



Order Decision

Inquiry opened on 20 July 2022

Site visit made on 19 July 2022

by Alan Beckett BA MSc MIPROW

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

Decision date: 14 December 2022

Order Ref: ROW/3271783

- 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 (Hart District No. 27) (Parish of Bramshill) and the Wokingham Borough Council, Parish of Swallowfield (Swallowfield Byway Open to All Traffic 38 and Swallowfield Restricted Byway 39) Definitive Map Modification Order 2019.
- The Order is dated 9 April 2019 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic and a Restricted Byway as shown in the Order plan and described in the Order Schedule.
- There were 2 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision.

Procedural Matters

1. The inquiry opened on Wednesday 20 July 2022 and sat for three days in total. Whilst it had been possible to hear all the live evidence by the end of the second day, other commitments of the parties meant that it was not possible to hear closing submissions on Friday 22 July. The inquiry adjourned until Monday 8 August 2022 and resumed as a virtual event by video conference.
2. If confirmed, the Order would record a public right of way from a point on Jouldings Lane (point A) to Well House Lane (point D) crossing the county boundary between Hampshire and Wokingham at point C. Given the cross-boundary nature of the Order route, agreement had been reached between Hampshire County Council ('HCC') and Wokingham Borough Council ('WBC') for HCC to make the Order. WBC adopted a neutral stance in relation to the Order and did not appear at the inquiry.
3. Prior to the inquiry opening, the principal parties had prepared a Statement of Common Ground ('SCG') which sought to narrow the matters in issue between them. The parties agreed that between points A and B the Order correctly describes the route as a Byway Open to All Traffic ('BOAT') but disagreed as to the width to be recorded. In relation to the width of A – B, HCC, Mr Stoate and Mr Saunders ('the Objectors') contend that the width for A – B should be recorded as that set out in the Order schedule whereas the British Horse Society ('BHS') disputes that width particularly in relation to Joulding's Ford, which the BHS contends should have a greater width based on an interpretation of historic documents.
4. In respect of the Order route between points B – C – D, the BHS maintains that the route should be confirmed as a Restricted Byway ('RB'), whereas the

Objectors contend this route should be recorded as a bridleway. Having undertaken a further review of the available documentary evidence, HCC is of the view that the documentary evidence does not support the route as being an RB, but that the available user evidence would support confirmation of this part of the Order route as a bridleway.

5. The parties are agreed that, if I were to reach a conclusion that B – C – D was not an RB, the available evidence is sufficient for this part of the route to be recorded as a public bridleway.
6. HCC supported the recording of the width of B – C – D as set out in the Order Schedule. BHS agrees with HCC regarding the width of B – C – D with the exception of the width at Joulding's Ford; at the ford, BHS argues for a greater width to be recorded based on its interpretation of historic documents. The objectors contend that the width of B – C – D should be significantly narrower than that which is set out in the Schedule (irrespective whether the route is an RB or bridleway).
7. BHS contends that there should be no limitations recorded in the Order. HCC and the Objectors submit that the limitations set out in Part III of the Schedule should be maintained if the route is confirmed as an RB on the basis of common law dedication, but removed if the Order is modified to record a bridleway on the basis of presumed dedication.
8. I am grateful to the principal parties for preparing the SCG and for the helpful and courteous way in which they endeavoured to assist me in the course of the inquiry.

The Main Issues

9. It follows that the main issues in relation to the Order are; (a) the status of the route B – C – D; (b) the width of the route A – B with particular reference to the width at the fording point of the river; (c) the width of B – C – D with particular reference to the width at the ford; (e) the nature of any limitations to be recorded in part III of the schedule.
10. The evidence adduced comprises both historic documentary evidence and evidence of recent user by the public on horseback and on foot. It will be necessary to undertake an examination of those sources before giving consideration to what conclusions can be reasonably drawn from that evidence. I will turn first to the documentary evidence.

Documentary evidence

11. The earliest documentary source submitted by the parties is Norden's 1607 map of the forests around Windsor. Roads between settlements are shown coloured pink. Just to the east of a point marked 'Farleyhill' is the junction of four roads; west to Swallowfield, north to Barkham, east to Finchampstead and south to the Blackwater. The BHS suggests that the route to the river is more likely than not to be the Order route A – B due to its position in relation to named features in the vicinity.
12. This map shows bridge crossings of the river Loddon east of Swallowfield and Aberfield whereas routes leading to the Blackwater are not bridged which suggests a means of fording the river was present. There is a very faint, short

- stub of pink on the Hampshire side of the river beyond B which suggests that the cartographer considered that the road continued south of the river.
13. Although the map is small scale and somewhat schematic, the route shown running to the river to the south of 'Farleyhill' and east of 'Wivoldes' is highly likely to be a representation of Jouldings Lane. The Norden map demonstrates that a route leading to and through the river was in existence at this location at the beginning of the seventeenth century.
 14. BHS has provided an extract from a paper written by Lt. Col. G A Kempthorne DSO published in volume 36 of the Berkshire Archaeological Journal (1932). Although this publication does not sit in chronological order with the documents being considered, part of the subject matter of that paper concerned a 1631 perambulation of the boundaries of the bailiwick of Finchampstead, one of the administrative areas of the Forest of Windsor. The Blackwater was the southern boundary of the Forest (the '*Sheire Stream*') with the boundary of the bailiwick being described in relation to identifiable features. Kempthorne's transcription is of the boundary following the '*Sheire Stream and so to Blackwater Bridge* (Eversely Bridge), *Oulde Ford* (Jouldings Ford) and *Thatcher's Ford*'. It is not known how Kempthorne identified Oulde Ford as Jouldings Ford, but given the description of the boundary from east to west in relation to known crossing points of the river, it seems probable that what was being described in 1631 was the existence of the ford on the order route.
 15. Taylors 1759 map of Hampshire shows a route crossing the Blackwater which corresponds to the Order route A – D where the route connects with a route which is likely to be Well House Lane. The key to the map shows that the route north of the river was a '*road inclos'd with Hedges*', to the south of the river the Order route is shown as a '*road open over Heaths Downs etc*'. This map, like the Norden map of 150 years earlier is small scale but demonstrates the continued existence of a route allowing travel between Berkshire and Hampshire via means of a ford through the river.
 16. Roque's map of Berkshire (1762 – 1764) is a highly detailed map which was stated to depict '*The main and cross Roads, Bridle Ways....appertaining to each parish etc*'. The map clearly depicts Jouldings Lane, the junction with BOAT 33 and that part of the Order route A – B leading to a crossing point of the river which is annotated 'Jouldins Ford'. As a map of Berkshire, Roque shows no detail on the Hampshire side of the boundary, but other crossings of the Blackwater are shown (Eversley Bridge, New Mill); a continuation of the Order route into Hampshire can be inferred, given the depiction of such a route on the earlier Taylor map.
 17. Under the terms of his 1779 will, Sir John Morduant Cope devised his Bramshill Estate to Trustees under strict settlement for a term of 500 years. The Bramshill Estate included Bramshill Common and other lands to the south of the Blackwater. It is the objectors' case that the Estate included that part of the Order route south of the river and that from 1779 until the sale of the Estate in 1935, successive 'tenants for life' had lacked the capacity to dedicate a public right of way over the land.
 18. Cary's maps of Berkshire and Hampshire published as part of his 'New and Correct English Atlas' (1787) are said to be based upon the earlier maps published by Taylor and Roque. If that is the case, it is unsurprising that Cary's

- maps show the order route crossing the Blackwater at Jouldings Ford providing a link between Berkshire and Hampshire.
19. Pride's 1790 map of 10 miles around Reading shows the entirety of the Order route as an enclosed way with the way through the river being annotated as Jouldins Ford. There is no key to the map to indicate what the cartographer considered was the status of the roadways being depicted although the legend to the map stated that '*main and Cross Roads*' were to be shown.
 20. Stockdale's map of Hampshire (1805) shows a route crossing the Blackwater from Berkshire via Joulding Ford to connect with a route over Bramshill Common which led to Eversely Bridge. The 1806 Ordnance Survey one-inch first edition drawing shows the Order route crossing the Blackwater at Jouldens Ford providing a link between Jouldens Lane, BOAT 33 and the edge of Bramshill Common. This depiction is repeated on the OS one inch map published in 1817.
 21. The Swallowfield Inclosure (1814 – 1817) plan does not provide detail of the Order route and land north of Joulding's Ford as it was not within the land being inclosed under the award. The line of what is now known as BOAT 33 is shown and is annotated '*To Bramshill Common*' at the parish boundary. A peck line route running south from BOAT 33 is annotated '*to Joulding's Ford and Bramshill*' at a point just north of the river. Although this document does not provide direct evidence relating to the order route, it indicates that traffic which could have used BOAT 33 would have been able to travel to Bramshill Common; the only feasible means of doing so would have been via the Order route.
 22. Cary's 1832 map shows the Order route crossing the Blackwater at Jouldings Ford. The route in Hampshire continues to Bramshill Common and then over the common to Ford Lane. Cary identifies this route as a '*parochial road*'. Walter's map of the vicinity of Windsor Forest (1823) shows the Order route A – B leading to Jouldin's Ford but a continuation into Hampshire is not shown. Attention is drawn by the objectors to other means of crossing the Blackwater (Thatcher's Ford, New Mill Ford) which are shown as continuing in to Hampshire and are annotated '*from Bramshill*' and '*from Eversley*' respectively. Although the route from Jouldings Ford is not annotated with a point of origin, this map is consistent with other earlier maps in showing a means of crossing the river into Hampshire.
 23. Greenwood's maps of Berkshire and Hampshire show the Order route in its entirety as an enclosed '*cross road*' (that is as a road which linked two other roads, not a point where two roads cross) which provided a means of access to the unenclosed '*cross roads*' which are shown running over Bramshill common. Although not determinative of the status of the route, it is likely that the map maker considered (rightly or wrongly) that the route being shown was one which the purchasers of the map were able to use.
 24. The Eversley tithe documents of 1837 show the Hampshire section of the Order route enclosed, coloured ochre and numbered '665' with the copy sourced from the National Archive suggesting the course taken through the river. The southern end of the route (where it currently meets Well House Lane) is separated from Bramshill Common by a solid line. This may indicate the existence of a gate or other feature, however it may be the cartographer's way of distinguishing the Order route from the common. Parcel 665 is recorded in

the apportionment under '*Roads and Waste in the Parish of Bramshill*' as '*Road through Swallowfield ford*'. Although the primary purpose of the tithe commutation process was not the recording of public rights of way, the exclusion of the Order route from tithe and its inclusion amongst those routes assessed as being 'roads' provides some support to the claim that this route had the reputation of a public carriageway.

25. The Swallowfield tithe documents of 1838 show the Order route north of the river coloured ochre, enclosed and separate from the surrounding lands. The Order route is not distinguished in any way from the remainder of Jouldings Lane or from BOAT 33. The map is annotated 'Jouldings Ford' with that annotation being partly in Hampshire and partly in the centre of the splay of the river. The road network within Swallowfield does not appear to have been separately identified by the inclosure commissioners (unlike in Eversley); the apportionment provides a composite figure of 243a 3r 33p for the '*commons waste lands roads and rivers*' within the parish. The tithe documents suggest that the part of the Order route north of the river was considered to be of the same status as Jouldings Lane and BOAT 33.
26. The deposited plan for the prospective Bristol and Dover Direct Junction Railway of 1845 shows the railway to have been planned to cross Bramshill Common to the south of the Order route. Although C – D was outwith the limits of deviation of the proposed scheme, it was shown on the deposited plan as being fully enclosed between hedges or fences, annotated '47' and with shown as leading to '*Swallowfield Ford*'. The book of reference records this parcel as being a '*parish road*' in the ownership of the '*Surveyor of Highways*'.
27. The southern end of the Order route connected to two plots shows as '41' and '51' which were listed in the book of reference as 'roads' in the ownership and occupation of Sir John Cope. The Objectors submit that the recording of the Order route as a 'parish road' is likely to have been a mistake as there was no public outlet for traffic using that road where it met the private road belonging to Sir John Cope.
28. A distinction appears to have been drawn by the railway company's surveyor between the Order route as a 'parish road' and those unenclosed routes over the common (shown as 'roads' or 'occupation roads'). Some weight can be attached to the railway plans as it is likely that enquiries would have been made locally by the railway company as to the status of routes in the neighbourhood as there were financial implications in relation to the infrastructure that would be required as part of the construction of the railway. Although not conclusive, this deposited railway plan is consistent with other documentary sources as regards the reputation of the Order route as a public through route.
29. The 1896 deposited plan for the Wokingham and Basingstoke Railway was projected to follow a similar alignment to the unbuilt Bristol and Dover Direct Railway. Part of the Order route C - D is shown on the plan but is not annotated as it was outside the limits of deviation. In contrast to the Bristol and Dover Direct railway plan, the 1896 plan is limited in detail and shows Bramshill Common as having no tracks or ways crossing it. Bramshill Common is described in the book of reference as owned and occupied by Sir John Cope; the Objectors submit that this demonstrates that the Order route did not have an outlet to a public road in 1896.

30. Snare's 1846 map of ten miles around Reading shows the Order route as an enclosed lane crossing the river at 'Joulders Ford' leading to the edge of Bramshill Common. Other than an unenclosed track over the common to the ford at New Mill, no routes are marked over Bramshill Common. Given the depiction of a route which accords with Well House Lane on earlier maps, the absence of a continuation route over the common on this map does not mean that the Order route was a cul-de-sac or that a means of onward travel south from D would not have been possible.
31. The Swallowfield inclosure award of 1865 inclosed and awarded areas of waste either side of the Order route north of Jouldings Ford. Although the BHS contends that these parcels were highway waste, the Award describes these parcels as '*common of pasture*' with the allottees being required to fence their awarded land '*Against the Road*'. The award map depicts Jouldings Lane, its junction with BOAT 33 and the Order route north of the river. None of these routes appear to have been directly impacted by the inclosure.
32. The OS boundary remarks books for Bramshill and Swallowfield parishes (1871) record the location of the parish boundaries of Swallowfield, Bramshill and Odiham in the mid-nineteenth century. On the Swallowfield sketch, two parallel lines to the west of the ford appear to indicate the presence at that date of a footbridge over the river. The boundary between Bramshill and Odiham south of the river is shown as running along the centre of the Order route ('C.R.' (centre of road)). The boundary sketch also shows a solid line drawn over the width of the route towards its southern end; this probably denotes the presence of a gate.
33. The OS six-inch to one-mile map of 1871 shows the configuration of routes leading to Jouldings Ford in a similar way to earlier mapping already considered. A foot bridge is shown to have been present at the ford at the date of the map. The map provides evidence of the continued presence of the Order route in the landscape, but not of its status. The first edition 25-inch to 1-mile map of 1871 shows an indicative line of the route through the ford with that part of C – D in Odiham being annotated '11'. In the book of reference parcel 11 is described as 'Road', but does not provide any evidence as to whether that road was considered to be public or private.
34. A plan of the 1881 diversion of part of Sandpit Lane and BOAT 33 shows the relationship of the road being diverted with the wider highway network. The Order route crossing the river via Jouldings Ford formed part of that wider network. The crossing point through the river is shown coloured ochre and is of a width which corresponds with the width of C – D south of the river. Although not directly related to the part of Sandpit Lane being diverted, the diversion plan demonstrates that A – B, the ford and the continuation south in Hampshire were regarded as part of the highway network of the area.
35. The second edition OS 25-inch to 1-mile map (1896-1899) and the third edition map of 1911 both show the Order route as being enclosed by fences or hedges with the exception of the sections south of point Y and between A and X where the route is marked in part by peck lines as it runs through otherwise open ground of the common (at the southern end) or in the vicinity of the ford. Like the earlier Sandpit Lane diversion order map, the 25-inch OS maps also marks the course of the road through the ford. On the 1896 map the Order route appears to be gated at point X but is open to the common at point Y; whereas

- on the 1911 map the reverse is shown. The footbridge shown on the earlier OS map is no longer present. The OS maps demonstrate the existence of the Order route as a physical feature in the landscape at the date of publication but are neutral with regard to status.
36. Bartholomew's map (1904 – 1920) shows the Order route amongst those roads considered to be '*inferior and not to be recommended to cyclists*'. Whereas the route may not have been recommended to cyclists, it was considered to be open to vehicular traffic as it was not shown by means of a single peck line which was used to indicate footpath and bridleways.
37. On the Finance Act 1910 plans the Order route is shown north of the river as being excluded from adjacent hereditaments in the same way as Jouldings Lane and BOAT 33 and is indicative of the perceived status of the route at that time as being a public carriageway. South of the parish boundary, the Order route in Hampshire (O.S. parcel 7) is included as part of hereditament 34 owned by the Bramshill Estate. Also included within hereditament 34 are Well House Lane and Ford Lane, both of which are now public carriageways.
38. The BHS submits that although the valuation plan appears to show the Hampshire section of the Order route as part of hereditament 34, the description in the field book of those OS parcels which made up hereditament 34 did not include OS parcel 7, nor O.S. parcel 12 (Ford Lane). It is suggested that as hereditament 34 primarily comprised low value rough grazing and common, the valuer did not mark out on the map those routes excluded from the hereditament in the field book, as including the roads would have had little impact upon the value of the plot as a whole. BHS considers that the Order route had been excluded from the valuation as it was part of the carriageway network of the area.
39. In the OS Object Name Books Jouldings Lane is recorded as a '*parish road leading southward from the Fox and Hounds P.H. to Jouldings Farm Ford*'. It is not known when the alteration was made, but it is evident from the earlier maps considered that Jouldings Lane did not lead solely to Jouldings Farm. The correction to the objects name book is consistent with other available evidence.
40. Jouldings Ford is recorded (in the Berkshire object name book) as applying to '*a ford on the Blackwater River close to Jouldings Farm*' and (in Hampshire) as being '*a ford in the Blackwater river situate 17 chains N.W. of Well House Farm*'. Authority for the spellings in Berkshire was given by the Parish Overseer and in Hampshire by Sir Antony Cope. In correspondence to the OS surveyor, Sir Antony Cope noted that there were no public rights over Bramshill Common. The name books provide supporting evidenced as to the status of the Order route north of the Blackwater but are of little assistance with B – C – D as the Order route south of the river is not named on the 25-inch maps.
41. The map produced for the handover of highway maintenance responsibilities from Hartley Witney Rural District Council to Hampshire County Council in 1929 show the roads which were considered by the RDC to be publicly maintainable. Well House Lane is coloured to show that it was publicly maintainable, but the Order route C – D was not.
42. Subsequent highways maintenance maps for Hampshire show Well House Lane as being publicly maintainable, but those records do not include the Order

- route C – D. The Order route A – B is shown on the Wokingham RDC map as being publicly maintainable to the norther edge of the ford.
43. Extracts from the minutes of Swallowfield Parish Council of 28 August 1931 and 2 February 1948 refer to Jouldings Ford. The earlier minute notes correspondence received from the 'Footpaths Preservation Society' which complained of a tree lying across the road at Jouldings Ford, whereas the latter minute notes the response from the Berkshire County Surveyor that as the ford lay within Hampshire 'any improvement' to it would have to come from that Council.
44. Whilst not providing evidence of the status of the route, the minutes demonstrate that the parish councils of the day considered the ford to be open to the public and that any (unspecified) 'improvements' which may be required may be the responsibility of the neighbouring highway authority. The minutes suggest that the parish council considered Jouldings Ford was part of a public right of way.
45. The 1952 sale particulars for the Bramshill Estate show the Order route C – D (OS parcel 152) as being separate from Lot 7 (to the east) and Lot 10 (to the west). Lot 10 is coloured pink and whilst the majority of the Order route is uncoloured on the sale plan, some pink has 'bled' into the line of the Order route. The description of the contents of Lots 7 and 10 does not include any part of OS parcel 152.
46. The sales particulars did not assign or include private rights over the Order route for the benefit of Lots 7, 10 or 11 (Bramshill Common). The BHS submits that this is likely to have been due to the public nature of the Order route providing a means of access over the whole route (and not just that half immediately adjacent to the land being sold) so that no private rights of access were required to be granted.

Conclusions on the documentary evidence.

47. When considering the application and in reaching its conclusion that the Order should be made, HCC had been of the opinion that the documentary evidence adduced had been sufficient for a reasonable allegation to be made that the Order route was a public carriageway, albeit that a restricted byway could only be recorded B – C – D due to the operation of section 67 (1) of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act').
48. HCC had reviewed the documentary evidence and its conclusions in the light of the evidence relating to the 1779 will of Sir John Cope and the settlement of the Bramshill Estate which followed. Following that review, HCC concurred with the view of the Objectors that the impact of the 1779 will was that there was no owner with the capacity to dedicate a public right of way over that part of the Order route which formed part of the estate. I understand that the Cope family sold their estate in 1935 following the coming in to operation of the Settled Land Act 1925. Under the terms of the 1779 will, the tenant for life would have lacked the capacity to dedicate public rights, either expressly or impliedly. It is from the documentary evidence that an inference of dedication at some indeterminate point of time is usually drawn.
49. The position is that the Objectors and HCC consider that inferred dedication at common law is not possible in this case due to the terms of the 1779 will. The

BHS also accepts this principle but submits that the settlement would not prevent an inference of dedication being drawn prior to 1779 or after 1935. I agree with that proposition.

50. The BHS's case is that the Order route is ancient in origin and that it was a feature in the landscape before the inclosure of the lands either side of it. Furthermore, the BHS contend that the documentary evidence demonstrates that if the ford and the route to the south was not a public route, there would be little point in BOAT 33 and Jouldings Lane converging there; without a public route running south from the ford, these other acknowledged public carriageways would have provided a circuitous route from one side of Farley Hill to the other.
51. The evidence in this case which pre-dates the 1779 settlement comprises the Norden map of 1607, the twentieth century transcription of a seventeenth century (1631) perambulation of the boundaries of the Finchampstead bailiwick, Taylor's map of 1759 and Roque's map of 1762. These documents depict routes to the north of the river which are likely to have formed part of the carriageway network of the time (and which are recognised now as public vehicular routes) converging at a fording point of the river which is more likely than not to be Jouldings Ford.
52. Norden's map shows routes crossing the county boundary in pink and there is a hint of that colour south of the ford which suggests that the route was considered to continue south into Hampshire. The 1631 perambulation does not provide evidence of what was present on the Hampshire side of the boundary as it was concerned solely with the boundaries of the Finchampstead bailiwick, however, it does provide evidence that the ford on the order route was an important feature along that boundary as does Roque's map of 1762. Taylor's map of Hampshire shows a through route via the ford which would have provided a means of travel between those communities north of the river in Berkshire and those south of the river in Hampshire.
53. These documents demonstrate that for a period of around 170 years prior to the settlement of the Bramshill Estate in 1779, a cross border route existed which provided a means of travel and communication between Berkshire and Hampshire via Jouldings ford. The convergence of known public carriageways (Jouldings Lane and BOAT 33) near to the ford suggests that any traffic using those routes was highly likely to be making use of the ford as a means of crossing the border into Hampshire.
54. If that was not the case, and the route south from the ford was wholly private, then the confluence of BOAT 33 and Jouldings Lane would have provided nothing more than a circuitous means of travelling from one side of Farley Hill to the other. Although the number of documentary sources which pre-date the 1779 settlement are few in number, they present a consistent picture of the availability of a cross border route capable of supporting all forms of public traffic.
55. Those small-scale maps which post-date the 1779 settlement are in the main consistent in the depiction of the order route as a through route and there is some indication from those maps as to what the cartographers knew or believed the status of the routes to be. Pride's map depicted what were considered to be the '*main and cross roads*' in the area; the Swallowfield inclosure plan noted that the continuation of BOAT 33 was a route to '*Jouldin's*

ford and Bramshill'. The makers and publishers of nineteenth century commercial small-scale maps are likely to have considered the routes depicted were those which were open and available for the travelling public to use.

56. There is a continuity in the depiction of the order route throughout the documentary evidence during the period of settlement which is consistent with it having the reputation of a public carriageway. The tithe award for Eversley shows C – D as not being subject to tithe and is listed amongst the '*roads and waste*' of the parish and is specifically described as the '*road to Swallowfield ford*'. Although the Bristol and Dover Direct Junction railway was not built, the southern part of the Order route was recorded as a '*parish road*' in the ownership of the '*Surveyor of Highways*'.
57. Whilst the Finance Act plan shows C – D to be part of hereditament 34, the field book entry for that hereditament does not list the order route as having been assessed as part of it. It is acknowledged that the Finance Act evidence in this case may be contradictory, but the absence of the Order route from the valuer's assessment is consistent with the documentary evidence which pre-dates the valuation survey.
58. The Bramshill estate sale particulars do not suggest that the Order route was sold as part of either Lot 7 or Lot 10, nor was a private right of access conveyed with either Lot. It is likely that a private right of access was not required over the Order route by the purchasers as access could be gained by virtue of the public right over it. Although there is evidence from the correspondence generated in relation to the OS name books that there were no public rights of way over Bramshill Common, the 1929 handover records demonstrate that Well House Lane was and had been a publicly maintainable route since before that date. Whilst the Order route does not appear to have been considered to be publicly maintainable, that does not preclude public rights from subsisting along it or from public rights having been dedicated over it at some indeterminate point in the past.
59. Taking the documentary evidence as I whole, I conclude that the Order route is one of some antiquity, and one that was in all probability in existence not later than 1607 as shown on Norden's map of that date. It is therefore likely that dedication of a route for all classes of public traffic occurred at some point before that date, but certainly before the settlement of the Bramshill estate in 1779.
60. Accordingly, I conclude that a public vehicular right of way subsists over the Order route, which in relation to B – C – D can only be recorded as a restricted byway as any mechanically propelled public vehicular rights would have been extinguished on 2 May 2006 by virtue of section 67 (1) of the 2006 Act.

User evidence

61. In support of the application, thirty-three user evidence forms were submitted which gave details of use of the Order route on horseback with the earliest use said to have taken place in 1965. Frequency of use ranged from once per week for most users with the use of others varying between twice per week to use only once per year. There is no suggestion from the user evidence forms that use was challenged in any way or that permission to use the route had been sought or obtained.

62. HCC submits that in relation to the question of whether a public bridleway can be deemed to have been dedicated under s31 of the Highways act 1980, the date use was brought into question is the date when the application was made to add the route to the definitive map; that is, March 2013. HCC's position on this matter is not challenged.
63. I heard from a number of witnesses at the inquiry as to their use of the Order route on horseback; however, the focus of the evidence was on use of B – C – D.
64. Mrs Brealey had ridden the order route approximately once per week between 1965 and 2000 and then at a lesser frequency. Although undergrowth and overgrowth had been heavy during the summer months it had always been possible to ride the route in the company of others even if that meant riding in single file. Ms Greenwood's evidence was that it had always been possible to ride along the route, and she had done so in the company of others going two abreast until arriving at the ford when 'all would be in the ford together', to allow the horses to cool off.
65. Miss Greenwood had ridden the route between 1985 and 1994 and recalled the route as being a wide dirt track of about 5 metres with hedges either side but was now much narrower due to the close board fences recently erected on the eastern side by the Objectors. The route through the ford was on a curve to the west due to a deep pool on the south-eastern side.
66. Mrs Smith had ridden the order route since 1985. Her recollection was that the route was wide enough for two to ride abreast in the winter when the vegetation had died back; in the summer the vegetation forced riders to ride single file. Mrs Kidney's evidence was of riding along side by side to have a chat whilst going by and had no recollection of anything constraining the width which had been available. There had been a fence along the eastern side of the track, but it had been of post and wire with vegetation growing through it; her horse had been prone to 'zig-zagging', but there had been sufficient room for the horse to meander. The route was much narrower following the erection of the close board fences.
67. Ms Champness' evidence was that the path had been wide enough to ride two abreast with her children weaving in and out on their own ponies; it had been possible to enter the ford side by side, ride through and emerge on the other side in the same formation. The close board fence recently erected had reduced the width which used to be available. I also heard from Mrs Connolly with regard to hunter trails which had taken place locally during the 1970 and which had used the ford as part of those trials, and of her daughter taking part in a sponsored ride in the 1990 which included the ford. Other evidence was given of long-distance endurance rides having incorporated the ford during the early years of this century.
68. Although the objectors submitted that they had not seen anyone riding the route, it was acknowledged that it would not have been possible to observe such use from their properties, and that they rarely, if ever, went along the Order route.
69. The frequency and duration of the use spoken to by the witnesses I heard from varied between individual users but reflects the untested evidence found in the UEFs. There is nothing in the user evidence to suggest that the claimed use

was not 'as of right' or that use was interrupted in any way. The evidence before me is of continuous use by the public on horseback since 1965 up to, and beyond, the date when use was brought into question. No evidence has been submitted to show that the owners of the land crossed by the Order route (whoever he, she or they may be) demonstrated an intention not to dedicate a public bridleway.

70. Although the user evidence is sufficient for a public bridleway to be deemed to have been dedicated through recent long use, any use of the order route by the public is, in my view, by virtue of the Order route having been dedicated at some indeterminate point in the past as demonstrated by the documentary evidence considered above and the conclusions drawn with regard to that documentary evidence.

Width

71. The Order seeks to record A – B as having a width which varies between 7.9 and 13 metres; C – D as having a width varying between 7.7 and 13 metres, with B – C at the ford in the river having a uniform width of 13 metres. HCC set out these widths in the Order based on an analysis and comparison between current OS mapping, the National Grid plan from the 1970s and the OS County Series map of 1895. HCC's view was that there was consistency between these three sources of mapping in respect of the depiction of the boundaries of the Order route and its separation from adjacent land.
72. HCC had prepared the Order based on its assessment of the documentary evidence prior to the evidence of the 1779 settlement being submitted. HCC remained of the view that the width of the route which would have been available to equestrians prior to March 2013 would have been that which had been consistently depicted on OS mapping since the late nineteenth century, and that there was no need for the width in the Order to be modified.
73. The Objectors contend that width to be recorded should be that which has actually been used by horseriders which would be of a lesser width than that set out in the Order. However, given the conclusions reached as to the status of the Order route and its antiquity, the width used in the recent past is unlikely to equate with the width which extant mapping suggests would have been available. In the absence of any documentary evidence such as an inclosure award which specifies the width of the route at issue, Advice Note 16 states that reference may be made to reliable sources of mapping such as the OS County Series maps. It is this advice which HCC appears to have followed when drafting the Order.
74. Whilst giving general support to the widths set out in the Order, BHS takes issue with the uniform 13-metre width specified for B – C at the ford. Whilst HCC had derived the uniform width from an assessment of the width of the route immediately north and south of the ford extending as a consistent corridor across the ford, the BHS contends that the width of the route at the river extended much further upstream and downstream as shown on some of the maps considered in evidence.
75. BHS contends that the land surrounding the ford and shown on some maps as unenclosed and part of the river, was part of the highway waste which reflected the availability of a broad crossing point whereby those seeking to cross the river were able to find the most appropriate place to do so.

76. The OS first edition 25-inch map shows the extent of the river by means of blue colourwash with the river extending to the south to point X on the order plan. The bank is shown as being tree lined at the date of the survey with the bank on the Hampshire side the river shown to follow a slightly more curved course. This map also shows by means of a double peck line the route through the river which is likely to reflect the surveyor's understanding of the available route through the river; this route lies to the east of what appears to be a footbridge.
77. The second edition map of the same scale also shows the course of the river by a blue colourwash, but on this edition the land to the north and south of the river previously identified as being covered by water is not shown as being part of the river. A route through the river is also identified by double peck lines which again indicates the position and alignment of the fording point as understood by the surveyor.
78. Other documents also show the extent of the river in the vicinity of the ford. Although the Eversley tithe records list plot 665 (the Order route south of the ford) as being amongst the 'roads and waste' of the parish, the river does not appear to be included in that assessment and the route through the ford on the west appears to be depicted by a line of dots. The Swallowfield tithe plan shows a wide splay of land west of the Order route prior to its later inclosure, with the extent of the river south of the ford hinted at by the use of a blue colourwash. The OS boundary sketch of 1871 also shows the extent of the splay in the river and is at one with the first edition 25-inch map in this respect.
79. The extract from the OS 1871 six-inch edition map appears to have been used for land management or estate purposes as the land either side of the order route in Hampshire has been coloured or edged brown and blue to distinguish separate holdings. On this plan the land and the river to the west of the ford is coloured brown and appears to be part of Smith's Farm; the brown shading includes the splay of the river west of the ford but does not appear to include the order route. It is not known by whom or for what purpose this edition of the map was marked up, but it appears to relate to the extent of individual landholdings or farm units. This version of the plan suggests that the splay of the river west of the ford was part of Smith's Farm and not regarded as being 'highway waste'.
80. The plan attached to the Farley Court diversion order shows the river splay to the south-west of the ford, but clearly depicts the position of the river crossing by the same ochre colouring used on the road network to which the ford connects. This plan suggests that the river crossing was of a width commensurate with the route south from point C.
81. In contrast to the annotated OS 1871 six-inch map, the Finance Act plan does not show the southern splay of the river as part of hereditament 37. What earlier maps showed as part of the river and covered by water is shown as marsh on the OS base plan used for the Finance Act. A double peck line indicates the route used through the ford which provides a link between points C and B.
82. The BHS also points to the Land Registry title records of land either side of the ford as evidence that the land which made up the splay of the river was part of the unregistered highway. The BHS contends that the width to be recorded at

the ford should reflect the width of the river splay as shown on the first and second editions of the OS 25-inch maps.

83. I heard evidence of the use of parts of the river as a place to cool off horses whilst on a ride and of use of the ford as part of organised endurance rides during the early years of this century. No doubt those who venture into the river on horseback may have made use of a wider section of the current river than would be encompassed by the 13-metre width specified in the Order. However, I did not hear any evidence of use of the splay of the river as shown in late nineteenth century OS maps (some of which is now dry land) or have received evidence to suggest that such use had been habitually made of a wider area in years gone by.
84. Whilst there are a number of maps which show the river as having a wide splay in the vicinity of the fording point, those large-scale maps of the area also show the position and general alignment of the route taken through the river. Although the BHS suggest that the available mapping suggests that the splay of the ford may have extended up to 100 metres at this point, the documentary evidence suggests fairly consistently that the route through the ford was less than that.
85. I consider that it would be highly improbable that anyone seeking to cross the river on horseback or with a cart from either side would venture upstream or downstream for up to 50 metres in order to emerge from the river at a point almost opposite where they entered. The available large-scale mapping suggests otherwise and that the lateral extent of the fording point was of the width suggested by HCC from its assessment of those same late nineteenth century large scale maps.
86. At 13 metres, the width at the ford would be sufficient to allow two carts to pass and is commensurate with the width of the route depicted by OS and other surveyors during the nineteenth century. Accordingly, I do not consider that the Order requires modification in respect of the width at the ford.
87. There was some debate as to whether the close board fences erected in 2017 were or were not on the same alignment as an earlier fence said to have been present. HCC produced a plan which showed the fences to be within the width between the boundaries of C – D as was shown on the second edition OS 25-inch to 1 mile map. Those who had used the route on horseback prior to and after the erection of the new fences considered that the width of the route had been constrained as a result.
88. The fence erected in 2017 appears to be coincident with the western extremity of the possessory title registered by one of the objectors in 2019. Whilst a wayleave agreement for the erection and maintenance of an electricity stay pole on the eastern side of the Order route has been in effect since the 1990s, this does not demonstrate that the land was not part of a much older highway or the extent of the ownership of the land.
89. On the basis of the historic width of the Order route as shown on the second edition OS 25-inch map, the fences erected in 2017 would appear to encroach upon that width. Resolution of this matter is not within my remit as the future maintenance of the right of way being recorded will be a matter for HCC as the Highway Authority.

Limitations

90. As drafted, the Order contains limitations in the form of field gates at points X and Y on the Order plan. A number of the large-scale documentary sources show a solid line across the Order route at points X and Y. These markings could indicate the presence of gates across the route at the time of the surveys or could represent the extent of the parcel of land being surveyed to separately identify that parcel from other adjacent land.
91. If these solid lines did represent the presence of gates or other barriers across the route, they would have been present at the time the surveys were carried out. The user evidence I heard did not make reference to any such gates or barriers being present during the period of modern usage which commenced in 1965; if the Order were to be confirmed on the basis of user evidence alone, the inclusion of gates as limitations would not be appropriate, as it appears that such gates have not been present across the Order route during the past 60 years.
92. However, the basis on which I consider the Order should be confirmed is that the available documentary evidence demonstrates, on a balance of probabilities, that the Order route is a public carriageway which has subsisted since at least the early seventeenth century and is probably much older than that. None of the very early documentary sources demonstrate or suggest that there were gates or barriers over any part of the Order route and there is no evidence that there were any restrictions on public use at the unspecified (and probably unknowable) point in time at which dedication can be inferred to have taken place.
93. Consequently, I am not satisfied that the limitations set out in Part II of the Schedule are required.

Overall conclusions

94. I am satisfied that the documentary evidence adduced in this case demonstrates, on a balance of probabilities, that the Order route is a public carriageway and should be recorded as such in the definitive map and statement.
95. The public right of way with mechanically propelled vehicles over A – B has been preserved by virtue of that route having been recorded in the list of streets on 2 May 2006, whereas public MPV rights over B – C – D were extinguished on that date by virtue of the coming into operation of section 67 (1) of the 2006 Act, with no evidence having been presented to demonstrate that any of the exceptions found in section 67 (2) or 67 (3) are applicable in this case.

Formal Decision

96. I confirm the Order subject to the following modifications: in that part of Part II of the Schedule which relates to Bramshill Restricted Byway 503 delete "Field gate at SU 75228 63439 Field gate at SU 75140 63252".

Alan Beckett

Inspector

Appearances

For Hampshire County Council

Jaqueline Lean of Counsel instructed by Legal Services

Who called

Jennifer Holden-Warren Map Review Officer

Harry Goodchild Map Review Manager

Mandy Brealey

For the British Horse Society:

Daniel Kozelko of Counsel instructed by Mark Weston

Who called:

Nicola Greenwood

Amanda Smith

Kate Kidney

Valerie Champness

Hugh Craddock

For the Objectors:

Michael Wood Director, ET Landnet

Who called:

Nigel Stoaate

Colin Crump

Mark Bristow

John Saunders

Interested party in support

Liz Connolly

Inquiry documents

1. Statement of Common Ground and Matters of Disagreement
2. Hampshire County Council updated list of documents in the inquiry bundles
3. Photographs of the Order route D – C dated 16 June 2022 prior to, and following, vegetation clearance (Mr Wood)
4. Statement from Carolyn Redding dated 20 July 2022 (Mr Wood)
5. Email from Stacy Jobling dated 19 July 2022 (Mr Wood)
6. Statement of Shaun Allison (Mr Wood)
7. Statement of Colin Crump (Mr Wood)
8. Statement of David Maw (Mr Wood)
9. Statement of Mark Bristow (Mr Wood)
10. Statement of Liz Connolly with extract from "Riding Through My Life" by HRH The Princess Royal
11. Two photographs taken by Hugh Craddock dated 20 July 2022 (Mr Kozelko)
12. Enlarged photograph of that at p79 of Hampshire County Council's Statement of Case (photograph taken by Hugh Craddock dated 2014 (Mr Kozelko)
13. Email correspondence between Harry Goodchild and Nigel Stoate various dates 1 – 18 October 2018 (Miss Lean)
14. Email correspondence between Nicola Greenwood and Nigel Stoate 19 September 2018
15. Plan showing available widths C – D between the western boundary hedge and eastern fence as at October 2018 (Miss Lean)
16. Chronology of interviews conducted by Harry Goodchild with user witnesses April – May 2018 (Miss Lean)
17. Composite maps with overlays of current MasterMap with National Grid 1975 and MasterMap 2013 (Mr Kozelko)
18. Opening Statement on behalf of Hampshire County Council
19. Statement from Kate Hogg (undated submitted via email dated 26 July 2022)
20. Email from Hugh Craddock dated 1 August 2022 containing three copies of the photograph contained in Hampshire County Council's Statement of Case (p79)
21. Closing Submissions on behalf of the Objectors (Mr Wood)
22. Closing Submissions on behalf of the British Horse Society (Mr Kozelko)
23. Closing Submissions on behalf of Hampshire County Council (Miss Lean)

ORDER MAP – COPY – NOT TO SCALE

