

AGENDA SUPPLEMENT (1)

Meeting: Southern Area Planning Committee

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

Date: Thursday 2 February 2023

Time: 3.00 pm

The Agenda for the above meeting was published on 25 January 2023. Additional documents are now available and are attached to this Agenda Supplement.

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

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

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

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

- **Late correspondence & Officer Response** (*Pages 3 - 14*)

DATE OF PUBLICATION: 1 February 2023

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Agenda Item 6

From: [Green, Janice](#)
Sent: 31 January 2023 16:19
To: [Green, Janice](#)
Subject: FW: Wiltshire Southern Area Planning Committee Meeting 2 February
Attachments: [letter to councillors Feb 2023.docx](#)

From: [REDACTED]
Sent: 30 January 2023 21:35
To: Oliver, Andrew <Andrew.Oliver@wiltshire.gov.uk>; Hocking, Sven <Sven.Hocking@wiltshire.gov.uk>; Dalton, Brian <Brian.Dalton@wiltshire.gov.uk>; Errington, Nick <Nick.Errington@wiltshire.gov.uk>; Jeans, George <George.Jeans@wiltshire.gov.uk>; McLennan, Ian <Ian.McLennan@wiltshire.gov.uk>; Najjar, Nabil <Nabil.Najjar@wiltshire.gov.uk>; Wayman, Bridget <Bridget.Wayman@wiltshire.gov.uk>; Rogers, Rich <Rich.Rogers@wiltshire.gov.uk>
Cc: Alexander, Lisa <Lisa.Alexander@wiltshire.gov.uk>
Subject: Wiltshire Southern Area Planning Committee Meeting 2 February

Dear Committee Members,

With reference to Agenda Item 6

Application to de-register wrongly registered common land at The Pound, Whiteparish

Please find attached further evidence and information we wish you to consider before the meeting on Thursday

We ask that members consider making an alternative determination from that of the officers recommendation as we believe we have now clearly shown evidence as to lead to the conclusion that Area 3 be also deregistered with Area 2

Regards Sarah and Shane Skeates

APPLICATION TO DE-REGISTER WRONGLY REGISTERED COMMON LAND

THE POUND, WHITEPARISH

APPLICATION NO.2021/01ACR

Agenda Item 6

Wiltshire Southern Area Planning Committee 2 February 2023

The report, on the above application, which you have received concluded –

'based on the evidence, officers consider the land at the Pound be part deregistered over that part of the application area as shown outlined in red on the plan on page 231

We refer to page 233 (attached) where the application land is marked into areas 1-4 and page 226 Test B – Conclusion on those four areas –

Area 1 'To be excluded from the area of land to be de registered where it does not form part of the registered common land' - *We accept that this is correct*

Area 4 'The wooded/green area to be excluded from the land to be de-registered' - *We accept that this is correct*

Area 2 'this area of the application land is capable of de-registration' - *We accept that this is correct*

Area 3 'Hardstanding area to be excluded from the area to be de-registered where there is insufficient evidence that the land was, at provisional registration, so intimately associated with the building as to lead to the conclusion that it formed part and parcel of the building, (there is evidence that it has been used in conjunction with this building only since around 2000 i.e. the parking of vehicles)' – *We submit the following points to clearly identify that from before the date of registration and until application this **hardstanding area** has been intimately associated with the building and it therefore formed part and parcel with the building*

- The officers at appendix 8 page 173 refer to the OS map of 1952- 1992 'This map appears to post date 1967 where the building is recorded'
'Within the site itself, there is no fencing indicated and it appears to be open for the whole of the application land. The single pecked lines indicate a change in surface of the land and would suggest the areas of hardstanding within the site, which include Area 2 and Area 3'

Officers have confirmed that even before the provisional registration of the Common Land, Area 3 was hardstanding and remains so until present day

- The officers at Appendix 8, page 165 state that 'This area provides access to the building and **part** of the visibility splay, which are required in the planning conditions and necessary for the operation of the building'

The visibility splay in Area 3 is clearly shown in Appendix 11 page 233 (attached)

If the visibility splay is 'necessary for the operation of the building' it is 'intimately associated with the building' and it therefore 'forms part and parcel of the building' and therefore Area 3 should be considered for de-registering

- On page 213, of the report, paragraph 38 'the visibility splay is clearly identified for the purposes of the building and its safe use, to remain undeveloped for as long as the building exists and is therefore tied to the building by the planning application, sufficient to form part of its curtilage

-

The above refers to Area 2 and Area 3 as the visibility splay is in both areas and therefore Area 3 should be considered for de registering for this reason

- Page 215 paragraph 44 it is stated that the hardstanding area was 'not identified in association with the building at the planning stage'

We are assuming it would not be identified as the hardstanding area was already in place (as confirmed at Appendix 8 page 173)

- Appendix 4 pages 53- 56 clearly show Area 3 being used for parking from 2001 to present day

The following additional information was added as an agenda supplement, to the report on Monday 30 January

Please see email below from Mr and Mrs Taylor confirming that Area 3, the hardstanding area, was in use from 1967 through to the 1980's for the parking of the milk collection lorries that were serviced in the building

From: [REDACTED]
Sent: 26 January 2023 14:12
To: [REDACTED]
Subject: COMMON land

Dear Sir,

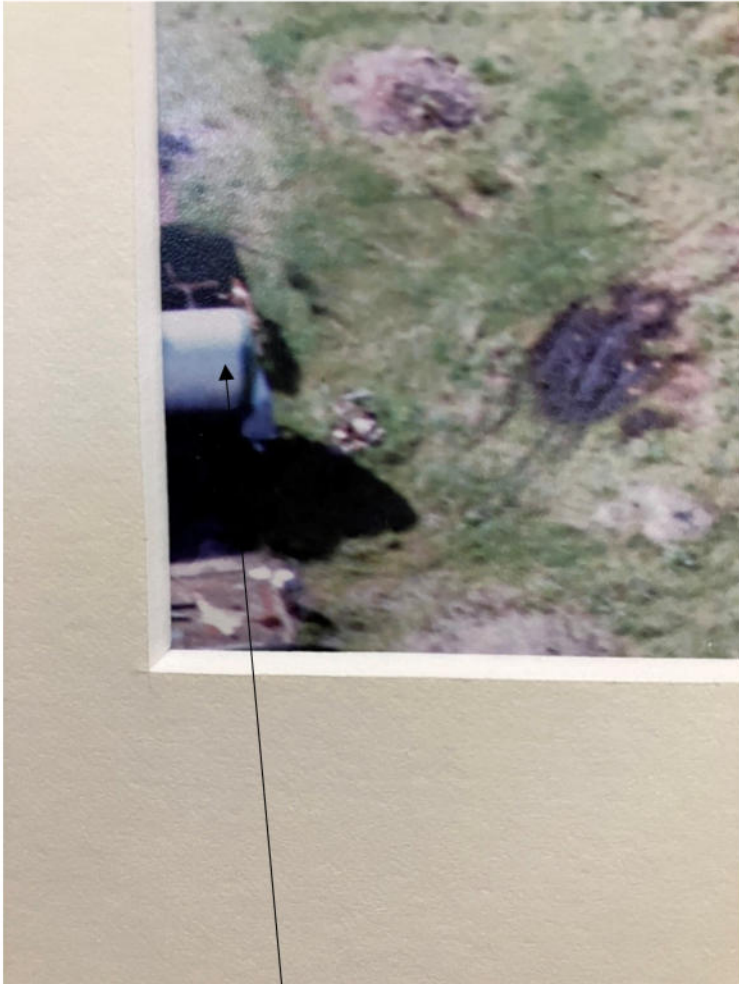
I have lived at [REDACTED] Common Road with a few breaks since 1950. Mr Dear owned the site from the sixties until 2009. He used all the hard stand including area 3 marked in the application to de-register common land, The Pound, Whiteparish report, for parking lorries used in his milk depot business until the eighties.

Yours Sincerely Sally Taylor (Mrs)

To confirm this email, we have an aerial photograph, from the 1970's, (attached) showing the hardstanding area and parked on it, a milk collecting tanker lorry (shown with arrow) and a trailer with what we believe are two milk churns in the bottom left-hand corner of the picture

From all the points we have demonstrated that Area 3, the hardstanding area has been in use, with the building, since 1967, therefore 'forms part and parcel of the building' and so we ask you to consider this Area 3, hardstanding area, for de-registration.

We ask that the members make an alternative determination from the officer's report as we have clearly identified, with the additional evidence, the reasons to depart from the officer's recommendation to not de-register Area 3



Milk collection tanker lorry on Area 3

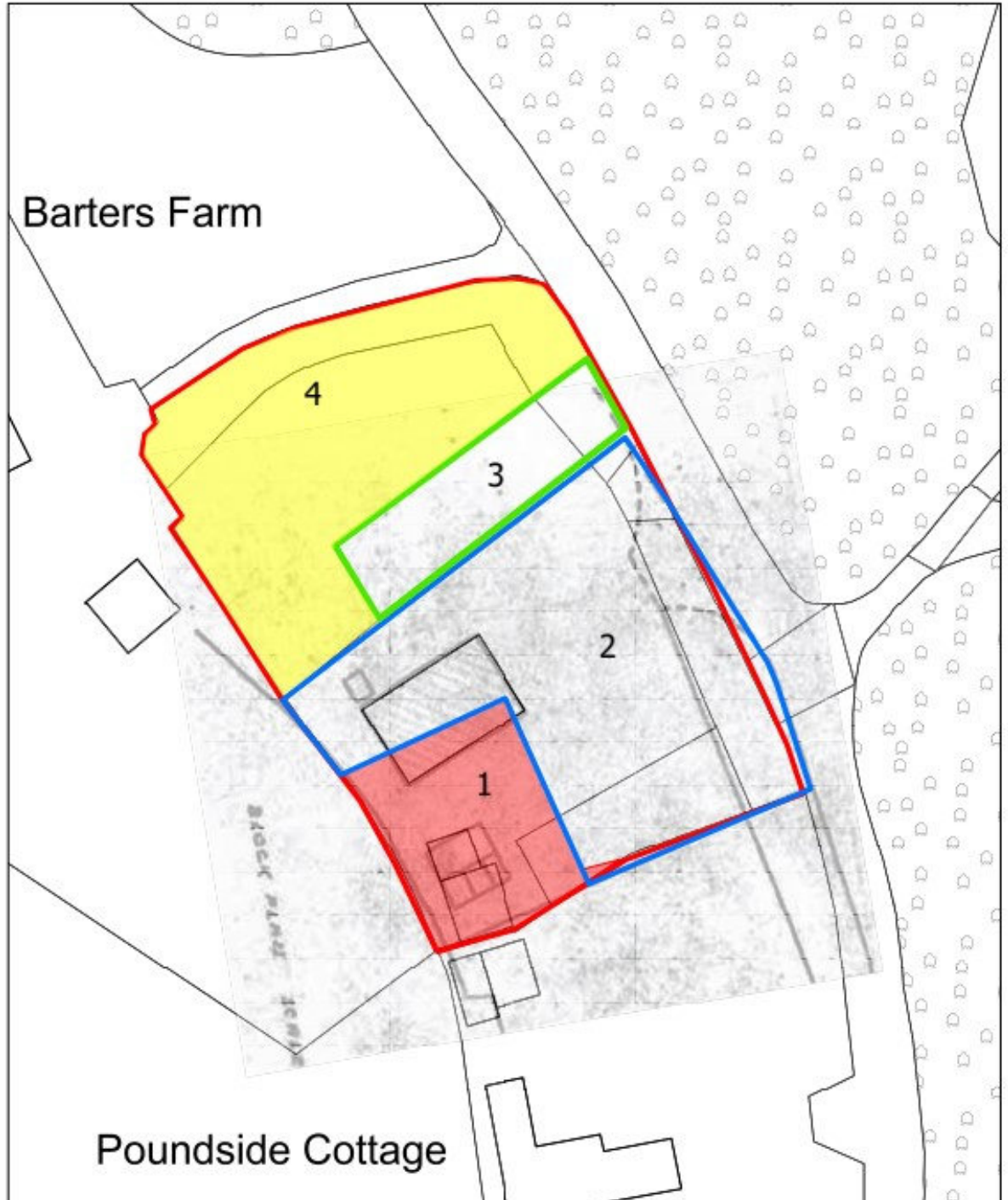


This is Area 3 (Hardstanding)

Aerial Photograph taken in the 1970's of [REDACTED] (property next to The Pound) and therefore is only showing the corner of The Pound (Hardstanding)

Hardstanding Area





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13/06/2022

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Scale 1:500 @ A4

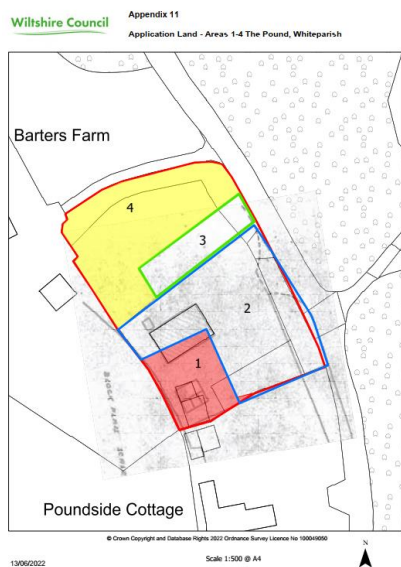


Southern Area Planning Committee – 2 February 2023 - Item no.6
Commons Act 2006 – Schedule 2(6) - Application to De-Register Buildings Wrongly
Registered as Common Land, The Pound, Whiteparish – Application no.2021/01ACR

Officers’ Response – Applicants Letter to Councillors 30 January 2023

The Applicants object only to the non-inclusion of Area 3 in the area of common land proposed to be de-registered. It is noted that they agree to the remainder of the Officers’ findings/recommendations in respect of Areas 1, 2 and 4:

Fig.1 – Application Land Areas 1 - 4, The Pound, Whiteparish:

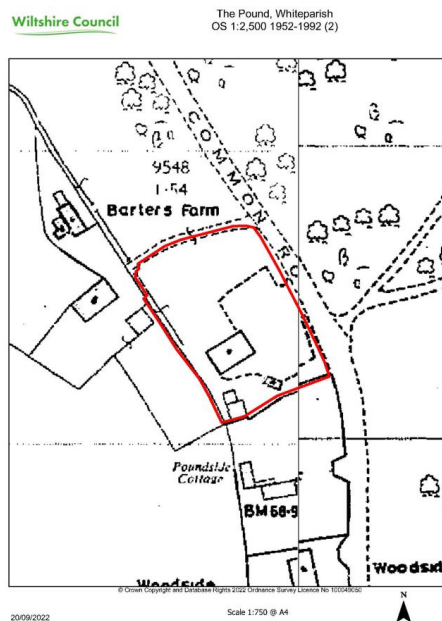


In order for Area 3 to be de-registered under Schedule 2(6) of the Commons Act 2006, where it is common land not covered by a building, it would be necessary to show that the area was curtilage of a building at the time of registration, 10 April 1968 and at all times since.

OS Mapping

The Applicants refer to **OS 1:2,500 County Series Map 1952 – 1992** (Fig.2 below) – *“Officers have confirmed that even before the provisional registration of the Common Land, Area 3 was hardstanding and remains so until present day.”*

Fig.2 - OS 1:2,500 County Series Map 1952 – 1992:



OS maps are topographical in nature, i.e. they record only physical features visible to the surveyor at the time of survey. On this map (Fig.2) the single pecked line encompassing both Area 2 and Area 3 signifies only a change in surface over the site, in the consideration of what constitutes curtilage, it is not sufficient to consider only the “functional equivalence” of the building and the land, there needs to be a demonstrated relationship between the two, as caselaw suggests:

“121. ...if it were permissible to identify the curtilage simply by asking whether the building and land together form a single unit with “functional equivalence”, or were used for the same overall purpose, then their relevant sizes and functions, the question of whether the land is ancillary to the building, and indeed any historical connection between them, would diminish in significance and perhaps cease to be of any relevance at all...”

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

R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398, (Blackbushe Airport case)

Visibility Splay

The Applicants consider that the visibility splay, the provision of which is a planning condition in the consent for change of use of The Pound site in 1967, extends into Area 3 and therefore the Officers’ conclusions regarding the visibility splay in Area 2, are also applicable to Area 3 – *“The visibility splay in Area 3 is clearly shown in Appendix 11 page 233 (attached).”* (Fig.1 above).

“If the visibility splay is ‘necessary for the operation of the building’ it is ‘intimately associated with the building’ and therefore ‘forms part and parcel of the building’ and therefore Area 3 should be considered for de-registering.”

Fig.3 - Application no.6759/10935 – Change of use from Builders Yard to Milk and General Haulage Depot at The Common, Whiteparish - Permission for Development – Granted subject to conditions 8 June 1967 – Salisbury and Wilton Rural District Council, Block Plan:

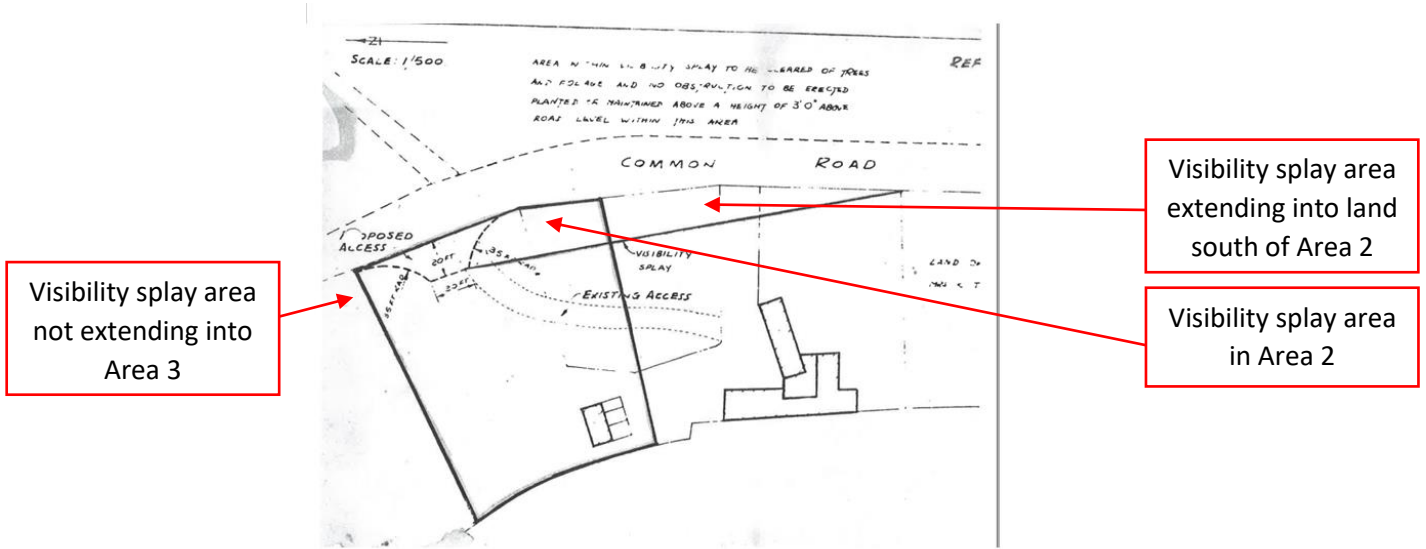
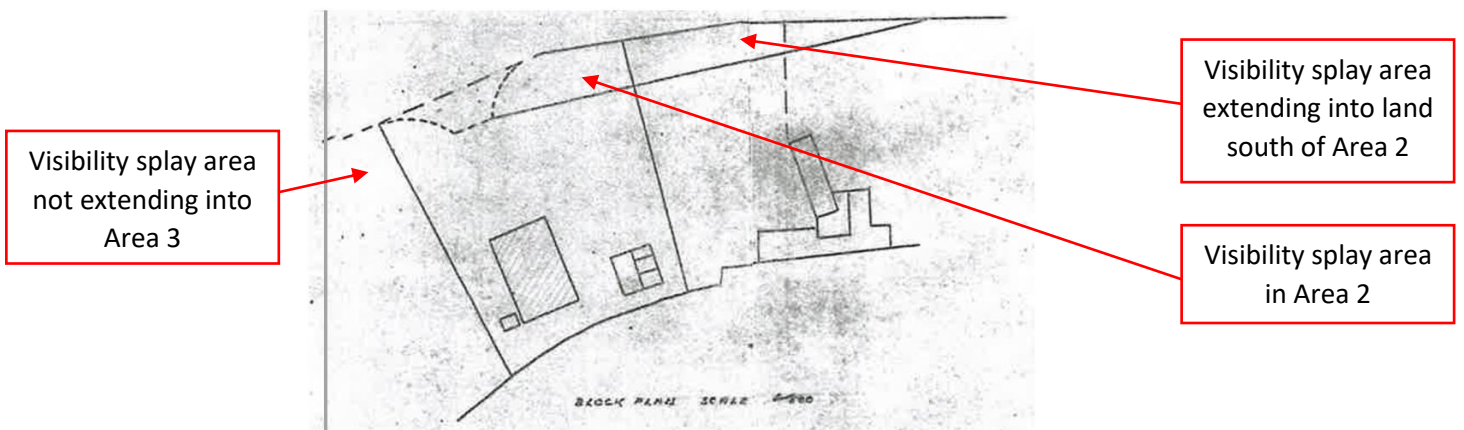


Fig.4 - Application no.7085/11434 – Erection of garage/maintenance workshop at Common Road, Whiteparish - Permission for Development - Granted subject to conditions – 12 October 1967 – Salisbury and Wilton Rural District Council, Block Plan:



Officers’ do not agree that the visibility splay extends into Area 3 and in the block plans above for the two planning applications in 1967 (Fig.3 and Fig.4), it can be seen that there is no visibility splay marked to the north of the site, outside Area 2. The visibility splay is located within Area 2 and extending southwards into the adjoining plot and conditioned as follows in planning consent 6759/10935 (change of use):

“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.” (emphasis added).

Officers’ consider that the line which the Applicants consider to be the visibility splay alongside Common Road in Area 3, is a feature on the modern OS base mapping, i.e. the hedge, as shown below:

Fig.5:



Hardstanding Area 3

The hardstanding of Area 3 is not identified in association with the building at the planning stage. The Applicants state: *“We are assuming it would not be identified as the hardstanding area was already in place (as confirmed at Appendix 8 page 173).”*

Officers’ consider that had a larger area than that identified in the planning documents been required for the parking of vehicles at the time the building was erected, it would have been included within the identified planning area subject to change of use and the erection of the building. The visibility splay to the south is very clearly conditioned to lie partly outside the planning area, Officers’ would expect similar wording regarding the provision of parking and turning for vehicles, however, the planning condition at change of use of the site (application no. 6759/10935), states that parking and turning is to be provided within the site:

“4. Adequate provision to be made for the parking and turning of vehicles within the site.”
i.e. the planning site identified in the block plans (emphasis added).

Officers’ accept that there is evidence that Area 3 has been used for parking from 2000 to the present day, however, this is not evidence that Area 3 was curtilage of the building at the provisional registration of the land on 10 April 1968, which is required for successful de-registration of common land under Schedule 2(6) of the Commons Act 2006.

Photograph – Barters Farm 1970’s

The Applicants submit an additional photograph of Barters Farm house, which they claim shows a milk collecting tanker lorry and trailer with what they believe to be two milk churns in the bottom left-hand corner of the picture:

Fig.6:



Officers’ accept that the photograph appears to show a vehicle/trailer parked in Area 3, particularly when considered alongside later aerial photographs showing parking in Area 3 from 2001 (**Appendix 4** of main report), however:

- The photograph is dated by the Applicants “*from the 1970’s*”, this is not evidence that the land in Area 3 was used for parking and therefore curtilage of the building on provisional registration of the land on 10 April 1968, which is required for successful de-registration.
- The photograph does not show the workshop building subject to this application and only includes part of Area 3, the relationship between the building and the claimed additional parking area is not demonstrated by this photograph in isolation.
- The planning application block plans and conditions (1967) do not support any land outside Area 2 being necessary/required for the operation of the building at its erection, unless conditioned as such, (i.e. the visibility splay).

- Challenge Fencing caselaw considers the meaning of curtilage and suggests that the curtilage of a building and the planning unit are not always the same and that the planning unit may be larger than the curtilage (rather than smaller):

“...there may be situations where the planning unit is different from (and almost certainly larger than) the curtilage of the building.”

Challenge Fencing Ltd v Secretary of State for Housing Communities and Local Government [2019] EWHC 553 (Admin)

Statement from Mrs S Taylor

Testimony from Mrs S Taylor, long-term resident of Whiteparish, regarding parking on Area 3 from the 1960's is not supported by clear photographs of the parking from provisional registration since 10 April 1968; the planning documents or Mr Dear's Operators licence 1984-1989 which excludes trailers.

Officers' Recommendation

Having considered the additional evidence in respect of Area 3, Officers' suggest that it is not sufficient to demonstrate on the balance of probabilities that Area 3 is so intimately associated with the building as to lead to the conclusion that it forms part and parcel of the building such that it was curtilage of the building at the time of provisional registration and at all times since. Therefore the Officers' recommendation set out at paragraphs 43 and 44 of the report, remains unchanged.

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