



**APPENDIX B – DECISION REPORT (18<sup>TH</sup> JULY 2016)****COVERING PAGE FOR DECISION REPORT ON APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY – DONHEAD ST ANDREW****PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME**

		<b>Signature</b>	<b>Date Signed Off</b>
<b>To:</b>	Sarah Marshall (Solicitor – Highways)	N/A	N/A
	Barbara Burke (Definitive Map and Highway Records Team Leader)		21.7.2016
	Richard Broadhead (Rights of Way and Countryside Manager)		22.07.2016
	Ian Brown (Head of Environment Services)	Copy for information only RB	
	Tracy Carter (Associate Director – Waste and Environment)	Not required - RB has delegated powers TC	
<b>From:</b>	Janice Green		
<b>Date of report:</b>	18 <sup>th</sup> July 2016		
<b>Return to:</b>	Janice Green, Rights of Way (Ext. 13345)		

**Nature of Report:** This is a report from Janice Green (Case Officer) to Tracy Carter (Officer with the relevant delegated powers).

**Executive Summary:**

Wiltshire Council is in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981 and dated 15<sup>th</sup> May 2015, to add a footpath to the definitive map and statement of public rights of way, in the parish of Donhead St Andrew. The application is supported by 33 user evidence forms, with maps attached and an extract from the 1901 Ordnance Survey Map, drawn at a scale of 25 inches to 1 mile.

Following an assessment of the evidence, Officers are satisfied, on the balance of probabilities, that a right of way for the public on foot which is not shown in the definitive map and statement, can be reasonably alleged to subsist over the land in question leading between Footpath no.4 and Footpath no.5 Donhead St Andrew, along the eastern boundary of the Mansfield.

It is considered that the public have used the northern section of the claimed route, as of right, for a period of at least 20 years, i.e. during a relevant user period of 8<sup>th</sup> August 1992 – 8<sup>th</sup> August 2012 and have acquired a public right on foot over the land.

On 8<sup>th</sup> August 2012, the new owners of the northern section of the field (Wardour Ltd), lodged with Wiltshire Council a map and statement under Section 31(6) of the Highways Act 1980, which acknowledged existing rights of way over land in their ownership, as recorded within the definitive map and statement of public rights of way, whilst indicating their non-intention to dedicate further public rights of way over the land. This action by the landowners served to bring into question the public right over the land, on the whole of the claimed route.

Additionally there is insufficient evidence of the landowners' non-intention to dedicate the way during the relevant user period of 8<sup>th</sup> August 1992 – 8<sup>th</sup> August 2012. Although the new landowners on the northern section of the route (Wardour Ltd) have carried out acts to show their non-intention to dedicate the land as a public right of way, the evidence in this case points towards 20 years public user, as of right, being established prior to 8<sup>th</sup> August 2012. Although the previous landowner (Mr David Pitman on behalf of the Pitman family), suggests that it was not their intention to dedicate the route as a public highway, i.e. they granted permission to individuals and they always led everyone to believe that it was at the landowners discretion if they walked anywhere else on the field other than on the public footpaths, there is insufficient evidence before the Council of any actions taken by them or the present owner of the southern section of the field, to convey to the public at large their non-intention to dedicate the land as a public highway.

There is insufficient evidence of public user for a 20 year period over the southern section of the route (i.e. over land owned by Mr and Mrs Shepherd). However, Officers consider that the installation of a stile and dog latch by Mr and Mrs Shepherd when the fence was erected at the northern boundary of their land in March 2012, constitutes an act of implied permission under common law. There is evidence that the public have accepted this route by continuing their use, therefore it is considered that the southern section of the route has acquired public footpath rights at common law.

**Officer's Recommendation:**

That a definitive map modification order be made to add a right of way for the public on foot to the definitive map and statement of public rights of way in the parish of Donhead St Andrew, between Footpath no.4 and Footpath no.5 Donhead St Andrew, having a width of 1.8 metres, where it is reasonably alleged that a right for the public on foot exists. Where an order is made on a reasonable allegation, it may not be confirmed until the more stringent test of the "balance of probabilities" is applied, i.e. it is more likely than not that a right for the public on foot exists. Therefore, where no objections to the making of the order are received, weight is added to the supporting evidence before the Council and it is recommended the order be confirmed, as an unopposed order where no objections are received.