

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber, Wiltshire Council Offices, Bradley Road,
Trowbridge
Date: Wednesday 10 March 2010
Time: **6.00 pm**

Please direct any enquiries on this Agenda to Marie Gondlach, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713597 or email marie.gondlach@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

Membership:

Cllr Ernie Clark	Cllr Christopher Newbury
Cllr Rod Eaton	Cllr Graham Payne
Cllr Peter Fuller (Chairman)	Cllr Stephen Petty
Cllr Mark Griffiths	Cllr Jonathon Seed
Cllr Malcolm Hewson	Cllr Roy While
Cllr John Knight	

Substitutes:

Cllr Rosemary Brown	Cllr Francis Morland
Cllr Trevor Carbin	Cllr Jeff Osborn
Cllr Andrew Davis	Cllr Fleur de Rhe-Philippe
Cllr Russell Hawker	Cllr Pip Ridout
Cllr Tom James MBE	

AGENDA

Part I

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

1. **Apologies for Absence**

2. **Minutes of the Previous Meeting** *(Pages 1 - 4)*

To approve the minutes of the last meeting held on 17 February 2010 (copy attached.)

3. **Declarations of Interest**

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

4. **Chairman's Announcements**

5. **Public Participation**

Members of the public who wish to speak either in favour or against an application 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. 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.

6. **The Wiltshire County Council sheet ST95NW parish of Keevil - Keevil 23 And Wiltshire County Council sheet ST96NW parish of Seend - Seend 57 rights of way modification order 21 2008** *(Pages 5 - 78)*

To consider the report of the Corporate Director for Transport, Environment and Leisure, copy attached.

7. **Planning Applications** (Pages 79 - 136)

To consider and determine planning applications in the attached schedule.

8. **Planning Appeals Update Report** (Pages 137 - 140)

To receive details of appeal decisions and appeals pending (see attached schedule.)

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

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

None

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WESTERN AREA PLANNING COMMITTEE

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 17 FEBRUARY 2010 AT COUNCIL CHAMBER, WILTSHIRE COUNCIL OFFICES, BRADLEY ROAD, TROWBRIDGE.

Present:

Cllr Ernie Clark, Cllr Rod Eaton, Cllr Peter Fuller (Chairman), Cllr Mark Griffiths, Cllr Malcolm Hewson, Cllr John Knight, Cllr Christopher Newbury, Cllr Graham Payne, Cllr Stephen Petty, Cllr Jonathon Seed and Cllr Roy While

Also Present:

Cllr Michael Cuthbert-Murray

96. **Apologies for Absence**

There were no apologies

97. **Minutes of the Previous Meeting**

The minutes of the meeting held on 10 February 2010 were confirmed as a correct record and signed by the Chairman subject to the following:

Minute 93.2 refer. W/09/00690/FUL

Resolved:

- To investigate gating the new footpath from the Bear Car Park to the site out-of-hours

98. **Declarations of Interest**

There were no Declarations of Interest

99. **Chairman's Announcements**

There were no Chairman's Announcements

100. **Public Participation**

The Chairman explained the rules of Public Participation

101. **Planning Applications**

101.1 W/09/03629/FUL Additional parking area (retrospective application) – R And R Coaches Ltd Bishopstrow Road Warminster Wiltshire BA12 9HQ

Members of the committee were informed that the applicant had withdrawn the application, as detailed in the Minutes Annex

It was therefore

Resolved:

- **To note that the applicant had withdrawn the application**
- **To request that should a further application be submitted Bishopstrow Parish Council be consulted**

101.2 W/09/02998/FUL Retrospective application for the continued use of agricultural building as an office and the retrospective erection of stable block - Land South Of Keepers Cottage Spiers Piece Steeple Ashton Wiltshire

Members of the committee were informed of some typing error and contradictory statements in the report, as detailed in the Minutes Annex.

Public Participation

1. Mr Geoffrey Hyatt, Steeple Ashton Parish Council, spoke in objection to the application
2. Mr Mark Campbell, Agent for the applicant, spoke in support of the application

Resolved:

That planning permission be REFUSED by unanimous vote

For the following reason(s):

1. Policy E8 of the West Wiltshire District Plan - First Alteration 2004 states that the conversion of rural buildings will not be permitted where it involves extensive alteration to the original character of the building, and where the proposed conversion does not safeguard the essential form and character of the building. The alterations to the building, particularly the amount and type of fenestration and the first floor balcony, significantly change the character of the building, giving a residential

appearance that is at odds with its countryside location. This is considered contrary to adopted development plan policy.

2. Policy E8 of the West Wiltshire District Plan - First Alteration 2004 requires the conversion of buildings in rural areas not to harm the natural environment, including the water environment, and be supported by a structural survey to ascertain the suitability of the building for conversion. Policies U1a and U2 of the West Wiltshire District Plan - First Alteration 2004 require the satisfactory provision of foul and surface water to protect the environment from pollution. The proposal for the conversion has been submitted with insufficient information with regard to the structural condition of the building, the impact of the conversion on protected species and their habitats, and the means of foul and surface water drainage, to allow a comprehensive and informed decision to be made about the need for the unauthorised change of use, works and buildings. This is considered contrary to these policies.

Informative(s):

You are advised that any application resubmission should be supported with sufficient information and supporting justification to allow a comprehensive assessment of the proposal to be made.

101.3 W/09/03480/FUL Proposed first floor extension - 44 Newtown Westbury Wiltshire BA13 3EF

Public Participation

There was no public participation.

Councillor Michael Cuthbert-Murray, Unitary Member for Westbury East, spoke in support of the application

Resolved:

That planning permission be GRANTED contrary to officer recommendation

For the following Reason(s)

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

Subject to the following condition(s)

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 materials to be used in the construction of the walls and roof of the development hereby permitted shall match in material, colour and texture those used in the existing building.

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

West Wiltshire District Plan 1st Alteration 2004 – C31A.

102. **Planning Appeals Update Report**

Members of the committee sought clarification over some of the appeals listed.

Resolved:

To note the Planning Appeals Update Report

103. **Urgent Items**

There were no urgent items

(Duration of meeting: 6.00 - 6.50 pm)

The Officer who has produced these minutes is Marie Gondlach, of Democratic Services, direct line 01225 713597, e-mail marie.gondlach@wiltshire.gov.uk

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

WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE 10 MARCH 2010

THE WILTSHIRE COUNTY COUNCIL SHEET ST95NW PARISH OF KEEVIL – KEEVIL 23 AND WILTSHIRE COUNTY COUNCIL SHEET ST96SW PARISH OF SEEND – SEEND 57 RIGHTS OF WAY MODIFICATION ORDER 21 2008

Purpose of Report

1. To:
 - (i) Consider and comment on evidence investigated, representations made and one objection lodged relevant to the above Definitive Map Modification Order.
 - (ii) Recommend that the Order be forwarded to the Secretary of State with the recommendation that the Order be confirmed with one minor modification.

Background

2. An application to upgrade the public footpath Keevil 23 was received by Wiltshire County Council on the 2 May 2006. The application was made by The Wiltshire Bridleways Association and sought to bring evidence to the Council's attention that public rights higher than footpath rights existed along the route of footpath 23 in Keevil Parish and that an Order should be made to record a bridleway.
3. The application relied on historical documents. Officers have investigated the copies of the documents included with the application and a considerable number of other documents, the majority of which are held at the Wiltshire and Swindon History Centre at Chippenham.
4. A non-statutory consultation was carried out initially between 17 April 2008 and 2 June 2008, though additional evidence has been forthcoming since the Order was made on 2 July 2008. The last piece of evidence was received in September 2009.
5. The landowner's agent responded to the consultation in May 2008 and pointed out that the route features a locked gate and that the pre-registration deed (early title deed) specifically refers to the route being a footpath. No other evidence was adduced that challenged the historical evidence and requests for further information were not answered.
6. It was considered that, on the balance of probability, higher rights than footpath existed along the route and an Order was made on 2 July 2008 to record the length of path Keevil 23 and a short stretch of highway u/c6076 as restricted byway (see **Appendix A**). The short stretch of highway u/c 6076 is included in this order as the definitive map provides conclusively the existence of public rights.
7. The Order was advertised on 10 July 2008. A statutory 42 day period, in which objections or representations could be received, followed.

8. Two representations and one objection were received in response to the advertisement of the order. The representations were made by user group representatives and the objection was made by the landowner.
9. The objection has not been withdrawn and hence this Order must now be determined by the Secretary of State. This Committee must decide whether the confirmation of the Order is supported, supported with modification or unsupported by Wiltshire Council.

Description of the Route

10. Keevil 23 is a wide hedged track leading from the A361 due north to the Semington Brook. It passes across the Semington Brook, the centre of which is the Seend/Keevil Parish boundary, and proceeds into Seend Parish as the u/c6076 (an unclassified road). The u/c6076 passes Seend Head Mill, crosses the mill leat and goes on towards Seend.
11. The route has been gated at the southern end (A361) throughout living memory and has been recently (summer 2009) gated at the northern end.
12. Keevil 23, to the middle of the Semington Brook, historically lay within the area administered by Westbury and Whorwellsdown Rural District Council. The u/c6076, north of the middle of the Semington Brook, lay within the Melksham Rural District Council Area.
13. The land appears to have been part of the Duke of Somerset's estate between at least 1747 and 1922 when it passed into the hands of a branch of the Noad family. It was sold in 1978 but is currently in the ownership of three members of the Noad family trading as J S Noad and Sons.
14. The terrible state of England's major roads in the 18th century, and the inability of parishes to maintain them, led to routes becoming Turnpikes. People on horseback, drovers and drivers of carts and carriages were charged a fee to use these roads. The roads were generally in better condition than local roads but travellers had to weigh this benefit against paying a fee. Fees were collected at toll gates or bars and side gates were set up to prevent travellers slipping off the Turnpike without paying a fee. Fees collected were used to maintain the road. The southern end of Keevil 23 joins the A361 which was a Turnpike administered by a Turnpike Trust, responsible for its repair through the levying of tolls. This commenced with an Act of Parliament 24 Geo II (1750-1751) and renewed in 1770/1771, again in 1796/1797 and again in 1820. The Act was finally repealed in 1870.
15. The northern end of the Order route leads through the Semington Brook (currently there is a bridge in place), effectively crossing the parish boundary in the middle of the brook joining the southern end of u/c6076 (an unclassified road maintainable at public expense) south of Seend Head Mill.

The Evidence

16. Officers have examined a large number of historical records relevant to assessing the status of the right of way. These have all been reviewed, taking into account the objector's comments. The evidence and comments are set out within **Appendix B**.

17. Before going into more detail, describing the most important documentary evidence, it may be helpful to Members to outline three tests that are to be applied to ensure that any information contained within the documents is relevant. The tests are as follows:
- (i) Why were the documents compiled?
 - Did the recording of the highway have any legal significance?
 - (ii) How were the documents compiled?
 - The compilation process
 - Public participation
 - Accuracy (for instance was the map accurately surveyed?)
 - (iii) Who compiled them?
 - What were the consequences for the compiler's duties/rights of including or not including a public right of way?
 - What were the consequences for the rights/duties of others?
 - Were there any declarations against the compiler's interest?
 - Were there any sanctions for falsifying evidence?
18. The 'how, why and by whom the evidence was compiled' will attach evidential weight to the data. This case will be determined by whether, on the balance of probabilities, the way ought to be shown in the definitive map and statement as a restricted byway.
19. The Council does not have to decide whether it is beyond reasonable doubt that public rights exist that are higher than already shown in the definitive map and statement. Instead, it must decide whether, on the balance of probabilities, those rights exist. In other words, whether it is more likely than not.
20. The evidence for this case is by no means 'one way', i.e. there is evidence both for and against the existence of higher rights than footpath, and careful consideration must be given to the weight of the evidence, both in quality and quantity.
21. The apparent anomaly of there being a footpath recorded from the A361 to the centre of the Semington Brook in Keevil and an unclassified road recorded north from the centre of the Semington Brook in Seend has dictated that evidence viewed has included a number of documents relating to Seend and the u/c6076 road, as well as records relating to Keevil Parish.
22. The fact that either side of the Semington Brook has traditionally been administered by different highway authorities (whether parish or rural district council) has also added to the amount of evidence that has been viewed.
23. **Appendix B** highlights in grey, evidence that is considered '**primary evidence**'. This covers documents produced as a result of an Act of Parliament. Whilst the representation of rights of way may not have been the purpose of the legislation, these records are considered to hold the higher evidential weight.

24. In medieval times, responsibility for maintenance of the King's Highway was placed on the Manor. The public has 'the right of good passage', not only on the beaten track and deviation was permitted if necessary. By the 14th and 15th centuries there was an increase in travelling in the country but with the breakdown of manorial institutions in the 15th and 16th centuries highways became badly neglected. This led to the passage of an Act in 1555 which, until the Highways Act of 1835, formed the basis of the organisation of road maintenance.
25. **Wiltshire Quarter Sessions records** reveal that a route in Seend described as "the Kings Highway" at "a certain place called Seend Head Mill" was in 1675 sufficiently repaired and mended "for horses, carts and carriages" and a certificate confirming this was signed and sealed by the court. This repair resulted from a presentment in 1674 for Seend Parish relating to a highway being out of repair, the parish then repairing the route before a surveyor inspected it and a certificate could be issued.
26. At the time of the presentment, the parish was the highway authority responsible for maintaining the highway and the Quarter Sessions Court was the body responsible for ensuring the parish carried out this duty. The Court found the route to be a vehicular highway and the route was repaired as such. It is noted that this record refers to the route in Seend Parish alone, as it was only Seend that was indicted for repair. This route is considered to be the u/c6076 road.
27. The Victoria County History records that by the mid 15th century Keevil Parish does not appear to have done suit to (appeared at) any of the hundred courts and hence no presentments were made from this date. However, a **Parish record**, dating from 1787, has been found and investigated. It relates to a rate made by surveyors in the parish of Keevil "to pay surveyors what they have laid out for materials in the repairing of highways". This relates to the responsibility of the parish to repair highways.
28. A payment was made to the surveyor for the "Duke of Somerset's" for materials to repair the highway. The document is a list of landowners or locations, for example field names where a road leads past. The Duke of Somerset only owned the land adjoining Keevil 23 and the Turnpike in Keevil Parish. As the Turnpike was maintained by the Turnpike Trust this payment has to be for the laying out for materials by surveyors along Keevil 23.
29. Although the objector argues that this evidence is conjectural, an alternative explanation has not been found, or offered.
30. Primary evidence relating to highway records has high evidential weight but other primary evidence compiled by bodies, such as the Inland Revenue, and either compiled after public consultation or derived as a result of consultation with landowners, is also valuable, even though the purpose of the document may not have been to record public rights.
31. The payments of tithes to the church (a percentage of production to be paid in kind) was a feature of medieval England. As wealth and production moved away from agriculture it was clear that the payment of tithes based on agricultural production only was not a fair scheme of taxation. From the 1700s to the passing of the Tithe Commutation Act in 1836 parishes moved away from the payment of tithes by commuting them to corn rents during the process of enclosure.

32. The tithes in the parish of Keevil were commuted to corn rents by the **Enclosure Act and Award of 1795**. The enclosure of land led to alterations in public access and the accompanying Act of Parliament allowed for the awarding of highway. The Keevil Award lists 2 public roads, 13 private roads and 2 footways, none of which is Keevil 23. The land surrounding the route of Keevil 23 was already enclosed by 1795 and the route of Keevil 23 is shown as a fenced and gated route leading to a narrow bridge and possible ford across the Semington Brook. Its physical existence as a road on its current course is substantiated by an estate map, dated 1749, which will be discussed later in this report.
33. In the Enclosure Award the route of Keevil 23 is not numbered or listed. The fields on either side are numbered and named. Although most currently recorded public roads are shown in this award, not all are. For example, the current “byway open to all traffic” Keevil 7 and the public road past Seend Road Farm are unnamed and unnumbered on the award. Hence, officers consider it impossible to attach any evidential weight to this document.
34. The tithes in the parish of Seend were commuted to a money charge (rent charge) in 1838 by virtue of the **Tithe Commutation Act 1836**. The process involved a survey of the parish and the production of a large scale map. The process was one of consultation and advertisement with eventual sealing of the documents by a tithe commissioner (or assistant commissioner). See **Appendix C**.
35. The Seend tithe map and apportionment (its purpose to identify productive land and identify owners for taxation purposes) excludes roads, canals, water courses and buildings, but numbers and details productive land and private roads. For example, 813b is described as “lane to the house”. It is therefore considered reasonable to suggest that roads shown coloured ochre and excluded from the apportionment were considered public roads at that time.
36. The map covers the whole parish and shows a total of 9 roads leaving the parish, the u/c6076, which becomes Keevil 23, is one of these and is shown leading over the Semington Brook in the direction it now heads. None of the roads leaving the parish have destinations written on them or arrows. It is noted that the exit from the parish over the claimed route is shown in exactly the same way as the parish exit at Baldham Bridge on the turnpike (now the A361). Other parish exits are all currently recorded as bridleways (x 4), C class roads (x 2) or A class roads (x 2). The modern maps showing public rights record 15 other paths leaving the parish (footpaths and bridleways) but none of these were recorded by the tithe commissioners as routes leaving the parish. It is considered likely that this is because these were minor routes.
37. The Seend tithe map and apportionment held at the Wiltshire and Swindon History Centre is the working copy of the document. The original, the Record Copy, is held at The National Archives at Kew, London. Officers have viewed this document and found it to be the same in its representation of routes.
38. The tithes in the parish of Keevil were commuted to a corn rent by the Enclosure Award of 1795 (see 32 above). The corn rents were converted to a rent charge in 1864 by virtue of the 1860 Tithe Amendment Act. A map and apportionment were produced in 1863 and signed by the Tithe Commissioners in 1864 (see **Appendix D**).
39. The map shows the route of Keevil 23 and the u/c6076 as a sienna coloured road, possibly gated at the southern end and numbered 11a. In the book of reference 11a is described as a “Private Carriage Road to Seend Head Mill” being in the ownership of “Somerset His Grace Duke of”.

40. At the end of the apportionment there is a list of “Public Roads” and one of “Private Roads etc”. The Private Carriage Road referred to above is not included in either list.
41. This map records that a pecked line (a common representation for a path) meets Keevil 23 at a point along it and then leaves it again heading west nearer to the bridge. The only access to this path would be along Keevil 23 and it is noted that the pecked line is not shown leading over or along Keevil 23.
42. In addition to this 1864 Tithe Map and Apportionment, the Wiltshire and Swindon History Centre also holds a detailed map of the parish of Keevil dated 1841. This map relates to a separate book of reference. It is noted that the map carries one stamp of the Tithe Commissioner and is neither signed nor further annotated by the Commissioner. Hence neither record is an official Inland Revenue document. This map represents the route of Keevil 23 and the u/c6076 as it is in the 1864 Tithe Map and apportionment – that is as a “Private Carriage road to Seend Head Mill” in the ownership of Edward Adolphus Duke of Somerset.
43. This map records that the pecked line joining Keevil 23 and leaving it again further north nearer the bridge is a “Public Footpath”. To use this footpath the user would have to use part of Keevil 23 that is labelled ‘private road’. The book of reference does not aid clarity here, as it fails to record the route of Keevil 23 as either a Private Road to fields or a public road through the parish. It is also noted that footroads are listed under Public Roads through the parish, but again, Keevil 23 is not recorded here either.
44. It is reasonable to assume that there is a relationship between the 1841 map and the 1864 map. This is perhaps best explained by Roger Kain and Richard Oliver in the Tithe Maps of England and Wales – a Cartographic analysis and county by county catalogue (Cambridge University Press 1995). This book states that before 1836 some tithes had been commuted in the course of parliamentary enclosure (this is the case for Keevil). The book continues to say that although some corn rents anticipated the method used for tithe commutation after 1836, they lacked the mechanism for automatic annual review of the tithe rent charge which was a central tenet of the 1836 Act.
45. It would appear that Keevil's corn rents could not be commuted by the Tithe Act of 1836 though the 1841 map was possibly prepared for this purpose. It is suggested that this is why it has one stamp from the Tithe Commissioner but no other official mark or signature. It is as if it was produced for this purpose, but was rejected. The Tithe Amendment Act of 1860 enabled pre-1836 corn rents to be converted into tithe rent charges on application. Although only 39 conversions were effected between 1862 and 1929, Keevil was one of these. Kain and Oliver also note that in a number of cases, schedules are direct transcripts from enclosure awards.
46. Officers consider that whilst the 1841 map and the 1864 Tithe Map show the claimed route as a private carriage road to Seend Head Mill, it is not clear why the route is not listed under the headings for private roads, nor why it should have a staggered crossing of a ‘public footpath’ if it was a wholly private road. The meaning of the term ‘private carriage road’ is by no means clear – if the road was simply a private road then it would have been less ambiguous to describe it as such.
47. On the subject of tithe maps, The Planning Inspectorate Guidelines state that it is “dangerous to assume the maps to be absolute proof of something that it was not the business of the Commissioners to ascertain. However, they can provide useful accumulative evidence of the history of a route and how it was viewed at that time”. This should be borne in mind when considering the evidence of either the Seend tithe map or the Keevil maps.

48. **Finance Act 1909-1910 Records.** In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was carried out by Inland Revenue Inspectors working in an area of the county of which they were knowledgeable. Every individual piece of land in private ownership was recorded and mapped and, because tax was to be levied based on area, highways and common land were carefully identified and included in the documentation.
49. The process, carried out in a blaze of publicity, was not publicly consulted upon but landowners participated by providing initial survey details of properties (using 'Form 4') prior to the valuer's visit. The Act provided for the owner to give notice of objection to the Inland Revenue. There were also criminal sanctions for falsifying evidence to the Inland Revenue. The above factors give confidence in placing reliance on evidence found in these documents.
50. Keevil 23 and the u/c6076 road are shown uncoloured and excluded from any numbered hereditament on the Finance Act Map (see **Appendix E**). The surveyor has highlighted the exclusion of the route from the valuation of the surrounding property by drawing onto the map broken braces and representing the Order route as part of the normal highway network. Both the working copy of the Finance Act plan, held at the Wiltshire and Swindon History Centre, and the Record Copy, held at The National Archive at Kew, were inspected and found to show the same exclusion of the route from the properties valued.
51. In addition to this evidence, officers were able to view the Inland Revenue valuer's notebook (a 'field book') for the surrounding hereditament. The valuer records a deduction for a public right of way (almost certainly the public footpath that joins the order route and is shown crossing this hereditament) and records the hereditament in detail by reference to the OS parcel numbers. The order route has an OS parcel number of 18 and this is not described or listed at all in keeping with its exclusion on the plan.
52. Although the Finance Act is not specific about the exclusion of public roads, it does allow for land that carries public rights to be allowed a deduction, hence this land could have been represented as part of the surrounding hereditament with a deduction for the right of way or user (as clearly public rights did exist owing to the presence of at least one linking path for which deductions were allowed – without any public rights on Keevil 23 this path would have been a cul-de-sac route). This was not done. The Smyth case (Inland Revenue Commissioners v Smyth [1914]) found that a metalled or stoned road in private ownership could have a value deducted by virtue of it being a structure. However, this course was not followed either, and its deduction from the whole must be based on the provision found in Section 35(1) of the Act which says that "No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority".
53. The objector to the Order points out that the route was, at this time, in the ownership of the same estate as the surrounding hereditaments. It is noted that the representation in the Finance Act records is not inconsistent with that, since it is a basic premise that any highway beneath the first two spits (spade depths) is owned to the mid point by adjoining landowners. It is where the top two spits are held by or on behalf of a rating authority that there is a case for the valuation to exclude the route.
54. Officers consider this to be very strong evidence in support of the order route being regarded as part of the local road network at this time. If it were not, its exclusion from the hereditament valuation would have attracted criminal sanctions. It is also noted that the Inland Revenue's valuer went to lengths to record its exclusion in his Field book.

55. The final piece of primary evidence considered is the **Definitive Map and Statement**. When this was drawn up in the 1950s neither the parish council nor the landowner brought to the Council's attention that any public rights existed along this route. The Ramblers' Association objected with the statement "the road is certainly an old public carriageway but now there is a gate across marked 'private road', but there is nothing to show that the footway has been closed". The route was added as a footpath by agreement of the resultant inquiry.
56. Officers have found no evidence that any rights were stopped up on this route, nor of any separate dedication of the route as a footway or footpath.
57. **Appendix B** records that a large amount of other evidence has been viewed. The Estate Map made in 1749 by James Sartain, Land Surveyor is amongst the most significant. It is a large scale map, extraordinarily well drawn and annotated. It is to the scale of 16 perches to one inch (1:3168) and has grid squares, which was very unusual for this time. Public roads are labelled, for example "road to Devizes and Lavington". The Order route is shown and labelled "the road to Seend Head".
58. Another significant map of this period, that was made by Andrews' and Dury in 1773 at a scale of approximately 2 inches to one mile, also records the route as a road continuous with and in the same way as the surrounding road network.
59. Another significant early map is C and I Greenwood's Map of Wiltshire from an actual survey made in 1819 and 1820. The order route is shown as a Cross Road – Cross Roads are roads linking villages and turnpikes and it is likely that they represented a public route on which no toll was payable – valuable information for a traveller or user of such a map. This is supported by the Planning Inspectorate's advice note number 4. It is also noteworthy that the owner of the land over which the route leads was the Duke of Somerset. The Duke of Somerset was a subscriber to this series of maps and is listed in the prospectus. He would have had financial input into this map and it is likely that the representation of a route over his property as a Cross Road would have been noted and amended if this had not been the true representation.
60. It is known that Christopher Greenwood relied not only on a topographical survey but also on the existence of historical records including maps, census reports and local knowledge collected by surveyors, especially relating to boundaries. The Wiltshire Record Society in "Printed Maps of Wiltshire 1787 – 1844" commends his achievement in mapping parish boundaries accurately two decades before tithe commutation maps. It is noteworthy that the Order route crosses a parish boundary, an area that would have required scrutiny.
61. Another independent surveyor of this time was John Cary. Widely regarded as one of the most important of the pre-Ordnance Survey surveyors, Cary was a Wiltshire man coming from nearby Corsley. Cary's map records that the Order route was continuous with the local road network and was a "Parochial Road". Parochial roads are local routes rather than main roads.
62. **Appendix F** contains a list of commercial maps that show this route. Officers consider it unlikely that any route that was not in use by the public would have survived being shown on maps designed for the travelling public for such a long period of time, as these maps would need to be reliable and were frequently revised.

63. The Ordnance Survey has shown the order route in the same manner as the surrounding road network since 1817. Ordnance Survey maps from the late 19th century onwards have carried a disclaimer to the effect that the representation of roads and tracks is not indicative of them having public rights over them. However, a closer examination of instructions for field surveyors and the representation of the order route throughout various surveys shows that although the Ordnance Survey could have depicted the order route as a fenced occupation road (usually considered a private road), it did not.
64. Examples of fenced occupation roads can be found in the First Edition of the 25" to the mile Ordnance Survey Map, County Series Sheet 39.2 dated 1885. Instructions to surveyors required that where fenced occupation roads and tracks were less than 10 chains in length they were to be braced to the adjacent parcel. The route of Keevil 23 is less than 10 chains in length and is not braced to the adjacent parcel. Instead, it is shown tinted sienna and shaded as a public road. It is not shaded as a metalled carriage drive, which would have been an option for surveyors.
65. Another example is found in the 25" to the mile Ordnance Survey Map, County Series, Sheet 39.2 Second edition revised 1899. Instructions to surveyors required that "metalled public roads for wheeled traffic kept in good repair by highway authority will in future be shaded". The route of Keevil 23 is shown with bold shading on the eastern side in the same manner as the surrounding road network.
66. A further example is found in the 1" to the mile Ordnance Survey Popular Series Contoured Road Map. These maps show private roads uncoloured. The Order route is shown coloured as an "other road under 14' wide". The 1" Popular series maps were a new series aimed at travellers on the roads and were undoubtedly aimed at motorists. They were the subject of frequent revision and the scheme took evidence from both the Royal Automobile Club and the Road Board. In practice, the maps went before the Rural District Council Surveyor. Whilst it is reasonable to assume that he would have been most concerned with checking the major routes, since Keevil 23 joins a major A class road (a "main road") its representation as a road joining a main road would surely have been noted and altered if it had been incorrectly represented.
67. Although the objector in this case has not given evidential weight to these small scale plans (see **Appendix F**) an expert in the field of map interpretation, Yolande Hodson in her book "Popular Maps" (ISBN 1-870598-15-6) states:

"Large-scale plans were not regarded as road maps; their primary function was to depict physical features and administrative features as accurately as the scale would allow. In contrast, the smaller scale showed a range of road classification, first by line-work, and then by line and colour. These conventions allowed the user to make an intelligent deduction of the suitability of routes for different purposes that would have been impossible at the larger scale. In this respect, the one-inch maps are an invaluable aid to the interpretation of roads on the large scale plans"

"Another demonstration of the map history rule is that the Popular Edition, rather than the 1:2500 plans, was, unquestionably, the largest scale at which road development was most faithfully portrayed, although its road classification system was unnecessarily complex as a result of inheriting principles which had been established in the days of more leisurely traffic; but most sheets had been "road-revised" at least twice at about a seven or eight year period."

68. Other evidence viewed concerned the bridge over the Semington Brook. Although this bridge is not a substantial structure today, it was once a stone arched bridge with a MDHB (Melksham District Highway Board) stone alleged to have stood at its northern bank. Melksham Rural District Council Minutes record that public money was spent on its repair in 1912. The bridge is not recorded as a publicly repairable bridge today, even though as a route carrying an unclassified road and a footpath it would be expected to be.
69. Historically, a Highway Authority was not required to provide a bridge for travellers and early bridges were usually built by private individuals for convenience. Records of 1773 show that a stone arched bridge was on this route at that time and it is suggested that the bridge was possibly built by the landowner, the Duke of Somerset.
70. In contradiction to the spending of public funds on the repair of the bridge in 1912 a record has been found that the Roads and Bridges Committee of the Melksham Rural District Council (RDC) did, in 1893, receive a letter from a Dr Green who had been challenged when trying to drive his dog cart along the u/c6076 road. The then tenant, Mr Noad, was present at the meeting and said that the way was private and he had a perfect right to stop Dr Green. The surveyor said he had always understood it to be a private road.
71. Officers find this a confusing reference insomuch as the road where Dr Green was stopped is today the u/c6076, and is recorded as publicly maintainable highway being handed over as such from the RDC in 1930. It is also the same highway that was publicly maintained in the Quarter Sessions records of 1675.

User Evidence

72. Officers have received several written statements and recollections from local people. It is clear from these recollections that the route has variously been open or gated and that private signs have been displayed at various times during the latter half of the 20th century. The evidence is listed towards the end of **Appendix B**.

Decision to make the Order

73. A considerable amount of evidence exists that shows that the route of Keevil 23 continuing as the u/c6076 has been regarded as, and recorded as, a public road. Some evidence exists that contradicts this and records the route as a private carriage road.
74. The legal test is not that higher rights should be proved beyond all reasonable doubt to exist, it is rather that on the balance of probabilities those rights must be shown to exist. In other words it must be more likely than not that the route of Keevil 23 carries public rights that are higher than footpath.
75. Although the application from The Wiltshire Bridleway Association was to upgrade the route to a public bridleway, officers considered that it was more likely that public vehicular rights existed than that they did not. However, any right to drive a mechanically propelled vehicle over this route was extinguished by Section 67 of the Natural Environment and Rural Communities Act 2006. Hence the route should be recorded as a restricted byway, that is a route that carries rights for the public to pass and re-pass on foot, on horseback or leading a horse, by cycle or by horse drawn carriage only.

76. An Order was made (**Appendix A**) on 2 July 2008 and advertised in the Wiltshire Gazette and Herald on Thursday 10 July 2008. Notices were posted on site and checked at regular intervals. Notice was served as statute requires.

Objections and Representations to the Order

77. One objection was received from the landowner, Mr R Noad.
78. Representations in support were received from Mr B Riley and Mrs M Haley.

Comments on the Objections

79. Owing to the complexity of the evidence there has been considerable exchange of information between the objector and the case officer. Subsequent to the making of the order, Mr Noad appointed a legal representative experienced in this area of law. The objecting landowners have submitted copies of their 1922 deed of conveyance which shows that the route of Keevil 23 is owned by them (this has not been in dispute) and is recorded as public footpath in their deeds. They have also viewed the majority of the documents viewed by the case officer and have submitted full and clear interpretations of them. These interpretations explore the evidence in depth and have not been included here but are summarised within **Appendix B** together with the officer's notes and are available from the officers on request.
80. The objection is based on the premise that the route has always been a private road and has never been dedicated to the public as anything other than a footpath. No date or details are given for this dedication.
81. The objector also includes some witness evidence which states that in recent time the route has been gated and that signs have been in place. This is not disputed.
82. Officers recognise that the evidence is not all one way in this case. Given the long history of the route and long association of the Noad family with it (and their strong contention that both the Order route and the u/c6076 road north of the mill is private) it is a difficult case to assess. However, it is considered that the weight of evidence for public rights existing higher than footpath is greater than any evidence against this.

Main Considerations for the Council

83. The Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 to investigate the application made by The Wiltshire Bridleways Association. Section 53 of the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.
84. Section 53(2)(b) states:

“as regards every definitive map and statement, the surveying authority shall: “as from that date (the commencement 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 those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”.

85. The events referred to in Section 53(2)(b) relevant to this case are set out below in Section 53(3)(c)(i) and (c)(ii):

(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 a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.*

86. The Order is made under 53(3)(c)(i) for the northerly section in Seend (from the centre of the Semington Brook to the northern bank) and 53(3)(c)(ii) for Keevil 23. Although 53(3)(c)(i) appears to offer a less demanding legal test, case law shows that the test for confirmation of the Order is equal to that of 53(3)(c)(ii). This Order should, therefore, only be recommended for confirmation if the Council is satisfied that the way ought to be shown as a highway of a different description.

Environmental Impact of the Recommendation

87. Issues relating to the environment may not be taken into consideration when determining an Application for an Order made under the Wildlife and Countryside Act 1981.

Risk Assessment

88. Risks to users may not be taken into consideration when determining an application for an Order made under the Wildlife and Countryside Act 1981.

Financial Implications

89. Costs would be incurred associated with attending a Public Inquiry or Public Hearing for which budgetary provision has been made.

Options Considered

90. The Order must now be forwarded to the Secretary of State for determination. The Council must decide whether to recommend that the Order be confirmed, confirmed with modification or not be confirmed.
91. It is noted that a numbering error appears on the Order and that the Order will require modification if confirmed. All references to Seend 57 should be altered to Seend 59.

Reasons for Recommendation

92. Officers are satisfied that the legal test in Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 has been satisfied in respect of the Order route and that on the balance of probabilities evidence supports that the Order should be confirmed.
93. Although it is recognised that evidence is not all one way officers consider that the weight of evidence in support of this route being a restricted byway is sufficiently high to show that the way ought to be recorded as such. Objections have been duly made and pursuant to paragraph 7 of Schedule 15 of the Wildlife and Countryside Act 1981 the Council is statutorily obliged to forward the Order to the Planning Inspectorate for determination.

Recommendation

94. That the Wiltshire County Council Sheet ST95NW Parish of Keevil – Keevil 23 and the Wiltshire County Council Sheet ST96SW Parish of Seend – Seend 57 Rights of Way Modification Order 21 2008 be submitted to the Secretary of State for Environment, Food and Rural Affairs, together with the objection and representations, with the recommendation that the Order be confirmed with the modification that all references to Seend 57 be altered to read Seend 59.

GEORGE BATTEN

Corporate Director for Transport, Environment and Leisure

Report Author

Sally Madgwick

Rights of Way Officer

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

Correspondence with Parish and District Councils, User Groups, other interested bodies and members of the public.

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SCHEDULE

PART I

MODIFICATION OF DEFINITIVE MAP

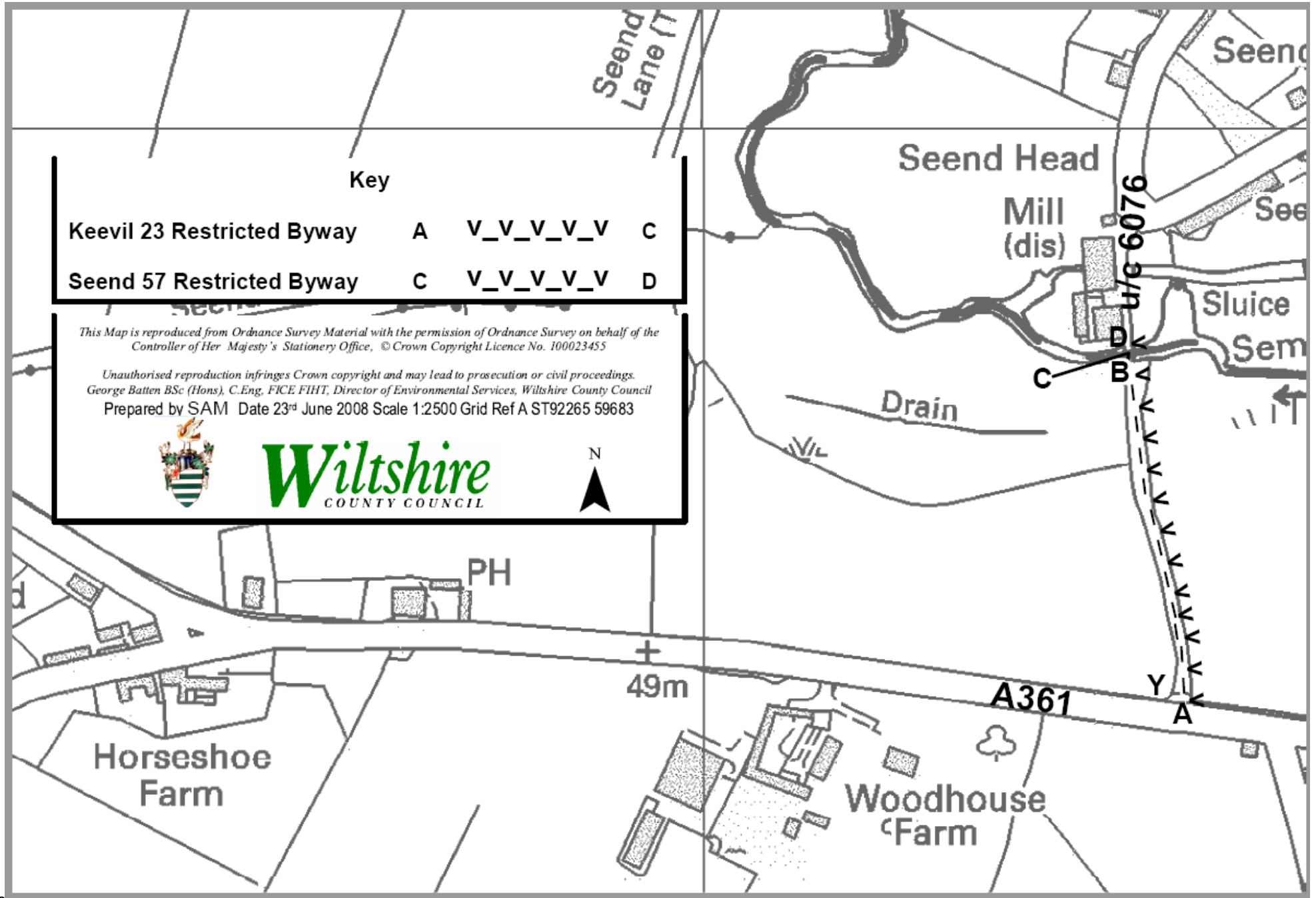
Parish	Path no	Description of path to be upgraded	Modified under Section 53(3) as specified
Keevil	23	Length of restricted byway shown by broken line and small arrowheads marked A-B-C on the plan annexed hereto. Width 6.1 metres between points A – B. Width 3 metres between points B-C. Gate at Y. Length 196 metres.	53(3)(c)(ii)
Seend	57	Length of restricted byway shown by broken line and small arrowheads marked C – D on the plan annexed hereto. Width 3 metres. Length 4 metres.	53(3)(c)(i)

SCHEDULE

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Parish	Path no	Description of path or way	Modified under Section 53(3) as specified
Keevil	23	Restricted byway from the southern end of Seend 57 at the parish boundary at Seend Head Leading south to the Trowbridge – Devizes Road A361 at ST92265 59683 Length 196 metres Width 6.1 metres from A361 to ST 92235 59875 Width 3 metres at ST92235 59875 to junction with Seend 57 Limitations: Gate compliant with BS5709 at ST 92265 59689	53(3)(c)(ii)
Seend	57	Restricted byway from the southern end of u/c6076 at the Corn Mill, Seend Head south to its junction with Keevil 23 at the parish boundary. Length 4 metres Width 3 metres	53(3)(c)(i)



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WSHC – Wiltshire and Swindon History Centre, Chippenham
 TNA – The National Archive, Kew
 CH – County Hall
 PCA – Private Collection of Applicant (Wiltshire Bridleways Association)

Grey shaded evidence – ‘primary evidence’

NB A361 this Section Turnpiked 1751 to 1870. u/c = unclassified road maintainable at public expense. u/c 6077 links u/c 6076 with A361.

Date	Document	States/shows	Officer’s comment	Objector’s comment	Notes
1551	WSHC 1875/6 Lease of two mills, one of which is Seend Head Mill.	Mill and land leased to Thomas Barksdale and mill and tenement leased to Thomas llyes.	No references to roads or access	n/a	n/a
1674	WSHC A1/110/1674E Great Roll Wiltshire Quarter Sessions.	A presentment for Seend in Melksham parish relating to highways being not sufficiently repaired. One is “in the lane leading to Seen head mill”	Refers to road u/c6076, not Keevil23 as different parish.	Refers only to lane ‘leading to the mill’ and not as the ‘road to Trowbridge’.	Agreed, however reference only refers to extent of lane not sufficiently repaired.
1675H	WSHC A1/110/1675H Great Roll Wiltshire Quarter Sessions	A certificate confirming that the inhabitants of Seend in “a certain place called Seend Head Mill” had sufficiently repaired and mended the Kings Highway for horses, carts and carriages.	Refers to road u/c6076 at Seend Head Mill being the Kings Highway repaired by the inhabitants for carts and carriages. .	As above	Confirms vehicular nature of the route at Seend Head Mill in Seend parish. Enrolled Quarter Sessions certificate, signed and sealed.
1695	PCA Ogilby’s Britannia Plate 35	Strip map showing the Roads from London to Bath and Wells. Shows the u/c6077 marked “to Trowbridge” Baldham Mill shown annotated “Baldham mill wood bridge and brook”	The u/c6077 formed part of a route to Trowbridge. Baldham Bridge was made of wood in 1695.	A map of this age may not properly be relied upon. Even the most accurate are indicative of existence rather than status.	For the u/c6077 to form a route to Trowbridge some or all of the order route must have been a part.

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1749	WSHC 1908/1H A Map of the Manor of Keevil in the County of Wilts the Estate of Thomas Beach Esq. surveyed by James Sartain, Land Surveyor.	Large map (1:3168) well drawn and annotated with grid squares. Keevil 23 is shown ungated as "the road to Seend Head" Land is enclosed and belongs to Sir Edward Seymour. Other public roads are labelled in the same way – "road to Devizes and Lavington" "road from Hinton to Keevil".	Shown in the same manner as other public roads The road is shown continuing over (or through) the Semington Brook.	The road is not shown as a through road but a road with a single destination. The bridge over the brook is represented differently to the bridge at Baldham.	Seend Head was/is a hamlet comprising a large house and some dwellings all of which are north of Seend Head Mill hence Seend Head is also a destination. Agreed, bridge is shown differently but this is more likely to be a drawing error, the colouring of the brook is very clearly broken by the bridge at Seend Head.
1752	Turnpiking of the A361 in Keevil/Seend.	The Devizes Road was Turnpiked in 1752 and remained so through various acts of 1768, 1799, 1819, 1854 and 1870 when the act was repealed.	Maintenance of Turnpike by Turnpike Trust from 1752 to 1870.		
1773	WSHC and CH Andrews' and Dury's Map of Wiltshire (approx two inches to one mile).	Shows Keevil 23 as a gated hedged road leading from the Turnpike (A361) at the Turnpike Gate through a side gate north to the hamlet of Seend Head leading on to Seend Row or west where over Semington Brook to rejoin the A361.	Shown as gated road enclosed by hedge linking into road network.	Gated at south end. Narrower than the Turnpike (A361).	The use of u/c6076 and u/c6077 would have avoided a toll on the Turnpike hence the presence of a side gate is unsurprising and not uncommon.

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1773	WSHC 873/16 Perambulation of Seend Row Manor	A detailed map is included which shows Seend Head Mill with the mill race bridge shown cross hatched. Seend Head Bridge is annotated "Seend hd Bridge" and drawn as an arched bridge in the same manner as Baldham Bridge.	Shown as road past the mill passing over a named bridge.	Other than an artistic representation of a bridge (symbolic?) it is difficult to see how this document helps determine status.	The bridge was clearly significant at this time (as it was named) and drawn. Agreed no status indicated, private or public.
1785	Paterson's British Itinerary "a new and accurate delineation and description of the direct and principal cross roads of Great Britain..."	Map shows Keevil 23 as a cross road leading from the A361 north where it joins a route east (the u/c6077) and a route west which no longer exists (but could be part of Seend Head Lane).	Principal cross road.	Considers cross roads to be no guarantee of public vehicular status.	See Planning Inspectorate Advice note 4.
1786	WSHC A1/316/16 Quarter Sessions Justice Certificate and plans.	Map does not extend far enough west. Shows the eastern end of u/c 6076 and a currently unrecorded footway leading "to Seend Head" A361 shown annotated as "Turnpike Road from Trowbridge to Seend".		u/c 6076 only went to Seend Head.	Seend Head is the hamlet and house, not the mill. If this were the case the road would not have gone to the mill, which the 1674 records show it did. The u/c6076 clearly went beyond Seend Head but this was the next destination off of the map.

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1787	WSHC 1497/9 Surveyor of the Highways Accounts.	Document referring to a rate made by surveyors of the highways in the parish of Keevil to pay surveyors what they have laid out for materials in the repairing of Highways....The document lists payments to surveyors for named areas – either named fields or in the case of Thomas Beach and the Duke of Somerset, just the name of the landowner. There is a payment for the “Duke of Somerset’s”.	No evidence of the Duke of Somerset owning any other land other than that surrounding Keevil 23 in Keevil parish has been found. The surveyors of the highways would not have been using public funds to maintain the turnpike and it is concluded that these payments were used to maintain Keevil 23.	Believes the point to be somewhat conjectural and should be contrasted against other evidence of the route being a private road and not a through route.	Considerable checking of field names and routes which are now recorded as public roads on contemporary documents (1749 Beach map and 1795 Enclosure Award) was carried out to test the suggestion that the names of fields were used as a way of describing where highway repairs had taken place – this was found to be the case.
1789	WSHC Coroner's Bills	Records a death of someone returning to Keevil from Seend who fell in the mill pond beside the road.	Can not tell where, more likely to be Baldham Mill as direct route back from Seend.	Conjectural. Victim would presumably have been on foot.	Agreed. However all documents viewed are listed.
1790	WSHC CC Maps 26 A Survey of the Parish of Melksham and the hamlet of Seend 1790.	U/c 6076 shown annotated “Rowde” and “lane” and u/c6077 annotated “Mill Way”. Roads shown converging and leading towards Seend Head Mill but this area is not mapped.	Keevil is not mapped. u/c 6076 and u/c 6077 shown joining and continuing south into unmapped area.	This document is good evidence that the u/c6076 linked Seend Row with Seend Head.	

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Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1790	WSHC 1908/2 Draft Inclosure Map of Keevil	Draft map similar to 1795 award map. Keevil 23 is shown as closed or gated at the southern end continuing north over a narrow bridge beside a mill pond. The narrow bridge possibly has a ford shown to the east (the bridge is deliberately drawn narrower than the carriageway allowed.	Route continuing into Seend Route not given parcel number as surrounding fields are (for example 13. Duke of Somerset, 15. Duke of Somerset).	No destination sign (whereas at Baldham Mill on the Turnpike the map says "to Seend").	
Page 27	WSHC 947/2197 A plan of the Wilts and Berks Canal.	Shows Keevil 23 and the u/c 6077 linking to the road through Seend to Semington. A short spur is shown west (north of Seend Head Mill) but not continuing over the Semington Brook.	Keevil 23 shown in the same way as the road network.	There is no indication of status.	No status is shown of any routes though it is reasonable to assume that the purpose of including roads on this plan was to illustrate available transport links close to the canal.
1795	WSHC A1/215/27 Enclosure Act and WSHC E/A 46 Award for Keevil	The route of Keevil 23 is shown continuing over the bridge towards Seend. It is shown closed or gated and is unnamed and numbered. Fields on either side are numbered and named. A narrow bridge is shown at the edge of the mill pond but a significant gap is shown suggestive of access to the edge of the pond from the carriageway.	Land surrounding Keevil 23 was already enclosed by the time of this award.	There is no destination sign on Keevil 23. The bridge is very narrow compared to Baldham. A footpath at Axford Mill is depicted in a different manner suggesting that Keevil 23 was not even thought to be a footpath.	Agreed Axford's Mill footpath is shown by a pecked line and annotated accordingly. Agreed there is no destination written on Keevil 23.

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
		<p>The award lays out only 2 public roads, 13 private roads and 2 footways.</p> <p>Other routes are shown and unnamed on the plan for example BOAT Keevil 7, nor is the road across Keevil Airfield (part of it by airfield) and nor is the public road past Seend Road Farm.</p>			
<p>c.1800</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 28</p>	<p>H7 1332 Litigation plans</p>	<p>Undated and untitled plans that appear to have been produced to support a legal action regarding water supplies between Baldham Mill and Seend Head.</p> <p>Keevil 23 shown as "the road from Def's mill to Trowbridge" and the u/c 6077 shown as "Road to Defendant's Mill. Both roads also labelled "The Mill Way".</p> <p>Bridge over Semington Brook shown as "cradle bridge".</p>	<p>The purpose of these plans is to resolve a dispute over water supplies at two mills, hence the plans refer extensively to mills and the plans are annotated to detail routes relating to the mills.</p> <p>It is taken as significant that the plans states "road from Defendants Mill to Trowbridge" suggesting a destination beyond the turnpike.</p>	<p>This is taken as further evidence that the way was regarded as a way serving the Mill rather than a public through route.</p>	<p>Seend – A Wiltshire Village Past and Present by Edward Bradby (SEE.940 WSHC) records that in relating to Seend Head Mill in 1803 tenant Jane Bell suffered loss of water and was allowed £330 in part payment. The owner, the Duke of Somerset accepted £200 for future loss of water. It is considered likely that it is to this dispute that these plans refer.</p>

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1808	WSHC Ordnance Survey 2" drawing no 61	Drawn from original survey, drawn at 2 inches to one mile. Shows Keevil 23 as a through route with the u/c6076 and the u/c6077 linking to the A361.			
1809	WSHC 653.30 Disbursements of the Highway Account February 1809.	Bulkington parish records listing payments made to people in respect of the highways. Entry 6 th December 1809 'paid William Somner for repairing Mill bridge'.	Bulkington parish not Keevil	n/a	n/a
1817 Page 29	WSHC 3673L & CH Ordnance Survey one inch to one mile Old Series.	Map produced from 2" drawing above. Shows Keevil 23 as a hedged through route continuous with the u/c6076 and the u/c6077.	Keevil 23 drawn as continuous with local road network. Turnpike gates or gate on Keevil 23 not shown.	This map shows Keevil 23 as narrower than the UCR.	Keevil 23 is narrower than the u/c6077 but is shown in the same manner as the u/c6076 and other minor roads in the area.
1810 revised	WSHC A1/524/2MS Andrews' and Dury's map of Wiltshire.	Shows Keevil 23 as a gated route continuous with the u/c6077 and a route leading west to Seend Head Lane. u/c 6076 is not shown.	Gated road shown as part of network.	Gated at south end, much narrower than the A361.	
1796	WSHC 2856/5 An Abstract of Keevil Vicarial Tythes by Rev Lascelles Iremonger, Canon of Winchester.	Book refers to numbered plots on "award plan and tythe plan". The land surrounding Keevil 23 is numbered 26,27,28 and 29 on Award plan but is not included in these Schedules.	n/a	n/a	n/a

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1818	WSHC EA107 Inclosure Award Steeple Ashton	Shows Seend Head Lane (bridleway Semington 37) as "By One private carriage road and driftway twenty feet wide marked By on the said map leading eastward and northward from the Devizes turnpike road in Littleton Wood Common to the allotment numbered 1447".	Steeple Ashton Inclosure award shows part of today's Semington parish. Although listed as a private carriageway and driftway in the award Seend Head Lane is today a cul-de-sac bridleway. The award is large and awards 9 public roads only, 70 private roads (all described as 'private carriage roads and driftways', 4 private footways and 19 public footways.	n/a	Demonstrates wide use of terms such as 'private carriage road' in enclosure awards for public routes.
1820 Page 30	WSHC 4L C Greenwood's Map of the County of Wiltshire from an Actual Survey made in the years 1819 and 1820.	Keevil 23 is shown as a 'Cross Road' continuous from the A361 and the u/c6076 and u/c6077.	Cross roads were roads linking villages and turnpikes and it is likely that they represented a public route on which no toll was payable – valuable information for a traveller or user of such a map. PINS Advice note 4. Hollins v Oldham	Advice note 4 with references to Hollins v Oldham, explains that the fact that a Cross Road appears on an old map or document does not automatically indicate public rights. The designation on a map will depend on analysis of the particular map and in particular, the categorisation of other ways shown on the map. Cary and Greenwood tend to show cul-de-sac lanes, farm access tracks and other private ways.	The Duke of Somerset was a subscriber to this series of maps and is listed in a prospectus issued by C and J Greenwood. As a subscriber the Duke of Somerset would have had a particular interest in how the map represented his property.

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1822	WSHC A1/531/11/1 Bridge Report Baldham Bridge 1822.	The engineer records that Baldham Bridge was built in around 1790 by the Toll Bridge Commissioners of the Turnpike. The engineer records that James Heritage had worked on the road since 1770 and spoke of repair liabilities. He was employed by Wingrove and Fowle who had the contract for the maintenance of the bridge and part of the road.	File accessed because title was unclear as to which bridge it refers. However document does confirm that the Turnpike was maintained by a contractor in the time frame 1770 to 1822.	n/a	In 1695 Baldham Bridge was a wooden bridge. This new bridge is a stone bridge. Supporting document showing that Turnpike was not maintained by parish in 1787.
1823	WSHC and PCA G and J Cary's Map of Great Britain, Sheet 18 Edition of 1823.	Map shows Keevil 23 as a Parochial Road between the A361 and continuous with the u/c6076. U/c 6077 shown as Turnpike.	Parochial road. Other parochial roads shown are now either u/c road, byway or bridleway.	See comment for 1820 Greenwood Map.	
1822	WSHC and PCA Map folder 3.4 G and J Cary's Map of Great Britain two miles to one inch.	Map shows Keevil 23 as a Parochial Road continuous with u/c6076. U/c 6077 shown as turnpike.	Parochial road. See note above.	See above.	
1831	PCA Pigot's Map of Wiltshire 1831 5 miles to one inch.	Map shows Keevil 23 continuous with u/c 6076 as a Cross Road. u/c6077 shown as Turnpike similar to Cary.	Cross Road.	See above	
1837	WSHC T/A Steeple Ashton Chapelry of Semington Tithe Map	Map shows Seend Head Lane as coloured ochre and un-numbered. Covers same area as the Inclosure Award for Steeple Ashton.	n/a	n/a	n/a

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
1838	WSHC TA/Seend Tithe Map and Apportionment for Seend.	The map shows the route of the u/c6076 coloured ochre continuing over the two bridges at Seend Head Mill and on into Keevil parish. Excluded as 'roads, canals, water courses and buildings'.	Seend Tithe map shows a total of 9 routes leaving or entering the parish. Keevil 23 is one of these, the others are all either an A class road, a C class road or public bridleways (some with some evidence of higher rights). Keevil 23 is the only route shown that is currently recorded a footpath.	No destination sign and nothing specific of this map to demonstrate the status of the route, being coloured sienna alone is not a sufficient indication. Reference to 'Merstham Manor case' "Tithe Maps make no distinction between a public and a private road". Also PI Consistency Guidelines 8.13 highlighting comparison with other reputable maps of the time. Suggests that of great importance is the Keevil tithe map which stated clearly that the route was a private road.	Map re-examined 21 st October 2009. No exits from parish show destinations. Parish exit at Seend Head is shown exactly as the Baldham Mill A361 parish exit is.
1840	PCA Pigot's Map of Wiltshire 5 miles to one inch.	Keevil 23 and u/c6076 shown as continuous route, u/c6077 shown bolder as Turnpike.	Shown as part of road network		
1841	PCA J and C Walker's map of Wiltshire 2.75 miles to one inch	Keevil 23 and u/c6076 shown as continuous route u/c6077 shown bolder as Turnpike.	Shown as part of road network.		

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1841	WSHC 1908/3 and ref book 653/17 Map of Keevil dated 1841.	<p>This map and reference book appears to incorporate some information from the 1795 Enclosure Award (for example 'Awarded width 40 feet wide' for the Turnpike) but carries the same plot numbers as the later Tithe map.</p> <p>The route of Keevil 23 is shown as number 14, labelled 'private road' and described in 653/17 as 'private carriage road to Seend Head Mill'.</p> <p>Shown going over narrow bridge and on to mill.</p> <p>Shown with a staggered crossing of 'public footpath' which is not represented in the map where it must travel along plot 14.</p> <p>653/17 lists a number of 'private roads to fields' but Keevil 23 is not listed amongst them.</p>	<p>The map is not considered a tithe map; the map does have a commissioner's stamp on it but no other features (for example commissioner's signature etc). It is known that the tithes were commuted to corn rents at enclosure in 1795 and later to rent charges by virtue of the Tithe amendment act and so it is unclear what the purpose of this map was. It may have been a tithe survey prepared in error.</p> <p>653/17 is not an apportionment document.</p>	<p>Consider it a greatly significant map in establishing the private nature of the route.</p> <p>The map shows destinations on all routes leaving the parish but not this one.</p> <p>The 1840 Keevil Parish survey states that the owner was the Duke of Somerset and that it was solely occupied by one tenant – Samuel Ferris.</p>	<p>Objector refers to this as the Tithe Map. It is not.</p> <p>Map and ref book re-examined 21st October 2009.</p> <p>Destinations are shown on routes exiting the parish but destinations are all distant. There is no need to show the destination as "to...." for Keevil 23 because the map has been extended beyond the parish boundary to show Seend Head itself. In other words the destination out of the parish is shown and there is no need to write "to...." in words.</p>

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1864	WSHC T/A Keevil 3 chains to one inch Tithe map and apportionment (NB In 1795 tithes were commuted to Corn rents in Keevil. Corn rents were converted to rent charges in 1863 under the 1860 Tithe Amendment Act).	The map is very similar to the 1841 1908/3 map. The route of Keevil 23 is shown coloured ochre and numbered 11a. It leads from the Turnpike over the Semington Brook and on into Seend Head. Number 11a is listed in the apportionment as in the ownership of His Grace the Duke of Somerset and occupied by William Taylor. It is described as "Private Carriage Road to Seend Head Mill". The route is not included in the lists of either "public" or "private roads etc" at the end of the apportionment.	<p>There is no doubt that the road is listed as a private carriageway to Seend Head Mill.</p> <p>The path that joins it and leaves it further north, that was shown as a public footpath on 1908/3 is shown, but not in this map labelled as a public footpath.</p>	<p>Further good evidence of private status. Gate shown. Bridge narrow. No destination sign whereas the Turnpike does say "to Seend" and "from Trowbridge".</p> <p>Position consistent in 1836 with this 1864 representation.</p> <p>Useful evidence of reputation. Consistency Guidelines paras 8.11 and 8.12.</p>	<p>From the Victoria History of Wiltshire Vol VIII. Great Tithes in Keevil were leased form around 1538. By 1600 most land had been enclosed and it was only the remnants of open fields that were inclosed by 1795 Act.</p> <p>The 1795 Act commuted the tithes to corn rents.</p> <p>In 1864 (map 1863) (under the 1860 Tithe Amendment Act) the Corn rents were converted to rent charges (when the last lease charge ran out). Small tithes were also commuted in 1795 and converted to a rent charge in 1863. Assigned to the vicar in 1870.</p>

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
					Map re-examined 21 st October 2009. Map does show destinations on most other routes (though not on Wick lane). However this was not necessary for Keevil 23 as the map is extended beyond the parish boundary to actually show the destination – Seend Head.
1865 Page 35	PCA Crutchley's Map of 1865. 2 miles to one inch.	This map shows Keevil 23 as a minor road continuous with u/c6076. u/c 6077 shown wider, as Turnpike is. Crutchley used Cary's plates with later railway information added.	Continuous route shown. Like Cary.		
1885	Ordnance Survey 1:2500 Sheet 39.2 WSHC.	The map shows Keevil 23 as parcel number 18 measuring 0.480 acre. It is shown boldly shaded on the eastern side with a sienna coloured carriageway along the centre. It is shown apparently gated at the southern end. u/c6076 is shown continuing on seamlessly with the u/c6077 joining it from the east as a separate parcel.	Bold shading is the same as the A361. Carriage drives were tinted sienna during this period and in 1885 it was directed that metalled carriage drives will in future be shaded as 2 nd class roads but the shading not as prominent as on public roads. Where fenced occupation roads and tracks are less than 10 chains in length they are braced to the	Although the thickened line indicates a metalled surface it does not mean that it was necessarily publicly maintained. We know that the route was not publicly maintained.	See 2 nd (1899) and 1924 editions also.

Date	Document	States/shows	Officer's comment	Objector's comment	Notes
			adjacent parcel. This route (and parcel) is less than 10 chains in length and is not braced to the adjacent parcel.		
1885	Ordnance Survey 1:10560 map WSHC surveyed 1885.	Keevil 23 is represented as a gated route (at A361 end) leading north to join the u/c6076 at Semington Brook.	Physical representation of route.	OS maps will show the route but are not determinative of status.	
1893	PCA Houlston's new map of Chippenham 2 miles to one inch.	Keevil 23 and u/c 6076 are continuous and coloured sienna. Keevil 23 and u/c6076 is shown as the through route, u/c6077 joins it. Not all roads are coloured sienna.	Continuous route shown.		
1893	Roads and Bridges Committee Minutes Melksham G2/1/3 page 50.	Committee heard letter from Dr Green who had been challenged in his dog cart and asked if road was public or private. Mr Noad present said it was private and had a perfect right to stop. Surveyor said he had always understood it to be a private road.	Challenge to public rights.	Surveyor affirms Mr Noad's assertion.	This was heard by Melksham Highway Board. Keevil 23 is not in Melksham. The highway in Melksham is public highway; hence the surveyor's comment does not make sense.
1895	PCA Davies half inch map. 2 miles to one inch.	Keevil 23 shown as through route with u/c6076 and u/c6077 is shown as the wider route – as the Turnpike.	Continuous route shown. Like Cary.		
1898	PCA Gall and Inglis' half inch map for Cyclists, Tourists etc.	Keevil 23 and u/c 6076 shown as continuous route also with u/c6077. Uncoloured as minor route.	Continuous route shown.		

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1899	Ordnance Survey 1:2500 Edition Sheet 39.2 surveyed 1884 revised 1899 WSHC.	Keevil 23 is shown separately numbered and measured as parcel 18 0.480 acres. It is shown with bold shading on the eastern side and is shown possibly gated at the southern end.	Southampton Circular 25.6.1884 "All metalled public roads for wheeled traffic kept in good repair by highway authority will in future be shaded. Cancelled 1912.	No Guide Post on this road but there are at other points. The closed off junction does not necessarily mean the way was gated it is suggested that the way may have been free of public maintenance. The thickened line only shows a metalled surface.	<p>Ordnance Survey expert Richard Oliver is not aware of a specific instruction regarding gates though "all gates and toll gates across roads and tracks will be shown closed (RB63, B60)</p> <p>See also First Edition 1:2500 1885 and 1924 Edition.</p> <p>Evidence reviewed 21st October 2009. Guide Posts are not consistent for example none shown on the u/c6077 and A361 junction either.</p> <p>It is also noted that a guide post may have several finger boards and it is possible that a guide post at the A361/Keevil road junction (opposite the toll house) could have had four finger boards on it.</p>

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1899	PCA Murray's Handbook for Residents and Travellers in Wiltshire and Dorset 2 miles to one inch.	Keevil 23 and u/c6076 shown as continuous route – minor road, also joining u/c6077.	Continuous route shown		
1899 (1906?)	PCA Ordnance Survey 1" Revised New Series Sheet 281. One inch to one mile.	Keevil 23 and u/c6076 shown as continuous route "metalled road; Third class". Bridging of brook and mill race clearly shown. Map does show footpaths but not over Keevil 23 or surrounds. Map carries OS disclaimer "The representation on this map of a Road, track or Footpath, is no evidence of the existence of a right of way".	Continuous route shown as road. Footpath not shown.	Draws attention to OS disclaimer. 20 th century commercial maps will no doubt show the route but tend not to be determinative of status. Not much weight should be given to them, it is disingenuous to suggest because a map "aimed at motorists" showing the route was subject to public vehicular rights.	
1901	Ordnance Survey Quarter Inch map, 1 st edition 1901 and 1903 PCA Four inches to one mile.	Keevil 23 and u/c 6076 is shown as a continuous route – "Road, third class".	Continuous route shown.		Also see 2 nd , 3 rd and 4 th editions (1913,1919 and 1934)
1902	PCA Through Guide Series Bath and Bristol and Forty Miles Round. 2 miles to one inch.	Keevil 23 and u/c6076 shown as continuous route (with u/c6077) passing from the A361 through Seend Head, Seend Row and The Stocks.	Continuous route shown.	As above	

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1904	PCA Bartholomew's half inch survey Atlas Plate 64 1904 2 miles to one inch.	Keevil 23 and u/c6076 (and u/c6077) shown as "Other Driving Road". Footpaths and Bridlepaths shown on map but not along Keevil 23 or crossing it.	Continuous route shown.	As above	
1906	PCA Ordnance Survey 1" Third Edition Sheet 281. Surveyed 1882-1884, revised in 1903-1904.	Keevil 23 and u/c6076 represented as through route and shown "metalled road, third class". Fenced. Seend Head shown as hamlet, Mill in smaller type as "Mill". c/f Baldham Mill all in smaller type. Bridges clearly represented. No footpath shown along Keevil 23. Map carries disclaimer "The representation on this map of a Road, Track or Footpath, is no evidence of the existence of a right of way.	Continuous route shown. Footpath not shown.	As above	
1910	Finance Act records WSHC Map 39.2 L8/10/39. Valuation books L8/1/113 (Bulkington and Keevil) and L8/1/107 Seend. Map 39.2 L8/10/39. Valuation books L8/1/113 (Bulkington and	The whole of Keevil 23 is shown excluded from neighbouring hereditaments. It runs between hereditament 153 which is recorded as being owned by the Duke of Somerset c/o A W Hartopp (?), Maiden Bradley. The Duke of Somerset's name has been subsequently crossed out and the name B. C. Thompson d'd (?) written above. The hereditament is	Route shown excluded from valuation. Usual exclusion in this way is because route was in the control of the rating authority.	Public road evidence is not corroborated as we know the route has always been in the private ownership of D of S. Maintains lack of capacity to dedicate 1893 to 1910.	See Smyth case for exclusion of private road as a construction. But where did the public footpath come from in the 1922 deed of conveyance? There is no evidence for it pre 1921 so if this could have been

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 40</p>	<p>Keevil) and L8/1/107 Seend.</p>	<p>shown as being in the occupancy of H and J S Noad.</p> <p>Also see Thornham Farm</p>	<p>Private road colour washed in with main hereditament.</p>		<p>dedicated during this time then so too could a road.</p> <p>Evidence re-examined 21st October 2009. Examples Stoggy Lane was excluded from hereditaments – today part u/c road and part bridleway. Also note Hereditament 66 has double hedged private track (OS parcel 168) shown coloured as part of hereditament.</p>
<p>1910</p>	<p>Finance Act records held at TNA, Kew IR125\7\53 and IR\11\442 XXXIX.2 and valuers field book IR58\73568.</p>	<p>Record copy map shows the whole of Keevil 23 shown uncoloured and separate from hereditaments in the same way as other public roads.</p> <p>Field book refers to a £25 deduction for rights of way or user and details the OS parcel numbers valued in with this hereditament. Parcel number 18 which is the roadway of Keevil 23 is not included in the hereditament.</p>	<p>As above</p>	<p>As above</p>	

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1912	Melksham Rural District Council Minutes G2/100/13 page 163.	Seend Head Bridge. It was resolved to pay the sum of £5.5 to messrs J and J Noad being the amount incurred by them in repairing the bridge at Seend Head.	Public funds were used to repair the bridge.	Requires strict proof which bridge this refers to. Also comments that bridge repair could have been for footbridge.	<p>Witness reports that there was an engraved stone MDHB (Melksham District Highway Board) by the southerly bridge.</p> <p>The 1773 hand drawn map shows that the southerly bridge was called Seend Head Bridge.</p> <p>WCC policy at time of handover from RDCs of bridges was that only bridges over natural water courses were to be handed over for maintenance. See example of Wilsford Mill F4/160/5.</p>
1913	Ordnance Survey Quarter Inch map Second Edition 1913 PCA.	Keevil 23 and u/c6076 shown as a continuous route "Road, third class".	Continuous route shown.		See also 1 st edition, 3 rd and 4 th editions (1901, 1913, 1919 and 1934).
1914	Daily Mail Milestone Motor Map 1914 (PCA) 3 miles to one inch.	Commercial "Motor Map" for "Motorists, cyclists and golfers". Keevil 23 shown as an 'other metalled road'. Very little detail of roads, u/c 6077 not shown, only u/c 6076.	Keevil 23 and u/c 6076 shown as continuous route from A361 to Seend Row.	Not much weight should be given to them, it is disingenuous to suggest because a map "aimed at motorists" showing the route was subject to public vehicular rights.	

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1914	Sales Plan Seend Row 1225/140/11 WSHC.	u/c6076 continues south past the mill and along the route of Keevil 23. Shown as the dominant route rather than the route of u/c 6077.	Has OS 1:2500 base map.	Destinations shown on the map do not record that Keevil 23 is the route to anywhere named whereas other routes do.	
1919	Ordnance Survey Quarter Inch Third Edition 1919 PCA.	Keevil 23 and u/c6077 shown as a continuous route "other metalled road".	Shown as road continuous with other public roads.		See also 1 st , 2 nd and 4 th editions (1901, 1913 and 1930).
1919 (corrections to 1929). Page 42	Ordnance Survey one inch to one mile popular edition sheet 111 1919 – Contoured Road Map PCA.	Route is shown as an 'other road' 'roads under 14' wide. Bridle and footpaths are shown by pecked line and the key carries the line "Private Roads are uncoloured..."	Shown as a public road continuous with u/c6076 and u/c6077.	Not much weight should be given to them, it is disingenuous to suggest because a map "aimed at motorists" showing the route was subject to public vehicular rights.	Map clearly differentiates between private and public routes. Also see Cassini Historical Map 173 – Swindon and Devizes introduction details purpose of the maps being for motorists. Also Popular Series was reviewed by the Road Board and the Royal Automobile Club and were sent to District Surveyors for checking also.

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1921	Extracts from Contract for Seend Head Mill dated 26 th May 1921 and extract from 1921 conveyance plan. supplied by objector.	<p>The whole of the route of Keevil 23 is conveyed with the bridge at this time.</p> <p>The route of Keevil 23 is described in the contract as a Public Footpath (J to K) as is Keevil 24 (H to I).</p>		<p>The wording of the schedule is clear that the Duke and his Trustees up to 1921 intended that no greater right than public footpath existed.</p> <p>It is inconceivable that the Duke's solicitors would have drafted the contract and conveyance in the way they did if the situation had of been otherwise.</p> <p>Strongly dispute the ability to dedicate during the period the route was held under the terms of a settlement created in 1855 by the Will of the 12th Duke under which the tenant for life was "beneficially entitled to the possession of...the hereditaments hereinafter conveyed as tenant for his life with remainders over the Trustees are the present Trustees under the Settlement created by the said Will with power of sale of the same hereditaments" Trustees had to be joined in the 1921 conveyance as it was they who had the power of sale.</p> <p>The Noads were tenants for some of this period.</p>	<p>When was the route dedicated a public footpath? No previous mention of this found.</p> <p>Noads took over running Seend Head mill from Mr John Taylor at the request of the Duke of Somerset in 1879 (A Book of Keevil Vol 4 The Keevil Society KEE940 WSHC).</p>

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1924	Ordnance Survey 1:2500 1924 Edition surveyed 1884, revised 1922. Levelling revised 1899. CH	Route shown as parcel number 18 0.480 acre. Probably gated at southern end. Route continuous with u/c6076. Joined from east by u/c6077.	Consistent representation of route with 1 st and 2 nd editions, allowing for surveyors' instructions changes.		
1925 (roads revised to 1932)	Ordnance Survey half inch road map, sheet 32 1925 (roads revised to 1932) PCA Two miles to one inch.	Route is shown as a continuous route with the u/c6076 and u/c6077. Shown as "road 2 nd class, indifferent or winding" A different symbol is used on these maps to distinguish footpaths and bridleways from roads.	Shown as a road and not a bridle or footpath.	Not much weight should be given to them, it is disingenuous to suggest because a map "aimed at motorists" showing the route was subject to public vehicular rights.	Could have been shown as an "other road" – other private roads were for example Thornham Farm.
c. 1930	Geographia Half inch Road Map of Wiltshire 2 miles to one inch. PCA	Route shown as "Other Roads" (Subject to a right of way). Footpaths were shown by pecked lines.	Shown as a road continuous with u/c6076 and u/c6077.	Not much weight should be given to them, it is disingenuous to suggest because a map "aimed at motorists" showing the route was subject to public vehicular rights.	

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1930	Highway Takeover Maps and Highway Record CH. Melksham Rural District Council and Westbury and Whorwellsdown Rural District Council.	Keevil 23 wholly in Westbury and Whorewellsdown area. Originally coloured as a publicly maintained route but subsequently scratched out (Takeover Map only). u/c6076 wholly in Melksham Rural District Council area. Coloured to parish boundary (centre of brook). Extension of route south has pencil note written on it "Not Repairable". A361 also annotated.	Takeover maps were produced by surveyors attending County Hall with their own maintenance records and copying routes to new maps. Records are very carefully drawn.	Suggests a drafting error subsequently scratched out.	Annotation records that it was not repairable, not that it was private.
1933	Survey of County and Other Bridges 1933 WSHC F4.	Melksham Rural District Council records not present in file.			
1984	Ordnance Survey Quarter Inch Map 4 th Edition 1934 PCA.	Keevil 23 and u/c6077 shown as a continuous route and shown as "other metalled road".	Shown as a road continuous with other public highways.		
1934 to 1987	Keevil Parish County Surveyors Correspondence WSHC F4/300/133.	No correspondence relating to Keevil 23.			
1936 and 1941	Bartholomew's Revised half inch maps 2 miles to one inch Sheet 28 1936 and Sheet 7 1941 PCA.	Sheet 28 1936 shows Keevil 23 and u/c 6076 as a continuous route "serviceable road" Sheet 7 1941 shows Keevil 23 and u/c6076 and u/c6077 as continuous route "serviceable motoring road".	Shown as a continuous road with other roads. Could have been shown as "other road" but was not.		

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1939	Application for Consent to Building, Access or Permanent Excavation WSHC F4\760\241.	Application is from J and J Noad who describe themselves as 'prospective owners'. Describe and show the council road ending at Semington Brook.	Document clearly indicates J and J Noads understanding of public rights at this time. Contrast this with the same Mr Noad's blocking of the road in the 1980s.		
1940-1945	Johnston's Road Atlas. 3 miles to one inch. CH	The map shows Keevil 23 and u/c6076 as minor roads and a through route from the A361. The Road Atlas does show footpaths but does state that "the representation of a footpath is no evidence of a right of way".	Continuous route, part of roads network.		
1948	Johnston's Road Atlas 3 miles to one inch PCA.	Keevil 23 shown as a continuous route with other public highways.			
1948	Ordnance Survey 1:25000 Provisional Edition 1948 PCA.	Keevil 23 and u/c6076 shown as continuous and ungated. Shown as other road. Footpaths and bridleways shown separately.	Continuous route with other public highways.		Map carries the disclaimer 'representation on this map of a road, track or footpath is no evidence of the existence of a right of way.
1951	WCC Schedule of Trunk and County Roads and Bridges 1951 CH	U/c 6076 recorded as going past Seend Head Corn Mill to bridge over Semington Brook. Bridges not recorded.			

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1991	Wiltshire County Council Bridge File Bridge 5067 CH	<p>Following inspections by WCC in 1991 the southerly bridge was recorded with a 5067 bridge number (private bridge number or other).</p> <p>Also contains correspondence from Seend Parish Council (1988) requesting that the road be opened to 'pedestrians and the occasional horse rider only'. Parish Council also state that if the owner were to apply to have the cul-de-sac closed the council would oppose the application.</p>	<p>Correspondence is confused regarding extents of highways and rights of way and is at odds with definitive map.</p> <p>Neither bridge recorded as publicly maintained.</p>		<p>Bridge engineer found ancient and substantial foundations to the bridge pre-dating current structure.</p>

Additional Evidence received from local people:

- 1) 30 September 2008 Beverley Hiscock. Moved to Seend Cleeve in 1983 and frequently rode horse along Keevil 23 for a number of years until the gate was locked. Spoke to older residents who remember the gate being unlocked and usable.
- 2) 30 September 2008 Mrs P Church. Has walked and cycled along Keevil 23 for many years. Also a neighbour cycled. The gate was sometimes fully opened or sometimes chained in such a way as the long chain allowed the gate to be opened for a cycle. The gate opened about one metre.
- 3) 7 October 2008 Janet Rawlings. Lived at Whites Farm, Seend Cleeve from 1957 to 1967 and in those years regularly rode Keevil 23 to Keevil and to Steeple Ashton for the blacksmith.
- 4) 5 October 2008. Anita Shea. Moved to Seend Cleeve 32 years ago and walked from Seend Cleeve down Row Lane and passed the gate which now says it is a private gated road.
- 5) 9 October 2008. Lucy Garton. Lived in Seend Cleeve since 2001. The Avon Vale Hunt always used to use it and said there was never any trouble, they are however unlikely to give evidence.
- 6) 14 October 2008. Pamela and Richard Church. Submitted WCC witness evidence form. Walked regularly but only cycled a few times in 2001-2003 and occasionally later. Knows of others who rode horses and cycled along the track. Remembers access by opening the gate wide on its long chain but found it locked on 26 June 2003. Assumed the barrels at the other end were only to stop cars and not cyclists or walkers. Bailer twine has recently appeared across the road by the barrels.

Husband always spoke to landowner when he saw him – in the 1980s and in 2001/02.

Mrs Church with a friend cycled through and had ‘a very interesting conversation with a man who seemed to own the mill, he talked about his plans for installing a generator’.
- 7) 19 October 2008. Anita Shea. By e.mail can’t date when the gate at the northern end was signed as private. People in the village say there was no private sign during the 1980s but there were barrels to stop vehicles. The mill appeared uninhabited. By 2001 there was a gate across and a private sign.
- 8) 14 October 2008. Beverley Hiscock. Told by locals to ride on Keevil 23 from 1983 approx 1990 when found gate locked. Cycled and rode horse. Would pass the time of day with an elderly relative.

- 9) 20 October 2008. John R Daniels. Used by walking cycling and riding a horse between 1956 and 1960, 1963 and 1967 and last used it in 1987. Used it on a paper round also Seend FC played football in the fields off the road and coaches used the road to get to the field. Saw other users by several means. Didn't find gate at A361 closed until 1990. Corn mill traffic used the road until mill was closed, and then barrels appeared at north end. The last person who lived at the mill supported the football team and was aware and also allowed people to use the road.
- 10) 20 October 2008. Mrs P Church. Has re-examined diaries and finds that she found the gate locked while out cycling on 25 February 2002. Her expectation was to push the gate back on its long chain.
- 11) 3 November 2008. Jonathon Cheal acting for landowner. 'We are obtaining further witness statements and will let you have them as soon as possible, so please don't conclude your recommendation yet.
- 12) 17 November 2008. Lucy Garton. Rode a horse sporadically along route 2002-3 by opening gate – chain was wound round but not locked. Spoke to Joe Noad and asked if he minded her riding the track and he said 'I would rather you did not' and subsequently the gate was locked. Gate at northern end was mostly open or closed with a piece of string. Mr Noad told her that the route from the bend to the river was not even a footpath.
- Mr J Hampton Born in Seend 1953 and lived there until 1973. Had grandparents who lived in a cottage (now demolished) opposite Seend Head House. Remembers roads past the mill to the river always being open and used by the public. There was no gate or signs at this end at this time. People also accessed the river banks for recreation. Father, grandparents and other residents always maintained that the lane from the river to the A361 was public. Grain lorries also used the lane.
- 14) Mr D Hampton Brother of the above. Offers recollections of his father who was born at Seend Head in 1922 (and died in 1994). There was a marker stone inscribed MDHB just before the bridge. Melksham District Highways Board. His father complained about obstructions to the u/c6076 and Mr Hampton attended Parish Council meetings to speak of concerns. His father thought that the southern stretch (Keevil 23) shouldn't be driven but could be walked on. The grandfather had spoken of the banks of the mill pool being very shallow and that people used to drive their cattle there to drink and it is probable that they would have done that from both Seend Row and The Strand (A361 end). The Noads had paid for the tarmac and he said they locked the gate once a year but that anyone could use the lane for the rest of the year. The gate was however locked more often and he wasn't happy about that.

The following four statements were submitted by the objector on the 17 February 2009

15) Mr G L Noad. Has had close knowledge of Seend Head Mill all of his life (born 1925). Recalls that the route of Keevil 23 has always been private and does not believe that there was any public right along there. He also does not accept that there was a public right of way south from the mill to the parish boundary. His father believed the same but gave people permission (out of courtesy) if they tried to use the route. The gate at the A361 end was locked from time to time and it has two signs on it, one giving a weight limit and the other saying 'private road'. Lorries tended to enter the mill full from the north end and exit empty from the south end because they were lighter then.

16) Mr K J Noad. Recalls Seend Head Mill from about 1957 and started work at the mill in August 1959. He was a partner in the mill business with his father. Wheat was washed at Baldham Mill, taken in lorries to Seend Head Mill where it was ground and then taken to local bakeries. Unloading lorries blocked the road completely, certainly for three or four hours at a time and probably up to seven hours a day. The road south of the mill (u/c6076 and Keevil 23) was always a private road and he doesn't think there were ever any public rights along it. George Node (cousin) lived at the mill house and stopped people that tried to use the route telling them it was private and that they were not entitled to use it. The odd motorist did try to use the lane. The southern end was always gated but was regularly left open and would remain open most working days though was shut at weekends and bank holidays. George Node would shut the gate if someone used the route without permission. Everyone local believed it was private and there was a sign at the southern end probably saying "private road". His family would have objected strongly to any recording of the way as public because it would have interfered with their business.

17) Mrs D M Webb. Recalls living at the mill from 1943 until 1967 and visited regularly between 1967 and 1977 at least twice a week. The route has always been private and local people will confirm this. It has always been privately surfaced and has not been maintained by the Council. Does believe there is a public footpath on most of Keevil 23 but nothing else. Her father stopped people who tried to travel along the u/c6076 north of the bridge. Other people were given permission to walk on the lane (Keevil 23) but others were challenged and always turned back. Most of the time there was a lorry parked on the road. Horse riders who tried to come through had permission to do so. The gate at the southern end tended to be shut when her parents were away.

18) Mr C W Smith. Witness statement from Mr Smith who is the chairman of Seend Parish Council, however the statement is not given in this capacity. Born in 1939 and has lived and farmed in the area all his life. He never used Keevil 23 because he knew it was private. The gate was opened for mill use and for the hunt. There was a 'private road' sign on the southern gate in the 1950s. Has never seen non mill traffic on the route.

Sally Madgwick
6 October 2009

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Tithe Map of Seend 1838

APPENDIX C

Source: Wiltshire and Swindon History Centre
Reference: TA/Seend
Scale: 6 chains to one inch

The Map is signed by Charles Tynne Assistant Tithe Commissioner July 16th 1838.

The road to Seend Head Mill and beyond (u/c 6076 and part of Keevil 23) is shown coloured sienna in the same way that public roads are shown.

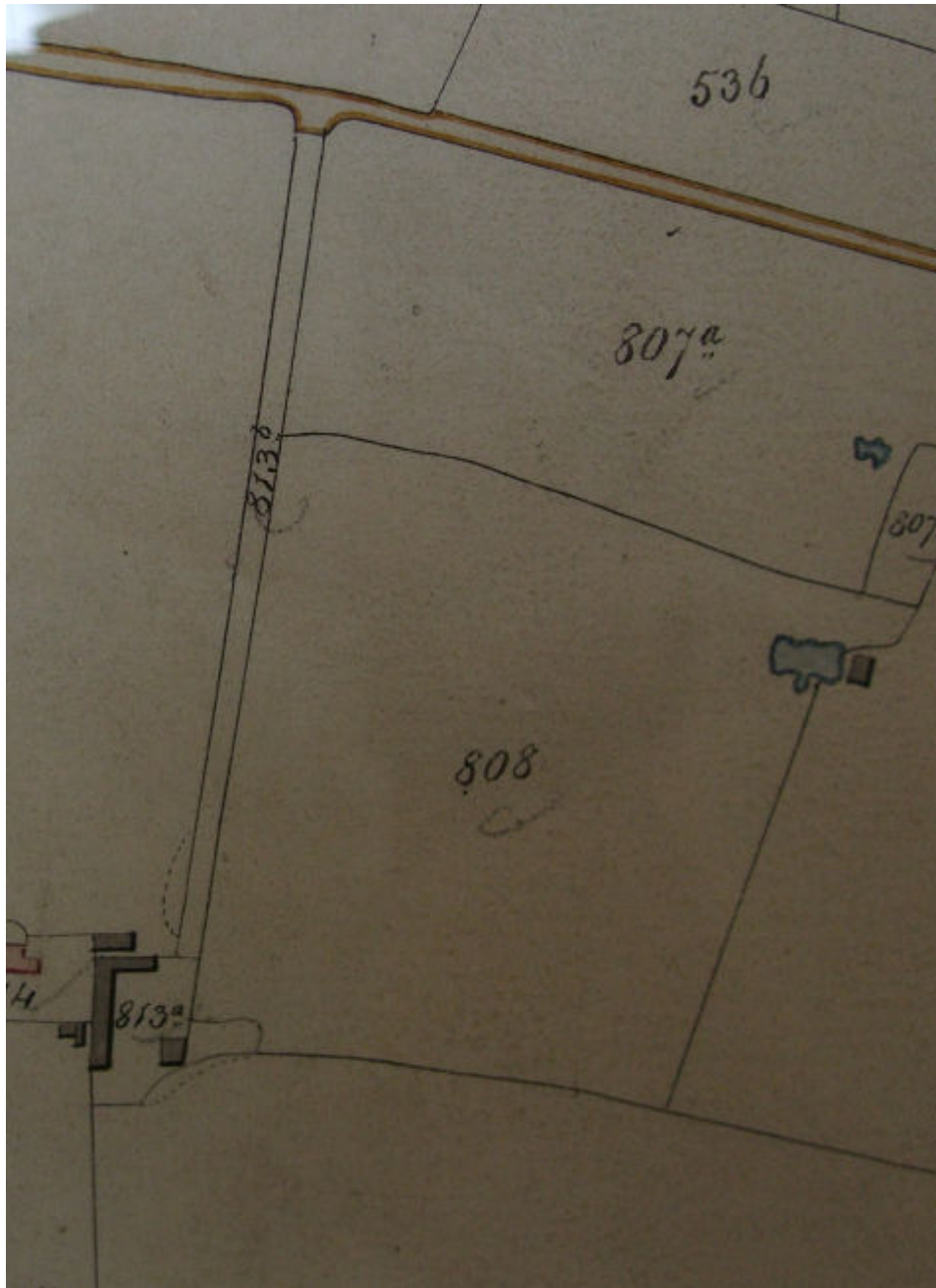
Although the survey only covers Seend the surveyor has recorded that the route of u/c 6076 continues over Semington Brook and beyond to Keevil.

Routes that were private are shown uncoloured and numbered.

Plot number 844 belongs to Edward Adolphus Seymour, Duke of Somerset and has Samuel Ferris as occupier. It is listed under “sundry houses, cottages, gardens and small plots of ground”.



For a private road, for example 813b, the way is represented as uncoloured and numbered:



The description refers to the “lane to the house”.

The road past Seend Head Mill is shown as a sienna coloured road continuing over the bridge and out of the parish.

The Tithe Map for Seend shows 9 routes leaving the parish, 6 of these are shown coloured sienna and 3 shown uncoloured.

The 9 shown are:

- A361 at Summerham Bridge (A class road)
- Sells Green to Rowde road (C class road)
- Curnick's Lane (SEEN55 to Rowde 21 bridleway)
- Continuation of Broad Lane (SEEN 25 bridleway)
- Collingbourne Lane (SEEN41 to Melksham Without 40 bridleway)
- Colbourne Lane (SEEN 57 to Melksham Without 43 bridleway)
- A365 at Vernon Farm (A class road)
- u/c 6076 to Keevil 23 at Seend Head Mill (u/c road to footpath)
- C class road at Seend Bridge

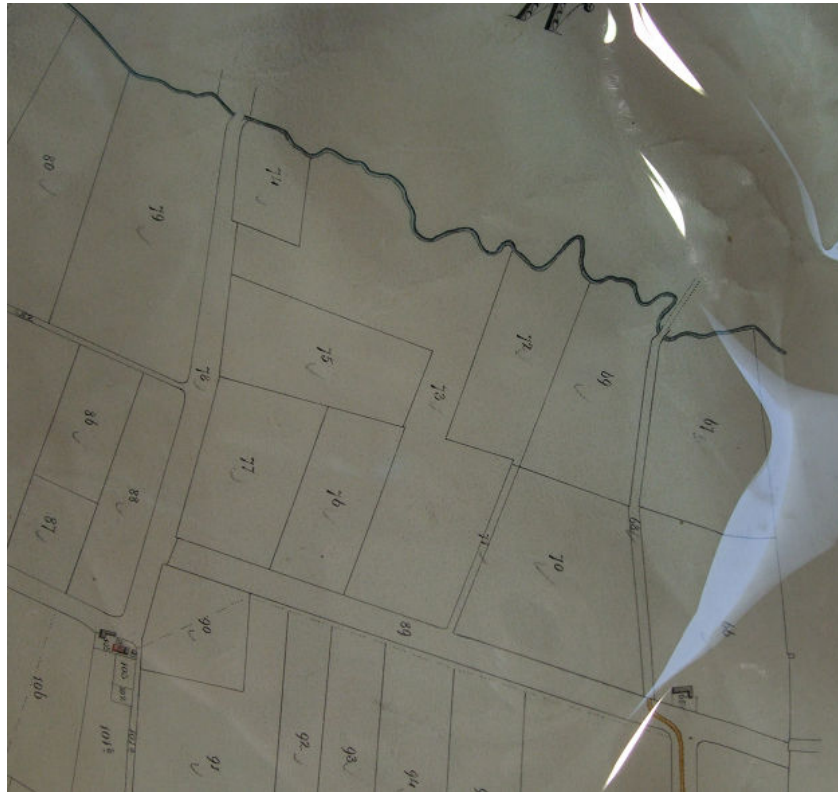
The modern map shows a further 15 other paths leaving the parish (footpath and bridleway) which are not shown on the Tithe Map.

See below for comparison of Tithe Map representation of the Order route, 2 routes now recorded as bridleways and the A361 at Baldham Bridge all leaving the parish.

u/c 6076 and Keevil 23 leaving Seend Parish



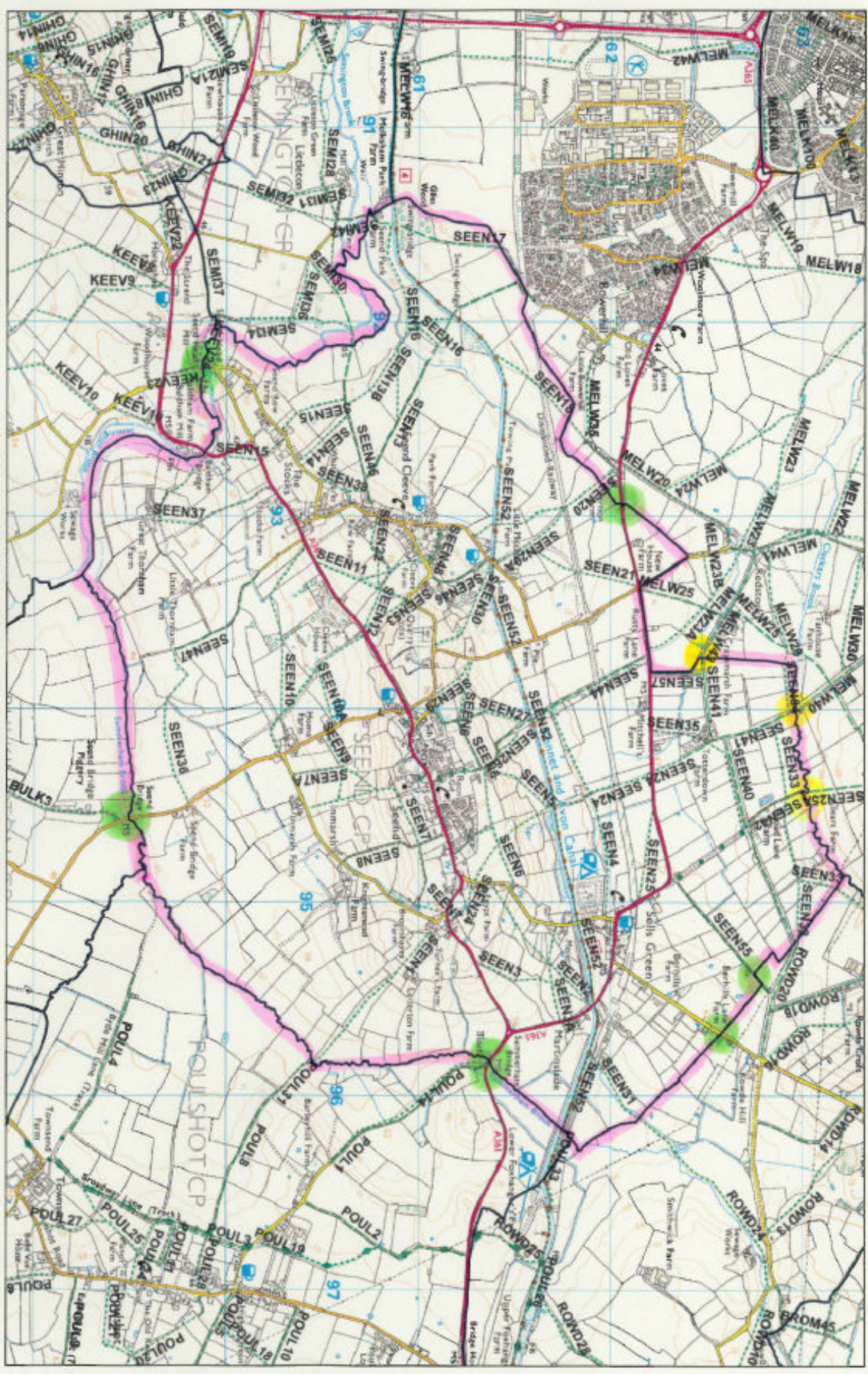
Bridleways Seend 42 and Seend 41 (Broad Lane and Collingbourne Lane) leaving parish



Seend u/c6076 (LHS) and A361 (RHS) leaving parish



EXIT POINTS FROM SEEND PARISH TAKEN FROM THE MAP 1838



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Produced using ESRI (UK)'s MapExplorer 2.0 - <http://www.esriuk.com>

09 January 2009
 Date:
 Not Set
 SLA:
 Scale: 1:25000

ROADS SHOWN UNCOLOURED ON THE MAP
 ROAD'S SHOWN UNCOLOURED ON THE MAP
 ROAD'S SHOWN UNCOLOURED ON THE MAP

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TITHE MAP AND APPORTIONMENT KEEVIL 1864 AND 1841 MAP OF KEEVIL**1) Tithe Map and Apportionment Keevil 1864**

Source:	Wiltshire and Swindon History Centre, Chippenham
Ref:	T/A Keevil
Scale:	3 chains to one inch

The 1836 Tithe Commutation Act converted tithes into a fixed money rent and resulted in some 12,000 apportionments. Tithe documents consist of three elements, the apportionment, the map and the file, and are solely concerned with identifying titheable land. Apportionments are statutory documents which were in the public domain and tithe maps have been treated by the courts as good evidence as to whether land was titheable or not titheable. However, the maps were not made for the purpose of establishing or recording rights of way. In the case of Keevil tithes were commuted at Enclosure in 1795 and were only able to be commuted to a rent charge by virtue of the 1860 Tithe Amendment Act.

There are a number of reasons why land might not have been subject to tithe in addition to the possibility of it being highway land. One of these was that the land was barren but other examples include land held either by the church or some other religious community, or because it had only recently been converted to productive land from previous barren heath or waste land. Hence it is dangerous to assume the maps to be absolute proof of something that it was not the business of the Commissioners to ascertain, however they can provide useful accumulative evidence of the history of a route and how it was viewed at that time.

Tithe Maps are accompanied by an Apportionment which lists all the numbered parcels of land and carries details of field names, usage, quantities of production and amounts of rent charge payable. Areas that are free of charge are listed in the apportionment under headings, for example Glebe or Roads and Wastes. The convention is that Roads were coloured sienna (orange/brown).

The Tithe Map for Keevil is a second class map and is dated 1863, signed by Tithe Commissioners 1864. It is notable that the document ref number 1908/3 (Wiltshire and Swindon History Centre) is a large scale map dated 1840 drawn at 3 chains to one inch. It bears a Tithe Commissioners stamp dated 27 June 1843 and although it does have a reference book accompanying it (ref no 653/17) this is not stamped apportionment document.

Keevil 23 is shown coloured sienna in the same way as the public road network and is numbered 11a.

11a is listed in the apportionment as a Private Carriage Road to Seend Head Mill.

PLAN
OF THE PARISH OF
KEEVIL
IN THE COUNTY OF
WILTS

TITHE APPORTIONMENT

1863

*(Signed) J. J. Rowlinson
Agent Tithe Commrs.
24 March 1864.*



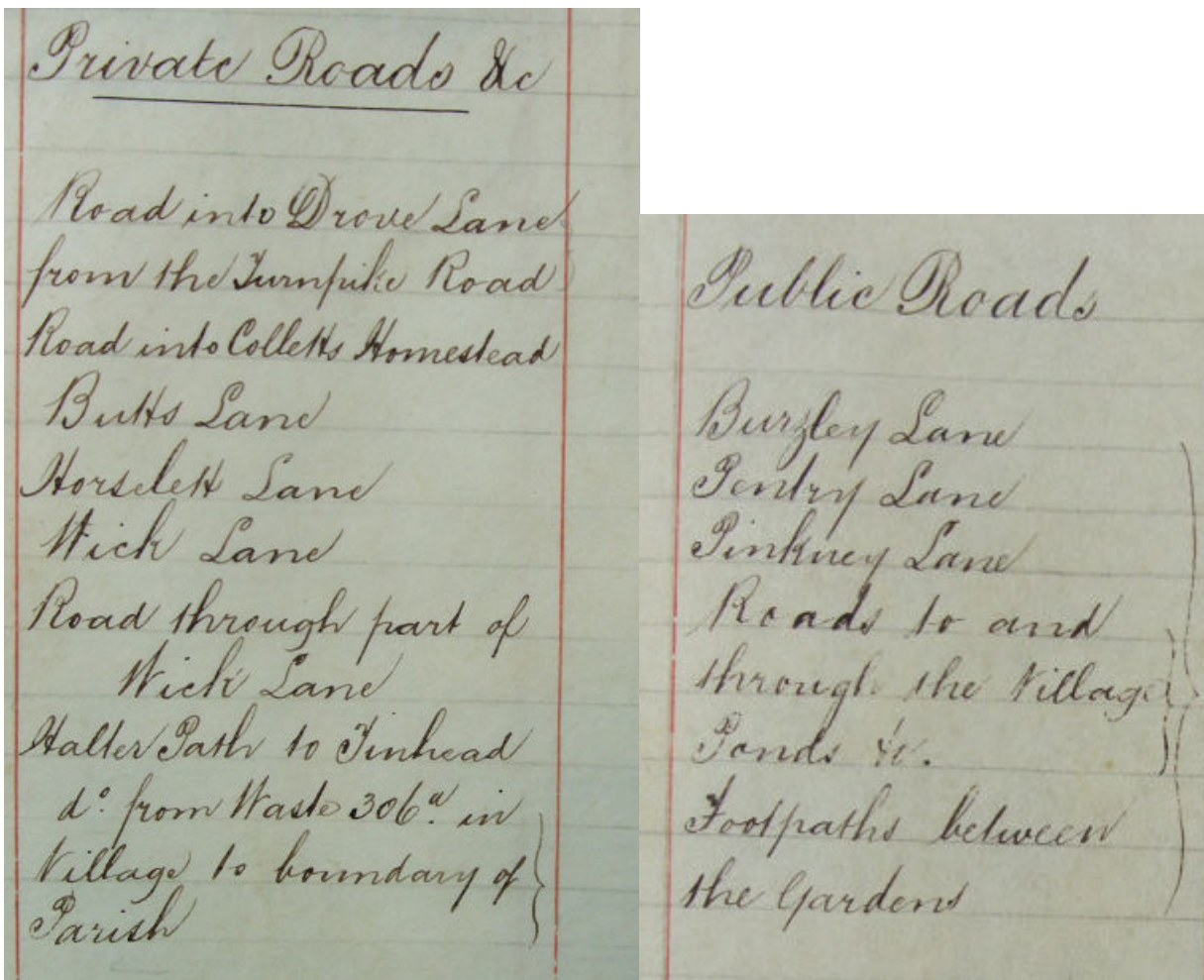
10	Bells Mead	Pasture	5	3	32		4	11		19	6 1/2
11	Great Morris's	d ^o	7	2	20		9	8		14	2
11 ^a	Private Carriage Road to Seend Head Mill	Road		1	15				3		
12	Last Morris	Pasture	6	3	27		9	6		15	3
			20	3	14	1	4	4	2	16	11 1/2

Landowners	Occupiers	Numbers referring to the Plan annexed hereto	Name and Description of Lands and Premises
Somerset His Grace the Duke of	William Taylor	10	Bells Mead
		11	Great Morris's
		11 ^a	Private Carriage Road to Seend Head Mill
		12	Last Morris

At the end of the Apportionment are listed in detail Private Roads and Public Roads.

Keevil 23 – “private carriage road to Seend Head Mill” is not specifically mentioned in either list.

Private Roads	6	1	21
Public Roads	15	1	35
Rivers and Brooks	8	2	20



Keevil 23 does not appear in either of these lists as it is separately numbered and detailed in the survey.

2) Map of Keevil 1841

Source: Wiltshire and Swindon History Centre
Ref: 1908/3 and reference book 653/17
Scale: 3 chains to one inch
Date: 1841

This map carries the stamp of the Tithe Commissioners June 27th 1843.

It is a very large and well drawn map which appears to incorporate the information contained in the Enclosure Award and the subsequent tithe map. It is titled "Survey of Keevil Parish 1840 by H.G. Buxton, Devizes.

Keevil 23 is shown as a private road though it is not listed under Private Roads in the accompanying reference book. It is numbered 14.

There is however a public footpath shown linking Keevil 23 and Baldham Bridge which if correct would assume that the public had a right to use Keevil 23 to access it.



Other private roads awarded in the Enclosure award are also shown in this colour but have their awarded widths written on them. They are not individually numbered like Keevil 23 is.

The reference book records the following:

12	Bells Mead	Edward Adolphus Duke of Somerset
13	Great Morris's	Edward Adolphus Duke of Somerset
14	Private carriage road to Seend Head Mill	Edward Adolphus Duke of Somerset
15	East Morris's	Edward Adolphus Duke of Somerset

Private roads to fields are listed in the refernce book and Keevil 23 is not listed here.

Private Roads to Fields. &c

Nos on Map	Names of Roads	Measure		
		A	r	p
43	Road into Drove Lane from the Turnpike R ^d	—	—	14
165	D ^o into Collet's Homestead	—	—	25
144	Torrige Lane	1	1	5
370	Butts Lane	2	2	11
401	Horselet Lane	1	1	17
481	Wick Lane	—	2	21
^{In} 170, 471	Road through part of Wick Green	—	—	39
517	Halter Path to Tinhead	—	1	2
380	D ^o ——— D ^o from Village opposite Cottage N ^o 396 to Parish Boundary	1	—	12
		7	2	26

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FINANCE ACT MAP AND VALUATION (DOMESDAY) BOOKS

Source: Wiltshire and Swindon Record Office, Chippenham
Refs: Map 39.2 L8/10/39
 Valuation book Bulkington and Keevil L8/1/113
 Valuation book Seend L8/1/107
Scale: Maps have 1:2500 OS Second Edition base

The 1910 Finance Act provided for the levying of tax ('Increment Value Duty') on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. There was a complex system for calculating the 'assessable site value' of land, which allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user and to the right of common and to any easements affecting the land.

Valuers produced coloured plans based on Ordnance Survey 1:2500 maps (2nd Edition) and recorded details of the hereditaments and various deductions in a valuation book.

A working copy of these plans and the valuation book is held at the Wiltshire and Swindon History Centre in Chippenham. A record copy of the plans and valuers field notebooks are held at the National Archive at Kew.

Public roads were excluded from the assessment and are generally left uncoloured and separated from numbered land parcels by broken braces or brackets.

The route of Keevil 23 and u/c 6076 have been left uncoloured and braced as separate from all properties/hereditaments. The representation is the same as the public road network and it is shown as a part of it.

A private way shared by others under an agreement could be listed under 'easements' in the Valuation Book and there is no entry under this category.

Case Law is very clear on the value of Finance Act records and the representation of routes shown as uncoloured and separate from any coloured hereditament. It must be remembered that the Finance Act imposed a tax levied by the Inland Revenue and any false representation or declaration would have been a serious offence.

Robinson Webster (Holdings) Ltd v Agombar 2001 – Judge Etherton states:

"The 1910 Finance Act map and schedule are, in my judgement, most material evidence in relation to the status of the Blue Land at that time. It would have been in the interest of the owner of the Blue Land to acknowledge that the Blue Land was a public highway and so not taxable. On the other hand, it would have been the concern of those acting for the Commissioners to establish that the Blue Land was private land and not subject to public rights. The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority"

NB Although these working copies represent Keevil 23 and u/c6067 as part of the road network by all conventional interpretation of Finance Act records, the surveyor does appear to have braced roads out in green brackets AND in black brackets and it was deemed to be worthwhile to view the Record copy and field notebooks held at the Public Record Office Kew (see later pages).



NB The hereditament coloured pink and numbered 153 is principally in Seend and is listed in the Seend Valuation book and not the Keevil one.

The listing for 153 shows no deductions or easements even though the field numbered 14 on the OS base map does appear to show a public footpath. It is however known that this footpath was not considered public by the parish council in the early 1950s when the definitive map was prepared and it is possible that the landowner, Mr Noad, disputed its status. It was included as a public footpath deduction by the valuer in the Field Book held at Kew.

Parish of Seend

No. of Assessment	No. of Poor Rate	Christian Names and Surnames of Occupiers	Christian Names and Surnames of Owners, with their Residences	Description of Property— If an Inn, &c., the name or sign by which known	Street, Place, Name and Precise Situation of Property	Poor Rate						Reference to Map	Extent as determined by Valuer				Original Gross Value	Deductions for			
						Estimated Extent	Gross Annual Value		Rateable Value		Acres		R.	P.	Y.	Buildings and other Structures including Machinery		Timber	Fruit Trees, Fruit Stocks, and other things growing on the land.		
							£	s.	£	s.									£	s.	£
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18				
✓ 147	214	Atkerman W.	Avis W ^m 166 Bromley Rd. ^{Shuttleham} _{Kent.}	Land	Totterdown	5 2	6	5 17						£	£	£	£				
✓ 148	215	Boulton Mrs.	8 C. Thompson & Co. Duke of Somerset 40 New Hartopp Maiden Parade	House & garden	Seigneur Lodge Street	3	35	28 0													
✓ 149	216	Wiltshire Edwin	" Bath.	House + Land	Egypt Farm	84 3	189	25													
✓ 150	217	Wiltshire Herbert	" "	House + Land	Loiterton Farm	62	134	17 0													
✓ 151	218	Thynne Canon	" "	House + Land	Street	4 2	23 12	14 0													
✓ 152	218 ^a	Cook Reuben	" "	Land	Station Rd.	3 1	5 0	5 0													
✓ 153	219	Noad H. J.S.	" "	Mill + Land	Seend Head	2 0	75	47													
✓ 154	220	Noad Walter	" "	Land	Seend Park	5 2	11 13	10 10													
✓ 154^a	221	Harris P.H.	Turner Jas. Wick, Berings.	House + garden	Seend Green	2	25	20													
						Total	168	2 504 5	434 2												

Form 21.—Land.

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An example of a private route being shown is at Little Thornham Farm where the route is the same colour as the heriditament.

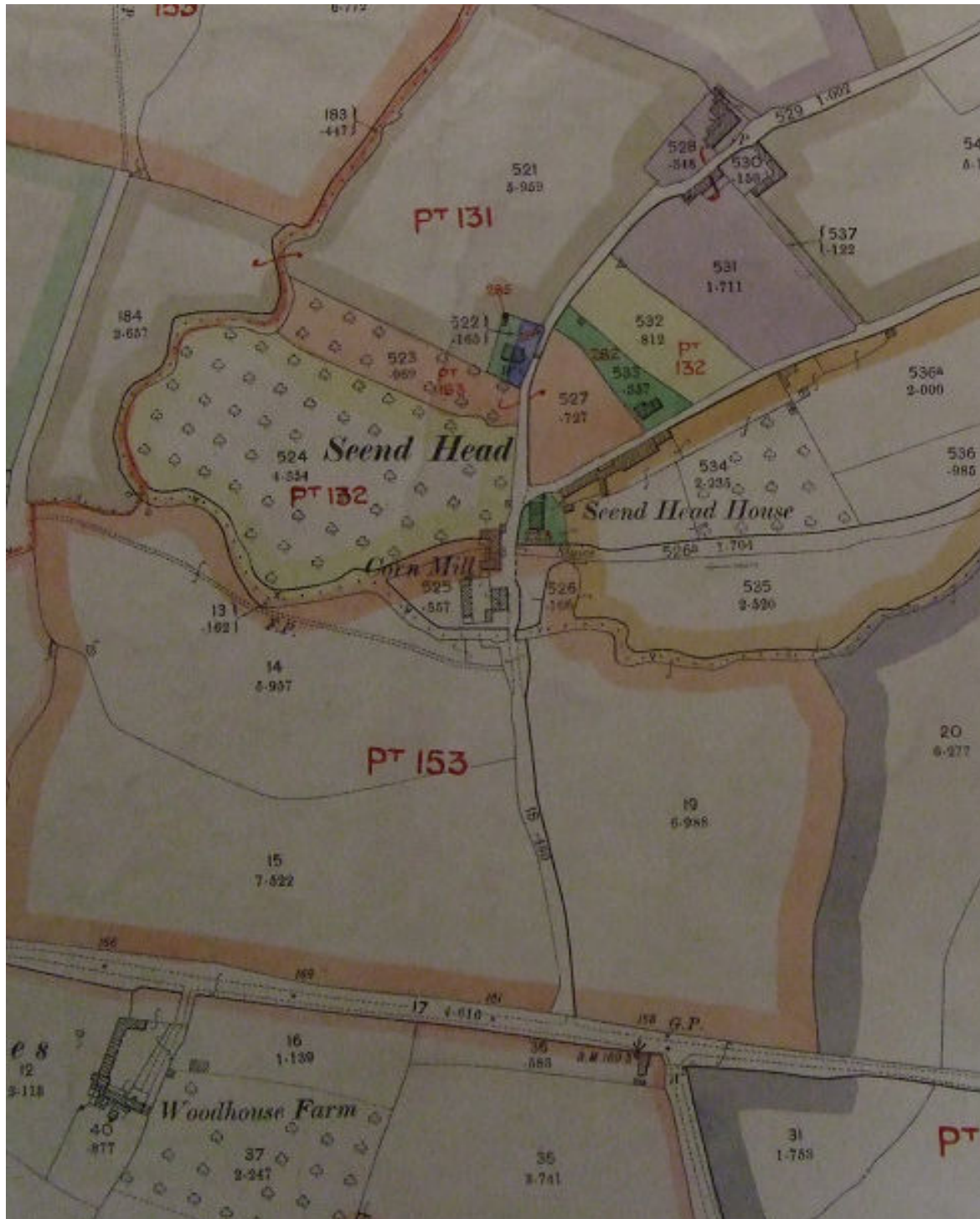


Finance Act records held at The National Archive, Kew

Plans – Record Copy IR125\7\53 and IR125\11\442 XXXIX.2
Valuers Field Book IR58\73568

Plans – Record Copy

The representation of Keevil 23 as uncoloured and braced apart from surrounding land holding (153) is the same on the record copy of the plan as it is on the working copy held at the Wiltshire and Swindon History Centre.



There is an additional Record Copy sheet held under these references which does not show the Keevil Parish hereditaments. It does however show the hereditament containing Seend Head Mill as being separated by the road which is uncoloured as other public roads. This valuer had drawn red braces across the roads to link parts of hereditaments - this is unusual but it is consistent and has been done over the trunk road (A361) in the same way as minor roads.

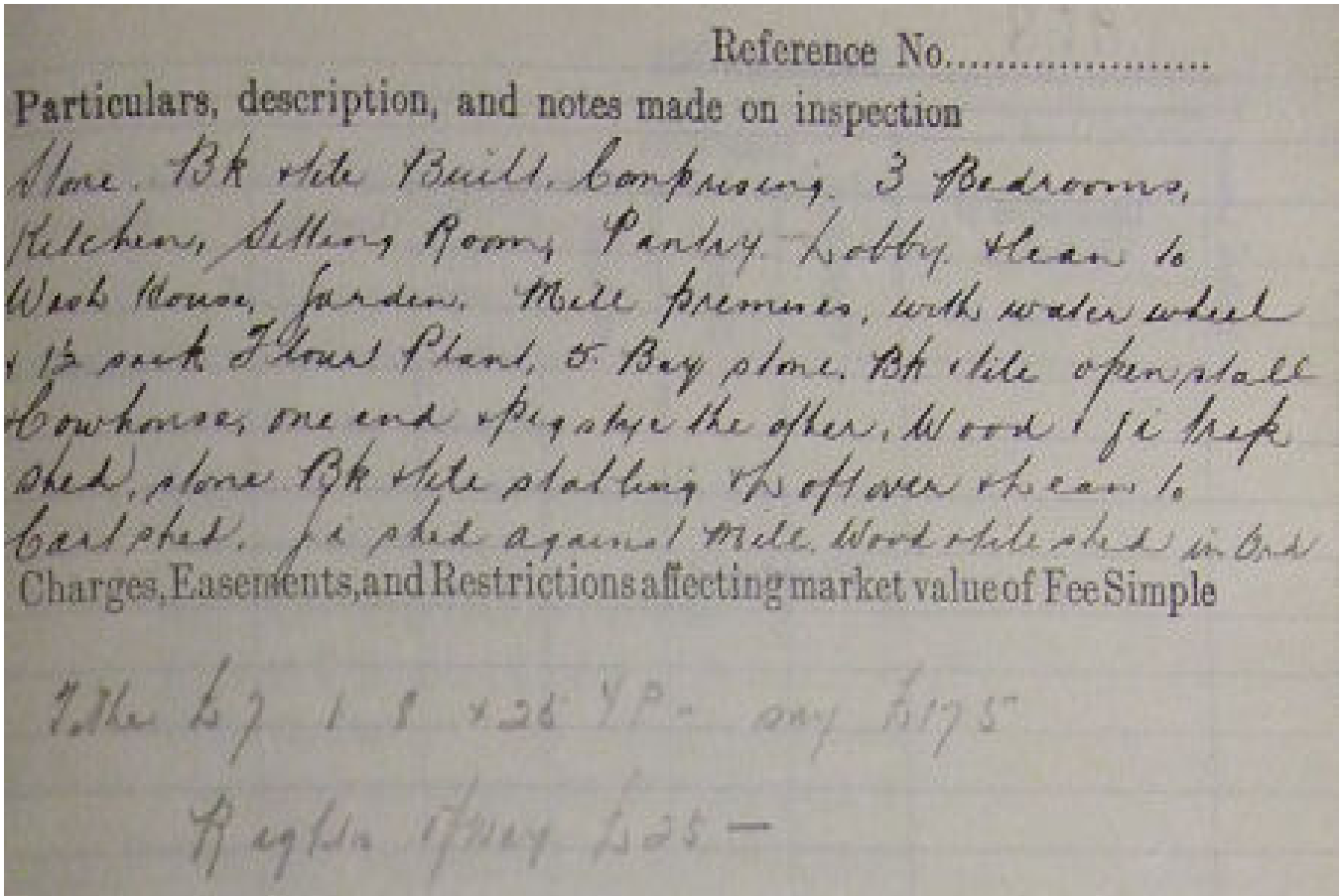


Field Note book – IR58\73568 – Hereditament no 153

The field notebook reveals a £25 deduction for Public Rights of Way. This is probably for the Public Footpath shown on the underlying OS map (now Keevil 24).

The valuer records the following Particulars, description and notes made on inspection:

Stone. Bk and tile build. Comprising 3 bedrooms, kitchen, sitting room, pantry, lobby and lean to wash house, garden. Mill premises with water wheel and ? sack flour plant 5 bay stone bk ?? open stall cowhouse one end and a pig sty the other. Wood and ???? shed stone Bk and tile stabling and loft over the cow to cart shed. ?? shed against mill Wood and slate shed in ??.



The valuer has also described the hereditament no 153 in detail by reference to the OS parcel numbers.

Although all the OS parcel numbers are listed and described around Keevil 23 (for example 13 = stream, 14,15,19 = pasture, 525 = house and mill) the OS parcel number 18, which is the roadway (Keevil 23) is not described or listed at all.

Part of the hereditament 153 (remote from the Seend Head Mill part) is numbered 535 and labelled waste.

No 161. Pasture land. food water supply.
Fair repairs

Schedule

Q. No.	Description	Area
19	Deep pasture	6.988
15	"	7.522
14	"	15.957
13	Stream	.1612
526	pond	.166
pl 535	Waste	.122
525	House & Mill	.557
pl 526 ^a	Stream	.144
527	Arable	.727
533	Orchard	.969
159	pasture	6.772
160	"	6.626
pl 161	"	5.220
pl 183	Stream	.195
pl 157	"	.315
		<hr/>
		45.442

Comment

The Finance Act Evidence is consistent in all respects in showing the route of Keevil 23 as being the same as the public road network (both local and trunk).

The Finance Act valuations commenced with a Form 4 which was completed by landowners – these have not survived – however the omission of this track from the valuation is significant in that the Inland Revenue valuer visited the property and recorded the route as being separate from the property. This representation is consistent between the working copy of the map and the Record copy.

Had this track formed part of the property (Hereditament 153) and been omitted from the valuation it would have formed a serious omission and evasion of tax and the landowner liable for criminal prosecution.

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Commercial Maps

The list below lists all commercial (i.e. non cadastral, that is maps not produced for purposes of land registration or taxation) maps viewed and records the representation of the Order route on these maps.

The maps listed below are all small scale maps (generally ranging between two inches to the mile to a quarter of an inch to the mile) and were produced for sale. They were not all derived from the same survey and maps produced by Ogilby, Andrews' and Dury, Cary, Greenwood and the Ordnance Survey were all produced from actual and independent surveys. Maps were also subject to frequent review, especially in the early decades of the 20th century when there were large increases in the amount of mechanically propelled vehicles on the roads. For example Ordnance Survey Popular Edition maps were reviewed by the road board, the Royal Automobile Club and District Surveyors and maps by Bartholomew's were specifically aimed at cyclists and routes were reviewed by the Cyclists Touring Club. The majority of maps would have been sold to people travelling around the county and the need for them to be reliable and accurate would surely have driven the need to continually review to maintain sales.

Most commercial maps had a key which offered a considerable amount of differentiation between routes and features. For example the 1919 Ordnance Survey Popular Edition showed a number of different routes in colour including 'roads under 14' wide', bridle and footpaths shown by pecked lines and private roads were shown uncoloured.

Whilst any one commercial map would carry relatively low evidential weight, the constant and repeated representation of a way throughout different surveys, time and revisions would significantly add to the evidential weight that can be given to these maps. Copies of the maps are available from the officers on request. Contact: sally.madgwick@wiltshire.gov.uk.

Date	Title of Map	Representation of Order route
1695	Ogilby's Britannia	Order route not shown but linking road indicates it would have been a part of the road to Trowbridge
1773	Andrews' and Dury's Map of Wiltshire	Gated road shown as part of road network
1785	Paterson's British Itinerary	Principle Cross Road
1808	Ordnance Survey Surveyor's drawing	Continuous route with road network
1817	Ordnance Survey Old Series	Continuous route with road network
1820	C Greenwood's Map of Wiltshire	Cross Road
1823	G and J Cary's Map of Great Britain Sheet 18	Parochial Road
1831	Pigot's Map of Wiltshire	Cross Road
1832	J Cary's Map of Great Britain	Parochial Road
1840	Pigot's Map of Wiltshire	Continuous with road network
1841	J and C Walkers Map of Wiltshire	Continuous with road network
1865	Crutchley's Map of Wiltshire	Continuous with road network
1885	Ordnance Survey 6" to one mile	Gated road continuous with road network at northern end
1893	Houlston's New Map of Chippenham	Sienna coloured road continuous with road network

Date	Title of Map	Representation of Order route
1895	Davies Half Inch Map	Continuous with road network
1898	Gall and Inglis Half Inch Map for Cyclists, Tourists etc	Minor route. Continuous with road network
1899	Murray's Handbook for Residents and Travellers	Continuous with road network
1899	Ordnance Survey 1" Revised New Series	Continuous with road network. Could have been shown as footpath but wasn't.
1901	Ordnance Survey Quarter Inch Map	Road, third class continuous with road network
1902	Through Guide Series Bath and Bristol and Forty Miles Round	Continuous route with road network
1903	Ordnance Survey Quarter Inch Map	Road, third class. Continuous with road network.
1904	Bartholomew's Half Inch Survey	Other Driving Road. Continuous with road network.
1906	Ordnance Survey 1" Third Edition	Metalled road , third class. Continuous with road network.
1913	Ordnance Survey Quarter Inch Map 2 nd Edition	Road, third class. Continuous with road network.
1914	Daily Mail Milestone Motor Map	Other metalled road. Continuous with road network.
1919	Ordnance Survey Quarter Inch Third Edition	Other metalled road. Continuous with road network.
1919	Ordnance Survey Popular Edition	Road under 14 feet wide. Continuous with road network. Could have been shown uncoloured as private road but wasn't.
1924 survey roads revised 1932	Ordnance Survey Half Inch Road Map	Road 2 nd class indifferent or winding. Continuous with road network. Could have been shown as bridle or foot path but wasn't.
c.1930	Geographia Half Inch Road Map of Wiltshire	Other road (subject to a right of way). Continuous with local road network. Could have been shown as a footpath but wasn't.
1934	Ordnance Survey Quarter Inch Map 4 th Edition	Other metalled road. Continuous with road network.
1936	Bartholomew's Revised Half inch map	Serviceable road. Continuous with road network.
1941	Bartholomew's Revised Half Inch map	Serviceable motoring road. Continuous with road network.
c.1940	Johnston's Road Atlas	Continuous with road network.
1948	Johnston's Road Atlas	Continuous with road network
1948	Ordnance Survey Provisional Edition 1:25000	Continuous with road network

WESTERN AREA PLANNING COMMITTEE

10 March 2010

Planning Applications for Determination

Item No.	Application No.	Location	Parish	Page No.
01	W/09/00690/FUL	Erection of a single storey 1,937sq m gross extension to the east and western elevations of the store; car park improvements and an extension to the south west of the existing car park resulting in an additional 91 car parking spaces; relocation of the petrol filling station from the river avon to the south eastern area of the site; revised service yard arrangements; provision of an online service facility; construction of a new pedestrian link with town centre; and landscape and ecological improvements to enhance the nature and amenity value of the site and the surrounding land to the south west - Sainsbury Store Bath Road Melksham Wiltshire SN12 6LL	Melksham (Town)	1
02	W/09/02622/FUL	Mobile home, day room and retention of existing pair of sheds - Land At Capps Lane Bratton Wiltshire	Bratton	34
03	W/10/00163/FUL	Extension of existing bed and breakfast accommodation to provide 5 additional rooms together with refurbishment of Cornicks Cottage to 2 additional rooms, formation of new vehicular access and car parking, and alterations to thatched boundary wall - Dove Inn Corton Wiltshire BA12 0SZ	Boyton	43
04	W/09/03641/FUL	Siting of a mobile home - Land Adjacent 28 Fairwood Road Dilton Marsh Wiltshire	Dilton Marsh	53

**REPORT TO THE WESTERN AREA PLANNING
COMMITTEE**

Item No. 01

Date of Meeting	10.03.2010		
Application Number	W/09/00690/FUL		
Site Address	Sainsbury Store Bath Road Melksham Wiltshire SN12 6LL		
Proposal	Erection of a single storey 1,937sq m gross extension to the east and western elevations of the store; car park improvements and an extension to the south west of the existing car park resulting in an additional 91 car parking spaces; relocation of the petrol filling station from the river avon to the south eastern area of the site; revised service yard arrangements; provision of an online service facility; construction of a new pedestrian link with town centre; and landscape and ecological improvements to enhance the nature and amenity value of the site and the surrounding land to the south west		
Applicant	Sainsbury's Supermarkets Ltd		
Town/Parish Council	Melksham (Town)		
Electoral Division	Melksham Central	Unitary Member:	Stephen Petty
Grid Ref	390311 163970		
Type of application	Full Plan		
Case Officer	Miss Julia Evans	01225 770344 Ext 140 juliaj.evans@wiltshire.gov.uk	

Reason for the application being considered by Committee

Former Councillor White has requested that this item be determined by Committee for the following reasons:

“the reason for calling in the Sainsbury’s Store application is as follows:

“The Town Council objected to the following planning application: 09/00690: Erection of a single storey 1,937sq m gross extension to the east and western elevations of the store; car park improvements and an extension to the south west of the existing car park resulting in an additional 91 car parking spaces; relocation of the petrol filling station away from the river Avon to the south eastern area of the site; revised service yard arrangements; provision of an online service facility; construction of a new pedestrian link with town centre and landscape and ecological improvements to enhance the nature and amenity value of the site and the surrounding land to the south west. Sainsbury Store, Bath Road, Melksham (Full Plan).

“Resolved: After considering the comments raised by residents and the many letters Extract from minutes of Melksham Town Council Development Control committee submitted the Town Council objected to the above application on the following grounds:

- Displacement of water. There is already a problem with flooding in this area, there is a concern if areas that currently flood are built upon where will the water go, especially as there are houses nearby in Church Walk / Canon Square area, which could be damaged.
- Again regarding displacement of water, this could even dry out some properties in Church Walk and the conservation area.

- Flooding. This is already a problem, the footpath adjacent to Sainsburys currently floods as does the small access road leading to the rear of properties in Victoria Terrace / Church Walk, if building work goes ahead this could make the problem worse. There is also a flooding problem to the rear of Sainsburys, however, it is not clear if this is a result of blocked drains and it was asked what plans are in place to resolve this problem now and in the future.
 - The removal of the balancing pond to allow for the extra car parking may also cause more flooding problems.
 - There is a concern there are existing underground water courses in this area which could be disturbed if building work goes ahead. This situation needs to be looked into more detail.
 - Repositioning of the petrol station could cause pollution problems ie fumes, light from the petrol station and cars and also noise from the cars to nearby properties in Victoria Terrace, Church Walk and Canon Square. This matter needs to be looked at carefully and whether there is a need to move the petrol station at all, as this is a safety issue for nearby residents. Indeed could the extra parking spaces be provided on the proposed new petrol station site. There needs to be clarification on how many more extra car parking spaces there will be as several documents available seem to contradict each other.
 - If this application goes ahead there needs to be a restriction on the delivery times, as current delivery times cause noise pollution problems for nearby residents.
 - Part of this application affects houses in a conservation area and indeed – part of the application encroaches onto a conservation area. The Conservation Officer and English Heritage need to be informed of this application as consideration needs to be given to how this application impacts on the conservation area.
 - `Riverside Walk. Currently this footpath is not maintained to a satisfactory standard and any maintenance, cleanliness issues need to be part of any Section 106 Agreement relating to this application.
 - There needs to be reassurances that the building work will not have an impact on the neighbouring properties in the conservation area, as had happened in the past when pile drivers were used.
 - It was noted that residents in Victoria Terrace and Canon Square were not informed of the planning application.
 - There seems to be confusion on how many more parking spaces will be provided.
 - Recycling bins. These need to be positioned so as not to cause a nuisance to nearby neighbours.
- “If minded to give permission to this application, could a condition be placed on any planning permission that Church Walk is repaired to a satisfactory condition.
- “Planning Policies C18, C21, C31a, C32, C35, C36 and C38 apply.”
-

1. Purpose of Report

To consider the above application and to recommend that planning permission be granted subject to conditions.

The report below has now been added to, so as to include the late list comments and the deferment request from the Members of the Planning Committee after at its initial consideration at the meeting of the 10th February 2010.

2. Main Issues

The main issues to consider are:

- * retail impact;
- * flooding and drainage matters;
- * highways and sustainability impact;
- * impact on Listed Buildings and the Conservation Area;
- * amenity (noise & nuisance);
- * contaminated land matters;
- * archaeology matters;
- * nature conservation;
- * miscellaneous matters.

3. Site Description

This is a full application for:-

- * the erection of a single storey 1,937sq m gross extension to the eastern and western elevations of the store;
- * car park improvements and an extension to the south west of the existing car park resulting in an additional 91 car parking spaces;
- * relocation of the petrol filling station from the River Avon to the south-eastern area of the site;
- * revised service yard arrangements;
- * provision of an online service facility;
- * construction of a new pedestrian link with the town centre; and
- * landscape and ecological improvements to enhance the nature and amenity value of the site and the surrounding land to the south-west, to the Sainsbury Store, Bath Road, Melksham, Wiltshire.

The existing Sainsbury store lies to the western side of Bath Road (the A3102), and runs along the southern bank of the River Avon. A mix of commercial and residential properties run along Bath Road to the east of the site. To the south lies Church Walk and the residential properties that run along it, whilst to the south-west lies amenity and nature conservation land, with associated pedestrian accesses over it. Beyond the River Avon to the north of the site lies a mix of commercial uses. The store and its ancillary service yard lies to the southern edge of the site, overlooking the River Avon, with its car park located in front and to its western side. It is a distinctly-designed building with a curved roof, with the service yard located to its eastern end. Service and customer access comes off Bath Road, to the northern edge of the site, with the existing petrol filling station lying adjacent to the river. Beyond the car park along the store's western elevation lies a level, overgrown area, bounded by semi-mature trees, and beyond this lies existing landscaping including flood compensation schemes. A public footpath runs along the riverside, with an additional route leading into the town and Church Walk. The site also includes the area known as the Bear Car Park, which is currently segregated from the Sainsbury site by landscaping and timber fencing. There is vehicular access to this site from Bath Road, but with no current vehicular or pedestrian linkage to the store.

4. Relevant Planning History

(Excluding advertisement control applications for the store and the previous employment uses on the site)

92/00308/OUT – Retail development (Class A1) and ancillary car parking – including demolition of existing buildings – Withdrawn 10/02/94

95/01126/OUT – Redevelopment of site including retail, flats, offices, petrol filling station and leisure uses with landscaping, car parking, servicing, highway, flood plain storage and engineering works – Permission 10/07/96

96/00591/REM – Redevelopment of site including retailing, petrol filling station, shops, and flats with ancillary landscaping, car parking, servicing, highway and flood plain storage – Approved 08/08/96

98/00807/FUL – Restaurant extension (156sqm) – Permission 27/07/98

01/01159/FUL – Extension to petrol filling station kiosk together with ancillary works – Permission 30/08/01

01/00613/FUL – Erection of a 605 square metre extension to existing foodstore and revision to car park layout – Permission 19/08/02

02/01581/FUL – Restaurant extension (renewal of 98/0807 dated 27 July 1998) – Permission 04/03/03

02/01661/FUL – Extension to warehouse area – Permission 05/12/02

02/01718/FUL – Variation of condition 02 of permission 01/00613/FUL: parking provision – Permission 10/04/03

03/00232/FUL – Air handling plant to the rear of the sales area extension – Permission 14/07/03

03/01053/FUL – Erection of a new 2m high acoustic fence to rear of store – Permission 08/08/03

05/01185/FUL – Relocation of air conditioning units – Permission 28/09/05

07/01399/FUL – Variation of condition 15 of planning permission 95/01126 in order to allow deliveries to take place up until 1am (mon-sat) for a temporary 6 month trial period – Permission 10/09/07

08/00211/FUL – Variation of condition 15 of planning permission 95/01126/FUL in order to allow deliveries to take place up until 1am (Mon to Sat) – Withdrawn 22/04/09

5. Proposal

This is a full application for:-

- * the erection of a single storey 1,937sq m gross extension to the eastern and western elevations of the store;
- * car park improvements and an extension to the south west of the existing car park resulting in an additional 91 car parking spaces;
- * relocation of the petrol filling station from the River Avon to the south-eastern area of the site;
- * revised service yard arrangements;
- * provision of an online service facility;
- * construction of a new pedestrian link with the town centre; and
- * landscape and ecological improvements to enhance the nature and amenity value of the site and the surrounding land to the south-west, to the Sainsbury Store, Bath Road, Melksham, Wiltshire.

The Store – the application proposes the extension of the store to both its east and west elevations, plus an extension to the existing first floor. The western elevation would be extended to provide for additional sales floorspace (approximately an additional 555sqm), a bakery and an online service area. To the east there would be an extension providing an extended and relocated servicing area, which would in turn allow approximately another 700sqm of sales floorspace for the store. Above the service area, the first floor would be extended to provide further ancillary support floorspace for the store. The extensions would be constructed of materials to match the existing, ie reconstituted Bath stone faced blockwork with cladding to the roof. The walls of the service yard would also be constructed of matching blockwork. The access to the service yard would be as existing (ie off Bath Road), but one of the access roads within the store would be realigned so that it could also serve the relocated petrol filling station.

The Petrol Filling Station – the existing one lies to the northern edge of the site adjacent to the bank of the River Avon. The application seeks to relocate it to the south-eastern corner of the site, in the area currently known as The Bear car park. It would be a self-service station, with associated landscaping. The existing access to the car park would be retained for pedestrian use only, and a footpath would be provided round the edge of the site to the store. The public sewer crossing the site would be diverted and have a three metre easement each side.

Car Park – the relocation of the petrol filling station would allow additional car parking provision for the store. A new access road would be located along the northern edge of the site to provide access to a further car park to the west of the store, and the online facility. Landscaping would be provided along the northern edge of the access road, and to the western boundary of the car park, to compensate for that lost by its extension.

Landscaping Works – In addition to the new pedestrian access off Bath Road, the existing footpaths in the site would be retained, including those along the river bank and that going into the church yard. Landscaping would be provided along the site edges and the existing flood storage area would be extended as a result of the proposed extensions and car park enlargements.

The application has been supported with the following information and submissions:-

- * a design and access statement;
- * a transport assessment;
- * a statement of community consultation;
- * a protected species survey;
- * a retail assessment;
- * an air quality assessment;
- * a noise assessment;
- * a flood risk assessment; and
- * a geo-technical and geo-environmental assessment.

The supporting statement for the application concludes:-

“The proposed extension will enable Sainsbury’s to upgrade the existing store by:

- * improving the quality and range of the existing non-food retail offer in an improved and modern foodstore shopping environment;
- * allowing for qualitative improvements to the internal layout of the store to provide a more comfortable and enjoyable shopping experience for all customers;
- * facilitating more innovative and attractive product displays; and
- * helping to relieve congestion in the store and the ‘back-up’ areas of the store.

“In retail terms, the proposed extension meets a quantitative need for comparison goods floorspace identified in the West Wiltshire Retail Needs Study (2007). Meeting the identified need at an existing

town centre retail anchor complies with the sequential approach to site selection and will ensure both qualitative and quantitative benefits to the town centre as a whole.

“Improving the range of non-food goods on offer at the application store will increase the attractiveness of the store and the town centre as a retail destination. The proposed extension and alterations to the store will increase its ability to compete with larger stores in nearby Chippenham and Trowbridge. In turn, an improved anchor store will increase the attractiveness of Melksham Town Centre as a retail destination and its ability to satisfy the shopping needs of the catchment population in the face of competition from alternative centres and facilities in the sub-region.”

In support of the application Sainsbury wrote a letter to all Members of the Planning Committee explaining the need and benefits of their proposal. This letter was summarised on the late list for the Committee meeting of the 10th February, and stated Sainsbury “seeks to more comfortable shopping experience and a wider product choice for customers”, which will achieve the following:

- 91 additional car parking spaces for both the town store and the town;
- improved access to the store from the town centre, particularly with the new pedestrian link;
- relocation of the petrol filling station away from the listed town bridge;
- an improved landscaping scheme, including an enhanced riverside walk; and
- the creation of approximately 30 jobs.

“There has been an extensive community consultation to address local concerns, including matters such as lighting, acoustic issues, litter, landscaping and enhancement of the riverside walk.”

6. Planning Policy

Wiltshire Structure Plan 2016

DP1 – Priorities for sustainable development

DP2 – Infrastructure

DP3 – Development Strategy

DP5 – Town centres, district centres, and employment areas

DP6 – Shopping

T3 – Public passenger transport

T5 – Cycling and walking

T6 – Demand management

C1 – Nature conservation

C2 – Nature conservation

C3 – Nature conservation

C5 – The water environment

HE2 – Other sites of archaeological or historic interest

HE7 – Conservation Areas and Listed Buildings

West Wiltshire District Plan - First Alteration 2004

C6 – Areas of High Ecological Value

C9 – Rivers

C17 – Conservation Areas

C23 – Street scene

C24 - Advertisements

C25 – Shopfronts

C31A - Design

C32 – Landscaping

C35 – Light pollution

C37 – Contaminated land

C38 – Nuisance

C40 – Tree planting

LP1 – Protection and enhancement of existing open space or sport and recreation provision

CR1 – Footpaths and rights of way

CR3 – Greenspace network

T9 – Bus services

T10 – Car parking

T11 – Cycleways

T12 – Footpaths and bridleways
SP1 – Town centre shopping
SP3 – Out of centre shopping
U1A – Foul water disposal
U2 – Surface water disposal
U4 – Groundwater Source Protection Areas
I1 – Implementation
I2 – Access for everyone

National Guidance

Planning Policy Statement 1 - Delivering Sustainable Development
Planning Policy Statement 4 - Planning for Sustainable Economic Growth
Planning Policy Statement 9 - Biodiversity and Geological Conservation
Planning Policy Guidance 13 - Transport
Planning Policy Guidance 15 - Planning & the Historic Environment
Planning Policy Guidance 16 - Archaeology & Planning
Planning Policy Guidance 23 – Planning & Pollution Control
Planning Policy Guidance 24 - Planning & Noise
Planning Policy Statement 25 - Development & Flood Risk

7. Consultations

Melksham Town Council state “After considering the minor alterations to the plans, and listening to the members of the public present the Town Council’s previous objections made on 30 March 2009 still stand ie: “Displacement of water. There is already a problem with flooding in the area, there is a concern if areas that currently flood are built upon, where will water go, especially as there are houses nearby in Church Walk / Canon Square area, which could be damaged.

“Again regarding displacement of water, this could even dry out some properties in Church Walk and the Conservation Area.

“Flooding. This is already a problem, the footpath adjacent to Sainsburys currently floods as does the small access road leading to the rear of properties in Victoria Terrace / Church Walk, if building work goes ahead this could make the problem worse. There is also a flooding problem to the rear of Sainsburys, however, it is not clear if this is a result of blocked drains and it was asked what plans are in place to resolve this problem now and in the future.

“The removal of the balancing pond to allow for the extra car parking may also cause more flooding problems.

“There is a concern there are existing underground water courses in this area which could be disturbed if building work across ahead. This situation needs to be looked into in more detail.

“Relocation of the petrol filling station could cause pollution problems ie fumes, light from the petrol station and cars and also noise from the cars to nearby properties in Victoria Terrace, Church Walk, and Canon Square. This matter needs to be looked at carefully and whether there is a need to move the petrol filling station at all as this is a safety issue for nearby residents. Indeed could the extra parking spaces be provided on the proposed new petrol station site. There needs to be clarification on how many more extra parking spaces there will be as several documents available seem to contradict each other.

“If this application goes ahead there needs to be a restriction on the delivery times, as current delivery times cause noise pollution problems for nearby residents.

“Part of this application affects houses in a Conservation Area and indeed part of the application encroaches onto a Conservation Area. The Conservation Officer and English Heritage need to be informed of this application as consideration needs to be given to how this application impacts on the Conservation Area.

“Riverside Walk. Currently this footpath is not maintained to a satisfactory standard and any maintenance, cleanliness issues need to be part of any Section 106 Agreement relating to this application.

“There needs to be reassurances that the building work will have no impact on the neighbouring properties in the Conservation Area, as had happened in the past when pile drivers were used.

“It was noted that residents in Victoria Terrace and Canon Square were not informed of the planning application.

“There seems to be confusion on how many more parking spaces will be provided.

“Recycling bins. These need to be positioned so as not to cause a nuisance to nearby neighbours.

“If minded to give permission to this application, could a condition be placed on any planning permission that Church Walk is repaired to a satisfactory condition.

“Planning policies C18, C21, C31A, C32, C35, C36, and C38 apply.

“The Town Council also wished to add the potential risk to customers using the new pedestrian access via The Bear Public House across the service road.”

Highways Authority state “The layout is now acceptable, subject to the following conditions being attached to any planning permission granted:-

* No development shall commence on site until full construction details of the alterations to the site layout as indicated on drawing reference CHQ.0707707 - PL05 P have been submitted to and approved by the Local Planning Authority; the measures shall be implemented in accordance with the approved details before the store extensions are first brought into use. Reason: To ensure a safe and satisfactory access and parking arrangement.

* No development shall commence on site until full details of the bus gate, including a scheme for its operation and maintenance, shall be submitted to and approved by the Local Planning Authority; the bus gate shall be in continuous operation on first use of the store extensions in accordance with the approved scheme. Reason: To prevent unauthorised and unsafe use of the bus gate and to ensure the bus gate remains available at all times.”

Library & Museum Services state “Thank you for sending the revised plans / information regarding the proposal above. Assuming we have received all such revisions, and there are no material changes to the plans, layout, footprint etc, I can confirm that we have no further comment to make, but reiterate the advice provided by my predecessor, Vanessa Clarke.”

The previous responses of the Section were as follows:- “Following on from the emails below, I recommend that the following condition is attached to any forthcoming planning consent:

“Recommendation: Full condition - archaeological watching brief. No development shall commence within the area indicated (proposed development site) until:

- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

“Further Recommendations: The work should be conducted by a professional recognised archaeological contractor in accordance with a brief issued by this office and there will be a financial implication for the applicant.”

Strategic Planning state “Key Issues: The application looks to the additional land purchased as an opportunity to increase the convenience offer of the retail store modernising an older facility, and to use this to facilitate the enhancement the existing peripheral landscaping, improve the ecology and also improve the pedestrian link with the town centre of the store.

“Whilst enhanced links and landscaping are welcome, the key test of suitability comes from criteria set out in Planning Policy Statement 6 - Planning for Town Centres; namely that there should be a need for the development, and that it should not impact upon the vitality and viability of the town centre. Furthermore, given that the extension to the store in gross floorspace is greater than 200 square metres a sequential test should be applied to the proposal (paragraph 3.29 of Planning Policy Statement 6 - Planning for Town Centres).

“Both the Retail Assessment submitted with the application and the West Wiltshire Retail Needs Study 2007 demonstrate that there is quantitative need for additional convenience retailing in Melksham, and that the extension will not have an excessive impact on the town centre.

“Although the Sainsbury’s development can be described as edge of centre, the store is already in existence. This ensures that the criteria in the sequential test is fulfilled by the need to improve the offer of an “anchor” for Melksham town centre retail offer.

“In terms of Structure Plan Policy DP6, the location of the store at one of the main settlement centres ensures it is in line with the retail hierarchy. Also given that the retail assessments have shown there should be no adverse impact on the town centre in terms of viability and vitality the application satisfies structure plan requirements.

“Conclusions: The need assessment and sequential test both demonstrate that the proposed extension will have a positive benefit to Melksham

“Policy Recommendation: The application is in line with strategic policy.”

Environment Agency state “Further to the submission of a revised Flood Risk Assessment on 27th October, the Environment Agency wish to withdraw its objection to the proposal subject to the following conditions forming part of any permission granted:

* Condition: The floodplain compensation scheme must be delivered prior to the enhancement of the car park and shop extension development. Reason: to ensure that the flood risk to the land is not increased at any time during or after the development.

* Condition: No development approved by this permission shall be commenced until a scheme for the provision of surface water drainage works has been submitted to and approved by the Local Planning Authority. The drainage works shall be completed in accordance with the details and timetable agreed. Reason: to prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal. Note: We expect the surface water drainage scheme to be delivered to improve the drainage of the existing car park. As can be seen in the photo enclosed there is an apparent drainage problem that must be rectified.

* Condition: No development shall commence until detailed plans and cross-sections showing the maintenance to the River Avon have been submitted to and formally approved in writing by the Local Planning Authority. Reason: to ensure that there is continued maintenance access along the River Avon.

“With regard to the responsibility for, and programme of operation and maintenance of the flood storage area, your council may consider it more appropriate for these issues to be addressed and secured through a Section 106 Agreement. We would welcome your council’s confirmation with respect to this matter.

“The failure to adequately operate and maintain the flood storage areas could potentially result in increased flood risk to the development and land / property in third party ownership.

“In the event of planning permission being given we request that the Decision Notice contains the following information: Under the terms of the Water Resources Act 1991 and the Land Drainage Byelaws, the prior written consent of the Agency is required for any proposed works to structures in, under, over, or within 8 metres of the top of the bank of the River Avon, designated a ‘main river’. Please contact our Development and Flood Risk team on 01278 484654 for guidance on how to apply for Flood Defence Consent.

“Please note that the conditions recommended in our letter dated 30 June 2009 remain relevant to this proposal.”

These conditions were as follows:

* Condition: Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the Local Planning Authority. That scheme shall include all of the following elements unless specifically excluded, in writing, by the Local Planning Authority.

1. A site investigation scheme, based on the preliminary risk assessment and previous site investigations already undertaken, to provide additional information to be used to prepare a detailed quantitative assessment of the risk to all receptors that may be affected, including those off site.

2. The results of the site investigations and risk assessment (1), and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken.

3. A verification report on completion of the works set out in (2) confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

Any changes to these agreed elements require the express consent of the Local Planning Authority. Reason: to provide additional assessment of the site regarding the level of contamination present and the likely impact that it will have on controlled waters. The date will allow a suitable remedial scheme to be developed and implemented to ensure that the proposed development will not cause pollution of controlled waters.

“The Environment Agency recommends that developers should:

1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination;

2. Refer to the Environment Agency Guidance on Requirements for Land Contamination Reports for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, eg human health.

3. Refer to our website at www.Environment-Agency.gov.uk for more information.

“Condition: Prior to development commencing, an Ecological Management Plan detailing how the habitats created as a result of the development will be managed in future for wildlife benefits should be prepared and submitted in writing for approval by the Local Planning Authority. The plan should also state who will be responsible for ensuring the management is carried out in the long-term.

Reason: to protect and safeguard the wildlife value of the site.

“Condition: A Construction Ecological Management Plan / Method Statement should be prepared and submitted in writing to the Local Planning Authority prior to development commencing. This plan should provide details of how works will be carried out on site with regard to protecting the wildlife and river corridor. Reason: to safeguard the wildlife adjacent to the site during construction.

“Condition: No development approved by this permission shall be commenced until a scheme for prevention of pollution during the construction phase has been approved by the Local Planning Authority. The scheme should include details of the following:

1. Site security;
2. Fuel oil storage, bunding, delivery and use;
3. How both minor and major spillage will be dealt with;
4. Containment of silt / soil contaminated run off;
5. Disposal of contaminated drainage, including water pumped from excavations;
6. Site induction for workforce highlighting pollution prevention and awareness.

Reason: to prevent pollution of the water environment.

“Condition: Prior to the opening of the store extension / car park, a trolley management system shall be in place to restrict the removal of trolleys from the site (and in particular prevent access for trolleys to the River Avon) in full accordance with details submitted to and approved in writing by the Local Planning Authority, unless otherwise agreed in writing by the Local Planning Authority. Thereafter the agreed measures shall be retained. Reason; to prevent pollution of the water environment and reduce the potential of blockage to flood flows.”

Wessex Water state “I refer to the recent application in respect of the above and can confirm the following:

“Foul Sewerage. I refer to the applicants drawing 659B-031A and note the public foul sewers which cross the site proposed for the relocated petrol station. We have been in discussions with the applicant’s consultants but as yet no diversion agreement is in place.

“Surface Water. There should be no surface water connections to the public foul sewer. The only exception will be the surface water from underneath the petrol station canopy, which subject to agreement of details, may discharge to the public foul sewer via a petrol / oil interceptor.”

Planning Policy – Flooding Matters state “It is understood that parts of the proposed development site are located within the floodplain. However, the majority of this area falls within Flood Zone 3a and therefore as less vulnerable development, as defined by Planning Policy Statement 25 - Development & Flood Risk, is considered as appropriate. A small area of the development site falls within Flood Zone 3b and on this basis it should be demonstrated that the Sequential Test has been passed. It is understood that the only part of development that will fall within Flood Zone 3b is part of the store car park.

“It should be noted that as the proposal is to extend an existing store, avoiding development within the floodplain would involve re-locating the store to another site in Melksham. The existing store is currently located in close proximity to the Primary Retail Frontage and so any alternative site would need to be identified in a highly sustainable, town centre location and in or in close proximity to the Primary Retail Frontage. It is not appropriate to consider out of town locations for the re-location of this store. It is considered that moving this store to an out of town location would be likely to have a significant negative impact on the town centre.

“Existing retail in the heart of Melksham has suffered from the existing economic climate and town centre regeneration has been identified as a priority for the emerging Wiltshire Core Strategy. The existing Sainsbury’s performs as an anchor store in Melksham and loss of this retailer in the town is likely to have a significant negative impact on the vitality of the town centre. A summary of the business case for store location has been made by the developer (Appendix 1) and this is supported by Spatial Planning.

“There are no other sites in the town centre of Melksham and in close proximity to the Primary Retail Frontage that can be considered suitable or large enough for the development of a supermarket.

“The developers have prepared plans for flood alleviation work which will allow the reclassification of the affected area from Flood Zone 3b to 3a. Details are attached as Appendix 2.

"It is considered that no alternative sites are available for a supermarket within the heart of the town centre. Work is proposed that will provide flood protection and allow the reclassification of the affected Flood Zone area to Flood Zone 3a. This will result in any development being classified by Planning Policy Statement 25 - Development & Flood Risk as 'appropriate'. For the reasons described above it is considered that the Sequential Test is passed."

Conservation Officer has not replied to the revised plans reconsultation but initially stated "The extension of the main building the service yard to the east, combined with the relocation of the petrol filling station (PFS) to the eastern corner, would result in a significant increase in built form and activity in the area adjacent to the Conservation Area."

"Policies C17 and C18 of the West Wiltshire District Plan - First Alteration 2004 apply to this case even though the site is outside the Conservation Area. The explanatory paragraph 2.4.4. states "Within Conservation Areas or outside, where development proposals would affect the setting, in particular, views into or out of the area, the preservation of their special character and / or appearance will be the primary consideration."

"The gap on Bath Road between The Bear Public House and No 5 Bath Road is a principal view of the site from the Conservation Area and consequently this aspect is very important to the character and setting of the Conservation Area. This gap would be completely compromised by the positioning of the PFS in such close proximity to the Conservation Area."

"Church Walk is within the Conservation Area and there are various glimpses of the store and the site that will be affected. The visual gap to the east of No 27 Church Walk would be the most affected and would be compromised in a similar way as above regarding the relocated PFS. This would also have a negative impact on the settings of 34 and 36 Church Walk, both of which are Grade II Listed Buildings."

"From the Sainsbury's site, there is an area of space between the existing car park / service yard and the Conservation Area edge and Church Walk. This space is important in maintaining a break in built form between the Conservation Area and the modern supermarket site. To fill this entire area with the extension, new service yard and barrier walls and the relocated PFS would result in the blurring of this site with the historic Conservation Area. The modern built form would be in such close proximity that it would result in irreparable harm to the Conservation Area as the setting of this important historic area would be lost."

"A benefit of relocating the petrol filling station is that there would be a small improvement in the setting of the Grade II listed town bridge. Although there would be an improvement in that the structure would be removed, the area would then be given over to car parking which would still have a negative impact on the setting of the listed bridge."

"Regarding the proposed extension of the store to the west, I do not consider that this would have any greater impact on the listed buildings in Church Walk or the Conservation Area than the existing building."

"In conclusion, the eastern extension, new service yard and relocated PFS, due to their poor relationship in such close proximity to the Conservation Area and Listed Buildings, would harm the character and setting of the Conservation Area and the settings of the nearby Listed Buildings in Church Walk."

"Recommendation: Refuse."

The Planning Committee deferred making a decision on the application until a response from the Conservation Officer on the revised plans submitted by the applicant was received. The Conservation Officer has now made comments and would like those made post-committee and his informal comments of the 1st June 2009 included within the report. These have all been attached below for consideration. It should also be noted that the Conservation Officer has now entered into negotiations with the applicant as regards his objections to the scheme. This meeting is scheduled for the 4th March 2010, and the outcome will be reported on the late list."

In the interim he has commented:

“Permission for housing at The Bear site clearly removes my argument over the loss of visual gap next to The Bear, adjacent to the Conservation Area, however I do feel that the scheme for housing would be preferable in design terms to the Petrol filling station.

“I still consider that the Petrol filling station would have an adverse visual impact on the Conservation Area due to its unsympathetic design whereas the housing scheme would be broadly in keeping with the surrounding built form. My comments regarding views of the site and proposals from Church Walk, and therefore the impact on those listed buildings and the Conservation Area, are unchanged.

The proposed plans have not been revised to address my earlier comments and therefore my position has not altered since the email sent to the case officer on 1st June 2009, copy attached.

“My only additional comment concerning the latest revised plans is that the originally proposed 2.1m timber fence, on the extension at the eastern end of north elevation, is now proposed to be a 4m high wall built in ‘marigold coloured tarmac topblocks’. This would result in further harm to the settings of the listed buildings on Church Walk and to the special character and appearance of the Conservation Area due to the increase in height and use of unsympathetic materials.

“Recommendation:Refuse

Environmental Health states “Matters considered: Noise, amenity, air quality, contaminated land. Food comments: No objection in principle – see informative below. Licensing comments: Not consulted. Safety comments: No general concerns (disappointed that reduction in customer toilets). Protection comments: Contaminated land. The development site has been subject to a previous site investigation undertaken in the approximate area of the proposed development. This study identified that there was a possibility of gas arising from peaty deposits and that there was also the possibility of some historic contamination in the made ground in the approximate region of the proposed development. This original study was undertaken on the assumption that housing was to be developed and the proposed commercial use is clearly less sensitive. It will however be necessary to undertake a survey to determine the existence and extent of any possible contamination and to ensure that the development mitigates any risks to a satisfactory level. Recommendation: No objections subject to conditions. Conditions:- Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 1 to 4 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

1. Site characterisation. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- i. a survey of the extent, scale and nature of contamination;
- ii. an assessment of the potential risks to:
 - * human health;
 - * property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - * adjoining land;
 - * groundwaters and surface waters;

- * ecological systems;
 - * archaeological sites and ancient monuments;
- iii. an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11".

2. Submission of remediation scheme. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of approved remediation scheme. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of unexpected contamination. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 2, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

5. Long term monitoring and maintenance. A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination CLR 11".

Reason: to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

"Informatives: Reduction in toilet facilities for customers is disappointing given increased retail area. Applicant is advised to reconsider. Minimum of two extra urinals for male customers should be considered within current scheme. Further application for inclusion of small café might reasonably be expected as a future development which would also impact on scale of provision of customer toilets.

"Air Quality. The applicant has carried out monitoring and modelling of Benzene levels from the proposal to move the fuel filling station onto the carpark of "The Bear". The consultant concluded that Benzene levels will be well below the National Air Quality Objective which comes into force in 2010. I accept the conclusions. There is no Air Quality Management Area in Melksham and it is not considered that increases in traffic will make a significant difference to existing Nitrogen Dioxide Levels, the pollutant most affected by road traffic. I therefore have no objection on grounds of Air Quality.

“Noise. I have previously objected to plans for extended delivery hours, due to the proposal to build dwellings in “The Bear” car park. This proposal would extinguish that permission and instead move the filling station onto that locality. The applicant’s consultant has carried out a thorough review of previous noise surveys and modelled the impact of this proposal. It concludes that there will be no unreasonable impacts and that noise levels will meet national planning guidelines. I have audited the work and am satisfied that it is robust. I am satisfied that this proposal is acceptable in terms of noise.”

Regeneration Officer states “The proposals to extend the store and remodel the external form and function of the site are acceptable in terms of town centre regeneration. This is the right site in terms of town centre large floorplate retail provision and the delivery of the proposed improvements may well off-set the potential detrimental impacts of the edge of town ASDA development in terms of minimising leakage from the town centre. The proposals to improve pedestrian linkage with the town centre are to be welcomed as this has scope to allow linked shopping trips to the town centre which would benefit other existing retailers. This scheme has potential to enhance the vibrancy and vitality of Melksham Town Centre and is to be welcomed in terms of its economic and regeneration benefits.”

Drainage Engineer has not responded. A further reminder letter for a response has been sent, and any comments received will be reported on the late list.

Tree & Landscape Officer has not responded. A further reminder letter for a response has been sent, and any comments received will be reported on the late list.

Building Control has not commented. A further reminder letter for a response has been sent, and any comments received will be reported on the late list.

Economic Development has not commented. A further reminder letter for a response has been sent, and any comments received will be reported on the late list.

County Ecologist states “Relevant Policy and Guidance: PPS 9, ODPM Circular 06/2005, Habitats Regulations 1994 (as amended), Wildlife and Countryside Act 1981 (as amended).

“Background: I have reviewed the Protected Species Surveys report (White Green Young, Feb 09), the Extended Phase 1 Habitat Survey and Great Crested Newt Presence/Absence Survey, (White Green Young, Feb 09) and also the landscape drawings (Authur Amos Assoc. 659B-03 Rev B and 659B-04 Rev A).

“Key Issues: Survey work is of a high professional standard. Key outstanding issues are the design, long term management and protection of the proposed flood compensation / habitat management and enhancement area, protection of the river during construction, translocation of reptiles, potential effects of lighting on the River Avon corridor and enhancement for bats. The Conigre Mead Nature Reserve currently lies about 150 m away from the Sainsbury’s car park and this will be reduced to 80m under the current application. I would be concerned if future development further reduced this buffer.

“ Ecological Recommendations: I suggest attaching conditions to any permission to achieve the following:

1. Long term protection of the proposed flood compensation area should be secured in perpetuity by condition or legal agreement in order to protect the features of Conigre Mead nature reserve
2. Before works commence a Construction Environment Management Plan will be submitted for LPA approval and implemented as agreed. The CEMP will cover, but not be limited to, the following:

- * Protection of the banks and water quality of the River Avon
 - * Protection of habitat used by otters
 - * Translocation of reptiles
 - * Erection of bat boxes
 - * Protection of breeding birds
3. Before works are completed a habitat management plan covering the proposed flood compensation area will be submitted for LPA approval and implemented as agreed.
4. A lighting scheme will be submitted for approval by the LPA and implemented as agreed. The scheme will demonstrate that the River Avon and its bankside habitats will remain unlit.”

Countryside Access Development Officer states “I was involved with this planning application from a highways perspective and have recently moved to the rights of way section. I have been contacted by Melksham Parish Councils who would like to see the riverside path next to Sainsbury’s upgraded (widened and better surfaced). I presume they submitted formal comments on the application which included this request. I have discussed this with Rebecca Lockwood, who is dealing with the highways aspects of the application, and we would like to let you know that we support the requests of the Parish Councils.”

8. Publicity

The application was advertised by site notice, press notice, and neighbour notification.

Expiry date: 17/iv/09 & 24/xi/09.

Summary of points raised: Forty letters have been received from twenty households and organisations, making the following comments:-

- * increased noise and light pollution from re-siting the petrol filling station, particularly as the lights are left on all night;
- * increased noise from an increase in delivery vehicles, which is already a nuisance problem;
- * loss of view in and out of the Conservation Area;
- * increased risk of flooding and disruption to the natural water course affecting wells sited in various properties in Church Walk;
- * impact on the bats in the area;
- * the roofline of the proposed extension is not in keeping with the surrounding Conservation Area;
- * when the store was originally built many houses were damaged, including several Listed Buildings, and it is a concern this will happen again;
- * the access road between Sainsbury and the rear of Church Walk regularly floods;
- * odour pollution from the petrol filling station;
- * there is no need for an extension to the store as there are already six large supermarkets in the town, and Asda on the way;
- * increased nuisance to residential properties from the new online facility and the enlarged car park;

- * loss of a small woodland area which will result in a habitat loss and visual impact;
- * there is insufficient junction capacity to support traffic flows particularly at rush hours;
- * increased noise and hooligan activity close to homes;
- * noise and fumes from the relocated petrol filling station will detrimentally impact on the business along Bath Road;
- * the layout of the new footpath from Bath Road will cause security problems for adjacent businesses;
- * the proposed new footpath will be across a petrol station forecourt and is therefore unsafe;
- * the petrol station's relocation will result in the loss of a mature tree which offers amenity value and landscape character to the area;
- * flooding already occurs every year and is getting higher in level and more frequent in occurrence;
- * loss of the old coach-house in "The Bear" carpark;
- * Sainsbury's are an inconsiderate company;
- * acoustic fencing is needed to the store and petrol filling station and online facility;
- * there will be increased opportunity for burglaries in the area;
- * there will be a future application for extended operating and delivery hours;
- * after hours racing round the car park is a regular thing, particularly in the summer and after rain;
- * the benzene in unleaded fuel is a class 2 carcinogen and will be located close to residential properties;
- * Sainsbury did not tidy up their site after the last lot of works that occurred;
- * the works will block up the historic drainage system for the area;
- * increased use of the listed bridge;
- * the applicant's "Transport Assessment" is obviously biased and uses obsolete modelling;
- * unfair to refuse domestic extensions if this application is permitted;
- * increased level of vermin in and around the site;
- * objection to 24 hour use of the site, including the petrol filling station due to the resulting noise and light pollution;
- * insurance company view that the works will cause unnecessary flooding risk to neighbouring properties, despite the view of the Environment Agency that it will have a neutral effect;
- * loss of green space adjacent to a nature reserve;
- * contamination of surrounding land and waterways from re-siting the petrol station and wash off from the increased car park; and
- * disruption to local residents when it is being constructed.

Two additional letters from the same property were reported on the late list. They stated the following:-

- * they were not notified of the proposal;
- * the loss of the floodplain will impact on properties in the surrounding area;
- * the flooding has been very close to the property in the past, so what provision will there be to stop it happening in the future;
- * what measures will the Council and Sainsbury take to stop properties flooding?

A further letter has been received since the consideration of the application by Planning Committee on the 10th February. It makes the following points:-

- * the proposal will have a serious impact on the safety and well being of Melksham residents in the event of a flooding episode. The proposals are likely to result in shifting the flood area to the north of the river Avon, affecting the properties in this area;
- * global warming is likely to increase the severity of flash floods thereby increasing the risk to local businesses and residents; and
- * the last development on the Sainsbury site increased flooding on the north side of the river.

9. Planning Considerations

9.1 This is a full application for:-

- * the erection of a single storey 1,937sq m gross extension to the eastern and western elevations of the store;
- * car park improvements and an extension to the south west of the existing car park resulting in an additional 91 car parking spaces;
- * relocation of the petrol filling station from the River Avon to the south-eastern area of the site;
- * revised service yard arrangements;
- * provision of an online service facility;
- * construction of a new pedestrian link with the town centre; and
- * landscape and ecological improvements to enhance the nature and amenity value of the site and the surrounding land to the south-west, to the Sainsbury Store, Bath Road, Melksham, Wiltshire.

9.2 The main issues to consider are:

- * retail impact;
- * flooding and drainage matters;
- * highways and sustainability impact;
- * impact on Listed Buildings and the Conservation Area;
- * amenity (noise & nuisance);
- * contaminated land matters;
- * archaeology matters;
- * miscellaneous matters.

9.3 Retail Matters. Planning Policy Statement 4 - Planning for Sustainable Economic Growth aims to maintain the vitality and viability of town centres, and that proposals that are considered to be edge of or out of centre do not undermine this function. The Sainsbury store is considered to be an edge of centre store, and as a result Policy SP3 of the West Wiltshire District Plan - First Alteration 2004 applies. This states:- "New and extensions to existing edge of centre and out of centre shopping developments, including superstores, supermarkets and retail warehouses but excluding small neighbourhood shops, will only be permitted if all of the following criteria are met:

A There is a need for the development;

B There are no suitable and viable sites available within firstly, the defined Primary Retail Frontages and secondly, (for out of centre proposals) edge of centre locations;

C The development does not, either by itself or together with other retail developments, harm the vitality or viability of nearby centres;

D The development is of acceptable scale, materials and design and does not harm the local environment or residential amenity;

E The development is sited to reduce the number and length of car journeys and is accessible by a choice of means of transport, including by foot, bicycle and public transport;

F The traffic generated by the proposal can be accommodated safely on the local highway network and sufficient car parking and servicing is provided;

Applications to vary the range of goods sold from out of centre stores, or to allow subdivision of units, will only be permitted where it can be demonstrated that the proposal would not harm the vitality and viability of the town centre's shopping role."

9.4 The Strategic Planning Section have considered the application and the retail impact of the proposal on the town centre. The store is considered to be important to the town, acting as a key anchor store for Melksham. They conclude that there is a need for the store's extension and that it will not have an adverse impact on the Melksham town centre in terms of viability and vitality. The Council's Regeneration Officer also supports the scheme in that it will allow regeneration opportunities for the town, plus offset the potential detrimental impacts of the out-of-town Asda store in terms of minimising leakage from the town centre. The edge of centre location and the proximity of the store to the town centre enables a potential reduction in vehicle movements, especially with the new pedestrian linkage to the town centre. It is considered that the scheme has the potential to enhance the vibrancy and vitality of Melksham town centre, and is to be welcomed in terms of its economic and regeneration benefits. Conditions have been suggested which limit the floorspace and type of sales occurring in the store so as to protect the vitality of the town centre. The proposal is considered to fulfil the policy requirements of SP3 of the West Wiltshire District Plan - First Alteration 2004 and the government guidance in Planning Policy Statement 4 - Planning for Sustainable Economic Growth.

9.5 Flooding and Drainage Matters. The store lies in the River Avon floodplain. A number of residents and the Town Council have objected to the proposal due to a concern that the proposal will increase flooding in the area, particularly from the River Avon. The application has been supported by a Flood Risk Assessment and has been subjected to extensive consideration and negotiation by both the Environment Agency and the Council's Strategic Flood Risk Officer. Sainsbury is considered by the Council to have an important anchor store role for the town in a sustainable location: its loss on flooding grounds is likely to have a significant negative impact on the vitality of the town centre. There are no other sites in the town centre in such close proximity to the Primary Retail Frontage that can be considered suitable or large enough for the relocation of a store the size of the proposed Sainsbury. In light of this the application has had to be robustly justified in terms of its flood impact, and an extensive range of mitigation has had to be proposed to ensure that proposal does not have a significant detrimental flooding impact on the surrounding area. The applicants have prepared proposals for flood alleviation works which have addressed the initial objection of the Environment Agency. Their objection has been withdrawn now that the Council has passed the Sequential Test, and subject to the extensive conditioning concerning the flood compensation measures and drainage of the site, no objection is raised on flooding grounds. The pollution control measures required by the Environment Agency have also been attached in order to prevent contamination.

9.6 Wessex Water have required agreement of connection onto their apparatus, and they have also requested relocation of the foul sewer that crosses "The Bear" car park. This has been suggested for conditioning, despite the applicant already being in negotiations with Wessex Water to address this matter. They also require that any surface water connections should not go to the public sewer: matters such as this can be dealt with by condition.

9.7 Highways and Sustainability Impact. The application has also been subject to extensive negotiation as regards the access and parking matters that it raises. Again the Town Council and a number of residents have objected to the application on the grounds that it would increase use of a dangerous access. The revised layout has not generated any objection from the Highway Authority

subject to conditions concerning construction details and details of the bus gate. The pedestrian access from “The Bear” car park has also raised local objection, but it is felt to be a significant improvement to the site, enhancing its permeability to the town centre. In addition, it has not raised any objection from the Highway Authority, although a condition has been suggested requiring further details of the route so as to ensure public safety.

9.8 Impact on the Listed Buildings and Conservation Area. The site is surrounded by a number of Listed Buildings and is adjacent to the Melksham Conservation Area. The Town Council and several residents have objected to the detrimental impact of the extension of the store on the Conservation Area and the settings of Listed Buildings. Concern has been raised in particular about the impact of the petrol filling on the built heritage. The relocation of the petrol filling station has the benefit of improving the setting of the Listed town bridge, although this view is not supported by the Council’s Conservation Officer. He considers that the replacement car parking would also have a negative impact on the Listed Building. The Conservation Officer initially objected to the scheme in terms of its impact on the Conservation Area and Listed Buildings, considering that the extensions to the store and the relocated petrol filling station result in a significant increase in the built form and activity in the area which also results in a loss of views and vistas into and out of the site. Despite the submission of revised plans and several requests for comments, the Conservation Officer has not commented on these changes. Although he has not commented on the revised proposals his original comments did not consider the extant housing permission on the site, which also results in a significant loss of views and increased built form in the area. The absence of comments from the Conservation Officer on the revised scheme means that an “on-balance” judgement has to be made, particularly in view of the importance of the store on the vitality and viability of Melksham town centre. The store has been extended several times in the past, and the recent planning permission for housing on The Bear car park is a material consideration in the processing of this application. On balance, it is felt that the existing proposals are not significantly detrimental to the Conservation Area and Listed Building to warrant a refusal.

9.9 Amenity Matters, Including Noise & Nuisance. A large number of the neighbouring residents who have responded to the application’s publicity procedures have objected to the proposal in terms of the increased nuisance to neighbouring residential properties. The increased size of the store is felt to result in more deliveries, which are already causing noise nuisance during the night-time. The relocation of the petrol filling station is considered to result in light, noise, and fumes nuisance, that would be additional to that currently experienced. The Environmental Health Section have not raised any objection to the proposal on amenity grounds. They consider that the petrol filling station will not make a significant difference to existing pollution levels, and that the extensions to the store will not result in unreasonable impacts, and that it will meet national planning guidelines. They have not made any comments on light pollution. No conditions have been suggested by the Section, but in view of the extensive planning history to the site, the established delivery hours and operational requirements have been suggested, as has a condition on lighting to the site. An informative has also been attached as regards the Section’s request for additional customer toilets.

9.10 Contaminated Land. Both the Environment Agency and the Council’s Environmental Health Section have made extensive comments on the resolution of contaminated land matters on the site. They require a comprehensive survey to determine the existence and extent of any possible site contamination and to ensure that the development mitigates any risks to a satisfactory level. These have also been suggested.

9.11 Archaeology Matters. The extension to the site requires an archaeological assessment, which due to negotiations during the processing of the application, can be dealt with by the imposition of a condition. This requires an archaeological watching brief prior to the commencement of development on the site.

9.12 Nature Conservation Matters. The River Avon has a high nature conservation importance, that includes its banks and floodplains. The applicant was supported with a protected species report,

which the County Ecologist and the Environment Agency have assessed. Both required additional conditions to protect the wildlife and their habitats, including an Ecological Management Plan, and these have been suggested.

9.13 Miscellaneous Matters. The publicity responses raised several objections in that building the store caused damage to neighbouring properties, particularly those to the south of the store in the Church Walk vicinity. Alleged structural damage to properties is not a planning matter, so cannot be addressed through the processing of this application. Any claims of this nature should be dealt with outside of the planning system.

9.14 The Town Council would like the applicant to repair Church Walk. Requests of this type need to be considered in light of Circular 11/95 as to whether such conditions would be relevant to the development to be permitted. Whereas works to the footpath along the riverside are relevant to the consideration of this application, the refurbishment of Church Walk is considered not to be, and therefore no conditions concerning it have been suggested.

9.15 The provision of the new pedestrian link via The Bear car park has raised security concerns from the nearby residents. A condition has been suggested as regards security measures to the site, including the provision of CCT to protect both the users of the footpath and the adjacent businesses, occupiers, and residents.

9.16 Several letters of complaint were received as to publicising the application. The statutory requirements were met as regards publicising the application, including the posting of site notices and undertaking neighbour notification.

.10. Deferred Issues

10.1 The report was first considered by the Planning Committee on the 10th February 2010, and it was deferred for the following additional information and research to be undertaken:-

- * - to ascertain the latest flooding legislation and the Council's position;
- * - to consider gating the car park out-of-hours;
- * - to ascertain the comments of the Conservation Officer on the revised plans;
- * - to renegotiate the impact of the petrol filling station on Church Walk;
- * - to reword conditions with hours – ie do to use the standard format;
- * - check whether the planning system can increase the number of toilets in the store, or whether this is covered by other legislation;
- * - ascertain the arrangements for disabled access to the petrol filling station;
- * - chase the missing consultation comments;
- * - request an increase to the two-hour parking restriction on the site; and
- * - request information signage to the town centre.

10.2 Latest Flooding Legislation. At the Planning Committee meeting on the 10th February Members requested officers to ascertain what the latest legislative situation was and whether the application and the Environment Agency had considered it in relation to the most up-to-date position. It was considered that recent legislation had come into force that would have a material impact on the processing of the application. Your officers have contacted the Environment Agency to ascertain what the latest legislative situation is, and they "confirm that our recent comments remain relevant. I believe that it is the Practice Guide, published December 2009 that the Councillor refers to, but this is advisory and does not alter our comments."

10.3 Out-of-Hours Car Park Gating. Members requested consideration of gating the store's car park out-of-hours to prevent its nuisance use. Although the Highways Authority have no objection to this proposal, Sainsbury have raised concern as regards the provision of emergency access to the river which would need to be gained at all times. To address security and nuisance concerns Sainsbury have agreed that the whole site would be covered by CCT. In addition to emergency river access concerns, if the site was gated it may well also prevent the other businesses and individuals who share use of the site gaining access.

10.4 Comments From the Conservation Officer on the Revised Plans. The Conservation Officer's comments on the revised plans have now been received and he maintains his objection (see consultation comments section within this report). A meeting has been scheduled with the Conservation Officer and Sainsbury to discuss whether his objections can be overcome, the outcome of which will be reported on the late list.

10.5 To Renegotiate the Impact of the Petrol Filling Station on Church Walk. Sainsbury are meeting with the Conservation Officer to discuss the petrol filling station, and the outcome will be reported on the late list.

10.6 To Reword Conditions 12 and 13 With Hours. This has been done.

10.7 To Check Whether the Planning System Can Increase the Number of Toilets in the Store. Toilet provision within the store is not a planning matter, so Members request to increase provision cannot be addressed through the application. Sainsbury point out that the number of toilets on site is legislatively compliant.

10.8 To Ascertain the Arrangements for Disabled Access to the Petrol Filling Station. The kiosk-free petrol filling station raised concerns from Members as to how it was to be used by those with mobility problems. The pumps will be constructed to be DDA compliant, provided with a button to summon assistance.

10.9 To Chase the Missing Consultation Comments. This has been done, and any comments received will be reported on the late list.

10.10 To Request an Increase to the Two-hour Parking Restriction on the Site. Members requested that Sainsbury increase their free parking at the site from two hours to three. Sainsbury have agreed to this subject to a parking management condition being attached that allows the time limit to be varied if they find it being abused by non-shoppers. This has been suggested (see Condition 35).

10.11 To Request Information Signage to the Town Centre. Members requested signage to the town centre. This has been agreed, as has signage to the riverside, and a condition has been attached for its provision (see suggested condition 36 and the informative concerning the need for Advertisement Regulations Consent).

10.12 Sainsbury have also agreed to submit revised drawings of the petrol filling station without any signage shown. These drawings will also incorporate any changes required by the Conservation Officer, if required. Please note that advertisements and signage may need a separate Consent under the Town & Country Planning (Control of Advertisements) (England) Regulations 2007.

Recommendation: Permission

For the following reason(s):

The proposed development conforms to the Development Plan and the conditions attached to it overcome any objections on planning grounds.

Subject to the following condition(s):

1 The development hereby permitted shall begin 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 of the external materials for the development, including the petrol filling station, have been submitted to and approved in writing

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

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

POLICIES: West Wiltshire District Plan - First Alteration 2004 – Policies C17, C18, C31A, and SP3.

- 3 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 details of which shall include:
- (a) indications of all existing trees and hedgerows on the land;
 - (b) details of any to be retained, together with measures for their protection in the course of development;
 - (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
 - (d) finished levels and contours;
 - (e) all means of enclosure including all walling, fencing, railings, etc;
 - (f) car park layouts;
 - (g) other vehicle and pedestrian access and circulation areas;
 - (h) hard surfacing materials;
 - (i) minor artefacts and structures (eg furniture, play equipment, refuse and other storage units, signs, lighting, etc);
 - (j) proposed and existing functional services above and below ground (eg drainage, power, communications, cables, pipelines, etc, indicating lines, manholes, supports, etc)

REASON: to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policies C17, C18, C31A, C32.

- 4 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the buildings or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: to ensure a satisfactory landscaped setting for the development and the protection of existing landscape features.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policies C17, C18, C31A & SP3.

- 5 No development shall commence on site until details of all earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, and the nature of the material, showing the relationship of proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with the approved details.

REASON: to ensure a satisfactory landscaped setting for the development and in the interests of flood prevention.

POLICY: Planning Policy Statement 25 - Development & Flood Risk and West Wiltshire District Plan - First Alteration 2004 - Policy C32.

- 6 No development shall commence on site until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved in accordance with the approved details.

REASON: to ensure the proper management of the landscaped areas in the interests of visual amenity and in the interests of flood prevention.

POLICY: Planning Policy Statement 25 - Development & Flood Risk and West Wiltshire District Plan - First Alteration 2004 – Policy C32.

- 7 No development shall commence on site until full construction details of the alterations to the site layout as shown on drawing reference CHQ.0707707-PL05-P have been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in accordance with these approved details before the store extensions are first brought into use.

REASON: to ensure a safe and satisfactory means of access and parking arrangements.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy SP3.

- 8 No development shall commence on site until full details of the bus gate, including a scheme for its operation and maintenance, shall be submitted to and approved in writing by the Local Planning Authority. The bus gate shall be in continuous operation on first use of the store extensions in accordance with these approved details.

REASON: To prevent unauthorised and unsafe use of the bus gate and to ensure the bus gate remains available at all times.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy SP3.

- 9 No development shall commence on site until a management plan for the use of the service yard, including details of the provision for loading and unloading of goods within the site has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in accordance with these approved details before the store extension is first brought into use, and at all times thereafter.

REASON: To ensure that adequate provision is made for servicing in the store in the interests of highway safety.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy SP3.

- 10 No development shall commence on site until full details of the cycle parking facilities shown on drawing CHQ.07.7707-PL05-P have been submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be implemented in accordance with these approved details before the store extensions are first brought into use, and shall be retained in accordance thereafter.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided to encourage travel by means other than the private car.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy SP3.

- 11 No materials, goods, plants, machinery, equipment, finished or unfinished products or parts of any description, skips, crates, cages, containers, waste or any other item whatsoever shall be placed, stacked, deposited, or stored outside any building on the site without the prior approval in writing of the Local Planning Authority.

REASON: In the interests of the appearance of the site and the amenities of the area, and in the interests of flood prevention.

POLICY: Planning Policy Statement 25 - Development & Flood Risk, and West Wiltshire District Plan - First Alteration 2004 – Policies C17, C18, C38, and SP3.

- 12 The delivery and despatch of goods to and from the site shall be limited to between the hours of 0600 and 2300.

REASON: in order to safeguard the amenities in which the development is located.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy C38 and SP3.

- 13 The use of the petrol filling station hereby permitted shall only take place between the hours of 0700 and 2300 on Monday to Saturdays, and 0900 and 2200 hours on Sundays and Bank Holidays.

REASON: in order to safeguard the amenities in which the development is located.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policies C38 and SP3.

- 14 The use of the online deliveries facility hereby permitted shall only take place between the hours of 0800 and 2200 on Mondays to Saturdays, and 09.00 and 1700 on Sundays and Bank Holidays.

REASON: in order to safeguard the amenities in which the development is located.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policies C38 and SP3.

- 15 No development shall commence on site until full details showing ventilation and extraction equipment within the site, including that to suppress and disperse any fumes and or smell created by the cooking operations on the premises have been submitted to and approved in writing by the Local Planning Authority. The details shall include details of noise attenuation, position and appearance. The approved equipment shall be installed before the first use of the store's extensions, and shall thereafter be maintained in accordance with these approved details.

REASON: in order to safeguard the amenities in which the development is located.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policies C38 and SP3.

- 16 No external lighting shall be installed on site before full details showing the type of light appliance, the height and position of fitting, illumination levels, light spillage, and hours of use, have been submitted to and approved in writing by the Local Planning Authority. These details shall include all measures for security lighting to the site. The lighting and use approved shall be installed and maintained in accordance with these approved details.

REASON: in the interests of the amenities of the area and to minimise unnecessary light spillage.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy C35 and C38.

- 17 No development shall commence on site until details of the storage of refuse, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority. These arrangements shall be undertaken in accordance with these approved details and shall be brought into use before the first use of the store's extensions. The approved arrangements shall be subsequently maintained in accordance with the approved details thereafter.

REASON: in the interests of public health and safety.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policies C38 and SP3.

- 18 No development shall commence on site until a scheme to restrict shopping trolleys leaving the site has been submitted to and approved by the Local Planning Authority. The development shall not be first brought into use until the approved scheme has been brought into operation. The approved scheme shall be maintained in operation in accordance with these approved details.

REASON: in the interests of the character, appearance, and amenities of the area, and to prevent pollution of the water environment and reduce the potential of blockage to flood flows.

POLICY: Planning Policy Statement 25 - Development & Flood Risk, and West Wiltshire District Plan - First Alteration 2004 – Policies C38 and SP3.

- 19 No development shall commence on site until details of surface water drainage from impermeable parking areas and hardstandings for vehicles, commercial lorry parks and petrol stations associated with the development to oil interceptor(s) has been submitted and approved by the Local Planning Authority. The development shall not be first brought into use until the oil interceptor(s) has/have been installed in accordance with the approved details. Thereafter the oil interceptor(s) shall be maintained in accordance with the approved details. Roof water shall not pass through the interceptor(s).

REASON: To minimise the risk of pollution of the water environment.

POLICY: West Wiltshire District Plan 1st Alteration 2004 - Policy U2.

- 20 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 brought into use until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained and to prevent the increased risk of flooding by ensuring the satisfactory disposal of surface water.

POLICY: Planning Policy Statement 25 - Development & Flood Risk and West Wiltshire District Plan 1st Alteration 2004 – Policy - U2.

- 21 No development shall commence on site until a scheme for the diversion of and the protection of the public foul sewer crossing the site has been submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with these approved details.

REASON: to protect public infrastructure on the site.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy U1A.

- 22 Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until requirements 1 to 4 (below) have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

1. Site characterisation. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons

and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- i. a survey of the extent, scale and nature of contamination;
- ii. an assessment of the potential risks to:
 - * human health;
 - * property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - * adjoining land;
 - * groundwaters and surface waters;
 - * ecological systems;
 - * archaeological sites and ancient monuments;
- iii. an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11".

2. Submission of remediation scheme. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of approved remediation scheme. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of unexpected contamination. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 2, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

5. Long term monitoring and maintenance. A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination CLR 11".

REASON: to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy C37.

- 23 The flood compensation scheme detailed in the approved Flood Risk Assessment (FRA) dated October 2009, "Extension to Sainsbury's Supermarket, Melksham, Flood Risk Assessment – Final", by Black & Veatch, shall be carried out and delivered in full prior to the first use of the car parks and store extensions.

REASON: to ensure that the flood risk to the land is not increased at any time during or after the development.

POLICY: Planning Policy Statement 25 - Development & Flood Risk.

- 24 No development shall commence on site until details of the balancing pond shown on the approved plans has been submitted to and approved in writing by the Local Planning Authority. Subsequently the scheme shall be constructed strictly in accordance with the approved details prior to the use of the store's extensions.

REASON: in the interests of flood prevention.

POLICY: Planning Policy Statement 25 - Development & Flood Risk.

- 25 No development shall commence until detailed plans and cross-sections showing the maintenance to the River Avon have been submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with these approved details, and thereafter.

REASON: in the interests of flood prevention.

POLICY: Planning Policy Statement 25 - Development & Flood Risk.

- 26 No development shall commence on site until details of the operation and maintenance of the flood storage area and the production of a Habitat Management Plan have been submitted to and approved in writing by the Local Planning Authority. The flood storage area shall be maintained in accordance these approved details.

REASON: in the interests of flood prevention and habitat protection.

POLICY: Planning Policy Statement 25 - Development & Flood Risk, and West Wiltshire District Plan - First Alteration 2004 – Policy C9.

- 27 A Construction Ecological Management Plan / Method Statement should be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any development on the site. The Plan should provide full details of how works will be carried out on site with regard to protecting the wildlife and river corridors.

REASON: to safeguard the wildlife and river adjacent to the site during construction.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy C9.

- 28 No development shall commence until a scheme for the provision of pollution during the construction phase has been submitted to and approved in writing by the Local Planning Authority. The scheme should include details of the following:-

- * site security;
- * fuel storage, bunding, delivery and use;
- * details of how major and minor spillages will be dealt with;
- * containment of silt, soil, and contaminated run off;
- * disposal of contaminated drainage, including water pumped from excavations;

* site induction measures for workforce for pollution prevention and awareness.

REASON: to prevent pollution of the water environment.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy U4.

- 29 No development shall commence within the site area until:
- (a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
 - (b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

POLICY: Planning Policy Guidance 16: Archaeology and Planning

- 30 No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- (a) the parking of vehicles of site operatives and visitors;
- (b) loading and unloading of plant and materials;
- (c) storage of plant and materials used in constructing the development;
- (d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- (e) wheel washing facilities;
- (f) measures to control the emission of dust and dirt during construction;
- (g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- (h) measures for the protection of the natural environment.
- (i) hours of construction, including deliveries;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.

REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

POLICY: Planning Policy Guidance 24: Planning and Noise and West Wiltshire District Plan 1st Alteration 2004 - POLICY: C38.

- 31 Before the commencement of development on the site a scheme providing details of the security measures to the site, including CCT and lighting, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with these approved details, prior to the first use of the petrol filling station and the store's extensions.

REASON: in the interests of the security of the site and surrounding area.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy C38.

- 32 Prior to the commencement of any development on site, an Ecological Management Plan, detailing how the habitats created as a result of the development will be managed in future for wildlife benefits should be prepared and submitted in writing for approval by the Local Planning Authority. The Plan should include details of who will be responsible for ensuring the management is carried out in the long-term.

REASON: to protect, safeguard and enhance the wildlife value of the site.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy C9.

- 33 The gross external area of the foodstore hereby permitted shall not exceed 5,495 metres square. The net sales and display area (defined as all areas used for the display and sale of goods, including floor spaces used for checkouts, customer circulation and customer services but excluding entrance / exit lobbies, customer toilets, café and Automated Teller Machines (ATMs)) shall not exceed 3,425 square metres, of which not more than 1,203 square metres shall be used for comparison goods.

REASON: in order to protect the vitality and viability of the town centre.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy SP3.

- 34 No part of the net sales and display area (defined as all areas used for the display and sale of goods, including floor spaces used for checkouts, customer circulation and customer services but excluding entrance / exit lobbies, customer toilets, café and Automated Teller Machines (ATMs)) of the foodstore hereby permitted shall be given over to any dry cleaning services, key cutting, shoe repair, photographic, or pharmacy services dispensing medicines by prescription or post office counter services.

REASON: in order to protect the vitality and viability of the town centre.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policy SP3.

- 35 Before the commencement of any development on site, a car park management plan, including specification of the terms and conditions of the existing and proposed hours of free public parking, shall be submitted to and approved in writing by the Local Planning Authority. The operation of the car park shall be in accordance with these approved details, and any changes to it shall be subject to the written consent of the Local Planning Authority.

REASON: to ensure that adequate provision is made for parking within the site in the interests of highway safety and to encourage multiple trips between the store and the town.

POLICY: West Wiltshire District Plan - First Alteration 2004 – Policies T10 and SP3.

- 36 No development shall commence on site until details and positioning of the directional signage to the town centre, riverside walk and nature reserve, have been submitted to and approved in writing by the Local Planning Authority, including, if necessary the relevant consents under the Control of Advertisement Regulations 2007.

REASON: in order to encourage trips to the town.

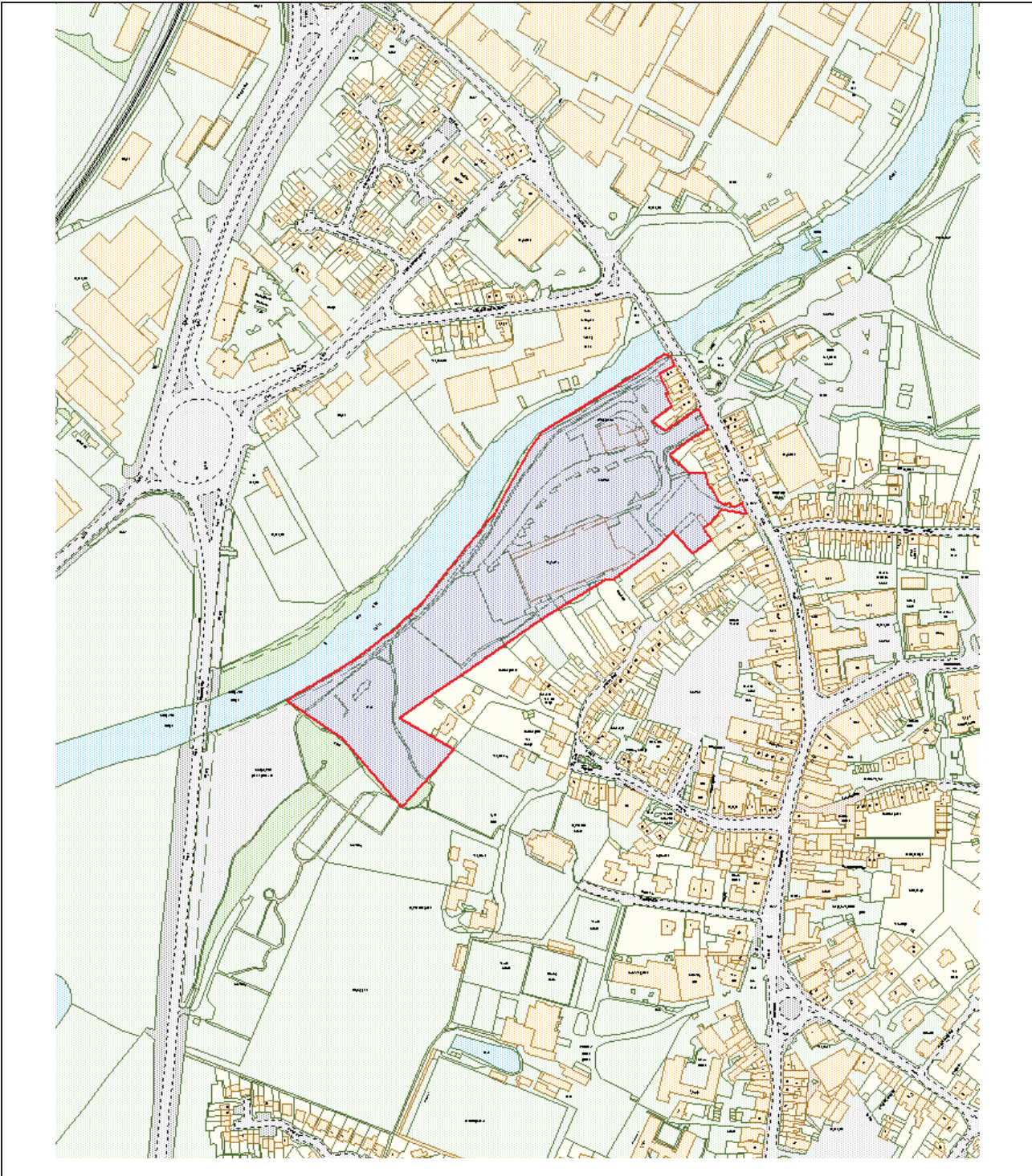
POLICY: West Wiltshire District Plan - First Alteration 2004 – C24.

Informative(s):

- 1 You are advised to contact Wessex Water to agree points of connection onto their apparatus.
- 2 The applicant should note that under the terms of the Wildlife and Countryside Act 1981 and Countryside and Rights of Way Act 2000, it is an offence to disturb nesting birds or roosting bats. You should note that the work hereby granted consent does not override the statutory protection afforded to these species and you are advised to seek expert advice if you suspect that the demolition would disturb any protected species. For further advice, please contact the district ecologist at Wiltshire Council.
- 3 The failure to adequately operate and maintain flood storage areas could potentially result in increased flood risk to the development and land / property in third party ownership.

- 4 Under the terms of the Water Resources Act 1991 and the Land Drainage Byelaws, the prior written consent of the Environment Agency is required for any proposed works to structures in, under, over, or within 8 metres of the top of the bank of the River Avon, designated a 'main river'. Please contact the Environment Agency's Development and Flood Risk team on 01278 484654 for guidance on how to apply for Flood Defence Consent.
- 5 The reduction in toilet facilities for customers is disappointing given the increased retail area. The applicant is advised to reconsider, as a minimum of two extra urinals for male customers.
- 6 Ecological Recommendations: the suggested conditions to any permission to should seek to achieve the following:
1. Long term protection of the proposed flood compensation area should be secured in perpetuity by condition or legal agreement in order to protect the features of Conigre Mead nature reserve
 2. Before works commence a Construction Environment Management Plan will be submitted for LPA approval and implemented as agreed. The CEMP will cover, but not be limited to, the following:
 - * Protection of the banks and water quality of the River Avon
 - * Protection of habitat used by otters
 - * Translocation of reptiles
 - * Erection of bat boxes
 - * Protection of breeding birds
 3. Before works are completed a habitat management plan covering the proposed flood compensation area will be submitted for LPA approval and implemented as agreed.
 4. A lighting scheme will be submitted for approval by the LPA and implemented as agreed. The scheme will demonstrate that the River Avon and its bankside habitats will remain unlit."
- 7 The archaeological watching brief should be conducted by a professional recognised archaeological contractor in accordance with a brief issued by this office and there will be a financial implication for the applicant.
- 8 "The Environment Agency recommends that developers should:
1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination;
 2. Refer to the Environment Agency Guidance on Requirements for Land Contamination Reports for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, eg human health.
 3. Refer to our website at www.Environment-Agency.gov.uk for more information .
- 9 You are advised that signage in and around the site may requirement Consent under the Town & Country Planning (Control of Advertisements) (England) Regulations 2007.

Appendices:	
Background Documents Used in the Preparation of this Report:	



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MSA: 100022961

RELEVANT APPLICATION PLANS

- Drawing : CHQ.07.7707 PL01 received on 03.03.2009
- Drawing : CHQ.07.7707-PL02 received on 03.03.2009
- Drawing : CHQ.07.7707-PL04 received on 03.03.2009
- Drawing : CHQ.07.7707-PL03 received on 03.03.2009
- Drawing : CHQ.07.7707-PL09 received on 03.03.2009
- Drawing : CHQ.07.7707-PL05P received on 10.11.2009
- Drawing : CHQ.07.7707-PL07C received on 16.10.2009

Drawing : CHQ.07.7707-PL06C received on 16.10.2009

Drawing : CHQ.07.7707-PL08 received on 03.03.2009

Drawing : 2327/16A received on 26.02.2010

Date of Meeting	10.03.2010		
Application Number	W/09/02622/FUL		
Site Address	Land At Capps Lane Bratton Wiltshire		
Proposal	Mobile home, day room and retention of existing pair of sheds		
Applicant	Mr Freddy Hughes		
Town/Parish Council	Bratton		
Electoral Division	Ethandune	Unitary Member:	Julie Swabey
Grid Ref	389997 153518		
Type of application	Full Plan		
Case Officer	Mr James Taylor	01225 770344 Ext 169 james.taylor@wiltshire.gov.uk	

Reason for the application being considered by Committee

This application is being brought to Committee following the receipt of further requested information. This has been obtained following the members requests and ultimate deferral of a decision at the 28 October 2009 meeting.

The application was deferred from 27 January 2010 at the request of the applicants and their agent because the agent was unable to attend and wished to make verbal representations.

Councillor Julie Swabey requested that this item be determined by Committee due to:

* "I understand that there is enforcement action ongoing with this and the land has been used as a site, unauthorised for several years."

* "complete lack of clarity on the number of sites we should allow in the West Wiltshire area".

1. Purpose of Report

To consider the above application and to recommend that planning permission be granted.

Further to address the concerns of members at the meeting of 28 October 2009 namely:

1. to establish the current position with regards to gypsy and traveller sites in the LDF including the number of pitches needed in the western part of Wiltshire and the number that have been provided
2. to find out more details about the applicants 'lifestyle', 'nomadic / travelling way of life' and his 'horse trading business'
3. for an explanation of where the existing unauthorised sheds fit into the applicant's proposals for the site and this application
4. to ascertain the current status of the enforcement action on the site, -
 - * what action is currently being taken.
 - * what is being done to remove unauthorised structures etc,
 - * against whom id this action being taken

This information has now been received and these matters are addressed in the officer's appraisal at Planning Considerations.

2. Main Issues

The main issues to consider are:

- * Impact on the rural character of the area
- * Impact on highway safety
- * Impact on amenity, including that of neighbours
- * Proximity to local services and facilities
- * The needs and safety of future occupants and their children
- * Requested information from members

3. Site Description

The application site is located in open countryside which is subject to no special landscape designations. It is sited on the C-classified Capps Lane which runs between Heywood and the settlements of Bratton and Edington.

The site has natural hedges to the north and east boundaries. To the south the boundary is a post and wire fence. To the west it is a mix of hedge and post and wire fencing.

Part of the site is still open to grazing, but the northern part is occupied by 2 barns and a caravan; the site has been subject to enforcement action by the Council regarding this and its uses.

Access to the site is existing, denoted by solid timber gates set back nominally from the highway. A rough access track is laid into the site beyond.

4. Relevant Planning History

None

5. Proposal

This is a planning application for a single private gypsy pitch to include the siting of a mobile home and touring caravan and the erection of a day room.

The day room would have a footprint of 5 metres by 6 metres; a height to eaves of 2.35 metres and a height to the ridge of 4 metres.

The proposal also proposes the retention of two existing barns at the site for use in connection with horses; the applicant is a traditional horse dealer.

Further the proposal includes revising the existing access to the site, hard and soft landscaping and parking and turning provision.

6. Planning Policy

West Wiltshire District Plan 1st Alteration (2004)

C1 Countryside Protection

C31a Design

C38 Nuisance

CF12 Gypsy Caravan Sites

National guidance
PPS1: Delivering Sustainable Development
PPS7: Sustainable Development in Rural Areas

ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites.
DETR Circular 03/1999: Planning requirement in respect of the use of non-mains sewerage incorporating septic tanks in new development.

7. Consultations

Bratton Parish Council

Objection:

"The council opposed the application on the following grounds:

1. The application is for a site outside the village policy limits contrary to policies H1 and H17 of the West Wiltshire District Plan 1st alteration (2004).
2. The proposal located in open countryside outside the defined village policy limits of Bratton would be tantamount to a new dwelling in the countryside without justification in the essential needs of agriculture or forestry contrary to Policy H19 of the West Wiltshire District Plan 1 Alteration (2004)
3. The proposal by reason of the proliferation of gypsy and traveller sites in the area would have a cumulative impact which fails to respect the scale of the village of Bratton contrary to paragraph 54 of ODPM Circular 01/2006.
4. The potential to accommodate further families.
5. It would appear that this application has been engineered to obstruct the declared wishes of Wiltshire Council (i.e. the enforcement notice of 13.07.09) who have stated that the land should be cleared."

Highway Authority

No Objection: Subject to conditions:

The development hereby permitted shall not be occupied until the access 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."

Wessex Water

No Objection.

8. Publicity

The application was advertised by site notice and neighbour notification.

Expiry date: 7 October 2009.

2 letters of objection from 1 party have been received. Summary of points raised:

- * The land has been subject to planning enforcement, which has yet to be complied with.
- * If approved the land may be handed back to the original owner to proceed as they intended prior to Council enforcement action.
- * Blot on the landscape (confirmed by planning inspector)
- * Erode the isolated and unspoilt countryside location.
- * Noise from generators and barking dogs is disturbing amenity (tested by an inspector).
- * Increase in traffic cannot be coped with on this lane.
- * No footpath or lighting on this lane which is used by local riding school
- * In the enforcement appeal it was stated by the Council that the land should not be residential.

- * No bus service
- * This proposal is a means of side stepping planning law.
- * The siting of the caravan and the new day room would spoil views from lounge and bedroom windows.

9. Planning Considerations

9.1 With regard to the first member request relating to the LDF progress on gypsy and traveller sites, Wiltshire Council's spatial planning officers were consulted in November 2009 and the matter has been revisited again in February 2010 to provide up to date information to committee. Consistent with the agenda item 14 produced for Wiltshire Council's cabinet on 23 February 2010 they have confirmed that in the 'west' area in January 2010 there was a residual residential need for 10 pitches (not including transient pitches).

9.2 The spatial planning team have detailed a timetable for the adoption of a Development Plan Document for gypsy and traveller site allocations, to form part of the LDF. The report to cabinet on 23 February 2010 detailed that stage 1 of the commissioned study to inform the Gypsy & Traveller Site Allocation DPD for Wiltshire is complete. This is being used to inform an 8-week public consultation on issues & options which following cabinet approval will commence on 5 April 2010 ending 31 May 2010. This will include a 'call for sites'.

9.3 As detailed in the initial committee report this spatial planning work for the LDF is still at a relatively early stage and there is a confirmed shortage of sites in this area at present. There is a demonstrable need for further gypsy and traveller sites.

9.4 The second member request relating to details of the applicants 'lifestyle', 'nomadic/travelling way of life' and 'horse trading business'. The applicant's agent has supplied additional information and stressed the original submission of details.

9.5 This may be summarised as follows. The applicant has reiterated that they are a gypsy and have stated that they have not lived in a house for 30 years and although using a permanent address with his partner and family often travels with his family for several months, as long as 8 months sometimes. Indeed the Hughes family are well known Romany Gypsies who have been saving and waiting for some land to be available such as this.

9.6 It is also considered prudent to reiterate the planning circular definition of a gypsy set out by national government in ODPM circular 01/2006.
'persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently.....'

9.7 It is considered that the applicant appears to meet the definition of a gypsy or traveller. Further the suggested condition can ensure that the Council retains reasonable control of the occupation of the site, limiting it to a person (and their family) that meets the above definition.

9.8 Turning to the third member request relating to details of how the unauthorised sheds that are on the site fit into the applicant's proposals. The applicant has clarified that these would be used for the keeping of horses to be taken away for sale at fairs or direct to purchasers. There would not be any selling of horses at the site. The sheds would therefore be used for stabling and for keeping usual equestrian type equipment and feed.

9.9 The applicant has highlighted, that like many Romani gypsies, they do many different things including in this case seasonal field work and demonstrations of gypsy crafts such as wooden peg making. Mr Hughes took part in the Romani Gypsy traveller history last June in Frome.

9.10 This additional information and reiteration of the previous comments affirm the status of the applicant as a gypsy and also confirms the intended use of the existing barns on the site.

9.11 Finally the members request for confirmation on the current status of enforcement action on the site has been thoroughly detailed. The Council has successfully taken enforcement action against the previous land owners who were in breach of planning regulations. This matter was considered in the magistrates' court in November where a guilty plea was made; the magistrates issued a fine and ruled that the Council's reasonable costs should be paid. The Council's enforcement team cannot take any further action against the previous land owner who was in breach of planning as they have sold the land.

9.12 The Council now needs to consider enforcement action against the new owners, however the outcome of this planning application is material to considering the expedience of such efforts.

9.13 Returning to the original planning considerations. This proposal has been presented as an application for a single private gypsy site. As such it must be principally considered under Policy DP15 of the Wiltshire Structure Plan 2016 and Policy CF12 of the West Wiltshire District Plan (2004). Further the proposals need to be considered in light of other relevant development plan policy and the regional and national context which includes the ODPM Circular 01/2006 on planning for gypsy and traveller caravan sites.

9.14 Policy DP15 clearly states that proposals for gypsy caravan sites cannot be assessed using policies for settlements and that travellers and gypsies have particular needs which are recognised in national government policy. Further it is clear that suitable sites may be found within and outside settlements.

9.15 Policy CF12 is consistent with the Structure Plan and also sets out criteria by which to assess applications and has a positive phrasing stating that proposals to provide caravan sites for gypsies will be permitted in appropriate locations having regard to issues such as nuisance, encroachment into open countryside, the needs and safety of future occupants and their children, highway safety, availability and adequacy of infrastructure, proximity to services, protecting agricultural land and flood risk.

9.16 National policy on such matters was updated in February 2006 with the production of ODPM Circular 01/2006. This acknowledges that the community has generally become more settled and that being settled can have benefits in terms of access to health and education facilities, and can contribute to greater integration and social inclusion within local communities as detailed in the circular.

9.17 As detailed above the Council's spatial planning team continues to work towards the production of a Development Plan Document for Gypsy and Traveller site allocations as part of the new Local Development Framework for Wiltshire. However this is in its very early stages and no allocations have been made to date nor have consultations on issues and options taken place. The Regional Spatial Strategy has indicated that there is a shortage of allocated sites within the former West Wiltshire administrative area and so there is an acknowledged need in the area.

9.18 National and local planning documents accept that private sites are acceptable in principal, indeed this can be beneficial in that it can reduce conflict between different families, ethnicities and cultural origins of travellers on larger communal sites.

9.19 This application site is located in the open countryside remote of village policy limits. This site is very close to an existing authorised private gypsy site and via public rights of way can access the village of Bratton and its services and facilities. The first of the Capps Lane approved sites was granted by a planning inspector who considered the site to be reasonably sustainable for a gypsy site given their nomadic lifestyles.

9.20 The planning policy is explicitly clear that applications should not be considered against the normal policies for housing and village and town settlement boundaries. Applications outside of settlements may be perfectly acceptable.

9.21 It is noted that the highway authority raises no objection subject to safety orientated conditions. The access to the site is rather rough, although well established. The visibility in both directions can be improved without significant harm to landscaping interests. Therefore subject to conditions over

visibility splays then the modest intensification of traffic at this point poses no significant concerns. Indeed the proposals would set back the gates which in itself would be an improvement over the existing access provision.

9.22 The site is located approximately 1.5 km from the village policy limits of Bratton which has all the facilities to be expected of a modest rural village, including a rural bus service which connects to larger local settlements and their facilities. This site, although not ideal in terms of its location some distance from an established settlement and not very well related to any settlement, in the context of being a gypsy application, is on balance reasonable. There is access to local facilities and services to satisfy the needs and safety of future occupants and their children including access to education, health facilities and work and leisure opportunities. Other locations, arguably, may be preferable, but without any LDF site allocations (indeed the Council's work is still at an early stage) it is hard to reasonably argue such a case when there is a demonstrable need. This site has been brought forward and must be assessed on its merits in light of the material considerations.

9.23 Turning to wider planning considerations of the site it is noted that this proposal is in open countryside that is subject to no special designations. The frontage of the site is well screened by an established hedge. The site would however be visible from public vantage points and the one neighbouring property to the west. However landscaping may mitigate against this to some extent and the planning system does not seek to protect an individual property owner's view. This can be reasonably secured by planning conditions and the applicant states a willingness to discuss landscaping and take on board advice from the Council on additional planting.

9.24 The amount of development being proposed is quite typical of a single, private gypsy application including a large caravan, a touring caravan and a dayroom. All of this development is limited to single storey heights and would be suitably sited within the context of the area, viewed against the backdrop of vegetation. In summary the proposal would not have a significant impact on the rural character at this point.

9.25 The proposals detail the siting of sewerage treatment facilities on the site, which seem reasonable. Since there are no mains facilities in the area then this is an acceptable approach. It is noted that Wessex water raises no objection. Conditions can reasonably control the points on services, and thus reduce the potential for nuisance noise from generators.

9.26 The application site is subject to the lowest level of flood risk and therefore this factor is not of significance. Further the land is not considered to be the best or most versatile agricultural land.

9.27 It has been noted that the proposals have been subject to some public objection following the display of a site notice and some neighbour letters being sent out. All the comments and points received in the consultation process have been noted and given consideration prior to reaching any conclusion or recommendation. Any planning matters have been discussed above, but other grounds for objection such as the loss of view are not material planning considerations.

9.28 In conclusion the members are advised that the additional information that has been sought at their request does not make any difference to the officers' original comments and recommendation at the committee meeting on 28 October 2009. In short the Council's LDF work is at an early stage and is being informed by evidence of a lack of sites at this time. The applicant has detailed their lifestyle, travelling and horse trading arrangements, which appear consistent with gypsy and traveller culture. The proposed use of the existing barns is reasonable in planning terms. Finally enforcement action has been successfully taken against the person originally in breach. However action against the new owners is dependent on the outcome of this application which requires a decision from members. Your officers still recommend planning permission be granted subject to conditions. If the Council grants permission it will also be for the retention of the buildings which were previously subject to enforcement action.

Recommendation: Permission

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

Subject to the following condition(s):

- 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 site shall not be permanently occupied by persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

REASON: Planning permission has only been granted on the basis of a demonstrated unmet need for accommodation for gypsies and travellers and it is therefore necessary to keep the site available to meet that need.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: CF12

- 3 No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than 1 shall be a static caravan or mobile home, shall be stationed on the site at any time.

REASON: In the interests of the visual amenity of the area.

West Wiltshire District Plan 1st Alteration (2004) POLICY CF12.

- 4 The development hereby permitted shall not be occupied or first brought into use until the area between the nearside carriageway edge and a line drawn 2.0 metres parallel thereto over the entire site frontage has been cleared of any obstruction to visibility at and above a height of 900mm above the nearside carriageway level. That area shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a

- 5 The development hereby permitted shall not be 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.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a

- 6 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.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a

- 7 No development shall commence and no caravans brought onto site until details, including a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority for the following:

i) the materials to be used in the construction of the external surfaces of the day room, hardstandings, access drives, parking and amenity areas;

- ii) the landscaping of the site (a scheme showing the species, plant sizes, numbers and densities) including details of any supplementary planting to reinforce the existing hedgerows;
- iii) any new boundary treatment, fencing or gates
- iv) refuse storage facilities
- v) electricity generation
- vi) lighting
- vii) details of septic tank

REASON: In the interests of amenity of the area and neighbours.

West Wiltshire District Plan 1st Alteration (2004) POLICY CF12.

- 8 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the site. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

REASON: To ensure a satisfactory landscaped setting for the development.

West Wiltshire District Plan 1st Alteration 2004 – POLICY CF12.

- 9 There shall be no burning of waste on the site.

REASON: In the interests of amenity and environmental protection.

West Wiltshire District Plan 1st Alteration (2004) POLICY CF12.

Appendices:	
Background Documents Used in the Preparation of this Report:	



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Bradley Road Trowbridge Wiltshire BA14 0RD www.wiltshire.gov.uk

MSA: 100022961

RELEVANT APPLICATION PLANS

Drawing : SITE PLAN received on 08.09.2009
Drawing : 0946/01 received on 08.09.2009
Drawing : 0946/02 received on 08.09.2009
Drawing : DAY ROOM received on 08.09.2009

Date of Meeting	10.03.2010		
Application Number	W/10/00163/FUL		
Site Address	Dove Inn Corton Wiltshire BA12 0SZ		
Proposal	Extension of existing bed and breakfast accommodation to provide 5 additional rooms together with refurbishment of Cornicks Cottage to 2 additional rooms, formation of new vehicular access and car parking, and alterations to thatched boundary wall		
Applicant	The Dove Inn (Corton) Ltd		
Town/Parish Council	Boyton		
Electoral Division	Warminster Copheap And Wylve	Unitary Member:	Christopher Newbury
Grid Ref	393466 140527		
Type of application	Full Plan		
Case Officer	Mrs Rosie MacGregor	01225 770344 Ext 597 rosie.macgregor@wiltshire.gov.uk	

Reason for the application being considered by Committee

Councillor Newbury has requested that this item be determined by Committee due to:

Councillor Newbury has requested that the following reason for his calling it to committee is stated in full:

‘Called in at the request of several residents who wish to explain to the Planning Committee their concerns about parking and highways issues, noise, the scale of development and other matters.’

1. Purpose of Report

To consider the above application and to recommend that permission is granted.

2. Main Issues

The main issues to consider are:

- * Previous planning history
- Tourism
- Community
- Streetscene
- Historic environment
- Area of Outstanding Natural Beauty
- Neighbouring amenity
- Highways

3. Site Description

The property comprises a public house, a detached cottage set within a mature garden and holiday accommodation

The site is situated on the edge of the village adjacent to countryside within the Wylve Valley entirely within the Corton Conservation Area, Cranbourne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty. Little Manor Cottage which is a Grade II Listed Building is situated to the rear of the public house.

The site is located not far from the T- junction where the road divides on entering the village and is in a prominent corner position fronted by a grassy triangle. The site is partially enclosed by a wall with a traditional thatch capping which is a prominent feature within the street scene and in the Corton Conservation Area. There is a listed building to the north-east of the site.

4. Relevant Planning History

05/00990/FUL - Alterations and extension to provide improved accommodation - Refused - 18/07/05

06/00658/FUL - Alterations and extension to provide improved accommodation - Refused – 24/04/06

07/03897/FUL – Proposed extensions to cottage and public house and additional parking – Refused – 15.04.08.

08/01407/FUL – Rear two storey extension to public house – Approved – 01.07.2008

5. Proposal

This is a full planning application for the extension of the existing bed and breakfast business at The Dove Inn. This would provide 5 additional rooms contained within a proposed 2-storey extension to the existing accommodation block to create improved tourist accommodation, together with the refurbishment and change of use of the detached Cornicks Cottage to form 2 additional rooms.

The proposals would be built in materials to match the existing but would include some timber cladding to the proposed and existing elevations. An external timber walkway supported on timber posts with staddle stones at the base and gallows brackets at the gallery level is proposed to provide access to the first floor bedrooms.

Externally the proposal includes alterations to the vehicular access and additional car parking spaces resulting in a total of 26 spaces. The proposal would have resulted in removal of a short section of cob wall to form a pedestrian access and an additional length of the frontage thatched cob wall to screen the parked vehicles to match the existing. The existing vehicular access would be closed off.

The application is accompanied by a Design and Access Statement.

6. Planning Policy

Wiltshire Structure Plan 2016

HE7 - Listed Buildings and Conservation Areas

RLTI – Recreation, sport and leisure

RTL9 – Hotels and camping sites

West Wiltshire District Plan 1st Alteration 2004

E6 – Rural Employment

C2 - Areas of Outstanding Natural Beauty

C17 - Conservation Areas

C18 - New Development in Conservation Areas

C19 - Alterations in Conservation Areas
C31a - Design
C38 – Nuisance
TO3 – Hotels, guest houses and self catering establishments
CF3 – Villages and rural areas

PPS1 - Delivering Sustainable Development
PPG15 - Planning and the Historic Environment

7. Consultations

Boyton Parish Council

Support the application subject to the following:

- a) The foul drainage system is of a specification which will prevent any risk of sewage getting into the village drains.
- b) An adequate surface water drainage system should be installed so that rainwater does not run off down the village roads.
- c) Lighting to the rear car parking area and rear garden should be low level and of an intensity to avoid light pollution.

Highways

'You will be aware that an objection on highway safety grounds was raised previously to an application to extend the site and provide additional parking, due to the increased traffic using the sub standard access.

The development the current application is concerned with includes the closing of the three existing vehicular accesses and the formation of a single access. The two existing accesses onto the southern side of the site are substandard with extremely poor visibility. I am satisfied that the proposed access is to a similar standard to the existing access on the western site boundary and would be suitable to accommodate the existing vehicle movements and those resulting from the proposed development.

In view of the above I recommend that no highway objection be raised subject to the following conditions being attached to any permission granted:-

Prior to the development hereby permitted being brought into use the parking spaces shown on drawing reference S4431/104B shall be provided.

Reason: In the interest of amenity and road safety

Prior to the development hereby permitted being brought into use the proposed access shall be constructed and available for use, and the existing accesses stopped up and their uses permanently abandoned, in accordance with drawing reference S4431/104B.

Reason: In the interest of highway safety.'

Heritage Development Officer

It is vital to keep public houses open, for community benefit and to aid the local economy. This is a comprehensive scheme which has been long in negotiation and will provide the accommodation needed to retain viability of the business. The major changes are within the site and are constructed in materials which are compatible with the local environment.

No objection.

Environmental Health

No objection.

Wessex Water

No objection in principle.

Cranbourne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty

'The Area of Outstanding Natural Beauty (AONB) Team are aware there is a shortage of Bed and Breakfast facilities in the AONB and would therefore be sympathetic to the provision of additional facilities where there are no conflicts with the reasons for the AONB designation.

The proposals appear to be a significant improvement on the previous application which was refused. However, parking still seems to be a significant issue. I note that the Design and Access Statement refers to the pub garden being retained, however the plans show that the majority of the open space is removed and replaced either with tarmac car parking or a terraced courtyard.

I also note that the parking on the south side of the conservatory is simply moved to the area on the south of Cornicks Cottage. The AONB Team is aware that car parking is currently an issue at the Inn and that there is frequent parking on the road.

The proposals clearly add seven units of accommodation which would imply at least seven additional vehicles requiring parking space. It appears that very few additional parking spaces are being provided in total and that the plan of the existing situation is more than slightly vague about the parking facilities on the northern and north eastern side of the pub.

As you know the AONB Team is particularly concerned about rural roads and the impact of traffic on the tranquillity of the villages in the AONB. We are therefore concerned that whilst the current proposals are a considerable improvement on the previous application the issues of parking at the pub are added to, and not solved by, these proposals.'

8. Publicity

The application was advertised by site notice/press notice /neighbour notification.

Expiry date: 26.02.2010

Fourteen letters have been received from local residents of which eight object and six are in support.

Summary of points raised:

The objections are on the following grounds:

New access is potentially dangerous.

Creation of additional surface water and sewage problems in an area where there are already problems.

Removal of ancient hedge.

Access to the village will be compromised by construction traffic for the duration of the building works.

Insufficient car parking will result in vehicles parking on the narrow roads.

Nuisance from additional traffic on roads.

Does Corton need a Motel at its entrance?

The scale of the proposals is disproportionate to the original buildings.

The proposals are too large for the needs of the area.

Harmful to the character of the village and conservation area.

Impact of increase need for drainage and water supply.

Impact of lighting and use of public address system.

The letters in support of the application are on the grounds that:

It will help ensure the survival of this valuable community resource in a village that has previously lost its school, post office, shop and two public houses.

2000 pubs close each year and this shows consideration for users, working people and suppliers alike.

Closure of the existing entrances and siting of the new entrance will make village roads considerably safer.

Extension of the thatched wall will create a very attractive feature, enhancing the overall appearance of this corner of the village.

The courtyard will create a very pleasant area for sitting out and by directing lighting to the centre of the site will reduce light pollution.

Great care has been taken to minimise any impact on the village and surrounding area.

Property values are enhanced because there is a pub in the village.

Even if cars do park on grass verges beside the road it is more important that a pub is retained in the village.

9. Planning Considerations

9.1 The key issues of this application are whether the proposal complies with development plan policy, whether there are any material considerations to outweigh the policy and whether any previous reasons for refusal of earlier related applications have been overcome.

9.2 The Council has a duty to protect the historic environment. The Dove Inn is situated entirely within the Corton Conservation Area and Little Manor, a dwelling to the side/rear of The Dove Inn, is a Grade II Listed building.

9.3 Corton is located within an Area of Outstanding Natural Beauty. Council policy further seeks to protect character of the countryside particularly in Areas of Outstanding Natural Beauty.

9.4 It is Council policy to encourage tourism and conversion of existing buildings and extensions to existing hotels and guest accommodation in villages without village policy limits will be supported provided that such extensions do not result in disproportionate additions over and above the existing building or harm the character of the existing building.

9.5 The principle of expanding the business to provide enhanced tourist facilities with the addition of 7 extra ensuite bedrooms at the public house in the manner proposed with improved parking and is to be encouraged. However, although there would be no objection in principle to the extension of these premises it will be necessary to ensure that the proposals meet the criteria contained within the policy.

9.6 The need to enhance the existing tourist accommodation and provide additional parking is understood but this should not be at the expense of other material considerations, not least the potential harm to the character and appearance of the conservation area, setting of any listed building, or the rural amenity in this prominent location at the entrance to the village within an Area of Outstanding Natural Beauty.

9.7 The site is in a prominent and sensitive location in the street scene, and this group of buildings - Cornicks Cottage, The Dove Inn and ancillary buildings are amongst the first to be seen on entering the village. The Dove Inn and Cornicks Cottage can be seen from wider views into the conservation area from the west. This is from the road that leads towards Tytherington and climbs a hill that gives an elevated view down towards the site. The buildings on site are clearly visible from a number of vantage points.

9.8 The current scheme is significantly different to any of the previous refusals at the site. In particular the historic cob wall would be retained and its length increased to match the existing and the attractive small cottage Cornicks Cottage would be retained and converted to bed and breakfast accommodation. Furthermore, an extension is now proposed to the existing bed and breakfast accommodation.

9.9 This extension represents a large increase in the size of the existing building, virtually doubling its volume. However, this forms only part of the site and when considered in the context of the various buildings which form part of the overall site including the public house, its outbuildings and Cornicks Cottage, these additions to the built form are not considered to be a disproportionate addition.

9.10 The proposals would enhance the appearance of the existing detached bed and breakfast accommodation by recladding some of the very poor and patchy brickwork on the original building. The extension has been designed in such a way that the height reduces along its length from two storey down to single storey to create a natural progression and reduce the visual impact. This is particularly important as the lower portion of the extended building would be the amongst the first buildings to be seen on entering the village. This visual impact is further reduced by the use of hipped roofs at the end nearest the edge of the village. Although hipped roof details can appear contrived, in this instance, it must be balanced against the reduction in volume from a simple gabled roof and the fact that this detail is typical of thatched roofs and therefore in character with many of the existing village houses which are thatched.

9.11 The materials proposed respect the original building and would not harm the character or appearance of the conservation area. The timber galleried first floor access faces into the courtyard and this feature has reduced the need for a corridor within the building that would have increased the overall volume. It has been designed so that it is relatively simple in form with a long and linear emphasis. The relationship of the extension to the existing built form is considered sympathetic and respects the historic form of the original building.

9.12 Although an objection has been received suggesting that the building will have the appearance of a 'Motel', such types of buildings are usually of utilitarian design and located on main vehicular routes. It is acknowledged that the building will be used for tourist accommodation and as such it is inevitable that it will have the appearance of a small hotel or public house with guest accommodation. However, that is no different to the existing use which is for a similar type of accommodation, albeit on a slightly smaller scale.

9.13 Little Manor, a dwelling to the side/rear of The Dove Inn, is a Grade II Listed building. The current proposals would not alter the main public house building which is separated from the extension to the bed and breakfast accommodation and screens it from the Listed Building which is behind the public house. The proposals as such would have little or no impact on Little Manor and would not harm the character or setting of the listed building.

9.14 Thatched cob walls are a distinctive feature of this village and as such help define the character of the conservation area. The current proposals would not result in any loss of the historic cob wall. Indeed the character and appearance of the conservation area would be enhanced by the additional length of wall proposed. This would also serve to screen parked cars when viewed from the countryside beyond.

9.15 Any increase in the size of the public house and bed and breakfast facilities would be likely to increase its business and number of patrons and visitors. However, whilst this location would not normally be regarded as particularly sustainable, the site is located in the heart of the Wylve Valley, an acknowledged area visited by tourists. It is in that context and with the need to enhance the rural economy and provide rural employment that this application is considered acceptable. The proposals to increase the overnight accommodation and parking provision will undoubtedly enhance the future viability of the premises. Apart from the tourism potential, the need to preserve this important village facility is also recognised because it is a focal point for sustaining the social infrastructure of the community.

9.16 It is considered that the buildings are sufficiently far from nearby dwellings for there to be no harm to neighbouring amenity and Environmental Health have no objections.

9.17 Highways have been consulted and do not object. Despite the concerns of local residents about the potential hazard to highway safety and insufficient parking the views of the highway authority are supported. The existing car park is very small although there is currently an unauthorised area of vehicular parking. The proposals would result in a significant increase in parking provision. Cornicks Cottage, if it were to remain in residential use, would itself generate traffic and a need for parking.

Aside from this only five further ensuite bedrooms are being added which are unlikely to generate a significant amount of additional traffic. If all these rooms were to be occupied they would result in a maximum need for five extra parking spaces. There may be a need for additional staff to service seven more bedrooms if Cornicks Cottage is included, but even then in the context of the overall business this is very small and it can be assumed that some of the additional staff would live locally and not require their own transport.

9.18 It is recognised that during construction works there will be some disturbance to neighbours as a result of noise and fumes from manoeuvring vehicles but this is inevitable with any building works and will be transient.

9.19 Matters relation to surface water drainage and sewage disposal can be controlled by condition, as can details of lighting to prevent any unacceptable egress of light into the night sky to the detriment of the rural amenity. Although the parking area is shown on plans as a tarmac surface it is considered that a permeable surface in this location would not only soften its visual appearance but would also make it more adaptable to climate change and prevention of flooding. This too can be controlled by condition.

9.19 It has been suggested that the proposal would result in the removal of ancient hedge. There is a small section of hedge that would be removed but this forms part of the boundary treatment to Cornicks Cottage rather than ancient hedgerow.

9.20 These proposals will ensure the continued viability of these premises both to serve the local community and as a tourist facility that will help sustain the rural economy and there would be no harm to any interests of acknowledged importance and there are no planning objections to the proposals.

Recommendation: Permission

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

Subject to the following condition(s):

- 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 Prior to the development hereby permitted being brought into use, the proposed access shall be constructed in accordance with the approved plans, drawing reference S4431/104B, and made available for use, and the existing vehicular accesses shall be stopped up and their use permanently abandoned.

Reason: In the interests of highway safety.

- 3 Prior to the development hereby permitted being brought into use, the parking spaces shown on drawing reference S4431/104B, together with the access thereto, shall be completed in accordance with the approved plans.

Reason: In the interest of amenity and highway safety.

- 4 Notwithstanding the approved plans, prior to the commencement of the works, details of the surface finishes of the courtyard, access, turning areas and parking spaces shall be agreed in

writing with the Local Planning Authority. Such surfaces shall be of a permeable finish and the first five metres of the access, measured from the edge of the carriageway, shall be consolidated and surfaced (not loose stone or gravel). The works shall be carried out in accordance with the approved details prior to the occupation of the additional bed and breakfast accommodation hereby approved and shall be maintained as such thereafter.

REASON: In the interests of sustainability and visual amenity.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a

- 5 No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage have been submitted to and approved in writing by the Local Planning Authority. The lighting approved shall be installed and shall be maintained in accordance with the approved details.

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C35 and C38

- 6 No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the parking spaces/access/driveway/gutters and rainwater pipes), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved surface water drainage scheme and the additional bed and breakfast accommodation shall not be occupied until the works are complete.

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

West Wiltshire District Plan 1st Alteration 2004 - POLICY: U2.

- 7 No development shall commence on site until details of the works for the disposal of sewerage have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved foul water drainage scheme and the additional bed and breakfast accommodation shall not be occupied until the works are complete.

REASON: To ensure that the proposal is provided with a satisfactory means of drainage.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: U1a.

- 8 No development shall commence on site until details and samples of the materials to be used for the external walls, dormer windows and roofs, including the timber cladding, walkway, stairs and balustrade, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the first occupation of the additional bed and breakfast accommodation hereby approved.

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

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a.

- 9 No development shall commence on site until construction details and samples of the material finishes to be used for the new section of frontage boundary wall, which shall match the existing 'cob' wall in height, width and external appearance, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be completed prior to the additional bed and breakfast accommodation hereby approved being brought into use.

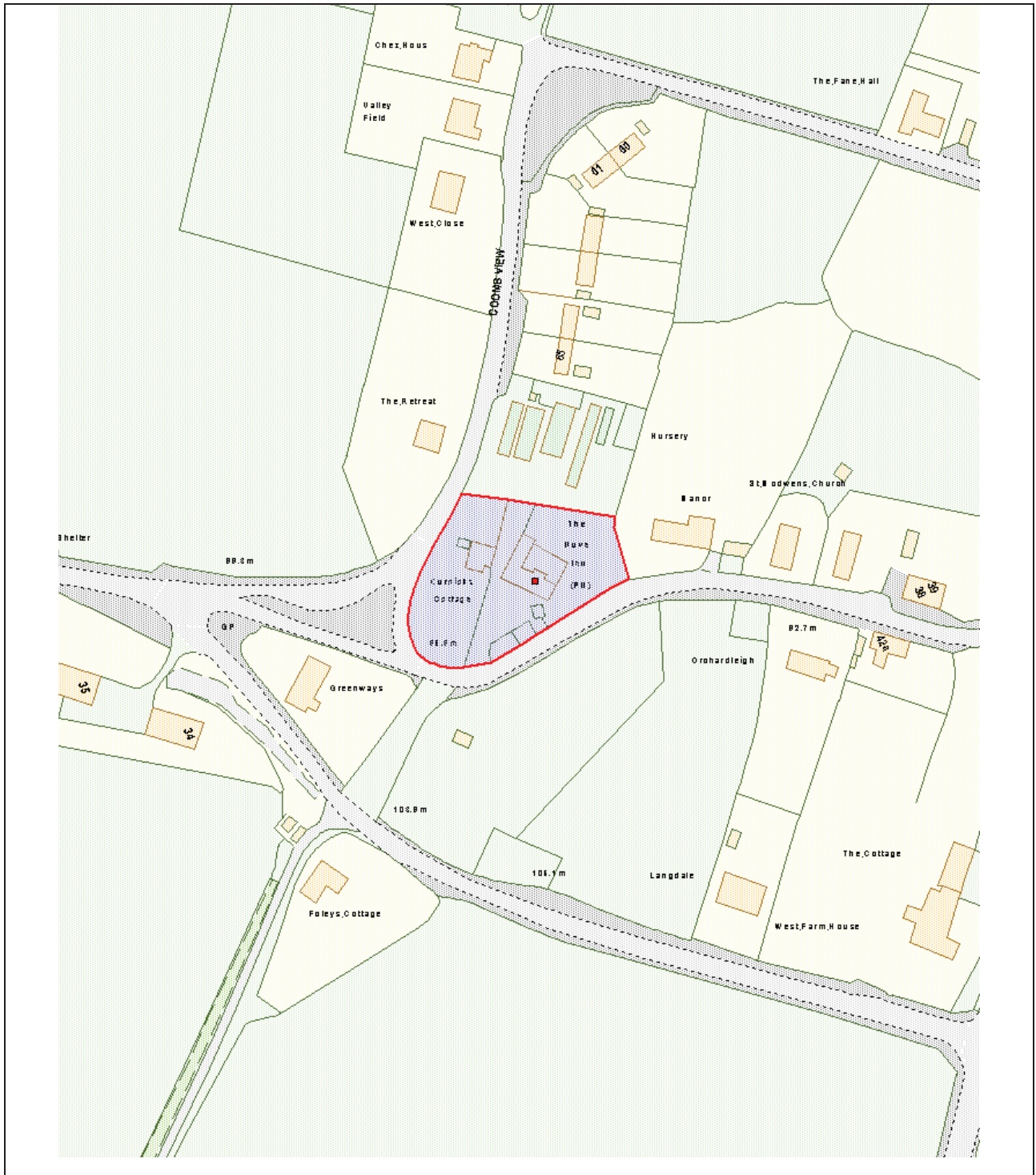
REASON: In the interests of visual amenity and the character and appearance of the area.

Informative(s):

- 1 You are advised that the proposal is not located within a sewered area and that Wessex Water state that there are no sewers in the vicinity. You are advised that the proposed development is within a Source Protection Zone and any surface water discharge will need to be in accordance with the Environment Agency guidelines.

There is a water main in the vicinity. It will be necessary to agree with Wessex Water a point of connection onto the system for the satisfactory supply of water. It is also important that you check with Wessex Water whether there are any uncharted mains within or very near to the site.

Appendices:	
Background Documents Used in the Preparation of this Report:	



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MSA: 100022961

RELEVANT APPLICATION PLANS

- Drawing : S4431/001 received on 20.01.2010
- Drawing : S4431/002 received on 20.01.2010
- Drawing : S4431/104 B received on 20.01.2010

Date of Meeting	10.03.2010		
Application Number	W/09/03641/FUL		
Site Address	Land Adjacent 28 Fairwood Road Dilton Marsh Wiltshire		
Proposal	Siting of a mobile home		
Applicant	Mr And Mrs Nick And Charlotte Flack		
Town/Parish Council	Dilton Marsh		
Electoral Division	Ethandune	Unitary Member:	Julie Swabey
Grid Ref	384687 151447		
Type of application	Full Plan		
Case Officer	Mr Matthew Perks	01225 770344 Ext 207 matthew.perks@wiltshire.gov.uk	

Reason for the application being considered by Committee

Councillor Swabey has requested that this item is brought to Committee to consider whether or not the dwelling complies with PPS 7 requirements in relation to housing an agricultural worker on site. There have furthermore been no objections from the Parish Council or neighbouring properties.

1. Purpose of Report

To consider the above application and to recommend that planning permission be refused.

2. Main Issues

The proposal is retrospective, for a mobile home to be occupied on a personal basis for an indeterminate but temporary period in an area outside of any town or village policy limits. The main issue in this case is therefore whether or not it would be justified under the advice contained within Annex A of Planning Policy Statement 7 (Sustainable Development in Rural Areas) and Policy H19 of the West Wiltshire District Plan, 2004.

3. Site Description

The application site is a ±340m² portion of land under hardstanding within a larger yard occupied by various storage buildings of agricultural appearance. It is located immediately adjacent to, and to the north west of the curtilage to the dwelling at No 28 Fairwood Road. The mobile home is situated to the south of a cluster of sheds/storage buildings. To the south east, occupying a large proportion of the remainder of the parent property are the "Cuckoo's Rest Fishing Lakes", which were granted planning permission in 1996. Access is shared with the dwelling at No 28.

4. Relevant Planning History

96/00803/FUL: Excavation of fishing lake with wildlife conservation area and broadleaf plantations:
Permission: 08.08.1996

5. Proposal

This retrospective application is made for personal occupancy of the mobile home by two family members of the occupants to 28 Fairwood Road.

The agent advises that the occupation of the mobile home relates to employment of a family member in managing the fishing lakes business and the care of a beef cattle herd on the holding, and his partner who is employed elsewhere. Whilst a temporary period of occupancy is indicated in the supporting statement, no proposals in respect of a time limit are made.

The supporting documentation states that "...residential occupation of the mobile home commenced in February 2003.." and that a Certificate of Lawfulness application would be unlikely to succeed in this instance because of the change of use of the land, hence the full planning application.

6. Planning Policy

Wiltshire Structure Plan 2016

DP15 Development in Open Countryside

West Wiltshire District Plan - 1st Alteration 2004

C1 Development in the countryside

C38 Nuisance

H19 Development in the open countryside

PPS7 Sustainable Development in Rural Areas

7. Consultations

Town/ Parish council

The Dilton Marsh Parish Council has no objection, subject to temporary permission only and tying occupancy to immediate family members.

Highways

The highway officer had an initial concern with visibility at the access, but this was resolved following discussions with the applicant.

Agricultural Consultant

The Agricultural Consultant has advised that the rationale for the proposed temporary dwelling lies outside the scope of Annex A of PPS7 and therefore, in his view, the dwelling is not warranted under that guidance. The Consultant's full evaluation of the case is discussed in greater detail under the "Planning Considerations" section below.

8. Publicity

The application was advertised by site notice and neighbour notification.

Expiry date: 08.01.2010

No neighbour comments were received.

9. Planning Considerations

Notwithstanding the family ties of the occupants, the proposal is tantamount to the creation of a new dwelling in the open countryside since the mobile home is a unit separate from the main dwelling and has established a new residential use since 2003 on a separate curtilage, and would be capable (by definition of a "mobile home") of functioning as a self-contained entity.

The key Local Plan Policy relevant to this application is therefore Policy H19, whilst national guidance is provided in Planning Policy Statement 7 (Sustainable Development in Rural Areas). Whilst separate accommodation in the form of an annex or similar arrangements have been accepted in the past, this is in general in situations where annex accommodation linked to a dwelling within an existing residential curtilage is provided for family members.

The mobile home in this case would effectively extend the residential use beyond the existing residential curtilage and provide a separate accommodation unit some 20m distant from the main dwelling. This would not accord with Policy H19 of the West Wiltshire District Plan, 2004 which states that new dwellings in the countryside will not be permitted unless justified in connection with the essential needs of agriculture or forestry.

Neither Policy H19 nor PPS 7 generally permit the establishment of new dwelling units in the countryside. However, where there is proven need for residential accommodation in connection with an agricultural, forestry or other rural occupation enterprises, new dwellings can be considered, according to the advice contained in PPS7 but strict assessment criteria apply.

Annex A of PPS7 states inter alia that a "functional test" is fundamental to assessing new rural dwelling serving agricultural or other rural enterprises. This test requires that it be established whether or not it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times. PPS 7 indicates that such a requirement would arise where workers are needed to be on hand day and night as essential support for an enterprise to address emergency situations (Par 4). Whilst a description of the fishing activity on site states that the lakes are "...regularly fishes by up to 40 anglers at weekends..." with specific facilities for the mobility impaired, there is no further justification as to why this and the attendance to the herd should be considered to satisfy the functional need requirement for being on hand night and day on a permanent basis, especially where there is already an extended dwelling on the property. The Agricultural Consultant considered this in his report:-

The Consultant considered the details of the application and notes that the planning application is to station the dwelling for a temporary period at the application site. He advises that, in terms of guidance in paragraph 12 of Annex A of PPS7, a temporary dwelling is associated with a significant change of business practice for an existing unit, or in association with the establishment of a new unit. In this case neither change to the business nor a new unit is proposed.

In assessing the nature of the activity on site he does not consider that the business practice from the angling enterprise and the beef unit present an essential requirement for a worker to be readily available at most times. The requirement for the angling business is for land maintenance, security and the day to day management of the business. The requirement for the beef cattle is for day to day husbandry. In both cases, in his view, the requirements of the enterprises do not meet the functional test. In this context he further notes that there is already an existing dwelling on site.

The Consultant also notes that the planning application makes it clear that the proposal is for a dwelling to be occupied under a planning permission that is personal to the applicants, and that the occupation of the proposed dwelling would be in association with the existing permanent dwelling. The occupants of the proposed dwelling would use the bathroom and laundry facilities in the permanent dwelling.

The reason for the dwelling is furthermore to assist the applicants by providing them with accommodation whilst they endeavour to purchase a house away from the site. Once a suitable dwelling (away from the site) was purchased then their occupation of the proposed dwelling would cease. As the proposed planning permission would be personal to the applicants then that consent would also lapse once their occupation of the dwelling ended.

The consultant is of the view that the proposed subsequent occupation of a dwelling away from the site runs counter to any argument for functional need on the holding. In this context the opinion therefore is that the planning application and the supporting statements do not make any case for a functional need on the holding in association with the current business practice.

This rationale for the proposed temporary dwelling lies outside the scope of Annex A of PPS7. The proposed dwelling is therefore not warranted under Annex A of PPS7.

The site access is another planning consideration. Highway officers had initial concerns about the visibility at the access to the site where an increase in vehicular use would arise. This was however discussed between the applicant and the highway officer who concluded that this issue could be addressed satisfactorily. The impact of the proposal on the open countryside in terms of visual amenity and the need to protect the natural environment would be limited. The mobile home has a backdrop to the north of the existing sheds, and is not prominent to view from any local vantage points.

Finally, the supporting documents to the application hold the view that the relocation of the mobile home onto the residential curtilage and its occupation there whilst using some of the facilities in the main dwelling would constitute permitted development and therefore is a "fall back position" that could be adopted, albeit with negative effects on the neighbouring property at 26 Fairwood Road. Whilst it is accepted that the storage of the mobile home in the residential curtilage and occasional occupation would constitute an ancillary use, it becomes a matter of fact and degree as to whether or not the nature of the occupation would constitute full time use of the mobile home as a self-contained dwelling providing all the normal facilities for day to day living. Case law suggest that the LPA would need to consider the extent to which the mobile home is provided with services that would render it capable of being occupied as a self-contained dwelling occupied on a full-time basis before taking a final view. A self-contained unit tantamount to a dwelling would not be permitted development. This is a moot point however, where the application is for the location outside of the residential curtilage.

Based on the foregoing it is considered that the mobile home is not warranted under PPS7 criteria and that the application should be refused for that reason.

Recommendation: Refusal

For the following reason(s):

- 1 Annex A to Planning Policy Statement 7 (Sustainable Development in Rural Areas) advises that new residential accommodation can be permitted in the open countryside only where the nature and demands of the rural enterprise may make it essential for one or more persons to live at or very close to the site of their work. The planning application and the supporting statements do not make any case for a functional need on the holding in association with the current business practice, and the rationale for the proposed temporary dwelling lies outside the scope of Annex A of PPS7. The proposed dwelling is therefore not warranted under Annex A of PPS7.

- 2 The dwelling in the open countryside is not fully justified in connection with the essential needs of agriculture or other rural occupation where a functional need has not been demonstrated. This is contrary to policy H19 West Wiltshire District Plan 1st Alteration 2004.

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MSA: 100022961

RELEVANT APPLICATION PLANS

Drawing : FLACK 1094 received on 10.12.2009

Drawing : FLACK 1093 received on 10.12.2009

❖ **Points of interest arising from decisions**

08/00334/BLD_L - Land Adjacent Crusader Park Furnax Lane Warminster

There were two appeals and the Inspector dismissed both the appeals and upheld the Enforcement Notice on the first and on the second directed that the wording of the Enforcement Notice should be varied.

The appeals related to unauthorised engineering operations and deposit of waste material to raise the level of land in excess of the levels shown on an approved plan.

In reaching his decision the Inspector concluded that on the balance of probabilities the importation of waste was not in accordance with any planning consent. Furthermore, that the works undertaken were not in accordance with any subsequent landscaping scheme which could not be considered in isolation from the earlier approval. The works undertaken at the site were effectively a separate engineering operation for which planning permission did not exist

Applications for costs were made against the appellant by the Council and by the appellant against the Council.

The Inspector made a full award of costs to the Council as he considered that 'these spurious appeals' had no realistic prospect of success and that the Council had incurred unnecessary expense as a result of this unreasonable behaviour in dealing with them.

He concluded in regard to the appellant's application for costs that the appeals had no realistic prospect of success. This gave the Council little option but to take enforcement action to bring a halt to a serious breach of planning control and the Council had not behaved unreasonably.

Note

If Members of the Council wish to read any of the Planning Inspectors decision letters, please contact the Planning Office for a copy.

Forthcoming hearing or Inquiries

Ref. no.	Site	Town/ Parish	Description	Appeal type	Venue	Date
W/09/02386/FUL	Land South West Of Bonnie Farm Court Lane Bratton	Bratton	Mobile home, day room and caravan	HRG	CR1	02.03.2010
W/09/01022/FUL	Land Adjacent Hackett Place Hilperton	Hilperton	Application to discharge clauses within section 106 agreement dated 6 February 2004	INQ	CC	23.03.2010
W/09/01142	Kingsdown Farm Lords Hill Longbridge Deverill	Sutton Veny	Erect 2 livestock buildings, straw storage building, dung store, hardened tracks and passageways and re-profiling of land adjacent to facilitate new buildings	INQ	CC	26.05.2010 27.05.2010 28.05.2010

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