

AGENDA

Meeting: Southern Area Planning Committee

Place: Wylye Room, Five Rivers Health & Wellbeing Centre, Hulse Road,
Salisbury, Wiltshire, SP1 3NR

Date: Thursday 2 February 2023

Time: 3.00 pm

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

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

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

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

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

Substitutes:

Cllr Ernie Clark
Cllr Kevin Daley
Cllr Bob Jones MBE

Cllr Ricky Rogers
Cllr Graham Wright
Cllr Robert Yuill

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Public Participation

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

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

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

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

AGENDA

Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 30*)

To approve and sign as a correct record the minutes of the meeting held on 8 December 2022.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

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

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

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular,

questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Thursday 26 January 2023** in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on **Monday 30 January 2023**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6 **Commons Act 2006: Schedule 2(6) – Application to De-register Buildings Wrongly Registered as Common Land – The Pound, Whiteparish - Application no.2021/01ACR (Pages 31 - 234)**

To consider the evidence submitted regarding an application made under Schedule 2(6) of the Commons Act 2006 to de-register buildings which it is claimed are wrongly registered as Common Land, the Pound, Whiteparish, (application no.2021/01ACR).

7 **Planning Appeals and Updates**

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

8 **Planning Applications**

To consider and determine planning applications in the attached schedule.

8a **PL/2022/07116 Land to the south of 1 Witt Road, Winterslow (Pages 235 - 250)**

Erection of 3 detached dwellings, garages, parking and access following demolition of 3 existing buildings (Outline application relating to access and layout).

8b **PL/2022/07632 The Gables, Dean Lane, Whiteparish, SP5 2RJ (Pages 251 - 270)**

Partial demolition, rebuild, extensions and internal alterations to the existing house and construction of a detached garage (part retrospective).

8c **PL/2022/08216 High Croft, Common Road, Whiteparish (Pages 271 - 290)**

Demolition of existing 5 bed dwelling and erection of 4 bed dwelling with garage and parking.

Urgent Items

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

Part II

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

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Southern Area Planning Committee

MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 8 DECEMBER 2022 AT WYLYE MEETING ROOM, FIVE RIVERS HEALTH & WELLBEING CENTRE, HULSE ROAD, SALISBURY, SP1 3NR.

Present:

Cllr Sven Hocking (Vice-Chairman, in the Chair), Cllr Trevor Carbin, Cllr Nick Errington, Cllr George Jeans, Cllr Nabil Najjar, Cllr Bridget Wayman and Cllr Robert Yuill (Substitute)

117 **Apologies**

Apologies were received from:

- Cllr Andrew Oliver
- Cllr Charles McGrath
- Cllr Rich Rogers, who was substituted by Cllr Robert Yuill
- Cllr Ian McLennan
- Cllr Brian Dalton

118 **Minutes of the Previous Meeting**

The minutes of the meeting held on 10 November 2022 were presented.

Cllr Errington noted that in relation to Item 7a, application PL/2021/09778 - Station Works, Tisbury, the paragraph *'It was confirmed that Network rail had no plans to introduce a bridge over the railway'* was correctly recorded, however he believed it not to be a true statement, as the Network Rail Line Study document of 2020 referred to a second platform and a diagram outlining a bridge at Tisbury Station, suggesting that a bridge had formed part of considerations for future development.

It was;

Resolved:

To approve as a correct record and sign the minutes.

119 **Declarations of Interest**

The following Declarations of Interest were made:

In relation to item 7a, Application PL/2022/00855, Cllr Nick Errington noted that he was a member of the Tisbury Community Land Trust (CLT) Steering Group. As the CLT would hold the freehold of the affordable houses on the site if

developed, he would remove himself from the room for the item and would not speak as Division Member or take part in discussion or the vote on the application.

In relation to item 7a, Application PL/2022/00855, Cllr Bridget Wayman noted that she was a non-executive Director of Stone Circle and as such had a pecuniary interest, therefore would remove herself from the room for the item and would not take part in discussion or the vote on the application.

In relation to item 7c – Application PL/2022/06794, Cllr Nabil Najjar noted that the Agent for the application had previously worked for him on a personal application, as this was a non-pecuniary interest, he was able to remain on the Committee for the discussion and vote.

In relation to 7a, Application PL/2022/00855, Cllr Nabil Najjar, noted for openness that he was Portfolio holder for Housing. As this did not constitute an interest, he would remain on the Committee for the discussion and vote.

120 **Chairman's Announcements**

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

121 **Public Participation**

The committee noted the rules on public participation.

122 **Planning Appeals and Updates**

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

Resolved

That the appeals update be noted.

123 **Planning Applications**

124 **APPLICATION NUMBER: PL/2022/00855 - Tisbury Sports Centre, Weaveland Road, Tisbury, Salisbury, SP3 6HJ**

Public Participation

Gerry Murray of Nadder Community Land Trust (NCLT) spoke in support of the application

Bev Cornish (Clerk) spoke as representative of Tisbury Parish Council

The Senior Planning Officer, Becky Jones, summarised the late correspondence which had been circulated at the meeting, relating to a response from the open space team for a suggested donation for off site play and adult provision and an update to the recommendation adding a further

condition relating to the S106 and all those with an interest in the land, in Section 9 of the report.

The Officer went on to present the report on the application, which was for the demolition of a former sports centre (class E(d)) involving redevelopment to form 13 no. dwellings (class C3) & associated works. The application was recommended for Approval with conditions.

The issues of the case were noted as:

1. Principle of development and absence of 5 year housing land supply
2. Scale, design, impact on the character of the AONB and neighbouring amenity
3. Trees and Landscaping
4. Other S106 matters and contributions - waste, public open space, education and affordable housing
5. Highway safety
6. Biodiversity – Ecology, Chilmark bat SAC and River Avon catchment
7. Flood Risk and Drainage
8. The Planning Balance

Members had no technical questions of the Officer.

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

The NCLT noted its support and the close involvement they had had with the project which would secure affordable housing which would be available to people with a local connection.

The Freehold of the affordable homes would remain with the NCLT. The site was allocated in the Neighbourhood plan as a site for community development.

The Tisbury Parish Council representative spoke in support of the application, noting the importance of the development within the community. Issues identified in the report were noted, as was the agreement of the Stone Circle Development Company to honour its commitments as set out in their letter to Tisbury Parish Council dated 8th March 2022, which related to the treatment of the affordable housing proportion on the site.

As the Division Member Cllr Nick Errington had declared an Interest and had left the room, he did not speak on the application.

The Chairman asked for a Committee Member to move a motion for debate.

Cllr Trevor Carbin moved the motion of Approval in line with the revised Officer recommendation, this was seconded by Cllr Hocking.

Cllr Carin noted that the site was a brownfield site on edge of Tisbury, which if approved would be able to provide an element of affordable homes to meet the need of the local community.

There had been comprehensive engagement between all parties, to deliver what was needed by the community.

The Committee discussed the application, the main points included clarification on what 'local connection' meant in terms of allocation of the affordable homes.

After discussion, the Committee voted on the motion of Approval, in line with Officer recommendation and the amended condition as set out in the late correspondence.

It was;

Resolved

That application PL/2022/00855 be Approved, subject to conditions and the applicant entering into a Section 106 Agreement to secure the following financial contributions:

- **£56,274 for primary school places**
- **Secondary spaces contribution – to be confirmed**
- **£10,000 towards Public Right of Way improvements on the adjacent right of way network**
- **£1,183 for provision of containers for waste and recycling**
- **£18,144 off-site play provision**
- **£7,560 off-site adult provision**

and to secure a scheme of 6 Affordable Housing Units with the agreed tenure mix, at nil subsidy, meeting NDSS design and floorspace standards, subject to the nomination rights remaining with Wiltshire Council and the homes being transferred to a Registered Provider, approved by the Council, or to the Council.

And subject to the following conditions:

1. No commencement of the development shall occur until all those with an interest in the land comprising the development hereby permitted have entered into a planning obligation with the local planning authority under Section 106 of the Town and Country Planning Act 1990 in the form attached and which secures the heads of terms approved by the Southern Area Committee on 8 December 2022.

Reason: To ensure that the appropriate contributions that are required for the development are secured by an appropriate legal agreement between the Council and the landowner.

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

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

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

Location (red line) Plan ref 2827 001 dated Nov 2021
Proposed Site Plan ref 2827 120 Rev C dated Nov 2021
(Proposed Site Plan in context ref 2827 121 Rev C dated Nov 2021)
Proposed Floor Plans and Elevations Plots 1-3 ref 2827 125 Rev B dated Nov 2021
Proposed Floor Plans and Elevations Plot 4 ref 2827 126 Rev A dated Nov 2021
Proposed Floor Plans and Elevations Plot 5 ref 2827 127 Rev B dated Nov 2021
Proposed Floor Plans and Elevations Plots 6-7 ref 2827 128 Rev A dated Nov 2021
Proposed Floor Plans and Elevations Plots 8-9 ref 2827 129 Rev A dated Nov 2021
Proposed Floor Plans and Elevations Plots 10-11 ref 2827 130 Rev B dated Nov 2021
Proposed Floor Plans and Elevations Plots 12-13 ref 2827 131 Rev B dated Nov 2021
Proposed Car Barn and Cycle Store ref 2827 132 Rev A dated Nov 2021
Proposed Street Scenes ref 2827 140 Rev B dated Nov 2021
Boundary Treatments ref 2827 150 dated June 2022
Ecological Assessment, Ethos Environmental Planning ref ETH21-105 V 3 dated July 2022
Drainage Technical Note ref Acl665/21020/TN dated 7th July 2022
Planning Design and Access Statement ref 2827/DAS dated Jan 2022
Arboriculture Impact Assessment, Constraints Plan and Method Statement, by Sharples Tree Services dated Jan 2022
Transport Statement v2 by Entran Ltd dated Jan 2022
Preliminary Drainage Strategy ref 21-020-003 dated Sept 2021
Flood Risk Assessment and Drainage Strategy ref Acl589/21020/FRA/DS dated Sept 2021

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

4. No development shall commence on site above slab level until the exact details and samples of the materials to be used for the external walls and roofs of the dwellings and car ports have been submitted to and approved in writing by the Local Planning

Authority. Development shall be carried out in accordance with the approved details.

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

5. Any new external street and artificial (domestic) security lighting shall achieve a level of 0.5 lux or less at the edges of the site's boundary features (hedges, tree lines and all other linear features at the site boundaries). External light fittings throughout the site shall be low level wherever possible, pointing downwards and avoiding any increase in the ambient light within, adjacent to and particularly above the site.

Any new external street light fixture within the site shall be installed in accordance with the appropriate Environmental Zone standards (E0 for the AONB) set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)" and shall be maintained thereafter.

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

6. No part of the development hereby permitted shall be first occupied until the access, turning area & parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall always be maintained for those purposes thereafter.

REASON: In the interests of highway safety.

7. The development hereby permitted shall not be first occupied, until the cycle parking facilities shown on the approved plans have been provided in full and made available for use. The cycle parking facilities shall be retained for use in accordance with the approved details at all times thereafter.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

8. The development hereby permitted shall not be first occupied until a scheme for the future maintenance of the roads and other communal areas has been submitted to, and approved in writing by, the Local Planning Authority.

REASON: To ensure that satisfactory arrangements for the future maintenance of those areas are in place.

9. Prior to the commencement of works, including demolition, ground works/excavation, site clearance, vegetation clearance and boundary treatment works, a Construction Environmental Management Plan (CEMP) shall be submitted to the local planning authority for approval in writing. The Plan shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:

- i. An introduction consisting of construction phase environmental management plan, definitions and abbreviations and project description and location;**
- ii. A description of management responsibilities;**
- iii. A description of the construction programme;**
- iv. Site working hours and a named person for residents to contact;**
- v. Detailed Site logistics arrangements;**
- vi. Details regarding parking, deliveries, and storage;**
- vii. Details regarding dust and noise mitigation and wheel washing for vehicles;**
- viii. Details of the hours of works and other measures to mitigate the impact of construction on the amenity of the area and safety of the highway network; and**
- ix. Communication procedures with the LPA and local community regarding key construction issues – newsletters, fliers etc.**
- x. Confirmation that there shall be no burning undertaken on site at any time.**
- xi. Details to demonstrate how water quantity and quality will be managed throughout the construction process.**

and also:

- a. Identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, e.g. exclusion fencing.**
- b. Working method statements for protected/priority species, such as nesting birds and reptiles.**
- c. Mitigation strategies already agreed with the local planning authority prior to determination, such as for great crested newts, dormice or bats; this should comprise the pre- construction/construction related elements of strategies only.**
- d. Work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.**
- e. Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).**
- f. Timeframe for provision of compliance report to the local planning authority; to be completed by the ecologist/ECoW and to include photographic evidence.**

The development shall be implemented in accordance with the agreed details in the CEMP.

Reason: Core policy 57, Ensuring high design and place shaping such that appropriate levels of amenity are achievable. To ensure adequate protection and mitigation for ecological receptors prior to and during construction, and that works are undertaken in line with current best practice and industry standards and are supervised by a suitably licensed and competent professional ecological consultant where applicable. To protect the water environment during construction.

10. The proposed scheme for Ultra Low Energy Vehicle infrastructure shown on the Proposed Site Plan and drawings hereby approved shall be implemented in full before the dwellings are occupied and maintained at all times thereafter.

Reason: Core Policy 55; Development proposals, which by virtue of their scale, nature or location are likely to exacerbate existing areas of poor air quality, will need to demonstrate that measures can be taken to effectively mitigate emission levels in order to protect public health, environmental quality and amenity.

11. No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses (including asbestos) has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

- Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site and any adjacent sites for at least the last 100 years and a description of the current condition of the sites with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site and the potential impact of any adjacent sites.**
- Step (ii) If the above report indicates that contamination may be present on, under or potentially affecting the proposed development site from adjacent land, or if evidence of contamination is found, a more detailed site investigation and risk assessment should be carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.**
- Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details must be submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local**

Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

Reason: Core policy 56, To reduce the risks associated with land contamination

12. The hours of construction for the development shall be limited to 0800 to 1800 hrs Monday to Friday, 0800 to 1300 hrs Saturday and no working on Sundays or Bank Holidays.

Reason: In the interests of neighbouring amenities.

13. The development hereby approved shall not commence until detailed drainage design drawings & calculations, demonstrating the finalised drainage design have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the agreed drainage details before the dwellings are occupied.

Reason: It is noted that the drainage strategy drawings submitted are "preliminary for planning" and finalised details are required to be agreed by the LLFA before development commences.

14. The development hereby approved shall be carried out in strict accordance with the following documents:

- Section 8 (Recommendations) of the updated Ecological Assessment, Former Sports Centre, Tisbury, dated July 2022 by Ethos Environmental Planning and**
- Ecological Management Plan (EMP), Former Sports Centre, Tisbury, dated July 2022 by Ethos Environmental Planning.**

All enhancement measures (for bats, swifts, bees and other birds) shown in Figure 3 of Section 3 (Management Prescriptions) and the nesting and roosting provisions in Table 3 shall be implemented before the dwellings are occupied and maintained for the lifetime of the development.

The post demolition management prescriptions in Table 2 shall be implemented in accordance with the management prescriptions for the lifetime of the development.

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

15. The development hereby approved (including site clearance, storage of materials and other preparatory work) shall be implemented in accordance with the Arboriculture Impact Assessment, Constraints Plan and Arboricultural Method Statement

(AMS), by Sharples Tree Services dated Jan 2022. Thereafter the development shall be undertaken only in accordance with the approved details, unless the Local Planning Authority has given its prior written consent to any variation.

The approved AMS shows the areas which are designated for the protection of trees, shrubs and hedgerows, hereafter referred to as the Root Protection Area (RPA). Unless otherwise agreed, the RPAs will be fenced, in accordance with the British Standard Guide for Trees in Relation to Construction (BS.5837: 2012) and no access will be permitted for any development operation.

REASON: To protect the amenity value of the trees, shrubs and hedgerows growing within or adjacent to the site.

16.No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;**
- means of enclosure in plan form (all railings, fences, gates, walls or other means of enclosure)**
- car park layouts;**
- all hard and soft surfacing materials;**
- All new trees, of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428**

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features. In the interests of good design to reduce the risk of crime and antisocial behaviour, visual amenity and the character and appearance of the area.

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

development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

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

18. The dwellings hereby approved shall not be occupied until the Building Regulations Optional requirement of maximum water use of 110 litres per person per day has been complied with.

REASON: To avoid any adverse effects upon the integrity of the River Avon Special Area of Conservation

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

REASON: In the interests of residential amenity and privacy.

20. No air source heat pumps shall be installed on the dwellings hereby approved until a Microgeneration Certification Scheme (MCS) accredited installer has demonstrated the Air Source Heat Pump (ASHP) installation will meet the requirements of the MCS Planning Standard; and the ASHP will produce a noise level of no more than 42dB LAeq (5mins) at the nearest bedroom/lounge window when operating; through source noise level data, distance attenuation and screening calculations. MCS compliance certification must be submitted to the LPA within 3 months of installation.

Reason: In the interests of neighbouring amenities.

Informatives

SuDS features should be constructed in line with the guidance provided within the CIRIA SuDS Manual Infiltration drainage features must be constructed in accordance with Wiltshire Council's soakaway guidance.

For guidance on external lighting – please visit <http://www.ccwwdaonb.org.uk/publications/aonb-management-plan/> and [view Dark Night Skies.](#)

125 **APPLICATION NUMBER: PL/2022/04451 - Land at Whitsbury Road, Odstock, Salisbury**

Public Participation

Andy Partridge (Agent) spoke in support of the application
Ed Riley spoke as representative of Odstock Parish Council

The Senior Planning Officer, Becky Jones, presented the report, which set out the merits of the planning proposal against the policies of the development plan and other material considerations. The application was for the construction of two residential dwellings, with associated parking and landscaping, and community orchard.

The application was recommended for Refusal, for the reasons as stated in the report.

The issues of the case were noted as:

- Principle of development, absence of 5 year housing land supply and infill at small villages
- Scale, design, impact on the character of the AONB and neighbouring amenity
- Highway safety
- Biodiversity – Ecology, River Avon catchment and New Forest SPA
- Drainage and flood risk
- CIL
- The Planning Balance

In the summary, the officer explained that the River Avon SAC nutrient reason for refusal had been added. This is because if Members decided that the development did not comply with CP2 and is not infill, then it would not fall under the Strategic Mitigation Strategy for planned development.

There were no technical questions of the Officer.

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

Some of the points raised included that the application had the support of the parish council and would deliver a community orchard, which would provide residents with a recreation space.

Other points raised the position of the 5 year land supply, the need for smaller more affordable houses and that the development would provide 2 & 3 bed semi-detached properties.

The definition of infill was explored in that it could refer to a space in-between the edge of a housing boundary and another dwelling and that a site in the AONB did not automatically rule out development in cases where a 5 year land supply was not met. However, the tilted balance did not automatically apply in the AONB.

The economic benefits and the sustainability elements were also noted.

The Parish Council representative spoke in support, noting that the site was the best option available in Odstock for affordable housing and that the design was felt to be sympathetic to the existing environments.

Division Member Cllr Richard Clewer who was not on the Committee, spoke on the application, noting the housing situation for Odstock and Nuneton, which was currently constrained. He highlighted the support of the parish council, the local community and the desire of the school and the village as a whole to remain sustainable.

The Chairman asked for a Committee Member to move a motion for debate.

Cllr Najjar moved the motion of Approval against Officer recommendation, for the reasons of the support of the parish council and need of this type of development in the community.

This was seconded by Cllr Jeans.

The Committee discussed the application, the main points included whether or not the development could be considered infill, based on its position or whether it was more in line with backland development. The Level of support by the community and the parish council were also noted.

The obligations which were in place due to the location being in the AONB and suitable conditions to reduce lighting and associated light spill into the AONB were discussed.

The Committee asked for clarification from the Officer on whether, if approved, a condition could be applied that controlled any development on the orchard in the future. It was confirmed that part of the conditions could include the removal of permitted development rights on that section of the site, so that no residential activity was permitted in that area.

The Committee discussed whether to consider deferral of the application to allow for a legal order to be applied to the orchard, however after clarification that it could be requested that approval be delegated to the Head of Service pending the legal agreement as part of the decision.

The Officer was asked to suggest conditions which would be appropriate for the application. The Committee agreed to the list of conditions which were summarised as:

- 3 Year commencement
- Standard plans list
- Materials
- Securing the community orchard
- Noise barrier
- Water consumption for River Avon phosphates
- 4 conditions and 1 informative requested by Highways

- Ecological / swifts and PEA recommendations
- Remove permitted development rights for the orchard – preventing structures and buildings etc in red line
- Foul drainage (Package Treatment Plant) and surface water connection before occupation
- Lighting – within the AONB must meet E0 standards

The mover of the motion, Cllr Najjar and the seconder were in support of an amendment to the motion to delegate approval to the Head of Services, pending a legal order being in place, in addition to the conditions as set out by the Officer.

After discussion, the Committee voted on the motion of Approval, against Officer recommendation for the reasons stated and with delegation to the Officers for wording of the conditions and subject to a Legal Agreement.

Resolved:

That application PL/2022/04451 be APPROVED for the following reasons:

The application site does not constitute a gap within the existing built area of the small village of Odstock, it doesn't meet the definition of infill under Core Policy 2 and is in a backland location. However, the development has the support of the local community and there is a local need for housing. The Community Orchard can be secured in perpetuity by legal agreement and in the absence of a 5 year housing land supply, the benefits of this proposal are considered to outweigh the policy harm.

Approve subject to the applicant entering into a Section 106 Agreement to secure the provision of the Community Orchard in perpetuity and to ensure that no residential use or development (such as outbuildings and gardens) takes place on the land

And subject to the following conditions:

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

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

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

Site Location Plan ref Wilts-AP-247.01 Rev A dated Jan 2022

Proposed Site Plan ref Wilts-AP-247.05 Rev D dated Feb 2022

Plans and Elevations as Proposed ref Wilts-AP-247.04 Rev A dated Jan 2022

Proposed Access Arrangements ref L424/2 dated 6/2/17

**Preliminary Ecological Assessment dated May 2022 by David Leach Ecology Ltd
NOISE IMPACT ASSESSMENT Technical Report: R9261 Rev 0 dated 29th October 2021
Proposed Site Layout Plan ref 6261 Figure 2 Rev A dated Oct 2021 in Noise Impact Assessment Report.**

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

3. The materials to be used in the construction of the external walls and roofs of the development hereby approved shall be in accordance with the details in the schedule on the drawing ref Plans and Elevations as Proposed ref Wilts-AP-247.04 Rev A dated Jan 2022, namely dark red tiles for the roof, dark stained timber boarding on the dormer windows and red brick for the walls.

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

4. There shall be no occupation of the dwellings hereby approved until a scheme of planting for the Community Orchard shown on plan ref Wilts-AP-247.05 Rev D dated Feb 2022 has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include the measures set out in Section 5.4.6 of the Preliminary Ecological Assessment dated May 2022 by David Leach Ecology Ltd.

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

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

5. There shall be no occupation of the dwellings until a noise barrier has been installed in accordance with the Proposed Site Layout Plan ref 6261 Figure 2 Rev A dated Oct 2021 in Noise Impact Assessment Report. The barrier shall meet the technical specifications set out in para 5.4 of the Noise Impact Assessment Technical Report: R9261 Rev 0 dated 29th October 2021. The barrier shall be maintained in situ for the lifetime of the development.

Reason: In order to reduce noise levels from vehicle movements in the road, and protect the nearest neighbouring property from undue disturbance.

- 6.** The dwellings hereby approved shall not be occupied until the Building Regulations Optional requirement of maximum water use of 110 litres per person per day has been complied with.

REASON: To avoid any adverse effects upon the integrity of the River Avon Special Area of Conservation

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

Reason: In the interests of highway safety.

- 8.** The gradient of the new access shall not at any point be steeper 1 in 15 for a distance of five metres from the edge of the carriageway.

Reason: In the interests of highway safety.

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

Reason: To ensure that the highway is not inundated with private surface water.

- 10.** No part of the development shall be first occupied until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 1.0m above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

Reason: In the interests of highway safety.

- 11.** There shall be no occupation of the dwellings until the ecological mitigation measures set out in Section 5.4 and on the plans in Appendices G and H of the Preliminary Ecological Assessment dated May 2022 by David Leach Ecology Ltd have been implemented and installed on the site and buildings. The enhancement measures shall be maintained and available for use for the lifetime of the development.

Reason: To enhance the biodiversity on site and ensure that there is a net biodiversity gain and no net biodiversity loss in the long

term

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no garages, sheds, greenhouses and other ancillary domestic or other outbuildings or structures shall be erected anywhere within the area shown as a Community Orchard on plan ref Proposed Site Plan ref Wilts-AP-247.05 Rev D dated Feb 2022.

REASON: To safeguard the character and appearance of the area.

13. There shall be no occupation of the dwellings until provision and connections have been made for foul and surface water drainage.

Reason: To ensure that the dwellings can be satisfactorily drained.

14. Any new external light fixture within the site shall be installed in accordance with the appropriate Environmental Zone standards (E0 for the AONB) set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)" and shall be maintained thereafter.

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

Informative

The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence will be required from the local highway authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact the Council's Vehicle Crossing Team on vehicleaccess@wiltshire.gov.uk and/or 01225 713352.

126 **APPLICATION NUMBER: PL/2022/06794 - Hartmoor Barn, Underhill Wood Nature Reserve, Underhill, East Knoyle, SP3 6BP**

Public Participation

Richard Storey Walker spoke in objection to the application
John Reading spoke in objection to the application
Dan Roycroft (Agent) spoke in support of the application
Keggy Carew (Applicant) spoke in support of the application

The Planning Team Leader, Adam Madge, presented the report, which set out the merits of the planning proposal against the policies of the development plan and other material considerations.

The application was for the Conversion of an existing barn/equestrian building to form a 2-bedroom dwelling, with associated hard and soft landscaping (resubmission of PL/2021/10169). The application was recommended for Approval with conditions.

Previous applications on the site for similar conversions had previously been refused, as they did not state why they met CP48, and had not explored alternative use.

The application now had run through various other uses for the barn and why those were not suitable, setting out why accommodation was suitable.

The issues of the case were noted as:

- Principle & Planning History
- Character & Design
- Neighbouring Amenities
- Highway Safety
- Ecology
- CIL/S106

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

It was noted that the barn had been in place since at least 1926, or possibly earlier.

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

Some of the main points raised included the importance of the barn locally as a historical asset, noting the unusual, secluded nature of the redbrick building and its location next to a nature reserve which had been created by the applicant on an adjacent field.

The bar had historically been for equestrian use, which was no longer required, due to the implementation of the nature reserve.

The negative impact that a residential dwelling would have on wildlife due to lighting and human habitation.

Whether any conditions could be applied to prevent any future business operating on the nature reserve.

The Agent noted the applicants experience in the field of rewilding, the redundant use of the barn for equestrian use and the proposals support for CP48, conversion of rural buildings.

It was stated that the village nearby already has community buildings, and the development was supported by a financial viability statement, leaving residential use as the only viable reuse for the barn.

Work would be minimal and sensitive, noting that the nearest neighbour was 70m away.

An ecologist had advised that bats would abandon buildings which had deteriorated. Advice would be followed to preserve the bats. In addition, the development would incorporate other elements including ledges for birds.

Cllr Wayman moved the motion of Refusal, against Officer recommendation, for the reasons:

Division Member Cllr Bridget Wayman who was on the Committee, spoke in objection to the application, moving the motion of Refusal, against Officer recommendation for the reasons:

- Relationship to adjoining properties
- Design – bulk, height, general appearance
- Environmental or highway impact;
- Other – Inappropriate conversion of a barn to residential use in a rural location in the Cranborne Chase AONB

It was noted that the Barn and paddock was in the AONB, was originally had been for equestrian purpose, was now not required for that due to the applicant removing the equestrian use after creating a nature reserve.

It was further stated that what had once been an unlit barn, would if approved become a dwelling with lighting, which would have a negative impact in the secluded protected area of the AONB with its internationally recognised dark skies, which should be protected against light pollution.

Cllr Wayman questioned the statement in the report which stated the conversion of the barn would scarcely be visible, suggesting that the view from the 3 nearest properties had not been taken into account, given their raised position, they would be adversely impacted by light spill. In addition, the local windmill site would also have its night time views damaged.

The application had not taken into account the AONB Management Plan.

The motion was seconded by Cllr Trevor Carbin.

The Committee discussed the application, the main points included the design and impact on the local community. The restrictions on development due to the location being within the AONB.

The preservation of the building and opportunity to be developed into an asset rather than be allowed to fall into disrepair and whether conditions could be applied if approved to control light spill.

The Committee then voted on the motion of Refusal against Officer recommendation, for the reasons as stated above.

The motion was not carried.

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

The Committee then voted on the motion of Approval with conditions.

It was;

Resolved:

That application PL/2022/06794 be Approved subject to the following conditions:

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

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

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

Application Form & Certificate

Ref: 21/747/P001 Rev B – Proposed Site Location Plan. Received – 31.08.2022

Ref: 21/747/P002 Rev B – Proposed Site Block Plan. Received – 31.08.2022

Ref: 21/747/P100 Rev A – Proposed Ground Floor Plan. Received – 31.08.2022

Ref: 21/747/P101 Rev A – Proposed First Floor Plan. Received – 31.08.2022

Ref: 21/747/P102 Rev A – Proposed Roof Plan. Received – 31.08.2022

Ref: 21/747/P110 Rev B – Proposed North & South Elevations. Received – 14.11.2022

Ref: 21/747/P111 Rev A – Proposed East & West Elevations. Received – 14.11.2022

Ref: 21/747/P120 Rev A – Proposed Sections A-A and B-B. Received – 31.08.2022

Ref: 348_PN_01 Rev B – Landscape Plan. Received – 31.08.2022

Ref: 348_PN_02 Rev A – Planting Schedule & Specification. Received – 31.08.2022

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

- 3. The materials to be used in the construction/repair of any external surfaces of the development hereby permitted shall match in material,**

colour and texture those used in the existing building; and/or shall accord with the material details identified on the approved plans.

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

4. The flue hereby approved shall be finished in a dark, non reflective finish

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

5. Notwithstanding the approved Landscape Scheme, the dwelling hereby approved shall not be first occupied until details of any hedgerows or boundary treatment that will be used to delineate the 'residential curtilage' of the dwelling on the ground have been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be implemented in accordance with an agreed timetable or in accordance with the timings identified in condition 6, whichever is sooner. The boundary treatment shall be retained in perpetuity.

REASON: To ensure that the domestication and residential development of this site does not encroach into the surrounding paddocks/countryside to the detriment of the landscape character of the area/area of outstanding natural beauty.

6. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

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

7. The ecological mitigation measures, bat roosts and bat access points identified on Plans Ref: 21/747/P110 Rev B – Proposed North & South Elevations and 21/747/P111 Rev A – Proposed East & West Elevations (Received – 14.11.2022); and as outlined in pages 24-30 of the Preliminary Ecological Appraisal and Bat Survey Report, (Date: September 2021 by Stark Ecology Ltd), shall be installed in accordance with the approved details, or as otherwise specified in a relevant European Protected Species Licence superseding this permission. They shall be installed

before the dwelling hereby approved is first occupied. The installation of the approved mitigation measures, bat roosts and access features will be supervised by a professional ecologist. The mitigation measures, bat roosts and access points shall be maintained and retained in situ in perpetuity for the lifetime of the development.

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

8. No new external artificial lighting shall be installed at the site.

REASON: In the interests of conserving biodiversity.

9. The development hereby permitted shall not be occupied until the area between the nearside carriageway edge and a line drawn 2.4m parallel thereto over the entire site frontage has been cleared of any obstruction to visibility at and above a height of 900mm above the nearside carriageway level, and maintained as such thereafter.

REASON: In the interests of highway safety.

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

REASON: In the interests of highway safety.

11. Any gates shall be set back 5m from the edge of the carriageway, such gates to open inwards only.

REASON: In the interests of highway safety.

12. The development hereby approved shall be occupied until enough space for the parking and turning of 2 vehicles together with a vehicular access thereto has been provided in accordance with details submitted to and approved in writing by the Local Planning Authority. The said spaces shall not be used other than for the parking of vehicles or for the purpose of access/turning.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Schedule 2, Part 1, Classes A-E, G or H shall take place on the dwellinghouse hereby permitted or within its curtilage.

REASON: In the interests of the amenity of the area; to retain the attractive agrarian character of the existing building; and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer windows or rooflights, other than those shown on the approved plans, shall be inserted in the development hereby permitted.

REASON: In the interests of amenity of the area and to retain the attractive agrarian character of the existing building.

INFORMATIVES

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

www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.

2) Please note that the drainage strategy for the development will be considered at the building regulation stage and has not been assessed as part of this planning application. Please note that should changes be required to the final approved scheme in order to achieve a satisfactory drainage strategy for the site, this may require the submission of a revised/amended scheme to be considered by the Local Planning Authority accordingly.

3) The barn is used bats as a roost. Under the Conservation of Habitats and Species Regulations 2017, it is an offence to harm or disturb bats or damage or destroy their roosts. Planning permission for development does not provide a defence against prosecution under this legislation. The applicant is advised that a European Protected Species Licence will be required before any work is undertaken to implement this planning permission. Future replacement of the roof could also breach this legislation and advice should be obtained from a

professional bat ecologist before proceeding with work of this nature.

127 **Urgent Items**

There were no urgent items

(Duration of meeting: 3.00 - 4.25 pm)

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

Press enquiries to Communications, direct line (01225) 713114 or email communications@wiltshire.gov.uk

WILTSHIRE COUNCIL

AGENDA ITEM NO.

SOUTHERN AREA PLANNING COMMITTEE

2 FEBRUARY 2023

**COMMONS ACT 2006 – SCHEDULE 2(6) – APPLICATION TO DE-REGISTER
BUILDINGS WRONGLY REGISTERED AS COMMON LAND – THE POUND,
WHITEPARISH
APPLICATION NO.2021/01ACR**

Purpose of Report

1. To consider the evidence submitted regarding an application made under Schedule 2(6) of the Commons Act 2006 to de-register buildings which it is claimed are wrongly registered as Common Land, the Pound, Whiteparish, (application no.2021/01ACR).

Relevance to the Council's Business Plan

2. Working with the local community to provide a countryside access network fit for purpose, making Wiltshire an even better place to live, work and visit.

Location Plan

3. The parish of Whiteparish is located in south-east Wiltshire, 8 miles from Salisbury to the north-west; 14 miles from Southampton to the south-east; 19 miles from Winchester to the east and 8 miles from Romsey to the south-east. The main village is located alongside the main A27 road, with Common Road leading south and entering the New Forest National Park. The parish is on chalk in the north and the clays, sands and gravels of the Reading beds, London Clay and Bagshot beds in the south. The land slopes down to the south from the northern boundary of the parish of Dean Hill, to the Hampshire border, (Wiltshire Community History). Please see location plan at **Appendix 1.**

Application Plan

4. Please see **Appendix 2.**

Photographs

5. Please see **Appendix 3.**

Aerial Photographs

6. Please see **Appendix 4**.

Applicants and Registered Landowners

7. Mr and Mrs S Skeates
[REDACTED]
Common Road
Whiteparish
Salisbury
Wiltshire, SP5 2[REDACTED]

Legal Empowerment

8. Wiltshire Council is the Commons Registration Authority (CRA) for the Commons Registration Act 1965 and the Commons Act 2006.
9. The land which is the subject of the application was registered under the Commons Registration Act 1965 and the application to de-register the land is made under Section 22 and paragraph 6 of Schedule 2, of the Commons Act 2006. Paragraph 6 provides as follows:

“6 (1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.

(2) This paragraph applies to land where-

- (a) the land was provisionally registered as common land under section 4 of the 1965 Act;*
- (b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
- (c) the provisional registration became final; and*
- (d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.*

(3) A commons registration authority may only remove land under sub-paragraph (1) acting on-

- (a) the application of any person made before such date as regulations may specify; or*
- (b) a proposal made and published by the authority before such date as regulations may specify.”*

10. The Regulations are The Commons Registration (England) Regulations 2014, of which paragraph 14 of Schedule 4 sets out the time limits for making applications:

14(1) An application made under Schedule 2 to the 2006 Act, for the purpose of remedying non-registration or mistaken registration under the 1965 Act, must be made on or before
 - (a) 31st December 2020, where the application is to an original registration authority; and*
 - (b) 15th March 2027, where the application is made to a 2014 registration authority.*

11. Wiltshire Council is neither an “original registration authority”, nor a “2014 registration authority”, but a “1965 registration authority” as defined in the Regulations and accordingly there is no time limit for applications made to the Council.

12. Paragraph 27 (1) of the Regulations sets out the material which the Council must consider in determining the application; this may be summarised as follows:
 - (a) the contents of the application, and any material accompanying it;
 - (b) any further information or evidence provided by the applicant in accordance with a direction by the Council;
 - (c) any written representations;
 - (d) any oral representations made;
 - (e) the findings made at a site inspection;
 - (f) where there is a public inquiry by an inspector, the evidence presented at the inquiry and the report of the inspector.

13. The standard of proof lies in the balance of probabilities i.e., that it is more likely than not that the land was covered by a building, or within the curtilage of a building at the time of the provisional registration as common land and at all times thereafter.

Background

14. The Council has received an application under Schedule 2(6) of the Commons Act 2006 to de-register buildings at The Pound, off Common Road, Whiteparish, which it is claimed were wrongly registered as common land.

15. The area of land claimed to be wrongly registered (‘the Application Land’) covers an area of approximately 2,420 square metres, shown at **Appendix 2**, and includes:
 1. The workshop building (having a footprint of approximately 122 square metres);
 2. Areas of hardstanding to the south; east and north of the building;

3. Land comprising grass and trees to the north of the hardstanding area;
 4. Smaller building to the south of the workshop building.
16. The Commons Registration Act 1965 provided for the registration of common land by County Councils. Registration commenced on 2 January 1967 with a time limit for registration by 31 March 1970, extended to 31 July 1970.
 17. In the Register of Common Land, the Application Land forms part of Register entry no. CL7, Whiteparish Common, **Appendix 5**, which was provisionally registered on 10 April 1968, and which, being undisputed, became final on 1 October 1970.
 18. The application, dated 2 January 2021, has been accepted as being in order and was allocated application number 2021/01ACR on 16 March 2021 (the relevant date of the application being the date of receipt by the Council on 4 January 2021).
 19. Common land is generally privately owned land, which is subject to rights enjoyed by others, i.e., commoners, to the use or produce of the land. Under the Countryside and Rights of Way Act 2000, areas of common land were recorded as "Open Access Land", having a right of access for the whole of the public on foot.
 20. At part 5 of the application form, the applicant includes the following justification:

"In order to apply under schedule 2(6) of the Commons Act 2006, it is necessary for the land to be provisionally registered under section 4 (Provisional registration) of the Commons Registration Act 1965, i.e. between 2nd January 1967 and 31st July 1970 and that on the date of the provisional registration, the land was covered by a building and since the provisional registration has at all times been and still is covered by a building. The application to register the land was 26th March 1968; the land was provisionally registered 10th April 1968. The register entry was undisputed and became final on 1st October 1970. On the date of the provisional registration, 10 April 1968, the land, at The Pound, was 'covered by a building' and the land at The Pound was within the curtilage of the building. Planning permission for the garage/maintenance workshop, at The Pound, was granted 12 October 1967 and garage erected before December 1967 and remains on the above site today."

Public Consultation

21. The CRA has complied with the requirements to serve notice of the application; publicise the application; make the application available for public

inspection and provide the applicant and objectors with opportunity to reply, as set out at paragraphs 21 and 23-25 of the Regulations. The following objections and representations have been received (please see correspondence in full at **Appendix 7**):

- 1) *Open Space Society (OSS), Mr H Craddock - E-mail 02/07/2021 (Objection)*
- 2) *Mr S Byrne – E-mail 20/05/2021 (Objection)*
- 3) *Mr S Byrne – E-mail 20/05/2021 (Objection)*
- 4) *Mr T King – E-mail 03/07/2021 (Objection)*
- 5) *Mr R Hughes, Economic Development and Planning, Wiltshire Council – E-mail 17/05/2021 (Representation)*
- 6) *Mr & Mrs S Skeates – Correspondence 21/07/2021 (Landowners and Applicants) (Support)*
- 7) *OSS, Mr H Craddock – email 03/08/2021 (Objection)*
- 8) *Mr & Mrs S Skeates – Correspondence 01/09/2021 (Support)*
- 9) *OSS, H Craddock – E-mail 04/10/2021 (Objection)*
- 10) *Mr & Mrs S Skeates – Correspondence 26/10/21 (Support)*
- 11) *OSS, Mr H Craddock – E-mail 25/11/2021 (Objection)*
- 12) *Mr & Mrs S Skeates – Correspondence 08/12/2021 (Support)*

Main Considerations

22. At Schedule 2, paragraph 6 of the Commons Act 2006, each of the legal tests set out must be met in order for land to be successfully de-registered, in which case de-registration is mandatory:
 - (a) *the land was provisionally registered as common land under section 4 of the 1965 Act;*
 - (b) *on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
 - (c) *the provisional registration became final; and*
 - (d) *since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.”*
23. A detailed consideration of the evidence in this case and the legal tests for the de-registration of buildings wrongly registered as common land, under Schedule 2(6) of the Commons Act 2006, is included at **Appendix 10**.
24. Officers are satisfied that the land identified as Area 2, (**Appendix 11**), has at all times been and still is, covered by a building or within the curtilage of a building, maintaining its relationship with the building throughout the relevant period for the accommodation of the parking/turning area; access to the building from Common Road and part of the visibility splay necessary for the safe use of the building and set out within the planning conditions for change of use of the site in 1967 and which are still relevant. Therefore, the legal tests, as set out at Schedule 2(6)(2) of the Commons Act 2006, are met over

this part of the application area (Area 2), as the only part of the application area which is capable of de-registration, please see detailed discussion at **Appendix 10**.

Overview and Scrutiny Engagement

25. Overview and Scrutiny engagement is not required in this case. The CRA must follow the statutory procedure set out in the Commons Registration (England) Regulations 2014.

Safeguarding Considerations

26. Considerations relating to safeguarding anyone affected by the de-registration of the land as Common Land under Schedule 2(6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Public Health Implications

27. Considerations relating to the public health implications of the de-registration of the land as Common Land under Schedule 2(6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Corporate Procurement Implications

28. Where land is de-registered / not de-registered as Common Land, there are opportunities for expenditure to occur and these are considered at paragraphs 32 and 33 of this report.

Environmental and Climate Change Impact of the Proposal

29. Considerations relating the environmental or climate change impact of the de-registration of the land as Common Land under Schedule 2(6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Equalities Impact of the Proposal

30. Considerations relating to the equalities impact of the de-registration of the land as Common Land under Schedule 2 (6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Risk Assessment

31. Wiltshire Council, as the CRA, has a duty to process applications made under Schedule 2(6) of the Commons Act 2006 to de-register buildings wrongly registered as Common Land, in a fair and reasonable manner. If the CRA fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with the risk of a significant costs order being made against the CRA if it is found to have made errors in processing the application or found to have determined the application in an unlawful manner.

Financial Implications

32. The Council is able to charge a fee for processing applications made under Schedule 2(6) of the Commons Act 2006, in line with its published fees table. These costs have been paid by the applicant. The costs to the applicant could increase if the application is forwarded to the Planning Inspectorate to hold a public inquiry in certain circumstances, i.e. where the CRA has an interest in the outcome of the application such that there is unlikely to be confidence in the authority's ability to determine the application impartially; or where there is objection to the application from any person having a legal interest in the land, (paragraph 26(3) Regulations); however, these circumstances are not applicable in this case. The CRA has served notice of the application on those parties specified within the Regulations, including properties to which the recorded rights over the land are attached, as set out in the Rights Section of the register entry for CL7, Whiteparish Common. None of those parties having a recorded right over the land have objected to the application.
33. The Commons Act 2006 makes no provision for statutory appeal by any of the interested parties against the determination of the CRA, (or the Planning Inspectorate); however, it is open to all parties to apply to the High Court for judicial review of the decision of the CRA, whether that is to de-register / not de-register the land, for which the permission of the court is required and the application to challenge the decision must be made within three months of the date of the decision of the CRA. Applications of this nature focus closely on the procedure used in the decision-making process. To avoid the risk of the significant costs of defending a legal challenge it is important that the CRA adopts the proper decision-making process in dealing with this application.

Legal Implications

34. This application does not require referral to the Planning Inspectorate for determination, as set out at paragraph 32 above.

35. Under paragraph 27(2) of the Regulations, it is open to the authority to decide that a public inquiry is to be held in relation to any application or proposal; however, the only requirement upon the CRA is to give the applicant opportunity to make their case before finalising the decision, as set out in DEFRA guidance: “Commons registrations authorities: applications and proposals – How to deal with applications and proposals, amend your registers of common land and town and village greens, and set fees.”:

“Hearings and inquiries

If you’re thinking of refusing an application, you must give the applicant an opportunity to make their case to you before finalising your decision. You must allow anyone else to make their case to you if their civil rights would be affected by your decision. They can do this by talking to you in person or on the phone. This applies whether you grant the application or refuse it.

You can appoint an independent inspector (such as a barrister) to hold a public inquiry. If you decide to hold an inquiry into applications and proposals (e.g., if they are likely to generate controversy) then you must appoint an inspector to oversee the inquiry.”

36. At paragraph 27(4) of the Regulations, the determining authority may, if it thinks necessary to enable an application or proposal to be determined, invite further written representations about any specified matter from the applicant; a person who has made representations, or any other person.
37. Paragraph 27(7), as set out below, makes provision for oral representation by the interested parties and it is considered that the public participation element of the Area Planning Committee meets this requirement, without the need to hold a public inquiry regarding the evidence. Paragraphs 27(6) and (7) state:
- “(6) Paragraph (7) applies in relation to any application or proposal which the determining authority decides to determine without holding a public inquiry or (where the Planning Inspectorate is the determining authority) a hearing in accordance with regulation 32.*
- (7) The determining authority-*
- (a) may not refuse an application without first offering the applicant an opportunity to make oral representations; and*
 - (b) may not grant or refuse an application or proposal without first offering any person (other than the applicant) for whom the grant or refusal (as the case may be) would represent a determination of that person’s civil rights an opportunity to make oral representations.”*

38. Where the CRA proposes to de-register the application land only in part, without holding a public inquiry, as at paragraph 27(7) above, the CRA may not refuse or grant an application without first offering the applicant or any person, opportunity to make oral representations. Opportunity to make oral representations will be available to all parties at the Southern Area Planning Committee meeting at which this application will be considered and the debate to follow will consider the oral representations made, meeting the requirements of paragraph 27(7) of the Regulations. The meeting may be adjourned, if necessary, following the oral representations, for consideration in a final report to be considered by the Area Planning Committee at a later date.

Options Considered

39. The options available to Wiltshire Council, as the CRA, are as follows:
- (i) To de-register the application land in full, where the legal tests for the de-registration of buildings wrongly registered as common land, as set out at Schedule 2(6) of the Commons Act 2006, are met in full over the whole of the application area.
 - (ii) To de-register the application land in part, where the legal tests for the de-registration of buildings wrongly registered as common land, as set out at Schedule 2(6) of the Commons Act 2006, are met in full only over part of the application area.
 - (iii) To refuse to de-register the application land, where the legal tests for the de-registration of buildings wrongly registered as common land, as set out at Schedule 2(6) of the Commons Act 2006, are not met in full over the whole of the application area.
 - (iv) To hold a public inquiry to consider the evidence relating to the application.

Reasons for Proposal

40. The legal requirements as set out under paragraph 6 of Schedule 2 of the Commons Act 2006, i.e. the de-registration of buildings wrongly registered as common land, are met in the following in this application:
- (i) Part of the land at The Pound, Whiteparish, subject to the application was provisionally registered as common land on 10 April 1968, (register entry no.CL.7, Whiteparish Common). The registration of the land became final on 1 October 1970, and this is not disputed.
 - (ii) Part of the application land was covered by a building and its curtilage at the time of provisional registration. Planning for the workshop building

subject to this application was granted in October 1967 and the building was erected before the end of 1967, i.e. before the provisional registration of the land in 1968. There is no dispute of the date the building was in place on the land and no evidence to suggest that the workshop building was not present at the time of provisional registration, however, there is dispute regarding the extent of curtilage of the building.

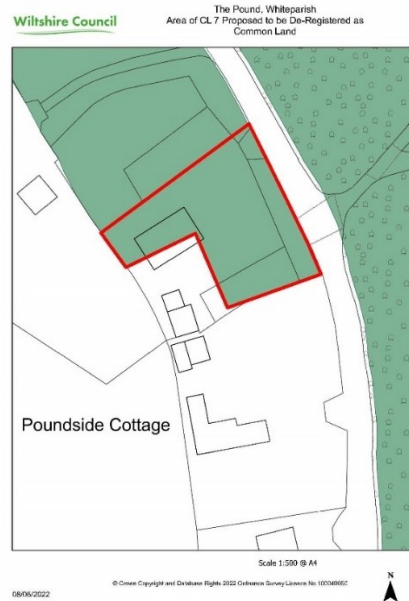
(iii) Part of the application land has been covered by a building and its curtilage at all times since provisional registration and still is, the period in question being April 1968 – present day. Although Mr King disputes continuous use of the building throughout this period, there is no requirement within the Act to consider continuous use, just that the building and/or its curtilage covered the land during this period, of which there is no dispute and no evidence to the contrary. There is dispute regarding the extent of the curtilage of the building.

41. Having considered the available evidence, Officers do not consider that the whole of the application area was, at provisional registration, covered by a building and its curtilage and has remained so. The CRA concludes that where the subject of this application is the garage/workshop building and its curtilage, it is only possible to consider the curtilage of this building to be that area included within the planning applications/consents for change of use of The Pound site and erection of the workshop building at The Pound, as an area so intimately associated with the building as to lead to the conclusion that it forms part and parcel of the building. This relationship between the extended area of the application land, for the full period from provisional registration and at all times since, has not been demonstrated. Therefore, it is proposed that the application to de-register land as common land be granted only in part over that part of the land subject to the successful planning applications in 1967 and excluding that area of the application land not included as part of Common Land Register Unit CL.7, Whiteparish Common, as shown on the plan at paragraph 43 below.
42. If it is determined to de-register the application land only in part, the CRA will give effect to the determination in the appropriate register by deletion and give written notice of the determination to the Applicant and every person who made representations regarding the application and publish the decision on its website, giving reasons for the decision, as required at paragraph 36 of the Regulations.

Proposal

43. Based on the evidence, that the land at The Pound, Whiteparish, currently registered as Common Land, part of Register Entry no.CL7, Whiteparish Common and subject to application made under Schedule 2(6) of the Commons Act 2006 to de-register buildings wrongly registered as common

land, be part de-registered over that part of the application area which is covered by a building or the curtilage of a building, for the reasons set out at paragraphs 40 and 41 above, as shown outlined in red on the plan below:



44. Where the CRA does not intend to hold a public inquiry, the Applicant and other parties be given opportunity to make oral submissions regarding the proposal, (as per paragraph 27(7) of the Regulations), to the Southern Area Planning Committee. The debate to follow will consider any oral submissions made, or alternatively the meeting may be adjourned for the submissions to be considered in a report and recommendation to the Committee at a later date.

Samantha Howell

Director of Highways and Transport

Report Author:

Janice Green

Senior Definitive Map Officer

Appendices:

Appendix 1 – Location Plan

Appendix 2 – Application Plan

Appendix 3 – Photographs of Application Land

Appendix 4 – Aerial Photographs

Appendix 5 – CL7 Register Entry

Appendix 6 – Application

Appendix 7 – Correspondence:

- i) Mr R Hughes (Economic Development and Planning, Wiltshire Council) – 17 May 2021

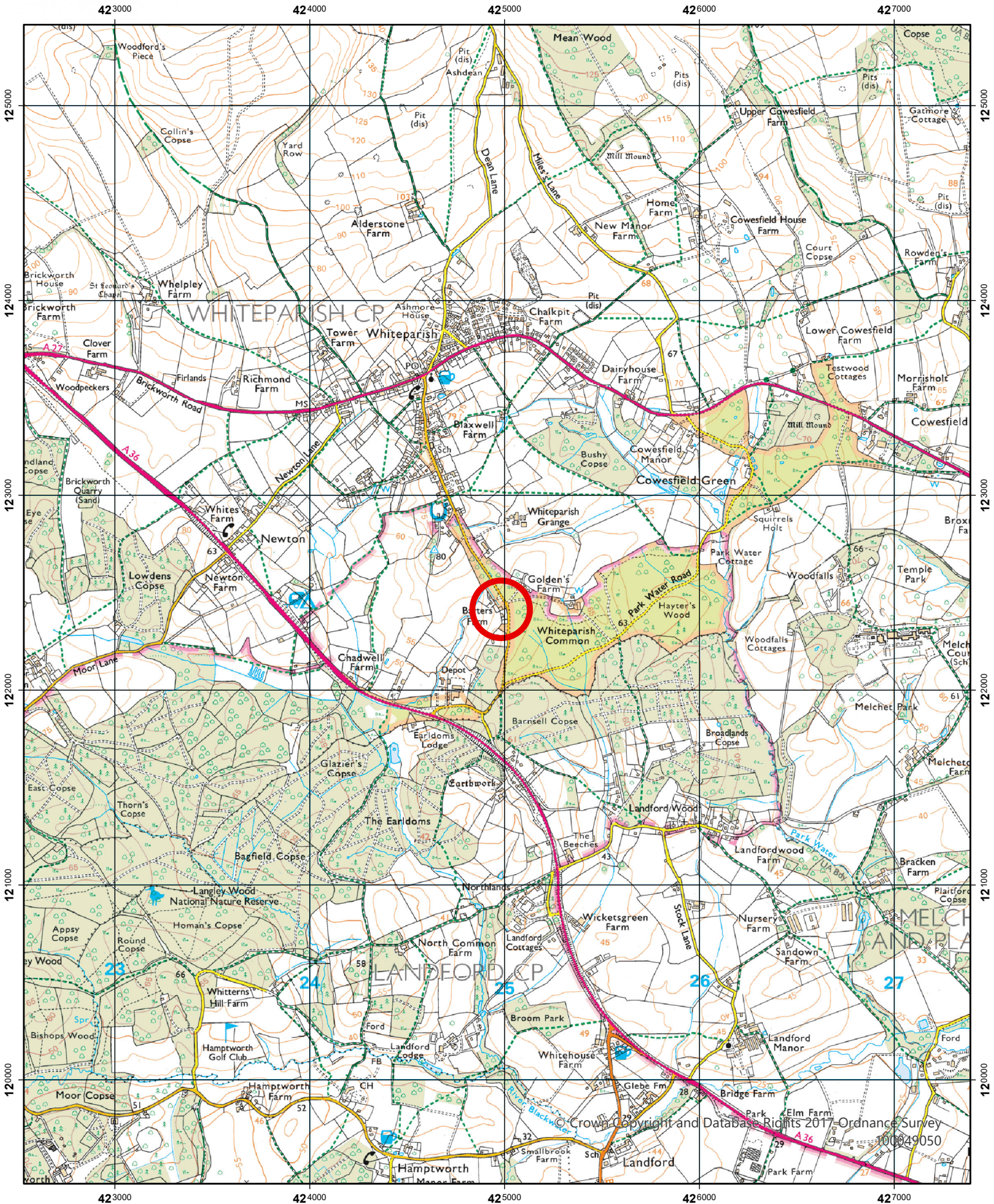
- ii) Mr S Byrne – 20 May 2021
- iii) Mr S Byrne – 20 May 2021
- iv) Mr H Craddock (Open Spaces Society (OSS)) – 2 July 2021
- v) Mr T King – 3 July 2021
- vi) Mr & Mrs S Skeates – 21 July 2021
- vii) Mr H Craddock (OSS) – 3 August 2021
- viii) Mr & Mrs S Skeates – 1 September 2021
- ix) Mr H Craddock (OSS) – 4 October 2021
- x) Mr & Mrs Skeates – 26 October 2021
- xi) Mr H Craddock (OSS) – 25 November 2021
- xii) Mr & Mrs Skeates – 8 December 2021

Appendix 8 – Curtilage Evidence

Appendix 9 – 1967 Planning Documents: i) 6759/10935
ii) 7085/11434

Appendix 10 – Officers Consideration of the Legal Tests

Appendix 11 – Application Land – Areas 1 - 4

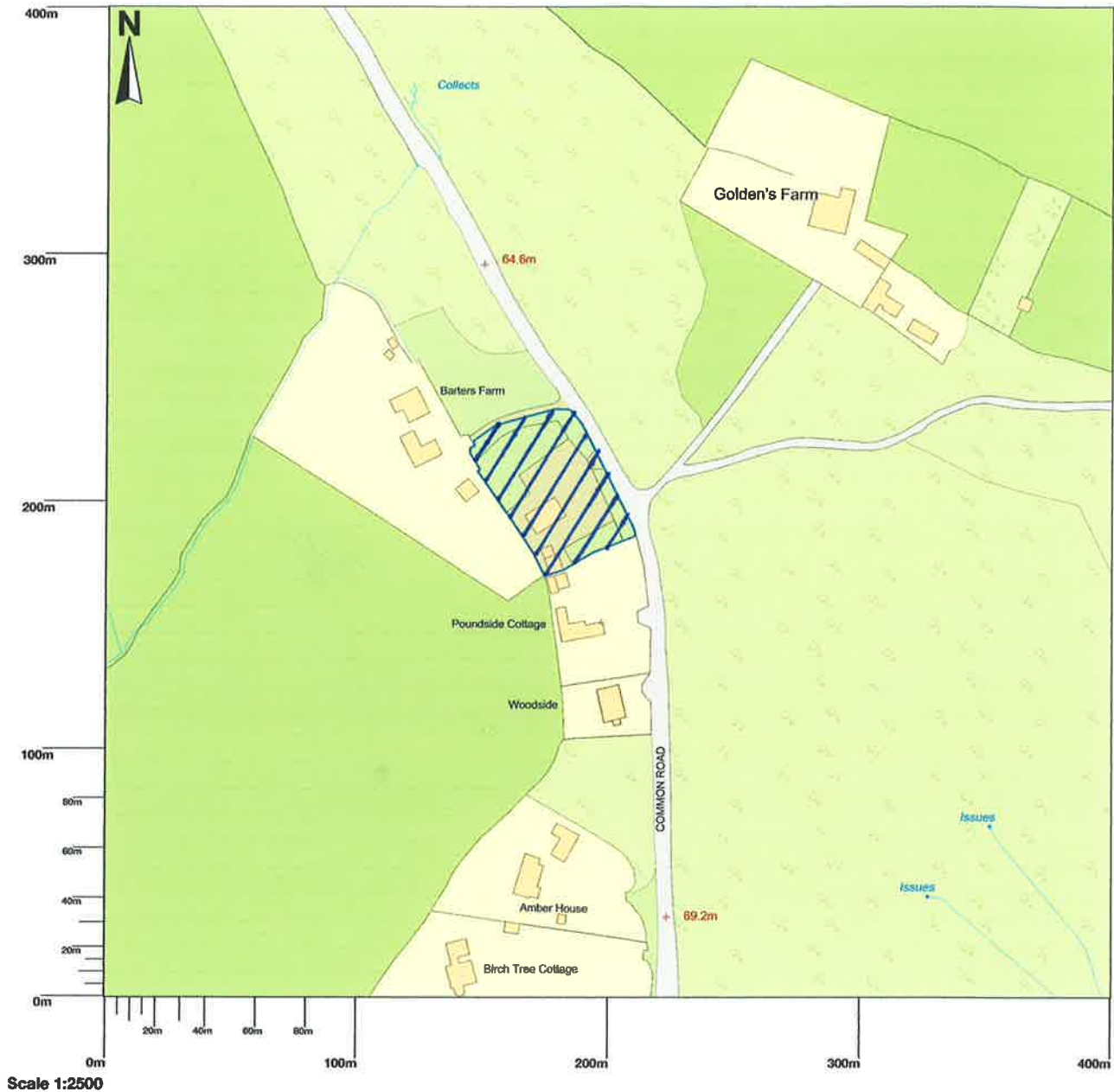


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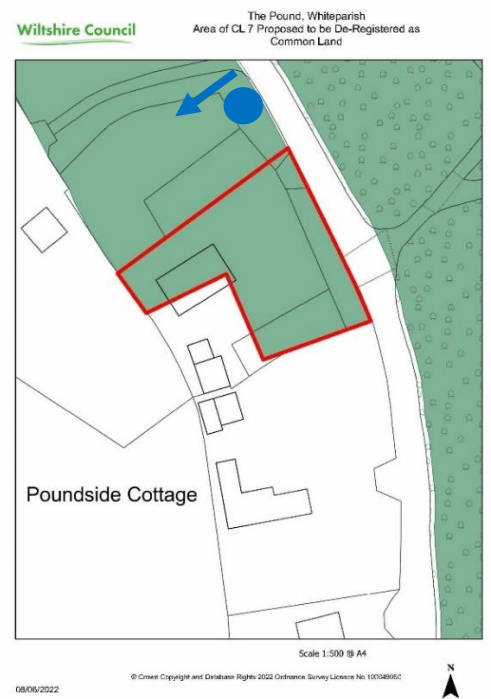
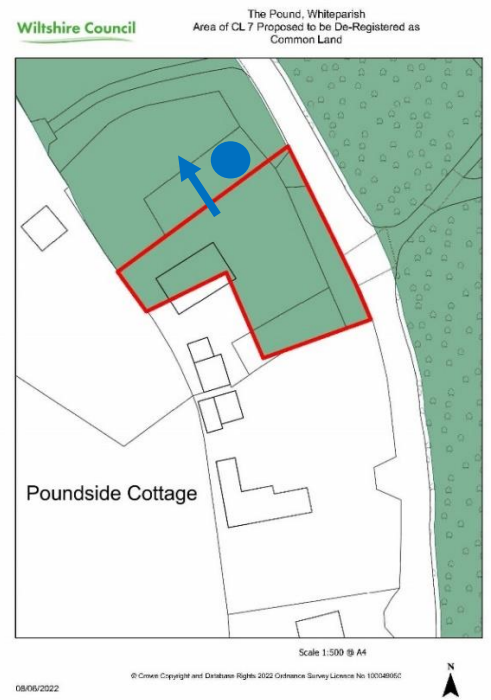
The Pound , Common road, Whiteparish, salisbury, Wilts , SP5 2RD

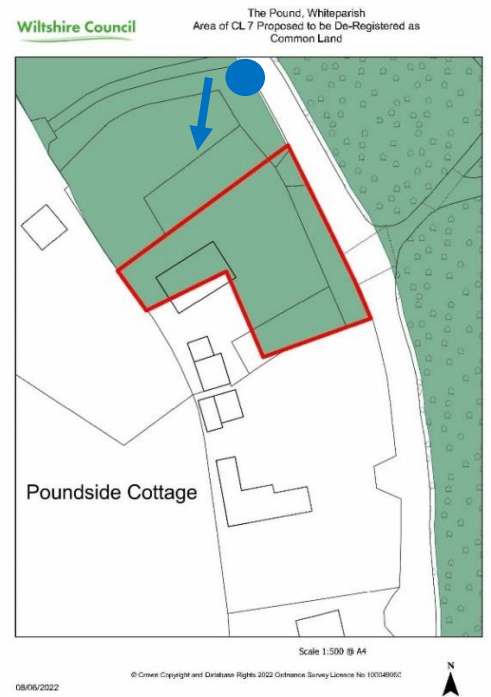
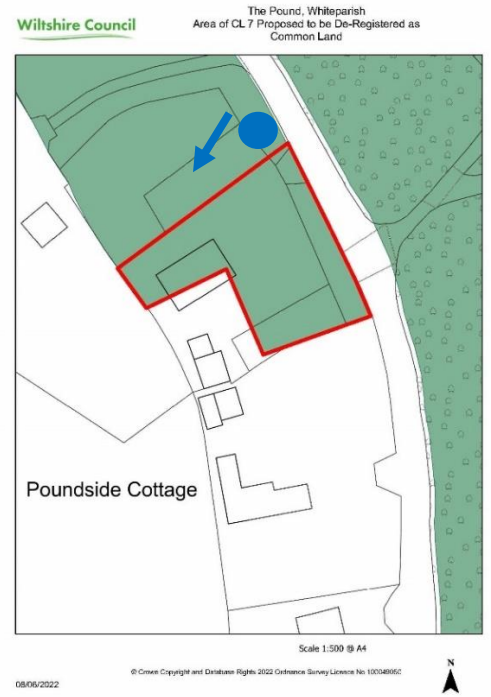


Map area bounded by: 424795,122235 425195,122635. Produced on 20 November 2020 from the OS National Geographic Database. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2020. Supplied by UKPlanningMaps.com a licensed OS partner (100054135). Unique plan reference: p16buk/537801/728496

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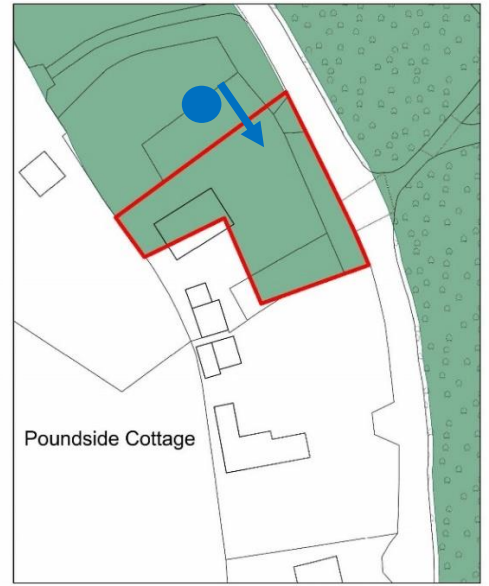
APPENDIX 3 - Photographs of Application Land – The Pound, Whiteparish







Wiltshire Council
 The Pound, Whiteparish
 Area of CL 7 Proposed to be De-Registered as
 Common Land

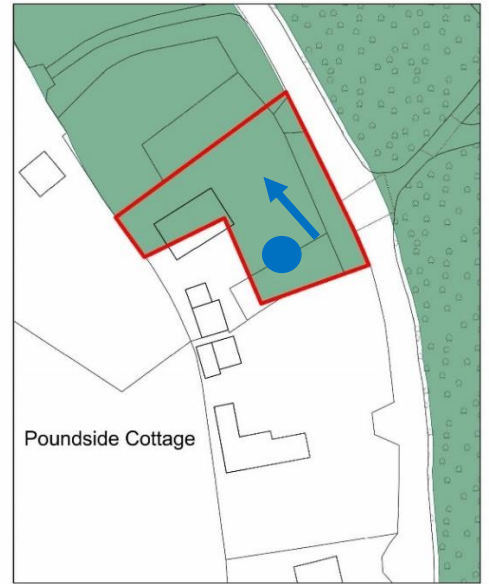


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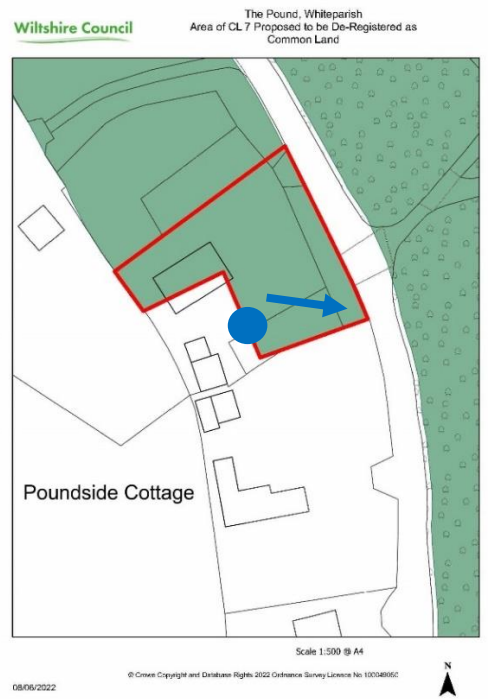
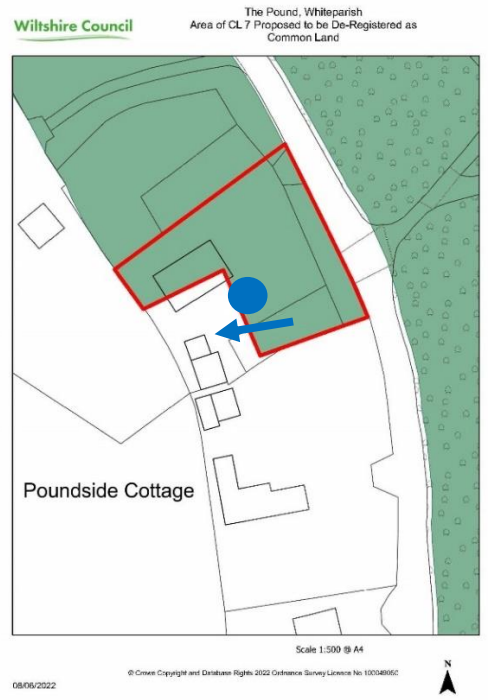
Wiltshire Council
 The Pound, Whiteparish
 Area of CL 7 Proposed to be De-Registered as
 Common Land

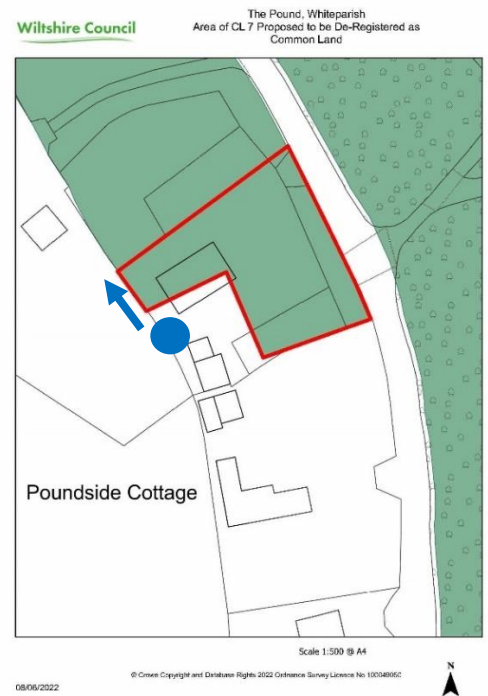
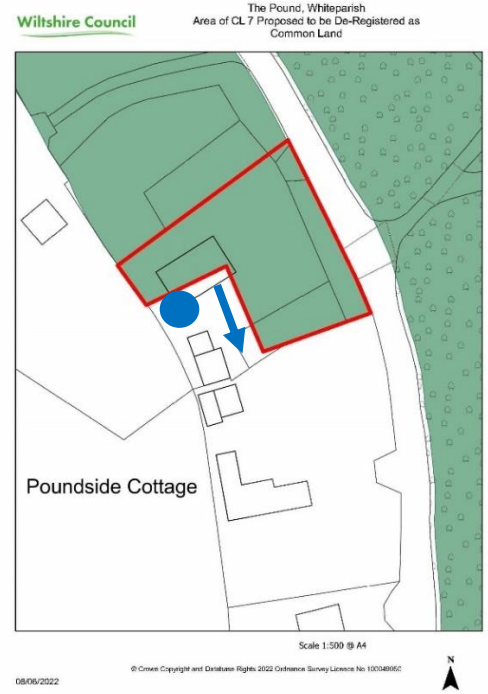


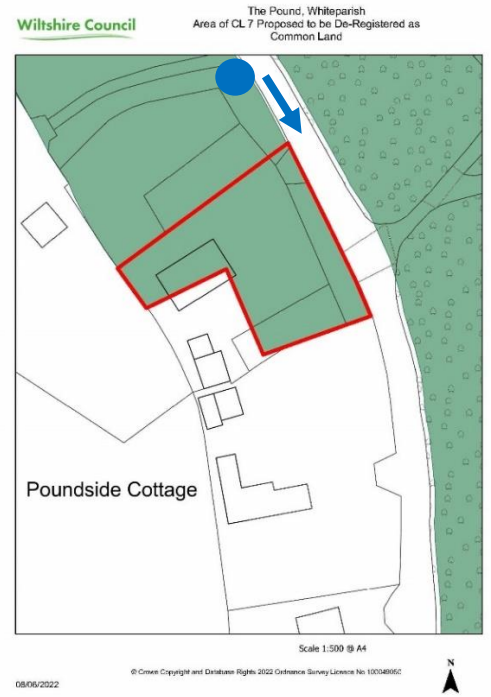
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**ARIEL VIEW
THE POUND
2003
SHOWING LORRY TRAILERS PARKED
IN FRONT OF GARAGE BUILDING**



Image supplied by Applicant with application no.2020/01ACR - Application to de-register buildings wrongly registered as common land - The Pound, Whiteparish



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APPENDIX 5 - CL7 Register Entry, Whiteparish Common

Register unit No. C.L.7.

Edition No. 1

Register of Common Land

See Overleaf
for Notes

LAND SECTION—Sheet No. 1

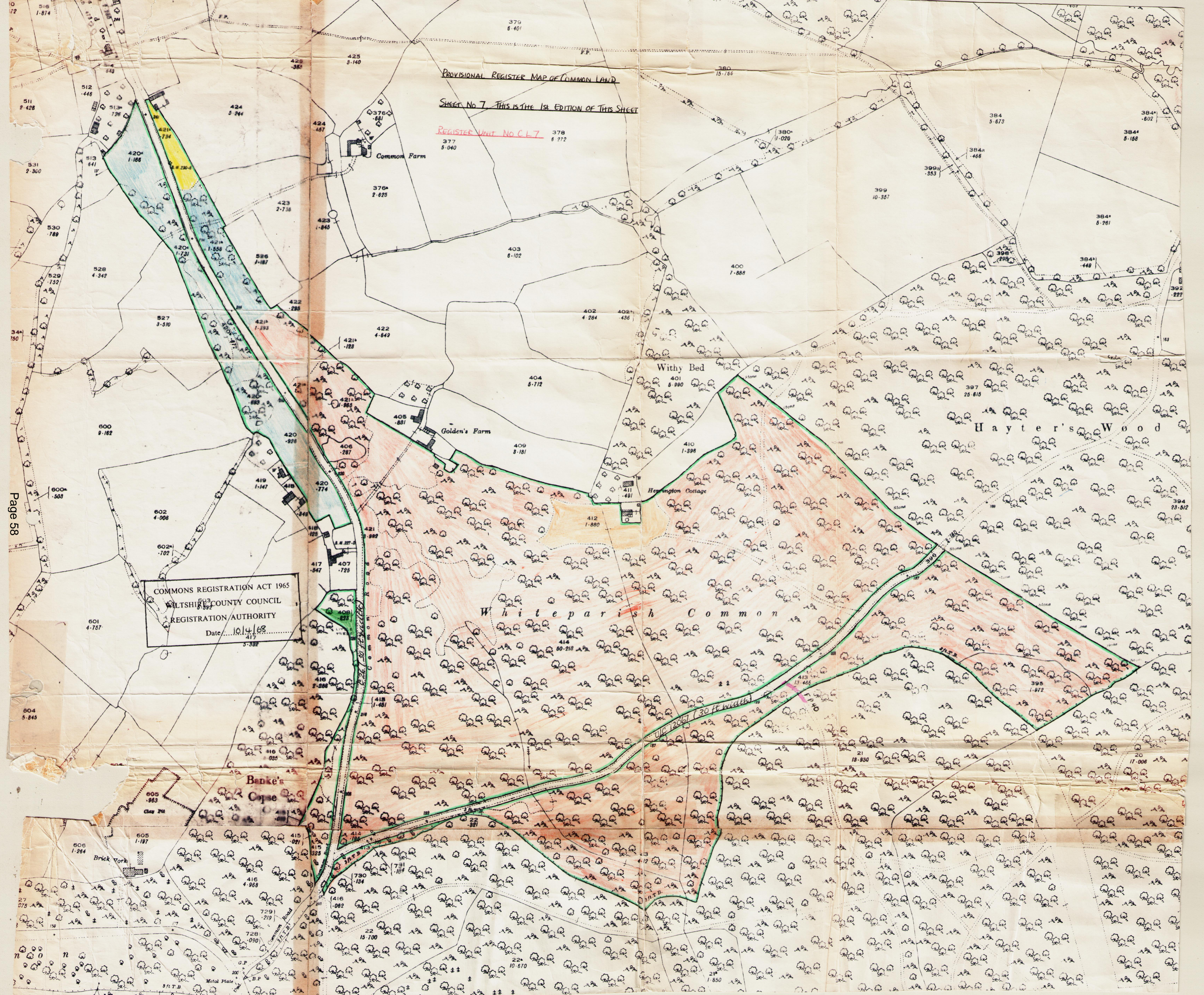
<i>No. and date of entry</i>	<i>Description of the land, reference to the register map, registration particulars etc.</i>
1 10th April 1968	That piece of land called Whiteparish Common in the Parish of Whiteparish, Wilts, as marked with a green verge line inside the boundaries on sheet 7 of the register map and distinguished by the number of this register unit. Registered pursuant to application No.11 made 26th March, 1968, by the Whiteparish Parish Council acting through their Clerk, Mr. C.M. Rowe, 22 Queen Alexandra Road, Salisbury, Wilts. (Registration ^{Final} Provisional).
2 22nd March, 1971.	The registration at Entry No.1 above, being undisputed, became final on the 1st October, 1970.

PROVISIONAL REGISTER MAP OF COMMON LAND
SHEET No 7. THIS IS THE 1st EDITION OF THIS SHEET

REGISTER UNIT No C.L.7
377 5-040 378 6-212

COMMONS REGISTRATION ACT 1965
WILTSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
Date 10/4/68

Page 58



Register of Common Land

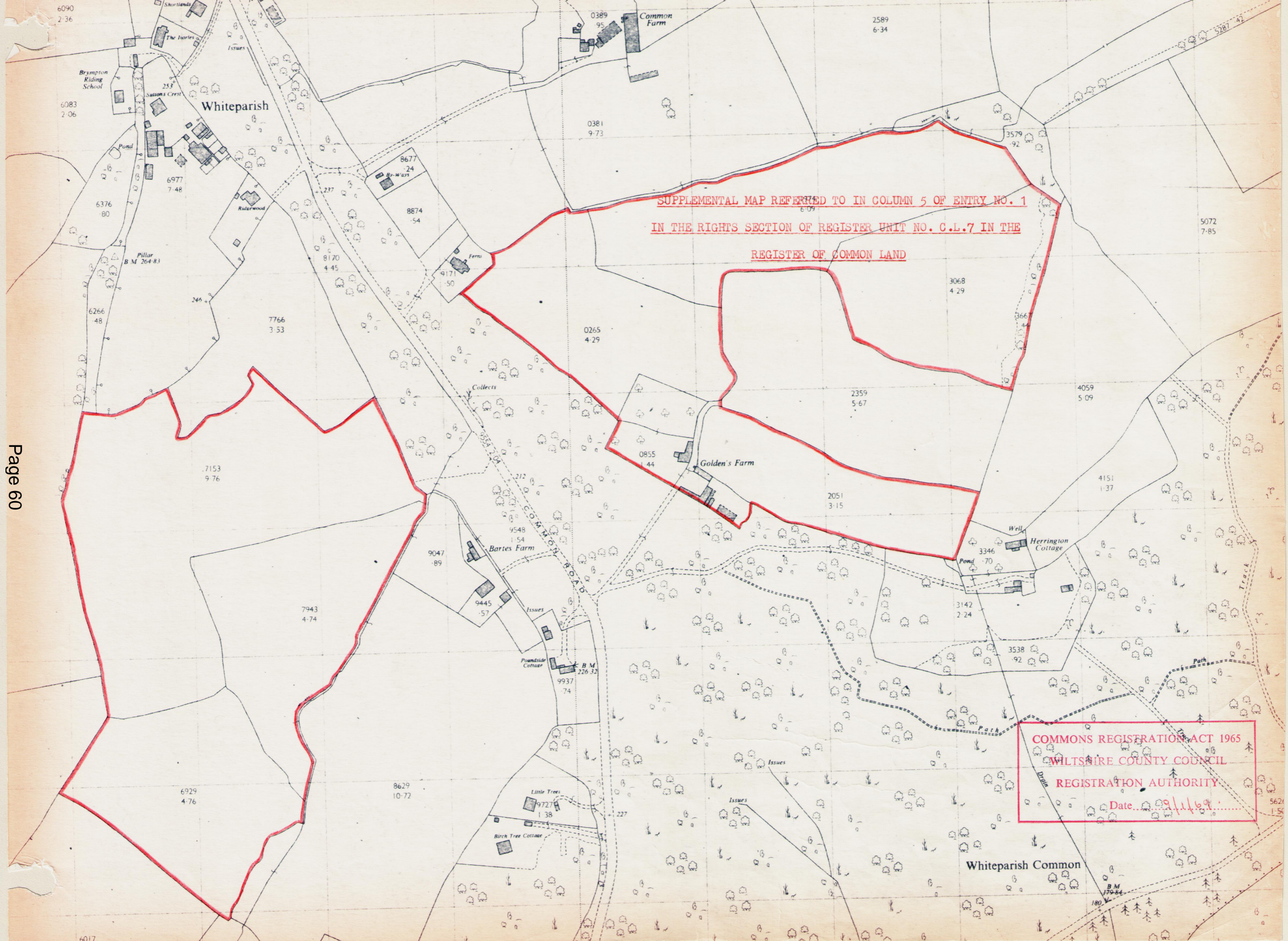
Register unit No. C.L.7.

Edition No. 1

See Overleaf
for Notes

RIGHTS SECTION—Sheet No. 1

1 No. and date of entry	2 No. and date of application	3 Name and address of every applicant for registration, and the capacity in which he applied	4 Particulars of the right of common, and of the land over which it is exercisable	5 Particulars of the land (if any) to which the right is attached
1 9th Jan 1969	131 8th Oct 1968	Mrs. Annie Florence Stride, Mr. Cyril Walter Stride and Mrs. Angela Florence Brown Stride all of Goldens Farm, Whiteparish, Salisbury, Wilts. Owners.	The applicants claim the following rights over the whole of the land comprised in this Register Unit, 1) Rights of Estovers 2) Grazing rights for 30 cattle and 20 pigs. Final (Registration Provisional)	Goldens Farm, Whiteparish, as shown verged red within the boundaries on the supplemental map bearing the number of this registration.



SUPPLEMENTAL MAP REFERRED TO IN COLUMN 5 OF ENTRY NO. 1
IN THE RIGHTS SECTION OF REGISTER UNIT NO. C.L.7 IN THE
REGISTER OF COMMON LAND

COMMONS REGISTRATION ACT 1965
WILTSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
 Date... 9/1/69...

Whiteparish Common

Register of Common Land

Register unit No. C.L.7

Edition No.1

See Overleaf
for Notes

RIGHTS SECTION—Sheet No. 2

1 <i>No. and date of entry</i>	2 <i>No. and date of application</i>	3 <i>Name and address of every applicant for registration, and the capacity in which he applied</i>	4 <i>Particulars of the right of common, and of the land over which it is exercisable</i>	5 <i>Particulars of the land (if any) to which the right is attached</i>
2 31st March, 1970	329 7th June, 1968	Mr. John Leonard Mark Andrews, Farmer, and Marjorie Lily Andrews, Spinster, both of Cottage Farm, Whiteparish, near Salisbury, Wilts.	A right to pasture 30 cows and followers over the whole of the land comprised in this register unit. (Registration Provisional ^{Final})	BarTERS Farm and Cottage Farm, Whiteparish, near Salisbury, Wilts, as shown edged red and blue respectively on the supplemental map referred to in Entry No. 1 in the Rights Section of Register Unit No. C.L.82.
Owners				
3 15th January, 1973.	The registrations at Entry Nos. 1 and 2 above, being undisputed, became final on the 1st August, 1972.			
NOTE: Also see similar entry in Register Unit No. C.L.82.				

NOTE: This section contains the registration of every person registered under the Act as owner of any of the land described in the land section of this register unit. It does not contain any registration in respect of land of which the freehold is registered under the Land Registration Acts 1925 and 1936, but the absence from this section of a registration in respect of any land described in the land section does not necessarily indicate that the freehold of that land is registered under those Acts.

Registration authority Wiltshire County Council

Register unit No. C.L.7

Edition No. 1

Register of Common Land

See Overleaf
for Notes

OWNERSHIP SECTION—Sheet No. 1

1 No. and date of entry	2 No. and date of application	3 Name and Address of person registered as owner	4 Particulars of the land to which the registration applies
1 31st March, 1970	314 31st December, 1969	The Executors of J.G.S. Mitchell, deceased, Elmfield, Woodfalls, Salisbury, Wilts, acting through their authorised Agent, Mr. Martin Antony Shallcross, of Rawlence & Squarey, Solicitors, 8 Rollestone Street, Salisbury, Wilts. Final (Registration Provisional)	The part of the land comprised in this register unit shown coloured pink on the register map.
2 31st March, 1970	315 2nd January, 1970	Mr. Jack Chant, "Poundside", The Common, Whiteparish, Nr. Salisbury, Wilts. Final (Registration Provisional)	The part of the land comprised in this register unit shown coloured blue on the register map.
3 15th January, 1973.		The registrations at Entry Nos. 1 and 2 above, being undisputed, became final	on the 1st August, 1972.
4 12th May, 1975		In pursuance of Section 8(2) of the Commons Registration Act, 1965, Ronald George Stride of "Little Trees", The Common, Whiteparish and Vera Marie Bismas Stride (widow), 26 Mill Road, Salisbury are hereby registered as the owners of the land coloured orange on the register map following a direction by the Chief Commons Commissioner dated 12th May, 1975.	

Commons Act 2006: Schedule 2

Application to correct non-registration or mistaken registration

This section is for office use only

Official stamp

COMMONS ACT 2006 WILTSHIRE COUNCIL REGISTRATION AUTHORITY Date <u>04/01/2021</u>

Application number

2021/01ACR

Register unit number
allocated at registration
(for missed commons
only)

--

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

- Any person can apply under Schedule 2 to the Commons Act 2006.
- All applicants should complete boxes 1-10.
- Applications must be submitted by a prescribed deadline. From that date onwards no further applications can be submitted. Ask the registration authority for details.
- You will be required to pay a fee unless your application is submitted under paragraph 2, 3, 4 or 5 of Schedule 2. Ask the registration authority for details. You would have to pay a separate fee should your application relate to any of paragraphs 6 to 9 of Schedule 2 and be referred to the Planning Inspectorate.

Note 1

*Insert name
of commons
registration
authority.*

1. Commons Registration Authority

To the:

Tick the box to confirm that you have:

enclosed the appropriate fee for this application:

or

£2556

have applied under paragraph 2, 3, 4 or 5, so no fee has been enclosed:



Official copy
of register of
title

Title number WT280576

Edition date 16.11.2018

This official copy shows the entries on the register of title on 07 Dec 2018 at 08:30:07.

This date must be quoted as the "search from date" in any official search application based on this copy.

The date at the beginning of an entry is the date on which the entry was made in the register.

Issued on 07 Dec 2018.

Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.

This title is dealt with by HM Land Registry Weymouth Office.

A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (18.05.2009) The Freehold land shown externally edged with red on the plan of the above title filed at the Registry and being The Pound, Common Road, Whiteparish, Salisbury.
- 2 (18.05.2009) The land has the benefit of the rights granted by but is subject to the rights reserved by the Conveyance dated 16 August 1967 referred to in the Charges Register.
- 3 (18.05.2009) A Deed of Exchange dated 9 December 1969 made between (1) Jack Chant (2) National and Provincial Bank Limited and (3) Graham George Dear relates to part of the south eastern boundary of the land in this title.

NOTE: Copy filed.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (16.11.2018) PROPRIETOR: SHANE PETER SKEATES and SARAH LOUISE SKEATES of [REDACTED] Common Road, Whiteparish, Salisbury SP5 2 [REDACTED]
- 2 (18.05.2009) RESTRICTION: No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by his conveyancer that the provisions of clause 7 of a Deed of Covenant dated 30 April 2009 have been complied with.
- 3 (16.11.2018) The price stated to have been paid on 13 November 2018 was £50,000.
- 4 (16.11.2018) A Deed of Covenant dated 1 November 2016 made between (1) SLA Property Company Limited and (2) Gerard John Mytton Downes contains covenantor's personal covenant

Note 2

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. If you supply an email address in the box provided, you may receive communications from the registration authority or other persons (e.g. objectors) via email. If box 3 is not completed all correspondence and notices will be sent to the first named applicant.

Note 3

This box should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

2. Name and address of the applicant

Name:

Postal address:

 Postcode

Telephone number:

Fax number:

E-mail address:

3. Name and address of representative, if any

Name:

Firm:

Postal address:
 Postcode

Telephone number:

Fax number:

E-mail address:

Note 4

For further details of the requirements of an application refer to Schedule 4, paragraph 14 to the Commons Registration (England) Regulations 2014.

4. Basis of application for correction and qualifying criteria

Tick one of the following boxes to indicate the purpose for which you are applying under Schedule 2 of the Commons Act 2006.

- To register land as common land (paragraph 2):
- To register land as a town or village green (paragraph 3):
- To register waste land of a manor as common land (paragraph 4):
- To deregister common land as a town or village green (paragraph 5):
- To deregister a building wrongly registered as common land (paragraph 6):
- To deregister any other land wrongly registered as common land (paragraph 7):
- To deregister a building wrongly registered as town or village green (paragraph 8):
- To deregister any other land wrongly registered as town or village green (paragraph 9):

For waste land of a manor (paragraph 4), tick one of the following boxes to indicate why the provisional registration was cancelled.

- The Commons Commissioner refused to confirm the registration having determined that the land was no longer part of a manor (paragraph 4(3)):
- The Commons Commissioner had determined that the land was not subject to rights of common but did not consider whether it was waste land of a manor (paragraph 4(4)):
- The applicant requested or agreed to cancel the application (whether before or after its referral to a Commons Commissioner) (paragraph 4(5)):

Please specify the register unit number(s) (if any) to which this application relates:

CL7

Note 5

Explain why the land should be registered or, as the case may be, deregistered.

5. Description of the reason for applying to correct the register:

In order to apply under schedule 2(6) of the Commons Act 2006, it is necessary for the land to be provisionally registered under section 4 (Provisional registration) of the Commons Registration Act 1965, i.e. between 2nd January 1967 and 31st July 1970 and that on the date of the **provisional registration**, the land was covered by a building and since the provisional registration has at all times been and still is covered by a building.

The application to register the land was 26th March 1968; the land was **provisionally registered on 10th April 1968**. The register entry was undisputed and became final on 1st October 1970

On the date of the provisional registration, 10 April 1968, the land, at The Pound, was 'covered by a building' and the land at The Pound was within the curtilage of the building

Planning permission for the garage/maintenance workshop, at The Pound, was granted 12 October 1967 and garage erected before December 1967 and remains on the above site today

Note 6

You must provide an Ordnance map of the land relevant to your application. The relevant area must be hatched in blue. The map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland. Give a grid reference or other identifying detail.

Note 7

This can include any written declarations sent to the applicant (i.e. a letter), and any such declaration made on the form itself.

If your application is to register common land or a town or village green and part of the land is covered by a building or is within the curtilage of a building, you will need to obtain the consent of the landowner.

6. Description of land

Name by which the land is usually known:

The Pound

Location:

Grid Reference SU 249224

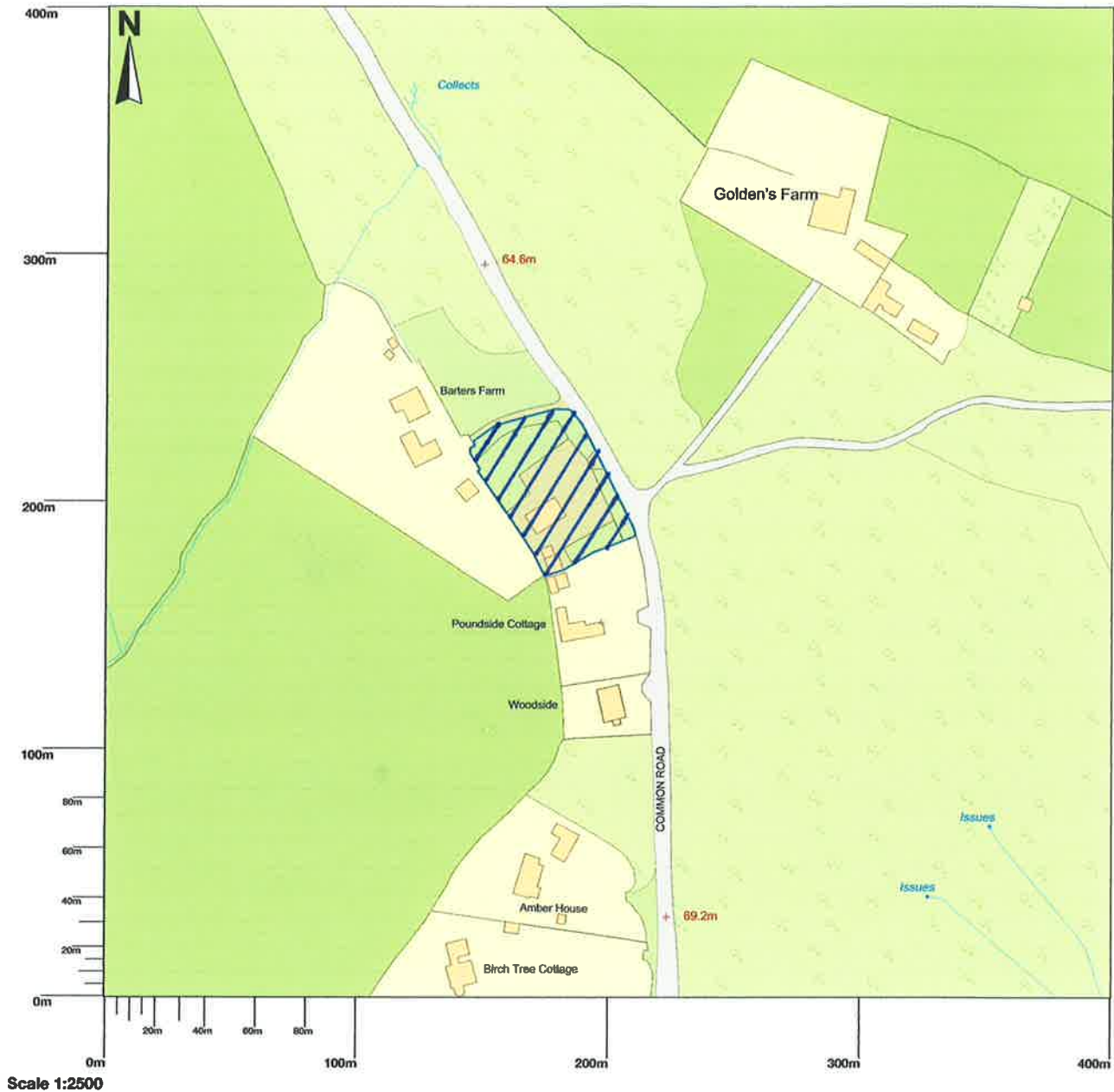
Tick the box to confirm that you have attached an Ordnance map of the land:



7. Declarations of consent

[Empty box for declarations of consent]

The Pound , Common road, Whiteparish, salisbury, Wilts , SP5 2RD



Note 8

List all supporting documents and maps accompanying the application, including if relevant any written consents. This will include a copy of any relevant enactment referred to in paragraphs 2(2)(b) or 3(2) (a) of Schedule 2 to the Commons Act 2006 or, in relation to paragraph 4 (waste land of a manor) evidence which shows why the provisional registration was cancelled. There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

8. Supporting documentation

See Seperate sheet .

8. Supporting documentation

1. Jonas & Parker Solicitors letter to The Land Commission regarding Land Commission Act of 1967 and altering the access or improving/ **extending the range of buildings** with reference to being used, at that time (30 June 1967), as Builders yard and store
2. Land Commission letter with reference to change of use and proposed extension of the buildings 'does not exceed the permitted tolerance (**5000 square feet of floor space additional to that which existed at 6 April 1967**)'
3. Conveyance of Land at The Common, Whiteparish from J Chant to G Dear 16 August 1967
4. Salisbury and Wilton Rural District Council '**Herby Permit**' '**Change of use** from Builders Yard to Milk and General Haulage Depot at The Common, Whiteparish 8 June 1967
Note '**Adequate provision to be made for the parking and turning of vehicles within the site**'
5. 8 June 1967 Part of conditions of above '**20 ft. ' site access to allow for lorries**
6. Official Search of land 11 August 1967 – **NO REFERENCE TO COMMON LAND**
7. **Plans of building (garage/maintenance workshop)** September 1967 received by planning committee 12. 10.67
8. Salisbury and Wilton Rural District Council '**Herby Permit**' **the development of Erection of garage/maintenance workshop** at Common Road, Whiteparish 12 October 1967
9. Mr Graham G Dear statement letter of 18 November 2020 regarding the building of the garage at The Pound

'**The garage/maintenance workshop was completed by end December 1967**' '**The building remains on the above site today**'
10. Photographs of garage 20 November 2020
11. CL 7 LAND SECTION - The land was **provisionally registered on 10th April 1968** This was confirmed by Wiltshire Council 5 November 2020
12. Confirmation email of provisional date of CL7 register 10 April 1968 received from Wiltshire Council 5 November 2020 and this being 'the key date'
13. Ariel view of The Pound showing lorry trailers being parked on site 2003 (continual use)
14. Letter from Mr and Mrs P Connolly of [REDACTED] Common Road referring to rescinding of rights of common over The Pound

C O P Y /

JONAS & PARKER
Solicitors

45 Castle Street
Salisbury
Wilts

RC/SG

30th June 1967.

Dear Sir,

Land Commission Act 1967

We shall be glad of your guidance on the following matter.

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

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

We feel that notice under Case C must be served before the user of the whole site is changed, but that no further notice is required before altering the access or improving/extending the range of buildings within the "ration" allowed, and provided the extension does not go beyond reasonable servicing requirements. Is this correct?

Yours faithfully,

(sgd.) Jonas & Parker

The Land Commission,
South Western Regional Office,
Bridge House,
Clifton Down,
Bristol 8.

C O P Y /

LAND COMMISSION

South Western Regional Office
Bridge House, Clifton Down, Bristol 8.

Our ref: 7/LEV/11/2

4th July, 1967.

Dear Sirs,

Land Commission Act 1967

Thank you for your letter dated 30th June 1967 which I have considered in relation to the above Act and the Material Development Regulations 1967 (Statutory Instrument No. 494 of 1967) made under authority of Sections 98 and 99 of the Act.

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

Yours faithfully,

(sgd.) B. J. Eurt

for Regional Controller.

Messrs. Jonas and Parker,
Solicitors,
45 Castle Street,
SALISBURY
Wilts.

ADJ



4

WATERLOO & CO. LIMITED
LONDON WALL
LONDON

This Conveyance

is made in duplicate the Sixteenth day of August One thousand nine hundred and sixty-seven B E T W E E N JACK CHANT of [redacted] The Common Whiteparish in the County of Wilts (hereinafter called "the Vendor") of the first part NATIONAL PROVINCIAL BANK LIMITED whose Registered Office is situate at Drapers Gardens 12 Throgmorton Avenue London E.C.2. (hereinafter called "the Bank") of the second part and GRAHAM GEORGE DEAR of [redacted] Bunkers Hill Whiteparish aforesaid (hereinafter called "the Purchaser") of the third part

W H E R E A S the Vendor is seised in fee simple in possession subject as hereinafter mentioned but otherwise free from incumbrances of the property hereinafter described

A N D W H E R E A S by a Legal Charge dated the Eighteenth day of January One thousand nine hundred and sixty-five and made between the Vendor of the one part and the Bank of the other part the Vendor charged (inter alia) the property hereinafter described by way of legal mortgage with payment of the money and liabilities therein mentioned

A N D W H E R E A S the Vendor has agreed to sell the said property to the Purchaser for an estate in fee simple in possession subject as hereinafter mentioned but otherwise free from incumbrances at the price of One Thousand Pounds and the Bank has agreed to join in these presents in manner hereinafter appearing

N O W T H I S D E E D W I T N E S S E T H as follows:-

1. I N pursuance of the said agreement and in consideration of the sum of ONE THOUSAND POUNDS paid by the Purchaser to the Vendor with the consent of the Bank (the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys and the Bank as Mortgagee at the request of the Vendor hereby surrenders and releases unto the Purchaser A L L T H A T piece or parcel of land situate at The Common Whiteparish in the County of Wilts comprising parts of the enclosures numbered 407 and 420 on the Ordnance Survey Map for the said Parish having a frontage on the eastern side thereof to the public highway of two hundred feet or thereabouts and bounded on the northern side thereof by a private roadway leading to [redacted] Whiteparish aforesaid A L L which said piece or parcel of land is for the purpose of identification only more particularly delineated on the

WILTSHIRE COUNTY COUNCIL.

TOWN AND COUNTRY PLANNING ACT, 1962.

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER, 1963.

PERMISSION FOR DEVELOPMENT.

Application No. 6759/10935

To: G. Dear Esq.,

Bunkers Hill, Whiteparish.
Per: Messrs. Jonas and Parker,
45 Castle Street,
Salisbury.

The above-named Local Planning Authority having, with the consent of the Minister of Housing and Local Government, delegated to the

SALISBURY AND WILTON RURAL DISTRICT Council

(hereinafter referred to as "the Council") their functions under Parts III & IV of the Act, the Council HEREBY PERMIT the development proposed by you in your application dated the 17th day of February 19 67

Change of use from Builders Yard to Milk and General Haulage Depot at The Common, Whiteparish

in accordance with the plans which accompanied your application, and subject to the conditions endorsed hereon

Dated this 8th day of June 19 67

~~Town Clerk~~/Clerk of the Council.

CONDITIONS.

1. Subject to the permission hereby granted being in respect of the change of use only from Builders Yard to use as a Milk and General Haulage Depot, and subject to detailed plans of any buildings proposed to be erected being submitted for the approval of the Council.
2. The access to be sited at the north end of the frontage of the site shown on the attached plan, to be at least 18ft. wide with 35 ft. radius curves on both sides and to replace the existing one which must be permanently closed.
3. A sight line as follows to be provided on the south side of the new access from a point 20 ft. along the centre line of the access as measured from the nearside along the edge of the county road C.26 to the southern end of the ~~frontage~~ frontage of the garden of the adjoining dwelling. Between this sight line and the road the hedge to be lowered to and maintained at a height not exceeding 3 ft. above road level and all trees and other obstructions to visibility to be removed; no obstruction exceeding this height to be planted or erected within this area.
4. Adequate provision to be made for the parking and turning of vehicles within the site.

See over for Notes.

Form P.5A.

SCALE: 1/500

AREA WITHIN VISIBILITY SPLAY TO BE CLEARED OF TREES
AND FOLIAGE AND NO OBSTRUCTION TO BE ERRECTED
PLANTED OR MAINTAINED ABOVE A HEIGHT OF 3'0" ABOVE
ROAD LEVEL WITHIN THIS AREA

REF

COMMON ROAD

PROPOSED ACCESS

VISIBILITY SPLAY

EXISTING ACCESS

LAND OF
MRS K T

OFFICIAL CERTIFICATE No.

F2474696

It is hereby certified that the Official Search applied for has been made up to the closing of the Office on the date given on the Official Stamp below

The Result is as follows:

H.M. LAND REGISTRY
LONDON
11 AUG 1967

THE FOLLOWING ENTRIES
THE FOLLOWING DATE

(1 Page)

SEARCH MADE - 11 AUGUST 1967
PROTECTION ENDS - 1 SEPTEMBER 1967

PROTECTION ENDS ADDRESS 1 SEP 1967	Title, Trade or Profession Farmer	NAME O H A N T
Whiteparish Wilts.	Tom	

4
LONDON REGISTRY

REFERENCE		SITUATION OF LAND		SHORT DESCRIPTION OF LAND
Register	Date and Refco. No. of Registration	County	Parish or Place	(If Practicable)
LC C(iv)	1956 8 May No. 34364	Wilts	Whiteparish	Part O.S. 526 and 421. <i>This is land to the North of Common Road.</i> 14 th August 1967

WARNING

This certificate refers to the description of the land, if any, given in the Alphabetical Index. Alterations of description subsequent to the date of registration cannot be made in the register and may not have been made in the Alphabetical Index.

NOTES

- Neither the Act nor the Rules require particular parcels of land to be entered in the Alphabetical Index. For the convenience of searchers, however, short descriptions of particular parcels are entered in the Index where practicable. This is not practicable in all cases. A certificate of the result of an official search may, consequently contain (in addition to entries affecting the parcel of land specified in the application therefor) entries in the Index where no particular parcel of land is given therein. Such entries may or may not affect the land in which the searcher is interested. Having obtained notice of them, a purchaser is, however, in a position to call on his vendor to satisfy him that they do not affect the land he is purchasing, or have them dealt with as provided by S.43 of the Law of Property Act, 1925. It is also open to him to apply on Form LC 14 for an office copy of the entry in the register. The fee for an Office Copy entry is 1/6d.
- Certificates of official search are normally posted on the day of the receipt of the application therefor if received before 10 a.m. Under Rule 1 (3) of the Land Charges Rules, 1926, the certificate extends to registration effected during the day of the date of the certificate, and may be issued only after the Office is closed for registrations on that date.
- S. 4 (2) of the Law of Property (Amendment) Act, 1926, as varied by Rule 1 (2) Land Charges Rules, 1940, provides that where a purchaser has obtained an official certificate of the result of search, any entry which is made in the register after the date of the certificate and before the completion of the purchase, and is not made pursuant to a priority notice entered on the register before the certificate is issued, shall not, if the purchase is completed before the expiration of the fourteenth day after the date of the certificate, affect the purchaser.
S. 4 (3) of the Law of Property (Amendment) Act, 1926, provides that in reckoning the number of days under this section, the days when the Office is not open to the public shall be excluded.
Normally the Office is closed to the public on Saturdays, Sundays and Public Holidays.
At the request of the Law Society, in order to assist solicitors, every certificate of the result of an official search shows both the date when the search was issued and the date when the period of protection ends. This information is supplied for convenience only and has no legal effect.
- If the name of the parish, district or other description has changed, former description must be given.

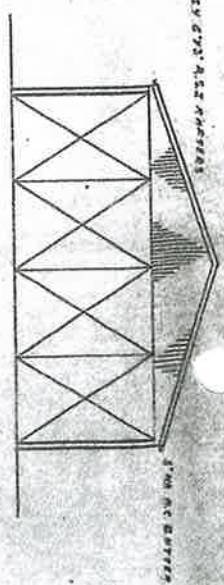
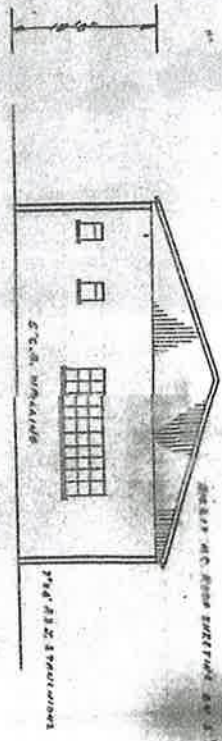
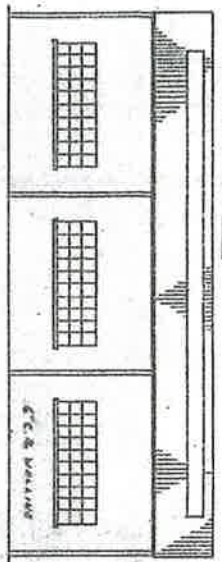
Contents of Official Certificate

Normal time for issuing Certificates of Official Searches

Protection for 14 days

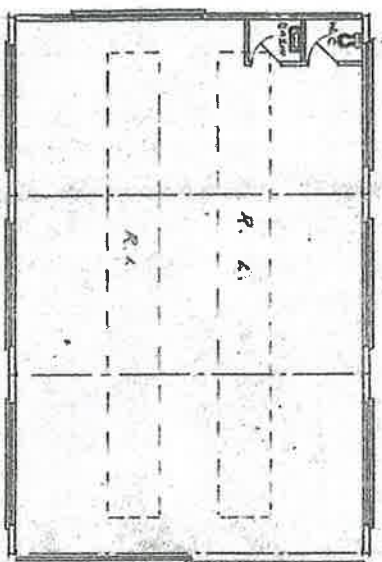
Change of parish name or of description of land

Plan No. 7035 / 11434
 REFERRED TO THE TOWN AND COUNTRY
 PLANNING COMMITTEE
 12. 10. 67

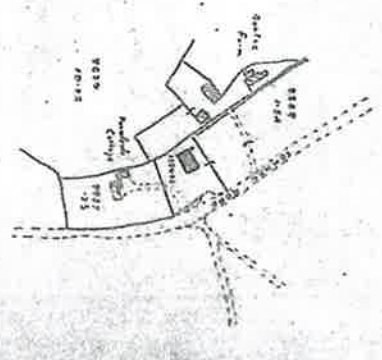
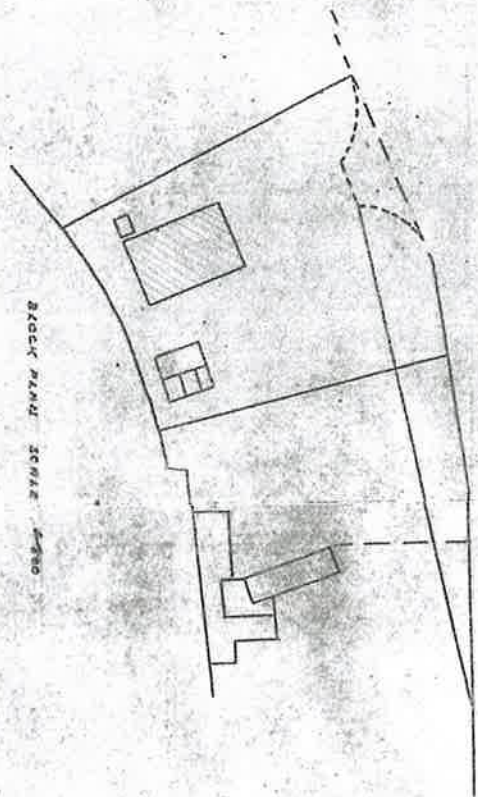


PAID & RECEIVED
 5 OCT 1968
 TOWN AND COUNTRY PLANNING COMMITTEE

SEWAGE
 TANK



43'-0"



LOCATION SCALE 1:2500

2222 BROADWAY for E. Dean Esq. WILTSHIRE.

H FRANCIS AND SONS LTD, KINGSTON, WILTS
 SEPTEMBER 1967 SCALE 1/8" = 1'

WILTSHIRE COUNTY COUNCIL.

TOWN AND COUNTRY PLANNING ACT, 1962.

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER, 1963.

PERMISSION FOR DEVELOPMENT.

Application No. 7085/11434

To: G.G. Dear, Esq.,

[REDACTED]
Romsey Road,
Whiteparish.

The above-named Local Planning Authority having, with the consent of the Minister of Housing and Local Government, delegated to the

SALISBURY AND WILTON RURAL DISTRICT Council

(hereinafter referred to as "the Council") their functions under Parts III & IV of the Act, the Council HEREBY PERMIT the development proposed by you in your application dated the 2nd day of October 1967

Erection of garage/maintenance workshop at Common Road, Whiteparish in accordance with the plans which accompanied your application, and subject to the conditions endorsed hereon

Dated this 12th day of October 1967

[REDACTED]
Town-Clerk/Clerk of the Council.

CONDITIONS.

REASONS.


Romsey Road

Whiteparish

Salisbury

Wilts

SP5 2 

18 November 2020

REFERENCE THE POUND, COMMON ROAD, WHITEPARISH, SALISBURY, WILTS, SP5 2RD

Having purchased the above property and being granted planning permission for

'Erection of garage/maintenance workshop'

By Salisbury and Wilton Rural District Council

Application No 7085/11434

12 October 1967

Building works, for the above garage/maintenance workshop commenced in November 1967 and the building completed by the end of December 1967

The garage/maintenance workshop was steel framed with face brickwork above ground

The building remains on the above site today

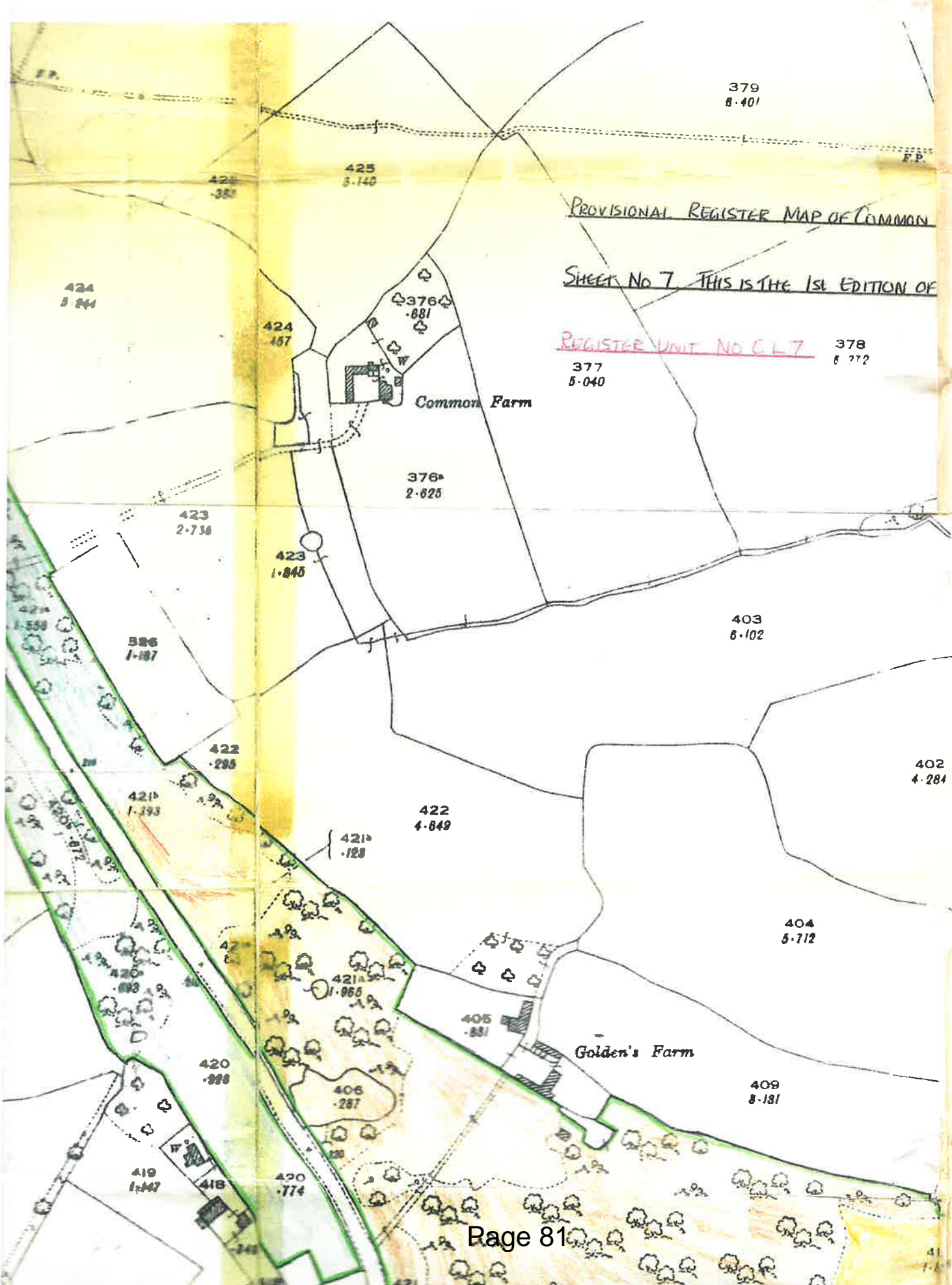

Mr Graham G Dear

THE POUND
COMMON ROAD, WHITEPARSIH, SP5 2RD

WHITEPARSIH GARAGE

20 NOVEMBER 2020

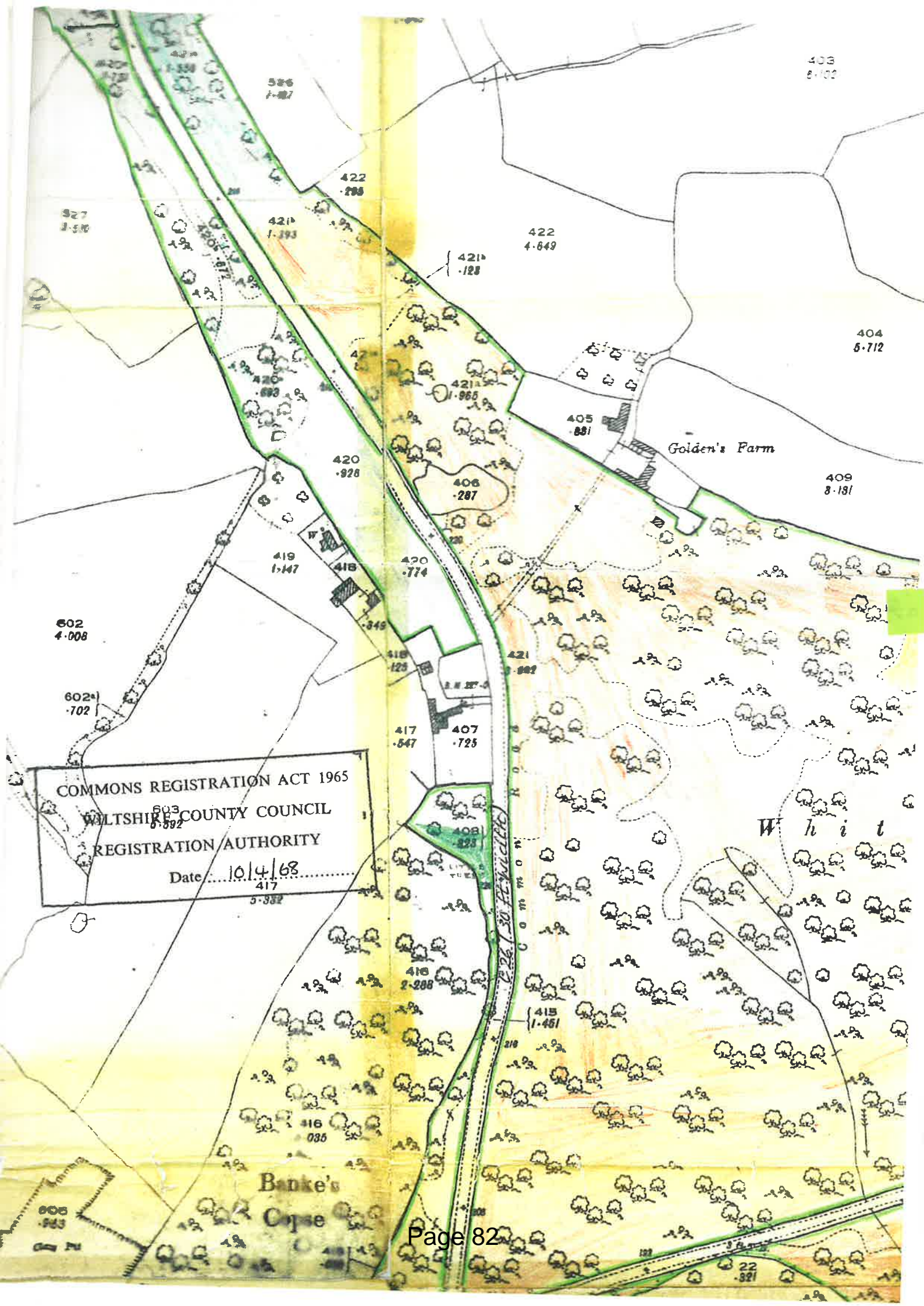




PROVISIONAL REGISTER MAP OF COMMON
SHEET No 7 THIS IS THE 1st EDITION OF
REGISTER UNIT NO CL 7

Common Farm

Golden's Farm



COMMONS REGISTRATION ACT 1965

WILTSHIRE COUNTY COUNCIL

REGISTRATION AUTHORITY

Date 10/4/68

Whit

Banke's
Cope

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]

Sent: 05 November 2020 09:54

To: [REDACTED]

Subject: RE: Schedule 2(6) Application under Commons Act 2006 - The Pound, Whiteparish

Hi Sarah,

Thank you for your e-mail. Although I am unable to offer advice regarding the merits of your potential application and you may wish to seek your own legal advice on these matters, I have now been able to check the register entry for CL 7, Whiteparish Common and it appears that following application to register the land dated 26th March 1968, the land was provisionally registered on 10th April 1968. The register entry was undisputed and became final on 1st October 1970, please see "Land Section" entry attached.

In order to apply under schedule 2(6) of the Commons Act 2006, it is necessary for the land to be provisionally registered under section 4 (Provisional registration) of the Commons Registration Act 1965, i.e. between 2nd January 1967 and 31st July 1970 and that on the date of the provisional registration, the land was covered by a building and since the provisional registration has at all times been and still is covered by a building. The provisional registration date appears to be the key date.

I do not have correspondence regarding which landowners were sent notification of the registration, however, I note that Mr Graham Deere is not included in the ownership section of the register entry, which includes various entries between 31st March 1970 and 12th May 1975, please "Ownership Section" entries attached.

I hope this information is helpful.

Kind regards,

Janice

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

ARIEL VIEW

THE POUND

2003

SHOWING LORRY TRAILERS PARKED

IN FRONT OF GARAGE BUILDING



Mr and Mrs P. Connolly

[REDACTED]
Common Road

White parish

Salisbury SP5 2 [REDACTED]

29th December 2020

Mr and Mrs S. Streets.

Just a quick note to confirm that I have

no problem whatsoever with rescinding any

rights commoners or otherwise over the plot of

land [REDACTED]

known as 'The Pond' [REDACTED]

Common Road, White parish. This does not in our

opinion affect any other rights held by our

ownership of [REDACTED]

kind regards
[REDACTED]

Note 9

List any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

9. Any other information relating to the application

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

Note 10

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.

10. Signature

Date:

2 JANUARY 2021

Signatures:

[Redacted signature area]

REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

You are advised to keep a copy of the application and all associated documentation.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.

APPENDIX 7 - Correspondence

i) Mr R Hughes (Economic Development & Planning, Wiltshire Council) - 17th May 2021

From: [Hughes, Richard](#)
Sent: 17 May 2021 09:27
To: [Green, Janice](#)
Subject: FW: Application to De-Register Common Land - The Pound, Whiteparish
Attachments: Notice of Application to De-Register Common Land, Whiteparish (Dev Control).pdf

Janice

Given this land is laid to hardsurface and presumably used for commercial purposes for some years, I have no comments on its de-registering. I assume you consult the parish council and local ward member on these matters. I would suggest notifying wc highways regards the strip of grass adjacent the highway, as this may be Council highways land ?

Site as circa 2020 (google)



Below, site as it was circa 2011 (google)



Richard D Hughes
Team Leader South Hub
Economic Development and Planning
Wiltshire Council

Tel: 01722 434382

Email: richard.hughes@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Follow Wiltshire Council



From: Madge, Adam <Adam.Madge@wiltshire.gov.uk>
Sent: 17 May 2021 08:35
To: Hughes, Richard <Richard.Hughes@wiltshire.gov.uk>
Subject: FW: Application to De-Register Common Land - The Pound, Whiteparish

One for you I guess?

Adam

Adam Madge
Team Leader (South)
Development Management
Economic Development and Planning

Wiltshire Council

Tel 01722 434380
E – mail adam.madge@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

Follow Wiltshire Council



From: Green, Janice <janice.green@wiltshire.gov.uk>
Sent: 14 May 2021 16:53
To: Madge, Adam <Adam.Madge@wiltshire.gov.uk>
Subject: Application to De-Register Common Land - The Pound, Whiteparish

Dear Mr Madge,

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

Please find attached notice of the above-mentioned application to de-register buildings wrongly registered as common land, the Pound, Common Road, Whiteparish.

Your comments on this matter are invited.

Kind regards,

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

Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

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

Report a problem: <https://my.wiltshire.gov.uk/>

Web: www.wiltshire.gov.uk

Follow Wiltshire Council



Follow Wiltshire Countryside



14th May 2021

Rights of Way & Countryside Team
Communities and Neighbourhood Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Adam Madge
Development Management Team Leader
Development Management, Operations
& Spatial Planning
Development Control (South)
Wiltshire Council

Your ref:

Our ref: JG/PC/245 2021/01ACR

Dear Mr Madge,

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

Wiltshire Council are in receipt of an application to de-register buildings wrongly registered as common land, The Pound, Common Road, Whiteparish. The application is made by the landowners under Schedule 2(6) of the Commons Act 2006 and dated 2nd January 2021.

Please find enclosed notice of the application for your attention, including a map of the land which it is claimed to be wrongly registered as common land by virtue of the land being covered by a building and its curtilage since its provisional registration on 10th April 1968. Notice of the application will also be posted on site and on the Wiltshire Council website: [Rights of way - Wiltshire Council](#) (please see statutory notices).

The application in full will be made available for public inspection at Wiltshire Council's Offices at County Hall, Trowbridge and Bourne Hill, Salisbury, between 9am and 5pm, on Monday to Friday, (please ask at reception to view a copy). Alternatively, please contact the case Officer, Miss Janice Green, tel: (01225) 713345 or e-mail: janice.green@wiltshire.gov.uk

If you would like to make any representations regarding the proposals, I would be very grateful if you could forward them to me in writing at the above address, or by e-mail, not later than 5:00pm on Monday 5th July 2021.

Yours sincerely



Janice Green
Senior Definitive Map Officer
Direct line: 01225 713345
Email: janice.green@wiltshire.gov.uk

Enc.

Please note that any responses to this letter will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>

COMMONS ACT 2006 — SCHEDULE 2 PARAGRAPH 6

**Notice of application to de-register buildings wrongly registered as Common Land – The Pound,
Common Road, Whiteparish**

To every reputed owner, lessee, tenant or occupier of any part of the land described below and to all others whom it may concern.

Application has been made to the Wiltshire Council as the Commons Registration Authority by Mr and Mrs S Skeates of Whiteparish under Schedule 2 Paragraph 6 of the Commons Act 2006 and in accordance with The Commons Registration (England) Regulations 2014. The application seeks to de-register the land described in the Schedule below which is claimed to have been wrongly registered as part of the common land register unit number CL7, The Common, Whiteparish, by virtue of the land being covered by a building and land within the curtilage of the building at the time of the provisional registration as common land on 10th April 1968 and since the provisional registration the land has at all times and still is covered by a building.

The application, which includes a plan of the land proposed to be de-registered, may be inspected at the following offices: Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN between the hours of 9am and 5pm on Monday to Friday, (please ask at Reception to view a copy). Copies of the documents may also be inspected at the following local authority offices: Wiltshire Council, Bourne Hill, Salisbury, Wiltshire, SP1 3UZ between the hours of 9am to 5pm on Monday to Friday, (please ask at Reception to view a copy). Alternatively, please contact the case Officer, J Green at janice.green@wiltshire.gov.uk or tel: (01225) 713345.

If the Registration Authority is satisfied that the land described below qualifies for de-registration as common land, it will so correct the register entry for CL7 The Common, Whiteparish, by removing the land.

Any person wishing to make representations or objections to the de-registration of the land as common land should send a statement of the facts on which the representation/objection is based to J Green, Senior Definitive Map Officer, Rights of Way and Countryside, Communities and Neighbourhoods Services, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN or e-mail janice.green@wiltshire.gov.uk on or before Monday 5th July 2021. Any representations that are to be taken into account by the Authority in reaching a decision on the application cannot be treated as confidential but will be dealt with in accordance with regulation 25 which requires the registration authority to serve a copy of all the representations it has received upon the applicant for comment and may be disclosed to other interested parties. Where the application is referred to the Planning Inspectorate for determination in accordance with regulation 26, any representations will be sent to the Planning Inspectorate.

Dated 21st May 2021

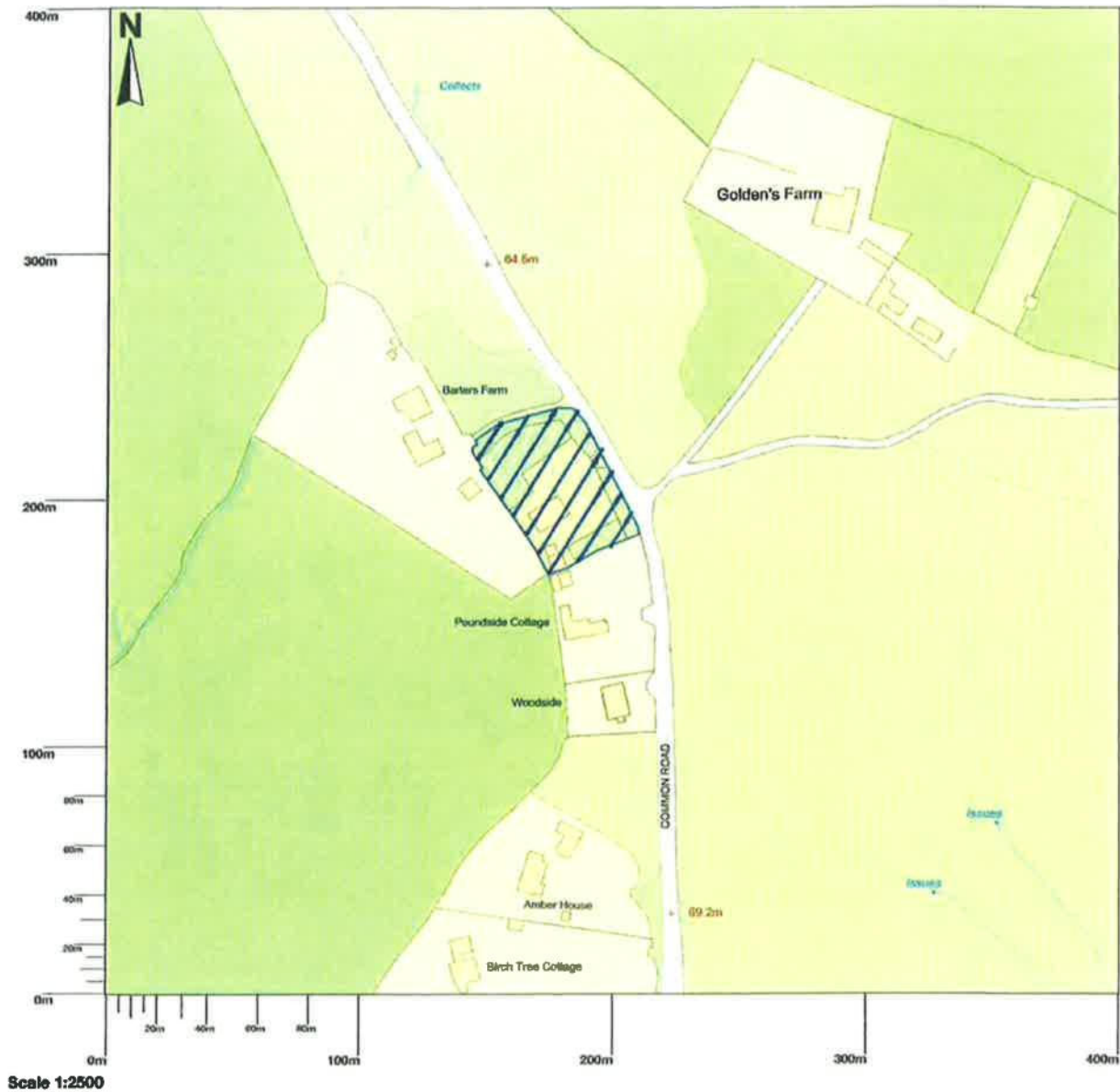
Wiltshire Council

Schedule

Description of land claimed to have been wrongly registered as common land

The Pound, Common Road, Whiteparish.

The Pound , Common road, Whiteparish, salisbury, Wilts , SP5 2RD



Map area bounded by: 424795,122235 425195,122635. Produced on 20 November 2020 from the OS National Geographic Database. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2020. Supplied by UKPlanningMaps.com a licensed OS partner (100054135). Unique plan reference: p16buk/537801/728496

ii) Mr S Byrne - 20th May 2021

From: [REDACTED]
Sent: 20 May 2021 15:35
To: [Green, Janice](#)
Subject: Re: Notice of Application to De-Register Common Land - The Pound, Whiteparish
Attachments: 1.OS(1~2500)(1924).jpg; 2.OS(1~10000)(1970).jpg; 3.OS(1~10560)(1962).jpg; 4.OS(1~2500)(1967).jpg; 5.OS(1~10560)(1970).jpg; 6.OS(1~10000)(1990-91).jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Janice

SCHEDULE 2(6) APPLICATION (THE POUND, COMMON ROAD, WHITEPARISH, WILTSHIRE)

I've searched for historical OS maps relating to this application and the results are shown in the six attachments to this e-mail. The details for each attachment are listed below.

NATIONAL LIBRARY OF SCOTLAND

<http://maps.nls.uk/index.html>

1. OS (1:2500) (1924)
2. OS (1:10000) (1970)

OLD MAPS SITE

www.old-maps.co.uk

3. OS (1:10560) (1962)
4. OS (1:2500) (1967)
5. OS (1:10560) (1970)
6. OS (1:10000) (1990-91)

From this initial search – and noting that the land was provisionally registered under the 1965 Act on 10 April 1968 – I can see no merit at all in the Schedule 2(6) application. The only map showing a building on the site is the one dated 1990-91. As you will see, the map at Attachment 2 was surveyed and revised between 1963 and 1970. It shows no buildings at all.

I'd be interested to know whether the applicants have produced any evidence contradicting this view.

Would it be possible for you to send me copies of the application and any supporting documents by e-mail?

Best wishes

Steve Byrne
[6 x Attachments]

From: Green, Janice <janice.green@wiltshire.gov.uk>
Sent: 20 May 2021 12:07

To: [REDACTED]

Subject: Notice of Application to De-Register Common Land - The Pound, Whiteparish

Dear Mr Byrne,

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

Wiltshire Council are in receipt of an application to de-register buildings wrongly registered as common land, The Pound, Common Road, Whiteparish. The application is made by the landowners under Schedule 2(6) of the Commons Act 2006 and dated 2nd January 2021.

Please find attached notice of the application for your attention, including a map of the land which it is claimed to be wrongly registered as common land by virtue of the land being covered by a building and its curtilage since its provisional registration on 10th April 1968. Notice of the application has also been posted on site and on the Wiltshire Council website: [Rights of way - Wiltshire Council](#) (please see statutory notices).

The application in full has been made available for public inspection at Wiltshire Council's Offices at County Hall, Trowbridge and Bourne Hill, Salisbury, between 9am and 5pm, on Monday to Friday, (please ask at reception to view a copy). Alternatively, please contact the case Officer, Miss Janice Green, tel: (01225) 713345 or e-mail: janice.green@wiltshire.gov.uk

If you would like to make any representations regarding the proposals, I would be very grateful if you could forward them to me in writing at the above address, or by e-mail, not later than 5:00pm on Monday 5th July 2021.

Kind regards,

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

Wiltshire Council

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

Email: janice.green@wiltshire.gov.uk

Information relating to the way Wiltshire Council will manage your data can be found at:

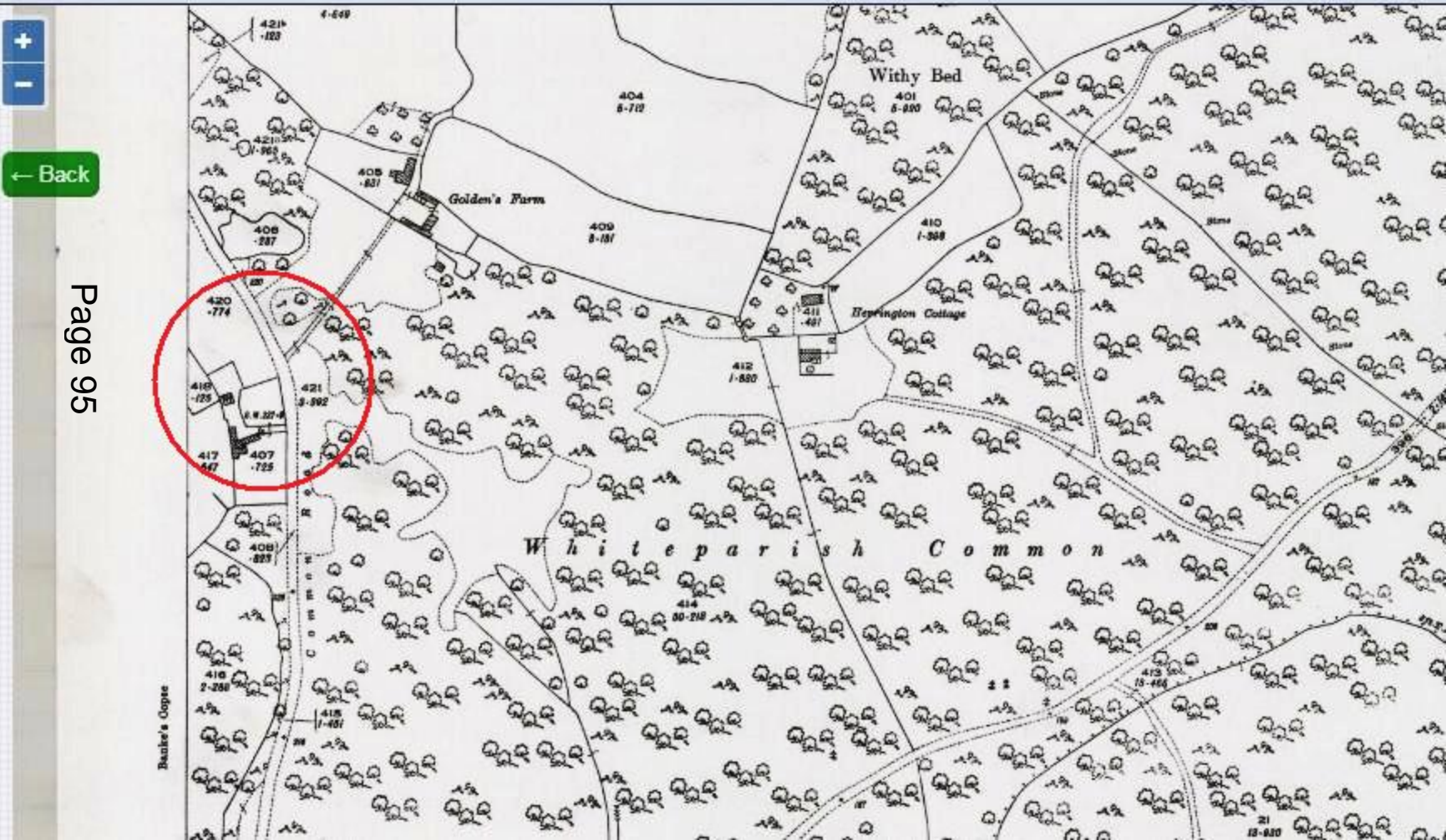
<http://www.wiltshire.gov.uk/recreation-rights-of-way>

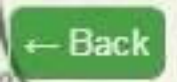
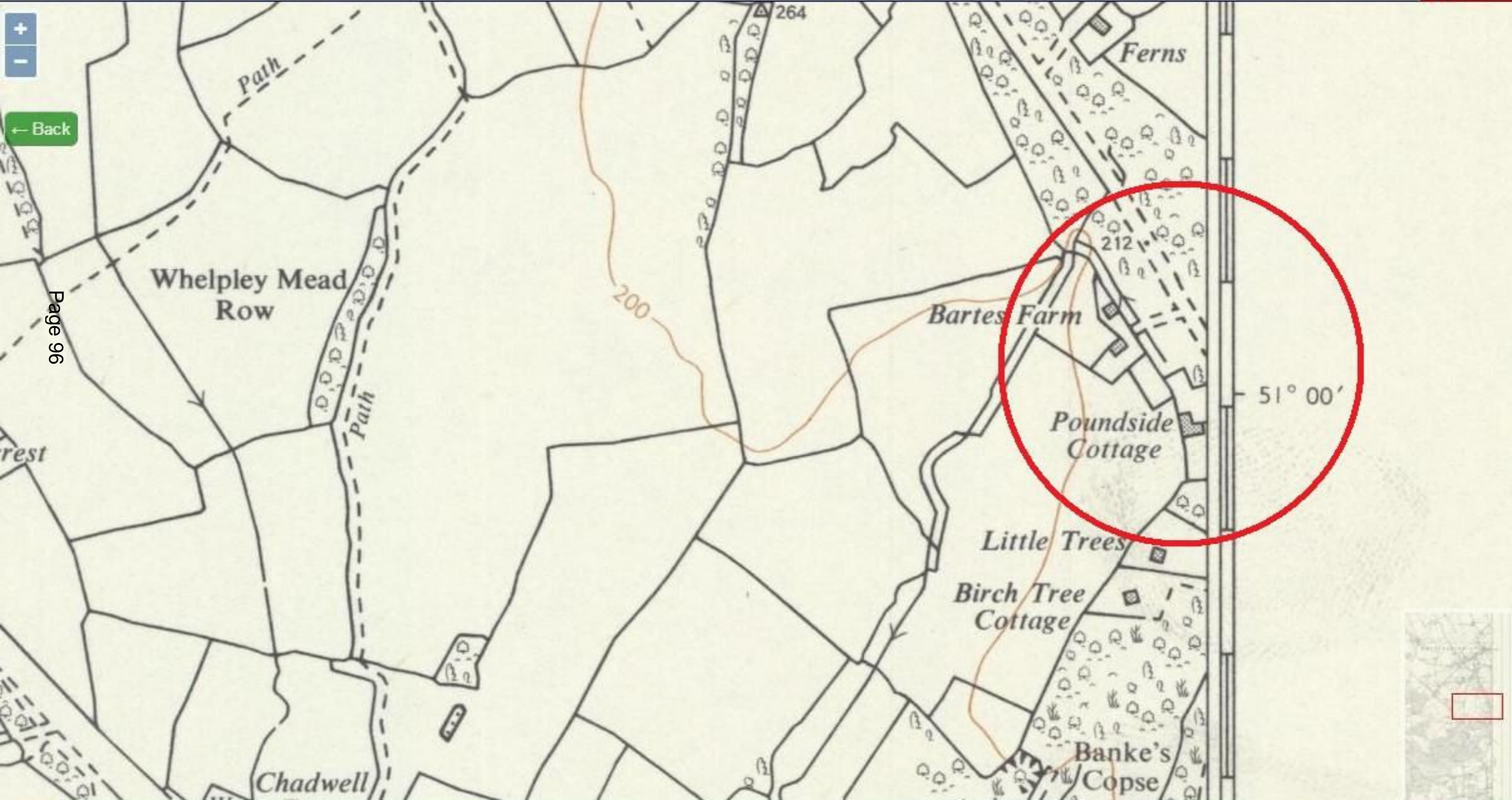
Report a problem: <https://my.wiltshire.gov.uk/>

Web: www.wiltshire.gov.uk

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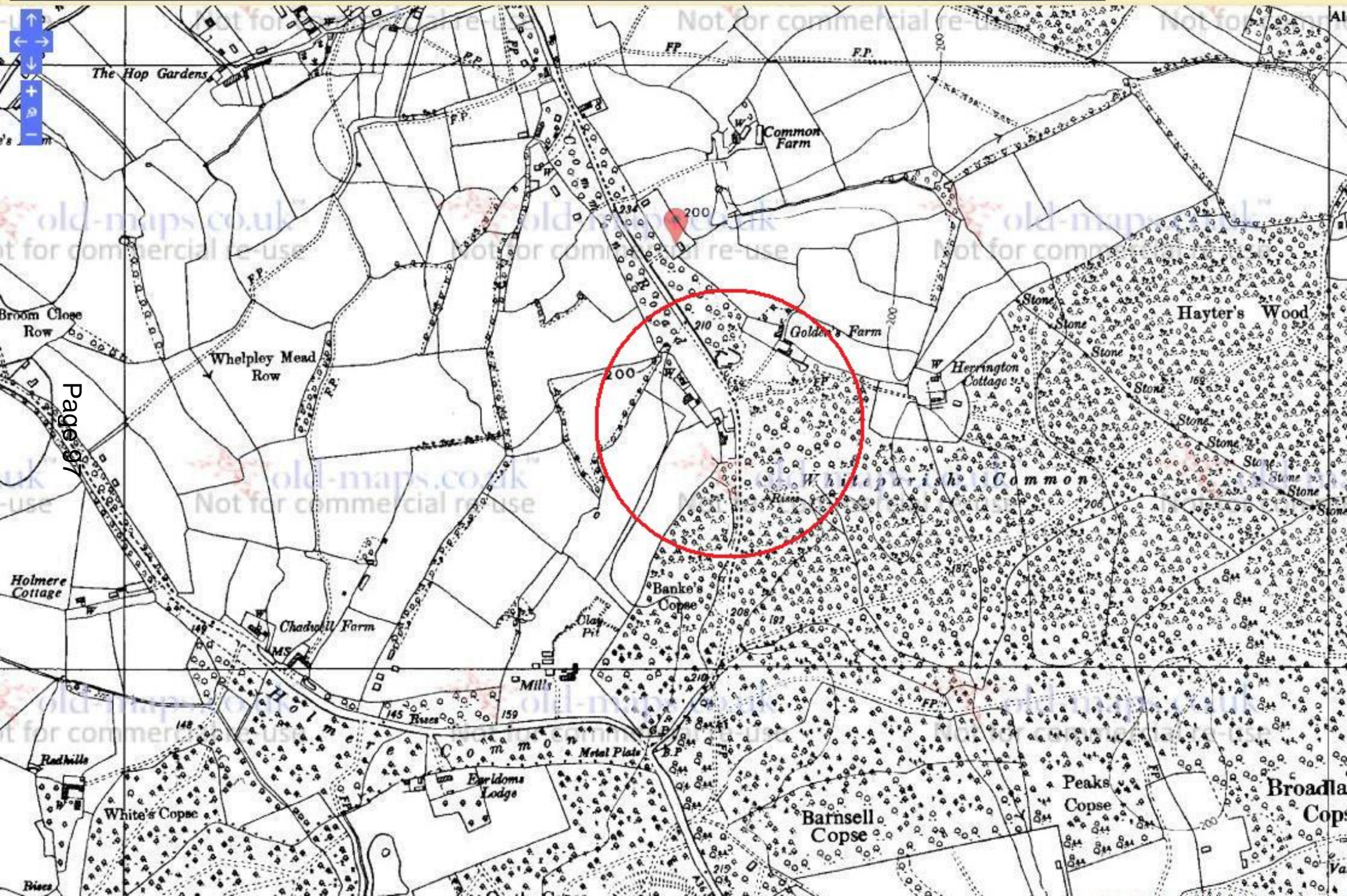




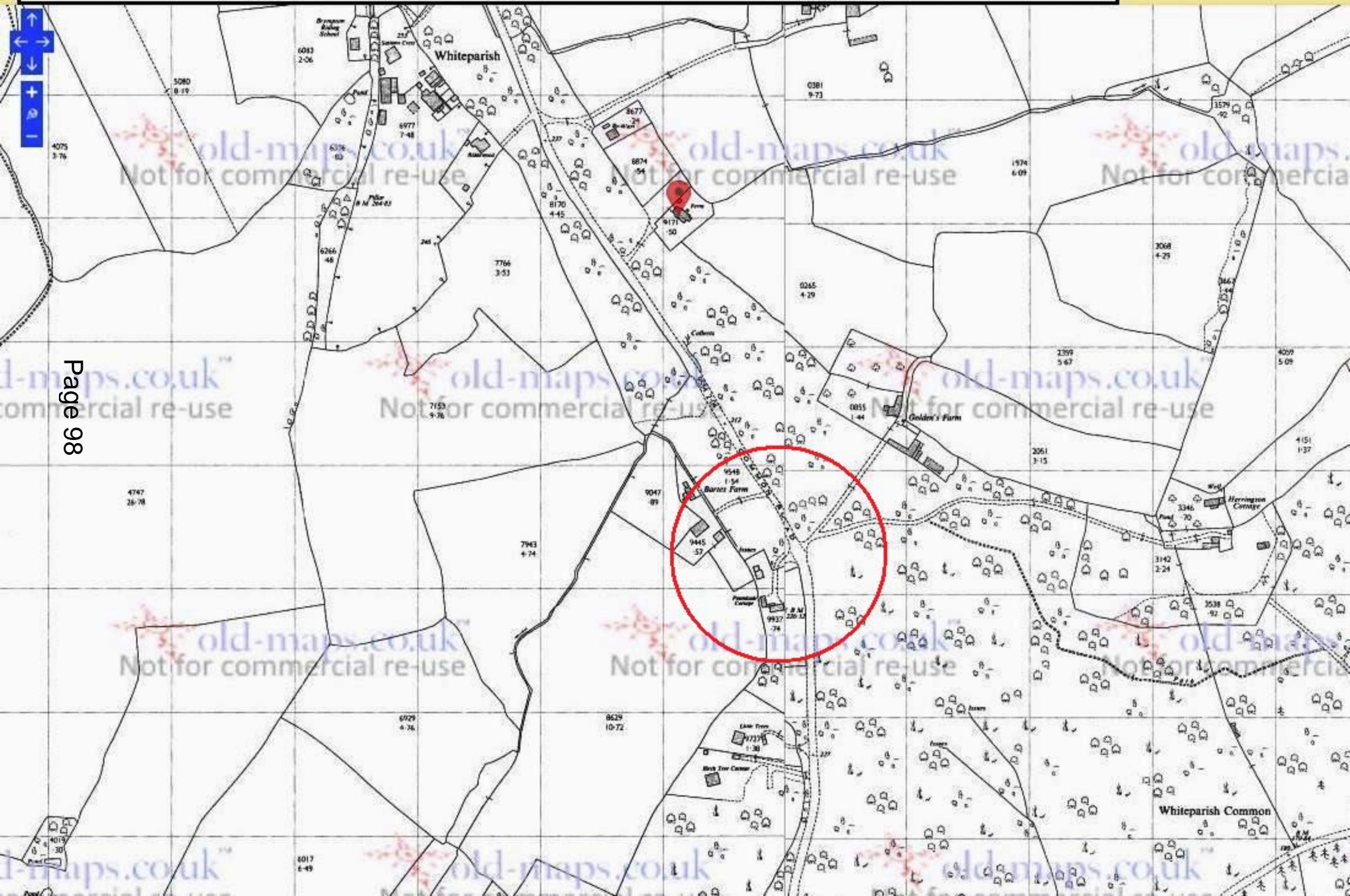


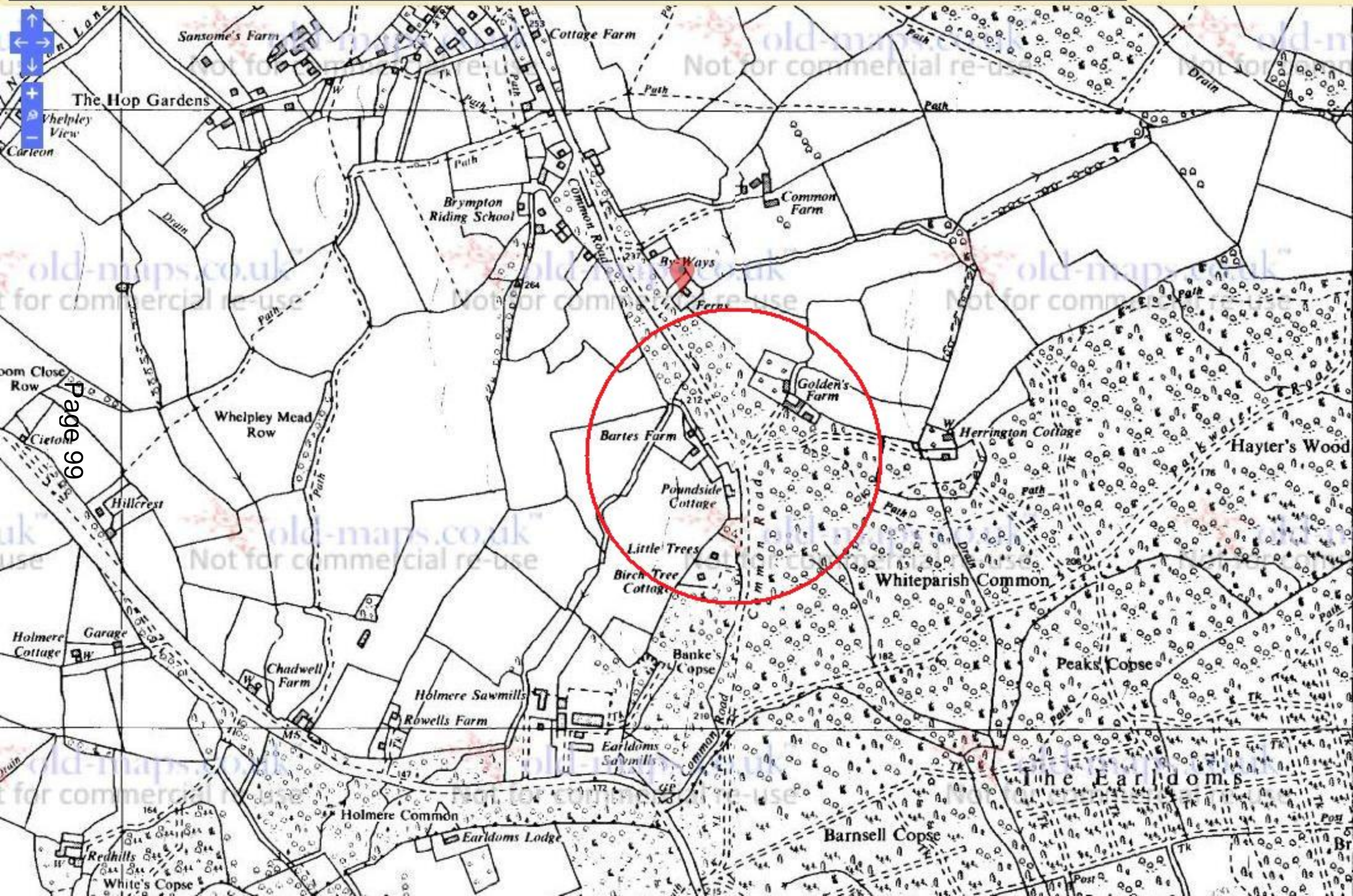
Page 96

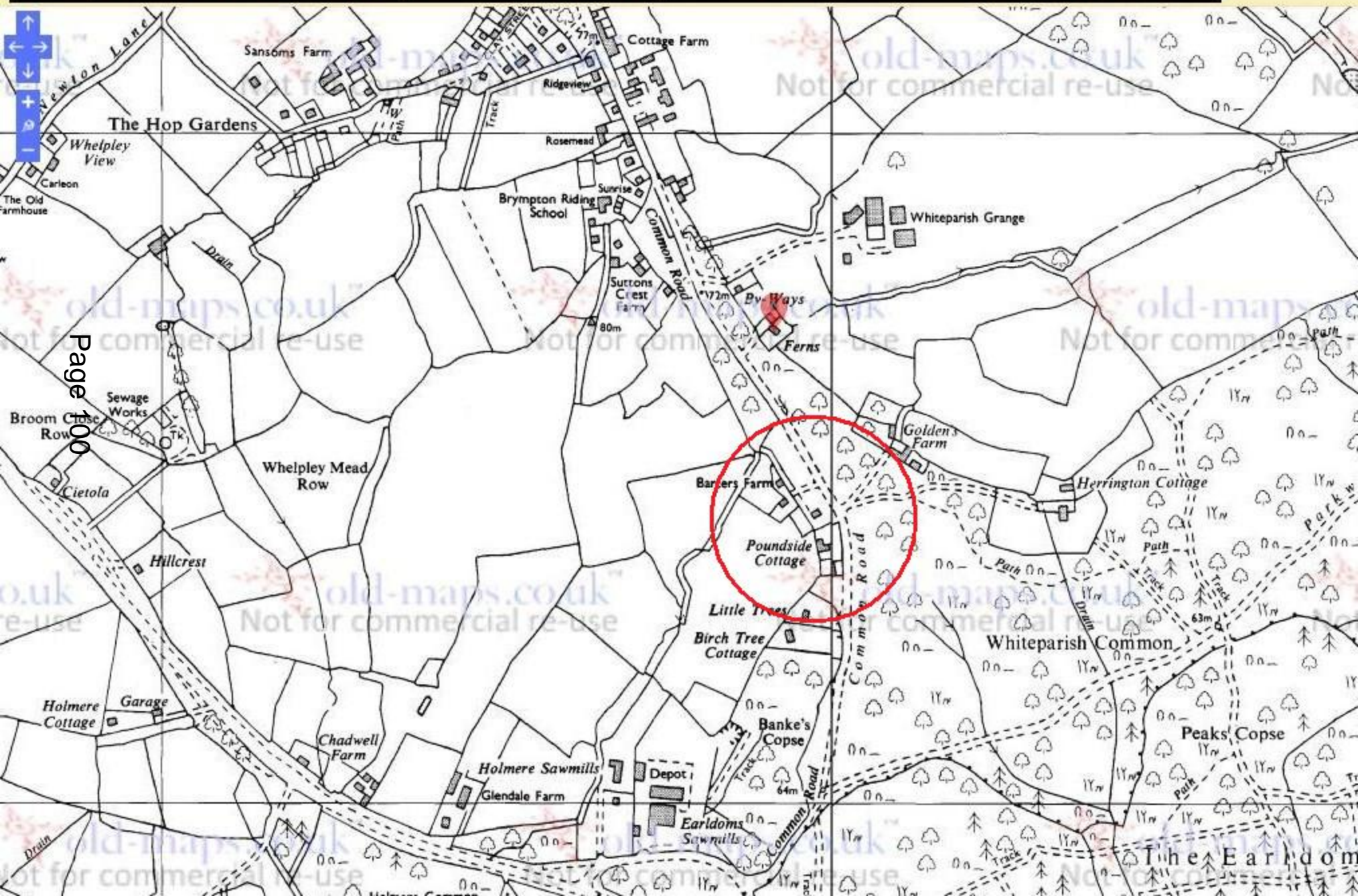




Page 97







iii) Mr S Byrne - 20th May 2021

From: [REDACTED]
Sent: 20 May 2021 16:23
To: [Green, Janice](#)
Subject: Re: Notice of Application to De-Register Common Land - The Pound, Whiteparish
Attachments: WILT_CL7.jpg

Dear Janice

Further to my previous e-mail: I don't know whether this is of any interest but I've attached the copy I have of the (1st edition) register map for CL.7. The map was supplied to me by GeoData, who took copies of the land sections & register maps from all of the English registers as part of a project related to the Countryside & Rights of Way Act 2000.

Best wishes

Steve Byrne

From: Green, Janice <janice.green@wiltshire.gov.uk>
Sent: 20 May 2021 12:07
To: [REDACTED]
Subject: Notice of Application to De-Register Common Land - The Pound, Whiteparish

Dear Mr Byrne,

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

Wiltshire Council are in receipt of an application to de-register buildings wrongly registered as common land, The Pound, Common Road, Whiteparish. The application is made by the landowners under Schedule 2(6) of the Commons Act 2006 and dated 2nd January 2021.

Please find attached notice of the application for your attention, including a map of the land which it is claimed to be wrongly registered as common land by virtue of the land being covered by a building and its curtilage since its provisional registration on 10th April 1968. Notice of the application has also been posted on site and on the Wiltshire Council website: [Rights of way - Wiltshire Council](#) (please see statutory notices).

The application in full has been made available for public inspection at Wiltshire Council's Offices at County Hall, Trowbridge and Bourne Hill, Salisbury, between 9am and 5pm, on Monday to Friday, (please ask at reception to view a copy). Alternatively, please contact the case Officer, Miss Janice Green, tel: (01225) 713345 or e-mail: janice.green@wiltshire.gov.uk

If you would like to make any representations regarding the proposals, I would be very grateful if you could forward them to me in writing at the above address, or by e-mail, not later than 5:00pm on Monday 5th July 2021.

Kind regards,

Janice Green

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

Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

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

Report a problem: <https://my.wiltshire.gov.uk/>

Web: www.wiltshire.gov.uk

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PROVISIONAL REGISTER MAP OF COMMON LAND

SHEET No 7. THIS IS THE 1st EDITION OF THIS SHEET

REGISTER UNIT No. C.L.7

COMMONS REGISTRATION ACT 1965
WILTSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
Date 10/4/68

Page 103



From: [REDACTED]
Sent: 02 July 2021 10:53
To: [Green, Janice](#)
Subject: 2021-01ACR The Pound
Attachments: 3 Google 2002.pdf; 1 OS map 1967 plan.jpg; 2 OS map marked up.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Janice

The society objects in part to the application under reference 2021-01ACR to the deregistration of a building and land at the Pound, Whiteparish common. The society has no legal interest in the application land.

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

The plan submitted in connection with the planning permission in 1967 shows two buildings within a compound defined by lines drawn to north, west and south. We do not know whether those lines were defined on the ground by fences, but we are willing to accept that the curtilage of the buildings at that time was represented by an area demarcated within the lines. There is no evidence whatsoever to suggest the curtilage extended beyond those lines at that time, and indeed we have seen no evidence to infer that it extends beyond those lines today.

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

We attach an Ordnance Survey plan (1) showing the application land, on which we have superimposed an extract from the 1967 plan. We have then demarcated the extent of the 1967 curtilage on a further plan (2) by means of a blue dotted line. We submit that what may be deregistered in consequence of the application should be confined to whatever land within the blue dotted line is currently registered common land.

In *R (On the Application of Blackbushe Airport Ltd) v Hampshire County Council & Ors* (the society appearing as an interested party), the Court of Appeal held:

...that the phrase "the curtilage of a building" in the 2006 Act requires the land in question to form part and parcel of the building to which it is related.

The Court endorsed the judgment of Buckley LJ in the Court of Appeal in *Methuen-Campbell v Walters* [1979] 2 QB 525, at pp. 543F–544G, giving particular attention to the following sentence:

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

We accept that the area within the blue dotted line is intimately associated with the buildings located within that area, it having been used as a parking and turning area at times throughout the period since 1967. There is nothing which enables the same conclusion to be drawn about the land outside the line. We also submit (3) a photograph derived from Google satellite photography dated

to 2002 which shows no evidence that, even as recently as 2002, the land to the north of the blue dotted line was being used with the buildings — let alone 'intimately associated' with them.

regards

Hugh

Hugh Craddock

Case Officer

Open Spaces Society

25a Bell Street

Henley-on-Thames

RG9 2BA

Email: hugh@oss.org.uk

www.oss.org.uk

Tel: 01491 573535

Please note that I work mornings only

(Registered in England and Wales, limited company number 7846516

Registered charity number 1144840)

Support our Grant a Green Appeal

*and help fund our campaign to protect open space
through voluntary registration as town or village green*





The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice.

The Pound 2002

Write a description for your map.

Legend

-  51.001262943001585,-1.6456364045879137
-  Whiteparish, Barbers Farm

 51.001262943001585,-1.6456364045879137

Page 106



Barters Farm

Poundside Cottage



Barters Farm

Poundside Cottage



v) Mr T King - 3rd July 2021

From: [REDACTED]
Sent: 03 July 2021 11:56
To: [Green, Janice](#)
Subject: 2021/01ACR

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green

I wish to make the following comments regarding application 2021-01ACR The Pound Whiteparish.

Whilst I am the [REDACTED], I am making these comments in a personal capacity.

My family have lived in Whiteparish for circa the last 150 years and for the whole of that time have been involved in farming in the village. We did at one time graze livestock on Whiteparish Common. I was born in the village in 1951 and have lived in the village from that time until now except for a 3 year period, (1973-76)

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

Many Whiteparish residents were amazed when planning consent was applied and granted, for the erection of the current building by a Whiteparish haulage business whose main occupation was the collection of milk from local farms. The fact that this business employed local drivers may have reduced local opposition.

I do take issue with some of statements made in this application.

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

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

I consider the registered Common Land of Whiteparish to be a special part of the village and should be protected from deregistration at all costs.

Kind regards, Trevor King, [REDACTED] Whiteparish SP5 2[REDACTED]

vi) Mr & Mrs S Skeates - 21st July 2021

Mr and Mrs S Skeates


Common Road

Whiteparish

Salisbury wilts

SP5 2 

21 July 2021

**Commons Act 2006 – Schedule 2(6) Application to de-register buildings wrongly registered as
Common land**

The Pound Application No 2021/01ACR

Please find the following response to the representations -

**Richard Hughes, Team Leader, South Hub, Economic Development and Planning WC email dated
17 May 2021**

- The strip of grass adjacent to the highway is part of The Pound and owned by ourselves. This is very clear when viewing his google 2011 photograph(see attached 1) which shows the hardstanding right to the road boundary
- The raised grass verges on the edge on the road were put in place, by ourselves, to prevent vehicles being stolen at The Pound. An attempt was made, to steal a vehicle, by means of a Hiab crane lifting a vehicle from The Pound site. The raised grass verge prevents the ability, of the Hiab, on the back of a lorry, getting close enough to lift vehicles from The Pound
- We also acknowledge his comments on The Pound being laid to hard surface and used for commercial purposes and he has no comments on its de-registering

Steve Byrne

- In answer to his question of 'Any evidence contradicting this view', as shown in our application the building planning permission was granted for the erection of garage/maintenance workshop 2 October 1967 and erected before December 1967

Hugh Craddock, Open Spaces Society email dated 2 July 2021

- We refer to the criteria of the application that 'on the date of the provisional registration, the land was covered by a building and since the provisional registration has at all times been and still is covered by a building and we note 'The Society accepts that, on the evidence available, the buildings at the Pound were erected just prior to provisional registration of the land on 10 April 1968'

- In answer to their comment 'that we do not accept that the curtilage of those buildings extend at that time, or for the majority of the period between that time and the date of the application to all of the application land' we firmly dispute this and make the following points
 1. Mr Graham Dear operated from December 1967 a general haulage depot with workshops. He held an Operator's Licence for 9 Goods Vehicles until 1989 (attached 2) . This meant he required a large hardstanding area at The Pound for vehicles to park and turn and this was a subject of condition of Change of use from Builders Yard to Milk and General Haulage Depot granted by Salisbury and Wilton Rural District 8 June 1967 'Adequate provision to be made for the parking and turning of vehicles within the site' (see attached 3) Mr Dear has informed us that he had to make a large proportion of the site hardstanding to accommodate the number of vehicles needed to operate the business. This hardstanding remains in use today
 2. Therefore for over 20 years the garage and site was used as a haulage/ maintenance yard
 3. From 1989 to 2009 Mr Dear then used the site for storage, parking and allowed BKG, a road haulier in Common Road, to park lorry trailers as shown in photograph 2003 (see attached 4)
 4. From 2009 when Mr Dear sold to Mr Downes it was rented out in a commercial capacity until January 2017 to present day when it has been used as a car garage and the majority of the site is used for parking of vehicles (see attached 1 and 5)
 5. We have lived at [REDACTED] to The Pound since 2002; 19 years and consider the site has been in continuous use

- With reference to the Open Spaces Society comments regarding 'two buildings within a compound defined by lines drawn to north, west and south'
 1. **The north line is marked with an elongated S symbol. This is clearly shown on the location scale map (circled) of the 1967 planning application, which we supplied in our application (see attached 6)**
 2. An elongated S symbol (an areas brace symbol) formerly known as a field tie, this joins areas of land together to give a single field parcel number (reference Ordnance Survey)
 3. **This indicates ONE piece of land and *not* the curtilage of the buildings. We are surprised that the Open Spaces Society do not know what the S symbol means and having full access to the planning permission of 1967 to which they are referring**
 4. The west and south lines are boundaries to adjoining properties

5. Therefore this is not 'lines defined on the grounds by fences' as suggested. This line is simply an historical field line as shown on the location scale and the curtilage of the building was NOT 'demarcated within the lines'

- In answer to the comment regarding the roadside
In the Permission for Development - Change of Use from Builders Yard to Milk and General Haulage Depot from Salisbury and Wilton Rural District Council dated 8 June 1967 it was subject to four conditions. Point 3 was a 'sight line as follows to be provided'
Please see attached photograph, google circa 2011, supplied by Richard Hughes (see attached 1) which clearly shows the hardstanding area was right to roadside to allow access by the haulage vehicles being serviced at the garage/workshop. Therefore this area formed part of the curtilage of the building in 1967 and for over 50 years and we have already stated the reasons for the laying of the raised grass verge which is part of The Pound for security
- The Blue dotted line marked by Open Spaces Society which they have suggested should be deregistered clearly shows hardstanding outside their area marked by blue dotted line and the hardstanding is clearly shown outside the blue dotted line of their plan (2)
The blue dotted line area would not have been sufficient for the turning and parking of up to nine haulage vehicles which were serviced by the garage from 1967 up to 1989 *and* would not supply an adequate parking area for car garage today
Just to emphasize this suggested area is much smaller than the hardstanding land that was used by Mr G Dear from 1967, shown in the picture of the lorry trailers (parked on it) in 2003 (see attached 4) *and* is still in current use for parking cars in association with the car garage business photograph November 2020 (see attached 1 and 5)
- With reference to The Google map supplied by Open Spaces Society dated to 2002
We must emphasise that the hardstanding that is present today is actually smaller in area than in 1967 as the land to the north of the existing hardstanding contained rubble for hardstanding

When The Pound was given permission for development - Change of use from Builders Yard to Milk and General Haulage Depot, 8 June 1967 this was for the entire site not part of the site

We also refer to the letter from New Forest National Park dated 3 June 2019 (attached 7) which confirms THE SITE – The Pound, Common Road, Whiteparish 'is considered to fall under B2 (General Industry) in the Use Classes Order. This was determined in 2018 as a result of a previous enforcement investigation due to degree and activity on the site'

This confirms that the entire site, The Pound was being used in a commercial capacity

Mr Trevor King email dated 3 July 2021

The information supplied by Mr King on his family history and history of The Pound has no relevance to our application which is based strictly on clear criteria

- Regarding Mr Kings comment 'The building and the hardstanding, used for parking, has not been in continuous use. For a considerable period of time tree trunks were positioned around the perimeter of the hardstanding to prevent vehicles parking on it'
 1. The tree trunks were never positioned 'around the perimeter'. We refer to the photograph of 2011 supplied by Richard Hughes (see attached 1) which clearly shows the tree trunks were *only* put on the hard standing facing the road to prevent undesirable access and quite clearly shows a vehicle parked on the hardstanding which was not prevented from gaining access!
 2. Mr Graham Dear operated from December 1967 a general haulage depot with workshops. He held an Operator's Licence for 9 Goods Vehicles until 1989 (see attached 2). This meant he required a large hardstanding area at The Pound for vehicles to park and turn and this was a subject of condition of Change of use from Builders Yard to Milk and General Haulage Depot granted by Salisbury and Wilton Rural District 8 June 1967 'Adequate provision to be made for the parking and turning of vehicles within the site' (see attached 3) Mr Dear has informed us that he had to make a large proportion of the site hardstanding to accommodate the number of lorries
 3. Therefore for over 20 years the garage and site was used as a haulage/ maintenance yard
 4. From 1989 to 2009 Mr Dear then used the site for storage, parking and allowed BKG, a road haulier in Common Road to park lorry trailers, see photograph 2003 (see attached 4) shown parked on a large area of hardstanding
 5. From 2009 when Mr Dear sold to Mr Downes it was rented out in a commercial capacity until January 2017 to present day when it has been used as a car garage and the majority of the site is used for parking of vehicles (see attached 1 and 5)
 6. We have lived at [REDACTED] to The Pound since 2002, almost 19 years and consider the site has been in continuous use
- With reference to Mr Kings issue with regard to the curtilage
 1. **We refer to letter from New Forest National Park dated 3 June 2019 (see attached 7) which confirms THE SITE – The Pound, Common Road, Whiteparish 'is considered to fall under B2 (General Industry) in the Use Classes Order. This was**

determined in 2018 as a result of a previous enforcement investigation due to degree and activity on the site'

This confirms that THE SITE, The Pound was being used in a commercial capacity

2. Mr King is chairman of the Whiteparish Parish Council and we acknowledge his comments are in a 'personal capacity' but were sent almost two weeks after he chaired the Whiteparish Parish Council meeting, held at the Memorial Centre, Whiteparish, 23 June 2021. We were present at the meeting when this application was an agenda item and was discussed. **The curtilage of the building was raised by the chairman only and deregistering part of The Pound was discussed. Councillors could not see his argument for part deregistering separating such a small parcel of land. A vote was taken and recorded as 'no comment (no response)**

The no comment (no response) will be recorded in the Whiteparish Parish Council minutes which will be available after the next meeting 28 July when minutes of previous meeting are approved

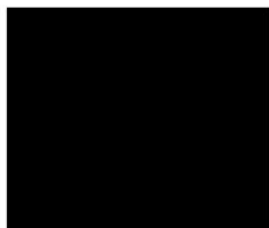
- The registered common land of Whiteparish may be 'a special part of the village' but The Pound is only .027% which is less than one third of 1% of the overall land of the 218 acres of registered common land known as Whiteparish Common and has been in commercial use since 1967

During that time, we believe the public have not walked/ accessed the land, because the site being used in a commercial capacity

We do hope this answers all comments regarding the representations



Mr and Mrs S Skeates



From: [Hughes, Richard](#)
Sent: 17 May 2021 09:27
To: [Green, Janice](#)
Subject: FW: Application to De-Register Common Land - The Pound, Whiteparish
Attachments: Notice of Application to De-Register Common Land, Whiteparish (Dev Control).pdf

Janice

Given this land is laid to hardsurface and presumably used for commercial purposes for some years, I have no comments on its de-registering. I assume you consult the parish council and local ward member on these matters. I would suggest notifying wc highways regards the strip of grass adjacent the highway, as this may be Council highways land ?

Site as circa 2020 (google)



Below, site as it was circa 2011 (google)



Richard D Hughes
Team Leader South Hub
Economic Development and Planning
Wiltshire Council

Tel: 01722 434382

Email: richard.hughes@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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The Clerk to the Licensing Authority
 Western Traffic Area
 The Gaunts' House
 Denmark Street
 Bristol BS1 5DR

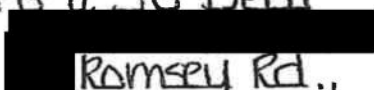
NOT TRANSFERABLE

LICENCE No. OH 141434

Transport Act 1978 Part V

Standard Operator's Licence for National and International Operations
~~Standard Operator's Licence for National Operations only~~
Restricted Operator's Licence

Issued to

G.G. & S.G. Dean  Ramsey Rd., White parish Salisbury Wilts.
--

Date of issue 3.5.84

Licence runs:

from 1.5.84 to 30.4.89

The Licensing Authority hereby authorises the person to whom this licence is issued to use any of the following:

- (a) motor vehicles specified in the schedule (Form GV 77) attached hereto, or vehicles temporarily authorised in substitution for specified motor vehicles (see Regulation 12 of the Goods Vehicles (Operator, Licences) regulations 1977); or
- (b) (provided that the licence permits the addition of authorised vehicles) motor vehicles which have come into the possession of the licence holder after the grant of the licence and have been in his possession for less than one month (see Note 6 below); or
- (c) trailers (including semi-trailers) not exceeding at any time the maximum number shown below.

Total Vehicles Authorised

Motor Vehicles	9								
Trailers (inc. Semi-Trailers)									

This licence is issued in pursuance of the provisions of Part V of the Transport Act 1968 and the Goods Vehicle Operators (Qualifications) Regulations 1977. Amended by the Goods vehicles Operators (Qualifications) (Amendment) Regulations 1980. It is subject to the following conditions:

- (a) that the holder of the licence shall notify the Licensing Authority of any changes in the addresses of his operating centres within 3 weeks of any such change;
- (b) (if a standard licence) that the conditions in the attached schedule (Form OL 2) be observed.

Notes

- (1) This licence must not be altered or defaced in any way by the holder. If vehicles are to be added or deleted it must be returned to the licensing Authority.
- (2) This licence only authorises the use of any motor vehicle referred to therein whilst being driven by the holder of the licence or by a person who is the servant or agent of the holder.
- (3) This licence is liable to revocation, suspension, premature termination or curtailment by the Licensing Authority on any of the grounds set out in Section 69 of the Transport Act 1968.
- (4) Any authorised vehicle ceases to be so authorised unless the licence holder notifies the Licensing Authority of its acquisition within one month.
- (5) Any change in the above address must be notified to the Licensing Authority within 3 weeks in accordance with Regulation 13 of the Goods Vehicles (Operator Licences) Regulations 1977.
- (6) If the number of vehicles specified is equal to the number of vehicles authorised, as shown above, the licence holder may not operate extra vehicles without first seeking authorisation from the Licensing Authority on form GV 81 for a variation of the licence, nor operate other vehicles in substitution for specified vehicles without prior notification to the Licensing Authority. At no time may the licence holder operate more vehicles than the number authorised above, without the sanction of the Licensing Authority.

WILTSHIRE COUNTY COUNCIL.

TOWN AND COUNTRY PLANNING ACT, 1962.
TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER, 1963.

PERMISSION FOR DEVELOPMENT.

To: G. Dear, Esq.,

Application No. 6759/10935

Bunkers Hill, Whiteparish,
Per: Messrs. Jonas and Parker,
45 Castle Street,
Salisbury.

The above-named Local Planning Authority having, with the consent of the Minister of Housing and Local Government, delegated to the

SALISBURY AND WILTON RURAL DISTRICT Council

(hereinafter referred to as "the Council") their functions under Parts III & IV of the Act, the Council HEREBY PERMIT the development proposed by you in your application dated the 17th day of February 19 67

Change of use from Builders Yard to Milk and General Haulage Depot at The Common, Whiteparish in accordance with the plans which accompanied your application, and subject to the conditions endorsed hereon

Dated this 8th day of June 19 67

John Clark / Clerk of the Council.

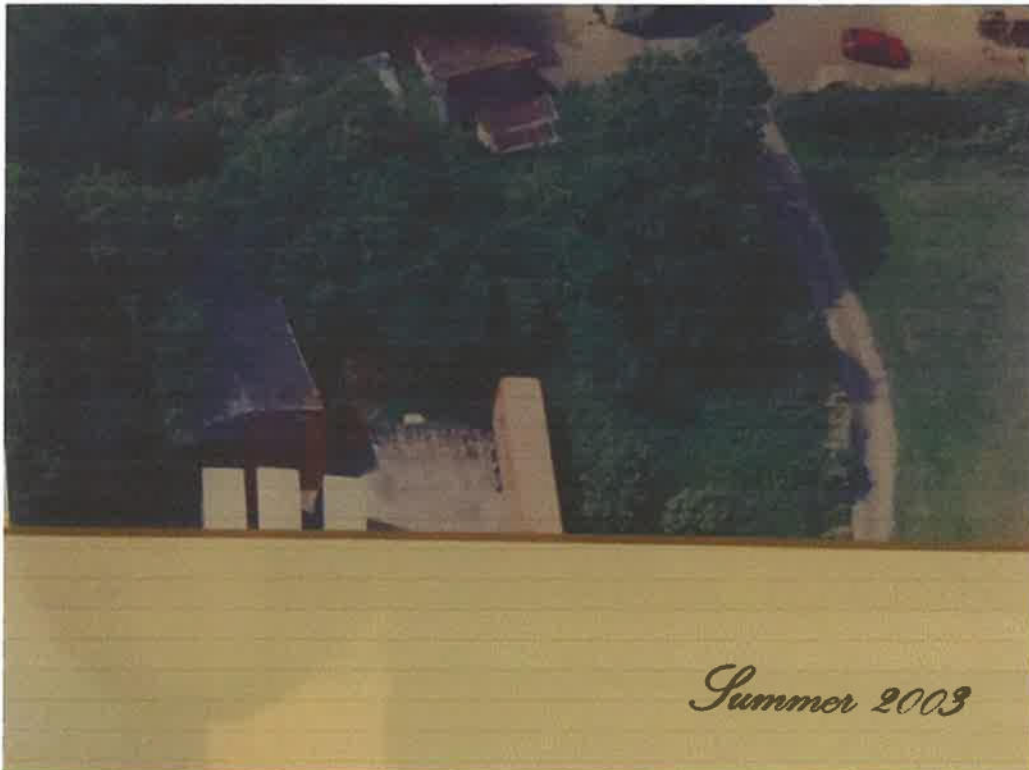
CONDITIONS.

1. Subject to the permission hereby granted being in respect of the change of use only from Builders Yard to use as a Milk and General Haulage Depot, and subject to detailed plans of any buildings proposed to be erected being submitted for the approval of the Council.
2. The access to be sited at the north end of the frontage of the site shown on the attached plan, to be at least 18ft. wide with 35 ft. radius curves on both sides and to replace the existing one which must be permanently closed.
3. A sight line as follows to be provided on the south side of the new access from a point 20 ft. along the centre line of the access as measured from the nearside along the edge of the county road C.26 to the southern end of the frontage of the garden of the adjoining dwelling. Between this sight line and the road the hedge to be lowered to and maintained at a height not exceeding 3 ft. above road level and all trees and other obstructions to visibility to be removed; no obstruction exceeding this height to be planted or erected within this area.
4. Adequate provision to be made for the parking and turning of vehicles within the site.

See over for Notes.

Form P.5A.

**ARIEL VIEW
THE POUND
2003
SHOWING LORRY TRAILERS PARKED
ON HARDSTANDING**



Summer 2003

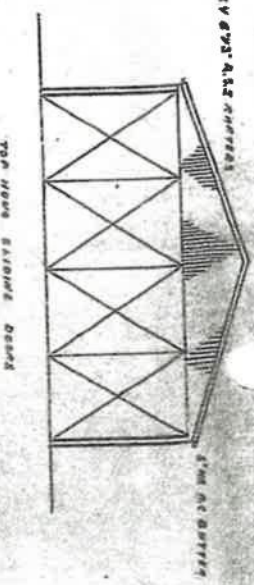
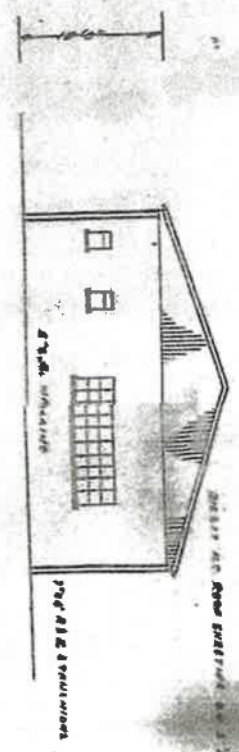
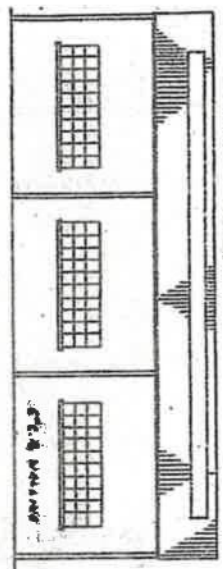
THE POUND
COMMON ROAD, WHITEPARSIH, SP5 2RD

WHITEPARSIH GARAGE

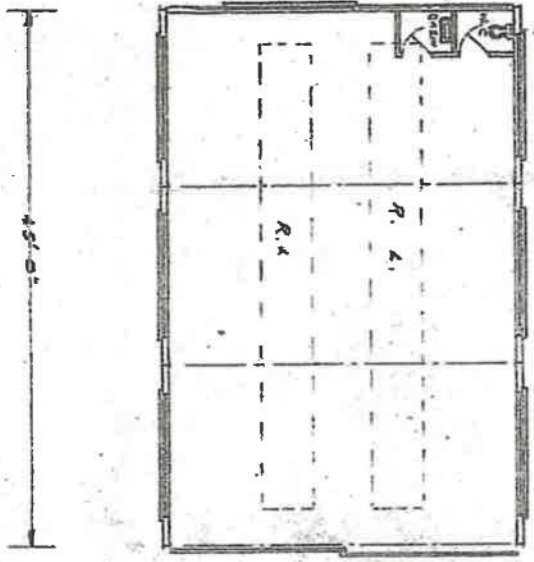
20 NOVEMBER 2020



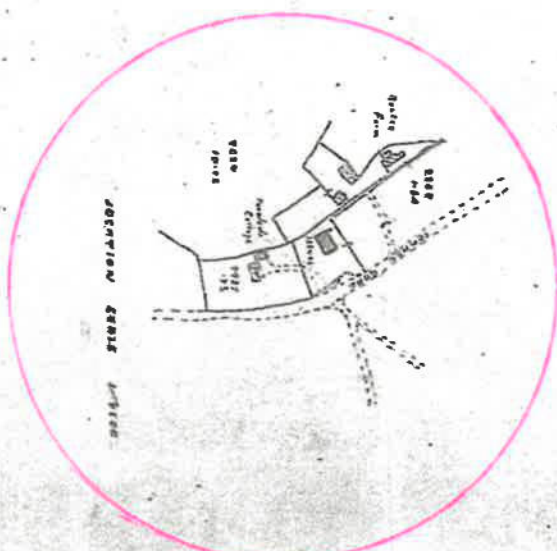
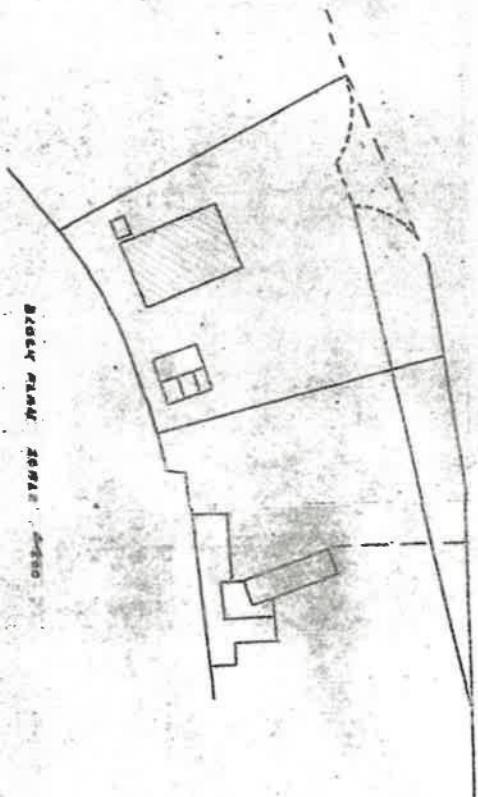
Order No. 708 S / 11434
 REPORT TO THE TOWN AND COUNTRY
 PLANNING COMMITTEE
 12. 19. 57



SEPTIC
 TANK



45'-0"



see Building for G. Dean, Esq., NINTERRISH.

H. FRANCIS AND SONS LTD., KINGSTON, WILT'S
 SEPTEMBER 1957. SCALE 1/4" = 1'

Scale 1/4" = 1'
 RECEIVED
 5 OCT 1957
 TOWN AND COUNTRY
 PLANNING COMMITTEE



Mrs S Skeates
[REDACTED]

Common Road
Whiteparish
SP5 2 [REDACTED]

03 June 2019

Dear Mrs Skeates

Case Number: QU/19/0081
Investigation: Erection of enclosure/fencing
Site: The Pound, Common Road, Whiteparish

I am writing to you regarding the above site and your enquiry relating to the use class.

Further to our telephone conversation, this letter serves as confirmation that the above mentioned site is considered to fall under B2 (General Industry) in the Use Classes Order. This was determined in 2018 as a result of a previous enforcement investigation due to degree and activity on the site (historically being used as a haulage yard and workshop).

Yours sincerely

Katherine Pullen
Planning Enforcement Officer
Tel: [REDACTED]
Email: katherine.pullen@newforestnpa.gov.uk

vii) Mr H Craddock (OSS) - 3rd August 2021

From: [Hugh Craddock](#)
Sent: 03 August 2021 11:38
To: [Green, Janice](#)
Subject: RE: Application to De-Register Buildings Wrongly Registered as Common Land - The Pound, Whiteparish
Attachments: Methuen-Campbell v Walters.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Janice

Thank you for sight of the applicant's reply to objections.

It is not satisfactory to circulate and, we assume, take into account substantial new evidential submissions from the applicant, without an opportunity for objectors to comment on them. In our view, this would be a breach of the principles of natural justice, and the council should not merely 'go forward to the determination stage of the application'.

We therefore make the following response to the applicant's reply. We suggest you copy our response to the applicant, and if no new evidence emerges, or any new evidence is of no substance, proceed to a decision.

Page 2 of the reply, first bullet: the applicant appears to misunderstand our comment (which is quoted in the bullet point). Nothing which appears in points 1–5 is relevant to whether all of the application land was and remains curtilage of the building.

Page 2 of the reply, second bullet: the applicant (at point 1) refers to the brace symbol on the planning application map (p.15 of the application pack pdf, and copied at p.11 of the applicant's reply). The brace is placed across a line shown on the plan. This tells us two things. First, there was at the date of survey (we are not told the date) a physical boundary along the line: it very likely was a fence. Secondly, the parcel to the north was braced (by the Ordnance Survey clerk preparing the final plan for publication) with the parcel containing the building for the purposes of numbering and calculation of area. There is no significance to the brace: it is merely a convenience to avoid separately labelling an excessive number of small parcels: contrary to point 3, the brace does not 'indicate... ONE piece of land'. But the presence of a fence, which is also shown on the block plan on the same page, confirms that the land to the north of the fence was no part of the application for planning permission.

Page 3 of the reply, first bullet: we agree that some of the hardstanding always has extended to the roadside to form an access off the road; equally, some of it does not extend to the roadside, and (on the evidence available) never has.

Page 3 of the reply, second bullet: we agree that there is now some hardstanding to the north of the blue dotted line and indeed, it is separately marked on the map. This is immaterial — what is relevant is whether the land to the north of the blue dotted line was curtilage at the date of provisional registration and has remained so since. As to that, plainly, the land north of the blue dotted line was not hardstanding throughout that period, and indeed, is not so on the photograph derived from Google satellite photography dated to 2002 submitted as (3) to our original comments. Whether that land nevertheless was and remains curtilage of the building is, we suggest, resolved by the presence of the fence (at least for part of the period in question), and the evidence that the land remained undeveloped grassland for most of that period (at least until 2002). As late as June 2011, when the Google Streetview image, [here](#) (and also page 6 of the reply), was taken, the hardstanding extended only as far as the additional rectangle shown on the Ordnance Survey plan submitted as (1) to our original comments. Photographs of use in the early years of the present century do not assist in demonstrating use in the late 1960s.

Page 3 of the reply, third bullet: we do not accept that 'in 1967...the land to the north of the existing hardstanding contained rubble for hardstanding' — there is no evidence to support this assertion, and if correct, it was not authorised by the planning permission. It is further stated that, 'When The Pound was given permission for development...this was for the entire site not part of the site'. But as we have stated above, the planning permission relates to the area shown within the parcel containing the building on the submitted plans, and not the adjacent parcel to the north. What was decided by the National Park authority as the extent of the site in 2019 is entirely immaterial.

We reiterate that the application must show that the entirety of the application land was covered by a building, or the curtilage of a building, throughout the period since provisional registration. What the evidence shows is that there was, at the date of provisional registration, the building and a limited area of hardstanding, contained within the blue dotted line, together with a hard surfaced access onto the main road. This — and only this — therefore is capable of satisfying the application criteria.

Curtilage

In *Methuen-Campbell v Walters* [1979] 2 QB 525 (copy attached), Buckley LJ said

What then is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the parcel. On the other hand, it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. **In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.** There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole.
[emphasis supplied]

This test was approved by the Court of Appeal in [Blackbushe Airport Ltd v Hampshire County Council](#) [2021] EWCA Civ 398.

The land to the north of the blue dotted line had, in 1968 and for many years thereafter, no association with the planning site within the blue dotted line (and the highway verge) save, possibly, common ownership (the evidence on ownership is incomplete: see the first page of the conveyance at p.11 of the application pack pdf, but lacking the plan referred to at the bottom of the first page). There is no evidence on which the land north of the blue dotted line could, in 1968, be found to 'be so intimately associated with the [planning site] as to lead to the conclusion that the former in truth forms part and parcel of the latter.'

regards

Hugh

Hugh Craddock
Case Officer
Open Spaces Society
25a Bell Street
Henley-on-Thames
RG9 2BA
Email: hugh@oss.org.uk
www.oss.org.uk
Tel: 01491 573535
Please note that I work mornings only
(Registered in England and Wales, limited company number 7846516
Registered charity number 1144840)

Support our Grant a Green Appeal

*and help fund our campaign to protect open space
through voluntary registration as town or village green*



The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice.

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]
Sent: 02 August 2021 12:55
To: Hugh Craddock
Subject: Application to De-Register Buildings Wrongly Registered as Common Land - The Pound, Whiteparish

Dear Mr Craddock,

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

Your representations regarding the above-mentioned application to de-register buildings wrongly registered as Common Land, The Pound, Whiteparish, were forwarded to the applicant for comment, as required under Section 25(3) of the Commons Registration (England) Regulations 2014. Under Section 25(6) of the Regulations, the Registration Authority is required to send a copy of the applicants reply to every person who has made representation, please find a copy of the applicants reply attached.

Wiltshire Council as the Registration Authority will now go forward to the determination stage of the application, I will of course keep you updated on progress.

Kind regards,

Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall

[COURT OF APPEAL]

METHUEN-CAMPBELL V. WALTERS

1978 June 15, 16, 19, 20, 21

Buckley, Roskill and Goff L.JJ.

Landlord and Tenant - Leasehold enfranchisement - Adjoining properties - Demise of house, garden and paddock - Whether paddock "premises" being "appurtenance" or part of "garden" - Leasehold Reform Act 1967 (c. 88), s. 2 (3)

Property consisting of a dwelling house, garden and an area of rough pasture known as "the paddock" was assigned to a lessee for a term of 64 years in 1929. The plan to the lease showed an unbroken line denoting the boundary between the garden and the paddock. The garden was divided from the paddock by a wire fence and a wicket gate gave access from the garden to the paddock until sometime before 1973, when the gate was boarded up.

In 1973, the tenant served notice on the landlord, under the Leasehold Reform Act 1967, for the freehold of the house and premises to be conveyed to her. The landlord sought a declaration that the house and premises, as defined by section 2 (3) of the Act,¹ did not include the paddock. The deputy circuit judge held that, on the true construction of the subsection, the paddock was within the meaning of "appurtenances" and passed under the conveyance of the house.

On appeal by the landlord :-

Held, allowing the appeal, (1) that the dispropriatory provisions of the Leasehold Reform Act 1967 to acquire property were not to be construed liberally to include all the property occupied by right of the demise but were limited by section 1 (1) of the Act to the house and premises; that in the context of the definition of "premises" in section 2 (3), "appurtenances" was not to be construed strictly according to its original meaning of incorporeal rights but was to be construed to include land within the curtilage of the house; that, although the paddock was contiguous with the garden of the house and was an amenity enjoyed with the house, it had always been separated therefrom by a fence and could not be described as within the curtilage (post, pp. **535B-F, H - 536B, D-E, 538G - 539A, 540C-D, H - 541D, 542F, 543G - 544A**).

Trim v. Sturminster Rural District Council [1938] 2 K.B. 508, C.A. applied.

Hill v. Grange (1556) 1 Pl. 164; *Leach v. Leach* [1878] W.N. 79 and *Clymo v. Shell-Mex & B.P. Ltd.* (1963) 10 R.R.C. 85, C.A. considered.

(2) That, where the demised premises included a cultivated garden and a comparatively large area of rough pasture, the latter could not come within the meaning of "garden" in the definition of "premises" in section 2 (3) of the Act and, therefore, the paddock, being neither part of the garden nor an appurtenance, was not land that could be enfranchised under the Act (post, pp. **538B, 539G - 540B, 543D, 544F-G, 545C-E**).

¹ Leasehold Reform Act 1967, s. 2 (3): see post, p. **528A-B**.

The following cases are referred to in the judgments:

Barnes v. Southsea Railway Co. (1884) 27 Ch.D. 536.

Bettisworth's Case (1580) 2 Co.Rep. 31b.

Buck d. Whalley v. Nurton (1797) 1 B. & P. 53.

Buszard v. Capel (1828) 8 B. & C. 141.

Clymo v. Shell-Mex & B.P. Ltd. (1963) 10 R.R.C. 85, C.A.

Cuthbert v. Robinson (1882) 51 L.J. Ch. 238

Evans v. Angell (1858) 26 Beav. 202.

Hill v. Grange (1556) 1 Pl. 164.

Leach v. Leach [1878] W.N. 79.

Lister v. Pickford (1864) 34 L.J.Ch. 582.

Pulling v. London, Chatham and Dover Railway Co. (1864) 3 De G. J. & S. 661.

St. Thomas's Hospital (Governors) v. Charing Cross Railway Co. (1861) 1 J. & H. 400.

Trim v. Sturminster Rural District Council [1938] 2 K.B. 508; [1938] 2 All E.R. 168, C.A.

The following additional case was cited in argument:

Pilbrow v. Vestry of St. Leonard, Shoreditch [1895] 1 Q.B. 433, C.A.

APPEAL from Deputy Circuit Judge Michael Evans sitting at Swansea County Court.

On August 3, 1976, the landlord, Christopher Paul Manser Methuen-Campbell, Penrice Castle, Reynoldston, Swansea (the tenant for life), applied to the court for a declaration that the house and premises known as The Gables, Reynoldston, Swansea which the tenant, Kate Evelyn Walters, was entitled to have conveyed to her by the landlord pursuant to a notice of desire to enfranchise the property given by the tenant under and by virtue of Part I of the Leasehold Reform Act 1967 did not include the paddock situated on the south-western side of the property. The landlord also sought an order for possession of the paddock.

On August 19, 1977, Mr. Michael Evans sitting as a deputy circuit judge, declared that on the true construction of section 2 (3) of the Act, the paddock was within the meaning of "appurtenance" and passed under the conveyance to the tenant.

The landlord appealed on the grounds (1) that the judge misdirected himself in construing the word "appurtenances" in section 2 (3) of the Act so as to include the paddock and that upon a true con-

struction of the word, the paddock was not comprehended thereby; (2) that upon the true construction of the Act the word "appurtenances" meant and referred to incorporeal rights appurtenant to the house to be enfranchised and not corporeal rights such as a tract of land such as the paddock; (3) that as the purpose of the Act was to give residential security by way of enfranchisement and that such security was given to the tenant upon favourable economic terms, the definition of the subject matter of the enfranchisement, which included the word "appurtenances" ought to be interpreted restrictively; (4) that, alternatively, if the judge were right in construing the word as including corporeal hereditaments, then the true test as to whether the paddock was an appurtenance was whether it would pass on a conveyance of the house without being specifically mentioned and that

[1979] Q.B. 525 Page 527

the judge misdirected himself in construing the hypothetical conveyance of The Gables, Reynoldston, without more, as including the paddock; (5) that, in the further alternative, even if the judge was right in construing the word "appurtenances" so as to comprehend the paddock, there was no evidence upon which the judge could have held, as he seemed to have done, that the paddock was at the relevant time (namely January 2, 1973) occupied with and used for the purposes of the house by an occupant thereof within the meaning of section 2 (3) of the Act.

By a respondent's notice of October 14, 1977, it was contended that the judgment should be affirmed on the additional or alternative ground that if the paddock was not comprehended by the word "appurtenances," then upon the true construction of section 2 (3) of the Act, the paddock was comprehended by the word "garden" and, upon the evidence, the judge ought to have so found.

The facts are set out in the judgment of Goff L.J.

Jules Sher for the landlord.

Ian Edwards-Jones Q.C. and Trefor Hughes for the tenant.

The main submissions of counsel are dealt with in the judgments (post, pp. **529F-G, 535G - 536G, 537B, 538E-G, 540A, B, F-G, 544H**). *Pilbrow v. Vestry of St. Leonard, Shoreditch* [1895] 1 Q.B. 433 was cited by the landlord for the proposition that "curtilage" included everything within the boundary of the land.

BUCKLEY L.J. I have asked Goff L.J. to deliver the first judgment in this case.

GOFF L.J. This is an appeal from a judgment, or order, dated August 19, 1977, of Mr Michael Evans Q.C., sitting as a deputy circuit judge in the Swansea County Court in a matter arising under the Leasehold Reform Act 1967. Proceedings were commenced by an originating application dated August 3, 1976, and the dispute between the parties is how much of the demised premises should be included in an enfranchisement under the Act. The landlord, who is the appellant, is tenant for life under a settlement created by the will of Emily Charlotte Talbot, who died in 1918 and whose will and codicils were proved in the Principal Probate Registry on January 10, 1919. As such, he is the estate owner of the demised premises and his title is admitted.

The relevant lease is dated August 27, 1894, and is made between the same Emily Charlotte Talbot of the one part and Horatio Edward Rawling of the other part. It was assigned to the tenant, the respondent to the originating application and this appeal, by an assignment dated October 31, 1929. Her title is also admitted.

I must draw attention to a number of sections of the Leasehold Reform Act 1967 and read certain extracts therefrom. I start with section 1 (1), which says:

"This Part of this Act shall have effect to confer on a tenant of a leasehold house, occupying the house as his residence, a right to acquire on fair terms the freehold or an extended lease of the house and premises where" - and then follow certain conditions.

[1979] Q.B. 525 Page 528

Then I pass to section 2 (3), which is as follows:

"Subject to the following provisions of this section, where in relation to a house let to and occupied by a tenant reference is made in this Part of this Act to the house and premises, the reference to premises is to be taken as referring to any garage, outhouse, garden, yard and appurtenances which at the relevant time are let to him with the house and are occupied with and used for the purposes of the house or any part of it by him or by another occupant."

I pass on to section 8, which gives the right to enfranchisement:

"(1) Where a tenant of a house has under this Part of this Act a right to acquire the freehold, and gives to the landlord written notice of his desire to have the freehold, then except as provided by this Part of this Act the landlord shall be found to make to the tenant, and the tenant to accept, (at the price and on the conditions so provided) a grant of the house and premises for an estate in fee simple absolute, subject to the tenancy and to tenant's incumbrances, but otherwise free incumbrances."

Section 9 is the section which determines the price. I need not read the whole of it but subsection (1), so far as material, and as amended retrospectively by section 82 of the Housing Act 1969, is as follows:

"Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family who reside in the house not buying or seeking to buy), might be expected to realise on the following assumptions:- (a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended; ..."

Section 14 deals with the alternative option, the right of the tenant to take an extension of the lease instead of to acquire the freehold, and section 15 describes the terms of any extended lease. Subsection (1) of that section provides that it shall be a tenancy on the same terms as the existing tenancy but with such modifications as may be required or appropriate, and subsection (2) deals with the rent:

"The new tenancy shall provide that as from the original term date the rent payable for the house and premises shall be a rent ascertained or to be ascertained as follows:- (a) the rent shall be a ground rent in the sense that it shall represent the letting value of the site (without including anything for the value of buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy, other than uses which by the terms of the new tenancy are not permitted or are permitted only with the landlord's consent; ..."

[1979] Q.B. 525 Page 529

Those two sections, sections 14 and 15, further provide that the new tenancy shall be a 50-year tenancy, with one rent review.

So it will be seen that where the tenant exercises an option to take a new tenancy, the ground rent is fixed at the date of the expiration of the old tenancy. The landlord can, as I have said, have one rent review, and it is also provided that the tenant is to pay the costs varying from time to time of the landlord's liability for services or repairs. Further by section 15 (7) the terms are subject to any agreement to the contrary between the parties.

The only other section of importance which I should read is section 10, which deals with the rights to be included on a conveyance of the freehold. Subsection (1) of that section is as follows:

"Except for the purpose of preserving or recognising any existing interest of the landlord in tenant's incumbrances or any existing right or interest of any other person, a conveyance executed to give effect to section 8 above shall not be framed so as to exclude or restrict the general words implied in conveyances under section 62 of the Law of Property Act 1925, or the all-estate clause implied under section 63, unless the tenant consents to the exclusion or restriction; but the landlord shall not be bound to convey to the tenant any better title than that which he has or could require to be vested in him ..."

The expression "relevant time" is defined by section 37 (1) (d) as meaning:

"... in relation to a person's claim to acquire the freehold or an extended lease under this Part of this Act, the time when he gives notice in accordance with this Act of his desire to have it; ..."

It will be seen that the assumption required to be made under section 9 (1) (a) gives the tenant electing to call for a sale of the freehold the benefit of his right to a new lease, and although under such a lease the landlord would get a modern, and therefore increased, ground rent with one, but only one, rent review, still obviously the price will be less, and I think substantially less, than it would be if the value of the freehold were assessed as if it were subject only to the original lease, at all events where the enfranchisement is near the end of the long term.

Mr. Edwards-Jones says, and says rightly, that this is not a penal provision, and he says that Parliament itself has declared that the prescribed terms are fair and, therefore, there should be no leaning on construction one way or the other. Mr. Sher, however, says that the Act is expropriatory and is giving a right of compulsory purchase, and that we ought therefore to construe it strictly. I think there is force in the latter submission. Too much weight should not be attached to it, but on the other hand we should not be too ready to give too liberal a construction to the words defining what the tenant is given a right to purchase.

I turn now to describe the property. It consists of a house and land now known as The Gables, Reynoldston, Gower in West Glamorganshire. Whether that is the original house which existed at the time of the demise, and whether, if so, it has been altered or to what extent, I do not know, for the lease contained a covenant by the tenant forthwith at his own expense to erect, alter and rebuild and (if specially required) according

[1979] Q.B. 525 Page 530

to plans and elevations to be first approved of by the lessor; but nothing turns on that.

The house lies at the northern part of the demised premises. South of the house, and at a lower level, there is a garden, and still further south and also again at a lower level, an area of rough pasture which has been referred to as the paddock. There was at all material times a post and wire fence dividing the garden from the paddock, but originally it included a gateway - it was a wicket gate - giving access from the garden to the paddock, with concrete steps leading down from the one to the other. There are also a considerable number of trees along this fence on the cultivated garden side. On the plan to the lease the garden and part of the paddock were alike coloured pink. The southern part of the paddock was coloured blue, but there is no significance in that for present purposes. It represents an area over which the lease reserves to the landlord a right to re-enter, the rent being thereupon reduced by an amount calculated at the rate of £8 per acre.

The plan to the lease, however, does show an unbroken line drawn across the whole of the property, which appears to denote the boundary between the garden and the paddock.

In the course of time the gate to the paddock became broken down; it was not replaced with a new gate but was roughly closed off. Mr. Reynolds, the landlord's surveyor, described it as an opening boarded up with planks. Mr. Walters, the tenant's son, called it an old gateway now obstructed by a broken wooden gate. The judge did not think the differing descriptions mattered, and he said that photograph no. 14, which we have seen, spoke for itself. He said: "The gateway or opening was and is an access to the paddock from the house area" and so in a sense it was; but it was not an open access from the time when it was boarded up. It

was no longer a gate which one could open. The evidence shows that this gate was broken down and the opening roughly closed up before, and remained so at the relevant time; that is January 2, 1973. Mr. Walters' evidence was that it was blocked up in this way because sheep, and occasionally ponies, strayed from the paddock into the garden.

At the south-west corner of the paddock there was another gate leading into a public highway, but Mr. Reynolds gave evidence that it was not in use and that one had to climb that gate to get into the paddock that way.

I shall now read the parcels from the lease itself. They are:

"All that piece or parcel of land with the dwelling house, stables and offices erected thereon situate in the village and parish of Reynoldston in the county of Glamorgan on the southern side of the highway road leading from Fairy Hill to Penrice and now in the occupation of the lessee all which said premises are delineated in the plan in the margin hereof and therein coloured pink and blue and contain in all by admeasurement two acres one rood and three perches or thereabouts with power to the lessee his executors administrators or assigns to alter or rebuild the said dwelling house in conformity with the covenant hereinafter contained ..."

The area of the house and garden is 0.5 of an acre and of the paddock 1.6 of an acre. The lease was for a term of 99 years from March 25,

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1893, at a yearly rent of £16. It is common ground that it is a long lease at a low rent to which the Act applies, the rateable value falling within the prescribed limit.

The issue is whether the tenant is entitled to a conveyance of the whole of the demised premises, or whether the landlord is entitled to exclude the paddock as not falling within the words "house and premises." The tenant in fact served a notice desiring to have the freehold as long ago as January 1, 1968, and in the schedule thereto the premises were described as: "Dwelling house and land comprised in lease dated August 27, 1894, between Miss Emily Talbot and Dr. Horatio Rawling." There were some negotiations about price after this and ultimately the notice lapsed, and the tenant served another notice, that being the one with which we are concerned. That is dated January 2, 1973. In the schedule to that notice the property is described as "House garden and land, known as The Gables, Reynoldston."

In his notice in reply the landlord took the point that the tenant was currently barred under section 9 (3) of the Act because of her failure to proceed to completion under the 1968 notice, which was not then five years old. This was a misapprehension, because no price had ever been agreed, and, therefore, that section had no application and the objection was withdrawn by letter dated January 22, 1974.

In her answer to the original application the tenant relied upon this letter as an estoppel precluding the landlord from objecting to the inclusion of the paddock, but the judge ruled against this and there is no appeal on that point. So that all that is before us is the question whether the paddock falls within the words "house and premises."

At the trial it was thought that the question turned solely on the definition of "premises" in section 2 (3) of which it was considered that the only relevant words were "garden" and "appurtenances." The judge held that the paddock was not garden, but that it was an appurtenance. He found:

"... the uses to which the paddock has been put continuously over the years down to the present day have been for the purposes of the house by Mrs. Walters and other occupants."

He therefore dismissed the landlord's originating application for a declaration:

"... that the house and premises which the [tenant] is entitled to have conveyed to her by the [landlord] pursuant to a notice of desire to enfranchise the above mentioned property dated January 2, 1973, given by the [tenant] to the [landlord] under and by virtue of Part I of the Leasehold Reform Act 1967 do not include the paddock ..."

and he made the counter declaration sought by the tenant:

"... that the whole of the said paddock is included in the said house and premises for the purposes of the said Act and that the [tenant] is entitled to have the same conveyed to her pursuant to the said notice of desire to enfranchise."

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The landlord contends that the judge was wrong, first because the paddock could not as a matter of law be appurtenant to the house since only an incorporeal hereditament can be appurtenant to land; secondly because even if it could be, it did not satisfy the proper test for determining what is appurtenant, and ought not to be so held; and thirdly because the conditions as to user in section 2 (3) were not satisfied at the relevant time. The tenant, of course, disputes all these contentions, but in addition, by a respondent's notice she claims that the paddock was "garden" within the meaning of that expression in section 2 (3), and by an amendment which we have allowed she contends further:

"... that the judgment of the judge should be upheld on the ground that the relevant paddock is in the circumstances of this case, and in the alternative to being 'appurtenant,' or part of the 'garden' itself within the scope of the term 'a house' as used in Part I of the Leasehold Reform Act 1967."

Appeal lies only on a point of law, but the landlord submits that there was no evidence to support the judge's finding of fact which I have read.

The tenant and her family came to the house in 1929. There was then the mother and father and three children, a son, Mr. Walters, who gave evidence and two daughters, one two years older and the other two years younger than the son. The whole family left the property at the outbreak of war and it was sublet. The tenant and her husband returned in 1944 but the children, who had grown up and married, did not live there again, save only the younger sister who lost her husband in 1968 and then returned to live with her mother.

The father died in 1949 and thereafter Mr. Walters visited the property quite frequently, that is to say, for three weeks every annual holiday and for eight to ten weekends a year, until his sister returned home, and thereafter his visits were less frequent, principally I think because he was no longer concerned about his mother being alone, but they did not cease altogether and they continued until after the relevant time, so that he was able to give some evidence about the state of affairs at that time, although the younger sister was not called as a witness.

In recent years Dr. Burgess, who had been in partnership with the younger sister's husband, also came to live at the house. Mr. Walters said that he had a home there for three years, so it would seem that he must have come some time in 1972. Dr. Burgess, the mother and the younger sister all left the house finally in 1975.

The evidence showed that the paddock was used quite often for recreational purposes by the family in the early years when the children were young. After the war, however, the use was greatly diminished, but it was still used by the grandchildren when they were visiting, and by other persons with the permission of the tenant. From about 1950 a local builder used it for grazing his pony under an informal agreement with the tenant. This was for their mutual benefit, she having the grass kept down and he obtaining a feed for his animal and a safe place in which to keep it. He also did odd jobs about the house. He was clearly not a visitor, but this intermittent use did not in any way detract from the tenant's occupation; indeed, it was user by her licensee.

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Mr. Sher placed much reliance upon the way in which, as the family grew up, user of the paddock diminished, and upon the fact that, as I have observed, the evidence showed that the gateway leading to the paddock was broken down and the opening blocked up by the relevant time, January 2, 1973, although I think, looking at the photograph, that any reasonably agile person would not have had great difficulty in getting through, or over, the fence from the garden into the paddock.

In my judgment, however, if the paddock could on the true construction of the words used in section 2 (3), that is to say,

"any garage, outhouse, garden, yard, and appurtenances which at the relevant time are let to him with the house and are occupied with and used for the purposes of the house or any part of it. ..."

and on the evidence as to user in the early days fall within those words then it was still so at the relevant time. There was no sufficient change to exclude it. I need not consider the evidence as to user further at this stage, for one must first consider whether on construction the words of section 2 (3) are wide enough to include the paddock. It may be that it will be necessary to go on to consider further whether there was any evidence on which the judge could find as he did, that the user at the relevant time was for the purposes of the house within the meaning of the section, whatever those words may mean.

There is only one other point I need mention. In 1961 Mr. Reynolds, the landlord's agent, caused an application for outline planning permission to be made in the tenant's name, and it was granted on January 15, 1961, for not more than five houses. It is clear, however, that this was not because of any intention on the part of the tenant or her family to build on it, but simply because she wanted to buy the freehold, and there were negotiations to that end. Mr. Reynolds requested that this application be made to assist him in arriving at a valuation by testing whether the land had any development potential, and in my judgment this incident has no relevance to anything that we have to decide.

Now I have to consider, on those facts, the problem which arises under section 2 (3) of the Act in determining whether the paddock falls within the house and premises which the tenant is entitled to enfranchise. The original strict meaning of "appurtenances" required that the thing appurtenant should be of the same character as the principal subject matter. Therefore, land could not be appurtenant to land and any attempt to make it so was void. This is clearly stated in *Coke upon Littleton*, 18th ed. (1823), p. 121b, section 184:

"Concerning things appendant and appurtenant, two things are implied. First, that prescription (which regularly is the mother thereof) doth not make any thing appendant or appurtenant, unlesse the thing appendant or appurtenant agree in quality and nature to the thing whereunto it is appendant or appurtenant; as a thing corporeall cannot properly be appendant to a thing corporeall, nor a thing incorporeall to a thing incorporeall."

The same thing was very clearly held in *Buszard v. Capel* (1828) 8 B. & C. 141, where Lord Tenterden C.J. said, at p. 150:

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"It is difficult to understand what is really meant by that part of the finding of the jury, 'that the exclusive use of the land of the river Thames opposite to and in front of the said wharf ground between high and low water mark, as well when covered with water as dry, for the accommodation of the tenants of the wharf, was demised as appurtenant to the said wharf ground and premises; but that the land itself between high and low water mark was not demised.'"

After adverting to the difficulty of understanding how the exclusive use could be demised and the land not, he continued:

"If the meaning of this finding be that the land itself was demised as appurtenant to the wharf, that would be a finding that one piece of land was appurtenant to another, which, in point of law, cannot be. If, on the other hand, the meaning be that the use and enjoyment of this land passed as appurtenant, that would be a mere privilege or easement, and the rent would not issue out of that; ..."

This strict meaning would yield to a context, however, not only in a will but also in a deed, as was shown in *Hill v. Grange* (1556) 1 Pl. 164, 170, where the following occurs:

"And all the four justices agreed unanimously that the averment or pleading that the land has been always appurtenant to the messuage is not good here, and also they agreed that land might not be appurtenant to a messuage in the true and proper definition of an appurtenance. But yet all of them (except Brown, justice, who did not speak to this point) agreed that the word (*appertaining* to the messuage) shall be here taken in the sense of *usually occupied* with the messuage, or *lying* to the messuage, for when *appertaining* is placed with the said other words," - that of course is a reference to context - "it cannot have its proper signification, as it is said before, and therefore it shall have such signification as was intended between the parties, or else it shall be void, which it must not be by any means, for it is commonly used in the sense of *occupied with*, or *lying* to, ut supra, and being placed with the said other words it cannot be taken in any other sense, nor can it have any other meaning than is agreeable with law, and forasmuch as it is commonly used in that sense, it is the office of judges to take and expound the words, which common people use to express their meaning, according to their meaning, and therefore it shall be here taken not according to the true definition of it, because that does not stand with the matter, but in such sense as the party intended it."

There, however, for what it is worth, it is to be observed that the word was "appertaining" and not "appurtenant." Indeed, I think the strict meaning has so far yielded to context as to be really dead and to be replaced by another, which is that all that passes on a demise as appurtenant is that which would pass without express mention: see *Evans v. Angell* (1858) 26 Beav. 202, where Sir John Romilly M.R. said, at p. 205: "Therefore, if these pieces of land pass at all, they must do so under the word 'appurtenances' ..." and he did not say "which they cannot do because they are land and not an incorporeal hereditament." But he went on later to say:

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"The word 'appurtenances' has a distinct and definite meaning, and though it may be enlarged by the context, yet the burthen of proof lies on those who so contend. Prima facie, it imports nothing more than what is strictly appertaining to the subject matter of the devise or grant, and which would, in truth, pass without being specially mentioned."

That the strict meaning had acquired the signification I have mentioned must, I think, be the explanation of the fact that in *Buck d. Whalley v. Nurton* (1797) 1 B. & P. 53, whilst both Lord Eyre C.J. and Heath J. applied the strict rule and excluded all other lands, they held that the orchard was included in the grant.

The present position seems to me to be clearly stated by Slessor L.J. in *Trim v. Sturminster Rural District Council* [1938] 2 K.B. 508, where he said, at pp. 515-516:

"The question for the decision of this court is whether, in coming to that conclusion, the learned judge was correct in law. In my opinion, he was wrong in law in coming to any such conclusion. In the definition to which I have referred certain specific matters are mentioned, that is to say, any yard, garden and outhouses, and then follows the word 'appurtenances.' That word has had applied to it, through a long series of cases mostly dealing with the meaning of the word in demises, a certain limited meaning, and it is now beyond question that, broadly speaking, nothing will pass, under a demise, by the word 'appurtenances' which would not equally pass under a conveyance of the principal subject matter without the addition of that word, that is to say, as pointed out in the early case of *Bryan v. Wetherhead* (1625) Cro.Car. 17 that the word 'appurtenances' will pass with the house, the orchard, yard, curtilage and gardens, but not the land. That view, as far as I understand the authorities, has never been departed from, except that in certain cases it has been held that the word 'appurtenances' may also be competent to pass incorporeal hereditaments. Certainly no case has been cited to us in which the word 'appurtenance' has ever been extended to include land, as meaning a corporeal hereditament, which does not fall within the curtilage of the yard of the house itself, that is, not within the parcel of the demise of the house."

That confines "appurtenances" to the curtilage of the house.

Mr. Edwards-Jones argued that the present legal meaning is wide, and is indeed the same as the popular meaning foreshadowed as long ago as the third year of the reign of Philip and Mary in *Hill v. Grange*, 1 Pl. 164. He submits that the legal meaning of the word today comprehends anything used and occupied with, or to the benefit of, the house, either as a matter of convenience or as an amenity, but in the face of *Trim's case* I do not think it possible so to hold.

But if that be not the legal meaning (and in my view it is not) then Mr. Edwards-Jones says that there is here a context which will give it that wider meaning. He relies on the fact that the word "appurtenances" in section 2 (3) follows the words "garage, outhouse, garden, yard";

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secondly, that the definition includes the words "... let to him with the house and ... occupied with and used for the purposes of the house," and he rightly points out that although one might use a right of light, one certainly could not occupy it; and thirdly that the subject of incorporeal hereditaments is so comprehensively dealt with by section 10. If indeed context be needed to enable the word "appurtenances" to include corporeal, as distinct from incorporeal, hereditaments, I would agree, but I see nothing in that context to enlarge the meaning of the word "appurtenance" beyond the curtilage of the house.

Alternatively he says, on the facts of this case the paddock is in any event within the curtilage. He relied on the fact that the house, garden and paddock were all let as one entire unit, but I think that in itself is not relevant - certainly not of much weight. But he relied also on the evidence of Mr. Walters that the land is vital to the enjoyment of the house, that the house and field are one unit and that there is a clear view to the south. He also relied strongly on the evidence of Mr. Rees, who is a surveyor and who said: "In my view the paddock is an essential element in the use of this type of house; any purchaser would expect some land with it." This evidence, however, and the rest of the evidence as to user, which I need not review in detail, goes, I think, no further than to show that the paddock is a valuable amenity. It does not make it an appurtenance and it does not show it to be within the curtilage of the house. Mr. Edwards-Jones submits that the paddock is all part of the residential unit and that we ought to take a broad, common sense, view of the word "appurtenance" itself, or of the definition of "house and premises" as a whole, and if necessary, to treat the paddock as part of the house itself or as being within the word "garden." But the Act is not one dealing with residential units. It is one giving people whose houses are held on long leases at a low rent security of tenure in their homes, and it specifies what is meant by "house and premises."

Without in effect not following *Trim v. Sturminster Rural District Council* [1938] 2 K.B. 508, which I am not prepared to do, even though it may be distinguishable, I cannot go along with these submissions of Mr. Edwards-Jones, or adopt the wide construction which he would seek to put upon the section, and I bear in mind also what I have already adverted to, but not, I hope, giving it too much weight, that this is a section which gives the tenant a compulsory right of purchase, and is thus expropriatory.

Mr. Edwards-Jones relied very much on a number of cases under section 92 of the Lands Clauses Consolidation Act 1845, but there the problem was different. Here, as I have said, we are dealing with an expropriatory Act. whereas there the court was considering the converse, a section protecting the landlord from undue expropriation. I do not think these cases help very much, but perhaps I should refer to two of them.

The first is *Barnes v. Southsea Railway Co.* (1884) 27 Ch.D. 536. There there was a house which fronted on to a highway; there was land in front of the house, between the house and the road with a way to the front of the premises; behind it there was a yard and over against the boundary walls some buildings described as kennels, and behind it a laid-out garden. The whole of that area and property was enclosed within

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one boundary, and in the corner there were double gates giving access to a paddock outside that boundary. There ran from the double gates to another highway a path, or road, giving access from that highway to the rear of the premises. The railway company wished to acquire a part of that back way in and a part of the paddock and the owner claimed, under section 92, that they could not do that but were bound to take the house as a whole. He succeeded in that contention.

Mr. Edwards-Jones says that that is a decision that the paddock was considered to be part of the house. It may be that that can be spelt out of the relief claimed, because the notice of motion sought to restrain the company from taking further proceedings to assess the amount of the compensation and from entering upon or taking any other proceedings for the purpose of obtaining possession of the land comprised in the notice, save upon the condition that they should acquire the whole house.

Reading the judgment, however, I think that the ratio decidendi and all that the court was dealing with was the road which ran across the paddock and not the rest of the paddock itself. But even if it be otherwise, this was a special case in that it afforded the rear access to the premises so that there was a direct nexus between the paddock and the rest of the property enclosed in the boundary to which I have referred. Bacon V.-C. in his judgment said, at p. 542:

"To his house so constructed the entrance for visitors is on one side, and the entrance and the exit for the use and enjoyment of the house is on the other side; and for that purpose he, the owner of the house, has made a part of his piece of land into a roadway by which he carries away from his house all the refuse or all that needs to be carried away, and by which he gets from the railway station coals, goods, and other necessaries; and that forms the entrance to the backyard of his house."

In my view this case is really against him because, unless one stops at the curtilage of the house, when one seeks to give a secondary meaning to "appurtenance" beyond the strict legal meaning, there is nowhere to stop, short of the whole of the demised premises, apart from the qualification in section 1 (3) of the Act, which says:

"This Part of this Act shall not confer on the tenant of a house any right by reference to his occupation of it as his residence (but shall apply as if he were not so occupying it) at any time when - (a) it is let to and occupied by him with other land or premises to which it is ancillary; ..."

Once one departs from the curtilage, I think that one might produce some extravagant results. This objection is supported by what Bacon V.-C. said in the *Barnes case*, quoting from *Pulling v. London, Chatham and Dover Railway Co.* (1864) 3 De G.J. & S. 661. The relevant quotation is at p. 544:

"Then the Lord Justice says further, 'If, indeed, it is to be held that these fields are part of the appellant's house, I do not see why every part of a large park would not be entitled to be considered as part of the mansion standing in the park, and to pass by a conveyance of the mansion.'"

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The other section 92 case which I would mention is that of *St. Thomas's Hospital (Governors) v. Charing Cross Railway Co.* (1861) 1 J. & H. 400. But there the court was dealing actually with the building, albeit it was a detached new wing, and with part of the garden. So that case, in my judgment, affords no support for Mr. Edwards-Jones' argument.

In my view it is impossible to treat this paddock as part of the house simpliciter, so I reject that. Likewise, for reasons which I will give in a moment, in my view it cannot be regarded as part of the garden. However, the garden is not itself part of the house and it would, I think, be extraordinary if, that being so, this paddock, separated from the house by the garden, could be regarded as part of the house.

So far as the garden is concerned, Mr. Edwards-Jones says that you can have a formal cultivated garden and a wild garden, and no doubt it is true that some people do have such a corner, or part, in their pleasure garden. But when you have, as here, a cultivated garden and a piece of rough pasture ground separated from one another, and apparently marked as separate in the lease plan, I do not think it is possible to regard that rough pasture (the paddock) as being garden. So in the end, in my judgment, the crux of the problem becomes: Is this within the curtilage?

The word "curtilage" is defined in the *Shorter Oxford English Dictionary*, 3rd ed. (1973) as "A small court, yard, or piece of ground attached to a dwelling house and forming one enclosure with it." Note 7 in *Stroud's Judicial Dictionary*, 4th ed. (1971), p. 663 suggests that it may be wider than that. We have looked at some of the cases cited in *Stroud*, but I do not think they afford us any assistance. What is within the curtilage is a question of fact in each case, and for myself I cannot feel that this comparatively extensive piece of pasture ought to be so regarded, particularly where, as here, it was clearly divided off physically from the house and garden right from the start and certainly at all material times.

Mr. Edwards-Jones has threatened that the consequences of this construction of the section would be that one would find all over the country large numbers of small pieces of land which could not be enfranchised and which would be left in the hands of the respective landlords as property of no real use or value to them, although the various tenants, if they could have enfranchisement, would have obtained value and benefit out of those small pieces of land. But I do not think that in practice that would be so, although the Act does not, of course, necessarily give the tenant the right in every case to everything contained in his demise.

In that connection I would conclude my reasoning by citing the concluding words of Upjohn L.J.'s judgment in *Clymo v. Shell-Mex & B.P. Ltd.* (1963) 10 R.R.C. 85, a case in which he quoted with approval the passage which I have read from Slesser L.J.'s judgment in *Trim's case*. Upjohn L.J. said, at pp. 98-99:

"This appeal was said to raise some important questions of principle upon which guidance was required, but we cannot see that it raises any question of principle at all. The whole problem is a question of mixed fact and law but depends very largely on the facts. Provided a piece of land satisfies the concept of being an appurtenance, it is a question of fact and circumstance whether it is an appurtenance."

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In my judgment, for the reasons which I have given, this piece of land does not satisfy the concept of being an appurtenance but what the position will be in other cases will depend first upon the question of law whether the piece of land in question does satisfy that concept, and secondly whether on the facts of the particular case it ought to be regarded as an appurtenance.

For these reasons I would allow the appeal, discharge the declaration that has been made and substitute the counter-declaration which I have read.

ROSKILL L.J. I have reached the conclusion, like Goff L.J., that this appeal succeeds. As we are differing from the judge, who gave a most careful judgment, and in deference to the arguments to which we have listened over a period of some four days, which have included the citation of authority as far back as the reign of Queen Mary Tudor as well as of more recent date, I will endeavour to give my own reasons.

In the ultimate analysis it seems to me that the determination of this appeal depends upon the true construction of a very few words in section 2 (2) of the Leasehold Reform Act 1967. We have been referred to a number of decisions upon other statutes in which the word "appurtenance" occurs, notably section 92 of the Land Clauses Consolidation Act 1845. We have also been referred to other decisions on the Housing Act 1936 and the Housing Act 1957, where the same word has appeared. We have also, as Goff L.J. said at the end of his judgment, been referred to the decision of this court in *Clymo v. Shell-Mex & B.P. Ltd.* where the same word appears in a different context in the Rating and Valuation Act 1925.

This word makes its appearance throughout the reports in a number of different contexts. Sometimes it has arisen for consideration as a matter of the construction of a will or a deed, and on other occasions as the matter of the construction of a statute. The meaning that is to be given must depend upon the context in which it appears.

If one looks at the history of the use of the word "appurtenant" there seems to be no doubt that originally conveyancers did give it an exceedingly restricted meaning. Goff L.J. referred to *Hill v. Grange*, 1 Pl. 164. I quote a passage which appears just before the passage which Goff L.J. quoted. It is at p. 170:

"And afterwards all the four justices argued, all whose arguments I heard except the beginning of Staunford's arguments" - Staunford was apparently a justice of the Common Bench - "and what I here affirm touching the beginning thereof, I report upon the credible information of others. And they all argued to the same intent, and agreed unanimously that land could not be appurtenant to a messuage in the true sense of the word *appertaining*. For a messuage consists of two things, viz. the land and the edifice, and before it was built upon it was but land, and then land cannot be appurtenant to land."

One therefore starts from that basic meaning, which was repeated by Sir John Romilly M.R. in *Evans v. Angell*, 26 Beav. 202, 205; but it is also clear that that being a restricted meaning, that construction will

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yield without great difficulty to the context in which the word appeared; and indeed, later the passage to which Goff L.J. referred in *Hill v. Grange*, and much relied upon by Mr. Edwards-Jones, shows that even as far back as 1556 the courts were ready to give a wider interpretation to the word "appurtenant" than that which the strict doctrine of the conveyancers of the day required. Whether it is right to say that today the strict meaning is dead or whether it would be better to say that a context in which this word should be given a strict meaning would now be extremely rare, is perhaps more a matter of language than anything else.

For my own part, I confess that I was attracted by Mr. Sher's first though not his main point that in the context in which this word is used in section 2 (3) it might be possible, even today, to give the word its strict meaning. My reason for so thinking is that when one looks at the context of the subsection, immediately before the word "appurtenances" one finds "garage, outhouse, garden, yard" - all corporeal hereditaments; it occurred to me that it was at least a possible view that in that context and following four specific corporeal hereditaments, the intention was to use the word "appurtenances" in its strict meaning. But the more I have listened to the arguments and considered these other cases, the more I am led to the conclusion that in this context it is impossible to give this narrow meaning to this word, and I think Mr. Edwards-Jones is right when he said that to give it this narrow meaning makes nonsense of the rest of the language, because it cannot be said that a party can occupy or use an incorporeal hereditament such as an easement of light.

So I start from the view, as does Goff L.J. that the word "appurtenances" has here to be given its wider meaning. But that is not to say that it should be treated as synonymous with what Mr. Edwards-Jones has called "a residential unit as a whole." One has to consider section 2 (3) in the context of the Act as a whole, and I ask myself - to what is the tenant entitled under this section? He is entitled to demand the enfranchisement of the house and the premises, provided that he is, as a first condition, the tenant of a leasehold house. But the Act does not go on to say that he shall be entitled to the enfranchisement of the house and premises, the premises being the whole of that which he occupies by reason of the demise from which his right arises. It would have been very easy to have defined the scope of the tenant's entitlement under section 2 (3) as the whole of the property which the tenant occupies under the demise, and to have said that he should be entitled to enfranchise the whole of what Mr. Edwards-Jones would call "the residential unit." That would not have been difficult to enact, but the Act does not so state. The Act states that that which he is entitled to enfranchise is the house (which is given what I might call an inclusive definition) and the premises, which are given an exhaustive definition; that exhaustive definition, to which Goff L.J. has already referred, is that "the premises" must be taken to refer to any garage, outhouse, garden, yard and appurtenance.

In my judgment, therefore, the question is whether or not (leaving on one side the further argument that this paddock forms part of the house or of the garden - and for the reasons Goff L.J. has given I think it is impossible to say that it is either) this paddock can fairly be said to be

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an appurtenance of the house, giving "appurtenance" a reasonably wide meaning, though not treating it as synonymous with all the land instantly occupied by the tenant seeking enfranchisement.

It is at this point that one does get some assistance from the cases. It seems to be clear that the cases show that the courts have never yet, even when treating "appurtenance" as apt to cover a corporeal hereditament, gone as far as construing the word as including land which does not itself fall within the curtilage of the house in question; and, like Goff L.J., I think it would be almost impossible to decide this case in favour of the tenant without ignoring the decision of this court in *Trim v. Sturminster Rural District Council* [1938] 2 K.B. 508. Goff L.J. has read the relevant passage from the judgment of Slesser L.J. at pp. 515-516 and I shall not repeat it; but I would draw attention to the fact that that passage was expressly approved by Upjohn L.J. giving the judgment of the court in the *Clymo* case, to which reference has already been made. Both decisions are binding on this court. They can only be departed from or distinguished, if in the particular context the word "appurtenances" can be given an even wider meaning than that which those cases show may be given to it. It seems to me that in the context of section 2 (3) of the Act of 1967 it is impossible to give any wider meaning to the word than to treat it, as Slesser L.J. did, as in effect synonymous with the curtilage of the house.

It was suggested this morning by Mr. Edwards-Jones that even so this paddock could be said to be within the curtilage of this house. This is, as Goff L.J. has said, a mixed quantity of law and fact. There is no finding by the deputy judge that this paddock was within the curtilage, and if he had found that it was, I confess that I would have wondered whether, on the evidence, that view was correct as a matter of law.

Goff L.J. has described the geographical layout of the paddock. It is well apart from the house physically, though contiguous with the garden, and I do not think that, giving the word "curtilage" its ordinary meaning by any possible legitimate construction can it be extended so as to include the paddock which the tenant is seeking to enfranchise.

So, for those reasons, in addition to the reasons which Goff L.J. has given, I have reached the conclusion that, with all respect to the judge's contrary view, the paddock cannot be said to be part of the curtilage of the house, and unless it can it is not an appurtenance within the subsection, and, since it is not, I do not think it is possible for the tenant to succeed.

I would only add this, I do not think it right to describe this statute as confiscatory legislation, it is a statute which obliges a landlord to enfranchise the tenant at a price fixed by the statute; rather, it is in the nature of a compulsory purchase. But where someone is seeking to exercise such a right given by statute it seems to me that it is for the person seeking to exercise that right to show that on the facts found he can properly bring his claim within the language of the statute which confers that right upon him; in my judgment the tenant cannot do so.

I would allow the appeal, set aside the declaration granted by the deputy judge, and subject to hearing counsel, substitute the alternative declaration to which Goff L.J. referred at the end of his judgment.

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BUCKLEY L.J. I agree; I also would only add something of my own out of respect for the judge and for the arguments which have been presented to us.

The word "appurtenance" in English law is a term of art which, according to its original and strict meaning, where the principal subject matter is land, does not include land but is restricted to incorporeal rights: see *Coke upon Littleton*, 18th ed. (1823), 121b, the passage which Goff L.J. has read; *Hill v. Grange*, 1 Pl. 164; *Buszard v. Capel*, 8 B. & C. 141; *Evans v. Angell*, 26 Beav. 202; *Lister v. Pickford* (1864) 34 L.J.Ch. 582 and *Cuthbert v. Robinson* (1882) 51 L.J. Ch. 238.

It would seem that the verb "appertain" may not perhaps have quite so technical a meaning. I note that in *Evans v. Angell*, 26 Beav. 202 Sir John Romilly M.R. said, at p. 205:

"In the first place, it is to be observed, that the word here is simply 'appurtenances,' not 'lands appertaining to,' or any equivalent words. It must, therefore, be distinguished from that class of cases which rest on such words. This distinction is taken in *Hearn v. Allen* (1627) Cro.Car. 57."

He says, at p. 206:

"There is a still further class of cases which must be distinguished from those to which I have already referred, where the words are not simply 'appurtenances,' but 'lands appurtenant' or 'lands appertaining thereto,' and the like. They rest on a totally different footing. ..."

But the technical meaning of the word "appurtenance" will yield to a context and perhaps, with the passage of years, it has become easier for it to do so. Thus in a will the word may carry land if the context and circumstances indicate that the testator so intended: *Buck d. Whalley v. Nurton*, 1 B. & P. 53 and *Cuthbert v. Robinson*, 51 L.J.Ch. 238.

In a statute, if the legislature uses a technical term, it should in my opinion be taken to use it in its technical sense unless it is plain that something else was intended. I agree with the view expressed by Goff L.J. that in an Act such as the Leasehold Reform Act 1967, which, although it is not a confiscatory Act is certainly a dispropriatory Act, if there is any doubt as to the way in which language should be construed, it should be construed in favour of the party who is to be dispropriated rather than otherwise.

In *Clymo v. Shell-Mex & B.P. Ltd.* 10 R.R.C. 85, it was held (see *per* Upjohn L.J. at p. 93) that the word "appurtenances" as used in section 22 of the Rating and Valuation Act 1925, in the context in which it is there to be found, extends to land described as appurtenant to houses or buildings. It was I think clear from the context afforded by section 22 (1) and (4) of that Act that the word there was used as applying to land. In such a case the question of what corporeal property is included as appurtenant in any particular case must depend in part on the construction of the instrument and in part on the circumstances of the case; in other words, the question is one of mixed law and fact.

In the absence of some contrary indication the word "appurtenances,"

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in a context which shows that it is used in a sense capable of extending to corporeal hereditaments, will not be understood to extend to any land which would not pass under a conveyance of the principal subject matter without being specifically mentioned; that is to say, to extend only to land or buildings within the curtilage of the principal subject matter.

Perhaps I may refer to one other ancient authority in this connection; it is *Bettisworth's Case* (1580) 2 Co.Rep. 31b, where I find this stated, at p. 32a: "For when a man makes a feoffment of a messuage cum pertinentiis, he departs with nothing thereby but what is parcel of the house, scilicet the buildings, curtilage and garden; ..." See also *Trim v. Sturminster Rural District Council* [1938] 2 K.B. 508 and in particular the passage which has already been read by Goff L.J. and what was said in the *Clymo* case by Upjohn L.J. at p. 97. What lies within the curtilage is a question of fact, depending upon the physical features and circumstances of the principal subject matter.

For the purposes of this appeal I will assume in the tenant's favour that the word "appurtenances" in section 2 (3) of the Act is apt to include land. It may be that the reference in that section to "occupation" and "use" is sufficient to admit such an interpretation. It then becomes a question whether the paddock can be aptly described as an appurtenance of The Gables, for the Act only applies to the house and premises. The relevant

house in this case is The Gables and the word "premises" must be interpreted in relation to the house in accordance with the definition contained in section 2 (3).

The tenant has submitted that in this case the paddock would pass under a conveyance of The Gables without any specific mention of the paddock. The paddock is said to be a parcel of the house, having been both let and occupied with it. The judge so held, but I do not find myself able to agree with that view. We have been referred to no cases going that length, except perhaps *Leach v. Leach* [1878] W.N. 79. Unless it can be said that in that case the description of the property devised as the testator's mansion house afforded a context justifying an extended construction of the word "appurtenances," which I very much doubt, I do not think that the very liberal construction adopted by Malins V.-C. should be regarded as good law.

What then is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the parcel. On the other hand, it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. In my judgment, for one corporeal hereditament to fall within the curtilage of another, the

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former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole. The conveyance of that messuage or parcel by general description without reference to metes or bounds, or to the several component parts of it, will pass all those component parts sub silentio. Thus a conveyance of The Gables without more, will pass everything within the curtilage to which that description applies, because every component part falls within the description. The converse proposition, that because an item of property will pass sub silentio under such a conveyance of The Gables, it is therefore within the curtilage of The Gables, cannot in my opinion be maintained, for that confuses cause with effect.

If a conveyance of The Gables simpliciter will pass all the component parts of what lies within the curtilage, to add the words "and the appurtenances thereof" adds nothing to the effect of the conveyance so far as those component parts are concerned. This was recognised by Sir John Romilly M.R. in *Evans v. Angell*, 26 Beav. 202, 205, and by Slesser L.J. in *Trim v. Sturminster Rural District Council* [1938] 2 K.B. 508. So construed, the word serves no purpose save as a conveyancing precaution of the kind which was effected before 1881 by the addition of numerous and often inappropriate general words to parcels described in a conveyance.

Under the Act we are concerned with the enfranchisement of a leasehold house occupied as a dwelling house, in the instant case The Gables. The tenant is entitled to enfranchisement of that house and the premises, and the term "premises" is defined in section 2 (3). In the present case the words "garage, outhouse, garden, yard" are not applicable. So the question is whether the paddock can be properly recognised as an appurtenance of the dwelling house. "Appurtenance" for this purpose is in my judgment confined to

what is within the curtilage of The Gables. So the question comes to this: Whether the paddock is within the curtilage of the house. In other words, would the paddock pass under a conveyance of "all that house known as The Gables"?

The tenant has submitted that the house and the paddock all constitute one residential unit but, as Goff L.J. has stressed in the judgment which he has delivered, there is nothing in the Act about residential units; we have to consider what are the premises as defined, which go with the house. I am quite ready to accept that the common ownership of the

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house and the paddock is advantageous to the occupant of the house and that the availability of the paddock to the occupant of the house may be something which adds to the value of the right to occupy the house. It does so, however, in my view because the common ownership of the house and the paddock provides an amenity, or a convenience, for the occupants of the house which enhances the value of the house; but the paddock can serve that purpose perfectly well without being part and parcel of the house.

The evidence established that the garden has at all material times been surrounded by a fence, fencing it in with the house and separating it from the paddock, a fence in which there was a gate until the date which has been mentioned in Goff L.J.'s judgment. But the presence of the gate does not in my judgment detract from the fact that the garden was separated physically from the paddock by a fence. The garden no doubt serves the intimate domestic purposes of the house, and the enjoyment of those uses of the garden is an integral part of the enjoyment of the house as a residence. The enjoyment of the paddock serves, as I say, to provide what may be a valuable amenity and convenience but is not, I think, a use of a kind such as to negate the fact that the paddock was at all material times separated from that plot of land, namely the garden, within which the house is situate.

For these reasons, which are substantially those which have already been expressed by Goff L.J. and Roskill L.J., I am unable to agree with the conclusion at which the judge arrived. I reach the conclusion that the paddock is not within the curtilage of the house and so, within the true construction of the Act, cannot be regarded as an appurtenance of the house.

Consequently in my judgment this appeal succeeds.

ROSKILL L.J. May I just add that I respectfully agree with what has fallen from Buckley L.J. with regard to the decision of Malin V.-C. in *Leach v. Leach* [1878] W.N. 79; it is a decision which may have been dictated, unless something supported it other than what appears in the very brief report, more by sympathy with the widow than with regard to the accuracy of the language used.

Appeal allowed with costs in Court of Appeal and below on County Court Scale 4.

Declaration in terms of originating application.

Leave to appeal refused.

Solicitors: *Dawson & Co.; L. C. Thomas & Son, Neath.*

L. G. S.

vii) Mr & Mrs S Skeates - 1st September 2021

Mr and Mrs S Skeates

[REDACTED]
Common Road

Whiteparish

Salisbury wilts

SP5 2 [REDACTED]

1 September 2021

**Commons Act 2006 – Schedule 2(6) Application to de-register buildings wrongly registered as
Common land**

The Pound Application No 2021/01ACR

Response to Open Spaces Society Email dated 3 August 2021

We gladly answer all the comments received from Open Spaces Society (OSS) but the whole of their argument is based on their blue dotted lines, north facing line and east facing line, adjacent to the road, based on a line on the planning application block plan of 1967 which they have considered a fence line (see OSS map with blue dotted lines attached)

We can clearly demonstrate this area was not fenced, the lines were not fences and therefore we suggest OSS comments regarding reduced curtilage should be ignored

In answer to OSS's comment that *'nothing which appears in points 1-5 is relevant to whether all of the application land was and remains curtilage of the building'* We have clearly demonstrated, in our response of 21 July 2021, that from December 1967 to present day the building and the application land has been used for a number of different purposes in a commercial use

In their fourth paragraph OSS uses the wording *'it very likely was a fence'*. OSS is only surmising as there is a line on the block map. We also bring your attention to *'the date of the survey (we are not told the date)'* we believe the plans were taken from an historical map hence *'the lines'* were still in place

There were no fences on The Pound

Please refer to Mr Trevor King's email of 3 July 2021 (comment's on application 2021/01AR in which he clearly states that *'Prior to the building, which is the concern of this application, being erected, this area was grazed by livestock which wandered between piles of building materials grazing what grass was available. The so called 'builders yard' was never fenced'*. **Mr King clearly states there was no fence**

Please also see the letter from Mr Graham Dear, the owner of The Pound at time of building application and for forty years; and the letter from Mr and Mrs K Taylor of [REDACTED], Common

Road who have been resident in the village for over 60 years stating that there was, at the time of the planning application and in previous years, no fencing on The Pound

We also refer back to point 5 (page 3) of our response dated 21 July 2021 that 'this line is simply an historical field line as shown on the location scale and the curtilage of the building was NOT 'demarcated within the lines''

The blue dotted line running east, running parallel to the road which the OSS has suggested as a curtilage marker is again incorrect. OSS have used the current fence line which was only erected two years ago and as we explained in our response of 21 July 2021 the reasons for erecting a fence **Previous to this fence being erected the hardstanding went to road edge**

In their sixth paragraph where OSS are disputing the land to the north of The Pound and marking their blue dotted line, which they have taken from the line on the planning permission block plan, are again assuming this line is a fence and commenting '*whether the land nevertheless was and remains curtilage of the building is, we suggest, resolved by the presence of the fence*' **We again confirm there was NEVER a fence as confirmed by Mr King's email and attached letters**

Reference OSS comments regarding the area to the north of the hardstanding. Even if the entire area of The Pound was not laid to hardstanding it does not mean that the entire site was not used in connection with the building

A very large area was needed for the haulage vehicles and this permission was provided by the conditions set in the permission for development dated 8 June 1967 'Adequate provision to be made for the parking and turning of vehicles within the site'

With reference to the seventh paragraph OSS state' *the planning permission relates to the area shown within the parcel containing the building on the submitted plans, and not the adjacent parcel to the north*'. At the time of the planning application there were no parcels of land. The whole of The Pound site was one piece of land. The line on the block plan was not a fence line and therefore, the whole site, The Pound, was given permission for development

The fact that the National Park Authority (NPA) has granted the entire site B2 use is not '*immaterial*' as stated by OSS. This was determined as a result of the' degree and activity on the site (historically being used as a haulage yard and workshop)' Why would a conservation charity deem a decision made by a public body immaterial?

With the evidence we have now shown regarding OSS blue dotted line being incorrect as there was no fencing at The Pound, at the time of provisional registration, we suggest the last paragraph of the OSS email should be ignored as the entire site fully meets the application criteria

A large black rectangular redaction box covering the signature area of the document.

Mr S Skeates and Mrs S Skeates



Poundside Cottage

Barbers Farm


Romsey Road

Whiteparish

Salisbury

Wilts

SP5 2 

26 August 2021

REFERENCE THE POUND, COMMON ROAD, WHITEPARISH, SALISBURY, WILTS, SP5 2RD

I can confirm that at the time of my purchase of The Pound in 1967 and when planning permission was submitted in September 1967 there were no fences on The Pound.

When planning permission was granted for 'Erection of garage/maintenance workshop'

By Salisbury and Wilton Rural District Council, Application No 7085/11434 dated 12 October 1967

there were no fences on the entire site of The Pound, Common Road, Whiteparish SP5 2RD

Mr Graham G Dear 

Mr and Mrs K Taylor



Common Road

Whiteparish

Salisbury

Wilts

SP5 2 

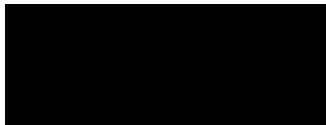
We have lived in Whiteparish for over 60 years, living most of our years at  We both know the site known as The Pound very well, as it is only a few hundred metres from our own property.

Poundside Cottage and The Pound were owned by Jack Chant who we also knew as local villiagers.

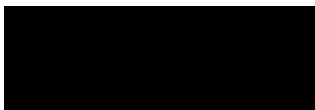
The entrance to Poundside Cottage used to run across the land, which became the haulage yard, in the mid-sixties.

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

Yours



Mr Keith Taylor



Mrs Sally Taylor

ix) Mr H Craddock (OSS) - 4th October 2021

From: [Hugh Craddock](#)
Sent: 04 October 2021 13:19
To: [Green, Janice](#)
Subject: RE: Application to De-Register Buildings Wrongly Registered as Common Land - The Pound, Whiteparish, Wiltshire

Hi Janice

Thank you for sight of the applicant's second round of representations.

The applicant states that the application area was not fenced at the time of the 1967 planning application, notwithstanding boundaries shown on the block plan accompanying the application. We do not know about that — in common with the applicant, we have no direct evidence either way. The applicant suggests that the block plan was 'taken from an historical map', but unsurprisingly, no Ordnance Survey large scale plan for the area shows fencing consistent with the block plan on this part of the common (see the plans submitted by Steve Byrne). One can only infer that the lines were drawn onto the block plan by the draughtsperson for a reason, and that they represented physical boundaries — whether fences, ditches or walls, or failing that, that they were intended to delimit the extent of the development site.

It is perfectly plain from the contemporary plans submitted (pp.13 and 15 of the application pdf) that these lines, to north and south, represented what today would be described as the 'red line' boundary of the development site. Accordingly, the planning permission did not extend beyond those lines, and without convincing evidence to the contrary (of which there is none), the curtilage of the development site cannot, at best, extend beyond those lines. The applicant refers to the 'entire site', but this begs the question of what was the 'entire site' in 1967. It is suggested that 'the whole site, The Pound, was given permission for development', but nothing in the contemporary documentation shows that the permission was intended to relate to land outside the 'blue dotted line' (as marked on the society's plan). The applicant merely asserts that 'adequate provision for the...parking and turning of vehicles within the site' must have required the use of land to the north of the blue dotted line — but also concedes that the entire area was not laid to hardstanding. In effect, the applicant appears to claim that planning permission was granted for use of whatever area the applicant chose to make use of, unconfined by anything shown on the submitted plans.

As to the roadside area east of the blue dotted line, we can only refer again to our previous representation: 'we note that the planning permission required a sight line to be left undeveloped, and that this remains demarcated to this day on the Ordnance Survey plan. Given that this area was to be kept free of any obstruction, we cannot see that it formed part of the curtilage of the buildings in 1967 or subsequently.'

Finally, we commented that the decision by the National Park authority as to the extent of the site in 2019 is immaterial because it was a decision taken on entirely different criteria. The authority did not have regard to the considerations arising from para.6 of Sch.2 to the Commons Act 2006, because they did not arise in the planning context. Likewise, your authority cannot reach a view on this application having regard to whether the application land satisfies certain planning considerations.

regards

Hugh

Hugh Craddock
Case Officer
Open Spaces Society
25a Bell Street
Henley-on-Thames
RG9 2BA
Email: hugh@oss.org.uk

www.oss.org.uk

Tel: 01491 573535

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Support our Grant a Green Appeal

*and help fund our campaign to protect open space
through voluntary registration as town or village green*



The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice. Please obtain our permission before sharing, reproducing or publishing any opinion.

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]

Sent: 15 September 2021 12:15

To: Hugh Craddock

Subject: Application to De-Register Buildings Wrongly Registered as Common Land - The Pound, Whiteparish, Wiltshire

Dear Mr Craddock,

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

Thank you for your e-mail and additional representations, dated 3rd August, in the above-mentioned application to de-register common land in the parish of Whiteparish, Wiltshire, which were forwarded for the attention of the Applicant.

I can confirm that the Applicant has now replied on the additional points raised in your correspondence dated 3rd August and I attach a copy of the Applicants reply for your attention. Please do let me know if you would like to make further submissions regarding the application.

Kind regards,

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

x) Mr & Mrs S Skeates - 26th October 2021

From: [REDACTED]
Sent: 27 October 2021 10:51
To: [Green, Janice](#)
Subject: RE: Application to De-Register Common Land - The Pound, Whiteparish
Attachments: Deregistering comments OSS October 2021.docx

Dear Janice,

Please find attached our comments on the OSS email of 4 October

We do hope this is the last of any representations

In the attached letter we have provided no new evidence and in fact we have had to repeat previous information as OSS have now tried numerous ways to reduce the curtilage with no evidence to support their views

If you need me to send a signed copy of attached I would be happy to do so, just let me know

Regards Sarah

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]
Sent: 26 October 2021 10:38
To: [REDACTED]
Subject: Application to De-Register Common Land - The Pound, Whiteparish

Dear Mr and Mrs Skeates,

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

Please find attached additional representation regarding the above-mentioned application to de-register Common Land, The Pound, Whiteparish, received from the Open Spaces Society. Please do let me know if you would like to make any additional comments regarding the representation.

Kind regards,

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

Wiltshire Council

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

Email: janice.green@wiltshire.gov.uk

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Mr and Mrs S Skeates

[REDACTED]
Common Road

Whiteparish

Salisbury wilts

SP5 2 [REDACTED]

26 October 2021

**Commons Act 2006 – Schedule 2(6) Application to de-register buildings wrongly registered as
Common land**

The Pound Application No 2021/01ACR

Response to Open Spaces Society Email dated 4 October 2021

In response to OSS comments, in the first paragraph, regarding the application area not being fenced at the time of the 1967 planning application, OSS state 'in common with the applicant, we have no direct evidence either way'. **OSS does not have any direct evidence but we have.** We have very clearly illustrated that there were no fences on The Pound, at time of planning application by providing three statements. One from the owner, Mr Dear, secondly, a neighbour who has lived in Whiteparish for over 60 years and thirdly the current chairman of the Whiteparish Parish Council provided a very clear statement in his email of 3 July 2021 confirming there were no fences

To summarise OSS previously in their emails of 2 July 2021 and 3 August 2021 have tried to prove that the lines on the block plan of September 1967 were fences. In our letter of 1 September 2021 we provided clear evidence that there were in fact no fences. Now OSS has suggested they were drawn onto the block plan by the draughtsperson for a number of reasons but they have actually stated they do not know why! But we can as the location map, on the planning application of 1967, shows a line with a brace symbol. **This line has been transferred to the block plan and we therefore emphasise again that these are historic field lines and not 'a line to delimit the extent of the development site' as suggested by OSS**

We have also spoken to Mr Dear, owner at time of planning application, who confirms the planning consent and change of use from builder's yard to milk and general haulage depot was for the entire site not confined to within the blue dotted line as marked by the OSS

We also remind you that this site as has continuous use, which we have demonstrated previously, including being used to park lorry trailers and these were not confined to the area within the blue lines

The site, at present, is almost entirely used by the car garage and most of the site is used for parking vehicles and they are not confined within the blue lines

In OSS third paragraph, referring to the roadside area east of the blue dotted line, OSS have used the current fence line which was only erected two years ago and as we explained in our response of 21 July 2021 the reasons for erecting a fence. Previous to this fence being erected the hardstanding went to road edge and therefore formed part of the curtilage of the buildings in 1967

In response to the OSS last paragraph -

In order to apply under schedule 2(6) of the Commons Act 2006, it is necessary for the land to be provisionally registered under section 4 (Provisional registration) of the Commons Registration Act 1965, i.e. between 2nd January 1967 and 31st July 1970 and that on the date of the **provisional registration**, the land was covered by a building and since the provisional registration has at all times been and still is covered by a building.

On the date of the provisional registration, 10 April 1968, the land, at The Pound, was 'covered by a building' and the land at The Pound was within the curtilage of the building

The fact that the National Park Authority (NPA) has granted the *entire site* B2 use has significant bearing on this criterion and should be taken into consideration. This was determined as a result of the 'degree and activity on the site (historically being used as a haulage yard and workshop)'

It is evidence that the building and *entire site* has been used since 1967 and for this reason should be regarded as clear evidence of site use and the land at The Pound was within the curtilage of the building

Mr S Skeates and Mrs S Skeates

xi) Mr H Craddock (OSS) - 25th November 2021

From: [Hugh Craddock](#)
Sent: 25 November 2021 07:47
To: [Green, Janice](#)
Subject: RE: Application to De-Register Common Land - The Pound, Whiteparish, Wiltshire

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Janice

Thank you for sight of this.

I regret we must respond to the applicants' statement that:

OSS previously in their emails of 2 July 2021 and 3 August 2021 have tried to prove that the lines on the block plan of September 1967 were fences.

In our third reply of 4 October, we concluded that the block plan was based on a modified Ordnance Survey map and that:

One can only infer that the lines were drawn onto the block plan by the draughtsperson for a reason, and that they represented physical boundaries — whether fences, ditches or walls, or failing that, that they were intended to delimit the extent of the development site.

The applicants suggest that these lines 'are historic field lines', but plainly, as they do not appear on any Ordnance Survey map, and are on waste land forming part of the common which has not been enclosed since time immemorial (until now), we can be quite confident that the one thing they are not is 'historic field lines'. They were drawn on the block plan for a reason, and no plausible explanation for that insertion has been provided by the applicants.

regards

Hugh

*Hugh Craddock
Case Officer
Open Spaces Society
25a Bell Street
Henley-on-Thames
RG9 2BA
Email: hugh@oss.org.uk
www.oss.org.uk
Tel: 01491 573535
Please note that I work mornings only
(Registered in England and Wales, limited company number 7846516
Registered charity number 1144840)*

[Support our Grant a Green Appeal](#)
*and help fund our campaign to protect open space
through voluntary registration as town or village green*



The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice. Please obtain our permission before sharing, reproducing or publishing any opinion.

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]
Sent: 12 November 2021 08:35
To: Hugh Craddock
Subject: Application to De-Register Common Land - The Pound, Whiteparish, Wiltshire

Dear Hugh,

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

Please find attached further representations from the applicant in the above-mentioned application to de-register common land, The Pound, Whiteparish.

Kind regards,

Janice

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

Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

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Web: www.wiltshire.gov.uk

xii) Mr & Mrs S Skeates - 8th December 2021

From: [REDACTED]
Sent: 08 December 2021 16:49
To: [Green, Janice](#)
Subject: RE: Application to De-Register Common Land, Whiteparish
Attachments: [Scan0021.pdf](#)
[Deregistering comments OSS December 2021.docx](#)

Hi Janice,

Please find our comments attached with highlighted plans

We do hope this is the last of any representations

As we said in our last email of 27 October, in the attached letter, we have provided no new evidence and in fact we have had to repeat previous information supplied and we would not expect this to be sent to Open Spaces Society

If you need me to send a signed copy of attached I would be happy to do so, just let me know

Regards Sarah

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]
Sent: 06 December 2021 13:20
To: [REDACTED]
Subject: Application to De-Register Common Land, Whiteparish

Dear Mr and Mrs Skeates,

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

Please find additional comments from the OSS regarding the above-mentioned application to de-register Common Land, Whiteparish. I would be very grateful if you could advise by e-mail, whether or not you have additional comments to add on these points.

Thank you for your help.

Kind regards,

Janice

Janice Green
Senior Definitive Map Officer

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



Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

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Mr and Mrs S Skeates

[REDACTED]
Common Road

Whiteparish

Salisbury wilts

SP5 2 [REDACTED]

8 December 2021

**Commons Act 2006 – Schedule 2(6) Application to de-register buildings wrongly registered as
Common land**

The Pound Application No 2021/01ACR

Response to Open Spaces Society Email dated 25 November 2021

With reference to the line drawn on the block plan of September 1967 (attached, highlighted in orange)

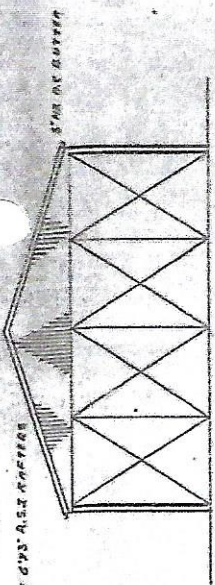
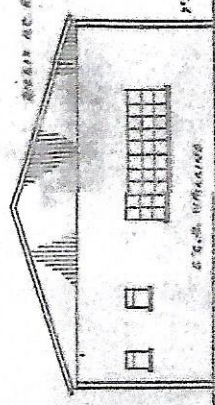
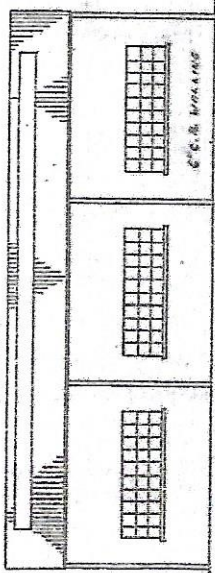
This is clearly shown on the location scale with an 'S' symbol, an areas brace symbol (attached, highlighted in orange) and this line is quite simply transferred to the block plan and not drawn onto the block plan by the draughtsperson as suggested by OSS

The draughtsperson couldn't have put this line in as it was already showing on the location scale!

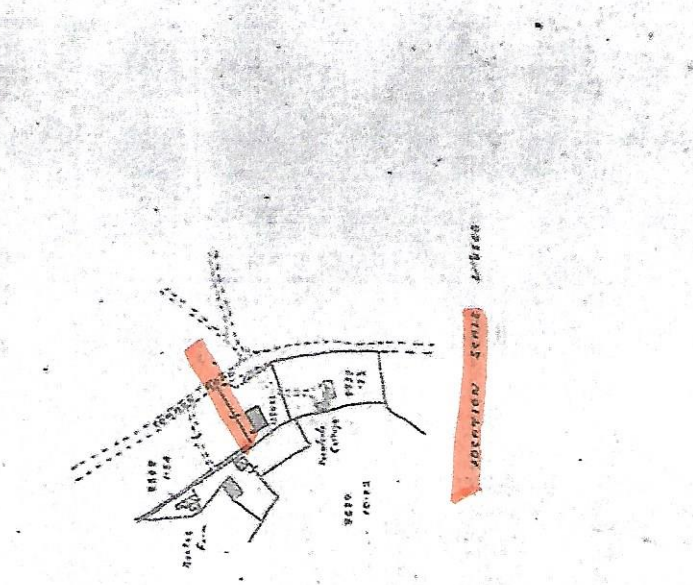
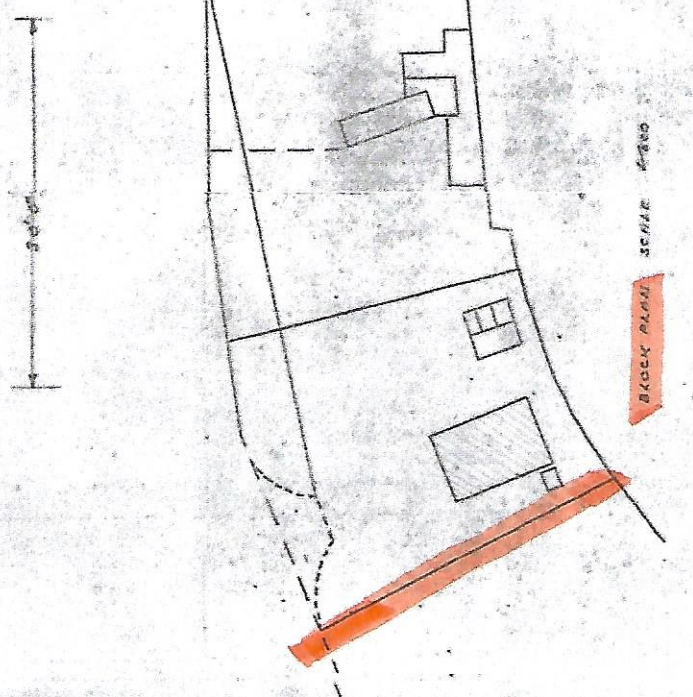
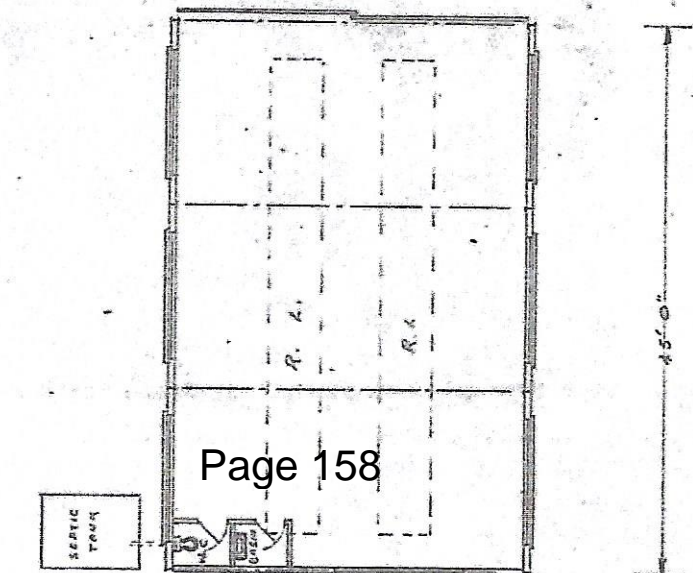
We have clearly demonstrated , in our previous correspondence, that the line does not represent 'physical boundaries' having provided concrete evidence from three village residents, including the present chairman of the Whiteparish Parish Council , there were no fences (physical boundaries as suggested by OSS) on The Pound in 1967

Mr S Skeates and Mrs S Skeates

NUMBER No. **7035 / 11434**
 PRESENTED TO THE TOWN AND COUNTRY
 PLANNING COMMITTEE
 12. 10. 57



DRAWN BY
 30.10.57
 H. FRANCIS



H. FRANCIS AND SONS LTD., KIMINGTON, WILTS

SEPTEMBER 1957. SCALE 1/8" = 1'



DESIGNED BUILDING FOR G. DENN. ESQ., MINTHORBURY.

Commons Act 2006 – Schedule 2 (paragraph 6)

Application to De-Register Buildings Wrongly Registered as Common Land – The Pound, Whiteparish

APPENDIX 8 – Curtilage Evidence

	Evidence	Comments
1		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking north into Area 4.</p> <p>At May 2021 the wooded/grass area to the north of the application land is fenced out as a separate enclosure, (the evidence supports the fencing of this area by the Applicants c.2019). From aerial photographs, this area appears to have always been a wooded/grass area, not included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building.</p>

2		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking west into Area 4.</p> <p>Please see comments above.</p>
3		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking south-west into Area 3.</p> <p>At May 2021 Area 3 hardstanding is used for the parking of vehicles associated with the car garage business (the building) and there is evidence that it has previously been used in conjunction with the building, i.e. for the parking of vehicles, since around 2000. This area is not included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building and there is not sufficient evidence to demonstrate that it was, at provisional registration in 1968, so intimately associated with the building as to lead to the conclusion that it formed part of the curtilage of the building.</p>

4



Photograph - May 2021 (Wiltshire Council)


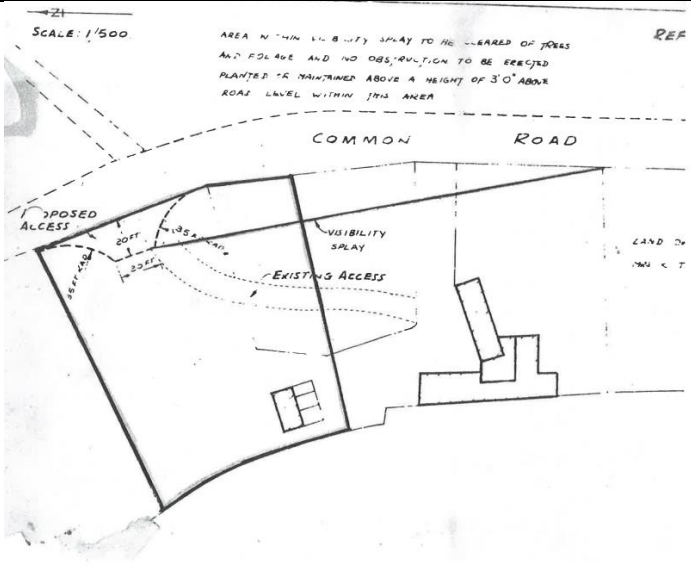
Looking south-west from the highway Common Road into Areas 3 and 4.

Please see comments above regarding Areas 3 and 4.

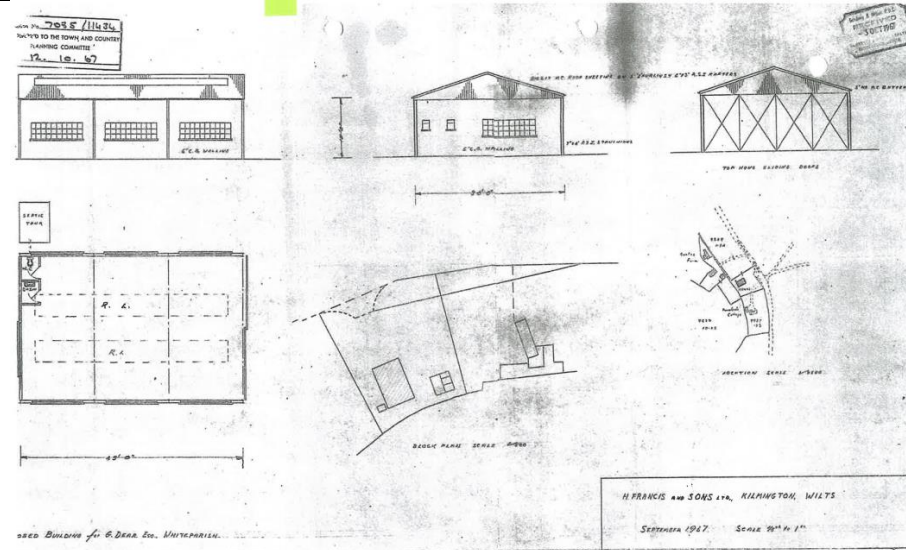
<p>5</p>		<p>Photograph - May 2021 (Wiltshire Council).</p> <p>Looking south-west into Areas 3 and 2.</p> <p>Please see comments above regarding Area 3 (foreground).</p> <p>Area 2 includes the building and land directly to the east of the building to the edge of Common Road, including the grass area adjacent to the highway.</p> <p>At May 2021 Area 2 is used in association with the car garage business (the building).</p> <p>Area 2 is included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building and includes the provision of access to the building; a turning/parking area and part of the visibility splay, as set out in the planning conditions.</p>
<p>6</p>		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking north into Areas 2, 3 and 4.</p> <p>Please see comments above regarding Areas 2, 3 and 4.</p> <p>The evidence suggests that the building has existed on the site since the close of 1967 and there is no dispute of the fact that part of the application land was covered by the building at the time of provisional registration, (part of register unit CL.7, Whiteparish Common), on 10th April 1968 and at all times since. The evidence suggests that the building has retained its original footprint of approx 122m², comprising approx 5% of the total area of the application land. What is in dispute in this case is the extent of the curtilage of this building which may also be capable of de-registration as common land.</p>

<p>7</p>		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking west towards Area 1.</p> <p>Land to south of the workshop building, Area 1, which does not form part of register unit CL.7, Whiteparish Common and is to be excluded from the application.</p>
<p>8</p>		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking south-east in Area 2.</p> <p>Please comments above regarding Area 2.</p> <p>Land to the south-east of the workshop building although not used in conjunction with the current use of the building as a car garage, is included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building. The area adjacent to Common road includes provision for part of the visibility splay required in the planning conditions. Although the area is now fenced by the Applicants c.2019, Officers consider that the visibility splay is clearly identified for the purposes of the building, to remain undeveloped for as long as the building exists and for safe use of the building, sufficient to form part of its curtilage.</p>

<p>9</p>		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking south into Area 1.</p> <p>Please see comments above regarding Area 1.</p> <p>The building located at the south-west corner of the site does not form part of the registered common land unit CL.7 and is therefore excluded from the application.</p>
<p>10</p>		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking north to the rear of the building, Area 2.</p> <p>Area to the rear of the building which is included in Area 2, to the western boundary hedge. Please see comments above regarding Area 2.</p>

<p>11</p>		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking south, land adjacent to Common Road.</p> <p>The grass area is not registered as highway maintainable at public expense, but does form part of common land register unit CL.7 and is in the ownership of the Applicants.</p> <p>Only that section of the land falling within Area 2 is capable of de-registration as common land, where it forms part of the 1967 planning site identified in the change of use and erection of the garage/workshop building planning applications. This area provides access to the building and part of the visibility splay, which are required in the planning conditions and necessary for the operation of the building.</p>
<p>12</p>		<p>8th June 1967 – Permission for Development – Change of Use at The Common, Whiteparish – Plan supplied by Applicants with Application 2021/01ACR - 04/01/2021</p> <p>Salisbury & Wilton Rural District Council hereby permit change of use from builders yard to milk and general haulage depot at The Common, Whiteparish.</p> <p>The area to be included in the change of use is very clearly set out and the visibility splay is shown extending into the adjacent plot, to be cleared of trees and foliage, with no obstructions to be erected, planted or maintained above the height of 3' above road level.</p> <p>A new, wider access to the site is to be provided within the identified planning area (Area 2), and the planning conditions include adequate provision for the parking/turning of vehicles to be accommodated within the site, not extending outside the identified area.</p>

13



12th October 1967 – Permission for Development – Erection of garage/maintenance workshop at Common Road, Whiteparish – Plans supplied by Applicants with Application 2021/01ACR - 04/01/2021

Proposed building with access and visibility splay, necessary for the safe operation of the building, to be accommodated within the identified planning area and not extending outside this area. The north section of the application land extending to Barter's Farm track, is not included as part of the planning application site. The Applicants refer to the "brace" symbol on the location plan to suggest that the planning site (Area 2), forms one single unit with Areas 3 and 4, however, Officers consider that the bracing is only a convenient way of joining two parcels of land together for the purposes of measuring area in OS convention.



14



Photographs 20th November 2020 – Supplied by Applicants with Application 2021/01ACR - 04/01/2021

At the time of application, the workshop building is present on site and the remainder of Area 2 is used in conjunction with the workshop, (save for the green area at the south-east of the site, however, this area does form part of the planning site in 1967).

At this time Area 3 is used for the parking of vehicles in conjunction with the car garage business.

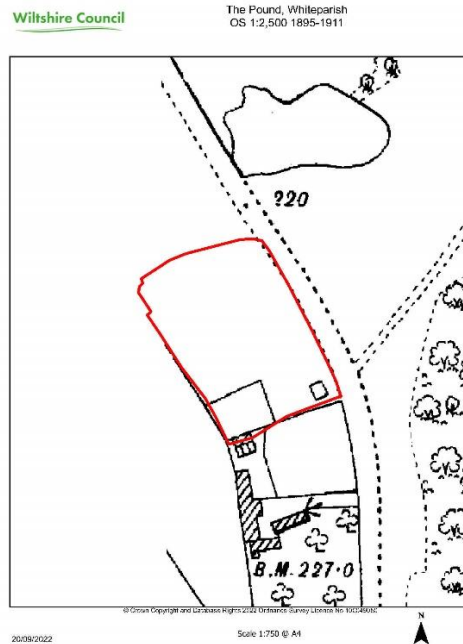
<p>15</p>	 <p><i>Summer 2003</i></p>	<p>2003 Aerial Photograph – Supplied by Applicants with Application 2021/01ACR - 04/01/2021</p> <p>Aerial view of The Pound, showing lorries parked in front of the garage/workshop building in 2003.</p>
<p>16</p>	 <p>Circa 2011 Google</p>	<p>Images supplied by Richard Hughes, Economic Development and Planning, Wiltshire Council – 17/05/2021</p> <p>In 2011 the site is not fenced and logs are placed across the hardstanding area, perhaps to prevent vehicular access to the site, although there are vehicles present on the site. In 2011 the site was owned by Mr G Downes who rented out the site for a number of different purposes according to the evidence provided by the Applicants. The workshop building, as erected in 1967 is still in place, although it does appear to be little used at this time. The areas of hardstanding (Areas 2 and 3) are not fenced and Area 4 appears to be a wooded/natural area.</p>



Circa 2020 - Google


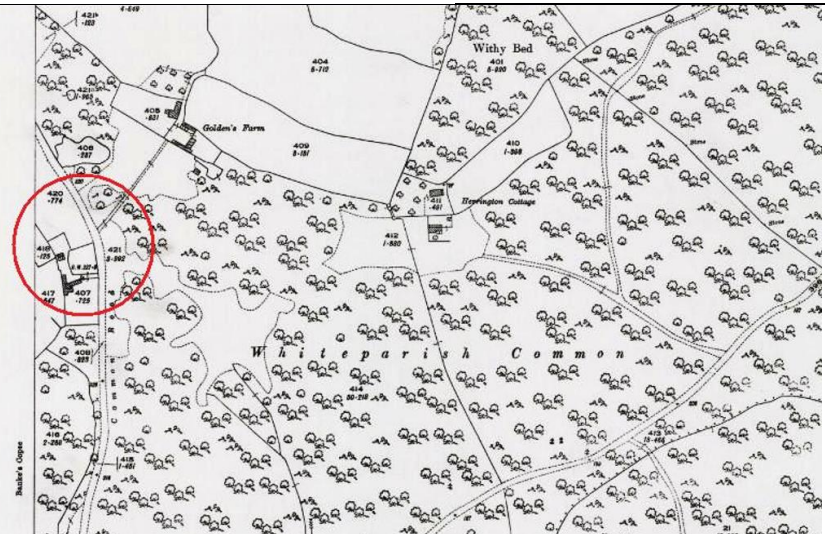
Circa 2020 – The workshop building is now used as a car repair garage with associated parking. The green area adjacent to the highway is not recorded as highway maintainable at public expense, but does form part of common land register unit CL.7 and has now been fenced by the Applicants (c.2019). The south-east corner of Area 2 is laid to grass and not used for car parking, however, this area does form part of the planning application site and visibility splay in 1967. Area 3 is used for car parking associated with the current use as a car repair garage. Area 4 remains a wooded, natural area now fenced off from the remainder of the application land.

17

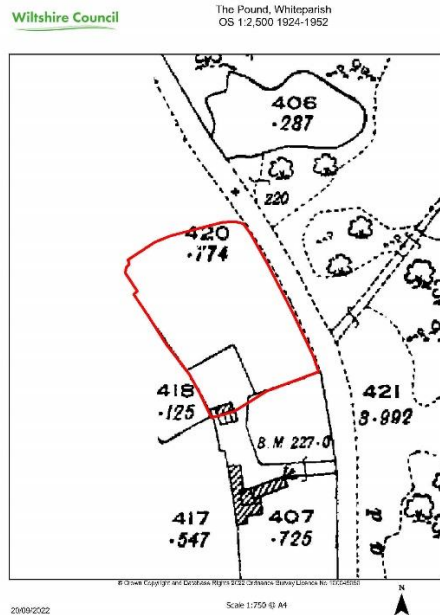


OS 1:2,500 (1895 - 1911) – (Wiltshire Council)

The application land is shown as an open area with a small fenced off enclosure to the south-west corner, (Area 1 – excluded from common land register unit CL.7 and therefore excluded from the application). The land appears to be open to the metalled highway of Common Road, as shown by the pecked line at the eastern edge of the application land, (the pecked line records a change in surface/vegetation on OS mapping, the land to the south has solid line against the highway which suggests a solid boundary against the highway such as a fence/hedge/wall). The map pre-dates the farm track which now marks the northern boundary of the land subject to this application.

<p>18</p>	<p>Wiltshire Council The Pound, Whiteparish OS 1:2,500 1908-1933</p>  <p>Scale 1:750 @ A4</p>	<p>OS 1:2,500 (1908 - 1933) – (Wiltshire Council)</p> <p>Again there is no fencing of the application land and it is open to the highway Common Road. The fencing in the south-west corner is not recorded.</p> <p>The map pre-dates the farm track which now marks the northern boundary of the land subject to this application.</p>
<p>19</p>		<p>OS 1:2,500 County Series map – Revised 1924, Published 1926 – Supplied by S Byrne 20/05/2021</p> <p>The application land is shown as an open area without fences, other than the south-west corner, (Area 1 excluded from common land register entry CL7 and therefore land excluded from the application). The land appears open to Common Road, as shown by a pecked line at the eastern edge of the land against the highway.</p> <p>The map pre-dates the farm track which now marks the northern boundary of the land subject to this application.</p>

20



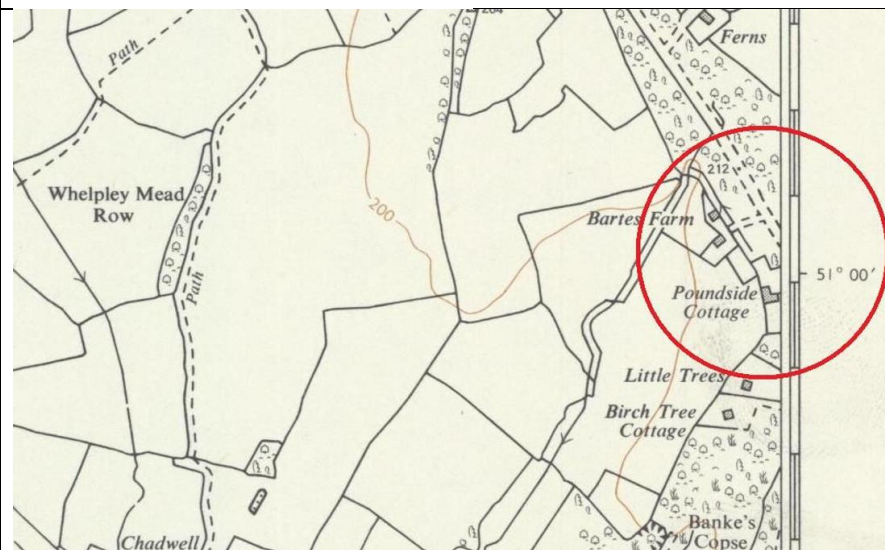
OS 1:2,500 (1924 – 1952) – (Wiltshire Council)

The application land is shown as an open area, without fencing, other than the south-west corner, (Area 1 which is excluded from the common land register until CL7 and therefore excluded from this application).

The land is open to the highway Common Road, as shown by a pecked line at the eastern edge of the land.

The map pre-dates the farm track which now forms the northern boundary of the land subject to this application.

21



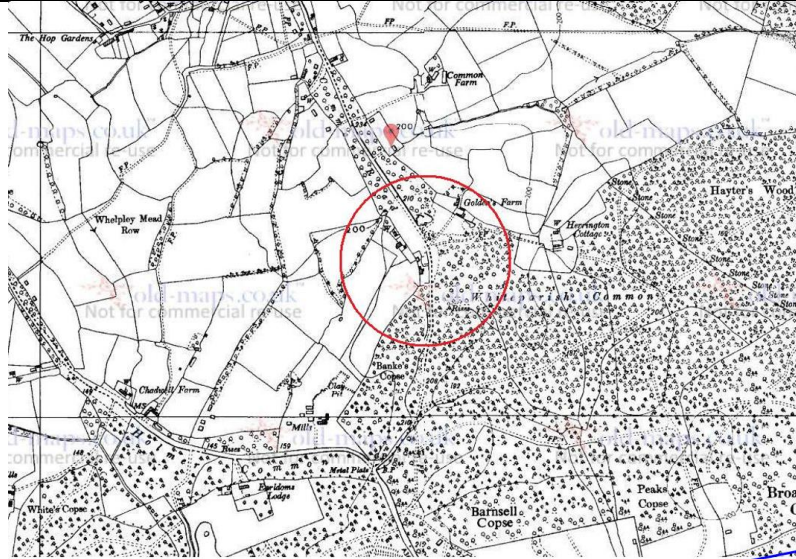
OS 1:10,560 – 1970 – supplied by S Byrne 20/05/2021

The application land is shown open and unfenced, with the exception of the south-west corner Area 1, which is fenced out of the application land and appears as part of Poundside Cottage. This area is excluded from the common land register unit CL7 and is therefore excluded from the application.

The land is open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.

This map appears to be revised prior to 1967 where the building present by the end of 1967 is not shown. Although the building would be expected to be recorded on a map dated 1970, these maps were revised between 1963 and 1970 and it is possible that revision in this area took place prior to 1967 and therefore the building is not recorded.

22



OS 1:10,560 map – 1962 – Supplied by S Byrne 20/05/2021

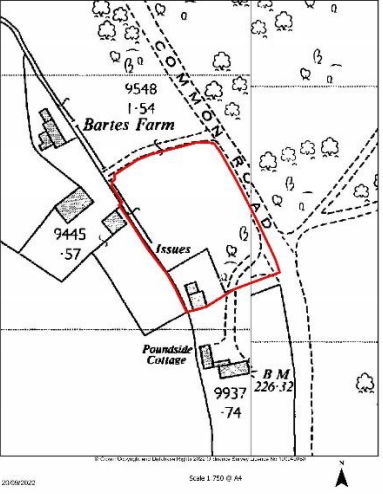
The application land is shown as an open area without fencing, open to the Common Road highway, as shown by a pecked line at the eastern edge of the land.
 The south-west corner which is part of the application land, Area 1, is fenced out of the land and appears to be a separate plot, this area is excluded from the common land register entry CL 7 and is therefore excluded from the application.
 The farm track which now forms the northern boundary of the application land is not recorded.

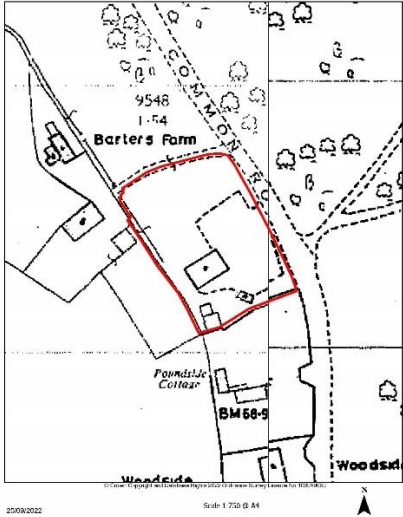
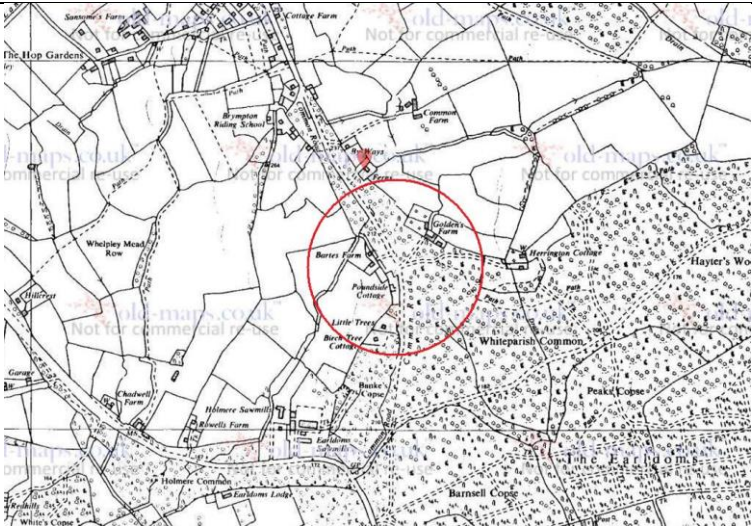
23

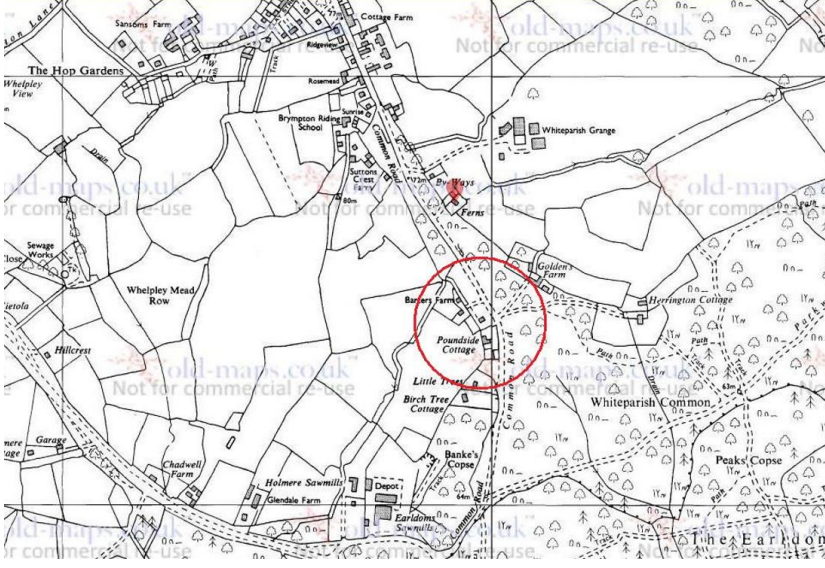


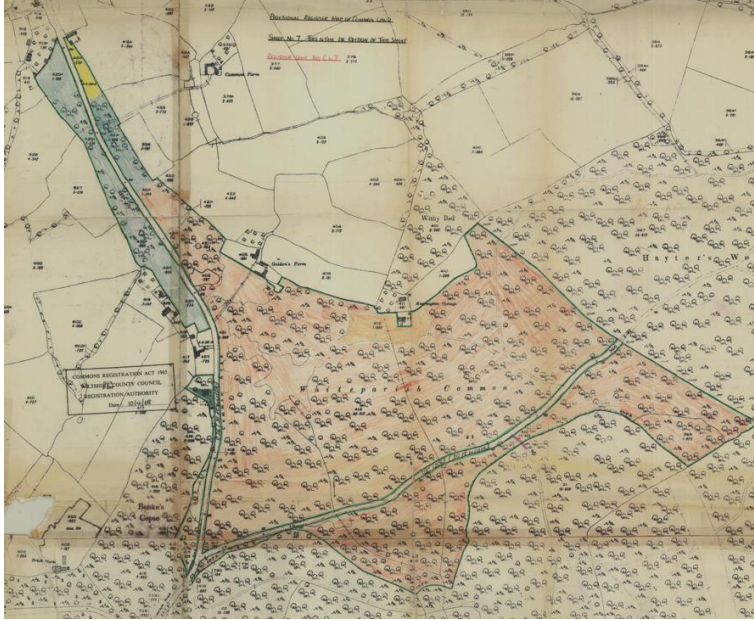

OS 1:2,500 – 1967 – Supplied by S Byrne 20/05/2021

The application land is shown as an open area, without fencing, with the exception of the south-west corner which is fenced out of the application land and appears to be part of the plot to the south, Poundside Cottage. This section of land (Area 1) is excluded from the common land register entry CL 7 and therefore excluded from the application.
 The farm track which forms the northern boundary of the application land is recorded and the land is open to both the farm track on the north and the highway Common Road to the east, as shown by pecked lines.
 The access drive to Poundside Cottage to the south is recorded by double pecked lines over the application land, (pecked lines indicate a change in surface/vegetation rather than a physical boundary). At

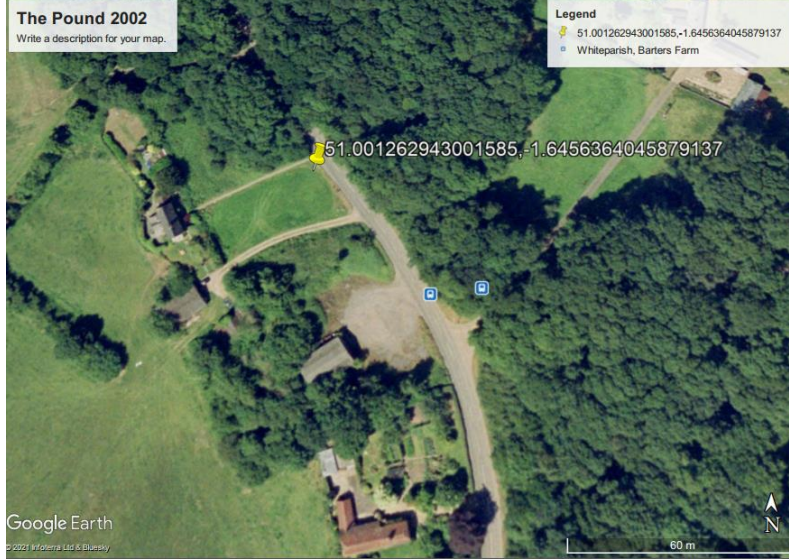
		<p>this time the land at the Pound and Poundside Cottage were both in the ownership of Mr J Chant.</p>
<p>24</p>	<p>Wiltshire Council</p> <p>The Pound, Whitparish OS 1:2,500 1952-1992 (1)</p> 	<p>OS 1:2,500 (1952 – 1992) (1) – (Wiltshire Council)</p> <p>As above, the application land is shown as an open area, save for south-west corner (Area 1) which is shown fenced out of the application land and appears to be part of Poundside Cottage. Area 1 is excluded from the common land register entry CL.7 and is therefore excluded from the application.</p> <p>The land is open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.</p> <p>The access drive to Poundside Cottage to the south is recorded over the application land, evidence suggests that at that time the land at The Pound and Poundside Cottage were in the same ownership.</p> <p>This map appears to pre-date the 1967 planning permissions where correspondence with the Land Commission in 1967 suggests that the change of use for the land is subject to a new shared access for the builder and the haulier, this map records the pre-existing access to Poundside Cottage.</p>

<p>25</p>	<p>Wiltshire Council The Pound, Whiteparish OS 1:2,500 1952-1992 (2)</p>  <p>25/08/2022 Scale 1:750 @ A4</p>	<p>OS 1:2,500 (1952 – 1992) (2) – (Wiltshire Council)</p> <p>This map appears to post-date 1967 where the building subject to planning permission in October 1967 and built before the close of 1967, is recorded.</p> <p>The south-west corner of the site (Area 1) is now incorporated, however, it does not form part of the common land register unit CL7 and is excluded from this application.</p> <p>The site remains open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.</p> <p>Within the site itself, there is no fencing indicated and it appears to be open for the whole of the application land. The single pecked lines indicate a change in surface of the land and would suggest the areas of hardstanding within the site, which include Area 2 (the identified planning site) and Area 3 (outside the identified planning site). Area 4 is not fenced off from the remainder of the site.</p>
<p>26</p>		<p>OS 1:10,560 – 1970 – supplied by S Byrne 20/05/2021</p> <p>The application land is shown open and unfenced, with the exception of the south-west corner Area 1, which is fenced out of the application land and appears as part of Poundside Cottage. This area is excluded from the common land register unit CL7 and is therefore excluded from the application.</p> <p>The land is open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.</p> <p>The suggestion of the access track to Poundside Cottage to the south, appears to be shown, faintly. This map appears to be revised prior to 1967 where the building present by the end of 1967 is not shown and the pre-1967 access track to Poundside Cottage appears to be recorded over the site. Although the building would be expected to be recorded on a map dated 1970, it is possible that revision in this</p>

		<p>area took place prior to 1967 and therefore the building is not recorded.</p>
<p>27</p>	 <p>The map is a detailed OS 1:10,000 plan showing a rural area. A red circle highlights a specific area containing 'Poundside Cottage' and 'Little Trees'. Other labeled features include 'The Hop Gardens', 'Whepley View', 'Brympton Riding School', 'Whiteparish Grange', 'Herrington Cottage', 'Whiteparish Common', 'Bank's Copse', 'Peak Copse', 'The Earldon', 'Holmers Sawmills', 'Glendale Farm', 'Eardoms Sawmills', 'Chadwell Farm', 'Garage', 'Sewage Works', 'Whepley Mead Row', 'Millcrest', 'Birch Tree Cottage', 'Bank's Copse', 'Depot', 'Ferry', 'Golden Farm', 'Herrington Cottage', 'Peak Copse', 'The Earldon', 'Holmers Sawmills', 'Glendale Farm', 'Eardoms Sawmills', 'Chadwell Farm', 'Garage', 'Sewage Works', 'Whepley Mead Row', 'Millcrest', 'Birch Tree Cottage', 'Bank's Copse', 'Depot', 'Ferry', 'Golden Farm', 'Herrington Cottage', 'Peak Copse', 'The Earldon'. The map also shows various roads, fields, and wooded areas.</p>	<p>OS 1:10,000 (1990 – 1991) – supplied by S Byrne 02/05/2021</p> <p>The building is now recorded and the application land in full is recorded as an open, unfenced area, including the south-west corner (Area 1), although this area is excluded from the common land registration unit CL.7 and is therefore excluded from the application. The land is open to the farm track to the north and the Common Road highway to the east.</p>

28		<p>CL 7 Whiteparish Common, Common Land Register Entry Map (Provisional Registration 10th April 1968, Final Registration 1st October 1970) - supplied by S Byrne 02/05/2021</p> <p>No separate enclosures are shown within the common land de-registration application land and part of the application land (south-west corner), does not form part of the area of registered common land CL 7 Whiteparish Common, (Area 1). Area 1 is therefore excluded from the application.</p> <p>The building subject to this application is not recorded on The Pound site, which is provisionally registered as common land and being undisputed, the registration becomes final on 1st October 1970.</p>
29		<p>Current OS mapping overlaid with 1967 planning area plan to illustrate extent of land which OSS proposes is within the curtilage of the building and therefore capable of commons land de-registration - Supplied by OSS 02/07/2021</p> <p>The OSS contend that the building and Areas 1 and 2, excluding the visibility splay area, as identified in the planning documents, are the areas capable of de-registration as common land.</p> <p>Officers consider that Area 1 should be excluded from the application where it is not land included within register unit CL 7.</p> <p>Additionally, Officers take an alternative view with regard to the de-registration of the visibility splay area, i.e. it is included within the planning site and is identified for the purposes of the building and its safe use, it was and continues to be necessary for the building, sufficient to form part of its curtilage.</p>

30



2002 Google Earth – Supplied by OSS 02/07/2021

The building and associated hardstanding in Area 2 are recorded. Area 3 is hardstanding and Area 4 appears to be laid to grass and trees. The evidence supports the OS mapping that the site has, until recently, been open and unfenced and accessible from the Common Road highway, please also see Google Streetview photograph 2011 above.

OSS add comments *“We also submit (3) a photograph derived from Google satellite photography dated 2002 which shows no evidence that, even as recently as 2002, the land to the north of the blue dotted line [see plan above] was being used with the buildings – let alone ‘intimately associated’ with them.”*

APPENDIX 9 - 1967 Planning Documents

From: [Dev Control](#)
Sent: 20 June 2022 19:09
To: [Green, Janice](#)
Subject: FW: Application to De-Register Common Land - The Pound, Whiteparish (2020/01ACR)
Attachments: [Application plan.pdf](#)
[The Pound site history search.pdf](#)
[SDC_46_06759-APPLICATION_FOR_PLANNING_PERMISSION.pdf](#)
[SDC_46_06759-BLOCK_PLAN.pdf](#)
[SDC_46_06759-DECISION_NOTICE.pdf](#)
[SDC_46_06759-LOCATION_BLOCK_PLAN_CONDITIONS.pdf](#)
[SDC_46_06759-LOCATION_PLAN.pdf](#)
[SDC_46_06759-TREE_PLAN.pdf](#)
[SDC_46_07085-APPLICATION_FOR_PLANNING_PERMISSION.pdf](#)
[SDC_46_07085-DECISION_NOTICE.pdf](#)
[SDC_46_07085-FULL_PLANS.pdf](#)

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Janice,

Thank you for your email.

Please accept my apologies for such a long delay in responding to your request.

Please find attached a site history search for The Pound.

The search *may* list applications for adjoining properties because of a shared boundary. I have highlighted the two applications for The Pound.

Please find attached the decisions, application forms and plans for both applications.

Sorry again for the delay.

Regards

Helen David
Planning Development

From: Green, Janice <janice.green@wiltshire.gov.uk>
Sent: 27 April 2022 15:56
To: Dev Control <Dev.Control@newforestnpa.gov.uk>
Subject: Application to De-Register Common Land - The Pound, Whiteparish (2020/01ACR)

You don't often get email from janice.green@wiltshire.gov.uk. [Learn why this is important](#)

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon,

Commons Act 2006 – Schedule 2(6)

Application to De-Register Buildings Wrongly Registered as Common Land – The Pound, Whiteparish, Wiltshire
Application no.2020/01ACR

I wonder if you could help. Wiltshire Council are in receipt of an application made under Schedule 2(6) of the Commons Act 2006 to de-register a building which is claimed to be wrongly registered as common land, The Pound, Whiteparish, Wiltshire. The building subject to the application forms part of common land register entry no.CL7 – Whiteparish Common and I have attached a plan showing the extent of the application area hatched blue.

For an application to be successful under Schedule 2(6) of the Commons Act 2006, it is necessary for the land to have been covered by a building, or within the curtilage of a building , i) at the time the land was provisionally registered and ii) at all times since provisional registration. In our consideration of this application, I wondered if it would be possible to locate any further information regarding the planning history on this site, (I have been advised that all planning information has now been transferred to the New Forest National Parks Authority). I am aware of the following two applications which are of particular interest in this case:

1. Application no. 6759/10935 – Application dated 17/02/67 – Change of use from builders yard to milk and general haulage depot at The Common, Whiteparish – granted 08/06/67 – Salisbury & Wilton RDC
2. Application no. 7085/11434 – Application dated 12/10/67 – Erection of garage/maintenance workshop at Common Road, Whiteparish – granted 12/10/67 Salisbury & Wilton RDC

I would be very grateful to receive any information which you are able provide regarding the two applications mentioned above, and indeed any additional planning history on this site.

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

Kind regards,

Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall

Trowbridge
BA14 8JN

Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

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

Report a problem: <https://my.wiltshire.gov.uk/>

Web: www.wiltshire.gov.uk

Follow Wiltshire Council



Follow Wiltshire Countryside



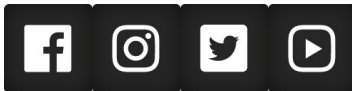
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 Avenue Road
 Lymington
 SO41 9ZG

Switchboard: 01590 646600
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[The New Forest National Park Authority's purposes](#)

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Keep your distance from the animals – don't feed or touch them

Keep dogs under control. Don't let dogs approach or chase any animals

Stick to the permitted cycle tracks

Take home litter and dog waste

Park only in car parks

Drive with care – animals on the road!

No fires or barbecues

No wild camping

Help wildlife by keeping to the main tracks

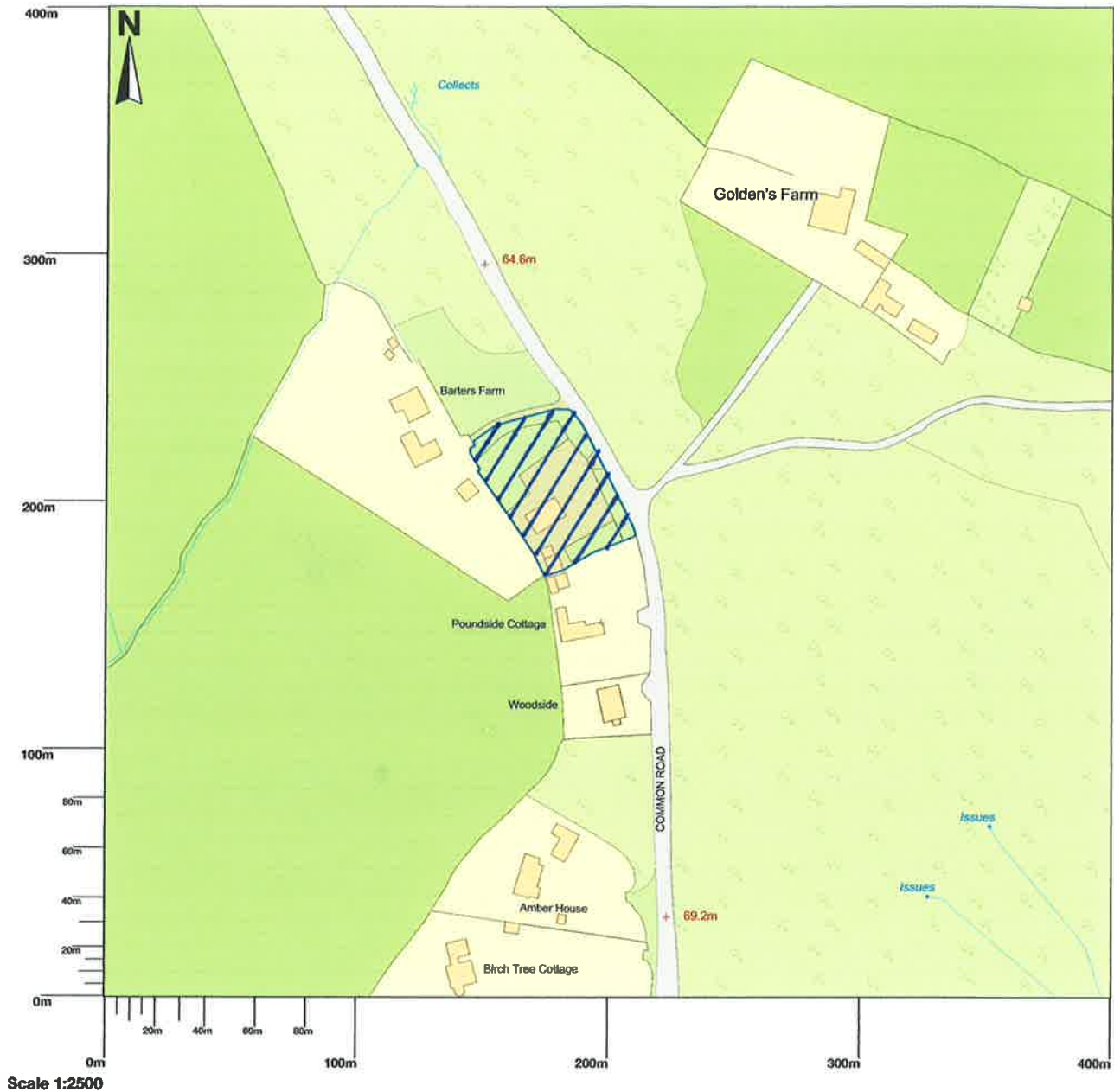
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The Pound , Common road, Whiteparish, salisbury, Wilts , SP5 2RD



Constraints and Site History for an Enquiry.

We regret to advise that some of the historic planning information inherited from the former Salisbury District Council may not include all the planning records for this property that pre-date 1 April 2006.

Location: The Pound, Common Road, Whiteparish

Proposal: This case has been set up to support enquiries on a site history. It is not a registrable application nor is it a formal pre-application enquiry. It is used in conjunction with a geographical spatial search using the site history provided by the originating Local Authorities / Councils. The results of the search do not constitute a Land Charges search. (Please contact your local District Council's Land Charges Section for a Land Charges Search).

Application Type: Test case

Development Type:

Date Valid:

Parish: WHITEPARISH

Constraints:

Reference	Name	Type	LB Grade
30km zone		Aerodrome Safeguarding Consultation Zone	
30km zone		Aerodrome Safeguarding Consultation Zone	
		Ancient Woodlands	
		Ancient Woodlands	
		Ancient Woodlands	
LANDFORD FOREST FARMLANDS		Landscape Character Areas	Landscape Character Assesment Document - https://www.newforestnpa.gov.uk/planning/landscape-policy-documents
ANCIENT FOREST FARMLANDS		Landscape Types	

The New Forest
Geological
Assessment
Whiteparish Common

WITHIN THE AREA
OF SPECIAL
ADVERTISEMENT
CONTROL
Whiteparish Meadow
Whiteparish

SAC
SDC RadonProtection
SSSI
Tranquility 2015
Wiltshire Advert Control
Wiltshire Wildlife Sites (SINC equiv)
PARISHES

Listed Buildings:

Conservation Area Character Features:

Trees:

Site History:

Application Number	Proposal / Site	Decision Date	Decision Description	Status	Appeal Outcome	Case Officer
SDC/46/0666 0	Case created from Salisbury DC plotting sheets. No			REC		

additional case information available. Year 46 is substitute year and does not represent the year of application.

[REDACTED]

Common Road, Whiteparish, SP5 2 [REDACTED]

SDC/46/0708
5

Case created from Salisbury DC plotting sheets. No additional case information available. Year 46 is substitute year and does not represent the year of application.

REC

[REDACTED]

Common Road, Whiteparish, SP5 2 [REDACTED]

SDC/46/0675
9

Case created from Salisbury DC plotting sheets. No additional case information available. Year 46 is substitute year and does not represent the year of application.

REC

[REDACTED]

Common Road, Whiteparish, SP5 2 [REDACTED]

10/95234

Single storey outbuilding (Non Material Amendment to Planning Permission 93052)

26/07/2010
10:47:15

Raise No Objection

DEC

PH

[REDACTED]

Common Road, Whiteparish, Salisbury, SP5 2 [REDACTED]

08/93052

Single-storey outbuilding

23/07/2008
10:35:17

Grant Subject to Conditions

DEC

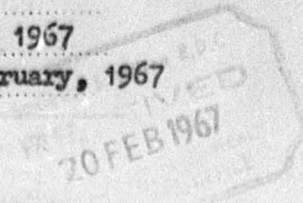
PH

[REDACTED]

Common Road, Whiteparish,

08/92572	SP5 2 Two-storey outbuilding Common Road, Whiteparish, SP5 2	28/03/2008	Refuse	DEC	PH
06/91066	Outbuilding with living accommodation for occupation by dependent relatives Common Road, Whiteparish, SP5 2	28/02/2007	Refuse	DEC	CI
SDC/S/03/00 902	DOUBLE AND SINGLE STOREY REAR ADDITIONS Common Road Whiteparish Salisbury SP5 2	18/06/2003	FP APPROVAL	DEC	61

Number 6759/10935
 Date received 17th February, 1967
 Date acknowledged 22nd February, 1967



WILTSHIRE COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT, 1962.

Application for Permission to Develop Land*

2 Copies of this Form are Required

To the Salisbury & Wilton Rural District Council

I/WE hereby apply for permission to carry out the development described in this application and on the attached plans and drawings.

Signed Jonas & Parker Date 17th February 1967

If signed by an Agent: Name of Agent Jonas & Parker

Profession Solicitors

Address and Telephone Number of Agent 45 Castle Street, Salisbury

Tel: [REDACTED]

*NOTE: Subject to the provisions of Section 13 of the Town and Country Planning Act, 1962, 'development' includes the making of any material change in the use of any buildings or other land.

PART I.—GENERAL

(In this part the word "land" includes any buildings thereon)

(1) Full Name and address of applicant (IN BLOCK LETTERS.)
 (state whether Mr., Mrs., or Miss) (MR.) GRAHAM DEAR
[REDACTED] BUNKERS HILL, WHITEPARISH, WILTS

(2) (i) Particulars of the applicant's interest in the land (e.g. owner, lessee, prospective purchaser, etc.) (ii) If the applicant is a prospective purchaser or lessee of the land, state whether the vendor or lessor has consented to the proposed development.	(2) (i) Prospective purchaser (ii) Yes
(3) Address or location of the land to be developed, in sufficient detail to enable it to be readily identified.	(3) Address THE COMMON, WHITEPARISH Road Parish Whiteparish O.S. Map No. Wilts. Parcel No. Pts. 407 & Edition 1901 419
(4) Describe briefly the proposed development including the purpose for which the land and/or buildings are to be used. If they are to be used for more than one purpose, give details. See note (a).	(4) Change of use from Builders' yard and buildings to Milk and General Haulage Depot
(5) State the purpose for which the land and or buildings are now used, and if used for more than one purpose, give details.	(5) Builders' yard and buildings; workshop etc, standing for vehicles storage of building materials etc.
(6) Will the proposed development involve:- (i) New pedestrian access (ii) New vehicular access (iii) Existing access (unaltered) (iv) Alterations to existing access (v) Crossing of kerb (vi) Crossing of footpath (vii) Crossing of roadside verge (viii) Crossing of roadside ditch If so, please give details.	(6) No (i) No (ii) No (iii) Yes (iv) No (v) No (vi) No (vii) No (viii) No Details The site adjoins the road and is largely unfenced.

**PART II.—ADDITIONAL INFORMATION REQUIRED ONLY IF THE APPLICATION IS FOR THE
CONSTRUCTION OF A BUILDING**

(If there is more than one building, give separate particulars for each)

<p>(7) Is the site within a layout plan for which permission has been granted by a Local Planning Authority? If so, state the Appn. number and date of permission.</p>	<p>(7)</p>
<p>(8) If the building is to be used wholly or partly for residential purposes, state:</p> <p style="margin-left: 20px;">(i) the number of habitable rooms. See note (b)</p> <p style="margin-left: 20px;">(ii) the total floor area of the non-residential part, if any. See note (c)</p>	<p>(8)</p> <p style="margin-left: 20px;">(i)</p> <p style="margin-left: 20px;">(ii)</p>
<p>(9) If the building is to be used wholly or partly for industrial or commercial use, state:</p> <p style="margin-left: 20px;">(i) the nature of the proposed industry or business, including, if for industrial use, a brief description of the type of processes to be carried on;</p> <p style="margin-left: 20px;">(ii) the total floor area. See note (c)</p> <p style="margin-left: 20px;">(iii) the intended provisions for the loading and unloading of vehicles;</p> <p style="margin-left: 20px;">(iv) if for industrial use, the means of disposal of any trade refuse or trade effluents.</p>	<p>(9)</p> <p style="margin-left: 20px;">(i)</p> <p style="margin-left: 20px;">(ii)</p> <p style="margin-left: 20px;">(iii)</p> <p style="margin-left: 20px;">(iv)</p>

(10) Materials to be used:

Walls: (i) Materials.....	Roof: (i)
(ii) Finish	(ii)
(iii) Colour.....	(iii)

(11) Drainage:—

Cesspool	Septic Tank	Sewer	}	Cross out where not applicable
Water Supply:—		Main		
Well				
Power:—				
Gas	Electricity			

FOR OFFICIAL USE ONLY

Surveyor's Observations:

Date of next meeting **9th March, 1967**

Certificate B received

Date **22nd February, 1967**

J.A. Furley
Surveyor.

CERTIFICATE B
TOWN AND COUNTRY PLANNING ACT, 1962

CERTIFICATE UNDER SECTION 16



I hereby certify that :

1. ~~✗~~ ~~XXXXXX~~ given the requisite notice to all the persons who, 21 days before the date of the accompanying application, were owners of any of the land to which the application relates, viz:-

<u>Name of owner</u>	<u>Address</u>	<u>Date of service of notice</u>
Jack Chant	The Common, Whiteparish, Wilts.	17th February 1967

✗ 2. None of the land to which the application relates constitutes or forms part of an agricultural holding.

or:-

~~✗ 2. ~~✗~~ I have ~~_____~~ given the requisite notice to every person who, 21 days before the date of the application, was a tenant of any agricultural holding any part of which was comprised in the land to which the application relates, viz:-~~

<u>Name of tenant</u>	<u>Address</u>	<u>Date of service of notice</u>
-----------------------	----------------	----------------------------------

Signed 

✗ On behalf of, Graham Dear the Applicant.

✗ Delete where inappropriate. Date 17th February 1967.

FORM P. 16.

WILTSHIRE COUNTY COUNCIL.

TOWN AND COUNTRY PLANNING ACT, 1962.

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER, 1963.

PERMISSION FOR DEVELOPMENT.

Application No. 7739/10935

To: G. Dear, Esq.,

[REDACTED]
Bunkers Hill, Whiteparish,
Per: Messrs. Jones and Parker,
45 Castle Street,
Salisbury.

The above-named Local Planning Authority having, with the consent of the Minister of Housing and Local Government, delegated to the

SALISBURY AND WILTCH RURAL DISTRICT Council

(hereinafter referred to as "the Council") their functions under Parts III & IV of the Act, the Council HEREBY PERMIT the development proposed by you in your application dated the 17th day of February 19 67

Change of use from Builders Yard to Milk and General Haulage Depot at The Common, Whiteparish

in accordance with the plans which accompanied your application, and subject to the conditions endorsed hereon

Dated this 9th day of June 19 67

[REDACTED]
Town Clerk/Clerk of the Council.

CONDITIONS.

1. Subject to the permission hereby granted being in respect of the change of use only from Builders Yard to use as a Milk and General Haulage Depot, and subject to detailed plans of any buildings proposed to be erected being submitted for the approval of the Council.
2. The access to be sited at the north end of the frontage of the site shown on the attached plan, to be at least 18ft. wide with 35 ft. radius curves on both sides and to replace the existing one which must be permanently closed.
3. A sight line as follows to be provided on the south side of the new access from a point 20 ft. along the centre line of the access as measured from the nearside along the edge of the county road C.26 to the southern end of the frontage of the garden of the adjoining dwelling. Between this sight line and the road the hedge to be lowered to and maintained at a height not exceeding 3 ft. above road level and all trees and other obstructions to visibility to be removed; no obstruction exceeding this height to be planted or erected within this area.
4. Adequate provision to be made for the parking and turning of vehicles within the site.

REF. 6759/10935

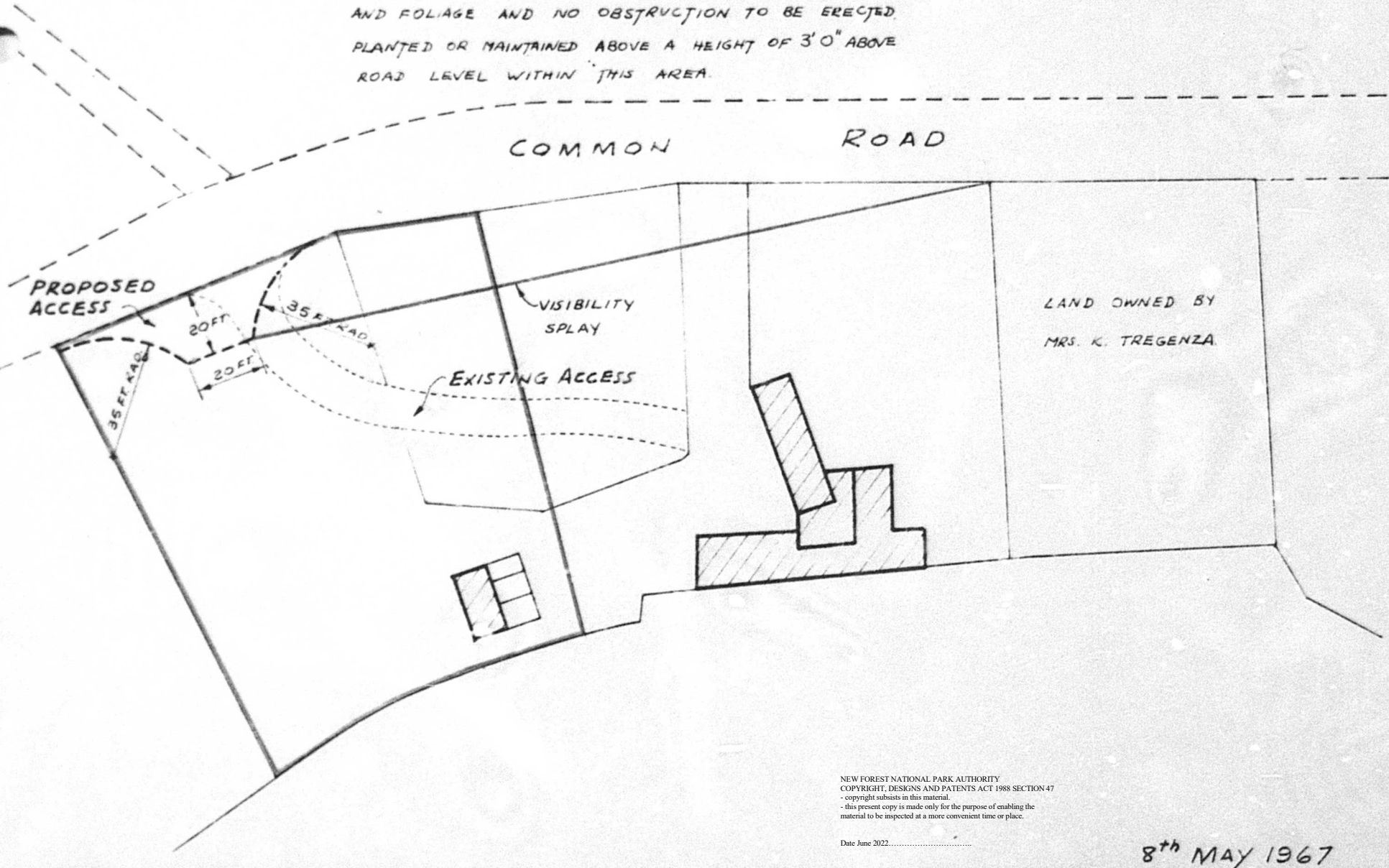
← Z1
SCALE: 1/500.

AREA WITHIN VISIBILITY SPLAY TO BE CLEARED OF TREES
AND FOLIAGE AND NO OBSTRUCTION TO BE ERECTED,
PLANTED OR MAINTAINED ABOVE A HEIGHT OF 3'0" ABOVE
ROAD LEVEL WITHIN THIS AREA.

COMMON ROAD

LAND OWNED BY
MRS. K. TREGENZA

Page 190



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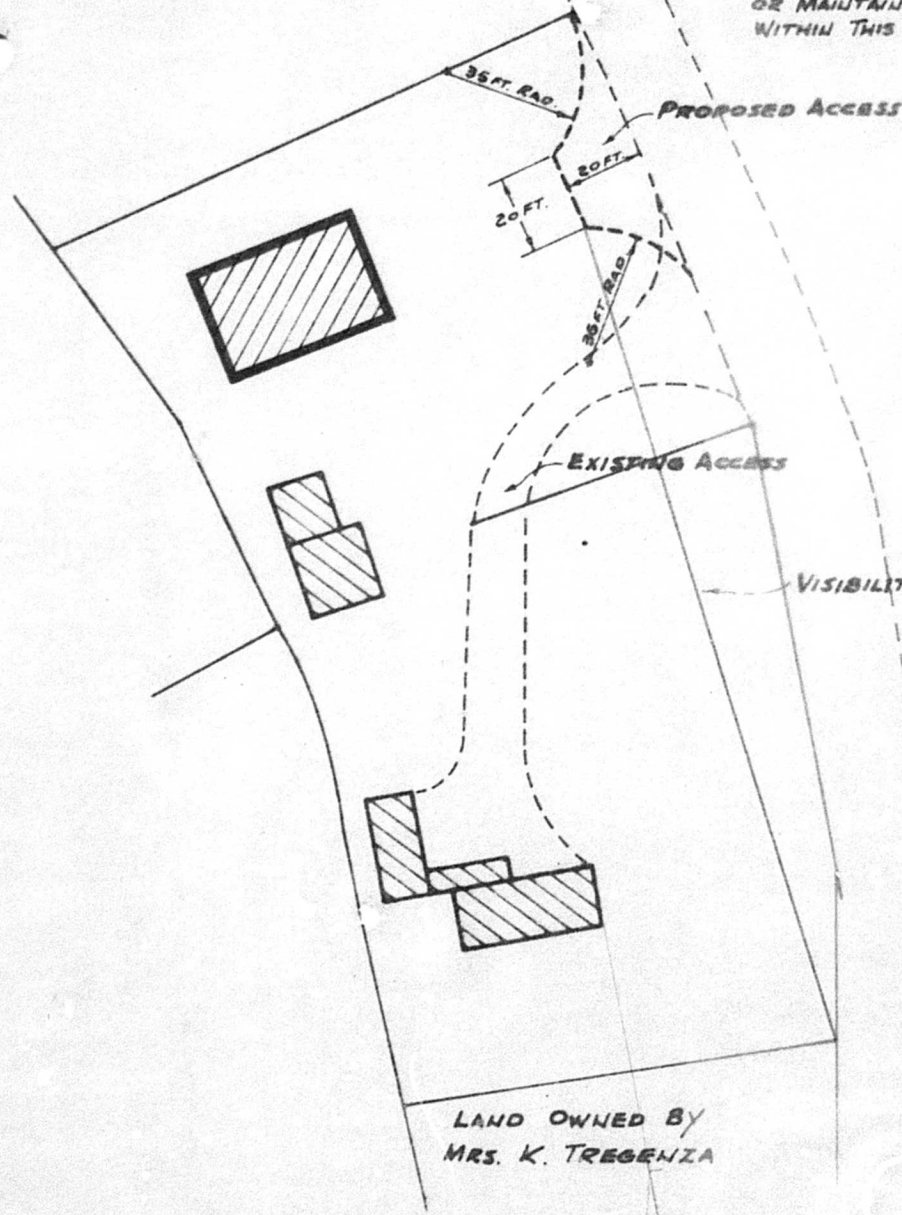
Date June 2022.....

8th MAY 1967

PROPOSED ACCESS AT THE COMMON, WHITEPARISH, FOR G. DEAR ESQ.

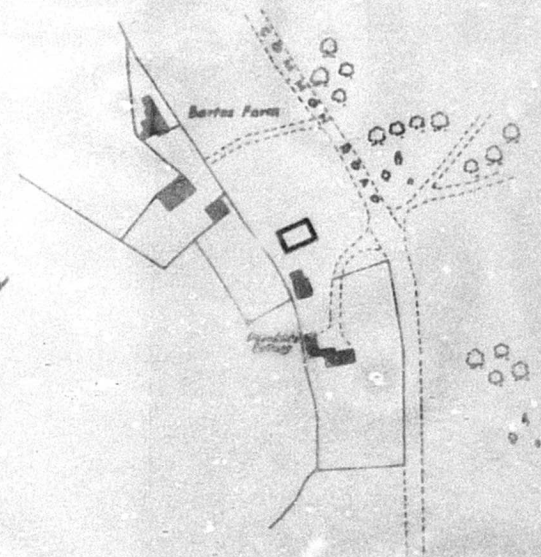
REF. 6759/10935

AREA WITHIN VISIBILITY SPLAY TO BE CLEARED OF TREES AND FOLIAGE AND NO OBSTRUCTION TO BE ERECTED, PLANTED OR MAINTAINED ABOVE A HEIGHT OF 3'-0" ABOVE ROAD LEVEL WITHIN THIS AREA.



LAND OWNED BY
MRS. K. TREGENZA

BLOCK PLAN. SCALE: 1/500.

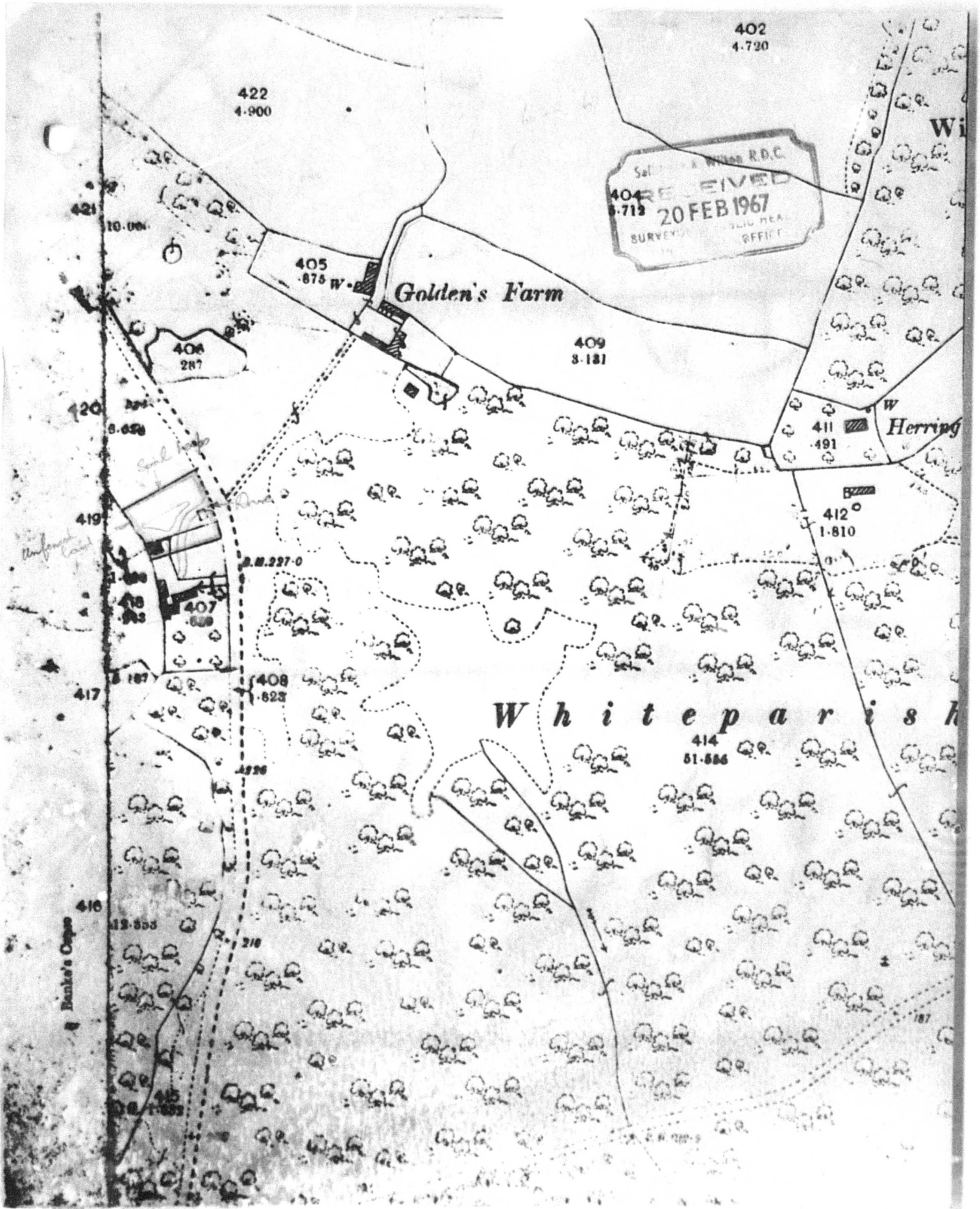


SITE PLAN
SCALE: 1/2500.

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 material to be inspected at a more convenient time or place.

Date June 2022.....

25.10.1967



REF. 6759/10935

SCALE: 1/500.

AREA WITHIN VISIBILITY SPLAY TO BE CLEARED OF TREES AND FOLIAGE AND NO OBSTRUCTION TO BE ERECTED PLANTED OR MAINTAINED ABOVE A HEIGHT OF 3' 0" ABOVE ROAD LEVEL WITHIN THIS AREA.

COMMON ROAD

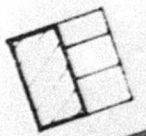
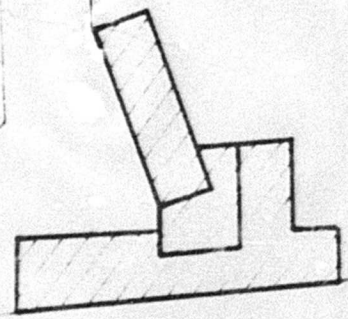
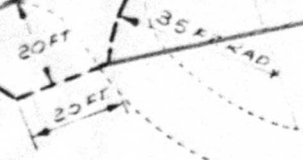
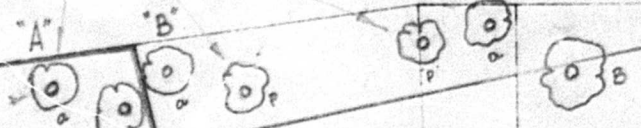
LAND OWNED BY
MRS. K. TREGENZA

PROPOSED ACCESS

EXISTING ACCESS

VISIBILITY SPLAY

Drawn by G. 18/7/67



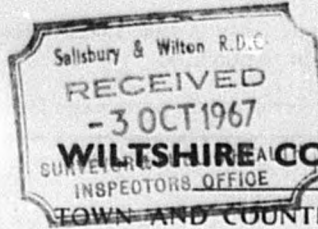
NEW FOREST NATIONAL PARK AUTHORITY
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Date June 2022.....

8th MAY 1967

PROPOSED ACCESS AT THE COMMON, WHITEPARISH, FOR G. DEAR ESQ.

Page 193



Number 7085/11434
 Date received 3rd October, 1967
 Date acknowledged 3rd October, 1967

Application for Permission to Develop Land*

2 Copies of this Form are Required

To the Salisbury & Wilton R.D.C. County/~~Borough~~~~Urban District~~~~Rural District~~ Council

I/WE hereby apply for permission to carry out the development described in this application and on the attached plans and drawings.

Signed [REDACTED] Date Oct. 2nd. 1967

If signed by an Agent: Name of Agent
 Profession
 Address and Telephone Number of Agent

*NOTE: Subject to the provisions of Section 13 of the Town and Country Planning Act, 1962, 'development' includes the making of any material change in the use of any buildings or other land.

PART I.—GENERAL

(In this part the word "land" includes any buildings thereon)

(1) Full Name and address of applicant (IN BLOCK LETTERS.)

(state whether Mr., ~~Mrs.~~ or Miss) GRAHAM GEORGE DEAR
[REDACTED]
ROMSEY RD WHITEPARISH WILTS

(2) (i) Particulars of the applicant's interest in the land (e.g. owner, lessee, prospective purchaser, etc.) (ii) If the applicant is a prospective purchaser or lessee of the land, state whether the vendor or lessor has consented to the proposed development.	(2) (i) <u>OWNER.</u> (ii)
--	-------------------------------

(3) Address or location of the land to be developed, in sufficient detail to enable it to be readily identified.	(3) Address <u>COMMON RD WHITEPARISH</u> Road Parish O.S. Map No. Wilts. Parcel No. Edition
--	--

(4) Describe briefly the proposed development including the purpose for which the land and/or buildings are to be used. If they are to be used for more than one purpose, give details. See note (a).	(4) <u>garage and workshop for maintenance.</u>
---	---

(5) State the purpose for which the land and or buildings are <i>now</i> used, and if used for more than one purpose, give details.	(5) <u>/</u>
---	--------------

(6) Will the proposed development involve:- (i) New pedestrian access (ii) New vehicular access (iii) Existing access (unaltered) (iv) Alterations to existing access (v) Crossing of kerb (vi) Crossing of footpath (vii) Crossing of roadside verge (viii) Crossing of roadside ditch If so, please give details.	(6) (i) <u>NO</u> (ii) <u>YES</u> (iii) <u>YES</u> (iv) <u>YES</u> (v) <u>NO</u> (vi) <u>NO</u> (vii) <u>YES</u> (viii) <u>NO</u>
--	--

Details
 ACCESS TO BE LAID
 BUT IN ACCORDANCE
 WITH PREVIOUS PERMISSION

**PART II.—ADDITIONAL INFORMATION REQUIRED ONLY IF THE APPLICATION IS FOR THE
CONSTRUCTION OF A BUILDING**

(If there is more than one building, give separate particulars for each)

<p>(7) Is the site within a layout plan for which permission has been granted by a Local Planning Authority? If so, state the Appn. number and date of permission.</p>	<p>(7)</p>																					
<p>(8) If the building is to be used wholly or partly for residential purposes, state:</p> <p style="margin-left: 20px;">(i) the number of habitable rooms. See note (b)</p> <p style="margin-left: 20px;">(ii) the total floor area of the non-residential part, if any. See note (c)</p>	<p>(8)</p> <p style="margin-left: 20px;">(i)</p> <p style="margin-left: 20px;">(ii)</p>																					
<p>(9) If the building is to be used wholly or partly for industrial or commercial use, state:</p> <p style="margin-left: 20px;">(i) the nature of the proposed industry or business, including, if for industrial use, a brief description of the type of processes to be carried on;</p> <p style="margin-left: 20px;">(ii) the total floor area. See note (c)</p> <p style="margin-left: 20px;">(iii) the intended provisions for the loading and unloading of vehicles;</p> <p style="margin-left: 20px;">(iv) if for industrial use, the means of disposal of any trade refuse or trade effluents.</p>	<p>(9)</p> <p style="margin-left: 20px;">(i) GARAGE AND MAINTAINANCE OF VEHICLES IN CONNECTION WITH MILK VEHICLES</p> <p style="margin-left: 20px;">(ii) SEE PLAN</p> <p style="margin-left: 20px;">(iii) NONE</p> <p style="margin-left: 20px;">(iv) NONE</p>																					
<p>(10) Materials to be used: CONCRETE BLOCKS</p> <table style="width:100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Walls: (i) Materials <u>Steel</u> (ii) Finish <u>NATURAL</u> (iii) Colour <u>NATURAL</u> </td> <td style="width: 50%; border: none;"> Roof: (i) <u>Asbestos</u> (ii) <u>CORRUGATED</u> (iii) <u>NATURAL</u> </td> </tr> </table>		Walls: (i) Materials <u>Steel</u> (ii) Finish <u>NATURAL</u> (iii) Colour <u>NATURAL</u>	Roof: (i) <u>Asbestos</u> (ii) <u>CORRUGATED</u> (iii) <u>NATURAL</u>																			
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<p>(11) Drainage:—</p> <table style="width:100%; border: none;"> <tr> <td style="width: 33%;">Cesspool</td> <td style="width: 33%;">Septic Tank</td> <td style="width: 33%;">Sewer</td> <td rowspan="3" style="width: 10%; vertical-align: middle; font-size: 2em;">}</td> <td rowspan="3" style="vertical-align: middle;">Cross out where not applicable</td> </tr> <tr> <td>Water Supply:—</td> <td></td> <td>Main</td> </tr> <tr> <td>Well</td> <td></td> <td></td> </tr> <tr> <td>Power:—</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Gas</td> <td>Electricity</td> <td></td> <td></td> <td></td> </tr> </table>		Cesspool	Septic Tank	Sewer	}	Cross out where not applicable	Water Supply:—		Main	Well			Power:—					Gas	Electricity			
Cesspool	Septic Tank	Sewer	}	Cross out where not applicable																		
Water Supply:—		Main																				
Well																						
Power:—																						
Gas	Electricity																					

FOR OFFICIAL USE ONLY

Surveyor's Observations:

Date of next meeting 12th October, 1967

Certificate A received

Date 3rd October, 1967

J. A. Furley
Surveyor.

CERTIFICATE A

TOWN AND COUNTRY PLANNING ACT, 1962

CERTIFICATE UNDER SECTION 16



I hereby certify that:

1. * I am * the estate owner in respect of the fee simple of every part
~~The applicant is~~ entitled to a tenancy
of the land to which the accompanying application dated. Oct 2nd 1967
relates;

*
2. None of the land to which the application relates constitutes or forms part of an agricultural holding.

or:-

*
2. * I have
~~The applicant has~~ given the requisite notice to every person who, 21 days before the date of the application was a tenant of any agricultural holding any part of which was comprised in the land to which the application relates, viz:-

<u>Name of tenant</u>	<u>Address</u>	<u>Date of service of notice</u>
-----------------------	----------------	----------------------------------

*
2. * I am the occupier of every part of the land to which the application
~~The applicant is~~ relates.

Signed. 

* On behalf of.....

Date. 2nd Oct 1967

* Delete where inappropriate.

WILTSHIRE COUNTY COUNCIL.

TOWN AND COUNTRY PLANNING ACT, 1962.

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER, 1963.

PERMISSION FOR DEVELOPMENT.

Application No. 7085/1143.

To: G.G. Dear, Esq.

Romsey Road,
Whiteparish.

The above-named Local Planning Authority having, with the consent of the Minister of Housing and Local Government, delegated to the

SALISBURY AND WILTON RURAL DISTRICT Council

(hereinafter referred to as "the Council") their functions under Parts III & IV of the Act, the Council HEREBY PERMIT the development proposed by you in your application dated the 2nd day of October 1967

Erection of garage/maintenance workshop at Common Road, Whiteparish

in accordance with the plans which accompanied your application, and subject to the conditions endorsed hereon

Dated this 12th day of October 1967

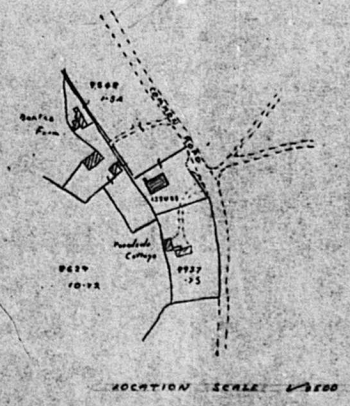
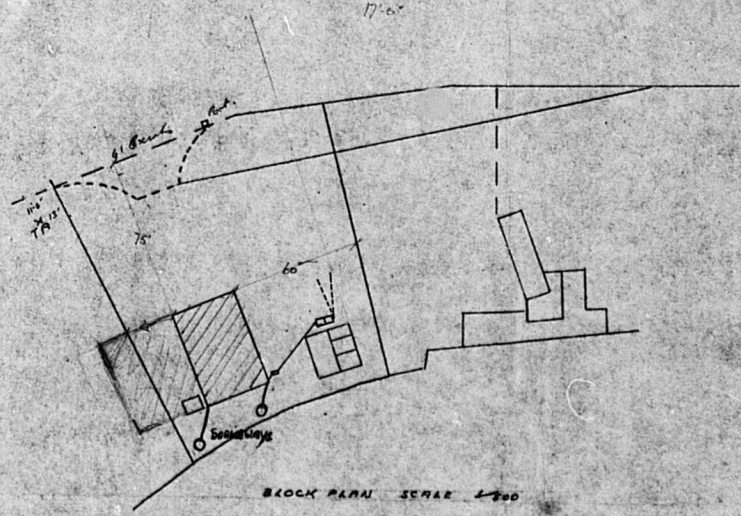
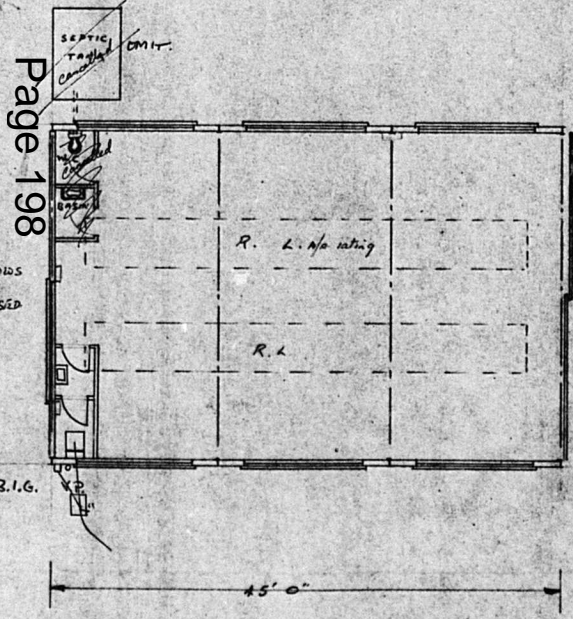
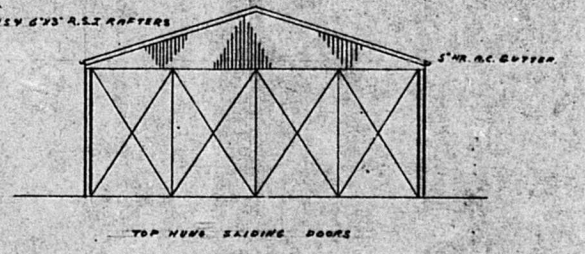
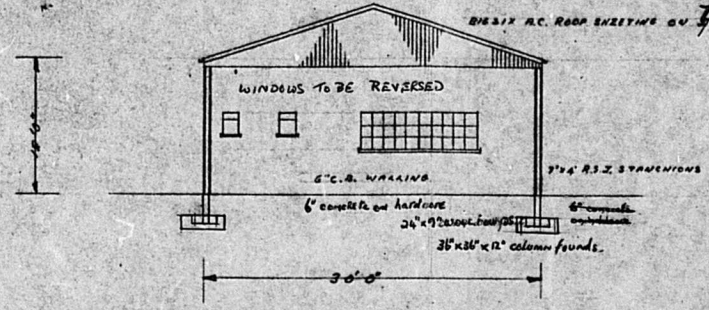
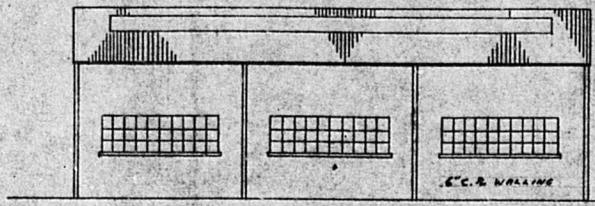
Town Clerk/Clerk of the Council.

CONDITIONS.

REASONS.

7085/11434

Building & Works
RECEIVED
- 3 OCT 1967
SURVEYOR & PUBLIC HEALTH
INSPECTOR'S OFFICE



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Date June 2022

H. FRANCIS AND SONS LTD., KILMINGTON, WILTS

SEPTEMBER 1967 SCALE 1/4" = 1'

PROPOSED BUILDING for G. DEAR Esq. WHITEPARISH

Page 198

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

Officer’s Consideration of Legal Tests

Main Considerations

1. At Schedule 2, paragraph 6 of the Commons Act 2006, each of the legal tests set out, must be satisfied for land to be successfully de-registered, in which case de-registration is mandatory:
 - (a) *the land was provisionally registered as common land under section 4 of the 1965 Act;*
 - (b) *on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
 - (c) *the provisional registration became final; and*
 - (d) *since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.*
2. The Regulations at paragraph 27(1), set out the material which the Commons Registration Authority (CRA) must take into account in its determination of the application.

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

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

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

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

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

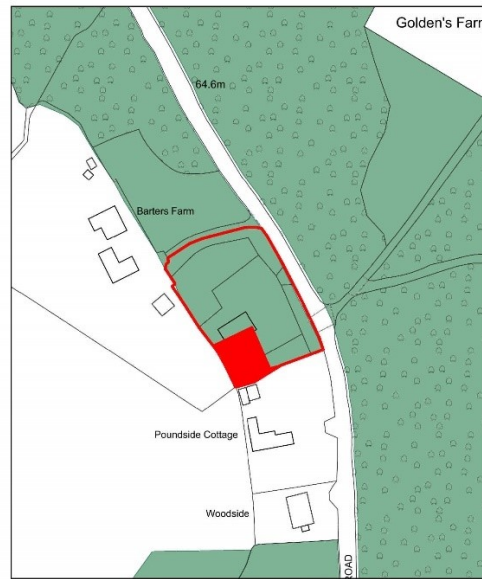


08/06/2022

Scale 1:1,000 @ A4



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



08/06/2022

Scale 1:1,000 @ A4



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



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



Test A - Conclusion:

Part of the building and application land at The Pound, adjacent to Common Road, Whiteparish, are included within the area of land provisionally registered as unit no.CL7, Whiteparish Common, on 10 April 1968.

Officers are satisfied that the legal test at Schedule 2(6)(2)(a) of the Commons Act 2006, is met over that part of the application area, (excluding that part of the application building and land not included within the provisionally registered area).

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

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

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

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

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

“7 Finality of undisputed registrations

- (1) If no objection is made to a registration under section 4 of this Act or if all objections made to such a registration are withdrawn the registration shall become final at the end of the period during which such objections could have been made under section 5 of this Act or, if an objection made during that period is withdrawn after the end thereof, at the date of withdrawal.*
- (2) Whereby virtue of this section a registration has become final the registration authority shall indicate that fact in the prescribed manner in the register.”*

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

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

Test C – Conclusion:

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

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

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

Building:

9. The location and size of the workshop building subject to this application, correspond with that detailed in The Town and Country Planning Act 1962, Town and Country Planning General Development Order 1963 – Permission for development for the erection of garage/maintenance workshop at Common Road, 12 October 1967. However, this is not evidence that the building was erected on site by the time of provisional registration of the land CL7, on 10 April 1968.
10. Mr S Byrne, upon consultation regarding the application, supplies copies of historical OS mapping, (please see **Appendix 8** (maps 19, 21, 22, 23, 26, 27 and 28)). He confirms that the only map recording the building on the application land is that dated 1990-91, (**Appendix 8** (map 27)). Of course, OS maps were subject to revision and Mr Byrne points out that the 1970, 1:10,560 map, (upon which we might expect the building to be shown given its date, **Appendix 8** (map 26)), was revised between 1963 and 1970 and shows no building on the site, therefore Mr Byrne can see no merit in the Schedule 2(6) application. However, the recording of the building erected, as claimed, prior to provisional registration of the land in April 1968, may have missed the revision for the 1970 map altogether if revision in this area took place at some point between 1963 and 1970 and before April 1968. There is not sufficient detail in the dates of the OS mapping to accurately pinpoint the exact date the building was erected.
11. However, the Applicants provide correspondence from Mr G Dear, dated 18 November 2020, who was purchasing the property in August 1967 and applied for and was granted the above planning permission for the erection of the workshop building. He still lives in the parish and writes to confirm:

*“Having purchased the above property and being granted planning permission for
‘Erection of garage/maintenance workshop’
By Salisbury and Wilton Rural District Council Application No.7085/11434
12 October 1967
Building works, for the above garage/maintenance workshop commenced in
November 1967 and **the building completed by the end of December
1967.**
The garage/maintenance workshop was steel framed with face brickwork
above ground.
The building remains on the above site today.”*
12. Mr Dear confirms that the building was erected on the site by the close of 1967 and in the absence of evidence to the contrary, this testimony is accepted as correct and Officers conclude that the workshop building was

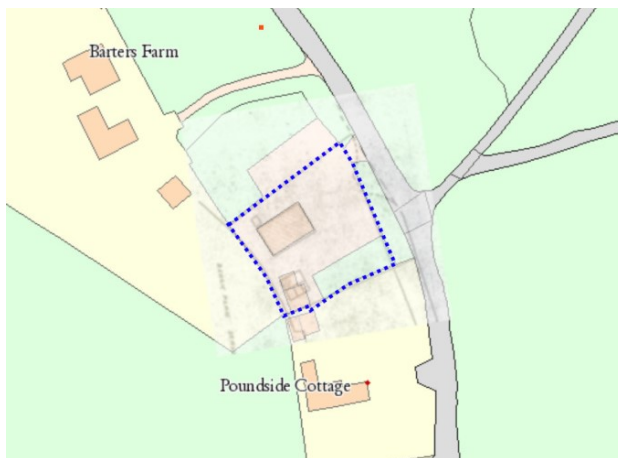
present on the site at the time of provisional registration on 10 April 1968, as required under Schedule 2(6)(2)(b) of the Commons Act 2006. This is not disputed by the objectors.

Curtilage

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

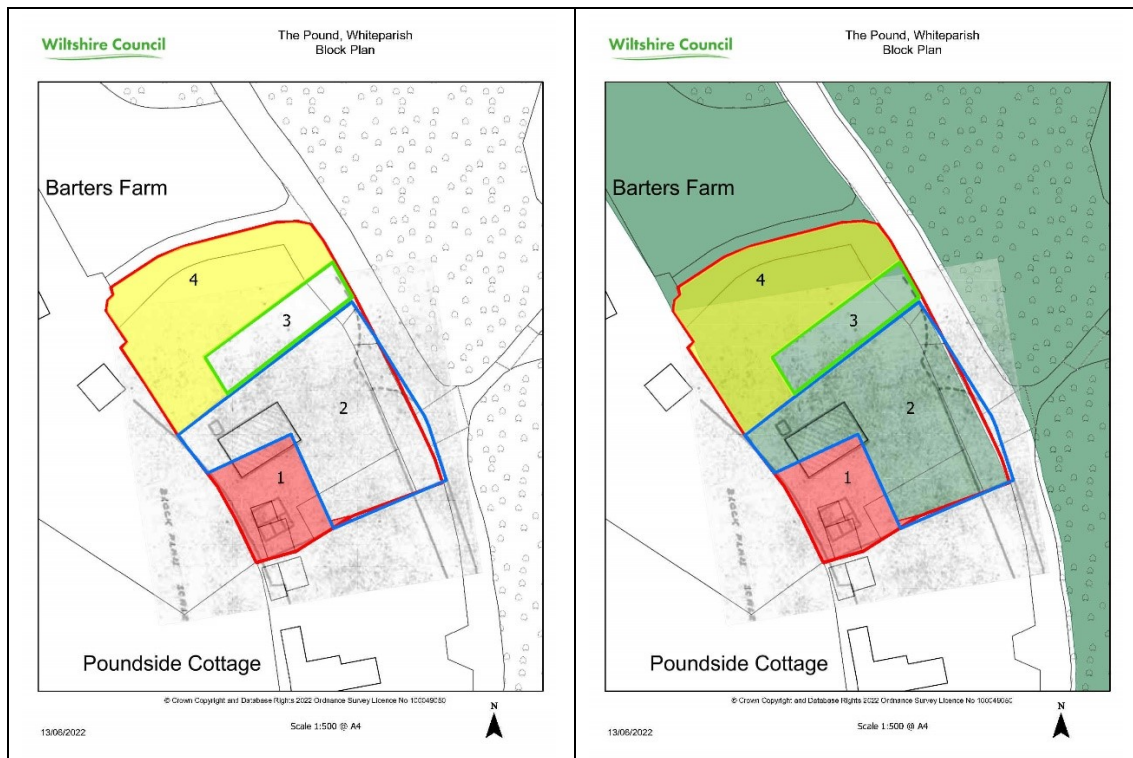
airfield was within the curtilage of the terminal building, but a different question, namely whether they together formed part of a single unit.”

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

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

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

26. The case concludes that what comprises the “curtilage” of a building is a matter of **fact and degree** for the decision maker in each individual case, but that the Methuen-Campbell test is that which has been applied consistently by the Courts when considering the matter of curtilage in all types of setting, i.e: ***“...for one corporeal hereditament to fall within the curtilage of another, the former must be so immediately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.”***
27. In the Whiteparish case, Officers have identified four areas of land which form the application land, as shown on the plan below (the extent of the application land is shown edged red):



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

Area 1 – Shaded Red

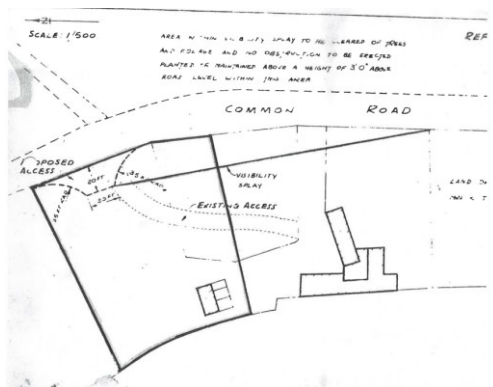
28. This part of the building and land subject to the application, do not form part of common land register unit no.CL7, Whiteparish Common, and therefore this area should be excluded from the area to be de-registered, please see paragraph 4 above.

Area 2 - Outlined Blue

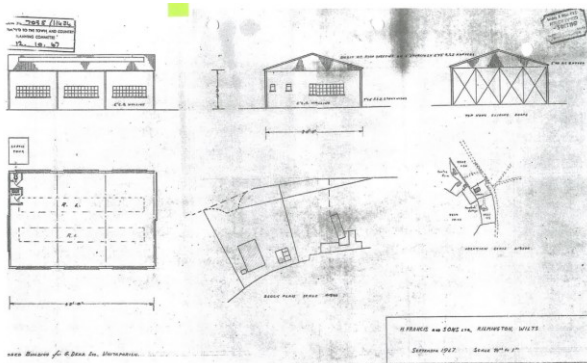
29. The area outlined blue is that identified in the two planning applications/consents dated 1967: 6759/10935 - application for change of use and 7085/11434 - application for erection of workshop. It is considered that this area of land meets the criteria of curtilage of the building where it is included consistently within the planning applications at the establishment of the workshop and being so intimately associated with the building as to lead to the conclusion that the land forms part and parcel of the building.
30. It seems unlikely that any land outside the identified planning application site, as shown on the plans, could be said to form part of the curtilage of the building where it was unnecessary for the planning application. As Lieven J considers in the Challenge Fencing case, (Challenge Fencing Ltd v Secretary of State for Housing Communities and Local Government [2019] EWHC 553 (Admin), as set out in Blackbushe and which considered “curtilage” in relation

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

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

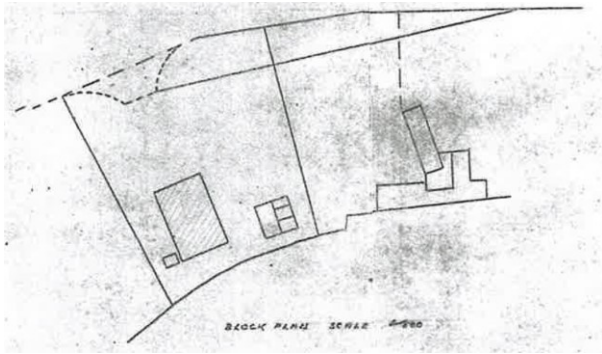


**Application no.6759/10935 – Change of use from Builders Yard to Milk and General Haulage Depot at The Common, Whiteparish
Permission for Development – Granted subject to conditions 8th June 1967 – Salisbury and Wilton Rural District Council**

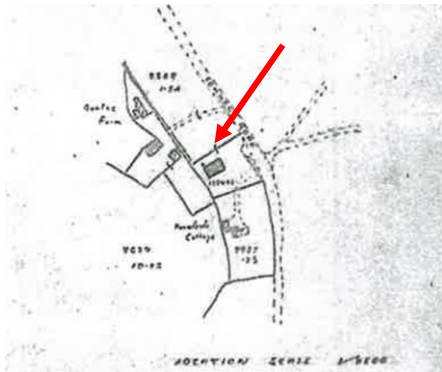


**Application no.7085/11434 – Erection of garage/maintenance workshop at Common Road, Whiteparish
Permission for Development - Granted subject to conditions – 12th October 1967 – Salisbury and Wilton Rural District Council
(with expanded Block Plan and Location plans below)**

**Application no.7085/11434
Block Plan (expanded)**



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



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

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

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

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

“...1967 onwards The Pound was used as a general haulage depot, milk haulage depot and workshops.”

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

“The blue dotted line area would not have been sufficient for the turning and parking of up to nine haulage vehicles which were services by the garage from 1967 up to 1989...”

“The whole of The Pound site was one piece of land. The line on the block plan was not a fence and therefore the whole site, The Pound, was given permission for development...”

“We have also spoken to Mr Dear, owner at the time of planning application, who confirms the planning consent for change of use from builders yard to milk and general haulage depot was for the entire site not confined to within the blue dotted lines as marked by OSS...”

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

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

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

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

The Land Commission reply dated 4 July 1967, states,

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

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

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

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

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

Area 3 – Outlined Green

40. Area 3 comprises an area of hardstanding which forms part of the common land de-registration application but is not included in the planning site as identified in planning applications 6759/10935 and 7085/11434, (Area 2 above). In April 1968, Area 3 is included within the area provisionally registered as common land, forming part of unit CL7.
41. Aerial photographs dated 2001 and 2003, (2003 photograph submitted by the Applicant), show lorry trailers parked on Area 3 to the north of the planning application site, and the aerial photograph dated 2014 shows the area of hardstanding extending into Area 3. The 2020/21 aerial photograph shows the current use of the building as a car garage/workshop, with cars parked on the hardstanding in Area 3, (please see aerial photographs attached at **Appendix 4**).



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

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

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

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

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

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



Area 3 – present day

45. In the *Blackbushe* case Lord Justice Nugee noted the *Challenge Fencing* case that the hardstanding area did not qualify as curtilage of the warehouse where:
- “134. ...A courtyard and access to a warehouse and mill was part of the curtilage (Caledonian Railway Co. v Turcan [1898] AC 256); as was a piece of ground in front of a public house used for access (Marson v London, Chatham and Dover Railway Co (1868) LR 6 Eq 101); and two small open spaces in an oil depot (Clymo); but not a large hardstanding massively in excess of what was necessary for an undertaking in a modest building (Challenge Fencing).”*
46. Certainly the Land Commission correspondence dated June/July 1967, (see paragraph 36 above), suggests that the development to be carried out on site was relatively modest and not material development as defined under section 99(2) of the Land Commission Act 1967, all the buildings having been used, and their future use, to be light industrial purposes, with no requirement for warehousing facilities and the yard to become a lorry park. The workshop building covers only 5% of the total common land de-registration application area, being 122 square metres approximately in size, (the total application area being 2,420 square metres approximately). As in the *Challenge Fencing* case, the large area of hardstanding to include Area 3, is in excess of what was necessary for an undertaking in a modest building.
47. It cannot be argued that land outside the identified planning site in 1967, is so intimately associated with the building, so as to lead to a conclusion that the land forms part and parcel of the building. There is no demonstrated relationship between the building and the land to the north of the identified planning site from the date of provisional registration in 1968, therefore Area 3 should be excluded from the area of common land to be de-registered as it does not form part of the curtilage of the building.

Area 4 - Shaded Yellow

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



Green/wooded Area 4 - present day



Green/wooded Area 4 - present day

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

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

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

The Planning Application Block Plans

51. **Bracing on Planning Application Block Plans** - The Applicants refer to “bracing” of the identified planning application site with land to the north on the location plan for application no.7085/11434, please see plan at paragraph 31. They argue that this means that the plot to the north is included with the planning application as part of the same unit. The OSS consider the alternative:
“...The brace is placed across a line shown on the plan. This tells us two things. First, there was at the date of survey (we are not told the date) a physical boundary along the line: it very likely was a fence. Secondly, the parcel to the north was braced (by the Ordnance Survey clerk preparing the final plan for publication) with the parcel containing the building for the purposes of numbering and calculation of area. There is no significance to the brace: it is merely a convenience to avoid separately labelling an excessive number of small parcels: contrary to point 3, the brace does not ‘indicate...ONE piece of land’. But the presence of a fence, which is also shown on the block plan on the same page, confirms that the land to the north of the fence was no part of the application for planning permission.”
52. The analysis of the Challenge Fencing case in Blackbushe suggests that the planning application site may be larger than the actual curtilage of the building, but not smaller and Officers have considered the meaning of the “brace” feature, as set out in:
- i) “Ordnance Survey Maps a concise guide for historians” Richard Oliver, 2005:

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

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

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

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

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

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

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

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

“I can confirm that at the time of my purchase of The Pound in 1967 and when planning permission was submitted in September 1967 there were no fences on The Pound.

When planning permission was granted for ‘Erection of garage/maintenance workshop’ By Salisbury and Wilton Rural District Council, Application No 7085/11434 dated 12 October 1967 there were no fences on the entire site of The Pound, Common Road, Whiteparish SP5 2RD.”

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

“We both know the site known as The Pound very well, as it is only a few hundred metres from our own property.

Poundside Cottage and The Pound were owned by Jack Chant who we also knew as local villagers.

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

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

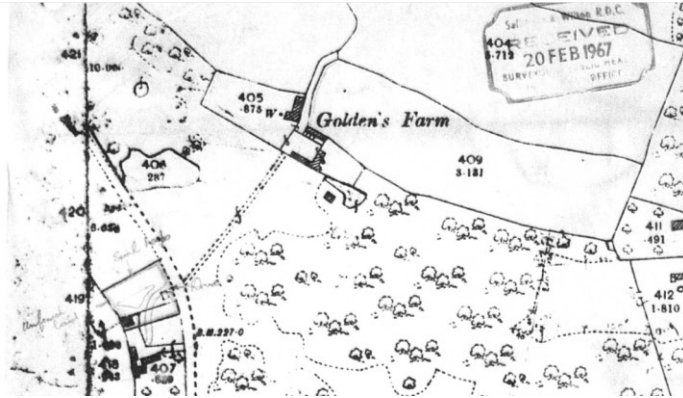
Mr T King, who has also lived in the village for all of his life, (save for the years 1973-76) - correspondence dated 3 July 2021, states:

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

55. The open nature of the site is also reflected in the planning application documents for change of use from builder's yard to milk and general haulage depot in 1967, application no.6759/10935. The application form sets out that the existing access remains unaltered as a result of the development: *"The site adjoins the road and is largely unfenced."*, (see planning documents at **Appendix 9**).
56. The lack of fencing on the site is supported by OS mapping evidence 1895 to 1992, (see **Appendix 8**, (maps 17-27)), which record no fences over the land, (other than the south-west corner on pre-1990/91 maps), and photographs which show no fences to the north and east of the site, until recently, (see photographs at **Appendix 8**). The OS maps appear to show the smaller building on site prior to 1967 at the south-west corner of the application land, and pre-1990-91 maps consistently show fencing at the south-west corner of the site against what is now the extent of common land register unit CL7 and the boundary with Poundside Cottage, there is no other fencing recorded on the site. Maps 25 and 27, (**Appendix 8**), dated 1952-1992 and 1991-1990 respectively, produced/revised after the erection of the workshop building, show the current extent of the application land, with no fencing/enclosure within this area.
57. The Applicants (and landowners) have lived adjacent to the site since 2002 and refer to fencing being erected within the site alongside Common Road, only 2 years ago, in correspondence dated 21 July 2021 – *"The raised grass verges on the edge of the road were put in place, by ourselves, to prevent vehicles from being stolen at The Pound. An attempt was made, to steal a vehicle, by means of Hiab crane lifting a vehicle from the Pound site. The raised grass verge prevents the ability, of the Hiab, on the back of a lorry, getting close enough to lift vehicles from The Pound."*, and further in

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

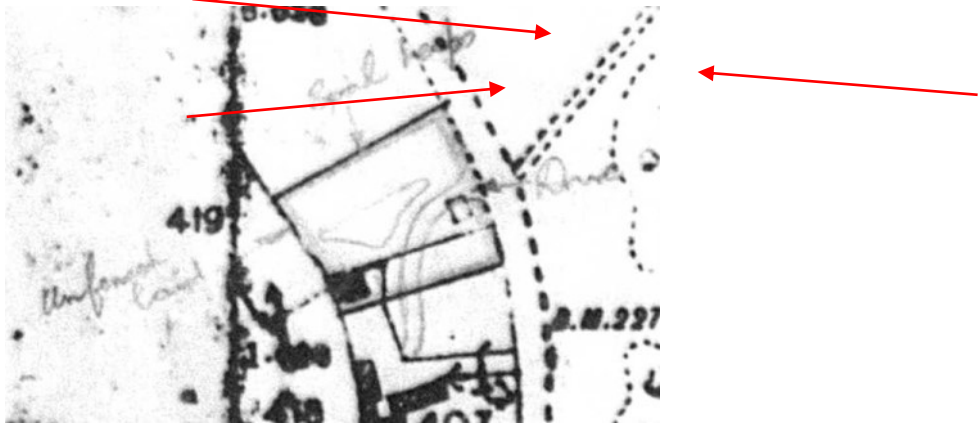
58. Certainly the Applicants evidence of fencing of the site, now 3 years ago, accords with enquiries made to the New Forest National Park Authority as the relevant planning authority, regarding the status of the land and proposals to fence in 2019, please see paragraph 49 above.
59. The Applicants do refer to the planning application map being produced from historical mapping and Officers would agree that the map is likely to be derived from OS mapping. They further refer to the line shown on the plan, (the northern boundary of the planning area), as an historic field boundary, however, Officers do not agree that this marks an historic field boundary as there is no additional evidence of this in the testimony of long term residents or the OS mapping evidence, (please see OS maps and photographs at **Appendix 8**), which consistently record the site as unfenced, even after the erection of the building in 1967, (the use of a solid line on OS maps being recognised convention for the recording a solid boundary such as a fence). Officers consider that this line on the planning application maps records the development application site, (Officers would agree with the OSS in referring to this as what would now be known as the “red line area” in a current planning application), and that the permission for development granted extends only as far as the identified area and no further.
60. There are no planning conditions included in planning application no.7085/11434 and no information regarding the treatment of the site boundaries. However, Officers have located a location plan for planning application no.6759/10935, (see historic planning documents supplied by the New Forest Planning Authority, at **Appendix 9**), which shows “spoil heaps” in the area of “the line” to the north of Area 2, please see extract below. The presence of rubble/spoil in this area is supported by the Applicant who states: *“We must emphasise that the hardstanding that is present today is actually smaller in area than in 1967 as the land to the north of the existing hardstanding contained rubble for hardstanding”*, however, spoil heaps would make it difficult to use an additional area north of the identified planning area, for the parking and turning of vehicles in conjunction with the site at the time of registration. The location plan below is dated as received by Salisbury and Wilton Rural District Council on 20 February 1967. The identified planning site (Area 2) is labelled as “Unfenced Land”.



“Spoil heaps”

“Unfenced land”

“Drive”



Enlarged extract from location plan – Planning Reference 06759/10935

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

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

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

62. There is not sufficient range in the dates of the historic OS mapping to document the change in size to the hardstanding area, extending further north into the site in 1967, as suggested by the Applicants. The only map which records the hardstanding is the OS National Grid Series 1:2,500 map dated 1952-1992, revised after the erection of the building in 1967 and which records the hardstanding area by a single pecked line, which appears to correspond with the hardstanding in Areas 2 and 3 (see **Appendix 8** (map 25)). However, this map; photographs of the site and the testimony of the Applicants, do record that the hardstanding area (Area 2), extended to the highway Common Road, before the fencing of the site in around 2019, (see aerial photographs at **Appendix 4** and Google Earth image 2002 and Google Streetview dated 2011 at **Appendix 8** (photographs 16 and 30)).
63. **The Stephenson Factors** – The Blackbushe Airport case considered the “Stephenson Factors” as set out in the Calderdale case, which must be taken into account when considering whether a structure or object is within the curtilage of a listed building, (although not a listed building case, the concept of curtilage is not different), i.e. 1) the physical layout of the listed building and the structure; 2) their ownership, past and present; 3) their function past and present.
- 1) **Layout** - The building subject of this application is the main focus of the application. It occupies 122 square metres approximately and forms only 5% approximately of the application site, (2,420 square metres approximately). Although there is evidence in OS mapping and witness testimony that until approximately two years ago, there was no fencing or enclosure of any part of the de-registration application site, Areas 3 and 4 were not required to access the building and did not form part of the planning application site over which planning permissions were granted for change of use and the erection of the workshop building in 1967. There is however, a defined relationship between the building and Area 2, as the identified planning application site, including a new access over this land from the highway Common Road to the building located at the west of the site, as required by the planning conditions; provision of the parking/turning area to be accommodated within the site, as required by the planning conditions and the provision of part of the visibility splay, necessary for the safe use of the building, as required by the planning conditions.
- 2) **Ownership** – The conveyance of plot no’s 407 and 420 (OS mapping) in 1967 from J Chant to G Dear, show that the whole de-registration

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

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

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

Test B – Conclusion:

- 1) Area 1 - shaded red on plan at paragraph 27 above – to be excluded from the area of land to be de-registered where it does not form part of the registered common land unit CL7, Whiteparish Common at provisional registration.
- 2) Area 4 – shaded yellow - The wooded/green area between Area 3 and the farm track, to be excluded from the land to be de-registered where there is no evidence that the land was so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building at provisional registration. It appears to have been and remains a separate wooded/green area.
- 3) Area 3 – edged green - Hardstanding area to be excluded from the area to be de-registered where there is insufficient evidence that the land was, at provisional registration, so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building, (there is evidence that it has been used in conjunction with this building only since around 2000, i.e. the parking of vehicles).
- 4) Area 2 – edged blue - That section of land identified on the block plans in association with the planning applications for change of use and the building of the workshop in 1967 and proposed to be de-registered where there is evidence that the land was at provisional registration, so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building, i.e. curtilage of the building, including the provision of access to the building; a turning/parking area and part of the visibility splay, in conjunction with the building, all to be accommodated within Area 2, as set out in the planning conditions. As the only section of the land over which the legal test, as set out at Schedule 2(6)(2)(c) of the Commons Act 2006, is met, only this area of the application land is capable of de-registration.

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

Building:

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

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

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

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

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

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

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



Google Streetview image circa 2011

Curtilage:

69. If any of the areas were not considered to be “curtilage” of the building at the time of provisional registration on 10 April 1968, they cannot be treated as curtilage for the purposes of part D of the Schedule 2(6)(2) legal test and therefore it is really only necessary to consider Area 2 as curtilage to the building throughout the relevant period, (please see conclusions on Test B above).
70. **Area 2** – The area of the application land forming part of the curtilage of the building at the time of the construction of the building, by way of its inclusion as the extent of the planning site and being so intimately associated with the building so as to lead to the conclusion that the land forms part and parcel of the building. It would appear that this area has remained closely associated with the building, initially forming the identified planning application site and now forming a car parking area associated with the building, as well as providing access to the building.
71. The Google image, circa 2011 at paragraph 68 above, appears to show the hardstanding area with logs across the eastern side of Area 2, obstructing access to the highway Common Road, however, there is a vehicle parked on the land and other vehicles within the workshop building. The hardstanding of Area 2 maintains its relationship with the building at this time for the accommodation of a parking/turning area; access to Common Road and part of the visibility splay necessary for the safe use of the building and set out within the planning conditions for change of use of the site in 1967. The logs are a temporary and moveable feature, and the Applicants provide evidence that at this time, i.e. between 2009 and 2017, the site was sold to Mr G Downes and rented out site for a number of different purposes.
72. In 1967 planning permissions for this site included an area of sight line to be retained against the highway Common Road, to be kept free from obstruction. The OSS argues that this area should not be de-registered as common land

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

Test D Conclusion:

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

Comment on Additional Representations

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

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

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

 <p>© Crown Copyright and Database Rights 2022 Ordnance Survey Licence No. 100049050</p> <p>Highway maintainable at public expense: </p> <p>The green area at the eastern edge of the application land, against Common Road, is not recorded as highway maintainable at the public expense.</p>	 <p>May 2021</p>  <p>Google Streetview c.2020</p>
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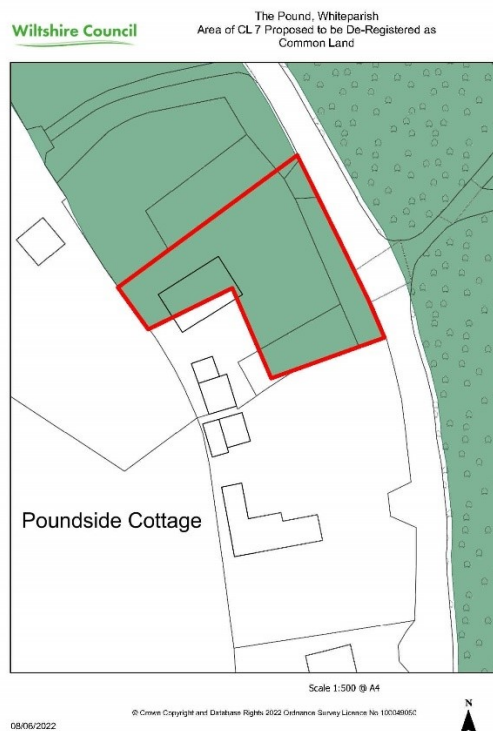
74. The applicant/landowner advises: *“The strip of grass adjacent to the highway is part of The Pound owned by ourselves...The raised grass verges on the road edge were put in place, by ourselves, to prevent vehicles being stolen at The Pound.”* The evidence suggests that works to raise the verges and erect fences were carried out by the landowners approximately 3 years ago. There is no area of highway maintainable at the public expense included within the application land.
75. Mr T King writing on 3 July 2021, states *“I consider the registered Common Land of Whiteparish to be a special part of the village and should be protected from deregistration at all costs.”* Officer’s do of course understand Mr King’s concern in this matter; however, as set out in the Blackbushe case, at the coming into effect of the 1965 Act, one would not have expected buildings to be present on land over which rights of common existed, given the prohibition of the erection of any building or fence on land subject to rights of common at Section 24 of the Law of Property Act 1925. Unfortunately, where there was no requirement for provisional registration to be notified to individual landowners, errors were made and the legislation provides for the correction of errors and the presumption is that buildings should not be registered as common land, the Blackbushe case sets out the position as follows: *“All four requirements in paragraph 6(2) must be satisfied in order for the land to be*

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

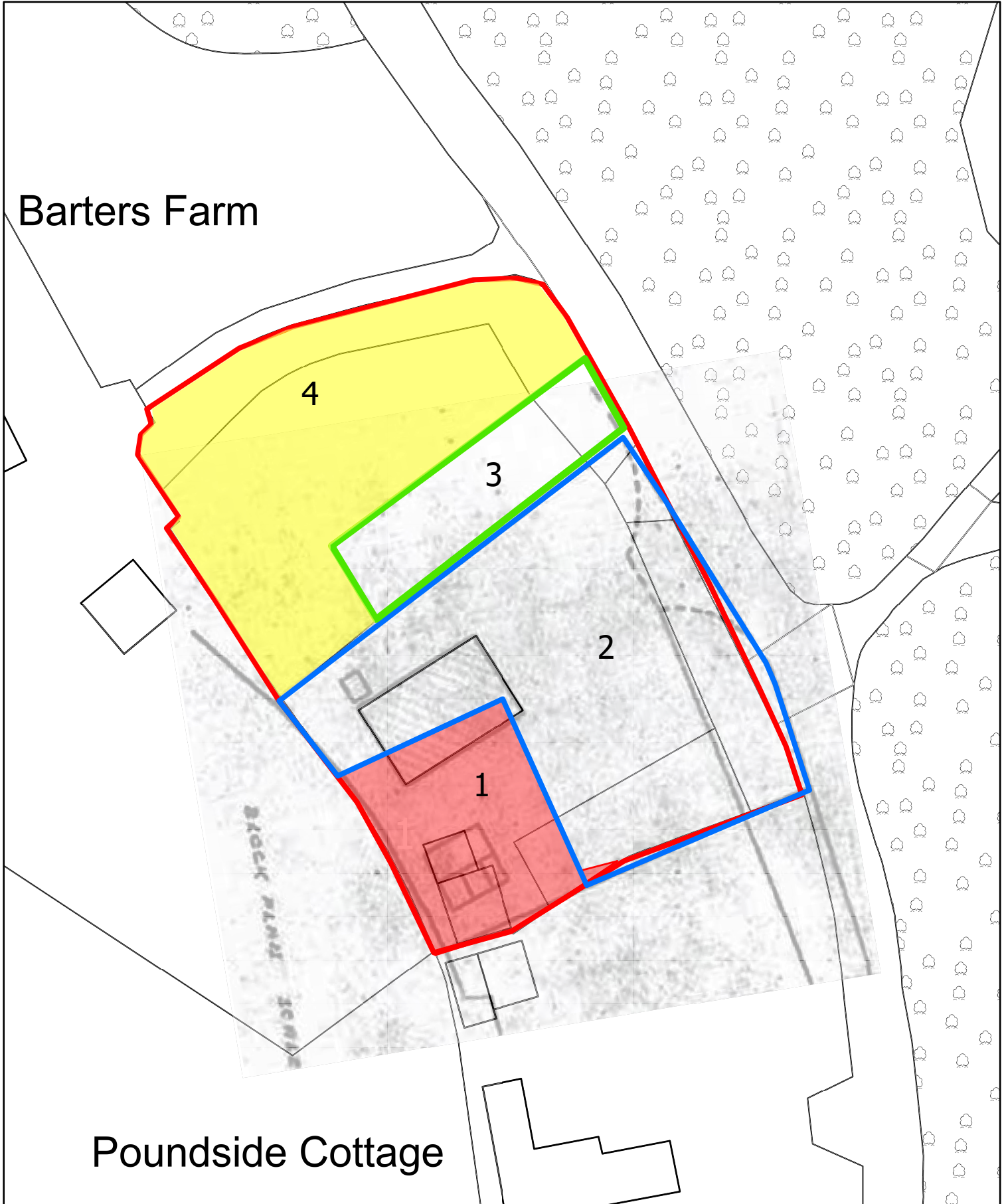
76. The Applicants consider that “The registered common land of Whiteparish may be ‘a special part of the village’ but The Pound is only .027% which is less than one third of 1% of the overall land of the 218 acres of registered common land known as Whiteparish Common and has been in commercial use since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

Conclusion

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



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**REPORT OUTLINE FOR SOUTHERN AREA PLANNING
COMMITTEES**

Report No.

Date of Meeting	2 ND February 2023
Application Number	PL/2022/07116
Site Address	Land to the south of 1 Witt Road Winterslow
Proposal	Erection of 3 detached dwellings, garages, parking and access following demolition of 3 existing buildings (Outline application relating to access and layout)
Applicant	Mr L Fairlie
Town/Parish Council	Winterslow
Electoral Division	Winterslow and Upper Bourne Valley – Cllr Rich Rogers
Grid Ref	424723 132582
Type of application	Outline Planning
Case Officer	Lynda King

Reason for the application being considered by Committee

This application is brought to committee at the request of Councillor Rogers, for the following reasons:

- Scale of development
- Relationship to adjoining properties
- Environmental/highway impact
- Other - The site is unsuitable for this scale of development. Witt Road is a narrow country lane which cannot safely support additional housing, particularly given the proposed access to the site and the close proximity to the road junction onto Middleton Road. It is also worth noting that there are no pavements on Witt Road which is frequently used by walkers as it provides access to Bentley Woods. The scale of the development would be totally out of keeping with the adjacent properties and the streetscene, and therefore have a detrimental impact.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be APPROVED

2. Report Summary

The main issues which are considered to be material to the determination of this application are listed below:

- Principle and planning history
- Neighbouring amenities
- Highway safety
- Ecology

- CIL/S106

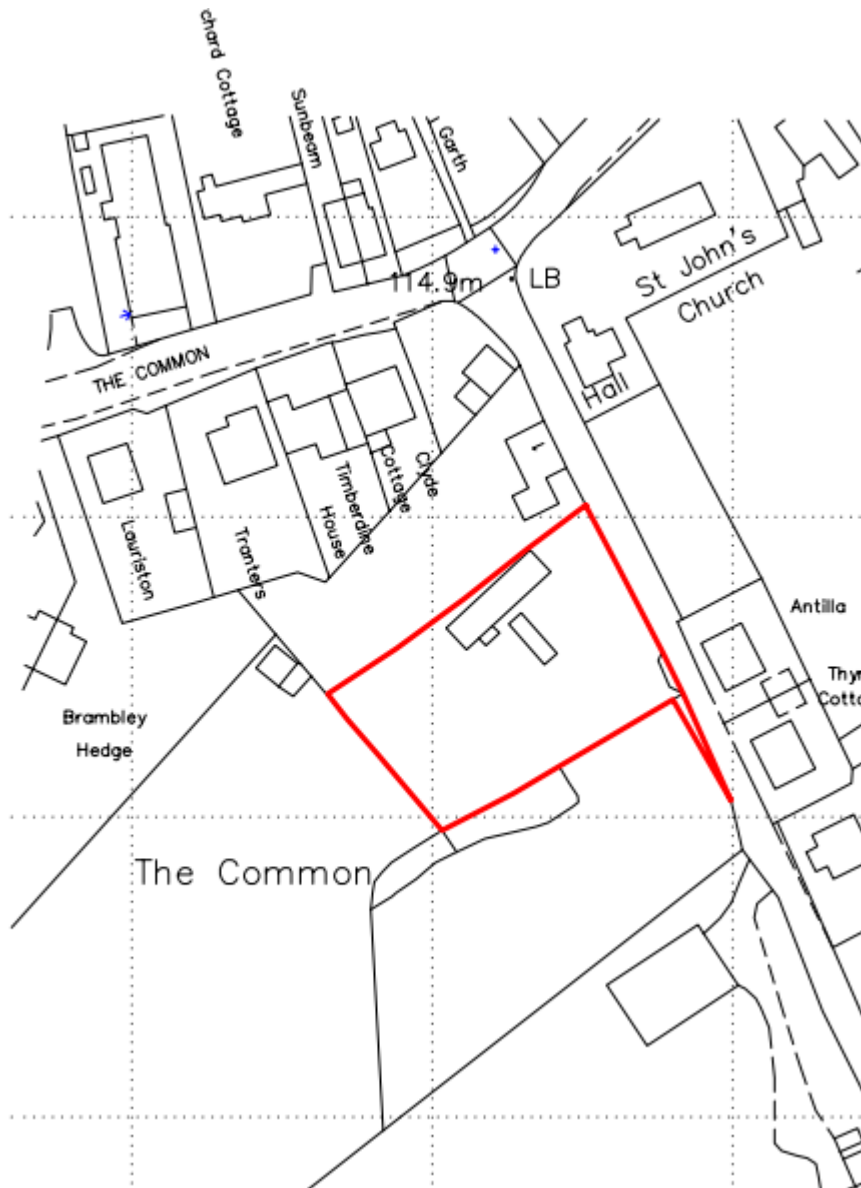
The application has generated an objection from Winterslow Parish Council and 25 letters of objection from third parties.

3. Site Description

The application site is a parcel of land that is understood to have formerly formed part of the curtilage of number 1 Witt Road, but has been severed by the sale of the house.

The site is located on the South side of Middle Winterslow, towards the Northern end of Witt Road close to its junction with The Common.

The application site is substantially enclosed by an existing evergreen fir hedge. Within the site there is further evergreen hedging and some storage buildings. It is understood that the buildings were originally used for agricultural purposes and have been used for general storage in recent years. The remainder of the site is laid to grass.





Proposed site layout

The site lies within the Settlement boundary for Winterslow, as revised in the Wiltshire Housing Site Allocations Plan 2020 and lies within the designated Special Landscape Area (saved local plan policy C6 applies).

4. Planning History

18/02580/OUT – Erection of 4 houses, parking and access following demolition of existing buildings (outline relating to access and layout) - Refused 21/09/2018

19/03930/OUT – Erection of 3 detached dwellings, garages, parking and access following demolition of 3 existing buildings (outline application relating to access and layout – re-submission of 18/02580/OUT) – Refused and Appeal Dismissed 03/09/2020

It should be noted that the above appeal was only dismissed on the ground that the applicants could not mitigate the impact of the development on the Solent and Southampton Water European Sites due to the increase in nutrients entering the rivers from developments. This matter has now been addressed through the Council's agreed mitigation strategy.

5. The Proposal

The application is for outline planning consent with all matters reserved save for access and layout. The application proposes the erection of 3 detached dwellings with garages, parking and access following the demolition of the existing buildings on the site.

The three dwellings would be served by a private drive, which is positioned in the approximate position of an existing field access. The other existing access at the northern end of the site will be closed.

It is proposed that the three dwellings will face towards the private drive with their rear gardens facing northwest. The applicant's agent has commented that two properties are large enough to be 4 bedroom dwellings and one would be for three bedrooms.

The submitted application site plan is the same plan that the Inspector found to be acceptable in the appeal decision referred to above.

The application has been accompanied by a Nutrient budget, which complies with the Council's nitrate mitigation scheme, which is referred to in more detail below.

6. Local Planning Policy

National Planning Policy Framework (NPPF)

National Planning Policy Guidance (NPPG)

National Design Guide (January 2021) (NDG)

Salisbury District Local Plan policies (Saved by Wiltshire Core Strategy) (SDLP):
R2 – Public Open Space Provision

Wiltshire Core Strategy (January 2015) (WCS):

CP1 (Settlement Strategy)

CP2 (Delivery Strategy)

CP3 (Infrastructure Requirements)

CP23 (Southern Wiltshire Community Area)

CP50 (Biodiversity and Geodiversity)

CP51 (Landscape)

CP57 (Ensuring High Quality Design & Space Shaping)

CP60 (Sustainable Transport)

CP61 (Transport & Development)

CP62 (Development Impacts on the Transport Network)

Wiltshire Housing Site Allocations Plan (February 2020) (WHSAP)

Supplementary Planning Documents:

Wiltshire Local Transport Plan – Car Parking Strategy

7. Summary of consultation responses

Winterslow Parish Council - objects to the application on the grounds of overdevelopment on the site and the proposals are not in keeping with the surrounding properties.

WC Highways - I am familiar with this site having dealt with previous proposals for residential developments in this location, and I am aware of a general lack of support from Highways. Concern has been raised with regards to the suitability of the junction of Witt Road with Gunville Road, together with a lack of pedestrian facilities in terms of footways and street lighting. The previous application ref: 19/03930/OUT was considered at appeal and the inspector was of the view that the proposal would NOT have an unacceptable impact on highway safety, nor have residual cumulative impacts on the road network which would be severe. I therefore do not wish to pursue an adverse highway recommendation in this instance. Recommends conditions.

WC Ecology – confirm that the applicant’s nutrient mitigation calculations meet WC requirements

WC Drainage – No comment received

Wessex Water – No objections

8. Publicity

The application was publicised by letters to neighbouring properties. 25 letters of objection were received in respect of the application, raising the following points:-

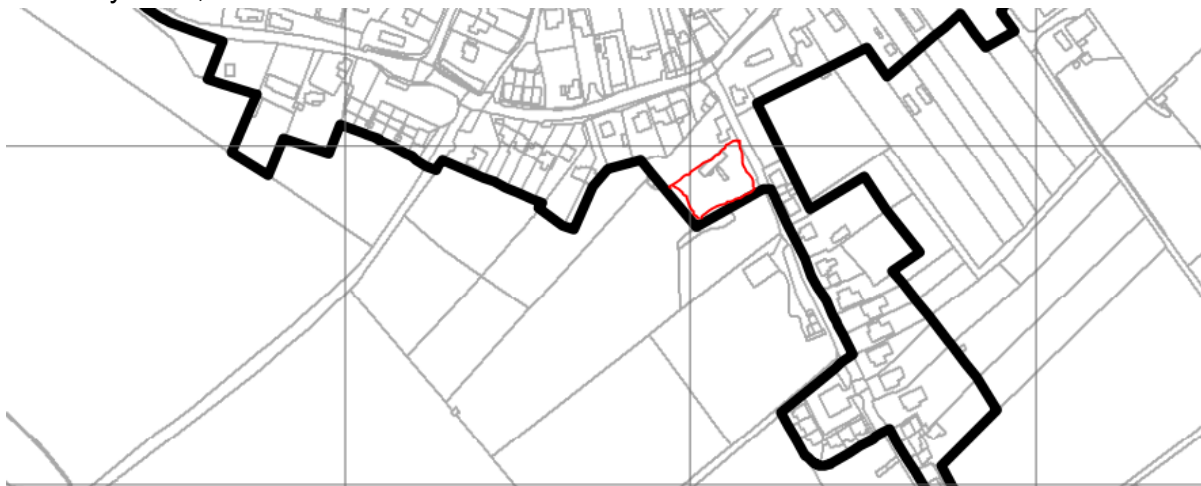
- Witt Road is a single track road, no through road with no turning facilities
- The road is frequently used by pedestrians, cyclists and horse riders visiting Bentley Wood at the end of the road
- The junction of Witt Road is substandard, leading to a risk of accidents
- Drainage issues
- Outside the settlement boundary
- Witt Road cannot accommodate any more traffic – there are existing problems with delivery vehicles on the road now adding to congestion
- The development would not be affordable to young people in the village
- Village sewer system is not adequate
- Problems with vehicles reaching the sewage pumping station at the end of Witt Road, which will be exacerbated with additional traffic
- Problems with vehicles currently parked near the junction of Witt Road
- Degrades the rural nature of the area
- Impact of the development on the amenities of nearby dwellings
- The site has repeatedly been refused planning permission and the previous objections all still stand
- Village facilities are about a mile from the site and the bus service is very infrequent
- The village has met its quota of new development and no more is needed
- Layout of the scheme out of character with the prevailing development in the area.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.1 Principle of development

As has been set out above, the site lies within the settlement boundary of Winterslow. It was included in the settlement boundary as part of the review of such boundaries as part of the preparation of the Wiltshire Housing Site Allocations Plan, which was adopted in February 2020, as can be seen on the extract of that document set out below:



Site area outlined in red

Core Policy 2 (Delivery Strategy) states that:

“Within the defined limits of development

Within the limits of development, as defined on the policies maps accompanying the Core Strategy, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns (including Westbury), Local Service Centres and Large Villages.

CP23 defines Winterslow as being a Large Village and therefore the principle of residential development in this location is acceptable. There is currently no adopted Neighbourhood Plan for the village, nor is one in the process of preparation, that could amend the settlement boundary in the short term.

9.2 Relevant Planning History

Planning permission was refused in outline for 4 dwellings on the site in 2018 (18/02580/OUT), and a similar application was submitted in 2019 reducing the number of units to 3 (19/03930/OUT). The second application was also refused, for 4 reasons. The first related to the consideration that Witt Road was inadequate to accommodate additional traffic due to its narrow width and substandard junction with The Common, and the remaining three related to the drainage of the site.

This application went to appeal, and during the process of the appeal the applicant submitted additional information to overcome the three reasons for refusal regarding the drainage of the site which enabled the planning authority to withdraw these reasons for

refusal. Therefore the appeal was determined initially solely on the matter of the adequacy or not of the access to the site. It did not consider the principle of development on the site or the impact on neighbouring properties as no reasons for refusal were stated in respect of these issues by the planning authority, in effect the planning authority considered the principle of the development and the layout proposed to be acceptable as layout was one of the matters for consideration as part of the application.

The appeal was therefore determined on the basis of the proposed site layout, which is identical to that submitted with the current application.

During the consideration of the appeal the Inspector was made aware of the objections raised by Natural England to any additional residential development within the catchment of the rivers that feed into the Solent, which is an internationally designated Special Protection Area and Special Area of Conservation, due to the high levels of nutrients in those rivers. This became a main issue at the appeal.

Therefore the appeal considered the access to the site and the impact of development on the European protected sites only, and no other matters.

The Inspector concluded that:-

Witt Road is not to ideal highway standards, being narrow with no street lights for example, but this is not uncommon in rural villages. Furthermore, the lack of accidents recorded in recent years, together with the relatively low level of vehicular or pedestrian trips along Witt Road as demonstrated with the appellant's evidence and my own observations, indicates that this is not a busy or dangerous stretch of highway. It is my conclusion that the low level of additional vehicles likely as a result of the development would not result in this road becoming dangerous or indeed having any discernible impact to highway safety.

And

Overall, the proposal would not have an unacceptable impact on highway safety, nor have residual cumulative impacts on the road network which would be severe. The proposal is therefore in accordance with the advice within the National Planning Policy Framework (the Framework). The proposal is also in accordance with Core Policy CP61 of the adopted Wiltshire Core Strategy, which requires development to be served by safe access to the highway network, amongst other things.

Therefore no objection was raised to the proposed development on grounds of highway safety or the adequacy of the highway network in this location.

The Inspector then went on to consider the nutrients issue and concluded that:-

Without detail of the mitigation package at this stage, there is a considerable amount of uncertainty as to the potential effectiveness of the mitigation available for this proposed development. There is no clear mitigation that is being proposed at this time by the appellant, though it is accepted that mitigation is required. Furthermore, whilst a Grampian condition could potentially prevent development occurring until suitable mitigation was

confirmed, an appropriate assessment must consider detailed mitigation proposals at the decision stage.

28. There are no firm detailed proposals for mitigation before me and as such, following appropriate assessment, I cannot conclude that adverse effects on the integrity of these European Sites would not arise from the development, in combination with other developments within the Solent catchment areas.

29. For this reason, the proposal would therefore conflict with Wiltshire Core Strategy policies CP50 (Biodiversity and Geodiversity), which requires that development demonstrates how it will protect features of nature conservation, to maintain ecological value in the long term.

He went on to dismiss the appeal due to the potential adverse impacts to nature conservation areas, and this was his only reason for dismissing the appeal in September 2020.

On that basis the principle of development on this site, the number of units proposed, the layout of the site and the means of access to the scheme have all been considered by an Inspector in recent times, and as there have been no material changes in circumstances that would allow the Council to re-consider any of these issues, it should be noted that reasons for refusal related to any of the above would be at considerable risk of costs at any subsequent appeal.

9.3 Neighbouring Amenities

Neighbours have raised concerns about the impact of the development on their residential amenities, and similar concerns were raised in respect of the previous, identical, application that went to appeal. The Inspector commented in his decision letter in respect of the amended plans which overcame the Council's objections on drainage grounds to the 2019 outline application that:-

Moreover, whilst I note the concern that the occupants at No 1 has with overlooking impact, the scale and internal layout of the proposed dwellings are not part of this outline stage of the proposal, so it cannot be fully considered as to the potential living condition impact based on either the original or amended Plot 3 house position. Furthermore, the amended position of the carport is to the boundary with a field/paddock and would have little or no impact to interested parties in the area. On this basis, considering all aspects of the proposed amendments, I have accepted the revised layout plan as it would not prejudice the interests of any other party including those who live in the area in doing so.

On that basis the impact of the development on the amenities of neighbouring properties did not become an issue at the previous appeal and as the plan is identical to that considered by the Inspector, no additional consideration can be given to this matter in respect of this application.

9.4 Highways

The Council's Highway Authority raised significant objection to the previous application on the impact of the development on highway safety in the vicinity of the application site, but the Inspector, in dismissing the appeal, concluded that:-

Overall, the proposal would not have an unacceptable impact on highway safety, nor have residual cumulative impacts on the road network which would be severe. The proposal is therefore in accordance with the advice within the National Planning Policy Framework (the Framework). The proposal is also in accordance with Core Policy CP61 of the adopted Wiltshire Core Strategy, which requires development to be served by safe access to the highway network, amongst other things.

On that basis, and as there are no new material considerations to be taken into account between the above appeal decision and the current application, your Highways Officer raises no objection to the application, subject to conditions.

9.5 Ecology

This application is accompanied by an Ecological Impact Assessment, including an updated Ecological Appraisal and phase 1 and 2 bat surveys, and the assessment concludes that the development would give rise to a net biodiversity gain as required under Planning Policy CP50. A condition is therefore proposed (number XXX) which will require details of the Biodiversity Net Gain to be set out and agreed as part of the Reserved Matters process.

As has been noted above in the Planning History section, the appeal into the previous refusal of planning permission was dismissed purely as the applicants could not demonstrate that they could mitigate the harm from the development of additional nutrients, in this case nitrates, into the Solent protected wildlife sites.

As Members will be aware, since the date of that appeal, in September 2020, the Council, in concert with Natural England, have agreed a mitigation strategy to enable developers to enter into a legal agreement with the authority to ensure that their development provides the necessary mitigation and that the application can proceed. The applicants have confirmed their willingness to enter into the necessary agreement and the Council's ecologists have confirmed that there is capacity for the nutrient mitigation required for this scheme. The necessary legal agreement is in the process of being drawn up, and this matter will be reported on further at the Committee meeting.

10. S106 contributions

As has been mentioned above, this site is subject to a legal agreement to secure the necessary mitigation in respect of nitrates generated from the development. This document is in the process of preparation in accordance with the agreed Council mitigation scheme and payment system.

As of May 2015, Wiltshire Council adopted the Community Infrastructure Levy (CIL). Therefore this proposal may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. A note highlighting this requirement to the applicant is therefore imposed on the recommendation.

11. Conclusion

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions. Planning decisions should apply a presumption in favour of sustainable development and this means approving development proposals that accord with an up-to-date development plan without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The Wiltshire Core Strategy and the NPPF set out the policy considerations for the application and the LPA cannot currently demonstrate a 5 year housing land supply. Irrespective of the extent of such shortfall, this means that the WCS policies relating to the delivery of housing are out of date. Paragraph 11(d) of the NPPF is therefore engaged, which says planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.

An identical application was considered by a Planning Inspector in September 2020 and was only refused, when considering objections on highway safety and objections from local residents about the impacts of the development on their amenity and those of the locality, on the grounds of lack of mitigation for the acknowledged issue of additional nutrients from development on the Solent areas of nature conservation protection. This mitigation is now in place and the applicants are in the process of entering into a legal agreement with the Council to secure the necessary mitigation for the site.

On that basis, officers consider that the objections to the 2019 application have been overcome and the previous objections, many of which have been repeated by local objectors to the scheme, cannot be re-visited and therefore the application should be granted, and that the issuing of the decision should be delegated to the Head of Development Management to enable the necessary legal agreement to be completed.

RECOMMENDATION: APPROVE, subject to the prior completion of the S106 Agreement and the following conditions:-

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

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

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

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

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

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

3. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:
 - (a) The scale of the development;
 - (c) The external appearance of the development;
 - (d) The landscaping of the site;The development shall be carried out in accordance with the approved details.

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

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

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

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

REASON: In the interests of highway safety.

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

REASON: In the interests of highway safety.

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

REASON: In the interests of highway safety.

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

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

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

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

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

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

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

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

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

REASON: In the interests of residential amenity.

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

REASON: In the interests of residential amenity.

INFORMATIVES

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

www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.

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

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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

Date of Meeting	2 nd February 2023
Application Number	PL/2022/07632
Site Address	The Gables, Dean Road, Whiteparish, Wiltshire, SP5 2RJ
Proposal	Partial demolition, rebuild, extensions and internal alterations to the existing house and construction of a detached garage (part retrospective)
Applicant	Mrs L Clewer
Town/Parish Council	Whiteparish
Electoral Division	Whiteparish– (Richard Britton)
Grid Ref	51.012425,-1.649538
Type of application	Full Planning
Case Officer	Joe Richardson

Reason for the application being considered by Committee

The scheme of delegation confirms that due to the relationship of the applicant to the Council, any objection received to this proposal requires the application to be determined by the relevant area planning committee board rather than under delegated powers to officers.

For the purposes of this application, the applicant is the mother of the leader of the Council, Cllr Richard Clewer and the relevant area planning committee board is the Southern Area Planning Committee.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved for the reason(s) set out below.

2. Report Summary

The issues in this case are:

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

The application has received a total of ten letters of objection from members of the public and an objection from Whiteparish Parish Council to the proposed development. The details of the objections received from the Whiteparish Parish Council and the members of the public are set out in Section 7 (Summary of consultation responses).

A re-consultation of amended and additional plans to all interested parties has taken place following the removal of the proposed parking spaces at the front of the dwellinghouse.

3. Site Description

The site, an existing cottage is located within the village of Whiteparish, set back from the public highway. The dwelling prior to its partial collapse was considered to be historic in nature not listed and is located within the Whiteparish Conservation Area. The dwellinghouse had been identified as a property that makes a positive contribution to the Conservation Area.

4. Planning History

19/00581/OUT - Proposed new traditional dormer style family dwelling located at "The Gables" (Outline application relating to access, appearance and scale) WTD 14.03.19

PL/2021/09435 - Subdivision of the plot and construction of a detached bungalow with associated parking, access and landscaping WTD 17.12.21

PL/2021/11905 - 2 storey front extension, construction of a detached garage, single storey extension and conservatory and internal alterations A.C 05.05.22

PL/2022/03685 - Partial discharge of condition 5 of PL/2021/11905 (Garage material details only) APP 14.07.22

PL/2022/04488 - Discharge of condition 5 of PL/2021/11905 APP 26.07.22

PL/2022/05038 - Variation of condition 2 of PL/2021/11905 - to allow a reposition and revision to the design of the detached garage and regrade the land to the front of the cottage WTD on officer advice 20.09.22

5. The Proposal

The proposal seeks planning permission for partial demolition, rebuild, extensions and internal alterations to the existing house and construction of a detached garage (part retrospective). The works have already commenced under permission PL/2021/11905 but have gone beyond the scope of that permission due to the partial collapse of the dwellinghouse.

6. Local Planning Policy

S72 of the Planning (Conservation and Listed Buildings) Act 1990

National Planning Policy Framework

Section 2 Achieving Sustainable Development

Section 12 Achieving Well Designed Places

Section 15 Conserving and enhancing the natural environment

Section 16 Conserving and enhancing the historic environment

Wiltshire Core Strategy

Core Policy 1 Settlement Strategy

Core Policy 2 Delivery Strategy

Core Policy 23 Southern Wiltshire Community Area

Core Policy 50 Biodiversity and Geodiversity
Core Policy 51 Landscaping
Core Policy 57 Ensuring high quality design and place shaping
Core Policy 58 Ensuring the conservation of the historic environment
Core Policy 61 Transport and New Development
Core Policy 69 Protection of the River Avon SAC

Wiltshire Local Transport Plan 2015-2026:
Car Parking Strategy

7. Summary of consultation responses

Whiteparish Parish Council – Objection with comments stating:

Whiteparish Parish Council RESOLVED to object to this application and recommends refusal due to the garage being:

- Inappropriate backland development.
- It will be detriment to neighbour amenity along with the impact on the setting to the existing neighbouring dwellings.
- It will be closer to other dwellings with an increase in noise, along with vehicular and garage lights being detrimental to neighbours.

The Parish Council also noted that it believes the site is being lived in which is contrary to the Wiltshire Councils Highways recommendation of:

Notwithstanding the submitted details, the proposed development shall not be occupied until means/works have been implemented to avoid private water from entering the highway.
Reason: To ensure that the highway is not inundated with private water.

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

REASON: In the interests of highway safety.

WC Highways – No objection subject to conditions

WC Conservation – No objection subject to conditions

WC Ecology – No objection subject to conditions

8. Publicity

The application has been advertised by way of letters to near neighbours. The publicity has generated ten letters of objection in total with comments received summarised as the following:

- Backland development
- Inappropriate development of a residential garden
- Increase in noise and light disturbance/amenity impacts
- Change in height of the dwellinghouse

The total of ten objections to this scheme is a result of a re-consultation to all interested parties following the submission of additional information by way of the works proposed, the changes proposed to the parking area and comparisons for this scheme and that of the previous approval PL/2021/11905. The Parish Council have responded to this re-consultation and have confirmed that their objection as outlined within this section of the committee report has not changed as a result of this additional information provided and changes proposed.

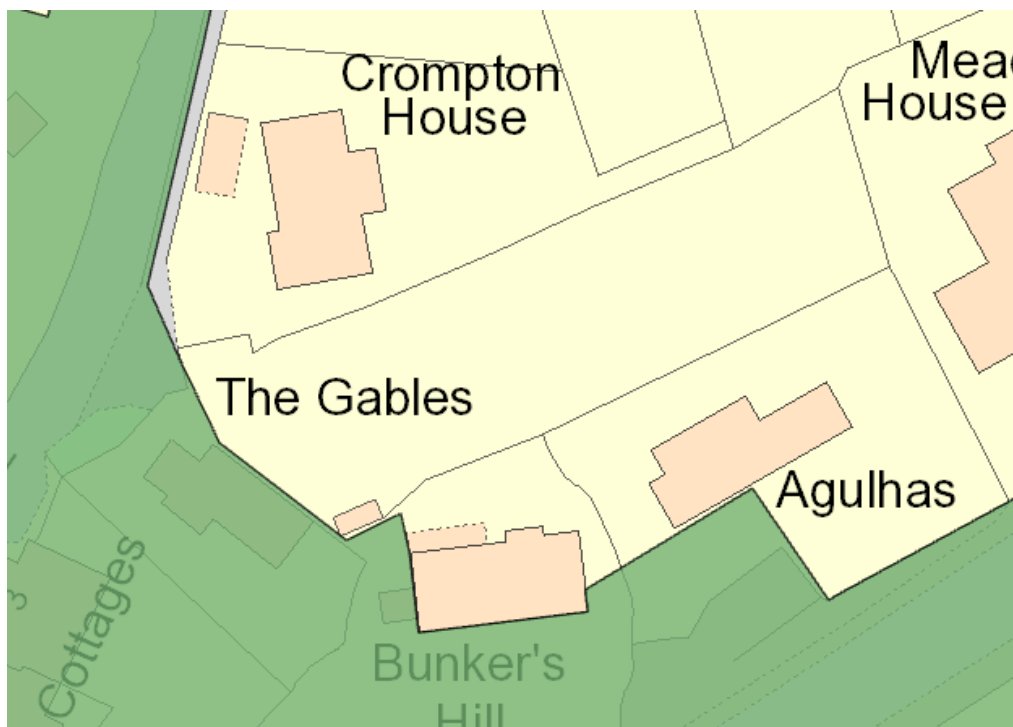
9. Planning Considerations

9.1 Principle of development, policy and planning history

The proposal seeks planning permission for partial demolition, rebuild, extensions and internal alterations to the existing house and construction of a detached garage (part retrospective). The works have already commenced under permission PL/2021/11905 but have gone beyond the scope of that permission due to the partial collapse of the dwellinghouse.

The principle of development has been established by planning permission PL/2021/11905 that granted permission for the erection of a two storey extension, single storey extension and conservatory with internal alterations. The scheme also granted consent for the erection of a detached garage. Works have commenced on site to implement this permission but due to the partial collapse of the dwellinghouse, the works carried out have gone beyond the scope of this original consent.

The site subject to this scheme is located partially within and partially outside the Whiteparish Conservation Area as shown below:



The proposal should aim to conform to the objectives of Core Policy 57 of the Wiltshire Core Strategy (WCS) which aims to achieve a high standard of design in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality.

Core Policy 57 of the WCS requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF (paragraph 130f) states that planning decisions should 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.'

Core Policy 58 of the WCS states that development should protect, conserve and where possible enhance the historic environment. Designated heritage assets and their settings will be conserved, and where appropriate enhanced in a manner appropriate to their significance, including:

- i.* Nationally significant archaeological remains
- ii.* World Heritage Sites within and adjacent to Wiltshire
- iii.* Buildings and structures of special architectural or historic interest
- iv.* The special character or appearance of conservation areas
- v.* Historic parks and gardens
- vi.* Important landscapes, including registered battlefields and townscapes.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in the exercise of any functions, with respect to any buildings or other land in a conservation area, under or by virtue of any of the provisions mentioned in this Section, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

9.2 Design, scale, heritage/conservation matters and impact to the amenity of the area

Planning permission PL/2021/11905 granted consent for the erection of a two storey extension, single storey extension, conservatory and erection of a detached garage. The plans shown below are of the dwelling prior to its collapse and the approved changes under this consent

Elevations of the dwellinghouse prior to its collapse:



DATUM 75.00m AOD
NORTH



DATUM 75.00m AOD
EAST



DATUM 75.00m AOD
SOUTH



DATUM 75.00m AOD
WEST

Approved elevations under consent PL/2021/11905:

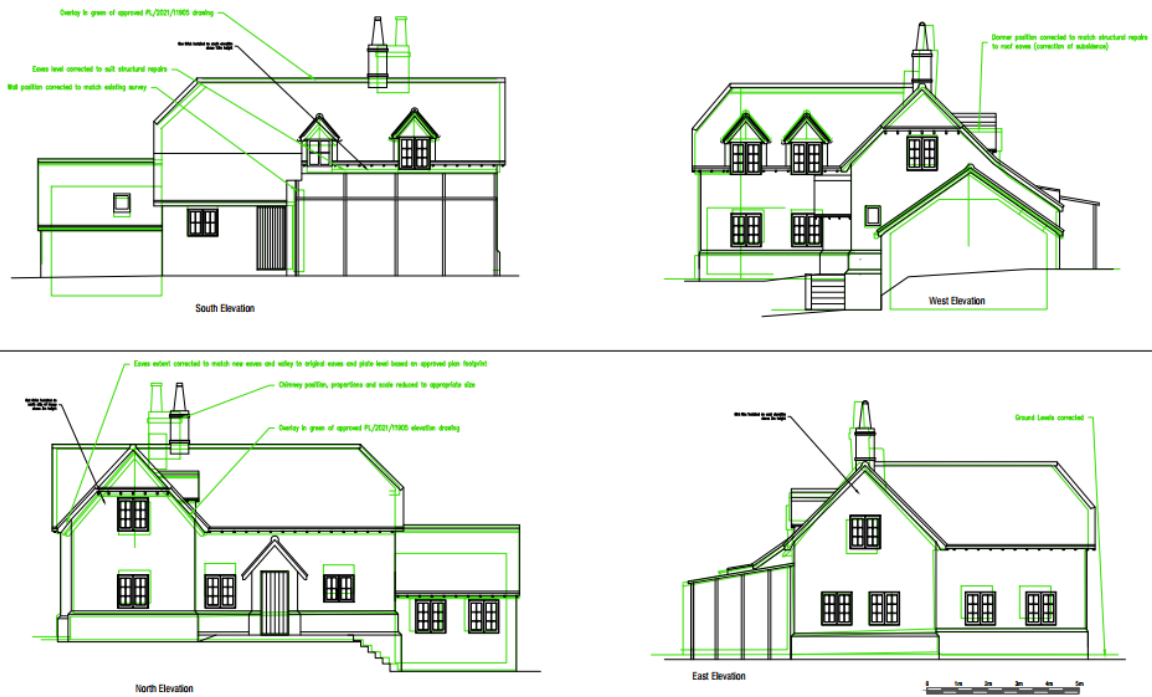


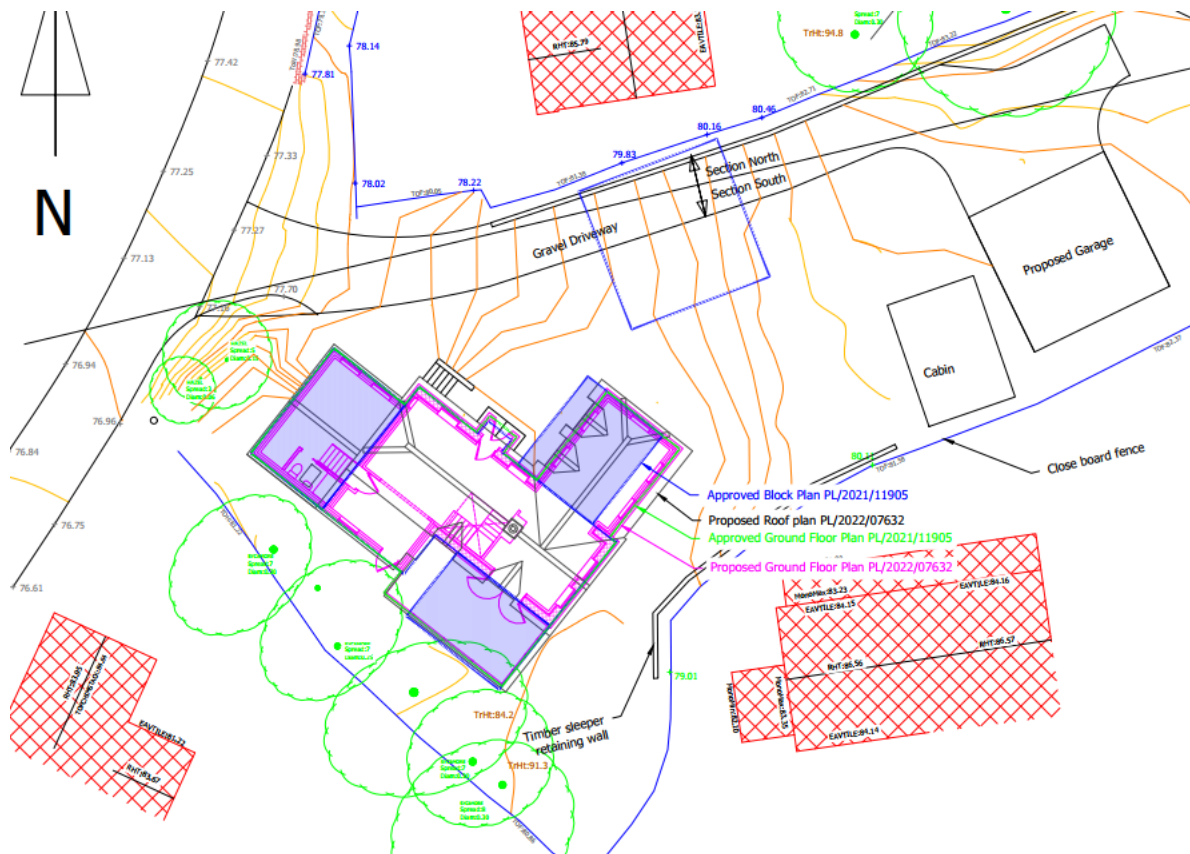
Proposed elevations under this application PL/2022/07632:



The rebuilding of the dwellinghouse subject to this proposal is largely similar to that of the approved changes under consent PL/2021/11905 with the exception of some fenestration

changes and design of the chimney. The footprint of the dwellinghouse is modestly increased due mainly to an increase in the thicknesses of walling for the rebuilding of the dwellinghouse. To confirm this, the agent has provided comparison plans with an overlay (shown in green) of the block plan and elevations plan approved under consent PL/2021/11905 and for this scheme (as shown below) that confirm the dwellinghouse to be rebuilt is the same height to that of previous dwelling.





The plans proposed are identical to that of the previous approval with the exception of some minor changes to comply with building regulations. These changes are:

1. Rafters have now been designed to pitch onto a level wall plate rather than the roof of the building leaning to one side.
2. The ridge is straight, level and horizontal
3. The valley and eaves overhang has now been corrected so that the new eaves coincide with the old eaves and the valley runs evenly between the old and new roofs.
4. The dormers have been corrected to coincide with the eaves.
5. The chimney is now vertical and over the fireplace in appropriate proportions.
6. Ground levels shown on the elevations now match the landscaping.

The appearance of the dwelling prior to its partial collapse was a property that makes a positive contribution to the Whiteparish Conservation Area. The building is not listed. As such comments for this proposal have been sought from the Council's Conservation Officer. Given the location of the dwellinghouse, comments from the Conservation Officer carry significant weight in the determination of this application.

Comments received from the Conservation Officer state:

My understanding is that the current application is required in view of the extent of demolition that has taken place which is unauthorised. One feels that this was almost inevitable, despite the reassurances of the agent which clearly were mis founded. I regret the degree of demolition to this cottage and can only feel that the eradication of historic form and character diminishes

the conservation area in some very modest way. However, providing the cottage is re-built as per the original approved plans, I conclude the proposals would preserve the character of the Conservation Area in accordance with Section 72 of the Planning (LB and CA) Act 1990.

Having regard for the location of the existing partially demolished dwellinghouse within the Whiteparish Conservation Area, the Conservation Officer has suggested a number of conditions to be imposed onto any consent. These suggested conditions are around the external materials to be used with particular reference to the roof tiles that should be handmade clay pegged tiles and a condition requiring the surviving historic fabric of the building shall be retained in accordance with the submitted design and access statement and; a drawn plan of the elevations/floor plans shall be provided demonstrating the extent of the historic fabric to be retained along with the methodology for this prior to further works commencing on site.

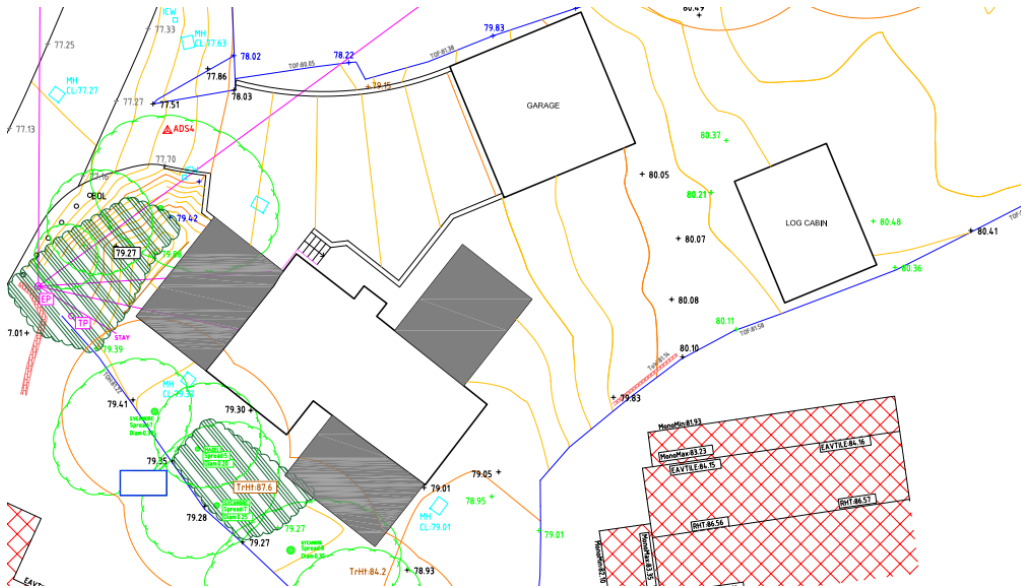
The agent has now provided an elevational plan of the areas of the partially demolished dwellinghouse that are to be retained by way of the works proposed and also a methodology statement for these works thus mitigating the need for these details to be conditioned. Subject to a condition imposed onto any consent around the retention of the historic fabric of the dwellinghouse and shown on the elevational plan and as outlined within the methodology statement, officers are of the opinion that the works will preserve the surviving elements of the partially demolished dwellinghouse.

Subject to the imposing of the suggested conditions as outlined by the Conservation Officer and having regard for the recent planning history, officers consider that the alterations and rebuilding of the dwellinghouse would not cause any detrimental impact to the special appearance and character of the Conservation Area that would warrant the refusal of planning permission. The agent has provided a schedule of materials to be used that are identical to that of application PL/2022/04488 for the discharge of condition associated with the previous consent PL/2021/11905 for the materials to be used in the works associated with the dwellinghouse. Officers consider it acceptable to impose the detailing of the materials as provided by the agent onto any consent for this proposal.

Core Policy 57 requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF (paragraph 130f) states that planning decisions should 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.'

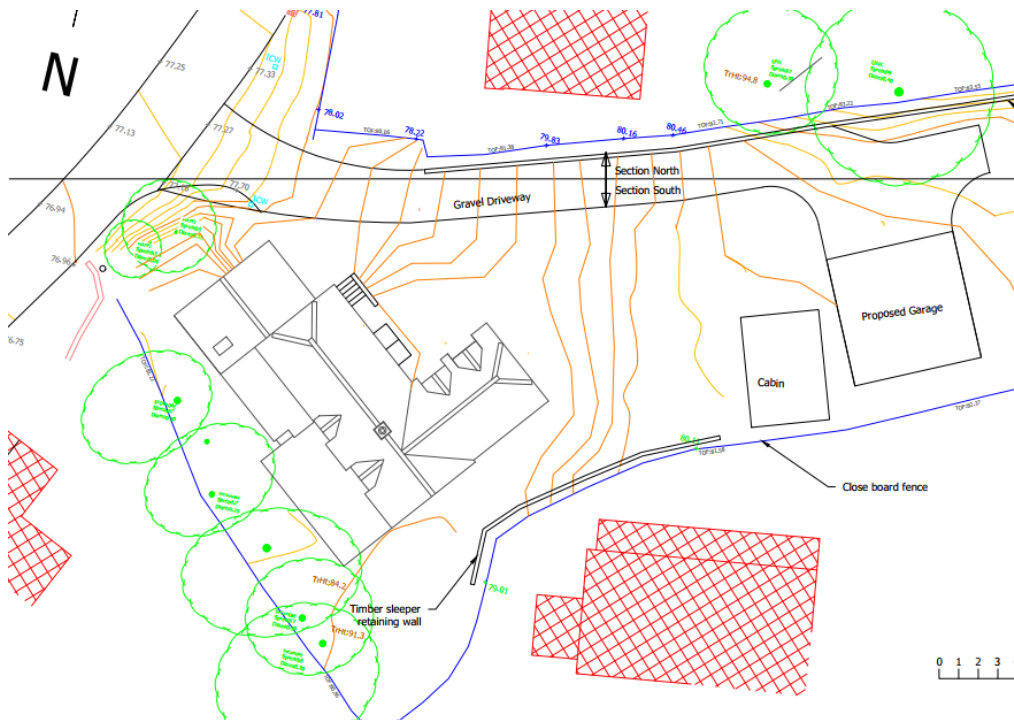
A number of objections have been received from members of the public and the Parish Council that object to the erection of a detached garage to the rear of the site. The site has an elongated rear garden set back from the existing (partially demolished dwelling). Planning consent PL/2021/11905 granted planning permission for the erection of a detached garage as per the approved plan below.

Approved layout plan for the detached garage under consent PL/2021/11905:



This scheme seeks to relocate the proposed garage further back into the site to the rear of the existing log cabin with the creation of an access track with turning as shown below.

Proposed layout plan for the detached garage:



The footprint of the existing partially collapsed dwellinghouse is set on undulating land with the rear garden area higher to that of dwellinghouse and public highway. The reasoning for the relocating of the garage further back into the plot would improve space around the dwellinghouse as shown on the plan above. The agent has confirmed that the relocating of the garage is not intended as a precursor to future applications for a new dwellinghouse as outlined within the objections received from members of the public. Any application for such a

proposal would need to be considered on its own merits assessed against the relevant planning policies.

It is also evident that the location of the garage is outside the Conservation Area boundary as referred to previously in this report. Therefore, permitted development rights apply for outbuildings of certain dimensions/limitations as set out in the General Permitted Development Order. The dimensions of the garage that are approximately 6.4 metres in depth by 6.5 metres in width by 3.93 metres in height are considered to be smaller in footprint/height to that of what could be achieved on this site under permitted developments but this garage proposal is included within the submission of this planning application for consideration. The materials to be used in the construction of the garage are identical to that of the detail provided in application PL/2022/03685 and therefore in officer opinion, can be imposed onto any consent for this scheme.

Officers note the concerns received from members of the public in respect of this element of the proposal which are summarised within the consultee response section of this report. Such is the elongated nature of the land associated with the dwellinghouse, the parcel of land is surrounded by several residential properties that include Crompton House, Agulhas, Mead House, Bunkers Hill and No's 4 and 5 The Triangle. Whilst the use of the land associated with the curtilage of the residential dwellinghouse and associated garage may increase levels of noise experienced by surrounding properties, given the residential setting of the area, to refuse a scheme on this basis would be difficult to justify given the existing residential use of the land where certain levels of noise associated with residential activities in built up areas as this site are generally considered acceptable in planning terms. As such, the proposal is not considered to be contrary to Core Policy CP57 of the WCS.

Officers also note the siting of a polytunnel within the rear garden of the application site. Providing that the location/size of the polytunnel is within certain limitations, the siting of the polytunnel can be considered as permitted development as set out in the General Permitted Development Order (as amended).

9.3 Highway safety/parking

Core Policy CP61 of the WCS states '*new development should be located and designed to reduce the need to travel particularly by private car, and to encourage the use of sustainable transport alternatives*'.

The Council's Highways Officer has assessed this proposal and returned the comments below with suggested conditions imposed onto any consent.

I note the proposals seek an alteration to the previously granted permissions. I am satisfied that adequate car parking will remain on site and as such, I recommend that no Highway objection is raised, subject to the following conditions being attached to any permission granted;

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

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

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

REASON: In the interests of highway safety.

Subject to the imposing of the conditions as outlined by the Council's Highways Officer, officers consider that this proposal adheres to the adopted parking strategy of Wiltshire Council and would not have any detrimental impact to highway safety or parking to warrant the refusal of planning permission.

9.4 Ecological Impact and the River Test Catchment Area

CP50 of the Wiltshire Core Strategy and the National Planning Policy Framework require that the planning authority ensures protection of important habitats and species in relation to development and seeks enhancement for the benefit of biodiversity through the planning system.

The application is accompanied by a bat survey report by Daniel Ahern Ecology and mitigation measures shown on the elevation plans submitted with this proposal. The Council's Ecologist has assessed this bat survey report and provided the following comments below.

The ecology report submitted with this application is welcomed. The report confirms the building to be partially demolished has low potential for roosting bats and has been subject to a sufficient survey effort that follows best practice guidance. The report also outlines suitable enhancement measures to ensure the project achieves a net gain in biodiversity.

The Council's ecologist has suggested the imposing of several conditions onto any consent around ecological mitigation being provided in line with the recommendation of the submitted bat survey report by Daniel Ahern Ecology and the submitted elevational plans with this proposal.

The site is located within the River Test Catchment Area. The Council's Ecologist has provided the following comments below to this.

WCS policy CP50 (Biodiversity and Geodiversity) and the NPPF requires the Local Planning Authority to ensure protection of important habitats and species in relation to development and seeks enhancement for the benefit of biodiversity through the planning system. Whilst the application site is not adjacent to any rivers or in any respective flood zones, it is situated within the River Test catchment which drains into the Solent. This region is protected by a number of international designations including the Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site; as well as the nationally designated Sites of Special Scientific Interest (SSSI) that underpin these international designations.

The Solent water environment is one of the most important for wildlife in the United Kingdom. It is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations 2017 (as amended) as well as through national legislation for many parts of the coastline and adjacent maritime areas. Natural England has confirmed high levels of nitrogen and phosphorus are entering this water environment and that there is sound evidence that this eutrophication is causing excessive growth of plants and algae which reduces oxygen and light levels and is leading to negative effects on the special features for

which the European sites are designated. These nutrient inputs mostly come either from agricultural sources or from waste water from existing housing and other development.

Natural England currently advises that every permission for new dwellings in the River Test Catchment Area could result in increased nutrients entering the Solent area (Guidance dated June 2020) from the increase in waste water and land use change. Since this application is for the re-development of an existing dwelling The Local Planning Authority considers this proposal is unlikely to lead to significant effects on the European Sites and an Appropriate Assessment (AA) is not required.

Based on the comments, it is considered that the proposal subject to the conditions as suggested imposed onto any consent, will not cause any significant adverse ecological impact in respect of Core Policy CP50 of the WCS or any adverse impact to the River Test SAC in respect of Core Policy CP69 of the WCS.

9.6 Other matters

Concerns received around the use of the existing log cabin within the grounds of the site being resided within are duly noted. Following a site visit to the application site, officers were not aware of any person(s) residing within this log cabin. Concerns of this nature are not a material consideration of this planning application and would be a matter for the Council's Planning Enforcement Team to investigate should the matter be brought to their attention.

10 Conclusion and Planning Balance

The comments received from the Parish Council and members of the public objecting to this scheme are duly noted and have been carefully considered. The planning history of the site is noted where a precedent and principle of development for the works have been established and is referred to within this report.

Written concerns regarding the use of the land and proposed garage to the rear of the site being a precursor to future development of the site are noted. However, each application has to be assessed on its own merits and without prejudice. As such for the reasons outlined within this report, officers consider the proposal for the works as outlined conforms to the objectives of Core Policies 23, 50, 51, 57, 58, 61 and 69 of the Wiltshire Core Strategy and the aims of the NPPF.

Taking the above into account, the application is not considered contrary to these policies as it does not cause any significant material harm that would justify a refusal of planning permission. Therefore, retrospective planning permission for the works to the dwellinghouse should be granted for the development and planning permission granted for the erection of the garage and associated works.

11 RECOMMENDATION:

Approve with conditions:

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

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

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

Site Location Plan Date Received 03.10.22

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

DWG No: 154 017 Rev B Proposed Elevations with Ecological Mitigation Date Received 23.11.22

DWG No: 154 102 Rev A Proposed Site Section South Date Received 23.11.22

Proposed Garage Elevations and Floor Plan Date Received 03.10.22

DWG No: 154 016 Rev A Proposed Ground Floor and First Floor Plans Date Received 03.10.22

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

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

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

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

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

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

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

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

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

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

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

REASON: In the interests of residential amenity and privacy.

- 7 No part of the development hereby permitted shall be first occupied until the access, turning areas and parking spaces have been completed in accordance with the details shown on the approved plans.

REASON: In the interests of highway safety.

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

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

- 9 The development shall be carried out in strict accordance with Section 3.6 of the Bat Survey Report by Daniel Ahern Ecology Ltd dated March 2022 and DWG No: 154 017 Rev B Proposed Elevations with Ecological Mitigation. The installation of the bat and bee bricks and bird box as showing on the approved drawing shall be supervised by a professional ecologist and these enhancement measures will continue to be available for their target species for the lifetime of the development.

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

INFORMATIVE TO APPLICANT(S):

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

2. Breeding birds

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

3. Artificial lighting

The habitat within the proposed development site and the surrounding area is suitable for roosting, foraging and commuting bats. An increase in artificial lux levels can deter bats which could result in roost abandonment and/or the severance of key foraging areas. This will likely result in a significant negative impact upon the health of bat populations across the region. Artificial light at night also negatively affects humans' health and has a substantial adverse effect on biodiversity. Therefore, any new external artificial lighting as part of this development should only be for the purposes of security and safe access. Any new lighting should be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08-18 "Bats and artificial lighting in the UK", issued by the Bat Conservation Trust and Institution of Lighting Professionals.

4. Bat roosts

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

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

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

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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

Date of Meeting	2 nd February 2023
Application Number	PL/2022/08216
Site Address	HIGH CROFT, COMMON ROAD, WHITEPARISH, SALISBURY, SP5 2SU
Proposal	Demolition of existing 5 bed dwelling and erection of 4 bed dwelling with garage and parking
Applicant	Mr & Ms Leach & Monzani
Town/Parish Council	Whiteparish Parish Council
Electoral Division	Cllr R. Britton
Grid Ref	
Type of application	Full
Case Officer	Mrs. Becky Jones

Reason for the application being considered by Committee

Cllr Britton has called the application to committee to be determined if recommended for approval by officers, on the following grounds:

- *Scale of development*
- *Visual impact on the surrounding area*
- *Design – bulk, height, general appearance.*

1. Purpose of Report

To consider the above application and the recommendation of the Area Development Manager that the application should be **APPROVED** for the reasons detailed below.

2. Report Summary

The main issues which are considered to be material in the determination of this application are listed below:

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

The application generated a letter of objection from Whiteparish Parish Council and six letters from neighbours both in support and objecting.

3. Site description, site constraints and the proposals

The site comprises a dwelling and single garage located at the north end of a cul-de-sac, within the settlement boundary for Whiteparish. The site is in an elevated position to the east above Common Road and the dwellings which front onto Common Road on each side. To the north is a detached dwelling known as The Bank's. To the south of the site are Rosebank (fronting Common Road) and Sunflower Cottage (which forms part of the cul de sac). To the

east are 5 and 6 Croft Heights and to the west is the garden of Rosebank, with further dwellings on the opposite side of Common Road, including Johanna's Mount and Meadowside (Daw-lea) with Greenfields being separated from the site by Rosebank's garden.

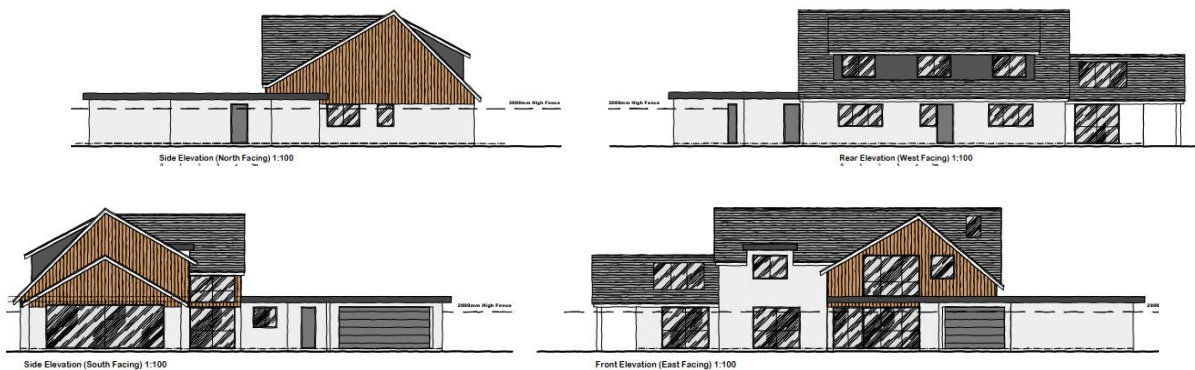


The application site comprises the existing dwelling, garage and a spacious garden with vehicular access onto Croft Heights.



The site is within the Special Landscape Area and the Mottisfont Bat SAC, within the 13.8km buffer for the New Forest SAC and SPA and the River Test catchment SAC and SPA. Croft Heights is unclassified and Common Road is a Class C highway.

The application seeks to replace the existing circa 6.5m tall five bed dormer dwelling with a circa 7.5m tall four bed dwelling with a rear elevation roof dormer and single storey linked double garage, utilising the existing access from Croft Heights. The existing hipped roof design would be replaced with gable ends and the new ridge height represents an increase of approximately 1m from ground to ridge:



The proposed materials for the dwelling are render with timber cladding for the walls and grey slates for the pitched roof slopes and grey aluminium for window and door frames. Block paving is intended for the hardstanding. 5 off street parking spaces are retained.

4. Planning Policy

The following planning policies are considered to be relevant to the determination of this application:

National Planning Policy Framework (NPPF 2021) and the PPG

Neighbourhood Plan status – area undesignated

Adopted Wiltshire Core Strategy

CP1 Settlement Strategy
CP2 Delivery Strategy
CP24 New Forest National Park
CP23 Spatial Strategy for Southern Wiltshire Community Area
CP50 Biodiversity and Geodiversity
CP51 Landscape conservation
CP58 Conservation of the Historic Environment
CP57 Design
CP61 Transport and new developments
CP69 Protection of the River Avon SAC
Saved Policy C6 Special Landscape Area (Annex D of WCS)

Other:

- Wiltshire Local Transport Plan – Car Parking Strategy: Chapter 7: Parking Standards
- Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019
- The Community Infrastructure Levy Regulations 2010
- National Model Design Code July 2021
- Building for a Healthy Life - A Design Code for neighbourhoods, streets, homes, and public spaces (Homes England June 2020).
- (*) Wiltshire Council INTERIM RECREATION MITIGATION STRATEGY FOR THE NEW FOREST INTERNATIONALLY PROTECTED SITES January 2022

5. Relevant Planning History:

S/1983/1049 OUTLINE APPLICATION - ERECTION OF 2 BUNGALOWS & 4 houses and construction of pedestrian and vehicular access Approved with conditions (AC)
S/1984/0651 APPROVAL OF MATTERS RESERVED - ERECTION OF 6NO. Bungalows and access road AC
S/1984/0690 O/L APPLICATION - ERECTION OF 2NO. DWELLINGS AND alteration of access Refused (The Bank's)
S/1986/1205 ERECTION OF BUNGALOW AND GARAGE AND ALTERATIONS TO access. AC (The Bank's)
S/1989/0252 O/L APPLICATION - ERECTION OF BUNGALOW AC
S/1991/1548 ERECTION OF BUNGALOW AND ASSOCIATED GARAGE AC
PL/2022/04810 Demolition of existing 5 bed dwelling and erection of a 4 bed dwelling with garage and parking Withdrawn

6. Consultations

Highways – no objection

Archaeology – no objection

I am of the view that it would not be proportionate to require an archaeological response to this proposal should it be permitted, and no further action is therefore required as regards the buried archaeological heritage in relation to this proposal.

Whiteparish Parish Council – Object and recommended refusal due to:

- *over development of site, scale and mass, it will impede on neighbour's amenity and it will be detrimental to the street scene*

7. Publicity

The application for minor development was advertised by neighbour consultation only.

3 letters of **no objection** (including from 2 adjacent neighbours) received on the following grounds:

- *dwelling would be an improvement over the existing*

3 letters of **objection** (including from 1 adjacent neighbour) received on the following grounds:

- *loss of amenity and privacy*
- *replacement dwelling would be disproportionate in height and scale and in an elevated position some 8m above the roadway*
- *dwelling in the vicinity are predominantly single storey (officer note: the photo submitted with this letter shows several dormer bungalows)*
- *Croft Heights dwellings are modest, single storey bungalows (officer note: High Croft at the north end of the cul de sac is a dormer bungalow)*
- *the surrounding dwellings in the road are traditional properties, single storey or chalet style and are sympathetic in scale, size and roof height with their neighbours and the locale.*
- *Application is for a two storey house*
- *Ridge height is over 3.5 feet higher and the ground floor area over twice that of the present dwelling. Re-positioning of the dwelling brings it closer to Common Road and will further magnify the increased height and mass intensifying the domination of this proposal on Common Road. Ridgeline will dominate neighbouring bungalows*
- *Overlooking into properties and gardens fronting Common Road. Dominant effect.*
- *Loss of privacy to front garden space at The Bank's and dominant impact. Overlooking, unsympathetic with surroundings, lacking any affinity with the immediate surroundings and properties in Croft Heights, disproportionate in both scale and height making it intrusive, compromising the privacy presently enjoyed by those within Croft Heights and Common Road, and the wider locale*
- *Contrary to Wiltshire Core Strategy Policies*
- *Overshadowing and loss of natural light. No overshadowing drawing provided.*
- *Loss of fir tree and hedge.*
- *The proposed dwelling is in such a prominent and dominant position that proposed screening and new planting would not deflect from the issue of the scale of the building*
- *The proposed dwelling is in such a prominent and dominant position, new appropriate screening is key to maintaining the privacy of certain overlooked properties*

8. Main Planning Considerations

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. (Section 70(2) of the Town and Country planning Act and Section 38(6) of the Planning and Compensation Act 2004). The NPPF is also a significant material consideration and due weight should be given to the relevant policies in existing plans according to their degree of consistency of the framework

8.1 Principle for development of a replacement dwelling

The site lies within the settlement boundary for the large village of Whiteparish. The principle for residential development within the settlement, including the replacement of existing dwellings, is acceptable in principle under Core Policies 1, 2 and 23, subject to detailed policy provisions.

8.2 Site history, character of the area and permitted development rights

The site history and the original outline application for the dwellings at Croft Heights includes the following description: *S/1983/1049 OUTLINE APPLICATION – Erection of 2 bungalows and 4 houses and construction of pedestrian and vehicular access Approved with conditions*

Whilst the details of the dwellings would not have been determined at outline stage, the *principle* for the development of houses and bungalows in Croft Heights was considered to be acceptable in principle and the outline application was approved on these terms. Presently, within Croft Heights, High Croft has south facing dormer windows in its roof. Its materials and colour (left) also contrast from its newer orange/red brick and tiled neighbours in Croft Heights.



1a Croft Heights (above right) is a dormer bungalow with accommodation in its roof facing towards Common Road approved under S/2003/0989 with a low hedge screen. Rosebank is a two storey, extended cottage. 8 Croft Heights, sited opposite the dwellings in Common Road (below left), is also a dormer bungalow with accommodation in the roof:



There are dormer bungalows and new dormer dwellings in Common Road, opposite Croft Heights (above right), some of which are significantly taller, more prominent and contemporary in their appearance and materials than their modest single storey neighbours:



Windyridge and Greenfields

Officers conclude that the character of dwellings in the area is a mixture of bungalows and dormer dwellings with a small number of two storey houses, all of varying sizes, colours and finishes and

no one style appears to dominate the area. There is also no particular established building line for the east side of Common Road and the plot layouts vary in size and orientation.

High Croft and Rosebank appear on the early plotting sheets and pre-date many other dwellings in the area. It is considered that High Croft would benefit from intact permitted development rights. The provisions of Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are a material consideration for the application as they set out the alterations which the applicant could make to the dwelling without the need for planning permission, subject to the restrictions and provisions.

8.3 Scale, design, impact on the character of the Special Landscape Area and neighbouring amenity

Adopted Wiltshire Core Strategy Core Policy 57 states:

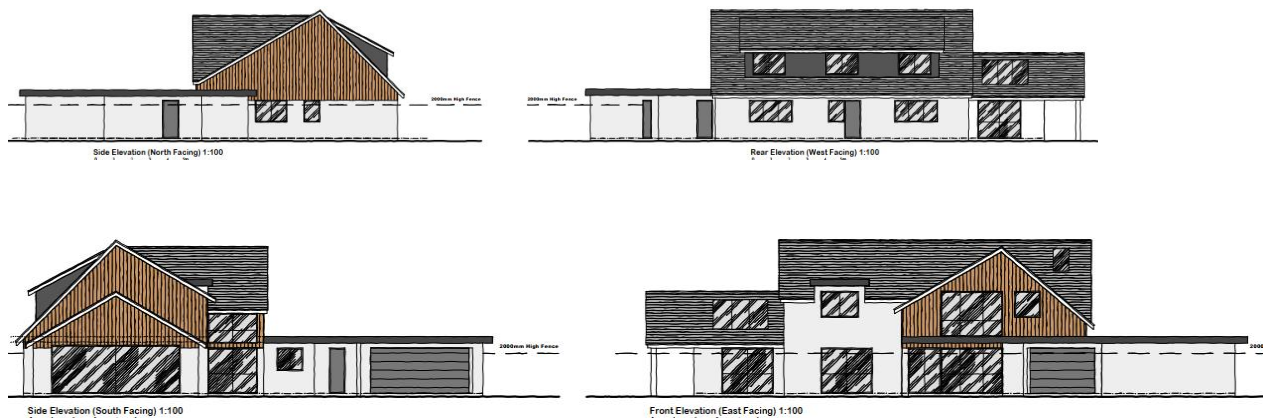
A high standard of design is required in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire....

CP57 requires development to relate *positively to its landscape setting and the existing pattern of development and responding to local topography by ensuring that important views into, within and out of the site are to be retained and enhanced.* It also seeks to ensure that development responds *positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials, streetscape and rooflines to effectively integrate the building into its setting.*

CP51 aims to ensure that *Development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures.*

The site is within the Special Landscape Area, but as the site is within the settlement and not the countryside, the provision of Saved Policy C6 do not apply.

The applicant is seeking to replace the original dormer bungalow with a contemporary dwelling with dormer windows and accommodation in the roof.



Impact on Croft Heights cul-de-sac

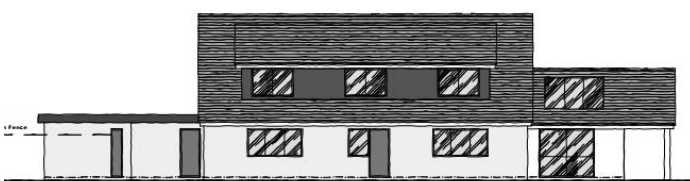
The proposals presents a modern, contemporary design with a palette of slate and render with timber. The dwelling to be replaced is the original dwelling within the Croft Heights development. High Croft is already taller, with a different appearance to the neighbouring bungalows, presenting white walls and dark roof tiles with dormer windows, in contrast with the simple red/orange brick finish to the surrounding bungalows in Croft Heights. Nevertheless, it isn't prominent:



For this reason, the proposed change to the appearance in the dwelling is not considered to harm the established character of Croft Heights and High Croft would retain its existing individual character and appearance within the development. The NPPF (paras 8 and 73) seeks to secure *a variety of well-designed and beautiful homes to meet the needs of different groups in the community*. There is no design requirement for the replacement to look the same as other bungalows, provided its appearance does not cause material harm to the character of the area. The change in orientation within the site away from the cul de sac would further reduce any impact the two storey elements of the front elevation would have on the streetscene of Croft Heights. The single storey elements to each side of the front elevation would further minimise the impact of the design. Therefore, no objection is raised in terms of siting, design, scale, massing and materials and the visual impact on Croft Heights.

Impact on Common Road

Several third parties have objected on the grounds of unacceptable impact and dominance of the replacement dwelling on the visual character and amenity of Common Road, which is below the site to the west. The garden has also been cleared, with some trees removed and hedges trimmed:



It is noted from the plans that the centre of the west elevation of existing dwelling is set some 28 metres back from the edge of the carriageway at the edge of Rosebank's garden. The replacement dwelling would be about 1m taller to the ridge and orientated more closely towards the road, set some 22m back at the same point:



Therefore, whilst the replacement dwelling may appear taller and more prominent in the site given its raised position, it would be set slightly lower (about half a metre from the contour plan) down the slope, partly behind Rosebank which has a number of mature trees in its garden and this would assist with screening the development.

To the north of the site, Common Road curves to the east and is densely lined with trees between the surgery and The Bank's entrance. Therefore, unobscured views of the site are limited to a short stretch of road across the entrance to The Bank's and opposite Meadowside.



The proposed elevation for Common Road is designed as a dormer bungalow, with all first floor accommodation in the roof and served by dormers, giving this elevation a modest character and scale. Given the set back of the dwelling and the overall acceptability of the design and scale of the development in relation to the ample size of the plot, it is not considered that any harm to the streetscene (due to the increased prominence of the dwelling) would be sufficient to warrant refusal on this ground. An increase in height, prominence and contemporary design would not be adequate reasons for refusal unless the dwelling would cause actual harm to the streetscene. In this case, the design and scale of the dwelling facing towards Common Road is considered to be sympathetic to the streetscene which comprises a number of dormer bungalows. The contemporary style is not considered to be harmful and would reflect the contemporary character of Greenfields.

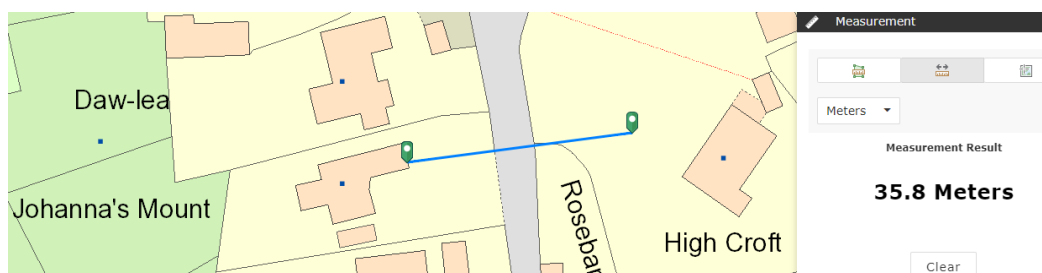
The site is considered to be sufficiently distant and adequately screened from the Conservation Area and Grade II* listed All Saint's Church to the north for the development to be unlikely to harm the setting or the significance of these designated heritage assets, in accordance with CP58.

In conclusion, the proposed scale, height, design, materials and massing for the replacement dwelling are considered to be appropriate within the site and the development would not appear cramped within the plot. The re-orientation of the dwelling is acceptable and would not materially harm the streetscene, particularly given the existing levels of screening available to the site. No objection is raised under CP57 and CP51.

Neighbouring amenities

Policy CP57 (vii) also considers neighbouring amenities: *Having regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing; vibration; and pollution (such as light intrusion, noise, smoke, fumes, effluent, waste or litter).*

Johanna's Mount, Greenfields and Meadowside – west



The likely separation between habitable room windows for the replacement dwelling and these homes would be in excess of 30 metres. 21 metres is considered to be an acceptable separation between windows of dwellings facing one another and so in this case, a reason for refusal on this ground could not be supported. Whilst there may be some *perceived* loss of privacy due to the elevated position of the replacement dwelling, there is adequate separation between the dwellings and the existing private gardens to the west of these dwellings would not be affected.

Rosebank – south and west

Rosebank is an existing two storey cottage, with a steep bank behind the dwelling, limiting outlook into and out from the property. There are good levels of screening from trees:



The replacement dwelling would be sited to the north east of the cottage. There are no first floor windows proposed for the south facing elevation. The west facing dormer would enable direct and 45 degree views over the north section of Rosebank's garden. However, the garden is very well screened by trees and hedges and is already somewhat overlooked by dwellings on the west side of the road. The above site plan shows that there is adequate spaces between the dwellings and the development does not appear cramped in relation to Rosebank. Therefore, no objection is raised on amenity grounds.

Sunflower Cottage - south



Sunflower cottage is a low, single storey bungalow sited to the south of High Croft. It enjoys good levels of privacy, which are partly due to its low height, its west facing outlook towards Rosebank and close proximity to a tall boundary fence separating the properties. The amenities of the occupiers are unlikely to be harmed by the proposed replacement dwelling, despite its re-orientation and increase in height. No south facing first floor windows are proposed and the existing outlook from Sunflower Cottage would not be harmed. No objection is raised on amenity grounds.

5 and 6 Croft Heights - east

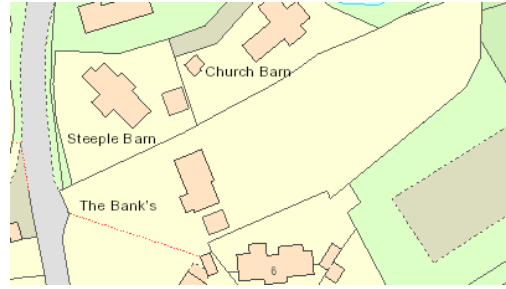
No 6 is a low, single storey bungalow to the east side of the site. The replacement dwelling has been designed to take account of this property and seeks to move the bulk of the dwelling away from the boundaries with No 6, with the single storey elements including the garage being retained close to the boundary. There are no first floor east facing windows proposed to overlook the rear garden and the existing shed for No 6 ensures good levels of privacy for this area. No amenity concerns are raised for this property by the proposal.



5 Croft Height lies oppsite the application site. However, given the change to the proposed orientation of High Croft, and the resultant separation (circa 30 metres between the elevations) the development is unlikely to disturb the amenities of the occupiers of No 5.

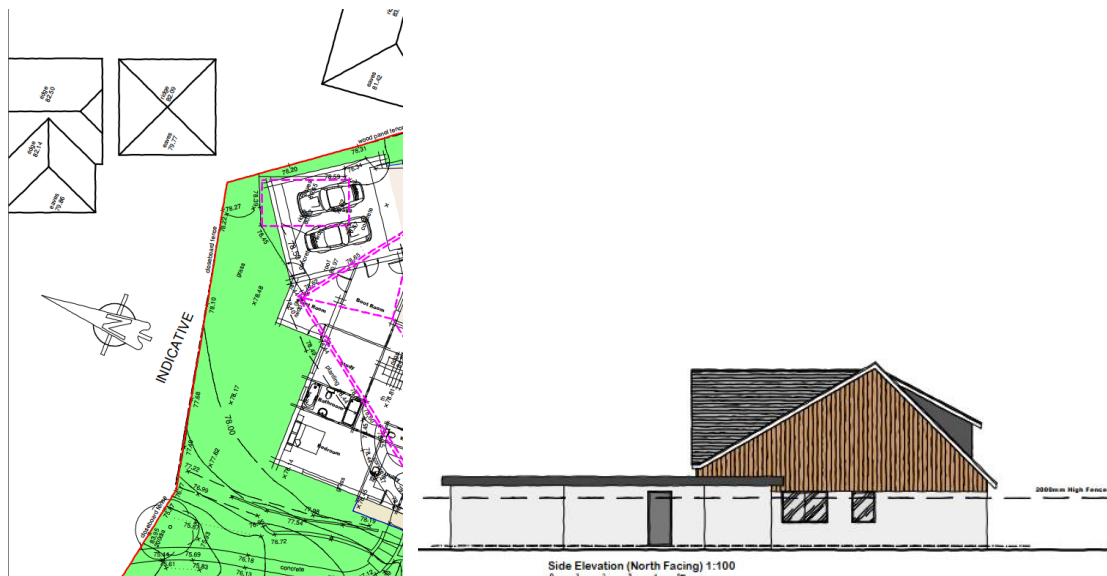
The Bank's - north





The Bank's is a detached dwelling, sited at a lower level than the application site on the north boundary shared with 6 Croft Heights. The aerial photo and mapping shows that the dwelling is accessed via a curved drive from Common Road through a large front garden to the gravelled parking area and house. A further large garden and private patio area lie to the east (rear) of the dwelling, along with equestrian grazing and a menage. The woodland area to the east shown yellow on the mapping was approved as private garden space for The Bank's under a certificate of lawfulness application S/2008/0022. This east area is not overlooked by High Croft or No 6 Croft Heights. The menage and equestrian land were approved under S/2002/1838.

Significant objections have been raised to the proposal by the occupiers on several grounds, including loss of privacy, loss of light, scale, overlooking and dominance.



A 2m high close boarded fence is proposed on the High Croft plans and there would be no north or north west facing windows in the replacement dwelling. Therefore, it is not possible to demonstrate that the proposal would result in undue or unacceptable overlooking into the front garden of The Bank's. Should members be minded to approve, permitted development rights for additional first floor windows, dormers and rooflights should be removed and the fence should be erected as part of the scheme and retained in perpetuity to maintain acceptable levels of privacy.

In terms of dominance, the north facing side elevation which would face towards The Bank's has been broken up into different elements, heights and materials. The resultant form is not considered to be overbearing or dominant, despite the increased overall height of about 1m. The single storey element ensures that the bulk of the dwelling is minimised and should not appear unduly dominant when viewed from the front garden of The Bank's. Given the closest part of the replacement dwelling to the front elevation of The Bank's would be single storey and set behind the 2m fence, officers do not consider that there would be an unacceptable level of overshadowing from the

dwelling. The two storey elements may cause some limited shadow at midday to the north of the building, but this part of the dwelling would be some 6m from the boundary, reducing the overall impact of shadow to the front garden area.

Any new overlooking towards The Bank's from the dormer windows would be limited to the front portion of the garden and the driveway to the west. A 45 degree splay is shown to indicate the likely extent of overlooking afforded by the new dormer:



Windows on the front elevation (east) would not afford any overlooking towards The Bank's and its private rear garden and patio.

In conclusion, the potential impacts of the development on the amenities of the occupiers of The Bank's and any harm arising is considered to be acceptable in terms of dominance, privacy, outlook and shadowing. The development would not detrimentally affect any of the private rear garden spaces currently enjoyed by this property.

Hours of construction and any demolition can be controlled by condition and subject to conditions, appropriate levels of amenity are achievable within the development, in compliance with CP57 (vii). Other dwellings are considered to be sufficiently separated from the site not to be materially affected in terms of amenity.

8.4 Highway Safety

Core Policies CP57, 60 and 61 are relevant to the application and the highways officer has stated:

The proposal, in highway terms, is the same as the previous application, PL/2022/04810 and I therefore adhere to my previous observations. Adequate off street parking is proposed and the existing vehicle access is not proposed to be altered. I wish to raise no highway objection.

Therefore, no highway safety or rights of way objections are raised under Core Policies CP57, 60 and 61.

8.5 Biodiversity

Ecology

Core Policy 50 of the WCS states:

Development proposals must demonstrate how they protect features of nature conservation and geological value as part of the design rationale. All development should seek opportunities to enhance biodiversity.

The site falls within the Mottisfont bat SAC and the majority of the garden is laid to lawn. There are no proposals within the application to remove significant trees or hedges as part of the application. The ecology team consider that bat survey work is not required for the dwelling given the good condition of the building and the existing room in the roof. A Great Crested Newt and Bat informative should be applied to any permission. A scheme for biodiversity enhancement (such as provision of bird, bee and bat boxes) should be conditioned as part of the new development and new external lighting should be restricted in the interests of bats.

River Test catchment: Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA), Portsmouth Harbour SPA, Solent and Southampton Water SPA

Whilst the application site is not adjacent to any rivers or in any respective flood zones, it is situated within the River Test catchment which drains into the Solent. This region is protected by a number of international designations. The Solent water environment is one of the most important for wildlife in the United Kingdom and is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations 2017 (as amended) as well as through national legislation for many parts of the coastline and adjacent maritime areas.

Natural England has confirmed high levels of nitrogen and phosphorus are entering this water environment and that there is sound evidence that this eutrophication is causing excessive growth of plants and algae which reduces oxygen and light levels and is leading to negative effects on the special features for which the European sites are designated. These nutrient inputs mostly come either from agricultural sources or from wastewater from existing housing and other development. Natural England currently advises that every permission for new dwellings in the River Test Catchment Area could result in increased nutrients entering the Solent area. Nutrients are generated by the new people in the housing (nutrients enter the water environment via wastewater discharges), and from their activities and pets. Nutrients can move to designated sites by streams, rivers or through the groundwater.

Essentially, plan-led development that complies with *in principle* policies in the Wiltshire Core Strategy includes proposals within settlement boundaries. This proposal seeks to replace an existing 5 bed dwelling with a four bed dwelling within the settlement boundary. As such, this is planned development and accordingly, the Local Planning Authority considers this proposal is unlikely to lead to any significant effects on the European Sites and an Appropriate Assessment (AA) may be concluded favourably.

New Forest Special Protection Area, SAC and Ramsar

Applications for new residential development and visitor accommodation within the New Forest SPA buffer zone have potential to lead to a significant adverse effect on the SPA on account of additional recreational/visitor pressure upon the SPA which is likely to detrimentally impact qualifying features of the SPA, namely ground nesting birds. It can be expected that even a single unit could give rise to impacts in-combination with other plans and developments.

As such the application is screened into Appropriate Assessment and adequate mitigation will be required before the assessment can be concluded favourably, and the application can be lawfully approved.

The ecology team has drawn up an interim mitigation strategy(*) and the mitigation for developments of under 50 dwellings would be secured through CIL funding towards Strategic Access Management and Monitoring (SAMM). This proposal is for a replacement dwelling and accordingly, an Appropriate Assessment can therefore be concluded favourably on this matter and it is possible to conclude that it will not lead to adverse impacts alone and in-combination with other plans and projects on the New Forest SPA.

8.6 Community Infrastructure Levy

The Community Infrastructure Levy (CIL) is a charge that local authorities in England and Wales can put on new development in their area to raise funds to help deliver the infrastructure necessary to support this development. All development containing at least 100 square metres of new build is chargeable, although residential extensions which are built by 'self builders' are exempt from CIL. An informative would be placed on any permission to advise the developer regarding CIL.

8.7 Conclusion and Planning Balance

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions. Planning decisions should apply a presumption in favour of sustainable development and this means approving development proposals that accord with an up-to-date development plan without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The application seeks to replace an existing dormer bungalow with a new dormer dwelling within the settlement boundary for the large village of Whiteparish, in the Mottisfont bat SAC, the New Forest SPA, SAC and Ramsar and the River Test SAC catchment. The principle for the development is acceptable and this can be afforded significant weight.

For the reasons set out in this report, the development is considered unlikely to cause any unacceptable material harm to existing neighbouring amenities. The resultant dwelling would be more prominent within the streetscene, but its contemporary design, scale and massing are acceptable and the dwelling would not appear cramped within the spacious plot. Highway safety would not be detrimentally affected and adequate off street parking can be provided. There is unlikely to be any adverse impacts on heritage assets and their settings. These factors also weigh in favour of the development.

The provision of biodiversity enhancement measures as part of the new scheme and the opportunity to restrict new external lighting to appropriate levels within the Mottisfont bat SAC are ecological benefits that can be afforded some weight.

The River Test catchment area is a European site and the development is not considered likely to lead to any adverse significant effects in terms of additional nutrients being created by a

replacement dwelling. Similarly, no adverse significant effects would be caused to the New Forest SPA and SAC by a replacement dwelling.

Some moderate negative impacts from the development include the increased prominence of the dwelling within Common Road, but this is limited to a short stretch of road opposite the site. The dwelling would be more prominent when viewed from neighbouring properties, and may result in some increase in potential overlooking (Rosebank and The Bank's front garden) but this is not considered to be at a harmful level. There may also be some degree of overshadowing to the front garden and drive area for The Banks around midday, but the development would not adversely impact on the private rear garden and patio area for this dwelling. These negative impacts are also afforded some weight in the planning balance.

The applicants are seeking to replace an existing dwelling and the impacts of the proposed scheme are considered to be acceptable. Having assessed the material planning considerations for the scheme, it is concluded by officers that the planning benefits and the rights of the applicants to improve their property would outweigh any harm identified, and that the development would be acceptable and in accordance with the development plan and NPPF. Any negative impacts are considered insufficient to warrant refusal of the scheme. Officers consider that the planning balance weighs in favour of the development, subject to conditions being imposed to restrict future changes to the scheme which could result in harm to neighbouring amenities.

9. RECOMMENDATION: APPROVE

Subject to the following conditions:

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

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

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

Location and proposed Site Plan ref 2890/03 02H dated March 2022
Proposed Elevations and Floor Plans ref 2890/03 03 Rev J dated March 2022
High Croft Landscape Design Concept dated 10/7/22
Design Response from Applicants received 10/1/23

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

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

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

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no window,

dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the elevations and roof slopes of the dwelling hereby approved. There shall be no extensions to the dwelling.

REASON: In the interests of residential amenity and privacy.

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

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

6. Any new external artificial (domestic) security lighting shall achieve a level of 0.5 lux or less at the edges of the site's boundary features (fences, hedges, tree lines and all other linear features at the site boundaries). External light fittings throughout the site shall be low level wherever possible, pointing downwards and avoiding any increase in the ambient light within, adjacent to and particularly above the site.

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

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

Reason: In the interests of neighbouring amenities.

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

REASON: To enhancement the biodiversity on the site

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

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

REASON: To ensure a satisfactory landscaped setting for the development and

the protection of existing important landscape features in the interests of bats.

10. The replacement dwelling hereby approved shall not be occupied until the Building Regulations Optional requirement of maximum water use of 110 litres per person per day has been complied with.

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

Informatives:

Bats and great Crested Newts

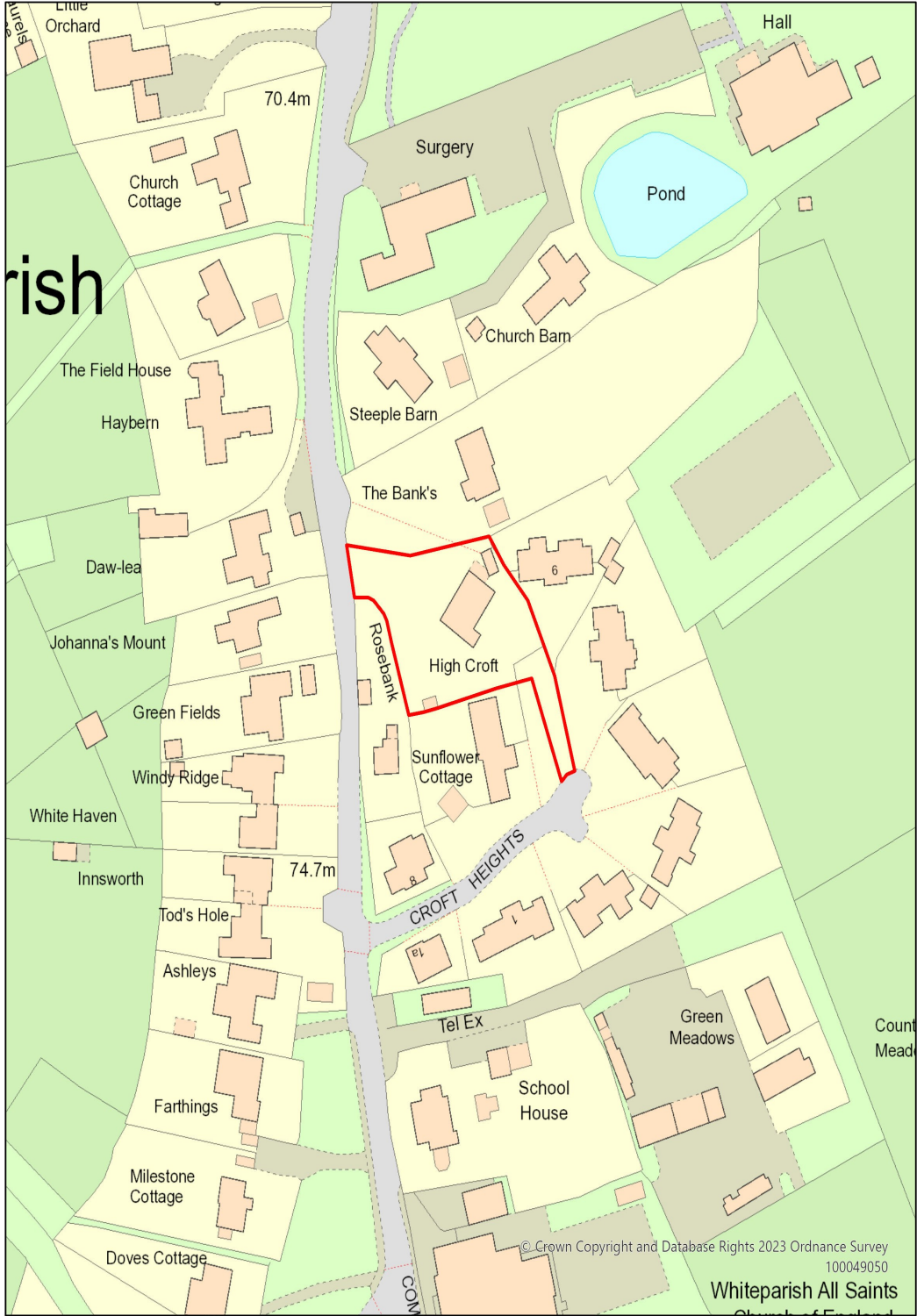
The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory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

CIL

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

www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy

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