APPENDIX 10

<u>Commons Act 2006 – Schedule 2(6) – Application to De-Register Buildings Wrongly Registered as Common Land – The Pound, Whiteparish Application no.2021/01ACR</u>

Officer's Consideration of Legal Tests

Main Considerations

1. At Schedule 2, paragraph 6 of the Commons Act 2006, each of the legal tests set out, must be satisfied for land to be successfully de-registered, in which case de-registration is mandatory:
   - *(a) the land was provisionally registered as common land under section 4 of the 1965 Act;*
   - *(b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
   - *(c) the provisional registration became final; and*
   - *(d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.*

2. The Regulations at paragraph 27(1), set out the material which the Commons Registration Authority (CRA) must take into account in its determination of the application.

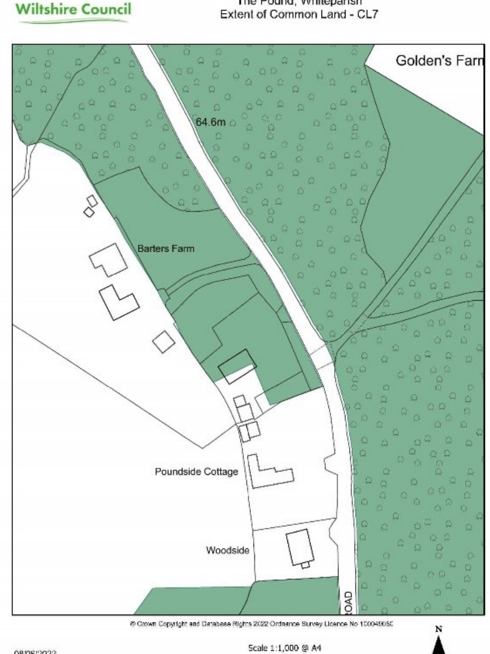
TEST A: The land was provisionally registered as common land under Section 4 of the 1965 Act (Schedule 2(6)(2)(a))

3. The land in question, as shown on the application plan at **Appendix 2**, forms part of Common Land register entry CL7, "Whiteparish Common", provisionally registered 10 April 1968. The "Land Section" of the register entry states:

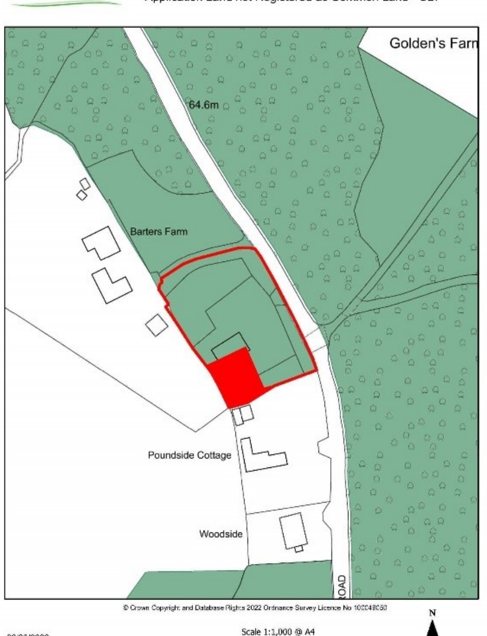
No. and date of entry	***Description of the land, reference to the register map, registration particulars etc.***
1 *10 April 1968*	*That piece of land called Whiteparish Common in the Parish of Whiteparish, Wilts, as marked with a green verge line inside the boundaries on sheet 7 of the register map by the number of this register unit. Registered pursuant to application No.11 made 26 March 1968, by the Whiteparish Parish Council acting through their Clerk, Mr C.M. Rowe, ██ Queen Alexandra Road, Salisbury, Wilts. (Registration ~~Provisional~~ Final).*

(Please see Register Entry no.CL7 at **Appendix 5**).

4. Part of the building and land subject to the application are not included within the register unit CL7, Whiteparish Common, as shown on the plan below, i.e. the south-west corner of the site, to be excluded from the application. This includes part of the workshop building and an additional small building located to the south of the workshop:



Extent of registered common land – CL7, Whiteparish Common, shown shaded green.



Extent of application land outlined in red. That section shaded red at the south-west corner of the application land is not registered common land and is therefore to be excluded from the application (including buildings located at this point).

Area of land to south-west of application site, not included in the registered area of common land CL7.

Test A - Conclusion:
Part of the building and application land at The Pound, adjacent to Common Road, Whiteparish, are included within the area of land provisionally registered as unit no.CL7, Whiteparish Common, on 10 April 1968.
Officers are satisfied that the legal test at Schedule 2(6)(2)(a) of the Commons Act 2006, is met over that part of the application area, (excluding that part of the application building and land not included within the provisionally registered area).

TEST C: The provisional registration became final (Schedule 2(6)(2)(c))

5. The Register Entry no. CL7 Whiteparish Common became final on 1 October 1970, where the provisional registration was not disputed, as shown on the "Land Section" of the Register Entry:

No. and date of entry	*Description of land, reference to the register map, registration particulars etc.*
2 *22 March 1971*	*The registration at Entry No.1 above, being undisputed, became final on the 1 October, 1970*

(Please see Register Entry no.CL7 at **Appendix 5**).

6. Section 7 of the Commons Registration Act 1965 states:

"7 Finality of undisputed registrations

(1) If no objection is made to a registration under section 4 of this Act or if all objections made to such a registration are withdrawn the registration shall become final at the end of the period during which such objections could have been made under section 5 of this Act or, if an objection made during that period is withdrawn after the end thereof, at the date of withdrawal.

(2) Whereby virtue of this section a registration has become final the registration authority shall indicate that fact in the prescribed manner in the register."

7. Additionally DEFRA Guidance "Part 1 of the Commons Act 2006 Guidance to applicants in the pioneer implementations areas" (June 2013), states:

"9.3.4. …Generally, any provisional registration made under the 1965 Act, and which remains registered today, became final, and this test will therefore be met in nearly all cases."

Test C – Conclusion:
Officers are satisfied that the provisional registration of the land CL7, Whiteparish Common, became final on 1 October 1970 and therefore, the legal test set out at Schedule 2(6)(2)(c) of the 2006 Act, is met over that part of the application area forming part of CL7, (excluding that part of the application building and land not included within the final registration area).

TEST B: On the date of provisional registration the land was covered by a building or was within the curtilage of a building (Schedule 2(6)(2)(c))

8. The Applicants submit that *"On the date of the provisional registration, 10 April 1968, the land, at The Pound, was 'covered by a building' and the land at The Pound was within the curtilage of the building.*

Building:

9. The location and size of the workshop building subject to this application, correspond with that detailed in The Town and Country Planning Act 1962, Town and Country Planning General Development Order 1963 – Permission for development for the erection of garage/maintenance workshop at Common Road, 12 October 1967. However, this is not evidence that the building was erected on site by the time of provisional registration of the land CL7, on 10 April 1968.

10. Mr S Byrne, upon consultation regarding the application, supplies copies of historical OS mapping, (please see **Appendix 8** (maps 19, 21, 22, 23, 26, 27 and 28)). He confirms that the only map recording the building on the application land is that dated 1990-91, (**Appendix 8** (map 27)). Of course, OS maps were subject to revision and Mr Byrne points out that the 1970, 1:10,560 map, (upon which we might expect the building to be shown given its date, **Appendix 8** (map 26)), was revised between 1963 and 1970 and shows no building on the site, therefore Mr Byrne can see no merit in the Schedule 2(6) application. However, the recording of the building erected, as claimed, prior to provisional registration of the land in April 1968, may have missed the revision for the 1970 map altogether if revision in this area took place at some point between 1963 and 1970 and before April 1968. There is not sufficient detail in the dates of the OS mapping to accurately pinpoint the exact date the building was erected.

11. However, the Applicants provide correspondence from Mr G Dear, dated 18 November 2020, who was purchasing the property in August 1967 and applied for and was granted the above planning permission for the erection of the workshop building. He still lives in the parish and writes to confirm:

    "Having purchased the above property and being granted planning permission for
    'Erection of garage/maintenance workshop'
    By Salisbury and Wilton Rural District Council Application No.7085/11434
    12 October 1967
    Building works, for the above garage/maintenance workshop commenced in November 1967 and ***the building completed by the end of December 1967.***
    The garage/maintenance workshop was steel framed with face brickwork above ground.
    The building remains on the above site today."

12. Mr Dear confirms that the building was erected on the site by the close of 1967 and in the absence of evidence to the contrary, this testimony is accepted as correct and Officers conclude that the workshop building was

present on the site at the time of provisional registration on 10 April 1968, as required under Schedule 2(6)(2)(b) of the Commons Act 2006. This is not disputed by the objectors.

Curtilage

13. The Applicants claim that the area of the application land which is not covered by a building forms the curtilage of this building and is therefore also capable of de-registration under paragraph 6, Schedule 2 of the Commons Act 2006, however, the extent of the curtilage of the building is disputed, as set out in the Open Spaces Society (OSS) correspondence dated 2 July 2021:

"The society accepts that, on the evidence available, the buildings at the Pound were erected just prior to provisional registration of the land on 10 April 1968. However, we do not accept that the curtilage of those buildings extended, at that time, or for the majority of the period between that time and the date of application, to all of the application land."

14. OSS suggests that a much smaller area may be the curtilage of the building, i.e., the area shown on the 1967 planning application maps, as shown by OSS overlaid onto a modern map by blue dotted lines, (excluding the visibility splay area identified in the planning application maps):

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OSS – 2 July 2021 – Area which OSS suggest is capable of de-registration as the extent of curtilage of the building.

15. Mr T King writing on 3 July 2021 agrees on the curtilage point:

"I also take issue with the area which is claimed as curtilage. A significant area of this application should not be considered as curtilage and has never been used as such. I refer to the 2006 Commons Act, which requires that the land in question must form part and parcel of the building to which it relates."

16. The Applicants, upon viewing the objections and representations on this matter, commented that (21 July 2021):

"Mr Graham Dear operated from December 1967 a general haulage depot with workshops. He held an Operator's Licence for 9 Goods Vehicles until 1989 (attached 2). This meant he required a large hardstanding area at The Pound for vehicles to park and turn and this was a subject of condition to Change of Use from Builders Yard to Milk and General Haulage Depot granted by Salisbury and Wilton Rural District 8 June 1967 'Adequate provision to be made for the parking and turning of vehicles within the site' (see attached 3) Mr Dear has informed us that he had to make a large proportion of the site hardstanding to accommodate the number of vehicles needed to operate the business. This hardstanding remains in use today."

17. The OSS refer to two cases which discuss the matter of "curtilage", i.e. R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398, (the Blackbushe Airport case, at which the OSS appeared as an interested party), and Methuen-Campbell v Walters [1979] 2 QB 525. The Blackbushe Airport case considered the de-registration of a building and land (some 115 acres) under Schedule 2, paragraph 6 of the Commons Act 2006 and whether the Application Land, which formed the operational part of the airport, was within the curtilage of a building, at and since provisional registration as common land. The Inspector, following a public inquiry, allowed the de-registration, however, the Inspector's decision was quashed in the High Court and was then considered by the Court of Appeal, (permission to appeal the decision to the UK Supreme Court was refused on 12 April 2022):

"5. If what is meant by "the curtilage of a building" is understood correctly, and all relevant factors are taken into account when determining whether the statutory requirements were satisfied in this case, the answer is no. This extensive area of operational airfield cannot properly be described as falling within the curtilage of the relatively small terminal building…

*7. In deciding that the statutory criteria were met, the Inspector applied the wrong test by asking himself whether the land and building together "formed an integral part of the same unit" because he found that there was "functional equivalence" between them. That error is perhaps best demonstrated in paragraph 83 of his decision letter, where he described the operational area as "part and parcel **with** the building and an integral part of the same unit" instead of asking whether the land should be treated as if it were "part and parcel **of** the building". The difference is critical, and it led to the Inspector addressing the wrong question, namely, whether the land and building together fell within the curtilage of the airport, rather than whether the land itself fell within the curtilage of the building."*

18. The judgement in the Court of Appeal considered the High Court decision in the Blackbushe Airport case:

"18. In a conspicuously thorough, considered and carefully reasoned judgment [2020] EWHC 959 (admin); [2021] QB 89, Holgate J held that the Inspector had erred in law in two material respects. First, his conclusions were tainted by misdirecting himself on the question whether the Application Land was ancillary to the terminal building (a relevant, though not necessarily conclusive, factor). Secondly, he applied the wrong legal test by asking whether the land and building together formed part of a single unit or integral whole. The Judge therefore allowed the claim and quashed the decision…

26. The ambit (or physical extent) of the curtilage of a building in any given case will be a question of fact and degree."

19. The Blackbushe case continues to consider cases which include the consideration of the concept of "curtilage" in many settings including listed buildings and planning. It concludes that the test set out in the case of Methuen-Campbell, which considers a property consisting of a dwelling house; garden and area of pasture known as "The Paddock", subject to notice served by the tenant upon the landlord under the Leasehold Reform Act 1967, for the freehold of the house and premises to be conveyed to the tenant and in which the landlord sought a declaration that the house and premises, as defined by section (2) 3 of the 1967 Act, did not include the paddock, is the leading authority in this matter and is consistently followed in cases to determine what is deemed to constitute "curtilage of a building", in a wide range of different settings:

"57. Methuen-Campbell is the authority in which the concept of curtilage is most clearly explained, and its correctness has never been called into question, on the contrary, it has been followed in numerous subsequent cases…

20. Buckley LJ giving leading judgement in the Methuen-Campbell case, is quoted in the Blackbushe case:

"61. …"In my judgement, for one corporeal hereditament to fall within the curtilage of another, the former must be so immediately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter."…"

21. In applying this test in the Blackbushe Airport case, Lady Justice Andrews, giving leading judgement states:

"65. …the test is not whether the terminal building could function without an operational airport, nor whether the Application Land was necessary for the functioning of the airport. Nor is the test whether the Application Land and the terminal building together form one part of an operational unit or whether they fall within a single enclosure. The question, whether, by reason of the association between them, the law would treat them as if they formed one parcel, or as an integral whole, depends on the application of the "part and parcel" test to the facts of the particular case."

22. In discussing the Calderdale case, Attorney General ex rel Sutcliffe v Calderdale BC (1983) 46 P&CR 399, a case regarding listed building consent, Lady Justice Andrews considers the *"Stephenson factors"*:

"88. At the bottom of p.406, Stephenson LJ adumbrated what have become known as the three "Stephenson factors" that must be taken into account in determining whether a structure or object is within the curtilage of a listed building, namely (1) the physical layout of the listed building and the structure, (2) their ownership, past and present and (3) their function, past and present. He observed that where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building, or even some distance from it, into its curtilage."

23. Lady Justice Andrews concludes by setting out the correct question to be addressed in considering the "curtilage of a building" in the 2006 Act:

"124. Holgate J was right to hold that the phrase "the curtilage of a building" in the 2006 Act requires the land in question to form part and parcel of the building to which it is related. The correct question is whether the land falls within the curtilage of the building, and not whether the land together with the building fall within, or comprise a unit devoted to the same or equivalent function or purpose, nor whether the building forms part and parcel of the same unit which includes the land…"

24. Lord Justice Nugee, agreeing with the leading judgment in this case, helpfully summarises the correct question to ask when considering the meaning of curtilage under paragraph 6, Schedule 2 of the Commons Act 2006:

"126. In summary, the statutory language in paragraph 6 of schedule 2 to the Commons Act 2006 requires one to ask whether since the date of its provisional registration as common land the relevant land has at all times been, and still is, "within the curtilage of a building". That, applying the guidance given by Buckley LJ in Methuen-Campbell, means that one needs to ask whether the land is so intimately associated with the building as to lead to the conclusion that the land forms "part and parcel" of the building…the Inspector did not really answer the statutory question, namely whether the

airfield was within the curtilage of the terminal building, but a different question, namely whether they together formed part of a single unit."

25. In the Whiteparish case, the building occupies 122 square metres approximately, which consists of approximately 5% of the application site (2,420 square metres approximately). The footprint of the building itself appears not to have changed since its erection in 1967. This building is the main focus of the application as set out in the Blackbushe case at paragraph 47:

    "The focus is therefore on the building which is deemed to have been wrongly registered as common land, and not the land…If a building is to be deregistered, the common land under or adjacent to it only qualifies for deregistration if and to the extent that it has a defined relationship with that building…

    48. Since it is the building which is to be treated as wrongly registered, the inference can be drawn that the relationship of the land to the building must be sufficiently proximate that a reference to the building – in this case, the terminal building – could be treated, without artifice, as including the land as well. So, for example, a reference to "Keepers Cottage" would naturally be taken to include a reference to the cottage garden. A reference to the terminal building at Blackbushe Airport would not be naturally understood as referring to the whole airport, or to 115 acres of operational land of which the terminal building occupies a very small part.

26. The case concludes that what comprises the "curtilage" of a building is a matter of **fact and degree** for the decision maker in each individual case, but that the Methuen-Campbell test is that which has been applied consistently by the Courts when considering the matter of curtilage in all types of setting, i.e: ***"…for one corporeal hereditament to fall within the curtilage of another, the former must be so immediately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter."***

27. In the Whiteparish case, Officers have identified four areas of land which form the application land, as shown on the plan below (the extent of the application land is shown edged red):

The plans show the block plan for planning application no.7085/11434 overlaid, with the 4 identified areas in question as being "curtilage to the building", shown, (the second plan includes the area of registered common land CL7 shaded green).

Area 1 – Shaded Red

28. This part of the building and land subject to the application, do not form part of common land register unit no.CL7, Whiteparish Common, and therefore this area should be excluded from the area to be de-registered, please see paragraph 4 above.

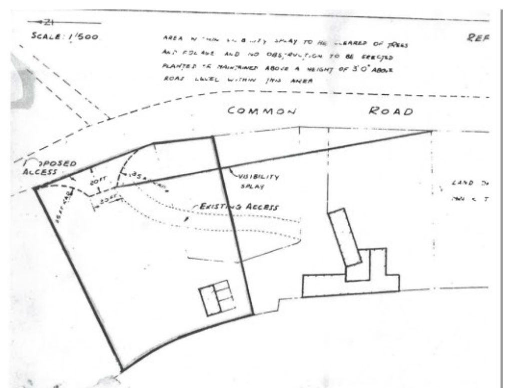
Area 2 - Outlined Blue

29. The area outlined blue is that identified in the two planning applications/consents dated 1967: 6759/10935 - application for change of use and 7085/11434 - application for erection of workshop. It is considered that this area of land meets the criteria of curtilage of the building where it is included consistently within the planning applications at the establishment of the workshop and being so intimately associated with the building as to lead to the conclusion that the land forms part and parcel of the building.

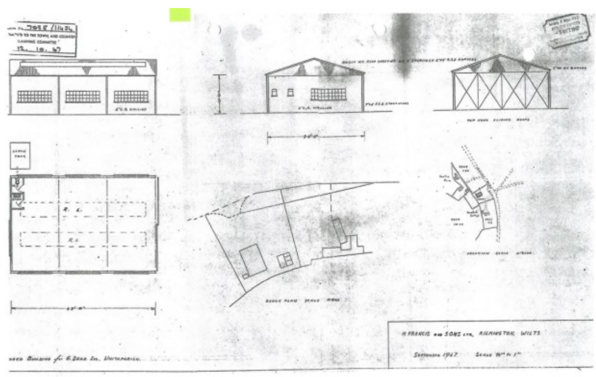
30. It seems unlikely that any land outside the identified planning application site, as shown on the plans, could be said to form part of the curtilage of the building where it was unnecessary for the planning application. As Lieven J considers in the Challenge Fencing case, (Challenge Fencing Ltd v Secretary of State for Housing Communities and Local Government [2019] EWHC 553 (Admin), as set out in Blackbushe and which considered "curtilage" in relation

to a case under the Town and Country Planning Act 1990), "…*there may be situations where the planning unit is different from (and almost certainly larger than) the curtilage of the building"*, which suggests that the curtilage of a building and the planning unit are not always the same and also that the planning unit may be larger than the curtilage, rather than smaller. The OSS contend that *"The plan submitted in connection with the planning permission in 1967 shows two buildings within a compound defined by lines drawn to the north, west and south. We do not know whether those lines were defined on the ground by fences, but we are willing to accept that the curtilage of the buildings at the time was represented by an area demarcated within the lines. There is no evidence whatsoever to suggest the curtilage extended beyond those lines at the time…"*

31. At Whiteparish, the same area of land is included in both planning consent no.6759/10935 – Change of use from Builders Yard to Milk and General Haulage Depot at the Common, Whiteparish and no.7085/11434 – Erection of garage/maintenance workshop at Common Road, Whiteparish, as shown on the plans below:

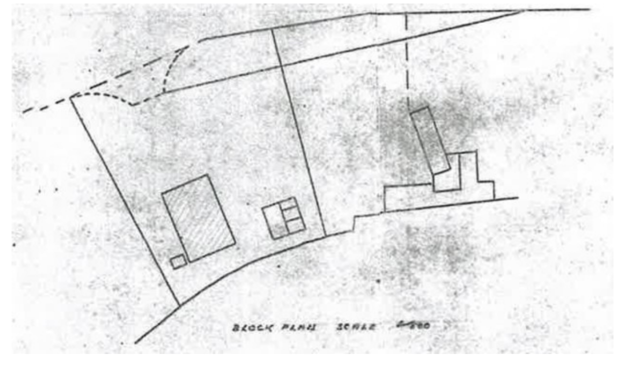


Application no.6759/10935 – Change of use from Builders Yard to Milk and General Haulage Depot at The Common, Whiteparish
Permission for Development – Granted subject to conditions 8th June 1967 – Salisbury and Wilton Rural District Council

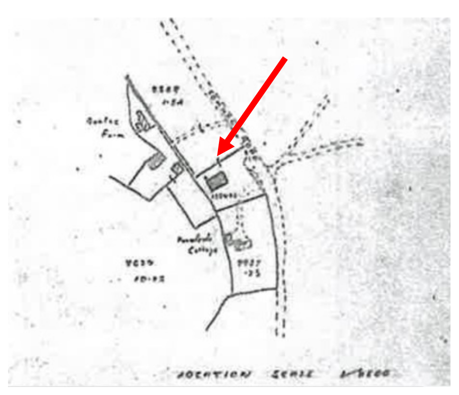


Application no.7085/11434 – Erection of garage/maintenance workshop at Common Road, Whiteparish
Permission for Development - Granted subject to conditions – 12th October 1967 – Salisbury and Wilton Rural District Council
(with expanded Block Plan and Location plans below)

Application no.7085/11434
Block Plan (expanded)



Application no.7085/11434
Location plan (expanded)
(please note "brace" symbol)



32. There are no planning conditions included with the details of planning consent for 7085/1134, (erection of the workshop building), however, the change of use consent over land included in the planning unit, (planning application no.6759/10935), includes the condition: *"4. Adequate provision to be made for the parking and turning of vehicles <u>within the site</u>."*, (emphasis added), i.e. to be accommodated within the identified site as shown on the plans. In contrast, condition 3 which relates to sight lines for the new access, confirms the sight line extending into the adjoining plot, there is no such "extension" outside the identified site in relation to the provision for parking and turning: *"3. A sight line as follows to be provided on the south side of the new access for a point 20ft. along the centre line of the access as measured from the nearside along the edge of the county road C.26 to the southern end of the garden of the adjoining dwelling…"*

33. Within the application to de-register common land, the Applicants point out the *"… '20 ft.' site access to allow for lorries."* in the change of use conditions, however, it is noted that the consent issued includes condition 2: *"The access to be sited at the north end of the frontage of the site shown on the attached plan, to be at least 18ft. wide with 35 ft. radius curves on both sides and to replace the existing one which must be permanently closed."* The plan accompanying the consent shows the proposed wider access, (presumably to accommodate lorries), fully accommodated within the identified planning site and not extending outside these boundaries.

34. The Blackbushe caselaw sets out that there may of course be areas of land which are part and parcel of the building "…*whilst it would be reasonable and appropriate to include some of the surrounding land that might be referred to figuratively as "part and parcel of" the building, or "belonging to" the building, it is plainly unnecessary to deregister the whole of the rest of the operational area of the airport."* When this principle is applied in the Whiteparish case, the hardstanding at the Pound included in the planning application can be considered as curtilage of the building, but not the area to the north of the planning application site identified.

35. The Applicants present evidence that Mr Dear who owned the land at the time of registration, held a haulage licence for 9 vehicles:

"…1967 onwards The Pound was used as a general haulage depot, milk haulage depot and workshops."
"Mr Graham Dear operated from December 1967 a general haulage depot with workshops. He held an Operator's Licence for 9 Goods Vehicles until 1989…This meant he required a large hardstanding area at The Pound for vehicles to park and turn and this a subject of condition of Change of use from Builders Yard to Milk and General Haulage Depot granted by Salisbury and Wilton Rural District 8 June 1967 'Adequate provision to be made for the parking and turning of vehicles within the site'…Mr Dear has informed us that he had to make a large proportion of the site hardstanding to accommodate the number of vehicles needed to operate the business…"
"The blue dotted line area would not have been sufficient for the turning and parking of up to nine haulage vehicles which were services by the garage from 1967 up to 1989…"
"The whole of The Pound site was one piece of land. The line on the block plan was not a fence and therefore the whole site, The Pound, was given permission for development…"
"We have also spoken to Mr Dear, owner at the time of planning application, who confirms the planning consent for change of use from builders yard to milk and general haulage depot was for the entire site not confined to within the blue dotted lines as marked by OSS…"

36. However, if land was required in addition to that subject to the planning application, it is not included in the identified planning site. Land outside this area will not be subject to the change of use, which suggests that the previous builder's yard extended only over that area shown on the application plan and/or that no additional land was required for the turning/parking of vehicles in connection with the change of use, outside that which was identified on the plans. In contrast, the planning condition relating to the visibility splay to be included, clearly states that this area will extend into land outside the identified planning area. One would expect the condition relating to the parking/turning area to contain similar wording if this was the case. The

correspondence between the Agent on behalf of Mr Dear and the Land Commission dated 30 June 1967, shows the hauliers plans for the site:

“Our Client, an agricultural and general haulier in a small way of business has obtained planning permission to carry on his business on property belonging to a third party and now used as part of a Builder’s yard and store: the sheds have been used for (inter alia) casting concrete lintels. The consent is subject to providing an improved access (which will be shared by the haulier and builder) and to submitting details of any new buildings.

The sheds will be used as motor stores and maintenance workshops (it is not usual to garage lorries in this business except while under repair and warehousing facilities are not required). It could therefore be fairly said that the sheds have been used by the Builder and will be used by the Haulier for light industrial purposes while the yard (to become a lorry park) is non-industrial.”

The Land Commission reply dated 4 July 1967, states,

“In my view, the change of use of the premises you mention does not constitute material development as defined under Section 99(2); provided therefore the proposed extension of the buildings does not exceed the permitted tolerance (5000 square feet of floor space additional to that which existed at 6 April 1967), there is no need to notify the Land Commission.”

37. Although there is no plan included with the correspondence, the change of use referred to in the correspondence is already acquired on 8 June 1967 and extends only to the area identified in the application 6759/10935. The same area is submitted as the affected area in the later planning application 7085/11434 for the erection of garage/maintenance workshop, made on 2 October 1967 and granted 12 October 1967. If an additional area was required for the parking of lorries, it was not applied for under the change of use application for the site. Indeed, the two planning applications show a consistent block plan and there is no land identified outside this area. Case law suggests that the identified planning area may be different to the curtilage of a building, but usually larger than the curtilage, rather than smaller.

38. The OSS consider that the visibility splay included in the planning permissions should be excluded from the area of common land to be de-registered:

“As to the roadside, we note that the planning permission required a sight line to be left undeveloped, and that it remains demarcated to this day on the Ordnance Survey plan. Given that this area was to be kept free of any obstruction, we cannot see that it formed part of the curtilage of the buildings in 1967 or subsequently.”

When the correct question to establish curtilage is applied to the area of land to remain undeveloped as a visibility splay, i.e. is the land so intimately associated with the building so as to lead to the conclusion that the land forms part and parcel of the building, Officers consider that the alternative applies, i.e. although to be left undeveloped, the visibility splay is clearly identified for the purposes of the building and its safe use, to remain undeveloped for as long as the building exists and is therefore tied to the building by the planning application, sufficient to form part of its curtilage.

39. Officers consider that only the area identified in the planning application/ consent block plans, (no's 7085/1134 and 6759/10935), i.e. containing access to the building; adequate provision for the parking and turning of vehicles and part of the visibility splay for the safe use of the building, forms part and parcel of the building, (not a larger area), and therefore capable of deregistration under paragraph 6 of Schedule 2 of the Commons Act 2006, as a building or being within the curtilage of a building, wrongly registered as common land.

Area 3 – Outlined Green

40. Area 3 comprises an area of hardstanding which forms part of the common land de-registration application but is not included in the planning site as identified in planning applications 6759/10935 and 7085/11434, (Area 2 above). In April 1968, Area 3 is included within the area provisionally registered as common land, forming part of unit CL7.

41. Aerial photographs dated 2001 and 2003, (2003 photograph submitted by the Applicant), show lorry trailers parked on Area 3 to the north of the planning application site, and the aerial photograph dated 2014 shows the area of hardstanding extending into Area 3. The 2020/21 aerial photograph shows the current use of the building as a car garage/workshop, with cars parked on the hardstanding in Area 3, (please see aerial photographs attached at **Appendix 4**).

42. The hardstanding of Area 3 is also shown on the OS 1;2,500 National Grid Series map dated 1952 – 1992, (**Appendix 8**, (map 25)), which records the building and a single pecked line around Areas 2 and 3 together, to indicate a change in surface over the site to the hardstanding. However, OS maps are topographical in nature, i.e. recording features on the ground visible to the Surveyor at the time of survey and in order for Area 3 to be deemed curtilage

of the building for the purposes of this application, it would be necessary to show that this land was so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building, at provisional registration in April 1968. The applicant provides the following evidence regarding use of the site:

"Previous to 1967 The Pound was used as a builder's yard.
1967 onwards The Pound was used as a general haulage depot, milk haulage depot and workshops.
2000-2009 Used to park empty lorry trailers and Mr Dear used workshop.
2009 Mr Dear sold to Mr Gerard Downes. Rented out site for a number of different purposes.
1 January 2017 Mr Robin Welsh took over the tenancy for use as a car garage and is still operating as Whiteparish garage…"

43. The Applicants provide the Operator's licence of Mr Dear, issued on 3 May 1984 running from 01.05.84 – 30.04.89, which shows that Mr Dear held a licence for 9 *"Motor Vehicles"*, however, there is no provision for *"Trailers (inc. Semi Trailers)"*, this box is left blank. Where no trailers are specified, it suggests that no trailers were stored at The Pound Site in the 5 years 1984 – 1989 and before that, if Mr Dear had used the site for the same purposes since the erection of the building, as the Applicants suggest was the case from 1967 – 2000. This licence does not provide evidence of trailers on site and use of an extended area of the site in conjunction with the workshop, i.e. extending into Area 3, prior to the aerial photographic evidence from 2001.

44. The Applicants claim that *"2000-2009 Used to park empty lorry trailers and Mr Dear used workshop"*, is supported by the 2001 and 2003 aerial photographs, (see **Appendix 4**), which show trailers parked on the part of the land to the north of the planning application site. However, this does not cover the whole of the period from provisional registration in 1968 and given the planning application area identified in 1967 and the accommodation of the parking and turning area for the building, (use as a general haulage and milk haulage depot and workshops), within the identified planning site, there is no evidence of the relationship of Area 3 in connection with the building, prior to 2000 in order to meet the legal test for the land to be covered by a building or its curtilage at the time of provisional registration. If the additional area was required for the purposes of the turning and parking of vehicles, in connection with the building at the time it was erected, one would expect this additional area (of hardstanding) to be identified in association with the building at the planning stage, which it is not. This leads to the conclusion that the land identified within the planning area was sufficient to meet the needs of the proposed building, with the exception of the visibility splay, but this is separately conditioned to extend into land outside the identified planning site. It is accepted that for the current use of the land as a car repair garage,

vehicles are now parked on this area, however, there is no evidence that Area 3 was used in conjunction with the building until around 2000 onwards:

Area 3 – present day

45. In the Blackbushe case Lord Justice Nugee noted the Challenge Fencing case that the hardstanding area did not qualify as curtilage of the warehouse where:

"134. …A courtyard and access to a warehouse and mill was part of the curtilage (Caledonian Railway Co. v Turcan [1898] AC 256); as was a piece of ground in front of a public house used for access (Marson v London, Chatham and Dover Railway Co (1868) LR 6 Eq 101); and two small open spaces in an oil depot (Clymo); but not a large hardstanding massively in excess of what was necessary for an undertaking in a modest building (Challenge Fencing)."

46. Certainly the Land Commission correspondence dated June/July 1967, (see paragraph 36 above), suggests that the development to be carried out on site was relatively modest and not material development as defined under section 99(2) of the Land Commission Act 1967, all the buildings having been used, and their future use, to be light industrial purposes, with no requirement for warehousing facilities and the yard to become a lorry park. The workshop building covers only 5% of the total common land de-registration application area, being 122 square metres approximately in size, (the total application area being 2,420 square metres approximately). As in the Challenge Fencing case, the large area of hardstanding to include Area 3, is in excess of what was necessary for an undertaking in a modest building.

47. It cannot be argued that land outside the identified planning site in 1967, is so intimately associated with the building, so as the lead to a conclusion that the land forms part and parcel of the building. There is no demonstrated relationship between the building and the land to the north of the identified planning site from the date of provisional registration in 1968, therefore Area 3 should be excluded from the area of common land to de-registered as it does not form part of the curtilage of the building.

Area 4 - Shaded Yellow

48. To the north of Area 3 (above) there is a green/wooded area extending to the farm track, (the northern boundary of the application area) – Area 4 (shaded yellow). As shown on the aerial photographs at paragraph 41 above, (please also see **Appendix 4**), there is evidence that from 2001 – present day, (please see photographs below), this area was and remains a green/wooded area which is now fenced out of the remainder of the site. There is no evidence submitted with the application to suggest that Area 4 has ever been used in conjunction with the building or to demonstrate its relationship with the building:

Green/wooded Area 4 - present day

Green/wooded Area 4 - present day

49. The Applicants provide a copy of a letter from the New Forest National Park Authority, as the relevant planning authority, dated 3 June 2019, to the Applicants, confirming that the site is considered to fall under B2 (General Industry) use in the Use Classes Order, as determined in 2018 as a result of previous enforcement investigation and based upon the *"degree and activity on the site (historically being used as a general haulage yard and workshop)"*. The Applicants claim that B2 use therefore covers the *"…entire site…"* as *"…evidence that the building and entire site has been used since 1967 and for this reason should be regarded as clear evidence of site use and the land at The Pound was within the curtilage of the building".* However, there is no map included with this letter and no evidence provided of what was/is *"the entire site"* referred to. Additionally, it is noted that the letter appears to be a response to a query from the Applicants regarding proposed fencing of The Pound site, the letter is entitled *"Erection of enclosure/fencing…The Pound, Common Road, Whiteparish"* and coincides with the evidence of the Applicants having erected fencing on the site *"…two years ago…".* It appears that the Applicants erected fencing against Common Road and to the north of Area 3 as the erection of *"…enclosure/fencing"*. If they were enclosing the site, they appeared to consider, at that time, that Area 4 was not an integral part of the building*.* Additionally, the erection of permanent fencing on common land is likely to have required consent under Section 38 of the

Commons Act 2006, under which those wishing to carry out works on the common land can make application to The Planning Inspectorate.

50. In the Methuen Campbell case, the paddock area was found to be outside the curtilage of the building and in applying this caselaw to the Whiteparish case, i.e. is the land so intimately connected with the building as to lead to the conclusion that it is part and parcel of the building and as stated in the Blackbushe case, *"The focus is therefore on the building which is deemed to be wrongly registered as common land, and not the land…If a building is to be deregistered, the common land under or adjacent to it only qualifies for deregistration if and to the extent that it has a defined relationship with that building…"*. There is no defined relationship between the building and Area 4 and therefore it should be excluded from de-registration as it is not within the curtilage of the building.

The Planning Application Block Plans

51. **Bracing on Planning Application Block Plans** - The Applicants refer to "bracing" of the identified planning application site with land to the north on the location plan for application no.7085/11434, please see plan at paragraph 31. They argue that this means that the plot to the north is included with the planning application as part of the same unit. The OSS consider the alternative:
"…The brace is placed across a line shown on the plan. This tells us two things. First, there was at the date of survey (we are not told the date) a physical boundary along the line: it very likely was a fence. Secondly, the parcel to the north was braced (by the Ordnance Survey clerk preparing the final plan for publication) with the parcel containing the building for the purposes of numbering and calculation of area. There is no significance to the brace: it is merely a convenience to avoid separately labelling an excessive number of small parcels: contrary to point 3, the brace does not 'indicate…ONE piece of land'. But the presence of a fence, which is also shown on the block plan on the same page, confirms that the land to the north of the fence was no part of the application for planning permission."

52. The analysis of the Challenge Fencing case in Blackbushe suggests that the planning application site may be larger than the actual curtilage of the building, but not smaller and Officers have considered the meaning of the "brace" feature, as set out in:

i) "Ordnance Survey Maps a concise guide for historians" Richard Oliver, 2005:

"Although the general principle was that each 'field' or enclosure had its separate number and acreage, in practice small enclosures and features were 'braced' by an 'S' symbol to larger ones."

ii) "Ordnance Survey Maps a descriptive manual" J B Harley, 1975 –

"A parcel is accordingly defined as any area which is measured and published on the plan; it may be a single feature, usually an enclosure, or it may consist of several adjacent features grouped together. As a general rule parcels are bounded by lines of natural detail, such as hedges or streams (although in creating 'Town Areas' other features such as railways are used), but they are sometimes bounded artificially as by administrative boundaries or the sheet edge. Each parcel is given a reference number. Where adjacent features are linked to make one parcel the process is known as bracing and is indicated by a brace – an elongated symbol – placed across the common division. No limit is stipulated to the number of features which may be braced into one parcel but none the less, the composition of parcels is governed by several rules… Secondly, just as there are minimum thresholds for detail to be shown to scale, so too are minimum areas below which certain features are not measured separately, but are braced with an adjacent parcel. For example, where a lake, pond, reservoir, or an island is less the one-tenth of an acre (0.040 hectare) it will be braced; and, similarly, where fenced occupation roads and tracks are less than 10 chains (200m) in length they are braced to the adjacent parcel, while unfenced occupation roads and tracks are braced irrespective of their length. These examples illustrate that the selection of parcels and the use of braces is governed by practical convenience in measuring; the parcels have no significance whatsoever in regard to ownership…
Thirdly, although some conventions (as will be shown) have changed, a fairly standard set of symbols is now used in the representation of area data on the 1:2500 series…A single brace is generally used to denote the extent of a parcel, the head and tail of the symbol being positioned on either side of the line dividing the features being braced…"

53. The Applicant argues that the bracing of the land to the north of the site shows one single unit, however, as set out in Harley above, the bracing is only a convenient way of measuring area and has no significance in regard to ownership of land, i.e., two separate parcels which are joined together for the purposes of measuring. It will be noted in the series of OS maps included at **Appendix 8**, that there is no such brace feature recorded and the application land is unfenced, (other than the south-west corner in pre-1990/91 mapping). Certainly OS 1:2,500 National Grid Series map dated 1952-1992, (**Appendix 8** (map 25)), records the workshop building subject of this application and the hardstanding of Areas 2 and 3 together, by a single pecked line to indicate a change in surface to the hardstanding area, there are

no solid lines dividing the areas which would indicate a fence over the site. In any case, in the consideration of what constitutes curtilage, it is not sufficient that the land forms “part and parcel” of the same unit with the building, there must be a relationship between the building and the land, as set out in Blackbushe:

“121…if it were permissible to identify a curtilage simply by asking whether the building and land together form a single unit with “functional equivalence”, or were used for the same overall purpose, then their relevant sizes and functions, the question of whether the land is ancillary to the building, and indeed any historical connection between them, would diminish in significance and perhaps cease to be on any relevance at all.” (i.e. the “Stephenson Factors”, *“…that must be taken into account in determining whether a structure or object is within the curtilage of a listed building…”*).

“ …The correct question is whether the land falls within the curtilage of the building, and not whether the land together with the building fall within, or comprise a unit devoted to the same or equivalent function or purpose, nor whether the building forms part and parcel of the same unit which includes the land…”

54. **Fencing** – The OSS submit that the line on the planning application maps is likely to represent a fence on the land, or some form of solid boundary, or if not, has been recorded on the planning application plans to mark the northern boundary of the development application site. However, the Applicants contend that there was in fact no fencing on the land before development and produce witness evidence of this from Mr G Dear the previous landowner – correspondence dated 26 August 2021:

“I can confirm that at the time of my purchase of The Pound in 1967 and when planning permission was submitted in September 1967 there were no fences on The Pound.
When planning permission was granted for ‘Erection of garage/maintenance workshop’ By Salisbury and Wilton Rural District Council, Application No 7085/11434 dated 12 October 1967 there were no fences on the entire site of The Pound, Common Road, Whiteparish SP5 2RD.”

Mr and Mrs K Taylor who have lived in Whiteparish for over 60 years – correspondence undated, but submitted by the applicants with correspondence dated 1 September 2021, confirm:

“We both know the site known as The Pound very well, as it is only a few hundred metres from our own property.
Poundside Cottage and The Pound were owner by Jack Chant who we also knew as local villagers.

The entrance to Poundside Cottage used to run across the land, which became the haulage yard, in the mid-sixties.

There weren't any fences on the land known as The Pound, only a shed in the corner. It was just an open piece of ground used by Jack for building materials and then for the milk lorries when they built the large building, which is still there to this day."

Mr T King, who has also lived in the village for all of his life, (save for the years 1973-76) - correspondence dated 3 July 2021, states:

"Prior to the building, which is the concern of this application, being erected, this area was grazed by livestock, which wandered between piles of building materials grazing what grass was available. The so called "builders yard" was never fenced."

55. The open nature of the site is also reflected in the planning application documents for change of use from builder's yard to milk and general haulage depot in 1967, application no.6759/10935. The application form sets out that the existing access remains unaltered as a result of the development: *"The site adjoins the road and is largely unfenced.",* (see planning documents at **Appendix 9**).

56. The lack of fencing on the site is supported by OS mapping evidence 1895 to 1992, (see **Appendix 8**, (maps 17-27)), which record no fences over the land, (other than the south-west corner on pre-1990/91 maps), and photographs which show no fences to the north and east of the site, until recently, (see photographs at **Appendix 8**). The OS maps appear to show the smaller building on site prior to 1967 at the south-west corner of the application land, and pre-1990-91 maps consistently show fencing at the south-west corner of the site against what is now the extent of common land register unit CL7 and the boundary with Poundside Cottage, there is no other fencing recorded on the site. Maps 25 and 27, (**Appendix 8),** dated 1952-1992 and 1991-1990 respectively, produced/revised after the erection of the workshop building, show the current extent of the application land, with no fencing/enclosure within this area.

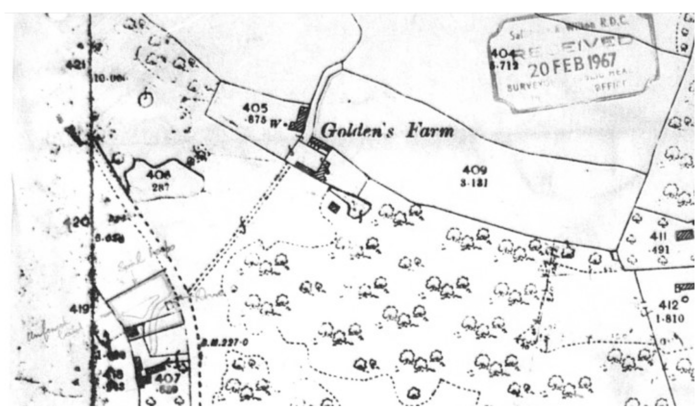
57. The Applicants (and landowners) have lived adjacent to the site since 2002 and refer to fencing being erected within the site alongside Common Road, only 2 years ago, in correspondence dated 21 July 2021 – "*The raised grass verges on the edge of the road were put in place, by ourselves, to prevent vehicles from being stolen at The Pound. An attempt was made, to steal a vehicle, by means of Hiab crane lifting a vehicle from the Pound site. The raised grass verge prevents the ability, of the Hiab, on the back of a lorry, getting close enough to lift vehicles from The Pound."*, and further in

correspondence dated 1 September 2021 - *"OSS have used the current fence line which was only erected two years ago and as we explained in our response of 21 July 2021 the reasons for erecting a fence.*
Previous to this fence being erected the hardstanding went to the road edge."

58. Certainly the Applicants evidence of fencing of the site, now 3 years ago, accords with enquiries made to the New Forest National Park Authority as the relevant planning authority, regarding the status of the land and proposals to fence in 2019, please see paragraph 49 above.

59. The Applicants do refer to the planning application map being produced from historical mapping and Officers would agree that the map is likely to be derived from OS mapping. They further refer to the line shown on the plan, (the northern boundary of the planning area), as an historic field boundary, however, Officers do not agree that this marks an historic field boundary as there is no additional evidence of this in the testimony of long term residents or the OS mapping evidence, (please see OS maps and photographs at **Appendix 8**), which consistently record the site as unfenced, even after the erection of the building in 1967, (the use of a solid line on OS maps being recognised convention for the recording a solid boundary such as a fence). Officers consider that this line on the planning application maps records the development application site, (Officers would agree with the OSS in referring to this as what would now be known as the "red line area" in a current planning application), and that the permission for development granted extends only as far as the identified area and no further.

60. There are no planning conditions included in planning application no.7085/11434 and no information regarding the treatment of the site boundaries. However, Officers have located a location plan for planning application no.6759/10935, (see historic planning documents supplied by the New Forest Planning Authority, at **Appendix 9**), which shows "spoil heaps" in the area of "the line" to the north of Area 2, please see extract below. The presence of rubble/spoil in this area is supported by the Applicant who states: "*We must emphasise that the hardstanding that is present today is actually smaller in area than in 1967 as the land to the north of the existing hardstanding contained rubble for hardstanding"*, however, spoil heaps would make it difficult to use an additional area north of the identified planning area, for the parking and turning of vehicles in conjunction with the site at the time of registration. The location plan below is dated as received by Salisbury and Wilton Rural District Council on 20 February 1967. The identified planning site (Area 2) is labelled as "Unfenced Land".



“Spoil heaps”

“Unfenced land”

“Drive”

Enlarged extract from location plan – Planning Reference 06759/10935

61. Correspondence between the agent acting for Mr G Dear and the Land Commission, dated 30 June 1967, i.e. after the planning permission for change of use for the site 6759/10935 (February 1967) and before planning permission for the new workshop building on the Pound site 7085/11434 (October 1967), gives further information regarding the change in access to the site, the existing “Drive” being drawn onto the plan above. As a requirement of the change of use, the existing drive across the site was to be permanently closed and a new access, at least 18’ wide with 35’ radius curves on both sides, to be accommodated at the north end of the identified planning area. The Agent writes:

“Our Client, an agricultural and general haulier (believed to be Mr G Dear) *in a small way of business has obtained planning permission to carry on his business on property belonging to a third party* (Mr J Chant) *and now used as part of a Builder’s yard and store: the sheds have been used for (inter alia)*

casting concrete lintols. The consent is subject to providing an improved access (which will be shared by the haulier and the builder) and to submitting details of any new buildings."

62. There is not sufficient range in the dates of the historic OS mapping to document the change in size to the hardstanding area, extending further north into the site in 1967, as suggested by the Applicants. The only map which records the hardstanding is the OS National Grid Series 1:2,500 map dated 1952-1992, revised after the erection of the building in 1967 and which records the hardstanding area by a single pecked line, which appears to correspond with the hardstanding in Areas 2 and 3 (see **Appendix 8** (map 25)). However, this map; photographs of the site and the testimony of the Applicants, do record that the hardstanding area (Area 2), extended to the highway Common Road, before the fencing of the site in around 2019, (see aerial photographs at **Appendix 4** and Google Earth image 2002 and Google Streetview dated 2011 at **Appendix 8** (photographs 16 and 30)).

63. **The Stephenson Factors** – The Blackbushe Airport case considered the "Stephenson Factors" as set out in the Calderdale case, which must be taken into account when considering whether a structure or object is within the curtilage of a listed building, (although not a listed building case, the concept of curtilage is not different), i.e. 1) the physical layout of the listed building and the structure; 2) their ownership, past and present; 3) their function past and present.

1) **Layout** - The building subject of this application is the main focus of the application. It occupies 122 square metres approximately and forms only 5% approximately of the application site, (2,420 square metres approximately). Although there is evidence in OS mapping and witness testimony that until approximately two years ago, there was no fencing or enclosure of any part of the de-registration application site, Areas 3 and 4 were not required to access the building and did not form part of the planning application site over which planning permissions were granted for change of use and the erection of the workshop building in 1967. There is however, a defined relationship between the building and Area 2, as the identified planning application site, including a new access over this land from the highway Common Road to the building located at the west of the site, as required by the planning conditions; provision of the parking/turning area to be accommodated within the site, as required by the planning conditions and the provision of part of the visibility splay, necessary for the safe use of the building, as required by the planning conditions.

2) **Ownership** – The conveyance of plot no's 407 and 420 (OS mapping) in 1967 from J Chant to G Dear, show that the whole de-registration

application site, (i.e. all 4 areas, please see plot no's 407 and 420 OS County Series map 1924 1:2,500 at **Appendix 8** (maps 19 and 20)), and land to the south, were in the same ownership from August 1967, i.e. Mr G Dear. This is supported in the planning application documents, in 6759/10935 (February 1967), in which Mr G Dear, as the applicant, is shown as the "Prospective purchaser", with certificate that Mr J Chant was the owner of the application land. By the time of the planning application no.7085/11434 (October 1967), Mr G Dear is recorded within the application as the landowner and certifies so. The applicant provides evidence that this was the case until 2009 when the site was sold to Mr Downes, however, the extent of the site sold to Mr Downes is not clarified. The current owners have lived alongside since 2002 and appear to have acquired the land known as "The Pound" in 2018 according to title deeds included with the application (WT 280576), which covers the whole of the application land. It would appear that the application land has changed ownership on 4 occasions since 1967 to present day but was sold together.

3) **Function** – There is evidence that Area 3, as an area of hardstanding, functioned as an area for parking lorry trailers from 2000 and now forms a parking area for the buildings current usage as a car repair garage, however, there is insufficient evidence of its use for that purpose from 1967 and the erection of the workshop building, particularly given the planning conditions for the parking and turning of vehicles to be accommodated within the site, i.e. the planning application site from which Area 3 is excluded. There is no evidence that Area 4 has ever been used in conjunction with the building, it is not included in the planning application site and appears to have remained at all times as a green/wooded area. Area 2 is the identified planning application site and accommodates the new access over this land from the highway Common Road, to the building at the west of the site, as required by the planning conditions; provision of the parking/turning area to be accommodated within this area, as required by the planning conditions and the provision of part of the visibility splay, necessary for the safe use of the building, as required by the planning conditions.

64. In the Calderdale case, Stephenson LJ considered that where the listed building and the structure/object *"…are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building, or even some distance from it, into its curtilage."* When this principle is applied in the Whiteparish case, whilst all 4 areas have remained together through four separate landowners since 1967, only Area 2 has been used in connection with the building since 1967, and Test B, as set out at Schedule 2(6) of the Commons Act 2006, is met only in the case of Area 2.

Test B – Conclusion:

1) Area 1 - shaded red on plan at paragraph 27 above – to be excluded from the area of land to be de-registered where it does not form part of the registered common land unit CL7, Whiteparish Common at provisional registration.

2) Area 4 – shaded yellow - The wooded/green area between Area 3 and the farm track, to be excluded from the land to be de-registered where there is no evidence that the land was so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building at provisional registration. It appears to have been and remains a separate wooded/green area.

3) Area 3 – edged green - Hardstanding area to be excluded from the area to be de-registered where there is insufficient evidence that the land was, at provisional registration, so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building, (there is evidence that it has been used in conjunction with this building only since around 2000, i.e. the parking of vehicles).

4) Area 2 – edged blue - That section of land identified on the block plans in association with the planning applications for change of use and the building of the workshop in 1967 and proposed to be de-registered where there is evidence that the land was at provisional registration, so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building, i.e. curtilage of the building, including the provision of access to the building; a turning/parking area and part of the visibility splay, in conjunction with the building, all to be accommodated within Area 2, as set out in the planning conditions. As the only section of the land over which the legal test, as set out at Schedule 2(6)(2)(c) of the Commons Act 2006, is met, only this area of the application land is capable of de-registration.

TEST D: Since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building (Schedule 2(6)(2)(d))

Building:

65. The evidence suggests that the workshop building for which planning permission was sought and constructed, remains on site to this day in its original footprint, please see planning permission application plan overlaid with modern mapping at paragraph 27. Additionally, aerial photographs dated 2001, 2003, 2014 and 2020/21 record the building unaltered, please see **Appendix 4** and Google Earth image (2002) at **Appendix 8** (photograph 30). This is supported by photographs of the building produced in evidence dated

2011 (Google Streetview); 2020 (Google Streetview); November 2020 and May 2021, (please see photographs at **Appendix 8**).

66. The Applicants provide the following additional information regarding the use of the building throughout this time, i.e. 1968 to present day:

“1967 onwards The Pound was used as a builder’s yard.
1967 onwards The Pound was used as a general haulage depot, milk haulage depot and workshops.
2000-2009 Use to park empty lorry trailers and Mr Dear used workshop.
2009 Mr Dear sold to Mr Gerard Downes. Rented out site for a number of different purposes.
1 January 2017 Mr Robin Welsh took over the tenancy for use as a car garage and is still operating as Whiteparish Garage.
From 1967 the building and land has been used in a commercial capacity.
The site has B2 General Industrial use.”

67. Mr King objects that the building has not always been in use, as set out in his correspondence dated 3 July 2021:

“The building and the hard standing, used for parking, has not been in continuous use. For a considerable period of time tree trunks were positioned around the perimeter of the hard standing to prevent vehicles from parking on it.”

68. Certainly, the tree trunks which Mr King refers to and the condition of the workshop building can be seen in the Google Streetview image dated circa 2011, as shown below, and the Applicants confirm in evidence that during this period the building and the site was in the ownership of Mr Gerard Downes and rented out site for a number of different purposes. However, the CRA is not required to consider the use of the building, (the purposes of which have changed over the period in question), in their consideration of the legal test, only that the land is covered by a building from the time of provisional registration and at all times since. Officers are therefore satisfied that there is sufficient evidence to support that the land has been covered by a building since its provisional registration and at all times since, i.e., from 10 April 1968 to the present day.

Google Streetview image circa 2011

Curtilage:

69. If any of the areas were not considered to be “curtilage” of the building at the time of provisional registration on 10 April 1968, they cannot be treated as curtilage for the purposes of part D of the Schedule 2(6)(2) legal test and therefore it is really only necessary to consider Area 2 as curtilage to the building throughout the relevant period, (please see conclusions on Test B above).

70. **Area 2** – The area of the application land forming part of the curtilage of the building at the time of the construction of the building, by way of its inclusion as the extent of the planning site and being so intimately associated with the building so as to lead to the conclusion that the land forms part and parcel of the building. It would appear that this area has remained closely associated with the building, initially forming the identified planning application site and now forming a car parking area associated with the building, as well as providing access to the building.

71. The Google image, circa 2011 at paragraph 68 above, appears to show the hardstanding area with logs across the eastern side of Area 2, obstructing access to the highway Common Road, however, there is a vehicle parked on the land and other vehicles within the workshop building. The hardstanding of Area 2 maintains its relationship with the building at this time for the accommodation of a parking/turning area; access to Common Road and part of the visibility splay necessary for the safe use of the building and set out within the planning conditions for change of use of the site in 1967. The logs are a temporary and moveable feature, and the Applicants provide evidence that at this time, i.e. between 2009 and 2017, the site was sold to Mr G Downes and rented out site for a number of different purposes.

72. In 1967 planning permissions for this site included an area of sight line to be retained against the highway Common Road, to be kept free from obstruction. The OSS argues that this area should not be de-registered as common land

where it was to be kept free from obstruction; however, Officers consider that when the building was constructed and as a condition of planning, this sight line area was necessary to the building and its safe use, therefore it formed part of the curtilage of the building. The Applicants, as the landowners, have recently erected fencing in this area which means that a section of the planning application site adjacent to Common Road, which was hardstanding all the way to the edge of the highway, cannot now be used for the parking of vehicles etc, however, at the time of construction it was a planning condition for this area to kept free of development and this appears to apply to the life of the workshop building, therefore, Officers consider that this section continues to form curtilage of the building, as it did at the construction of the building in 1967. The planning condition relating to this part of the land continues to be relevant.

Test D Conclusion:
Officers are satisfied that the land identified as Area 2, (see legal test B above), has at all times been, and still is, covered by a building or within the curtilage of a building and therefore the legal test, as set out at Schedule 2(6)(2)(d) of the Commons Act 2006, is met over that part of the application area, which is capable of de-registration.

Comment on Additional Representations

73. Mr R Hughes, Economic Development and Planning, Wiltshire Council, makes the following representation regarding the highway land:

"I would suggest notifying wc highways records regards the strip of grass adjacent to the highway, as this may be Council highways land?"

The current highway record is shown on the plan below, and it will be seen that although the grass area adjacent to the highway (Common Road), appears to resemble highway verge, it is not in fact highway maintainable at the public expense.

May 2021

Google Streetview c.2020

74. The applicant/landowner advises: *"The strip of grass adjacent to the highway is part of The Pound owned by ourselves…The raised grass verges on the road edge were put in place, by ourselves, to prevent vehicles being stolen at The Pound."* The evidence suggests that works to raise the verges and erect fences were carried out by the landowners approximately 3 years ago. There is no area of highway maintainable at the public expense included within the application land.

75. Mr T King writing on 3 July 2021, states *"I consider the registered Common Land of Whiteparish to be a special part of the village and should be protected from deregistration at all costs."* Officer's do of course understand Mr King's concern in this matter; however, as set out in the Blackbushe case, at the coming into effect of the 1965 Act, one would not have expected buildings to be present on land over which rights of common existed, given the prohibition of the erection of any building or fence on land subject to rights of common at Section 24 of the Law of Property Act 1925. Unfortunately, where there was no requirement for provisional registration to be notified to individual landowners, errors were made and the legislation provides for the correction of errors and the presumption is that buildings should not be registered as common land, the Blackbushe case sets out the position as follows: *"All four requirements in paragraph 6(2) must be satisfied in order for the land to be*

deregistered. If they are, and the application is made within the prescribed time limits, deregistration is mandatory."

76. The Applicants consider that *"The registered common land of Whiteparish may be 'a special part of the village' but The Pound is only .027% which is less than one third of 1% of the overall land of the 218 acres of registered common land known as Whiteparish Common and has been in commercial use since 1967".* However, having considered the evidence in this case, Officers would suggest that not all of the land within the application is curtilage of the building and therefore it is proposed to de-register only part of the application area which is identified as the building and its curtilage.

Conclusion

77. Based on the evidence, Officers consider that the land at The Pound, Whiteparish, currently registered as Common Land part of Register Entry no.CL7, Whiteparish Common and subject to application made under Schedule 2(6) of the Commons Act 2006 to de-register buildings wrongly registered as common land, be part de-registered over that part of the application area which is covered by a building or the curtilage of a building, as shown outlined in red on the plan below: