

WILDLIFE AND COUNTRYSIDE ACT 1981 S.53

DECISION REPORT

Application to upgrade footpath North Tidworth 11 to a Byway Open To All Traffic and add a new section of Byway Open To All Traffic in the parish of Collingbourne Ducis

1. **The Application**

Application number: 2004/09

Date of application: 31st March 2004

Applicant: Bill Riley
141 Bath Road
Bradford on Avon
Wiltshire
BA15 1SS

Application for: *An Order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by upgrading to a byway open to all traffic the footpath No.11 North Tidworth, Oxford Road. From the Ludgershall Road, A3026, east of North Manor Farm, leading north north-east over Windmill Hill to the Collingbourne Ducis Parish boundary on Sunnyhill Down. Approximate length 2.06km. Approximate width ranging from 4.5 to 9 metres.*

And adding the byway open to all traffic in Collingbourne Ducis Parish, Oxford Road. From then northern end of right of way No.11 , North Tidworth , at the Parish boundary, leading north north-east across Sunnyhill Down and the Devizes Road, A342 , to its junction with right of way no.19. Approximate length 600m. Approximate width 9 metres south of A.342 , and 75 metres north of A.342.

Application comprises: Schedule 7 form of application for modification order.

Schedule 8 form of notice of application for modification order served upon the landowner Defence Estates , Training Estate, Land Agents Office, Westdown Camp, Tilshead, Salisbury, Wiltshire, SP3 4RS.

Schedule 9 certificate of notice of application for a modification.

Map showing the claimed route highlighted in pink.

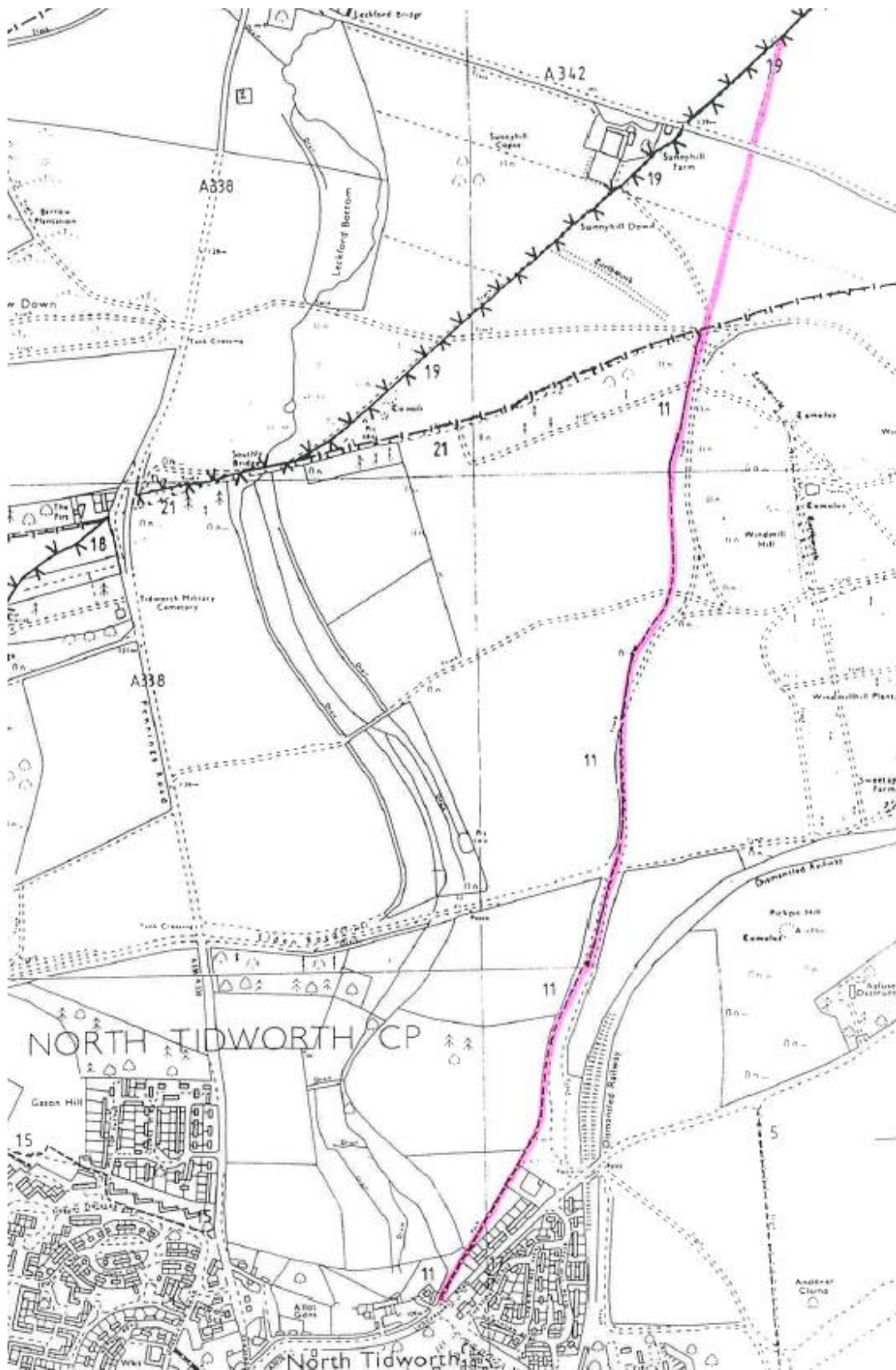
Summary of Historical Evidence.

2 Background

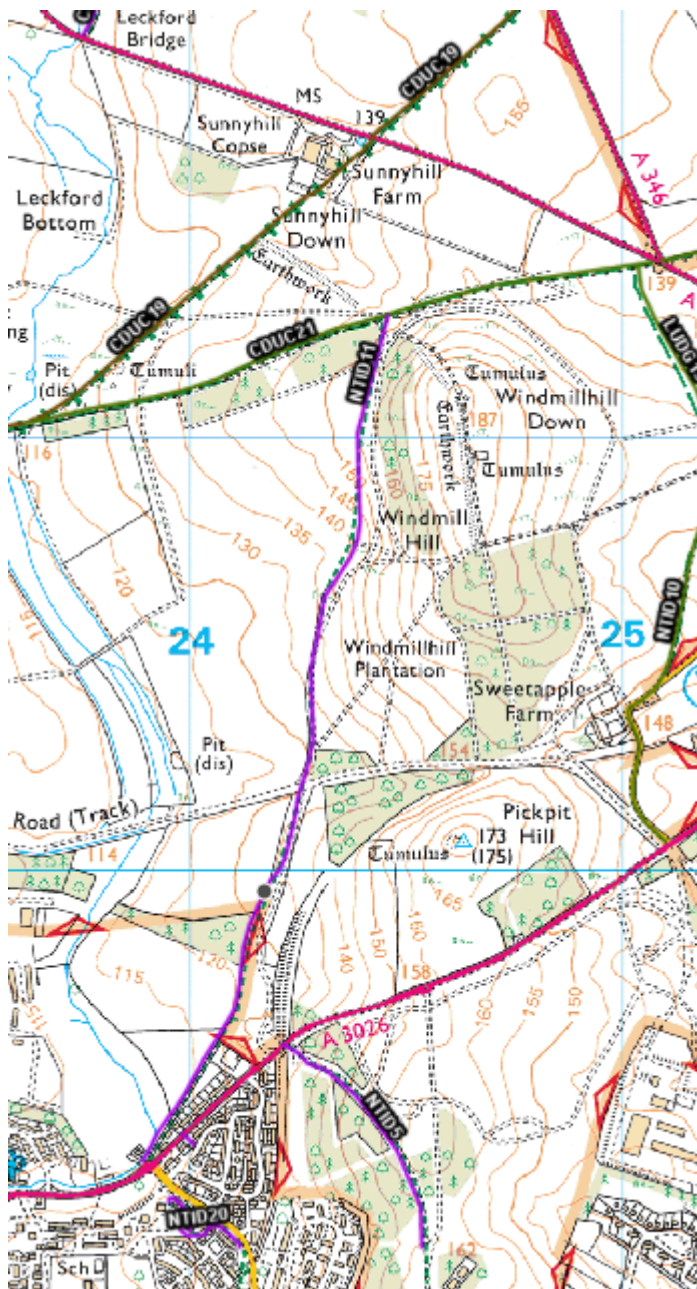
- 2.1 Wiltshire Council received an application on 31st March 2004 to upgrade footpath North Tidworth 11 (NTID1) to a byway open to all traffic (BOAT) from its junction on the A3026 Ludgershall Road OS Grid Reference SU 2389 4933 leading in a generally northerly direction to its junction with bridleway Collingbourne Ducis 21 (CDUC21) at SU 2446 5128. The application also applies for a new section of BOAT from SU 2446 5128 leading north – north-east across Sunnyhill Down and the A.342 to its junction with BOAT Collingbourne Ducis 19 (CDUC19) at SU 2459 5184.

Some evidence, as will be seen later in the report , indicates part of the route crosses for a small length into the parish of Ludgershall at the North Tidworth/ Collingbourne Ducis parish boundary, as such Ludgershall Parish Council have been consulted, but for most references it is considered the claimed route is within the two parishes of North Tidworth and Collingbourne Ducis.

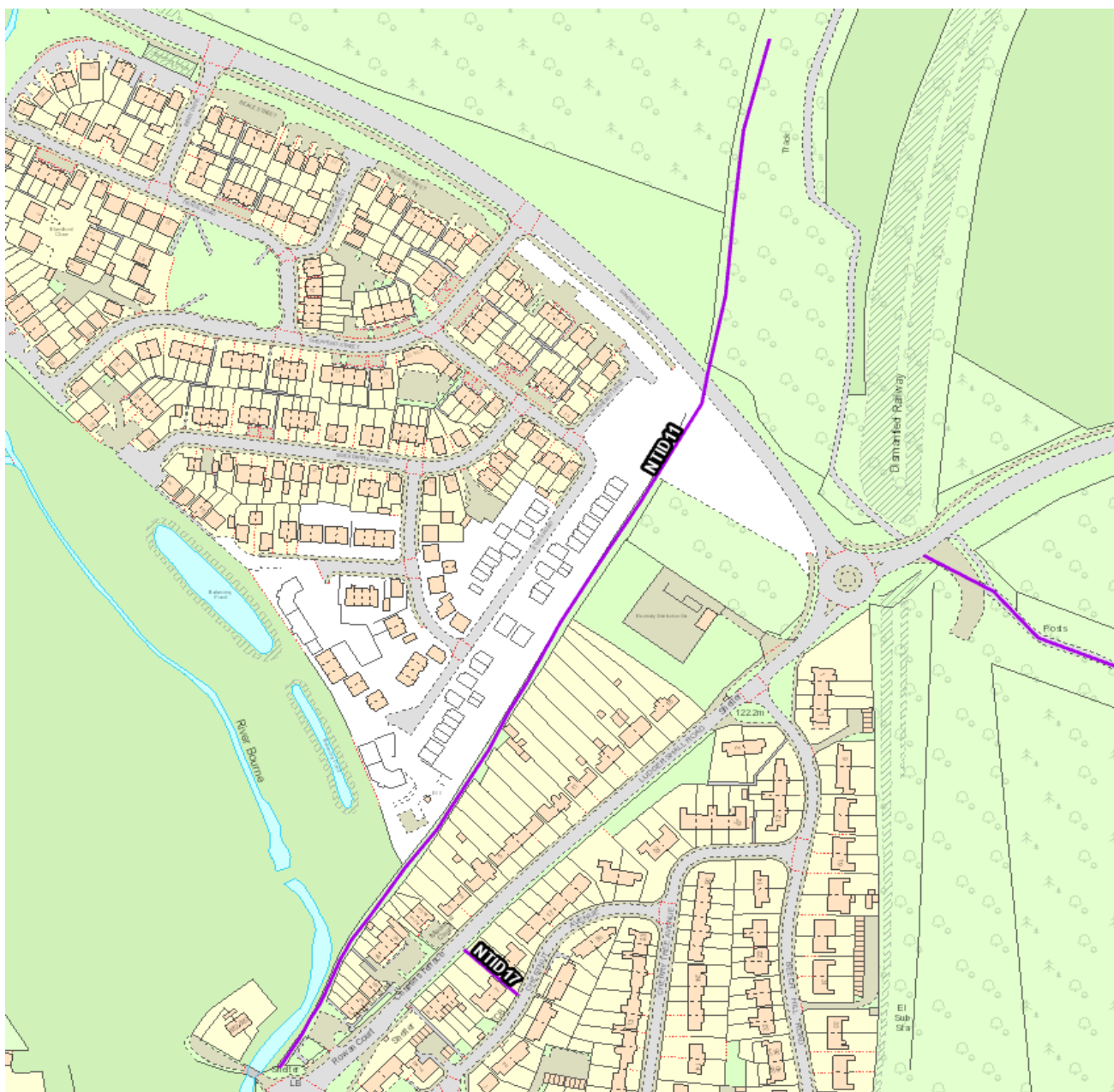
2.2 The application was accompanied by a map with the application route highlighted in pink. This is shown below.



2.3 The current working copy of the definitive map for the area is shown below for context.

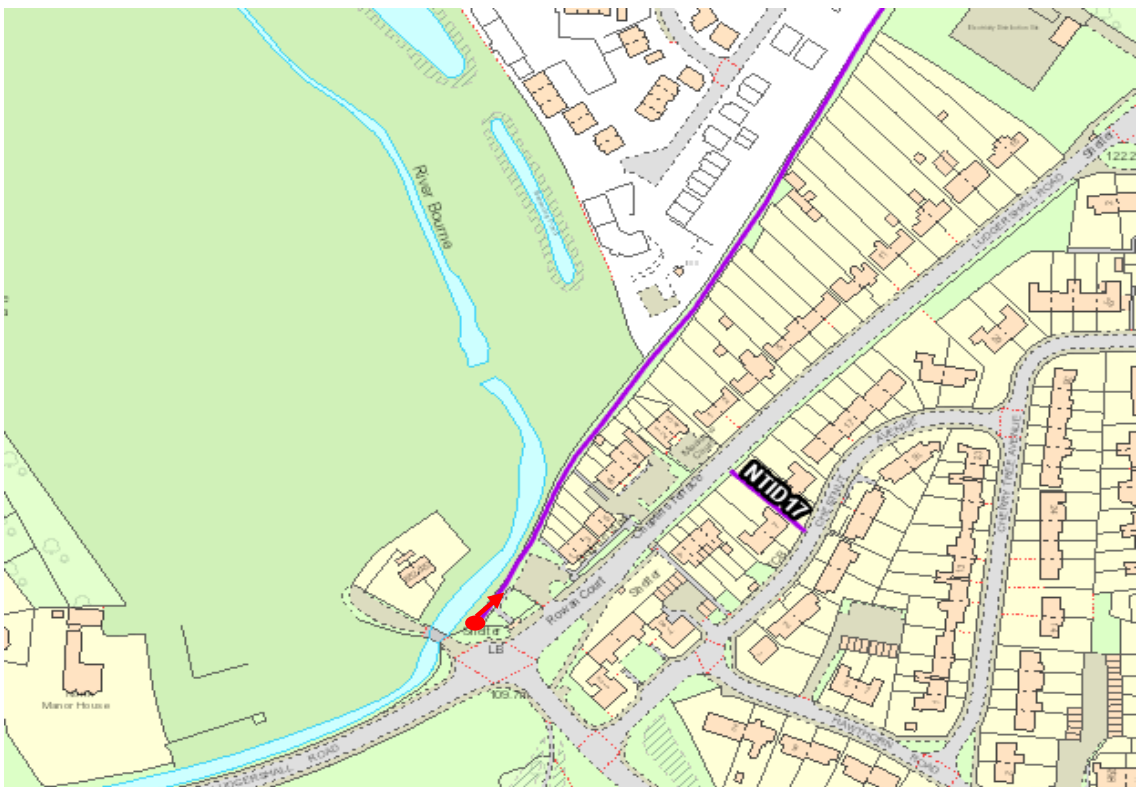


2.4 At the southern end of the footpath a new housing estate has been recently built immediately to the west of the path and can be seen in the below map extract. The footpath also now crosses a newly constructed road, named Windmill Drive, to the north of the housing estate, this is currently unadopted.

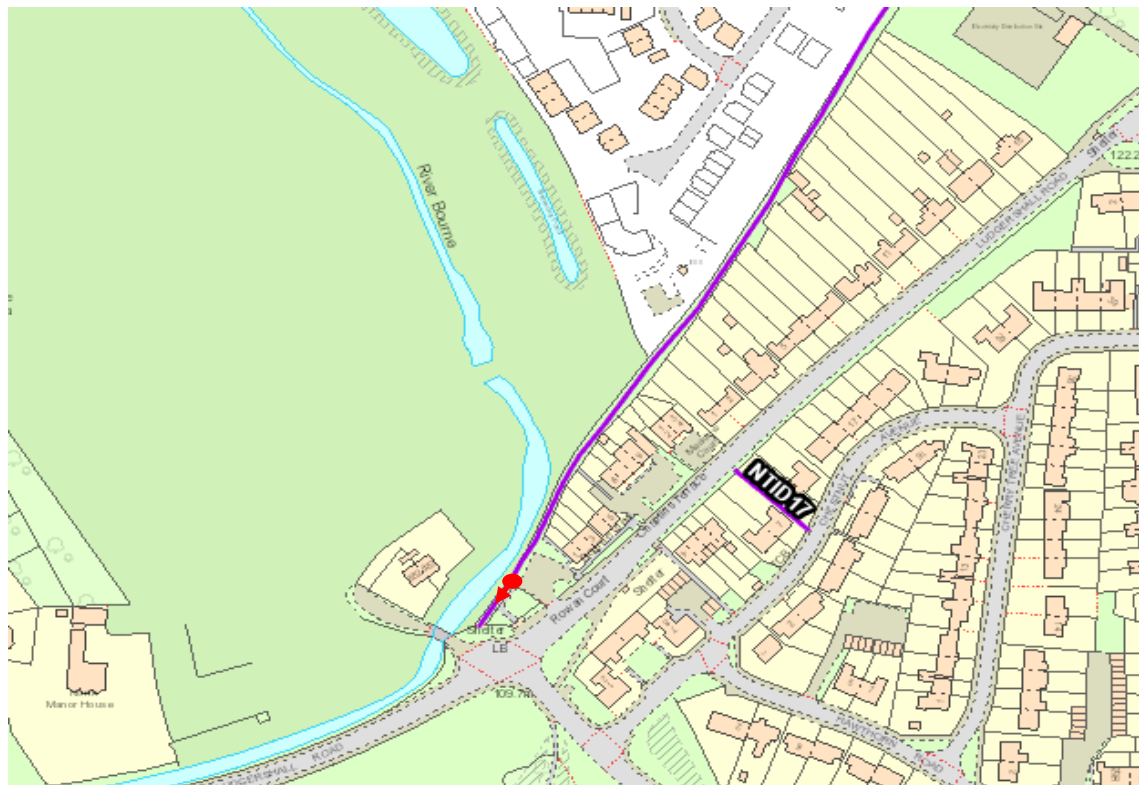


3.0 Photos of the site

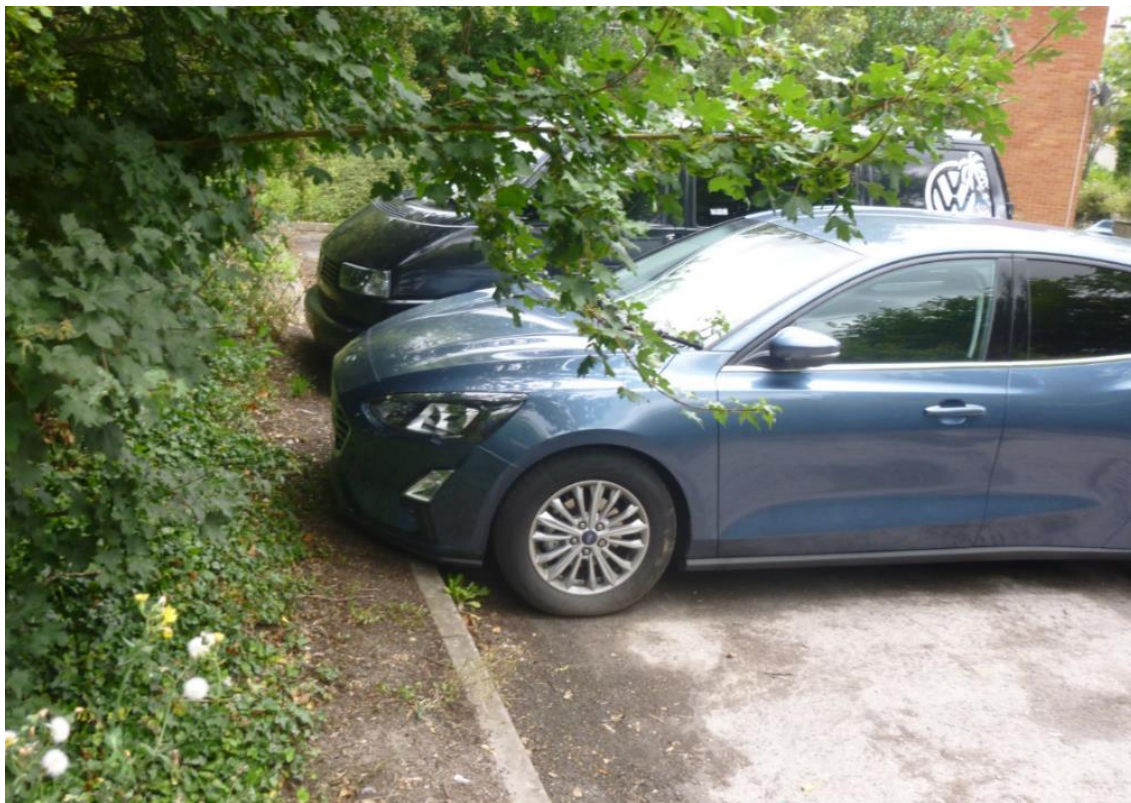
The following photos were taken of the application route taken in July 2020. Beginning at the southern end of footpath NTID11 from Ludgershall Road. The map extract accompanying each photo will show the location and direction each photo is taken from; this is indicated by a red arrow on the map.







3.4



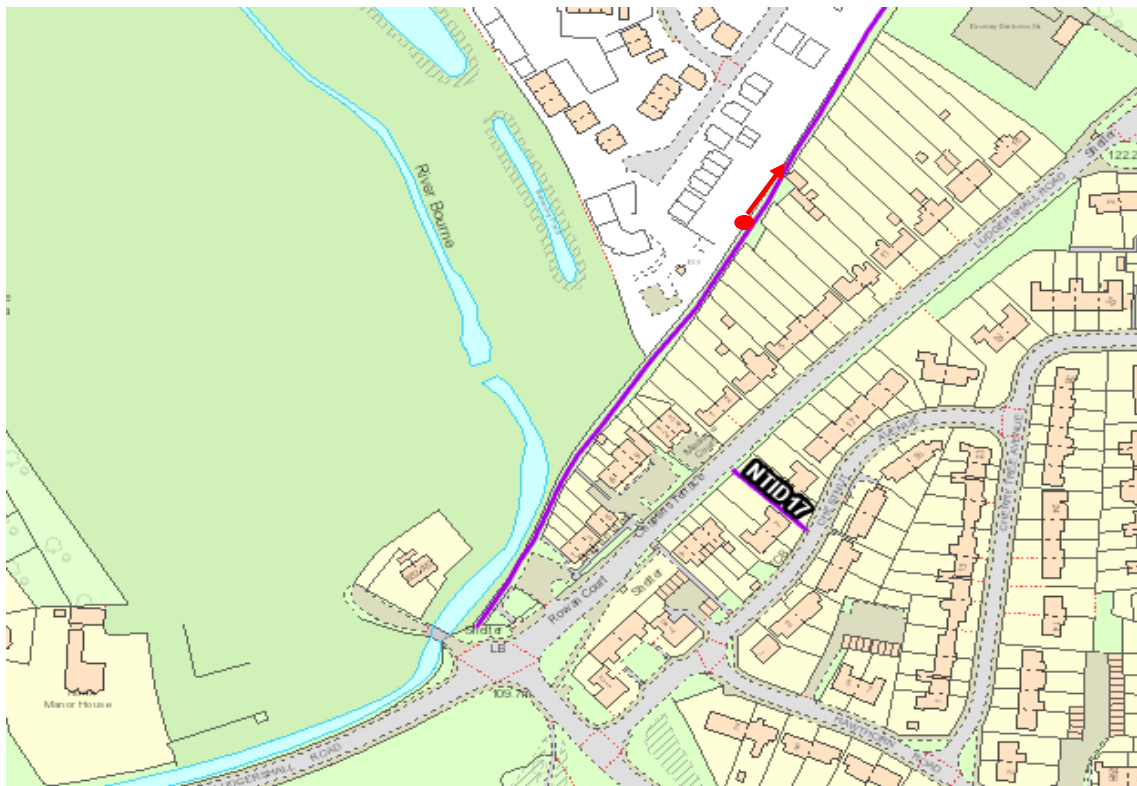
3.5

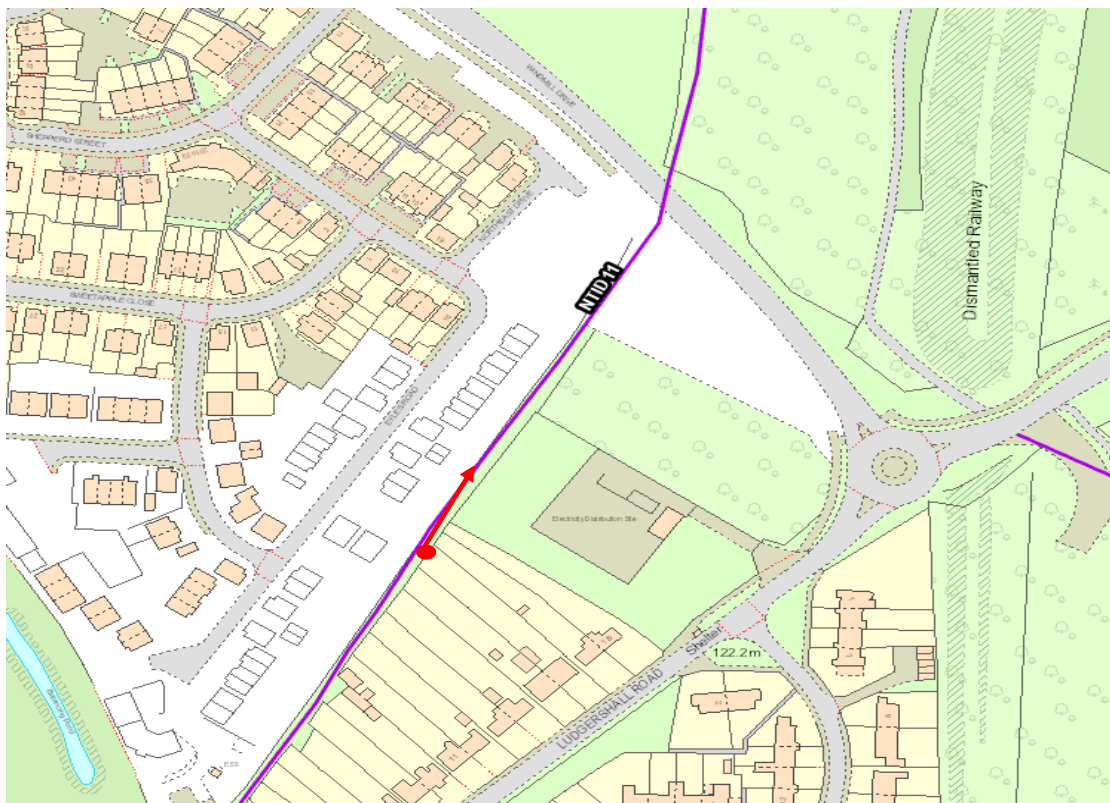


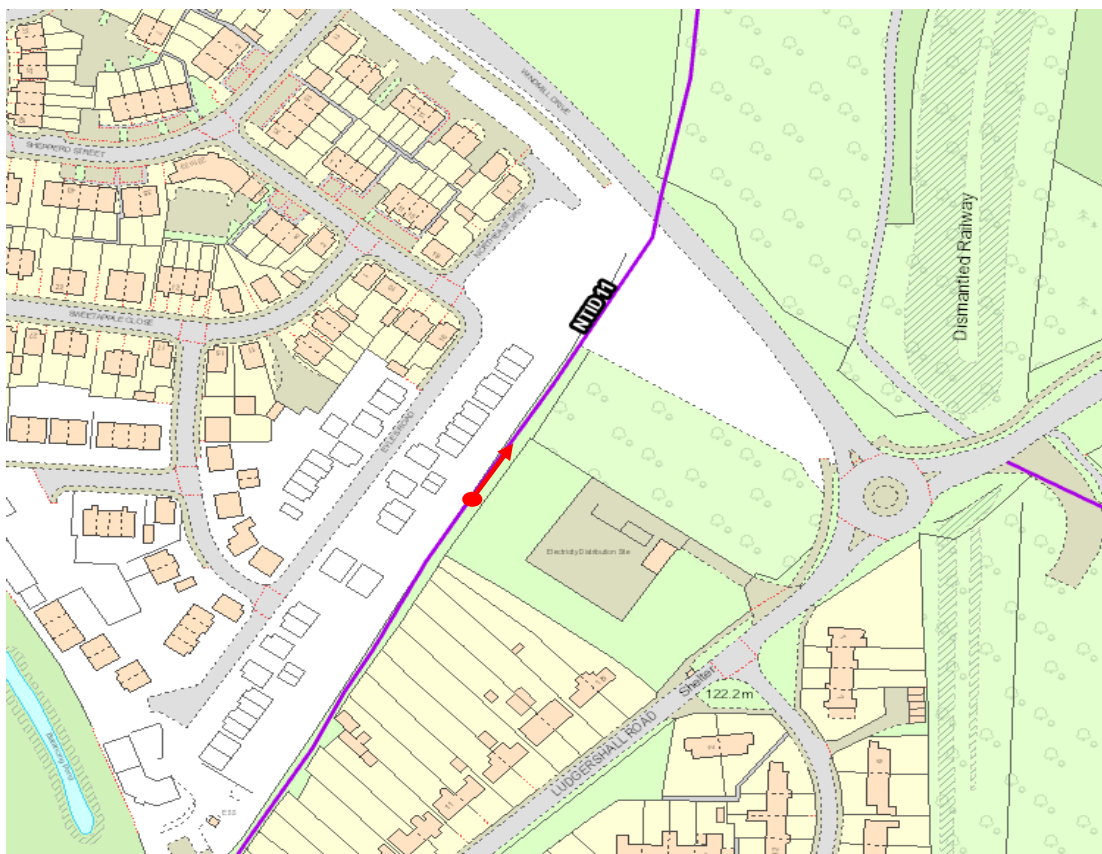


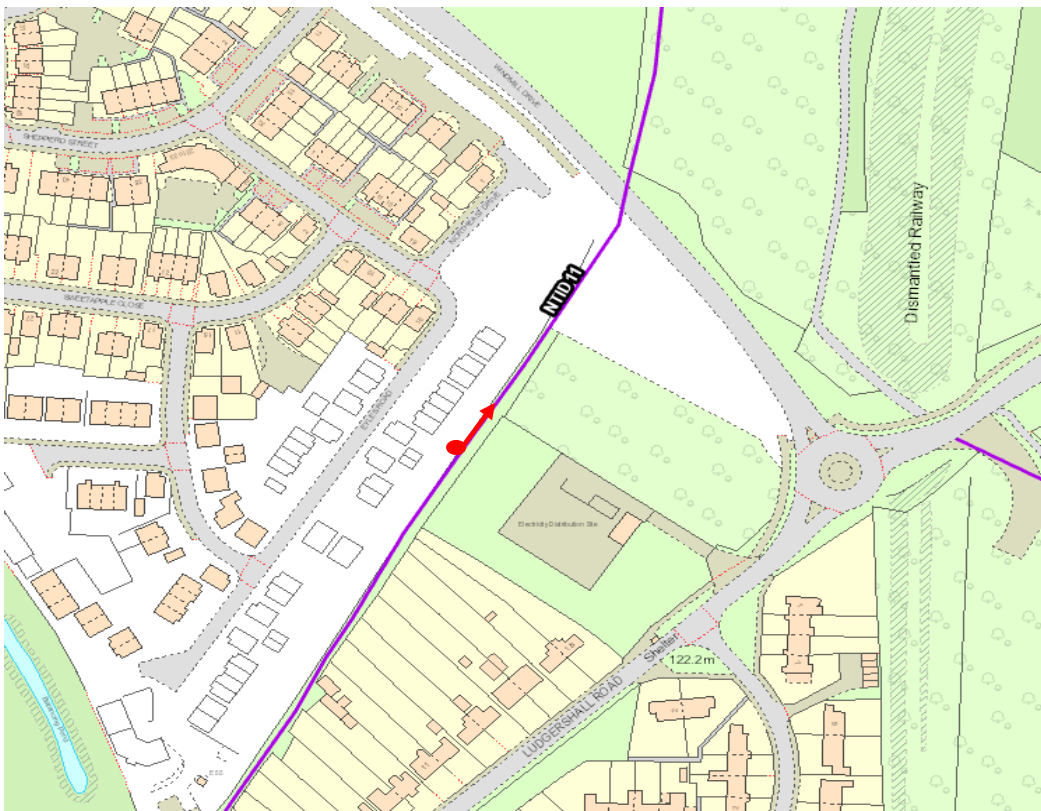


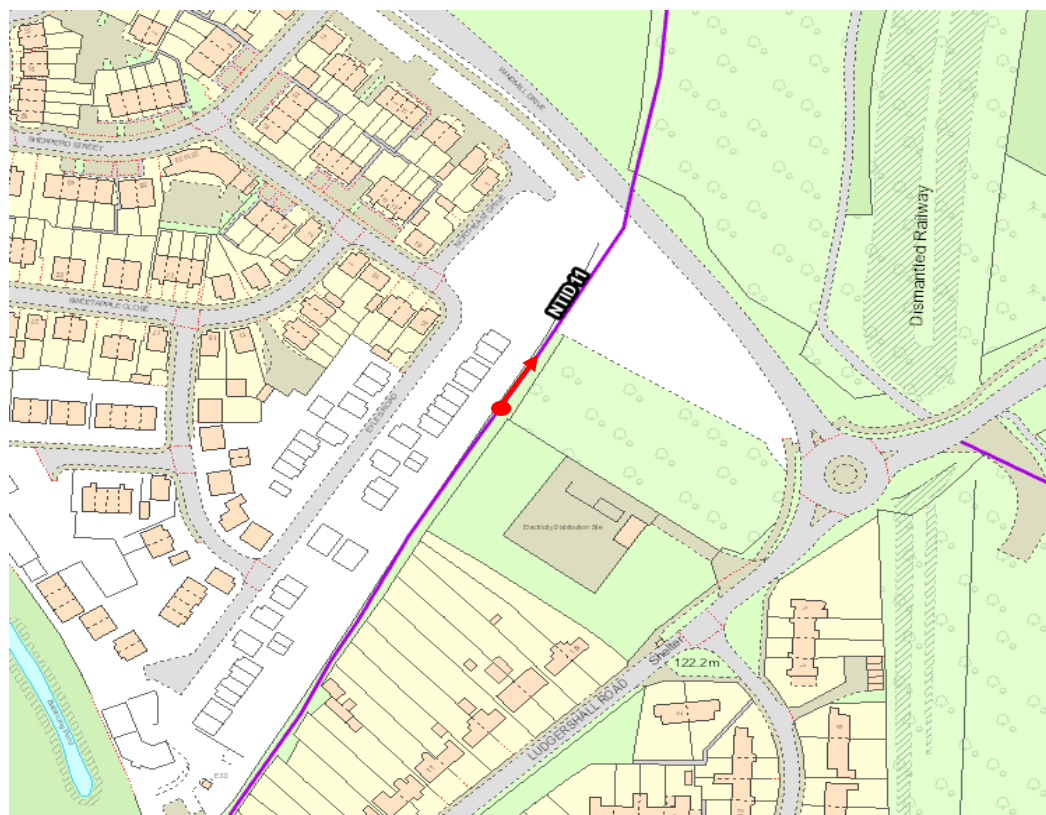


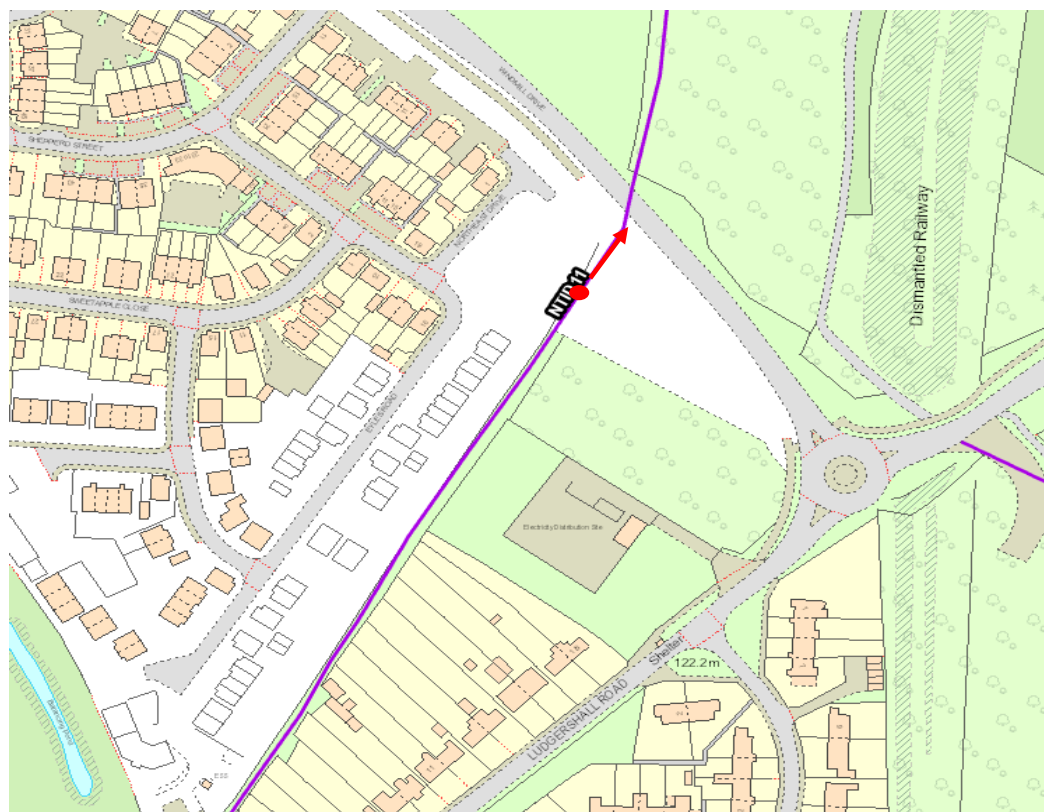


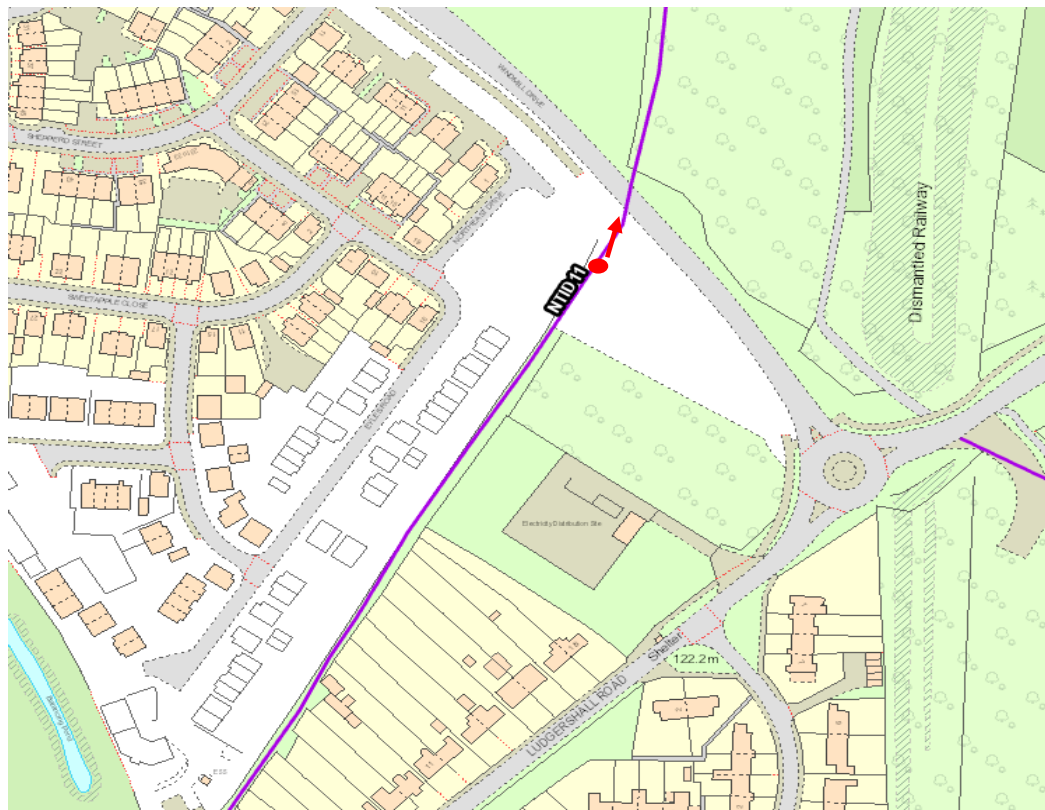


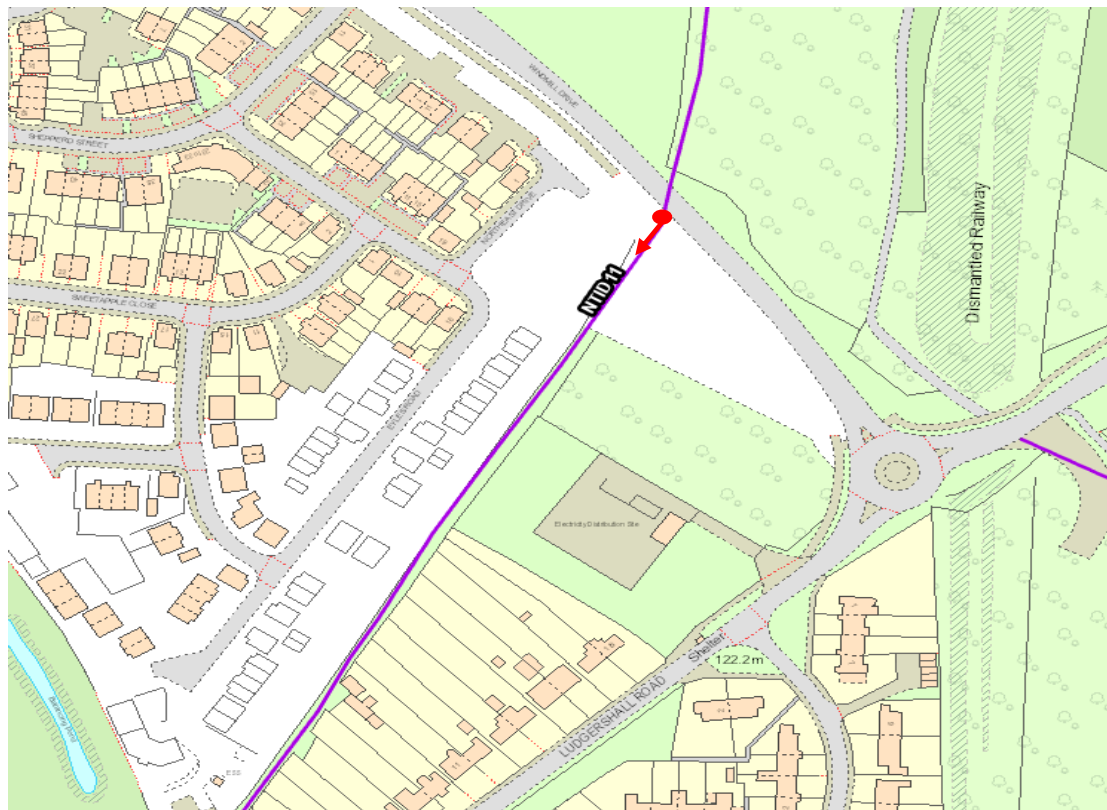




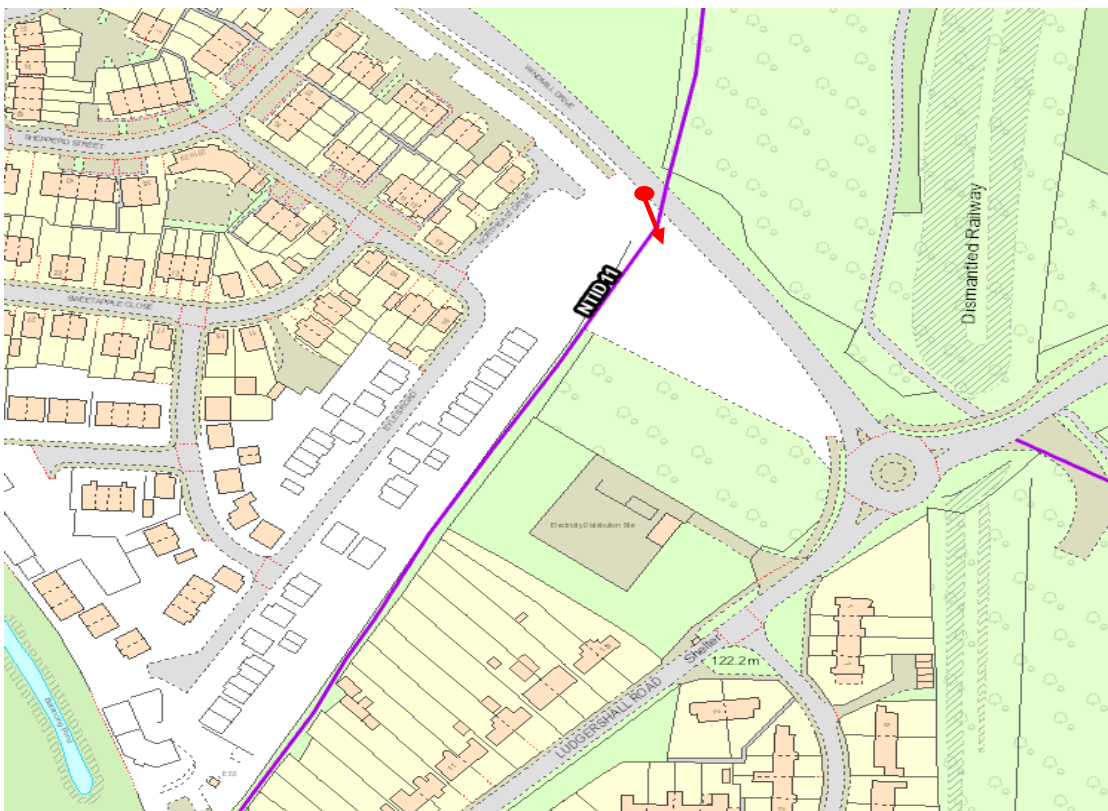


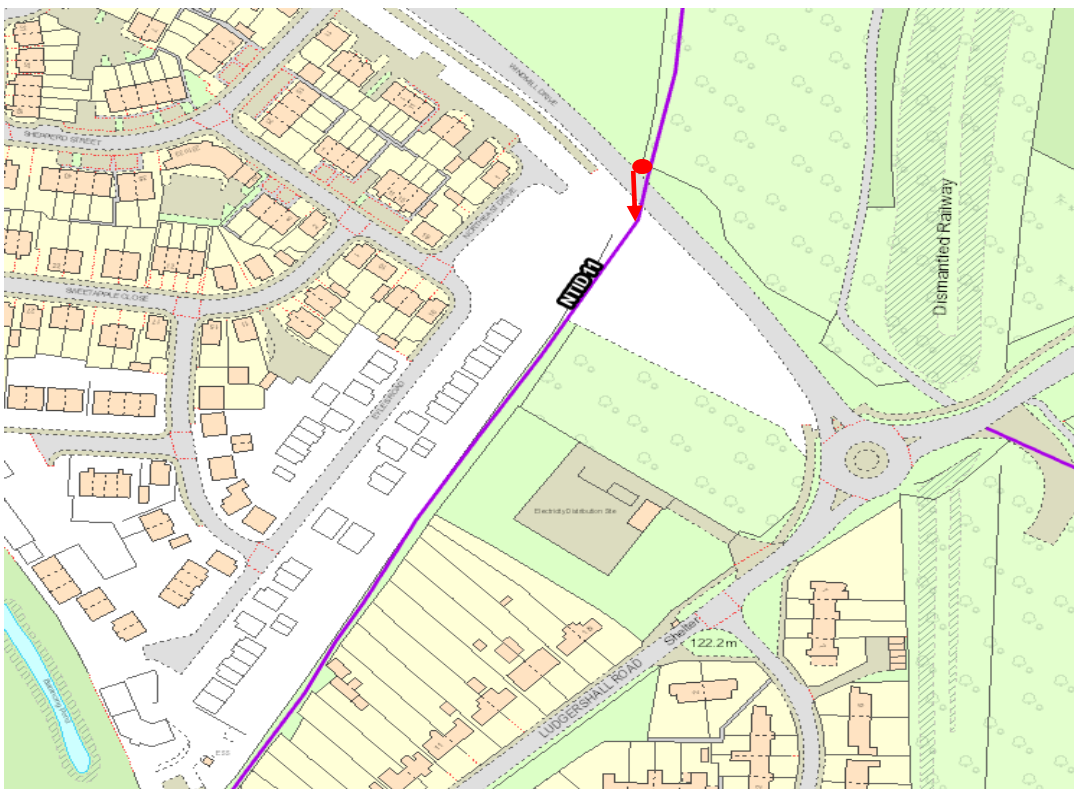


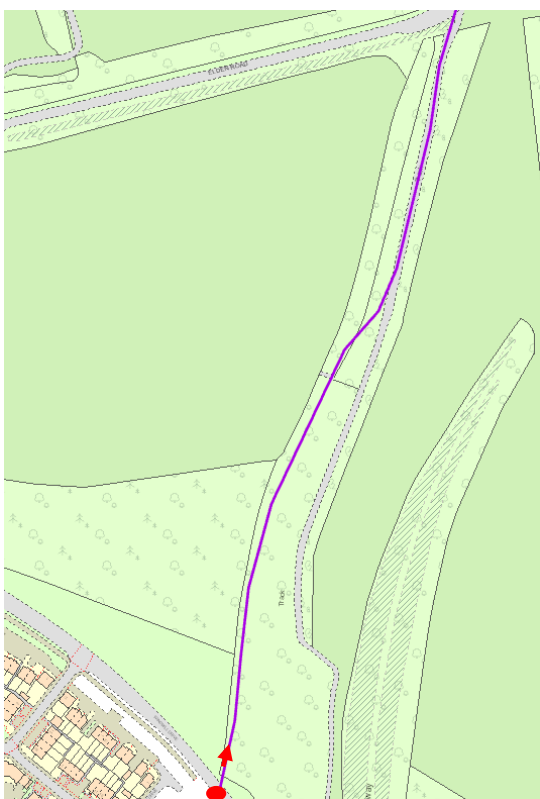


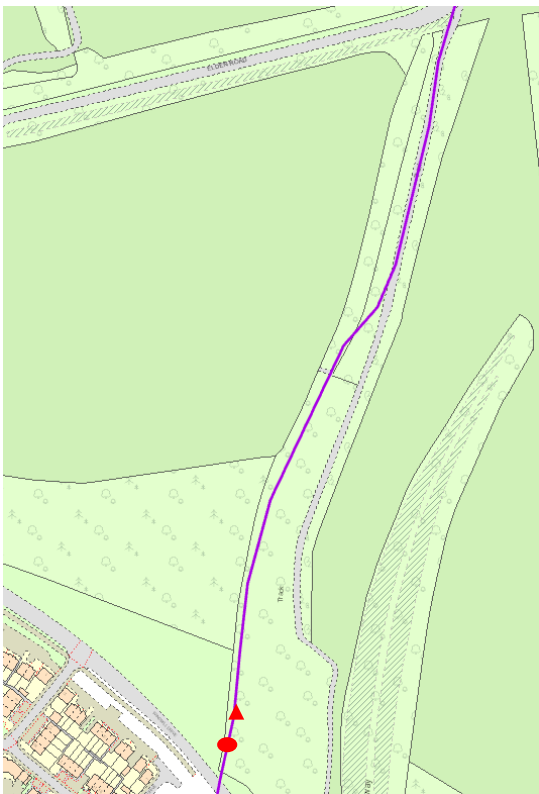


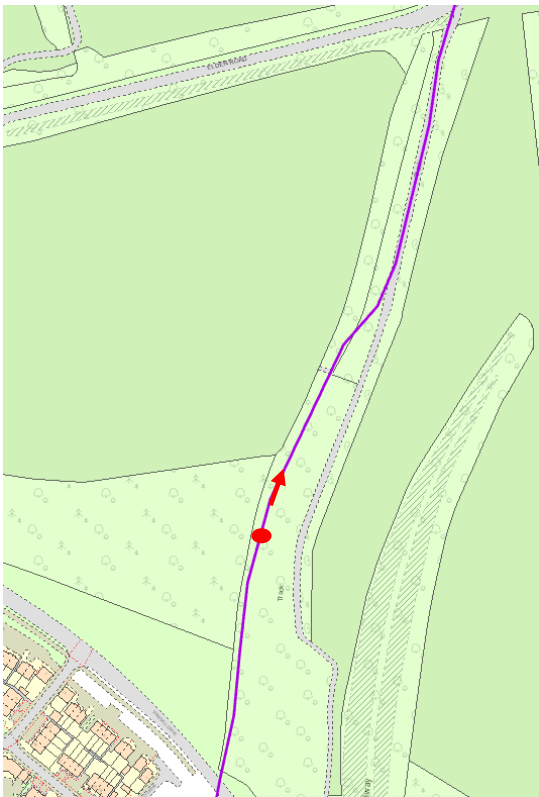
3.17

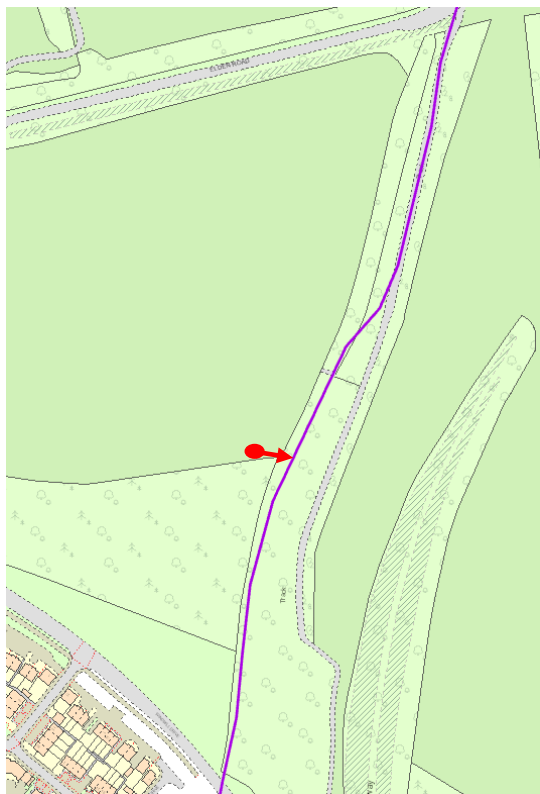


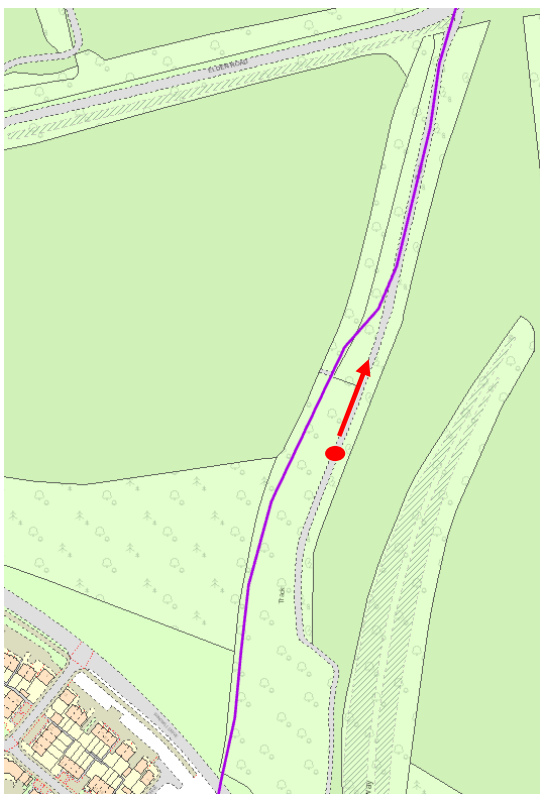


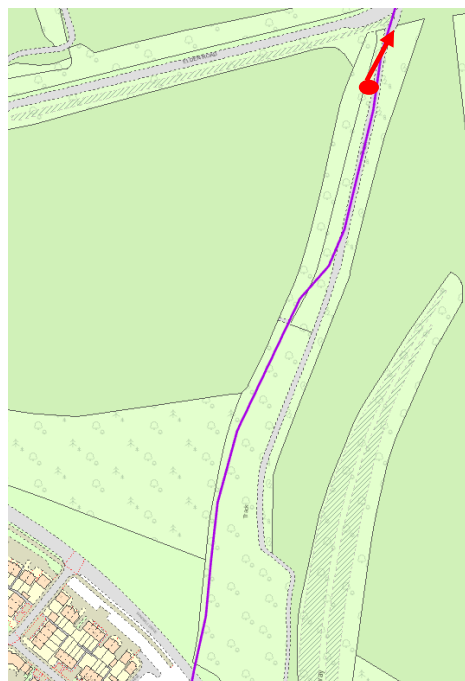


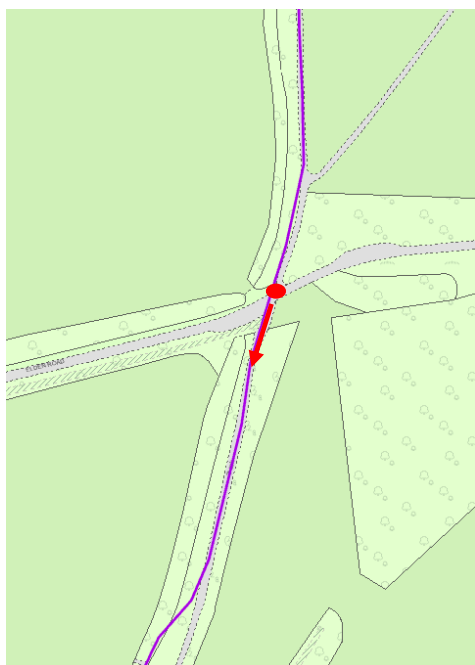


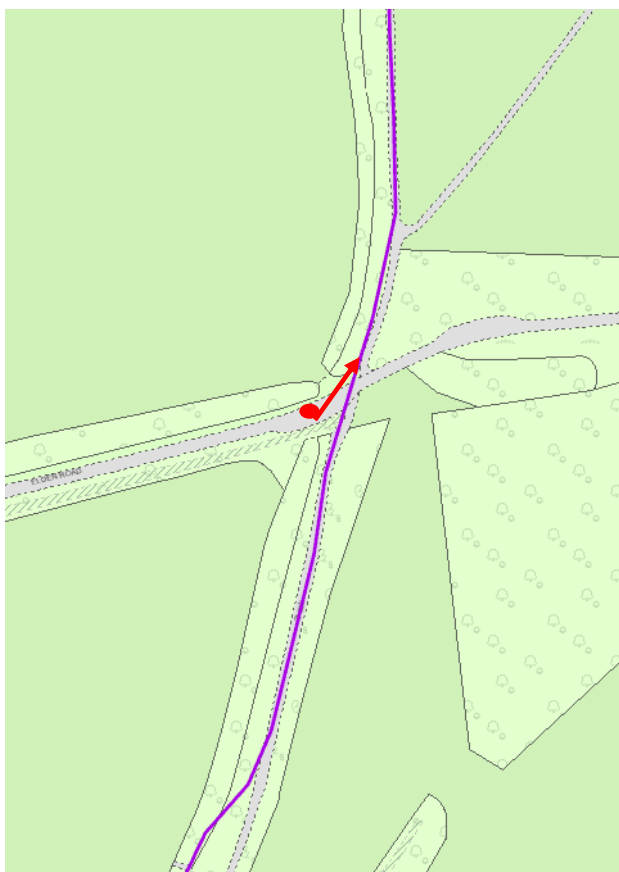


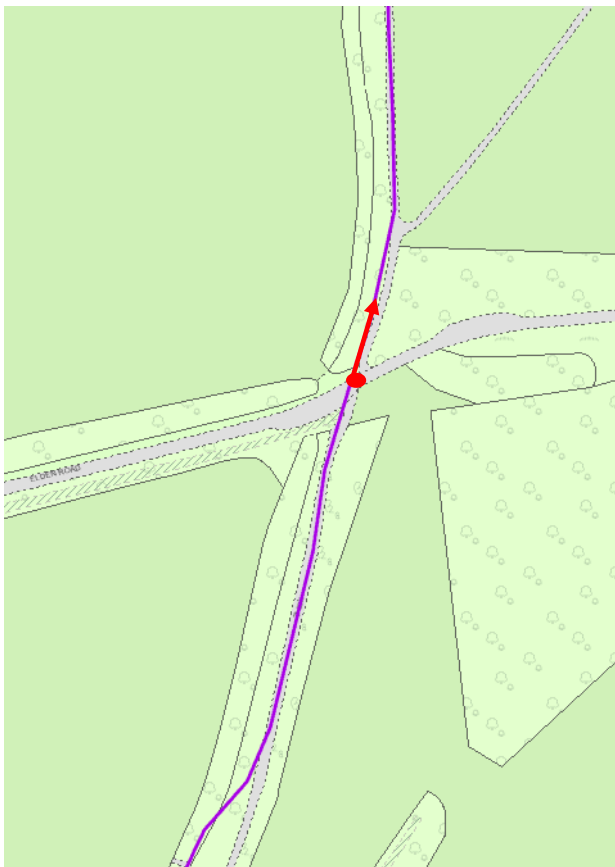
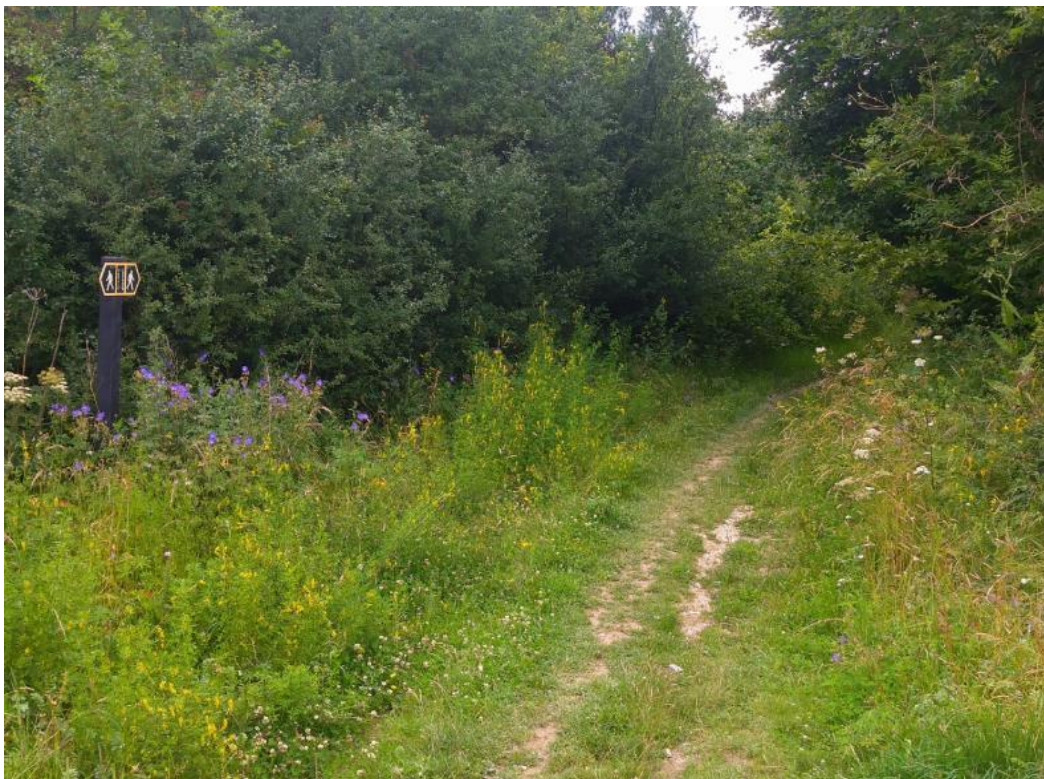


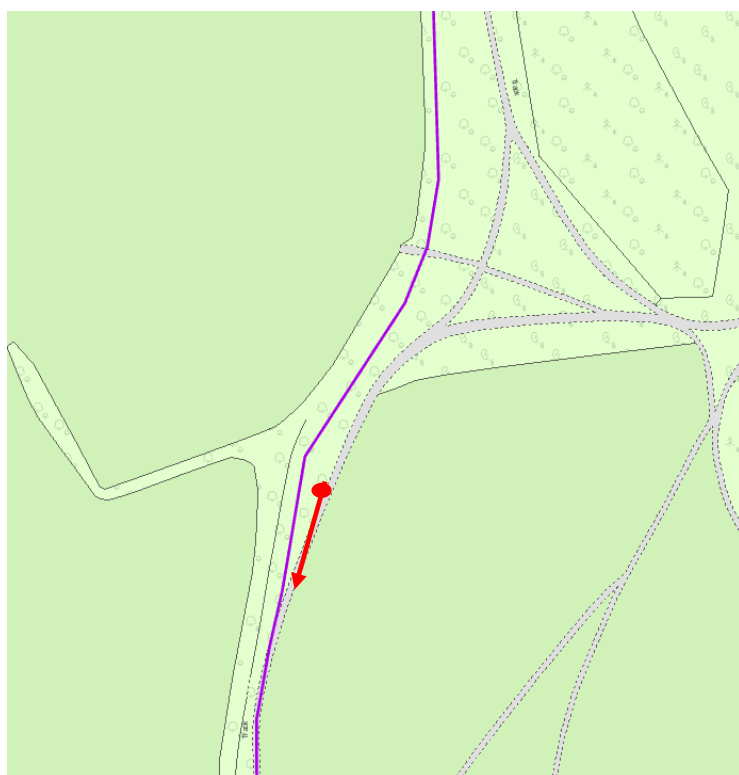










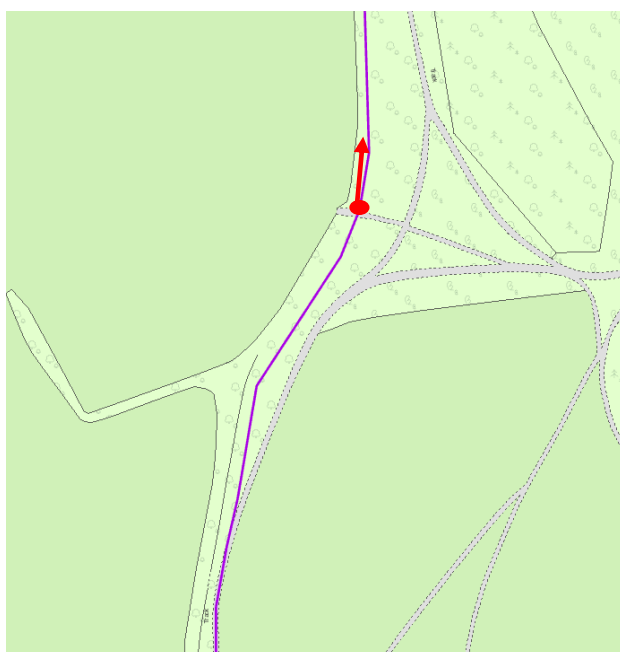


3.29



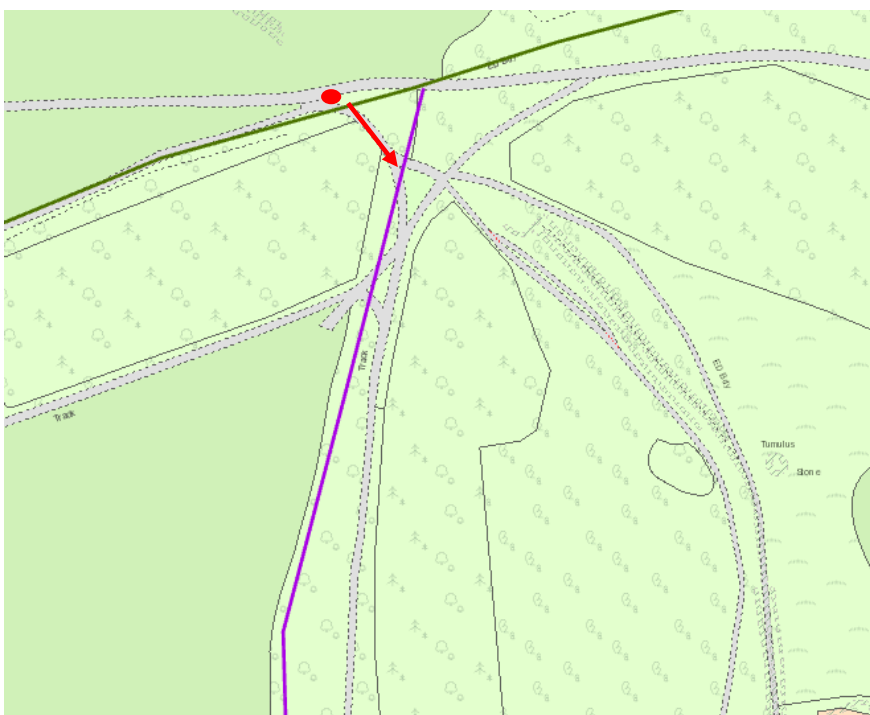
3.30

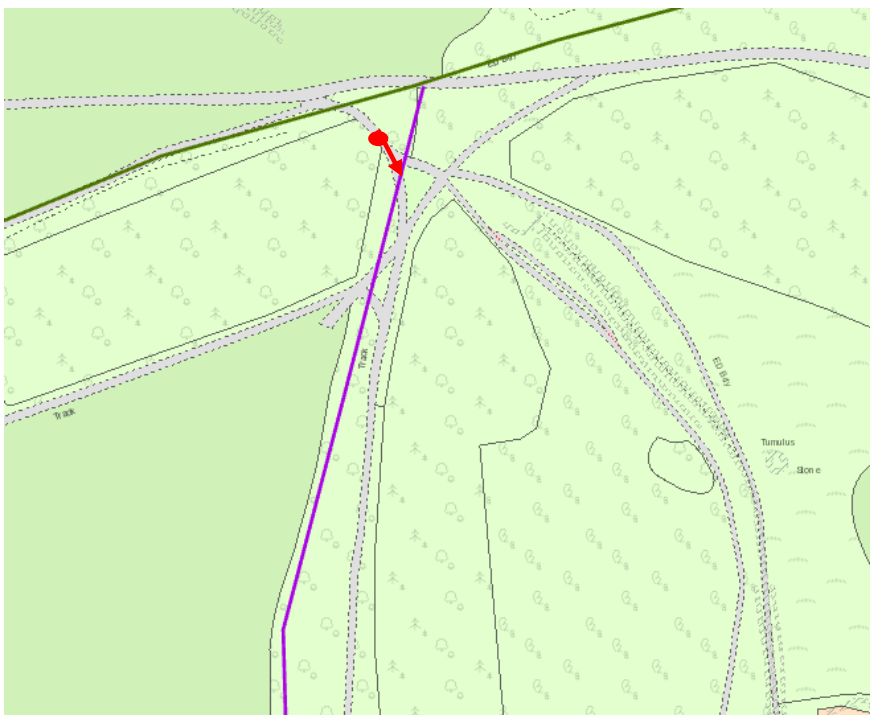
A view of the route depicted by the working copy of the definitive map at this point. It is completely obstructed by dense vegetation, the adjacent made track is the used route.

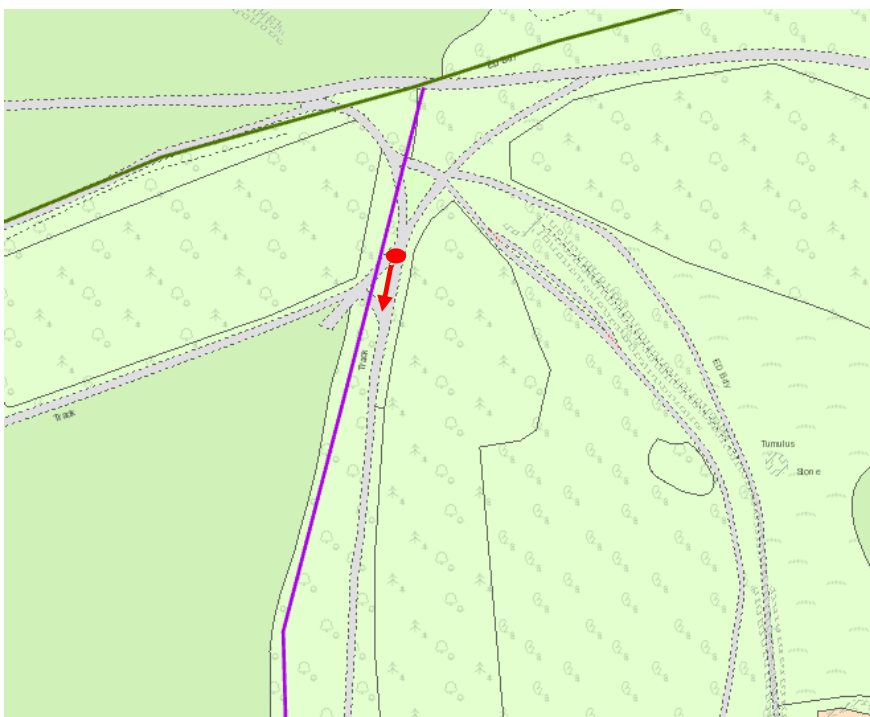


3.31

At the junction of the footpath and bridleway CDUC21 the path is signed and follows a made track. The route shown on the working copy of the definitive map is blocked by dense vegetation.







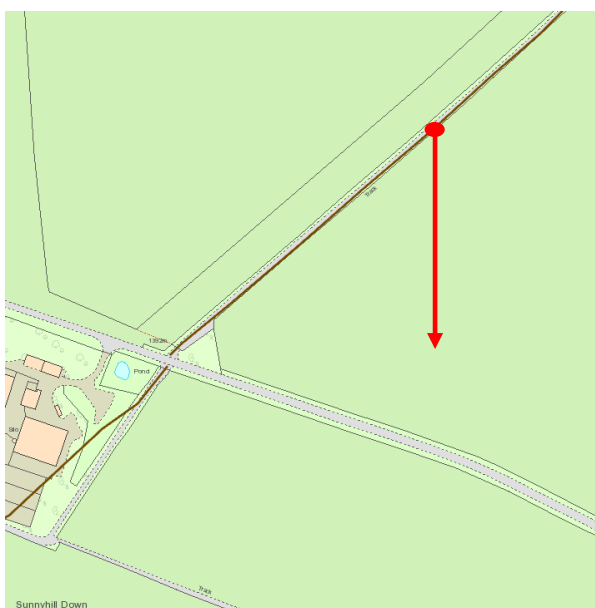
3.34

The photos from this point depict the route of the applied for BOAT in the parish of Collingbourne Ducis , currently there are no recorded rights over this route.



3.35

The route of the unrecorded section of the application is currently blocked by multiple barbed wire fences across the field from the northern end of footpath NTID11 to the A342. Where the route crosses the A342 there are currently no crossing points. The application route then enters a field north of the A342 leading in a northerly direction to its junction with byway CDUC19. The photo below is approximately where the application route joins CDUC19, it is currently blocked by a barbed wire fence.



4 Relevant Legislation

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

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

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

(a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*

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

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

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

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

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

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

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

which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

- 4.5 The legal test to apply is that the need to change the definitive map must be shown on the *balance of probabilities*. That is, that it is more likely than not that something is shown.
- 4.6 On May 2nd, 2006 the law relating to the public's use of mechanically propelled vehicles (MPVs) changed with the enactment of s.67(1) of the Natural Environment and Rural Communities Act 2006. In broad terms this section extinguished any historic right for the public to drive or ride a mechanically propelled vehicle over every way that wasn't already recorded as a byway open to all traffic.
- 4.7 Section 67(2) and (3) of the 2006 Act contained exemptions for these rights in some cases. However, to consider these exemptions it is first necessary to consider whether a public vehicular right subsisted over the way before the 2nd May 2006. As a result, the effect of the NERC Act 2006 will be considered later in this report.

5.0 Land ownership

- 5.1 The application route is over 2 km in length. All of the land north of Windmill Drive is owned by the Ministry of Defence and managed by the Defence Infrastructure Organisation (DIO). The route of footpath NTID11 from Ludgershall Road to Windmill Drive is owned by various parties. At the time of the initial consultation most of the houses adjacent to the path to the west in the new housing estate were still under construction and the majority were not being lived in, the developer and individual house addresses were all contacted to ensure as many interested and affected parties were aware of the application.
- 5.2 The identified landowners directly affected are as follows:
- The Secretary of State for Defence c/o Ministry of Defence Legal Advisers, Property Team, Ministry of Defence, Defence Infrastructure Organisation
 - Sovereign Housing Association Limited, Woodlands, 90 Bartholomew Street, Newbury RG14 5EE.

- Persimmon Homes Limited of Persimmon House, Fulford, York YO19 4FE.

All identified owners of land and adjoining land to the application route have been consulted.

6.0 Initial Consultation

- 6.1 An initial consultation was conducted between the 23rd July 2020 and 25th September 2020. A copy of the letter can be seen below.

Dear

Wildlife and Countryside Act 1981 – Section 53
Application to Upgrade Footpath no.11 North Tidworth to a Byway Open to All Traffic and adding a byway open to all traffic in the parish of Collingbourne Ducis across Sunnyhill Down

Wiltshire Council are in receipt of an application, dated 31st March 2004, to modify the Pewsey Rural District Council Area Definitive Map and Statement dated 1952, by upgrading footpath no.11 North Tidworth to a byway open to all traffic and by adding a byway open to all traffic in the parish of Collingbourne Ducis leading north from footpath North Tidworth 11 across Sunnyhill Down and the A.342 to its junction with byway open to all traffic Collingbourne Ducis 19, as shown on the enclosed plan. The application seeks to record these byways open to all traffic with widths ranging from 4.5 metres to 9 metres.

The application is accompanied by a summary of historical evidence in support of the claim. The Council is now placed under a duty to investigate the available evidence to determine, on the balance of probabilities, whether or not vehicular rights subsist over the routes and to amend the definitive map and statement accordingly. Your comments on this matter are therefore invited and I would be very grateful to receive any further evidence which you may have regarding the status of the routes in question, or any comments or representations regarding the application.

In May 2006 the Natural Environment and Rural Communities Act (NERCA) came into force and affected the way in which we deal with such applications. Section 67(1) of the Act had the effect of extinguishing unrecorded public vehicular rights, save for certain exceptions, and it is now considered likely that the highest public rights which can subsist over the routes is that of restricted byway (a restricted byway is a route for pedestrians, cyclists, horse riders and carriage drivers but not mechanically propelled vehicles). As part of its investigations Wiltshire Council will be considering these exemptions and I would also be very grateful to receive any information which you may have regarding use of the routes with motor vehicles prior to 1930 (i.e. when it first became an offence to drive a mechanically propelled vehicle “off road”) and also between 2000 and 2006 (during the 5 year period prior to the commencement of NERCA).

I would be very grateful to receive any additional information, comments, or representations on this matter, in writing, preferably in email format to

*craig.harlow@wiltshire.gov.uk, not later than Friday 25th September 2020.
Correspondence sent in writing to County Hall will be received but may not be picked up immediately due to covid 19 restrictions.*

Yours

6.2 The letter and plan showing the application was sent to 84 recipients including;

The Auto Cycle Union

Commons, Open Spaces & Footpaths Society

Wiltshire Bridleways Association

Wiltshire Cycling Touring Club

British Horse Society

Tidworth Town Council

Collingbourne Ducis Parish Council

Ludgershall Parish Council

Wiltshire Councillor Mark Connolly

Wiltshire Councillor Ian Blair Pilling

Byways and Bridleways Trust

Wiltshire Council Countryside Access Officer Alex Howson

Wiltshire Council Countryside Access Officer Carys Ford

Wiltshire Ramblers Association

Wiltshire Trail Riders Fellowship

Green Lane Association

Trail Riders Fellowship

All adjoining properties in Ludgershall Road and Eyles Road.

All identified landowners

6.3 The following response were received to the consultation:

Gill Anlezark- Cycling Opportunities Group for Salisbury

Dear Mr Harlow

Thank you for your letter of 23rd July 2020 (ref 2004/09) requesting information regarding this Public Right of Way. I have contacted a number of our members who are more familiar with this area than I am, but none of them are able to shed any light

on the usage of this path by motor vehicles in the time periods stated in your letter (prior to 1930 or between 2000 and 2006).

We would support upgrading to a restricted byway in order to regularise the use of the path by non-motorised users and avoid confusion. It appears to form a useful link and addition to the Rights of Way to Collingbourne Ducis and further north.

Yours sincerely

Gill Anlezark

6.4 Jeremy Batchelor- resident of Ludgershall Road

Craig,

I am a resident of Ludgershall road Tidworth.

I and I expect most residents will be confused and concerned with your recent letter.

The foot path runs to the rear of our properties it is narrow with banks on both sides and is to my knowledge only ever used by the occasional dog walker.

I have lived here for 20 years.

It would be totally unsuitable for any mechanically propelled vehicles.

My main concern if modified is that off road motorbikes would use it.

Is this a possibility?

Can you please also explain in layman's terms why you think this application has been made?

Why is it dated 2004?

Regards

Jeremy Batchelor

6.5 Nigel Linge

Craig,

Thank you for the invitation to comment on the above.

I spoke at length with Bill Riley (the applicant) back in 2014 and he was not averse to diverting the northern section (which is not currently a RoW) onto an existing MOD track which runs to the west (first attachment) and thus linking to the BOAT up to Sunnyhill Farm.

You will be aware that it crosses another route (CDUCIS21) on which there is also a DMMO and which has also been "Winchestered" and has no sign of wheeled use to the east of the junction with NTID11.

NTID11 has little or no evidence of vehicular use and when I looked at it again in 2013/4 it was already quite overgrown in places and the route had migrated onto a nearby track.

Of some concern was that there was encroachment on the route behind the established houses as it leaves the Ludgershall road.

There was also encroachment and obstruction by the new development while it was under construction (which your map and the on line definitive map air shots do not show). Second attachment.

It would be worth consulting MOD to see if they would be averse to linking footpath NTID5 (a permissive bridleway) with NTID11 via the short section of disused railway. In fact MOD and the developer may like to take the opportunity to move NTID11 onto a more sustainable route. Third attachment.

Finally ... an Esso Pipeline runs near to the area of interest and it may be better to run NTID11 along at least part of the line of the pipeline as it has to be kept clear for inspection purposes.

I have copied in James Nevitt (MOD Senior Access Advisor).

Best Regards,

Nigel

6.6 Sarah Pearce – resident of Eyles Road

I am writing this email in response to letter reference 2004/19 regarding the application to upgrade the footpath no.11 North Tidworth to a Byway Open to All Traffic and adding a byway open to all traffic in the parish of Collingbourne Ducis across Sunnyhill Down.

I wish to express my concern regarding the NTID11 which is proposed to be upgraded to a byway open to all traffic. When I purchased this house and received my local searches, I was made aware of a public footpath that was likely to be put in but I was not aware of a byway open to all traffic that would be going on this road, which goes directly behind my house. I wish to object this proposal for it to be made into a byway open to all traffic for the stretch of road that runs through the newly built Persimmon homes estate, Riverbourne Fields.

I look forwards to your reply

Kind regards

Sarah

6.7 Peter Gallagher – The Ramblers

Dear Craig

Thank you for your letter dated 23 July.

Having made enquiries, we are unable to provide any information relevant to this application.

Best wishes

Peter Gallagher

6.8 Richard Gordon

Dear Sir,

Further to your letter regarding the Byway access across Sunnyhill Down. I have farmed this farm with my family since 1994 (Family have been here since 1966) and have lived on the farm all my life. In all that time I have never encountered any

vehicles using this area adjacent to Sunnyhill Dairy (apart from lost MOD soldiers) I can safely state this on the record as this field is adjacent to the dairy and has had cattle kept on it consistently throughout this period as per agreement with the MOD. Indeed if there was any vehicular usage I would have been the one getting the cattle back in again as the whole field is electric fenced. Further the boundary of the A342 has a permanent 4 Strand barbed wire fence and large bank on both sides all of which have remained intact for the living memory of the workers and family who's memory extends beyond mine. In terms of pedestrian access I have never seen any one using the route outlined. With walkers using the CDUC21, CDUC19 and LUDG13 paths instead.

I would also like to raise the question if this proposed path is indeed needed given the existing network of foot paths and MOD tracks that already criss cross the area. Attempting to keep livestock from straying onto the A342 in an area is difficult and given we have 4 public footpaths all crossing the A342 between Leckford cross roads and the bottom of Shaw hill any additional crossing point would further escalate the difficulties that running a dairy on this site creates.

Indeed when we attempted to install a cow crossing point on the CDC19 track it was deeded by Highways to be unsafe due to poor visibility and was moved to the west of the dairy to improve visibility. In addition the open access footpath caused severe problems with straying cattle and still is an issue at the back of Sunnyhill with gates being consistently left open.

As a point of note the current line of the footpath on the Map is incorrect and was amended in the late 1980's due to the MOD's Construction of a dairy building which is directly on the line of the footpath. I would appreciate if the revised route to the East of the dairy could be updated on the Map as the poor mapping causes a risk to the public who follow the map and not the signs

I hope this information proves useful, however if further information is needed please feel free to contact me and I would be happy to meet on site to discuss the matter further.

Kind Regards

Richard Gordon (On behalf of WE Gordon & Sons)

6.9 Mark Connolly Wiltshire Councillor for Tidworth

Craig,

I have had previous email correspondence about the Tidworth end behind Ludgershall Road leading to the new link road. I understand that the evidence provided by the applicant that this was once a highway is strong and that as a result, once a highway, always a highway is the end result. On that basis I have no choice but to not object.

Other restrictions can be put in place to remove vehicle access once the BOAT has been agreed where applicable?

Mark Connolly

6.10 Ian Kent

Craig,

Would it be possible to explain why this action is being taken.

Is this a pre-cursor to another future application? Who benefits, who loses? What was the trigger?

Kind Regards

Ian Kent

6.11 Kate Nunney- Estate Surveyor- DIO- Defence Infrastructure Organisation



Ministry of Defence
Building 88
Westdown Camp
Tilshead
Wiltshire SP3 4RS
United Kingdom



REF: Wildlife and Countryside Act 1981 – Section 53

Application to Upgrade Footpath no.11 North Tidworth to a Byway Open to All Traffic and adding a byway open to all traffic in the parish of Collingbourne Ducis across Sunnyhill Down (Wilts ref. 2004/09)

17 September 2020

Dear Mr Harlow

I write regarding your letter dated 23 July 2020 concerning the above highway matter and your invitation to provide further comment or information.

The application to upgrade the aforementioned public rights of way to a byway open to all traffic and to add a new section is concerning. Unfortunately, DIO currently have no evidence which could counter the claim, but we continue to look through our records.

Given the various interests in the land I have sought comment from the relevant subject matter experts and have summarised the statements below:

Ecology: This claim crosses sensitive natural environment. Should an upgrade to the public right of way occur, any physical modification to cater for a change in highway use would have to be assessed to mitigate for potential loss of priority habitat.

The subsequent outcome of the claim may also impact on protected species such as bats and great crested newts, both of which are recorded in this area.

All of the above would have to be assessed and accounted for by Wiltshire Council.

Archaeology: The main concern is a Scheduled Monument - a Bronze Age linear ditch - at point B on your plan. This site already receives unwelcome attention and damage from off-road vehicles that access without permission. There are real concerns that formalising a means of access to the area for motorised vehicles will exacerbate the situation and make it harder to police / manage.

Land Agent: The upgrade of the public rights of way will have a detrimental impact on our tenant, his tenancy and his agricultural use of the area. The northern section will mean loss of arable land. Persistent degradation of the surface through public use will inhibit the use of the area by the farmer and is likely to create a long-term maintenance burden at the expense of the tenant. The creation of new rights of way may also increase illegal activity on land that is currently not impacted.

Forestry: Woodland in this area already receive significant damage to soil structures and roots from illegal 4x4 and motorbike access. This is particularly damaging in the winter. This has led to increased mortality and damage to the woodland environment. As covered above under archaeology, formalising a means of motorised access to the area will further exacerbate the situation and make it harder to police / manage.

Military: This will increase unwanted vehicle access to an area already overused illegally.

The comments above are influenced by ongoing issues arising from illegal off-road activity across Salisbury Plain. Each new avenue into the local countryside exposes the area to more degradation and abuse. Staff and resources are already stretched in trying to manage the current situation. The impacts are felt by the collective land managers across the Plain, including tenant farmers, and the public who seek to enjoy the area.

It is understood that a decision must be based upon the balance of evidence presented. Should the decision be in favour of upgrade it is hoped that there is sufficient evidence to ensure that the route falls within NERC 2006 and can therefore only be upgraded to a maximum of restricted byway. Either way the Council is urged to consider the impacts of increasing access to the Plain and to work with DIO towards provision of highways that better fit within the landscape – for example, the map extract below depicts a viable alternative (in red) to the proposed route cutting north-south across agricultural land (black).

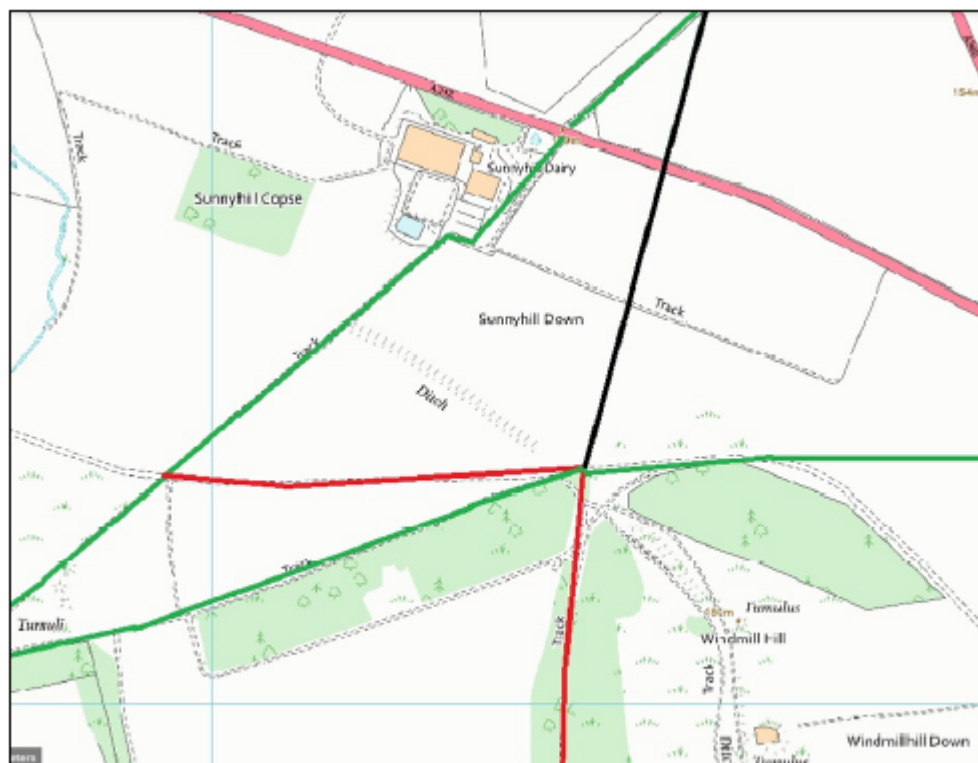
Should we have any evidence come to light that would influence the application we will share this with you as soon as possible.

We ask that you continue to keep us up to date with progress.

Yours sincerely



Katie Nunney MRICS
Estate Surveyor
Salisbury Plain (East)



6.12 Comments on consultation responses

A number of respondents raise concerns regarding a possible upgrade of the route to a BOAT and whilst officers can understand the concerns raised by local residents and the tenant farmer the need or desirability of the route cannot be considered as part of the decision.

The possibility of diverting some of the route, which is raised by Nigel Linge and the main landowner, the DIO, is a possibility and can be discussed if higher rights or other rights than currently recorded are found to subsist. Where questions were asked responses were sent.

7.0 Current records

7.1 Wildlife and Countryside Act 1981 s.56

(1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely –

(a) where the map shows a footpath, the map shall be conclusive evidence that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right.

(b) where the map shows a bridleway, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights.

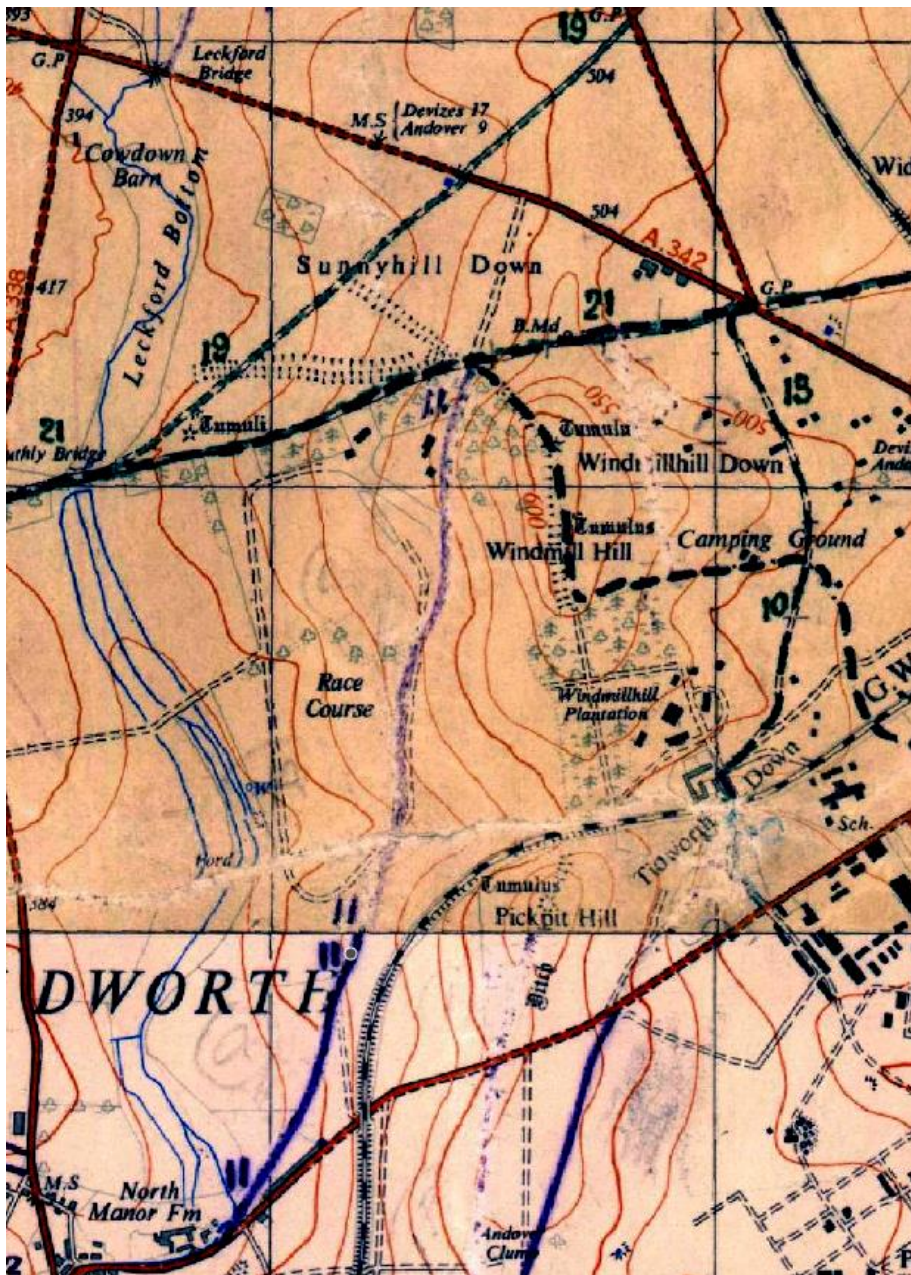
(c) where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic;

(d) where the map shows a [F1restricted byway], the map shall [F2, subject to subsection (2A),] be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse [F3together with a right of way for vehicles other than mechanically propelled vehicles], so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights; and

(e) where by virtue of the foregoing paragraphs the map is conclusive evidence, as at any date, as to a highway shown thereon, any particulars contained in the statement

as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.

7.2 Pewsey Rural District Council Definitive Map 1953



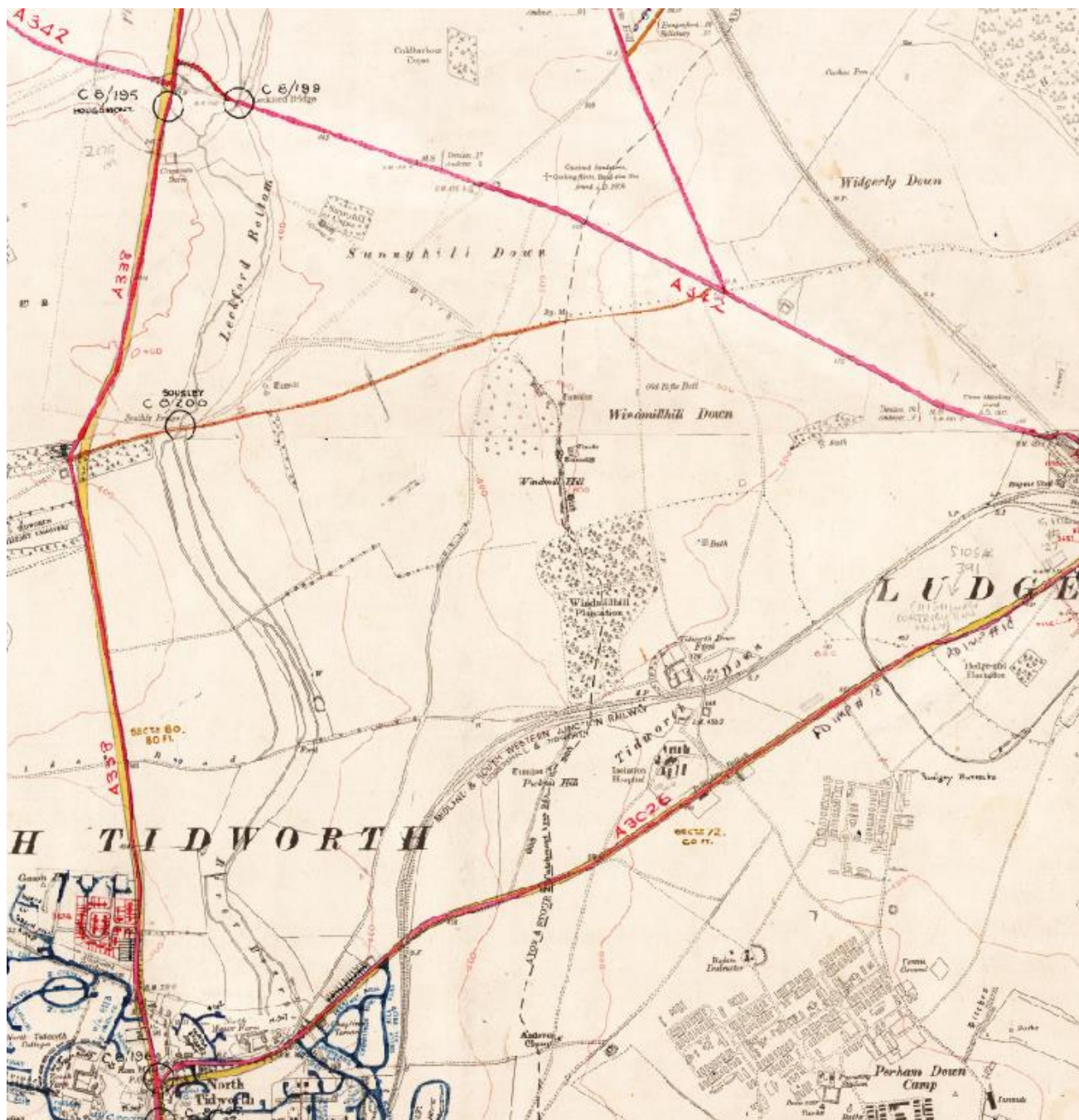
Original scale 1:25000

7.3 Pewsey Rural District Council Definitive Statement 1953

North Tidworth 11 FOOTPATH From the Ludgershall road, A.3026, east of North Manor Farm, leading north-north-east over Windmill Hill to the Collingbourne Ducis Parish boundary on Sunnyhill Down.

Approximate length 2.414km.

7.4 Wiltshire Council Highway Record



Original scale 1:10560

The application route is not shown as a highway maintainable at public expense on the highway record.

8.0 Historic Records

- 8.1 Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example, although a way may appear on many commercial maps it does not necessarily carry as much evidential weight as if the way is shown in two publicly consulted documents or created, say, as the result of an Act of Parliament.
- 8.2 Therefore, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used;

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate's Consistency Guidelines (as revised to date of report) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

Category	May provide evidence for	Examples
A	<p>Legal creation of a highway</p> <p>Reputation of a way as a highway</p> <p>Physical existence of a way</p> <p>Conclusive evidence of public rights</p>	<p>Inclosure Acts, awards and plans</p> <p>Orders creating, diverting or extinguishing highways</p> <p>Railway and canal acts and plans</p> <p>Definitive map and statement</p>
B	<p>Reputation of a way as a highway</p> <p>Physical existence of a way</p>	<p>Documents, maps plans drawn up as a result of legislation, consulted upon, but whose primary purpose was not to record public rights.</p> <p>i.e. Tithe Commission, Inland Revenue Finance Act</p>

C	Reputation of a way as a highway Physical existence of a way	Includes local government records (highway board, county council, parish council)
D	Reputation of a way as a highway Physical existence of way	Other maps and documents showing highways additional to or as a part of their purpose. Includes parish maps, estate plans, conveyances
E	Reputation of a way as a highway Physical existence of a way	Commercial maps, some Ordnance Survey records
F	Reputation of a way as a highway Physical evidence of a way	Local repute, consultation responses

9.0 Category A Evidence

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

9.2 Inclosure

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

9.3 The application route crosses the boundary of two parishes, North Tidworth and Collingbourne Ducis. No inclosure award for North Tidworth is available at The Wiltshire and Swindon History Centre (WSHC) or The National Archive (TNA) and no evidence of the application route being subject to inclosure in Collingbourne Ducis has been found.

9.4 **Deposited Plans for Public Undertakings**

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

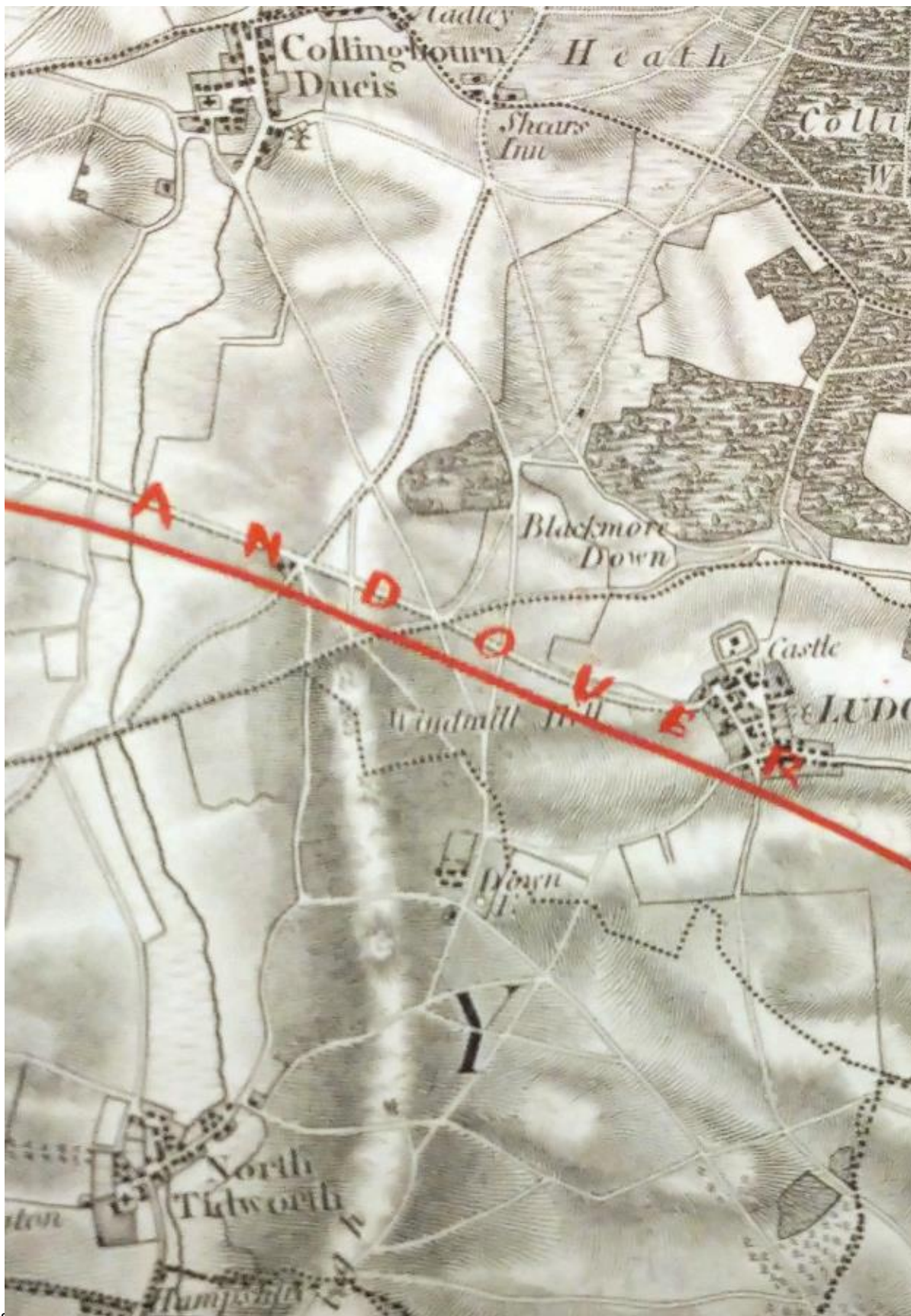
9.6 **The Deposited Plans of the Upavon and Andover Railway 1866 :Wiltshire and Swindon History Centre (WSHC) ref:A1/371/118**

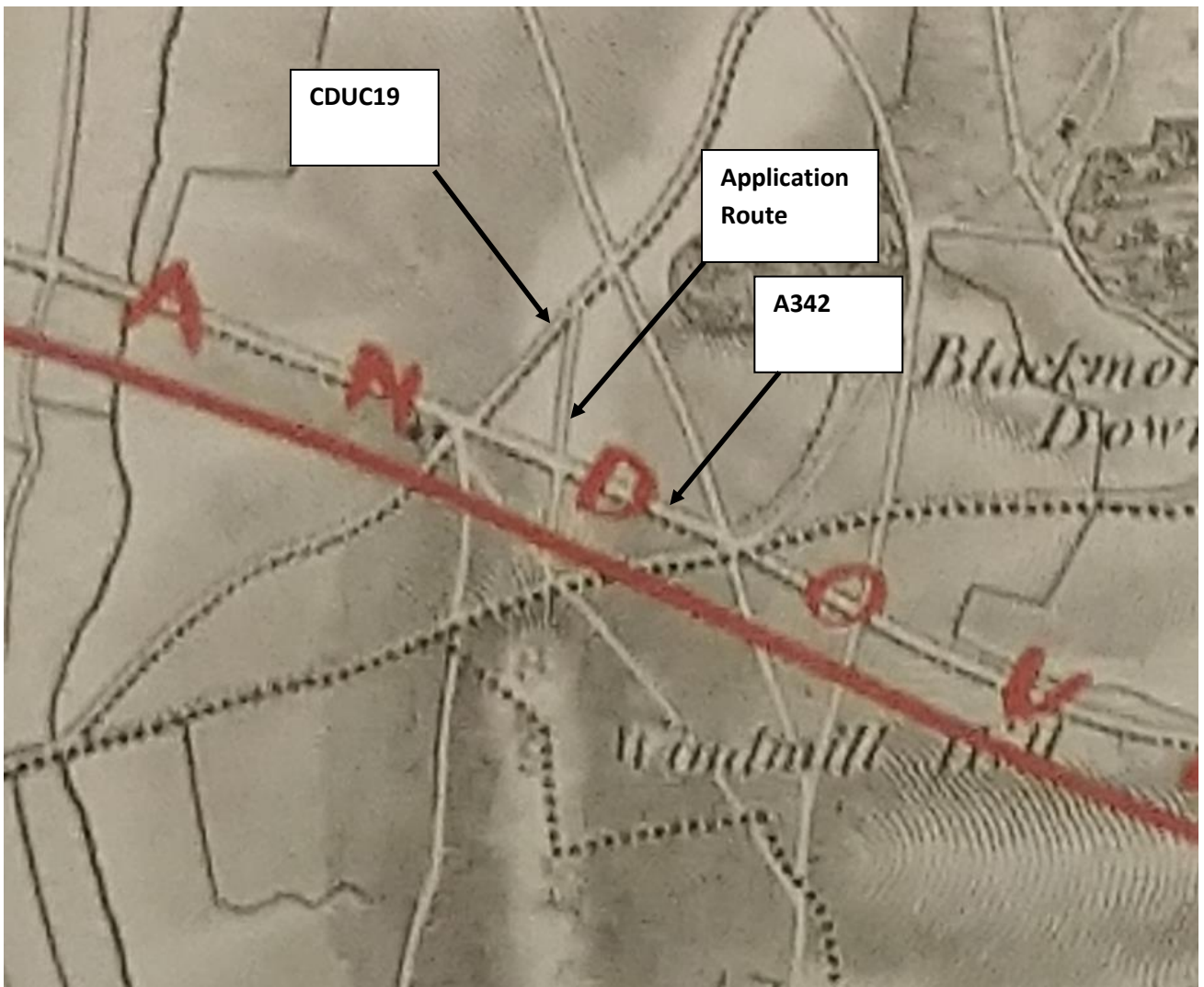
The plans and book of reference were deposited with the Clerk of the Peace of the County of Wiltshire at Marlborough on 30th November 1865 at 2.30pm. The overview plan for the railway is shown below. This plan is based on an Ordnance Survey 1 inch to the mile map and the railway route is depicted by a solid red line on a plan.

It is noted this railway was not constructed; however, the deposited plans were drawn up to the same standards, however they may not have been subject to the same considerations that a plan followed through to completion may have been.

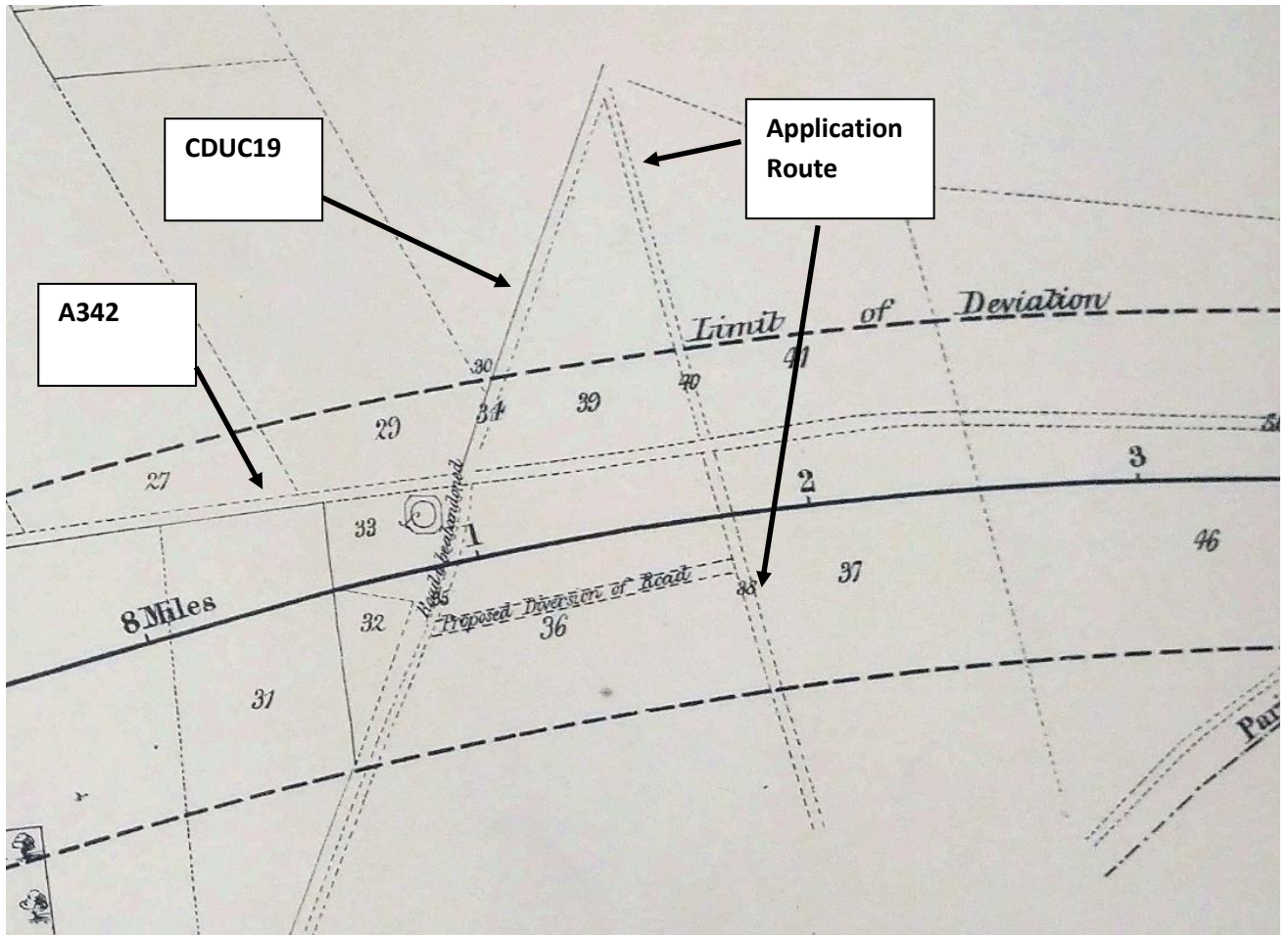
The section of the application route that is affected by the railway is the unrecorded BOAT in the parish of Collingbourne Ducis.

9.7 Overview map of proposed railway.

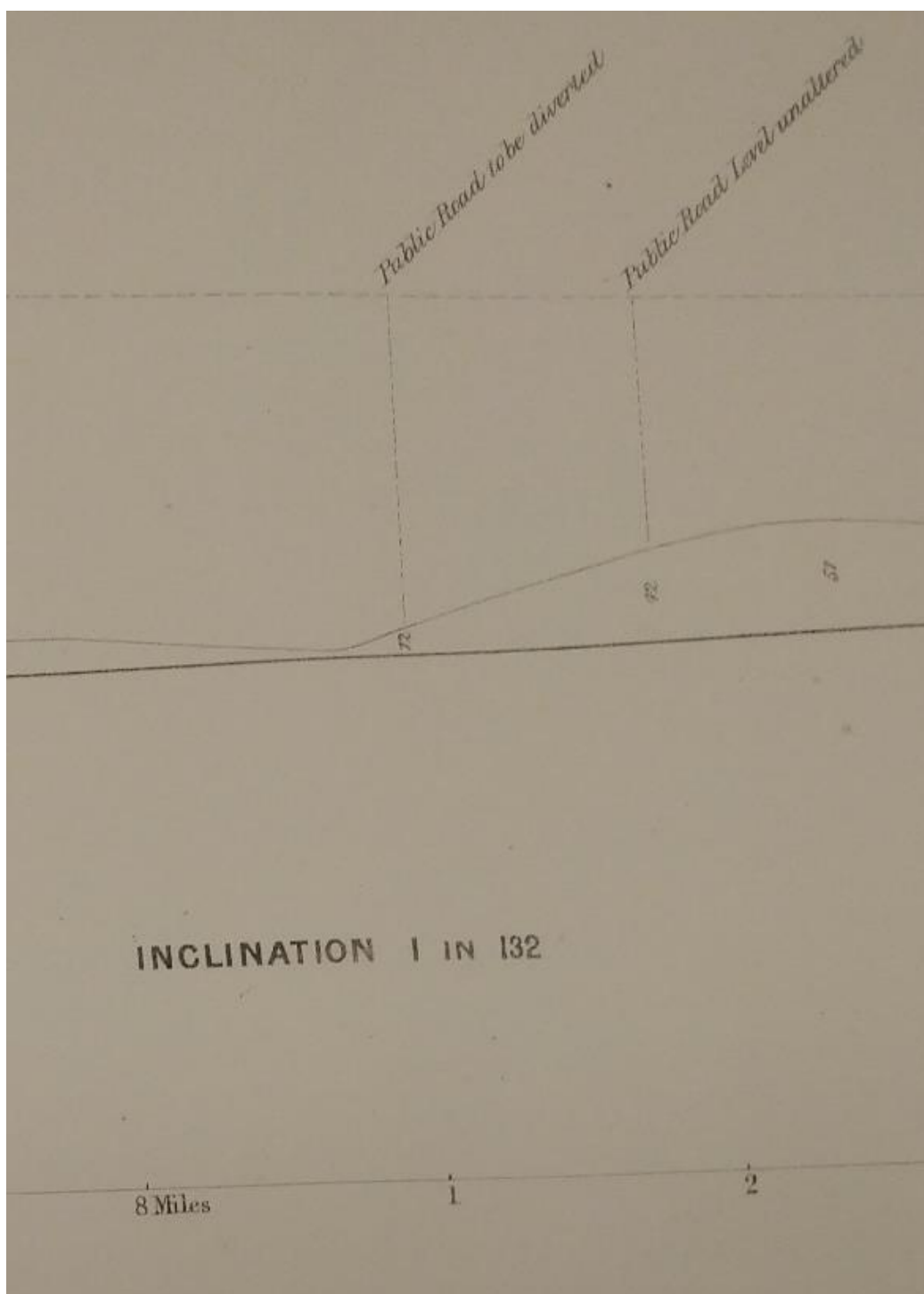




9.9 The deposited plans show the limit of deviation of the railway and the highways that the railway would cross or affect. Each highway affected by the plan was numbered. The plan on sheet no.3, shown below, depicts the application route numbered 40 north of the A342 and 38 south of the A342. The route north and south of the A342 is shown as an unfenced road (dashed lines).

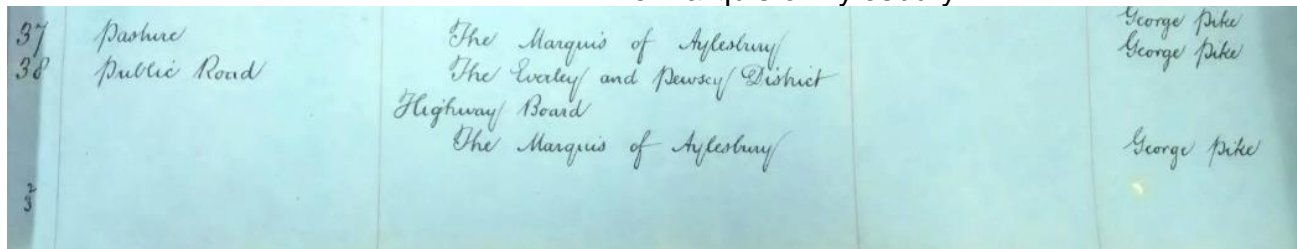


9.10 From the sections plans at approximately 8 miles 1 furlong 7 ½ chains it is noted “Public Road Level Unaltered”. It can be seen at 9.9 of this report from the image of the plan that the application route is at approximately 8 miles 1 furlong and 7 ½ chains.

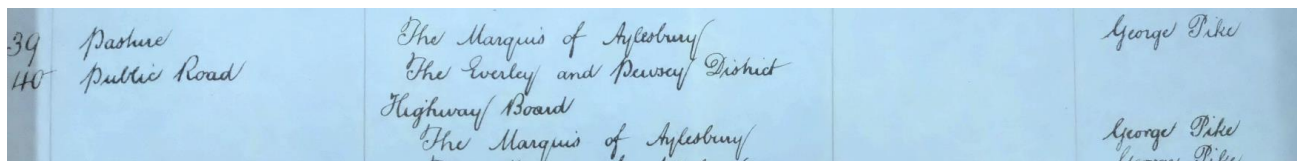


9.11 The Book of Reference for the Parish of Collingbourne Ducis records:

No on Plan.	Description of Property	Owners or Reputed Owners	Occupiers
38	Public Road	The Everly and Pewsey District Highway Board The Marquis of Aylesbury	George Pike



No. on Plan.	Description of Property	Owners or Reputed Owners	Occupiers
40	Public Road	The Everly and Pewsey District Highway Board The Marquis of Aylesbury	George Pike



9.12 The Planning Inspectorate Definitive Map Orders Consistency Guidelines state in relation to railway plans at 10.2.4 “Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.”

10.0 Category B Evidence

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

- 10.2 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and generally represented one tenth of production. The system was both unpopular, cumbersome and increasingly unjust as the industrial revolution gathered pace. The Tithe Commutation Act of 1836 sought to commute these tithe payments in kind to annual rent-charges. Parliament appointed a three-man commission to direct a staff of assistant commissioners, valuers and surveyors who mapped, valued and apportioned rent charges among thousands of separate parcels of the titheable land in different states of cultivation.
- 10.3 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 10.4 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians by Roger J P Kain and Hugh C. Prince*) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.
- 10.5 The route being investigated crosses the parish boundaries between North Tidworth, Ludgershall and Collingbourne Ducis and the three tithe maps and apportionments have been viewed.
- 10.6 **North Tidworth Tithe Map - 1844 (WSHC Ref- T/A/Tidworth, North)**
- 10.7 The map of the parish is drawn to the scale of 4 chains to one inch.
- 10.8 The route of footpath North Tidworth 11 can be seen on the tithe map where it leaves what is now the Ludgershall Road and leads in a north north westerly direction. The route is uncoloured and appears to be excluded from tithable land. This may be suggestive of a highway but not necessarily that of a public highway, as The Planning Inspectorate Definitive Map Orders :Consistency Guidelines document states at 8.2.13

“Both public and private roads had the capacity to diminish the productiveness of land for the assessment of tithe”.

10.9

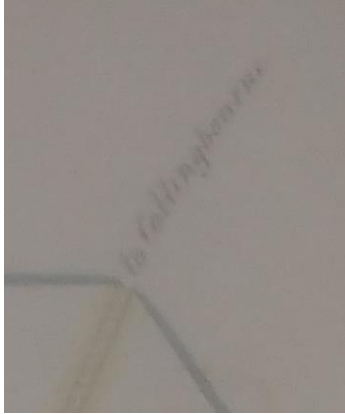


Route begins at southern end

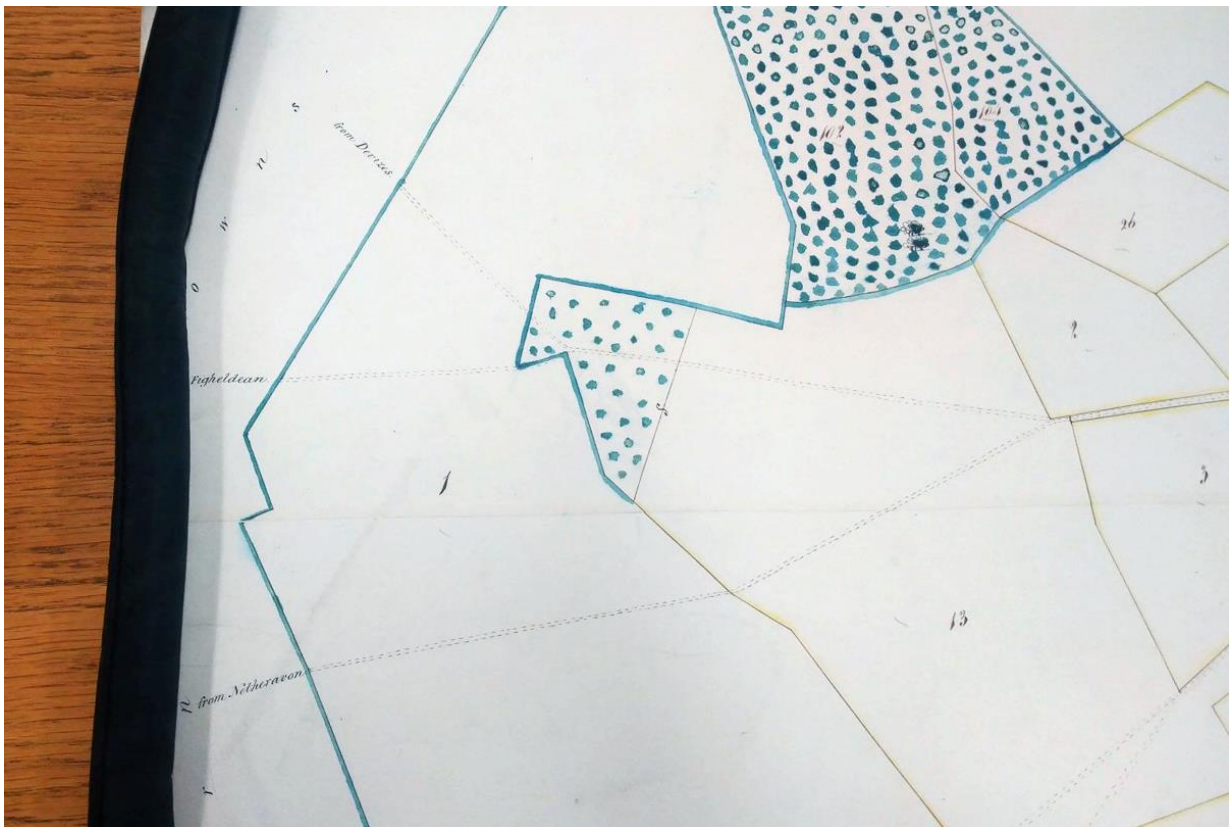


Route continues north in the same manner , i.e. excluded from tithable land.

10.11 At the northern most extent of the route within the parish it is written “ to Collingbourne”. This indicates the route continued beyond the parish limits in the direction of Collingbourne and this could be indicative of a public road. The continuation of the route is however not recorded on the Ludgershall or Collingbourne Ducis tithe maps (see Ludgershall and Collingbourne tithe from 10.17)



10.12 Other routes shown on the tithe map are also annotated with destinations where they leave the parish. An example being, to the west three routes leave the parish and are annotated , “from Devizes” , from Figheldean” and “ from Netheravon”. See the below image, these routes are not recorded on the definitive map and statement.



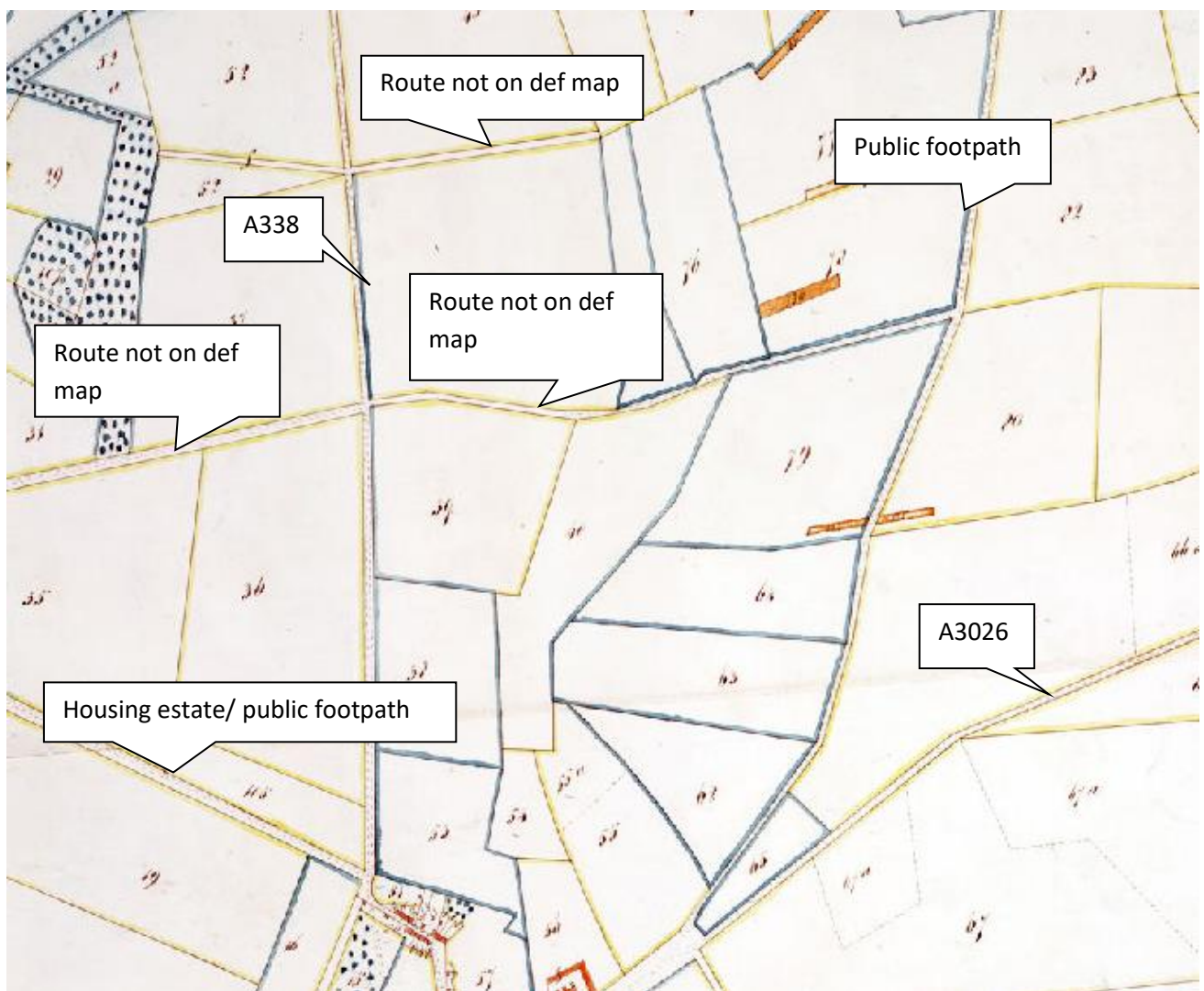
10.13 These three routes with annotated destinations are not excluded from the tithable land, at least over the last two parcels of land in the parish. This could indicate the routes were considered productive land and therefore tithable land. This would not usually be conducive to a public road if we are to take their annotated destinations to indicate a status of a public road, although it is possible over down land that these routes were unsurfaced and productive land. Other routes with annotated destinations are shown in a similar manner on the map, some of the routes appear to be excluded from tithable land and other parts not so.

10.14 Some of the parcels of land on the map are bound by yellow marking and others by blue, with some parcels marked by a combination of the two colours, it is unclear as to what these colours represent. No key is available and there appears to be no correlation with the colours and type of land in the apportionment.

10.15 The North Tidworth tithe map is described as having “an amateurish appearance” in *The Tithe Maps of England and Wales* by Roger J.P Kain and Richard Oliver on page 560. Roger Kain being a professor specialising in Historical Geography and Map History and a fellow of the British Academy.

10.16 Comparing routes depicted on the tithe map to the modern road network can be a useful exercise, however much of the land in North Tidworth has changed considerably with a high proportion of the land, now and for the last 100 years, being in the possession of the War Department and latterly the Ministry of Defence.

The below image depicts the routes that suggest they may have been considered public roads on the tithe map and their current modern statuses, as can be seen there is no particular correlation between status on the tithe map (either un-tithable land or routes that were annotated with a destination) and the status of the routes in modern times.



10.17 Collingbourne Ducis Tithe Map 1844- (WSHC Ref- T/A Collingbourne Ducis) and Ludgershall Tithe Map -1841 (T/A Ludgershall)

The Collingbourne Ducis map is drawn to a scale of 6 chains to an inch and the Ludgershall Tithe is also drawn at a scale of 6 chains to an inch.

The image below is taken from maps.bristol.gov.uk , copies at WHSC have also been viewed. The image shows the three tithe maps of North Tidworth (to the south), Ludgershall (land in blue) and Collingbourne Ducis (to the north of the blue land) overlaid together to show where they join at the parish boundaries.



Route of NTID11

10.18 The Collingbourne Ducis tithe map of 1844 does not depict the continuation of NTID11 which can be seen to the south, entering Ludgershall (in blue) for a what would be a very short distance. The surveyors of the Ludgershall tithe and Collingbourne Ducis tithe have not recorded any track, public highway or any feature that is not subject to tithe crossing into Ludgershall or Collingbourne Ducis from the continuation of the

route depicted on the North Tidworth tithe, these surveys were carried out within 3 years of each other . This indicates the surveyors of Collingbourne and Ludgershall considered that all the land within those parcels of land depicted were tithable and no tracks are depicted , which would indicate it is likely there were no public roads crossing the land at that time. It is noted all 3 tithe maps have different surveyors.

10.19 Considering the tithe evidence as a whole there is a route that follows what is now known as footpath NTID11 that could be seen as suggestive of a public road in the parish of North Tidworth. This evidence is far from conclusive as to public road status as discussed above and that route does not appear to continue into the parishes, or at least any evidence of a route does not exist, in the parishes of Ludgershall or Collingbourne Ducis.

10.20 **Inland Revenue Finance Act 1909/1910**

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

10.21 The following is taken from the Journal of the Society of Archivists (JSA, Vol 8(2) no 2, Oct 1986 p 95-103 “An Edwardian Land Survey: the Finance (1909-10) Act and describes the process by which this was achieved. It is clear that the survey was carefully undertaken by people with local knowledge:

“The Valuation Department assumed responsibility of valuation for rating purposes, and the hereditaments of 1910 provided the basis for their work for very many years, so that the documents of that time often continued to be used as working documents long after the repeal of land clauses”.

“A land valuation officer was appointed to each income tax parish. These were almost always the existing assessors of income tax (who were also frequently assistant overseers), and some several thousand were appointed nationally. This enabled the

Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying each hereditament.”

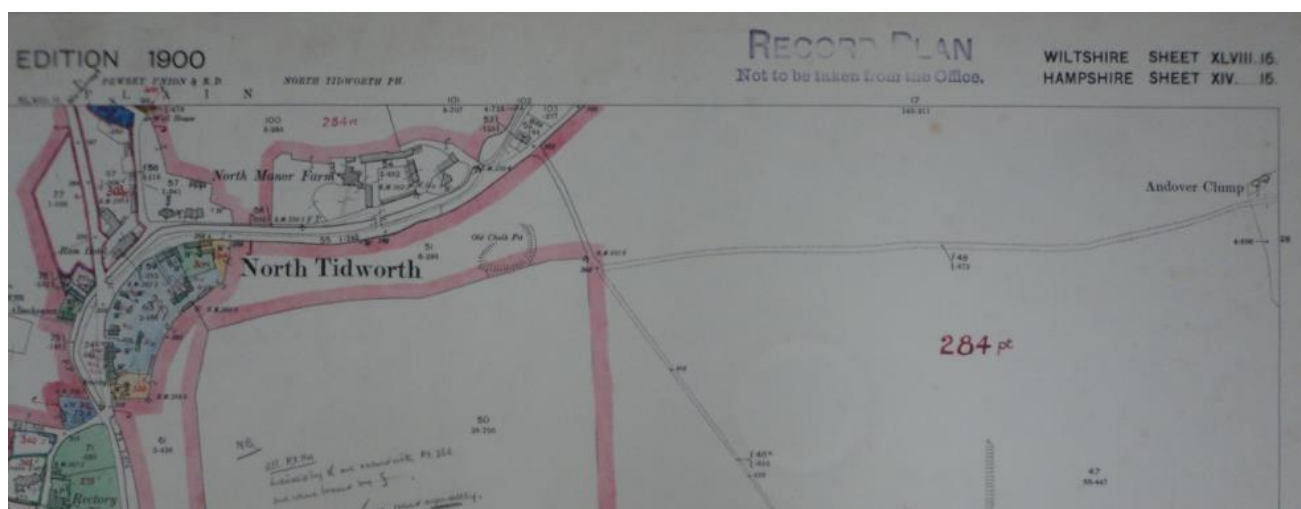
10.22 The working copy of the Finance Act plans are held at WSHC. Officers have had sight of the record copies held at The National Archive which are often in better condition than the working copies.

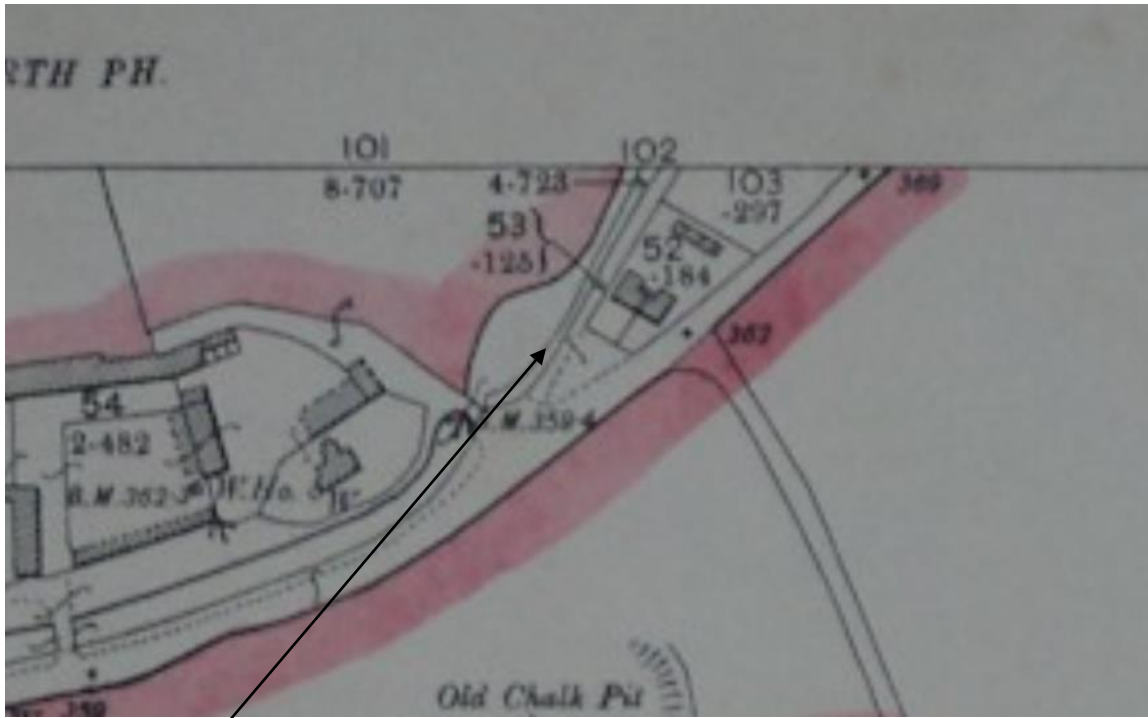
10.23 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property were diminished, for example if a public right of way, an easement, or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-inforcing their separation from the surrounding hereditaments by drawing on ‘broken braces’. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.

10.24 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that “No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority”.

10.25 The copies held at the National Archives are shown below. These images have been viewed online. The route crosses three sheets from south to north.

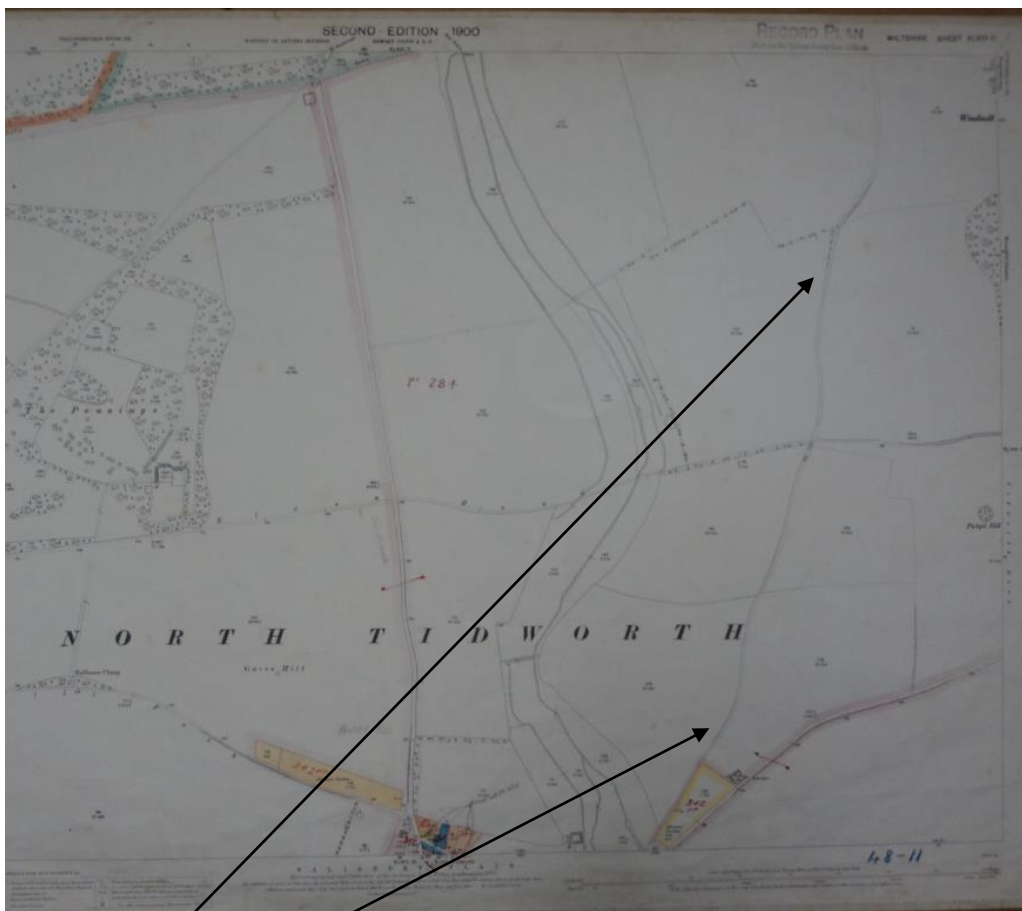
10.26 Wiltshire Sheet XLVIII.15 – WSHC Ref : IR 125/11/564



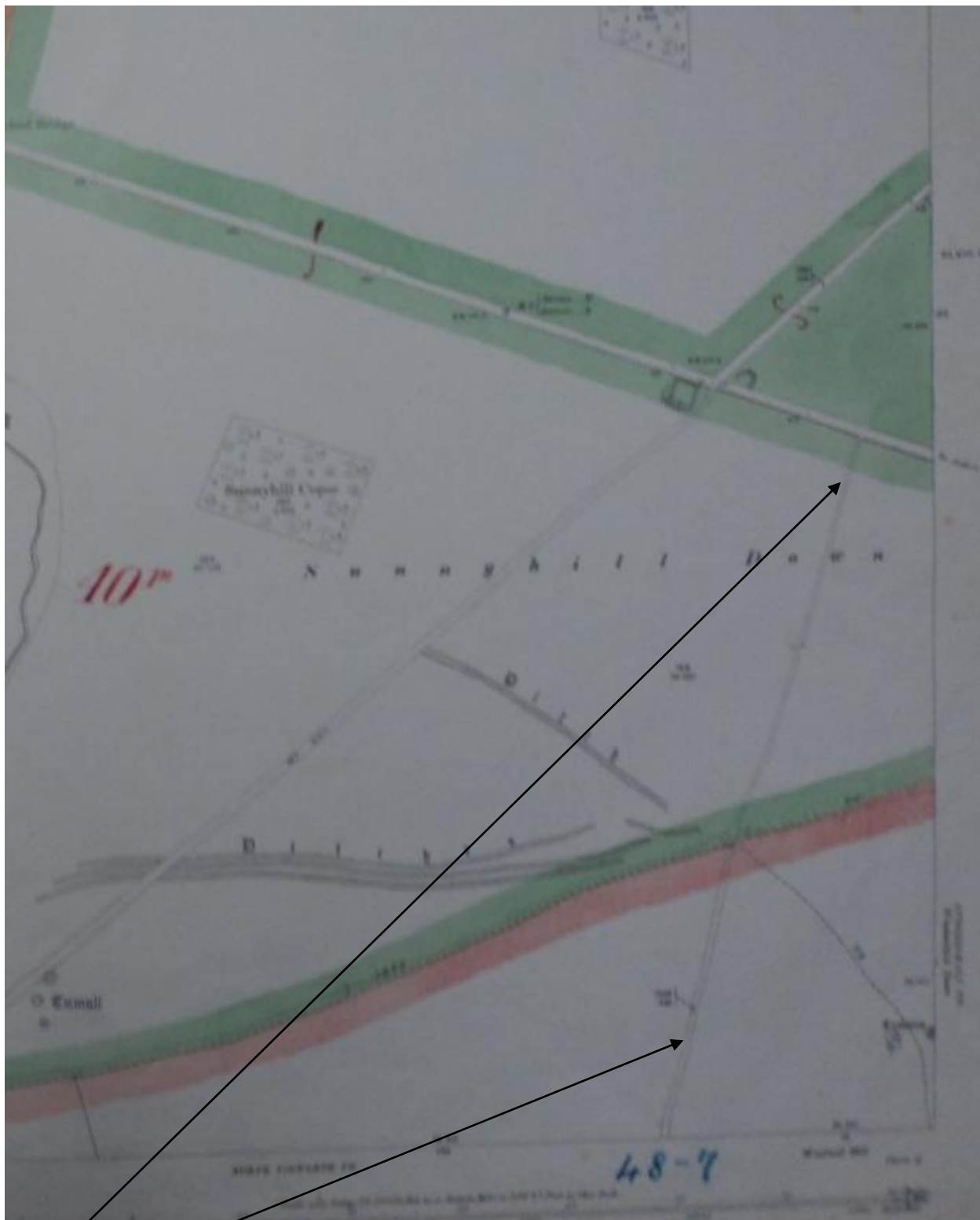


Application route

10.27 Wiltshire Sheet XLVIII. 11 – Ref: IR 125/11/560



Application Route



Application Route

10.29 The application route is shown from its southern end to the A342 as a physical feature on the base map. It is not excluded from the land it passes through which has been

valued as required by the 1910 act. Public roads would usually be excluded from the land and left outside of the valued area of land. This indicates that the route was likely not considered in 1910 to be a public road.

No rights of way deductions are recorded within the valuation book for the land the route crosses in the parish of Collingbourne Ducis or North Tidworth. It is noted the land is recorded as being in the ownership of the War Department and no rights of way reductions are recorded for land in the War Department's ownership within the North Tidworth tithe apportionment.

11.0 Category C Evidence

11.1 Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. These include records of bodies whose function is the highway authority.

11.2 These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of the same.

11.3 Pewsey Rural District Council Takeover Map c.1930

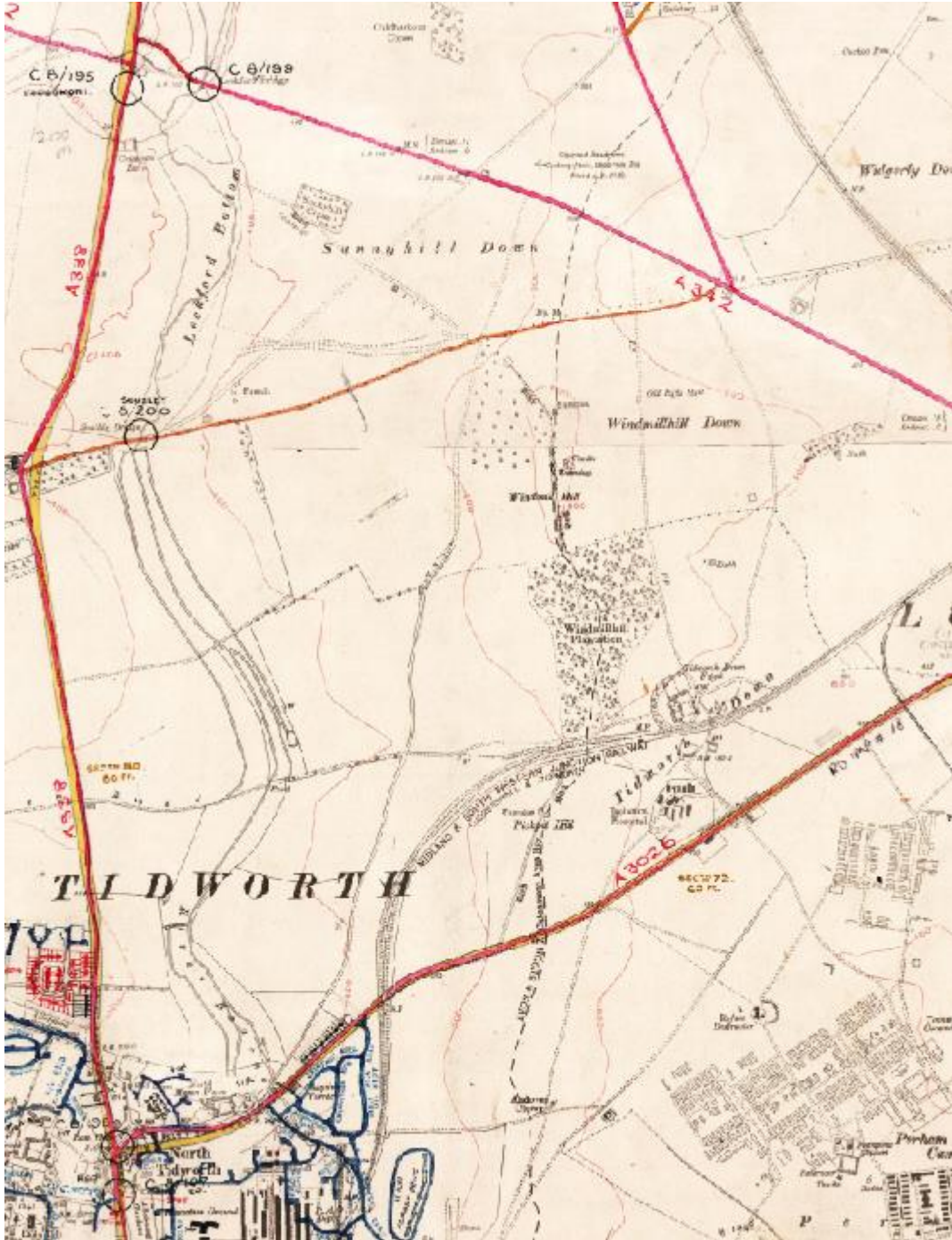
11.4 The Local Government Act 1929 required that the maintenance responsibility for rural roads passed to the County Council. As a result of this records known as The Takeover Maps were produced by the RDCs and passed to Wiltshire County Council.

11.5 The map for the relevant area can be seen below and the application route is not shown other than on the base map. This indicates that the Rural District Council did not consider the route to be a public road at that time.



11.6 Wiltshire County Council Highway Record

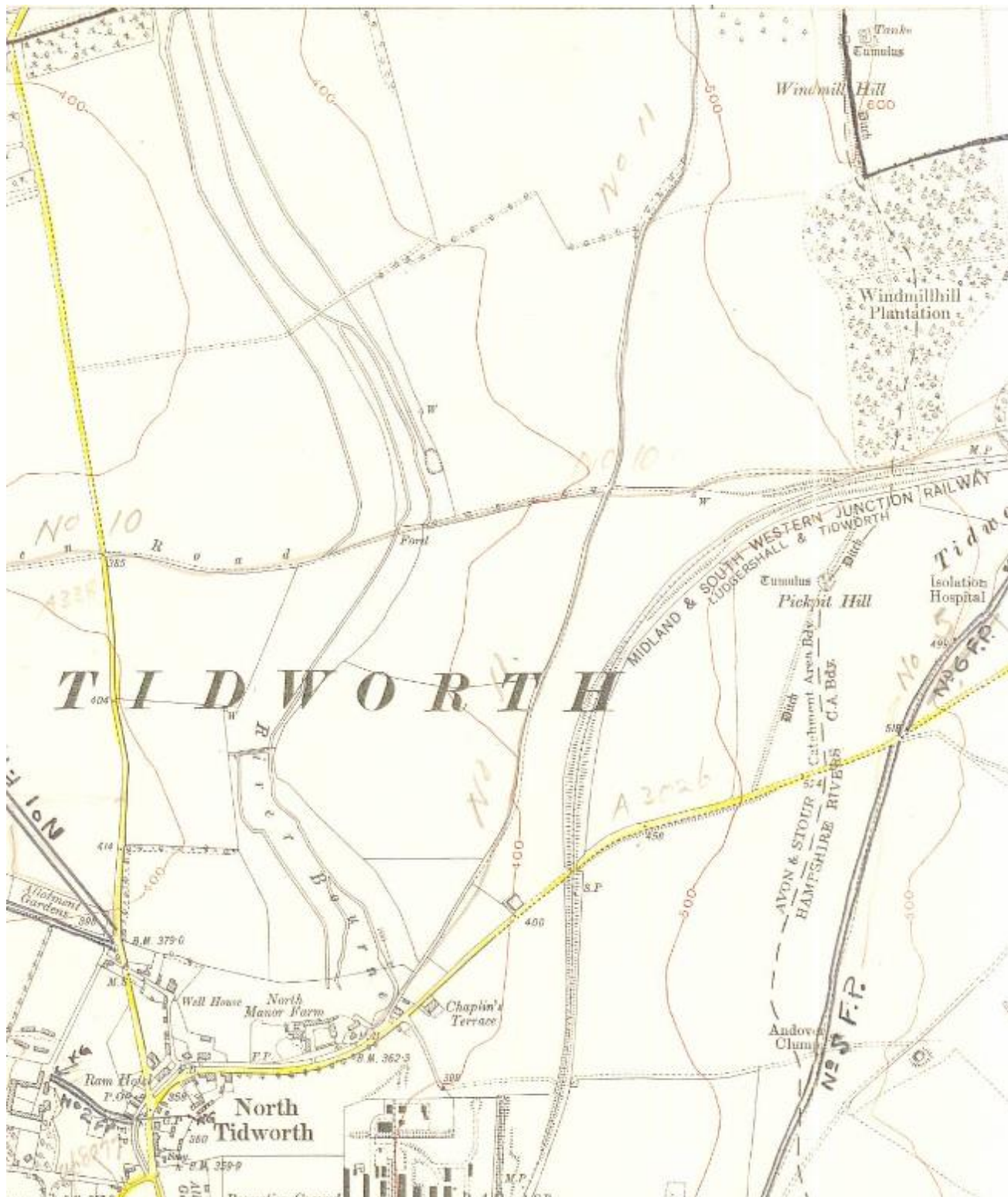
Sometime after the taking over of the responsibility for rural roads Wiltshire County Council amalgamated the information and produced a highway record. This record has been maintained and amended since that time and forms part of the Council's records of highways maintainable at public expense. The application route is not shown on the Highway Record.

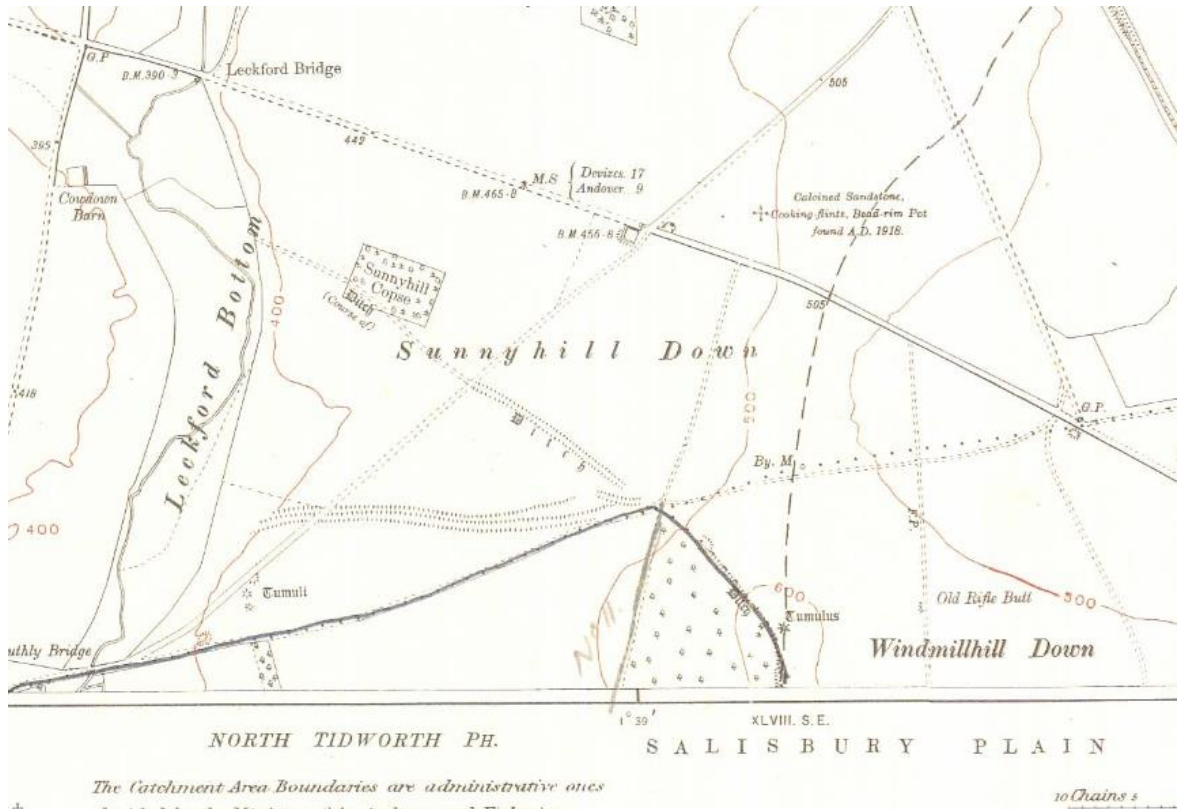


11.7 Parish Council Claims and Definitive Map Processes– National Parks and Access to the Countryside Act 1949

- 11.8 The National Parks and Access to the Countryside Act 1949 required Wiltshire County Council to produce a definitive map and statement of public rights of way. As a part of this process Parish Councils had to submit details of all the ways in their parish that they considered to be public rights of way that should be included in the map and statement.
- 11.9 Although parish councils were directed with guidance on the matter and all parish councils did submit a claim in Wiltshire, there is significant variation in the extent and detail of the submissions between parishes.
- 11.10 All parish councils in Wiltshire were issued , by Wiltshire County Council , the memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association: recommend by the County Councils Association. This document guided Parish Councils on how to identify paths for the draft definitive map.

11.11 The parish claim map for North Tidworth can be seen below. Footpath North Tidworth 11 can be seen on the map drawn in pencil and numbered "NO 11". The footpath crosses over two sheets , with the northern end of the path shown on the second sheet.





11.12 The parish claim card for NTID11 can be seen below.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

PUBLIC RIGHT OF WAY.

PATH No. 11
(to correspond with No. on map)

PARISH OF North Tidworth

<p>NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)</p> <p><u>C.R.F. from east of north main farm on the Tidworth - Hazenall road (A 3026) leading northwards over Windmill Hill to the Collingbourne parish boundary on Sunnyhill Down.</u></p>	<p>LENGTH <u>1.2 miles</u> WIDTH _____</p> <p>WHETHER FENCED OR OPEN _____</p> <p>APPROXIMATE PERIOD OF UNINTERRUPTED USER — YEARS FROM _____</p> <p>WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL — _____</p> <p>DATE OF REPAIR _____</p> <p>WHETHER SUBJECT TO PLOUGHING _____</p> <p>DATE OF SURVEY _____</p> <p>WHETHER SHOWN ON UNDERMENTIONED MAPS — ORDNANCE 6" SHEET, REF. _____</p> <p>INCLOSURE AWARD _____</p> <p>LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932.) _____</p> <p>OTHER MAPS — _____</p>
NATURE OF SURFACE _____	
STILES, GATES, FOOTBRIDGES, STEPPING STONES _____	
WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS) _____	
OBSERVATIONS : _____	

The text reads “ C.R.F. from east of north manor farm on the Tidworth-Ludgershall (a3026) leading northwards over Windmill Hill to the Collingbourne parish boundary on Sunnyhill Down.” “LENGTH- 1 ½ miles”

11.13 It can be seen on the parish card above that the path was claimed as C.R.F , this status stood for a Public Carriage or Cart Road mainly used as a footpath. The path is however recorded as a footpath on the definitive map and statement. This is due to an objection to its status as a C.R.F received as the draft stage of the definitive map.

11.14 Documents viewed at the WSHC under ref F2/ 271/10 and F2/273/10 show that the objection was made by the war department on the basis that the route should be recorded as a footpath only as “bridle or cart track user confined to licensees only”. The documents state that the parish council agreed it should be a footpath.

"A" 8

SURVEY OF RIGHTS OF WAY
Representations or Objections to paths
shown on Draft Maps
Rural District ...NEWKEY.....

1. Parish.	NORTH TIDWORTH.
2. Number and status of path objected to.	C.R.F. No. 11.
3. Name and address of Objector.	War Department.
4. Whether objection to (i) the existence of the whole or part of the right of way, or (ii) its status.	Its status: it should be a F.P.
5. Grounds of objection.	Bridle or cart track user confined to licensees only.
6. Documents, if any, supporting objection.	
7. Does the Parish Council agree with this objection?	YES, AGREED IT SHOULD BE A FOOTPATH

4/24
4/25

11.15 Objections to the draft map for the Pewsey Rural District were heard at an inquiry held on 26th January 1956. The objection to the status of NTID11 was heard at the inquiry the recommendation recorded is "Alteration of status to F.P" reasons given are "by agreement".

No. and Map Reference.	Objection that path omitted from Draft Map	Objection to path included in Draft Map	Modification of Draft Map recommended.	Reasons.
Parish of North Tidworth—continued.				
7 (41/25)	—	C.R.F. No. 10 , Eldon Road, from N. end of path No. 1 at the Pennings, E. across the Collingbourne road, A.338, to Tidworth Down Farm and then N. to the Ludgershall boundary.	(a) Deletion of section from path No. 1 at the Pennings, E. to Tidworth Down Farm. (b) Addition of length from Tidworth Down Farm via W.D. road to road A.3026, in lieu of F.P. No. 5.	Inspected. From road A.342 on the Collingbourne Ducis boundary the track has been surfaced by the W.D. and is continuous. S. of the railway the W.D. road is the obvious continuation. The maze of tracks to the W. of the W.D. road are purposeless and discontinuous.
8 (41/24 41/25)	—	C.R.F. No. 11 , from the Ludgershall road, A.3026, E. of North Manor Farm, N. over Windmill Hill to the Collingbourne Ducis boundary on Sunnyhill Down.	Alteration of status to F.P.	By agreement.

11.21 On page 200 , at the meeting held on 12th April 1978 it was recorded “*W.C.C have sent asking if we had any footpaths , etc that needed cleaning as a new job creation crew had been set up in this area. The clerk was to reply asking if the Old Roman Road, behind the council houses in Ludgershall Road could be cleared*”.

11.22 These parish council minutes demonstrate that a route likely to be the route of footpath NTID11 , which runs behind the then council houses in Ludgershall Road, was in 1973 and 1978 in need of litter picking and general tidying. Members of the parish council refer to this route as “ the old coach road” and the “old roman road” and ask for it to be cleared. It is also acknowledged that its status was that of a footpath, as Wiltshire County Council was inquiring with the parish council if any “footpaths, etc” required cleaning. It is North Tidworth parish council who claimed the route as a footpath as a result of the 1949 act which drafted the definitive map and statement [correction 14/02/22 by CH- route claimed as C.R.F not footpath as stated]. Members of the parish council clearly referred to the route as an old coach road or roman road but we do not know why those members of the PC held this belief and the PC agreed the route should be recorded as a footpath at the inquiry into objections to the draft map in 1956. The minutes also provide a record of public maintenance of the route but not in the manner of anything other than a footpath.

12 CATEGORY D EVIDENCE

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

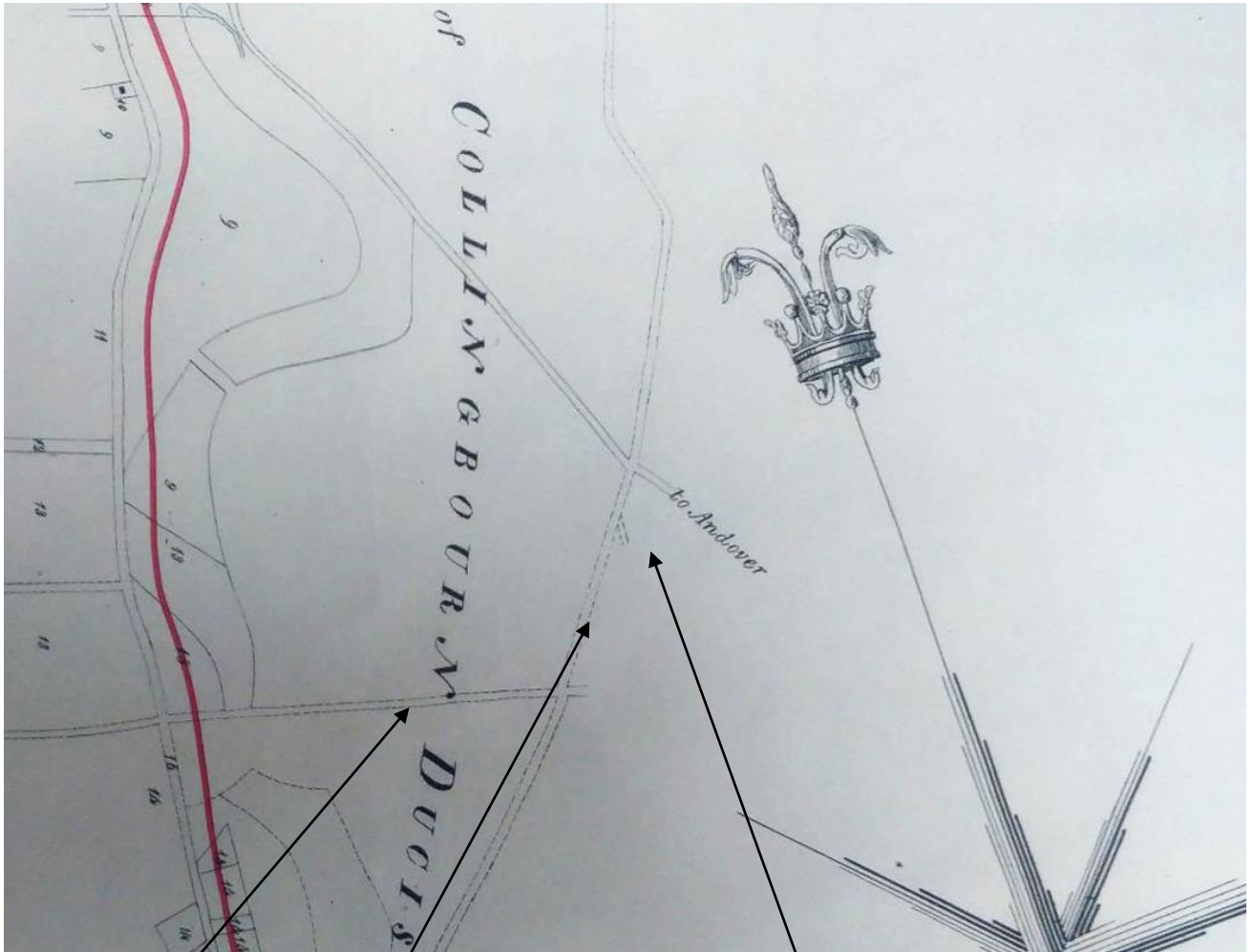
12.2 “Map of Collingbourne Ducis Estate in the County of Wilts belonging to The Rt. Hon. The Earl of Ailesbury 1815”.(WSHC Ref: 9/9/382L)



Route of A342

The extract above from the 1815 estate map shows no route or physical feature on or in the vicinity of the application route south or north of the A342.

12.3 “Map of Proposed Branch Road from Collingbourne Ducis To the Turnpike Road from Andover to Salisbury in the County of Wilts 1831”. (WSHC Ref: 451/97)



Route of A342, Route of byway CDUC19 , Track shown between byway and A346

This map showing a proposed branch road drawn and surveyed in 1831 shows a track leading in a southerly direction from the route now know as byway CDUC19 towards the A342. This is in the proximity of the proposed unrecorded section of the application route.

13. Category E Evidence

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

group of documents would have had the largest public circulation outside of the parish.

- 13.2 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the county maps produced by Andrews and Dury, C & I Greenwood, and the Ordnance Survey.
- 13.3 It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew's were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.
- 13.4 The applicant, Bill Riley, has supplied a summary of the evidence he has relied upon to make this application. That summary includes a list of over 50 category E evidence maps depicting some or all of the application route.. These are shown below in chronological order. This list also includes other evidence Mr Riley has relied upon such as the Tithe Award, Railway Plans and Parish Council minutes.

OXFORD ROAD, NORTH TIDWORTH 11 & COLLINGBOURNE DUCIS UNREGISTERED

Summary of Historical Evidence

<u>Ogilby's Britannia, Plate 83, 1675:</u>	<i>"Principal Road"</i> Part of <i>"The Road from Oxford to Salisbury"</i>
<u>Andrews & Dury's 2ⁿ Map of Wiltshire 1773:</u>	Minor road
<u>Cary's Map of Wiltshire 1789¹:</u>	Minor road
<u>Cary's Map of Wiltshire 1801 (3.2):</u>	<i>"Cross Road"</i>
<u>Smith's Map of Wiltshire 1801 (2.7):</u>	<i>"Cross Road"</i>
<u>Ordnance Survey 2ⁿ Drawing No.77 1808:</u>	Minor road
<u>Andrews & Dury's 2ⁿ Map of Wiltshire, 2nd Edition, Revised & Corrected, 1810:</u>	<i>"Cross Road"</i>
<u>Dix's Map of Wiltshire 1816¹:</u>	<i>"Bye Road"</i>
<u>Ordnance Survey 1ⁿ Old Series 1817:</u>	Minor road
<u>Greenwood's 1ⁿ Map of Wiltshire 1820:</u>	<i>"Cross Road"</i>
<u>Smith's Map of Wiltshire corrected to 1821¹:</u>	<i>"Cross Road"</i>
<u>Cary's ½ⁿ Map, Sheet 18, 1823 (3.2A):</u>	<i>"Parochial Road"</i>
<u>Colt Hoare, Modern Wiltshire, Map of Everley, Ambresbury & Underditch 1826:</u>	Minor road
<u>Teesdale's Map of Wiltshire 1829 (1.18):</u>	<i>"Bye Road"</i>
<u>Greenwood's Map of Wiltshire corrected to 1829 (3.3):</u>	<i>"Cross Road"</i>
<u>Darton's Map of Wiltshire 1832 (1.17):</u>	<i>"Cross Road"</i>
<u>Cary's ½ⁿ Map, Sheet 18, 1832 (3.4):</u>	<i>"Parochial Road"</i>
<u>Teesdale's Map of Wiltshire 1840¹:</u>	<i>"Bye Road"</i>
<u>North Tidworth Tithe Award 1846: Map:</u>	Shown as a fenced tithe-free road. Where the road crosses into Collingbourne Ducis Parish it is inscribed <i>"to Collingbourne"</i> . Width ranges from 15 to 30 feet.
<u>Collins' Map of Wiltshire 1852 (1.25):</u>	<i>"Bye Road"</i>
<u>Crutchley's Map of Wiltshire 1855 (2.9):</u>	Minor road
<u>Weller's Map of Wiltshire 1862 (1.29):</u>	<i>"Road"</i>
<u>Crutchley's ½ⁿ Map c.1865¹:</u>	Minor road

The Deposited Plans of the Upavon and Andover Railway 1866 (A1/371/118MS):

Plans: Sheet No.3. The unregistered length in Collingbourne Ducis is shown as an unfenced road crossing the Turnpike Road (A342) 7½ chains east of Byway 19 and joining the latter 12 chains north of the A342. The Railway crosses the road at 8 miles 1 furlong 7½ chains. The length south of the Turnpike Road is shown as an unfenced road approximately 30 feet wide and numbered 38. The length north of the Turnpike Road is shown as an unfenced road approximately 25 feet wide and numbered 40 in the parish of Collingbourne Ducis.

Sections: Sheet No.8. At 8 miles 1 furlong 7½ chains. "Public Road Level Unaltered".

Book of Reference: "Parish of Collingbourne Ducis"

<u>No. on Plan</u>	<u>Description of Property</u>	<u>Owners or Reputed Owners</u>	<u>Lessees or Reputed Lessees</u>	<u>Occupiers</u>
38	Public Road	The Everley and Pewsey District Highway Board	-	George Pike
40	Public Road	The Marquis of Aylesbury The Everley and Pewsey District Highway Board The Marquis of Aylesbury	- - -	George Pike

Ordnance Survey 6th 1st Edition, Sheet 48, 1883-88: "Minor Road"

Philips' Cyclists' Map of Wiltshire c.1890 (2.14): "Cross Road"

Bacon's Map of Wiltshire 1895¹: "Cross-road"

Brown's Guide to Salisbury 1895¹: Minor road

Ordnance Survey 1st New Series, Sheet 283, 1896 (Map Folder): "Unmetalled Road"

Bartholomew's ¼th Road Map 1897¹: "Other Road"²

Smith's Reduced Ordnance Survey Map for Tourists 1897¹: "Other Road"²

Gall & Inglis' ½th Map for Cyclists Tourists etc., 1898¹: Minor road

Ordnance Survey 1st Map of W.D. Land on Salisbury Plain 1898¹: "Unmetalled Road"

Ordnance Survey 2nd Map of W.D. Land on Salisbury Plain 1898 (Map Folder): "Unmetalled Road"

Bartholomew's ¼th Royal Atlas, Plate 40, 1899¹: "Other Road"²

Ordnance Survey 25th 2nd Edition, Sheet 48/7, 1900 (Revised 1899): Shown as an unfenced road or track, separately numbered and measured in North Tidworth. In Collingbourne Ducis it joins (but does not cross) the main road (A342) 7½ chains east of Byway 19. Width approximately 15 feet in Collingbourne Ducis and ranging from 15 to 25 feet in North Tidworth. Not marked *F.P.* or *B.R.*

Ordnance Survey 25th 2nd Edition, Sheet 48/11, 1900 (Revised 1899): Shown as a partly fenced road, separately numbered and measured. Width ranges from 10 to 25 feet. Not marked *F.P.* or *B.R.*

Ordnance Survey 25th 2nd Edition, Sheet 48/15, 1900 (Revised 1899): Shown as a mainly fenced road, separately numbered and measured. Width ranges from 10 to 15 feet. Not marked *F.P.* or *B.R.*

Gall & Inglis' Map for Cyclists Tourists etc., 1902¹: Minor road

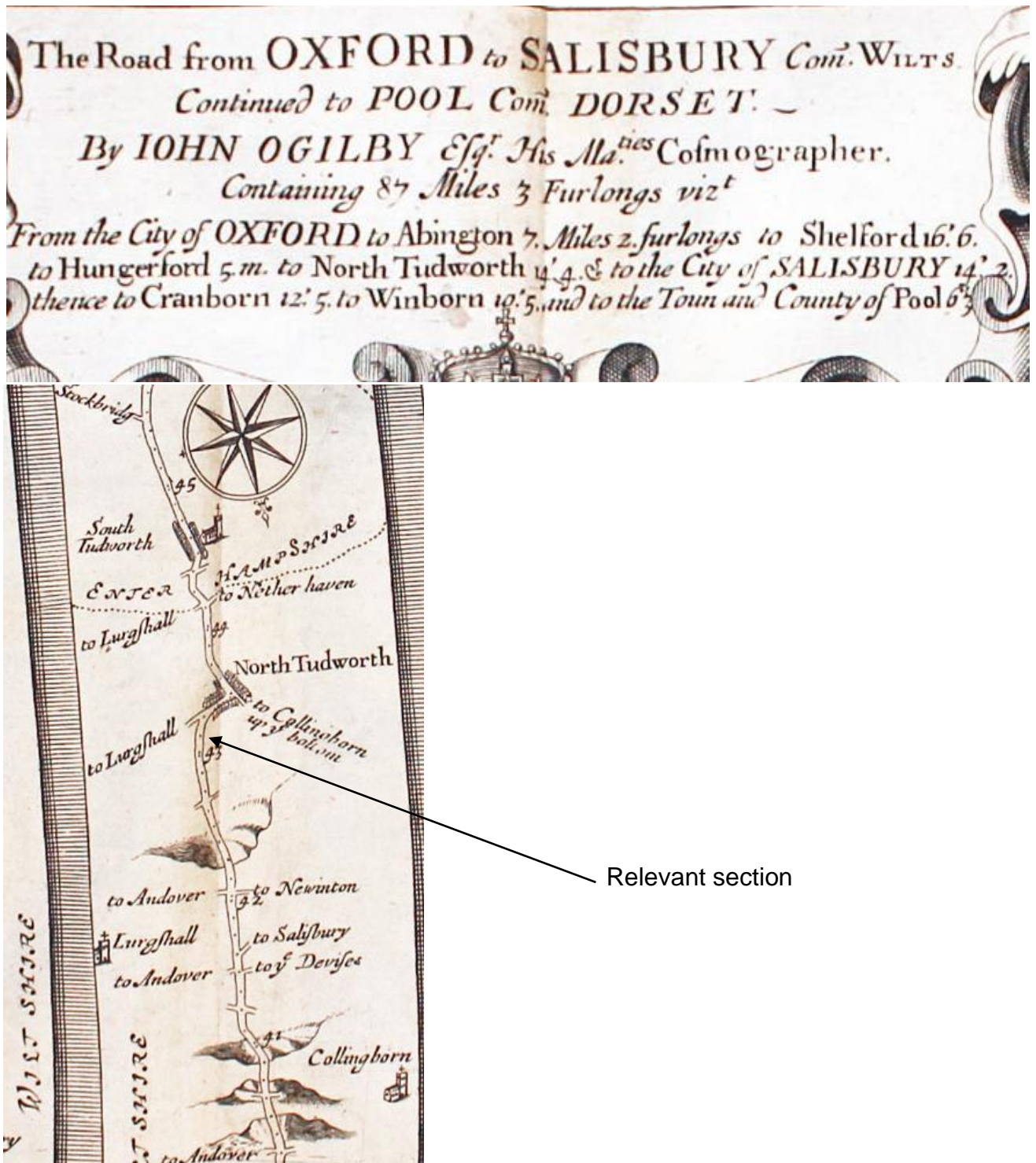
<u>Bartholomew's ½" Survey Atlas of England & Wales, Plate 64, 1903¹:</u>	"Other Driving Road"
<u>Bacon's New ½" Map for Cyclists and Motorists c.1905¹:</u>	Minor road
<u>Ordnance Survey ½" Sheet 33, 1908¹:</u>	"Other Road" ²
<u>Ordnance Survey 1" 3rd Edition, Sheet 123, 1908¹:</u>	"Unmetalled Road"
<u>Ordnance Survey 1" 3rd Edition, Salisbury Plain, 1909¹:</u>	"Unmetalled Road"
<u>Bartholomew's ½" for Tourists & Cyclists, Sheet 29, all editions 1910–1920¹:</u>	Uncoloured road
<u>Bacon's Map of Wiltshire for Cyclists and Tourists 1910¹:</u>	Minor road
<u>Ordnance Survey ½" Sheet 33, 1910¹:</u>	"Other Road" ²
<u>Bartholomew's ¼" Road Map 1919¹:</u>	"Other Road" ²
<u>Ordnance Survey 1" Popular Edition, Sheet 122, 1919¹:</u>	"Minor Road"
<u>Ordnance Survey 1" Popular Edition, Salisbury Plain, 1920¹:</u>	"Minor Road"
<u>Ordnance Survey 25" 3rd Edition, Sheet 48/7, 1924 (Revised 1923):</u>	Details as per 2 nd Edition
<u>Bacon's Map of Wiltshire for Tourists, Cyclists, etc., c.1925¹:</u>	Minor road
<u>Ordnance Survey ½" Road Map, Sheet 33, 1926¹:</u>	"Other Road" ²
<u>Johnston's Touring Map c.1929¹:</u>	Minor road
<u>Geographia ½" Road Map of Wiltshire c.1930¹:</u>	"Other Road" ²
<u>Ordnance Survey 1" 5th Edition, Sheet 131, 1938¹:</u>	"Unmetalled Road"
<u>Bartholomew's Revised ½" Map, Sheet 8, 1940¹:</u>	"Other Road"
<u>North Tidworth Parish Council Minutes (1612/3):</u> Page 446, 13 June 1973, refers to the "State of the old coach road running up behind the council houses in Ludgershall Road".	
<u>North Tidworth Parish Council Minutes (1612/4):</u> Page 3, 11 July 1973, and page 8, 12 September 1973, refer to the "the Old Coach Road behind the council houses in Ludgershall Road". Page 200, 12 April 1978 refers to "the Old Roman Road, behind the council houses in Ludgershall Road".	
<u>Victoria County History of Wiltshire, Vol.15, 1995:</u> Page 155. "In the 17 th century the main Oxford–Salisbury road via Hungerford (Berks) ran southwards over Windmill Hill and passed through North Tidworth Village....." The map on page 154, based on the tithe award map, shows the road "To Oxford via Hungerford" following the line of North Tidworth 11.	

¹ Not in WRO

² Other than a main road

A selection of those commercial maps are depicted in the next pages of this report.

13.5 John Ogilbys Britannia, Plate 83, 1675

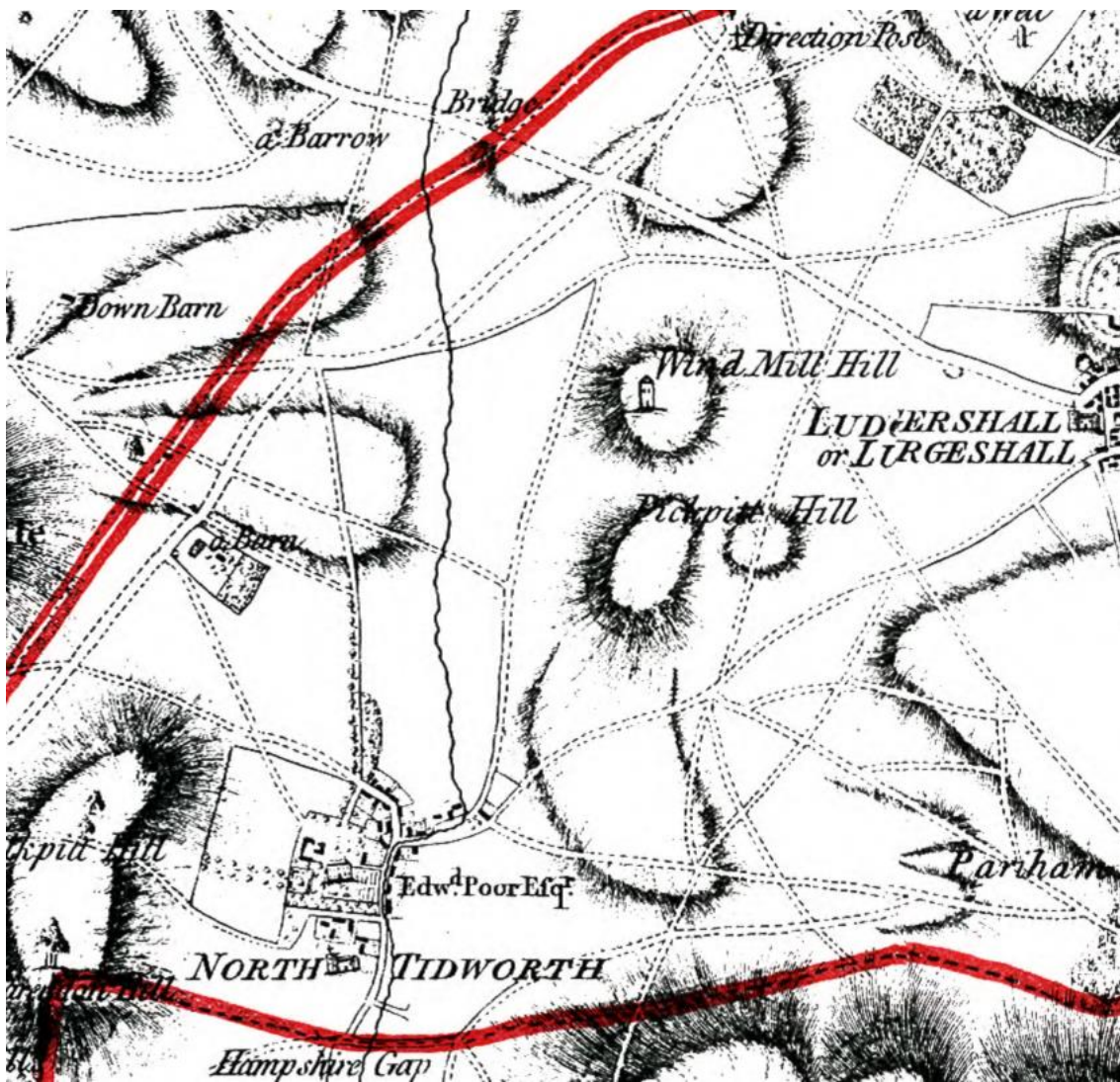


This map from 1675 is a strip map, the relevant section is shown above. The map is drawn with south at the top of the page. It can be seen what was clearly considered a major road leads north from the settlement in the general position the route of footpath NTID11 leaves the Ludgershall road today. Any specific route is difficult to ascertain from the scale and limitations of this map.

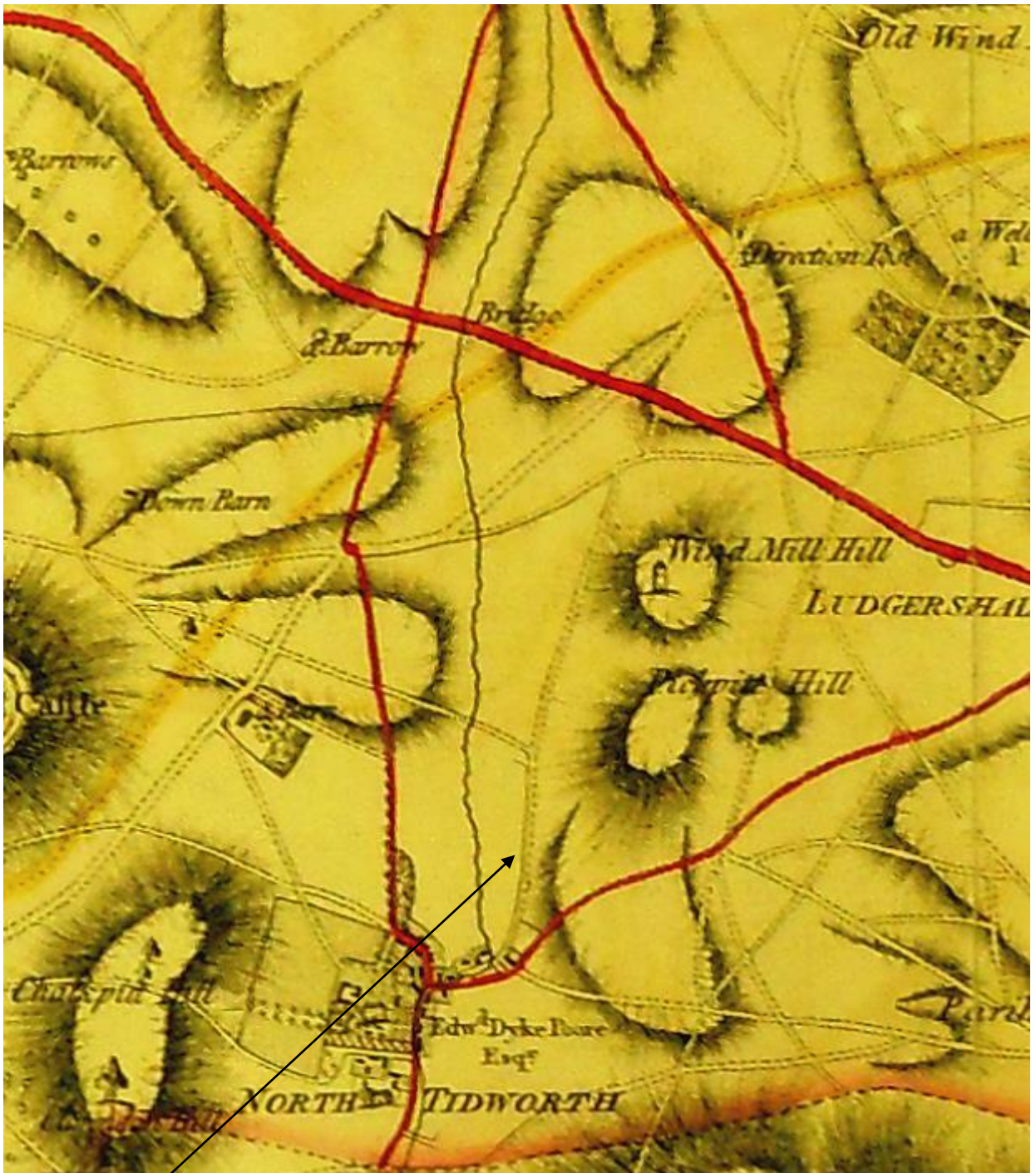
13.6 Andrews' and Dury's Map of Wiltshire 1773 The map is drawn at the scale of 2 inches to one mile. It does not have a key but Andrews' and Dury's map of Hertfordshire does and the symbology appears to be the same.

E X P L A N A T I O N

 Parish Towns.....	 Rivers with Bridges.....	 Kitchen Gardens.....
 Villages.....	 Wind Mills.....	 Ponds.....
 Roads enclosed by Hedges.....	 Parks.....	 Woods.....
 Open Roads.....	 Churches.....	 Pasture, enclosed by Hedges.....
 Roads, one side enclosed by a Hedge.....	 Heaths or Commons.....	 Arable enclosed by D?.....
 Water Mills.....	 Hills.....	 Marshes.....

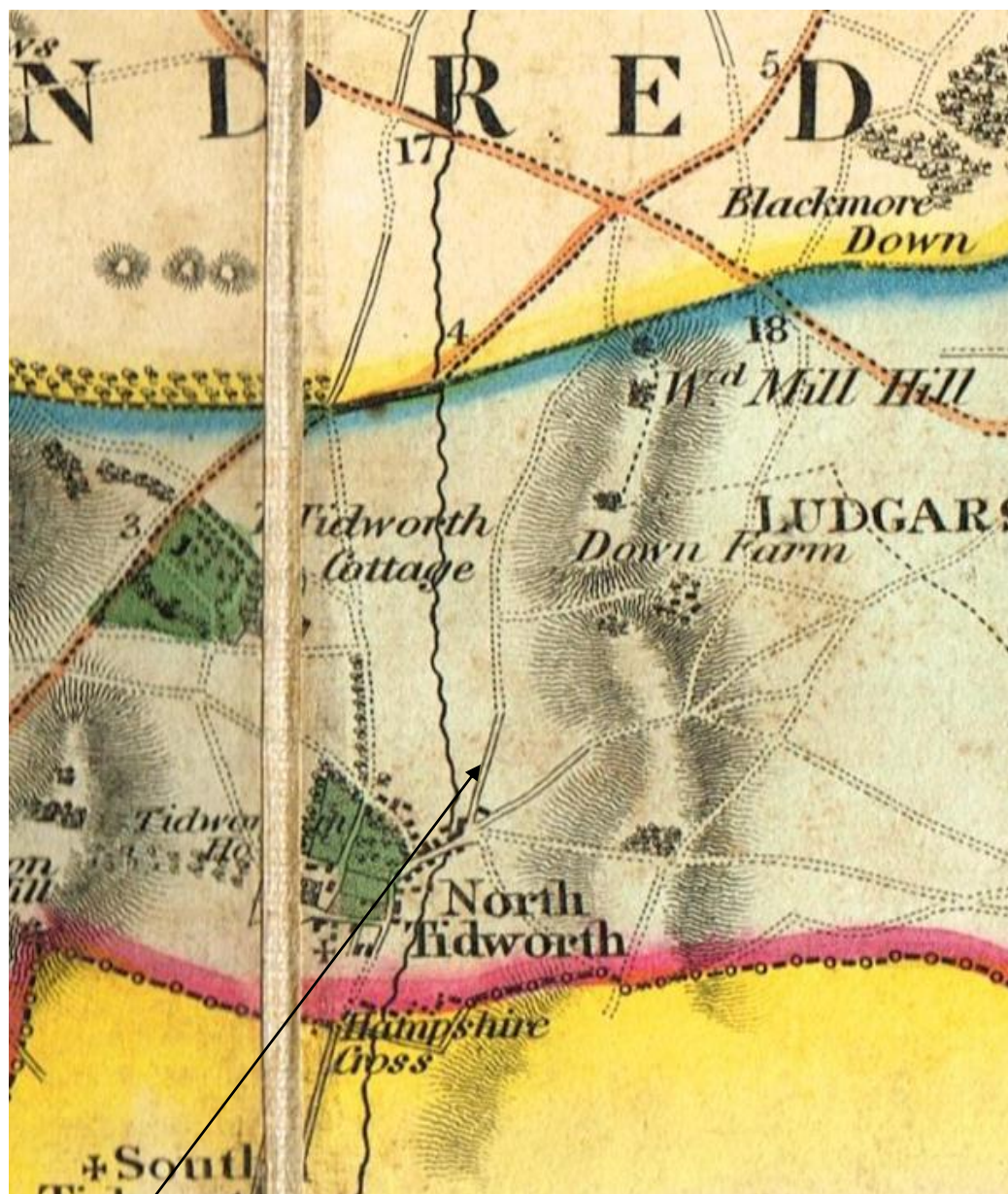
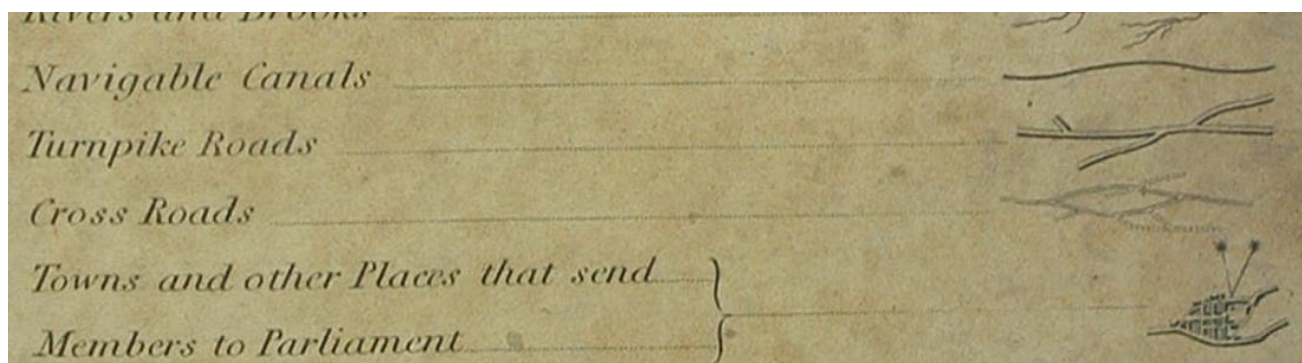


13.7 **Andrews' and Dury's Map of Wiltshire 1810.** This map is drawn at a scale of 2 inches to one mile.



Application Route

13.8 C and I Greenwoods Map of Wiltshire 1820 This map shows the route as a “Cross Road”. Scale 1 inch to 1 mile.



Application Route

13.9 J. Cary's Map of Wiltshire 1789.



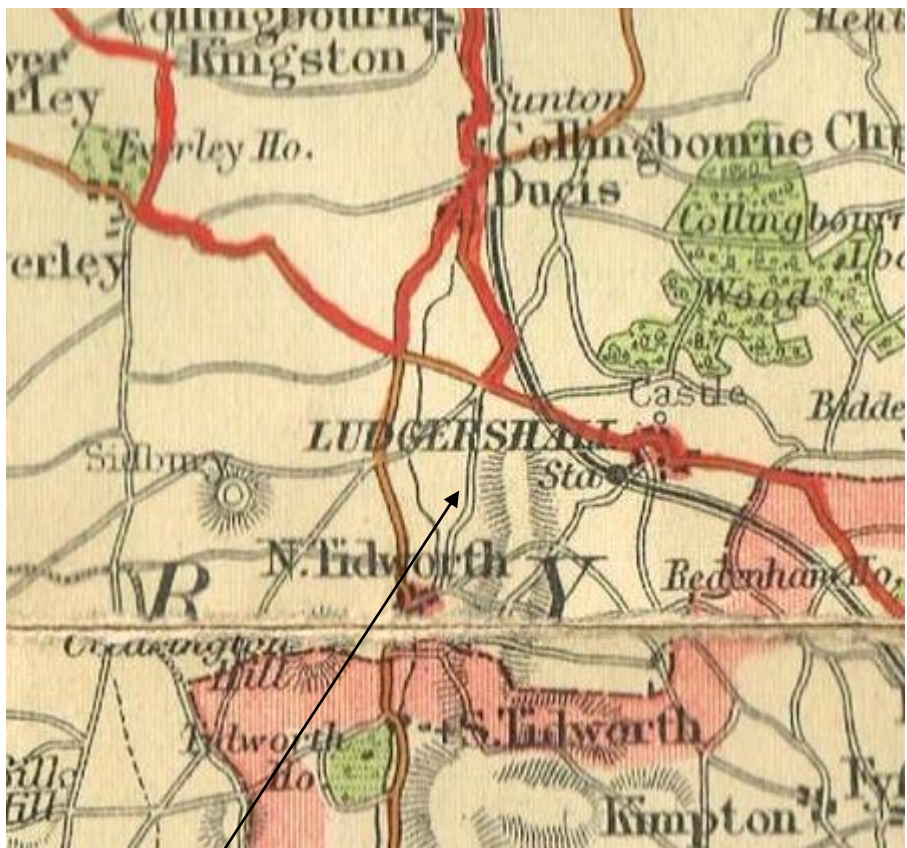
Application Route

13.10 J. Cary's Map of Wiltshire 1823. Scale of 1/2 inch to a mile *parochial road"



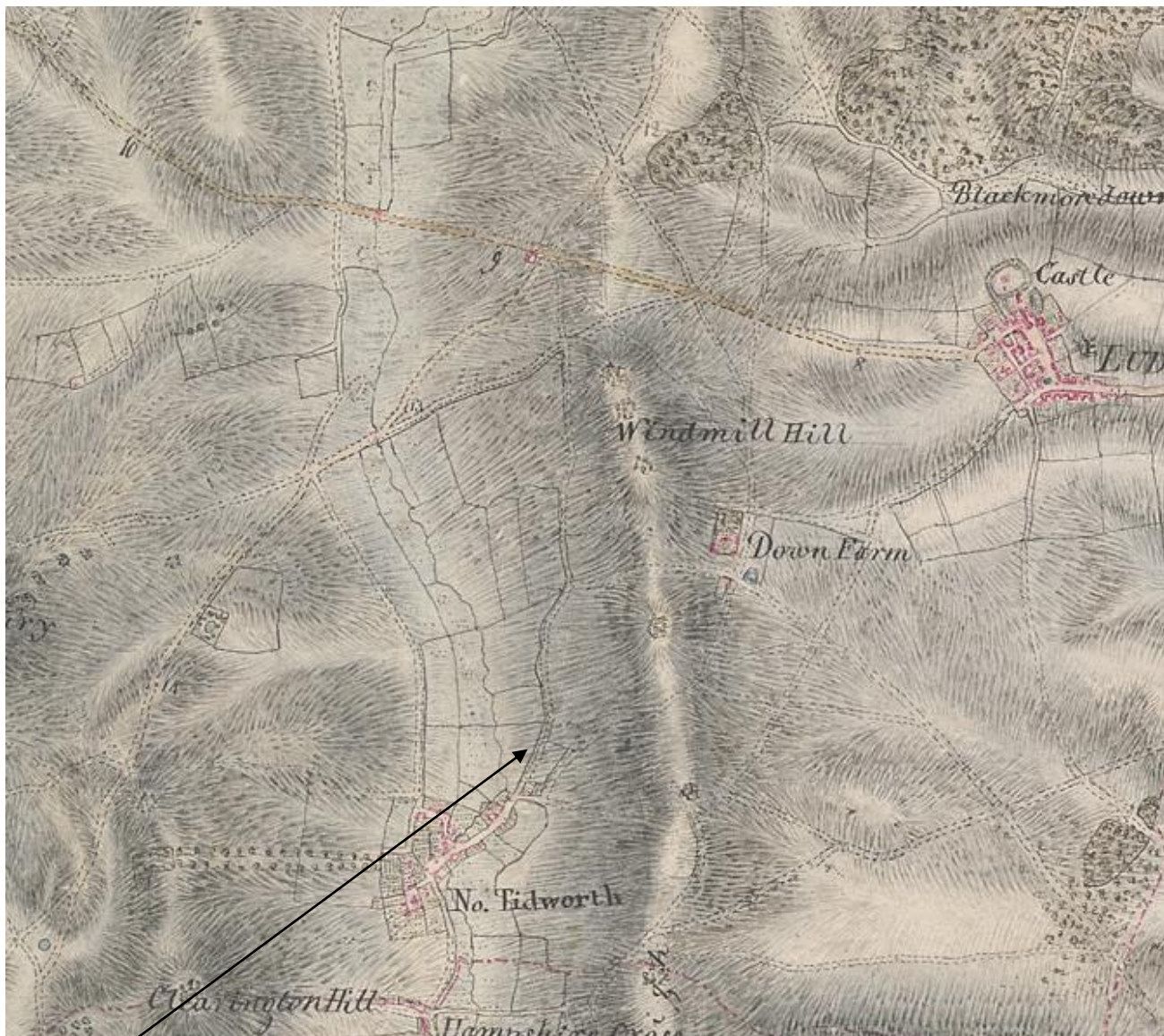
Application Route

13.11 Barthomolews 1897 : Scale ¼ inch to a mile “other road”



Application Route

13.12 Ordnance Survey 2" drawing 1808. Sheet no 77



Application Route

13.13 Ordnance Survey 1:2500 County Series mapping 1878 to 1923

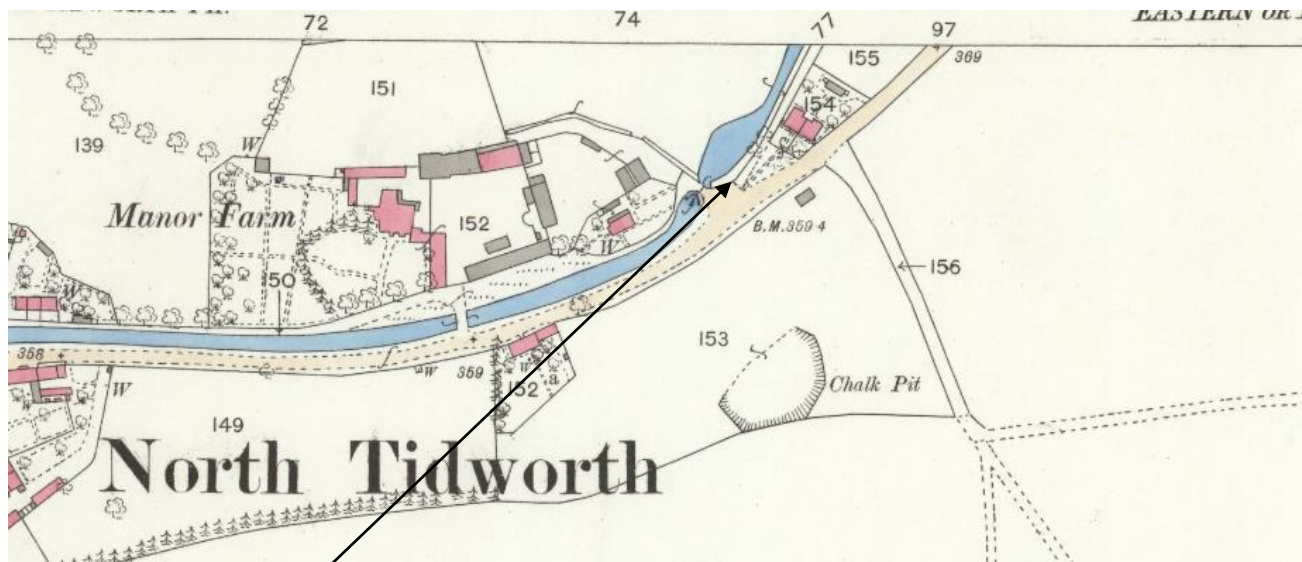
The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact, practically all the significant man-made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road....., field....., stream and building are shown; non-agricultural land is distinguished...quarries, sand,

gravel and clay pits are depicted separately; all administrative boundaries are shown;...hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

- 13.14 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”
- 13.15 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 13.16 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water....*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet and land use information was dropped.

The order route is shown across three separate sheets. The southern end of the order route is shown on Wiltshire sheet 48.15, going north the route is shown on Wiltshire sheet 48.11 and then Wiltshire sheet 48.7.

13.17 First Edition 1880- surveyed 1878- scale 1:2500- Wiltshire Sheet 48.15



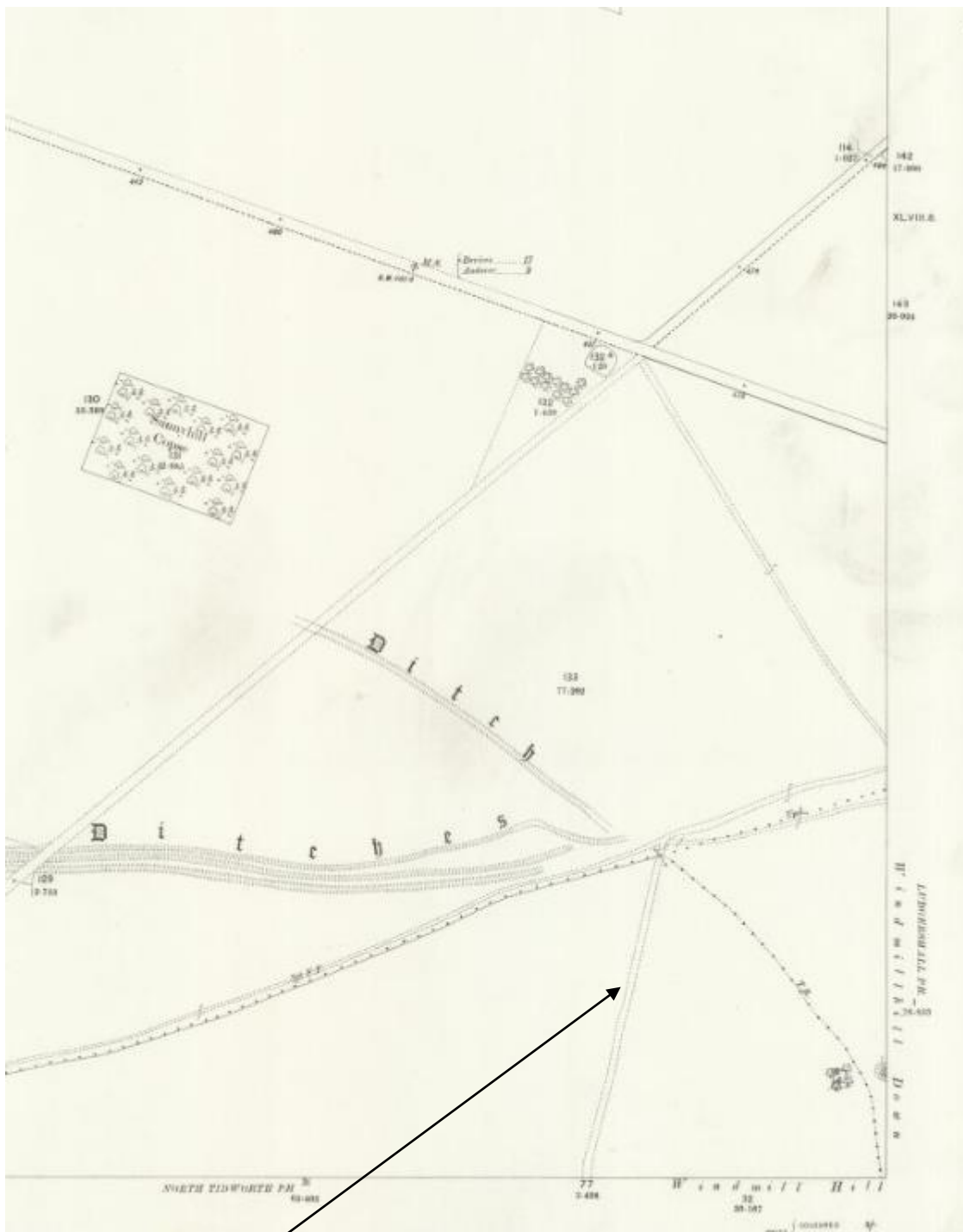
Route of footpath NTID11 leaving the road.

13.18 First Edition 1880- scale 1:2500- Wiltshire Sheet 48.11



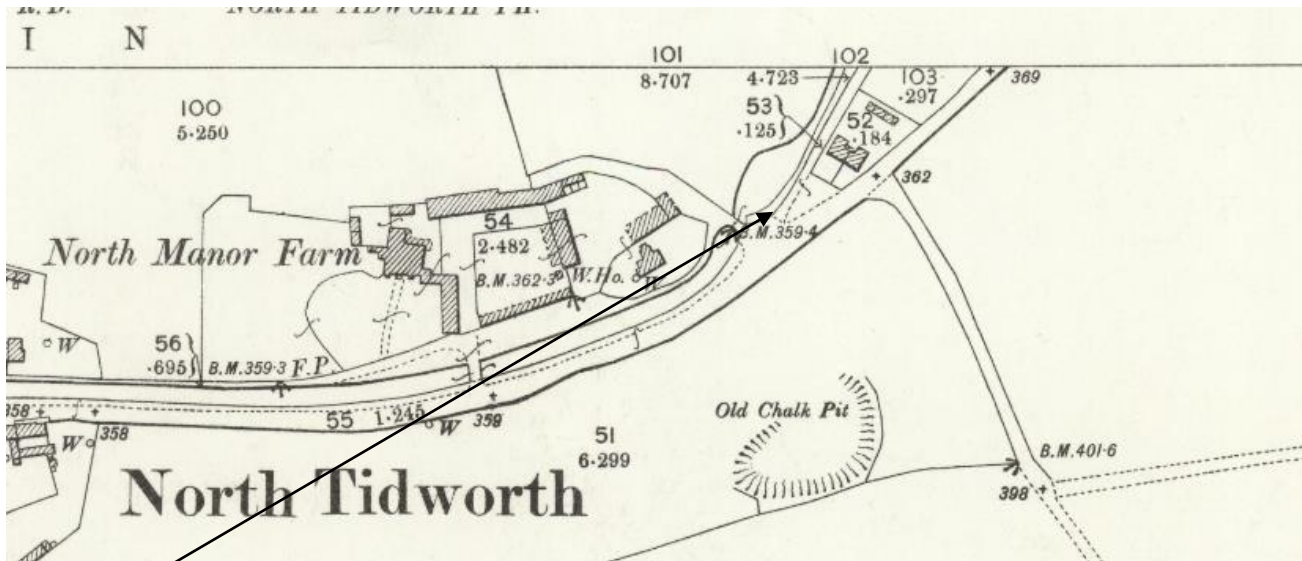
Application route/ route of NTID11

13.19 First Edition 1880- scale 1:2500- Wiltshire Sheet 48.7



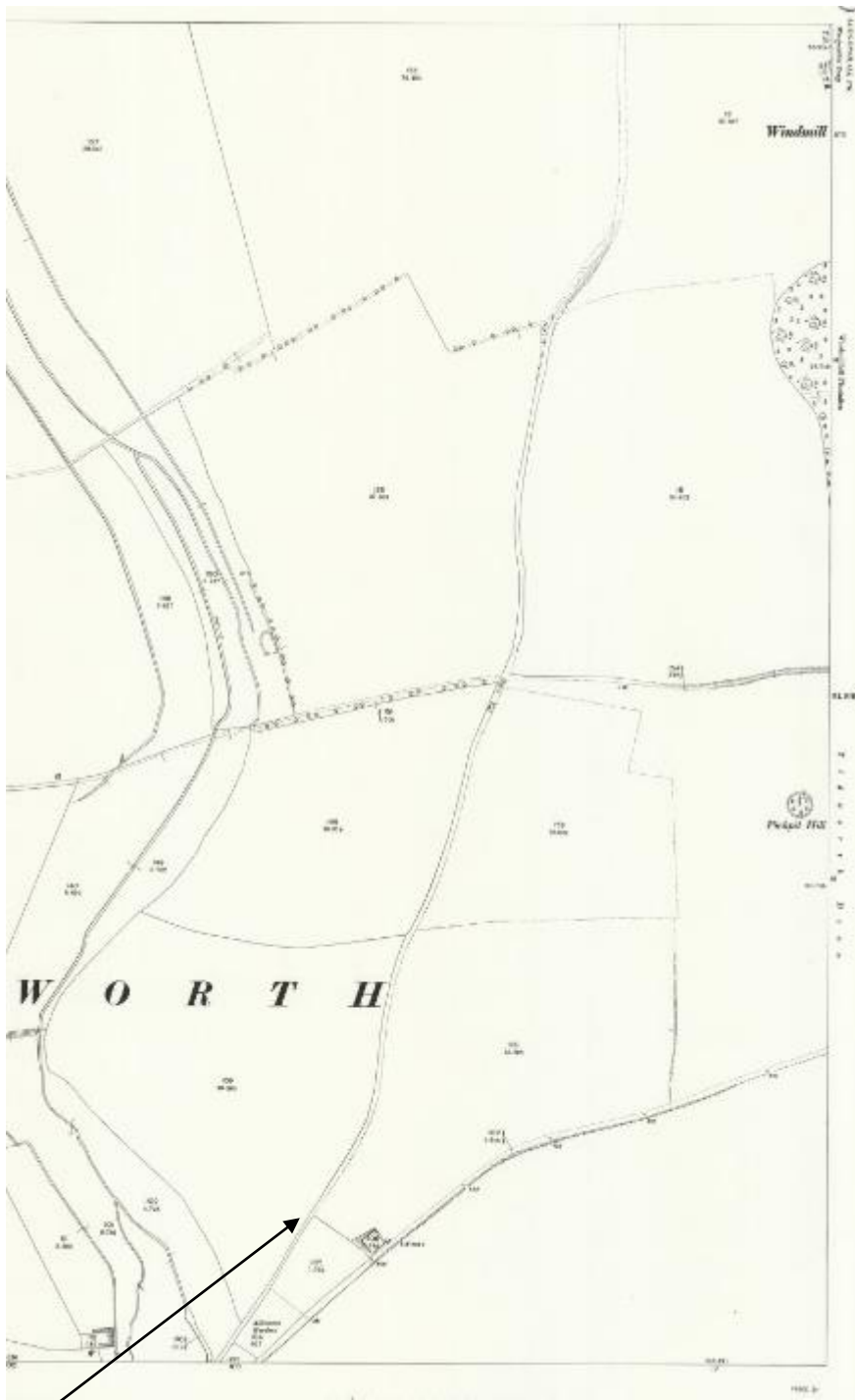
Application Route

13.20 Second edition 1900- scale 1:2500- Wiltshire Sheet 48.15



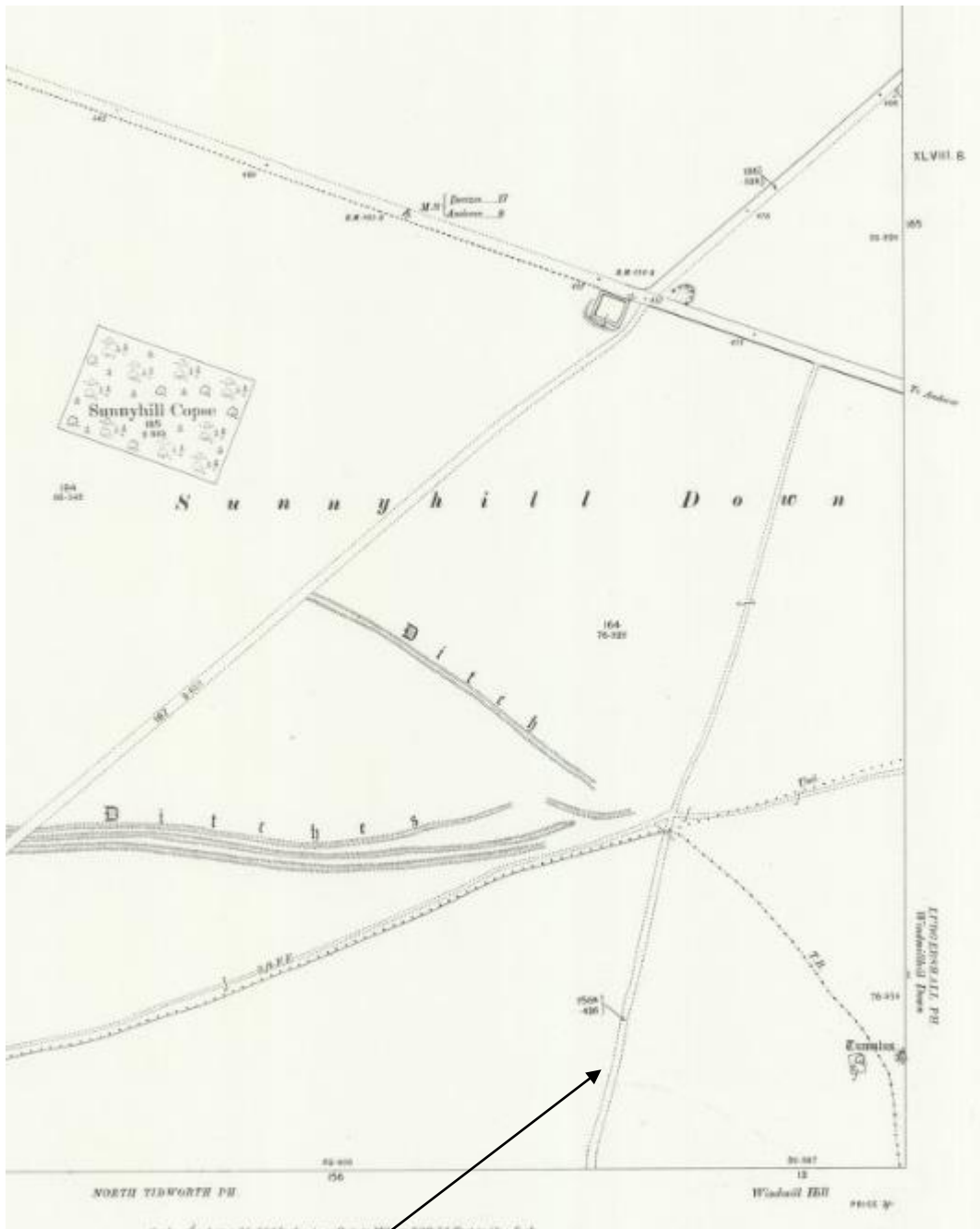
Application route / route of NTID11

13.21 Second edition 1900- scale 1:2500- Wiltshire Sheet 48.11



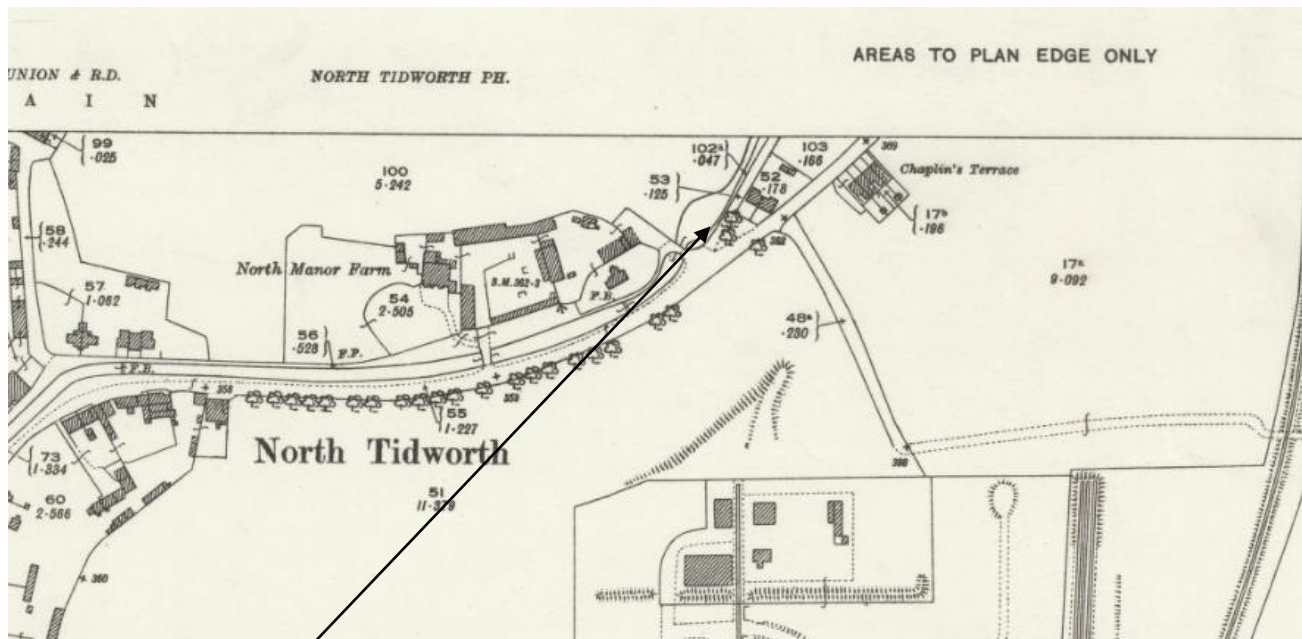
Application route / route of NTID11

13.22 Second edition 1900- scale 1:2500- Wiltshire Sheet 48.7



Application route / route of NTID11

13.23 Edition of 1924 – scale 1:2500 – Wiltshire sheet 48.15



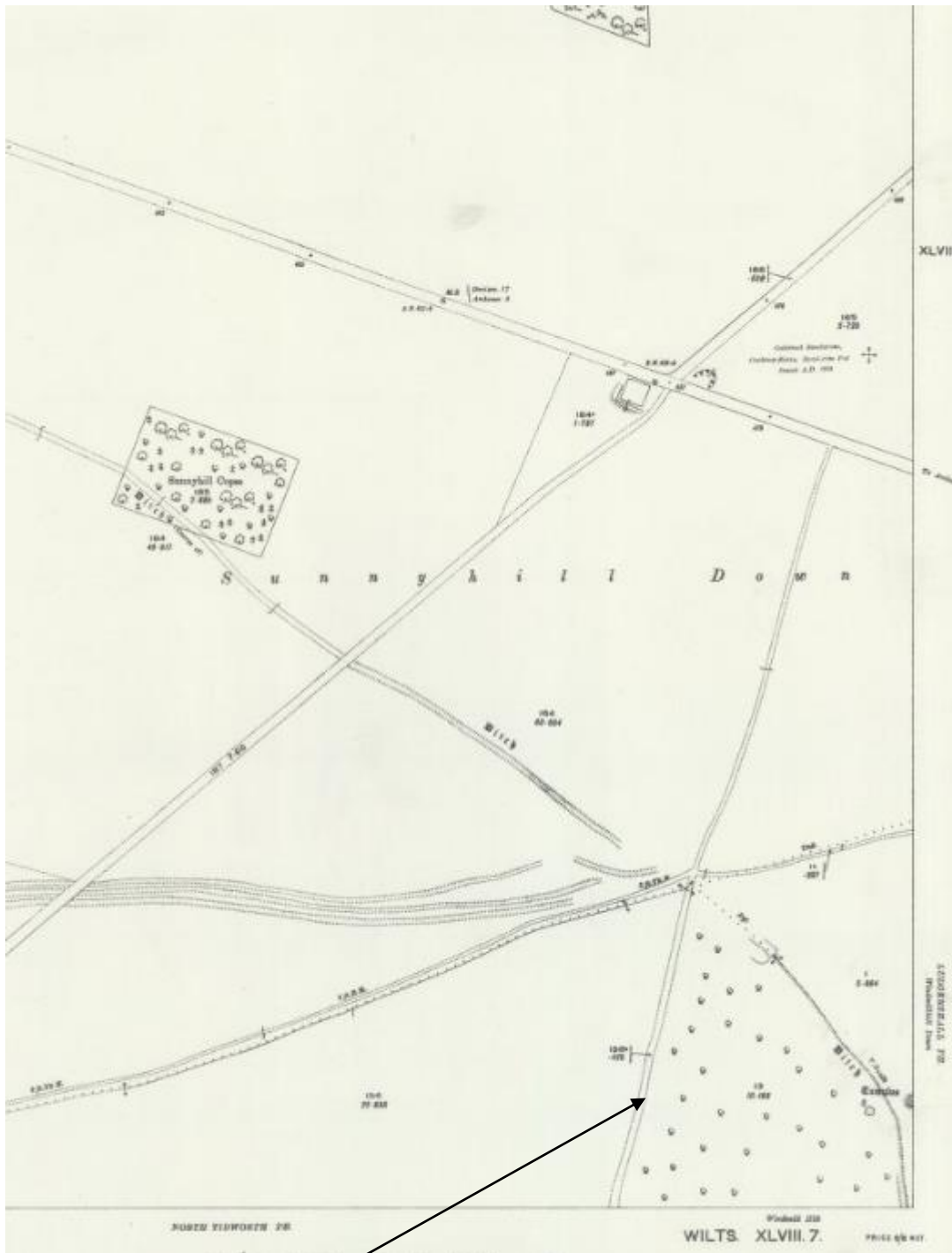
Application route / route of NTID11

13.24 Edition of 1924 – scale 1:2500 – Wiltshire sheet 48.11



Application route / route of NTID11

13.25 Edition of 1924 – scale 1:2500 – Wiltshire sheet 48.7



Application route / route of NTID11

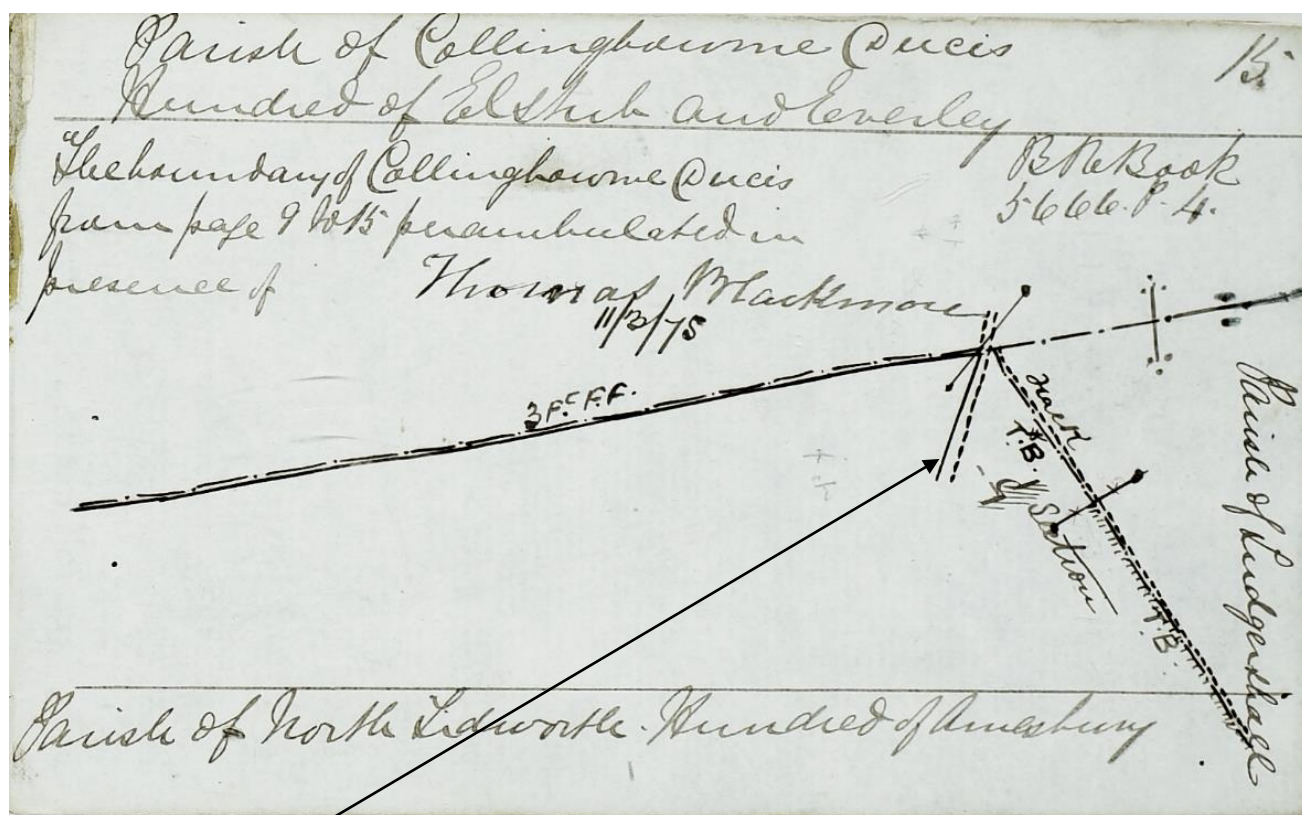
13.26 The route of the footpath NTID11 can be seen consistently from its southern junction with the Ludgershall road to its northern junction with the Collingbourne Ducis parish boundary as a partly fenced track which is separately numbered from 1880 through to 1924 on the OS maps. The route north of the parish boundary is inconsistent , no

route continuing north from NTID 11 is shown in 1880 and there is a track shown continuing north from NTID11 on the 1900 and 1924 editions. None of the OS maps other than the 1808 drawing show a route north of the A.342.

13.27 OS Boundary Remark Book

13.28 As the application route crosses the Collingbourne Ducis and North Tidworth parish boundary part of the route is depicted in the OS boundary remark book. OS boundary remark books (also called Perambulation Books) are small booklets containing hand-drawn strip maps. They were prepared by the Ordnance Survey to record original information on public boundaries under the provisions of the Ordnance Survey Act 1841. The maps show boundary and related ground features and carry the signatures or marks of the meres men (local people with knowledge of the parish boundaries) for the parishes on each side of the boundary

13.29 The remark book for the North Tidworth parish boundary has been viewed by officers and it shows at the junction of NTID11 and CDUC21 a track continuing north of the parish boundary as a continuation of the route that became NTID11, see image below. The boundary was walked on 11th March 1875.



Route of NTID11 leading to the parish boundary.

13.30 The remark book does not demonstrate what status the drawn track was considered to be, they are recording the physical features along the parish boundary on a given date. In this case it demonstrates a track leads north from the track of what is now NTID11 at the parish boundary.

13.31 This survey of 1875 is not consistent with the OS map of 1880 , seen at 13.19 , where no track leads north from the end of the route of NTID11 at the parish boundary. The 1900 and 1924 1:2500 OS maps , shown at 13.22 and 13.25, do show a track at the location shown by the OS boundary remark book .The position of tracks north of parish boundary appears to be inconsistent and tracks may have moved.

14 CATEGORY F EVIDENCE

14.1 This evidence category includes local repute or any consultation responses that are not covered elsewhere.

14.2 There was a change in the law in 2006 relating to the use of mechanically propelled vehicles (MPVs) on routes that were not already recorded in the definitive map and statement as byways open to all traffic and this will be addressed later in this report as part of the council's decision but it is noteworthy that no evidence to support the continuation of any public mechanically propelled vehicular rights post 2006 has been adduced by any party (including vehicular user groups).

14.3 The responses to the council's consultation can be seen at section 6 of this report.

14.4 The consultation carried out between July and September 2020 which was sent to many local residents and affected landowners did not adduce any public use of footpath NTID11 or the unrecorded section of the application route continuing north from footpath NTID11 with MPVs. No further documentary evidence was adduced from the consultation. There was a general concern for the route being possibly upgraded or created as a BOAT for various reasons, but the decision must be based upon the evidence available to the council , not on a base of want or need.

15.0 Decision

15.1 This decision is taken in two sections, whether footpath NTID11 should be upgraded to a BOAT or any other status. Also then to consider if the section of the application route which is currently unrecorded which continues north from footpath NTID11

across Sunnyhill Down and the A342 and links into BOAT CDUC19 should be recorded on the definitive map and statement and if so what status. These decisions must be based on the evidence available to the council.

15.2 The law requires that any evidence of no rights, higher rights or greater width must ultimately be shown on the balance of probabilities. This means that it is more likely than not that something is shown. The relevant legislation for this application and decision is section 53 (3)(c)(i) , (ii) and (iii) see below.

“(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 [F4a right of way such that the land over which the right subsists is a public path [F5, a restricted byway] or, subject to section 54A, a byway open to all traffic];

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

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

15.3 This decision is in two parts and applies different subsections of S.53 of the WCA81 as described above. One section of the application route seeks to apply 53(3)(c)(i), that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist, and the other (the upgrade of the current route of footpath NTID11 seeks to apply 53(3)(c)(ii) that a highway should be shown of different description and subsection 53(3)(c)(iii) may also apply if only the statement is amended.

15.4 The first subsection 53(3)(c)(i) applies a reasonably alleged test when reaching a decision on whether an order should be made or not. This is a weaker test than that of the balance of probabilities which must be applied when reaching a decision on whether to confirm an order made under this section.

15.5 In considering the evidence under section 53(3)(c)(i) there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw(1994) 68P & CR 402 (Bagshaw)*:

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the authority should find that a public right of way has been reasonably alleged.

To confirm the Order, a stronger test needs to be applied; that is, essentially that contained within Test A. In *Todd and Bradley v SoSEFRA [2004] EWHC 1450 (Admin)*. Evans-Lombe J found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This allegation may only be defeated at the order making stage by incontrovertible evidence.

15.6 The decision on whether the route of NTID11 should be shown as a highway of a different description and subject to 53(3)(c)(ii) or (iii) is not subject to the same reasonable alleged tests when making an order, it is subject to the balance of probabilities test when making and confirming an order.

15.7 The NERC act of 2006 also needs to be considered when a byway application is made as it concerns the extinguishment of MPV rights. The “Winchester” case also needs to be considered, this case “Winchester R (oao) the Warden and Fellows of Winchester College and Humphrey Feeds Limited and SoSEFRA (Interested party) [2008] EWCA Civ 431” also concerns applications made to record byways. NERC and the Winchester case will be considered later in this report.

15.8 This investigation has considered evidence that was not available or in some cases, not considered, at the time that the definitive map was produced. The investigation has therefore considered ‘new’ evidence.

15.9 The status of footpath North Tidworth 11

- 15.10 This application applies to upgrade footpath NTID11 to a byway open to all traffic “*From the Ludgershall Road, A3026, east of North Manor Farm, leading north north-east over Windmill Hill to the Collingbourne Ducis Parish boundary on Sunnyhill Down. Approximate length 2.06km. Approximate width ranging from 4.5 to 9 metres.*”
- 15.11 The current records show NTID11 was recorded as a footpath on the Pewsey Rural District Council Definitive map and statement dated 1953 (see 7.2 and 7.3 of this report) . The statement clearly records the route as a footpath with a length of 2.414 km but it does not record a width for the footpath. The legal record for this footpath has not been amended since its recording in 1953 on the map and statement.
- 15.12 The evidence discussed in section 11 of this report is broken down into categories A-F , with category A evidence of the most value down to F. The evidence relating to the current route of NTID11 is within categories B, C and E. The category A evidence derived from the railway plans is concerned directly with the section of the application route currently unrecorded. There is an implication that the recorded public road going south from the proposed railway must continue south but the scope of the railway plans does not extend as far south as the current route of NTID11 and its termination could have been the route of bridleway CDUC21, the category A evidence does not assist in determining the status of the current route of NTID11.
- 15.13 In terms of provenance the main body of evidence for the status of NTID11 lies within the North Tidworth Tithe survey and map of 1844. This map shows the route of NTID11 as un tithable land, which can indicate it was considered a public road. It is written on the map “ to Collingbourne” where it crosses into Collingbourne Ducis again indicating it was a route leading to a destination , in the manner of a public road. The purpose of the tithe map was not to indicate the status of a highway but it does demonstrate the route was in physical existence at that time. The North Tidworth tithe map is not considered a “1st class” tithe map, and the North Tidworth map is described as having “*an amateurish appearance*” in the book “*The Tithe Maps of England and Wales*” by Roger J.P. Kain and Richard Oliver. As discussed at 10.16 other routes depicted on the tithe map in a similar manner are no longer considered public roads. The tithe map of Ludgershall and Collingbourne Ducis do not depict the routes continuation north in any manner, these surveys were carried out within 2 years of

each other, with the Collingbourne map surveyed in the same year as the Tidworth map, yet the surveyor of Collingbourne records no continuation of the route in Tidworth , or at least no indication of a public road is recorded.

- 15.14 The tithe award and map of North Tidworth suggest the route may have had highway rights in 1844 but it was not the purpose of the tithe map to record public rights and the suggestive evidence of highway rights within the tithe evidence should be taken into consideration with other available evidence.
- 15.15 The North Tidworth Parish Council minutes shown at 11.13 of this report indicate that the Parish Council in the 1970s referred to the route of NTID11 as an Old Roman Road / old coach road, at least behind the houses in Ludgershall Road. No record of public maintenance of the route in the manner of anything other than a footpath is recorded ; however it is clear some members of Parish Council referred to the route in an historic nature and that of a coach road. No evidence is supplied as to why the members of the parish council held this belief other than the words written in the minutes and it is noted that North Tidworth Parish Council agreed the route should be recorded as a footpath in the 1956.. The records found within the parish council minutes are evidence of some local reputation of an ancient origin of the route behind the council houses in Ludgershall road but is not conclusive evidence as to the status of the highway.
- 15.16 There is a large body of evidence within category E with many commercial maps provided by the applicant. These maps depict the approximate route of NTID11 and labelling it a number of statuses. The below is a list of all commercial maps the applicant relies on for this application, with the date of the map and the status the route is shown as.

<u>Ogilby's Britannia, Plate 83, 1675: "Principal Road" Part of "The Road from Oxford to Salisbury"</u>	
<u>Andrews & Dury's 2ⁿ Map of Wiltshire 1773:</u>	Minor road
<u>Cary's Map of Wiltshire 1789¹:</u>	Minor road
<u>Cary's Map of Wiltshire 1801 (3.2):</u>	"Cross Road"
<u>Smith's Map of Wiltshire 1801 (2.7):</u>	"Cross Road"
<u>Ordnance Survey 2ⁿ Drawing No.77 1808:</u>	Minor road
<u>Andrews & Dury's 2ⁿ Map of Wiltshire, 2nd Edition, Revised & Corrected, 1810:</u>	"Cross Road"
<u>Dix's Map of Wiltshire 1816¹:</u>	"Bye Road"
<u>Ordnance Survey 1ⁿ Old Series 1817:</u>	Minor road
<u>Greenwood's 1ⁿ Map of Wiltshire 1820:</u>	"Cross Road"
<u>Smith's Map of Wiltshire corrected to 1821¹:</u>	"Cross Road"
<u>Cary's ½ⁿ Map, Sheet 18, 1823 (3.2A):</u>	"Parochial Road"
<u>Colt Hoare, Modern Wiltshire, Map of Everley, Ambresbury & Underditch 1826:</u>	Minor road
<u>Teesdale's Map of Wiltshire 1829 (1.18):</u>	"Bye Road"
<u>Greenwood's Map of Wiltshire corrected to 1829 (3.3):</u>	"Cross Road"
<u>Darton's Map of Wiltshire 1832 (1.17):</u>	"Cross Road"
<u>Cary's ½ⁿ Map, Sheet 18, 1832 (3.4):</u>	"Parochial Road"
<u>Teesdale's Map of Wiltshire 1840¹:</u>	"Bye Road"
<u>Collins' Map of Wiltshire 1852 (1.25):</u>	"Bye Road"
<u>Crutchley's Map of Wiltshire 1855 (2.9):</u>	Minor road
<u>Weller's Map of Wiltshire 1862 (1.29):</u>	"Road"
<u>Ordnance Survey 6ⁿ-1st Edition, Sheet 48, 1883-88:</u>	"Minor Road"
<u>Philips' Cyclists' Map of Wiltshire c.1890 (2.14):</u>	"Cross Road"
<u>Bacon's Map of Wiltshire 1895¹:</u>	"Cross-road"
<u>Brown's Guide to Salisbury 1895¹:</u>	Minor road

<u>Ordnance Survey 1st New Series, Sheet 283, 1896 (Map Folder):</u>	"Unmetalled Road"
<u>Bartholomew's ¼th Road Map 1897¹:</u>	"Other Road" ²
<u>Smith's Reduced Ordnance Survey Map for Tourists 1897¹:</u>	"Other Road" ²
<u>Call & Inglis' ½th Map for Cyclists Tourists etc., 1898¹:</u>	Minor road
<u>Ordnance Survey 1st Map of W.D. Land on Salisbury Plain 1898¹:</u>	"Unmetalled Road"
<u>Ordnance Survey 2nd Map of W.D. Land on Salisbury Plain 1898 (Map Folder):</u>	"Unmetalled Road"
<u>Bartholomew's ¼th Royal Atlas, Plate 40, 1899¹:</u>	"Other Road" ²
<u>Ordnance Survey 25th-2nd Edition, Sheet 48/7, 1900 (Revised 1899):</u> Shown as an unfenced road or track, separately numbered and measured in North Tidworth. In Collingbourne Ducis it joins (but does not cross) the main road (A342) 7½ chains east of Byway 19. Width approximately 15 feet in Collingbourne Ducis and ranging from 15 to 25 feet in North Tidworth. Not marked <i>F.P.</i> or <i>B.R.</i>	
<u>Ordnance Survey 25th-2nd Edition, Sheet 48/11, 1900 (Revised 1899):</u> Shown as a partly fenced road, separately numbered and measured. Width ranges from 10 to 25 feet. Not marked <i>F.P.</i> or <i>B.R.</i>	
<u>Ordnance Survey 25th-2nd Edition, Sheet 48/15, 1900 (Revised 1899):</u> Shown as a mainly fenced road, separately numbered and measured. Width ranges from 10 to 15 feet. Not marked <i>F.P.</i> or <i>B.R.</i>	
<u>Gall & Inglis' Map for Cyclists Tourists etc., 1902¹:</u>	Minor road
<u>Bartholomew's ½th Survey Atlas of England & Wales, Plate 64, 1903¹:</u>	"Other Driving Road"
<u>Bacon's New ½th Map for Cyclists and Motorists c.1905¹:</u>	Minor road
<u>Ordnance Survey ½th Sheet 33, 1908¹:</u>	"Other Road" ²
<u>Ordnance Survey 1st 3rd Edition, Sheet 123, 1908¹:</u>	"Unmetalled Road"
<u>Ordnance Survey 1st 3rd Edition, Salisbury Plain, 1909¹:</u>	"Unmetalled Road"
<u>Bartholomew's ½th for Tourists & Cyclists, Sheet 29, all editions 1910-1920¹:</u>	Uncoloured road
<u>Bacon's Map of Wiltshire for Cyclists and Tourists 1910¹:</u>	Minor road
<u>Ordnance Survey ½th Sheet 33, 1910¹:</u>	"Other Road" ²
<u>Bartholomew's ¼th Road Map 1919¹:</u>	"Other Road" ²
<u>Ordnance Survey 1st Popular Edition, Sheet 122, 1919¹:</u>	"Minor Road"
<u>Ordnance Survey 1st Popular Edition, Salisbury Plain, 1920¹:</u>	"Minor Road"
<u>Ordnance Survey 25th 3rd Edition, Sheet 48/7, 1924 (Revised 1923):</u>	Details as per 2 nd Edition
<u>Bacon's Map of Wiltshire for Tourists, Cyclists, etc., c.1925¹:</u>	Minor road

<u>Ordnance Survey ½" Road Map, Sheet 33, 1926¹:</u>	"Other Road" ²
<u>Johnston's Touring Map c.1929¹:</u>	Minor road
<u>Geographia ½" Road Map of Wiltshire c.1930¹:</u>	"Other Road" ²
<u>Ordnance Survey 1" 5th Edition, Sheet 131, 1938¹:</u>	"Unmetalled Road"
<u>Bartholomew's Revised ½" Map, Sheet 8, 1940¹:</u>	"Other Road"

15.18 This body of evidence clearly demonstrates that commercial map makers believed the route to be a road of some status from 1675 through to 1940. It is important to remember this evidence is category E evidence, i.e. it is evidence of reputation of a highway, but these commercial maps were not produced as a result of any legislation setting out highway rights and it is recognised that OS maps are not evidence of public rights. However we must also take into account the consistency of the evidence over a long period and the number of maps showing the route in the same or a similar manner.

15.19 In the case of *Fortune & Ors v Wiltshire Council and Anor* [2012] EWCA Civ 334, [2011] EWCA Civ 883, part of the case the judge considered a mass of documentary evidence, and it is therefore an interesting insight into how judges view these documents. The documents provided a broad picture that was largely consistent over time, leading to Lewison LJ stating at para 22:

"In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in R v Exall (1866) 4 F&F 922: 'It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope, composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.'"

15.20 The historic documentary evidence adduced to demonstrate the route of NTID11 should be upgraded is from the tithe map and award, the North Tidworth parish council minutes and a selection of commercial maps.

The tithe map does not demonstrate sufficiently, by itself, the status of the route shown, it is suggestive of a public road but the purpose of the tithe was not to demonstrate public rights and the map is considered “amateurish” by an expert in the field. The other documentary evidence is of much lower provenance, the parish council minutes show limited local repute of an ancient origin to the route behind the council house but no more, and although there are many commercial maps showing the route described as some status of road this is of low evidential value. It is officers opinion that this combination of evidence is not sufficient to show, on the balance of probabilities, that the route should be recorded as a BOAT or any other status other than its current recorded status of a public footpath.

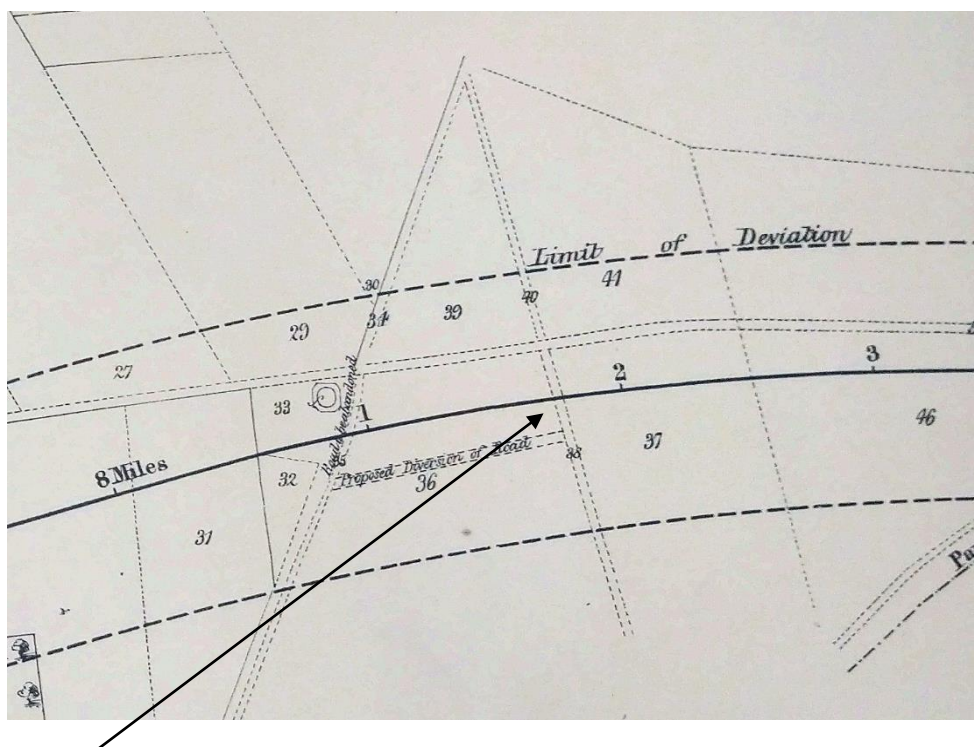
15.21 The route of NTID11 currently has no recorded width and although it has not been possible to determine any other status than that of a footpath it is possible , on the balance of probabilities, to record the width of this path. The route is consistently shown as track and the route depicted on the OS map of 1900, which was available to measure from at the WSHC and is considered an accurate survey of the physical feature on the ground at a scale which is reasonable to measure from will be used to record the width of the footpath. The OS map shows the route ranging from a width of 3- 8 metres , the map itself will be used as the record of the width with ranges quoted in the statement.

15.22 Unrecorded section of Application

15.23 The section of the application route which is currently unrecorded north of the current route of footpath NTID11 is subject to different historic documentary evidence and also different legal tests. To make an order to record a previously unregistered route on the definitive map and statement only requires a reasonable allegation but will be subject to the test of the balance of probabilities when considering whether such an order should be confirmed. At this stage we are only considering whether there is a reasonable allegation that rights subsist north of NTID11 across the parish boundary and to a junction with byway CDUC19. This section of the application route has evidence within category A of public highway status in the form of the Upavon and

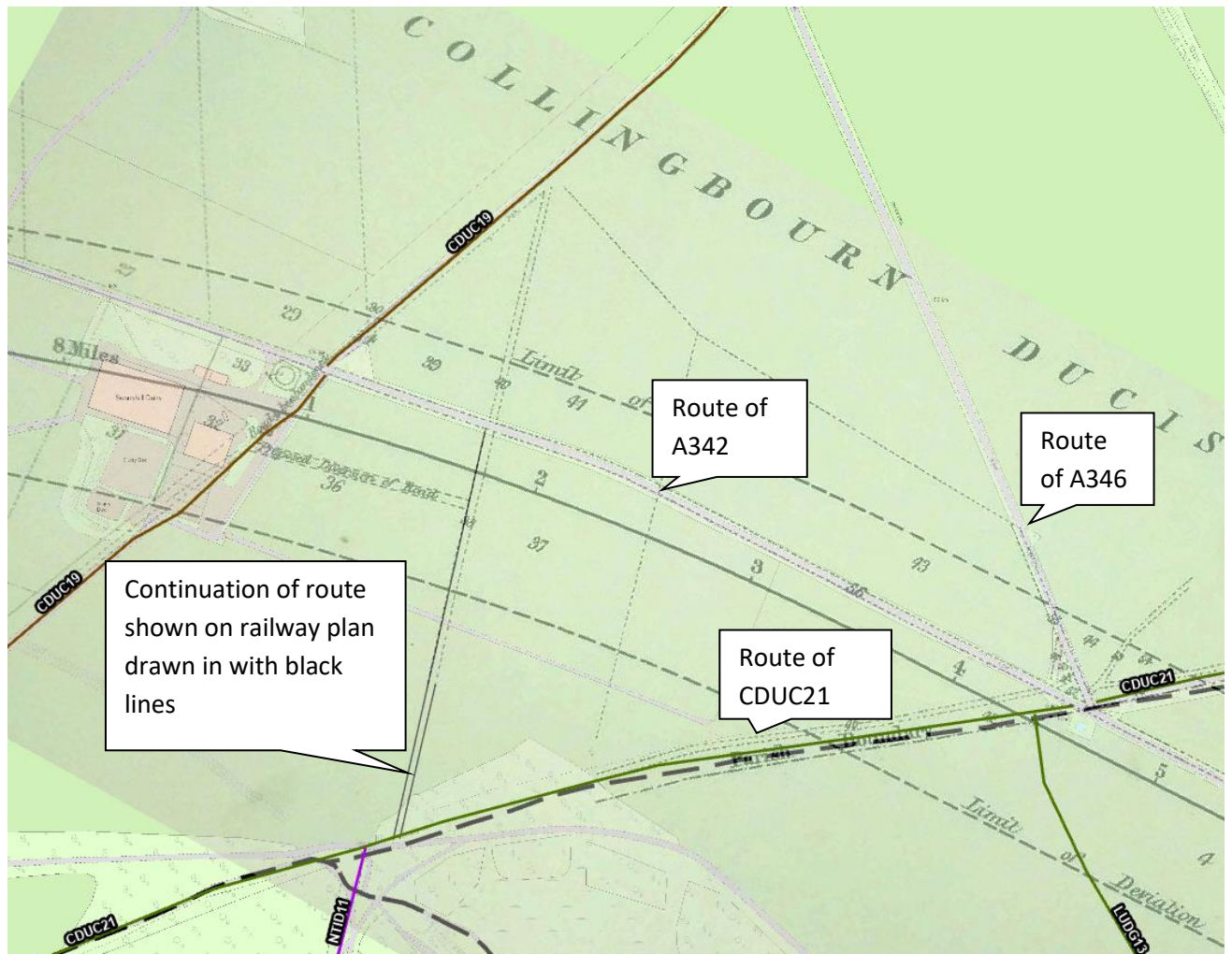
Andover railway plans of 1866, documented at 9.6-9.11 of this report . The railway plans were required to demonstrate how highways affected by the proposed railway would be accommodated if the railway was built. The plans and documents show the application route, north and south of the A.342 , was considered a public road. We are able to see in the sections plan that the application route north of the A.342 meets what is now BOAT CDUC19. South of the A342 we are unable to see the exact route of the public road, where it is assumed it meets what is now bridleway CDUC21, due to the limitations of the plan. To show where the continuation of this route is likely to have met CDUC21 , the sections plan has been overlaid with a modern OS plan.

15.24 Extract of sections plan from railway plans



Route of recorded public road in railway plans, north and south of A.342.

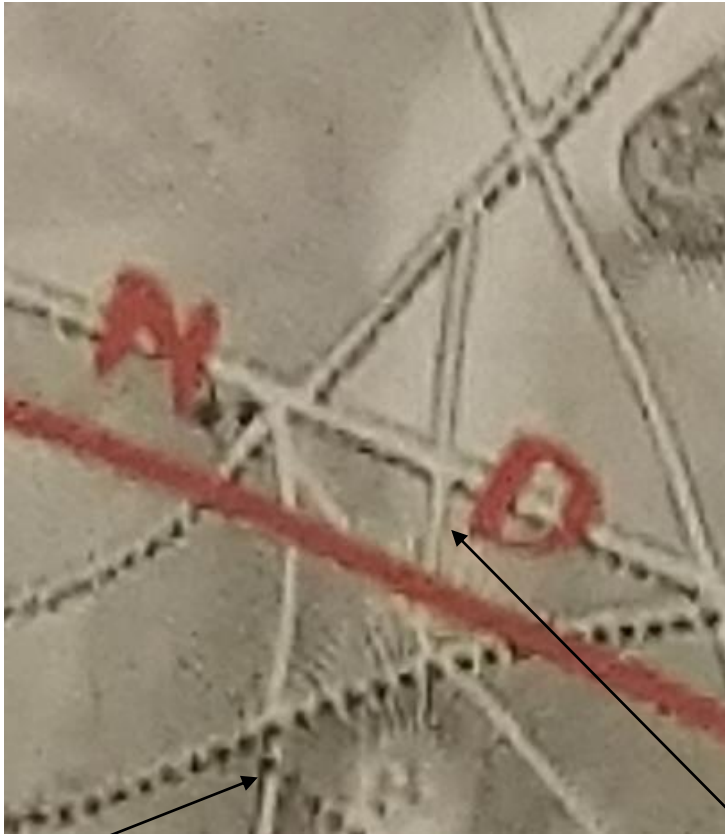
15.25



15.26 The above map aligns the railway sections plan, which is the main document which demonstrates the route was considered a public road, with a modern OS view of the area. It can be seen the route of the A342 , the A346 leading north west , the route of CDUC19 and the route of CDUC19 line up accurately and therefore we can use this plan to plot the continuation of the route considered a public road to where it meets CDUC21.

15.27 This route depicted by the railway plans does not match the railway overview plan, which appears to be an older OS 1 inch map, surveyed in the early 1800s. It is likely the area differed from this overview map to what was on the ground in the 1860s.

15.28 Overview map of railway



Route of footpath NTID11

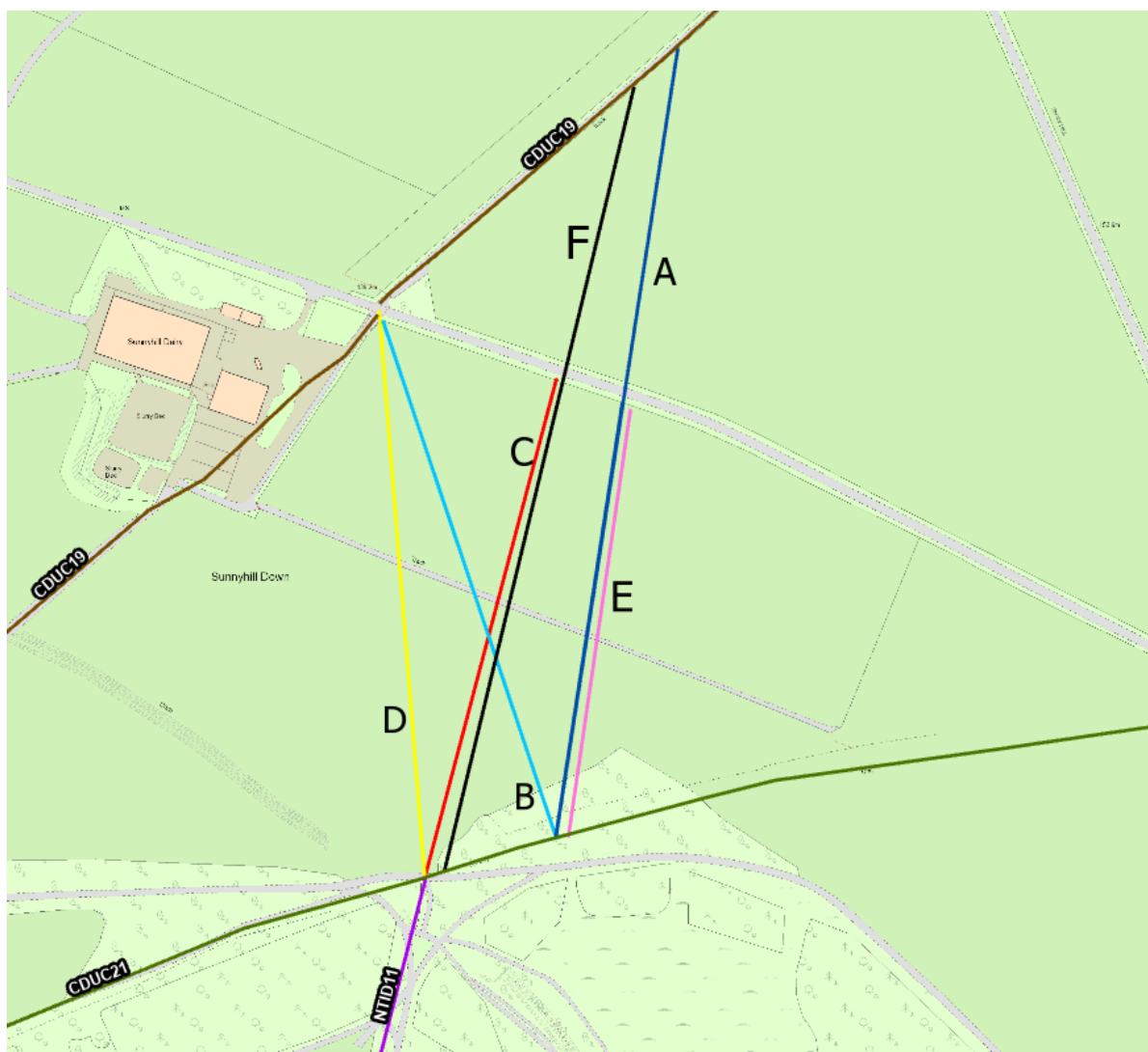
Route of 'public road' depicted in railway sections

15.29 The sections plan which is the detailed survey of the land will be relied upon for any route that may be recorded. Whilst it is reasonable to assume the public road on the plans reached the next highway which would have been the route of CDUC21 it is not possible to assume any public rights beyond its junction with CDUC21, the scope of the evidence does not allow this.

15.30 A number of historical maps have been investigated and it is clear that the layout of tracks, whether public or otherwise, north of the junction of NTID11 and CDUC21 has changed a number of times over the past 200 years. This is not uncommon on down land where routes were often not surfaced and grazed, therefore changing position to suit farming and agricultural needs. To reach a decision on whether any rights should

be recorded north of NTID11 it is necessary to evaluate where the physical tracks in this area have been at different points in time and what public rights those tracks may have had as per the evidence adduced.

15.31 Using the map below , a number of routes are depicted labelled A - F. Route A depicted by a dark blue line, B- light blue line, C- red line, D- yellow line, E – pink line and F by a black line. These are the approximate routes depicted on a selection of various maps that have been viewed. The table below shows the years these routes appear on the maps viewed, and also the category of evidence those maps fall within.



15.32

Route	Years route appears	Category of evidence
A	1773,1808,1866	Category E.(+ railway overview plan)
B	1773,1808,1810,1880	E
C	1900,1924	E
D	1808,1820,1829	E
E	1810	E
F	1866	A – railway sections plan

15.33 Maps used to produce the above plan and table are, Andrews and Dury's 1773, OS 2 inch 1808, Andrew and Drury's 1810, Greenwoods 1820, Carys 1829, 1866 railway overview and sections plans, OS 1:2500 1880, OS 1:2500 1900 and OS 1:2500 1924. These maps cover a period of over 150 years and from a number of different surveyors.

15.34 This evidence demonstrates that physical routes north of the current route of NTID11 have deviated and changed over time. This is not unusual on down land where routes are often unsurfaced and can be grazed. The key point of evidence for this section of the application is the 1866 railway sections plan which is considered category A evidence as it demonstrates a route was considered a public road. The purpose of these plans was to depict public highways which were to be affected by the railway. There was no incentive for the railway companies to depict a public highway which was not one as they would be required to identify how they proposed to accommodate the highway affected by the railway, likely only to increase their costs. This railway was not constructed and therefore the full process was not carried out as such this evidence is not as strong as if the process of building the railway was seen through to completion.

15.35 Route F depicted on the map at 15.31 is the route shown on the railway sections plans, the plans do not show the route meeting CDUC21 as the scope of the plan does not reach this far , however it is a reasonable assumption the identified public

road continued in its southerly direction to reach what is now CDUC21. This reasonable assumption is supported by other maps showing this route as a physical feature on the ground. The route of CDUC21 has not been investigated and is subject to a separate application, 2005/61, which applies to upgrade the whole of CDUC21 that is currently recorded as bridleway to a BOAT.

15.36 Taking into account the adduced evidence it is deemed that, on the basis of a reasonable allegation, that the route depicted as route F on the table at 15.31 should be recorded as a BOAT, as no incontrovertible evidence has been found which defeats the evidence adduced that shows this route as a public road or that those rights have been extinguished by an act of legislation, therefore it is a reasonable allegation that these rights still exist. It is clear any physical route north of what is now CDUC21 has changed its course and position over the last few centuries, the other routes depicted in the map and table, those being routes A,B,C,D and E do not have sufficient evidence to record them on the definitive map and statement.

15.37 As a result of the above it is deemed that on the basis of 'test A', based on a reasonable allegation that public rights subsist over the route depicted as route F at 15.31 carried a public vehicular right prior to the enactment of s.67 NERCA 2006; that is the 2nd May 2006.

15.38 It is therefore appropriate to consider whether the right for the public to drive a mechanically propelled vehicle (MPV) over the route was extinguished by s.67 of the NERCA 2006 or whether it was preserved.

16.0 Natural Environment and Rural Communities Act 2006 (NERCA 2006)

16.1 The NERC Act 2006 came into force on 2nd May 2006 and section 67(1) of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:

S.67 (1) (a) was not shown in a definitive map and statement, or

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

Subject to subsections (2) to (8)

S.67 (2) to (8) are parts of the Act that detail exemptions to the extinguishment of vehicular rights.

s.67 (2) states that subsection (1) does not apply to an existing public right of way if

–

- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles*
- (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) list of highways maintainable at public expense),*
- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles*
- (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
- (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.*

S.67 (3) states that subsection (1) does not apply to an existing public right of way if

–

- (a) the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*
- (b) before commencement the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*
- (c) before commencement a person with an interest in land has made such an application immediately before commencement, use of the way for mechanically propelled vehicles –*

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

S.67 (4) states that the relevant date in England means January 2005

S.67 (5) deals with private rights

S.67 (6) states that for the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act

16.2 It is appropriate to consider each exemption in turn:

S.67 (2)(a) *'it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles'.*

No evidence of use by MPVs, other than apparent use over some of the route to access fields has been adduced for the period 2001 to 2006 and officers are not aware of any other evidence of MPV use.

16.3 **S.67 (2)(b)** *'immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense, also known as the List of Streets).*

The route does not appear in the councils list of streets. Public vehicular rights are therefore not preserved by this section.

16.4 **S.67 (2)(c)** *'it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles'.*

It is known that this road was in physical existence by 1808 as depicted by the OS 2 inch drawing of the area, this is a time before mechanically propelled vehicles were widely in use on public roads.

Therefore, the requirements of Section 67 (2)(c) NERC Act 2006 are not met.

16.5 **S.67 (2)(d)** *'it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles'.*

Public MPV rights have not been preserved by this section.

16.6 **S.67 (2)(e)** *'it was created by virtue of use by such vehicles during a period ending before 1930'.*

The mechanically propelled vehicle did not exist as a distinct class of highway user before the 2nd May 2006; hence it is very difficult to consider this section. It is likely that as mechanically propelled vehicles became more common (in the mid 1800s) people started using them on roads that would support their use. No evidence has been adduced that demonstrates the claimed route appear to have ever been surfaced in a manner that would support MPV use of any significant amount.

Since the distinct category didn't exist and since prior to 2006 the right to drive a horse drawn carriage was the same as the right to drive a motorised one it is not considered that the right was created by any actual MPV use, any such use was merely use continuing.

Public MPV rights are not preserved by this section

16.7 **S.67 (3)(a)** (3) *Subsection (1) does not apply to an existing public right of way over a way if –*

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

This application for a byway open to all traffic is dated 31st March 2004, i.e. before the relevant date of January 2005. As such it is possible that byway open to all traffic status may be applied to this application if the evidence demonstrates that.

16.8 It is concluded that the public's right to drive a motor vehicle over the route have not been extinguished by NERC due to S.67(3)(a). As an application was made under section 53(5) of the wildlife and countryside act 1981 for an order making modifications to the definitive map and statement so as to show a BOAT before the relevant date of January 2005. However relevant case law must also be considered.

17.0 Case Law- Winchester

R (ooo) the Warden and Fellows of Winchester College and Humphrey Feeds Limited and SoSEFRA (Interested party) [2008] EWCA Civ 431 (Winchester)

The following is a summary of what is known as the Winchester case which is relevant to this application.

17.1 Hampshire County Council made a decision to upgrade a bridleway and a restricted byway to byways open to all traffic. The landowners' objected to that decision and took it to High Court. The judge at High Court refused the landowners' appeal against the decision. The case was then appealed to the Court of Appeal (CA). The points to be decided upon at the CA were in principle, whether the applications made to record MPV rights were valid when considering s.67(6) of NERC which refers to the form applications should be made in, as set out in schedule 14(1) of the Wildlife and Countryside Act 1981. Section 67(6) of NERC requires applications to be "made in accordance with paragraph 1 of schedule 14 of that Act" if MPV rights are to be saved from extinguishment by the Act. Schedule 14(1) states:

"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."

17.2 The CA concluded that the requirements of schedule 14(1) are strict and must be complied with when in consideration of s.67 of NERC. The applications in this case had not supplied copies of the documents which they relied upon to record byways open to all traffic and did not meet 14(1)(b) as valid applications and therefore MPV rights were not saved from extinguishment by s.67(1) of NERC. This even applies if the authority may have originals of the documents which the case may rely upon in their archives or other accessible archives. The applicant must supply copies of the evidence they rely upon. In effect unless an application for a byway open to all traffic is accompanied by copies of all evidence it relies upon it will fail to record MPV rights (applications also subject to other sections of NERC).

17.3 The application subject to this report did not supply all the documents it relies upon to supply evidence of a byway open to all traffic, a summary was supplied but not copies of the documents themselves. As such this application fails the 'Winchester' test and

therefore BOAT rights have not been protected from extinguishment. If evidence for BOAT rights are found then the highest right that can be recorded is that of restricted byway, that is a right for pedestrians, cyclists, equestrians and horse and carriage, it does not allow for any MPV rights.

18.0 Conclusion

- 18.1 The evidence discussed in this report has demonstrated that the current route of footpath NTID11 does not have sufficient evidence on the balance of probabilities to upgrade the route. The evidence has demonstrated NTID11, which does not currently have a recorded width is capable of having its historic width recorded, the 1900 1:2500 OS map will be used to depict the width and will be between 3 and 8 metres.
- 18.2 The evidence has shown that there is a reasonable allegation that rights subsist over a route north of NTID11, leading from CDUC21 north across the A342 to meet CDUC19, and that these rights would be that of a byway open to all traffic. However the application is subject to the Winchester case as discussed at 17 of this report, and as a result MPV rights are not saved from extinguishment, therefore the route can only be recorded as a restricted byway (a right for pedestrians, cyclists, equestrians and horse and carriage, but not MPV). The width for this restricted byway is taken from the railway sections plans and will be recorded as between 5 and 7.5 metres, narrower at the northern end and widening south of the A.342.
- 18.3 It is possible that the route to be recorded as a restricted byway could be subject to a proposal to divert this route as its current route is likely to not be viable for land management and is a safety concern where it crosses the A.342. This is not a consideration for the recording of rights but is a proposal which may be discussed with the affected landowners. It is noted currently the proposed order to record the restricted byway has only been considered to pass the reasonably alleged test and therefore it is possible to make an order but for the order to be confirmed the balance of probabilities test must be met, this has not been considered as part of this decision. A further decision would be made as to the orders confirmation depending on order consultation responses and their content.

19.0 Environmental Impact of the Recommendation

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

20.0 Equality Impact

20.1 The Equality Act duty is not engaged with WCA81 s.53 duties but may have relevance for any ongoing management of the routes

20.2 The recording of a width for NTID11 will ensure the right to pass and repass over the entire width of the recorded route will be protected which will ensure that obstructions and encroachments may be removed by Order of the Council if appropriate. This could lead to greater accessibility as footpath North Tidworth 11 has no recorded width currently.

20.3 If a route is recorded north of NTID11/CDUC21 as restricted byway it may be used by pedestrians, cyclists, equestrians and horse and cart but not to motorised vehicles as appears to be the main concern in the responses to the public consultation. It may be possible to divert this section of restricted byway , if it is recorded, to a route more amenable for land management and safety purposes..

20.4 The recording of a width and a new restricted byway is in line with the Council's duty under The Equality Act 2010. This is however not a material consideration contained within the Wildlife and Countryside Act 1981.

21.0 Legal Implications

21.1 The making of a definitive map modification order to correctly record the routes is in line with the Council's duty contained within s.53(2) of the 1981 Act to keep the definitive map under continual review.

21.2 If the Council makes an Order which receives objections it may be liable to pay subsequent costs if it acts in an unreasonable manner at public inquiry. Costs awards of this nature are rare and may be in the region of c.£10,000.

21.3 Any final decision made on an order that has been objected to is made by the Secretary of State (SoS) and not Wiltshire Council. Any challenge to that decision is against the SoS and not the Council.

22.0 Risk Assessment

- 22.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety. As discussed it may be possible to make future orders to extinguish or divert routes.
- 22.3 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 22.4 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.

23.0 Financial Implications

- 23.1 The determination of Definitive Map Modification Orders and the continual review of the definitive map are statutory processes for which financial provision has been made.
- 23.2 If orders are made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order , if appropriate. If the orders attract objections that are not withdrawn they must be forwarded to the Secretary of State for determination. The orders may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £5000).
- 23.3 If a width is recorded for footpath NTID11 which is greater than the available current width, the management of that recorded width is a separate issue that is not able to be considered as part of the decision. It is possible that any potential recorded historic width may be subject to further orders to reduce that width. If an order is made to record a currently unrecorded restricted byway in the definitive map and statement the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority

is placed under a duty to ensure that the route is safe for use by the general public traffic of the area and has a duty to maintain the surface of the highway to that extent. It is possible that further orders may be made to divert that section of newly recorded restricted byway to a more desirable location than its historic location. Any future possible orders have no bearing on the evidence and recommendation made in this report.

24.0 RECOMMENDATION

- 24.1 An order is made to add a recorded width for footpath NTID11 under section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 and an order is made to record a section of restricted byway within the parish of Collingbourne Ducis linking bridleway CDUC21 and byway open to all traffic CDUC19 under section 53(3)(c)(i) of the same act and to confirm such orders if no objections are made or any made are withdrawn.**

Craig Harlow

Definitive Map Officer

3rd November 2021