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

Wiltshire Council

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

J. Green

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

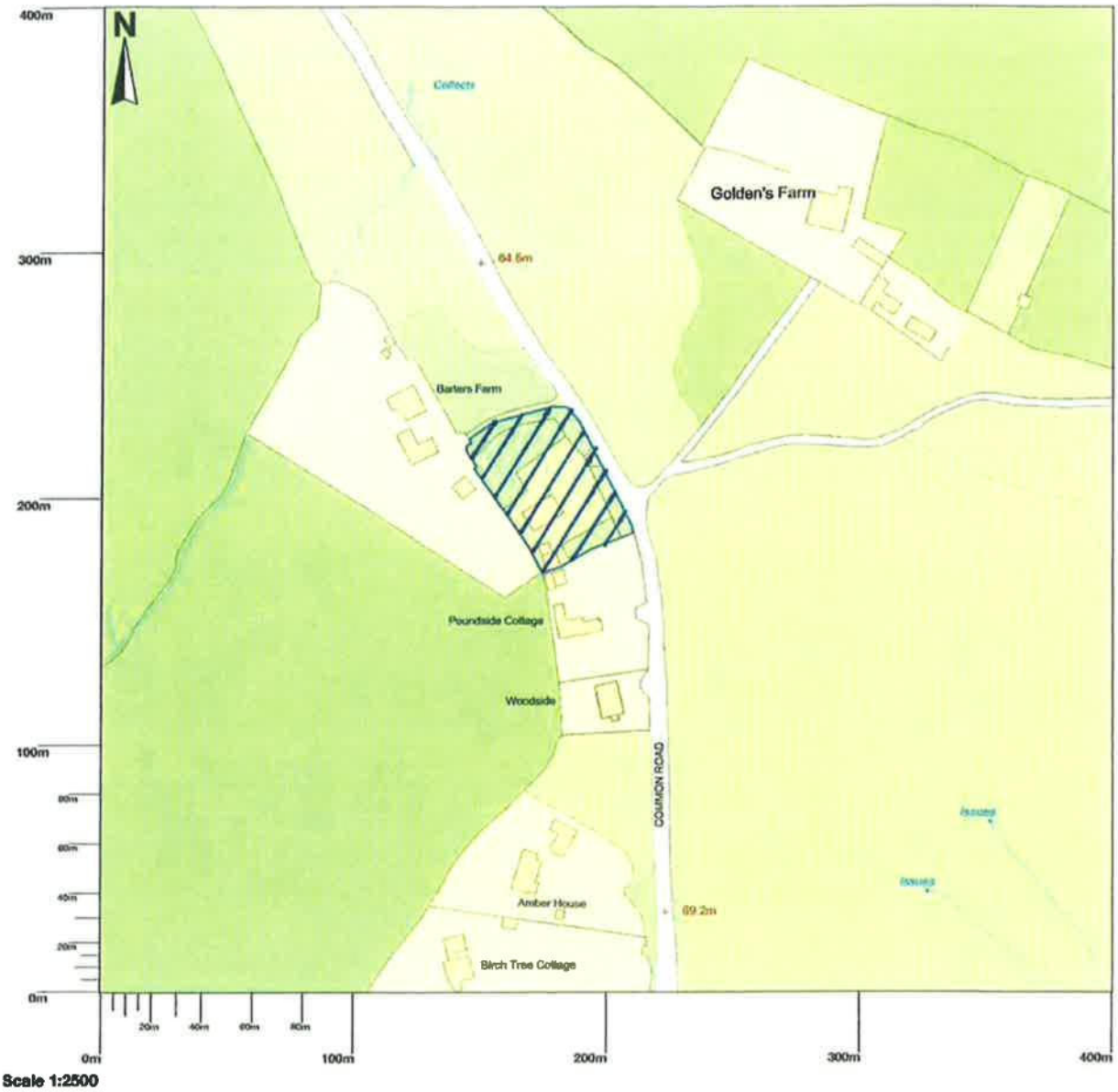
Wiltshire Council

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



Scale 1:2500

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

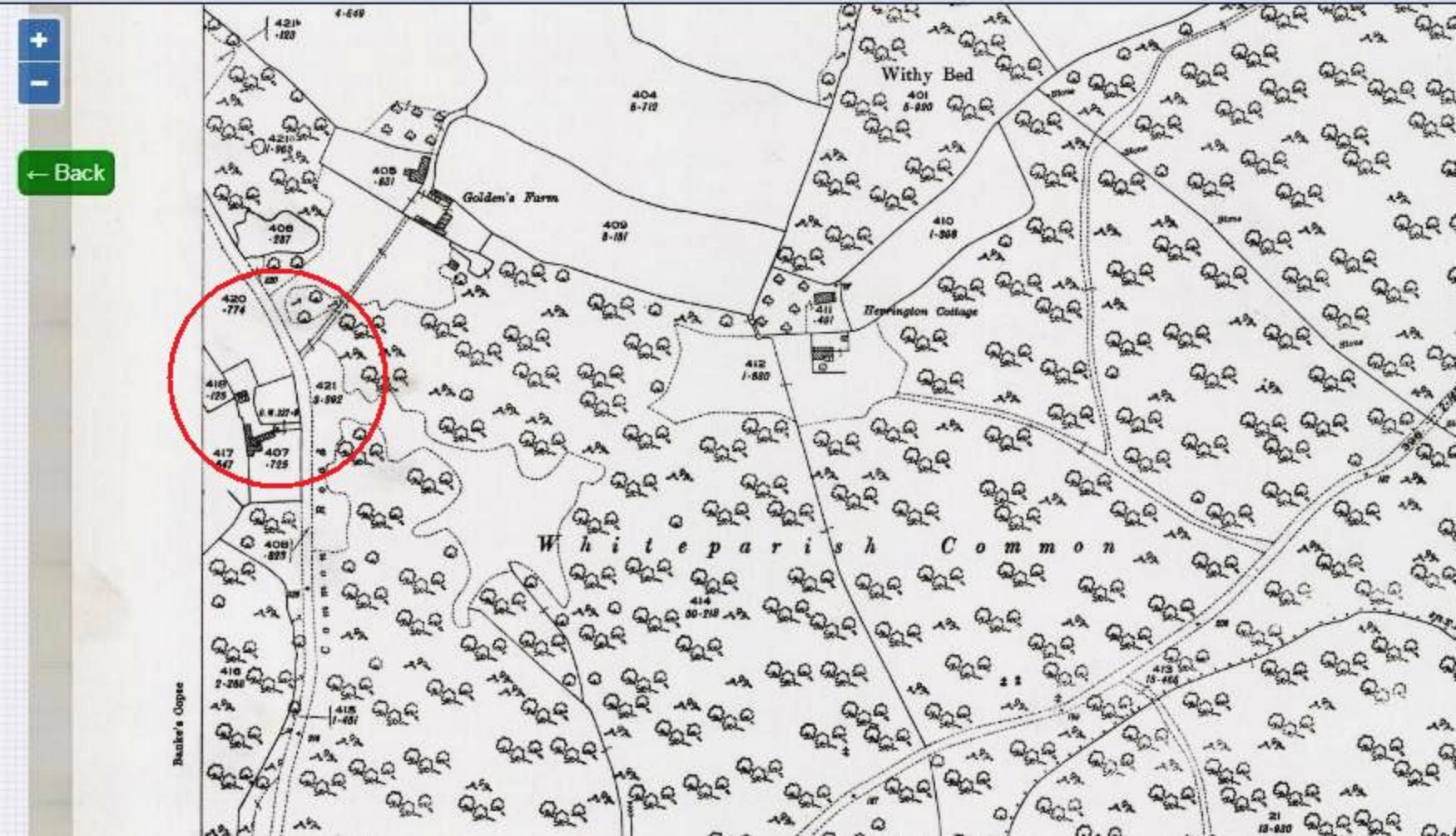
Report a problem: https://my.wiltshire.gov.uk/

Web: www.wiltshire.gov.uk

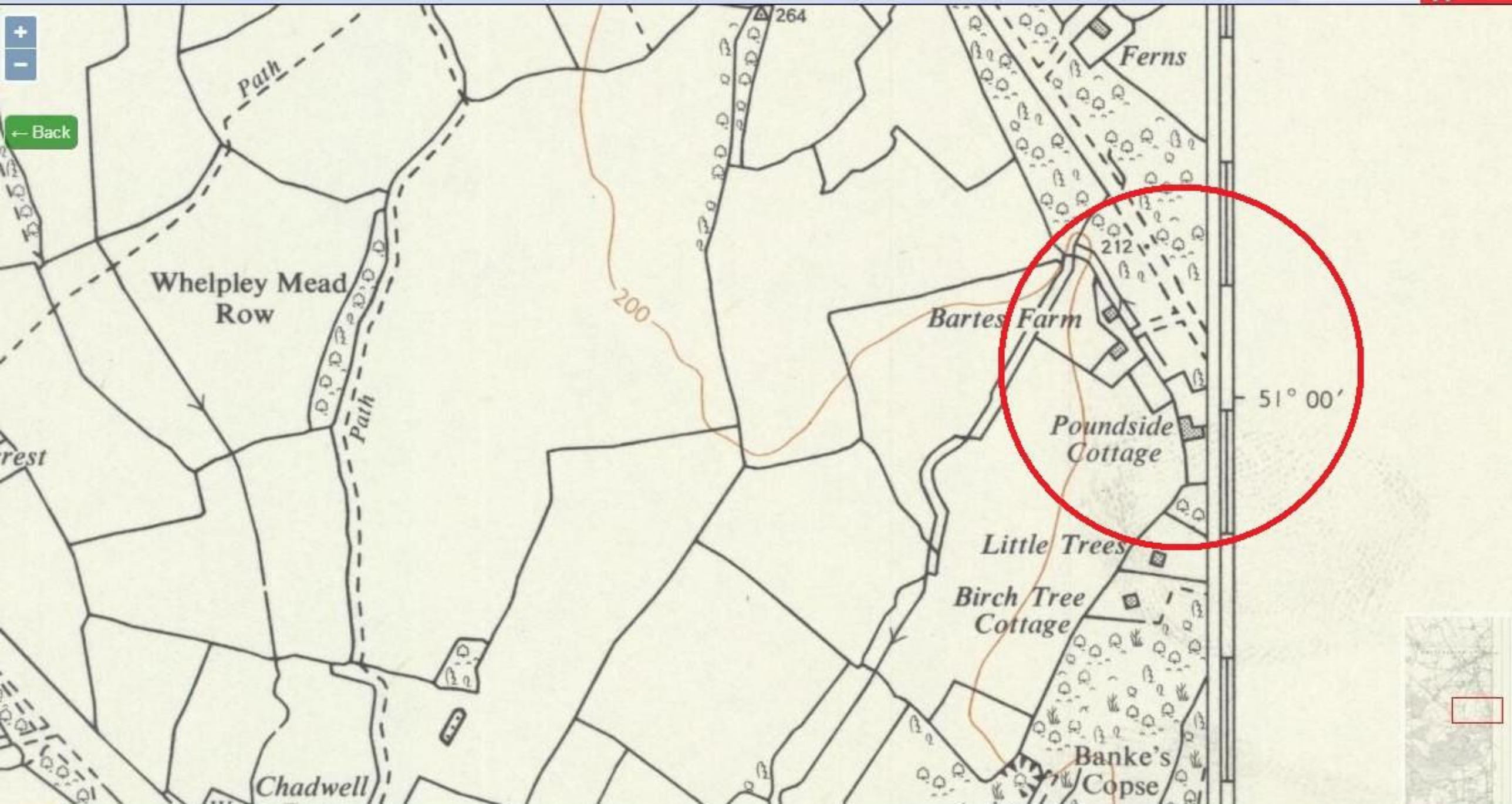
Follow Wiltshire Council

National Library of Scotland
Leabharlann Nàiseanta na h-Alba

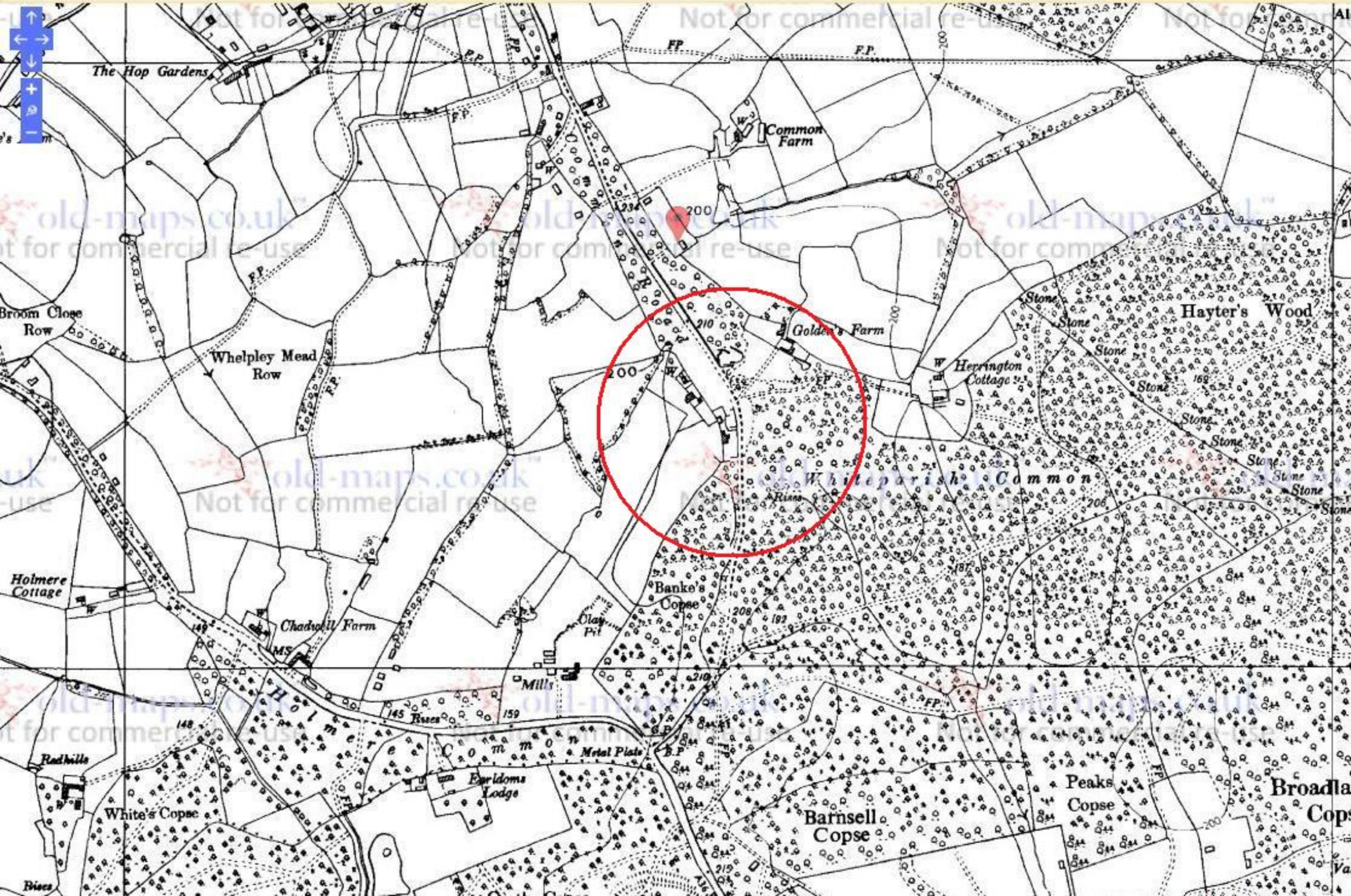
Wiltshire LXXII.16 (Landford; Melchet Park and Plaitford; Sherfie...
Revised: 1924, Published: 1926
Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)



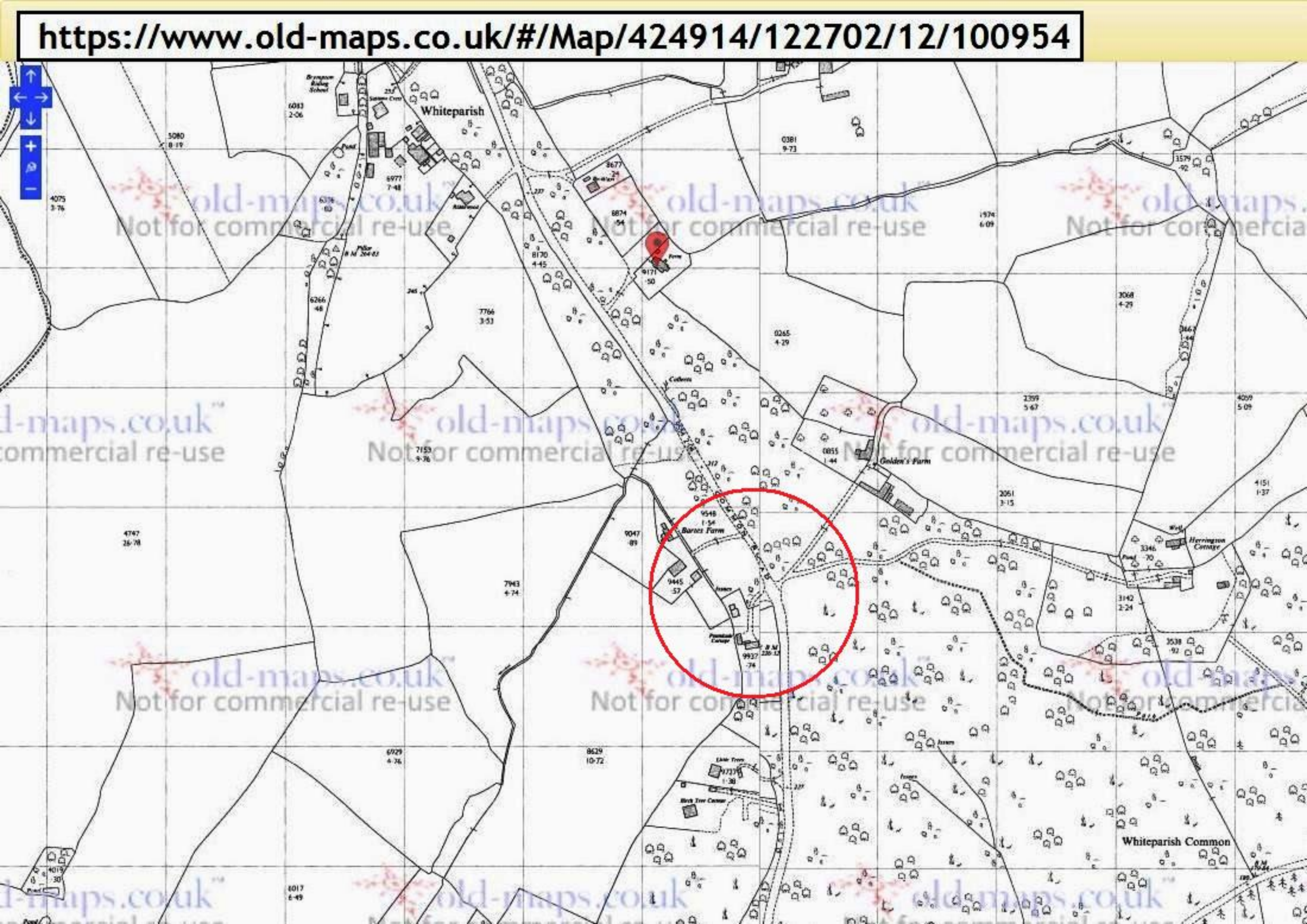
SU22SW - A (includes: Alderbury; Downton; Landford; Redlynch; Whi...
Surveyed / Revised : 1963 to 1970, Published: 1970
Size: map 47-50 x 47-50 cm (ca. 19 x 20 inches), on sheet ca. 68 x 58 cm (27 x 23 inches)



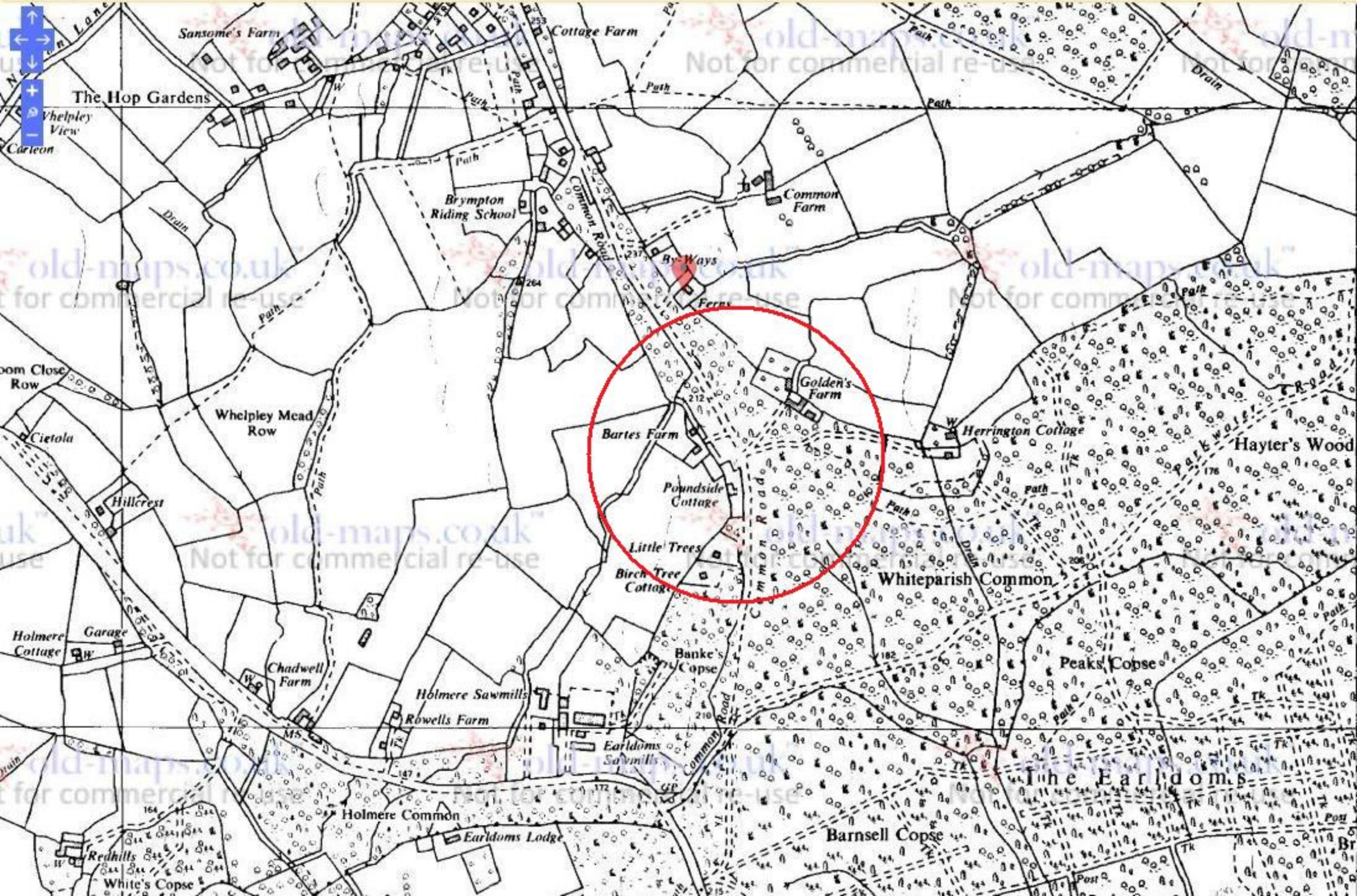
https://www.old-maps.co.uk/#/Map/424914/122702/10/101324



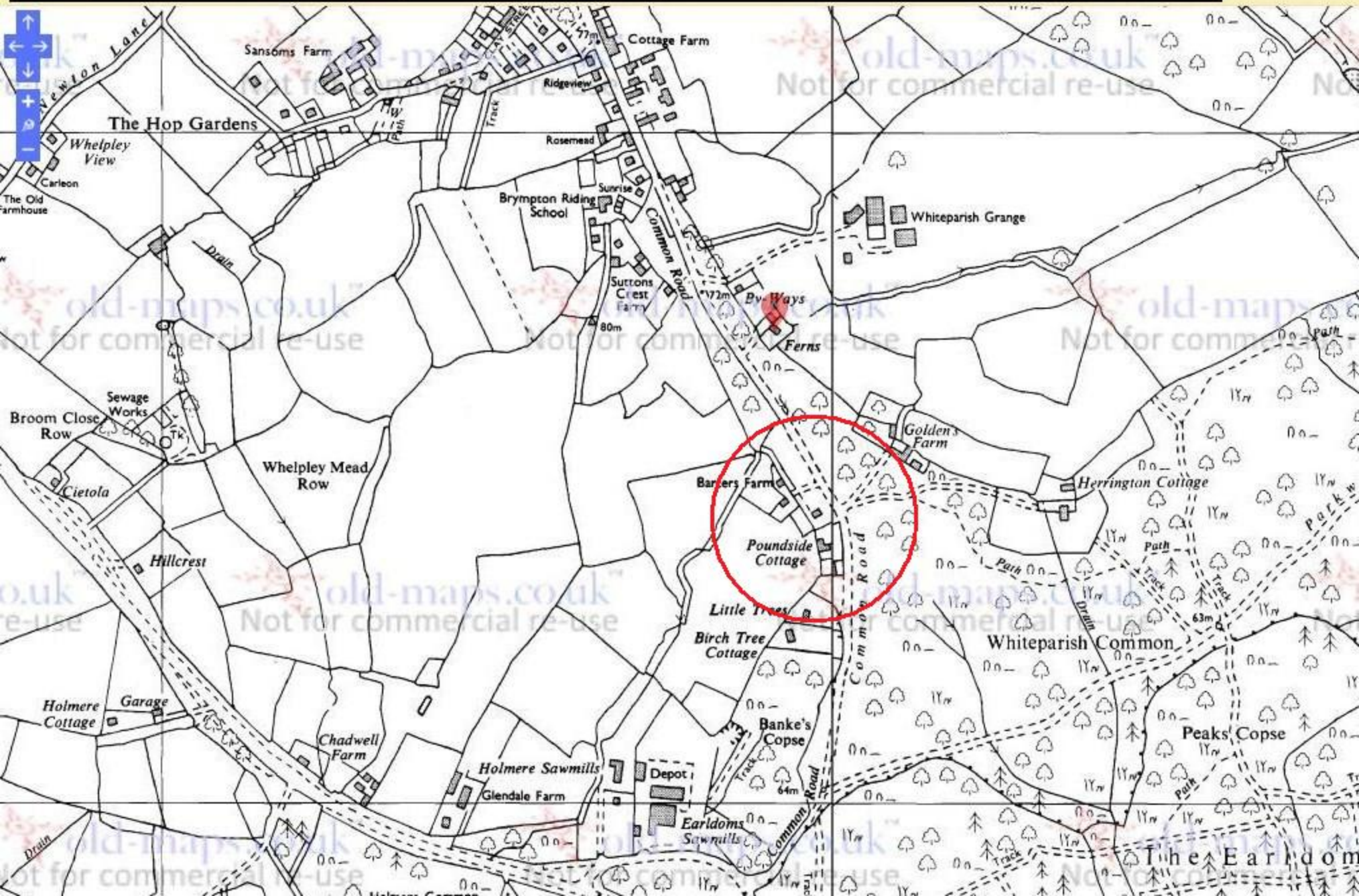
https://www.old-maps.co.uk/#/Map/424914/122702/12/100954



https://www.old-maps.co.uk/#/Map/424914/122702/10/101325



https://www.old-maps.co.uk/#/Map/424914/122702/10/101322



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

Follow Wiltshire Council

Follow Wiltshire Countryside

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

Common Farm

Golden's Farm

Withy Bed

Hayter's Wood

Whiteparish Common

Banke's Copse

Herrington Cottage

Brick Yard

Common Road

U/C 12067 (30 ft Width)

Metal Plate

iv) Mr H Craddock (Open Spaces Society (OSS)) - 2nd July 2021

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)


The Pound 2002
Write a description for your map.
Legend
51.001262943001585,-1.6456364045879137
Whiteparish, Barters Farm
51.001262943001585,-1.6456364045879137
Google Earth
© 2021 Infoterra Ltd & Bluesky
N
60 m


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 195[redacted] 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

[redacted]

Common Road

Whiteparish

Salisbury wilts

SP5 2[redacted]

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

[redacted] [redacted]

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

Follow Wiltshire Council

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 Dear
[redacted] Romsey Rd.,
Whiteparish
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.

OH № 53684

OLI

2.

WILTSHIRE COUNTY COUNCIL.

TOWN AND COUNTRY PLANNING ACT, 1962.

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER, 1963.

PERMISSION FOR DEVELOPMENT.

To: G. Dear, Esq.,
[redacted]
Bunkers Hill, Whiteparish.
Per: Messrs. Jonas and Parker,
45 Castle Street,
Salisbury.

Application No. 6759/10935

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

[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.

See over for Notes.

Form P.5A.

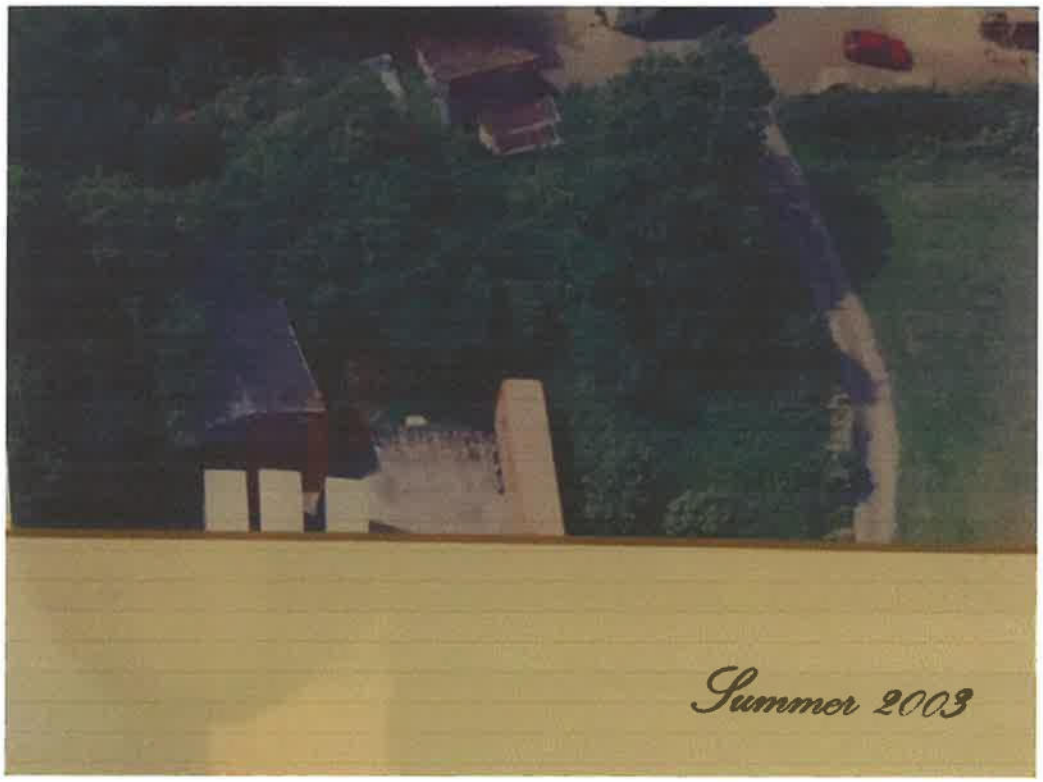
ARIEL VIEW

THE POUND

2003

SHOWING LORRY TRAILERS PARKED

ON HARDSTANDING

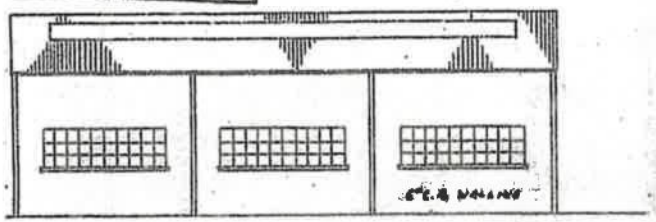


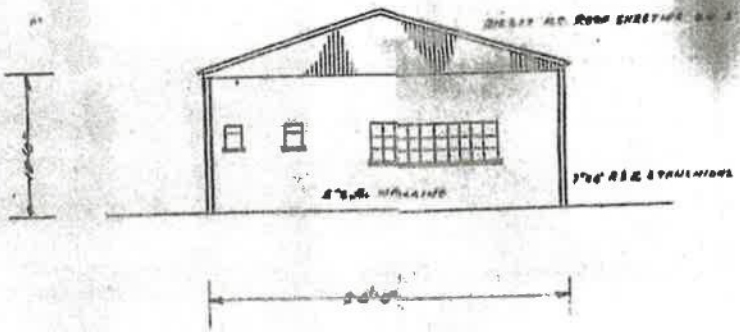
THE POUND

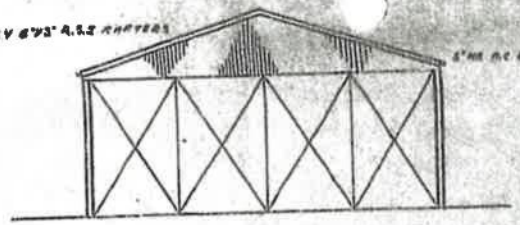
COMMON ROAD, WHITEPARSIH, SP5 2RD

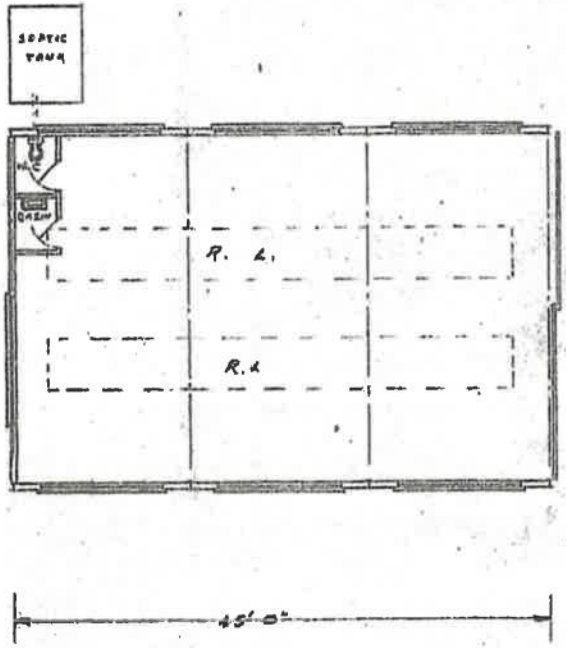
WHITEPARSIH GARAGE

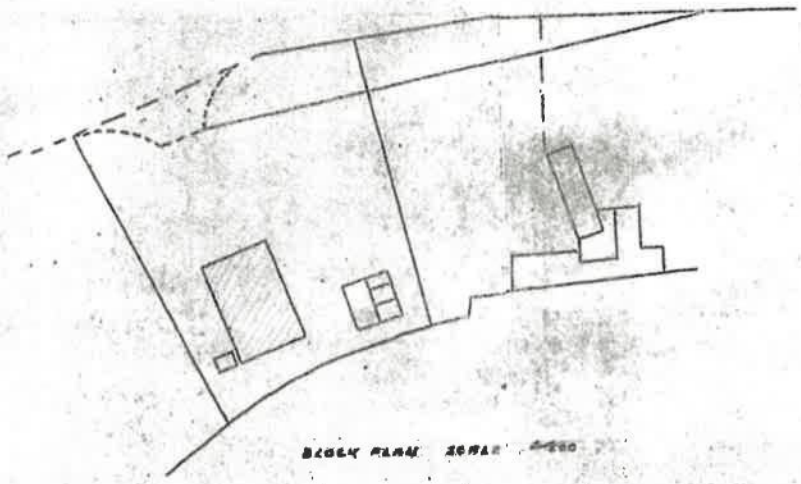
20 NOVEMBER 2020



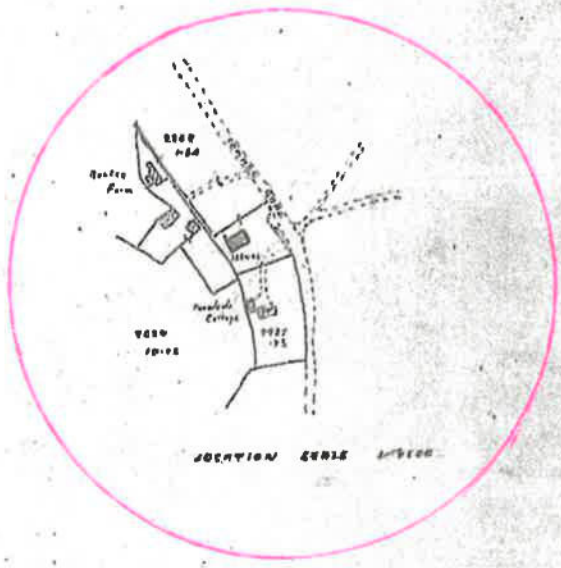








BLOCK PLAN SCALE 1/200



LOCATION SCALE 1/1250

PROPOSED BUILDING for G. DEAR. Esq., WHITEPARISH.

H. FRANCIS AND SONS LTD., KILMINGTON, WILTS

SEPTEMBER 1967. SCALE 1/8" to 1'

NEW FOREST
NATIONAL PARK

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)

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

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.

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; ..."

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

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 ky 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,

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."

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.

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:

> "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:

> "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 Slesser 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";

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

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.'"

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."

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

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

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.

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,"

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

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

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 negative 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 form 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

[redacted] [redacted]

Mr S Skeates and Mrs S Skeates


Barters Farm
Poundside Cottage

[redacted]

Romsey Road

Whiteparish

Salisbury

Wilts

SP5 2[redacted]

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 [redacted]

Mr and Mrs K Taylor
[redacted]
Common Road
Whiteparish
Salisbury
Wilts
SP5 2[redacted]

We have lived in Whiteparish for over 60 years, living most of our years at [redacted] 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

[redacted]

Mr Keith Taylor

[redacted]

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
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

---

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: App ication 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

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

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 bearence 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)

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

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

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

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

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)

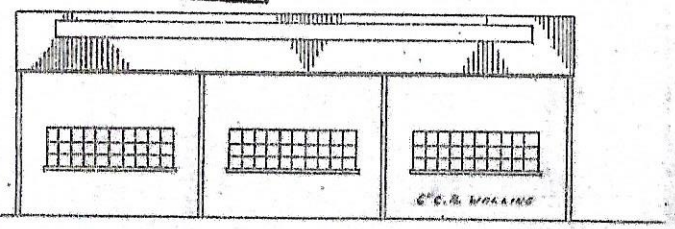
This is clearly shown on the location scale with an 'S' symbol, an areas brace symbol (attached, highlighted in orange) and this line is quite simply transferred to the block plan and not drawn onto the block plan by the draughtsperson as suggested by OSS

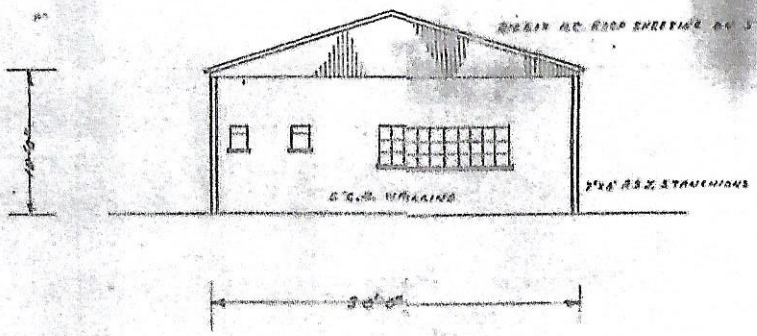
The draughtsperson couldn't have put this line in as it was already showing on the location scale!

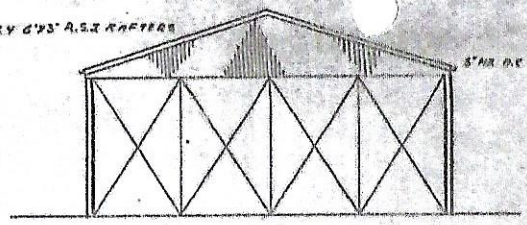
We have clearly demonstrated , in our previous correspondence, that the line does not represent 'physical boundaries' having provided concrete evidence from three village residents, including the present chairman of the Whiteparish Parish Council , there were no fences (physical boundaries as suggested by OSS) on The Pound in 1967

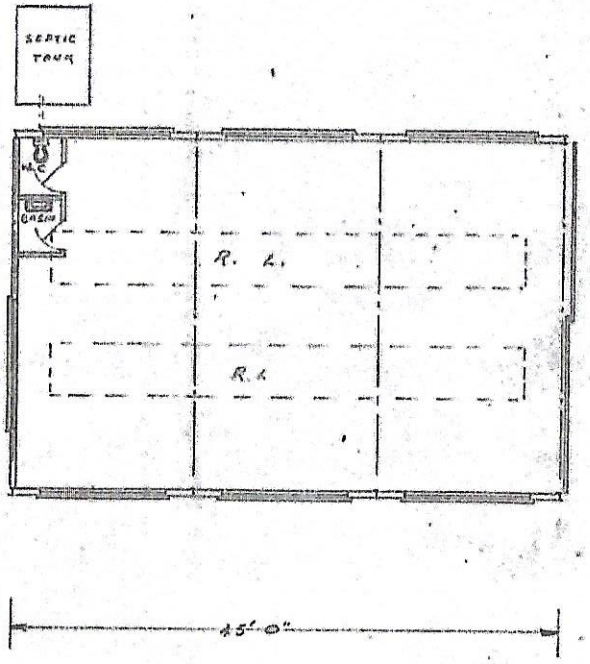
Mr S Skeates and Mrs S Skeates

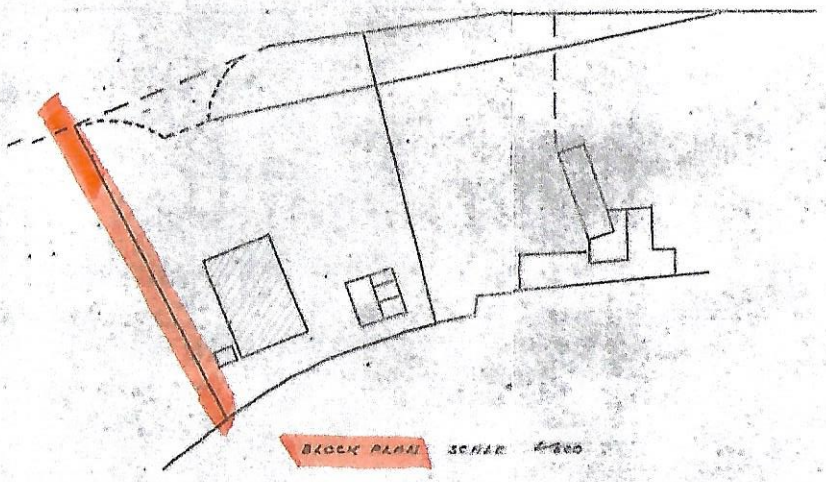
Application No. 7035/11434
REFERRED TO THE TOWN AND COUNTRY PLANNING COMMITTEE
12. 10. 67

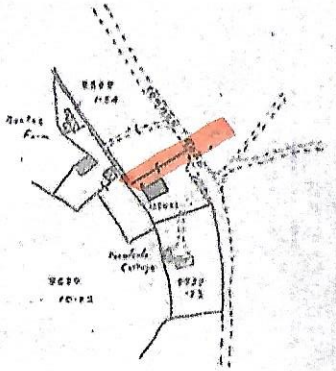












OSED BUILDING for G. DEAR. ESQ. WHITEPARISH.

H. FRANCIS AND SONS LTD., KILMINGTON, WILTS

SEPTEMBER 1967. SCALE 1/8" to 1'