

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

**DECISION REPORT**

**APPLICATION TO RECORD PARTS OF FOOTPATHS  
RAMSBURY 9B AND 44, MILDENHALL 16 AND AN ADDITIONAL  
LENGTH OF TRACK AS RESTRICTED BYWAYS IN THE  
DEFINITIVE MAP AND STATEMENT**

NB All documents (including user evidence forms where applicable, responses to consultations and correspondence) are available to be viewed at the Council's offices at Rights of Way and Countryside, County Hall, Bythesea Road, Trowbridge, BA14 8JN; please contact Sally Madgwick on 01225 713392.

**1.0 APPLICATION**

Application number: 2018/07

Date of application: 10 October 2018

Applicant: Mr A Woodford  
7 Vicarage Close  
Marlborough  
Wiltshire  
SN8 1AY

Application for: Adding the restricted byway leading southwards from the junction of bridleway Ramsbury 43 and road u/c 5085 at Crosslanes, south of Church Farm, Axford (grid ref. SU23486969 approx.) to its junction with footpath Ramsbury 9B at grid ref. SU23786906 approx. with a width of 16 feet and shown on the application map A ----- B.

Upgrading to a restricted byway part of footpath Ramsbury 9B from grid ref. SU23786906 approx. leading westwards to its junction with a track leading southward and labelled on the application map as "Axford Lane (Track)" at grid ref. SU23756905 approx. with a width of 33 feet (10.06 metres) and shown on the application map B ----- C.

Adding the restricted byway leading southwards from footpath 9B at grid ref. SU23756905 and marked on the application map as "Axford Lane (Track)" to its junction with footpath Ramsbury 44 at grid ref. SU23836862 approx. with a width of 33 feet (10.06 metres) and shown on the application map C ----- D.

Upgrading to a restricted byway footpath Ramsbury 44 from grid ref. SU23836862 approx. to its junction with footpath Mildenhall 16 with a width of 33 feet (10.06 metres) and shown on the application map D ----- E ----- F.

Upgrading to a restricted byway footpath Mildenhall 16 from its junction with footpath Ramsbury 44 leading southwards to its junction with main road A4 at grid ref. SU23716781 approx. with a width of 2.7 metres and shown on the application map F ---- G.

Application comprises: Schedule 7 Form of application for a modification order 10 October 2018

Schedule 8 Form of notice of application for a modification order 10 October 2018: copies of notices served on:

On Site : addressed to The Owners and Occupiers.

Mr J S Burrows, Coombe Farm, Stitchcombe, SN8 2EU.

Ramsbury (S.A.R.L.), Bignalls Solicitors, Coombe Farm, Coombe Lane, Naphill, High Wycombe, HP14 4QR.

Penitrust Ltd, Da Vinci House, Basing View, Basingstoke, RG21 4EQ.

Simon G Nutall, c/o McGills Ltd, Oakley House, Tetbury Road, Cirencester, GL7 1US.

Ramsbury (S.A.R.L.), Priory Farm, Axford, SN8 2HA.

The Occupier, Coombe Farm, Stitchcombe, SN8 2EU.

The Occupier, Putall Farm, Marlborough, SN8 3HR.

The Forestry Commission South West England, Bullers Hill, Kennford, Exeter, EX6 7XR.

Certificate of service of notice of application 12 October 2018

Site notices permitted, erected and monitored.

Plus additional notices served on 15 January 2019:

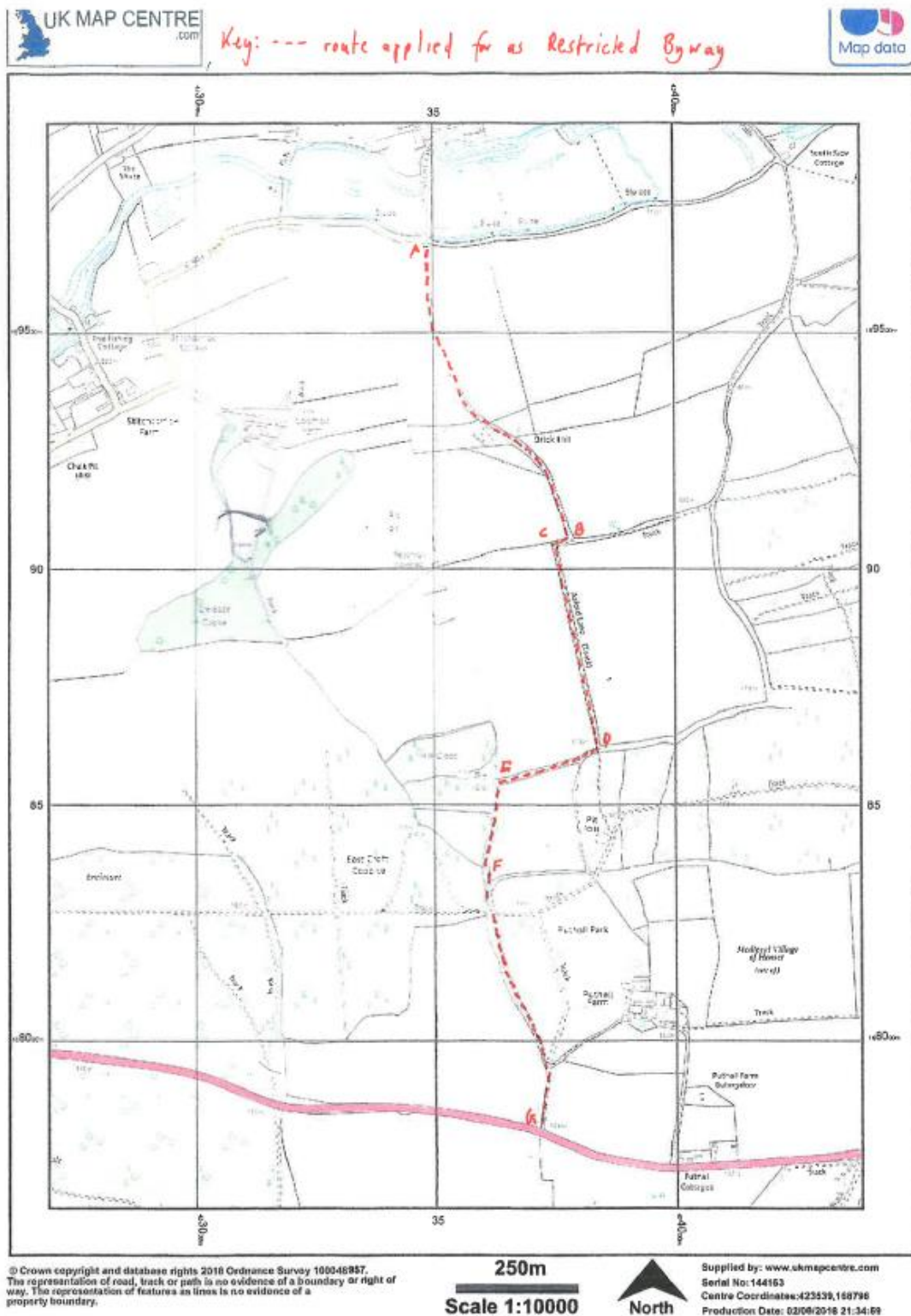
The Occupiers, Land at Savernake Estates, Marlborough (sent via Penitrust Ltd and McGills Ltd.

The Occupiers, Land at Ramsbury Estate, Axford (sent vi Ramsbury (S.A.R.L.), Priory Farm, Axford.

Photographs of site notices and record of maintenance

Map to the scale of 1:10000 showing the route pecked in red leading A ---- B ---- C ---- D ---- E ---- F ---- G.

Application map (here reduced from 1:10000 original)



Evidence

Summary of Evidence

Applicant's Statement AW001

Short Story

Copies of all evidence adduced and list of same

NB The applicant updated documents and now relies on version 3 of AW001 (applicant's statement) and Summary of Evidence Stone Lane to A4 V3.doc also 1727 Axford IA Transcript replaces Axford IA Transcript .doc

## **APPENDIX A – Applicant's Summary and Statement**

### **2.0 Enabling Legislation**

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

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

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

- (a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- (b) ***as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.***

2.3 The events referred to in subsection 2 above relevant to this case are:

*(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 such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;*

*(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;*

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

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

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

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

- 2.6 Schedule 14 to this Act states:

*Form of applications*

1. *An application shall be made in the prescribed form and shall be accompanied by –*
  - (a) *a map drawn to the prescribed scale and showing the way or ways to which the application relates and*
  - (b) *copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.*

*Notice of applications*

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

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

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

- 2.7 A surveying authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the surveying authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.
- 2.8 This application is considered to be compliant with the provisions of Schedule 14 (1) and (2).
- 2.9 It is noted that the application adduces evidence to support that the route should be recorded as a restricted byway. The basis for this is that the route was a former public vehicular highway but that the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (NERCA 2006) apply and that any public rights to use the route with a mechanically propelled vehicle (MPV) were extinguished on the 2<sup>nd</sup> May 2006 when that part of the Act was enacted.
- 2.10 Where the evidence supports this it is necessary for the Council to consider whether any savings to the extinguishment of the public MPV right apply, regardless of what the application was originally for. This will be considered later in the report at section 17.

### **3.0 Land Ownership**

3.1 The route leads through land registered as follows:

Section A to B                      WT164195 Ramsbury Estate, Ramsbury S.A.R.L.,  
Bignalls Solicitors, Coombe Farm, Coombe Lane, Naphill,  
High Wycombe, HP14 4QR

Section B – C                      Unregistered

Short length Section C – D Unregistered

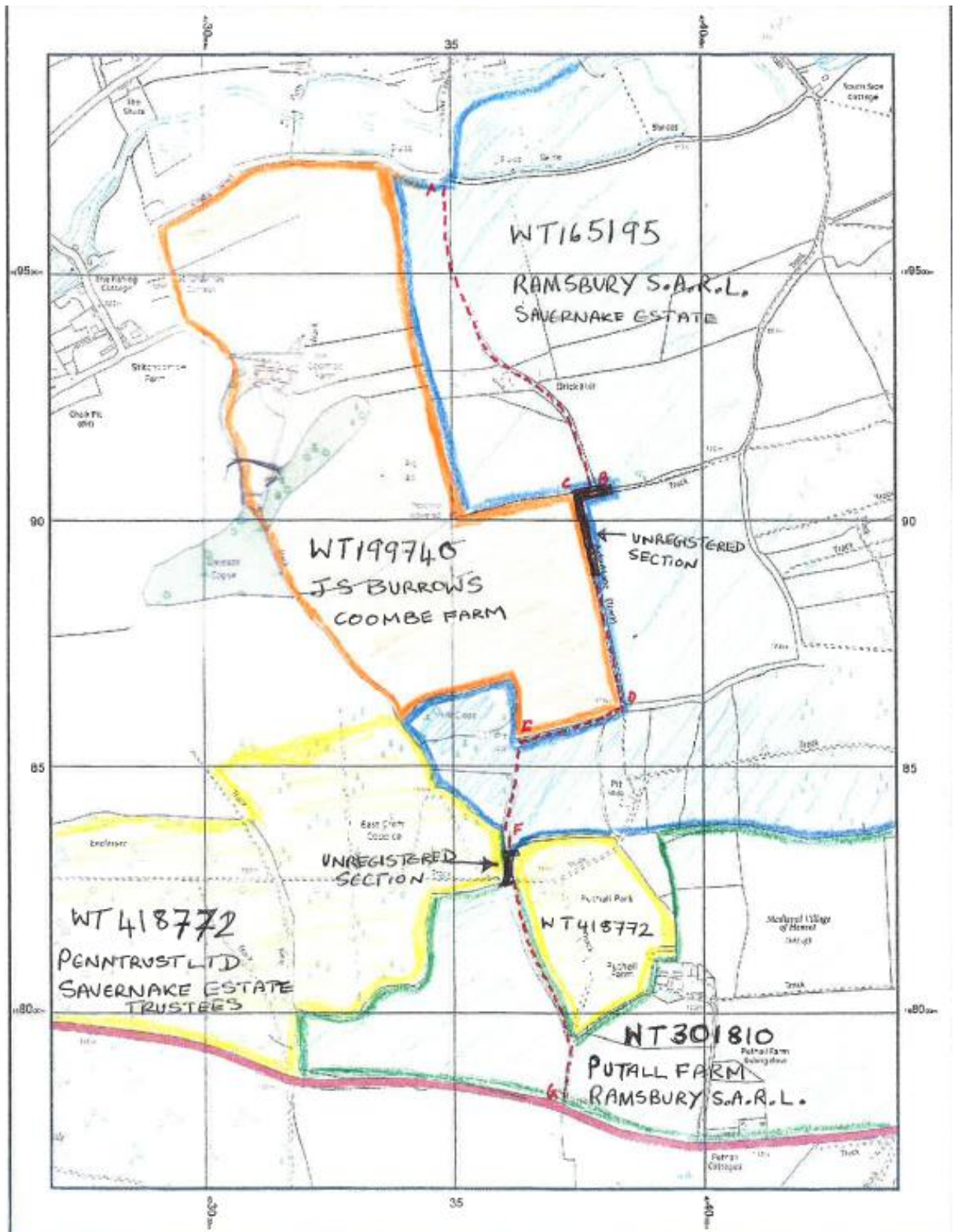
Remainder C – D                      WT 164195 Ramsbury Estate, Ramsbury S.A.R.L.

Section D – E – F                      WT164195 Ramsbury Estate, Ramsbury S.A.R.L.

Short length south of F              Unregistered

Remainder F – G                      WT301810 Puthall Farm, Ramsbury S.A.R.L.

See depiction on following map:



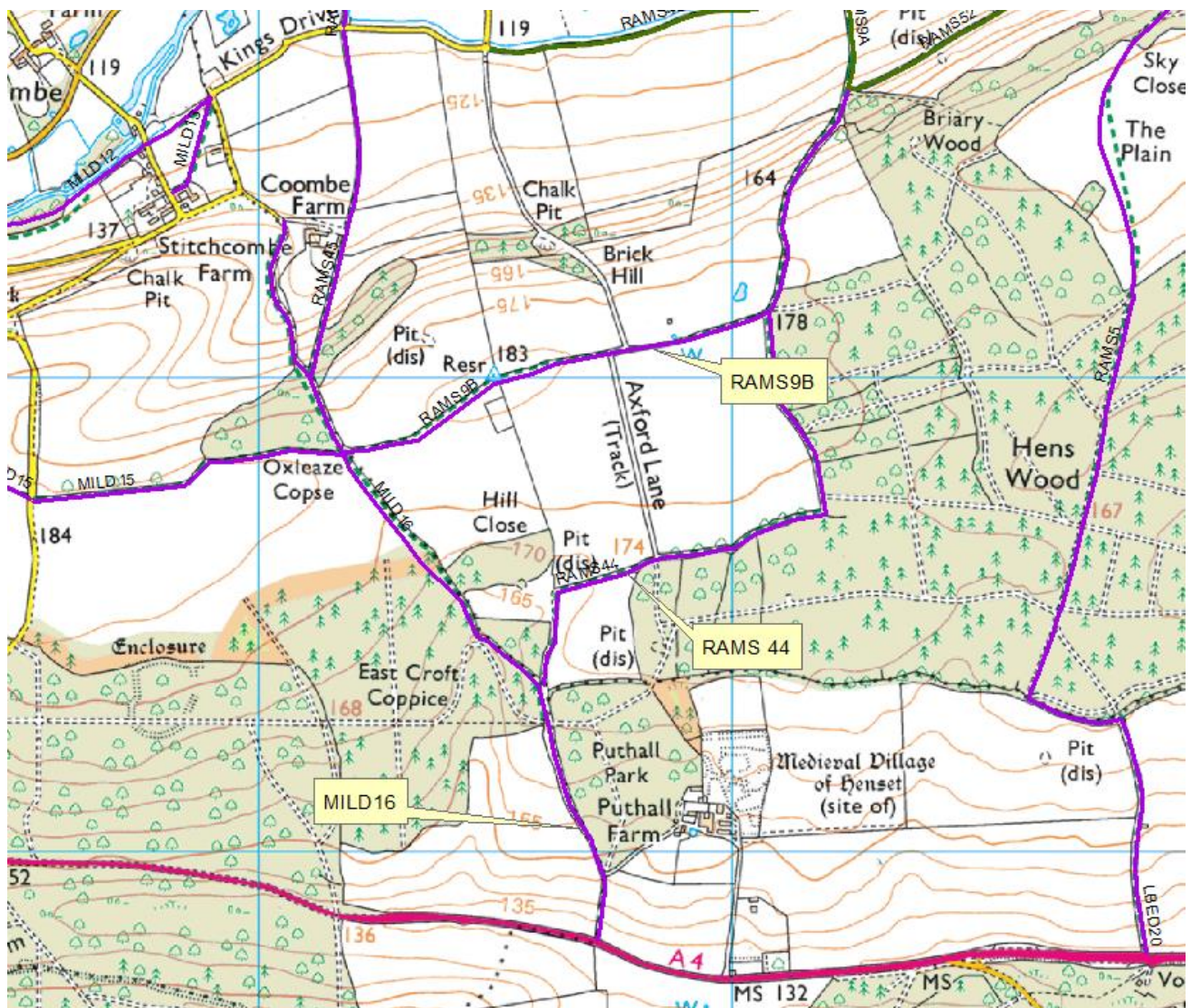
## 4.0 Current Records

4.1 Approximately 50% of the route is unrecorded in the definitive map and statement with other parts of the claimed route currently recorded as public footpaths.

A to B	Unrecorded
B to C	Footpath Ramsbury 9B
C to D	Unrecorded
D to E	Footpath Ramsbury 44
F to G	Footpath Mildenhall 16

4.2 Extract from working copy of the definitive map:

Footpaths = purple  
Bridleways = green





4.3 The definitive statement describes the routes as follows:

Ramsbury 9B FOOTPATH. Knaxton Way. From the southern end of path No.9A at its junction with path No.52, about 91 m north of the north-west tip of Briary Wood, leading south to the north-west corner of Hens Wood then west-south-west to Mildenhall path No.15 at Oxleaze Copse.  
Approximate length 1450 m.  
Width 1.2 - 2.4 m.

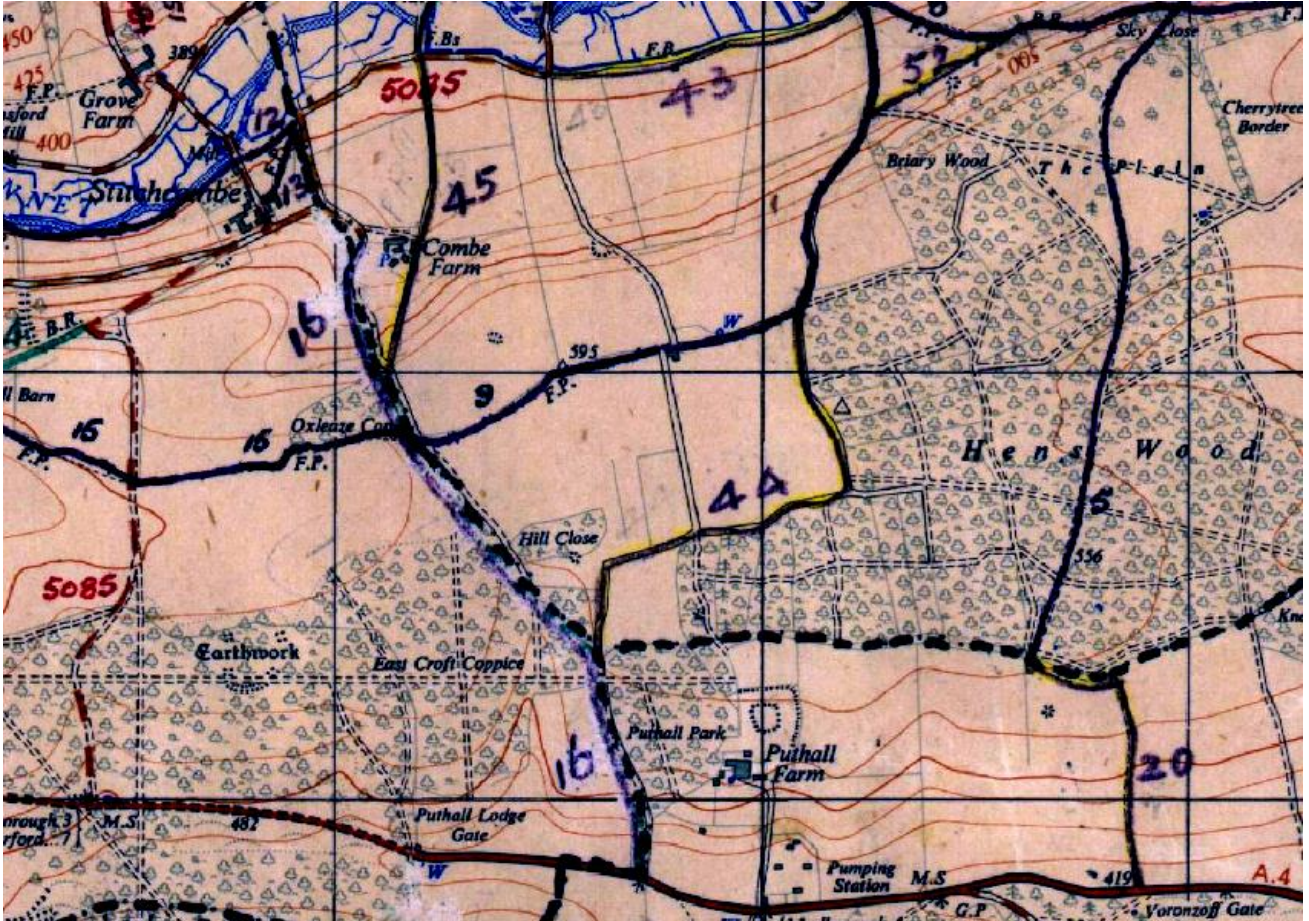
Ramsbury 44 FOOTPATH. From Mildenhall path No.16 at the north-west corner of Puthall Park leading north, east-north-east and north along the edge of Hens Wood to path No.9B.  
  
Approximate length 1300 m.

Mildenhall 16 FOOTPATH. Axford Lane. From the southern end of spur road U/C 5085 at the entrance to Coombe Farm leading south-east along the Ramsbury Parish boundary, through East Croft Coppice and south-south-east along the edge of Puthall Park to the London – Bath road, Trunk Road A.4, on the Little Bedwyn Parish boundary.  
  
Approximate length 1700 m  
  
Width 0.3 – 2.4 m

4.4 RAMS 9B, RAMS 44 and MILD 16 were all added to the Marlborough and Ramsbury Rural District Council Definitive Map and Statement dated 1952 and have been unaltered with respect to the area affected by this application, since that time.

Extract from Marlborough and Ramsbury Rural District Council definitive map (original scale 1:25000): Footpaths = purple Bridleways = green

**NB** Routes coloured over yellow or white marks are routes (or omissions) that attracted objections at the Draft map stage but were subsequently resolved.



### 5.0 Photographs of the Route – site visit 09 March 2020



Point A at junction with RAMS 48 and Kings Drive



Between points A and B ('Brick Hill' on application map OS base map)



Point B (junction with RAMS 9B)



RAMS 9B between points B and C



Point C heading north towards point D (Axford Lane)



Axford Lane



Between points D and E RAMS 44



Between points E and F





Heading for point F



Points F to G



From A4 point G looking north along MILD16

## 6.0 Consultation

The following letter of consultation was sent on 14 February 2020:

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

#### ***Application to record a restricted byway at Ramsbury (Axford) and Mildenhall – Axford Lane***

*In October 2018 Wiltshire Council received an application to modify the definitive map and statement by upgrading parts of footpath Ramsbury 9B and 44 and Mildenhall 16 to a restricted byway and by adding connecting lengths of restricted byway. Please see enclosed map showing the application route. The approximate grid reference of Point A is SU23486969 and Point g is SU23716781.*

*Further to an appeal against the non-determination of the application the Secretary of State for Environment, Food and Rural Affairs has now directed Wiltshire Council to determine the application. The application is based on historical evidence which, it is alleged, shows that on the balance of probability the route was historically a public road. Although it is likely that any public right to use a mechanically propelled vehicle on the route has been extinguished, if the application is successful the route would be recorded as a restricted byway which carries a right for the public on foot, on a cycle, on or leading a horse or with a horse drawn carriage to pass and re-pass.*

*Wiltshire Council will now proceed with investigating the evidence but invites any additional evidence that may support or rebut the application. Where the common law principle of ‘once a highway, always a highway’ applies evidence of any legal event extinguishing the public right would be needed to rebut it. I have enclosed a summary of the evidence adduced by the applicant.*

*Please note that matters related to desirability, need, the environment or suitability of the route are not relevant considerations for the application of s.53 of the Wildlife and Countryside act 1981.*

*I would be grateful to receive any responses you wish to make by 1700 03 April 2020. If you have any queries, please do not hesitate to contact me.*

A copy of the application map, applicant’s ‘short story’ and Summary of Evidence were also circulated.

### 6.1 The following were consulted:

The applicant  
Mr J S Burrows, Coombe Farm  
Ramsbury (S.A.R.L.) c/o Bignalls Solicitors  
Penitrust Ltd  
S G Nutall, McGills Ltd  
Ramsbury (S.A.R.L.) Priory Farm  
The occupier of Coombe Farm  
The occupier of Putall Farm  
The Forestry Commission SW England  
Thomas Gurney, Strutt and Parker  
The Auto Cycle Union  
Open Spaces Society  
British Driving Society  
British Horse Society (national and local)  
Byways and Bridleways Trust

Green Lane Association (GLASS)  
Cyclists Touring Club  
Trail Riders Fellowship  
Wiltshire Council Countryside Access Officers  
Mildenhall Parish Council  
Ramsbury and Axford Parish Council  
Wiltshire Councillor James Sheppard  
Wiltshire Bridleways Association  
The Ramblers

## **7.0 Consultation responses**

### **Trail Riders Fellowship 16 February 2020**

*“Thank you for sending me details of the application to record a restricted byway at Ramsbury (Axford) and Mildenhall. As you will be aware, the route has been recorded as a status anomaly by myself for many years, so I support the application, which has been so thoroughly researched that in my opinion any additional evidence of consequence is unlikely to be found.”*

### **The Ramblers 29 February 2020**

*“Thank you for your letter dated 14 February regarding this DMMO application.*

*One of our members has checked the route and reports that there is currently a padlocked field gate at point A but there are no other obstacles, nor is there any signage, to indicate that the unrecorded sections A – B and C – D are not already available for public use. It is therefore possible that some use by the public which would meet the conditions to be “as of right”, particularly of section C – D, has taken place. However, we cannot provide any evidence of this and, since the historical evidence appears to be very strong, we do not propose to explore this any further.”*

### **Mildenhall Parish Council 30 March 2020**

*“Thank you for your letter of 14 February 2020 advising us of this application. The Parish Councillors discussed this at their meeting on 9 March and we believe we know the applicant. As Clerk I have walked the route and sent photos to the Councillors. I found it to be in mainly good condition, some hardcore but other areas a little muddy. It would be suitable for horse riding although the end point on the A4 has no path opposite. The main issue appears to be the gate at the Axford end is locked and there is a stile for walkers only.*

*Councillors believe the path to be little used although in good condition. The paths at the top where it connects to Ramsbury 44 are in poor condition with many trees down. Overall Councillors feel that the path is not at all suitable for any kind of motorised vehicle. We are unable to provide any further evidence.”*



## **British Horse Society 02 April 2020**

*I note that in the case of a section 53 application matters of desirability, need, the environment or suitability of the route are not relevant considerations in determining an application.*

*Leaving section 53 requirements aside, but considering the national and local need for safe off-road provision for vulnerable road users, the route applied for offers good off-road connectivity from the A4 to the Marlborough–Ramsbury road. In conjunction with other DMMOs submitted in the area, this route will be a welcome addition to safe off-road access for horse riders, cyclists, carriage drivers and walkers both in and around Axford and from further afield.*

*Therefore the British Horse Society (Wiltshire) supports this application.”*

### **8.0 General Context** *Some notes taken from Victoria County History Volume XII pages 12 to 52*

- 8.1 **Ramsbury** is 9 km east of Marlborough and before the Norman conquest was the second largest non-royal estate in Wiltshire. It included the modern parishes of Baydon and Bishopstone and also the village of Axford which remains in Ramsbury Parish today. Ramsbury lies in the Kennet Valley (the River Kennet runs through it) and is on chalk.
- 8.2 The village of Axford, at the western extremity of Ramsbury parish, lies north of the River Kennet but extends south of the river and it is through this area that the claimed route leads. The area was historically wooded with Hens Wood an existing feature today dating from at least the 16<sup>th</sup> century and possibly back to the 11<sup>th</sup> century. Hens Wood lies to the north of Puthall Farm and borders part of the claimed route.
- 8.3 The north part of the parish of Ramsbury is crossed by ancient and modern downland roads. The Roman road, Ermine Street, from Speen in Berkshire to Gloucester follows the Ridge Way between the Kennet and its tributary, the Lambourn. The London and South Wales motorway (the M4) opened across the parish in 1971 and follows a parallel course. The other main roads have followed the valleys and are presumably as old as the settlements in them. That linking the villages beside the Kennet between Hungerford and Marlborough may long have rivalled the London – Bath road over the downs between these places. Between Ramsbury and Axford the road presumably followed the river, as it did elsewhere, with Ramsbury Manor and Axford Farm near its course. East of Ramsbury Manor a road diverged from it and led through Sound Bottom across the downs to Ogbourne St Andrew. That road may have been diverted northwards when the north park of Ramsbury Manor was enlarged in the 15<sup>th</sup> century and the riverside road between Ramsbury and Axford was stopped, possibly at the same time. In the late 17<sup>th</sup>

century and early 18<sup>th</sup>, when it was called the Marlborough Road and the London Road, the road through Sound Bottom may have been the main Hungerford – Marlborough road through Ramsbury. Its course round the park was diverted eastwards and northwards when the park was further enlarged c.1775.

- 8.4 After this time the circuitous route between Ramsbury and Axford was made easier by a cutting at White's Hill and shorter by a new north-south road north west of Axford Farm, and the road through Axford became the main Ramsbury-Marlborough route. The road through Sound Bottom was never made up.
- 8.5 **Axford** was the westernmost tithing of Ramsbury parish and its north, south and west boundaries were those of Ramsbury parish. Its east boundary with Park Town tithing cannot now be precisely determined but it passed a short distance east of Axford, or Priory Farm, and thence ran south west through Hens Wood and north north west perhaps near the western edge of Blake's Copse.
- 8.6 Axford was first mentioned in 1163 and in the later Middle Ages and 16<sup>th</sup> century was a village of medium sized farmsteads. Axford Street was so called in 1727 when the road south of the River Kennet and parallel to it was called Mead Lane. The lane linking Axford Street and Mead Lane near Church Farm crosses the Kennet on an early 19<sup>th</sup> century brick bridge of five arches. Mead Lane is currently recorded as Ramsbury Bridleway no 43 and is at the northern end of the claimed route (point A).

## 9.0 Historical Records

- 9.1 Although it can be helpful to present these in chronological order to show the consistency of recording of a way over time it does not allow for the need to apply evidential weight to documents. For example, although a way may appear on twenty commercial maps it does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament.
- 9.2 The value of relatively low evidential weight documents should not be underestimated though where it is considered that they add synergy to the evidence as a whole. The Planning Inspectorate's *Definitive Map Modification Orders: Consistency Guidelines* state:

*"There is a distinct and important difference between the 'cumulative' and 'synergistic' approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g., three commercial maps by different cartographers all produced within the same decade or so) could be regarded as mere repetition. Thus their cumulative weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g., an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents."*

- 9.3 The court of appeal gave guidance on how evidence should be considered in ‘the Fortune’ case (*Fortune & Ors v Wiltshire Council & Anr [2012] EWCA Civ 334*). Lewison LJ at paragraphs 22 and 23:

22. *“In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in R v Exall (1866) 4 F & F 922:*

*“It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fail. It is more like the case of a rope composed of several cords. One strand of the cord may be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.”*

23. *In addition section 32 of the 1980 Act provides:*

*“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 a dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose form which it was made or compiled, and the custody in which it has been kept and from which it is produced.”* “

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

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

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

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

The evidence investigated in this report will be presented in order of weight (i.e. Category A being the most significant). Although officers have endeavoured to view original documents where it has not been possible to view originals (e.g., those held at The National Archive at Kew) officers have relied upon the copies adduced by the

applicant. Additionally, owing to the restrictions imposed on working by the global Covid-19 pandemic, officers have not investigated original copies of some commercial maps.

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

## 10.0 Category A Evidence

10.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e., the definitive map and statement), inclosure acts, awards and plans, legal orders or events and deposited plans for public undertakings (i.e. arising from an Act of Parliament which specifically required the identification and verification of public rights of way).

### 10.2 Inclosure

Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

10.3 **Inclosure agreement for North and South Fields, Cow Down and Axford Marsh in Axford in Ramsbury 1727 WSHC 1883/217** File also contains a copy of a transcript of enclosures and highways.

The Planning Inspectorate's Consistency Guidelines advise that Inclosure Agreements although having the power to divide and allot land lacked the power to alter existing rights of way. Additionally, although the creation of new highways (usually to facilitate the new allotments in the agreement) may be taken as evidence of dedication by the landowner, there would need to be additional evidence of public acceptance, usually by use or reputation.

*"7.13 Agreements to enclose land could be informal or formal, the latter often being confirmed by a legal court and the former, by their very nature, being unlikely to be evidenced by records still existing today.*

*7.14 Formal inclosure agreements were usually made between the lord of the manor and the principal farmers and landowners, and were normally drawn up by a local solicitor. Without the powers to do so under an Act of Parliament, the parties concerned would have had no authority to alter existing public rights of way. However agreements may provide evidence of pre-existing highways or of dedication by the landowner (if there is corresponding evidence to show acceptance by the public).*

10.4 The original parchment copy of the Agreement and Articles of Agreement forms part of WSHC catalogue entry 1883/217 and is dated 17<sup>th</sup> April 1727. It has been signed and sealed by the following:

Daniel Appleford  
Simon Appleford  
S A Appleford Snr  
Thomas Appleford  
Thomas Appleford Jnr/Snr (?)  
Anthony Appleford  
George Moore  
Robert Visey  
Jonathan Knckston (?)  
Thomas Barre (?)  
John Newson

10.5 The file also contains a copy of the agreement though not written in the same hand as the Articles of Agreement. This could be a later (Victorian?) transcript.

The partial transcript reads as follows:

*"To all ??? People To whom this present writing of award ...Edward Hanson of Chisbury in the county of Wilts Yeoman ????? of Manton in the said County Yeoman and Roger Gator of Flintbury in the county of Berks Yeoman send greetings*

*Whereas by Certain articles or Deeds of agreement bearing date the Seventeenth day of April in the Thirteenth Year of the Reign of our Sovereign Lord King George the First Anno Domini 1727 made and executed by Richard Jones of Ramsbury in the County of Wilts Esq. Lord of the Mannor of Ramsbury aforesd. of the one part AND Daniel Appleford Sen. of Rockley in the sd county Yeoman Daniel Appleford Junior of Axford in the Parrish of Ramsbury in the said county Yeoman Symon Appleford Jun of Axford aforesaid Yeoman Thos. Appleford Senior of Axford aforesaid Yeoman Thomas Appleford Junior of Axford aforesaid Yeoman Edward Appleford of Axford aforesaid ????? Anthony Appleford of Axford aforesaid Yeoman George Moor of Littlecot in the said county Yeoman Robb. Veysey of Axford aforesaid Yeoman Jonathon Knackston of Axford aforesaid Yeoman Thomas Pearce of Savernake Park in the said county Yeoman and Jn. New of Stourington in the county of Berks ....the Advantage of Tyllage and good husbandry those fields called the North Fiield & South Field with a down called the Cow Down & the Common Marsh all belonging to the tything or hamlet of Axford aforesaid should be enclosed and divided proportionlaby (?) to the severall subscribers whose names were herein beforementioned according to these several estates and interests herein AND that it should be lawful for Edward Hanson Jn. Brown & Roger Gate aforesaid by any writing under our hands and seals to allot divide and layout the sd. Common Field Down and Marsh unto the several persons herein beforementioned according to the ex??? proportions or interest of each proprietor or subscriber aforesaid AND also to limit and appoint the places where each and every of their (?) lotts ??? be allotted to them AND also to lay out all Common Roads, Ways Byways and private ways as might be necessary and convenient leading to every particular enclosure AND to appoint to all and every of them ...."*

Allotments of land are not transcribed here (though transcription is preserved at WSHC) though do refer to their positions by reference to the below routes where they form a border

to that allotment. The extract below relates only to the allotments in the Mead and in South Field. The full transcript relating to North Field (i.e. north of the main road) has been supplied by the applicant.

*“AND as Touching and Concerning Ways, Drove Ways, Lanes , Private Ways , Highways to be laid out for the conveniency of the Proprietors of the Enclosure we the said Edward Hanson Jno Brown and Roger Gate do order and appoint as follows (vis)....*

*ITEM in the marsh shall be left another Lane or Way beginning at Stone Lane and shall pass over the River Kennett to South Field which way shall be everywhere thirty feet wide & which Way has been all along in the Foregoing Descriptions called **Stone Lane Causey***

*ITEM in the marsh shall be left **another Lane or Cartway** which beginning at the south end of Saunders lane shall pass thence over the River Kennet to the gate at the north end of Coomb Way which lane or cartway shall be everywhere thirty feet wide*

*ITEM in the marsh shall be left **another Lane** or way beginning in Ann Harts way and shall pass over the River Kennet to Coomb lane which lane of Way shall be everywhere thirty feet wide*

*IN SOUTH FIELD shall be left a Lane that beginning at Holly Lane Causey shall pass westwards till it comes into Combe Lane having adjacent on its South side divided into Lotts as herein before described and on the north side diverse meads belonging to proprietors herein before mentioned which shall be everywhere twenty four feet wide and which lane has been all along in its foregoing description called by the name of **Mead lane***

*ITEM in South Field shall be left another lane which beginning at Mead lane shall pass southwards until it comes into the Down having the (?) lotts of Thos Pearce & George Moor adjacent on (???) East & Lotts of Edward Appleford George Moor adjacent on ??? west which lane shall be everywhere sixteen feet wide and which lane has been all along in the foregoing descriptions called by the name of **Stone Lane Way***

*ITEM in South Field shall be left another Lane or way beginning at Mead lane shall pass southwards until it comes to C]ombe Lane having adjacent on its west a lott of Daniel Appleford (Snr?) and of a lott of Thomas Appleford (???) and on its east ... part of a lott ??? Thomas Appleford Jnr which lane or way shall be every where sixteen feet wide and which lane of way has been all along in the foregoing descriptions called by the name of **Coomb Way***

*IN THE DOWN shall be left a lane which beginning at the south end of Holly Lane shall pass on southwards till it comes to Saunders Gate having adjacent on the east ??? coppices of the proprietors herein before mentioned and adjacent on ??? west four lotts of Daniel Appleford Senior herein before described which lane shall be every where thirty three feet wide and which lane has been all along in the foregoing descriptions called by the name of **East Lane***

*ITEM in the Down shall be left another Lane which lane beginning at Saunder's Gates shall pass on westwards as far as a ground called Hill Close having adjacent on the south divers coppices belonging to the proprietors herein before mentioned and ??? lotts of Danl Appleford Senior and adjacent on the north lotts of Danl Appleford Sennr George Moor Edward Appleford Jonathon Knaxton & Thos Appleford Junr which lane shall be every where thirty three feet wide and which lane has all along in the foregoing descriptions called by the name of **South Lane***

*ITEM in the Downs shall be left another lane which beginning at the west end of South Lane shall pass southwards as farr as Putall Gate having adjacent on the east side a lot of Daniel Appleford Senior and having adjacent on its west a ??? called Hill Close and a Coppice called Oaken Coppice which lane shall be every where thirty three feet wide and which lane has been in the foregoing descriptions called by ??? name of **Hill Close Lane***

*ITEM in the Downs shall be left another lane or way which beginning at the west end of south lane shall pass on first northwards and then westwards on the west side of the downs as farr as Coomb lane having on the east side a lott of Thos Appleford and on ??? west side a coppice of George Moor which lane or way shall be every where sixteen feet and a half wide and the herbage of which shall belong to Thos Appleford junr*

*ITEM in the Down shall be another way which beginning at south end of Holly Lane shall pass westwards until it comes to a lott of Simon Appleford herein before described having adjacent on the south side lotts of Daniel Appleford Senr and George Moore and adjacent on the North Side South Field which lane shall be everywhere thirty three feet wide and and has been all along in the foregoing descriptions called by the name of **North Lane***

*ITEM in the down shall be left another lane beginning at the west end of North lane shall pass on westwards as farr as a lott of Jonathon Knaxton having adjacent on the south a lott of Simon Applefords and adjacent on the north all of south field which way shall be everywhere sixteen feet and a half wide and the herbage of the said way shall belong to Simon appleford and which way has been in the foregoing description called **Knaxtons Way***

*ITEM in the down which beginning at the west end of North Lane shall pass on southwards as farr as South Lane having on the west the the lots of Symon Appleford Thos Pearce and Edward Appleford and having adjacent on the east the lots of George Moor which Lane shall be every where Thirty three feet wide and has been all along in the foregoing descriptions called by the name of **Cross Lane***

*ITEM in the marsh shall be left a **footway** which beginning at the south side of Saunders's Lane shall pass along ??? ?? Causey through the whole length of that lott of Jonathon Knaxtonss (herein before said to contain Two roods and thirty seven poles) till it reaches the bridge that passes over the river Kennet at the south end of the said lott and from this bridge the said footway shall pass to the gates at the north end of Coomb Way “*

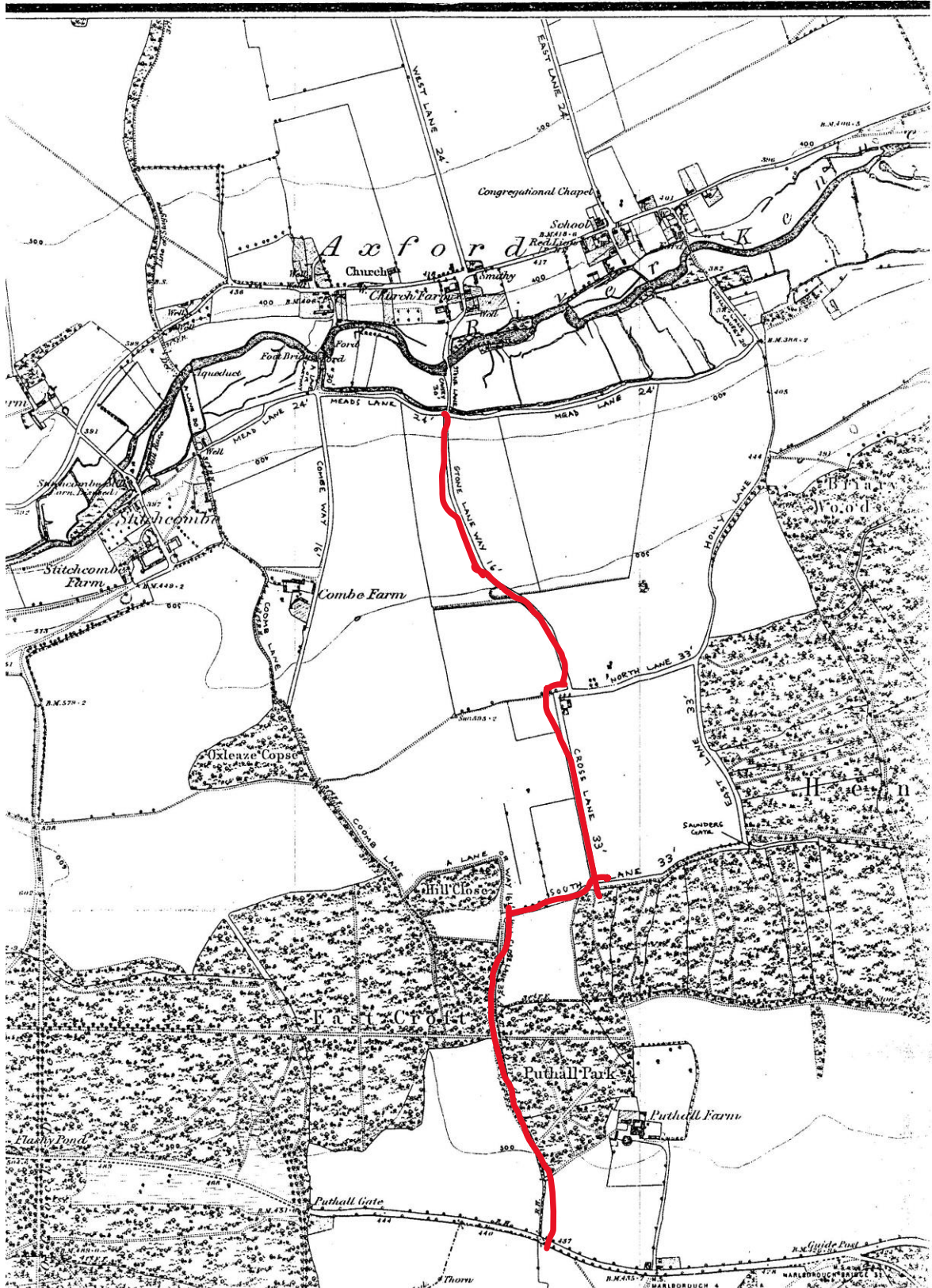
- 10.6 The agreement is not accompanied by a map. However, given the clear descriptions of the position of the lanes and ways detailed in the agreement, the description of the position of the allotments in relation to them, the survival and current use of some names and descriptions, including the original parish claim dated 1950, the Marlborough and Ramsbury Rural District Council definitive map and statement dated 1952, the research notes of historian Barbara Croucher and extracts from the Victoria County History, it is possible to identify the majority of the routes referred to and to plot them onto a map.
- 10.7 The applicant has submitted his interpretation of the position of these routes overlaid onto an Ordnance Survey County Series map of the scale 1:10560 (First Edition c.1870) and officers concur with this interpretation.
- 10.8 The following table identifies the routes in the mead and the south field and their current recorded status:



No	Agreement description	Width in agreement	Current recording
1	<b>Stone Lane Causey</b> <i>River Kennet to South Field</i>	30 feet	Stone Lane unclassified road u/c 5085
2	<b>Another lane or cartway</b> <i>River Kennet to gate at north end of Coomb Way</i>	30 feet	Footpath Ramsbury 45 Hoppers Lane
3	<b>Another lane or way</b> <i>Ann Harts Way over River Kennet to Coomb Lane</i>	30 feet	Not identified but possibly near the Mildenhall parish boundary (u/c 5085 does have 90-degree bend here avoiding river crossing)
4	<b>Mead Lane</b> <i>Holley Lane Causey west into Coomb Lane</i>	24 feet	Bridleway Ramsbury 43 AND u/c5085 Mead Lane and Kings Drive. Subject to DMMO application 2019/02
5	<b>Stone Lane Way</b> <i>Mead Lane south to the down</i>	16 feet	Claimed route subject to application 2018/07
6	<b>Coomb Way</b> <i>Mead Lane south to Combe Lane</i>	16 feet	Footpath Ramsbury 45 Hoppers Lane
7	<b>East Lane</b> <i>South end Holly Lane South to Saunders Gate</i>	33 feet	Part of footpath Ramsbury 9B Knaxton Way. Subject to DMMO application 2019/01
8	<b>South Lane</b> <i>Saunders Gate west to Hill Close (coppices to the south, lots to the north)</i>	33 feet	Footpath Ramsbury 44. Claimed route Subject to DMMO application 2018/07
9	<b>Hill Close Lane</b> <i>west end of South Lane to Putall Gate (west of Hill Close)</i>	33 feet	Part footpath Ramsbury 44. Claimed route. Subject to DMMO application 2018/07
10	<b>Another lane or way</b> <i>west end of South Lane north and west to Coombe Lane</i>	16.5 feet	Unrecorded route north of Hill Close
11	<b>North Lane</b> <i>south end of holly Lane westwards</i>	33 feet	Footpath Ramsbury 9B Knaxton Way. Subject to DMMO application 2019/01
12	<b>Knaxtons Way</b> <i>west end of North Lane westwards</i>	16.5 feet	Footpath 9B Knaxton Way. Subject DMMO application 2019/01
13	<b>Cross Lane</b> <i>west end of North Lane south to South Lane</i>	33 feet	Claimed route "Axford Lane"
14	<b>Footway</b> <i>south end of Saunders Lane over bridge over River Kennet to gates at north end of Combe Way</i>	No width given	Unrecorded footway north to south somewhere between Combe Way and Combe Lane

10.9 Represented on a map, the routes identified in the agreement appear as below, approx. claimed route in red:

LANES NAMED FROM THE AXFORD INCLOSURE AWARD 1727 (WRO 154/2)



## 10.10 Other Category A Evidence – Railway and Canal Plans

Individual railway and canal schemes were promoted by Special Acts. The process for canal schemes was codified in 1792 by a Parliamentary Standing Order and these arrangements were extended to cover railway schemes in 1810. The requirements for railways were expanded in the 1845 Act, which requires public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Therefore, although it was not the primary purpose of the deposited plans to record rights of way, these plans provide good evidence in this context as the law required provision to be made for existing routes crossing the line.

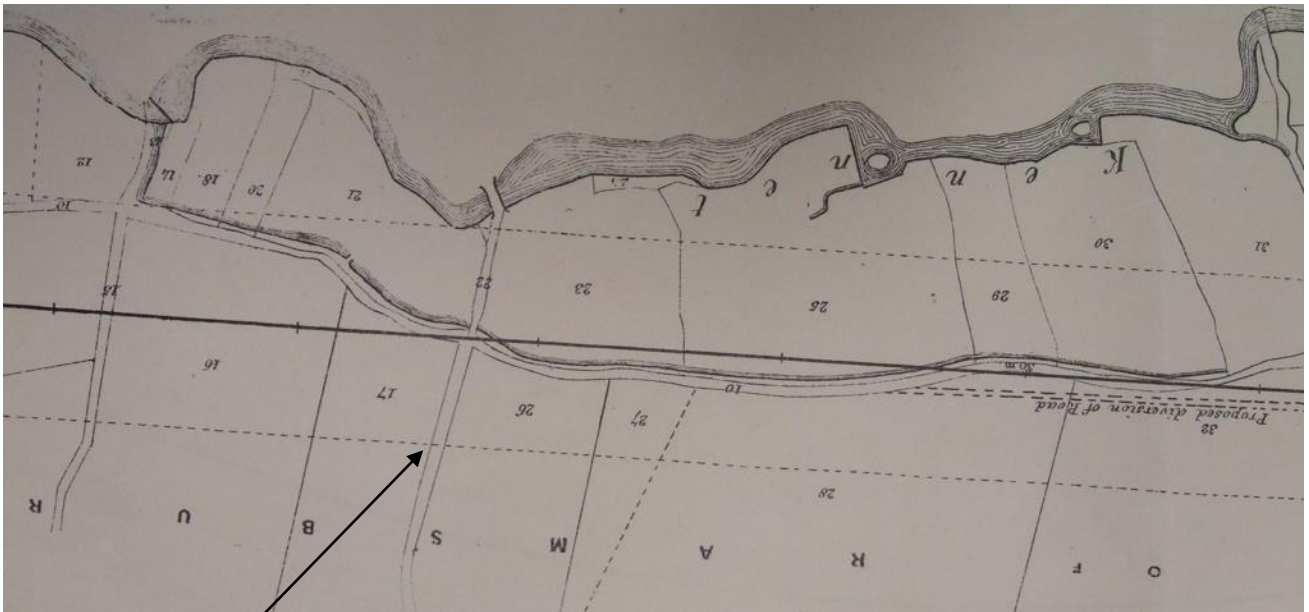
- 10.11 Clause 10 of the 1845 Act requires that true copies of such plans and books of reference ... certified by any such clerk of the peace .... shall be received by the courts of justice or elsewhere as evidence of the contents thereof. The Act also includes provisions for the crossing of the line by any highway and specifies (Clauses 46 to 51) the minimum bridge dimensions for public and private roads and the requirements for the gating of crossings on the level.
- 10.12 Railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes was exacting and the Book of Reference and Deposited Plans made in the course of the process needed to be of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way.
- 10.13 The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights. Therefore, an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right of some description.
- 10.14 Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain.
- 10.15 Railway plan sections and cross-sections usually differentiate between public and private roads. Where this is not the case and the route is described as 'road' in the book of reference, it is sometimes possible to establish the nature of the way by reference to the description of other roads. Unless the existing roadway was less than 25 feet (in which case section 51 of the 1845 Act set the minimum by reference to the average available width for the passage of carriages within 50 yards of the point of crossing), the minimum width for bridges laid down in the 1845 Act is 25 feet (7.62 metres) for public roads and 12 feet (3.66 metres) for private roads. However,

caution needs to be exercised regarding the latter as some high-status estate roads had wider bridges. There were no specified widths for bridleways or footpaths.

- 10.16 The status of a way had an impact on the cost of the scheme and it is unlikely that railway plans would show a route at a higher status than was actually the case. There was no obligation to bridge footpaths under the 1845 Act and, as a general rule, unless there is specific provision in the Special Act, any public route requiring a bridge is of at least bridleway status. Bridleways and footpaths which are not shown on the plan are sometimes described in the associated Book of Reference.
- 10.17 It must be borne in mind that the procedure to be followed for deposited plans of public undertakings was strictly regulated by Standing Orders of the House of Lords. For example there was a requirement that plans, sections and books of reference, in duplicate, were deposited with Clerks of the Peace and Principal Sheriff Clerks; that Clerks of the Peace were to endorse them on receipt; that plans, sections and Books of Reference were to be deposited with clerks of the parishes through which the works were to be carried; that any plans showing variations had to also be deposited with the Clerks of the Peace and that copies of standing orders relating to the deposits were also to be delivered.
- 10.18 Parts of the claimed route are affected by three different railway schemes and accordingly three sets of deposited plans and books of reference have been viewed. Not all schemes were promoted by the same companies and accordingly the evidence can have greater synergy as a result.
- 10.19 **Basingstoke and Didcot Junction Railway with a branch through Newbury to Swindon 1844 WSHC reference A1/371/29MS**

The plans, sections and book of reference were deposited with the Clerk of the Peace of the County of Wilts on November 30<sup>th</sup> 1844. The proposed line of the railway is shown as a solid black line and the limits of deviation are shown by a pecked black line.

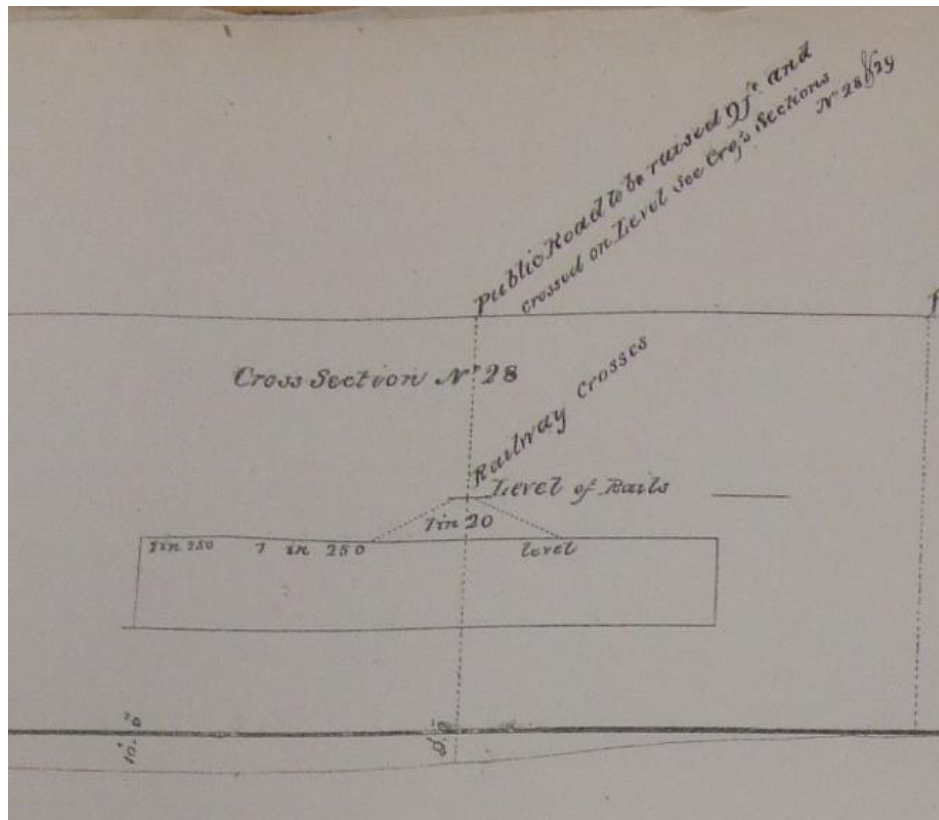
- 10.20 The claimed route from Point A south to the edge of the map is shown within the limits of deviation and numbered "22". The plan is orientated with north at the bottom of the sheet but has been inverted in the image below for ease of interpretation (i.e., the River Kennet is now at the top or in the north). It is crossed by a route shown and numbered as "10" (now recorded as unclassified road and bridleway RAMS45). Page 7a.



Claimed route no. 22

10.21 The route crosses the line at approx 30 miles and 2.4 furlongs (from Newbury start point).

10.22 The sectional plan at sheet 19 at approx 30 miles and 2.4 furlongs records at Cross Section 28 a Public Road to be raised and crossed on the level.



10.23 The Book of Reference records that route "22" is owned or reputed to be owned by "Surveyor of Highways for Axford Tithing John Rowland" has no lessees or reputed lessees, is occupied by "The public" and is described as a "Parish Road".

Numbers referring to the plan.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES
21	Sir Robert Burdett	William George
22	Surveyor of Highways for (Axford Tithing) John Rowland	
23	Robert Waisey	
24	Sir Robert Burdett	William George
25	Sir Robert Burdett	William George
26	Robert Waisey	
27	Sir Robert Burdett	William George

in the COUNTY of *Melts*

ED LESSEES.	GENERAL OCCUPIERS' NAMES.	DESCRIPTION OF PROPERTY.
	William George	Meadow and River
	The Public	Parish Road
	Robert Waisey	Meadow and River
	William George	Meadow and River
	William George	Meadow & River and Island
	Robert Waisey	Arable
	William George	Arable
	William George	Arable

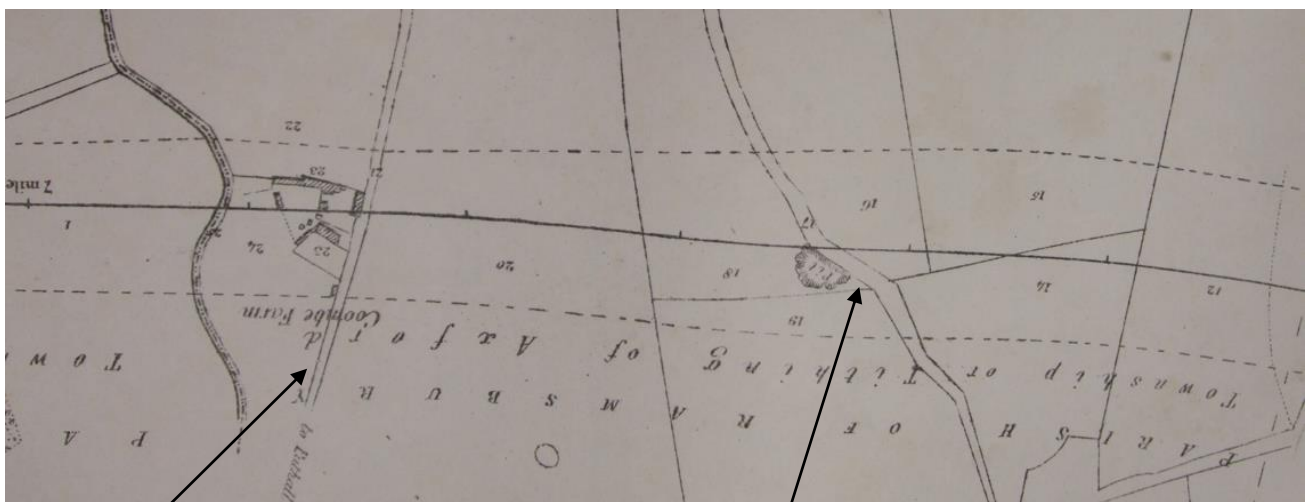
PARISH of Ramsbury		in the COUNTY of Wilts.		
Number relating to the plan.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIERS' NAMES.	DESCRIPTION OF PROPERTY.
21	Sir Robert Burdett	William George	William George	Meadow and River
22	Surveyor of Highways for John Rowland (Aspet Ashane)		The Public	Parish Road
23	Robert Vaisey		Robert Vaisey	Meadow and River
24	Sir Robert Burdett	William George	William George	Meadow and River
25	Sir Robert Burdett	William George	William George	Meadow, River and Island
26	Robert Vaisey		Robert Vaisey	Arable

10.24 The surveyor was able to differentiate between routes as can be seen at number 13 (Parish Lane and Ford and River), number 15 (Private Road) and number 51 (Public Footpath).

**10.25 London, Bristol and South Wales Direct Railway With Branch To Devizes 1845 WSHC ref. A1/371/45MS**

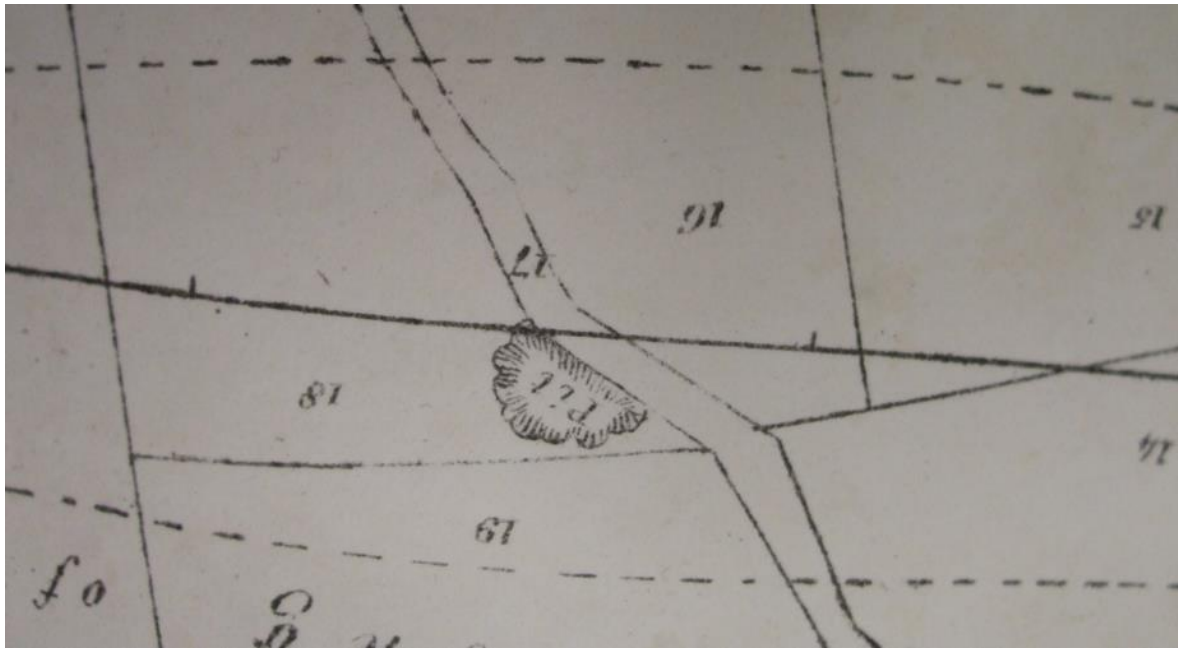
The plans, sections and Book of Reference were deposited with the Clerk of the Peace for the County of Wilts at 1730 on the 30<sup>th</sup> November 1845. The proposed line of the railway is shown as a solid black line and the limit of deviation from the line is shown as a black pecked line. Like the 1844 scheme considered above, north is at the bottom of the plan sheets but the images have been reversed here for ease of interpretation.

10.26 The line passes over the claimed route at just over 6 miles and 4 furlongs (from the start of this section in Hungerford) at a point just south of the pit (between A and B). The route lies wholly within the limits of deviation and is numbered "17".



No. 21

Claimed route No. 17



10.27 The Book of Reference records that number 17 is a “Public Highway” owned by “Thomas Osmond Surveyor of the Highways for the township of Axford” and has no lessees or occupiers.

COUNTY OF MIDDLESEX PARISH OF RAMSBURY  
Township or Tithing of Axford

NUMBER ON PLAN.	DESCRIPTION OF PROPERTY.	OWNERS OR REPUTED OWNERS.	LESSEES OR REPUTED LESSEES.	OCCUPIERS.
11	Public Highway	Thomas Osmond Surveyor of the Highways for the Township or Tithing of Axford		
12	Field and Footpath	Sir Robert Burdett	Henry Woodman	Henry Woodman
13	Footpath	Thomas Osmond Surveyor of the Highways for the Township or Tithing of Axford		
14	Field	Sir Robert Burdett	Henry Woodman	Henry Woodman
15	Field	George Moore	William Watts	William Watts
16	Field	Elizabeth Naisey		Elizabeth Naisey
17	Public Highway	Thomas Osmond Surveyor of the Highways for the Township or Tithing of Axford		
18	Field and Chalk pit	Sir Robert Burdett	Henry Woodman	Henry Woodman
19	Field	Sir Robert Burdett	Henry Woodman	Henry Woodman
20	Field	Elizabeth Naisey		Elizabeth Naisey

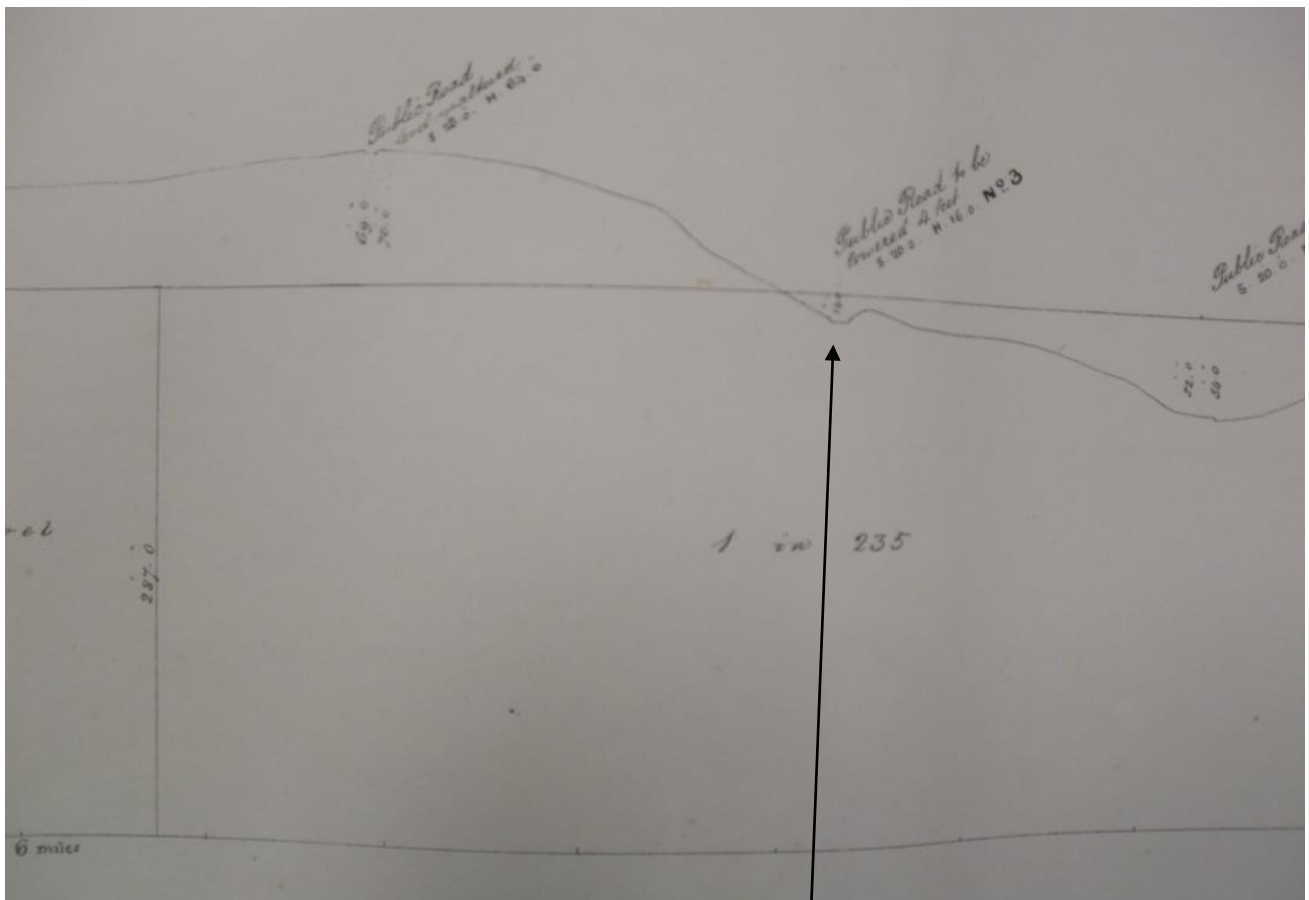
No. 17



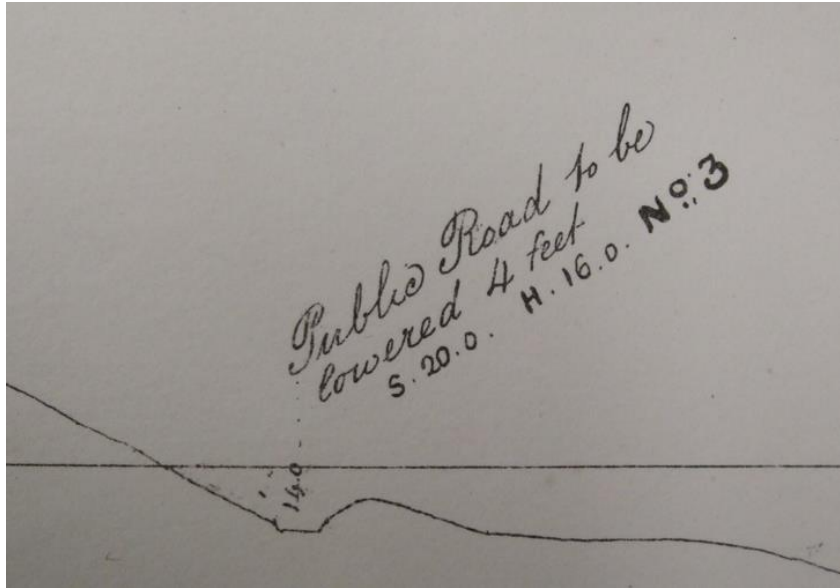
10.28 As with the 1844 plans the surveyor recorded the route of nearby number 21 (the route through Coombe Farm) as a "Private Road".

COUNTY OF MIDD		PARISH OF Ramsbury		
Township or Tithing of Axford				
NUMBER ON PLAN.	DESCRIPTION OF PROPERTY.	OWNERS OR REPUTED OWNERS.	LESSEES OR REPUTED LESSEES.	OCCUPIERS.
21	Private Road	Elizabeth Vaisey		Elizabeth Vaisey
22	Mead	Elizabeth Vaisey		Elizabeth Vaisey
23	House Yard Garden Out buildings and premises	Elizabeth Vaisey		Elizabeth Vaisey
24	Field and Outbuildings	Elizabeth Vaisey		Elizabeth Vaisey
25	Public Highway	Thomas Leonard surveyor of the Highway for the Township or Tithing of Axford		
Sir Robert Burdett Bart Lord of the Manor of Ramsbury				

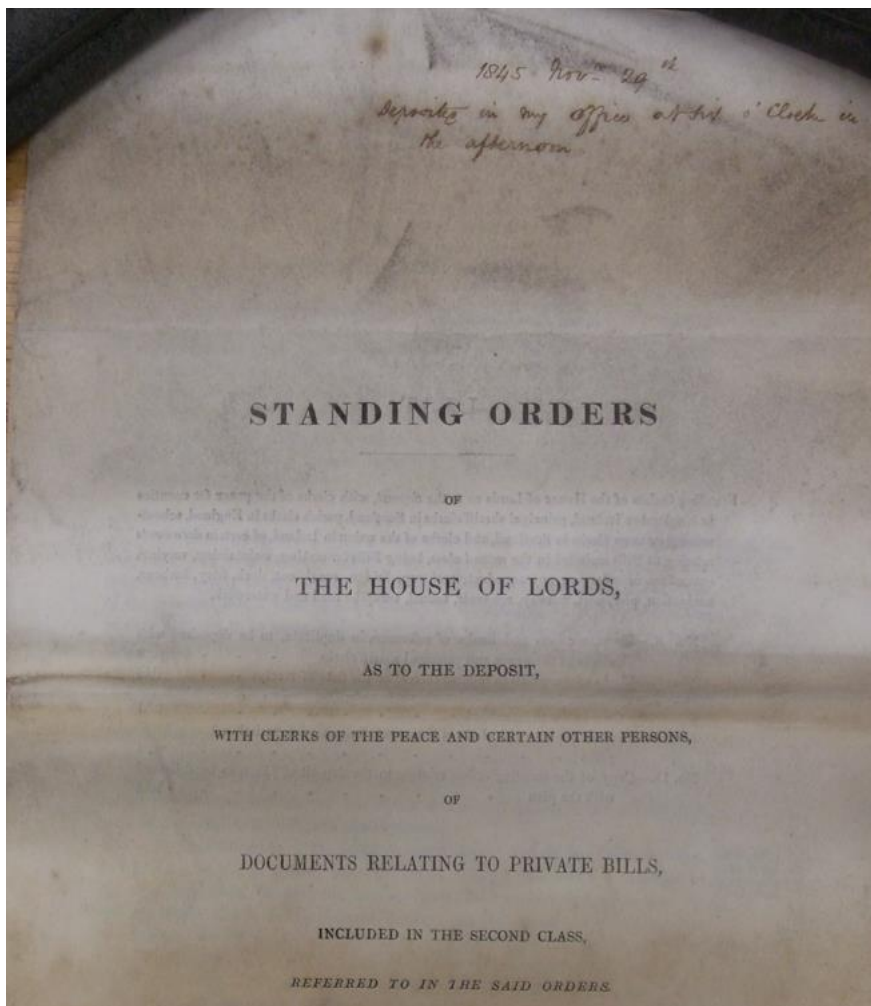
10.29 The sections show a "Public Road" crossing the line at 6 miles and just over 4 furlongs corresponding to number 17 (the claimed route).



No. 17



10.30 Also deposited at the offices of the Clerk of the Peace along with the plans, section and book of reference was a copy of the Standing orders of The House of Lords as to the Deposit with Clerks of the Peace and Certain Other Persons of Documents Relating to Private Bills.



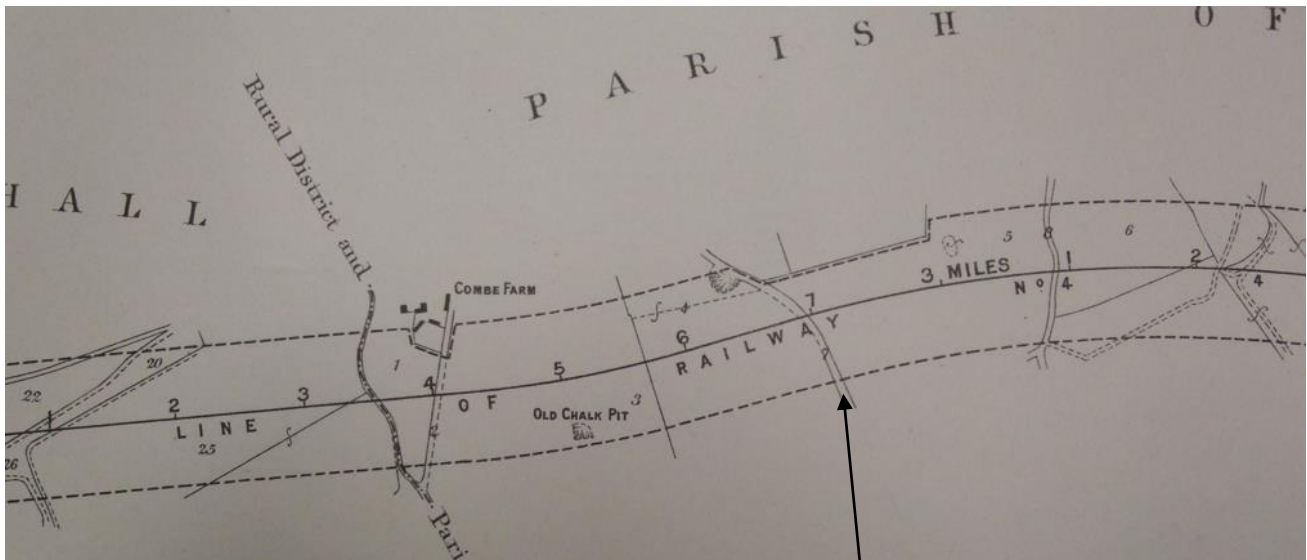
10.31 **Deposited Plans of the Central Wilts Light Railway 1903 WSHC ref. no A1/371/165BMS**

The plans and book of reference were deposited at the office of the Clerk of the County Council on 30<sup>th</sup> May 1903. Also filed is an overview plan showing the route superimposed on a 1" to the mile Ordnance Survey plan. The proposed railway crosses part of the claimed route at around 2 miles and 7 furlongs.



Claimed route

10.32 Sheet number 4 shows the railway crossing the claimed route south of the pit between A and B and labelled "7" at 2 miles and 7 furlongs.



No. 7

10.33 The sectional drawings do not depict and crossings of the line at any point. The Book of Reference records number "7" as an "Occupation Road, Chalk Pit and Land" owned by "Sir Francis Burdett, Bart." with no lessee or occupier.

10.34 The Book of Reference does not describe any roads crossed in either the parish of Mildenhall or Ramsbury as public highways, only accommodation or occupation roads. Whilst this may be taken to have been the view of the day, it is noted that roads 2 and 8 are today recorded as public highways. Additionally, the applicant has adduced evidence from Mildenhall Parish Council minutes that in 1903 further to the public consultation (the purpose of the public deposit) the Parish Council resolved to raise a number of inaccuracies in the deposit in their own parish:

**10.35 Mildenhall Parish Council Minutes 1903 WSHC 2902/1**

19<sup>th</sup> June 1903 (page 55):

*“A letter was read from the Clerk to the Rural District Council with referenceto the plans of the proposed Central Wilts Light Railway which will run through the parish and asking for the observations which the parish council may think necessary to make in the interests of the safety and convenience of the public and the Clerk was directed to call the attention of the District Council to the following numbers in the Schedule which are inaccurately described viz:*

*No. 6 should be accommodation road*

*9 should be Parish Road (Cock a Troop)*

*21 should be Parish Road*

*26 should be Parish Road (Forest to Stitchcombe)*

*And also to the fact that no mention is made of an accommodation Road in Plot 22.”*

It is suggested that if that many errors existed in Mildehall then the likelihood is that there were errors in other parishes too.

**10.36 Other category A evidence – Turnpike Trusts**

Turnpike Trusts became commonplace in the 18<sup>th</sup> and 19<sup>th</sup> centuries as the need for a well maintained road network became increasingly apparent. Turnpike Trusts were bodies set up by individual Acts of Parliament which enabled them to collect tolls from road users to pay for the maintenance of the roads. Accordingly the schemes and plans provided for them underwent public scrutiny and publication.

10.37 The evidence considered here relates to the statutory deposit of plans affecting the the London and Bath Turnpike route via Hungerford. In each case the promoted route crosses the claimed route Stone Lane Way (route A to B on application plan) which is shown on the deposited plans. There is no suggestion in this evidence that the claimed route was affected by the scheme (other than to be crossed) applied for in the Act but the recording of the claimed route on the deposited plans has been relied upon by the applicant and is therefore included here under Category A reflecting the rigour and scrutiny of the process.

**10.38 London and Bath Turnpike Trust via Hungerford 1832 WSHC A1/370/20**

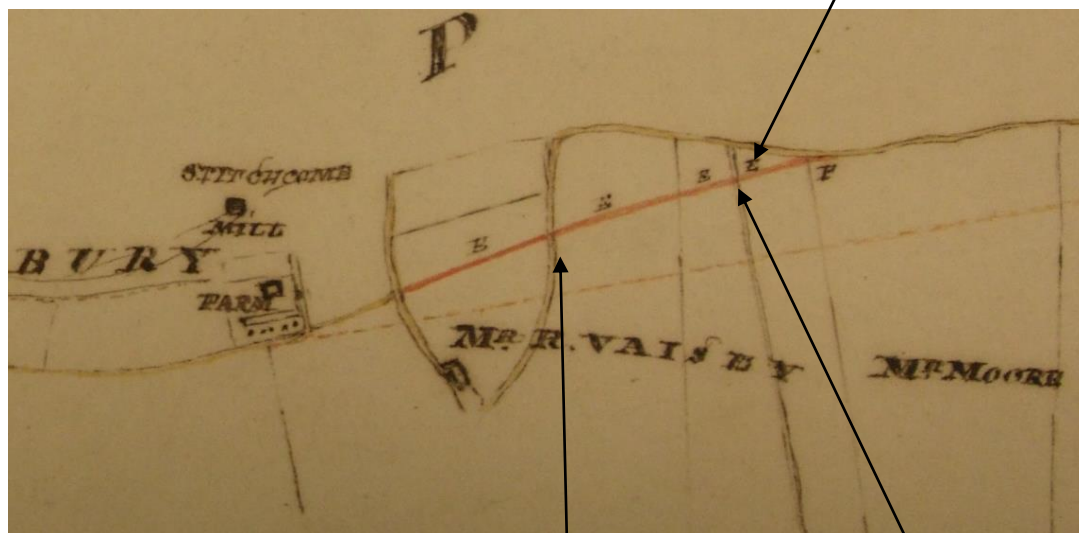
The London and Bath Turnpike Trust was originally set up by Act of Parliament in the early 1700s and extended several times as the extent of the turnpike increased. The Act providing the Trust with powers covering the date of this plan was 7 -8 Geo IV c52 (1826/1827) and this deposit covered the area between Marlborough and Hungerford. The section of the proposed route that is of interest here leads east – west through the Axford area crossing the claimed route at its northern end between A and B.

10.39 The Book of Reference was deposited with the Clerk of the Peace of the County of Wilts on November 30<sup>th</sup> 1832 and is entitled:

*Book of reference to the map of the proposed new Turnpike Road from Charnham Street in the Parish of Hungerford through the parishes of Chilton Foliot, Ramsbury and Mildenhall to Saint Margarets in the Parish of Preshute all in the County of Wilts containing a list of the owners and occupiers of land to be passed through.”*

10.40 The book of Reference lists landowners as numbered on the map from a to m, all of the land is described as arable and there is no inclusion of any of the roads or tracks crossed by the line of the proposed new road.

10.41 The plan of “a proposed road from Marlborough to Hungerford in the County of Wilts” is also inscribed to the effect that it was deposited with the Clerk of the Peace on November 30<sup>th</sup> 1832. The claimed route (A to B) is shown passing through the land letter E (divided by the road) belonging to Robert Vaisey. Tracks are shown coloured sienna, a common convention for a road.



Coombe Way (RAMS45)

Stone Lane Way

10.42 The road does not appear to have been built on this route but would have connected Stitchcombe Farm with Mead Lane (RAMS43) in a direct north easterly direction crossing Combe Way and Stone Lane Way.

#### 10.43 **London and Bath Trust via Hungerford Deviation 1835 WSHC A1/370/21HC**

The Book of Reference and Plan were deposited with the Clerk of the Peace of the County of Wiltshire on November 30<sup>th</sup> 1835 and proposes a deviation from the Bath and London Road near Hungerford to Marlborough.

10.44 The Book of Reference identifies the owners and occupiers of land crossed by the proposed road denoted by the letters shown on the plan. The claimed route is shown passing over land belonging to Mr Vaisey and on the eastern side, Sir Fras. Burdett before coming to the land owned by Mr Moore. This reflects an additional owner to those shown on the 1832 plan with Stone Lane Way forming a division between the two owners.

10.45 Combe Lane, Combe Way, Stone Lane Way (northern end of application route A – B) and Holly Lane are shown with the northern end of Stone Lane Way being inscribed “To Axford”.

10.46 It is noted that the Books of Reference (both 1832 and 1835) make no reference to highways that the proposed route crosses.

#### 10.47 **National Parks and Access to the Countryside Act 1949**

This Act of Parliament required Wiltshire County Council (WCC) to prepare a definitive map and statement of public rights of way. The means by which it should do this were strictly prescribed and the process started with WCC requiring Parish Councils to complete a survey of public rights of way in their area and to complete details relating to them on a map and parish claim card. This happened in the period 1950 – 1952.

10.48 Despite definitive maps only recording footpaths, bridleways and roads used as public paths (RUPPs) the memorandum distributed to parish councils instructed how public paths should be distinguished during this survey and detailed that a public carriage road or cart road (or green unmetalled lane) used mainly as a bridleway should be recorded as a Carriage Road Bridleway – a CRB.

#### 10.49 **Mildenhall Parish Council Parish Claim**

The southern end of the claimed route (F to G) is currently recorded in the definitive map and statement as footpath Mildenhall 16 (part of a longer path linking the A4 with Coombe Farm and Combe Way in the north). This right of way was identified by Mildenhall Parish Council as a Carriage Road Bridleway (C.R.B.) in the parish survey and described as:

*“From London Road via Puthall Park to Stitchcombe following parish boundary through Hill Copse and corner of East Croft Coppice.”*

The letters CRB have been added above this text and the proposed statement on the card reads:

*“Axford Lane. C.R.B. from the southern end of spur road u/c 5085 at entrance to Combe Farm leading SE along the Ramsbury Parish boundary through East Croft Coppice and Putall Park to A4.”*

10.50 Under the heading “Nature of Surface” the following description is given:

*“Tarred with loose gravel for light traffic, deteriorates into narrow footpath just beyond Combe Farm, develops into a grass track (muddy in wet weather) near Oxleaze Copse, then into a narrow footpath at Hill Close and finally broadens into a track suitable for cars.”*

Under the heading “Observations” the following is given:

*“By taking short cuts it becomes a narrow footpath but in several places there is a better road which goes further around.”*

10.51 It is therefore clear that the route of MILD16 was originally claimed as a road used as a public path and that the parish council considered the section south of Hill Close (parts F to G of the application route) to be a track “suitable for cars”. Evidence supports that WCC supported this as the draft map and statement both showed the route as a RUPP and CRB respectively.

**10.52 Marlborough and Ramsbury Rural District Rights of Way Survey 1951  
Statement required under Section 32 WSHC G8/250/3**

This type written draft statement gives (page 77):

*“16 C.R.B. Axford Lane. From the southern end of spur road u/c 5085 at the entrance to Combe Farm leading south-east along the Ramsbury Parish Boundary, through East Croft Coppice and Puthall Park to the London – Bath road, Trunk Road A.4, on the Little Bedwyn Parish Boundary”.*

However, the statement was altered by hand to strike through C.R.B. and insert F.P. and to add the words “...and south south east along the edge of...” Puthall Park.

10.53 Following the publication of the draft definitive map and statement objections to it were received by WCC. In many cases the council sought to resolve objections by agreement though in many cases the matter was decided at an inquiry into objections to the draft map and statement. In this instance it is known that an objection to a number of paths, including this one, was raised by the Forestry Commission and that the one relating to this path was upheld, leading to the status being recorded as footpath in the provisional and final definitive map and statement.

**10.54 Draft Map Inquiry Decision WSHC F2/271/8**

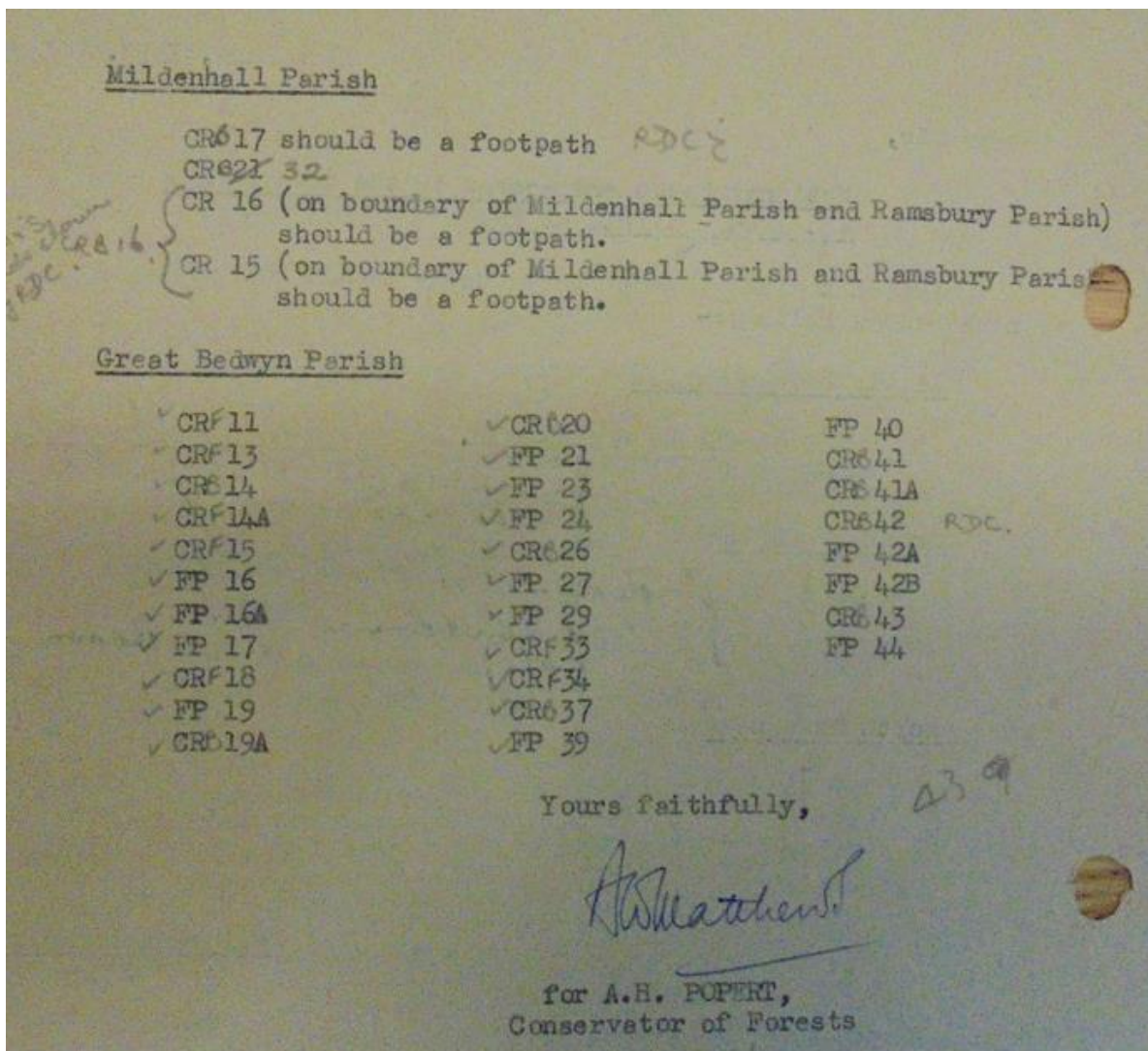
This document confirms that the modification to footpath status was the result of the Savernake Estate raising this and the Parish Council agreeing.

10.55 **Letter from Forestry Commission WSHC F2/271/8**

The alteration of the status of the recording of the path as a footpath despite the parish council's original claim relating to the path as a public road warrants the re-investigation of the Forestry Commission's original objection.

10.56 In this letter the Forestry Commission objected to 43 paths shown on the draft map. The affected parishes were: Great Bedwyn, Mildenhall, Little Bedwyn, Ramsbury and North Savernake. No detail is given of the nature of the objection in all but 4 instances and it is considered that the inclusion of detail in those 4 objections is important and does appear to have been ignored by those ultimately making the decision to amend the recording of the status of the route of MILD16 to footpath.

10.57 A pencil note of unknown origin (but likely to be contemporary) on the letter confirms that the objection may only have related to part of the track and not to the north and south ends, which were surfaced and suitable for cars or light traffic (parish claim) and were recorded in the Council's Highway Record as a highway maintainable at public expense.





10.58 The objection clearly only relates to that section of MILD16 on the boundary of Mildenhall Parish and Ramsbury Parish, there being a deliberate exclusion of that part bordering Little Bedwyn Parish. However, the whole of MILD16 was altered to FP.



## 11 Category B Evidence

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

11.1 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and generally represented one tenth of production. The system was both unpopular, cumbersome and increasingly unjust as the industrial revolution gathered pace. The Tithe Commutation Act of 1836

sought to commute these tithe payments in kind to annual rent-charges. Parliament appointed a three man commission to direct a staff of assistant commissioners, valuers and surveyors who mapped, valued and apportioned rent charges among thousands of separate parcels of the titheable land in different states of cultivation.

- 11.2 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 11.3 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians by Roger J P Kain and Hugh C. Prince*) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.
- 11.4 Roger J P Kain and Richard Oliver in *The Tithe Maps of England and Wales* at page 23 note that the portrayal of features on tithe maps is very variable across parishes and that advice to the privately commissioned surveyors was itself imprecise and that although the official instructions required that surveyors should include such detail on their maps as it is usual to find on estate maps, there was no statutory requirement to do this.
- 11.5 There are however general conventions that are observed and at page 24 Kain and Oliver observe that:

*“Roads are usually shown on tithe maps as they normally bounded individual tithe areas. Only very rarely is their status as public or private indicated with any certainty, though the general convention of colour filling public roads in sienna is often followed.”*

*“Foot and Bridleways ...are sometimes explicitly annotated as such, but more usually they are indicated by single or double pecked lines.”*

11.6 **Ramsbury Tithe Award 1842 WSHC T/A Ramsbury (also D/1/25/T/A Ramsbury)**

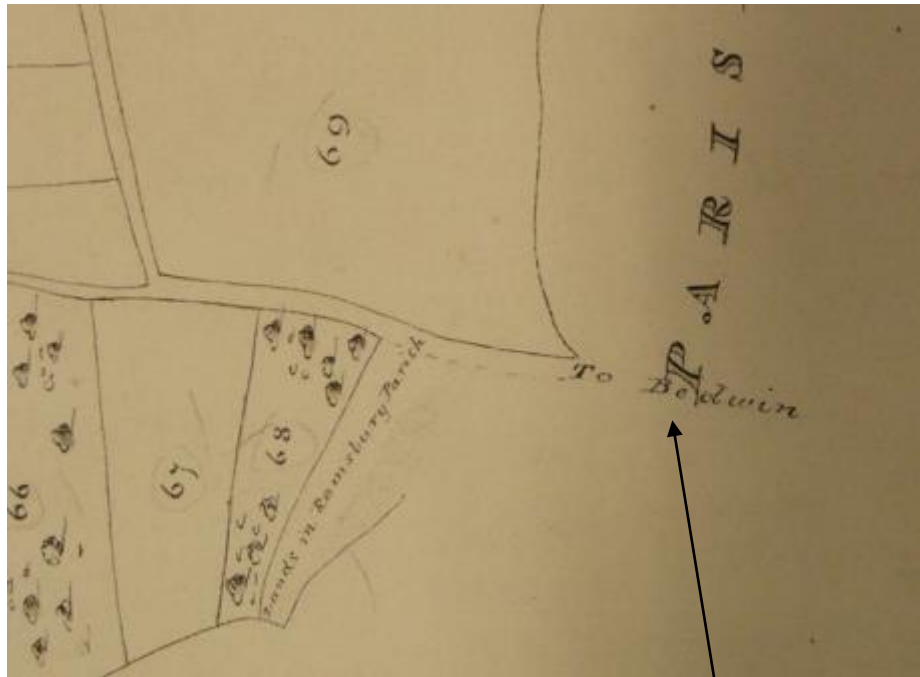
Officers have viewed the copy held by the Wiltshire and Swindon History Centre and the applicant has also adduced the copy held at The National Archive act ref. IR30/38/224. This section refers to the WSHC copy. The apportionment is accompanied by two maps entitled “Map of the Titheable lands in the Parish of Ramsbury Wilts in Two Parts”. The maps are drawn at the scale of 6 chains to one inch and stamped by the Tithe Commission Dec 20 1842 and certified by Wm Blamire and Rd Jones that the two part map is the one referred to in the apportionment. The map is further signed by Anneurin Owen Assistant tithe commissioner and later signed and dated June 5 1843 and 01/4/44. The second

map is entitled “*Skeleton map of the Parish of Ramsbury in the County of Wilts on a reduced scale showing the situation of the Titheable Lands in 2 parts. Part 2*”

11.7 The claimed route is clearly shown on both plans as an un-numbered route, excluded from the apportionment of tithes and marked “to Bedwyn” at its southern end on the map marked Part 1 and “from Bedwyn” at the southern end on Part 2.

11.8 Part 1



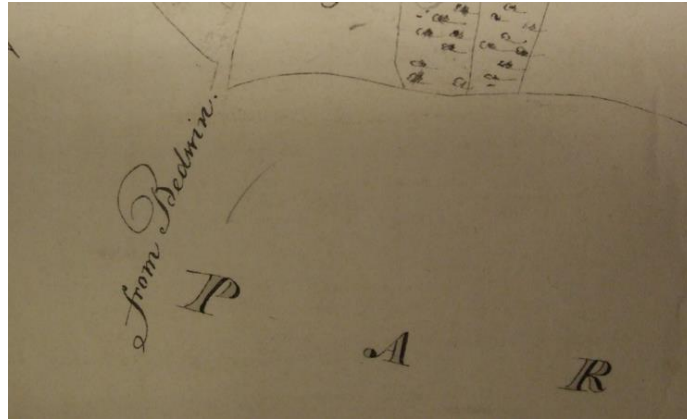


Detail of southern end Part 1 map

### 11.9 Part 2 (skeleton map)

The claimed route is shown as in Part1 except for the inscription at the southern end reads "From Bedwin" on the Bedwyn side of the parish boundary.





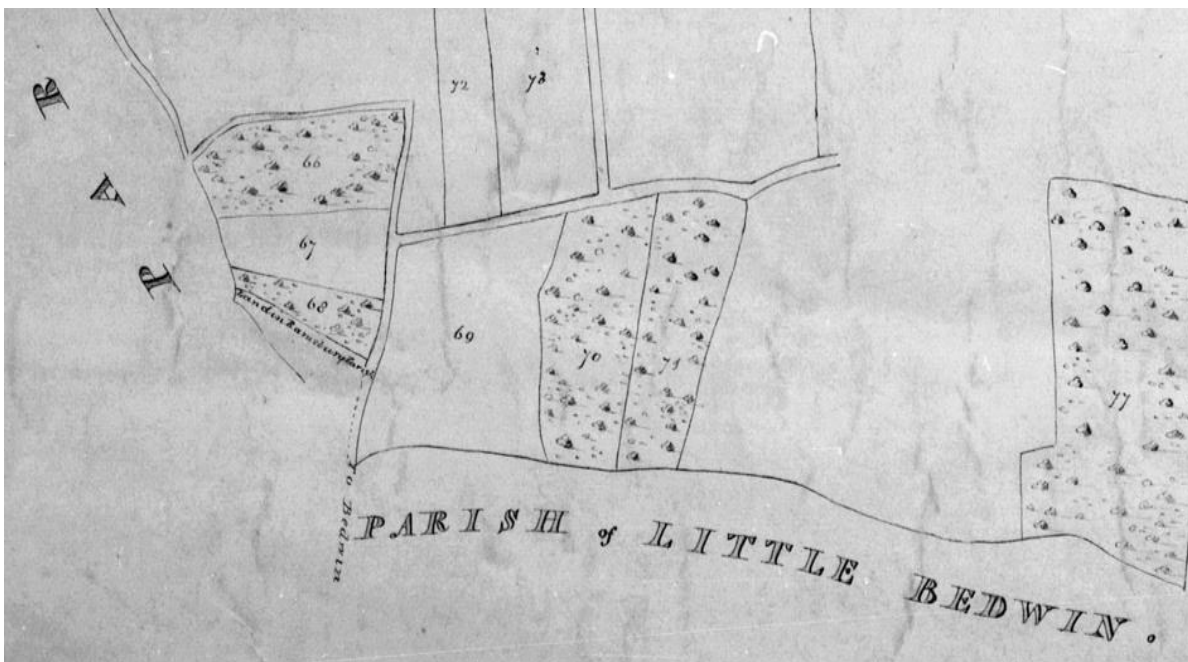
Detail of southern end of Part 2 map

11.10 It is the style of the map to show destinations or directions where roads leave the parish (e.g. "From Marlborough" "From Mildenhall" "To Ramsbury").

**11.11 Note on the Kew copy of the tithe apportionment and map IR30/38/224**

The applicant adduces this copy of the tithe map. Roger J P Kain and Richard R Oliver in the book "The Tithe Maps of England and Wales" list this as having an apportionment dated 03.12.1841 covering 2051 acres of the parish. The map is quoted as "1842?" at the scale of 6 chains and in 7 parts and on a reduced scale.

11.12 The claimed route is shown unnumbered and hence not included specifically in the apportionment document though likely to be part of the "Roads, Water and Waste 53 acres – 7" calculation of land on which no tithe is payable. The southern end of the claimed route is marked "To Bedwyn" in the same manner as the copy held at WSHC.



Detail of southern section "To Bedwin"

## 11.13 Other Category B Evidence

### Inland Revenue Finance Act 1909/1910 Records

In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was usually carried out by Inland Revenue Inspectors working in an area of the county of which they were knowledgeable. Every individual piece of land in private ownership was recorded and mapped and, because tax was to be levied based on area, highways and common land were generally identified and included in the documentation.

- 11.14 The working copy of the Finance Act plans held at Wiltshire and Swindon History centre (WSHC) have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and provide the most accurate record of the landscape that we have for this area at that time.
- 11.15 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property was diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-inforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.
- 11.16 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that "*No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority*". Section 25 states that "*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 fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and...[other exclusions]*". Details relating to s.25 reductions are found in the Valuation Books, records of any exclusions resulting from s.35 can be seen on the plans where the routes are shown excluded from hereditaments.

### 11.17 Finance Act 1909/1910 Records for the Claimed Route

**Map Sheets: 29.11 (XXIX.11) and 29.15 (XXXIX.15)**

**TNA Kew ref: Record copies IR 125/11/352**

**WSHC ref: working copies L8/10/29**

Both the record and working copy plans show that the claimed route between points A and B (Stone Lane Way) has been excluded from the survey by leaving it

uncoloured. Additionally, 'broken braces' have been drawn on the map confirming its exclusion from the surrounding hereditament no. 484.



Uncoloured route and broken braces

11.18 After point B the route is no longer excluded from the hereditaments and shown coloured in the same manner as no. 184. Sheet 29:15 was missing from the WSHC records so it has not been possible to see how the southern end of the route was portrayed.

## 12.0 Category C Evidence

Evidence in this category includes local government records (i.e., parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the

protection of public rights and assets and is subject to public scrutiny. Includes bodies whose function is the highway authority. These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

12.1 Records in this category can be difficult to identify as they are often contained within minute books or written records rather than depicted on maps or plans.

## 12.2 **National Parks and Access to the Countryside Act 1949**

**NB part of this evidence is also included at paragraphs 10.47 to 10.58 including further details which led to the finalised definitive map and statement in 1952**

Section 27 of the National Parks and Access to the Countryside Act 1949 required Wiltshire County Council (WCC) to carry out a survey of all lands in their area (with some exceptions) over which a right of way is alleged to exist. Section 28 required the authority to consult with parish and district councils and ultimately to compile a draft definitive map showing the public rights of way that existed or were reasonably alleged to exist.

12.3 WCC required parish councils to conduct their surveys in the period 1950 to 1952 and records relating to these parish surveys have survived and are held by the Rights of Way team at County Hall.

12.4 Parish Councils were sent OS 1:10560 sheets and a number of blank parish claim survey sheets to complete.

## 12.5 **Ramsbury Parish Council**

The only Right of Way (RoW) in the area of the claimed route is shown by a thin pencil line coincident with the RoW that is now recorded as RAMS9B (including section of claimed route D to E). The parish council do not appear to have used symbology to depict claimed RoWs and in many cases on their parish claim cards fail to give an answer when asked to describe the way ("Footway, Bridleway etc"). In the example of no. 9, no status is given. No other part of the route A -B-C – D and E-F is claimed by the parish council. The date of the survey of path no. 9 is given as February 1951.

## 12.6 **Mildenhall Parish Council**

Where the claimed route passes through Mildenhall Parish (i.e.between points F and G on the application map) Mildenhall Parish Council have shown it as a solid red line labelled "16". The parish claim card (survey date 19 January 1952) records it as a CRB (Carriage Road Bridleway) leading "*from London Road via Puthall Park to Stitchcombe following Parish Boundary through Hill Copse and corner of East Croft*



*Coppice*". It is described as having a surface "Tarred with loose gravel suitable for light traffic, deteriorates into narrow footpath just before Coombe Farm, develops into grass track (muddy in wet weather) near Oxleaze Copse, then into a narrow footpath again at Hill Close and finally broadens into a track suitable for cars." "No gates etc". The surveyor observed that "By taking short cuts it becomes a narrow footpath but in several cases there is a better road which goes further round."

## 12.7 Marlborough Highway Board Survey of Roads 1865 WSHC G8/1/28

Arising out of the Highways Act 1862, highway boards were the highway authority for the area and took over the duties of the parish imposed by the 1835 Highways Act. The power to form a highway board was executed by the Justices of the Peace at Quarter Sessions. In most cases the duty for rural roads remained with the highway board until the creation of Rural District Councils as a result of the Local Government Act 1894.

12.8 The Marlborough Highway Board survey of roads in the area is dated 1865 and is a detailed hand written survey with the following headings:

*Parish*

*Tything*

*Roads*

*Remarks on present condition of Roads*

*Estimated mileage*

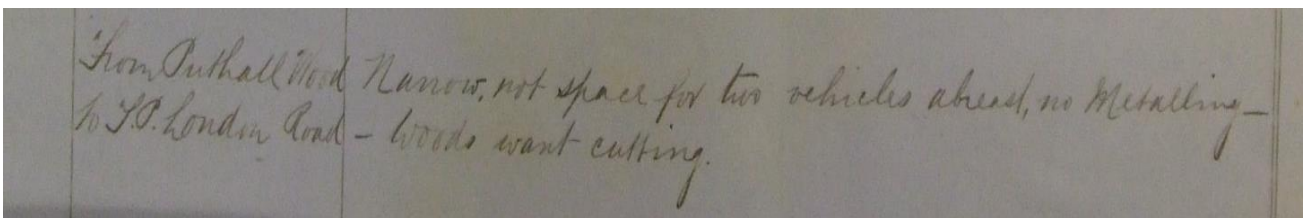
*Incidental (?) and contingencies*

*Estimated cost per tything*

*Estimated cost per parish*

12.9 The original document is supplemented at WSHC G8/1/28 by a typed transcript of the entries.

12.10 Under the Parish of Mildenhall the southern section of the claimed route (F to G MILD16) is recorded as being " From Putall Wood to TP London Road" "*narrow, not space for two vehicles abreast, no metalling. Woods want cutting.*"



12.11 Under the Parish of Ramsbury, Axford Tything, a road is surveyed described as "Putall Road to Holly Corner" "*Green Drove, ruts filled with unbroken flints*". It is not clear where Putall Road is though it is likely that Holly Corner is the corner where Holly Lane meets a road that links it to Putall Road. If this is the case, then the road referred to is North Lane (a section of RAMS9B) and the road it links to at the

western end is either the claimed route (which links Axford with Putall) or the Putall Wood road referred to at 12.10 (and now recorded as MILD16). In either case the evidence suggests that the section of the claimed route C to B was a road or, at its highest, the claimed route from A to G was a road.

12.12 Additionally, a third road in this area was surveyed by the Highway Board. Again in the parish of Ramsbury and in the tything of Axford, the road described as “*Stone Lane from Stitchcombe Corner to Holly Lane*” is described as “*very rough*”. The only route linking Stitchcombe with Holly Lane (today part of RAMS44) is the east west route Mead Lane (as awarded), strongly suggesting that in 1865 Stone Lane referred to Mead Lane. In any event, this entry does not appear to offer evidence for the claimed route but as it was adduced by the applicant it has been considered here.

**12.13 Marlborough Rural District Council Rights of Way Map 1905 WSHC G8/250/1  
Marlborough Rural District Council Rights of Way Report 1905 WSHC G8/250/2  
Marlborough Rural District Council Minutes 1906 WSHC G8/100/2**

Rural District Councils were formed as a result of the Local Government Act 1894 and had duties related to the maintenance of rural roads. At the time these records were produced, they were the highway authority. The map associated with this survey is a large scale leather bound map engraved on the cover with the name of the surveyor J W Brooke. The map carries the following inscription:

*“This map was prepared during the months of August and September from information collected at Parish Meetings and from references to old maps by the District Road Surveyor. Joshua W Brooke M.S.I. Rosslyn, Marlborough, Wilts. 30/09/1905.”*

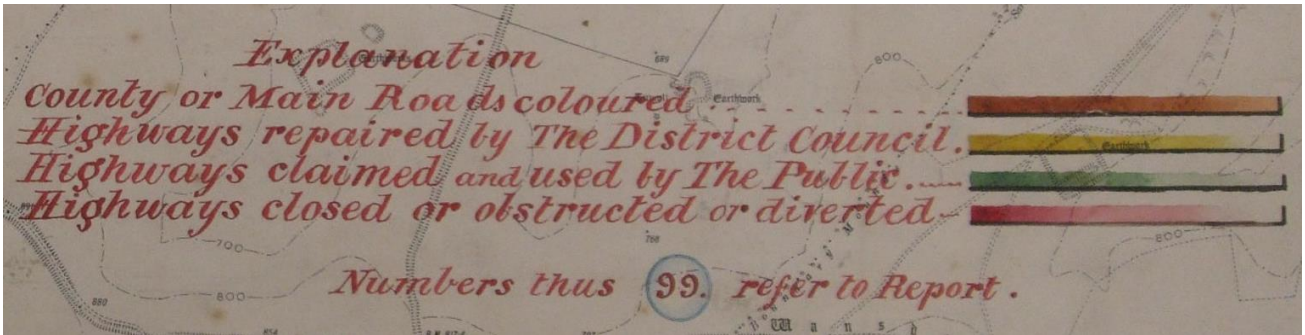
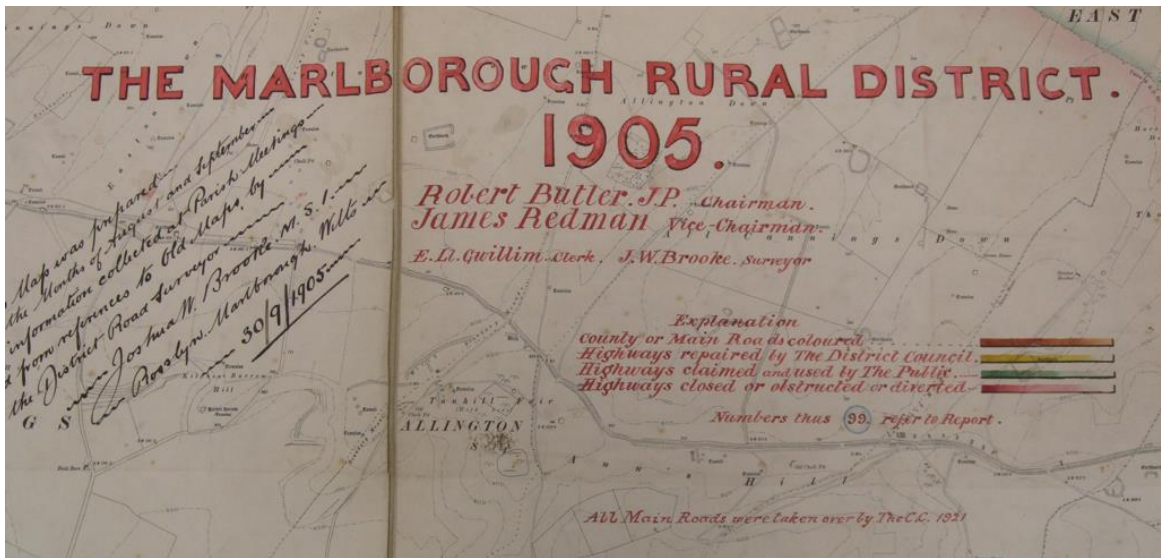
It is further inscribed with the names of the Chairman, Vice Chairman, Clerk and Surveyor and carries a key (“*explanation*”) recording County or Main roads, highways repaired by the district council and highways closed or obstructed or diverted. It has been updated by an inscription reading:

*“All Main Roads were taken over by The C.C. 1921”.*

12.14 The map does not cover the parish of Ramsbury and has at its eastern extent the parish of Mildenhall so the evidence relates only to that part of the claimed route coincident with MILD16 (i.e. F to G).

12.15 The section F – G (“Axford Lane”) “*no 34*” is shown coloured yellow as a “*Highway repaired by the District Council*” with the preceding section through the wood coloured red as a “*Highway closed or obstructed or diverted*” before continuing as a yellow highway north.

12.16 It is noted that highways coloured green are generally footpaths and bridleways making it clear that in 1905 section F to G was considered to be a road.





12.17 The route is numbered “34” on the map and the key to the map advises that numbers’ refer to report’.

**12.18 Marlborough RDC Rights of Way Report (1905)**

This is the report referred to in the map above. The report was produced by J W Brooke, Marlborough RDC Surveyor and has the following as an introduction:

*“To THE MARLBOROUGH RURAL DISTRICT COUNCIL*

*Chairman and Gentlemen,*

*Having on the 6<sup>th</sup> May called your attention to the fact that several rights of way in your District had been disturbed and others obliterated, I was deputed to prepare a*

*Map of the District in relation to the matter. I now beg to submit the results of my efforts, hoping that I may not only give you satisfaction but that the Public may derive some advantage and information from the particulars I have collected.*

*I trust Gentlemen you will remember that I am paid by the Public to consider their interests and to endeavour to preserve their rights; therefore it follows that I view the matter in hand from their standpoint, but I hope that those who come within the scope of my investigations will not take umbrage at that which I write, because I am doing as I am told.*

*The information I beg to submit I have collected with care from the following sources:*

1. Award Maps: - Avebury  
Fyfield  
Lockeridge  
Manton  
Ogbourne St George  
The Overtons
2. The Awards of the above and  
Ogbourne St Andrew
3. Tithe Maps: Broad Hinton  
Fyfield  
Lockeridge  
Manton  
Mildenhall  
Ogbourne St Andrew  
The Overtons  
Savernake N  
Savernake S
4. Parish Maps Broad Hinton  
Mildenhall
5. Railway Maps Manchester & Southampton 1845 -6  
do. Do. 1846-7  
Berks and Hants Extension  
The Marlborough Railway  
The Swindon Marlborough & Andover 1872
6. Estate Maps Manton  
Mildenhall  
Savernake N  
Savernake S

7. Parish Meetings: Avebury  
Broad Hinton  
Lockeridge  
Manton  
Ogbourne St George

8. Various sources: Old Inhabitants  
Old Schedule of divers Roads  
Local knowledge

*In these days of keen competition and rapid locomotion, it is a growing necessity to keep all tracks open, for, indeed if a single track is lost in each decade the Ruralness of the District will soon be gone, and our descendants will have only dusty Roads to travel over and greater distances to cover from point to point. The necessity, too, of keeping open all Sheep Drovers is of very great importance, for a flock of sheep on a road is a source of danger to motorists. I would ass that motor Traffic is increasing at an alarming extent; on the Bath Road we counted during the Day (Monday September 18<sup>th</sup>) 110 cars not counting motor cycles; and when cars are cheaper and motor traction more general you can, perhaps, better imagine the state of the roads that I can describe.*

*It is most necessary that the Parish Council acquaint you immediately of any Interference with their accustomed or acquired rights of way, and be it rememebred That any act or obstruction, without lawful authoirty, upon any highway which Renders the same less commodious is a public nuisance at "common law", and it Is no defence that the obstruction is only on part of the highway and that sufficient Space is left for public traffic.*

*To raise a stile, to erect a gate, even if the gate be not locked, is a "nuisance", for the public right exists, and either erection is an injury to that right.*

*I do not for one moment think that you can order the removal of all gates across the highways, and I think each case must be decided upon its own merits when time and circumstances must be considered. If through insufficient reason and evidence you cannot, order the removal of an old gate, you can always prevent the erection of new ones. You cannot sanction a nuisance, i.e. obstruction. The law is very clear, and it is your duty to protect all public rights-of-way, not only in your own District, but those that adjoining; if you fail in this duty your Parish Councils can petition the County Council, who legally can incur any expense (the same as you may) even on a most*

*Doubtful case. Before a right-of-way can be stopped up, in full, in part, or diverted, You must obtain the Parish Council's consent, then give your own, and go through All the formalities prescribed by the Act.*

*Rights-of-way which were obstructed before the passing of the Local Government Act, as well as those that have been obstructed since, can be opened up, even Though the same may be destroyed; and the rights-of-way closed legally by order Of Quarter Sessions can be opened up again upon proper representation that the Same are now necessary.*

*Before ordering the removal of an old gate, it is necessary to know how the Highway Was dedicated, for an Owner can dedicate a Highway to the Public and reserve Certain rights as to the erection of gates, as to ploughing it up, or to restrictions as to Class of traffic.*

*Roads laid out through an Estate for the use and convenience of the inhabitants and Tenants on the Estate are not thereby dedicated to the Public, but the rpesumption Arising from long uninterrupted user of a way by the general Public is so strong as to Dispense with inquiry as to whom the soil was vested in as the Owner.*

*The length of time to acquire the right of user varies from four years upwards, and I Consider the Ordnance Map 1883-5, alhtough each sheet carries the marginal note "The representation on this map of a Road, Track or Footpath is no evidence of a Right-of-way", yet it carries enormous conviction, for the tree classes of Highway Mentioned, if shown on the Maps as in use to-day, a period of some twelve years User is fully established. The Highways shown on the Inclosure Awards are the Strongest evdiences of reputation and direction, but not necessarily their widths; but If a width is awarded the Public can claim the whole width free of all obstructions.*

*Tracks running along Parish Boundaries I consider are indisputable – the tracks Following the boundaries or vice versa; but the tracks worn by labourers to and from Their work, or by the Doctor, Parson, Baker, Farmer, or Surveyor may reasonably be Disputed.*

*I would advise that all the tracks you open up have guide posts at each end, others if Not of their awarded widths have some indication of the same, and the gates that You cannot remove have a metal plate on the top bar indicative of a Public Highway.*

*Your District being extensive it would be wise to work in conjunction with the Parish Councils you represent in your administration of the District, for it would mean much Work for a single individual to carry this matter to a successful issue.*

*The map I now have the pleasure fo submitting to you shows some 1600 miles of Paths, tracks and roads, and to each class of Highway I have given a distinctive*

*Colour, viz. - all Main or County Roads brown, all District Roads and Paths repaired under the District Rate yellow, all tracks in use green, and all tracks distrubed, obstructed or destroyed red. All parishes are coloured, and all bridges, drocks, stiles fences upon which public monies have been spent are shown, the extended Borough area is also shown."*

Document then lists parishes surveyed with details of routes numbered on the map. Avebury, Berwick Bassett, Broad Hinton, Fyfield, East Kennett, Mildenhall, Ogbourne St Andrew, Ogbourne St George, East and West Overton and Lockeridge, Preshute, Savernake North and South, Winterbourne Bassett and Winterbourne Monkton. The Report ends:

*"Having brought a somewhat lengthy Report to an end, I have to thank you for your great consideration in allowing me the time in which to prepare t, and I honestly hope that this time I have given to the work will be of some advantage to the Public.*

*Gentleman, I remain Your obedient Servant, Joshua W Brooke, M.S.T. District Surveyor.*

*October 5 1905  
Rosslyn  
Marlborough"*

*"Mildenhall*

*31. A Footpath from Sound Bottom to Mildenhall Warren is fenced across, and its Latter part towards Hill barn to the border of the Parish is disturbed.*

*32. The grass track on the top of Sound Hill, which leads down the same towards White Hill, is claimed as Public, but the Estate considers it Private. Mr W. E. Piper Rceently erected a gate across this track, but he has since moved the same at my advice.*

*33. An old footpath is claimed from Axford Shoot to Thicket Copse; the same is now Ploughed up. This path is of no Public utility.*

*34. The Road leading from Stitchcombe, via Puthall Park, to the London Road, has Been disturbed; this road should follow the Parish Boundary through Hill Copse and A corner of East Croft Coppice. Part now MILD16.*

*35. The road known as Parson's Pit Road is considered by the present Rector, and Was also by his late Father, as being a Public Bridle Track. It has two gates across it.*



36. A Road, little known by the Public, commences closs to Poulton Farm, and terminates at Ray Bridge, Ogbourne St Andrew. It has five gates across it, three of which are on lands in the occupation of Mr T Lavington and two on lands belonging to Major Edwards.

37. The footpath from Poulton Bridge towards Mildenhall Church is shown on the old Maps, and the Swindon, Marlborough and Andover Deviation Plans 1878, give it as A Public Footway, yet no provision has been made to enable the Public to get up And down the dangerously steep embankment; to add to this obstruction there are Two railway fences also.

*The Company should be required to find suitable stiles, steps and rails."*

#### **12.19 Marlborough Rural District Council Minutes 1906 WSHC G8/100/2**

At a meeting held on 22<sup>nd</sup> September 1906 the Report of Mr J. W. Brooke, District Surveyor, presented to the Rural District Council, 7<sup>th</sup> October 1905 was considered, parish by parish. Extracts from the printed report have been pasted into the minute book with the decision written alongside.

*"Upon the motion of the Chairman it was Resolved that the Council confirm the decisions arrived at by the Council in committee upon the subject of Roads and Footpaths within the District as follows: -*

*Parish of Avebury.....Decisions by the Rural District Council with reference thereto Mildenhall*

*31. No action required*

*32. No action required*

*33. No action*

*34. No action required*

*35. No action required*

*36. Notices to be erected on gates showing public right*

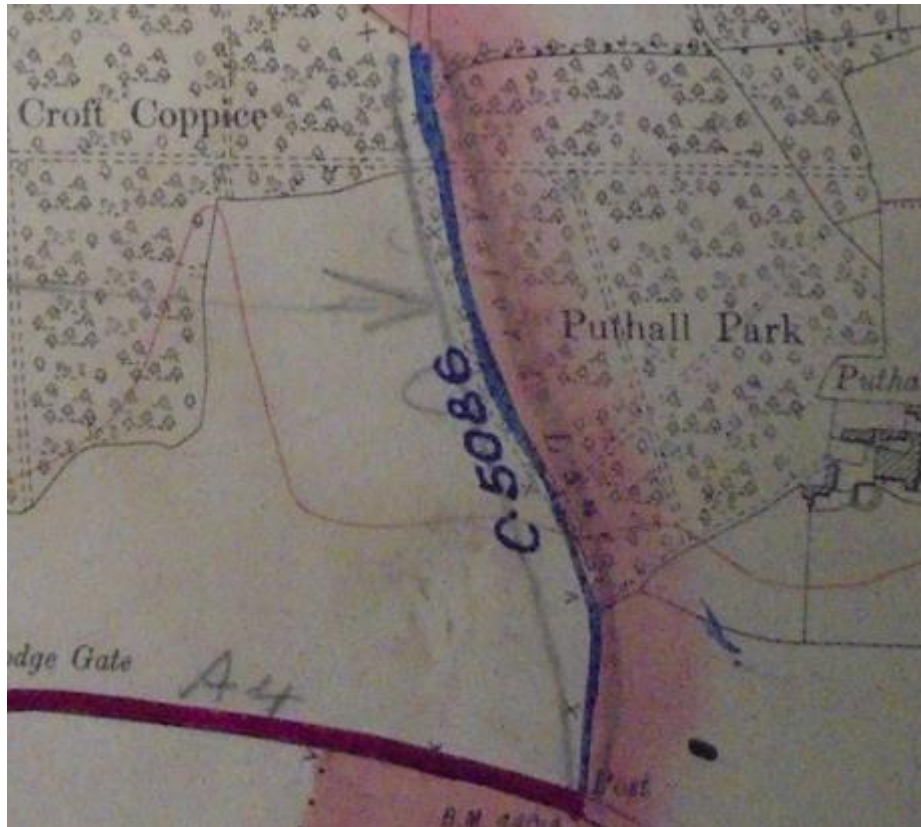
*37. Referred to Parish Council to take action"*

#### **12.20 Marlborough Rural District Council Takeover Map 1929 Held by Rights of Way, County Hall, Trowbridge**

The Local Government Act 1929 required the maintenance liability of rural roads to be taken over by the County Councils. In Wiltshire District Surveyors came into the offices of the County Council and copied details of the roads that they maintained and were handing over onto Ordnance Survey 1:10560 maps. These maps recorded roads in red, yellow, blue and brown inks. The maps have been subsequently copied and amended over time and form the basis for the Council's Highway Record and List of Streets.

12.21 MILD16 is shown coloured blue as an unclassified road (c.5085) ending at the parish boundary with Ramsbury. The continuation of the route is in another Rural District Council area. After a short gap, the road (c.5086) continues north to Stitchcombe and beyond as both a brown and a blue road.





**12.22 Ramsbury Rural District Council Takeover Map 1929  
Held by Rights of Way, County Hall, Trowbridge**

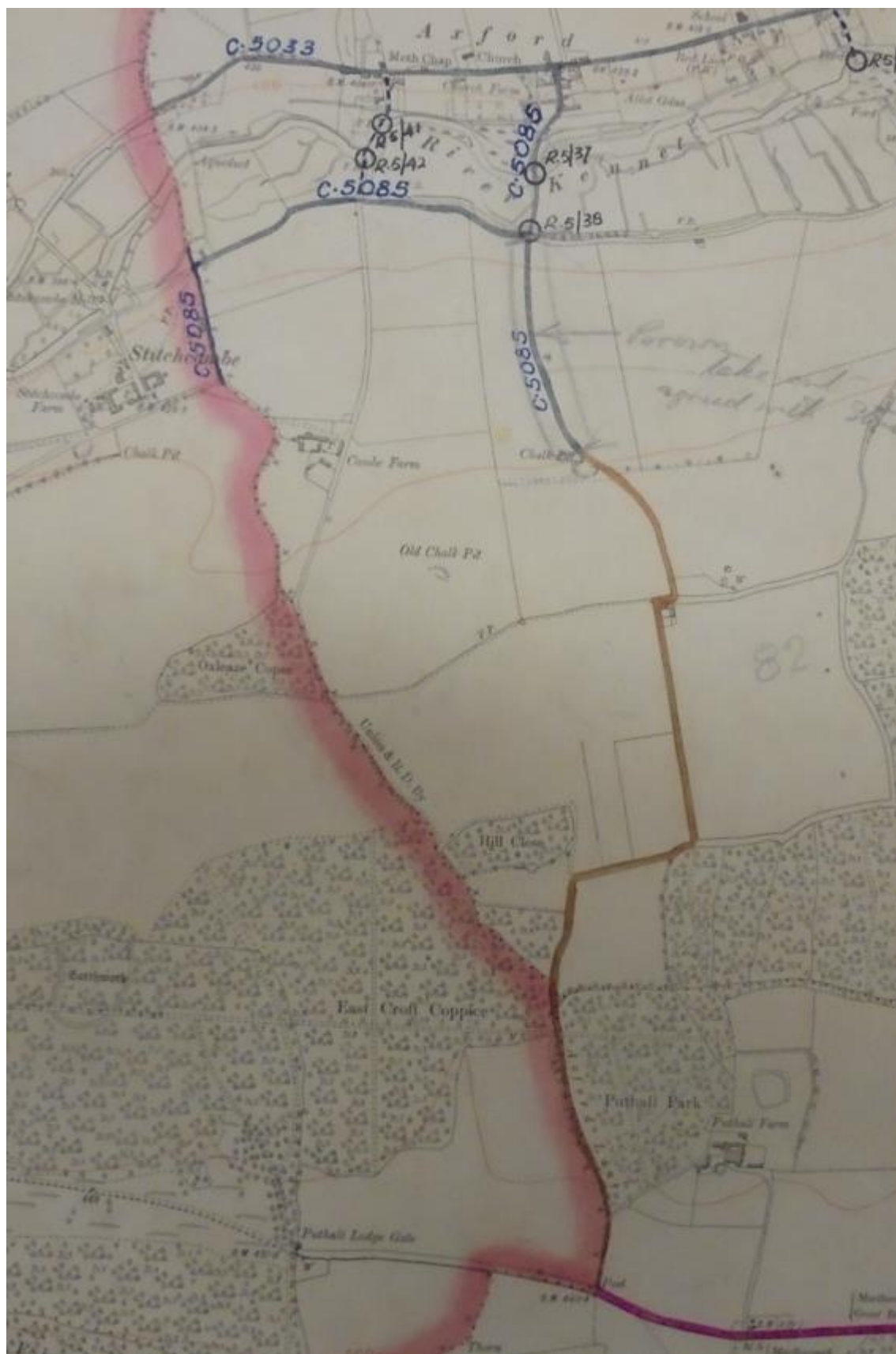
This record has the same provenance as the previous one but covers the neighbouring Rural District Council area of Ramsbury. In Ramsbury the remainder of the claimed route is shown as part blue road (C.5085) and in part coloured brown. It is noted that the Ramsbury Rural District surveyor coloured the section now recorded as MILD16 in the neighbouring RDC area as brown also.

12.23 Beside the blue section of the route (c.5085) (between points A and B on the Application plan) there is a pencilled note saying "*Brown take out*" and "*agreed with Strickland*". William Strickland was the Highway Surveyor, Sanitary Inspector and Surveyor of New Buildings at Ramsbury Rural District Council in 1915.

12.24 It is noted that this action was taken as subsequent records including Wiltshire Council's current Highway Record (record of highways maintainable at public expense) record the whole of the application route coloured brown.

12.25 A highway coloured brown in this record is considered by Wiltshire Council to be the lowest category of highway handed over as a result of the Local Government Act 1929 and on the balance of probability to be a public highway with no maintenance budget allocated.

12.26 Extract from Ramsbury Rural District Council Highway Takeover Map 1929





**12.29 Ministry of Food National Farm Survey 1941 – 1942**  
**The National Archive, Kew MAF 73/45/29**

The National Farm Survey was carried out by the Ministry of Food and provides a detailed record related to farming at that time. A number of records relating to it have been preserved at The National Archive including:

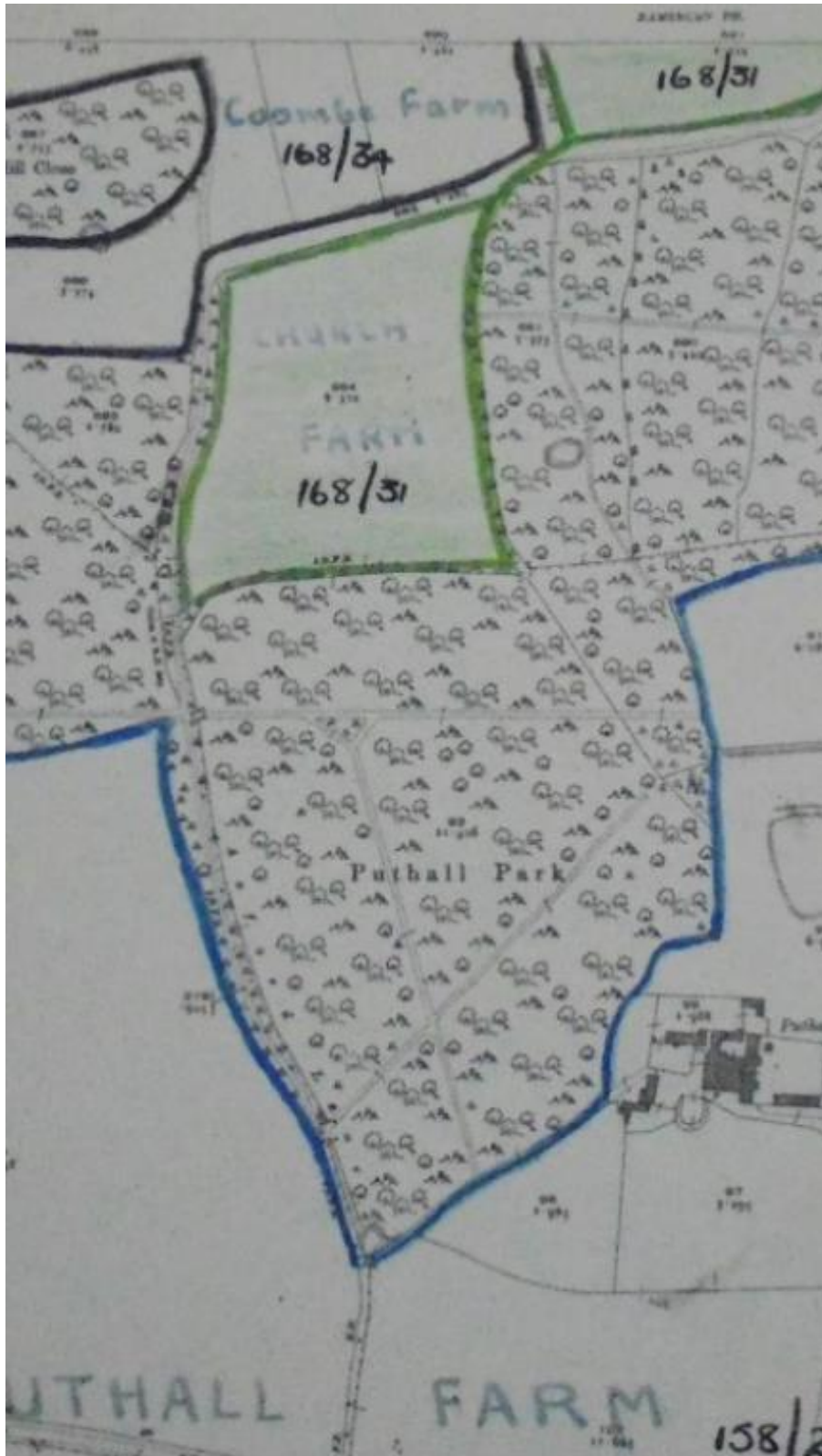
- i) A Farm Record detailing tenure and occupation and state of the farm and facilities.
- ii) A census return for 04 June 1941 detailing crop acreages, livestock numbers and information on rent and tenancy.
- iii) A map based on the Ordnance Survey 1:2500 County Series maps showing the extent of farms.

12.30 Rights of way were not depicted on the map or featured in the records and roads through farms/holdings are not excluded from the farm area even when they are clearly not a part of it (for example the A4 is shown as part of Puthall Farm). Where a farm is separated from another by a road the road is shown dividing the farms and not a part of one or the other.

12.31 In the case of the application route, parts of the route (C to E) are shown to lead between Church Farm and Coombe farm and not to be a part of them.



Sheet 29.11



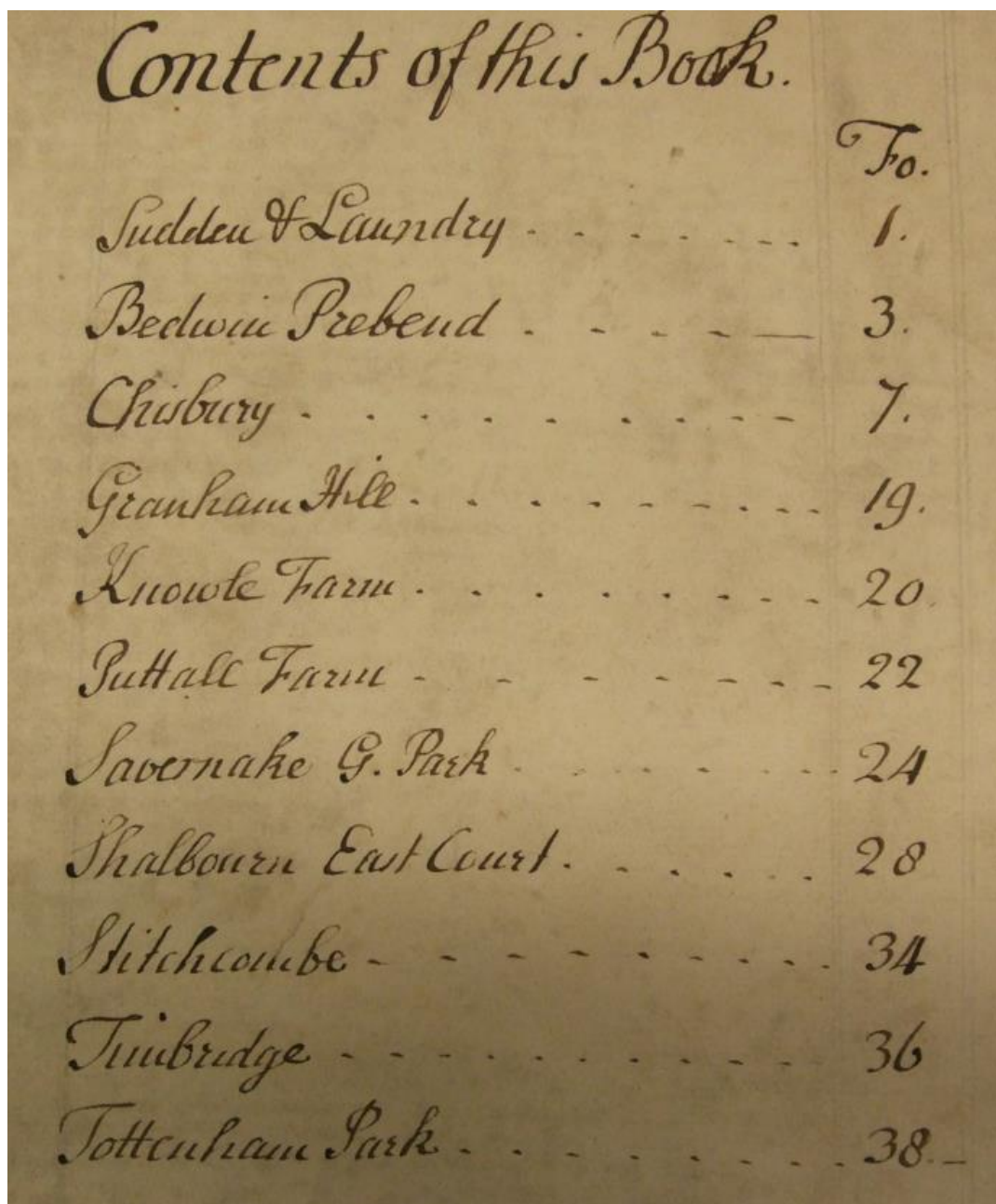
Sheet 29.15

### 13.0 Category D Evidence

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

#### 13.1 Survey of Putell Farm 1737 WSHC 1300-372MS

This document is an extensive survey of lands in the form of a leather bound book containing detailed coloured maps. Puttall Farm is detailed at sheet 22.



*Contents of this Book.*

	<i>To.</i>
<i>Suddeu &amp; Laundry . . . . .</i>	<i>1.</i>
<i>Bedwin Prebend . . . . .</i>	<i>3.</i>
<i>Chisbury . . . . .</i>	<i>7.</i>
<i>Gransham Hill . . . . .</i>	<i>19.</i>
<i>Knowle Farm . . . . .</i>	<i>20.</i>
<i>Puttall Farm . . . . .</i>	<i>22</i>
<i>Savernake G. Park . . . . .</i>	<i>24</i>
<i>Shalbourne East Court . . . . .</i>	<i>28</i>
<i>Stitchcombe . . . . .</i>	<i>34</i>
<i>Timbudge . . . . .</i>	<i>36</i>
<i>Tottenham Park . . . . .</i>	<i>38.</i>



13.2 The Puttel Farm map is titled as “an Accurate Survey of Puttel Farm for the Rt Honorable Charles Ld Bruce by C Price 1737”. It is drawn at the scale of 11 poles to one inch.

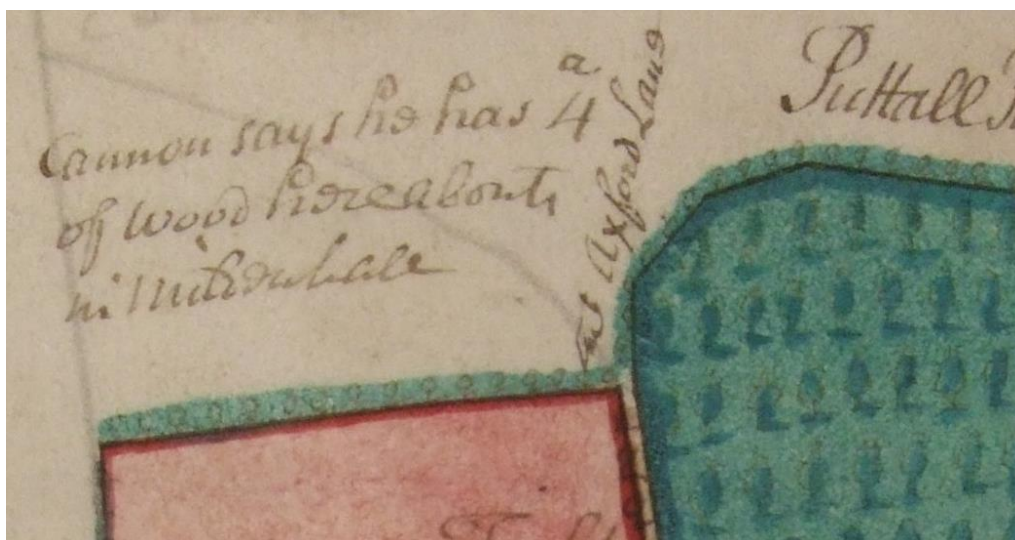


13.2 The map is annotated with detail related to land use, size of enclosures, some details of tenure. The road that is now the A4 is annotated “London Road” and shown gated at Puttall Gate. The only other road shown on the map is the section of the application route F-G (MILD16), annotated “Axford Lane” and coloured as the London Road is.

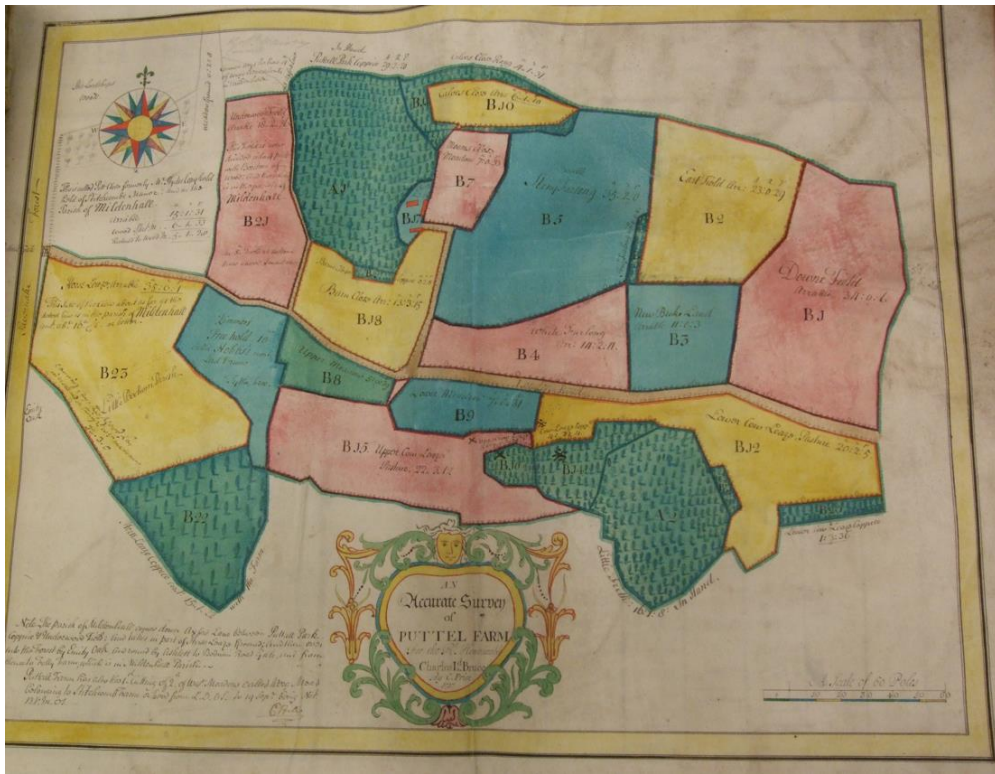
13.3 Additionally the map is inscribed as follows:

*“Note. The Parish of Mildenhall comes down Axford Lane between Puttall Park Coppice and Underwood Field; And later in part of Horse Leaze Ground; and then over into the Forest by Emity Oak and round by Ashlett to Bod?? Road Gate, and from thence to Holly Farm which is in Mildenhall Parish.”*

Underlining emphasis added.



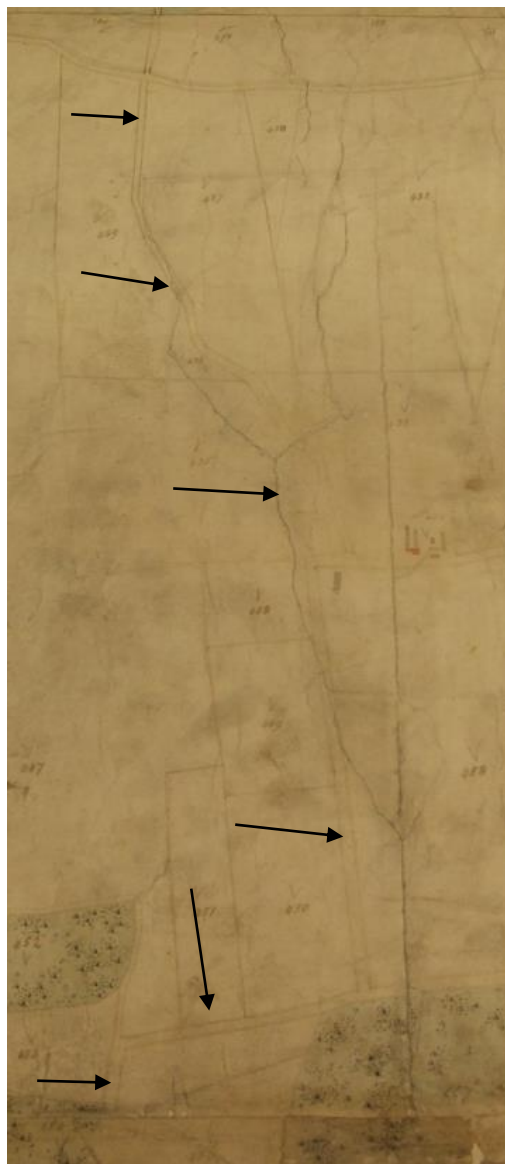
13.4 Extracts:



**13.5 Vestry Map of Ramsbury 1839 WSHC 1792/38L and Book of Ref 1792/39**

These documents are held with Ramsbury Parish Council records at WSHC in recognition of the role of the Vestry in parish matters before the advent of parish councils. It appears to be a valuation survey of the parish including a large scale map drawn at the scale of 3 chains to 1 inch. Roads are shown coloured sienna. There are two rolls entitled Eastern Division and Western Division.

13.6 The map is physically very large and has suffered considerable fading, however, the applicant route can be clearly seen as a road coloured sienna leading out of the parish in the south (i.e., entering Mildenhall Parish). Extending north to point A (in other words, the route A to F is shown in the same manner as other public roads (for example those labelled with destinations “to Marlborough”). The route is not numbered or included in the Book of Reference in common with other roads.



13.7 The map does not photograph well but the colour and direction are clear in the original.



## 14.0 Category E Evidence

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

- 14.1 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the early county maps produced by Andrews and Dury John Cary and C & I Greenwood and also those of the Ordnance Survey as all were independent surveyors.
- 14.2 It must also be considered that even when surveys produced by the Ordnance Survey were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors. The applicant has adduced a list of a considerable number of these maps and only some of them have been viewed, however, a full list of those adduced follows:

WSHC – Wiltshire and Swindon History Centre TNA – The National Archive, Kew

Year	Document	Source	Depiction of claimed route
1773	Andrews and Dury's half inch to one mile Index Map of Wiltshire	WSHC 1300/48/A-S	As minor road
1773	Andrews and Dury's 2" to one mile Map of Wiltshire	WSHC 13000/48/A-S	As minor road
1792	Robertson's 1" Survey of the Bath Road Map No. 8	WSHC AAA/912	As minor road
1793	Rennie's Survey for the Kennet and Avon Canal	ESHG 1644/34	As minor road
1801	Cary's Map of Wiltshire	WSHC Printed maps 3.2	A to F as minor road and also F to G as minor road. No connection shown.
1801	Smith's Map of Wiltshire	WSHC Printed maps 2.2	As a "Cross-road"

<b>Year</b>	<b>Document</b>	<b>Source</b>	<b>Depiction of claimed route</b>
1810	Andrews and Dury's Half inch index Map of Wiltshire Revised and Corrected	WSHC A1/524/2MS	"Cross Road"
1810	Andrews and Dury's 2" Map of Wiltshire Revised and Corrected Sheet 9	WSHCA1/524/2MS	"Cross Road"
1816	Mogg's 1" Survey of the High Roads of England and Wales Plate 182	WSHC	Section G – F as a minor road
1817	Ordnance Survey 1" Old Series Sheet 14	WSHC Printed maps 3.7	A-B, B-C, C-D, D-E, E-F as "fenced minor roads". The map has no key but see "The Old Series Ordnance Survey Maps of England and Wales, Volume III, South-central England, published by Harry Margary, Lympne Castle, Kent, 1981" Fig 6 pp xviii – xix, illustrates "Topographical conventions, not to true size, used in engraving the maps of south-central England".
1820	C & I Greenwood's Map of Wiltshire	WSHC 2667/21/16	A to south of F as "Cross Road". F to Bath Road (A4) as "Cross Road" but slightly offset from claimed route
1828	Ordnance Survey 1" Old Series Sheet 34	WSHC printed maps 3.8	A-B (section not shown on Sheet 14) as "Fenced Minor Road" – no key but reference Margery book as above.
1829	C & I Greenwood's Map of Wiltshire Reduced and Corrected	WSHC printed maps 3.8	A to F as "Cross Road". F to G may be obscured by parish boundary.
1832	Cary's half inch Map of England and Wales Sheet 18	WSHC Printed maps 3.4	A to F "Carriage Roads or Parochial roads". G to Bath Road (A4 offset – as Greenwood above).
1836	Walker's Map of Wiltshire	WSHC Printed maps 1.22	As minor road
1862	Weller's Map of Wiltshire	WSHC Printed maps 1.29	A to F as "Road", south of F "Road" is shown turning into Puttall's Farm and on to join Bath Road (A4)

<b>Year</b>	<b>Document</b>	<b>Source</b>	<b>Depiction of claimed route</b>
1874	Ordnance Survey Boundary Remark Book 5501A Little Bedwyn	TNA OS 26/11336	G to F shown as wide unnamed track (in position of Axford Lane)
1874	Ordnance Survey Boundary Remark Book 5638 Ramsbury	TNA OS 26/11126	G to F shown as wide unnamed track (in position of Axford Lane)
1876	Bacon's Map of Wiltshire c.1876	WSHC Printed maps 2.10	A to F as "Road", south of F "Road" is shown turning into Puttall's Farm and on to join Bath Road (A4)
1876	Ordnance Survey Boundary Sketch map Froxfield and Little Bedwyn	TNA OS27/5731	Shows track leading from G (A4) north to F. The track is Axford Lane.
1876	Ordnance Survey Boundary Sketch map covering Mildenhall	TNA OS 27/5756	Shows track from G north to F continuing as per claimed route away from boundary
1876	Ordnance Survey Boundary Sketch map covering Ramsbury	TNA OS 27/5767	Shows track from G north to F as claimed route
1885	Ordnance Survey 25" 1 <sup>st</sup> Edition Sheet 29/11	WSHC	A to B shown coloured with sienna carriageway. Fenced except at pit. Not shown as FP or BR. Width c.26 feet. Separately numbered and measured. B – C uncoloured partially fenced. Not FP or BR width c.40 feet. Numbered and measured separately (but with Holly Lane and Cross Lane). C-D is shown uncoloured and fenced. Not FP or BR. Width c.40 feet. Numbered and measured separately (with Holly Lane and North Lane)
1885	Ordnance Survey 25" 1 <sup>st</sup> Edition Sheet 29/15	WSHC	C-D-E-F-G (F-G named "Axford Lane") uncoloured, fenced, not FP or BR, no gates, widths vary 26 to 50 feet. All separately numbered and measured.
1889	OS 1" New Series Sheet 267 Hungerford (coloured)	WSHC Printed maps 4.40	Southern section A-B, B-C, nearly all D-E and southern F – G all shown as "Minor Roads"

Year	Document	Source	Depiction of claimed route
1890	Philips' Cyclists Map of Wiltshire	WSHC Printed maps 2.14	A to F shown as Weller's map of 1862 but described as "Cross Road"
1892 (survey 1878-86)	OS 1" New Series Sheet 266 Marlborough (Coloured)	WSHC Printed maps 4.38	A-B (part), west end D – E, E – F and north F-G all depicted as "Minor Roads"
1899 – 1922	Ordnance Survey Object Name Book – Wiltshire Sheet XXIX SE	TNA OS 35/7496	F – G "Axford Lane" verified by Col. Merriman Agent to the Most Hon Marquis of Ailesbury (occupier) as "unmetalled road...". Nearby Sawpit Drive described as "private road".
1900	Ordnance Survey 25" 2 <sup>nd</sup> Edition Sheet 29/11	WSHC	A – B – C – D all shown sep. numbered and measured (but included with Holly, Cross and North Lanes). None marked FP or BR Widths variable 26 – 40 feet.
1900	Ordnance Survey 25" 2 <sup>nd</sup> Edition Sheet 29/15	WSHC	C-D – E – F -G all shown separately numbered and measured, not FP or BR. Width 26 to 50 feet variable. F- G named "Axford Lane"
1900	Ordnance Survey 6" 2 <sup>nd</sup> Edition Sheet 29 SE and OS 6 inch Conventional Signs (1) and (2)	WSHC	All sections of application route shown as "Fenced Minor Roads". Nearly all fenced on both sides.
1903	Ordnance Survey 1" New Series 3 <sup>rd</sup> Edition Sheet 267 (Hungerford) surveyed 1872 – 1883, revised 1901 – 02	Not given	Southern part A – B, B- C, C – D, D – E (almost all) and southern part F – G shown as "Third Class Metalled Roads" or "Unmetalled Roads" – difficult in interpreting line thickness.
1904	Ordnance Survey 1" New Series 3 <sup>rd</sup> Edition Sheet 266 (Marlborough) Surveyed 1878 – 1883 Revised 1902	Not given	A – B (north), D – E (west), E – F and F – G (north) all "Third Class Metalled Roads" or "Unmetalled Roads" – difficulty in interpreting line thickness.



Year	Document	Source	Depiction of claimed route
1908	Ordnance Survey 1" 3 <sup>rd</sup> Edition Sheet 113 revised 1901-02 published 1908 railways to 1912	WSHC printed maps 4.18	Section A to B shown as 1 <sup>st</sup> or 2 <sup>nd</sup> class Fenced Metalled Road. B to G fenced 3 <sup>rd</sup> class metalled or unmetalled road.
1924	Ordnance Survey 25" 3 <sup>rd</sup> Edition Sheet 29/11 revised 1922	WSHC	All sections A-B-C-part way to D shown separately numbered and measured (though included as parts of other routes in some instances). Not marked FP or BR. Widths varying between approx..26 feet and 40 feet
1924	Ordnance Survey 25" 3 <sup>rd</sup> edition Sheet 29/15 revised 1922	WSHC	Sections from between C and D E-F-G shown separately numbered and measured. Not shown FP or BR. Width varies between c 26 feet and 50 feet. Section F – G labelled "Axford Lane".
1925	Ordnance Survey 6" 3 <sup>rd</sup> Edition Sheet 29SE 1925 and OS 6 inch Conventional Signs (1) and (2)	WSHC	All sections of the route are depicted as "Fenced or Unfenced Minor Roads".
1938	Ordnance Survey 1" 5 <sup>th</sup> Edition Sheet 112 Marlborough	WSHC Printed maps 4.17	A to beyond F shown as unmetalled road. From there to A4 unclear owing to parish boundary markings.
1940	Ordnance Survey 1" Popular Edition Series Sheet 112 War Revision	WSHC Printed maps 4.18	A to B (i.e. Stone Lane Way) shown as "Bad Road". B to G composed of "Minor Roads"
1947	Ordnance Survey Conventional signs 1947 and 2.5 " map edition 1 Sheet SU26 1949	WSHC	All of application route shown as "Other Roads (not classified by the Ministry of Transport)"
1961	Ordnance Survey 2.5" Sheet SU26 Revised 1961	WSHC	All of application route shown as "Other Roads (not classified by the Ministry of Transport)"

### 14.3 Andrews' and Dury's Map of Wiltshire 1773

This map was produced at the scale of 2 inches to one mile over 18 sheets. It also has an Index map produced at the scale of half an inch to one mile. The claimed route is shown on both the smaller scale Index Map and on the larger scale Sheet 12.

14.4 Andrews' and Dury's county map of Wiltshire does not have a key but their map of the county of Hertfordshire does and significant similarities exist that suggest that on the balance of probabilities, that key could apply to the Wiltshire county map as well. This map is the earliest commercial map viewed for this area and was derived from an original survey.

14.5 The entire route is shown as a minor road on the Index Map:



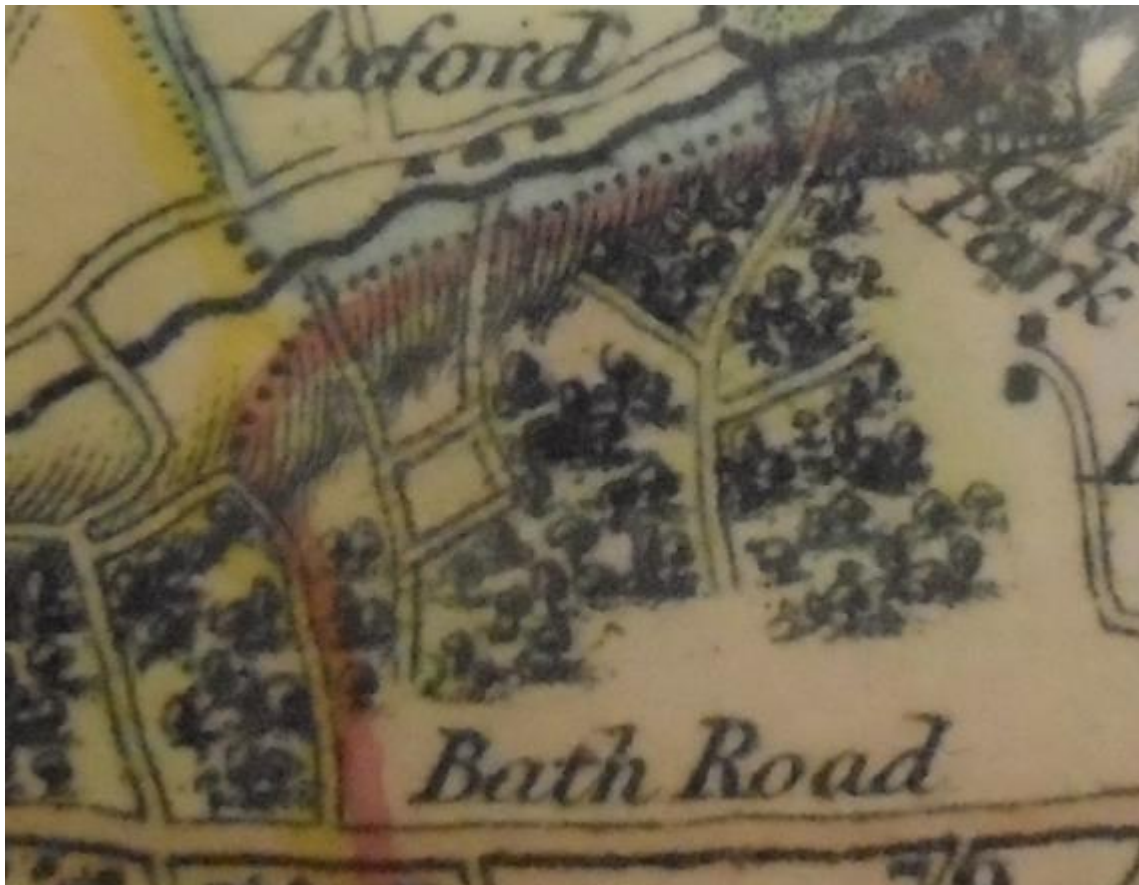
14.6 The entire route is shown on Sheet 12 of the map itself:



#### 14.7 Cary's Map of Wiltshire 1801

The Wiltshire record Society in their book entitled "The Printed Maps of Wiltshire" describe John Cary as "one of the most important of the pre-Ordnance Survey English cartographers". This map is entitled "A New map of Wiltshire Divided into Hundreds exhibiting Its Roads, Rivers, Parks &c by John Cary Engraver 1801" and is printed at the scale of 8 miles to one inch.

- 14.8 The claimed route is unclear on the map below but from the position of the routes leading north of Axford (West Lane and East Lane), the suggestion is that the claimed route leads south from the most westerly one. That being the case, its junction with the A4 to the south is not mapped. The applicant contends that the claimed route is shown in part, with the A4 junction west of the title "Bath Road" on the excerpt below. Insufficient clarity is given here to place reliance on this map in this instance.



#### 14.9 Ordnance Survey – Surveyor's Drawing 166 - Ramsbury – British Library c.1908

In preparation for the production of the first countrywide 1 inch to 1 mile maps (now known as 'the old series') the Ordnance Survey surveyed the country at the scale of 2 inches to 1 mile. The drawing clearly shows the claimed route as a prominent route linking Axford with the A4 road to the south.



**14.10 Ordnance Survey 1 inch to 1 mile map ('Old Series') 1817 and 1828**

The Ordnance Survey produced the first maps of the long running 1" to the mile maps around 1820 (1817 for Sheet 14 and 1828 for Sheet 34). The maps did not have a key but depicted the landscape in detail including minor and major roads, routes and tracks. The scale of the map dictated that these routes were significant landscape features and likely to have been vehicular, the map however not differentiating between public and private rights.

14.11 Sheet 14 depicts the claimed route leading from a point north of B south to the A4 likely as a fenced minor road. Sheet 34 (dated 1828) shows the northern section of the claimed route from a point north of B to A as a fenced minor road. The route would join the southern section shown on Sheet 14 making a continuous route between Axford and the A4.



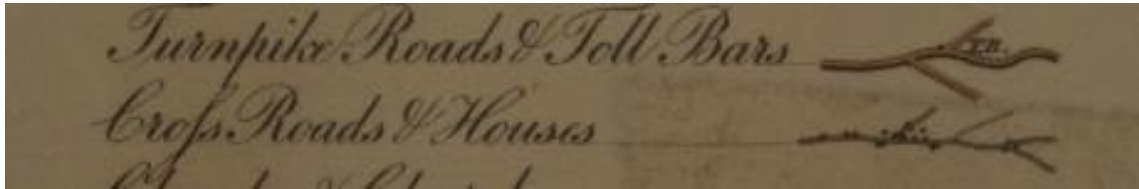
Sheet 14 1817



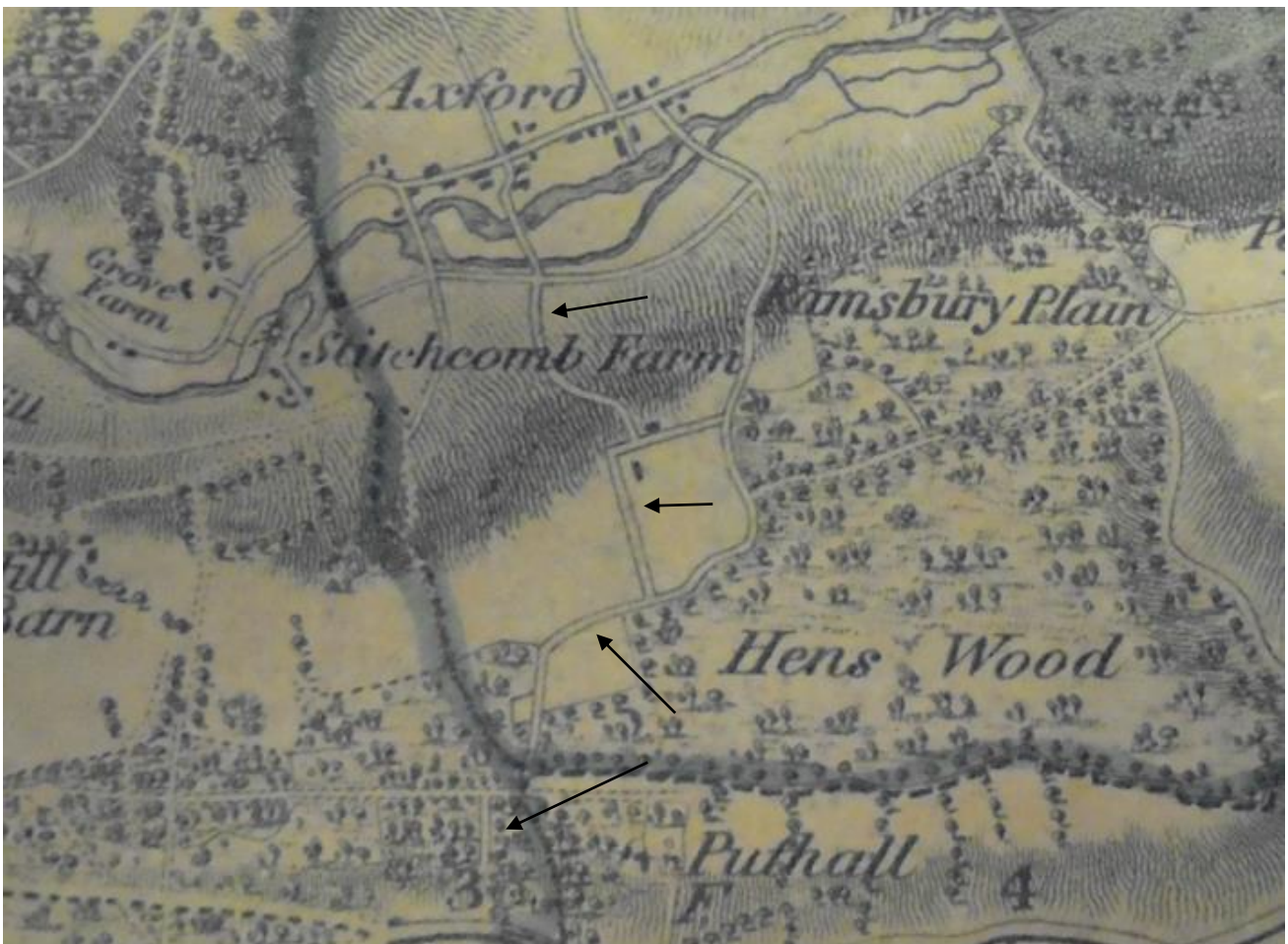
Sheet 34 1828

14.12 C and I Greenwood's Map of Wiltshire 1820 and 1829 WSHC Ref. no 3.3

This county map, again from an independent survey was produced at the scale of one inch to the mile in 1820 and then produced in 1829 as a revised and reduced version. The map has a scale and shows, amongst other things, Turnpike Roads and Cross Roads, Rivers and Brooks. The map does not show footpaths and bridleways.



14.13 The entire claimed route is shown as a "Cross Road".



14.14 The term 'cross road' is a historic term used to describe routes that were not primary or turnpike roads. Susan Taylor in her book entitled "What is a Cross Road?" ISBN 0 9530573 0 5 records:

*"The earliest mention of a 'cross road' so far discovered is found in John Ogilby's famous road book Britannia, published in 1675. Ogilby chose this term to distinguish*

secondary roads, which ran across country from one provincial settlement to another, from primary roads (which he called 'direct roads') which began in London and led to a provincial town or city..."

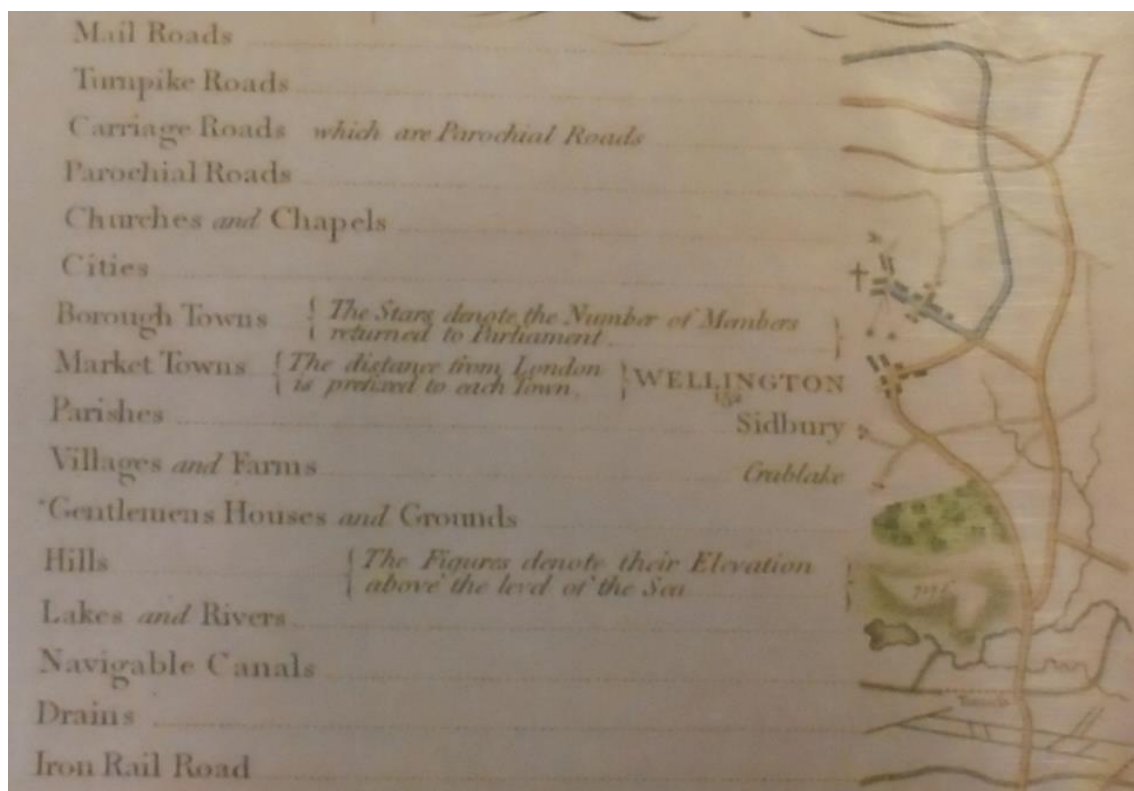
14.15 The Planning Inspectorate's Consistency Guidelines records at section 12:

*"Hollins v Oldham 1995 C94/0206, unreported. Judicial view on cross roads: 'Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used on payment of a toll and, secondly, other types of roads which are called cross roads... This latter category, it seems to me, must mean a public road in respect of which no toll was payable."*

14.16 Greenwoods Map of Wiltshire has an extensive key featuring 19 items. Like Burdett's map described in the case of Hollins v Oldham, there are 2 categories of road: "Turnpike Roads" and "Cross Roads".

**14.17 John Cary's Half Inch Map Sheet 18 1832 (WSHC Ref. no 3.4)**

Cary's half inch map has a key which differentiates Mail Roads, Turnpike Roads, Carriage Roads which are Parochial Roads and Parochial Roads. It is certainly not an unreasonable suggestion to say that this was a commercial map aimed at the travelling public. The claimed route is shown as a Parochial Road linking Axford with the A4.





14.18 It is noted that the southern end of the route is portrayed as being west of the parish boundary rather than along it. It is considered that this is more likely to be the result of an error associated with the scale of the map or perhaps an issue arising from copying than it is to be a representation of an actual movement of this part of the route as other evidence is strong that it follows the parish boundary here.

#### 14.19 Ordnance Survey Mapping – The County Series 1:2500 1878 - 1924

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheets 29.11 and 29.15 cover the claimed route. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact, practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries...are shown;...hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

14.20 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to



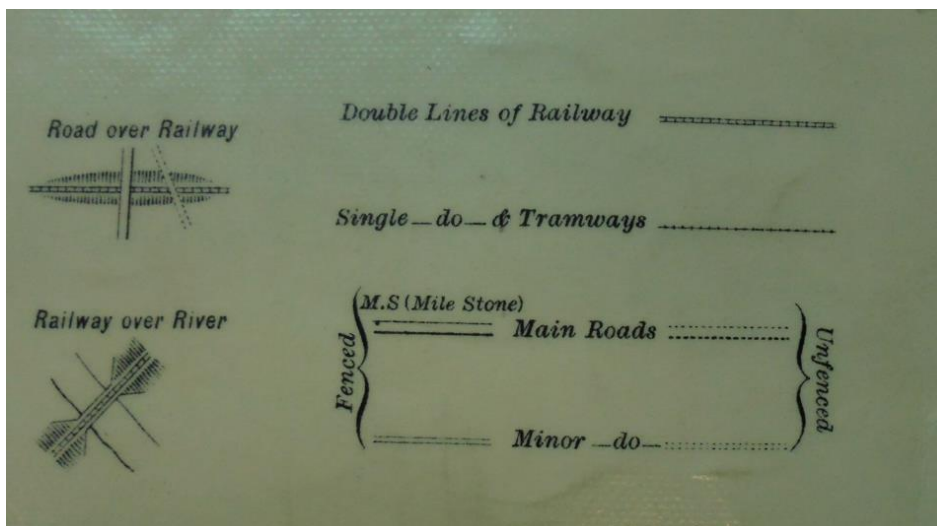
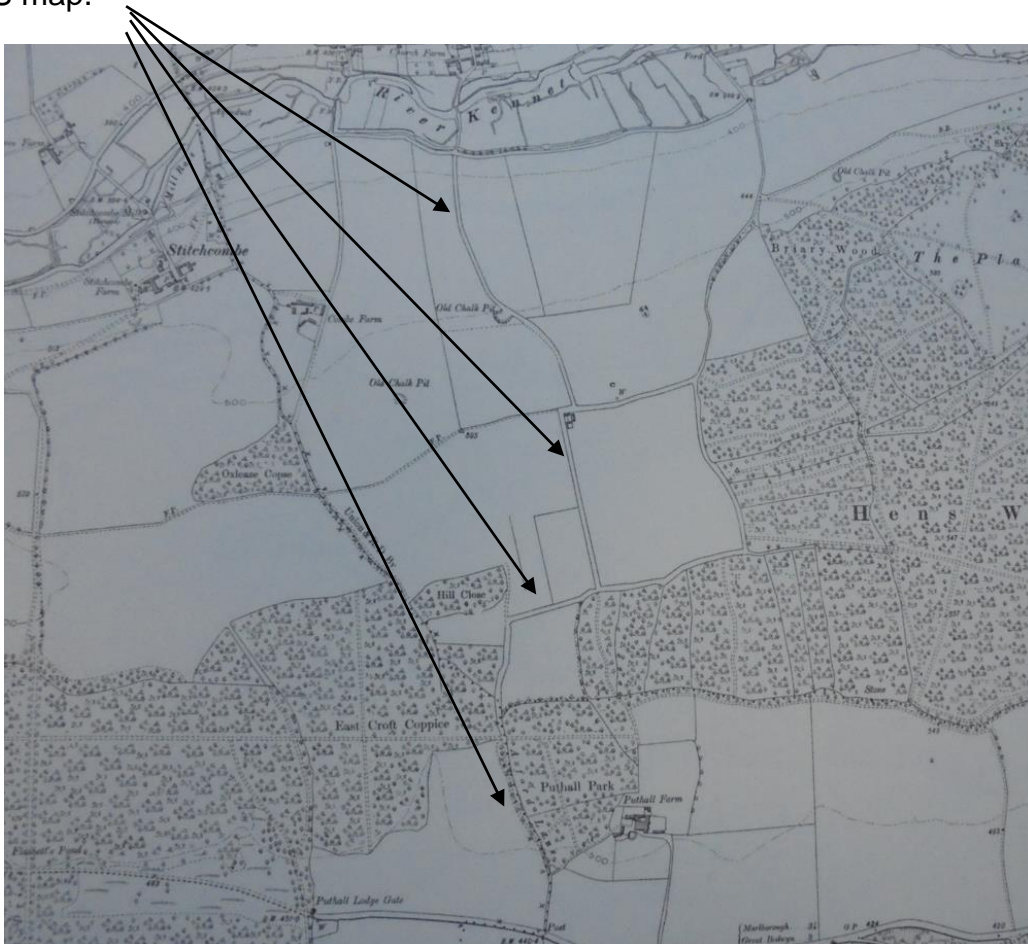
be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”

- 14.21 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 14.22 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water...*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet. Land use information was dropped. Unfortunately the First Edition maps in this area do not have land use information available for them at the Wiltshire and Swindon History Centre.
- 14.23 Officers have viewed three editions of the 1:2500 County Series maps of sheets 29/11 and 29/15. The editions are dated 1885, 1900 and 1924 and depict a consistent route on the claimed route, separately numbered and measured in the manner of a public road. The First Edition (1885) (sheet 29/11) shows the route coloured sienna between points A and B on the application map depicting, in all likelihood, a road metalled or in in good order.



### 14.24 Ordnance Survey 1:10560 maps (WSHC)

Also known as the “6 inch maps” these were a series of maps derived from a reduction of the 1:2500 (“25 inch maps”). Unlike the 25 “ inch maps they have a key detailing the features depicted. Accordingly it is clear that the depiction of the application route is as a “fenced minor road”. The route is clearly continuous and corresponds with the route coloured brown in Wiltshire County Council’s Highway Record dating from 1929. Below is an extract from the 1900 Edition of the 1:10560 OS map.



- 14.25 **Ordnance Survey Boundary Remarks Books and Boundary Sketches**  
**OS Boundary Remark Book 5501A Little Bedwyn 1874 OS 26/11336 TNA**  
**OS Boundary Remark Book 5638 Ramsbury 1874 OS 26/11126 TNA**  
**OS Boundary Sketch Map Ramsbury 1876 OS 27/5767 TNA**  
**OS Boundary Sketch Map Mildenhall 1876 OS 27/5756 TNA**  
**OS Boundary Sketch Map Little Bedwyn and Froxfield 1876 OS 27/5731**

The Ordnance Survey Act 1841 gave the Ordnance Survey the duty of ascertaining and recording all public boundaries. Meresmen (surveyors) from the OS kept detailed records of these including maps and sketches arising from surveys detailing features of the immediate area to the boundary and accordingly they can provide useful information for the position of roads and tracks.

- 14.26 The surveyor was empowered to summon the Clerk of the Peace who would have been committing an offence for obstruction of hinderance if he had not surrendered documents to the surveyor. Boundary sketch maps were advertised for public inspection and were passed from the Ordnance Survey to TNA.
- 14.27 The provenance of these documents is undoubtedly high but it was not the purpose of the documents to identify public rights, merely to record accurately where features were. In this respect the records are useful in identifying a significant track or road at places where the claimed route is coincident with the parish boundaries.
- 14.28 **Ordnance Survey Object Names Books XXIXSE page 11 1899 OS 35/7496 TNA**

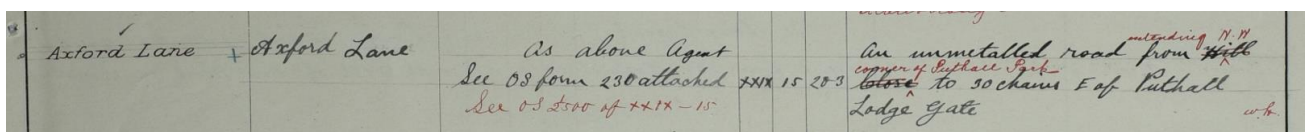
In order to achieve accuracy on its maps the OS sought authority for the spelling of named features on its maps. On the page detailing Axford Lane (the section shown as Axford Lane by the Ordnance Survey being section F to G on the claimed route) it is described as:

*“An unmetalled road extending from NW corner of Puthall Park to 30 chains east of Puthall Lodge Gate”.*

Above it, Sawpit Lane is recorded as:

*“Applies to a private road extending from Amity Oak through the Eight Walks”.*

Both Sawpit Lane and Axford Lane were given authority for the spelling by Colonel E B Merriman, Savernake Estate Office. He was the agent to the Rt Hon. Marquis of Ailesbury.



Names collected & entered by J. Bignall in March 1897

March 1897

77 D & L (1171) - 434e - 530/00-03

Names &c as altered & initialled in red by W. Haynes, Serjeant-at-Law, in April 1897

O/S 21.

Wiltshire Little Bedwyn, The South-Lavacake, The Sheet XXIX SE Newmarket in March 1897

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
Littleworth	Littleworth	Col. E. B. Derriman (agent) Lavacake Estate Office See OS form 250 attached See O/S form of XXIX-15	XXIX	15	6	It applies to two cottages situated ½ mile south of Puthall Farm the property of The Marquis of Salisbury Lavacake House Lavacake Lavacake or a recently burnt down; probably will be rebuilt
Scapit Drive	Scapit Drive Scapit Drive w.f.	As above (Agent) See OS form 280 attached See O/S form of XXIX-15	XXIX	15	47-5	Applies to a private road extending from Emily Oak through the Eight Walks to main road to Leilbury near the 3 mile stone from Marston
Axford Lane	Axford Lane	As above Agent See OS form 230 attached See O/S form of XXIX-15	XXIX	15	28-3	An unmetalled road from Lodge Gate to 30 chains E of Puthall Lodge Gate
Roman Road (Track of)	Roman Road (Track of)	J. W. Brooke Esq Local Soc. Sec. Mts. Arch. Society The Green, Marlborough See fm 230 attached See O/S form of XXIX-15	XXIX	15	44	A portion of the Roman road from Cyneth's to Andover, Winchester &c extending through Lavacake Forest from the parish boundary to Lavacake House &c

14.29 The Planning Inspectorate's Consistency Guidelines refer to the value of evidence relating to named highways at section 2.4.8 to 2.4.10. The guidance recognises that there is some force in the assumption that a named highway is a public highway, however it recognises that 'supporting evidence would be required). The naming of Axford Lane has synergy with other evidence ("Axford Lane" in the 1737 Survey of Putell Farm for instance) and may have greater weight as a result.

**14.30 Plan of the proposed Navigable Canal surveyed 1793 printed after 1810 1644/34 WSHC**

This plan does not form a part of the deposited plans for the Kennet and Avon Canal (WSHC A1/372/1) but was clearly created as a part of the scheme in some way. In 1793 the civil engineer John Rennie was appointed as Chief Surveyor and Engineer for the Kennet and Avon canal which leads over lands in parishes south of Ramsbury. It is considered that his original survey of the route occurred in 1793 and it is reasonable to assume that this plan is derived from the original survey. This documents is entitled:

*"PLAN of the proposed NAVIGABLE CANAL between the RIVER KENNETT at NEWBURY in the COUNTY of BERKS; and the RIVER AVON at BATH, in the County of SOMERSET: whereby a navigable Communication will be opened between the CITIES of LONDON and BRISTOL. Likewise of part of the WILTS & BERKS CANAL, from SEMINGTON to the towns of CALNE & CHIPPENHAM; to*

which is added a PLAN of the proposed SOMERSETSHIRE COAL CANAL. Surveyed 1793, by John Rennie Civil Engineer: COMPLETED IN 1810.

Engraved by W. Faden, Geogr. To His Majesty & to His R.H. the Prince of Wales.”

14.31 The map does not have a key but shows the route of the canal in red with the local network of roads or tracks shown by solid or broken lines. The claimed route is shown in its entirety linking Axford with the A4. The purpose of the plan appears to be to demonstrate the position of the canal in relation to villages and settlements nearby.



## 15.0 Category F Evidence – Evidence of Repute or Physical Evidence

No relevant consultation responses were received that adduced any additional evidence. The route exists very clearly on the ground with an abundance of physical features indicating a wide route, well defined. The southern end of the route leading past Puttalls Farm to the A4 has the character of a sunken road between banks and hedges.

15.1 The applicant adduces the following additional evidence:

“The Village in the Valley: A History of Ramsbury” by Barbara Croucher: Research note WSHC Ref. 3397/15

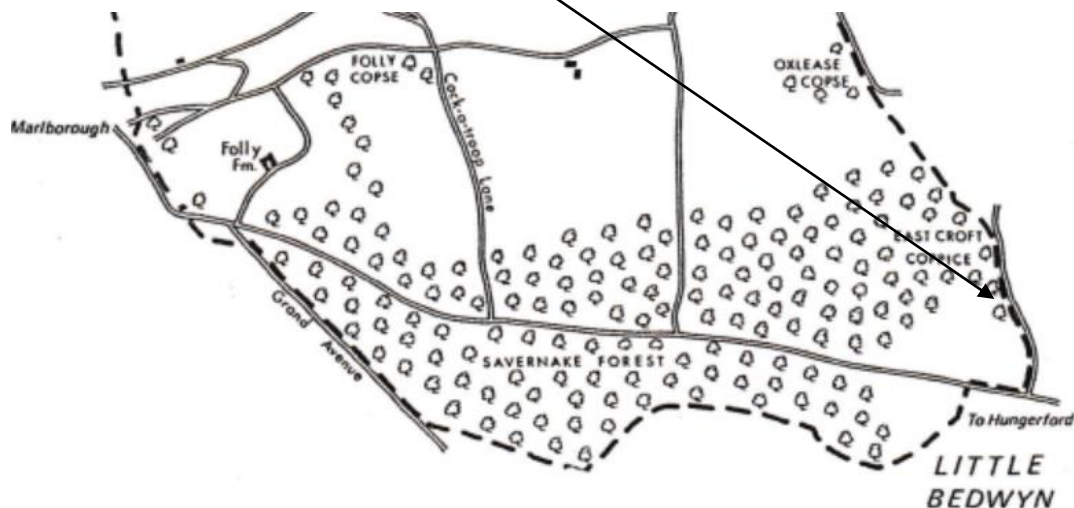
Victoria County History of Wiltshire Vol. 12 1983 Map of Mildenhall c.1842

Victoria County History of Wiltshire: vol 12 1983 page 51 (*reference to the area affected by inclosure*)

“The Village in the Valley: A History of Ramsbury” by Barbara Croucher published 1986

## 15.2 Victoria County History Vol.12 1983 Map of Mildenhall c.1842

The map was produced by the Victoria County History authors to illustrate how the area appeared around 1842, it is not an original document. However, it is clear that the research of the team identified a route leading north from the A4 along the Mildenhall – Little Bedwyn parish boundary veering away from East Croft Coppice in similar manner to the claimed route.

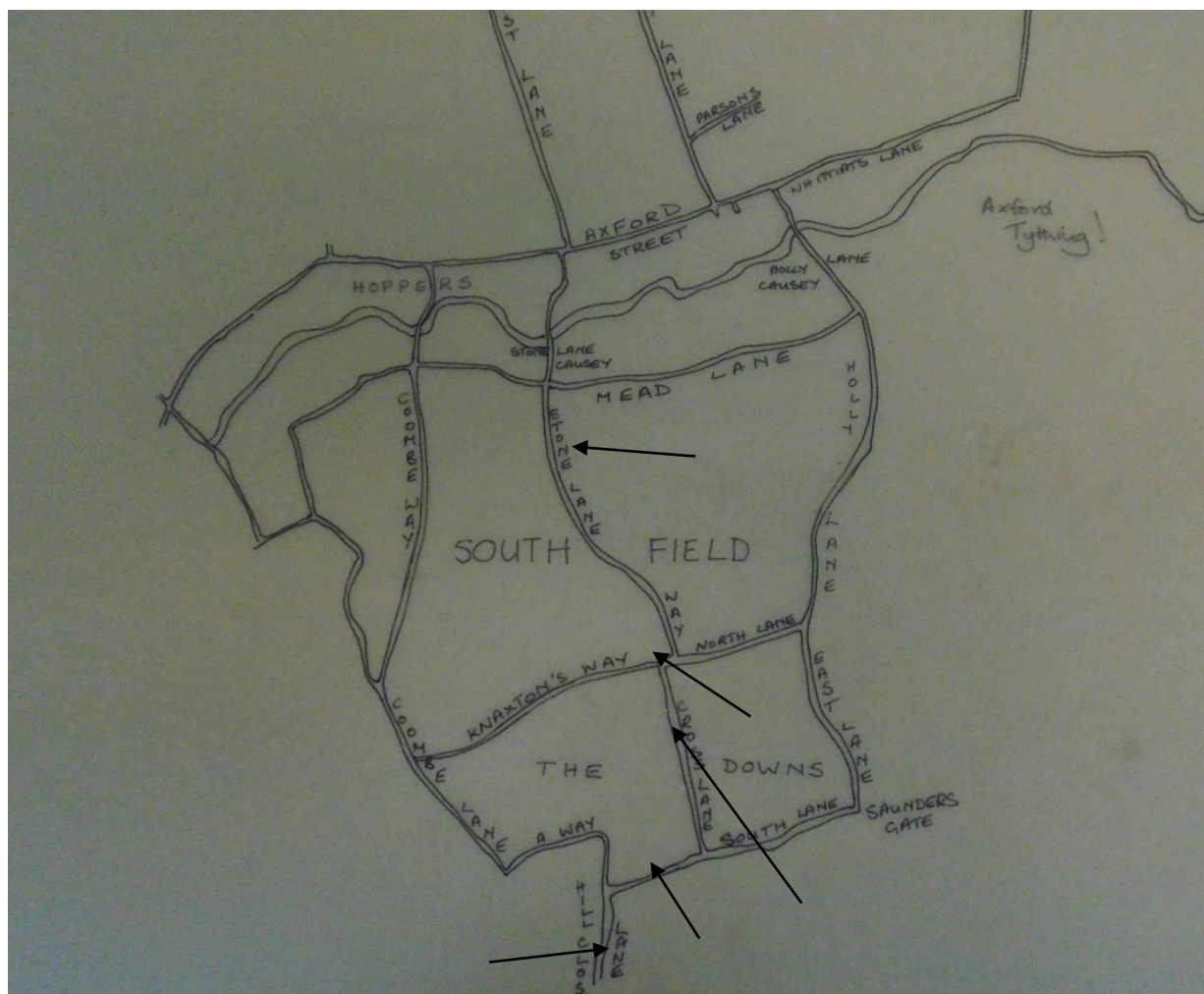


## 15.3 The Village in the Valley: a History of Ramsbury by Barbara Croucher

The research notes date from the 1970s and 1980s and are the work of Barbara Croucher who published the book “The Village in the Valley: a History of Ramsbury” in 1986. The research notes contain diagrams and a map that she produced from

the 1727 Enclosure Award and transcripts supplied by the University of Bristol in 1981.

- 15.4 The map shows the tracks set out in the 1727 Inclosure Agreement as deduced by her. These agree with the interpretation by the applicant and by the case officer, the claimed route comprising Stone Land Way, part of North Lane, Cross Lane, part of South Lane and Hill Close Lane.



- 15.5 Page 127 of the book contains a plan showing “Axford’s Southfield after enclosure in 1727” and is similar to map from the research notes above.

## 16.0 Natural Environment and Rural Communities Act 2006

- 16.1 On the 2<sup>nd</sup> May 2006 the **NERC Act 2006** commenced and section 67(1) of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:

- (1) (a) *was not shown in a definitive map and statement, or*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(4) “The relevant date” means –*

*(a) in relation to England, 20<sup>th</sup> January 2005;*

*(b) in relation to Wales, 19<sup>th</sup> May 2005.*



- (5) *Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –*
- (a) *was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*
- (b) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.*
- (6) *For the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act*
- (7) *For the purposes of subsections 3(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact –*
- (a) *exercising the existing public right of way, or*
- (b) *able to exercise it.*
- (8) *Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c.69) does not apply.*
- (9) *Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c.37) has effect to this section.*

16.2 It is therefore necessary for the Council to consider the effect of the NERC Act 2006 if it is considered that on the balance of probability the application route was, before the 2<sup>nd</sup> May 2006, a road or public carriageway.

**17.0 Interim Decision regarding public rights over the applicant route prior to the 2<sup>nd</sup> May 2006 – was it, on the balance of probability, a public road or carriageway before that date?**

17.1 In considering the evidence adduced with this application it is important to understand the ‘weight’ to put on the documents which involves an evaluation of their purpose and provenance as well as what they actually depict (s.32 Highways Act 1980). There must be a synergy in existence between the evidence and it must be appreciated that in order to confirm any order made, it must be shown on the balance of probabilities, that the public right subsists. Where the path would be an addition to the definitive map and statement, the legal test to make the order is weaker (it must be ‘reasonably alleged’) as given in s.53(3)(c)(i) Wildlife and

Countryside Act 1981 but the stronger balance of probability test must be met to confirm that order. Where the applicant route upgrades rights of way already shown in the definitive map and statement, section 53(3)(c)(ii) is used which requires the stronger balance of probabilities test to be applied just to make the order.

17.2 Wiltshire Council is guided by the Planning Inspectorate’s Consistency Guidelines for Inspectors along with case law and other sources for evaluation of the evidence.

17.3 The table below lays out the documents considered in categories of evidential weight:

Cat.	Date	Document	Applicant route represented and width
A	1727	<b>Inclosure Agreement Ramsbury Axford</b>  “Ways, Drove Ways, lanes, Private Ways, Highways to be laid out for the conveniency of the Proprietors of the Enclosure...”	A to B Stone Lane Way (16 feet) B to C as part North Lane (33 feet) C to D as Cross Lane (33 feet) D to E as part of South Lane (33 feet) E to F Hill Close Lane
A	1844	<b>Basingstoke and Didcot Junction Railway (also held at House of Lords record office)</b>	Route A to B “Public Road” owned by Surveyor of Highways for Axford Tithing John Rowland. Occupied by “The Public” “Parish Road”
A	1845	<b>London, Bristol and South Wales Direct Railway (also held at House of Lords record office)</b>	Route A to B “Public Highway” owned by Thomas Osmond Surveyor of the Highways for the township of Axford. “Public Road”
A	1903	<b>Central Wilts Light Railway (Not found at House of Lords record office).</b>	Route A to B as “Occupation Road, chalk pit and Land” but see Parish Council minutes
A	1832	<b>London and Bath Turnpike Trust</b>	Route A to B coloured sienna as road crossed by turnpike
A	1835	<b>London and Bath Tunrpike Trust</b>	Route A to B shown as road with northern end inscribed “To Axford”
A	1950	<b>National Parks and Access to the Countryside Act 1949</b>	Route F to G claimed as Carriage Road Bridleway in Mildenhall described as “track suitable for cars in area F to G.
B	1842	<b>Ramsbury Tithe Award</b>	Claimed route as un-numbered route linking Axford with the Parish boundary of Mildenhall and Little Bedwyn labelled “from Bedwyn” and “To Bedwin” on two maps.
B	1909/1910	<b>Finance Act</b>	Route A to B uncoloured and excluded from hereditaments by red broken braces. Other sheet missing from archive.
C	1865	<b>Marlborough Highway Board Survey of Roads</b>	Route F to G “narrow, not space for two vehicles abreast, no metalling”
C	1905	<b>Marlborough Rural District Council</b>	Route F to G “Highway repaired by the District

		<b>Rights of Way Map</b>	<b>Council"</b>
<b>C</b>	<b>1929</b>	<b>Marlborough Rural District Council Takeover Map</b>	<b>Route F to G coloured blue as road C.5086</b>
<b>C</b>	<b>1929</b>	<b>Ramsbury Rural District Council Takeover Map</b>	<b>Route A to B blue as road C.5085 remainder of claimed route coloured brown as lowest maintenance responsibility</b>
<b>C</b>	<b>Current</b>	<b>Wiltshire Council Highway Record</b>	<b>Claimed route coloured brown as lowest maintenance responsibility</b>
<b>C</b>	<b>1941-1942</b>	<b>Ministry of Food National Farm Survey</b>	<b>Route excluded from lands surveyed between C and E</b>
<b>Cat.</b>	<b>Date</b>	<b>Document</b>	<b>Applicant route represented and width</b>
<b>D</b>	<b>1737</b>	<b>Survey of Putell farm</b>	<b>Route F to G shown as sienna coloured road and labelled "To Axford" at norther end</b>
<b>D</b>	<b>1839</b>	<b>Vestry Map of Ramsbury</b>	<b>Route A to F shown in same manner as other public roads</b>
<b>D</b>	<b>1841</b>	<b>Map of Ramsbury</b>	<b>Route A to F shown as a fenced route coloured sienna</b>
<b>E</b>	<b>1773 to 1961</b>	<b>Various commercial and OS maps, some result of independent survey</b>	<b>Claimed route shown variously as minor road, "cross road", "fenced minor road", "carriage road or parochial road", "road", "Axford Lane", "minor road", "third class metalled road" "unmetalled road", "fenced or unfenced minor road", "other road not classified by the Ministry of Transport".</b>
<b>E</b>	<b>1793/1810</b>	<b>Rennie's Canal Plan from 1793 survey as completed in 1810</b>	<b>Plan produced by the Chief Surveyor and Engineer of the Kennet and Avon Canal after the deposited plans (1793) and after completion in 1810. Shows route in same manner as local road network.</b>
<b>E</b>	<b>1899</b>	<b>Ordnance Survey Object Names Book</b>	<b>"Axford Lane" "Unmetalled road" (route F to G).</b>

17.4 Independent considerations of the Inclosure agreement 1727 undertaken by the applicant, the author Barbara Croucher in her research notes and Council officers support that on the balance of probabilities, a continuous route linking Axford with the A4 existed along the claimed route, it being a way laid out in the Inclosure Agreement of 1727 for the use of the proprietors of the agreement. Those proprietors are taken to be the residents of the parish affected by the award. See paragraphs 5.2.12 to 5.2.14 Planning Inspectorate's Consistency Guidelines:

*"5.2.12....However, Coleridge LJ (as he was then) in R v Southampton (Inhabitants) 1887 said that "user by the public must not be taken in its wider sense...for it is*

*common knowledge that in many cases only the local residents ever use a particular road or bridge.”*

The establishment of this route as a road linking the A4 with Axford is confirmed by the farm estate plan of 1737 (the south end of the route near Puttall's Farm is annotated "To Axford"). Whilst an inclosure agreement may not have held certain powers for commissioners that an Act did, the agreement was clearly satisfactorily enacted as evidenced by the division of land and titles that we see today and the lack of any evidence supporting a later inclosure of the area either by agreement or Act of Parliament.

- 17.5 A variety of later maps and plans support the existence of this continuous route being represented in the same manner as other roads in the area with the Tithe Award maps marking the route "to Bedwin" and "from Bedwyn" as appropriate. It is accepted that it was not the role of the Tithe Commissioners to record whether a highway was private or public. However, The Planning Inspectorate's guidance entitled Definitive Map Orders: Consistency Guidelines (updated 27 January 2022, reviewed 2016) at 8.2.13 state:

*"8.2.13 Both public and private roads had the capacity to diminish the productiveness of land for the assessment of tithe. It follows therefore that the inclusion of a road under the heading 'roads and waste' is not, in itself, good evidence that it was public. However, the annotation of a road 'to' or 'from' a named settlement is suggestible of public rights....."*

- 17.6 By 1844 and 1845 the route had been recorded as a Public Road in two sets of railway plans deposited with Parliament by different railway companies and in each instance the owner of the route was given as the Surveyor of Highways. The Planning Inspectorate's guidance entitled Definitive Map Orders: Consistency Guidelines (updated 27 January 2022, reviewed 2016) considers the relevance of deposited railway documents at part 10.

*"10.2.2. Both canal and railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes, and to a lesser extent, canal schemes, was exacting and the Book of Reference and deposited plans made in the course of the process needed to of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way...."*

*"10.2.3. The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership. Highway authorities would not have wanted to take on unwarranted maintenance responsibilities, and parish councils would not have wished their parishioners to lose rights. Therefore an entry in the Book of Reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a*

*public right of some description. However, the weight to be given to this can only be determined when it is considered alongside all other evidence. There may be reputable evidence to rebut it such as a deed, conveyance or local map....”*

*“10.2.4. Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.”*

*“10.2.5. Railway plans and cross-sections usually differentiate between public and private roads....”*

*“10.2.6. The status of a way had an impact on the cost of the scheme and it is unlikely that railway plans would show a route at a higher status than was actually the case....”*

*“10.2.7. For the above reasons deposited plans can be good evidence to support a claim that highway existed at the time they were made...”*

- 17.7 The maintenance liability for the claimed route was recorded as being with the Rural District Councils and that responsibility was handed over to Wiltshire County Council as a result of the Local Government Act 1929. The entire route remains recorded as the lowest category of maintenance liability in the Council’s highway record even though parts of the claimed route have no rights recorded in the definitive map and statement.
- 17.8 The Ordnance Survey (a government body) confirmed that Axford Lane was a ‘road’ when verifying the spelling of names in 1899 with another lane in the same parish being described as a ‘private road demonstrating the distinction being made by the Ordnance Survey at that time.
- 17.9 Very little evidence has been found to contradict the findings above. The railway plan deposited in 1903 describes the route A to B as an Occupation Road (the inference being it is not public) but this must be considered against the evidence of two other railway plans describing the route as public and the evidence of Mildenhall Parish Council identifying a significant number of errors in the 1903 plan where the scheme passed through Mildenhall parish.
- 17.10 Officers consider that while the evidence arising from the 1727 inclosure agreement confirms that the route existed at that time and was laid out for the use of the people within that parish (a parochial road) it is clear that by at least (possibly earlier) the mid-1800s it was viewed as a public road and maintained as such. Indeed, any traveller looking at a commercial map dating from 1773 onwards would have identified the route as a link between the then turnpike (now the A4) and Axford, Ramsbury and beyond. Likewise, anyone interested in utilising the new Kennet and Avon canal would have identified the claimed route as a means of getting to Axford

or beyond. The subsequent records of maintenance liability held by the Rural District Council confirm that the route was viewed as a public route and officers have found no evidence to suggest that the route was not historically a road. Its size and form are that of a road and its continual representation throughout the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> century as such in a range of documents supports that on the balance of probability, the claimed route carried a public vehicular right before the effects of the enactment of s.67 of the Natural Environment and Rural Communities Act 2006.

17.11 It being considered that the claimed route was, on the balance of probability a public road before 2006, It is therefore necessary to consider the effects of that Act on the historic public right.

## 18.0 Consideration of the Effect of NERCA 2006

It is appropriate to consider each exemption in turn:

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

No evidence has been adduced for the use of the route with MPVs in the period 2001 to 2006.

I conclude that the requirements of Section (2)(a) NERCA 2006 are not met and public vehicular rights are not preserved by this section.

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

Parts of the claimed route are recorded in the definitive map and statement as footpaths so this saving cannot apply to those parts. Other parts are recorded in the Council's highway as 'brown tracks' and it is the Council's position that a brown track is a publicly maintainable highway but of the lowest category and for which no grant was available. The level of public rights over these routes must be tested on an individual basis and accordingly the council does not declare that a public vehicular right necessarily exists over those routes and does not record them in the List of Streets.

I conclude that the requirements of Section (2)(b) NERCA 2006 are not met on the claimed route as a whole and public vehicular rights are not preserved by this section.

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

It is known that this road was awarded as a lane in 1727, a time before mechanically propelled vehicles were provided for.

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

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

Public MPV rights have not been preserved by this section.

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

No evidence of this has been adduced and accordingly Public MPV rights have not been preserved by this section.

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

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

This application does not pre-date the relevant date.

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

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

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

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

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

## **19.0 Legal and Financial Considerations**

19.1 The determination of Definitive Map Modification Orders (DMMOs) and the continual review of the definitive map are statutory processes for which financial provision has been made. In determining applications for DMMOs the Council is acting in pursuit

of its statutory duty and cannot be challenged in so doing (subject to due process being followed).

- 19.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to the Secretary of State for determination. It may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £4000).
- 19.3 If the route is upgraded to restricted byway the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority is placed under a duty to ensure that the route is safe for use by the general public traffic of the area and has a duty to maintain the surface of the highway to that extent. No works to the route are currently identified beyond the removal of a gate, signage and trimming growth.

## **20.0 Risk Assessment**

- 20.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety
- 20.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 20.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 20.4 This application is subject to a direction from the Planning Inspectorate to determine the application within 6 months of 05 February 2020 (Direction Decision FPS/Y3940/14D/3). Clearly this direction has not been met and it is therefore a considerable risk to delay a decision any longer. To delay longer would increase the present risk of a further legal challenge on this failure.

## **21.0 Environmental Impact of the Recommendation**

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

## **22.0 Equality Impact**

- 22.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to equality. While these considerations will not affect the council's decision the following observations have been made.



- 22.2 The character of the route will not alter with the making of an order to record the way as restricted byway. The legal right to pass and repass over the entire width will be protected which will ensure that obstructions and encroachments may be removed by Order of the Council. This could lead to greater accessibility. It is a requirement that a width must be recorded in the order and accordingly the widths awarded in the agreement of 1727 will be used with Ordnance Survey 1:2500 measured widths used if any part of the route is not so mentioned.
- 22.3 A restricted byway may be used by a horse and cart. Many people who cannot ride a horse for reasons of a disability drive horses and the recording of this long route as a restricted byway will increase the available network for them. This will lead to greater accessibility. This would offer a significant improvement to the network for carriage drivers.
- 22.4 The recording of the full width as a restricted byway is in line with the Council's duty under The Equality Act 2010. Equality is however not a material consideration contained within the Wildlife and Countryside Act 1981.

### **23.0 Safeguarding Considerations**

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

23.1 It is however noted that there are no considerations arising.

### **24.0 Public Health Considerations**

24.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to public health.

### **25.0 Relationship to the Council's Business Plan**

25.1 Consideration of the Council's Business Plan is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981 which is a duty for the council. However, Wiltshire Council is committed to 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.

### **26.0 Options to Consider**

- 26.1 i) Make a definitive map modification order under s.53(3)(c)(i) & (ii) WCA81 to record the applicant route as a restricted byway
- ii) To refuse to make a definitive map modification under WCA81.

### **27.0 Reason for Recommendation**

This report presents and considers the evidence adduced by the applicant and gives weight to that evidence at section 17. It is clear to officers that a considerable body

of evidence exists to demonstrate that on the balance of probability the applicant route was a public vehicular highway from at least 1727 and that there is great synergy in the evidence, especially from the mid 18<sup>th</sup> and 19<sup>th</sup> centuries. No evidence has been found that a public right has been stopped up or extinguished and it is considered that the legal maxim 'once a highway, always a highway' must apply.

27.1 As a result of that decision it has been necessary to consider the effect of s.67 of the Natural Environment and Rural Communities Act 2006 on those rights and no evidence has been found that supports the saving of the right for the public to use the route with a mechanically propelled vehicle. Accordingly it is considered that the highest status that the applicant route can be recorded as is as a restricted byway, a right of way for the public to use on foot, on a bicycle, on or leading a horse or with a horse drawn carriage.

27.2 Where sections of the applicant route are currently unrecorded in the definitive map and statement the council is required only to consider whether the application forms a reasonable allegation of the rights claimed to make an order (s.53(3)(c)(i)). It must consider the stronger balance of probabilities test at the confirmation stage. However, owing to the strength of the evidence and the need to consider those parts of the application route that are currently recorded as footpaths under the balance of probability test at the order making stage (s.53(3)(c)(ii)), it is considered that the evidence for the whole route meets the stronger test at this stage..

## 28.0 Recommendation

**That a definitive map modification order is made under s.53(3)(c)(i) & (ii) of the Wildlife and Countryside Act 1981 to record the route subject to application 2018/07 as a restricted byway and to confirm the order if no objections or representations to it are duly made.**

Sally Madgwick

Definitive Map and Highway Records Manager  
Wiltshire Council

25 March 2022

Appendix A – Applicant's Summary and Statement

Appendix B – Draft order plan