

# AGENDA SUPPLEMENT (1)

**Meeting:** Southern Area Planning Committee

**Place:** The Pump Room, The Old Fire Station Enterprise Centre, 2 Salt Lane,  
Salisbury, SP1 1DU

**Date:** Thursday 30 March 2023

**Time:** 3.00 pm

---

The Agenda for the above meeting was published on 22 March 2023.  
Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Lisa Alexander of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01722 434560 or email [lisa.alexander@wiltshire.gov.uk](mailto:lisa.alexander@wiltshire.gov.uk)

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

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

---

## **Part I – Meeting Presentation Slides (Pages 3 - 74)**

- 6 **Wildlife and Countryside Act 1981 - Section 53, The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022 – Late correspondence and Officer comments (Pages 75 - 84)**

DATE OF PUBLICATION: 28 March 2023
------------------------------------

This page is intentionally left blank

# Southern Area Planning Committee

30<sup>th</sup> March 2023

**WILDLIFE AND COUNTRYSIDE ACT 1981 –  
SECTION 53  
THE WILTSHIRE COUNCIL WHITEPARISH PATH  
NO.42 DEFINITIVE MAP AND STATEMENT  
MODIFICATION ORDER 2022**

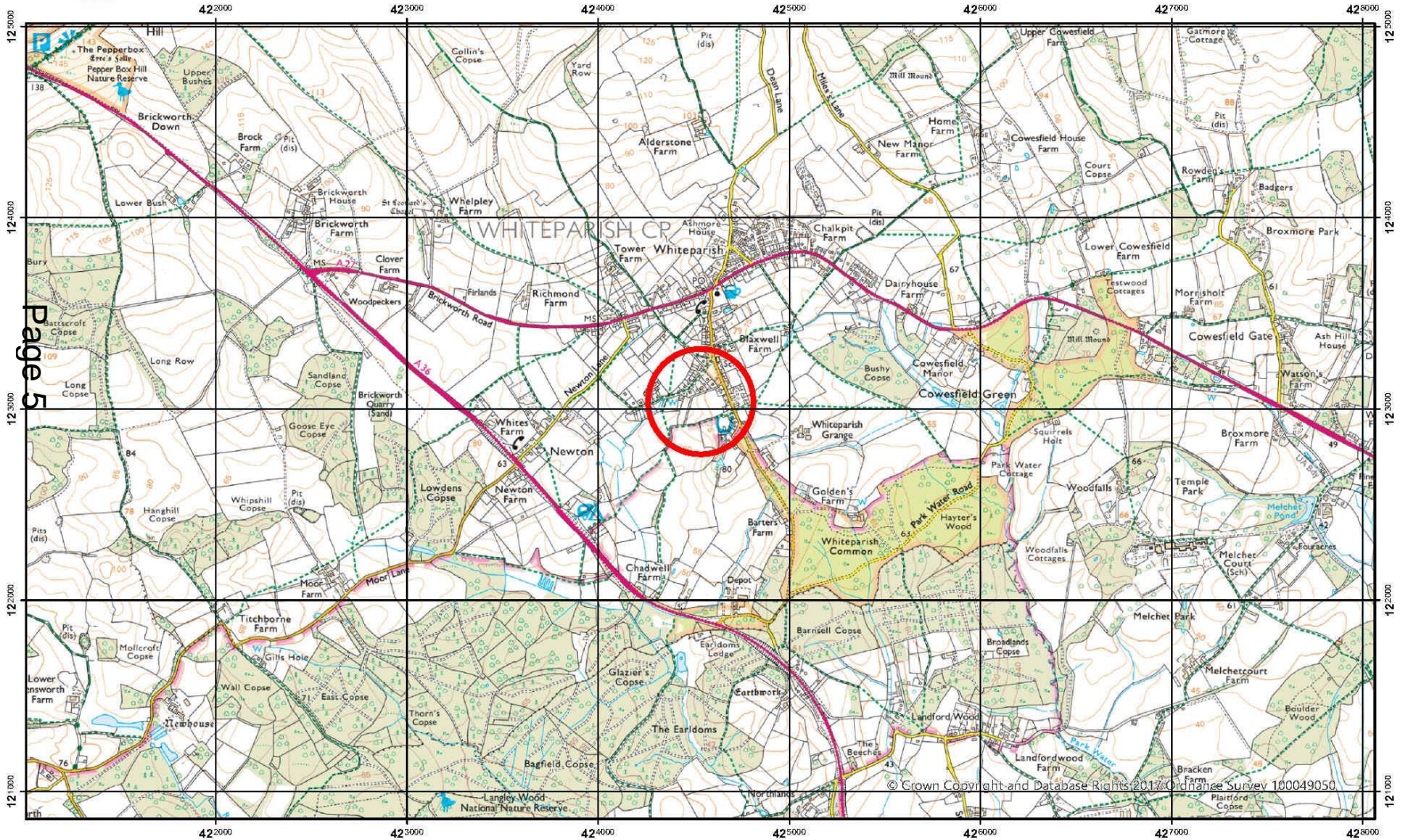
**AGENDA ITEM NO.6  
SOUTHERN AREA PLANNING COMMITTEE:  
30 MARCH 2023**

**JANICE GREEN – SENIOR DEFINITIVE MAP OFFICER**

# Footpath no.42 Whiteparish (The Drove) – Location Plan

Wiltshire Council

Location Plan  
The Drove, Whiteparish



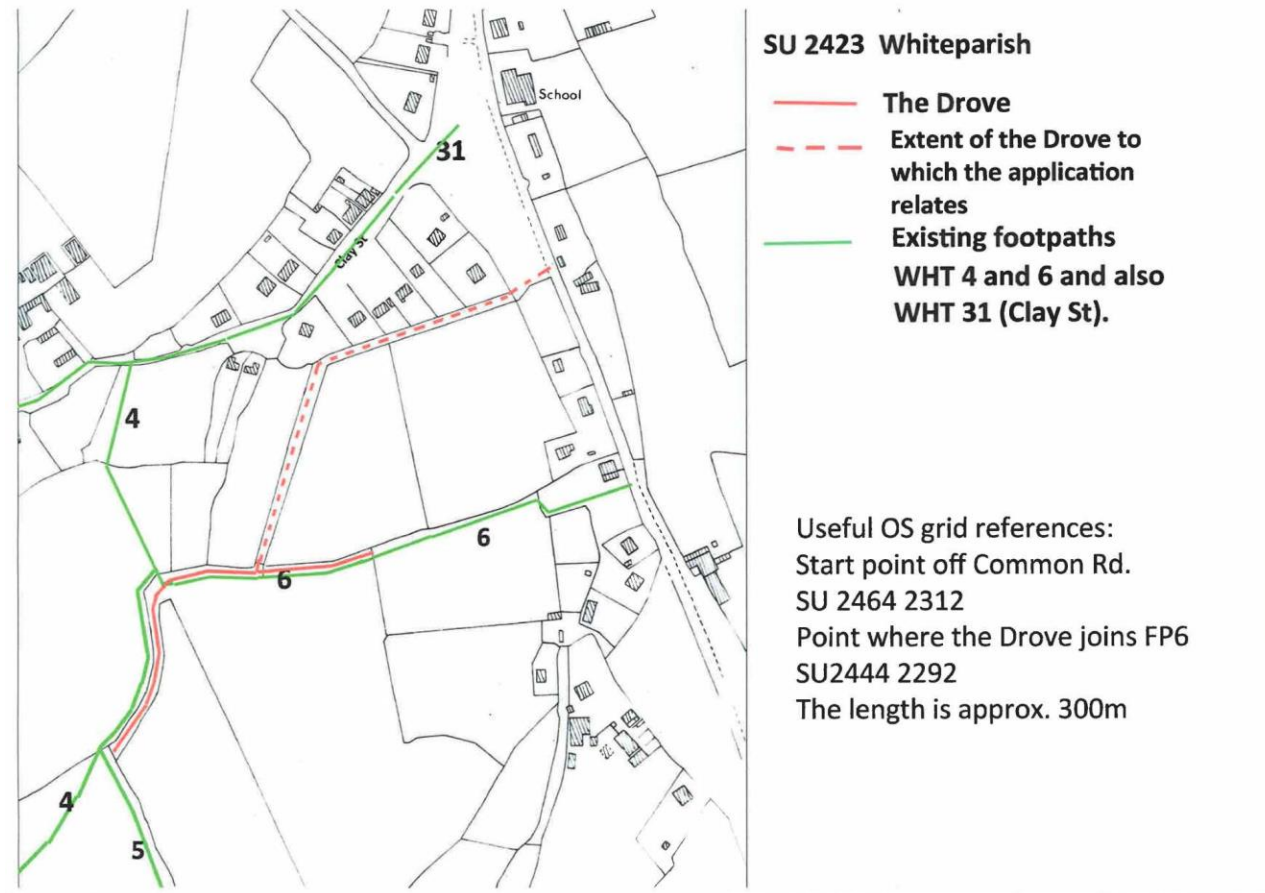
Page 5



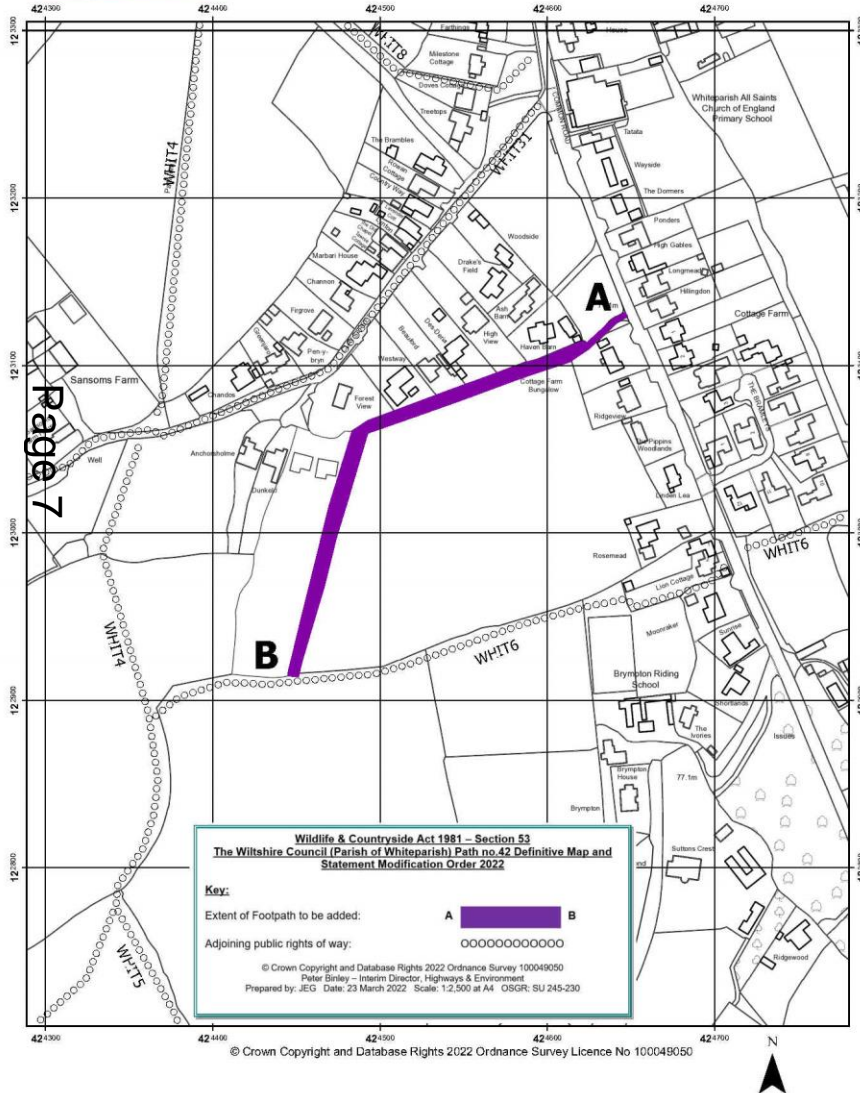
## Path no.42 Whiteparish (The Drove) – Application Plan

Wiltshire Council received an application under Section 53 of the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement of Public Rights of Way, between Common Road and Footpath no.6 Whiteparish, “The Drove”, based on user evidence and some historical evidence:

Page 6



# Path no.42 Whiteparish (The Drove) – Modification Order



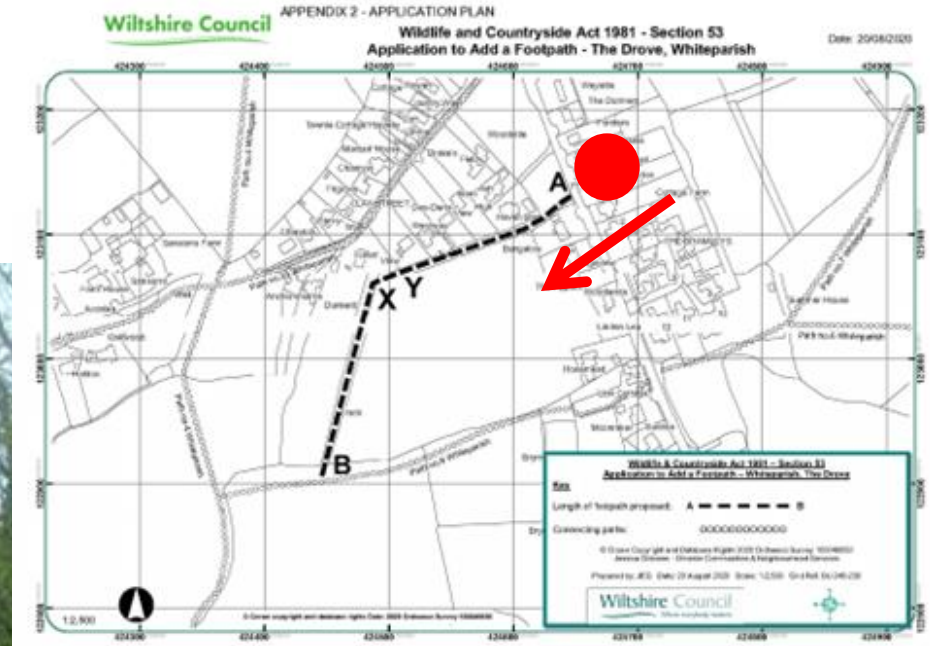
Based on the available evidence “**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022**” was made to add a length of footpath between Common Road and Footpath no.6.

A right for the public on foot could be **reasonably alleged** to subsist, having a width varying between 3m and 9m.

The Order route at point A at its junction with Common Road, looking generally west



Page 8

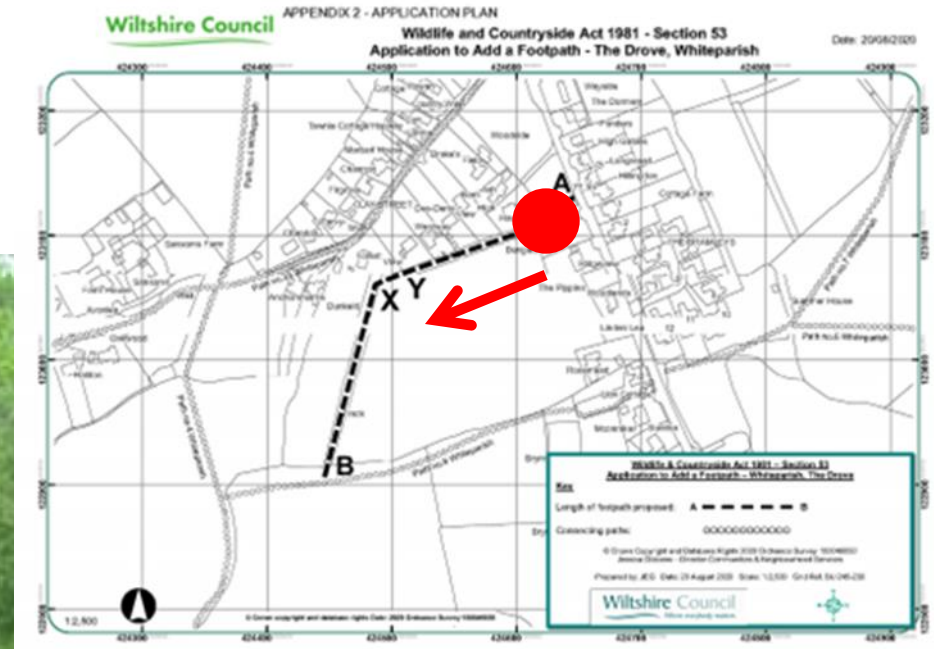


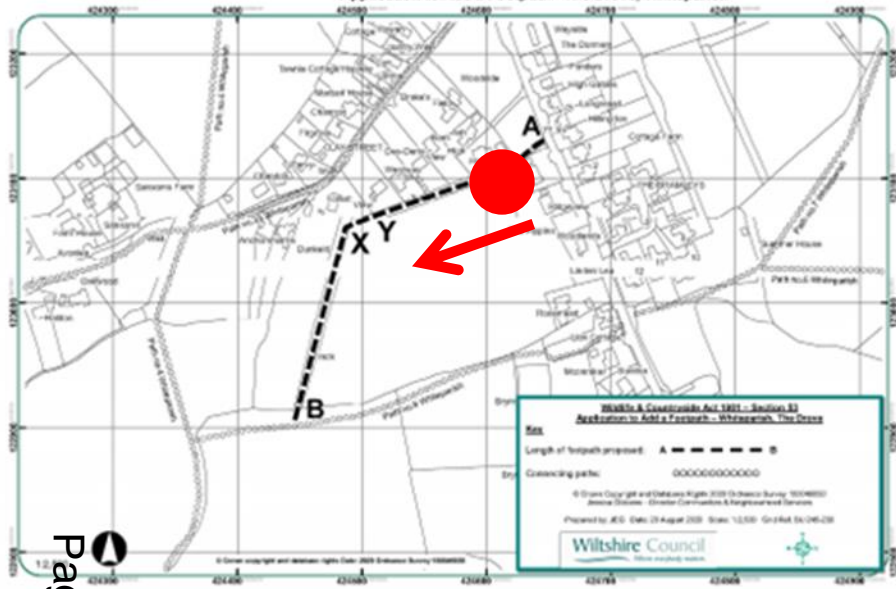


Looking generally west, the field gate into “Cottage Field” can be seen on the left-hand side



Page 9

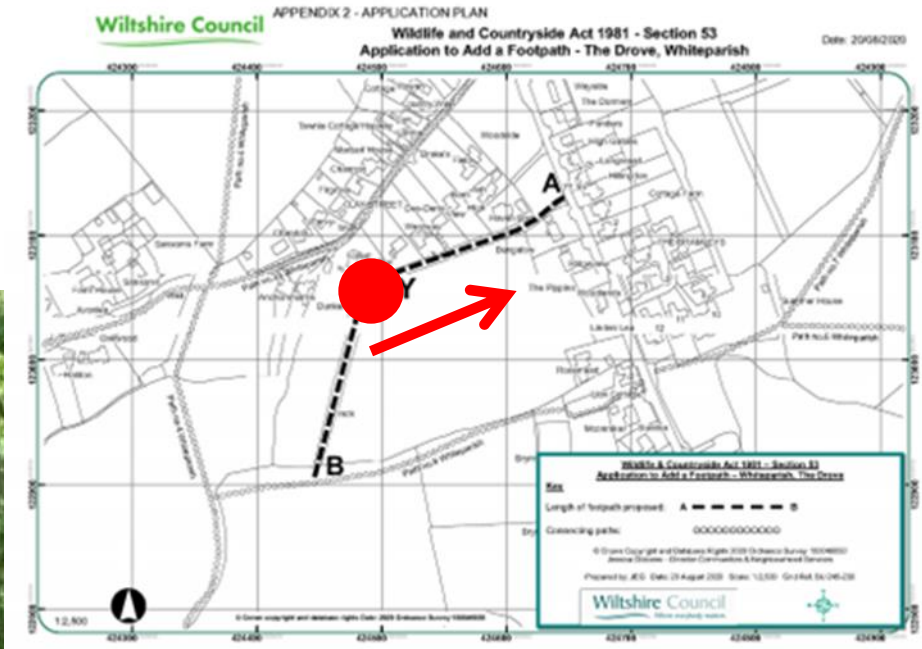




“The Drove” looking generally west towards point Y to the rear of the gardens of properties in Clay Street



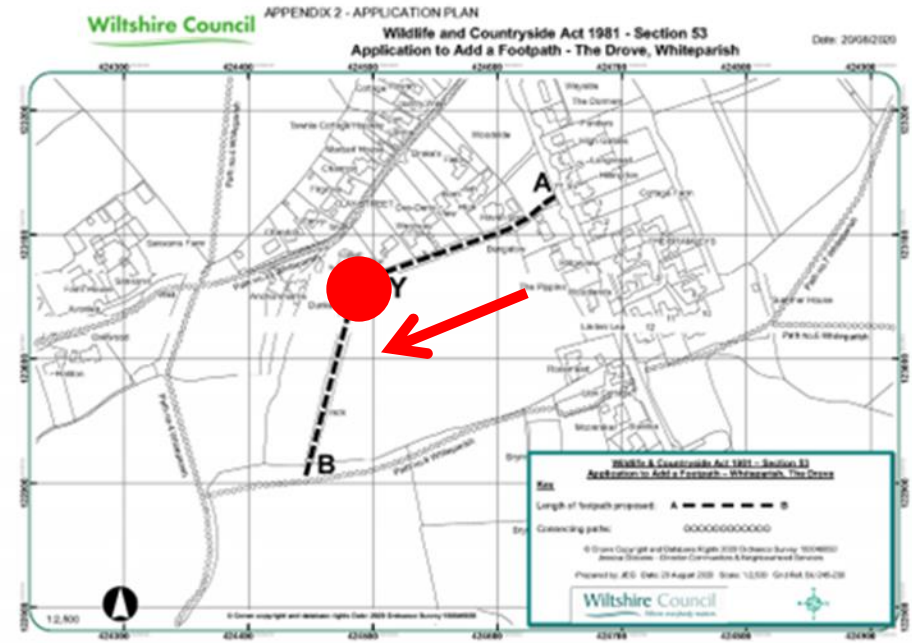
Closeboard fencing now erected across the full width of "The Drove" at point Y



The Order route looking generally west towards point X at the turn, new properties built alongside the route



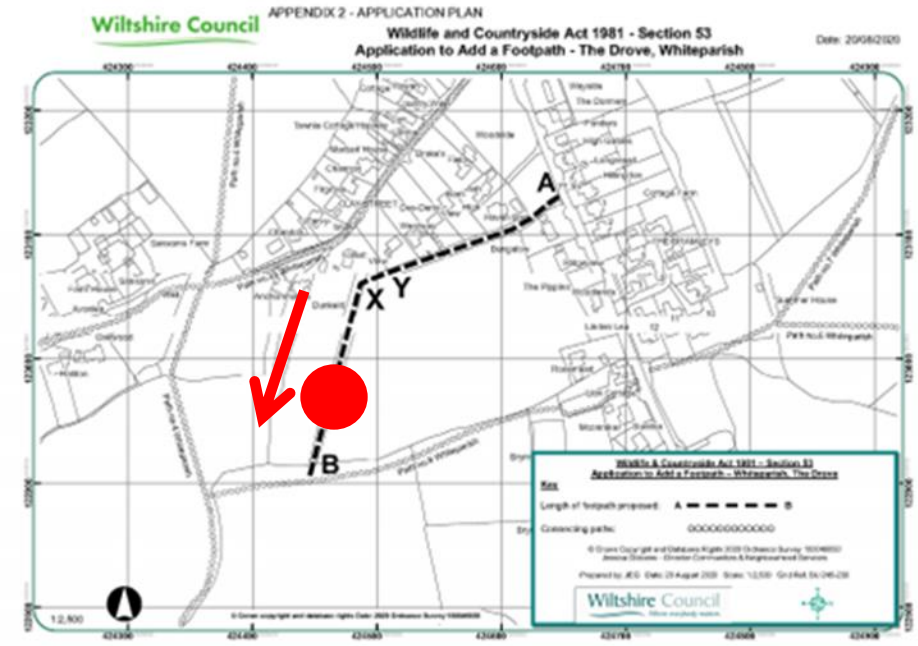
Page 12



The continuation of “The Drove”,  
looking south-west in “Secret Field”  
as a tree-lined route

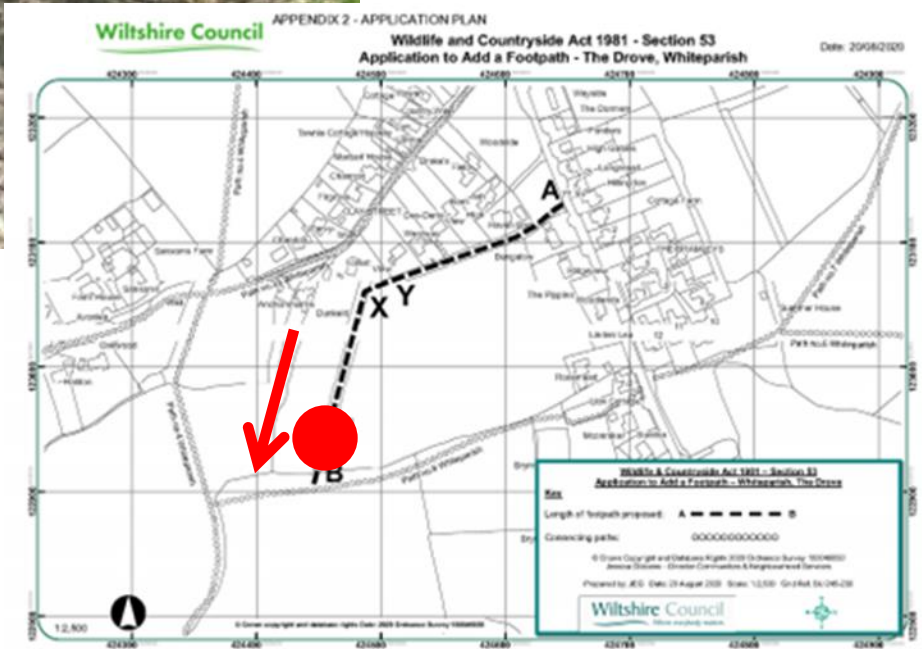


Page 13





The Order route looking south-west to point B at its junction with Footpath no.6 Whiteparish – no break in the hedge/field boundary to allow access to Footpath no.6 (2021)



# The Legislation

- **Section 53 Wildlife and Countryside Act 1981** - an Order to modify the definitive map and statement of public rights of way may be made where there is evidence that there is an error within the map and statement – in this case, the discovery of evidence which shows that a right of way which is not shown in the map and statement subsists, or is reasonably alleged to subsist.

Page 15

- **Section 31(1) Highways Act 1980** – where a way over any land has actually been enjoyed by the public as of right and without interruption for 20 years or more, the way is deemed to have been dedicated as a highway, unless there is sufficient evidence that there was no intention during that period to dedicate it.
- **Evidence is key** – only matters relating to the evidence of public rights may be taken into account.

# The Secretary of State

Where the Order has received objections which have not been withdrawn, the Order must be forwarded to the Secretary of State for determination.

The Secretary of State will determine the Order by:

- Written representations;
- Holding a local hearing; or
- Holding a local public inquiry, to be presided over by an Inspector appointed on behalf of the Secretary of State, at which witnesses on both sides will give oral evidence and be cross-examined on their evidence.

Based on the evidence, the Inspector appointed on behalf of the Secretary of State will determine whether the Order is:

- Confirmed;
- Confirmed with modification/s; or
- Not confirmed.



# Committee Decision

- The Committee is making a decision in its Regulatory function, which is a quasi-judicial function.
- The Committee does not determine the Order, but determines the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for decision, based on the evidence before it.
- The evidence is likely to be tested at a statutory public inquiry, at which new oral or documentary evidence may come to light and the oral evidence of witnesses will be tested under cross examination.

# Objections to the Making of the Order

The application to add a footpath (The Drove) to the definitive map and statement was made by a local residents and supported by 27 completed user evidence forms and some documentary evidence.

Based on the evidence that a public right of way could be reasonably alleged to subsist, a Definitive Map Modification Order was made to add Footpath no.42 Whiteparish (the Drove), having a recorded width varying between 3m and 9m.

**Following Notice of the making of the Order, objections were received on the following grounds relating to the evidence:**

- Obstruction of “The Drove”
- Insufficient evidence of use
- The route is in doubt
- Private rights over “The Drove”
- Lack of documentary evidence
- Natural Environment and Rural Communities Act 2006
- Fence across the width of “The Drove” at Secret Field prior to 2003
- No junction of “The Drove” with Footpath no.6 Whiteparish
- Landowners’ non-intention to dedicate a public right of way
- Use not “as of right”
- Width recorded in Order is disputed

# Objections to the Making of the Order

## Other objections which cannot be taken into account (non-evidential objections):

- No “need” for a public footpath – suitable alternatives available
- Vexatious application – to disrupt planning and preserve the historic Drove
- Planning for new properties – as the same authority granting planning permission, Wiltshire Council should dismiss the footpath application
- Negative impact on properties
- Costs in making and determining a Definitive Map Modification Order

# Tests for Making and Confirmation of an Order

Wiltshire Council as the Surveying Authority and the Secretary of State may only take into account the evidence regarding public rights in the making and determination of an Order.

**Making of the Order** – The Order was made based on the evidence that a right for the public on foot could be **reasonably alleged to subsist** – This is a low evidential bar and is sufficient for the making of an Order.

**Confirmation of the Order** - At the confirmation of an Order the evidential bar is raised to the **balance of probabilities test**, i.e. that it is more likely than not that a right for the public exists.

Page 20

These tests are considered in caselaw – the Norton & Bagshaw case:

*“...under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the test which the County Council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that a right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person having considered all the relevant evidence available, could reasonably allege a right of way to subsist...”*

***If, however ... there were to be conflicting evidence which could only be tested or evaluated by cross-examination, an Order would seem likely to be appropriate.”***

R v Secretary of State for the Environment, ex p. Bagshaw and Norton,  
Queens Bench Division (Owen J.): April 28, 1994

## Neutral Stance

It is appropriate to make the Order based on a reasonable allegation, however, in this case, upon the making of the Order, no additional evidence to support the addition of the route has been submitted and additional evidence has been submitted in objection to the Order, particularly with reference to:

- The presence of a two strand wire fence across the width of the way, at the south-west turn, which may have prevented use and/or affected qualifying user “as of right” from the early 1980’s.  
The junction with Footpath no.6 at the southern end of the Order route.

It is considered that where there is conflict in the evidence and the evidence is finely balanced in the balance of probabilities test to be applied at the confirmation of the Order, it is not possible for Wiltshire Council, as the Surveying Authority, to reach a recommendation to be attached to the Order when it is forwarded to the Secretary of State for determination.

# Neutral Stance

## Implications of Neutral Stance:

- If the case is determined by holding a public Inquiry, the Council is present only as an interested party and the case is presented by the Applicant.

Page 22

There is no requirement for Wiltshire Council to appoint Legal representation, (costs to the Council are minimal, i.e. facilitating the inquiry and venue).

## Alternative resolution:

If the Committee makes an alternative resolution to that of the Officers' recommendation to support or not support the confirmation of the Order, clear evidential reasons for the decision must be given, (the decision of the Council is open to legal challenge).

## Officers' Recommendation

That “The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022” be forwarded to the Secretary of State with a neutral stance from Wiltshire Council regarding the determination of the Order, as it is not possible for Wiltshire Council to reach a decision where the evidence is finely balanced in the balance of probabilities test and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry.

**8a) PL/2023/00213 - 3 Old Mill Close, East Knoyle, Salisbury, SP3 6EX**  
Construction of single 2 bedroom cottage on part of garden  
**Recommendation: Approve**



Site Location Plan



Aerial Photography



# Site Location Plan

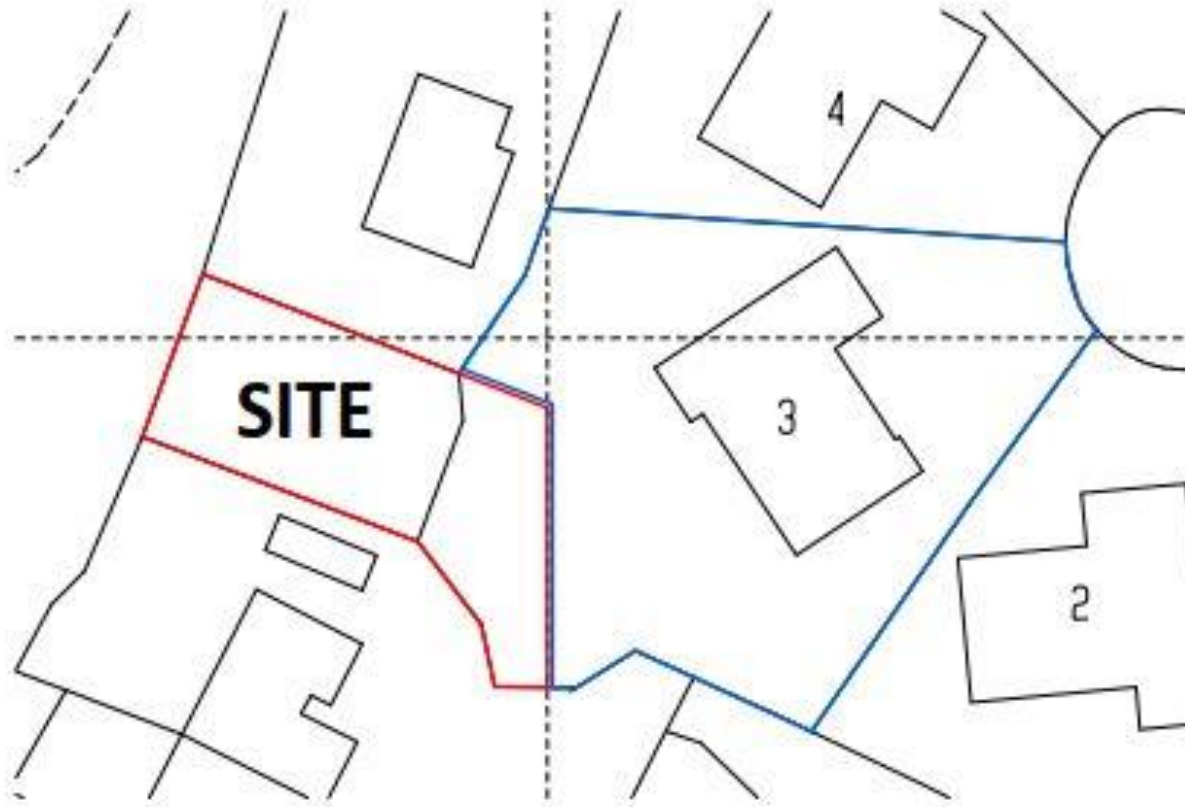


Ordnance Survey (c) Crown Copyright 2015. All rights reserved. Licence number 100022432

**SITE LOCATION PLAN - SCALE 1:1250**

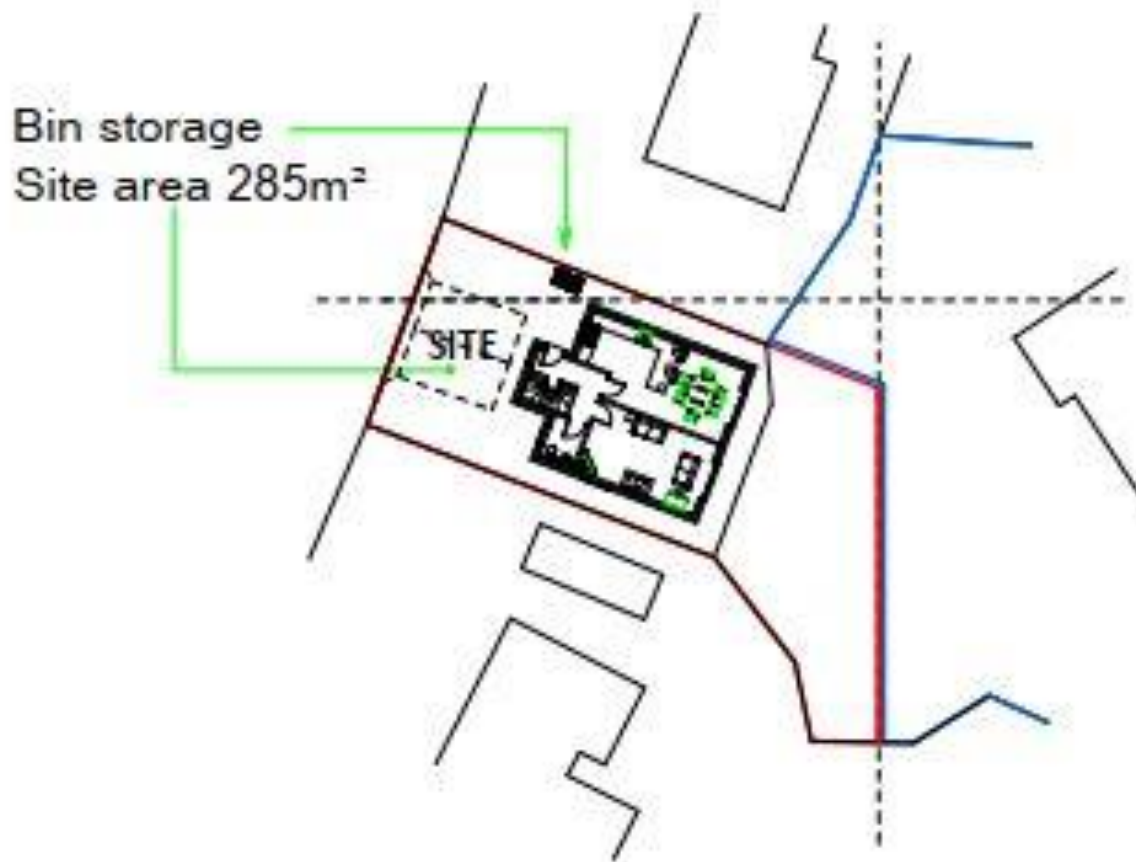
# Existing Block Plan

Page 26



SITE BLOCK PLAN SCALE 1:500

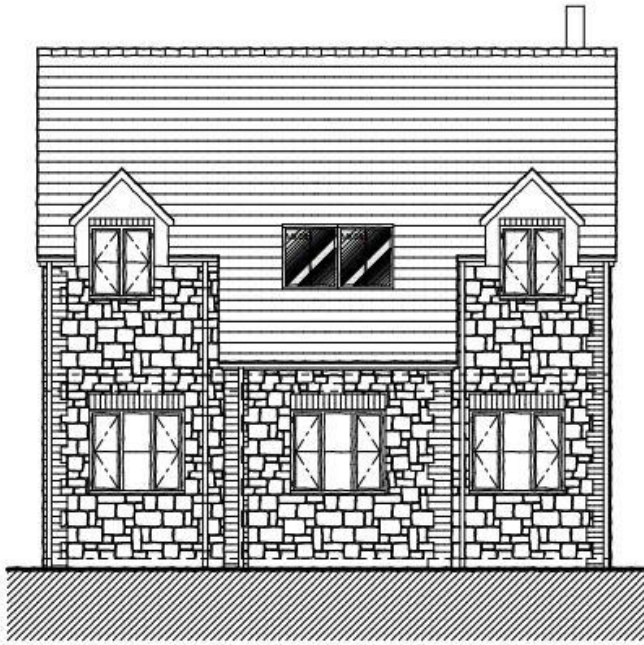
# Proposed Site Block Plan



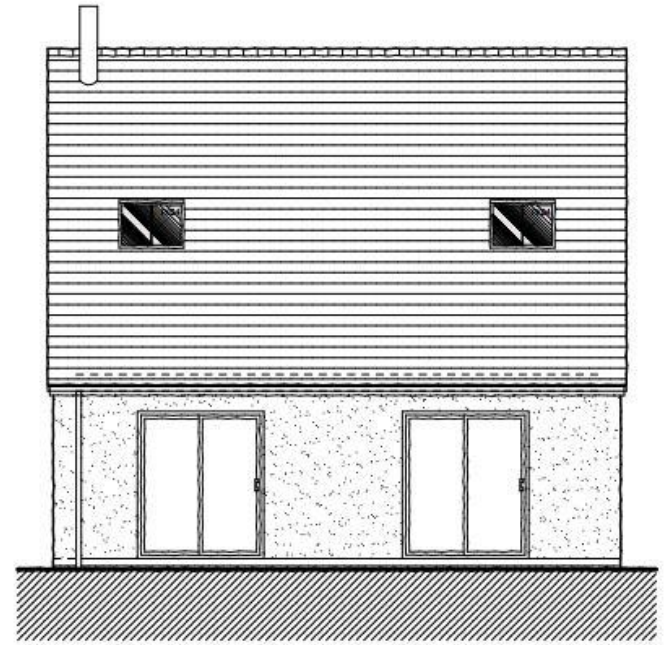
PROPOSED BLOCK PLAN SCALE 1:500

# Front & Rear Elevations

Page 28

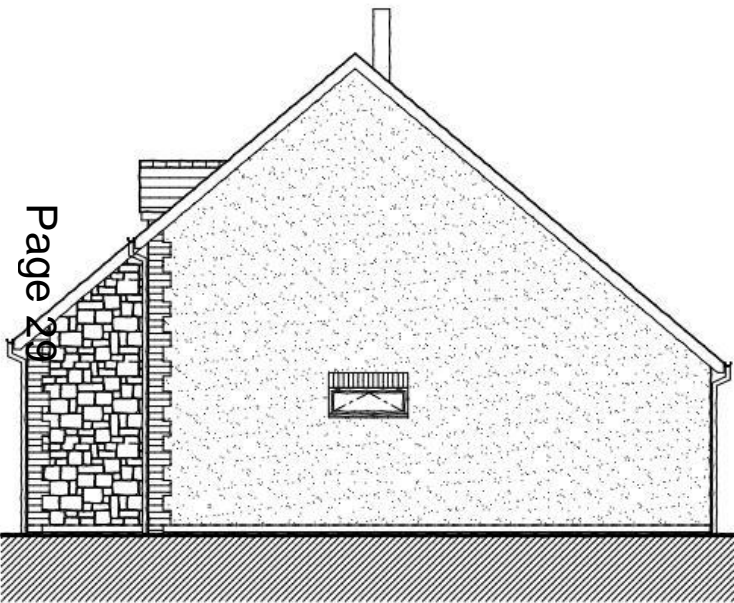


FRONT ELEVATION - NORTH WEST

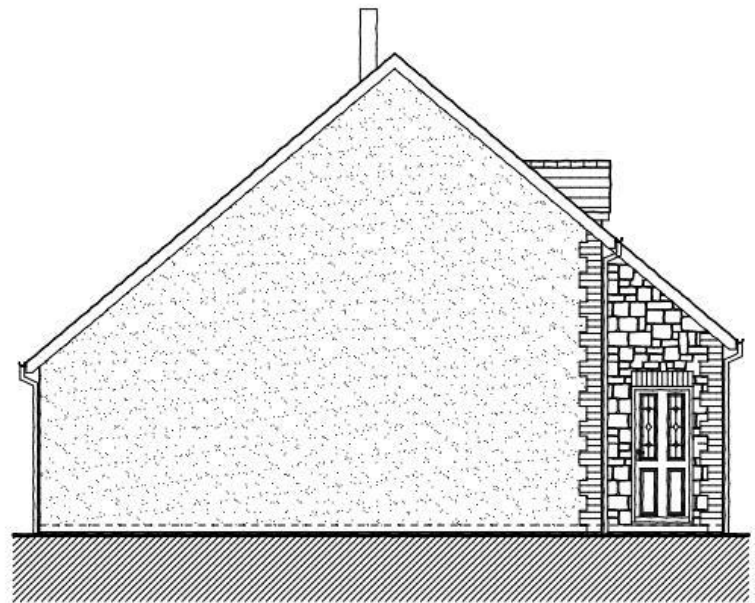


REAR ELEVATION - SOUTH EAST

# Side Elevations



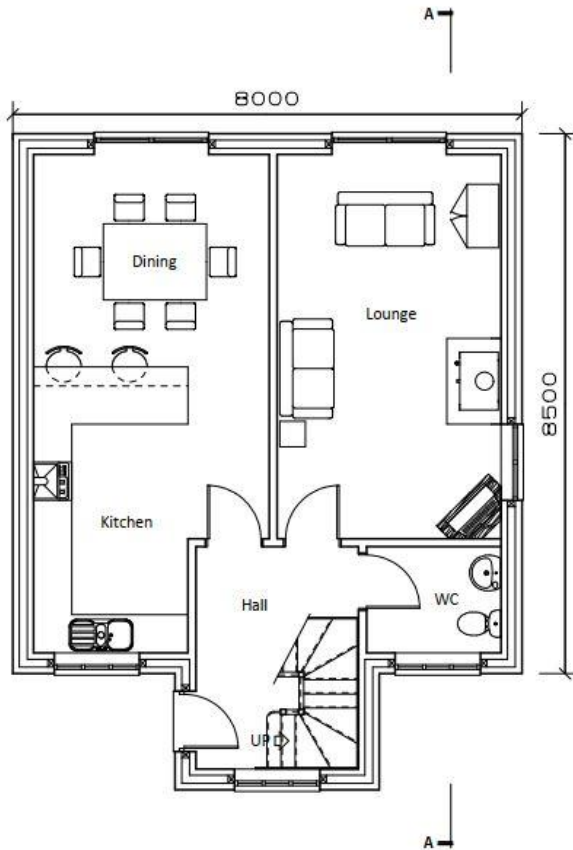
SIDE ELEVATION - SOUTH WEST



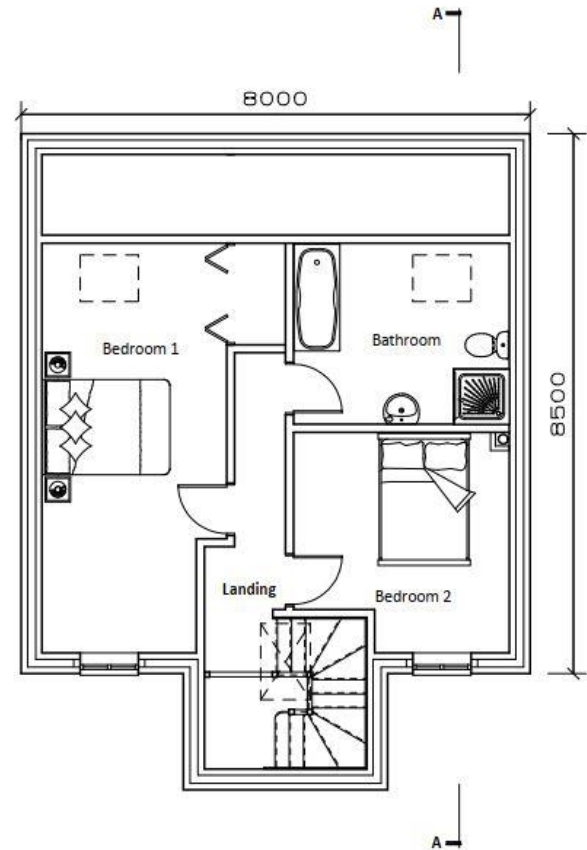
SIDE ELEVATION - NORTH EAST

# Floorplans

Page 30



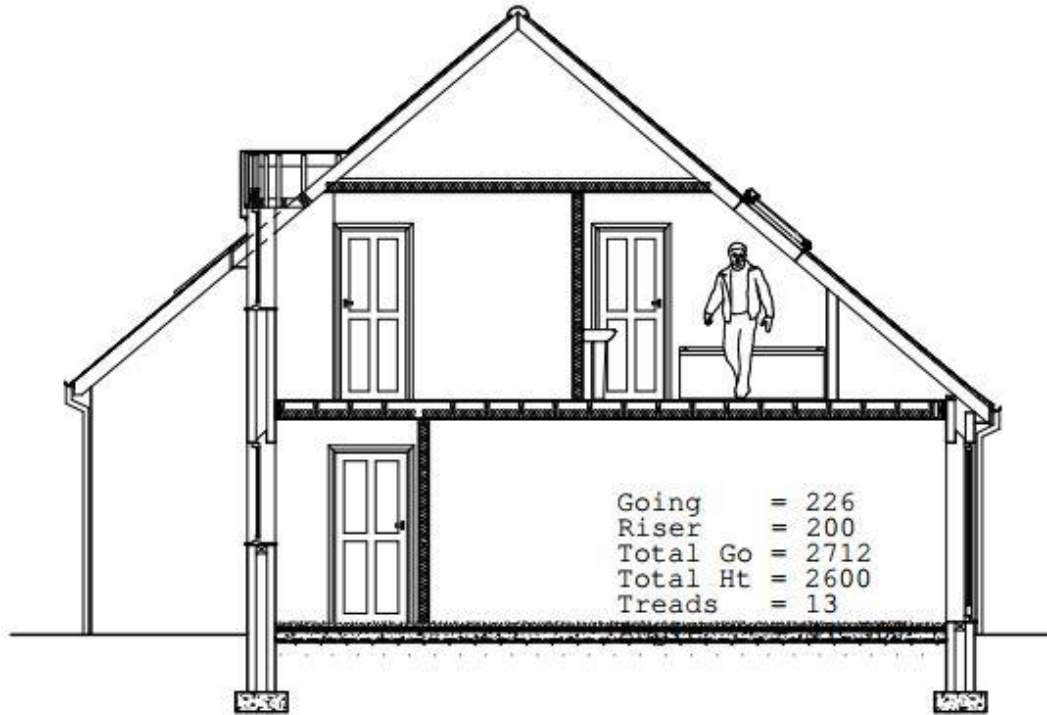
GROUND FLOOR



FIRST FLOOR

# Cross Section

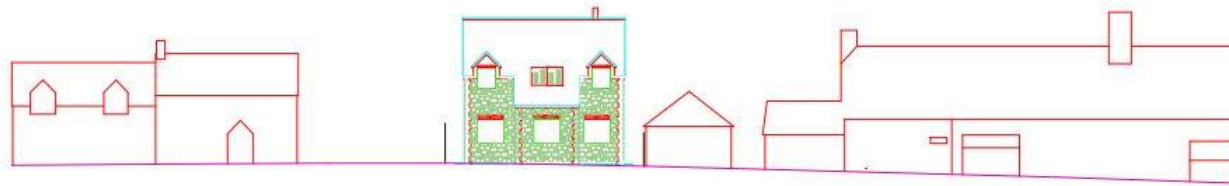
Page 31



SECTION A - A

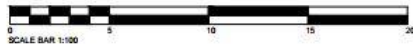
# Surveyed Street Scene

Page 32



STREET SCENE - LOOKING EAST

Datum 15.00 \_\_\_\_\_





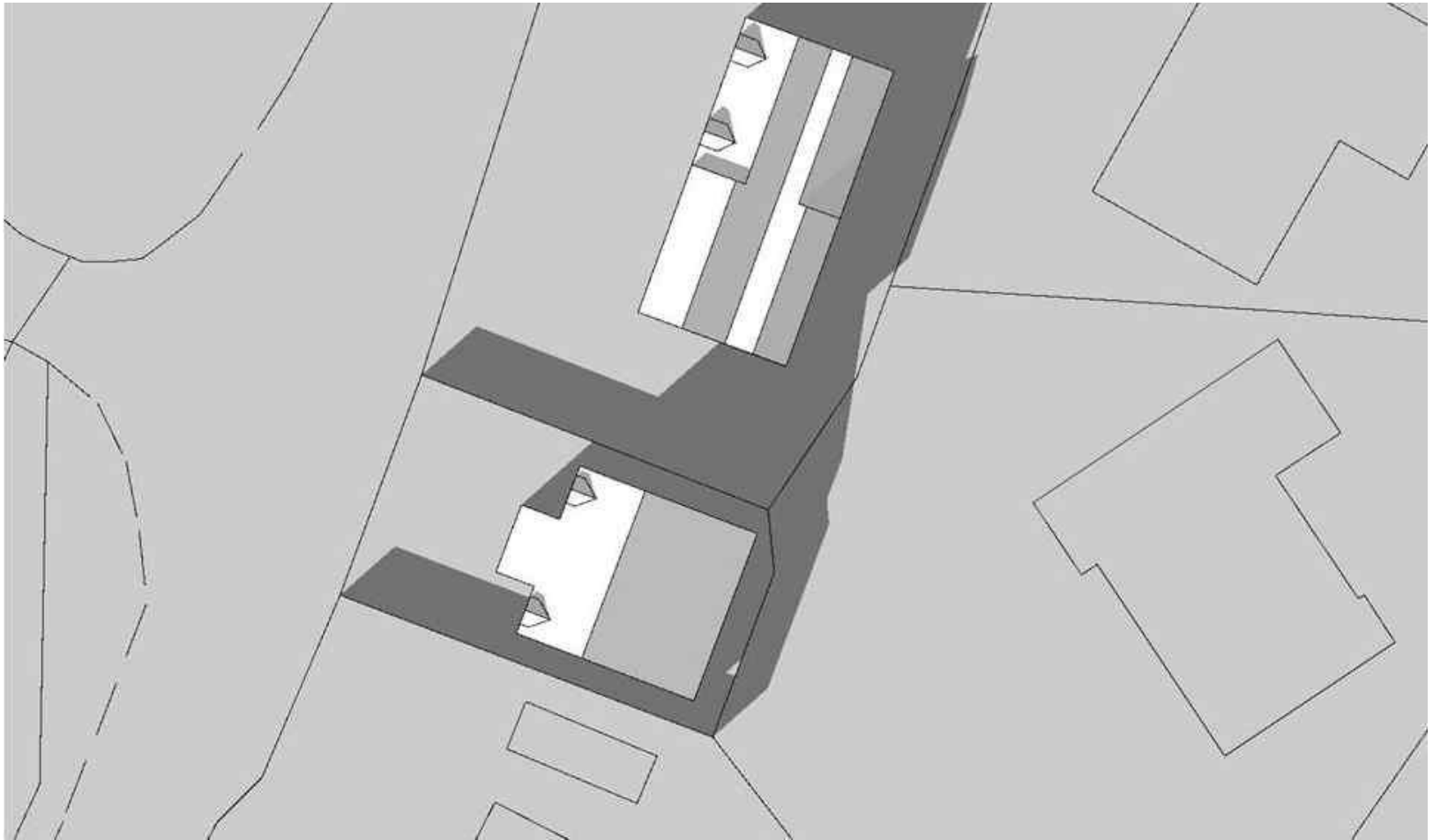
# Street Scene Measured

Page 33



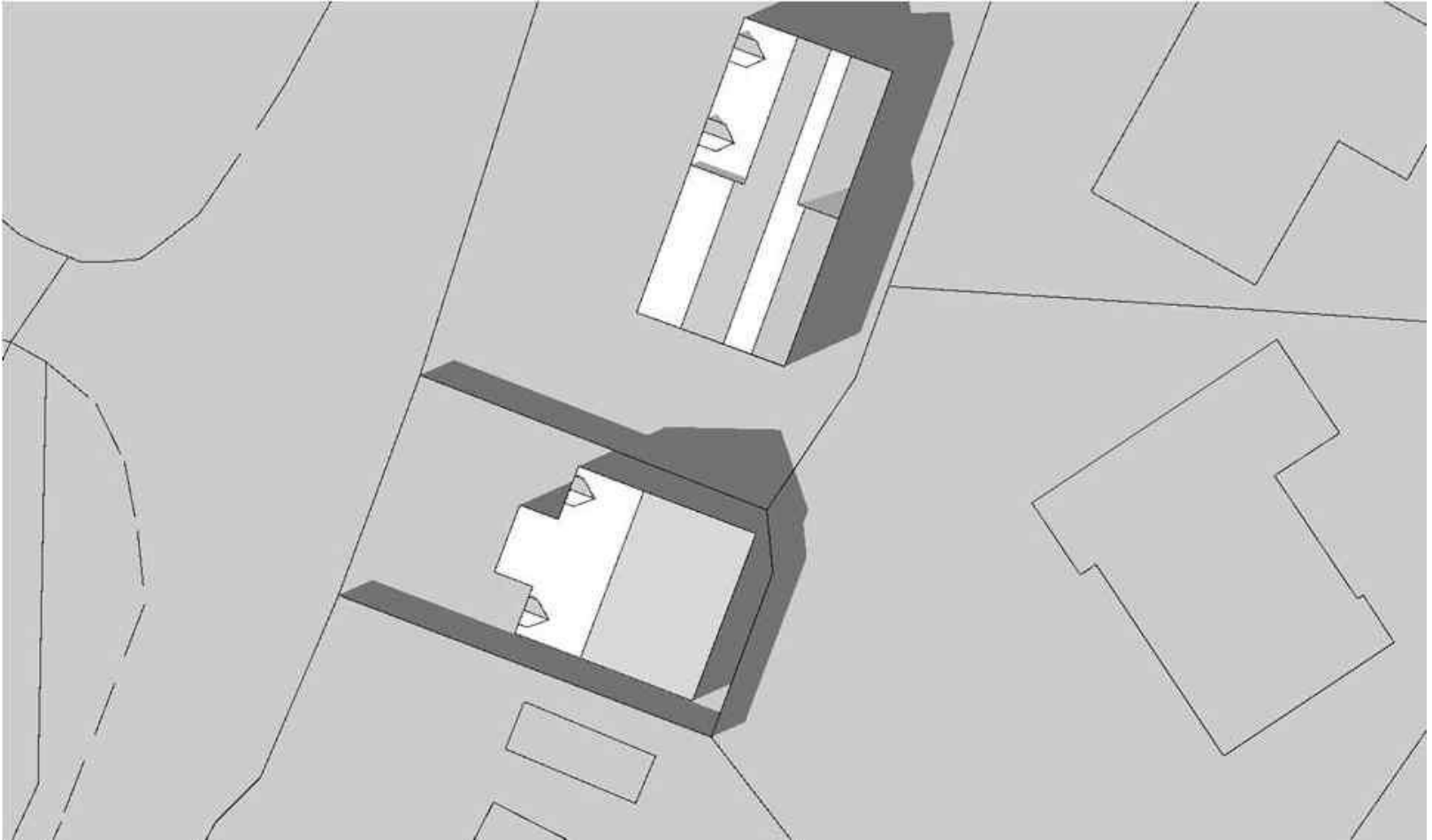
# Shadow Plan 3pm 21<sup>st</sup> March

Page 34



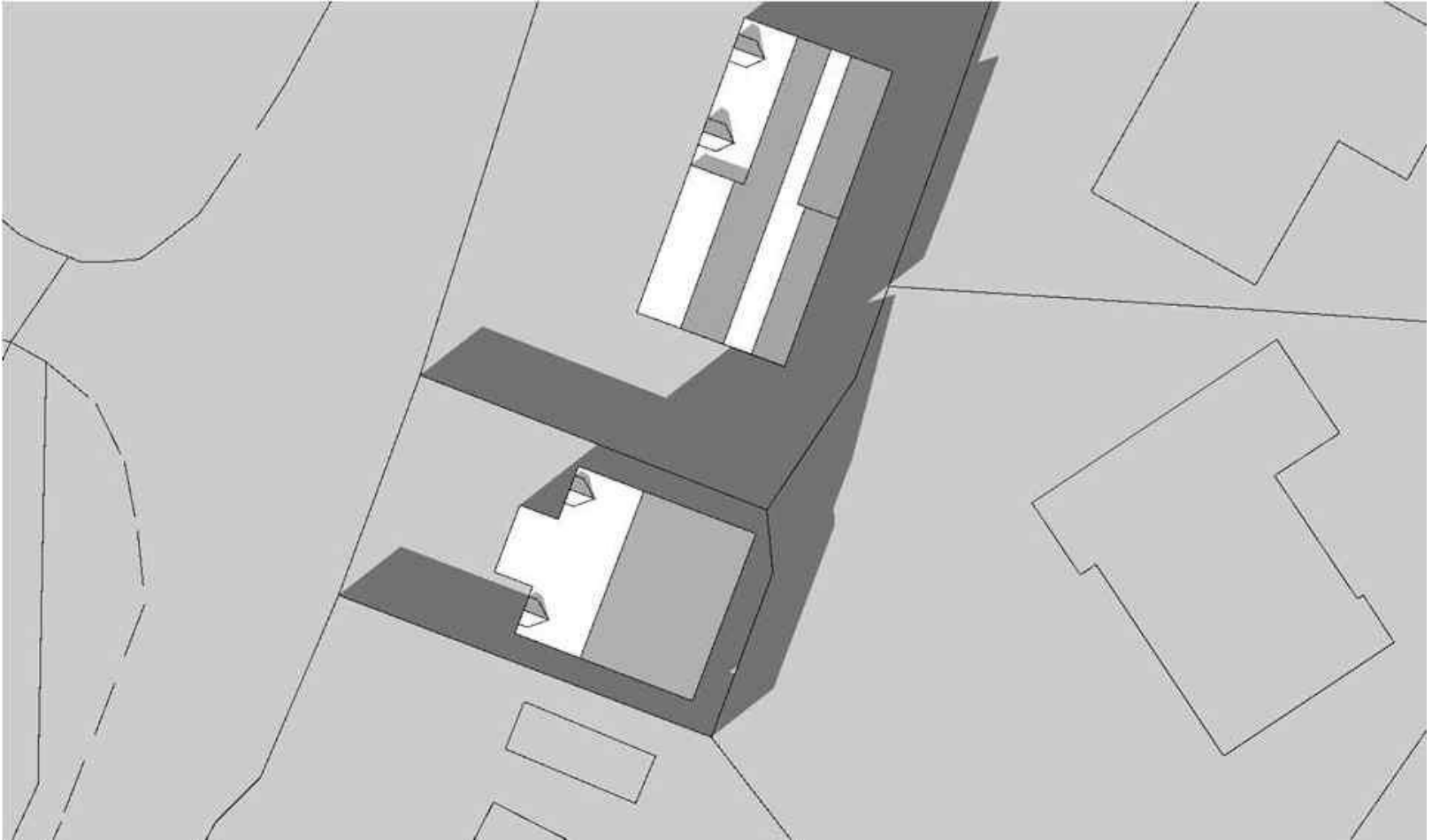
# Shadow Plan 3pm 21<sup>st</sup> June

Page 35



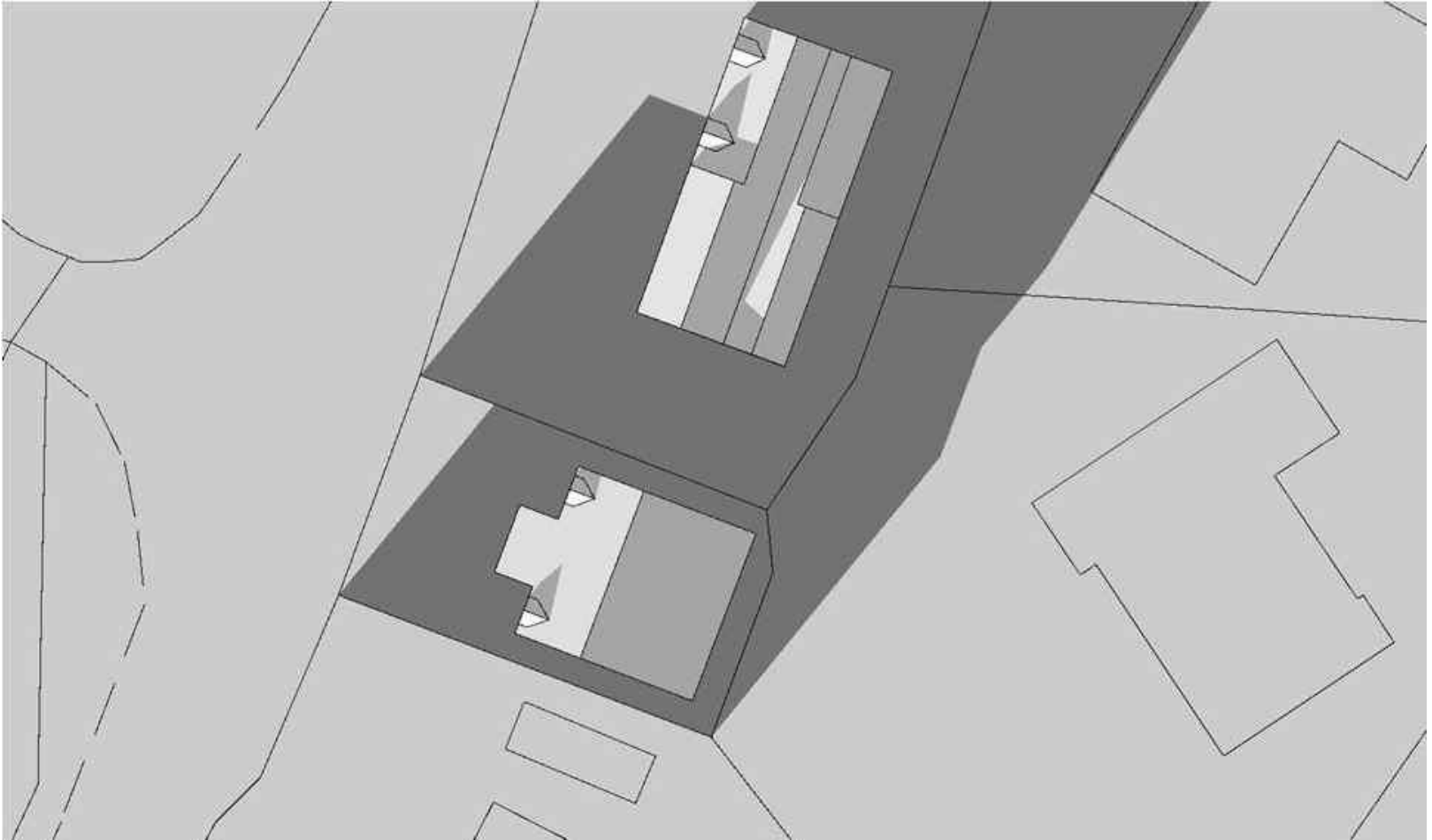
# Shadow Plan 3pm 21<sup>st</sup> September

Page 36



# Shadow Plan 3pm 21<sup>st</sup> December

Page 37



## Site and context in 2011 (Google maps)

Page 38



# The site



Page 39

# Northwards

Page 40





# Northwards



# Southwards

Page 42



# Southwards



# Opposite



# Towards 3 Old Mill Close



Page 45

# Rear of Site Looking Southwards



Page 46

# Rear of Site Looking Northwards



Page 47

# Rear of Site Towards Road





# Public Realm over Ravenscroft

Page 49



# Public Realm over Horseshoe Cott.

Page 50



# On site Towards Garage to South



Page 51

## 8b) PL/2022/09311 - 4 The Flood, Middle Winterslow, Salisbury, Wilts, SP5 1QT

Erection of a dwellinghouse, associated access, hard and soft landscaping and associated works  
(Resubmission of 21/00943/FUL)

**Recommendation: Approve**

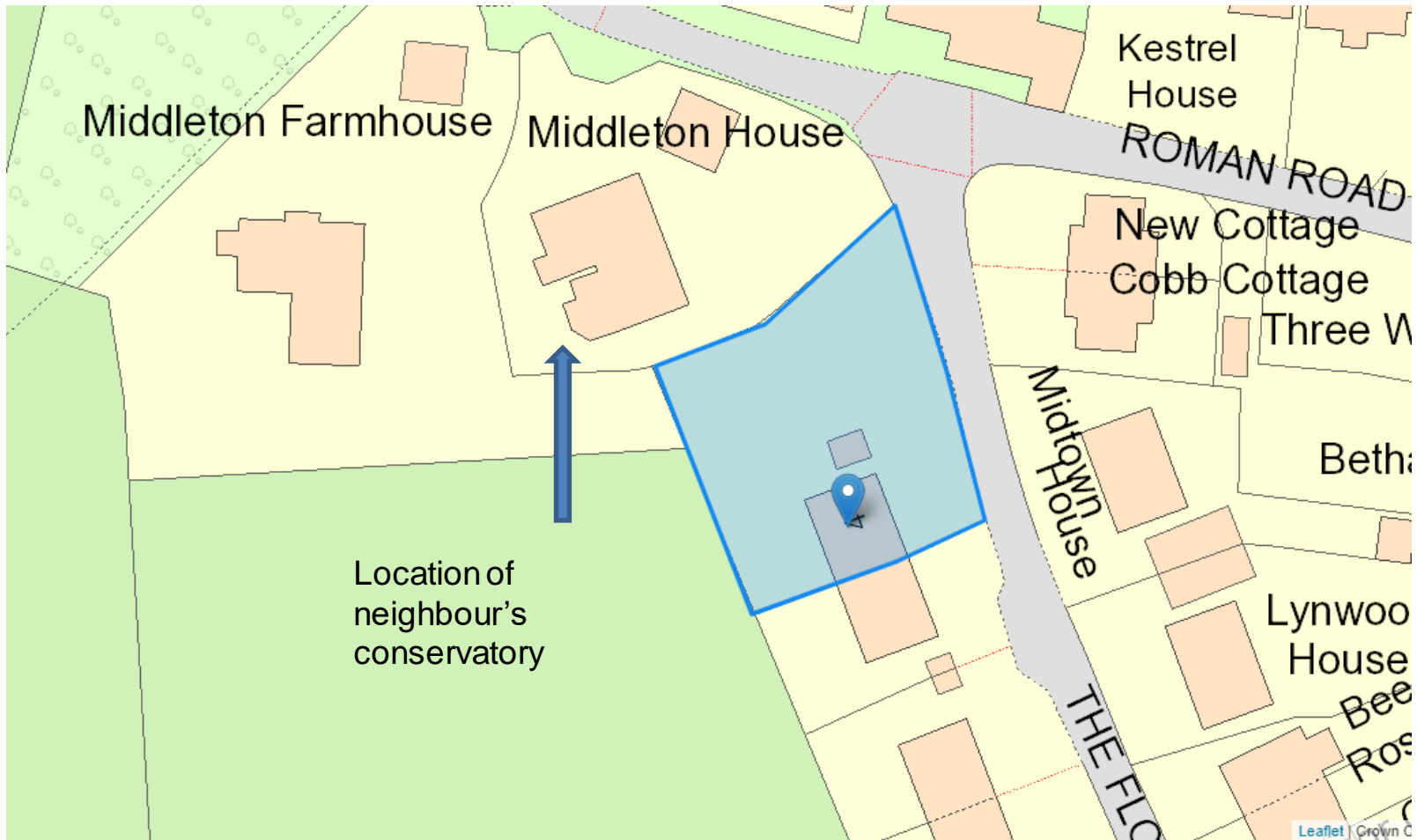


Site Location Plan

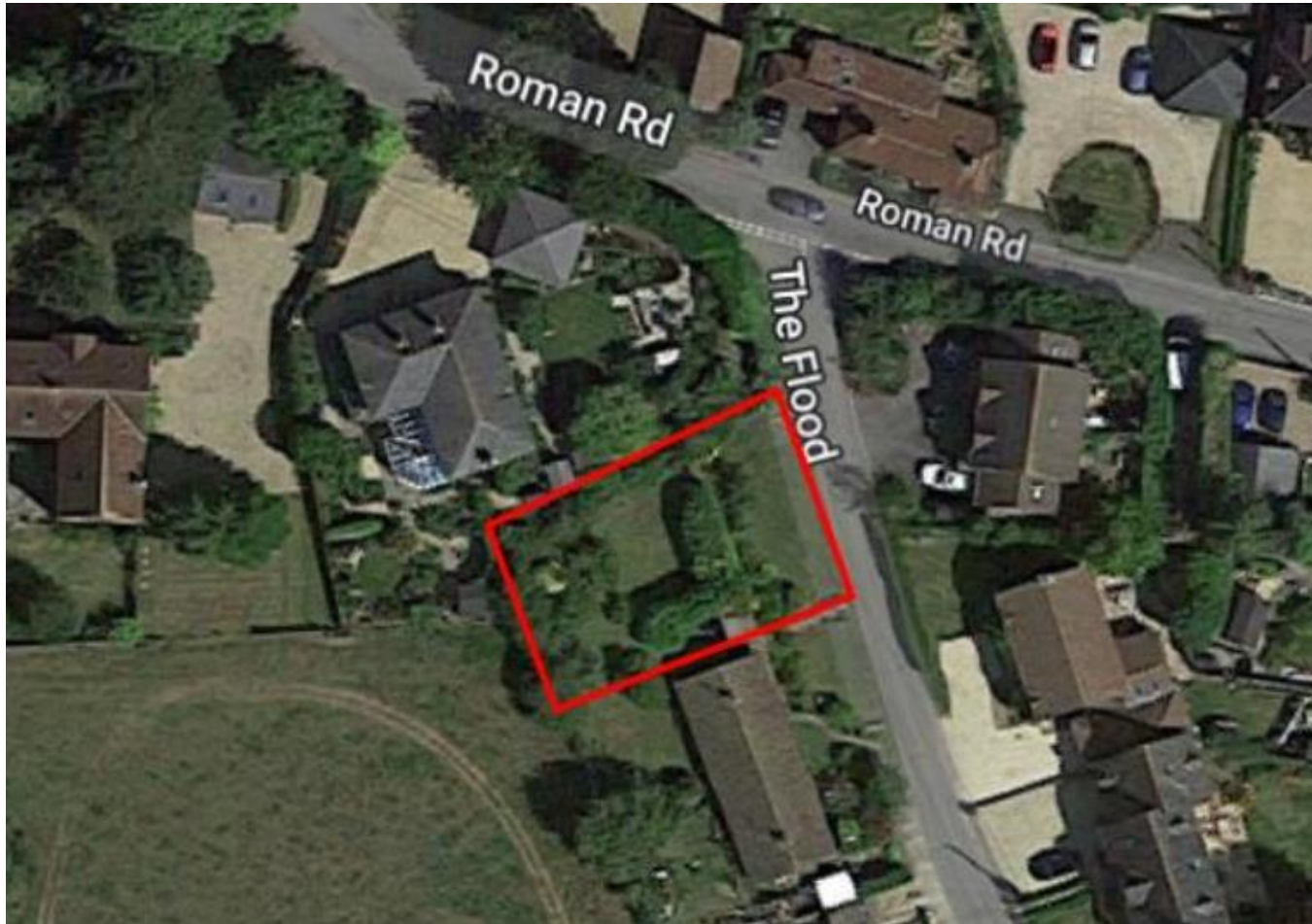
Aerial Photography

# Location plan in more detail

Page 53

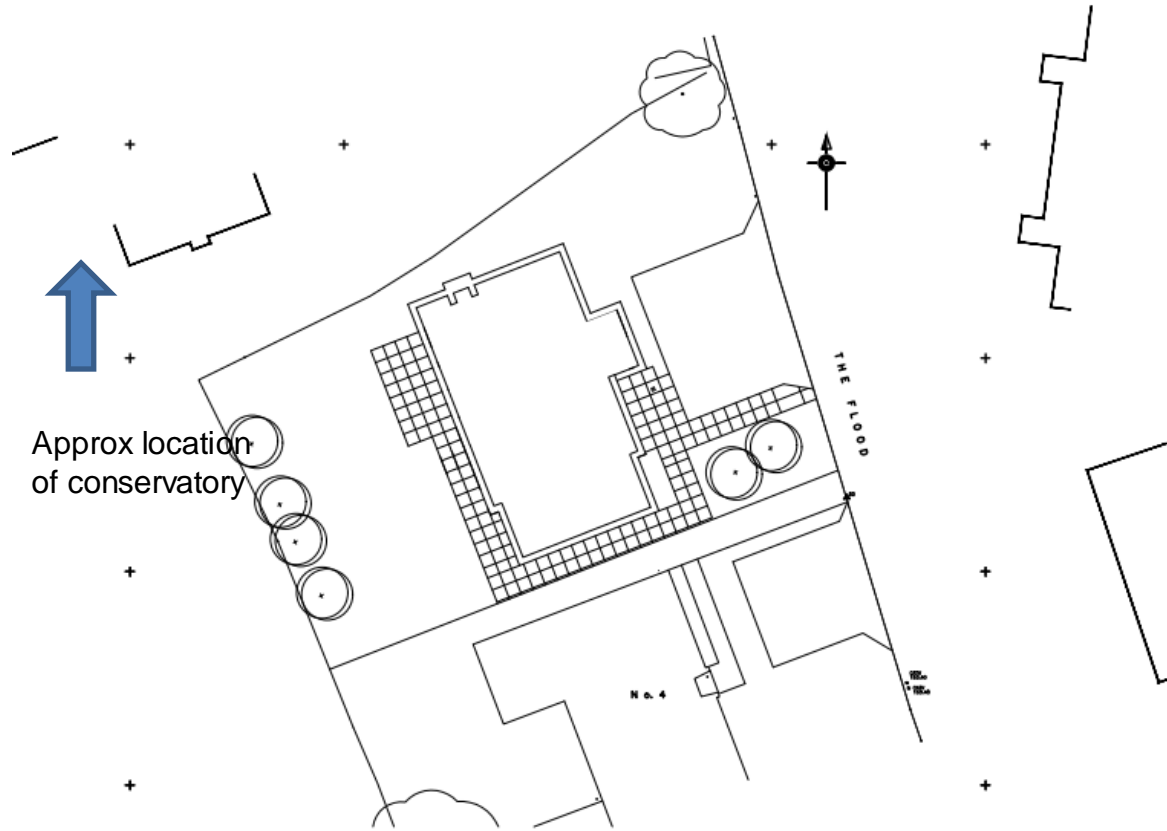


Plot outlined in red showing relationship to dwelling to the



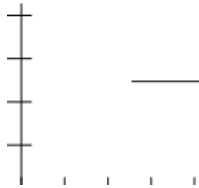
# Proposed Block Plan

Page 55



# Proposed elevations

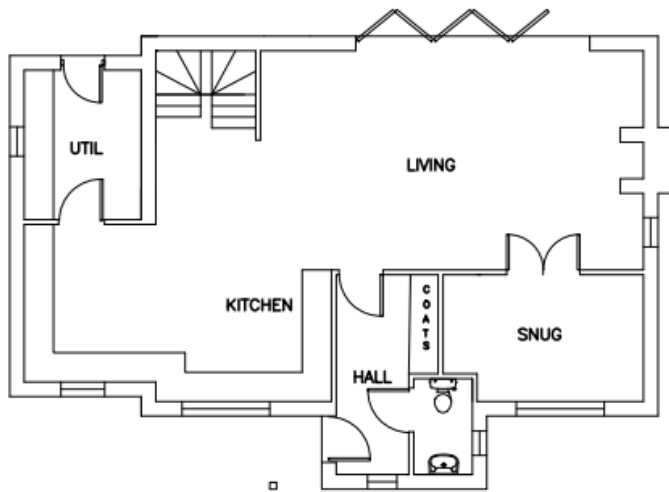
Page 56



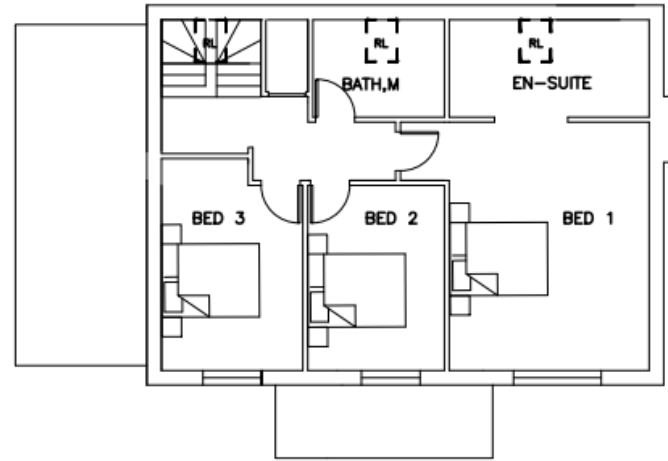


# Proposed Floor plans

Page 57



GROUND  
93 SQM

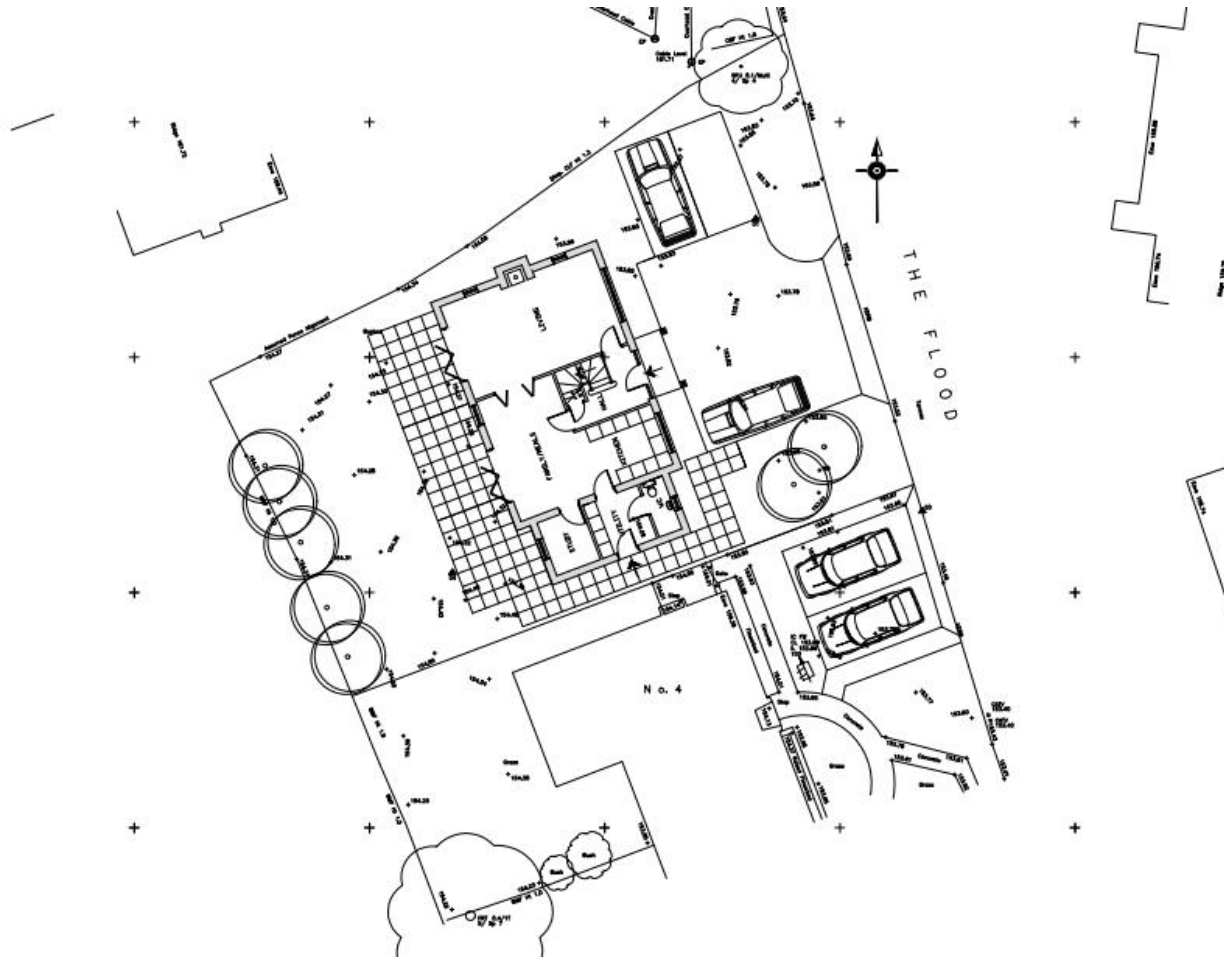


FIRST  
72 SQM



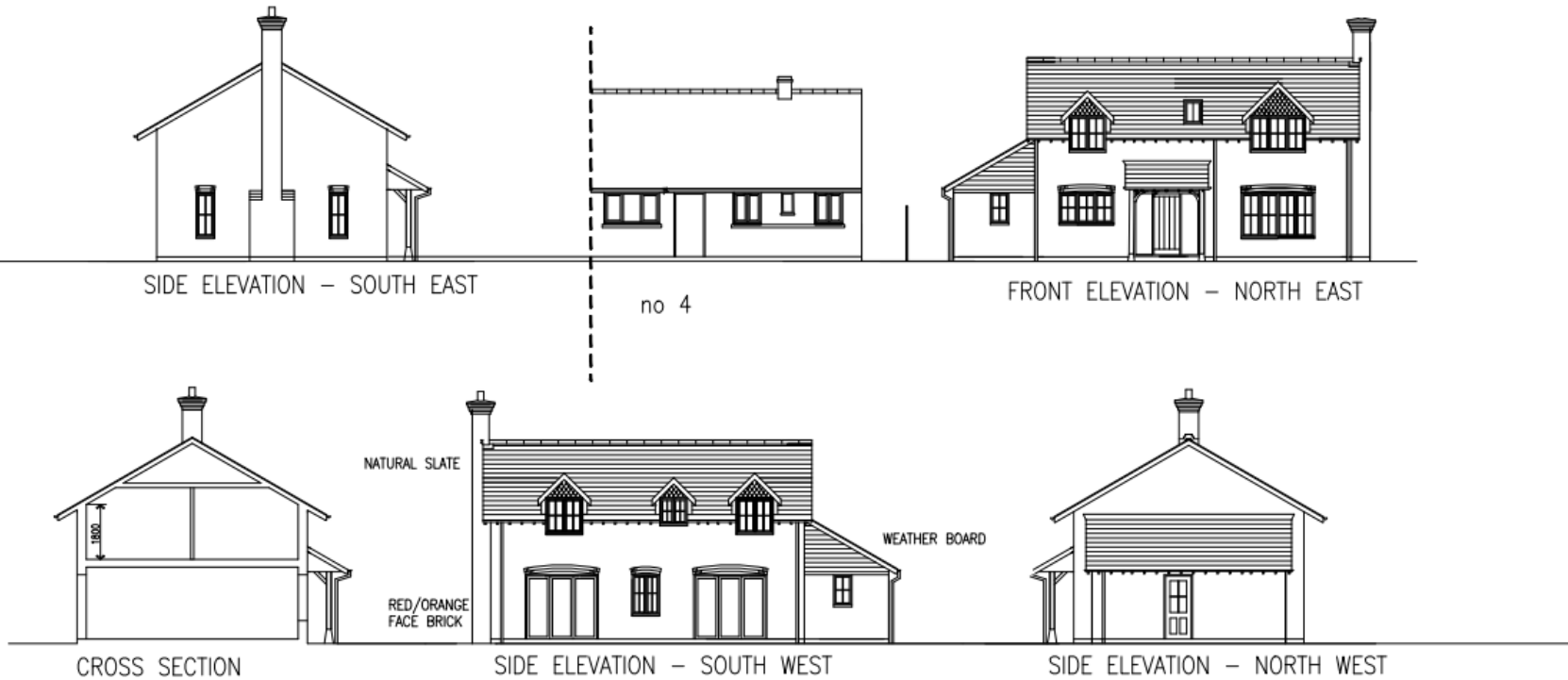
# Site layout for scheme dismissed at appeal (21/00943/FUL)

Page 58



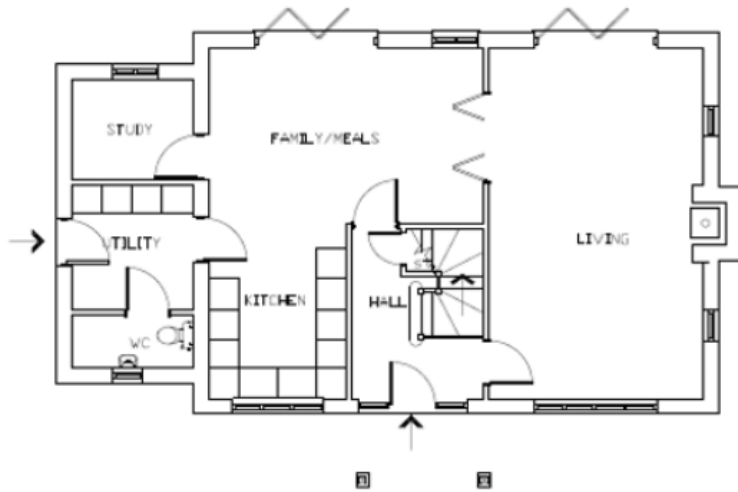
# Proposed elevations dismissed at appeal

Page 59

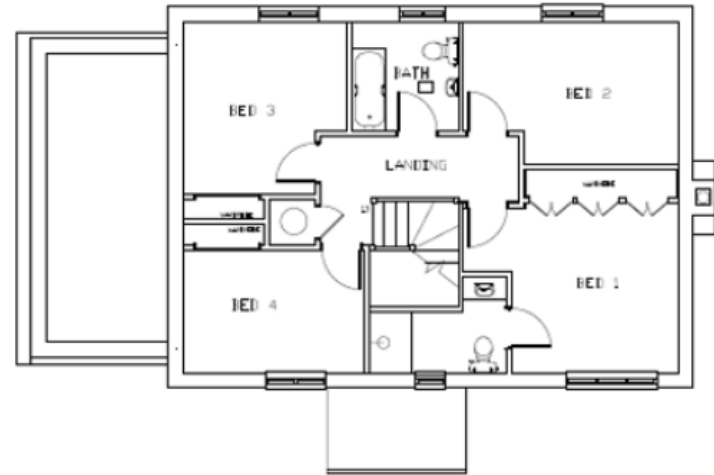


# Proposed floor plans dismissed at appeal

Page 60



GROUND FLOOR PLAN



FIRST FLOOR PLAN

# Application site looking towards No. 4 The Flood

Page 61



# Application site looking towards Middleton House

Page 62



View within site looking towards Middleton House with conservatory just visible



# Dwellings opposite the application site

Page 64





# General view of The Flood looking south

Page 65



### 8c) PL/2023/01136- 61 Moberly Road, Salisbury, SP1 3BX

Construction of painted timber bike store to front of dwelling. Install window with rendered surround and painted cladding below.

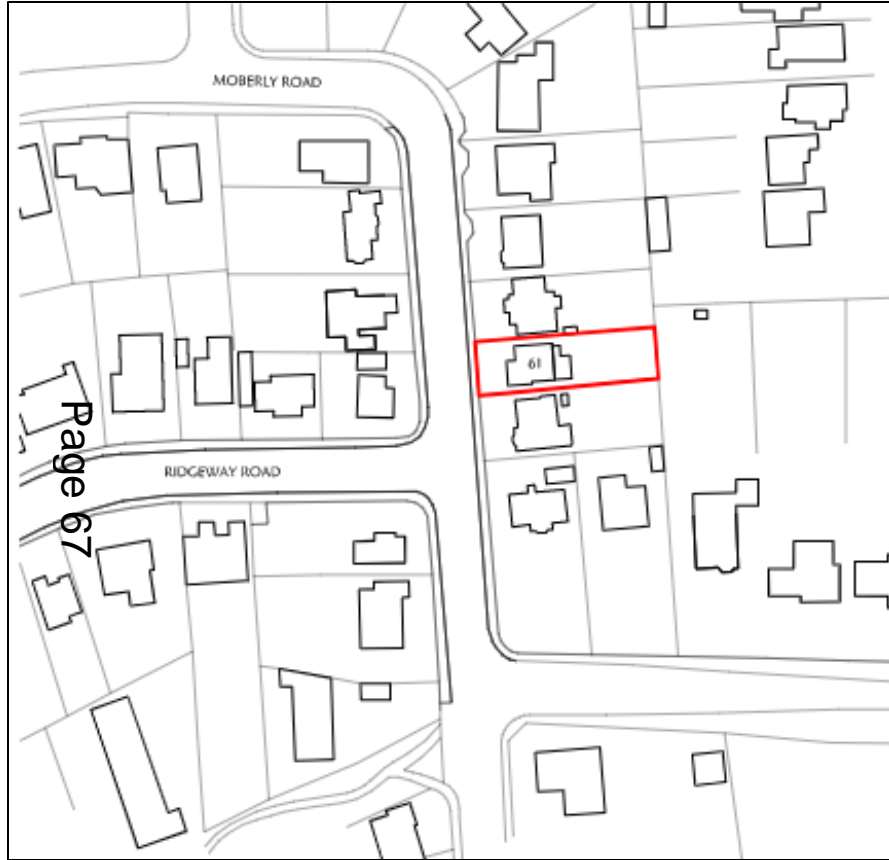
**Recommendation: Refuse**



Site Location Plan

Aerial Photography

# Site Location and Proposed Block Plan



Page 67



# Approved Elevations (16/10356/FUL)

61 MOBERLY ROAD,  
SALISBURY

Proposed Elevations:



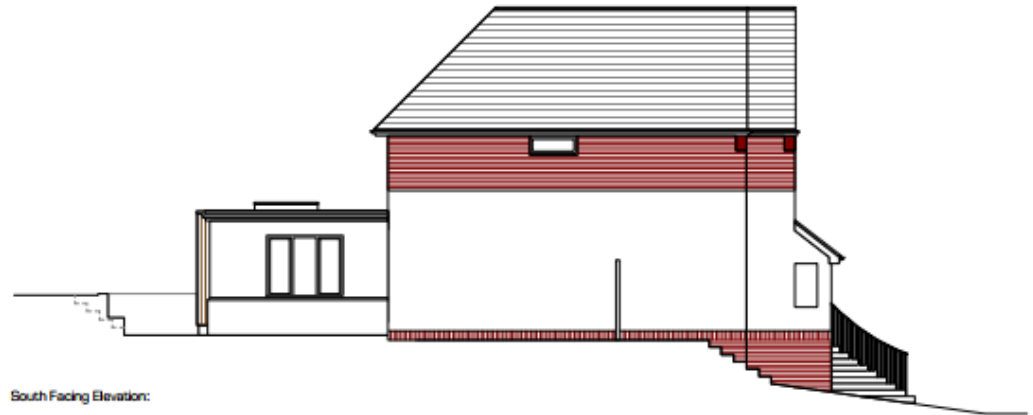
East Facing Elevation:



North Facing Elevation:



West Facing Elevation:



South Facing Elevation:

# Proposed Elevations (PL/2023/01136)

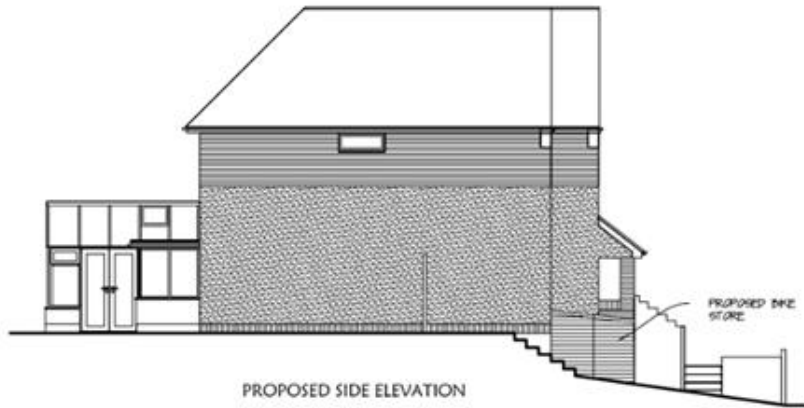
Page 69



PROPOSED FRONT ELEVATION



PROPOSED REAR ELEVATION



PROPOSED SIDE ELEVATION



PROPOSED SIDE ELEVATION

# Approved Front Elevation (16/10356/FUL)      Proposed Front Elevation (PL/2023/01136)

Proposed Elevations:

Page 70



East Facing Elevation:



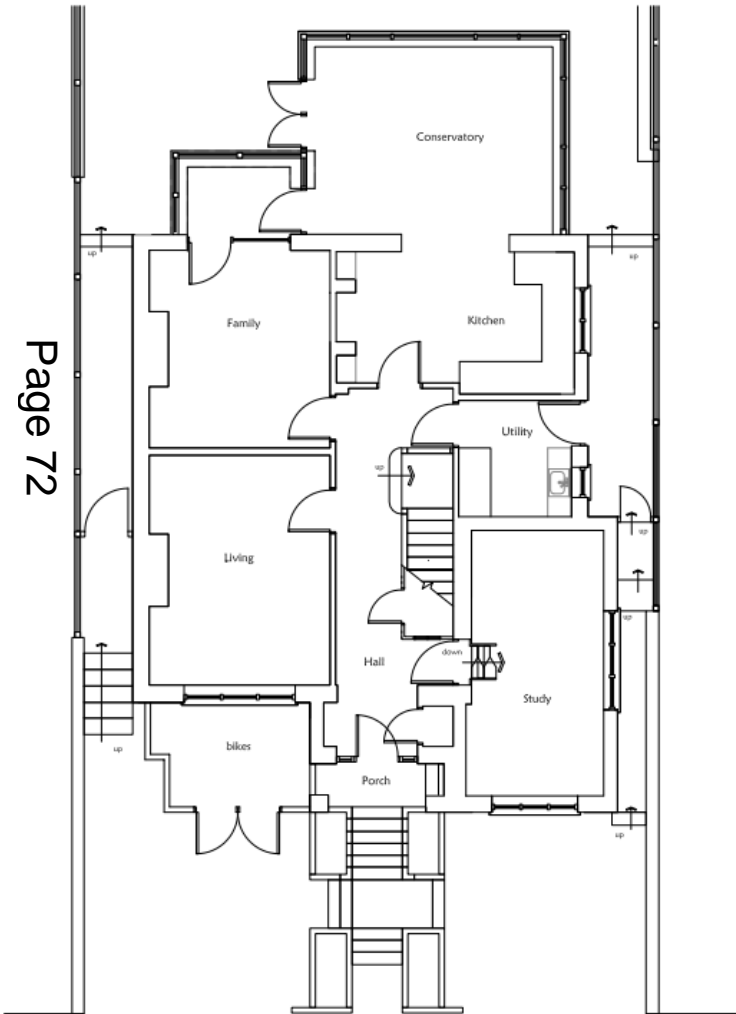
PROPOSED FRONT ELEVATION

# Current Front Elevation (Site Visit)

Page 71



# Proposed Ground Floor Plan



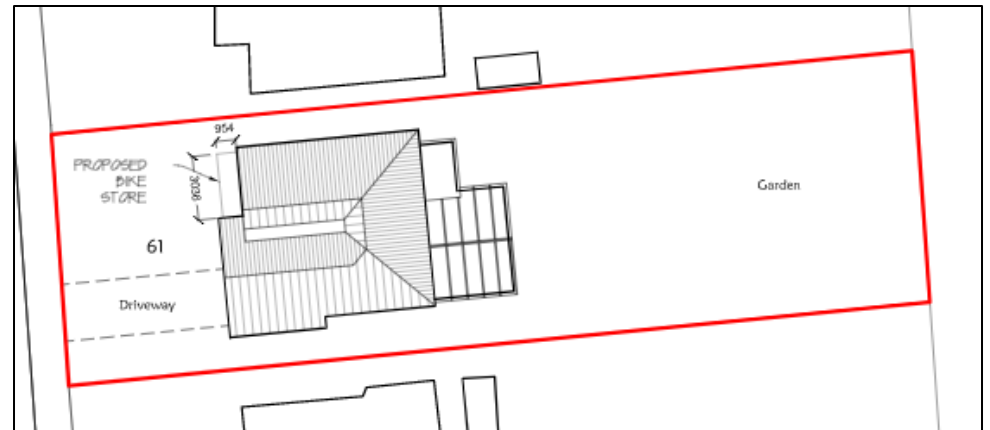
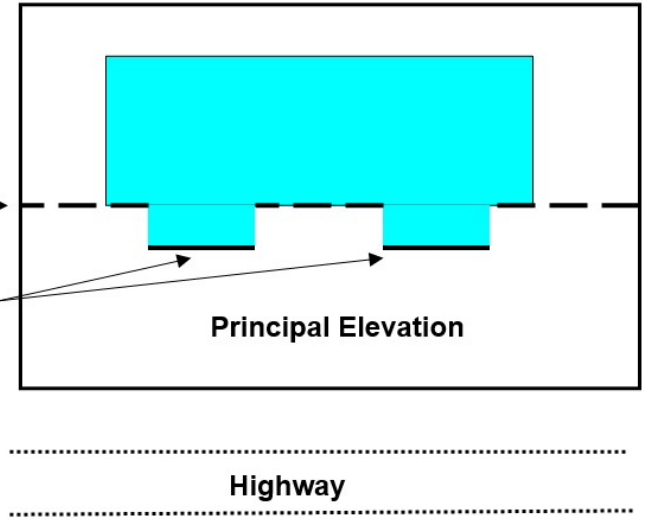
PROPOSED GROUND FLOOR PLAN

Page 72

# Permitted Development Guidance

Any extension forward of this line will **not** be permitted development and will require an application for planning permission

Bay windows form part of principal elevation





# Southern Area Planning Committee

30<sup>th</sup> March 2023

This page is intentionally left blank

**From:** [REDACTED]  
**Sent:** 23 March 2023 10:17  
**To:** [Green, Janice](#)  
**Subject:** RE: Wildlife & Countryside Act 1981 s.53 - DMMO Footpath no.42 Whiteparish (The Drove) - Southern Area Planning Committee 30th March 2023

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Green,

**Wildlife & Countryside Act 1981 – Section 53**  
**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022**

-

**Southern Area Planning Committee – Thursday 30<sup>th</sup> March 2023, 3:00pm**

Thank you for information regarding the forthcoming meeting. I am sorry that neither my husband nor I can attend but we would wish to make the following points, which we consent to being used at the meeting, if required.

1. Wiltshire Council has recognised The Drove as a Historic Monument and included in its register where it is described as 'A medieval trackway between fields formed by medieval assarting. Ref: SU22SW467.
2. The permissive use of The Drove extends back over more than 50 years to our knowledge and, probably, for hundreds of years.
3. Several owners of properties backing onto The Drove have rights of access onto it written into the deeds of their properties. These people have provided witness statements which can be verified.

We consider the conservation of this historic feature to be particularly significant, as well as its use as a public right of way. **Its incorporation in part into gardens should not exclude this duty of care.**

The fields adjacent to The Drove have been used for exercise and dog walking for decades and the incorporation of The Drove as proposed would provide

considerable community benefits, as currently encouraged by national government in order to officially establish these ancient routes.

Our priorities are therefore to

- To conserve the historic feature
- To provide improved public amenities.

We ascertain that all of the information provided in our witness statements remains, to the best of our knowledge, correct.

Kind regards,

Pat and Brian Woodruffe

---

**From:** Green, Janice [mailto:janice.green@wiltshire.gov.uk]

**Sent:** 10 March 2023 08:51

**To:** 'Pat Woodruffe' [REDACTED]

**Subject:** Wildlife & Countryside Act 1981 s.53 - DMMO Footpath no.42 Whiteparish (The Drove) - Southern Area Planning Committee 30th March 2023

Dear Mr and Mrs Woodruffe,

**Wildlife & Countryside Act 1981 – Section 53**

**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022**

-

**Southern Area Planning Committee – Thursday 30<sup>th</sup> March 2023, 3:00pm**

I am writing to advise you that a report regarding the above-mentioned Order which proposes to add a footpath in the parish of Whiteparish, Footpath no.42 (The Drove), is due to be considered by Members of the Wiltshire Council Southern Area Planning Committee at their meeting dated Thursday 30<sup>th</sup> March 2023. The meeting starts at 3:00pm and will be held at The Pump Room, The Old Fire Station Enterprise Centre, 2 Salt Lane, Salisbury, Wiltshire, SP1 1DU.

I understand that the agenda and report will be published shortly before the meeting, (generally about 5-7 days before the meeting) and may be viewed on the Wiltshire Council website using the following link:

[Browse meetings - Southern Area Planning Committee | Wiltshire Council](#)

Please note: in the unlikely event that this agenda item is not considered at the meeting dated 30<sup>th</sup> March, or the meeting is cancelled, the agenda item will be taken forward to the next meeting on 27<sup>th</sup> April, please check the agenda for updated information before attending.

Public participation at the meeting is possible and members of the public who wish to speak either in favour or against the agenda item are asked to register with the Senior Democratic Services Officer, before the deadline specified in the agenda. Please contact Lisa Alexander, Senior Democratic Services Officer on 01722 434560, or e-mail [lisa.alexander@wiltshire.gov.uk](mailto:lisa.alexander@wiltshire.gov.uk)

The agenda will contain full details of public participation. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an item. Each speaker will be given up to 3 minutes to speak and will be invited to speak immediately prior to the item being considered. Speakers for the Parish Council are in addition to the above and are given up to 4 minutes to speak.

I hope this information is helpful.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Report a problem: <https://my.wiltshire.gov.uk/>

Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

Follow Wiltshire Council



Follow Wiltshire Countryside



**From:** [Green, Janice](#)  
**Sent:** 28 March 2023 08:25  
**To:** [Green, Janice](#)  
**Subject:** FW: SOUTHERN AREA PLANNING COMMITTEE - THURSDAY 30 MARCH 2023

---

**From:** Jennifer Harrison [REDACTED]  
**Sent:** 27 March 2023 14:26  
**To:** Alexander, Lisa <[Lisa.Alexander@wiltshire.gov.uk](mailto:Lisa.Alexander@wiltshire.gov.uk)>  
**Subject:** SOUTHERN AREA PLANNING COMMITTEE - THURSDAY 30 MARCH 2023

[REDACTED]

Dear Ms Alexander

**AGENDA ITEM NO 6  
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53  
THE WILTSHIRE COUNCIL WHITEPARISH PATH NO 42  
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022**

Thank you for sending us the agenda and paperwork for the above Committee Meeting and I regret that we are unable to attend so please record our apologies. We would like to submit the following statement:

**After due consideration and with some reluctance we have decided to withdraw our support for the above application. This is because we can see no amicable neighbourly result if this application for The Drove to become a public footpath is approved.**

**When the small development of three dwellings was first proposed we were dismayed and in a state of disbelief that the developer destroyed part of The Drove in such a wanton manner with no regard to the environment and any wildlife.**

**Subsequently the development was approved on Appeal by the Planning Inspectorate and part of The Drove was incorporated into two of the new gardens. Our understanding is that The Drove was classified as an Ancient Monument and that no permanent dwelling can be built on it.**

**We have lived in Clay Street since 1985 and although we have withdrawn our support we stand by our initial statement that we submitted in applying for consideration to be given to The Drove being designated a public footpath. The main points of our statement were that it was possible to negotiate the whole length of The Drove to the point where it joined Footpath No 6 - we clearly remember seeing and hearing groups of people coming from the Common Road entrance going past our back garden (as well as individual dog walkers) and never turning back. We fail to understand how newcomers to Whiteparish can assert that The Drove has never been a through-route. Also Mr Andrews, the then-co-owner of The Drove, was fully aware that our children played in The Drove during the late 1980s and early 1990s and he never protested that they were on private land.**

**We would like to acknowledge that Wiltshire Council did not approve the planning application for the three new dwellings and that there has been a very comprehensive report undertaken in respect of this footpath application. We are grateful for the part that Wiltshire Council played in attempting to stop this development going ahead.**

**Finally the deeds to our dwelling show that we are legally entitled to use The Drove from where there is now a barrier in the form of a wooden fence outside our boundary hedge to the junction with Common Road. We trust that this means that this part of The Drove will always be protected and we shall continue to exercise our right to use it.**

With thanks and regards

Jenny and John Harrison

  
Clay Street  
Whiteparish

Sent from [Mail](#) for Windows

**Southern Area Planning Committee – 30<sup>th</sup> March 2023**

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

**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022**

**Officers' Response to Additional Representations of Mr and Mrs Woodruffe 23<sup>rd</sup> March 2023**

The Applicants in this case are the “Residents of Clay Street” (Whiteparish), Mrs Woodruffe being the main contact for the application. In correspondence dated 23<sup>rd</sup> March in relation to “The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022”, Mr and Mrs Woodruffe make a number of points in support of the Order, as set out below, with Officers comments attached:

- 1) *Wiltshire Council has recognised The Drove as a Historic Monument and included in its register where it is described as “A medieval trackway between fields formed by medieval assarting. Ref: SU22SW467.”*

The Drove is included in the Wiltshire and Swindon Historic Environment Record (HER) ref: SU22SW460 – MWI17191, which contains information on archaeological sites, monuments and finds in Wiltshire and Swindon, being a local listing rather than a nationally recognised designation. The site is included in the HER as follows: Monument, Medieval Settlement 1066-1539, Common Road – “A settlement site which except for one platform, the earthworks of which were ploughed by 1967. 12<sup>th</sup> to 14<sup>th</sup> century coarse black pottery.”

In the making and confirmation of an Order under Section 53 of the Wildlife and Countryside Act 1981, only the evidence of public rights may be taken into account. The designation of the route as an historic monument in the Wiltshire and Swindon HER, is not a relevant consideration for the Committee in its consideration of the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for determination.

The Wiltshire Council Archaeology Service has been consulted regarding the proposed addition of Footpath no.42 Whiteparish (The Drove) and advised that they have no archaeological concerns and no further action is required as regards the buried archaeological heritage.

- 2) *The permissive use of The Drove extends back over more than 50 years to our knowledge and, probably, for hundreds of years.*

In order for user evidence to be qualifying evidence in support of an application, it is necessary for user to be “as of right”, i.e. without permission; without force and without secrecy. As set out in the Sunningwell caselaw:



*“The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect a landowner to resist the exercise of the right...”*

R v Oxfordshire County Council and Another ex parte Sunningwell Parish Council [1999] 3 WLR 160.

The Applicant refers to “permissive” use of the Drove dating back more than 50 years, which would accord with the evidence of property owners in Clay Street who have a private right within their deeds to access the rear of their properties using the upper section of the Order route from Cottage Field, and the evidence of Mrs Cook, the landowner, who states that her Great Grandmother granted the private easement for the five properties, over the upper section of The Drove, (over the land in her ownership), in May 1957. Any other use prior to that date; use by non-residents and the property owners’ use continuing past the properties on the south-west section of the route to Footpath no.6, is likely to have been without permission. Of 27 witness evidence forms in total, where those having a private right to the upper section of The Drove, were excluded from qualifying user, 14 users remained who appeared to be using the route without permission, sufficient to make the Order based on a reasonable allegation.

However, user “as of right” is disputed in the objections received following the making of the Order. One of the supporters withdraws his support where he now considers that it is his neighbours seen using the path, who have a private right, which is not qualifying use “as of right”. Additionally use by the 14 users remaining and property owners’ continuing south-west, may be affected by additional evidence of the 2 strand wire fence being present across the width of the way from 1979 – 2003, which may bring use of the way into question at an earlier date; prevent use and/or affect user “as of right”.

Although Mr and Mrs Woodruffe claim that use has taken place for probably hundreds of years, there is no evidence of use prior to 1962. If the 2 strand wire fence was in place across the width of the Drove in 1979 which brought use of the way into question, it would be necessary to consider an alternative 20 year period of 1959 – 1979. 6 users support use prior to 1979, however, the earliest user evidence of witnesses is provided in 1962, there is no evidence of a full 20 year user period prior to 1979 to satisfy Section 31(1) of the Highways Act 1980.

- 3) *Several owners of properties backing onto The Drove have right of access onto it written into the deeds of their properties. These people have provided witness statements which can be verified.*

As above, the property owners have a private right to use the upper section of The Drove to access the rear of their properties. This is not qualifying user under Section 31(1) of the Highways Act 1980, where it is undertaken with permission, and is therefore done “by right” rather than “as of right”. Therefore, the property owners’

evidence of use of the upper section of the Drove must be disregarded. However, their continuation south-westwards on The Drove appears to be user without permission, again such use may be affected by additional evidence of a 2 strand wire fence across the width of The Drove in 1979.

*We consider the conservation of this historic feature to be particularly significant, as well as its use as a public right of way. **Its incorporation in part into gardens should not exclude this duty of care.***

*The fields adjacent to The Drove have been used for exercise and dog walking for decades and the incorporation of The Drove as proposed would provide considerable community benefits, as currently encouraged by national government in order to officially establish these ancient routes.*

*Our priorities are therefore to*

- *To conserve the historic feature*
- *To provide improved public amenities.*

The conservation of the historic monument is not a matter for consideration in the making and confirmation of an Order under Section 53 of the Wildlife and Countryside Act 1981. The incorporation of a public right of way into the gardens, does not have the effect of extinguishing unrecorded public rights, if they are found to exist.

Mrs P Woodruffe states in her user evidence form: *“It would be a relatively simple matter to link this ancient track to other public footpaths and so create a new amenity for local people...”* In the determination of an application to add a public right of way, the Surveying Authority are not seeking to add “new” rights of way, but simply to record an existing public right, previously unrecorded.

*We ascertain that all of the information provided in our witness statements remains, to the best of our knowledge, correct.*

Where, since the making of the Order, the evidence is disputed and finely balanced in the balance of probabilities test to be applied at the confirmation of an Order, Officers’ consider that it is not possible for Wiltshire Council to make a recommendation regarding the determination of the Order. Dispute is likely to be resolved by the testing of evidence at a local public inquiry. Additional weight may be given to the oral evidence given at a public inquiry where it has been subject to testing through cross-examination.

#### **Officers’ Response to Additional Representations of Mr and Mrs Harrison 27<sup>th</sup> March 2023**

The attention of Committee Members is brought to correspondence from Mr and Mrs Harrison, who are “reluctantly” withdrawing their support for the Order, not for evidential

reasons, but where they “...can see no amicable neighbourly result if this application for The Drove to become a public footpath is approved.”

Matters with regards to the development of the three dwellings; environment and wildlife, cannot be taken into account in the making and determination of an Order under Section 53 of the Wildlife and Countryside Act 1981.

Mr and Mrs Harrison, as local residents, have a private right to access the upper section of The Drove, however, they maintain that it was possible to use the whole length of The Drove to the point where it joined Footpath no.6 and they have seen and heard groups of people coming from Common Road and continuing past their back garden, without turning back. Objectors maintain that there has been a fence across the width of the way since 1979 and that there has never been access to Footpath no.6 at the southern end of the Order route. Where the evidence is disputed and finely balanced in the balance of probabilities test to be applied at the confirmation of an Order, Officers’ consider that it is not possible for Wiltshire Council to make a recommendation regarding the determination of the Order. Dispute is likely to be resolved by hearing from witnesses at a local public inquiry and testing of the evidence through cross-examination.

This page is intentionally left blank