


Executive Summary of Decision Report and Record of Officer Decision**Wildlife and Countryside Act 1981 – Section 53****Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way**
Whiteparish (The Drove)

Please sign off the Report next to your name

		Signature	Date Signed Off
To:	Sally Madgwick (Definitive Map and Highway Records Manager)		16 February 2022
	Chris Clark – (Head of Local Highways)	Copy for information	n/a
	Parvis Khansari – (Director Highways & Environment)	No Copy required	n/a
From:	Janice Green (Senior Definitive Map Officer)		
Date of report:	2 nd December 2021		
Return to:	Janice Green (Ext. 13345)		

Nature of Report:

This is a report from Janice Green (Case Officer) to Sally Madgwick (Officer with the relevant delegated powers), regarding an application to add a footpath to the definitive map and statement of public rights of way, in the parish of Whiteparish, (The Drove).

Executive Summary:

Wiltshire Council are in receipt of an application dated 12th July 2020, made under Section 53 of the Wildlife and Countryside Act 1981, to add a public footpath in the Parish of Whiteparish, (The Drove), based on evidence that the Salisbury and Wilton Rural District Council Area Definitive Map and Statement dated 1953, is incorrect in its omission of the claimed footpath route. The application is accompanied by 27 completed user evidence forms and documentary evidence, 3 additional witnesses have submitted user evidence at the initial consultation stage.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 places a duty upon Wiltshire Council, as the Surveying Authority, to keep the definitive map and statement of public rights of way up to date and under continuous review. Section 53(3)(c)(i) applies:

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

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path...”*

Section 31 (as amended) of the Highways Act 1980, deals with the dedication of way as a highway, presumed after public use for 20 years, as of right and without interruption.

To make an order, in the absence of incontrovertible evidence to the contrary, only a reasonable allegation is required, which is a relatively low evidential test, however, at the confirmation of an order it is necessary to satisfy the higher legal test of the balance of probabilities.

Upon examining the evidence received with the application; at the initial consultation regarding the application and from the Officer’s research, the following conclusions are drawn:

- There is insufficient documentary evidence of a public right of way over The Drove, Whiteparish.
- There is sufficient evidence of use by the public on foot during the relevant 20 year user period 1983-2003, as of right and without interruption, for public footpath rights to be reasonably alleged.
- There is insufficient evidence of the landowner’s non-intention to dedicate a public right of way during that period.
- The historical OS mapping and user evidence support a width varying between 3m and 9m to be recorded over the footpath, as shown on the proposed order plan at **Appendix 10**.

Officer’s Recommendation:

That further to the application to add a footpath to the definitive map and statement of public rights of way, The Drove, Whiteparish, a definitive map modification order be made to add a footpath and if no objections are received, the order be confirmed by Wiltshire Council, as the Surveying Authority, as an unopposed order.

Decision Report
Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath to the Definitive Map and Statement of Public
Rights of Way – Whiteparish (The Drove)

1. Purpose of Report

- 1.1. To determine an application made 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, in the parish of Whiteparish (The Drove).

2. Relevance to the Council's Business Plan

- 2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

3. Location Plan

- 3.1. Please see **Appendix 1**.

4. Application Plan

- 4.1. Please see **Appendix 2**.

5. Photographs

- 5.1. Please see **Appendix 3**.

6. Registered Landowners

6.1. Mrs S Cook

██████████

Sherfield English

Romsey

Hampshire

SO51 6████

Zelda Investments

C/O Mr M Richards

Business Development Director

██████████

Chilworth Road

Chilworth

Southampton

Hampshire, SO16 7████

Mr H Urquhart

██████████

Rectory Hill

West Dean

Salisbury

Wiltshire, SP5 1████

7. Background

7.1. Wiltshire Council are in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to amend the Salisbury and Wilton Rural District Council Area Definitive Map and Statement of Public Rights of Way, dated 1953, by adding a footpath in the parish of Whiteparish. The application route is known as The Drove from its junction with Common Road, approximately 135m south of Clay Street, leading in a west-south-westerly direction for approximately 175m before leading south-south-west for approximately 160m to its junction with Footpath no.6 Whiteparish. The route has an unmade surface and is enclosed for most of its route by fences, mature hedges and trees. There is now a closed board wooden fence across the width of the claimed route on that section leading west-south-west from Common Road, before the route turns south-south-west, (point Y on the

application consultation plan at **Appendix 2**). The section of the path leading south-south-west is tree-lined with a metal gate across it, located about half-way along this length, and a hedge across the southern end of the claimed route which prevents continuation on Footpath no.6 Whiteparish, leading east-west at the southern end of the claimed route, (please see photographs at **Appendix 3**).

- 7.2. The application is dated 12th July 2020 and is made by Residents of Clay Street, Whiteparish, on the grounds that a right of way for the public on foot subsists or can be reasonably alleged to subsist over the way, based on user and historical evidence and which should be recorded within the definitive map and statement of public rights of way, as such. The application form, which consists of Forms 1 and 3, is accompanied by a plan drawn at a scale of not less than 1:25,000, highlighting the claimed route; 27 completed user evidence forms and documentary evidence extracts, therefore being compliant with the form of application required at Schedule 14 of the Wildlife and Countryside Act 1981, i.e. including a map drawn at the prescribed scale and copies of documentary evidence, including witness statements, (see relevant legislation at **Appendix 5**).
- 7.3. Part of the land is not registered, but it is believed that the section adjacent to Common Road is in the ownership of Mr H Urquhart. Although the applicants did serve notice of the application upon the two registered landowners, they did not serve notice upon Mr Urquhart, however, the Parish Council advised Wiltshire Council that Mr Urquhart was a landowner and his comments on the application were sought in the initial consultation undertaken by the Council.
- 7.4. Wiltshire Council undertook an initial consultation regarding the proposals on 21st August 2020. The representations and objections received are included at **Appendix 4**.

8. Main Considerations for the Council

8.1. Section 56 of the Wildlife and Countryside Act 1981 states that the definitive map and statement of public rights of way shall be conclusive evidence of the particulars contained therein, but this is without prejudice to any question of whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire (excluding the borough of Swindon), responsible for the preparation and continuous review of the definitive map and statement of public rights of way.

8.2. Section 53(2)(b) of the Wildlife and Countryside Act places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way up to date and under continuous review. Section 53(3)(c)(i) applies in this case:

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

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to 54A, a byway open to all traffic...”

8.3. Section 53(5) of the Act allows any person to apply for a definitive map modification order (DMMO) under subsection 2, based on evidence that the definitive map and statement is incorrect, in this case in its omission of public rights on foot over The Drove, Whiteparish, (please see relevant legislation at **Appendix 5**). The application to add a Footpath in the parish of Whiteparish (The Drove), has been correctly made in the prescribed form, as per Schedule 14 of the 1981 Act.

- 8.4. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years, as of right and without interruption, (please see relevant legislation at **Appendix 5**).
- 8.5. The relevant legal test to be applied in this instance is: can a right for the public on foot over the way be reasonably alleged to subsist, or subsist on the balance of probabilities? In the case of making an order the lower test of reasonably alleged is all that is required, however, at the confirmation of an order the more substantial evidential test must be met and the Authority or the Secretary of State must be satisfied on the balance of probabilities, i.e. that it is more likely than not that a right for the public subsists.
- 8.6. There will inevitably be points of conflict within the evidence of objectors and that of the supporters. For this reason, an order can be made based on a reasonable allegation that a right of way for the public subsists, which is a lower test than the balance of probabilities. Where there is no incontrovertible evidence against this, it is in the public interest for a local authority to support the order. The case of *R v Secretary of State for the Environment, ex p. Bagshaw and Norton*, Queen's Bench Division (Owen J.): April 28, 1994, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective county councils for orders to add public rights of way to the definitive maps and statements, based upon witness evidence of at least 20 years uninterrupted public user and where the councils determined not to make orders. On appeal, in both cases, the Secretary of State considered that the Councils should not be directed to make the orders. At judicial review, Owen J allowed both applications; quashed the Secretary of State's decisions and held that:

“(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests 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 the 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. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”

Owen J also held that:

“(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”

- 8.7. It is notable in the Norton case that, the Secretary of State “...notes that the user evidence submitted in support of a presumption of dedication is limited to four persons claiming 20 years of vehicular use as of right; he must weigh this against the statements from the landowner, supported by 115 signed forms and the Layham and Polstead Parish Councils, indicating the use of the route has been on a permissive basis and that active steps to prevent a presumption of dedication arising have been taken...” In both the Norton and Bagshaw cases Owen J concluded that: “If, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, an Order would seem likely to be appropriate.” Even in a case with only limited supporting evidence and a

large number of objections, Owen J held that an order would seem appropriate.

9. **Documentary Evidence**

9.1. Section 32 of the Highways Act 1980 states that the Authority should consider a range of historical documents and their provenance in relation to the claim:

“32. Evidence of dedication of a way as highway

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give 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.”

9.2. In evaluating historical evidence, it is necessary to recognise that differing weight must be given to individual documents. The following categorisation has been used, (Category A documents carry the highest evidential weight and Category F documents the lowest):

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of way as a highway Physical existence of highway Conclusive evidence of public rights	Inclosure Acts, Awards, Plans Orders creating, diverting or extinguishing highways – i.e. Railway and Canal Acts, Plans Definitive Map and Statement
B	Reputation of 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 way as a highway Physical existence of a way	Includes Local Government records - i.e. Highway Board, County Council, Parish Council
D	Reputation of way as a highway Physical existence of a way	Other maps and documents showing highways additional to or as part of their purpose - i.e. Parish Maps, Estate Plans, Conveyances
E	Reputation of way as a highway Physical existence of a way	Commercial Maps, some Ordnance Survey Records
F	Reputation of way as a highway Physical existence of a way	Local repute, consultation responses

This system of categorisation has been devised by Officers with regard to the Planning Inspectorate Consistency Guidelines and “Rights of Way A Guide to Law and Practice” – Fourth Edition by John Riddall and John Trevelyan (Chapter 6).

- 9.3. As part of Wiltshire Council’s investigations, Officers have examined documentary evidence, including the provenance and purpose of the documents to draw conclusions regarding the claimed route. Please see list of historical evidence and conclusions attached at **Appendix 6**.
- 9.4. There is no category A evidence relating to this path. Inclosure Award evidence would normally be extremely reliable and weighty evidence relating to the existence of public rights, arising from an Act or Acts of Parliament, one of their main purposes being to record public rights of way and having the power to retain, amend and set out the network of public and private roads, bridleways and footways over the land to be inclosed. However, in this case the Whiteparish Inclosure Award dated 1805 does not cover the area in question and no conclusions can be drawn from this document.
- 9.5. The definitive map process following the National Parks and Access to the Countryside Act 1949, also arises from an Act of Parliament which required all

Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake review of this map. The Parish Councils surveyed and provided local information to Wiltshire County Council who then published draft and provisional maps before the definitive map. There was opportunity for objection to the inclusion / non-inclusion of a path; its provisionally recorded status and route. At the survey stage, Parish Councils were issued guidance on doing so from the Ministry of Town and Country Planning, produced by the Commons and Open Spaces and Footpaths Preservation Society with the Ramblers Association and the “presumption of regularity” applies, i.e. it is assumed that Parish Council’s followed the guidance in the preparation of their survey unless there is evidence to the contrary. In this case, Whiteparish Parish Council did not include the claimed route within the claim, however, they did include two paths leading north and north-west from Path no.6 Whiteparish, to junction with the claimed route - Footpaths 9 and 29. Interestingly the Surveying Authority then queried whether or not “Forkes Drove”, the claimed route, was a public right of way and if not, did path no’s 9 and 29 have any public use. The Parish Council replied:

“The drove you refer to as Forke’s Drove is not a public right-of-way and on reflection it is felt that Paths No’s 9 and 29 serve no useful purpose, and in any case are seldom used, and could be omitted.”

- 9.6. It was open to the Parish Council to add the claimed route if they considered it to be a public right of way, but they did not consider it so at the time the definitive map was produced and subsequently removed routes connecting with it, which is significant given their local knowledge of the route and any public use of it. In Mr Urquhart’s evidence (comments of West Dean Parish Councillor Christine Warry), Ms Warry observes: *“One wonders also, if The Drove has been so much used by walkers in recent years whether it was also used in earlier years and, if so, why was it not included in the Definitive Map*

when it was instituted in the late 1940s/early 1950s. But that of course is irrelevant to whether it should be added now.”

Neither is the claimed route recorded within the highway record as a highway maintainable at the public expense.

- 9.7. In category B evidence, the Whiteparish Tithe Award map does include the route by double broken lines, but there is no connection shown with what we now know to be public highway, Common Road. The route has a solid boundary which stops west of Common Road, but it is open to what is now Footpath 6 at its southern end. It was not the main purpose of the Tithe Award to record public highways and they must be viewed alongside other evidence.
- 9.8. Whilst the Finance Act would normally provide useful supporting evidence relating to public rights of way, in this case the map held at Wiltshire and Swindon History Centre appears to show the route uncoloured, but there are very few hereditament numbers on the map. Officers do not consider this to be the original version of the map and its provenance is unclear. There is no Finance Act map for this location available to be viewed at the National Records Office, therefore the details cannot be checked and no conclusions can be drawn from the plan. It is noted that the Ordnance Survey base map again shows no connection of the claimed route with Common Road, it stops west of its junction with Common Road.
- 9.9. The route is recorded on only one estate map, included within the deeds of Newton Farm 1797-1853, a legal Order of exchange of land authorised by the Inclosure Commissioners, dated 1853. The eastern ends of Clay Street and the claimed route are recorded at their junction with Common Road, coloured sienna as is the remainder of the public highway network. Whilst this map is suggestive of the claimed route having public rights, this is the only estate map which records The Drove and is not consistent with the sale particulars maps produced in 1856 and 1867, which record only Clay Street. The route is

clearly excluded from the 1801 “Map of the parish of Whiteparish showing lands of Alderstone and Brocks Moor Estates and Other Lands”, which records Clay Street and what is now Footpath no.6 Whiteparish.

- 9.10. Small scale and commercial maps based on original survey are category E evidence, but consistent recording of a route can show reputation as a highway. The route is not shown on the Andrews and Dury’s maps of Wiltshire of 1773 or 1810, whilst Clay Street further north is recorded and labelled “Clay Street”. The same is true of Greenwoods maps of Wiltshire dated 1820 and 1829, (although Clay Street is not labelled on the 1829 map which is drawn at a smaller scale). Cary’s map dated 1787 does not record the claimed route or Clay Street and the 1801 map records only the northern section of Clay Street, the 1823 and 1832 map sheets (18) do not extend far enough south to record the claimed route.
- 9.11. Ordnance Survey (OS) maps are also based original survey, with revisions, and are category E evidence, i.e. providing evidence of reputation of a public highway. However, the maps are topographical in nature and accurately record features visible to the surveyor at the time of survey, but are not necessarily indicative of public rights and a number of the maps contain the disclaimer “*N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.*” Officers have examined the 1872 6” map and the 1876, 1901 and 1926 editions of the 25” County Series map. The route is consistently shown on the maps by double solid lines, however, only the 1876 25” map shows any connection with Common Road at the western end of the route, although the short section between the enclosed route and Common Road, shown as a narrower route having a solid line to the north and a broken line to the south, appears associated with the house and gardens to the south of the claimed route, parcel number (302). There is a solid line between this section and the enclosed part of the claimed route. On this map the route is labelled 283 which is referred to as “*Road*” in the OS Book of Reference, however, the

“Road” has no connection with Common Road and the section of land adjoining the end of 283, i.e. between 283 and Common Road is recorded as 302 - *“Houses, garden, &c.”* and 252 – *“House and garden”*. Although the route is referred to as road, it may not be a public road and as we will see there is evidence that farmers drove animals along the way to the common and the Buildings, to be milked, although there is no rights of way disclaimer on this map. There is also a solid boundary between the southern end of the claimed route and what is now Footpath no.6 leading east-west. Only the 1872 6” map shows the route open to Footpath no.6. All OS maps record the two paths leading north and north-west from Path no.6 to junction with the claimed route, which are later removed from the Parish Claim by Whiteparish Parish Council, due to lack of use.

- 9.12. The applicant refers to the recording of The Drove in the *“Wiltshire Council Full Monument Report”* as Monument no. SU22SW460 – MWI17191 *“Medieval Settlement, Common Road”* and which refers to *“1967, The Wiltshire Archaeological and Natural History Magazine – Volume 62, pp.79-101...A settlement site, which except for one platform, the earthworks of which were ploughed out by 1967. 12th to 14th century coarse black pottery.”* The article referred to in the WANHS Magazine is by Christopher Taylor - *“Whiteparish A Study of the Development of A Forest-Edge Parish by C. C. Taylor”*

“The work has involved the study of many of the usual national and local records pertaining to the parish and it has been accompanied by a detailed examination on the ground. Every building and almost every field has been visited over a period of three years.”

- 9.13. The scheduled monument above is referred to in the article as part of the medieval expansion of the village, *“Finally there is a little archaeological evidence for yet another settlement. Almost halfway between the village and*

the Goldens Farm settlement, the wedge of wood along the road bulges out to the west, down the valley side. Just outside the wood there was formerly a series of disturbed earthworks. These have now been destroyed by ploughing, apart from one roughly rectangular platform, but quantities of coarse black pottery dating from the 12th and 13th centuries can be picked up from the site. All this indicates that here too there was a small medieval settlement, probably only a single farmstead.”

9.14. The study goes on to consider the expansion of the parish in the 17th, 18th, 19th and 20th centuries, including the making of new and enclosed fields in the forest and the spread of houses south of the village onto the common land, however, this evidence and The Drove having scheduled monument status, (certainly much is made of The Drove as a scheduled monument in the planning application replies, please see paragraphs 10.39. – 10.43.), do not provide additional evidence of public rights over the claimed route.

9.15. The applicant also provides an extract from “*Roads and Tracks of Britain*” by Christopher Taylor, 1979, which refers to tracks and hollow ways between the fields created from the woodland during the mid 13th to mid 14th centuries, which might in fact be much older than the field system itself, citing the parish of Whiteparish as an example:

“Much of this assarting took place between the twelfth and fourteenth centuries when tens of thousands of acres of woodlands were turned into farmland. In the village of Whiteparish, Wiltshire, for example which lay on the edge of the Royal Forest of Melchet, we have records of fields being created from woodland from the mid thirteenth century to the mid fourteenth century. In just one year, 1330, we know that nearly 75 acres of land were cleared; we can actually identify some of the fields formed at that time and pass between them along narrow, deeply hollowed lanes which would seem to be contemporary... Yet again we run up against the old problem of the date of such tracks, for we cannot assume that they are the same date as the fields

through which they pass. They could be much older tracks which were incorporated into the later field system and reused for a new purpose. Certainly at Whiteparish some of the old roads through the forest fields can be proved to be older than the fields themselves. One, which gives access to some fields made in 1255, was certainly there nearly 200 years before when the area was still wooded for it leads to a farm which was in existence in 1086. Another, which passes through some of the 1330 fields, appears to have been in existence even earlier, perhaps by 968 at the latest.” The claimed route is shown on the map provided with this extract, “*Fig.74 Medieval forest tracks, Whiteparish, Wiltshire*” as a “Track and hollow way” by double broken lines, “Existing Roads” are recorded by double bold solid lines (the first section of the claimed route from Common Road appears in this manner). This does not necessarily suggest a public route, it can be seen on the map that there are cul-de-sac routes which do not continue to meet another highway and serve to access the fields.

- 9.16. Overall, Officers consider that there is insufficient documentary evidence to support public rights on foot, or by any other means, over the claimed route. There is no category A evidence and the Parish Council in the survey of public rights of way, denied that the route had public rights in the preparation of the definitive map. The route is recorded only on the Tithe Award map, one estate map and Ordnance Survey mapping, (the Finance Act map is not reliable in this case), the majority of this mapping records no junction between Common Road and the claimed route at its eastern end. It was not the main purpose of the tithe maps to record highways and the OS mapping is topographical in nature and gives no indication of public rights.
- 9.17. It is noted that the eastern section of the claimed route leads over an area of Whiteparish Common, to the west of Common Road between the claimed route, Clay Street and opposite Croft Heights. It is perhaps possible that the claimed route was used to drive animals between the fields in the south of the

parish to the common grazing lands, by those who had grazing rights and hence the route is known as “The Drove” or “Forkes Drove”. Commons were not open to the public at large until the Commons Act 2006, which made all common land “access land” having a right for the wider public on foot. This theory would tie in somewhat with the comments of some of those giving witness evidence, for example Mrs Woodruffe claims that the route was used to drive cows to milking parlour on Common Road until 2000; Mr Woodruffe highlights the research by Christopher Taylor which confirms that the route allowed villagers and animals access to common grazing; B Kennard recalls that The Drove was full of cow pats and Mr Andrews the farmer used it as useful passage to other fields; S & J Karmy state that it used by the Andrews’ to take cattle food in a wheelbarrow to animals grazing on fields next to Hop Gardens and C Woodruffe confirms that cattle were herded along it. This is also supported by representations made in respect of the recent planning applications for development alongside The Drove. A resident of Clay Street confirms that the Drove was occasionally used to take the cattle out and Mr B Woodruffe refers to the “...*medieval passageway between cultivated fields to allow animals to reach the common grazing lands of the New Forest...though not in permanent farming use today, the drove could readily serve future agricultural purposes (in use by dairy cattle well into the 1990’s)...*”; J Smith recognises the “*historic and agricultural importance*” of The Drove and others refer to the medieval trackway between fields formed by medieval assarting (converting forest to arable use). Although the landowner Mrs Cook confirms that cattle were taken for milking to The Buildings on the opposite side of Common Road, she gives an alternative route for this, via the gate off Cooks Field at the bottom of Clay Street or from the top gate in Cottage Field, (please see plan at paragraph 10.7. which includes field names). Overall, the agricultural use of the claimed route, does not support public use of the way in the absence of other historical evidence.

9.18. Whilst there is insufficient historical evidence to support public rights over the claimed route, that is not to say that the route has not acquired a public right through public user of 20 years or more and it is now necessary to consider the user evidence in relation to the path.

10. User Evidence

10.1. The application includes 27 completed witness evidence forms in support of the application to add a footpath. 3 additional witnesses have also provided evidence in response to the initial consultation regarding the application. A summary of the user evidence is attached at **Appendix 7** and user evidence chart at **Appendix 8**.

10.2. Section 31(1) of the Highways Act 1980 deals with the dedication of a way as a highway, presumed where a way over land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. 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.

Bringing into question

10.3. In order to establish a 20 year public user period, there must be a date upon which use of the path by the public was brought into question. In the case of R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA and R (on the application of Drain) (Appellant) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question as contained in Fairey v Southampton County Council [1956] and quotes him as follows:

"I think that in order for the right of the public to have been "brought into question", the landowner must challenge it by some means sufficient to bring

it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of the Attorney General against the landowner in the courts claiming that there is a public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in some way makes it clear to the public that he is challenging their right to use the way."

10.4. In Godmanchester, Lord Hoffman says of Denning L J's interpretation:

"As a statement of what amounts to bringing the right into question, it has always been treated as authoritative and was applied by the inspectors and the Court of Appeal in these cases."

10.5. In the Whiteparish case the witnesses/objectors refer to 4 events which may have brought use of the way into question, (please see bringing into question evidence summary at **Appendix 9**):

- i) Closed Board fencing at point Y – 2020
- ii) Post and rail fencing and hedging - 2020.
- iii) 3 strand barbed wire fence with piping at point X- 2003
- iv) 2 strand barbed wire fencing prior to 2003 at point X - (since 1980's)

10.6. It is the Officers' understanding that the Drove has been subject to 4 recent planning applications, (2 successful), resulting in the condition of The Drove which we see today:

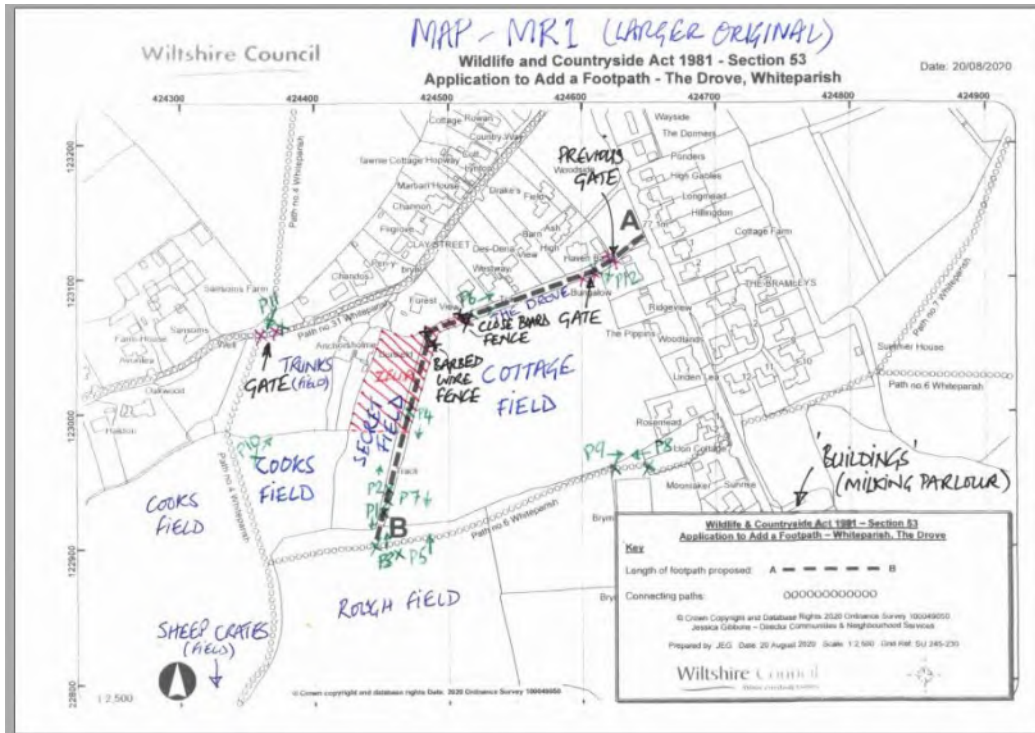
18/06027/FUL – Forest View and Land adjacent, Clay Street, Whiteparish
Erection of one new dwelling and conversion of existing dwelling to
accommodate rooms in roof and addition of garage
Refused 29/08/18

18/08737/FUL – Land south of Forest View, Clay Street, Whiteparish
Erection of two dwellings
Refused 27/11/18 – Allowed on appeal 20/08/19

18/08738/FUL – Forest View, Clay Street, Whiteparish
Retention of existing bungalow known as Forest View and additional dwelling
on Land at Forest View including parking spaces
Refused 27/11/18 – Refused at appeal 24/09/19

20/04331/FUL – Plot 3, land off Forest View, Clay Street, Whiteparish
Erection of single storey dwelling
Approved with conditions 23/10/2020

- 10.7. The objectors submit Map MR1, which is a useful location map, providing information on the areas of land ownership and also field names and locations (the claimed route runs between Secret Field and Cottage Field (south section) and between Cottage Field and the rear of properties facing Clay Street (east section)):



Close board fencing and post and rail fencing with hedging 2020

10.8. Zelda Investments who now own the northern section of Secret Field, (highlighted red above and purchased from the Cook family in 2019), confirm that they erected close board fencing at point Y on the application plan, following the sale of Forest View in March 2020 to replace the previous barbed wire fence at point X. 15 witnesses refer to this more recent fencing of the path, one additional witness refers to the plots for the new houses blocking the path which appears to be an indirect reference to the fencing. The witnesses suggest that close board 6ft high fencing, which extends the whole width of the path and prevents access, was erected in Jan/Feb 2020; early 2020; June 2020; 2020; April 2020; May 2020. 6 witnesses refer to a second fence which appears to be an open/post and rail fence, with shrubs/hedging. There is some evidence that this second fence came later, May/June 2020; June 2020; April 2020. Witness 4 suggests that this second fence is passable with some difficulty; witnesses 22 and 23 do not consider that the fences prevent use and Mr D Stiles suggests that it is possible to just

walk around the more recent fence by Forest View. However, Ms S Delamore recalls that the developers' contractors placed the large fence blocking off The Drove after they had purchased their property and they were told that it was to *“purposefully block off the drove in preparation for the planning application and a way for the developer to claim the land and remove the drove from any plans.”* Having inspected the site in 2021 Officers are satisfied that the erection of this fencing has had the effect of blocking the full width of the Drove since March 2020, an event which would bring public use of the way into question, however, in this case there is possibly an event which would bring public use of the path into question at an earlier date.

Barbed wire fencing with piping - 2003:

10.9. Within the user evidence forms, 14 witnesses make reference to a barbed wire fence, which from the evidence appears to have been located at point X on the application consultation plan, (see **Appendix 2**), where the claimed route changes direction and appears to have been erected across the full width of the path. 9 users refer to this fence being covered with plastic pipe / foam / shrouded to allow access by the public. There are 3 references to a single strand of barbed wire and one reference to 2 strands of barbed wire at this location. There is only one reference to the manner in which path users crossed the fence, witness no.2 explains that the protective plastic tubing allowed access between the top two strands of wire. This may not have been accessible to all parties, the Objectors make reference to the age of the witnesses and/or their ability to climb the barbed wire fence. Ms De Graffham explains that she has not been able to walk the path due to it being blocked by rusty barbed wire and thick brambles near the turn and Witness no.7 states that the wire fence obstructed the Drove. 10 witnesses on the other hand confirm that the padding/protection allowed access and did not prevent them from using the way. Two of the witnesses suggest that the purpose of the fence was to prevent livestock/horses escaping the field. 4 witnesses give

dates for the presence of the fence of 2002-19; 12 years ago; 1995-2019 and 1999-2019.



The applicant includes a photograph of the fence as part of the application, showing a 3 strand barbed wire fence (looking east): “4. Fencing to prevent horses escaping along the Drove 2018” (objectors dispute the date of this photograph as being earlier than 2018 in date).



Mr J Hall also provides a photograph of the fence in August 2018, from the other side (looking west). In both photographs a trodden path appears to be shown on the eastern section of the claimed route towards Common Road).

10.10. Witnesses were then asked to provide further detail of how they had crossed the 3 strand barbed wire fence previously located across the path, which appeared to have been in place since around 2003 according to the Objectors, (which ties in with the dates gates given by witnesses):
Mr D Wise confirms – *“I didn’t cross the wire fence but went around it.”*

Mr E Klapp – *“The wire gate was at the rear of the new bungalow. The horse owner put the fence up to stop horses escaping. So people can get over she put padding on it and you could get through the wire too. You could unhook all 3 strands like a Hampshire gate and get through fully. This was necessary as I drive my tractor through there. The gate has not been there for some time.”*

Pat Hudson – *“I don’t ever recall a three strand barbed wire fence at X. In the time I remember there was one strand of barbed wire around which someone had kindly fixed some plastic piping making it easy to step over.”*

John Hall – *“At the point of crossing, the barbed wire strands were encased in flexible plastic tubing to allow easy access in passing between the top two wires. As far as I am aware, the only reason the fencing existed was to prevent the horses in the field from escaping.”*

Darren Stiles – *“I do vaguely remember a barb wire fence, it was in a very poor state and even had tape/insulation around the barb. It was in such a poor state I simply stepped over the top of it!”*

Pat and Brian Woodruffe – *“Protection was placed along the three strands of barbed wire both providing ease of access and implying that use was anticipated.”*

S Delamore – *“...the X on the map is behind my house there is no barbed wire fence behind my house on the drove. The only fence is the fence the developer has put up recently. Below is a picture taken standing on the drove behind my house (my shed is on the right). You can see from this picture you can get straight down and turn left slightly after the trees which takes you straight down the drove.”*

“There was no barbed wire fence behind forest view blocking the drove, if there was a barbed wire fence it definitely wasn’t in this location.

We had moved in prior to when he had erected the large wooden fence and it definitely did not replace any barbed wire. The picture below was taken before he erected the wooden fence and no barbed wire fence was in this location.”



Photograph provided by S Delamore, taken prior to the close board fencing now located at Y. Officers believe that the barbed wire fencing was previously located at the turn of the path, which is just out of sight in this photograph (point X).

C Carpenter – *“I’m talking about going back to school days when I can last remember wandering playing and wandering in the area and I’m now in my seventies, so sorry, I can’t really help you.”* – Mr Carpenter confirms in his witness evidence that he had not used the route, but would like to see The Drove preserved as a right of way.

Mr and Mrs Karmy – *“There was some sort of plastic bits or cloth covering the top of the barbed wire, so that one could push the strands down and climb over it”.*

10.11. Mr E Klapp suggests that it was possible to remove the wire strands and replace them to open up the route for him to be able to use his tractor on the route, however, there is no other evidence from the landowner or other witnesses to support this. Additionally, it may have prevented use of the route by the general public if they were not immediately aware, when faced with the

3 strand barbed wire fence, that this was a “Wiltshire gate” which they could open to gain access.

10.12. The Objectors also make reference to the fence. Zelda Investments Ltd, (landowner), confirm that their land is fenced at both ends and that the barbed wire fence was replaced with closed board fencing in March 2020, which accords with the date that witnesses recall the wire fence being removed. Mark Richards on behalf of Zelda’s recalls that this was a three strand barbed wire fence, (which accords with the photograph above) and which ran in a south-easterly direction to the Cottage Field boundary and formed the north-east corner of Secret Field and “*has at all times been impassable*”. Zelda’s purchased the northern half of Secret Field and a section of the Drove from the barbed wire fence in November 2019. Mr Richards states:

“With regards to the alleged use of The Drove and Secret Field, not only have I never seen or heard of anyone walking along here outside of the instance mentioned, but it seems impossible to me that someone could do this apart from at the time that we were clearing the undergrowth and replacing the barbed wire fence with the relocated close board fence. In order to do so, someone would need to have walked down The Drove which is overgrown to the point of being impassable (and now blocked by close board fence), climbed over a three-strand barbed wire fence to enter Secret Field, navigated through the horses and then somehow exited at the other end through another overgrown and fenced boundary.”

“After the Westways boundary with Forest View to the west the overgrown scrub continued for 10m up to a 3 strand barbed wire livestock fence running between an ash tree (which itself was impossible to get to) and another ash tree in the hedge line to the field to the east (known as Cottage Field). This barbed wire fence formed part of the field boundary and prevented horses in Secret Field from escaping...”

In purchasing the property, "...Note in the handover period we inadvertently breached the three strand barbed wire fence before putting up the replacement and Mrs Cook had a phone call to say a horse was out 2 hours later.

There has never been any other breach in any stock fence to Secret Field in the time we owned first Forest View and then Secret Field – as is clear, any breach would be immediately apparent with livestock escaping.

At the time of purchase of Secret Field there was plastic tubing on the 3 strand barbed wire fence in the north-east corner as shown in one of the pictures from Mrs Woodruffe. I would add that this photographs [sic] is probably much older as in our ownership you could not get close to the fence from the north east (Forest View) side due to undergrowth..."

"We sold Forest View in March 2020 – with the sale we extinguished the rights of Forest View to access the Drove and erected a close board fence the width of the Drove and removed the barbed wire fence. Note the remains of the barbed wire fence are still on the Cottage Field side of Secret Field with posts and strands intact and wires embedded in an ash tree."

10.13. The previous owner of this section of The Drove and current owner of The Drove and land to the east, west and south of that owned by Zelda's, Mrs S Cook, makes reference to the fact that she obstructed the way with a barbed wire fence in 2003. The family of Mrs Cook have owned Cottage Farm since 1929, previously farming cattle on the whole of the farm and Mrs Cook and her husband have owned the farm since 2003, at which date they purchased a horse for their daughter. From 2003 to 2019 approximately 10 horses were kept on the farm on a field rotation, including Secret Field, (these dates concur with the 3 strand barbed wire fencing being erected):

"...The southern half of Secret Field continues to be owned by myself. Since 2003, the northern boundary of Secret Field has been marked with a three-

strand barbed wire fence (the Fence). The fence was installed by myself and my father and replaced a two-strand barbed wire fence which local children had been climbing over to ride their bicycles. This behaviour ceased as soon as the Fence was installed as it is difficult and dangerous to now pass over the Fence. No breaks (including styles and gates) have ever existed in the Fence. The Fence was maintained by my family until we sold the northern half of Secret Field to Zelda in 2019. Since then and to the best of my knowledge, Zelda has continued to maintain the Fence in a like condition until it was replaced by a nearby close board fence in March 2020.”

“...during the period when my family kept cattle on Cottage Farm up until 2003, I never saw or heard of any incidents of unauthorised third parties walking on the Drove, apart from a group of children who for a short period in 2003 climbed over the fence into Secret Field to ride bicycles, which led us to install the three-strand barbed wire fence and immediately stopped this behaviour...”

Mrs Cook refers to it being *“...difficult and dangerous for individuals to pass over the Fence...an impassable three-strand barbed wire fence which leads into a field which has on a near constant basis been occupied by a number of cows and/or horses...”*

“The barbed wire stock fence at the top of Secret Field was improved with 3 strands of barbwire, as local lads persisted in getting through and using Secret Field for bike jumps. With 3 strands this stopped the bikes, we previously only had 2 strands which is usual for a stock fence.”

“Regarding the fence at the top of Secret Field, there is no need for anything other than absolute clarity on this and it is shown in photographs. After the last property with access rights, Forest View, there has always been a barbed wire stock fence. If there wasn't one then cows would have gone through the

overgrown brambles and appeared on Common Road which they never did. Even if unpassable to a human, a cow would get through if there wasn't a stock fence.

This barbed wire stock fence was upgraded in 2003 as a result of kids climbing through it/over it to make ramps in Secret Field. Playing in the track part next to residents back gardens who have rights is one thing (and it is hard to identify a child with rights nor would my parents or I have wished to) but anyone climbing a fence into a field with livestock in is totally different as it affects our livelihood and we are implicated in the liability of those people. The three stranded barbed wire fence is shown in pictures in the application – it is not one stranded, neither is it two, it is three stranded. The remains of the three strand barbed wire fence in Secret Field after Zelda Investments Ltd replaced it are still attached to the ash tree on the turn where the path becomes an open field. For clarity 4ft of fence is the norm to have above the ground and this is the case for the posts to Secret Field (and some are still up against the ash tree) – so in pictures supplied by witnesses you can scale the overgrowth behind to see how small you would have to be to get through... This fence was continuous and without break. No stiles. No gates.”

“Photograph 4 – clearly shows 3 strand barbed wire fence with padding put on by someone to try and make it easier to trespass. Even with the tubing on the wires I do not know Mrs Woodruffe’s age but climbing over or through the barbed wire on her annual visit would likely be rather difficult for her even with one person holding the wires apart as much as possible for her to get through and the other holding her hand for stability...Note the dense undergrowth behind the fence for which you would immediately have to crouch. For information the fence posts are 4ft tall out of the ground, they are still on site wrapped against the ash tree they were anchored to.”

10.14. The witnesses suggest that the barbed wire fence was erected for the purposes of keeping stock in the field, however, they suggest that the

padding/piping was added to allow walkers access. Mrs Cook denies this and confirms *“We did not put any protection on the wires as that would be defeating the purpose of a stock fence as we need the barbs to deter the livestock – whoever put the plastic on there has done so without our permission and it is deeply annoying and once again trespassing.”*

10.15. Mrs Cook also provides further evidence regarding the tubing in place on the three strand barbed wire fence, via Zelda Investments:

“Sheila has to speak to all the family...to see who did what as her father, husband and children all work/worked the farm at various points.

There have been 3 coverings to the 3 strand fence – the first was plastic bags which Alan removed; the second was what looked like green tree guards which Alan also removed; the last was a blue plastic tube which was still there when I replaced the fence with the close board one.

Timings are vague and no-one took a picture, sorry – there is certainly an element of fatigue in how much they chose to actively deter people, same as telling people (children mostly) not to climb over the gates to pick blackberries in the bigger field towards Common Road. Having to upgrade the two strand fence in the first place was annoying enough but categorically at no point did they ever do anything other than try to stop people from entering the field, it had a number of horses in it almost all of the time (only not in it if they were in a neighbouring field to give the grass a rest).

You will remember from the testaments that Alan (Sheila’s husband) finds it easiest to be the most vocal to people – it was/is also him who has to fix the fences.

Perhaps also to note is that when they did their rounds of the fields or tended to livestock they themselves (or people from the stables tending to horses) never used the back garden path from Common Road as it was not an access path, so when anyone entered the field they did so at the working break half way down to the west side of the field...which is about as far away as possible from where the 3 strand fence is...”

10.16. Certainly, Mrs Cooks evidence regarding the fence is helpful, the fence appears to have been in place from 2003 until its replacement for the new development with the close board fencing in March 2020. The witnesses have differing recollection of the type of fence, i.e. the number of strands, however, Mrs Cook who erected the fence with her father in 2003, makes reference to 3 strands of barbed wire and this is supported in evidence by the photographs submitted by Mrs Woodruffe and Mr Hall above and the remains of the fence on site, the posts being 4ft above ground. As the landowner at that time, Mrs Cook denies that she placed the protection on the fencing to allow access, it may have appeared to users that the landowner was allowing access by the provision of the protection, however, Mrs Cook and her family confirm that on two occasions which they recall, the protection/piping was removed by them and it was done without the landowner's permission.

10.17. The user evidence also suggests that use of the path increases slightly after 2003 and the installation of the fence, to 24 users between 2003 and 2020, (19 users in the period 1983 – 2003), it would appear that the erection of the three strand fencing did little to deter users. However, Mrs Cook confirms that the previous 2 strand fence was upgraded to 3 strand in 2003 where children had crossed the fence into Secret Field to ride their bikes and that the upgrading of the fence cured this problem, suggesting the opposite of increased use. Users suggest that the fence was to keep the livestock in the secret field, however, Mrs Cook gives evidence that the reason for the three-wire strand fence was to replace an earlier two strand fence which had been breached by children with bicycles to enter Secret Field. They erected the new fence to keep people out and it resolved the issue of the children with bicycles entering the field.

10.18. Considering the nature of the fence, it seems that any person encountering a 3 strand barbed wire fence, even with protection over the wires, (although there do appear to be at least two periods when the landowners removed the

protection, even if the fence appeared without the piping for a very short time), might reasonably consider that they were not permitted to go any further along the route and therefore their right to use the path is brought into question by the erection of this fence in 2003. It also raises the issue of user “as of right” (i.e. without force), which is addressed later in this report. In the decision regarding “The Wiltshire Council (Parish of Urchfont) Path no.51 Definitive Map and Statement Modification Order 2015”, which was the subject of a public inquiry dated 24th – 26th April 2019, the Inspector appointed on behalf of the Secretary of State, considers the addition of a public footpath over land partly occupied by a School, which included a gate on the path with a bolt placed at such a height to prevent children escaping from the school grounds, that was accessible to some, i.e. those who could reach it, but not all. The Inspector thus concluded that: *“However, in the dedication of a right of way there cannot be a dedication limited to a certain group of people.”* And *“In my view, given that some use would have been prevented such as to give rise to a limited dedication, the statutory dedication of a public right of way must fail.”* If this principle is applied to the Whiteparish case, the erection of the fence in 2003, where it prevents use by some users, but not all, as evidenced by Ms De Graffham who was prevented from using the southern section of the route beyond the fence, the dedication of a public right of way is not possible after the erection of the fence.

2 strand barbed wire fence

10.19. There is also the question of whether a previous fence at point X, (see application consultation plan at **Appendix 2**), brings use by the public into question. There is very little evidence of the nature of the previous fence, Mrs Cook suggests two strands of barbed wire, however, path users give no evidence regarding how they crossed this fence and no pictures or further details are provided. Mr and Mrs J Harrison and Mr N Harrison suggest that there was only a thin hedge at this point prior to the 3 strand barbed wire

fence in 2003. Only Mrs Hudson suggests, in her use since 1984, that there has always been a wire fence across the path to keep the horses in, which suggests a fence existing here prior to the 2003 wire fence.

10.20. Witnesses were asked to further clarify if there was a fence present at point X, before 2003 and if so the details of the fence and how they crossed it. Of particular relevance here are the replies from those witnesses whose use ceased before 2003, as they are unlikely to have confused a pre-2003 fence with the new barbed wire fence erected in 2003, none of these witnesses refer to a fence being present before 2003:

C Bicknell – use ceased 1990 - no stiles, gates, other barriers

B Kennard – use ceased 1987 – *“possible small stile in hedge not far from our back gate as on a few occasions we entered the top field alongside The Drove to pick blackberries but I cannot remember its actual location or if there was one, we may have entered the field via the large gate to the top cow field”* - (stile or gate on south side of The Drove to access the adjacent field – no mention of fence across the width of The Drove).

“I believe also a gate at the bottom end of The Drove where it joined the bottom cow field” (at southern end).

N Harrison – use ceased 2000 – No stiles, no gates, hedge at X but did not prevent use.

C Woodruffe – use ceased 1995 when moved away (now only occasional use whilst visiting since 1995) – No gates or stiles – *“possibly a strand of wire occasionally put across at SU2444 2292 to deter the livestock from wandering up the drove at point B”* (not point X).

L Harrison – use ceased 2001 - no gates, no stiles, no barriers.

10.21. Other witnesses whose use continued after 2003 provided the following details:

Pat and Brian Woodruffe – *“There was no fence prior to 2003. It was put in when the field was grazed by horses, after Lenard and Marjorie Andrews ceased to actively manage the land.”*

Darren Stiles – Does not recall pre-2003 fence.

John Hall – *“As we only moved to the village in 2007 I can’t comment personally on any previous fencing apart from saying that various more established residents including some since departed have told me that the drove has been walkable over many years.”*

Pat Hudson – *“I don’t ever recall a three strand barbed wire fence at X. In the time I remember there was one strand of barbed wire around which someone had kindly fixed some plastic piping making it easy to step over.”*

Elvin Klapp – *“Not sure.”*

David Wise – *“I don’t recall a previous fence.”*

Mr and Mrs Karmy – *“We don’t remember any sort of fence in the early years prior to 2003, but in later years someone put in some sort of fence because of fears that horses might otherwise get through the natural barriers and escape.”* (This may be a reference to the 2003 fence where it is understood that horses were kept on the land from around 2003).

“We think that one could push through the fences and hedges at the point which you describe, to obtain access. Or you could turn and follow the Drove itself, but that became heavily obstructed by bushes and brambles in later years. It is difficult to date when this happened.”

10.22. The Objectors make reference to a two strand barbed wire fence present at this location, which Mrs Cook replaced when children with bicycles managed to enter the field. Mrs Cook provides the following information regarding the previous fence, via the current landowner:

*“Sheila (Mrs S Cooke) spoke to her father over the weekend.
He had cows in the field from the early 80’s to 2003.
Before that Sheila’s uncle had cows in the field.”*

The 2 strand fence was categorically there as otherwise the cows would have ended up on Common Road and needless to say no farmer wants cows out – on the contrary the fence would have been checked at least 3 times a week for its integrity.

There wasn't any piping on the two strand fence, no-one was climbing through, no dog no adult no child, to be hassled by curious cows!

I wish we had an old picture as I know that would help you – to them its blindingly obvious (and the whole thing is annoying), cows in the field with 2 strand fence, then when cows are removed 2003 then kids climb through, so they upgrade the fence to 3 strand.”

10.23. There are no dates for this earlier fence, however, Mrs P Hudson whose use of the path begins in 1984, suggests that there has always been a wire fence, so perhaps this earliest recollection can be used as the date in the “early 1980's” that we know this fence existed which could be the earliest date at which public use of the path is brought into question, although it appears that users may have continued to use the route even if the fence was in place, but this may not be user as of right. Overall, it is considered that there is insufficient evidence of a 2 strand wire fence across the width of the path, prior to the 2003 fence.

Additional comments regarding brining into question

10.24. There is the suggestion of a gate set back from the entrance of the Drove off Common Road. Mrs Cook states: *“There was a gate at the entrance to our part of The Drove from Common Road, the hinges of which were visible in situ until the fence to Cottage Farm was redone in October 2020.”*

“My family has never owned and I do not own the first 30 metres of The Drove from Common Road (my understanding is that his section of The Drove is unregistered and owned by Mr Urquhart, but that we have a right of access

over it)...the boundary between my family's section of The Drove and Mr Urquhart's was until around 1990 marked by a gate, but this was removed when our machinery became wider than the gate. My family have never maintained or cut back any part of the Drove beyond the gate at Cottage Field. As a result, The Drove has generally been overgrown for as long as I can remember and at times sections of The Drove have been completely impassable..."

10.25. This gate is also mentioned by Mr and Mrs Woodruffe and Mr and Mrs Karmy state: *"There used to be a rusty old gate at the entrance to the Drove, used by the Andrews who farmed adjacent fields which they owned, but they always left this open, and over time it almost faded into the hedge/brambles!"* It would appear that this gate was always open and did not prevent use of the way and was eventually removed by Mrs Cook and her family in 2020.

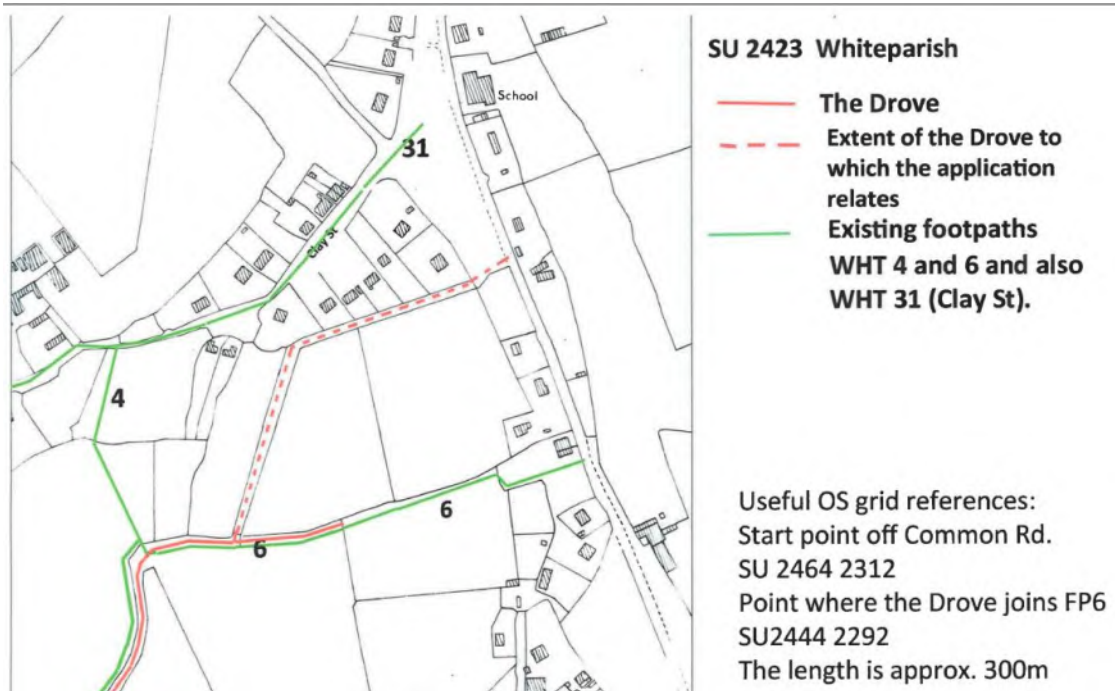
10.26. Access from The Drove onto Footpath no.6, (southern end of The Drove point B), was not possible due to overgrowth when Officers viewed the claimed route in 2021 and Mrs Cook states: *"Even more obviously incorrect is that the dotted line is suggested to exit Secret Field to the south to join up with footpath 6. But there is no break in the fencing or hedging where it is requested, so if someone vaguely suggests they have been walking through to join up with footpath 6 then I have no idea where they have been doing it. Wishful thinking perhaps as not a single person explicitly says how they get in or out of Secret Field to the south."*

10.27. Mr Stiles and Mr C Woodruffe mention barbed wire at point B and Mrs Kennard mentions a gate at this location. However, there is no additional evidence of a fence or gate at this location. Officers have inspected the route and found point B to be impassable due to overgrowth of the hedge, it is not possible to view if there was a fence within, however, it appears to have been in that condition for some time. Only the OS 6" map dated 1885 records a

gap at the southern end of the claimed route, the 25" 1876 map appears to show a hedge across the southern end and the 1901 and 1926 25" maps record a solid boundary at the southern end of the path. It is not possible to claim a cul-de-sac footpath, by which the public would return on the same path, where there is no place of popular resort at the end of the path which the public would legitimately wish to reach, such as a view. There is no evidence of such a place of popular resort located at the southern end of the claimed path. The applicant confirms in the application itself: "*Securing the Drove as a public footpath would offer both improved short walks and also longer walks over and beyond the A36, linking footpaths at Earldoms and hence to Langley Wood National Nature Reserve. It is recognised that, to link the Drove to WHIT6 would require some clearance of vegetation.*" and Mr B Woodruffe confirms on the map included with his evidence form, that at the southern end of the route: "*Link to FP6 through hedge required*".

10.28. It is noted that as part of the witness evidence form, witnesses have been provided with a pre-drawn map including the application route (The Drove), rather than a blank map upon which to individually record the route which they have used, however, all but one of the maps are signed to confirm that the map correctly records the used route, as clarified by P Hudson on her map, "*This is the path I have walked for over 30 years*". 17 witnesses have added their own annotations to this map to indicate features such as fences / gates. The claimed route is shown on this plan connecting with Footpath no.6 and additionally witnesses provide a written description of the used route, (independently of each other). 21 witnesses confirm that the route junctions with Footpath no.6 and all but one of the witnesses confirm that the route has always followed the same course (including 2 witnesses who confirm that the route followed the same course until its recent obstruction by the close board fencing). Mrs P Woodruffe confirms that the path "*...bifurcates where it meets Whit 6...*", but confirms its junction with the footpath, Mr B Woodruffe, however, states that the southern end of the Drove is located "*North of FP6*"

and two other witnesses, Mr and Mrs Karmy confirm that the claimed route ends were it “...joins the rest of The Drove at SU 2444 2292”. The application map appears to show a section of The Drove in red, leading east-west for a short section located to the north and parallel with Footpath no.6, however, this section is not claimed as part of this application and the majority of users confirm a connection with Footpath no.6, please see application plan below:



The Salisbury and Wilton Definitive Map dated 1953 records Footpath no.6 as a thick purple line, it is very likely that the claimed route joins the footpath within the scope of the purple line, giving connection to another public highway at the southern end of the claimed route, (the recorded width of Footpath no.6 being 1.2m)

10.29. Overall, it has not been demonstrated that a fence or gate obstructed the way at point B in order to bring the route into question earlier than the 2003 fence, during the relevant 20 year user period.

Bringing into question:

Evidence of an event bringing public use into question is contradictory and mixed, despite the landowners' contention that there was a fence present since the 1980's, only one of the witnesses confirms a fence in place for the whole of her user period since the 1984, despite 13 witnesses claiming to have used the path since 1985 at least. Officers therefore can only conclude that the 3 strand barbed wire fence erected by the landowner in 2003, for which there is photographic evidence from two separate witnesses, is the confirmed event bringing public use into question.

Although there are mixed views on the reasons for the erection of this fence, the landowner confirms it was erected to prevent public access after children had entered the field to ride their bikes in 2003, whilst users consider that it was erected to keep livestock in the field, the date of the fencing concurs with Mr and Mrs Cook taking over the farm and the keeping of horses, (as opposed to cattle), on the land in the same year.

The evidence relating to the piping is also mixed and whilst some witnesses refer to this as inviting use of the path, the landowner confirms that they did take steps to remove the piping on 2 occasions, but it was replaced three times, the last coverings still being present when the current landowner relaced the fence in 2020.

Officers consider that this fence did bring public use of the way into question, it would have been more difficult to use the way and it prevented some users from continuing on the claimed route. In the dedication of a right of way there cannot be dedication limited to a certain group of people.

Evidence of a 2 strand barbed wire fence at the same location as an earlier event bringing public use into question is less clear.

Twenty Years Public User

10.30. Given the above conclusions regarding the date of bringing into question, the relevant user evidence period is 1983-2003. 19 witnesses claim to have used the path during this period, 5 of them for the whole of this period.

10.31. There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence, i.e. its honesty, accuracy, credibility and consistency are of much greater important than the number of witnesses. In R (Lewis) v Redcar and Cleveland Borough Council UKSC 11 (03 March 2010), a Town/Village Green case, Lord Walker refers to Mr Laurence QC, who:

“...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...”

Lord Walker goes on the quote Lindley L J in the case of Hollins v Verney [1884] giving the judgment of the Court of Appeal:

“...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance to it is intended.”

10.32. The frequency of user is also an important factor, please see chart below, those witnesses whose evidence is greyed out have not used the route within the relevant timescale of 1983 – 2003, (also witnesses who admit to having a private right over the central section of the route behind their properties, are shown highlighted yellow):

User	Frequency	User	Frequency
1	Once per yr (sometimes more)	16	Frequently / daily
2	More than monthly	17	Daily / weekly as children Only occasional now moved away
3	Every few months	18	Once per month
4	10-20 times per yr	19	Occasionally / intermittent
5	Several times per yr	20	Once
6	Every 4 – 6 weeks	21	Weekly
7	Infrequently (every few months)	22	Twice per week
8	Monthly?	23	Once a month
9	Most days	24	Once / twice per month
10	Weekly	25	Occasionally
11	3-4 times per yr	26	Weekly
12	Average 6 times per yr	27	Weekly
13	2 weekly on average	D Stiles	On and off for nearly 30 years Near daily in past 2 yrs
14	Weekly	S De Graffham	N/A
15	N/A	S Delamore	N/A

Frequency (Users 1983 – 2003)	No of users (individual witnesses in brackets)
Daily	2 (17 as children, D stiles (only in last 2 years))
Most days	1 (9)
Twice weekly	1 (22)
Weekly	4 (10, 14, 17, 26)
Once / twice per month	4 (8, 18, 23, 24)
10-20 times per year	1 (4)
6 times per year	1 (12)
3 - 4 times per year	2 (3, 11)
Several times per year	1 (5)
Once per year	1 (1)
Occasionally / on and off	4 (17 post moving away 1995, 19, 25, D Stiles)

10.33. The frequency of use is not necessarily, at first glance, sufficient to bring to the attention of the landowners that a right is being exercised against them, in order for them to resist if they so wished. Of the daily use, one of those is within only the last 2 years which is not the relevant user period and the other daily user moved away in 1995, the most frequent use being weekly and once/twice a month and occasionally. However, in addition to their own use, 18 of these witnesses claim to have seen others using the path, in various manners including walking; dog walking; children / groups of children playing; families; friends; runners; ramblers / groups of ramblers; neighbours; residents (Hop Gardens, Clay Street and village); maintaining property; the farmer; one memory of horse riders and cyclists; one recollection of school classes using The Drove; venturesome youngsters exploring; access to fields and Common Road and cattle herded along and accessing property. Two witnesses state that they occasionally saw others, (their own use every few months (11 & 12)); five witnesses refer to regular and frequent use by dog walkers, (certainly witness 23 confirms that even if her own use of the way had been only once a month, she had watched people walk, especially dog walkers every day out of the kitchen window until April 2020). Another witness refers to lots of people walking along it, (their own use twice a week (22)) and another often met other villagers, (their own use weekly (26)). One witness, who used the path on and off for nearly 30 years, (near daily for the past 2 years once he got a dog, outside the relevant user period), states that he did not see others on the route. One witness recalls towing cars out with his tractor (22).

10.34. Zelda Investments Ltd purchased Forest View in 2018, with planning permission granted for two additional properties in August 2019, after which it is likely that they or their contractors would have been on site for the majority of the working week. In evidence Mrs Woodruffe provides a photograph of a digger on site in 2020. Mark Richards recalls only once incident of seeing a member of the public on the Drove, albeit outside the relevant user period 1983 - 2003:

“I have witnessed only one person walking The Drove and this was a senior gentleman with a dog in Secret Field in November 2019 when we started clearing the overgrowth outside the back garden gate to Forest View. I politely asked him to leave after he had finished his walk as it was private land. Apart from this I have not been told of any incidents of anyone walking along The Drove...”

“To be explicit I did not see anyone walking past the back gate to Forest View from July 2018 to November 2019.

When I walked the top section of The Drove from Common Road (as we have rights from in front of the Cottage Field gate) I never saw anyone going in or out of their back gardens onto The Drove or walking towards Common Road...”

10.35. Mrs S Cook does not live on site presently, but her great grandparents were tenants at Cottage Farm from 1919, purchasing the farm in 1929 and it has been farmed by the family ever since, (by her great grandparents, then by her grandmother Marjorie Andrews and her brother Leonard who inherited the farm in 1950, followed by her parents and then by herself and her husband, (the land was gifted to Mrs Cook and her mother in 1988)). Between 1929 and 2003 cattle were farmed, until the sale of the herd in 2003, and grazed on the whole farm throughout the year. In 2003 Mr and Mrs Cook purchased a horse for their daughter and from 2003-2019, approximately 10 horses were kept at Cottage Farm on a field rotation basis. Mrs Cook herself has worked on the farm since 1988 and her daughter had a horse on Secret Field from 2003 – 2007, *“...it is what they did most weekends and nearly every day over the summer and every day at Christmas...”*

10.36. Mrs Cook has worked and been a frequent visitor to the land since at least 1988:

“11. During the time that I lived and worked on the Farm...

b. during the period when my family kept cattle on Cottage Farm up until 2003, I never saw or heard of any incidents of unauthorised third parties walking on The Drove, apart from a group of children who for a short period in 2003 climbed over the fence into Secret Field to ride bicycles, which led us to install the three-strand barbed wire fence and immediately stopped this behaviour.

c. during the period between 2003 and 2007 when my daughter kept her horse on Cottage Farm, she never reported to me or my husband any incidents of unauthorised third parties walking on the Drove; and

d. although on rare occasions my husband has seen unauthorised third parties on our fields including Secret Field, he has consistently approached these individuals to inform them that they are trespassing on private property and to request that they leave immediately, which has always been responded to without argument, incident or repetition. These incidents have, however, been rare as it is not only difficult and dangerous for individuals to pass over the Fence but also to walk through fields occupied by a number of cows and/or horses.”

“...Our daughter has never seen anyone on the area being called The Drove in Secret Field with the horses nor in the overgrown section the other side of the fence behind Forest View..”

“In October 2019, I walked The Drove looking for the water pipe, I didn’t see anyone.”

“Since the cows were replaced by horses in 2003 my husband Alan has mowed/topped the grass and cropped Cottage, Secret and Cooks fields and the other adjacent fields every year and has seen one person trying to get into Secret Field from the south whom he challenged...”

“I deny that the access rights that individuals claim to have exercised, this is both due to my own knowledge, not seeing individuals exercising the rights whilst I have been on my property...”

10.37. All 19 witnesses claim to have used the route on foot during the relevant user period and one user has additionally used the route with a tractor every few months and pulled cars out on The Drove, (user 1987 to 2020), which might suggest use by other vehicles, however, there is no other witness evidence of use with vehicles and the historical evidence available does not support public vehicular use of the claimed route.

10.38. With regard to the used route and a single identifiable route consistently used by witnesses, Officers note that as part of the witness evidence form, witnesses have been provided with a pre-drawn map including the application route (The Drove), rather than a blank map upon which to individually record the route which they have used. However, all but one of the maps are signed to confirm that the map correctly records the used route, as clarified by P Hudson on her map, *“This is the path I have walked for over 30 years”* and 17 witnesses have added their own annotations to this map to indicate features such as fences / gates. In addition, witnesses provide a written description of the used route, (independently of each other), in which the majority of witnesses confirm use of a route between Common Road and Footpath no.6 Whiteparish and which accords with the map. All but one of the witnesses confirm that the route has always followed the same course (including 2 witnesses who confirm that the route followed the same course until its recent obstruction by the close board fencing).

10.39. The current landowner and Objector Mr Mark Richards states that many of the users are from the same households and observes that there is an absence in any comments by the same applicants regarding their use of The Drove in the public consultations for the planning applications on site, which pre-date the

footpath application: *“It would appear that all except one of the footpath applicants (the originator household) only choose to comment once Patricia Woodruffe had placed her advert in the parish magazine and approached people in July 2020 with her ‘please fill in and sign’ copy document.”* In both planning applications *“...only Mr Woodruffe mentions The Drove in respect of a footpath. No mention by rights of way officer, no mention in planning summary.”*

10.40. Certainly, in planning application no.18/06027/FUL (Forest View and Land adjacent - Erection of one new dwelling and conversion of existing dwelling to accommodate rooms in roof and addition of garage), many of those responding to the planning application appear to be concerned with the ancient drove for its historical and ecological importance, rather than referring to their own use of the way, a number of whom have also completed witness evidence forms in support of the DMMO application. Only Mr B Woodruffe refers to, as well as its historic and ecological importance, The Drove as *“...an ancient trackway of probable early medieval date, marked by a fine set of trees and is a valuable piece of Green Infrastructure leading away from the village towards the National Park (Wiltshire Council Core Strategy 2015, Policy 52, para 6.88). A public path, used for more than 40 years, runs along it and, though not in permanent farming use today, it could readily serve future agricultural purposes (in use by dairy cattle in the 1990’s).”*

10.41. In planning application no.18/08737/FUL (Land south of Forest View - Erection of two dwellings) and 18/03738/FUL (Forest View - Retention of existing bungalow known as Forest View and additional dwelling on Land at Forest View including parking spaces), again the historic and ecological nature of the track is emphasised and the Open Spaces Society are concerned regarding *“...an ancient track shown on the tithe map which runs to the east of the site and which will be destroyed by the development.”*, however, they do not mention public use of the track. The route is also

referred to by a resident of Clay Street as a “green lane”, but again there is no mention of how the public might use the lane. Another resident of Clay Street states: “...*the Drove Road has not been accessed by vehicles for many years...Over the many years that Mr and Miss Andrews grazed milking cattle in the fields surrounding these properties, the cattle were regularly taken out via the gate below our property at SU2435 2305 where a public right of way crosses Clay St. Occasionally, the Drove Road was also used...The photograph shows a narrow but clearly defined path through the vegetation, indicating its constant and recent use by local people.*”

John Hall comments: “*One of my main personal objections concerns the footpath at the rear of the properties in Clay Street. I, and other dog walkers, have used that regularly for many years. The path leads to (and is presumably part of) an ancient drove and just past Forest View one could bear right and cross the field where the two additional properties are proposed. This was a fairly clearly defined footpath leading down to the designated footpath that crosses the field opposite ‘Chandos’. Sadly, a little while before the former planning applications, the field by ‘Forest View’ was bulldozed and a number of trees and bushes lining the old drove were destroyed...I was still able to walk across the field at that stage. However, around the time of the previous applications, a barbed wire fence was erected separating the lower field from the proposed development site and thereby preventing use of the former pathway.*”

John and Jennifer Harrison – “...*there have been no vehicles down The Drove within the last 30 years although Mr Andrews did occasionally use The Drove on foot with his wheelbarrow.*”

Mrs J McWilliam refers to the Drove – “*Mature trees have already been cut down on this plot, on the ancient Drove, an area of footpath used by wildlife and villagers.*”

Alec Knight states – “*The Drove is an ancient feature providing access to the New Forest which is currently used by villagers as a footpath.*”

Mr B Woodruffe – *“The driveway is an historic feature, distinctly shown on the 1843 Tithe Map and subsequent OS maps. It was a medieval passageway between cultivated fields to allow animals to reach the common grazing lands of the New Forest are (now in the National Park). Moreover, this 600-year feature is also...a public footpath that has been in frequent use for more than 50 years and today is regularly used by dog-walkers, ramblers, adventurous children and Sunday strollers from the village... A public path, used for more than 40 years and still in use, runs along it and, though not in permanent farming use today, the drove could readily serve future agricultural purposes (in use by dairy cattle well into the 1990’s)...But most important of all is that the drove has been part of the history of the parish for more than 500 years, and is shown clearly on the Tithe Map of 1843, thus reflecting the medieval usage by villagers to get their stock to the common and forest lands on the northern edge of the New Forest.”*

10.42. In objection to planning application 20/04331/FUL (Plot 3, land off Forest View - Erection of single storey dwelling), respondents now provide more information regarding public use of The Drove and refer to the application for a definitive map modification order made to Wiltshire Council:

Robert Canney and Sara Webb – *“...the ancient drove which is classified as a monument and is recorded as a medieval trackway between fields formed by medieval assarting in the Wiltshire and Swindon Historic Environment Register Ref: SU22 SW467. An application has been made to Wiltshire Council for a definitive map modification order which could upgrade the status of this monument to a public right of way...”*

Ivor Ellis – *“The Applicant has erected a 2metre high wooden fence across the Drove Road which runs to the rear of the proposed garden of Plot 3. This has stopped me and other Whiteparish residents from walking along the Drove Road to link up with footpaths 4 and 6 making circular walks around the village.*

The Drove Road is classified as a monument and recorded as a medieval trackway between fields in the Wiltshire and Swindon Historic Environment Register. The fence needs to be removed and the Applicant made to reinstate the Drove Road.

...erecting a 2metre high fence across the Drove Road now cutting it off completely is not in keeping with 'avoiding any Amenity impact on the neighbours and surrounding land'."

John Hall – "I am writing to strongly object to this application on the grounds that it is annexing an ancient drove into the garden of the proposed dwelling. As I understand it, an application to consider the drove as a public right of way is to be submitted shortly to Wiltshire Council."

"I have regularly walked along part of the drove for over 10 years and no doubt it has probably been used for centuries before."

John & Jenny Harrison – "The Drove is a medieval drove road. We understand that The Drove is classified as a monument and recorded as a medieval trackway between fields formed by medieval assarting in the Wiltshire and Swindon Historic Environment Register – ref: SU22 SW467. Residents of Clay Street are in the process of applying to Sally Madgwick, Definitive Map and Highway Records Manager, for a definitive map modification order for The Drove and we will be submitting our Evidence Statements to her shortly."

Elvin Klapp – "The Drove is an important historical feature and is recorded as Ref. SU22SW467 in the Wiltshire and Swindon Historic Environment Records...It is considered to be a medieval trackway between fields formed by medieval assarting.

The developer...has recently blocked off access to the drove in likely preparation for this application. I am now unable to walk the drove which is unacceptable as I have been walking this drove for over 30 years."

Barry Rutter – "The land on which the proposed development sets out...incorporates land that currently is know [sic] as The Drove. It is an important historical feature and is recorded as Ref.SU22SW467 in the

Wiltshire and Swindon Historic Environment Records...It is considered to be a medieval trackway between fields formed by medieval assarting...This route has been used by myself and my wife for more than 60 years, along with many other residents and hikers who have enjoyed its access...the developer has already removed some of the trees and erected fences blocking access along The Drove..."

Darren Stiles – *"I wish to object for the following reasons...Annexation of the drove / footpath."*

Brian Woodruffe – *"Removal of this tree-clad boundary has severely damaged the integrity of a 600 year old Historical Monument...The Drove Track is the last remaining feature of the village's association with the New Forest communing system..."*

Patricia Woodruffe – *"Although not a public right of way, local people have exercised their right to use an ancient Drove part of which, according to the plans, is to be destroyed and incorporated into the gardens of Plots 2 and 3. To the rear of this property, and all others along the south side of Clay St. is an ancient Drove Road. It appears on the local Tithe Map of 1843 and an historian who lived locally at the time, referred to it and to the nearby medieval field systems in the publication of 1967. (Taylor C. 1967 Whiteparish – a study of the development of a forest-edge Parish. WANHS Magazine Vol.62.) It seems that local people have, as of right, accessed the fields to the southwest of the village by this and other ancient trackways. More recently its use has been for recreational purposes...The entire width of the Drove is incorporated into the gardens of Plots 2 and 3. It has already been blocked off by the developer, thus prohibiting access to local people.*

...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...

Local efforts to retain access to the Drove have led to the submission of an application to Wiltshire Council to have the track registered as a public right of way. (Definitive Map Modification Order Application number 2020/09D)."

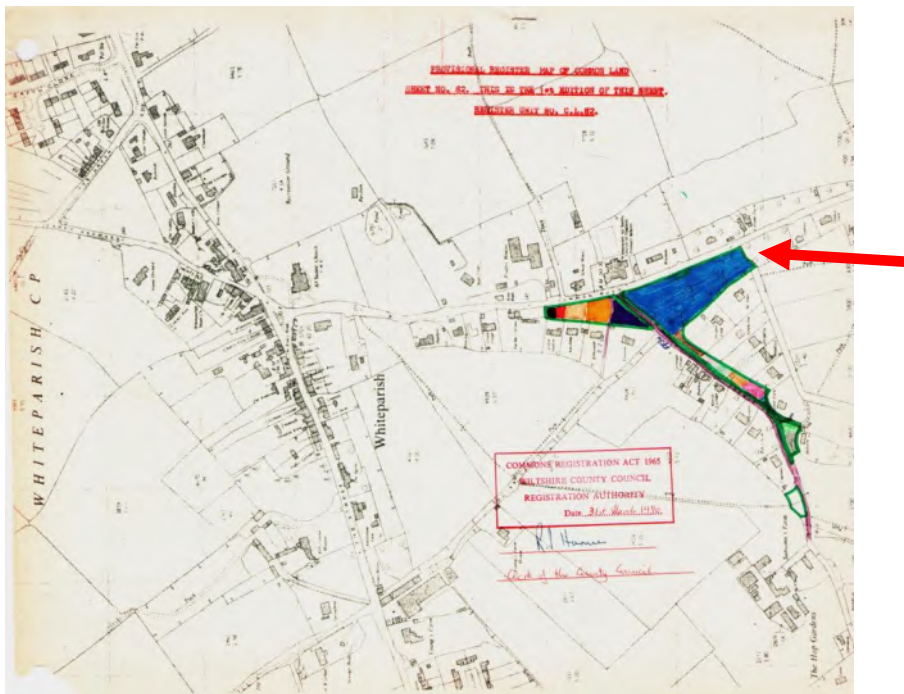
10.43. Overall, Officers consider that the planning application replies are written in direct response to the planning matters and therefore, they may not contain information regarding personal use of The Drove and it appears that The Drove is already obstructed by the current close board fencing across its width by the time of the 2020 planning application, which impacts The Drove and any use of it more than previous planning applications. However, the responses are on the whole supportive of the documentary evidence as an ancient feature, recorded on the maps, which served to allow commoners to move their animals between to commonable fields of Whiteparish. They also support use by individuals including Mr Hall; Mr Klapp and Mr Rutter who have all completed user evidence forms in support of the application and in addition Mr I Ellis, and this use going back to around 10-60 years in memory. However, the following comment made by Mrs P Woodruffe, who is the applicant in the DMMO and in her evidence form states that she would prefer to use the Drove as an alternative route to the existing definitive line of Footpath no.6 Whiteparish which leads to the south of the Drove through a garden, is at odds with claiming a public right of way based on evidence, *“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 claiming a public right of way, the Surveying Authority are not seeking to add new rights of way as suggested in this statement, but simply record existing public rights.

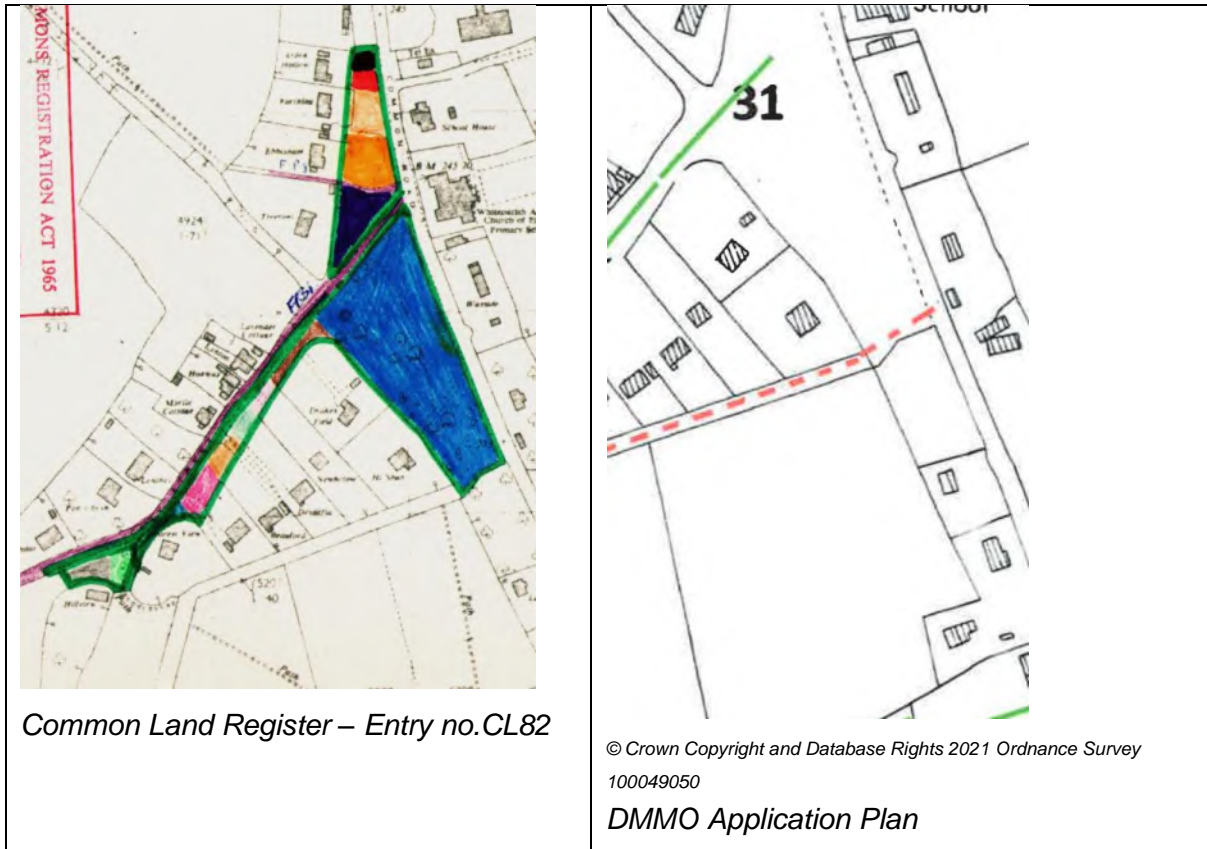
20 years public user – Officers consider the relevant user period to be 1983 – 2003. During that period 19 witnesses claim to have used the path, a single identifiable route between Common Road and Footpath no.6 Whiteparish, 5 of them for the full 20 year user period in question. Although the frequency of use by witnesses is relatively low, they do refer to use of The Drove by others, in particular walkers and dog walkers, and as witness no.23 points out, her own frequency of use was low, but she was able to view others using the path on a daily basis from her property. Zelda Investments ownership of the land is outside the relevant user period and Mr and Mrs Cook have been absentee landowners

not currently residing at the farm, however, the use is likely to have been sufficient to come to their attention and as Mrs Cook states, the fence was renewed in 2003 to prevent access after children with bikes had crossed into Secret Field and she refers to removing the piping on the fence on two occasions, which is likely to have brought use of the way to the landowners attention.

As of Right

10.44. In order to establish a public right of way, public use must be “as of right”, i.e. without force, without secrecy and without permission. It should be noted that the first 30m approx. of the claimed route adjoining Common Road and leading west-south-west, is over a strip of common land included within the Common Land Register, held by Wiltshire Council as the Commons Registration Authority, as part of Register Entry no.CL 82, (please see plan below and also enlarged extract of the register entry and the DMMO application plan for comparison):





10.45. This area of land already carries a recorded right for the public on foot as registered common land, (access to common land was extended to the whole of the general public, on foot, following the Countryside and Rights of Way Act 2000).

Without Force

10.46. Use by force could include the breaking of locks, cutting of wire or passing over, through and around an intentional blockage such as a fence / locked gate. In evidence, the landowner Mrs S Cook suggests that the three strand barbed wire fence was erected to prevent access into Secret Field, following problems of children with bicycles breaching the previous two strand wire fence. This suggests that as a remedy to the problem, the three strand fence was an intentional blockage of the way to prevent access into Secret Field. Ms Warry, in the evidence provided by Mr Urquhart suggests that “*It is clear*

that in putting up barbed wire across the route to keep animals in but covering it with plastic to protect people the owners were not only aware of public use but had no objection to it.” Mrs Cook gives evidence that she did not place the plastic piping over the barbed wire strands to allow access through the wire and therefore any access to the Drove in Secret Field via the fence was user by force and cannot be user “as of right” after the fence was erected in 2003. However, it is not known for how long the plastic tubing was in place, Mrs Woodruffe provides a photograph of the fence in 2018, although this date is disputed by Zelda’s, Mr Richards states: *“Picture 4 shows the barbed wire fence and the overgrowth behind it – are you sure this was 2018 as we purchased Forest View in 2018 and you could hardly get in from the fence.”* , however, another witness produces a photograph from the other side of the fence, which is also dated 2018 and given the corresponding features in the two photographs, corroborates the date of the photograph submitted by Mrs Woodruffe. Mr Richards does confirm that the plastic tubing was present at the time of his purchase (November 2019) *“At the time of purchase of Secret Field there was plastic tubing on the 3 strand barbed wire fence...”* If it was not the intention of the landowner to acquiesce in the use of the path, there is evidence that they removed the piping on two occasions, but it was replaced on three occasions and eventually the landowner’s gave up.

10.47. There is very little evidence provided regarding just how witnesses would have negotiated the 2003 fence. Mr Hall suggests that it was possible to squeeze between the top two wires and Mr D Stiles confirms that he just stepped over it, however, the photographs at 10.9. suggest a substantial 3 strand barbed wire fence which would not have been possible to “step” over (perhaps Mr Stiles is referring to an earlier fence) and there is certainly evidence that some users were not able to continue using the route after the fence was erected, i.e. Ms De Graffham confirms that in her period of user 2013-18, she was prevented from using the route past the turn, due to the barbed wire fence and brambles. It is therefore considered that any use after

2003, with the fence in place, is likely to be user by force, however, the erection of the fence in 2003 is also the date of bringing into question and the close of the public user period. In considering the Urchfont case, the Inspector in the decision letter dated 31st May 2019, considers that *“In my view, given that some use would have been prevented such as to give rise to a limited dedication, the statutory dedication of a public right of way must fail.”* If this principle is applied to the Whiteparish case, with the erection of the fence in 2003 which prevents use by some users, but not all, the period of user as of right under statute, ceases following the erection of the fence. As discussed at 10.19.-10.23. there is insufficient evidence provided regarding a fence across the whole width of the way, prior to 2003, to suggest user by force before that date.

10.48. Use by force does not include only physical force, but may also apply where use is deemed contentious, for example by the erection of prohibitory signs or notices in relation to the use in question. In the Supreme Court Judgement *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another (Respondents) (2010)*, Lord Rodger commented that:

“The opposite of “peaceable” user is user which is, to use the Latin expression, vi.

But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”

10.49. Neither the witnesses, nor the landowners, present evidence that there were ever prohibitory notices placed on the route, until very recently. Mr D Stiles who has used the route daily in the last 2 years, (since getting a dog), has

recently noticed private land signs fixed to a couple of trees along The Drove, he assumes put up by the developer and after the erection of the fence, so likely to date from around 2020, outside the relevant user period. Mrs S Cook confirms that *“Climbing over that fence is trespass and we have now put up signs.”*, but no dates or detail of the signs is given, however, Officers consider that this accords with the recollection of Mr Stiles. Ms S Delamore states *“Since he (the developer) has blocked off the drove we have had a number of people trying to access the drove and ending up near my garden stuck. Prior to him blocking off the drove you could access the walkway highlighted in brown on the map below. The developers building contractors has [sic] recently put up signs (Sept 2020) saying no access to either side of the drove, this was done recently and the signs keep getting removed by people accessing the drove.”* The erection of signs occurs outside the relevant user period of 1983-2003.

Without Secrecy

10.50. Witnesses do not appear to have used the route in secrecy and 17 of the 19 witnesses who have used the route during the relevant user period consider that the landowner would have been aware of their use, 16 of whom make the following comments regarding the landowner being aware of use:

Witness	Landowner aware
1	Well trodden, until 2000 used to drive cattle to and from milking shed on Common Road.
3	Mr Andrews past owner was aware as he used the lane frequently and spoke to us.
4	Both current owners well aware. Len and Marjorie Andrews happy to allow use – continued by current farming family.
5	Past owner Mr Andrews used to speak to us and others on the route.
8	Consistent use, worn path.
9	Would occasionally meet and speak to farmer Andrews when working at top of garden or taking dog for a walk there.
10	Mr Andrews witnessed me in the Drove many times.

11	Village children often played there - Mr and Miss Andrews lived close by Drove and must have seen use. The next owners also had home in village close by.
12	As above.
14	Mr Andrews past owner saw me playing in Drove.
17	When we used The Drove as children, the landowner would often use The Drove to herd cattle.
18	Farmer and farming family aware.
19	Passed time of day cordially with farmer.
22	Talked to owner whilst on application route.
24	Seemed to be a public right of way and assumed owner would be aware.
26	When local stables leased the meadow they were often in field when villagers passed through the Drove.

10.51. Mrs Cook provides the following useful chronology of the tenancy and then ownership of Cottage Farm by her family:

1919 – Mrs Cook’s Great Grandparents became tenants at Cottage Farm which owned all the land in question.

1929 – Mrs Cook’s Great Grandparents purchased the farm.

1950 – Mrs Cooks Grandmother Marjorie Andrews took on the farm with her brother Leonard. The cows were herded to the dairy at Buildings off Common Road twice a day via the gate off Cooks Field at the bottom of Clay Street or from the top gate at Cottage Field (please see landowners plan at paragraph 10.7.)

1988 – Marjorie and Leonard gifted the land to Mrs S Cook and her mother when their cows were sold.

1988 – 2003 – Mrs Cook’s father rented the land for his cows who were grazed on the land but not taken for daily milking.

2003 – Cows replaced by horses.

10.52. During the relevant user period 1983 – 2003 the landowners would have been Marjorie and Leonard Andrews and since 1988 Mrs Cook’s mother and Mrs S Cook, who now farms the land with her husband. It appears that during the early part of the relevant user period, the previous landowners, Mr and Miss

Andrews, were well known to path users and they appear to have tolerated use of the way, there is no evidence provided of their objection to use of the way. In Mr Urquhart's evidence, Ms Warry considers that: "*Several [witnesses] mention that Mr Andrews used the route to take cows from fields to milking shed. This means that they would have used it in each direction twice daily and therefore were highly likely to be aware of people using it. Witnesses appear to have used the route in an open manner which would have come to the attention of the landowners.*" Mrs Cook claims that they have rarely seen unauthorised persons on the land and that her husband challenged these parties, however, there are no dates of these incidents; the parties involved and where or what the parties were doing on the land at the time, provided.

Without Permission

10.53. Use "as of right" was discussed in the Town / Village Green Registration case of R (on the application of Barkas) v North Yorkshire County Council and Another, Supreme Court, 21st May 2014. The leading judgement was given by Lord Neuberger, who sets out the legal meaning of the expression "as of right":

"...the legal meaning of the expression "as of right" is, somewhat counterintuitively, almost the converse of "of right" or "by right". Thus, if a person uses privately owned land "of right" or "by right", the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is "as of right", it is without the permission of the landowner, and therefore is not "of right" or "by right", but is actually carried on as if it were by right – hence "as of right"."

10.54. Therefore, where use is "as of right" and the public do not have permission to use the land, it follows that all rights of way claims will begin with a period of

trespass against the landowner. As Lord Neuberger states in the Barkas case, the mere inaction of the landowner with knowledge of the use of the land does not amount to permission and the use is still trespass:

“...the fact that the landowner knows that a trespasser is on the land and does nothing about it does not alter the legal status of the trespasser. As Fry J explained, acquiescence in the trespass, which in this area of law simply means passive tolerance as is explained in Gale, (or, in the language of land covenants, suffering), does not stop it being trespass. This point was well made by Dillon LJ in Mills v Silver [1991] Ch 271, 279-280, where he pointed out that “there cannot be [a] principle of law” that “no prescriptive right can be acquired if the user...has been tolerated without objection by the servient owner” as it would be “fundamentally inconsistent with the whole notion of acquisition of rights by prescription.” Accordingly, as he added at p 281, “mere acquiescence in or tolerance of the user...cannot prevent the user being user as of right for the purposes of prescription.”

10.55. The property owners for all the properties facing Clay Street and backing onto The Drove, appear to have a private right within their deeds to access The Drove between their property and leading east towards Common Road. Mrs Cook clarifies that this private right does not extend beyond the land owned by the Cook family, i.e. over Mr Urquharts land to Common Road, as the private rights were granted by Mrs Cook’s Great Grandmother Agnes in 1957 and it was not within her powers to grant a private right over land she did not own. However, the first 30m of the claimed route linking with Common Road, is registered common, over which the general public, including the property owners, have a right of foot. Witnesses give the following evidence regarding private rights over The Drove:

Witnesses 3 and 5 - Were told application route was not public by solicitor when purchasing their property and the deeds contain right of access from back gate along the Drove to Common Road.

9 – Previous resident - property deeds have grant of access to Drove to trim hedge.

10 – Residents (parents) had right of access.

13 – Access to Drove in house deeds.

16 – Right of access to rear garden.

14 – No private right of access specified but the same household as witnesses 3, 5 and 10.

S De Graffham – Relatives whose properties backed onto the Drove had access granted in deeds.

10.56. Mrs S Cook confirms: *“The nature of the two parts of what is being called The Drove are very distinct but seemingly very blurred by most of the witness accounts. The first 100m from Common Road is a narrowing track which has been impassable at the lower section for several periods most notably since 2000. The track has pedestrian gates onto it from the rear gardens of properties to the north which front onto Clay Street, our large Cottage Field is to the left with a field gate at the beginning of Cottage Field after what used to be my Grandmother’s house.*

The mouth of the track at Common Road is wider as we drive machinery up it...”

“We continue to access Cottage Field with our gate after 30m on the left...it is our only access to all our fields without going down Clay Street.

After our gate to Cottage Field the track turns 20 degrees north and starts to narrow and become more overgrown from the south side.

With Cottage Field to the left, to the right five properties which back onto the top section of The Drove (and front onto Clay Street) have access rights from their houses to 30m before Common Road as granted by my Great Grandmother Agnes in May 1957 and they are cited multiple times in the witness statements.

What is incorrect or unclear in all these accounts of the 1957 covenant is that the households do not have access rights to Common Road. As stated above

they only have access to the boundary of our land with Mr Urquharts as it was not my Grandmother's to award over someone else's land and previously there was a gate at the boundary. If you look at the title deeds supplied by the [REDACTED] family in Westways you will see the shading illustrating the right of access ends at the boundary and not at Common Road.

By definition these are the only people with legal access rights over this part of our private property..." Mrs Cook suggests that where these users then play on the way and climb into Top Field to pick blackberries, cut down the undergrowth and leave it lying on the ground or empty their grass cuttings outside their back gates, they are trespassing and those visiting these residents using this section of the route are trespassing over Mr Urquharts land to do so.

"Those residents are in several instances saying that they walked down The Drove from their houses turning right out of their back garden gates even though they clearly state that they have been told by their solicitor that it is private and their right is towards Common Road."

10.57. It is true that any period of public user begins with a period of trespass against the landowner. Use by those witnesses who have a private right of access over The Drove, i.e. the 5 properties which back onto The Drove and front onto Clay Street, cannot be treated "as of right" where they have a right of access over the Drove from their property leading east to Common Road. However, their evidence can be treated as user "as of right" where they turned west from their property and continued on the Drove towards Footpath no.6. When the evidence from residents of these properties is withdrawn from the evidence relating to use of the central part of The Drove, that leaves 14 witnesses who have used the central section of The Drove and who claim to have used the whole route during the relevant user period 1983-2003, which is sufficient to reasonably allege public rights. Mr Richards confirms that the private rights for Forest View were stopped up in 2020, however, any use of

The Drove by the residents of that property after that date, is outside the relevant user period in this case.

10.58. Mrs S Cook refers to granting permission to Mr Roy Bowles and the tenant of [REDACTED]: *“I gave Roy Bowles permission to walk The Drove from 2002 onwards including climbing into Cottage Field as needed if the path was blocked as I have a water pipe which travels down The Drove and he checked it on a regular basis as it feed the troughs – he has not seen anyone walking down there.”*

“My tenant in Cottage Farm Bungalow at the top of The Drove [REDACTED] has permission to walk across Cottage Field.”

However, there is no evidence of permission being granted more widely to the general public.

As of Right – Based on the erection of the 3 strand barbed wire fence in 2003, any user after that date would be user “by force” which cannot be user as of right. Additionally, the erection of the fence also serves as the date of bringing public user of the path into question.

Users appear to have used the route in an open manner, i.e. without secrecy, the previous landowners Mr and Miss Andrews appear to have tolerated user and although the current landowners Mrs Cook and her husband refer to users being challenged within the relevant user period, no further details of these instances are provided.

Only a handful of individuals have been given permission to use The Drove, as set out by Mrs Cook, there is no evidence that a wider permission was communicated to the public as a whole and where the evidence of property owners who had a private right of access to The Drove within their property deeds, is removed, there remain 14 users of the whole route who appear to have used the route without permission.

Overall, the user evidence prior to 2003, suggests use by the public “as of right”.

Width

10.59. Path users suggest the following available width of the path:

Witness	Width	Witness	Width
1	Variable – narrow behind houses due to overgrown hedges. General 8m including hedges and trees on boundaries, upkeep of which has varied over the years.	16	Approx 3m at Common Road end, narrowing just past Des-Deria to approx 1.5m then enlarging past Beauford to 2m plus.
2	Varies due to overgrowth – at minimum single file but only because of plant spread.	17	Depending on the hedgerows growth, at the widest 6m and the least 2.5m including bushes.
3	Approx 6m from our back boundary to field boundary.	18	Varies between 1.2m to open in field area.
4	About 6m-8m. Narrower at Common Road end, wider beyond Forest View.	19	3m?
5	Approx 6m.	20	Varying widths from 6m to about 1m depending on vegetation (hedges and trees).
6	2m – 3m.	21	Varies in width from 1m – 6m depending on vegetation (hedges and trees).
7	12ft (3m – 3.5m)	22	2m – 3m.
8	Variable widths – 8m including hedgerows and trees, but possibly 1m.	23	3m.
9	About 20ft although I believe it is now very overgrown.	24	30' until it runs behind Clay St houses when it reduces to 10' – 12'.
10	4m – 5mg	25	2m from Common Rd, reduces to about 1m at the bend.
11	From Common Rd to blockage now varies in width from approx 3m narrowing down to approx 1m.	26	3m.

	I feel that it used to be wider.		
12	Varies in width from approx 3m narrowing down to approx 1m. I feel that it used to be wider.	27	1m – 1.5m – 3m.
13	Varies due to vegetation – Between 1m – 3m.	D Stiles	N/A
14	4m – 5m.	S De Graffham	N/A
15	N/A	S Delamore	N/A

10.60. Where witnesses give a varying width over different parts of the path, it is very difficult to establish a median width from these values. The witnesses suggest, as supported by Mrs Cook, that the path is narrower at Common Road, the users then claim that the route opens up in Secret Field, however, Officers noted an avenue of trees in Secret Field which appears to mark the boundaries of the route. The user evidence is reflected in the OS mapping which records the route narrowing at the Common Road entrance (if shown), before widening and then narrowing again at the junction with Footpath no.6, this also accords with width measurements taken by Officers on a site visit in 2021, (allowing for vegetation overgrowth). It is therefore proposed to record a width varying between 6m and 9m within an order, by reference to the order plan which will reflect the OS mapping, excluding that section from Common Road leading west for approximately 30m which is not recorded on OS mapping. The width here may be taken from the evidence of users who identify a width of the path at Common Road, the median value being 3m, please see proposed Order Plan at **Appendix 10**.

Width – It is proposed to record a width varying between 3m and 9m as recorded in OS mapping and based on user evidence for that section approximately 30m from Common Road which is not recorded on OS mapping, by reference to the

order plan, recording a route between Footpath no.6 and Common Road, (please see **Appendix 10**).

Landowners Intention

10.61. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after public user of a route for a period of 20 years or more “as of right”, unless during that period there was in fact no intention on the part of the landowner to dedicate the land as a highway. Intention to dedicate was discussed in the Godmanchester case, which is considered to be the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956:

“...in order for there to be “sufficient evidence there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must in Lord Blackburn’s words, take steps to disabuse these persons of any belief that there was a public right...”

10.62. In the same case, Lord Neuberger of Abbotsbury went further on this point:

“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1 (1) of the 1923 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was

re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.”

10.63. Lord Hoffman went on to say:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”

10.64. There are no deposits and statutory declarations made under Section 31(6) of the Highways Act 1980 and/or Section 15A of the Commons Act 2006 with Wiltshire Council, over the land in question, which would negate the landowners’ intention to dedicate additional rights of way over the land.

10.65. The fence erected in 2003 is believed to have brought public use of the way into question. It would appear that in the early part of the user period 1983-1988, the landowners’ Mr and Miss Andrews, acquiesced in the use of the way and there is no evidence of their non-intention to dedicate a public right of way over The Drove. Although a fence is suggested across the way from the early 1980’s, evidence of this fence is limited and there are no photographs.

10.66. Mrs Cook makes reference to her husband challenging users when found to be on the land / the Drove, but there are no further details provided regarding who was challenged; exact dates of challenge or where and what users were doing when challenged. None of the witnesses make reference to such challenge whilst using the route.

Non-intention to dedicate – There is little evidence of the landowners' non-intention to dedicate additional rights of way over the land in question, until the erection of the barbed wire fence in 2003, which also brings public use of the way into question, (the landowner confirms that it was not their intention to allow public use by the provision of piping over the fencing to allow access and that this was done against their will, they did on two occasions remove the piping). Prior to that date landowners appear to have acquiesced in public use of the way.

Common Law Dedication

- 10.67. Section 5 of the Planning Inspectorate Definitive Map Orders: Consistency Guidelines suggests that even where a claim meets the tests under Section 31 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.
- 10.68. Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends upon the inference that the way was in fact dedicated at some point in the past.
- 10.69. A highway can be created at common law by a landowner dedicating the land to the public for use as a highway, either expressly or in the absence of evidence of actual express dedication by landowners, through implied dedication, for example, making no objection to public use of the way. It also relies upon the public showing their acceptance of the route by using the way.
- 10.70. Whilst the principles of dedication and acceptance remain the same in both statute and common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners intentions, remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at common law at some time

in the past, it is recognised that evidence of such dedication is difficult to obtain and it is then appropriate to apply Section 31 of the Highways Act 1980.

10.71. Relatively few highways can be shown to have been expressly dedicated and in the Whiteparish case there is no evidence before the Surveying Authority that the landowners have carried out any express act of dedication over the claimed route. However, there is evidence that the previous landowners have acquiesced in the use of the path and evidence of public acceptance of this route through user evidence, until the fence was erected in 2003, which brings public use of the way into question. If the claim at statute were to fail, it is possible to apply the principles of common law dedication in this case.

Conclusion

10.72. Officers have considered the evidence submitted both supporting and opposing the application and concluded that there is sufficient evidence that a right of way for the public on foot can be reasonably alleged to subsist over The Drove, Whiteparish, by virtue of use of the path, as of right, for a period of 20 years, from 1983 to 2003 when a barbed wire fence was erected across the way, bringing public use of the way into question. There is insufficient evidence of the landowners' non-intention to dedicate a public right of way during that period. The historical and witness evidence suggest that a width varying between 3m and 9m should be recorded for the footpath. Where there is sufficient evidence for it to be reasonably alleged that a right for the public on foot subsists, the only option available to Wiltshire Council as the Surveying Authority, is to make a definitive map modification order to amend the definitive map and statement of public rights of way accordingly by adding a footpath.

10.73. As outlined in the Norton and Bagshaw caselaw, there will inevitably be points of conflict within the evidence of objectors and that of the supporters. For this reason, an order can be made based on a reasonable allegation that a right of way for the public subsists, which is a lower test than the balance of probabilities. Where there is no incontrovertible evidence against this, it is in the public interest for a local authority to support the making of the order.

11. Overview and Scrutiny Engagement

11.1. Overview and Scrutiny engagement is not required where the procedures to be followed regarding applications and orders made under Section 53 of the Wildlife and Countryside Act 1981 are set out at Schedules 14 and 15 of the 1981 Act and within "*The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993 – Statutory Instruments 1993 No.12*".

12. Safeguarding Considerations

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

13. Public Health Implications

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

14. Procurement Implications

- 14.1. The determination of a definitive map modification order application and making an order to modify the definitive map and statement of public rights of way accordingly, are statutory duties for the Council. The financial implications are discussed at part 18 of this report.

15. Environmental Impact of the Proposal

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

16. Equalities Impact of the Proposal

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

17. Risk Assessment

- 17.1. Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.
- 17.2. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and there is no risk associated

with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error within the definitive map and statement which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. Where the Council fails to pursue its duty to determine the application, (within 12 months of the date of application), the applicant may appeal to the Secretary of State who will impose a deadline upon the authority for determination of the application.

18. Financial Implications

- 18.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, are statutory duties for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
- 18.2. Where no definitive map modification order is made, the costs to the Council in processing a definitive map modification order application are minimal.
- 18.3. Where a definitive map modification order is made and objections are received, which are not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however, where a local hearing is held, the costs to the Council are estimated at £200-£600. If a local public inquiry is held, the costs are estimated at £1,500 - £4,500 (1-3 day inquiry), if Wiltshire Council continues to support the order, (i.e. where legal representation is required by the Council), and £200 - £600 where the Council

no longer supports the order, (i.e. where no legal representation is required by the Council and the case is presented by the applicant).

19. Legal Considerations

- 19.1. Where the Surveying Authority determines to refuse to make a definitive map modification order, the applicants may lodge an appeal with the Secretary of State, who will consider the evidence and may direct the Council to make a definitive map modification order.
- 19.2. If an order is made and objections are received, any determination of the order by the Secretary of State may be challenged in the High Court.

20. Options Considered

20.1. To:

- (i) Refuse to make a definitive map modification order under Section 53 of the Wildlife and Countryside Act 1981, where there is considered to be insufficient evidence that a right of way for the public subsists or can be reasonably alleged to subsist, or
- (ii) Where there is sufficient evidence that a right of way for the public on foot subsists or is reasonably alleged to subsist, the only option available to the authority is to make a definitive map modification order to add a public right of way and to amend the definitive map and statement of public rights of way accordingly, under Section 53 of the Wildlife and Countryside Act 1981.

21. Reasons for Proposal

21.1. It is proposed to make an order adding a footpath, The Drove, Whiteparish, to the definitive map and statement of public rights of way for the following reasons:

- (i) There is insufficient documentary evidence of a public right of way over The Drove, Whiteparish.
- (ii) There is sufficient evidence of use by the public on foot during the relevant 20 year user period 1983-2003, as of right and without interruption, for a public footpath to be reasonably alleged.
- (iii) There is insufficient evidence of the landowner's non-intention to dedicate a public right of way during that period.
- (iv) The user evidence and historical OS mapping evidence supports a width varying between 3m and 9m to be recorded over the footpath by reference to the order plan (please see proposed order plan at **Appendix 10**).

22. Proposal

22.1. That further to the application to add a footpath to the definitive map and statement of public rights of way, The Drove, Whiteparish, a definitive map modification order be made to add a footpath and if no objections are received, the order be confirmed by Wiltshire Council, as the Surveying Authority, as an unopposed order.

Janice Green

Senior Definitive Map Officer, Wiltshire Council

Date of report: 2nd December 2021

Appendices:

Appendix 1 – Location Plan

Appendix 2 – Application Plan

Appendix 3 – Photographs

Appendix 4 – Representations and Objections

Appendix 5 – Relevant Legislation

Appendix 6 – Historical Evidence Summary

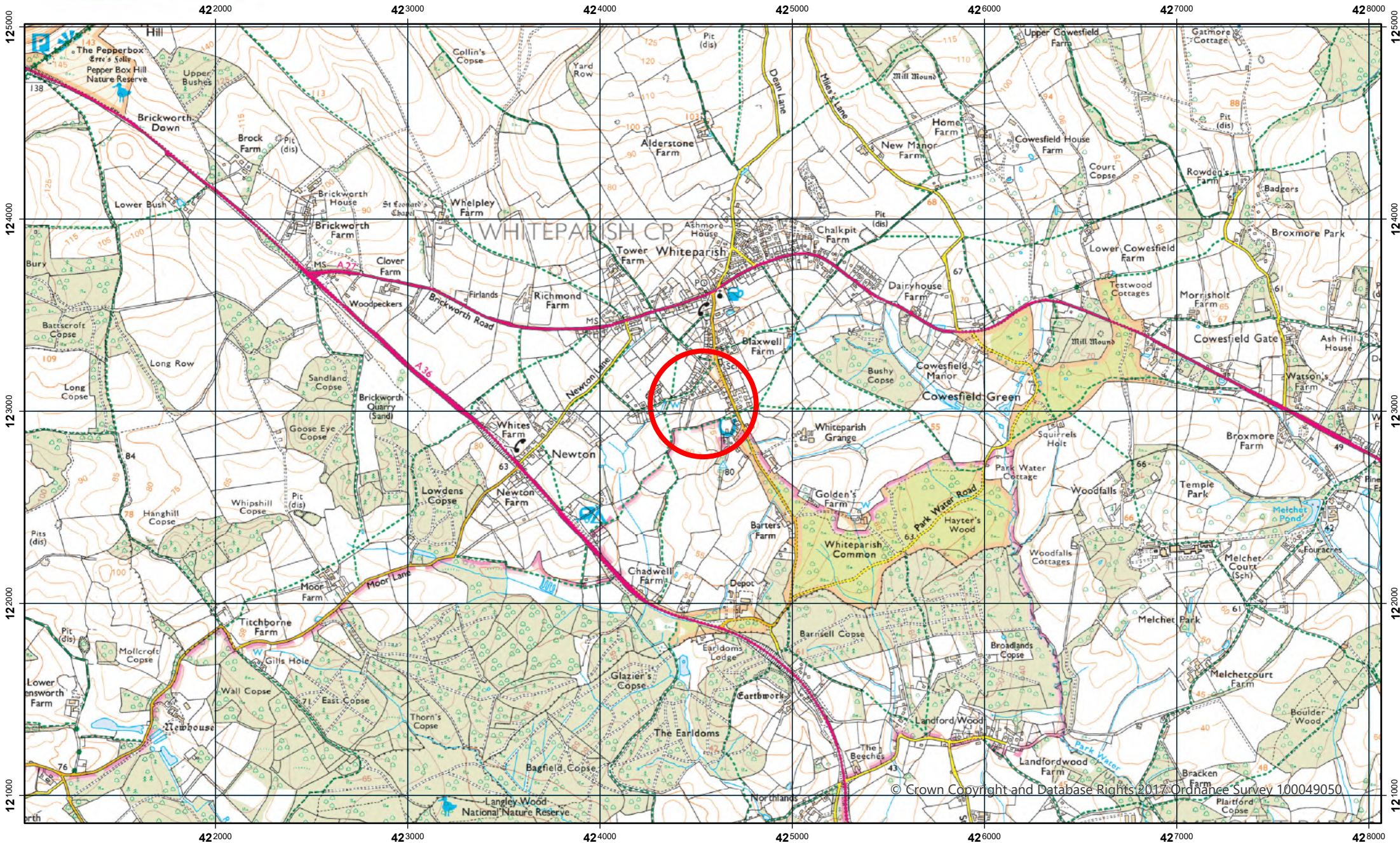
Appendix 7 – User Evidence Summary

Appendix 8 – User Evidence Chart

Appendix 9 – Bringing into Question




Appendix 10 – Proposed Order Plan

Appendix 1 - Location Plan
The Drove, Whiteparish

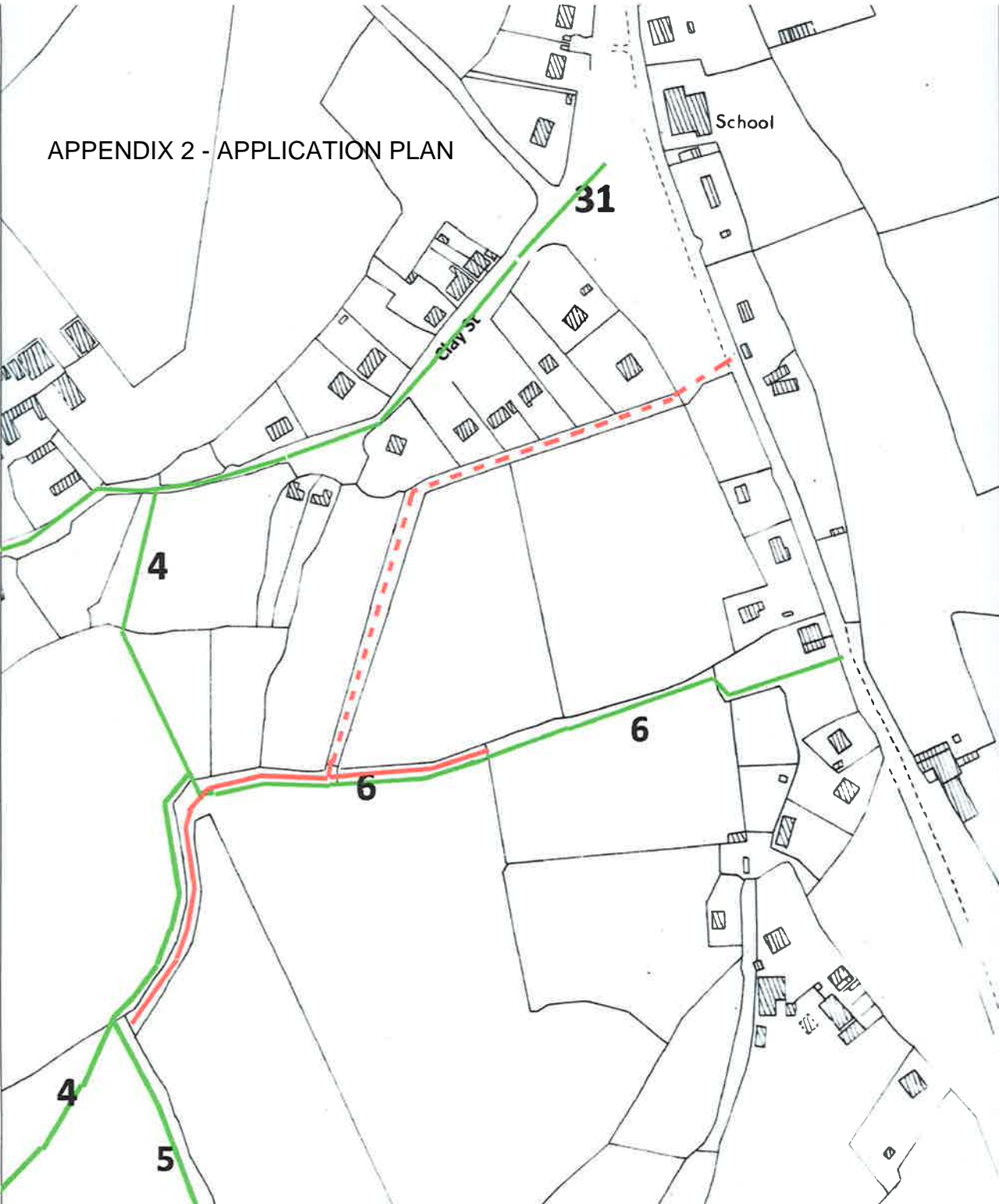


APPENDIX 2 - APPLICATION PLAN

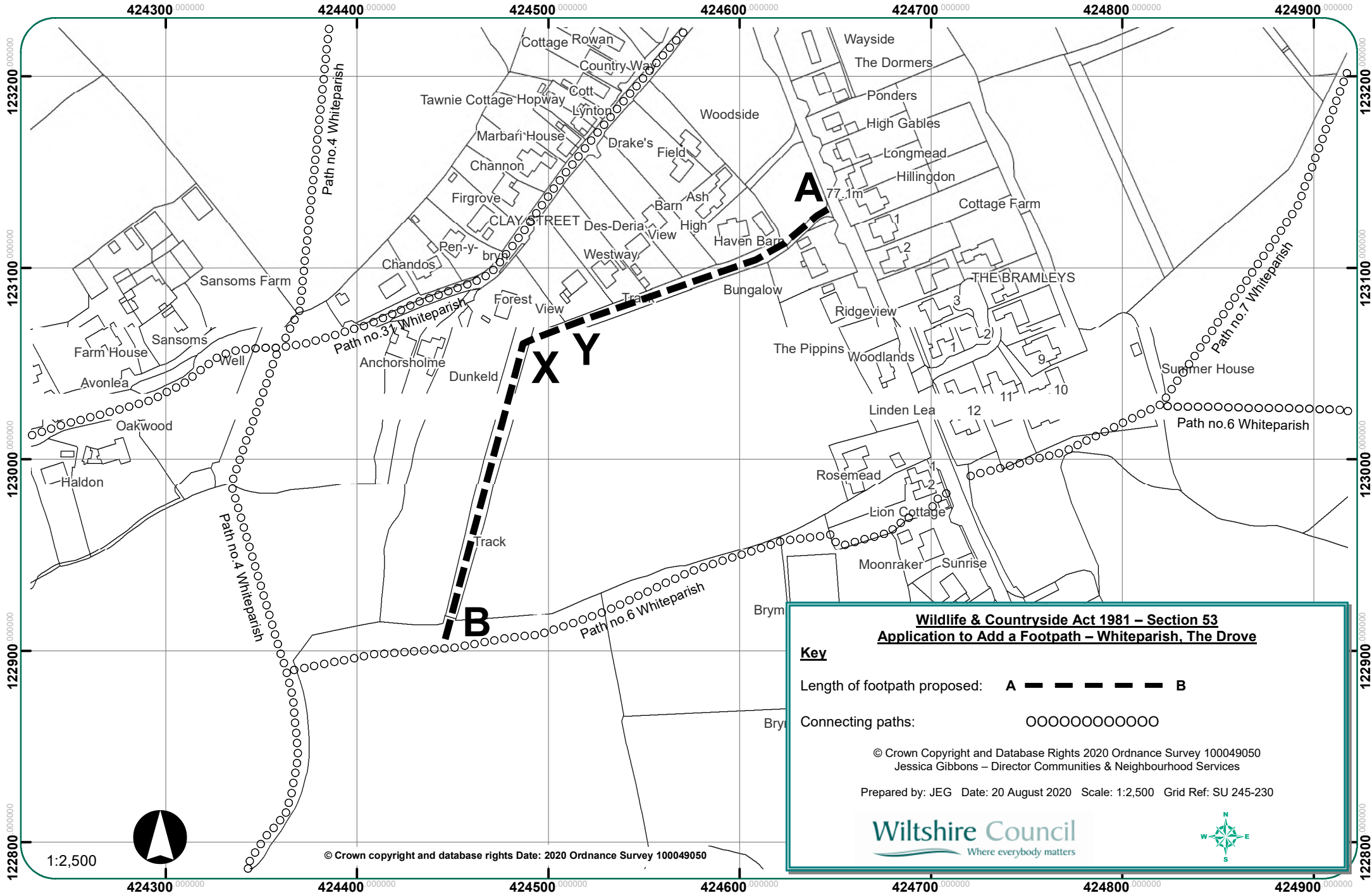
SU 2423 Whiteparish

-  **The Drove**
-  **Extent of the Drove to which the application relates**
-  **Existing footpaths**
WHT 4 and 6 and also
WHT 31 (Clay St).

Useful OS grid references:
Start point off Common Rd.
SU 2464 2312
Point where the Drove joins FP6
SU2444 2292
The length is approx. 300m



Wildlife and Countryside Act 1981 - Section 53
Application to Add a Footpath - The Drove, Whiteparish



Wildlife & Countryside Act 1981 – Section 53
Application to Add a Footpath – Whiteparish, The Drove

Key

Length of footpath proposed: **A** — — — — — **B**

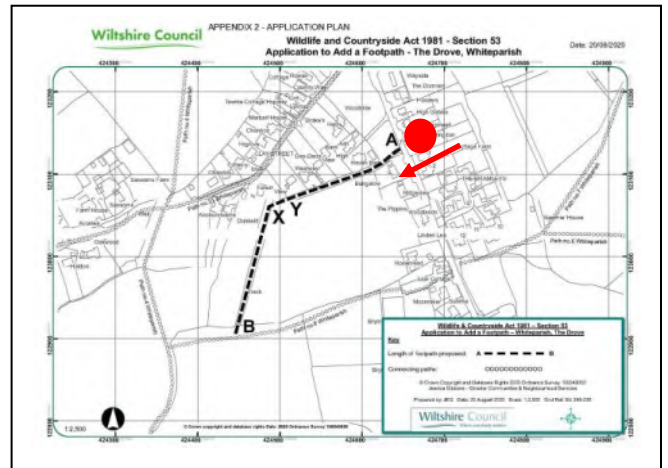
Connecting paths: ○○○○○○○○○○○

© Crown Copyright and Database Rights 2020 Ordnance Survey 100049050
Jessica Gibbons – Director Communities & Neighbourhood Services

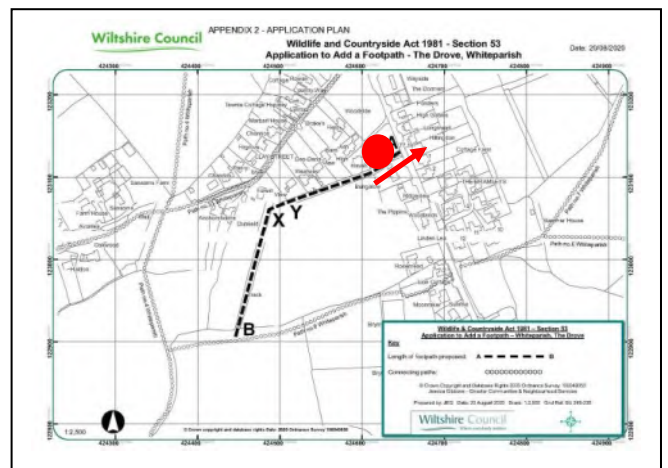
Prepared by: JEG Date: 20 August 2020 Scale: 1:2,500 Grid Ref: SU 245-230

Wiltshire Council
Where everybody matters

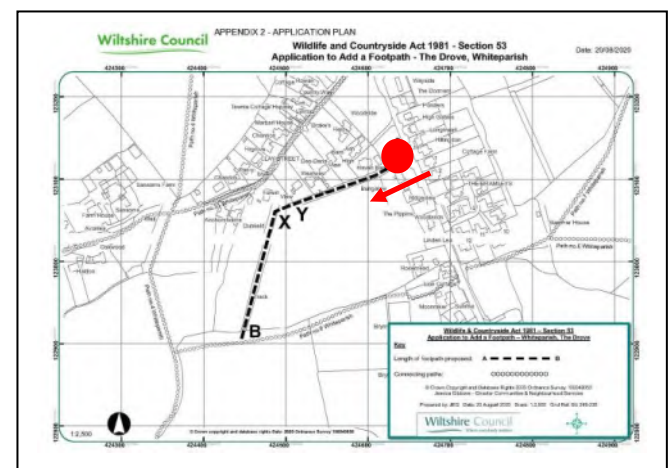
Wildlife & Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 3 – Photographs



Point A, junction of claimed route with Common Road, looking generally west.



Looking generally east towards point A at the junction of the claimed route with Common Road.

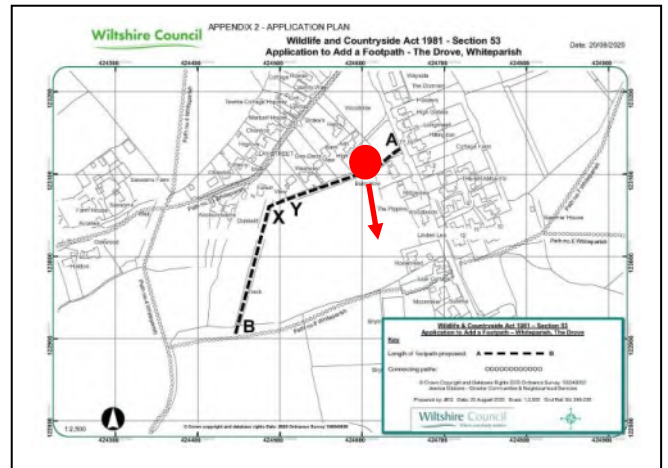


Looking generally west, the field gate into “Cottage Field” can be seen on the left-hand side.

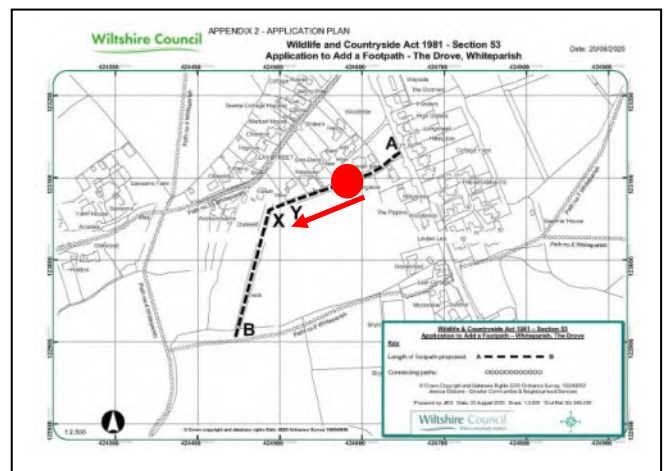
Wildlife & Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 3 – Photographs



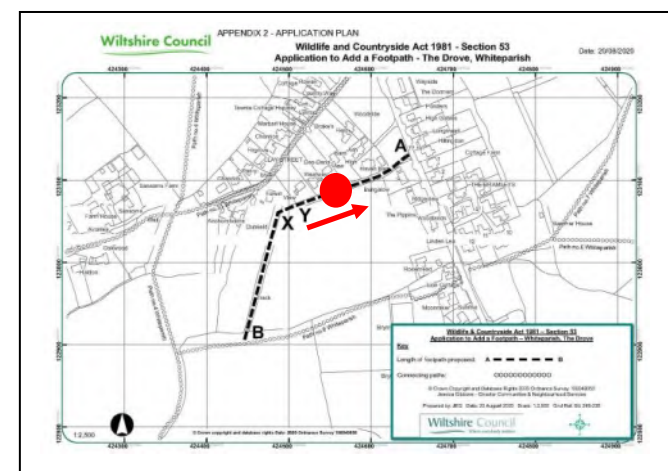
Field Gate leading off The Drove into “Cottage Field”.



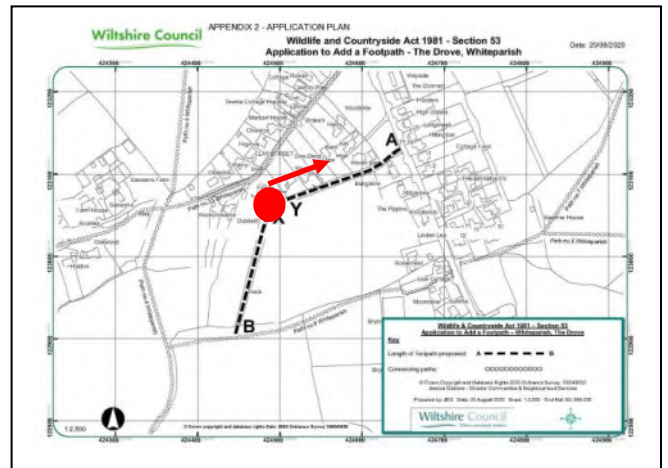
The Drove looking generally west towards point Y, to the rear of the gardens of the properties in Clay Street.



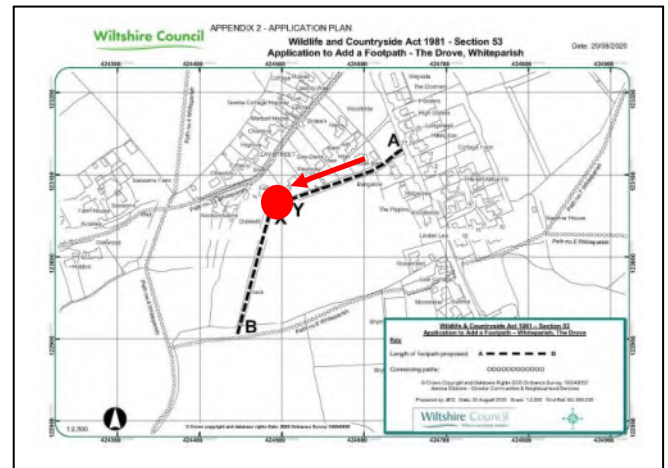
The Drove looking generally east to the rear of the gardens of the properties in Clay Street.



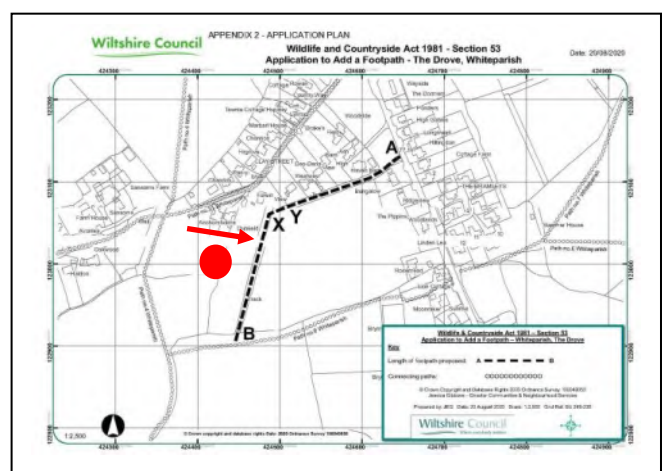
Wildlife & Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 3 – Photographs



Close board fencing across the full width of The Drove at point Y.

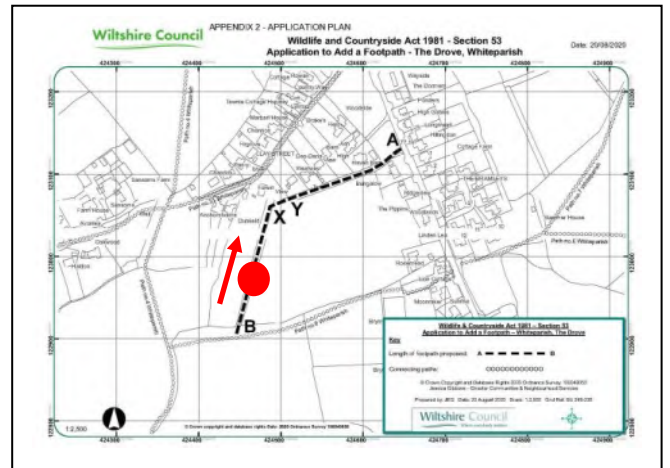


Looking generally west towards point X.

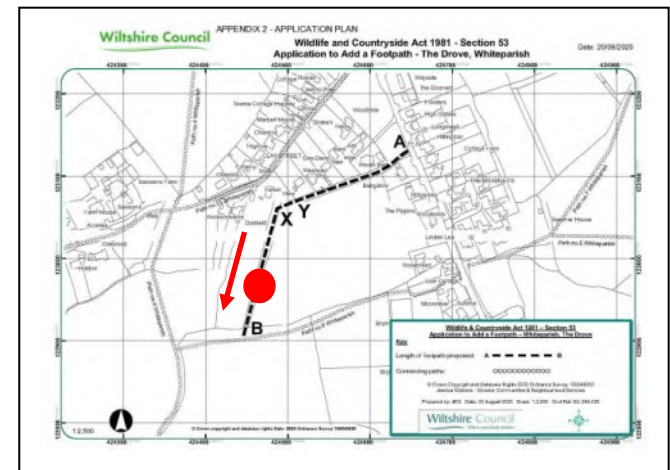


“Secret Field” looking east to the claimed route which leads at the eastern edge of this field, as a tree-lined route.

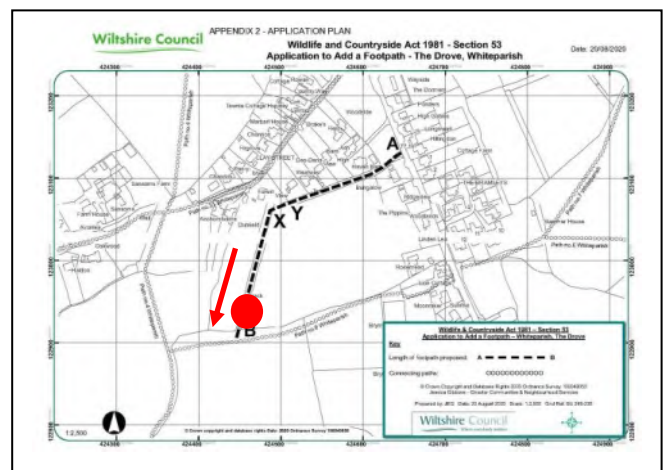
Wildlife & Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 3 – Photographs



Gate on that section between points B and X, looking north-east.

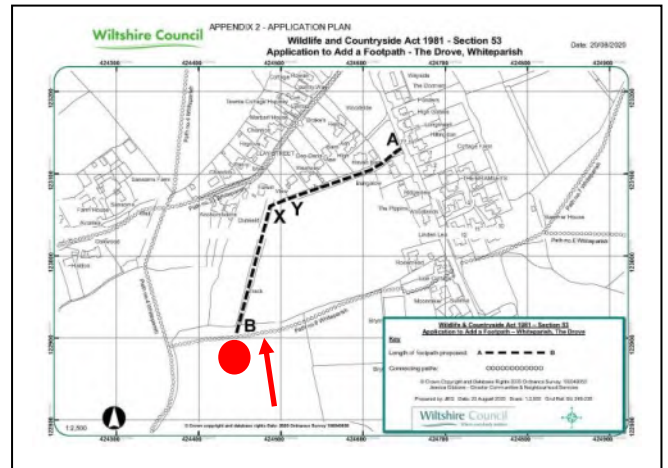


The continuation of The Drove in “Secret Field” as a tree lined route, looking south-west.



Looking south-west towards point B, no break in the hedge/field boundary to allow access to Footpath no.6 Whiteparish leading east-west in “Rough Field”.

Wildlife & Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 3 – Photographs



In “Rough Field” at point B, looking north-east – no break in the hedge to allow access between the claimed route and Footpath no.6 Whiteparish.



Chilworth Road
Chilworth
Southampton
Hampshire SO16 7

30th October 2020

Ms Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside Team
Communities and Neighbourhood Services
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

Dear Ms Green,

**Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish**

Thank you for your letter dated 21st August and subsequent e-mails regarding information and time extension to the end of October 2020.

On behalf of Mrs Sheila Cook (landowner) and Zelda Investments Ltd (landowner) please find enclosed:

- Landowner evidence form Mark Richards of Zelda Investments Ltd with associated map
- Statutory declaration by Mark Richards with accompanying exhibit MR1 – witnessed originals enclosed, delivered by hand
- Accompanying witness statement Mark Richards
- Landowner evidence form Sheila Cook with associated map
- Statutory declaration by Sheila Cook with accompanying exhibit SC1 – witnessed originals enclosed, delivered by hand
- Accompanying witness statement Sheila Cook

I trust this is as anticipated. Please do not hesitate to contact me if there is any more information I can provide.

Kind regards,

Mark Richards
Director

Wiltshire Council

LANDOWNER EVIDENCE FORM

The object of this enquiry is to establish whether a Public Right of Way exists. It is important that you answer all the questions accurately and as fully as possible. This is of special importance as the information given may be examined at a Public Inquiry or Hearing.

FULL NAME MARK RICHARDS

ADDRESS ZELDA INVESTMENTS LTD [REDACTED] CHILWORTH RD, CHILWORTH
SOUTHAMPTON SO16 7 [REDACTED]

Tel no (day) [REDACTED] Tel no (eve) [REDACTED]

e.mail address [REDACTED]

PATH DETAILS:

Parish Whiteparish

Claimed Status of Way Foot paths

Description of Path (also see attached map)

From: Cannon Road A To: Foot paths 6 B

1. The route of the way is shown on the accompanying plan.

Does the route cross or adjoin your land? YES / NO

If no, no further questions need to be answered.

If yes, please indicate on the plan the position of your land and state the number of years it has been in your ownership RED LINES / ZELDA
1 YEAR (NOV 2019) or tenancy

2. Do you believe this way to be public? NO

(a) If so, with what status

(b) For how long have you held this belief? ALWAYS

3. Have you seen, or been aware of, members of the public using this way?

(a) If so, please state the period, regularity and nature of such use ONCE, NOV '19

4. Have you ever required people to ask permission before using the way?

If so, please give details ALWAYS, BY DEFINITION

5. Have you deposited a Section 31 (Highways Act 1980) plan and statement? ~~YES~~ / NO

If so, please give details and dates

6. Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?

If yes, please give details and appropriate dates YES, SEE 3 IN NOV '19

7. Have you, or someone on your behalf, ever told anyone using the way it was not public?

If yes, please give details and appropriate dates YES, SEE 3 & 6, NOV '19

8. Have you ever erected notices or signs stating that the way was not public? NO

a. If yes, please give details and approximate dates

b. State whether these notices were ever defaced or destroyed and whether they were replaced.

c. Show their position on the accompanying plan

9. Have there, to your knowledge, ever been on the way any stiles or gates? ~~YES~~ / NO

a. If yes, state whether the gate or gates were ever locked

b. Show their position on the accompanying plan

10. Have you ever obstructed the way?

a. If yes, state where, how and when YES, OUR LAND IS FENCED AT BOTH ENDS, BARBED WIRE AT 'A' REPLACED WITH CLOSE BOARD

11. Can you give any further information? Please continue on a separate sheet of paper if needed.

SEE WITNESS STATEMENT, STATUTORY DECLARATION + MRI MARCH 2020

DECLARATION

I hereby certify that, to the best of my knowledge and belief, the information that I have given is true.

Signed:

[Redacted Signature]

Date: 26 OCT 2020

Please return this form and any accompanying map to:

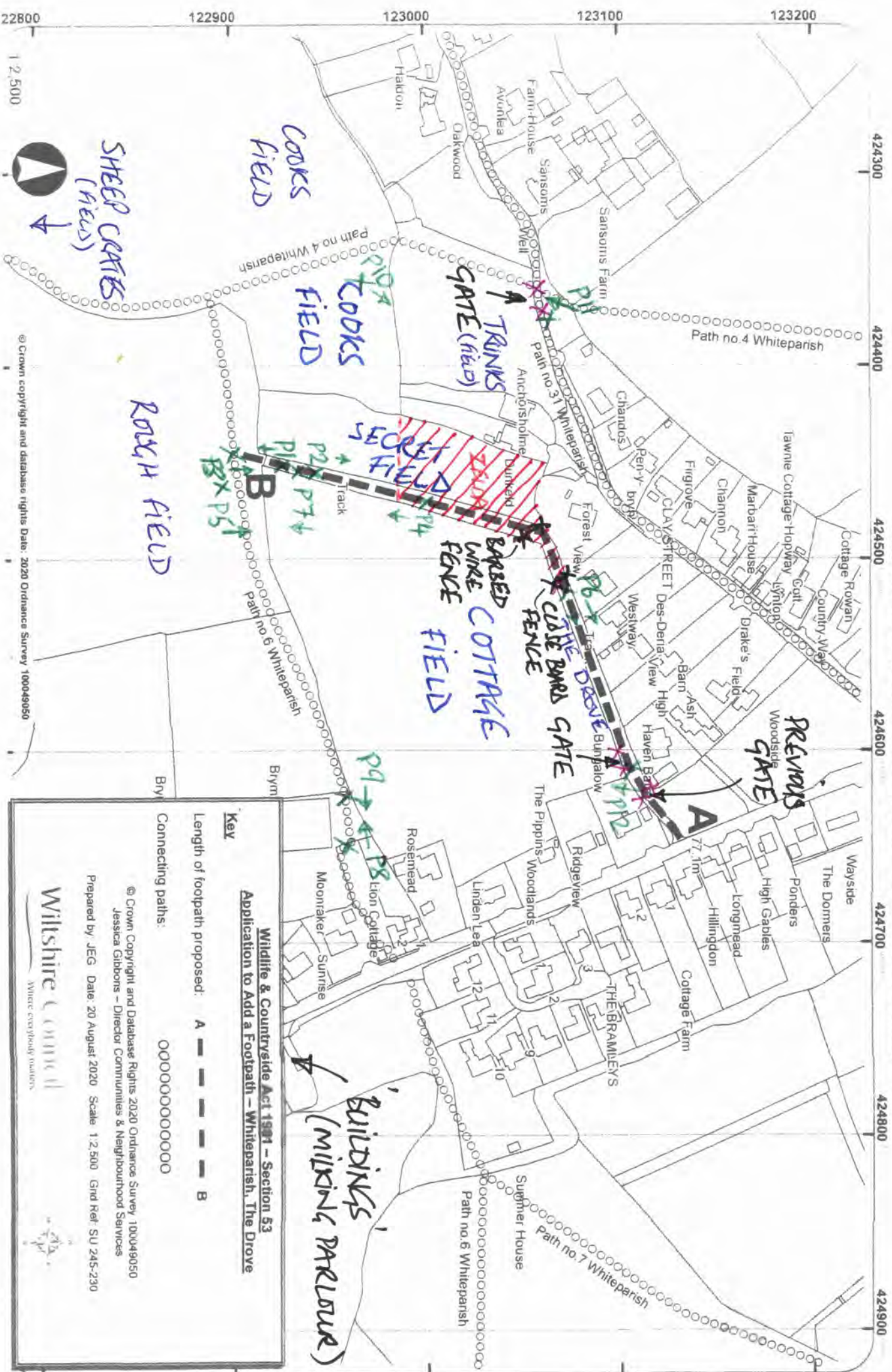
Rights of Way and Countryside Section, Communities and Neighbourhood Services, Wiltshire Council, County Hall, Trowbridge, BA14 8JN

Information relating to how Wiltshire Council will manage your data can be found at:
<http://www.wiltshire.gov.uk/recreation-rights-of-way>

MAPP - MR1 (WORKER ORIGINAL)

Wildlife and Countryside Act 1981 - Section 53
Application to Add a Footpath - The Drive, Whiteparish

Date: 20/08/2020



Key

Length of footpath proposed: A - - - - - B

Connecting paths: 00000000000000

Wildlife & Countryside Act 1981 - Section 53
Application to Add a Footpath - Whiteparish, The Drive

© Crown Copyright and Database Rights 2020 Ordnance Survey 100049050
Jessica Gibbons - Director Communities & Neighbourhood Services
Prepared by JEG Date: 20 August 2020 Scale 1:2,500 Grid Ref SU 245-230

Wiltshire Council
Where everybody matters

22800 122900 123000 123100 123200

1:2,500

© Crown copyright and database rights Date: 2020 Ordnance Survey 100049050

424300 424400 424500 424600 424700 424800 424900



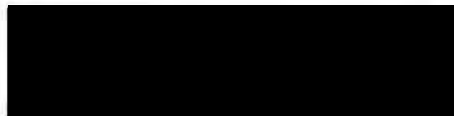
MARK RICHARDS of Zelda Investments Limited, [REDACTED] Chilworth Road, Chilworth, Southampton, SO16 7 [REDACTED] DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am a director of Zelda Investments Limited (**Zelda**).
2. Zelda purchased the property known as Forest View, Clay Street, Whiteparish SP5 2ST in July 2018. Forest View was unoccupied for approximately five years before it was purchased by Zelda.
3. Forest View is the last in a row of residential properties which adjoin Clay Street to the north and which have rear gardens adjoining a lane to the south which is known as The Drove. At the time of purchase Forest View's boundary to the south was an overgrown hedge and several metres wide bramble with a broken gate which if you climbed over it and through the branches would have joined with the track leading east towards Common Road from Westways back garden gate. From the south eastern most angle of the Forest View boundary a three strand barbed wire fence ran in a south east direction to the Cottage Field boundary. This formed the north eastern corner of Secret Field and has at all times been impassable. A map showing the relative locations of Forest View, The Drove and Secret Field, and various photographs (P1 to P12) which have been taken from locations indicated on the map, is attached at Exhibit MR1.
4. In November 2019, Zelda purchased from Mrs Sheila Cook the northern half of Secret Field (marked 'Zelda' in red on the map at Exhibit MR1) and the section of The Drove from the barbed wire fence mentioned above to a line extending from the boundary between Forest View and Westways.
5. Until Zelda's purchase of the top section of Secret Field and the section of The Drove in November 2019, Secret Field benefitted from a right of way granted by a 1957 covenant which permitted access over the adjoining section of The Drove owned by Mrs Sheila Cook from Forest View towards Common Road. On the date of purchase of Secret Field and part of The Drove in November 2019 the remaining right of way for the lower section of Secret Field over that section of The Drove was automatically extinguished.
6. Zelda sold Forest View to a third party purchaser in March 2020. As part of the sale, Zelda extinguished Forest View's rights to access to The Drove. At this time, Zelda also erected a close board fence across the width of The Drove at the point marked on the map at Exhibit MR1.
7. Since Zelda's purchase of Forest View in July 2018:
 - a. the route along The Drove from Forest View towards Common Road outside the Forest View south eastern boundary has been practically impassable due to The Drove being overgrown with vegetation and boggy underfoot;
 - b. I have witnessed only one person walking The Drove and this was a senior gentleman with a dog in Secret Field in November 2019 when we started clearing the overgrowth outside the back garden gate to Forest View. I politely asked him to leave after he had finished his walk as it was private land. Apart from this I have not been told of any incidents of anyone walking along The Drove; and

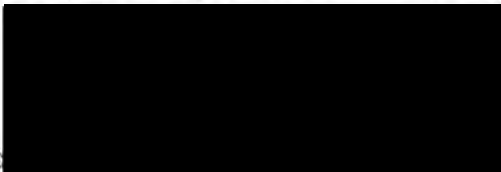
- c. apart from one incident in June 2020 when a section of the vegetation along The Drove outside rear garden gates was cut back by persons unknown, and our clearance operation outside the Forest View rear garden gate prior to the sale of that property, I have never seen or heard of anyone (including Zelda) tending to or cutting back the overgrown vegetation along The Drove.
8. In relation to the alleged existence of a path which runs through Secret Field, no such path exists. There is a line of trees which provided shelter for livestock but there is no exit at the bottom where the path is suggested to exit onto footpath 6; indeed, the opposite is true, as it is probably the most impassable part of the field boundary due to the junction of three fences and the overgrowth and fallen trees are in places five metres deep with a fence in the middle. As I understand it this has always been the most enclosed area of Secret Field as this is where horses and previously cows took shelter in the winter. Photographs showing the southern boundary of Secret Field is attached at P1, 2, 7 of Exhibit MR1.
9. With regards to the alleged use of The Drove and Secret Field, not only have I never seen or heard of anyone walking along here outside of the instance mentioned, but it seems impossible to me that someone could do this apart from at the time that we were clearing the overgrowth and replacing the *barbed wire fence with the relocated close board fence*. In order to do so, someone would need to have walked down The Drove which is overgrown to the point of being impassable (and now blocked by a close board fence), climbed over a three-strand bared wire fence to enter Secret Field, navigated through the horses and then somehow exited at the other end through another overgrown and fenced boundary.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Signature of declarant..



Declared at *Harris & Harris*
on this *27* day of *October* 2020 before me



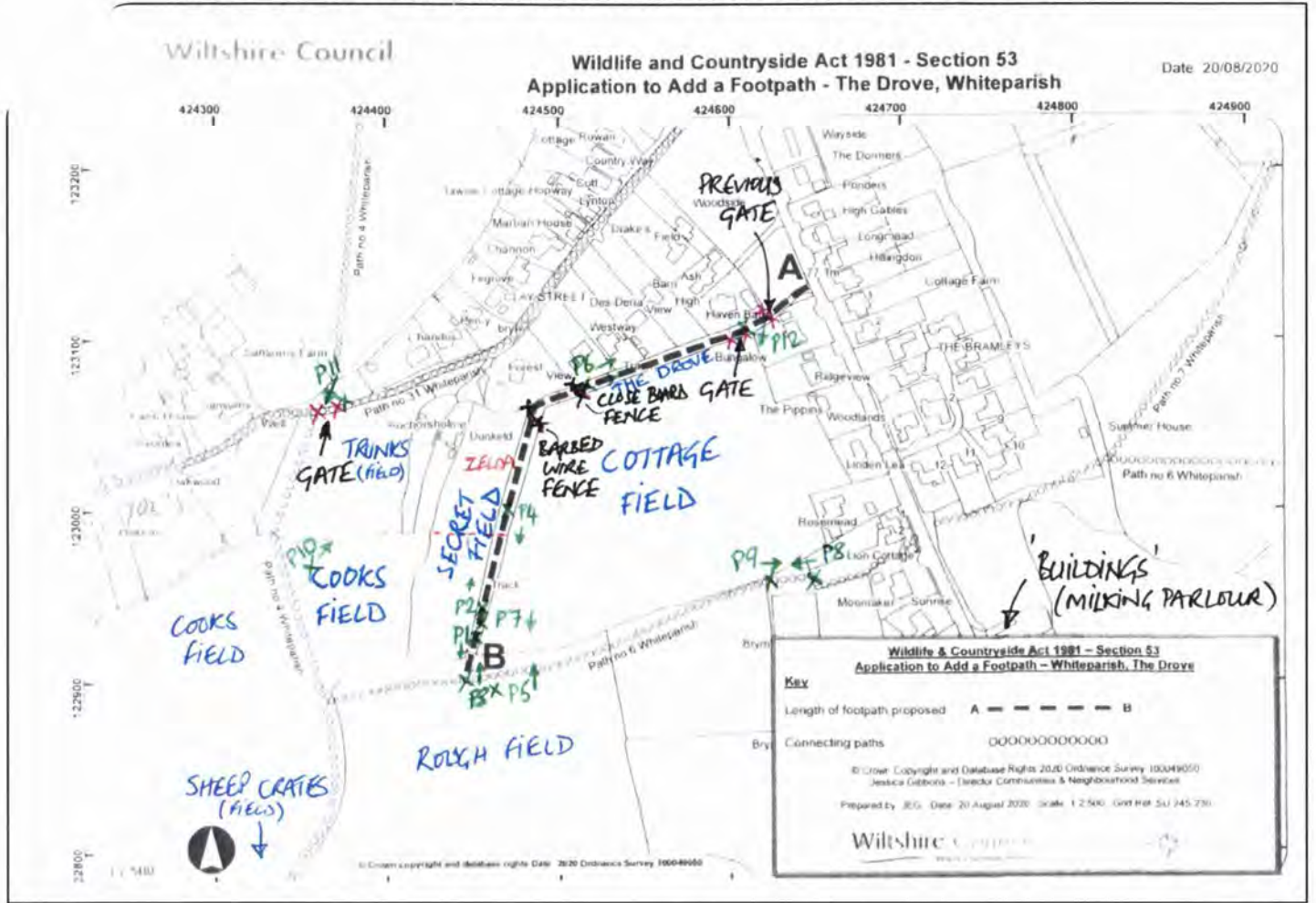
Signed

Solicitor/~~Commissioner for Oaths~~

Benjamin Monksummers LL.B LL.M
Solicitor
Harris & Harris LLP
11 Stony St, Frome, Somerset BA11 1BU

ACCOMPANIED BY EXHIBIT MR1

MAP SHOWING FIELD NAMES, GATES AND LOCATIONS OF PHOTOGRAPHS



This is the Exhibit MR1 with accompanying pages referred to in the Declaration of Mark Richards Dated 27 Oct 2020



Benjamin Monksummers LL.B LL.M
 Solicitor
 Harris & Harris LLP
 11 Stony St, Frome, Somerset BA11 1BU

P1 – BOTTOM OF SECRET FIELD LOOKING SOUTH ON THE DOTTED LINE, AUGUST 2020



P2 – BOTTOM OF SECRET FIELD LOOKING NORTH ON THE DOTTED LINE, AUGUST 2020



P3 – FROM FOOTPATH 6 LOOKING NORTH AT THE DOTTED LINE, AUGUST 2020



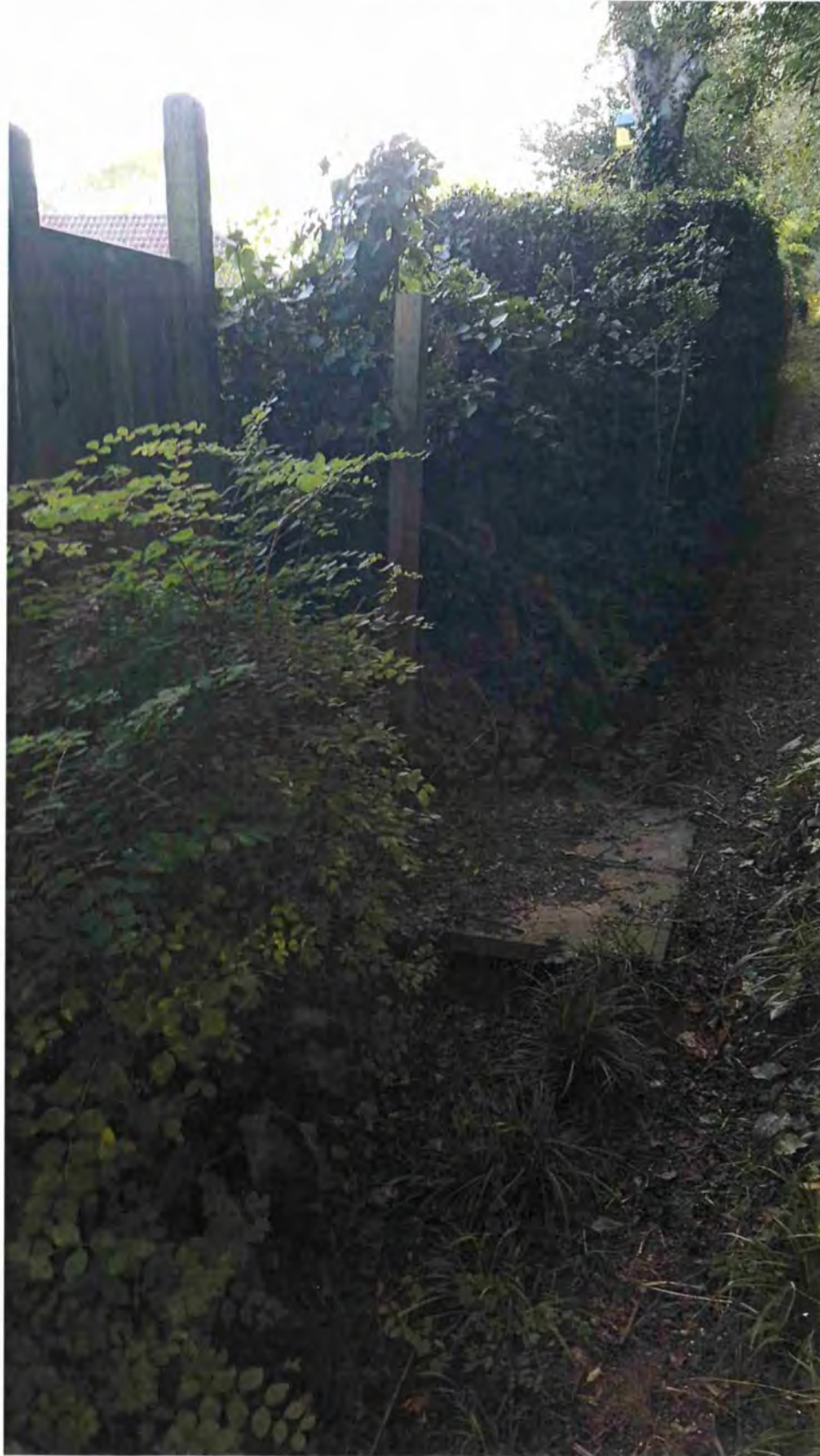
4 – TOP SECTION OF SECRET FIELD LOOKING SOUTH ON THE DOTTED LINE, AUGUST 2020



P5 – ON FOOTPATH 6 LOOKING NORTH AT THE DOTTED LINE, AUGUST 2020



P6 – IN FRONT OF WESTWAYS REAR GATE LOOKING EAST, AUGUST 2020



P7 – BOTTOM OF SECRET FIELD LOOKING SOUTH ON THE DOTTED LINE, AUGUST 2020



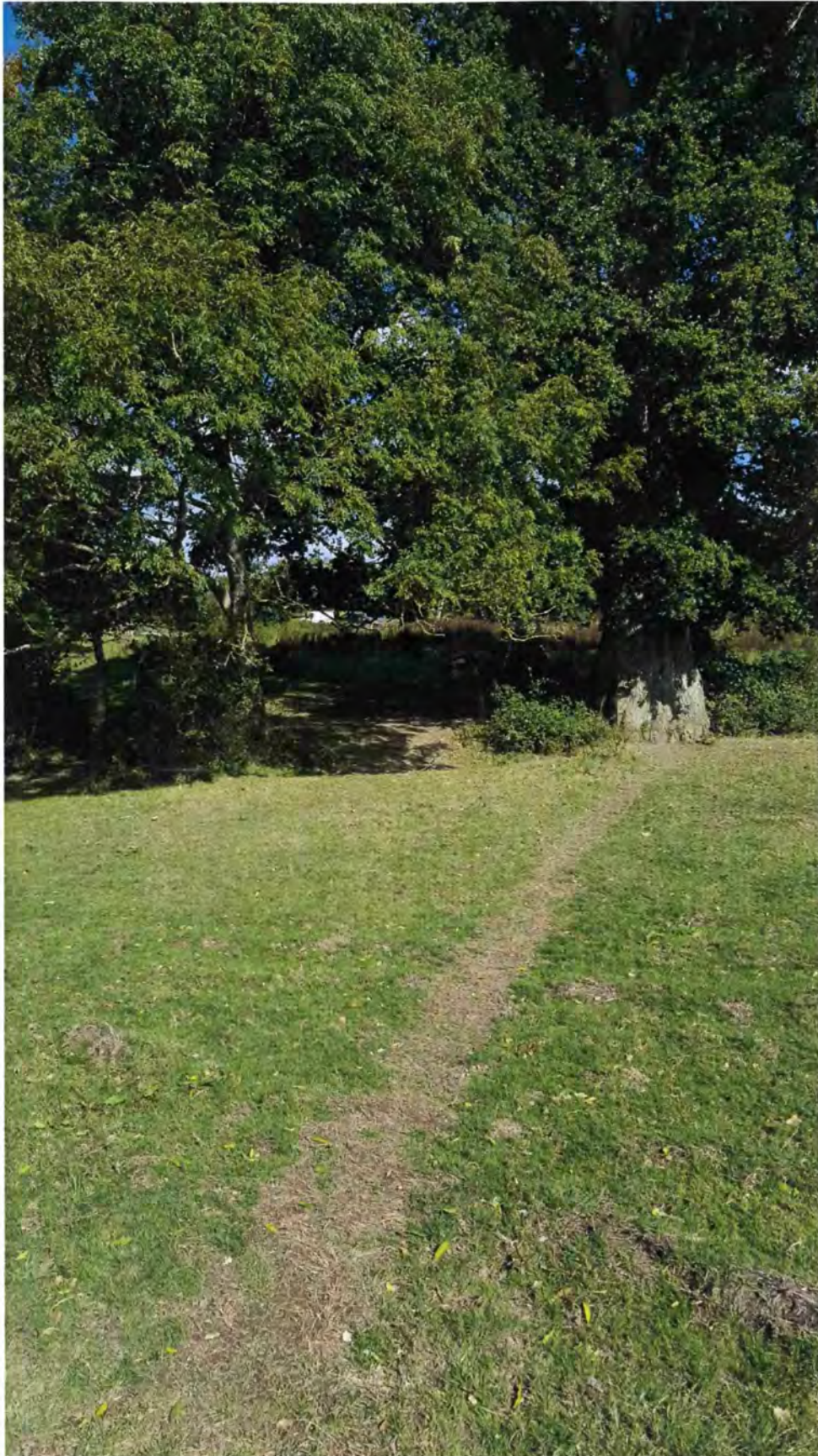
P8 – OVERGROWN ENTRANCE TO FOOTPATH 6 LOOKING WEST, AUGUST 2020



9 – OVERGROWN EXIT FROM HORSE FIELD ON FOOTPATH 6 LOOKING EAST, AUGUST 2020



P10 – EXAMPLE OF HORSE TRACK COOKS FIELD LOOKING NORTH EAST, AUGUST 202



- CATTLE GATES FROM CLAY STREET TO TRUNKS FIELD LOOKING SOUTH, AUGUST 2020



P12 - CATTLE GATES FROM THE DROVE TO COTTAGE FIELD LOOKING SOUTH, AUGUST 2020



Signed

[Redacted signature]

In the presence of

[Redacted name]

Date

27/10/2020

WITNESS STATEMENT – MR MARK RICHARDS

My name is Mark Richards, Director of Zelda Investments Ltd.

We purchased Forest View in July 2018.

It is the last in the line of properties with rear gardens off The Drove to benefit from the often mentioned 1957 covenant granting access to Common Road.

At time of our purchase, access to Forest View rear garden via The Drove was not passable without pushing branches out of your face and needing sturdy boots to get through the mud and roots without injury. Forest View itself had been left unoccupied for 5 years before we purchased it, the back garden gate was broken and clearly no-one used The Drove beyond Westways rear garden gate to the east. Going east from the Westways rear garden gate the path was and remains 0.3m, see P6 in MR1.

To be explicit I did not see anyone walking past the back gate to Forest View from July 2018 to November 2019.

When I walked the top section of The Drove from Common Road (as we have rights from in front of the Cottage Field gate) I never saw anyone going in or out of their back gardens onto The Drove or walking towards Common Road. All the back gardens are very well screened, understandably private given your neighbours have permission to walk past.

The only time there has been any change to the top section of The Drove by the rear of the properties was in the month leading up to this application when some of the overgrowth was cut (and left) and verges trimmed, grass cut and left.

After the Westways boundary with Forest View to the west the overgrown scrub continued for 10m up to a 3 strand barbed wire livestock fence running between an ash tree (which itself was impossible to get to) and another ash tree in the hedge line to the field to the east (known as Cottage Field). This barbed wire fence formed part of the field boundary and prevented horses in Secret Field from escaping. Note the boundary to Secret Field with Forest View going to the West was equally totally overgrown and impassable. As the ecologist employed by Mrs Woodruffe pointed out it was all 'without management for approx 45 years'.

Secret field was an open field. Secret Field was unmaintained in terms of fallen trees or vegetation but open in outlook, in stark contrast to the impassable track the other side of the barbed wire fence. It could also have been called Muddy Secret Field as it has always been boggy at the bottom, there is a natural dip followed by an overgrown area where the horses would shelter. Clay Street is appropriately named, drainage is an issue.

When we bought Forest View, and up to the time we sold it, Secret Field had horses in it. As we understand it cows grazed Secret Field before the horses – cows normally create even more bog and mud than horses. The exit for Secret Field for the horses is to the west into what we understand is Cooks field which is also owned by the same farmer Mrs Sheila Cook.

We purchased the top half of Secret Field including the overgrown section of The Drove behind Forest View up to the boundary between Forest View and Westways from Mrs Sheila Cook in November 2019.

The 1957 covenant granting rights to neighbouring property to access a section of the Drove towards Common Road is well documented. In the purchase of the top section of Secret Field we

extinguished the rights of the farmer Mrs Sheila Cook to access towards Common Road via The Drove as they use the access from the remainder of Secret Field to Cooks Field to the west.

Note in the handover period we inadvertently breached the three strand barbed wire fence before putting up the replacement and Mrs Cook had a phone call to say a horse was out 2 hours later.

There has never been any other breach in any stock fence to Secret Field in the time we owned first Forest View and then Secret Field – as is clear, any breach would be immediately apparent with livestock escaping.

At the time of purchase of Secret Field there was plastic tubing on the 3 strand barbed wire fence in the north east corner as shown in one of the pictures from Mrs Woodruffe. I would add that this photographs is probably much older as in our ownership you could not get close to the fence from the north east (Forest View) side due to undergrowth.

Regarding the supposed/proposed path - there is nowhere obvious for a dotted path to go in Secret Field as there is no path. There is a line of trees which provided shelter for the livestock but there is no exit at the bottom where the path is requested to exit to footpath 6 – the opposite is true, it is probably the most impassable part of the field boundary as it is the junction of three fences and the overgrowth and fallen trees are in places 5m deep with a fence in the middle. As we understand it this was the most enclosed area as this is where horses and previously cows took shelter in the winter. See map and pictures P1, 2, 4, 7 in MR1.

And there is no visible path – you can see where the horses used to stand at the bottom and where they tracked up the field boundary under the trees but you cannot see a walkers path (which would be like FP6). Equally there is no visible path from the FP6 side when looking back at where the supposed footpath is. (see P3, 5).

We assume this is just wishful thinking and that if people have trespassed into Secret Field down an overgrown private track, climbed a barbed wire fence they must have then walked around in a circle before returning up the same path. Not a single witness statement demonstrates anything explicit about how to get out of Secret Field to get to footpath 6 however they are suggesting that is has apparently been used unobstructed and with permission for the last 20 years... Most people are likely to have walked up The Drove from Common Road thinking it was a footpath and have then turned back as it narrowed near garden gates and then became impassable or if they carried on through the scrub to avoid trespassing would not have climbed over the 3 strand barbed wire fence. To then stand in a field with free roaming livestock and their dog? And then pick their way through that livestock across a boggy field through brambles and fallen trees to climb through or over a hedge to meet with another footpath?

We sold Forest View in March 2020 – with the sale we extinguished the rights of Forest View to access The Drove and erected a close board fence the width of The Drove and removed the barbed wire fence. Note the remains of the barbed wire fence are still on the Cottage field side of Secret Field with posts and strands intact and wires embedded in an ash tree.

From the time of purchase of Forest View in July 2018 to March 2020 I saw one person in any part of The Drove and this was in Secret Field in November 2019 half way down after we had cleared the scrub on the corner outside the back garden gate of Forest View making the approach to the barbed wire fence more passable and we then removed the barbed wire fence to replace it with the close boarded one in the new location. I politely told the mature gentleman and his black Scottie (I think)

that it was private land but that he could continue his walk this time. It was slightly awkward as he didn't have anywhere to go except back past me where he had arrived from.

Secret Field – we bought a field (which had horses grazing uninterrupted in all parts of it) with an overgrown corner the other side of a three strand barbed wire fence. I cannot say where the 8m title comes from. If you climbed over the barbed wire fence you are in a field with livestock. As I understand it before the horses there were cows – cows don't leave or make paths 8m wide, they go everywhere up to a stock fence.

Title deeds are repeatedly mentioned in witness statements. If you look carefully at the shading on title plans you can see the extent of any legal right of way.

COMMENTS ON INDIVIDUAL WITNESS STATEMENTS

Main applicant Patricia Woodruffe.

The title Residents of Clay Street would imply all the Residents – it is some of the residents, most notably those in Dunkeld and Anchorholme most affected by the housing development in Secret Field ~~who~~ next to their houses. We have got used to them trying to obstruct every aspect of the development, including trespassing regularly despite Covid procedures to take pictures of work, filming from windows. We couldn't say with clarity but it may also be her who has called the fire brigade, the wildlife officer, Health and Safety etc and anyone else who might be able to create a problem. All of which is exhausting for all parties, not to mention a waste of taxpayers money for which we apologise every time to the agencies. We just have to live with it and not take it personally, but clearly a few people remain very upset about the development even though it will raise the value of their own properties.

The Monument Report – what is the relevance of this please? It has no information or bearing on rights of way in the last 40 years let alone 20 years.

Equally the extract from Roads and Tracks of Britain by Christopher Taylor 1979 has zero relevance to evidence of a right of way in the last 20 years.

OS Map published circa 1881 – how is this relevant as no information on rights of way are shown?

Tithe map 1843 – similarly how is this relevant to rights of way? This is not a history group discussion - this is about challenging private ownership of land for a public right of way through continued and uninterrupted use without force for the last 20 years.

Please note no permission was given to Mrs Woodruffe for her to take pictures. Neither was any permission given to an ecologist. Mrs Woodruffe states she walked the route she is requesting once a year – so I guess she took these pictures on her single annual visits or she has used other people's pictures.

There is an age submission with the application, this may be relevant to the athleticism required for the trespassing mentioned. Could Mrs Woodruffe climb through the overgrowth backing onto Forest View, scale the barbed wire fence, walk down through the mud, climb over the fallen trees (see pictures) climb through the dense hedge with barbed wire fencing at the bottom.... on her one visit a year?

Her first picture taken outside Westways back gate shows the last of the passable part of the top section of The Drove over which residents including Westways have rights of access. Does she have a

picture facing the other way taken at the same time as it was impassable – we cleared it when we sold Forest View; we had to start the clearing at the Secret Field end and work eastwards as there was no path to work from unless you were 2ft tall.

Picture 2 is also misleading – we cleared the section you are looking at to access the farmers water pipe so it could be moved. But we didn't clear beyond where the picture is taken so if you swivel the camera you get a different story.

Picture 3 is at the bottom of the dotted red line, it is to this day still too boggy to walk in – it wouldn't stop cows and horses but too treacherous for any walker – also if you swivel the camera round 180 degrees there is nowhere to go so what are you doing there? There is dense hedging/fencing without break which is exactly as it is today – there is no exit at the bottom towards footpath 6 and none of the witness statements actually mention it.

Patricia Woodruffe herself (on her annual visit) suggests 'it is recognised that, to link the Drove to WHT6 would require some clearance of vegetation'... Perhaps an understatement.

Picture 4 shows the barbed wire fence and the overgrowth behind it – are you sure this was 2018 as we purchased Forest View in 2018 and you could hardly get in from the fence.

John Hall

After we cleared the overgrowth in front of Forest View rear garden gate and removed the three strand barbed wire fence prior to erecting the close board fence (March 2020).. I met a man who must be John Hall standing in Secret Field with his dog. I politely asked him what he was doing, guessing he must have opportunely come down The Drove from Common Road now that it was unblocked. He was not someone who I considered could have made it previously through the undergrowth or through the barbed wire fence so if he says he regularly walked it he is probably referring to the top section behind the houses as far as Westways rear garden. Needless to say I politely pointed out that the land he was standing on was private but he could carry on and finish his walk back out the way he came. It was an awkward encounter, he looked embarrassed given both that he was standing on someone else's land and because he had to walk back past me as the only possible exit.

Signed

Print name

MARSH RICHARDS

Date

30th October 2020

Wiltshire Council

LANDOWNER EVIDENCE FORM

The object of this enquiry is to establish whether a Public Right of Way exists. It is important that you answer all the questions accurately and as fully as possible. This is of special importance as the information given may be examined at a Public Inquiry or Hearing.

FULL NAME SHEILA COOK

ADDRESS [REDACTED] BRYCES LANE, SHERFIELD ENGLISH
ROMSEY HANTS 3051 [REDACTED]

Tel no (day) [REDACTED] ... Tel no (eve) [REDACTED]

e.mail address [REDACTED]

PATH DETAILS:

Parish WHITE PARISH

Claimed Status of Way PUBLIC

Description of Path (also see attached map)

From: COMMON RD To: PATH NO 6

1. The route of the way is shown on the accompanying plan.

Does the route cross or adjoin your land? YES / ~~NO~~

If no, no further questions need to be answered.

If yes, please indicate on the plan the position of your land and state the number of years it has been in your ownership FAMILY SINCE 1919
MYSELF 1988 or tenancy

2. Do you believe this way to be public?

(a) If so, with what status NO

(b) For how long have you held this belief? ALWAYS

3. Have you seen, or been aware of, members of the public using this way?

(a) If so, please state the period, regularity and nature of such use NO. but

..... MY HUSBAND HAS

4. Have you ever required people to ask permission before using the way?

If so, please give details YES, ALWAYS

5. **Have you deposited a Section 31 (Highways Act 1980) plan and statement? YES / NO**
 If so, please give details and dates NO
6. **Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?**
 If yes, please give details and appropriate dates YES MR ALAN COOK
 2012
7. **Have you, or someone on your behalf, ever told anyone using the way it was not public?**
 If yes, please give details and appropriate dates YES MR ALAN COOK
 2012 2016
8. **Have you ever erected notices or signs stating that the way was not public?**
 a. If yes, please give details and approximate dates YES
 SEPT 2020
- b. State whether these notices were ever defaced or destroyed and whether they were replaced.

- c. Show their position on the accompanying plan
9. **Have there, to your knowledge, ever been on the way any stiles or gates? YES / NO STILES**
 a. If yes, state whether the gate or gates were ever locked GATE AT TOP OF
 COMMON ROAD. TO 1990, NOT
 b. Show their position on the accompanying plan LOCKED
10. **Have you ever obstructed the way? YES**
 a. If yes, state where, how and when BARBED WIRE FENCE
11. **Can you give any further information? Please continue on a separate sheet of paper if needed.**
 SEPERATE SHEET

DECLARATION

I hereby certify that, to the best of my knowledge and belief, the information that I have given is true.

Signed:



Date: 29-10-20

Please return this form and any accompanying map to:

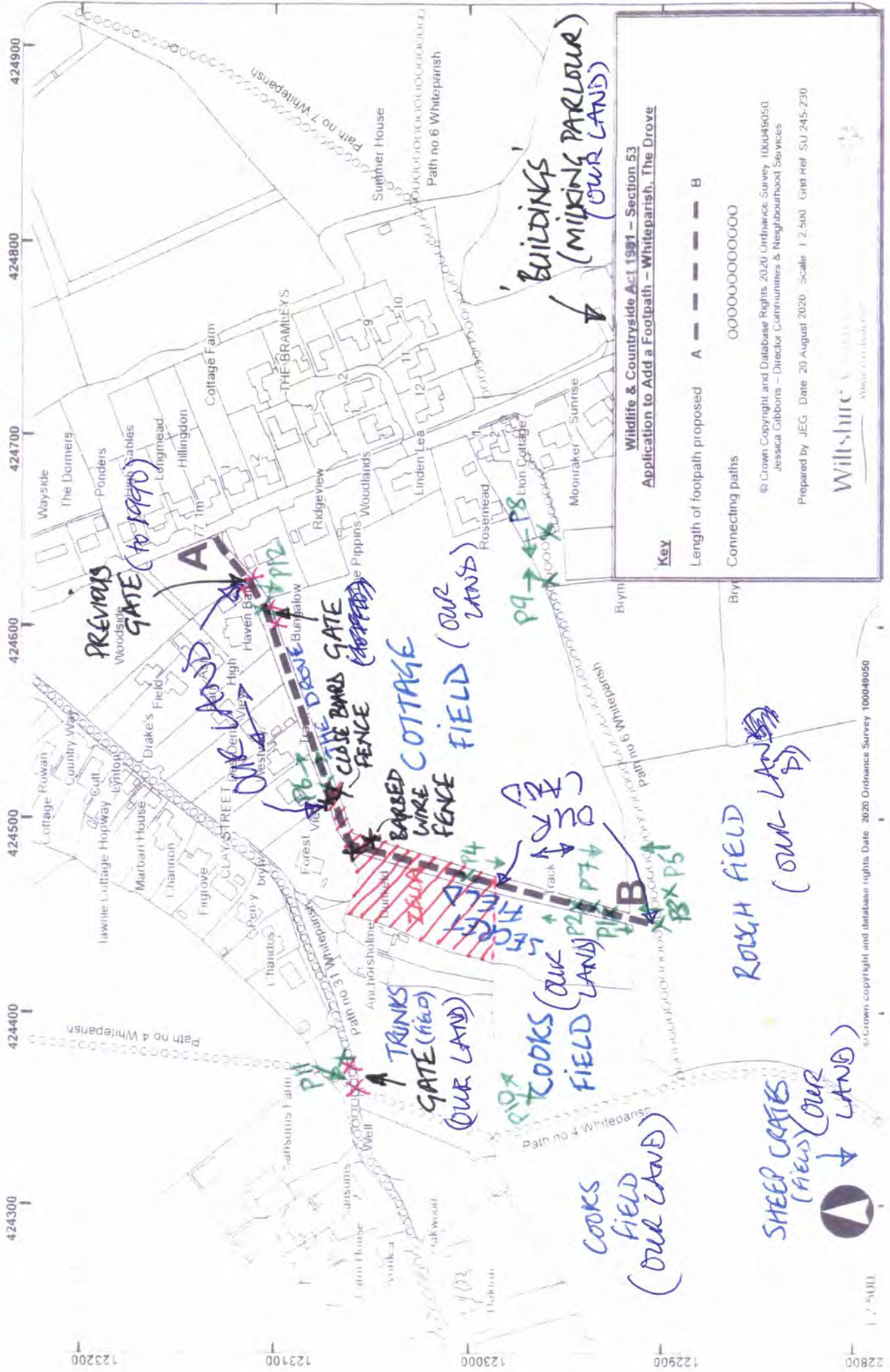
Rights of Way and Countryside Section, Communities and Neighbourhood Services, Wiltshire Council, County Hall, Trowbridge, BA14 8JN

Information relating to how Wiltshire Council will manage your data can be found at:
<http://www.wiltshire.gov.uk/recreation-rights-of-way>

MAP SCI - LALISA ORIGINAL

Wildlife and Countryside Act 1981 - Section 53 Application to Add a Footpath - The Drive, Whiteparish

Date: 20/08/2020



I, SHEILA COOK of [REDACTED] Bryces Lane, Sherfield English SO51 6 [REDACTED] DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am a farmer who lives and works at the above address alongside my husband, Alan Cook.
2. I make this declaration based on my own knowledge and belief and in support of Zelda Investments Limited. I attach to this declaration Exhibit SC1 to which I will refer during the course of this declaration.
3. I own Cottage Farm and the land shown on the map which is annexed at Exhibit SC1 (**the Farm**). The Farm includes fields known by my family as Cottage Field, Cooks Field, Rough Field, Trunks and Sheep Crates which are marked accordingly on Exhibit SC1.
4. The neighbouring landowner in the middle of the northern section of the Farm is Zelda Investments Limited (**Zelda**), as indicated 'Zelda' in red above the red dotted line in Secret Field on Exhibit SC1.
5. Zelda owns the northern half what is known by my family and marked on Exhibit SC1 as Secret Field, which was purchased from us in November 2019. The southern half of Secret Field continues to be owned by myself. Since 2003, the northern boundary of Secret Field has been marked with a three-strand barbed wire fence (**the Fence**). The Fence was installed by myself and my father and replaced a two-strand barbed wire fence which local children had been climbing over to ride their bicycles. This behaviour ceased as soon as the Fence was installed as it is difficult and dangerous to now pass over the Fence. No breaks (including styles and gates) have ever existed in the Fence. The Fence was maintained by my family until we sold the northern half of Secret Field to Zelda in 2019. Since then and to the best of my knowledge, Zelda has continued to maintain the Fence in a like condition until it was replaced by a nearby close board fence in March 2020.
6. To the north east of Secret Field is a track known by my family as The Drove, which is marked accordingly on Exhibit SC1. The Drove is essentially an access track which leads from Common Road to our fields. My family has never owned and I do not own the first 30 metres of The Drove from Common Road (my understanding is that this section of The Drove is unregistered and owned by Mr Urquhart, but that we have a right of access over it) but we do own the section of The Drove from this point to the property known as Forest View, where a close board fence has been erected. The Drove down through the upper section of Secret Field is owned by Zelda. Beyond this the remainder is owned by myself. The boundary between my family's section of The Drove and Mr Urquhart's was until around 1990 marked by a gate, but this was removed when our machinery became wider than the gate. My family have never maintained or cut back any part of The Drove beyond the gate to Cottage Field. As a result, The Drove has generally been overgrown for as long as I can remember and at times sections of The Drove have been completely impassable (depending on the prevailing weather and the season, as a result of bog, brambles and overgrown undergrowth).

7. The northern boundary of The Drove adjoins five residential properties, the frontages of which run along Clay Street ("the Houses"). Each of these Houses has a pedestrian gate at the end of their rear gardens which opens onto The Drove. To the south of these Houses is my family's field, Cottage Field, which has a large farm gate at the north eastern corner that connects onto The Drove.
8. In May 1957, my Great Grandmother (who was at that point the owner of the Farm) granted access rights to each of the Houses from their respective gates which connected onto The Drove towards Common Road, ending where our family's section of The Drove ended and Mr Urquhart's section of The Drove began ("the Access Rights"). These Access Rights were clearly granted to allow the proprietors of the Houses to access their properties from Common Road, assuming of course that the owner of the top section would grant the proprietors of the Houses a like right over his section of The Drove. The Access Rights clearly do not provide the proprietors of the Houses with the right to access The Drove to the west of the Houses.
9. My great grandparents purchased the Farm in 1929, and it has been farmed by my family – firstly by my great grandparents, and subsequently by my grandparents, my parents, and now by myself and my husband – ever since. Between 1929 and 2003, my family farmed cattle until we sold our herd. During that period, cattle were grazed the whole farm throughout the year.
10. In 2003 my husband and I purchased a horse for our daughter, which was kept on and ridden by our daughter from Cottage Farm on a field rotation including Secret Field for much of the year. From 2003 and 2019 approximately ten horses were generally kept in this rotation along with some forage. These horses were owned by third parties who used a nearby stables to keep and care for their animals. The stables had an agreement with myself and my husband to keep horses on Cottage Farm including Secret Field
11. During the time that I have lived and worked on the Farm:
 - a. I have given permission to only one individual to walk along The Drove, Mr Roy Bowles from 2001 onwards, in order to check on water pipes which run through The Drove;
 - b. during the period when my family kept cattle on Cottage Farm up until 2003, I never saw or heard of any incidents of unauthorised third parties walking on The Drove, apart from a group of children who for a short period in 2003 climbed over the fence into Secret Field to ride bicycles, which led us to install the three-strand barbed wire fence and immediately stopped this behaviour;
 - c. during the period between 2003 and 2007 when my daughter kept her horse on Cottage Farm, she never reported to me or my husband any incidents of unauthorised third parties walking on The Drove; and
 - d. although on rare occasions my husband has seen unauthorised third parties on our fields, including Secret Field, he has consistently approached these individuals to inform them

that they are trespassing on private property and to request that they leave immediately, which has always been responded to without argument, incident or repetition. These incidents have, however, been rare as it is not only difficult and dangerous for individuals to pass over the Fence but also to walk through fields occupied by a number of cows and/or horses.

12. I therefore support Zelda in its argument that no public rights of way exist – or have ever existed – over the area claimed by the Applicant. The Access Rights enjoyed by the Houses only relate to a short section of The Drove from the Houses towards Common Road to the boundary with Mr Urquhart's land (and so in respect of this section, the use of The Drove by the proprietors of the Houses has always been in accordance with the covenant granted by my Great Grandmother in 1957 and with my family's consent). From a practical perspective, it would be virtually impossible for the remainder of The Drove to be used as a public right of way, on account of the fact that it is generally overgrown and at times completely impassable on foot, an impassable close board fence has been erected at the western boundary of my family's section of The Drove to replace the previous boundary with Secret Field which was an impassable three-strand barbed wire fence which leads into a field which has on a near constant basis been occupied by a number of cows and/or horses. I have worked on the Farm from 1988 and to the very best of my knowledge The Drove has never been used as a public footpath and my family have never given anyone cause to think otherwise.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Signature of declarant...

[Redacted Signature]

BELLS SOLICITORS 5
Declared at MARKET PLACE, ROMSEY
HAMPSHIRE SO51 8XF

on this 28th day of OCTOBER 2020

before me

ANGELA McQUINNERS

[Redacted Signature]

Signed.....

Solicitor/Commissioner for Oaths - (21302)

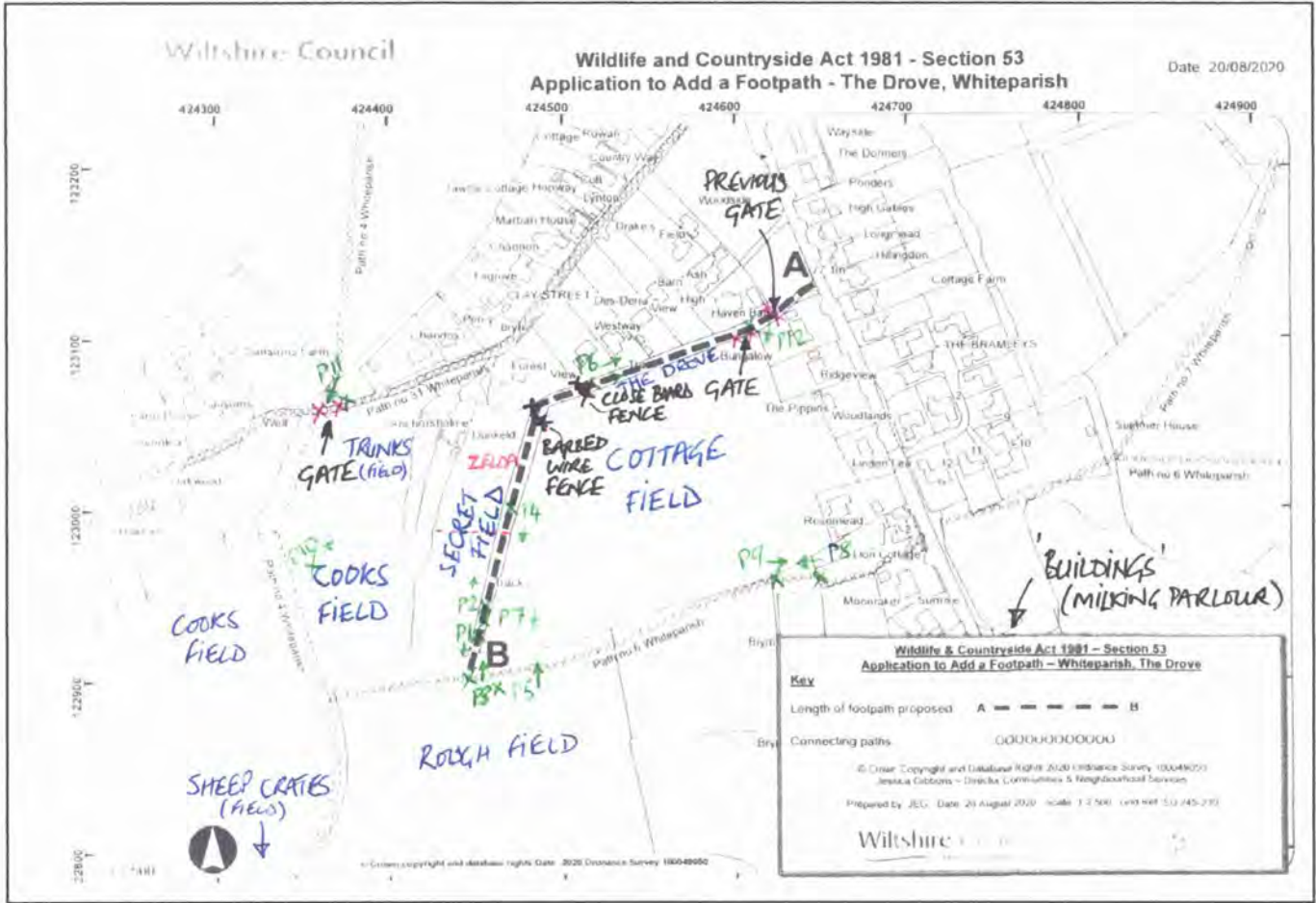


ACCOMPANIED BY EXHIBIT SC1

SCI

SAC

MAP SHOWING FIELD NAMES, FENCES AND PHOTOGRAPH LOCATIONS AND DIRECTION OF VIEW



BELL'S Solicitors
5 Market Place • Romsey
Hampshire • SO51 8XF

P1 – IN SECRET FIELD LOOKING SOUTH ALONG DOTTED LINE, AUGUST 2020



P2 – IN SECRET FIELD LOOKING NORTH ALONG DOTTED LINE, AUGUST 2020



P3 – ON FOOTPATH 6 LOOKING NORTH AT DOTTED LINE, AUGUST 2020



P4 – IN SECRET FIELD TOP SECTION LOOKING SOUTH ON DOTTED LINE, AUGUST 2020



P5 – ON FOOTPATH 6 LOOKING NORTH AT DOTTED LINE, AUGUST 2020



P6 – OUTSIDE WESTWAYS REAR GATE LOOKING EAST, AUGUST 2020



P7 – BOTTOM OF SECRET FIELD ON DOTTED LINE LOOKING SOUTH, AUGUST 202



P8 – OVERGROWN ENTRANCE TO FOOTPATH 6 LOOKING WEST, AUGUST 2020



P9 – OVERGROWN EXIT FROM HORSE FIELD ON FOOTPATH 6 LOOKING EAST, AUGUST 2020



P10 – EXAMPLE OF A HORSE TRACK COOKS FIELD LOOKING NORTH EAST, AUGUST 2020



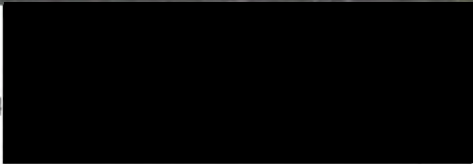
P11 – CATTLE GATES FROM CLAY STREET TO TRUNKS FIELD LOOKING SOUTH, AUGUST 2020



P12 – CATTLE GATES FROM THE DROVE TO COTTAGE FIELD LOOKING SOUTH, AUGUST 2020



Signed



In the presence of ANGELA McQUINNNESS (SOLICITOR)

Date 28TH OCTOBER 2020

WITNESS STATEMENT – MRS SHEILA COOK

My name is Mrs Sheila Cook, I own the top section of area being called The Drove from in front of our gate to Cottage Field near Common Road as far as the recently erected close board fence to Secret Field – see map SC1. I also own the neighbouring Cottage Field to the south east and the fields which have footpaths 4 and 6 passing through them and Cooks field to the west of Secret Field. To simplify this further, if you walk down The Drove from Common Road the first 30m are not owned by me, I then own it up to the close board fence after the rear entrance gate to Westway (at the boundary of Westway and Forest View). Zelda Investments own from the close board fence and all of Secret Field. We then own the land where the proposed dotted line route would exit Secret Field through the fence/hedge at the bottom and join up in our field with footpath 4 and 6.

My Great Grandparents became tenants at Cottage Farm (which owned all the land in question) in 1919, in 1929 they purchased it.

My Grandmother Marjorie Andrews took on the farm with her brother Leonard in 1950 when my Great Grandfather died.

Note my Grandmother was over protective of the land, for example I was instructed embarrassingly in 2005 to go and tell someone to move their car parked on our land.

My uncle Leonard was an approachable man – but he never learnt to drive, didn't own a tractor. His vegetable garden was at the bottom of Clay Street in Hop Gardens and he was most known for pushing his wheelbarrow up Clay Street back to his house on Common Road.

The cows were herded to the dairy at Buildings on Common Road opposite the stables, see map. The cows were driven via the gate off Cooks Field at the bottom of Clay Street or from the top gate at Cottage Field, see map. Photographs of the gates are shown in SC1 – P11 and P12.

This happened twice a day, every day. Cows up to Buildings parlour to be milked in the evening. Overnight at Buildings. Milked in the morning then back to the fields to graze.

Marjorie and Leonard gifted the land to my mother and myself in 1988 when their cows were sold.

Leonard died of old age in 1999 aged 85. Marjorie died in 2017 aged 102.

My father rented the land for his cows and heifers from 1988 until he retired in 2003. They were grazed on the land, not taken daily to Buildings for milking.

The barbed wire stock fence at the top of Secret Field was improved in 2003 with 3 strands of barbwire, as local lads persisted in getting through and using Secret Field for bike jumps. With 3 strands this stopped the bikes, we previously only had 2 strands which is usual for a stock fence.

We bought our daughter a horse in 2003 which she kept in association with the nearby stables – all her friends had horses at the same stables, it is what they did most weekends and nearly every day over the summer and every day at Christmas. Her horse grazed and was ridden from our land. There were 4 to 6 horses together in Secret Field at any one time (as our horse was kept with horses from the stables, males and females separated hence the changeable number). The horses had the shelter at the bottom of Secret Field each winter even though the ground was uneven for both them and the children fetching them. At no time was our daughter allowed to go down the top section of The Drove from Common Road as it was impassable due to mud and undergrowth, she had to walk or get a lift down Clay Street to our gate in Cooks Field and through the west entrance to Secret field. This is the same route that Shirley Near from the stables would take the children every day in her Landrover. Our daughter has never seen anyone on the area being called The Drove in Secret Field with the horses nor in the overgrown section the other side of the fence behind Forest View as it

was muddy, covered in brambles and difficult to walk through (and we had forbidden her to attempt it!). She had her horse in Secret Field for 6 years with no change to the state of the entirety of The Drove as it suited us for it to not be maintained.

I gave Roy Bowles permission to walk The Drove from 2001 onwards including climbing into Cottage Field as needed if the path was blocked as I have a water pipe which travels down The Drove and he checked it on a regular basis as it feeds the troughs - he has not seen anyone walking down there.

My tenant in Cottage Farm Bungalow at the top of The Drove [REDACTED] has permission to walk across Cottage Field.

In October 2019, I walked The Drove looking for the water pipe, I didn't see anyone.

Since the cows were replaced by horses in 2003 my husband Alan has mowed/topped the grass and cropped Cottage, Secret and Cooks fields and the other adjacent fields every year and has seen one person trying to get into Secret Field from the south whom he challenged asking in no uncertain terms what they were doing on private land and showing them the easiest way to leave. It is not unusual to see people walking angles across our fields from footpath 6 and climbing over gates instead of following the paths.

In the section behind the houses this was totally unmaintained until just before the date of this application when undergrowth and branches were cut back and just left on the ground. One resident has even recently mowed a section. They may not be aware that littering tree and grass cuttings on private land is trespassing, let alone rude.

From the rather varied witness statements there would appear to be some confusion as to what The Drove is. Geographically in mine and my father's lifetimes The Drove has been an access track which leads from Common Road down the rear of houses for 100m to a field known to us as Secret Field.

Secret Field is appropriately named as it is hidden by all but an approach from the west via Cooks Field. It is clearly an open field which has been used as pasture for cows up to 2003 and for horses from 2003 until November 2019.

The nature of the two parts of what is being called The Drove are very distinct but seemingly very blurred by most of the witness accounts. The first 100m from Common Road is a narrowing track which has been impassable at the lower section for several periods most notably since 2000. The track has pedestrian gates onto it from rear gardens of properties to the north which front onto Clay Street, our large Cottage Field is to the left with a field gate at the beginning of Cottage Field after what used to be my Grandmother's house.

The mouth of the track at Common Road is wider as we drive machinery up it. We don't own the first 30m of the track, it is currently unregistered (see title plan) but I understand it is owned by Mr Urquart and we have an access right over it. Previously we had a gate at the boundary between our land and Mr Urquart's. This gate was removed in about 1990 when our machinery became wider than the gate.

We continue to access Cottage Field with our gate after 30m on the left (see P12 in SC1), it is our only access to all of our fields without going down Clay Street.

After our gate to Cottage Field the track turns 20 degrees north and starts to narrow and become more overgrown from the south side.

With Cottage Field to the left, to the right five properties which back onto the top section of The Drove (and front onto Clay Street) have access rights from their houses to 30m before Common Road as granted by my Great Grandmother Agnes in May 1957 and they are cited multiple times in the witness statements.

What is incorrect or unclear in all of these accounts of the 1957 covenant is that the households do not have access rights to Common Road. As stated above they only have access to the boundary of our land with Mr Urquarts as it was not my Grandmother's to award over someone else's land and previously there was a gate at the boundary. If you look at the title deeds supplied by the [REDACTED] family in Westways you will see the shading illustrating the right of access ends at that boundary and not at Common Road.

By definition these are the only people with legal access rights over this part of our private property.

Those residents are entitled to access near the end of The Drove towards Common Road, the wording is repeated multiple times by householders.

So if they in addition to those householders choose to play on the way and take liberties with these rights, even climbing our gate into Top Field to pick blackberries then they are technically trespassing. They may choose to cut down parts of the overgrowth and leave it lying on the ground. They may choose to empty the grass cuttings from their lawns outside their back gates. All of which is trespassing. Other people may in turn visit people in this section by trespassing over Mr Urquarts and our land or come out of the respective back gardens via their back garden gates and they may in turn interpret all variations of what they see in whatever way they choose, but they are all trespassing.

Those residents are in several instances saying that they walked down The Drove from their houses turning right out of their back garden gates even though they clearly state they had been told by their solicitor that it is private and their right is towards Common Road.

But neither my parents nor my grand parents are likely to have told off children for playing or picking blackberries in that part of the access track, or indeed as one witness says for climbing over our gate into Cottage Field to pick blackberries.

Please note all of our children went to Whiteparish School between 1994 and 2005 and they never went down The Drove for school trips.

I expect you will find under scrutiny that those that say they have played in The Drove are referring to this top section near the back gardens of properties who have access rights over our land towards Common Road, and not in the boggy impassable overgrown section after Westways and certainly not over the barbed wire fence into Secret Field with cows or horses in.

Regarding the fence at the top of Secret Field, there is no need for anything other than absolute clarity on this and it is shown in photographs. After the last property with access rights, Forest View, there has always been a barbed wire stock fence. If there wasn't one then cows would have gone through the overgrown brambles and appeared on Common Road which they never did. Even if unpassable to a human, a cow would get through if there wasn't a stock fence.

This barbed wire stock fence was upgraded in 2003 as a result of kids climbing through it/over it to make ramps in Secret Field. Playing in the track part next to residents back gardens who have rights is one thing (and it is hard to identify a child with rights nor would my parents or I have wished to) but anyone climbing a fence into a field with livestock in is totally different as it affects our livelihood and we are implicated in the liability of those people.

The three stranded barbed wire fence is shown in pictures in the application – it is not one stranded, neither is it two, it is three stranded. The remains of the three strand barbed wire fence in Secret Field after Zelda Investments Ltd replaced it are still attached to the ash tree on the turn where the path becomes an open field. For clarity 4ft of fence is the norm to have above the ground and this is the case for the posts to Secret Field (and some are still up against the ash tree) – so in the pictures supplied by witnesses you can scale the overgrowth behind to see how small you would have to be to get through.

We did not put any protection on the wires as that would be defeating the purpose of a stock fence as we need the barbs to deter the livestock - whoever put the plastic on there has done so without our permission and it is deeply annoying and once again trespassing. Our land is effectively no different from someone else's private garden, it is our garden so why does someone think they can change a part of it without asking us? If I disable the security lighting in your front drive because I feel like it is that ok? And if that makes it easier for me to stand on your front lawn is that ok? And now is it ok for me to claim a right to stand on your front lawn because I removed the lights and say 'it is easier for me to stand on your front lawn so I must have a right'?

This fence was continuous and without break. No stiles. No gates.

I would imagine that if this matter goes any further then the vagueness of some of the witness statements about where they have walked will be clarified. Climbing over that fence is trespassing and we have now put up signs.

On a personal note, most people find crawling through overgrowth and climbing over or through a 3 strand barbed wire fence and standing in a field with large horses quite an effort and rather dangerous, I certainly found it an effort when locating the water pipe and could not have done it without help from my daughter.

Even more obviously incorrect is that the dotted line is suggested to exit Secret Field to the south to join up with footpath 6. But there is no break in the fencing or hedging where it is requested, so if someone vaguely suggests they have been walking through to join up with footpath 6 then I have no idea where they have been doing it. Wishful thinking perhaps and not a single person explicitly says in their witness statements how they have done it. No-one actually says how they get in or out of Secret Field to the south, it is after all an open field without an obvious exit in this corner where it is overgrown with fallen trees providing extra shelter albeit boggy for livestock enclosed by a solid hedge with a fence in the middle of it. See P1, 2, 3, 4, 5, 7 in SC1. To be clear if this goes to a tribunal they should be asked how they have been using The Drove, which parts, over which fences they climbed, how they joined up with any other right of way if at all. We have not prosecuted anyone to date for trespassing on our land but it is a continuous issue.

Equally the geography of the land does not need to be vague or overstated, perhaps all the witness statements are just referring to the varying widths of the access track from Common Road which was at times impassable with overgrowth, bog and brambles. We have not tended it ever so it's condition has varied. It has a maximum width of 6m where we turn tractors into Cottage field and a minimum width of 0.3m as it approaches the last access to a property (Forest View until March 2020) – see P6.

There was a gate at the entrance to our part of The Drove from Common Road, the hinges of which were visible in situ until the fence to Cottage Farm was redone in October 2020.

The top half of Secret Field was acquired from us by Zelda Investments Ltd in November 2019 (marked 'Zelda' in red on SC1). The bottom half including where the cows used to shelter and with

the access to Cooks Field remains ours. As part of that sale we surrendered our own access rights from the lower section of Secret Field towards Common Road as we have an access to Cooks Field.

Zelda informed us that with the subsequent sale of Forest View in March 2020 they removed the rights of Forest View to use The Drove from their back garden gate and erected a close board fence at the boundary with our land across the width of The Drove effectively after the last property which has remaining access rights (Westway).

At the same time we re-routed our water pipe from the edge of Secret Field onto the other side of the fence to be in Cottage Field.

Summary

I deny that the access rights that individuals claim to have exercised, this is both due to my own knowledge, not seeing individuals exercising the rights whilst I have been on my property, and also due to the practical difficulties the individuals would have met in seeking to access the part of the Drove beyond the first 50m off Common Road. In order to access individuals would have had to climb through the brambles at the end of the straight section of The Drove from Common Road, and then have climbed over a 3 strand barbed wire fence and then walked a dog in a field with cows or horses in which had no southern exit point. This would have required them to then turn around, climb back over the 3 strand barbed wire fence and return through the brambles. I anticipate that with clarification individuals are referring only to the first 50m off Common Road which has always been open as we need tractor access to the gate to the top field on the left and in respect of which residents have legal access rights from their back garden gates along a part of our land.

SOME COMMENTS ON OTHER WITNESS STATEMENTS

The main application witness statement **Patricia Mary Woodruffe**:

It would appear that Mrs Woodruffe has been round the village soliciting support including putting an advert in the local magazine. Many have used her documentation and repeated things she has said.

The area specified in the application is '8m at it's widest point to include hedgerows and mature boundary trees'... where is this vague approximation from please as there is no 8m anything? Does this refer to this distance between trees in part of Secret Field which has a line of trees as shown in one of the photographs? If you climbed over the barbed wire fence at the top of Secret Field heading west then you are standing in an open field. If you look at her photograph 4 you can see how a path on one side turns into even brown landscape on the other. Perhaps because old Tithe maps show the line of a track (as The Drove is likely to have been used for cattle once upon a time) then the applicant is using that to try and suggest a historic similar right of way regardless of what is on the ground and regardless of what has been used for the last 20 years?

Is her desire to create a new footpath because footpath 6 is as good as blocked at Common Road as it goes through stinging nettles and across someone's back garden and as she says she would like a more convenient route? See pictures attached P8,9.

Photograph 1 – to be specific this is taken standing in front of the rear gate of Westways looking east towards Common Road along what is labelled 1 on the 1926 OS Map. The path would appear to be circa 0.3m wide. Today this part of the path remains 0.3m wide see P6. What this picture doesn't show you is that behind you the path was blocked as no-one needed to get to the Forest View back gate as it was unoccupied for 5 years and not maintained by us ever.

Photograph 2 – for your information what photograph 2 doesn't show is the fallen trees behind the photographer across the horse track (see P4 attached). An example of a horse track is shown in P10 in Cooks Field.

Photograph 3 – this is taken from the bottom of Secret Field in the winter. Note the horse hoof churning of the mud. The horses were able to get more shelter from the trees in this area. What this picture doesn't show you is that behind you (where the supposed dotted line is meant to join up with footpath 6) there is absolutely nothing apart from overgrown hedge and fixed continuous barbed wire fencing – see P1, 7. There is absolutely nowhere to go from where this picture is taken except for back up the boggy horse track in front of you.

Photograph 4 – clearly shows 3 strand barbed wire fence with padding put on by someone to try and make it easier to trespass. Even with the tubing on the wires I do not know Mrs Woodruffe's age but climbing over or through the barbed wire fence on her annual visit would likely be rather difficult for her even with one person holding the wires apart as much as possible for her to get through and the other holding her hand for stability. And this is trespassing. Note the dense undergrowth behind the fence for which you would immediately have to crouch. For your information the fence posts are 4ft tall out of the ground, they are still on site wrapped against the ash tree they were anchored to.

I cannot comment on the photograph of young children standing in The Drove as it is not visible.

Mrs Woodruffe suggests that the dotted line 'bifurcates where it meets WH6' – where what meets WH6? See P3, 5 looking north from WH6. There is no path where the dotted line leads south from Secret Field, it's just the muddy corner of a field. There is a dense hedge with a barbed wire fence underneath it, is that where the supposed bifurcation is? Cows and horses would all choose a different place to try and escape if they were forced to, the overgrowth and bog there is too hard to penetrate for anyone let alone a senior lady on her annual visit.

Mrs Woodruffe tries to speak authoritatively on the whole route but states that she walked it once a year.

What an extraordinary co-incidence to have seen 'other walkers and groups of children playing' on her single visit per year! I and my family have been in Cottage Field and Secret Field over 500 times in the last 20 years and I have never seen children playing not even in the area behind people's back gardens. All of the back gardens are very private and the area outside them overgrown – see P6 Westways rear fence. I have never seen anyone at all in the bottom section of The Drove where Mrs Woodruffe says it exits through a dense hedge with a fence in the middle of it to join footpath 6 as it is inhospitably boggy and overgrown even for livestock. The only place children could have any space to play would be outside the back gardens nearest Common Road which residents have a right to access. Can you imagine the risk assessment for children to play in picture 1, 2, 3 or 4? In picture 1 you can't move if you turn the camera round, picture 2 is boggy and dangerous with trip hazards everywhere and fallen trees if you turn the camera round, picture 3 is too boggy for adults let alone children, picture 4 is barbed wire and where the picture is taken you are in a field with free-roaming horses.

Needless to say I have never been requested by the school for a risk assessment for an outing.

Why on earth would we want people in our livestock field? The opposite is true for any farmer and we already have two footpaths crossing our fields, how could we possibly want another. People taking liberties and thinking it is ok to walk across private fields is a constant issue for a farmer.

Mrs Woodruffe knows that the land is private and she knows that a few houses have access rights.

I attach the letter she wrote to me asking for help with the application, mistakenly thinking I might be interested in creating another footpath when I already have two across my land within half a mile of where she is asking for another. She states that the application is 'in the hope of linking it to footpaths WHT 4 and 6 so creating some interesting and circular walks'.

'Until approx 2000 was used to drive cattle up and down, to and from the milking shed on Common Road'. The milking cows were sold in 1988 ! Apart from the fact that yes the cows needed to go to and from our fields to the milking shed on Common Road. If grazing Trunks/Cooks Field the cows went back and forth past the front gate of her house Anchorsolme on Clay Street moving up or down Clay Street from the gate on Clay Street (see P11 in SC1) to Trunks/Cooks Field to the west of her house (where Footpath 4 has its stile). So the cows went right in front of her driveway... but not through the fence/hedge at the corner of Secret Field. The same cows would commute back from the milking parlour after milking again in the morning (see map, parlour opposite the stables at a part of the farm called Buildings). If the cows were grazing Cottage Field then they would commute to the milking parlour via our gate at the top of The Drove into Cottage Field see P12 in SC1. Note the cattle gates being used for cattle.

Mrs Woodruffe says the path is well trodden – is she referring loosely to the bit behind people's houses to get to their back gates (which is well trodden, more than just an animal track) and by keeping it poorly defined trying to extrapolate it to an open field with a stock fence preventing you getting in or out? Which she doesn't even recall the geography of correctly nor the daily movement of animals.

It is an interesting point that Mrs Woodruffe would for her own convenience prefer not to use the end of footpath 6 where it goes through a private garden – 'the owners are amenable but I would prefer not to use it'. See P8, 9 - she would not be able to use it in its current state, has she actually been on it or is that an annual occurrence? The horses for the stables are permanently in the two fields to the west of the private residence on Common Road, so not only do you have to wade through brambles and waist high nettles and across a back garden but you also have to navigate around horses. I can see why she would prefer an alternative! But what is the difference in value of land between our private garden and anyone else's? She is inferring that a farmer's field has less private value than her residential garden? Would she like to buy the land to create her footpath or does it have no value and she should be allowed to 'prefer' to use our private land?

NB. In the annotated map which is then used by several other witnesses please note the language 'if access from The Drove onto FP6 could be achieved..' meaning clearly there is no current access.

John Hall

Would appear to be using the information from Mrs Woodruffe. He walked from Common Road to just beyond Forest View – this is where residents had/have rights to walk and the path is adequate as far as Westways, he correctly states that thereafter it became uneven and often muddy. But he omits it being blocked. He correctly mentions the barbed wire stock fence to keep the horses in.

He surmises that because a path is well worn it must be public – he is referring to the track leading behind the houses rear gardens which have access rights and if he knew any of those residents he would likely of known that the track was private.

No mention is made of the nature of a path through Secret Field nor any exit from Secret Field towards footpath 6.

But he does say that his use 'varied depending on how muddy the field on Whiteparish footpath 4 was'. As an aside if FP4 was muddy then Secret Field would have been even muddier as it sits in a dip with a bit of a quagmire at the bottom where the livestock would shelter.

Same map used, same language 'if access from the Drove onto FP6 could be achieved..' stating clearly there is no current access.

Jennifer Harrison

Mrs Harrison from [REDACTED] the last house with rights over my land suggests the application route outside her back gate is 'approx 6 metres from our back boundary to the field boundary'. It is a deliberately loose description of boundary lines and not paths – it is clear from the pictures and as observed today that the width of the path to her back garden gate is at most single file.

Attached is a picture of the rear garden fence to [REDACTED] P6. It is not possible to see The Drove from inside the rear garden. For Ms Harrison to have witnessed all the 'regular dog walkers, rambling groups, children playing, individual walkers and runners, neighbours maintaining their hedges' she would have to have been outside her property. If she was outside her property she could not have witnessed the above either as shown by the vegetation in picture 1 of Mrs Woodruffe's testimony. And she could not have seen them in the other direction given the overgrowth of picture 4 of Mrs Woodruffe's testimony. So I conclude that in all the instances mentioned she must have been nearer Common Road or alternatively all of the people mentioned had gone through the vegetation past her gate and climbed over the barbed wire fence into Secret Field which has no exit and horses in.

All of which she observed in full knowledge from her solicitor in 1985 that the track to Secret Field was private and only they and other residents backing onto the track benefited from a right of access. Her words 'Our deeds give us right of access from our back gate along the length of The Drove to Common Road'. This is very clear (albeit incorrect in her testimony as she has no rights over the last 30m as under different ownership and unregistered - if you look at the map supplied you can see where her rights begin and end in green, they reach our old gate and not Common Road). So by turning right out of her back garden gate, if not blocked, she is knowingly trespassing. Note the same is repeated by John Harrison of the same household, showing their title map and stating they did not have permission to turn right out of their back garden gate.

No mention is made of the nature of the path through Secret Field nor any exit from Secret Field towards footpath 6 apart from:

'If access from The Drove onto FP6 could be achieved, then the options for circular, or longer walks, are possible'.. this would suggest that there is no access. Correct – large overgrown hedge and fence blocking dotted line and all around dotted line.

She says that 'during lockdown more people have been using the Drove'. Note the close board fence to the west of her back garden gate was erected in March 2020 before lockdown on 23rd March. I imagine what she is really trying to say is that with lockdown more people would have liked to use another footpath!

Brian Woodruffe

Note this is the same household as Patricia Woodruffe.

Mr Woodruffe states 'link to FP6 through hedge required'. Thankfully someone pointing out inadvertently that there is no exit from Secret Field where the dotted line is, it would need to be

created. He uses the same map, same language 'if access from the Drove onto FP6 could be achieved..' stating clearly there is no current access.

None of the witnesses, regardless of what they say about the top part of the track by the rear gardens, none of them have ever 'walked' continuously and without force or interruption through the hedge to join up with FP6 as this is not physically possible.

Mr Woodruffe tries to associate the Drove with Common Land – but it isn't Common Land, it is private farming land.

Please note Mr Woodruffe makes no mention of the 3 stranded barbed wire fence which blocked access neither shows it on his map.

Equally he is mistaken with the Drove 'occasionally being used by school classes'... can you imagine the risk assessment needed - needless to say I have never been asked by any school.

'Venturesome youngsters' – is this the biker children, who made ramps and we had to re-inforce the fence which subsequently stopped them? The word venturesome is appropriate given they had to go down a narrowing track from Common Road, climb through overgrowth, through a barbed wire fence into a field with livestock in...

How could it be used by families? What would a family do? Pass the picnic rug and lunchbox through the barbed wire having navigated the undergrowth, Sit in a boggy field with cows/horses and nowhere else to go?

'The Drove forms a section of several circular routes used by up to 15 dog-walkers and families every week' – clearly this isn't true as he says there has never been a way through from the bottom of The Drove to FP6, in the same way there has always been a fence at the entrance to Secret Field.

My Grandmother was categorically not 'happy to allow users along it'!! They were willing to allow residents to use the section of The Drove behind their rear gardens as they had access rights. Policing which children might belong to which household was not something she would have wished to do, nor would my parents nor would I. But none of us were happy with anyone climbing fences into a cow field with or without a dog!!!

'Barbed wire fence is necessary in places to ensure stock are kept safe'... what an extraordinary way of saying Secret Field was a fenced off stock field! It's no different to saying that someone with a fence round their front garden 'is necessary in places'... so should I claim I have a right to walk straight across the Woodruffes front garden.

Repetition of his wife's historical references – none of which are relevant to access rights. He says for example 'this route is a section of an historical trackway or drove' which is correct. But it is privately owned, linking farmland for farmers which it has done for my family since the First World War.

John Harrison

Note this is the same household as previous witness Jennifer Harrison.

The width is again quoted as 6m – but the picture from their friend Patricia Woodruffe shows it right outside their garden gate as less than half a metre.

Mr Harrison clearly states again that they were told by their solicitor in 1985 that the application route was not public and that 'our deeds show a right of access from our property to Common Road' and he includes the title plan (map3). So every time Mr Harrison turns right out of his back garden gate he is knowingly trespassing. See previous correction that per their plans submitted their right of access only goes to the end of our land and not to Common Road as the last bit was not for my Grandmother to grant as we do not own it.

Mr Harrison suggests that 'until approx 25 years ago the owner used to maintain the route with a hedge cutting tractor' – firstly he is I believe referring to the section between his back garden gate and Common Road and no other part of the application route.

He does however inadvertently say 'was a popular walking route until lack of maintenance and blockage'.. So it was blocked, it became overgrown and blocked - finally an applicant states it was blocked by lack of maintenance. 50 years intentional lack of maintenance.

David Wise

Usage 2020 to 2020 every 4-6 weeks... the close board fence after Westways was erected at the end of March 2020 which would suggest he may have been able to walk the top section of the application path probably once.

He states the application route is '2-3m. Grass, earth (overgrown)'

He has never seen anyone else using it.

Looks like he got his encouragement/information from the Village History Society.

No mention is made of any detail of the route, purely the comment that 'it is essential these ancient tracks are preserved for future generations'. If he was using it every 4-6 weeks in 2020 surely he would have noticed that it was firstly blocked by undergrowth with a barbed wire stock fence with horses the other side, then some undergrowth cleared alongside the last house (Forest View), then fenced with a close board fence in March 2020.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Alexander Knight

'It is a deeply rutted path with overhanging trees to the left and back garden fences of properties in Clay Street for 100 yards approx'. Thank you. In addition he might add that at the Common Road end it is wide enough for a tractor to get into Top Field and at the bottom it is 1ft wide leading into blockage.

'It turns left alongside an open field'. Yes an open field. He neglects to mention the barbed wire fence at this point and the lack of any exit point associated with the application.

There is no stile at the junction of The Drove with FP6 and FP4 as there is no way to get to FP6 from The Drove.

However he is correct in saying 'A wire fence obstructed The Drove at the back of Forest View property'.

He has never seen other people using it. This is given he used it every few months from 2006 to 2019 apart from the years 2012-2018.

He says the route 'was blocked off in 2019 at the right turn' – does he mean the left turn? Does he mean the close board fence in March 2020 or the barbed wire fence which was there for all of the last 20 years?

He also suggests there is a stile at the junction of The Drove with FP6 and FP4 – I don't believe he has ever been there as there is no gap in the hedge and continuous 4 strand barbed wire fencing (where you can see it where it is not too overgrown).

'There was evidence of dog walking and different foot tracks'.

He places the wire fence in the wrong location on his map and it was not there in 2019, it was permanently there on the angle and there was no fence where his shows in 2019.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Ceri Bicknell

This is I believe the Woodruffe's daughter.

'Cannot remember exactly to be honest' – you would definitely remembered if you had been playing with your friends in Secret Field in amongst the cows, Did you perhaps play outside the back garden gates of your friends houses? This would be consistent with seeing 'school friends and local families'.

Application route width: 'but probably 1 metre'

She has not walked the proposed route since 1990.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Barbara Kennard

'We used the Drove to visit our neighbours as we all had back gates onto The Drove from our properties on Clay Street and using The Drove was a quicker and more convenient way to see them'. So she is talking about the section next to their back garden gates and going in and out of their back garden gates to see each other, sounds idyllic and completely legal!

Last used this section in 1987.

Width – 'about 20 feet although I believe it is now very overgrown'.

Confesses to climbing into Cottage Field to pick blackberries – no there never was a stile there as it is also private!!

Yes there would be cow pats in Secret Field, that is where the cows lived! They didn't pass through it, they lived there!

She was aware of her deeds and that they were granted access to The Drove but she neglects to say which part she had access to.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Nicholas Harrison

This is the same household as Jennifer and John Harrison.

He has not used the route since 2000.

He says he saw horse riders, but there was nowhere for a horse rider to go outside his back gate? And cyclists? Children playing on their bikes outside the back gates perhaps?

He states that the fence to Secret Field was a hedge but nevertheless a barrier.

It would appear he is describing the area outside his parents back garden gate and not a field with cows in it (the other side of his 'hedge').

He does not state that he went through or over that 'hedge'.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Stephen Karmy

In the description of the application route he is incorrect in reference to my uncle Leonard, who had his vegetable garden down in Hop Gardens and he used to take the vegetables in his wheelbarrow up Clay Street back to his house on Common Road.

In his description of the width of the application route, Mr Karmy like many others would appear to only refer to the bit behind people's houses, he describes it as from 3m down to 1m but 'he feels it used to be wider'!! There is no mention of beyond the back gardens, the overgrowth, the barbed wire fence... which would suggest he didn't go beyond the back garden gates.

Under point 11 he suggests that 'the walkers are cut off from access to the following network of footpaths'. But they already have FP4 and FP6 within half a mile of The Drove which connect Common Road with Clay Street/Hop Gardens.

20. He is referring to the top section of the Drove behind the houses, of course residents and visitors went down it as observed by many people. But I don't think this applicant really understands that what is being claimed is a right to walk beyond the houses rear gardens, through the bushes, over the barbed wire fence, through the cow/horse field, through or under or over a hedge/fence at the bottom joining with FP6 as supposedly practised continuously and without obstruction for the last 20 years...

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Jenny Karmy

In the same household as Stephen Karmy.

The path has never been used by horse riders but of course horses lived in Secret Field.

Same correction regarding uncle Len and his wheelbarrow.

Copy and paste of her husband's words.

Still no mention of the blindingly obvious barbed wire fence, nor cows nor horses.

20. Copy and paste of husband.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Matthew Leach

States correctly the location of the barbed wire fence in line with the end of his blue green right of way on his deeds map. When he has a legal document so freshly understood (2019) why does he think that he has a right to climb over the barbed wire fence at the end of the marked right of way?

Seen others in passing... but also visible through hedge to back garden. May I suggest you look at his rear garden hedge to see if they could discern from inside their back garden what was going past and whether whatever it was had the intention to go into a neighbouring house or climb a fence etc.

Lisa Harrison

Same household as 3 other Harrisons.

She states she uses the route by pedal cycle – this can only be the section from near Common Road to their back garden gate. But if she was using her bicycle, does she know the people who climbed through and made the ramps with the cows in Secret Field.

When she says 4-5metres wide, is she sure when the evidence clearly suggests that outside their back garden gate it was about a foot?

20. Len doubtlessly saw kids playing in The Drove behind people's houses, but not in Secret Field!

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Mr Carpenter

Have you used the application route – NO.

But he has lived in Whiteparish all of his life and 'This footpath would also fit well with existing footpaths no4 and no6' – use of language, it 'would'..

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Rodney Coat

How wide is the application route... he suggests it enlarges past Beauford, this is actually where it is at it's narrowest tapering to Westways due to the least number of people needing to use it to get to their back gardens and no-one needing to get to Forest View.

Right of access to rear garden – by definition no access to anything else.

Do you believe the owner was aware of the public using the land – NO.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Christopher Woodruffe

Same household as 2 others.

'The route was one field away from our back garden' – exactly right, so you had to walk across a field to get to it, a fenced field with cows in.

Another pedal cyclist – perhaps he knows who built the ramps in Secret Field?!

Fence – 'possibly a strand of wire... to deter the livestock'. If there were cows then you might need more than 'possibly a strand' to keep them in! At the point where he has drawn the strand of wire three fences meet and it is a very wooded area where the livestock would shelter.

'Cattle were herded along it', This did not happen Cattle grazing Cottage Field used the gate at the top of the Drove, cattle using Trunks/Cooks/Secret Field used the gate via Trunks/Cooks Field to Clay Street.

Same in point 20, no herded cattle on The Drove. Cows were either in Cottage Field or Secret Field, herded off our land via the appropriate gates.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Naomi Hounslow née Ellis

Same household as Christine Ellis, her daughter.

How wide 'it varies between 1.2m to open in field area'... Field area. Field. Open.

Surprisingly no mention of the barbed wire fence separating the open field.

How can she see 'dog walkers daily' when she supposedly used it once a month?

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Christine Ellis

Used intermittently.

When she says 'passed the time of day cordially with the farmer' to whom is she referring? She knows me by name.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Karen Tongs

Moved there in December 2019 – used the application route once. If she could say what type of fence she had to climb over to use it and how much vegetation as it was so recently then that will tell us exactly when she walked it or didn't walk it as the case may be.

And on that single visit she saw local residents using it, hopefully she can even remember which ones as there is only one visit to remember and it is very recently.

Martin Tongs

Same household as Karen Tongs, moved November 2019 whereas Karen moved in December...

Used it weekly whereas Karen has used it once. No mention of the barbed wire fence.

Elvin Klapp

Driven in a tractor along the route!! Amazing. Who's tractor and how did you do it? How did you manage to get through and how did you cover up the tracks through the overgrowth and through the barbed wire fence? What was the actual purpose of the tractor driving?! Did you have to recover a car with your tractor from the Common Road end perhaps? There shouldn't have been a car there in the first place but did one break down there? Perhaps on Mr Urquarts land would be the most likely as you could not have got any vehicle any further than our gate to Cottage Field.

Sara Webb

Lives in [REDACTED] with Robert Canney. So in order to get from [REDACTED] to get to Common Road Ms Webb must have been going through Forest View back garden. The fence at the top of Secret Field linking [REDACTED] and Forest View has been totally overgrown for at least 20 years.

One strand of barbed wire fence – incorrect, see pictures and material still visible today.

Patricia Hudson

How wide – 30 foot until it runs behind the Clay Street houses when it reduces to 10-12 foot.

But what about after that or are you interpreting the application as just being behind the houses?

Beverley Rutter and Barry Rutter

Nice that finally some people put their application in as one as opposed to trying to make the supposed body of complainants feel larger by having all parents and children separate.

Approximate width – '2 metres at the start from Common Road' 'reduces to about 1 metre width at the bend about half way along the track' – like many others do they realise that the application is for the dotted line all the way to footpath 6 and not just the track behind the houses? There is no further description but the landmarks were very obvious.

And there are/were no stiles at the end, are they thinking of the same path?

And they say there were no barriers along the way – so no 3 strand barbed wire fence? They must be on a different route.

And they say there were no barriers along the way – so no 3 strand barbed wire fence? They must be on a different route.

13. 'Myself and a former resident who's property backed onto the drove used it for access to there property'. Completely possible and likely. It doesn't sound like you actually walked anywhere apart from Common Road to the back of the properties.

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Given picture 1 you have clearly trespassed in order to take picture 2.

Robert Canney

20. He mentions the local stables leased the meadow and were aware – they are not the owner.

Mrs Jackie Gallow

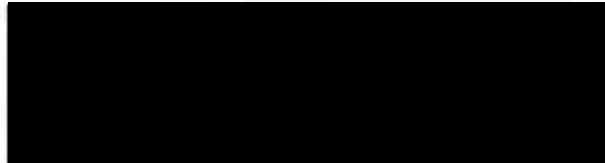
Did not use it 'when there were too many brambles'

Width 1m-1.5m-3m. No mention of the barbed wire fence

'Darren Stiles at the SU444 2292 end has been told that it's not a footpath and he has no right of access – several times, I believe.'

Patricia Woodruffe's map information is again repeated with the same 'if access from the Drove onto FP6 could be achieved...'

Signed



Print name SHEILA COOK.

Date

29.10.2020

Green, Janice

From: notices@bywaysandbridlewaystrust.org.uk
Sent: 21 August 2020 18:31
To: Green, Janice
Subject: Thank you for your email [Re: Application to Add a Footpath - Whiteparish, The Drove (Wiltshire)]

Thank you for your notice.

Due to the number of notices received, we will not necessarily respond.

Green, Janice

From: Summer De graffham [REDACTED]
Sent: 25 August 2020 19:37
To: Green, Janice
Subject: Ref jg/pc/245

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Janice,

Thank you for inviting comments regarding the drove in Whiteparish.

I'm afraid I cannot really comment because I have not been able to walk this path due to it being blocked by rusty barbed wire and thick bramble at the end of the row of houses nearing its turn into the farmers cow field.

I have most certainly walked as far as Des Deria and the neighbouring property Beaford to visit relatives who lived there until recently. This was from 2013 until 2018. Their properties backed onto the drove and they had access to the drove granted in their deeds to allow rear access to their property.

I regret I can not add any more to this.

Kind regards Summer de Graffham
[REDACTED]

Green, Janice

From: samantha delamore [REDACTED]
Sent: 11 October 2020 20:23
To: Green, Janice
Subject: Support for footpath JG/PC/245

Good Evening Janice

For background i am the new owner of [REDACTED] SP52 [REDACTED] i have recently moved to the village with my husband and 2 young children. I support the application to reinstate the historic drove to protect this walkway and the trees and wildlife along this route.

The developer who sold us [REDACTED] is planning on building another house in the plot of the garden that was previously [REDACTED] Planning application 20/04331/FUL)

<https://planning.wiltshire.gov.uk/Northgate/PlanningExplorer/Generic/StdDetails.aspx?PT=Planning%20Application%20On-Line&TYPE=PL/PlanningPK.xml&PARAM0=911187&XSLT=/Northgate/PlanningExplorer/SiteFiles/Skins/Wiltshire/xslt/PL/PLDetails.xslt&FT=Planning%20Application%20Details&PUBLIC=&XMLSIDE=/Northgate/PlanningExplorer/SiteFiles/Skins/Wiltshire/Menu/PL.xml&DAURI=PLANNING>

The land he is proposing to use for the bungalow being called plot 3 is in part the historical drove. In May 2020 the developers' contractors placed a large fence blocking off the drove at the rear of forest view behind our house. This was installed after we had purchased the property by his builders. We were told it was to purposefully block off the drove in preparation for the planning application and a way for the developer to claim the land and remove the drove from any plans.

Since he has blocked off the drove we have had a number of people trying to access the drove and ending up near my garden stuck. Prior to him blocking off the drove you could access the walkway highlighted in brown on the map below. The developers building contractors has recently put up signs (Sep 2020) saying no access to either side of the drove, this was done recently and the signs keep getting removed by people accessing the drove. The neighbour opposite Mr Elvin Klapp has been using this drove for 30+ years. He has asked me to add this to my email as further evidence. Mr Elvin Klapp lives at [REDACTED] Clay Street, Whiteparish Sp52 [REDACTED] Statement from Mr Klapp lodged on a recent objection ' The developer who owns this plot and the adjacent two new builds which are being built, has recently blocked off access to the drove in likely preparation for this application. I am now unable to walk the drove which is unacceptable as I have been walking this drove for over 30 years' <https://unidoc.wiltshire.gov.uk/UniDoc/Document/File/MjAvMDQzMzEvRiVMLDE0MDcwODk=>

There is also proof in the old deeds of the property that this is a drove and clearly marked as a drove. The plans show the drove down the back of all the properties down clay street.

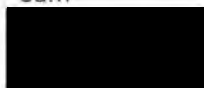
"TOGETHER with a right of way for the Purchaser and his successors in title in common with all others having the like right over and along the drove shown on the said plan and thereon coloured green"

NOTE: The drove referred to is tinted brown on the filed plan.

It feels like the developer is blocking access to the drove illegally and claiming the land as theirs which doesn't feel right.

Thanks

Sam



Green, Janice

From: Chris Ellis [REDACTED]
Sent: 28 August 2020 13:29
To: Green, Janice
Subject: JG/PC/245 The Drove

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green

In response to your letter regarding the application to add a footpath, The Drove, Whiteparish, I have submitted all evidence to support the status of this path as a public footpath on the application made dated 12th July 2020.

Yours

Christine Ellis
[REDACTED]

Green, Janice

From: John Hall [REDACTED]
Sent: 06 October 2020 12:42
To: Green, Janice
Subject: Your ref JG/PC/245
Attachments: P1040725.JPG; P1040729.JPG

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you for your letter of August 21st concerning the application to add a footpath - The Drove, Whiteparish.

I have already submitted a Public Right of Way User Evidence Statement that will presumably be taken into consideration. In addition, please find attached photos dating from August 2018. These were taken because, a little while earlier, mature trees adjoining the drove were felled and the area cleared for no apparent reason at that stage. The first photo shows the simple barbed wire fencing covered with plastic tubing to allow pedestrian access along the drove. This was situated at the bend in the drove by the bungalow Forest View. The fence was presumably in place to prevent the grazing horses and ponies in the adjoining fields from escaping. It was in place when I first started walking along the drove in 2008. Unfortunately I did not take a picture of the rear boundary hedge of Forest View with its wooden gate giving access into the drove. As I said in my statement this part of the drove behind Forest View has now been fenced off and apparently incorporated into the new developments. It appears to be shown in a recent planning application for 'Plot 3' as part of a proposed garden. The second photo shows piles of 'shreddings' from the removal of undergrowth and branches.

Thanking you
John Hall [REDACTED]





Green, Janice

From: Jennifer Harrison [REDACTED]
Sent: 09 October 2020 18:00
To: Green, Janice
Subject: WILDLIFE AND COUNTRYSIDE AT 1981 - SECTION 53. APPLICATION TO ADD A FOOTPATH - THE DROVE WHITEPARISH

Follow Up Flag: Follow up
Flag Status: Flagged

YOUR REF: JG/PC/245

Dear Ms Green

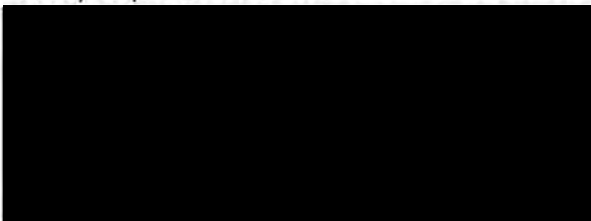
I am emailing on behalf of the Harrison family who have each provided individual Evidence Statements regarding the above.

Thank you for your letter of the 21st August 2020 and I confirm that we have no additional information, comments or representations on this matter to add to our Evidence Statements.

We have however noted that the target date for a decision on Planning Application No 20/04331/FUL has now been pushed back again for the 5th or 6th time and is now the 23rd October 2020.

This application is for a single storey dwelling to be erected on Plot 3, land off Forest View, Clay Street and includes part of The Drove within its boundary as a garden.

Will you please note Nick Harrison's address is now:



Your letter says that any responses to it will be available for public inspection in full and I would like your assurance that Nick's address will not be made available in this respect.

Regards
Jenny Harrison
on behalf of John, Nick and Lisa Harrison.

Green, Janice

From: [REDACTED]
Sent: 31 August 2020 09:16
To: Green, Janice
Subject: Application to add a footpath - The Drove, Whiteparish

Follow Up Flag: Follow up
Flag Status: Flagged

Ref: JG/PC/245

Dear Ms Green,

I reply to your letter of 21st August, 2020.

I have lived in Whiteparish since 1983 and during all that time I have had dogs and walked the local footpaths regularly. Amongst those have been footpaths 4 and 6 on your map. From these I would often take the track marked A to B – indeed I always believed this was part of the footpath system. It is a very obvious track.

To say how often I walked the track is difficult. Sometimes I might go twice in one week and then possibly not for several weeks - but my use has been consistent for over 36 years.

It was probably getting on for a year ago that I first noticed a lot of earth being dug and stored in the field near the B end of the path and within a few months the way had been completely barred at about the point near "Forest View".

Such a natural path which has been in use for so long will be a sad loss to our local system of off road access and I would like to see it designated as a footpath.

Yours sincerely,
Pat Hudson

[REDACTED]
Dean Lane,
Whiteparish,
Salisbury, Wiltshire.
SP5 2[REDACTED]

Green, Janice

From: [REDACTED]
Sent: 13 October 2020 16:38
To: Green, Janice
Subject: RE: Application to add a footpath - The Drove, Whiteparish

Dear Janice,

Thank you for your email. My replies to your specific questions are as follows:

1. I have never asked permission of anyone to use this footpath and have never been stopped using it.
2. There have never been any stiles or gates at any point on the path. There was always a piece of wire covered in a plastic tube at the perimeter point where the adjacent field ends. I assumed the wire was there to stop any horses in the field straying along the continuation of the path behind the houses and the plastic tube was to assist walkers, like me, getting over it safely. I have no recollection of ever seeing any notices on the path.
3. From time to time I have passed other dog walkers using the path.
4. No.

I hope this helps. Please get in touch if there is anything else I might be able to help with.

Kind regards,
Pat Hudson

From: Green, Janice <janice.green@wiltshire.gov.uk>
Sent: 13 October 2020 09:32
To: [REDACTED]
Subject: RE: Application to add a footpath - The Drove, Whiteparish

Dear Pat,

Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way – The Drove, Whiteparish

Thank you for your e-mail regarding the above mentioned application to add a footpath in the parish of Whiteparish, The Drove, with many apologies for the delay in getting back to you. I note your evidence regarding your own use of the way, which is very helpful in our determination of this application. I just wondered if I could ask you to expand on this if I may, (please note that evidence in the case will be publicly available as part of the application process):

- 1) Have you ever asked / been given permission to use the way?
- 2) Were there ever any gates / stiles / notices on the path?
- 3) Did you observe others using the way and if so by what means?
- 4) Are you aware of any documents / historic documents / photographs recording the way?

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice

Janice Green
Senior Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

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

Email: 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

Follow Wiltshire Council



Follow Wiltshire Countryside



From: [REDACTED]

Sent: 31 August 2020 09:16

To: Green, Janice <janice.green@wiltshire.gov.uk>

Subject: Application to add a footpath - The Drove, Whiteparish

Ref: JG/PC/245

Dear Ms Green,

I reply to your letter of 21st August, 2020.

I have lived in Whiteparish since 1983 and during all that time I have had dogs and walked the local footpaths regularly. Amongst those have been footpaths 4 and 6 on your map. From these I would often take the track marked A to B – indeed I always believed this was part of the footpath system. It is a very obvious track.

To say how often I walked the track is difficult. Sometimes I might go twice in one week and then possibly not for several weeks - but my use has been consistent for over 36 years.

It was probably getting on for a year ago that I first noticed a lot of earth being dug and stored in the field near the B end of the path and within a few months the way had been completely barred at about the point near "Forest View".

Such a natural path which has been in use for so long will be a sad loss to our local system of off road access and I would like to see it designated as a footpath.

Yours sincerely,

Pat Hudson

[REDACTED]
Dean Lane,

Whiteparish,
Salisbury, Wiltshire.
SP5 2

This email originates from Wiltshire Council and any files transmitted with it may contain confidential information and may be subject to Copyright or Intellectual Property rights. It is intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete the email from your inbox. Any disclosure, reproduction, dissemination, modification and distribution of the contents of the email is strictly prohibited. Email content may be monitored by Wiltshire Council to ensure compliance with its policies and procedures. No contract is intended by this email, and any personal opinions expressed in this message are those of the sender and should not be taken as representing views of Wiltshire Council. Please note Wiltshire Council utilises anti-virus scanning software but does not warrant that any e-mail or attachments are free from viruses or other defects and accepts no liability for any losses resulting from infected e-mail transmissions. Receipt of this e-mail does not imply consent to use or provide this e-mail address to any third party for any purpose. Wiltshire Council will not request the disclosure of personal financial information by means of e-mail any such request should be confirmed in writing by contacting Wiltshire Council.

Green, Janice

From: Alec Knight [REDACTED]
Sent: 27 August 2020 17:45
To: Green, Janice
Subject: The Drove Whiteparish - Ref: JG/PC/245

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Janice Green,

Thank you for the invitation to make further comments on the application to make The Drove into a footpath. I have nothing further to add to my original submission.

I notice that the map accompanying your letter shows my house incorrectly named. The name was changed 14 years ago from [REDACTED] to [REDACTED]. Similarly my neighbour's house is no longer [REDACTED] it is [REDACTED]. What I find curious is that other more recent house name changes in Clay Street are correctly shown.

Yours sincerely
Alec Knight

Green, Janice

From: Bill Riley [REDACTED]
Sent: 23 August 2020 11:58
To: Green, Janice
Subject: JG/PC/245
Attachments: FA 1910 Record Plan 72.15.jpg; FA 1910 Record Plan 72.15 (detail).PNG; OS Sheet 72.15 1876.PNG; OS Book of Reference.pdf

Hi Janice,

Thanks for sending me details of the claim for a FP along The Drove in Whiteparish. I had a quick look to see if I had any information on the route.

The Inland Revenue Finance Act 1910 Record Plan shows the route and its continuation uncoloured, suggesting a status higher than a FP.

The 1st Edition of the 25" OS map shows the same route as parcel numbers 283 and 354, which are recorded in the Book of Reference as 'Road'.

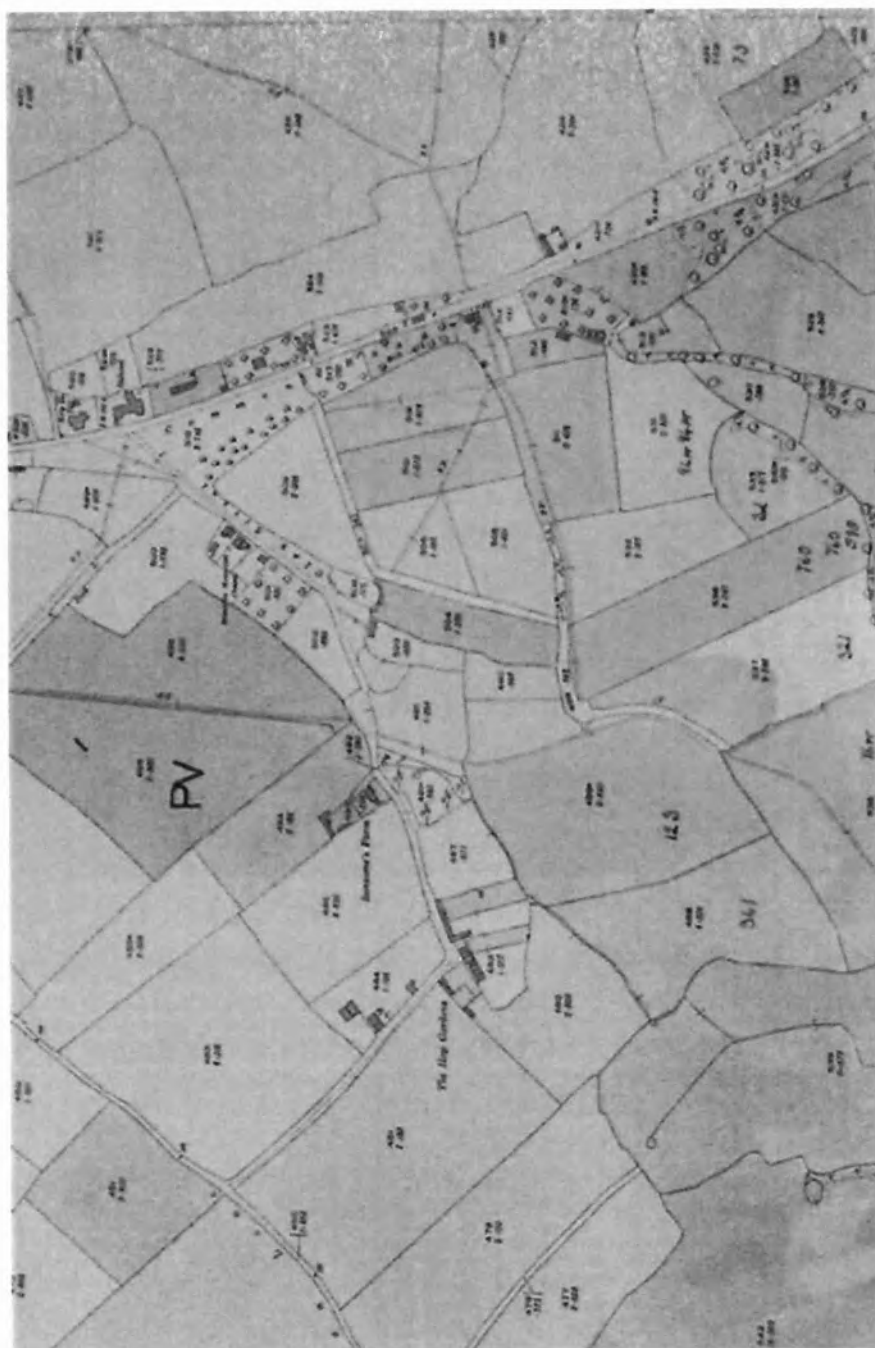
It is also shown on the Tithe Award Map, but I don't have a decent copy of this.

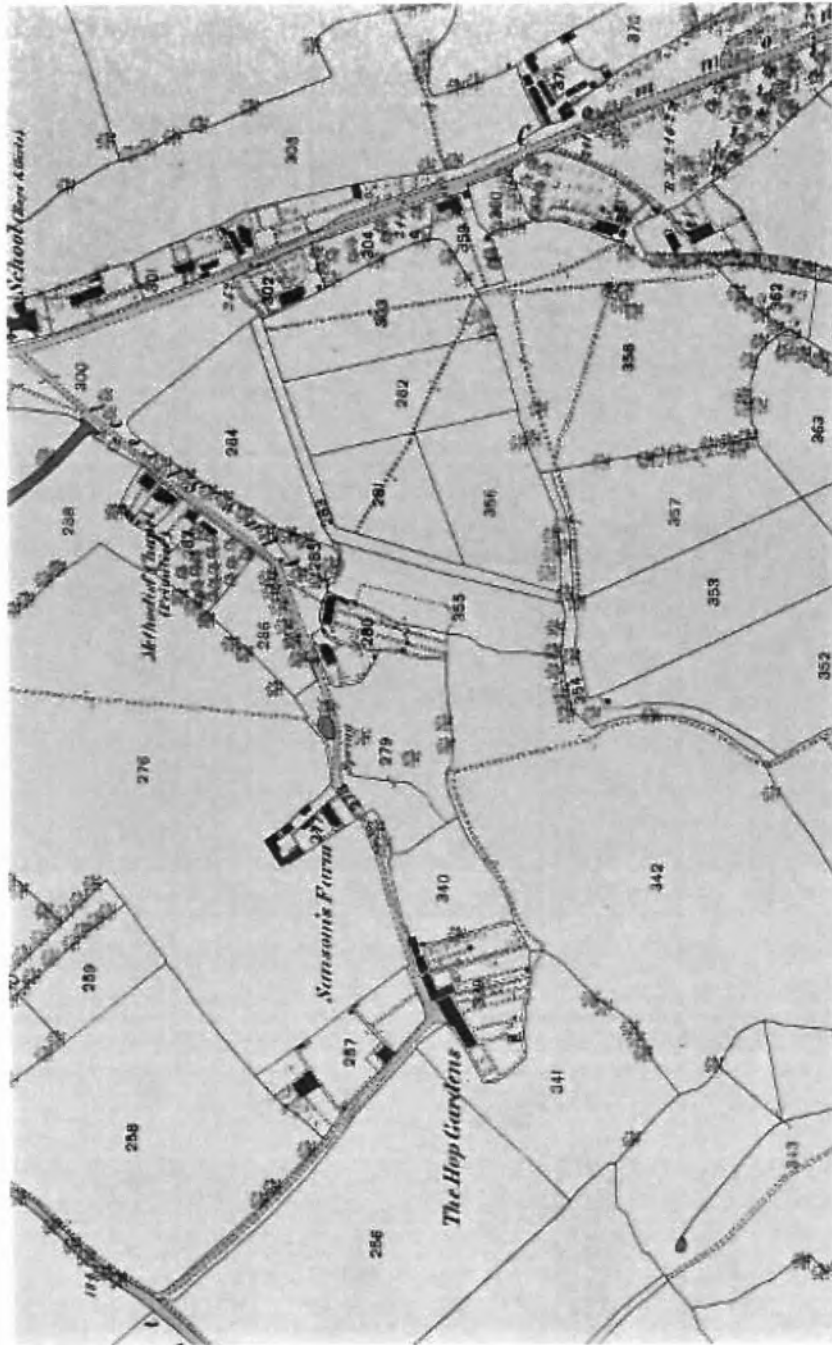
Probably worth further investigation (which you will be doing anyway).

Kind regards,

Bill







PARISH OF WHITEPARISH,

IN THE

COUNTY OF WILTS—(SOUTHERN DIVISION).

HUNDRED OF FRUSTFIELD.

N.B.—To convert Decimal Fractions of an Acre into Rods and Perches, multiply the decimal first by 4 and then by 40, preserving the same number of decimals in the product.

Examples—

A. R. P.	Acres.	A. R. P.	Acres.
633 1 17	633.357	527 0 2	527.013
	4		4
	1.428		.052
	40		40
	17.120		2.080

TABLE

FOR CONVERTING DECIMAL PARTS OF AN ACRE INTO RODS AND PERCHES.

Perch.	0 Rods.	1 Rods.	2 Rods.	3 Rods.	Perch.	0 Rods.	1 Rods.	2 Rods.	3 Rods.
0	.000	.530	.500	.730	21	.131	.381	.631	.881
1	.006	.236	.306	.736	22	.137	.387	.637	.887
2	.012	.262	.312	.762	23	.144	.394	.644	.894
3	.015	.269	.319	.769	24	.150	.400	.650	.900
4	.025	.273	.323	.773	25	.156	.406	.656	.906
5	.031	.281	.331	.781	26	.162	.412	.662	.912
6	.037	.287	.337	.787	27	.169	.419	.669	.919
7	.044	.294	.344	.794	28	.175	.425	.675	.925
8	.050	.300	.350	.800	29	.181	.431	.681	.931
9	.056	.305	.355	.806	30	.187	.437	.687	.937
10	.062	.312	.362	.812	31	.194	.444	.694	.944
11	.069	.319	.369	.819	32	.200	.450	.700	.950
12	.075	.325	.375	.825	33	.209	.456	.706	.956
13	.081	.331	.381	.831	34	.212	.462	.712	.962
14	.087	.337	.387	.837	35	.216	.469	.719	.969
15	.094	.344	.394	.844	36	.225	.475	.725	.975
16	.100	.350	.400	.850	37	.231	.481	.731	.981
17	.106	.356	.406	.856	38	.237	.487	.737	.987
18	.112	.362	.412	.862	39	.244	.494	.744	.994
19	.119	.369	.419	.869	40	.250	.500	.750	1.000
20	.125	.375	.425	.875					

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	4.964	Wood.	36	8.109	Arable.
2	13.946	Arable, &c.	37	1.942	Wood.
3	1.125	Wood.	38	84.172	Arable, &c.
4	.662	Wood.	39	27.846	Arable.
5	84.110	Arable.	40	36.321	Arable, &c.
6	1.748	Road.	41	3.761	Wood, &c.
7	.482	Wood, &c.	42	114.924	Arable, &c.
8	1.079	Wood, &c.	43	.789	Wood.
9	8.054	Pasture, &c.	44	.334	House, garden, &c.
10	9.567	Pasture, &c.	45	6.970	House, garden, &c.
11	.656	Wood, &c.	46	.170	House, garden, &c.
12	2.384	Arable, &c.	47	3.498	Wood, &c.
13	2.748	Houses, gardens, &c.	48	13.958	Arable, &c.
14	42.614	Pasture, &c.	49	14.884	Arable, &c.
15	20.656	Arable, &c.	50	7.379	Houses, gardens, &c.
16	26.922	Arable, &c.	51	5.898	Pasture, &c.
17	5.088	Arable, &c.	52	.108	House and garden.
17a	1.014	Road.	53	313.873	Arable, &c.
18	42.161	Arable, &c.	54	2.541	Wood.
18a	1.701	Road.	55	172.571	Arable.
19	86.804	Wood, &c.	56	3.482	Wood.
20	91.157	Arable, &c.	57	17.754	Arable.
21	19.817	Arable, &c.	58	16.472	Arable.
22	31.743	Arable.	59	16.324	Arable.
22a	1.192	Wood.	60	18.456	Arable, &c.
23	7.864	Wood.	61	45.196	Arable, &c.
24	1.301	Wood.	62	.395	Wood, &c.
24a	43.160	Arable, &c.	63	18.529	Arable, &c.
26	1.603	Wood, &c.	64	1.226	Wood.
26a	.771	Wood.	65	25.562	Ornamental ground.
27	6.188	Arable.	66	1.038	Wood, &c.
28	8.463	Wood, &c.	67	51.331	Arable, &c.
29	2.815	Wood, &c.	68	10.408	Pasture, &c.
30	4.907	Arable.	69	.987	Houses, garden, &c.
31	6.170	Wood, &c.	70	2.134	Arable.
32	13.809	Arable.	71	30.422	Arable, &c.
33	10.124	Pasture, &c.	72	71.648	Arable, &c.
34	95.722	Pasture, &c.	73	1.577	Road.
35	8.997	Wood, &c.	74	25.410	Arable, &c.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
75	19.057	Arable, &c.	127	2.506	Wood, &c.
76	20.961	Arable, &c.	128	65.928	Arable, &c.
77	12.254	Arable.	129	.591	Houses, garden, &c.
78	57.492	Arable, &c.	130	4.532	Wood, &c.
79	5.799	Garden.	131	1.519	Wood.
80	2.925	Pasture.	132	.611	Wood, &c.
81	1.527	Pasture, &c.	133	26.406	Arable, &c.
82	.821	Arable, &c.	134	5.273	Wood, &c.
83	.766	Pasture, &c.	135	1.443	Wood, &c.
84	5.161	Houses, gardens, &c.	136	8.907	Arable, &c.
85	4.681	Pasture.	137	6.145	Wood, &c.
86	5.255	Pasture.	138	4.446	Wood.
87	4.887	Pasture, &c.	139	27.270	Arable.
88	2.494	Houses, gardens, &c.	140	3.126	Arable, &c.
89	10.653	Arable, &c.	141	5.859	Arable.
90	12.326	Arable.	142	2.483	Wood, &c.
91	4.575	Houses, gardens, &c.	143	21.338	Arable, &c.
92	1.973	Road.	144	3.541	Wood, &c.
93	.847	House, gardens, &c.	145	6.994	Pasture, &c.
94	5.720	Arable.	146	11.461	Arable, &c.
95	3.785	Road.	147	.575	House, garden, &c.
96	19.961	Arable, &c.	148	16.973	Arable, &c.
97	.223	Pond.	149	4.732	Arable, &c.
98	3.033	Arable.	150	20.213	Arable, &c.
99	4.287	Arable, &c.	151	43.465	Arable, &c.
100	2.179	Houses and gardens.	152	.664	Wood.
101	.302	Road.	153	3.037	Chalk pit, &c.
102	1.434	Arable.	154	4.580	Arable, &c.
103	1.790	Houses and gardens.	155	.996	Houses, gardens, &c.
104	.388	Houses and gardens.	156	1.732	Pasture.
105	4.406	Arable.	157	1.725	Pasture.
106	.349	Houses, garden, &c.	158	24.821	Arable, &c.
107	4.200	Garden.	159	5.480	Pasture.
108	1.919	Houses, gardens, &c.	160	6.873	Wood.
109	1.563	Houses, gardens, &c.	161	.931	Wood, &c.
110	15.519	Road.	162	63.669	Arable, &c.
111	.479	Houses and gardens.	163	3.550	Road.
112	.511	Arable.	164	7.280	Arable, &c.
113	5.534	Arable.	165	6.323	Pasture, &c.
114	36.606	Arable.	166	3.046	Wood, &c.
115	4.398	Wood.	167	6.320	Pasture, &c.
116	31.118	Arable, &c.	168	5.079	Pasture, &c.
117	3.331	Arable.	169	1.147	Wood.
118	33.828	Arable, &c.	170	4.249	Pasture, &c.
119	11.842	Wood, &c.	171	8.896	Pasture, &c.
120	18.891	Arable, &c.	172	9.604	Arable, &c.
121	3.833	Wood, &c.	173	2.997	Wood.
122	1.039	Wood.	174	2.162	Wood, &c.
123	41.119	Arable, &c.	175	1.311	Wood, &c.
124	.479	Road.	176	.168	Pond.
125	7.498	Arable, &c.	177	.117	Pond.
126	17.871	Arable.	178	12.845	Houses, gardens, &c.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
179	.981	Wood.	227	1.219	Wood, &c.
180	22.076	Ornamental ground, &c.	228	165.896	Arable, &c.
181	4.633	Wood, &c.	229	.676	Road.
182	5.650	Pasture, &c.	230	.992	Wood, &c.
183	1.710	Wood.	231	18.225	Arable.
184	.521	Wood.	232	4.921	Pasture, &c.
185	14.324	Pasture, &c.	232a	.115	Pond.
186	1.277	Arable.	233	1.190	Wood.
187	.824	Road.	234	17.239	Wood, &c.
188	1.263	House and garden.	235	8.206	Wood, &c.
189	16.891	Arable.	236	17.266	Arable, &c.
190	2.184	Houses, garden, &c.	237	.400	Chalk pit.
191	.277	Road.	238	1.007	Rough pasture, &c.
192	2.981	Arable, &c.	239	9.298	Pasture, &c.
193	.229	Road.	240	21.274	Arable, &c.
194	.340	House and yard.	241	31.879	Arable, &c.
195	19.368	Arable, &c.	242	19.707	Arable.
196	.829	Wood.	243	3.725	Road.
197	.888	Wood, &c.	244	16.267	Wood, &c.
198	11.459	Arable, &c.	245	39.859	Arable, &c.
199	25.406	Arable, &c.	246	58.832	Arable, &c.
200	4.790	Arable.	247	52.506	Arable, &c.
201	2.824	Wood, &c.	248	7.752	Arable.
202	6.037	Wood.	249	.693	Road.
203	.720	Road.	250	1.989	Houses and garden.
204	19.266	Arable, &c.	251	1.504	Pasture.
205	13.461	Arable, &c.	252	.267	House and garden.
206	3.078	Houses, garden, &c.	253	1.446	Pasture, &c.
207	5.157	Pasture, &c.	254	8.597	Pasture, &c.
208	8.743	Arable, &c.	255	1.458	Road.
209	1.492	Road.	256	7.131	Arable.
210	31.508	Ornamental ground.	257	1.198	Houses and gardens.
211	146.616	Wood, &c.	258	6.270	Arable.
212	19.639	Arable, &c.	259	.949	Arable.
213	16.951	Arable, &c.	260	.563	Pasture.
214	19.325	Arable, &c.	261	.957	Arable.
215	.141	Road.	262	8.910	Pasture.
216	34.704	Ornamental ground.	263	3.122	Pasture, &c.
217	14.641	Houses, wood, &c.	264	.497	Houses, garden, &c.
218	30.739	Ornamental ground.	265	1.698	Pasture.
219	17.303	Wood, &c.	266	.643	Pasture, &c.
220	22.383	Wood, &c.	267	1.384	Houses, gardens, &c.
221	2.023	Wood, &c.	268	2.114	Pasture.
222	11.371	Wood, &c.	269	1.221	Houses, garden, &c.
223	5.213	Wood.	270	4.110	Houses, garden, &c.
224	67.821	Arable, &c.	271	1.235	Pasture, &c.
225	5.352	Wood.	272	2.120	Houses, gardens, &c.
226	3.143	Wood.	273	11.169	Pasture, &c.
			274	.740	Road.
			275	1.958	Pasture.
			276	15.296	Arable, &c.
			277	.809	House, gardens, &c.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
278	1.204	Road.	329	1.847	Houses, gardens, &c.
279	1.639	Pasture, &c.	330	1.842	Pasture.
280	.896	Houses and gardens.	331	7.833	Road.
281	1.133	Pasture, &c.	332	1.443	Wood.
282	1.672	Arable, &c.	333	27.943	Arable, &c.
283	.543	Road.	334	2.438	Houses, garden, &c.
284	2.002	Pasture.	335	.624	Pasture.
285	.170	Garden.	336	3.530	Arable, &c.
286	.680	Pasture.	337	.323	Road.
287	.831	Houses, gardens, &c.	338	5.130	Arable.
288	1.785	Pasture.	339	1.210	Houses and gardens.
289	2.019	Pasture.	340	.974	Pasture.
290	.210	Hous, garden, &c.	341	2.809	Arable.
291	2.269	Pasture, &c.	342	11.282	Pasture.
292	.207	Pond.	343	7.490	Arable, &c.
293	1.069	Church and grave-yard.	344	4.903	Pasture, &c.
294	4.311	Pasture, &c.	345	10.271	Pasture, &c.
295	.401	Road.	346	.825	Wood.
296	13.195	Arable, &c.	347	6.023	Arable, &c.
297	3.810	Houses, gardens, &c.	348	3.015	Arable, &c.
298	.051	Road.	349	4.090	Arable, &c.
299	.306	Pasture.	350	1.127	Arable.
300	2.743	Pasture, &c.	351	3.780	Pasture, &c.
301	2.006	Houses, gardens, &c.	352	2.620	Arable.
302	.385	Houses, gardens, &c.	353	1.080	Pasture.
303	1.874	Pasture, &c.	354	.568	Road.
304	.473	Pasture.	355	2.182	Pasture, &c.
305	5.847	Pasture, &c.	356	1.651	Pasture.
306	5.924	Pasture.	357	2.182	Pasture, &c.
307	3.886	Arable.	358	5.174	Pasture, &c.
308	15.035	Pasture, &c.	359	.884	House and garden.
309	25.856	Wood, &c.	360	.253	Pasture.
310	9.407	Pasture, &c.	361	1.367	Houses, gardens, &c.
311	3.817	Wood.	362	.386	Pasture.
312	46.410	Wood, &c.	363	1.682	Pasture, &c.
313	2.562	Wood.	364	.403	Pasture.
314	21.308	Arable, &c.	365	.752	Wood.
315	.929	Orchard.	366	4.342	Pasture.
316	.979	House, gardens, &c.	367	9.671	Arable, &c.
317	2.473	Pasture, &c.	368	3.510	Wood, &c.
318	.913	Houses and gardens.	369	5.999	Pasture.
319	8.214	Arable.	370	.685	Pasture.
320	6.162	Pasture, &c.	371	.433	Houses and yard.
321	7.039	Pasture, &c.	372	4.589	Arable, &c.
322	1.672	Wood.	373	4.380	Pasture, &c.
323	5.679	Arable, &c.	374	1.187	Pasture.
324	7.356	Arable, &c.	375	3.482	Road.
325	1.678	Orchard.	376	10.302	Pasture, &c.
326	1.011	Houses, garden, &c.	377	7.559	Pasture, &c.
327	4.487	Pasture.	378	2.128	Houses, garden, &c.
328	.313	Houses and gardens.	379	.237	Road.
			380	.339	Houses and garden.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
381	4.623	Road.	433	11.394	Arable, &c.
382	36.553	Arable, &c.	434	1.038	Houses, gardens, &c.
383	5.946	Pasture, &c.	435	4.424	Arable, &c.
384	.835	Pasture.	436	9.174	Pasture.
385	12.639	Arable, &c.	437	3.804	Pasture, &c.
386	1.370	Pasture.	438	4.555	Wood.
387	.585	Houses and gardens.	439	3.793	Pasture.
388	.385	Pasture.	440	.877	House, garden, &c.
389	.613	Pond.	441	2.189	Pasture.
390	1.346	Wood, &c.	442	3.890	Pasture.
391	12.849	Pasture, &c.	443	.711	Pasture.
392	34.635	Arable, &c.	444	.099	Pasture.
393	6.616	Pasture, &c.	445	6.375	Pasture, &c.
394	3.390	Pasture, &c.	446	.248	Pond.
395	7.011	Pasture.	447	9.792	Arable, &c.
396	.591	Pasture.	448	14.319	Pasture, &c.
397	.469	House and garden.	449	1.876	Houses, garden, &c.
398	10.143	Pasture, &c.	450	2.029	Houses, gardens, &c.
399	1.709	Wood, &c.	451	2.043	Pasture.
400	3.623	Arable.	452	3.560	Pasture, &c.
401	5.364	Pasture.	453	1.670	Pasture.
402	.105	Road.	454	2.292	Pasture, &c.
403	1.396	Wood.	455	9.419	Pasture, &c.
404	5.010	Pasture.	456	.482	Pond.
405	6.948	Pasture, &c.	457	.550	Wood, &c.
406	1.829	Pasture.	458	4.148	Pasture, &c.
407	.675	Pasture, &c.	459	1.280	Pasture, &c.
408	.476	House, garden, &c.	460	1.627	Pasture, &c.
409	2.609	Arable.	461	.132	House and garden.
410	6.200	Pasture, &c.	462	1.159	Houses, garden, &c.
411	5.926	Arable, &c.	463	1.271	Orchard.
412	3.725	Pasture, &c.	464	.217	Ponds.
413	5.967	Arable, &c.	465	63.642	Wood, &c.
414	2.031	Pasture, &c.	466	3.958	Rough pasture, &c.
415	6.200	Pasture, &c.	467	.208	House and garden.
416	6.457	Arable, &c.	468	.345	Garden.
417	7.054	Pasture, &c.	469	5.119	Wood, &c.
418	4.751	Arable, &c.	470	.499	Pasture.
419	4.710	Pasture, &c.	471	3.359	Pasture, &c.
420	1.886	Pasture, &c.	472	.203	Houses and gardens.
421	.445	Arable.	473	1.938	House and gardens.
422	5.592	Pasture, &c.	474	1.205	Pasture.
423	.433	Houses and yard.	475	2.240	Wood.
424	12.483	Wood, &c.	476	11.037	Wood, &c.
425	495	Arable, &c.	477	7.719	Wood, &c.
426	27.547	Houses, gardens, &c.	478	25.723	Arable, &c.
427	.312	Garden.	479	1.904	Houses, garden, &c.
428	.354	Pond.	480	.452	Pasture, &c.
429	7.192	Pasture, &c.	481	1.594	Houses, &c.
430	4.096	Pasture.	482	.142	Houses and gardens.
431	3.604	Pasture, &c.	483	1.588	Pond.
432	29.663	Wood.	484	10.625	Houses, garden, &c.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
485	2.159	Wood, &c.	535	17.739	Ornamental ground, &c.
486	7.084	Pasture, &c.	536	.336	House and garden.
487	1.799	Houses, garden, &c.	537	.646	House and ornamental ground.
488	3.684	Wood, &c.	538	7.747	Wood.
489	.582	House, garden, &c.	538a	.429	Houses and garden.
490	.332	Wood.	539	.256	Houses and garden.
491	.164	Pond.	540	41.146	Rough pasture, &c.
492	.494	Road.	541	.439	House and garden.
493	.560	Wood.	542	11.555	Arable.
494	6.799	Houses, &c.	543	.285	House, garden, &c.
495	16.185	Arable, &c.	544	19.800	Arable, &c.
496	7.686	Wood.	544	1.773	Houses, garden, &c.
497	2.454	Arable, &c.	546	17.274	Arable.
498	2.625	Wood.	547	1.406	Pasture.
499	3.525	Pasture.	548	4.739	Pasture.
500	.681	House, garden, &c.	549	5.600	Pasture, &c.
501	4.927	Pasture.	550	7.631	Arable.
502	5.712	Pasture.	551	.910	Road.
503	6.102	Pasture.	552	2.198	Houses, garden, &c.
504	5.040	Pasture, &c.	553	2.263	Pasture.
505	6.401	Pasture, &c.	554	13.511	Pasture, &c.
506	17.521	Pasture, &c.	555	1.908	Arable.
507	6.272	Pasture, &c.	556	1.394	House, garden, &c.
508	4.720	Pasture, &c.	557	1.074	Orchard.
509	5.950	Wood, &c.	558	5.361	Pasture.
510	4.433	Pasture, &c.	559	.724	Wood.
511	3.445	Pasture.	560	.975	Road.
512	10.710	Pasture, &c.	561	10.111	Arable, &c.
513	7.453	Pasture, &c.	562	1.329	Wood, &c.
514	17.679	Pasture, &c.	563	2.741	Houses, ornamental ground, &c.
515	6.546	Wood, &c.	564	23.251	Ornamental ground.
516	.289	Wood.	565	4.858	Pasture.
517	.298	Wood.	566	6.497	Pasture.
518	.869	Pasture.	567	10.518	Arable.
519	.222	House and garden.	568	19.578	Wood, &c.
520	3.030	Pasture.	569	1.185	Pasture.
521	1.052	Pasture.	570	8.972	Pasture.
522	.287	Pond.	571	3.824	Pasture.
523	.722	House, garden, &c.	572	3.083	Arable.
524	.856	Houses, garden, &c.	573	.298	Pond.
525	3.123	Pasture.	574	.341	Pond.
526	.491	House, garden, &c.	575	1.321	Pond.
527	1.398	Pasture, &c.	576	2.020	House, gardens, &c.
528	130.589	Wood, &c.	577	.980	Orchard.
529	3.149	Road.	578	.541	Wood.
530	1.972	Wood.	579	14.622	Pasture.
530a	3.573	Ornamental ground, &c.	580	8.876	Arable.
531			581	11.044	Pasture.
532	1.771	House and garden.	582	.566	Wood.
533	3.317	Wood, &c.			
534	11.175	Ornamental ground, &c.			

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
583	9.747	Arable.			
584	20.025	Arable.			
585	4.143	Wood, &c.			
586	1.809	Pasture, &c.			
587	9.343	Wood, &c.			
588	39.826	Wood, &c.			
589	2.887	Arable.			
590	1.010	Pasture.			
591	3.901	Wood.			
592	4.918	Pasture.			
593	4.126	Pasture.			
594	12.531	Wood, &c.			
595	12.323	Pasture.			
596	15.135	Wood, &c.			
597	6.427	Wood.			
598	6.231	Wood, &c.			
599	17.201	Pasture, &c.			
600	10.423	Pasture, &c.			
601	.360	Pasture.			
602	7.606	Wood, &c.			
603	2.951	Wood, &c.			
604	12.040	Wood, &c.			
605	2.474	Pasture.			
606	3.331	Pasture.			
607	7.020	Pasture.			
608	5.382	Pasture.			
609	10.773	Wood, &c.			
610	4.566	Arable.			
611	9.384	Pasture.			
612	8.834	Arable.			
613	.273	Garden.			
614	12.672	Pasture.			
615	1.888	Houses, orchard, &c.			
616	3.825	Pasture.			
617	.123	Pond.			
618	.337	Wood.			
619	.140	Garden.			
620	9.643	Pasture, &c.			
621	9.912	Wood, &c.			
622	.861	Wood.			
623	.582	Pasture, &c.			
624	1.636	Pasture, &c.			
625	19.140	Wood, &c.			
626	.230	House and yards.			
627	3.099	Pasture, &c.			
628	7.658	Pasture, &c.			
629	5.945	Wood.			
630	.090	Wood.			
	6074.411				

PARISH OF WHITEPARISH (Detached, No. 1).		
No. on Plan.	Area in Acres.	Remarks.
1	2.439	Wood, &c.
2	.432	Wood, &c.
3	4.180	Arable.
4	5.698	Arable.
5	7.225	Arable.
6	2.845	Pasture.
7	7.507	Arable.
8	.396	Arable.
9	.916	Pasture, &c.
10	2.590	Pasture.
11	1.048	Houses, garden, &c.
12	3.934	Rough pasture.
13	.070	Garden.
14	.020	Road.
15	.194	Houses and garden.
16	.363	Orchard, &c.
17	.534	House, pasture, &c.
18	5.969	Pasture.
19	3.923	Wood.
20	1.942	Arable.
21	2.070	Furze, &c.
22	2.635	Arable, &c.
23	.639	House, garden, &c.
24	.477	Arable.
25	4.540	Arable.
26	1.666	Rough pasture, &c.
27	.851	House, garden, &c.
28	5.207	Wood, &c.
29	3.293	Arable.
30	.341	Arable.
31	2.777	Pasture.
32	5.022	Pasture.
33	3.678	Road.
34	3.066	Arable.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
35	.925	Arable.	87	1.155	Arable, &c.
36	.183	House, garden, &c.	88	1.135	Road.
37	.118	Road.	89	4.405	Arable.
38	5.006	Pasture.	246.921		
39	.597	Houses, garden, &c.	RECAPITULATION.		
40	1.417	Pasture.	237.763		
41	.434	Pasture.	Land.		
42	.147	Pond.	9.011		
43	5.531	Pasture, &c.	Roads.		
44	3.424	Houses, garden, &c.	.147		
45	.256	Houses, gardens, &c.	246.921		
46	.303	House and gardens.	Area of the Parish of		
47	2.064	Pasture.	Whiteparish (De-		
48	5.108	Pasture.	tached, No. 1).		
49	1.668	Pasture.	PARISH OF WHITEPARISH		
50	.968	Pasture.	(DETACHED, No. 2).		
51	1.352	Wood, &c.	HUNDRED OF FRUSTFIELD		
52	1.048	Road.	(DETACHED).		
53	.511	Pasture, &c.	1	.203	Pasture.
54	.029	Road.	2	5.150	Pasture, &c.
55	.044	Road.	3	11.433	Pasture.
56	.240	Pasture.	4	14.767	Pasture, &c.
57	.105	Wood.	5	.544	Pasture, &c.
58	13.849	Wood, &c.	6	5.518	Pasture, &c.
59	5.728	Wood, &c.	7	11.268	Pasture.
60	7.242	Arable.	8	1.071	Wood.
61	1.835	Pasture.	9	3.031	Pasture.
62	8.587	Arable.	10	3.140	Wood.
63	7.477	Wood, &c.	11	9.299	Pasture, &c.
64	.443	House, garden, &c.	12	1.711	Wood.
65	1.296	Pasture.	13	6.435	Pasture, &c.
66	2.811	Houses, garden, &c.	14	3.298	Wood, &c.
67	2.258	Arable.	15	2.735	Wood, &c.
68	4.940	Wood, &c.	16	6.663	Pasture, &c.
69	.933	Road.	17	8.116	Pasture, &c.
70	6.179	Arable.	18	5.838	Pasture, &c.
71	13.743	Arable, &c.	19	5.027	Pasture, &c.
72	.194	Pasture, &c.	105.247		
73	7.287	Arable, &c.	Area of the Parish of		
74	3.534	Pasture.	Whiteparish (De-		
75	7.009	Arable.	tached, No. 2).		
76	2.006	Road.	PARISH OF WHITEPARISH.		
77	4.451	Arable.	RECAPITULATION FOR THE PARISH.		
78	.554	Pasture.	Area in Acres.		
79	.355	House, garden, &c.	6344.460		
80	5.698	Rough pasture.	Land.		
81	1.339	Pasture.	76.552		
82	2.725	Arable, &c.	Roads.		
83	.161	Pasture.	5.567		
84	3.826	Rough pasture.	Water.		
85	1.290	Wood, &c.	6426.579		
86	2.431	Arable.	Total area of the Parish of Whiteparish, in the County of Wilts.		

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.
1	.203	Pasture.
2	5.150	Pasture, &c.
3	11.433	Pasture.
4	14.767	Pasture, &c.
5	.544	Pasture, &c.
6	5.518	Pasture, &c.
7	11.268	Pasture.
8	1.071	Wood.
9	3.031	Pasture.
10	3.140	Wood.
11	9.299	Pasture, &c.
12	1.711	Wood.
13	6.435	Pasture, &c.
14	3.298	Wood, &c.
15	2.735	Wood, &c.
16	6.663	Pasture, &c.
17	8.116	Pasture, &c.
18	5.838	Pasture, &c.
19	5.027	Pasture, &c.
105.247		
Area of the Parish of Whiteparish (Detached, No. 2).		

Green, Janice

From: darren stiles [REDACTED]
Sent: 03 September 2020 09:56
To: Green, Janice
Subject: lf/pc/245

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Janice,
Thanks for your letter regarding the drove in Whiteparish. What information are you looking for? I have walked the drove on and off for nearly 30 years and have been regularly walking along it in the past 2 years on a near daily basis until the current housing development started.

Thanks
Darren Stiles

[REDACTED]

[REDACTED]

Green, Janice

From: darren stiles [REDACTED]
Sent: 31 October 2020 22:55
To: Green, Janice
Subject: Re: lf/pc/245

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Janice,

1. I walk the length of the drove usually from point B to A to get to common road (sometimes in reverse but not so often). As a child I played in the drove and used to access other fields for playing (especially when it snowed). I grew up in the property called [REDACTED]
2. Increased use is due to getting a dog. I walk around the fields near my home [REDACTED] then walk the drove and along common road and then further afield from there.
3. Always without permission, force or secrecy.
4. There is barb wire fence at point B. More recently a fence was erected by a developer to try and block the path behind forest view but you can just walk around it! And even more recently I have noticed private land signs, again I assume fixed by the same developer to a couple of trees along the drove.
5. No, never.
6. I have never encountered other people on the drove at the same time as myself.
7. No, sorry.

Thanks

Darren Stiles

[REDACTED]

From: Green, Janice <janice.green@wiltshire.gov.uk>
Sent: Monday, October 12, 2020 3:34:19 PM
To: [REDACTED]
Subject: RE: lf/pc/245

Dear Mr Stiles

Wildlife and Countryside Act 1981 – Section 53

Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way – The Drove, Whiteparish

Thank you for your e-mail regarding the above-mentioned application to add a footpath in the parish of Whiteparish, The Drove, with many apologies for the delay in getting back to you on this matter.

We are in receipt of an application to add a footpath, as shown on the attached plan, under Section 53 of the Wildlife and Countryside Act 1981. The application is based on some documentary evidence and some witness evidence from users of the path, to support the applicants claim that the definitive map and statement of public rights of way is wrong in its omission of "The Drove", Whiteparish. Under Section 31(1) of the Highways Act 1980, it is possible to add a footpath where a way has been used by the public, as of rights, for a period of 20 years or more, without interruption.

We are therefore carrying out a consultation to gather evidence regarding the use of the way and your comments regarding your use of the way on and off for a period of 30 years and regularly for the past 2 years, are very helpful in our consideration of this application. If you would be willing to give further evidence, (which will be made publicly available as part of the application process), would you be able to provide any of the following further details regarding your use of the way:

1. Where were you going when you were using the way?
2. Why did your use increase to regular use in the last 2 years?
3. Under Section 31(1) of the Highways Act 1980, qualifying user must be as of right, i.e. without permission, without force and without secrecy. Was your use of the way with or without permission?
4. Were there any obstructions / gates / stiles / notices etc on the route?
5. Have you ever been challenged whilst using the way?
6. Did you observe any others using the route and if so by what means?
7. Are you aware of any documents / historical documents / photographs recording the route?

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice

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

Wiltshire Council

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

Follow Wiltshire Council



Follow Wiltshire Countryside




From: darren stiles [REDACTED]
Sent: 03 September 2020 09:56
To: Green, Janice <janice.green@wiltshire.gov.uk>
Subject: lf/pc/245

Hi Janice,

Thanks for your letter regarding the drove in Whiteparish. What information are you looking for? I have walked the drove on and off for nearly 30 years and have been regularly walking along it in the past 2 years on a near daily basis until the current housing development started.

Thanks

Darren Stiles
[REDACTED]



This email originates from Wiltshire Council and any files transmitted with it may contain confidential information and may be subject to Copyright or Intellectual Property rights. It is intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete the email from your inbox. Any disclosure, reproduction, dissemination, modification and distribution of the contents of the email is strictly prohibited. Email content may be monitored by Wiltshire Council to ensure compliance with its policies and procedures. No contract is intended by this email, and any personal opinions expressed in this message are those of the sender and should not be taken as representing views of Wiltshire Council. Please note Wiltshire Council utilises anti-virus scanning software but does not warrant that any e-mail or attachments are free from viruses or other defects and accepts no liability for any losses resulting from infected e-mail transmissions. Receipt of this e-mail does not imply consent to use or provide this e-mail address to any third party for any purpose. Wiltshire Council will not request the disclosure of personal financial information by means of e-mail any such request should be confirmed in writing by contacting Wiltshire Council.

Green, Janice

From: Pat Woodruffe [REDACTED]
Sent: 16 September 2020 20:51
To: Green, Janice
Subject: JG/PC/245 The Drove, Whiteparish

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you for your letter concerning the application Wildlife and Countryside Act 1981 – Section 53 Application to add a Footpath – The Drove, Whiteparish.

Whilst I have no further evidence to add to that already submitted, I should like to draw your attention to a planning application currently under consideration which affects The Drove.

The application number is 20/07356/VAR. The variations under consideration are not my concern but the plans submitted do now clearly show the incorporation of a considerable extent of the Drove into the garden of Plot 2. PA03, the site and layout plan, shows no sign of any retained hedging or tree line along The Drove, only a suggestion that 'natural hedging' will be planted. Furthermore there is a major discrepancy between the position of the southern boundary, as shown on this plan, and that seen when the site plan is examined in Rightmove where the plots are both advertised as being approx. 0.4 acres. The extent of the gardens is of considerable significance for the future of the trees which line the Drove on both sides. Although far from completed, both properties are believed to be under offer.

I hope that you are able to understand my concern and appreciate the considerable threat to the integrity of The Drove.

Kind regards,
Pat Woodruffe

From: [REDACTED]
Sent: 15 November 2020 22:52
To: [Green, Janice](#)
Cc: [REDACTED]
Subject: Application to Add A Footpath ref JG/PC/245 202009
Attachments: [FOOTPATH.docx\[40\].docx](#)

Thanks hope you find this helpful Harry Urquhart

FOOTPATH APPLICATION 202009

Dear Janice

First thank you for all your assistance regarding this Application and your granting an extension to the timescales which I put to good use

I was able to enlist the help of West Dean Parish Councillor Christine Warry who has responsibility for All the Parish Issues regarding Footpaths /Rights of Way etc

She enjoys a good reputation for her expertise with both Test Valley and WCC and other Bodies and Organisations that relate to this subject

What she has produced here are her views and opinions and I thought it would make sense to let you have them as she gave them to me

It will hopefully add to your Data on the Application and given your expertise allow you to interpret points she has set out

Dated 15th November 2020

There are 198 right of way applications pending at Wiltshire Council, the earliest dating from 1994. This one stands at 191. For this application there are 304 documents although a number of these are the page of Wiltshire Council's guidance on completing the forms headed Public Rights of Way User Evidence Statement (many but far from all attached this to the completed form).

I cannot see any relevance in the document relating to a BOAT which you gave me with the letter from Janice Green, the Senior Map Officer, and which I assume she sent you with that letter. This relates to application 2005/57 and having taken a look at that application too it is for an existing bridleway, Whiteparish right of way No 30, to be upgraded to a BOAT. It runs from the A27 at a point opposite Youngs Farm up past Blackwater Farm to the top of Dean Hill.

The application form asks that the owners and occupiers upon whom notice was served be listed but that section is blank. There is nothing to show who owns the rest of the land over which the path runs. This is curious as Hampshire CC always requires that copies of the notice of the application sent to the landowner(s) be attached to the application when it is submitted. I assume that you did not receive such notice from the applicant. However I see Janice refers to you not being included in the initial consultation of 21 August which perhaps indicates they are aware of the other landowner and have consulted him. The only details relating to ownership online are the Land Registry records for Forest View showing that it was purchased by a developer, Zelda Investments Ltd, in 2018. These make it clear that the land purchased did not extend over the path, usually referred to as The Drove, which has

been taken into the garden(s) and fences erected across The Drove at either end of where Forest View land adjoins it. One wonders why the owner is not taking action against the developers for encroaching on his land – perhaps he is doing so in the civil court.

One wonders also, if The Drove has been so much used by walkers in recent years whether it was also used in earlier years and, if so, why it was not included in the Definitive Map when it was instituted in the late 1940s/early 1950s. But that of course is irrelevant to whether it should be added now.

So, to look at the evidence:-

Historic Evidence

There is a good amount of this. Listed in date order it consists of:-

1 An extract from Roads and Tracks of Britain by Christopher Taylor in which it appears on a map entitled Medieval forest tracks, Whiteparish, and in which, writing of the clearance of woodland to turn it into farmland, he says “In the village of Whiteparish, Wiltshire for example, which lay on the edge of the Royal Forest of Melchet, we have records of fields being created from woodland from the mid thirteenth century to the mid fourteenth century. In just one year, 1330, we know that nearly 75 acres of land were cleared; we can actually identify some of the fields formed at that time and pass between them along narrow, deeply hollowed lanes which would seem to be contemporary (Fig 74).” (Fig 74 is the map in question.)

2 Tithe Map 1843 on which The Drove appears clearly.

3 A Map from the National Library of Scotland published in 1881 and based on a survey of 1878.

4 Ordnance Survey Map of 1926

5 Map National Grid Sheet SU 2423 of 1965

From these there seems little doubt that The Drove has existed exactly on its present route since at least 1330 (Christopher Taylor mentions that many tracks are older than the fields which now surround them and that in “Whiteparish one which gives access to some fields made in 1255 was certainly there nearly 200 years before when the area was still wooded for it leads to a farm which was in existence in 1086” and that “another which passes through some of the 1330 fields appears to have been in existence even earlier perhaps by 968 at the latest”)

So there is no doubt about existence which leaves public use to be established.

Evidence of public use

There are 27 user statements relating to this application, of these 18 are from people living in Clay Street, either currently or during the period they used the route. Of these 18, nine

say they have or had private access to the Drove and nine say they do/did not. The majority seem to indicate that they used the whole length of the path applied for and not just the length to which they had private access but I am sure this will be checked out by Wiltshire Council rights of way officers during follow-up interviews. On all statements (but one) dates of birth have been redacted and for those giving their address as Clay Street the names of the houses and the second half of their postcodes have been redacted. All photographs showing individuals have been noted but not copied on website.

Each person completing a user statement is asked how they think the application route should be recorded. Of the 27, 26 say it should be a footpath and one (a married couple) says it should be a bridleway. Of the 26 who say it should be a footpath, one says it should also be a bridleway and one says it should also be a BOAT, he himself having driven a tractor along it every few months. He also says he has used the tractor to tow out cars, the only person to mention cars on it. Interestingly five say they have seen horse riders using it although none say they have ridden a horse on it themselves, two say they have seen cyclists using it and two of the past residents say they used it by pedal cycle themselves as well as on foot. None of these suggested it should be recorded as a bridleway which it would need to be if horse riders and cyclists wanted to continue using it.

Periods of use date from 1962 to 2020 until prevented by the fences which have been erected across it. Analysis of periods of use and frequency I have shown on a separate sheet.

Other Points of interest from user statements

There is some variance in the dates quoted for the erection of the barrier fences, varying from Jan/Feb 2020 to June 2020 but general consensus seems to be close boarded fence April 2020 and post and rail fence June 2020

1 Pat Woodruffe

Barbed wire fence with protection for walkers 2002-2019. Solid wooden fence and open structure wooden fence plus hedging erected Jan/Feb 2020. Both recent fences erected to incorporate the Drove into gardens of two new properties. One has gained planning permission and is being constructed (application refused but appeal upheld), the second application is currently under construction. Until approx. 2000 path was also used to drive cattle up and down from milking shed on Common Road. Has supporting evidence:- tithe map, OS map 1926, map from survey 1876, Wilts Council Register of Ancient Monuments, Extract from Roads and Tracks of Britain by Christopher Taylor 1979, photographs. *(Various pieces of this evidence have been submitted with other statements also but I will not repeat below)* Footpath 6 running east from end point of this application goes through a private garden. Owner is amenable but she (Pat) would prefer not to use it. Inclusion of the Drove as footpath would provide good alternative. The southerly section of this application is threatened by development in the field to the west. *Full answer to Q 22 printed off and attached on separate sheet.* Following successful appeal against planning refusal the developers of Forest View have breached the track and felled a substantial number of trees or large limbs. The field in which the number 2 is positioned is now a building site and

planning consent has been given for a section of Drove Road to be incorporated into gardens. Second map shows building site the length of the Drove from where it turns to end of path applied for plus fences at either end of where Forest View plot joins the Drove. On right on the bend is barbed wire fence replaced by wooden fence and hedging and the other, at bottom end of Forest View plot is solid wooden fence erected 2020. Map makes clear the Drove is longer than the length applied for. The far south end runs parallel to existing footpaths. FP6 runs parallel with the Drove and crosses it to join FP4. FP4 runs down the western edge of the Drove in the field.

2 John Hill

States Forest View had its own access on to the path by a gate. His map shows the position of the accessible fence – barbed wire but covered and padded so walkers could get through.

3 Jennifer Harrison

Speaks of Mr Andrews, a past owner of the Drove, was aware of use of the footpath as used land frequently himself and “spoke to us and to others”. Her map shows the barbed wire fence and wooden fence.

4 Brian Woodruffe

Six feet fence on the junction between Westway and Forest View. June 2020 open fence and newly planted shrubs at end of Forest View boundary. Boundary now indistinct because of extraction of clay and removal of all trees and vegetation (May – June 2020). The six foot fence is boarded and essentially blocking the pathway, the open fence is passable with difficulty. The previous owners, Len and Marjorie Andrews, were most protective of its natural qualities but were happy to allow users along it. This has been continued by the current farming family, as users are aware that barbed wire is necessary in places to ensure stock are kept safely (largely in adjacent fields). Mr Andrews (past owner) used to speak to us and others on this route.

5 John Harrison

Back gate gives access to application route. Barbed wire but protected by pipe lagging to enable access. Erected approx. 12 years ago – still accessible. Wooden fence erected 2020 blocks the route. Told by solicitor route was not public when purchased property in 1985. Deeds show have right of access from property to Common Road. Mr Andrews (past owner) used to speak to us and others on the route. Additional evidence he has:- Tithe map dated 1842 showing the route of the Drove, closer detail of Tithe Map, Plan attached to deeds. Until approx. 25 years ago the Owner used to maintain the route with a hedge cutting tractor. Was a popular route until lack of maintenance and blockage. *Copies of the second and fourth maps attached to his statement have been printed off and attached.*

6 David Ian Wise

Two recently built houses block the Drove and a proposed third one also will (see planning application 20/14331/FUL)

7 Alexander T Knight

Deeply rutted path with overhanging trees to left and back garden fences of properties in Clay Street for 100 yards approx.. It turns left alongside open field. There was hedge to right with mature trees in until recently. A wire fence obstructed The Drove at back of Forest View property.

8 Ceri Bicknell

Lived at [REDACTED], Whiteparish 1972-1990.

9 Barbara Kennard

Lived at [REDACTED], Clay Street Whiteparish 1978 – 1987. Also mentions Mr Andrews as owner. No longer has deeds to [REDACTED] but to best of memory deeds mentioned granted private access to Drove specifically to trim hedge. Attaches photos of top cow field from the Drove footpath near where she lived and one of husband and son blackberrying in the Drove. Also mentions Mr Andrews seeing her using Drove many times. *The map she attached showing the gates from the Drove into the “cow” fields is of interest particularly the one close to your property so has been printed off and attached*

10 Nicholas Harrison

Mentions Mr Andrews witnessed him in the Drove many times. Map indicates hedge across the route where it turns left.

11 Stephen Karmy

States path also used by Len Andrews, brother of previous owner, Miss Andrews, to take food in wheelbarrow to animals grazing in field next to Hop Gardens. This only ceased on his death several decades ago. Barriers consisting of tall fence panels have now (2020) been erected behind Westways, Clay Street cutting the Drove and making proper access impossible.

12 Jenny Karmy

Also mentions food in wheelbarrow to cattle grazing in fields next to Hop Gardens. Says same as above re fence behind Westways.

13 Matthew Leach

Barbed wire fence with pipe covering to enable access in line with end of blue/green right of way on deeds map. Quotes wording of deeds in full. *The map and wording have been printed off and attached, the line of the private access has been shown by others on their maps and appears always to cover the same length of the Drove regardless of where the garden of the house in question adjoins it.* Barbed wire fence shown on map attached.

14 Lisa Harrison

Mr Andrews, a past owner of Drove, saw her playing in the Drove.

15 C W Carpenter

Has never used path himself but knows many villagers who have. Whiteparish has been his home all his life and believes Drove should be preserved as right of way and also fits well with existing footpaths 4 & 6.

16 Rodney E Coat

Fence line with barbed wire covered to allow access to Drove. He had private right of access to rear garden.

17 Christopher Woodruffe

Born in Whiteparish and lived at [REDACTED], Clay Street 1975 -1995. Strand of wire occasionally put across at SU 2444 2292 to deter livestock from wandering Drove – did not prevent usage. Cattle also herded along it. As children used Drove, often landowner used it to herd cattle between field and farm. His map shows strands of wire in different place to all other users. He shows it where Drove turns parallel to FP6 (SU 2444 2292).

18 Naomi Hanslow

Has seen farmer using it previously. Farmer and farming family aware of Drove route. Ancient trackway now barred.

19 Christine Ellis

Used it for dog walking from Whiteparish school to A36 joining FP6 and 4. Has seen farmer who owned the land using it as well as children walking/playing and residents of Hop Gardens/Clay Street. She passed time of day cordially with farmer. Route links Common Road and school with dwellings on A36 along footpaths rather than road.

20 Karen Tongs

Only used once in 2020 because just moved to Whiteparish from Southampton. Believes the owner knew of its use because is historic route.

21 Martin Tongs

Moved to Whiteparish 11/19. Also says believes owner aware of public using footpath because historic route.

22 Elvin Klapp

Wiltshire Council omitted redacting date of birth on this one – is [REDACTED]. Has walked it and driven a tractor along it. Couple of strands of barbed wire with foam on 1995 -2019. Close boarded fence erected June 2020. Hedging and post and rail fence erected June 2020. Has towed cars out with his tractor as well as seeing lots of people walking it. Used to talk to the owner while on the route.

23 Sara Webb

Clay Street resident, used it as route to and from house to Common Road. One strand of barbed wire fence covered with plastic pipe 1999 – 2019. Close boarded fence April 2020. Hedging and post and rail fence June 2020. As well as meeting people on path have watched people using it every day, especially dog walkers, until April 2020.

24 Patricia Hudson

There was a wire fence across the path where it started to run behind the houses – was presumably to stop horses that grazed in field adjacent to wider path (has earlier on form said width 30' until runs behind houses when reduces to 10' to 12'.

25 Beverley Rutter and Barry Rutter

Was always a stile at the end (*instructions on form are to show on map but has not done so*). Developers have recently erected two fences across the path preventing access to Drove across the edge of fields. "Myself and a former resident whose property backed on to the drove used it for access to there (sic) property. We feel that this is part of the village heritage and many people have had much pleasure using this route. Should not be discarded for personal gain of some individual." Pictures of both fences attached (*As they are good clear ones have printed off and attached*).

26 Robert Canney

One strand barbed wire shrouded did not prevent access. Close board fencing erected April 2020. Hedging and rail fence erected April 2020. *Re question whether owner was aware of public use* When local stables leased the meadow for their horses they were often in the field when other villagers passed through the Drove.

27 Jacquie Gallon

Barred due to new development – fencing across whole path. *Re question about prevention of use: Barriers and unfriendly attitude of developers, Barriers are impossible to get round. In answer to question has anyone else ever told you they were prevented from using application route: "Darren Stiles at the SU 2444 2292 end has been told that it's not a footpath and he has no right of access – several times I believe". Believes owner was aware of public use because of conversations with neighbours.*

Other points from the user statements

All users say that, until they have been barred by the fences erected by the developer this year, they have never found any barriers preventing them from using the path, have never seen any signs or notices suggesting whether or not the application route is a public right of way, for example "Private", "Keep Out", "No Right of Way", "Trespassers will be Prosecuted", have never been stopped or turned back when using the application. At least six mention seeing the previous owner, Mr Andrews, and speaking to him while using the route. Several

mention that the Andrews used the route to take cows from fields to milking shed. This means that they would have used it in each direction twice daily and therefore were highly likely to be aware of other people using it. It is clear that in putting up barbed wire across the route to keep animals in but covering it with plastic to protect people the owners were not only aware of public use but had no objection to it.

There is also mention of The Drove having a rich assemblage of plants, that it could, like Whiteparish Common and the extensive area of Common Land along Common Road, be regarded as Ancient semi-natural Woodland and that in the 2018 planning application (the one turned down by the Council but allowed on appeal) a member of the Wiltshire Council ecological team emphasised the importance of The Drove as a link between the open fields and the woodland along Common Road, providing a significant wildlife corridor, especially for bats and nesting birds. There is an ancient monument on the route which it is considered should be protected – Wiltshire Council Monument Full Report included in documents submitted. Other planning applications along the route are said to have been granted with planning permission to take in parts of The Drove similarly so it is clear if The Drove is to be saved from destruction a decision on this right of way application is urgently needed.

Conclusions

The evidence both historical and user is good and it is valued as a significant wildlife corridor. If you wish to oppose the application then, a) you need to have submitted a map and statement to the Council in accordance with Section 31 of the Highways Act 1980 asserting that no right of way exists (copy of that Section with the relevant sub-section highlighted attached) or (b) you can state you have ever turned people back from using it or (c) told them it was not public or (d) erected signs or notices stating it was not public or (e) obstructed the way (despite the user statements to the contrary),

I would personally like to make an argument that given the number of existing rights of way surrounding it render its addition to the Wiltshire Definitive Map unnecessary (Whiteparish footpaths numbers 4,6 and 31 already giving access to the A27, the A36 and the Common Road linking them (the one on which your property lies).

I also attach, for information, a downloaded copy of section 53 of the Wildlife and Countryside Act 1981 to which Janice refers in her letter. In essence this deals with the addition of and the removal of rights of way from the Definitive Map, modification of existing ones, and the obligation resting on the Council to investigate any evidence relating to a right of way which comes before them.

[Janice I expect you have this information already]

So to conclude my thanks again should you need me to expand or explain more of this report I will be pleased to do so

Regards

Harry Urquhart

Decision Report Wildlife and Countryside Act 1981 – Section 53

Application to Add a Footpath – Whiteparish (The Drove)

Appendix 5 – Relevant Legislation

1. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies in the determination of this application:

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

(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 those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”

2. The event referred to in subsection 2, (as 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 –

...(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies...”

3. Section 53(5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

“Any person may apply to the authority 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.”

4. Schedule 14 of the Wildlife and Countryside Act 1981, 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.”*

The prescribed scale is included within “The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993” – Statutory Instruments 1993 No.12, which state that “A definitive map shall be on a scale of not less than 1/25,000.”

5. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

“(1) Where a way over any land, other than a way of such 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.

(1A) Subsection (1) –

- (a) Is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but*
- (b) Applies in relation to the dedication of a restricted byway by virtue of use for mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.*

- (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 way as aforesaid passes-*
(a) *has erected in such 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 1st January 1934, or any later date on which it was erected,*
the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.
- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in 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 a highway.*
- (6) *An owner of land may at any time deposit with the appropriate council-*
(a) *a map of the land 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 deposit has been made, declarations in valid form 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 the relevant number of years from the date of the deposit, or*
- (ii) within the relevant number of 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 to 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.

(6A) Where the land is in England-

- (a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,*
- (b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and*
- (c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years...*

(6C) Where, under subsection (6), an owner of land in England deposits a map and statement or lodges a declaration, the appropriate council must take the prescribed steps in relation to the map and statement or (as the case may be) the declaration and do so in the prescribed manner and within the prescribed period (if any).

(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), (6), (6C) and (13) '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 subsections (6),

(6C) and (13)) 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...”

Decision Report – Wildlife and Countryside Act 1981 – Section 53

Application to Add a Footpath, Whiteparish (The Drove)

Appendix 6 – Historical Evidence Summary:

Each document is listed according to the evidential weighting awarded to that document (please see paragraph 9.2. of main report):

Document	Whiteparish Inclosure Award (A1/210/EA 64) An Act For Dividing, Allotting, and laying in Severalty, certain Open Commonable Fields, Downs, Meadows, and Waste Lands, within the Parishes of West Grimstead and Whiteparish , in the County of Wilts. (A1/215/41)
Date	Award – 1805 Local Act - 1802
Relevant Documents	Inclosure Award Inclosure Award Map Local Inclosure Act
Size / Scale	Scale of Chains 22 Yards each (12.5cm = 30 chains)
Evidential Weighting	A
Significance	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the Manor, were redistributed amongst people having rights of common. By the 18th Century new innovations in farming were increasing output, but where communal farming was in place it was difficult to modernise without the agreement of all parties, as the Whiteparish Inclosure Act 1802 states: <i>“And whereas the Lands and Grounds of the several Owners and Proprietors in the said Open Commonable Fields, Downs, Meadows, and Waste Lands, lie intermixed and dispersed in small parcels, and are in their present Situation incapable of any considerable Improvement; and it would be advantageous to the several Proprietors thereof, and Persons interested therein, if the said Open Commonable Fields, Downs, Meadows, and Waste Lands were divided, and specific Parts thereof allotted to the several Proprietors or Persons interested therein, in proportion to their Property, Rights of Common, and other Interests: BUT such Division and Allotment cannot be effected without the Aid of Parliament.”</i> Therefore, the larger landowners who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Inclosure Awards provide sound and reliable evidence of the existence of a highway and its status where they arise from Acts of Parliament. Prior to 1801 inclosure was dealt with by local acts for specific areas, each with its own terms and conditions. After 1801 the Inclosure</p>

	<p>Consolidation Act, <i>“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”</i>, provided standard conditions for the Inclosure process, although each inclosure still required a local authorising Act alongside it which could vary the rules. The Acts gave the Commissioners the power to change the highway network of the parish and authorised and required the Commissioners to set out highways, public and private within the parish.</p> <p>Weight can be given to routes included within Inclosure Awards as landowners has a strong influence over the inclosure process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure process was clearly set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways. One of the main purposes of the Inclosure Award was to record highways.</p>
<p>Conclusion</p>	<p>On the Inclosure Award Map, the main A27 road (The Street) is recorded to a point just east of Pill Hill. The Hop Gardens (off Newton Lane) is recorded with the western end of Clay Street, however, the claimed route is not recorded where the area to be inclosed does not extend far enough south and east of Whiteparish, to include the claimed route.</p> <p>This Inclosure Award dated 1805, stems from both the Consolidation Act and a local Act of Parliament: <i>“An Act For Dividing, Allotting, and laying in Severalty, certain Open Commonable Fields, Downs, Meadows, and Waste Lands, within the Parishes of West Grimstead and Whiteparish, in the County of Wilts.”</i> which makes the following provisions for roads:</p> <p><i>“And be it further Enacted, That if any of the public Roads to be set out by virtue of this Act or the said recited Act, shall by the said Commissioners be directed to be fenced, then it shall not be lawful for any Person or Persons to graze or keep any Sort of Cattle whatsoever, in or upon any of the said public Roads, for the Space of Seven Years next after the making and executing of the said Award, on pain of forfeiting and paying for every such Offence any Sum not exceeding Forty Shillings nor less than Twenty Shillings, to be paid to such Person or Persons, and to be applied for such Uses and Purposes, as the said Commissioners shall in and by their said Award authorize and direct.”</i></p> <p><i>“And be it further Enacted, That the said Commissioners shall and may, and they are hereby authorized and required to set out, allot, and</i></p>

award, unto and for the Surveyor of Highways of the said Parish of West Grimstead for the Time being, One Plot of the said Lands and Grounds so intended to be divided and allotted as aforesaid, in the said Parish of West Grimstead, as they shall think proper, not exceeding in the Whole One Acre, as and for public Stone and Gravel Pits, with convenient Roads to and from the same, which said Plot shall be used in Common by the Proprietors of Lands and Estates within the said Parish, and their Tenants, for the Repairs of the public and private Roads within the same Parish; and such Plot of Land or Ground so to be set out and allotted unto and for the Surveyor of the Highways of the said Parish, shall be and is hereby vested in the Surveyor or Surveyors of the Highways for the Time being in the said Parish for ever, in Trust for the Purposes aforesaid, and also in Trust, to let and set the Grass and Herbage from Time to Time growing and renewing upon such Plot of Land and Ground, for the best Rent that can be reasonably got for the same, and to apply the Rents and Profits thereof in repairing the said public Highways in the said Parish, and to account touching the Application of such Rents and Profits, at such Times and in such Manner as they are and shall be accountable by Law for any other Monies that shall come to their Hands as Surveyors of the Highways as aforesaid; and if any of the Surveyors of the Highways, shall at any Time or Times hereafter neglect or refuse to account for, and apply the said Rents for the Herbage growing or renewing from the said Plot of Land and Ground, it shall be lawful for any of His Majesty's Justices of the Peace acting in and for the said County of Wilts, to cause the said Rent and Arrears of Rent, and the Costs and Charges attending the Recovery thereof, to be levied by Distress and Sale of the Goods and Chattels of such Surveyor, so neglecting or refusing to account for such Rents as aforesaid...

Provided always, and be it further Enacted, That nothing herein or in the said recited Act contained shall authorize the said Commissioners to allot, set out, or assign any Lands or Grounds in the said Parish of Whiteparish, except the Four Arable Commonable Fields hereinbefore mentioned."

"Provided always, and be it further Enacted, That convenient Gaps and Openings shall be left in the Fences to be made (if any shall be directed to be made by the said Commissioners) for the Space of Twelve Calendar Months next ensuing the Execution of the said Award, for the Passage of Carts, Cattle and Carriages, in and through the same, unless the said Commissioners shall by their Award, or other Instrument in Writing under their Hands, order that the same be sooner fenced and made up."

"...and the Costs and Charges of forming and completing, and putting into good and sufficient repair, the public Carriage Roads ... shall be

borne and defrayed by the several Owners of the Lands, Grounds and Hereditaments to be divided and allotted by virtue of this Act..."

The Consolidation Act of 1801 contains additional powers for the Commissioners to set out and appoint public highways:

"Be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required, in the first Place, before he or they proceed to make any of the Divisions and Allotments directed in and by such Act, to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted and inclosed, and to divert, turn, and stop up, any of the Roads and Tracts, upon or over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary, so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required to ascertain the same by Marks and Bounds, and to prepare a Map in which such intended roads shall be accurately laid down and described, and to cause the same, being signed by such Commissioner, if only one, or the major Part of such Commissioners, to be deposited with the Clerk of the said Commissioner or Commissioners, for the inspection of all Persons concerned; as soon as may be after such Carriage Roads shall have been so set out, and such Map so deposited, to give Notice in some Newspaper to be named in such Bill, and also by affixing the same upon the Church Door of the Parish, in which any of the Lands so to be inclosed shall lie, of his or their having set out such Roads and deposited such Map, and also of the general Lines of such intended Carriage Roads, and to appoint in and by the same Notice, a Meeting to be held by the said Commissioner or Commissioners, at some convenient Place, in or near to the Parish or Township within which the said Inclosure is to be made, and not sooner than three Weeks from the Date and Publication of such Notice, at which Meeting it shall and may be lawful for any person who may be injured or aggrieved by the setting out of such roads to attend; and if any such Person shall object to the setting out of the same, then such Commissioner or Commissioners, together with any Justice or Justices of the Peace, acting in and for the Division of the County in which such inclosure shall be made, and not being interested in the same, who may attend such Meeting, shall hear and determine such Objection, and the Objections of any other such person, to any Alteration that the said Commissioner or Commissioners, together with such Justice or Justices, may in Consequence propose to make, and shall, and he or they are hereby required, according to the best of their Judgment upon the Whole, to order and finally direct how such Carriage Roads shall be set out, and either to confirm the said Map, or make such Alterations therein as the

Case may require: Provided always, That in Case such Commissioner or Commissioners shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any Part of the old Inclosures in such Parish, Township, or Place, the same shall in no Case be done without the Concurrence and order of two Justices of the Peace, acting in and for such Division, and not interested in the Repair of such Roads, and which Order shall be subject to Appeal to the Quarter Sessions, in like Manner and under the same Forms and Restrictions as if the same had been originally made by such Justice aforesaid.

And be it further enacted, That such Carriage Roads so to be set out as aforesaid, shall be well and sufficiently fenced on both Sides, by such of the Owners and Proprietors of the Lands and Grounds intended to be divided, allotted, and inclosed, and within such Time as such Commissioner or Commissioners shall, by any Writing under his or their Hands, direct or appoint, and that it shall not be lawful for any Person or Persons to set up or erect any Gate across any such Carriage Road...and such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required, by Writing under his or their Hands, to nominate and appoint one or more Surveyors, with or without a Salary, for the First forming and completing such Parts of the said Carriage Roads as shall be newly made, and for putting into complete Repair such Parts of the same as shall be previously made..."

"And be it further enacted, That after such publick and private Roads and Ways have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either Side thereof, as far as the Crown of the Road; and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which not be set out as aforesaid, shall for ever be stopped up and extinguished, and shall be deemed as taken as Part of the Lands and Grounds to be divided, allotted and inclosed, and shall be divided, allotted and enclosed accordingly; Provided, That nothing herein contained shall extend, or be construed to extend, to give such Commissioner or Commissioners any Power or Authority to divert, change, or alter any Turnpike Road that shall or may lead over any such Lands and Grounds, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at some publick Meeting called for that purpose on ten Day Notice, be first had and obtained..."

And be it further enacted, That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, pursuant to the Purport and Directions of this or any such Act, the said Commissioner or Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing, which shall express the Quantity of Acres, Roods, and Perches, in Statute Measure,

contained in the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof which shall be so allotted, assigned or exchanged, and the Situations and Descriptions of the same respectively, and shall also contain a Descriptions of Roads, Ways and Footpaths...set out and appointed by the said Commissioner or Commissioners respectively as aforesaid, and all such other Rules, Orders, Agreements, Regulations, Directions and Determinations, as the said Commissioners shall think necessary, proper, or beneficial to the Parties; which said Award shall be fairly ingrossed or written on Parchment, and shall be read and executed by the Commissioner or Commissioners, in the presence of the Proprietors who may attend at a special General Meeting called for that Purpose, of which ten Days Notice at least shall be given in some Paper to be named in such Act and circulating in the County, which Execution of such Award shall be proclaimed the next Sunday in the Church of the Parish in which such Lands shall be, from the Time of which Proclamation only and not before, such Award shall be considered as complete; and shall, within twelve Calendar Months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of his Majesty's Courts of Record at Westminster, or with the Clerk of the Peace for the County in which such Lands shall be situated, to the End of that Recourse may be had thereto by any Person or Persons interested therein, for the Inspection and Perusal whereof no more than one Shilling shall be paid; and a Copy of the said Award, or any part thereof, signed by the proper Officer of the Court wherein the same shall be inrolled, or by the Clerk of the Peace for such County, or his Deputy, purporting the same to be a true Copy, shall from Time to Time be made and delivered by such Officer or Clerk of the Peace for the Time being as aforesaid, to any Person requesting the same, for which no more shall be paid than Two-pence for every Sheet of seventy-two Words; and the said Award, and each Copy of the same, or of any Part thereof, signed as aforesaid, shall at all Times be admitted and allowed in all Courts whatever as legal Evidence; and the said Award or Instrument, and the several Allotments, Partitions, Regulations, Agreements, Exchanges, Orders, Directions, Determinations, and all other Matters and Things therein mentioned and contained, shall, to all Intents and Purposes, be binding and conclusive, except where some Provision to the contrary is herein or shall be by any such Act contained, unto and upon the said Proprietors, and all Parties and Persons concerned or interested in the same, or in any of the Lands, Grounds, or Premises aforesaid; and also that the said respective Commissioners, if they think it necessary, shall form or draw, or cause to be formed and drawn, on Parchment or Vellum, such Maps or Plans of the said Lands and Grounds, the better to describe the several new Allotments or Divisions to be made, and Premises that shall be exchanged by virtue of this Act, and which shall express the Quantity of each Allotment in Acres, Roods and Perches, together with the names

of the respective Proprietors at the Time of such Division and Allotments; which said Maps and Plans shall be annexed to and inrolled with the said respective Award, and shall be deemed and construed in every respect as and for Part of the said Award.”

Where the claimed route is not recorded on the Inclosure Award map as that part of the parish to be inclosed, no conclusions can be drawn from this document.



Whiteparish Inclosure Award Map - 1805



Whiteparish Inclosure Award Map – 1805

Document	Definitive Map of Public Rights of Way
Date	1951
Relevant Documents	Parish Claim Map and Survey Cards Definitive Map
Size / Scale	Claim Map - 6 inches to 1 mile Definitive Map – 1:25,000
Evidential Weighting	A
Significance	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map.</p> <p>Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey Maps to all Parish, Borough, Town and City Councils, who surveyed and recorded what they considered to be public rights of way within their areas, with an accompanying description of each path. The local Councils were required to convene a meeting at which the public rights of way information to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of</p>

	<p>the definitive map and statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District or Urban District area.</p> <p>Detailed guidance regarding the local Council's input into the definitive map process was issued with Circular no.81/1950 from the Ministry of Town and Country Planning – <i>“Surveys and Maps of Public Rights of Way for the purposes of PART IV of the National Parks and Access to the Countryside Act , 1949 Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Council Association and approved by the MINISTRY OF TOWN AND COUNTRY PLANNING”</i>. The Planning Inspectorates <i>“Definitive Map Orders: Consistency Guidelines”</i> state that the legal <i>“presumption of regularity”</i> applies, i.e. unless otherwise demonstrated, it should be assumed that local Council's received this guidance and complied with it in undertaking their survey and claim.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p>
<p>Conclusion</p>	<p>The parish claim map does not record The Drove and hence there is no survey card for this route. The lack of a connecting path to the north of Whiteparish Footpath no.6 was queried by the Wiltshire County Council Surveyor upon receiving the Parish Council Survey information. The Surveyor wrote to the Parish Council ref Path no's 9 and 29 on the parish claim map, which formed links between The Drove and Path no.6, yet The Drove was not claimed by the parish. He questioned whether or not the claimed route <i>“Forkes Drove”</i>, should be recorded as a public right of way which would create the connection (correspondence dated 4th December 1951):</p> <p><i>“Ordnance Sheet No. LXXII.S.E. Path Nos.9 and 29 as shown have no outlet at their northern ends. Is Forkes Drove, leading north from path No.6 and then north-east to Common Road, C.26, a public right of way? If not, have these two paths any public use? ...I enclose Ordnance Sheets Nos. LXXII.S.E. and N.E., which please return with the forms of statement and your observations as soon as possible.”</i></p> <p>The parish survey card for path no.29 records that it commences <i>“...at the junction of No.9 and No.6 Footpaths and proceeding in a northerly direction to FORKES DROVE”</i>. In Observations it is recorded that <i>“This Footpath is never used”</i> and the approximate period of uninterrupted user is: <i>“Now disused 50 years from 1901”</i>. The survey card for Footpath 9 shows that it is <i>“Unmade”</i> and <i>“This path has fallen into disuse”</i>.</p>

The Parish Council replied to the County Surveyor, (correspondence dated 25th January 1952):

*“Ordnance Sheet No. LXXII S.E.
 Paths No. 9 and 29. The drove you refer to as Forke’s Drove is not a public right-of-way and on reflection it is felt that Paths No’s 9 and 29 serve no useful purpose, and in any case are seldom used, and could be omitted.”*

Adjacent to this observation on the letter is a note in pencil *“take out”* presumably added by the County Surveyor referring to path no’s 9 and 29 which are then scribbled out in pencil on the Parish Claim map and the claim cards struck through with *“Take out see P.C’s letter dated 25.1.52.”* In the same letter the Parish Council adds other paths queried by the County Surveyor, so it was open to the Parish Council to add *“The Drove”* if they considered it to be a public right of way.



Whiteparish Parish Claim map 1951

FD/DMK.

4th December, 1951.

Mrs. E. McComish,
Clerk to the Whiteparish Parish Council,
56, Hulse Road,
Salisbury,
Wiltshire.

Dear Madam,

Survey of Rights of Way.

I have now had an opportunity of checking the maps and statements and the only comments I wish to make are as follows.

Ordnance Sheet No. LXXI.S.E.

Paths Nos. 9 and 29 as shown have no outlet at their northern ends. Is Forkes Drove, leading north from path No. 6 and then north-east to Common Road, C.26, a public right of way? If not, have these two paths any public use?


Path No. 10, from Blaxwell Farm leading south-east alongside Bushy Copse to road U/c.12067, is not coloured on the map as described on the form. Is the colouring correct as I have shown it? The form for this path is enclosed.

Correspondence from County Surveyor (4th December 1951)

WHITEPARISH PARISH COUNCIL

E. McCOMISH
Clerk

56 HULSE ROAD
SALISBURY
25th January, 1952.



Dear Sir,

Survey of Rights of Way.

I have now had an opportunity of bringing your letter, dated the 4th December last, before my Council and have set out their observations below:-

Ordnance Sheet No. LXXII S.E.

take out

Paths No. 9 and 29. The drove you refer to as Forke's Drove is not a public right-of-way and on reflection it is felt that Paths No's 9 and 29 serve no useful purpose and, in any case, are seldom used, and could therefore be omitted.

Path No. 10. The colouring for this path as amended by you is, of course, correct.

Ordnance Sheets No's LXXII N.E. & S.E.

add

Path No. 19. The lane from road U/c 12025 at Ashmore Pond leading north west past Alderstone Farm is a public right-of-way and therefore provided an outlet for Path No 19 at its southern end.

Path No. 31. This path, leading from Newton Lane, south-east to the Hop Gardens and north-east past Sansomes Farm and the Methodist Chapel to Common Road opposite the School, should have been included and is now numbered No. 31 on the schedule.

Correspondence from Whiteparish Parish Council (25th January 1952)

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. (to correspond with No. on map)

PATH No. 6
(to correspond with No. on map)

PARISH OF WHITEPARISH

PUBLIC RIGHT OF WAY.

NAME OR SITUATION AND DESCRIPTION
(FOOTWAY, BRIDLEWAY, ETC.)
Footpath with its junction with No. 1 in COOK'S MEADOW and
proceeding eastwards to the south of Lian's cottage to the corner
road continuing to the opposite side of the road and proceeding
in an easterly direction to the south end of BUSHY GLEBE and from
there, turning North-east to COWSFIELD GREEN.

LENGTH 3/4 mile WIDTH 4 feet

WHETHER FENCED OR OPEN Fenced

APPROXIMATE PERIOD OF UNINTERRUPTED USER—
YEARS FROM _____

WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH
OR COUNTY COUNCIL—
None

DATE OF REPAIR January 1951

WHETHER SUBJECT TO PLOUGHING No.

DATE OF SURVEY January 1951

WHETHER SHOWN ON UNDERMENTIONED MAPS—
ORDNANCE 6" SHEET. REF. Yes LXX 115.E.

INCLOSURE AWARD Yes

LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF
THE RIGHTS OF WAY ACT, 1932.) Yes

OTHER MAPS—

NATURE OF SURFACE Pathway & made. Copied & reinforced N.E.
to N.W. at Cowfield Green.

STILES, GATES, FOOTBRIDGES, STEPPING STONES Low Rises - Barbed wire

WHETHER DIRECTION POSTS ON WAY
(GIVE PARTICULARS) None

OBSERVATIONS: Not used - full of obstructions - mainly overgrown
hedges & barbed wire fences.

Parish Survey Record Card – Path no.6 Whiteparish 1951

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. (to correspond with No. on map)

PATH No. 9
(to correspond with No. on map)

PARISH OF WHITEPARISH

PUBLIC RIGHT OF WAY.

NAME OR SITUATION AND DESCRIPTION
(FOOTWAY, BRIDLEWAY, ETC.)
Footpath commencing near Bonetta House in the High Grounds (known
as "The Vines" proceeding in a south-easterly direction to its
junction with Footpath No. 6.

LENGTH 1/2 mile WIDTH 4 feet

WHETHER FENCED OR OPEN Fenced

APPROXIMATE PERIOD OF UNINTERRUPTED USER—
YEARS FROM _____

WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH
OR COUNTY COUNCIL—

DATE OF REPAIR _____

WHETHER SUBJECT TO PLOUGHING No.

DATE OF SURVEY January 1951

WHETHER SHOWN ON UNDERMENTIONED MAPS—
ORDNANCE 6" SHEET. REF. Yes

INCLOSURE AWARD Yes

LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF
THE RIGHTS OF WAY ACT, 1932.) Yes

OTHER MAPS—
Not known

NATURE OF SURFACE Pathway

STILES, GATES, FOOTBRIDGES, STEPPING STONES None

WHETHER DIRECTION POSTS ON WAY
(GIVE PARTICULARS) No.

OBSERVATIONS: None.

Take out as P.R.W. after deleted 25.1.52

Parish Survey Record Card – Path no.9 Whiteparish (deleted) 1951

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

PATH No. 29
(to correspond with No. on map)

PUBLIC RIGHT OF WAY.

PARISH OF WHITEPARISH.

<p>NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)</p> <p><i>Footpath commencing at junction of No. 9 and No. 6 Footpaths and proceeding in a westerly direction to FORKE'S DRIKE</i></p>	<p>LENGTH <u>200 yds</u> WIDTH <u>—</u></p> <p>WHETHER FENCED OR OPEN <u>open</u></p> <p>APPROXIMATE PERIOD OF UNINTERRUPTED USER — <u>Not known</u> <u>80</u> YEARS FROM <u>1901</u></p> <p>WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL: — <u>Not known</u></p> <p>DATE OF REPAIR <u>—</u></p> <p>WHETHER SUBJECT TO PLOUGHING <u>No</u></p> <p>DATE OF SURVEY <u>January 1951</u></p> <p>WHETHER SHOWN ON UNDERMENTIONED MAPS — ORDNANCE 6" SHEET. REF. <u>ja</u> INCLOSURE AWARD <u>ja</u></p> <p>LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932) <u>ja</u></p> <p>OTHER MAPS —</p>
<p>NATURE OF SURFACE <u>Positive</u></p> <p><i>Take out letter 95.1.52</i></p>	
<p>STILES, GATES, FOOTBRIDGES, STEPPING STONES <u>1. Field gate 1. Rail</u></p>	
<p>WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS)</p> <p><u>None</u></p>	
<p>OBSERVATIONS: <u>This footpath is never used.</u></p>	

Parish Survey Record Card – Path no.29 Whiteparish (deleted) 1951

Parish	Path No.	Description of path with terminal points	Approximate length	Width	Limitation or conditions affecting public rights	Remarks
Whiteparish.	5.	<i>had no of boundary north</i> F.P. From Trunk Road A.36 at Chadwell Farm leading north along the east side of Whelpley Head now to its junction with path No. 4.	$\frac{1}{2}$ mile 1100 yds	4 feet	Subject to part ploughing.	
	6.	F.P. From path No. 4 about 100 yards north of its junction with path No. 5, leading east across the Common Road, C.26, to the south-west corner of Bushy Copse and continuing north-east to road A.27 at Cowesfield Green.	1 mile	4 feet	-	Barbed wire obstructions and overgrown.
	7.	F.P. From path No. 6 leading north-east through Blaxwell Farm to road A.27 <i>at the Nursery</i>	$\frac{1}{2}$ mile	4 feet	Subject to part ploughing.	
	8.	F.P. From path No. 4 leading south-east and north-east to the north side of School House and thence east to Blaxwell Farm at its junction with path No. 7 <i>at</i>	780 yards	4 feet	Subject to part ploughing.	
	10.	F.P. From road A.27 at Little Suttons leading south-east past Blaxwell Farm and continuing along the south-west side of Bushy Copse and through Hayter's Wood to road U/s.12067.	1 mile	4 feet	-	Overgrown and obstructed.

Annotation c.26

Draft Definitive Statement (Whiteparish)

Parish	Path No.	Description of path with terminal points	Approximate length	Width	Limitation or conditions affecting public rights	Remarks
Whiteparish.	27.	F.P. From road U/s.12067, opposite Cowesfield Brick Kiln, leading south-east past Woodfalls Farm to the Hampshire County boundary.	700 yards 500	4 feet	-	
	28.	F.P. From road A.27 at Cowesfield Gate leading north-east past Morris Holt Farm and continuing across road U/s.12070, past Ash Hill House and Harrens Copse to the Hampshire County boundary.	1 mile	4 feet	-	
	30.	F.P. - Pill Hill Lane. From the junction of paths Nos. 4 and 8 leading north-west across road A.27 by Young's Farm and continuing east Collis's Copse and Woodford's Piece to the Grimstead Parish boundary.	1 $\frac{1}{2}$ miles	12 feet	Subject to part ploughing.	Barbed wire obstructions and overgrown.
	31.	F.P. From Newton Lane, U/s.12065, leading south-east to the Hop Gardens and north-east past Sansome's Farm and the Methodist Chapel to Common Road, C.26, opposite the School.	$\frac{1}{2}$ mile	-	-	

Draft Definitive Statement (Whiteparish)



Objections Map (part of Path no.6 deleted at its eastern end, as shown hatched)



Salisbury and Wilton Rural District Council Area Definitive Map of Public Rights of Way (1953)

Parish	Path No.	Description of Path	Approximate Length	Width	Limitation or conditions affecting public rights
Whiteparish.	5.	F.P. From path No. 4 leading south-east and south to Chadwell Farm then south-east and south-west on the eastern side of the farm to the Southampton - Bath Trunk Road, A.36, then, leaving the road 130 yards to the east, continuing south, south-east and south across Holmere Common to Landford path No. 20, west of Barlildoms Lodge.	1150 yards	4 feet	Part subject to ploughing.
	6.	F.P. From path No. 4, about 100 yards north of its junction with path No. 5, leading east-north-east across the Common road, C.26, east to the south-west corner of Bushy Copse and north-east to the Romsey road, A.27, at Covesfield Green.	1 mile	4 feet	
	7.	F.P. From path No. 6 leading north-east through Blaxwell Farm to the Romsey road, A.27, at the Nursery.	½ mile	4 feet	
	8.	F.P. From path No. 4 leading south-east and north-east across road C.26 on the north side of School House, then east to its junction with path No. 7 at Blaxwell Farm.	780 yards	4 feet	Part subject to ploughing.
	10.	F.P. From the Romsey road, A.27, at Little Suttons, leading south-east to path No. 7 at Blaxwell Farm and, leaving path No. 7 about 100 yards to the south, continuing south-east along the south-west side of Bushy Copse and through Hayter's Wood to road U/c.12007.	1 mile	4 feet	

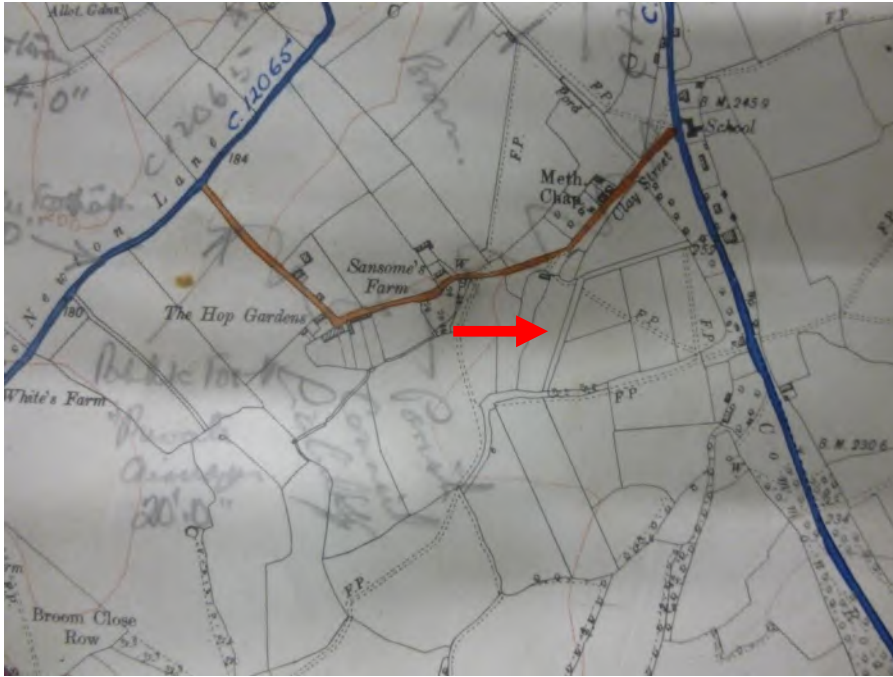
Definitive Statement (Whiteparish)

Parish	Path No.	Description of Path	Approximate Length	Width	Limitation or conditions affecting public rights
Whiteparish.	28.	F.P. From the Romsay road, A.27, at Cowesfield Gate, leading north-east past Morris Holt Farm and continuing east across road U/c.12070, past Ash Hill House and Warren's Copse to the Hampshire County boundary.	1 mile	4 feet	
	30.	B.R. - Pill Hill Lane. From the junction of paths Nos. 4 and 8 leading north-west across the Romsay road, A.27, by Young's Farm, and continuing north-west past Collin's Copse and Woodford's Piece to the Grimstead Parish boundary.	1½ miles	12 feet	Part subject to ploughing.
	31.	F.P. From Newton Lane, U/c.12065, leading south-east to the Hop Gardens and north-east past Sansome's Farm and the Methodist Chapel to the Common Road, C.26, opposite the School.	½ mile		
	32.	F.P. From path No. 20 at the northern end of Philip's Hat Copse, leading west to the West Dean Parish boundary at Ashmore Lane, U/c.12025.	¾ mile		
	33.	C.R.B. - Alderstone Lane. From Ashmore Lane, U/c.12025, opposite Ashmore Pond, leading north-west past Alderstone Farm to the southern end of path No. 19.	1000 yards		

Definitive Statement (Whiteparish)

Document	Highways Takeover Map
Date	1929
Relevant Documents	Highways Takeover details drawn onto the Ordnance Survey 6 inches to 1 mile map
Size / Scale	6 inches to 1 mile
Evidential Weighting	B
Significance	<p>Following the Local Government Act of 1929, responsibility for all rural roads was transferred from the Rural District Councils to the County Council, as the new Highway Authority, on 1st April 1930. Section 29 (1) of the Local Government Act 1929 states:</p> <p><i>“The Council of every county shall be the highway authority as respects every road in the county which at the appointed day is a main road or which would, apart from this section, at any time thereafter have become a main road, and every such road and every other road as respects which a County Council became by virtue of this Part of the Act the highway authority, shall be termed a county road, and all enactments relating to main roads shall as from the appointed day have effect as if for references therein to main roads there were substituted references to county roads”.</i></p> <p>The Act sought to effect changes to deal with the impact of motor vehicles on road maintenance demands on local authorities. In referring to all roads transferred being subject to the same functions which the County Councils had previously exercised over main roads, it does not suggest that it was intended that footpaths and bridleways should be included in the term “roads”.</p>

	<p>Despite the legislation to transfer the maintenance responsibility for highways to County Councils, there was no statutory requirement to produce a handover map and no government circulars were produced to recommend the preparation of such a map. On 31st May 1929, the County Council’s Roads and Bridges Committee considered a <i>“report by the County Surveyor that it would be necessary to obtain maps from the Rural District Councils showing the whole of the roads in their districts which are repairable by the highway authority.”</i> A handover map was produced for the county of Wiltshire. The detail was drawn onto the 6 inch to 1 mile Ordnance Survey map. The Rural District Surveyor coloured those highways which they regarded as falling within the County Council’s responsibility for maintenance on takeover, i.e. those routes over which the Surveyor had a record or knowledge of public maintenance – those coloured blue indicated repairable by the inhabitants at large, coloured brown indicated not so repairable and not coloured indicated that no maintenance responsibility passed to the County Council on takeover. The Rural District Councils retained their responsibilities concerning public rights of way.</p> <p>During the passage of the Act through Parliament, the Ministry of Health prepared a memorandum on the Local Government Bill 1929 which states: <i>“Clause 29 provided that County Councils shall have in relation to all roads transferred to them the same functions that they now have with respect to main roads. Some of the roads transferred to the County Council will be of comparatively small importance and could not be called main roads as the term is ordinarily understood. In order to preserve uniformity and avoid an inappropriate nomenclature, the clause accordingly provides that all roads vested in the County Council (including the present main roads) shall as from the appointed day be known as ‘county roads’.”</i></p>
Conclusion	<p>The Drove has never been recognised by the Highway Authorities as a highway maintainable at the public expense and there is no record or knowledge of public maintenance. This supports the evidence of the Parish Council at the time the definitive map of public rights of way was produced where they confirmed that the Drove was not public and had not been used by the public.</p>



1929 Highways Takeover Map



Modern highway record map

Document	Whiteparish Tithe Award
Date	1842
Relevant Documents	Tithe Apportionment Tithe Award Map
Size / Scale	Scale of 6 Chains to an Inch

Evidential Weighting	B
Significance	<p>Parishioners once paid tithes to the Church and its clergy in the form of payment in kind, for example grain, comprising an agreed proportion of the annual profits from cultivation and farming. This gradually began to be replaced by monetary payments and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system.</p> <p>Tithe Awards are not primary sources of evidence as the apportionments and plans were produced as an official record of all titheable areas and it was not their main purpose to record highways. However, they can provide useful supporting evidence as the existence of a highway could affect the productivity of the land and also give important map orientation and plot boundary information, therefore the Commissioners had some interest in recording them.</p> <p>Additionally, the public provenance of the documents adds weight to the information recorded within them.</p> <p>The award is stamped as received by the Clerk of the Peace on May 26 1842 (1845 handwritten).</p>
Conclusion	<p>The claimed route is shown by double solid lines, as per the remainder of the road network, including Common Road. The tithe evidence does not record the status of the route and there is no key to the map, however, The British Parliamentary Paper XLI 405 – 1837, gives guidance on how landscape features were to be indicated on Tithe maps produced under the Commutation of Tithes Act 1836. This describes a route shown by double solid lines as a “Bye or Cross Roads”, (it should be noted that “Bridle Roads” and “Foot Paths” are shown by different conventions). There was no statutory requirement to follow these instructions and it is noted that bridleways and footpaths do not appear to be shown on the Whiteparish plan, (or at least not in the manner provided for in the Parliamentary Paper), however, the recording of the route as a “Bye or Cross Roads” may support public vehicular rights over the way.</p> <p>In this context “cross road” is not necessarily the same as our modern understanding of this term. It would appear that the term “cross road” was first mentioned in Ogilby’s Britannia of 1675, which used the classification to distinguish secondary roads from direct/primary roads, (i.e. those originating in London). In the preface of the Brittanica, Ogilby states “...having illustrated the principal roads in England and Wales by 85 several itineraries we have distinguished the same into direct and cross roads...and calling such cross as lead from some of the said lesser centres to another like capital town or place of eminency...” It would appear that subsequent map makers consistently used this term with the same meaning until about 1912 and dictionaries still contain a reference to “by-way” within the definition of “cross roads”.</p>

The claimed route is excluded from the surrounding apportionments, those adjacent to the route being - (Landowner and name; description of lands and premises and state of cultivation):

829 = Bristow Robert Esquire - Part of Forks – arable

830 = Not found

831 = Not found

832 = Bishop Sarah – Orchard - Pasture

833 = Bishop Sarah – House and Garden

834 = Bristow Robert Esquire – Part of Forks - Arable

835 = Bristow Robert Esquire – Part of Forks - Arable

836 = Bristow Robert Esquire – Part of Forks - Arable

837a = Bristow Robert Esquire – Part of Forks – Arable

837b = Bristow Robert Esquire – Part of Forks – Arable

838 = Nelson Frances Elizabeth Dowager Countess - Crooks Orchard - Pasture

841 = Bristow Robert Esquire – Part of Forks - Arable

1208 = Nelson Frances Elizabeth Dowager Countess – Whiteparish Common - Pasture

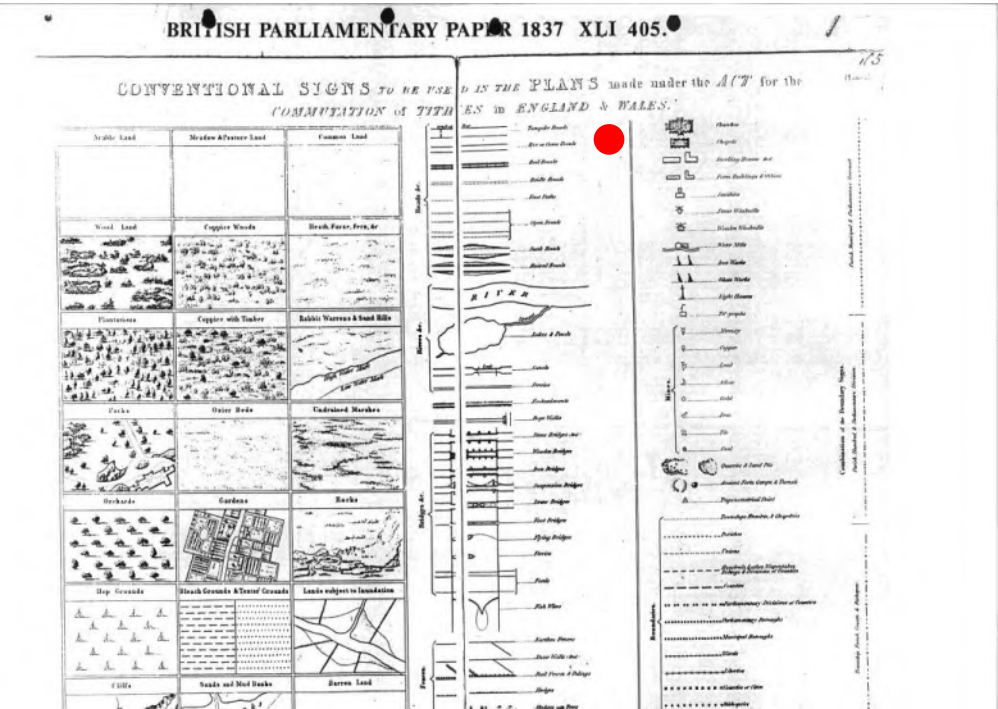
The surrounding lands are generally pasture and arable with the area of common land (1208) between the claimed route and Common Road.

Tithe award documents are not category A evidence and it was not the main purpose of the award to record highways, although the Commissioners did have some interest in recording them. It is possible that The Drove was recorded where the presence of a private route to access surrounding land or property could affect the productivity of the land, or to add plot boundary/map orientation information. The Drove is shown linking to a route which accords with what is now Footpath no.6 Whiteparish, leading east-west at the southern end, however, Footpath no.6 is shown in the same manner as The Drove, (it is now recorded only as a footpath and Officers are not aware of any other evidence to support additional public rights over path no.6), and it has no connection to another public highway at its western end. The Drove connects only back to Common Road using the eastern end of Footpath no.6 and there is no through route shown linking to another highway at the western end of Path no.6, it appears to access only the fields. Additionally, the claimed route is shown separated from Whiteparish Common, plot no.1208, by a solid line and the strip of common land separates the claimed route from Common Road, so in effect the claimed route had no connection with Common Road for the general public, (public rights over common land, previously only open to those having recorded rights of common, have only been in place since the Countryside and Rights of Way Act 2000, which recorded common land as Open Access Land, including a right on foot for the public). The route shown in this manner is repeated in the Ordnance Survey mapping.

The Tithe Award documents, being only category B evidence, are not sufficient to suggest public rights when viewed individually and should be considered carefully alongside other documentary evidence.



Whiteparish Tithe Award 1842



British Parliamentary Paper XLI 405 – 1837

Document	Finance Act (L8/1/182 & L8/10/72-73)
Date	1910
Relevant Documents	Finance Act Plan (OS Sheet 72/15) Finance Act Valuation Book
Size / Scale	Plan – 1:2,500
Evidential Weighting	B
Significance	<p>In the early 20th Century, the ownership of the majority of the land in Britain by a privileged few was seen as a major cause of social injustice and poverty. By the time of the Finance Act of 1910, the Government’s main concern was that private landowners should pay part of the increase in land values which was attributable, not to their own efforts to improve the land, but to expenditure by the state, e.g. the provision of improved roads, drainage and other public services.</p> <p>The 1910 Finance Act required the Valuation Department of the Inland Revenue to carry out a survey of all hereditaments (land holdings) for the purposes of levying a tax upon the incremental value of a site. This included all property and land in the United Kingdom, (whether or not it was considered to be exempt). It has been referred to as the “Second Domesday” as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence.</p> <p>Public Rights of way over land could be excluded from the land as a tax benefit. Hereditaments are illustrated on OS base maps (1:2,500), coloured and numbered, being referred to in the books of reference which accompany the maps. As rights of way could decrease the value of the land, we would expect them to be shown excluded from the hereditaments in the case of public roads, or as a deduction made for rights of way within the valuation book in the case of a lesser public right of way, e.g. footpath. The Planning Inspectorate Consistency Guidelines suggest that the exclusion of public roads may relate to Section 35 (1) of the Finance Act 1910, which states: <i>“No duty under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of the rating authority.”</i> and also Section 25 (3) which states that: <i>“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to...any public rights of way.”</i></p> <p>The hereditament information is recorded on the Ordnance Survey Second Edition County Series map dated 1901 and drawn at a scale of 25 inches to 1 mile.</p>
Conclusion	The copy of the Finance Act map for Sheet no.72/15 held at the Wiltshire and Swindon History Centre, has few hereditament numbers attached and therefore it is not possible to refer back to the valuation book for this area. The route does appear uncoloured, but this is not the original version of the Finance Act map sheet where the plots are coloured on the 1926 Ordnance Survey base map, drawn at a scale of 1:2,500, which post-dates the Inland Revenue survey of 1910-1915.

There is a note written in pencil in the top left corner of the map which states:

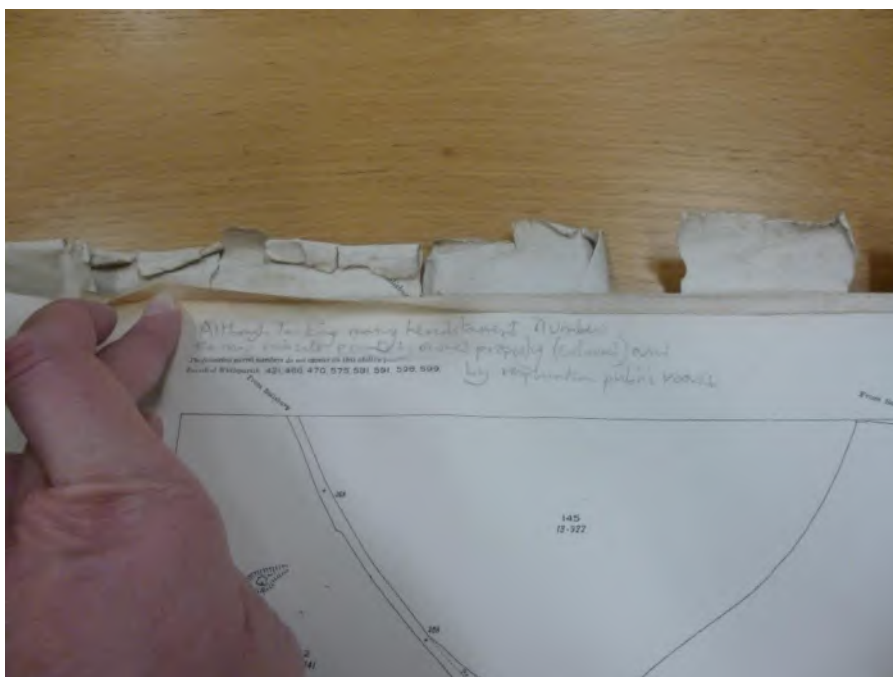
“Although lacking many hereditament numbers the map indicates privately owned property (coloured) and by reputation public roads.”

Officers consider that there is little information which can be gained from this map, its provenance is not clear. The Drove is shown excluded from the colouring of private property, however, the land is now registered in the ownership of Mrs S Cook and Zelda Investments Ltd, there is only a small section at the Common Road end which is unregistered, but is in the ownership of Mr Urquhart. The exclusion of the Drove is not conclusive proof that the route is public and in this case the Finance Act evidence should be considered with caution and alongside other historical evidence.

Officers have also searched for a version of the Finance Act map sheet at the National Records Office, however, there does not appear to be a map sheet for this location, sheet no.72/15.

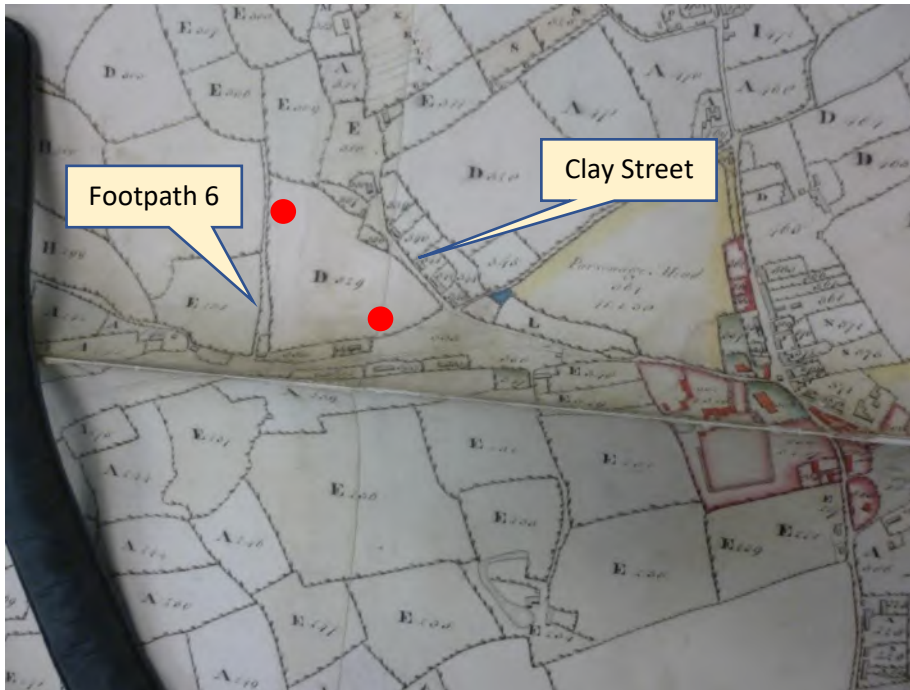


Finance Act Map 1910

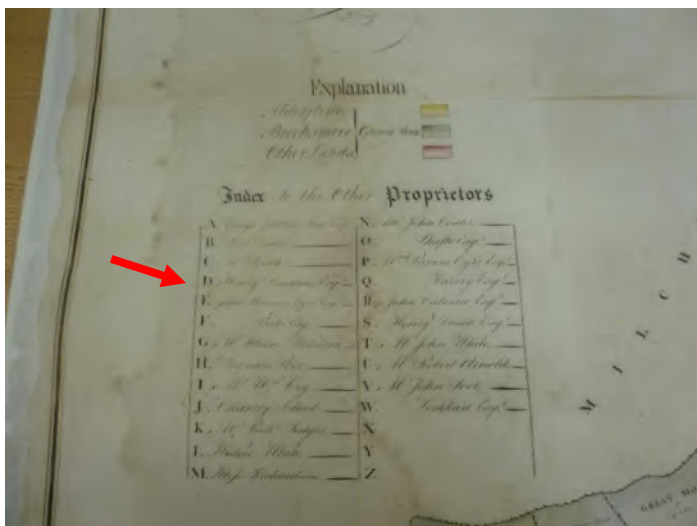


Finance Act Map 1910

Document	A Plan of Whiteparish in the County (sic) of Wilts L Wilkins. Devizes (2562/1L)
Date	1801
Relevant Documents	Map of the parish of Whiteparish showing lands of Alderstone and Brocksmoor Estates and Other Lands with an "Index to the other proprietors".
Size / Scale	4 chains to 1 inch
Evidential Weighting	D
Significance	Estate maps were produced for various reasons and the finished maps varied depending upon the specific instructions which had been issued to the Surveyor by the landowner, e.g. some were working documents to be used by the Estate Manager and others where a means of recording the entire estate in pictorial form. For this reason estate maps are not a primary source of evidence and are unlikely to give reliable highways information as a single document, i.e. they must be considered alongside other evidence. Some useful information can be found on these maps as the location of highways could help with map orientation and give plot boundary information. This map appears to show the lands of the Alderstone and Brockmoor Estates in the parish of Whiteparish.
Conclusion	The claimed route would cross land marked as D 329, land to Henry Dawkins Esq, however, the route is not shown on this plan located between Clay Street and Footpath 6, which are both recorded, (locations by reference to tithe award map).



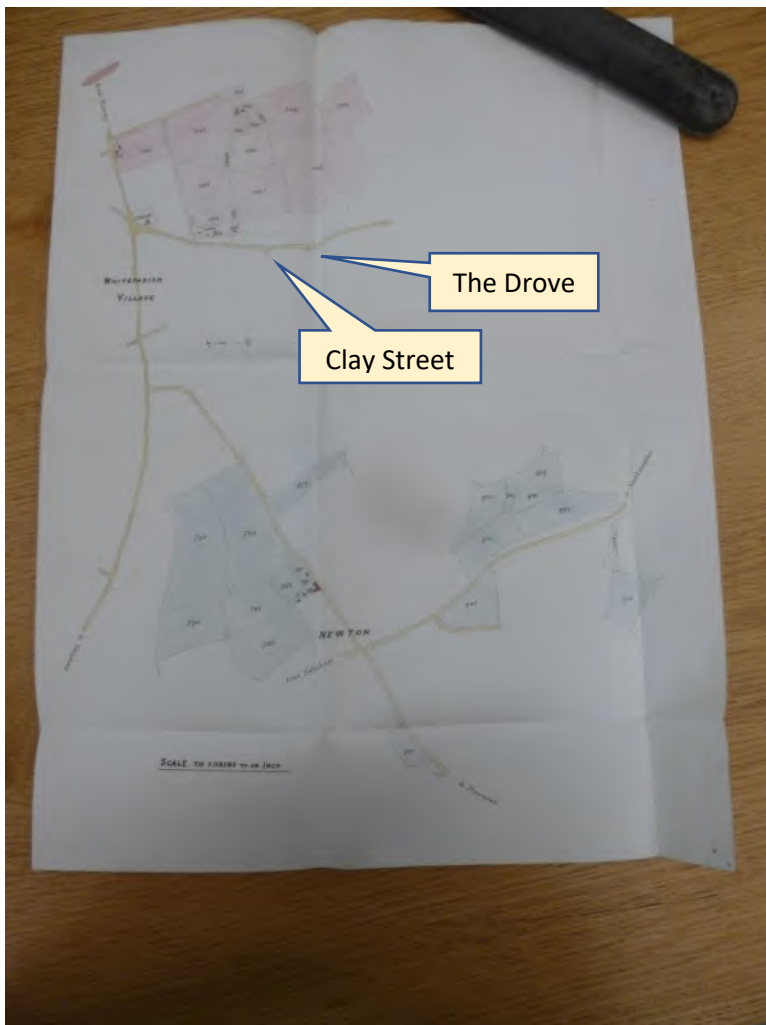
1801 - A Plan of Whiteparish in the County (sic) of Wilts L Wilkins. Devizes



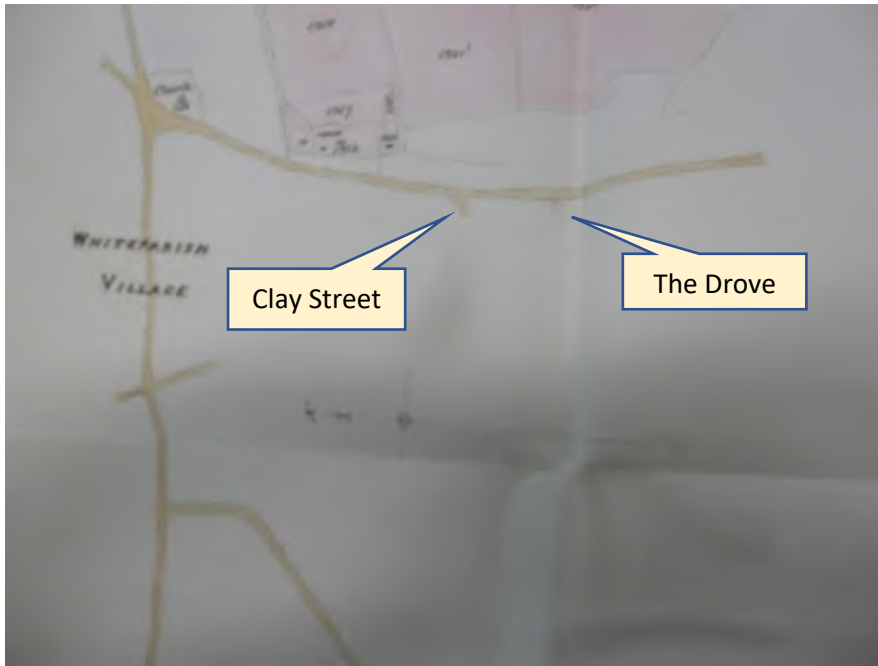
1801 - A Plan of Whiteparish in the County (sic) of Wilts L Wilkins. Devizes (Explanation)

Document	Deeds of Newton Farm (776/522)
Date	1797 - 1853
Relevant Documents	Plan of Newton Farm 1853
Size / Scale	Six Chains to an Inch
Evidential Weighting	D
Significance	Legal Order of Exchange of land authorised by the Inclosure Commissioners, between Horatio Earl Nelson and Frances Elizabeth Countess Dowager Nelson, as described in the schedule and shown on

	the plan accompanying the order, (lands coloured blue to be given in exchange and taken by Frances Elizabeth Countess Dowager Nelson and lands coloured pink to be given in exchange and taken by Horatio Earl Nelson).
Conclusion	<p>Whilst the land to the west of Common Road is not affected by the Order, Common Road is shown for sufficient length for the eastern ends of Clay Street and the claimed route "The Drove", (location by reference to tithe award map), to be shown at their junction with Common Road, coloured sienna as is the remainder of the public highway network (Path no.6, located further south, is not recorded).</p> <p>Whilst this map is suggestive of the claimed route having public rights, this is the only estate map which records The Drove and is not consistent with the sale particulars map produced in 1856 and 1867, which record only Clay Street.</p>

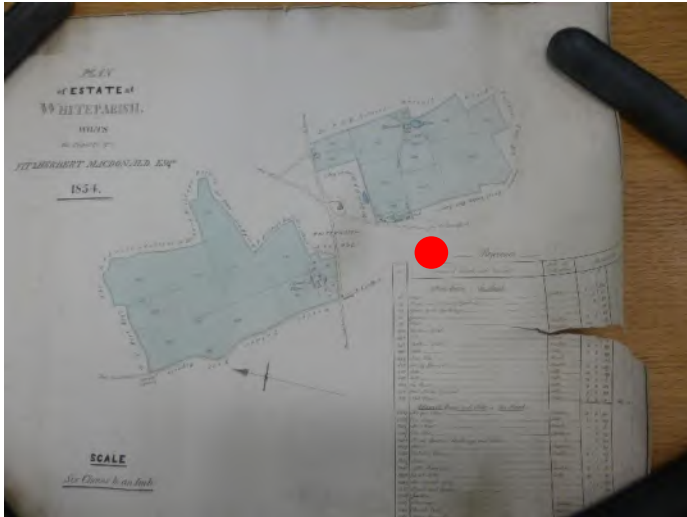


1853 - Plan of Newton Farm

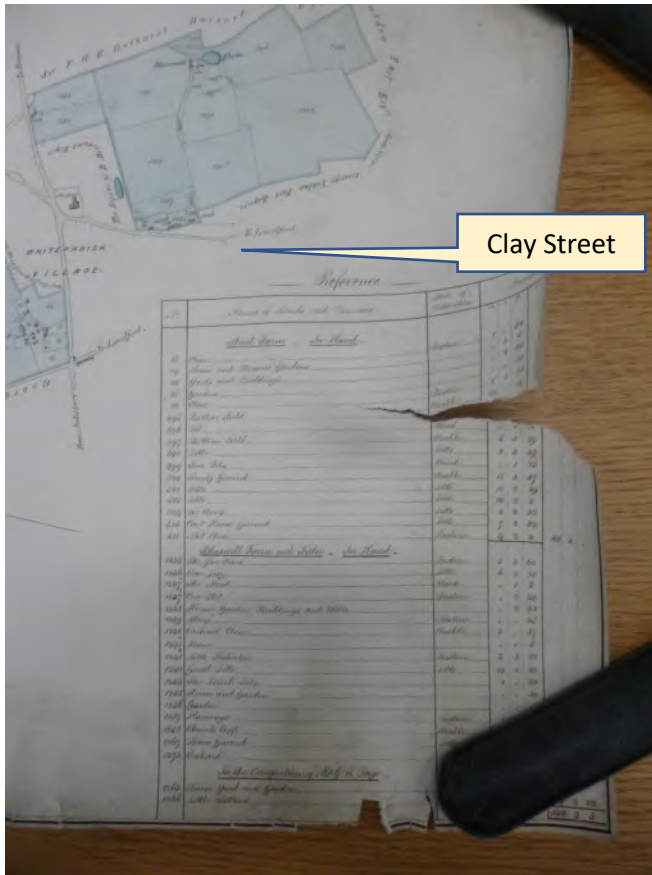


1853 - Plan of Newton Farm

Document	Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDonald Esq (727/5/3)
Date	1854
Relevant Documents	Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDonald Esq with Reference to Names of Lands and Premises and State of Cultivation (Street Farm; Blaxwell Farm and Kiln and In the Occupation of Mr G W Page)
Size / Scale	Six Chains to an Inch
Evidential Weighting	D
Significance	As per Estate Maps above.
Conclusion	The eastern end of Clay Street (location by reference to tithe award map), is shown at its junction with Common Road, however, the claimed route, which would be located further south of Clay Street, to the west of Common Road, is not recorded and no conclusions can be drawn from this plan.



1854 - Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDONALD Esq

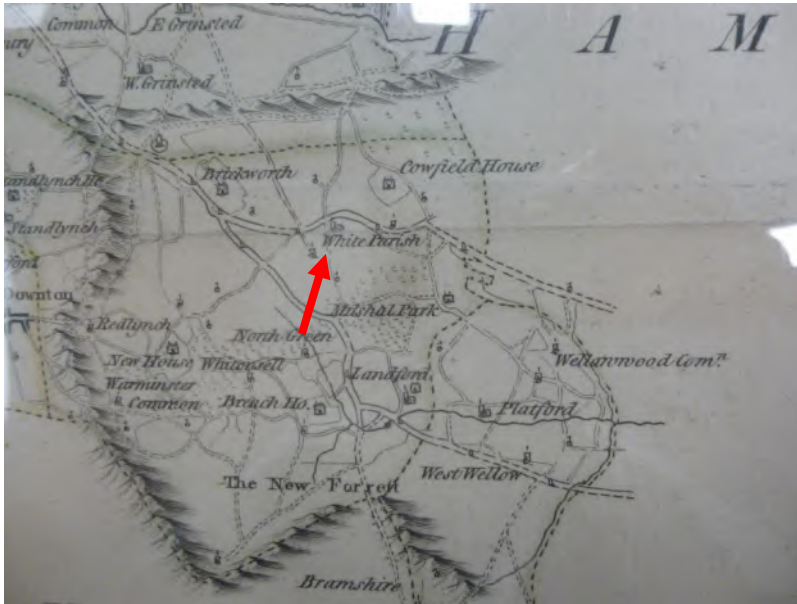


1854 - Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDONALD Esq

Document	Andrews' and Dury's Map of Wiltshire (1810 – A1/524/2MS)
Date	1773 1810
Relevant Documents	1773 Index Map 1773 Map Plate no.3 of 16 plates

	1810 Index Map 1810 Map Plate no.18 of 18 plates
Size / Scale	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
Evidential Weighting	E
Significance	<p>Commercial maps were produced for profit and intended for sale to the whole of the travelling public. From the 17th Century Turnpike Trusts were set up having powers to collect road tolls for maintaining the principal roads and as travel became more popular and traffic on the main roads increased as a result of agricultural and industrial progress, there was a demand for itineraries, road books and road maps.</p> <p>There are four map makers whose maps are based on original survey: Andrews' and Dury's; Greenwoods; Carys, to a certain extent and the Ordnance Survey. Other small scale commercial maps are derivatives of these original surveys.</p> <p>Andrews' and Dury's Map of Wiltshire dated 1773 is a commercial map of the County based on original survey, drawn at a scale of 2 inches to 1 mile. The map is dedicated <i>"To Noblemen Gentlemen Clergy shareholders of the County of Wilts This MAP is inscribed by their most Obedient and devoted servants JOHN ANDREWS ANDREW DURY"</i>.</p> <p>The 1810 second edition map is a corrected and updated edition of the 1773 map, entitled, <i>"A Topographical Map of the County of Wilts Describing the Seats of the Nobility and Gentry Turnpike & Cross Roads, Canals & c. Surveyed originally in 1773 by John Andrews and Andrew Dury Drawn from a Scale of two Inches to one Statute Mile. Second Edition, Revised and corrected from the extensive information liberally communicated by the Right Honourable The Earl of Radnor and Sir Richard Hoare Bart to Whom this Improved Edition is most respectfully inscribed By William Eaden Charing Cross Jan.y 1st 1810"</i>.</p> <p>The Wiltshire Map has no key, however, a key is attached to Andrews' and Dury's Hertfordshire map. The Wiltshire Archaeological and Natural History Society have produced a reduced facsimile of the 1773 map, dated 1952, in which Elizabeth Crittall writes in the introduction: <i>"The conventions used on the map to indicate natural and artificial features are those generally employed at the time...The map has no key, but it appears that, as in the case of Andrews' and Dury's map of Hertfordshire for which there is a key, a broken line indicates an unhedged roadside..."</i> There is no reason to consider that the conventions accepted in the Hertfordshire map, could not be applied to the Wiltshire map.</p>
Conclusion	<p>Whilst Clay Street, north of the claimed route is shown on the maps, The Drove itself is not recorded.</p> <p>Being commercial maps and with the constraints of small scale, it is unlikely that these maps would have recorded routes which were not</p>

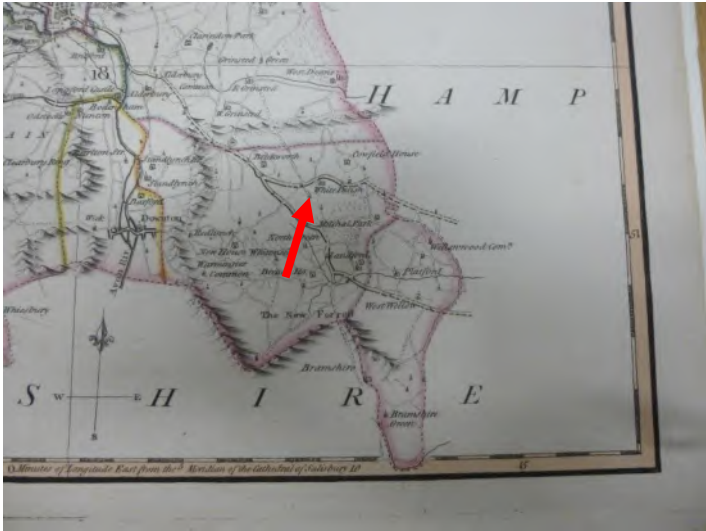
open to the public, i.e. accommodation routes, or routes which were not open to all the traffic of the day, i.e. footpaths and bridleways, which would cause trespass against the landowners from whom the map makers sought subscriptions and difficulty for the travelling public who purchased the maps, neither of which was in the interests of the map makers. If the route was not open to the public, i.e. serving only the land and property around it, or it was not open to all public traffic, we would not expect it to be shown on these maps.



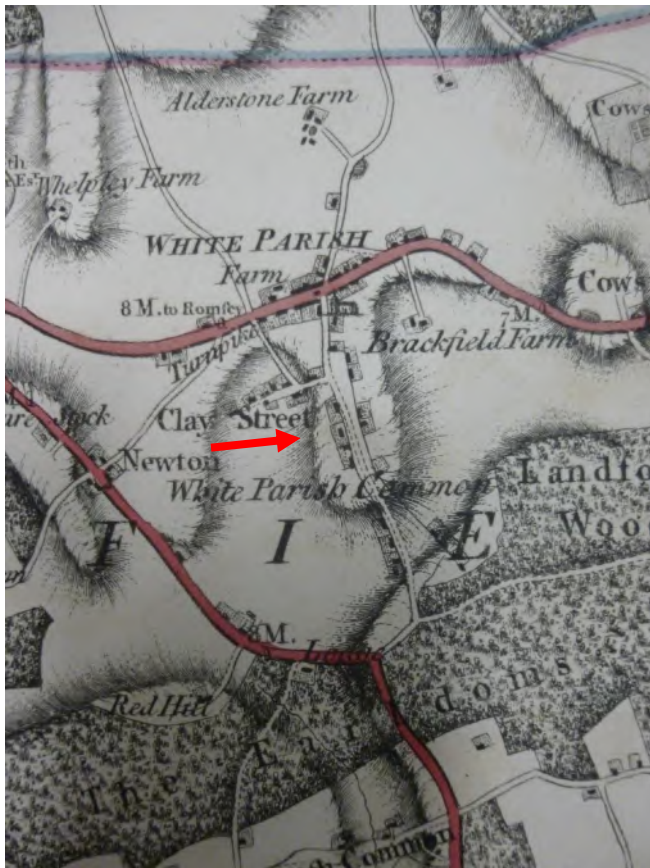
Andrews' and Dury's Map of Wiltshire 1773 Index Map



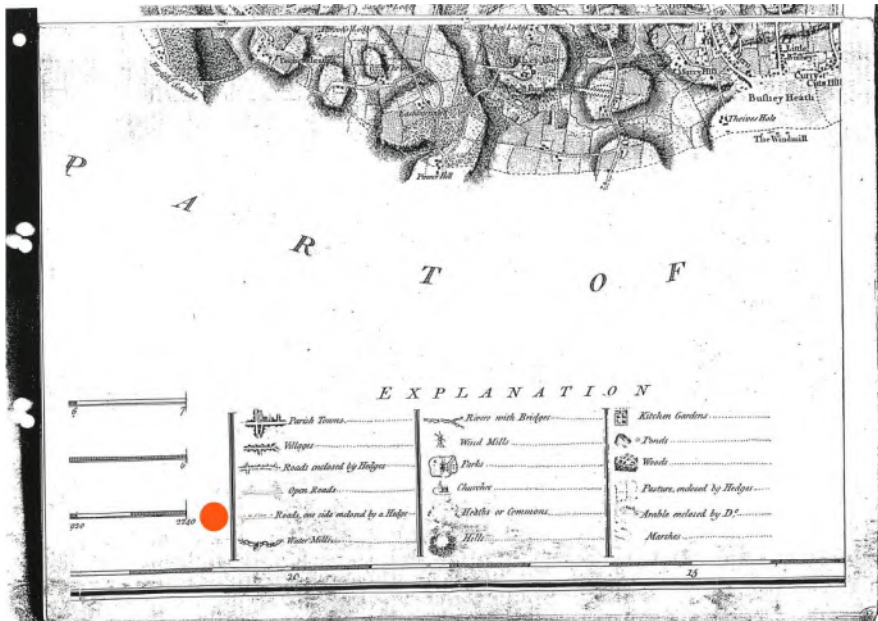
Andrews' and Dury's Map of Wiltshire 1773 – Plate 3



Andrews' and Dury's Map of Wiltshire 1810 – Index Map



Andrews' and Dury's Map of Wiltshire 1810 – Plate 18



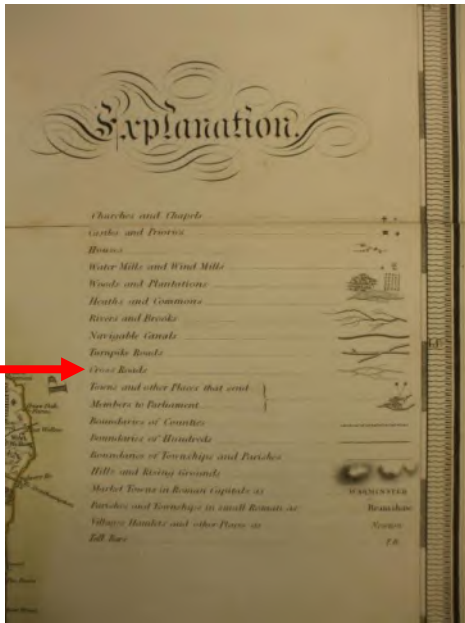
Andrews' and Dury's – Hertfordshire Map Key

Document	Greenwoods Map of Wiltshire (1820 – 1390/142, 1829 – Map Folder 3.3)
Date	1820 1829
Relevant Documents	1820 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood 1829 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood Corrected to the present period and Published 4 July 1829
Size / Scale	1820 – 1 inch to 1 mile 1829 – 1 inch to 3 miles
Evidential Weighting	E
Significance	Greenwood re-surveyed and produced a set of updated County Maps between 1817 and 1839. Greenwood appears to have carried out actual survey supported by existing secondary sources such as inclosure and estate maps; printed guide books; official sources and local knowledge collected by Surveyors. Greenwoods first edition “Map of the County of Wilts from Actual Survey”, dated 1820 is a commercial map produced for the travelling nobility who contributed to its production. The inscription reads: <i>“To the Nobility, Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors”</i> . Greenwood produced a revised and corrected map of Wiltshire in 1829. Roads are shown either as <i>“Turnpike Roads”</i> or <i>“Cross Roads”</i> , which encompassed all other roads. Between 1818 and 1831 Greenwood and

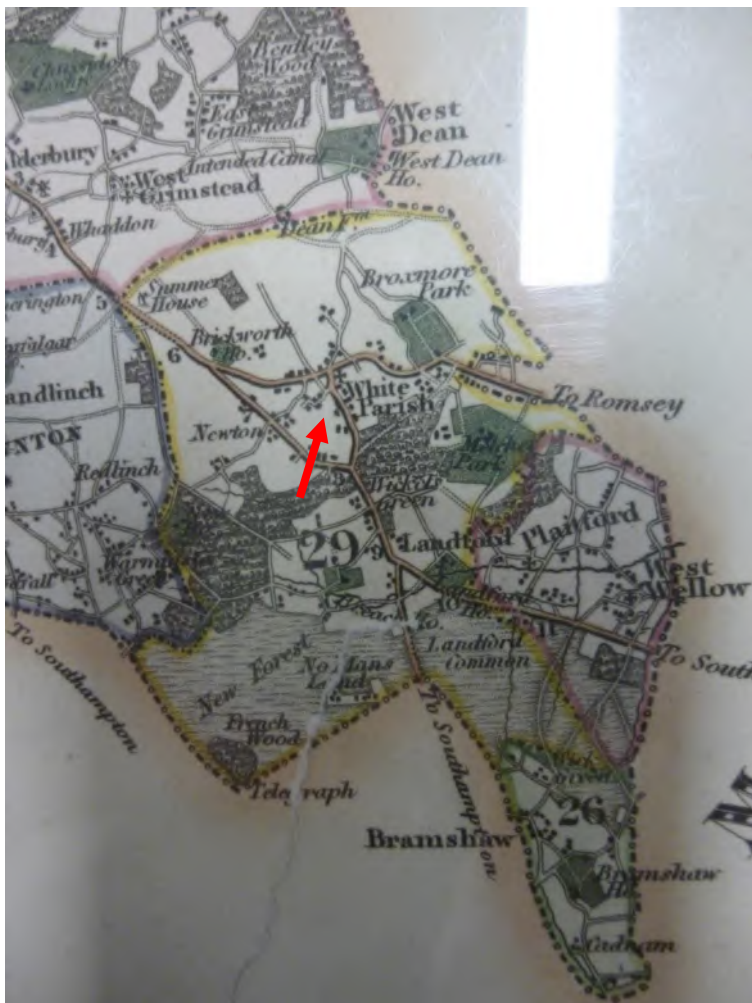
	<p>his associates published 35 county maps. Greenwood employed several surveyors and draughtsmen, but we do not know their level of competence or their instructions, the methods used or whether there was any systematic checking for errors and Greenwood's work has been criticised. Although there were many sheets of the OS one inch map available for consultation, Greenwood appears to have used these sparingly, (<i>Yolande Hodson – Rights of Way Law Review Training “Nineteenth Century and Early Twentieth-Century Non-OS Maps An introduction to the mapping of Cary, Greenwood, Bryant, Cruchley, Gall and Inglis, Bartholomew and Michelin”</i>).</p>
<p>Conclusion</p>	<p>Whilst Clay Street (north of the Drove) is recorded, excluding that section of Clay Street leading north-west to meet Newton Lane, The Drove itself is not recorded on both maps.</p> <p>Being commercial maps and with the constraints of small scale, it is unlikely that these maps would have recorded routes which were not open to the public, i.e. accommodation routes, or routes which were not open to all the traffic of the day, i.e. footpaths and bridleways, which would cause trespass against the landowners from whom the map makers sought subscriptions and difficulty for the travelling public who purchased the maps, neither of which was in the interests of the map makers. If the route was not open to the public, i.e. serving only the land and property around it, or it was not open to all public traffic, we would not expect it to be shown on these maps.</p>



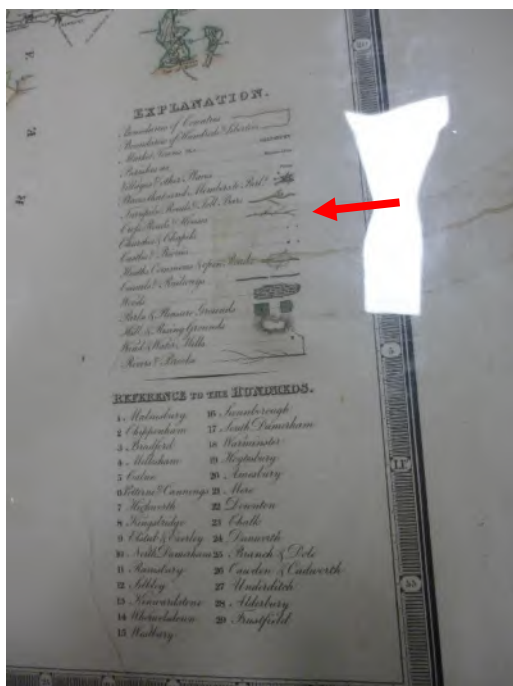
1820 – Map of the County of Wilts C and I Greenwood



1820 – Map of the County of Wilts C and I Greenwood (Explanation)



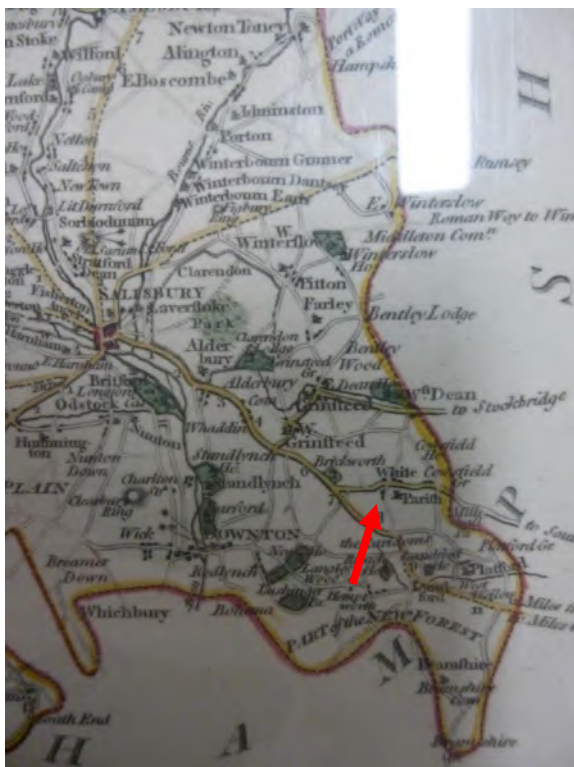
1829 – Greenwoods Map of Wiltshire



1829 – Greenwoods Map of Wiltshire (Explanation)

Document	<p>Cary's Map of Wiltshire 1787 (Map Folder 1.12)</p> <p>Cary's Map of Wiltshire 1801 (Map Folder 3.2)</p> <p>Cary's Map 1823 (Map Folder 3.2A)</p> <p>Cary's Map 1832 (Map Folder 3.4)</p>
Dates	1787; 1801; 1823; 1832
Relevant Documents	<p>1787 – Wiltshire by John Cary Engraver</p> <p>1801 – A New Map of Wiltshire Divided into Hundreds Exhibiting its Roads, Rivers, Parks & c.</p> <p>1823 – Improved Map of England and Wales - Map Sheet 18 (with key)</p> <p>1832 – Improved Map of England and Wales - Map Sheet 18</p>
Size / Scale	<p>1787 – 10 miles = 1 ¾ inches</p> <p>1801 – 8 miles = 2 7/8 inches</p> <p>1823 – 2 miles = 1 inch</p> <p>1832 – 2 miles = 1 inch</p>
Evidential Weighting	E
Significance	<p>John Cary was a cartographer, born in Warminster, Wiltshire in 1755, well known for his series of county maps. In 1794 he became Surveyor of Roads for the Postmaster General, charged with undertaking a survey of all main roads in England. Cary appears to have used actual survey, as well as the work of others, e.g. the Ordnance Survey in the production of his maps.</p> <p>On Cary's maps dated 1823 and 1832, part of "Cary's improved map of England and Wales with a considerable portion of Scotland" on 65 large sheets published from 1820, roads are recorded in one of four classifications, a detailed road classification which is particular to Cary.</p>

	<p>Cary's interest in the road network stems probably from his recognition of the growing importance to commerce of the letter-post and by the introduction of the mail coach in 1784. In the advertisement of the 2 miles to 1 inch map, produced from 1820, Cary stated: <i>"The whole of the Turnpike Roads will be marked down, as well as the Parish Roads; distinguishing the Carriage Roads from the Bye Roads, which has never yet been attempted in any Map of England, and which the Publisher flatters himself will be found of considerable importance to the Traveller."</i> (Yolande Hodson – <i>Rights of Way Law Review Training "Nineteenth Century and Early Twentieth-Century Non-OS Maps An introduction to the mapping of Cary, Greenwood, Bryant, Cruchley, Gall and Inglis, Bartholomew and Michelin"</i>).</p>
<p>Conclusion</p>	<p>The claimed route is not recorded on the 1787 and 1801 Maps of Wiltshire, drawn at a smaller scale, neither is Clay Street recorded as it is on Andrews and Dury's and Greenwoods maps. This may be due to the constraints of small scale mapping and additionally the recording of routes not available to the public at large, i.e. accommodation routes serving only land or property, would cause difficulty for the travelling public who purchased these maps and landowners, which was not in the interests of the mapmaker.</p> <p>The larger scale sheets produced in 1823 and 1832, part of the Improved Map of England and Wales, do not extend far enough south to include the parish of Whiteparish and no conclusions can be drawn from these maps.</p>



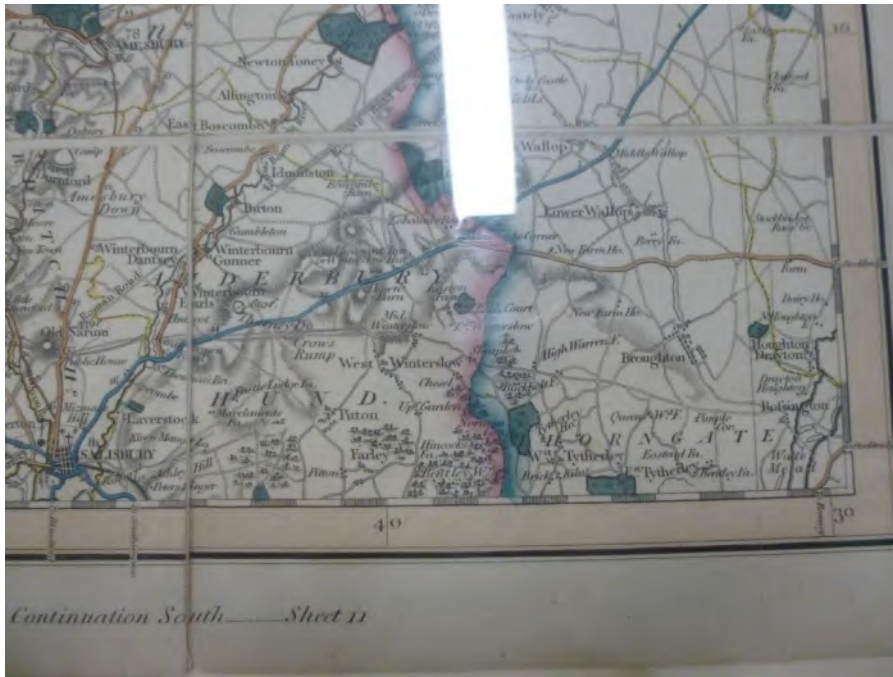
1787 – Cary's map of Wiltshire



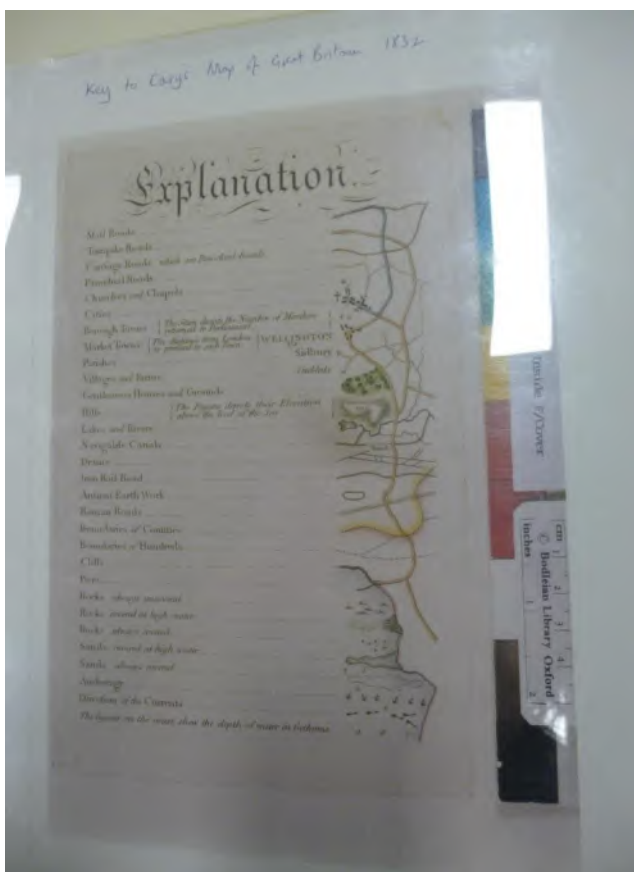
1801 – Cary's map of Wiltshire



1823 – Cary's Improved Map of England and Wales - Sheet 18

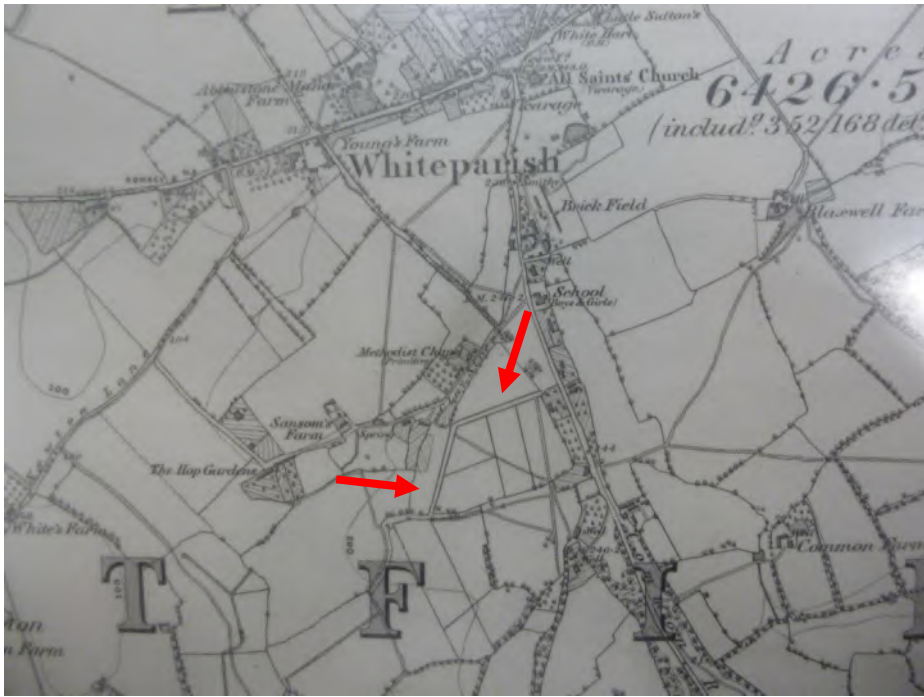


1832 – Cary's Improved Map of England and Wales - Sheet 18

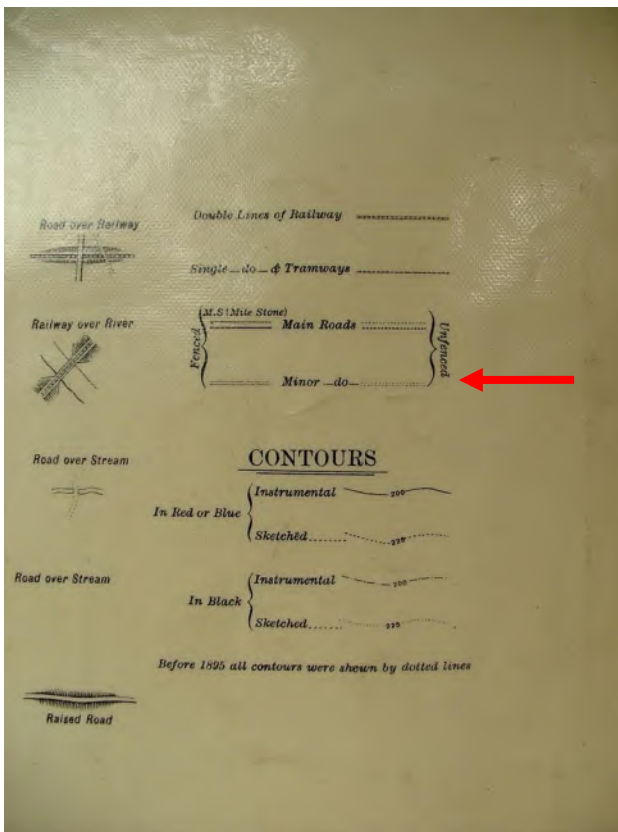


1832 – Cary's Improved Map of England and Wales (Explanation)

Document	Ordnance Survey First Edition Map
Date	Surveyed 1872; Contoured 1872; Engraved 1872; Published 1873 Wiltshire Portion: Surveyed 1879; Contoured 1882; Engraved 1885; Published 1885
Relevant Documents	Map Sheet 72
Size / Scale	Scale: 6 inches to 1 mile
Evidential Weighting	E
Significance	<p>The Ordnance Survey was founded in 1791, due to demand from the military for accurate maps of southern England in preparation for the Napoleonic Wars. In time the Ordnance Survey developed a range of maps, varying in scale and level of detail to meet changing needs for accurate and updated maps of the country.</p> <p>The maps are based on original survey, with revisions, and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added.</p>
Conclusion	<p>The route appears as solid double lines, suggesting an enclosed route. There appears to be no connection with Common Road recorded, the claimed route has a solid boundary at its eastern end and no link to Common Road, as per the Tithe Award map. Only the solid boundary line of the property to the south-east of the claimed route is shown between Common Road and the claimed route.</p> <p>The claimed route does appear to be open to the land at the south of the claimed route, which is now Footpath no.6 Whiteparish. There are two footpaths shown linking to the claimed route from what is now Footpath no.6, one leading north to the claimed route and another spur leading north-west to the claimed route, however, in later correspondence from the Parish Council at the time the Definitive Map and Statement was produced, the Parish Council confirm that the Drove has never been a public right of way and therefore these two paths, which were included within the parish survey as path no's 9 and 29, are seldom used and therefore should be removed from the Parish Claim.</p> <p>The map key includes the claimed route as an "Unfenced – Minor Road" and there is no rights of way disclaimer attached to the map, however, Ordnance Survey maps are topographical in nature, whilst they record features visible to the surveyor at the time of survey, they are not necessarily an indication of whether or not a route carries public rights and the maps should be viewed carefully alongside other evidence. An accommodation road serving land or property, may appear on these maps in the same manner as a public road.</p>



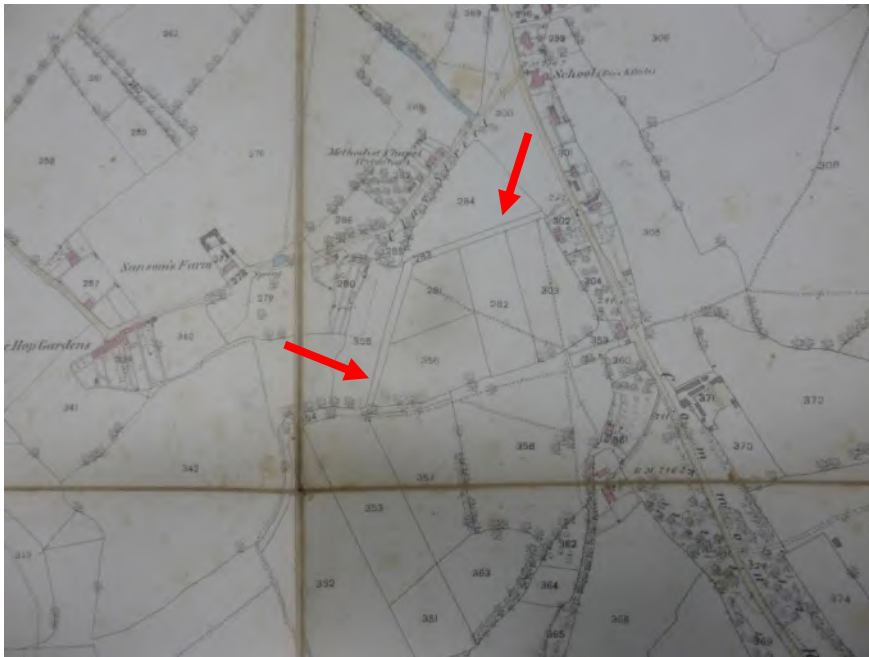
Ordnance Survey First Edition Map – 1885, Sheet 72 (6 inches to 1 mile)



Ordnance Survey First Edition Map Key – 1885 (6 inches to 1 mile)

Document	Ordnance Survey County Series Map
Date	Surveyed 1876
Relevant Documents	Map Sheet 72/15
Size / Scale	25 inches to 1 mile
Evidential Weighting	E
Significance	<p>As above. The 25 inch County Series maps were completed to 1890, with a first revision between 1891-1914, second revision commenced 1904 and third revisions were never completed nationally due to wartime conditions and a period of austerity and entrenchment which followed in the 1920's. The Ordnance Survey was unable to maintain its planned revision programme.</p> <p>There is no public rights of way disclaimer included on the map.</p>
Conclusion	<p>Most of the route is shown by double solid lines suggesting an enclosed route. The wider enclosed section does not link directly to the main road (Common Road) and there is a short section of footpath, having a solid boundary to the north and an unenclosed boundary to the south, between Common Road and the east end of the enclosed route, junctioning at its southern side. However, there is a solid boundary at the east end of the wide enclosed section of the claimed route, at its junction with the footpath on its south side and the footpath section appears to be more associated with the house and gardens (plot no.302), located to the south of the claimed route off Common Road.</p> <p>There is also a solid boundary between the south of the claimed route and what is now Footpath no.6 Whiteparish.</p> <p>The route is marked 283, recorded as "<i>Road</i>" in the Ordnance Survey Book of Reference entry, although it is noted that this "<i>Road</i>" has no junction with Common Road and the section of land adjoining the eastern end of 283, i.e. between 283 and Common Road is recorded as 302 - "<i>Houses, garden, &c.</i>" and 252 - "<i>House and garden</i>".</p> <p>It is noted that the claimed route is uncoloured as other public routes in the village such as Common Road are, including Clay Street to the north of the claimed route.</p> <p>The two footpath links leading north and north-west from Footpath no.6 to the claimed route, (the redundant Footpaths 9 and 29 as per the Parish Survey), are recorded by double broken lines as unenclosed cross-field routes. The Parish Council later confirm that these paths are seldom used and should not be included within the definitive map and statement.</p> <p>Ordnance Survey maps are topographical in nature and whilst the claimed route is recorded as "<i>Road</i>", an accommodation road serving only land and property, may appear to the surveyor as a feature in the</p>

same manner as a public road, although in this case the public roads, i.e. Common Road and Clay Street appear shaded sienna, the claimed route is not included within this shading.



Ordnance Survey County Series Map 1:2,500 Sheet 72/15 – 1876

PARISH OF WHITEPARISH,

IN THE

COUNTY OF WILTS—(SOUTHERN DIVISION).

HUNDRED OF FRUSTFIELD.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
--------------	----------------	----------	--------------	----------------	----------

248	7.752	Arable.			
249	.693	Road.			
250	1.989	Houses and garden.			
251	1.504	Pasture.			
252	.267	House and garden.			
253	1.446	Pasture, &c.			
254	8.597	Pasture, &c.			
255	1.458	Road.			
256	7.131	Arable.			

278	1·204	Road.	329	1·847	Houses, gardens, &c.
279	1·959	Pasture, &c.	330	1·842	Pasture.
280	·896	Houses and gardens.	331	7·833	Road.
281	1·153	Pasture, &c.	332	1·443	Wood.
282	1·672	Arable, &c.	333	27·943	Arable, &c.
283	·543	Road.	334	2·438	Houses, garden, &c.
284	2·005	Pasture.	335	·624	Pasture.
285	·170	Garden.	336	3·550	Arable, &c.
286	·680	Pasture.	337	·323	Road.
287	·831	Houses, gardens, &c.	338	5·150	Arable.
288	1·785	Pasture.	339	1·210	Houses and gardens.
289	2·019	Pasture.	340	·974	Pasture.
290	·210	House, garden, &c.	341	2·809	Arable.
291	2·269	Pasture, &c.	342	11·282	Arable.
292	·207	Pond.	343	7·076	Pasture.
293	1·069	Church and grave- yard.	344	7·490	Arable, &c.
294	4·511	Pasture, &c.	345	4·903	Pasture, &c.
295	·401	Road.	346	10·271	Pasture, &c.
296	13·195	Arable, &c.	347	·825	Wood.
297	3·810	Houses, gardens, &c.	348	6·023	Arable, &c.
298	·051	Road.	349	3·015	Arable, &c.
299	·306	Pasture.	350	4·090	Arable, &c.
300	2·743	Pasture, &c.	351	1·127	Arable.
301	2·006	Houses, gardens, &c.	352	3·780	Pasture, &c.
302	·385	Houses, garden, &c.	353	2·620	Arable.
303	1·874	Pasture, &c.	354	·568	Road.
			355	1·080	Pasture.

Ordnance Survey County Series Map 1:2,500 – 1876 Book of Reference

Document	Ordnance Survey County Series Map
Date	Second Edition 1901 Surveyed 1874; Revised 1900; Zincographed and Published 1901
Relevant Documents	Map Sheet 72/15
Size / Scale	25 inches to 1 mile
Evidential Weighting	E
Significance	As above
Conclusion	<p>The route is shown as per the 1876 OS map, however, there is now no recorded junction of the claimed route and Common Road, only the solid boundary of the land parcel 517 is shown between the route and the common land area at the west of Common Road. Again, there is a solid boundary at the southern end of the route where it junctions with what is now Footpath no.6 Whiteparish.</p> <p>The two footpath links leading north and north-west from Footpath no.6 to the claimed route (the redundant Footpaths 9 and 29 as per the Parish Survey), are recorded by double broken lines as unenclosed cross-field routes. The Parish Council later confirm that these paths are seldom used and should not be included within the definitive map and statement.</p> <p>The map attaches the disclaimer “N.B._The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.” Ordnance Survey maps should therefore be carefully considered alongside other evidence.</p>



Ordnance Survey County Series Map 1:2,500 Sheet 72/15 – 1901

Document	Ordnance Survey County Series Map
Date	Edition of 1926 Surveyed 1874; Revised 1924; Levelling Revised 1900; Printed and Published 1926
Relevant Documents	Map Sheet 72/15
Size / Scale	25 inches to 1 mile
Evidential Weighting	E
Significance	As above
Conclusion	<p>The route is shown as per the 1901 map above, with the solid boundary to the southern end of the route, on its eastern side, extending into the narrow strip of land leading east-west at the southern end of the route, (which is now divided but appears to remain in the same ownership where the east and west sections are braced and measured together).</p> <p>Again, there is no recorded link between the wide enclosed route and Common Road, over the common land to the west of Common Road. The two footpath links leading north and north-west from Footpath no.6 to the claimed route (the redundant Footpaths 9 and 29 as per the Parish Survey), are recorded by double broken lines as unenclosed cross-field routes. The Parish Council later confirm that these paths are seldom used and should not be included within the definitive map and statement.</p> <p>Attaches the disclaimer: <i>“N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of</i></p>

	way.” Ordnance Survey maps should therefore be carefully considered alongside other evidence.
--	---



Ordnance Survey County Series Map 1:2,500 Sheet 72/15 - 1926

Document	Wiltshire County Council, Clerk’s Office, Planning Appeal Land at rear of Common Road and Clay Street, Whiteparish – Residential Development and Construction of Vehicular Access (F2/1210/74)
Date	1972
Relevant Documents	County Solicitor correspondence files
Size / Scale	Proposed Development Plan – 1:2,500
Evidential Weighting	E
Significance	The route is not directly affected by the development, but a plan of the proposed development is included and the correspondence sets out useful background regarding the formation of the village.
Conclusion	The route is shown on the proposed development plan, but is not recorded as a right of way and is not referred to within the correspondence. It is shown by double solid lines for the most part, although there is no connection to Common Road recorded, with solid boundaries/gates at both ends of the section shown by double solid lines. This map is based on Ordnance Survey and accords with the earlier Ordnance Survey mapping and should therefore be carefully considered alongside other evidence.



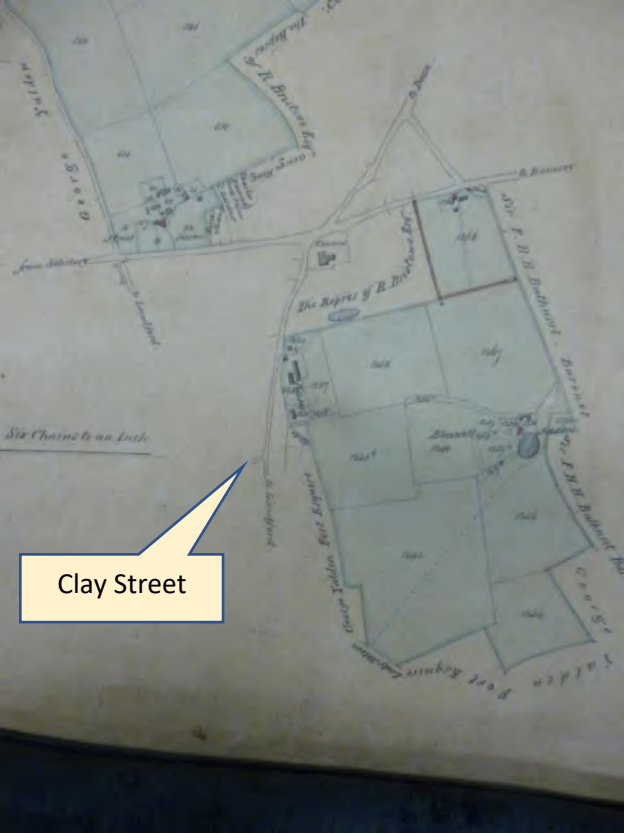
1972 - Wiltshire County Council, Clerk's Office, Planning Appeal, Land at rear of Common Road and Clay Street, Whiteparish – Proposed Development Plan

Document	Sale Particulars (451/341)
Date	Tuesday 18 th November 1856
Relevant Documents	Sketch of Street and Blaxwell Farms, Whiteparish, Wilts – draft and final Sale Particulars – draft and final
Size / Scale	Scale – Six Chains to an inch
Evidential Weighting	E
Significance	<i>“Messrs Ewer & Sidford will shortly offer for sale by public Auction (unless in the interim sold by private contract) the following desirable Freehold Farms, Brick Kilns and Hereditaments situated at Whiteparish in the County of Wilts Whiteparish, Wilts. Particulars of Valuable and Compact Freehold Estates, with all Requisite Building: Cottage Residence, Garden & Arable Land Which Ewer & Sidford Will Sell by Auction at the White Hart Hotel, Salisbury On Tuesday, Nov. 18th, 1856, at Three O’Clock in the Afternoon (Subject to Such Conditions as Will be The Produced,) in six lots”</i>
Conclusion	Although the land to the west of Common Road is not included in the sale, Common Road is recorded on the sketch plans for part of its length and the eastern end of Clay Street is recorded at its junction with Common Road, (location by reference to the Tithe Award map).

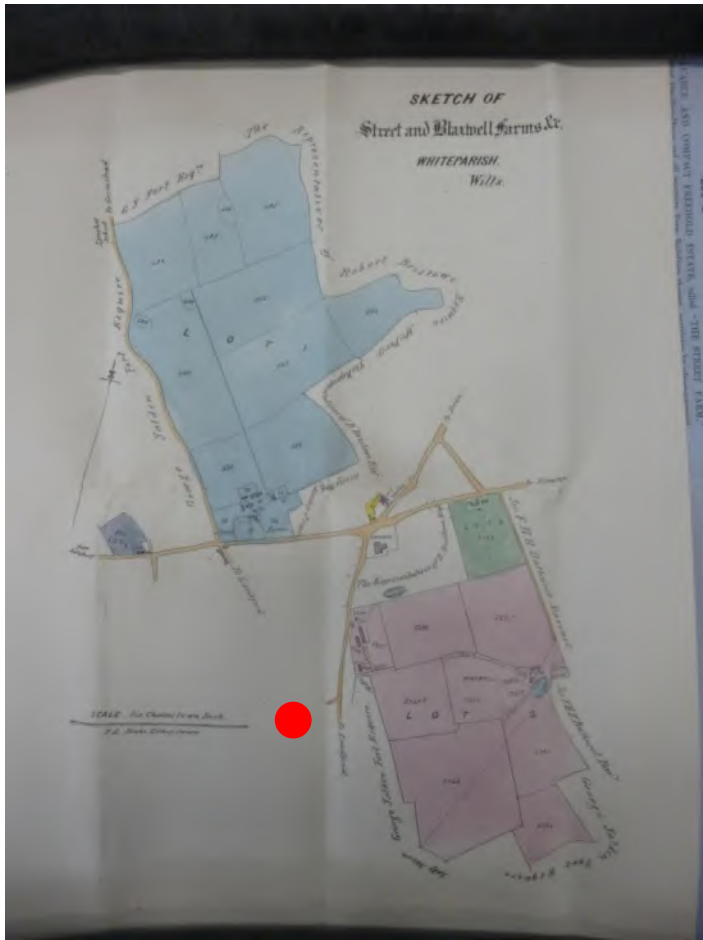
The Drove is not recorded on these plans and no conclusions regarding the claimed route can be drawn from these plans.



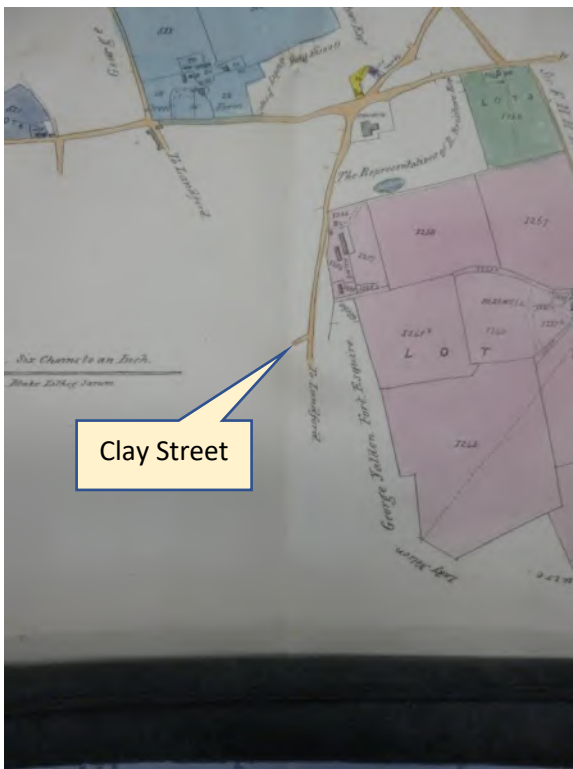
1856 Sale Particulars – Plan of Street and Blaxwell Farms (draft)



1856 Sale Particulars – Plan of Street and Blaxwell Farms (draft)

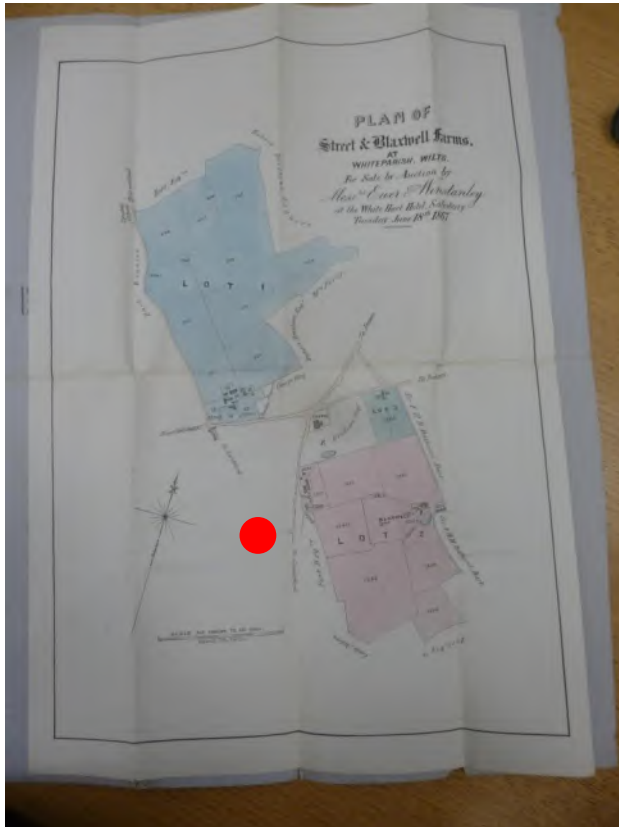


1856 Sale Particulars – Plan of Street and Blaxwell Farms

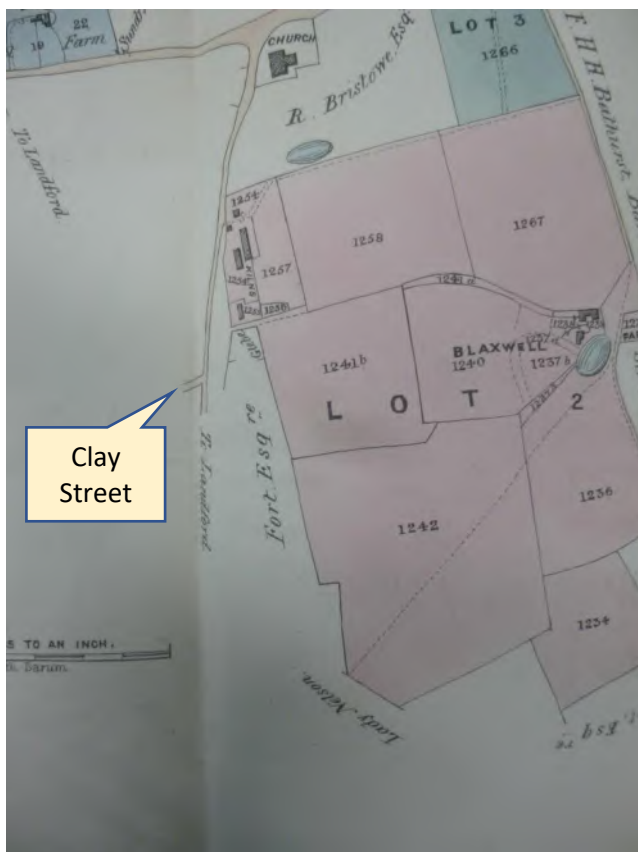


1856 Sale Particulars – Plan of Street and Blaxwell Farms

Document	Sale Particulars (451/342)
Date	1867
Relevant Documents	Plan of Street & Blaxwell Farms, at Whiteparish, Wilts, For Sale by Auction by Messrs Ewer & Winstanley at the White Hart Hotel, Salisbury. Tuesday, June 18 th 1867
Size / Scale	6 Chains to an inch
Evidential Weighting	E
Significance	<i>“Whiteparish Wilts. Particulars of Valuable and Compact Freehold Estates Containing Together Above 140 Acres of Arable and Pasture Land With Suitable Residences, Farm and Outbuildings, Brickkiln, &c., To Be Sold By Auction By Messrs. Ewer & Winstanley By Order Of The Mortgagees At the White Hart Hotel, Salisbury On Tuesday, The 18th Day of June, 1867, At Three O’Clock in the Afternoon, (Unless Previously Disposed Of By Private Contract) Subject to such Conditions as will then be produced.”</i>
Conclusion	Although the land to the west of Common Road is not included in the sale, Common Road is recorded on the plan for part of its length and the eastern end of Clay Street is recorded at its junction with Common Road, (location by reference to the Tithe Award map). The Drove is not recorded on this plan and no conclusions regarding the claimed route can be drawn from the plan.



1867 – Sale Particulars Street and Blaxwell Farms



1867 – Sale Particulars Street and Blaxwell Farms

Documents	The Wiltshire Archaeological and Natural History Magazine – Volume 62, pp.79-101 - “Whiteparish A Study of the Development of A Forest-Edge Parish by C. C. Taylor” “Roads and Tracks of Britain” Christopher Taylor
Date	The Wiltshire Archaeological and Natural History Magazine - 1967 “Roads and Tracks of Britain” - 1979
Relevant Documents	As above.
Size / Scale	N/A
Evidential Weighting	F
Significance	The applicant refers to the recording of The Drove in the “Wiltshire Council Full Monument Report” as Monument no. SU22SW460 – MWI17191 “ <i>Medieval Settlement, Common Road</i> ” and which refers to: “1967, <i>The Wiltshire Archaeological and Natural History Magazine – Volume 62, pp.79-101...A settlement site, which except for one platform, the earthworks of which were ploughed out by 1967. 12th to 14th century coarse black pottery.</i> ”

<p>Conclusion</p>	<p>The article referred to in the Wiltshire Archaeological and Natural History Magazine is by Christopher Taylor - <i>“Whiteparish A Study of the Development of a Forest-Edge Parish by C. C. Taylor”</i>: <i>“The work has involved the study of many of the usual national and local record pertaining to the parish and it has been accompanied by a detailed examination on the ground. Every building and almost every field has been visited over a period of three years.”</i></p> <p>IV. Pre-Domesday Settlement p.84 <i>“One other settlement has to be identified. No. 529 in Domesday Book is an entry for one virgate of land, worth 15d., which Svernus (sic) holds in Cristesfeld, Frustfeld, i.e. in the western part of the present parish. Certainly its inclusion here tallies with the hideage given from the Geld Rolls of Frustfeld Hundred. If this suggestion is accepted it is necessary to identify the site of what was only a single farmstead. This cannot be done with certainty, but the logical place for it is the present Sansons Farm, a quarter of a mile south of the present village on the edge of the London Clay. The site is just above a spring once called South Well, which was also the former name of the farm. The curiously irregular fields which still exist round this farm suggest that it has always had enclosed fields.”</i> On the map at Fig.3, South Wells appears to be located just north of Clay Street.</p> <p>V. The Medieval Expansion p.89 <i>“Finally there is a little archaeological evidence for yet another settlement. Almost halfway between the village and the Goldens Farm settlement, the wedge of wood along the road bulges out to the west, down the valley side. Just outside the wood there was formerly a series of disturbed earthworks. These have now been destroyed by ploughing, apart from one roughly rectangular platform, but quantities of coarse black pottery dating from the 12th and 13th centuries can be picked up from the site. All this indicates that here too there was a small medieval settlement, probably only a single farmstead.”</i></p> <p>VII. The 17th Century p.96 <i>“The making of new and enclosed fields from the forest and the downland also took place without the establishment of new farms. South of Whiteparish village a small area of forest was cleared at this time, breaking up the U shaped forest edge which the earlier assarts had left. Six hundred yards west of Goldens Farm is an area of some 50 acres divided into small fields with straight sides and near square corners, which are known today as Burnt Ground. These fields were called New Burnt Grounds in 1618, indicating that they had not long been taken from the forest.”</i></p> <p>p.97 <i>“One last feature in the development of the pattern of settlement in the 17th century appears to have been the spread of houses south</i></p>
--------------------------	--

from the village along the road leading into the forest. Here an unknown number of houses or cottages were built. Some have been demolished or rebuilt, but a few remain and are clearly 17th century, though almost impossible to date more accurately. The reason for this spread of settlement can perhaps be explained in terms of population...some at least of this increased population was forced to build new homes on the common land south of the village."

VIII. The 18th Century

p.97 "The rise in population noted in the 17th century went on increasing from 700 in 1700 to 800 in 1800. No doubt the houses in the village were able to absorb some, but again other new houses were built south of the village on common land and also around Sansons Farm, to the south-west."

IX. The 19th and 20th Centuries

p.99 "From 800 inhabitants in 1800, the number rose to 1,351 in 1851 in spite of emigration to the Americas...To cope with this vastly increased population more cottages and houses appeared all over the parish, especially again on the common land to the south of the village..."

p.100 "In the western half of the parish the Nelson family, who acquired most of the land there, also built a new farm, south of Blaxwell Farm in the old assarts, called Common Farm, about 1830 to judge from its architecture. It certainly did not exist in 1811. Further west, the Eyre family at Newhouse appear to have carried out further enclosures of the woodland south of the park and large new rectangular fields were made in this area between 1773 and 1842."

This evidence in the article by Christopher Taylor and The Drove having scheduled monument status, does not provide additional evidence of public rights over the claimed route.

"Roads and Tracks of Britain" Christopher Taylor, 1979:

"Much of this assarting took place between the twelfth and fourteenth centuries when tens of thousands of acres of woodlands were turned into farmland. In the village of Whiteparish, Wiltshire, for example which lay on the edge of the Royal Forest of Melchet, we have records of fields being created from woodland from the mid thirteenth century to the mid fourteenth century. In just one year, 1330, we know that nearly 75 acres of land were cleared; we can actually identify some of the fields formed at that time and pass between them along narrow, deeply hollowed lanes which would seem to be contemporary...Yet again we run up against the old problem of the date of such tracks, for we cannot assume that they are the same date as the fields through which they pass. They could be much older tracks which were

incorporated into the later field system and reused for a new purpose. Certainly at Whiteparish some of the old roads through the forest fields can be proved to be older than the fields themselves. One, which gives access to some fields made in 1255, was certainly there nearly 200 years before when the area was still wooded for it leads to a farm which was in existence in 1086. Another, which passes through some of the 1330 fields, appears to have been in existence even earlier, perhaps by 968 at the latest."

The claimed route is shown on the map provided with this extract, "Fig.74 Medieval forest tracks, Whiteparish, Wiltshire" as a "Track and hollow way", by double broken lines, "Existing Roads" are recorded by double bold solid lines, (the first section of the claimed route from Common Road appears in this manner). This does not necessarily suggest a public route, it can be seen on the map that there are cul-de-sac routes which do not continue and serve to access the fields.



Fig. 74 Medieval forest tracks, Whiteparish, Wiltshire

"Roads and Tracks of Britain" – Christopher Taylor, 1979

Appendix 7 – User Evidence Summary

Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

	Witness	Status	Years of use	Frequency	Use	Followed same route	Width	Stiles/gates/barriers	Signs/notices	Others seen	Permission or private right	Challenge / prevented	Owner aware	Comments
1	Patricia Woodruffe Clay Street	FP	1969 - 2020	Once a yr (sometimes more)	On foot	Yes	Variable – general width 8m	Gate offset from Common Rd – removed late 1990’s – did not prevent use. Barbed wire with protection for walkers 2002-19 – did not prevent use. Solid wooden fence & open structure wooden fence plus hedging Jan/Feb 2020 – prevents use.	No	Yes - Other walkers & groups of children playing	No	No	Yes – well trodden. Until 2000 used to drive cattle to & from milking shed on Common Rd.	Alternative to FP 6 which goes through garden - prefer not to use. South section threatened by development in field to west. Scheduled ancient monument. Carried out botanical survey.
2	John Hall Common Road	FP	2009 - 2020	More than monthly	On foot	Mainly section from Common Rd to just past Forest View. Occasionally went further but then became uneven and muddy. Application route followed same route until blocked 2020.	Varies due to overgrowth – minimum single file	Barbed wire fence just past Forest View with protective plastic tubing to allow access between top 2 strands. In place to prevent horses escaping field.	No	Yes – Over the years various dog walkers.	No	Told by current developer late 2019/early 2020 Drove was privately owned but that I could walk there for now until development progressed.	Don't know but path fairly well worn should have made it obvious	Photos of the fence (if I can find them). Route obviously walked for many decades if not centuries. Unacceptable to be suddenly fenced off and incorporated into garden. Forest View had its own boundary hedge with gate to access the Drove.
3	Jennifer Harrison Clay Street	FP	1985 - 2020	Every few months	On foot	Yes	6m approx. from our back boundary to field	1) Barbed wire fence with padding replaced thin hedge just past Forest View – did not prevent use. 2) Wooden fence erected early 2020 by our back gate – prevented use as extends whole width of Drove	No	Yes – Regular dog walkers, rambling groups, children playing, individual walkers, runners, neighbours maintaining their hedges.	No permission. Told the application route was not public by our solicitor when purchasing our property in 1985. Our deeds give us right of access from our back gate along the length of The Drove to Common Rd.	No	Yes – Mr Andrews past owner aware as he used the lane frequently and spoke to us and others.	Back gate gives access to Drove. From 1985 onwards our family have used The Drove for recreational purposes including bike riding and walking. During lockdown more people using The Drove.
4	Brian Woodruffe Clay Street	FP	Early 1970's - 2020	10 – 20 times per year (monthly / every few months) (Feb – Aug 1976 working in Europe)	On foot	Yes	6 – 8m Narrower at Common Rd end, wider beyond Forest View. Now narrow where houses being built because sides of The Drove have been excavated away.	Gate at Common Rd – sometimes locked but access available around it. 6ft fence at junction between Westways and Forest View (June 2020) – essentially blocking pathway. Open fence and newly planted shrubs at southern end of Forest View boundary, passable with difficulty (May-June 2020).	No	Early mornings quite popular with dog walkers from the Common Rd area; weekends in spring and summer used by families; in the past used by venturesome youngsters as an exploration and meeting / play site. Drove occasionally used by school classes.	No	No – 1970's – 2020 Yes – by 2 recent barriers June 2020. June 2020 – regular dog walker finds normal usage to Common Rd blocked from circular route around neighbouring fields.	Yes – both current owners well aware of usage. Previous owners Len & Marjorie Andrews happy to allow use. Continued by the current farming family.	Drove forms section of several circular walks used by up to 15 dog walkers and families every week. Historical trackway, last remaining feature of wider spread of similar tracks that linked Whiteparish and New Forest. Recorded as historical monument. Used over many centuries.
5	John Harrison Clay Street	FP	1985- 2020	Several times per yr (hedge cutting and maintaining ditch)	On foot	Yes	6m approx	Barbed wire fence with pipe protection – approx. 12 yrs ago – still accessible. Wooden fence 2020 – blocks route.	No	Regular dog walkers, runners, ramblers. Neighbours maintaining hedges and route. Children playing.	Back gate access. Never given or asked permission. Solicitor advised route not public when purchasing property 1985. Deeds show right of access from property to Common Rd.	No	Yes – Mr Andrews (past owner) used to speak to us and others on the route.	Until 25yrs ago approx. owner used to maintain route with hedge cutting tractor. Was popular walking route until lack of maintenance and blockage.
6	David Wise Romsey Road	FP	2020 - 2020	Every 4 – 6 weeks (monthly)	On foot	Yes	2 - 3m	2 recently built houses do and proposed third house will block Drove way – house plots block path	No	No	No	No, but members of village history society prevented in 2020	Don't know	Ancient track. Discovered route through village history society.

Appendix 7 – User Evidence Summary

Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

7	Alexander Knight Clay Street	FP / BR	2006 - 2019	Infrequently – (every few months). Became carer 2012-18.	On foot	No – blocked 2019	12 ft (3 – 3.5m)	Stiles at junctions with FP's 6 & 4. Wire fence obstructed Drove at back of Forest View. The barriers blocked whole width.	No	No	No	Yes, since barrier was erected. No private right to use route.	Yes – evidence of dog walking and different foot tracks.		
8	Ceri Bicknell Penrith	FP	1972 - 1990	Can't remember exactly, at times frequently used as play area, other times path through to meet up with school friends - (monthly)	On foot	Yes	Variable – 8m including hedgerow and trees – probably 1m		No	Yes – school friends and local families	No	No	Yes – consistent use, worn path.		
9	Barbara Kennard, New Milton	FP	1978 - 1987	Most days – unless wet and windy (daily & weekly)	On foot	Yes	About 20ft	Possibly small stile in hedge not far from our gate. Believe there was gate at bottom end at cow field – did not prevent use.	No	Yes – our neighbours and farmer	No but property deeds had grant of access to Drove to trim hedge.	No	Yes – would occasionally meet and speak to farmer Andrews when working at top of garden or taking dog for walk there.	Photograph of son and husband blackberrying in Drove in 1983 approx. Photo of top cow field from the Drove 1983.	
10	Nicholas Harrison Southampton	FP	1985 - 2000	Weekly	On foot	Yes	4-5m	Hedge – did not prevent use	No	Yes – horse riders, walkers, cyclists	No permission given or requested. Residents (my parents) had right of access.	No	Yes – Mr Andrews witnessed me in the Drove many times.		
11	Stephen Karmy The Hop Gardens	FP	1980 - 2020	Varied but average 3-4 times per yr (every few months)	On foot	Yes	Varies 3m – 1m on section Common Rd to blockage. Feel that it used to be wider.	Tall fencing panels 2020 – access impossible.	No	Yes - occasionally	No	No	Yes – village children often played there. Mr & Miss Andrews (previous owners) lived close by entrance to Drove and must have seen use. The next owners also had home in village close by.	Drove is classified as a monument and medieval trackway. Part of footpath network.	
12	Jenny Karmy The Hop Gardens	FP	1980 - 2020	Varied but average 6 times per yr – (every few months)	On foot	Yes	Varies – 3m narrowing to 1m. Feel it used to be wider.	Tall fencing panels 2020 – access impossible	No	Yes – occasionally.	No	No	As above.	As above.	
13	Matthew Leach Clay Street	FP	2019 - 2020	Two weekly on average (weekly / monthly)	On foot	Yes	Varies due to vegetation 1m - 3m	Barbed wire fence with pipe for access.	No	Yes – seen others in passing but also visible from garden.	No – never given or requested. Access to Drove in house deeds.	No	Yes - deeds		
14	Lisa Harrison Crystal Palace	FP	1985 - 2001	Weekly	On foot	Yes	4-5m	No	No	Yes – walkers, children playing, neighbours	No	No	Yes – Mr Andrews past owner saw me playing in Drove.		
15	C W Carpenter Newton Bungalows	FP												Application route not used – Drove should be preserved as a right of way and fits well with FP 4 & 6.	
16	Rodney E Coat Clay Street	FP	2015 - present	Frequently / daily	On foot	Yes	3m approx at Common Rd, narrowing to 1.5m approx past Des-Deria, enlarging to 2m+ past Beauford	Fence – line with barbed wire covered to allow access.	No	Yes – regular dog walkers	No, never given or sought permission. Right of access to my rear garden.	No	No		
17	Christopher Woodruffe	FP	1979 - 1995	As Children daily or	On foot	Yes	6m – 2.5m	Strand of barbed wire occasionally to deter livestock	No	Yes – access to fields and Common Rd.	No	No	Yes – when used The Drove as children often landowner		

Appendix 7 – User Evidence Summary

Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

	Hayle			weekly depending on time of yr. Moved away 1995 now only occasional use	Bike once a yr.			– did not prevent use of Drove (at junction with Footpath no.6 at south end of Drove).		Enjoyment, exercising dogs and cattle herded along it.			would use The Drove to herd cattle.	
18	Naomi Hanslow Meadow Court	FP	1990 - 2020	At least once a month. Not used during university terms.	On foot	Yes / Don't know	Varies – 1.2m to open in field area			Yes – dog walkers and farmer	No	No, but now prevented by fences and hedges erected.	Yes – farmer & farming family aware.	Ancient trackway now barred.
19	Christine Ellis Meadow Court	FP	1989 - 2020	Occasionally, intermittent	Dog walk	Yes	3m?		No	Yes – children walking/ playing. Residents of Hop Gardens / Clay Street. Farmer who owned land.	No	No up to 2020 when route blocked by fences & hedges.	Yes – passed time of day cordially with farmer.	Ancient track, links Common Rd and school with dwellings on A36 on FP's rather than road.
20	Karen Tongs Clay Street	FP	2020	Once – recently moved to Whiteparish	On foot	Yes	Varies – 6m-1m	Recent fencing by builder/contractor – prevents use.	No	Yes – local residents	No	Yes – recently because of fencing	Yes – historic route	Told by a neighbour of the walk, he has been walking it for last 30 yrs. Monument & medieval trackway.
21	Martin Tongs Clay Street	FP	11/19 - current	Weekly	On foot	Yes	Varies 1m – 6m depending on vegetation	Fencing erected on development of Forest View, 6ft close board – prevents anyone using The Drove.	No	Yes – local residents	No	Yes – stopped from walking length of Drove by fencing.	Yes – historic route.	Told by neighbours of all local walks. Recorded as Monument and medieval trackway.
22	Elvin Klapp Clay Street	FP & BOAT	1987 - 2020	Twice a week	Walked (daily) & driven tractor along it (every few months)	Yes	2-3m	Couple of strands of barbed wire with foam on it 1995 - 2019. Close board fence – April 2020. Hedging & post & rail fence – June 2020. None prevented use of way.	No	Yes – I have towed cars out with my tractor. Lots of people walking along it.	No	No	Yes – I used to talk to the owner whilst on application route.	
23	Sara Webb Clay Street	FP	1999 - 2020	Once a month	On foot	Yes	3m	One strand barbed wire fence covered with plastic pipe – 1999-2019. Close board fence – April 2020. Hedging & post & rail fence – June 2020. None prevented use.	No	Yes – met people on path and watched people walk, especially dog walkers every day out of kitchen window until April 2020.	No	No	Yes -	
24	Patricia Hudson Dean Lane	FP	1984 - 2019	Once / twice a month	On foot	Yes	30ft until it goes behind Clay Street houses and reduces to 10ft – 12ft.	Wire fence across path where it started to go behind houses to stop horses – did not prevent use.	No	Yes – walking dogs or just walking.	No	No	Yes – seemed a PROW and assumed owner would be aware.	
25	Beverley & Barry Rutter Clay Street	BR	1962 - current	Occasionally (every few months)	On foot	Yes	2m at Common Rd, reduces to about 1m at bend half way along.	Stiles at the end – always. No other barriers until recently – developer erected 2 fences across path preventing access.	No	Yes – myself and former resident used Drove to access property.	No	Never been stopped by a person, only the recent instalment of fences.		Village heritage.
26	Robert Canney Clay Street	FP	1999 - 2020	Weekly	On foot	Yes	3m	One strand barbed wire fence shrouded. Close board fence – April 2020 – prevents access. Hedging & post & rail fence – April 2020.	No	Yes – often met other villagers walking dogs or strolling with children.	No	No	Yes – when local stables leased the meadow they were often in field when villagers passed through the Drove.	
27	Jaquie Gallon Clay Street	FP	2017 - present	Weekly (not used when too many brambles)	On foot	Yes	1m – 1.5m – 3m	Barriers due to new development – fencing across the whole path – impossible to get round.	No	Yes – frequent use by other neighbours	No	No, but Darren Stiles has been told its not a FP and he has no right of access several times.	Yes – conversations with neighbours.	Told about it by neighbour.

Appendix 7 – User Evidence Summary

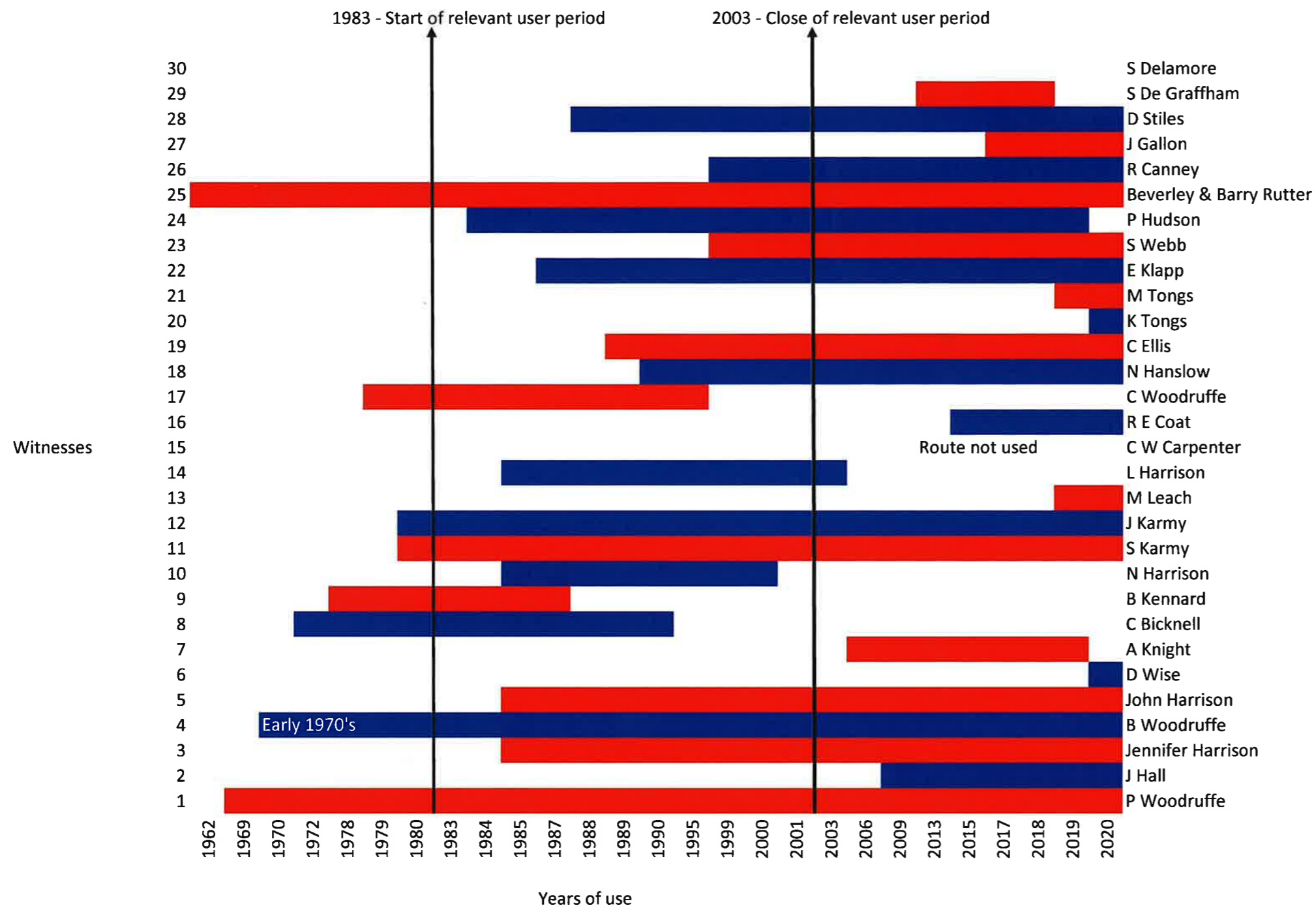
Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

							Unfriendly attitude of developers.						
Darren Stiles Clay Street		32 years	On and off for nearly 30 years. Regularly in past 2 years on a near daily basis (got a dog) until housing development.	Walking	B-A to get to Common Road		Barbed wire fence at B. More recent fence by Forest View, but can just walk around it.	“Private Land” signs more recently affixed to a couple of trees along Drove, I assume by developer.	No	No – always without permission / force / secrecy.	No		Played in Drove as a child and used it to access field for playing (especially when it snowed).
Summer De Graffham		2013 - 2018		Walking as far as Des Deria & Beauford to visit relatives there until recently.			Not been able to walk this path due to being blocked by rusty barbed wire and thick brambles near the turn.			Relatives whose properties backed onto The Drove had access granted in deeds.			
S Delamore Clay Street	Walk way	Moved to area 2020					The only fence is the fence the developer has put up recently. There was no barbed wire fence behind our property blocking Drove, if there was a barbed wire fence it wasn't at this location. May 2020 large fence blocking off Drove – told it was to purposefully block off Drove in preparation for planning application. Did not replace barbed wire fence.	Developers' contractor put up signs (Sept 2020) saying no access to either side of Drove – they keep getting removed by people accessing Drove.	Since blocking of Drove we have had a number of people trying to access Drove and ending up near my garden stuck.	Proof in the old deeds of the property that this is a drove and clearly marked as a drove – right of purchaser of property and successors over and along the drove shown on the plan.	Neighbour Mr E Klapp who has used Drove for 30 years plus, is now unable to walk Drove.		Feels like the developer is blocking access to the Drove illegally and claiming the land as theirs which doesn't feel right.

Greyed out witness evidence is user outside the relevant period 1983 – 2003.

Wildlife & Countryside Act 1981 - Section 53
Application to Add a Footpath - The Drove, Whiteparish

Appendix 8 - User Evidence Chart



Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 9 – Bringing into question

Witness	Pre 2003 fencing	2003 3-strand wire fencing	Close board fencing	Other
P Woodruffe		Barbed wire with protection 2002-19 Didn't prevent access	Solid wood fence / open structure wooden fence / hedging Jan/Feb 2020 Prevents access	Gate offset from entrance at Common Road – removed / disintegrated late 1990's
J Hall		Barbed wire "fence", 3-4 strands quite widely spaced with protective plastic tubing to allow pedestrian access via entry between top 2 strands – to prevent horses in field escaping, in place when I started walking the Drove in 2008. Did not prevent access	Drove now fenced off and incorporated into the new developments (proposed garden of plot 3).	
Jennifer Harrison	Thin hedge (replaced by barbed wire fence with padding)	Barbed wire fence with padding. Didn't prevent access	Wooden fence whole width of Drove 2020. Prevents access	
B Woodruffe		Users are aware that barbed wire is necessary in places to ensure stock are kept safe (largely in adjacent fields)	6ft fence June 2020 – blocking pathway. Open fence and newly planted shrubs now indistinct because of extraction of clay and removal of trees, vegetation May-June 2021 – passable with difficulty	Gate at Common Road entrance off the common land – sometimes locked but access available around it
John Harrison		Barbed wire fence with piping to enable access – 12 yrs ago – still accessible	Wooden fence 2020 – blocked route	
D Wise			Two recently built houses block the Droveway and proposed 3 rd also will – new house plots block path	
A Knight		Wire fence obstructed Drove	Blocked off in 2019 at the right turn - barriers block whole width	Stile at junction with FP6 & FP4
C Bicknell				User 1972 - 1990
B Kennard	I believe there was a gate at the bottom end of the Drove where it joined cow field.			User 1978 – 1987. May have been small stile in hedge not far from our back gate – on a few occasions we entered "top" field alongside The Drove to pick blackberries but cannot remember its location or if there was

Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 9 – Bringing into question

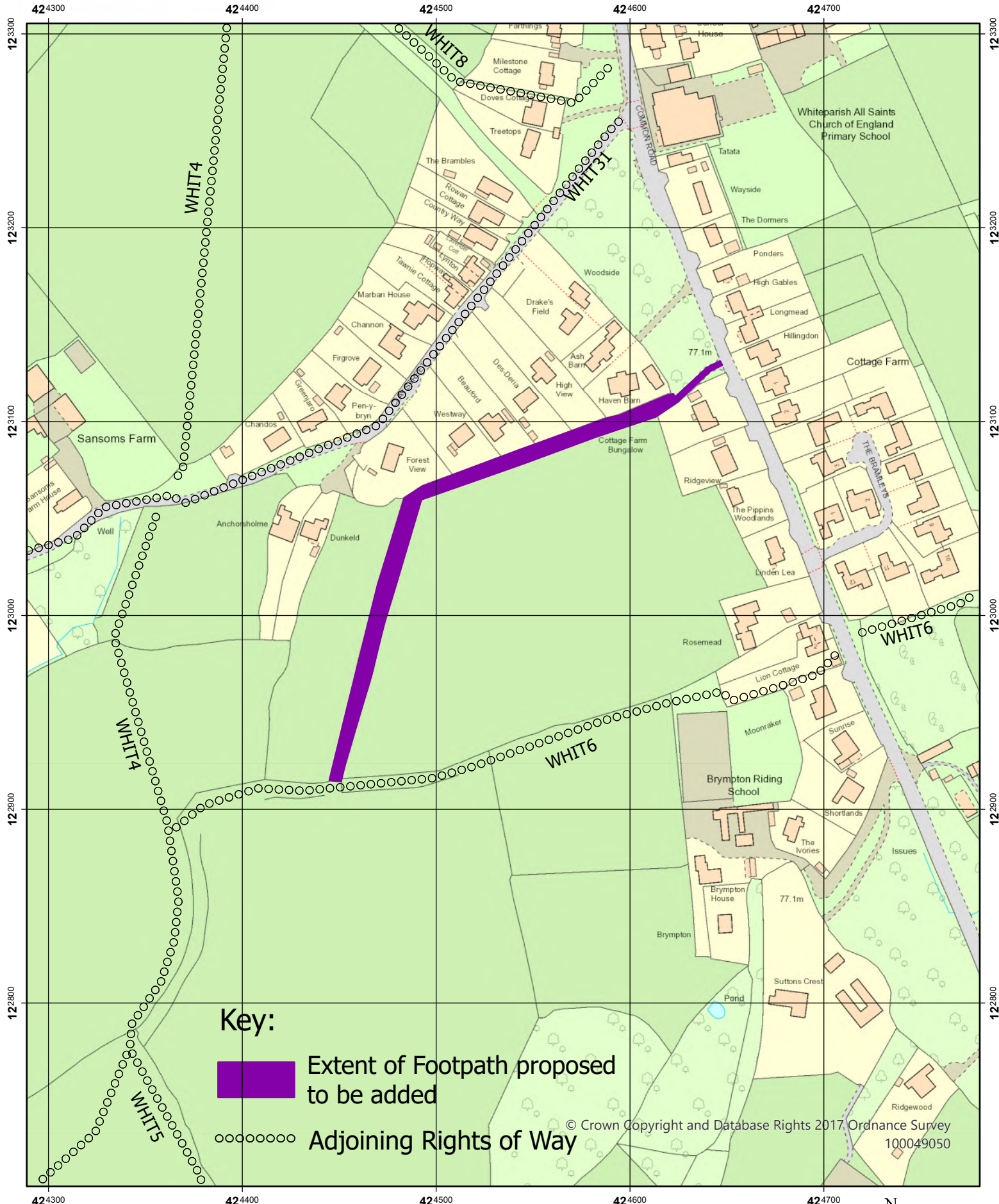
				one – instead we may have entered the field via the large gate, I have forgotten (see map and photos)
N Harrison	Hedge – did not prevent access			
S Karmy			Tall fence panels 2020 – cut Drove and make access impossible	
J Karmy			As above	
M Leach		Barbed wire fence with pipe to enable access (in line with end of blue/green right of way on deeds map) – did not prevent access		
L Harrison				
C W Carpenter				Not used application route
R Coat		Barbed wire fence line covered to allow access		
C Woodruffe				At junction with FP 6 - possibly a strand of wire occasionally put across at SU2444 2292 to deter livestock from wandering up the Drove – did not prevent access
N Hanslow			Now fences and hedges erected across it	
C Ellis			Blocked by fencing and hedging - 2020	
K Tongs			Fencing put up by builders that have blocked the Drove	
M Tongs			Fencing (6 ft close board) erected on the development that now prevents use of the Drove	
E Klapp		Couple of strands of barbed wire with foam 1995-2019 – did not prevent use	Close board fencing – April 2020 Hedging & post and rail fencing – June 2020 Did not prevent use	
S Webb		One strand barbed wire fence with pipe – 1999-2019 – did not prevent use	Close board fence – April 2020 Hedging & post and rail fence – June 2020	

Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 9 – Bringing into question

			Did not prevent use	
P Hudson	There was a wire fence across path where it started to run behind the houses, presumably to stop horses that grazed in the field adjacent to the wider path (no dates or detail given, user 1984-2019) – did not prevent use	Always a piece of wire covered in plastic tube at the perimeter point where the adjacent field ends. Assumed wire there to stop horses straying along continuation of path behind houses and plastic tube was to assist walkers to get over it safely. (36 yrs use)		Never any stiles or gates at any point
Beverley & Barry Rutter			None until recently – developers erected 2 fences across path preventing access – fence panel and ranch fencing and shrubs planted	User 1962 – current. Until recently nothing prevented use of application route
R Canney		One strand barbed wire fence shrouded – did not prevent access	Close board fence erected April 2020. Hedging & post and rail fence erected April 2020 – Drove blocked	
J Gallon			Barriers due to new development – fencing across whole path	
Mr H Urquhart c/o Christine Warry		Several witnesses mention that the Andrews used the route to take cows from fields to milking shed. This means they would have used it in each direction twice daily and therefore were highly likely to be aware of people using it. It is clear that in putting up barbed wire across the route to keep animals in but covering it with plastic to protect people the owners were not only aware of public use but had no objection to it.		
D Stiles		Barb wire fence at B	More recently fence erected by developer to try to block the path, but you can just walk around.	
S De Graffham		Unable to walk route due to rusty barbed wire and thick bramble at the end of the row of		2013-2018 used first section to Des Deria

Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath – The Drove, Whiteparish
Appendix 9 – Bringing into question

		houses nearing its turn into the farmers cow field.		
S Delamore			May 2020 – developers placed large fence blocking Drove	
M Richards – Zelda Investments Ltd		3 strand barbed wire livestock fence running between 2 ash trees, formed part of field boundary of Secret Field to stop the horses escaping. At time of our purchase of Secret Field plastic tubing on the fence. With sale of Forest View in March 2020, removed barbed wire fence, the remains of barbed wire fence still on Cottage Field side of Secret Field with posts and strands of wire embedded in an ash tree.		
S Cook	3-strand barbed wire stock fence replaced previous 2-strand in 2003, after children had been climbing over to ride bicycles in Secret Field. There has always been a barbed wire stock proof fence. If there wasn't then cows would have gone through the overgrown brambles and appeared on Common Road, which they never did.	3-strand Barbed wire fence – obstructed way. Children climbing over to ride bikes ceased with new fence – difficult and dangerous to pass over the fence. No breaks, including stiles and gates, ever existed in fence and maintained by family until sold northern section of Secret Field to Zeldas in 2019. We did not put protection on the wires as this would defeat the purpose of stock fence barbs to deter livestock – done without our permission. Climbing over fence is trespass.	Close board fence erected by Zeldas at boundary of our land across width of Drove.	Gate at top of Common Road to 1990. Not locked, marked boundary between family's section of land and Mr Urquhart's. They had right of access over Mr Urquharts section, gate was removed when their machinery became wider than the gate. No break in fence or hedge at junction with FP6.



© Crown Copyright and Database Rights 2017 Ordnance Survey 100049050

© Crown Copyright and Database Rights 2022 Ordnance Survey Licence No 100049050

