

# AGENDA

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**Meeting:** Southern Area Planning Committee

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

**Date:** Thursday 30 March 2023

**Time:** 3.00 pm

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

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

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

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Note: Due to limited space within the meeting room, should there be a high number of public attendees for any specific item, there may be a requirement to rotate attendees in order of agenda item of interest. Please contact the Officer named above for further information.

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## Membership:

Cllr Andrew Oliver (Chairman)  
Cllr Sven Hocking (Vice-Chairman)  
Cllr Trevor Carbin  
Cllr Brian Dalton  
Cllr Nick Errington  
Cllr George Jeans

Cllr Charles McGrath  
Cllr Ian McLennan  
Cllr Nabil Najjar  
Cllr Bridget Wayman  
Cllr Rich Rogers

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## Substitutes:

Cllr Sam Charleston  
Cllr Ernie Clark  
Cllr Kevin Daley  
Cllr Bob Jones MBE

Cllr Ricky Rogers  
Cllr Graham Wright  
Cllr Robert Yuill

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## **Recording and Broadcasting Information**

Wiltshire Council may record this meeting for live and/or subsequent broadcast. At the start of the meeting, the Chairman will confirm if all or part of the meeting is being recorded. The images and sound recordings may also be used for training purposes within the Council.

By submitting a statement or question for a meeting you are consenting that you may be recorded presenting this and that in any case your name will be made available on the public record. The meeting may also be recorded by the press or members of the public.

Any person or organisation choosing to film, record or broadcast any meeting of the Council, its Cabinet or committees is responsible for any claims or other liability resulting from them so doing and by choosing to film, record or broadcast proceedings they accept that they are required to indemnify the Council, its members and officers in relation to any such claims or liabilities.

Details of the Council's Guidance on the Recording and Webcasting of Meetings is available on request. Our privacy policy can be found [here](#).

## **Parking**

To find car parks by area follow [this link](#). The three Wiltshire Council Hubs where most meetings will be held are as follows:

**County Hall, Trowbridge**  
**Bourne Hill, Salisbury**  
**Monkton Park, Chippenham**

County Hall and Monkton Park have some limited visitor parking. Please note for meetings at County Hall you will need to log your car's registration details upon your arrival in reception using the tablet provided. If you may be attending a meeting for more than 2 hours, please provide your registration details to the Democratic Services Officer, who will arrange for your stay to be extended.

## **Public Participation**

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

Our privacy policy is found [here](#).

For assistance on these and other matters please contact the officer named above for details

# AGENDA

## Part I (Pages 7 - 78)

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (Pages 79 - 100)

To approve and sign as a correct record the minutes of the meeting held on 2 February 2023.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

### **Statements**

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register **no later than 10 minutes before the start of the meeting**. If it is on the day of the meeting registration should be done in person.

The rules on public participation in respect of planning applications are linked to in the Council's Planning Code of Good Practice. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application, and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered.

Members of the public will have had the opportunity to make representations on the planning applications and to contact and lobby their local member and any other members of the planning committee prior to the meeting. Lobbying once the debate has started at the meeting is not permitted, including the circulation of new information, written or photographic which have not been verified by planning officers.

### **Questions**

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on Thursday 23 March 2023, in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on Monday 27 March 2023. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Wildlife and Countryside Act 1981 - Section 53, The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022 (Pages 101 - 474)**

To consider an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a Footpath to the definitive map and statement of public rights of way in the parish of Whiteparish, (The Drove).

7 **Planning Appeals and Updates (Pages 475 - 476)**

To receive details of completed and pending appeals and other updates as appropriate.

8 **Planning Applications**

To consider and determine planning applications in the attached schedule.

8a **APPLICATION NUMBER: PL/2023/00213 3 Old Mill Close East Knoyle New dwelling (Pages 477 - 490)**

Construction of single 2 bedroom cottage on part of garden.

8b **APPLICATION NUMBER: PL/2022/09311 4 The Flood, Middle Winterslow (Pages 491 - 508)**

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

8c **APPLICATION NUMBER: PL/2023/01136 61 Moberley Road Retrospective application for the retention of a bike shed etc. (Pages 509 - 518)**

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

**Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency

**Part II**

Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

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# Southern Area Planning Committee

30<sup>th</sup> March 2023

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

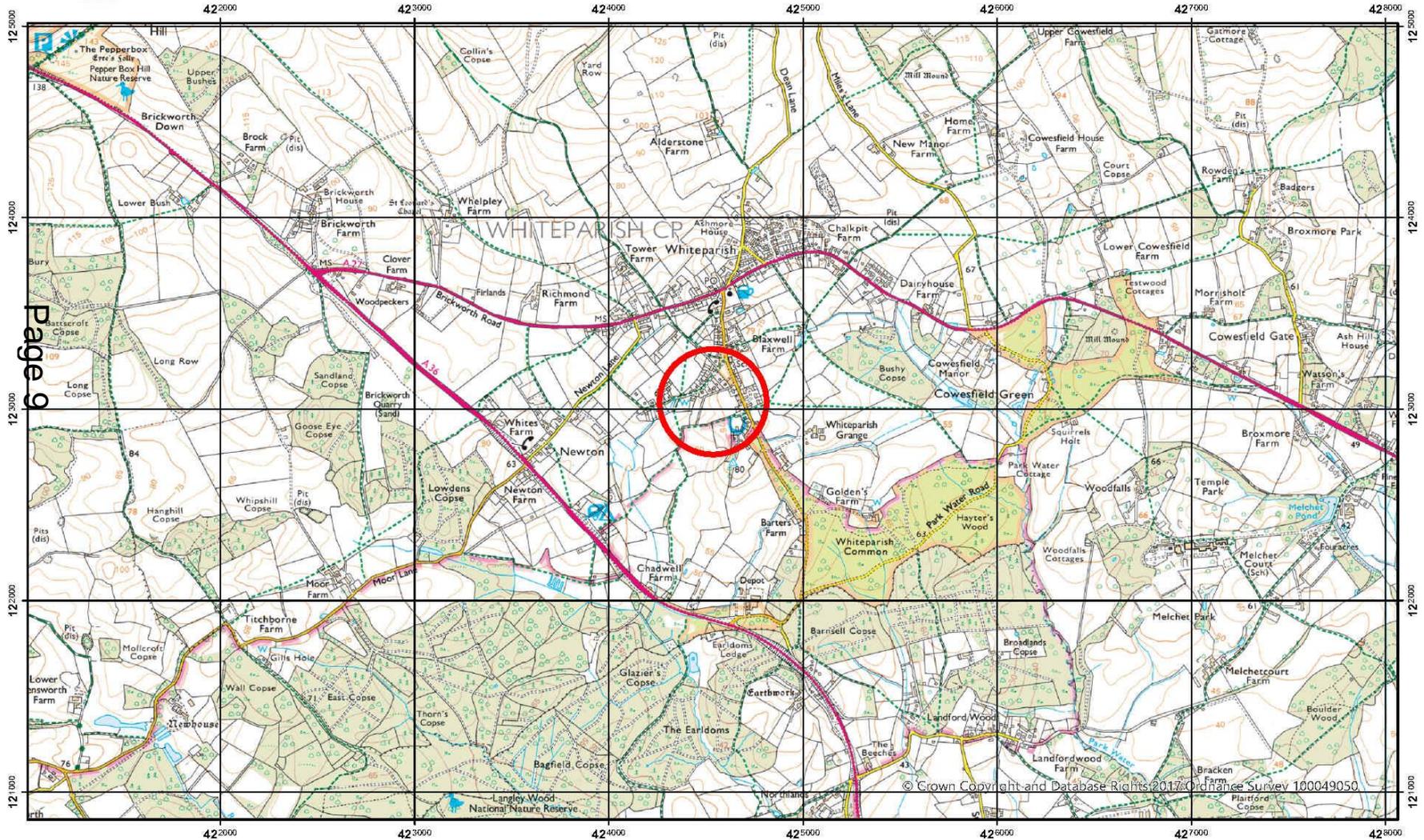
**AGENDA ITEM NO.6  
SOUTHERN AREA PLANNING COMMITTEE:  
30 MARCH 2023**

**JANICE GREEN – SENIOR DEFINITIVE MAP OFFICER**

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

Wiltshire Council

Location Plan  
The Drove, Whiteparish



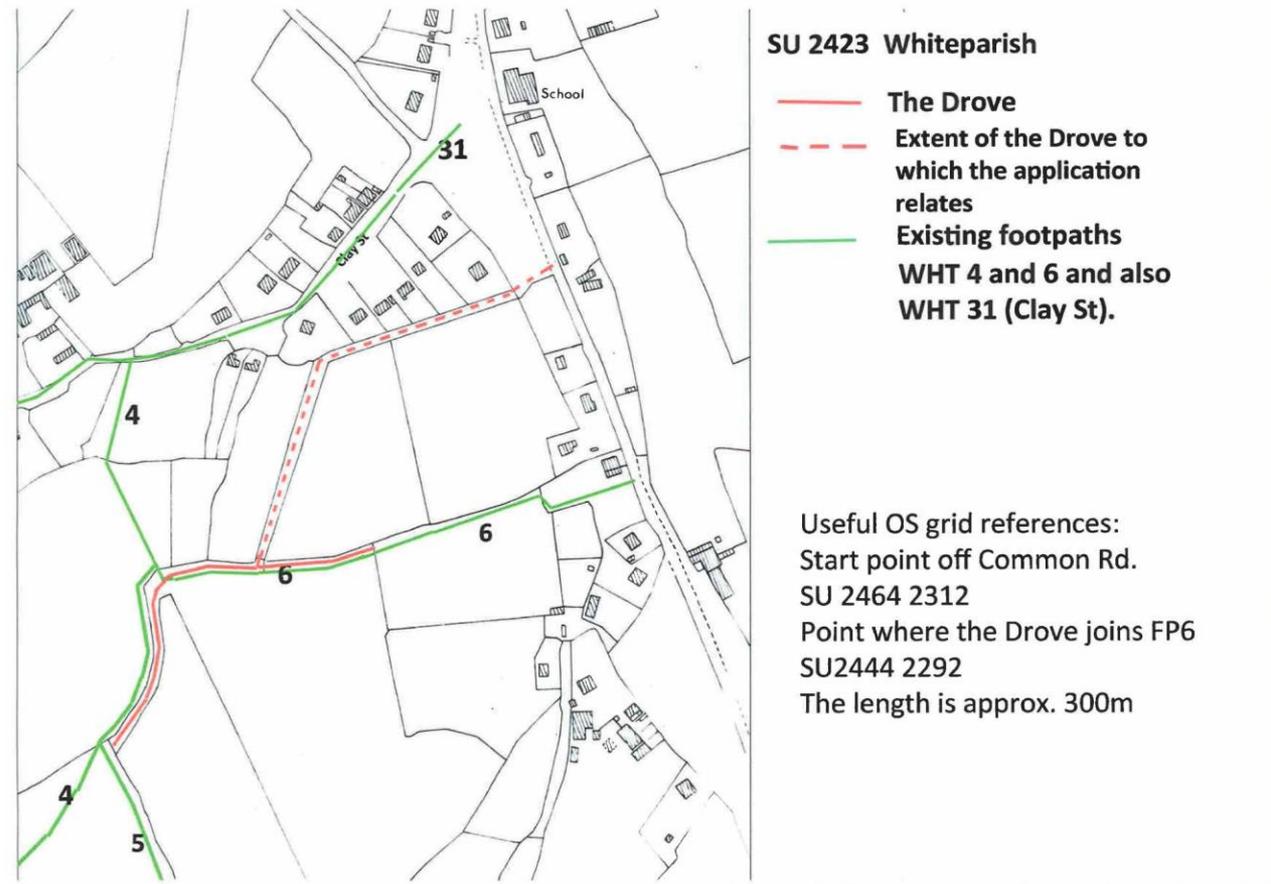
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## Path no.42 Whiteparish (The Drove) – Application Plan

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

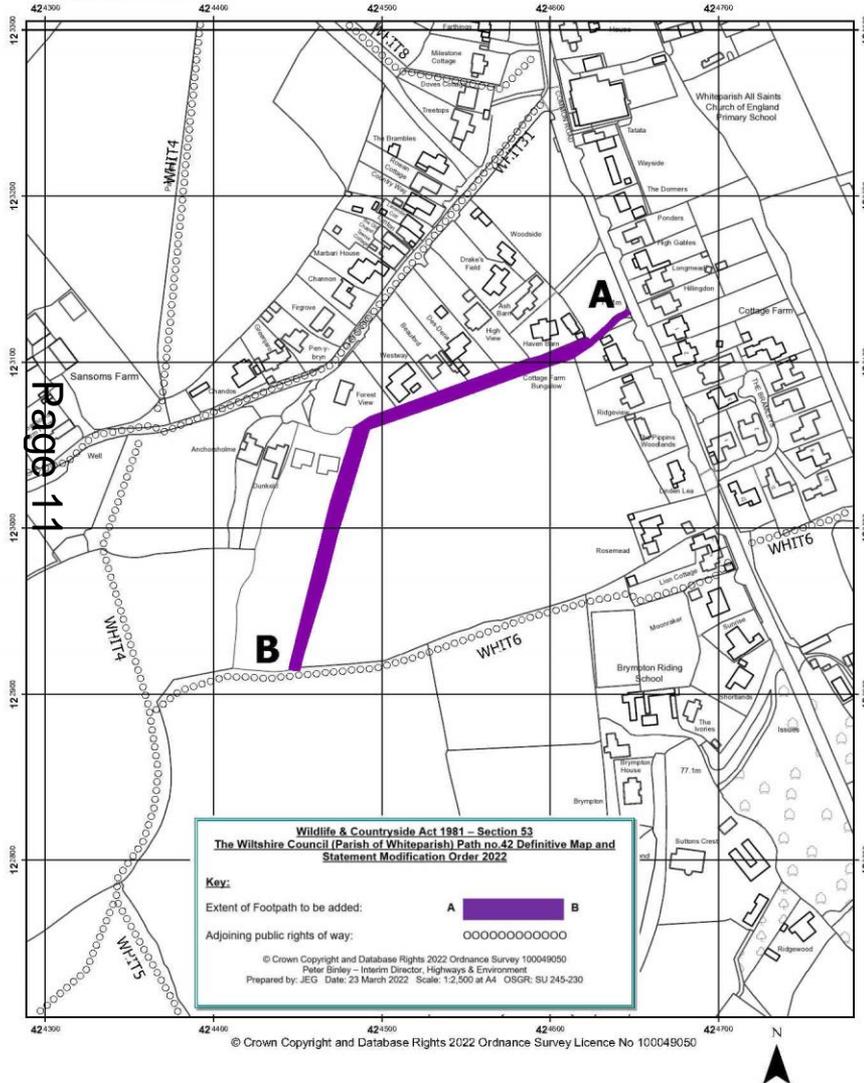
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# Path no.42 Whiteparish (The Drove) – Modification Order

Wiltshire Council

The Wiltshire Council (Parish of Whiteparish) Path no.42  
Definitive Map and Statement Modification Order 2022



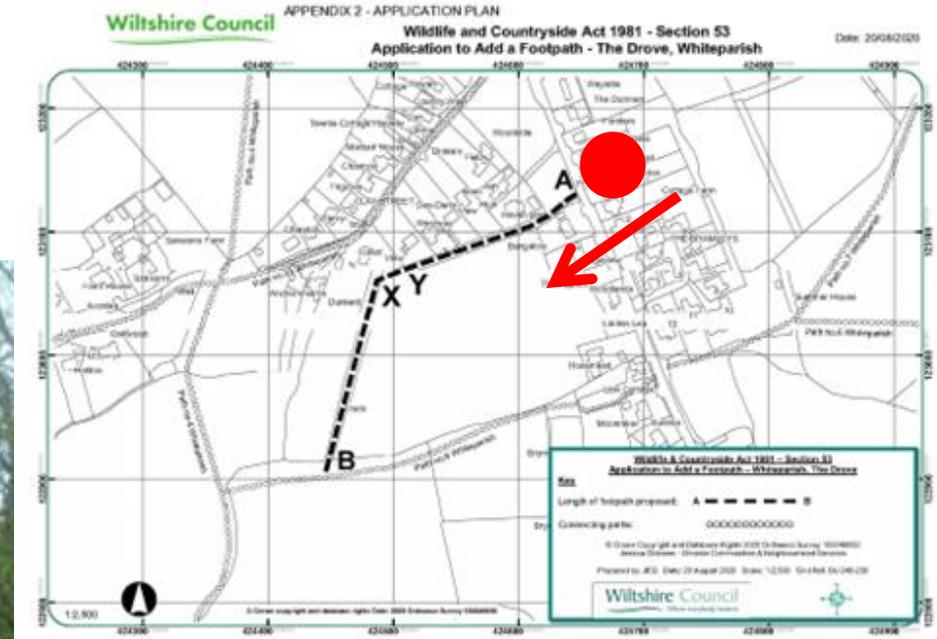
Based on the available evidence “**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022**” was made to add a length of footpath between Common Road and Footpath no.6.

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

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



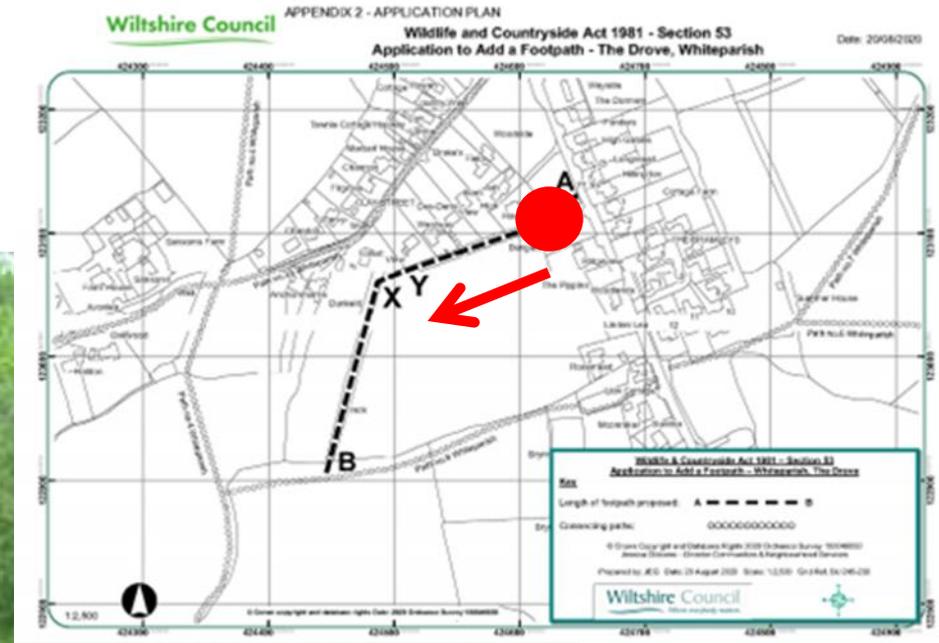
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Looking generally west, the field gate into “Cottage Field” can be seen on the left-hand side

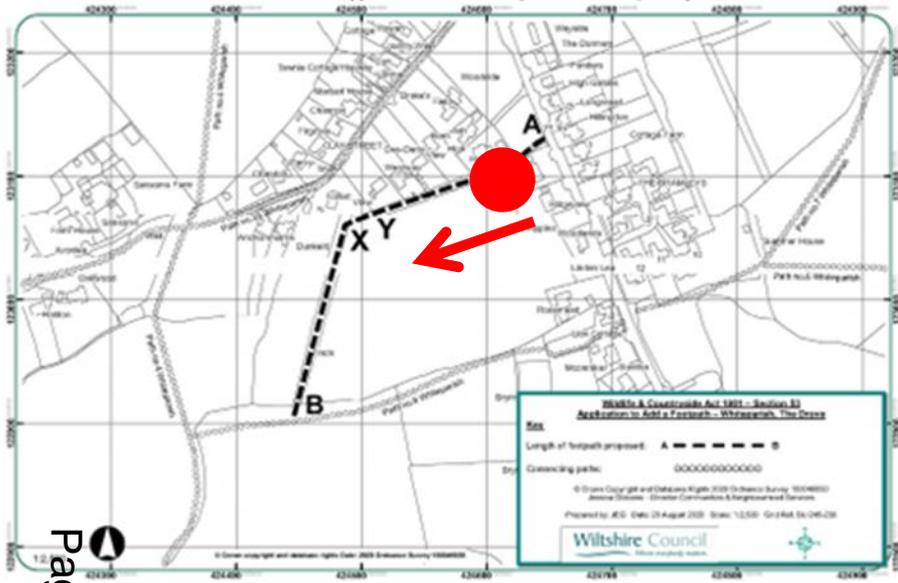


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Wildlife and Countryside Act 1981 - Section 53  
Application to Add a Footpath - The Drove, Whiteparish

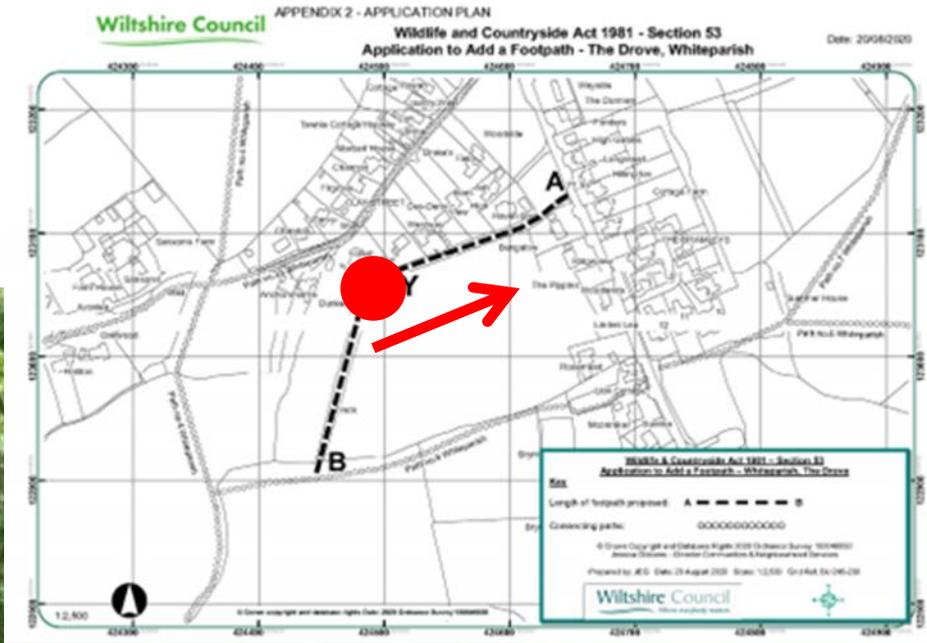
Date: 26/08/2020



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

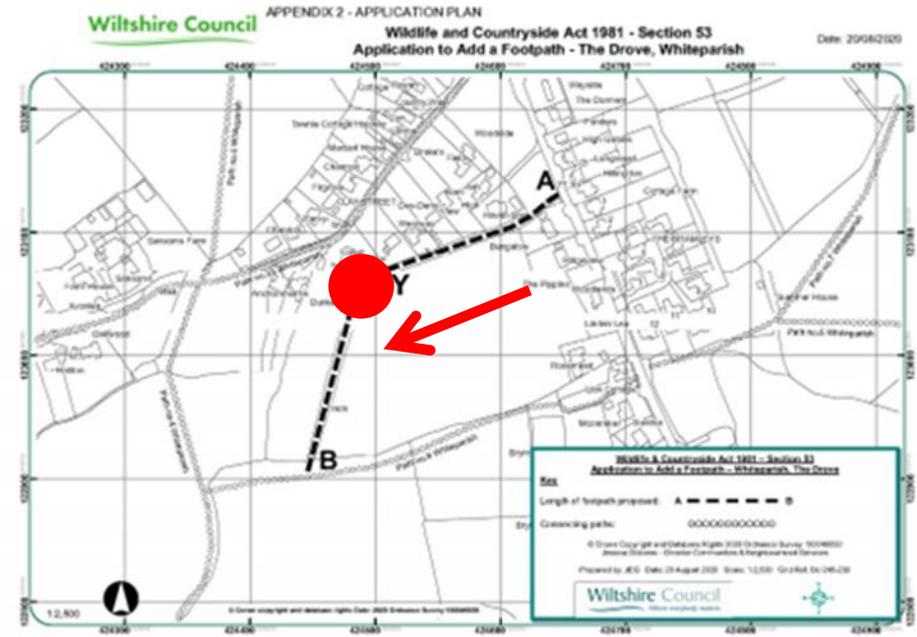


Closeboard fencing now erected across the full width of "The Drove" at point Y



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

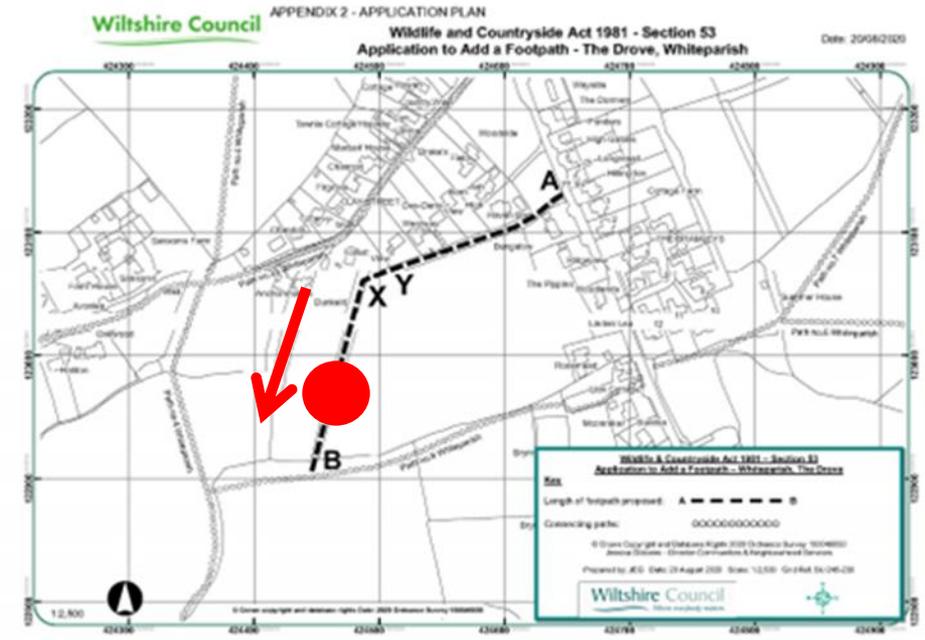
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The continuation of “The Drove”,  
looking south-west in “Secret Field”  
as a tree-lined route



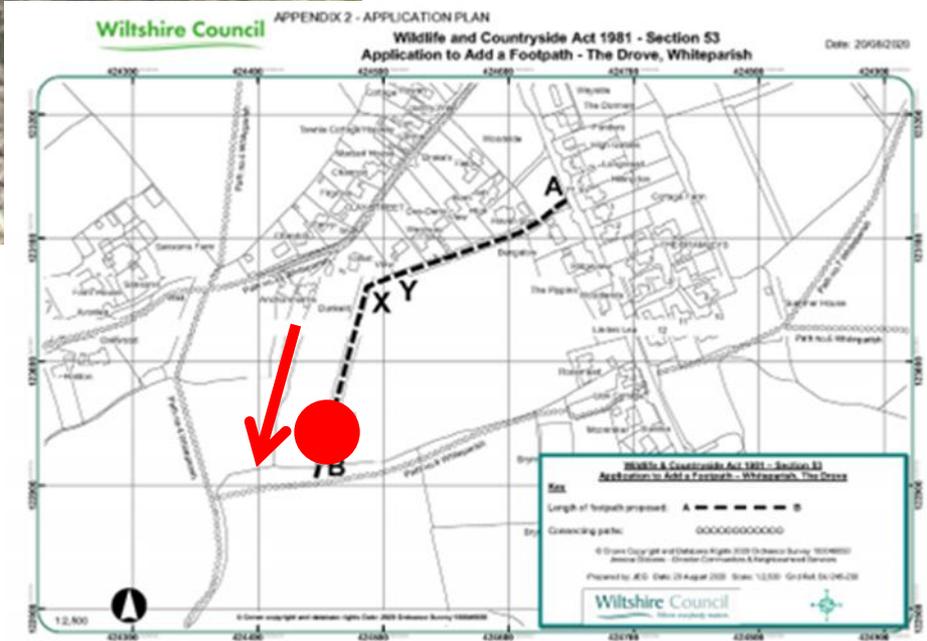
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The Order route looking south-west to point B at its junction with Footpath no.6 Whiteparish – no break in the hedge/field boundary to allow access to Footpath no.6 (2021)



# The Legislation

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

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

# The Secretary of State

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

The Secretary of State will determine the Order by:

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

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

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

# Committee Decision

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

# Objections to the Making of the Order

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

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

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

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

# Objections to the Making of the Order

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

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

# Tests for Making and Confirmation of an Order

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

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

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

Page 24  
These tests are considered in caselaw – the Norton & Bagshaw case:

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

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

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

## Neutral Stance

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

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

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

# Neutral Stance

## Implications of Neutral Stance:

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

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

## Alternative resolution:

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

## Officers' Recommendation

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

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



Site Location Plan



Aerial Photography

# Site Location Plan

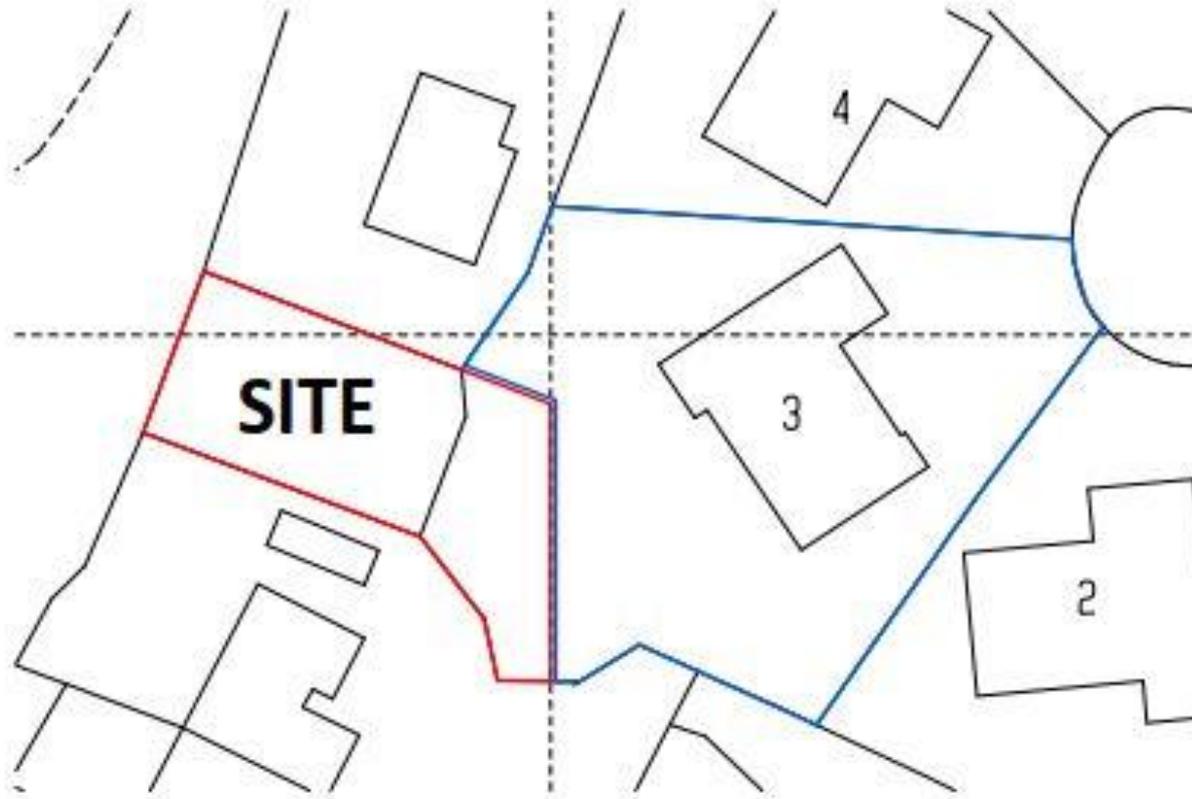


Ordnance Survey (c) Crown Copyright 2015. All rights reserved. Licence number 100022432

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

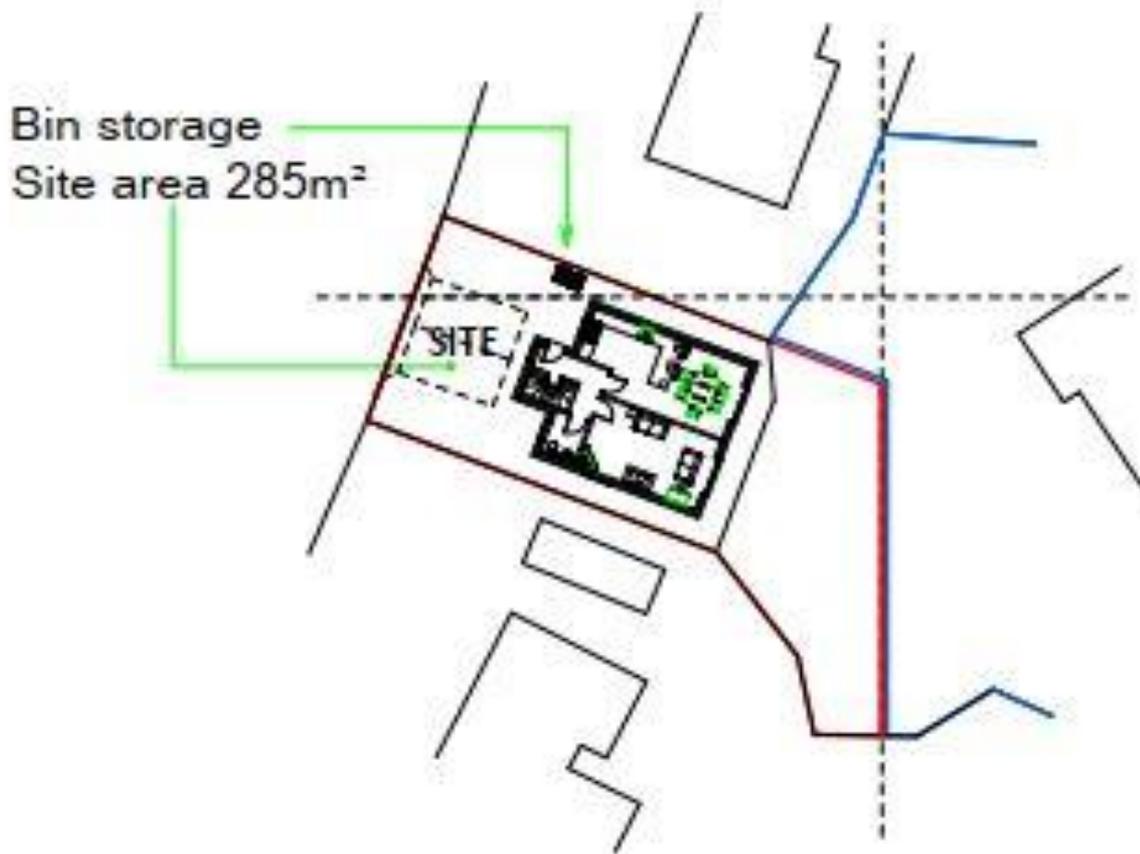
# Existing Block Plan

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SITE BLOCK PLAN SCALE 1:500

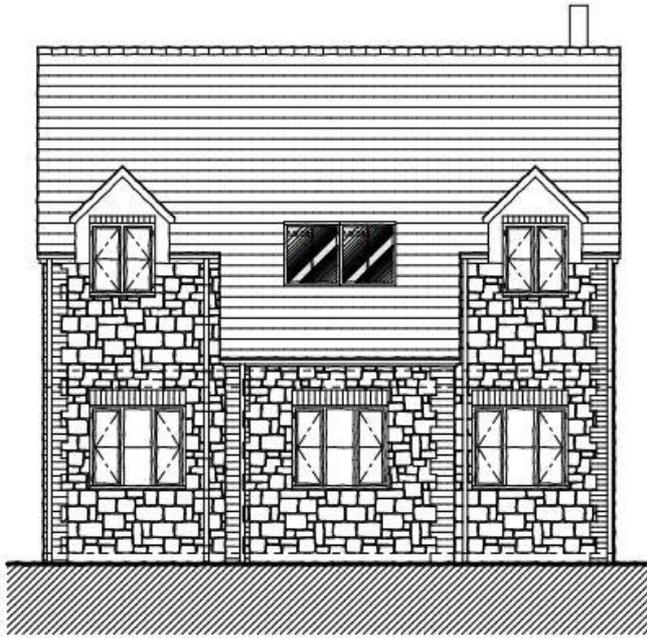
# Proposed Site Block Plan



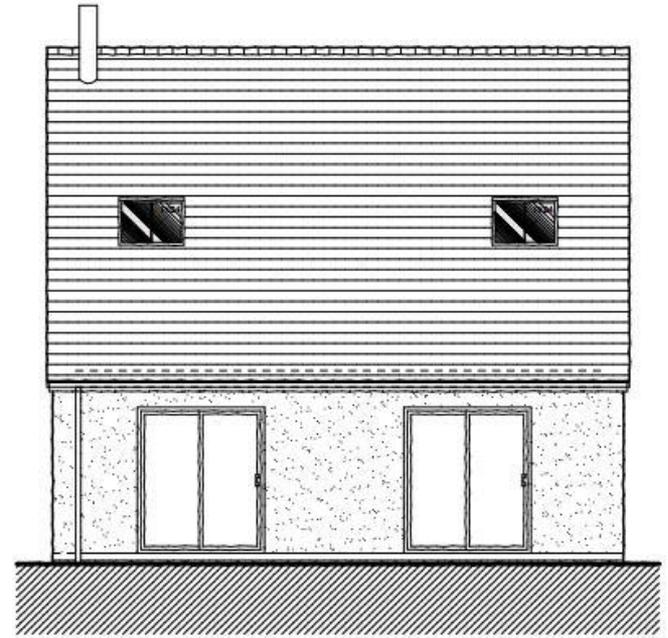
PROPOSED BLOCK PLAN SCALE 1:500

# Front & Rear Elevations

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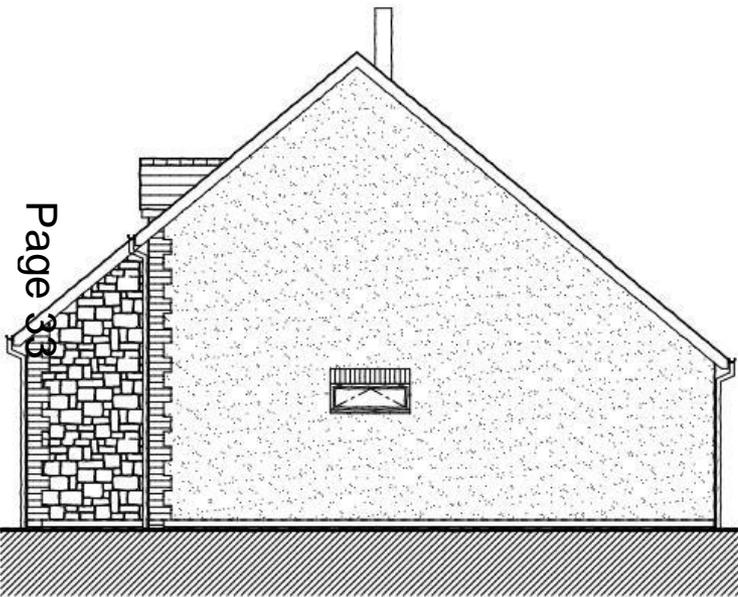


FRONT ELEVATION - NORTH WEST



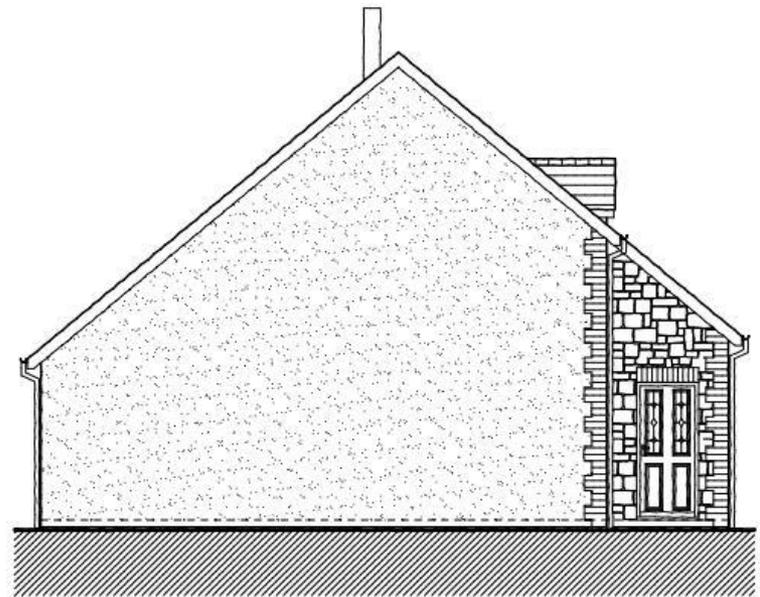
REAR ELEVATION - SOUTH EAST

# Side Elevations



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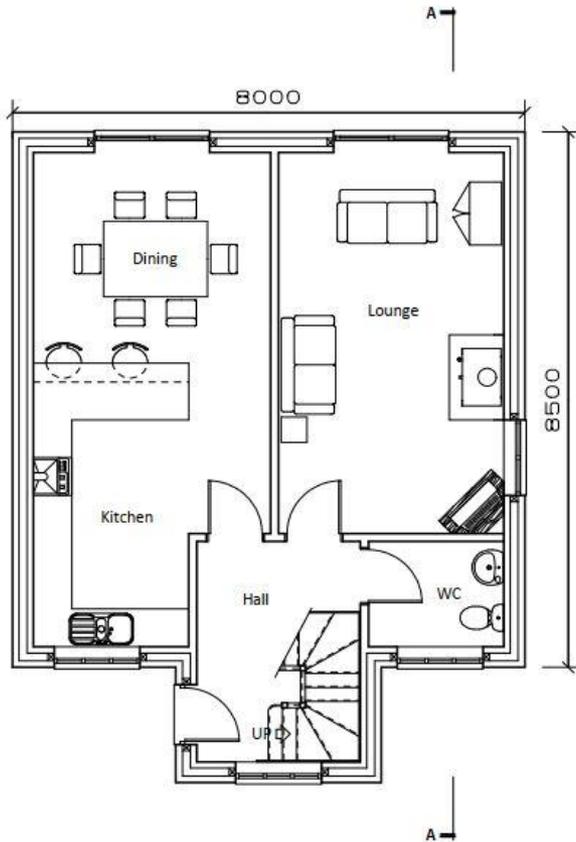
SIDE ELEVATION - SOUTH WEST



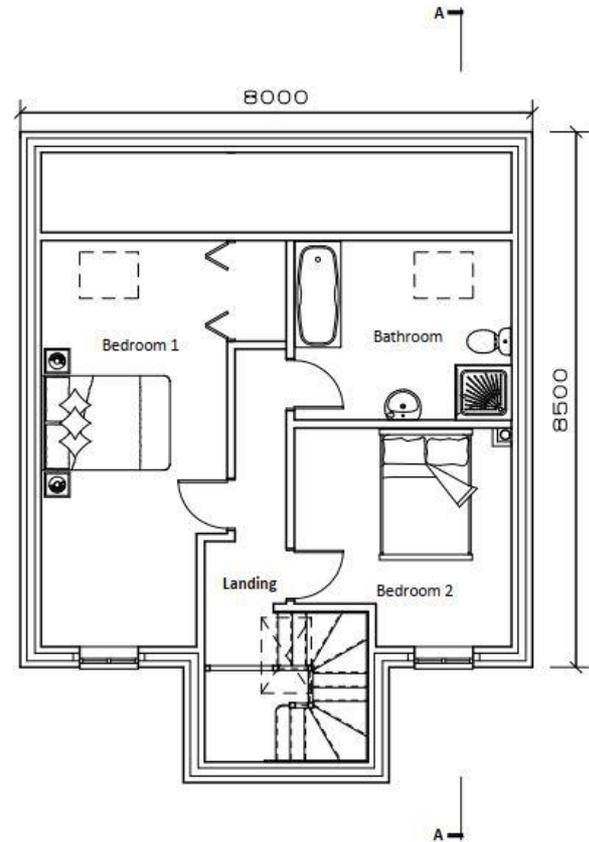
SIDE ELEVATION - NORTH EAST

# Floorplans

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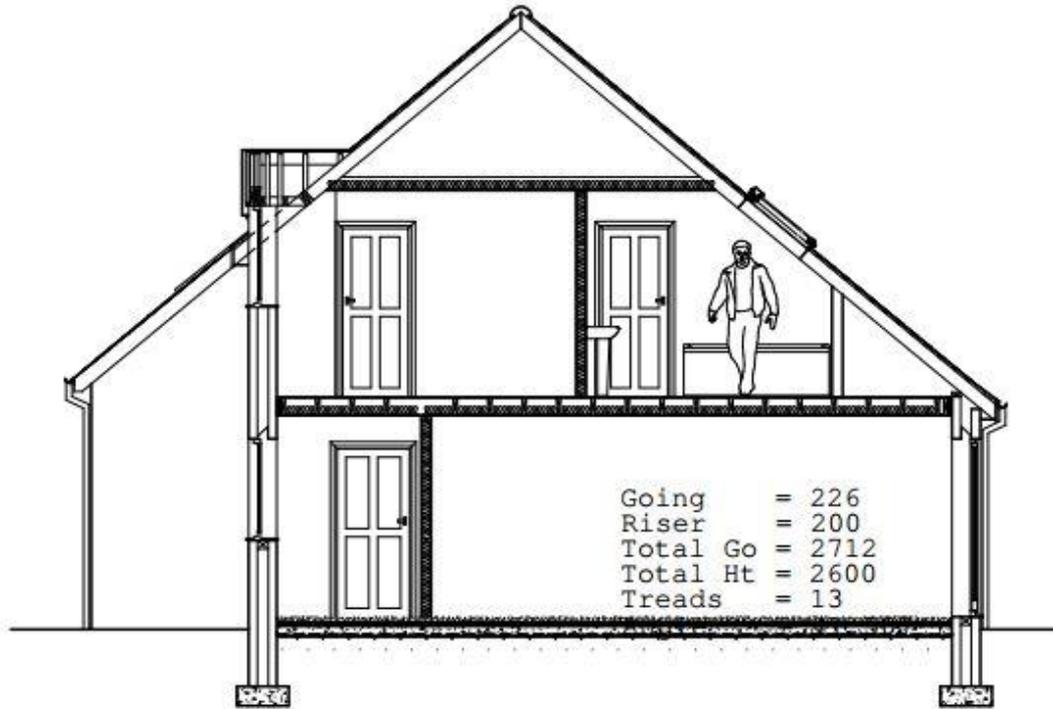
GROUND FLOOR



FIRST FLOOR

# Cross Section

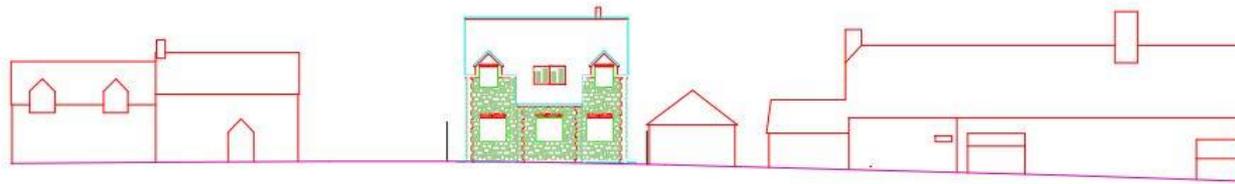
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SECTION A - A

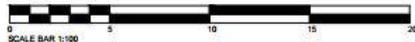
# Surveyed Street Scene

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STREET SCENE - LOOKING EAST

Datum 15.00



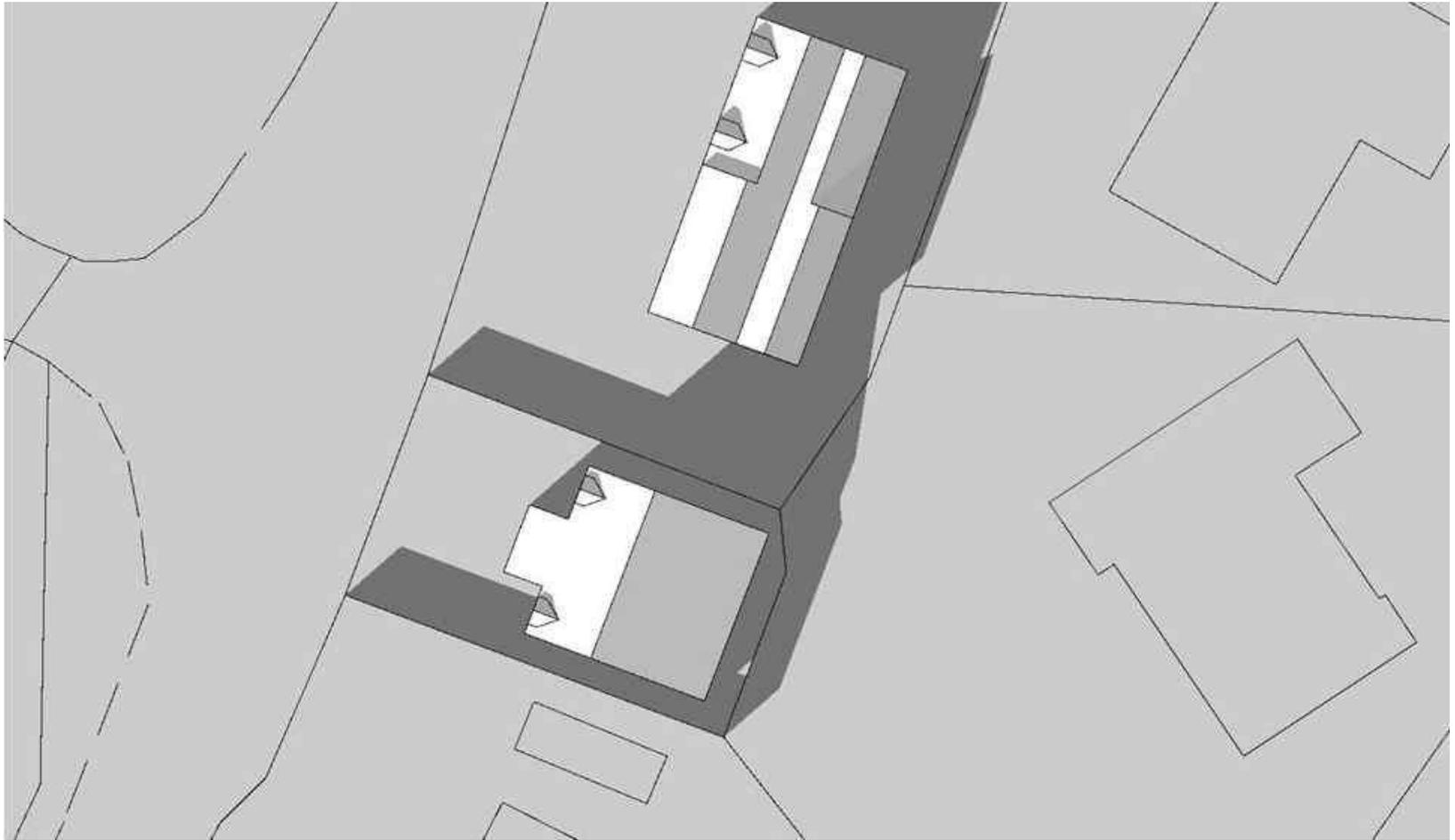
# Street Scene Measured

Page 37



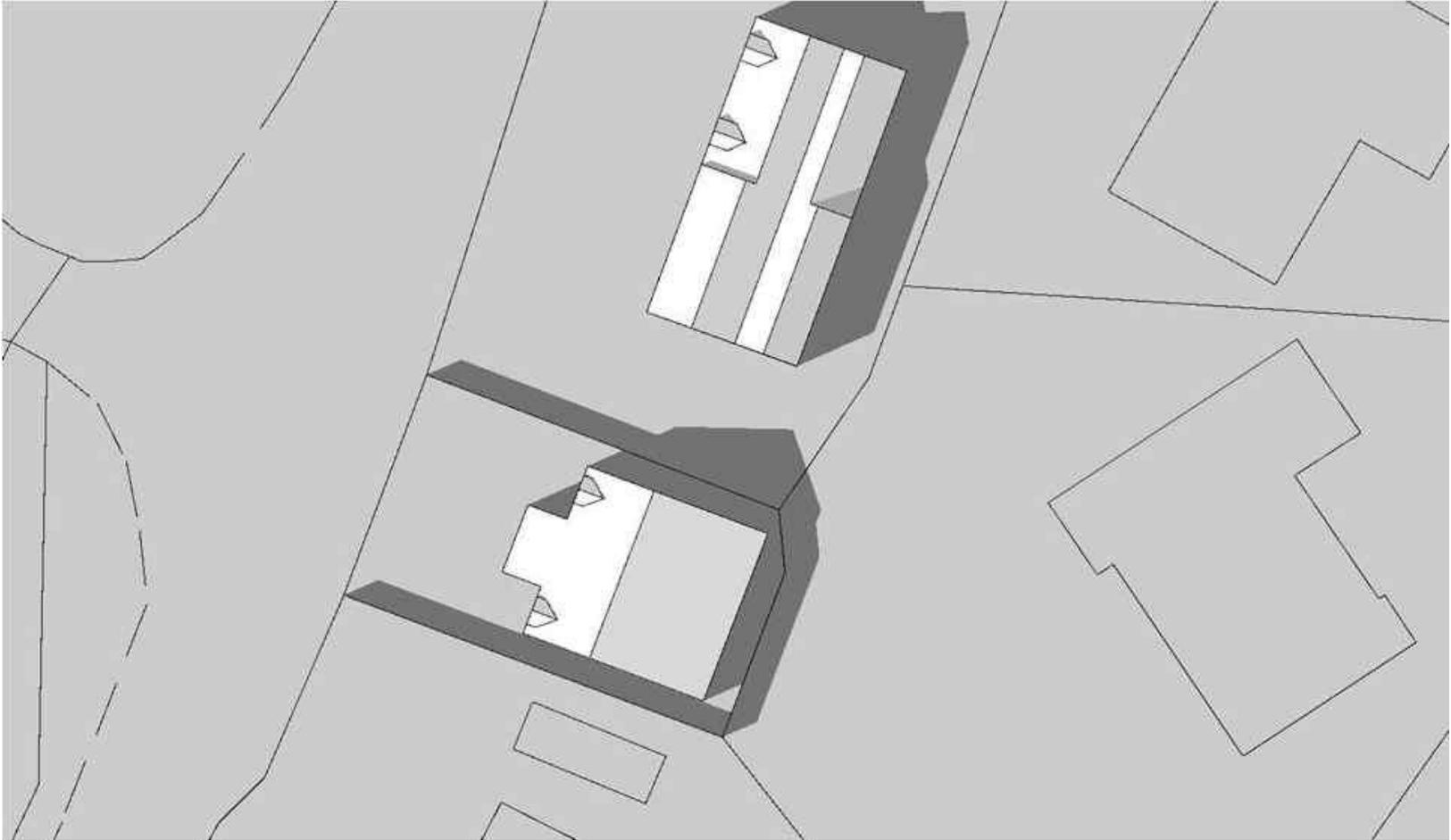
# Shadow Plan 3pm 21<sup>st</sup> March

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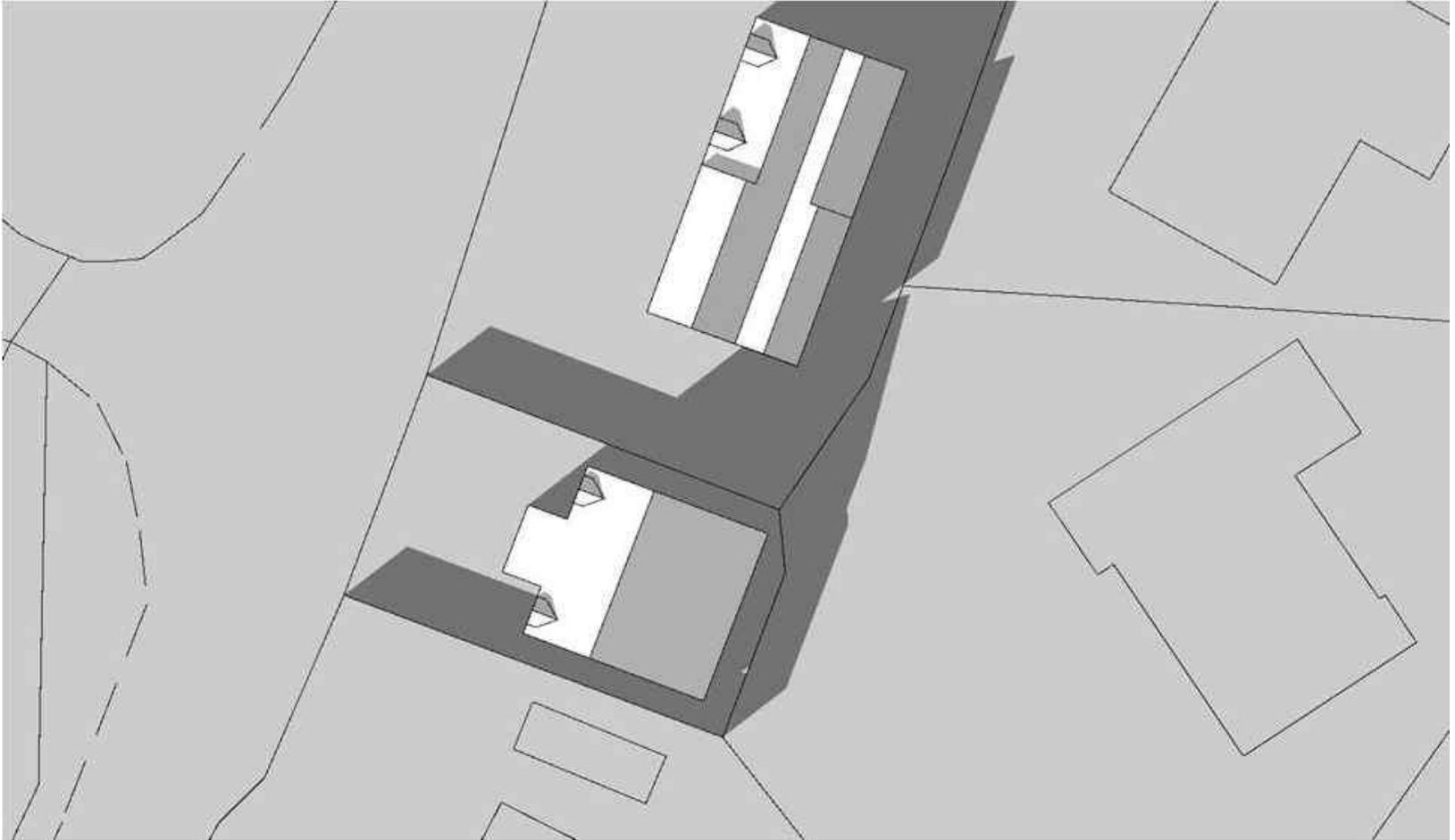
# Shadow Plan 3pm 21<sup>st</sup> June

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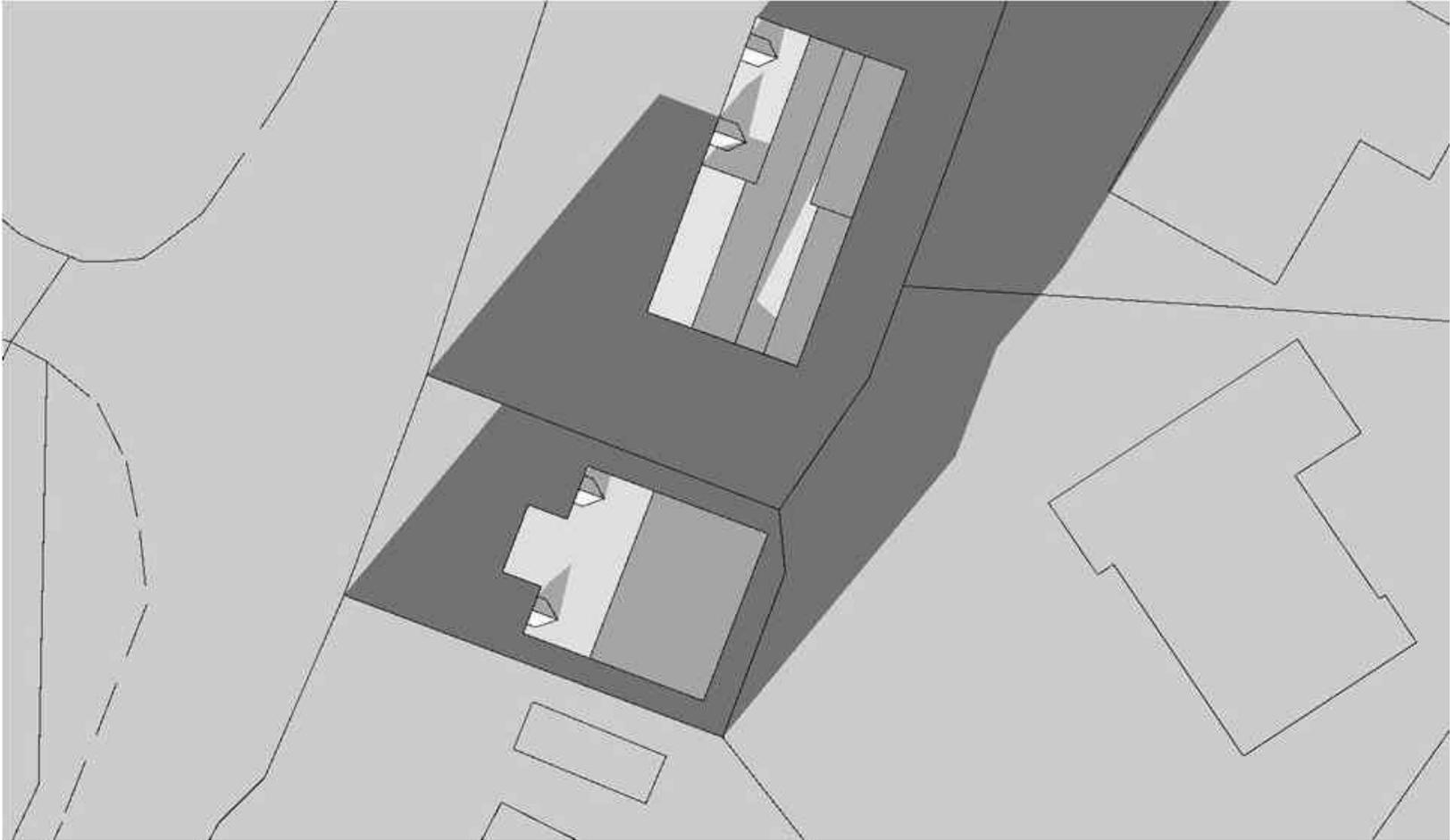
# Shadow Plan 3pm 21<sup>st</sup> September

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

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## Site and context in 2011 (Google maps)

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# The site

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# Northwards

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# Northwards



# Southwards

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# Southwards



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# Opposite



# Towards 3 Old Mill Close



# Rear of Site Looking Southwards



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# Rear of Site Looking Northwards



Page 01

# Rear of Site Towards Road



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# Public Realm over Ravenscroft

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# Public Realm over Horseshoe Cott.

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# On site Towards Garage to South



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

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

**Recommendation: Approve**

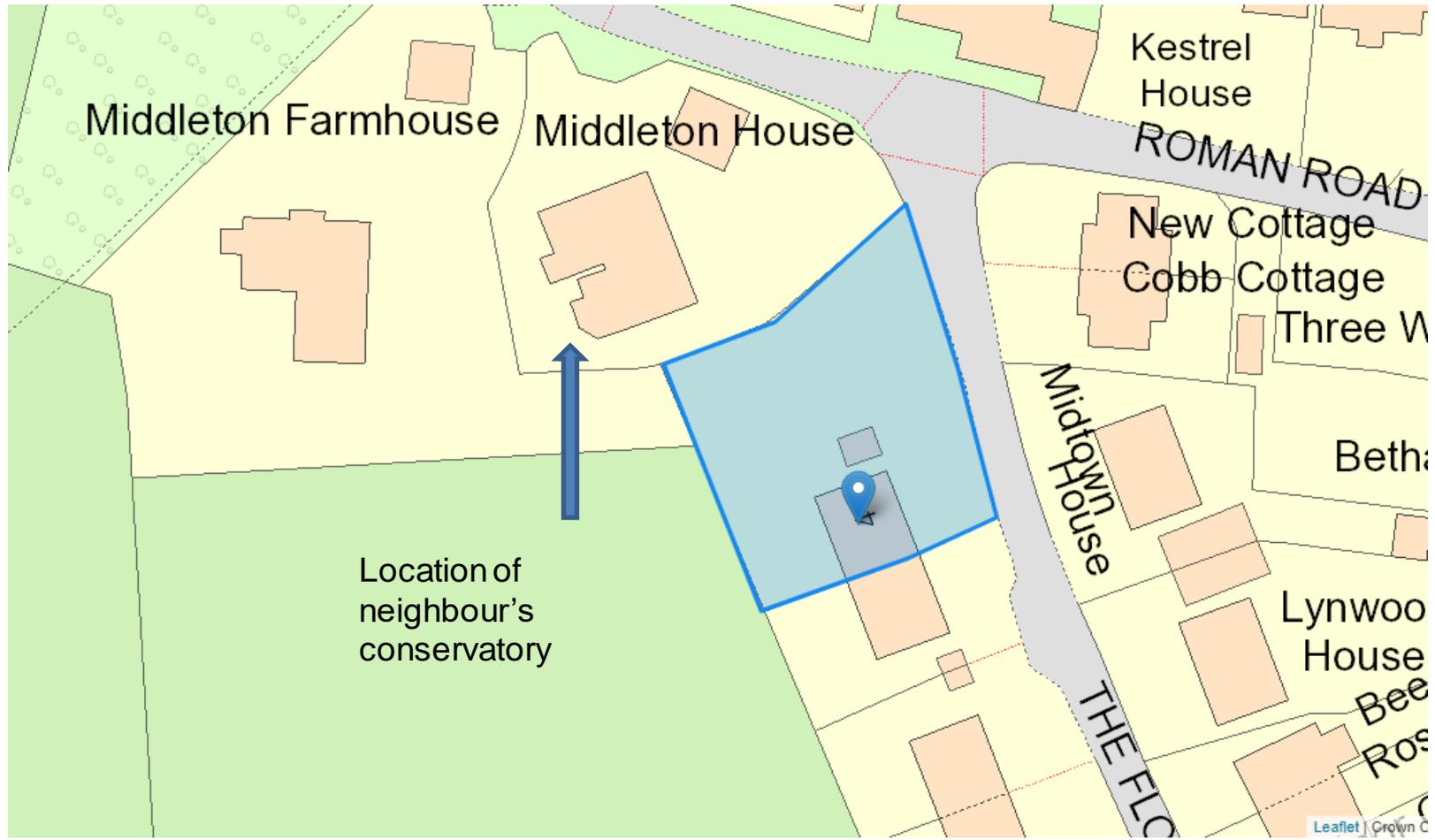


Site Location Plan

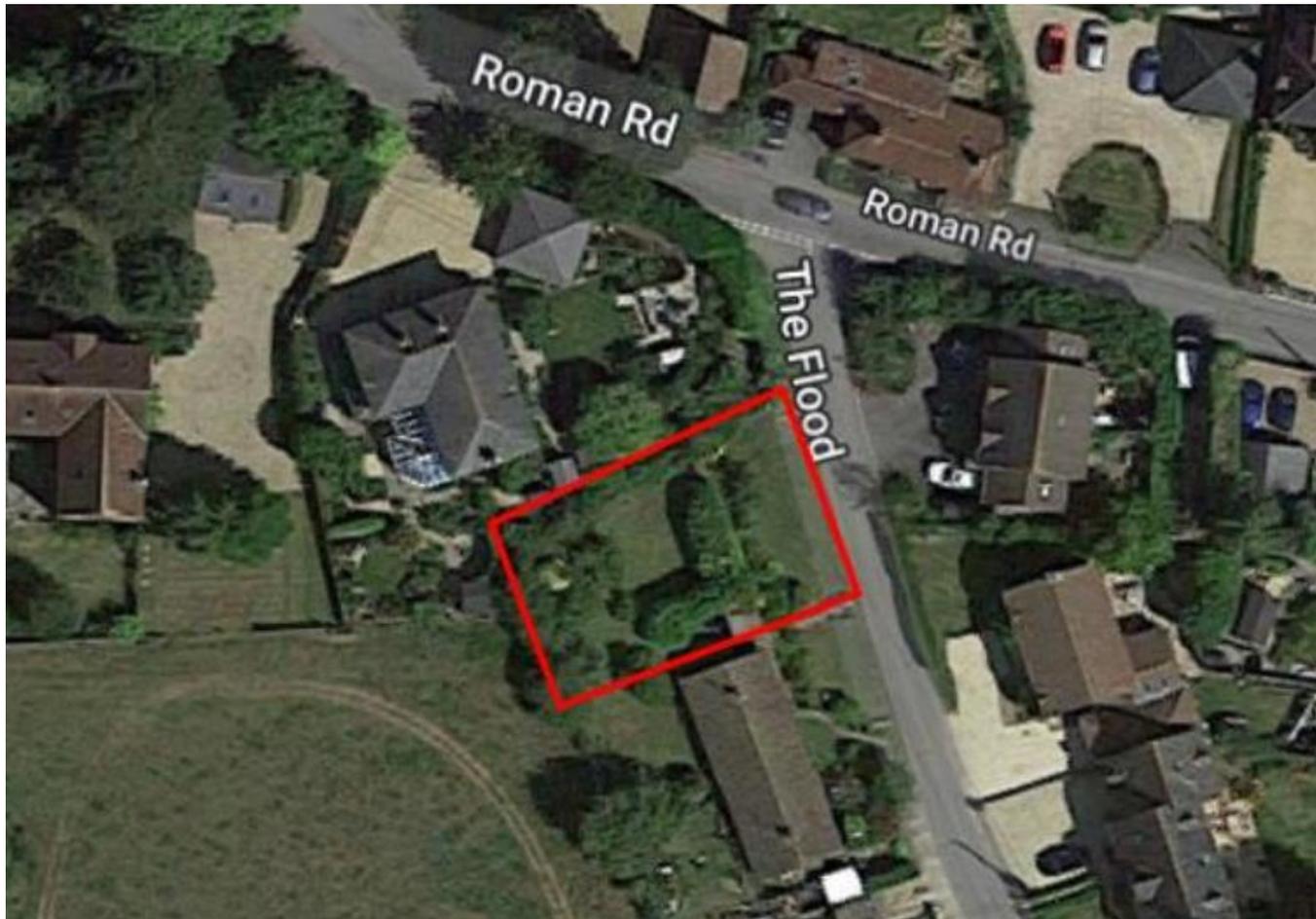
Aerial Photography

# Location plan in more detail

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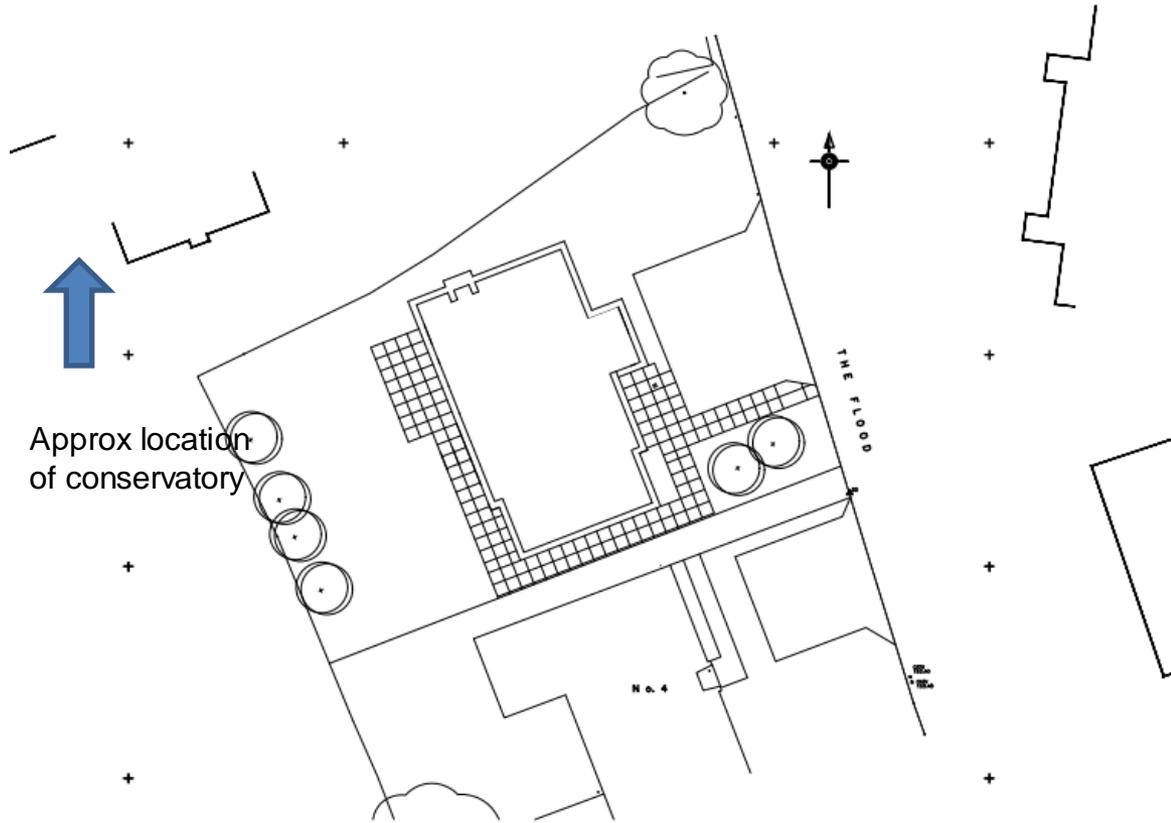


Plot outlined in red showing relationship to dwelling to the



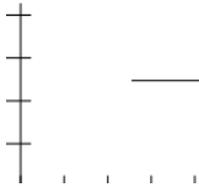
# Proposed Block Plan

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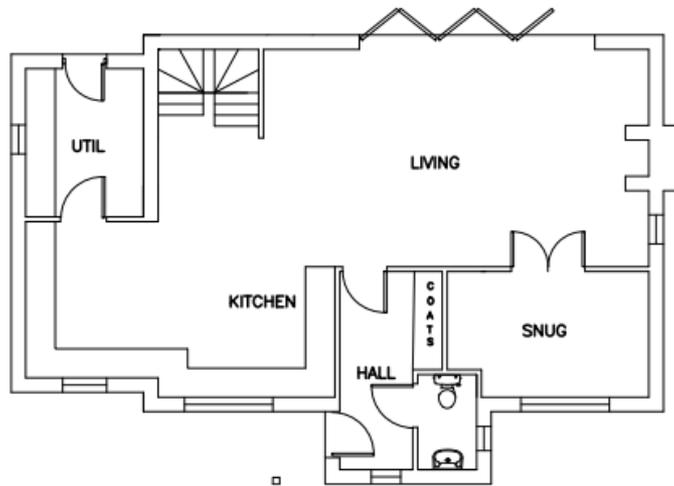
# Proposed elevations

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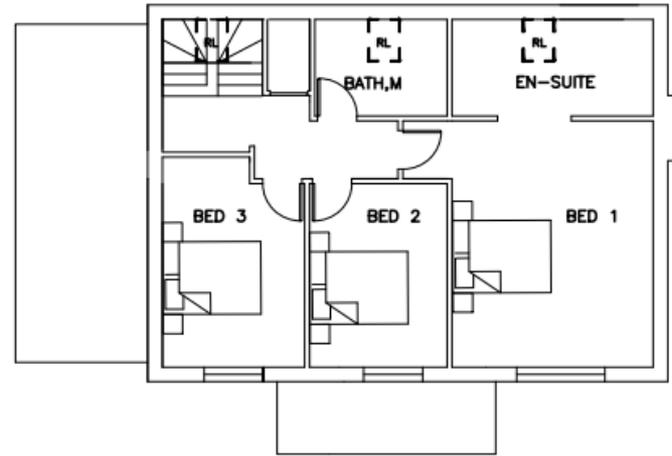


# Proposed Floor plans

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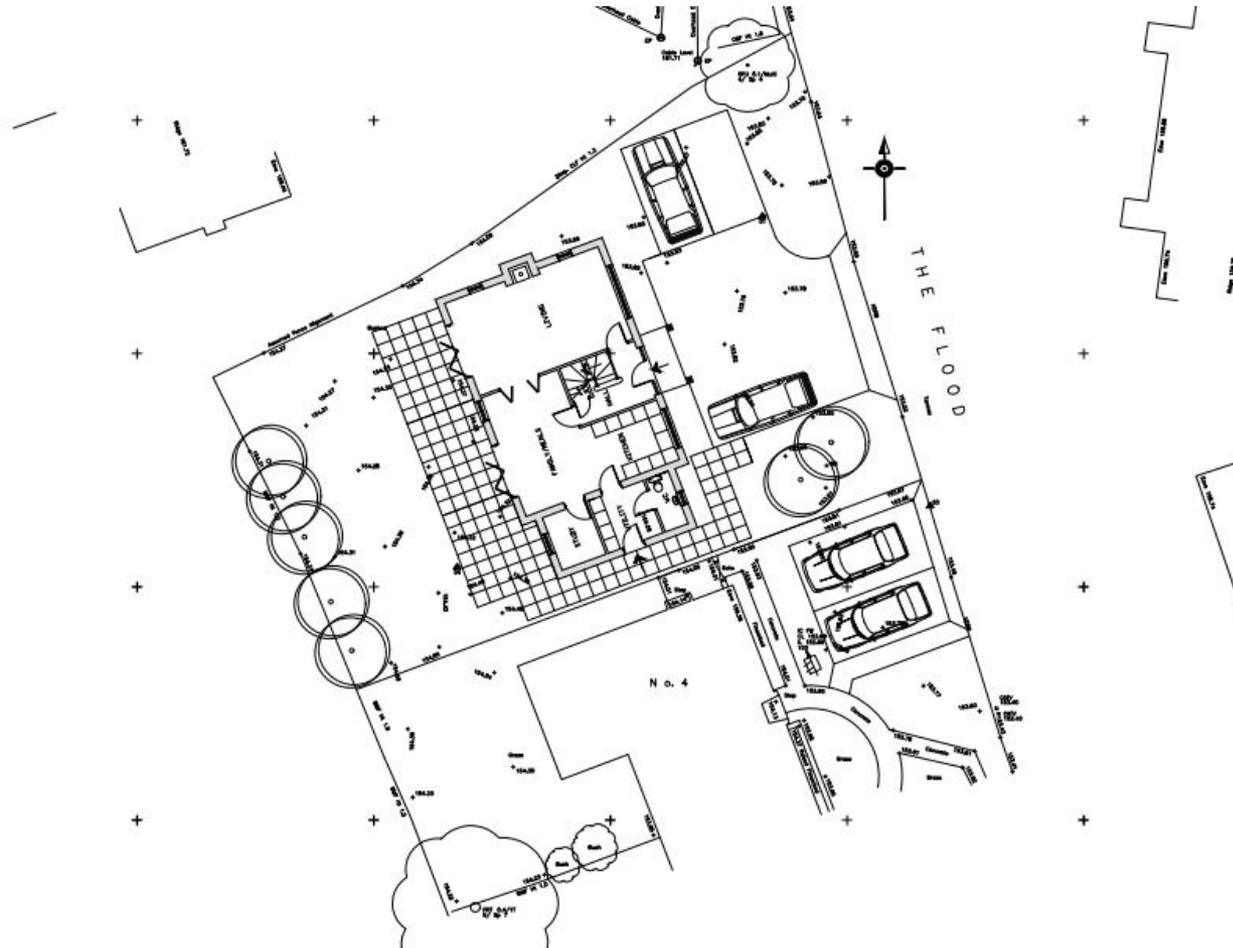
GROUND  
93 SQM



FIRST  
72 SQM

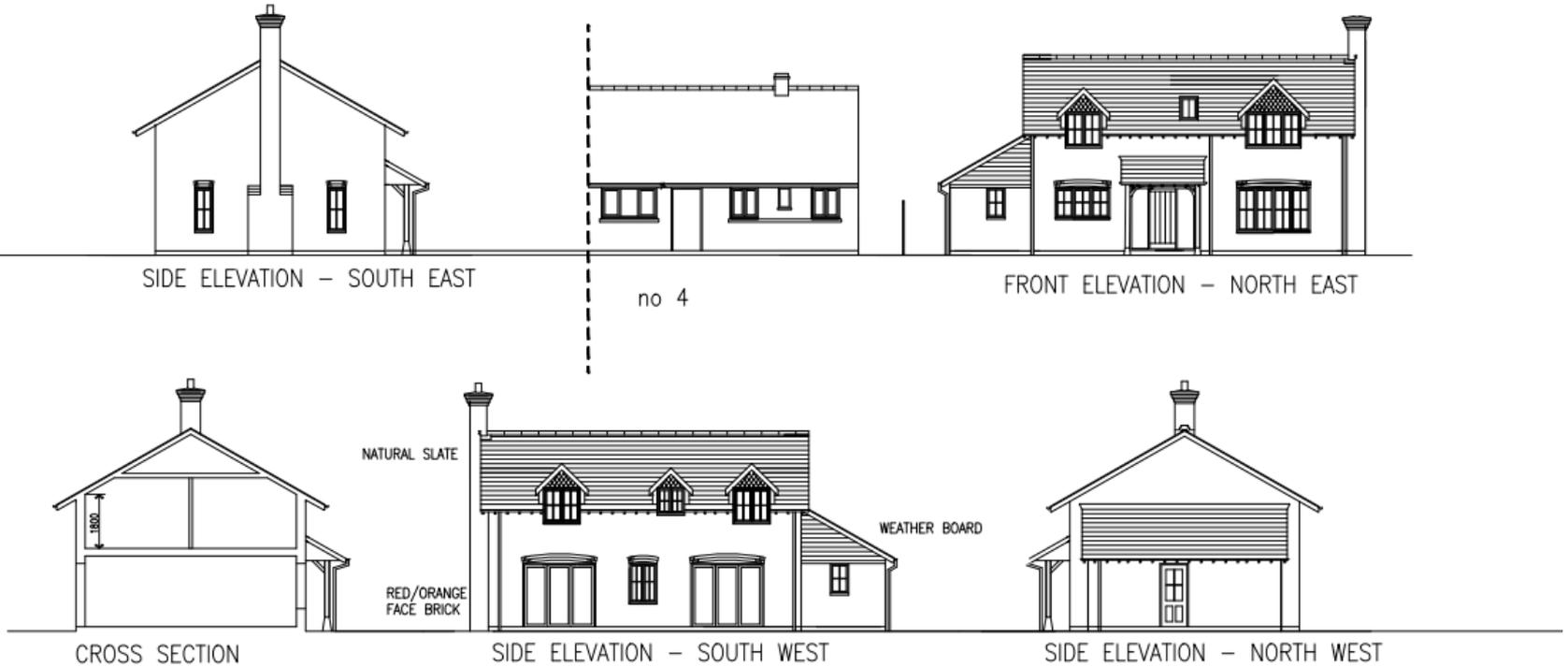


# Site layout for scheme dismissed at appeal (21/00943/FUL)



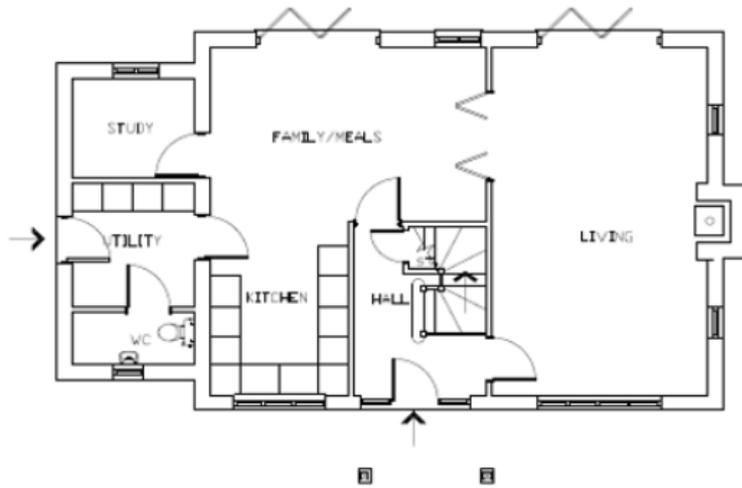
# Proposed elevations dismissed at appeal

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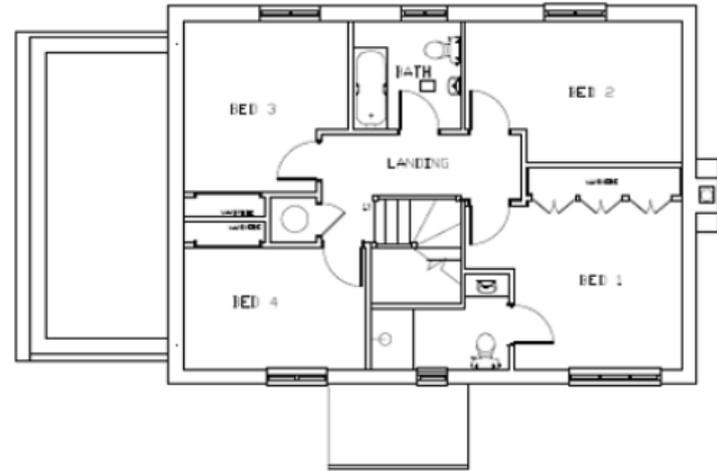


# Proposed floor plans dismissed at appeal

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GROUND FLOOR PLAN



FIRST FLOOR PLAN

# Application site looking towards No. 4 The Flood

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# Application site looking towards Middleton House

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View within site looking towards Middleton House with conservatory just visible



# Dwellings opposite the application site

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# General view of The Flood looking south

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

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

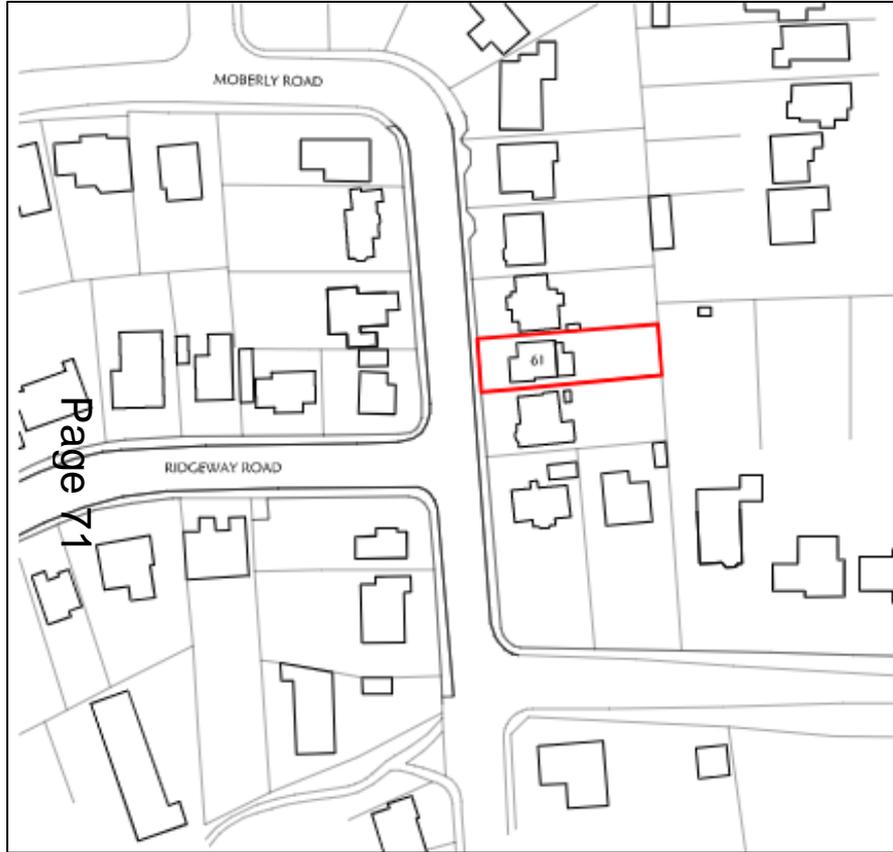
**Recommendation: Refuse**



Site Location Plan

Aerial Photography

# Site Location and Proposed Block Plan



# Approved Elevations (16/10356/FUL)

61 MOBERLY ROAD,  
SALISBURY

Proposed Elevations:



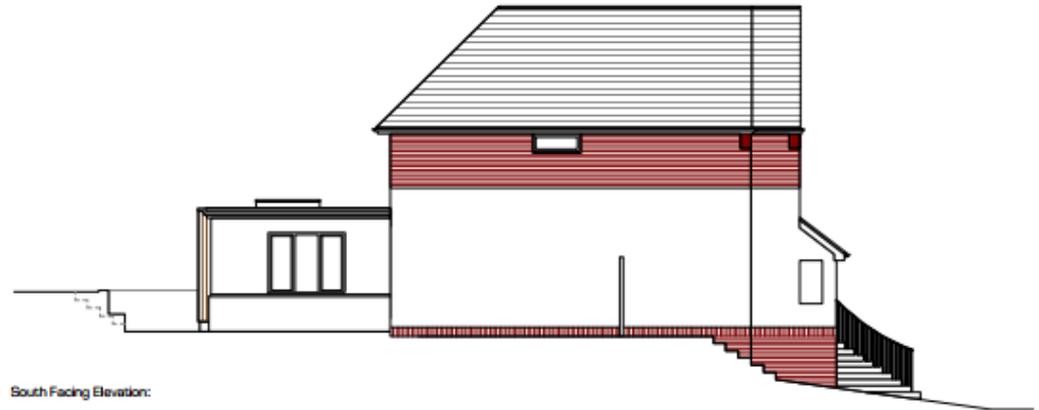
East Facing Elevation:



North Facing Elevation:



West Facing Elevation:



South Facing Elevation:

# Proposed Elevations (PL/2023/01136)

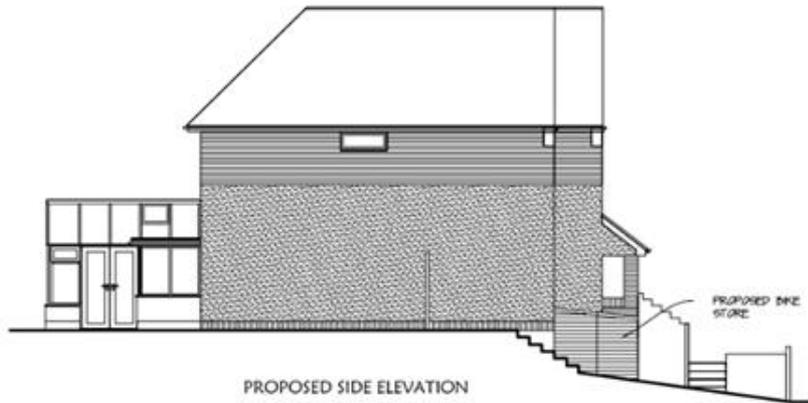
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PROPOSED FRONT ELEVATION



PROPOSED REAR ELEVATION



PROPOSED SIDE ELEVATION



PROPOSED SIDE ELEVATION

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

Proposed Elevations:

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East Facing Elevation:



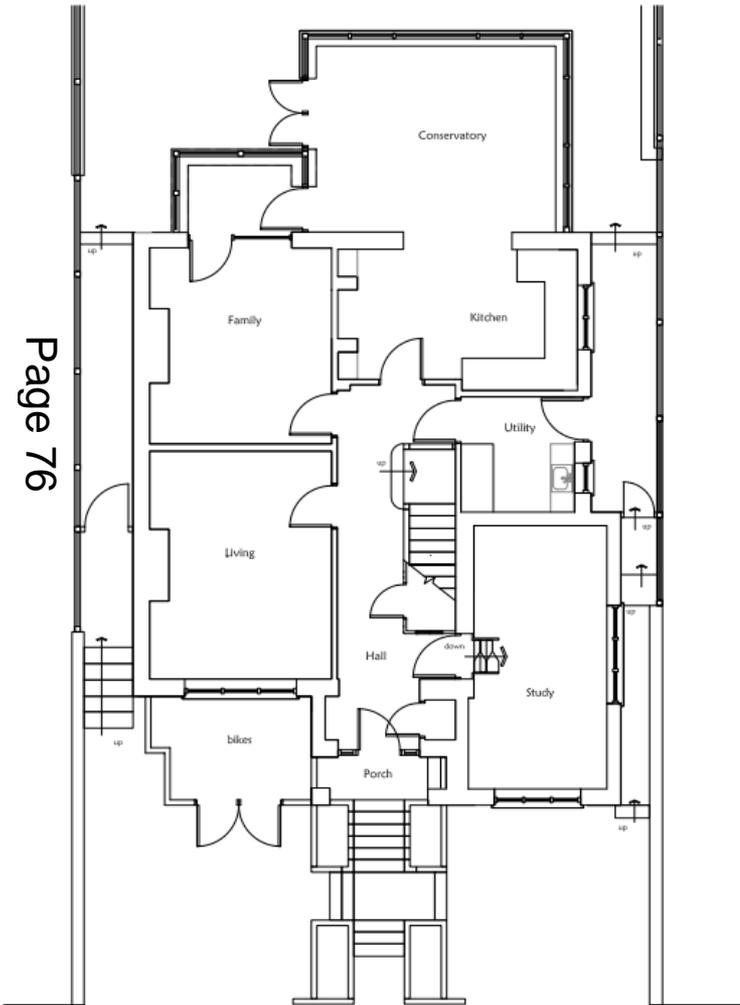
PROPOSED FRONT ELEVATION

# Current Front Elevation (Site Visit)

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# Proposed Ground Floor Plan



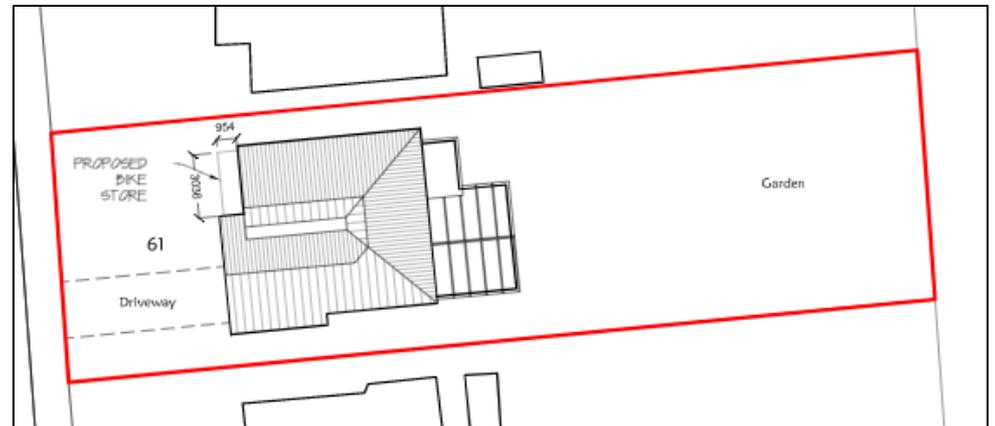
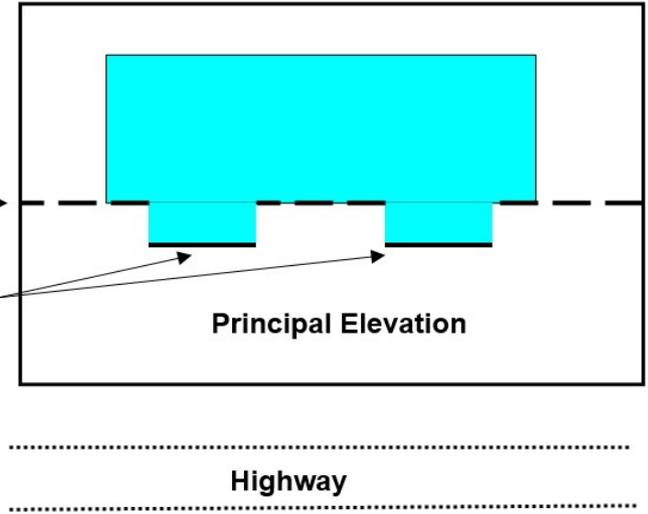
PROPOSED GROUND FLOOR PLAN

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# Permitted Development Guidance

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

Bay windows form part of principal elevation



# Southern Area Planning Committee

30<sup>th</sup> March 2023

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## Southern Area Planning Committee

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**MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 2 FEBRUARY 2023 AT WYLYE ROOM, FIVE RIVERS HEALTH & WELLBEING CENTRE, HULSE ROAD, SALISBURY, WILTSHIRE, SP1 3NR.**

**Present:**

Cllr Andrew Oliver (Chairman), Cllr Sven Hocking (Vice-Chairman), Cllr Brian Dalton, Cllr Nick Errington, Cllr George Jeans, Cllr Ian McLennan, Cllr Nabil Najjar, Cllr Bridget Wayman and Cllr Rich Rogers

**Also Present:**

Cllr Richard Britton

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128 **Apologies**

Apologies were received from:

- Cllr Charles McGrath
- Cllr Trevor Carbin

129 **Minutes of the Previous Meeting**

The minutes of the meeting held on 8 December 2022 were presented.

**Resolved:**

**To approve as a correct record and sign the minutes.**

130 **Declarations of Interest**

There were no declarations.

131 **Chairman's Announcements**

The Chairman explained the meeting procedure to the members of the public.

132 **Public Participation**

The committee noted the rules on public participation.

133 **Commons Act 2006: Schedule 2(6) – Application to De-register Buildings Wrongly Registered as Common Land – The Pound, Whiteparish - Application no.2021/01ACR**

Public Participation

Trevor King spoke in Objection to the Application  
Sarah Skeats (Applicant) spoke in Support of the Application

Attention was drawn to additional information as set out in supplements 1 and 2 to the agenda.

The Officer noted corrections to the report, which were:

- Para 11 – (main report) – was amended to read “*The closing date for applications made under Schedule 2 of the 2006 Act, is now the same as that made to a 2014 registration authority, i.e. 15 March 2027. In this case the application is made before the cut-off date and there is no material affect*”
- Paras 20 & 26 (Appendix 10) - the word ‘immediately’ had been replaced with the word “intimately” in the quotes from the Methuen-Campbell caselaw.

The Senior Definitive Map Officer, Janice Green, presented the Application to de-register buildings wrongly registered as Common Land at The Pound, Whiteparish.

It was proposed that the Application site be part de-registered, over the part of the application area covered by a building or the curtilage of a building, as set out in the report and detailed on the presentation slides.

Some of the main points raised included clarification of the site and its areas which had been numbered 1 to 4 in the report and shown on the screen.

The Officer explained how the legal tests set out at Schedule 2(6) of the Commons Act 2006 regarding the de-registration of buildings wrongly registered as common land, had been considered in relation to the areas of the application land, in that;

- Area 1 was not registered common land and should be excluded.
- Area 2 of the site was included in historical block plans for planning applications/consents for change of use and erection of workshop building at the Pound site in 1967.
- Area 3 was an area of hardstanding, positioned outside of the 1967 planning site.
- Area 4 was a grass / wooded area at the north of the application area, also outside of the 1967 planning site.

The Legislation relevant to the application was presented and it was explained that on applying the tests, only one area, Area 2, met the criteria.

Attention was drawn to the reasons for the recommendation, which were set out in paras 40 and 41 of the report.

It was noted that three objections had been made to the application.

The Officer clarified that in relation to the late correspondence submitted by the applicant regarding the Ordnance Survey Mapping and a County Series map from 1952-1992, although these showed a change in surface over the site including Area 3, there was no evidence to demonstrate a relationship between the building and Area 3 necessary for it to form curtilage of the building.

It was also clarified that in relation to the visibility splay extending into Area 3, mentioned by the applicant, that the line on the mapping was the current hedge line rather than extension of the visibility splay northwards. The 1967 planning block plans do not record the visibility splay extending north of the identified planning area and its extension southwards is very clearly conditioned to extend outside the planning area.

Members then had the opportunity to ask technical question of the Officer, where it was noted that in relation to the late correspondence the Officers' recommendation remained unchanged, as set out in the report.

The Officer explained that the application had come to Committee due to its regulatory function which required the Committee to act in a quasi-judicial capacity, to enable natural justice and a right to a fair hearing. Any decision outside of the Officers' Recommendation would need to be supported by clear evidence.

Members of the public as detailed above, then had the opportunity to speak on the application.

Some of the points raised included references to local farming families use of the common to raise livestock for over 150 years and that Parish Council held the Commons registration documents.

There was a recollection by local residents of grazing cattle across the builder's yard and of Romany Gypsies roaming the common land.

The Applicant highlighted the additional evidence and suggested that Area 3 also be de-registered, as she felt there was enough evidence to show that the hard standing area has been in use since 1963 and that the visibility splay formed part of the building curtilage.

The Division Member, Cllr Richard Britton spoke on the application, questioning the Officers' rebuttal of the hard standing area (Area 3), stating that it was not as convincing as on the main site, asking the Committee whether it would consider a deferral of the application, to allow for further investigation of Area 3.

Cllr Hocking moved the motion of part de-registration, in line with the Officers' recommendation. This was seconded by Cllr McLennan.

The Committee discussed the application, the main points included the request of the Divisional Member for a deferral, which were not supported and whether the evidence provided by the applicant was enough to deviate from the Officers' recommendation, which the Committee again did not support.

The Committee considered the options available and the Officers' reasons for the proposal to part de-register, as set out in the report.

The Committee then voted on the motion to part de-register the application site as set out by the Officers' recommendation.

It was;

**Resolved:**

**That the Commons Act 2006: Schedule 2(6) – Application to De-register Buildings Wrongly Registered as Common Land – The Pound, Whiteparish - Application no.2021/01ACR, be granted only in part, over that part of the application area, named as Area 2, which is covered by a building or the curtilage of a building, for the following reasons:**

- 1. The legal requirements as set out under paragraph 6 of Schedule 2 of the Commons Act 2006, i.e. the de-registration of buildings wrongly registered as common land, are met in the following in this application:**
  - i. Part of the land at The Pound, Whiteparish, subject to the application was provisionally registered as common land on 10 April 1968, (register entry no.CL.7, Whiteparish Common). The registration of the land became final on 1 October 1970, and this is not disputed.**
  - ii. Part of the application land was covered by a building and its curtilage at the time of provisional registration. Planning for the workshop building subject to this application was granted in October 1967 and the building was erected before the end of 1967, i.e. before the provisional registration of the land in 1968. There is no dispute of the date the building was in place on the land and no evidence to suggest that the workshop building was not present at the time of provisional registration, however, there is dispute regarding the extent of curtilage of the building.**
  - iii. Part of the application land has been covered by a building and its curtilage at all times since provisional registration and still is, the period in question being April 1968 – present day. Although Mr King disputes continuous use of the building throughout this period, there is no requirement within the Act to consider continuous use, just that the building and/or its curtilage covered the land during this period, of which there is no dispute**

and no evidence to the contrary. There is dispute regarding the extent of the curtilage of the building.

- 2 Having considered the available evidence, Officers' did not consider that the whole of the application area was, at provisional registration, covered by a building and its curtilage and has remained so. The CRA concludes that where the subject of this application is the garage/workshop building and its curtilage, it is only possible to consider the curtilage of this building to be that area included within the planning applications/consents for change of use of The Pound site and erection of the workshop building at The Pound, as an area so intimately associated with the building as to lead to the conclusion that it forms part and parcel of the building. This relationship between the extended area of the application land, for the full period from provisional registration and at all times since, has not been demonstrated. Therefore, it is proposed that the application to de-register land as common land be granted only in part over that part of the land subject to the successful planning applications in 1967 and excluding that area of the application land not included as part of Common Land Register Unit CL.7, Whiteparish Common, as shown on the plan (para 43 of report).

134 **Planning Appeals and Updates**

The committee received details of the appeal decisions as detailed in the agenda.

The Planning Team Leader noted the consistent outcome of dismissed appeals as detailed in the update, adding that it was an indication of the amount of hard work the Officers put into each application.

The Committee commended the Officers.

**Resolved:**

**That the Appeals update be noted.**

135 **Planning Applications**

136 **PL/2022/07116 Land to the south of 1 Witt Road, Winterslow**

**Public Participation**

Mike Jones spoke in Objection to the Application

The statement of Winterslow Parish Council was read by Cllr Rich Rogers

The Senior Planning Officer, Lynda King, presented the report on the application, which was for the erection of 3 detached dwellings, garages, parking and access following demolition of 3 existing buildings (Outline application relating to access and layout).

The main issues which were considered to be material to the determination of this application of the case were noted as:

- Principle and planning history
- Neighbouring amenities
- Highway safety
- Ecology
- CIL/S106

The application had generated an objection from Winterslow Parish Council and 25 letters of objection from third parties.

The application was recommended for Approval with conditions.

Members then had the opportunity to ask technical question of the Officer. It was noted that a 2019 application was refused on access into the site and drainage reasons, not on the layout or the number of dwellings. That application was dismissed at appeal due to a nitrate issue. The layout was found to be satisfactory by the Inspector.

The current application had overcome the nitrate issue as the applicant had reached an agreement with Wiltshire Council on purchasing credits to mitigate the nitrates.

The Officer noted that the absence of a response from the Drainage Officer, likely indicated that they were content.

As this was an outline application, the Officer could not confirm whether the properties would be 2 or 3 storey, however it was stated that it was expected that they would be standard 2 storey dwellings.

Members of the public as detailed above, then had the opportunity to speak on the application. Some of the main points included the impact on Witt Road, the conditions of the surrounding area at the time of the Inspectors visit, which had taken place during an afternoon in winter, when the full experience of the walkers, horses, families and children etc that used the road was not present. The rise in the number of deliveries since the pandemic, resulting in more vehicular movements. The design of the proposal, being out of character.

The Parish Council statement noted that the layout on the site was not in keeping with nature of the area and adjacent properties and considered the proposal an over-development of the site. They noted concerns relating to overlooking on neighbouring properties and felt that the narrow nature of Witt

Road and its use by walkers and horse riders to and from Bentley Wood, given that there was no footpath raised safety concerns.

The Divisional Member, Cllr Rich Rogers who was on the Committee spoke in Objection to the application, noting the narrow nature of Witt Road and its rural setting.

He felt that the proposal for 3 family homes was already provided for within the village. The limited detail in the outline application was noted, in particular as it was not known whether the dwellings would be 2 or 3 storey he stated there was insufficient evidence to make an informed decision.

In addition, he raised concerns relating to property density, Highway safety and a detrimental impact on neighbouring amenity, noting that the Inspector had not seen a typical view of Witt Road at the time of his visit.

Cllr Rogers moved the motion of Refusal, against Officer recommendation, stating the following reasons:

- That the development was contrary to the Wiltshire Council spatial strategy as set out in CP23 which states a need for a balanced growth of housing and employment to deliver sustainable communities.
- That the development was contrary to strategic objective 3 which sets out an explicit need for affordable housing.
- That the development would have a detrimental impact on the amenity of neighbouring properties.
- That the development would have a detrimental impact on the character of the surrounding area and wider landscape contrary to CP57.
- That flood risks associated with the development had not been adequately mitigated, contrary to CP67.
- That highway safety for pedestrians, and other road users would be compromised and place increased reliance on car use contrary to sections 104, 105, 110 and 111 of the NPPF and CP61.

This was seconded by Cllr Ian McLennan.

The Officer clarified that the Inspector had ruled on highway safety and amenity as part of the previous application, which was identical, with the nitrate issue being the only reason given for previously dismissal.

The Committee discussed the application, the main points included the reason for previous refusal and the nitrate matter which it was reported had since been mitigated.

Members discussed the location of the site in relation to the settlement boundary and the Winterslow Neighbourhood Plan, the location of the development site on Witt Road, the existing dwellings and the proposed layby which it was felt would offer an area to safely stand aside for any pedestrian road users whilst vehicles passed.

The Division Member Cllr Rogers concluded that the timing of the Inspectors visit had had an impact on the outcome and that a better way to gain a fuller picture of the conditions would have been to visit over a period of time.

At the conclusion of debate, the Committee voted on the motion of refusal against Officer recommendation, for the reasons listed above.

That motion failed.

Councillor Sven Hocking then moved a motion of Approval with conditions, in line with the Officer recommendation. This was seconded by Cllr Bridget Cllr Wayman.

Ian McLennan noted his dissent with the situation, as he felt the Committee was tied to voting in support of the application due to the previous Appeal decision.

It was,

**Resolved:**

**That application PL/2022/07116 Land to the south of 1 Witt Road, Winterslow, be APPROVED subject to the prior completion of the S106 Agreement and the following conditions:**

**1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.**

**REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

**2. The development hereby permitted shall be carried out in accordance with the following approved plans:**

**Location Plan – Drawing no Wilts/11/2022.11.15/LP, received on 16<sup>th</sup> November 2022**

**Site Plan – Drawing no. Wilts11/07.08.19/Rev G, received on 22<sup>nd</sup> September 2022**

**REASON: For the avoidance of doubt and in the interests of proper planning.**

**3. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:**

- (a) The scale of the development;**
- (c) The external appearance of the development;**
- (d) The landscaping of the site;**

**The development shall be carried out in accordance with the approved details.**

**REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.**

**4. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.**

**REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.**

**5. The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.**

**REASON: In the interests of highway safety.**

**6. Full details of the layby area to the site frontage with Witt Road, as shown on plan reference Wilts11/07.08.19/Rev G, shall be submitted to and approved in writing by the Local Planning Authority. The layby shall be completed as per the agreed details prior to the occupation of any of the dwellings hereby approved.**

**REASON: In the interests of highway safety.**

**7. No part of the development hereby permitted shall be occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.**

**REASON: In the interests of highway safety.**

**8. No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:**

- a) the parking of vehicles of site operatives and visitors;**
- b) loading and unloading of plant and materials;**
- c) storage of plant and materials used in constructing the development;**
- e) wheel washing facilities;**
- f) measures to control the emission of dust and dirt during construction;**
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and**
- h) measures for the protection of the natural environment.**

**i) hours of construction, including deliveries;**  
**has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the**

construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

**REASON:** The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

**9. No dwelling hereby permitted shall be occupied until foul and surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority.**

**REASON:** in the interests of ensuring that the site is adequately drained.

**10. The mitigation measures under Section 7.0 detailed in the approved Ecological Assessment dated August 2022, prepared by Lindsay Carrington Ecological Services shall be carried out in full prior to the first bringing into use/ occupation of the development and/or in accordance with the approved timetable detailed in the Ecological Assessment.**

**REASON:** To mitigate against the loss of existing biodiversity and nature habitats.

**11. No materials shall be burnt on the development site during the demolition/construction phase of the development.**

**REASON:** In the interests of residential amenity.

**12. No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.**

**REASON:** In the interests of residential amenity.

## **INFORMATIVES**

1) The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full

payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website:  
[www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy).

2) The grant of the planning permission should be read in conjunction with the S106 legal agreement dated XXX entered into by XXX

137 **PL/2022/07632 The Gables, Dean Lane, Whiteparish, SP5 2RJ**

Public Participation

A statement in objection to the Application by Bill Symonds was read by Cllr Richard Britton

Matt Holmes (Agent) spoke in Support of the Application

The Senior Planning Officer, Joe Richardson, presented the report on the application, which was for partial demolition, rebuild, extensions and internal alterations to the existing house and construction of a detached garage (part retrospective).

The Committee noted that due to the Applicant's relationship to the Leader of the Council, Cllr Richard Clewer, the Council's Scheme of Delegation required the application to be determined at the relevant area planning committee rather than under delegated powers.

The Officer also summarised the late correspondence which had been uploaded to the planning portal and circulated at the meeting, relating to conditions 1 and 2.

Condition 1 was advised to be disregarded as the proposal was retrospective and works on site had already started. Condition 2 was amended to include a correction to an incorrect plan.

The main issues which were considered to be material to the determination of this application of the case were noted as:

- Principle of development, policy and planning history;
- Design, scale, heritage/conservation matters and impact to the amenity of the area;
- Parking/Highways Impact;
- Ecological Impact and Protection of the River Test SAC
- Other matters

The application had generated an objection from Whiteparish Parish Council and 10 letters of objection from third parties.

The application was recommended for Approval with conditions.

Members then had the opportunity to ask technical question of the Officer.

It was noted that the application was almost identical to what had been approved in 2021, apart from the movement of the garage.

Members of the public as detailed above, then had the opportunity to speak on the application. The key points included a view that the location of the garage represented back-land development on the garden area and a request that a condition be applied to prevent further back-land development, should the applicant be approved.

The Agent noted that planning permission for the property to be extended was already in place and that the current application was for a minor change to the dimensions. The house at the front of the site was in the conservation area, however the proposed area for the garage was not and could be developed under permitted development rights.

Whiteparish Parish Council raised points in objection, noting concern in the works having been carried out beyond the scope of the existing consent. The proposed siting of the garage was felt to be in the wrong place on the site and would, in its current position, result in car lights causing an intrusion on neighbouring properties. It was noted that the permitted development rights could be removed.

The Divisional Member, Cllr Richard Britton who was not on the Committee, spoke in objection to the application, noting that he would have called the application in, even if not done so by the scheme of delegation.

Cllr Britton drew attention to the Conservation Officer's comments, in recognising the sensitivity of the site. He felt that the siting of the garage would cause annoyance to the surrounding properties, noting that the original proposal would have been less so. The way in which the site rose slightly, would result in the proposed garage assuming much more prominence than it would have in the previous position.

Cllr Britton noted that the site was originally planned for 2 dwellings, one where the proposed garage was now to be built, hence the concern of a new development on that location. He urged the applicant to revert to the position of the extant permission.

Cllr Sven Hocking moved the motion of Approval, in line with the Officer recommendation. This was seconded by Cllr Najjar

The Committee discussed the application, the main points included that the application would need to be considered as a whole and could not be broken up.

It was confirmed that the proposed garage area was not in the conservation area and therefore, a structure of this type could benefit from permitted development rights, which would allow for an outbuilding up to 4m in height with a ridge roof, if 2.5m or more from the boundary.

The Committee discussed whether further applications for additional development could be prevented by way of a condition, it was confirmed that such a condition was not possible, and that any future application would be judged on its own merits.

It was confirmed that should the application be approved, a condition could be included which would restrict the driveway surface to specific materials, preventing the use of gravel.

The original mover of the motion agreed to include a condition on the driveway surface. This was also supported by the seconder of the motion.

The Committee then voted on the motion of Approval in line with the Officer recommendation, with the additional condition relating to materials.

It was;

**Resolved:**

**That application PL/2022/07632 The Gables, Dean Lane, Whiteparish, SP5 2RJ, be Approved subject to conditions:**

**1 The development hereby permitted shall be carried out in accordance with the following approved plans:**

**Site Location Plan Date Received 03.10.22**

**DWG No: 154 100 Rev B Proposed Block/Landscape Plan Date Received 23.11.22**

**DWG No: 154 017 Rev C Proposed Elevations with Ecological Mitigation Date Received 23.11.22 DWG No: 154 102 Rev A Proposed Site Section South Date Received 23.11.22**

**Proposed Garage Elevations and Floor Plan Date Received 03.10.22**

**DWG No: 154 016 Rev A Proposed Ground Floor and First Floor Plans**

**Date Received 03.10.22 DWG No: 154 018 Rev A Proposed Roof Plan Date Received 03.10.22**

**DWG No: 1352/05 Proposed Dormer Detail Date Received 03.10.22**

**DWG No: 154 317 Rev A Retained Dwellinghouse Elevations Date Received 16.12.22**

**REASON: For the avoidance of doubt and in the interests of proper planning.**

**2 The materials to be used in the reconstruction of the dwellinghouse shall be in strict accordance with the details in an email received by the Local Planning Authority dated the 14th December 2022. The materials to be used in the construction of the garage shall be in strict accordance with the details received in an email by the Local Planning Authority dated the dated the 21st November 2022 unless otherwise agreed in writing by the Local Planning Authority.**

**REASON:** To preserve and enhance the appearance of the Conservation Area.

**3** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no extensions, alterations or further window openings inserted to the roofslopes or first floor elevations to the dwelling other than as approved as part of a formal planning application by the Local Planning Authority.

**REASON:** In the interests of the amenity of the area.

**4** The works associated with the retention of the surviving historic fabric of the dwellinghouse shall be retained in accordance with the approved drawing ref DWG No: 154 317 Rev A Retained Dwellinghouse Elevations and the statement of methodology received by the Local Planning Authority dated the 19th December 2022.

**REASON:** In order to preserve and enhance the dwellinghouse and the wider Conservation Area.

**5** Before the development hereby permitted is first brought into use the dormer window in the southern roofslope as shown in approved drawing DWG No: 154 017 Rev C Proposed Elevations with Ecological Mitigation/Enhancement Proposals (serving the ensuite bathroom) shall be glazed with obscure glass only (to level 5 obscurity) and shall be maintained with obscure glazing in perpetuity.

**REASON:** In the interests of residential amenity and privacy.

**6** Notwithstanding the details showing a gravel driveway on drawing no 154 100, Rev B, Proposed Block/Landscape Plan. The development hereby permitted shall not be first brought into use/occupied until the access/driveway, turning areas and parking spaces for the garage as shown on that plan have been surfaced in a consolidated material (not loose stone or gravel). The access/driveway, turning area and parking spaces shall be maintained as such thereafter.

**REASON:** In the interests of residential amenity and highway safety.

**7** Notwithstanding the submitted details, the proposed development shall not be occupied until means/works have been implemented to avoid private water from entering the highway.

**REASON:** To ensure that the highway is not inundated with private water.

**8** The development shall be carried out in strict accordance with Section 3.6 of the Bat Survey

**Report by Daniel Ahern Ecology Ltd dated March 2022 and DWG No: 154 017 Rev C Proposed Elevations with Ecological Mitigation. The installation of the bat and bee bricks and bird box as showing on the approved drawing shall be supervised by a professional ecologist and these enhancement measures will continue to be available for their target species for the lifetime of the development.**

**REASON: For the avoidance of doubt and for the protection, mitigation and enhancement of biodiversity.**

**Informatives: (5)**

1 The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website [www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy)

2 Breeding birds

The adults, young, eggs and nests of all species of birds are protected by the Wildlife and Countryside Act 1981 (as amended) while they are breeding. Please be advised that works should not take place that will harm nesting birds from March to August inclusive. All British birds, their nests and eggs are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000 while birds are nesting, building nests and sitting on eggs. The applicant is advised to check any structure or vegetation capable of supporting breeding birds and delay removing or altering such features until after young birds have fledged. Damage to extensive areas that could contain nests/breeding birds should be undertaken outside the breeding season. This season is usually taken to be the period between 1st March and 31st August but some species are known to breed outside these limits.

3 Artificial lighting

The habitat within the proposed development site and the surrounding area is suitable for roosting, foraging and commuting bats. An increase in artificial lux levels can deter bats which could result in roost abandonment and/or the severance of key foraging areas. This will likely result in a significant negative impact upon the health of bat populations across the region. Artificial light at night also negatively affects humans' health and has a substantial adverse effect on biodiversity. Therefore, any new external artificial lighting as part of this development should only be for the purposes of security and safe access. Any new lighting should be in accordance with the appropriate

Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08- 18 "Bats and artificial lighting in the UK", issued by the Bat Conservation Trust and Institution of Lighting Professionals.

#### 4 Bat roosts

There is a low risk that bats may occur at the development site. Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected all times by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or the applicant is advised to follow the advice of a professional ecologist or to contact Natural England's Batline through the internet.

5 The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

### 138 **PL/2022/08216 High Croft, Common Road, Whiteparish**

#### Public Participation

Ian Scaife spoke in Objection to the Application

Andrew Brighton spoke in Objection to the Application

Tracy Payne (Agent) spoke in Support of the Application

Whiteparish PC – Represented by Cllr Trevor King

The Committee noted a site visit had been arranged for earlier in the day.

The Senior Planning Officer, Becky Jones, presented the report on the application, which was for the demolition of existing 5 bed dwelling and erection of 4 bed dwelling with garage and parking.

The main issues which were considered to be material to the determination of this application of the case were noted as:

1. Principle for development of a replacement dwelling
2. Site history, character of the area and permitted development rights
3. Scale, design, impact on the character of the area and neighbouring amenity
4. Highway safety
5. Biodiversity
6. CIL
7. The Planning Balance

The application had generated an objection from Whiteparish Parish Council and 6 letters from neighbours both in support and objection.

The Officer noted the setting of the site in relation to the neighbouring dwellings on both sides. Several slides were shown and explained, depicting the site from varying directions.

The application was recommended for Approval with conditions.

There were no technical questions of the Officer.

Members of the public as detailed above, then had the opportunity to speak on the application. Some of the key points included reference to a difference between the reported height difference between the proposed development and the neighbouring properties, the cropping of photographs used in the presentation, which it was felt did not show the full impact of unobstructed views from a neighbour, the increase in size of the development in comparison to the existing dwelling on the site and the impact on neighbouring properties.

The Agent noted the Applicants aim in producing a high quality design which was considerate to the neighbouring properties, with windows placed to ensure no loss of privacy to surrounding dwellings. The site was in the settlement boundary and that the development was considered acceptable in principle. Dwellings in both Croft Heights and Common Road were varied and already included a mixture of designs.

The Whiteparish PC representative, Cllr Trevor King noted the parish councils objection to the application, based on scale, visual impact and design. The number of bedrooms was not felt to be an issue, however the development would be significantly taller than everything else around it.

The Divisional Member, Cllr Richard Britton, who was not on the Committee spoke in Objection to the application, noting the objection of the parish council and the key arguments previously stated.

Cllr Britton noted that despite the loss of one bedroom, there would be an increase to the ridge height and the property would be moving forward, making it more prominent from Common Road. In addition, he felt that the design was out of keeping and included a slate roof, whilst all other dwellings except one, had tiled rooves.

Cllr Britton suggested that the development was in reality a 2-storey house pretending to be a dormer and urged the Committee to refuse the application.

Cllr Sven Hocking then moved the motion of Approval, in line with Officer recommendation. This was seconded by Cllr Nabil Najjar.

The Committee discussed the application, the main points included consideration of the materials, height difference and possible impact on neighbouring dwellings.

The Officer explained that when evaluating the application, she had considered the appearance of the current dwelling as a starting point, in that it was currently different in appearance to those around it and therefore could not refuse it on those grounds. In addition, there were other dwellings with similar elements such as timber further along the road towards the school. The presentation did include a photo provided by a third party of unobscured views of the dwelling from Common Road and this photo was re-shown to Members.

The Committee noted the confirmation of the Officer that from the scaled plans, the existing ridge height was 6.5m and the proposed 7.5m and the proposed dwelling would be rotated on its site towards Common Road, with the dormers facing Common Road ~~Croft Height~~. The appearance on Common Road would be changed. Once rotated the front elevation would be set about 22m back into the site in an elevated position. It was noted by the officer that the impact on Common Road would be increased but that the degree of potential harm was a subjective judgement.

The Committee then voted on the motion of approval, in line with the Officer recommendation.

It was;

**Resolved:**

**That application PL/2022/08216 High Croft, Common Road, Whiteparish be Approved with the following conditions:**

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**REASON:** To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans listed in the schedule:

**Location and proposed Site Plan ref 2890/03 02H dated March 2022**  
**Proposed Elevations and Floor Plans ref 2890/03 03 Rev J dated March 2022**

**High Croft Landscape Design Concept dated 10/7/22**  
**Design Response from Applicants received 10/1/23**

**REASON:** For the avoidance of doubt and in the interests of proper planning.

3. The materials for the development hereby approved shall be in accordance with the details submitted in the application, namely slate for the roof, timber cladding and light coloured render for the walls. Development shall be carried out in accordance with the approved details.

**REASON:** In the interests of visual amenity and the character and appearance of the area.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the elevations and roof slopes of the dwelling hereby approved. There shall be no extensions to the dwelling.

**REASON:** In the interests of residential amenity and privacy.

5. The replacement dwelling hereby approved shall not be occupied until the 2m timber fence along the north and north east site boundary (shown on site plan ref 2890/03/02 Rev H and elevation plans ref 890/03/03 Rev J) has been erected and completed. The perimeter fence shall be maintained in this condition for the lifetime of the development.

**Reason:** In the interests of neighbouring amenities and to prevent undue overlooking.

6. Any new external artificial (domestic) security lighting shall achieve a level of 0.5 lux or less at the edges of the site's boundary features (fences, hedges, tree lines and all other linear features at the site

boundaries). External light fittings throughout the site shall be low level wherever possible, pointing downwards and avoiding any increase in the ambient light within, adjacent to and particularly above the site.

**REASON:** In the interests of the visual amenities of the site, to minimise unnecessary light spillage above and outside the development site and to avoid excessive illumination of habitat used by bats.

7. The hours of construction for the development including any demolition works shall be limited to 0800 to 1800 hrs Monday to Friday, 0800 to 1300 hrs Saturday and no working on Sundays or Bank Holidays. There shall be no fires or burning of waste on the site during the demolition or construction phases.

**Reason:** In the interests of neighbouring amenities.

8. Before development of the dwelling commences above slab level, a scheme of enhancement measures (for bats, swifts, bees and other birds) shall be submitted for approval in writing by the Local Planning Authority and implemented before the replacement dwelling is occupied. The measures shall be maintained for the lifetime of the development.

**REASON:** To enhance the biodiversity on the site

9. Notwithstanding the submitted landscape plan (Concept Design dated 7/10/22), before the replacement dwelling is occupied, a scheme to help screen the development from Common Road shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall include the retention and reinforcement of the existing hedge fronting Common Road.

All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the replacement dwelling or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

**REASON:** To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features in the interests of bats.

10. The replacement dwelling hereby approved shall not be occupied

until the Building Regulations Optional requirement of maximum water use of 110 litres per person per day has been complied with.

**REASON:** To avoid any adverse effects upon the integrity of the River Test catchment SPA and SAC.

**Informatives:**

**Bats and great Crested Newts**

The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England's website for further information on protected species.

**CIL**

The applicant is advised that the development hereby approved represents chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. A separate Community Infrastructure Levy Liability Notice will be issued by the Local Planning Authority. Should you require further information with regards to CIL please refer to the Council's Website [www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy)

139 **Urgent Items**

There were no urgent items

(Duration of meeting: 3.00 - 5.20 pm)

The Officer who has produced these minutes is Lisa Alexander of Democratic Services, direct line (01722) 434560, e-mail [lisa.alexander@wiltshire.gov.uk](mailto:lisa.alexander@wiltshire.gov.uk)

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

SOUTHERN AREA PLANNING COMMITTEE

30 MARCH 2023

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## WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

### THE WILTSHIRE COUNCIL WHITEPARISH PATH NO.42 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022

#### Purpose of Report

1. To:
  - (i) Consider objections and representations received following the making and advertisement of “The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022”.
  - (ii) Recommend that “The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022” be forwarded to the Secretary of State with a neutral stance from Wiltshire Council regarding the determination of the Order, as it is not possible for Wiltshire Council to reach a decision where the evidence is finely balanced and should be tested at a public inquiry.

#### Relevance to the Council’s Business Plan

2. 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.

#### Background

3. Wiltshire Council received an application dated 12 July 2020, made under Section 53 of the Wildlife and Countryside Act 1981, to add a Footpath to the definitive map and statement of public rights of way in the parish of Whiteparish, (The Drove), as shown on the application plan at **Appendix A**, (please also see Location Plan at **Appendix B** and aerial photographs at **Appendix C**). The application was made by Residents of Clay Street, on the grounds that a right of way for the public on foot subsists or can be reasonably alleged to subsist over the way, based on user and historical evidence, and which should be recorded within the definitive map and statement of public rights of way, as such. The application was supported by 27 completed user evidence forms and some documentary evidence.

4. The application route is known as “The Drove” from its junction with Common Road, approximately 135 metres south of Clay Street, leading west-south-west for approximately 180 metres before leading south-south-west for approximately 150 metres to its junction with Footpath no.6 Whiteparish, having a width varying between 3 and 9 metres. The route has an unmade surface and is enclosed for most of its route by fences, mature hedges and trees.
5. Before determining whether or not to make a Definitive Map Modification Order (DMMO) to add a public right of way in the parish of Whiteparish (The Drove), as a result of the application, Wiltshire Council undertook an initial consultation regarding the proposals. The representations, objections and additional evidence received are included at Appendix 4 of the Decision Report attached at **Appendix D**.
6. Following an investigation of the available evidence, including 27 completed witness evidence forms and documentary evidence submitted by the Applicant; objections and representations, Officers of Wiltshire Council produced a decision report in which a recommendation was made to Senior Officers that a footpath be added to the definitive map and statement of public rights of way between Common Road and Footpath no.6 Whiteparish, to the south of Clay Street, on the grounds that a footpath was reasonably alleged to subsist, please see Decision Report at **Appendix D**. Senior Officers approved the recommendation on 16 February 2022.
7. Wiltshire Council subsequently made a DMMO to add Footpath no.42 Whiteparish (The Drove), having a width varying between 3 and 9 metres, please see DMMO at **Appendix E**. Notice of the making of the Order was duly advertised, posted on site, and served on interested parties (including landowners; neighbouring properties; Whiteparish Parish Council and the Wiltshire Council Member for Alderbury and Whiteparish).
8. Following the making of the Order, the following representations and objections were received:

Objections:

- i) Mr P Davies – e-mail 11/06/22
- ii) Mr P Davies – e-mail 13/06/22
- iii) Mr P and Mrs C Davies – e-mail 08/07/22 and letter 22/06/22
- iv) Mrs S Cook – e-mail dated 20/07/22 attaching 6 letters of objection:
  - Mrs S Cook – 25/06/22
  - Ms J Cook – 27/06/22
  - Mr D Cook – 28/06/22
  - Mr M Jewell – 25/06/22
  - Mr A Cook – 21/06/22

- Mr R Bowles – 20/06/22
- v) Mr D Stockton-Chalk – e-mail 31/07/22
- vi) Mr G & Mrs J Peacop – e-mail 25/07/22 and letter 22/07/22
- vii) Mr C Dyson – e-mail 01/08/22 and letter undated
- viii) Mr T Rudman – e-mail 01/08/22
- ix) Zelda Investments C/O Mr M Richards – e-mail 01/08/22
- x) Mr M Leach – e-mail 08/08/22 - Withdrawing support for making “The Drove” a designated footpath
- xi) Mr S & Mrs S Aldhouse – Letter undated

Representations of Support:

- i) Mr P Woodruffe – e-mail 07/03/22 (pre-DMMO)
- ii) Mr J Hall – e-mail 06/04/22

No comment:

- i) Whiteparish Parish Council – e-mail 12/04/22
- ii) Whiteparish Parish Council – e-mail 13/05/22

9. The representations and objections are included in full at **Appendix F** and the comments on the objections and representations are set out at paragraphs 21 – 72 of this report.
10. Due to the unresolved objections, the Order now falls to be determined by the Secretary of State for the Environment, Food and Rural Affairs. Members of the Committee are requested to consider the objections and representations received against:
  - (i) the evidence already before the Council as the Surveying Authority in this case, and
  - (ii) the legal tests for making a DMMO under Section 53 of the Wildlife and Countryside Act 1981,
 in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for decision.

**Main Considerations for the Council**

11. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way up to date and under continuous review.
12. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:

*“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.”*

13. Where witness evidence regarding the use of The Drove, Whiteparish is submitted, Section 31(1) of the Highways Act 1980 states:

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

14. Evidence is key and therefore the only valid objections to the making of the Order are those which challenge the evidence available to the Surveying Authority. The Authority is not able to consider other considerations such as, the suitability of the way for use by the public; environmental impacts of the proposal; the availability of suitable alternative paths; the “need” for the claimed route or private rights.

15. In determining whether or not to make an Order, the Surveying Authority has correctly considered the available evidence according to the legal tests, as set out above, and resolved to make a DMMO adding Footpath no.42 Whiteparish, where a right on foot for the public can be **reasonably alleged** to subsist, (please see Decision Report at **Appendix D**). The Order does not seek to create new rights of way, but simply to record existing public rights of way which can be reasonably alleged to subsist, based on the available evidence.

16. There will inevitably be points of conflict within the evidence of objectors and that of the supporters. For this reason, an Order can be made based on a reasonable allegation that a right of way for the public subsists, which is a lower test than the balance of probabilities. Where there is no incontrovertible evidence against this, it is in the public interest for a local authority to support the making of the Order. The case of *R v Secretary of State for the Environment, ex p. Bagshaw and Norton*, Queen’s Bench Division (Owen J.): April 28, 1994, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective County Councils for Orders to add public rights of way to the definitive maps and statements, based upon witness evidence of at least 20 years uninterrupted public user, and where the Councils determined not to make Orders. On appeal, in both cases, the Secretary of State considered that the Councils should not be directed to

make the Orders. At judicial review of those decisions, Owen J allowed both applications; quashed the Secretary of State's decisions and held that:

*“(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that, and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”*

17. Owen J also held that:

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

18. It is notable in the Norton case that, the Secretary of State:

*“...notes that the user evidence submitted in support of a presumption of dedication is limited to four persons claiming 20 years of vehicular use as of right; he must weigh this against the statements from the landowner, supported by 115 signed forms and the Layham and Polstead Parish Councils, indicating the use of the route has been on a permissive basis and that active steps to prevent a presumption of dedication arising have been taken...”*

In both the Norton and Bagshaw cases Owen J concluded that:

*“If, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, an Order would seem likely to be appropriate.”*

19. Even in a case with only limited supporting evidence and a large number of objections, Owen J held that an Order would seem appropriate. However, whilst a DMMO may be made on the weaker reasonably alleged “Test B”, at the confirmation of an Order, the more stringent balance of probabilities “Test A” must be applied.

20. Additionally, in the Court of Appeal, *Roxlena Ltd. R (on the application of) v Cumbria County Council* [2019] EWCA Civ 1639, considers the level of investigation to be undertaken by the Surveying Authority in the making of an Order: “1. *How should a surveying authority approach the evidence said to justify it making an order to add a footpath to its definitive map and statement of public rights of way under section 53 of the Wildlife and Countryside Act 1981?*”

Giving leading judgement Lord Justice Lindblom held that:

*“52. ...At the order-making stage of the statutory process, the consideration of evidence is necessarily less intense than at the stage of confirmation. The context here is the need to consider whether a right of way may reasonably be alleged to subsist. In that context, a surveying authority’s duty to “investigate” under paragraph 31(1)(a) of Schedule 14 to the 1981 Act does not constrain it to investigate a particular matter in greater depth and detail than it reasonably judges to be necessary in the circumstances...”*

*54. ...The county council did not have to go behind the user evidence forms...That evidence could reasonably be taken at face value at the order-making stage...It might or might not withstand questioning at the confirmation stage. But it did not have to be investigated more fully before the order could lawfully be made.”*

### **Comments on the Objections**

21. Objections to the Order are made on a number of grounds, as set out below with the Officers comments, (please see Objections and Representations to the making of the Order, in full at **Appendix F**):

#### **Obstruction of “The Drove”:**

22. A number of witnesses make reference to the obstruction of the path by overgrowth, including Mr C Dyson, who states: *“I did on one occasion many years ago mistakenly venture into what the order refers to as ‘the drove’. It was overgrown and it soon became obvious that there was no path through as it was blocked about 60 yards down and I was forced to turn around and retrace my steps...”*
23. Mr D Stockton-Chalk agrees that the footpath is *“...totally overgrown, and leads nowhere...”*
24. Mr and Mrs Aldhouse state that: *“The so call [sic] footpath “the drove” is not used as a footpath, it remains overgrown, and the track marked on the map does not lead to anywhere. Paths in the fields North of point B on the map have been blocked by homeowners on Common Rd, not allowing access to Common Rd.”*

25. Whilst it is not open to the Surveying Authority to consider the condition of a path in its determination of an application made under Section 53 of the Wildlife and Countryside Act 1981, in this case Objectors point to historic overgrowth and blockage of the path which would prevent public use, whilst witnesses in support of the application maintain that they have been able to use the path. In the supporters' evidence regarding the width of the path, witnesses confirm that the width is variable due to overgrowth, which narrows at points as follows:
- Minimum single file because of plant spread
  - Depending on the hedgerow's growth...the least 2.5 metres including bushes
  - Variable – narrow behind houses due to overgrown hedges...upkeep of which has varied over the years
  - Varying widths from 6 metres to about 1 metre depending on vegetation (hedges and trees)
  - Varies in width from 1 - 6 metres depending on vegetation (hedges and trees)
  - Variable widths – 8 metres including hedgerows and trees, but possibly 1 metre
  - About 20 feet although I believe it is now very overgrown
  - Varies due to vegetation – Between 1 metre and 3 metres
26. Although witnesses acknowledge that the overgrowth of vegetation on the route has narrowed the path to around 1 metre / single file in places and at varying times depending upon growth, they claim that this has not prevented their use of the way, as suggested by the Objectors. Only Ms S De Graffham confirms in evidence that she was prevented from using the path past the turn past the houses, during her user period in 2013-18 due to the barbed wire fence and thick brambles.
27. In this case, the evidence of overgrowth and obstruction of the path is disputed and inconclusive and whilst it may have been appropriate for the Council to make the Order based on a reasonable allegation, it is considered that, in the light of the evidence presented in the objections, the more stringent test of balance of probabilities, applicable at the confirmation of an Order, is finely balanced and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry.

#### **Insufficient Evidence of Use:**

28. A number of Objectors point to a lack of use of the way and insufficient evidence to suggest that a public right of way subsists: Mr D Stockton-Chalk who resides alongside the route in question states that: *"To my knowledge the path has not been used for ages."* Mr and Mrs Peacop add that the path: *"...has never been used as a footpath thoroughfare..."*

*“It seems implausible to apply for a ‘footpath; when it seems that, when accessed (by trespassing in our view), it has not been used as a ‘footpath’ but as a playground (not least because it doesn’t lead anywhere)...it has never been used or accessed as a footpath and the various testimonies should be subjected to greater scrutiny...we suggest that over time the areas known separately as ‘The Drove’ and ‘Secret Field’ have been conflated which has caused confusion...”*

*There is very little supporting evidence for Wiltshire Council to reach its conclusion that there is ‘sufficient evidence that a right of way for the public on foot can be reasonably alleged to subsist over The Drove...This judgement appears very subjective (section 10.72 on p66) and weak in arriving at the conclusion. Wiltshire Council needs to be held account to ensure that the appropriate levels of burden of proof have been demonstrably achieved.”*

29. Mr and Mrs Peacop consider the number of those giving evidence to be insufficient: *“There is palpably insufficient evidence by a statistically significant number of people to demonstrate the route has ever been used regularly or frequently as a ‘footpath’...”*

*“The extent of 27 ‘user statements’, some from the same families and many of whom have moved from the area some time ago, seems to be a statistically insignificant number for Wiltshire Council to conclude that the application should result in an Order being made. It should not be possible for so few people to have such a significant impact on the environment and local residents...we understand that some of those ‘user statements’ have subsequently been withdrawn which should mean The Order is even less valid than the already weak basis on which it was granted. It might also suggest that some local residents were coerced into supporting the application without understanding the ramifications of the footpath being granted...”*

*On the basis there is a limited number of user statements and that these coincide with the same objectors of the planning permission, we conclude that the level of (self) interests in granting the footpath is limited to people who live in the very close proximity to the proposed footpath. There is palpably no widespread village outcry.”*

30. Mr and Mrs Davies add: *“We believe evidence and statements submitted are insufficient, unsubstantiated, in error and miss-leading...”*

*We have no doubts people walked some of the drove 1983 to 2003, we feel confident however that the majority based on witness evidence refer to primarily walking the upper section Forest View to Common Road...*

*Witness 17 states he frequently used the Drove to access Common Road as a child 1979 to 1995...” given the location of his family home “...I do not believe as a child he meant that he went up his drive to Clay Street, left to footpath 4, along Footpath 6, North through a fence / hedge then up through cow pats, through a further fence and then east to common road where he could have crossed 50 metres the top of Secret Field by Forest View to the upper drove directly!”*

31. Mr and Mrs Davies undertake some investigation of the witness evidence on this point and submit the following findings:

Witness 1 - “Well-Trodden” partially correct where 1983 – 2003 upper section of Drove behind houses, having legal access, was well trodden. Lower section was heavily trodden by cows and not defined path as upper section.

Witness 3, 5 and 8 - same family having legal access to upper section.

Witness 4 – use by dog walkers from Common Road and local families – where are their witness statements? (Application was very well advertised locally).

Also recalls previous and current farming family were happy for public use – strongly suggest this comment applies to upper section with legal right, as confirmed by Mrs Andrews.

Witness 9 – has “forgotten over the years” but recalls gates.

Witness 10 – Legal access to upper section, recalls fenced hedge and use by cyclists/horse riders. How did cyclists and riders navigate hedges with integral fences and locked gates near Common Road?

Witness 11 and 12 – Occasionally viewed people using it but only used it themselves 3 times per year.

Witness 14 – Legal access to upper section, recalls using it on bicycle – suggest this only refers to upper section as lower drove rutted, had cows in it, cow pats and was not accessible due to hedge and fence (as remembered by her brother).

Witness 17 – Remembers wire fence – unlikely to have accessed lower drove.

Witness 18 – Many questions unanswered in questionnaire.

Witness 19 – Spoke to farmer but only occasional use / intermittent and not enough to be specific.

Witness 22 – Walked Drove twice a week, remembers barbed wire fence in 1995.

Witness 24 – walked the Drove monthly with dogs since 1990 and remembers fence blocking its path.

Witness 25 – Use since 1962, monthly but cannot remember gates which were present until late 1990’s.

32. Mr and Mrs Davies consider this to be: *“...a path of two sections and two histories an upper and lower section, nobody has ever questioned the upper section right of way between adjacent houses, if the question is actually **total** “Right of way” there is very negligible evidence to support that people really*

*used it for access from SU24642312 to SU24442292., the “vast majority” of map applications refer to upper section access...*

*Without doubt the truth is that although the map application is for a right of way SU24642312 to SU24442292 the vast majority of witnesses have not ever used SU24642312 to SU24442292, rather they have used a part of it which is **vastly different**.*

*1983 to 2003 were there cyclists SU24642312 to SU24442292 – no there was not!*

*1983 to 2003 were there horse riders SU24642312 to SU24442292 – no there was not!*

*1983 to 2003 were there ramblers and families enjoying a day out SU24642312 to SU24442292.....Very unlikely.*

*1983 to 2003 were there more than 3 or 4 people a year that walked the entirety SU24642312 to SU24442292 (Trespassing to do so) – No there was not!*

*1983 to 2003 were there 2 hedges each with barbed wire fences blocking the path SU24642312 to SU24442292 – Yes there were – and a gate by common road until 1999.”*

33. Mr M Richards, on behalf of the developer Zelda Investments Ltd, comments: *“5 neighbouring households, parents and children, represent 95% of the supporting applications...I think you will now find that people are withdrawing their support...”*

*“Where were all the other more widespread supporting letters for the footpath application for other users for 20 years uninterrupted and without force. Why is it just 5 households for whom many of the offspring have not lived in the area for many years.*

*The good thing is I imagine you are now receiving a broader spectrum of witness statements from people clearly pointing out the totally fabricated nature of the application.”*

34. Mr and Mrs Davies agree: *“27 total applications we do not consider substantial given that it was widely publicised by the Parish Council and we note every single map application is from OS SU24642312 to SU24442292, this means every single applicant has walked Common Road via a gate to the Upper Drove, left at Forest View having crossed a hedge and fence, ventured through an area potentially filled with livestock, crossed a hedge with a further integral fence (that has been there decades before 1983) or vice versa in the frequency they have given, we consider that extremely unlikely to have happened, it is miss-leading and poor quality information.*

*Looking at the period in question 1983 to 2003, if you take families as one application the number is actually 10. Only a very few applicants say they use the Drove frequently and if you remove all the applicants that have a legal*

*right to use the drove (High View towards Common Road Access Gate) the number that state frequent use (more than once a month) is **“extremely”** small (actually 3)...*

*We reservedly believe untruths are being told with the applications either knowingly or unwittingly (by reference to no fences or barriers and the OS coordinates), we believe a few of the 10 families used the upper drove, a much smaller number in dry weather trespassed past the hedge / fence down the lower drove exiting in the middle of the Lower Drove to Secret field (with cows) then across through another wire fence to Cooks Field then Footpath 4, only 2 individuals claim to have actually walked the entire drove (witness 19 and 22) before crossing the hedge (and trespassed more than once to do so) to Footpath 6.*

*Wiltshire Council has generated a right of way order OS SU24642312 to SU 24442292 based on “Reasonably Assured” statements when only 2 individuals have said they have used the path OS SU24642312 to SU 24442292 1983 to 2003.”*

35. The wording of the test set out at Section 31(1) of the Highways Act 1980, does not refer to a “significant number” of witnesses/users required to establish a public right and there is no statutory minimum level of user required, i.e. its honesty, accuracy, credibility and consistency are of much greater importance than the number of witnesses and in R (Lewis) V Redcar and Cleveland Borough Council UKSC 11 (03 March 2010), Lord Walker quotes Lindley LJ in the case of Hollins v Verney [1884] giving the judgement in the Court of Appeal:

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

36. It is noted in the Norton and Bagshaw case where the evidence in support of the presumption of dedication was limited to four persons claiming 20 years public vehicular use as of right, against the statements of the landowner supported by 115 signed forms indicating that use had been on a permissive basis and that active steps had been taken to prevent a presumption of dedication arising, Owen J concluded that if there was conflicting evidence which could only be tested or evaluated by cross-examination, an Order would seem appropriate, even in a case with only limited supporting evidence and a large number of objections. Officers therefore consider that Wiltshire Council was correct to make an Order based on the “reasonably alleged test”, based upon the evidence available to the Council for sufficiency of user, at the making of the Order. The reasonably alleged test is in itself a relatively low

evidential bar and where there is no incontrovertible evidence against this, it is in the public interest to make the Order, (please see Norton and Bagshaw and Roxlena Ltd. caselaw at paragraphs 16 - 20 above). However, since the making of the Order, additional evidence has been submitted by Objectors and there is dispute regarding the level of use of the path, which would lead Officers to suggest that the more stringent balance of probabilities test to be applied at the confirmation of an Order, is finely balanced and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry.

### **The Route:**

37. Mr M Richards on behalf on the developer, Zelda Investments Ltd, considers the description of the path given to be in doubt: *“...is The Drove just the bit behind the houses or is it through Secret Field?!! Do witnesses actually know?? Given a grey description witnesses found it easier to say they walked “The Drove” as part of their protest against the development even though they could easily be referring to the section behind the houses before the barbed wire fence with cows the other side. Would it not be more appropriate to ensure total certainty in description before calling witnesses under oath so there can be no doubt?”*
38. Mr and Mrs Davies agree that this is a route of 2 parts and 2 histories, adding that: *“The middle of the Drove lower section is a natural drain for cottage field and venturing there after the heavy rain means sinking to one’s knees in mud”*, (picture provided halfway along lower section of southern Drove, showing wet area).
39. Certainly, there is reference in the planning responses (objections), to the wet area described by Mr and Mrs Davies, which may affect public use of the lower Drove area:

Planning application no.18/06027/FUL Forest View and Land adjacent –  
Erection of one new dwelling and conversion of existing dwelling to  
accommodate rooms in roof and additional garage):

Mr and Mrs Harrison - letter dated 30 July 2018 - *“Surface water from the field (which is on higher ground) to the south of Clay Street is collected in an open ditch behind the properties on that side and discharged down The Drove to Forest View and beyond. This ditch is occasionally in flood...”*

This is repeated by Mr D Stiles in his objections to the planning application, dated 9 August 2018.

Planning application no.18/08737/FUL (Land south of Forest View – Erection of two dwellings) and 18/08738/FUL (Forest View – Retention of existing bungalow known as Forest View and additional dwelling on Land at Forest View including parking spaces):

Mr and Mr Harrison - correspondence dated 13 November 2018 -  
*“Development of The Drove must be prohibited as it includes a storm ditch that drains the field to the south which is higher land and discharges into the fields past this proposed development. At times of heavy rain this ditch is in flood...”*

Planning application no.20/04331/FUL (Plot 3, land off Forest View – Erection of single storey dwelling):

Mr and Mrs Harrison in correspondence dated 9 July 2020 do not mention the existence of the storm drain in The Drove.

Mr B Woodruffe - correspondence dated 11 June 2020 - *“In wet weather the Drove can become a spillway for water originating from the higher field and upper section of the track, water which was previously channelled along ditched bounding Forest View’s garden and along the field edge of plot 2.”*

40. In evidence witnesses do not produce their own maps with completed witness evidence forms, instead they are provided with a pre-drawn map including the application route, rather than a blank map upon which to individually record the route which they have used, and it may appear that a witness used the whole route even if they only used part of the route. However, all but one of the maps are signed to confirm that the map correctly records the route they have used, as P Hudson clarifies on her map: *“This is the path I have walked for over 30 years.”* 17 witnesses have added their own annotations to the map to indicate features which they recall such as fences / gates. Additionally, witnesses do independently provide a description of the route in their evidence forms which accord with the feature consistently shown on OS mapping and which is known as “The Drove”. However, the witnesses do not refer in evidence to how their use was affected by the wet section of the Lower Drove which appears to have been a spillway for the upper section of the track and the higher fields.
41. In a statutory public inquiry held to determine an Order made under Section 53 of the Wildlife and Countryside Act 1981, witnesses are not called under oath and the relevant legal test to be applied in the confirmation of an order is the balance of probabilities, i.e., it is more likely than not that a right of way for the public exists, there is no requirement for “conclusive” evidence. Officers consider that Wiltshire Council was correct to make an Order based on the reasonably alleged test and where there is no incontrovertible evidence, it is in the public interest to make the Order, please see Norton and Bagshaw and Roxlena Ltd. caselaw at paragraphs 16 - 20 above. However, there is dispute of the evidence regarding the route of the path, raised in the objections and Officers consider that the balance of probabilities test, applicable at the confirmation of an Order, is finely balanced and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry.

### Private Rights over “The Drove”:

42. Mr M Leach, formerly in support of the application to add a footpath, The Drove, writes:

*“I wish to remove my support for making “The Drove” a designated footpath. I was new to the village not long before this application was made. Having lived here longer now, I have met my neighbours on The Drove on several occasions, leading me to believe my neighbours do indeed use the path quite regularly. Therefore, it seems likely it was my neighbours (who have a right of way on the section of the drove behind my house) that I had previous seen through the hedge using this footpath, rather than the general public.”*

43. Mr and Mrs Davies suggest that: *“Barbara Kennard who states she used the drove **Daily** 1978 to 1987 refers to the upper section she was legally entitled to (based on her witness statement).”*
44. Officers would certainly agree that a number of the witnesses in this case, had a private right to use the upper section of the Drove, i.e. between their property, leading east towards Common Road, (over the land owned by the Cook family), the final approximately 30 metres towards Common Road being in the separate ownership of Mr H Urquhart, but also registered common over which the general public have a right on foot. The use of the two parts of The Drove is considered in the decision report at **Appendix D**, paragraphs 10:55 to 10:57. and it is concluded that even where the evidence of those who, as residents of the properties backing onto Clay Street have a private right to use the central section of The Drove to access their properties, (as granted by Mrs Cook’s Great Grandmother, Agnes, in 1957), is removed, 14 witnesses remain who claim to have used the whole of the route during the relevant user period, without any private rights of access; however, their use would be affected by matters such as the date of bringing into question of use of the route and the presence of fences on the claimed route.

### Lack of Documentary Evidence:

45. Mr and Mrs Peacop consider that: *“Significant ‘evidence’ has been considered by Wiltshire Council in assessing the application and consequently Wiltshire Council has determined that ‘There is insufficient documentary evidence of a public right of way over The Drove, Whiteparish.”* This is also listed by Mr and Mrs Peacop as an error within the Order and the application should have been dismissed on this basis alone in their view.
46. Officers would agree that there is insufficient documentary evidence to support the existence of a public footpath over the route, as set out in Section 9 and Appendix 6 (Historical Evidence Summary), of the decision report at **Appendix D**. There is no category A evidence, such as Inclosure

Award and although the route is recorded on the Tithe Award; Estate map and OS mapping, it was not the main purpose of the tithe award maps to record public rights of way and OS maps are topographical in nature, i.e., recording only physical features visible to the surveyor at the time of survey and give no indication of public rights. Whilst these documents can be useful in supporting other evidence, as stand-alone documents to record the status of a path, they are not sufficient.

47. However, whilst the historical evidence is insufficient to support public rights over the claimed route, the Surveying Authority also has a duty to investigate the witness evidence submitted and an Order can be made based upon witness evidence alone, i.e. Section 31(1) Highways Act 1981, deemed dedication of a public right of way where there is 20 years user by the public, as of right and without interruption, unless there is sufficient evidence that there was no intention by the landowner to dedicate a public right of way during that period. The application cannot simply be dismissed where there is no documentary evidence, the Survey Authority must consider **all** available evidence and failing to do so could lead the Applicant to challenge the Council's decision to refuse the application, by way of appeal to the Secretary of State, who may then direct the Surveying Authority to make an Order if there is sufficient evidence that a right of way can be reasonably alleged to subsist, or subsist on the balance of probabilities.

#### **Natural Environment and Rural Communities Act (NERCA) 2006:**

48. Mr and Mrs Peacop would: *"...be interested to understand the extent to which Wiltshire Council has given consideration the provisions the Natural Environment and Rural Communities Act 2006 which, amongst other things, has the objective of giving more certainty to people purchasing land."*
49. NERCA, as regards an application made under Section 53 of the Wildlife Act 1981, has not been considered in this case, where the evidence examined is not supportive of public vehicular rights over the way. Section 67(1) of NERCA has the effect of ending certain unrecorded public vehicular rights of way, (save for a number of exemptions), which would give landowners / prospective purchasers greater certainty regarding unrecorded public vehicular rights, but there is no affect upon the claiming of a public right on foot.

#### **Fence at Secret Field Prior to 2003:**

50. In making the Order based on a relevant user period of 1983 – 2003, i.e. the date on which a three strand barbed wire fence was erected across The Drove at "Secret Field", just south of the turn leading south-south-west (from Common Road), bringing public use of the way into question, Officers considered that there was insufficient evidence of a previous two strand

barbed wire fence at this location which may have brought public use into question, at an earlier date. However, following the making of the Order, further evidence regarding the presence of an earlier fence across the Drove at Secret Field, has been submitted by the previous landowner, Mrs S Cook, and her family:

*S Cook – “From 1989 to 2003 I helped my father with the cows at Cottage Farm.*

*The Drove from Common Road was blocked by a barbed wire stock fence at the back garden of Forest View otherwise the cows would have got out from Secret Field.*

*We visited my Granny (Marjorie Andrews) every Tuesday from 1989 (when I had my daughter [REDACTED]) until October 2006 (when my Granny went into a nursing home and after my son finished at Whiteparish Primary School). All my three children went to Whiteparish Primary School.*

*When my father retired in 2003, I took over the farm with my mother and we ran it together renting it out for horses.*

*In 2003 we replaced the 2-strand barbed wire fence at the corner of Secret Field and Forest View with a 3-strand barbed wire fence to stop teenagers who had started to climb through with their bicycles.*

*The developer who bought Secret Field from us in 2019 replaced the 3-strand barbed wire fence with a close board fence.”*

*J Cook – “We used to visit Great Granny’s house (Marjorie Andrews, Cottage Farm Bungalow, at the corner of Common Road and The Drove) every Tuesday – I can remember clearly from aged 8 (1997) until Great Granny went into a nursing home in October 2006.*

*We could walk down The Drove from Great Gran’s house behind people’s back gardens, but the path was blocked with a barbed wire fence after the last house Forest View.*

*I kept horses in Secret Field from 2003 to 2007 and the corner of Secret Field and The Drove was still blocked by a barbed wire fence otherwise the horses would have escaped.”*

*D Cook – “I, like my sister who is 2 years older than me, used to go to Great Granny’s house (Marjorie Andrews, Cottage Farm Bungalow, at the corner of Common Road and The Drove) every Tuesday after school from as early as I can remember (2001) until Great Gran went into a nursing home in October 2006. Sometimes I would go with friends from school, and we would pick blackberries.*

*The Drove was open from Common Road down past the back gardens of the houses, but the path was blocked with a barbed wire fence to keep the cows the other side at the junction of the cow field and the last house Forest View.”*

*M Jewell – “Marjorie and Leonard farmed Cottage Farm together from the 1950’s and took over from their parents John and Agnes.*

*I married Monica Andrews, Marjorie's daughter.*

*I did contract work on the farm up until 1989, at which point I took over from Leonard.*

*In my time from 1989 to 2003 the boundaries of the farm were stock fenced to keep the cows in, including the top of Secret Field at its junction with Forest View back garden and The Drove.*

*I sold my whole herd of approximately 235 cows in March 2003 and retired ( [REDACTED] ).*

*From March to October every year there were 30 or more heifers at Cottage Farm including Secret Field.*

*In my time not a single heifer escaped onto Common Road."*

*A Cook – "In 1979 I did my year practical work for Bryces Farms Ltd before going to Sparsholt Agricultural College.*

*As part of this work I assisted in contract hay making at Cottage Farm.*

*I clearly remember cutting turning and carting hay from these fields. I was driving a Fiat 780 tractor registration JCG 660S.*

*In all of my year from 01/09/1979 to 31/08/1980 the northeast corner of what is known as Secret Field was blocked with a 2-strand barbed wire stock fence so neither you nor cows could get through to access Common Road. Coming from Common Road on what is known as The Drove, you could access the rear garden gates of the houses, but your path was blocked immediately after the last gate to Forest View by the 2-strand barbed wire stock fence."*

*R Bowles – "I have worked alongside Alan Cook of Bryces Farm in many different roles since 1995. Throughout this period from 1995 to present as part of my job I have checked and maintained the fences at Cottage Farm, Whiteparish.*

*There has always been a stock fence across the corner of The Drove at the back garden of Forest View. Owners of the bordering houses can walk to their back garden gates from Common Road, but the route was always blocked after the last garden gate at Forest View.*

*In 2003 I replaced the two-strand barbed wire fence with a three strand barbed wire fence.*

*At no point did I need to repair the fence, it blocked the route and no cows ever got out from Secret Field to Common Road."*

51. The presence of the earlier fence is supported by other Objectors:

Mr M Richards on behalf of Zelda Investments Ltd:

*"In the main applicants (Patricia Woodruffe) testimony she features the 3-strand barbed wire fence blocking the proposed route. In law a barbed wire fence has never shown to operate as a style. In the previous statements upon which you based your decision, little reference was made to the fence that predated the 3-strand barbed wire fence, but it is erroneous for you to*

*conclude that there wasn't a fence. What is your sufficient evidence that there wasn't a fence which was replaced by the 3 strand barbed wire fence?...Secret Field has operated as part of a dairy farm for over 50 years with livestock contained within Secret Field by a 2 strand barbed wire fence which was only upgraded to a 3 strand when the cattle were retired with a generational change of farmer replaced the cows with horses (which are not as curious as cows so kids from the back gardens area then started to climb through with their bikes...If you would like to see the farm accounts they are available, I have studied the ones from 1985 to 1998. If you would like to see the student project done on the farm in 1989 by Victoria Pratt for Sparshalt College, then please ask. The workings of the farm are very clear, including the well-known (and nationally recognised) breeding programme for Hampshire Cattle Breeders of which Secret Field formed an integral part. The Jewell/Cook family have farmed it without break since 1929. When you effectively say there was no fence to keep the cows in Secret Field you are effectively telling them that they farmed without stock fencing, i.e., neglected a standard part of farming which under the 1971 Animals Act they would have then been culpable for every cow that escaped onto Common Road. But obviously there is not a single occurrence recorded."*

Mr and Mrs Davies:

*"...we confidently believe there was a hawthorn hedge and fence in place 1983 to 2003 behind Forest View across the Drove to contain the Heifers in the lower Drove, public access through that section was trespass, the fence divided the upper and lower Drove to keep livestock in secret field / Lower Drove, walking any path especially back in time when memories are strained does not mean it was done so legally. We know for an indisputable fact that pregnant heifers were in Secret field and The Drove June to September 1989, it [is] impossible that they were not fence contained..."*

*There was a hedge with a barbed wire fence across the dove 1983 to 2003, I have removed the remnants of it from the Ash tree to protect our dogs..."*  
(Photograph of one end of its connection showing two rings/scars in the tree at 2 and 4 foot levels, where the tree has grown around the wire for decades since, contrasting with photo of fallen ash having 3 scars/rings where Mrs Cook and her husband installed 3 barbed wire strand upgrade, please see Mr and Mrs Davies correspondence dated 22 June 2022 at **Appendix F**).

*"...hedge in the drove with integral wire fence went diagonally from the edge of Forest View hedge end to the right corner apex of the drove approximately 3 to 4 metres down where you see the bend..."*

*The farmer has a legal duty under the Animals Act of 1971 to keep animals contained and were any to escape to Common Road the penalties would*

*have been very large, there was a locked gate at the exit to CL82 Common Land but no cows were ever in the upper section of the drove, the farmer knew well that householders were legally allowed to use it and kept his cows securely contained by a hedge and fence.”*

52. The supporters’ evidence of the 2-strand barbed wire fence is less clear. Those whose use ceased prior to 2003, (i.e., when the 3-strand barbed wire fence was installed), who would not be confusing the 2 fences, provide the following evidence, (please see plan at **Appendix A** for reference points X and B):

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

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

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

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

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

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

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

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

Darren Stiles – Does not recall pre-2003 fence.

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

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

Elvin Klapp – *“Not sure.”*

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

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

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

53. Additionally, Mr P Hudson in her witness evidence form, states that her use of the path began in 1984 and she suggests that there has always been a wire fence, which supports the Cook family’s additional comments that there has always been a fence. Whilst there is no photographic evidence of the pre-2003 fence in place on the land, the Cook family provide compelling evidence of the presence of a fence across The Drove between 1979-1980 and then 1989 to 2003 when it was upgraded, (the likelihood being that the presence of the fence was continuous from 1980-1989, the land having been used to graze cattle as evidenced by the Cook family, who were clearly frequent visitors to the land, S Cook; M Jewell; A Cook and R Bowles having worked on the land):
- S Cook – Visiting Grandmother (Marjorie) at Cottage Farm Bungalow (Common Road), since 1989 and then taking over the running of the farm on her father’s retirement in 2003, until the sale of the land to Zelda Investments Ltd in 2019.
  - M Jewell – Mrs Cooks father, farmed the land from 1989 (before 1989 contract work on the land and then from 1989 took over farming the land from Leonard Andrews), until his retirement in 2003.
  - A Cook – Mrs Cook’s husband, worked the land from 1979 – 1980 and then from 2003 with Mrs Cook.
  - R Bowles – Worked with Mr A Cook on the land from 1995 to present.
54. This additional evidence regarding the presence of a fence prior to 2003, may affect: i) the date of bringing into question of public use of The Drove, ii) public user during the identified user period 1983 - 2003, based upon which the order is made and iii) use of the route as of right, i.e., without force.
55. It is possible to consider an alternative user period prior to 1979, (the earliest reference to the 2-strand fence), i.e., 1959 - 1979, however, as the user evidence chart records, (Appendix 8 of decision report at **Appendix D**), there is evidence from only 6 users to support use prior to 1979:
- P Woodruffe - use 1969 – 2020
  - B Woodruffe – use early 1970’s - 2020
  - C Bicknell – use 1972 - 1990
  - B Kennard – use 1978 - 1987
  - Mr and Mrs B Rutter – use 1962 - 2020
- With the earliest user period commencing in 1962, there is no evidence of a full 20-year user period before 1979, the date of bringing into question of public use of the way, as the earliest reference to the 2-strand fence across the route at Secret Field.
56. The presence of the fence would suggest users engaging in force to continue on the Drove by climbing over the 2-strand barbed wire fence located at Secret Field, which is not qualifying user “as of right”, after 1979.

57. There is dispute in the evidence regarding the presence of a fence prior to 2003 and where the Order is made only on a reasonable allegation, Officers would suggest that as a result of the additional evidence submitted on this point following the making of the Order, the balance of probabilities test applicable at the confirmation of an Order, is finely balanced and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry.

**No Junction of “The Drove” with Footpath no.6 Whiteparish:**

58. The DMMO application plan, (please see **Appendix A**) records the route junctioning with Footpath no.6 Whiteparish and users claim that they have used the Drove and connected with path no.6, which is reflected in the Order as made, (please see **Appendix E**); however, the Objectors dispute that this has ever been the case:

*Mr and Mrs Peacop – “Whatever has been loosely referred to as ‘The Drove’ and on the route which the footpath is now proposed, has never (demonstrably on the evidence on which The Order is predicated) joined with anything, it has never had a ‘junction with Path no.6 Whiteparish’...” This is also listed by Mr and Mrs Peacop as an error within the Order: “The Order is, therefore, incorrect and should be dismissed on this basis.”*

*Mr M Richards on behalf of Zelda Investments Ltd – “Equally erroneous, no applicant states that there was ever a connection through to FP6 at the southern end of the applicant’s route – so why are you filling in the blanks by assuming this was the case let alone considering that there was a route uninterrupted, without force, for 20 years? Isn’t it rather clear that this was simply the corner of a field with barbed wire fence and thick hedge where livestock, particularly pregnant cows and young calves, gathered under the trees for more protection. This was an enclosed protected area, the opposite of a way through to a public footpath!*

*The main applicant Patricia Woodruffe (on her annual visit) states: ‘it is recognised that, to link the Drove to WHT6 would require some clearance of vegetation’...*

*The main applicant’s husband Brian Woodruffe states: ‘link to FP6 through hedge required’*

*So how is it that when the main applicant and her husband clearly state that there was no link to FP6 and that one would be desirable in order to not use the top of FP6 as it ‘goes through a private garden. The owners are amenable, but I would prefer not to use it’...how do you get from this to any presumption at all that people have been passing through the hedge/fence to join FP6 for 20 years, uninterrupted and without force?”*

Mr and Mrs Davies comment that the Wiltshire County Council, Clerks Office, Planning Appeal Map - Land at rear of Common Road and Clay Street, Whiteparish – Residential Development and Construction of Vehicular Access

1972, shows: “Gates existed at both ends of the Drove, the Upper gates that join the Common land CL82 before Common Road remained until the late 1990’s.”

“We moved to [REDACTED] at the end of January with a fairly good understanding of The Drove. On a practical basis the “need” to access beyond High View south on foot was always limited and impractical. The Drove itself (Lower or entire) as a footpath is and always was a path to nowhere, the lower section Forest View to end is 150 metres there and 150 metres back, 2 solitary applications mention using it to join SU24442292 (which is not the Drove but in Rough Field – 532/536) at Footpath 6, this requires going through a fence and hedge for access – obvious and blatant trespass.”

“The Drove does not and never has connected to footpath 6, (Point B in the MR1 is very misleading) you can go to the end and back which is not OS SU24442292 it is where it joins area 489 that is still part of cottage farm land, the hedge on rough field has many decades of growth and an integral wire fence that was there long before 1983.” 2002 Google Earth image – Mr and Mrs Davies claim that this shows nearly the same extent of growth at the end of the Drove as in 2021, please see correspondence dated 22 June 2022 at **Appendix F**). Looking at the two photographs, Officers would disagree on this point and suggest that the 2002 photograph appears to show a gap in the vegetation or less dense vegetation at the southern end of “The Drove”, than that on either side of it. Although more overgrowth is shown in the 2021 photograph, there still appears to be less vegetation at the southern end of The Drove, as can be seen in the aerial photographs attached at **Appendix C**, particularly that dated 2020/21. However, it is not clear from these photographs whether or not Footpath 6 is accessible from the southern end of The Drove, certainly when Officers visited in 2021, the junction was overgrown and inaccessible.

“The Drove does not and never has had a junction with footpath 6, Pat Woodruffe in her statement suggests it would be nice to have one, but the south-south-westerly part of the drove goes to the end stops and goes no further. (Other than back the way you came)  
I would be grateful if you would correct the order, please as it is one of the key factors for ourselves.”

As shown on the OS plan from the Farm Deeds included with Mr Davies’ correspondence dated 13<sup>th</sup> June 2022 (**Appendix F**), “Area 507 (.543 acres) is the Drove, Area 489 is still farmland, it was never part of the Drove, and the Drove has never joined footpath 6 in any capacity ever.”

59. The objections provide additional evidence regarding the junction of The Drove, with Footpath no.6. Certainly, when Officers made a site inspection in 2021, it was not possible to connect with Footpath no.6 from the Drove due to

overgrowth and a thick hedge. Mr and Mrs Davies suggest that there was a fence within the hedge, (the hedge is now too overgrown to see within), Mr Stiles and Mr C Woodruffe also mention barbed wire at point B and Mrs Kennard mentions a gate at this location, supported by the Wiltshire County Council, Clerks Office, Planning Appeal Map – Land at rear of Common Road and Clay Street, Whiteparish – Residential Development and Construction of Vehicular Access 1972, which appears to show a gate at the southern end of The Drove. Only the 6” OS map dated 1885 records a gap at the southern end of the claimed route. The 25” 1876 OS map appears to show a hedge across the southern end and the 1901 and 1926 OS 25” maps record a solid boundary at the southern end of the path and the applicant confirms in the application: *“Securing the Drove as a public footpath would offer both improved short walks and also longer walks over and beyond the A36, linking footpaths at Earldoms and hence to Langley Wood National Nature Reserve. It is recognised that, to link the Drove to WHIT6 would require some clearance of vegetation.”* and in her evidence form: *“Link to FP6 through hedge required”*; however, 21 witnesses confirm that the route junctions with Footpath no.6, so the evidence of connections with Footpath no.6 is contradictory and disputed. Officers considered overall that the evidence was sufficient to make an Order on the weaker reasonably alleged test, however, the evidence regarding the connection of “The Drove” with Footpath no.6, is disputed in the objections received following the making of the Order and Officers consider that the more stringent balance of probabilities test, applicable at the confirmation of an Order, is finely balanced and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry. This is relevant where it is not possible to claim a cul-de-sac footpath unless there is place of popular resort at the end of the footpath which the public would legitimately wish to reach and return by the same route, such as a view. In this case there is no evidence of a “place of popular resort” at the termination point B on the footpath, which the public would legitimately wish to reach.

#### **Landowner Intention:**

60. At Section 31(1) of the Highways Act 1980, a right of way may be deemed to be dedicated where there is use by the public, as of right and without interruption for a period of 20 years or more, unless there is sufficient evidence that there was no intention during that period to dedicate it. Mr and Mrs Davies comment: *“Your report conclusion bases a lot on the fact that the farmer in 1983 – 2003 was aware of applicants presence in the Drove...Witnesses 3,5,9 and 10 all have legal access in their deeds to the upper Drove, they are the only witnesses in this list who mention talking / conversing with the farmer and why would they not? Driving cows up and down the Drove (which Mrs Andrews said did not happen) would be a danger to the public and prohibited by the 1971 animals act, if it did happen which was very unwise it provides no evidence of a public right of way, it potentially*

would have meant a milking herd of cows were free to roam the upper drove which was never the case...Witnesses 11 and 12 have made “an assumption” – that is not evidence, Witness 14 had legal access to the upper drove so would expect to see the farmer and visa versa, witness 17 might well be referring to the upper section and Mr Andrews (confirmed appropriately as the **LANDOWNER**), cattle were free to roam / herd in the lower section as they were kept in by a fence / barrier at Forest View, Witness 19 passed the time of day cordially with the farmer, but states she only used the Drove occasionally. **Must have been a farmer with very few duties**, Witness 22 recalls the “2 strand wire fence” but also refers to “Driving my tractor down it – every few months 1987-2020” – extremely difficult to believe especially when Mr Harrison in his statement states that walking it (which he has the right to part of it) has been difficult the **last 25 years due [to] poor maintenance and blockage**, Witness 24 (who also remembers the fence) again make an assumption which is not evidence, Witness 26 makes reference to the local stables and a leased field – they were not the landowners and have no connection to this application, none have come forward to present evidence.”

61. Mr and Mrs Davies suggest that the discussions with the landowners may have taken place on the upper section of The Drove, over which some of the witnesses had a private right of way, and where the landowner would have expected to see these witnesses using the path, which is of course very feasible. There is insufficient evidence provided regarding the incidents of discussions with the landowner which may have led members of the public to consider that the landowner was aware of use and acquiesced in that use and there is still little evidence of the landowners non-intention to dedicate additional rights of way, save for the pre-2003 fence at Secret Field which the Cook family provide additional evidence for, being present in 1979, for the purposes of keeping stock secure. There is no evidence of notices being placed on site to deter public use at any time and there is no deposit made by the landowners under Section 31(6) of the Highways Act 1980, which would serve to negative the landowner’s intention to dedicate additional public rights of way over the land.
62. Whilst the evidence of the landowner’s non-intention to dedicate additional rights over the way, was sufficient for the making of an Order on the reasonably alleged test, it is considered that the evidence is finely balanced in the balance of probabilities test, which is applicable at the confirmation of an Order, and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry.

#### **Use of “The Drove” As of Right:**

63. In order for an application to be successful, based on user evidence, qualifying user must be “as of right”, i.e., without force, without secrecy and without permission. Mr T Rudman has lived in Whiteparish most of his life,

since 1962: *"I know the area very well and was a very explorative child, as were my friends, in the 1970s/80s.*

*I remember on many occasions seemingly moving freely through numerous fields, irrespective of whether we were allowed. We would have frequently entered private farmland, perhaps scaling a gate or fence, in the full awareness that we would not have an assumed right of way or access.*

*...with friends I would have ventured into the Drove/Secret Field, knowing full well that this was private land. Indeed as well as breaching gates/fences to enter these areas from time to time we would have been challenged by the farmer, and asked to leave."*

64. Mr and Mrs Davies recall similar memories, *"As children we would daily cross fences and hedges to access fields and farms the majority with no stiles or similar. With friends for over a decade we visited fields filled with cows, farm buildings, tracks, barns, and lots more "always" with the conscious knowledge that having crossed unmarked fences we were knowingly "trespassing". ...I myself crossed fruit orchards (Blackmore estates) unchallenged, we played with farm machinery unchallenged, we frequently transited many separate fields with rough paths through fences, or hedges, we were very seldom told or advised to "Move along" – farmers or their staff had better things to do back then with more pressing obligations than policing their lands."*

*"We find your "Without Force" comment 10.46 to be in error, Mrs Cook made it quite clear that in 2003 the fence was "**Upgraded**" not "Erected" as part of a series of measures to deter local children on their bikes using secret field, are we really expected to believe the farmer would fit a barbed wire fence and wrap it for protection (kind of defeats the object of fitting BARBED wire really) its quite obvious looking at the pictures (below) that secret field would have been accessed far easier in 2003 than through the Drove (footpath 4 and 6 already there), Mrs Cook and her husband's actions were to cover all angles...you can clearly see local children would hardly have ridden their bicycles down a heavily overgrown Drove and made access through a hedge with its integral fence when they could come down Clay Street and footpath 4."*

65. Mr Rudman and Mr and Mrs Davies provide evidence that as children they trespassed onto farmland etc; however, it is true that all rights of way claims will begin with a period of trespass against the landowner. Certainly, the climbing of gates would not be user "as of right", where it is user "by force" and it is suggested in this case, through additional evidence of the 2-strand wire fence at Secret Field from 1979, that user after that date would not be qualifying user, as of right, where the public would be required to continue on the route by climbing over the fence. Evidence regarding the presence of a fence across the route before 2003 is conflicting and disputed and Officers consider that the more stringent balance of probabilities test applicable at the confirmation of an Order, is finely balanced and may only be resolved by

witnesses giving evidence and being cross-examined on their evidence at a public inquiry.

### **Width Recorded in DMMO:**

66. The width of the path recorded in the DMMO as varying between 3 – 9 metres, is disputed by the Objectors. Mr and Mrs Peacop state: *“To be clear, up to ‘9 metres’ potentially takes the proposed footpath up to the eastern wall of [redacted] house, cutting right across [redacted] land and threatening the security and value of [redacted].”*

Mr M Richards, Zelda Investments Ltd: *“And a presumption of a path varying between 3m and 9m? How can you suggest any path at all let alone a variable width of great magnitude when there is no evidence to show any path existed at all through the hedge/fence at the southern boundary nor at the overgrown hedge/fence turn into Secret Field from the top section of The Drove by the rear gates to the houses. The path to the back gardens in front of the 2-strand fence was 0.3m wide at Westways. Secret Field was approximately 50m wide. When kids with bikes trespassed through a barbed wire fence how much did they use, 9m?! So where does a footpath width of 3m-9m emanate from?! Wishful preservation order for a type of terrain? Certainly not a footpath! However, when seen in the context of the applicants trying to be as obstructive as possible to a development you can understand that a large and varying width could be the most effective.”*

Mr and Mrs Davies – *“We see in your conclusion the issue of an order is “not” based on OS or historic documentary evidence. However, “The historical OS mapping and user evidence support a width varying between 3m and 9m to be recorded over the footpath, as shown on the proposed order plan at Appendix 10” being proposed for the Drove width. OS mapping of agricultural land and boundaries is notoriously inaccurate at close scale, boundaries themselves can actually be up to 2 metres wide. None of the submitted evidence suggests the width is 9 metres some suggesting it is a mere 1 metre. We would strongly question why a public right of way for a “Footpath” has to be wider than a two-lane highway, every single comment from residents states “access on foot”. **Why also would you support the OS mapping for a footpath that OS itself does not dedicate to be such.**”*

67. As Mr and Mrs Davies point out, and as concluded in the decision report at **Appendix D**, there is insufficient documentary evidence to support public rights over The Drove, however, OS mapping does consistently record a feature on the ground in the location of The Drove, (OS maps being topographical in nature). Therefore, whilst the OS mapping cannot on its own support public rights, it can support the width of the feature on the ground and assist in identifying an area available to the public and the width has been taken from OS mapping which consistently records the route, excluding that

section adjacent to Common Road, which is not recorded on OS mapping and where the Order width is taken from witness evidence of the “used” area. The Objectors present no other evidence to suggest an alternative route other than the user evidence, some of which suggests 1 metre, or 0.3 metres to the back gardens, as suggested by Mr M Richards; however, Officers considered that from the evidence of users giving varying widths over different parts of the path, it is very difficult to establish a median width from these values. Officers consider that the width of 1 metre in user evidence is a result of overgrowth and that the way may in fact be wider, many witnesses point to a varying width depending upon the vegetation growth, as witness 12 states “*I feel that it used to be wider*”. Additionally, in Secret Field, the avenue of trees which can be seen to exist still on the 2020/21 aerial photograph, (please see **Appendix C**), accords with the width of The Drove, as recorded in the OS mapping.

### **Other Objections:**

68. Objectors make further representations on the following points:
- No need for a Public Footpath – where there are suitable alternative paths available.
  - Vexatious Application – to disrupt planning and to preserve historic Drove.
  - Planning granted for the development of the new properties alongside The Drove – As the same Authority granting planning permission, Wiltshire Council should dismiss the DMMO application.
  - Negative impact on properties.
  - Costs in making and determining DMMO.
69. Once an application is made under Section 53 of the Wildlife and Countryside Act 1981 and evidence is brought to the attention of the Surveying Authority, it is the duty of the Authority to consider the evidence in order to determine the application. In the consideration of an application made under Section 53 of the Wildlife and Countryside Act 1981 to add a footpath to the definitive map and statement of public rights of way, the Surveying Authority, is not permitted to take into account the matters listed above, and the only valid objections are those which challenge the available evidence. The consideration of the Authority is limited to the available evidence and the correct recording of existing public rights, amending an error in the definitive map and statement. The Order does not seek to create a “new” footpath, but simply record a footpath which can be reasonably alleged to subsist, based on the available evidence.

## **Objections regarding procedural matters:**

### **Consultation:**

70. One of the landowners has raised concerns that they were not consulted on the proposals to add a footpath until the making of the Order, by letter dated 29 March 2022. At the initial consultation regarding the application in August 2020, they were not registered landowners. Given that the new properties were being built and sold throughout the application and order making process, Wiltshire Council has tried to ensure that new owners are added and consulted at each stage. All parties will now receive opportunity to make their representations to the Southern Area Planning Committee and then to the Planning Inspectorate in the Order determination process. It is therefore considered that landowners have not been prejudiced and have received / will receive opportunity to make their representations.

### **Errors in Order:**

71. The letter from Wiltshire Council, dated 29 March 2022, giving notice of the making of the Order, quotes the route of the footpath from its junction with Common Road, leading west-south-west for approximately **180 metres** and then south-south-west for approximately **180 metres**, which is inconsistent with the Order which refers to the path leading south-south-west for approximately 150 metres. The reference to the path leading south-south-west for approximately **180 metres** in the covering letter is a typing error and Officers offer apologies for any confusion which this may have caused. The route description contained in the Order enclosed with the letter is correct, i.e., leading from “...its junction with Common Road, Whiteparish, in a generally west-south-westerly direction for approximately 180 metres, before leading south-south-west for approximately 150 metres...”
72. “The Order does not use the latest Definitive Map - we have a more recent version in our Land Registry title deeds, so the Order has been made on the basis of the incorrect Map.” Where the area has been/is being developed, Officers have used the most up to date mapping available to Wiltshire Council at the time of making the Order. The base map used does not amend the effect of the Order despite later revisions to the OS base mapping.

### **Overview and Scrutiny Engagement**

73. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981 and within The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993, (Statutory Instruments 1993 No.12).

### **Safeguarding Considerations**

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

### **Public Health Implications**

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

### **Corporate Procurement Implications**

76. Where an Order is forwarded to the Secretary of State for determination, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 80 - 83 of this report.

### **Environmental and Climate Change Impact of the Proposal**

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

### **Equalities Impact of the Proposal**

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

### **Risk Assessment**

79. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error in the definitive map and statement of public rights of way which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. If the Council fails to fulfil this duty, it is liable to complaints to the Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council if it is found to have acted unlawfully.

## **Financial Implications**

80. The determination of DMMO applications and the modification of the definitive map and statement of public rights of way, accordingly, are statutory duties for the Council, therefore the costs of processing such Orders must be borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
81. Where objections are received to the making of the Order and not withdrawn, the Order falls to be determined by the Secretary of State and cannot simply be withdrawn. The Order will now be determined by an independent Inspector appointed on behalf of the Secretary of State by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.
82. Where the case is determined by written representations, the cost to the Council is negligible. However, where a local hearing is held, the costs to the Council are estimated at £300-£900. A public inquiry could cost between £3,000 and £6,000, if Wiltshire Council supports the Order, (i.e., where legal representation is required by the Council) and around £300-£900 where the Council no longer supports the making of the Order, or it takes a neutral stance, (i.e., where no legal representation is required by the Council and the case is presented by the applicant).
83. Where the Council makes an Order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

## **Legal Implications**

84. Where the Council no longer supports the making of the Order, clear evidential reasons for this must be given, as the applicant may seek judicial review of the Council if this decision is seen by them to be incorrect or unjust.
85. The determination of an Order which has received objections is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State, (although the Council, as the Surveying Authority would be considered by the Court to be "interested party" and named as such in any Court proceedings). Any legal challenge would be heard in the High Court and would need to show that the Inspector, (appointed on behalf of the Secretary of State to preside over the inquiry and take the decision), has misinterpreted the law or erred in the making of the decision. If the challenge is successful, the Court could quash the decision and in cases where an error has been found, return the case to the Secretary

of State for re-determination. The losing party would be responsible for the costs of the successful party.

### **Options Considered**

86. Members of the Committee should now consider the objections and representations received and the evidence as a whole, in order to determine whether or not Wiltshire Council continues to support the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the Order has been objected to; therefore, the Order must now be submitted to the Secretary of State for decision and Members of the Committee are required to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State. The options available to members, having considered the available evidence and the objections and representations, are as follows:
- (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed without modification;
  - (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification, based on consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed with modification;
  - (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, based on consideration of the available evidence, in which case the Committee should recommend that the Order is not confirmed with clear evidential reasons given for this resolution;
  - (iv) Members may resolve to take a neutral stance, if the Committee considers on consideration of the available evidence that a Wiltshire Council recommendation cannot be attached to the Order when it is forwarded to the Secretary of State for determination.
87. Please note that all references to the available evidence above, include the submissions made at the formal objection period, (please see correspondence at **Appendix F**), as well as the evidence considered within the decision report dated 2 December 2021, (included at **Appendix D**). Members should note that the evidence in full is available to be viewed at Wiltshire Council's Offices, County Hall, Trowbridge.

## Reason for Proposal

88. The Order was correctly made where rights for the public on foot could be on a reasonably alleged to subsist; however, following the making of the Order, additional evidence has been submitted which would lead Officers to consider that the more stringent balance of probabilities test, i.e. that it is more likely than not that public rights exists, which is applicable at the confirmation of an Order, is finely balanced and may only be resolved by witnesses giving evidence and being cross-examined on their evidence at a public inquiry and a Wiltshire Council recommendation to confirm the Order cannot be attached. It is therefore recommended that Wiltshire Council takes a neutral stance in this matter when the Order is forwarded to the Secretary of State for determination. In particular the evidence is disputed on the following points:

- The Cook family provide additional evidence regarding the fencing of Secret Field, across the width of The Drove, (2-strand wire fence), since at least 1979 and 1980 and then from 1989 to 2003, (this fencing is likely to have continued from 1980 to 1989 due to the use of Cottage Farm, including Secret Field, for the grazing of cattle during these years, as evidenced by the Cook family). There is no photographic evidence of the 2-strand wire fence pre-2003 provided, other than the photographs provided by Mr and Mrs Davies showing scars/rings on the ash trees where the wires were previously located, please see correspondence dated 22 June 2022 at **Appendix F**; however, the Cook family are frequent visitors to the area and provide compelling evidence regarding the earlier fence from 1979 at least.
  - It is possible to then consider a user period prior to 1979 if the date of bringing use into question is now the fencing of the route in 1979. There are 6 witnesses who claim to have used the route prior to 1979; however, the earliest use of these witnesses is that of Mr and Mrs B Rutter who have used the route from 1962. Therefore, a 20-year user period prior to 1979 cannot be shown, the user period in question being 1959 – 1979, (the earliest use commencing in 1962).
  - The earlier dates of the fence also affect user “as of right” where any user from 1979 onwards would involve climbing/stepping over the fence, which is use by force and not qualifying use by the public “as of right”.
- Additional testimony regarding there being no junction with Footpath no.6 Whiteparish, at the southern end of The Drove. It is not possible to claim a cul-de-sac footpath unless there is a place of popular resort at the end of the path which the public would legitimately wish to reach, such as a view, and on which the public would return by retracing their steps. There is no evidence that there is a place of popular resort which the public would

legitimately wish to reach at the southern end of the footpath and upon which a cul-de-sac footpath may be added.

- There is dispute regarding the level of user by the public. It is noted that one of the witnesses previously in support of the application has now removed support for the Order where he now considers the use of the path by his neighbours, to be with permission, i.e., they have a right within their property deeds to use The Drove to the rear of their properties leading east towards Common Road, which is not qualifying user “as of right”.
- The additional comments/evidence from supporters do not raise the evidence from reasonably alleged to balance of probabilities which is applicable at the confirmation of an Order. Whilst Mr Hall and Mrs Woodruffe are supportive of the application, on the making of the Order Mrs Woodruffe comments that “...it is important that the owners recognise the status of the drove as an ancient monument and, hopefully, they will be encouraged to maintain it as such.” In the making and confirmation of a DMMO, the Surveying Authority cannot take into consideration the preservation of the monument, this is not the purpose of a DMMO, which seeks to record existing public rights and to correct the definitive map and statement of public rights of way.

89. In taking a neutral stance to the determination of the Order, Wiltshire Council, as the Surveying Authority, seeks to facilitate the process for testing and making full use of the evidence. Additional weight may be attached to oral evidence given under public inquiry conditions where it is tested through the process of cross-examination.

### **Proposal**

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

**Samantha Howell**

Director Highways and Transport

Report Author:

**Janice Green**

Senior Definitive Map Officer

**The following unpublished documents have been relied upon in the preparation of this report:**

None

**Appendices:**

**Appendix A** – Application and Initial Consultation Plan

**Appendix B** – Location Plan

**Appendix C** – Aerial Photographs

**Appendix D** – Decision Report 2 December 2021

**Appendix E** – “The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022”

**Appendix F** – Objections and Representations

Completed witness evidence forms x 27 are available to be viewed at the Offices of Rights of Way and Countryside, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN or using the following link:

[DMMO Search - Rights Of Way - Wiltshire Council](#)

**Wiltshire Council**

Wildlife and Countryside Act 1981

Definitive Map and Statement of Rights of Way for the County of Wiltshire

Notice of Application for Modification Order

To: **Rights of Way Section, Wiltshire Council, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN**

I/We (please insert your name or the name of the organisation making the application)

RESIDENTS OF CLAY ST. WHITE PARISH.....

Of (please insert your full address) ...../o.....

CLAY ST, WHITE PARISH, SALISBURY, SP5 2.....

Hereby apply for an Order under Section 53(2) of the Wildlife & Countryside Act 1981 modifying the Definitive Map and Statement for the area by:-

**Adding** the footpath/~~bridleway/restricted byway/byway open to all traffic~~ (please delete the irrelevant status) **leading from** (please describe the position and route of the right of way you are referring to)

Common ROAD, WHITE PARISH (SU 2464 2312) leading.....

behind properties in Clay St to open fields and footpath.....

WHT 6 (the section with a red dashed line on map).....

**With a width of:** 8m at widest point to include hedgerows and mature boundary trees.

**The route of the right of way is shown on the attached map.**

I/We attach copies of the following documentary evidence and or statements of witnesses in support of this application.

Dated 12/07/2020..... Signed [Redacted Signature]

For a definition of the various categories of rights of way please see overleaf.

## SU 2423 Whiteparish

The Drove



Extent of the Drove to which the application relates



Existing footpaths



WHT 4 and 6 and also WHT 31 (Clay St).

Useful OS grid references:

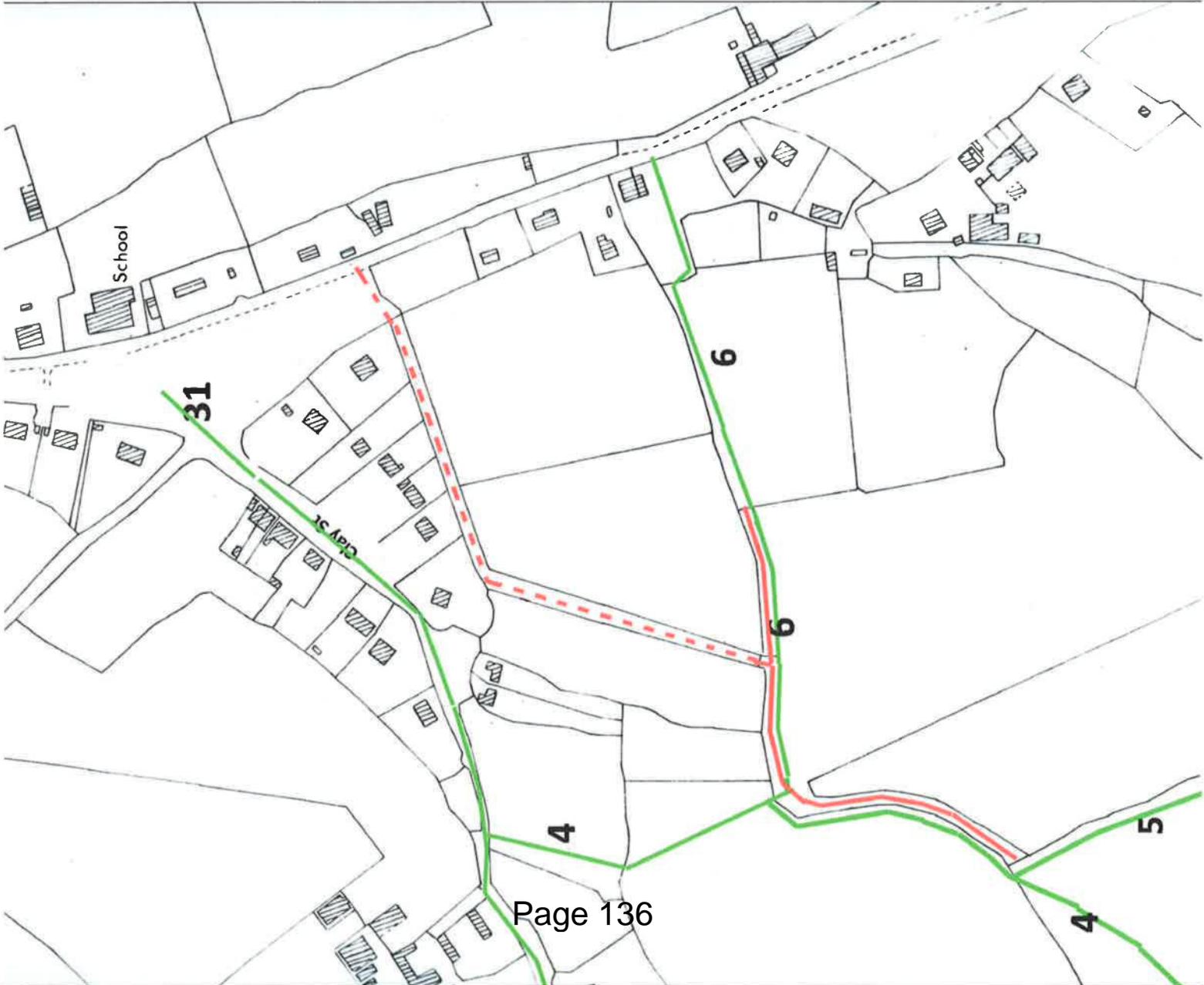
Start point off Common Rd.

SU 2464 2312

Point where the Drove joins FP6

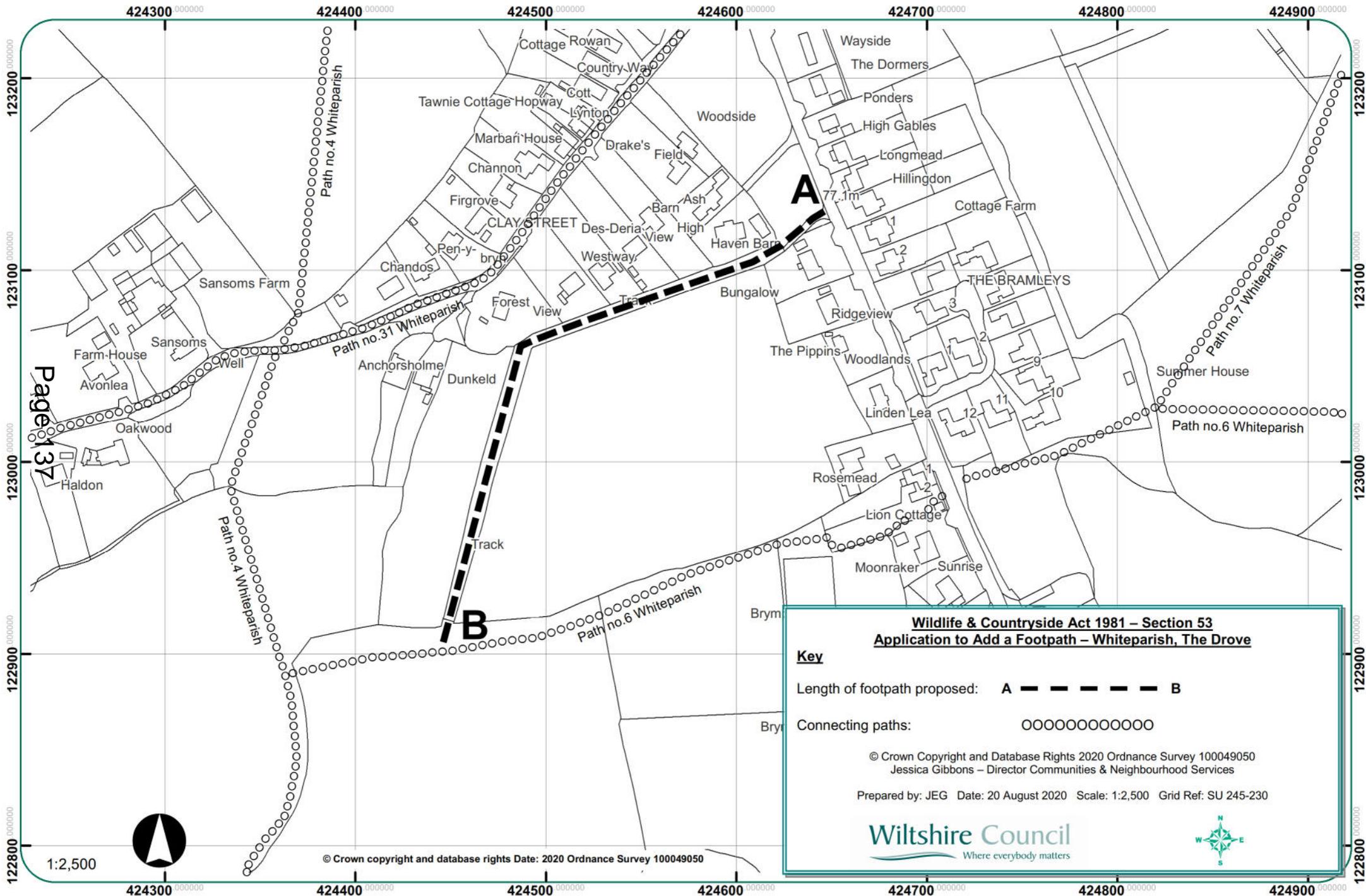
SU2444 2292

The length is approx. 300m



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

Date: 20/08/2020



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

**Key**

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

Connecting paths: **OOOOOOOOOO**

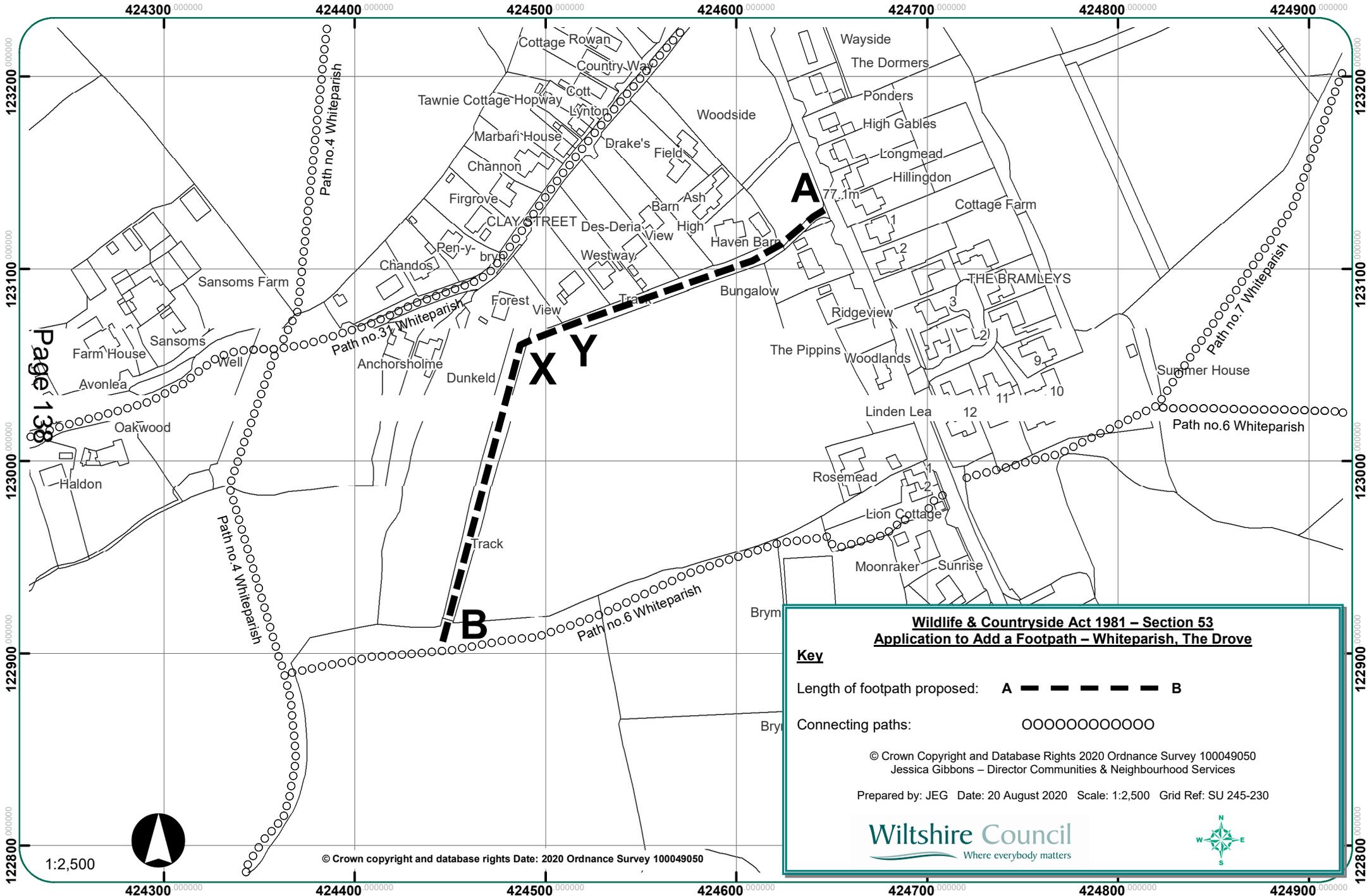
© Crown Copyright and Database Rights 2020 Ordnance Survey 100049050  
Jessica Gibbons – Director Communities & Neighbourhood Services

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

**Wiltshire Council**  
Where everybody matters



1:2,500



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

**Key**

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

Connecting paths:                    OOOOOOOOOOO

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Jessica Gibbons – Director Communities & Neighbourhood Services

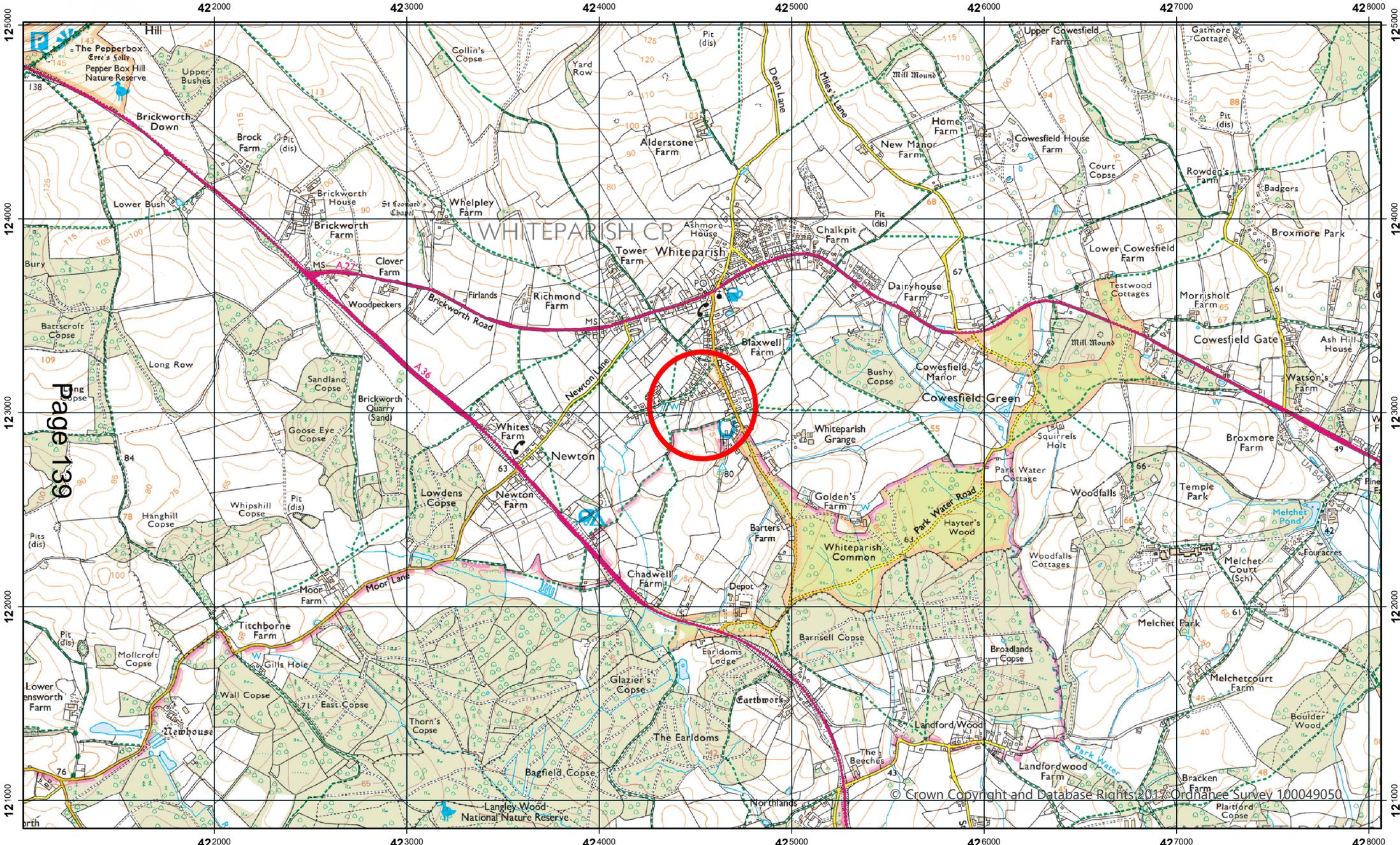
Prepared by: JEG    Date: 20 August 2020    Scale: 1:2,500    Grid Ref: SU 245-230

**Wiltshire Council**  
Where everybody matters



1:2,500

APPENDIX B - LOCATION PLAN  
THE DROVE, WHITEPARISH



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

Please sign off the Report next to your name

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

**Nature of Report:**

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

**Executive Summary:**

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

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

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

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

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

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

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

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

**Officer's Recommendation:**

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

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

**1. Purpose of Report**

- 1.1. To determine an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Whiteparish (The Drove).

**2. Relevance to the Council's Business Plan**

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

**3. Location Plan**

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

**4. Application Plan**

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

**5. Photographs**

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

## 6. Registered Landowners

6.1. Mrs S Cook

██████████

Sherfield English

Romsey

Hampshire

SO51 6████

Zelda Investments

C/O Mr M Richards

Business Development Director

██████████

Chilworth Road

Chilworth

Southampton

Hampshire, SO16 7████

Mr H Urquhart

██████████

Rectory Hill

West Dean

Salisbury

Wiltshire, SP5 1████

## 7. Background

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

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

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

## 8. Main Considerations for the Council

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

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

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

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

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

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

*“(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or*

*(b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”*

Owen J also held that:

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

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

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

## 9. **Documentary Evidence**

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

*“32. Evidence of dedication of a way as highway*

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

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

<b>Category</b>	<b>May provide evidence for</b>	<b>Examples</b>
A	Legal creation of a highway Reputation of way as a highway Physical existence of highway Conclusive evidence of public rights	Inclosure Acts, Awards, Plans Orders creating, diverting or extinguishing highways – i.e. Railway and Canal Acts, Plans Definitive Map and Statement
B	Reputation of way as a highway Physical existence of a way	Documents, Maps, Plans drawn up as a result of legislation, consulted upon, but whose primary purpose was not to record public rights – i.e. Tithe

		Commission, Inland Revenue Finance Act
C	Reputation of way as a highway Physical existence of a way	Includes Local Government records - i.e. Highway Board, County Council, Parish Council
D	Reputation of way as a highway Physical existence of a way	Other maps and documents showing highways additional to or as part of their purpose - i.e. Parish Maps, Estate Plans, Conveyances
E	Reputation of way as a highway Physical existence of a way	Commercial Maps, some Ordnance Survey Records
F	Reputation of way as a highway Physical existence of a way	Local repute, consultation responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **10. User Evidence**

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

10.2. Section 31(1) of the Highways Act 1980 deals with the dedication of a way as a highway, presumed where a way over land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. The way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

### **Bringing into question**

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

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

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

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

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

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

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

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

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

Refused 29/08/18

**18/08737/FUL** – Land south of Forest View, Clay Street, Whiteparish  
Erection of two dwellings

Refused 27/11/18 – Allowed on appeal 20/08/19

**18/08738/FUL** – Forest View, Clay Street, Whiteparish

Retention of existing bungalow known as Forest View and additional dwelling  
on Land at Forest View including parking spaces

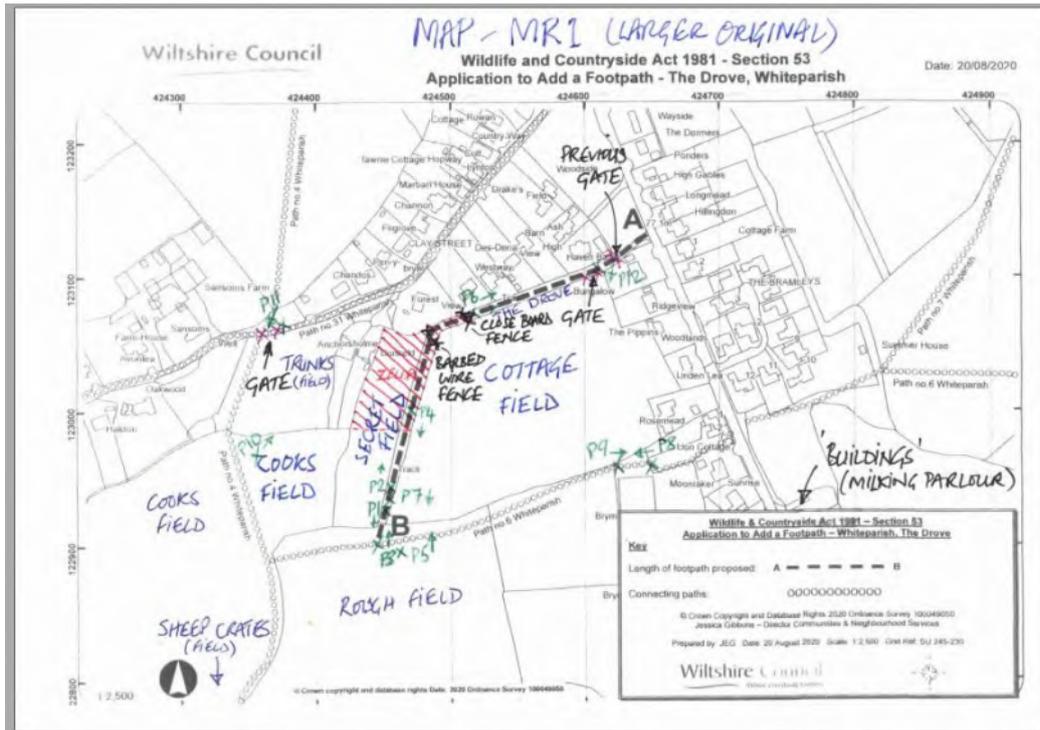
Refused 27/11/18 – Refused at appeal 24/09/19

**20/04331/FUL** – Plot 3, land off Forest View, Clay Street, Whiteparish

Erection of single storey dwelling

Approved with conditions 23/10/2020

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



**Close board fencing and post and rail fencing with hedging 2020**

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

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

### **Barbed wire fencing with piping - 2003:**

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

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



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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2 strand barbed wire fence**

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

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

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

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

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

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

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

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

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

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

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

Darren Stiles – Does not recall pre-2003 fence.

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

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

Elvin Klapp – *“Not sure.”*

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

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

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

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

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

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

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

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

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

#### **Additional comments regarding brining into question**

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

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

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

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

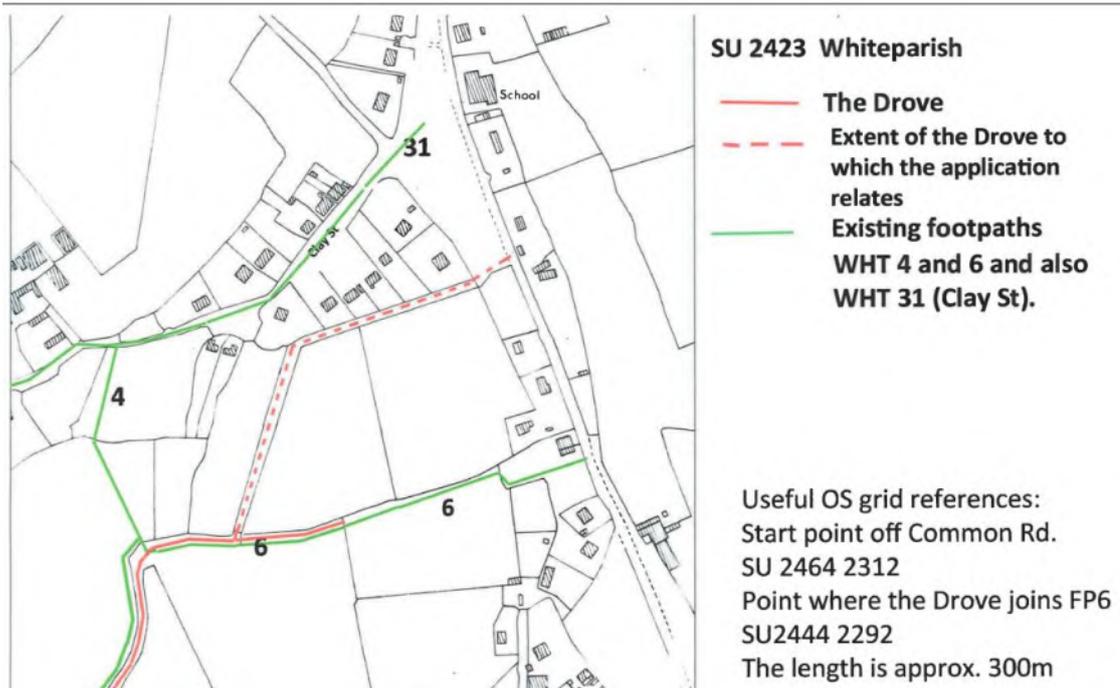
10.26. Access from The Drove onto Footpath no.6, (southern end of The Drove point B), was not possible due to overgrowth when Officers viewed the claimed route in 2021 and Mrs Cook states: *"Even more obviously incorrect is that the dotted line is suggested to exit Secret Field to the south to join up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

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

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

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

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



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

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

**Bringing into question:**

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

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

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

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

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

## Twenty Years Public User

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*...It would be a relatively simple matter to link this ancient track to other public footpaths and so create a new amenity for local people...*

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

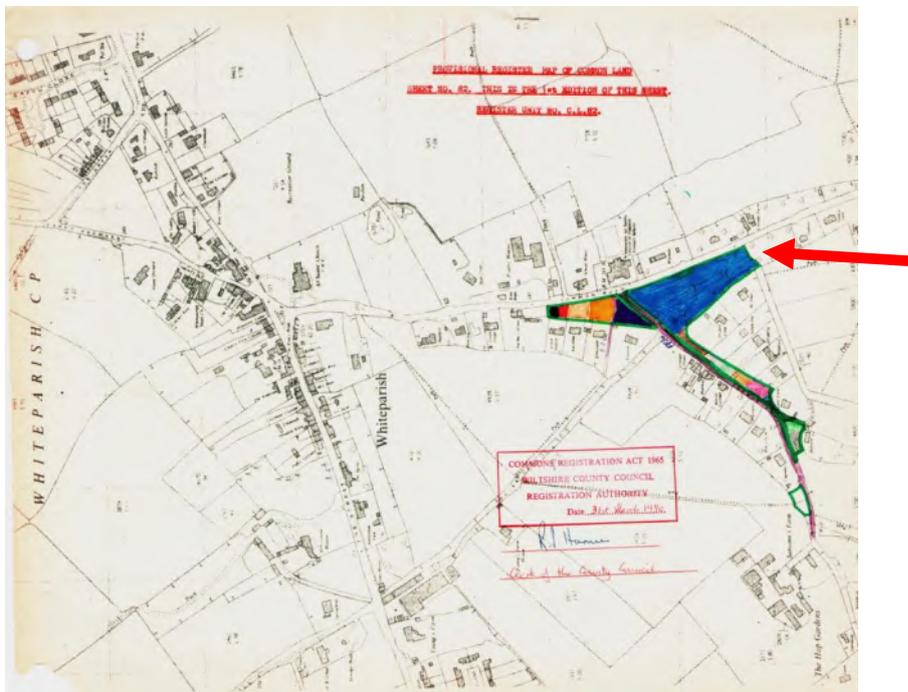
10.43. Overall, Officers consider that the planning application replies are written in direct response to the planning matters and therefore, they may not contain information regarding personal use of The Drove and it appears that The Drove is already obstructed by the current close board fencing across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

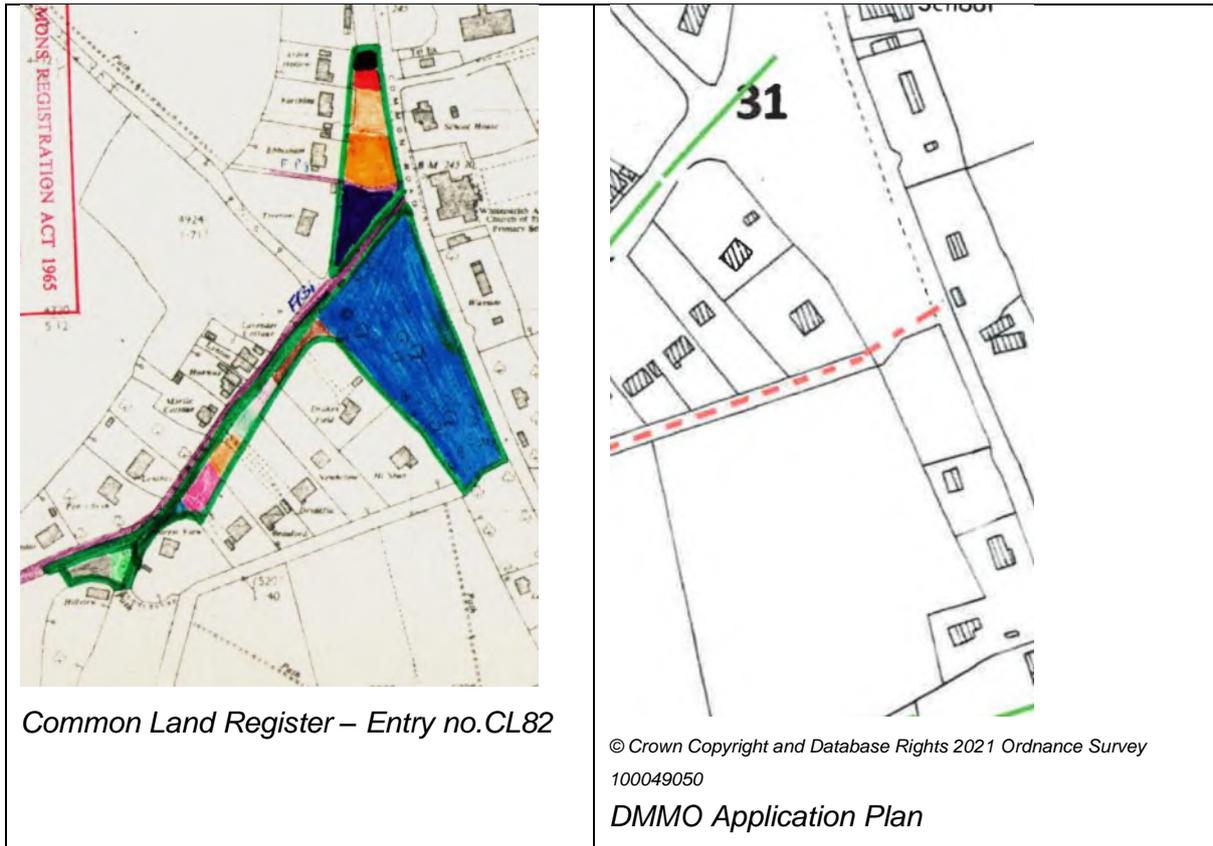
**20 years public user** – Officers consider the relevant user period to be 1983 – 2003. During that period 19 witnesses claim to have used the path, a single identifiable route between Common Road and Footpath no.6 Whiteparish, 5 of them for the full 20 year user period in question. Although the frequency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

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

### **As of Right**

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





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

**Without Force**

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

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

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

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

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

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

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

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

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

**Without Secrecy**

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

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

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

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

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

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

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

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

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

2003 – Cows replaced by horses.

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

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

### **Without Permission**

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

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

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

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

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

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

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

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

10 – Residents (parents) had right of access.

13 – Access to Drove in house deeds.

16 – Right of access to rear garden.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Width

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

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

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

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

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

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

### **Landowners Intention**

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

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

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

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

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

10.63. Lord Hoffman went on to say:

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

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

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

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

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

### **Common Law Dedication**

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

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

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

## **Conclusion**

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

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

## **11. Overview and Scrutiny Engagement**

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

## **12. Safeguarding Considerations**

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

## **13. Public Health Implications**

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

#### **14. Procurement Implications**

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

#### **15. Environmental Impact of the Proposal**

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

#### **16. Equalities Impact of the Proposal**

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

#### **17. Risk Assessment**

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

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

## **18. Financial Implications**

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

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

## **19. Legal Considerations**

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

## **20. Options Considered**

20.1. To:

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

## **21. Reasons for Proposal**

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

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

## **22. Proposal**

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

Janice Green

Senior Definitive Map Officer, Wiltshire Council

Date of report: 2<sup>nd</sup> December 2021

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**Appendices:**

**Appendix 1** – Location Plan

**Appendix 2** – Application Plan

**Appendix 3** – Photographs

**Appendix 4** – Representations and Objections

**Appendix 5** – Relevant Legislation

**Appendix 6** – Historical Evidence Summary

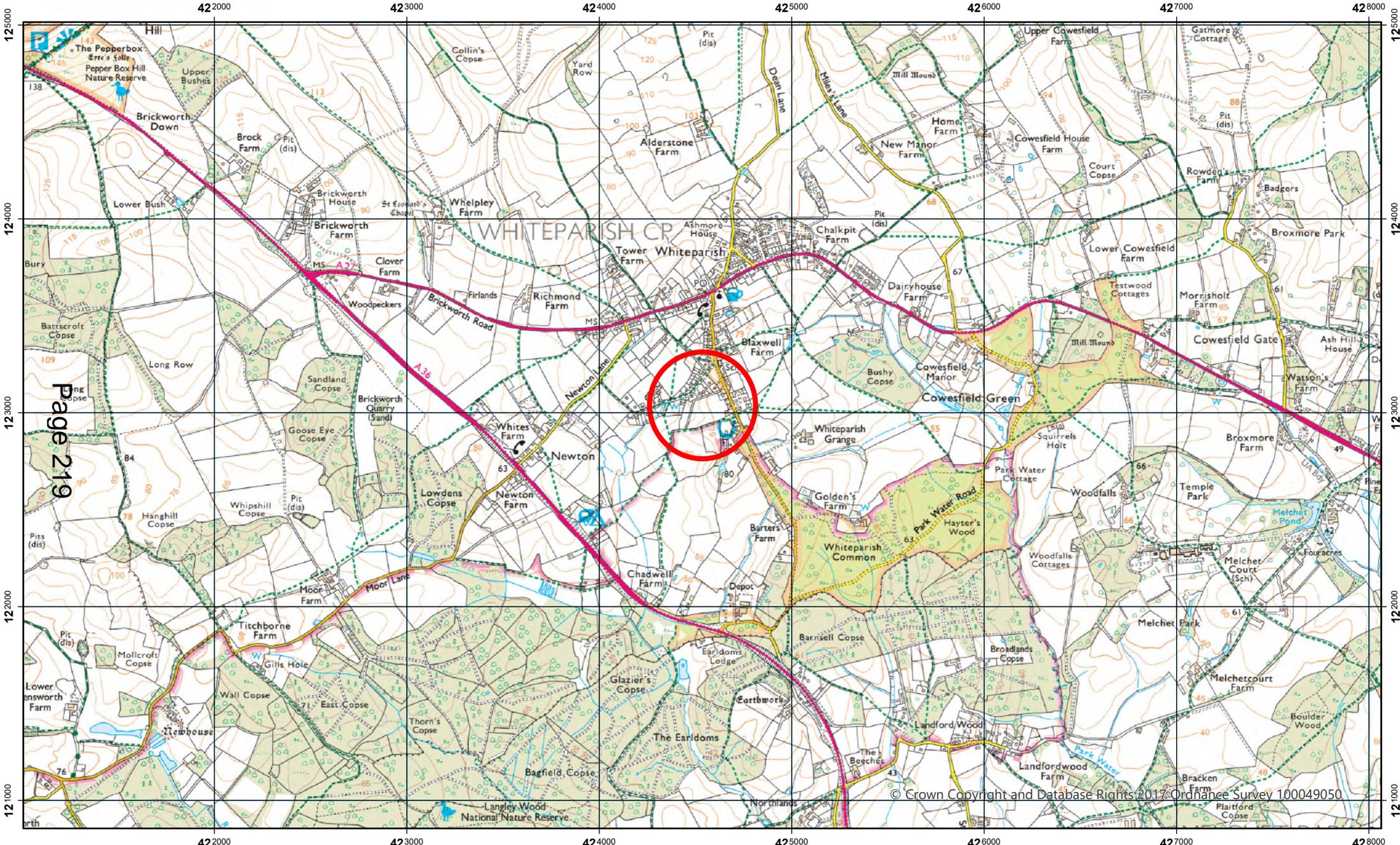
**Appendix 7** – User Evidence Summary

**Appendix 8** – User Evidence Chart

**Appendix 9** – Bringing into Question

**Appendix 10** – Proposed Order Plan

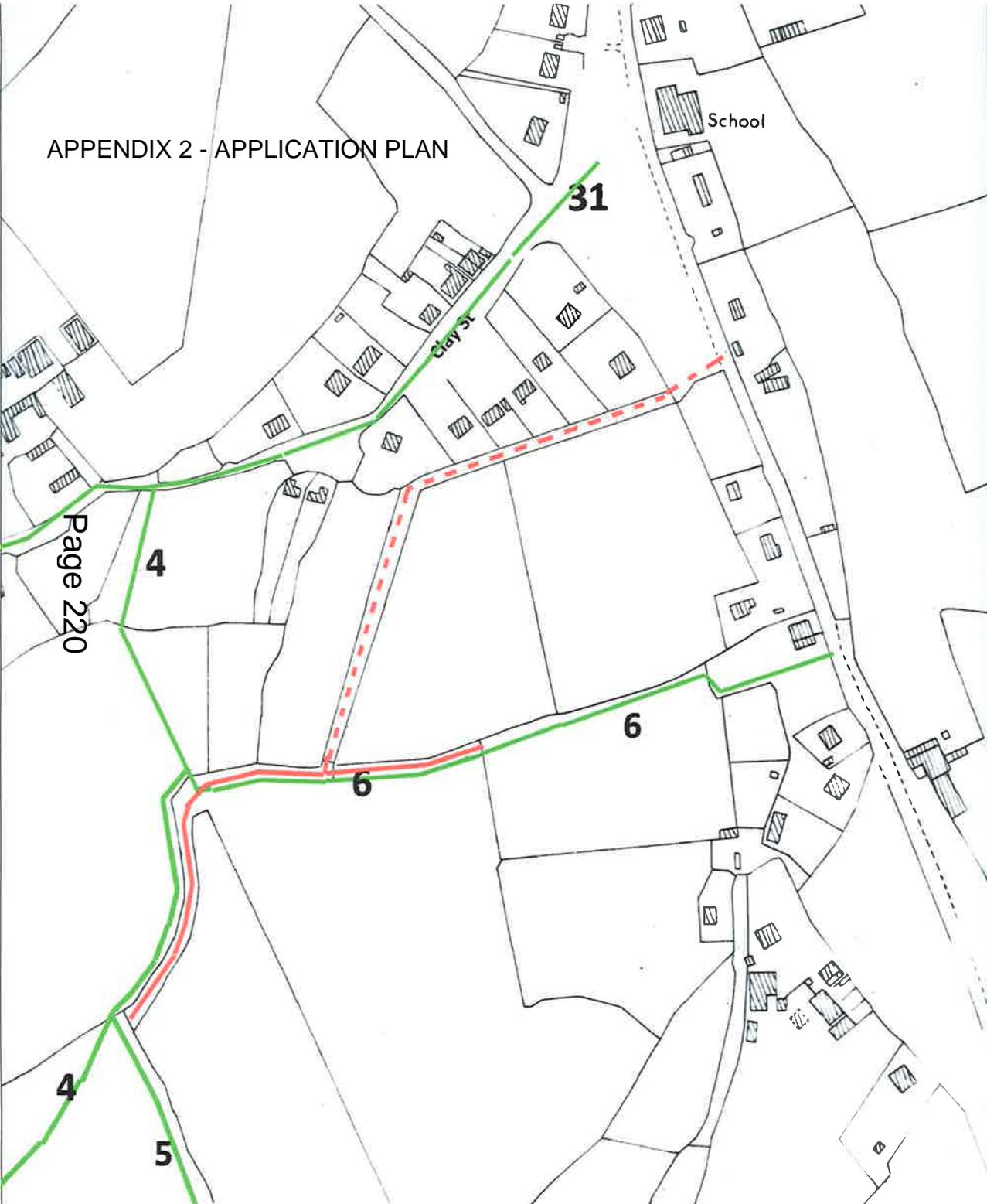
Appendix 1 - Location Plan  
The Drove, Whiteparish



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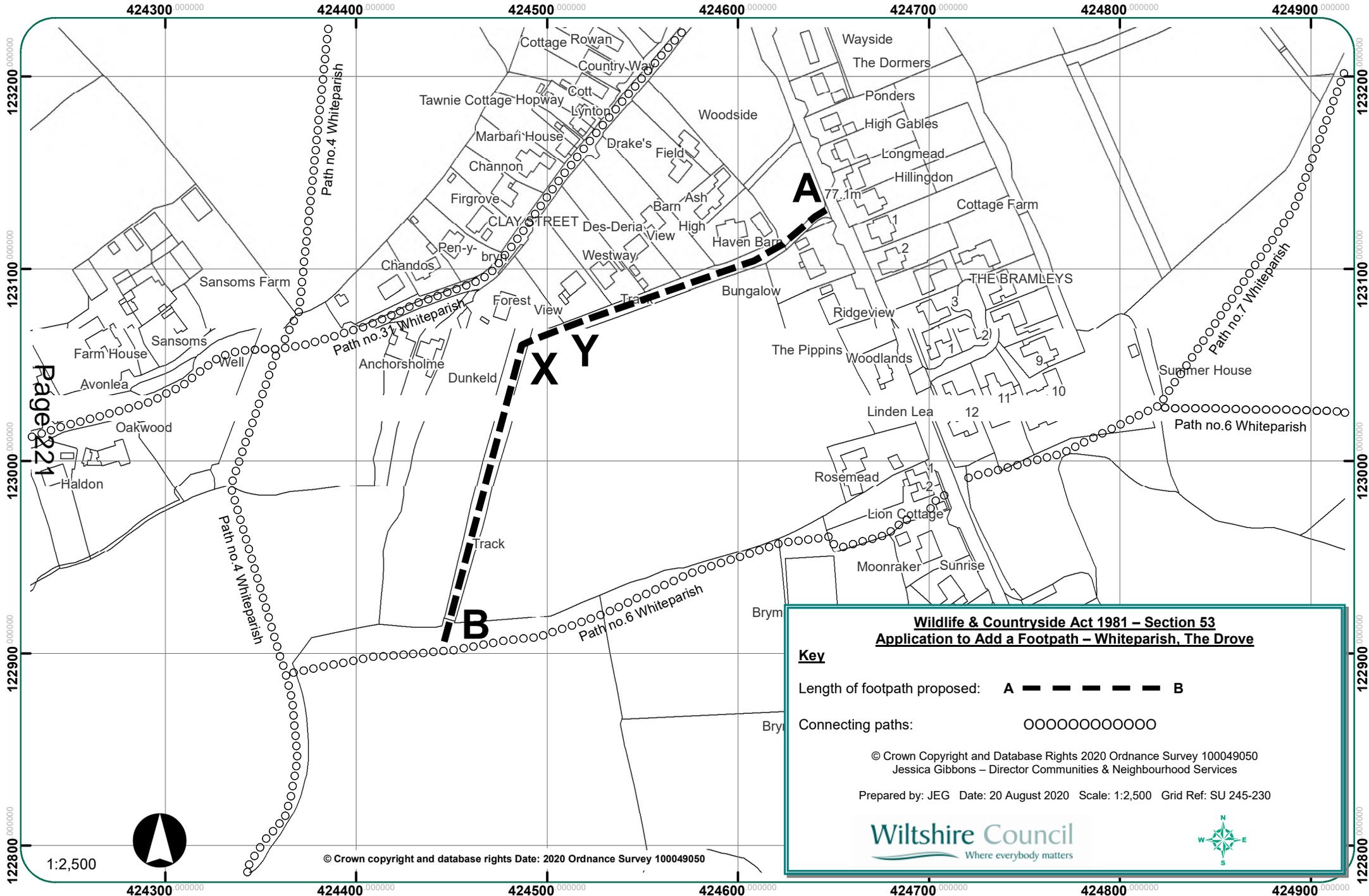


**SU 2423 Whiteparish**

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

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

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



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

**Key**

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

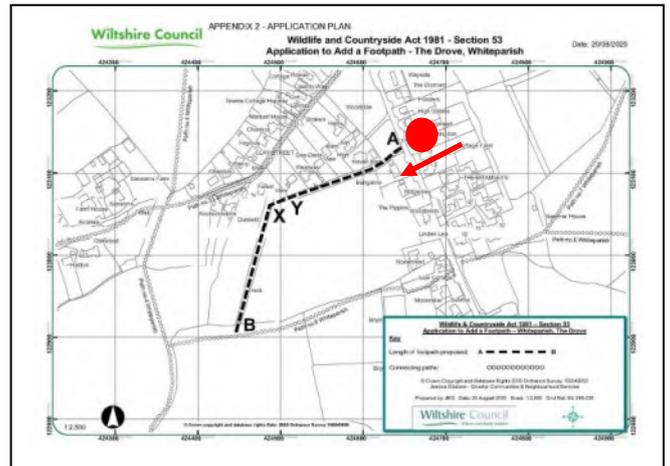
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Jessica Gibbons – Director Communities & Neighbourhood Services

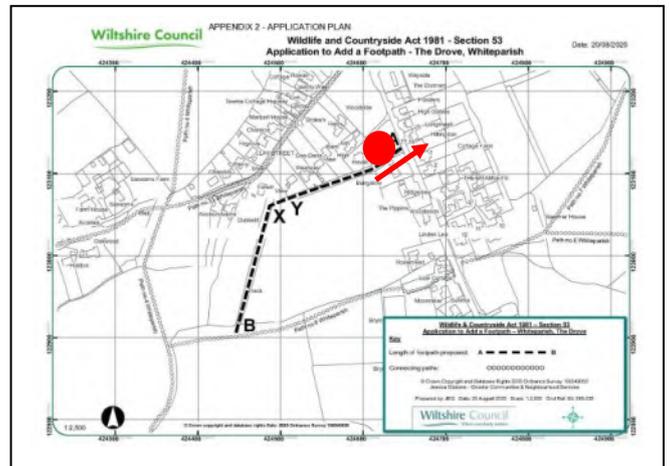
Prepared by: JEG    Date: 20 August 2020    Scale: 1:2,500    Grid Ref: SU 245-230

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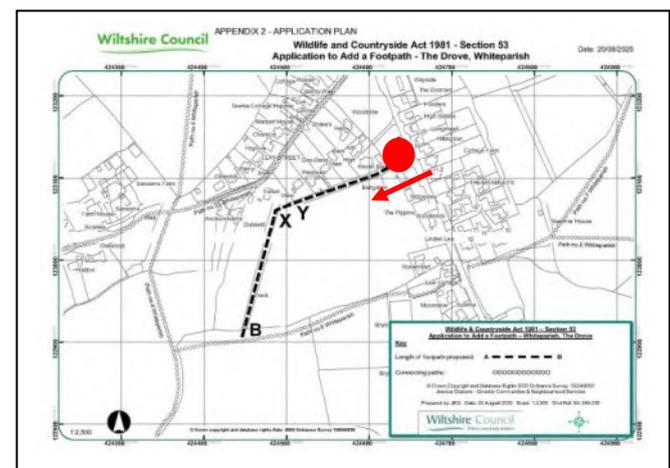
Wildlife & Countryside Act 1981 – Section 53  
Application to Add a Footpath – The Drove, Whiteparish  
Appendix 3 – Photographs



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



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

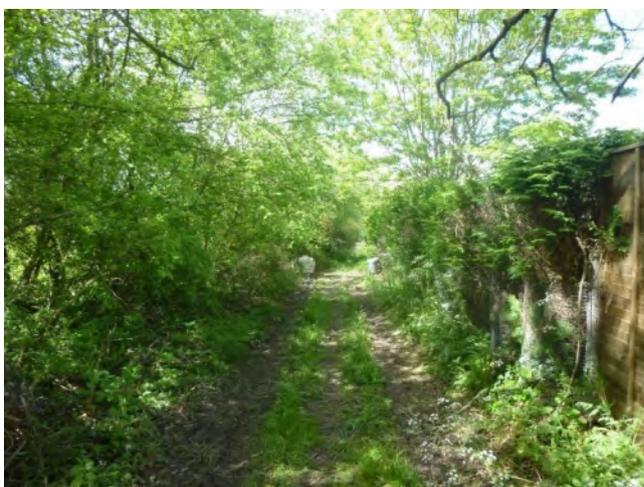
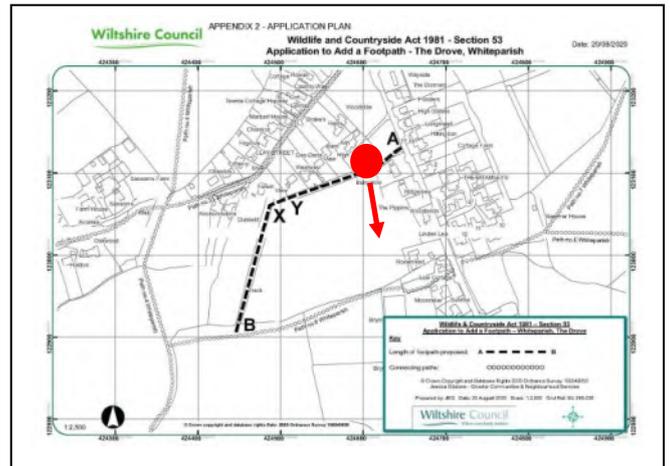


Looking generally west, the field gate into "Cottage Field" can be seen on the left-hand side.

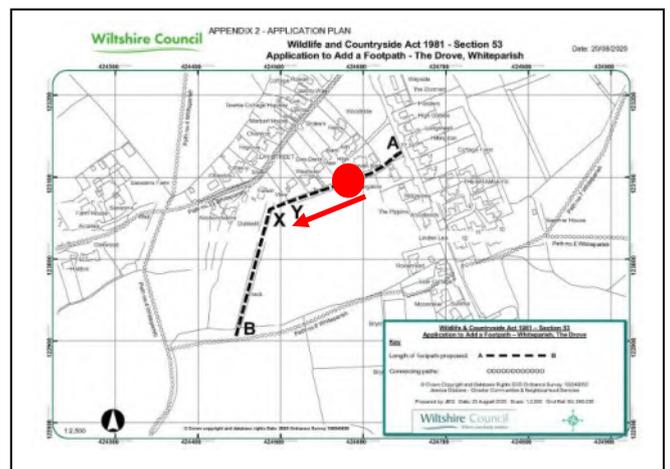
Wildlife & Countryside Act 1981 – Section 53  
Application to Add a Footpath – The Drove, Whiteparish  
Appendix 3 – Photographs



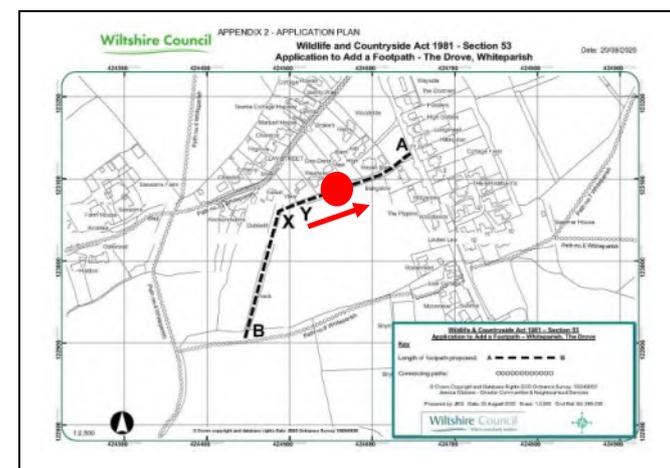
Field Gate leading off The Drove into “Cottage Field”.



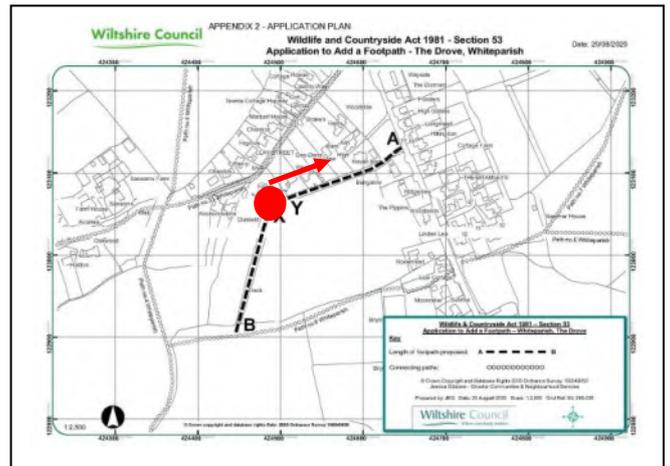
The Drove looking generally west towards point Y, to the rear of the gardens of the properties in Clay Street.



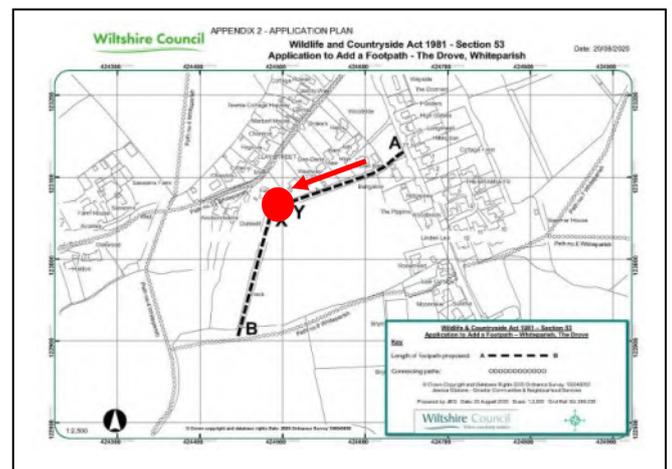
The Drove looking generally east to the rear of the gardens of the properties in Clay Street.



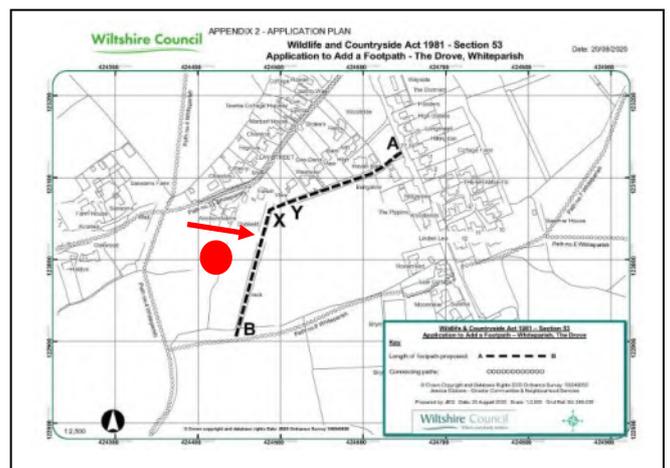
Wildlife & Countryside Act 1981 – Section 53  
Application to Add a Footpath – The Drove, Whiteparish  
Appendix 3 – Photographs



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



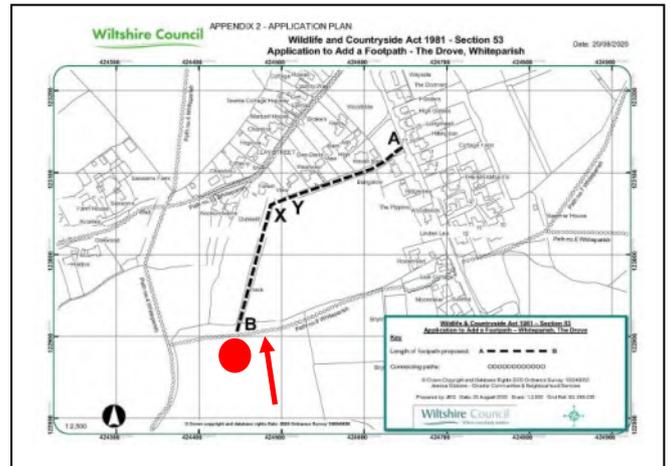
Looking generally west towards point X.



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



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



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



Chilworth Road  
Chilworth  
Southampton  
Hampshire SO16 7

30<sup>th</sup> October 2020

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

Dear Ms Green,

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

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

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

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

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

Kind regards,

Mark Richards  
Director

# Wiltshire Council

## LANDOWNER EVIDENCE FORM

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

FULL NAME MARK RICHARDS

ADDRESS ZELDA INVESTMENTS LTD CHILWORTH RD, CHILWORTH  
SOUTHAMPTON SO16 7

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

e.mail address [REDACTED]

### PATH DETAILS:

Parish Whiteparish

Claimed Status of Way Footpaths

Description of Path (also see attached map)

From: Cannon Road A To: Footpaths 6 B

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

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

If no, no further questions need to be answered.

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

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

(a) If so, with what status

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

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

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

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

If so, please give details ALWAYS, BY DEFINITION

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

If so, please give details and dates .....

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

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

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

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

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

a. If yes, please give details and approximate dates .....

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

c. Show their position on the accompanying plan

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

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

b. Show their position on the accompanying plan .....

10. Have you ever obstructed the way?

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

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

SEE WITNESS STATEMENT, STATUTORY DECLARATION + MRI MARCH 2020

### DECLARATION

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

Signed:



Date: 26 OCT 2020

Please return this form and any accompanying map to:

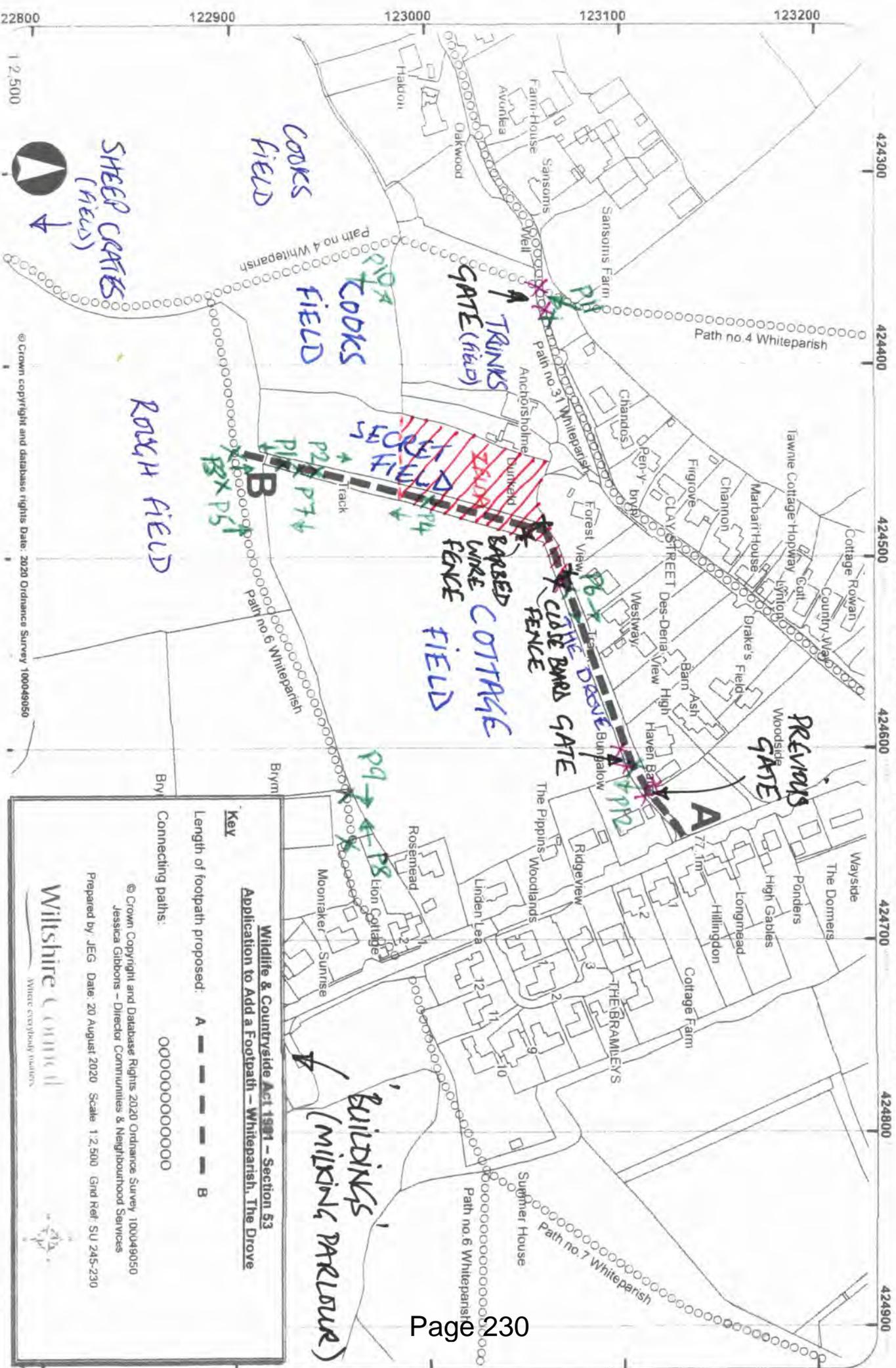
Rights of Way and Countryside Section, Communities and Neighbourhood Services, Wiltshire Council, County Hall, Trowbridge, BA14 8JN

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

MAPP - MR1 (WORKER ORIGINAL)

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

Date: 20/08/2020



**Key**

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

Connecting paths: 000000000000

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

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 Jessica Gibbons - Director Communities & Neighbourhood Services  
 Prepared by JEG Date: 20 August 2020 Scale 1:2,500 Grid Ref SU 245-230

**Wiltshire Council**  
 Where everybody thrives

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

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

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

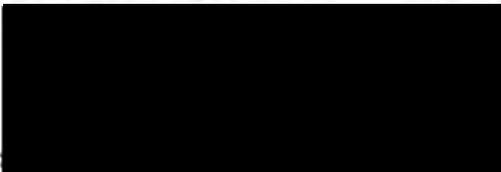
**I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.**

Signature of declarant..



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

Signed



Solicitor/~~Commissioner for Oaths~~

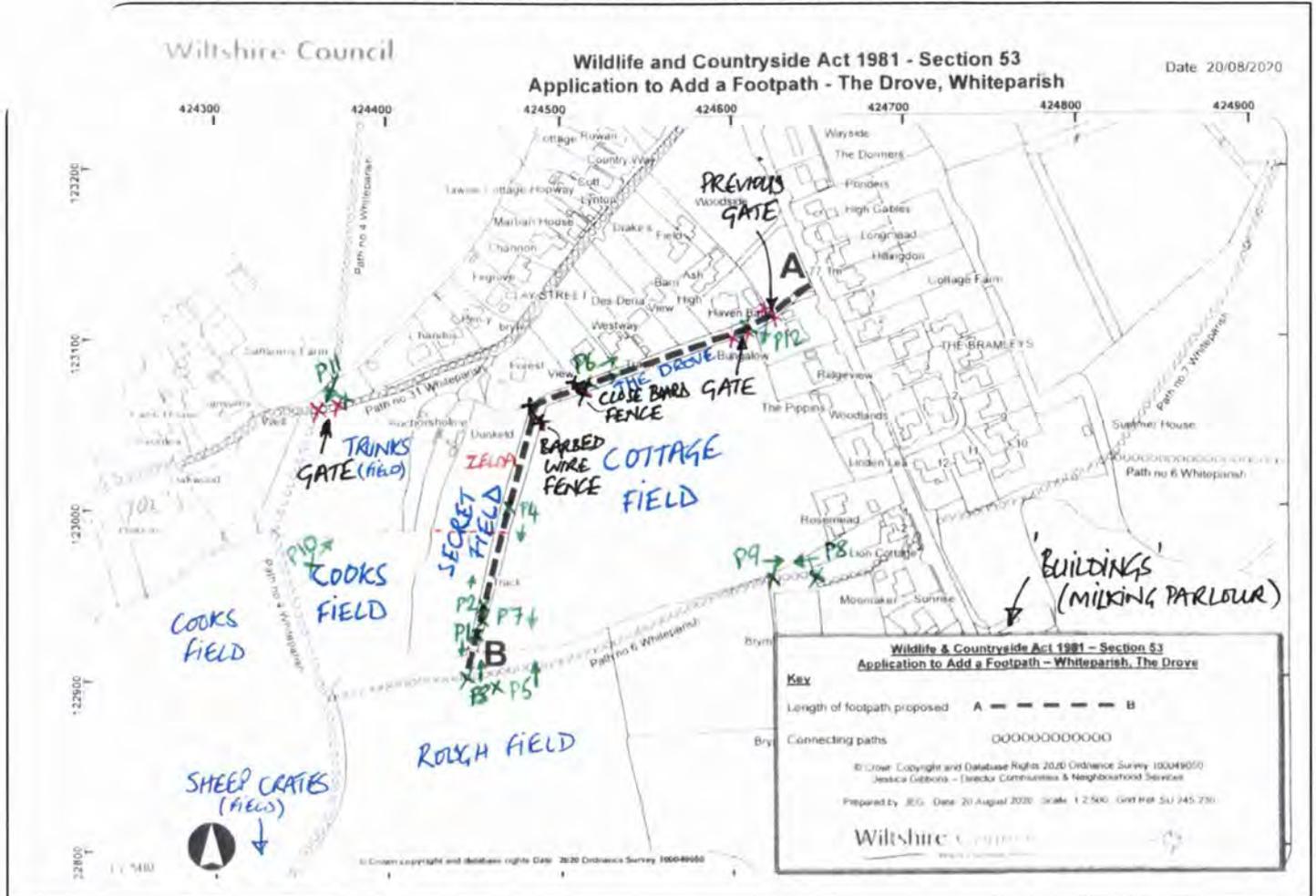
Benjamin Monksummers LL.B LL.M  
Solicitor  
Harris & Harris LLP  
11 Stony St, Frome, Somerset BA11 1BU

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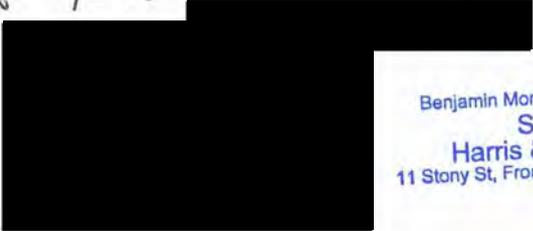
ACCOMPANIED BY EXHIBIT MR1

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**MAP SHOWING FIELD NAMES, GATES AND LOCATIONS OF PHOTOGRAPHS**



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



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





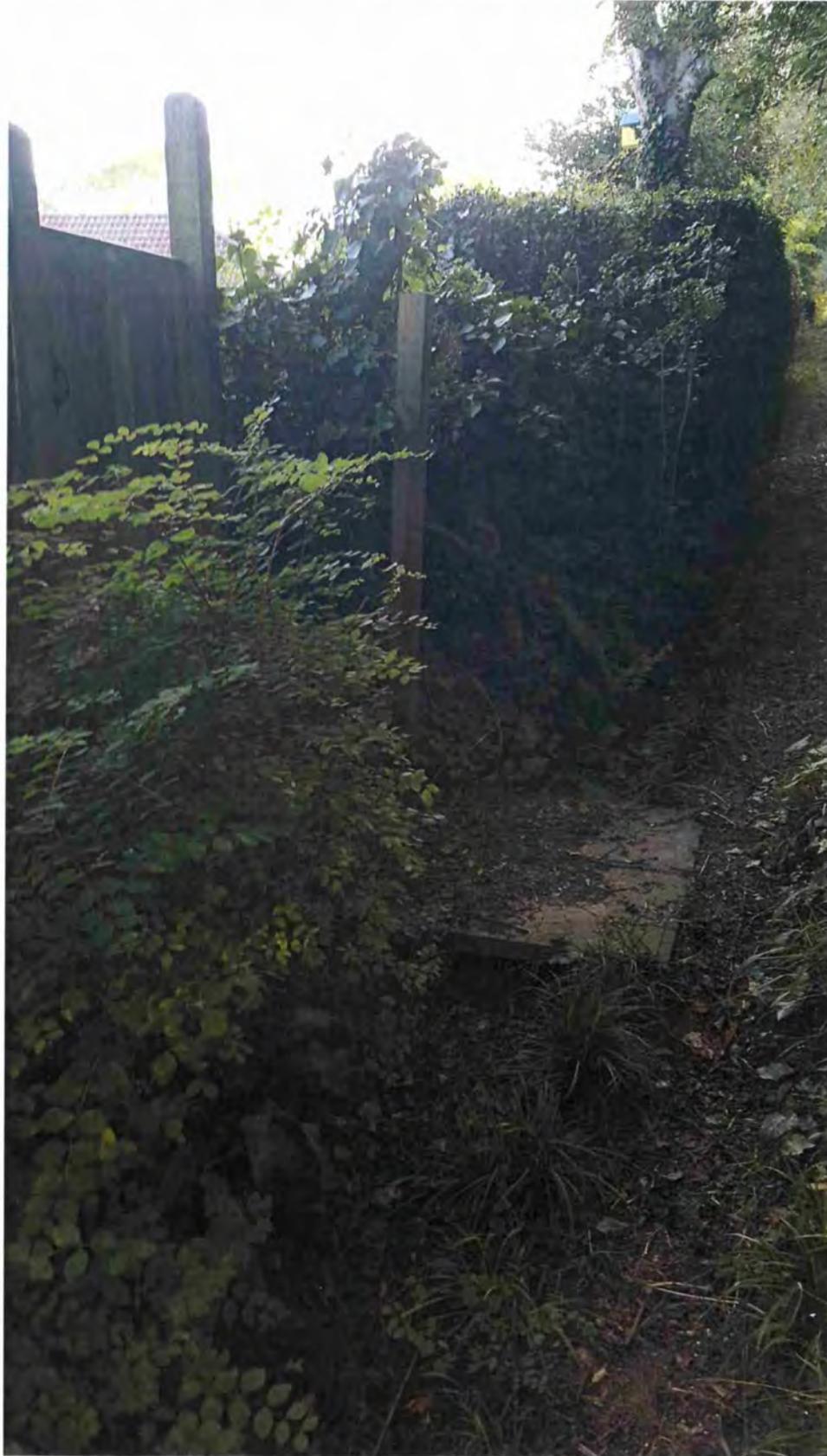


4 – TOP SECTION OF SECRET FIELD LOOKING SOUTH ON THE DOTTED LINE, AUGUST 2020



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

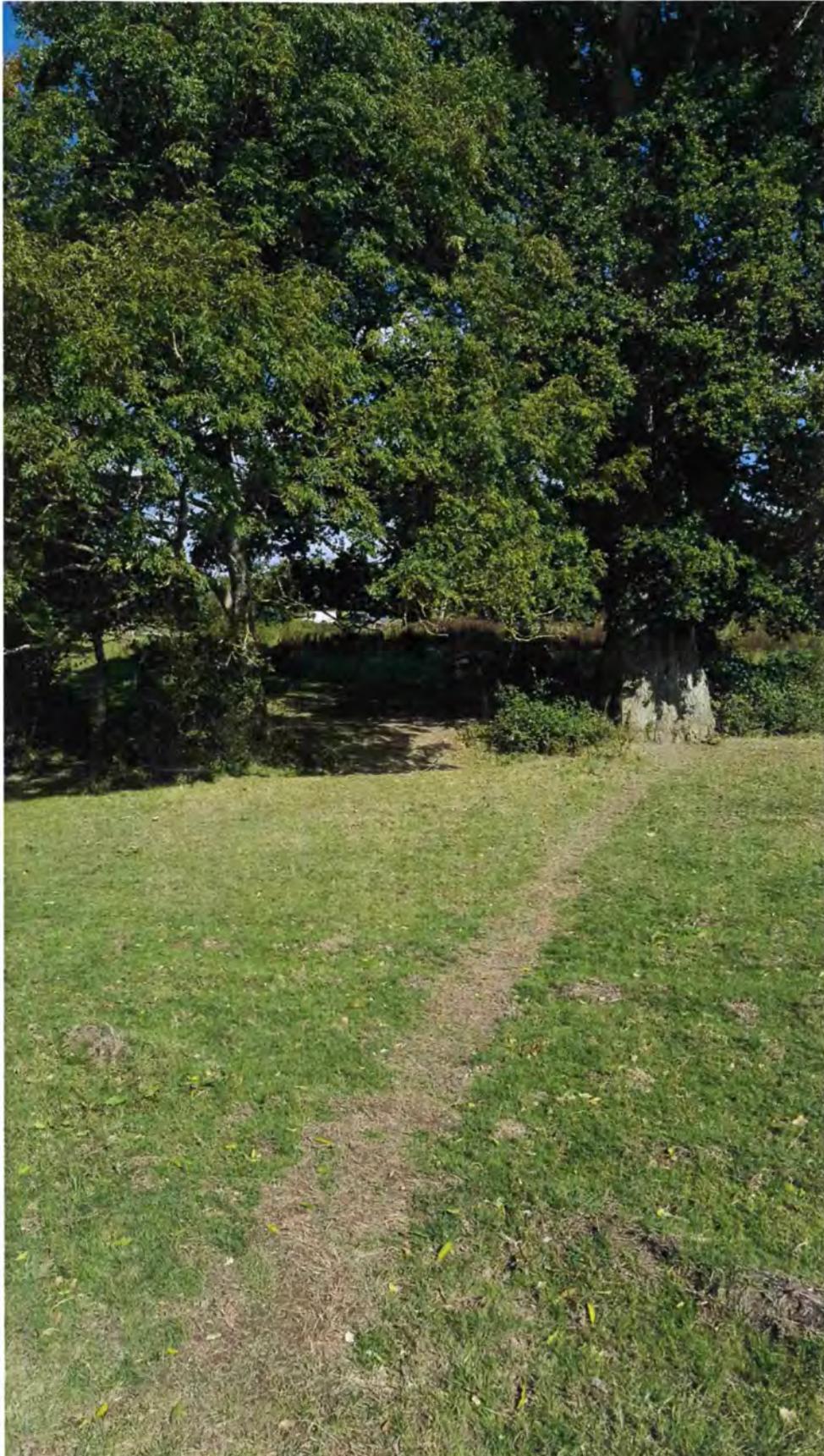












- CATTLE GATES FROM CLAY STREET TO TRUNKS FIELD LOOKING SOUTH, AUGUST 2020



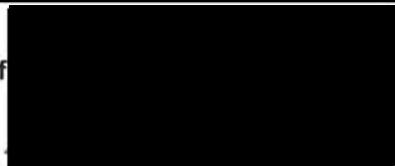
P12 - CATTLE GATES FROM THE DROVE TO COTTAGE FIELD LOOKING SOUTH, AUGUST 2020



Signed



In the presence of



Date

27/10/2020

## **WITNESS STATEMENT – MR MARK RICHARDS**

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

We purchased Forest View in July 2018.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## COMMENTS ON INDIVIDUAL WITNESS STATEMENTS

Main applicant Patricia Woodruffe.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **John Hall**

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

Signed

Print name

MARSH RICHARDS

Date

30<sup>th</sup> October 2020

# Wiltshire Council

## LANDOWNER EVIDENCE FORM

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

FULL NAME ..... SHEILA COOK .....

ADDRESS ..... [REDACTED] BRYCES LANE, SHERFIELD ENGLISH  
ROMSEY HANTS SO51 6 [REDACTED] .....

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

e.mail address ..... [REDACTED] .....

### PATH DETAILS:

Parish ..... WHITE PARISH .....

Claimed Status of Way ..... PUBLIC .....

Description of Path (also see attached map)

From: ..... COMMON RD ..... To: ..... PATH NO 6 .....

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

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

If no, no further questions need to be answered.

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

2. Do you believe this way to be public?

(a) If so, with what status ..... NO .....

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

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

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

..... MY HUSBAND HAS .....

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

If so, please give details ..... YES, ALWAYS .....

5. **Have you deposited a Section 31 (Highways Act 1980) plan and statement? YES / NO**  
 If so, please give details and dates ..... NO .....
6. **Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?**  
 If yes, please give details and appropriate dates ..... YES MR ALAN COOK  
 ..... 2012 .....
7. **Have you, or someone on your behalf, ever told anyone using the way it was not public?**  
 If yes, please give details and appropriate dates ..... YES ..... MR ALAN COOK  
 ..... 2012 ..... 2016 .....
8. **Have you ever erected notices or signs stating that the way was not public?**  
 a. If yes, please give details and approximate dates ..... YES .....  
 ..... SEPT 2020 .....
- b. State whether these notices were ever defaced or destroyed and whether they were replaced.  
 .....
- c. Show their position on the accompanying plan
9. **Have there, to your knowledge, ever been on the way any stiles or gates? YES / NO STILES**  
 a. If yes, state whether the gate or gates were ever locked ..... GATE AT TOP OF  
 COMMON ROAD. TO 1990, NOT  
 b. Show their position on the accompanying plan ..... LOCKED
10. **Have you ever obstructed the way? YES**  
 a. If yes, state where, how and when ..... BARBED WIRE FENCE .....
11. **Can you give any further information? Please continue on a separate sheet of paper if needed.**  
 ..... SEPERATE SHEET .....

**DECLARATION**

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

Signed:



Date: 29.10.20

Please return this form and any accompanying map to:

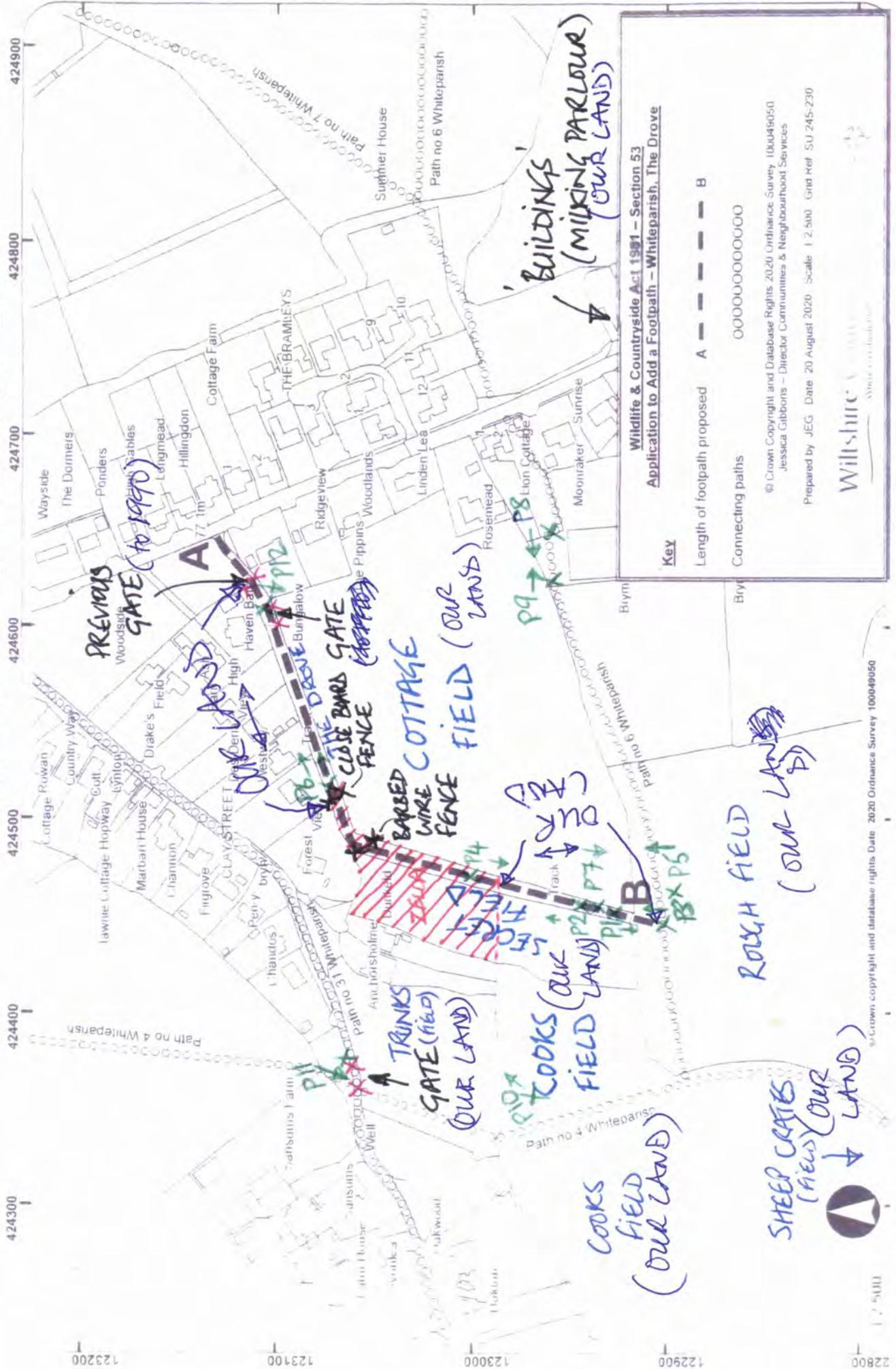
**Rights of Way and Countryside Section, Communities and Neighbourhood Services, Wiltshire Council, County Hall, Trowbridge, BA14 8JN**

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MAP SCI - LALISA ORIGINAL

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

Date: 20/08/2020



**Key**

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

Length of footpath proposed    A — — — — —    B — — — — —

Connecting paths    0000000000000000

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Jessica Gibbons - Director Communities & Neighbourhood Services  
Prepared by JEG Date 20 August 2020 Scale 1:2,500 Grid Ref SU 245-230

Wiltshire WILTSHIRE COUNCIL

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

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

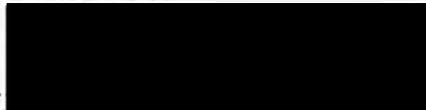
7. The northern boundary of The Drove adjoins five residential properties, the frontages of which run along Clay Street ("the Houses"). Each of these Houses has a pedestrian gate at the end of their rear gardens which opens onto The Drove. To the south of these Houses is my family's field, Cottage Field,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

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

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

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

Signature of declarant...



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

on this 28th day of OCTOBER 2020

before me

ANGELA McQUINNERS

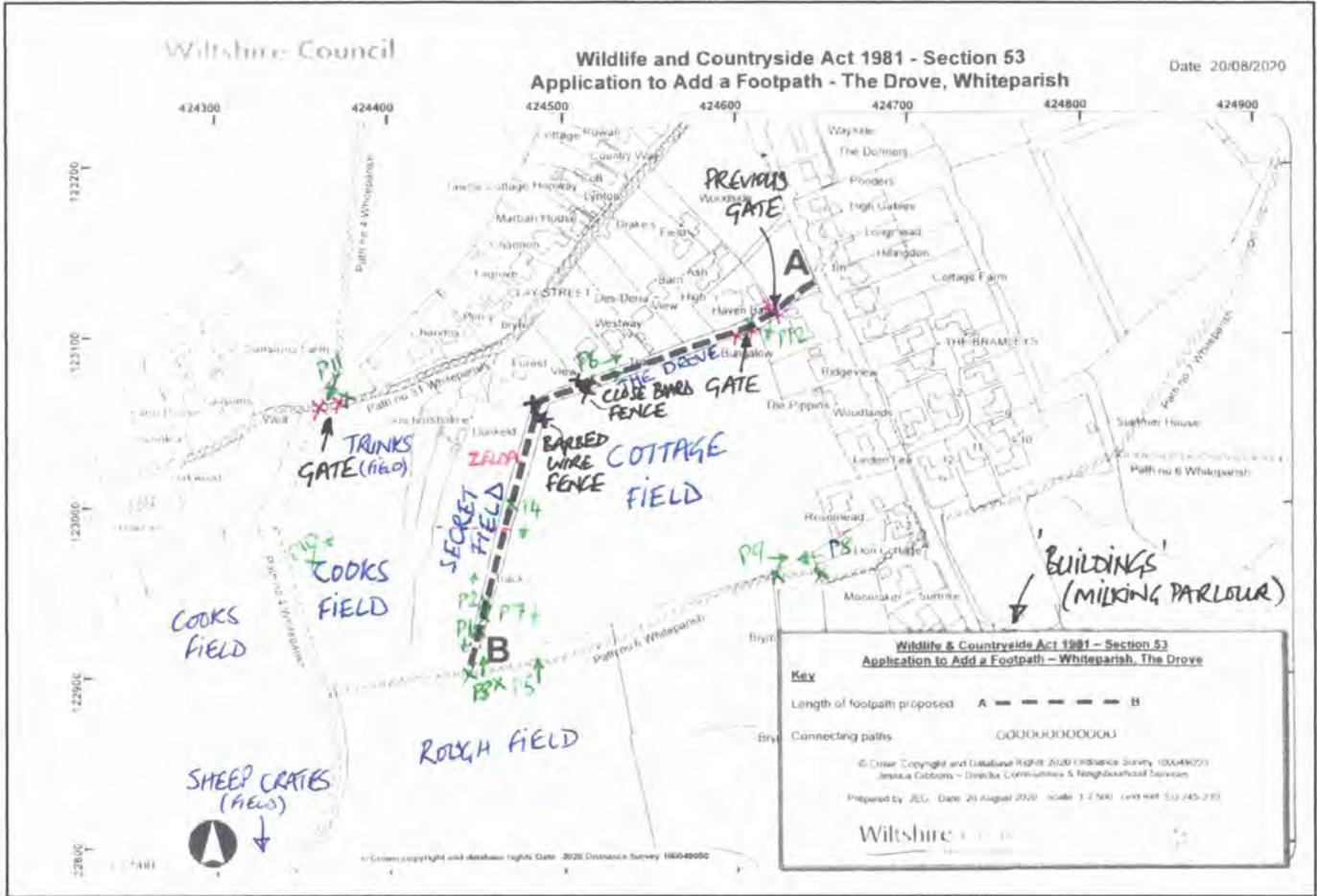
Signed.....

Solicitor/Commissioner for Oaths - (21302)



ACCOMPANIED BY EXHIBIT SC1

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



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



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



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



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



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

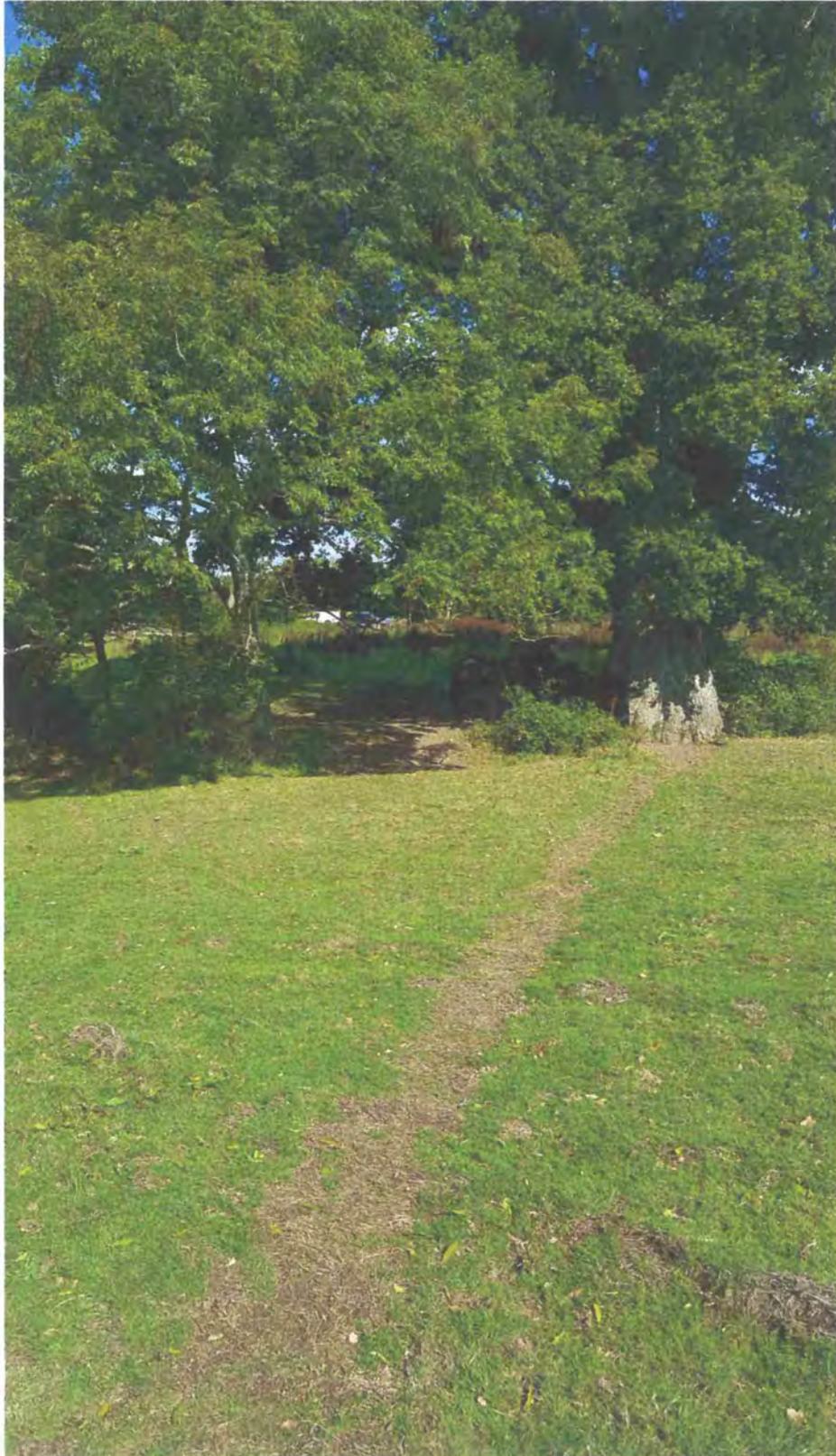












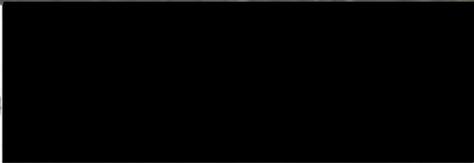
P11 – CATTLE GATES FROM CLAY STREET TO TRUNKS FIELD LOOKING SOUTH, AUGUST 2020



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



Signed



In the presence of ANGELA McQUINNNESS (SOLICITOR)

Date 28TH OCTOBER 2020

## **WITNESS STATEMENT – MRS SHEILA COOK**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Summary**

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

### **SOME COMMENTS ON OTHER WITNESS STATEMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **John Hall**

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

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

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

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

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

### **Jennifer Harrison**

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

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

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

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

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

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

### **Brian Woodruffe**

Note this is the same household as Patricia Woodruffe.

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

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

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

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

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

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

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

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

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

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

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

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

### **John Harrison**

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

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

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

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

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

#### **David Wise**

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

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

He has never seen anyone else using it.

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

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

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

#### **Alexander Knight**

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

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

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

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

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

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

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

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

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

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

### **Ceri Bicknell**

This is I believe the Woodruffe's daughter.

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

Application route width: 'but probably 1 metre'

She has not walked the proposed route since 1990.

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

### **Barbara Kennard**

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

Last used this section in 1987.

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

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

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

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

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

#### **Nicholas Harrison**

This is the same household as Jennifer and John Harrison.

He has not used the route since 2000.

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

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

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

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

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

#### **Stephen Karmy**

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

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

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

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

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

#### **Jenny Karmy**

In the same household as Stephen Karmy.

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

Same correction regarding uncle Len and his wheelbarrow.

Copy and paste of her husband's words.

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

20. Copy and paste of husband.

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

#### **Matthew Leach**

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

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

#### **Lisa Harrison**

Same household as 3 other Harrisons.

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

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

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

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

#### **Mr Carpenter**

Have you used the application route – NO.

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

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

#### **Rodney Coat**

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

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

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

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

### **Christopher Woodruffe**

Same household as 2 others.

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

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

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

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

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

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

### **Naomi Hounslow née Ellis**

Same household as Christine Ellis, her daughter.

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

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

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

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

### **Christine Ellis**

Used intermittently.

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

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

### **Karen Tongs**

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

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

### **Martin Tongs**

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

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

### **Elvin Klapp**

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

### **Sara Webb**

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

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

### **Patricia Hudson**

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

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

### **Beverley Rutter and Barry Rutter**

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

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

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

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

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

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

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

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

**Robert Canney**

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

**Mrs Jackie Gallow**

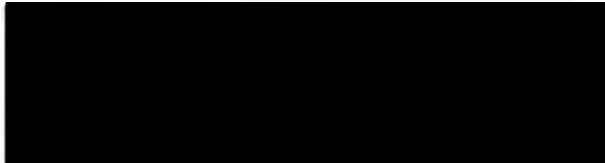
Did not use it 'when there were too many brambles'

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

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

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

Signed



Print name SHEILA COOK.

Date

29.10.2020

## Green, Janice

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

Thank you for your notice.

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

## Green, Janice

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

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

Dear Janice,

Thank you for inviting comments regarding the drove in Whiteparish.

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

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

I regret I can not add any more to this.

Kind regards Summer de Graffham  
[REDACTED]

## Green, Janice

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

Good Evening Janice

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

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

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

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

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

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

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

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

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

Thanks

Sam



## Green, Janice

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

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

Dear Ms Green

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

Yours

Christine Ellis

## Green, Janice

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

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

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

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

Thanking you  
John Hall [REDACTED]





**Green, Janice**

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

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

YOUR REF: JG/PC/245

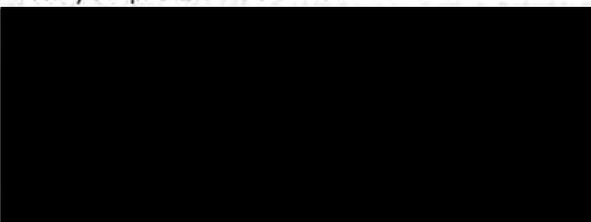
Dear Ms Green

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

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

We have however noted that the target date for a decision on Planning Application No 20/04331/FUL has now been pushed back again for the 5th or 6th time and is now the 23rd October 2020. This application is for a single storey dwelling to be erected on Plot 3, land off Forest View, Clay Street and includes part of The Drove within its boundary as a garden.

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



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

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

## Green, Janice

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

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

Ref: JG/PC/245

Dear Ms Green,

I reply to your letter of 21<sup>st</sup> August, 2020.

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

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

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

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

Yours sincerely,  
Pat Hudson

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

## Green, Janice

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

Dear Janice,

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

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

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

Kind regards,  
Pat Hudson

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

Dear Pat,

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

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

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

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

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer

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

## Wiltshire Council

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

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

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

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

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

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

Follow Wiltshire Council



Follow Wiltshire Countryside



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**From:** [REDACTED]

**Sent:** 31 August 2020 09:16

**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>

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

Ref: JG/PC/245

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Yours sincerely,

Pat Hudson

[REDACTED]  
Dean Lane,

Whiteparish,  
Salisbury, Wiltshire.  
SP5 2

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## Green, Janice

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

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

Dear Janice Green,

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

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

Yours sincerely  
Alec Knight

## Green, Janice

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

Hi Janice,

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

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

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

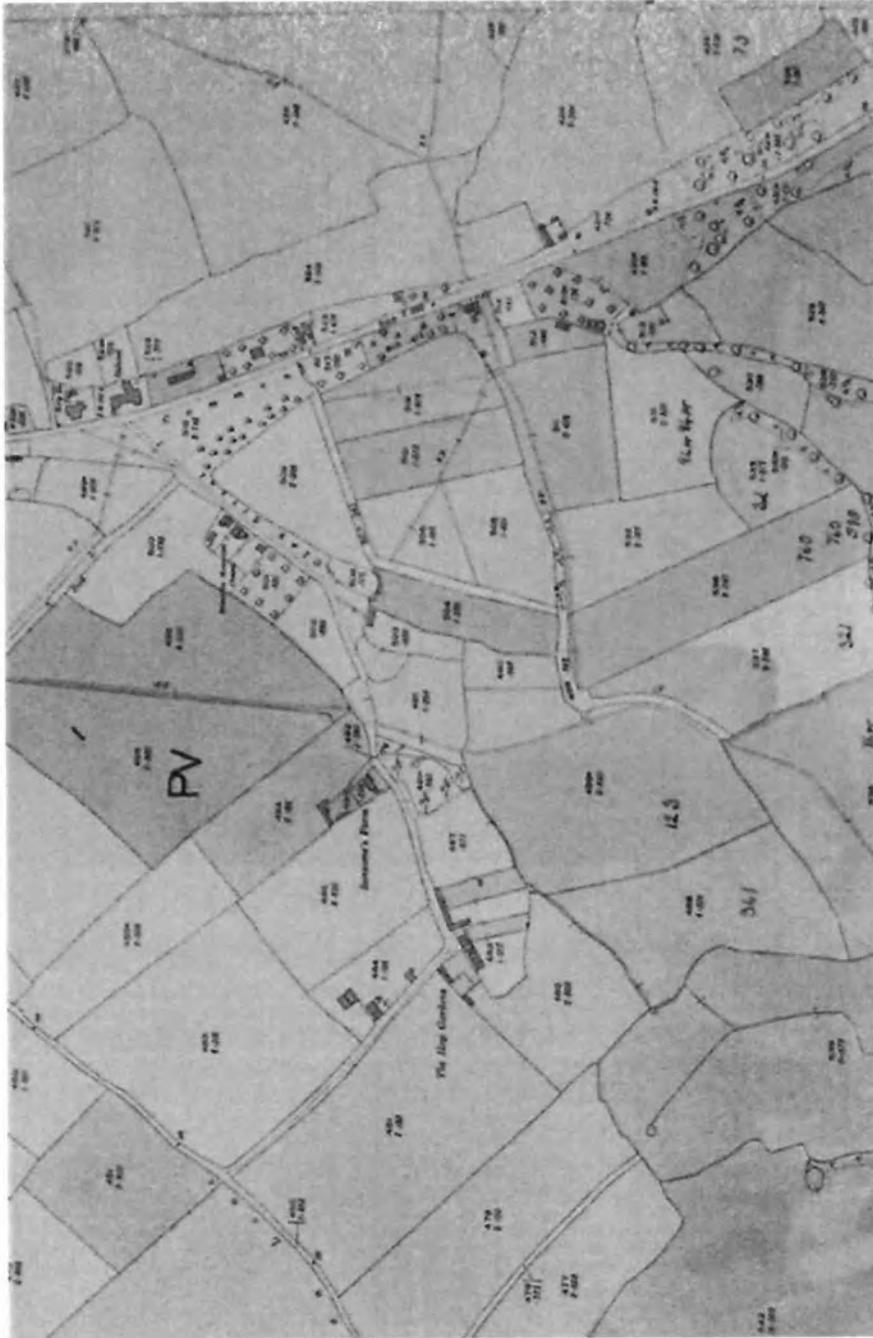
It is also shown on the Tithe Award Map, but I don't have a decent copy of this.

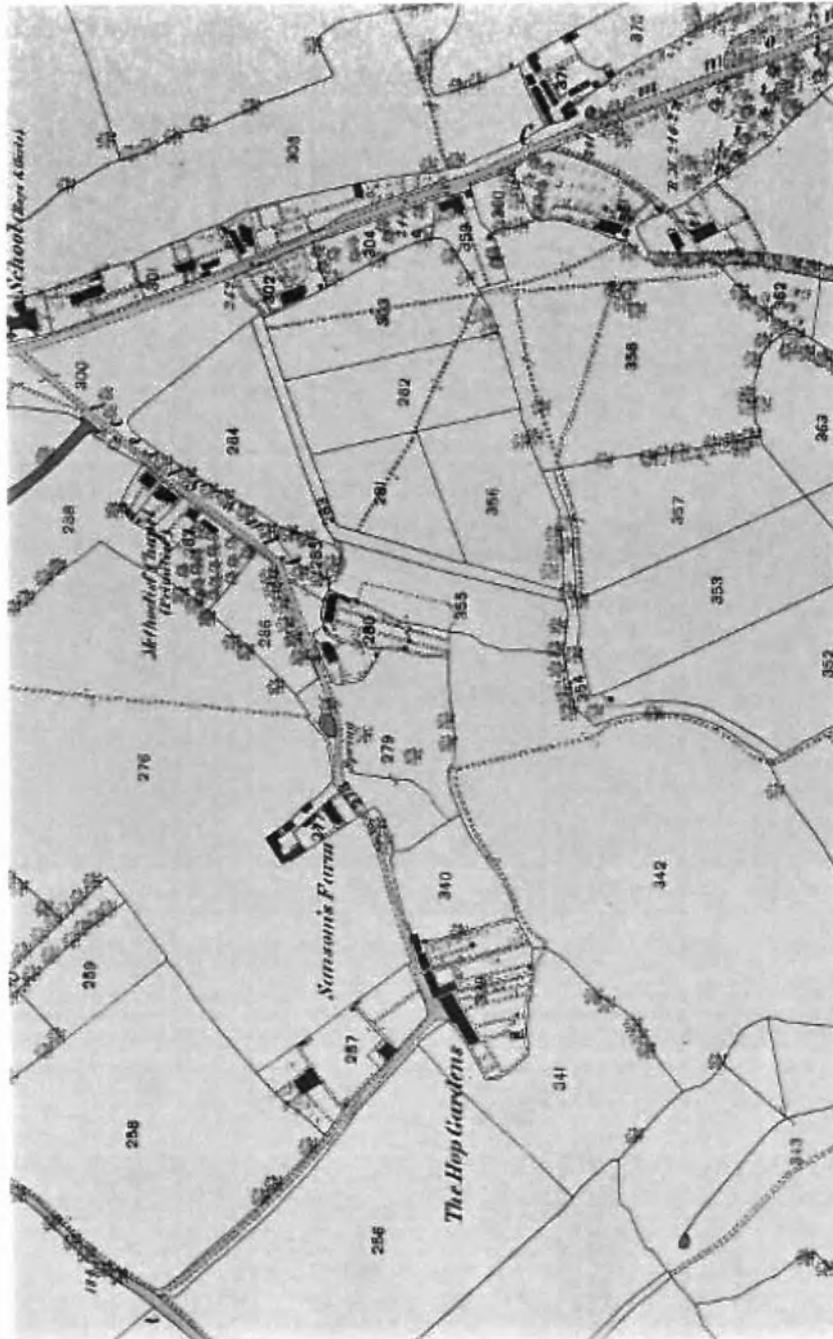
Probably worth further investigation (which you will be doing anyway).

Kind regards,

Bill







# PARISH OF WHITEPARISH,

IN THE

## COUNTY OF WILTS—(SOUTHERN DIVISION).

### HUNDRED OF FRUSTFIELD.

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

Examples—	A. R. P.	Acres.	A. R. P.
633 1 17	17 120	633.357	527 0 2
		4	2 080
		1.428	
		40	
		.052	
		40	

### TABLE

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

Perch.	0 Rod.	1 Rod.	2 Rods.	3 Rods.	Perch.	0 Rod.	1 Rod.	2 Rods.	3 Rods.
0	.000	.250	.500	.750	21	.131	.381	.631	.881
1	.006	.256	.506	.756	22	.137	.387	.637	.887
2	.012	.262	.512	.762	23	.144	.394	.644	.894
3	.015	.269	.519	.769	24	.150	.400	.650	.900
4	.025	.275	.525	.775	25	.156	.406	.656	.906
5	.031	.281	.531	.781	26	.162	.412	.662	.912
6	.037	.287	.537	.787	27	.169	.419	.669	.919
7	.044	.294	.544	.794	28	.175	.425	.675	.925
8	.050	.300	.550	.800	29	.181	.431	.681	.931
9	.056	.306	.556	.806	30	.187	.437	.687	.937
10	.062	.312	.562	.812	31	.194	.444	.694	.944
11	.069	.319	.569	.819	32	.200	.450	.700	.950
12	.075	.325	.575	.825	33	.209	.456	.706	.956
13	.081	.331	.581	.831	34	.212	.462	.712	.962
14	.087	.337	.587	.837	35	.216	.469	.719	.969
15	.094	.344	.594	.844	36	.225	.475	.725	.975
16	.100	.350	.600	.850	37	.231	.481	.731	.981
17	.106	.356	.606	.856	38	.237	.487	.737	.987
18	.112	.362	.612	.862	39	.244	.494	.744	.994
19	.119	.369	.619	.869	40	.250	.500	.750	1.000
20	.125	.375	.625	.875					

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	4.964	Wood.	36	8.109	Arable.
2	13.946	Arable, &c.	37	1.942	Wood.
3	1.125	Wood.	38	84.172	Arable, &c.
4	.662	Wood.	39	27.846	Arable.
5	84.110	Arable.	40	36.321	Arable, &c.
6	1.748	Road.	41	3.761	Wood, &c.
7	.482	Wood, &c.	42	114.924	Arable, &c.
8	1.079	Wood, &c.	43	.789	Wood.
9	8.054	Pasture, &c.	44	.334	House, garden, &c.
10	9.567	Pasture, &c.	45	6.970	House, garden, &c.
11	.656	Wood, &c.	46	.170	House, garden, &c.
12	2.384	Arable, &c.	47	3.498	Wood, &c.
13	2.748	Houses, gardens, &c.	48	13.958	Arable, &c.
14	42.614	Pasture.	49	14.884	Arable, &c.
15	20.656	Arable, &c.	50	7.379	Houses, gardens, &c.
16	26.922	Arable, &c.	51	5.898	Pasture, &c.
17	5.088	Arable, &c.	52	.108	House and garden.
17a	1.014	Road.	53	313.873	Arable, &c.
18	42.161	Arable, &c.	54	2.541	Wood.
18a	1.701	Road.	55	172.571	Arable.
19	86.804	Wood, &c.	56	3.482	Arable.
20	91.157	Arable, &c.	57	17.754	Arable.
21	19.817	Arable, &c.	58	16.472	Arable.
22	31.743	Arable.	59	16.324	Arable.
22a	1.192	Wood.	60	18.456	Arable, &c.
23	7.864	Wood.	61	45.196	Arable, &c.
24	1.301	Wood.	62	.395	Wood, &c.
24a	43.160	Arable, &c.	63	18.529	Arable, &c.
25	1.603	Wood, &c.	64	1.226	Wood.
26	.771	Wood.	65	25.562	Ornamental ground.
26a	6.188	Arable.	66	1.038	Wood, &c.
27	8.463	Wood, &c.	67	51.331	Arable, &c.
28	2.815	Wood, &c.	68	10.408	Pasture, &c.
29	4.907	Arable.	69	.987	Houses, garden, &c.
30	6.170	Arable, &c.	70	2.134	Arable.
31	13.809	Arable.	71	30.422	Arable, &c.
32	10.124	Pasture, &c.	72	71.648	Arable, &c.
33	95.722	Pasture, &c.	73	1.577	Road.
34		Wood, &c.	74	25.410	Arable, &c.
35					

PARISH OF WHITEPARISH.

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

PARISH OF WHITEPARISH.

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

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
278	1.204	Road.	329	1.847	Houses, gardens, &c.
279	1.639	Pasture, &c.	330	1.842	Pasture.
280	.896	Houses and gardens.	331	7.833	Road.
281	1.133	Pasture, &c.	332	1.443	Wood.
282	1.672	Arable, &c.	333	27.943	Arable, &c.
283	.543	Road.	334	2.438	Houses, garden, &c.
284	2.002	Pasture.	335	.624	Pasture.
285	.170	Garden.	336	3.530	Arable, &c.
286	.680	Pasture.	337	.323	Road.
287	.831	Houses, gardens, &c.	338	5.150	Arable.
288	1.785	Pasture.	339	1.210	Houses and gardens.
289	2.019	Pasture.	340	.974	Pasture.
290	.210	House, garden, &c.	341	2.809	Arable.
291	2.269	Pasture, &c.	342	11.282	Pasture.
292	.207	Pond.	343	7.490	Arable, &c.
293	1.069	Church and grave- yard.	344	4.903	Pasture, &c.
294	4.311	Pasture, &c.	345	10.271	Pasture, &c.
295	.401	Road.	346	.825	Wood.
296	13.195	Arable, &c.	347	6.023	Arable, &c.
297	3.810	Houses, gardens, &c.	348	3.015	Arable, &c.
298	.051	Road.	349	4.090	Arable, &c.
299	.306	Pasture.	350	1.127	Arable.
300	2.743	Pasture, &c.	351	3.780	Pasture, &c.
301	2.006	Houses, gardens, &c.	352	2.620	Arable.
302	.385	Houses, gardens, &c.	353	1.080	Pasture.
303	1.874	Pasture, &c.	354	.568	Road.
304	.473	Pasture.	355	2.182	Pasture, &c.
305	5.847	Pasture, &c.	356	1.651	Pasture.
306	5.924	Pasture.	357	2.182	Pasture, &c.
307	3.886	Arable.	358	5.174	Pasture, &c.
308	15.035	Pasture, &c.	359	.884	House and garden.
309	25.856	Wood, &c.	360	.253	Pasture.
310	9.407	Pasture, &c.	361	1.367	Houses, gardens, &c.
311	3.817	Wood.	362	.386	Pasture.
312	46.410	Wood, &c.	363	1.682	Pasture, &c.
313	2.562	Wood.	364	.403	Pasture.
314	21.308	Arable, &c.	365	.752	Wood.
315	.929	Orchard.	366	4.342	Pasture.
316	.979	House, gardens, &c.	367	9.671	Arable, &c.
317	2.473	Pasture, &c.	368	3.510	Wood, &c.
318	.913	Houses and gardens.	369	5.999	Pasture.
319	8.214	Arable.	370	.685	Pasture.
320	6.162	Pasture, &c.	371	.433	Houses and yard.
321	7.039	Pasture, &c.	372	4.589	Arable, &c.
322	1.672	Wood.	373	4.580	Pasture, &c.
323	5.679	Arable, &c.	374	1.187	Pasture.
324	7.356	Arable, &c.	375	3.482	Road.
325	1.678	Orchard.	376	10.302	Pasture, &c.
326	1.011	Houses, garden, &c.	377	7.559	Pasture, &c.
327	4.487	Pasture.	378	2.128	Houses, garden, &c.
328	.313	Houses and gardens.	379	.257	Road.
			380	.339	Houses and garden.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
381	4.623	Road.	433	11.394	Arable, &c.
382	36.553	Arable, &c.	434	1.038	Houses, gardens, &c.
383	5.946	Pasture, &c.	435	4.424	Arable, &c.
384	.835	Pasture.	436	9.174	Pasture.
385	12.639	Arable, &c.	437	3.804	Pasture, &c.
386	1.370	Pasture.	438	4.555	Wood.
387	.585	Houses and gardens.	439	3.793	Pasture.
388	.385	Pasture.	440	.877	House, garden, &c.
389	.613	Pond.	441	2.189	Pasture.
390	1.346	Wood, &c.	442	3.890	Pasture.
391	12.849	Pasture, &c.	443	.711	Pasture.
392	34.635	Arable, &c.	444	.099	Pasture.
393	6.616	Pasture, &c.	445	6.375	Pasture, &c.
394	3.390	Pasture, &c.	446	.248	Pond.
395	7.011	Pasture.	447	9.792	Arable, &c.
396	.591	Pasture.	448	14.319	Pasture, &c.
397	.469	House and garden.	449	1.876	Houses, garden, &c.
398	10.143	Pasture, &c.	450	2.029	Houses, gardens, &c.
399	1.709	Wood, &c.	451	2.043	Pasture.
400	3.623	Arable.	452	3.560	Pasture, &c.
401	5.364	Pasture.	453	1.670	Pasture.
402	.105	Road.	454	2.292	Pasture, &c.
403	1.396	Wood.	455	9.419	Pasture, &c.
404	5.010	Pasture.	456	.482	Pond.
405	6.948	Pasture, &c.	457	.550	Wood, &c.
406	1.829	Pasture.	458	4.148	Pasture, &c.
407	.675	Pasture, &c.	459	1.280	Pasture, &c.
408	.476	House, garden, &c.	460	1.627	Pasture, &c.
409	2.609	Arable.	461	.132	House and garden.
410	6.200	Pasture, &c.	462	1.159	Houses, garden, &c.
411	5.996	Arable, &c.	463	.217	Orchard.
412	3.725	Pasture, &c.	464	63.642	Ponds.
413	5.967	Arable, &c.	465	.217	Wood, &c.
414	2.031	Pasture, &c.	466	3.958	Rough pasture, &c.
415	6.200	Pasture, &c.	467	.208	House and garden.
416	6.457	Arable, &c.	468	.345	Garden.
417	7.054	Pasture, &c.	469	5.119	Wood, &c.
418	4.751	Arable, &c.	470	.499	Pasture.
419	4.710	Pasture, &c.	471	3.359	Pasture, &c.
420	4.710	Pasture, &c.	472	.203	House and gardens.
421	.445	Arable.	473	1.938	House and gardens.
422	5.592	Pasture, &c.	474	1.205	Pasture.
423	5.137	Pasture.	475	2.240	Wood.
424	12.483	Wood, &c.	476	11.037	Wood, &c.
425	27.547	Arable, &c.	477	7.719	Wood, &c.
426	.302	Houses, gardens, &c.	478	25.723	Arable, &c.
427	.415	Garden.	479	1.904	Houses, garden, &c.
428	.354	Pond.	480	.452	Pasture, &c.
429	7.192	Pasture, &c.	481	1.594	Houses, garden, &c.
430	4.096	Pasture.	482	.142	Houses and gardens.
431	3.604	Pasture, &c.	483	1.588	Pond.
432	29.663	Wood.	484	10.625	Houses, garden, &c.

PARISH OF WHITEPARISH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
485	2.159	Wood, &c.	535	17.739	Ornamental ground, &c.
486	7.084	Pasture, &c.	536	.336	House and garden.
487	1.739	Houses, garden, &c.	537	.646	House and ornamental ground.
488	3.684	Wood, &c.	538	7.747	Wood.
489	.582	House, garden, &c.	538a	.429	Houses and garden.
490	.332	Wood.	539	.256	Houses and garden.
491	.164	Pond.	540	41.146	Rough pasture, &c.
492	.494	Road.	541	.439	House and garden.
493	.560	Wood.	542	11.555	Arable.
494	6.799	Houses, &c.	543	.285	House, garden, &c.
495	16.185	Arable, &c.	544	19.800	Arable, &c.
496	7.686	Wood.	545	1.773	Houses, garden, &c.
497	2.454	Arable, &c.	546	17.274	Arable.
498	2.625	Wood.	547	1.406	Pasture.
499	3.525	Pasture.	548	4.739	Pasture.
500	.681	House, garden, &c.	549	5.600	Pasture, &c.
501	4.927	Pasture, &c.	550	7.631	Arable.
502	5.712	Pasture.	551	.910	Road.
503	6.102	Pasture.	552	2.198	Houses, garden, &c.
504	5.040	Pasture, &c.	553	2.263	Pasture.
505	6.401	Pasture, &c.	554	13.511	Pasture, &c.
506	17.521	Pasture, &c.	555	1.908	Arable.
507	6.272	Pasture, &c.	556	1.394	House, garden, &c.
508	4.720	Pasture, &c.	557	1.074	Orchard.
509	5.950	Wood, &c.	558	5.361	Pasture.
510	4.433	Pasture, &c.	559	.724	Wood.
511	3.445	Pasture.	560	.975	Road.
512	10.710	Pasture, &c.	561	10.111	Arable, &c.
513	7.453	Pasture, &c.	562	1.329	Wood, &c.
514	17.679	Pasture, &c.	563	2.741	Houses, ornamental ground, &c.
515	6.546	Wood, &c.	564	23.251	Ornamental ground.
516	.289	Wood.	565	4.858	Pasture.
517	.298	Wood.	566	6.497	Pasture.
518	.869	Pasture.	567	10.518	Arable.
519	.222	House and garden.	568	19.578	Wood, &c.
520	3.030	Pasture.	569	1.185	Pasture.
521	1.052	Pasture.	570	8.972	Pasture.
522	.287	Pond.	571	3.824	Pasture.
523	.722	House, garden, &c.	572	3.083	Arable.
524	.856	Houses, garden, &c.	573	.298	Pond.
525	3.123	Pasture.	574	.341	Pond.
526	.491	House, garden, &c.	575	1.321	Pond.
527	1.398	Pasture, &c.	576	2.020	House, gardens, &c.
528	130.589	Wood, &c.	577	.980	Orchard.
529	3.149	Road.	578	.541	Wood.
530	1.972	Wood.	579	14.622	Pasture.
530a	3.573	Ornamental ground, &c.	580	8.876	Arable.
531	1.771	House and garden.	581	11.044	Pasture.
532	3.317	Wood, &c.	582	.566	Wood.
533	11.175	Ornamental ground, &c.			
534					

PARISH OF WHITEPARISH.

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

PARISH OF WHITEPARISH (Detached, No. 1).

1	2.439	Wood, &c.
2	.432	Wood, &c.
3	4.180	Arable.
4	5.698	Arable.
5	7.225	Arable.
6	2.845	Pasture.
7	7.507	Arable.
8	.396	Arable.
9	.916	Pasture, &c.
10	2.590	Pasture.
11	1.048	Houses, garden, &c.
12	3.934	Rough pasture.
13	.070	Garden.
14	.020	Road.
15	.194	Houses and garden.
16	.363	Orchard, &c.
17	.534	House, pasture, &c.
18	5.969	Pasture.
19	3.923	Wood.
20	1.942	Arable.
21	2.070	Furze, &c.
22	2.635	Arable, &c.
23	.639	House, garden, &c.
24	.477	Arable.
25	4.540	Arable.
26	1.666	Rough pasture, &c.
27	.851	House, garden, &c.
28	5.207	Wood, &c.
29	3.293	Arable.
30	.341	Arable.
31	2.777	Pasture.
32	5.022	Pasture.
33	3.678	Road.
34	3.066	Arable.

RECAPITULATION.

6001	450	Land.
67	541	Roads.
5	420	Water.
6074	411	Area of the Parish of Whiteparish, exclusive of the detached parts.

PARISH OF WHITEPARISH.

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

PARISH OF WHITEPARISH.

RECAPITULATION FOR THE PARISH.

Area in Acres.	
6344.460	Land.
76.552	Roads.
5.567	Water.
6426.579	

Total area of the Parish of Whiteparish, in the County of Wilts.

## Green, Janice

---

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

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

Hi Janice,

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

Thanks

Darren Stiles

[REDACTED]

[REDACTED]

**Green, Janice**

---

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

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

Hi Janice,

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

Thanks

Darren Stiles

[REDACTED]

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

Dear Mr Stiles

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

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

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

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

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

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

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

Kind regards,

Janice

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

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

Information relating to the way Wiltshire Council will manage your data can be found at:  
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Report a problem: <https://my.wiltshire.gov.uk/>

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

Follow Wiltshire Council



Follow Wiltshire Countryside



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

Hi Janice,

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

Thanks

Darren Stiles  
[REDACTED]



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## Green, Janice

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

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

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

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

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

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

Kind regards,  
Pat Woodruffe

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

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Thanks hope you find this helpful Harry Urquhart

## **FOOTPATH APPLICATION 202009**

**Dear Janice**

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

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

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

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

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

**Dated 15<sup>th</sup> November 2020**

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

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

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

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

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

So, to look at the evidence:-

### **Historic Evidence**

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

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

2 Tithe Map 1843 on which The Drove appears clearly.

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

4 Ordnance Survey Map of 1926

5 Map National Grid Sheet SU 2423 of 1965

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

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

### **Evidence of public use**

There are 27 user statements relating to this application, of these 18 are from people living in Clay Street, either currently or during the period they used the route. Of these 18, nine

say they have or had private access to the Drove and nine say they do/did not. The majority seem to indicate that they used the whole length of the path applied for and not just the length to which they had private access but I am sure this will be checked out by Wiltshire Council rights of way officers during follow-up interviews. On all statements (but one) dates of birth have been redacted and for those giving their address as Clay Street the names of the houses and the second half of their postcodes have been redacted. All photographs showing individuals have been noted but not copied on website.

Each person completing a user statement is asked how they think the application route should be recorded. Of the 27, 26 say it should be a footpath and one (a married couple) says it should be a bridleway. Of the 26 who say it should be a footpath, one says it should also be a bridleway and one says it should also be a BOAT, he himself having driven a tractor along it every few months. He also says he has used the tractor to tow out cars, the only person to mention cars on it. Interestingly five say they have seen horse riders using it although none say they have ridden a horse on it themselves, two say they have seen cyclists using it and two of the past residents say they used it by pedal cycle themselves as well as on foot. None of these suggested it should be recorded as a bridleway which it would need to be if horse riders and cyclists wanted to continue using it.

Periods of use date from 1962 to 2020 until prevented by the fences which have been erected across it. Analysis of periods of use and frequency I have shown on a separate sheet.

### **Other Points of interest from user statements**

There is some variance in the dates quoted for the erection of the barrier fences, varying from Jan/Feb 2020 to June 2020 but general consensus seems to be close boarded fence April 2020 and post and rail fence June 2020

#### **1 Pat Woodruffe**

Barbed wire fence with protection for walkers 2002-2019. Solid wooden fence and open structure wooden fence plus hedging erected Jan/Feb 2020. Both recent fences erected to incorporate the Drove into gardens of two new properties. One has gained planning permission and is being constructed (application refused but appeal upheld), the second application is currently under construction. Until approx. 2000 path was also used to drive cattle up and down from milking shed on Common Road. Has supporting evidence:- tithe map, OS map 1926, map from survey 1876, Wilts Council Register of Ancient Monuments, Extract from Roads and Tracks of Britain by Christopher Taylor 1979, photographs. *(Various pieces of this evidence have been submitted with other statements also but I will not repeat below)* Footpath 6 running east from end point of this application goes through a private garden. Owner is amenable but she (Pat) would prefer not to use it. Inclusion of the Drove as footpath would provide good alternative. The southerly section of this application is threatened by development in the field to the west. *Full answer to Q 22 printed off and attached on separate sheet.* Following successful appeal against planning refusal the developers of Forest View have breached the track and felled a substantial number of trees or large limbs. The field in which the number 2 is positioned is now a building site and

planning consent has been given for a section of Drove Road to be incorporated into gardens. Second map shows building site the length of the Drove from where it turns to end of path applied for plus fences at either end of where Forest View plot joins the Drove. On right on the bend is barbed wire fence replaced by wooden fence and hedging and the other, at bottom end of Forest View plot is solid wooden fence erected 2020. Map makes clear the Drove is longer than the length applied for. The far south end runs parallel to existing footpaths. FP6 runs parallel with the Drove and crosses it to join FP4. FP4 runs down the western edge of the Drove in the field.

## **2 John Hill**

States Forest View had its own access on to the path by a gate. His map shows the position of the accessible fence – barbed wire but covered and padded so walkers could get through.

## **3 Jennifer Harrison**

Speaks of Mr Andrews, a past owner of the Drove, was aware of use of the footpath as used land frequently himself and “spoke to us and to others”. Her map shows the barbed wire fence and wooden fence.

## **4 Brian Woodruffe**

Six feet fence on the junction between Westway and Forest View. June 2020 open fence and newly planted shrubs at end of Forest View boundary. Boundary now indistinct because of extraction of clay and removal of all trees and vegetation (May – June 2020). The six foot fence is boarded and essentially blocking the pathway, the open fence is passable with difficulty. The previous owners, Len and Marjorie Andrews, were most protective of its natural qualities but were happy to allow users along it. This has been continued by the current farming family, as users are aware that barbed wire is necessary in places to ensure stock are kept safely (largely in adjacent fields). Mr Andrews (past owner) used to speak to us and others on this route.

## **5 John Harrison**

Back gate gives access to application route. Barbed wire but protected by pipe lagging to enable access. Erected approx. 12 years ago – still accessible. Wooden fence erected 2020 blocks the route. Told by solicitor route was not public when purchased property in 1985. Deeds show have right of access from property to Common Road. Mr Andrews (past owner) used to speak to us and others on the route. Additional evidence he has:- Tithe map dated 1842 showing the route of the Drove, closer detail of Tithe Map, Plan attached to deeds. Until approx. 25 years ago the Owner used to maintain the route with a hedge cutting tractor. Was a popular route until lack of maintenance and blockage. *Copies of the second and fourth maps attached to his statement have been printed off and attached.*

## **6 David Ian Wise**

Two recently built houses block the Drove and a proposed third one also will (see planning application 20/14331/FUL)

### **7 Alexander T Knight**

Deeply rutted path with overhanging trees to left and back garden fences of properties in Clay Street for 100 yards approx.. It turns left alongside open field. There was hedge to right with mature trees in until recently. A wire fence obstructed The Drove at back of Forest View property.

### **8 Ceri Bicknell**

Lived at [REDACTED], Whiteparish 1972-1990.

### **9 Barbara Kennard**

Lived at [REDACTED], Clay Street Whiteparish 1978 – 1987. Also mentions Mr Andrews as owner. No longer has deeds to [REDACTED] but to best of memory deeds mentioned granted private access to Drove specifically to trim hedge. Attaches photos of top cow field from the Drove footpath near where she lived and one of husband and son blackberrying in the Drove. Also mentions Mr Andrews seeing her using Drove many times. *The map she attached showing the gates from the Drove into the “cow” fields is of interest particularly the one close to your property so has been printed off and attached*

### **10 Nicholas Harrison**

Mentions Mr Andrews witnessed him in the Drove many times. Map indicates hedge across the route where it turns left.

### **11 Stephen Karmy**

States path also used by Len Andrews, brother of previous owner, Miss Andrews, to take food in wheelbarrow to animals grazing in field next to Hop Gardens. This only ceased on his death several decades ago. Barriers consisting of tall fence panels have now (2020) been erected behind Westways, Clay Street cutting the Drove and making proper access impossible.

### **12 Jenny Karmy**

Also mentions food in wheelbarrow to cattle grazing in fields next to Hop Gardens. Says same as above re fence behind Westways.

### **13 Matthew Leach**

Barbed wire fence with pipe covering to enable access in line with end of blue/green right of way on deeds map. Quotes wording of deeds in full. *The map and wording have been printed off and attached, the line of the private access has been shown by others on their maps and appears always to cover the same length of the Drove regardless of where the garden of the house in question adjoins it.* Barbed wire fence shown on map attached.

**14 Lisa Harrison**

Mr Andrews, a past owner of Drove, saw her playing in the Drove.

**15 C W Carpenter**

Has never used path himself but knows many villagers who have. Whiteparish has been his home all his life and believes Drove should be preserved as right of way and also fits well with existing footpaths 4 & 6.

**16 Rodney E Coat**

Fence line with barbed wire covered to allow access to Drove. He had private right of access to rear garden.

**17 Christopher Woodruffe**

Born in Whiteparish and lived at [REDACTED], Clay Street 1975 -1995. Strand of wire occasionally put across at SU 2444 2292 to deter livestock from wandering Drove – did not prevent usage. Cattle also herded along it. As children used Drove, often landowner used it to herd cattle between field and farm. His map shows strands of wire in different place to all other users. He shows it where Drove turns parallel to FP6 (SU 2444 2292).

**18 Naomi Hanslow**

Has seen farmer using it previously. Farmer and farming family aware of Drove route. Ancient trackway now barred.

**19 Christine Ellis**

Used it for dog walking from Whiteparish school to A36 joining FP6 and 4. Has seen farmer who owned the land using it as well as children walking/playing and residents of Hop Gardens/Clay Street. She passed time of day cordially with farmer. Route links Common Road and school with dwellings on A36 along footpaths rather than road.

**20 Karen Tongs**

Only used once in 2020 because just moved to Whiteparish from Southampton. Believes the owner knew of its use because is historic route.

**21 Martin Tongs**

Moved to Whiteparish 11/19. Also says believes owner aware of public using footpath because historic route.

**22 Elvin Klapp**

Wiltshire Council omitted redacting date of birth on this one – is [REDACTED]. Has walked it and driven a tractor along it. Couple of strands of barbed wire with foam on 1995 -2019. Close boarded fence erected June 2020. Hedging and post and rail fence erected June 2020. Has towed cars out with his tractor as well as seeing lots of people walking it. Used to talk to the owner while on the route.

### **23 Sara Webb**

Clay Street resident, used it as route to and from house to Common Road. One strand of barbed wire fence covered with plastic pipe 1999 – 2019. Close boarded fence April 2020. Hedging and post and rail fence June 2020. As well as meeting people on path have watched people using it every day, especially dog walkers, until April 2020.

### **24 Patricia Hudson**

There was a wire fence across the path where it started to run behind the houses – was presumably to stop horses that grazed in field adjacent to wider path (has earlier on form said width 30' until runs behind houses when reduces to 10' to 12'.

### **25 Beverley Rutter and Barry Rutter**

Was always a stile at the end (*instructions on form are to show on map but has not done so*). Developers have recently erected two fences across the path preventing access to Drove across the edge of fields. "Myself and a former resident whose property backed on to the drove used it for access to there (sic) property. We feel that this is part of the village heritage and many people have had much pleasure using this route. Should not be discarded for personal gain of some individual." Pictures of both fences attached (*As they are good clear ones have printed off and attached*).

### **26 Robert Canney**

One strand barbed wire shrouded did not prevent access. Close board fencing erected April 2020. Hedging and rail fence erected April 2020. *Re question whether owner was aware of public use* When local stables leased the meadow for their horses they were often in the field when other villagers passed through the Drove.

### **27 Jacquie Gallon**

Barred due to new development – fencing across whole path. *Re question about prevention of use: Barriers and unfriendly attitude of developers, Barriers are impossible to get round. In answer to question has anyone else ever told you they were prevented from using application route: "Darren Stiles at the SU 2444 2292 end has been told that it's not a footpath and he has no right of access – several times I believe". Believes owner was aware of public use because of conversations with neighbours.*

### **Other points from the user statements**

All users say that, until they have been barred by the fences erected by the developer this year, they have never found any barriers preventing them from using the path, have never seen any signs or notices suggesting whether or not the application route is a public right of way, for example "Private", "Keep Out", "No Right of Way", "Trespassers will be Prosecuted", have never been stopped or turned back when using the application. At least six mention seeing the previous owner, Mr Andrews, and speaking to him while using the route. Several

mention that the Andrews used the route to take cows from fields to milking shed. This means that they would have used it in each direction twice daily and therefore were highly likely to be aware of other people using it. It is clear that in putting up barbed wire across the route to keep animals in but covering it with plastic to protect people the owners were not only aware of public use but had no objection to it.

There is also mention of The Drove having a rich assemblage of plants, that it could, like Whiteparish Common and the extensive area of Common Land along Common Road, be regarded as Ancient semi-natural Woodland and that in the 2018 planning application (the one turned down by the Council but allowed on appeal) a member of the Wiltshire Council ecological team emphasised the importance of The Drove as a link between the open fields and the woodland along Common Road, providing a significant wildlife corridor, especially for bats and nesting birds. There is an ancient monument on the route which it is considered should be protected – Wiltshire Council Monument Full Report included in documents submitted. Other planning applications along the route are said to have been granted with planning permission to take in parts of The Drove similarly so it is clear if The Drove is to be saved from destruction a decision on this right of way application is urgently needed.

## **Conclusions**

The evidence both historical and user is good and it is valued as a significant wildlife corridor. If you wish to oppose the application then, a) you need to have submitted a map and statement to the Council in accordance with Section 31 of the Highways Act 1980 asserting that no right of way exists (copy of that Section with the relevant sub-section highlighted attached) or (b) you can state you have ever turned people back from using it or (c) told them it was not public or (d) erected signs or notices stating it was not public or (e) obstructed the way (despite the user statements to the contrary),

I would personally like to make an argument that given the number of existing rights of way surrounding it render its addition to the Wiltshire Definitive Map unnecessary (Whiteparish footpaths numbers 4,6 and 31 already giving access to the A27, the A36 and the Common Road linking them (the one on which your property lies).

I also attach, for information, a downloaded copy of section 53 of the Wildlife and Countryside Act 1981 to which Janice refers in her letter. In essence this deals with the addition of and the removal of rights of way from the Definitive Map, modification of existing ones, and the obligation resting on the Council to investigate any evidence relating to a right of way which comes before them.

[Janice I expect you have this information already ]

So to conclude my thanks again should you need me to expand or explain more of this report I will be pleased to do so

Regards



## **Decision Report Wildlife and Countryside Act 1981 – Section 53**

### **Application to Add a Footpath – Whiteparish (The Drove)**

#### **Appendix 5 – Relevant Legislation**

1. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies in the determination of this application:

*“As regards every definitive map and statement the Surveying Authority shall-*

*(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”*

2. The event referred to in subsection 2, (as above), relevant to this case, is:

*“(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –*

*...(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies...”*

3. Section 53(5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

*“Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.”*

4. Schedule 14 of the Wildlife and Countryside Act 1981, states:

*“Form of applications*

- 1. An application shall be made in the prescribed form and shall be accompanied by:*
- (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and*
  - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”*

The prescribed scale is included within “The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993” – Statutory Instruments 1993 No.12, which state that “A definitive map shall be on a scale of not less than 1/25,000.”

5. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

*“(1) Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(1A) Subsection (1) –*

- (a) Is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but*
- (b) Applies in relation to the dedication of a restricted byway by virtue of use for mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.*

- (2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) *Where the owner of the land over which any way as aforesaid passes-*  
(a) *has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*  
(b) *has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected,*  
*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*
- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.*
- (6) *An owner of land may at any time deposit with the appropriate council-*  
(a) *a map of the land and*  
(b) *a statement indicating what ways (if any) over the land he admits to having been dedicated as highways:*

*and, in any case in which such deposit has been made, declarations in valid form made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –*

- (i) within the relevant number of years from the date of the deposit, or*
- (ii) within the relevant number of years from the date on which any previous declaration was last lodged under this section,*

*to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.*

*(6A) Where the land is in England-*

- (a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,*
- (b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and*
- (c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years...*

*(6C) Where, under subsection (6), an owner of land in England deposits a map and statement or lodges a declaration, the appropriate council must take the prescribed steps in relation to the map and statement or (as the case may be) the declaration and do so in the prescribed manner and within the prescribed period (if any).*

*(7) For the purpose of the foregoing provisions of this section, 'owner', in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5), (6), (6C) and (13) 'the appropriate council' means the council of the county, metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in the case of subsections (6),*

*(6C) and (13)) is situated or, where the land is situated in the City, the Common Council.*

*(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.*

*(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act...”*

**Decision Report – Wildlife and Countryside Act 1981 – Section 53**

**Application to Add a Footpath, Whiteparish (The Drove)**

**Appendix 6 – Historical Evidence Summary:**

Each document is listed according to the evidential weighting awarded to that document (please see paragraph 9.2. of main report):

<b>Document</b>	<b>Whiteparish Inclosure Award (A1/210/EA 64)</b>  <b>An Act For Dividing, Allotting, and laying in Severalty, certain Open Commonable Fields, Downs, Meadows, and Waste Lands, within the Parishes of West Grimstead and Whiteparish , in the County of Wilts. (A1/215/41)</b>
<b>Date</b>	Award – 1805 Local Act - 1802
<b>Relevant Documents</b>	Inclosure Award Inclosure Award Map Local Inclosure Act
<b>Size / Scale</b>	Scale of Chains 22 Yards each (12.5cm = 30 chains)
<b>Evidential Weighting</b>	A
<b>Significance</b>	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the Manor, were redistributed amongst people having rights of common. By the 18<sup>th</sup> Century new innovations in farming were increasing output, but where communal farming was in place it was difficult to modernise without the agreement of all parties, as the Whiteparish Inclosure Act 1802 states: <i>“And whereas the Lands and Grounds of the several Owners and Proprietors in the said Open Commonable Fields, Downs, Meadows, and Waste Lands, lie intermixed and dispersed in small parcels, and are in their present Situation incapable of any considerable Improvement; and it would be advantageous to the several Proprietors thereof, and Persons interested therein, if the said Open Commonable Fields, Downs, Meadows, and Waste Lands were divided, and specific Parts thereof allotted to the several Proprietors or Persons interested therein, in proportion to their Property, Rights of Common, and other Interests: BUT such Division and Allotment cannot be effected without the Aid of Parliament.”</i> Therefore, the larger landowners who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Inclosure Awards provide sound and reliable evidence of the existence of a highway and its status where they arise from Acts of Parliament. Prior to 1801 inclosure was dealt with by local acts for specific areas, each with its own terms and conditions. After 1801 the Inclosure</p>

	<p>Consolidation Act, <i>“An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts”</i>, provided standard conditions for the Inclosure process, although each inclosure still required a local authorising Act alongside it which could vary the rules. The Acts gave the Commissioners the power to change the highway network of the parish and authorised and required the Commissioners to set out highways, public and private within the parish.</p> <p>Weight can be given to routes included within Inclosure Awards as landowners has a strong influence over the inclosure process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure process was clearly set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways. One of the main purposes of the Inclosure Award was to record highways.</p>
<p><b>Conclusion</b></p>	<p>On the Inclosure Award Map, the main A27 road (The Street) is recorded to a point just east of Pill Hill. The Hop Gardens (off Newton Lane) is recorded with the western end of Clay Street, however, the claimed route is not recorded where the area to be inclosed does not extend far enough south and east of Whiteparish, to include the claimed route.</p> <p>This Inclosure Award dated 1805, stems from both the Consolidation Act and a local Act of Parliament: <i>“An Act For Dividing, Allotting, and laying in Severalty, certain Open Commonable Fields, Downs, Meadows, and Waste Lands, within the Parishes of West Grimstead and Whiteparish, in the County of Wilts.”</i> which makes the following provisions for roads:</p> <p><i>“And be it further Enacted, That if any of the public Roads to be set out by virtue of this Act or the said recited Act, shall by the said Commissioners be directed to be fenced, then it shall not be lawful for any Person or Persons to graze or keep any Sort of Cattle whatsoever, in or upon any of the said public Roads, for the Space of Seven Years next after the making and executing of the said Award, on pain of forfeiting and paying for every such Offence any Sum not exceeding Forty Shillings nor less than Twenty Shillings, to be paid to such Person or Persons, and to be applied for such Uses and Purposes, as the said Commissioners shall in and by their said Award authorize and direct.”</i></p> <p><i>“And be it further Enacted, That the said Commissioners shall and may, and they are hereby authorized and required to set out, allot, and</i></p>

*award, unto and for the Surveyor of Highways of the said Parish of West Grimstead for the Time being, One Plot of the said Lands and Grounds so intended to be divided and allotted as aforesaid, in the said Parish of West Grimstead, as they shall think proper, not exceeding in the Whole One Acre, as and for public Stone and Gravel Pits, with convenient Roads to and from the same, which said Plot shall be used in Common by the Proprietors of Lands and Estates within the said Parish, and their Tenants, for the Repairs of the public and private Roads within the same Parish; and such Plot of Land or Ground so to be set out and allotted unto and for the Surveyor of the Highways of the said Parish, shall be and is hereby vested in the Surveyor or Surveyors of the Highways for the Time being in the said Parish for ever, in Trust for the Purposes aforesaid, and also in Trust, to let and set the Grass and Herbage from Time to Time growing and renewing upon such Plot of Land and Ground, for the best Rent that can be reasonably got for the same, and to apply the Rents and Profits thereof in repairing the said public Highways in the said Parish, and to account touching the Application of such Rents and Profits, at such Times and in such Manner as they are and shall be accountable by Law for any other Monies that shall come to their Hands as Surveyors of the Highways as aforesaid; and if any of the Surveyors of the Highways, shall at any Time or Times hereafter neglect or refuse to account for, and apply the said Rents for the Herbage growing or renewing from the said Plot of Land and Ground, it shall be lawful for any of His Majesty's Justices of the Peace acting in and for the said County of Wilts, to cause the said Rent and Arrears of Rent, and the Costs and Charges attending the Recovery thereof, to be levied by Distress and Sale of the Goods and Chattels of such Surveyor, so neglecting or refusing to account for such Rents as aforesaid...*

*Provided always, and be it further Enacted, That nothing herein or in the said recited Act contained shall authorize the said Commissioners to allot, set out, or assign any Lands or Grounds in the said Parish of Whiteparish, except the Four Arable Commonable Fields hereinbefore mentioned."*

*"Provided always, and be it further Enacted, That convenient Gaps and Openings shall be left in the Fences to be made (if any shall be directed to be made by the said Commissioners) for the Space of Twelve Calendar Months next ensuing the Execution of the said Award, for the Passage of Carts, Cattle and Carriages, in and through the same, unless the said Commissioners shall by their Award, or other Instrument in Writing under their Hands, order that the same be sooner fenced and made up."*

*"...and the Costs and Charges of forming and completing, and putting into good and sufficient repair, the public Carriage Roads ... shall be*

*borne and defrayed by the several Owners of the Lands, Grounds and Hereditaments to be divided and allotted by virtue of this Act..."*

The Consolidation Act of 1801 contains additional powers for the Commissioners to set out and appoint public highways:

*"Be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required, in the first Place, before he or they proceed to make any of the Divisions and Allotments directed in and by such Act, to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted and inclosed, and to divert, turn, and stop up, any of the Roads and Tracts, upon or over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary, so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required to ascertain the same by Marks and Bounds, and to prepare a Map in which such intended roads shall be accurately laid down and described, and to cause the same, being signed by such Commissioner, if only one, or the major Part of such Commissioners, to be deposited with the Clerk of the said Commissioner or Commissioners, for the inspection of all Persons concerned; as soon as may be after such Carriage Roads shall have been so set out, and such Map so deposited, to give Notice in some Newspaper to be named in such Bill, and also by affixing the same upon the Church Door of the Parish, in which any of the Lands so to be inclosed shall lie, of his or their having set out such Roads and deposited such Map, and also of the general Lines of such intended Carriage Roads, and to appoint in and by the same Notice, a Meeting to be held by the said Commissioner or Commissioners, at some convenient Place, in or near to the Parish or Township within which the said Inclosure is to be made, and not sooner than three Weeks from the Date and Publication of such Notice, at which Meeting it shall and may be lawful for any person who may be injured or aggrieved by the setting out of such roads to attend; and if any such Person shall object to the setting out of the same, then such Commissioner or Commissioners, together with any Justice or Justices of the Peace, acting in and for the Division of the County in which such inclosure shall be made, and not being interested in the same, who may attend such Meeting, shall hear and determine such Objection, and the Objections of any other such person, to any Alteration that the said Commissioner or Commissioners, together with such Justice or Justices, may in Consequence propose to make, and shall, and he or they are hereby required, according to the best of their Judgment upon the Whole, to order and finally direct how such Carriage Roads shall be set out, and either to confirm the said Map, or make such Alterations therein as the*

*Case may require: Provided always, That in Case such Commissioner or Commissioners shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any Part of the old Inclosures in such Parish, Township, or Place, the same shall in no Case be done without the Concurrence and order of two Justices of the Peace, acting in and for such Division, and not interested in the Repair of such Roads, and which Order shall be subject to Appeal to the Quarter Sessions, in like Manner and under the same Forms and Restrictions as if the same had been originally made by such Justice aforesaid.*

*And be it further enacted, That such Carriage Roads so to be set out as aforesaid, shall be well and sufficiently fenced on both Sides, by such of the Owners and Proprietors of the Lands and Grounds intended to be divided, allotted, and inclosed, and within such Time as such Commissioner or Commissioners shall, by any Writing under his or their Hands, direct or appoint, and that it shall not be lawful for any Person or Persons to set up or erect any Gate across any such Carriage Road...and such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required, by Writing under his or their Hands, to nominate and appoint one or more Surveyors, with or without a Salary, for the First forming and completing such Parts of the said Carriage Roads as shall be newly made, and for putting into complete Repair such Parts of the same as shall be previously made..."*

*"And be it further enacted, That after such publick and private Roads and Ways have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either Side thereof, as far as the Crown of the Road; and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which not be set out as aforesaid, shall for ever be stopped up and extinguished, and shall be deemed as taken as Part of the Lands and Grounds to be divided, allotted and inclosed, and shall be divided, allotted and enclosed accordingly; Provided, That nothing herein contained shall extend, or be construed to extend, to give such Commissioner or Commissioners any Power or Authority to divert, change, or alter any Turnpike Road that shall or may lead over any such Lands and Grounds, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at some publick Meeting called for that purpose on ten Day Notice, be first had and obtained..."*

*And be it further enacted, That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, pursuant to the Purport and Directions of this or any such Act, the said Commissioner or Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing, which shall express the Quantity of Acres, Roods, and Perches, in Statute Measure,*

*contained in the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof which shall be so allotted, assigned or exchanged, and the Situations and Descriptions of the same respectively, and shall also contain a Descriptions of Roads, Ways and Footpaths...set out and appointed by the said Commissioner or Commissioners respectively as aforesaid, and all such other Rules, Orders, Agreements, Regulations, Directions and Determinations, as the said Commissioners shall think necessary, proper, or beneficial to the Parties; which said Award shall be fairly ingrossed or written on Parchment, and shall be read and executed by the Commissioner or Commissioners, in the presence of the Proprietors who may attend at a special General Meeting called for that Purpose, of which ten Days Notice at least shall be given in some Paper to be named in such Act and circulating in the County, which Execution of such Award shall be proclaimed the next Sunday in the Church of the Parish in which such Lands shall be, from the Time of which Proclamation only and not before, such Award shall be considered as complete; and shall, within twelve Calendar Months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of his Majesty's Courts of Record at Westminster, or with the Clerk of the Peace for the County in which such Lands shall be situated, to the End of that Recourse may be had thereto by any Person or Persons interested therein, for the Inspection and Perusal whereof no more than one Shilling shall be paid; and a Copy of the said Award, or any part thereof, signed by the proper Officer of the Court wherein the same shall be inrolled, or by the Clerk of the Peace for such County, or his Deputy, purporting the same to be a true Copy, shall from Time to Time be made and delivered by such Officer or Clerk of the Peace for the Time being as aforesaid, to any Person requesting the same, for which no more shall be paid than Two-pence for every Sheet of seventy-two Words; and the said Award, and each Copy of the same, or of any Part thereof, signed as aforesaid, shall at all Times be admitted and allowed in all Courts whatever as legal Evidence; and the said Award or Instrument, and the several Allotments, Partitions, Regulations, Agreements, Exchanges, Orders, Directions, Determinations, and all other Matters and Things therein mentioned and contained, shall, to all Intents and Purposes, be binding and conclusive, except where some Provision to the contrary is herein or shall be by any such Act contained, unto and upon the said Proprietors, and all Parties and Persons concerned or interested in the same, or in any of the Lands, Grounds, or Premises aforesaid; and also that the said respective Commissioners, if they think it necessary, shall form or draw, or cause to be formed and drawn, on Parchment or Vellum, such Maps or Plans of the said Lands and Grounds, the better to describe the several new Allotments or Divisions to be made, and Premises that shall be exchanged by virtue of this Act, and which shall express the Quantity of each Allotment in Acres, Roods and Perches, together with the names*

*of the respective Proprietors at the Time of such Division and Allotments; which said Maps and Plans shall be annexed to and inrolled with the said respective Award, and shall be deemed and construed in every respect as and for Part of the said Award.”*

Where the claimed route is not recorded on the Inclosure Award map as that part of the parish to be inclosed, no conclusions can be drawn from this document.



*Whiteparish Inclosure Award Map - 1805*



*Whiteparish Inclosure Award Map – 1805*

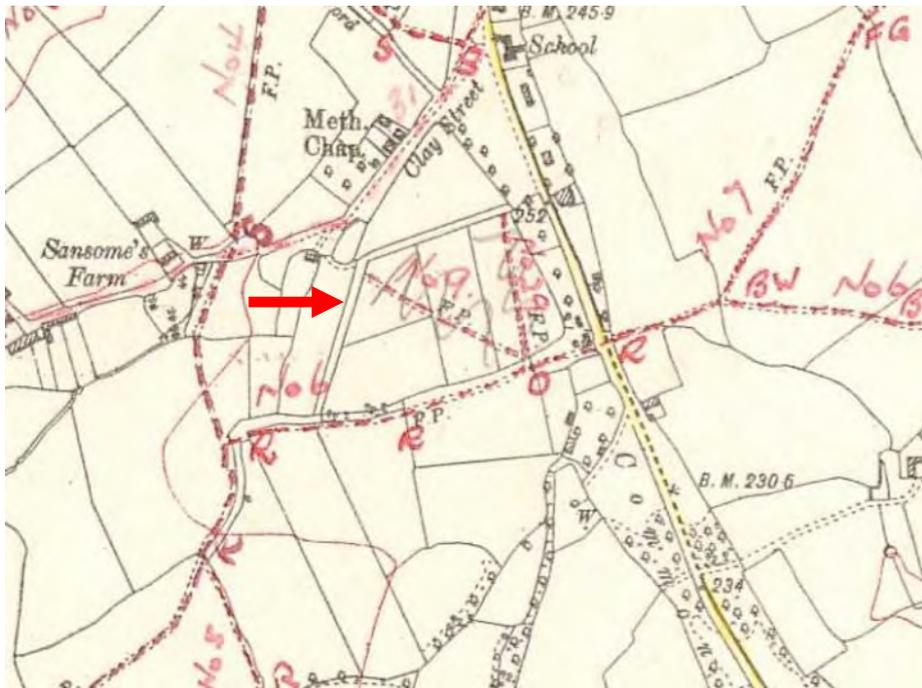
<b>Document</b>	<b>Definitive Map of Public Rights of Way</b>
<b>Date</b>	1951
<b>Relevant Documents</b>	Parish Claim Map and Survey Cards Definitive Map
<b>Size / Scale</b>	Claim Map - 6 inches to 1 mile Definitive Map – 1:25,000
<b>Evidential Weighting</b>	A
<b>Significance</b>	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map.</p> <p>Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey Maps to all Parish, Borough, Town and City Councils, who surveyed and recorded what they considered to be public rights of way within their areas, with an accompanying description of each path. The local Councils were required to convene a meeting at which the public rights of way information to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of</p>

	<p>the definitive map and statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District or Urban District area.</p> <p>Detailed guidance regarding the local Council's input into the definitive map process was issued with Circular no.81/1950 from the Ministry of Town and Country Planning – <i>“Surveys and Maps of Public Rights of Way for the purposes of PART IV of the National Parks and Access to the Countryside Act , 1949 Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Council Association and approved by the MINISTRY OF TOWN AND COUNTRY PLANNING”</i>. The Planning Inspectorates <i>“Definitive Map Orders: Consistency Guidelines”</i> state that the legal <i>“presumption of regularity”</i> applies, i.e. unless otherwise demonstrated, it should be assumed that local Council's received this guidance and complied with it in undertaking their survey and claim.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p>
<p><b>Conclusion</b></p>	<p>The parish claim map does not record The Drove and hence there is no survey card for this route. The lack of a connecting path to the north of Whiteparish Footpath no.6 was queried by the Wiltshire County Council Surveyor upon receiving the Parish Council Survey information. The Surveyor wrote to the Parish Council ref Path no's 9 and 29 on the parish claim map, which formed links between The Drove and Path no.6, yet The Drove was not claimed by the parish. He questioned whether or not the claimed route <i>“Forkes Drove”</i>, should be recorded as a public right of way which would create the connection (correspondence dated 4<sup>th</sup> December 1951):</p> <p><i>“Ordnance Sheet No. LXXII.S.E. Path Nos.9 and 29 as shown have no outlet at their northern ends. Is Forkes Drove, leading north from path No.6 and then north-east to Common Road, C.26, a public right of way? If not, have these two paths any public use? ...I enclose Ordnance Sheets Nos. LXXII.S.E. and N.E., which please return with the forms of statement and your observations as soon as possible.”</i></p> <p>The parish survey card for path no.29 records that it commences <i>“...at the junction of No.9 and No.6 Footpaths and proceeding in a northerly direction to FORKES DROVE”</i>. In Observations it is recorded that <i>“This Footpath is never used”</i> and the approximate period of uninterrupted user is: <i>“Now disused 50 years from 1901”</i>. The survey card for Footpath 9 shows that it is <i>“Unmade”</i> and <i>“This path has fallen into disuse”</i>.</p>

The Parish Council replied to the County Surveyor, (correspondence dated 25<sup>th</sup> January 1952):

*“Ordnance Sheet No. LXXII S.E.  
 Paths No. 9 and 29. The drove you refer to as Forke’s Drove is not a public right-of-way and on reflection it is felt that Paths No’s 9 and 29 serve no useful purpose, and in any case are seldom used, and could be omitted.”*

Adjacent to this observation on the letter is a note in pencil *“take out”* presumably added by the County Surveyor referring to path no’s 9 and 29 which are then scribbled out in pencil on the Parish Claim map and the claim cards struck through with *“Take out see P.C’s letter dated 25.1.52.”* In the same letter the Parish Council adds other paths queried by the County Surveyor, so it was open to the Parish Council to add *“The Drove”* if they considered it to be a public right of way.



Whiteparish Parish Claim map 1951

FD/DMK.

4th December, 1951.

Mrs. E. McComish,  
Clerk to the Whiteparish Parish Council,  
56, Hulse Road,  
Salisbury,  
Wiltshire.

Dear Madam,

Survey of Rights of Way.

I have now had an opportunity of checking the maps and statements and the only comments I wish to make are as follows.

Ordnance Sheet No. LXXI.S.E.

Paths Nos. 9 and 29 as shown have no outlet at their northern ends. Is Forkes Drove, leading north from path No. 6 and then north-east to Common Road, C.26, a public right of way? If not, have these two paths any public use?

Path No. 10, from Blaxwell Farm leading south-east alongside Bushy Copse to road U/c.12067, is not coloured on the map as described on the form. Is the colouring correct as I have shown it? The form for this path is enclosed.

Correspondence from County Surveyor (4<sup>th</sup> December 1951)

**WHITEPARISH PARISH COUNCIL**

E. McCOMISH  
Clerk

56 HULSE ROAD  
SALISBURY  
25th January, 1952.



Dear Sir,

Survey of Rights of Way.

I have now had an opportunity of bringing your letter, dated the 4th December last, before my Council and have set out their observations below:-

Ordnance Sheet No. LXXII S.E.

*take out*

Paths No. 9 and 29. The drove you refer to as Forke's Drove is not a public right-of-way and on reflection it is felt that Paths No's 9 and 29 serve no useful purpose and, in any case, are seldom used, and could therefore be omitted.

Path No. 10. The colouring for this path as amended by you is, of course, correct.

Ordnance Sheets No's LXXII N.E. & S.E.

*add*

Path No. 19. The lane from road U/c 12025 at Ashmore Pond leading north west past Alderstone Farm is a public right-of-way and therefore provided an outlet for Path No 19 at its southern end.

Path No. 31. This path, leading from Newton Lane, south-east to the Hop Gardens and north-east past Sansomes Farm and the Methodist Chapel to Common Road opposite the School, should have been included and is now numbered No. 31 on the schedule.

Correspondence from Whiteparish Parish Council (25<sup>th</sup> January 1952)

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. (to correspond with No. on map)

PUBLIC RIGHT OF WAY. PARISH OF WHITEPARISH. PATH No. 6 (to correspond with No. on map)

NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)  
Footpath with its junction with No. 1 in COOK'S MEADOW and  
proceeding eastwards to the south of Lian's cottage to the corner  
road continuing to the opposite side of the road and proceeding  
in an easterly direction to the south end of BUSHY GLEBE and from  
there, turning North-east to COWSFIELD GREEN.

LENGTH 3/4 mile WIDTH 4 feet

WHETHER FENCED OR OPEN Fenced

APPROXIMATE PERIOD OF UNINTERRUPTED USER —  
 YEARS FROM \_\_\_\_\_

WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH  
 OR COUNTY COUNCIL —  
None

DATE OF REPAIR January 1951

WHETHER SUBJECT TO PLOUGHING No.

DATE OF SURVEY January 1951

WHETHER SHOWN ON UNDERMENTIONED MAPS —  
 ORDNANCE 6" SHEET. REF. Yes LXX 115.E.

INCLOSURE AWARD Yes

LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF  
 THE RIGHTS OF WAY ACT, 1932.) Yes

OTHER MAPS —

NATURE OF SURFACE Pathway & made. Copied & reinforced N.E.  
to N.W. at Cowfield Green.

STILES, GATES, FOOTBRIDGES, STEPPING STONES Low Rail - Barbed wire

WHETHER DIRECTION POSTS ON WAY  
 (GIVE PARTICULARS) None

OBSERVATIONS: Not used - full of obstructions - mainly overgrown  
hedges & barbed wire fences.

Parish Survey Record Card – Path no.6 Whiteparish 1951

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. (to correspond with No. on map)

PUBLIC RIGHT OF WAY. PARISH OF WHITEPARISH. PATH No. 9 (to correspond with No. on map)

NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)  
Footpath commencing near Bonetta House in the High Grounds (known  
as "The Vines" proceeding in a south-easterly direction to its  
junction with Footpath No. 6.

LENGTH 1/2 mile WIDTH 4 feet

WHETHER FENCED OR OPEN Fenced

APPROXIMATE PERIOD OF UNINTERRUPTED USER —  
 YEARS FROM \_\_\_\_\_

WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH  
 OR COUNTY COUNCIL —  
 \_\_\_\_\_

DATE OF REPAIR \_\_\_\_\_

WHETHER SUBJECT TO PLOUGHING No.

DATE OF SURVEY January 1951

WHETHER SHOWN ON UNDERMENTIONED MAPS —  
 ORDNANCE 6" SHEET. REF. Yes

INCLOSURE AWARD Yes

LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF  
 THE RIGHTS OF WAY ACT, 1932.) Yes

OTHER MAPS —  
Not known

NATURE OF SURFACE Pathway

STILES, GATES, FOOTBRIDGES, STEPPING STONES None

WHETHER DIRECTION POSTS ON WAY  
 (GIVE PARTICULARS) No.

OBSERVATIONS: None

*Take out of P.R.O. after date 25.1.52*

Parish Survey Record Card – Path no.9 Whiteparish (deleted) 1951

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

PATH No. 29  
(to correspond with No. on map)

## PUBLIC RIGHT OF WAY.

PARISH OF WHITEPARISH.

<p>NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)</p> <p><i>Footpath commencing at junction of No. 9 and No. 6 Footpaths and proceeding in a westerly direction to FORKE'S DRIE</i></p>	<p>LENGTH <u>200 yds</u> WIDTH <u>-</u></p> <p>WHETHER FENCED OR OPEN <u>open</u></p> <p>APPROXIMATE PERIOD OF UNINTERRUPTED USER - <u>Not known</u> <u>80</u> YEARS FROM <u>1901</u></p> <p>WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL - <u>Not known</u></p> <p>DATE OF REPAIR <u>-</u></p> <p>WHETHER SUBJECT TO PLOUGHING <u>No</u></p> <p>DATE OF SURVEY <u>January 1951</u></p> <p>WHETHER SHOWN ON UNDERMENTIONED MAPS - ORDNANCE 6" SHEET. REF. <u>ja</u> INCLOSURE AWARD <u>ja</u></p> <p>LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932) <u>ja</u></p> <p>OTHER MAPS -</p>
<p>NATURE OF SURFACE <u>Positive</u></p> <p><i>Take out letter 95.1.52</i></p>	
<p>STILES, GATES, FOOTBRIDGES, STEPPING STONES <u>1. Field gate 1. Rail</u></p>	
<p>WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS)</p> <p><u>None</u></p>	
<p>OBSERVATIONS: <u>This footpath is never used.</u></p>	

Parish Survey Record Card – Path no.29 Whiteparish (deleted) 1951

Parish	Path No.	Description of path with terminal points	Approximate length	Width	Limitation or conditions affecting public rights	Remarks
Whiteparish.	5.	<i>had no of boundary north</i> F.P. From Trunk Road A.36 at Chadwell Farm leading north along the east side of Whelpley Head now to its junction with path No. 4.	$\frac{1}{2}$ mile 1100 yds	4 feet	Subject to part ploughing.	
	6.	F.P. From path No. 4 about 100 yards north of its junction with path No. 5, leading east across the Common Road, C.26, to the south-west corner of Bushy Copse and continuing north-east to road A.27 at Covesfield Green.	1 mile	4 feet	-	Barbed wire obstructions and overgrown.
	7.	F.P. From path No. 6 leading north-east through Blaxwell Farm to road A.27 at Covesfield Green.	$\frac{1}{2}$ mile	4 feet	Subject to part ploughing.	
	8.	F.P. From path No. 4 leading south-east and north-east to the north side of School House and thence east to Blaxwell Farm at its junction with path No. 7.	780 yards	4 feet	Subject to part ploughing.	
	10.	F.P. From road A.27 at Little Suttons leading south-east past Blaxwell Farm and continuing along the south-west side of Bushy Copse and through Hayter's Wood to road U/c.12067.	1 mile	4 feet	-	Overgrown and obstructed.

*Annotation c.26*

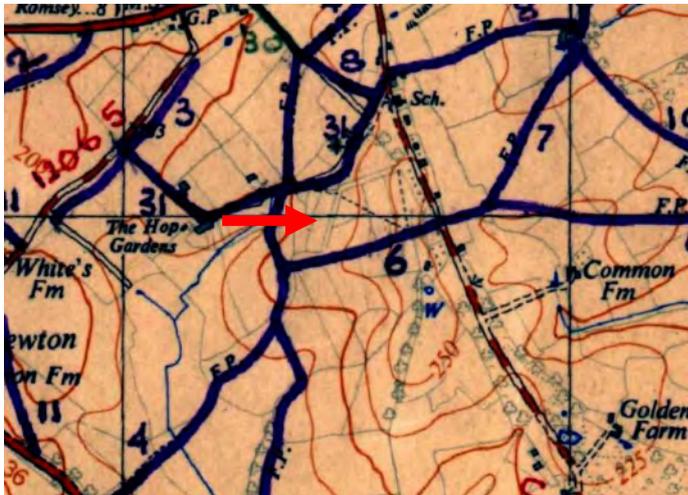
Draft Definitive Statement (Whiteparish)

Parish	Path No.	Description of path with terminal points	Approximate length	Width	Limitation or conditions affecting public rights	Remarks
Whiteparish.	27.	F.P. From road U/c.12067, opposite Covesfield Brick Kiln, leading south-east past Woodfall Farm to the Hampshire County boundary.	700 yards 500	4 feet	-	
	28.	F.P. From road A.27 at Covesfield Gate leading north-east past Morris Holt Farm and continuing across road U/c.12070, past Ash Hill House and Harrens Copse to the Hampshire County boundary.	1 mile	4 feet	-	
	30.	F.P. - Pill Hill Lane. From the junction of paths Nos. 4 and 8 leading north-west across road A.27 by Young's Farm and continuing East Collis's Copse and Woodford's Piece to the Grimstead Parish boundary.	1 $\frac{1}{2}$ miles	12 feet	Subject to part ploughing.	Barbed wire obstructions and overgrown.
	31.	F.P. From Newton Lane, U/c.12065, leading south-east to the Hop Gardens and north-east past Sansome's Farm and the Methodist Chapel to Common Road, C.26, opposite the School.	$\frac{1}{2}$ mile	-	-	

Draft Definitive Statement (Whiteparish)



Objections Map (part of Path no.6 deleted at its eastern end, as shown hatched)



Salisbury and Wilton Rural District Council Area Definitive Map of Public Rights of Way (1953)

Parish	Path No.	Description of Path	Approximate Length	Width	Limitation or conditions affecting public rights
Whiteparish.	5.	F.P. From path No. 4 leading south-east and south to Chadwell Farm then south-east and south-west on the eastern side of the farm to the Southampton - Bath Trunk Road, A.36, then, leaving the road 130 yards to the east, continuing south, south-east and south across Holmere Common to Landford path No. 20, west of Barlildoms Lodge.	1150 yards	4 feet	Part subject to ploughing.
	6.	F.P. From path No. 4, about 100 yards north of its junction with path No. 5, leading east-north-east across the Common road, C.26, east to the south-west corner of Bushy Copse and north-east to the Romsey road, A.27, at Covesfield Green.	1 mile	4 feet	
	7.	F.P. From path No. 6 leading north-east through Blaxwell Farm to the Romsey road, A.27, at the Nursery.	½ mile	4 feet	
	8.	F.P. From path No. 4 leading south-east and north-east across road C.26 on the north side of School House, then east to its junction with path No. 7 at Blaxwell Farm.	780 yards	4 feet	Part subject to ploughing.
	10.	F.P. From the Romsey road, A.27, at Little Suttons, leading south-east to path No. 7 at Blaxwell Farm and, leaving path No. 7 about 100 yards to the south, continuing south-east along the south-west side of Bushy Copse and through Hayter's Wood to road U/c.12007.	1 mile	4 feet	

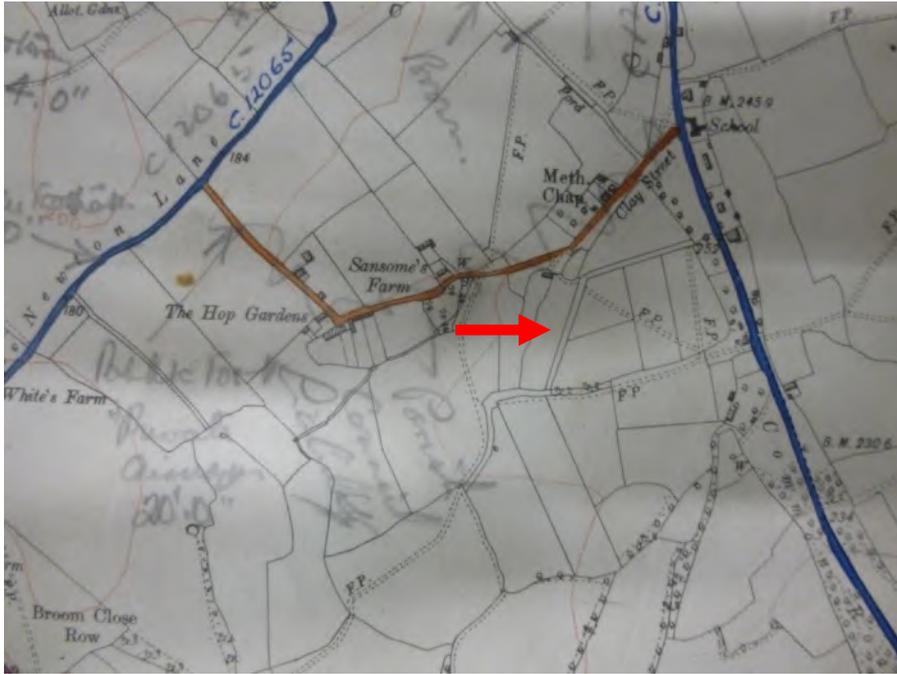
Definitive Statement (Whiteparish)

Parish	Path No.	Description of Path	Approximate Length	Width	Limitation or conditions affecting public rights
Whiteparish.	28.	F.P. From the Romsay road, A.27, at Cowesfield Gate, leading north-east past Morris Holt Farm and continuing east across road U/c.12070, past Ash Hill House and Warren's Copse to the Hampshire County boundary.	1 mile	4 feet	
	30.	B.R. - Pill Hill Lane. From the junction of paths Nos. 4 and 8 leading north-west across the Romsay road, A.27, by Young's Farm, and continuing north-west past Collin's Copse and Woodford's Piece to the Grimstead Parish boundary.	1½ miles	12 feet	Part subject to ploughing.
	31.	F.P. From Newton Lane, U/c.12065, leading south-east to the Hop Gardens and north-east past Sansome's Farm and the Methodist Chapel to the Common Road, C.26, opposite the School.	½ mile		
	32.	F.P. From path No. 20 at the northern end of Philip's Hat Copse, leading west to the West Dean Parish boundary at Ashmore Lane, U/c.12025.	¾ mile		
	33.	C.R.B. - Alderstone Lane. From Ashmore Lane, U/c.12025, opposite Ashmore Pond, leading north-west past Alderstone Farm to the southern end of path No. 19.	1000 yards		

### Definitive Statement (Whiteparish)

Document	Highways Takeover Map
Date	1929
Relevant Documents	Highways Takeover details drawn onto the Ordnance Survey 6 inches to 1 mile map
Size / Scale	6 inches to 1 mile
Evidential Weighting	B
Significance	<p>Following the Local Government Act of 1929, responsibility for all rural roads was transferred from the Rural District Councils to the County Council, as the new Highway Authority, on 1<sup>st</sup> April 1930. Section 29 (1) of the Local Government Act 1929 states:</p> <p><i>“The Council of every county shall be the highway authority as respects every road in the county which at the appointed day is a main road or which would, apart from this section, at any time thereafter have become a main road, and every such road and every other road as respects which a County Council became by virtue of this Part of the Act the highway authority, shall be termed a county road, and all enactments relating to main roads shall as from the appointed day have effect as if for references therein to main roads there were substituted references to county roads”.</i></p> <p>The Act sought to effect changes to deal with the impact of motor vehicles on road maintenance demands on local authorities. In referring to all roads transferred being subject to the same functions which the County Councils had previously exercised over main roads, it does not suggest that it was intended that footpaths and bridleways should be included in the term “roads”.</p>

	<p>Despite the legislation to transfer the maintenance responsibility for highways to County Councils, there was no statutory requirement to produce a handover map and no government circulars were produced to recommend the preparation of such a map. On 31<sup>st</sup> May 1929, the County Council’s Roads and Bridges Committee considered a <i>“report by the County Surveyor that it would be necessary to obtain maps from the Rural District Councils showing the whole of the roads in their districts which are repairable by the highway authority.”</i> A handover map was produced for the county of Wiltshire. The detail was drawn onto the 6 inch to 1 mile Ordnance Survey map. The Rural District Surveyor coloured those highways which they regarded as falling within the County Council’s responsibility for maintenance on takeover, i.e. those routes over which the Surveyor had a record or knowledge of public maintenance – those coloured blue indicated repairable by the inhabitants at large, coloured brown indicated not so repairable and not coloured indicated that no maintenance responsibility passed to the County Council on takeover. The Rural District Councils retained their responsibilities concerning public rights of way.</p> <p>During the passage of the Act through Parliament, the Ministry of Health prepared a memorandum on the Local Government Bill 1929 which states: <i>“Clause 29 provided that County Councils shall have in relation to all roads transferred to them the same functions that they now have with respect to main roads. Some of the roads transferred to the County Council will be of comparatively small importance and could not be called main roads as the term is ordinarily understood. In order to preserve uniformity and avoid an inappropriate nomenclature, the clause accordingly provides that all roads vested in the County Council (including the present main roads) shall as from the appointed day be known as ‘county roads’.”</i></p>
<b>Conclusion</b>	<p>The Drove has never been recognised by the Highway Authorities as a highway maintainable at the public expense and there is no record or knowledge of public maintenance. This supports the evidence of the Parish Council at the time the definitive map of public rights of way was produced where they confirmed that the Drove was not public and had not been used by the public.</p>



1929 Highways Takeover Map



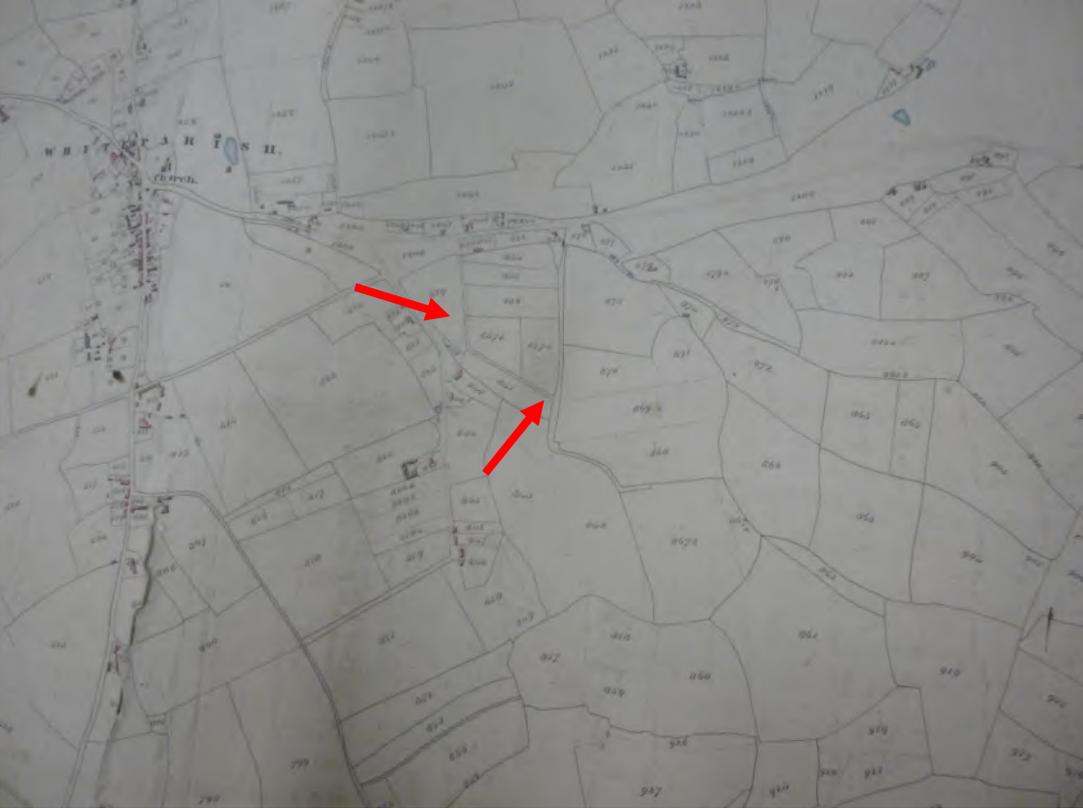
Modern highway record map

<b>Document</b>	<b>Whiteparish Tithe Award</b>
<b>Date</b>	1842
<b>Relevant Documents</b>	Tithe Apportionment Tithe Award Map
<b>Size / Scale</b>	Scale of 6 Chains to an Inch

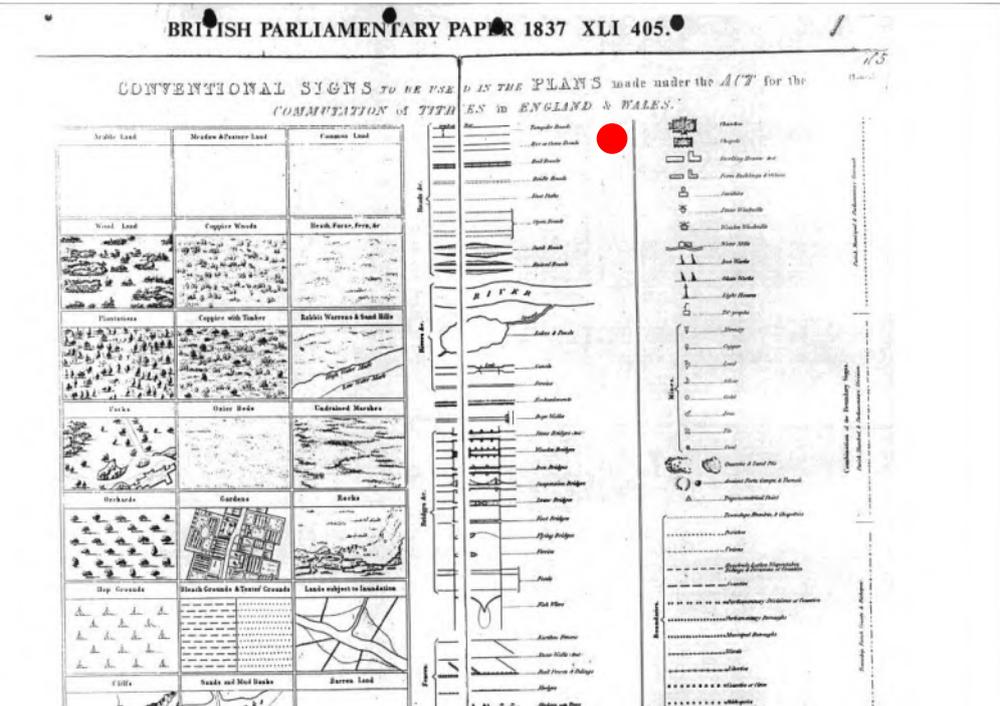
<b>Evidential Weighting</b>	B
<b>Significance</b>	<p>Parishioners once paid tithes to the Church and its clergy in the form of payment in kind, for example grain, comprising an agreed proportion of the annual profits from cultivation and farming. This gradually began to be replaced by monetary payments and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system.</p> <p>Tithe Awards are not primary sources of evidence as the apportionments and plans were produced as an official record of all titheable areas and it was not their main purpose to record highways. However, they can provide useful supporting evidence as the existence of a highway could affect the productivity of the land and also give important map orientation and plot boundary information, therefore the Commissioners had some interest in recording them.</p> <p>Additionally, the public provenance of the documents adds weight to the information recorded within them.</p> <p>The award is stamped as received by the Clerk of the Peace on May 26 1842 (1845 handwritten).</p>
<b>Conclusion</b>	<p>The claimed route is shown by double solid lines, as per the remainder of the road network, including Common Road. The tithe evidence does not record the status of the route and there is no key to the map, however, The British Parliamentary Paper XLI 405 – 1837, gives guidance on how landscape features were to be indicated on Tithe maps produced under the Commutation of Tithes Act 1836. This describes a route shown by double solid lines as a “Bye or Cross Roads”, (it should be noted that “Bridle Roads” and “Foot Paths” are shown by different conventions). There was no statutory requirement to follow these instructions and it is noted that bridleways and footpaths do not appear to be shown on the Whiteparish plan, (or at least not in the manner provided for in the Parliamentary Paper), however, the recording of the route as a “Bye or Cross Roads” may support public vehicular rights over the way.</p> <p>In this context “cross road” is not necessarily the same as our modern understanding of this term. It would appear that the term “cross road” was first mentioned in Ogilby’s Britannia of 1675, which used the classification to distinguish secondary roads from direct/primary roads, (i.e. those originating in London). In the preface of the Brittainia, Ogilby states “...having illustrated the principal roads in England and Wales by 85 several itineraries we have distinguished the same into direct and cross roads...and calling such cross as lead from some of the said lesser centres to another like capital town or place of eminency...” It would appear that subsequent map makers consistently used this term with the same meaning until about 1912 and dictionaries still contain a reference to “by-way” within the definition of “cross roads”.</p>

	<p>The claimed route is excluded from the surrounding apportionments, those adjacent to the route being - (Landowner and name; description of lands and premises and state of cultivation):</p> <p>829 = Bristow Robert Esquire - Part of Forks – arable  830 = Not found  831 = Not found  832 = Bishop Sarah – Orchard - Pasture  833 = Bishop Sarah – House and Garden  834 = Bristow Robert Esquire – Part of Forks - Arable  835 = Bristow Robert Esquire – Part of Forks - Arable  836 = Bristow Robert Esquire – Part of Forks - Arable  837a = Bristow Robert Esquire – Part of Forks – Arable  837b = Bristow Robert Esquire – Part of Forks – Arable  838 = Nelson Frances Elizabeth Dowager Countess - Crooks Orchard - Pasture  841 = Bristow Robert Esquire – Part of Forks - Arable  1208 = Nelson Frances Elizabeth Dowager Countess – Whiteparish Common - Pasture</p> <p>The surrounding lands are generally pasture and arable with the area of common land (1208) between the claimed route and Common Road.</p> <p>Tithe award documents are not category A evidence and it was not the main purpose of the award to record highways, although the Commissioners did have some interest in recording them. It is possible that The Drove was recorded where the presence of a private route to access surrounding land or property could affect the productivity of the land, or to add plot boundary/map orientation information. The Drove is shown linking to a route which accords with what is now Footpath no.6 Whiteparish, leading east-west at the southern end, however, Footpath no.6 is shown in the same manner as The Drove, (it is now recorded only as a footpath and Officers are not aware of any other evidence to support additional public rights over path no.6), and it has no connection to another public highway at its western end. The Drove connects only back to Common Road using the eastern end of Footpath no.6 and there is no through route shown linking to another highway at the western end of Path no.6, it appears to access only the fields. Additionally, the claimed route is shown separated from Whiteparish Common, plot no.1208, by a solid line and the strip of common land separates the claimed route from Common Road, so in effect the claimed route had no connection with Common Road for the general public, (public rights over common land, previously only open to those having recorded rights of common, have only been in place since the Countryside and Rights of Way Act 2000, which recorded common land as Open Access Land, including a right on foot for the public). The route shown in this manner is repeated in the Ordnance Survey mapping.</p>
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The Tithe Award documents, being only category B evidence, are not sufficient to suggest public rights when viewed individually and should be considered carefully alongside other documentary evidence.



Whiteparish Tithe Award 1842



British Parliamentary Paper XLI 405 – 1837

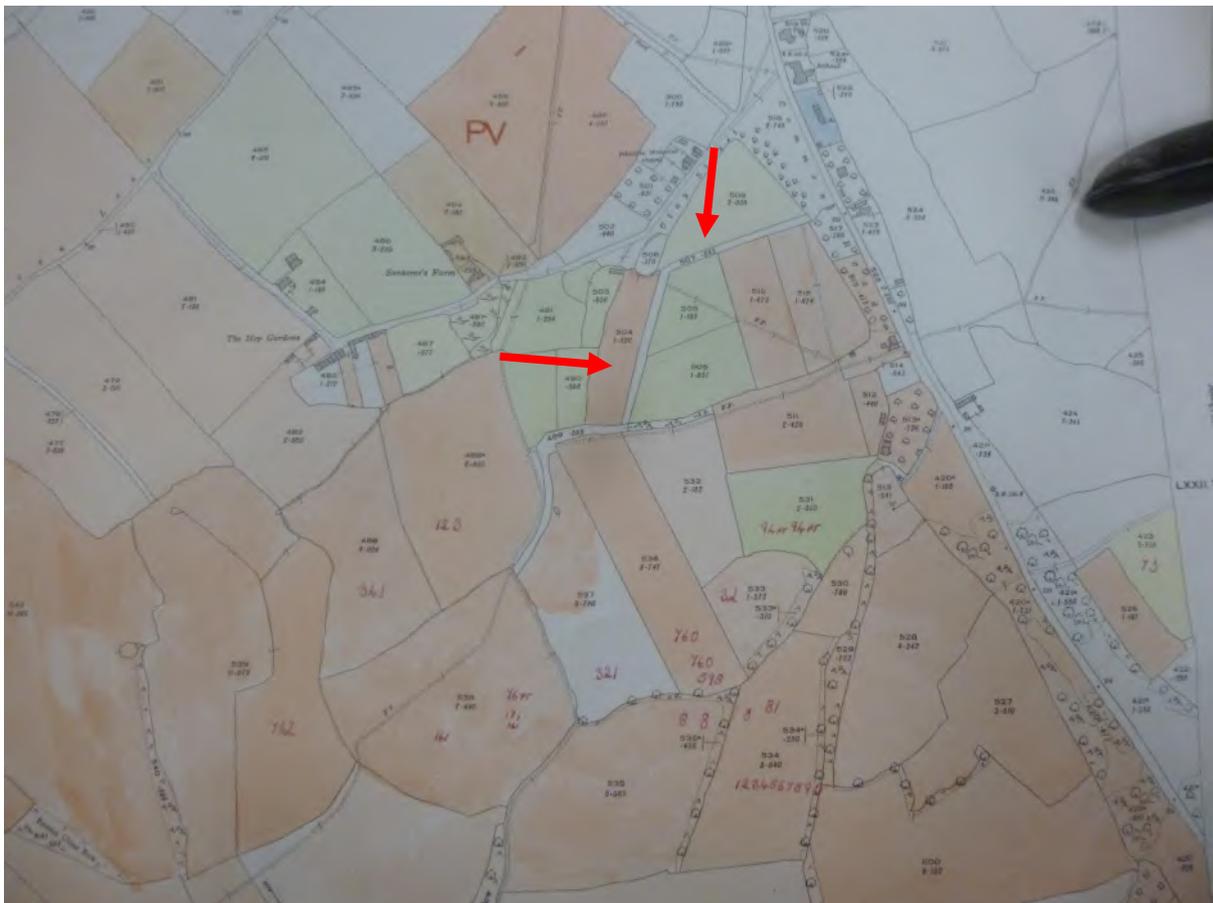
<b>Document</b>	<b>Finance Act (L8/1/182 &amp; L8/10/72-73)</b>
<b>Date</b>	1910
<b>Relevant Documents</b>	Finance Act Plan (OS Sheet 72/15) Finance Act Valuation Book
<b>Size / Scale</b>	Plan – 1:2,500
<b>Evidential Weighting</b>	B
<b>Significance</b>	<p>In the early 20<sup>th</sup> Century, the ownership of the majority of the land in Britain by a privileged few was seen as a major cause of social injustice and poverty. By the time of the Finance Act of 1910, the Government’s main concern was that private landowners should pay part of the increase in land values which was attributable, not to their own efforts to improve the land, but to expenditure by the state, e.g. the provision of improved roads, drainage and other public services.</p> <p>The 1910 Finance Act required the Valuation Department of the Inland Revenue to carry out a survey of all hereditaments (land holdings) for the purposes of levying a tax upon the incremental value of a site. This included all property and land in the United Kingdom, (whether or not it was considered to be exempt). It has been referred to as the “Second Domesday” as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence.</p> <p>Public Rights of way over land could be excluded from the land as a tax benefit. Hereditaments are illustrated on OS base maps (1:2,500), coloured and numbered, being referred to in the books of reference which accompany the maps. As rights of way could decrease the value of the land, we would expect them to be shown excluded from the hereditaments in the case of public roads, or as a deduction made for rights of way within the valuation book in the case of a lesser public right of way, e.g. footpath. The Planning Inspectorate Consistency Guidelines suggest that the exclusion of public roads may relate to Section 35 (1) of the Finance Act 1910, which states: <i>“No duty under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of the rating authority.”</i> and also Section 25 (3) which states that: <i>“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to...any public rights of way.”</i></p> <p>The hereditament information is recorded on the Ordnance Survey Second Edition County Series map dated 1901 and drawn at a scale of 25 inches to 1 mile.</p>
<b>Conclusion</b>	The copy of the Finance Act map for Sheet no.72/15 held at the Wiltshire and Swindon History Centre, has few hereditament numbers attached and therefore it is not possible to refer back to the valuation book for this area. The route does appear uncoloured, but this is not the original version of the Finance Act map sheet where the plots are coloured on the 1926 Ordnance Survey base map, drawn at a scale of 1:2,500, which post-dates the Inland Revenue survey of 1910-1915.

There is a note written in pencil in the top left corner of the map which states:

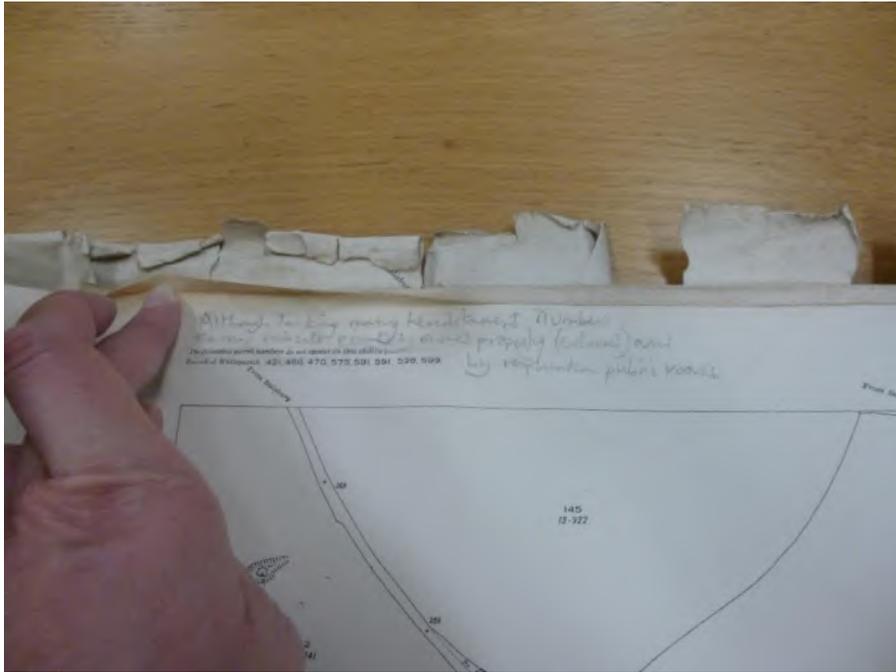
*“Although lacking many hereditament numbers the map indicates privately owned property (coloured) and by reputation public roads.”*

Officers consider that there is little information which can be gained from this map, its provenance is not clear. The Drove is shown excluded from the colouring of private property, however, the land is now registered in the ownership of Mrs S Cook and Zelda Investments Ltd, there is only a small section at the Common Road end which is unregistered, but is in the ownership of Mr Urquhart. The exclusion of the Drove is not conclusive proof that the route is public and in this case the Finance Act evidence should be considered with caution and alongside other historical evidence.

Officers have also searched for a version of the Finance Act map sheet at the National Records Office, however, there does not appear to be a map sheet for this location, sheet no.72/15.

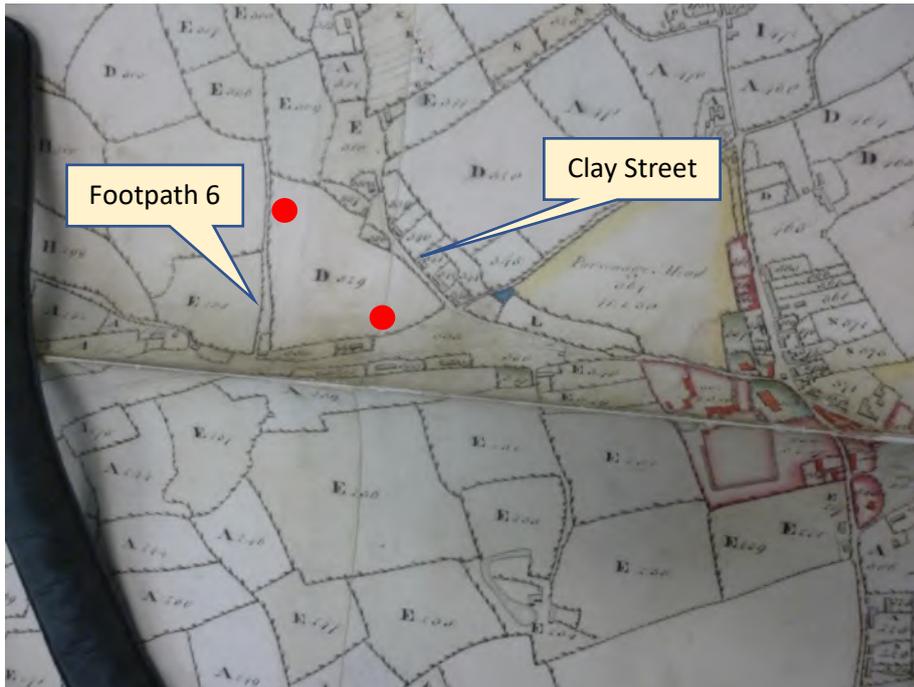


Finance Act Map 1910

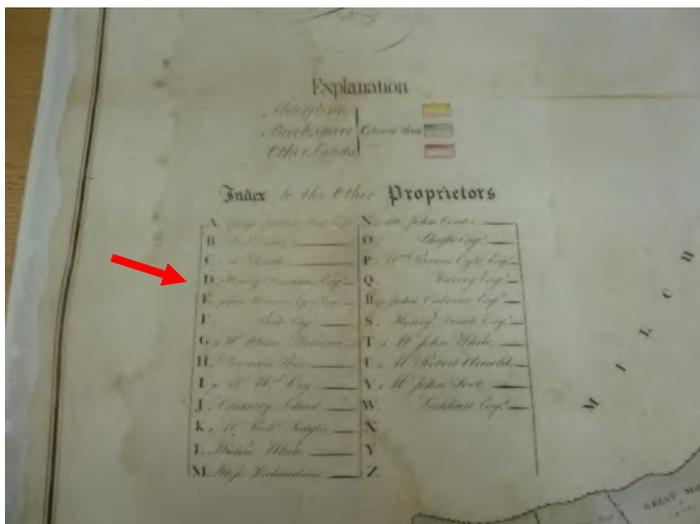


Finance Act Map 1910

<b>Document</b>	<b>A Plan of Whiteparish in the Couny (sic) of Wilts L Wilkins. Devizes (2562/1L)</b>
<b>Date</b>	1801
<b>Relevant Documents</b>	Map of the parish of Whiteparish showing lands of Alderstone and Brocksmoor Estates and Other Lands with an "Index to the other proprietors".
<b>Size / Scale</b>	4 chains to 1 inch
<b>Evidential Weighting</b>	D
<b>Significance</b>	Estate maps were produced for various reasons and the finished maps varied depending upon the specific instructions which had been issued to the Surveyor by the landowner, e.g. some were working documents to be used by the Estate Manager and others where a means of recording the entire estate in pictorial form. For this reason estate maps are not a primary source of evidence and are unlikely to give reliable highways information as a single document, i.e. they must be considered alongside other evidence. Some useful information can be found on these maps as the location of highways could help with map orientation and give plot boundary information. This map appears to show the lands of the Alderstone and Brockmoor Estates in the parish of Whiteparish.
<b>Conclusion</b>	The claimed route would cross land marked as D 329, land to Henry Dawkins Esq, however, the route is not shown on this plan located between Clay Street and Footpath 6, which are both recorded, (locations by reference to tithe award map).



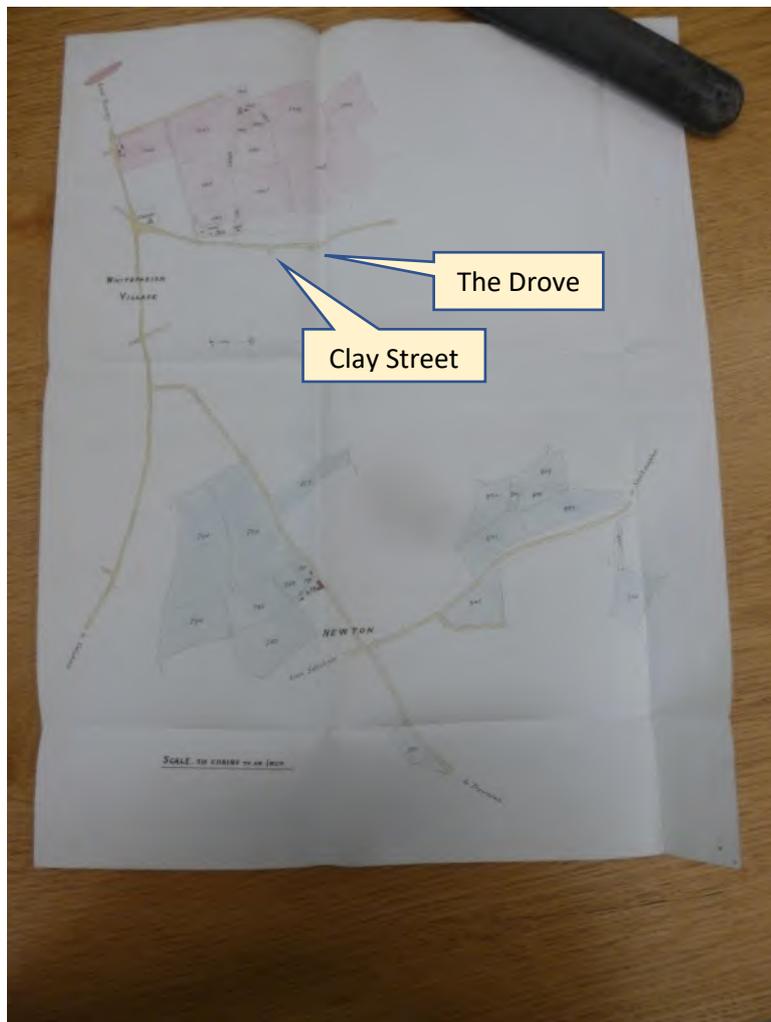
1801 - A Plan of Whiteparish in the County (sic) of Wilts L Wilkins. Devizes



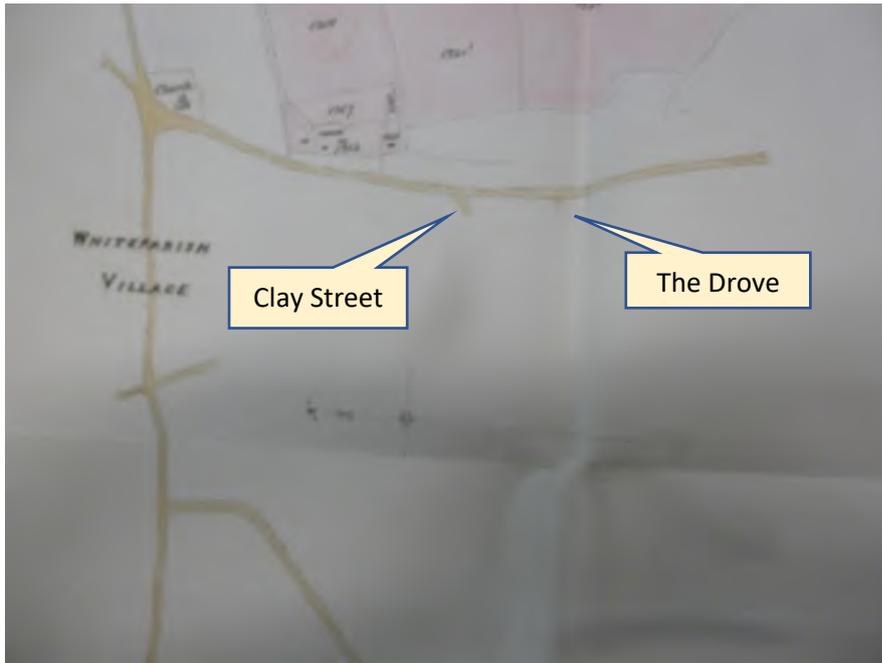
1801 - A Plan of Whiteparish in the County (sic) of Wilts L Wilkins. Devizes (Explanation)

<b>Document</b>	<b>Deeds of Newton Farm (776/522)</b>
<b>Date</b>	1797 - 1853
<b>Relevant Documents</b>	Plan of Newton Farm 1853
<b>Size / Scale</b>	Six Chains to an Inch
<b>Evidential Weighting</b>	D
<b>Significance</b>	Legal Order of Exchange of land authorised by the Inclosure Commissioners, between Horatio Earl Nelson and Frances Elizabeth Countess Dowager Nelson, as described in the schedule and shown on

	the plan accompanying the order, (lands coloured blue to be given in exchange and taken by Frances Elizabeth Countess Dowager Nelson and lands coloured pink to be given in exchange and taken by Horatio Earl Nelson).
<b>Conclusion</b>	<p>Whilst the land to the west of Common Road is not affected by the Order, Common Road is shown for sufficient length for the eastern ends of Clay Street and the claimed route "The Drove", (location by reference to tithe award map), to be shown at their junction with Common Road, coloured sienna as is the remainder of the public highway network (Path no.6, located further south, is not recorded).</p> <p>Whilst this map is suggestive of the claimed route having public rights, this is the only estate map which records The Drove and is not consistent with the sale particulars map produced in 1856 and 1867, which record only Clay Street.</p>



1853 - Plan of Newton Farm

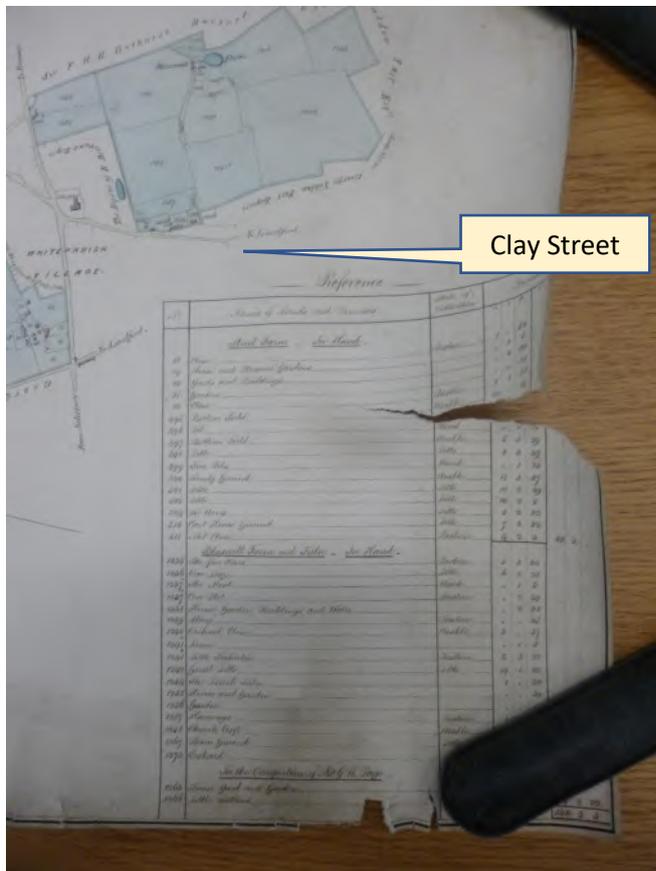


1853 - Plan of Newton Farm

<b>Document</b>	<b>Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDonald Esq (727/5/3)</b>
<b>Date</b>	1854
<b>Relevant Documents</b>	Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDonald Esq with Reference to Names of Lands and Premises and State of Cultivation (Street Farm; Blaxwell Farm and Kiln and In the Occupation of Mr G W Page)
<b>Size / Scale</b>	Six Chains to an Inch
<b>Evidential Weighting</b>	D
<b>Significance</b>	As per Estate Maps above.
<b>Conclusion</b>	The eastern end of Clay Street (location by reference to tithe award map), is shown at its junction with Common Road, however, the claimed route, which would be located further south of Clay Street, to the west of Common Road, is not recorded and no conclusions can be drawn from this plan.



1854 - Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDONALD Esq



1854 - Plan of Estate at Whiteparish Wilts the Property of Fitzherbert MacDONALD Esq

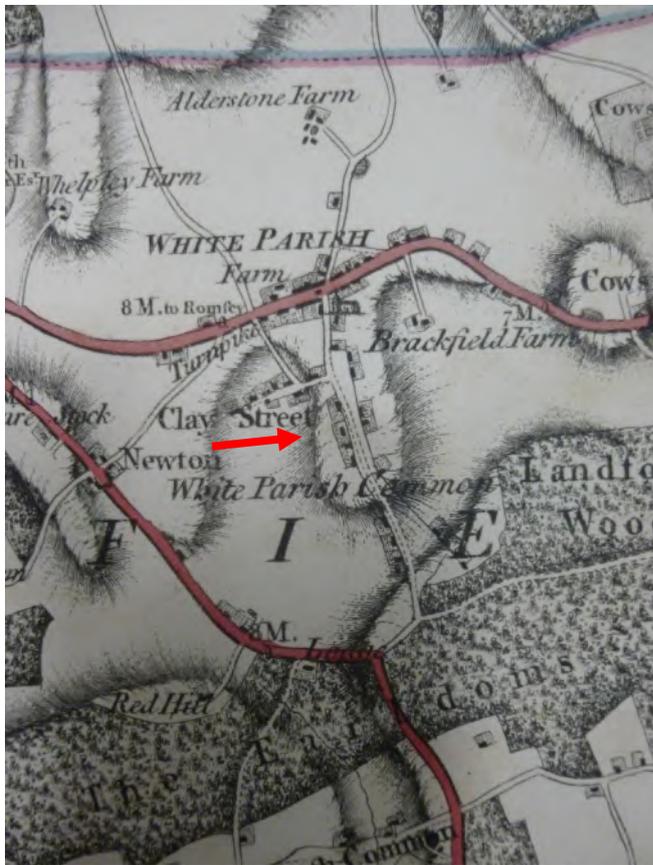
<b>Document</b>	<b>Andrews' and Dury's Map of Wiltshire (1810 – A1/524/2MS)</b>
<b>Date</b>	1773 1810
<b>Relevant Documents</b>	1773 Index Map 1773 Map Plate no.3 of 16 plates

	1810 Index Map 1810 Map Plate no.18 of 18 plates
<b>Size / Scale</b>	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
<b>Evidential Weighting</b>	E
<b>Significance</b>	<p>Commercial maps were produced for profit and intended for sale to the whole of the travelling public. From the 17<sup>th</sup> Century Turnpike Trusts were set up having powers to collect road tolls for maintaining the principal roads and as travel became more popular and traffic on the main roads increased as a result of agricultural and industrial progress, there was a demand for itineraries, road books and road maps.</p> <p>There are four map makers whose maps are based on original survey: Andrews' and Dury's; Greenwoods; Carys, to a certain extent and the Ordnance Survey. Other small scale commercial maps are derivatives of these original surveys.</p> <p>Andrews' and Dury's Map of Wiltshire dated 1773 is a commercial map of the County based on original survey, drawn at a scale of 2 inches to 1 mile. The map is dedicated <i>"To Noblemen Gentlemen Clergy shareholders of the County of Wilts This MAP is inscribed by their most Obedient and devoted servants JOHN ANDREWS ANDREW DURY"</i>.</p> <p>The 1810 second edition map is a corrected and updated edition of the 1773 map, entitled, <i>"A Topographical Map of the County of Wilts Describing the Seats of the Nobility and Gentry Turnpike &amp; Cross Roads, Canals &amp; c. Surveyed originally in 1773 by John Andrews and Andrew Dury Drawn from a Scale of two Inches to one Statute Mile. Second Edition, Revised and corrected from the extensive information liberally communicated by the Right Honourable The Earl of Radnor and Sir Richard Hoare Bart to Whom this Improved Edition is most respectfully inscribed By William Eaden Charing Cross Jan.y 1<sup>st</sup> 1810"</i>.</p> <p>The Wiltshire Map has no key, however, a key is attached to Andrews' and Dury's Hertfordshire map. The Wiltshire Archaeological and Natural History Society have produced a reduced facsimile of the 1773 map, dated 1952, in which Elizabeth Crittall writes in the introduction: <i>"The conventions used on the map to indicate natural and artificial features are those generally employed at the time...The map has no key, but it appears that, as in the case of Andrews' and Dury's map of Hertfordshire for which there is a key, a broken line indicates an unhedged roadside..."</i> There is no reason to consider that the conventions accepted in the Hertfordshire map, could not be applied to the Wiltshire map.</p>
<b>Conclusion</b>	<p>Whilst Clay Street, north of the claimed route is shown on the maps, The Drove itself is not recorded.</p> <p>Being commercial maps and with the constraints of small scale, it is unlikely that these maps would have recorded routes which were not</p>

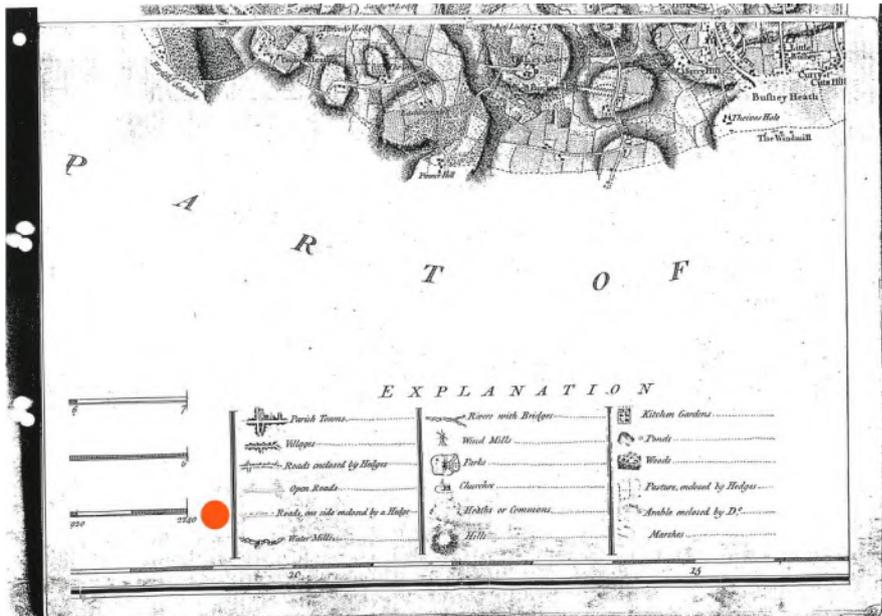




Andrews' and Dury's Map of Wiltshire 1810 – Index Map



Andrews' and Dury's Map of Wiltshire 1810 – Plate 18



Andrews' and Dury's – Hertfordshire Map Key

<b>Document</b>	<b>Greenwoods Map of Wiltshire (1820 – 1390/142, 1829 – Map Folder 3.3)</b>
<b>Date</b>	1820 1829
<b>Relevant Documents</b>	1820 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood 1829 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood Corrected to the present period and Published 4 July 1829
<b>Size / Scale</b>	1820 – 1 inch to 1 mile 1829 – 1 inch to 3 miles
<b>Evidential Weighting</b>	E
<b>Significance</b>	Greenwood re-surveyed and produced a set of updated County Maps between 1817 and 1839. Greenwood appears to have carried out actual survey supported by existing secondary sources such as inclosure and estate maps; printed guide books; official sources and local knowledge collected by Surveyors. Greenwoods first edition “Map of the County of Wilts from Actual Survey”, dated 1820 is a commercial map produced for the travelling nobility who contributed to its production. The inscription reads: <i>“To the Nobility, Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors”</i> . Greenwood produced a revised and corrected map of Wiltshire in 1829. Roads are shown either as <i>“Turnpike Roads”</i> or <i>“Cross Roads”</i> , which encompassed all other roads. Between 1818 and 1831 Greenwood and

	<p>his associates published 35 county maps. Greenwood employed several surveyors and draughtsmen, but we do not know their level of competence or their instructions, the methods used or whether there was any systematic checking for errors and Greenwood's work has been criticised. Although there were many sheets of the OS one inch map available for consultation, Greenwood appears to have used these sparingly, (<i>Yolande Hodson – Rights of Way Law Review Training “Nineteenth Century and Early Twentieth-Century Non-OS Maps An introduction to the mapping of Cary, Greenwood, Bryant, Cruchley, Gall and Inglis, Bartholomew and Michelin”</i>).</p>
<p><b>Conclusion</b></p>	<p>Whilst Clay Street (north of the Drove) is recorded, excluding that section of Clay Street leading north-west to meet Newton Lane, The Drove itself is not recorded on both maps.</p> <p>Being commercial maps and with the constraints of small scale, it is unlikely that these maps would have recorded routes which were not open to the public, i.e. accommodation routes, or routes which were not open to all the traffic of the day, i.e. footpaths and bridleways, which would cause trespass against the landowners from whom the map makers sought subscriptions and difficulty for the travelling public who purchased the maps, neither of which was in the interests of the map makers. If the route was not open to the public, i.e. serving only the land and property around it, or it was not open to all public traffic, we would not expect it to be shown on these maps.</p>

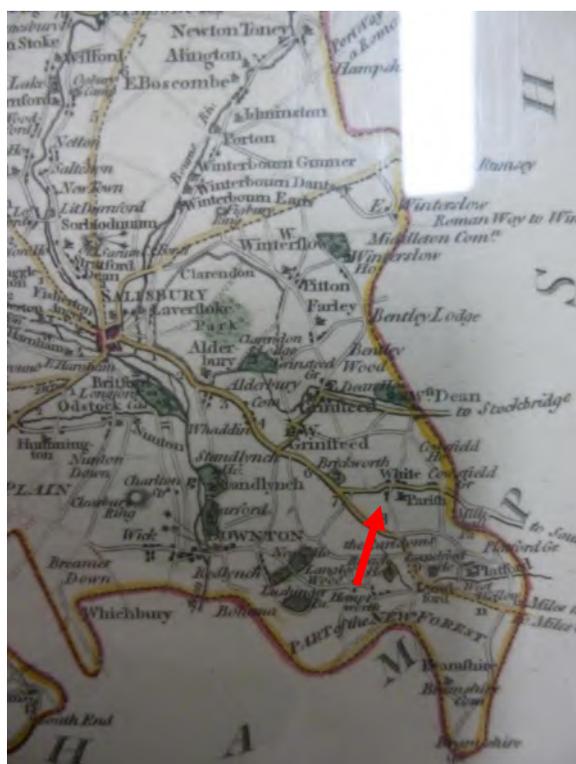


1820 – Map of the County of Wilts C and I Greenwood





	<p>Cary's interest in the road network stems probably from his recognition of the growing importance to commerce of the letter-post and by the introduction of the mail coach in 1784. In the advertisement of the 2 miles to 1 inch map, produced from 1820, Cary stated: <i>"The whole of the Turnpike Roads will be marked down, as well as the Parish Roads; distinguishing the Carriage Roads from the Bye Roads, which has never yet been attempted in any Map of England, and which the Publisher flatters himself will be found of considerable importance to the Traveller."</i> (Yolande Hodson – <i>Rights of Way Law Review Training "Nineteenth Century and Early Twentieth-Century Non-OS Maps An introduction to the mapping of Cary, Greenwood, Bryant, Cruchley, Gall and Inglis, Bartholomew and Michelin"</i>).</p>
<p><b>Conclusion</b></p>	<p>The claimed route is not recorded on the 1787 and 1801 Maps of Wiltshire, drawn at a smaller scale, neither is Clay Street recorded as it is on Andrews and Dury's and Greenwoods maps. This may be due to the constraints of small scale mapping and additionally the recording of routes not available to the public at large, i.e. accommodation routes serving only land or property, would cause difficulty for the travelling public who purchased these maps and landowners, which was not in the interests of the mapmaker.</p> <p>The larger scale sheets produced in 1823 and 1832, part of the Improved Map of England and Wales, do not extend far enough south to include the parish of Whiteparish and no conclusions can be drawn from these maps.</p>

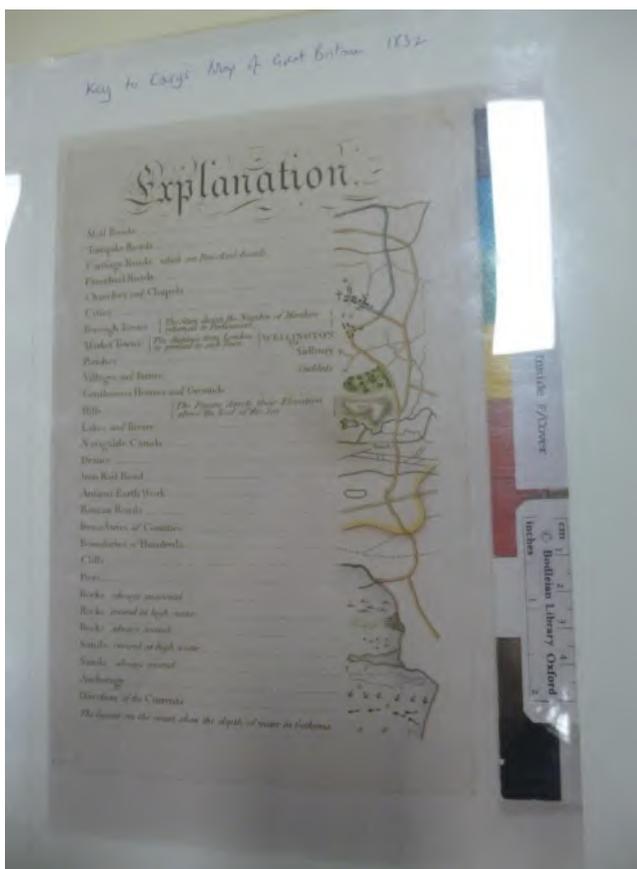


1787 – Cary's map of Wiltshire





1832 – Cary's Improved Map of England and Wales - Sheet 18

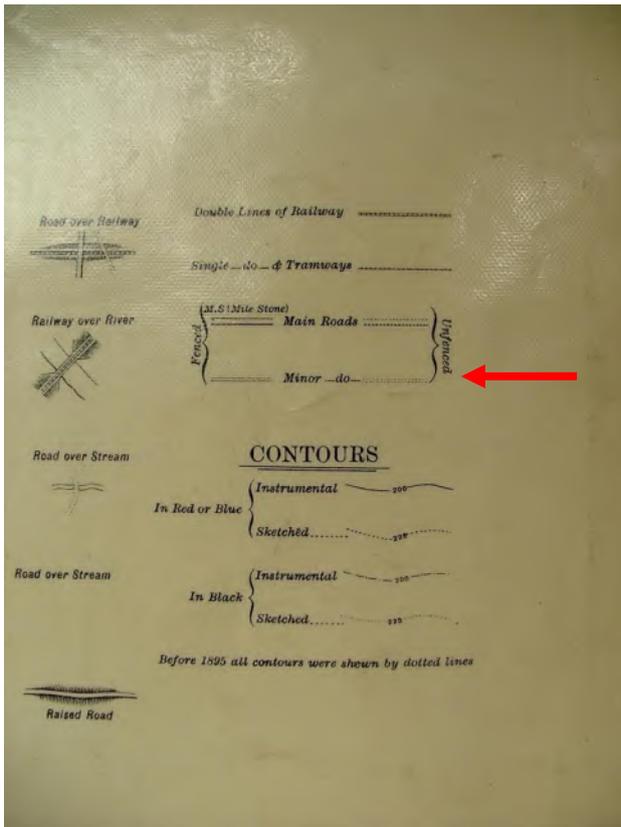


1832 – Cary's Improved Map of England and Wales (Explanation)

<b>Document</b>	<b>Ordnance Survey First Edition Map</b>
<b>Date</b>	Surveyed 1872; Contoured 1872; Engraved 1872; Published 1873 Wiltshire Portion: Surveyed 1879; Contoured 1882; Engraved 1885; Published 1885
<b>Relevant Documents</b>	Map Sheet 72
<b>Size / Scale</b>	Scale: 6 inches to 1 mile
<b>Evidential Weighting</b>	E
<b>Significance</b>	<p>The Ordnance Survey was founded in 1791, due to demand from the military for accurate maps of southern England in preparation for the Napoleonic Wars. In time the Ordnance Survey developed a range of maps, varying in scale and level of detail to meet changing needs for accurate and updated maps of the country.</p> <p>The maps are based on original survey, with revisions, and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added.</p>
<b>Conclusion</b>	<p>The route appears as solid double lines, suggesting an enclosed route. There appears to be no connection with Common Road recorded, the claimed route has a solid boundary at its eastern end and no link to Common Road, as per the Tithe Award map. Only the solid boundary line of the property to the south-east of the claimed route is shown between Common Road and the claimed route.</p> <p>The claimed route does appear to be open to the land at the south of the claimed route, which is now Footpath no.6 Whiteparish. There are two footpaths shown linking to the claimed route from what is now Footpath no.6, one leading north to the claimed route and another spur leading north-west to the claimed route, however, in later correspondence from the Parish Council at the time the Definitive Map and Statement was produced, the Parish Council confirm that the Drove has never been a public right of way and therefore these two paths, which were included within the parish survey as path no's 9 and 29, are seldom used and therefore should be removed from the Parish Claim.</p> <p>The map key includes the claimed route as an "Unfenced – Minor Road" and there is no rights of way disclaimer attached to the map, however, Ordnance Survey maps are topographical in nature, whilst they record features visible to the surveyor at the time of survey, they are not necessarily an indication of whether or not a route carries public rights and the maps should be viewed carefully alongside other evidence. An accommodation road serving land or property, may appear on these maps in the same manner as a public road.</p>



Ordnance Survey First Edition Map – 1885, Sheet 72 (6 inches to 1 mile)



Ordnance Survey First Edition Map Key – 1885 (6 inches to 1 mile)

<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Surveyed 1876
<b>Relevant Documents</b>	Map Sheet 72/15
<b>Size / Scale</b>	25 inches to 1 mile
<b>Evidential Weighting</b>	E
<b>Significance</b>	<p>As above. The 25 inch County Series maps were completed to 1890, with a first revision between 1891-1914, second revision commenced 1904 and third revisions were never completed nationally due to wartime conditions and a period of austerity and entrenchment which followed in the 1920's. The Ordnance Survey was unable to maintain its planned revision programme.</p> <p>There is no public rights of way disclaimer included on the map.</p>
<b>Conclusion</b>	<p>Most of the route is shown by double solid lines suggesting an enclosed route. The wider enclosed section does not link directly to the main road (Common Road) and there is a short section of footpath, having a solid boundary to the north and an unenclosed boundary to the south, between Common Road and the east end of the enclosed route, junctioning at its southern side. However, there is a solid boundary at the east end of the wide enclosed section of the claimed route, at its junction with the footpath on its south side and the footpath section appears to be more associated with the house and gardens (plot no.302), located to the south of the claimed route off Common Road.</p> <p>There is also a solid boundary between the south of the claimed route and what is now Footpath no.6 Whiteparish.</p> <p>The route is marked 283, recorded as "<i>Road</i>" in the Ordnance Survey Book of Reference entry, although it is noted that this "<i>Road</i>" has no junction with Common Road and the section of land adjoining the eastern end of 283, i.e. between 283 and Common Road is recorded as 302 - "<i>Houses, garden, &amp;c.</i>" and 252 - "<i>House and garden</i>".</p> <p>It is noted that the claimed route is uncoloured as other public routes in the village such as Common Road are, including Clay Street to the north of the claimed route.</p> <p>The two footpath links leading north and north-west from Footpath no.6 to the claimed route, (the redundant Footpaths 9 and 29 as per the Parish Survey), are recorded by double broken lines as unenclosed cross-field routes. The Parish Council later confirm that these paths are seldom used and should not be included within the definitive map and statement.</p> <p>Ordnance Survey maps are topographical in nature and whilst the claimed route is recorded as "<i>Road</i>", an accommodation road serving only land and property, may appear to the surveyor as a feature in the</p>

same manner as a public road, although in this case the public roads, i.e. Common Road and Clay Street appear shaded sienna, the claimed route is not included within this shading.



Ordnance Survey County Series Map 1:2,500 Sheet 72/15 – 1876

PARISH OF WHITEPARISH,

IN THE

COUNTY OF WILTS—(SOUTHERN DIVISION).

HUNDRED OF FRUSTFIELD.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
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248	7.752	Arable.			
249	.693	Road.			
250	1.989	Houses and garden.			
251	1.504	Pasture.			
252	.267	House and garden.			
253	1.446	Pasture, &c.			
254	8.597	Pasture, &c.			
255	1.458	Road.			
256	7.131	Arable.			

278	1·204	Road.	329	1·847	Houses, gardens, &c.
279	1·959	Pasture, &c.	330	1·842	Pasture.
280	·896	Houses and gardens.	331	7·833	Road.
281	1·153	Pasture, &c.	332	1·443	Wood.
282	1·672	Arable, &c.	333	27·943	Arable, &c.
283	·543	Road.	334	2·438	Houses, garden, &c.
284	2·005	Pasture.	335	·624	Pasture.
285	·170	Garden.	336	3·550	Arable, &c.
286	·680	Pasture.	337	·323	Road.
287	·831	Houses, gardens, &c.	338	5·150	Arable.
288	1·785	Pasture.	339	1·210	Houses and gardens.
289	2·019	Pasture.	340	·974	Pasture.
290	·210	House, garden, &c.	341	2·809	Arable.
291	2·269	Pasture, &c.	342	11·282	Arable.
292	·207	Pond.	343	7·076	Pasture.
293	1·069	Church and grave- yard.	344	7·490	Arable, &c.
294	4·511	Pasture, &c.	345	4·903	Pasture, &c.
295	·401	Road.	346	10·271	Pasture, &c.
296	13·195	Arable, &c.	347	·825	Wood.
297	3·810	Houses, gardens, &c.	348	6·023	Arable, &c.
298	·051	Road.	349	3·015	Arable, &c.
299	·306	Pasture.	350	4·090	Arable, &c.
300	2·743	Pasture, &c.	351	1·127	Arable.
301	2·006	Houses, gardens, &c.	352	3·780	Pasture, &c.
302	·385	Houses, garden, &c.	353	2·620	Arable.
303	1·874	Pasture, &c.	354	·568	Road.
			355	1·080	Pasture.

Ordnance Survey County Series Map 1:2,500 – 1876 Book of Reference

<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Second Edition 1901 Surveyed 1874; Revised 1900; Zincographed and Published 1901
<b>Relevant Documents</b>	Map Sheet 72/15
<b>Size / Scale</b>	25 inches to 1 mile
<b>Evidential Weighting</b>	E
<b>Significance</b>	As above
<b>Conclusion</b>	<p>The route is shown as per the 1876 OS map, however, there is now no recorded junction of the claimed route and Common Road, only the solid boundary of the land parcel 517 is shown between the route and the common land area at the west of Common Road. Again, there is a solid boundary at the southern end of the route where it junctions with what is now Footpath no.6 Whiteparish.</p> <p>The two footpath links leading north and north-west from Footpath no.6 to the claimed route (the redundant Footpaths 9 and 29 as per the Parish Survey), are recorded by double broken lines as unenclosed cross-field routes. The Parish Council later confirm that these paths are seldom used and should not be included within the definitive map and statement.</p> <p>The map attaches the disclaimer “N.B._The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.” Ordnance Survey maps should therefore be carefully considered alongside other evidence.</p>



Ordnance Survey County Series Map 1:2,500 Sheet 72/15 – 1901

<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Edition of 1926 Surveyed 1874; Revised 1924; Levelling Revised 1900; Printed and Published 1926
<b>Relevant Documents</b>	Map Sheet 72/15
<b>Size / Scale</b>	25 inches to 1 mile
<b>Evidential Weighting</b>	E
<b>Significance</b>	As above
<b>Conclusion</b>	<p>The route is shown as per the 1901 map above, with the solid boundary to the southern end of the route, on its eastern side, extending into the narrow strip of land leading east-west at the southern end of the route, (which is now divided but appears to remain in the same ownership where the east and west sections are braced and measured together).</p> <p>Again, there is no recorded link between the wide enclosed route and Common Road, over the common land to the west of Common Road. The two footpath links leading north and north-west from Footpath no.6 to the claimed route (the redundant Footpaths 9 and 29 as per the Parish Survey), are recorded by double broken lines as unenclosed cross-field routes. The Parish Council later confirm that these paths are seldom used and should not be included within the definitive map and statement.</p> <p>Attaches the disclaimer: <i>“N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of</i></p>

	way.” Ordnance Survey maps should therefore be carefully considered alongside other evidence.
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*Ordnance Survey County Series Map 1:2,500 Sheet 72/15 - 1926*

<b>Document</b>	<b>Wiltshire County Council, Clerk’s Office, Planning Appeal Land at rear of Common Road and Clay Street, Whiteparish – Residential Development and Construction of Vehicular Access (F2/1210/74)</b>
<b>Date</b>	1972
<b>Relevant Documents</b>	County Solicitor correspondence files
<b>Size / Scale</b>	Proposed Development Plan – 1:2,500
<b>Evidential Weighting</b>	E
<b>Significance</b>	The route is not directly affected by the development, but a plan of the proposed development is included and the correspondence sets out useful background regarding the formation of the village.
<b>Conclusion</b>	The route is shown on the proposed development plan, but is not recorded as a right of way and is not referred to within the correspondence. It is shown by double solid lines for the most part, although there is no connection to Common Road recorded, with solid boundaries/gates at both ends of the section shown by double solid lines. This map is based on Ordnance Survey and accords with the earlier Ordnance Survey mapping and should therefore be carefully considered alongside other evidence.



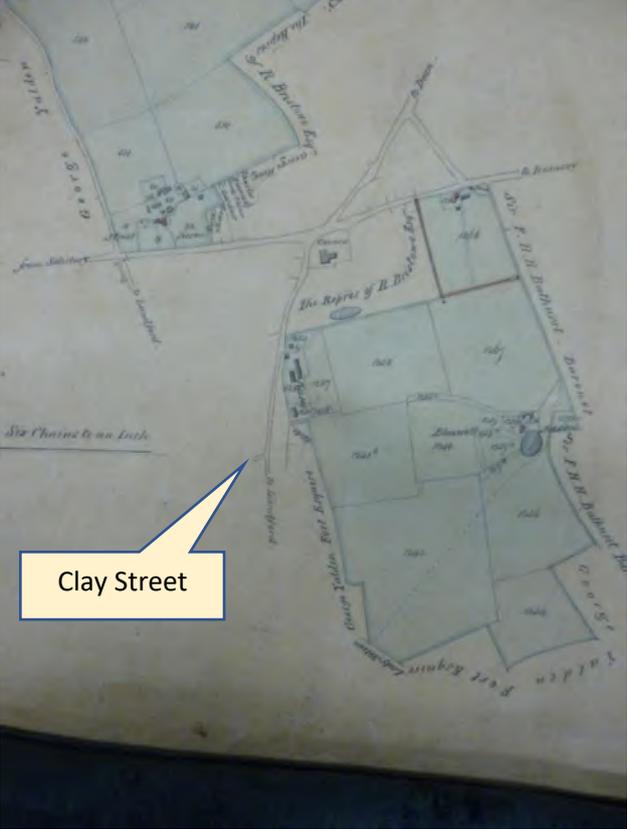
1972 - Wiltshire County Council, Clerk's Office, Planning Appeal, Land at rear of Common Road and Clay Street, Whiteparish – Proposed Development Plan

<b>Document</b>	<b>Sale Particulars (451/341)</b>
<b>Date</b>	Tuesday 18 <sup>th</sup> November 1856
<b>Relevant Documents</b>	Sketch of Street and Blaxwell Farms, Whiteparish, Wilts – draft and final Sale Particulars – draft and final
<b>Size / Scale</b>	Scale – Six Chains to an inch
<b>Evidential Weighting</b>	E
<b>Significance</b>	<i>“Messrs Ewer &amp; Sidford will shortly offer for sale by public Auction (unless in the interim sold by private contract) the following desirable Freehold Farms, Brick Kilns and Hereditaments situated at Whiteparish in the County of Wilts Whiteparish, Wilts. Particulars of Valuable and Compact Freehold Estates, with all Requisite Building: Cottage Residence, Garden &amp; Arable Land Which Ewer &amp; Sidford Will Sell by Auction at the White Hart Hotel, Salisbury On Tuesday, Nov. 18<sup>th</sup>, 1856, at Three O’Clock in the Afternoon (Subject to Such Conditions as Will be The Produced,) in six lots”</i>
<b>Conclusion</b>	Although the land to the west of Common Road is not included in the sale, Common Road is recorded on the sketch plans for part of its length and the eastern end of Clay Street is recorded at its junction with Common Road, (location by reference to the Tithe Award map).

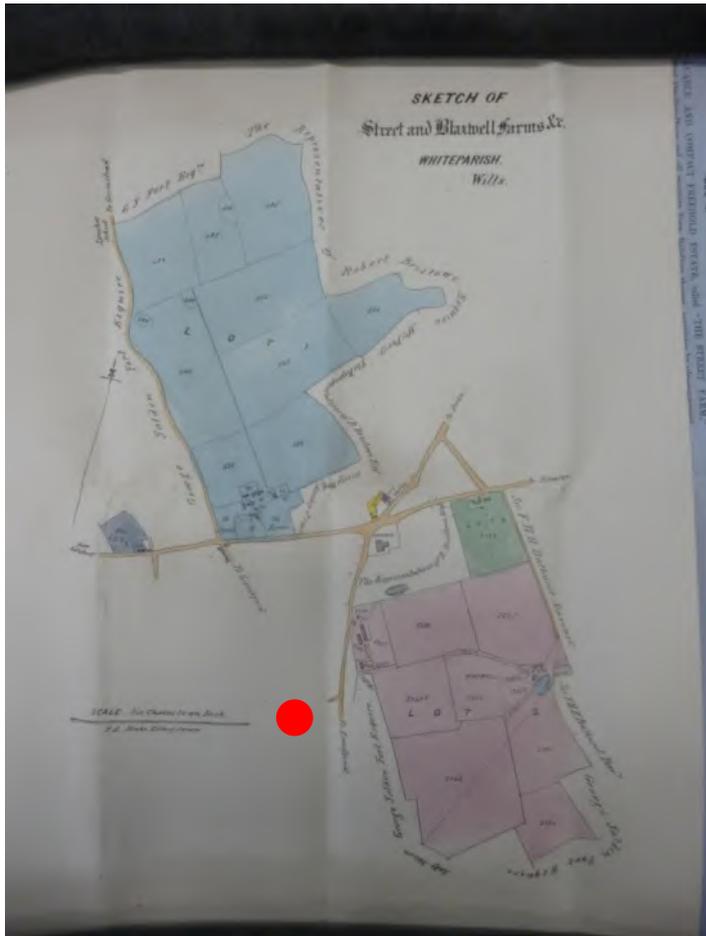
The Drove is not recorded on these plans and no conclusions regarding the claimed route can be drawn from these plans.



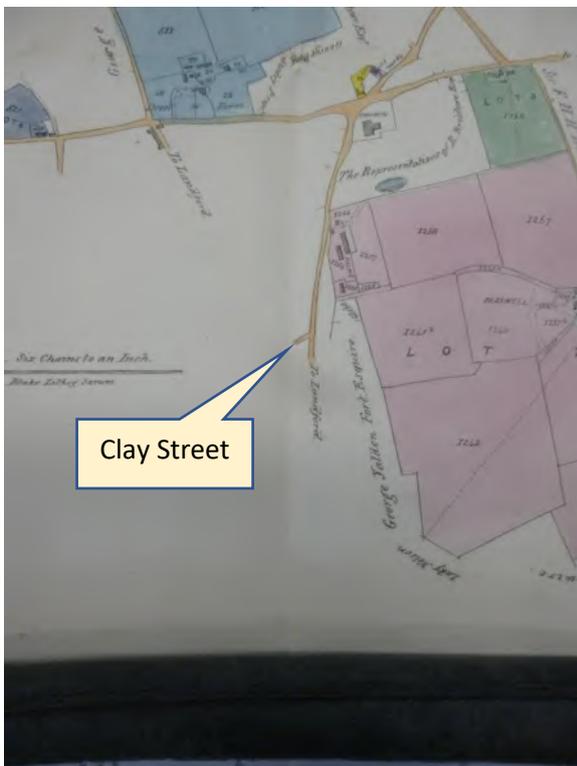
1856 Sale Particulars – Plan of Street and Blaxwell Farms (draft)



1856 Sale Particulars – Plan of Street and Blaxwell Farms (draft)

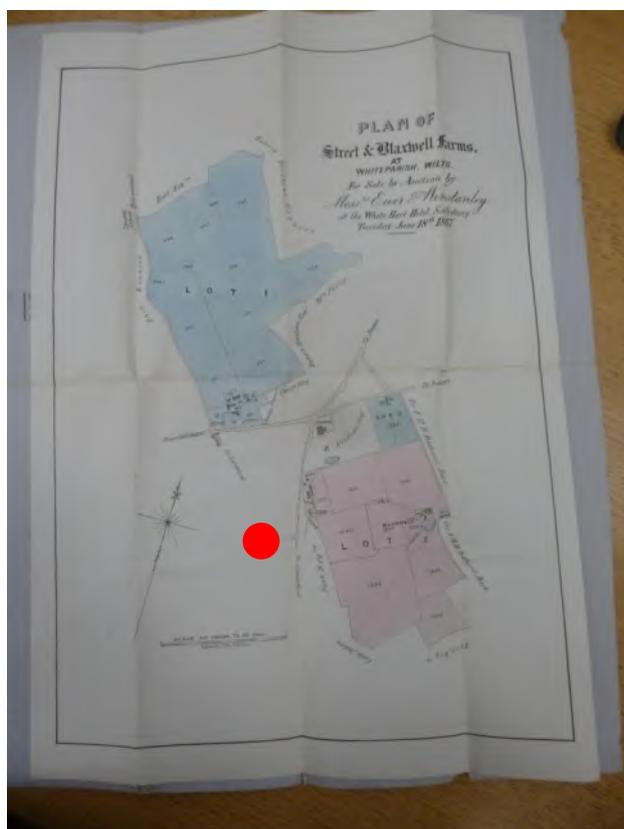


1856 Sale Particulars – Plan of Street and Blaxwell Farms

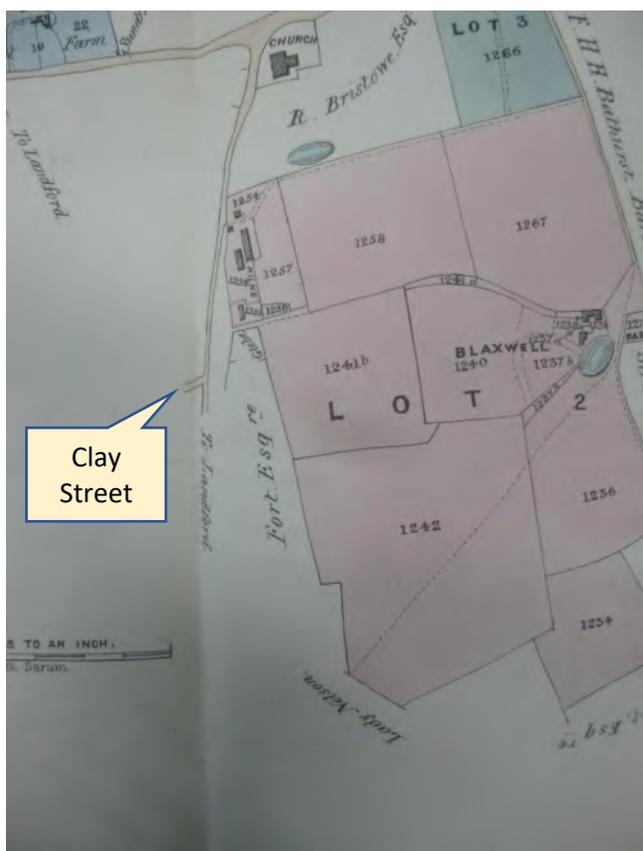


1856 Sale Particulars – Plan of Street and Blaxwell Farms

<b>Document</b>	<b>Sale Particulars (451/342)</b>
<b>Date</b>	1867
<b>Relevant Documents</b>	Plan of Street & Blaxwell Farms, at Whiteparish, Wilts, For Sale by Auction by Messrs Ewer & Winstanley at the White Hart Hotel, Salisbury. Tuesday, June 18 <sup>th</sup> 1867
<b>Size / Scale</b>	6 Chains to an inch
<b>Evidential Weighting</b>	E
<b>Significance</b>	<i>“Whiteparish Wilts. Particulars of Valuable and Compact Freehold Estates Containing Together Above 140 Acres of Arable and Pasture Land With Suitable Residences, Farm and Outbuildings, Brickkiln, &amp;c., To Be Sold By Auction By Messrs. Ewer &amp; Winstanley By Order Of The Mortgagees At the White Hart Hotel, Salisbury On Tuesday, The 18<sup>th</sup> Day of June, 1867, At Three O’Clock in the Afternoon, (Unless Previously Disposed Of By Private Contract) Subject to such Conditions as will then be produced.”</i>
<b>Conclusion</b>	Although the land to the west of Common Road is not included in the sale, Common Road is recorded on the plan for part of its length and the eastern end of Clay Street is recorded at its junction with Common Road, (location by reference to the Tithe Award map). The Drove is not recorded on this plan and no conclusions regarding the claimed route can be drawn from the plan.



1867 – Sale Particulars Street and Blaxwell Farms



1867 – Sale Particulars Street and Blaxwell Farms

<b>Documents</b>	<b>The Wiltshire Archaeological and Natural History Magazine – Volume 62, pp.79-101 - “Whiteparish A Study of the Development of A Forest-Edge Parish by C. C. Taylor”</b>  <b>“Roads and Tracks of Britain” Christopher Taylor</b>
<b>Date</b>	The Wiltshire Archaeological and Natural History Magazine - 1967 “Roads and Tracks of Britain” - 1979
<b>Relevant Documents</b>	As above.
<b>Size / Scale</b>	N/A
<b>Evidential Weighting</b>	F
<b>Significance</b>	The applicant refers to the recording of The Drove in the “Wiltshire Council Full Monument Report” as Monument no. SU22SW460 – MWI17191 “ <i>Medieval Settlement, Common Road</i> ” and which refers to: “1967, <i>The Wiltshire Archaeological and Natural History Magazine – Volume 62, pp.79-101...A settlement site, which except for one platform, the earthworks of which were ploughed out by 1967. 12<sup>th</sup> to 14<sup>th</sup> century coarse black pottery.</i> ”

<p><b>Conclusion</b></p>	<p>The article referred to in the Wiltshire Archaeological and Natural History Magazine is by Christopher Taylor - <i>“Whiteparish A Study of the Development of a Forest-Edge Parish by C. C. Taylor”</i>:  <i>“The work has involved the study of many of the usual national and local record pertaining to the parish and it has been accompanied by a detailed examination on the ground. Every building and almost every field has been visited over a period of three years.”</i></p> <p>IV. Pre-Domesday Settlement  p.84 <i>“One other settlement has to be identified. No. 529 in Domesday Book is an entry for one virgate of land, worth 15d., which Svernus (sic) holds in Cristesfeld, Frustfeld, i.e. in the western part of the present parish. Certainly its inclusion here tallies with the hideage given from the Geld Rolls of Frustfeld Hundred. If this suggestion is accepted it is necessary to identify the site of what was only a single farmstead. This cannot be done with certainty, but the logical place for it is the present Sansons Farm, a quarter of a mile south of the present village on the edge of the London Clay. The site is just above a spring once called South Well, which was also the former name of the farm. The curiously irregular fields which still exist round this farm suggest that it has always had enclosed fields.”</i> On the map at Fig.3, South Wells appears to be located just north of Clay Street.</p> <p>V. The Medieval Expansion  p.89 <i>“Finally there is a little archaeological evidence for yet another settlement. Almost halfway between the village and the Goldens Farm settlement, the wedge of wood along the road bulges out to the west, down the valley side. Just outside the wood there was formerly a series of disturbed earthworks. These have now been destroyed by ploughing, apart from one roughly rectangular platform, but quantities of coarse black pottery dating from the 12<sup>th</sup> and 13<sup>th</sup> centuries can be picked up from the site. All this indicates that here too there was a small medieval settlement, probably only a single farmstead.”</i></p> <p>VII. The 17<sup>th</sup> Century  p.96 <i>“The making of new and enclosed fields from the forest and the downland also took place without the establishment of new farms. South of Whiteparish village a small area of forest was cleared at this time, breaking up the U shaped forest edge which the earlier assarts had left. Six hundred yards west of Goldens Farm is an area of some 50 acres divided into small fields with straight sides and near square corners, which are known today as Burnt Ground. These fields were called New Burnt Grounds in 1618, indicating that they had not long been taken from the forest.”</i></p> <p>p.97 <i>“One last feature in the development of the pattern of settlement in the 17<sup>th</sup> century appears to have been the spread of houses south</i></p>
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*from the village along the road leading into the forest. Here an unknown number of houses or cottages were built. Some have been demolished or rebuilt, but a few remain and are clearly 17<sup>th</sup> century, though almost impossible to date more accurately. The reason for this spread of settlement can perhaps be explained in terms of population...some at least of this increased population was forced to build new homes on the common land south of the village."*

#### VIII. The 18<sup>th</sup> Century

*p.97 "The rise in population noted in the 17<sup>th</sup> century went on increasing from 700 in 1700 to 800 in 1800. No doubt the houses in the village were able to absorb some, but again other new houses were built south of the village on common land and also around Sansons Farm, to the south-west."*

#### IX. The 19<sup>th</sup> and 20<sup>th</sup> Centuries

*p.99 "From 800 inhabitants in 1800, the number rose to 1,351 in 1851 in spite of emigration to the Americas...To cope with this vastly increased population more cottages and houses appeared all over the parish, especially again on the common land to the south of the village..."*

*p.100 "In the western half of the parish the Nelson family, who acquired most of the land there, also built a new farm, south of Blaxwell Farm in the old assarts, called Common Farm, about 1830 to judge from its architecture. It certainly did not exist in 1811. Further west, the Eyre family at Newhouse appear to have carried out further enclosures of the woodland south of the park and large new rectangular fields were made in this area between 1773 and 1842."*

This evidence in the article by Christopher Taylor and The Drove having scheduled monument status, does not provide additional evidence of public rights over the claimed route.

*"Roads and Tracks of Britain" Christopher Taylor, 1979:*

*"Much of this assarting took place between the twelfth and fourteenth centuries when tens of thousands of acres of woodlands were turned into farmland. In the village of Whiteparish, Wiltshire, for example which lay on the edge of the Royal Forest of Melchet, we have records of fields being created from woodland from the mid thirteenth century to the mid fourteenth century. In just one year, 1330, we know that nearly 75 acres of land were cleared; we can actually identify some of the fields formed at that time and pass between them along narrow, deeply hollowed lanes which would seem to be contemporary...Yet again we run up against the old problem of the date of such tracks, for we cannot assume that they are the same date as the fields through which they pass. They could be much older tracks which were*

*incorporated into the later field system and reused for a new purpose. Certainly at Whiteparish some of the old roads through the forest fields can be proved to be older than the fields themselves. One, which gives access to some fields made in 1255, was certainly there nearly 200 years before when the area was still wooded for it leads to a farm which was in existence in 1086. Another, which passes through some of the 1330 fields, appears to have been in existence even earlier, perhaps by 968 at the latest."*

The claimed route is shown on the map provided with this extract, "Fig.74 Medieval forest tracks, Whiteparish, Wiltshire" as a "Track and hollow way", by double broken lines, "Existing Roads" are recorded by double bold solid lines, (the first section of the claimed route from Common Road appears in this manner). This does not necessarily suggest a public route, it can be seen on the map that there are cul-de-sac routes which do not continue and serve to access the fields.



Fig. 74 Medieval forest tracks, Whiteparish, Wiltshire

*"Roads and Tracks of Britain" – Christopher Taylor, 1979*

Appendix 7 – User Evidence Summary

Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

	Witness	Status	Years of use	Frequency	Use	Followed same route	Width	Stiles/gates/barriers	Signs/notices	Others seen	Permission or private right	Challenge / prevented	Owner aware	Comments
1	Patricia Woodruffe Clay Street	FP	1969 - 2020	Once a yr (sometimes more)	On foot	Yes	Variable – general width 8m	Gate offset from Common Rd – removed late 1990’s – did not prevent use. Barbed wire with protection for walkers 2002-19 – did not prevent use. Solid wooden fence & open structure wooden fence plus hedging Jan/Feb 2020 – prevents use.	No	Yes - Other walkers & groups of children playing	No	No	Yes – well trodden. Until 2000 used to drive cattle to & from milking shed on Common Rd.	Alternative to FP 6 which goes through garden - prefer not to use. South section threatened by development in field to west. Scheduled ancient monument. Carried out botanical survey.
2	John Hall Common Road	FP	2009 - 2020	More than monthly	On foot	Mainly section from Common Rd to just past Forest View. Occasionally went further but then became uneven and muddy. Application route followed same route until blocked 2020.	Varies due to overgrowth – minimum single file	Barbed wire fence just past Forest View with protective plastic tubing to allow access between top 2 strands. In place to prevent horses escaping field.	No	Yes – Over the years various dog walkers.	No	Told by current developer late 2019/early 2020 Drove was privately owned but that I could walk there for now until development progressed.	Don't know but path fairly well worn should have made it obvious	Photos of the fence (if I can find them). Route obviously walked for many decades if not centuries. Unacceptable to be suddenly fenced off and incorporated into garden. Forest View had its own boundary hedge with gate to access the Drove.
3	Jennifer Harrison Clay Street	FP	1985 - 2020	Every few months	On foot	Yes	6m approx. from our back boundary to field	1) Barbed wire fence with padding replaced thin hedge just past Forest View – did not prevent use. 2) Wooden fence erected early 2020 by our back gate – prevented use as extends whole width of Drove	No	Yes – Regular dog walkers, rambling groups, children playing, individual walkers, runners, neighbours maintaining their hedges.	No permission. Told the application route was not public by our solicitor when purchasing our property in 1985. Our deeds give us right of access from our back gate along the length of The Drove to Common Rd.	No	Yes – Mr Andrews past owner aware as he used the lane frequently and spoke to us and others.	Back gate gives access to Drove. From 1985 onwards our family have used The Drove for recreational purposes including bike riding and walking. During lockdown more people using The Drove.
4	Brian Woodruffe Clay Street	FP	Early 1970's - 2020	10 – 20 times per year (monthly / every few months) (Feb – Aug 1976 working in Europe)	On foot	Yes	6 – 8m Narrower at Common Rd end, wider beyond Forest View. Now narrow where houses being built because sides of The Drove have been excavated away.	Gate at Common Rd – sometimes locked but access available around it. 6ft fence at junction between Westways and Forest View (June 2020) – essentially blocking pathway. Open fence and newly planted shrubs at southern end of Forest View boundary, passable with difficulty (May-June 2020).	No	Early mornings quite popular with dog walkers from the Common Rd area; weekends in spring and summer used by families; in the past used by venturesome youngsters as an exploration and meeting / play site. Drove occasionally used by school classes.	No	No – 1970's – 2020 Yes – by 2 recent barriers June 2020. June 2020 – regular dog walker finds normal usage to Common Rd blocked from circular route around neighbouring fields.	Yes – both current owners well aware of usage. Previous owners Len & Marjorie Andrews happy to allow use. Continued by the current farming family.	Drove forms section of several circular walks used by up to 15 dog walkers and families every week. Historical trackway, last remaining feature of wider spread of similar tracks that linked Whiteparish and New Forest. Recorded as historical monument. Used over many centuries.
5	John Harrison Clay Street	FP	1985- 2020	Several times per yr (hedge cutting and maintaining ditch)	On foot	Yes	6m approx	Barbed wire fence with pipe protection – approx. 12 yrs ago – still accessible. Wooden fence 2020 – blocks route.	No	Regular dog walkers, runners, ramblers. Neighbours maintaining hedges and route. Children playing.	Back gate access. Never given or asked permission. Solicitor advised route not public when purchasing property 1985. Deeds show right of access from property to Common Rd.	No	Yes – Mr Andrews (past owner) used to speak to us and others on the route.	Until 25yrs ago approx. owner used to maintain route with hedge cutting tractor. Was popular walking route until lack of maintenance and blockage.
6	David Wise Romsey Road	FP	2020 - 2020	Every 4 – 6 weeks (monthly)	On foot	Yes	2 - 3m	2 recently built houses do and proposed third house will block Drove way – house plots block path	No	No	No	No, but members of village history society prevented in 2020	Don't know	Ancient track. Discovered route through village history society.

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Appendix 7 – User Evidence Summary

Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

7	Alexander Knight Clay Street	FP / BR	2006 - 2019	Infrequently – (every few months). Became carer 2012-18.	On foot	No – blocked 2019	12 ft (3 – 3.5m)	Stiles at junctions with FP's 6 & 4. Wire fence obstructed Drove at back of Forest View. The barriers blocked whole width.	No	No	No	Yes, since barrier was erected. No private right to use route.	Yes – evidence of dog walking and different foot tracks.	
8	Ceri Bicknell Penrith	FP	1972 - 1990	Can't remember exactly, at times frequently used as play area, other times path through to meet up with school friends - (monthly)	On foot	Yes	Variable – 8m including hedgerow and trees – probably 1m		No	Yes – school friends and local families	No	No	Yes – consistent use, worn path.	
9	Barbara Kennard, New Milton	FP	1978 - 1987	Most days – unless wet and windy (daily & weekly)	On foot	Yes	About 20ft	Possibly small stile in hedge not far from our gate. Believe there was gate at bottom end at cow field – did not prevent use.	No	Yes – our neighbours and farmer	No but property deeds had grant of access to Drove to trim hedge.	No	Yes – would occasionally meet and speak to farmer Andrews when working at top of garden or taking dog for walk there.	Photograph of son and husband blackberrying in Drove in 1983 approx. Photo of top cow field from the Drove 1983.
10	Nicholas Harrison Southampton	FP	1985 - 2000	Weekly	On foot	Yes	4-5m	Hedge – did not prevent use	No	Yes – horse riders, walkers, cyclists	No permission given or requested. Residents (my parents) had right of access.	No	Yes – Mr Andrews witnessed me in the Drove many times.	
11	Stephen Karmy The Hop Gardens	FP	1980 - 2020	Varied but average 3-4 times per yr (every few months)	On foot	Yes	Varies 3m – 1m on section Common Rd to blockage. Feel that it used to be wider.	Tall fencing panels 2020 – access impossible.	No	Yes - occasionally	No	No	Yes – village children often played there. Mr & Miss Andrews (previous owners) lived close by entrance to Drove and must have seen use. The next owners also had home in village close by.	Drove is classified as a monument and medieval trackway. Part of footpath network.
12	Jenny Karmy The Hop Gardens	FP	1980 - 2020	Varied but average 6 times per yr – (every few months)	On foot	Yes	Varies – 3m narrowing to 1m. Feel it used to be wider.	Tall fencing panels 2020 – access impossible	No	Yes – occasionally.	No	No	As above.	As above.
13	Matthew Leach Clay Street	FP	2019 - 2020	Two weekly on average (weekly / monthly)	On foot	Yes	Varies due to vegetation 1m - 3m	Barbed wire fence with pipe for access.	No	Yes – seen others in passing but also visible from garden.	No – never given or requested. Access to Drove in house deeds.	No	Yes - deeds	
14	Lisa Harrison Crystal Palace	FP	1985 - 2001	Weekly	On foot	Yes	4-5m	No	No	Yes – walkers, children playing, neighbours	No	No	Yes – Mr Andrews past owner saw me playing in Drove.	
15	C W Carpenter Newton Bungalows	FP												Application route not used – Drove should be preserved as a right of way and fits well with FP 4 & 6.
16	Rodney E Coat Clay Street	FP	2015 - present	Frequently / daily	On foot	Yes	3m approx at Common Rd, narrowing to 1.5m approx past Des-Deria, enlarging to 2m+ past Beauford	Fence – line with barbed wire covered to allow access.	No	Yes – regular dog walkers	No, never given or sought permission. Right of access to my rear garden.	No	No	
17	Christopher Woodruffe	FP	1979 - 1995	As Children daily or	On foot	Yes	6m – 2.5m	Strand of barbed wire occasionally to deter livestock	No	Yes – access to fields and Common Rd.	No	No	Yes – when used The Drove as children often landowner	

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Appendix 7 – User Evidence Summary

Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

	Hayle			weekly depending on time of yr. Moved away 1995 now only occasional use	Bike once a yr.			– did not prevent use of Drove (at junction with Footpath no.6 at south end of Drove).		Enjoyment, exercising dogs and cattle herded along it.			would use The Drove to herd cattle.	
18	Naomi Hanslow Meadow Court	FP	1990 - 2020	At least once a month. Not used during university terms.	On foot	Yes / Don't know	Varies – 1.2m to open in field area			Yes – dog walkers and farmer	No	No, but now prevented by fences and hedges erected.	Yes – farmer & farming family aware.	Ancient trackway now barred.
19	Christine Ellis Meadow Court	FP	1989 - 2020	Occasionally, intermittent	Dog walk	Yes	3m?		No	Yes – children walking/ playing. Residents of Hop Gardens / Clay Street. Farmer who owned land.	No	No up to 2020 when route blocked by fences & hedges.	Yes – passed time of day cordially with farmer.	Ancient track, links Common Rd and school with dwellings on A36 on FP's rather than road.
20	Karen Tongs Clay Street	FP	2020	Once – recently moved to Whiteparish	On foot	Yes	Varies – 6m-1m	Recent fencing by builder/contractor – prevents use.	No	Yes – local residents	No	Yes – recently because of fencing	Yes – historic route	Told by a neighbour of the walk, he has been walking it for last 30 yrs. Monument & medieval trackway.
21	Martin Tongs Clay Street	FP	11/19 - current	Weekly	On foot	Yes	Varies 1m – 6m depending on vegetation	Fencing erected on development of Forest View, 6ft close board – prevents anyone using The Drove.	No	Yes – local residents	No	Yes – stopped from walking length of Drove by fencing.	Yes – historic route.	Told by neighbours of all local walks. Recorded as Monument and medieval trackway.
22	Elvin Klapp Clay Street	FP & BOAT	1987 - 2020	Twice a week	Walked (daily) & driven tractor along it (every few months)	Yes	2-3m	Couple of strands of barbed wire with foam on it 1995 - 2019. Close board fence – April 2020. Hedging & post & rail fence – June 2020. None prevented use of way.	No	Yes – I have towed cars out with my tractor. Lots of people walking along it.	No	No	Yes – I used to talk to the owner whilst on application route.	
23	Sara Webb Clay Street	FP	1999 - 2020	Once a month	On foot	Yes	3m	One strand barbed wire fence covered with plastic pipe – 1999-2019. Close board fence – April 2020. Hedging & post & rail fence – June 2020. None prevented use.	No	Yes – met people on path and watched people walk, especially dog walkers every day out of kitchen window until April 2020.	No	No	Yes -	
24	Patricia Hudson Dean Lane	FP	1984 - 2019	Once / twice a month	On foot	Yes	30ft until it goes behind Clay Street houses and reduces to 10ft – 12ft.	Wire fence across path where it started to go behind houses to stop horses – did not prevent use.	No	Yes – walking dogs or just walking.	No	No	Yes – seemed a PROW and assumed owner would be aware.	
25	Beverley & Barry Rutter Clay Street	BR	1962 - current	Occasionally (every few months)	On foot	Yes	2m at Common Rd, reduces to about 1m at bend half way along.	Stiles at the end – always. No other barriers until recently – developer erected 2 fences across path preventing access.	No	Yes – myself and former resident used Drove to access property.	No	Never been stopped by a person, only the recent instalment of fences.		Village heritage.
26	Robert Canney Clay Street	FP	1999 - 2020	Weekly	On foot	Yes	3m	One strand barbed wire fence shrouded. Close board fence – April 2020 – prevents access. Hedging & post & rail fence – April 2020.	No	Yes – often met other villagers walking dogs or strolling with children.	No	No	Yes – when local stables leased the meadow they were often in field when villagers passed through the Drove.	
27	Jaquie Gallon Clay Street	FP	2017 - present	Weekly (not used when too many brambles)	On foot	Yes	1m – 1.5m – 3m	Barriers due to new development – fencing across the whole path – impossible to get round.	No	Yes – frequent use by other neighbours	No	No, but Darren Stiles has been told its not a FP and he has no right of access several times.	Yes – conversations with neighbours.	Told about it by neighbour.

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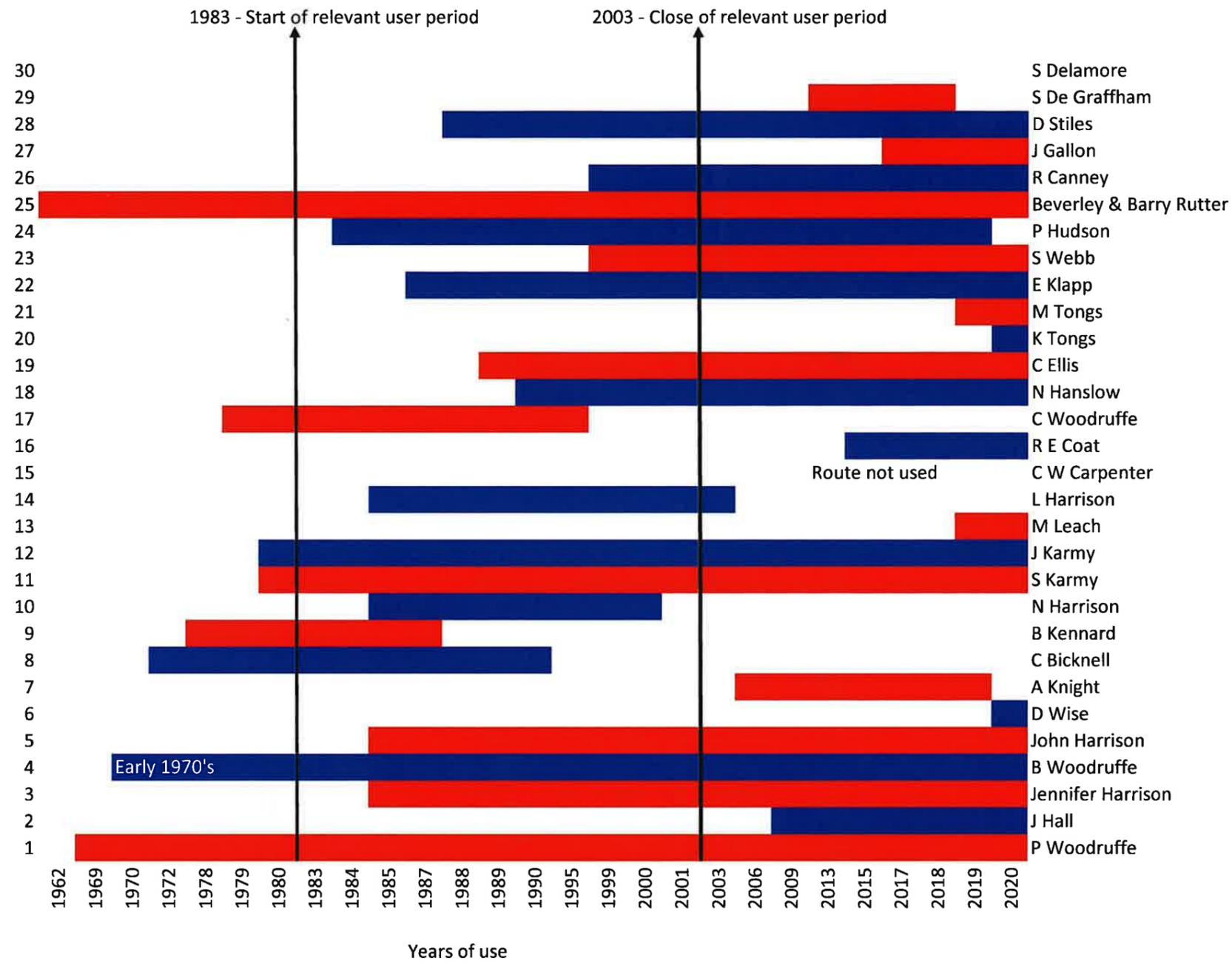
Appendix 7 – User Evidence Summary

Decision Report – Wildlife and Countryside Act 1981 – Section 53 - Application to Add a Footpath, Whiteparish (The Drove)

							Unfriendly attitude of developers.						
Darren Stiles Clay Street		32 years	On and off for nearly 30 years. Regularly in past 2 years on a near daily basis (got a dog) until housing development.	Walking	B-A to get to Common Road		Barbed wire fence at B. More recent fence by Forest View, but can just walk around it.	“Private Land” signs more recently affixed to a couple of trees along Drove, I assume by developer.	No	No – always without permission / force / secrecy.	No		Played in Drove as a child and used it to access field for playing (especially when it snowed).
Summer De Graffham		2013 - 2018		Walking as far as Des Deria & Beauford to visit relatives there until recently.			Not been able to walk this path due to being blocked by rusty barbed wire and thick brambles near the turn.			Relatives whose properties backed onto The Drove had access granted in deeds.			
S Delamore Clay Street	Walk way	Moved to area 2020					The only fence is the fence the developer has put up recently. There was no barbed wire fence behind our property blocking Drove, if there was a barbed wire fence it wasn't at this location. May 2020 large fence blocking off Drove – told it was to purposefully block off Drove in preparation for planning application. Did not replace barbed wire fence.	Developers' contractor put up signs (Sept 2020) saying no access to either side of Drove – they keep getting removed by people accessing Drove.	Since blocking of Drove we have had a number of people trying to access Drove and ending up near my garden stuck.	Proof in the old deeds of the property that this is a drove and clearly marked as a drove – right of purchaser of property and successors over and along the drove shown on the plan.	Neighbour Mr E Klapp who has used Drove for 30 years plus, is now unable to walk Drove.		Feels like the developer is blocking access to the Drove illegally and claiming the land as theirs which doesn't feel right.

Greyed out witness evidence is user outside the relevant period 1983 – 2003.

Appendix 8 - User Evidence Chart



**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Add a Footpath – The Drove, Whiteparish**  
**Appendix 9 – Bringing into question**

<b>Witness</b>	<b>Pre 2003 fencing</b>	<b>2003 3-strand wire fencing</b>	<b>Close board fencing</b>	<b>Other</b>
P Woodruffe		Barbed wire with protection 2002-19 Didn't prevent access	Solid wood fence / open structure wooden fence / hedging Jan/Feb 2020 Prevents access	Gate offset from entrance at Common Road – removed / disintegrated late 1990's
J Hall		Barbed wire "fence", 3-4 strands quite widely spaced with protective plastic tubing to allow pedestrian access via entry between top 2 strands – to prevent horses in field escaping, in place when I started walking the Drove in 2008. Did not prevent access	Drove now fenced off and incorporated into the new developments (proposed garden of plot 3).	
Jennifer Harrison	Thin hedge (replaced by barbed wire fence with padding)	Barbed wire fence with padding. Didn't prevent access	Wooden fence whole width of Drove 2020. Prevents access	
B Woodruffe		Users are aware that barbed wire is necessary in places to ensure stock are kept safe (largely in adjacent fields)	6ft fence June 2020 – blocking pathway. Open fence and newly planted shrubs now indistinct because of extraction of clay and removal of trees, vegetation May-June 2021 – passable with difficulty	Gate at Common Road entrance off the common land – sometimes locked but access available around it
John Harrison		Barbed wire fence with piping to enable access – 12 yrs ago – still accessible	Wooden fence 2020 – blocked route	
D Wise			Two recently built houses block the Drove and proposed 3 <sup>rd</sup> also will – new house plots block path	
A Knight		Wire fence obstructed Drove	Blocked off in 2019 at the right turn - barriers block whole width	Stile at junction with FP6 & FP4
C Bicknell				User 1972 - 1990
B Kennard	I believe there was a gate at the bottom end of the Drove where it joined cow field.			User 1978 – 1987. May have been small stile in hedge not far from our back gate – on a few occasions we entered "top" field alongside The Drove to pick blackberries but cannot remember its location or if there was

**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Add a Footpath – The Drove, Whiteparish**  
**Appendix 9 – Bringing into question**

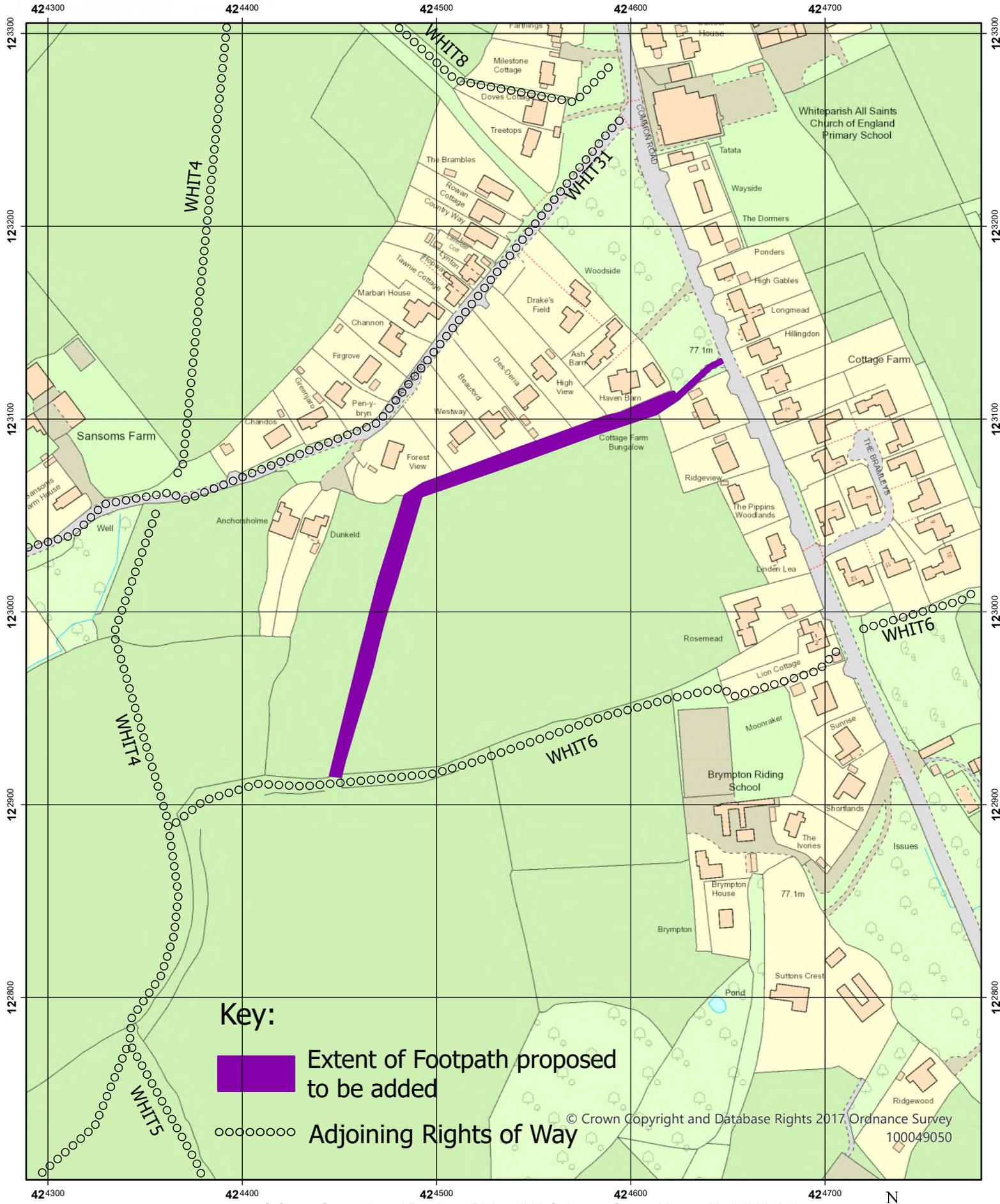
				one – instead we may have entered the field via the large gate, I have forgotten (see map and photos)
N Harrison	Hedge – did not prevent access			
S Karmy			Tall fence panels 2020 – cut Drove and make access impossible	
J Karmy			As above	
M Leach		Barbed wire fence with pipe to enable access (in line with end of blue/green right of way on deeds map) – did not prevent access		
L Harrison				
C W Carpenter				Not used application route
R Coat		Barbed wire fence line covered to allow access		
C Woodruffe				At junction with FP 6 - possibly a strand of wire occasionally put across at SU2444 2292 to deter livestock from wandering up the Drove – did not prevent access
N Hanslow			Now fences and hedges erected across it	
C Ellis			Blocked by fencing and hedging - 2020	
K Tongs			Fencing put up by builders that have blocked the Drove	
M Tongs			Fencing (6 ft close board) erected on the development that now prevents use of the Drove	
E Klapp		Couple of strands of barbed wire with foam 1995-2019 – did not prevent use	Close board fencing – April 2020 Hedging & post and rail fencing – June 2020 Did not prevent use	
S Webb		One strand barbed wire fence with pipe – 1999-2019 – did not prevent use	Close board fence – April 2020 Hedging & post and rail fence – June 2020	

**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Add a Footpath – The Drove, Whiteparish**  
**Appendix 9 – Bringing into question**

			Did not prevent use	
P Hudson	There was a wire fence across path where it started to run behind the houses, presumably to stop horses that grazed in the field adjacent to the wider path (no dates or detail given, user 1984-2019) – did not prevent use	Always a piece of wire covered in plastic tube at the perimeter point where the adjacent field ends. Assumed wire there to stop horses straying along continuation of path behind houses and plastic tube was to assist walkers to get over it safely. (36 yrs use)		Never any stiles or gates at any point
Beverley & Barry Rutter			None until recently – developers erected 2 fences across path preventing access – fence panel and ranch fencing and shrubs planted	User 1962 – current. Until recently nothing prevented use of application route
R Canney		One strand barbed wire fence shrouded – did not prevent access	Close board fence erected April 2020. Hedging & post and rail fence erected April 2020 – Drove blocked	
J Gallon			Barriers due to new development – fencing across whole path	
Mr H Urquhart c/o Christine Warry		Several witnesses mention that the Andrews used the route to take cows from fields to milking shed. This means they would have used it in each direction twice daily and therefore were highly likely to be aware of people using it. It is clear that in putting up barbed wire across the route to keep animals in but covering it with plastic to protect people the owners were not only aware of public use but had no objection to it.		
D Stiles		Barb wire fence at B	More recently fence erected by developer to try to block the path, but you can just walk around.	
S De Graffham		Unable to walk route due to rusty barbed wire and thick bramble at the end of the row of		2013-2018 used first section to Des Deria

**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Add a Footpath – The Drove, Whiteparish**  
**Appendix 9 – Bringing into question**

		houses nearing its turn into the farmers cow field.		
S Delamore			May 2020 – developers placed large fence blocking Drove	
M Richards – Zelda Investments Ltd		3 strand barbed wire livestock fence running between 2 ash trees, formed part of field boundary of Secret Field to stop the horses escaping. At time of our purchase of Secret Field plastic tubing on the fence. With sale of Forest View in March 2020, removed barbed wire fence, the remains of barbed wire fence still on Cottage Field side of Secret Field with posts and strands of wire embedded in an ash tree.		
S Cook	3-strand barbed wire stock fence replaced previous 2-strand in 2003, after children had been climbing over to ride bicycles in Secret Field. There has always been a barbed wire stock proof fence. If there wasn't then cows would have gone through the overgrown brambles and appeared on Common Road, which they never did.	3-strand Barbed wire fence – obstructed way. Children climbing over to ride bikes ceased with new fence – difficult and dangerous to pass over the fence. No breaks, including stiles and gates, ever existed in fence and maintained by family until sold northern section of Secret Field to Zeldas in 2019. We did not put protection on the wires as this would defeat the purpose of stock fence barbs to deter livestock – done without our permission. Climbing over fence is trespass.	Close board fence erected by Zeldas at boundary of our land across width of Drove.	Gate at top of Common Road to 1990. Not locked, marked boundary between family's section of land and Mr Urquhart's. They had right of access over Mr Urquharts section, gate was removed when their machinery became wider than the gate. No break in fence or hedge at junction with FP6.



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**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT FOR THE SALISBURY AND WILTON  
RURAL DISTRICT COUNCIL AREA DATED 1953 AS MODIFIED UNDER THE  
PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE WILTSHIRE COUNCIL (PARISH OF WHITEPARISH) PATH NO.42  
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022**

This Order is made by Wiltshire Council under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Salisbury and Wilton Rural District Council Area Definitive Map and Statement dated 1953 as modified under the provisions of the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act, namely 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.

The authority have consulted with every local authority whose area includes the land to which the order relates. The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is 25<sup>th</sup> March 2022.
2. The Salisbury and Wilton Rural District Council Area Definitive Map and Statement dated 1953 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Wiltshire Council (Parish of Whiteparish) Path no.42 Definitive Map and Statement Modification Order 2022.

THE COMMON SEAL of  
THE WILTSHIRE COUNCIL  
was hereunto affixed this  
25<sup>th</sup> Day of March 2022  
in the presence of:

} Mike [Signature]  
}  
} Michael DOOLEY



11440

## SCHEDULE

### PART I

#### Modification of Definitive Map

##### Description of path or way to be added

That extent of footpath as shown by a continuous purple line on the attached plan, leading from point A at OS Grid Reference SU 2465-2313, at its junction with Common Road, Whiteparish, in a generally west-south-westerly direction for approximately 180 metres, before leading south-south-west for approximately 150 metres to OS Grid Reference SU 2445-2292, at its junction with Path no.6 Whiteparish, having a width varying between 3 metres and 9 metres, as shown coloured purple on the attached plan.

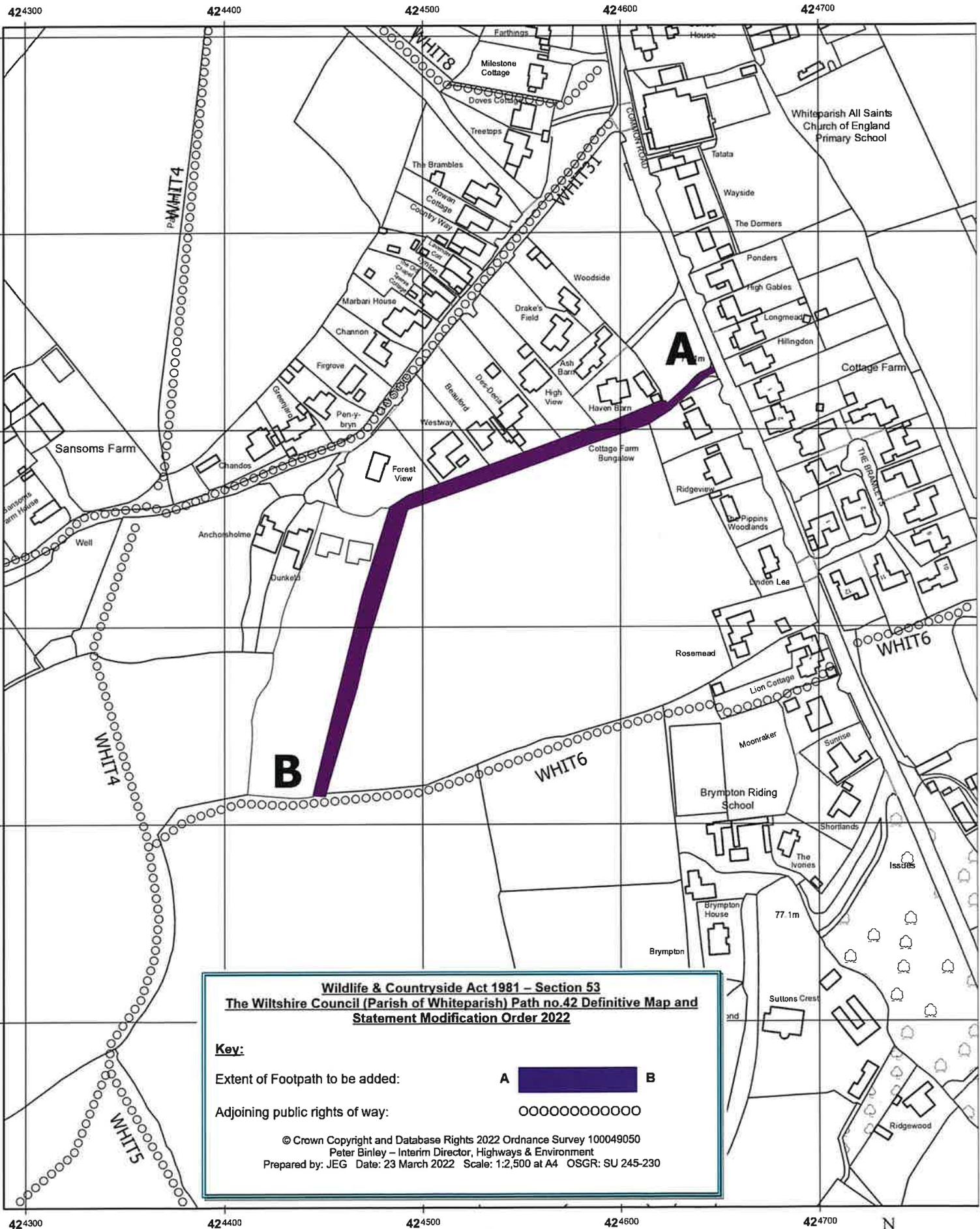
## SCHEDULE

### PART II

#### Modification of Definitive Statement

##### Variation of particulars of path or way

Parish	Path No.	Modified Statement to read:-	Modified under Section 53(3) as specified
Whiteparish	42	<p><u>FOOPATH.</u> The Drove. From its junction with Common Road, Whiteparish, at OS Grid Reference SU 2465-2313, leading generally west-south-west for approximately 180 metres and then south-south-west for approximately 150 metres to its junction with Path no.6 Whiteparish, at OS Grid Reference SU 2445-2292.</p> <p>Approximate length: 330m. Width: varying between 3m and 9m (as shown coloured purple on the Order plan – The Wiltshire Council (Parish of Whiteparish) Path no.42 Definitive Map and Statement Modification Order 2022).</p>	53(3)(c)(i)



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## APPENDIX F - OBJECTIONS AND REPRESENTATIONS

**From:** [Pat Woodruffe](#)  
**Sent:** 07 March 2022 10:56  
**To:** [Green, Janice](#)  
**Subject:** RE: Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

---

Dear Ms. Green,

Thank you so much for your support, and that of WC, over this matter. Although two sections have now been incorporated into gardens, it is important that the owners recognise the status of the drove as an ancient monument and, hopefully, they will be encouraged to maintain it as such.

Kind regards,  
Pat Woodruffe

---

**From:** Green, Janice [mailto:janice.green@wiltshire.gov.uk]  
**Sent:** 07 March 2022 09:47  
**To:** Pat Woodruffe [REDACTED]  
**Subject:** Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

Dear Mrs Woodruffe,

-

**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way –**  
**Whiteparish, The Drove**

I am writing to advise you that Wiltshire Council has now completed its investigation of the available evidence in the above-mentioned application to add a footpath to the definitive map and statement of public rights of way, in the parish of Whiteparish, (The Drove). It has been resolved to make a definitive map modification order to add a footpath (the Drove), with a width varying between 3m and 9m, as shown on the proposed order plan (Appendix 10 of decision report). Please find attached a copy of the Wiltshire Council decision report, which sets out the reasons for this decision.

I am intending to make the order in the week commencing 21<sup>st</sup> March 2022. Formal notice of the making of the order will be served upon all interested parties and this will be followed by a statutory objection period of at least 6 weeks, during which time formal objections and representations to the making of the order may be lodged in writing with Wiltshire Council.

I hope this information is helpful and you will of course receive notice of the making of the order in due course.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall

Trowbridge  
BA14 8JN

## Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** [John Hall](#)  
**Sent:** 06 April 2022 15:35  
**To:** [Green, Janice](#)  
**Subject:** Your ref JG/PC/245 2020/09D

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thank you for forwarding me the definitive map modification order relating to footpath 42 Whiteparish (The Drove).

I fully support the confirmation of the order

Thanking you  
John Hall

**From:** [Clerk](#)  
**Sent:** 12 April 2022 20:32  
**To:** [Green, Janice](#)  
**Cc:** [WPC Chairman](#)  
**Subject:** WC (Parish of Whiteparish) Path no.42 Definitive map and statement modification order 2022  
**Attachments:** [row\\_3192264\\_order map.pdf](#)  
[view with new dwellings on as approved by WC.jpg](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Janice,

Thank you, we have received the hard copy of the WC (Parish of Whiteparish) Path no.42 Definitive map and statement modification order 2022.

We wonder if you can help with a couple of queries please?

Firstly, we see that the map has been partially updated with 2 of the new dwellings on it but the 3rd dwelling in the rear of Forest View is not marked on the plan, I believe the home may even be occupied and the new path may even be going through this new dwellings garden?

Secondly, the use of a bold purple strip to show the route of the new path does not allow to see what linedated below the strip, which in some areas is 9m wide. You can also not see if it is to run through the back gardens of the other properties in Clay Street? I have attached the map that was used for the order for the new path at Mean Wood a few years ago, Path 41, which showed very clearly where it was to run.

Lastly, at which points is the path 3 metres wide and then 9 metres?

Regards,

Maria Pennington  
Whiteparish Parish Clerk

[www.whiteparish-pc.gov.uk](http://www.whiteparish-pc.gov.uk)

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**From:** [Clerk](#)  
**Sent:** 13 May 2022 13:57  
**To:** [Green, Janice](#)  
**Cc:** [WPC Chairman](#)  
**Subject:** Re: WC (Parish of Whiteparish) Path no.42 Definitive map and statement modification order 2022

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice,

Whiteparish Parish Council has no comment to make regarding this.

How can we view what comments are submitted?

Regards,

Maria Pennington  
Whiteparish Parish Clerk

[www.whiteparish-pc.gov.uk](http://www.whiteparish-pc.gov.uk)

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On 2022-04-14 07:56, Green, Janice wrote:

Dear Maria,

**Wildlife and Countryside Act 1981 – Section 53**  
**The Wiltshire Council (Parish of Whiteparish) Path no.42 Definitive Map and Statement Modification Order 2022**

Thank you for your e-mail, I am pleased to hear that you have received notice of the making of the order adding Footpath no.42 in the parish of Whiteparish, (The Drove).

Thank you for the information regarding the new property at the rear of Forest View. At the time of our Land Registry title search on 7<sup>th</sup> March there were no details relating to this property and it is not shown on our ordnance survey mapping layer, (order map produced 23<sup>rd</sup> March), however, I will check that all landowners have been notified and send appropriate notice if this is not the case.

We are now required to include a width for all newly added paths and there are various ways of recording this, as set out in Rights of Way Advice Note no.16 – “Widths on Orders”, which may be viewed using the link below. I would refer you in particular to section 4 – Definitive Map Modification Orders:

[Rights of Way Advice Note No 16 - Widths on Orders - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The order map differs from that included within the previous Mean Wood order which concerns a path having a uniform width throughout its length. Where the width of a path is varying and it would be very complex within the statement to record the many points at which the path width varies, as in the case of The Drove, we are able within the statement to refer to the order map, which can record a varying width as a feature on the map showing the extent of the path. The purple line on the order map is therefore intended to record the extent of the footpath, based on the historic OS mapping which consistently records the route at the width shown in purple. This purple colouring also meets with the requirements of the regulations which require a footpath to be shown by a broken black line, or a continuous purple line, please see The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993, using the link below, (Schedule 1 – Notation to be Used on Definitive Maps):

<https://www.legislation.gov.uk/ukSI/1993/12/schedule/2/made>

The question of width is set out within the decision report included with my previous e-mail to you dated 7<sup>th</sup> March, I would refer you to the section entitled “Width” (p.61) which sets out the reasons for recording the path having a width between 3m and 9m. The recording of the width is based upon evidence and in this case this is mostly based on OS mapping evidence, having maximum width of 9m. However, there is very little documentary evidence of a width for the first 30m of the path adjacent to Common Road and therefore, it has been necessary to base the width of this section of the path on the evidence provided by witnesses, which has suggested a width of 3m for this eastern section, as shown in the order map. In essence the order map indicates the full extent of the path to be recorded within the definitive map and statement and where it will run.

I hope this information is helpful.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** Clerk <clerk@whiteparish-pc.gov.uk>  
**Sent:** 12 April 2022 20:32  
**To:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Cc:** WPC Chairman <trevorpaxtonking@gmail.com>  
**Subject:** WC (Parish of Whiteparish) Path no.42 Definitive map and statement modification order 2022

Dear Janice,

Thank you, we have received the hard copy of the WC (Parish of Whiteparish) Path no.42 Definitive map and statement modification order 2022.

We wonder if you can help with a couple of queries please?

Firstly, we see that the map has been partially updated with 2 of the new dwellings on it but the 3rd dwelling in the rear of Forest View is not marked on the plan, I believe the home may even be occupied and the new path may even be going through this new dwellings garden?

Secondly, the use of a bold purple strip to show the route of the new path does not allow to see what linedated below the strip, which in some areas is 9m wide. You can also not see if it is to run through the back gardens of the other properties in Clay Street? I have attached the map that was used for the order for the new path at Mean Wood a few years ago, Path 41, which showed very clearly where it was to run.

Lastly, at which points is the path 3 metres wide and then 9 metres?

Regards,

Maria Pennington  
Whiteparish Parish Clerk

[www.whiteparish-pc.gov.uk](http://www.whiteparish-pc.gov.uk)

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**From:** [Pete davies](#)  
**Sent:** 11 June 2022 16:54  
**To:** [Green, Janice](#)  
**Subject:** Re: Application to Add a Footpath - The Drove,  
Whiteparish

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**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Janice

I received a copy of the order this morning thank you for the drove but want to point out a glaring error with it please.

It says the order if confirmed will be “ footpath 42 leading from its junction with common road in a general west-southwesterly direction approximately 180m and then south-southwesterly for approximately 180 metres to its junction with footpath 6”

The Drove does not and never has had a junction with footpath 6, Pat Woodruffe in her statement suggests it would be nice to have one but the south-southwesterly part of the drove goes to the end stops and goes no further. ( other than back the way you came )

I would be grateful if you would correct the order please as it is one of the key factors for ourselves

Thank you and best regards

Peter

Sent from my iPhone

On 7 Jun 2022, at 12:49, Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)> wrote:

Dear Mr Davies,

Thank you for your e-mail and very kindly providing your correspondence address, I will very shortly be sending a copy of the order and public notice in the post.

Yes, that’s correct, if objections to the making of the order are made and not withdrawn, the order will be referred to the Secretary of State for determination, which could result in a hearing or public inquiry to consider the evidence. The Wiltshire Council Southern Area Planning Committee will firstly consider the evidence, as well as all representations and objections received to the making of the order, to determine whether or not

Wiltshire Council continues to support the making of the order and the Wiltshire Council recommendation to be attached to the order when it is forwarded to the Secretary of State for determination.

I will of course keep you updated on progress.

I hope this is helpful.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>

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**From:** Pete davies [REDACTED]  
**Sent:** 06 June 2022 18:25  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** Re: Application to Add a Footpath - The Drove, Whiteparish

Hi Janice

The Address is [REDACTED] clay street, whiteparish, wilts, SP5 [REDACTED]

Am I correct in reading that any objections mean it has to be passed to the Secretary of State and will then require a public hearing?

Best regards

Peter

Sent from my iPhone

On 6 Jun 2022, at 16:24, Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)> wrote:

Dear Mr Davies,

**Wildlife and Countryside Act 1981 – Section 53**  
**The Wiltshire Council (Parish of Whiteparish) Path no.42 Definitive Map and Statement Modification Order 2022**

Further to my e-mail dated 30<sup>th</sup> March, enclosing a copy of the above-mentioned definitive map modification order, which proposes to add a footpath, The Drove, in the Parish of Whiteparish, I wondered if it would be possible for you to very kindly provide a correspondence address, in order to serve a paper copy of the order and notice and to keep you updated on progress in this case.

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**



Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** Pete Davies [REDACTED]  
**Sent:** 11 January 2022 16:50  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** Application to Add a Footpath - The Drove, Whiteparish

Hi Janice

I just wondered if you have an update please wrt the drove ?

We are laid back with it to be honest i understand the need for footpaths ( we have 2 dogs ) ..... We have it covered at purchase on a personal level would just be nice to see it resolved.

Best regards

Peter

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**From:** [Pete Davies](#)  
**Sent:** 13 June 2022 11:30  
**To:** [Green, Janice](#)  
**Subject:** The Drove

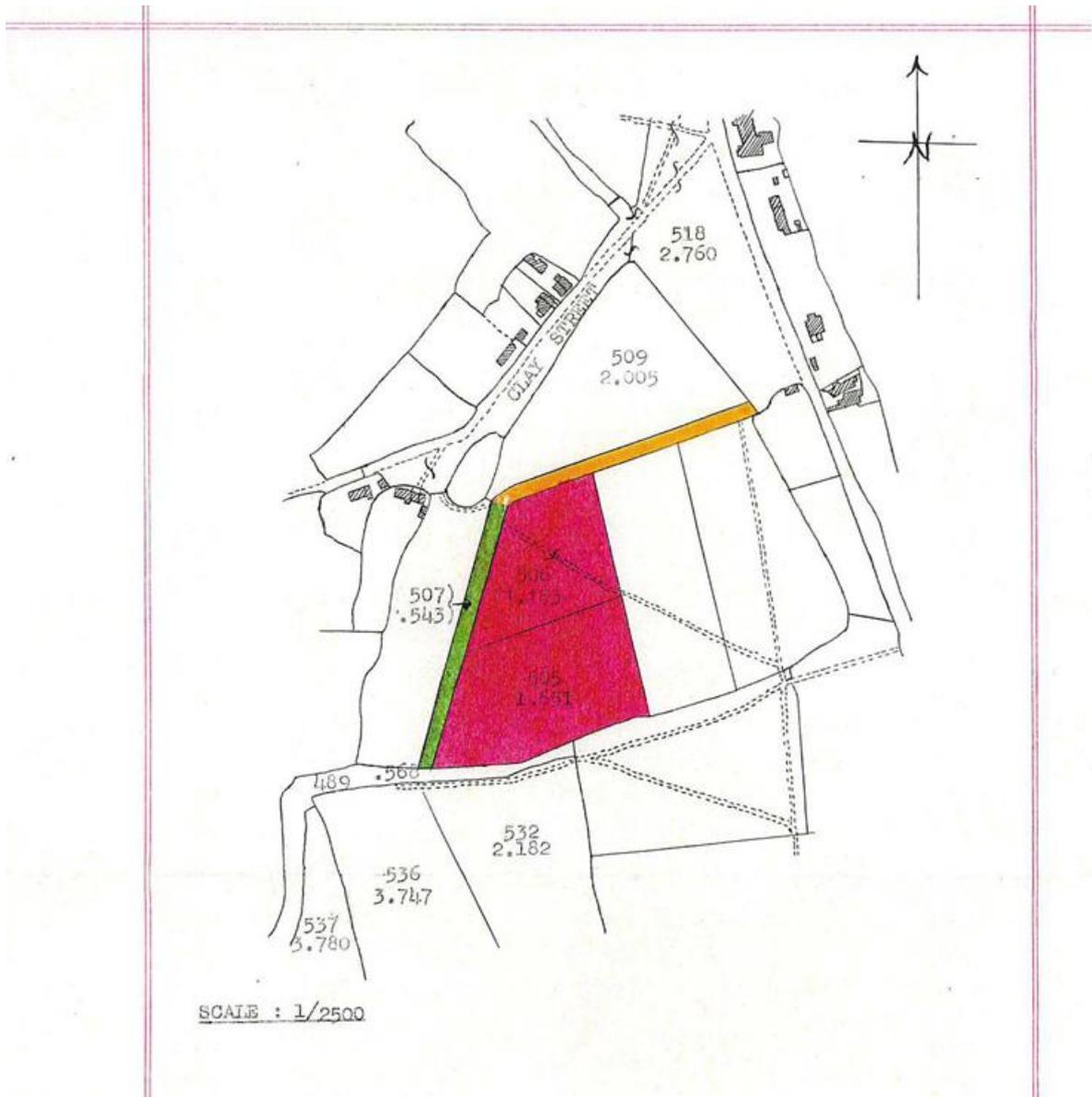
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**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Janice

Just following on from my previous mail and sorry its late i have only just twiggged about the OS references.

This is the Drove from the Farm Deeds >>>



Area 507 ( .543 acres ) is the Drove, Area 489 is still farm land, it was never ever part of the Drove and the Drove has never joined footpath 6 in any capacity ever

Best Regards

Peter

**From:** [Pete Davies](#)  
**Sent:** 08 July 2022 10:22  
**To:** [Green, Janice](#)  
**Subject:** Emailing: Objection.pdf  
**Attachments:** [Objection.pdf](#)

---

Hi Janice

Please find attached our Objection for The Drove Order in whiteparish.

I would be grateful if you would confirm receipt of it and that its readable please.

Best Regards

Peter

Your message is ready to be sent with the following file or link attachments:

Objection.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Peter And Christine Davies

██████████  
Clay Street, Whiteparish, Salisbury  
SP52██████

22 June 2022

Janice Green

Senior Definitive Map Officer, Rights of Way and Countryside  
Wiltshire Council-County Hall  
Trowbridge  
BA14 8JN

Dear Janice,

Ref:- JG/PC/245 2020/09D

We would like to object to the map order concerning the Drove in Whiteparish, the reason for our objection is >>> “We believe the evidence and statements submitted are insufficient, unsubstantiated, in error and misleading”.

We have the following comments about the order to kindly be taken into consideration.

1/ The order in question however relates to a **“right of way”** map application not ownership or protection of the Drove – we feel that is an important comment.

We have no doubts people walked some of the drove 1983 to 2003, we feel confident however that the majority based on witness evidence refer to primarily walking the upper section Forest View to Common Road.

Our objection mirrors some of our own childhood activities a decade earlier to the earliest date in question but the same principles apply. As children we would daily cross fences and hedges to access fields and farms the majority with no stiles or similar. With friends for over a decade we visited fields filled with cows, farm buildings, tracks, barns, and lots more “always” with the conscious knowledge that having crossed unmarked fences we were knowingly “trespassing”.

..... I myself crossed fruit orchards (Blackmore estates) unchallenged, we played with farm machinery unchallenged, we frequently transited many separate fields with rough paths through fences or hedges, we were very seldom told or advised to “Move along” - farmers or their staff had better things to do back then with more pressing obligations than policing their lands.

So this brings us to the footpath Order, we confidently believe there was a hawthorn hedge and fence in place 1983 to 2003 behind Forest View across the Drove to contain the Heifers in the lower Drove, public access through that section was trespass, the fence divided the upper and lower Drove to keep livestock in secret field / Lower Drove, walking any path especially back in a time when memories are strained does not mean it was done so legally.

We know for an indisputable fact that pregnant heifers were in Secret field and The Drove June to September 1989, it impossible that they were not fence contained.

2/ 27 total applications we do not consider substantial given that it was widely publicised by the Parish Council and we note every single map application is from OS SU24642312 to SU24442292, this means every single applicant has walked Common road via a gate to the Upper Drove, left at Forest View having crossed a hedge and fence, ventured through an area potentially filled with livestock, crossed a hedge with a further integral fence (that has been there decades before 1983) or visa versa in the frequency they have given, we consider that extremely unlikely to have happened, its miss-leading and poor quality information.

Looking at the period in question 1983 to 2003, if you take families as one application the number is actually 10. Only a very few applicants say they used the Drove frequently and if you remove all the applicants that have a legal right to use the drove (High View towards Common Road Access Gate) the number that state frequent use (more than once a month) is "**extremely**" small (actually 3). Barbara Kennard who states she used the drove **Daily** 1978 to 1987 refers to the upper section she was legally entitled to (based on her witness statement). The middle of the Drove lower section is a natural drain for cottage field and venturing there after the heavy rain means sinking to ones knees in mud.

\*\*\* Picture shows Drain approximately half way along the lower section of the southern Drove \*\*\*



We reservedly do believe untruths are being told with the applications either knowingly or unwittingly (by reference to no fences or barriers and the OS co-ordinates), we believe a few of the 10 families used the upper drove, a much smaller number in dry weather trespassed past the hedge / fence down the lower drove exiting in the middle of the Lower Drove to Secret field (with cows) then across through another wire fence to Cooks Field then Footpath 4, only 2 individuals claim to have actually walked the entire drove (witness 19 and 22) before crossing the hedge (and trespassed more than once to do so) to Footpath 6.

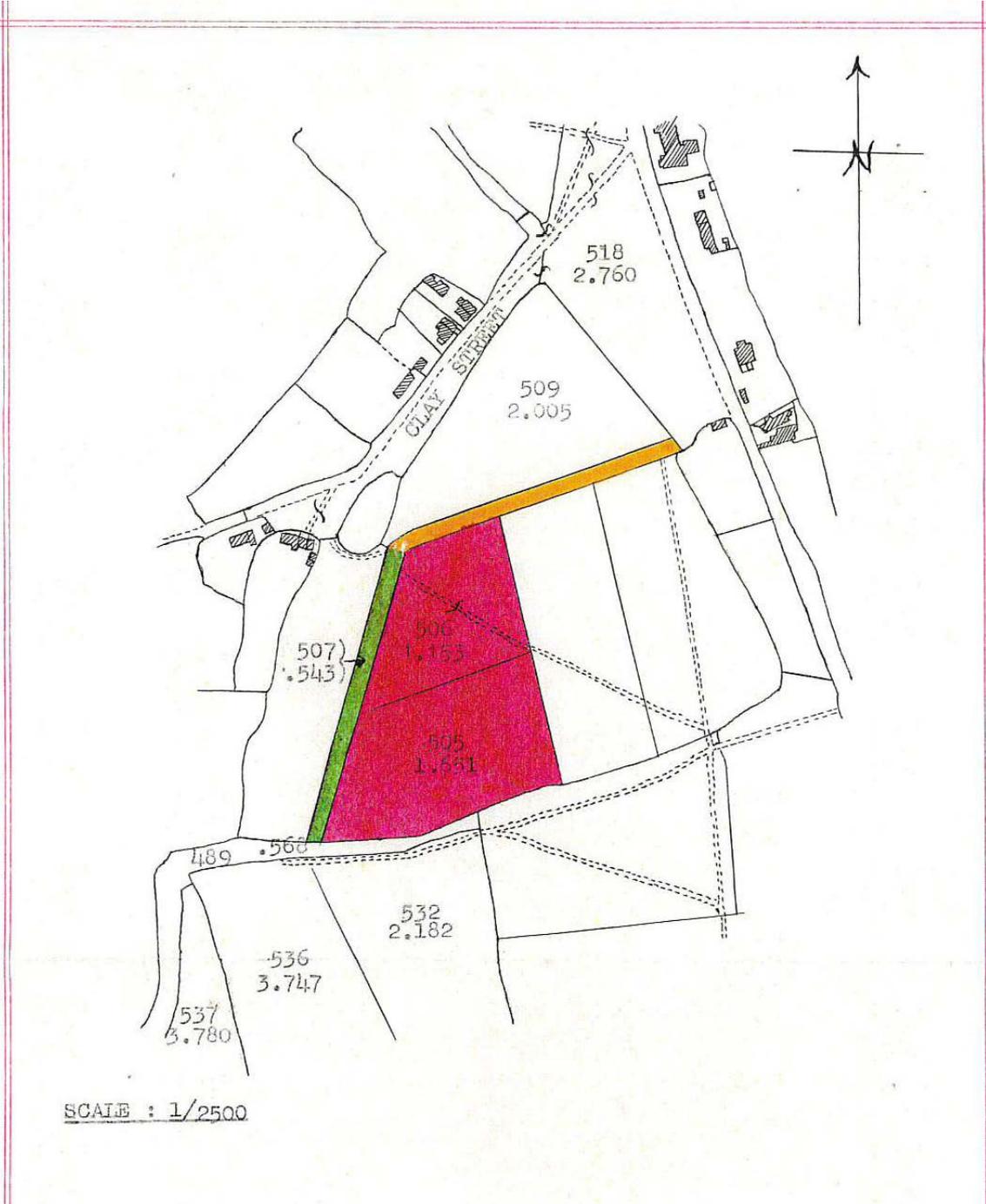


Wiltshire Council has generated a right of way order OS SU24642312 to SU24442292 based on “Reasonably Assured” statements **when only 2 individuals** have said they have used the path OS SU24642312 to SU24442292 1983 to 2003.

This was a satellite view of the Drove in 1999 >>>



3/ We moved to [redacted] at the end of January with a fairly good understanding of the Drove. On a practical basis the “need” to access beyond High View south on foot was always limited and impractical. The Drove itself (Lower or entire) as a footpath is and always was a path to nowhere, the lower section Forest View to end is 150 metres there and 150 metres back, 2 solitary applications mention using it to join SU24442292 (which is not the Drove but in Rough Field – 532/536) at Footpath 6, this requires going through a fence and hedge for access – obvious and blatant trespass.



\*\*\*\* 507 is The Drove, 489 is unlisted farm land that backs on to secret field, 532 and 536 are Rough Field, footpath six is visible at the top of rough field, it has NEVER linked to the Drove.

4/ Your report conclusion bases a lot on the fact that the farmer in 1983-2003 was aware of applicants presence in the Drove >>>

Witness	Landowner aware
1	Well trodden, until 2000 used to drive cattle to and from milking shed on Common Road.
3	Mr Andrews past owner was aware as he used the lane frequently and spoke to us.
4	Both current owners well aware. Len and Marjorie Andrews happy to allow use – continued by current farming family.
5	Past owner Mr Andrews used to speak to us and others on the route.
8	Consistent use, worn path.
9	Would occasionally meet and speak to farmer Andrews when working at top of garden or taking dog for a walk there.
10	Mr Andrews witnessed me in the Drove many times.

Witnesses 3,5,9 and 10 all have legal access in their deeds to the upper Drove, they are the **only** witnesses in this list that mention talking / conversing with the farmer and why would they not?. Driving cows up and down the Drove (which Mrs Andrews said did not happen) would be a danger to the public and prohibited by the 1971 animals act, if it did happen which was very unwise it provides no evidence of a public right of way, it potentially would have meant a milking heard of cows were free to roam the upper drove which was never the case.

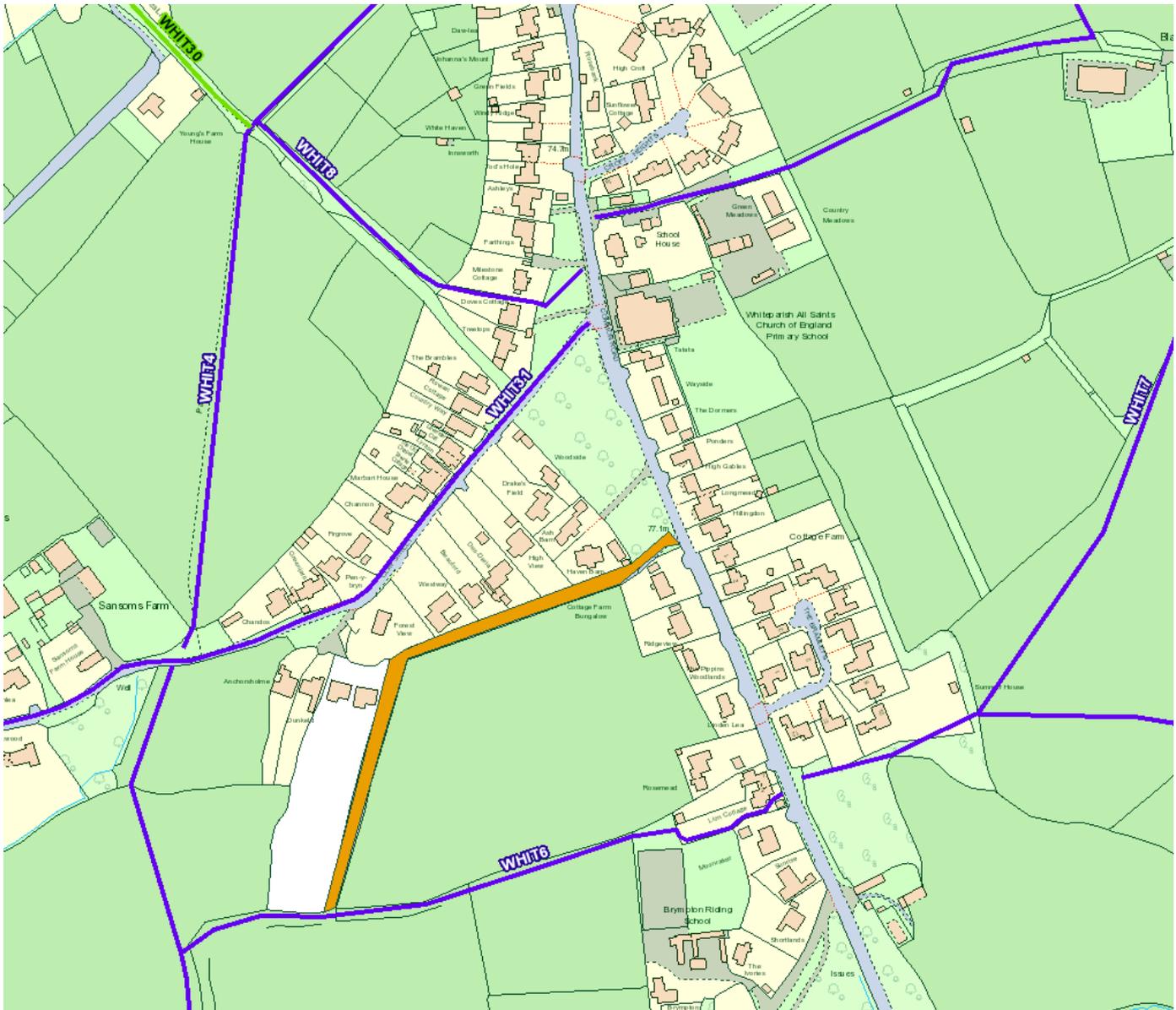
11	Village children often played there - Mr and Miss Andrews lived close by Drove and must have seen use. The next owners also had home in village close by.
12	As above.
14	Mr Andrews past owner saw me playing in Drove.
17	When we used The Drove as children, the landowner would often use The Drove to herd cattle.
18	Farmer and farming family aware.
19	Passed time of day cordially with farmer.
22	Talked to owner whilst on application route.
24	Seemed to be a public right of way and assumed owner would be aware.
26	When local stables leased the meadow they were often in field when villagers passed through the Drove.

Witnesses 11 and 12 have made “an assumption” - that is not evidence, Witness 14 had legal access to the upper drove so would expect to see the farmer and visa versa, witness 17 might well be referring to the upper section and Mr Andrews (Confirmed appropriately as the **LANDOWNER**), cattle were free to roam / herd in the lower section as they were kept in by the fence / barrier at Forest View, Witness 19 passed the time of day cordially with the farmer, but states she only used the Drove occasionally >>> **Must have been a farmer with very few duties**, Witness 22 Recalls the “2 strand wire fence” but also refers to “Driving my tractor down it – every few months 1987 -2020” - extremely difficult to believe especially when Mr Harrison in his statement states that walking it (which he has the right to pass over) has been difficult the **last 25 years due poor maintenance and blockage**, Witness 24 (who also remembers the fence) again make an assumption which is

not evidence, Witness 26 makes reference to the local stables and a leased field – they were not the landowners and have no connection to this application, none have come forward to present evidence.

5/ We see in your conclusion the issue of an order is “not” based on OS or historic documentary evidence. However **“The historical OS mapping and user evidence support a width varying between 3m and 9m to be recorded over the footpath, as shown on the proposed order plan at Appendix 10”** being proposed for the Drove width. OS mapping of agricultural land and boundaries is notoriously inaccurate at close scale, boundaries themselves can actually be up to 2 metres width. None of the submitted evidence suggests the width is 9 metres some suggesting it is a mere 1 metre. We would like to strongly question why a public right of way for a “Footpath” has to be wider than a two lane highway, every single comment from residents states “access on foot”. **Why also would you support the OS mapping for a footpath that OS itself does not dedicate to be such.**

6/ We view Mr Harry Urquhart comments (actually Christine Warry’s) with interest >>> **I would personally like to the make an argument that given the number of existing rights of way surrounding it render its addition to the Wiltshire Definitive Map unnecessary (Whiteparish footpaths numbers 4,6 and 31 already giving access to the A27, the A36 and the Common Road linking them (the one on which your property lies) – We entirely agree.**



7/ There was a hedge with a barbed wire fence across the drove 1983 to 2003, I have removed the remnants of it from the Ash tree to protect our dogs but this is one end of its connections >>>



You can very clearly see the rings on the Ash at 2 foot and 4 foot levels, also that the barbed wire ring at 2 foot has now clearly grown into the trunk section from trunk growth decades since.

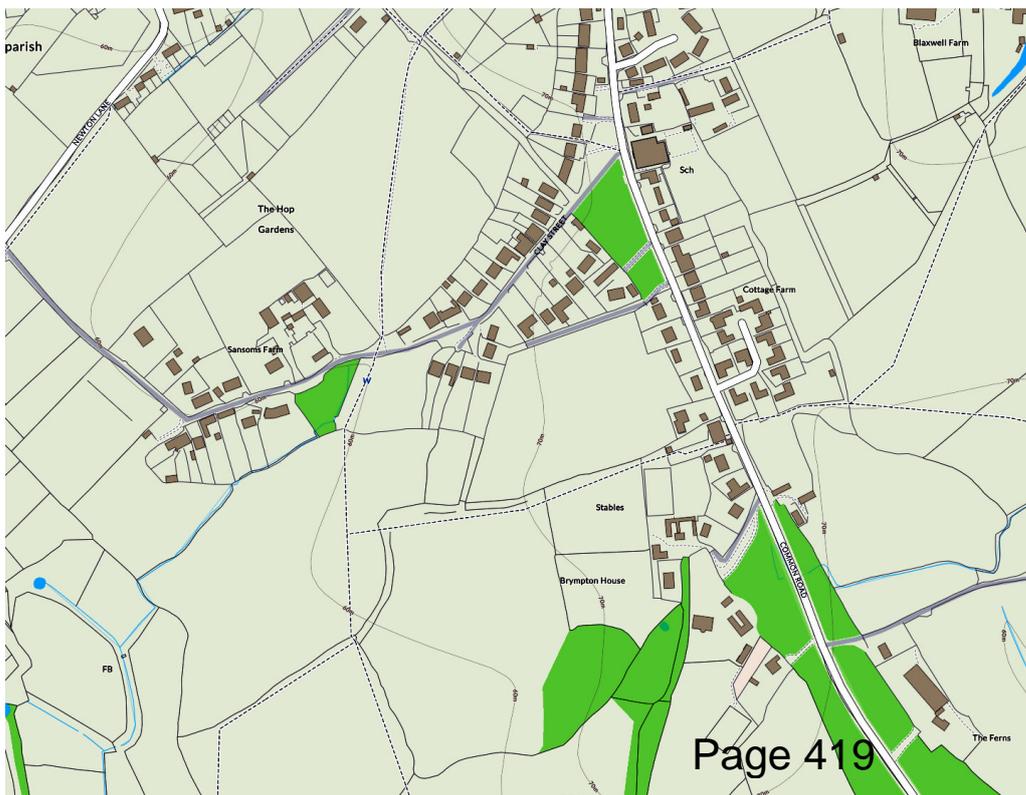


By Contrast above is the now fallen Ash where Mrs Cook and her husband installed the 3 wire barbed upgrade.

8/ This is a google earth satellite view from 2002 of the Drove Corner section >>> You can clearly make out a hedge at the base of Forest View Garden, the hedge in the drove with integral wire fence went diagonally from the edge of Forest View hedge end to the right corner apex of the drove approximately 3 to 4 metres down from where you see the bend.



Witness 17 states he frequently used the Drove to access Common Road as a child 1979 to 1995, His Family home is the [REDACTED] in the Photo above, I do not believe as a child he meant he went up his drive to Clay Street, left to footpath 4, along Footpath 6, North through a fence / hedge then up through cow pats, through a further fence and then east to common road >>> where he could have crossed 50 metres the top of secret field by Forest View to the upper drove directly!.



9/ The Farmer had a legal duty under the Animals Act of 1971 to keep his animals contained and were any to escape to Common Road the penalties would be very large, there was a locked gate at the exit to CL82 Common Land but **no cows were ever in the upper section** of the drove, the farmer knew well that householders were legally allowed to use it and kept his cows securely contained by a hedge and fence.

10/ Our Bungalow on [REDACTED] was granted planning permission by yourselves (Planning application Reference Number: 20/04331/FUL) and part of that permission required the drove be lowered 3 metres to keep the ridge height of the bungalow low (some 4000 tonnes of clay removed), we will legally challenge any order that requires us to install / provide steps or ramps for a public right of way >>>



11/ We note there was a spate of burglaries and break-ins on Clay Street and Common Road during June 2021, we have to question the wisdom of having a publicised public access via an unwatched path to the back of 5 properties on Clay Street, it practically invites crime, we are surprised residents would want such a footpath legally linking it to Footpath 6 (which it never has been) which would greatly increase that risk.

<https://planetradio.co.uk/greatest-hits/salisbury/news/eight-burglaries-in-whiteparish-in-one-night/>

12/ Taking the related witness statements into context >>>

A/ Witness 1 states the route is “Well Trodden”, this is partially correct and was so 1983-2003, the upper section of the Drove behind the houses with legal access has a very well trodden path and this is true for decades, the lower section was heavily trodden by cows for decades - it doesn't have a defined path like the upper section now nor did it have 1983-2003.

B/ Witness 3, 5 and 8 (Same Family) Had legal access to the upper section as far as the locked gates to the east

C/ Witness 4 Says it was used by dog walkers from Common Road and Local Families >>> **Where are their witness statements? (the Map application was very well advertised locally asking for applications)** He suggests the previous and current farming family were happy for people to use it, I suggest strongly that comment applied to the upper section only as confirmed by Mrs Andrews in her statement, no farmer would be happy to have people regularly passing close to their livestock.

D/ Witness 9 – Has “forgotten over the years” but remembers Gates!

E/ Witness 10 - As B Above but also remembers the fenced hedge and Cyclists / Horse Riders using the Drove, Difficult to understand how the Cyclists and Horse Riders navigated the Hedges with integral Fences let alone the locked gates near Common Road!

F/ Witnesses 11 and 12 Occasionally Viewed people using it but only used it themselves 3 times a year ..... **So they very occasionally saw people while very occasionally using it!**

G/ Witness 14 - As B Above but also recalls using it on a pedal cycle, I suggest this could only have been the upper section >>> The lower section was rutted, had cows in it, was full of cow pats and not accessible due the hedge and fence (remembered by her brother..... but in the same comment box herself is listed as “Unknown”)

H/ Witness 17 – Remembers the wire fence but please see my item 9 comment above, extremely unlikely to have accessed the lower Drove.

I/ Witness 18 – Poor report many sections unanswered.

J/ Witness 19 – Talked to the Farmer but only used the Drove Occasionally / Intermittently and not enough to be specific, at least witness 1 knew she used it once a year, Occasionally / Intermittently might be every 5 years but she still somehow remembers talking to the farmer - Really!

K/ Witness 22 – Walked the Drove twice a week and remembers a barbed wire fence in 1995.

L/ Witness 24 – Walked the Drove Monthly with Dogs since 1990 and remembers the Fence blocking its path.

M/ Witness 25 - Used it since 1962 Monthly but strangely still cant remember the gates that were there until the late 1990s (witness 1 confirms)

13/ This is from your own information confirming in 1972 that Gates existed at both ends of the Drove, the Upper gates that join the Common land CL82 before Common Road remained until the late 1990s.

<b>Document</b>	<b>Wiltshire County Council, Clerk's Office, Planning Appeal Land at rear of Common Road and Clay Street, Whiteparish – Residential Development and Construction of Vehicular Access (F2/1210/74)</b>
<b>Date</b>	1972
<b>Relevant Documents</b>	County Solicitor correspondence files
<b>Size / Scale</b>	Proposed Development Plan – 1:2,500
<b>Evidential Weighting</b>	E
<b>Significance</b>	The route is not directly affected by the development, but a plan of the proposed development is included and the correspondence sets out useful background regarding the formation of the village.
<b>Conclusion</b>	The route is shown on the proposed development plan, but is not recorded as a right of way and is not referred to within the correspondence. It is shown by double solid lines for the most part, although there is no connection to Common Road recorded, with solid boundaries/gates at both ends of the section shown by double solid lines. This map is based on Ordnance Survey and accords with the earlier Ordnance Survey mapping and should therefore be carefully considered alongside other evidence.



1972 - Wiltshire County Council, Clerk's Office, Planning Appeal, Land at rear of Common Road and Clay Street, Whiteparish – Proposed Development Plan

14/ We consider “The Drove” for what it really is i.e. a path of two sections and two histories >>> an upper and lower section, nobody has ever questioned the upper section right of way between adjacent houses, if the question is actually **total** “Right of way” there is very negligible evidence to support that people really used it for access from SU24642312 to SU24442292., the “vast majority” of map applications refer to upper section access.

15/ We find your “Without Force” comment 10.46 to be in error, Mrs Cook made it quite clear that in 2003 the fence was “**Upgraded**” not “Erected” as part of a series of measures to deter the local children on their bikes using secret field, are we really expected to believe the farmer would fit a barbed wire fence and then wrap it for protection (kind of defeats the object of fitting BARBED wire really) its quite obvious looking at the pictures (below) that secret field would have been accessed far easier in 2003 than through the Drove (footpath 4 and 6 already there), Mrs Cook and her husbands actions were to cover all angles >>>



As above you can clearly see local children would hardly have ridden their bicycles down a heavily overgrown Drove and made access through a hedge with its integral fence when they could come down Clay Street and footpath 4. I am also sure Mrs Cook and her Husband didn't only upgrade the Drove Fence to deter the children but only made that evidence as a statement for the Drove not other areas.

16/ We find it concerning to see comments in the witness reports suggesting how ideal a right of way would be to access other paths – So is this evidence that a right of way currently exists or a request to have one established?, with that in mind one should question why Mrs Cooks Granny granted Legal Access to the Drove Title Deeds of properties if said “Right Of Way” was being exercised already!

17/ The Drove does not and never has connected to footpath 6, (Point B on the MR1 is very misleading) you can go to the end and back which is not OS SU24442292 it is where it joins area 489 that is still part of cottage farm land, the hedge on rough field has many decades of growth and an integral wire fence that was there long before 1983.

This is the lower end of "The Drove" >>> Looking East!



And Looking west!



This is a Google Earth satellite image from 2002 and 2021 respectively, its quite blatant that there was nearly the same extent of Growth around the end of the Drove / area 489 in 2002 as 2021 (today) >>>



In conclusion >>>

We realise that this will likely go to a public hearing and we worry this will cause very bad feelings locally something we do not relish, this application however was never really about The Drove, it is about Nostalgia and anger over developments. Access to the A36, the New Forest and safety for school Children is far better served by the existing footpath 31(Clay Street) and Footpath 4!

Your conclusion to generate an order is based on evidence presented that's inaccurate and un-collaborated, it has brought the integrity of the Andrews family who have farmed in Whiteparish for several generations into question.

Without doubt the truth is that although the map application is for a right of way SU24642312 to SU24442292 the vast majority of witnesses have not ever used it SU24642312 to SU24442292, rather they have used a part of it which is **vastly different**.

1983 to 2003 were there cyclists SU24642312 to SU24442292 – no there was not!

1983 to 2003 were there horse riders SU24642312 to SU24442292 – no there was not!

1983 to 2003 were there ramblers and families enjoying a day out SU24642312 to SU24442292..... Very unlikely.

1983 to 2003 were there more than 3 or 4 people a year that walked the entirety SU24642312 to SU24442292 (Trespassing to do so) – No there was not!

1983 to 2003 were there 2 hedges each with barbed fences blocking the path SU24642312 to SU24442292 – Yes there were - and a gate by common road until 1999.

We hope further public expenditure is not wasted on what is not and never has been a public right of way.

Best Regards

Peter and Christine Davies

**From:** [REDACTED]  
**Sent:** 20 July 2022 11:45  
**To:** [Green, Janice](#)  
**Subject:** PC/245 2020/09D  
**Attachments:** [Letters concerning the Drove .pdf](#)

---

Dear Janice,

Hope this email finds you well

Please find attached 6 letters which object to the proposed footpath in the Drove at Whiteparish, this relates to the following reference JG/245/2020/09D, on the grounds that that the proposed route has always been blocked by a barbed wire fence as you can see from these letters,

please can I have a receipt

regards

Sheila Cook

Mrs Sheila Cook

[REDACTED]  
[REDACTED]  
Sherfield English

Romsey

SO51 6 [REDACTED]

25<sup>th</sup> June 2022

Dear Janice,

Footpath application, The Drove, Common Road, Whiteparish

From 1989 to 2003 I helped my father with the cows at Cottage Farm.

The Drove from Common Road was blocked by a barbed wire stock fence at the back garden of Forest View otherwise the cows would have got out from Secret Field.

We visited my Granny (Marjorie Andrews) every Tuesday from 1989 (when I had my daughter Jenna) until October 2006 (when my Granny went into a nursing home and after my son finished at Whiteparish Primary School). All my three children went to Whiteparish Primary School.

When my father retired in 2003 I took over the farm with my mother and we ran it together renting it out for horses.

In 2003 we replaced the 2 strand barbed wire fence at the corner of Secret Field and Forest View with a 3 strand barbed wire fence to stop teenagers who had started climbing through with their bicycles.

The developer who bought Secret Field from us in 2019 replaced the 3 strand barbed wire fence with a close board fence.

Yours sincerely,

[REDACTED]

Jenna Cook



Sherfield English

Romsey SO51 6 [redacted]

27<sup>th</sup> June 2022

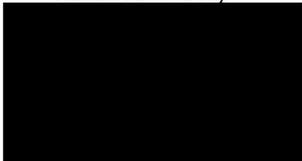
**To whom it may concern – footpath application, The Drove, Common Road, Whiteparish**

We used to go to Great Granny's house (Marjorie Andrews, Cottage Farm Bungalow, at the corner of Common Road and The Drove) every Tuesday – I can remember clearly from aged 8 (1997) until Great Granny went into a nursing home in October 2006.

We could walk down The Drove from Great Gran's house behind people's back gardens but the path was blocked with a barbed wire fence after the last house Forest View.

I kept horses in Secret Field from 2003 to 2007 and the corner of Secret Field and The Drove was still blocked by a barbed wire fence otherwise the horses would have escaped.

Yours faithfully



Jenna Cook

David Cook

[REDACTED]  
Sherfield English

Romsey SO51 6 [REDACTED]

28<sup>th</sup> June 2022

To whom it may concern – footpath application, The Drove, Common Road,  
Whiteparish

I, like my sister who is 2 years older than me, used to go to Great Granny's house (Marjorie Andrews, Cottage Farm Bungalow, at the corner of Common Road and The Drove) every Tuesday after school from as early as I can remember (2001) until Great Gran went into a nursing home in October 2006. Sometimes I would go with friends from school and we would pick blackberries.

The Drove was open from Common Road down past the back gardens of the houses but the path was blocked with a barbed wire fence to keep the cows the other side at the junction of the cow field and the last house Forest View.

Yours faithfully

[REDACTED]

David Cook

Michael Jewell

  
Bryces Lane

Sherfield English

25<sup>th</sup> June 2022

To whom it may concern – footpath application The Drove, Cottage Farm,  
Whiteparish

Marjorie and Leonard farmed Cottage Farm together from the 1950's and took over from their parents John and Agnes.

I married Monica Andrews, Marjorie's daughter.

I did contract work on the farm up until 1989, at which point I took over from Leonard.

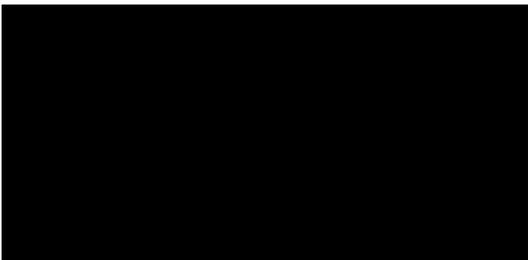
In my time from 1989 to 2003 the boundaries of the farm were stock fenced to keep the cows in, including the top of Secret Field at its junction with Forest View back garden and The Drove.

I sold my whole herd of approximately 235 cows in March 2003 and retired (  
).

From March to October every year there were 30 or more heifers at Cottage Farm including Secret Field.

In my time not a single heifer escaped onto Common Road.

Yours faithfully



Foxlea  
[REDACTED]  
Sherfield English  
Romsey  
SO51 6 [REDACTED]

21<sup>st</sup> June 2022

Dear Janice,

**Footpath application at Cottage Farm, Whiteparish**

In 1979 I did my year practical work for [REDACTED]  
before going to Sparsholt Agricultural College.

As part of this work I assisted in contract hay making at  
Cottage Farm.

I clearly remember cutting turning and carting hay from these  
fields. I was driving a Fiat 780 tractor registration JCG 660S.  
In all of my year from 01/09/1979 to 31/08/1980 the north  
east corner of what is known as Secret Field was blocked with  
a 2 strand barbed wire stock fence so neither you nor cows  
could get through to access Common Road. Coming from  
Common Road on what is known as The Drove you could  
access the rear garden gates of the houses but your path was  
blocked immediately after the last gate to Forest View by the  
2 strand barbed wire stock fence.

Yours faithfully,

[REDACTED]

Alan Cook

To whom it may concern:

My name is Roy Bowles.

I have worked alongside Alan Cook of [REDACTED] in many different roles since 1995.

Throughout this period from 1995 to present as part of my job I have checked and maintained the fences at Cottage Farm, Whiteparish.

There has always been a stock fence across the corner of The Drove at the back garden of Forest View. Owners of the bordering houses can walk to their back garden gates from Common Road but the route was always blocked after the last garden gate at Forest View.

In 2003 I replaced the two strand barbed wire fence with a three strand barbed wire fence.

At no point did I need to repair the fence, it blocked the route and no cows ever got out from Secret Field to Common Road.

Yours faithfully,

[REDACTED]

Roy Bowles

[REDACTED] Sherfield English Road, Plaitford,  
Romsey SO51 6 [REDACTED]

Date: 20<sup>th</sup> June 2022

**From:** [Graham Peacop](#)  
**Sent:** 25 July 2022 11:39  
**To:** [Green, Janice](#)  
**Subject:** Application to Add a Footpath - Whiteparish (The Drove) - Path no.42 Definitive Map and Statement Modification Order 2022  
**Attachments:** [Letter to Wiltshire Council - Footpath Application - Whiteparish \(The Drove\) - Peacop -22072022 .docx](#)

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Dear Ms Green

With reference to the above Order, we attach our formal objection. We will also be sending our objection letter by regular post.



JUDGE & PRIESTLEY LLP  
DX117600  
BROMLEY 7

Date  
28 February 2022

Your Ref  
PEAC014/0002

Our Ref  
RCS/WT457377

## Completion of registration

Title number [REDACTED]  
Property [REDACTED] Clay Street, Whiteparish,  
Salisbury (SP5 2[REDACTED])  
Registered proprietor Jennifer Louise Peacop  
Graham Mark Peacop

HM Land Registry  
Weymouth Office  
PO Box 75  
Gloucester  
GL14 9BD

DX 321601  
Gloucester 33

Tel 0300 006 0014

[www.gov.uk/land-registry](http://www.gov.uk/land-registry)

Your application lodged on 13 April 2021 has been completed. An official copy of the register is enclosed together with an official copy of the title plan.

The official copy shows the entries in the individual register of title as at the date and time stated on it. You do not need to reply unless you think a mistake has been made in completing your application.

An owner's property is probably their most valuable asset so it's important to protect it from the risk of fraud. Please read our property fraud advice at [www.gov.uk/protect-land-property-from-fraud](http://www.gov.uk/protect-land-property-from-fraud)

### **Important information about the address for service**

If we need to write to an owner, a mortgage lender or other party who has an interest noted in the register, we will write to them at their address shown in the register. We will also use this address if we need to issue any formal notice to an owner or other party as a result of an application being made. Notices are often sent as a safeguard against fraud so it is important that this address is correct and up-to-date. If it is not, the property owner or other party may not receive our letter or notice and could suffer a loss as a result.

Up to three addresses for service can be entered in the register. At least one of these must be a postal address, but this does not have to be in the United Kingdom; the other two may be a DX address, a UK or overseas postal address or an email address.

Please let us know at once of any changes to an address for service.

For information on how a property owner can apply to change their contact details or add an address, please see [www.gov.uk/government/publications/updating-registered-owners-contact-address](http://www.gov.uk/government/publications/updating-registered-owners-contact-address) on GOV.UK (or search for "COG1") or contact HM Land Registry Customer Support (0300 006 0411) (0300 006 0422 for Welsh speakers service) from Monday to Friday between 8am and 5pm.

If you require this correspondence in an alternative format, please let us know.



## Official copy of register of title

Title number [REDACTED]

Edition date 13.04.2021

- This official copy shows the entries on the register of title on 28 Feb 2022 at 15:50:03.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 28 Feb 2022.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry Weymouth Office.

### A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (18.02.2000) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being [REDACTED] Clay Street, Whiteparish, Salisbury (SP5 2[REDACTED]).
- 2 (13.04.2021) A Transfer of the land in this title and other land dated 5 December 2019 made between (1) Sheila Alison Cook and (2) Zelda Investments Limited contains a provision relating to the creation and/or passing of easements.  
*NOTE: Copy filed under [REDACTED]*
- 3 (13.04.2021) The land has the benefit of any legal easements granted by the Transfer dated 9 March 2021 referred to in the Charges Register but is subject to any rights that are reserved by the said deed and affect the registered land.
- 4 (13.04.2021) The Transfer dated 9 March 2021 referred to above contains a provision as to light or air and boundary structures and a provision relating to the creation and passing of easements.

### B: Proprietorship Register

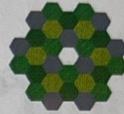
This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

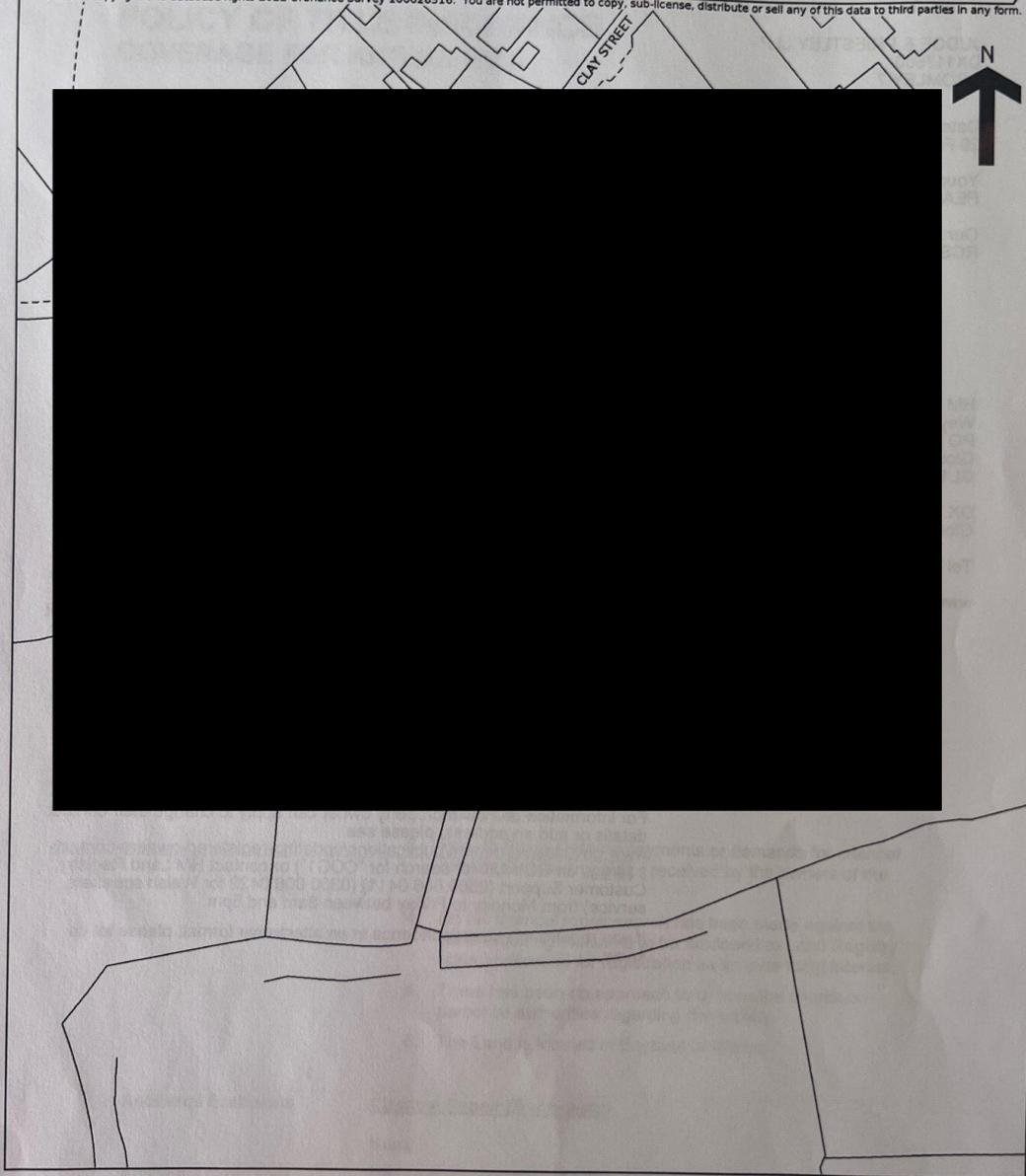
- 1 (13.04.2021) PROPRIETOR: [REDACTED] and [REDACTED] of [REDACTED] Clay Street, Whiteparish, Salisbury SP5 2[REDACTED].
- 2 (13.04.2021) The price stated to have been paid on 9 March 2021 was £830,661.
- 3 (13.04.2021) RESTRICTION: No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a

HM Land Registry  
Official copy of  
title plan

Title number [REDACTED]  
Ordnance Survey map reference **SU2423SW**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **Wiltshire**

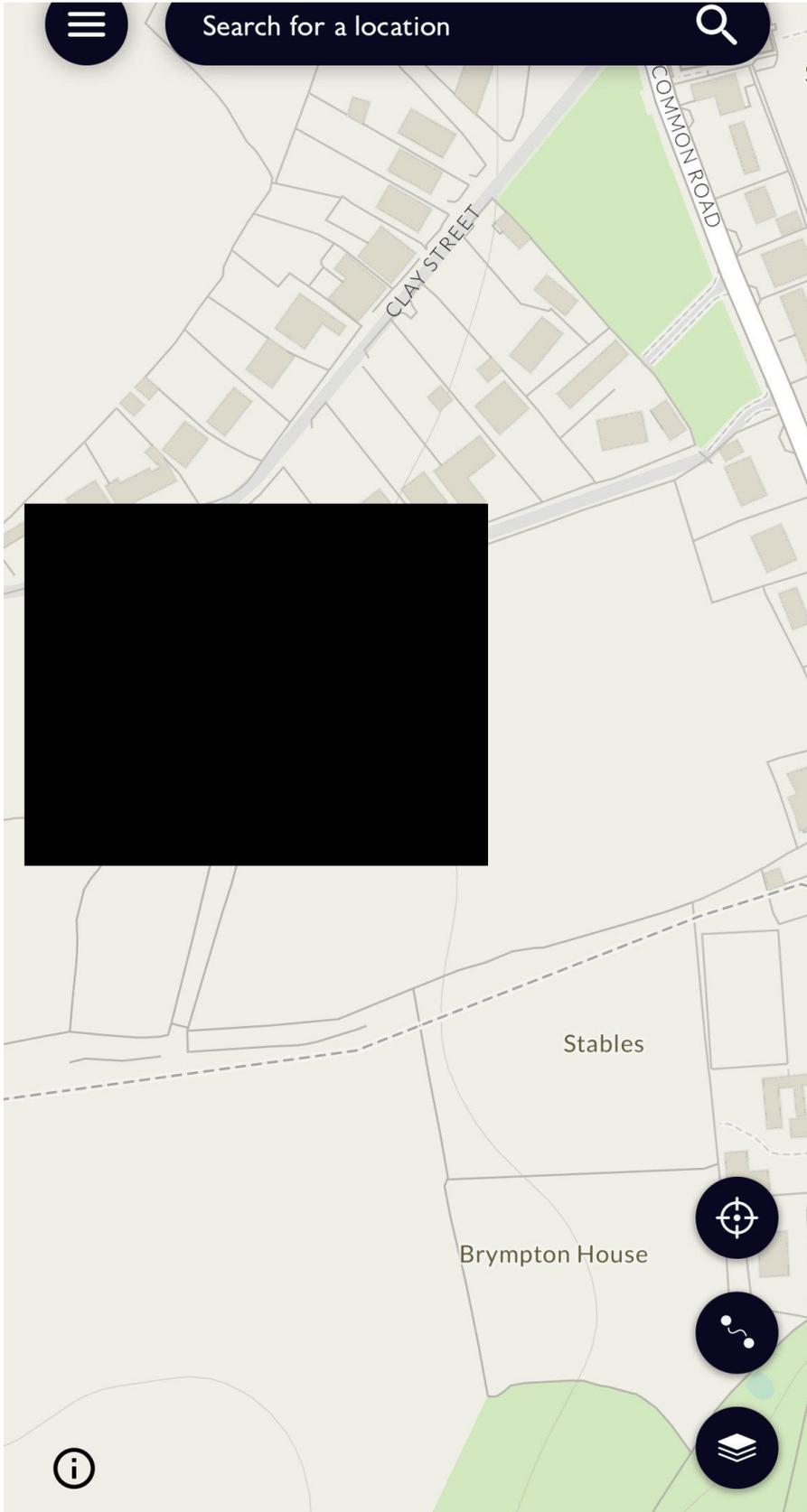


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15:16







Please be aware that we are very pleased to be approached to assist in your deliberations. We look forward to hearing from you in due course.

Thank you

Graham and Jennifer Peacop

Clay Street

Whiteparish

SPS ■

# Graham and Jennifer Peacop

██████████  
Clay Street  
Whiteparish  
Wiltshire  
SP5 2████

---

22 July 2022

Your ref: JG/PC/245 2020/09D

Janice Green  
Senior Definitive Map Officer  
Rights of Way & Countryside Team  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

Dear Ms Green

**Application to Add a Footpath - Whiteparish (The Drove) – Path no.42 Definitive Map and Statement Modification Order 2022**

We were very disappointed to receive your letter of 29 March 2022 advising us of the definitive map modification order (The Order) made on 25 March 2022 relating to the above application, which directly and significantly affects us as owners of Wren House, Clay Street.

**We wish to object in the strongest terms to what we consider to be a vexatious application on which a flawed interim decision has been reached and one which should not be finalised. We request that we receive confirmation that The Order will not be confirmed. In any event this must not occur without a public enquiry, we wish to be kept advised of developments so we can consider our options in respect of a judicial review.**

Our objection is made on the following grounds:-

**Summary**

The Order by Wiltshire Council is predicated on a vexatious application by some (not all) 'residents' of Clay Street. The circumstances behind the application have not been fully taken into account by Wiltshire Council – the application appears very much to emanate from the (perhaps understandable) frustration of some residents in Clay Street to the planning approval (legitimately granted by Wiltshire Council) giving rise to Wren House, Warblers Cottage and Lilac Lodge which are now established home dwellings under new ownerships.

The application and The Order in the context of a 'footpath' seem somewhat spurious for a 'footpath' to be considered as varying between 3 metres and 9 metres. This appears to bear the hallmarks of a preservation order over a romantic notion of an historic 'drove' rather than considering the actual merits of a 'footpath'. Once again this points to the vexatious nature of the application.

To be clear, up to '9 metres' potentially takes the proposed footpath up to the eastern wall of our house, cutting right across our land and threatening the security and value of our home. Others who back onto the

proposed footpath will be similarly impacted. There is no supporting evidence or argument from Wiltshire Council that a 'footpath' is even viable as proposed by The Order. The impacts on the lives and homes of the people who live in Wiltshire should be the primary concern for Wiltshire Council.

As owners of Wren House, which includes ownership of land being directly impacted by The Order, irrespective of the timing of the application, we have not been consulted at any time before the making of The Order (we took ownership on 9 March 2021). This seems inconceivable, if the Council is indeed concerned about the people living in Wiltshire.

There is palpably insufficient evidence by a statistically significant number of people to demonstrate the route has ever been used regularly or frequently as a 'footpath' and the Order should not be finalised. No further public money should be wasted.

More detailed point of objections are made below:-

### **Factual Error**

1. The letter of 29 March from Wiltshire Council, advising of the making of The Order, quotes 'Footpath no.42 Whiteparish (The Drove), leading from its junction with Common Road, in a generally west-south-westerly direction for approximately 180m and then south-south-west from approximately **180** metres...'. This is inconsistent with The Order which refers to **150** metres and there needs to be precision, as well as consistency.
2. The Order is set out as going 'to its junction with Path no.6 Whiteparish'. Whatever has been loosely referred to as 'The Drove' and on the route on which the footpath is now proposed, has **never** (demonstrably on the evidence on which The Order is predicated) joined with anything, it has never had a 'junction with Path no.6 Whiteparish' and has **never** been used as a footpath thoroughfare. The Order is, therefore, incorrect and should be dismissed on this basis.
3. Significant 'evidence' has been considered by Wiltshire Council in assessing the application and consequently Wiltshire Council has determined that '**There is insufficient documentary evidence of a public right of way over The Drove, Whiteparish**'. This is a clear and categorical statement and the application should have been dismissed on this basis alone.
4. Wiltshire Council (a single legal entity ie 'person') having made The Order is that same 'person' that had within the past 2 years granted planning permission for the building of 3 dwellings in and around 'Secret Field' and 'The Drove', and the following *should* have been sufficient for the footpath application to be dismissed:-
  - The planning permission was granted by Wiltshire Council **in the full knowledge** of the concerns of local residents regarding the impact on the local environment including 'The Drove'
  - **The same arguments were presented by local residents in their objections to the planning permission and indeed, many of the user statements contained in the footpath application have been lifted verbatim from the planning application objections**
  - The outcome of the planning permission has the effect of giving permission for a change of use of the land, **in the full knowledge of the impact on Secret Field and The Drove**

- Sections of Secret Field and The Drove have now passed to new owners ie the new owners of the 3 new dwellings and in the case of 2 of those new dwellings sections of The Drove are now an integral part of the Land Registry title of their new properties
- It seems irrational, and fundamentally wrong, that the same 'person' ie Wiltshire Council, having granted planning permission with the same information that it now has relating to the footpath application can now make an Order for a footpath directly across the land now owned by the owners of the new dwellings
- The Land Registry title deeds (copy enclosed for Wren House) confirm that there is no delineation of The Drove ie it has ceased to exist in plots 2 and 3 as a consequence of the planning permission granted by Wiltshire Council (the most recent Ordnance Survey maps, copy enclosed, reflect the current ownership and non-existence of The Drove in these plots)
- The Order does not use the latest Definitive Map - we have a more recent version in our Land Registry title deeds, so the Order has been made on the basis of the incorrect Map
- The proposed footpath will potentially blight the new dwellings which have been approved by Wiltshire Council, particularly those which will possibly have a footpath running through its gardens and a consequent effect on the marketable value of those homes. Wiltshire Council should be held to account for acting inconsistently in its decision making without having given due regard to the effect of making the Order, having already granted planning permission to the 3 new dwellings
- We should be interested to understand the extent to which Wiltshire Council has given consideration the provisions the Natural Environment and Rural Communities Act 2006 which, amongst other things, has the objective of giving more certainty to people purchasing land.

### **Uncertainty**

5. There are varied references to people walking 'The Drove', as well as people walking into and across 'Secret Field' as well as children playing in 'The Drove' and 'Secret Field'. - It seems implausible to apply for a 'footpath' when it seems that, when accessed (by trespassing in our view), it has not been used as a 'footpath' but as a playground (not least because it doesn't lead anywhere). To repeat, it has never been used or accessed as a footpath and the various testimonies should be subjected to greater scrutiny. Furthermore, we suggest that over time the areas known separately as 'The Drove' and 'Secret Field' have been conflated which has caused confusion.
6. In the light of the various references to how people have used the space, whether 'The Drove' or 'Secret Field', which we maintain has been entered by trespass, the application (on which the Order has been made) bears the characteristics of a preservation order rather than a 'footpath', largely for sentimental reasons of the local residents. This should have received greater scrutiny.

### **Evidential Flaws**

7. There is very little supporting evidence for Wiltshire Council to reach its conclusion that there is 'sufficient evidence that a right of way for the public on foot can be reasonably alleged to subsist over The Drove, Whiteparish, by virtue of use of the path, as of right, for a period of 20 years, from 1983 to 2003.....'. In attempting to demonstrate how it balanced its findings to arrive at its conclusions (which appears limited) it seems to jump quickly to arriving at a judgement. This judgement appears very

subjective (section 10.72 on p66) and weak in arriving at the conclusion? **Wiltshire Council needs to be held to account to ensure that the appropriate levels of burden of proof have been demonstrably achieved.**

8. The basis of The Order, predicated on a vexatious application for a footpath, is implausible and demonstrably impractical to be considered credible for a 'footpath' to have a width as between '3m-9m'. The impact and feasibility of the The Order needs to be properly and fully assessed. It should be readily determined that The Order of a footpath is unworkable with disproportionately significant impacts on local residents and is unworkable.
9. The vexatious nature of the application is clearly apparent on scrutinising the events leading up to the application. There were various planning permission applications for the development of the new houses, with extensive objections from nearby residents. Interestingly , the timing of the application of the footpath follows soon after the granting of final planning permission for 3 dwellings. This appears highly suspicious, perhaps as a tactic to undermine the development, the developer and the builder. In reality, the impact is the new owners and other residents of Clay Street backing onto the proposed footpath.
10. The extent of 27 'user statements', some from the same families and many of whom have moved from the area some time ago, seems to be a statistically insignificant number for Wiltshire Council to conclude that the application should result in an Order being made. It should not be possible for so few people to have such a significant impact on the environment and local residents.
11. Interestingly, we understand that some of those 'user statements' have subsequently been withdrawn which should mean The Order is even less valid than the already weak basis on which it was granted. It might also suggest that some local residents were coerced into supporting the application without understanding the ramifications of the footpath being granted.
12. On the basis there is a limited number of user statements and that these coincide with the same objectors of the planning permission, we conclude that the level of (self) interest in the granting of the footpath is limited to people who live in the very close proximity to the proposed footpath. There is palpably no widespread village outcry.

#### **Additional Queries**

13. The proposed footpath will create significant security risks and loss of privacy to adjacent properties to the potential footpath. The houses backing onto 'The Drove' currently have a rear boundary that is wholly inaccessible by foot which provides reassurance as regards security. The granting of the footpath completely changes this and the security and costs implications are considerable. Wiltshire Council has not demonstrated how these issues have been considered in the making of The Order.
14. Section 18 Financial Implications is wholly inadequate in demonstrating the extent of the costs. Wiltshire Council have looked at a very narrow perspective and taken no account of the money spent by the Council in considering this case to date ie internal costs (which must be significant). It also takes no account of potential internal costs to the Council in the event of a public hearing etc. There appears to be

very significant costs in reaching the point of granting The Order with even more and very significant costs in considering this further. It seems to us to be a dreadful waste of public resources, both human and financial, and we wonder the extent to which there is accountability to demonstrate and justify the exorbitant costs.

15. There is also the question of costs relating to the establishing and ongoing maintenance of the proposed footpath, which has not been addressed in the report. These will be significant.

To reiterate, we request that we receive confirmation that The Order will not be confirmed. In any event this must not occur without a public enquiry. Please keep us up to date so that we can consider our options in respect of a judicial review.

We would welcome any consultation with you if this would assist in your deliberations. We would wish you to know that our desire is to settle in to our new home and to be come a fully accepted and integrated part of the village community. Unfortunately, it has not been particularly easy to do so with this hanging over our heads. We do not seek confrontation and very much hope that common sense and kindness prevails.

Yours sincerely

Graham and Jennifer Peacop

**From:** [Craigio](#)  
**Sent:** 01 August 2022 10:11  
**To:** [Green, Janice](#)  
**Subject:** Application to Add a Footpath – Whiteparish (The Drove) – Path No.42 Definitive Map and Statement Modification Order 2022.  
**Attachments:** [Footpath Application 2022.docx](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Ms Green,  
I have attached a letter of objection to the above order. Please let me know if you require a written copy via post.

Yours

Craig Dyson

Mr C Dyson

██████████ The Street

Whiteparish, Salisbury

SP5 2 ██████████

Rights of Way & Countryside Team

County Hall, Bythesea Road

Trowbridge, Wiltshire

BA14 8JN

Re: Application to Add a Footpath – Whiteparish (The Drove) – Path No.42 Definitive Map and Statement Modification Order 2022.

Dear Ms Green

In relation to the above Order for a new footpath I would like to put on record my objection to the proposed Order, for the following reasons: -

I have lived in Whiteparish for over 23years, since 1999. I have enjoyed exploring the majority of the known and established footpaths in the local area. Whiteparish is particularly well served with many footpaths and I am pleased that the Parish council tries to keep them in good order. However, adding yet another just places a further burden upon the parish council.

I did on one occasion many years ago mistakenly venture into what the order refers to as ‘the drove’. It was over grown and it soon became clear that there was no path through as it was blocked about 60 yards down and I was forced to turn around and re-trace my steps to Common Road. Therefore, at no time have I known or considered there to be a footpath or right of access to the route proposed by The Order.

My main issue with this order is as follows -

Two well established public rights of way footpaths already go in the same direction as the one in the order. One is 143 yards north of the proposed common road start of the footpath and goes down Clay Street (footpath 31). This footpath ultimately links up with footpath 4 another established footpath which then links to footpath 6.

The proposed new footpath virtually follows the exiting Clay Street footpath and at one point is only 43 yards away from the exiting footpath. If allowed this order would have the residents on the south side of Clay Street having a footpath in front and at the back of their dwellings that goes in the same direction. I do not see any advantage in allowing this order.

The second footpath which heads in the same direction is actually footpath 6 the one the new footpath links up with. This footpath is only 173 yards south of the proposed new footpath start on Common Road. I don't see any need for the new footpath when there are two well established routes going in the same direction, one being the very path the new footpath appears to be aiming to link with. It would literally take 2/3 minutes to walk from the start of the new footpath on common road to access footpath 6.

Sorry, establishing this new footpath does not make any sense to me when other long-standing footpaths are available.

I hope this information is helpful. For the reasons given I do object and hope this order is not confirmed.

Yours Sincerely

Craig Dyson

**From:** [tim rudman](#)  
**Sent:** 01 August 2022 16:48  
**To:** [Green, Janice](#)  
**Subject:** Application to Add a Footpath - Whiteparish (The Drove)  
- Path no.42 Definitive Map and Statement  
Modification Order 2022

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**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms Green

Application to Add a Footpath - Whiteparish (The Drove) - Path no.42 Definitive Map and Statement  
Modification Order 2022

In relation to the above Order for a new footpath I would like to put on record my objection to the proposed Order, for the following reasons:-

I have lived in Whiteparish for most of my life, since 1962. I know the area very well and was a very explorative child, as were my friends, in the 1970s/80s.

I remember on many occasions seemingly moving freely through numerous fields, irrespective of whether we were allowed. We would have frequently entered private farmland, perhaps scaling a gate or fence, in the full awareness that we would not have an assumed right of way or access. My experience is that this was fairly common behaviour for children back in those days, whether or not they should.

Specifically as this relates to the above Order, with friends I would have ventured into the drove/Secret Field, knowing full well that this was private land. Indeed, as well as breaching gates/fences to enter these areas from time to time we would have been challenged by the farmer, and asked to leave.

The basis of the application for the footpath seems/appears flawed and I do not support the basis of The Order.

Tim Rudman

**From:** [Mark Richards | Zelda Investments](#)  
**Sent:** 01 August 2022 17:52  
**To:** [Green, Janice](#)  
**Subject:** RE: Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

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**Importance:** High  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

1<sup>st</sup> August 2022  
Your ref: JG/PC/245

Janice Green  
2020/09D  
Senior Definitive Map Officer  
Rights of Way & Countryside Team  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

Dear Janice,

**Path no.42 Definitive Map and Statement Modification Order 2022**

Thank you for your letter of 29 March 2022 advising us of the definitive map modification order (The Order) made on 25 March 2022 relating to the above application.

Consistent with my statutory declaration and witness statement already submitted, I wish to object in the strongest terms to what is clearly an application based on anti-developer sentiment, drummed up during 'lockdown' by one household using an advert in the local parish magazine and a cut and paste application form.

5 neighbouring households, parents and children, represent 95% of the supporting applications. Time passes, the properties are complete and occupied by new owners.

I think that you will now find people are withdrawing their support as they are embarrassed by what they stated during lockdown in regard to this erroneous emotional application, swept along by the frustrations of lockdown where everyone stood in their gardens and had all the time in the world to work up sentiment against a planning application that was won at appeal against the wishes of many locals, followed but by heavy plant, constant trucks and dust, noise and abrasive workmen etc. The flawed interim decision which has been reached by Wiltshire Council should not be finalised. We request that we receive confirmation that The Order will not be confirmed. In any event this must not occur without a public enquiry, we wish to be kept advised of developments so we can consider our options in respect of a judicial review.

In the main applicant's (Patricia Woodruffe) testimony she features the 3 strand barbed wire fence blocking the proposed route. In law a barbed wire fence has never been shown to operate as a style. In the previous witness statements upon which you based your decision, little reference was made to the fence that predated the 3 strand barbed wire fence but it is erroneous for you to then conclude

that there wasn't a fence. What is your sufficient evidence that there wasn't a fence which was replaced by the 3 strand barbed wire fence?

'sufficient evidence that a right of way for the public on foot can be reasonably alleged to subsist over The Drove, Whiteparish, by virtue of use of the path, as of right, for a period of 20 years, from 1983 to 2003.....'

Indeed the opposite is true - Secret Field has operated as part of a dairy farm for over 50 years with livestock contained within Secret Field by a 2 strand barbed wire fence which was only upgraded to a 3 strand when the cattle were retired with a generational change of farmer replaced the cows with horses (which are not as curious as cows so kids from the back gardens area then started to climb through with their bikes – those children are now adults and would be able to tell you what they did if asked under oath!).

If you would like to see the farm accounts they are available, I have studied the ones from 1985 to 1998. If you would like to see the student project done on the farm in 1989 by Victoria Pratt for Sparshalt College then please ask. The workings of the farm are very clear, including the well known (and nationally recognised) breeding programme for Hampshire Cattle Breeders of which Secret Field formed an integral part.

The Jewell/Cook family have farmed it without break since 1929. When you effectively say there was no fence to keep the cows in Secret Field you are effectively telling them that they farmed livestock without stock fencing, ie neglected a standard part of farming for which under the 1971 Animals Act they would have then been culpable for every cow that escaped onto Common Road. But obviously there is not a single occurrence recorded. Magically the cows stayed in the field! Next you will be saying because it is not mentioned in witness statements that the milking parlour on Common Road didn't exist!!

Equally erroneous, no applicant states there was ever a connection through to FP6 at the southern end of the applicant's route – so why are you filling in the blanks by assuming this was the case let alone considering that there was a route uninterrupted, without force, for 20 years? Isn't it rather clear that this was simply the corner of a field with barbed wire fence and thick hedge where livestock, particularly pregnant cows and young calves, gathered under the trees for more protection? This was an enclosed protected area, the opposite of a way through to a public footpath!

The main applicant Patricia Woodruffe (on her annual visit) states: 'it is recognised that, to link the Drove to WHT6 would require some clearance of vegetation'...

The main applicant's husband Brian Woodruffe states: 'link to FP6 through hedge required'

So how is it that when the main applicant and her husband clearly state that there was no link to FP6 and that one would be desirable in order to not use the top of FP6 as it 'goes through a private garden. The owners are amenable but I would prefer not to use it'.. how do you get from this to any presumption at all that people have been passing through the hedge/fence to join FP6 for 20 years, uninterrupted and without force?

And a presumption of a path varying between 3m and 9m? How can you suggest any path at all let alone a variable width of great magnitude when there is no evidence to show any path existed at all through the hedge/fence at the southern boundary nor at the overgrown hedge/fence turn into Secret Field from the top section of The Drove by the rear gates to the houses. The path to the back gardens in front of the 2 strand fence was 0.3m wide at Westways. Secret Field is/was approx 50m wide. When kids with bikes trespassed through a barbed wire fence how much did they use, 9m?! So where does a footpath width of 3m-9m emanate from?! Wishful preservation order for a type of terrain? Certainly not a footpath! However, when seen in the context of applicants trying to be as obstructive as possible to a development you can understand that a large and varying width could be the most effective!! Equally a blurred description could provide the most administrative complications – is The Drove just the bit behind the houses or is it through Secret Field?! Do witnesses actually

know?? Given a grey description witnesses found it easier to say they walked 'The Drove' as part of their protest against the development even though they could easily be referring to the section behind the houses before the barbed wire fence with cows the other side. Would it not be more appropriate to ensure total certainty in description before calling witnesses under oath so there can be no doubt? The same witnesses need to explain why they did not mention the suggested right of way on previous approved planning application consultations but only after the one for Secret Field went through on appeal and Mrs Woodruffe campaigned for a new footpath etc. It is notable of the timing of the footpath application, shortly after the planning appeal was granted and work commenced! Wiltshire Council needs to explain it's own position when approving those previous applications vs now saying that a right of way should exist.

Where were all the other more widespread supporting letters for the footpath application for other users for 20 years uninterrupted and without force? Why is it just the 5 households for whom many of the offspring have not lived in the area for many years?

The good thing is I imagine you are now receiving a broader spectrum of witness statements from people clearly pointing out the totally fabricated nature of the application.

Yours sincerely,  
Mark Richards

---

Mark Richards  
Business Development Director  
**Zelda Investments Ltd**

----- Original message -----

From: "Green, Janice" <janice.green@wiltshire.gov.uk>

Date: 28/03/2022 15:33 (GMT+00:00)

To: Mark Richards | Zelda Investments [REDACTED]

Subject: RE: Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

Hi Mark,

No, please don't worry you haven't missed anything. Just to confirm that the order was sealed on Friday, it is about to come out in the post (I'm in the office tomorrow). Notice will appear in the newspaper (Salisbury Journal) on Thurs 7<sup>th</sup> April and will be followed by a formal objection period until Tues 2<sup>nd</sup> August, during which time objections and representations may be lodged with Wiltshire Council.

I hope this is helpful.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer

Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** Mark Richards | Zelda Investments [REDACTED]  
**Sent:** 28 March 2022 14:52  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** RE: Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

Hi Janice,

I hope you are well.

I didn't miss an email did I?

Many thanks,

Mark

---

Mark Richards  
Business Development Director

Zelda Investments Ltd

----- Original message -----

From: "Green, Janice" <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>

Date: 07/03/2022 11:46 (GMT+00:00)

To: Mark Richards | Zelda Investments [REDACTED]

Subject: RE: Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

Hi Mark,

Thank you for your e-mail and speaking with me today.

Not necessarily, it is all about the evidence and each case is different, some applications will be based on historic or user evidence alone and others will be based on a mixture of both types of evidence. I would refer you to the Norton and Bagshaw caselaw which is outlined in the report and which sets out the two tests: A (balance of probabilities) and B (reasonably alleged), and the public interest in making an order. Owen J held that:

*"(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied."*

*"(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry."*

*"If, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, an Order would seem likely to be appropriate."*

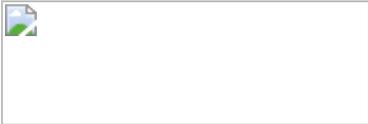
As outlined in the Norton and Bagshaw caselaw, there will inevitably be points of conflict within the evidence of objectors and that of the supporters. For this reason, an order can be made based on a reasonable allegation that a right of way for the public subsists, which is a lower test than the balance of probabilities. Where there is no incontrovertible evidence against this, it is in the public interest for a local authority to support the making of the order.

I hope this is helpful.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** Mark Richards | Zelda Investments [REDACTED]  
**Sent:** 07 March 2022 11:12  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** Re: Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

Hi Janice,

Just out of interest, is every single application found to be 'reasonably alleged'?

Many thanks,

Mark

---

Mark Richards  
Business Development Director  
**Zelda Investments Ltd**

----- Original message -----

From: "Green, Janice" <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>

Date: 07/03/2022 09:48 (GMT+00:00)

To: Mark Richards | Zelda Investments [REDACTED]

Subject: Wildlife & Countryside Act 1981 - Application to Add Footpath, The Drove, Whiteparish

Dear Mr Richards,

**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way –**  
**Whiteparish, The Drove**

I am writing to advise you that Wiltshire Council has now completed its investigation of the available evidence in the above-mentioned application to add a footpath to the definitive map and statement of public rights of way, in the parish of Whiteparish, (The Drove). It has been resolved to make a definitive map modification order to add a footpath (the Drove), with a width varying between 3m and 9m, as shown on the proposed order plan (Appendix 10 of decision report). Please find attached a copy of the Wiltshire Council decision report, which sets out the reasons for this decision.

I am intending to make the order in the week commencing 21<sup>st</sup> March 2022. Formal notice of the making of the order will be served upon all interested parties and this will be followed by a statutory objection period of at least 6 weeks, during which time formal objections and representations to the making of the order may be lodged in writing with Wiltshire Council.

I hope this information is helpful and you will of course receive notice of the making of the order in due course.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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[REDACTED]  
Common Road

Whiteparish

Salisbury

Wiltshire

SP5 2 [REDACTED]

Mobile: [REDACTED]  
[REDACTED]

Janice Green  
Senior Definitive Map Officer  
Rights of Way & Countryside Team  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

Your ref: JG/PC/245 2020/09D

Application to Add a Footpath - Whiteparish (The Drove) – Path no.42 Definitive Map and Statement Modification Order 2022

Dear Ms Green

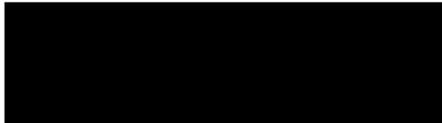
My objections to the footpath being added to the definitive map are

1. The so call footpath "the drove" is not used as a footpath, it remains overgrown, and the track marked on the map does not lead to anywhere. Paths in the fields North of point B on the map have been blocked by homeowners on Common Rd, not allowing access to Common Rd.
2. Wiltshire Council granted planning permission for the building of dwellings in and around 'The Drove', and the following must have been sufficient for the footpath application to be dismissed:-
  - The planning permission was granted by Wiltshire Council in the full knowledge of the concerns of local residents regarding the impact on the local environment including 'The Drove'
  - Arguments were presented by local residents in their objections to the planning permission and many of the user statements contained in the footpath application have been copied from the planning application objections
  - The outcome of the planning permission has the effect of giving permission for a change of use of the land, in the full knowledge of the impact on The Drove
  - Sections of The Drove have now passed to new owners. The Drove is now an integral part of the Land Registry title of their new properties.

- The Land Registry title deeds confirm that there is no delineation of The Drove.
- It seems inconceivable that Wiltshire Council having granted planning permission with the same information that it now has relating to the footpath application can now make an Order for a footpath directly across the land now owned by the owners of the new dwellings
- The proposed footpath will massively impact the new dwellings which have been approved by Wiltshire Council, particularly those which will possibly have a footpath running through its garden. Wiltshire are acting inconsistently in its decision making without having given due regard to the effect of making the Order, having already granted planning permission to the new dwellings

This application has been made to continue with petty objections to the original planning permission granted by Wiltshire Council and no more time or money should be spent.

Your sincerely,

A solid black rectangular box redacting the signature of Simon and Sharon Aldhouse.

Simon and Sharon Aldhouse

**From:** [Matthew Leach](#)  
**Sent:** 08 August 2022 16:35  
**To:** [Green, Janice; rightsofway](#)  
**Subject:** Application to Add a Footpath – The Drove,  
Whiteparish

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Janice,

I hope this email finds you well.

I wish to remove my support for making "The Drove" a designated footpath.

I was new to the village not long before this application was made. Having lived here longer now, I have met my neighbours on The Drove on several occasions, leading me to believe my neighbours do indeed use the path quite regularly. Therefore it seems likely it was my neighbours (who have a right of way on the section of the drove behind my house) that I had previously seen through the hedge using this footpath, rather than the general public.

Kind Regards,

Matthew Leach  
[REDACTED]  
Clay Street

**From:** [David Stockton-Chalk](#)  
**Sent:** 03 October 2022 16:32  
**To:** [Green, Janice](#)  
**Subject:** Re: Subject Re Footpath(the drove) path 42 .  
Whiteparish. Modification order 2022. Dear Ms Green.  
I live next door to Mr and Mrs peacop. I cannot see any  
purpose in the drove, it's totally overgrown, and leads  
to nowhere . To my knowledge it hasn't been u

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from stocktonchalk@gmail.com. [Learn why this is important](#)

Dear Ms Green. Re foot path( The Drove) modification order 2022.  
I live next door to Mr&Mrs Peacop. I cannot see any purpose in the Drove, it's totally overgrown, and  
leads to nowhere. To my knowledge the path has not been used for ages. Regards David Stockton-  
Chalk.

Sent from DSC's iPhone

On 3 Oct 2022, at 09:42, Green, Janice <janice.green@wiltshire.gov.uk> wrote:

Dear Mr Stockton-Chalk,

**Wildlife and Countryside Act 1981 – Section 53**  
**The Wiltshire Council (Parish of Whiteparish) Path no.42 Definitive Map and Statement**  
**Modification Order 2022**

Thank you for your e-mail dated 31<sup>st</sup> July, I confirm receipt with many apologies for the  
delay in getting back to you. I note your objection to the above-mentioned order which  
proposes to add a footpath in the parish of Whiteparish, The Drove, however, your  
comments have been inserted into the title of the e-mail and unfortunately, it has not  
been possible to read your comments in full. I would therefore be very grateful if you  
could re-send your email, with your full comments inserted into the message section,  
with many thanks for your help in this matter.

Where objections to the making of the Order are received and not withdrawn, the Order  
falls to be determined by the Secretary of State, therefore Officers will now be preparing  
a report regarding the evidence, including the objections and representations received,  
for consideration by Members of the Southern Area Planning Committee, who will  
determine the Wiltshire Council recommendation to be attached to the Order when it is  
forwarded to the Secretary of State for determination.

Thank you for your help in this matter, I will of course keep you updated on progress

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** David Stockton-Chalk [REDACTED]

**Sent:** 31 July 2022 17:14

**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>

**Subject:** Subject Re Footpath(the drove) path 42 . Whiteparish. Modification order 2022.

Dear Ms Green. I live next door to Mr and Mrs peacop. I cannot see any purpose in the drove, it's totally overgrown, and leads to nowhere . To my knowledge it hasn't been us...

Sent from DSC's iPhone

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**From:** [REDACTED]  
**Sent:** 23 March 2023 10:17  
**To:** [Green, Janice](#)  
**Subject:** RE: Wildlife & Countryside Act 1981 s.53 - DMMO Footpath no.42  
Whiteparish (The Drove) - Southern Area Planning Committee  
30th March 2023

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Green,

**Wildlife & Countryside Act 1981 – Section 53**  
**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement**  
**Modification Order 2022**

-

**Southern Area Planning Committee – Thursday 30<sup>th</sup> March 2023, 3:00pm**

Thank you for information regarding the forthcoming meeting. I am sorry that neither my husband nor I can attend but we would wish to make the following points, which we consent to being used at the meeting, if required.

1. Wiltshire Council has recognised The Drove as a Historic Monument and included in its register where it is described as 'A medieval trackway between fields formed by medieval assarting. Ref: SU22SW467.
2. The permissive use of The Drove extends back over more than 50 years to our knowledge and, probably, for hundreds of years.
3. Several owners of properties backing onto The Drove have rights of access onto it written into the deeds of their properties. These people have provided witness statements which can be verified.

We consider the conservation of this historic feature to be particularly significant, as well as its use as a public right of way. **Its incorporation in part into gardens should not exclude this duty of care.**

The fields adjacent to The Drove have been used for exercise and dog walking for decades and the incorporation of The Drove as proposed would provide

considerable community benefits, as currently encouraged by national government in order to officially establish these ancient routes.

Our priorities are therefore to

- To conserve the historic feature
- To provide improved public amenities.

We ascertain that all of the information provided in our witness statements remains, to the best of our knowledge, correct.

Kind regards,

Pat and Brian Woodruffe

---

**From:** Green, Janice [mailto:janice.green@wiltshire.gov.uk]

**Sent:** 10 March 2023 08:51

**To:** 'Pat Woodruffe' [REDACTED]

**Subject:** Wildlife & Countryside Act 1981 s.53 - DMMO Footpath no.42 Whiteparish (The Drove) - Southern Area Planning Committee 30th March 2023

Dear Mr and Mrs Woodruffe,

**Wildlife & Countryside Act 1981 – Section 53**

**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022**

-

**Southern Area Planning Committee – Thursday 30<sup>th</sup> March 2023, 3:00pm**

I am writing to advise you that a report regarding the above-mentioned Order which proposes to add a footpath in the parish of Whiteparish, Footpath no.42 (The Drove), is due to be considered by Members of the Wiltshire Council Southern Area Planning Committee at their meeting dated Thursday 30<sup>th</sup> March 2023. The meeting starts at 3:00pm and will be held at The Pump Room, The Old Fire Station Enterprise Centre, 2 Salt Lane, Salisbury, Wiltshire, SP1 1DU.

I understand that the agenda and report will be published shortly before the meeting, (generally about 5-7 days before the meeting) and may be viewed on the Wiltshire Council website using the following link:

[Browse meetings - Southern Area Planning Committee | Wiltshire Council](#)

Please note: in the unlikely event that this agenda item is not considered at the meeting dated 30<sup>th</sup> March, or the meeting is cancelled, the agenda item will be taken forward to the next meeting on 27<sup>th</sup> April, please check the agenda for updated information before attending.

Public participation at the meeting is possible and members of the public who wish to speak either in favour or against the agenda item are asked to register with the Senior Democratic Services Officer, before the deadline specified in the agenda. Please contact Lisa Alexander, Senior Democratic Services Officer on 01722 434560, or e-mail [lisa.alexander@wiltshire.gov.uk](mailto:lisa.alexander@wiltshire.gov.uk)

The agenda will contain full details of public participation. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an item. Each speaker will be given up to 3 minutes to speak and will be invited to speak immediately prior to the item being considered. Speakers for the Parish Council are in addition to the above and are given up to 4 minutes to speak.

I hope this information is helpful.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



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**From:** [Green, Janice](#)  
**Sent:** 28 March 2023 08:25  
**To:** [Green, Janice](#)  
**Subject:** FW: SOUTHERN AREA PLANNING COMMITTEE - THURSDAY 30 MARCH 2023

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**From:** Jennifer Harrison [REDACTED]  
**Sent:** 27 March 2023 14:26  
**To:** Alexander, Lisa <[Lisa.Alexander@wiltshire.gov.uk](mailto:Lisa.Alexander@wiltshire.gov.uk)>  
**Subject:** SOUTHERN AREA PLANNING COMMITTEE - THURSDAY 30 MARCH 2023

[REDACTED]

Dear Ms Alexander

**AGENDA ITEM NO 6  
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53  
THE WILTSHIRE COUNCIL WHITEPARISH PATH NO 42  
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022**

Thank you for sending us the agenda and paperwork for the above Committee Meeting and I regret that we are unable to attend so please record our apologies. We would like to submit the following statement:

**After due consideration and with some reluctance we have decided to withdraw our support for the above application. This is because we can see no amicable neighbourly result if this application for The Drove to become a public footpath is approved.**

**When the small development of three dwellings was first proposed we were dismayed and in a state of disbelief that the developer destroyed part of The Drove in such a wanton manner with no regard to the environment and any wildlife.**

**Subsequently the development was approved on Appeal by the Planning Inspectorate and part of The Drove was incorporated into two of the new gardens. Our understanding is that The Drove was classified as an Ancient Monument and that no permanent dwelling can be built on it.**

**We have lived in Clay Street since 1985 and although we have withdrawn our support we stand by our initial statement that we submitted in applying for consideration to be given to The Drove being designated a public footpath. The main points of our statement were that it was possible to negotiate the whole length of The Drove to the point where it joined Footpath No 6 - we clearly remember seeing and hearing groups of people coming from the Common Road entrance going past our back garden (as well as individual dog walkers) and never turning back. We fail to understand how newcomers to Whiteparish can assert that The Drove has never been a through-route. Also Mr Andrews, the then-co-owner of The Drove, was fully aware that our children played in The Drove during the late 1980s and early 1990s and he never protested that they were on private land.**

**We would like to acknowledge that Wiltshire Council did not approve the planning application for the three new dwellings and that there has been a very comprehensive report undertaken in respect of this footpath application. We are grateful for the part that Wiltshire Council played in attempting to stop this development going ahead.**

**Finally the deeds to our dwelling show that we are legally entitled to use The Drove from where there is now a barrier in the form of a wooden fence outside our boundary hedge to the junction with Common Road. We trust that this means that this part of The Drove will always be protected and we shall continue to exercise our right to use it.**

With thanks and regards

Jenny and John Harrison

  
Clay Street  
Whiteparish

Sent from [Mail](#) for Windows

**Southern Area Planning Committee – 30<sup>th</sup> March 2023**

**Wildlife and Countryside Act 1981 – Section 53**

**The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022**

**Officers' Response to Additional Representations of Mr and Mrs Woodruffe 23<sup>rd</sup> March 2023**

The Applicants in this case are the “Residents of Clay Street” (Whiteparish), Mrs Woodruffe being the main contact for the application. In correspondence dated 23<sup>rd</sup> March in relation to “The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022”, Mr and Mrs Woodruffe make a number of points in support of the Order, as set out below, with Officers comments attached:

- 1) *Wiltshire Council has recognised The Drove as a Historic Monument and included in its register where it is described as “A medieval trackway between fields formed by medieval assarting. Ref: SU22SW467.”*

The Drove is included in the Wiltshire and Swindon Historic Environment Record (HER) ref: SU22SW460 – MWI17191, which contains information on archaeological sites, monuments and finds in Wiltshire and Swindon, being a local listing rather than a nationally recognised designation. The site is included in the HER as follows: Monument, Medieval Settlement 1066-1539, Common Road – “A settlement site which except for one platform, the earthworks of which were ploughed by 1967. 12<sup>th</sup> to 14<sup>th</sup> century coarse black pottery.”

In the making and confirmation of an Order under Section 53 of the Wildlife and Countryside Act 1981, only the evidence of public rights may be taken into account. The designation of the route as an historic monument in the Wiltshire and Swindon HER, is not a relevant consideration for the Committee in its consideration of the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for determination.

The Wiltshire Council Archaeology Service has been consulted regarding the proposed addition of Footpath no.42 Whiteparish (The Drove) and advised that they have no archaeological concerns and no further action is required as regards the buried archaeological heritage.

- 2) *The permissive use of The Drove extends back over more than 50 years to our knowledge and, probably, for hundreds of years.*

In order for user evidence to be qualifying evidence in support of an application, it is necessary for user to be “as of right”, i.e. without permission; without force and without secrecy. As set out in the Sunningwell caselaw:

*“The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect a landowner to resist the exercise of the right...”*

R v Oxfordshire County Council and Another ex parte Sunningwell Parish Council [1999] 3 WLR 160.

The Applicant refers to “permissive” use of the Drove dating back more than 50 years, which would accord with the evidence of property owners in Clay Street who have a private right within their deeds to access the rear of their properties using the upper section of the Order route from Cottage Field, and the evidence of Mrs Cook, the landowner, who states that her Great Grandmother granted the private easement for the five properties, over the upper section of The Drove, (over the land in her ownership), in May 1957. Any other use prior to that date; use by non-residents and the property owners’ use continuing past the properties on the south-west section of the route to Footpath no.6, is likely to have been without permission. Of 27 witness evidence forms in total, where those having a private right to the upper section of The Drove, were excluded from qualifying user, 14 users remained who appeared to be using the route without permission, sufficient to make the Order based on a reasonable allegation.

However, user “as of right” is disputed in the objections received following the making of the Order. One of the supporters withdraws his support where he now considers that it is his neighbours seen using the path, who have a private right, which is not qualifying use “as of right”. Additionally use by the 14 users remaining and property owners’ continuing south-west, may be affected by additional evidence of the 2 strand wire fence being present across the width of the way from 1979 – 2003, which may bring use of the way into question at an earlier date; prevent use and/or affect user “as of right”.

Although Mr and Mrs Woodruffe claim that use has taken place for probably hundreds of years, there is no evidence of use prior to 1962. If the 2 strand wire fence was in place across the width of the Drove in 1979 which brought use of the way into question, it would be necessary to consider an alternative 20 year period of 1959 – 1979. 6 users support use prior to 1979, however, the earliest user evidence of witnesses is provided in 1962, there is no evidence of a full 20 year user period prior to 1979 to satisfy Section 31(1) of the Highways Act 1980.

- 3) *Several owners of properties backing onto The Drove have right of access onto it written into the deeds of their properties. These people have provided witness statements which can be verified.*

As above, the property owners have a private right to use the upper section of The Drove to access the rear of their properties. This is not qualifying user under Section 31(1) of the Highways Act 1980, where it is undertaken with permission, and is therefore done “by right” rather than “as of right”. Therefore, the property owners’

evidence of use of the upper section of the Drove must be disregarded. However, their continuation south-westwards on The Drove appears to be user without permission, again such use may be affected by additional evidence of a 2 strand wire fence across the width of The Drove in 1979.

*We consider the conservation of this historic feature to be particularly significant, as well as its use as a public right of way. **Its incorporation in part into gardens should not exclude this duty of care.***

*The fields adjacent to The Drove have been used for exercise and dog walking for decades and the incorporation of The Drove as proposed would provide considerable community benefits, as currently encouraged by national government in order to officially establish these ancient routes.*

*Our priorities are therefore to*

- *To conserve the historic feature*
- *To provide improved public amenities.*

The conservation of the historic monument is not a matter for consideration in the making and confirmation of an Order under Section 53 of the Wildlife and Countryside Act 1981. The incorporation of a public right of way into the gardens, does not have the effect of extinguishing unrecorded public rights, if they are found to exist.

Mrs P Woodruffe states in her user evidence form: *“It would be a relatively simple matter to link this ancient track to other public footpaths and so create a new amenity for local people...”* In the determination of an application to add a public right of way, the Surveying Authority are not seeking to add “new” rights of way, but simply to record an existing public right, previously unrecorded.

*We ascertain that all of the information provided in our witness statements remains, to the best of our knowledge, correct.*

Where, since the making of the Order, the evidence is disputed and finely balanced in the balance of probabilities test to be applied at the confirmation of an Order, Officers’ consider that it is not possible for Wiltshire Council to make a recommendation regarding the determination of the Order. Dispute is likely to be resolved by the testing of evidence at a local public inquiry. Additional weight may be given to the oral evidence given at a public inquiry where it has been subject to testing through cross-examination.

#### **Officers’ Response to Additional Representations of Mr and Mrs Harrison 27<sup>th</sup> March 2023**

The attention of Committee Members is brought to correspondence from Mr and Mrs Harrison, who are “reluctantly” withdrawing their support for the Order, not for evidential

reasons, but where they “...can see no amicable neighbourly result if this application for The Drove to become a public footpath is approved.”

Matters with regards to the development of the three dwellings; environment and wildlife, cannot be taken into account in the making and determination of an Order under Section 53 of the Wildlife and Countryside Act 1981.

Mr and Mrs Harrison, as local residents, have a private right to access the upper section of The Drove, however, they maintain that it was possible to use the whole length of The Drove to the point where it joined Footpath no.6 and they have seen and heard groups of people coming from Common Road and continuing past their back garden, without turning back. Objectors maintain that there has been a fence across the width of the way since 1979 and that there has never been access to Footpath no.6 at the southern end of the Order route. Where the evidence is disputed and finely balanced in the balance of probabilities test to be applied at the confirmation of an Order, Officers’ consider that it is not possible for Wiltshire Council to make a recommendation regarding the determination of the Order. Dispute is likely to be resolved by hearing from witnesses at a local public inquiry and testing of the evidence through cross-examination.

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**Wiltshire Council  
Southern Area Planning Committee  
30<sup>th</sup> March 2023**

**Planning Appeals Received between 20/01/2023 and 17/03/2023**

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
21/01329/FUL	Land adj Footes House, Homington Road, Coombe Bissett SP5 4LY	Coombe Bisset	Erect 1no. dwelling; form new access from Shutts Lane and associated development	DEL	Written Representations	Refuse	15/03/2023	No
PL/2022/00862	44 High Street, Downton, Salisbury, SP5 3PJ	Downton	Replacement Windows	DEL	Written Representations	Refuse	22/02/2023	No
PL/2022/06741	Drove Cottage, High Post Road, Netton, Salisbury, SP4 6AP	Till Valley	Removal of Conditions 5 & 6 of 16/03468/FUL (Proposed construction of new detached dwelling and relocation of existing access to serve new dwelling. Creation of new access to serve existing dwelling)	DEL	Written Representations	Refuse	17/03/2023	No
PL/2022/06742	Drove Cottage, High Post Road, Netton, Salisbury, SP4 6AP	Till Valley	Removal of Conditions 4 and 5 of 20/11294/FUL (Change of use of agricultural land to domestic garden)	DEL	Written Representations	Refuse	17/03/2023	No
PL/2022/07702	Brooklyn 4x4 Ltd, Richmond Farm, Whiteparish, SP5 2QJ	Alderbury & Whiteparish	Retrospective change of use from Sui Generis (Equine) to Sui Generis (Car Sales and Repairs) together with the retention of a mobile home to provide on-site security and associated works	DEL	Written Representations	Refuse	17/03/2023	No

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**Planning Appeals Decided between 20/01/2023 and 17/03/2023**

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded
PL/2022/02040	Peartree Cottage, Ansty Coombe Lane, Ansty, Salisbury	Ansty	Erection of garage (variation to approval 17/07021/FUL)	DEL	Householder Appeal	Refuse	Allowed with Conditions	07/03/2023	None

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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

<b>Date of Meeting</b>	30 <sup>th</sup> March 2023
<b>Application Number</b>	PL/2023/00213
<b>Site Address</b>	3 OLD MILL CLOSE, EAST KNOYLE, SALISBURY, SP3 6EX
<b>Proposal</b>	Construction of single 2 bedroom cottage on part of garden
<b>Applicant</b>	Mrs V Garrett
<b>Parish Council</b>	East Knoyle
<b>Ward</b>	Nadder Valley
<b>Type of application</b>	Full Planning Permission
<b>Case Officer</b>	James Repper

### Reason for the application being considered by Committee

Councillor Bridget Wayman has called the application to committee for the following reasons:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties

#### 1. Purpose of Report

To consider the above application and the recommendation of the Area Development Manager that planning permission should be **APPROVED** subject to conditions.

#### 2. Report Summary

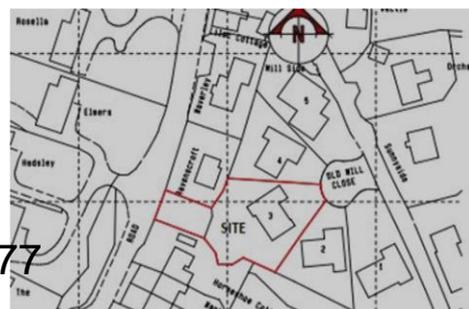
The main issues which are considered to be material in the determination of this application are listed below:

- Principle of development
- Scale, design, impact on character and appearance of the area
- Impact on AONB
- Residential amenities/living conditions

The application has generated an objection from East Knoyle Parish Council and received 8 letters of representation from the general public.

#### 3. Site Description

The application site relates to a parcel of land now separated from the southwest corner of 3 Old Mill Close, East Knoyle. The site itself is accessed off Shaftesbury Road and is located between the residential dwellings known as Ravenscroft (to the north) and Horseshoe Cottage (to the south). The site is located upon a primarily residential through road of mixed-form properties to the southern end of the small village of East Knoyle, as defined by Wiltshire Core Strategy (WCS) core policies 1 (Settlement Strategy), 2 (Delivery Strategy) and 17 (Spatial Strategy for the Mere Community Area). The site is surrounded by other residential properties, and their associated amenity and parking provisions, several of which have been subject to alterations and/or extensions over time. The site is located approximately 100m south of the designated East Knoyle Conservation Area.



#### 4. Planning History

Application Ref	Proposal	Decision
S/1986/1254	APPLICATION SITE: ERECTION OF DWELLING HOUSE WITH INTEGRAL GARAGE AND ACCESS	Refused 24/09/1986
S/20032549	RAVENS CROFT: TWO-STOREY EXTENSION	Approved with Conditions 26/01/2009
S/1990/1313	HORSESHOE COTTAGE: EXTENSION TO PROVIDE BEDROOM ABOVE EXISTING DINING ROOM	Approved with Conditions 30/10/1990

#### 5. The Proposal

This is a full planning permission application proposing the addition of a single residential dwelling to a primarily residential street via in-fill policies. The property is proposed to be a two-storey (chalet style) two-bedroom property with off-road parking and external amenity space plus all associated works.

#### 6. Local Planning Policy

##### **National Planning Policy Framework (NPPF)**

Section 5 (Delivering a sufficient supply of homes)  
Para 78 (Rural Housing)

##### **National Planning Practice Guidance (NPPG)**

##### **Wiltshire Core Strategy:**

CP1 (Settlement Strategy)

CP2 (Delivery Strategy)

CP17 (Spatial Strategy for the Mere Community Area)

CP57 (Ensuring High Quality Design & Space Shaping)

##### **Supplementary Planning Guidance:**

Creating Places Design Guide SPG (April 2006)

Achieving Sustainable Development SPG (April 2005)

Cranborne Chase Partnership Plan (2019-2024)

Wiltshire Local Transport Plan – Car Parking Strategy

East Knoyle Village Design Statement

#### 7. Summary of consultation responses

##### **Parish Council: Object**

- The plot is too small for the proposed building
- Possible shadow over neighbouring properties
- Dormer/roof windows should be referred to current Dark Sky recommendations
- Concern over the distances between the new building and existing boundaries
- Building Line is questioned

- Design - the front of the building does not relate to existing houses either side
- The building would visually detract from that part of the village
- Existing Hedges will be removed

**Highways: No Objection Subject to Conditions**

- Adequate off-street parking is proposed to meet Wiltshire's current parking standards.

I wish to raise no highway objection providing the following conditions are imposed:

- The development hereby permitted shall not be occupied until the area between the nearside carriageway edge and a line drawn 2.4m parallel thereto over the entire site frontage has been cleared of any obstruction to visibility at and above a height of 900mm above the nearside carriageway level, and maintained as such thereafter.

REASON: In the interests of highway safety.

- The development hereby permitted shall not be occupied until the whole of the parking area, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

- Notwithstanding the submitted details, the proposed development shall not be occupied until means/works have been implemented to avoid private water from entering the highway.

REASON: To ensure that the highway is not inundated with private water.

- The vehicle access and parking spaces shall remain un gated.

REASON: In the interests of highway safety.

- No part of the development hereby permitted shall be occupied until the access & parking spaces [2] have been completed in accordance with the details shown on the approved plans. The areas shall always be maintained for those purposes thereafter and maintained free from the storage of materials.

REASON: In the interests of highway safety.

- **Informatives**

- The applicant is advised to fully note the requirements for Electric Vehicle Charge Points as required in Approved Document S of the Building Regulations. The requirements in the document represent the minimum standard and the applicant is advised that additional provision may be provided at the applicant's cost.
- The application involves the creation of a new vehicle access/dropped kerb. The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence

will be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact our Vehicle Crossing Team on [vehicleaccess@wiltshire.gov.uk](mailto:vehicleaccess@wiltshire.gov.uk) and/or 01225 713352 or visit their website at <http://wiltshire.gov.uk/highways-streets> to make an application.

- The applicant is advised that, if it is proposed to drain this development directly into the river or carry out any work within 8 metres of the watercourse then a Land Drainage Consent is required from the Environment Agency. For further information see [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

#### **AONB (Cranborne Chase): Comment**

- Subject to the views of your Conservation Architect, the AONB does not have an 'in principle' objection to the proposal. However, it seems clear that that architect/applicant do not appreciate that in this International Dark Sky Reserve the obligation is to reduce, year on year, light pollution, and not simply minimise the increase in light pollution. The proposed roof lights on the front and rear elevations have the capacity to add significantly to light pollution in the locality. In order for this AONB not to object either the roof lights are designed out or the applicant submits a modification showing all the roof lights fitted with integral blinds that are automatically operated at dusk by light sensitive switching. Any external lighting should be explicitly approved by the LPA and comply with the criteria for Environmental Lighting Zone E0, and no additional lighting should be permitted without the permission of the LPA.

Furthermore, the AONB is concerned about potential changes to the street scene. The visual provided only shows the proposed building, not the street scene. The proposal does not appear to incorporate any biodiversity enhancements and therefore fails to comply with this AONB Board's Position Statement on Biodiversity [May 2022]. There do not appear to be any technologies to capture and utilise solar energy so, again, the proposal is not supporting the aims of the adopted AONB Management Plan.

As things stand, the AONB strongly advises the submitted proposal is not good enough to approve.

#### **8. Publicity**

This application was advertised through the use of letters of consultation sent in several rounds due to an initial error by the admin team that failed to notify an immediate neighbour.

8 letters of representation were received from the residents of 3 properties. The following comments were made:

- Overshadowing
- Overlooking
- The discrepancy of the square footage on plan to reality
- Loss of Hedge
- Surface water drainage
- Highway concerns
- Noise and pollution during construction
- Overdevelopment

- Inappropriate use of land
- Breach of article 8 of the Human Rights act.
- Out of Character

## **9. Planning Considerations**

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise.

### **9.1 Principle:**

The application site is located within the small village of East Knoyle, part of the Mere Community Area, which is defined as a small village by WCS core strategies 1 and 2. The housing policy boundaries have been removed from small villages effectively categorizing them as the countryside.

The WCS sets out Settlement and Delivery Strategies for the sustainable delivery of new development within the County. Applying the normal principle that applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise; proposed new development which does not comply with the Settlement and Delivery Strategies will be unsustainable, and so unacceptable as a matter of principle in this overarching context. The WCS for the area was adopted by Wiltshire Council in January 2015.

CP2 (Delivery Strategy) confirms that development in the County's smaller villages should be limited to infill development only within the existing built-up area of the village. This is because Small Villages, by their very nature, have even fewer facilities and services than Large Villages, Hamlets even less so. Infill development is defined in the supporting text of this policy as '...the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling'. This is however on the proviso that any such infill development:

- i) Respects the existing character and form of the settlement
- ii) Does not elongate the village or impose development in sensitive landscape areas
- iii) Does not consolidate an existing sporadic loose-knit area of development related to the settlement.'

This principle acceptability is however subject to the details, such as its implications for the character of the area; and neighbouring amenities. These will, therefore, be addressed in more detail below.

### **9.2 Character & Design**

Core Policy 57 states that new development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality. Residential extensions such as this are acceptable in principle subject to there being no adverse impacts.

Good design helps to provide a sense of place, creates or reinforces local distinctiveness, and promotes community cohesiveness and social wellbeing; The layout and design of new developments must also be based on a thorough understanding of the site itself and its wider context, and seek to maximise the benefits of the site's characteristics. This will require careful consideration of the site layout. No two sites

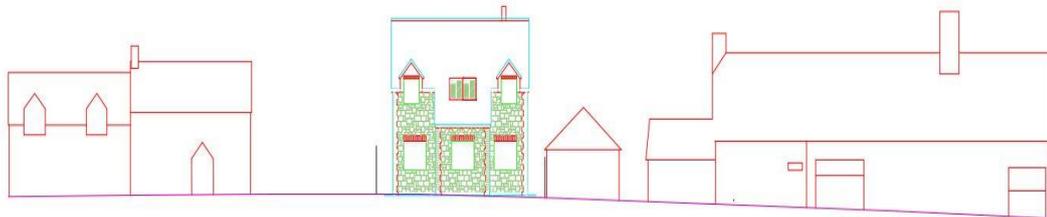
share the same landscapes, contours, relationship with surrounding buildings, street pattern and features. The proximity of poor quality or indistinct development is not a justification for standard or poor design solutions. New development should integrate into its surroundings whilst seeking to enhance the overall character of the locality; A high standard of design is required in all new developments, including extensions, alterations, and changes of use of existing buildings.

The site is located in the southern section of the village and is located between existing residential properties on all sides and, therefore, would not elongate the built form of the village or consolidate any sporadic or loose form of development. The built form of the immediate area is considerably varied with Horseshoe Cottage to the immediate south being the end of a thatched terrace and Ravenscroft to the North a detached double-pitched, tiled roof, property that has undergone considerable extension and alteration over the years, to the rear of the site the properties of Old Mill close are relatively modern as are the bungalows located opposite the proposed site.

The East Knoyle Village Design Statement states (VDS) *“Infill development and extensions to existing dwellings should follow the established line of existing roads and buildings”*. When discussing building materials the VDS states *“The building character of East Knoyle, as is typical of many villages across Britain, has evolved over many centuries and has been determined by various factors. These include the building materials available locally; developing techniques and fashions; land availability; fluctuating population; the wealth, status and pretensions of those who commission and live in the village houses; and the survival of buildings from different periods.”* The proposed building has detailed that the front façade will be made of natural stone with red brick quoin detailing, the windows and doors to the front will have red brick soldier courses and the roof is to use natural slate. The properties on either side of the application site, Horseshoe Cottage and Ravenscroft both have front elevations that appear to be made of natural stone with Horseshoe Cottage having a thatched roof and Ravenscroft having what appears to be a clay-tiled roof. The use of slate as a roofing material is both mentioned within the VDS and found on multiple properties within the village and as such is considered to be an appropriate material. The side and rear elevations of the proposal are detailed to be rendered which is again considered to be a relatively common design detail within the village and surrounding area, Ravenscroft to the north appears to have the rear half of the building rendered similarly. The location of the proposed building within the plot is considered to respect the existing build line of the properties on either side and is to be constructed of materials considered appropriate and in use within the immediate vicinity. Given the large variety of designs and forms of properties in the area, it is considered that the proposal pays sufficient attention to the materials that characterise the locality and whilst not a copy of the designs found on either side is considered to be sufficiently conservative to not appear incongruous in the street scene or be detrimental to the character of the surrounding area.

The proposed height of the application appears to be higher than Horseshoe Cottage to the south, however, this is not considered to be particularly unusual given Horseshoe Cottage forms the end of a terrace of thatched cottages that are squat in nature as evidenced by the ridge height of Prospect House immediately to the south of the terrace with its Slate roof considerably higher than those of the thatched cottages. Ravenscroft to the immediate north of the site is actually located in a plot set down in comparison to the application site which does then give the appearance that the application site will be taller, but then it is at the top of a slight rise. The roof design of the proposed uses front dormer windows which are considered to be akin to those used in the Ravenscroft extension from 2003 so again are not considered to be out of character for the location. Overall it is considered that the scale, height, mass and design of the proposals would

be appropriate for the location, would constitute infill as per CP2 of the WCS and would not be detrimental to either the street scene or to the character of the surrounding area.



### 9.3 Neighbouring Amenity:

WCS policy CP57 requires that development should ensure the impact on the amenities of existing occupants/neighbours is acceptable and ensuring that appropriate levels of amenity are achievable within the development itself. The NPPF includes that planning should 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'. Residential amenity is affected by significant changes to the environment including privacy, outlook, daylight and sunlight, and living areas within private gardens and this, therefore, needs to be carefully considered accordingly.

In this instance, it is considered that the proposals whilst clearly a major change from the status quo of the site as residential garden land consideration however whether the changes are significantly detrimental shall be considered below

#### **Privacy:**

The proposed building will introduce glazing at both ground-floor and first-floor levels where currently there is none, however, the properties are arranged in linear form and as such a degree of inter-relationship is inherent between properties. It is considered that the proposed dwelling has given consideration to neighbouring privacy during the design phase. This is evidenced by the lack of glazing on the side elevations other than a single ground-floor window on the southern elevation that is detailed to be a "high-level" window allowing light entry but no real views out, it is also noted that this window is located next to the detached garage serving Horseshoe Cottage. The first-floor glazing to the rear has specifically been chosen as rooflights to protect the neighbouring property's rear gardens from being overlooked and whilst the front elevation has standard windows at the first floor in both front-facing dormers these windows both serve bedrooms and overlook the front aspects which are areas that can be viewed from the public realm, it is also considered that these windows are not oversized or arranged in such a way as to promote lingering more than any normal bedroom window so oblique views over designated amenity spaces that can be seen from the public realm would not

be considered significantly detrimental to the privacy or enjoyment of these amenity spaces available to the occupiers of neighbouring dwellings.

**Outlook:**

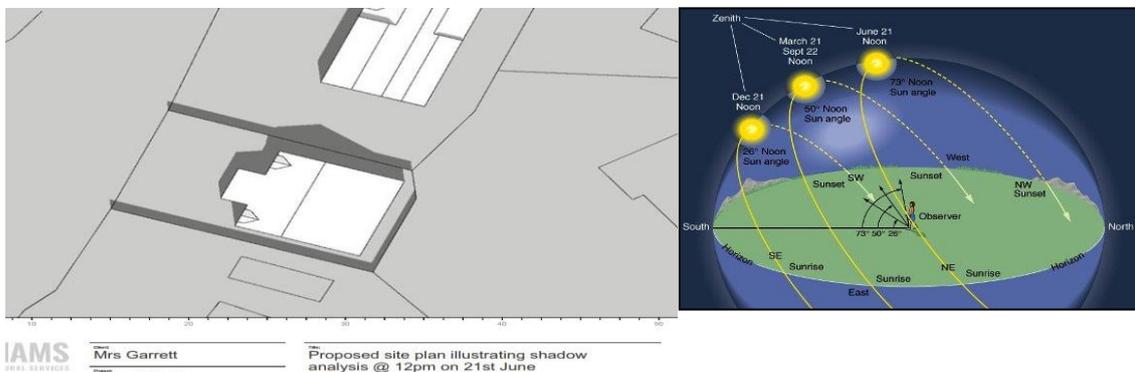
It is considered that whilst the proposed dwelling would appear in certain properties views it would not lead to a blockage of outlook.

**Sunlight & Daylight:**

The occupants of Ravenscroft have raised concerns in relation to the impact of the dwelling upon their remaining area of amenity space where they have constructed a patio area to which the proposals are close. The applicants have provided a shadow plan analysis of the proposals at the behest of the planning department in response to these concerns.

The occupiers have stated that they installed their patio, and french doors to access said patio, in 2020 and that they have resided in the house since 1998. The right to light is governed by the prescription act of 1832 which does state "When the access and use of light to and for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing." Paying particular attention to the french doors and patio which have only been in place for a short period of time, it could be argued that this area of amenity space has been the primary area of garden available to the occupants of Ravenscroft since the householder planning application of 2003 developed the amenity space to the north of the property and that it has been garden area for more than 20 years. Whilst the Prescription Act does grant an absolute and indefeasible right in this instance it is considered to not apply as the shadow produced would not interrupt light to the french doors and patio to a sufficient degree. The right to light is not a planning concern but a separate legal matter, once the right to act was established then occupiers of Ravenscroft are entitled to "sufficient light according to the ordinary notions of mankind" whilst this is a term open to legal wrangle in this instance it is considered that the prescription act would not be a reason to stop this proposal from proceeding.

The shadow path analysis clearly shows that whilst at certain times of the year the proposals would cast shadows towards and over Ravenscroft, in the summer months when the patio area would most benefit from direct sunlight the shadow cast is minimal and not sufficient to cause sufficient detriment to the enjoyment of the area in question and would not constitute sufficient grounds to warrant a refusal of planning.



**Living Areas within Private Gardens:**

Given the lack of windows overlooking the patio area of Ravenscroft and the considered position in relation to sunlight and shadowing it is considered that the proposals would

not significantly affect the enjoyment of this external living area to warrant a refusal of planning, it is also considered that the proposals would be most detrimental to the occupiers of Ravenscroft and as such would not be sufficiently detrimental to the occupiers of other nearby dwellings to warrant a refusal of planning permission.

#### **9.4 Highways:**

Concerns have been raised by several respondents in relation to the access of the site being safe and that the proposals could lead to issues during construction and into the future once the property is completed. I refer to the highways officer who has returned no objection to the proposals subject to conditions, it is also considered that the location offers reasonable visibility as the road is relatively clear of obstructions but is also not restricted so currently, parking is possible on the road to the front of the existing hedge. The proposals include off-street parking sufficient to accord with the local planning authority's parking standards and as such is considered to be acceptable

#### **9.5 Human Rights Act:**

The respondents from Ravenscroft have raised concerns that they feel the application would be in breach of the Human Rights Act notably article 8.

The Human Rights Act 1998 incorporated provisions of the European Convention on Human Rights (ECHR) into UK law. The general purpose of the ECHR is to protect human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society. It sets out the basic rights of every person together with the limitations placed on these rights in order to protect the rights of others and of the wider community.

The specific Articles of the ECHR relevant to planning include Article 6 (Right to a fair and public hearing), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

The planning system by its very nature respects the rights of the individual whilst acting in the interest of the wider community. It is an inherent part of the decision-making process for the Department to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining whether development should be allowed to proceed. The balance of the considerations is such that the development will provide an acceptable standard of amenities for existing and future occupants and will be appropriate to the character and appearance of the area for the reasons set out in the report.

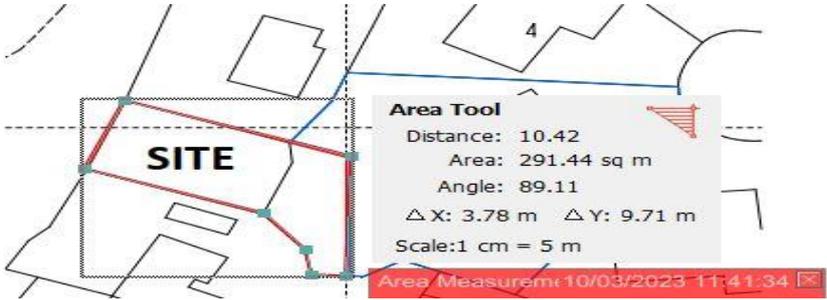
#### **9.6 AONB:**

The AONB Officer has raised concerns relating to the use of roof lights on the property given the Dark Skies Status of the area. However, there are no policies preventing the installation of roof lights in the area and surrounding properties have permitted development rights to install them outside of the planning application process both Ravenscroft and 3 Old Mill Close themselves have rooflights on their rear roof slopes, given the harm dormer windows would cause on private amenity spaces and the ability for neighbouring properties to add rooflights at will it is considered unreasonable to refuse the use of rooflights on the proposals. The officer has suggested a condition imposing the use of automatic blinds, however, this is not something that can be enforced and would fail the six tests of a condition. An informative can be added to any permission that makes future occupants aware of the AONB's dark skies status and encourages the use of blinds.

**9.7 Other Matters:**

Neighbours have commented on the loss of the hedge to the front of the site and that it was not mentioned on the application form. It should be noted that hedges are not in fact protected from removal other than by separate legislation protecting bird nesting seasons and as such the removal of the hedge cannot be prevented by the planning system.

The size of the proposed site has also been called into question which states the site is 285m<sup>2</sup>. The plans provided by the applicants form part of the conditions of any granted permission and as such if incorrect any permission would be invalid. Having reviewed the submitted site plans which are to a specific scale the area has been calculated as 291.44m<sup>2</sup>. Whilst scaling off plans is not considered to be an exact science it is considered that this measurement and the expressed size of the site are acceptable for the purposes of a planning application.



**10. Conclusion:**

Throughout the application process, the concerns raised by the immediate neighbours and by those from other parts of the village, have been considered and it is concluded that the proposals would be of an acceptable overall scale and design for the character of the application site and surrounding area. Similarly, due to the mass, scale and design, it is considered that the proposals would be unlikely to have a significantly detrimental effect on the amenities enjoyed by the occupiers of adjacent dwellings.

**RECOMMENDATION:**

Approve subject to the following conditions

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Application Form & Certificate Received 10<sup>th</sup> January 2023  
 Plans Ref:  
 Site Location Plan DWG: 1470-23-03 Received 10<sup>th</sup> January 2023  
 Existing and Proposed Block Plan DWG: 1470-23-04. Received 10<sup>th</sup> January 2023  
 Proposed Elevations DWG: 1470-23-01 SK Received 10<sup>th</sup> January 2023  
 Proposed Floorplans & Section DWG: 1470-23-02 Received 10<sup>th</sup> January 2023

REASON: For the avoidance of doubt and in the interests of proper planning

- 3. No development shall continue beyond slab level on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted

to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

4. No walls shall be constructed on-site, until a sample wall panel of the proposed greensand, not less than 1 metre square, has been constructed on-site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

REASON: in the interests of visual amenities and the character and appearance of the area.

5. No development shall continue beyond slab level on site until the exact details of the boundary treatments to be used have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

6. The development hereby permitted shall not be occupied until the area between the nearside carriageway edge and a line drawn 2.4m parallel thereto over the entire site frontage has been cleared of any obstruction to visibility at and above a height of 900mm above the nearside carriageway level, and maintained as such thereafter.

REASON: In the interests of highway safety.

7. The development hereby permitted shall not be occupied until the whole of the parking area, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

8. Notwithstanding the submitted details, the proposed development shall not be occupied until means/works have been implemented to avoid private water from entering the highway.

REASON: To ensure that the highway is not inundated with private water.

9. The vehicle access and parking spaces shall remain ungated.

REASON: In the interests of highway safety.

10. No part of the development hereby permitted shall be occupied until the access & parking spaces [2] have been completed in accordance with the details shown on the

approved plans. The areas shall always be maintained for those purposes thereafter and maintained free from the storage of materials.

REASON: In the interests of highway safety.

11. No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2021)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed. (<https://theilp.org.uk/publication/guidance-note-1-for-the-reduction-of-obtrusive-light-2021>)

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site aiding in the preservation of the Dark Skies Status of the Cranborne Chase & West Wiltshire Downs Area of Outstanding Natural Beauty.

#### **Informatives:**

1. The applicant is advised to fully note the requirements for Electric Vehicle Charge Points as required in Approved Document S of the Building Regulations. The requirements in the document represent the minimum standard and the applicant is advised that additional provision may be provided at the applicant's cost.
2. The application involves the creation of a new vehicle access/dropped kerb. The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence will be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact our Vehicle Crossing Team on [vehicleaccess@wiltshire.gov.uk](mailto:vehicleaccess@wiltshire.gov.uk) and/or 01225 713352 or visit their website at <http://wiltshire.gov.uk/highways-streets> to make an application.
3. The applicant is advised that, if it is proposed to drain this development directly into the river or carry out any work within 8 metres of the watercourse then a Land Drainage Consent is required from the Environment Agency. For further information see [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)
4. The site is located within the Cranbourne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty and is a designated "European Dark Skies Reserve" as such there is an obligation to reduce, year on year, light pollution, and not simply minimise the increase in light pollution to maintain this Dark Skies Status. As such it is requested that future occupiers take steps to limit their light pollution as much as possible and it is recommended that any roof lights have automatic blinds installed that close at dusk and open at dawn.



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**REPORT OUTLINE FOR SOUTHERN AREA PLANNING  
COMMITTEES**

**Report No.**

<b>Date of Meeting</b>	2 <sup>ND</sup> March 2023
<b>Application Number</b>	PL/2022/09311
<b>Site Address</b>	4 The Flood, Middle Winterslow
<b>Proposal</b>	Erection of a dwelling house, associated access, hard and soft landscaping and associated works (Resubmission of 21/00943/FUL)
<b>Applicant</b>	Mr Paul Martin
<b>Town/Parish Council</b>	Winterslow
<b>Electoral Division</b>	Winterslow and Upper Bourne Valley – Cllr Rich Rogers
<b>Grid Ref</b>	423681 133115
<b>Type of application</b>	Full
<b>Case Officer</b>	Lynda King

**Reason for the application being considered by Committee**

This application is brought to committee at the request of Councillor Rogers, for the following reasons:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Design – bulk, height, general appearance
- Environmental/highway impact
- Other – Whilst the proposed dwelling has been modified from the previous application (21/00943/FUL) I do not believe sufficient changes have been made to warrant approval. In particular, the relationship with adjoining properties on the Western side of the Flood which are predominantly single storey dwellings, such that this proposed dwelling would be incongruent with the street-scene. The property would still overlook the neighbouring Middleton House, a previous reason for refusal which was upheld when the matter was taken to appeal. I am also deeply concerned with the location of vehicular access to the property. The Flood is a substandard lane with no dedicated pedestrian facilities, and the access is in close proximity to the Clough Lane junction. With a mix of road users including pedestrians, horses and vehicles, there will be an increased highway safety issue due to these constraints and the inadequacy of visibility splays.

**Purpose of Report**

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be APPROVED

**1. Report Summary**

The main issues which are considered to be material to the determination of this application are listed below:

- Principle and planning history
- Neighbouring amenities
- Highway safety
- Ecology
- CIL/S106

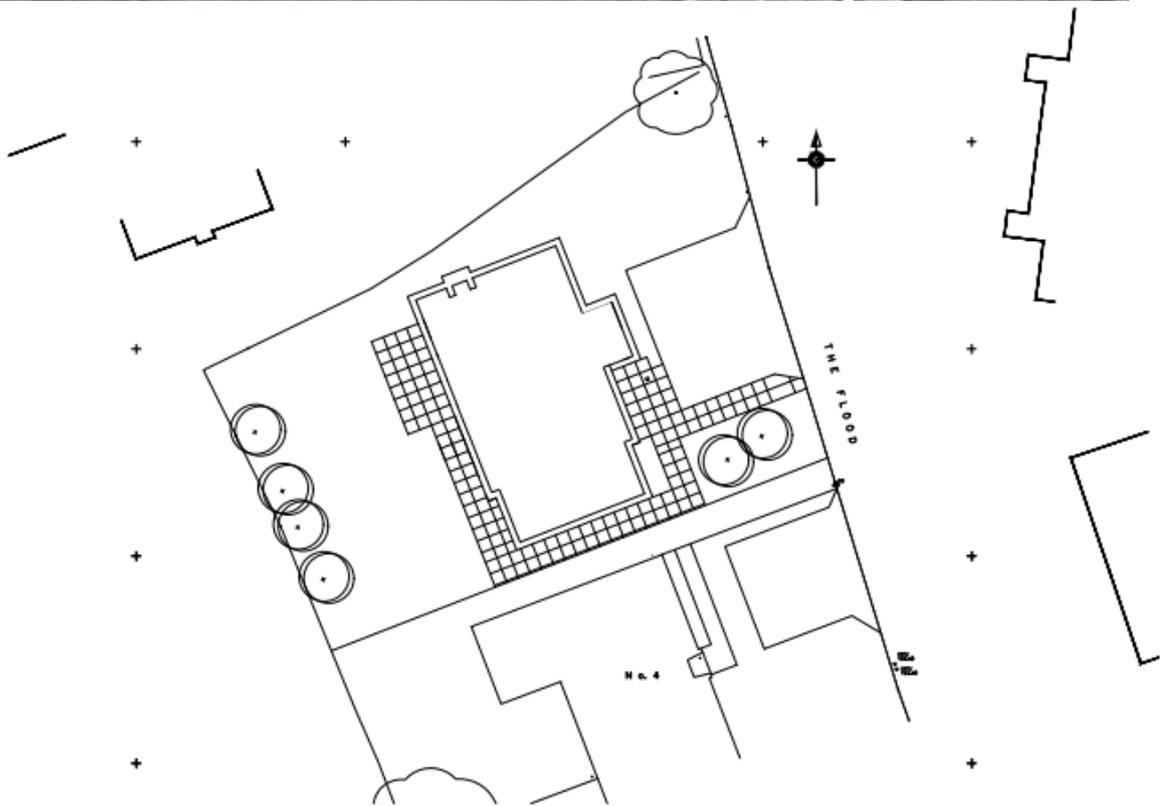
The application has generated an objection from Winterslow Parish Council and 14 letters of objection from third parties.

## 2. Site Description

The application site is on land adjacent to 4 The Flood, and was until recently garden land associated with that property. The adjoining dwelling and the application site are now in two separate ownerships. 4 The Flood is a semi-detached single storey dwelling situated within an established residential area in Winterslow and the application site lies within the village settlement boundary. It consists of the overgrown former garden area, with an open frontage to The Flood and some existing vegetation within the site and along the northern boundary, some of which would be removed as part of the development.



Site location plan, with aerial photo below.



Proposed site layout

The site lies within the Settlement boundary for Winterslow, as revised in the Wiltshire Housing Site Allocations Plan 2020 and lies within the designated Special Landscape Area (saved local plan policy C6 applies).

### **3. Planning History**

21/00943/FUL – 4 bedroom detached house- Refused 19/07/2021, appeal dismissed 16/08/2022

It should be noted that the above appeal was dismissed on the impact of overlooking from first floor rear windows on a neighbouring property and the grounds that the applicants could not mitigate the impact of the development on the Solent and Southampton Water European Sites due to the increase in nutrients entering the rivers from developments. This matter has now been addressed through the Council's agreed mitigation strategy and the revised application now removed the overlooking from the rear first floor windows.

### **4. The Proposal**

The application is in full for the construction of a three bedroomed two-storey dwelling, with parking and landscaping. The dwelling proposes rooms within the roofspace with dormer windows to the front elevation.

The height and design of the proposed dwelling, other than the rear elevation, which is referred to in more detail below, is very similar to that considered at the previous appeal on the site, which was dismissed in August last year.

The application has been accompanied by a Nutrient budget, which complies with the Council's nitrate mitigation scheme, which is referred to in more detail below.

### **5. Local Planning Policy**

National Planning Policy Framework (NPPF)

National Planning Policy Guidance (NPPG)

National Design Guide (January 2021) (NDG)

*Salisbury District Local Plan policies (Saved by Wiltshire Core Strategy) (SDLP):*

R2 – Public Open Space Provision

*Wiltshire Core Strategy (January 2015) (WCS):*

CP1 (Settlement Strategy)

CP2 (Delivery Strategy)

CP3 (Infrastructure Requirements)

CP23 (Southern Wiltshire Community Area)

CP50 (Biodiversity and Geodiversity)

CP51 (Landscape)

CP57 (Ensuring High Quality Design & Space Shaping)

CP60 (Sustainable Transport)

CP61 (Transport & Development)

CP62 (Development Impacts on the Transport Network)

Wiltshire Housing Site Allocations Plan (February 2020) (WHSAP)

*Supplementary Planning Documents:*

## 6. Summary of consultation responses

Winterslow Parish Council - objects to the application on the grounds of overdevelopment on the site and the proposals are not in keeping with the surrounding properties, restricted access/ highways and flood risk.

WC Highways - I refer to the above planning application for the erection of a dwellinghouse, associated access, hard and soft landscaping and associated works (Resubmission of 21/00943/FUL).

This application is for a 3 bed dwelling rather than a 4 bed dwelling and as such adequate off street parking is proposed to meet Wiltshire's current parking standards.

The comments from the previous application are still relevant and I therefore reiterate these.

I note that some local concern has been raised about the location of the access for the new dwelling and that this may cause highway safety issues with vehicles turning in to The Flood from the North. However, it seems clear that there is an existing access already present in this broad location, which could be used regularly. The proposal actually appears to move this access slightly further South and as such, I do not believe the access location presents any detriment to highway safety over and above what already exists.

Whilst The Flood is considered substandard in terms of width and its lack of dedicated pedestrian facilities, the rural location is noted and vehicle speeds are generally low in the vicinity. As such, I do not believe that this proposal would result in a severe highway capacity issue, nor would it create an unacceptable highway safety issue.

The parking area for the existing dwelling has already been created.

I wish to raise no highway objection providing conditions are imposed.

WC Ecology – confirm that the applicant's nutrient mitigation calculations meet WC requirements

## 7. Publicity

The application was publicised by letters to neighbouring properties. 14 letters of objection were received in respect of the application, raising the following points:-

- The Flood is not adequate to take additional traffic
- The junction with Roman Road is inadequate and has blind spots for both vehicles and pedestrians
- The design and appearance of the dwelling is out of character with the area
- Impact on the local electricity grid

- Loss of vegetation
- Impact on amenities of neighbours
- Lack of storage space within the dwelling
- Surface water issues on The Flood following periods of heavy rain
- Affect of the dwelling on daylight to neighbouring properties
- The dwelling is too large for the small plot
- Loss of privacy from living rooms at the front of the dwelling
- Impact on overhead power cables
- Should be single storey, like other dwellings in the road.

## 8. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

### 9.1 Principle of development

As has been set out above, the site lies within the settlement boundary of Winterslow.

Core Policy 2 (Delivery Strategy) states that:

***“Within the defined limits of development***

*Within the limits of development, as defined on the policies maps accompanying the Core Strategy, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns (including Westbury), Local Service Centres and Large Villages.*

CP23 defines Winterslow as being a Large Village and therefore the principle of residential development in this location is acceptable. There is currently no adopted Neighbourhood Plan for the village, nor is one in the process of preparation, that could amend the settlement boundary in the short term.

### 9.2 Relevant Planning History

Planning permission was refused in 2021 for the erection of a 4 bedroomed dwelling on the site (21/00943/FUL) on the grounds that the dwelling would overlook the neighbouring property, Middleton House, to the detriment of the amenities of the occupiers of this dwelling, and that the development failed to mitigate for the impact of nitrates on the Solent Special Areas of Conservation. This application proposed three first floor windows in the rear elevation serving two bedrooms and a bathroom. It should be noted that no reasons for refusal related to the access to the site, as no objection was raised by the Highway Authority, nor was there a reason relating to the size and scale of the proposed dwelling in this location. The Parish Council did not object to the proposal either.

This application went to appeal, and the Inspector dismissed the appeal in August last year on 2 grounds, namely overlooking from first floor rear windows to the conservatory to the rear of Middleton House, and lack of mitigation for nitrates. He commented in paragraphs 10 – 12 of his decision letter as follows:-

*10. The side of the original Middleton House has a blank wall which would not lead to overlooking to those first-floor rooms.*

*11. However, the windows of the first-floor rooms on the rear elevation of the proposed house would face, albeit indirectly, the conservatory on the corner of Middleton House. This conservatory has a transparent roof and would be visible above the existing boundary hedge. As I observed on my site visit it is used as a sitting room by the occupants.*

*12. The intended occupants of the new dwelling would overlook the conservatory of Middleton House. In addition, the occupants of Middleton House would have the perception of being overlooked by the new dwelling which would be unsettling. Whilst this overlooking would not be direct and more tangential, it would nonetheless be very close and from elevated positions, and thus would be significant. Consequently, the proposal would harm the living conditions of the occupants of Middleton House.*

He went on to comment in para 14 that:-

*14. The windows would overlook part of the garden of Middleton House which is used as a sitting out area. However, the rear garden does extend away from the appeal site which would allow an alternative private area. Consequently, in terms of the impact on the outdoor space, I do not find that the proposal would be significant.*

The Inspector addressed the issue of the scale of the dwelling relative to the area as follows:-

*15. The appeal site follows the alignment and the plot sizes of existing properties along The Flood. It is large enough to accommodate the proposed dwelling without any significant overbearing or overshadowing implications.*

Therefore the appeal considered the impact of development on the amenities of the neighbouring property and the European protected sites only, and no other matters.

The Inspector raised no objection to the proposed development on grounds of highway safety or the adequacy of the highway network in this location, or the scale of the two storey dwelling on the site, or any of the other matters raised by local residents, many of which are repeated in respect of the current application .

The Inspector then went on to consider the nutrients issue and concluded that:-

*21. The Council, similar to others in the area has a mitigation scheme. This would permanently change an intensively managed, high nitrogen producing dairy farm to chalk grassland, lowland meadow and woodland. Using the latest Natural England methodology a nitrogen burden of 3.16 kg/N/yr would result from the proposal and mitigation is required to ensure there are no adverse effects on the integrity of these protected sites. This necessitates a financial payment to cover the cost of changing the land. The Council advise that the*

*cost equates to £7900. A unilateral undertaking is therefore required.*

*22. As the undertaking has not been provided, the proposal would harm protected species and would not accord with the Council's mitigation strategy agreed with Natural England. The proposal would be contrary to Wiltshire Core Strategy Policy 50 and paragraph 181 of the Framework and the Conservation of Habitats and Species Regulations 2017*

On that basis the principle of development on this site, the form of the dwelling proposed, the layout of the site and the means of access to the scheme have all been considered by an Inspector in recent times, and as there have been no material changes in circumstances that would allow the Council to re-consider any of these issues, it should be noted that reasons for refusal related to any of the above would be at considerable risk of costs at any subsequent appeal. Guidance on Cost Claims contained within the National Planning Practise Guidance document make it clear that planning decisions should be reached on a consistent basis, and that objections should not be raised to a scheme or elements of a scheme where the Secretary of State or an Inspector has previously indicated to be acceptable.

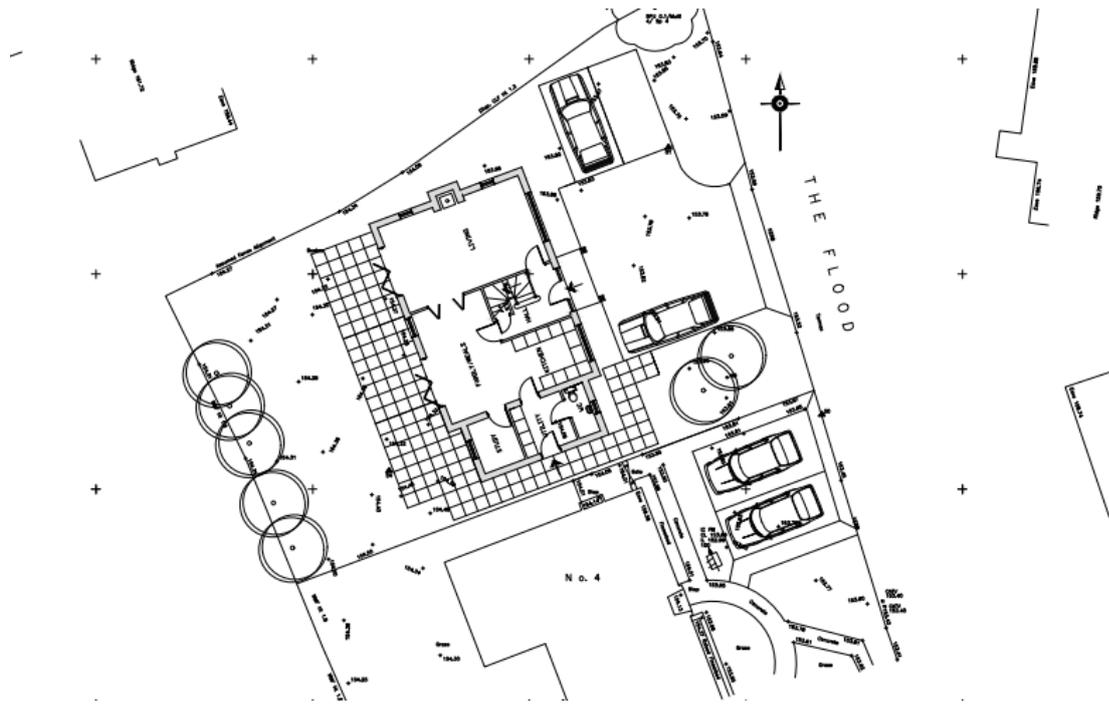
### **9.3 Neighbouring Amenities**

Neighbours have raised concerns about the impact of the development on their residential amenities, and similar concerns were raised in respect of the previous application that went to appeal.

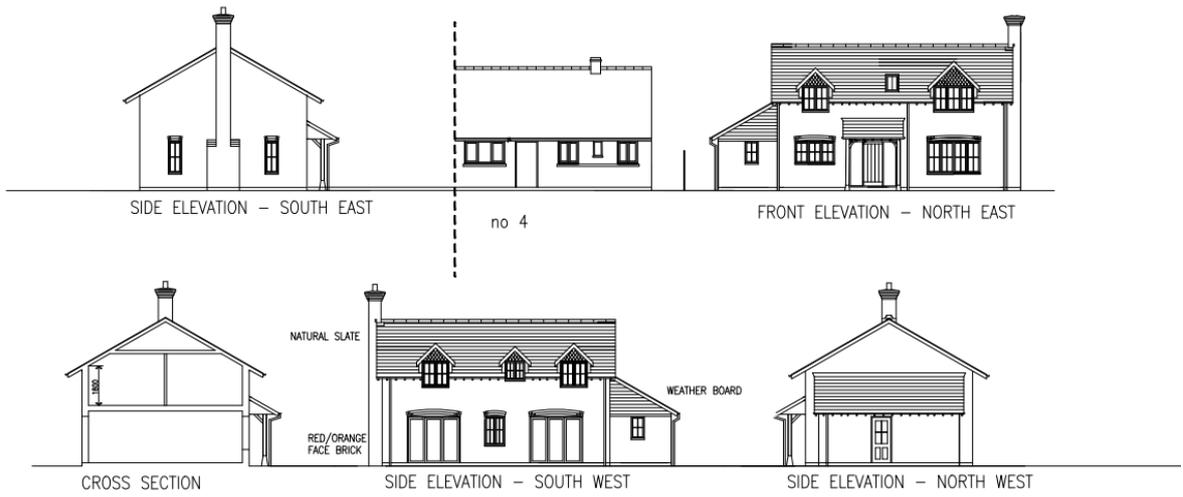
As has been explained above, the Inspector found that the previous proposal would give rise to unacceptable overlooking of the neighbouring dwelling's conservatory, to the detriment of the amenities of the occupiers of that property.

The current application has amended the design and layout of the proposed dwelling to overcome that reason for refusal. The building has been reduced to a three bedroomed property, with habitable rooms on the first floor moved to the front of the property, and with only bathrooms and a stair well rooflights to the rear rather than windows serving bedrooms. The whole building has also been slightly moved closer to the highway than the previous proposal to give a greater separation distance to the property, Middleton House, which was affected by the original proposals. However it is considered that this re-location is not sufficient to give rise to an un-acceptable relationship with the properties on the opposite side of The Flood due to the distances between the dwellings (more than 20m) and the fact that the frontages of properties are in the public domain anyway. The proposed carport/garage to the front of the dwelling has also been omitted from the current scheme.

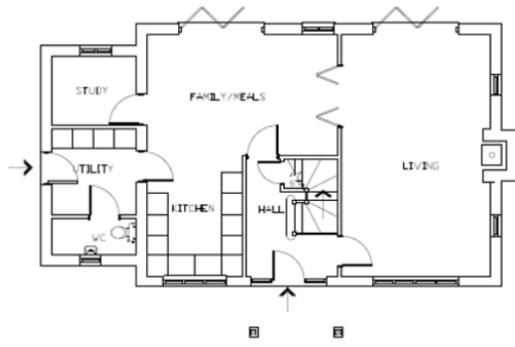
The previously refused plans and elevations are set out below:-



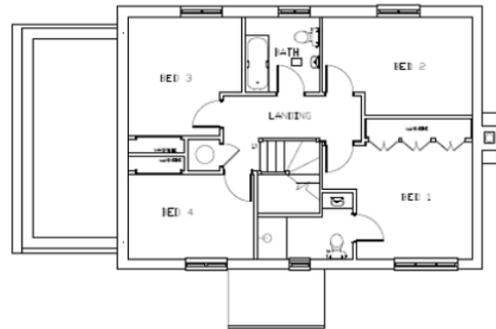
Previously proposed block plan



Previously proposed elevations

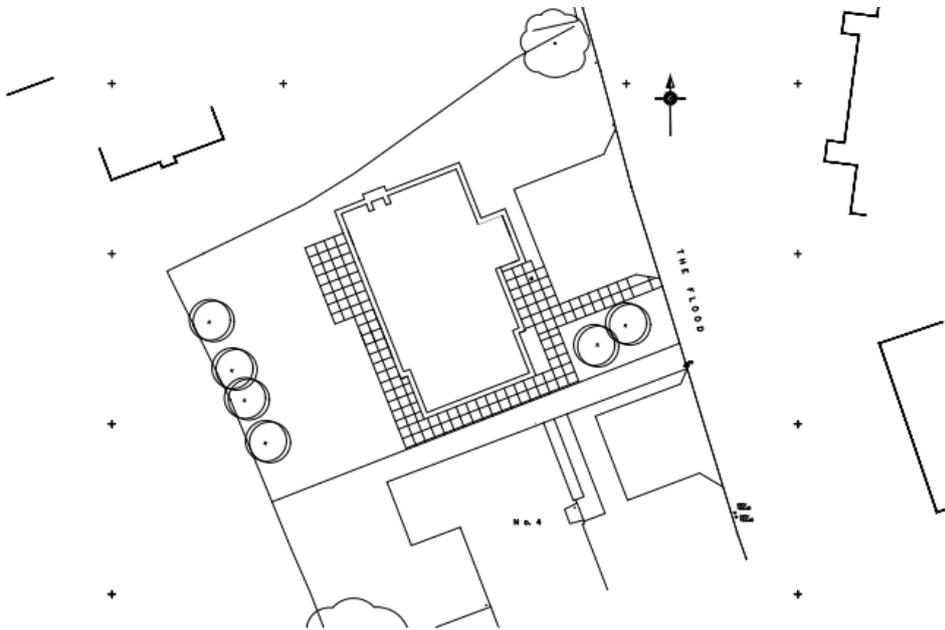


GROUND FLOOR PLAN



FIRST FLOOR PLAN

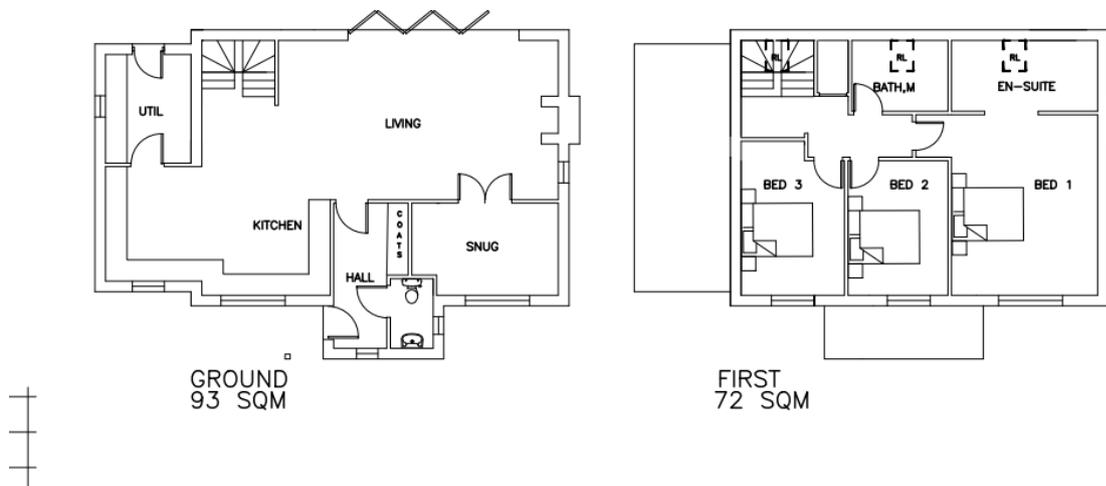
Previously proposed floor plans



Current block plan



Proposed elevations of current application



Proposed floor plans of current application

It is considered that the revised scheme, by re-arranging the internal layout of the property so that all the main habitable rooms at first floor are now to the front of the dwelling, with only bathrooms and a stairwell, all lit by roof lights, on the rear first floor elevation that the Inspector's concerns regarding overlooking of the conservatory of the dwelling known as Middleton House have been overcome.

#### 9.4 Highways

The Council's Highway Authority raised no objection to the previous application on the impact of the development on highway safety in the vicinity of the application site, and recommended that conditions be added to any planning permission. The Highways authority maintains that view in respect of the current proposal.

## **9.5 Ecology**

As has been noted above in the Planning History section, the appeal into the previous refusal of planning permission was dismissed partly as the applicants did not enter into the necessary legal agreement to secure mitigation in respect of the development's impact of additional nitrates on the Solent Special Area of Conservation and Special Protection Area.

The applicants have now confirmed their willingness to enter into the necessary agreement and the Council's ecologists have confirmed that there is capacity for the nutrient mitigation required for this scheme. The necessary legal agreement is in the process of being drawn up, and this matter will be reported on further at the Committee meeting.

## **9. S106 contributions**

As has been mentioned above, this site is subject to a legal agreement to secure the necessary mitigation in respect of nitrates generated from the development. This document is in the process of preparation in accordance with the agreed Council mitigation scheme and payment system.

As of May 2015, Wiltshire Council adopted the Community Infrastructure Levy (CIL). Therefore this proposal may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. A note highlighting this requirement to the applicant is therefore imposed on the recommendation.

## **10. Conclusion**

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions. Planning decisions should apply a presumption in favour of sustainable development and this means approving development proposals that accord with an up-to-date development plan without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The Wiltshire Core Strategy and the NPPF set out the policy considerations for the application and the LPA cannot currently demonstrate a 5 year housing land supply. Irrespective of the extent of such shortfall, this means that the WCS policies relating to the delivery of housing are out of date. Paragraph 11(d) of the NPPF is therefore engaged, which says planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the

policies in the Framework taken as a whole or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.

A similar application was considered by a Planning Inspector in August 2022 and was only refused, when considering objections on highway safety from local residents and about the impacts of the development on the amenity of a neighbouring property and the locality, on the grounds of lack of mitigation for the acknowledged issue of additional nutrients from development on the Solent areas of nature conservation protection and impact on amenity of the neighbouring dwelling. The applicants are in the process of entering into a legal agreement with the Council to secure the necessary mitigation for the site in respect of the nitrates objections, and the amended plans have overcome the possibility of overlooking the neighbouring dwelling.

On that basis, officers consider that the objections to the 2021 application have been overcome and the previous objections, many of which have been repeated by local objectors to the scheme, cannot be re-visited and therefore the application should be granted, and that the issuing of the decision should be delegated to the Head of Development Management to enable the necessary legal agreement to be completed.

**RECOMMENDATION: APPROVE, subject to the prior completion of the S106 Agreement and the following conditions:-**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan – Drawing no. 21/01/SK500 , received on 2<sup>nd</sup> December 2022  
Block Plan – Drawing no. 22/22/SK200A, received on 12<sup>th</sup> December 2022  
Proposed Floor Plans – Drawing no. 22/22/SK1, received on 2<sup>nd</sup> December 2022  
Proposed Elevations – Drawing no. 22/22/SK3, received on 2<sup>nd</sup> December 2022  
Proposed Roof Plan – Drawing no. 22/22/SK2, received on 2<sup>nd</sup> December 2022

REASON: For the avoidance of doubt and in the interests of proper planning.

- 3) No development shall commence on site above slab level until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-

enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the rear (south west) roofslope of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 5) The development hereby permitted shall not be first occupied until the first 2m of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

- 6) Notwithstanding the submitted details, the proposed development shall not be occupied until means/works have been implemented to avoid private water from entering the highway.

Reason: To ensure that the highway is not inundated with private water.

- 7) No part of the development hereby permitted shall be first occupied until the access & parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall always be maintained for those purposes thereafter.

REASON: In the interests of highway safety.

## **INFORMATIVES**

1) The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development.

Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website:

[www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy).

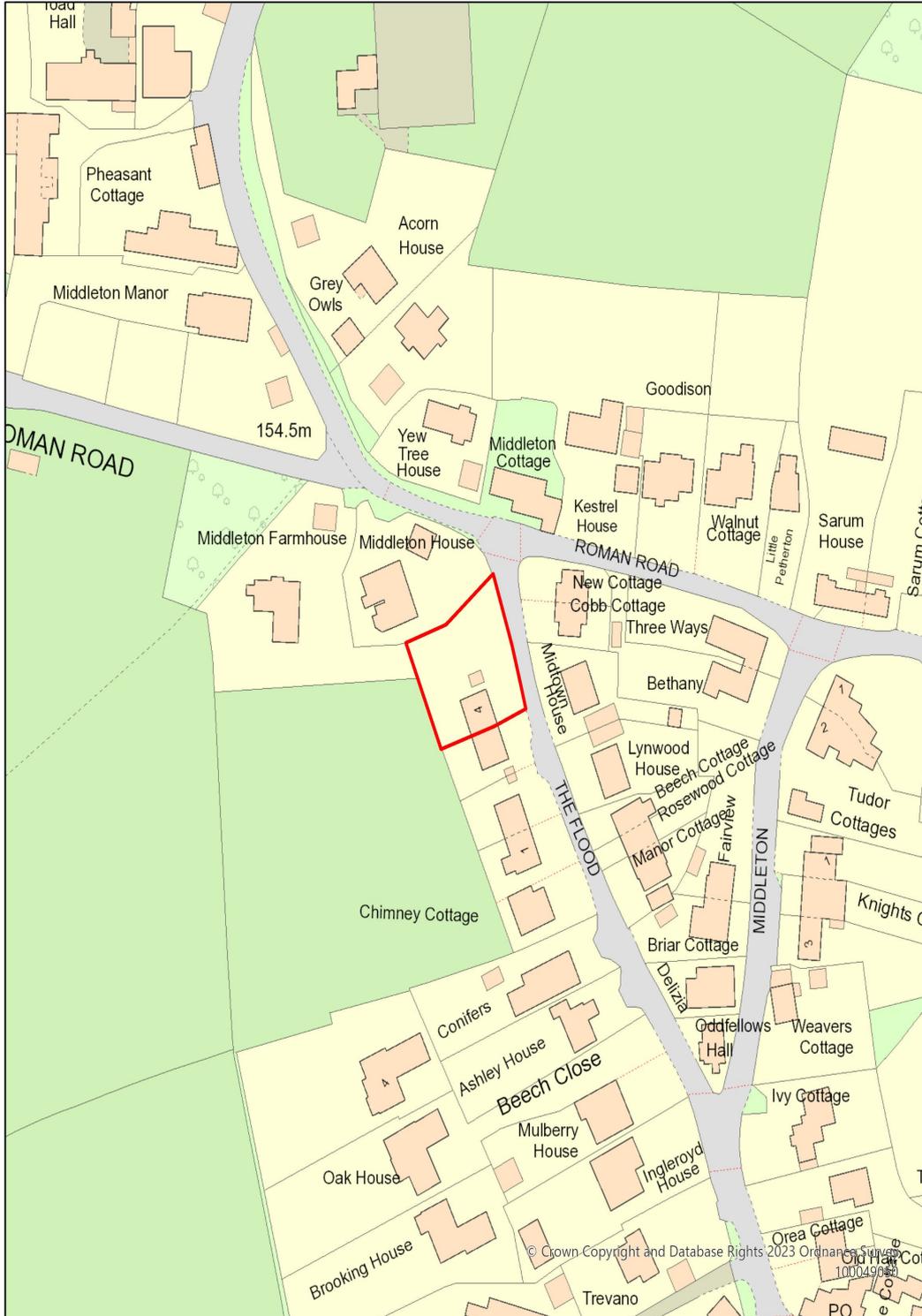
2) The grant of the planning permission should be read in conjunction with the S106 legal agreement dated XXX entered into by XXX

3) The application involves an alteration to the existing vehicle access/dropped kerb. The consent hereby granted shall not be construed as authority to carry out works on the highway. The

applicant is advised that a licence will be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact our Vehicle Crossing Team on [vehicleaccess@wiltshire.gov.uk](mailto:vehicleaccess@wiltshire.gov.uk) and/or 01225 713352 or visit their website at <http://wiltshire.gov.uk/highways-streets> to make an application.

4) The applicant is advised that, if it is proposed to drain this development directly into the river or carry out any work within 8 metres of the watercourse then a Land Drainage Consent is required from the Environment Agency. For further information see [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

<b>Date of Meeting</b>	30 <sup>th</sup> March 2023
<b>Application Number</b>	PL/2023/01136
<b>Site Address</b>	61 Moberly Road, Salisbury, Wiltshire, SP1 3BX
<b>Proposal</b>	Construction of painted timber bike store to front of dwelling. Install window with rendered surround and painted cladding below.
<b>Applicant</b>	Dr N Arnold
<b>Town/Parish Council</b>	Salisbury City Council
<b>Electoral Division</b>	Salisbury St. Francis and Stratford – (Dr Mark McClelland)
<b>Grid Ref</b>	51.078594,-1.790394
<b>Type of application</b>	Householder Application
<b>Case Officer</b>	Sarah Hill

### Reason for the application being considered by Committee

The application has been called-in by Cllr McClelland if officers are minded to refuse.

For the purposes of this application, the relevance of the withdrawn application PL/2022/07646 is also stated, and Cllr Dr Mark McClelland requests that the application should be considered by a planning committee to ensure public confidence in the outcome.

### 1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved for the reason(s) set out below.

### 2. Report Summary

The issues in this case are:

- Principle of development, policy and planning history;
- Design, scale and impact on the amenity of the area;
- Other matters

The application has received a total of three letters of objection from members of the public, and a response of no comment from Salisbury City Council. The details of the objections received from the members of the public are set out in Section 7 (Summary of consultation responses).

### 3. Site Description

The site is a detached dwellinghouse located on the east side of Moberly Road, it is set within a dense residential area within Salisbury City. The site is bordered by residential dwellings and their garden areas and parking provisions to the north, east and south, some of which

have been subject to development in the past. The topography of the area means that the dwelling occupies a heightened position within the streetscape, with a sloping driveway and stepped access up to the front of the dwelling. This forms the landscaped frontage of the dwelling.

#### **4. Planning History**

S/1988/2181 - Extension at front. Approved 25/01/1989

S/2004/0863 – Conservatory at rear of dwelling east side. Approved 01/06/2004

16/10356/FUL – Replace rear conservatory with single storey extension & conversion of garage into study, replace garage door with window and replace steps up to front door  
Approved 16/12/2016

PL/2022/04908 – Single storey rear kitchen extension Approved 19/08/2022

PL/2022/07646 – Construction of timber bike store to front of dwelling, install window with rendered surround and painted cladding below Withdrawn 09/12/2022

#### **5. The Proposal**

The proposal seeks retrospective planning permission for the construction of a painted timber bike store to the front of the dwelling, installation of a new window with rendered surround and painted cladding below.

#### **6. Local Planning Policy**

##### National Planning Policy Framework

Section 2 Achieving Sustainable Development

Section 12 Achieving Well Designed Places

Section 15 Conserving and enhancing the natural environment

##### Wiltshire Core Strategy

Core Policy 1 Settlement Strategy

Core Policy 2 Delivery Strategy

Core Policy 20 Salisbury Community Area

Core Policy 51 Landscaping

Core Policy 57 Ensuring high quality design and place shaping

Core Policy 61 Transport and New Development

##### Wiltshire Local Transport Plan 2015-2026:

Car Parking Strategy

#### **7. Summary of consultation responses**

**Salisbury City Council** – No Comment

#### **8. Publicity**

The application has been advertised by way of letters to near neighbours. The publicity has generated three letters of objection in total with comments received summarised as the following:

- The proposal is Incongruous and of visual harm
- It is Inappropriate development to the front of the dwelling
- There is a Contradiction of implemented materials from the previously approved permission
- The materials proposed/used are inconsistent with the streetscape

The total of three objections to this scheme follow a previous submission of the same application (PL/2022/07646) which was withdrawn. (the same other than the proposal to paint it). All interested parties were consulted on the previous application and have been reconsulted on the most recent application (PL/2023/01136). It is noted that the withdrawn application was identical (other than the painting) to that of the current application. The previous application was withdrawn after officers advised they were minded to refuse it on the grounds of its appearance and also the positioning of the bicycle storage unit.

## **9. Planning Considerations**

### **9.1 Principle of development, policy and planning history**

The proposal seeks retrospective planning permission for a bicycle store positioned on the far north side of the front elevation finished in horizontal timber cladding, installation of a window to the previously converted garage (16/10356/FUL) with rendered surround and painted timber cladding. The works have already been completed with the window and treatments to the façade of the garage conversion approved under application 16/10356/FUL but have not remained consistent with the plans. With deviation from the approved materials and therefore retrospective permission was sought through application PL/2022/07646. This was subsequently withdrawn due to suggestion that the application would be refused.

The principle of development for the garage conversion has been established by planning permission 16/10356/FUL that granted permission for the garage conversion along with other works stated in section 4. This permission has been implemented but due to a change in materials, the works no longer comply with the approved plans and materials of the original consent. Permission was not sought prior to the construction of the bicycle store.

The proposal should aim to conform to the objectives of Core Policy 57 of the Wiltshire Core Strategy (WCS) which aims to achieve a high standard of design in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality.

Core Policy 57 of the WCS requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF (paragraph 130f) states that planning decisions should 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.'

### **9.2 Design, scale, and impact on the amenity of the area**

Planning permission 16/10356/FUL granted consent for the conversion of the existing garage into a study. The plans shown below are of the dwelling as proposed in that consent.

**Elevations of the dwellinghouse approved under 16/10356/FUL:**



**Proposed elevations under this application PL/2023/01136:**



The alterations to the dwellinghouse undertaken differ from that of the approved alterations under consent 16/10356/FUL as the window on the principal elevation, where the garage door was previously sited, differs from that approved, as do the external materials. The approved plans and application form state that walls are to be finished in brick, render and tile, with the front elevation materials to match existing, and the windows are to be UPVC on the roadside

elevation to match existing. The actual materials used on the development are render surrounding the window at ground floor level, and dark grey painted cladding below the window. The bike store has also been constructed, finished in painted timber horizontal cladding. To further show the differences in the approved front elevation and implemented front elevation, the plans are shown below.



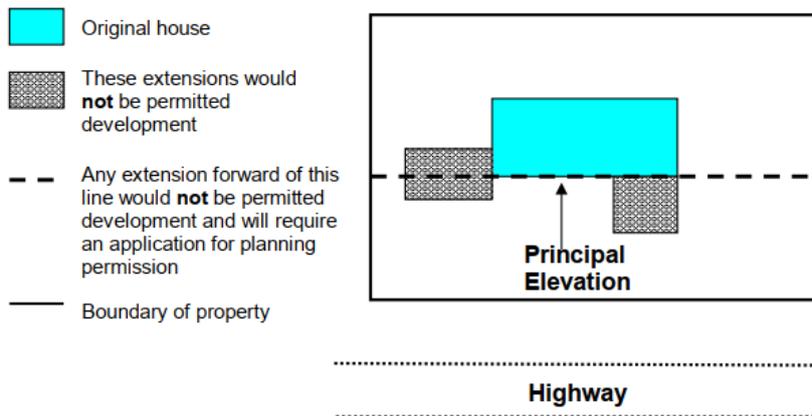
The plans proposed differ to that of the previous approval due to the below changes:

1. Underside of the window in the former garage, now store, is timber clad, proposed to be painted dark grey.
2. A smaller window, of inconsistent style and scale with the rest of the dwelling, has been implemented to the south side of the principal elevation.
3. The style of the steps up to the front door, and treatment surrounding such, is in contrast with that previously approved.
4. A timber clad bike store has been constructed which extends across the north side of the front elevation below ground floor level, across to the stepped access to the front door of the dwelling.

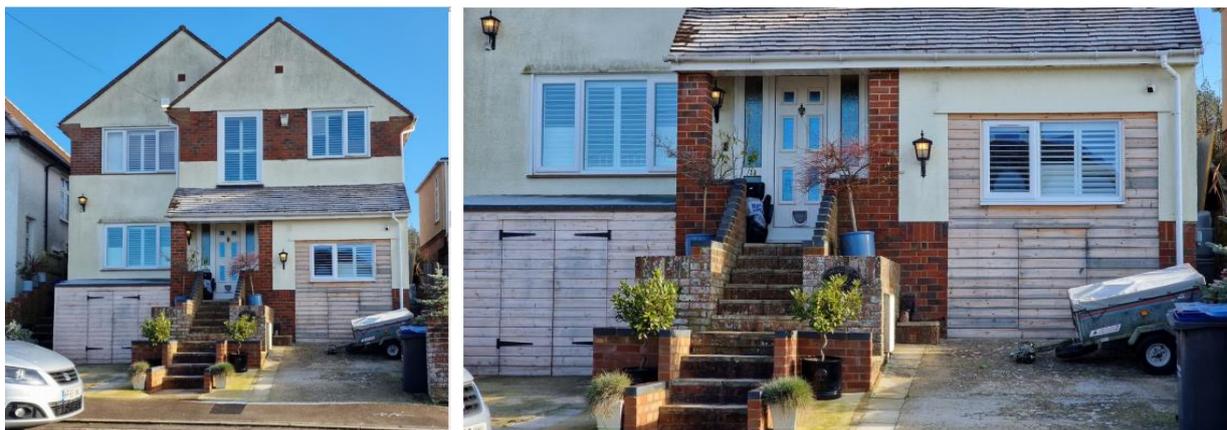
The appearance of the dwelling as approved under application 16/10356/FUL was considered suitable and complimentary in its design and use of materials, in compliance with the relevant WCS policies. The context of the area is that of residential development and the consistent use of materials across the front façade of the dwelling suitably integrating the development with the existing dwelling. The alterations undertaken that differ from the approved plans propose dark grey painted timber cladding across the underside of the window. There is no other timber cladding on the principal elevation of no.61, nor is painted cladding present in the broader streetscape. CP57 states that new development must make a positive contribution to the character of Wiltshire through: 'iii. *responding positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials, streetscape and rooflines to effectively integrate the building into its setting*'. A front access hatch has also been inserted below the new window, contradictory to the approved plans.

The timber clad bicycle store, located below the ground floor window to the north side of the front elevation, has been constructed without permission. The development does not fall under Permitted Development under the General Permitted Development Order (as amended) which states that '*any development to enlarge a house that is in front of a principal elevation, or in*

front of a side elevation that front a highway will require an application for planning permission'. A diagram demonstrating this is shown below:



Retrospective permission was sought through application PL/2022/07646 following on from an enforcement case. The structure extends across the recessed façade between the stepped side access along the north elevation and the stepped access to the front door, positioned on the existing driveway. As the store has already been constructed, the visual impact can be fully assessed. The bicycle store is finished in timber cladding with a dark felt roof as previous site visit pictures show below:



The footprint of the existing dwelling is extended by around 2 metres onto the private driveway and adds another roofline to the principal elevation. The horizontal timber cladding is maintained across the front and side elevation of the store. As previously discussed in relation to the cladding on the façade of the converted garage, the design pays no regard to the original design and character of the existing dwelling, resulting in a significant contrast across the dwelling following development, and in the broader context does not integrate into the local surroundings. Prior to development, the dwelling was finished in brick, painted render and tiles which is consistent throughout the residential area and created a cohesive frontage to no.61. The bicycle store has created an additional low-level roofline, a further contrasting material, and when considered with the timber clad access hatch below the proposed window, creates the visual appearance of a below ground level storey to the dwelling.

The materials in the local area are predominantly either exposed brick or rendered finish under a pitched roof or gabled end. The original dwelling had bands of exposed brickwork across the ground and first floor with cream render in between. The proposed works have created discord across the façade, with the timber cladding across the ground floor and below ground floor level. The proposal fails to comply with CP57 as it does not draw on the local context or remain complimentary to the locality; neither does it maintain the character of the dwelling itself which prevents the dwelling from making a positive contribution to the wider setting.

Officers note the concerns received from members of the public in respect of this element of the proposal which are summarised within the consultee response section of this report. Such is the incongruous nature of the structure on the front elevation, made more visible by the dwellings prominent and raised position along the east side of Moberly Road. As such, the proposal is considered contrary to Core Policy CP57 of the WCS.

Salisbury City Council responded to this application with 'No Comment', and the local councillor stated that *'It is my personal view that the development is not detrimental to the amenity and visual appeal of the area, and is in keeping with similar development on properties in the vicinity.'* Having undertaken a site visit, the Officer is of the opinion that there are no other dwellings in this area that have shed-style structures on the principal elevation, immediately visible from the highway, or any similar development that could be considered a precedent. The development has not been implemented to a high quality, and the disjointed use of materials across the façade is considered detrimental to visual amenity.

## **9.6 Other matters**

It is acknowledged that the previous application for the same retrospective works was withdrawn by the applicant due to probable refusal of the permission. As mentioned in the consultee comments and by Cllr McClelland, the previous application (PL/2022/07646) was reported through local and national press. This application has since been resubmitted through this permission (PL/2023/01136) and immediately called in to committee by Cllr McClelland siting that in the context and in the interests of transparency the application should be determined by a planning committee.

Concerns received regarding the media attention surrounding the previous application are not a material planning consideration. It is asserted that as per the formal consultation process, interested and affected parties are consulted and invited to provide their comments and stance on the proposed development works.

## **10 Conclusion and Planning Balance**

The comments received during consultation from members of the public objecting to this scheme are duly noted and have been carefully considered. The planning history of the site is noted where the principle of development for the part of the works have been established and is referred to within this report.

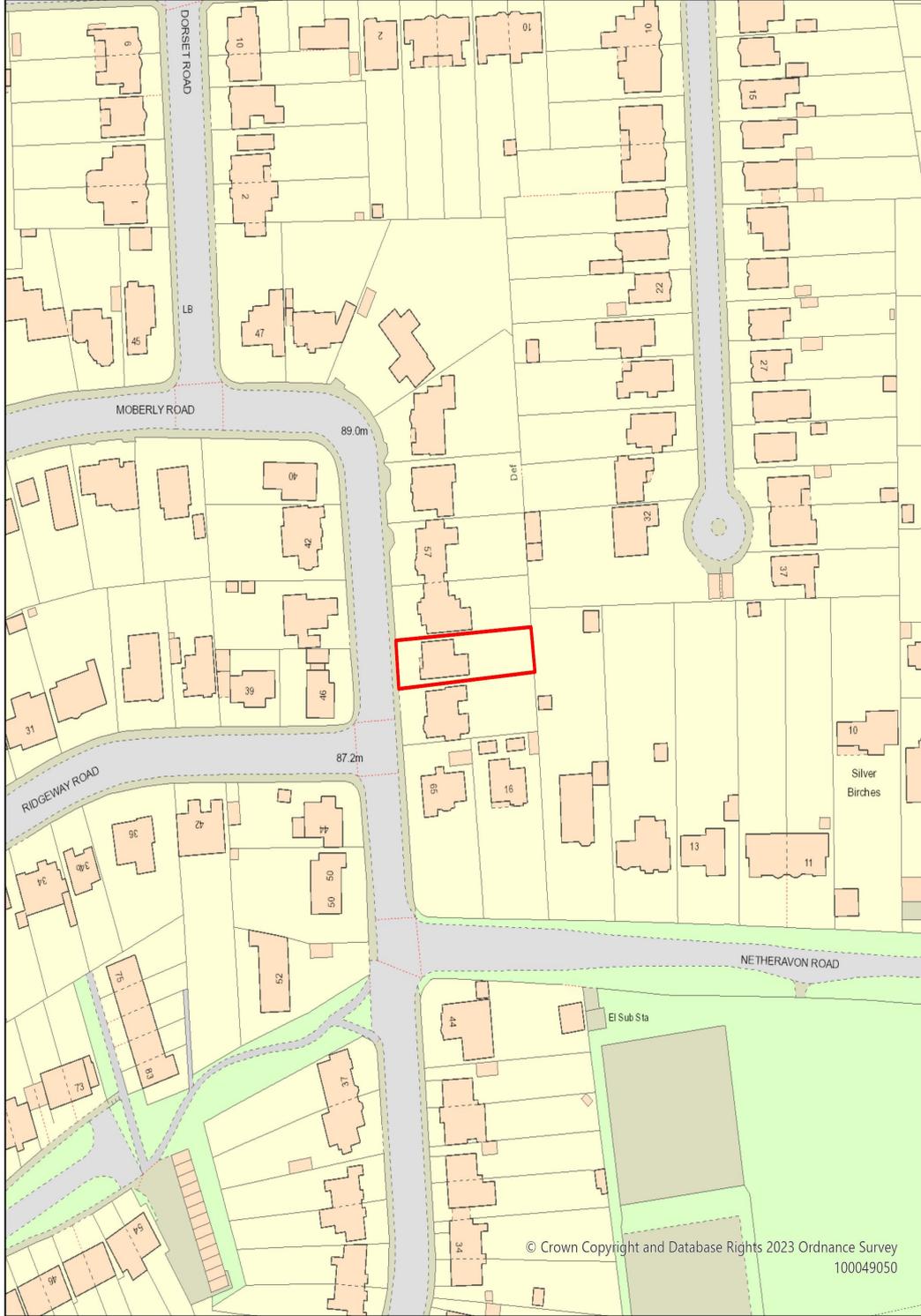
As such for the reasons outlined within this report, officers consider the proposal for the works does not conform to the objectives of Core Policies 1, 2, 20, 51, 57 and 61 of the Wiltshire Core Strategy and the aims of the NPPF.

Taking the above into account, the application is considered contrary to the stated policies as it is considered of significant detriment to the visual amenity of the locality, does not draw on the local context, and is not completed to the high standard of design expected from new developments in Core Policy 57 of the WCS. As the application does not conform to the relevant policy as described, it is recommended that the application be refused.

## **11 RECOMMENDATION:**

**The planning application be refused for the following reasons:**

1. The proposed amendments to the external material treatment of the converted garage and construction of a timber clad bicycle storage to the front of the application site by reason of the use of dark grey painted timber cladding, deviation from the previously approved plans and visual impact on the streetscape, it is considered of detriment to the character of the dwelling and broader setting. The inconsistency of materials, incongruous appearance and poor design quality is considered contrary to policy CP57 of the Wiltshire Core Strategy and guidance contained within the NPPF.



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