

**Wildlife and Countryside Act 1981 Section 53
Hampshire County Council The Hampshire (Test Valley Borough No. 63)
(Parish of East Dean) Definitive Map Modification Order 2017**

1. I am employed by Hampshire County Council as a Senior Definitive Map Review Officer. I have 20 years' experience working as a Map Review Officer in the rights of way team, part of the Countryside Service of the County Council. I also have 7 years' experience of historical geography research at Portsmouth University. I can confirm that this Proof of Evidence and the contents of the Statement of Case ('SoC') contain my true and professional opinion.
2. The Order Making Authority ('OMA') maintains the position as stated in its 'SoC'. I do not propose within this Proof of Evidence to repeat what has been set out within it. The purpose of this Proof of Evidence is to focus on key areas of disagreement with the cases from objectors.

Network Rail

3. The OMA takes issue with the following paragraphs of Network Rail's ('NR') SoC, namely paragraphs **3.1-7.3.14**, **4.1-7.4.10**, and **5.1-5.22**, that the route N-O does not exist. The OMA's case is that N-O was recorded in 1856 as a 'footpath' and 'public footpath', with other supporting evidence, crucially the tracing of a 1936 map compiled by East Dean parish to show public rights of way (see **3.7.10**, **3.7.32.8**, **5.4.8** OMA's SoC).
4. The OMA considers that, in accordance with the Railway Regulation Act 1840, section 16, proof is required that there has been criminality (see **7.1-7.13**, NR's SoC) in order to take advantage of the terms of the act which require a '*refusal to quit...upon request...made*'. No evidence of this has been provided by NR.
5. The OMA disagrees with paragraphs **1-5** and with paragraph **6**, and these issues will be addressed in relation to the SoC submitted by the major landowner, Harving Limited.

Harving Limited

6. There is evidence that the magazines for armaments were being built in 1939 (see **6.10** of Harving's SoC), and that the completion of the conveyances took time (see **3.7-3.8** of the SoC). The OMA states that there were three conveyances for the RNAD site.

- First Conveyance – the OMA has not seen a copy of this conveyance for the area housing the magazines for the armaments. Order routes A-B-C and part of B-L run over this land. If this land was purchased under the 1842 Defence Act, there is no evidence of this, or for the closure of these two Order routes. Neither is there any evidence of the alternative routes required to be provided under section 17 of the 1842 Act. Harving argues that the 1939 consultations by the Admiralty with the RDC and the Parish Meeting covered the entire RNAD site, but provides no evidence. The OMA’s strong view is that this cannot be the case, and that this leaves a gaping hole in the evidence of the development of the RNAD.
 - Second and Third Conveyances – dated 1940 and 1941 of land for the railway construction (see 3.4, 6.4-6.6 of Harving’s SoC). If section 16 was used, there is no evidence of the stopping-up of paths or the required provision of alternatives for each path so stopped-up under section 17 of the 1842 Act.
 - Plainly, it would assist the Inquiry for all relevant conveyances that exist to be made available well in advance of the Inquiry.
7. The OMA further disputes paragraphs 7.1-7.8 of Harving’s SoC. The OMA says:
- Due to the size and physical terrain of the RNAD, section 17 of the 1842 Act could not be complied with.
 - One alternative path on the boundary could not meet the requirements of sections 16 and 17 in these circumstances.
 - The OMA argues that the difficulties outlined above, particularly in meeting section 17, prompted the Admiralty to seek co-operation with East Dean Parish Meeting to give only one alternative and correspondingly close off, rather than extinguish, the paths.
 - The Parish Meeting agreed and this is evidenced in the letter of 1939 (see OMA’s SoC 3.7.25.4).
 - Paragraph 13 of the ‘Ramblers’ case of 2007¹ says ‘...Section 17 is expressed in peremptory terms. **A replacement path or road ‘shall’ ‘always’ be ‘provided and made’...** and ‘**That duty is not removed merely because the defendant considers that, given the existing highway network, it is unnecessary to provide a replacement path in lieu**’ [added emphasis].
 - Harving makes a related point at paragraph 9 of Nathalie Lieven QC’s statement, that ‘*the Council now appears to be arguing that the alternative path (FP9) does not meet the requirements of s.17 because it is only one path, and thus cannot be an alternative to all the paths closed*’. She says that this is ‘*simply wrong*’ because the OMA has failed to take into account paragraph 10 of the ‘Ramblers’ case of 2007, that ‘*the submission that there*

¹ ‘*The Queen on the application of the Ramblers Association -v- Secretary of State for Defence*’ [2007] EWHC 1398 (Admin). See also paragraph 19 of this case.

should be no loss to the public of footpath or bridleway is an anachronistic approach to section 17'.

- Harving refers to this comment in the Ramblers case to support the idea that one path is enough to meet section 17. The OMA says the substance of the comment is about the length of replacement paths, which might be longer or shorter, and says nothing about the number of paths to be provided.
 - Nowhere in Harving's SoC is there any evidence that section 17 of the 1842 Act has been complied with, thereby invalidating any purported extinguishment of public footpaths under section 16.
8. With regard to paragraphs **11.1-14.1** of Harving's SoC, the 1953 map of rights of way (see **3.7.31.2-3.7.31.6** of the OMA's SoC) suggests that the 1939 alternative was not put on the ground. The OMA considers that users started to walk up the hill on the private access route provided in the 1941 conveyance and along the route numbered '5' and drawn in ink on the 1953 annotated parish map, which then became, in time, Footpath 9.
 9. The OMA says that Harving (see **22.1-22.4**) has provided no evidence that the 1860 Defence Act was used in relation to Order route D-E-X.
 10. Opportunities for the scrutiny of evidence after 1945 are discussed at **15.1-20.4** of Harving's SoC. In particular, it is said at **7.20** that the RDC Clerk was not recorded as saying there was no 'gentleman's agreement'. The OMA states that the Clerk had several opportunities to say that all paths were legally stopped-up under the 1842 Act (**3.7.32.1-3.7.32.6**, OMA's SoC), but did not. The tone of the correspondence here is of doubt and a search for information that was ultimately not available. Even the Admiralty turned to the County Council at a meeting in 1953 because it had clearly kept no records of its own actions in relation to the RNAD, as did the MoD in 2005 for information prior to the sale of RNAD land.
 11. There are eleven maps in the OMA's bundle used to show information about routes in the parish between 1940 and 1988, the latest being hand-drawn by estate agents. These maps show some, or all, of the Order routes. Maps are out-of-date from the moment they are printed; however, it is noted that all the public footpaths have been left in place, and not marked to show that the rights had been extinguished after 1939, which one would expect to see.

Mr. Newton

12. The OMA has nothing further to say in relation to Mr. Newton's SoC.

Additional Information

13. A booklet in A3 format is to be provided to the Inquiry, containing copies of maps within in the OMA's SoC, compactly in one place. The maps will be numbered on an index list, with a cross-reference to the SoC. Included, additionally to those maps already in the SoC, is a copy of the Salisbury Branch Railway Plan of 1844 (No. 9), and the second edition of the Definitive Map of 1958 (No. 30).

The OMA's case

14. It is the view of the OMA that there were common law dedications of the Order routes during the last two hundred years, satisfying the requirements of both Section 31 of the Highways Act 1980 and the common law, and no *actual* evidence that they were legally extinguished, or that there was any statutory extinguishment under the Defence Act 1842.
15. The OMA's reasoning and evidence is set out in full in its SoC, which may be taken as a full proof of its evidence. The County Council would ask that the Order is confirmed.