has been no opportunity to test it, and it is, in any case, rather scant. However, the physical appearance of the Order route, both as a sunken lane and with a worn track still visible on much of the obstructed section, does suggest that there has been regular use of the way by more than just Mr Sheerman. Mr Sheerman clearly tends to use the northern end of the route to access his fields, and there are clear vehicular tracks on that section, in contrast to the southern section.
50. Nevertheless, the evidence of use, scant though it is, does indicate that some public use of the Order route has taken place, which supports its reputation as a public right of way.

Summary of evidence as to status

51. The documentary evidence supports the existence of the Order route for over 250 years, and also indicates that it has at some point been considered to be publicly maintainable. This is strong evidence that it was a public highway. However, the fact that it was considered by the Vestry in 1863 to be a matter of debate does suggest to me that it was not, even then, a route of any major significance. This is supported by its omission from many smaller scale maps where the strategic routes are shown, but Rope Yarn Lane is not. I cannot accept the contention by the OMA that Rope Yarn Lane formed part of the principle route from St Mary Bourne to Newbury.
52. I agree with Mr Batchelor that the name suggests a connection to the rope industry, but I consider it more likely than not to refer to the growing of rope yarn and not the making of ropes. I have no evidence to show how that crop was transported to the rope makers, and it may have been by pack horse or by agricultural vehicles. Nevertheless, such traffic may only ever have been related to that trade, and not necessarily demonstrate use by the public.
53. Having not accepted the OMAs contention with regard to the nature of the route, the omission of the route from the 1863 Highway Board Surveyor's report indicates to me that the route was not likely to have been considered as an all-purpose road. There is no evidence that it has ever been metalled, in contrast to the surrounding and linking routes, and recent user evidence in vehicles by the public, whether mechanically propelled or not, is insufficient for me to rely on to demonstrate public vehicular rights.
54. The evidence of the Finance Act 1910 is supportive of highway rights, and the 1937 Planning Scheme is also supportive of highway rights, but the latter in particular re-affirms the impression that it may have been considered to be less than an all-purpose road, due to the terminology used. This is further supported by the subsequent recording of some of the similarly depicted routes as public footpaths.

55. The absence of the route from any of the 20th century highway handover records further supports that the route was not considered to carry public vehicular rights, but the failure to claim the route as part of the Definitive Map process demonstrates that there may have been some confusion about its status.
56. I am satisfied on the balance of probabilities that Rope Yarn Lane is a highway, but not that it carries public vehicular rights. The question to be addressed is whether or not it is a footpath or a bridleway. Given its topographical surroundings and its appearance, and the fact that it was excluded from land tax assessment and from sales particulars, I consider that it is likely to be more than merely a public footpath. I therefore conclude, on the balance of probabilities, that Rope Yarn Lane ought to be recorded as a bridleway.
57. This will require a modification to the Order which will need to be advertised.

The NERC Act

58. Given my conclusion on the status of the route, I have not needed to address the vehicular exemption issues in relation to the NERC Act.

Width of the route

59. Mr Sheerman considered that the width of the route as set out in the Order was excessive, and that it was barely 2 metres wide for the most part. At the site visit it was clear that the northern part of the route, in regular use by vehicles, is currently only wide enough for one vehicle. Further south, the vegetation has grown in to the extent that the width is considerably narrower.
60. Nevertheless, I am satisfied that the width of the route to be recorded is the width between the centre lines of the hedges on either side where appropriate; and that, in the absence of any other evidence, the width should be taken from an early edition of the 1:2500 map. I note that the width of the Order route on the Order plan has been shaded in accordance with the guidance from Defra.² It does not include the land which was previously the location of Rope Yarn Cottage.

Other Matters

61. Issues relating to the health and safety of users of the path, both the public and those carrying out agricultural operations, are not matters which I can take into consideration. I have not allowed these matters to influence my decision.
62. Neither have I allowed issues such as the security of premises or the well-being of stock to influence me. Distressing as it may be, acts of vandalism and attacks on stock are not matters which relate to the existence or otherwise of a highway. The investigation of crime is a matter for the police.
63. The worries about the environmental impact of allowing the public access to the Order route are equally not a matter which relates to the existence or otherwise of highway rights. It is not appropriate for me to take these issues into consideration and I have not done so.

² 'Non-Statutory guidance on the recording of widths on public path, rail crossing and definitive map modification orders' – Letter to all Order Making Authorities 12 Feb 2007

Conclusions

64. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that the Order should be confirmed with modifications.

Formal Decision

65. I propose to confirm the Order subject to the following modifications;

- All references in the Order and on the Order plan to 'restricted byway' to be deleted and replaced by references to 'bridleway'.
- The notation of the route on the Order plan to be amended to show the symbol for a bridleway as far as is practicable.

66. Since the confirmed Order would show as a highway of one description a way which is shown as a highway of another description in the Order as submitted, Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Helen Slade

Inspector

APPEARANCES

FOR THE ORDER MAKING AUTHORITY:

Harry Goodchild
Sylvia Seeliger

Map Review Officer, Hampshire County Council
Senior Map Review Officer, Hampshire County Council

IN SUPPORT:

Pauline Wood
Sue Prior
Peter Scrase
Caroline Hoyes
Tony Styles

Applicant

Parish Councillor, St Mary Bourne

FOR THE OBJECTOR:

Gordon Sheerman
Edward Batchelor Snr
Dan Sheerman

Statutory objector

DOCUMENTS

- 1 Statement of Case and Appendices, Hampshire County Council
- 2 Original Submission Bundle, Hampshire County Council
- 3 Letter and Statement of Case, Pauline Wood
- 4 Statement and Case and Appendices, Gordon Sheerman
(prepared by Edward Batchelor)
- 5 Copies of maps relating to Finance Act 1910, Peter Scrase
- 6 1935 Joint Planning Committee Map and Key, Hampshire County Council

HAMPSHIRE COUNTY COUNCIL

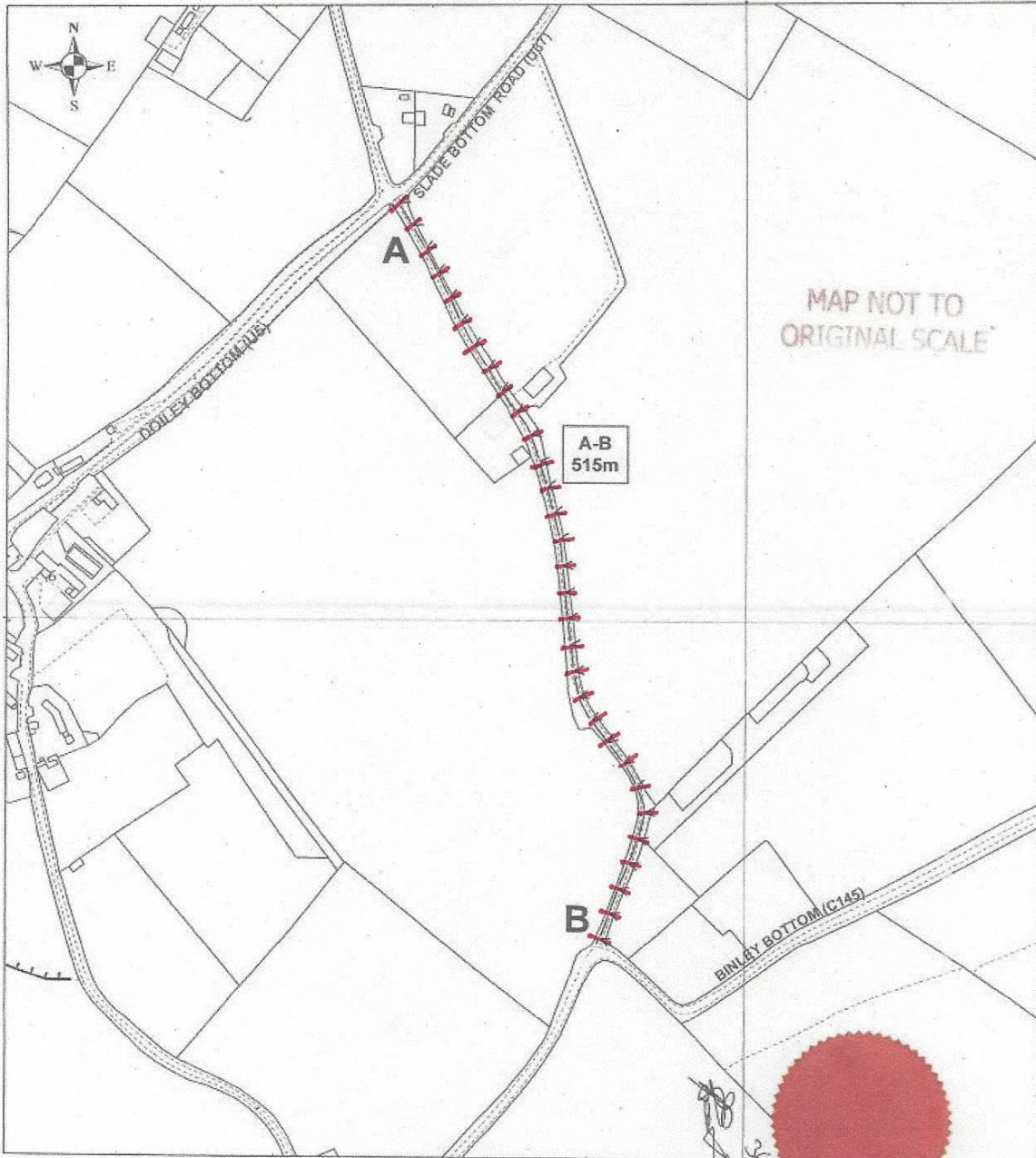
WILDLIFE AND COUNTRYSIDE ACT 1981

MAP REFERRED TO IN THE HAMPSHIRE

(BASINGSTOKE AND DEANE BOROUGH NO. 49)

(PARISH OF ST MARY BOURNE)

DEFINITIVE MAP MODIFICATION ORDER 2016



SCALE 1:2,500

LEGEND

Bridge way
RESTRICTED BYWAY
OF VARIABLE WIDTH TO BE
ADDED TO THE MAP SHOWN:-



MAP No 463 PRODUCED FROM DIGITAL DATA
SUPPLIED BY ORDNANCE SURVEY

THE COMMON SEAL OF HAMPSHIRE COUNTY
COUNCIL WAS HEREUNTO AFFIXED IN THE
PRESENCE OF:-

AUTHORISED
SIGNATORY

DATE *27 October 2016*

REPRODUCED FROM THE O.S. MAPPING
WITH THE PERMISSION OF THE
CONTROLLER OF HMSO & CROWN.
UNAUTHORISED REPRODUCTION
INFRINGEMENTS OF CROWN AND MAY LEAD TO
PROSECUTION OR CIVIL PROCEEDINGS.
HCC LICENCE No. 109019180 DATE 13.10.16

KAREN MURRAY,
DIRECTOR OF CULTURE, COMMUNITIES
AND BUSINESS SERVICES, WINCHESTER