

**WILDLIFE AND COUNTRYSIDE ACT 1981 s.53**

**DECISION REPORT**

**TEFFONT PATH No. 9**

**1.0 The Applications**

- 1.1 Wiltshire Council is in receipt of 2 applications for definitive map modification orders affecting Teffont path no. 9. One was received in March 2005 (application no. 2005/19) and the other in August 2014 (application no. 2014/05). The 2005 application is for an order to record the way as a byway open to all traffic and relies on historical documentary evidence and the 2014 application is for an order to add additional width to the route of Teffont 9 and relies on a mixture of evidence from users of the way and from historical documents.
- 1.2 Applications that rely on the evidence of users of the way are prioritised by the Council and as a result the 2014 application was allocated to an officer for determination soon after receipt. Following the discovery of evidence the Council is charged with a duty to consider all other relevant evidence available to them (s.53 Wildlife and Countryside Act 1981 (WCA81)) and it was therefore considered expedient to determine the 2005 application concurrently.
- 1.3 This report considers both applications and all relevant evidence available to the Council relating to Teffont path no 9 (TEFF9).
- 1.4 **The 2005 Application 2005/19**

**Application date:** 08.03.2005

**Applicant:** Mr Steve Gunning, 1 Green Terrace, Seymour Estate,  
Trowbridge, BA14 8JD

**Application to:** Upgrade to a byway open to all traffic the bridleway number 9 in  
the parish of Teffont Magna.

**Application** Form of Application for Modification Order (Schedule 7  
Regulation 8(1))

**Contents:** Form of Certificate of Service of Notice of Application for  
Modification Order (Schedule 9 Regulation 8(4)). Notice served

on Mr Waddington, Manor Farm, Teffont Magna, SP3 5QY  
Map extract from Ordnance Survey 1:10000 sheet showing  
Teffont 9 highlighted in pink.

Summary of Evidence with brief descriptions including transcript  
of the relevant section of the Dinton and Teffont Magna Inclosure  
award 1837

- 1.5 Although notice was served on Mr Waddington by name (the current landowner and owner in 2005) the address used was that of neighbouring property Manor Farm, Teffont which at the time was owned and occupied by Lord Sharman.
- 1.6 It is not clear from the correspondence received at the time that Mr Waddington received the notice although on the 11<sup>th</sup> March 2005 Wiltshire County Council answered a request from a neighbour of Mr Waddington, Mr Peter Durtnall (whose property abuts Teffont 9) for information and a copy of the application.
- 1.7 Around that time officers also answered requests for information from Mr A N Deane, Fitz Farmhouse, Teffont (16.03.05), Mr Dare, Hurdcott Farm, Barford St Martin (21.03.05), Mr I Dawson, Font House, Teffont (23.03.05), Mr Fisher, Wrens Cottage, Teffont (29.03.05), Lord Sharman, Manor Farm Livery, Teffont Magna (11.03.05) and Mrs L Nelson, 1 Riverside Cottages, Teffont Evias (15.09.05).
- 1.8 The letter from Mr Fisher in March 2005 was also copied to Mr Robert Key, MP for Salisbury, Cllr Richard Willan, Wiltshire County Council, Councillor Sara Willan, Salisbury District Council and The Chairman, Teffont Parish Council.
- 1.9 Additionally in November 2013 Wiltshire Council further to a telephone conversation with Mrs Waddington confirmed in writing (by e.mail) to Mrs Waddington that an application had been received on the 8<sup>th</sup> March 2005 and included a copy of the evidence summary that formed part of the application.

#### 1.10 **The 2014 Application 2014/05**

**Application date:** 22.08.14 Copy to Wiltshire Council  
26.08.14 Certificate of Notice served on Mr E Waddington and Mr D Wood  
30.08.14 Certificate of Notice served on Mr P Durtnall and W G Fry and Son

**Applicant:** Wiltshire Bridleways Association, c/o 20 Coombe, Enford, SN9 6DE

**Application to:** *“Wiltshire Bridleways Association seek a modification to the statement width of Teffont 9 along its entire length between GR ST994325 (C277 road) and GR SU000349 (TEFF12/Ox Drove)*

*specifically to include within the width the public right of way the area of the bell mouth of the entrance of the track leading from Manor Farm Livery Teffont Magna, Salisbury, Wiltshire, SP3 5QY.”*

**Width:** Thirty feet (30ft)

**Application Contents:** Form 1 Notice of Application for Modification Order (22.08.14)  
Form 3 Certificate of Service of Notice of Application for Modification Order. Notice served on Mr E Waddington, Waddington Farms, Field Buildings, Teffont, SP3 5RD and Mr D Wood, Manor Farm, Teffont Magna, SP3 5QY (both 26.08.14)  
Form 3 Certificate of Service of Notice of application for Modification Order. Notice served on Mr P Durtnall, Hillcrest, Old Dinton Road, Teffont Magna, SP3 5QX and W G Fry and Son, Totterdale Farm, Tisbury Row, Salisbury, SP3 6RS (both 30.08.14)  
Map extract from Ordnance Survey 1:25000 sheet showing Teffont 9 highlighted in pink.  
Witness statements from 23 users. NB One further letter and form were submitted subsequent to the application making a total of 24 users.  
Summary of Evidence (historical documents and user)  
Copy of letter from the Council dated 06.05.14  
Copy of plan and summary of evidence from 2005 application  
Photographs – aerial 2004 and 3 images from 2011 and 2012

1.11 Copies of all application papers were sent to Mr Waddington, Mr Wood and Mr Durtnall on the 1<sup>st</sup> October 2014.

## **2.0 Enabling Legislation**

2.1 Wiltshire Council is the surveying authority for the County of Wiltshire, excluding the Borough of Swindon. A surveying authority is the body responsible for the preparation and upkeep of the definitive map of public rights of way.

2.2 The Wildlife and Countryside Act 1981 (WCA 1981)(c.69) section 53(2)(b) applies:

*As regards every definitive map and statement the Surveying Authority shall-*

- (a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be*

*requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*

- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.**

2.3 The event referred to in subsection 2 above relevant to this case is:

*(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –*

*(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*

*(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.*

2.4 The council must consider all available evidence and this may relate to a dedication at common law or by statute law. Historical evidence may be considered by virtue of Section 32 of The Highways Act 1980 (below):

*A court or tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.*

2.5 Section 53(5) WCA 1981 allows for any person to apply for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

2.6 Schedule 14 to this Act states:

*Form of applications*

1. *An application shall be made in the prescribed form and shall be accompanied by –*

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

*Notice of applications*

2. (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*

*(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.*

*(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.*

*(4) Every notice or certificate under this paragraph shall be in the prescribed form.*

- 2.7 A surveying authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the surveying authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.
- 2.8 Although it is clear that it is possible to proceed with most applications that are not strictly compliant with Schedule 14, legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006 (NERC Act 2006 see para 12) means it is necessary for the Council to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles (MPVs) under s.67(3) may apply.
- 2.9 The application, when received in 2005, in line with Defra advice and practice, appeared compliant with Schedule 14. Subsequent investigations by officers revealed that it is possible that Mr Gunning failed to serve notice on the landowners despite certifying that he had (the notice was sent to the landowner, Mr Waddington, but at the address of the neighbouring farm) though it was clear that even if the application being general knowledge in the

village had failed to come to his notice by 2013 Mrs Waddington was definitely aware of the application.

- 2.10 In 2007 and 2008 the High Court and the Court of Appeal considered issues relating to the compliance of applications to Schedule 14. In [2008] EWCA Civ 431 (The Queen on the Application of Warden and Fellows of Winchester College and Humphrey Feeds Limited v Hampshire County Council and The Secretary of State for Environment Food and Rural Affairs) Lord Justices Ward, Dyson and Thomas considered compliance where there had been a failure in the service of notice on landowners (in addition to compliance in relation to copies of evidence adduced). At paragraph 70 in agreeing with the earlier findings of George Bartlett QC ([2007] EWHC 2786 (Admin) in this case LJ Dyson states:

*“...I conclude that Parliament cannot fairly be taken to have intended that, if a paragraph 2(2) certificate is wrongly issued, it must follow that a determination on which it is based is invalid. The facts of the present case show that the better approach is to examine the consequence of the defect in the certificate. If they are serious and the defective certificate has caused real prejudice, then it may be that the determination on which it is based should be declared to be invalid. But in my judgment, on the facts of this case the judge reached the correct conclusion on this issue and for the right reasons.”*

- 2.11 Officers consider that in this case, because the landowner has definitely been aware of the application since 2013 and has been consulted prior to any determination by the Council that no prejudice has been caused by the possible failure of the 2005 service of notice by the applicant.
- 2.12 Following the Winchester Case’ ([2008] EWCA Civ 431) the Lord J Ward, Dyson and Thomas found that **if** the outcome of an application turned on the application of Section 67(3) of the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) then strict compliance with Schedule 14 would be required in respect of the presentation of “copies of any documentary evidence ...which the applicant wishes to adduce in support of the application”. This is required in Section 67(6) for Section 67(3) to apply.

However Dyson J, in paragraph 55 of his decision went on to say:

*“I wish to emphasise that I am not saying that, in a case which does not turn on the application of section 67(6) it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and proceed to make a determination under paragraph 3; or to treat a non-compliant application as the “trigger” for a decision under section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3)”*

- 2.13 As a result it is now considered that this application does not satisfy the requirements of Schedule 14 with regard to the evidence adduced. Schedule 14 states that copies of evidence may be adduced by the applicant but in this case Mr Gunning had not included copies of any evidence, just a list of documents and a short transcript. The application is therefore not fully compliant with Schedule 14 in this regard. The application was also made too late to qualify for a s.67(3) exemption, the cut off date is 19 January 2005 and this application was received in March 2005.
- 2.14 Since then the NERC Act 2006 s.67(3) exemption cannot apply it is permissible for authorities to waive a failure to comply and to proceed.
- 2.15 The NERC Act 2006 permits further exemptions to the extinguishment of public vehicular rights, however, in all cases it is necessary to establish whether, on the balance of probabilities, the route carried a right for the public to use a mechanically propelled vehicle before the 2nd May 2006. Only then is it appropriate to consider whether any savings apply. As a result NERC Act 2006 will be covered later in this report (section 16).
- 2.16 The 2014 application is based on the evidence of users and historical evidence. The Council may consider historical documents under s.32 of The Highways Act 1980 (see para. 2.4 above) but the evidence of users may be taken as evidence of acceptance by the public (common law dedication), ongoing use of an existing way or evidence of presumed dedication under s.31 of the Highways Act 1980.
- 2.17 S.31 of the Highways Act 1980 gives that a public right of way may be deemed to have been dedicated if the public have used the way, uninterrupted, for a period of 20 years or more in a manner that was 'as of right'. This is without permission, force or secrecy. Deemed dedication in this way may also be defeated by a number of other means including the placing and maintenance of notices, statutory deposits made by landowners and notices given to the highway authority regarding the maintenance of signs.
- 2.18 The 2014 application user evidence is considered later in this report (Section 14 category F evidence) but details of s.31 of the Highways Act 1980 are given here:

### ***31. Dedication of way as highway presumed after public use of 20 years***

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

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

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

—

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

*(b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected.*

*(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

*(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

*(6) An owner of land may at any time deposit with the appropriate council-*

*(a) a map of the land on a scale of not less than 6 inches to 1 mile and*

*(b) a statement indicating what ways(if any) over the land he admits to having been dedicated as highways;*

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

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

*to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of*



*a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.*

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

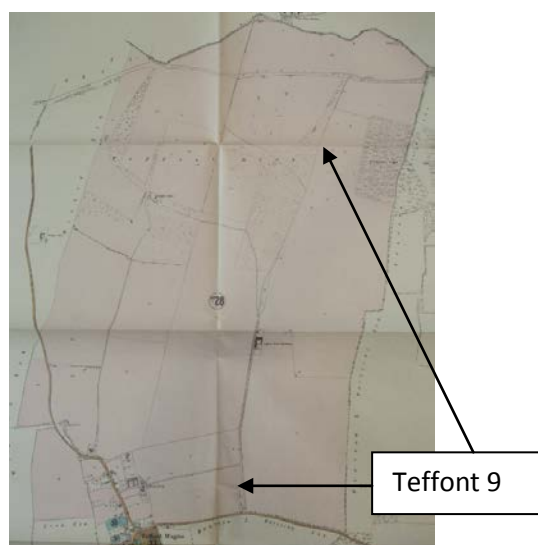
*(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.*

*(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.*

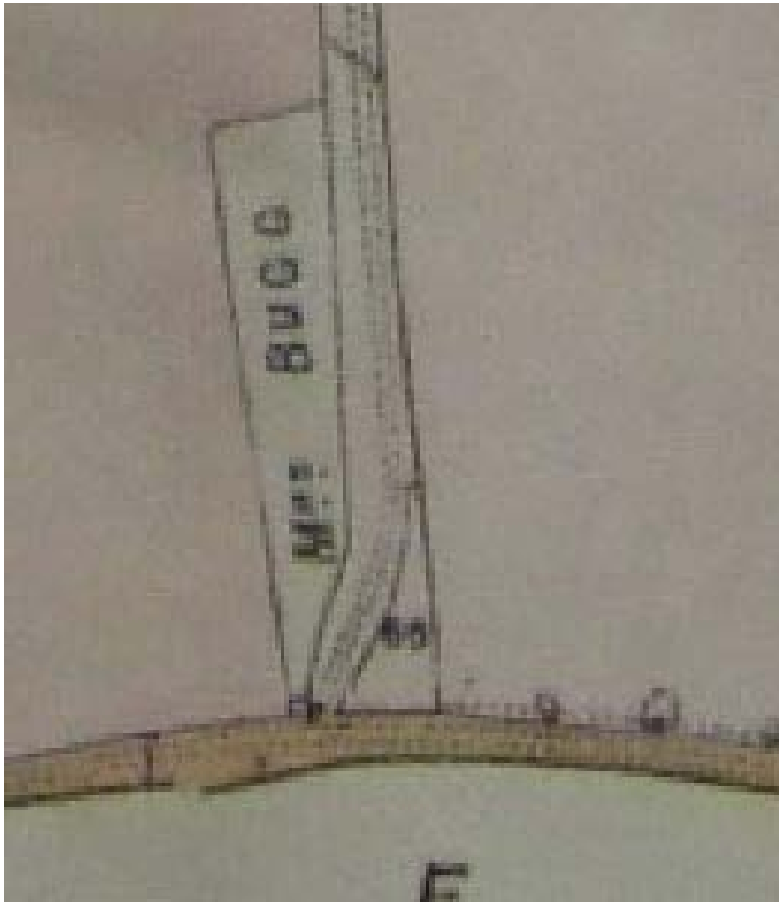
*(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over the land as a highway if the existence of a highway would be incompatible with those purposes.*

### **3.0 Land Ownership**

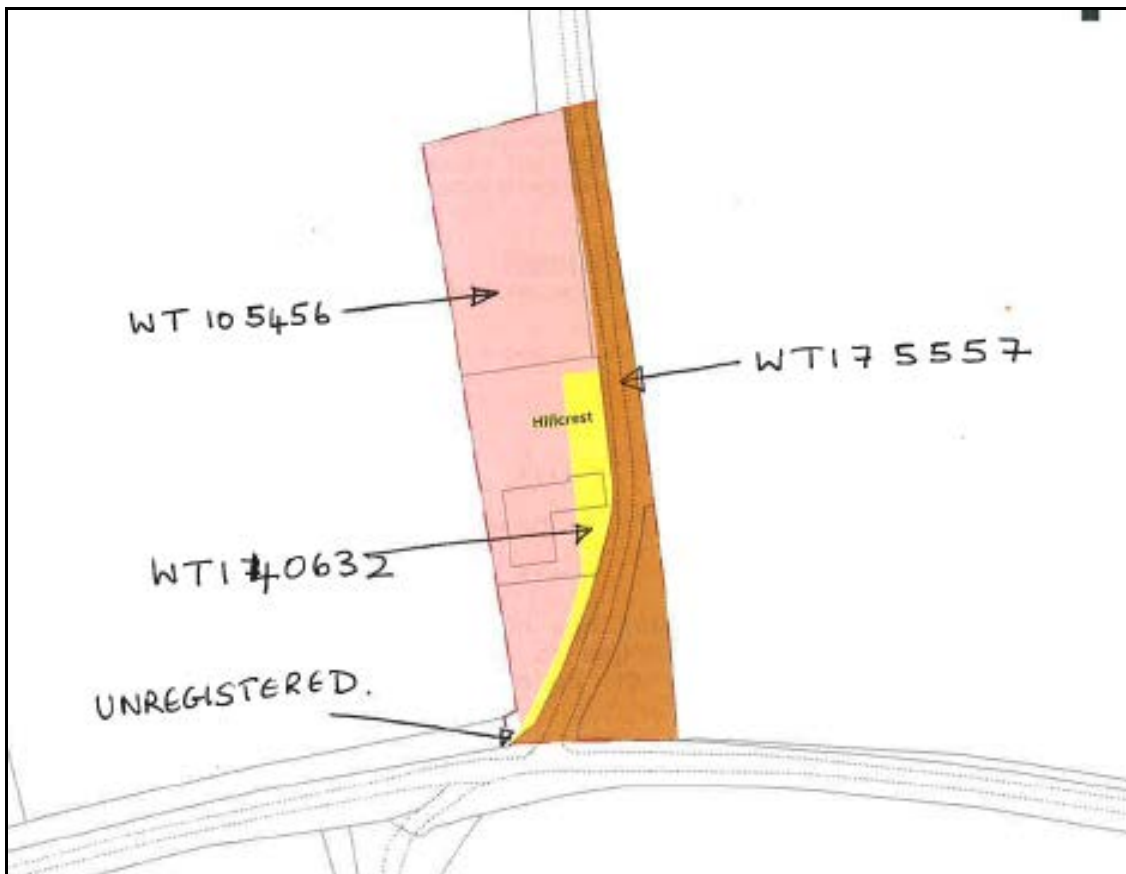
- 3.1 Historically the route of Teffont 9 and the surrounding lands were owned by the Earl of Pembroke and Montgomery and formed part of a large estate. The estate was broken up into a number of lots in 1918 and offered for sale; the route of Teffont 9 and surrounding lands formed part of a property called Manor Farm at that time. See land coloured pink on the plan below:



- 3.2 The southern end of Teffont 9 meets the Old Dinton Road (the turnpike road until 1814) and here a small parcel of land abuts the claimed route in different ownership (Mrs Bugg) and not offered in the sale:



- 3.3 The land shown in pink was retained as one estate from its sale in the early 1900s until 1998 when the then owner, Mr Crook, offered the land for sale as a whole or in six lots. The land was eventually divided and sold to four purchasers namely Mr and Mrs Sharman, Mr Waddington, “the Frys” and Mr Maitland Robinson.
- 3.4 Teffont 9 and the wider claimed route was in the Lot bought by Mr Waddington and remains in his ownership today. It is registered as Title no. WT175557.
- 3.5 The southern end of Teffont 9 (see 3.2 above) remains as separate parcels of land with registered titles WT10546 and WT140632 belonging to Mr P Durtnall. WT140632 was a later addition to Land Registry’s records (WT10546 was filed in 1991 and WT140632 was filed in 1995). The small parcel of land on the opposite side of Teffont 9 that was part of Mrs Bugg’s property at 3.2 now appears as part of Mr Waddington’s title WT175557 and part of the Earl of Pembroke’s land that is the roadway (Teffont 9) now forms part of Mr Durtnall’s title WT105456.



#### 4.0 Current Records

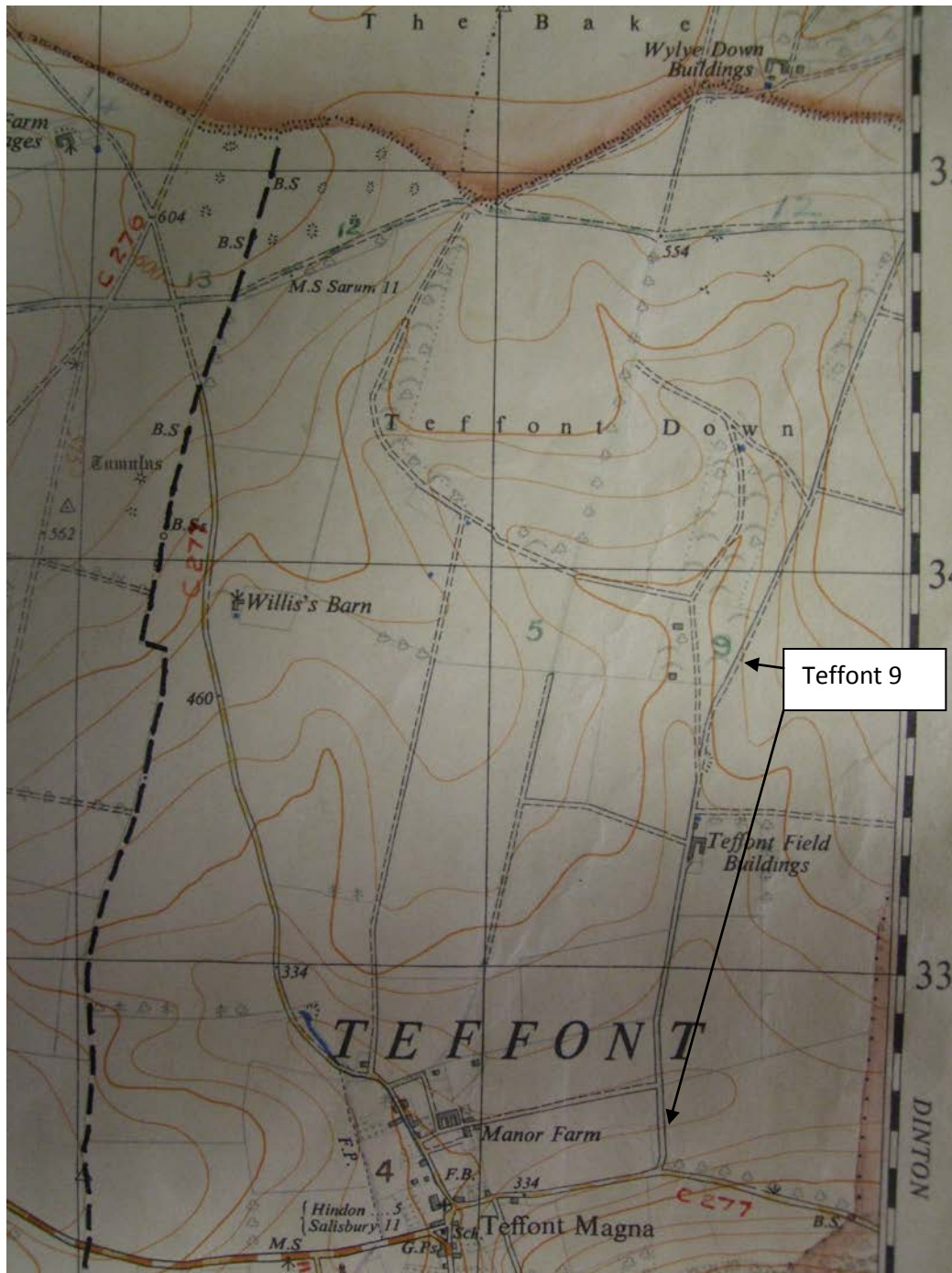
4.1 Teffont path no. 9 was recorded in the Mere and Tisbury Rural District Council area definitive map and statement dated 1952 and has remained unaltered since that time.

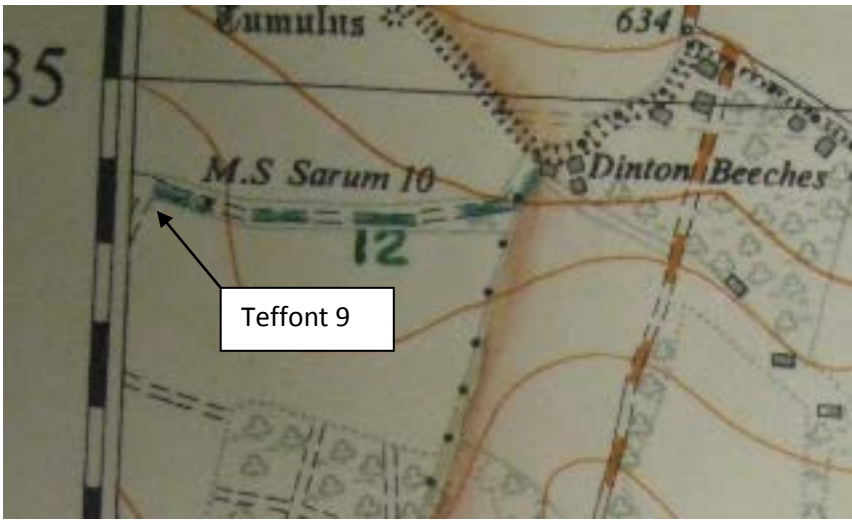
4.2 The definitive statement reads:

Teffont 9 B.R. From the Dinton road, C.277, leading north past Teffont Field Buildings to its junction with the Ox Drove, path No. 12.

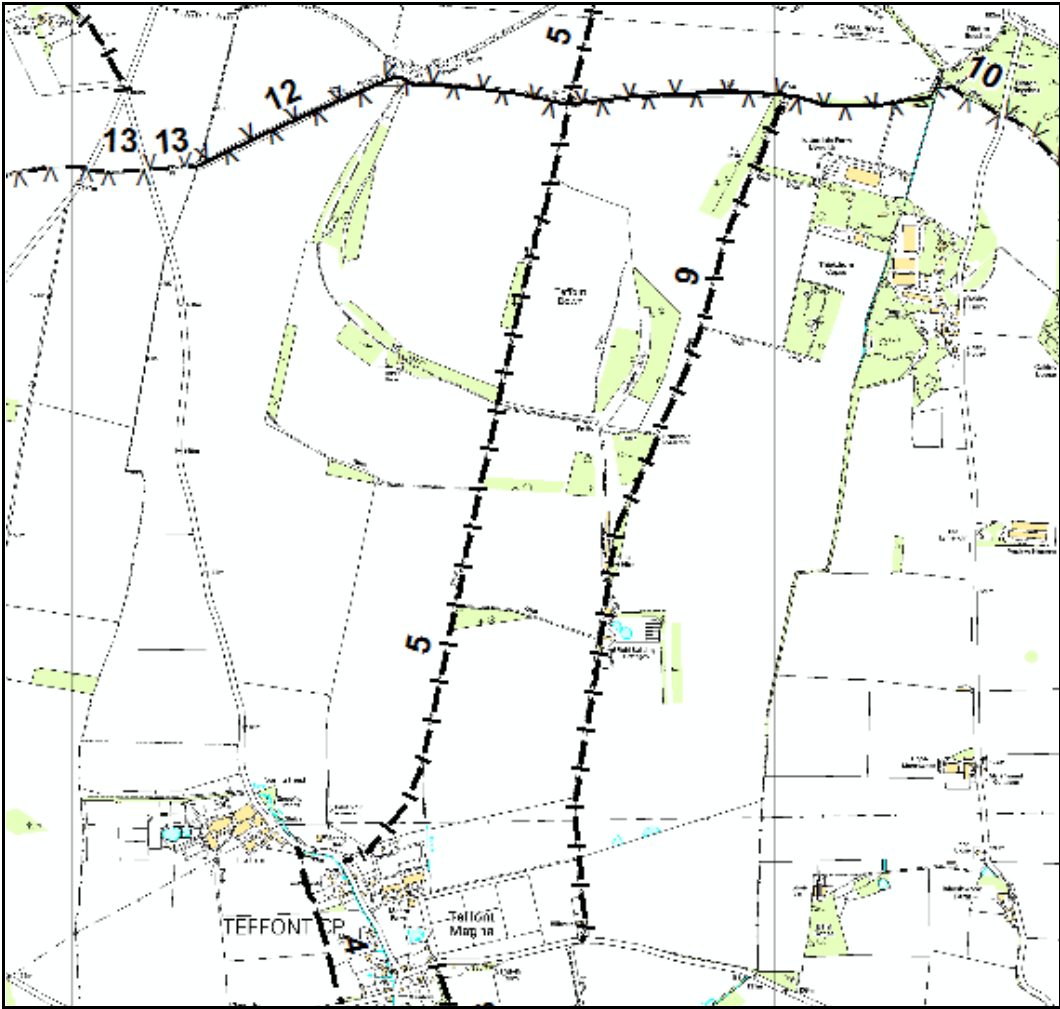
Approximate length 1.5 miles Width 8 feet

4.3 The definitive map for the Mere and Tisbury Rural District Council area dated 1952 has suffered very badly from fading of the ink used. As a result the green line of Teffont 9 is not very clear though the green no. 9 can still be seen as can green shading with the naked eye. The original scale of the map is 1:25000.





4.4 The working copy of the definitive map shows the way as below:



**5.0 Site Visit Photos 29.08.14**





Teffont 9 leading north. Junction with track towards Manor Farm on left, access to fields on right



Teffont 9 leading north



Teffont 9 leading north



Teffont 9 leading north



Teffont 9 leading north



Teffont 9 leading north past Teffont Farm Buildings (house)





Teffont 9 leading north past barn at Teffont Farm Buildings



Teffont 9 leading north after barn



Teffont 9 leading north



Teffont 9 leading north



All above and next page - Teffont 9



Teffont 9 - Locked gate with open gate to side at junction with Ox Drove



Teffont 9 – junction with Ox Drove (Teffont 12)





- 5.1 The tarmac surface was laid by Mr Waddington sometime around 2000. The locked gate across the route and the side gate at the Ox Drove (north) junction were erected around 2006.
- 5.2 Photographic evidence has been adduced dated 1994 (from witness 11 Mrs J R De Berneus Nicholson) and 1998 (from Mr D Wood and Mr Waddington) showing the nature of the surface of the track at these times.

5.3 1994



5.4 1998





## 6.0 Initial Consultation

6.1 Wiltshire Council conducted an initial consultation for both applications. The following letter was circulated on the 1st October 2014:

### ***“Wildlife and Countryside Act 1981 s.53***

#### ***Applications for Definitive Map Modification Orders Affecting Teffont Path no. 9***

*Wiltshire Council has recently received an application for an order to modify the definitive map and statement to show Teffont path no. 9 as a bridleway 30 feet wide. This application is supported by evidence of use by 24 witnesses and historical evidence. Additionally, in March 2005, Wiltshire County Council received an application for an order to modify the definitive map and statement to show Teffont path no. 9 as a byway open to all traffic. This application is supported by historical evidence.*

*The council prioritises any application that adduces evidence from users and as a result the 2014 application will now be investigated. As some of the evidence adduced is common to the 2005 application and as the updating of the definitive map is a duty of the Council, it is inevitable that evidence relating to both applications will be investigated and it is hoped that both applications will be determined.*

*Public rights for mechanically propelled vehicles that were not recorded in the definitive map and statement as a byway open to all traffic on the 2<sup>nd</sup> May 2006 (or the subject of a fully compliant application made before the 20<sup>th</sup> January 2005) were extinguished by the Natural Environment and Rural Communities Act 2006; though there were some savings. As part of this consultation I would be grateful to receive any evidence that any savings apply. If they are not, on the balance of probabilities, found to apply, the highest status that Teffont 9 could carry for the public is that of restricted byway. A restricted byway has a right for the public to pass and repass on foot, horseback, leading a horse, cycling or in a horse drawn cart or carriage. To support this status it would need to be found that on the balance of probabilities higher rights than bridleway subsist. The legal test for the recording of a greater width is the same.*

*Officers have not yet started to investigate the evidence adduced by either application but would welcome any evidence that you may have relating to Teffont path no. 9. This may be in the form of deeds, documents, maps, plans, photographs or recollections additional to those already adduced. I would be grateful to receive these (or copies of, or to arrange sight of) by Friday 7<sup>th</sup> November 2014.*

*If you have any queries relating to this matter please do not hesitate to contact me. Please find enclosed a map showing the route affected.”*

6.2 In addition to this copies of the applications and all supporting documents were sent to Mr and Mrs Waddington, Mr Durtnall and Mr Wood.

6.3 The consultation was sent to the following:

The Auto Cycle Union

Commons, Open Spaces and Footpaths Society

Wiltshire Bridleways Association

Wiltshire Cycling Touring Club

British Horse Society (national and Wiltshire)

Clerk to Teffont Parish Council

Wiltshire Councillor Bridget Wayman

Byways and Bridleways Trust

British Driving Society

Wiltshire Council Senior Rights of Way Warden Nick Cowen

Ramblers (Wiltshire)

Trail Riders Fellowship

Mr B Riley

Mr S Gunning (applicant 2005)

Mr N Beardsley (applicant on behalf of Wiltshire Bridleways Association 2014)

Mr P Durtnall (landowner)

Mr D Wood (adjoining land owner)

Mr E Waddington (landowner)

W G Fry and Son (adjoining landowner)

Mr A Burgess (witness)

Mrs P Fisher (witness)

Dr J Fox Hayler (witness)

Mr R Faulkner (witness)

Mrs S Beech Caldicott (witness)

Mr E Long Fox (witness)

Dr S Vile (witness)

Mrs A Stone (witness)

Ms G Green (witness)

Dr E Fisher (witness)

Mrs J R De Berneus Nicholson (witness)

Mr J Fisher (witness)

Mr John Fisher (witness)

Mrs C Large (witness)

Mrs C M Bernard (witness)

Mrs H Wakeford (witness)

Miss K McNamara (witness)  
Mrs D Verdon – Smith (witness)  
Ms M Corrie (witness)  
Miss A Collins (witness)  
Mr S Nathan (witness)  
Mrs C Marking (witness)  
Mrs J Nathan (witness)  
Ms Z Faulkner (witness)

6.4 The plan circulated was as below:



## Responses

6.5 **Mr B Riley** 06 October 2014

*“Thanks for your letter re Teffont 9. You already have a list of the maps and documents examined for 2005/19, so I thought it might be useful for you to know which maps and documents I did not have time to look at. These were:*

*Original Parish Claim; Finance Act Maps; Take Over Map; Railway Deposited Plans (if any); and the Survey Book for the 1801 Map.*

*I am not aware of any MPV use of Teffont 9 by the public during the relevant periods”.*

**Officer’s comments:** The suggested documents have been viewed and are included in the historic evidence section. Mr Riley’s comment relating to MPV use supports this report’s subsequent findings that any public MPV rights have not been preserved by s.67(2)(a) of the Natural Environment and Rural Communities Act 2006.

6.6 **Mr D Wood** 28 October 2014

Mr Wood submitted the witness statements of Georgina Green, Pamela Fisher, Lord Sharman, Richard Long-Fox and Stuart Crook as considered by Mr Justice Morgan in the recent court case [2014] EWHC 1358 (Ch) David and Philippa Wood v Edward Alexander Waddington.

Submission of documents dating from the sale of Manor Farm sometime in the 1930s.

*“I have recently been passed an interesting set of documents dating from the sale of Manor Farm from the Pembroke Estate (sometime in the 1930s). I attach a scan of the map which was part of the sale documentation and a scan of the corresponding schedule. Both are A3 and I only have an A4 scanner so please forgive the partial scan.*

*Of interest is that the roadway along which TEFF9 now runs is described in the Schedule (item 64) as a ‘Roadway’ with its state is given as a ‘Road’. By contrast the track from Manor Farm is described as a ‘Cartway’.”*

**Officer’s Comments:** Sales particulars have been viewed and are included in the historic evidence section. The witness statements provided were prepared and submitted in relation to a case regarding various private rights that had, or had not, passed with Manor Farm following the sale and division of the lands in 1998. Inevitably much of what is contained in the statements refers to other routes (for example the Manor Farm track leading west of Teffont 9, also known as the Small Sands track, the width of a route near to Manor Farm and matters relating to the southern end of Teffont 5), however, the witness statement of Lord Sharman provides helpful background as to how access was between the years 1998 and 2009. Lord Sharman makes it clear that access to Teffont 9 from his property was important to him and his business and that at no time had he ever been challenged by Mr Waddington of his, or his client’s, use of the wider extent and verges of Teffont 9. The judge concluded that no private right to do this subsisted. However, the judge did not address the

question of whether any public right subsisted to enable Lord Sharman (or the current owner of Manor Farm) to do this. Given that the use of the connection occurred without permission or challenge during this period it is more likely than not that people considered they were exercising a public right to do this (in other words, that the verges were part of the highway).

6.7 **Mrs S Vile** 6 November 2014

*"I know that you have my 'user evidence form' submitted during the summer. Thank you for the letters sent on 29 August and 1 October 2014 offering me the opportunity to make further comments or provide further evidence regarding the above matter.*

*Further to that I can only re-iterate the following:*

*Since 1965 I have made use of that path, with frequent use being made up to 1983, but much less often since. The majority of use was made on foot, occasionally on a borrowed horse. Sometimes we walked the whole length of the path, and I have marked this on both your maps using a green marker pen. This would be as part of a long circular route also including the 'Ox Drove', Path no. 5 and portions of road. Much more frequently, even daily at times, we walked a shorter circular route marked in pink on the maps. This incorporated a short section of Path no. 9 from which we turned west onto a private track through the centre of Manor Farm, who maintained an open free and clear access from Path no. 9 to their farm track. This shorter route was much more suitable for walks with young children – either myself with my siblings, or later when I was helping neighbours by taking their children for walks.*

*For most of the period when I have made use of Path no. 9, it was a rough track, used by walker and horse riders. It would be suitable for mountain bikes, and was used by farm vehicles accessing various field and other tracks leading from it. However, one would not have driven a normal car on this path."*

**Officer's Comments:** Mrs Vile has used the verges of Teffont 9, at least when on her shorter walks, to access the Manor Farm track. There is no mention of her seeking permission from Mr Waddington to do so. It is noted that Mr Waddington refers to the Manor Farm track as the Small Sands track.

6.8 **Mr P Durtnall** 07 November 2014

Scan of letter follows:

Thank you for your letter of 1 October 2014.

I have lived at Hillcrest for about 20 years. My property borders the first 100 metres of Teff 9 from Old Dinton Road.

I believe this is an unfortunate case of a very determined individual manipulating others for his personal benefit. The alleged difficulties have been created or grossly exaggerated in order to stir up public support for his private and commercial ambitions. This application may have come from Wiltshire Bridleways Association but it originated from owner of Manor Farm Livery.

#### Tarmac Surface of Teff 9

The bridleway Teff 9 has been used by the public for walking, cycling and horse riding for many years. The tarmac surface laid by Mr Waddington in 2000, on his private road over which Teff 9 passes has actually improved the access for walkers and cyclists.

The width of the tarmac is about 10 feet from Old Dinton Road for about 1000 metres and the Definitive Map actually describes the bridleway as 8 feet wide. The witness statements claiming difficulty in riding "in the centre section" of the tarmac track are absurd. The only difficulty, perhaps for a small number of novice riders is only in the first 40 metres down the slope of the tarmac surface from Old Dinton Road. Horses with metal shoes, in dry conditions may slip as the front hooves have a braking function. In wet conditions the surface is perfectly acceptable. Riding up this

*(This space intentionally blank)*

gradient presents no difficulty in wet or dry conditions as the horse is driving up the slope with its back legs. This professional advice was given to me by the Manor Farm Livery manager. The simple remedy, if a remedy is needed at all is to resurface the centre section with a suitable non-slip coating. That is all that is needed for Teff 9 to fulfil its function as a bridleway.

#### Public Access

The vehicular gate at the Ox Drove end of Teff 9 is locked but the adjoining horse gate has always been accessible. Any references to this as a problem are spurious.

The occasional event of a farm vehicle passing the few horse riders who actually use Teff 9 in a day is not a problem. All vehicles slow down and use the verge to pass safely. If a horse rider feels the need to move onto the verge to assist the passing vehicle then this has been perfectly acceptable.

The only difficulty has been the wanton use of the verges by a few awkward horse riders trotting or cantering, trying to prove a point which is totally unnecessary. If this is allowed then the only result would be the cutting up and poaching of the verges which spoils this lovely part of the countryside for other users. Any occasional animosity stems from an aggressive approach by a very small minority of horse riders and the reaction from the landowner. I note that within the witness statements submitted with this claim, the majority do not show any sign of personal animosity and at least one is positive about the landowner's helpful nature.

This is a public right of way enjoyed by walkers and cyclists of all ages. I would be very concerned for people's safety if a minority of riders assumed the right to canter or gallop along it. Opening Teff 9 to a 30 feet wide horse motorway width would be unsafe for the majority of users.

Safety on shooting days is paramount and this includes the public's right to safely pass along the bridleway of Teff 9. At no stage are any bridleways blocked. If a bridleway may be affected then shooting only starts if it is not being used. If shooting is already in progress for a few minutes, then a member of the public arriving on the scene may be politely asked to wait until it is clear. However if that person insists on the right to pass then the shoot is stopped until the person has safely passed by. Any suggestion of a problem is no more than another spurious attempt to create local conflict and generate local support for this privately driven claim.

Manor Farm Livery track is a private access not a public access. The only way to use it is to pay money to the livery owner one way or another. Any claimed access to or from Manor Farm Livery along their private track onto Teff 9 is not open to the general public who would not benefit from this claim. Including any form of special concession to the livery owner in his request for a special "bell mouth" access from Teff 9 for his private and commercial use or a "realignment" of the claimed 30 feet width in this Wiltshire Council publically funded process would be a misuse of public funds.

I am unsure why the livery owner would want to force an access along his track and out onto Teff 9 for his commercial horse riding clients and villagers on foot who have paid for a licence. This track is also his neighbour's established grain lorry and agricultural vehicle access route. His objection letter of 30 January 2012 to Wiltshire Council on the subject of the neighbour's grain drier planning application states "I am very concerned that any additional heavy traffic will, if allowed to pass

through Manor Farm, increase to unacceptable levels the risk of an accident on my property. My fear is that such an accident might very well involve a child or an animal here. I believe that the planning process would be open to serious criticism were it to permit that situation to arise". Why is the livery owner trying to force an access which he believes to be dangerous? In fact, the new alignment of the farm vehicle's access track onto Teff 9, created by the neighbouring farmer at his expense has made this section of Teff 9 safer for public use.

#### **Witness Statements**

The witness statements submitted in support of the claim do no more than show that the current Definitive map width of 8 feet has been used by the public for generations. There is no dispute here. This width is sufficient as a bridleway and has no need to be increased to 30 feet in order to perform its function.

I note that the Natural England guidance notes refer to the 20 year period for presumed dedication of public use and I assume that this is the purpose of all the witness statements. However, periods in which it is known to have been with the permission or licence of the landowner are excluded. It is well known that the generous owners of Manor Farm from 1963 to 1991 gave permission for "villagers" to walk along all the tracks over the whole of Manor Farm. This is the same, specific group that have submitted these witness statements. The permission did not extend to the general public. The new owner in 1991 made it clear that he would not allow this general village activity to continue on his farm. In 1998 Manor Farm was sold in separate lots. The new owners of the farm house created a livery business and erected gates to stop villagers walking past their home and onto Teff 9. In 2009 the current owner only allowed access to villagers who purchased a licence from him. Therefore there has not been a continuous period of 20 years where the "general public" have enjoyed access without landowner's permission or a licence from the landowner.

The witness statements are very interesting but I do not believe that they prove anything.

#### **Existing properties**

Some of the various maps and Inclosure Awards quoted in the claim from the livery owner are over 200 years old. It is clear from the maps of with the Awards of 1800 and 1831 that land use has now changed. To revert to the 1800s could lead to the loss of gardens from a number of Teffont properties. Clearly Hillcrest could be affected but it can also be seen that village houses by Teffont Magna church fronted directly onto the public highway and yet they now have front gardens. It is a shame that the personal ambition of the livery owner could lead to further distress among villagers from whom he has gained support.

#### **Width of Teff 9**

I have measured the distance between the hedgerows either side of Teff 9 at the point where the livery owner wants to force an access. I find it to be at least 32 feet and more in some places. It is



clear that even if Wiltshire Council decide to confirm the width of 30 feet in accordance with the 1831 Award then it will in equity have to be centred between the hedgerow borders. The livery owner will still have to cross his neighbour's land or more to the point his neighbour has the right to plant a hedge on his own land through which pedestrians and horse riders cannot pass. The livery owner will not achieve his personal goal of creating a private access onto the public bridle path at the expense of public resources. To extend the 1831 Award across the neighbour's private land for the benefit of the livery owner would presumably require a New Path Creation Order which is not within the terms of this application for a Modification of an existing path.

#### **Modification of the Bridleway**

The application is for a bridle way 30 feet wide based on the 1831 Award of a "Publick Carriage Road". I believe that the breadth of 30 feet would have included allowance for a drainage ditch for practical purposes and therefore the actual road surface would have been less than 30 feet. Clearly a horse or cart cannot travel in a ditch so it cannot have been part of the original useable surface. It is clear from inspection that drainage ditches on one or both sides of the bridle way have been used for generations to manage the rainwater flow off the adjoining farmland. The current landowner has actually maintained and reinstated the ditches for this specific purpose. There has been no two way horse drawn farm cart traffic for generations and this "Wyly Road No. III" is no longer used for its original purpose as the main public road from Teffont Magna to Wylye. I believe that if a Modification Order is to be made then it should reflect modern times and revise the 1831 Award in line with the 1951 Definitive Map bridle way 8 feet wide. This is what is needed and used by the public.

In the livery owner's summary of evidence attached to his claim he refers to his bitter dispute with his neighbour. A difference of opinion with his neighbour first arose about a year after he arrived in the village and he has battled on various fronts against his neighbour since then. In this claim he has referred to his recent legal action against his neighbour in the High Court. The Judge said no to the livery owner but unfortunately the livery owner is now continuing his battle in the Court of Appeal. The livery owner is trying to glean part of the High Court transcript in support of this claim. The arguments were not stated from both sides on the Teff 9 issue and it was not tested in the High Court. I believe it is misleading for the livery owner to try to influence Wiltshire Council in this way.

I have to be critical of the livery owner for what I believe to be the obscene amounts of money in legal fees, public resource and private time that he has caused to be spent in his single minded determination to force an additional access from his small holding of about 30 acres of land when he already has two vehicular and one bridleway accesses with another application for a further equestrian access onto Old Dinton Road under consideration.

Abraham Laslo, the renowned American psychologist said *"if all you have is a hammer then everything looks like a nail"*. I sincerely hope that the livery owner will learn not to treat everyone who disagrees with him in this manner.

This claim adds nothing to the convenience or enjoyment of a substantial section of the public or of local residents on the existing bridleway of Teff 9 as required in the grounds for making an order and

the tests to be satisfied. I understand that Wiltshire Council have the option to take no action at all with this claim. This would be a sensible decision in the circumstances of this claim.

**Officer's Comments:** Matters such as the surface, safety and desirability are not matters for consideration in s.53 of the Wildlife and Countryside Act 1981. Further there is no requirement to only walk a horse on a bridleway and the public would normally be expected to proceed on a horse at any speed appropriate for the conditions and safety.

Mr Durnall is correct in identifying that the public used the Manor Farm track by permission and that no public rights are likely to have been acquired, however, it is clear that when granting that permission since 1998 both Lord Sharman and Mr Wood both considered that Teffont 9 could be accessed in this way. No evidence has been adduced as to whether Mr Crook (or the Pitcairns) considered the matter of whether permission would be needed to access the verges of Teffont 9 when the land was in one ownership.

It is agreed that land use has changed significantly since the beginning of the 19<sup>th</sup> century, however, no legal orders have been found affecting the public rights awarded in either award (1801 and 1837) and these remain legal events in themselves. This is not to say that further legal orders may not be made that do affect these rights, but none have occurred to date.

Mr Durnall is incorrect in stating that the Council has an "option to take no action at all with this claim" as the determination of such applications and the continual review and updating of the definitive map and statement are statutory duties contained within s.53 of the Wildlife and Countryside Act 1981.

6.9 **Teffont Parish Council** posted 5 November 2014 received 20 November 2014

*"Further to your letter dated 1<sup>st</sup> October 2014 I would like to inform you of the views of Teffont Parish Council.*

*With regards to the proposal concerning the application to make this a BOAT. **Teffont PC do not support this proposal.***

*With regards to the proposal to reinstate the path to the original width of 30 feet.*

***Teffont PC wish to support this proposal.***

*This route was historically a sheep drove and drove routes were 30 feet wide. The reinstatement of this path to the original width would improve safety for both walkers and riders."*

**Officer's Comment:** The Parish Council is correct in identifying that drove routes were wide routes, however, officers are not aware of any width requirement for them, indeed, the Ox Drove was awarded at 110 feet wide.

Although a wider route may have benefits for walkers and riders in terms of safety these are not considerations for the Council under this legislation.

The Parish Council has adduced no evidence for the preservation of any public MPV rights.

#### 6.10 **Edward Waddington** 20 November 2014

A submission containing the following letter, the witness statement of Stephen James Coombes (as submitted in the High Court of Justice in the case of David and Philippa Wood and Edward Alexander Waddington), photographs dated 1998 showing Teffont 9, a submission from Mr Wood to the Planning department, Salisbury regarding an application for a new grain barn, a notice of approval of full planning permission for change of use of redundant agricultural buildings to use for equestrian purposes at Manor Farm, an Accessway Licence between David Wood and Philippa Wood and Edward Waddington, unsigned and undated but drawn up in 2012, a photograph of Teffont 9 at its junction with the Manor Farm track and a colour copy of an aerial photograph of Teffont Field Buildings dated June 1959.

The letter forms the core of Mr Waddington's objection and is as follows:

#### **“BACKGROUND**

I am a working farmer and I feel privileged to be a custodian of the countryside. In 1998 when Manor Farm was lotted, I bought the agricultural farmland and workers cottages. The Sharmans bought Manor Farm House, the agricultural buildings, Small Sands field and 2 cottages. In 2009 the Sharmans sold Manor Farm House and Small Sands field to David and Philippa Wood. It was approximately 35 acres as the Sharmans retained the 2 cottages.

The Sharmans submitted 2 planning applications for the change of use of redundant agricultural buildings for a groom's flat S/1999/1742 and for a livery /1999/1987. “Approval of Full Planning Permission” was granted on the 20<sup>th</sup> January 2000, see attached.

Point 3 of S/1999/1987 specifically states that the permission granted is for stabling and ancillary equestrian activities but shall exclude any form of riding school. Prior to the Sharmans obtaining this permission there was no equestrian element at Manor Farm, Teffont Magna.

David Wood is a businessman who has confirmed that the equestrian centre is a “*lifestyle business*” and he does not rely on the income it generates. After he bought Manor Farm he submitted an application under the guise of a “*Riding Arena*” which in effect is an indoor riding school of Olympic sized dimensions designed for teaching dressage. This can be seen in their local advertising and on their website [www.manorfarmliveryteffont.co.uk](http://www.manorfarmliveryteffont.co.uk)

I would like to make it absolutely clear that prior to the Woods' ownership, I have never seen riders using the verge or evidence of riders using the verge and there was never any problem regarding the width or surface of the bridlepath TEFF9 which has been tarmacked since 2000. Although the application for a modification has come through the Wiltshire Bridleways Association, it has been instigated and fuelled by David Wood who is looking to achieve what he failed to gain through litigation.

David Wood is Chairman of the local Parish Council and this is just one in a long list of issues that I have had to deal with. I have had to endure the Woods cutting off the water to my ponds which has still not been reinstated, their continued attempt to gain vehicular access along Teff 9 and their wish to own my field Home Ground, directly opposite Small Sands.

I understand from the September 2014 Minutes of the Teffont Parish Council meeting that Point 14/076, Councillor P. Fisher is looking into the farm and large vehicles using the Old Dinton Road and Warminster/Wyley Road. I can only assume their next step will be to try and alter the route taken by my farm traffic.

### **Teff 9**

The width of Teff 9 was recorded in 1951 as 8ft and in 2000 I had the track tarmacked to a width of approximately 10ft. I have always regularly maintained the bridle path and I mow a strip either side of the tarmac and leave the rest of the verge to nature. Allowing the wild grasses and natural vegetation to flourish gives maximum benefit to the flora and fauna on the farm. These grasses bring in a wide array of insects and particularly bats which feed in the evenings all the way along from Field Buildings to the Old Dinton Road. Once a year after the wild grasses and cow parsley have seeded I cut it back in order to control the thorn bushes. I would suggest an Environmental Survey would be required to establish the detrimental impact which could be made by widening Teff 9.

When I moved here in 1998 the village had problems with flooding so I cut grips into Big Sands to alleviate the flooding problem by taking the rain water on to my own land. It also improved Teff 9 as the erosion by the rain water caused the bridle path to become deeply pot holed. I believe it was much safer for walkers, cyclists and even riders after it was tarmacked and I certainly did not receive a single complaint after the change of surface. This slipping of the horses appears to be a recent phenomenon.

The Sharmans bought Manor Farm House at the same time as I bought the farm and I can confirm that the Sharmans did not allow locals to use their land without their permission. Gates were quickly erected to stop villagers walking past their house to access Teff 9 or walking past their house to access the Warminster Road. I note that the witnesses who use Small Sands Track to access Teff 9 have been keen to confirm that they did so with the

owner's permission. For the avoidance of doubt, riders have not been riding on the verges or accessing the track across my land for a period of 20 years.

There has been a ditch running along the beginning part of TEFF9 since I purchased the farm and recently I have extended part of this ditch due to the excessive rain water coming down from the Old Dinton Road into Big Sands. I also took the mouth of the Small Sands track across my own land in order to make it wider and improve visibility for farm traffic going from Small Sands track onto Teff 9, see attachment.

I have access at all times for all agricultural and sporting traffic along Small Sands track and if riders are now complaining about the width of Teff 9 then I am surprised they are not more nervous about using Small Sands track when a farm vehicle is also driving along, particularly as until recently there was no verge on either side. Please see the attached letter of objection from David Wood regarding my application to build a grain store after my lease with the Sharmans expired and also David Wood's "Accessway Licence" which he offered to favoured villagers and which he also wanted me to sign to restrict my access.

After losing in High Court, David Wood contacted Wiltshire Council. I believe the majority of the witnesses are either friends of the Woods, fellow Parish Councillors, family of other witnesses or sympathetic individuals. I question that there is a problem for riders using Teff 9, even at the beginning where the gradient is at its steepest. Perhaps it would be prudent to obtain statements by riders who have nothing to gain by supporting this modification order and they may confirm that the verges of Teff 9 have never been included as part of the bridle path and that this has not caused the riders any problems.

Having read the witness statements in support of the modification order I am struck by the similarity in all of them. It is also interesting to read that 15 of the statements all mention that they used Teff 9 to access Manor Farm Equestrian Centre and this is the genesis of this modification order. It is Mr Wood's personal campaign for riders to cross my land in order to access Wood's private track leading to the equestrian centre and thereby enhancing his business and making it more appealing for riders of all capabilities.

It is important for Manor Farm Equestrian Centre to be able to market their business with "direct" access on to the bridle paths as Mrs Nathan writes in her statement "*access from Manor Farm was part of the livery agreement*".

It is interesting that only since these witnesses have been rallied and informed of the possible extra width of Teff 9 that they now seem to claim they have always used the bridle path to its maximum width of 30ft.

I question Mrs P Fisher's comments when she states "*the track was used for sheep by the sheppard before the farm was broken up soo I think it should be 30 feet*". Who is the shepherd she is referring to? I also question Zillah Faulkner's comment in her letter of 17<sup>th</sup>

September 2014 when she writes “*obstructions had been put along part of the verges on this stretch of road just to prevent riders even attempting to let their horses step on the grass*”. For the avoidance of doubt, this is simply not true.

John Fisher comments in his statement that he is requesting the bridle path to be re-instated to 30 feet. This is because since 1952 and probably longer, Teff 9 has been a definitive width of 8 feet and this is the width which has been used without complaint until David Wood sought

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to make mischief for his personal benefit. Mrs D Verdon-Smith writes in her statement “*I am informed that there was an Act of Parliament awarding a width of 30ft*” and finally retired Teffont Parish Council Clerk, Zillah Faulkner writes regarding Teff 9, “*it has now been discovered had a legal status width of 30ft*”. Until the witnesses were advised of this possible widening, all users of Teff 9 have abided by the 8ft measurement and have been happy to do so.

I believe Teff 8 is of a similar gradient to Teff 9 and this has recently been tarmacked by David Scott, a Councillor of Teffont Parish Council and no complaints have been made by riders as to the surface of this bridle path which is also the Scotts’ personal drive leading to their home from which they run a busy bakery business.

Since I have lived in Teffont, Teff 9 has always been used with common sense and courtesy. If a farm vehicle is unable to pass a rider safely then the vehicle driver will pull over onto the verge. If there is a problem with riders using Teff 9 due to the farm traffic then I do not understand why the Woods have developed their 35 acres into such a large equestrian venture which clearly they find incompatible with the mechanised farming business which was established generations before the livery began.

After the High Court Judgement, Georgina Green, a witness in court for David Wood and a witness for the modification order, submitted an application to Teffont Parish Council which was to be heard on the 12<sup>th</sup> May 2014. Please see the attached agenda point 14/020 “*To consider whether to support a proposal from Ms G Green*” requesting “*the ancient carriage/bridleway number 9 to include the entrance to the Wood's track to Manor Farm..... as a result of the court case it seems unreasonable that people are now no longer to allowed cross a tiny patch of land..... It is ludicrous that this is now no longer possible.*”

Prior to the meeting David Wood was advised the matter had not followed correct procedure and consequently the item was not raised at the Parish Council meeting. David Wood instead chose to go through the Wiltshire Bridleways Association.

The witnesses spuriously claim that vehicles drive quickly along Teff 9. However, given that this is a farm with young families (including my three young children aged 5, 8 & 11 all riding scooters and bicycles along Teff 9), dogs and game birds, it would hardly be used in a fast manner and certainly nowhere near as fast as 60 mph which is the speed limit for the Old Dinton Road which is regularly used as the route of choice for the grooms of Manor Farm Livery to exercise the horses.

### **Impact of Modification Order**

I have lived in the countryside all my life and I feel strongly that others should enjoy it too. However, I want to keep the riders to a sensible level and if the connection between Manor Farm equestrian centre and the local network of bridle paths is agreed then this would

Significantly increase the horse traffic because the equestrian centre would be particularly attractive for novice riders, pony trekkers, event training and endurance bringing in riders from far and wide in their horse boxes. Commercial equestrian access across my land from Small Sands field would provide the opportunity for a circular route, the ideal distance for novice riders to complete a reasonable hack. This increase in disturbance would render my business almost unmanageable. The increase in the numbers of novice riders on the bridleway would further enhance the risk of accident or damage because of the rider's inability to deal with sudden appearances of farm machinery or, indeed, the surprise of the flush of a covey of partridges exploding out of a hedge or ditch line. It would also make the farm work more difficult during planting and harvest time by slowing machinery around the farm, particularly during tricky season's weather wise when time is at a premium.

Horses are notoriously unpredictable and I can provide several examples where highly experienced and competent riders have been killed when their horses have been spooked by a stationary tractor, digger and even a cyclist.

These are all issues which were deliberated in High Court and why my conveyancing was carried out in order to protect the farm which I bought in 1998. I have done my utmost to support the riders in the local community but the widening of the bridle path will intensify the use of the bridle paths due to the commercial public access and, as David Wood confirmed in his witness statement at trial, "*some of our clients come in daily to ride their own horses out onto the adjacent bridleways..... I have never seen more than four horses being ridden out together*" but this can be happening numerous times a day.

Partridge in particular are more prone to disturbance than pheasants because they are an open ground bird and only comfortable in areas where they can see predators coming and make their escape in good time. Wild partridge are in serious decline across the country but we have a number of wild grey partridge at Teffont due to the natural habitat and the planting and environmental measures I take. The wild and reared birds nest in spring in grass banks and in the bottom of hedgerows, often alongside tracks and paths.

Partridge will not tolerate increased disturbance on a regular basis and consequently will move elsewhere.

The conservation element involved with the farm has seen a huge rise in song bird numbers, particularly corn buntings and a rise in the number of rare plant species including wild orchids and cowslips due to scrub clearance as part of the management of the downland for the partridge.

### **Modification Order**

With regards to mechanically propelled vehicles using Teff 9, the only unauthorised users are David and Philippa Wood and their staff from the equestrian centre. Other than that there have not been any unauthorised vehicles regularly using this bridle path unless it has been



with my permission and I do not believe Teff 9 was saved from the Natural Environment and Rural Communities Act 2006. I understand Teff 9 may be widened on the basis of the 1831 Award of a "Publick Carriage Road". *The Award of Commissioners for dividing allotting and c Teffont Magna Wilts* 2<sup>nd</sup> September 1800. However, the requirements necessary for the villagers in the 1800's were significantly different from those required nowadays. On the 1831 map there was no Manor Farm House, no farm cottages along Teff 9 and it bears little resemblance to the infrastructure now in situ. Due to the changes over time the needs of the villagers have altered considerably and buildings have since been erected. It is for these reasons I believe the requirement width was accordingly amended to reflect these changes and consequently the 1951 Definitive Map stipulated a reasonable width of 8ft which has subsequently been enjoyed by the public for decades. It should be noted that in 1831 Small Sands track belonging to the Woods, did not even exist and if one is to revert to the maps and documentation of the 1800's to satisfy individuals who chose to cherry pick and substantiate their claims through antiquated Awards, then many land registry documents may be subject to change and people may find their gardens or private land being reclaimed.

I believe that supporting this modification order which will absorb a significant amount of public funds, in order to satisfy a few individuals, would be the wrong decision to make. The outcome could have serious repercussions by setting precedence and thereby enabling a small minority to cause unnecessary problems in the countryside. If any action should be taken by the Council then it should be the action to extinguish any possibility of widening Teff 9 and ensure that it remains at its current width of 8ft, as confirmed in the 1951 Definitive Map and Statement.

Enclosures:

1. Approval of Full Planning Permission
2. Letter of Objection re Grain Store
3. Accessway Licence
4. Aerial photograph of June 1959 showing a narrow width use of Teff 9
5. Photographs of Teffont in 1998 showing no use of the verges by the riders
6. Photo of new access to Teff 9 from Small Sands Track
7. Aerial photograph dated 1959"

**Officer's Comment:**

Mr Waddington clearly states that he has never seen riders using the verge (or evidence of their use) in the period up to Mr Woods purchasing Manor Farm. This is the period 1998 – 2009.

Mr Waddington confirms that Teffont 9 was tarmacked by him in 2000 and he has not received complaints that it is slippery in the period leading to the 2014 application.

Much of the letter relates to the activities of Manor Farm and the grant of planning permission relating to its use as a livery yard. Matters relating to this, in addition to whether or not it may attract more novice riders, whether it is being run as a riding school or whether or how any clients of Manor Farm use Teffont 9 is not a matter for this investigation.

Further matters relating to the environment, drainage, upkeep of the verges and the wildlife that they attract and support are also not matters for this investigation which is related solely to the Council's duty to consider relevant evidence (in this instance primarily under s.32 Highways Act 1980) and to keep the definitive map and statement up to date (s.53 Wildlife and Countryside Act 1981). The Council does then have a duty to maintain the majority of those highways so recorded and, so far as is consistent with the proper exercise of those functions to conserve biodiversity under s.40 of the Natural Environment and Rural Communities Act 2006. For example, should the greater width of Teffont 9 be recorded as public highway in the definitive map and statement, the Council would have to have due regard to conserving biodiversity in any future management of it.

Likewise the recording of the greater width is a duty (if it is so shown to subsist on the balance of probabilities) and is independent of the situation on the ground today. Mr Waddington considers that land registry documents may be subject to change, however, this is unlikely to be the case as it is a feature of rights of way that a public right may subsist over land which is privately owned, indeed, in the vast majority of cases this is so. On the contrary it is the documents on which the Council may rely (Inclosure Awards) that form the basis of the boundaries of titles registered today.

Mr Waddington envisages a situation where people may find their gardens or private land being reclaimed. This is unlikely to be the case and in cases where ancient highways have been enclosed for periods of time without objection applications for orders under s.116 of the Highways Act 1980 are often successful in having highway rights stopped up as being unnecessary.

### **Additional Information**

6.9 On the 21<sup>st</sup> October 2014 officers wrote to Mr Waddington, Mr Durtnall and Mr Wood informing them of the discovery of a significant document that did not form part of the 2005 application.

#### ***“Wildlife and Countryside Act 1981 s.53***

#### ***Applications for Definitive Map and Modification Orders Affecting Teffont Path no. 9***

*Further to my letter dated 01 October 2014 I have been able to make some progress investigating the historical evidence relating to Teffont 9 as adduced by the application for a definitive map modification order 2005/19. Although the Council's assessment of this evidence will be published in its decision report in due course, in the interim I thought it may be helpful for interested parties to be aware of an earlier agreement and award relating to land in Teffont that was not adduced as part of the application but which is being*

*considered (the Council has a duty to consider available relevant evidence). The document is entitled “The Award of Commissioners for dividing allotting and c Teffont Magna Wilts” 2<sup>nd</sup> September 1800 and is held at the Wiltshire and Swindon History Centre, Chippenham document reference 2057/115. The document is available there for public viewing.*

*(Further to our conversation by ‘phone this afternoon please find enclosed a copy of a User Evidence Form (copy also e.mailed). It is certainly not necessary to submit these but it can be helpful to any case (even one which may end up relying on historical evidence) to read about people’s experiences, memories of the route and, as I said, see photographs of the route.) \* This paragraph added to Mr and Mrs Waddington’s letter only.*

*If you have any queries please do not hesitate to contact me.”*

## **7.0 Historic Records**

7.1 A route on the line of Teffont 9 can be seen on maps dating from 1801 to the present day. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example although a way may appear on fifty commercial maps it does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament.

7.2 Therefore, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used;

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate’s Consistency Guidelines:

<http://www.planningportal.gov.uk/planning/countryside/rightsofway/guidance> (as revised to date of report) and Chapter 6 of the book ‘Rights of Way A Guide to Law and Practice – Fourth Edition’ by John Riddall and John Trevelyan.

Abbreviations: Wiltshire and Swindon History Centre, Chippenham (WSHC), The National Archive, Kew (TNA), House of Lords Record Office (HoL

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

**8.0 General Context** *notes primarily from Victoria County History Vol VIII (1965)*

8.1 Teffont Magna was originally a chapelry of Dinton and a civil parish with Dinton since the 19<sup>th</sup> century. It was ecclesiastically dependent upon Dinton until 1922 and in 1934 Teffont Magna (or Upper Teffont) combined with Teffont Evias to form the civil parish of Teffont.

- 8.2 After the dissolution of the monasteries (1536 – 1541) Teffont Magna was acquired with Dinton by William Herbert who later became the Earl of Pembroke and Montgomery. He retained the land until 1919/1920 when it was sold to Lord Bledisloe and in 1950 the son, Charles Hiley Bathurst, sold the land to John Jacob Astor who soon broke it up and sold it in several lots.
- 8.3 The ancient parish of Teffont Magna formed 1734 acres and measured approximately two and half miles north to south and one mile wide. Grovely Wood and the earthwork Grims Ditch form the northern boundary with Thickthorn Wood on the downs being the most westerly offshoot of Grovely Wood (Thickthorn was recorded in 1567 as being approximately 10 acres in extent).
- 8.4 Thickthorn Wood and field is at the north easterly end of Teffont 9 and along with the Ox Drove at the northern end and the turnpike road and Jack Thorns enclosures at the southern end provide clearly identifiable surviving reference points for various descriptions of Teffont 9 found in historical documents.
- 8.5 The Roman road from Mendip lead mines to Old Sarum passes through the north of the parish and the green way called the Ox Drove (now Teffont 12), of possibly greater antiquity, runs in roughly the same direction (west to east) across the parish just to the south of it.
- 8.6 Although an ancient road, The Ox Drove was awarded at inclosure in 1837 at a width of 110 feet as a public carriage road and driftway and is today recorded as a byway open to all traffic. The northern end of Teffont 9 meets it.
- 8.7 Teffont 9 has the Old Dinton Road at its southern end. This road was turnpiked around 1760, becoming the 'old turnpike' in 1814 when a new road was constructed to the south linking Dinton Pound with Sparks's Bridge, Teffont.
- 8.8 The old enclosures known as Jack Thorns predate enclosure by agreement in 1800 and form the west side of Teffont 9 at its junction with the Old Dinton Road.
- 8.9 The centre of habitation in Teffont Magna lies to the west of Teffont 9 and village water was obtained from Springhead (north west of Manor Farm) from 1896 until 1962 when mains were installed in the village.
- 8.10 Turning to the management of lands, early records (for example the Domesday survey) do not exist for Teffont Magna as its lands were surveyed with those in Dinton. In 1567 a survey showed no separate demesne there but records show that Teffont Magna had 3 open arable fields including 80 acres of sheep pasture on Teffont Down.
- 8.11 A survey in 1631 showed 15 copy holders in upper Teffont most of whom had small closes as well as unenclosed strips in common fields. Nearly all had, besides grazing rights on the downs, an acre of Thickthorn Wood (north end of Teffont 9).

- 8.12 In 1650 for the first time demesne lands in Teffont were leased as a separate estate. They comprised a small close of arable land in which stood a barn, a coppice, another small close and 66 acres of arable land in common field – namely 22 acres in West Field, 28 acres in Middle Field and 16 acres in east Field. There was also grazing on the downs for 270 sheep and an allotment out of Teffont Common for fuel. There was a dwelling house attached and hence forward this formed a separate estate which enlarged and was called Manor Farm.
- 8.13 This is the same Manor Farm currently owned by Mr Wood and the same whose land abuts Mr Waddington's land lying west of the southern end of Teffont 9 above the inclosures formerly called Jack Thorns (part of which now comprise the property of Mr Durtnall called Hillcrest).
- 8.14 A map dated 1801 (pursuant to the 1800 agreement) shows the open fields still in being but the 3 field system has been modified. Consolidation of the rest of the lands was done by the joint Inclosure award for Dinton and Teffont Magna in 1837.
- 8.15 Historically agriculture has been virtually the only employment in Teffont Magna.

## **9.0 Category A Evidence**

- 9.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e. the definitive map and statement), inclosure acts, awards and plans, legal orders or events and deposited railway plans (i.e. arising from an Act of Parliament which specifically required the identification and verification of public rights of way).
- 9.2 Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.
- 9.3 Although there is some evidence of inclosure in Teffont Magna before 1800 (for example the old enclosures known as Jack Thorns and closes near to Manor Farm) it is clear that the pattern of the modern landscape was formed by an Award dated 1800 arising out of an agreement made in 1799 and an Award dated 1837 arising out of Acts of Parliament dated 1801 (general act), 1821 (general act) and 1822 (local act).

#### 9.4 **Inclosure by Agreement 1800**

Agreement 1799 WSHC 2057/I/26

Copy of Award 1800 WSHC 2057/I/26

Award and Plan 1800 WSHC 2057/I15

(Post award - Plan 1801 WSHC 1553/122)

(Post award - Book of Reference for Plan 1553/122 WSHC 2057/5/I13)

#### 9.5 **2057/I/26 Agreement dated 1799**

This document is entitled “Copy of Agreement for dividing and allotting the Common Lands and c Teffont Magna”. The agreement is made *between “The Right Honorable George Earl of Pembroke and Montgomery on the one part and The President and fellows of Magdalen College Oxford The Reverend William Dean Clerk Henry Penruddocke Wyndham Esquire William Wyndham Esquire Walter Fitz Robert Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayler Elizabeth Lackham widow Robert Fitz Edward Larkham William Cowdry Waterman widow and the several other persons whose names are hereunto subscribed and seals affixed of the other part”*

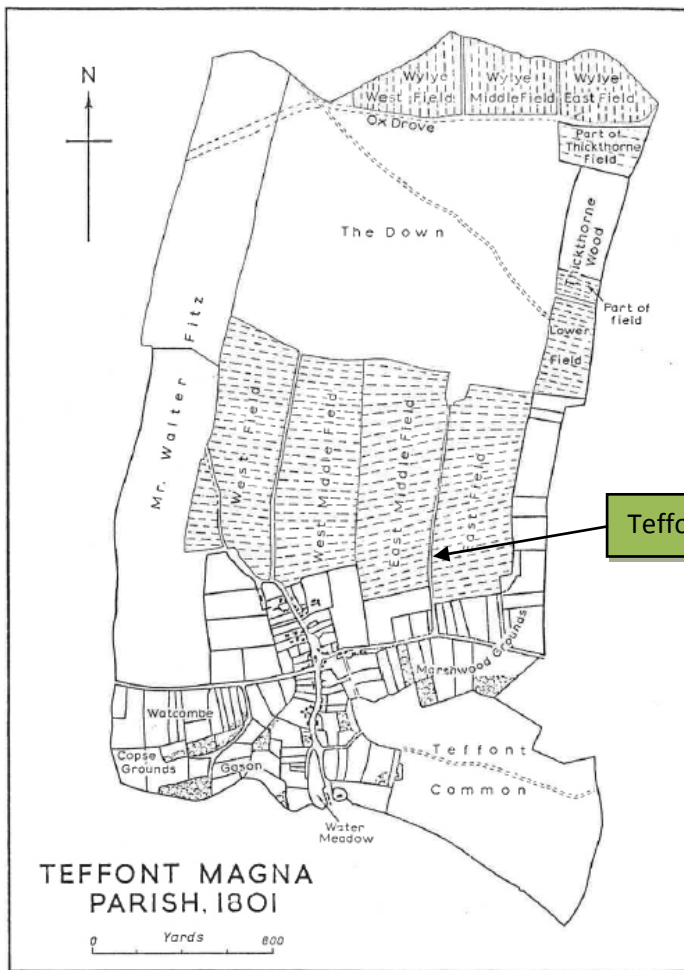
- 9.6 The purpose of the agreement was to divide the Cow down and Sheep down (“*now incumbered in part with furze*” (approximately 700 acres) into 4 or 5 fields and a common tenantry sheep down and also to permit other alterations to lands “*Provided also that in case any of the owners of Lands within the said Parish of Teffont Magna shall be desirous to exchange any of their messuages lands or hereditaments old inclosures or other lands in the same Parish it shall be lawful for them to do so...*”

#### 9.7 **2057/I15 Enclosure Award dated 2<sup>nd</sup> September 1800**

The award is entitled “The Award of Commissioners for dividing allotting and C Teffont Magna Wilts”

- 9.8 The document describes an agreement made in 1799 (see 9.5 above) between the Right Honorable George Earl of Pembroke and Montgomery and the President and Fellows of Magdalen College, the Reverend William Dean and various freeholders and leaseholders. The Earl of Pembroke was the Lord of the Manor and Magdalen College entitled to the great and small tithes.

The award details a new division and allotment and the Commissioners were John Seagrim and Thomas Charlton. The agreement created four “several fields of an equal size as near as may be for the purpose of being used in common or tenantry and called by them East ffield, East Middle ffield, West Middle ffield and West ffield. See representational map below:



Map from Victoria County History Vol. 8

- 9.9 Teffont path no 9 leads from the Turnpike Road north between East Middle Field and East Field to The Down. It is awarded as a public Road or driftway of width 33 feet.
- 9.10 The effect of the award was to enclose the more southerly cow down leaving the northern part (labelled The Down in the representational map above) as down.

Page 4 of the award sets out the roads:

*"...And we do hereby further award order and direct a public Road or driftway to and for each of them the said several owners and proprietors of the said several and respective allotments and pieces or parcels of land hereby allotted and awarded to each and every one of them respectively as herein before mention and to and for his or their respective tenants or ffarmers of their said several allotments to go pass and repass on ffoot and on horseback and with coaches various cattle carts and carriages at his and their will and pleasure for ever hereafter through over and along the same without any let hindrance or molestation of or from any or either of the other or others in them their respective heirs tenants and assigns of the breadth of thirty three ffeet leading from the Turnpike Road through an Inclosure belonging to the Earl of Pembroke called Jack Thorns in the occupation of Oliver Smith and*



*between the East ffield and East Middle ffield to the Common Down as the same is already staked meted bounded and marked by us”.*

This is today recorded as the southern section of path Teffont no. 9.

*“And we de hereby further award Order and Direct another public Road or driftway with the like liberty of going passing and repassing at all times of their will and pleasure to and for them the said several owners and proprietors and their respective tenants and ffarmers and in like manner as last herein before mentioned of the breadth of twenty ffeet branching out of the last herein before described public Road or Driftway and leading between the allotment in East ffield hereby awarded to Robert ffitz for or in respect of his life hold Estate and other allotments in the same ffield hereby awarded to Joan Macey and the Earl of Pembroke for or in respect of his Estate in the Occupation of Elizabeth Lackham to a Ground or Enclosure called Teffont Ground and to an allotment hereby awarded to Oliver Smith in respect of his freehold estate AND WE Do award Order and Direct a private carriage Road or Driftway to and for the use of the said William Wyndham his heirs and assigns and his and their respective tenants or ffarmers of the allotment hereby awarded to him in Teffont Common for ever hereafter on all occasions to pass and repass on ffoot or on horseback and with coaches carious carts and carriages in through and over and along the same of the breadth of ffifteen feet leading from his said allotments in Teffont Common along the Church Road and through and over the allotments hereby awarded to the said Oliver Smith and George Macey in the said common to the head of the lane by Beatley (?) Close leading in to the turnpike Road without any hinderance or molestation of and from the said Oliver Smith and George Macey or either of them their heirs or assigns or their tenants or tenant of the said allotments in Teffont Common AND WE DO further award order and direct one other private Carriage Road or Driftway to and for the use of the said Luke Toomer his heirs and assigns and his and their respective tenants and ffarmers of the allotment awarded to him on Teffont Common for ever hereafter on all occasions to pass and repass on ffoot or on horseback and with coaches wains carts and carriages in through over and along the same of the breadth of fifteen feet leading from his said allotment in Teffont Common along the Church road and through and over the allotments hereby awarded to the said Oliver Smith and George Macey in the said common to the head of the lane by Beatley (?) Close leading into the Turnpike Road without any hindrance or molestation of and from the said Oliver Smith and George Macey or either of them or their heirs or assigns or their tenants or tenant of the said allotment in the said common AND WE DO further award order and direct one other private carriage road or driftway to and for the use of the said Oliver Smith his heirs assigns and his or their respective tenants or ffarmers of the allotments hereby awarded to him in Teffont Common forever hereafter on all occasion to pass and repass on ffoot or on horseback and with coaches wains carts and carriages in through and over and along the same of the breadth of ffifteen ffeet leading from his said allotment in*

*the Common along the Church Road and through and over the allotment hereby awarded to the said George Macey in the said common to the head of the lane by Beatley (?) Close leading into the Turnpike Road without any hindrance or molestation of and from the said George Macey his heirs or assigns or his or their tenant of the said allotment in the said common AND WE DE hereby further award order and direct that the several persons whose names are written in the second schedule hereunto annexed marked with the letter B their heirs executors administrators or assigns...*

From the Award:

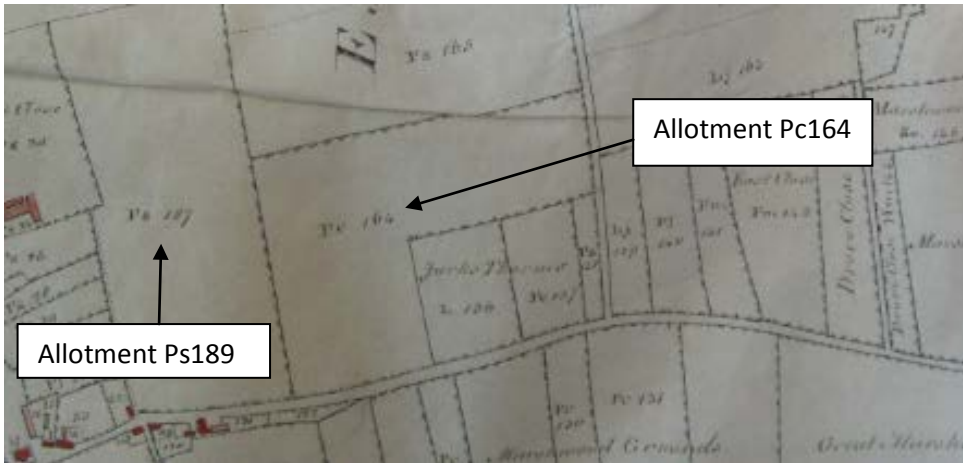
*“provided also that in case of any of the owners of Lands within the said Parish of Telford Magna shall be desirous to exchange any of their messuages Lands or hereditaments old inclosures or other lands in the same parish it shall be lawful for them to do so”*

*“upon each and every of the said several allotments and Divisions in and by this present Award allotted set out and awarded as and for the ? and Property of each of them the said several Proprietors of and in the said open or Common Tenantry fields open Common Downs and other Commonable Places and old Inclosures and of which such survey and admeasurement as aforesaid hath been made by us the said Surveyors and for the assuming unto each and every of them the said Proprietors the peaceable and quiet Enjoyment and Possession of the said several allotments and Divisions allotted to them as aforesaid and in all such other Rights Priviledges and Advantages which in and by the present Award is of ? meant and intended to be awarded and allotted unto and for the use and Benefit of each of the said Proprietors as aforesaid And also for the further better and more effectually adjoining unto the other or others of them the making ? abiding by performing and executing by each and every other and others of them of all and every The Rules Regulations Orders Matters and Things hereby awarded ordered adjudged and determined to be done and executed by each and every of them touching the said allotments and Division hereby awarded and allotted unto each and every of them and touching Ways Roads and Passages to made Course of Husbandry to be used fences be made and all such exchanges Regulations Orders Rules Matters and Things in and by this present Award awarded ordered and adjudged and to be done performed executed observed and kept by each of them the said several Proprietors as by the other or others of them their or either of their Heirs Executors or Administrators or their or either their counsel learned in the Law shall be reasonably devised or advised and required In Witness whereof we the said John Seagrim and Thomas Charlton have hereunto set our Hands and seals the second day of September in the fortieth year of the Reign of our sovereign Lord George the Third by the grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith and in the year of our Lord one thousand and Eight hundred. Signed by Jn Seagrim and Thomas Charlton.”*

- 9.11 The award also directs in great detail matters relating to water, husbandry, ploughing, wheat, barley, grazing rotations and patterns of grazing. Cow pasturing on the downs was to cease.
- 9.12 The award was signed by John Seagrim and John Charlton on 2<sup>nd</sup> September 1800.
- 9.13 Schedule A details allotments and to whom the award refers and Schedule B lists those to whom fence responsibilities were given and to whom the award refers.
- 9.14 A detailed map forms part of the award.



2057/115 Length of inclosed section (first awarded public road or driftway) = 50 chains



South end of Teffont 9

9.14 The map key is as follows:

**Earl of Pembroke**

- Ps Oliver Smith
- Pl John Lush
- PL Edward Larkham
- Pp Mary Larkham
- Pc Henry Macey

**Leaseholds**

- Sm Joan Macey
- L Edward Larkham
- W Dorothy Waterman
- Lj John Lush
- Hm Edward Mould
- Fm Mary Fitz
- Le John Lush

**Freeholds**

- F Walter Fitz
- So Oliver Smith
- M Edward Mould
- La Edward Larkham
- Lu John Lush
- Mg George Macey
- Luke Tamer
- G John
- Ww William Wyndham

Pw H G Wyndham Esq  
Hj John Hayter

- 9.15 Allotments are described with reference to their boundaries. Hence in the region of Manor Farm, Enclosures were taken in exchange:

Ps189 (Oliver Smith) *“An allotment of arable land bounded on the East by the East Middle ffield and another allotment next hereinafter mentioned on the west by Barn Close and other old enclosures on the north by the West Middle ffield and on the south by the Turnpike Road”*

Pc164 (Henry Macey) *“one other allotment of arable land bounded on the East by a Drove Way and by an allotment to the said Earl for his tenants at Dinton on the west by the last described allotment to the said Earl on the north by the East Middle ffield and on the south by old enclosures called Jack Thorns the aforesaid allotment for the Dinton tenants and the Turnpike Road”*

Schedule A lists allotments and both Pc 164 and Ps 165 are allotted.

- 9.16 The southern section of Teffont 9 is awarded as a Public Road or driftway from the Old Turnpike Road (The Old Dinton Road) north through the enclosed grounds to the Common Down at a width of thirty three feet. The Public Road is detailed as *being “to and for each of them the several owners and proprietors...and to their respective tenants and farmers....to pass and repass on ffoot, horseback, with coaches various cattle carts and carriages at their will and pleasure for ever and hereafter through over and along without let or hinderance....”*
- 9.17 The use of the road is for all in the award (see 9.10 for transcript) or at least the owners, proprietors, tenants and farmers of the 24 allotments adjoining it. Additionally the route provided access to The Down which was still used in common and to Thickthorn Wood which was historically divided between copyholders. Additionally a pre-inclosure map of 1773 (see Category E evidence Andrews and Dury’s Map of Wiltshire) shows the northern section of Teffont 9 leading to the Ox Drove and the down – the enclosures created by the award disturb the old route shown by Andrews and Dury in 1773 and it is averred that the awarded southern section of Teffont 9 replaces the ancient route . This is further supported by the description in the 1800 award of the allotment Pc164 (currently part of Mr Wood’s Manor Farm) as having a Drove Way at its eastern boundary. It would have been a necessity to have a droveway allowing access from the Turnpike Road to the cow and sheep downs before enclosure and the evidence supports the existence of a more ancient route from the village to the downs part of which formed a boundary with Pc164. It is likely that the awarding of the route as a public Road and driftway (and not the more common private carriage roads and driftways) reflected this wider use.

- 9.18 A total of 5 roads were awarded in 1800. 2 Public Roads or Driftways (Teffont 9 and a route leading from it not recorded as a public right of way today - leading from Teffont 9 east to Teffont Ground) and 3 Private Carriage Roads or Driftways. These 3 are south of the Turnpike in the region of Teffont Common.
- 9.19 The first Public Road and Driftway (Teffont 9) was awarded at a width of 33 feet, the second at a width of 20 feet. The three private carriage roads and driftways were awarded at a width of 15 feet.
- 9.20 The award of 33 feet is an unusual measurement in the context of the award but it is likely to refer back to the more ancient measurement, the perch. 33 feet equals 2 perches. Officers have viewed an earlier (mid 18<sup>th</sup> century) enclosure award covering another Wiltshire parish (Purton) that makes their award of roads in perches and the unit was generally in more common use in earlier times. Hence it is possible, but not demonstrated, that the route being two perches wide refers to an earlier reference to this route.

9.21 **Plan only 1553/122**  
**Book of Reference for Plan 2057/5/113**

The plan is the same as the award plan entitled “A Plan of the Manor of Teffont Magna in the County of Wilts the Property of George Earl of Pembroke and Montgomery. Survey by Jn Charlton. 1801.” Drawn at a scale of 6 chains to 1 inch.

- 9.22 The map identifies “Jack Thornes” and “Thickthorne Field” – old enclosures predating and surviving the enclosures of 1800 and 1837. These enclosures are also identifiers for the location of Teffont 9 in various descriptions.
- 9.22 The map appears to be numbered as the plan accompanying the Agreement Award and the Book of Reference contains detail of allotments using the same nomenclature. For example Ps 165 is described as “Common Field Arable Land – late Cawdreys” and Pc164 is described as an “Allotment to be enclosed “. Lj 139 is “enclosed arable” and Im138 “Part of Earl of Pembrokes Inclosure called Jack Thorns allotted to him in lieu of Right in Teffont Common”.
- 9.23 The Book of Reference contains entries from 1801 and has then been updated for example in some cases 1834 and 1844. It appears to have been used for estate management purposes by the Earl of Pembroke after the enclosure process.

9.24 **Parliamentary Enclosure**

**Documents:**

- 1) **An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts 2<sup>nd</sup> July 1801 WSHC 41 Geo III 109 (1801 Inclosure Consolidation Act or 1801 General Act) **APPENDIX A (notes)****

2) **An Act for dividing, allotting and inclosing lands in the Parish of Dinton 24<sup>th</sup> June 1822** (*1822 Local Act*) **APPENDIX B**

HoL HL/PO/PB/1/1822/3G4n180 and WSHC X4/18

3) **An Act to amend the Law respecting the inclosing of Open Fields, Pastures, Moors, Commons and Waste Lands in England 19<sup>th</sup> April 1821** WSHC 2057/124 (*1822 General Act*)

4) **Dinton and Teffont Magna Inclosure Award 1837** WSHC EA150 (*Award*) and WSHC 2069/16 Certified copy of Award - transcript **APPENDIX C**

- 9.25 The inclosure of part of Teffont Magna by agreement in 1800 caused the southern part of the cow and sheep downs to be inclosed creating closes on the downs to the east of Manor Farm and formally awarding the public road at a width of 33 feet that is now recorded as part of Teffont 9 (albeit as a bridleway and at a lesser width).
- 9.26 A number of small allotments were also created in the 4 large fields therein created leaving the down to the north and north east of Manor Farm unenclosed.
- 9.27 This system of land management and arrangement of enclosures and roads appears to have persisted for just over 20 years before further enclosure was required to complete the enclosure of the parish (including the remaining sheep down) and to more satisfactorily manage the multiple allotments in the four large fields created by the 1800 agreement.
- 9.28 In 1822 an Act of Parliament empowering commissioners to do this gained Royal Assent and a copy of this Act is appended at B (and hereafter referred to as “the 1822 Local Act”). The commissioners appointed to bring about this enclosure and allotment were John Charlton of Stourton and John Seagrim of the Borough of Wilton and they were empowered to act under the terms of the 1822 Local Act, the 1801 Inclosure Consolidation Act (see 9.24 for full title – Appendix A for relevant extracts) and the 1822 General Act (see 9.24 for full title).
- 9.29 The 1822 Local Act laid out procedures to be followed in the event of the incapacity or death of either commissioner, the appointment of umpires, details of requirements for public notices and meetings, details relating to disputes and costs, the power to extinguish rights of common, the requirement to make allotments to the vicar, power to re-allot lands already allotted, power to order depasturing of lands pastured in common, details of fencing arrangements for allotments, details for managing exchanges and details of how the Award is to be deposited and appealed.
- 9.30 Nothing in the 1822 Local Act alters or relates to public roads and the provisions of the 1801 Inclosure Consolidation Act apply.
- 9.31 Inclosure changes the local landscape by forming and allotting enclosures or closes. It alters the manner by which people may get around their lands and their parish and alters the way people travel through the parish on a longer journey. The

commissioners did not have specific powers to stop up existing highways without recourse to the justices at Quarter Sessions and as a result it was common practice to form enclosures around existing or ancient highways wherever possible.

9.32 As well as being a statutory provision it was also a matter of practicality that caused commissioners to first set out and agree the highway network before moving on with the allotment of the land enclosed by their creation.

9.33 Before looking specifically at the chronology of events in the Dinton and Teffont Magna Inclosure award dated 1837 it is useful to look at the general procedure followed to bring about enclosure, the formation of the highway network and the titles, deeds and subsequent conveyances of the plots of land that derive from the process.

9.44 **Process and Procedure for Parliamentary Enclosure** (From A Crosby “The Process and Procedure for Parliamentary Enclosure)

- Preliminary discussions between landowners and possibly tenants
- Canvassing support
- Publication of a notice declaring the intention to enclose and to seek parliamentary authority
- Public meeting of proprietors to adopt resolution to petition parliament
- Petition to the House of Commons; Bill prepared by local MPs
- Obtaining consents; the views of all proprietors of land had to be sought
- Counter petitions and opposition
- ‘State of Property’ document submitted
- Draft Bill prepared, checked by enclosure lawyers and presented in the House of Commons, usually by a local MP
- Passing of the legislation – Royal Assent. The Bill becomes an Act.
- The commissioners begin work, hold meetings, appoint surveyors to do detailed design and laying out work, issue notices, make orders such as any road closures needed), direct fencing, ditching etc as required.
- Design stages including drafting maps
- Negotiation about claims, compensations, allocation of land for public uses such as highways, gravel pits, poor allotments etc



- Prepare enclosure map
- Draw up Enclosure Award
- Implementation involving pegging out new boundaries, construction of new hedged or fences, ditches, denying access to common land.
- Obtain costs
- When all the work has been implemented to the satisfaction of the commissioners a fair copy of the map and award were signed and sealed and enrolled. That is given full legal force and in effect confirmed irrefutable title to land – and – in theory at least – to highways and other routes. Copies deposited with Clerk of the Peace and other parties – perhaps the Lord of The Manor, major proprietor etc

9.46 The Chronology for the events leading up to the Dinton and Teffont Magna Inclosure Award 1837 are as follows:

The award was enrolled with the Clerk of the Peace for Wiltshire on February 11<sup>th</sup> 1837.

### **Chronology**

1800 Cow Down and other lands inclosed by agreement in Teffont Magna. Southern section of Teffont 9 awarded as a public Road and driftway at a width of 33 feet.

From text of award:

1822 Private act passed for inclosure in Dinton and Teffont Magna

1822 John Charlton and John Seagrim appointed commissioners

25.11.1822 First meeting. Notice places in Salisbury and Winchester Journal 11.11.1822 and on the door of Dinton Parish Church (10.11.1822)

John Charlton and John Seagrim took oaths (enrolled with Award). Appointed John Hayward of West Lavington as an umpire. He took an oath on this day and this is enrolled with the Award.

5<sup>th</sup> meeting John Charlton and John Seagrim nominated Charles Pearson Charlton as surveyor and instructed him to produce a survey.

After divers meetings held by John Charlton and John Seagrim to consider and examine claims, allegations, objections and to settle and ascertain rights they “did set out appoint the several public carriage roads and highways” in a way that “appeared most commodious to the public”.

- 27.07.1823 Maps showing the roads were deposited with the Clerk of the County John Swayne for inspection. Salisbury and Winchester Journal notice 04.08.1823.
- 27.08.1823 Meeting to be held to hear from anyone aggrieved or injured by the setting out and appointment of the public roads
- 1823 – 1824 John Charlton and John Seagrim finished their divisions and allotments but John Charlton died before the award was prepared and enrolled
- 15.11.1826 Meeting to be held at the Pembroke Arms Inn, Wilton to appoint a commissioner to replace John Charlton. Notice given by William Wyndham and William Barnes in the Salisbury and Winchester Journal on 28.10.1826 and on the Dinton parish church door on 28.10.26.

William Wyndham and William Barnes appointed Charles Pearson Charlton as a commissioner in place of John Charlton. He took the oath on 15.11.1826

Further to more meetings John Seagrim and Charles Pearson Charlton instructed their clerk to prepare the award. This was done and the award approved and ordered to be engrossed but further applications were made for other exchanges between certain owners and proprietors and the engrossment was suspended while John Seagrim was taken severely ill. He died in May 1832.

- 29.08.1832 William Woodcock was appointed as commissioner to act with Charles Pearson Charlton and took the oath on 4.12.1832 (annexed to award).

William Woodcock and Charles Pearson Charlton revised the surveys, valuations and proceedings of John Seagrim and Charles Pearson Charlton and judged them fair and just.

Charles Pearson Charlton undertook to correct the maps and plans but died in May 1834 and all proceedings were again suspended.

- 20.06.1834 Meeting held by William Masten Barnes and William Douty (by notice in the Salisbury and Winchester Journal on 06.06.1834 and on Dinton parish church door 05.06.1832) and appointed James Poole to be a commissioner in place of Charles Pearson Charlton and he took the oath.

James Poole had for many years worked with John Charlton and Charles Pearson Charlton during the progress of the division and allotment and had assisted in the preparation of maps and plans.

He carefully revised and examined the whole and James Poole and William Woodcock held meetings and duly informed themselves that proprietors and persons had long ago entered into and were in possession of the allotments.

1837 James Poole and William Woodcock declared that maps A and B should be enrolled with the award.

11.02.1837 Award and Plans enrolled with Jn Swayne, Clerk of the Peace in the County of Wilts.

9.47 **Public Notices** A number of public notices in the Salisbury and Winchester Journal have been viewed (11.11.1822, 18.11.1822, 25.11.1822, 04.08.1823, 28.10.1826). The notices support that due process was followed.

04.08.1823

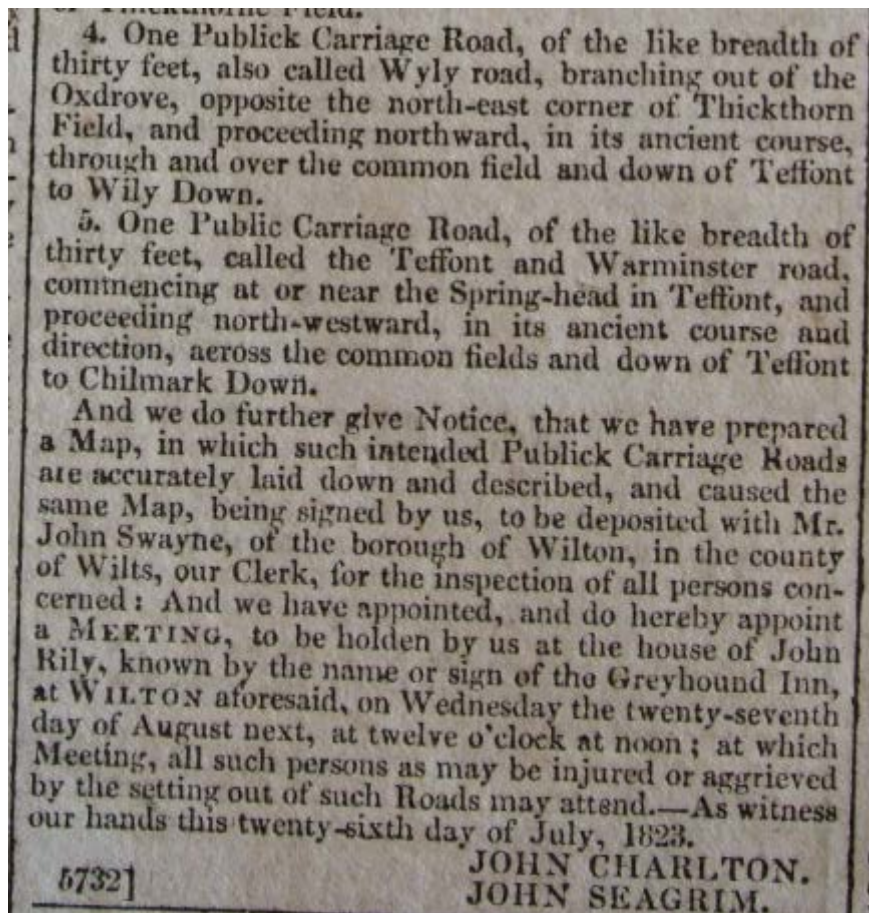
DINTON INCLOSURE.  
**WE, JOHN CHARLTON & JOHN SEAGRIM**, the Commissioners named and appointed in and by an Act of Parliament for allotting and inclosing Lands in the parish of Dinton, in the county of Wilts, by virtue and in execution of the power given, as well by the said Act as by a certain Act of Parliament passed in the forty-first year of the reign of his late Majesty King George the Third, intituled "An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure, and for facilitating the mode of proving the several facts usually required on the passing of such Acts," Do hereby give Notice, that we have set out and appointed the following **PUBLICK CARRIAGE ROADS** through and over the Lands and Grounds in the said first-mentioned Act, intended to be divided and allotted in manner directed by the last-mentioned Act. The general lines of which Publick Carriage Roads are hereafter described (that is to say),

No. 1. One Publick Carriage Road and Driftway, called the Oxdrove, of the breadth of one hundred and ten feet, commencing at New Inn Lane, in Dinton, and proceeding westward, in its ancient course, through and over the downs of Dinton and Teffont, to Chilmark Down.

2. One Publick Carriage Road, of the breadth of thirty feet, called the Dinton and Warminster road, commencing near the north-west corner of an old inclosure called Little Wayfield, in Dinton, and proceeding north-westward, in its ancient course, through and over Dinton Down and the common fields and down of Teffont, to Dapton Down.

3. One Public Carriage Road, of the like breadth of thirty feet, called the Wily road, branching out of the old turnpike road from Salisbury to Hindon, at Jackthornes, in Teffont, and proceeding northward, in its ancient course, through and over the common fields and down of Teffont to the Oxdrove at the north-west corner of Thickthorne Field.

Teffont 9



#### 9.48 Roads

The award sets out 1 Public Carriage Road and Driftway (110 feet wide), 4 Public Carriage Roads (30 feet wide), 11 Private Roads (20 feet wide) and 1 Public Footpath (6 feet wide).

Public Carriage Road and Driftway number I is "The Ox Drove".

Public Carriage Road number II (2) is the "Dinton and Warminster Road".

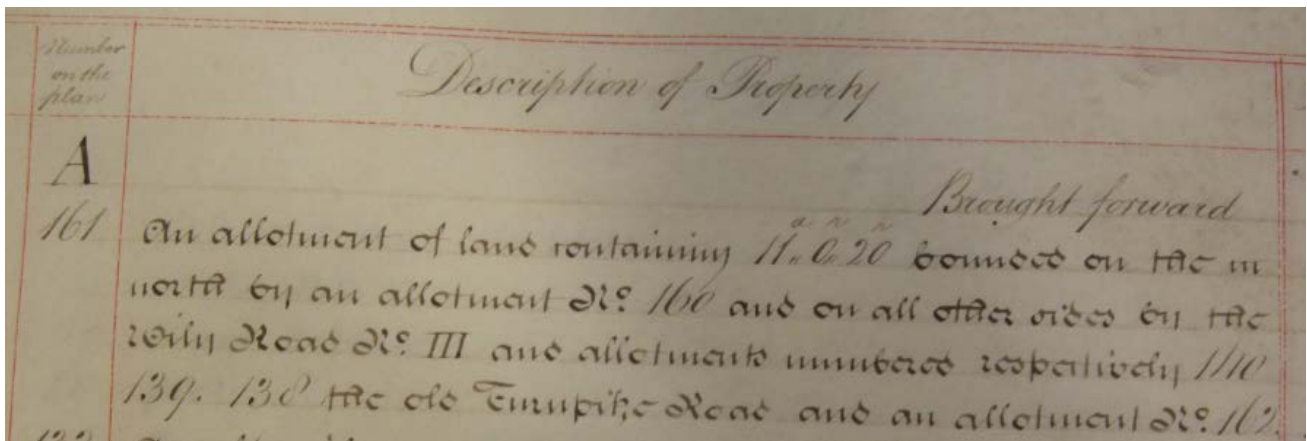
Public Carriage Road number III (3) is "The Wyllye Road" **This is Teffont 9**

Public Carriage Road number IV (4) is "The Wyllye Road" – a continuation north of the Ox Drove

Public Carriage Road number V (5) is "The Teffont and Warminster Road"

#### 9.49 Allotments in the region of Teffont 9

Land allotments are shown on the Plans and are numbered. Roads are shown on the Plans also numbered and named as above. The Award has a detailed table of descriptions of the allotments. Below is an example:



“161 An allotment of land containing 11.0.20 (a.r.p) bounded on the north by an allotment No. 160 and on all other sides by the Wily Road No. III and allotments numbered respectively 139, 138, the Old Turnpike Road and an allotment No. 162.”

The following allotments form the western boundary of Public Carriage Road no. III Wyllye Road:

140, 161, 160 and 159

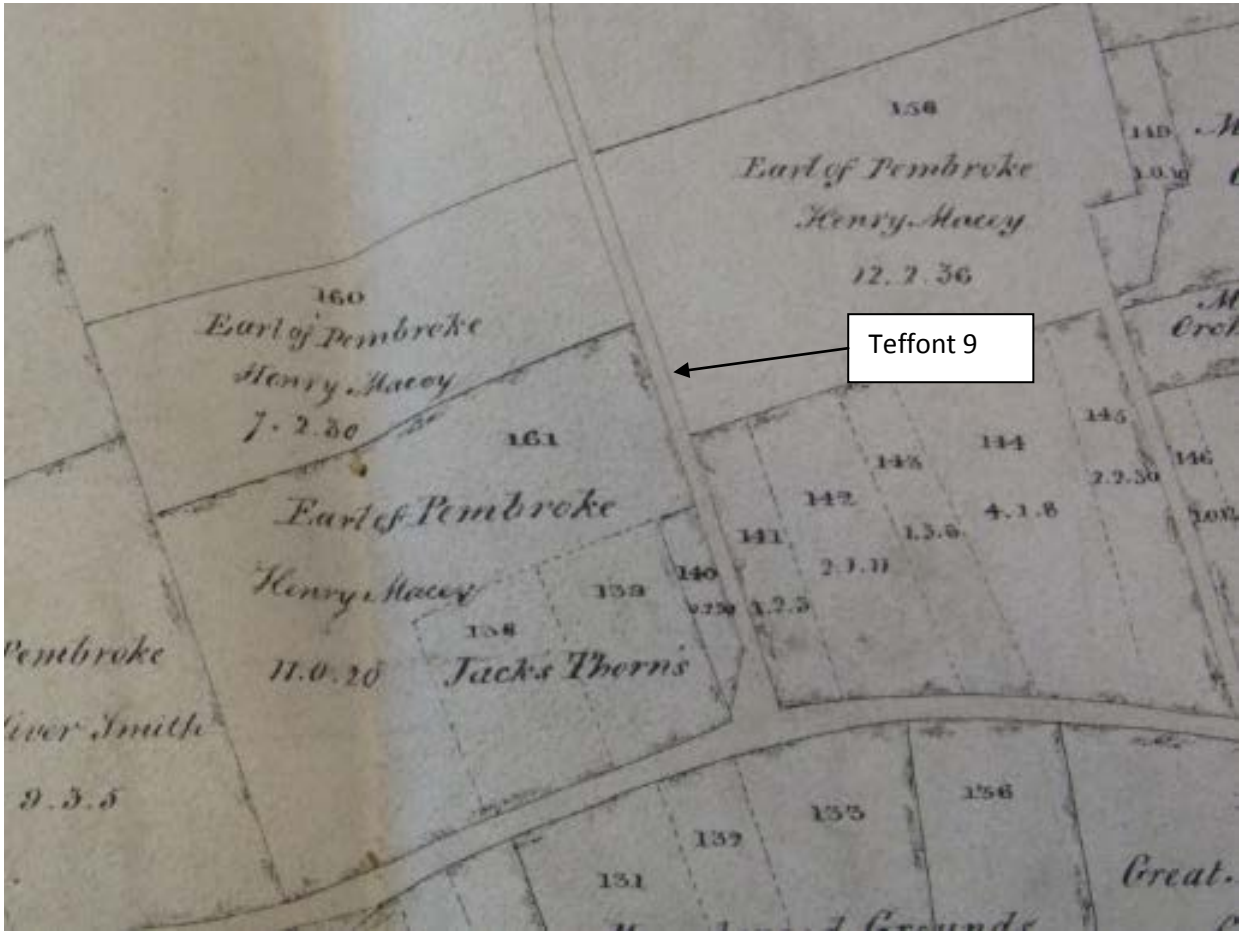
The following allotments form the eastern boundary of Public Carriage Road no. III Wyllye Road:

155, 156, 157, 158 and 141

Wyllye Road leads through allotment no. 185 but does not form a boundary to it (it is described as “being bounded by the Public Road called the Ox Drove No. 1”)

Descriptions for all of the above allotments include the following:

- 140 “bounded on the east and south by the Wily Road no III...”
- 161 “bounded on the north by allotment 160 and on all other sides by the Wily Road no. III and allotments...”
- 160 “bounded on the east by the Wily Road no III...”
- 159 “bounded on the east by the Wily Road no III...”
- 155 “bounded on the west by the Wily Road no III...”
- 156 “bounded on the west by the public road called the Wily Road no III...”
- 157 “bounded on the west by the public road called the Wily Road no III...”
- 158 “bounded on the west by the Wily Road no III...”
- 141 “bounded on the west by the Wily Road no III...”

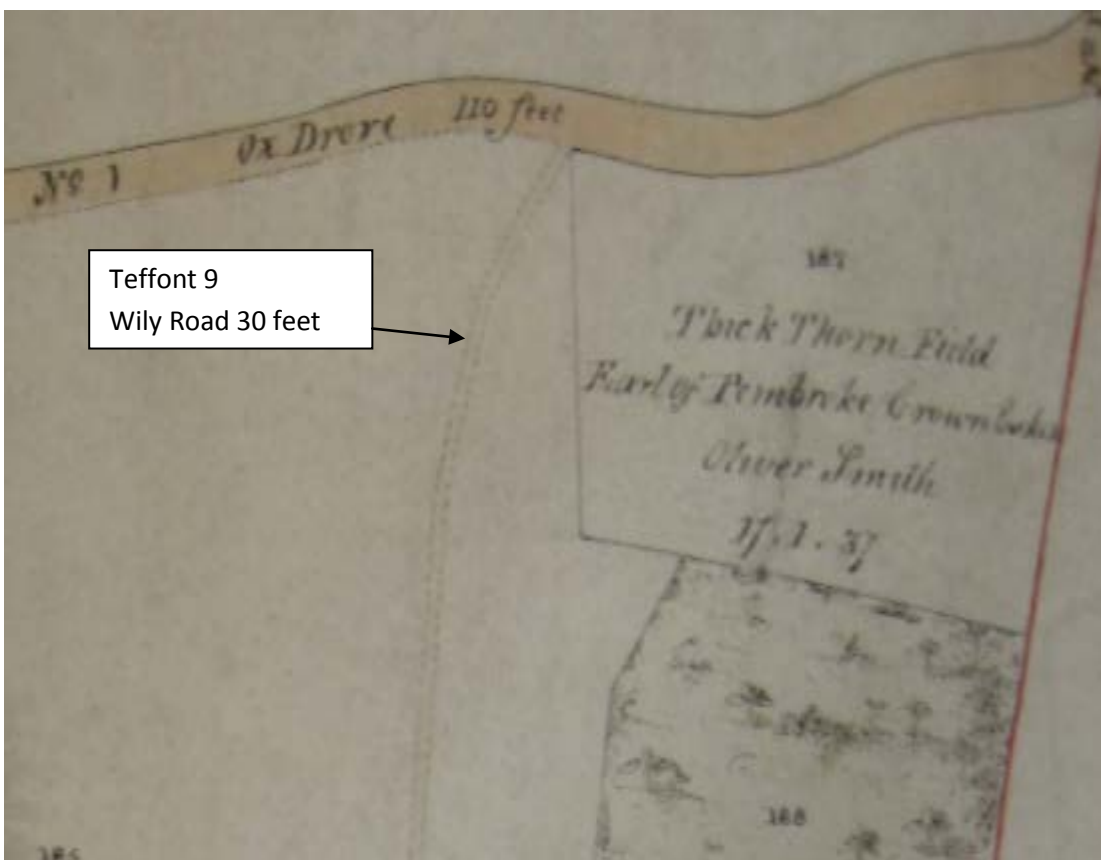


9.50 **Description**

The award describes No. III One Publick Carriage Road as:

“of the breadth of thirty feet called the Wyle Road branching out of the Old Turnpike Road from Salisbury to Hindon at Jackthorns in Teffont and proceeding northward in its ancient course through and over the common fields and Down of Teffont to the Oxdrove at the north west corner of Thickthorn ffield.”

The Old Turnpike Road is today called the Old Dinton Road but is shown on the plan as The Old Turnpike Road. Jackthorns are old enclosures at the corner of the Old Turnpike Road and the Wily Road no III and are clearly labelled on the enrolled plan. Thickthorn ffield is also clearly labelled on the enrolled plan and the Wily Road no III is labelled twice along its length.



Teffont 9  
Wily Road 30 feet

9.51 With regard to the roads the Commissioners were required to “set out and appoint” the proposed “public carriage roads or highways” ascertain them on the ground with marks and bounds, prepare a map on which the routes could be inspected and then advertise and convene a meeting at which any local persons aggrieved by the proposals could lodge an objection. Commissioners were required to appoint a surveyor who was to be responsible for “the first forming and completing such parts of the [public carriage roads] as shall be newly made, and for putting into complete

repair such parts of the same have been previously made” (S.9 1801 Inclosure Consolidation Act).

- 9.52 The 1801 Inclosure Consolidation Act required application be made to the Justices for a certificate to record the routes so created as being repairable by the public at large.
- 9.53 S. 9 of the Act required application to be made to Justices in Special Sessions (rather than Justices acting in the general Quarter Sessions) and Justices acting outside of Quarter Sessions, at Special or Petty Sessions, were not required to keep notes of their proceedings nor submit records of the meetings to any higher court. *Rights of Way Law Review 2003 9.3 p 160*)
- 9.54 There are no known records in Wiltshire of the certification of any highways by Justices sitting at Special Sessions and accordingly no certificate for III. The Wily Road - Teffont 9 has been found.
- 9.55 As a result it is not known whether application was ever made to the Justices. Certainly a presumption of regularity would apply as the award of the road was within the powers of the Commissioners, was clearly formed and made up, hedges planted and adjoining land parcels described within the award, formed and continue to be subject to deeds and registered titles. Indeed the adjacent landowners rely upon the Act and Award as the basis of their title to the land and the existing publicly maintained highway network in many cases arise from it. Further the process was a clear indication of the intention of the landowners, at that time, to provide certain land for use by the public in return for the inclosure of the formerly common land, to their advantage.
- 9.56 Looking beyond the presumption of regularity the certification procedure sits uncomfortably with these highways. Alex Lewis LLB in her article “Inclosure: Justices Certificates” *Rights of Way Law Review Nov 2003 s.9.3 p.161* observes that prior to the 1801 act the pre inclosure roads would have been repairable by the parish (the southern part of Teffont 9 pre-dates parliamentary enclosure) yet the 1801 Act required a certificate to be obtained before the roads are repairable by the very body of people whose responsibility they were before inclosure. Further, the 1835 Highways Act altered the way maintenance responsibility was acquired by the public, making all pre-1835 highways repairable at public expense (as ancient highways). Hence because the Dinton Inclosure Award was not enrolled until 1837, and because the Award recognised that the roads and allotments had long been laid out, it is a fact that they were public highways by 1835 and hence repairable by the public at large anyway.
- 9.57 **The Hedgerows**



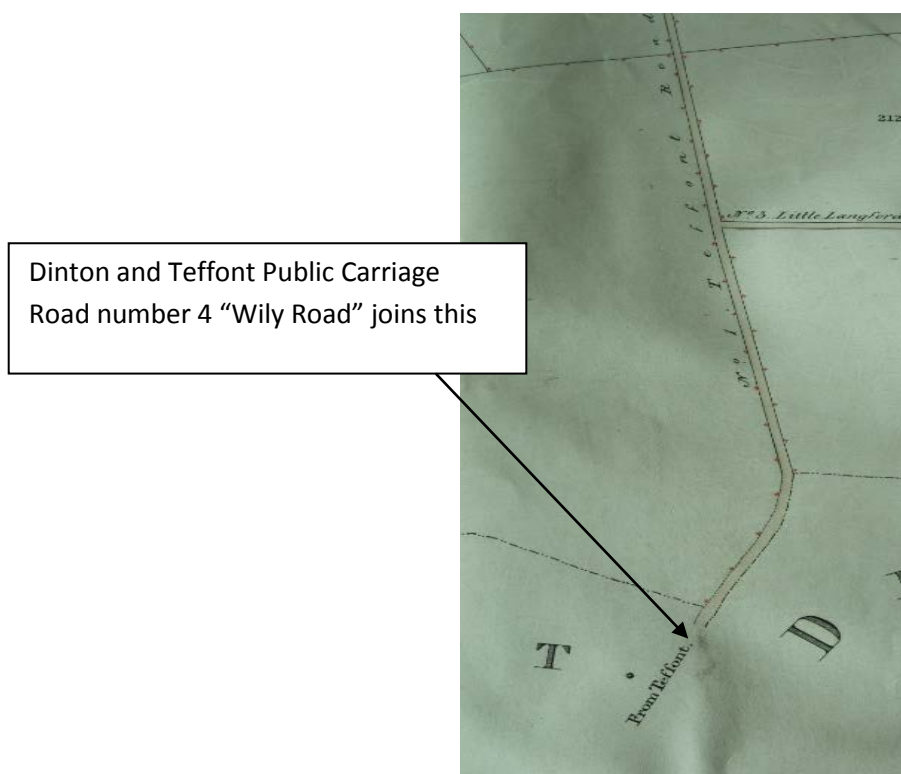
The 2014 application relates to recording a width for Teffont 9. The evidence from the Inclosure Awards of 1800 and 1837 support that the way was awarded to the public at two widths, 33 feet for the southern section and 30 feet for the whole length as a result of the 1837 award. Maps used for both awards support that there were no changes to the boundaries of the southern part of Teffont 9 for the 1837 award (and it could not have been practicable to do so for the sake of 3 feet) and both awards support that the boundaries of the land forms the highway boundary.

- 9.58 No historical evidence has been viewed or adduced to contradict this.
- 9.59 In an article entitled Hedgerow protection by Graham Watson LL.B Rights of Way Law Review October 1997 s.9.3 p. 85 – 88 it is stated that case law has established that where a hedgerow runs beside a highway it will normally be presumed to have been planted in relation to that highway so that a public right of passage and repassage will include the land up to the hedge. *“In Offin v Rochford Rural District Council [1906] 1 Ch 342 Warrington J stated: “...if you find a fence by the side of a highway, then prima facie that fence is the boundary of the highway, unless you can find some reason for supposing that it was put up for a different purpose.”* Thus hedgerows are indicators of rights of way and there is a rebuttable presumption that the highway extends between them. Officers are not aware of any other purpose for these hedgerows other than to define the boundary between the fields and the highway.
- 9.60 Officers are aware that Mr Justice Morgan sitting in the High Court of Justice at Bristol ([2014] EWHC 1358 (Ch) and hearing a case on the application of Mr and Mrs D Wood of Manor Farm against their neighbour Mr E Waddington of Teffont Field Buildings recently determined that the bridleway Teffont 8 did not extend beyond the central tarmac strip to include the verges.
- 9.61 The case related to whether Manor Farm had a right of access from its land to Teffont 9 (through the hedge line and onto the bridleway ‘verge’). Morgan J determined that it did not. The decision is understood to be the subject of an appeal.
- 9.62 Mr Justice Morgan was not provided with a copy of either Dinton/ Teffont Magna Inclosure awards (though reference was made to an award at para 23 of the judgement) and neither party relied on inclosure in their evidence. No mention was made to the judge of the 2005 application or the evidence it adduced relating to width and the case did not turn on historical evidence. Although user evidence for the verges will be discussed later officers consider that the judgement has no relevance for these investigations. It related solely to the existence of a private right for Manor Farm.
- 9.63 **Wylie Inclosure Award 1861** WSHC EA187  
**Wylie Inclosure Commissioners Minute Book** WSHC 2057/I/24

The Dinton and Teffont Magna Inclosure award 1837 awards Public Carriage Roads numbers 3 and 4 as “The Wily Road”. Number 3 is the route now recorded as Teffont 9 and number 4 is a short section of road which now forms part of road C.24 to Wyllye. It leads north from the Ox Drove to the parish boundary.

- 9.64 Although today the C.24 continues south to Dinton, in 1837 it did not (the public road past Marshwood is a later public road) and the route connecting Wyllye with Teffont involved using awarded route number 4, part of the Ox Drove and then south down awarded route number 3 – Teffont 9 and into Teffont on the old turnpike. It is therefore sensible to look at the Wyllye award to see whether a road was awarded there to link up with this route as the road to Teffont.
- 9.65 It is noted that J Poole was a commissioner for both the Dinton and Teffont award and the Wyllye award.
- 9.66 Three public roads (all public carriage roads and driftways) and 7 private carriage roads and driftways were awarded in Wyllye and the road connected to Wyllye Road number 4 in the Dinton and Teffont award is awarded as public carriage road and driftway number 1 at a width of 30 feet and labelled as “The Teffont Road” and labelled “from Teffont” at its southern end where it leaves Wyllye parish.
- 9.67 The award states: “No. 1 One Public Carriage Road and Driftway of the width of Thirty Feet called the Teffont Road branching out of the public highway from Bapton to Hanging Langford between Homestead and Gardens to near the North East Corner of an allotment to the said Earl of Pembroke numbered 174 in the said Map and extending southward in its ancient course and direction until it enters the Chapelry of Teffont Magna in the Parish of Dinton near Mr Wyndham’s Beech Trees”.
- 9.68 The commissioners’ minute book records a number of events including: July 27 1840 “attended their adjourned meeting employed in subdividing the allotments and making map of proposed new public roads staking out same and preparing description of such Roads to be published and advertised.” Duly advertised Salisbury Wiltshire Herald August 01 1840.
- 9.69 At a meeting at The Bell Inn, Wily as advertised to hear objections from aggrieved persons, “No person attended to make any objection to any or either of the public carriage Roads and Driftways proposed and intended to be set out”.
- 9.70 The procedure was repeated for the private carriage roads in October 1846 and no one objected to those either. A further meeting was held in 1860 to resolve an objection with Public Road number 2 and private road number 2 to allow for a wooden sheep bridge and on September 5<sup>th</sup> 1861 the commissioners finally met and the examined the engrossment of the award produced by the clerk on the 4<sup>th</sup> September and executed the same on the 5<sup>th</sup> September 1861.

9.71 Extract from map:



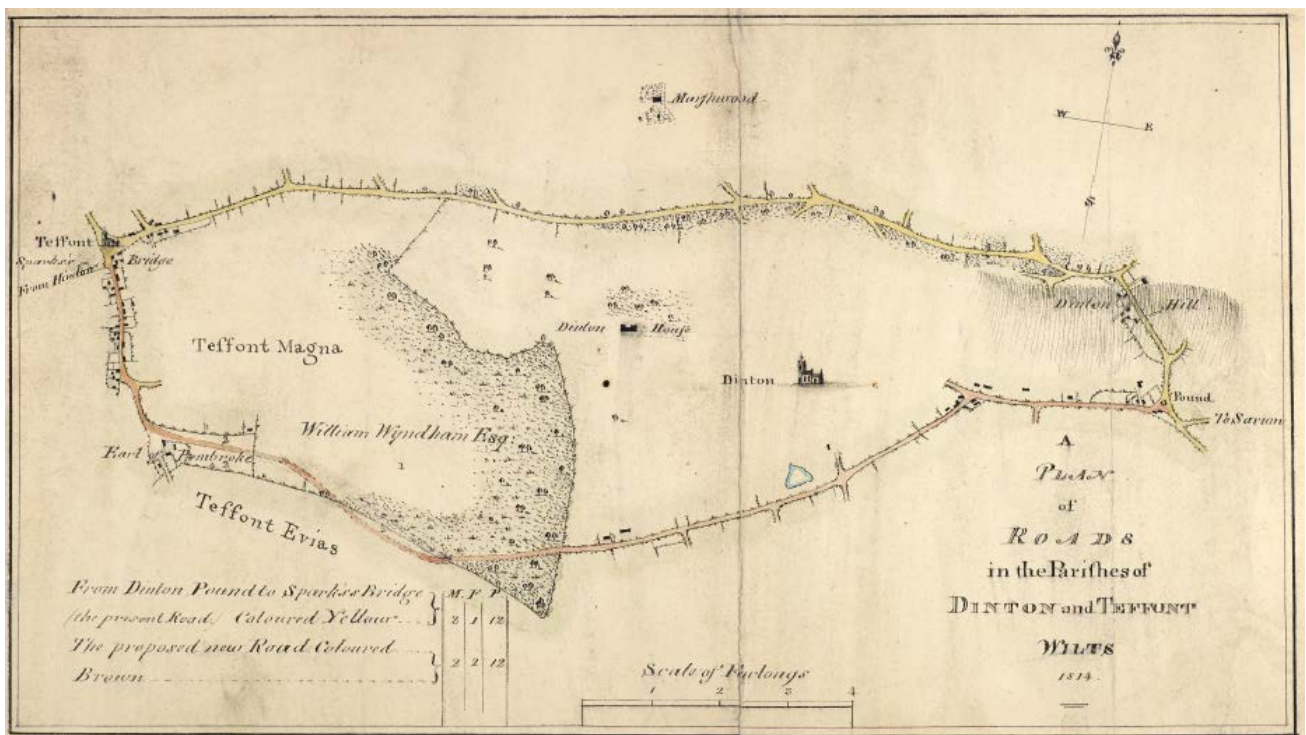
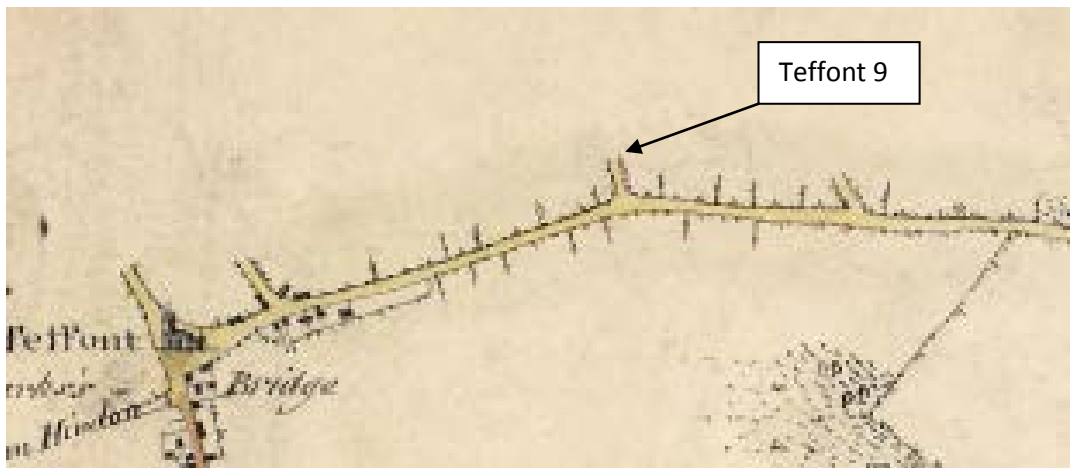
9.72 The Wylie evidence is consistent with the route of Teffont 9 being part of the road linking Wylie (Wily) with Teffont at this time. The 1861 award in Wylie refers to the route as being on its “ancient course and direction”. The award of the width is also consistent (30 feet).

9.72 **Other Category A Evidence**

In Wiltshire Quarter Sessions records have been searched and indexed for highway references and no entries relating to the route of Teffont 9 have been found. Additionally no applications or orders for diversions, closures or creations from 1750 – 1971 relating to the route of Teffont 9 have been found. No Orders relating to the route have been found in other public records to date of report.

9.73 The southern end of Teffont 9 meets the Old Dinton Road. This road was the turnpike road until the early 1800s. In 1814 a plan and book of reference was deposited with the Clerk of the Peace of the County of Wiltshire (30.09.1814) detailing the new road that was to be created leading from Dinton Pound to Sparks’s Bridge, Teffont Magna (these documents are held at WSHC A1/370/46HC). The documents were then presented to Parliament as the Fisherton Road Bill dated 8<sup>th</sup> May 1815. These documents are held at the House of Lords Record Office HL/PO/PB/3/plan19 (Act 55 GeoIII c.62) and have been viewed.

- 9.74 The plan deposited both with the Clerk of the Peace and with Parliament shows a road joining the “present road” at the position of Teffont 9, however, a number of other junctions are also represented on the plan and officers consider that other than supporting that a road on the route of Teffont 9 existed at this time – and was sufficiently significant to be represented – the document has little evidential weight despite being a Category A piece of evidence.
- 9.75 The new road had been built by the time the 1837 Dinton and Teffont Inclosure Award plan was made as this shows “The Old Turnpike” and “The New Turnpike”.
- 9.76 Excerpts from the deposited plan:



9.77 In Wiltshire Petty and Special Sessions Justices' minute books have also been indexed for highway references. Although no entry relating to Teffont 9 has been found the following entry relating to the adjoining route in Teffont, the Ox Drove has been noted: It provides a useful insight into how the extent of the highway (the Ox Drove was awarded at 110 feet) was viewed in 1896.

28.5.1896 Game trespass in gorse in the oxdrove, Teffont. Farmer's statement "*The oxdrove is a free right of way to the public, but is let with the farm to me.*"

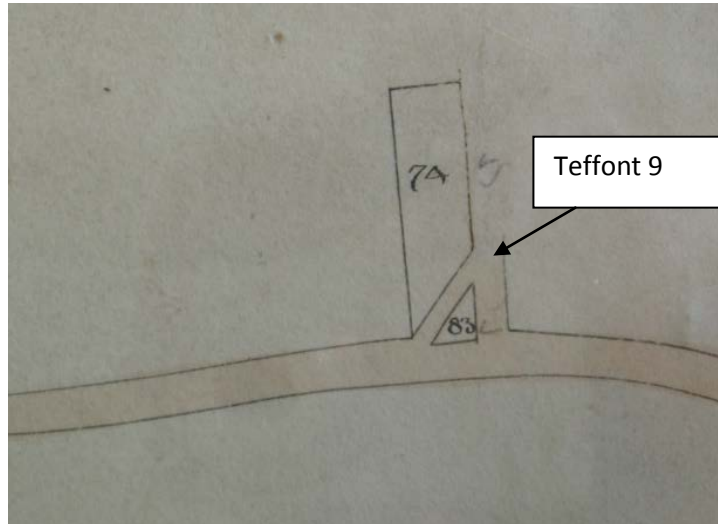
9.78 No deposits plans for railways or canals affect the area close to Teffont 9 (the closest is south of Teffont Evias).

## 10.0 Category B Evidence

Category B evidence may be documents or plans drawn up as a result of legislation, and consulted upon but where the primary purpose was not to record public rights. Examples of this includes records from the Tithe Commissioners and the Inland Revenue.

- 10.1 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and generally represented one tenth of production. The system was both unpopular, cumbersome and increasingly unjust as the industrial revolution gathered pace. The Tithe Commutation Act of 1836 sought to commute these tithe payments in kind to annual rent-charges. Parliament appointed a three man commission to direct a staff of assistant commissioners, valuers and surveyors who mapped, valued and apportioned rent charges among thousands of separate parcels of the titheable land in different states of cultivation.
- 10.2 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 10.3 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians by Roger J P Kain and Hugh C. Prince*) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.
- 10.4 **Dinton and Teffont Magna Tithe Award 1840** WSHC TA/Dinton

The apportionment is dated 28.04.1840 and the map is dated 1840. The map was made by J Poole, Sherbourne, Dorset and is drawn at the scale of 6 chains to one inch. The map is drawn in some part to the suggested standard, with roads coloured sienna, watercourses blue, inhabited properties in red, uninhabited properties in grey. Only roads that form apportionment boundaries are shown (the Ox Drove is omitted) and hence a short length of Teffont 9 is shown branching out of road C.277 where it abuts two apportionments and is shown coloured sienna. The remainder of the surrounding land is owned by the Earl of Pembroke.



10.5



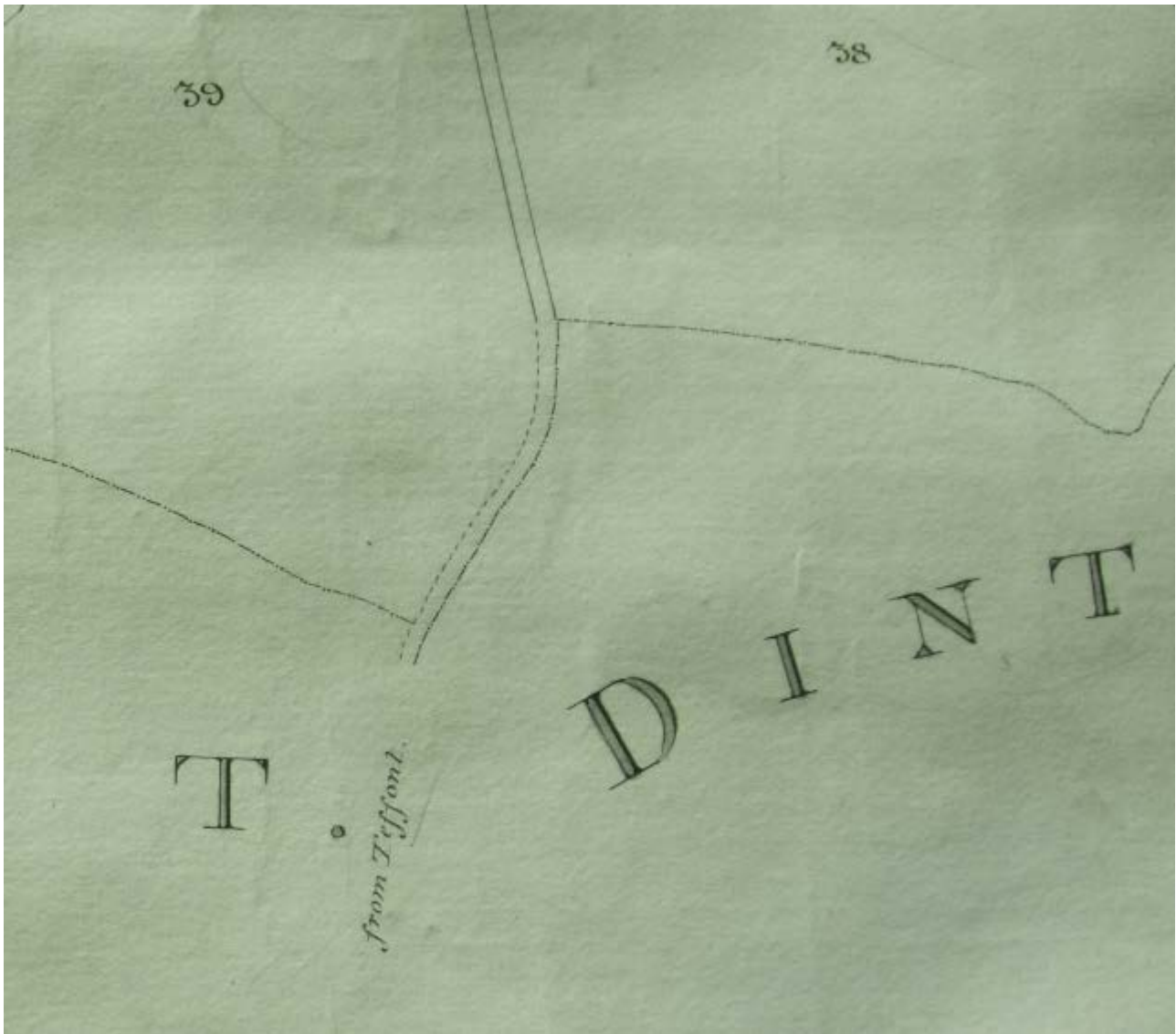
10.6 The junction of Teffont 9 with the old turnpike road (the Old Dinton Road) is often depicted on maps as being splayed in the manner it is on the tithe map. This arrangement would have reflected its utility as a droveway if sheep (or cattle) were being herded from Teffont to the downs as the inviting ‘funnel’ shape would have greatly assisted herding from that direction. The tithe map records the two parcels here as follows:

<b>Number on plan</b>	<b>Owner</b>	<b>Occupier</b>	<b>Description</b>
74	Joseph Mullens	John Macey	Jackthorns
83	Earl of Pembroke	James Mullens	Garden

10.7 The roads are un-numbered and are not included in the tithe apportionment.

10.8 **Wily Tithe Award 1841** WSHC TA/Wylye

The Apportionment for Wily (Wylye) is dated 22.09.1838 and the map is dated 1841. It was drawn at a scale of 6 chains to one inch by J Poole, Sherbourne, Dorset and shows houses, water meadow channels. No roads are shown coloured but are shown with destinations on some routes where they leave the parish. The route corresponding with the road to Teffont (as referred to in the 1861 Wily Inclosure award as being on its ancient course and direction) is labelled “From Teffont”.



10.9 The roads are un-numbered and included under a heading "Roads, Rivers, Waste and c" and are free from tithe (or rent charge).

**10.10 Inland Revenue Finance Act 1909/1910 Records**

**Plans** WSHC L8/10/59 and L8/10/65

**Valuation Book** WSHC L8/1/154

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 usually 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 generally carefully identified and included in the documentation.

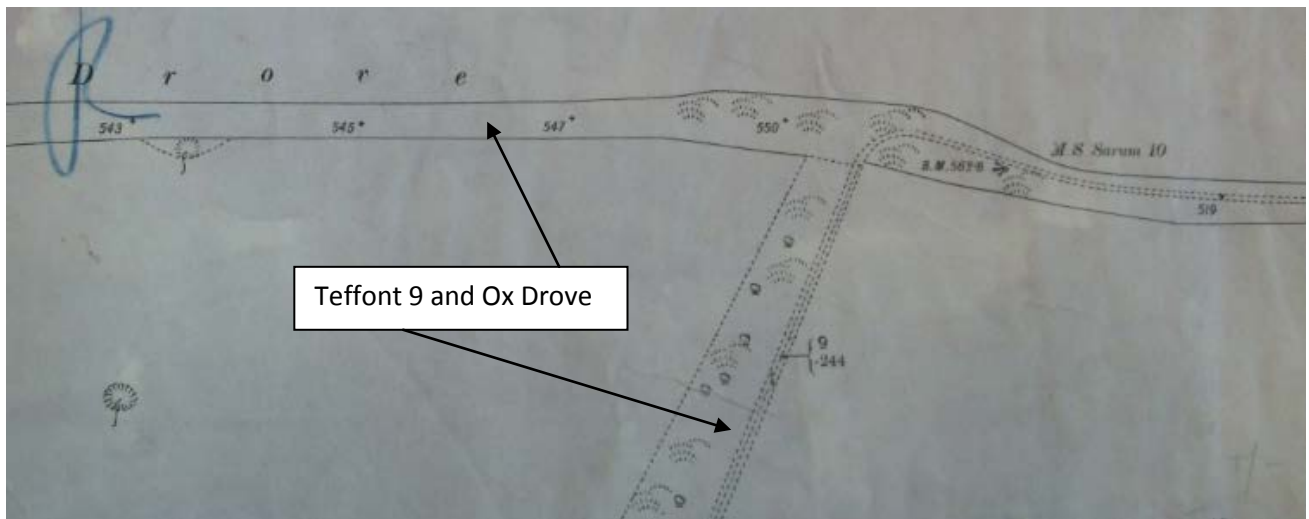
- 10.11 The following is taken from the Journal of the Society of Archivists (JSA, Vol 8(2) no 2, Oct 1986 p 95-103 “An Edwardian Land Survey: the Finance (1909-10) Act and describes the process by which this was achieved. It is clear that the survey was carefully undertaken by people with local knowledge:

*“The Valuation Department assumed responsibility of valuation for rating purposes, and the hereditaments of 1910 provided the basis for their work for very many years, so that the documents of that time often continued to be used as working documents long after the repeal of land clauses”.*

*“A land valuation officer was appointed to each income tax parish. These were almost always the existing assessors of income tax (who were also frequently assistant overseers), and some several thousand were appointed nationally. This enabled the Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying each hereditament.”*

- 10.12 The working copy of the Finance Act plans held at Wiltshire and Swindon History centre (WSHC) have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey’s County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and undoubtedly provide the most accurate record of the landscape that we have for that time. Sheets 65.1, 65.5 and 59.13 (L8/10/65 and L8/10/59) have been viewed.
- 10.13 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property was diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on ‘broken braces’. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.
- 10.14 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or 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”.
- 10.15 The route of Teffont 9 (and the Ox Drove and other tracks in the area) are coloured blue (65.5) or purple (65.1 and 59.13) and are all included in hereditament no 312. 312 is The Earl of Pembroke’s Manor farm, Buildings and Land and covers 1067 acres. The valuation book records no deductions for rights of way or easements.

10.16



10.17 The Valuer was J Groome of Dinton, Salisbury. It is unlikely that a local person would not have been aware of the public rights of way in the area, especially one so historically significant and wide (110 feet) as The Ox Drove and officers can not

explain why the valuation does not allow for any relief as a result of them. It is however noted that the maps have a large blue letter “R” written on top of them and in previous cases with large estates (for example the War Department lands on Salisbury Plain) this has denoted that records are kept separately. These additional records have not survived.

10.18 The Finance Act plans held by the Wiltshire and Swindon History Centre are working copies. The Record plans are held by the National Archive at Kew. Officers have been able to view images of these (provided as part of Natural England’s Lost Ways Project) and these show the same representation as the working copies.

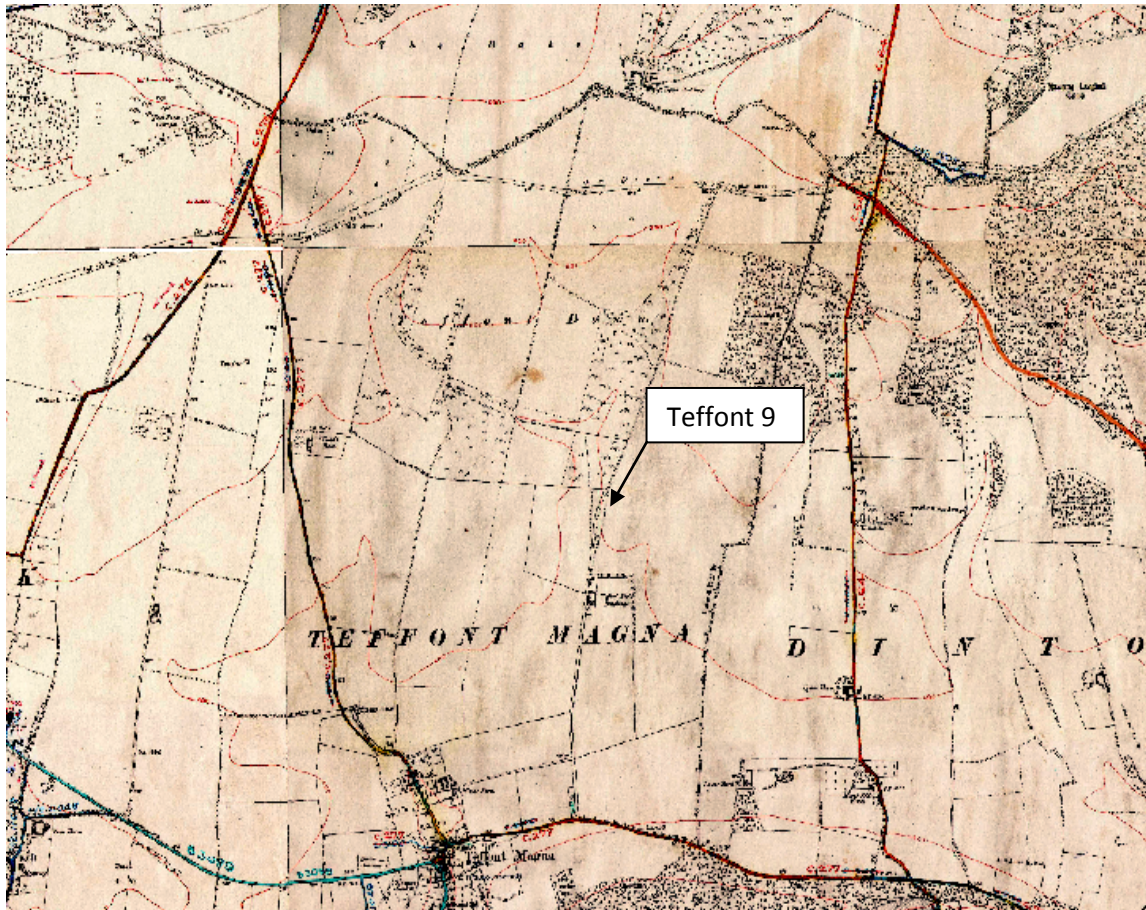
## **11.0 Category C Evidence**

Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. Includes bodies whose function is the highway authority. These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

### **11.1 Rural District Council Highway Takeover Maps and County Council Highway Record**

As a result of the Local Government Act 1929 the responsibility for the maintenance of rural roads was passed from Rural District Councils to the County Council. In Wiltshire the maps transferring this information are known as Takeover Maps. This information was then used to produce the County Council’s Highway record. Teffont 9 is not shown as a road for which either the RDC or the CC had maintenance responsibility. It is noted that the Ox Drove is not shown on either map either. This is often the case with ‘down tracks’ in Wiltshire. Tracks over chalk downland would have received little or no maintenance and it is noted that the non-representation of Teffont 9 (and the Ox Drove) in these records is by no means unusual.

11.2 This is consistent with the comment in the Court of Appeal in *Eyre v New Forest Highway Board (1892)* “*The duty to repair an ancient highway was always co-extensive with the right of passage of the public. The liability of the parish attached though there were thousands of instances in which it was never exercised.*”



Excerpt from Wiltshire County Council Highway Record c.1930 plus later amendments

### 11.3 Parish Council

The National Parks and Access to the Countryside Act 1949 required Wiltshire County Council (WCC) to draw up a definitive map and statement of public rights of way. The initial stage of this was for WCC to provide maps and 'cards' to Parish Councils and request that they survey their rights of way. The information provided by parish councils provided the basis for the Draft Map.

11.4 The Draft Map was publicly advertised and held by Parish Councils and objections and representations could be made. Changes may have been made to the draft map by agreement or as the result of a recommendation of an Inspector or other person appointed to deal with the matters. The amended map was called the Provisional Map.

11.5 Objection could be made to the Provisional Map but only by landowners and only through the courts. The Provisional Map then became the Definitive Map (and statement).

11.6 Records relating to the Teffont Parish Council claim have been inspected and the following was recorded on the claim card for Teffont 9.

*“Footway and bridleway from Teffont Field Buildings in a Northerly direction to its junction with path No 12 (Ox Drove)”*

Surface *“mostly grass hard surface”*

*“Width 8 feet”*

Fenced or Open? *“Open”*

Repaired by Parish, District, Borough or County Council? *“Yes”*

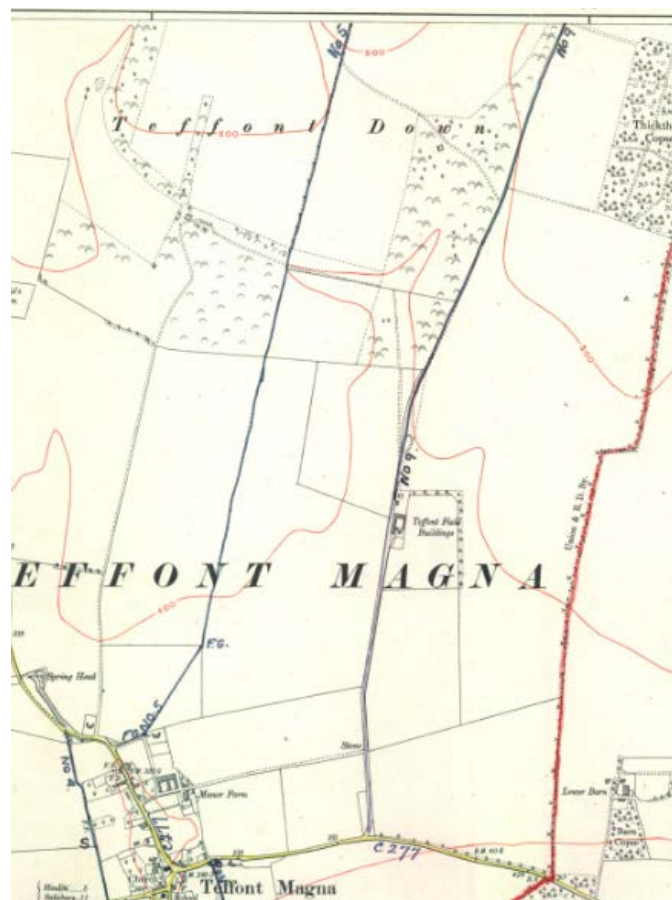
Approximate period of uninterrupted user: *“Time out of mind”*

Observations: *“This right of way was mentioned in the Dinton – Teffont award”*

Date of survey 14/2/51 walked by T I Phillips

11.7 For comparative purposes the Ox Drove was also claimed as a Bridleway and Footway. The width claimed was 10 feet. The card also records that the surface was concreted by the RAF and USA in 1942 and that it had been used at all times except during the 1939 – 1945 war. The card states “This is part of the old historic Roman roadway from Old Sarum”.

11.8 Excerpt from parish claim map



11.9 It is noted that rights of way in Teffont were claimed with relatively minimal widths (for example the Ox Drove was claimed at a width of 10 feet when the awarded width is 110 feet and Teffont 9 was claimed at a width of 8 feet when the awarded width in the 1837 award the parish referred to is 30 feet).

11.10 One possible reason for this is the guidance issued to parish councils for the definitive map process. "Surveys and Maps of Public Rights of Way" the memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers' Association; recommended by the County Councils Association and approved by the Ministry of Town and County Planning, gave the following advice (paragraph 5):

*"If the surveying authority require particulars to be furnished of the width of any public paths, these should be given in the schedule, as far as possible. If, for example, a way was set out by an enclosure award as a public footpath 4 feet wide, or a public bridleway 8 feet wide, these widths can and should be specified."*

11.11 The Institute of Public Rights of Way Management in their Good Practice Guide on the ascertainment and recording of widths observe that some authorities chose not to record widths at all while others chose only to record those where there was solid documentary evidence (such as an inclosure award). Less explicable are those case where authorities chose a notional width with apparently no supporting evidence; but the use of the examples of four feet for the width of a footpath and eight feet for the width of a bridleway may explain why these are common widths found in statements in these cases.

11.12 Recorded widths in Teffont (Mere and Tisbury Rural District Council definitive statement 1952)

Footpaths		Bridleways		Roads Used as Public Paths	
Path no.	Width in feet	Path no.	Width in feet	Path no.	Width in feet
2	2	3	10	12	10
4	2	5	6		
6	3 – 6	8	6		
7	2 – 6	9	8		
13	2				
15	2				

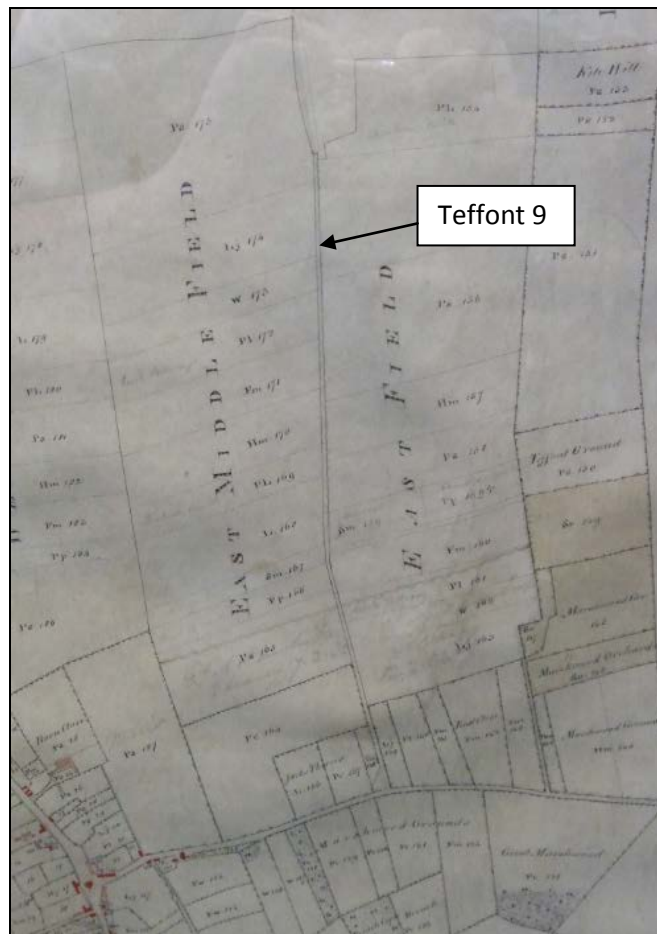
## 12.0 Category D Evidence

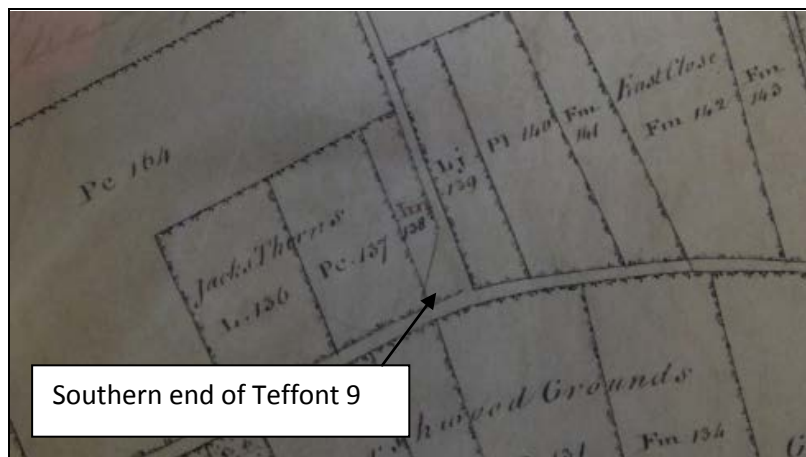
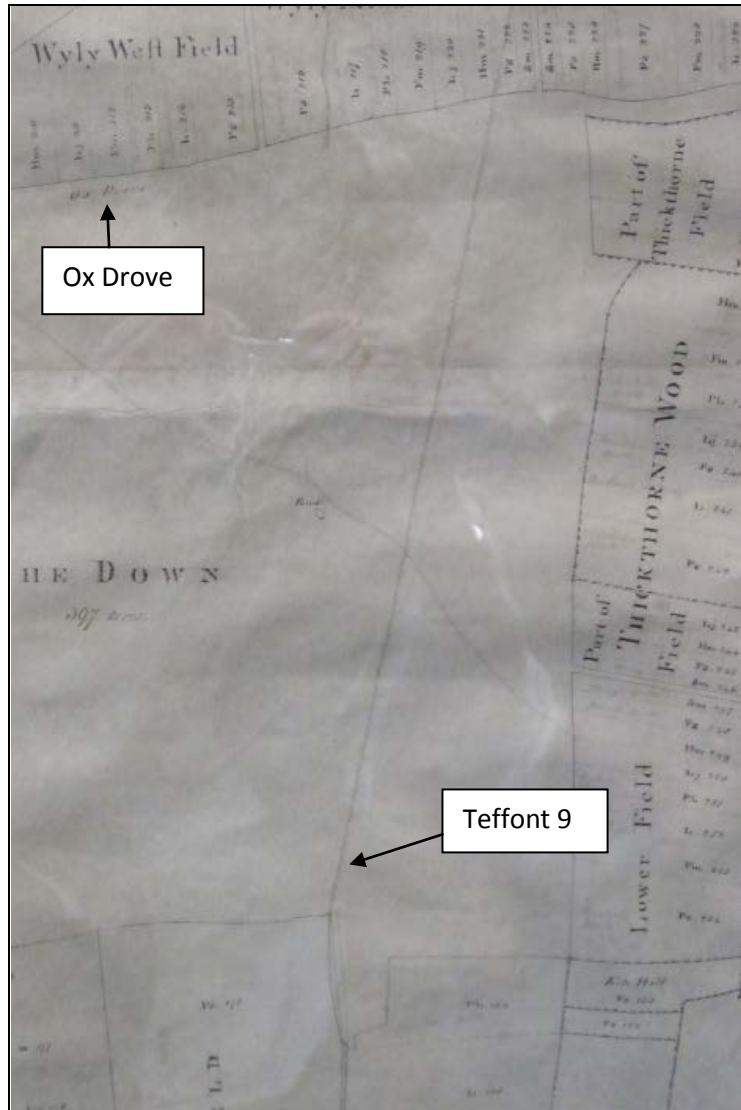
Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.

### 12.1 A Plan of the Manor of Teffont Magna 1801 WSHC 1553/122 Book of Reference 2057/5/113

This document is entitled “A Plan of the Manor of Teffont Magna in the County of Wilts the Property of George Earl of Pembroke and Montgomery. Survey by J A Charlton 1801”. The map is drawn at the scale of 6 chains to one inch. Teffont 9 is shown bounded by East Middle Field and East Field (both of which are subdivided into strip fields) leading to The Down. Old inclosures Jack Thornes and Thickthorne Field are identified. The length of Teffont 9 that is shown is approximately 50 chains.

12.2 The plan is similar to the plan with the Inclosure Agreement of 1800 and with the Book of Reference (which has been updated at various times) appears to have been used for estate purposes by the Earl of Pembroke.





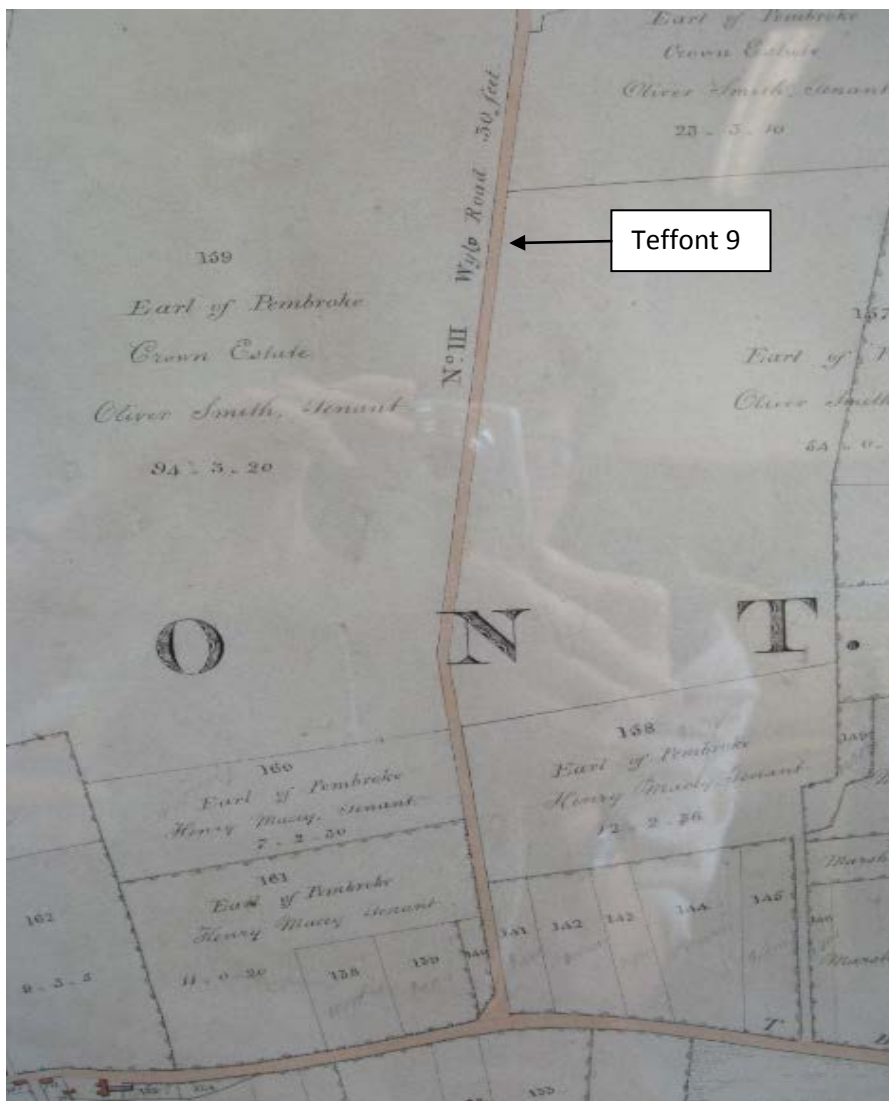
12.3 These documents are also discussed at 9.21 – 9.24 as they were clearly drawn up and used after the 1800 Inclosure Agreement came into effect.

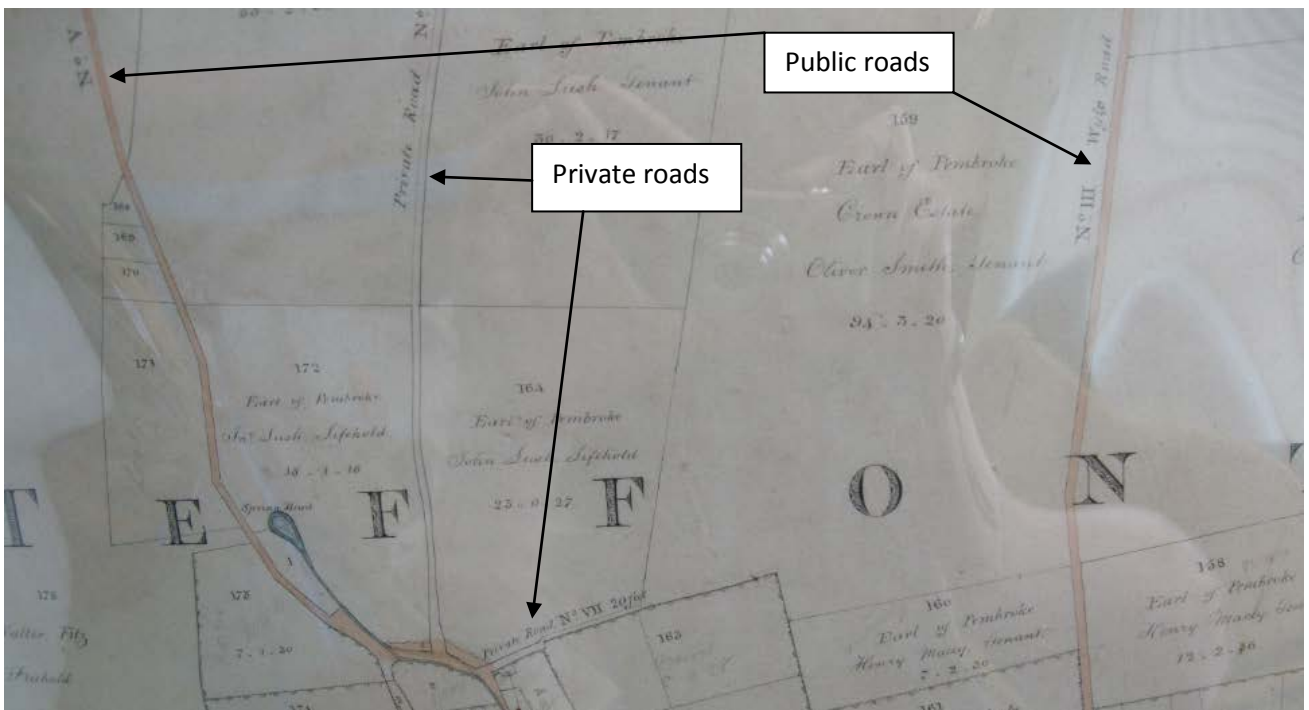
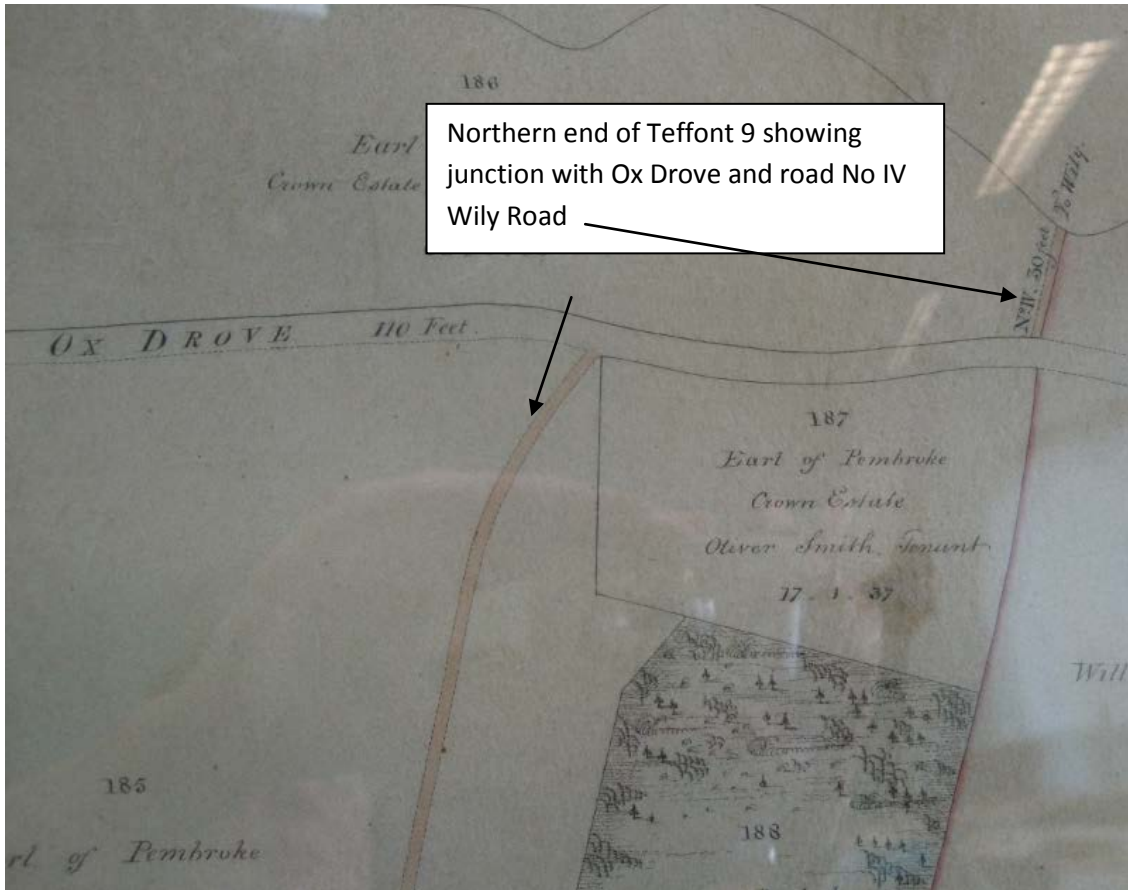


12.4 **Map of the Manors of Dinton and Teffont 1827** WSHC 2069/I5

The map is entitled “Map of the Manors of Dinton and Teffont in the County of Wilts 1827” and is drawn at the scale of 6 chains to one inch. Underneath the scale bar the map is inscribed with the name I Poole, Landsurveyor, Sherborne, Dorset 1836.

12.5 The map is finely detailed, public roads are shown sienna and private roads are shown without colour. One notable exception to this is that the Ox Drove is shown uncoloured. Teffont 9 is shown coloured sienna and labelled “No III Wily Road 30 feet”. Other roads are labelled and private roads are labelled as such (in addition to being colourless). The route has no gates.





12.6 The map is closely related to the enrolled map for the 1837 Dinton and Teffont Magna Inclosure Award. It is known that the execution of parliamentary inclosure in Dinton and Teffont Magna took from 1822 to 1837 to achieve and it is possible that this map was dated 1827, after the roads were laid out and agreed, but before the

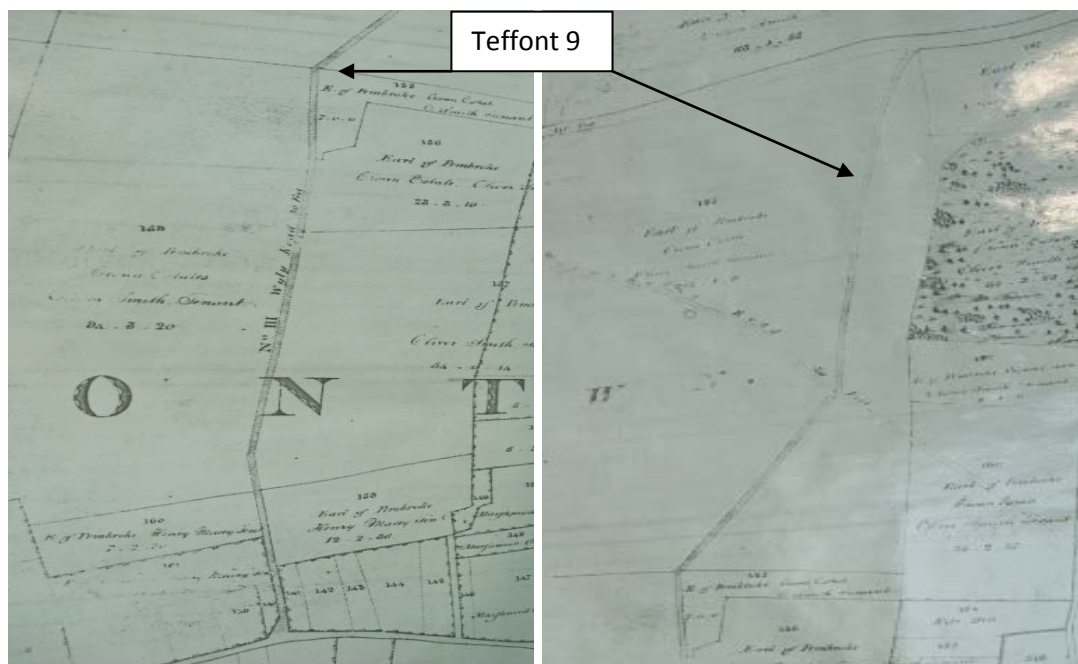
award was finalised and enrolled (1837). Certainly the dates would support that this map was drafted over that period.

12.7 The map is held by the Wiltshire and Swindon History Centre as a map deposited by the parish (catalogue ref no 2069) and not a map that formed part of the estate papers (catalogue ref no 2057). This would suggest that the map may have been used for parish consultation or parish records, or perhaps, both.

12.8 **Maps of the Manors of Dinton and Teffont 1828** (ex open access) WSHC X6/80 copy. Original held at Somerset Heritage Centre

This map is similar to the map discussed above but is dated 1828 and signed by I Poole, Landsurveyor, Sherborne, Dorset 1836. Again the map would appear to be related to the enclosure process, perhaps as a draft plan.

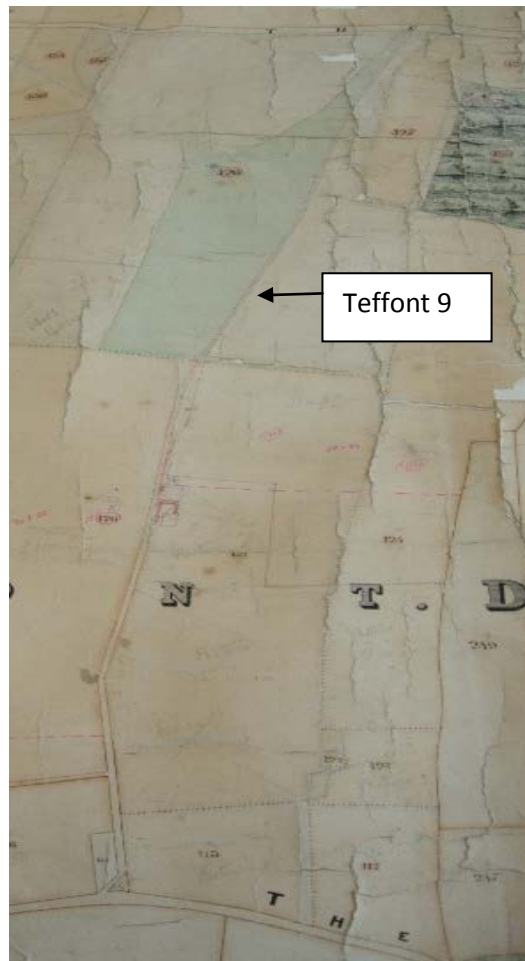
12.9 This map originated from the Wyndham family archives and is held at Somerset's record office. Officers have only viewed a copy of the map which is in black and white. However, the route of Teffont 9 appears to be shaded and is labelled "No III Wyly Road 30 feet". The route has no gates.

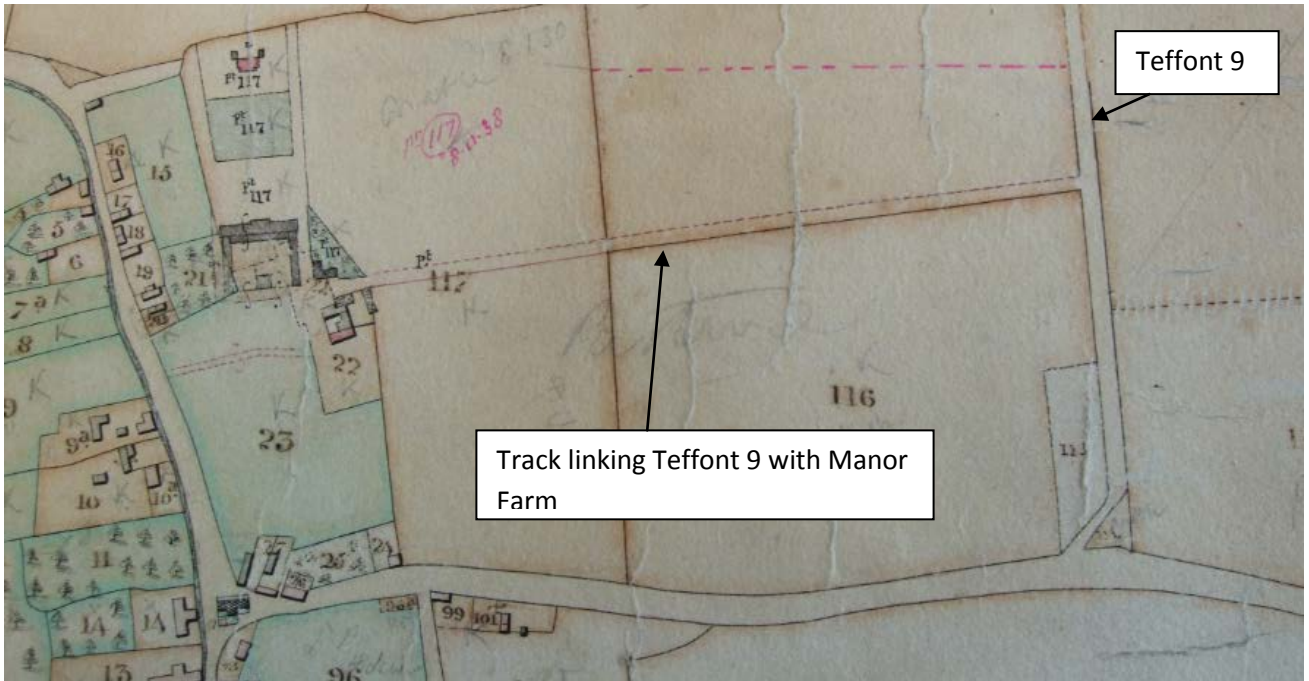


12.10 **Map of the Parish of Dinton and Teffont 1843** WSHC 2057/PI/26L

This map is entitled "Map of the Parish of Dinton and Teffont in the County of Wilts 1843". The map is highly detailed and coloured and carries the inscription "This map is drawn on the same scale as the tithe apportionment map" and is by J Poole, Land Surveyor, Sherbourne 1843.

- 12.11 There are three very distinct surveys of Teffont available, there is the 1801 map showing the effect of the 1800 Inclosure by agreement, the 1837 map showing the 1837 parliamentary inclosure changes and there is this map which shows the effect of the new enclosures on the landscape (larger fields and new roads and enclosures).
- 12.12 The representation of Teffont 9 is consistent between all three maps and here is shown in its entirety leading between the Old Dinton Road and the Ox Drove. It does not have any gates.







Route is only shown fenced or hedged to a point north of the Manor Farm track

12.13 This map is catalogued with the Earl of Pembroke's estate papers and annotations to the map in both pencil and red pen suggest that it was a document used by the estate.

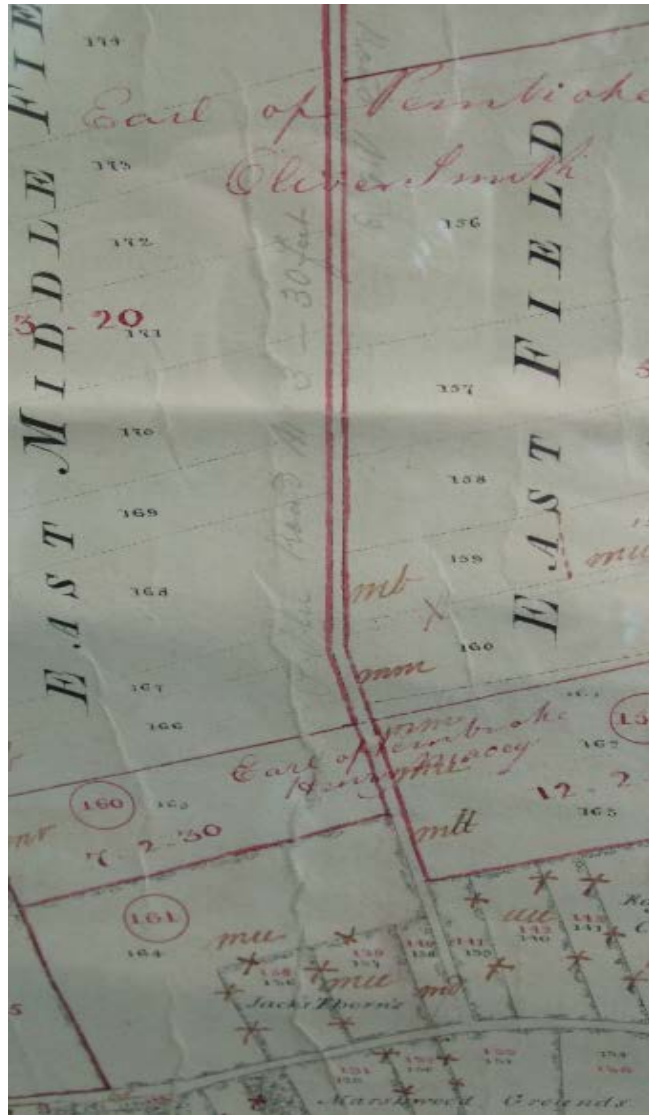
12.14 The map is important because it is the first document to record the track to Manor Farm meeting Teffont 9. This area was not mapped on the Tithe Survey map but this map does not post date the tithe map by much (3 years). It allows us to date the construction of the track to Manor Farm as being between 1823 and 1843 and it is noteworthy that in 1843 it did not connect with a public highway at the western end, just Manor Farm.

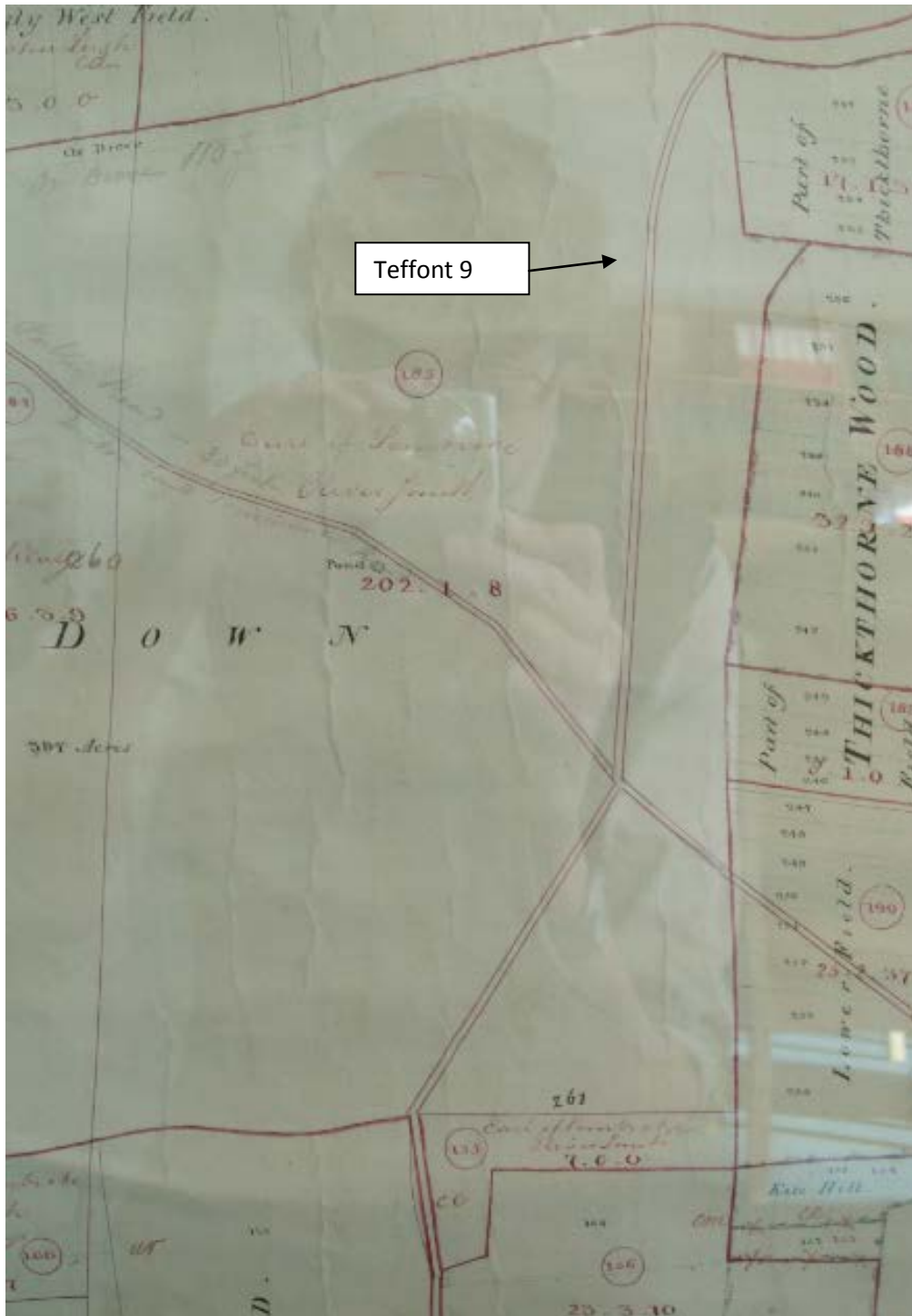
#### 12.15 **Map of the Manor of Teffont Magna 19<sup>th</sup> century** WSHC 2057/P1/32H

The Map is entitled "Map of the Manor of Teffont Magna in the County of Wilts" and is undated and unsigned. The map is catalogued with the Earl of Pembroke's estate

papers and appears to be a copy of the 1801 map (showing inclosures created by the 1800 agreement) with alterations in accordance with the 1837 parliamentary inclosure written over the top in red pen.

- 12.16 The whole length of Teffont 9 is shown as a road and outlined very clearly in red ink. There are two pencilled inscriptions “Public Road No 3 – 30 feet” and “Wyly Road No.3 “.





12.17 Although the purpose of this document is not clear, it is useful in confirming the identity and route of Teffont 9 post inclosure. It is noted that the Manor Farm track is not shown suggesting that this map is dated between 1822 and 1843 and not “mid 19<sup>th</sup> century” as catalogued.

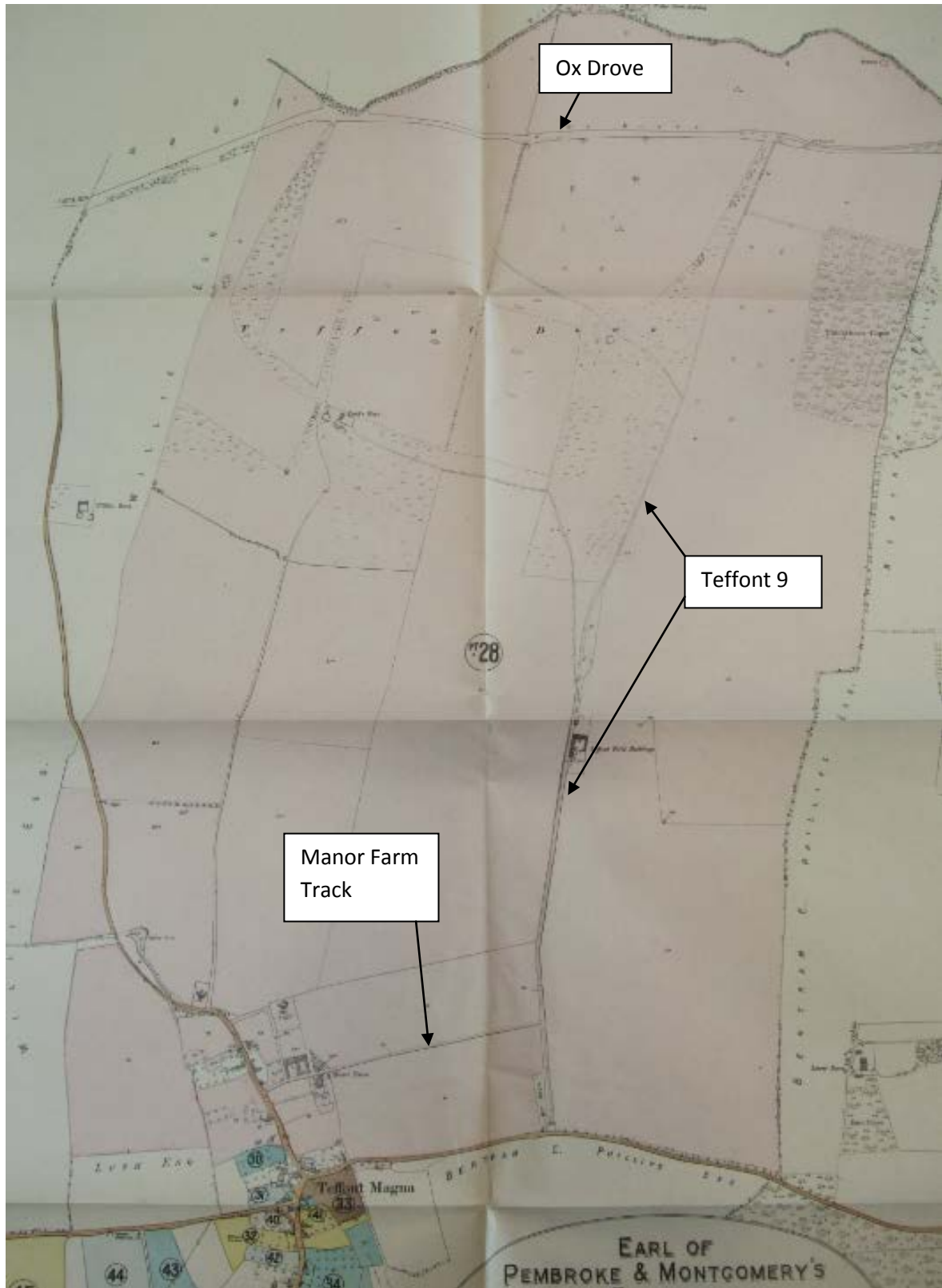
12.18 **Sales Catalogue Manor Farm 1918 WSHC 2132/28**



On the 13<sup>th</sup> and 14<sup>th</sup> November 1918 J Carter Jonas and Sons held a sale at The White Hart Hotel, Salisbury to sell outlying portions of the Wilton Estate (the Earl of Pembroke's estate). Manor Farm including 1065 acres of land (but excluding the Manor House) was Lot 28 in the sale but was subsequently withdrawn. However, the land was catalogued and listed.

12.19 The route that is Teffont 9 was included in the sale (shown coloured pink) but was separately numbered along with other parcels as follows (numbering is from Ordnance Survey base map):

<b>O.S. Parcel no.</b>	<b>Description</b>	<b>State</b>	<b>Current representation in modern records</b>
6A	Part Ox Drove	Grass	Byway Open to All Traffic Teffont 12
9	Track	Roadway	Bridleway Teffont 9 north
23	-	Roadway	Bridleway Teffont 9 central
62	Cartway	Roadway	Manor Farm Track
64	Roadway	Road	Bridleway Teffont 9 south



12.20 Sales Catalogue 1962 WSHC 2630/9

Teffont 9 (and the Manor Farm Track) are shown on the underlying Ordnance Survey 1:10560 map but there is no mention of the route in any text or annotation.

## 12.21 **Sales Catalogue c.1930** Submitted by Mr D Wood

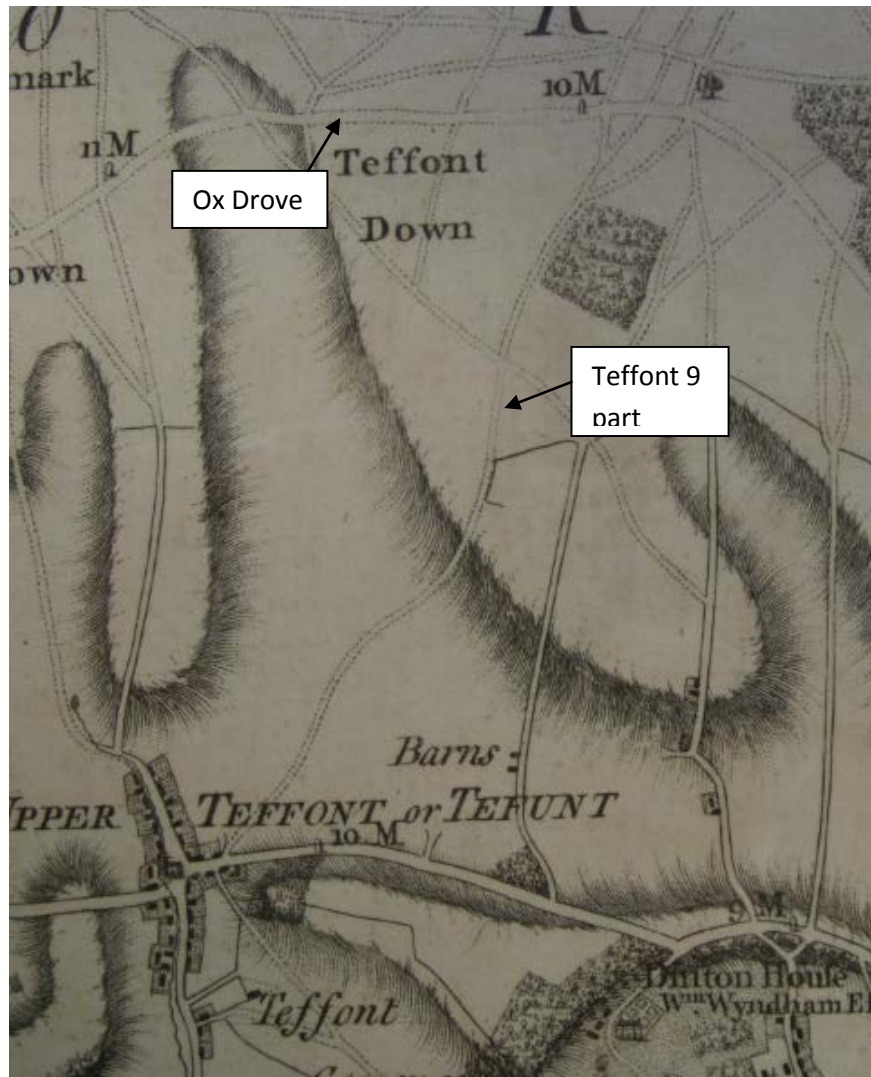
This is considered to be an extract from a sale catalogue from the 1930s when part of the Earl of Pembroke's estate was sold. The plan and table of parcel numbers appears similar to the 1918 sale catalogue. Teffont 9 is listed as a Roadway and Road whereas the Manor Farm Track is listed as a Cartway and Roadway.

## 13.0 **Category E Evidence**

Evidence in this category includes commercial maps and Ordnance Survey maps, plans and documents. It is usual for there to be a significant quantity of evidence in this category and it is important to bear in mind the originality and purpose of the documents. The value of this group of evidence lies in the continuity of records over a long period of time and any differing origin. It must be borne in mind that this group of documents would have had the largest public circulation outside of the parish.

- 13.1 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the county maps produced by Andrews and Dury , John Cary , C & I Greenwood and the Ordnance Survey.
- 13.2 It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew's were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.
- 13.3 **Andrews' and Dury's Map of Wiltshire 1773** The map is drawn at the scale of 2 inches to one mile. It does not have a key but Andrews' and Dury's map of Hertfordshire does and the symbology appears to be the same.
- 13.4 The map shows an unenclosed road leading from Teffont Magna village leading north east and then generally north to join the Ox Drove. The map shows a number of other entrances to the downs from the turnpike road but it is considered that none of them coincide with Teffont 9 - contrary to the 2005 applicant's interpretation of the map.
- 13.5 The route from Teffont Magna north to the Ox Drove pre-dates inclosure of the downs and the southern section would have been severely affected by the 1800 inclosure award though the northern section appears unchanged by inclosure.
- 13.6 The 1800 Inclosure Award describes a droveway as being part of the eastern boundary of an allotment (now land belonging to Manor Farm) and it is possible that

this is a reference to the more ancient route as shown by Andrews and Dury (and the Ordnance Survey's surveyor in 1808 – who showed both the ancient route and the inclosure route).



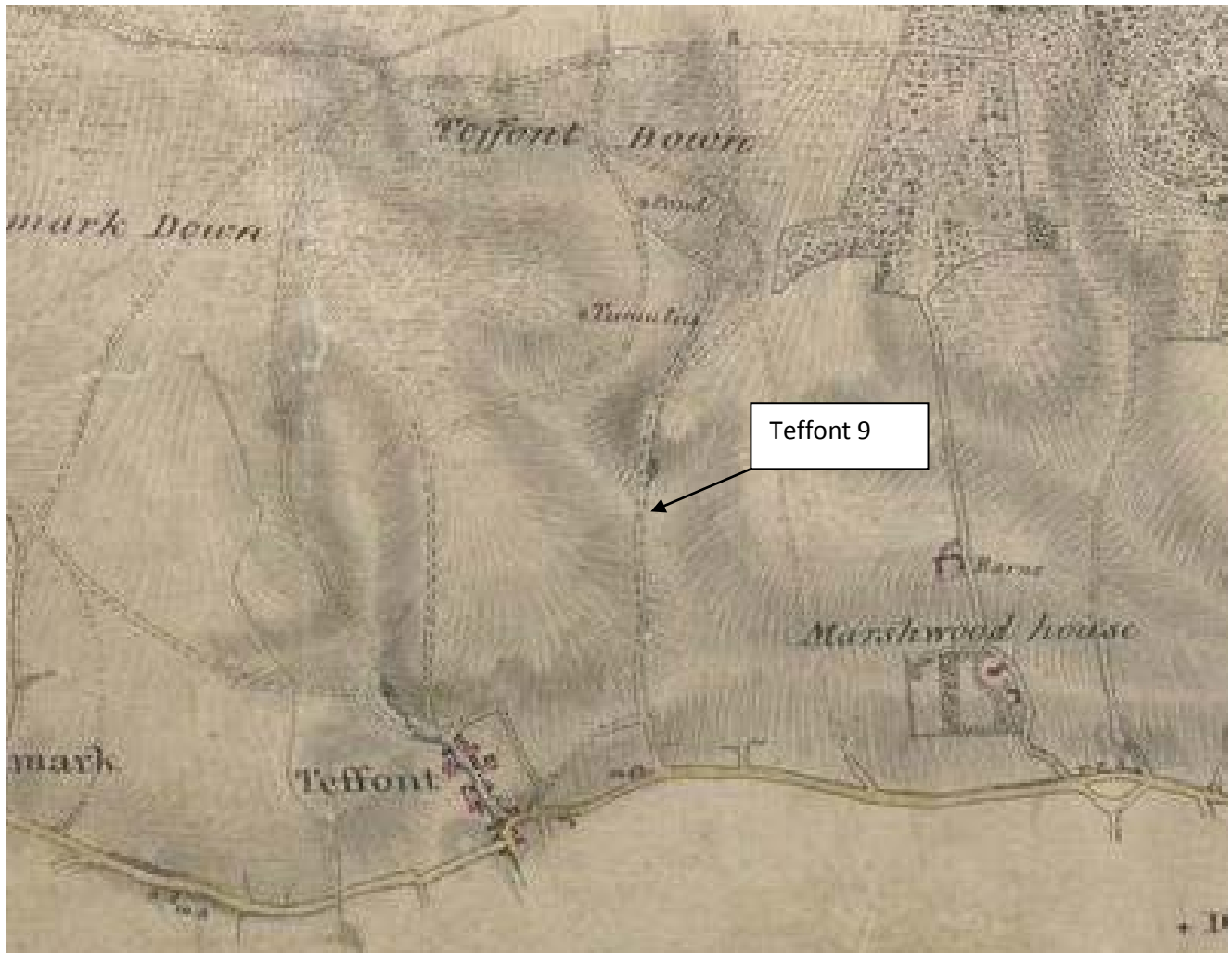
- 13.7 The 1773 map was revised in 1810 and re-titled to make it clear that it showed Cross Roads. Parts of Teffont 9 are shown as Cross Roads in this map. The Map is entitled "A Topographical Map of the County of Wilts describing the Seats of Nobility and Gentry, Turnpike and Cross Roads, Canals and c. Surveyed in 1773. 2<sup>nd</sup> Edition revised and corrected." WSHC A1/524/2MS



**13.8 Ordnance Survey Surveyor's Drawing No. 63 Surveyed 1808**

In preparation for the production of a map covering the whole of England at the scale of 1 inch to 1 mile the OS surveyed the country at a scale of 2 inches to 1 mile.

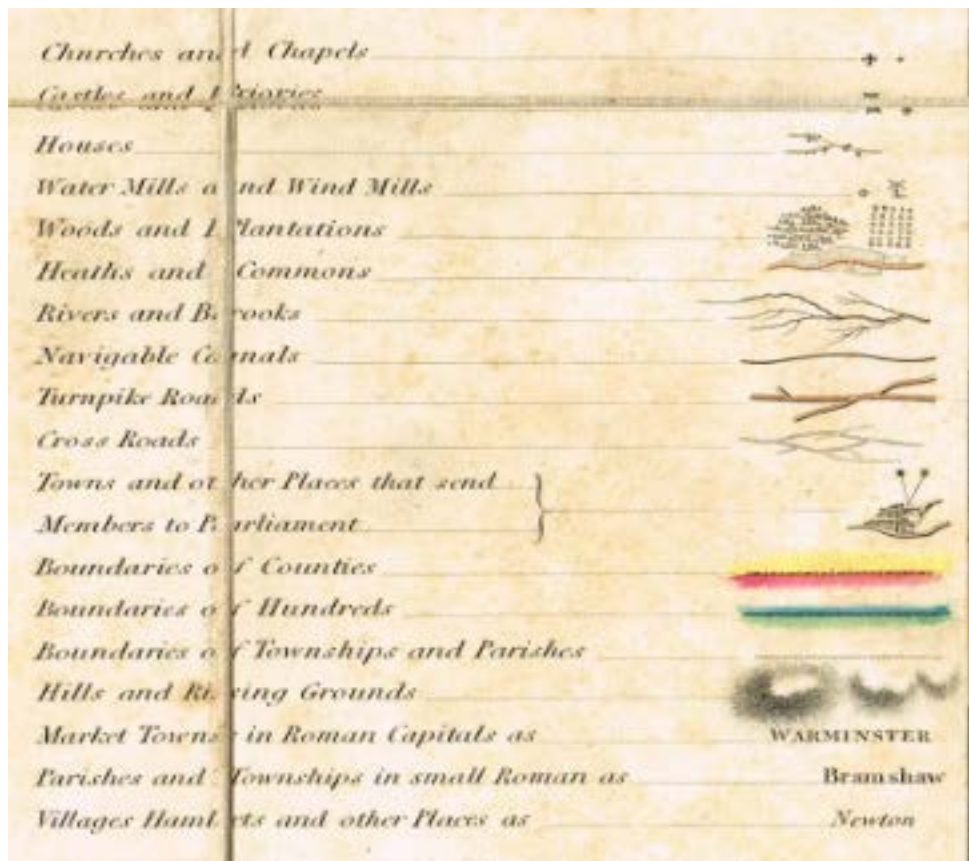
13.9 The resultant drawings provide a depiction of the landscape at the time but do not differentiate between public or private roads, however, the route of Teffont 9 is represented in the same manner as minor roads.



13.10 The surveyor recorded the route of Teffont 9 north from the Turnpike as detailed in the 1800 inclosure award and the route of the section northwards across the down as shown by Andrews and Dury in 1773. He also records a route linking the village with Teffont 9 east of Manor Farm, again partly as recorded by Andrews and Dury. However, this route was clearly not part of the inclosure process (it would have crossed newly made inclosures) and does not survive to be recorded on later maps. It is not possible to say whether the junction with Teffont 9 shown here is at the same point as the pre- 2014 Manor Farm Track junction. It is possible that it is.

**13.11 C and I Greenwood’s Map of Wiltshire 1820**

Greenwood’s maps relied on a survey independent of Andrews’ and Dury and the Ordnance Survey and can be a useful source of information. The maps were produced at a scale of 1 inch to the mile, in full colour and have a key. The route of Teffont 9 is shown as a ‘Cross Road’.



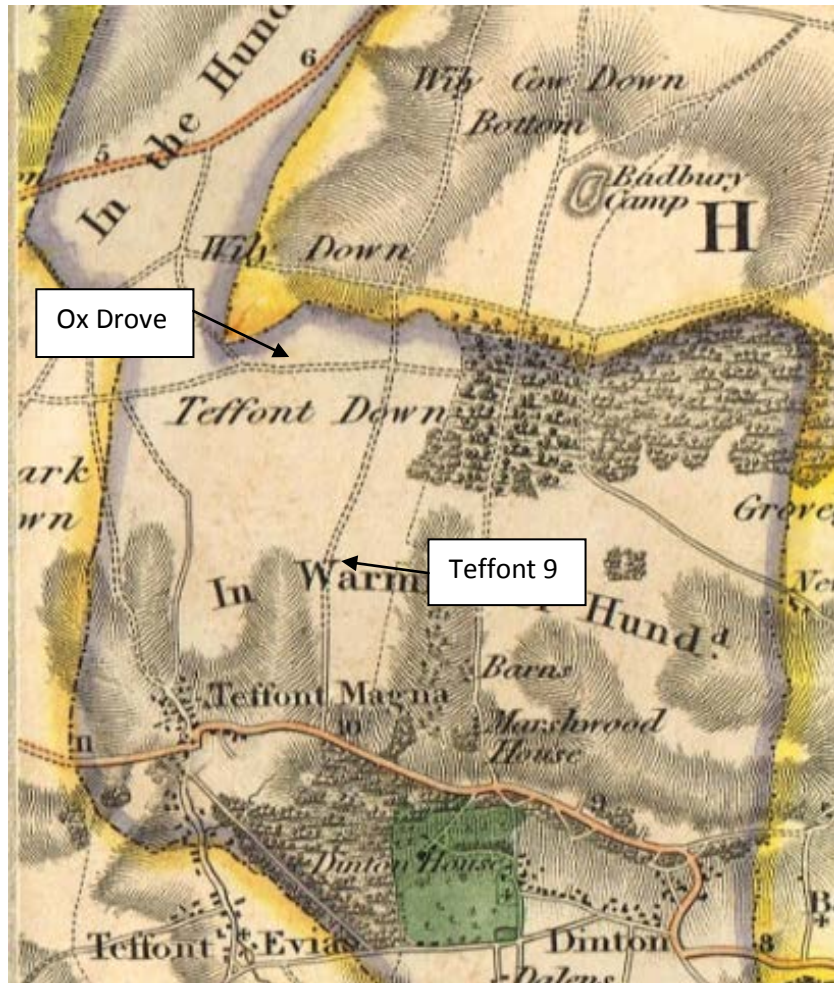
13.12 The Council is guided by the Planning Inspectorate’s Consistency Guidelines (para 2.24 to 2.30) for the definition of a cross road.

*“In modern usage the term cross road/crossroads is generally taken to mean the point where two roads cross. However old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres.”*

13.13 Howarth J’s comments in the case of Hollins-v-Oldham 1995 concluded that the category known as ‘cross road’ must mean a public road in respect of which no toll was payable. The judge gave his reason for this view, stating:

*“This latter category, it seems to me, must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use.”*

13.14

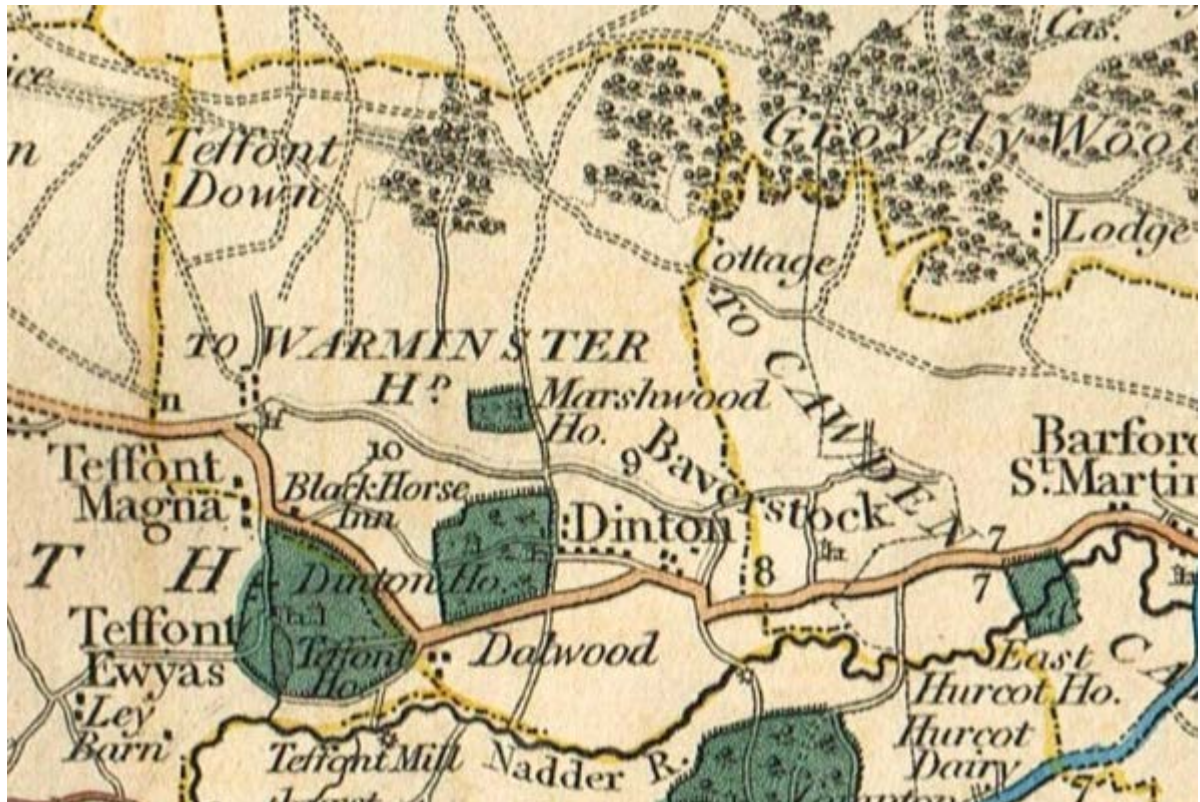


13.15 Greenwood's Reduced Map of Wiltshire corrected to 1829 also shows Teffont 9 as a "Cross Road".

### 13.15 J Cary's Maps 1823 and 1832

The representation of Teffont 9 on both maps is the same. Both maps show the new turnpike south of the old turnpike (the Old Dinton Road) as a road coloured sienna. The maps do not show the entire length of Teffont 9 though do show a route to the north joining the Ox Drove.





### 13.16 Other Commercial Maps

The applicant for the 2005 application adduced a number of other commercial maps as supporting evidence for the application. The maps cover the period 1829 to 1945 and have not all been viewed by officers at date of report. The maps, taken individually have relatively low evidential weight but taken as a body of evidence do show a consistent representation of Teffont 9 by these map makers throughout this period. The maps are largely of small scale (between 2 and 6 miles to one inch).

13.17 The Ordnance Survey maps present the most detailed body of map evidence and will be discussed further, however, the list of commercial maps adduced by the applicant are as follows:

Colt Hoare's Map of Dunworth Hundred 1829	Minor road
Pigot's Map of Wiltshire 1831 and 1840	"Cross Road"
Walker's Map of Wiltshire 1836 and 1841	Minor road
Dispatch Atlas Half Inch Map of the Great Western Railway	Minor road
Weller's Map of Wiltshire 1862	"Road"
Post Office Map of Wiltshire 1875	Minor road
Ordnance Survey 1:10560 Map 1889 (sheet 59) and 1890 (sheet 65)	"Minor Road"
Philips' Cyclists' Map of Wiltshire c.1890	"Cross Road"
Dotesio's New Half inch Touring Cycling and Rambling Map 1890	Minor road
Ordnance Survey 1" Map Revised New series sheet 298 1898	"Unmetalled road"



The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheets 65/1, 65/5 and 59/13 cover the applicant route. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;....hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

- 13.19 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”
- 13.20 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 13.21 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water....*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet. Land use information was dropped. Unfortunately the First Edition maps in this area do not have land use information as they were printed relatively late in the series.

**13.22 First Editions LXV.1 1886, LXV.5 1884 & LIX.13 1884**

Sheet 65.5 covers the southern end of Teffont 9 where it joins the Old Dinton Road (the former turnpike) and shows it shaded and coloured sienna as a carriage drive

and road. It is separately numbered and measured and clearly depicts the Manor Farm Track joining it at an ungated junction.

Sheet 65.1 covers the central part of Teffont 9 and the survey for this map was made in 1886 (two years later than sheet 65.5). The route is shown separately numbered and measured as a road but is significantly also shaded as a “metalled Public Road for wheeled traffic kept in good repair by Highway Authority”. This is a clear difference to the earlier sheet 65.5 and may reflect a response to the surveyor’s instruction at 2 below.

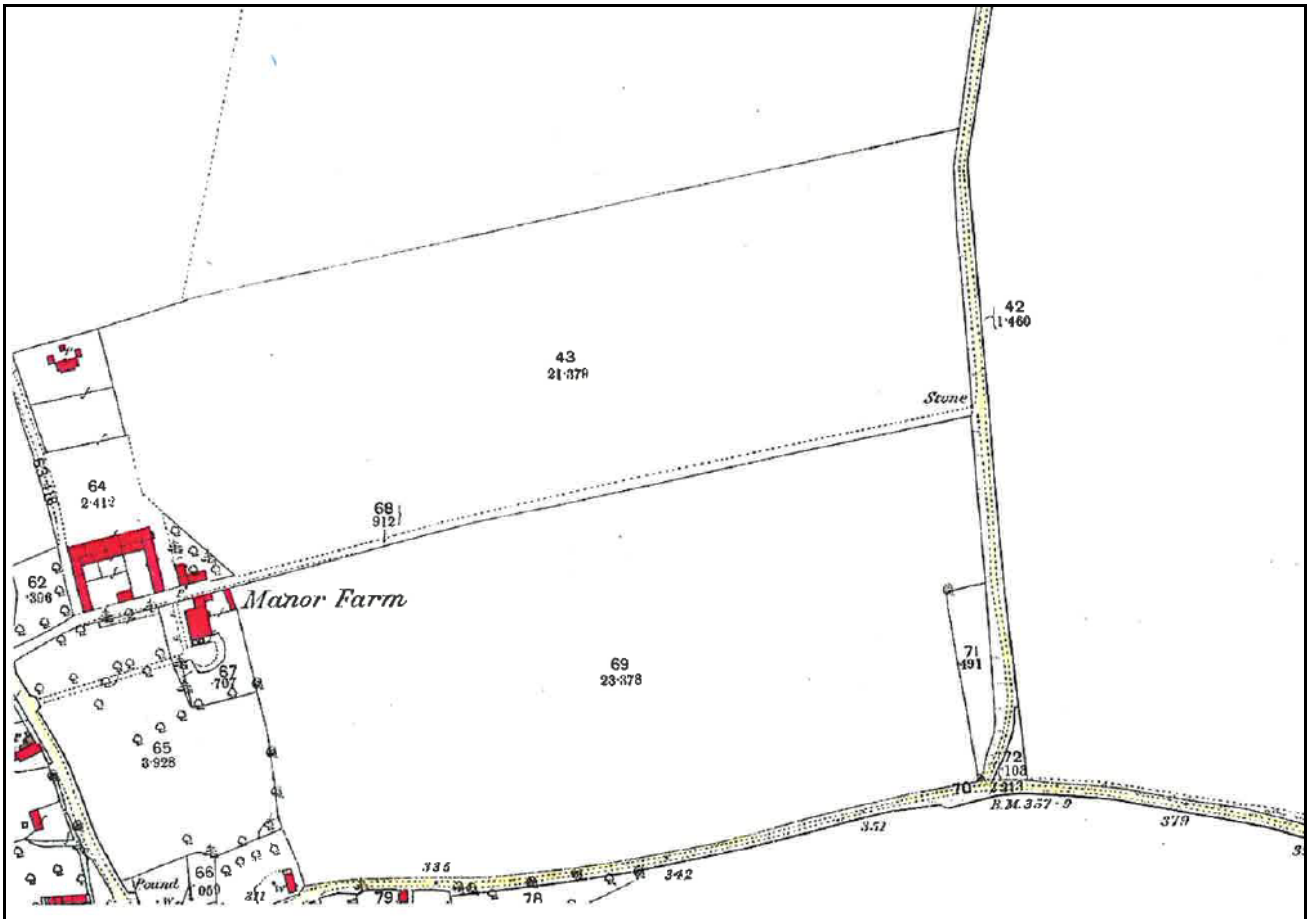
Sheet 59.13 covers the northern end and junction with the Ox Drove and was surveyed in 1884. The route is separately numbered and measured as a road.

13.23 Whilst the 1:2500 maps carried the Ordnance Survey disclaimer (“the representation on this map of a road track or footpath is no evidence of the existence of a right of way”) it is clear from instructions to surveyors that the OS wished the maps to be as accurate as possible in this regard at this time. The Ordnance Survey has two relevant instructions to surveyors in place at the time of the surveys:

1) Carriage Drives (and roads) were tinted sienna on 1:2500 plans produced about 1880 and again from 1884 onwards. The instruction was probably cancelled about 1899.

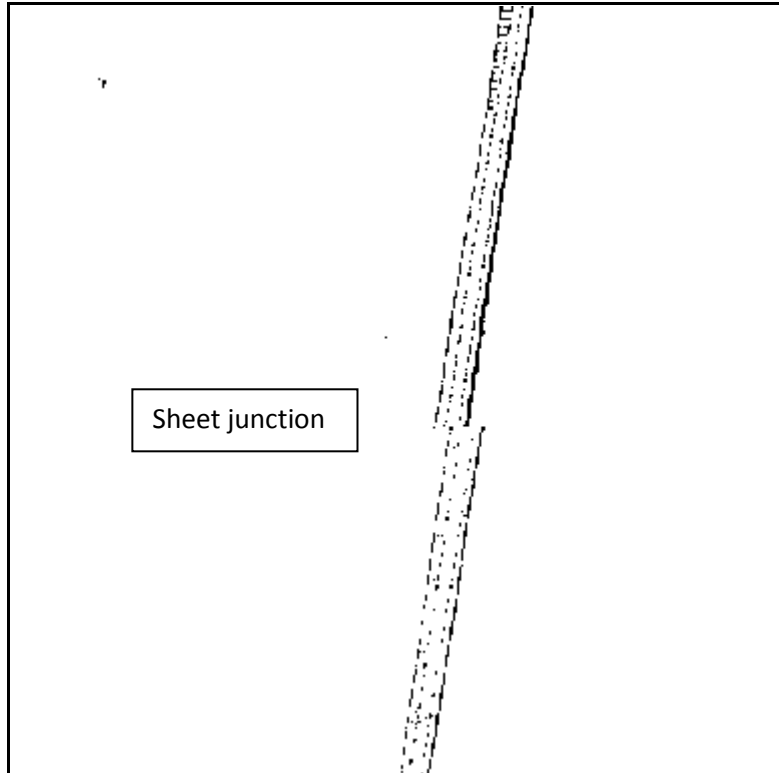
2) In 1885 it was directed that metalled carriage drives will be in future shaded as 2<sup>nd</sup> class roads, but shading not so prominent as on public roads. Carriage drives could include approaches to country houses and farm access roads.

13.24 Extract from First Edition Sheet 65.5

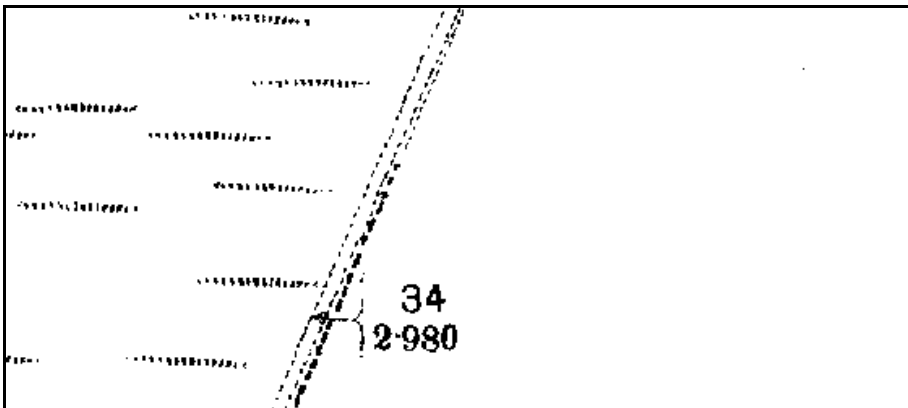


13.25 It is noted that only the central section is shown metalled but that the verges are included in the measurement of the road and not the adjoining land parcels.

13.26 Junction of Sheets 65.5 and 65.1 showing shading to road edge.

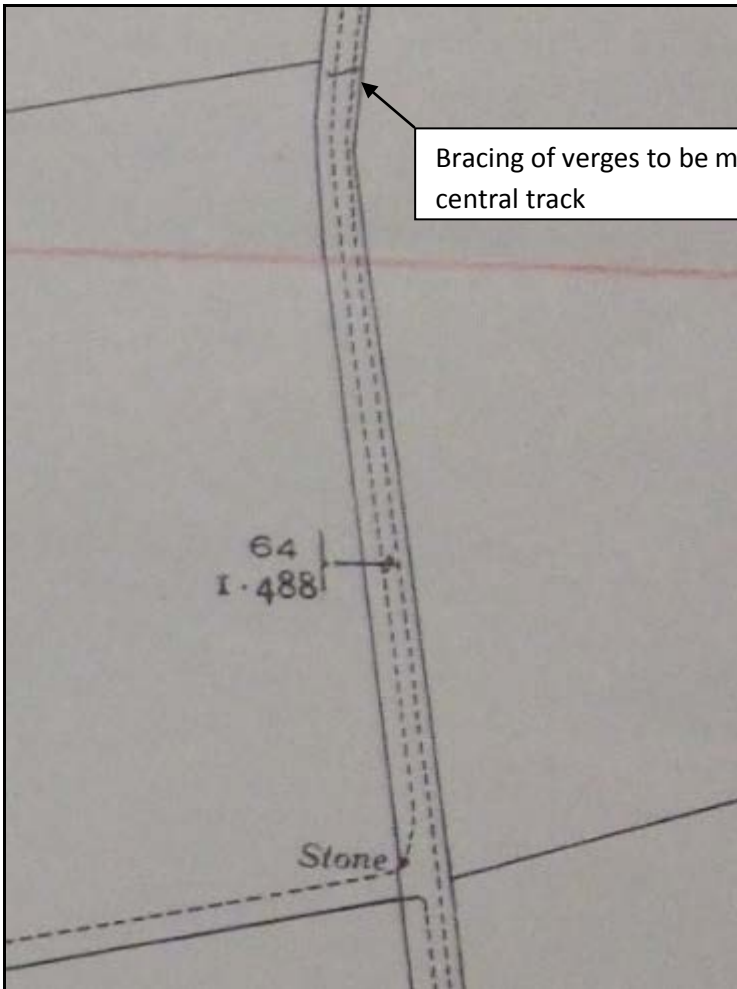


13.27 On all sheets the verges are measured as part of the road. This is consistent throughout all editions viewed.

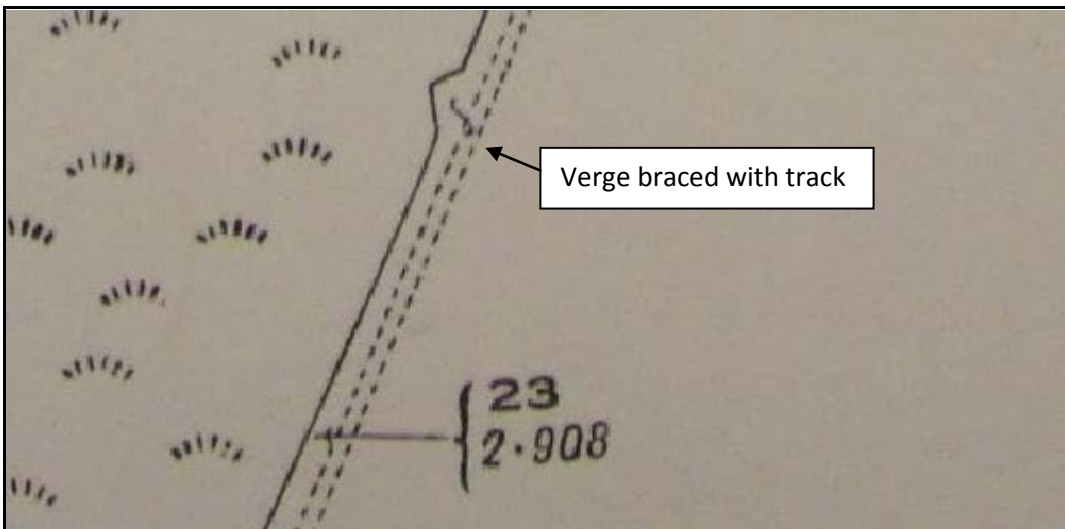


First Edition (also shows

end of metalled section by change in line shading) Sheet 65.1



Third Edition (1939) Sheet 65.5



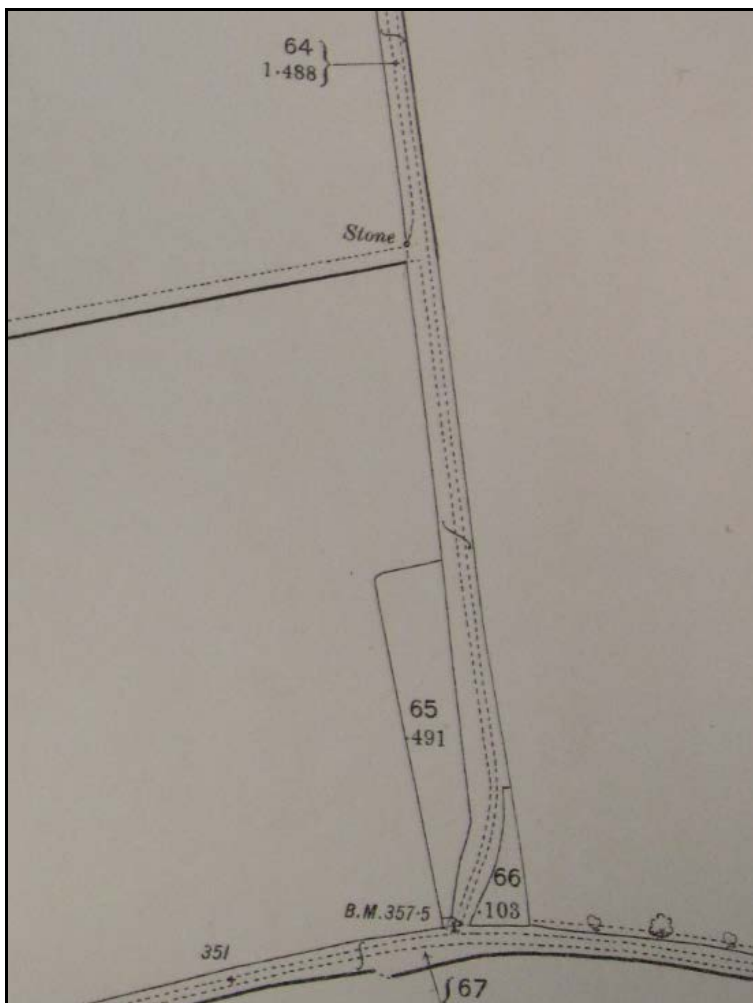
1925 Edition

Sheet 65.1

13.28 Second Editions 1:2500 All sheets revised 1899

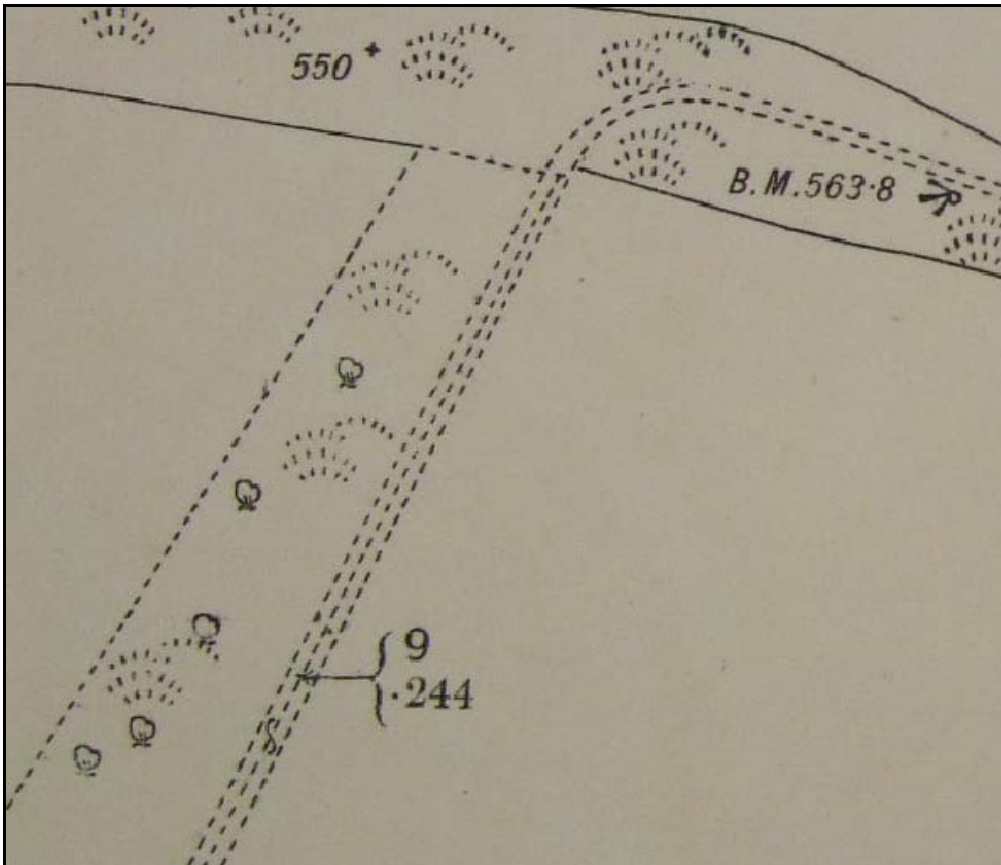
Teffont 9 is shown as a fenced road to Field Buildings, then unfenced across the Down. The whole length is separately numbered and measured and approximately half a mile is shaded as a “metalled Public Road for wheeled traffic kept in good repair by Highway Auhthority”. No gates. Not marked as ‘F.P.’ or ‘B.R.’.

13.29 It is noted that although the shading appears on Teffont 9, it also appears on the Manor Farm Track. Since no evidence supporting that this track carries any public rights has been viewed to date it is doubtful that this was kept in repair by the Highway Authority. It may that the surveyor was recording what he saw on the ground (i.e. a well maintained and accessible track) without further investigating whether the route was or was not maintained by the highway authority.



Sheet 65.5 1884/1901





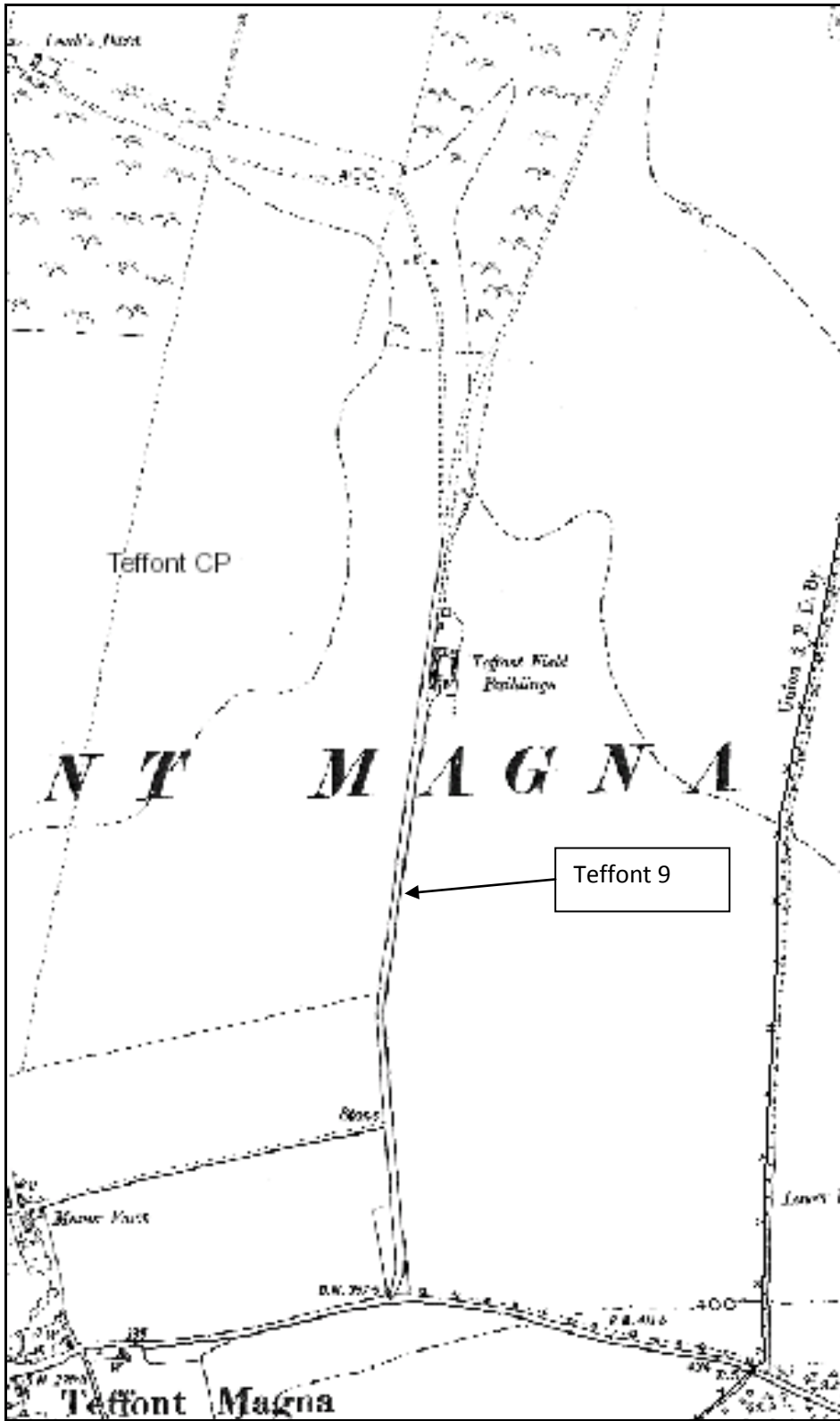
Sheet 59.13 showing Teffont 9 joining the Ox Drove. 1884/1901. Note bracing of verge with road parcel.

### 13.30 Later Editions

Editions of 1924 and 1925 and 1939 have been viewed for all sheets and all show a consistent representation of the route as a through road separately numbered and measured.

### 13.31 Ordnance Survey 1:10560 (six inch) Survey Sheets 59 and 65 Surveyed 1886

The base survey data for the six inch series is taken from the 25 inch (1:2500) series and it is rare to see any differences in the data. However, the six inch series does have a key and all editions viewed show the route of Teffont 9 as a "Minor Road" unfenced north of Teffont Field Buildings.



1:10560 Second Edition

#### 14.0 Category F Evidence

- 14.1 This evidence category includes local repute or any consultation responses that are not covered elsewhere.
- 14.2 There was a change in the law in 2006 relating to the use of mechanically propelled vehicles (MPVs) on routes that were not already recorded in the definitive map and statement as byways open to all traffic (this will be addressed later in this report as part of the Council's decision) but it is noteworthy that no evidence to support the continuation of any public mechanically propelled vehicular rights post 2006 has been adduced by any party (including vehicular user groups) despite the question being specifically asked at the consultation stage.
- 14.3 The 2014 application adduced a significant amount of category F evidence in the form of user evidence forms (UEFs) and these are summarised at APPENDIX D.
- 14.4 A total of 24 people submitted evidence relating to their use of the way, the evidence covered the period 1956 to 2014 and use was mainly by people on horseback or walking. Some people had cycled the route and one person had driven a car along it. All users had used the route for recreation and all had also used the Manor Farm Track, accessing it from the bridleway Teffont 9 in either direction.
- 14.5 Of the 24 users 21 considered the width was 30 feet with some referring to the 1837 inclosure award and others referring to their use of the verges. Anyone accessing the Manor Farm Track would have had to use the verge to get there from the central tarmac strip of Teffont 9.
- 14.6 A number of riders commented on the slippery surface of the central tarmac strip and consider that it is necessary to use the verges to both avoid passing traffic and to ride somewhere that isn't slippery. One rider describes their pony falling on the tarmac. The narrow gate at the Ox Drove end is also mentioned as being hazardous.
- 14.7 Matters such as the slippery surface and the need to avoid traffic are not matters for consideration under the Wildlife and Countryside Act 1981. The matter of the gate is also not strictly a matter for the Wildlife and Countryside Act though the width of the highway is. It is noted that no maps show the route of Teffont 9 as being gated at this end and it is clear from the positioning of the open gate (accessible from the verge) that the width of the highway was considered to include the verge when the gate was installed.
- 14.8 The matter of access to the Manor Farm Track is not strictly a matter for this report as no evidence of any weight supports that public rights subsist along this track. It appears to have been built around 1830 though parts of it may be earlier (OS 2 Inch drawing 1808). Early maps show it going only to Manor Farm though later maps and the evidence of users show that it became a through route subsequently.

- 14.9 It was not created as a result of any inclosure awards and was not claimed by the Parish Council (or any other party) when the definitive map and statement was drawn up in the 1950s. No application has been made to add it since that time. Additionally all users of the track describe doing so with permission, either from the Pitcairns, Mr Crook, Lord Sharman or Mr Wood.
- 14.10 At the time the Pitcairns and Mr Crook owned the land (before 1998) over which the Manor Farm Track ran they also owned the land over which Teffont 9 ran. Since it is clear that all use of the Manor Farm Track was by permission it is not appropriate to consider the application of s.31(1) of the Highways Act 1980 since any claim would fail by virtue of use not being 'as of right'. However, it is not clear whether witnesses thought they were also asking for permission to get to the centre section of Teffont 9 or whether the Pitcairns and Mr Crook thought they were granting permission to use the verge of Teffont 9 at this point.
- 14.11 If permission was also sought and granted for the verges of Teffont 9 when the land was owned by the Pitcairns and the Crooks then the evidence of use only becomes 'as of right' in 1998 when the land was divided. There is no record of Mr Waddington ever having been asked for permission for the public on foot or horseback to use the verge to access the Manor Farm Track. This period of use has now been stopped by the blocking of the way, as a result the period of use is only 16 years and s.31(1) could not be satisfied.
- 14.12 However, it is averred that users of Teffont 9 did not consider they were seeking permission to use the verge as they are generally clear in their responses that they have always considered the verges to be part of the route. It may that the Pitcairns and Mr Crook also thought the verges were part of the route as certainly Mr Crook did not make provision for the crossing of them when dividing the land and separating the Manor Farm Track from the land over which Teffont 9 leads even though there was clearly a connecting track.
- 14.13 It is also notable that one user recalls use of the route as a driveway for sheep. The 1800 Inclosure Award awards the route as a public Road or driftway. The online Oxford Dictionary gives the definition of driftway as being "a broad route along which cattle or sheep used to be driven.." It is difficult to see how, if Teffont 9 was only 8 feet wide, sheep could have been driven on only the central section.
- 14.13 Taken as a body of evidence the user evidence may not prove decisive for this case as the historical evidence is strong (and it is not possible to dedicate a highway when it is already a highway) but it is a clear indication of local custom and practice for the period 1956 to 2014.

## **15.0 Decision relating to public rights pre 2<sup>nd</sup> May 2006**

- 15.1 The southern part of the route (c. 50 chains) that is currently recorded as Teffont 9 was awarded in 1800 as a “public Road and driftway” at a width of 33 feet for a length of 50 chains (50 chains = 3300 feet = 1006 metres) north from the turnpike road. The route arose from an Inclosure Award dated 1800 which confirmed that the way “is already staked meted bounded and marked by us”.
- 15.2 The whole of Teffont 9 was awarded as a “Publick Carriage Road” at a width of 30 feet. This arose from an Act of Parliament.
- 15.3 Nothing has been viewed that suggests that either award was not properly carried out and that either of these two actions was beyond the powers (ultra vires) of the Commissioners. The maps and descriptions accompanying both awards are clear and unequivocal of the position of the awarded routes as being on the course of Teffont 9.
- 15.4 A number of supporting documents have been viewed which support that the awards were carried out and that the landscape changed as a result. Documents supporting this have come from both parish council, the former landowner’s estate and registered title of lands inclosed.
- 15.5 A number of points have been raised during the consultation period but none adduce any further evidence to be considered. It is clear that a number of issues relating to access have arisen in this area but none of these are relevant to the duty of the Council under s.53 of the Wildlife and Countryside Act 1981 which relates solely to the correct recording of public rights.
- 15.6 It is therefore considered that on the balance of probabilities the route of Teffont 9 is an ancient road and that until the 2<sup>nd</sup> May 2006 a public vehicular right existed along it.
- 15.7 It is now necessary to consider the effect of the Natural Environment and Rural Communities Act 2006.

## **16.0 Natural Environment and Rural Communities Act 2006**

- 16.1 On the 2<sup>nd</sup> May 2006 **the NERC Act 2006** commenced and section 67(1) of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:
  - (1) (a) *was not shown in a definitive map and statement, or*

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

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

Subsections 2 to 8 are parts of the Act that detail exemptions to the extinguishment of vehicular rights.

*(2) Subsection (1) does not apply to an existing public right of way if –*

*(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles*

*(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(List of highways maintainable at public expense),*

*(c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles*

*(d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*

*(e) it was created by virtue of use by such vehicles during a period ending before 1<sup>st</sup> December 1930.*

*(3) Subsection (1) does not apply to an existing public right of way if –*

*(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*

*(b) before commencement the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*

*(c) before commencement a person with an interest in land has made such an application immediately before commencement, use of the way for mechanically propelled vehicles –*

*(i) was reasonably necessary to enable that person to obtain access to the land or*

*(ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only.*

*(4) The relevant date in England means January 2005*

*(5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –*

*(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*

*(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only.*

(6) *For the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act*

16.2 It is appropriate to consider each exemption in turn:

**(2)(a)** *it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles.*

No evidence of use by the public in MPV has been submitted for the period 2001 – 2006.

The claimed route does not meet the requirements of Sec(2)(a) NERC Act 2006 .

**(2)(b)** *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(list of highways maintainable at public expense).*

The claimed route is shown in the definitive map and statement and is not shown in a list required to be kept under section 36(6) of the Highways Act 1980 (the Highway Record)

Public vehicular rights are not preserved by this section.

**(2)(c)** *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles.*

It is known that this road was a road by 1800 and the northern section 1837, a time before mechanically propelled vehicles existed.

I conclude that the requirements of Section (2)(c) NERC Act 2006 are not met.

**(2)(d)** *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.*

Public MPV rights have not been preserved by this section.

**(2)(e)** *it was created by virtue of use by such vehicles during a period ending before 1930*

The mechanically propelled vehicle did not exist as a distinct class of highway user before the 2<sup>nd</sup> May 2006, hence it is very difficult to consider this section. It is likely that as mechanically propelled vehicles became more common (in the mid 1800s)

people started using them on roads that would support their use. Although Teffont 9 is a relatively well drained route that had a metalled (stone laid) surface on the southern section in the late 1800s, it does have a significant gradient where it climbs from the old turnpike road (Old Dinton Road) to the Ox Drove. It is likely that the new turnpike road was made in 1814 because of the gradient on the Old Turnpike Road and as a result the majority of traffic would not have been passing the southern end of Teffont 9. Although the route of Teffont 9 (awarded Publick Carriage Road no. III) would have served a similar purpose for travellers as the awarded Publick Carriage Road no V it was road no V that was brought up to a standard suitable for MPVs (it is now the C.277 Teffont to Chilmark road) and not Teffont 9. Possibly because of its better connectivity with the new turnpike road and the housing in the village.

Since the distinct category didn't exist and since prior to 2006 the right to drive a horse drawn carriage was the same as the right to drive a motorised one it is not considered that the right was created by any actual MPV use, any such use was merely use continuing.

Public MPV rights are not preserved by this section

**(3)(a)** (3) *Subsection (1) does not apply to an existing public right of way over a way if –*

*(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic.*

An application was not made before the relevant date (20 January 2005).

16.3 It is concluded that the public's right to drive a motor vehicle over the route was extinguished on the 2<sup>nd</sup> May 2006. However, as the route was a public vehicular highway prior to this date, section 67(5) of the NERC Act 2006 applies with respect to private access rights to property:

*(5) Where immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –*

*(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*

*(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.*



This is in addition to any granted easements or consents that the Council is unaware of.

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

17.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to the environment.

## **18.0 Equality Impact**

18.1 The character of the route will not alter with the making of an order to record the way as restricted byway. The legal right to pass and repass over the entire width will be protected which will ensure that obstructions and encroachments may be removed by Order of the Council. This could lead to greater accessibility.

18.2 A restricted byway may be used by a horse and cart. Many people who cannot ride a horse for reasons of a disability drive horses and the recording of this long route as a restricted byway will increase the available network for them. This will lead to greater accessibility. This would offer a significant improvement to the network for carriage drivers.

18.3 The recording of the full width as a restricted byway is in line with the Council's duty under The Equality Act 2010. Equality is however not a material consideration contained within the Wildlife and Countryside Act 1981.

## **19.0 Legal Implications**

19.1 The making of a definitive map modification order to correctly record the applicant route is in line with the Council's duty contained within s.53(2) of the 1981 Act to keep the definitive map under continual review. It is not likely that the Council would be challenged if acting in pursuit of this duty. Additionally the 2005 application has been unresolved for so long (9 years) that the Council is at greater risk of legal action if it does not resolve the matter than if it does.

- 19.2 It is noted that landowners Mr and Mrs Wood and Mr Waddington are involved in litigation regarding private access rights and clarity over the definitive map and statement would greatly assist the courts.
- 19.3 If the Council fails to make an Order it may be subject to judicial review. This could have significant cost implications (c. £50000).
- 19.4 If the Council makes an Order which receives objections it may be liable to pay subsequent costs if it acts in an unreasonable manner at public inquiry. Costs awards of this nature are rare and may be in the region of c.£10,000.
- 19.5 Any final decision made on an order that has been objected to is made by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) and not Wiltshire Council. Hence any challenge to that decision is against the SoSEFRA and not the Council.

## **20.0 Risk Assessment**

- 20.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety
- 20.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 20.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 20.4 Advice from the Planning Inspectorate is that a byway open to all traffic application should not be refused as the Schedule 14 appeal process is not open in a case where evidence subsists and the Council has a duty to make an Order. The Schedule 14 appeal procedure is only open to applicants where the Council refuses to make any order. The applicant's appeal route is thereby through objection to the Council's order. Officers consider it highly unlikely that the 2005 applicant would object to a restricted byway order as the effect of the NERC Act 2006 is generally well known and understood.

## **21.0 Financial Implications**

- 21.1 The determination of Definitive Map Modification Orders and the continual review of the definitive map are statutory processes for which financial provision has been made.
- 21.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to the Secretary of State for determination. It may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £5000).
- 21.3 If the route is upgraded to restricted byway the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority is placed under a duty to ensure that the route is safe for use by the general public traffic of the area and has a duty to maintain the surface of the highway to that extent. No works to the route are currently identified.

## **22.0 RECOMMENDATION**

- 22.1 **That an Order to record Teffont Path no. 9 as a restricted byway with a width of 33 feet extending for 50 chains north of the Old Dinton Road and with a width of 30 feet for the remainder leading north to the Ox Drove is made and duly advertised. If no objections are received the Order should be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick

Rights of Way Officer

01 December 2014