

## AGENDA

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**Meeting:** Southern Area Planning Committee  
**Place:** The Guildhall, Market Place, Salisbury, Wiltshire, SP1 1JH  
**Date:** Thursday 6 November 2014  
**Time:** 6.00 pm

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Please direct any enquiries on this Agenda to David Parkes, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 718220 or email [david.parkes@wiltshire.gov.uk](mailto:david.parkes@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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### Membership:

Cllr Richard Britton	Cllr George Jeans
Cllr Richard Clewer	Cllr Ian McLennan
Cllr Brian Dalton	Cllr Ian Tomes
Cllr Christopher Devine (Vice-Chairman)	Cllr Fred Westmoreland (Chairman)
Cllr Jose Green	Cllr Ian West
Cllr Mike Hewitt	

### Substitutes:

Cllr Trevor Carbin	Cllr Helena McKeown
Cllr Terry Chivers	Cllr Leo Randall
Cllr Ernie Clark	Cllr Ricky Rogers
Cllr Tony Deane	Cllr John Smale
Cllr Dennis Drewett	Cllr John Walsh
Cllr Peter Edge	Cllr Bridget Wayman
Cllr Magnus Macdonald	Cllr Graham Wright

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# AGENDA

## Part I

Items to be considered when the meeting is open to the public

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes** (*Pages 1 - 2*)

To approve and sign as a correct record the minutes of the meeting held on 16 October 2014.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person no later than 5.50pm on the day of the meeting.

The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda (acting on behalf of the Corporate

Director) no later than 5pm on Thursday 30 October 2014. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Rights of Way Modification Order** (*Pages 3 - 98*)

7 **Planning Appeals** (*Pages 99 - 100*)

To receive details of completed and pending appeals.

8 **Planning Applications**

To consider and determine planning applications in the attached schedule.

8a **13/05402/FUL - Harnham Telephone Repeater Station**

A site visit will be arranged for this item for the day of the meeting.

8b **14/07720/OUT - 3 Westfield Close, Durrington, SP4 8BY** (*Pages 113 - 122*)

8c **14/07911/FUL - 15 Ridgmount, Durrington, SP4 8AH** (*Pages 123 - 130*)

9 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency

**Part II**

**Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed**

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## **SOUTHERN AREA PLANNING COMMITTEE**

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**DRAFT MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 16 OCTOBER 2014 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU.**

**Present:**

Cllr Richard Britton, Cllr Richard Clewer, Cllr Peter Edge (Substitute), Cllr Jose Green, Cllr Mike Hewitt, Cllr George Jeans, Cllr Ian McLennan, Cllr John Smale (Substitute), Cllr Ian Tomes, Cllr Fred Westmoreland (Chairman) and Cllr Ian West

**Also Present:**

Cllr Julian Johnson, Cllr Bill Moss and Cllr Bridget Wayman

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**99 Apologies for Absence**

Apologies for absence were received from Councillors Brian Dalton and Chris Devine.

Councillor Devine was substituted by Councillor John Smale.

Councillor Dalton was substituted by Councillor Peter Edge.

**100 Minutes**

The minutes of the meeting held on 25 September were presented for consideration, and it was,

**Resolved:**

**That subject to the inclusion of Councillor Ian McLennan as having given his apologies for the meeting, and a correction to Minute 97a to read “Councillor Richard Britton requested his dissent to the approval be recorded”, to approve as a correct record and sign the minutes.**

Councillor Britton was also permitted to make a brief statement clarifying his dissent to the decision and why he felt it necessary to have his vote recorded.

101 **Declarations of Interest**

There were no declarations.

102 **Chairman's Announcements**

There were no announcements.

103 **Public Participation and Councillors' Questions**

The Chairman explained the meeting procedure to the members of the public and noted the rules on public participation.

104 **Planning Appeals**

The Committee received details of the appeal decisions as detailed in the agenda.

105 **Planning Applications**

Attention was drawn to the late list of representations and observations, which would be subsequently published.

106 **14/06864/FUL - Land to the west of Bake Farm Buildings, Salisbury Road, Coombe Bissett, SP5 4JT**

Public Participation

Mr Aster Crawshaw spoke in objection to the application.

Mrs Jennifer Epworth spoke in objection to the application.

Mrs Linda Buckley spoke in objection to the application.

Mr Richard Jowett spoke in support of the application.

Mr Angus MacDonald, applicant, spoke in support of the application.

Mr Andrew Fido, agent, spoke in support of the application.

Mr Richard Burden, National Association for Areas of Outstanding Natural Beauty (AONB), spoke in objection to the application.

Cllr Gerald Bundy, Coome Bissett Parish Council, spoke in objection to the application.

The Area Development Manager presented the report which recommended that permission be approved. Key issues were stated to include the visual impact on the adjoining Area of Outstanding Natural Beauty (AONB) and the surrounding area and on the existing agricultural land. National and local planning policy regarding solar farms was provided along with details of the mitigation measures to be included as part of the application.

Members of the Committee then had the opportunity to ask technical questions of the officer. Details were sought on the scale of the proposed development, the number of inverter stations on the site, and the quality grade of the land.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The local Unitary Division Member, Councillor Julian Johnson, then spoke regarding the application. Although he took a neutral view, he highlighted the concerns raised by the local community and the importance that in accordance with policy the Committee needed to determine whether the need for renewable energy would be overriding the need to protect the environment should the application be approved.

A debate followed, where members discussed the level of impact of the proposals on the site itself and in particular on the AONB, and whether the scale of the proposals could be sufficiently mitigated through the screening proposed at short and longer distances. It was also raised that the quality grade of the land was unclear, and whether it was at a level where additional uses other than arable farming was encouraged. Members also raised whether the site would become permanent in future, although it was noted that grazing could continue on the site if solar panels were installed.

At the conclusion of debate, it was,

**Resolved:**

**To REFUSE the application for the following reason:**

**The site lies in open countryside within the setting of, and visible from, the Cranbourne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty. The proposal, by reason of its siting, scale and resulting prominence in views both from, and to, the Area of Outstanding Natural Beauty, would not achieve the fundamental aim of the Area of Outstanding Natural Beauty which is to conserve its landscape and natural beauty.**

**Although the proposal includes mitigation in the form of new hedge planting, this is considered insufficient to reduce the adverse impacts on the Area of Outstanding Natural Beauty. Those adverse impacts are, in particular, the visual impact of the closely arranged ranks of solar arrays which spread across a significant area of farmland on higher ground, and which would 'read' as a man-made, almost industrial intrusion in the otherwise natural landscape from which the Area of Outstanding Natural Beauty can be experienced and which can be experienced from the Area of Outstanding Natural Beauty.**

**This is contrary to Core Policy 51 of the emerging Wiltshire Core Strategy which specifically refers to the relevance of the setting of Areas of Outstanding Natural Beauty, the spirit of 'saved' Policy C4 of the**

**Salisbury District Local Plan, and Central Government planning policy set out in the National Planning Policy Framework (paragraph 115).**

*The Committee took a recess from 1930-1935.*

**107 14/07557/FUL - 10 Ventry Close, Salisbury, SP1 3ES**

Public Participation

Mr Tony Allen spoke in objection to the application.

Mrs Elizabeth Bec spoke in objection to the application.

Mr Bob Law spoke in objection to the application.

Mr Damian Thursby spoke in support of the application.

Mr Peter Hughes spoke in support of the application.

Cllr John Lindley, Chairman of the Salisbury City Council Planning and Transportation Committee, spoke in objection to the application.

The Area Development Manager presented a report which recommended that planning permission be approved. Key issues were stated to include the principal of development, particularly in lights of permitted development rights for some development in the garden of the existing property, the impact on residential amenity and the siting, scale and design of the proposal. It was confirmed that trees of sufficient height to screen views from the neighbouring Tower Mews development, were included as part of the application details.

Members of the Committee then had the opportunity to ask technical questions of the officer, and clarification was sought on the height and orientation of the application.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The local Unitary Division Member, Councillor Bill Moss, then spoke in objection to the application, stating that the proposed plot was not suitable for another dwelling despite the understandable personal position of the applicants.

A debate followed, where the Committee discussed whether another dwelling could be accommodated on the site, with particular attention to the amount of amenity space that would be available, or whether although the current applicants might find it acceptable, this constituted overdevelopment of the area. The character of properties in the area was assessed, with it noted that although all the properties were of a unique design, each had been designed to fit a distinct familial style, and it was considered whether the proposed dwelling was in character with that style.

At the end of debate, it was,

**Resolved:**

**To REFUSE the application for the following reasons:**



1. The proposed development would be located in the side garden of an existing two storey property in Ventry Close. The site slopes and is elevated above road level, and is prominent being close to the entry point to the Close.

The proposal, by reason of the relatively large size of the proposed dwelling on the site, its positioning close to the roadside boundary, and the relatively small areas within the site proposed to provide amenity space/garden, would amount to an over-development of the site to the detriment of the character and appearance of the wider Ventry Close estate. Furthermore, the proposed dwelling, by reason of its design and appearance, would be out of keeping with the grain and style of established development in Ventry Close.

The development would therefore be contrary to 'Saved' Policies G2 and D2 of the Salisbury District Local Plan and the guidance in the National Planning Policy Framework - Para 9, 56, 58 and 64.

2. The development would be contrary to saved Policy R2 of the Salisbury District Local Plan, as provision for public open space has not been made.

**Informative: Reason 2 above can be overcome by the applicant entering into a Section 106 Agreement in respect of Policy R2.**

108 **14/06726/OUT - Farmer Giles Farmstead, Teffont, Salisbury, Wiltshire, SP3 5QY**

#### Public Participation

Mr Tony Allen spoke in support of the application.

Cllr David Wood, Chairman of Teffont Parish Council, spoke in support of the application.

The Area Development Manager presented the report which recommended that permission be delegated for approval subject to the applicant entering into planning obligation for the delivery of a financial contribution towards local recreation provision, and subject to the following conditions. Key issues were stated to include the principal of development and the sustainability of the proposal, which officers considered an improvement on the existing situation with many defunct buildings.

Members of the Committee then had the opportunity to ask technical questions of the officer. Details were sought on the size of the building plot and scale of the proposal, but it was stated as an outline application many details were not yet finalized, although it was around 600m<sup>2</sup>. Other queries included the activity at the site, and whether the Farmer Giles attraction was ever in operation or had been wound down completely, and the number of lodges and caravans that could use the wider site. It was also confirmed that the application had been referred

to Committee under delegated powers as the applicant was a relative of a Wiltshire Councillor.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Division Member, Councillor Bridget Wayman, then spoke in objection to the application, stating that the principle of constructing a new large house in the countryside was against policy, and the trade off of the unsightly car park and a few now unused buildings being removed was not sufficient. She also stated that the original permission for the lodges and caravans had been contingent upon the Farmer Giles business being in operation and the land should be restored as it was no longer operating.

A debate followed, where the Committee discussed whether the employment land at the site was unviable and suitable for conversion to residential status, and whether the continued existence of multiple disused properties closer to the road meant that the improvement to the landscape from some removals sufficiently enhanced the area as a result. In response to queries it was also stated that the land was classified as a brownfield site, with attendant permitted development rights. Members also discussed the views of Wiltshire Councils Spatial Planning team and any traffic implications.

At the conclusion of debate, it was,

**Resolved:**

**To REFUSE the application for the following reasons:**

- 1. The application site lies in open countryside and an Area of Outstanding Natural Beauty. Within the countryside there is effectively a presumption against new residential development except in limited circumstances not relevant to this case. This presumption is in the interests of sustainability and amenity. It follows that as a matter of principle the proposal comprises unacceptable development.**

**In terms of harm, the proposal would introduce a house and its curtilage with inevitable domestic paraphernalia, and these would be visually intrusive and alien in such an isolated and rural location, distant from other residential properties or any settlement. By reason of their visibility and alien appearance, the house and its curtilage would detract from the wider appearance of the landscape, neither conserving nor enhancing its status as an Area of Outstanding Natural Beauty. There are no exceptional circumstances which would outweigh the harm to the countryside and landscape.**

**The proposal is, therefore, contrary to the principles of the settlement strategy set out in Policy CP1 of the South Wiltshire Core Strategy (and Policies CP1 and CP2 of the emerging Wiltshire Core Strategy) and 'Saved' Policies C2 and C4 of the Salisbury District Local Plan, and the**

**guidance in the National Planning Policy Framework – paragraphs 109 and 115.**

- 2. The development would be contrary to saved Policy R2 of the Salisbury District Local Plan, as provision for public open space has not been made.**

**Informative: Reason 2 above can be overcome by the applicant entering into a Section 106 Agreement in respect of Policy R2.**

## **109 Urgent Items**

There were no urgent items.

(Duration of meeting: 6.00 - 9.15 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line (01225) 718504, e-mail [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

Press enquiries to Communications, direct line (01225) 713114/713115

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**WILTSHIRE COUNCIL**

**SOUTHERN AREA PLANNING COMMITTEE**

**6 NOVEMBER 2014**

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**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT FOR THE AMESBURY RURAL  
DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER THE  
PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**The Wiltshire Council Milston 16 (Part) Rights of Way Modification Order 2014**

**Purpose of Report**

1. To:
  - (i) Consider the evidence and duly made objections and representation relating to the above Order.
  - (ii) Recommend that the Order be submitted to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed.

**Relevance to the Council's Business Plan**

2. Working with the local community to provide a rights of way network fit for purpose.

**Background**

3. In 2006 Wiltshire County Council made an Order under Section 53 of the Wildlife and Countryside Act 1981 to:
  - (a) 'delete the footpath leading from Brigmerston corner, Church Road, Milston through the farmyard to RUPP 16 Milston leading to Durrington with a width of two metres'; and
  - (b) add 'the footpath leading from Brigmerston corner, Church Road, Milston and then running parallel to Barn House and Cottage on right then crossing diagonally left to join RUPP 16 leading to Durrington with a width of two metres.'

4. The Order was duly advertised and an objection and representations were made to it. The objections and representations received were considered by the Southern Area Planning Committee on 16 January 2014. A copy of the Agenda item is attached at **Appendix 1**. The Area Planning Committee resolved that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that the Order be confirmed with the modification to the Order map to show the Restricted Byway to be added by a broken black line and small arrowheads.
5. The Order and associated papers were submitted to the Secretary of State for determination but the Order was returned to the Council as the Secretary of State has taken the view that the use of a solid black line to depict the new route and a broken line to depict the route to be deleted is considered to be misleading and a fundamental error which is fatal to the validity of the Order.
6. As a consequence, to correct the drawing error the Order was remade with a revised plan (see **Appendix 3**) on the 15 July 2014 in accordance with Statutory Instrument 1993/12 Wildlife and Countryside (Definitive Maps and Statements) Regulations. The Order was duly advertised and a representation in support of the Order was made by Mr R W Henman on behalf of himself and his wife and objections made by Mr Andrew Smith and Mrs Samantha Smith. Copies of the objections and representation are attached at **Appendix 2** to this report.

### **Main Considerations for the Council**

7. The main issues to be taken into consideration are set out in paragraphs 4 – 27 of the Decision Report contained as Appendix B to the Southern Area Committee report attached here as **Appendix 1**.
8. The judgement given by the Court of Appeal in R v Secretary of State for the Environment ex parte Burrows and Simms (1991) 2 QB 354 held, in effect that if evidence comes to light to show that a mistake had been made in drawing up the definitive map, such a mistake can be corrected in either of the three ways envisaged in Section 53(3)(c) of the Wildlife and Countryside Act 1981.
9. There is a consistent portrayal of the claimed route as part of the local road network on the maps described in the Decision Report. This supports the application applied for by Jancis Henman and triggers the duty of the Council to modify the definitive map and statement accordingly by adding to the definitive map and statement as a Restricted Byway on the claimed route and the deletion of the section of Milston 16 currently shown through Brigmerston farmyard. The historical evidence is entirely supported by the significant amount of user evidence also submitted with the application. No statements and plans have been deposited under Section 31(6) of the Highways Act 1980 in this area.
10. No mapping evidence has been discovered by Council officers to confirm that the section of Milston 16 currently shown on the definitive map through Brigmerston farmyard is correct. Taking the map evidence into consideration with all the other evidence relating to Milston 16, as the legislation requires the Council to do, officers believe that the section of Milston 16 shown through the farmyard should be deleted from the definitive map.

11. The Order was advertised in accordance with the regulations and the attached objections and representation have been received. The Order must now be forwarded to the Secretary of State for determination. The test that the Secretary of State will apply in deciding whether or not to confirm the Order in relation to the proposed additional Restricted Byway made under Section 53(3)(c)(i) is:

Does a right of way subsist on the balance of probabilities? This requires that there is clear evidence in favour of public rights and no evidence to the contrary.

12. In considering the part of the Order concerning deleting that part of Milston 16 through the farmyard made under Section 53(3)(c)(iii), in accordance with the decision of the Court of Appeal in *Trevelyan v Secretary of State for the Environment, Transport and the Regions* (2001) it will fall to the Secretary of State to start with the initial presumption that the way did exist. The standard of proof required to show that the inclusion of the right of way on the definitive map was incorrect is the balance of probabilities. But evidence of some substance had to be put in the balance if it was to outweigh the initial presumption that the way had been correctly included.

#### The Objections to the Order

13. On 18 August 2014 Mr Andrew Smith of the Barn House wrote to the Council:

*“Whilst I have objected previously both by letter and email I write to comply with the notice dated 15 July. Let me once again place on record an objection to the proposal to divert the footpath from the existing delineated route as designated on the definitive map.*

*In the notice you have requested grounds to the objection and the following are the basis for these.*

- 1. Points raised in my letter of 23 August 2006*
- 2. Evidence of aerial photography of the 70’s and 80’s which clearly indicates the path is routed and utilized via the stables which is the present route as confirmed by the definitive map.*
- 3. The intrusive effect on the family home of the proposed alteration.*
- 4. The failure of the Council to undertake any discussion with ourselves since we purchased the Properties in 2002 concerning the proposed change.”*

#### Comment on the Objection

14. Mr Smith is not contesting the physical presence of a route adjacent to his property along the line of the proposed Restricted Byway as he has acknowledged its existence in his letter dated 23 August 2006. He states ‘an overgrown and often muddy track adjacent to our Property’ and ‘the proposed re-routing is directly along a path which becomes waterlogged during the winter months and overgrown during the summer.’

15. Mr Smith has not produced any evidence to challenge the use of the proposed Restricted Byway given by the 42 local people who have completed witness evidence forms testifying to daily use of the route dating back to 1916. Many of the people who completed user evidence forms commented on a former owner of Barn House frequently observing them from his garden using the claimed right of way and never being challenged whilst doing so.
16. The aerial photographs show the physical features that existed at the time the photographs were taken and it simply is not possible to deduce from them where the public have walked, or the nature of that use.
17. In 'A Guide to definitive maps and changes to public rights of way' produced by Natural England the legal considerations to be taken into account in matters relating to definitive map modification orders are made clear. The guide, which is targeted at members of the public, states:

*'Definitive map modification orders are about whether rights already exist, not about whether they should be created or taken away. The suitability of a way for users who have a right to use it, or the nuisance that they are alleged to cause, or to be likely to cause, are therefore irrelevant. So also is the need for public access, locally, if the order alleges that public rights do not exist.'*

**Evidence is the key**

*The definitive map is a legal recognition of existing public rights to walk, ride and use vehicles. As such, any proposal to modify it by means of a definitive map modification order to add a right of way has to be judged by the legal test: 'Do the rights set out in the order already exist?.' If they do, then the map must be modified, regardless of any effect on anyone's property interests, or whether or not the routes physically exist at the present time on the ground. Similarly, if the evidence in support of the order proves to be sufficient, and the test is not satisfied, then the map remains as it is, however desirable it may seem for the public to have those additional rights.*

*Evidence is also the key where the proposal is to remove some or all of the rights recorded on a way already shown on the map. In this case it must demonstrate clearly that a right of way, of that status, did not exist when it was first shown on the definitive map, and that an error was made.'*

18. On the 18 August 2014 Mrs Samantha Smith wrote to object to the Order for the following reasons:
  1. *The failure of the Council to undertake any discussion with ourselves since we purchased the Properties in 2002 concerning the proposed change.*
  2. *Points raised in my letter of 9 October 2013 including the request to change the right of way from uninhabited land to running directly past our house and cottage as well as Vandalism.*
  3. *Right to Respect for Private and Family Life under Human rights Act 1998 including the infringement and 'protection of our property.'*



4. *Wiltshire County Council lead by you to protect one parties interests over another. This has been seen over the last 12 years where The Smith Family residing at The Barn House and Cottage having had attempts at bullying regarding Milston Restricted Byway 16.'*

Comment on the objection

19. The comments made in paragraphs 14–17 above are relevant to this objection.

Representation in support of the Order

20. Mr R W Henman wrote on 1 August on behalf of himself and his wife in support of the Order:

*'For the record, you should be aware that we both fully support this revised order as we believe it accurately reflects the correct route. There has been considerable correspondence and evidence produced over the last seven years or so in support of this route, and there is therefore little point in repeating it all now.'*

*We have lived here for almost twenty three years and it is well known that this is the route of the byway. We particularly object to the residents of Barn House unilaterally deciding that it suits them to change the route of this right of way. We also understand that the residents have been abusive to ramblers on this public land and if this is correct, we find their behaviour to be totally unacceptable.'*

Comment on the Representation

21. Mr and Mrs Henman have provided evidence of actual use of the Restricted Byway to be added to the definitive map and have long knowledge of the area.

**Safeguarding Considerations**

22. Considerations relating to safeguarding anyone affected by the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be confirmed based on the relevant evidence alone.

**Public Health Implications**

23. Considerations relating to any public health implications of the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Orders must be confirmed based on the relevant evidence alone.

### **Environmental Impact of the Recommendation**

24. Considerations relating to the environmental impact of the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Orders must be confirmed based on the relevant evidence alone.

### **Risk Assessment**

25. Considerations relating to risks or safety of the impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Orders must be confirmed based on the relevant evidence alone.

### **Financial Implications**

26. It is considered that with this case, and the need to test the evidence of witnesses from both sides, that a Public Inquiry is unavoidable. However, the decision whether to determine an Order by written representations, a Hearing or a Public Inquiry rests with the Secretary of State.
27. The Council has a duty in law to support Orders where it is considered that on the balance of probability public rights subsist or the definitive map erroneously shows a right of way as it is believed the evidence shows for that section of Milston 16 which runs through Brigmerston farmyard. Budgetary provision has been made for carrying out this duty, including covering the cost of any Public Inquiry or hearing that may be convened to determine the Order.

### **Legal Implications**

28. Wiltshire Council has a legal duty to keep the definitive map and statement under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly.

### **Options Considered**

29. That:
- (i) The confirmation of the Order is supported as made.
  - (ii) The confirmation of the Order is supported with modifications.
  - (iii) The confirmation of the Order is objected to.

## **Reasons for Recommendation**

30. Under Section 53(3)(c)(i) the Surveying Authority is not required to prove beyond all reasonable doubt that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not that the rights exist. An Order may be made under this section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the definitive map.
31. The earliest map examined which officers believe shows the route sought to be added to the definitive map is Andrews' and Dury's map of Wiltshire dated 1773. Whilst it may be argued that this map is on such a small scale, 2 inches to 1 mile, that it is not possible to identify with any degree of accuracy the route of a particular way, when compared with the later mapping evidence, in particular the large scale Ordnance Survey maps, a picture of the road layout of this area becomes clear. There is a consistent portrayal of the claimed additional route as part of the local road network on the maps described in the Decision Report attached at Appendix B to the Southern Area Planning Committee report attached here as **Appendix 1**. This supports the application applied for by Jancis Henman and triggers the duty of the Council to modify the definitive map and statement accordingly by adding to the definitive map and statement as a Restricted Byway the claimed route and the deletion of the section of Brigmerston 16 through the farmyard. The historical evidence is entirely supported by the significant amount of user evidence also submitted with the application. No statements and plans have been deposited under Section 31(6) of the Highways Act 1980 for the land over which the claimed Restricted Byway runs.
32. No mapping evidence has been discovered by Council officers to confirm that the section of Milston 16 currently shown on the definitive map through Brigmerston farmyard is correct. Taking the map evidence into consideration with all the other evidence relating to Milston 16 the Council has considered, officers believe that the section of Milston 16 shown through the farmyard should be deleted from the definitive map.

## **Recommendation**

33. That the Wiltshire Council Milston 16 (Part) Rights of Way Modification Order 2014 is forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that the Order be confirmed.

**Tracy Carter**  
**Associate Director Waste and Environment**

Report Author:  
**Barbara Burke**  
Definitive Map and Highway Records Team Leader

**The following unpublished documents have been relied on in the preparation of this Report:**

Correspondence with Parish Council, user groups, other interested bodies and members of the public

**Appendices:**

- Appendix 1 - Southern Area Committee Report – 16 January 2014
- Appendix 2 - Objections and representations to the Order
- Appendix 3 - Order Map dated 15 July 2014

WILTSHIRE COUNCIL

AGENDA ITEM NO.

SOUTHERN AREA PLANNING COMMITTEE

16 JANUARY 2014

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**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT FOR THE AMESBURY RURAL  
DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER THE  
PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**The Wiltshire County Council (Sheet SU 14 NE) Rights of Way Modification  
Order No. 11 2006 (Milston restricted Byway No. 16)**

**Purpose of Report**

1. To:
  - (i) Consider the evidence and duly made objections and representation relating to the above Order.
  - (ii) Recommend that the Order be submitted to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed subject to correcting an error on the order map by amending the symbol to the way being added to reflect the statutory prescribed symbol for a Restricted Byway.

**Background**

2. On 13 August 2001 Jancis Henman, on behalf of The Friends of Milston and Brigmerston, applied to Wiltshire County Council for an Order to be made under Section 53 of the Wildlife and Countryside Act 1981 to:
  - (a) 'delete the footpath leading from Brigmerston corner, Church Road, Milston through the farmyard to RUPP 16 Milston leading to Durrington with a width of two metres'; and
  - (b) add 'the footpath leading from Brigmerston corner, Church Road, Milston and then running parallel to Barn House and Cottage on right then crossing diagonally left to join RUPP 16 leading to Durrington with a width of two metres.'
3. The applicant had incorrectly identified the status of the route described in paragraph 2(a) above as a footpath. In 2001 this section of right of way was shown on the definitive map as a Road Used as a Public Path (RUPP). The RUPP was reclassified as a Restricted Byway on 2 May 2006. The map attached at **Appendix A** shows the application routes to be deleted and added.

4. The application was supported by 41 user evidence forms completed by 42 people who claim to have used the route described in paragraph 2(b) above since 1916.
5. The Council has a duty to investigate applications of this nature and to make an Order if, on the balance of probability, it is reasonably alleged that public rights exist over the claimed route and to delete ways if evidence comes to light that there is no public right of way of any description on the definitive map.
6. Officers considered all the evidence available to them and concluded in a Decision Report attached at **Appendix B** that the route referred to in paragraph 2(a) above ought to be deleted and an Order to add a Restricted Byway on the route claimed in paragraph 2(b) above ought to be added to the definitive map.
7. On 2 August 2006 a Modification Order was made under Sections 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981, seeking to bring the changes referred to in paragraph 6 above into effect. The Order was duly advertised, two objections were received to the making of the Order from Mr A R H Smith of The Barn House on behalf of himself and family and from Mr B Riley. A representation was made to the making of the Order from Defence Estates. Copies of the objections and representation are attached at **Appendix C**.

### **Main Considerations for the Council**

8. The main issues to be taken into consideration are set out in paragraphs 4 – 27 of the Decision Report attached at **Appendix B**.
9. The judgement given by the Court of Appeal in R v Secretary of State for the Environment ex parte Burrows and Simms (1991) 2 QB 354 held, in effect that if evidence comes to light to show that a mistake had been made in drawing up the definitive map, such a mistake can be corrected in either of the three ways envisaged in Section 53(3)(c) of the Wildlife and Countryside Act 1981.
10. There is a consistent portrayal of the claimed route as part of the local road network on the maps described in the Decision Report. This supports the application applied for by Jancis Henman and triggers the duty of the Council to modify the definitive map and statement accordingly by adding to the definitive map and statement as a Restricted Byway on the claimed route and the deletion of the section of Milston 16 currently shown through Brigmerston farmyard. The historical evidence is entirely supported by the significant amount of user evidence also submitted with the application. No statements and plans have been deposited under Section 31(6) of the Highways Act 1980 in this area.
11. No mapping evidence has been discovered by Council officers to confirm that the section of Milston 16 currently shown on the definitive map through Brigmerston farmyard is correct. Taking the map evidence into consideration with all the other evidence relating to Milston 16, as the legislation requires the Council to do, officers believe that the section of Milston 16 shown through the farmyard should be deleted from the definitive map.

12. The Order was advertised in accordance with the regulations and the attached objections and representation have been received. The Order must now be forwarded to the Secretary of State for determination. The test that the Secretary of State will apply in deciding whether or not to confirm the Order in relation to the proposed additional Restricted Byway made under Section 53(3)(c)(i) is:

Does a right of way subsist on the balance of probabilities? This requires that there is clear evidence in favour of public rights and no evidence to the contrary.

13. In considering the part of the Order concerning deleting that part of Milston 16 through the farmyard made under Section 53(3)(c)(iii), in accordance with the decision of the Court of Appeal in *Trevelyan v Secretary of State for the Environment, Transport and the Regions* (2001) it will fall to the Secretary of State to start with the initial presumption that the way did exist. The standard of proof required to show that the inclusion of the right of way on the definitive map was incorrect is the balance of probabilities. But evidence of some substance had to be put in the balance if it was to outweigh the initial presumption that the way had been correctly included.

#### The Objections to the Order

14. On 23 August 2006 Mr Andrew R H Smith of the Barn House wrote to the Council:

*'My family and I object, most forcefully, to the proposed re routing of the Restricted Byway. The occupants of the land, through which the Byway presently runs, locked and fenced the access and route some months ago and signs were erected forcing the walking public to make their way via an overgrown and often muddy track adjacent to our Property.....*

*In general terms the property through which the Byway runs was used continuously by the public from the moment we moved into our property in October 2001 until four months ago..... It should also be appreciated that the proposed re routing is directly along a path which becomes waterlogged during the winter months and overgrown during the summer.*

*Given that the Byway is presently routed mostly along a made up track, the re-routing would in fact be over a less direct and more inconvenient route and therefore the reason for the re-route is unclear and questionable.'*

#### Comment on the Objection

15. Mr Smith is not contesting the physical presence of a route adjacent to his property along the line of the proposed Restricted Byway as he has acknowledged its existence in his letter dated 23 August. He states 'an overgrown and often muddy track adjacent to our Property' and 'the proposed re-routing is directly along a path which becomes waterlogged during the winter months and overgrown during the summer.'

16. Mr Smith states that he and the family moved into Barn House in October 2001. Gates were erected across the route of the proposed Restricted Byway in effect giving the appearance that it is within the curtilage of Barn House; however, the land over which the route crosses is not within the registered title of the property. Mr Smith has not produced any evidence to challenge the use of the proposed Restricted Byway given by the 42 local people who have completed witness evidence forms testifying to daily use of the route dating back to 1916. Many of the people who completed user evidence forms commented on a former owner of Barn House frequently observing them from his garden using the claimed right of way and never being challenged whilst doing so.
17. Mr Smith has not produced any evidence of use of the route through Brigmerston farmyard.
18. In 'A Guide to definitive maps and changes to public rights of way' produced by Natural England the legal considerations to be taken into account in matters relating to definitive map modification orders are made clear. The guide, which is targeted at members of the public, states:

*'Definitive map modification orders are about whether rights already exist, not about whether they should be created or taken away. The suitability of a way for users who have a right to use it, or the nuisance that they are alleged to cause, or to be likely to cause, are therefore irrelevant. So also is the need for public access, locally, if the order alleges that public rights do not exist.'*

**Evidence is the key**

*The definitive map is a legal recognition of existing public rights to walk, ride and use vehicles. As such, any proposal to modify it by means of a definitive map modification order to add a right of way has to be judged by the legal test: 'Do the rights set out in the order already exist?'. If they do, then the map must be modified, regardless of any effect on anyone's property interests, or whether or not the routes physically exist at the present time on the ground. Similarly, if the evidence in support of the order proves to be sufficient, and the test is not satisfied, then the map remains as it is, however desirable it may seem for the public to have those additional rights.'*

*Evidence is also the key where the proposal is to remove some or all of the rights recorded on a way already shown on the map. In this case it must demonstrate clearly that a right of way, of that status, did not exist when it was first shown on the definitive map, and that an error was made.'*

19. Mr Riley wrote on 25 August 2006 to object to the status of the additional right of way being added to the definitive map as a Restricted Byway. Mr Riley believes that 'on the balance of probability, the correct status is a byway open to all traffic.' Mr Riley goes on to explain that:

*'In all probability, many (perhaps most) former RUPPs will have been used by MPVs (including tractors and traction engines) before 1 December 1930, and in some cases mainly by MPVs in the five years before 2 May 2006.'*



*The principal evidence implying MPV use of Milston 16 before 1 December 1930 (a tree lined lane until at least 1954) consists of its classification on four Bartholomew's half-inch maps, which are available for inspection.*

1. *Survey Atlas of England & Wales, Plate 64, 1904: 'Other Driving roads'*
2. *Reduced Survey for Tourists & Cyclists, Sheet 29, 1911 'Secondary Roads (Good)'*
3. *Reduced Survey for Tourists & Cyclists, Sheet 29, 1920 'Motoring Roads: Secondary Roads'*
4. *Revised Contoured Map, Sheet 29, 1929: 'Motoring Roads: Secondary Roads'*

#### Comment on the objection

20. Section 67 of the Natural Environment and Rural Communities Act 2006 ends certain unrecorded public rights of way. Section 67(1) states:

*'An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-*

- a) was not shown in a definitive map and statement, or*
- b) was shown in a map or statement only as a footpath, bridleway or restricted byway.*

But this is subject to subsections (2) to (8). Officers are not aware of any of the exceptions in subsection (3) relating to public rights applying to the section of additional Restricted Byway. No evidence of actual vehicular use of the route has been submitted to the Council. Section 67 of the Act is attached to the Decision Report at **Appendix C** to this report.

#### Representations in support of the Order

21. Mr R D Watts, Senior Land Agent at the Defence Estates, wrote on 14 September 2006 to support the making of the Modification Order which is the subject of this report. Mr Watts stated:

*'I would make the point that the Byway has never run through our land and when I used to work at our Durrington office, on an almost daily basis for approximately 8 years, I would walk the route in front of what is now Mr Smith's house along the correct route. There had not been any problems with this route until the ownership of The Barn House changed hands. It was at this time that difficulties began to arise over access along the byway as it was obvious that the new owner wished to prevent access in front of their property and it was at this time that the local inhabitants began to go through the MOD land, hence the reason why we put the signs up.*

*As access along the byway has been restricted by the erection of gates, I assume you will be taking enforcement action against Mr Smith.*

*Concerning the condition of the paddock along which the right of way runs, the tenant has strimmed the nettles, which I understand is your responsibility, which now allows unimpeded access along the correct route.*

*I really fail to see how Mr Smith can object; indeed I am somewhat confused as to how it is on the definitive map because the byway has never taken this route.'*

#### Comment on the Representation

22. The evidence in support of the Order provided by Mr Watts on behalf the Defence estates is welcome.

#### Safeguarding Considerations

23. Considerations relating to safeguarding anyone affected by the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be confirmed based on the relevant evidence alone.

#### Public Health Implications

24. Considerations relating to any public health implications of the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Orders must be confirmed based on the relevant evidence alone.

#### Environmental Impact of the Recommendation

25. Considerations relating to the environmental impact of the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Orders must be confirmed based on the relevant evidence alone.

#### Risk Assessment

26. Considerations relating to risks or safety of the impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Orders must be confirmed based on the relevant evidence alone.

#### Financial Implications

27. It is considered that with this case, and the need to test the evidence of witnesses from both sides, that a Public Inquiry is unavoidable. However, the decision whether to determine an Order by written representations, a Hearing or a Public Inquiry rests with the Secretary of State.
28. The Council has a duty in law to support Orders where it is considered that on the balance of probability public rights subsist or the definitive map erroneously shows a right of way as it is believed the evidence shows for that section of Milston 16 which runs through Brigmerston farmyard. Budgetary provision has been made for this duty.

## Options Considered

29. That:
- (i) The confirmation of the Order is supported as made.
  - (ii) The confirmation of the Order is supported with modifications.
  - (iii) The confirmation of the Order is objected to.

## Reasons for Recommendation

30. Under Section 53(3)(c)(i) the Surveying Authority is not required to prove beyond all reasonable doubt that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not that the rights exist. An Order may be made under this section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the definitive map.
31. The earliest map examined which officers believe shows the route sought to be added to the definitive map is Andrews' and Dury's map of Wiltshire dated 1773. Whilst it may be argued that this map is on such a small scale, 2 inches to 1 mile, that it is not possible to identify with any degree of accuracy the route of a particular way, when compared with the later mapping evidence, in particular the large scale Ordnance Survey maps, a picture of the road layout of this area becomes clear. There is a consistent portrayal of the claimed additional route as part of the local road network on the maps described in the Decision Report attached at **Appendix B**. This supports the application applied for by Jancis Henman and triggers the duty of the Council to modify the definitive map and statement accordingly by adding to the definitive map and statement as a Restricted Byway the claimed route and the deletion of the section of Brigmerston 16 through the farmyard. The historical evidence is entirely supported by the significant amount of user evidence also submitted with the application. No statements and plans have been deposited under Section 31(6) of the Highways Act 1980 for the land over which the claimed Restricted Byway runs.
32. No mapping evidence has been discovered by Council officers to confirm that the section of Milston 16 currently shown on the definitive map through Brigmerston farmyard is correct. Taking the map evidence into consideration with all the other evidence relating to Milston 16 the Council has considered, officers believe that the section of Milston 16 shown through the farmyard should be deleted from the definitive map.
33. The order map has a drafting error on it as the route to be added as a Restricted Byway is not portrayed with the statutory prescribed symbols. Consequently, officers recommend that the Order be submitted to the Secretary of State with the recommendation that the Order plan be modified accordingly.

## **Recommendation**

34. That the Wiltshire County Council (Sheet SU14 NE) Rights of Way Modification Order No. 11, 2006 (Milston Restricted Byway No. 16) is forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that the Order be confirmed with the modification to the Order map to show the Restricted Byway to be added by a broken line and small arrowheads.

**Tracy Carter**  
**Associate Director of Environment and Leisure**

Report Author:  
**Barbara Burke**  
Definitive Map and Highway Records Team Leader

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### **The following unpublished documents have been relied on in the preparation of this Report:**

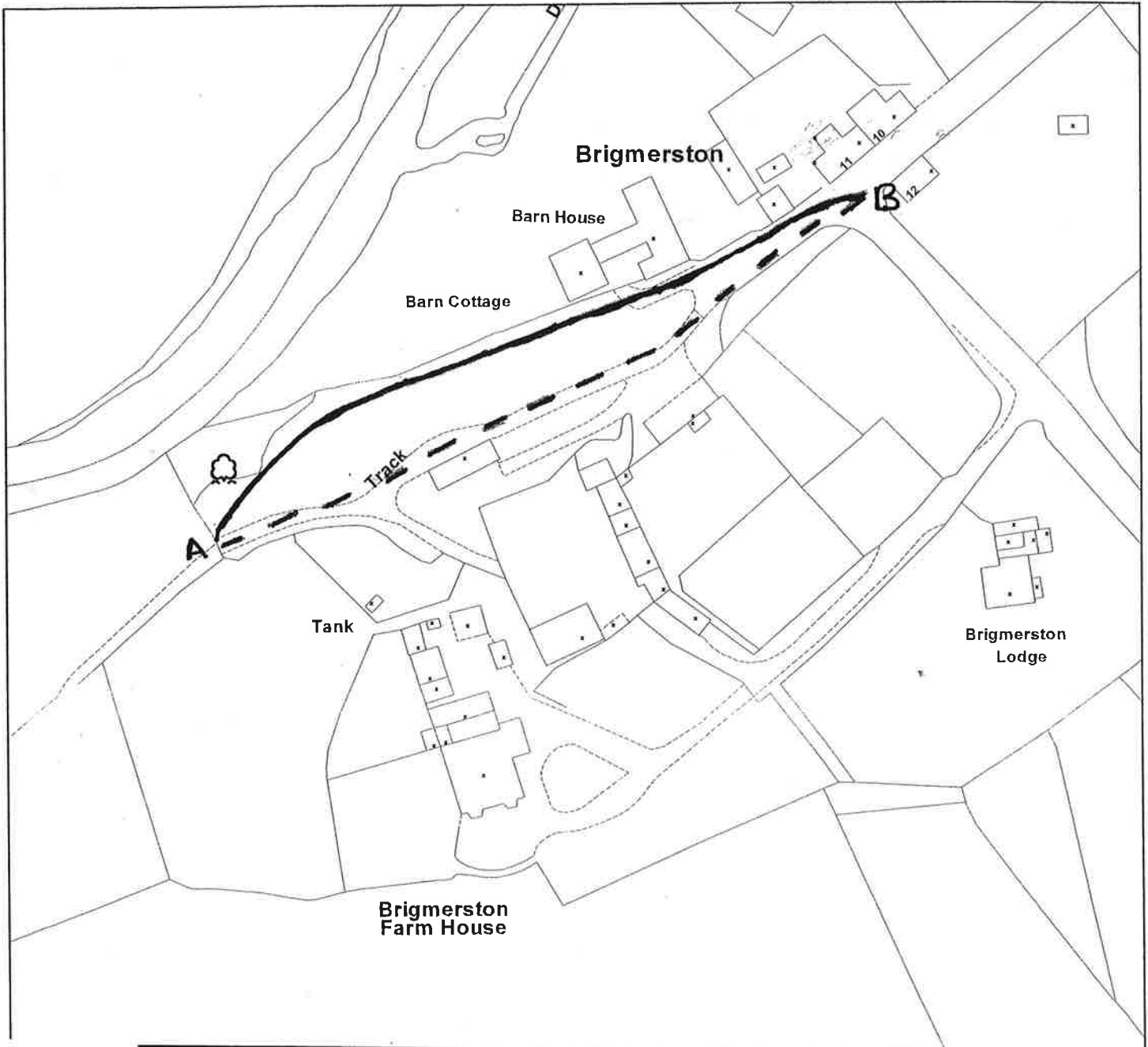
Correspondence with Parish Council, user groups, other interested bodies and members of the public

### **Appendices:**

Appendix A - Order Plan  
Appendix B - Decision Report  
Appendix C - Decision Report Attachments



GIS by ESRI (UK)



**MILSTON RESTRICTED BYWAY No. 16**

**Key**

Length of restricted byway to be added:      A ————— B

Length of restricted byway to be deleted:      A - - - - - B

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*Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. George Batten, BSc(Hons), C.Eng FICE FIHT, Director of Environmental Services, Wiltshire County Council*

*Prepared by: KLF Date: 1<sup>st</sup> August 2006 Scale: 1:1250 Grid Ref: SU 156-453*



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**Wildlife and Countryside Act 1981, Section 53**

**Application to delete a section of Milston 16 and add a restricted byway to form part of Milston 16 to correct a drawing mistake on the definitive map**

**Decision Report**

The application

1. On 13 August 2001 Jancis Henman, on behalf of The Friends of Milston and Brigmerston, applied to Wiltshire County Council to:
  - (a) 'delete the footpath leading from Brigmerston corner, Church Road, Milston through the farmyard to RUPP 16 Milston leading to Durrington with a width of two metres.' and
  - (b) add 'the footpath leading from Brigmerston corner, Church Road, Milston and then running parallel to Barn House and Cottage on right then crossing diagonally left to join RUPP 16 leading to Durrington with a width of two metres.'

The applications are attached at BB1, **Appendix C**.

2. The application was supported by 41 user evidence forms completed by 42 people who claim to have used the route described in paragraph 1(b) above since 1916. A summary of the forms is attached at BB2, **Appendix C**.
3. Notice of the application was served on all owners and occupiers of land affected by both applications.

Legal considerations

4. Wiltshire Council is now the Surveying Authority for the county of Wiltshire excluding the Borough of Swindon. Surveying Authorities are responsible for the preparation and constant review of definitive maps and statements of public rights of way. Section 53(2)(b) of the Wildlife and Countryside Act 1981 states-

As regards every map and statement the Surveying Authority shall-

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.
5. The events referred to in subsection 2 above which are relevant to this case are:
- 53(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:
- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to Section 54A, a byway open to all traffic;
- (ii) that there is no right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
6. The Council must consider all available relevant evidence both user and historical. Section 32 of the Highways Act 1980 states:
- 'A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.'
7. Section 53(5) of the Wildlife and Countryside Act 1981 allows for any person to apply for an Order under Section 53(2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3). The provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.
8. Schedule 14 to the 1981 Act states:
- Form of applications
1. An application shall be made in the prescribed form and shall be accompanied by-



- (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates and
- (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

#### Notice of applications

- 2. (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates
  - (2) If, after reasonable enquiry has been made, the authority are satisfied that it is not practicable to ascertain the name and address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description 'owner' or 'occupier' of the land (describing it) and by affixing it to some conspicuous object or objects on the land.
  - (3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.
  - (4) Every notice or certificate under this paragraph shall be in the prescribed form.
- 9. A Surveying Authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the Surveying Authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.

Following the decision in the Court of Appeal case R ( on the application of the Warden and Fellows of Winchester College and Humphrey Feeds Limited) v Hampshire County Council and the Secretary of State for the Environment Food and Rural Affairs delivered on 29 April 2008 [2008] EWCA Civ 431 Lords Ward, Dyson and Thomas found that if the outcome of an application turned on the application of Section 67(3) of the Natural Environment and Rural Communities Act 2006 then strict compliance with Schedule 14 would be required in respect of the presentation of 'copies of any documentary evidence ... which the applicant wishes to adduce in support of the application'. This is required in Section 67(6) for Section 67(3) to apply. However, Justice Dyson went on to say in paragraph 55 of his decision 'I wish to emphasise that I am not saying that, in a case which does not turn on the application of Section 67(6), it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and

proceed to make a determination under paragraph 3, or to treat a non compliant application as the trigger for a decision under Section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3).'

10. Section 67 of the Natural Environment and Rural Communities Act 2006 ends certain unrecorded public rights of way. Section 67(1) states:

'An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-

(a) was not shown in a definitive map and statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8).

Officers are not aware of any of the exceptions in subsection (3) relating to public rights applying to Milston 16. The section of the 2006 Act is attached at BB3, **Appendix C**. Milston 16 is shown on the definitive map and statement as a restricted byway. The application meets the requirements of schedule 14 of the 1981 Act.

11. The Highways Act 1980 allows, in Section 31(1) for the dedication of a right of way to be deemed highway unless there is sufficient evidence during the relevant 20 year period that there was no intention to dedicate it.

Section 31(1) states:

(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in sub-section (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in sub-section (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes –

(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after 1 January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary

intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in sub-section (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.
- (5) Where a notice erected as mentioned in sub-section (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.
- (6) An owner of land may at any time deposit with the appropriate council -
  - (a) a map of the land on a scale of not less than 6 inches to 1 mile and
  - (b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;

And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time-

- (i) within ten years from the date of deposit
- (ii) within ten years from the date on which any previous declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

- (7) For the purpose of the foregoing provisions of this section, "owner", in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land, and for the purposes of sub-sections (5) and (6) above 'the appropriate council' means the council of the county, metropolitan district or London Borough in which the way (in the case of sub-section (5) or the land (in the case of sub-section (6)) is situated or, where the land is situated in the City, the Common Council."

## Evidence submitted in support of the applications

12. The evidence provided by the members of the public who filled in the user evidence forms, referred to in paragraph 2 above, describes daily use in some cases, but otherwise, very regular use of the route claimed by the applicant for the additional right of way. The route being claimed is shown on the County Series Ordnance Survey map, plot number 69a. The use dates from 1916 until the route was obstructed in 2001. The use during this 85 year period was exercised as of right, openly and without the permission of the owner of the land over which the route crossed. The evidence provided described use on foot with two witnesses who stated they had cycled over it. Some witnesses described the route as Cuckoo Lane. The route was described as being outside the curtilage of Barn House and Barn Cottage. The former owner of Barn Cottage stated his bedroom window looked directly on to the path and the path was in daily use. Other witnesses referred to a former owner of Barn House being a keen gardener, who had often been seen in his garden whilst they used the path and he did not challenge their presence. A number of the witnesses described the route having a width of 15 feet.

## Evidence discovered by the Council relating to the applications

13. The Planning Inspectorate has produced 'Definitive Map Orders: Consistency Guidelines' which provide information and references to resources and relevant case law to assist in the interpretation and weighing of evidence on Definitive Map Orders (DMOs). They are the primary reference material for Inspectors in determining such Orders.

In evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. A number of general principles need to be applied when evaluating documents and there is a need to understand the context in which the maps were compiled:

- (a) Why was the document compiled?

What was the purpose of the compilation process and of the particular document within that process? If for example the recording of the existence of a public highway was of significance to the process of compiling the document, considerable evidential weight will be added. Weight is added if the document was conclusive evidence for a particular purpose.

- (b) How was the document compiled?

The requirements for recording need to be checked, for example what scales and conventions were applied to the mapping and recording process. Was the process based upon a new survey or on updated older records? Was there an external check on accuracy? Public participation in the process of compiling the document strengthens the value of the evidence.

(c) Who compiled the document?

Consideration needs to be made of the consequences of the legal effect of the compiler either including or failing to include a highway. Declarations against the compiler's interest carry more weight than declarations in the compiler's interest. The sanctions for falsifying evidence also affect the weight accorded to evidence.

Using these basic principles and having regard to the Planning Inspectorates Consistency Guidelines and advice in the book *Rights of Way A Guide to Law and Practice* by John Riddall and John Trevelyan Wiltshire Council officers have devised a system of categorising the historical evidence.

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of a way as a highway Physical existence of a way Conclusive evidence of public rights	Inclosure Acts, Awards and plans Orders creating, diverting or extinguishing highways Railway and canal Acts and Plans Definitive Map and statement
B	Reputation of a way as a highway Physical existence of a way	Documents, maps and plans drawn up as a result of legislation, consulted upon but whose primary purpose was not to record public rights e.g. Tithe Awards, 1910 Inland Revenue Act documentation
C	Reputation of a way as a highway Physical existence of a way	Includes local government records e.g. Highway Boards, County Council, parish council
D	Reputation of a way as a highway	Other maps and documents showing highways additional to or as part of their purpose e.g. parish maps, estate plans and conveyances
E	Reputation of a way as a highway Physical existence of a way	Commercial maps and some Ordnance Survey records
F	Reputation of a way as a highway Physical evidence of a way	Local repute, consultation responses

14. In 'A History of the County of Wiltshire', volume 15 produced by the Victoria County History, Milston and Brigmerston are described-

'The villages of Milston and Brigmerston apparently originated within a westwards meander of the Avon, Milston on the north bank, Brigmerston on the south, and grew round a rectangle of lanes. The east side of the rectangle was a track in 1841 and did not survive in 1851. The name Church Road was applied to both the south and the west sides in the 20<sup>th</sup> century. Both villages were bypassed by the Figheldean-Bulford turnpike road. Brigmerston may have been the wealthier of the two settlements in the 14<sup>th</sup> century. Milston was more populous in the mid 19<sup>th</sup> century, Brigmerston in the later 20<sup>th</sup>.

Brigmerston.

The north side of the rectangle of lanes, extending west beyond Church Road, formed a village street for Brigmerston.....The principal farmstead in the village, Brigmerston Farm, was at the west end of the street on the south side, the farm buildings west of the house. A new farmhouse was built south west of the buildings between 1851 and c. 1877.'

The location of the village street is shown on mapping to be dealt with later in this report. Part of the claimed additional right of way runs along the village street described above.

Victoria County History [VCH] was founded in 1899 and was originally dedicated to Queen Victoria. VCH is an encyclopaedic record of England's places and people from earliest times to the present day. Based at the Institute of Historical Research in the University of London since 1933, the VCH is written by Historians working in Counties across England.

#### Category A evidence

15. The definitive statement prepared under Section 32 of the National Parks and Access to the Countryside Act 1949 with the relevant date of the 16 November 1952 states 'Milston 16 C.R.B. From the northern end of Durrington path No.12 leading north across the Ford and *North-east along the cart track past Brigmerston Farm to Church Farm, u/c 10006* [authors italics]. The route described in the definitive statement is along a defined track which ran past and not through Brigmerston Farm i.e. on the route which the application seeks to have added to the definitive map and statement. No right of way is described on the route currently shown on the definitive map as the route of Milston 16. The definitive statement is attached at BB4, **Appendix C**.

#### Category B evidence

16. A Tithe Award dated 1841 covering the parish of Milston is held in the County History Centre. The map attached to the Award shows a lane along the route of the claimed right of way in the same manner as the C32 Figheldean to Bulford road and unclassified road 10006 Church Street. The road leads east

off Church Street to the river, an extract from the Tithe Award map is attached at BB5, **Appendix C**. A number of allotments are shown and numbered to the north and south of the lane which I have shown in a table attached at BB6, **Appendix C**. Whilst the allotments are in the ownership of only two people, Charles Edward Rendall and Reverend Peter Hall, a number of people occupy them for a variety of purposes as you might expect in a typical village street. The lane shown on the Tithe Award plan is in the approximate position of the lane shown on the County Series Ordnance Survey maps which I will be describing later on in this report and is the route of the claimed additional path in the application under consideration. No route is shown on the map along the line shown on the definitive map as the right of way.

The Tithe Award for Milston is derived from the Tithe Commutation Act of 1836 which reformed the way in which the established church was financed by tax (the tithe) on local agricultural output. The 1836 Act converted tithes into fixed money rent. The documents consist of three elements, the apportionment, the map and the file and they are solely concerned with identifying titheable land. The apportionments are statutory documents which were in the public domain; however, the maps were not made for the purpose of establishing or recording rights of way. Tithe maps are generally good evidence of the topography of the roads they portray, especially those which form boundaries of titheable land.

#### Category C evidence

17. In the papers of the Amesbury District census 1851 held in the History Centre a note and plan concerning the hamlet of Brigmerston may be found, attached at BB7, **Appendix C**. The text states:

'Milston

This Parish consists of the Village of Milston and the hamlet of Brigmerston close adjoining. There are in Brigmerston 2 out of the way cottages, *situate in a hollow by the River side beyond Mr Edward's farm on a swampy trackway to Durrington*. They lay on the right hand side.' [Authors italics]

The plan, which is hand drawn and not to scale, identifies Mr Edward's farm alongside a 'road down to the river' with 2 'out of the way Cottages' shown on the opposite side of the road on the river side. From comparing the map and description against the Tithe Award map and the slightly later drawn Ordnance Survey maps it is reasonable to say the route being depicted on the map is the same route i.e. the route relating to the claimed additional way in the application.

18. Wiltshire County Council was required to consult with all the parish council's within its administrative area at the preparation stage of the definitive map and statement to ascertain the location and status of public rights of way within their parish. County Series Ordnance Survey plans were sent to the councils in 1950 with the request that they drew on the maps the routes of the public rights of way and described the route on forms. Milston Parish Council drew a right of way on a map along the track to which the application to add a right of way refers i.e. along the route past what is now Barn House and shown on the underlying Ordnance Survey map. On the form the parish council described the path as:

' Milston 2 Footpath Durrington to Brigmerston. Follows Durrington – Milston footpath for 250f then after stile thence north to unmetalled road.' The nature of the surface was described as 'Metalled for first 250f thence meadow for 300f then unmetalled road' The unmetalled road section of the path was described as being fenced.

On 8 February the County Surveyor wrote to Mr Bartlett, Chairman of Milston Parish Meeting, regarding the survey of rights of way:

'The cart track or unmetalled road which you refer to in your description of path No. 2 continues southwards to the western end of path No. 1 after crossing a ford. I think this should be added to your schedule, but I should be glad to have your observations as to whether this is a public right of way throughout its whole length.'

In his reply dated 4 July the Chairman confirmed 'Para 2 Agree with W.D.L.A. footpath No 2 should be as originally shown.'

Whilst the length of path being referred to in the letter is not the length of way which is the subject of the application, but its continuation, the Chairman is clearly confirming the location of the entire length of the path which it is claiming as a public right of way i.e. along the route shown by the Ordnance Survey as a track alongside what is now Barn House, not a line through Brigmerston farmyard. Documents appended at BB 8, **Appendix C**.

#### Category D evidence

19. On 16 November 2000 Salisbury District Council received an application for permission for development at Barn House, Brigmerston which was given the reference S/00/2164. The application was made by R and S Howes Partnership, agents on behalf of Mr J Elliott of Barn House, Brigmerston, Wiltshire, who was stated to be the owner of the Barn House. The development proposed was to 'demolish and re-build' Barn House. The site plan produced to a scale of 1:2500 appears from how the plots are numbered, e.g. plots 64, 66 and 72, to be based on the County Series Ordnance Survey map. The site is delineated by a red line. On the block plan produced at a scale of 1:500 Barn House is shown along 'Existing Lane' i.e. the route sought



to be added to the definitive map. On the Appraisal page within the documentation held with the application in the County History Centre, under site notes, against 'HIGHWAY Traffic, Access, Parking' an officer had commented 'In need of renovation'. The application completed presumably with the knowledge of the owner of Barn House at that time clearly acknowledged the existence of a track outside his curtilage on the route which the application seeks to add to the definitive map.

The application was approved on 9 February 2001 with one of the conditions being:

'3. There shall be no new buildings, structures (including gates, walls and fences) or raised ground levels within

a) 8 metres of the top of any bank or watercourses

b) 8 metres of any side of an existing culverted watercourse inside or along the boundary of the site, unless agreed otherwise in writing by the Local Planning Authority.'

Copies of papers attached at BB9, **Appendix C**.

#### Category E evidence

20. Evidence in this category includes commercial and Ordnance Survey maps. The value of this category of evidence lies in the continuity of the records over a long period of time, the different compilers and the public use of them. Not all commercial maps are derived from the same surveys.
21. Andrews' and Dury's map of Wiltshire was produced in 1773 at a scale of approximately 2 inches to the mile. The map was based on an original survey. The conventions used on the map to indicate natural and artificial features are those generally employed at the time. Whilst the Wiltshire map has no key the compiler's map of Hertfordshire does have a key and the symbology deployed on that map appears to be the same as used on the Wiltshire map. Relief is represented by vertical shading, woods are depicted as compact clumps of roughly drawn tree-tops and roads are traced by double lines and turnpike gates are marked. The map does show a T junction of roads at the heart of the hamlet of Briggerston one of which leads in an easterly direction to the river with buildings lying to north and south of the road. Whilst the map is crudely drawn, considering the map in the context of the other evidence available to Council, the map is showing a route in the approximate position of the route shown on the later Tithe Award map and County Series Ordnance Survey maps as the claimed additional right of way. The map is appended at BB10, **Appendix C**.

22. Greenwoods map of Wiltshire dated 1820 has been examined and it shows a fenced track on the same alignment as the mapping evidence I have previously described. According to the inscription on the map it was completed after an actual survey of the county made in 1819 and 1820. John Chandler in his book *Printed Maps of Wiltshire 1787 – 1844* states the following about the map:

'In surveying Wiltshire, Greenwood had the advantage over his predecessors of the Ordnance Survey's published trigonometrical survey, which described with great accuracy the principal and some of the secondary triangulation of England and Wales. He might also, although he appears not to, have used and copied from the recently published Ordnance Survey sheets covering the south and centre of the county. His surveying methods, it must be confessed, fell far short of the standards set by the Ordnance Survey, but his map should not be disregarded on that account. Unlike the Ordnance Survey he appears to have relied for his information not only on topographical survey, but also on existing local manuscript maps, such as estate and enclosure maps; on printed guidebooks and official sources, such as census reports, for the orthography of names and hierarchy of settlements; and on local knowledge collected by the surveyors, especially relating to boundaries. The achievement of mapping Wiltshire's parish boundaries, two decades before the appearance of the tithe commutation maps, was in itself a considerable one, which should deserve our respect. And in other regards, too, the existence of a detailed map compiled largely independently of Andrews and Dury and the Ordnance Survey, from a new topographical survey and from secondary sources, should give Greenwood's map an importance and significance for Wiltshire historians which has not hitherto perhaps been adequately appreciated.'

The route depicted by Greenwoods on his map is shown extending down to the river Avon much further than on the Ordnance Survey manuscript drawing of 1808 which I will describe later. I suggest this different depiction is an example of Greenwood's surveyors having consulted other local records in the compilation of the map. An extract from the map is produced at BB11, **Appendix C**.

23. John Cary was born in Warminster in 1754 and worked from London as a map maker, engraver and publisher. He was active in the early part of the 19<sup>th</sup> century. In 1794 he was commissioned by the Postmaster General to undertake a survey of main roads in the country and he undertook considerable work on the English Ordnance Survey prior to 1805. Cary appears to have used actual surveys, as well as the work of others, in the production of his maps. On his map of Wiltshire dated 1832 roads are recorded in one of four classifications, a detailed road classification system at that time which is particular to Cary's maps. The 1832 map shows a parochial

road on the line of the claimed right of way. An extract from the map is produced at BB12, **Appendix C**.

24. In 1969 the publishers, David and Charles, produced what was referred to as sheet 14 in the Old Series Ordnance Survey 1 inch maps. The survey in Wiltshire began in 1793. The local topographical survey was undertaken between 1807 and 1811 at a uniform scale of 2 inches to 1 mile. The published map is a composite document embodying material from a succession of dates. The engraving of 1817 based on the survey of 1807-1816 remains intact over much of the sheet. The major revisions result from the periodic insertion of railway material.

The relevant section of the map is produced as printed and an extract at an enlarged scale at BB13, **Appendix C**, shows a fenced road along the route shown on the Tithe Award map leading from Brigmerston through buildings to Durrington.

25. According to the notes on Cassini's Popular Edition of the Ordnance Survey 1 inch map, map 184 Salisbury and The Plain 'The original impetus behind the creation of the Ordnance Survey and the original Old Series maps had been one of military necessity. Although the maps had soon assumed a more civilian aspect and market, the Ordnance Survey continued to fulfil an important wartime role. During the First World War its normal activities were suspended and over 5,000 people were engaged on military work, producing more than 32 million maps for the war effort.

The end of the conflict co-incided with another revolution as dramatic as that which had swept the country three generations earlier with the advent of the railways – the increased use of the motor car. By the 1920s, this new and independent means of transport had helped create an entirely new market for maps..... Responding to this, the Ordnance Survey, under the Director-Generalship of Colonel Charles Close, began re-surveying the country in 1912 with a view to producing maps that were both accurate and eye-catching in design. After the war, and guided by the results of public consultation, the one-inch Popular Edition was launched.'

The relevant sheet shows a fenced track on the same alignment as the earlier Old Series map described in the above paragraph but by the time of this survey the road no longer continued through to Durrington. The map is produced at BB14, **Appendix C**, together with an enlarged extract and an extract from the key to the map. According to the key on the map the route is shown as a road less than 14 feet wide.

26. Sheet 54 of the First Edition 6 inches to 1 mile Ordnance Survey sheet surveyed between 1877-78 shows a fenced track to the north of Brigmerston Farm on the same alignment as the other mapping evidence already

described, no route is shown passing through the farm yard. An extract from the map is at BB15, **Appendix C**.

27. J B Harley, in his book *Ordnance Survey Maps a descriptive manual* published by the Ordnance Survey in 1975, states that Ordnance Survey maps at the scale of 1:2500 originated in the mid nineteenth century in response to the urgent need for accurate plans for land registration purposes. An extract from the 1<sup>st</sup> edition of the relevant sheet, which was surveyed in 1877-78, is reproduced along with an extract from the 1926 revision at BB16, **Appendix C**. Both editions show a track which is separately numbered and measured to the north of Brigmerston Farm along the alignment of mapping previously described, such as the Tithe Award map. In his description on Areas in his book Mr Harley states 'The system by which each parcel of land is numbered, its area calculated from the map, and this value printed on the sheet is peculiar to the 1:2500 series and helps render it an important tool in the conveyancing and registration of land. The Ordnance Survey large scale maps, which show practically all permanent fences and hedges, are particularly suitable for use as the basis of the description of the land to which each title refers.... A parcel is accordingly defined as any area which is measured and published on the plan; it may be a single feature, usually an enclosure, or it may consist of several adjacent features grouped together. As a general rule parcels are bounded by lines of natural detail, such as hedges or streams (although in creating 'Town Areas' other features such as railways are used), but they are sometimes bounded artificially as by administrative boundaries or the sheet edge. Each parcel is given a reference number....there are minimum areas below which certain features are not measured separately...In any case there are exceptions to such thresholds and some features are *always* separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of 'Town Areas'), all public roads, whether fenced or unfenced.' Mr B St G Irwin Director General of the Ordnance Survey at the time the book was published stated in the Foreword of the book that Dr Brian Harley was a leading authority on Ordnance Survey maps.

#### Decision.

28. The judgement given by the Court of Appeal in *R v Secretary of State for the Environment ex parte Burrows and Simms* (1991) 2 QB 354 held, in effect that if evidence comes to light to show that a mistake had been made in drawing up the definitive map, such a mistake can be corrected in either of the three ways envisaged in Section 53(3)(c) of the Wildlife and Countryside Act 1981.
29. Under Section 53(3)(c)(i) the Surveying Authority is not required to prove 'beyond all reasonable doubt' that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not, that the rights exist. An Order may be made under this section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent

test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the definitive map.

30. The earliest map examined, which officers believe shows the route which is the subject of the application, is Andrews' and Dury's map of Wiltshire dated 1773. Whilst it may be argued that this map is on such a small scale, 2 inches to 1 mile, that it is not possible to identify with any degree of accuracy the route of a particular way, when compared with the later mapping evidence, in particular the large scale Ordnance Survey maps, a picture of the road layout of this area becomes clear. There is a consistent portrayal of the claimed route as part of the local road network on the maps described in this report. This supports the application applied for by Jancis Henman and triggers the duty of the Council to modify the definitive map and statement accordingly by adding to the definitive map and statement as a restricted byway the claimed route and the deletion of the section of Milston 16 at Brigmerston Farm. The historical evidence is entirely supported by the significant amount of user evidence also submitted with the application. No statements and plans have been deposited under Section 31(6) of the Highways Act 1980 for the area over which Milston 16 runs.
31. No mapping evidence has been discovered by council officers to confirm that the section of Milston 16 currently shown on the definitive map through Brigmerston farmyard is correct. Taking the map evidence into consideration with all the other evidence relating to Milston 16 the Council has considered officers believe that section of Milston 16 shown through the farmyard should be deleted from the definitive map.

Barbara Burke

Definitive Map and Highway Records team leader

FORM 1

WILTSHIRE COUNTY COUNCIL

WILDLIFE & COUNTRYSIDE ACT 1981

DEFINITIVE MAP & STATEMENT OF RIGHTS OF WAY  
FOR THE COUNTY OF WILTSHIRE

Notice of Application for Modification Order

To: Rights of Way Section, Environmental Services Department, Wiltshire County Council, county Hall, Trowbridge, Wilts. BA14 8JD

*A*WE (please insert your name or the name of the organisation making the application)  
..... THE FRIENDS OF MILSTON & BRIGMERSTON .....  
of (please insert your full address) MILSTON HOUSE, MILSTON, .....  
DURRINGTON, SALISBURY, WILTSHIRE. SP4 3HT. .....

hereby apply for an Order under Section 53(2) of the Wildlife & Countryside Act 1981 modifying the Definitive Map and Statement for the area by:-

**deleting the footpath/~~bridleway/byway~~ open to all traffic (please delete the irrelevant status) leading from (please describe the position and route of the right of way you are referring to)**

..... BRIGMERSTON CORNER, CHURCH ROAD, .....  
MILSTON THROUGH THE FARMYARD TO RUPP 16, .....  
MILSTON: leading to Durrington: .....

with a width of 2 METRES .....

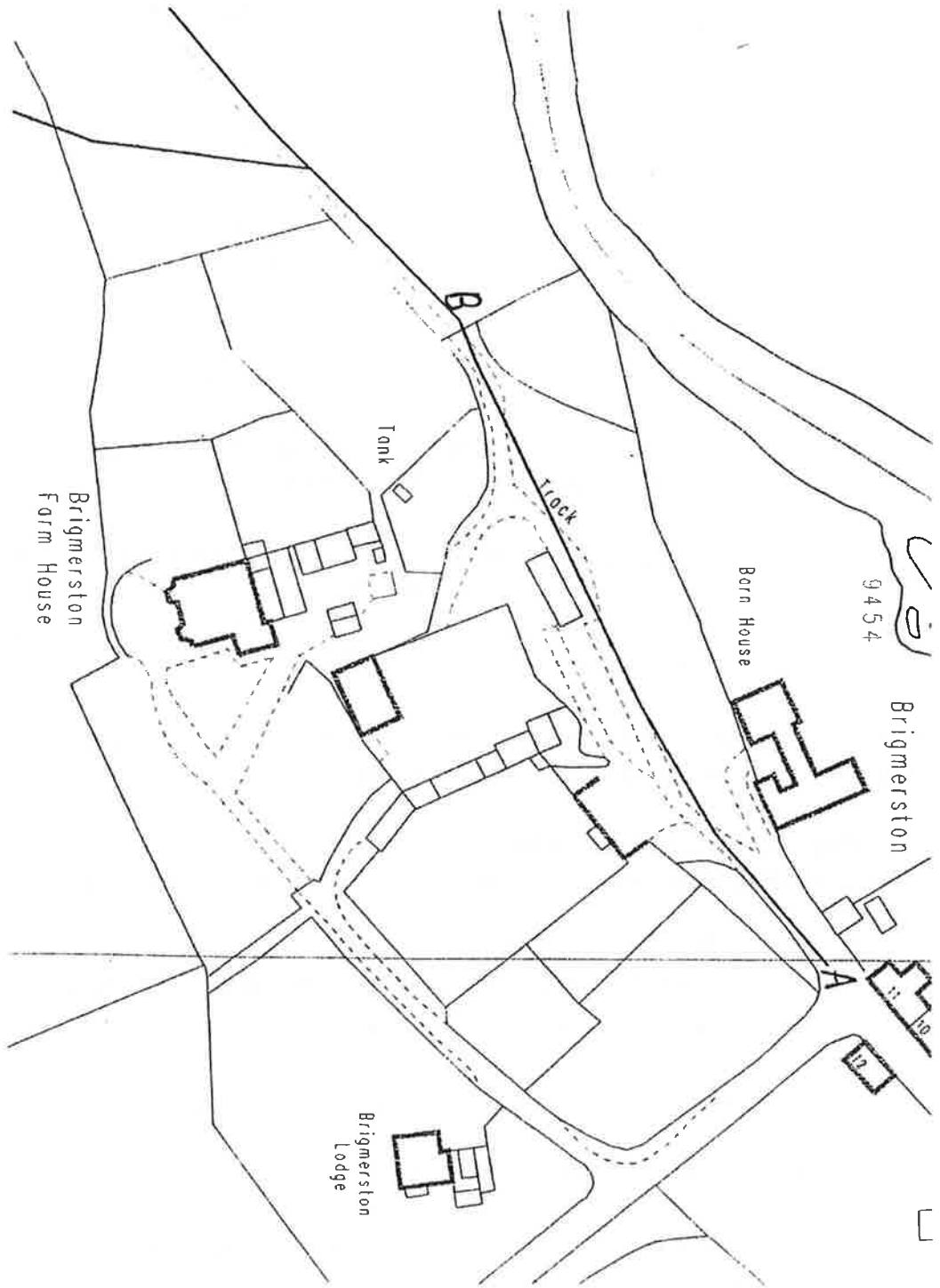
**The route of the right of way is shown on the attached map.**

*A*WE attach copies of the following documentary evidence and or statements of witnesses in support of this application.

Dated 13th August 2001:

Signed Janis. Herman  
p.p. The Friends et al

For a definition of the various categories of rights of way please see overleaf.



REPRODUCED FROM THE ORDINANCE SURVEY MAP  
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LICENCE NO. LA 070910 WILTSHIRE COUNTY COUNCIL  
ENVIRONMENTAL SERVICES DEPARTMENT  
FOR REFERENCE PURPOSES ONLY NO FURTHER COPIES  
MUST BE MADE.

*KCR/gh*

**FORM 1**

**WILTSHIRE COUNTY COUNCIL**

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..... *THE FRIENDS OF MILSTON & BRIGMERSTON,* .....  
of (please insert your full address) *MILSTON HOUSE, MILSTON,* .....  
*DUKELINGTON, SALISBURY, WILTSHIRE SP4 8HT.* .....

hereby apply for an Order under Section 53(2) of the Wildlife & Countryside Act 1981 modifying the Definitive Map and Statement for the area by:-

**adding** the footpath/~~bridleway~~/~~byway~~ open to all traffic (please delete the irrelevant status) **leading from** (please describe the position and route of the right of way you are referring to) *BRIGMERSTON CORNER, CHURCH ROAD, MILSTON & THEN RUNNING PARALLEL TO BARN HOUSE & COTTAGE ON RIGHT THEN CROSSING DIAGONALLY LEFT TO JOIN RUPP 16 leading to Drummington* .....  
with a width of: *2 METRES* .....

**The route of the right of way is shown on the attached map.**

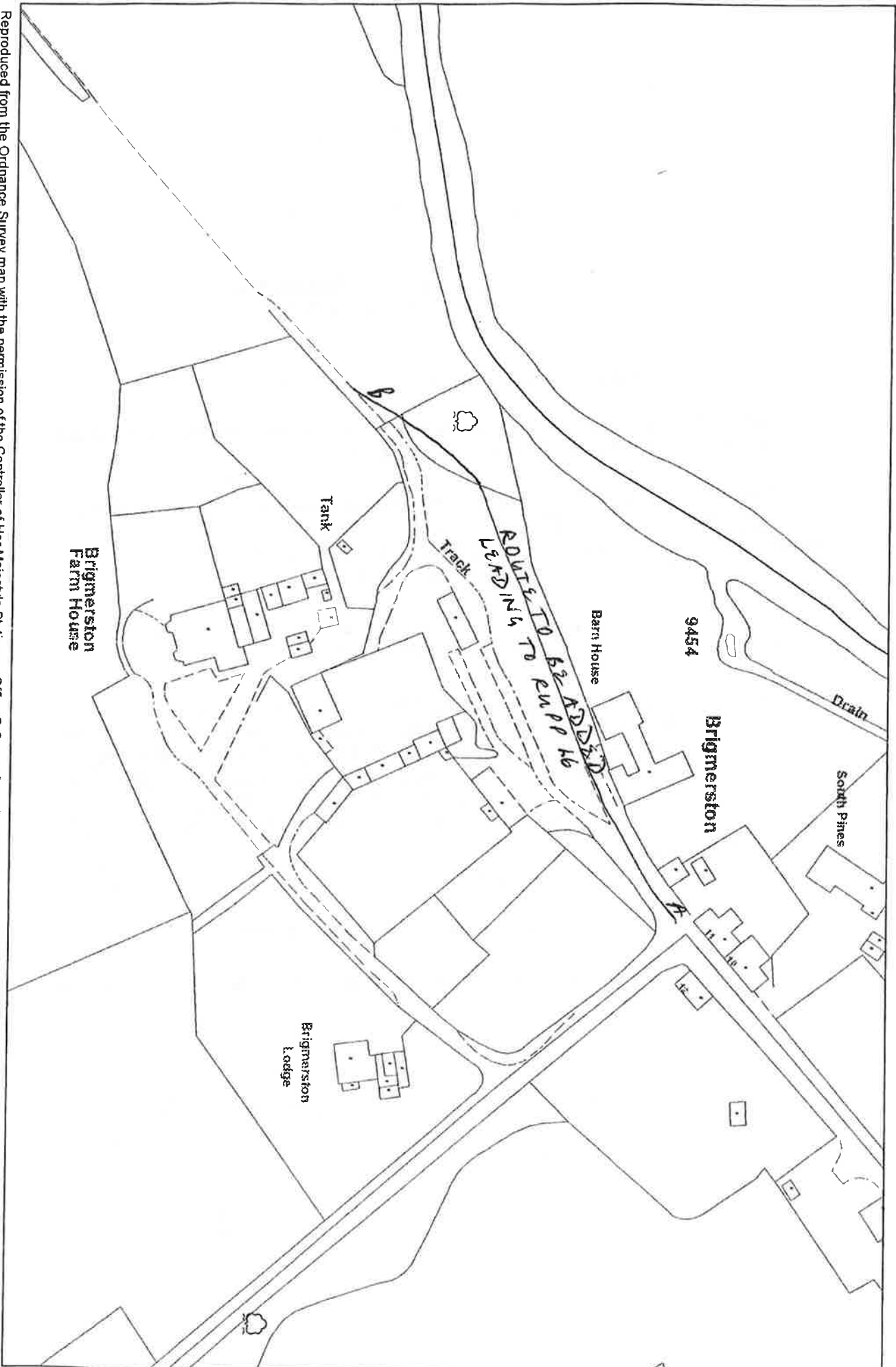
*I/WE* attach copies of the following documentary evidence and or statements of witnesses in support of this application.

Dated *13th August 2001.*

Signed *Francis Herriman*  
*FF The Friends et al?*

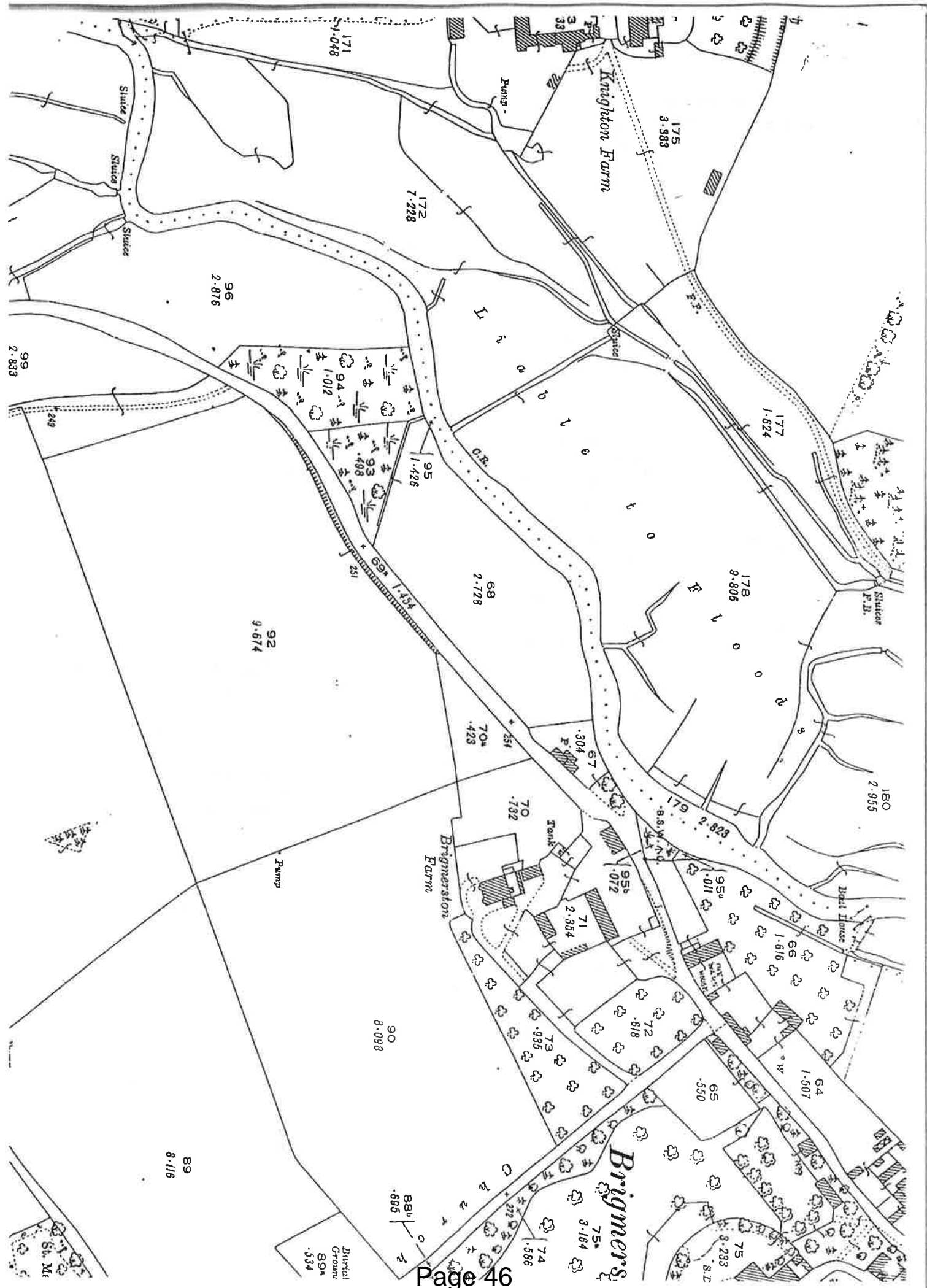
For a definition of the various categories of rights of way please see overleaf.





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Date: 06 June 2001  
 SLA: IA 076910  
 Scale 1:1250



Name	Route used	Period of use	Comments
Batty H M	County Series O S route	1956 – 1995	Uses the route for recreation about 30 times a year now obstructed with barbed wire and soil at Briggerston
Broe T A	Route hand drawn on modern map but not on CS line	1973 – 2001	Uses for recreation about 24 times a year now obstructed by soil and barbed wire at Briggerston
Card P J	Alongside Barn house over stile into meadow but deviates off the CS line	1935 – 1980	Uses for recreation most Sunday evenings from 1935 – 1950
Courage L P	Alongside Barn House and wall now demolished over stile into meadow. Not shown all along the CS line	1995 – 2001	Uses weekly, barb wire obstructed the route in April/June 2001
Courage W J	Alongside Barn House and wall to stile into meadow. Not shown all along the CS line	1995 – 2001	Used 3 times a week Blocked in spring 2001 with a bank and barb wire
Dryden J	Drew route alongside Barn House and wall referred to a stile into area by the river	1960 – 2001	Used 2 – 3 times a week in childhood now twice a week. Bank and wire fence erected 2001 obstructing the route
Dryden	Described route alongside Barn House and wall into field	1960 – 2001	Used 3 times a week when children were young. "001 builder pulled down the wall and stile put bank on the right of way
Foyle C D	Described route between the farm and barn House alongside wall now demolished over stile into water meadows	1980 – 2000	Used once a month route signed stopped from using 2001
Freeman	Route alongside Barn House and wall now demolished	1932 – 1998	Used it first with Milston Brownies/Guides Use it about twice a month. Has seen other people using it. Stile erected at end of Barn Cottage wall in 1980

Gow A C	County series route, marked where the stile was	1967 – 2001	Blocked in 2001 with old vehicles, building materials and stile removed. Had used daily
Haines J M	County Series route to stile	1980 – 1996	Walked it but didn't say how often
Henman J	County Series route	1991 – 2000	Used almost daily during the summer. Saw other dog walkers on it. Stile removed by owner of Barn House in 2001 who put up barb wire across the way earth bank and saplings planted on route
Henman R W	Alongside barn House and wall to stile	1991 – 2001	Used route at least once a week. Developer of barn house removed stile, erected an earth bank on the route. Saw former owner of Barn House whilst using the route never challenged
King M	County Series route	1990 – 2001	Used for dog walking. Signed as a public right of way
Lester-Card	County Series route	1973 - 2001	Used irregularly
Lloyd-Price R M	County Series route	1979 – 2000	Knew former owner of Barn House, right of way never in the bounds of that property. Present owner has incorporated the path into his garden
Lloyd-Price Z	County Series route	1980 – 2000	Used it about 25 times a year. Former owner of Barn house was great gardener and was often there or in his fruit cage so he would have known lots of people used the path
Love M B	County Series route between the farm and Barn House	1990 – 2000	Used once or twice a year
Love W E	Approximately County Series route, described as same	1990 – 2000	Part of dog walking circuit

	route as other witnesses past barn house and former wall to stile		
Mortimer A C	Approximate County Series route on signed path to meadow	1950s onwards	Used it once or twice a month. 15 feet wide
Mortimer E B	County Series route on sign posted path	1940 – 1950, 1970 – 2001	Used it weekly in the 1940s recently approximately 12 times a year. Width 15 feet
Parsons N I	No route marked or identifiable route described	1958 – 1975	Walked route as a child [born 1952].
Piece Y R	Partially County Series route described as Cuckoo Lane [other witness has described it as this]. Described as following wall to stile into meadows	1951 – 2000	Used it approximately 10 times a year. Saw other people using it
Reed H J	County Series route but not all the way. Route described same as other witnesses alongside former wall to stile into field	1971 – 78 regular use 1n the 80s and 90s irregular use	2001 old wall demolished by developer of Barn House stile also removed and earth bank put across the right of way. Was signed
Rennie J J	County Series route	1948 – 2001	Route signed as right of way Use 24 times a year, saw other users. Obstructed with barbed wire and earth bank
Rennie M	County Series route	1960 – 2001	Used it with her children, grand children and dogs. Saw other users, was signed
Sheppard A	Approximate County Series route	1977 – 1998	Use about 6 times a year, width 3 metres, signed
Sommerton S G	Partially County Series route past barn house and wall to stile to meadow	1952 – 1999	Used about 12 times a year, width 8 – 10 feet. Signed. Obstructed by barb wire and high bank
Spreadbury A J	County Series route	1936 – 2000	Dog walking route 70 to 100 times a year. Width 12 to 14 feet.

			Barn House wall removed in January 2001 with stile obstructed with barbed wire
Spreadbury F	County Series route	1916 – 1965	Used it since childhood 50 or 60 times a year
Stephenson E W	Approximate County Series route, described as Cuckoo Lane	1974 – 1980	Used about 20 times in the period 1974 – 1980, saw other walkers. Exit onto Cuckoo Lane has recently been blocked
Stephenson A M	As above	As above	As above
Stephenson-Jarrett	No route drawn on the map but described as Cuckoo lane leading past dwelling and wall to stile into meadow	Walked in childhood [born 1964]	Walked 5 times a year, width 4 to 5 metres
Sturgess M E	Partially on County Series route, described alongside Barn house and wall	1965 – 1970 and 1984 -1995	Used for dog walking. Route marked on the Tithe award map
Tamplin L	County Series route	1996 – 2000	At least twice a week dog walking, 3 metres wide and signposted, location common knowledge
Tamplin P H	County Series route	1996 – 2000	Difficult to use when wet so use probably less than once a month. Well defined route
Taylor H	County Series route	1992 – 1999	Daily use walking and cycling. Width about 4 metres, new building has encroached on it. Lived in barn cottage and his bedroom window looked out onto the path. Was signed
Toomer C J	County series route	1980 – 1986	Walked with a dog about 6 times a year. Width 5 metres
Toomer R J	Partially County Series route. Described alongside Barn Cottage and wall to stile into	1992 – 1998	Used it for dog walking about 5 times a year, width 5 metres

	meadow		
Vandeleur S	Partially County Series route but described as following track past barn house over a stile	1994 – 2001	Use it at least once a week from May to August on foot and cycle. Signed. Well used path
Weaver B	County Series route and route through farmyard	1937 – 1955 last used 1985	As a child used it daily, gates always open

- (2) After paragraph (h) insert –  
     “(i) a National Park authority; or  
     (j) the Broads Authority.”
- (3) Omit “or” preceding paragraph (h).

## PART 6

### RIGHTS OF WAY

#### *Rights of way and mechanically propelled vehicles*

#### **66 Restriction on creation of new public rights of way**

- (1) No public right of way for mechanically propelled vehicles is created after commencement unless it is –  
     (a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or  
     (b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.
- (2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

#### **67 Ending of certain existing unrecorded public rights of way**

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement –  
     (a) was not shown in a definitive map and statement, or  
     (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.  
 But this is subject to subsections (2) to (8).
- (2) Subsection (1) does not apply to an existing public right of way if –  
     (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,  
     (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),  
     (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,  
     (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or  
     (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if –



- (a) before the relevant date, an application was made under section 53(5) of the *Wildlife and Countryside Act 1981 (c. 69)* for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
  - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
  - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles –
    - (i) was reasonably necessary to enable that person to obtain access to the land, or
    - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (4) “The relevant date” means –
- (a) in relation to England, 20th January 2005;
  - (b) in relation to Wales, 19th May 2005.
- (5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –
- (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
  - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,
- the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.
- (6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.
- (7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact –
- (a) exercising the existing public right of way, or
  - (b) able to exercise it.
- (8) Nothing in this section applies in relation to an area in London to which Part 3 of the *Wildlife and Countryside Act 1981 (c. 69)* does not apply.
- (9) Any provision made by virtue of section 48(9) of the *Countryside and Rights of Way Act 2000 (c. 37)* has effect subject to this section.

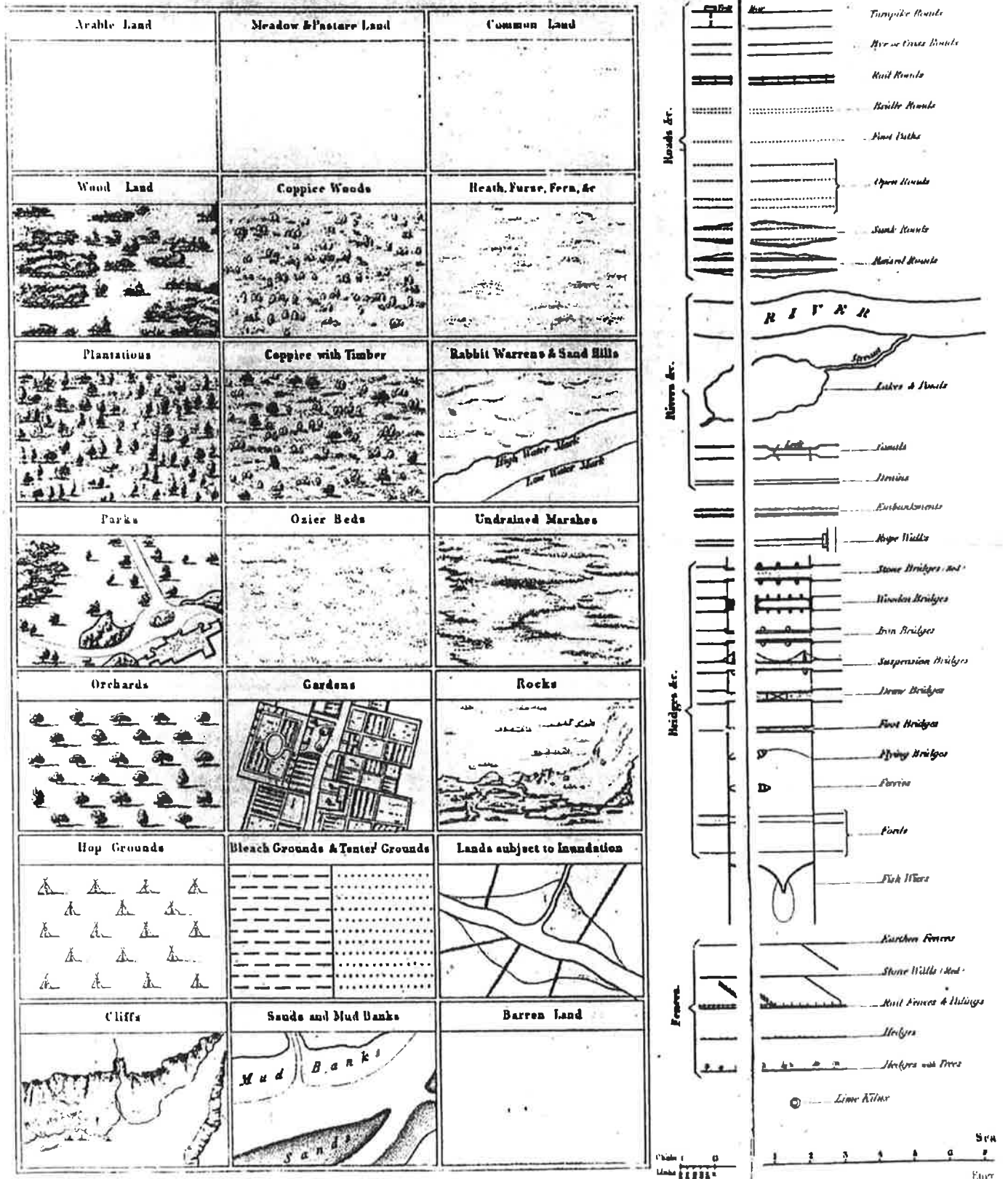
**68 Presumed dedication of restricted byways and use by pedal cycles etc.**

- (1) Amend section 31 of the *Highways Act 1980 (c. 66)* (dedication of highway presumed after public use for 20 years) as follows.
- (2) After subsection (1) insert –
  - “(1A) Subsection (1) –
    - (a) is subject to section 66 of the *Natural Environment and Rural Communities Act 2006* (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

<u>Parish</u>	<u>Path No.</u>	<u>Description of Path</u>	<u>Approximate Length</u>	<u>Width</u>	<u>Limitation or Conditions affecting Public Rights</u>
Milston.	16.	C.R.B. From the northern end of Durrington path No. 12 leading north across the ford and north-east along the cart track past Brigmerston Farm to Church Road, U/c.10006.	800 yards		
	17.	F.P. From path No. 6 leading north across the River Avon by the new footbridge to road U/c.10006, east of Milston Church.	75 yards		
	18.	F.P. From the western end of road U/c.10002 at Milston Bridge leading west along the north bank of the River Avon to path No. 17 at the new footbridge.	200 yards		
	19.	C.R.B. From the Hampshire County boundary near Hare Warren, west of Devil's Ditch, leading north and north-west to Rignoldean path No. 26 at Dunch Hill.	1400 yards		



CONVENTIONAL SIGNS TO BE USED IN THE PLANS  
COMMUTATION OF TITHE IN ENGLAND



Tithe award Allotments

Landowner	Allotment No.	Occupier	Name & description of land or premises	State of Cultivation	Area
Charles Edward Rendall	16	Himself	Bwad mead	Meadow	7a 2r
Ditto	17	Himself	Gudgeon mead	Meadow	4a 1r 5p
Ditto	10	Himself	Court Heme	Pasture	2a 10p
Ditto	11	Himself	Homestead		1a 27p
Ditto	64	Himself	Plantation		2a 18p
Ditto	7	Himself	Farm Yard		17p
Ditto	9	Himself	Farm Yard		20p
Ditto	10	Himself	Willow bead	Meadow	3p
Ditto	12	Himself	Upper mead	Meadow	3a 1r 5p
Ditto	4	Charles Edward Rendall and Rolfe Robert	House and Carpenters shop		35p
Ditto	5	Robert House, Rolfe Robert and Henry Peviett	Gardens		15p
Ditto	8	James Sims and William Hopgood	Cottage and gardens		34p
Ditto	11	John Smith and John Harding	Cottage and garden		1r 1p
Reverend Peter Hall (Glebe)	18	Reverend James Ellaby and Charles Edward Rendall	Gudgeon meadow		2a 3r 8p

Roads Rivers and waste 104a 3r 37p

May -  
(Parish) and two outposts, which are

1<sup>st</sup> The Hamlet called Longs Pennings situated a mile distant on the cross road from Bulford to Andover (over Beacon Hill) and consisting of 4 cottages and Farm build<sup>g</sup>s.

2<sup>nd</sup> The hamlet called Tidworth Pennings situated  $1\frac{1}{2}$  mile distant at the end of a broad waggon track road that turns sharp off to the right a little beyond M<sup>r</sup> John Robbins' farm house. It is just opposite the first turning down to Milston (on the left). It consists of 2 cottages and extensive farm buildings.

### Milston

This Parish consists of the Village of Milston and the hamlet of Brigmilston close adjoining. There are in Brigmilston 2 out of the way cottages, situated in a hollow by the River side beyond M<sup>r</sup> Edwards' farm on a swampy trackway to Durrington. They lay on the right hand side.

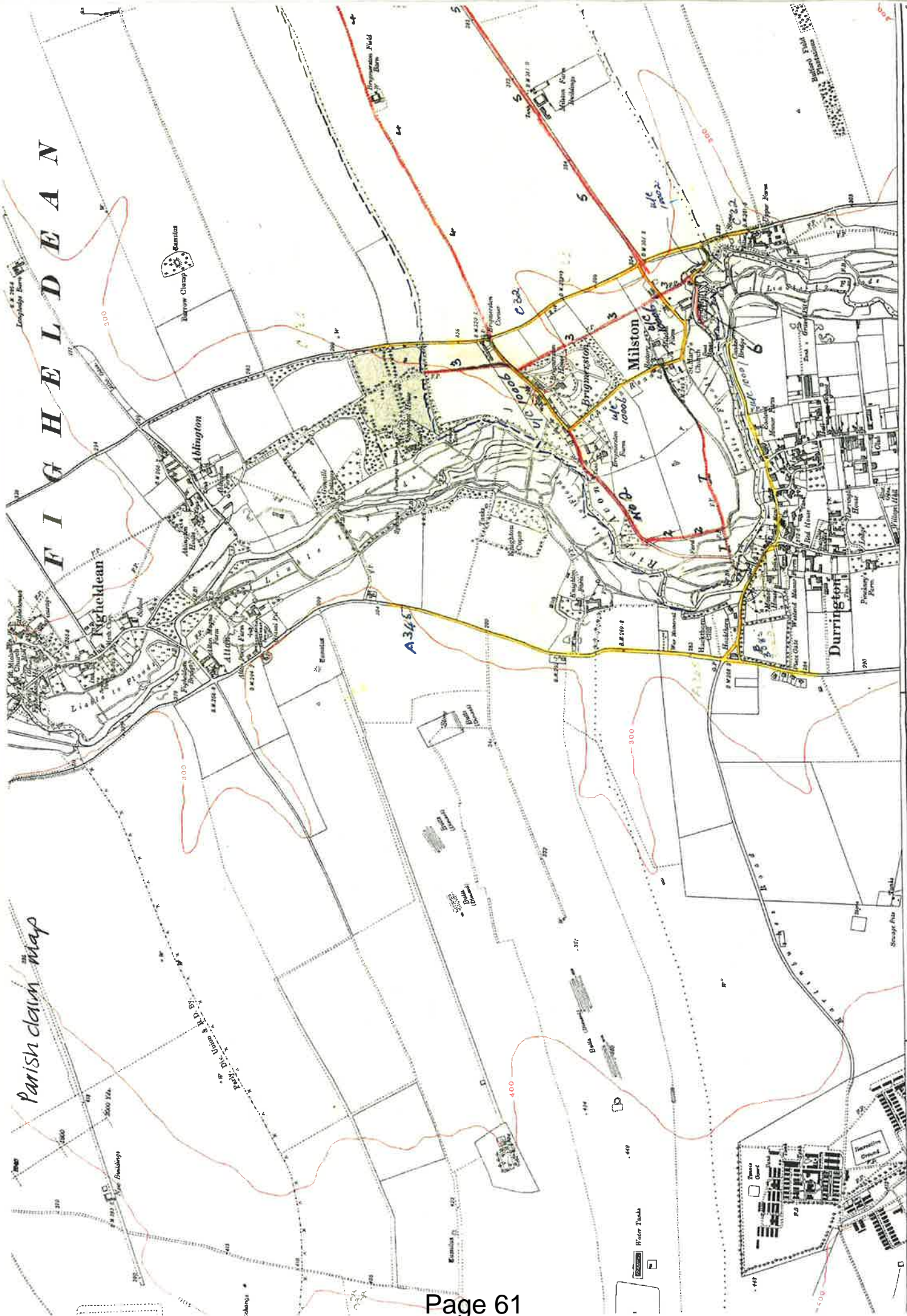






*Parish claim map*

**F I G H E L D E A N**



Lark Hill 1°40' Durrington Field Durrington PE. LWSE 1°47' SALISBURY DIVISION BULFORD PH. UNK. 1°

the information should be approved should the situation has arisen. non as

7

TAP/GA.

8th February, 1951.

R.E. Bartlett, Esq.,  
Addison House,  
Milston,  
Durrington,  
Wilts.

Dear Sir,

Survey of Rights of Way

The following are my observations on the plans and statements relating to the survey of rights of way:-

The cart track or unmetalled road which you refer to in your description of path No. 2 continues southwards to the western end of path No. 1 after crossing a ford. I think this should be added to your schedule, but I should be glad to have your observations as to whether this is a public right of way throughout its whole length.

Many of the tracks across Briggerston Down, although at present inaccessible to the public, undoubtedly form part of public ways which run through other parishes. I think perhaps they should be included in the schedule as they may at some future time be restored to public use. If this is correct this would involve the following additions to your schedule:-

Path No. 7. From the eastern end of path No. 5 leading east across path No. 9 and a ford over Nine Mile River, crossing paths Nos. 10 and 11 near the ditch and continuing east to its junction with path No. 12 near the county boundary at Hare Warren. Length 3200 yards.

Path No. 8. From the eastern end of path No. 5 leading east south east across path No. 9 and a ford over Nine Mile River, thence across path No. 10 across Milston Down to its junction with Path No. 11. Length 2800 yards.

Path No. 9. From the northern parish boundary near Goats wood leading south across paths Nos. 7 and 8 to the southern parish boundary at Milston Firs. Length 2500 yards.

Path No. 10. From the north-eastern parish boundary leading south-west across paths Nos. 7, 11, and 8 to the southern parish boundary towards Bulford Camp. Length 2900 yards.

Path No. 11. From the northern parish boundary near Goats Wood leading south-east crossing paths Nos. 7, 10, and 12, forming a junction with path No. 8, and then crossing paths Nos. 13 and 14, thence leading to the parish and county boundary towards Parkhouse Camp. Length 3100 yards.

Path No. 12. From the north-eastern parish and county boundary at Hare Warren, leading south-west, making a junction with path No. 7, crossing paths Nos. 11 and 8, to the southern parish boundary towards Bulford Camp. Length 2500 yards.

Path No. 13. From the eastern parish and county boundary near The Belt, leading south-west crossing path No. 11 to the southern parish boundary towards the Rifle Ranges. Length 1270 yards.

I should be glad to have your views on these questions at your early convenience.

Yours faithfully,

County Surveyor.

Addison House

Ingleton

Durham



Wills

4 July 51.

Dear Sir

Reference W.D. L. A. 1  
letter, dated 20 July  
past, it is felt  
that his point should  
be met by showing  
such portions of the paths  
as are restricted in  
some particular colour  
so that the Public are

not misled.

Para 2

Agree with W.D.A.  
Footpath ~~no 2~~ should  
be as originally shown.

Please accept my  
apologies for the delay

Yours faithfully

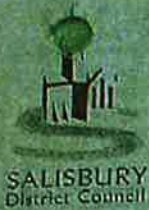
A. Bantles.

Chairman

Hulston Parish

MILSTON

S/00/2164



Planning Office  
Salisbury District Council  
61 Wyndham Road  
Salisbury SP1 3AH

Telephone (01722) 434327  
Fax (01722) 434520  
DX 58026 Salisbury

TOWN AND COUNTRY PLANNING ACT 1990  
APPLICATION FOR PLANNING PERMISSION

Four completed copies of this form and six copies of all plans accompanying the application together with the correct fee should be sent to the above address.

PLEASE READ THE GUIDANCE NOTES BEFORE COMPLETING THIS FORM

1. NAME & ADDRESS OF APPLICANT	NAME: MR. J. ELLIOTT ADDRESS: BARN HOUSE, BRIGMERSTON, WILTSHIRE POSTCODE: Tel. No.	
2. NAME & ADDRESS OF AGENT (if any) (to whom all correspondence will be sent)	NAME: R & S. HOWES PARTNERSHIP ADDRESS: 97 TORQUAY ROAD, PAIGINTON, DEVON POSTCODE: TQ3 2SE Tel. No 01803: 522578	
3. FULL ADDRESS OR LOCATION OF SITE (OUTLINED IN RED ON SUBMITTED PLAN)	BARN HOUSE, BRIGMERSTON POSTCODE:	
4. DESCRIBE THE DEVELOPMENT FOR WHICH YOU ARE APPLYING	DEMOLISH AND RE-BUILD	Salisbury District District Department
5. WHAT IS THE APPLICANT'S INTEREST IN THE LAND? (e.g. owner, tenant, prospective purchaser)	OWNER	22 NOV 2000
6. WHAT IS THE PRESENT USE OF THE LAND/BUILDINGS?	HOUSE	
7. WHAT IS THE SITE AREA? (Edges, red)	Hectares <input type="checkbox"/> OR <input type="checkbox"/>	sq.m.
8. IS THERE ANY ADJOINING LAND WHICH THE APPLICANT OWNS OR CONTROLS? (If so please give its location and show it edged blue on the submitted plans.)	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
9. DOES THE PROPOSAL INVOLVE-	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
(A) THE CONSTRUCTION OF NEW BUILDINGS	IF RESIDENTIAL STATE NUMBER OF NEW DWELLINGS	No. of new Dwellings REPLACEMENT
(B) THE ALTERATION, EXTENSION OR IMPROVEMENT OF AN EXISTING BUILDING	IF NON-RESIDENTIAL STATE TOTAL GROSS FLOOR AREA	sq.m.
(C) THE CHANGE OF USE ONLY OF AN EXISTING BUILDING OR LAND	STATE TOTAL GROSS FLOOR AREA OF (A) BUILDINGS AS EXISTING	sq.m.
(D) ANY OTHER ENGINEERING OR BUILDING OPERATION	(B) PROPOSED NEW BUILDING WORK	sq.m.
	(C) ANY BUILDINGS TO BE DEMOLISHED	sq.m.
	STATE TOTAL GROSS FLOOR AREA OF ANY BUILDINGS AFFECTED BY THE PROPOSAL	sq.m.
10. IS THE APPLICATION FOR-	Application	
(A) FULL PLANNING PERMISSION	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
(B) OUTLINE PLANNING PERMISSION	YES <input type="checkbox"/>	NO <input type="checkbox"/>
(C) APPROVAL OF RESERVED MATTERS FOLLOWING GRANT OF OUTLINE PERMISSION	YES <input type="checkbox"/>	NO <input type="checkbox"/>
(D) RENEWAL OF TEMPORARY PERMISSION	YES <input type="checkbox"/>	NO <input type="checkbox"/>
(E) CONTINUATION OF USE OF LAND OR BUILDINGS WITHOUT COMPLYING WITH TERMS OF A CONDITION PREVIOUSLY IMPOSED	YES <input type="checkbox"/>	NO <input type="checkbox"/>

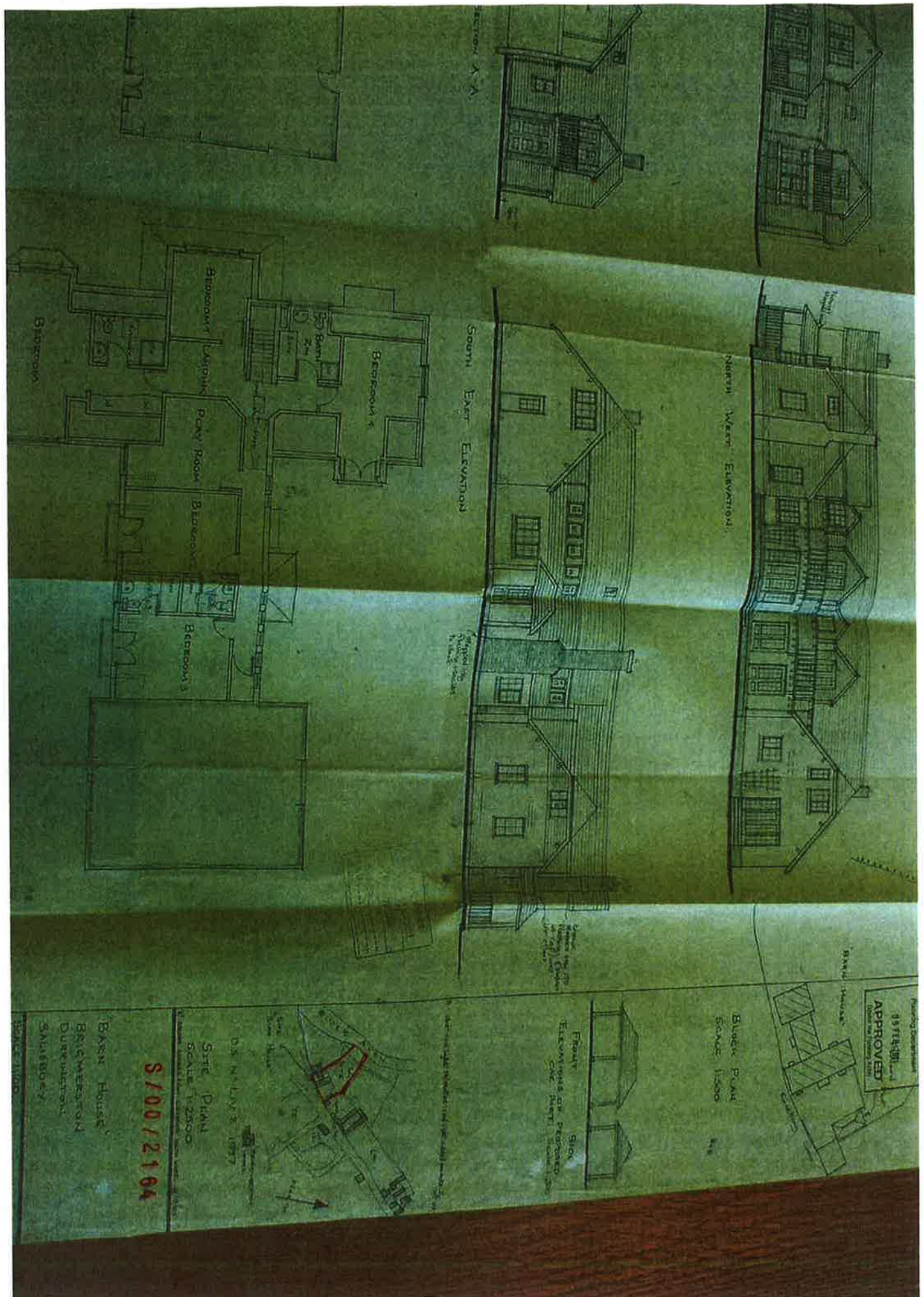


PUBLIC INSPECTION COPY



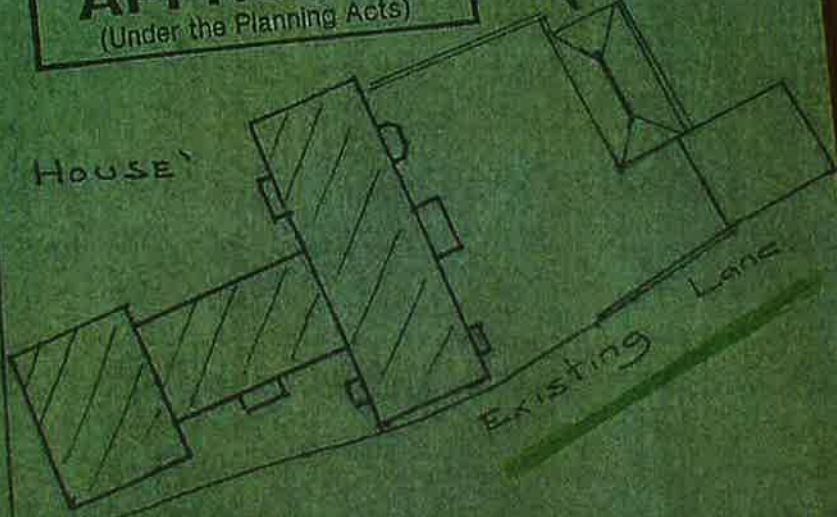






Salisbury District Council  
Planning Department  
09 FEB 2001  
*Proposed*  
**APPROVED**  
(Under the Planning Acts)

'BARN HOUSE'



BLOCK PLAN  
SCALE 1:500

Decision



## TOWN AND COUNTRY PLANNING ACT 1990

### APPROVAL OF FULL PLANNING PERMISSION

Name and address of agent:

R & S HOWES PARTNERSHIP  
97 TORQUAY ROAD  
PAIGNTON  
DEVON  
TQ3 2SE

Name and address of applicant:

MR J ELLIOTT  
BARN HOUSE  
BRIGMERSTON  
DURRINGTON  
SALISBURY  
SP4 8HX

Reference No: S/2000/2164  
Date Registered: 22/11/00

PROPOSAL: FULL APPLICATION - DEMOLISH AND  
REBUILD BARN HOUSE  
LOCATION: BARN HOUSE BRIGMERSTON  
DURRINGTON SALISBURY

**SALISBURY DISTRICT COUNCIL  
HEREBY GRANTS FULL PLANNING PERMISSION  
FOR THE ABOVE DEVELOPMENT**  
(Subject to the conditions overleaf / attached)

Signed:

(Authorised Officer)

Date:

09 FEB 2001

Please refer to the notes  
attached to this decision

S/2000/2164 MILS	22/11/00	17/01/01	MR J ELLIOTT R & S HOWES PARTNERSHIP
Easting: 415957.071867808	Northing: 145599.282951197		
PROPOSAL:	FULL APPLICATION -DEMOLISH AND REBUILD BARN HOUSE		
LOCATION:	BARN HOUSE BRIGMERSTON DÜRRINGTON SALISBURY SP4 8HX		

#### REASON FOR REPORT TO MEMBERS

Councillor Spencer disagrees with recommendation because of the scale of the proposed operation and the detrimental impact on the historic hamlet.

#### SITE AND ITS SURROUNDINGS

Barn House is a large property set within a large plot adjacent the River Avon watercourse located to the South West of the small hamlet of Brigmerston. The site has been the subject of an application for a Certificate of Lawfulness for the occupation of barn house and barn cottage as two separate dwellings and was approved on 12 January 2000. However there is no distinct boundary between the two properties and the current applicant is in ownership of both properties. The existing structure consists of a T shaped footprint with a two storey element to the north east incorporating accommodation in the roof space. The structure that links the two properties is single storey in nature.

The application site is outside the HPB of the settlement.

#### THE PROPOSAL

It is proposed to demolish Barn House and rebuild to the same footprint with additional extensions and alterations to the property including the increase in roof height of the linked structure allowing first floor accommodation in the roof space. A number of dormer windows are also included within the proposal. The demolition of the existing structure is required as the existing timber walls are infested with woodworm and the front foundations require strengthening.

#### PLANNING HISTORY

The site has been the subject of an application for a Certificate of Lawfulness for the occupation of Barn House and Barn Cottage as two separate dwellings and was approved on 12 January 2000 (S/1998/1066 relates). In addition consent was given on 9 October 2000 for extensions and alterations to Barn House (S/2000/1335 relates). The proposed alterations were identical to the proposals submitted as part of this application. The only difference between the two applications relates to the demolition of the existing structure due to structural problems.

#### CONSULTATIONS

Housing & Health Officer	No objections
Environment Agency conditions below	No objections on flood risk grounds subject to
English Nature	No objection - there is no evidence of bats at the site.

#### REPRESENTATIONS

Advertisement: No

Site Notice displayed	Yes	Expiry 21/12/00
Departure	No	
Neighbour notification	Yes	Expiry 14/12/00
Neighbour response	No	
Parish Council response	No	

#### MAIN ISSUES

1. Accordance with housing policy
2. Impact on neighbouring amenity
3. Nature conservation and impact on adjacent river environment and wider landscape setting

#### POLICY CONTEXT

H30, C7 and C12, C18 and G1 of adopted SDLP

#### PLANNING CONSIDERATIONS

1. Accordance with housing policy

The proposed development now relates to a replacement dwelling within the open countryside and as such policy H30 is relevant.

Policy H30 states:

*The replacement of an existing dwelling in the countryside will normally be permitted provided that:*

- (i) *the proposed replacement dwelling is not significantly larger than the existing dwelling;*
- (ii) *the design of the new dwelling is of a high standard and is appropriate to the rural surroundings;*
- (iii) *the dwelling is not disproportionate in size to neighbouring properties;*
- (iv) *the siting of the replacement dwelling is closely related to that of the existing;*
- (v) *current parking and access standards can be met; and*
- (vi) *the existing dwelling has not been abandoned.*

*Where the residential use of the existing dwelling is the result of a temporary, or a series of temporary permissions, any permanent replacement dwelling will only be permitted in exceptional circumstances.*

The proposed replacement dwelling would be built within the same footprint of the existing property. The proposed alterations to the design and nature of the property include the introduction of first floor accommodation in the roof space of part of the dwelling that links Barn House and Barn Cottage incorporating dormer windows and additional fenestration to all elevations of the existing property. The proposed changes to the design and nature of the property would result in a dwelling that is larger than the existing property. However it is considered that the resulting dwelling would not be significantly larger than the existing property. In addition it is considered that the proposed alterations and extensions add greater legibility to the existing structure, are not out of keeping with the surrounding environment and in design terms are considered an improvement to the existing property. In any case the proposed changes to the existing property do not differ from the alterations already granted planning permission under S/2000/1335.

The proposal is therefore considered to comply with the criteria set out in policy H30 of the SDLP.

2. Impact on neighbouring amenity

As stated above the existing structure consists of two linked properties and as such the amenity of the two properties needs to be safeguarded against any new development that may have an adverse impact. The SW elevation of Barn House faces Barn Cottage and it is proposed to

construct two dormer windows in the roof space of this elevation. Window 25, as indicated on the plans, would look directly onto the patio area of the adjoining property. Whilst this window does serve a bedroom, additional light would come from two new, fairly large windows to the NW and NE elevations and it is therefore considered that it is acceptable to attach a condition so that this first floor bedroom window be fixed and obscure glazed.

It is considered that the proposed alterations do not cause demonstrable harm to the amenity of the neighbours to the NW of the site.

### 3. Nature conservation and impact on adjacent river environment and wider landscape setting

The property is set within close proximity to the River Avon with the garden area sloping towards the river to the north west of the site. The flood plain of the River Avon is designated as a Site of Special Scientific Interest and candidate Special Area of Conservation under the European Habitats Directive. As such policies C12 and C18 are relevant to this application. The Environment Agency have proposed a number of conditions relating to the restriction of development that is within close proximity of the watercourse and the restriction of storage of materials within the 1 in 100 floodplain. These conditions were attached to the previous consent and are considered acceptable in this case. Whilst the proposals would lead to a larger dwelling on this site it is considered that due to the size of the plot and the resulting design the proposed development would not harm the general setting of the adjacent river environment and the wider landscape setting.

The proposal is therefore considered to comply with policies C7, C12 and C18 of the SDLP.

### CONCLUSION

The proposed replacement dwelling is considered to meet the criteria of policy H30 and is not considered to harm the setting of the adjacent river environment or wider landscape area.

**RECOMMENDATION:** SUBJECT TO A BAT SURVEY AND NO ADVERSE COMMENTS FROM ENGLISH NATURE AS A RESULT OF THE BAT SURVEY THEN,

**APPROVE** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission. (A07A)

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990. (0004)

2. Before development is commenced, a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external wall[s] and roof[s] of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. (D04A)

0014 To secure a harmonious form of development.

3. There shall be no new buildings, structures (including gates, walls and fences) or raised ground levels within

(a) 8 metres of the top of any bank or watercourse

and/or

(b) 8 metres of any side of an existing culverted watercourse inside or along the boundary of the site, unless agreed otherwise in writing by the Local Planning Authority.

To maintain access to the watercourse for maintenance or improvements and provide for overland flood flows.

4. There shall be no storage of any materials including soil within that part of the site liable to flood as shown by the 1 in 100 year flood plain on drawing no.35837/FM/92/1(2).

To ensure that there will be no increased risk of flooding to other land/properties due to the impedance of flood flows and/or reduction of flood storage capacity.

# APPRAISAL PAGE

Site Visit Date

Application Number

Site Notice Displayed

29/11

S/00/2164

Yes  No

Description of Development correct Yes  No

Consultations adequate Yes  No

Publicity adequate Yes  No

**CONSERVATION**

**LISTED BUILDINGS**

**DESIGN & APPEARANCE**  
Scale, massing, character, materials

**AMENITY**

Privacy / Overlooking  
Terracing

**AMENITY AREA**

Conforming with policy R2

**HIGHWAY**

Traffic, Access, Parking

**LANDSCAPING**

Enclosure, Ex. Trees  
Levels / Topography

**NOISE / POLLUTION**


**ADJOINING LAND USES**

**DRAINAGE**

**DISABLED ACCESS**

**FLOODING**

**SITE NOTES**

- Existing structure = large foot print with 2 storey gable with side & form  & foot pad  
↑ separate directly

- adj rise & in flood plain & slope down

- Textured white render with some roof slopes of small concrete dark tiles + timber cladding

- In need of renovation

- Site elevation = middle house but good boundary & visible - trees at

- Amenity NW elev. faces rise & no properties.

- NE = faces. Wall but fair distance any <sup>156/159</sup> windows in SW elev face Ben Howe's obsq + omit back!

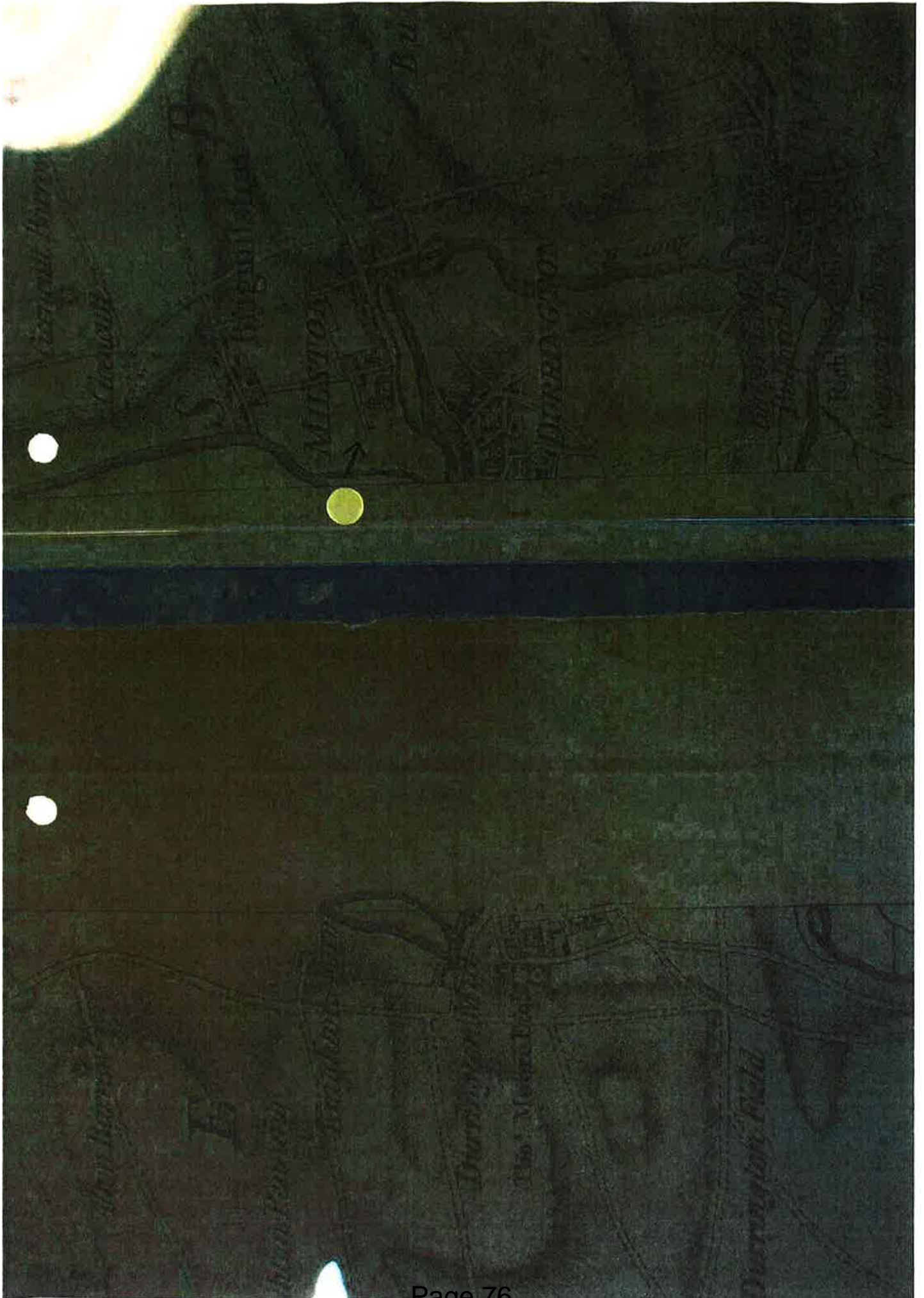
## ADDITIONAL NOTES / SKETCH

- Area in vicinity not eye of any public character & appears appear to build on existing design & theme

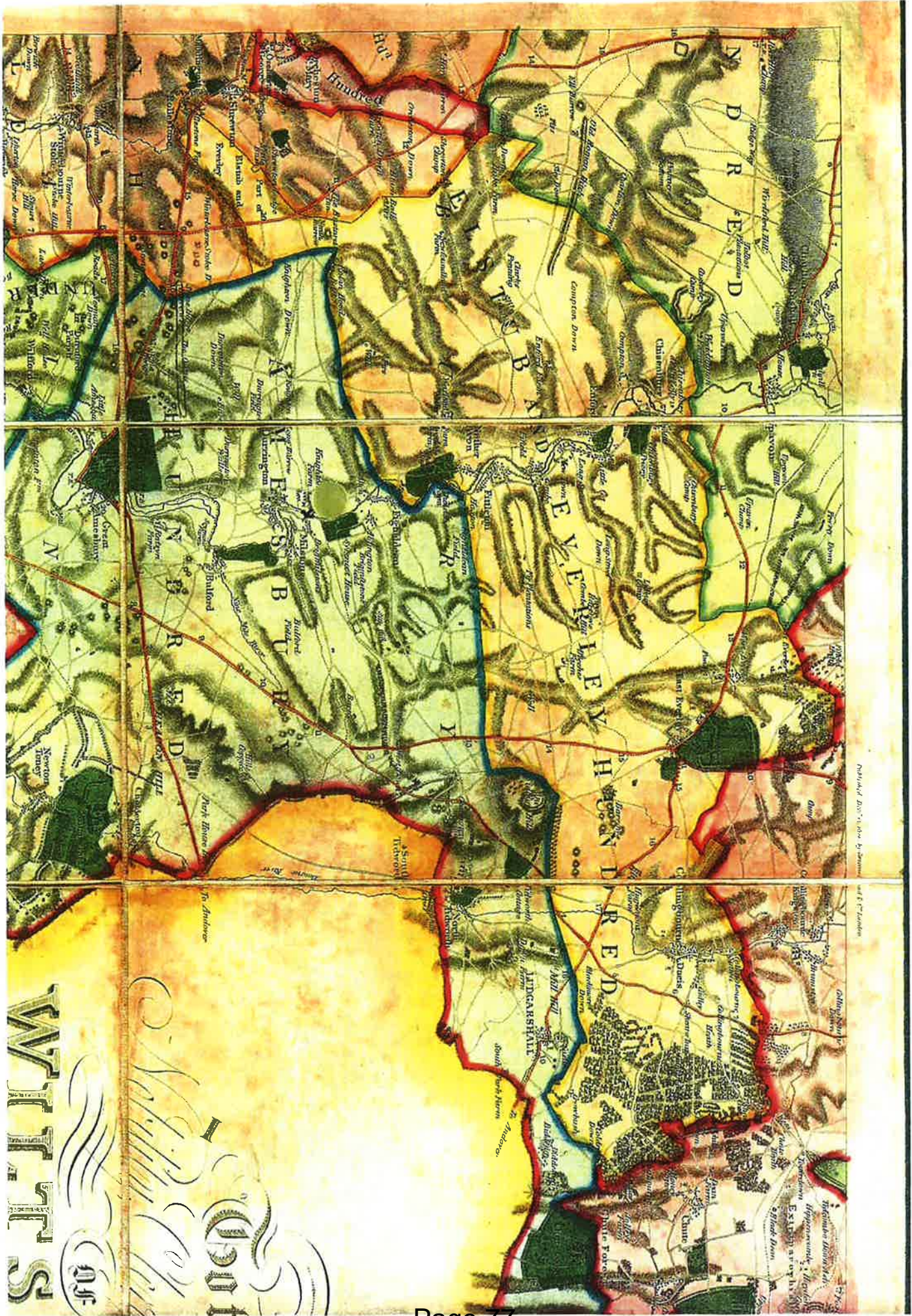
- Although larger property created, large plot & should accommodate - add legibility & form + work survey of exist! as with S/00/1355

Other

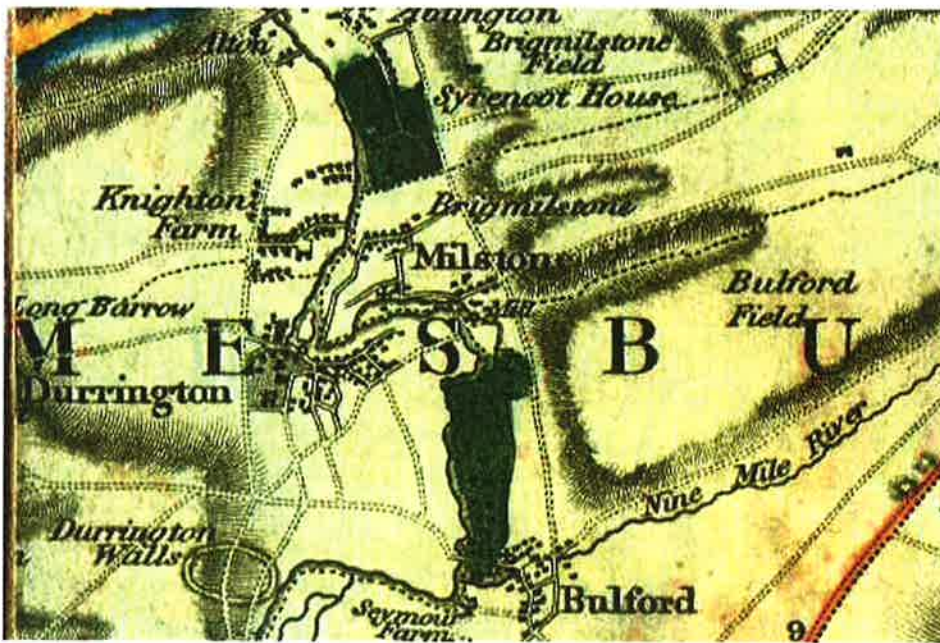








Greenwoods Map of Wiltshire 1820





Continuation of Sheet U

35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100



Cary 1832 enlarged

# Explanation.

Mail Roads

Tunpike Roads

Carrige Roads *which are Parochial Roads*

Parochial Roads

Churches and Chapels

Cities

Borough Towns { *The Stars denote the Number of Members returned to Parliament.* }

Market Towns { *The distance from London is prefixed to each Town.* } WELLINGTON

Parishes Sidbury

Villages and Farms Crublake

Gentlemens Houses and Grounds

Hills { *The Figures denote their Elevation above the level of the Sea* }

Lakes and Rivers

Navigable Canals

Drains

Iron Rail Road

Antient Earth Work

Roman Roads

Boundaries of Counties

Boundaries of Hundreds

Cliffs

Fiers

Rocks *always uncovered*

Rocks *covered at high water*

Rocks *always covered*

Sands *covered at high water*

Sands *always covered*

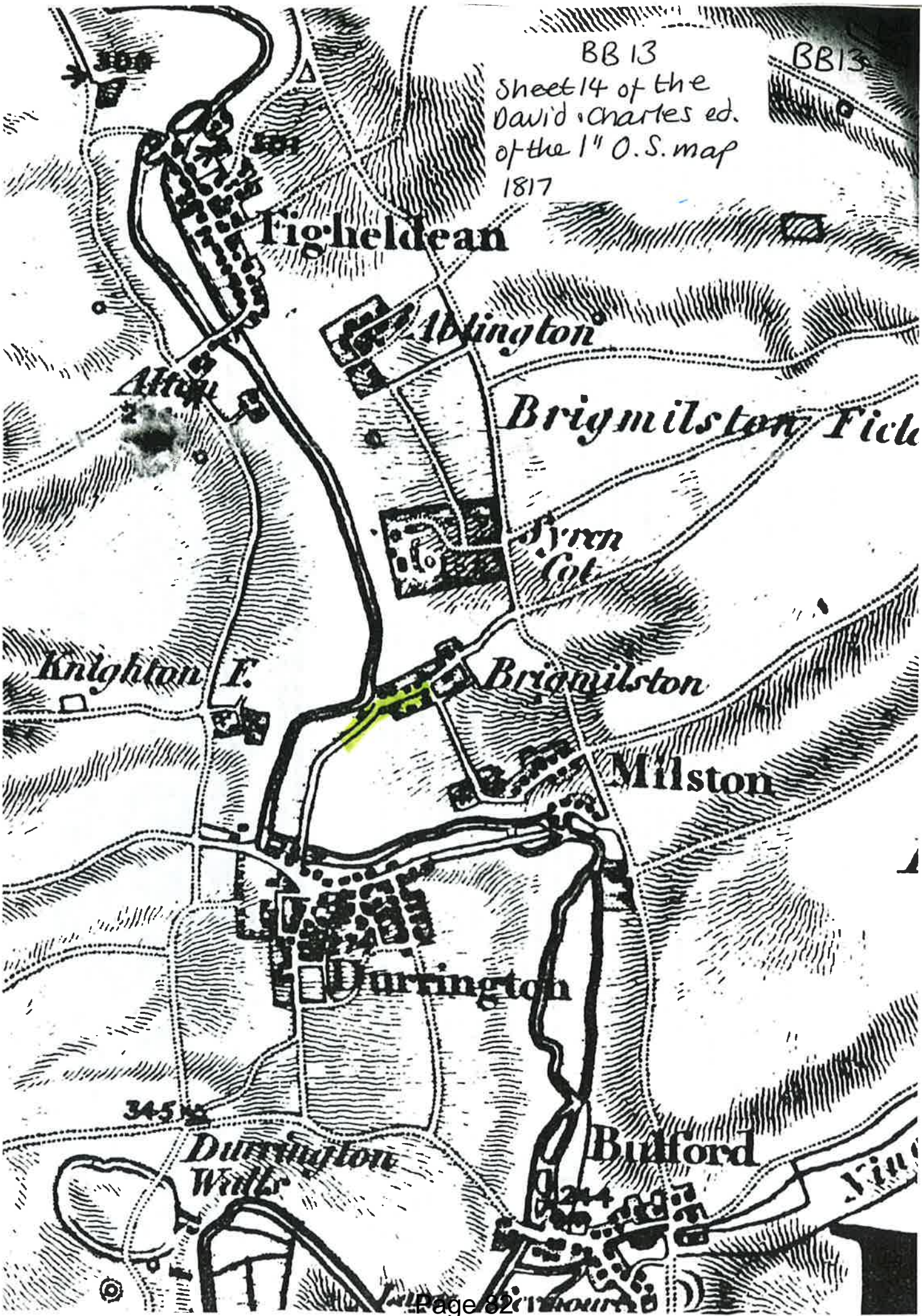
Anchorage

Direction of the Currents

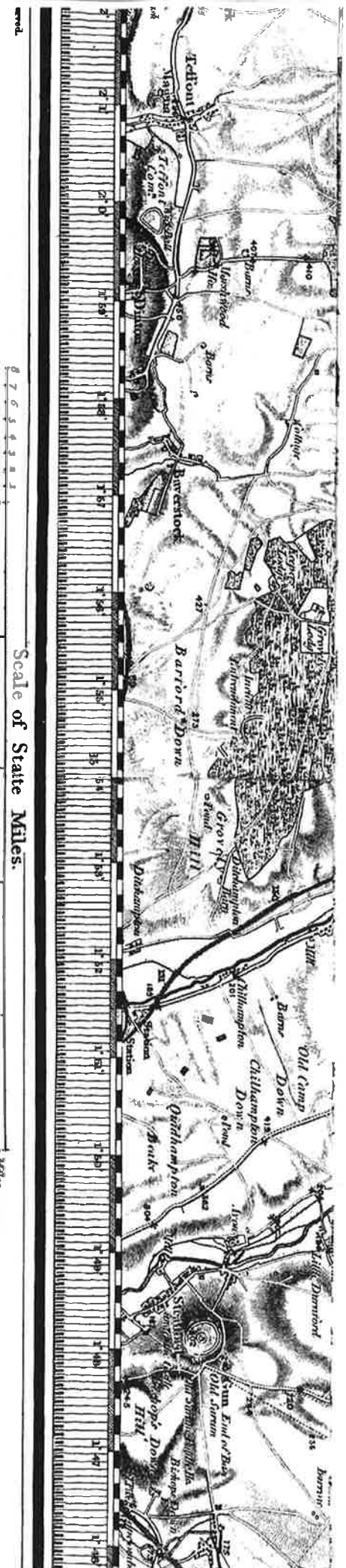
*The figures on the coast show the depth of water in fathoms*



BB 13  
Sheet 14 of the  
David Charles ed.  
of the 1" O.S. map  
1817







to establish in receipt of surveyed and the British

a final draft of the map was those office men assisted by the Tower of London. Several of these are mentioned in the drawing of the Plain area sketching is shown in the margin in the edition of (D & C 76) antiquary, 1801 with an engraver. The engravers were finished

state, printed from a press in the Tower, were then circulated for corrections to be made by well-informed gentry within the county: again, as with sheet 19, published on the same day, it is possible that Sir Richard Colt Hoare cast his eye over a proof.<sup>8</sup>

**PUBLICATION HISTORY**

The main stages in the revision of the map are outlined below, although these should not be regarded as a definitive carto-bibliography embracing all printings where addition or deletion has produced alteration to the copper-plate or its successive electrotypes. Nonetheless, it will assist historians in assessing the extent of revision between the first printing of 1817 and that reproduced by David B. Charles, and allow isolated copies, in a variety of local map collections, to be dated approximately.

**1) Early printings (1817–c1824)**

Sheet 14 was first published on 14 August 1817, as one of a pair of sheets (OS numbers 14, 19) issued on the same day, and both measuring c29 x 23in.<sup>9</sup> In common with a band of sheets occupying central England, the reason for this reduction of size from the larger sheets (36in x 24in) employed elsewhere is not clear, although it may be related to the projection of the map from independent meridians at Greenwich and Burtonon Hill, with the result that the intervening country would not divide into equal rectangles.<sup>10</sup> The influence of it does not form a right angle at the north-east corner and the northern neat line is about half-an-inch shorter than the southern: it was along the tapering eastern edge of sheet 14 that part of the discontinuity arising from sheets projected from separate meridians had been reconciled.

Sheets 14 and 19 do not coincide with the county boundaries of the area they cover, although the traditional practice of the Board of Ordnance in attempting to issue the sheets in relation to a county, is reflected in a contemporary printed

title slip which describes the issue as 'Ordnance Survey of Great Britain, Part the VI<sup>th</sup>. Containing the Central Part of Wiltshire, A Portion of Somersetshire, and the remaining Part of Hampshire. Comprised in Plates No. 14, and 19.'<sup>11</sup> On the early states no borders were engraved—possibly to facilitate the mounting of different sheets as a unit for one county, although on some copies a separately engraved border has been pasted on (RGS, Duke of Wellington set). The marginal imprints read 'Published 14<sup>th</sup> Aug. 1817, by Col<sup>l</sup>, Mudge, Tower,' and 'Engraved at the Drawing Room in the Tower, under the Direction of Col<sup>l</sup>, Mudge, by Ben<sup>l</sup>, Baker & Assistants—The Writing by Eben<sup>r</sup>, Bourne.' There may be more than one state of the map in this early period.

**2) James Gardner printings (1824–40)**

In 1824, James Gardner, former trigonometrical surveyor with the Board of Ordnance, was appointed agent for the sale of the Ordnance maps. In the bottom border of the map he was permitted to have engraved 'Sold by Jas<sup>s</sup>. Gardner Agent for the Sale of the Ordnance Maps 163, Regent-Street, London.'<sup>12</sup> In addition, 'Printed by Ramshaw' is added in the bottom margin.<sup>13</sup> The border has been completed on all sides: and, probably in more than one state, we may expect to encounter minor revisions to topography.

**3) First electrotpe printings (1850s)**

'Printed from an Electrotpe' is not added below the bottom border, but by analogy to other sheets a duplicate plate may have been first made c1850. A number of changes may be noted. The Gardner and Ramshaw imprints have been deleted. The numbers of adjacent sheets have been added within borders, and an arabic sheet number by the roman in the north-east corner. The first railway information, namely the Wilts & Somerset Railway—serving Trowbridge and terminating abruptly in open country at Westbury station—has been inserted. The BM copy is accession-stamped 1854.

The Index to the Tithe Survey, showing parish boundaries, was based on an

electrotpe duplicate of Wilts & Somerset Railw:

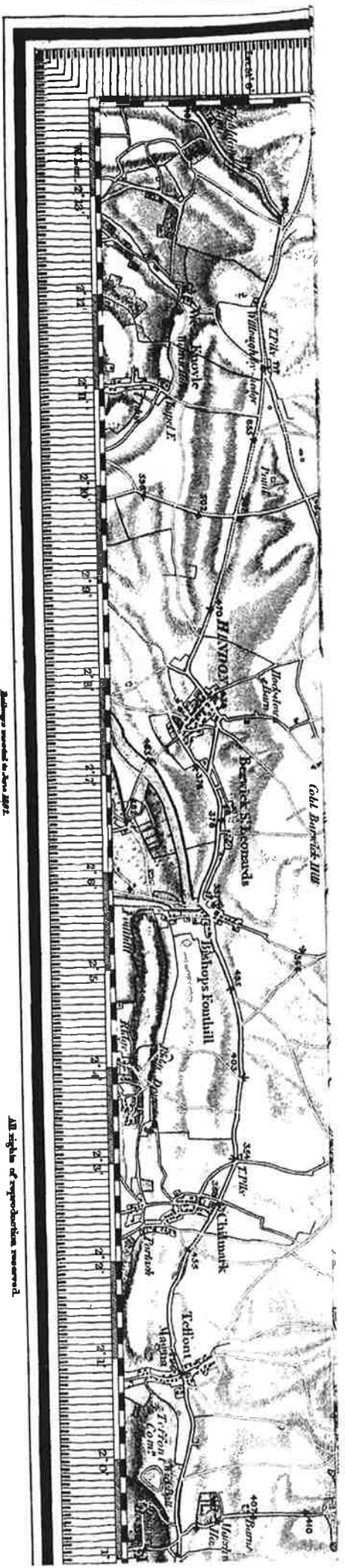
4) Middle electrotpe printings A new inner edge has been longitue within it. The Wilts Somerset & W&S Railway and a line (the BM copy is accession-stamped 1866. Additions include a Marlborough and a numt

5) Late electrotpe printings Changes made after the recorded further railway 1871,<sup>14</sup> but the map published in 1893. Railway (since the 1860s) include Numerous spot heights (vention of an arrow point We may sum up by saying document embodying map 1817 (based on a survey The major revisions result

References  
1 William Mudge and I



Published, according to Col. Mudge, Tower:



## SHEET 77 DEVIZES

Sheet 77 of the David & Charles edition was sheet 14, named Devizes, in the Old Series of Ordnance Survey 1in maps.

### SURVEY

The survey of Wiltshire began in 1793 when the triangulation<sup>1</sup> of Dorset was extended northwards, by Captain William Mudge and Isaac Dalby, to observe trigonometrical stations at Old Sarum, Four Mile Stone (on the road from Salisbury to Devizes) and Beacon Hill near Amesbury. These observations were continued in 1794 and, in June of that year, the measurement of the base-line of verification on Salisbury Plain was put in hand. This base extended from Old Sarum Castle (where 'Gun End of Base' is marked on sheet 14: an upturned gun muzzle marked the exact site) to Beacon Hill near Amesbury, and was measured with a hundred-foot steel chain.<sup>2</sup> As Mudge reports: '... great pains were taken to produce an accurate result', and his detailed description of the stages in the operation can leave us in little doubt as to the meticulous care exercised with the geodetic framework for the first 1in maps, although we should not forget that in this early period at least, the trigonometrical survey was regarded as an end in itself.

The interior triangulation, extending the framework of precisely located points to many other local landmarks—including church spires, prehistoric earth works, windmills and clumps of trees—was completed in the early 1800s under the direction of Lieutenant-Colonel William Mudge and Captain Thomas Colby.

The local topographical survey was undertaken—apart from the line of the Marlborough turnpike in the north of the sheet surveyed in 1816—between 1807 and 1811 at a uniform scale of 2in to 1 mile. It was executed by the Royal Military Surveyors and Draftsmen, and probably assisted by local surveyors hired for the task. Their methods seem to have included the use of compasses to

take angular measurements, and pacing or the perambulator to establish distances within the triangulated framework. The field parties were in receipt of supplementary pay for every square mile successfully surveyed and planned.<sup>3</sup> Copies of the fair drawings of this work are preserved in the British Museum.<sup>4</sup>

### DRAWING AND ENGRAVING

From the nine field drawings relating to sheet 77 in whole or part, a final draft was prepared for the engraver at a scale of 1in to 1 mile. This reduction was undertaken by Thomas Yeakell,<sup>5</sup> also a Royal Military Surveyor, whose office was in the Drawing Room of the Tower of London. He may have been assisted by other members of the Corps, some of whom returned to work in the Tower after a summer season in the field. A revision and selection of material took place at this stage. For instance the milestones (ms) indicated along several roads on the drawings have been omitted from the engraved map; there are minor revisions to the spelling of place-names (eg Ffield, west of Marlborough, becomes Fyfield); and some of the descriptions of antiquities on the drawing have been edited for the engraver. The drawings for the Salisbury Plain area give the appearance of being executed with particular care: the hill sketching is carefully done by the use of a fine black colour wash; settlements are shown in red, roads buff and the Kennet & Avon Canal in green.<sup>6</sup> As befits a region rich in prehistoric earthworks both the drawings and the engraved sheets are something of a landmark in the history of the Ordnance Survey's depiction of archaeological sites. It seems likely that on this sheet, as on sheet 19 (D & C 76) to the west, Sir Richard Colt Hoare (1758-1838), the Wiltshire antiquary, had a hand in the inclusion of so much specialised detail.<sup>7</sup>

An engraver's workshop had been set up in the Tower after 1801 with Benjamin Baker (formerly in private practice in Islington) as principal engraver. The lettering was cut by Ebenezer Bourne, one of his four assistant engravers at this date. Proof impressions of the map, both in outline and later finished

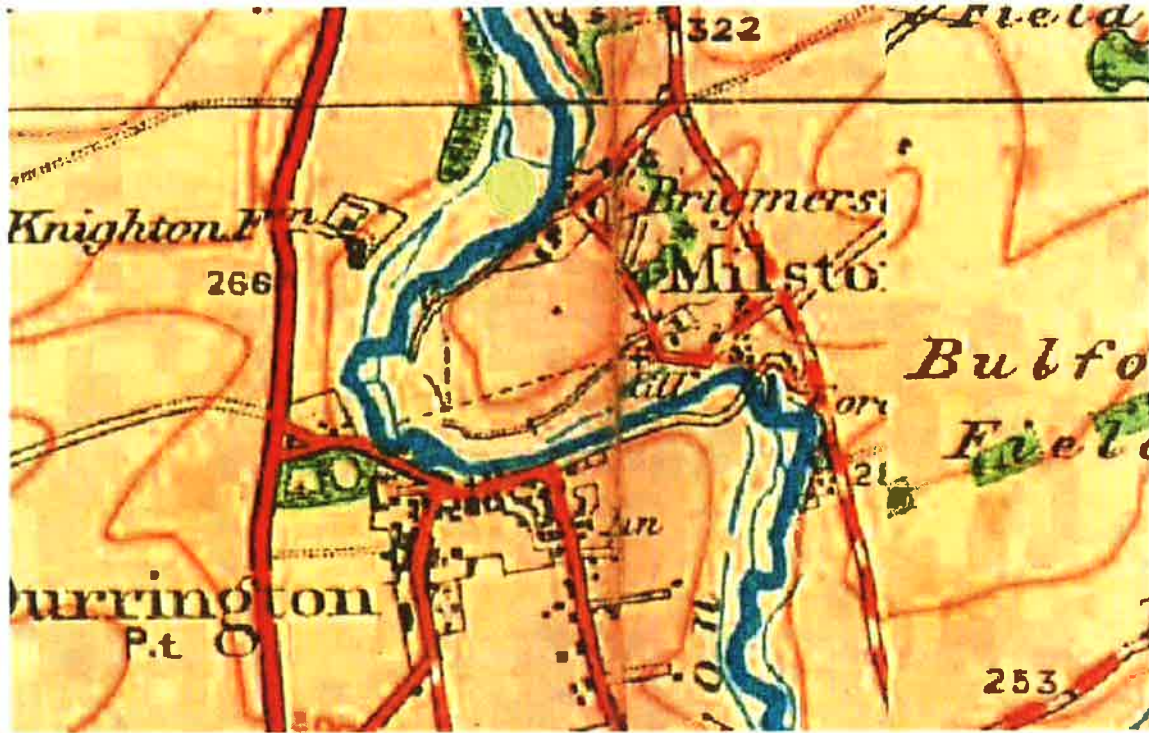
state, printed from to be made by well 19, published on t his eye over a pl

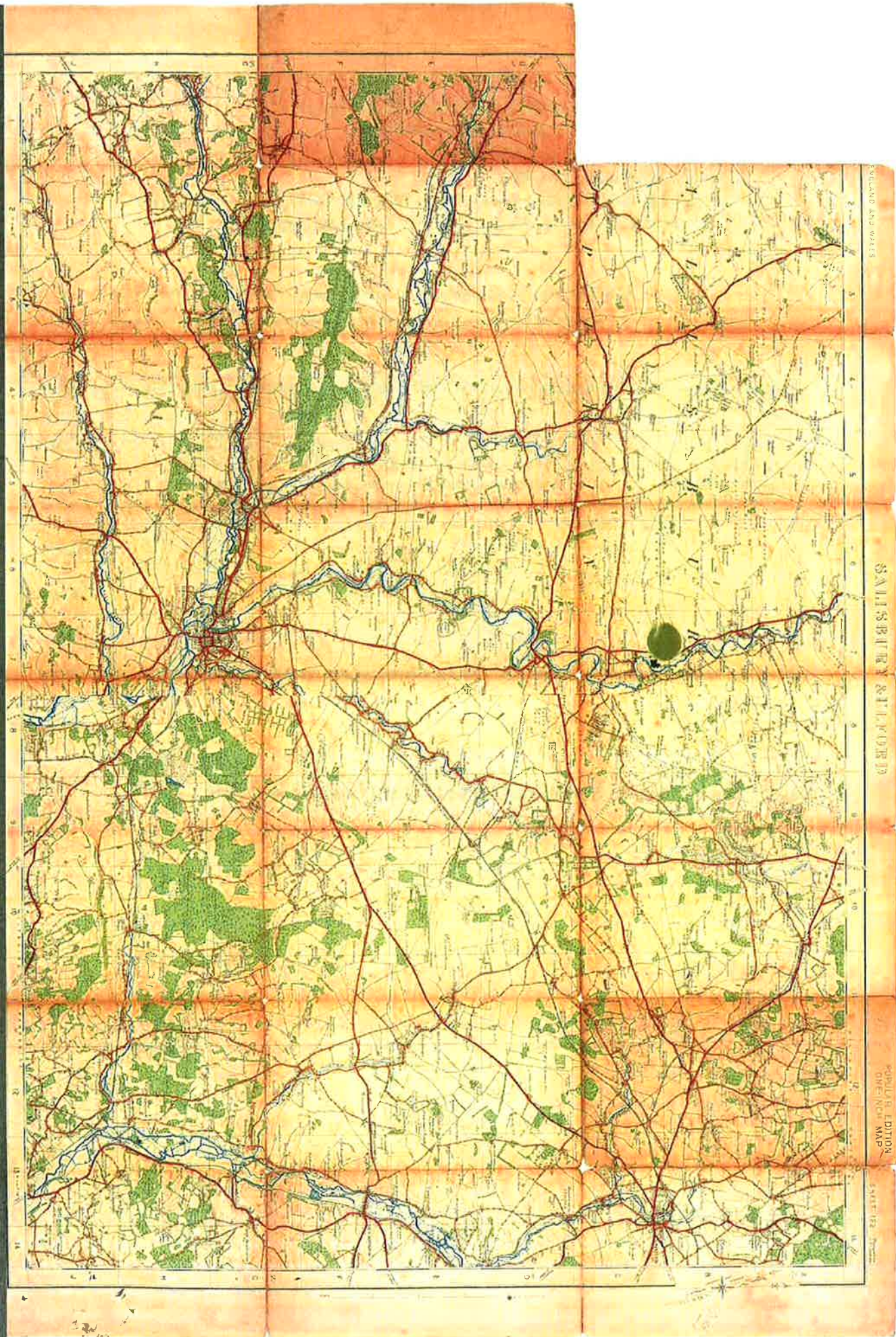
### PUBLICATION

The main stages should not be where additional successive extent of revision David & Charles, to be dated approx: 1) Early printings ( Sheet 14 was first (OS numbers 14, 1: In common with a this reduction of s; is not clear, altho dependent meridia intervening county projection on the t it does not form a line is about half-a eastern edge of st projected from sep Sheets 14 and 15 cover, although the to issue the sheets



Enlarged extract from Popular Edition of 1919 1 inch Ordnance Survey map





RB14

*Engraved at the ORDNANCE SURVEY OFFICE, Southampton.  
 Surveyed in 1882-5 and Published in 1892-3.  
 Revised in 1897. and in 1903-5.  
 Revised (5<sup>th</sup> Revision) in 1913.  
 Published by Colonel Sir Charles Close, KBE, C.B., C.M.G., Director General.  
 Printed at the Ordnance Survey Office, Southampton, 1919.*

*N.B. The representation on this map of a Road, Track, or  
 Footpath, is no evidence of the existence of a right of way.*

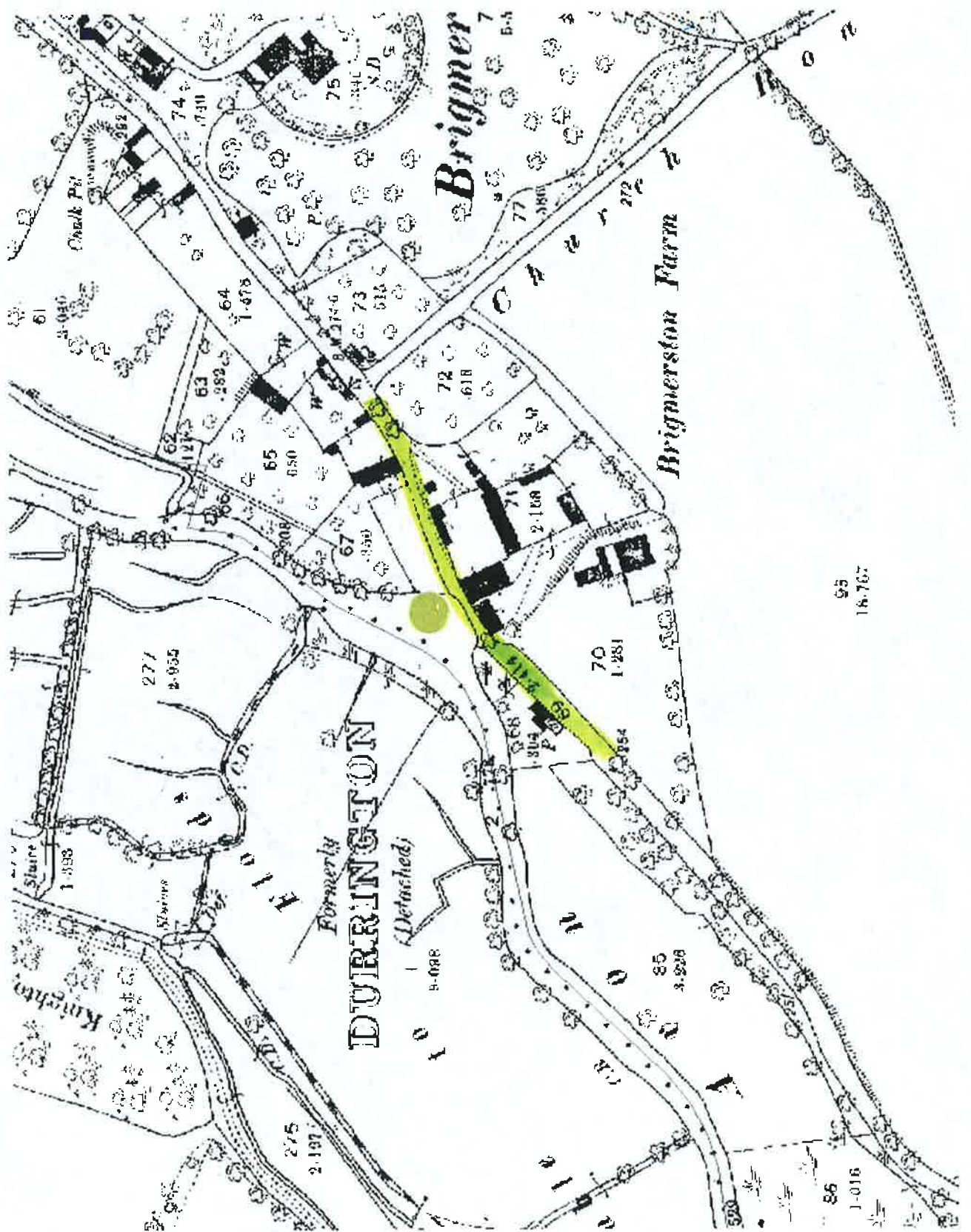
	Surface	Good & fit for fast traffic	Fit for ordinary traffic	Indifferent or winding road	Bad	
Main Routes between towns	} over 14' of metalling	—————				Railw.
Other Roads		—————				"
Roads under 14' wide		—————				Minor
Minor Roads		—————				
Bridle & Footpaths		- - - - -				Wood
(Private Roads are uncoloured. Unfenced Roads are shown by dotted lines)						
Slopes steeper than $\frac{1}{4}$ ———→						Orcha

Key for 1 inch Ordnance Survey map revised in 1913 and printed in 1919

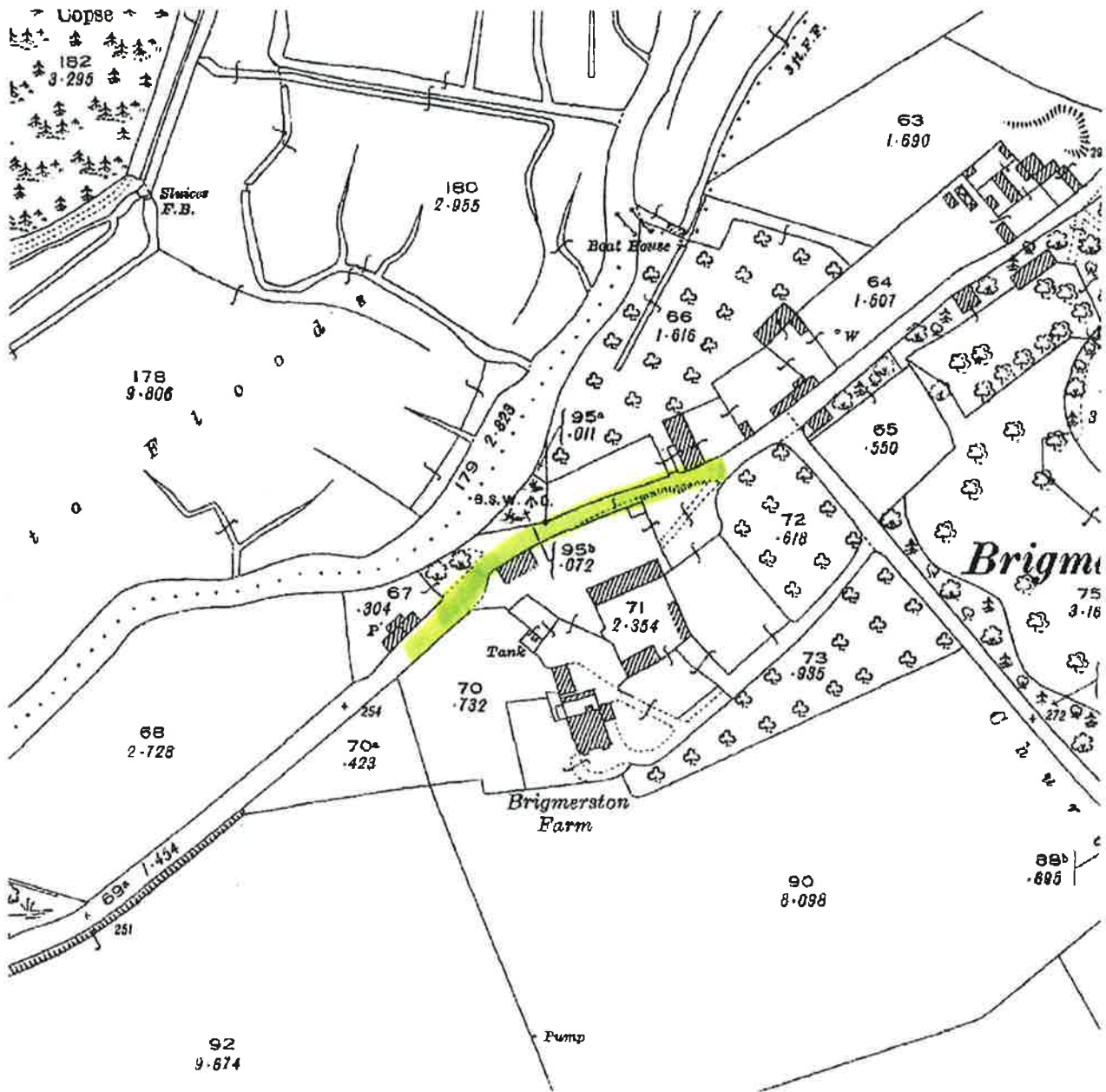


First edition County Series Ordnance Survey map, surveyed 1877-78, 25 inches to 1 mile

BB 16



1926 edition 25 inches to 1 mile Ordnance Survey Map  
County Series, surveyed 1877-78







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**Mr. R D Watts, Senior Land Agent BSc Hons FRICS**

Mrs Barbara Burke  
Environmental Services Department  
Wiltshire County Council  
Trowbridge  
Wilts  
BA 14 8JD

Your Ref  
  
Our Ref  
RDW/ 101  
  
Date  
14 September 2006

Dear Mrs Burke

**MODIFICATION ORDER 11 2006 – BRIGMERSTON**

Mr Smith has sent me a copy of his letter to you concerning the “diversion” of the right of way in front of his house. I have the following comments to make:-

I would make the point that the Byway has never run through our land and when I used to work at our Durrington office, on almost a daily basis for approximately 8 years, I would walk the route in front of what is now Mr Smiths house along the correct route. There had not been any problems with this route until the ownership of The Barn House changed hands. It was at this time that difficulties began to arise over access along the byway as it was obvious that the new owner wished to prevent access in front of their property and it was at this time that the local inhabitants began to go through the MOD land, hence the reason why we put the signs up.

As access along the byway has been restricted by the erection of gates, I assume you will be taking enforcement action against Mr Smith.

Concerning the condition of the paddock along which the right of way runs, the tenant has strimmed the nettles, which I understand is your responsibility, which now allows unimpeded access along the correct route.

I really fail to see how Mr Smith can object, indeed I am somewhat confused as to how it is on the definitive map because the byway has never taken this route.

Yours sincerely

R D WATTS  
Senior Land Agent SPTA

Environmental Services Dept.			
18 SEP 2006 Ack.			
1 <i>R</i>	2 <i>KB</i>	3	4
5	6	7	8



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**Bill Riley** 141 Bath Road, Bradford on Avon,  
Wiltshire, BA15 1SS. Tel/Fax: (01225) 863811

Barbara Burke  
Rights of Way Section  
Environmental Services Department  
Wiltshire County Council  
County Hall  
Trowbridge BA14 8JD

Your Ref: KF/PC/163



25<sup>th</sup> August 2006

Dear Mrs. Burke,

**Restricted Byway Milston 16**

Thank you for the letter of 16<sup>th</sup> August 2006, together with a copy of an Order correcting a drawing error on the Definitive Map.

The previous correspondence referred to is presumably the letter dated 28 November 2001 together with plans referring to a proposal to make a Modification Order showing the same length of road as a byway open to all traffic, which I supported. I am not aware of any subsequent consultation on the amended proposal for a restricted byway. Had there been, I would have drawn the Council's attention to evidence showing that it is more likely than not that a public right of way for mechanically propelled vehicles (MPVs) was created over the road by virtue of use during a period ending before 1<sup>st</sup> December 1930.

The third paragraph of the Council's letter states: *"It means that members of the public wishing to use the highway with a motorised vehicle will not be able to do so."* With respect, I believe the advice is wrong in respect of this, and other unclaimed carriageways, unless thorough investigations have ruled out the exceptions referred to in section 67 of the Act. In all probability, many (perhaps most) former RUPPs will have been used by MPVs (including tractors and traction engines) before 1<sup>st</sup> December 1930, and in some cases mainly by MPVs in the five years before 2<sup>nd</sup> May 2006.

The principal evidence implying MPV use of Milston 16 before 1<sup>st</sup> December 1930 (a tree-lined lane until at least 1954) consists of its classification on four Bartholomew's half-inch maps, which are available for inspection.

- |                                                            |                                          |
|------------------------------------------------------------|------------------------------------------|
| 1. Survey Atlas of England & Wales, Plate 64, 1904:        | <i>"Other Driving Roads"</i>             |
| 2. Reduced Survey for Tourists & Cyclists, Sheet 29, 1911  | <i>"Secondary Roads (Good)"</i>          |
| 3. Reduced Survey for Tourists & Cyclists, Sheet 29, 1920: | <i>"Motoring Roads: Secondary Roads"</i> |
| 4. Revised Contoured Map, Sheet 29, 1929:                  | <i>"Motoring Roads: Secondary Roads"</i> |

Other evidence confirms the existence of the road during the relevant period.

Because the proposed status of restricted byway appears to be wrong, I must object on the ground that, on the balance of probability, the correct status is a byway open to all traffic. I regret having to do this because I know that it will cause extra work for the hard-pressed Rights of Way staff.

Yours sincerely,

Bill Riley

**The Barn House  
Brigmerston  
Durrington  
Salisbury SP4 8HX  
Wiltshire**

**Tel 01980 652540  
Fax 01980 654954**

Environmental Services Dept.			
25 AUG 2006 Ack.			
1	2	3	4
5	6	7	8

23<sup>rd</sup> August 2006

Barbara Burke  
Environmental Services Department,  
Wiltshire County Council  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JD

Dear Ms Burke,

**Rights of Way Modification Order No 11 2006**

I refer to the above order, a description of which was placed on an electricity pole near to the above Property which is my Residence.

My Family and I object, most forcefully, to the proposed re-routing of the Restricted Byway. The occupants of the land, through which the Byway presently runs, locked and fenced the access and route some months ago and signs were erected forcing the walking public to make their way via an overgrown and often muddy track adjacent to our Property.

Numerous members of the public have made comments about the restriction of access and have expressed concern since the only access to the Byway is now via our Property, which the public consider to be an intrusion. The erection of the sign appears to be a unilateral decision and against the correct Byway route as depicted on your map. The sign, it would appear, photo attached, to be questionable in nature and legality and I can only assume the council will make the necessary representations to have it removed from the gate and permit the public, once again, access to the Byway.

In general terms the property through which the Byway runs was used continuously by the public from the moment we moved into our property in October 2001 until four months ago. The sign was erected, the stile removed and the gate chained. These actions appear, on the face of your proposed order, to be contrary to the current depicted right of way. The occupants of the property, who lease it from a tenant of the MOD, fail to keep it in good condition, with the land being overrun with weeds and generally in an unkempt state.

The use of the Byway has been considerable by the rambling public over the years and the route has not been detrimental to either the owners of the land or the occupiers since it has not had any livestock on it, in fact the Byway is routed over a part metalled track through the old Farm Yard, thus making it an all weather route.

It is most surprising that an order has been made to direct the Byway immediately adjacent to a dwelling from a well depicted route which has for years been used by the public without causing any inconvenience.

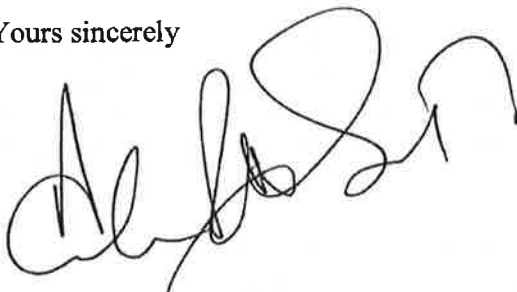
No consultation about the proposed change has taken place with either me or my Wife, who are the most affected, nor with our neighbours - the owners of Brigmerston Farm House. It should also be appreciated that the proposed re-routing is directly along a path which becomes waterlogged during the winter months and overgrown during the summer.

Given that the Byway is presently routed mostly along a made up track, the re-routing would in fact be over a less direct and more inconvenient route and therefore the reason for the re-route is unclear and questionable.

The obvious cost of upkeep of the track will be an added burden on the council which hitherto has not been the case.

We register our objection to such a re-route and in any case believe consultation should have taken place prior to such an order being made.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew R H Smith', with a large, stylized flourish at the end.

**Andrew R H Smith**

Cc Milston Parish Council  
Maj. Gen. W Courage-Brigmerston Farm House  
Defence Estates-Westdown Camp

Notice of Modification Order  
Section 53 of the Wildlife and Countryside Act 1981  
The Definitive Map and Statement for the Amesbury Rural District Council Area 1952  
The County of Wiltshire (Sheet SU 14 NE) (Milton No. 16)  
Rights of Way Modification Order No. 14 2006

The above order made on the 7<sup>th</sup> August 2006, if confirmed as made, will modify the Definitive Map and Statement for the area by deleting that part of Restricted Byway Milton 16 currently leading north east through Brigmerston Farm House from OS Grid Reference SU160455, and then adding that part of Restricted Byway Milton 16 from OS Grid Reference SU 155450, leading north-east along the cart track past Barn House to Church Road, OS Grid Reference SU160455.

A copy of the Order and the Order Map may be seen free of charge at the Rights of Way Section, Wiltshire County Council, County Hall, Bythesea Road, Trowbridge, during normal office hours. Copies of the Order and Map may be bought there at a price of £5.00.

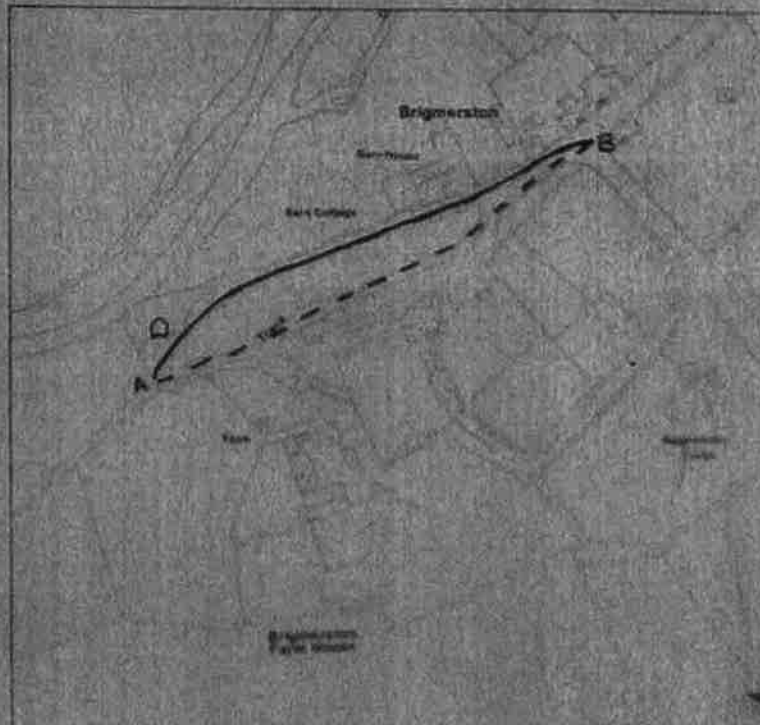
Any representation or objection relating to the Order may be sent in writing, to be received at County Hall, addressed to Barbara Burke, Environmental Services Department, Wiltshire County Council, Bythesea Road, Trowbridge, BA14 8JD not later than 5.00 on the 28<sup>th</sup> September 2006 and applications are requested to state the grounds on which it is made.

If no representations or objections are duly made to the Order, [or any part of it], or if any so made are withdrawn, the Wiltshire County Council instead of submitting the order to the Secretary of State, [(or part of it if the authority has by notice to the Secretary of State so elected under paragraph 5 of Schedule 15 to the Wildlife and Countryside Act 1981)] may itself confirm the order [(or that part of the order)], any representations or objections which have been duly made and not withdrawn will be sent with it.

Dated this 17<sup>th</sup> day of August 2006

*G. Batten*

G. Batten  
 Director Environmental Services



**WILTSHIRE COUNTY COUNCIL No. 14**

Route		
Current restricted byway to be deleted	—	B
Proposed restricted byway to be added	- - - -	B

**Wiltshire**



*The Barn House  
Brigmerston  
Durrington  
Salisbury  
Wiltshire  
SP4 8HX  
Telephone: 01980 652540  
Email:- [a.smith@nascorporation.biz](mailto:a.smith@nascorporation.biz)*

6<sup>th</sup> August 2014

Ms Barbara Burke  
Definitive Map and Highway Records Team Leader  
Waste and Environment  
Wiltshire Council, County Hall  
Bythesea Road  
Trowbridge  
Wilts. BA14 8JN

Dear Ms Burke

**Milston Restricted Byway 16**

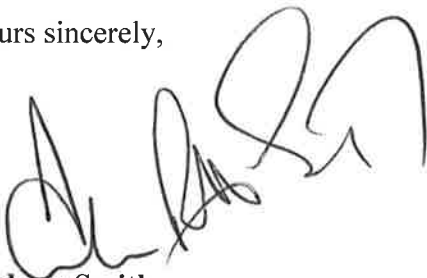
Thank you for your letters dated 10 and 18 July concerning the above subject, and I also acknowledge receipt of the notice of Modification Order dated 15 July, which was also pinned to the gate leading to the Barn Cottage.

Whilst I have objected previously both by letter and email I write to comply with the notice dated 15 July. Let me once again place on record an objection to the proposal to divert the footpath from the existing delineated route as designated on the definitive map.

In the notice you have requested grounds to the objection and the following are the basis for these.

1. Points raised in my letter of 23 August 2006
2. Evidence of aerial photography of the 70's and 80's which clearly indicates the path is routed and utilized via the stables which is the present route as confirmed by the definitive map.
3. The intrusive effect on the family home of the proposed alteration.
4. The failure of the council to undertake any discussion with ourselves since we purchased the Properties in 2002 concerning the proposed change.

Yours sincerely,



**Andrew Smith**

*The Barn House  
Brigmerston  
Durrington  
Salisbury  
Wiltshire  
SP4 8HX  
Telephone: 01980 652540*

18<sup>th</sup> August 2014

Ms Barbara Burke  
Definitive Map and Highway Records Team Leader  
Waste and Environment  
Wiltshire Council, County Hall  
Bythesea Road  
Trowbridge  
Wilts. BA14 8JN

Dear Ms Burke

**Milston Restricted Byway 16**

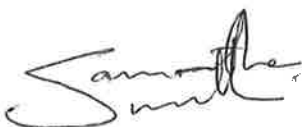
With regards to the notice of Modification Order dated 15 July, which was pinned to the gate leading to the Barn Cottage I would like to place my objection on record to the proposal to divert the footpath from the existing delineated route as designated on the definitive map.

Whilst I have objected previously by letter I write to comply with the new notice dated 15 July.

In the notice you have requested grounds to the objection and the following are the basis for these.

1. The failure of the council to undertake any discussion with ourselves since we purchased the Properties in 2002 concerning the proposed change.
2. Points raised in my letter of 9<sup>th</sup> October 2013 including the request to change the right of way from uninhabited land to running directly past our house and cottage as well as Vandalism.
3. Right to Respect for Private and Family Life under Human rights Act 1998 including the infringement and "protection of our property"
4. Wiltshire Country Council lead by you to protect one parties interests over another. This has been seen over the last 12 years where "The Smith Family" residing at "The Barn House and Cottage" having had attempts at "bullying" regarding Milston Restricted Byway 16.

Yours sincerely,



**Samantha Smith**



Your ref: BB/2001/01

Milston House  
Milston  
Salisbury  
Wilts  
SP4 8HT

1 August 2014

Definitive Map and Records Team  
Waste and Environment  
Wiltshire Council  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

Dear Sirs,

re: Milston – Restricted Byway 16

On behalf of my both my wife and I, we acknowledge receipt of your letter dated 16th July 2014 regarding the above.

For the record, you should be aware that we both fully support this revised order as we believe it accurately reflects the correct route. There has been considerable correspondence and evidence produced over the last seven years or so in support of this route, and there is therefore little point in repeating it all now.

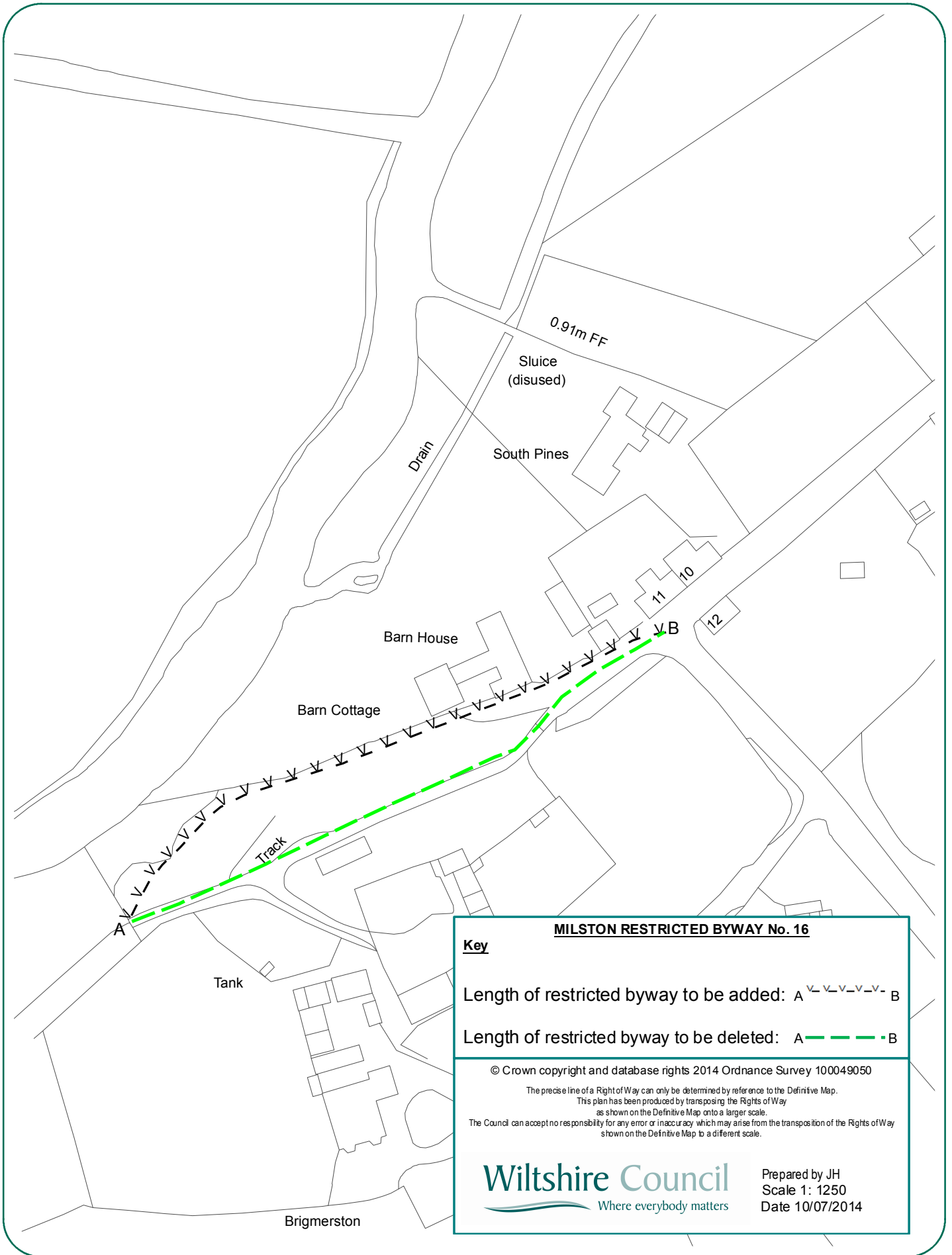
We have lived here for almost twenty three years and it is well known that this is the route of the byway. We particularly object to the residents of Barn House unilaterally deciding that it suits them to change the route of this right of way. We also understand that the residents have been abusive to ramblers on this public land and if this is correct, we find their behaviour to be totally unacceptable.

Yours faithfully,



R.W. Henman

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**MILSTON RESTRICTED BYWAY No. 16**

**Key**

Length of restricted byway to be added: A B

Length of restricted byway to be deleted: A B

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The precise line of a Right of Way can only be determined by reference to the Definitive Map.  
This plan has been produced by transposing the Rights of Way as shown on the Definitive Map onto a larger scale.  
The Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way shown on the Definitive Map to a different scale.

**Wiltshire Council** Where everybody matters

Prepared by JH  
Scale 1: 1250  
Date 10/07/2014



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## APPEALS Appeal Decisions

Application Number	Site	Appeal Type	Application Delegated/ Committee	Appeal Decision	Overturn	Costs
13/05532/OUT	Land adj Coombe Road, Salisbury	WR	DEL	Dismissed		Dismissed
13/02243/FUL	Land at Rear of the Plaza, Durrington	WR	DEL	Dismissed		
14/02238/FUL	Land at Paddock View, The Street, Teffont	WR	COMMITTEE	Allowed	O/T	Allowed
14/04819/FUL	10 Skew Bridge road, Salisbury	HH	DEL	Allowed		

### Outstanding Appeals

Application Number	Site	Appeal Type	Application Delegated/ Committee	Overturn
13/01493/FUL	44 Fisherton Street, Salisbury	WR	DEL	
13/02724/FUL	Woodford, Middle Woodford, Salisbury	WR	COMMITTEE	O/T
13/04330/ADV	Partridge Hill, Giles Lane, Landford	WR	DEL	
13/04200/FUL	Lyvers Farm, East Grimstead	Hearing	COM	O/T
14/03436/ADV	Richmond Farm, Brickworth Road, Whiteparish	WR	DEL	
14/04518/FUL	5 Beech Close, Porton	HH	DEL	

### New Appeals

Application Number	Site	Appeal Type	Application Delegated/ Committee	Overturn
14/02018/FUL	81 Downton Road, Salisbury	WR	DEL	
14/07763/FUL	Land adj to Orchard Cottage, Stapleford	WR	DEL	

**WR** Written Representations  
**HH** Fastrack Householder Appeal  
**H** Hearing  
**LI** Local Inquiry  
**ENF** Enforcement Appeal

27<sup>TH</sup> October 2014

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**REPORT TO THE AREA PLANNING COMMITTEE**

**Report No.**

<b>Date of Meeting</b>	06 November 2014
<b>Application Number</b>	13/05402/FUL
<b>Site Address</b>	Harnham Telephone Repeater Station Shaftesbury Drove Salisbury SP2 8QH
<b>Proposal</b>	The demolition of existing telephone repeater station and development of two 4 bedroom and four 3 bedroom houses, with associated access, car parking and landscaping
<b>Applicant</b>	Mr Jonny Pitts
<b>Town/Parish Council</b>	SALISBURY CITY
<b>Ward</b>	SALISBURY HARNHAM
<b>Grid Ref</b>	413345 128417
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Warren Simmonds

**Reason for the application being considered by Committee**

Cllr Dalton has requested the application be considered by the Members of the Southern Area Committee due to local concern, design and Highway concerns.

**1. Purpose of Report**

To consider the above application and recommend to Members that the application is APPROVED subject to Conditions and S106 legal agreement.

**2. Report Summary**

1. Principle of the proposed development and loss of employment
2. Impact on the character of the surrounding area
3. Impact on the amenity of neighbours
4. Highways considerations
5. Tree impacts
6. Archaeology
7. Protected species
8. Provision of financial contributions in respect of affordable housing and recreational open space

### **3. Site Description**

The application site consists of approximately 0.17ha site on which the former Telephone Repeater Station building (TRS) is situated, comprising a relatively large three/four storey scale brick built building constructed in approximately 1940 and occupying the majority of the ground area of the site (constituting a levelled plot of land slightly terraced into the side of Harnham Hill) and surrounded by hard standing on all sides save for the front (south) where there is a modest grassed area of frontage with sparse trees and shrubbery.

The topography of the land falls from the east to the west. The levels of the site (prior to the construction of the existing TRS building) have been amended resulting in an earth retaining wall rising between approx. 0.5m and 3.6m from south to north along the eastern boundary, and a fall from approx. 3.5m to 1m along the northern boundary.

The site is accessed from Shaftesbury Drove at the southern end.

The application site is surrounded on all sides by existing residential development (consisting of properties on Harnwood Road to the east and north, properties accessed via Shaftesbury Drove to the west and south).

A byway runs east/west along Shaftesbury Drove to the south of the application site.

Tree preservation orders exist for trees along Shaftesbury Drove (to the south west) and to the north west of the application site, but none exist within the application site.

### **4. Planning History**

None relevant to the current application

### **5. The Proposal**

The application is for full planning permission and proposes the demolition of the TRS building and the development of 2 x four bedroom houses and 4 x three bedroom houses, with associated access, car parking and landscaping.

### **6. Planning Policy**

Adopted Salisbury District Local Plan saved policies, including the saved policies listed in Appendix C, of the Adopted South Wiltshire Core Strategy:

G1 & G2 – General Development Criteria  
D2 – Design  
C12 – Nature Conservation  
H19 – Housing Restraint Area  
TR11 – Transport  
R2 – Open space

#### ***South Wiltshire Core Strategy:***

This was formally adopted at full Council on 7 February 2012 and forms part of the development plan for South Wiltshire.

Core Policy 3 (Affordable Housing)  
Core Policy 5 (Employment)  
Core Policy 6 (Meeting Salisbury's Housing Needs)



Core Policy 18 (Lifetime Homes Standard)

Core Policy 19 (Water Efficiency and the River Avon Special Area of Conservation)

***Emerging Wiltshire Core Strategy:***

The emerging Wiltshire Core Strategy (eWCS) has now been through the independent public examination procedure and is expected to be fully adopted (thereby superseding the South Wiltshire Core Strategy) in late 2014. The policies of the eWCS therefore now carry significant material weight in the consideration and determination of planning applications.

The effect of the eWCS on saved local plan policies:

Of particular importance to the application site (currently designated as an H19 Housing Restraint Area) is the loss of local plan policy H19, to be replaced by eWCS Core Policy 2 (Delivery Strategy), which in turn refers back to Core Policy 1 (Settlement Strategy).

Additionally, saved local plan policy D2 is replaced by CP57 (Ensuring high quality design and place shaping), saved local plan policy C12 is deleted as national policy/legislation covers impact on protected species, TR11 is replaced by CP64 (Demand management), whereas saved local plan policy R2 is continued as a saved policy in the eWCS.

The effect on the eWCS on adopted SWCS policies:

With the impending adoption of the eWCS, relevant adopted SWCS policies are affected as follows:

- CP3 (SWCS) is replaced by CP43 (Providing affordable homes) of the eWCS
- CP5 (SWCS) is replaced by CP35 (Existing employment sites) of the eWCS
- CP6 (SWCS) is replaced by CP45 (Meeting Wiltshire's housing needs) of the eWCS
- CP18 (SWCS) is replaced by CP46 (Meeting Wiltshire's housing needs) of the eWCS
- CP19 (SWCS) is replaced by CP68 (Water resources) of the eWCS

***Government Guidance:***

National Planning Policy Framework (NPPF) March 2012, and National Planning Policy Guidance (NPPG) March 2014.

**7. Consultations**

WC Highways – No Highway objection, subject to Condition

WC Ecologist – No comments

WC Archaeology – No objection subject to Condition

Wessex Water – Standard letter of advice provided

WC Public Protection – No objection subject to Conditions

Tree officer – No objection subject to development being carried out in accordance with the submitted arboricultural report

WC Rights of Way officer – No response received

WC Housing team – Requirement for financial contribution in respect of off-site provision of affordable housing, and recreational open space contribution

Salisbury City Council – Object on grounds of overdevelopment and road safety issues

## 8. Publicity

The application was advertised by site/press notice and neighbour consultation.

Following the amendment (reduction) of the proposed scheme from eight houses to six, all neighbours, consultees and all other third parties who had previously expressed an interest were re-consulted. Thirteen representations were received from third parties in response to the re-consultation, each was objecting to the proposed development on grounds including overdevelopment of the site (density), development out of character with the surrounding housing restraint area, Highway safety, potential obstruction of the adjacent right of way by parked cars associated with the proposed development, adverse impacts in respect of neighbour amenity (overlooking, noise), setting of adverse precedent in respect of density of development in the area, and insufficient off-street car parking provision.

## 9. Planning Considerations

### 9.1 Principle of the proposed development and loss of employment

The site is within an area of housing restraint where any such proposal will be considered against the criteria of saved policy H19 (Housing Restraint Areas). The requirements of the policy are:

Within Housing Restraint Areas, residential development (including the erection of new dwellings) will be acceptable only if the following criteria are met:

- I. there will be no adverse impact on the character of the settlement or neighbourhood;
- II. there is no loss of an important open space which contributes to the special character of the area;
- III. the loss of features such as trees, hedges and walls which contribute to the character of the area is kept to a minimum, and
- IV. the development will be in keeping with the character of neighbouring properties

However, due consideration and appropriate material weight must be given to the emerging Wiltshire Core Strategy (eWCS) which has now been fully through the independent public examination procedure and is expected to be adopted (thereby superseding the South Wiltshire Core Strategy) in late 2014. The policies of the eWCS therefore now carry significant material weight in the consideration and determination of planning applications.

Under Core Policy 1 of the eWCS, Salisbury is defined as a Principal Settlement where sustainable development will take place to improve the lives of all those who live and work in Wiltshire. The application site is identified as being within the

Core Policy 2 of the eWCS sets out the underlying principles of the Delivery Strategy, namely to ensure that communities have a better balance of jobs, services and facilities and homes. Within the limits of development, as defined within the proposals maps, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages.

Core policy 5 (SWCS) and emerging Core Policy 35 (eWCS) deal with employment land but relate only to the conservation of B1, B2 and B8 uses and therefore do not apply to the former employment use of the application site (which it is considered constituted a *sui generis* use).

It is therefore considered the proposed development, consisting of the residential redevelopment of a former commercial site within an otherwise residential area is acceptable in principle.

### 9.2 Impact on the character of the surrounding area

The existing TRS building was erected in about 1940 and is a conspicuously large brick built structure of three to four storey scale (relative to a domestic property) which occupies the majority of the site by floor area. As such the existing TRS building currently forms a prominently visible element of the existing character of the surrounding area.

The proposed development (amended plans/6 dwelling reduced scheme) would provide two detached four bed dwellings at the southern end of the site, with an access from the southern boundary along the western side to four further dwellings (two pairs of three bed semi-detached houses).

The existing earth retaining wall along the eastern and northern boundaries is to be retained and improved as a 'green living wall' with additional planting, together with a concrete retaining wall to ensure the stability of adjoining gardens.

Taking into consideration the scale, height and mass of the existing TRS building to be demolished which currently forms part of the existing character of the immediate and wider surrounding area, and the significantly reduced overall scale, mass and height (relative to the existing TRS building) of the proposed new dwellings, and taking into consideration the imminent changes in local plan policy criteria (i.e. the loss of local plan policy H19 Housing Restraint Areas as discussed in section 9.1 above), it is considered the scale, design, density, materials and layout of the proposed development would not result in undue harm to the existing character of the surrounding area such as warrant the refusal of the proposed scheme.

### 9.3 Impact on the amenity of neighbours

Several objections have been received from third parties in response the re-consultation. Grounds for objection included the density of development being out of character with the surrounding housing restraint area, Highway safety and adverse impacts in respect of neighbour amenity.

The proposed development represents a significant reduction in bulk, scale and mass over that of the existing TRS building. The proposed two four bedroom detached dwellings at the southern end of the site will have south facing front elevations facing towards Shaftesbury drove. The closest neighbouring dwelling to the south is 'Winsome' which is located on a partial 'island' site with Shaftesbury Drove running along its northern boundary, and Old Blandford road running along the southern side (the property is accessed on the northern side off of Shaftesbury Drove). The closest neighbouring dwellings to the east of the application site are existing dwellings on Harnwood Road which back onto the boundary with the site. Number 60 Harnwood Road occupies the land to the north of the application site, whereas to the immediate west of the site is the cul-de-sac and head of Shaftesbury Drove with dwellings on the opposite (western) side.

The proposed rear (east facing) elevations of the four semi-detached dwellings have no dormers or rooflight windows above first floor ceiling height level. In order to preserve the

amenity of neighbouring dwellings (in terms of overlooking) a Condition should be imposed to ensure no additional windows or openings are inserted into the east facing roof planes of these dwellings. A similar Condition, relating to the north facing (rear) roof planes of the two detached four bed dwellings should also be imposed in the interests of amenity of existing neighbouring occupiers and future occupiers of the development site.

By reason of the separation distance and general relationship between the proposed new dwellings within the application site and the nearest neighbouring residential properties, it is considered the proposed development would not unduly disturb, interfere, conflict with or overlook adjoining dwellings or uses to the detriment of existing occupiers.

#### 9.4 Highway considerations

Whilst significant concerns have been raised in third party representations with respect to the impacts of the proposed development on traffic generation, parking provision and Highway safety, the application has been thoroughly assessed by the Council's Highways officer who is content the proposed development would not be prejudicial to Highway safety and therefore raises no Highway objection subject to a Condition that access, turning area(s) and parking spaces are completed in accordance with the details shown on the approved plans and are maintained for those purposes at all times thereafter.

#### 9.5 Tree impacts

An Arboricultural Impact Assessment (Professional Tree Services Ltd, 25.10.13) was submitted with the application. The Council's Tree Officer has assessed the proposed development and raises no objection subject to development being carried out in accordance with the submitted arboricultural report.

#### 9.6 Archaeology

The applicant has submitted an Archaeological desk based assessment of the site. The Council's Assistant Archaeologist has assessed the proposal and raises no objection subject to a recording Condition.

#### 9.7 Protected species

The applicant has submitted a Protected Species Survey report for the existing TRS building and site. The ecological survey concluded that bats were not using the building and there was no evidence of other protected species on the site.

The council's Ecologist has assessed the proposed development and raises no objection.

#### 9.8 Provision of financial contributions in respect of affordable housing and recreational open space

The applicant has confirmed their agreement to enter into a legal agreement with the Council to make appropriate financial provision towards the off-site provision of recreational open space and affordable housing.

## 10. Conclusion

The development would be acceptable in principle, consisting of previously developed land within an established residential area. The proposal is considered acceptable in terms of its scale, design layout and materials and (subject to Conditions) would not adversely affect the amenity of neighbours or the existing character of the immediate and wider surrounding area. The proposed development would not be prejudicial to road safety and would not have undue impacts on ecology, archaeology or nearby trees that are subject to tree preservation orders. An appropriate level of financial contribution towards off-site affordable housing and recreational open space would be provided via a S106 legal agreement between the landowner and the Council in accordance with the relevant policies.

## RECOMMENDATION

That the application should be APPROVED, subject to the landowner entering into a suitable S.106 legal agreement to ensure/facilitate the payment of appropriate financial contributions in respect on off-site affordable housing provision and recreational open space provision, and subject to the following Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing number A101 revision D dated Sept 13, as deposited with the local planning authority on 27.08.14, and

Drawing number A1.02 revision C dated Sept 13, as deposited with the local planning authority on 27.08.14, and

Drawing number A103 revision B dated Sept 13, as deposited with the local planning authority on 27.08.14, and

Drawing number A104 revision B dated Sept 13, as deposited with the local planning authority on 27.08.14, and

Drawing number A1.05 revision B dated Sept 13, as deposited with the local planning authority on 27.08.14, and

Drawing number A201 revision A dated Aug 14, as deposited with the local planning authority on 27.08.14, and

Drawing number A202 revision A dated Aug 14, as deposited with the local planning authority on 27.08.14.

REASON: For the avoidance of doubt and in the interests of proper planning.

3. No development shall commence on site until details of the external materials to be used for the walls and roofs of the development have been submitted to and approved

in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

4. No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 on weekdays and 08:00 to 13:00 on Saturdays. No burning of waste shall take place on the site during the construction phase of the development.

REASON: In the interests of neighbouring amenities

5. No part of the development hereby permitted shall be first occupied until the access, turning area, parking area and passing place have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety

6. A Method Statement for the protection of trees (to be retained) during construction works shall be submitted to the local planning authority and agreed in writing prior to the commencement of development. Development shall be carried out in accordance with the details thereby agreed.

REASON: To ensure the retention and long term sustainability of retained trees in the interests of amenity

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window(s), dormer window(s) or rooflight(s), other than those shown on the approved plans, shall be inserted in the rear (east facing) roofslope(s) of Units 6, 5, 4 or 3 the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window(s), dormer window(s) or rooflight(s), other than those shown on the approved plans, shall be inserted in the rear (north facing) roofslope(s) of Units 2 or 1 the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), the garages hereby permitted shall not be converted to habitable accommodation.

REASON: To safeguard the amenities and character of the area and in the interest of highway safety.

10. No works shall commence on site until an appropriate programme of building recording has been carried out in respect of the building concerned. This record shall be carried out by an archaeologist/building recorder or an organisation with acknowledged experience in the recording of standing buildings which is acceptable to the Local Planning Authority. The recording shall be carried out in accordance with a written specification, and presented in a form and to a timetable, which has first been agreed in writing with the Local Planning Authority.

REASON: To secure the proper recording of the listed building.

11. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

12. No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

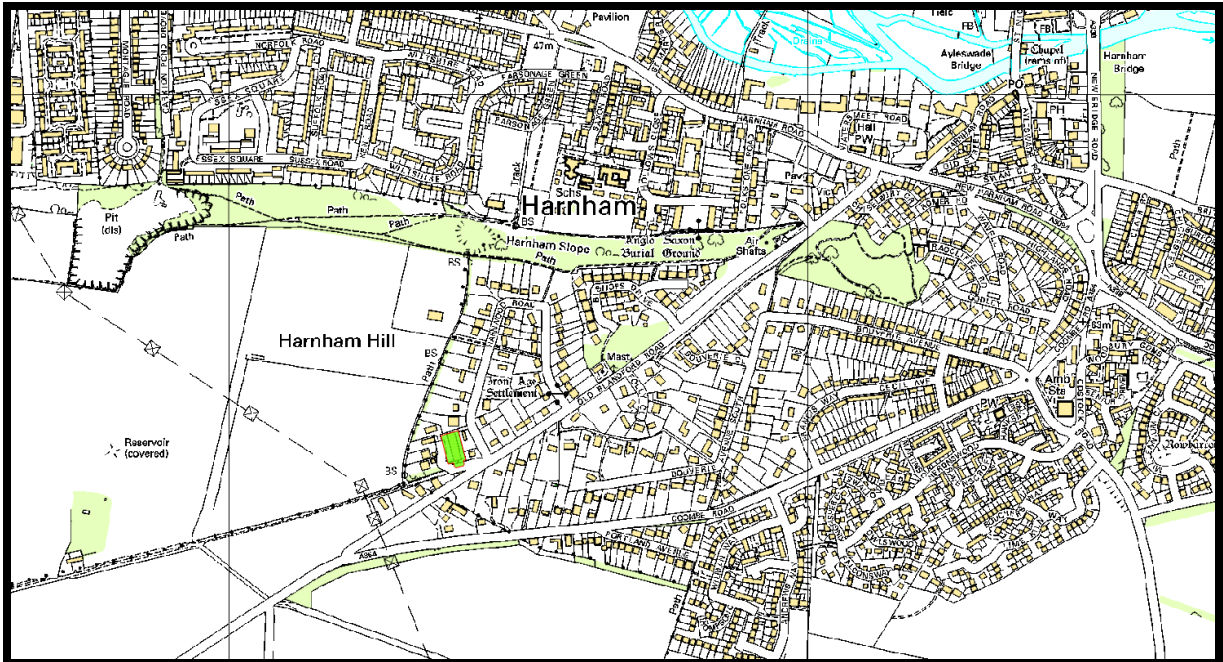
- Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.
- Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment should be carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.
- Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been

agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

REASON: To ensure that land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority.



13/05402/FUL - Harnham Telephone Repeater Station, Salisbury, SP2 8QH



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**REPORT TO THE SOUTHERN AREA PLANNING  
COMMITTEE**

**Report No.**

<b>Date of Meeting</b>	06/11/2014
<b>Application Number</b>	14/07720/OUT
<b>Site Address</b>	3 Westfield Close  Durrington  Wiltshire  SP4 8BY
<b>Proposal</b>	The construction of a bungalow with an attached garage
<b>Applicant</b>	Mr J P Steeples
<b>Town/Parish Council</b>	DURRINGTON
<b>Ward</b>	DURRINGTON AND LARKHILL
<b>Grid Ref</b>	415374 144363
<b>Type of application</b>	Outline planning permission with all matters reserved.
<b>Case Officer</b>	Steven Banks

**Reason for the application being considered by Committee**

Cllr Graham Wright has requested the consideration of the above application at a Planning Committee, if the Case Officer's recommendation is to conditionally approve the application, due to public interest and the consideration that the proposal would represent the overdevelopment of the site and would, by reason of its positioning, change the building line and symmetry of the close.

The Case Officer has recommended the conditional approval of the application and therefore the application is to be considered by a Planning Committee.

**1. Purpose of Report**

To consider the above application and the recommendation of the Area Development Manager that permission be granted subject to conditions for the reasons detailed below.

**2. Report Summary**

The main considerations which are considered to be material in the determination of this application are listed below:

1. The principle of development
2. The impact that the proposal would have on the amenity of the occupiers of the properties nearest to the proposal

3. The impact that the proposal would have on the character and appearance of the area surrounding the proposal site
4. The impact that the proposal would have on highway safety
5. Financial contributions towards the provision of recreational open space

8 objections from third parties have been received. The Parish Council object to the proposal.

### **3. Site Description**

The proposal site lies within the Durrington Housing Policy Boundary and is located on the eastern side of Westfield Close in Durrington. Westfield Close is characterised by single storey detached dwellings, two storey semi detached dwellings, single storey semi detached dwellings and 1.5 storey semi detached dwellings. The external walls of the dwellings in the area surrounding the proposal site have been constructed out of red brick, tiles, cream render and buff brick. The external roofs of the dwellings in the area surrounding the proposal site have been constructed out of red tiles. The proposal site currently functions as part of the garden which serves the property. The topography of the site is relatively flat. The boundary between the proposal site and Westfield Road is marked by established trees which are set behind a low wall and a hedge and close boarded wooden fencing forms the boundary between the proposal site and the property to the south east.

### **4. Planning History**

None

### **5. The Proposal**

In this application for outline planning permission with all matters reserved it is proposed to construct one 2 bed bungalow with an attached garage, remove existing trees and retain an existing boundary hedge.

### **6. Planning Policy**

The following planning policies are considered to be relevant to the determination of this application.

#### **National Planning Policy Framework (NPPF) 2012:**

This Framework sets out the Government's planning policies for England. The Framework repeats that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Part 6 of the NPPF, delivering a wide choice of high quality homes, is considered to be particularly relevant to this application.

The following policies are relevant to the determination of this application and are considered to align with the principles, aims, objectives and intentions of the NPPF. The following policies are therefore considered to carry significant weight.

#### **Salisbury District Local Plan saved policies (which are 'saved' policies of the adopted South Wiltshire Core Strategy):**

H16: Housing Policy Boundaries

G1: Principles of sustainable development  
G2: General criteria for development  
R2: Open space provision  
D2: Infill development  
TR11: The provision of off street car parking spaces

## **Wiltshire Local Transport Plan 2011 - 2026 Car Parking Strategy**

### **7.Consultations**

Durrington Town Council, - considered that the proposal would represent overdevelopment which, by reason of its positioning in front of the building line, would be out of character with the area and objected to the proposal.

Wiltshire Council Archaeologist, - considered it unlikely that significant archaeological remains would be disturbed by the proposed development and did not raise any objections to the proposal.

Wessex Water, - considered that new water supply and waste water connections would be required from Wessex Water to serve the proposed development and did not raise any objections to the proposal.

Highways Officer - considered that the proposal would not harm highway safety and did not raise any objections to the proposal subject to the imposition of two conditions, relating to the consolidation of surfacing of the access and a scheme for the discharge of water, on any planning permission.

### **8.Publicity**

Eight statements of objection to the proposal have been received.

In summary the grounds of the objections related to the considerations that:

- The proposal, by reason of its positioning, would harm the character of the area;
- the proposal, by reason of the views which would be possible from openings, would result in a harmful increase in the overlooking of nearby properties which would harm the amenity of the occupiers of nearby properties;
- the proposal, by reason of it being detached, would be out of character with the neighbouring properties;
- the proposal would result in an increase in housing density which would harm the character of the area;
- the parking of additional vehicles, associated with the proposed development, on the highway would harm highway safety;
- future alterations to the proposal, if it was approved, would harm visual and residential amenity; the proposal would damage tree roots;
- the drainage system may not have the capacity to cope with the additional liquid; the loss of trees would harm the appearance of the area;
- the proposal would decrease the value of a neighbouring property; the proposal would not have adequate amenity space and that the dwelling would appear cramped and harm the character of the area.

### **9. Planning Considerations**

#### **9.1The principle of development:**

Policy H16 permits small scale development within certain Housing Policy Boundaries, including the Housing Policy Boundary of Durrington, subject to the proposed development not conflicting with the policies of the Local Plan.

Therefore, policy H16 accepts the principle of development within certain Housing Policy Boundaries subject to the development not conflicting with the policies of the Local Plan.

It is proposed to construct one 2 bed bungalow with an attached garage. The proposed works are considered to constitute small scale development. The proposal falls within the Housing Policy Boundary of Durrington. Therefore, due to the location of the proposal and the type of work proposed, the principle of development is accepted subject to the proposal not conflicting with the policies of the Local Plan.

The following parts of this report assess the proposal against the relevant policies of the Local Plan.

### **9.2 The impact on the amenity of adjacent properties.**

This application is for outline planning permission with all matters, which include access, appearance, landscaping, layout and design, reserved for consideration through a separate application for the approval of the reserved matters, should permission be granted. However, the positioning and footprint of the dwelling is shown in an indicative plan which has been submitted as part of this application. It is also indicated that the dwelling would comprise of one single storey.

It is considered that a single storey dwelling with an attached garage, of the size indicated and in the position indicated, by reason of its size in terms of its height, width and depth, and the separation distance between the structure and the nearest properties, would not result in an unduly harmful increase in any overshadowing or overbearing effect which would be to the detriment of the occupiers of the nearest properties.

The amenity of the occupiers of the properties which are nearest to the proposal would not be harmed through a significant increase in any overlooking resulting from the proposed development, provided that any windows would be on the ground floor only.

Whilst the resultant property would have a very modest garden area, there is no national standard for garden sizes, and given a bungalow is proposed, it would be difficult to justify a refusal of the scheme on the limited size of the planned residential curtilage.

It is consequently considered that the proposed scheme, as indicated, would be achievable without harming the amenity of the occupiers of nearby properties. The proposal is therefore considered to be in accordance with criterion (vi) of policy G2.

### **9.3 The impact on the character and appearance of the area surrounding the proposal site:**

As stated above, this application is for outline planning permission with all matters, which include access, appearance, landscaping, layout and design, reserved for consideration through a separate application for the approval of the reserved matters, should permission be granted. However, the positioning and footprint of the dwelling and attached garage is shown in an indicative plan which has been submitted as part of this application. It is also indicated that the dwelling and attached garage would comprise of one single storey and that the existing hedge and low wall would be retained.

The indicative plan shows that the proposed dwelling would be sited in a position which is forward of the building line of the property to the north east. The siting of dwellings in positions which are forward of strongly defined building lines is not encouraged where the dwellings would appear to be out of character with an important characteristic of the area. However, the building line in Westfield Close is not strongly defined and it is considered that the positioning of the proposed dwelling would not appear to be severely out of character with the loosely defined building line of Westfield Close.

It is considered that the retention of the boundary hedge and low wall would provide an element of screening of views of the proposed single storey dwelling from the public highway, thus reducing the impact that the proposal would have on the character and appearance of the area concerned.

Single storey and two storey dwellings characterise the area concerned. It is considered that the a single storey dwelling of the size indicated, by reason of its height, width and depth, would not be excessive in terms of its size and would not be out of scale with the existing structures in the surrounding area. It is therefore considered that a single storey dwelling of the size indicated would not undermine the character of the area sufficiently to warrant refusal.

It is further considered that the proposal site is of a size which could accommodate a dwelling of an appropriate scale. It is also considered that the construction of a well designed dwelling, which used materials of a reasonable quality, on the proposal site would not harm local character and identity.

It is, therefore, considered that the indicated size and positioning of the proposed dwelling would not detract from the character and appearance of the area concerned. In order to ensure that the building is of single storey construction only and of the footprint indicated only the imposition of appropriate conditions on any permission is recommended.

The proposal is therefore considered to be in accordance with criterion (iv) of policy G2 and policy D2.

#### **9.4 The impact on highway safety:**

As stated above, this application is for outline planning permission with all matters, which include access, appearance, landscaping, layout and design, reserved for consideration through a separate application for the approval of the reserved matters, should permission be granted. However, the positioning and footprint of the dwelling is shown in an indicative plan which has been submitted as part of this application.

The Highways Officer, did not object to the proposal on the grounds of the proposal site not being able to provide a satisfactory access, turning space and level of off street parking.

It is consequently considered that the proposed scheme would be achievable without harming highway safety.

The proposal is therefore considered to be in accordance with criterion (i) of policy G2, policy TR11 and the Wiltshire Local Transport Plan 2011 - 2026 Car Parking Strategy.

#### **9.5 Financial contributions**

On proposal sites where residential development is proposed, a financial contribution, under policy R2, is sought towards the provision of recreational open space. Section 106 agreements are entered into when applicants are willing to comply with the requirements of

policy R2. Due to the proposal being considered at a Committee meeting, it is not considered prudent to enter into a Section 106 agreement. If this application is conditionally approved at a committee meeting it is recommended that the applicant should be required to enter into a section 106 agreement in order to comply with the requirements of policy R2.

Whilst Policy CP3 of the SWCS indicates that a financial payment is required towards affordable housing, the revised draft policy within the WCS does not require a payment for single dwellings. As this is the direction of travel of Council policy, it has been decided that no payment is therefore required towards affordable housing in this instance.

## **10.Conclusion**

The principle of the construction of a dwelling on the proposal site is accepted and despite the small size of the site, on balance, it is considered that the proposed scheme would be achievable without harming the amenity of the occupiers of nearby properties, highway safety and the character of the area. Consequently, a refusal of the scheme may be difficult to justify.

## **11.RECOMMENDATION**

**Planning permission be GRANTED subject to the following conditions and the applicant entering into a section 106 agreement in order to comply with the requirements of policy R2:**

1.The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2.No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

- (a) The scale of the development;
- (b) The layout of the development;
- (c) The external appearance of the development;
- (d) The landscaping of the site;
- (e) The means of access to the site.

The development shall be carried out in accordance with the approved details.

Reason: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995.

3.An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.



4. The building hereby permitted shall be of single storey construction only (with no dormer windows or other windows above eaves level), and the footprint of the dwelling shall not exceed that shown on the indicative site plan.

Reason: In the interests of visual amenity.

5. No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity and the character and appearance of the area.

6. No delivery of plant, equipment, materials, demolition or construction work or other building activity shall take place on Sundays or public holidays or outside the hours of 0800 & 1800 Monday to Friday and 0800 & 1300 on Saturdays.

Reason: In the interests of residential amenity

7. The highway kerbs and paved footway shall be lowered across the parking area access.

Reason: In the interests of highway safety.

8. Any gates shall be set back 4.5 metres from the edge of the carriageway, such gates to open inwards only.

Reason: In the interests of highway safety.

9. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

10. The development hereby permitted shall not be first brought into occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

Reason: In the interests of highway safety.

11. No development shall commence on site until details of the proposed ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels details.

Reason: In the interests of visual amenity.

12. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

Reason: To ensure that the development can be adequately drained.

14. The building hereby permitted shall be of the footprint indicated only.

Reason: In the interests of visual amenity.

15. The development shall be carried out in complete accordance with the following drawings:

Location plan: Date drawn: 03/06/2014 Date received by Wiltshire Council: 14/08/2014

Reason: For the avoidance of doubt.

Informative:

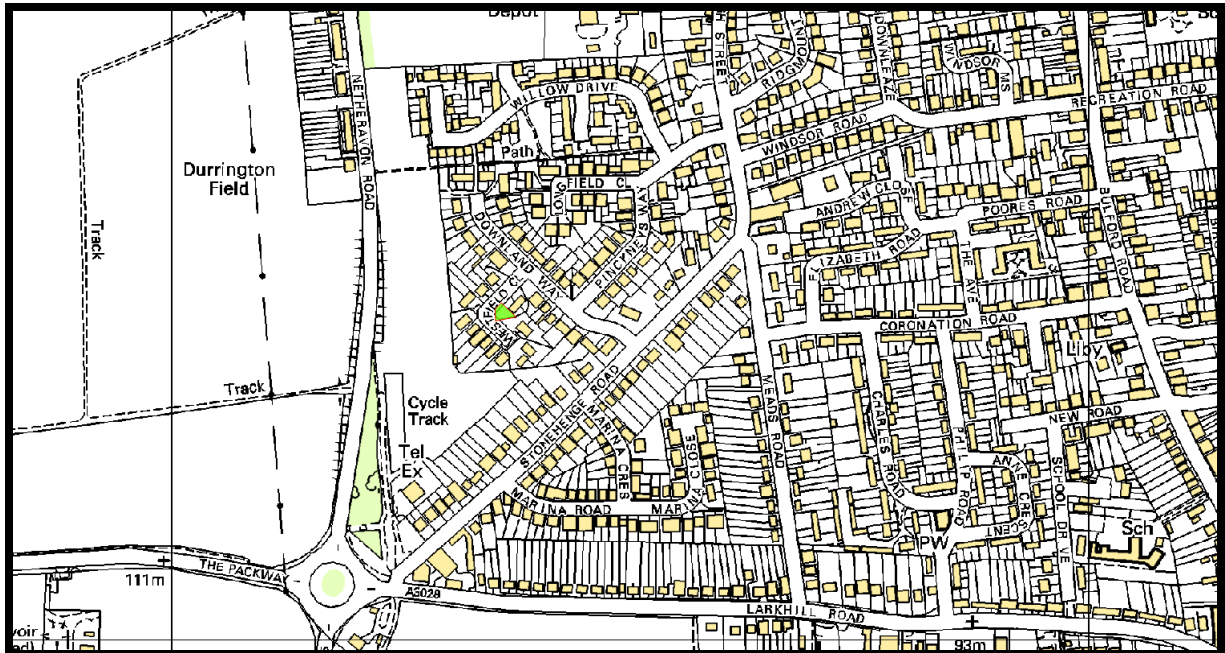
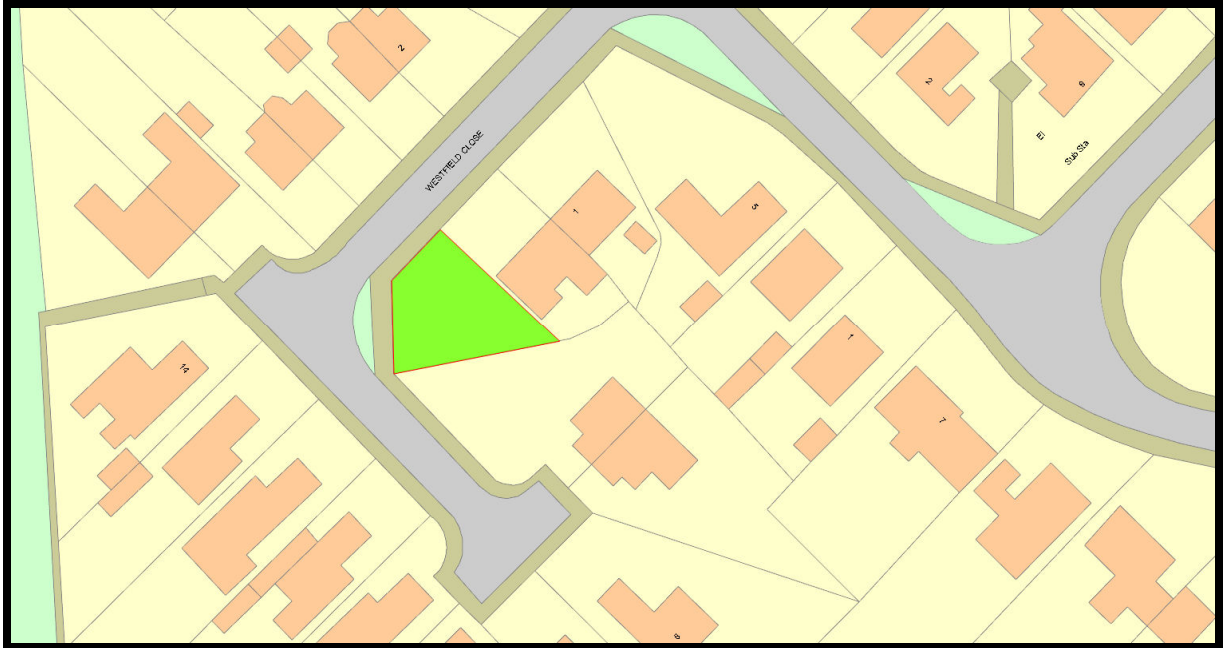
#### 1. Water supply and waste connections

New water supply and waste water connections will be required from Wessex Water to serve this proposed development. Application forms and guidance information is available from the Developer Services web-pages at [www.wessexwater.co.uk/developerservices](http://www.wessexwater.co.uk/developerservices)

Please note that all sewer connections serving more than a single dwelling require a single adoption agreement with Wessex Water before the connection can be made.

Further information can be obtained from Wessex Water's New Connections Team by telephoning 01225 526222 for Water Supply and 01225 526333 for Waste Water.

14/07720/OUT - 3 Westfield Close, Durrington, SP4 8BY



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**REPORT TO THE AREA PLANNING COMMITTEE**

**Report No.**

<b>Date of Meeting</b>	06 November 2014
<b>Application Number</b>	14/07911/FUL
<b>Site Address</b>	15 Ridgmount Durrington Salisbury Wiltshire SP4 8AH
<b>Proposal</b>	The construction of a 1.5 storey extension on the west elevation of the dwelling and the insertion of three dormer windows in the eastern roof slope of the dwelling.
<b>Applicant</b>	Sally Rhind-Tutt
<b>Town/Parish Council</b>	DURRINGTON
<b>Ward</b>	DURRINGTON AND LARKHILL
<b>Grid Ref</b>	415660 144703
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Steven Banks

**Reason for the application being considered by Committee**

Cllr Graham Wright has requested the consideration of the above application at a Planning Committee, if the Case Officer's recommendation is to conditionally approve the application, due to public concern and the consideration that the design of the window serving the first floor of the extension would harm the character of the surrounding area.

The Case Officer has recommended the conditional approval of the application and therefore the application is to be considered by a Planning Committee.

**1. Purpose of Report**

To recommend that the application be approved subject to conditions.

**2. Report Summary**

The main considerations which are considered to be material in the determination of this application are listed below:

- 1.The principle of development
- 2.The impact that the proposal would have on the character and appearance of the building and the surrounding area

3. The impact that the proposal would have on the amenity of the occupiers of the nearest properties

### 3. Site Description

The proposal site lies within the Durrington Housing Policy Boundary, is within close proximity to the Durrington Conservation Area and is located on the western side of Ridgemount in Durrington. Ridgemount is characterised by detached residential properties, of which many have 1.5 stories. It should be noted that dormer windows can also be found in Ridgemount. The proposal site accommodates a detached 1.5 storey dwelling. The external walls of the dwelling have been constructed out of cream render and red brick and the external roof of the dwelling has been constructed out of red tiles. The rear of the site is enclosed by a wall and fencing and the front of the site is relatively open.

### 4. Planning History

S/2003/0333	BRICKBUILT CAR PORT AND GARDEN WALL AND ALTERATION TO ACCESS
S/2001/0366	REPLACEMENT OF FLAT ROOFS WITH PITCHED TO INCORPORATE LOFT CONVERSION PLUS INTERNAL ALTERATIONS
S/2003/0768	RAISING ROOF TO PROVIDE NEW FIRST FLOOR ACCOMMODATION INCLUDING DORMER WINDOWS
S/2002/1099	FIRST FLOOR BEDROOM EXTENSION ON EXISTING FLAT ROOFED KITCHEN
S/2007/1129	PROPOSED BOUNDARY WALL. PROPOSED STORE/GYM
S/2005/1338	PROPOSED SINGLE STOREY SIDE EXTENSION
S/2001/2172	EXTENSION TO KITCHEN AND DEMOLITION OF REAR PORCH

### 5. The Proposal

Planning permission is sought for the construction of a 1.5 storey extension on the west elevation of the dwelling and the insertion of three dormer windows in the eastern roof slope of the dwelling.

### 6. Planning Policy

The following planning policies are considered to be relevant to the determination of this application.

#### **National Planning Policy Framework (NPPF) 2012:**

This Framework sets out the Government's planning policies for England. The Framework repeats that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework replaced the previously published Planning Policy Statements (PPSs) and Planning Policy Guidance notes (PPGs).

#### **Salisbury District Local Plan saved policies (which are 'saved' policies of the adopted South Wiltshire Core Strategy):**

The following saved policies are relevant to the determination of this application and are considered to align with the principles, aims, objectives and intentions of the NPPF. The following policies are therefore considered to carry significant weight.

H16: Housing Policy Boundaries  
G2: General criteria for development  
D3: Extensions

## **7. Consultations**

Durrington Town Council, - considered that the first floor window in the west elevation of the proposed extension, by reason of its appearance, would harm the character of the surrounding area and would harm views from the Conservation Area and objected to the proposal.

Conservation Officer, - considered that the proposed works would not detract from the character and appearance of the host dwelling and would not form a prominent part of any significant view from the Conservation Area.

## **8. Publicity**

This application was advertised through the use of a site notice and letters of consultation.

Two statements, expressing concerns, from occupiers of Apple Tree Cottage 34 High Street Durrington and 32 High Street Durrington have been received.

In summary the grounds of the concerns related to the considerations that the first floor window in the west elevation of the proposed extension, by reason of its design, size and positioning, would harm the character of the surrounding area, would harm views from the Conservation Area, would result in a harmful increase in the overlooking of properties and would result in light pollution.

## **9. Planning Considerations**

### **9.1 The principle of development:**

Policy H16 permits small scale development within certain Housing Policy Boundaries, including the Housing Policy Boundary of Durrington, subject to the proposed development not conflicting with the policies of the Local Plan.

Therefore, policy H16 accepts the principle of development within certain Housing Policy Boundaries subject to the development not conflicting with the policies of the Local Plan.

It is proposed to construct a 1.5 storey extension on the west elevation of the dwelling and to insert three dormer windows in the eastern roof slope of the dwelling. The proposed works are considered to constitute small scale development. The proposal falls within the Housing Policy Boundary of Durrington. Therefore, due to the location of the proposal and the type of work proposed, the principle of development is accepted subject to the proposal not conflicting with the policies of the Local Plan.

The following parts of this report assess the proposal against the relevant policies of the Local Plan.

### **9.2 The impact on the character and appearance of the building and the surrounding area**

Policy D3 permits extensions to existing properties or the development of ancillary buildings within their curtilages subject to the works being compatible with the existing property, the street scene and the landscape framework and criteria (iv) of policy G2 requires new development to respect the physical environment.

It is proposed to construct the external surfaces of the walls of the proposal out of render and brick. It is proposed to construct the external surfaces of the roofs of the proposal out of concrete tiles. It is considered that these materials would be compatible with the materials which have been used to construct the host dwelling. Due to the compatibility of the materials it is considered that the proposed materials would not detract from the overall character and appearance of the property and, in turn would not detract from the character of the surrounding area.

It is proposed to locate the extension on the rear elevation of the dwelling. In this location, the extension would not form a prominent part of the street scene. It is therefore considered that the proposed extension would not harm the appearance of the street scene. It is proposed to construct three dormer windows in the eastern roof slope of the dwelling. It should be noted that this roof slope faces the public highway. Dormer windows can be found in the roofs of dwellings in the area surrounding the proposal site. A certain precedent which accepts the construction of dormer windows in the area surrounding the proposal site has therefore been set. It is consequently considered that the construction of the proposed dormer windows in the eastern roof slope of the host dwelling would not detract from the appearance of the street scene through the introduction of an alien feature.

In terms of height, width and depth the proposed extension and dormer windows would be subservient to the principle building. This subordinate design would not harm the appearance of the property.

It is considered that the design of the proposed extension and dormer windows follows established principles of development which characterise the area surrounding the proposal site. It is consequently considered that the design of the proposed extension and dormer windows would not detract from the overall character and appearance of the property and, in turn, would not undermine the character of the area.

Consequently, it is considered that the proposed extension and dormer windows, by virtue of their design, size, positioning and materials, would be compatible with the host building and, in turn, would not harm local character and identity. The proposal is therefore considered to be in accordance with policies G2 and D3.

### **9.3 The impact on the amenity of the occupiers of the adjacent properties**

The dwelling is located in a relatively tight knit housing area, where there is already a level of overlooking between properties and garden areas.

The proposal involves a two storey rear extension, which would have a large glazed window at first floor level. Third parties have expressed concern regards the impact of the works on privacy levels of adjacent properties.

It is acknowledged that oblique views of adjacent property, to the north and south of the proposal site would be possible from the proposed extension. The distance to "April Rise" and the proposed extension is approximately 37m, the distance between Cherry Tree Cottage (32 High Street) and the proposed extension is approximately 30m and the distance between Apple Tree Cottage (34 High Street) and the proposed extension is approximately 34m. However, associated garden areas between the properties are obviously closer to the extension and first floor window than the distances above.



Some landscape screening between these properties was evident at the time of the site visit. As a consequence, whilst there may be some inter-relationship between adjacent properties and the proposed rear extension, given the distance between properties, it is considered that the amenity of the occupiers of the properties which are nearest to the proposal would not be so significantly harmed through a significant increase in any overlooking resulting from the proposed development to warrant refusal.

Notwithstanding the impact of the extension in terms of overlooking, the proposed rear extension, by reason of its size, in terms of their height, width and depth, and the separation distance between the structures and the nearest properties, would not result in an unduly harmful increase in any overshadowing or overbearing effect which would be so significant as to warrant refusal.

The proposed dormer windows in the front roofslope facing the street scene are not considered to be an issue in planning terms.

The proposal is therefore considered to be in accordance with policy G2.

## **10. Conclusion**

The proposal may result in some additional inter-relationship between the proposed rear extension and adjacent dwellings to the west. However, given the distance between the properties, it is considered that any additional loss of privacy would not be so harmful as to warrant refusal on that basis.

The development would be compatible with the main dwelling and, in turn, would respect the character of the locality. It is also considered that the proposed structures would not cause any demonstrable harm to the amenity of the occupiers of nearby properties. The proposal is therefore considered to be in accordance with the aims and objectives of policies G2, D3 and H16.

## **RECOMMENDATION**

### **Planning permission be GRANTED subject to the following conditions:**

1.The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2.No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity and the character and appearance of the area.

3.The development shall be carried out in complete accordance with the following drawings:

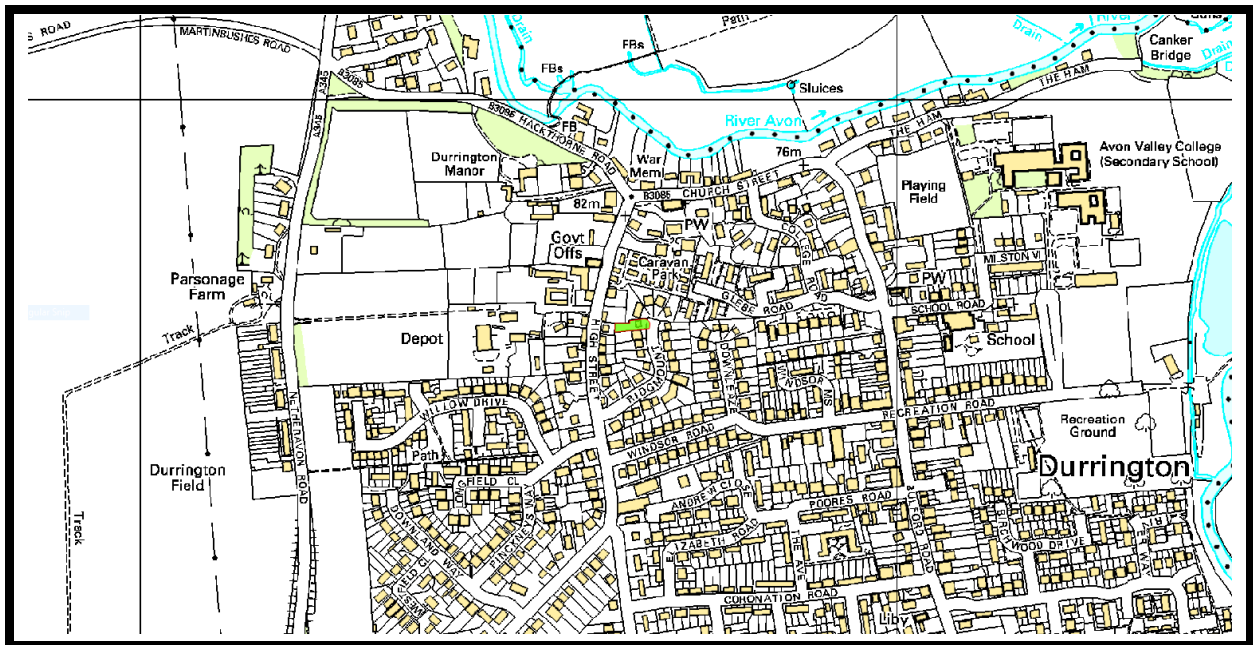
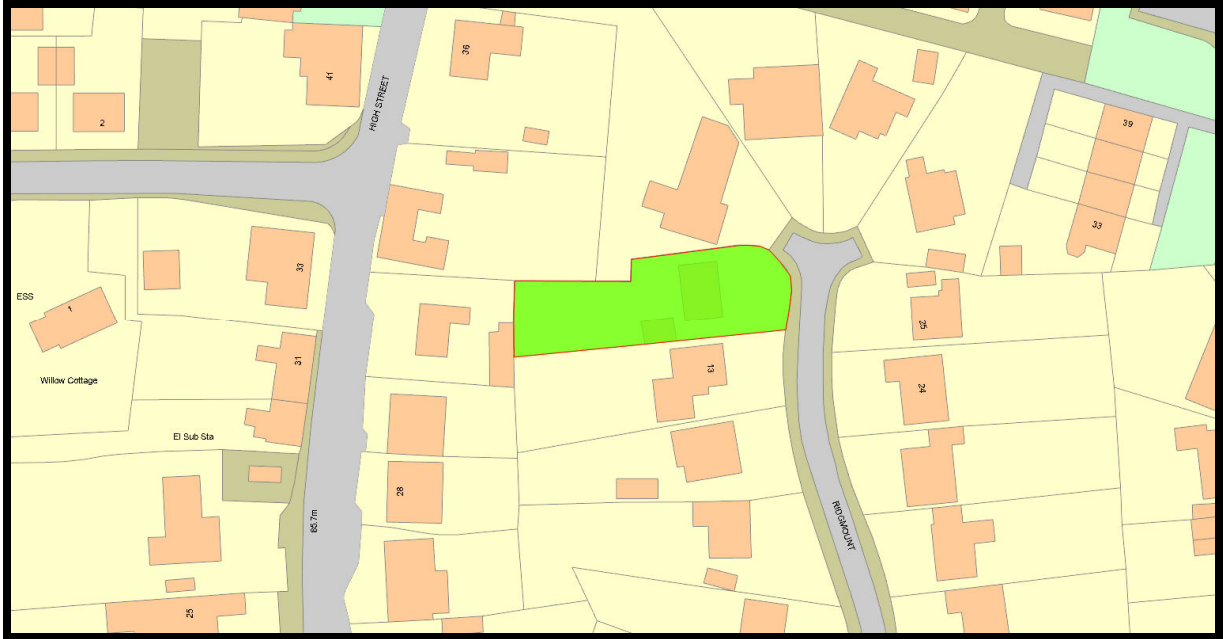
Drawing reference: 2014-27-3 revision: A Date drawn: 08/2014 Date received by Wiltshire Council: 20/08/2014

Drawing reference: 2014-27-4 Date drawn: 08/2014 Date received by Wiltshire Council:  
15/08/2014

Drawing reference: 2014-27-5 Date drawn: 08/2014 Date received by Wiltshire Council:  
15/08/2014

Reason: For the avoidance of doubt.

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