

AGENDA

Meeting: Southern Area Planning Committee
Place: Alamein Suite, City Hall, Salisbury
Date: Thursday 2 February 2017
Time: 6.00 pm

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

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

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

Membership:

Cllr Fred Westmoreland
(Chairman)
Cllr Christopher Devine
(Vice Chairman)
Cllr Richard Britton
Cllr Richard Clewer
Cllr Brian Dalton
Cllr Jose Green

Cllr Mike Hewitt
Cllr George Jeans
Cllr Ian McLennan
Cllr Ian Tomes
Cllr Ian West

Substitutes:

Cllr Trevor Carbin
Cllr Terry Chivers
Cllr Ernie Clark
Cllr Tony Deane
Cllr Dennis Drewett
Cllr Peter Edge
Cllr Magnus Macdonald

Cllr Leo Randall
Cllr Ricky Rogers
Cllr John Smale
Cllr John Walsh
Cllr Bridget Wayman
Cllr Graham Wright

RECORDING AND BROADCASTING NOTIFICATION

Wiltshire Council may record this meeting for live and/or subsequent broadcast on the Council's website at <http://www.wiltshire.public-i.tv>. At the start of the meeting, the Chairman will confirm if all or part of the meeting is being recorded. The images and sound recordings may also be used for training purposes within the Council.

By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and/or training purposes.

The meeting may also be recorded by the press or members of the public.

Any person or organisation choosing to film, record or broadcast any meeting of the Council, its Cabinet or committees is responsible for any claims or other liability resulting from them so doing and by choosing to film, record or broadcast proceedings they accept that they are required to indemnify the Council, its members and officers in relation to any such claims or liabilities.

Details of the Council's Guidance on the Recording and Webcasting of Meetings is available on the Council's website along with this agenda and available on request.

If you have any queries please contact Democratic Services using the contact details above.

AGENDA

Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 26*)

To approve and sign as a correct record the minutes of the meeting held on Thursday 12 January 2017.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register by phone, email or in person no later than 5.50pm on the day of the meeting.

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

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Thursday 26 January 2017** in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on **Monday 30 January 2017**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6 **Rights of Way - Donhead St Andrew, Path No. 27** *(Pages 27 - 204)*

To consider objections received to the making of "The Wiltshire Council (Parish of Donhead St Andrew) Path No. 27 Definitive Map and Statement Modification Order 2016", under Section 53 of the Wildlife and Countryside Act 1981.

The Committee is asked to consider the recommendation that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

7 **Planning Appeals and Updates** *(Pages 205 - 206)*

To receive details of completed and pending appeals and other updates as appropriate for the period of 20/12/2016 to 19/01/2017.

8 **Planning Applications**

To consider and determine planning applications in the attached schedule.

8a **16/08981/FUL - Toll Cottage, Towns End, Wylve, BA12 0RZ**

Erection of a single storey side extension.

8b **16/04956/FUL - Longacre Farm, Figsbury, Salisbury, SP4 6DT**

Proposed construction of agricultural trackway, pole barn for hen house, service link building, pole barn for rearing shed and feed bins, along with temporary stationing of mobile home, all in connection with free range egg production flock, with associated works.

9

Urgent Items

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

This page is intentionally left blank

SOUTHERN AREA PLANNING COMMITTEE

MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 12 JANUARY 2017 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU.

Present:

Cllr Fred Westmoreland (Chairman), Cllr Christopher Devine (Vice Chairman), Cllr Richard Clewer, Cllr Brian Dalton, Cllr Jose Green, Cllr Mike Hewitt, Cllr George Jeans, Cllr Ian Tomes and Cllr Ian West

Also Present:

Cllr Peter Edge

108 Apologies

Apologies were received from:

- Cllr Richard Britton
- Cllr Ian McLennan

109 Minutes of the Previous Meeting

The minutes of the meeting held on Thursday 3 November 2016 were presented.

Resolved:

To approve as a correct record and sign the minutes.

110 Declarations of Interest

Councillor George Jeans declared a non-pecuniary interest in relation to item 9f S/2003/1016 - due to him sitting on the Western Area Committee of Salisbury District Council when the application had first come for consideration. He stated that he would look at it with a fresh mind.

111 Chairman's Announcements

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

112 **Public Participation**

The committee noted the rules on public participation.

113 **Village Design Statement - Steeple Langford**

The Committee considered the contents of the Village Design Statement (VDS) for Steeple Langford.

The Committee noted that Steeple Langford and all involved in the work should be commended for the VDS.

The Chairman proposed the Committee support the VDS going forward as a material consideration. This was seconded by Cllr Hewitt.

Resolved

The Southern Area Planning Committee endorsed the Steeple Langford Village Design Statement as a material consideration for future planning applications.

114 **Rights of Way - Durnford Paths 8, 25 and 26**

Public Participation

Nick Gallop spoke in Support to the Application

Fiona Curtis spoke in Support of the Application

The Rights of Way Officer presented the report including one representation and one objection received to the making of The Wiltshire Council Durnford Paths 8, 25 and 26 Rights of Way Modification Order 2016 made under Section 53 of the Wildlife and Countryside Act 1981.

The Committee then had the opportunity to ask technical questions of the Officer, of which there were none.

Members of the public then had the opportunity to present their views as detailed above.

The Unitary Division Member, Councillor Hewitt noted that the report showed evidence that the paths had been used for several years.

Cllr Hewitt proposed Support in line with Officer's recommendation; this was seconded by Cllr Devine.

Resolved

The Southern Area Planning Committee Approved the recommendation that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination and that Wiltshire Council supports the confirmation of the Order as made.

115 Planning Appeals and Updates

The Committee received details of the appeal decisions as detailed in the report attached to the agenda, for the period 21/10/2016 to 20/12/2016.

Resolved

That the report be received and noted.

116 Planning Applications

117 14/01986/FUL The White Hart, St John Street, Salisbury, SP1 2SD

Public Participation

Cecile Gemmell spoke in objection to the Application

Carina Birt spoke in objection to the Application

Katie Brown (Agent) spoke in Support of the Application

The Senior Planning Officer drew attention to late correspondence circulated at the meeting and introduced the application for alterations and extensions to existing rear extension/courtyard, buildings, to provide function rooms, entrance, and 28 guest, bedrooms. Internal changes and refurbishment, with, enhancement of existing parking area. A site visit had taken place earlier in the day.

It was noted that the Building was a grade II style listed building in a conservation area. Another scheme back in 2002 had been refused, however that had been for a much more substantial extension.

In 2013 a more contemporary style scheme was withdrawn following responses from some consultations. Since then the applicants had reviewed and revised the scheme and presented the proposed.

The application was recommended for APPROVAL subject to conditions.

The Committee then had the opportunity to ask technical questions of the Officer, it was noted that new fire escapes were included. There were no details on which type of glass would be used in the glazed stairwell.

The Parking Statement submitted detailed that 53 spaces would be provided. The addition of a function room to the site was new, as there had only previously been a meeting room. No comments had been submitted by Salisbury City Council (SCC).

Members of the public then had the opportunity to present their views as detailed above.

The Unitary Division Member, Councillor Tomes pointed out the visual differences between the front of the building to the rear extension built in the 1970's. He noted that the proposal was more suited to other locations outside of Salisbury and its historic environment.

He felt that the proposed extension was not suited in a conservation area; next to a grade II listed building.

With an additional 28 bedrooms and losing 23 car parking spaces, the addition of the extra guests using the function rooms would increase the number of people needing to park. The nearby car park in Brown Street, was a short stay and there were rarely many free spaces.

Noise was an issue to consider, as with the function rooms, this would bring a larger mass of people even closer to the neighbouring residents, adding to the amount of people coming and going, increasing the noise disturbance taking place. The noise management plan would be forgotten in time, windows would still be left open allowing noise to escape.

Cllr Tomes proposed REFUSAL against Officer's recommendation for the following reasons:

- Noise and amenity (related to the function rooms and increased operations of the hotel in close proximity to dwellings, dominance and overlooking of adjacent properties).
- Parking – based on the loss of parking and increase in bedroom numbers.
- Heritage Impact – on listed building and conservation area due to the poor design

This was seconded by Cllr West

The Committee discussed the application noting that the lack of input from SCC Planning Committee was unfortunate. The impact of noise on the houses in close proximity to the extension would be quite substantial. The Committee felt that covering the 1970's extension with a more pleasing design had its merits;

however the proposed design was considered by some, not to be appropriate for the conservation area.

The Neighbouring houses back gardens would sit a meter below the car park, so the proposed extension would be over bearing to those gardens.

The function rooms cause a noise issue, as they are pushed away from hotel and towards the neighbouring homes.

Resolved

That application 14/01986/FUL be REFUSED against Officers recommendation, for the following reasons:

- 1. The White Hart is a substantial Grade II* listed building located at the heart of the Conservation Area of the historic city of Salisbury and forms a significant part of one of the historic Chequers of the mediaeval settlement. The Planning (Listed Building and Conservation Areas) Act 1990 (Sections 16 & 66) places a statutory duty on the local planning authority for 'special regard' to be given to the desirability of preserving the special interest of listed buildings and their settings. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also places a statutory duty on the local planning authority that 'special attention' shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The proposed extension to the hotel would result in a further substantial and bulky addition to the original listed building with an uncharacteristic roof form, including an upward extension to the later 1970s block. It is considered that the built form and design of the proposed development would be unsympathetic to the character and setting of the main listed building, would have a negative impact on the setting of the nearby listed buildings and would adversely affect the character and appearance of the Conservation Area. As such, the scheme as submitted is considered to be contrary to Core Policies CP57 and CP58 of the adopted Wiltshire Core Strategy (January 2015); guidance within the PPG and NPPF; and the duty placed on the Council under Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed building and to pay special attention to the desirability of preserving the character and appearance of the Conservation Area. Having regard to advice in Section 12 of the NPPF (in particular paragraphs 131-135) it is considered that the public benefits of the proposal would not outweigh the resultant harm identified above.**
- 2. The significant bulk and scale of the proposed development would result in a dominant impact on the outlook of surrounding**

properties in close proximity to the site together with increased levels of overlooking. The proposed expansion of the hotel would also result in an intensification of use of the site with a likely increase in noise and disturbance; in particular that associated with the use of the function rooms, car park and rear service area. As such, it is considered that the proposal would have an adverse impact on the living conditions and amenities for the occupants of surrounding properties (in particular those properties 2- 12 Ivy Street, 82-102 Brown Street and 3-5 St Johns Street in close juxtaposition with site boundary and proposed extensions) contrary to Core Policy 57 of the adopted Wiltshire Core Strategy.

3. The proposed development would result in a significant increase in hotel floorspace, including 2 function rooms and 28 additional guest bedrooms, whilst there would be an overall reduction in the current level of on-site parking available to the hotel. Having regard to Core Policy 64 of the adopted Wiltshire Core Strategy and the aims and objectives of the Wiltshire Local Transport Plan, it is considered that the proposed reduction in the level of on-site parking for the resultant development would be inappropriate; where in this busy trafficked location there is pressure on the existing restricted level of on-street parking in the surrounding area; and where it is considered there are no overriding design, conservation and or amenity benefits resulting from the proposed scheme that would outweigh the harm from the significant shortfall in on-site parking provision in this case.

118 14/01990/LBC The White Hart, St John Street, Salisbury, SP1 2SD

The presentation and discussion relating to this application was included with the previous application on the agenda - 14/01986/FUL.

The chairman; Cllr Westmoreland moved REFUSAL against Officer's recommendation for the following reasons:

- Noise and amenity (related to the function rooms and increased operations of the hotel in close proximity to dwellings, dominance and overlooking of adjacent properties)
- Parking – based on the loss of parking and increase in bedroom numbers
- Heritage Impact – on listed building and conservation area due to the poor design

This was seconded by Cllr Devine.

Resolved

That application 14/01990/LBC be REFUSED for the following reasons:

- 4. The White Hart is a substantial Grade II* listed building located at the heart of the Conservation Area of the historic city of Salisbury and forms a significant part of one of the historic Chequers of the mediaeval settlement. The Planning (Listed Building and Conservation Areas) Act 1990 (Sections 16 & 66) places a statutory duty on the local planning authority for 'special regard' to be given to the desirability of preserving the special interest of listed buildings and their settings. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also places a statutory duty on the local planning authority that 'special attention' shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The proposed extension to the hotel would result in a further substantial and bulky addition to the original listed building with an uncharacteristic roof form, including an upward extension to the later 1970s block. It is considered that the built form and design of the proposed development would be unsympathetic to the character and setting of the main listed building, would have a negative impact on the setting of the nearby listed buildings and would adversely affect the character and appearance of the Conservation Area. As such, the scheme as submitted is considered to be contrary to Core Policies CP57 and CP58 of the adopted Wiltshire Core Strategy (January 2015); guidance within the PPG and NPPF; and the duty placed on the Council under Sections 16 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed building and to pay special attention to the desirability of preserving the character and appearance of the Conservation Area. Having regard to advice in Section 12 of the NPPF (in particular paragraphs 131-135) it is considered that the public benefits of the proposal would not outweigh the resultant harm identified above.**

118: 16/09228/FUL Land at the rear of 82 Britford Lane, Harnham, Salisbury, SP2 8AJ

Public Participation

Andrew James spoke in objection to the Application

Roger Pragnell spoke in objection to the Application

Richard Harvey (Applicant) spoke in Support of the Application

The Senior Planning Officer drew attention to the late correspondence circulated at the meeting and introduced the application for the proposed development of two detached chalet dwellings and garages. The application was recommended for Approval subject to conditions. It was noted that an application for 9 dwellings on an adjoining site had been approved the previous year.

The Committee then had the opportunity to ask technical questions of the Officer, it was noted that there were no affordable housing contributions because the proposal did not require section 106 contributions.

Members of the public then had the opportunity to present their views as detailed above.

The Unitary Division Member, Councillor Tomes noted that he understood why the applicant wanted to develop their land, however there had been objections from several residents and SCC on the grounds of overdevelopment.

Cllr Tomes proposed REFUSAL against Officer's recommendation on the grounds of Overdevelopment.

This was seconded by Cllr Brian Dalton.

The Committee discussed the application, noting that the nursery development next to the site had already put in a lot of backfill. In comparison to the other plots around the site, this proposal did not equate to overdevelopment and therefore from a planning point of view the application could not be refused on those grounds. It was felt that the proposal was an extension to a reasonable sized development that has already been allowed.

The motion to REFUSE was not carried.

The Chairman; Cllr Westmoreland then moved the motion of APPROVAL in line with Officer's recommendation. This was seconded by Cllr Devine.

Resolved

That application 16/09228/FUL be APPROVED in line with Officer's recommendation, subject to conditions:

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

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

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

Arboricultural Impact Assessment and Method Statement dated 19/09/2016, including Tree Protection Plan GH1652b, received by this office 21/09/2016

Plan Reference: P16-065 02-02-003, dated August 2016, received by

this office 21/09/2016

Plan Reference: P16-065 02-03-001, dated August 2016, received by this office 21/09/2016

Plan Reference: P16-065 02-03-002, dated August 2016, received by this office 21/09/2016

Plan Reference: P16-065 02-05-001, dated August 2016, received by this office 21/09/2016

Plan Reference: P16-065 02-05-002, dated August 2016, received by this office 21/09/2016

Plan Reference: P16-065 02-02-002A, dated 07/11/2016, received by this office 11/11/2016

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

(3) No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

(4) No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until surface drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

(5) No development shall commence within the area indicated (proposed development site) until:

- A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and**
- The approved programme of archaeological work has been carried out in accordance with the approved details.**

REASON: To enable the recording of any matters of archaeological interest.

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

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment has been carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

REASON: The site includes the adjacent former Nursery Site and this condition is necessary to ensure that land contamination can be dealt with adequately prior to the use of the site hereby approved.

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

REASON: To ensure that the site access is laid out and constructed in a satisfactory manner.

(8) No part of the development hereby permitted shall be first occupied until the access and vehicle turning area has been completed in accordance with the details shown on the approved plans. These areas shall be maintained for these purposes at all times thereafter.

REASON: In the interests of highway safety.

(9) The dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

REASON: To ensure that the objectives of sustainable development equal or equivalent to those set out in Policy CP41 of the Wiltshire Core Strategy are achieved.

(10) No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.

REASON: In the interests of amenity.

(11) The development shall be completed in accordance with the Arboricultural Impact Assessment and Method Statement dated 19/09/2016, including Tree Protection Plan GH1652b, received by this office 21/09/2016.

REASON: To enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

(12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

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

(13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or the Town and Country Planning Act 1990 (or any Order revoking and re-enacting that Order with or without modification), there shall be no additional windows, rooflights or dormer windows inserted above ground floor level in the

roofslopes or gable ends of the dwellings.

REASON: To secure adequate standards of privacy for the occupants of neighbouring premises.

INFORMATIVE: Private Property/Access Rights

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

The applicant is advised to consider the third party comments re private rights and the developers should satisfy themselves/resolve matters before development commences.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT: Community Infrastructure Levy

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

INFORMATIVE TO APPLICANT: Archaeology work

The work should be conducted by a professionally recognised archaeological contractor in accordance with a written scheme of investigation approved by this office and there will be a financial implication for the applicant.

INFORMATIVE TO APPLICANT: Dorset & Wiltshire Fire & Rescue

The applicant should be made aware of the letter received from Dorset

& Wiltshire Fire & Rescue Service regarding advice on fire safety measures. This letter can be found on the application file which can be viewed on the council's website against the relevant application record.

INFORMATIVE TO APPLICANT:

No burning of waste or other materials should take place on the development site during the demolition/construction phase of the development.

119 16/09446/FUL Mayfield, White Way. Pitton, SP5 1DT

Public Participation

James Mardon spoke in Support to the Application

Chris Juhkental (Applicant) spoke in Support of the Application

Cllr Rod Coppock – Chair of Pitton PC spoke in Objection to the Application

The Planning Officer introduced the application for Rear extension and raise roof to provide rooms within roof space. The application was recommended for approval with conditions.

The site was adjacent to a conservation area, in an adopted core policy housing boundary area.

Planning permission had been granted in March last year for a two storey dwelling next door, for a property named Journey's End.

A site visit had taken place earlier that day.

The Committee then had the opportunity to ask technical questions of the Officer, it was noted that the development at the neighbouring property named Journeys End would be built on the existing footprint.

Members of the public then had the opportunity to present their views as detailed above.

The Unitary Division Member, Councillor Devine thanked Chairman of Pitton parish council for coming to present their views. He noted that Pitton was a unique village which had not been overrun by development of its bungalows.

He felt the parking situation was not sufficient, as having three spaces in a line was not practical in that section of the village. He suggested that the applicant listen to neighbours and bring back a proposal more in keeping with the village.

Cllr Devine proposed refusal against Officer's recommendation on the grounds of the inappropriate parking arrangement. This was seconded by Cllr West.

The Committee discussed the application, noting that the proposed parking arrangements were unrealistic, as to juggle cars out on to a busy road was not practical, as it sits on the narrowest point of the road. Officers should have a proper plan on how parking would work on the site.

The proposed development was approximately 80% larger than the original property. From a planning point of view there were already other properties along the road which were two storeys, with Journeys End about to become 1.5 storeys, so to say that a chalet bungalows did not fit here was not valid.

There was room for an extension on this bungalow; however something would need to be worked out in terms of parking. And a condition could be put in to request this.

The motion for REFUSAL was not carried.

The Chairman Cllr Westmoreland then moved APPROVAL subject to the addition of a condition to request a revised Parking Plan which would incorporate room for parking and turning in front of the property to allow vehicle to leave in a forward direction. This was seconded by Cllr Hewitt.

Resolved

That application 16/09446/FUL be APPROVED as per Officer's recommendation with the following conditions:

The submission of a revised Parking Plan; which would incorporate room for parking and turning in front of the property to allow vehicles to leave in a forward direction, to be approved by Highways.

120 **16/05643/FUL Land to the rear of 22-30 High Street (The Old Garden Centre) and 98 Crane Street, Salisbury**

Public Participation

Margaret Reese spoke in Objection to the Application

John Collins spoke in Objection to the Application

Dan O'Boyle spoke in objection to the Application

Philip Villars (Agent) spoke in support of the Application

The Senior Planning Officer introduced the application for Change of use of existing retail unit/storage for restaurant use, extensions, landscaping and public access onto Avon riverside path and servicing access. The application was recommended for Approval with conditions.

The site was in a conservation area and secondary shopping area.

The Committee then had the opportunity to ask technical questions of the Officer, it was noted that the vehicular entrance would be located on Crane Street, via a gated building, which was next to a protected wall. The conditions in the report included the inclusion of a scheme for safety bollards to protect the wall and the buildings either side.

Riverside walk was partly owned by the applicant and partly by SCC, which had indicated support for the proposals.

Members of the public then had the opportunity to present their views as detailed above.

The Unitary Division Member, Councillor Hoque was not in attendance

The Chairman; Cllr Westmoreland proposed approval in line with Officer's recommendation. This was seconded by Cllr Devine.

The Committee discussed the application, noting that this part of the river front was a missed opportunity for development. However the vehicular access on Crane Street presented issues. Deliveries would either block the road or have difficulty turning in at that point of the narrowing road. The pedestrian path also crossed the route and vehicles using the access would not be able to see people using the path until they had driven out across it.

The site was a derelict site in the city centre, ripe for development, however the entrance on Crane Street did not work.

The motion for APPROVAL was not carried.

Cllr Clewer then moved REFUSAL against Officer's recommendation for the following reasons:

- Poor design of the proposed building and access onto Crane Street, and the subsequent impact on the area, contrary to CP57 & 58.

Resolved

That application 16/05643/FUL be REFUSED against Officer's recommendation; for the following reasons:

- **Poor design of the proposed building and access onto Crane Street, and the subsequent impact on the area, contrary to CP57 & 58.**

121 **S/2003/1016 - E V Naish Ltd, Crow Lane, Wilton, SP2 0HD**

Public Participation

Mark Blackburn spoke in Objection to the Application

David Von Zeffman spoke in Objection to the Application

Keith Crockett spoke in Objection to the Application

Gavin Hall spoke in Support of the Application
Geoff Naish spoke in Support of the Application
Cllr Trevor Batchelder spoke from Wilton Town Council, in Objection to the Application.

The Senior Planning Officer drew attention to late correspondence circulated at the meeting and introduced the application for Demolition of Existing Buildings to Facilitate the Mixed Use Development of the Site to Provide 61 Residential Units, Two Commercial Units of B1 Use, One Retail Unit, and Associated Car Parking. The application was recommended for Approval.

There were two current access points to the site. One of which was not currently used by the owner.

As the development was subject to a feasibility study, the elements up for consideration at the meeting were the access and the number of dwellings.

A site visit had taken place earlier that day.

The Committee then had the opportunity to ask technical questions of the Officer, it was noted there was no affordable housing was offered by the applicant as part of the scheme. The applicant wanted to know whether they would get permission for the scheme before he carried out a feasibility study.

Affordable housing was separate to CIL and it would be possible to ask for an education contribution. The Education authority would want some from this development.

Members of the public then had the opportunity to present their views as detailed above.

The Unitary Division Member, Councillor Edge noted that he called the application in because of the impact on the centre of Wilton. He was disappointed to see the old building was due to be removed. However the continuation of industrial use on this site was not viable.

The Crow lane access was often hit by large lorries, causing damage to buildings either side. In his view, the development would ease traffic congestion. He noted that access from the C&O tractor site was due to come available in the near future, this could be considered as an alternative.

He confirmed that emergency vehicles could currently access the site and would still be able to in the future.

A Flood protection investigation has been worked on and there had been lots of negotiations on putting forward a proposal.

The Old coach works was next to a listed building on the site, any development would need to maintain some access for that resident. He asked the Committee to move approval with conditions.

Cllr Fred proposed Approval in line with Officer's recommendation. This was seconded by Cllr Hewitt.

The Committee discussed the application, noting that the site was not suitable for industrial use any longer. The applicant intended to move the business to another site where the existing staff could be taken on.

There were access problems due to the narrow width of Crow Lane and North Street.

This site was ripe for development; however the Committee felt that an affordable housing allocation should be included. There was also no public transport contribution and flooding was also a consideration which it was thought could be addressed.

It was noted that SSSI had not been ignored, and was included in the report.

If the agreement could not be reached on the viability in 6 months then the development would be refused.

The motion for APPROVAL was not carried.

Cllr Devine moved the motion for REFUSAL against Officer's recommendation for the reasons as set out in the decision below.

This was seconded by Cllr Tomes.

Resolved

That application S/2003/1016 was REFUSED against Officer's recommendation for the following reasons:

- 1. The precautionary approach adopted by The National Planning Policy Framework is that the overall aim of decision-makers should be to steer new development to Flood Zone 1 and a 'Sequential Test' must be undertaken to see whether there are alternative lower risk sites that could accommodate the development. The proposal is for a 'more vulnerable' form of development proposed within Flood Zone 2/3. The NPPF makes clear that such development should be located in Flood Zone 1 unless it can be demonstrated that no such sites are available.
The council can demonstrate that there is a readily available and deliverable 5-year supply of housing land in Flood Zone 1, the zone of least risk, within the Local Planning Authority area to meet the housing development needs of the area. South Wiltshire has 5.69**

years of deliverable housing land supply and therefore there is no urgent or immediate need for further housing to be permitted on this site to meet strategic requirements.

The applicant has not demonstrated that the site should be brought forward for housing development ahead of other sites in Flood Zone 1. The proposal would

therefore represent an unacceptable form of development with particular regard to its flood zone location, the flood vulnerability of the residential development and the sequential test of the NPPF, NPPG and contrary to Core Policy 67 of the Wiltshire Core Strategy.

- 2. The applicant has provided a viability assessment dated the 7th April 2016 which outlines the applicants case that the proposed development is not considered to be viable to provide the required contributions for affordable housing and other infrastructure contributions. The local planning authority's assessment of this document indicates that there is scope to provide some contributions towards infrastructure requirements associated with the site.**

Therefore the proposed development, does not make provision for 40% affordable housing on site as required by core policy 43 of the Adopted Wiltshire Core strategy nor does it make provision for other infrastructure requirements including contributions towards the cost of a traffic regulations order to control parking on the estate, Education contributions towards primary and secondary school education in the area, on site public art contribution or contribution towards waste and recycling as required by core policy 3 of the adopted Wiltshire Core strategy.

- 3. The site is located in the historic market town of Wilton and will be served by several narrow access roads. The development would result in significant traffic generation which would utilise the existing access points. Traffic generated by this residential development is likely to result in 24 hour use of the site on an ad hoc basis by residents to the detriment of the amenity of neighbouring residential properties situated on these access roads, as such the proposal is considered to be contrary to policy CP57 (vii) of the Wiltshire Core strategy.**

121: 16/07192/FUL - E V Naish Ltd, Crow Lane, Wilton, SP2 0HD

The presentation and discussion relating to this application was included with the previous application on the agenda – S/2003/1016.

The Chairman moved Officer's recommendation for APPROVAL in line with Officer's recommendation; this was seconded by Cllr Hewitt.

The motion was not carried.

Cllr Devine moved the motion for REFUSAL against Officer's recommendation for the reasons as set out in the decision below.

This was seconded by Cllr Tomes.

Resolved

That application 16/07192/FUL was REFUSED against Officer's recommendation for the following reasons:

- 4. The precautionary approach adopted by The National Planning Policy Framework is that the overall aim of decision-makers should be to steer new development to Flood Zone 1 and a 'Sequential Test' must be undertaken to see whether there are alternative lower risk sites that could accommodate the development. The proposal is for a 'more vulnerable' form of development proposed within Flood Zone 2/3. The NPPF makes clear that such development should be located in Flood Zone 1 unless it can be demonstrated that no such sites are available. The council can demonstrate that there is a readily available and deliverable 5-year supply of housing land in Flood Zone 1, the zone of least risk, within the Local Planning Authority area to meet the housing development needs of the area. South Wiltshire has 5.69 years of deliverable housing land supply and therefore there is no urgent or immediate need for further housing to be permitted on this site to meet strategic requirements. The applicant has not demonstrated that the site should be brought forward for housing development ahead of other sites in Flood Zone 1. The proposal would therefore represent an unacceptable form of development with particular regard to its flood zone location, the flood vulnerability of the residential development and the sequential test of the NPPF, NPPG and contrary to Core Policy 67 of the Wiltshire Core Strategy.**
- 5. The applicant has provided a viability assessment dated the 7th April 2016 which outlines the applicants case that the proposed development is not considered to be viable to provide the required contributions for affordable housing and other infrastructure contributions. The local planning authority's assessment of this document indicates that there is scope to provide some contributions towards infrastructure requirements associated with the site. Therefore the proposed development, does not make provision**

for 40% affordable housing on site as required by core policy 43 of the Adopted Wiltshire Core strategy nor does it make provision for other infrastructure requirements including contributions towards the cost of a traffic regulations order to control parking on the estate, Education contributions towards primary and secondary school education in the area, on site public art contribution or contribution towards waste and recycling as required by core policy 3 of the adopted Wiltshire Core strategy.

6. The site is located in the historic market town of Wilton and will be served by several narrow access roads. The development would result in significant traffic generation which would utilise the existing access points. Traffic generated by this residential development is likely to result in 24 hour use of the site on an ad hoc basis by residents to the detriment of the amenity of neighbouring residential properties situated on these access roads, as such the proposal is considered to be contrary to policy CP57 (vii) of the Wiltshire Core strategy.

122 Urgent Items

There were no urgent items

(Duration of meeting: 6.00 - 11.16 pm)

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

Press enquiries to Communications, direct line (01225) 713114/713115

WILTSHIRE COUNCIL

AGENDA ITEM NO.6

SOUTHERN AREA PLANNING COMMITTEE

2 FEBRUARY 2017

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

**THE WILTSHIRE COUNCIL (PARISH OF DONHEAD ST ANDREW) PATH NO. 27
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2016**

Purpose of Report

1. To:
 - (i) Consider objections received to the making of “The Wiltshire Council (Parish of Donhead St Andrew) Path No. 27 Definitive Map and Statement Modification Order 2016”, under Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to the Council’s Business Plan

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

Background

3. Wiltshire Council received an application dated 15 May 2015 and made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Donhead St Andrew. The application is made by Donhead St Andrew Parish Council on the grounds that public footpath rights can be reasonably alleged to subsist, or subsist over the claimed route, based on user evidence and some documentary evidence and should be recorded within the definitive map and statement of public rights of way, as such.

4. The claimed route is located in the parish of Donhead St Andrew which lies between Shaftesbury (Dorset) to the west and Salisbury to the east (please see location plan at **Appendix A**). The claimed route crosses a field known as the Mansfield, to the east of Beauchamp House and forms a link between two recorded footpaths and two former mills, (Kelloways Mill and a mill formerly known as Ricketts Mill). The claimed route leads generally north-east, following the eastern field boundary, from its junction with Footpath No. 4 Donhead St Andrew, crossing the fence line via a stile and then continuing to its junction with Footpath No. 5. The surface of the route is laid to grass.
5. The northern and central parts of the claimed route lead over land in the ownership of Wardour Ltd (Mrs Anne Shaw and Mr Colin Shaw), who have owned this land since 2012 and the southern part of the route passes over land in the ownership of Mr and Mrs Shepherd (landowners since 2011).
6. Wiltshire Council undertook an initial consultation regarding the proposals on 8 September 2015. The objections and representations received are summarised at Appendix 1 of the decision report attached to this report at **Appendix B**.
7. Following its investigation of all the available evidence, Officers of Wiltshire Council produced a decision report in which a recommendation was made to Senior Officers that a footpath should be added to the definitive map and statement of public rights of way, on the grounds that a right for the public on foot can be reasonably alleged to subsist (please see decision report at **Appendix B**). Senior Officers approved this recommendation on 22 July 2016.
8. Wiltshire Council subsequently made a definitive map modification order to add the claimed footpath to the definitive map and statement of public rights of way, as Footpath No. 27 Donhead St Andrew (please see definitive map modification order at **Appendix C**). Notice of the making of the Order was duly advertised, served on interested parties (including landowners) and posted on site.
9. Following the making of the Order, Wiltshire Council received nine objections to the making of the Order, as follows:
 - (1) Marcus and Johanna Shepherd – e-mail correspondence dated 7 October 2016
 - (2) Claire Macdonald – e-mail correspondence dated 9 October 2016
 - (3) David Pitman – correspondence dated 10 October 2016
 - (4) John Graham – correspondence dated 12 October 2016
 - (5) Paul Farrant – e-mail correspondence dated 12 October 2016

- (6) H R Graham – correspondence dated 12 October 2016
- (7) Anne and Colin Shaw – correspondence dated 14 October 2016
- (8) Margaret Pitman – e-mail correspondence dated 15 October 2016
- (9) John Barton – e-mail correspondence dated 15 October 2016

The objections and representations are included in full at **Appendix D** and Officers comments on the objections are included at **Appendix E**.

10. Due to the objections outstanding, the Order now falls to be determined by the Secretary of State for the Environment, Food and Rural Affairs. Members of the Committee are therefore respectfully requested to consider the objections and representations received against the evidence already before the Council in this case and the legal tests for making a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981 and Section 31 of the Highways Act 1980, in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for determination.

Main Considerations for the Council

11. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review. The requirements of this section of the Act and Section 31 of the Highways Act 1980, which refers to the dedication of a way as a highway presumed after public user of 20 years, are outlined at part 8 (pages 10–14) of the decision report attached at **Appendix B**.
12. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:

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

 - (i) *that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”*
13. Evidence is the key and therefore valid objections to the making of the Order must challenge the evidence available to the Surveying Authority. The Authority is not able to take into account other considerations, such as the suitability of the way for use by the public, environmental impacts and the need for the claimed route.

Comments on the Objections

14. The Officers comments on the objections are included in full at **Appendix E**. It is considered that in this case, the objections do not contain sufficient counter evidence which would lead Officers to reconsider their interpretation of the evidence and their determination of the application.
15. In this case, however, there are some points of conflicting evidence and the Order has been made only on a reasonable allegation that public rights for the public, on foot, subsist over the order route. The case of *R v Secretary of State for the Environment, ex p. Bagshaw and Norton, Queen's Bench Division (Owen J.): April 28, 1994*, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective County Councils for Orders to add public rights of way to the definitive maps and statements, based upon witness evidence of at least 20 years uninterrupted public user, where the Councils determined not to make Orders. On appeal, in both cases, the Secretary of State considered that he should not direct the Councils to make the Orders. At judicial review, Owen J allowed both applications; quashed the Secretary of State's decisions and held that:

“(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”

16. Owen J also held that:

“(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”

17. It is notable in the Norton case that, the Secretary of State “...notes that the user evidence submitted in support of a presumption of dedication is limited to four persons claiming 20 years of vehicular use as of right; he must weigh this against the statements from the landowner, supported by 115 signed forms and the Layham and Polstead Parish Councils, indicating the use of the route has been on a permissive basis and that active steps to prevent a presumption of dedication arising have been taken...”. Parallels may be drawn between the conflict of evidence in the Norton case and the Donhead St Andrew case. In both the Norton and Bagshaw cases Owen J concluded that:

“If, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, an order would seem likely to be appropriate.”

18. Therefore, in such a case concerning the balancing test to be applied to the evidence, the authority is correct in making the Order on the grounds that it is reasonable to allege that a right of way for the public on foot subsists. Where the objectors have not submitted sufficient evidence that would lead Officers to reconsider their interpretation of the evidence and their determination of the application, the Committee should resolve to support the making of the Order and recommend to the Secretary of State that the Order be confirmed without modification. The only way to properly determine the Order is to see the witnesses at a public inquiry where they may give evidence in chief and their evidence may be tested through the process of cross-examination.

Overview and Scrutiny Engagement

19. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981.

Safeguarding Considerations

20. Considerations relating to safeguarding anyone affected by the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Public Health Implications

21. Considerations relating to the public health implications of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Corporate Procurement Implications

22. Where an Order is forwarded to the Secretary of State for determination, there are a number of opportunities for expenditure to occur and these are covered at paragraphs 26 to 29 of this report.

Environmental and Climate Change Impact of the Proposal

23. Considerations relating to the environmental or climate change impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Equalities Impact of the Proposal

24. Considerations relating to the equalities impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Risk Assessment

25. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error in the definitive map and statement which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to a complaint to the Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

Financial Implications

26. The determination of definitive map modification order applications, and the modifying of the definitive map and statement of public rights of way, accordingly are statutory duties for the Council. Therefore, the costs of processing such Orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
27. Where objections are received to the making of the Order and not withdrawn, the Order falls to be determined by the Secretary of State and cannot simply be withdrawn. The Order will now be determined by an independent Inspector (appointed on behalf of the Secretary of State) by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.

28. Where the case is determined by written representations, the cost to the Council is £200 to £300; however, where a local hearing is held, the costs to the Council are estimated at £300 to £500. A public inquiry could cost between £1,500 and £3,000, if Wiltshire Council supports the Order (i.e. where legal representation is required by the Council) and around £300 to £500 where Wiltshire Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council and the case is presented by the applicant).
29. Where the Council makes an Order to which it receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

Legal Implications

30. Where the Council no longer supports the making of the Order, clear reasons for this must be given, as the applicant may seek judicial review of the Council's decision if it is seen by them to be incorrect or unjust.
31. An Order to which objections have been made is determined by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State (although the Council would be considered by the Court to be an "interested party" in any such proceedings).

Options Considered

32. Members of the Committee should now consider the objections received and the evidence as a whole, in order to determine whether or not Wiltshire Council continues to support the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the Order has been objected to, therefore the Order must now be submitted to the Secretary of State for determination. Members should determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State. The options available to members, having considered the available evidence and the objections received, are as follows:
 - (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on its consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed without modification;

- (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification based on its consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed with modification;
 - (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, on its consideration of the available evidence, in which case the Committee should recommend that the Order is not confirmed with clear reasons for this resolution.
33. Please note that all references to the available evidence above, now includes the submissions made at the formal objection period (please see correspondence at **Appendix D**), as well as the evidence considered within the decision report dated 18 July 2016, (included at **Appendix B**). Members should note that the evidence in full is available to be viewed at Wiltshire Council's Rights of Way Offices, Ascot Court, Trowbridge).

Reason for Proposal

34. The Order has been made on the grounds that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot, subsists.
35. Officers have fully considered the evidence submitted within the objections; however, insufficient evidence has been submitted by the objectors which would lead Officers to amend their determination of the application (comments on the objections are set out in full at **Appendix E**).
36. There is conflicting evidence in this case; however, Officers consider that the Council is correct in making the Order and it should now be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification. Witness evidence may then be presented in chief at the public inquiry and tested through the process of cross-examination.

Proposal

37. That "The Wiltshire Council (Parish of Donhead St Andrew) Path No. 27 Definitive Map and Statement Modification Order 2016", be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author:
Janice Green
Rights of Way Officer

The following unpublished documents have been relied on in the preparation of this report:

Witness evidence
Correspondence received as part of the initial consultation
(The above-mentioned documents are available to be viewed at the offices of Rights of Way and Countryside, Wiltshire Council, Unit 9, Ascot Court, Trowbridge.)

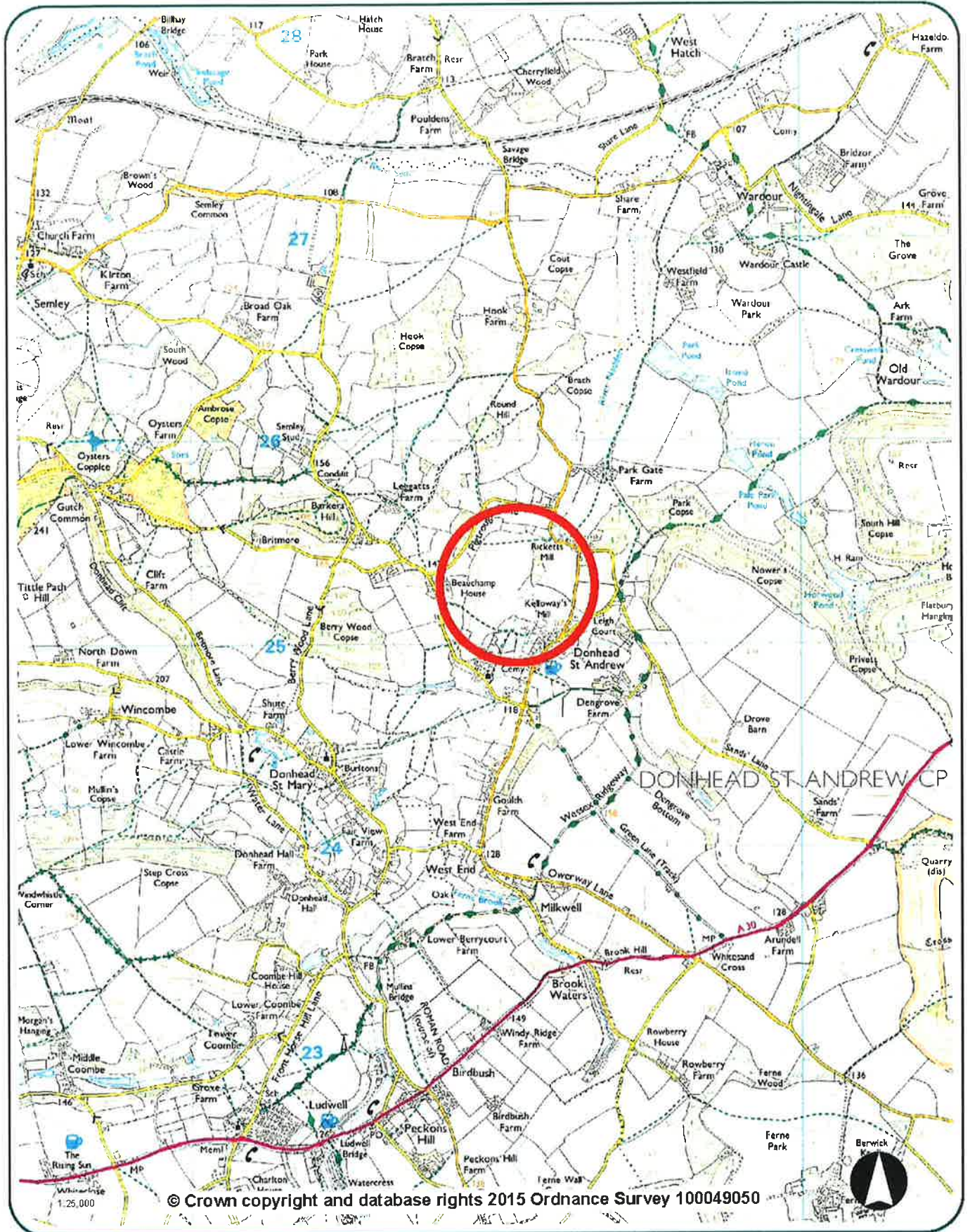
Appendices:

- Appendix A** – Location Plan
- Appendix B** – Decision Report (18 July 2016)
- Appendix C** – “The Wiltshire Council (Parish of Donhead St Andrew) Path No.27 Definitive Map and Statement Modification Order 2016”
- Appendix D** – Correspondence received in the formal objection period
- Appendix E** – Comments on objection

This page is intentionally left blank

APPENDIX A – LOCATION PLAN

Application to Add a Footpath
Donhead St Andrew



This page is intentionally left blank

APPENDIX B – DECISION REPORT (18TH JULY 2016)**COVERING PAGE FOR DECISION REPORT ON APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY – DONHEAD ST ANDREW****PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME**

		Signature	Date Signed Off
To:	Sarah Marshall (Solicitor – Highways)	N/A	N/A
	Barbara Burke (Definitive Map and Highway Records Team Leader)	<i>Barbara Burke</i>	21.7.2016
	Richard Broadhead (Rights of Way and Countryside Manager)	<i>R Broadhead</i>	22.07.2016
	Ian Brown (Head of Environment Services)	<i>Copy for information only RB</i>	
	Tracy Carter (Associate Director – Waste and Environment)	<i>Not required - RB has delegated power</i>	
From:	Janice Green		
Date of report:	18 th July 2016		
Return to:	Janice Green, Rights of Way (Ext. 13345)		

Nature of Report: This is a report from Janice Green (Case Officer) to Tracy Carter (Officer with the relevant delegated powers).

Executive Summary:

Wiltshire Council is in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981 and dated 15th May 2015, to add a footpath to the definitive map and statement of public rights of way, in the parish of Donhead St Andrew. The application is supported by 33 user evidence forms, with maps attached and an extract from the 1901 Ordnance Survey Map, drawn at a scale of 25 inches to 1 mile.

Following an assessment of the evidence, Officers are satisfied, on the balance of probabilities, that a right of way for the public on foot which is not shown in the definitive map and statement, can be reasonably alleged to subsist over the land in question leading between Footpath no.4 and Footpath no.5 Donhead St Andrew, along the eastern boundary of the Mansfield.

It is considered that the public have used the northern section of the claimed route, as of right, for a period of at least 20 years, i.e. during a relevant user period of 8th August 1992 – 8th August 2012 and have acquired a public right on foot over the land.

On 8th August 2012, the new owners of the northern section of the field (Wardour Ltd), lodged with Wiltshire Council a map and statement under Section 31(6) of the Highways Act 1980, which acknowledged existing rights of way over land in their ownership, as recorded within the definitive map and statement of public rights of way, whilst indicating their non-intention to dedicate further public rights of way over the land. This action by the landowners served to bring into question the public right over the land, on the whole of the claimed route.

Additionally there is insufficient evidence of the landowners' non-intention to dedicate the way during the relevant user period of 8th August 1992 – 8th August 2012. Although the new landowners on the northern section of the route (Wardour Ltd) have carried out acts to show their non-intention to dedicate the land as a public right of way, the evidence in this case points towards 20 years public user, as of right, being established prior to 8th August 2012. Although the previous landowner (Mr David Pitman on behalf of the Pitman family), suggests that it was not their intention to dedicate the route as a public highway, i.e. they granted permission to individuals and they always led everyone to believe that it was at the landowners discretion if they walked anywhere else on the field other than on the public footpaths, there is insufficient evidence before the Council of any actions taken by them or the present owner of the southern section of the field, to convey to the public at large their non-intention to dedicate the land as a public highway.

There is insufficient evidence of public user for a 20 year period over the southern section of the route (i.e. over land owned by Mr and Mrs Shepherd). However, Officers consider that the installation of a stile and dog latch by Mr and Mrs Shepherd when the fence was erected at the northern boundary of their land in March 2012, constitutes an act of implied permission under common law. There is evidence that the public have accepted this route by continuing their use, therefore it is considered that the southern section of the route has acquired public footpath rights at common law.

Officer's Recommendation:

That a definitive map modification order be made to add a right of way for the public on foot to the definitive map and statement of public rights of way in the parish of Donhead St Andrew, between Footpath no.4 and Footpath no.5 Donhead St Andrew, having a width of 1.8 metres, where it is reasonably alleged that a right for the public on foot exists. Where an order is made on a reasonable allegation, it may not be confirmed until the more stringent test of the "balance of probabilities" is applied, i.e. it is more likely than not that a right for the public on foot exists. Therefore, where no objections to the making of the order are received, weight is added to the supporting evidence before the Council and it is recommended the order be confirmed, as an unopposed order where no objections are received.

DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY – DONHEAD ST ANDREW

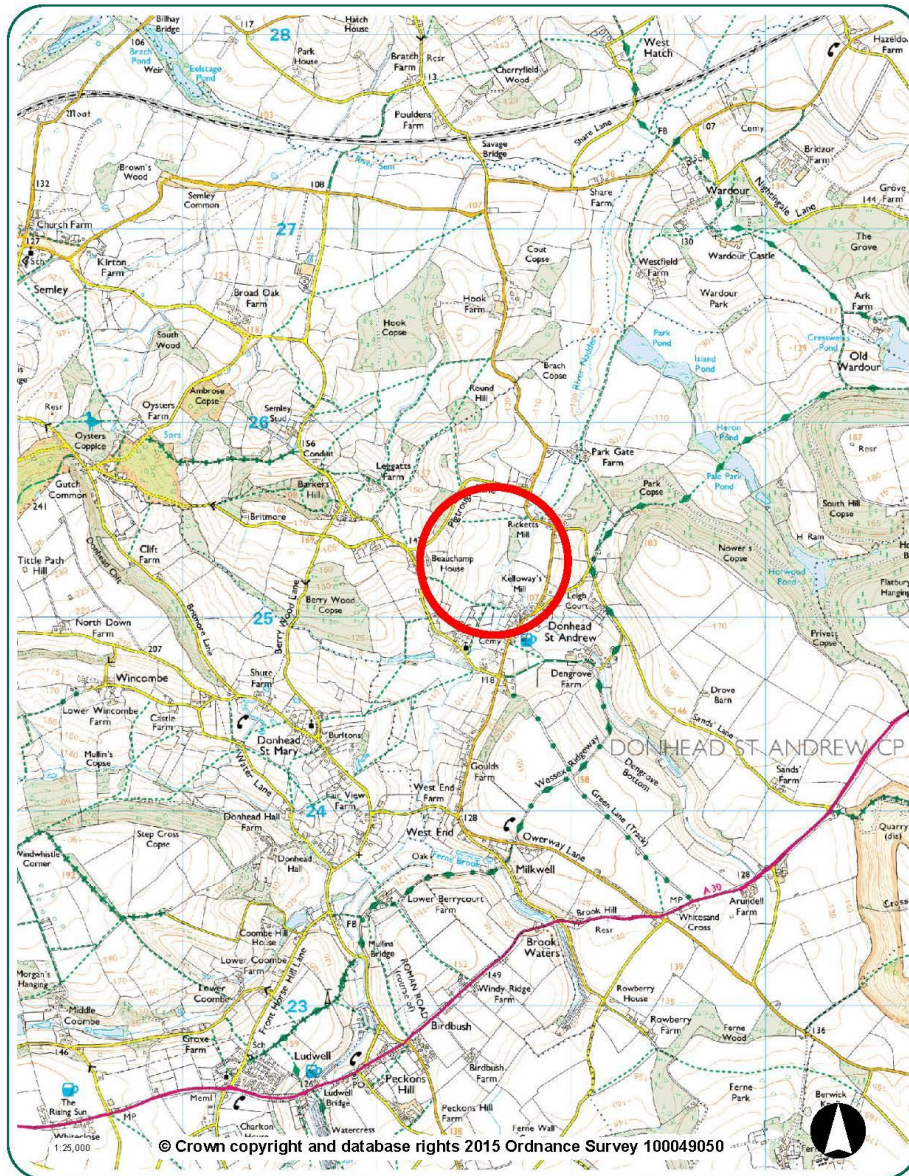
1. Purpose of Report

- 1.1. To determine an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Donhead St Andrew.

2. Relevance to Council's Business Plan

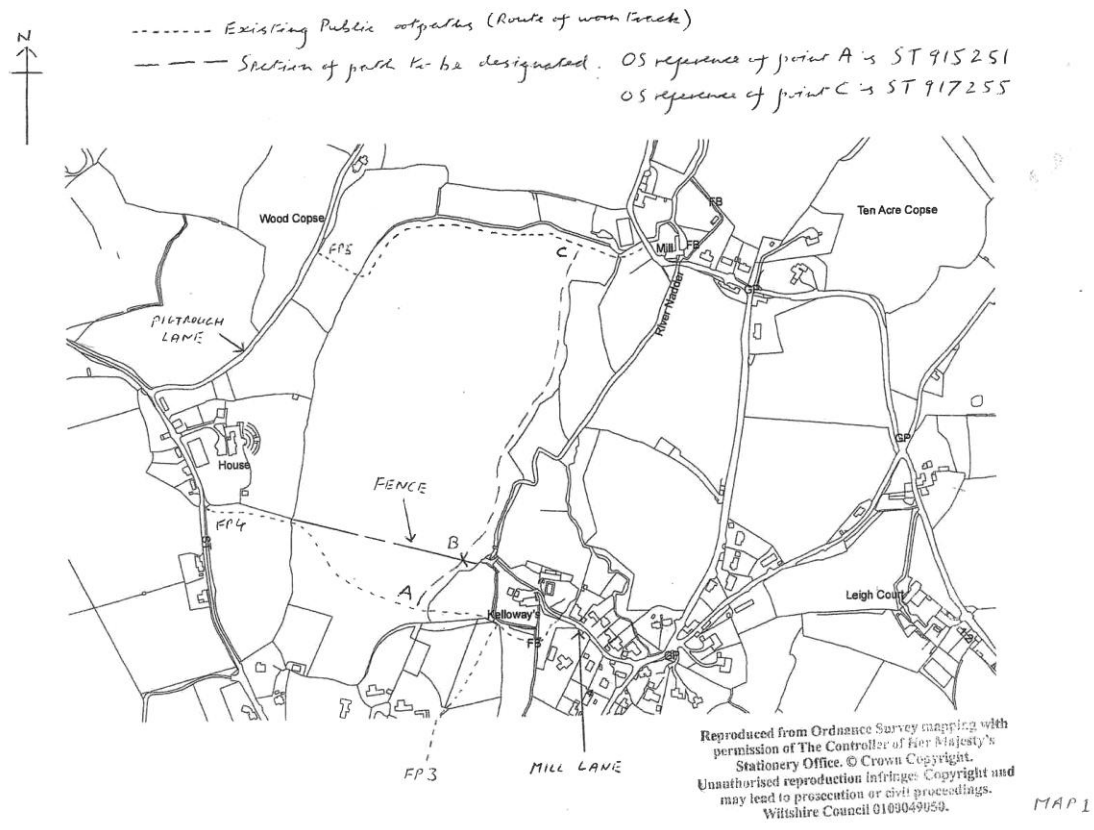
- 2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

3. Location Plan



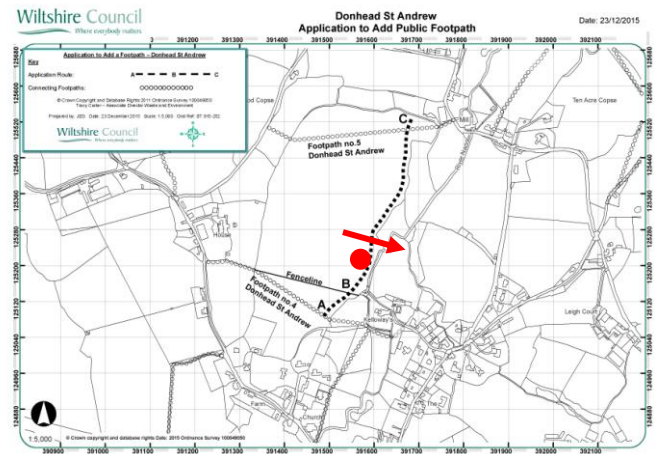
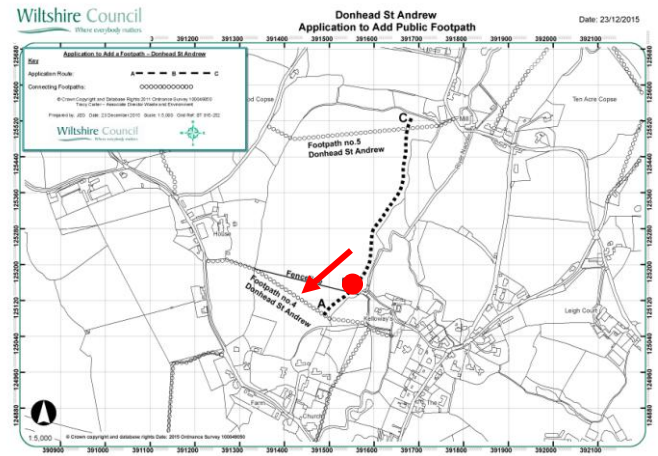
Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
Donhead St Andrew

4. Claimed Footpath Route

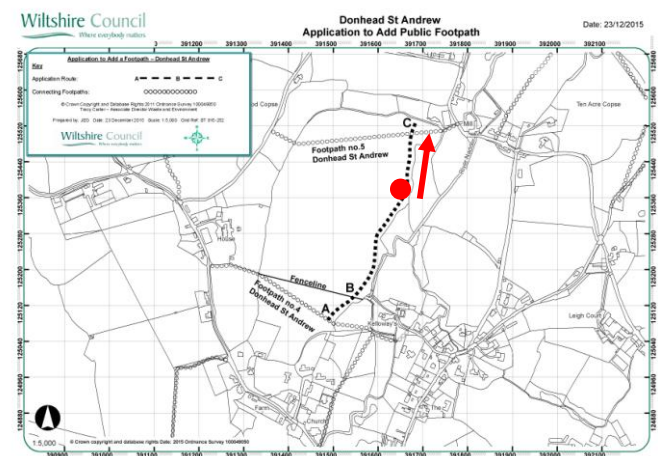
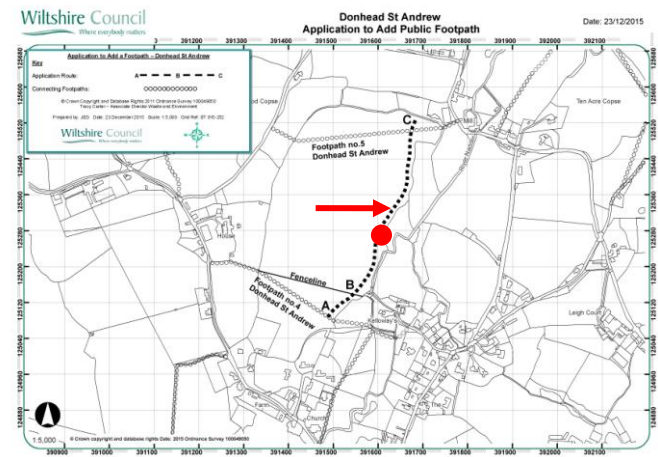
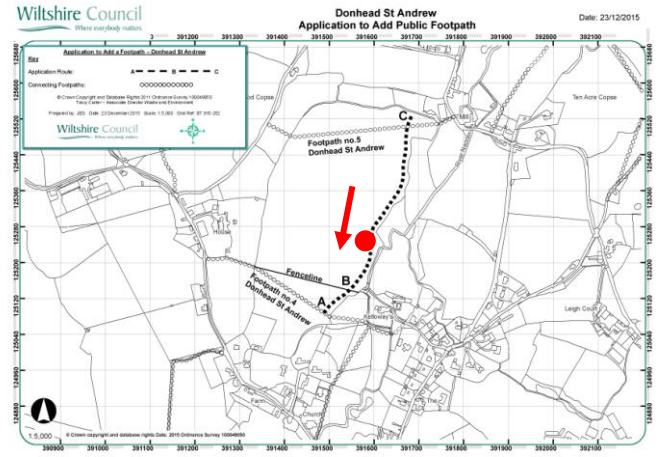


- 4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Donhead St Andrew, leading from point A, at its junction with Footpath no.4 Donhead St Andrew, in a generally north-easterly direction, through the fence line via a stile at point B and then continuing to point C, at its junction with Footpath no.5 Donhead St Andrew.

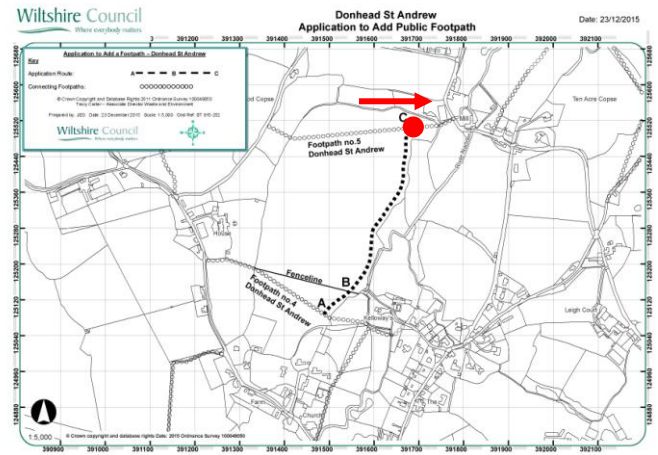
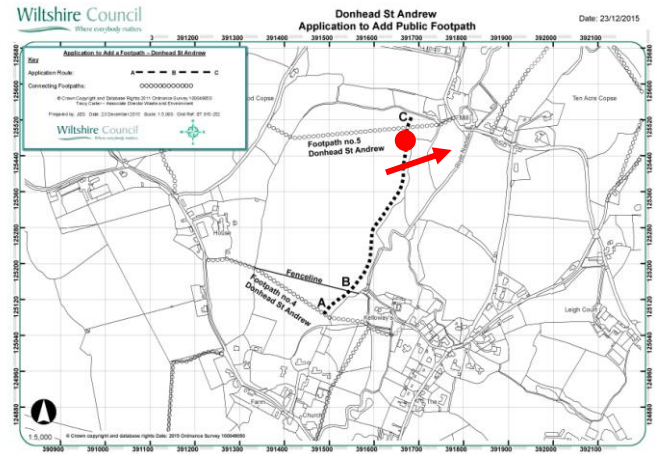
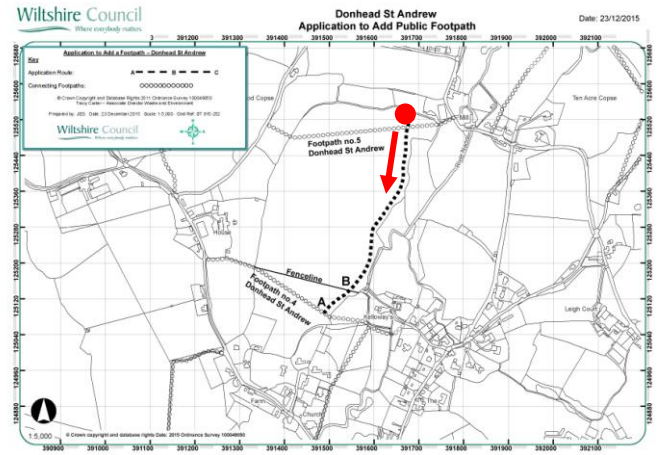
5. Photographs



Decision Report: Wildlife and Countryside Act 1981 – Section 53
 Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
 Donhead St Andrew



Decision Report: Wildlife and Countryside Act 1981 – Section 53
 Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
 Donhead St Andrew



Decision Report: Wildlife and Countryside Act 1981 – Section 53
 Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
 Donhead St Andrew

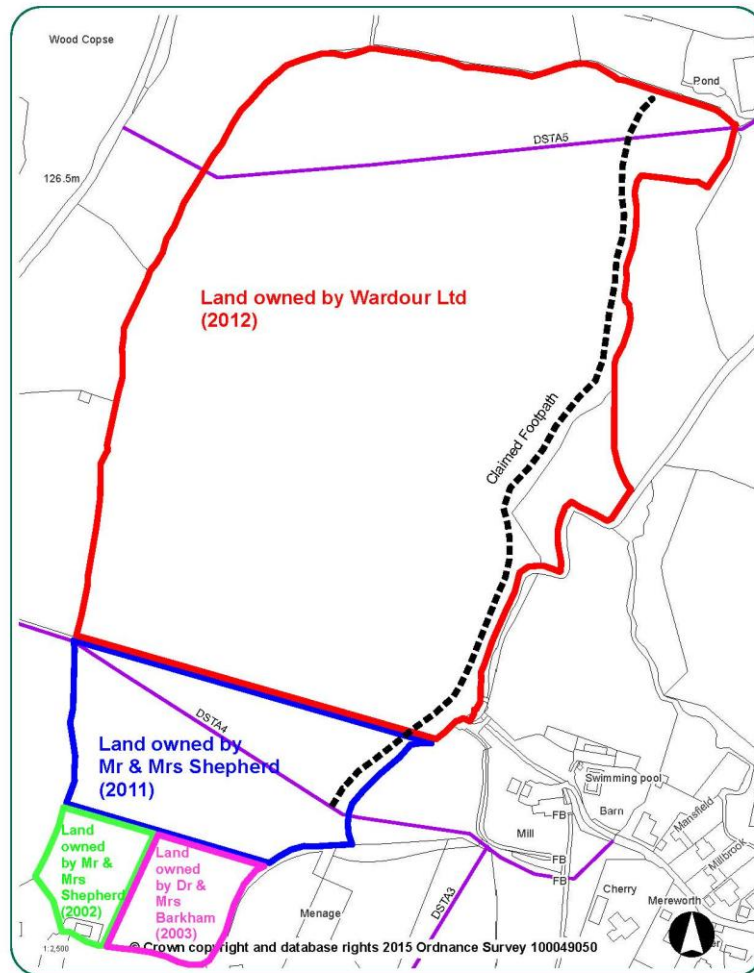
6. Registered Landowners

6.1. Mr Marcus Shepherd	Wardour Limited
Hillside House	C/O Mr and Mrs Shaw
Barkers Hill	Beauchamp House
Donhead St Andrew	Donhead St Andrew
Shaftesbury	Shaftesbury
Dorset SP7 9EB	Dorset SP7 9LB

Tenant:

Mrs Margaret Pitman
Wheelwrights
Sans Lane
Donhead St Andrew
Shaftesbury
Dorset SP7 9EJ

6.2. Mrs Anne Shaw has completed a landowner evidence form dated 10th October 2015 on behalf of herself and her husband, duly authorised for and on behalf of Wardour Ltd. She confirms that they have owned Beauchamp House (adjacent to the field over which the claimed the route passes), since January 1993 and the northern section of the affected land since 22nd May 2012. She also confirms that the whole of the larger field (known as Mansfield), was previously owned by Mrs Francis Pitman; Mr David Pitman and Mr Gerald Pitman, purchased by them between 1982 and 1984 and being transferred to Mrs Margaret Pitman in June 2011. An area of land in the south-west corner of the field was sold to Mr and Mrs Shepherd in 2002 and in July 2011, Mr and Mrs Shepherd purchased the middle section of the field, south of the present fence line. The south-east corner of the field is now owned by Dr and Mrs Barkham and is not affected by this claim, (please see plan below).



(Plan showing present land ownership)

- 6.3. Mr and Mrs Shepherd erected a fence at the boundary of their land in March 2012 and Wardour Ltd purchased the remainder of the field (north of the fence line), on 22nd May 2012. The Wardour Ltd land was then leased back to Mrs Margaret Pitman for 5 years on a farm business tenancy.

7. **Background**

- 7.1. Wiltshire Council is in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Donhead St Andrew. The application is dated 15th May 2015 and is made by Donhead St Andrew Parish Council on the grounds that public footpath rights can be reasonably alleged to subsist, or subsist on the balance of probabilities, over the claimed route, based on user evidence and some documentary evidence and should be recorded within the definitive map and statement of public rights of way, as such. The application form (which consists of forms 1 and 3) is accompanied by a plan drawn at a scale of approximately 1:5,000 showing the claimed route; Ordnance Survey 25 inch map extract dated 1901 and 33 completed user evidence forms with maps attached.
- 7.2. The claimed route is located in the parish of Donhead St Andrew which lies between Shaftesbury (Dorset) to the west and Salisbury to the east. The claimed route crosses a field known as Mansfield, to the east of Beauchamp House and forms a link between two recorded footpaths and between two former mills, (Kelloways Mill and a mill formerly known as Ricketts Mill). The claimed route leads generally north-east, following the eastern field boundary, from its junction with Footpath no.4 Donhead St Andrew, through the fence line via a stile and then continuing to its junction with Footpath no.5. The surface of the route is laid to grass.
- 7.3. Wiltshire Council undertook an initial consultation regarding the proposals on 8th September 2015. The objections and representations received are summarised at **Appendix 1**, (please note that the responses are available to be viewed in full with the Rights of Way and Countryside Team, Unit 9 Ascot Court, Trowbridge, Wiltshire, BA14 8JN).

8. Main Considerations for the Council

8.1. The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, but this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, (excluding the Borough of Swindon), responsible for the preparation and continuous review of the definitive map and statement of public rights of way.

8.2. In this case the Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

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

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”*

8.3. The event referred to in subsection 2 (as above), relevant to this case is:

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

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

8.4. Section 53 (5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

“Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.”

8.5. Schedule 14 of the Wildlife and Countryside Act, states:

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:*

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”

8.6. The prescribed scale is included within the *“Statutory Instruments 1993 No.12 Rights of Way – The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993”*, which state that *“A definitive map shall be on a scale of not less than 1/25,000.”*

8.7. The application to add a right of way to the definitive map and statement of public rights of way in the parish of Donhead St Andrew, has been correctly made in the prescribed form, being accompanied by a map drawn at a scale of 1:5,000; printed extract from the 1901 25 inch Ordnance Survey map and 33 witness evidence forms.

8.8. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway under statute, presumed after public use of 20 years:

- “(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) Where the owner of the land over which any such way as aforesaid passes –*
- (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*
- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a*

contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.

(6) *An owner of land may at any time deposit with the appropriate council-*

(a) a map of the land on a scale of not less than 6 inches to 1 mile and

(b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;

And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –

(i) within ten years from the date of deposit

(ii) within ten years from the date on which any previous declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(7) *For the purpose of the foregoing provisions of this section, ‘owner’, in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above ‘the appropriate council’ means the council of the county, metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in*

the case of subsection (6)) is situated or, where the land is situated in the City, the Common Council.

(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over land as a highway if the existence of a highway would be incompatible with those purposes.”

8.9. Section 32 of the Highways Act 1980, states that the authority may consider a range of historical documents and their provenance:

“Evidence of dedication of a way as highway

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

9. Documentary Evidence

- 9.1. As part of Wiltshire Council's investigations, Officers have examined documentary evidence, including the provenance and purpose of the documents to draw conclusions regarding the existence of public rights over the claimed route. Please see list of historical evidence and conclusions in full, attached at **Appendix 2** to this report.
- 9.2. A route corresponding with the location of the northern section of the claimed path is recorded on three maps examined by the Surveying Authority, i.e. the Ordnance Survey (OS) map dated 1896 and drawn at a scale of 1 mile to 6 inches; 1901 OS map drawn at a scale of 1 mile to 25 inches and the 1910 Finance Act map which uses the OS 1901 25 inch map as its base. Ordnance Survey maps are topographical in nature, i.e. they record only what was visible on the ground to the surveyor at the time of survey.
- 9.3. These maps record a route leading between Ricketts Mill to the north and Kelloways Mill to the south, directly linking the two mills, between Footpath no.5 Donhead St Andrew and the former route of Footpath no.4, (which was diverted south of its original line in 1997). The route shown on the maps is on a slightly different line to the claimed path, i.e. the claimed route is closer to the field boundary. The maps do not record the route leading south of Kelloways Mill to its modern day connection to Footpath no.4 (i.e. following the diversion of Footpath no.4). The route is recorded by double broken lines which suggest that the path was open to the field on both sides, the 1901 map shows the route braced as part of the field and labelled "*F.P.*".
- 9.4. The route is not recorded on the 1925 OS 25 inch map, which suggests that at some point between the 1901 map and the 1925 edition, the route was no longer visible on the ground, suggesting that it went out of use. The 1901 and the 1925 maps are based upon the same survey of 1884-1885, the 1925 map being revised in 1924, the exclusion of the claimed route being a physical change to the 1901 map. In evidence, the landowner Mrs Shaw states that "*Mention is made in some Witness Statements*

to the OS Map of 1901...which shows a track between Rickett's Mill and Kelloways Mill. The two Mills were in common ownership at that time and the track was not shown on the OS maps after 1901 (on the 1925 OS Map Kelloway's Mill is shown as disused) suggesting that there was no evidence of any footpath after the mill was closed..." Having considered the documentary evidence available, Officers would agree that this is an entirely plausible explanation for the omission of the claimed route on OS maps after 1901.

- 9.5. Whilst OS maps can provide useful supporting evidence of public rights of way, they cannot be relied upon alone to indicate the public status of a route shown. The Planning Inspectorate publication "*Wildlife and Countryside Act 1981 Definitive Map Orders: Consistency Guidelines*", when considering the evidential weight of OS mapping, quotes Cooke J in *Norfolk County Council v Mason* [2004], who observed that "*Throughout its long history the OS has had a reputation of accuracy and excellence ... It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion of public or private rights...*" OS mapping evidence should therefore be carefully considered alongside other documentary evidence and in this case, Officers have viewed no other documentary evidence which would support the existence of the claimed route as a public right of way. The Finance Act map, shows a route as per the 1901 OS base map, drawn at a scale of 25 inches to 1 mile, however there is no additional evidence within the Finance Act documents to support public rights over this route, i.e. the route is not excluded from the shading of plot no.24, it is braced as part of the field and there are no deductions for rights of way recorded over plot no.24. On the balance of probabilities Officers must conclude that the documentary evidence as a whole does not support the existence of public footpath rights over the claimed route.
- 9.6. This does not mean that public rights over the claimed route do not exist and we must now consider the available user evidence in this case.

10. User Evidence

- 10.1. Section 31 of the Highways Act 1980 provides for the dedication of a way as highway under statute, presumed where a way over land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. The way is deemed to be dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it as such.

Bringing into question

- 10.2. In order to demonstrate a relevant 20 year user period, as referred to under Section 31 of the Highways Act 1980, there must be a date upon which the use of the path by the public was first brought into question.
- 10.3. In the case of R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question contained in the case of Fairey v Southampton County Council [1956], and quotes him as follows:

"I think that in order for the right of the public to have been "brought into question", the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of the Attorney-General against the landowner in the courts claiming that there is a public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in

some way makes it clear to the public that he is challenging their right to use the way.”

10.4. In Godmanchester, Lord Hoffman says of Denning L J's interpretation:

“As a statement of what amounts to bringing the right into question, it has always been treated as authoritative and was applied by the inspectors and the Court of Appeal in these cases.”

10.5. In the Donhead St Andrew case, 20 of the 33 witnesses stopped using the claimed route in 2014. Additionally Mrs Louise Saunders' use of the route ended in 2013 or 2014 and Mr and Mrs York stopped using the path regularly in 2012 and ceased use altogether in 2014. The evidence suggests that in late 2014 / early 2015, temporary closure notices appeared on the claimed route when a large sinkhole appeared close to the path, although 8 of the witnesses appear to have continued using the route up until the date of the claim in 2015.

10.6. Officers also note that some witnesses refer to a fence being installed across the path, with a stile (and dog latch as evidenced by Mr and Mrs Barkham and Miss Saint and which can be seen in the photograph included at 5). Mrs Clark; Mrs Collyer and Miss Maxwell-Arnot refer to changing their route because of the stile being put in a new location and not on the route formerly used. Mrs Collyer and Miss Maxwell-Arnot confirm that the stile was inserted much closer to the eastern boundary of the field, Miss Maxwell-Arnot suggests *“in a swampy part”* of the field. Mrs Saunders and Mr York make reference to being restricted by the new stile and Mrs Saunders confirms that where the public were forced to cross the fence at just one pinch-point, it became rather muddy. Mr York confirms that the route became a single track path at the stile, where it had been wide enough for two people to walk side by side.

10.7. Mrs Shaw on behalf of Wardour Ltd, confirms that the fence was erected in March 2012, prior to Wardour Ltd's purchase of the northern section of the field in May 2012. This concurs with the user evidence which suggests that the fence and stile

were added in around 2012/2013. In R v SSETR ex parte Dorset County Council 1999, Dyson J's interpretation of the Fairey judgement is that:

“Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as highway.”

Also in Applegarth v Secretary of State for the Environment Transport and the Regions, 2001 High Court judgement, Mr Justice Munby states:

“It will be noted that section 31(2) [Highways Act 1980] places no limit at all on the circumstances in which the public's rights may “otherwise”, that is, otherwise than by an owner's notice under section 31(3), be brought into question. Whilst as Mr Bedford accepts, the words must be read in their context (a context which includes the remainder of section 31(2)), there is, in my judgment, absolutely no warrant for construing these very wide words - “or otherwise” – as meaning anything other than what they say or, in particular, as being limited to acts or things done by the owner. Whether someone has “brought into question” the “right of the public to use the way” is, as it seems to me, a question of fact and degree in every case...”

- 10.8. In a telephone conversation with Miss Maxwell Arnot (7th July 2016), she confirms that the installation of the stile, moved the route traditionally used further towards the river perhaps 3-4 ft, the route was now much straighter and had never been so close the boundary. Given the accuracy of the definitive map it is considered that the relocation of the stile 3-4 ft to the east is de-minimus for the purposes of recording a route on the definitive map. Therefore, Officers consider that the fencing of the claimed route, with the inclusion of a stile and dog latch, to the east of the used route as a slight deviation, does not bring the public's use of the route into question. In fact in this case the erection of the stile had the opposite effect of bringing the public's right to use the way in question, particularly where provision is made for users with dogs. In his evidence Mr John Graham confirms that after the stile was erected, the number of users increased. Mr and Mrs Collyer confirm that when the Mansfield was

divided by a fence, a stile was incorporated into the fence "...allowing us to continue to use the path between DSTA4 and DSTA5..." It would appear that users did not consider this action by the landowner as a challenge to their right to use the path; they were not prevented from using the path and the evidence shows that they continued to use the route after 2012, (please see witness evidence chart at 10.15).

- 10.9. Mrs Shaw, in her landowner evidence, has provided a copy of a permissive footpath sign which was erected on the claimed route over the Wardour Ltd land in Autumn 2012 and January 2013, which stated *"The footpath shown in blue on the plan below is a permissive footpath only. Please note that this path may be closed on some days. It is not intended that this path should be dedicated as a public right of way. Please keep to the route shown on the plan."* This notice clearly shows the "permissive footpath" and was erected close to the stile added by Mr Shepherd earlier in 2012 and at the northern end of the claimed route, where it begins to follow the field boundary leading south at the edge of the woodland. Permissive path waymarkers were also placed on the stile on Footpath no.5 where it exits the Mansfield at the north-east corner of the field and on the stile erected by Mr Shepherd in the new fence line. Mrs Shaw has provided photographic evidence of these notices and waymarkers on site.
- 10.10. These notices and waymarkers were erected only upon the land in the ownership of Wardour Ltd and not on the section of the claimed route in the southern part of the field owned by Mr and Mrs Shepherd. Whilst the map attached to the notices records the whole of the claimed route, including that section of the route on Mr and Mrs Shepherd's land, it is not considered that Mr and Mrs Shaw would be entitled to grant a permissive route over Mr and Mrs Shepherd's land, however public user after the notices were erected was not qualifying user "as of right" over the whole of the claimed path as users of the route leading from the south, i.e. from Footpath 4 could continue no further "as of right" on the claimed route once they passed the fence. The termination point of the southern section of the path at the fence line is not a place of popular resort which the public would legitimately wish to reach using a cul-de-sac route (by which they would have to return using the same route which they

had already used), unless they continued northwards on the permissive route to link with another public highway, i.e. Footpath no.5.

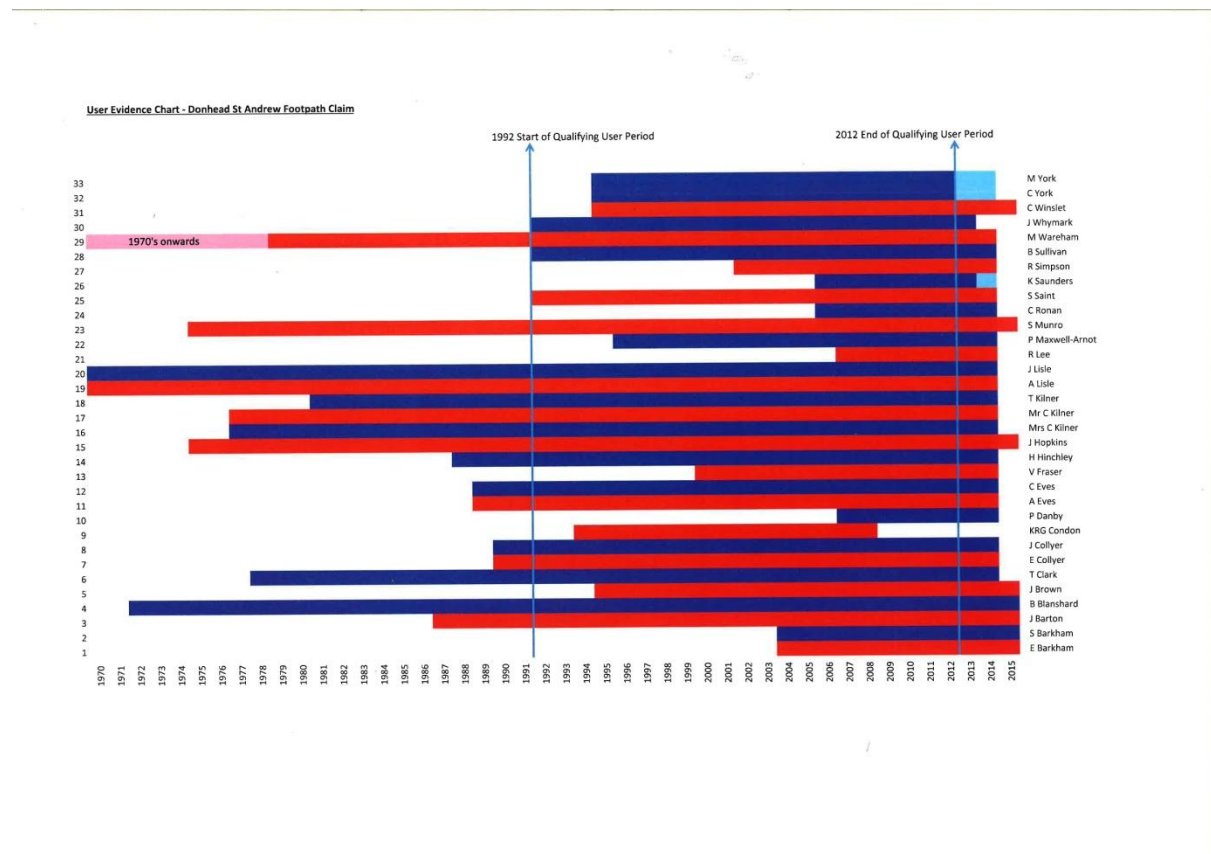
- 10.11. The permissive path notices and waymarkers erected on site, had the effect of bringing to the public's attention that it was not the intention of the landowners to dedicate the route as a public footpath and that their use of the path following the erection of the signs, was only with the permission of the landowners and as such after that date public user was not "as of right". Therefore, public use after Autumn 2012 is not qualifying user, even where 32 of the witnesses continued to use the route after 2012.
- 10.12. Additionally on 8th August 2012, Mrs Shaw on behalf of Wardour Ltd, deposited with Wiltshire Council a statement and map under Section 31(6) of the Highways Act 1980, including that part of the Mansfield in Wardour Ltd's ownership, followed by a statutory declaration under the same legislation, dated 14th August 2012. Under Section 31(6) of the 1980 Act, it is possible for landowners to deposit such statements and declarations with accompanying maps, with the Authority to the effect that no additional ways over the land shown on the map, (other than any specifically indicated in the declaration), have been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration. They are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway. The claimed route is not shown on this map. The deposition of the plan and statement appear to pre-date the erection of the permissive path notices in Autumn 2012 and January 2013 and therefore the deposit under Section 31(6) of the Highways Act 1980, serves to end public use of the use "as of right" on the whole of the claimed route.
- 10.13. Mrs Shaw has also submitted a CA16 form for deposits under Section 31(6) of the Highways Act 1980 and Section 15A(1) of the Commons Act 2006, dated 22nd July 2015. This has the same effect as the deposit made under Section 31(6) of the Highways Act 1980 in 2012 and also from that date (2015), forms an interruption in

use of the land by the inhabitants of any locality or neighbourhood within a locality, for lawful sports and pastimes, therefore protecting the landowner against town and village green claims over the land in question.

10.14. In conclusion, the relevant public user period over the whole of the claimed route should be calculated from 8th August 2012, when a statutory declaration and map were deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980. The user period in question is therefore 8th August 1992 – 8th August 2012.

Twenty Year User

10.15. Please see chart below which shows the level of user outlined within the 33 witness evidence forms:



Decision Report: Wildlife and Countryside Act 1981 – Section 53
 Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
 Donhead St Andrew

10.16. For the period of user in question, i.e. 8th August 1992 – 8th August 2012, of the 33 user evidence forms submitted, all witnesses have used the route during this time period and 19 have used the route for the full 20 year period.

10.17. In addition to their own use, witnesses refer to seeing others using the route:

User	Others seen	User	Others seen
1	Yes - walking	18	Yes – walking
2	Yes - walking	19	Yes – walking
3	Yes – walking	20	Yes, others were walking
4	Sometimes - walking	21	Yes – walking
5	Walker	22	Yes, always walking
6	Yes – walking / running	23	Yes – walking
7	Yes, often and always walking	24	Yes – also walking
8	Yes, frequently and always walking	25	Yes – walking
9	Yes, walking – individuals, groups of Ramblers	26	Yes, lots of other walkers
10	Yes – walking	27	Yes – walking
11	Yes – walking	28	Yes, also walking
12	Yes – walking	29	Yes – walking
13	Yes many people walking	30	Yes – walking
14	Other walkers	31	Yes, often – always walking
15	Not on this occasion	32	Yes – regular dog walkers
16	Yes – lots of others walking. In fact we all used to walk the whole circuit of the field.	33	Yes – always walking, often with dogs
17	Yes – walking		

10.18. Additionally, within the letters received at the initial consultation, Mr Tom Kilner; Mr and Mrs Barkham and Mr Wareham refer to their use of the path with family members.

10.19. There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence, i.e. its honesty, accuracy, credibility and

consistency, is of much greater importance than the number of witnesses. In *R (Lewis) v Redcar and Clevedon Borough Council* UKSC 11 (3rd March 2010), a Town and Village Green registration case, Lord Walker refers to Mr Laurence QC, who:

“...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...”

Lord Walker goes on to quote Lindley L J in the case of *Hollins v Verney* [1884] giving the judgement of the Court of Appeal:

“...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised, and if resistance to it is intended.”

10.20. Mrs Shaw confirms that she and her husband have owned Beauchamp House adjacent to the Mansfield since 1993. The field and the claimed footpath can be seen from Beauchamp House and Mrs Shaw confirms in her landowner evidence form that she was aware of use by the public, adding that from 1993, use of the path was virtually non-existent, rising to occasional use in 2003 and increasing to several times per day in 2015, the relevant user period in this case being 8th August 1992 – 8th August 2012.

10.21. Mr David Pitman and his family owned the land from approximately 1982-84 onwards until Mr and Mrs Shepherd and Wardour Ltd took ownership of the land in 2011 and 2012 respectively. In his statutory declaration Mr David Pitman confirms that in the first 20 years or so of their ownership of the field, there was hardly any public use, however in about 2003 public use generally began to increase noticeably. Therefore, if the public have really been using the field other than the public footpaths, it will only have been in the last 12 years or so that they have done so. In their statutory

declarations, Mr Hugh Graham; Mr John Graham; Mrs Claire MacDonald; Mrs Margaret Pitman; Mr Christopher Long and Mrs Janet Long, agree that public use of the claimed route began between 2002 and 2005, therefore public user of only 12 years or so can be shown. Mrs Margaret Pitman also confirms that during her husband's ownership of the land she did not see others using the claimed route and she herself did not use the route. When she owned the land for a short period in 2011-12, she only ever saw the odd dog walker. In conversation with Mrs Margaret Pitman, she confirms that she may not have seen users during her family's or her own period of ownership, as they may have used the path at different times to her own use of the land, perhaps early in the morning.

10.22. The witness evidence chart (see 10.15) does show a greater concentration of use from around 2004 onwards, but from the witness evidence provided, there is still a significant amount of use at the start of the user period in question, i.e. from 1992.

10.23. In further evidence Mr Tom Kilner confirms that he was born in the village in 1981 and lived there until 2000 and now frequently visits. During those 34 years he has frequently walked the path along with many other dog walkers and ramblers. Mr and Mrs C Kilner confirm that they have used the path fairly frequently since they moved to Pigtrough Lane in 1977, at which time the path was well known and well used. They are supporting the claim based on the historical mapping evidence and their own experience of using the path for more than 35 years. Mr Roy Powell confirms that he used the claimed path as early as 1953 as a child to walk to school from Pigtrough Lane every day and on Sundays to go to church. Mr Richard Lee who has lived in the parish for over 31 years and knows the village and the surrounding area well, submits that it is very probable that this route has been used by the public for over 100 years, given the 1900 OS mapping. Mr and Mrs C Eves have used the claimed route as a footpath for over 26 years. Mr Wareham confirms that as a child living in the area they would often walk from the church along the path to visit friends at Thorn House. His mother is now 70 and attended school and the church as did her brother and sisters and recalls using the path many times.

10.24. The frequency of user suggests a well used route:

User	Frequency of use	User	Frequency of use
1	Daily	18	Monthly
2	3-4 times per week	19	Twice a year
3	Daily	20	3-4 times per year
4	24-30 times a year	21	5-6 times a week
5	Weekly in summer	22	About twice a week
6	1978-1996 – 2-3 times weekly, 1996-2014 – 4 times per year	23	6 times a year
7	Approx 1-2 times a month	24	Daily
8	Variable often weekly in summer, much less in winter	25	2/3 times per week
9	Fortnightly	26	About 5 times a week
10	Weekly	27	Daily
11	Up to 5 times a week	28	5-8 times per year
12	1989-2000 once a month, 2000-2014 1 to 5 times a week	29	2-3 times a week
13	Once a week until mud by stile became impossible	30	4-5 times a year
14	Daily until August 2013, approx weekly after that	31	30-40 times a year
15	Twice a week	32	In nice weather almost daily
16	Certainly once or twice a week	33	4/5 times weekly but not in winter – certain areas too muddy
17	About 10 times a year		

10.25. A number of users continued to use the route after 2012, but it appears that use after that date was not qualifying user “as of right”, where the new landowner Mrs Shaw had lodged with Wiltshire Council (on behalf of Wardour Ltd) a map and statement under Section 31(6) of the Highways Act 1980, indicating their non-intention to dedicate the route as a public highway (8th August 2012), followed up by the erection of “permissive path” notices and waymarkers later that year.

10.26. 26 of the 33 witnesses are residents of Donhead St Andrew, however use wholly or largely by local people may be sufficient to show use by the public. The Planning Inspectorate Consistency Guidelines make reference to R v Southampton (Inhabitants) 1887, in which Coleridge L J stated that:

“user by the public must not be taken in its widest sense...for it is common knowledge that in many cases only local residents ever use a particular road or bridge.”

10.27. The landowner has provided a great deal of evidence, including statutory declarations, to the effect that the public have only used the route since the early 2000's and Officers would agree, looking at the witness evidence chart (please see 10.15), that there is a concentration of use around this time, however there is also a large amount of public user evidence before this date. On balance, Officers consider that it is more likely than not that the public have been using the route for a full period of 20 years, up until 8th August 2012.

As of Right

10.28. In order to establish a public right of way, public use must be “as of right”, i.e. without force, without secrecy and without permission.

Without force

10.29. Use by force could include the breaking of locks, cutting of wire or passing over, through and around an intentional blockage such as a gate.

10.30. In the Donhead St Andrew case, there is no evidence before the Surveying Authority to suggest that public use of the claimed route, was by force. Officers consider that it was necessary for the public to use force to enter the land, where there was free access to the claimed route from the existing public highways, Footpath no.4 and

Footpath no.5 Donhead St Andrew and there is no evidence of obstructions on the route.

10.31. Use by force does not include only physical force, but may also apply where use is deemed contentious, for example by erecting prohibitory signs or notices in relation to the use in question. In the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another (Respondents) (2010), Lord Rodger commented that:

“The opposite of “peaceable” user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”

10.32. In the Donhead St Andrew case, there is no evidence that prohibitory notices were erected prior to those erected in 2014, closing the footpath over the land in the ownership of Wardour Ltd, however this was outside the relevant user period of 8th August 1992 – 8th August 2012. Public use does not appear to have been contentious and therefore use is not by force, (the permissive path notices erected in 2012 allowed the public to continue using the route but with the permission of the landowner and they were, in any case, erected outside the relevant user period).

Without secrecy

10.33. It would appear that witnesses used the route in an open manner, without secrecy and in a manner in which a person rightfully entitled to do so would do:

User	Do you believe the owner or occupier was aware of the public using the way
1	Yes, it was a well worn path with local people using it every day which the current owners

	would have been aware of before acquiring the field.
2	Yes, because there are people walking it daily, there is a well worn track, a stile is provided together with a dog slot and recently notices have appeared saying that it is now closed.
3	Yes, because Mrs Shaw saw people on the path and the wear on the ground.
4	Yes.
5	Yes.
6	Yes, well used – we frequently met two or more other users / groups of users. Probably visible from Beauchamp House.
7	Yes, the previous owners farmed the land and often saw me walking the path. The present owners can see the path from their house and must know the path was well used.
8	Yes, the field changed ownership a couple of years ago, the previous owner which farmed the land regularly saw people walking across the field.
9	Yes, because it was a well known footpath and many people in the village used it.
10	Yes, because any search should have picked up that this is a public footpath.
11	Yes, they agreed to a stile being erected between their land and that owned by M Shepherd.
12	Yes, they had erected signs at (b) and (c) referring to the footpath as a permissive path.
13	I assume yes as they bought the house knowing there were rights of way round the field that had always been used by the village.
14	Yes, on several occasions I stood in my paddock with Mr G Pitman watching people using the path.
15	Yes, because there is a clear worn path which has been used during the 40 years I have lived in the village.
16	Yes, all through the years we have lived here, the route has been used frequently and publicly by many people in the village. The field is visible from all around, so the owner would have seen them using it.
17	Yes, this is a well known footpath being part of the route linking Mill Lane and Footpaths 3 and 4 to Footpath 5 and Pigtrough Lane.
18	Yes, because the public have used it for my entire lifetime and the stiles were always maintained.
19	Yes, well used footpath over many years.
20	Yes, a frequently used footpath for very many years.
21	Yes, the owner occasionally visits the area and will probably have seen people using it.
22	Yes, Gerald Pitman who owned the land when I moved to the village allowed everyone to

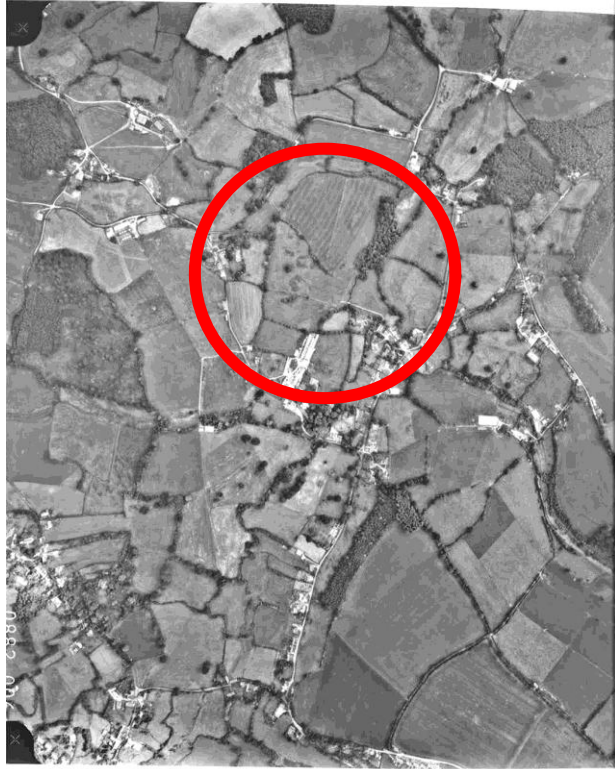
	walk in this field both at the top near Beauchamp House and the bottom from Donhead Mill to Kelloways Mill.
23	Yes, clear worn path and people walking on it regularly.
24	Yes, the footpath had been used by residents of Donhead St Andrew for many years.
25	Yes, when a new fence was constructed, a stile was put in with dog shutter. Use of the footpath continued as normal.
26	Don't know, I would be surprised if they were unaware of it as it was so regularly used, but they are not in residence very often I understand.
27	Yes, clear line of sight by owner to footpath.
28	Yes, we were visible to anybody in residence.
29	Yes, frequent use by walkers.
30	Yes, before the present owner. People frequently observed to be walking it.
31	Yes, it is such a popular (although not over used) route for recreation (including owl watching) and dog walking, it is inconceivable that the owner didn't know.
32	Yes, could be seen from house or by their gardener.
33	Yes, at the meetings mentioned at 11 above we were told that the owner was aware and that walkers were not keeping exactly to the prescribed path.

10.34. 32 of the 33 witnesses believe that the landowners were aware of use of the path.

The witnesses claim that there is a well worn path and that the route can be seen from the landowners' residence (Beauchamp House). Mrs Shaw in her evidence appears to have been aware of public use in the relevant user period 1992 – 2012, albeit virtually non-existent until 2003. Witnesses claim that the provision of a stile in the new fencing erected in 2012, suggests that the landowners were aware of use. Mr Michael York confirms that as a Parish Councillor he was involved in meetings dated 10th December 2014 with the landowners' Solicitor and 31st January 2015 with the Landowner; the Chair of the Parish Council and the Clerk, to facilitate the opening of the now closed permissive path. At these meetings they were told that the owner was aware of the use and that walkers were not keeping exactly to the prescribed path, (however this is outside the relevant user period of 8th August 1992 – 8th August 2012).

10.35. The objectors claim that there is no evidence of public use of the path on the ground. Mrs Shaw suggests that if a path had been apparent on the ground, one would expect it to remain on OS maps after 1901 and to be claimed under the 1949 National Parks and Access to the Countryside Act and included within the definitive map and statement of public rights of way. She viewed aerial photographs of the area from the 1990's, in March 2012, which did not show any evidence of a trodden path along the eastern edge of the field at that time. Mr David Pitman; Mr John Barton; Mr Hugh Graham; Mr John Graham; Mrs Claire MacDonald; Mrs Margaret Pitman; Mr Christopher Long and Mrs Janet Long, in evidence, acknowledge the existence of Footpath no's 4 and 5 Donhead St Andrew, as recorded on the definitive map of public rights of way, but claim that there was no other obvious or trodden footpath at the eastern edge of the land when they first knew the land. The objectors seem to concur that there was no physical evidence of the footpath on the ground, until they first noticed the public using the route in around 2002-5.

10.36. Aerial photographs examined by Officers, dated 1982; 1991; 2001 and 2005/06 (two of them within the relevant user period) are inconclusive as they do not appear to record a well worn footpath route at the eastern edge of the Mansfield:

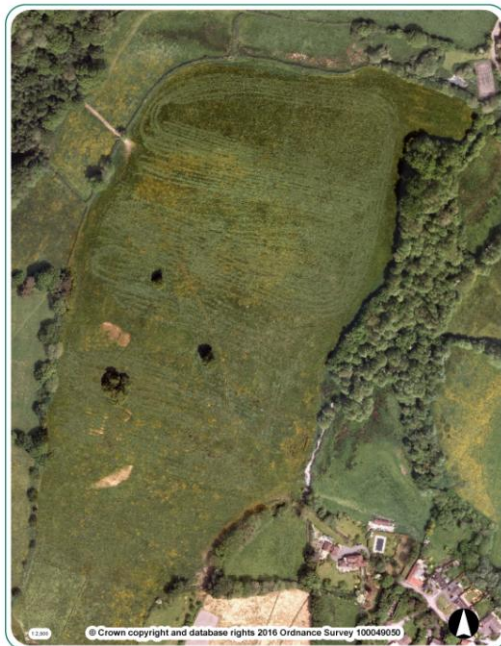


Aerial photograph 1982



Aerial photograph 1991

Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
Donhead St Andrew



Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
Donhead St Andrew

10.37. None of the users claim to have been challenged whilst using the path until recently. Mr and Mrs Collyer state with reference to the diversion of Footpath no.4 in 1996/97: *“...At no point, either before or after the changes that occurred to path DSTA4 in 1996/97, were we challenged with regard to our use of this path...”* Mr and Mrs Barkham were approached in autumn 2014 by a man claiming to be the brother of the owner of the field, who told them that the footpath was closed due to a sinkhole; Mr Barton was recently told by Mrs Shaw that the way was not public (evidence form dated 2015); Miss Maxwell-Arnot advises that only after the permissive path was introduced did she hear of people being stopped when they closed the path due to subsidence and Miss Whymark was never told it was not public until recently when the present owner told the Parish Council that it was not public. Additionally, one of the witnesses makes reference to the permissive path signs being a challenge to their use and 3 witnesses refer to the path closure signs forming a challenge to their use.

10.38. In the statutory declaration provided by Mr David Pitman, he states that *“We told people who asked where the public footpaths were...”*, however there is no further evidence that the Pitman’s challenged users and no specific incidents of challenge are referred to, i.e. times and dates; how individuals were using the land at the time of challenge and the individuals involved.

10.39. In the Sunningwell case, Lord Hoffman states that the use must have been open and in a manner that a person rightfully entitled to do so would have used it, that is not with secrecy. He observes that Lord Blackburn in discussing the dedication of a highway in Mann v Brodie [1885]:

“...is concerning himself, as the English theory required with how the matter would have appeared to the owner of the land. The user by the public must have been, as Parke B said in relation to private rights of way in Bright v Walker 1 CM and R211, 219, ‘openly and in a matter that a person rightfully entitled would have used it.’ The presumption arises, as Fry J said of prescription generally in Dalton v Angus and Co App Cass 770, 773, from acquiescence.”

10.40. Such use would allow the landowner the opportunity to challenge the use, should they wish to do so. The witness evidence suggests that on the balance of probabilities, the past and present landowners were aware of use of the route by the public. Mrs Shaw has challenged the public user immediately upon taking ownership of the land in 2012, by erecting permissive path signs, granting permission to certain individuals and to other individuals on behalf of the village and by depositing with Wiltshire Council a statement and plan under Section 31(6) of the Highways Act 1980. However, it would appear that the previous landowners and the present owners of land over which the southern section of the route passes, have not undertaken any actions to challenge public user. On the evidence before the Council it would appear that any challenge to public use of the path was recent in date and outside the relevant user period of 8th August 1992 – 8th August 2012.

Without permission

10.41. Use “as of right” was discussed in the Town / Village Green Registration case of R (on the application of Barkas) v North Yorkshire County Council and Another, Supreme Court, 21st May 2014. The leading judgement was given by Lord Neuberger, who sets out the legal meaning of the expression “as of right”:

“...the legal meaning of the expression “as of right” is, somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried on as if it were by right – hence “as of right”.”

10.42. Therefore, where use is “as of right” and the public do not have permission to use the land, it follows that all rights of way claims will begin with a period of trespass against the landowner. As Lord Neuberger states in the Barkas case, the mere inaction of the landowner with knowledge of the use of the land does not amount to permission and the use is still trespass:

“...the fact that the landowner knows that a trespasser is on the land and does nothing about it does not alter the legal status of the trespasser. As Fry J explained, acquiescence in the trespass, which in this area of law simply means passive tolerance as is explained in Gale, (or, in the language of land covenants, suffering), does not stop it being trespass. This point was well made by Dillon LJ in Mills v Silver [1991] Ch 271, 279-280, where he pointed out that “there cannot be [a] principle of law” that “no prescriptive right can be acquired if the user...has been tolerated without objection by the servient owner” as it would be “fundamentally inconsistent with the whole notion of acquisition of rights by prescription.” Accordingly, as he added at p 281, “mere acquiescence in or tolerance of the user...cannot prevent the user being user as of right for the purposes of prescription.”

10.43. None of the witnesses were employees or tenants of the landowner at the time of their use, nor were they related to the owners or occupiers of the land, therefore they cannot be said to have implied permission for the purposes of their employment or through family. The majority of users claim to be using the way without permission.

User	Have you ever worked for or been tenant of any owner / occupier of the land crossed by the way at the time you were using it	Are you related to any past or present owner / occupier of land crossed by the claimed way	Have you ever been given permission to use the way, if so by whom and when
1	No	No	Not by the present owner but the previous farmer Gerald Pitman told us it was a footpath
2	No	N/A	Not by the present owner but the previous farmer G Pitman told us that it was a footpath when we arrived in the village in 2004
3	No	No	Yes, by Mrs Shaw
4	No		No
5	No	N/A	No

6	No	No	No. We used to do a large circle all around this central field and no restrictions were ever placed on this until the last couple of years when it was confirmed (via signs) that the western edge of the field (by Beauchamp House) was not to be used
7	No	No	No – not until a sign was put up by the new owners of the field. This stated it was a permissive path
8	No	No	No
9	No	No	No
10	No	N/A	No, never
11	No	No	No
12	No	No	No
13	No	No	No, assumed there was no problem
14	No		No
15	No	N/A	No
16	No	No	No
17	No	No	No
18	No	N/A	No, always took presence of stiles and obviously well worn path as permission
19	No	No	No
20	No	No	No
21	No	N/A	No
22	No	No	Only passively. I encountered the previous owner Gerald Pitman when he was on his tractor and I was walking with my dogs, he did not make any objection
23	No	N/A	No
24	No	No	No

25	No	N/A	No, as it has always been considered a public right of way and my and other usage of it, as far as I am aware, was not queried before
26	No	No	I always understood it was a regularly used village footpath and met many other walkers using it
27	No	No	No
28	No	No	No
29	No	No	No
30	No	No	No
31	No	No	
32	No	No	No
33	No	No	No, prior to 2012 assumed I had right of way

10.44. The users and the landowner make reference to permissive path signs being erected on site in 2012. This action by the landowner would bring to an end the period of user “as of right” and clearly demonstrates to all users of the path that their use is at the discretion of the landowner and with permission which may be withdrawn at any time. Additionally, the action of depositing of a plan and statement under Section 31(6) of the Highways Act 1980, with Wiltshire Council on 8th August 2012, further demonstrates the landowner’s non-intention to dedicate the path as a public right of way.

10.45. Whilst the permissive path notices served to bring home to all path users that their use was no longer “as of right”, in 2012 (albeit after the landowner had lodged with Wiltshire Council a map and statement under Section 31(6) of the Highways Act 1980, on 8th August 2012), there is evidence that individuals also approached Mrs Shaw in 2012, to request permission to continue using the route. In Mr Barton’s statutory declaration he states that he and his family were granted permission to use the route in a letter from Mrs Shaw dated 17th July 2012 (a copy of which has been supplied by Mrs Shaw in her evidence) and at the same time, Mr and Mrs Lee sought

permission from Mrs Shaw to use the claimed route on behalf of the village (a copy of this letter has not been viewed by Wiltshire Council and the date of this permission being granted is not known). This permission was granted by Mrs Shaw and supporting evidence of these permissions being granted to both parties is given by Mrs Shaw; Mr Hugh Graham; Mr John Graham; Mrs Judy MacMillan and Mr Paul Farrant. Additionally, Mrs Shaw recalls that Mrs Barkham thanked her whilst attending a gardening opening on 21st June 2014, for allowing them to walk the path and asked if her husband could inspect the sinkhole which had opened up adjacent to the claimed route. Mrs Barkham does not refer to this permission in her witness evidence form, but in 2014 the path was already signed as permissive and it falls outside the relevant user period. Also Mr and Mrs Lee do not refer to the permission which they sought on behalf of the village, in their user evidence forms, however, the date of granting of this permission is not known and it may fall outside the relevant user period in this case of 8th August 1992 – 8th August 2012.

10.46. The land was previously owned by the Pitman family. In his statutory declaration, Mr David Pitman confirms that *“When we purchased the Land one or two people asked us for permission to walk other than on the public footpaths (Mrs. Belinda Blanshard was one such person) and we granted that permission.”* Mrs Shaw, the present landowner also confirms that Mrs Belinda Blanshard requested permission to walk the field other than the public footpaths, in the early 1980's from Mr David Pitman, however this permission is not referred to in Mrs Blanshard's user evidence form.

10.47. Mr Pitman continues, *“I know my brother, Gerald Pitman who died in 2009, also gave permission to some villagers to walk other than on the public footpaths”*. Mrs Margaret Pitman supports this in her statutory declaration, in which she states *“I understand that from time to time Gerald gave some villagers permission to walk on the land other than on the public footpaths.”* However, no further details of these instances are given for example did this permission refer to the claimed route or just the land in general and to whom was this permission given. Mr David Pitman also states that *“...we always led everybody to believe that it was at our discretion if they walked anywhere else on the field other than the footpaths.”*, but there is no further

evidence given of how this permission was conveyed to members of the public at large and there is no evidence of notices being erected on site to make this clear to the public.

10.48. Mr and Mrs Barkham claim that on purchasing their house and the adjoining paddock in 2003, they approached Mr Gerald Pitman regarding walking through the field on what was a well used path between A, B and C (please see plan at 4). Mr Pitman advised them that it was ok to do so, as it was a public footpath and they were free to walk it.

10.49. In his statutory declaration, Mr Barton confirms that when he moved to Kelloways Mill in 1987, he was aware of the existence of Footpath 4 and 5, but did not recall a trodden path at the eastern edge of the field. At that time he requested permission from Mr Pitman to walk the claimed route and they agreed that it was not a public right of way. Mr Barton again sought permission from the new landowner Mrs Shaw to use the route in 2012.

10.50. Therefore, Mr John Barton and Mrs Belinda Blanshards witness evidence, cannot be considered as use “as of right” as they sought and were granted permission to use the claimed route during the relevant user period in question. However, even when this evidence is removed, there is still a substantial amount of evidence that the public used the route without permission, on the balance, during the relevant user period.

The Claimed Route

10.51. Users claim that the route in question historically formed a vital public highway link, within the village and even to neighbouring parishes:

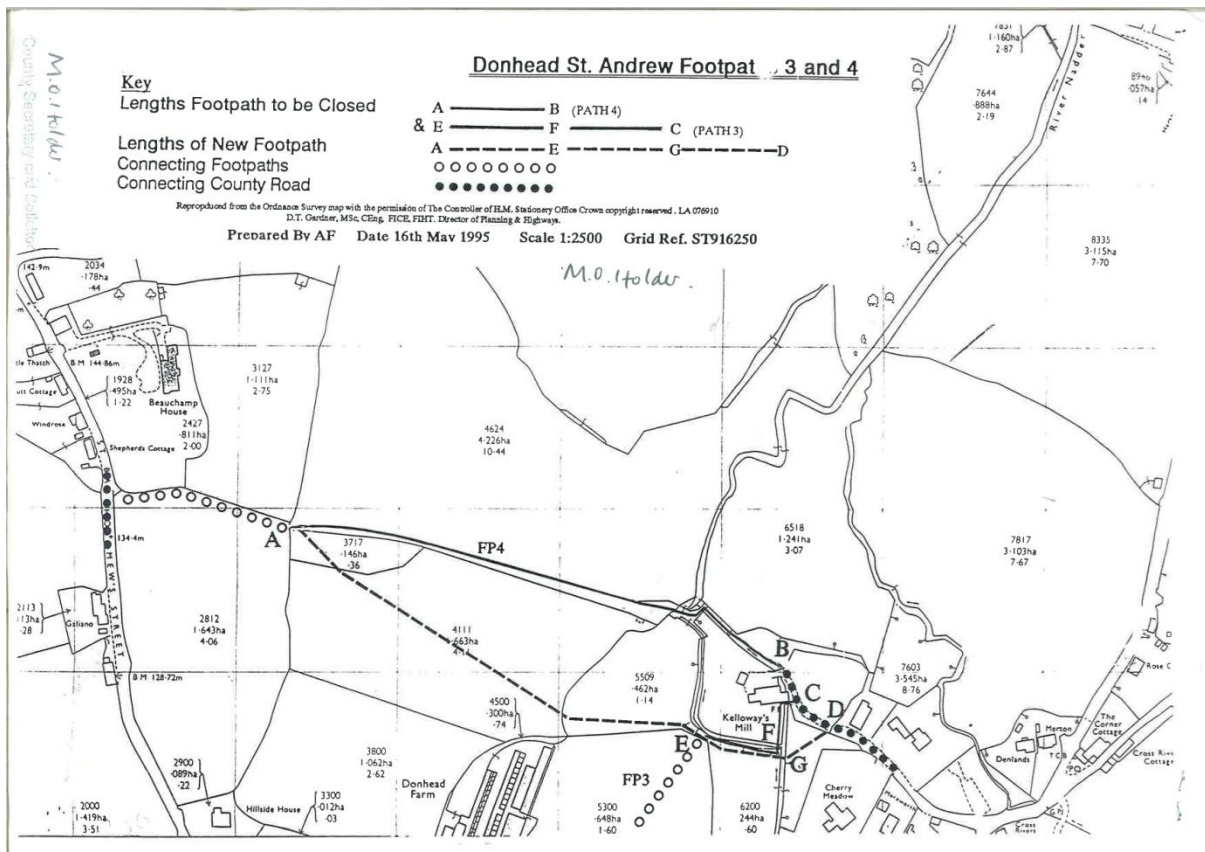
- Mr and Mrs Kilner used the route from their home in Pigtrough Lane to visit neighbours in the village; attend events at the old school and church and leading onwards to Donhead St Mary. This section of path is the only section linking the south and west footpath network to the network of the north and east.

- Mr Roy Powell used the route as a child to walk to school from Pigtrough Lane every day and on Sundays to go to church. His grandparents used the same footpath to get to Donhead Church from Pigtrough Lane.
- Mr Richard Lee states that the claimed route forms part of the network of footpaths in the Parish and the surrounding area and joins the northern part of the parish around Donhead Mill (previously Ricketts Mill), to the centre, around the church and the old school and on towards Donhead St Mary. It is reasonable to assume that the footpath is the best and obvious route for people walking between their houses; place of work; farms; mills, smithy's etc. and also to get from the village school and church.
- Mr P Danby understands that historically the claimed route was, until the construction of New Road along with other interconnecting paths, the only means by which villagers were able to get around going back centuries. The section in question crucially linked the mill at the northern end with both the church and the school at the centre of Donhead St Andrew.
- Mr and Mrs Barkham consider the footpath to be a vital link between the north and south of the village and for parishioners from the north of the village to get to the church. The footpath allows access from the Donheads to Wardour Court: Castle and woods without walking along the road and further to Tisbury.
- Mr Wareham would often walk the claimed route from the church to visit friends at Thorn House, when living in the area as a child and his mother attended school and church as did her brother and sisters and she recalls using the path many times.
- Mrs Collyer walked from home in Barkers Hill to access village amenities.
- Mrs Condon walked the route from her former home Wood Cottage to the village hall; church and centre of the village, and visiting neighbours.
- Mrs Eves used the route from Mill Lane to access Pigtrough Lane and to visit friends.
- Mrs Hinchley from Mill Lane used the route to visit friends in Pigtrough Lane.
- Miss Maxwell-Arnot used the route from Sans Lane to the village; church and to visit friends.
- Miss Saint used the footpath in order to stay off the road as much as possible when dog walking between two other footpaths; visiting friends and to access the pub.
- Mrs Saunders used the route to get from one part of the village to another.
- Mr Simpson used the route from Mill Lane to go visiting and to go to Pigtrough Lane.

- Miss Whymark used the route from Pigtrough Lane to access the Church and St Bartholomews Street.

10.52. The application plan is included at 4, with the claimed route marked by a broken line between points A, B and C. The claimed route is shown linking the two recorded Footpaths 4 and 5 Donhead St Andrew, however it is noted that the application plan does not record Footpath no.5 in its correct position. It is shown at the northern field edge, in fact the definitive line of the path goes further south into the field. The claimed route is shown meeting with Footpath no.5 at the field edge path, however this junction would be further south in the field and there is no reason for path users to walk to the field edge where there is no connection with another public highway.

10.53. It should also be noted that the line of Footpath no.4 Donhead St Andrew, was diverted in 1996 by Salisbury District Council (confirmation of order 14th November 1996, the diversion route to be made available 21 days after confirmation. A definitive map modification order was made accordingly in 1997). The claimed route leads between Footpath no.5 and Footpath no.4 Donhead St Andrew, forming a link between these two routes.



Modification order plan 1997. Footpath no.4 Donhead St Andrew was diverted from a line through the middle of the Mansfield to Kelloways Mill, to a new route further south through the field, in 1996.

10.54. Prior to 1996 it is considered that the public would have walked to the connection with the existing public highway, Footpath no.4. There would be no reason to continue southwards to the present route of Footpath no.4 as the footpath did not exist on this line and there was no other connection with a public highway at this point. This is supported by the historic OS maps dated 1896 and 1901, which record a route only between the two mills (please see **Appendix 2**). Where the extension of the claimed route southwards has only been used by the public since the diversion in 1996/97, 20 year public user cannot be established over this part of the route.

10.55. It is possible that whilst the diversion of Footpath no.4 was formally recorded on the definitive map in 1997, the public may have already been walking the proposed

Decision Report: Wildlife and Countryside Act 1981 – Section 53
 Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
 Donhead St Andrew

diversion route for a number of years prior to 1996/97, thereby demonstrating 20 year user of the southern section of the claimed route. Officers carried out a consultation amongst 19 users who claimed to use the path prior to 1996 and the Parish Council, to this effect:

“From the evidence you have already very kindly provided, it would appear that you have used the claimed footpath route prior to 1996/97 and I would therefore be very grateful if you could provide me with any information regarding:

1) Your recollections of use of the claimed route prior to 1996/97.

2) Your recollections of use of Footpath no.4 Donhead St Andrew prior to 1996/97.

I am particularly interested to find out at what location you connected with Footpath no.4 prior to its formal diversion in 1996/97 and on what line you continued your journey, incorporating the claimed route and Footpath no.4. Perhaps you could mark on the attached map the route which you used prior to 1996/97 and return it to me.”

10.56. 16 responses were received, which are outlined below:

User	Pre 1996/97 route
4	Former route of FP 4, joining claimed route north of Kelloways Mill, then leading north to FP 5. Walked this route since 1972.
5	Route marked alongside the present route of FP 4, the southern section of the claimed route is used (i.e. over land owned by Mr Shepherd). Walked former route of FP 4 in front of Kelloways Mill, over bridge and gate and then turned right along the bottom of the field (now the footpath in dispute) or left and up hill to Barkers Hill (leaving footpath just beside Beauchamp House). Always used the new footpath once it was redirected.
6	Former route of FP and then a route around the perimeter of the northern section of the field. Part of the southern extent of the claimed route is used, but then the route leads into the adjoining field directly alongside Kelloways Mill, to access FP 3.

	<p>Map completed from memory, may not be completely accurate.</p> <p>Routes marked are those historically used as a child, 1976 -1996, prior to Kelloways Mill diversion (approx 1985) and prior to FP 4 diversion.</p>
7 & 8	<p>Line marked A to B on the former route of FP 4, but this is not a straight line. The claimed route is marked by a broken line.</p> <p>At the time (1996/97) Mansfield was a single open field. A to B on the map is the former route of FP 4, but it was not possible to walk this route in a straight line due to the contours of the land and the presence of a number of gorse bushes. On reaching Kelloways Mill at point B the path ran directly past the front door of the Mill.</p> <p>When the access point to Mansfield was changed we continued to walk the path joining DSTA 5 to DSTA 4 but had to walk a little further in order to reach the new access point C.</p>
11 & 12	<p>Former route of FP 4 used.</p> <p>Prior to the footbridge over the river Nadder being built 1996/97 we followed the footpath from Mill Lane down the drive of Kelloways Mill and then between the front door of the mill and the Nadder. We continued with the Nadder on our right until going through a gate into Mansfield. The followed FP 4 in a westerly, direct route up the hill to the NE corner of the top field and would continue until reaching the route at Barkers Hill.</p> <p>To link to Footpath 5, we would turn right (once we crossed into Mansfield) and then would walk along the west side of the Nadder to begin with and then along the side of the wood.</p>
14	Former route of FP 4 marked on map, claimed route not recorded on this map.
15	Former route of FP 4 marked on map. The northern part of the claimed route is shown between FP 5 and the former route of FP 4.
16 & 17	<p>Former route of FP 4 marked A – B on map. The northern part of the claimed route is shown between FP 5 and the former route of FP 4.</p> <p>Since moving to Pigtrough Lane in 1977, we have used what are now known as FP's 5 and 4 and the footpath linking them fairly frequently, to visit neighbours in Mill Lane and to access FP 3. Prior to the diversion of FP 4, they followed a very similar rote to the 1901 OS map (please see Appendix 2).</p> <p>From point A the old path followed an easterly route towards Kelloways Mill approximately along the line of the new fence. At point B the path divided, one path leading north to FP 5 and other continuing east across the culvert for the mill leat and along the north front of Kelloways Mill to the junction of what is now FP 3 and Mill Lane.</p> <p>When FP 4 was diverted with a new bridge across the river and a new entry point at C to</p>

	<p>the field known locally as Mansfield, the route of FP 4 became established as the present more direct line C – A and the existing path linking it to 5 was extended to link points B and C.</p> <p>The effect of the diversion of FP 4 was to shorten the distance between point B and the point where the claimed footpath crosses the new fence line. Reference to the historic map shows that the stile is sited almost exactly on the historic mapped route of FP 4 from point A to the crossing point to Kelloways Mill near point B, indicating historical map evidence of the link between to location of the stile and the crossing point near B.</p>
18	<p>Full claimed route marked on the map, between FP 5 and the present route of FP 4.</p> <p>I have no memory of FP 4 being diverted in 1996, but used the claimed path prior to that. As I recall it went from the east end of FP 5, along the woods and river, over the stile into the Kelloways Mill field and then turned right onto FP 3. It certainly joined FP 3 (which has also changed course I believe after new houses were built on what used to be the Pig Farm), as I used to walk along it to youth club in the late 1980's, at Henrietta Barnett field centre, by the church, whilst I lived around the corner from the east entrance to FP 5.</p>
23	<p>Only the southern section of the claimed route is recorded, i.e. from Kelloways Mill to the present route of FP 4.</p> <p>I have lived in the area since 1974 and have used the footpath daily walking dogs. FP 4 connected to the bridge at Kelloways Mill (the large bridge over the river which went into the field and then the lane). Originally it went over a stile into Kelloways garden and followed their stream past the house and down the drive to the lane.</p>
25	<p>My personal usage of the path was post 1996/97. My original correspondence was on behalf of my father, who moved here in 1989 and has now sadly passed away and with him any knowledge of the old FP 4.</p>
28	<p>The claimed route is shown in full on the map.</p> <p>If we had walked down Butlers Hill, then along FP 3, past the church, at the end of FP 3 (its northern end) turn left along FP 4, after climbing over the stile we then followed a well trodden and clearly defined path until we picked up FP 5 which we then followed past our secondary parcel of land until we came out on the road adjacent to our house. The advantage of doing this was to avoid vehicular traffic along New Road.</p> <p>If we had walked through the village either from the A30 or one of our longer walks via Gutch Common and Donhead St Mary we turned off New Road into Mill Lane and then followed FP 4 as described above.</p> <p>When we were playing in our tennis court we frequently saw walkers, quite often with</p>

	dogs, following FP 5 past the court and coming out on the road by Thorn House. Some of the walkers had clearly come from Pigtrough Lane as they had been visible from our court. However some of them suddenly appeared and must have come from FP 4, probably having followed the route I have marked.
30	Former route of FP 4 marked on map. The northern part of the claimed route is shown between FP 5 and the former route of FP 4.
32 & 33	Former route of FP 4 marked on map. The northern part of the claimed route is shown between FP 5 and the former route of FP 4. Our best memories prior to 96/97 are that we entered the drive of Kelloways Mill, continued up the drive past the house on our left, through the garden to the field near where the present stile is in the new fence. We crossed the field straight to the old oak tree or turned right in a north-easterly direction to meet FP 5, i.e. along the claimed footpath. We think the old route of FP 4 roughly followed the line of the new fence, we think to its southern side.
Parish Council	Former route of FP 4 marked on map. The northern part of the claimed route is shown between FP 5 and the former route of FP 4. The route as remembered by Parish Councillors, this was a unanimous decision of those present at the time of the diversion.
Mr Roy Powell	FP 4 across the Mansfield is not shown to be a used route on the map. The northern section of the claimed route leading south from FP 5 to Kelloways Mill and then leading east directly to the north of Kelloways Mill is recorded (the former route of FP 4 at Kelloways Mill.) As children my brothers and I used the footpath as marked to travel to school from Pigtrough Lane. My Grandparents also used the same footpath to get to Donhead Church from Pigtrough Lane.

10.57. 11 of these witnesses refer to use of the former route of Footpath no.4 before 1996/97, therefore on the balance, it would appear that 20 years public user of the southern section of the route cannot be shown during the relevant user period of 8th August 1992 – 8th August 2012. There is insufficient evidence of its public use and existence on its present definitive line prior to 1996/97. It is considered that prior to this date the northern section of the claimed route, linked Footpath no.5 to the former

route of Footpath no.4 which led east-west between Beauchamp House and Kelloways Mill.

10.58. 18 of the witnesses have used a different route to the claimed route, at the northern end, i.e. instead of continuing in a northerly direction to meet footpath 5 within the field, they have turned in a north-easterly direction to continue to the edge of the field, to junction with footpath no.5 at the field edge, near Ricketts Mill. This is supported by OS mapping dated 1896 (six inch map) and 1901 (25 inch map) which show a route leading to the north-east corner of the field (please see **Appendix 2**).

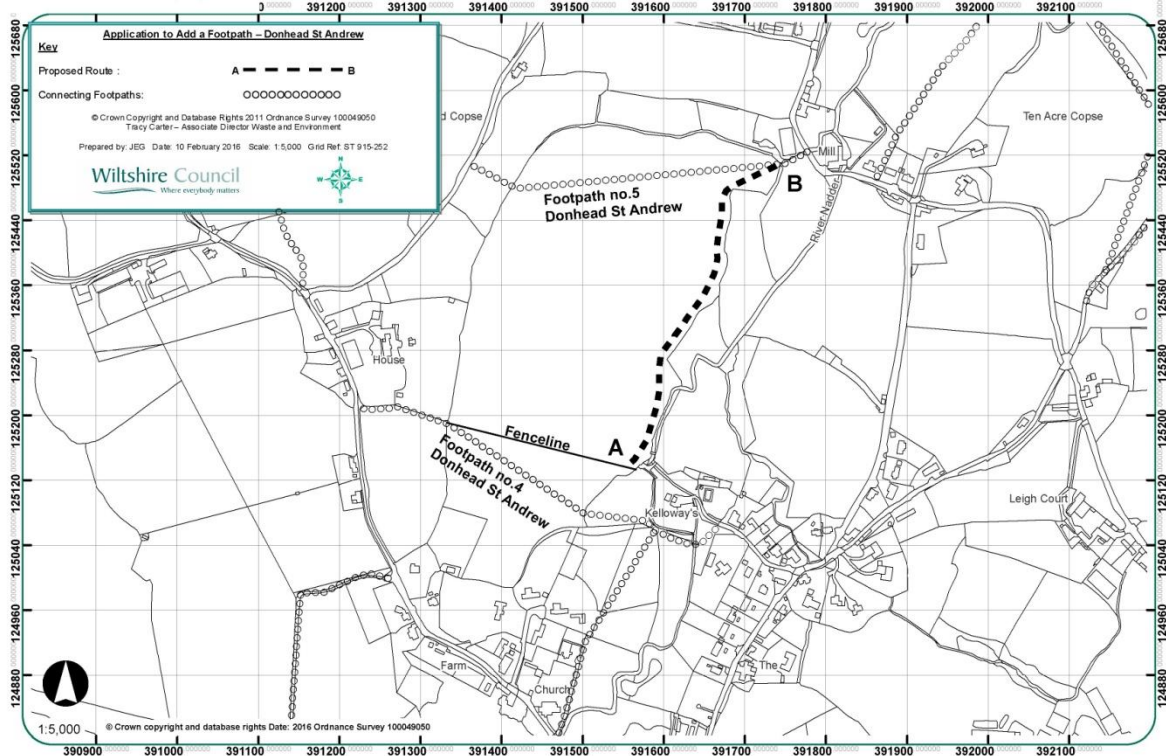
10.59. All witnesses have used the path through the field on more or less the same route, although there are some variations, i.e. some being closer to the field boundary and some being more central within the field, allowing for the inevitable inconsistencies in the drawing of the route by different individuals.

10.60. At the southern end, the majority of users have junctioned with Footpath no.4, however, one of the users continues south in the field, past Footpath no.4 (it is not clear where they were going after this as there are no linking public highways at their termination point) and one of the users continues south of Footpath no.4 and then continues east to the south of Kelloways Mill paddock. Additionally two of the users (Miss Ronan and Mr Winslet) terminate their route north of the fence line and do not enter the southern field. Their route terminates to the north-west of Kelloways Mill where the former route of Footpath no.4 would have junctioned with the claimed route and it is not clear where they were going after this as there are no longer any linking public highways at their termination point following the diversion of Footpath no. 4 Donhead St Andrew in 1996/97. Miss Ronan used the claimed route until 2014 and Mr Winslet used the route until 2015, so their use continued following the diversion of Footpath no.4.

10.61. In her evidence Mrs Shaw states that until the 1980's the land now owned by the Wardour Ltd was divided into several fields, as shown on the 1901 OS 25" map. Drainage was poor and the eastern edge of the field was waterlogged throughout the

autumn and winter. This is supported by Mrs Margaret Pitman in her statutory declaration, who states that when they bought the land *“It was then divided into several fields and was poorly drained.”* The 1982 aerial photograph (included at 10.36), shows that in 1982 the field was divided by hedges. Certainly the 1925 OS 25 inch map shows the field divisions (please see **Appendix 2**) and although witness claim use dating back to 1970, the majority of witnesses do not mention previous field boundaries and how these were negotiated. Only Mr Tom Kilner advises that there used to be a metal fence a long time ago, with a gate as he recalls and when the newer wooden fence was put in, a stile was placed where the path crossed it. From examining the historic OS mapping (please see **Appendix 2**), it would appear that there was previously a fence to the southern section of the field, on the approximate line of the present fence and Officers believe this to be the former fence which Mr Kilner refers to, with gate (Mr Kilner’s use spans 34 years). It is not clear when these boundaries were removed and although they appear on the 1982 aerial photograph, they appear to be removed by 1991 (as can be seen from the 1991 aerial photograph, see 10.36), at the start of the relevant user period. They do not appear to be present on the 2001 and 2005/06 aerial photographs, within the relevant user period (included at 10.36). It is likely that during the user period in question 1992-2012, the field boundaries had been removed and Mr and Mrs Shepherd sought to re-establish the field boundary to the north of their land in 2012.

- 10.62. Please find attached below, the proposed route to be added to the definitive map and statement of public rights of way, based upon the witness evidence before the Council and the diversion order on Footpath no.4 Donhead St Andrew which took place in 1996/97:



10.63. This creates a cul-de-sac footpath, as public user of 20 years cannot be shown on the southern section of the claimed route, following the diversion of Footpath no.4 Donhead St Andrew in 1996/97, i.e. this section of the route cannot be claimed under statute.

Common Law Dedication

10.64. Section 5 of the Planning Inspectorate Definitive Map Orders: Consistency Guidelines, suggest that even where a claim meets the legal tests under Section 31(1) of the Highways Act 1980 for dedication under statute, there should be consideration of the matter at common law.

10.65. Dedication at common law does not rely upon a 20 year public user period and there is no defined minimum period of contentious user. Where the origin of a highway is

Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to add a footpath to the Definitive Map and Statement of Public Rights of Way - Donhead St Andrew

not known, its status at common law depends upon the inference that the way was in fact dedicated at some time in the past.

10.66. A highway can be created at common law by a landowner dedicating the land to the public for use as a highway, either expressly, or in the absence of evidence of actual express dedication by landowners, through implied dedication, for example making no objection to public use of the way. It also relies upon the public showing their acceptance of the route by using the way. Whilst the principles of dedication and acceptance remain the same in both statute and common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners intentions remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at common law at some time in the past, it is recognised that in practice evidence of such dedication is difficult to obtain and it is then appropriate to apply Section 31 of the Highways Act 1980.

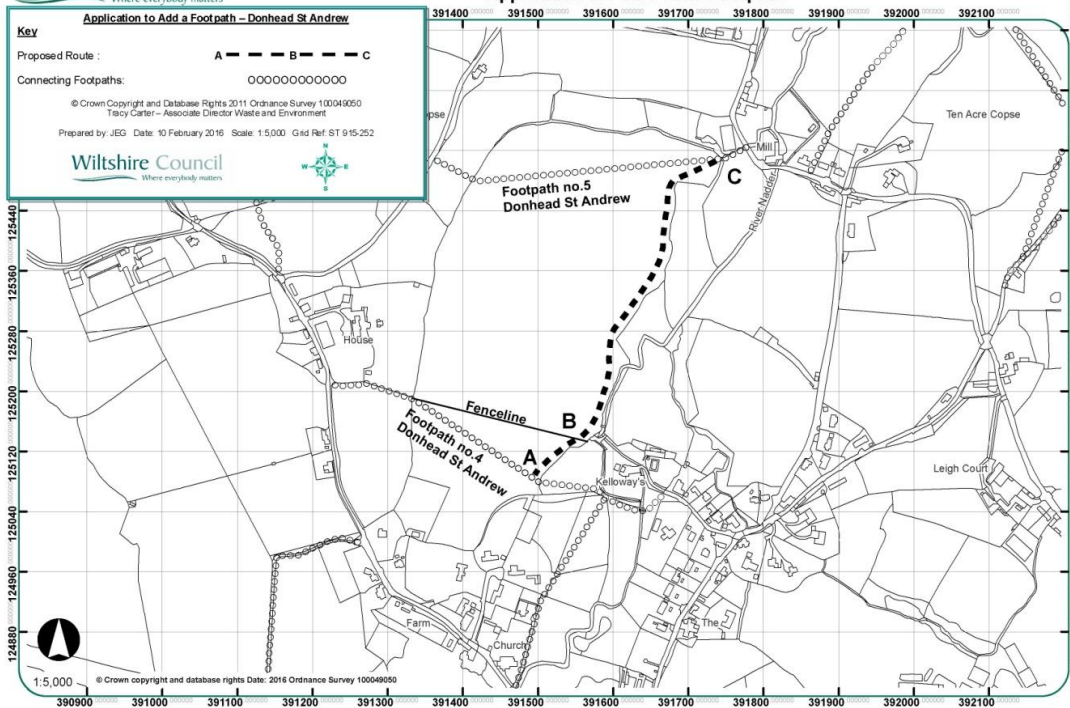
10.67. Relatively few highways can be shown to have been expressly dedicated and in the Donhead St Andrew case there is no evidence before the Surveying Authority that Wardour Ltd, or the Pitman family before them, have carried out any express act of dedication over the northern section of the claimed route. However, there is evidence that the previous landowners acquiesced in use of the claimed route by the public, before 2012, and evidence of the public acceptance of this route through user. Therefore if the claim under statute were to fail, it is possible to apply the principles of common law on the northern part of the claimed route.

10.68. On the southern section of the route, Mr and Mrs Shepherd installed a fence on the northern boundary of their land in March 2012, including a stile in the fence to allow public access with a dog latch. Whilst this action was de-minimis for the purposes of Section 31 of the Highways Act 1980, it could be taken as an act of implied dedication at common law (in the absence of any express dedication at common law). Although Wardour Ltd lodged with Wiltshire Council a plan and statement under Section 31(6) of the Highways Act 1980 to negative their intention to dedicate land in

their ownership as a public highway, on 8th August 2012, which brought into question the public right to use the whole of the claimed route, this action comes 5 – 6 months after the erection of the stile. The user evidence chart at 10.15 shows that 32 witnesses continued to use the claimed route before and after 2012 and this is considered sufficient to show acceptance by the public over the southern section of the route on Mr and Mrs Shepherds land, during that 5-6 month period. Mr John Graham confirms that the number of users increased following the erection of the stile and Mr and Mrs Collyer state that the stile was incorporated in the fence allowing them to continue to use the path between Footpath 4 and Footpath 5.

10.69. There is evidence that the adjoining landowner Mr Pitman was against the installation of a stile as evidenced by Mrs Shaw; Mr Hugh Graham and Mr Paul Farrant. Mr Farrant states that a stile was incorporated at the eastern edge of the fence to accommodate the walkers, although David Pitman, a previous owner of the land who was involved in constructing the fence, made it clear that the walkers had no right to walk that route. Mrs Shaw requested that the stile be removed in an e-mail to Mr Shepherd dated 15th October 2014.

10.70. Officers consider that a dedication at common law has taken place on the southern section of the route, between Footpath no.4 and the fence on the land owned by Mr and Mrs Shepherd and there is evidence of acceptance of the route by the public in the period of time before the route as a whole was brought into question by the actions of the adjoining landowner, Wardour Ltd, in lodging with Wiltshire Council a plan and statement under Section 31(6) of the Highways Act 1980. On the evidence before the Council, Officers consider that the following route should be added to the definitive map and statement of public rights of way:



Width

10.71. In making an order to add a new footpath to the definitive map and statement of public rights of way, a width must be recorded within the definitive statement, based on evidence. The 1901 OS map (25 inches to 1 mile) records only part of the claimed route (i.e. within plot no.105), on a slightly different line, by double broken lines, standard OS symbols to record a route with no physical boundaries. The route is also braced as part of the field, therefore no conclusions regarding the width of the path can be drawn from the OS mapping (please see **Appendix 2**). It is important therefore to consider the witness evidence of the actual used width of the path. Witnesses have recorded the following path widths:

Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to add a footpath to the Definitive Map and Statement of Public Rights of Way - Donhead St Andrew

Witness	Width	Witness	Width
1	2-3m	18	Footpath through grassy field so roughly 0.5m
2	Approx 2m	19	2m
3	Approx 1m	20	Approx 2m
4	1-2m	21	1-2m. A fence and stile were erected about 100m from point A around 2013/14
5	2m	22	About ¾ m. A new fence was put in the middle when the land was sold to two people a new stile was installed when permissive path established
6	Usually a well worn path of approx 1m	23	Up to 3m
7	The path runs almost along the edge of an open field. A fence was placed across part of the path with a stile across	24	
8	It is a rough path probably about 2m	25	2m
9	2m	26	As long as I've know it there has been no "boundary" or fencing, it was just a walk around the perimeter, or one side of a field, joining another path
10	c.2m wide (a fence with stile erected 2013)	27	1-2m
11	1m	28	2m
12	0.5m	29	Footpath in open field 1.5m
13	1-2m	30	1m
14	No defined width, i.e. fences. Width commonly used is approx 1.5-2m	31	No more than 2m
15	Up to 3m	32	Was about 2m, narrower since new fence and stile put in. I could walk side by side with villagers.
16	1-2m	33	Variable but about 2m. Since new fence and stile almost a single track, previously 2 people could walk side by side.
17	About 2m		

10.72. Witnesses give varying path widths. Officers have therefore used an average from those users who have provided width figures (based on the maximum extent given), which gives an average width of 1.8 metres to be recorded as the definitive width of the footpath, if a definitive map modification order is made.

Landowner's Intention

10.73. Under Section 31 of the Highways Act 1980, there is a presumption of dedication following public use of a route for a period of 20 years or more "as of right", unless during that period, there was in fact no intention on the landowners part to dedicate the land as a highway. Intention to dedicate was discussed in the Godmanchester case, which is considered to be the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956:

"...in order for there to be "sufficient evidence there was no intention" to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must in Lord Blackburns words, take steps to disabuse these persons of any belief that there was a public right..."

10.74. In the same case, Lord Neuberger of Abbotsbury went further on this point:

"...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1 (1) of the 1923 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1981 Act."

10.75. Lord Hoffman went on to say:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”

10.76. The land was previously owned by Mr David Pitman; Mr Gerald Pitman and Mrs Francis Pitman from 1982/84, being transferred to Mrs Margaret Pitman in June 2011. From the evidence available to the Council, it would appear that the Pitman partnership, took little action to deter the public from using the route. The witnesses suggest the Pitmans were aware of the path, but in fact acquiesced in its use and no witnesses report being challenged during the Pitman’s period of ownership. One user reports standing in her paddock with Mr Gerald Pitman, watching people using the path and two witnesses report that Mr Pitman told them that the route was a public footpath which they were free to walk when they came to the village in 2004, thereby acknowledging the existence of a path.

10.77. In his statutory declaration Mr David Pitman states that they always led everyone to believe that it was at the landowners’ discretion if they walked anywhere else on the field other than on the public footpaths and they told people who asked where the public footpaths were. They did grant permission to one or two people who asked permission to walk elsewhere on the land, other than on the public footpaths, (including Mrs Belinda Blanshard). Upon purchasing the land Mr John Barton requested permission from Mr Pitman to walk the claimed route. However, whilst some individuals appear to have requested permission, this does not convey the landowners intentions to the wider public and there is no evidence that the landowners non-intention to dedicate the route, was communicated to the public at large, e.g. through the erection of permissive path signs or prohibitory notices.

- 10.78. Mr and Mrs Shepherd who own the land over which the southern section of the route passes, appear to have taken no action to communicate to the public that it was not their intention to dedicate the land as a public highway and in fact included a stile with dog latch in the boundary fence erected in 2012, against the advice of the previous landowner.
- 10.79. On the northern section of the route, since Mr and Mrs Shaw's ownership of the land in May 2012, they have clearly communicated to the public their non-intention to dedicate this land as a public highway. It would appear that they were aware of the public use of the route upon purchasing the land and lodged with Wiltshire Council a map and statement under Section 31(6) of the Highways Act 1980, covering the area of land in question, on 8th August 2012, thereby negating the landowner's intention to dedicate further public rights of way over the land. This intention was communicated to the public at large by the erection of permissive path signage on the claimed route in Autumn 2012 and January 2013, making it clear to members of the public that use of the path was at the discretion of the landowners and could be withdrawn at any time. In 2014 temporary path closure notices were erected on site by Mr and Mrs Shaw, amid safety fears following the appearance of a sink hole on the land, close to the claimed footpath.
- 10.80. Whilst these do qualify as actions to negate a landowner's intention to dedicate the land as a public highway, it would appear that on the balance, a 20 year public user period, as of right and without interruption, had already been established prior to the deposit of a statement and plan under Section 31(6) of the Highways Act 1980 on 8th August 2012 and prior to Wardour Ltd's ownership of the land.

Conclusion

- 10.81. Officers have very carefully considered the evidence submitted both in support of and opposing the application and concluded that there is sufficient evidence for it to be reasonably alleged that a right for the public on foot subsists over the land in question and therefore the only option open to Wiltshire Council as the Surveying

Authority is to make a definitive map modification order to amend the definitive map and statement of public rights of way accordingly.

11. Overview and Scrutiny Engagement

11.1. Not required.

12. Safeguarding Considerations

12.1. Considerations relating to the safeguarding of anyone affected by the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

13. Public Health Implications

13.1. Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

14. Procurement Implications

14.1. The determination of definitive map modification order applications and modifying the definitive map and statement accordingly, are statutory duties for the Council. The financial implications are discussed at 18.

15. Environmental Impact of the Proposal

15.1. Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not

considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

16. Equalities Impact

16.1. Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

17. Risk Assessment

17.1. Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

18. Financial Implications

18.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, are statutory duties for the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.

18.2. Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application, are minimal.

18.3. Where a definitive map modification order is made and objections received, which are not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written

representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 – £300 and a public inquiry may cost between £1500 - £3000, if Wiltshire Council supports the order (i.e. where legal representation is required by the Council) and around £200 - £300 if it does not support the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant).

- 18.4. In cases involving witness evidence, the case is usually determined by local public inquiry, where the evidence given by in chief by witnesses can be tested under cross examination.

19. Legal Considerations

- 19.1. Where the Surveying Authority determines to refuse to make an order, the applicant may lodge and appeal with the Secretary of State, who will consider the evidence and may direct the Council to make an order.
- 19.2. If an order is made and objections are received, any determination of the order by the Secretary of State may be challenged in the High Court.

20. Options Considered

- 20.1. To:
- i) Refuse to make a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that a right of way for the public on foot subsists on the balance of probabilities, or is reasonably alleged to subsist, or
 - ii) Where there is sufficient evidence that a right for the public on foot subsists on the balance of probabilities, or is reasonably alleged to subsist, the only option available to the authority is to make a definitive map modification order

to add a footpath to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981.

21. Reasons for Proposal

- 21.1. Under statute law, it is considered that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot, subsists, over the northern section of the route through the Mansfield (i.e. over the land owned by Wardour Ltd), based on evidence of public user, as of right, over the claimed route for a period of 20 years or more.
- 21.2. Additionally there is insufficient evidence of the landowners' non-intention to dedicate the way during the relevant user period of 8th August 1992 – 8th August 2012. The new landowners on the northern section of the route (Wardour Ltd) have carried out acts to show their non-intention to dedicate the land as a public right of way, i.e. erecting permissive path signs in 2012 and 2013; granting permission to individuals in 2012; depositing with Wiltshire Council a statement and plan under Section 31(6) of the Highways Act 1980 on 8th August 2012; depositing with Wiltshire Council a statutory declaration under Section 31(6) of the Highways Act 1980 on 14th August 2016; depositing with Wiltshire Council a CA16 form for deposits under Section 31(6) of the Highways Act 1980 and Section 15A(1) of the Commons Act 2006 in 2015 and erecting temporary path closure notices in 2014, however the evidence as a whole points towards 20 years public user, as of right, being established prior to the public's use of the path first being brought into question by the deposition of the statement and plan under Section 31(6) of the Highways Act 1980, on 8th August 2012.
- 21.3. Mr David Pitman on behalf of the Pitman family as the previous landowners, makes clear in his evidence that it was not their intention to dedicate the route as a public highway, i.e. they granted permission to individuals and they always led everyone to believe that it was at the landowners discretion if they walked anywhere else on the field other than on the public footpaths, there is however insufficient evidence before the Council of any actions undertaken by the Pitman family as the previous

landowners, or by Mr and Mrs Shepherd as the present owners of the land over which the southern section of the route passes, to convey to the public at large their non-intention to dedicate the land as a public highway.

- 21.4. There is insufficient evidence of public user for a 20 year period over the southern section of the route (over the land owned by Mr and Mrs Shepherd). However, Officers consider that the installation of a stile and dog latch by Mr and Mrs Shepherd when the fence was erected at the boundary of their land in March 2012, constitutes an act of implied permission under common law. There is evidence that the public have accepted this route by continuing to use it before and after 2012, therefore it is considered that the southern section of the route has acquired a right for the public on foot, at common law.

22. Proposal

- 22.1. That a definitive map modification order be made to add a right of way for the public on foot to the definitive map and statement of public rights of way in the parish of Donhead St Andrew, between Footpath no.4 and Footpath no.5 Donhead St Andrew, having a width of 1.8 metres, where it is reasonably alleged that a right for the public on foot subsists. Where an order is made on a reasonable allegation, it may not be confirmed until the more stringent test of the “balance of probabilities” is applied, i.e. it is more likely than not that a right for the public on foot exists. Therefore, where no objections to the making of the order are received, weight is added to the supporting evidence before the Council and it is recommended that the order be confirmed as an unopposed order, where no objections are received.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 18th July 2016

Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to add a footpath to the Definitive Map and Statement of Public Rights of Way -
Donhead St Andrew

Decision Report – Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of
Way – Donhead St Andrew

Appendix 1 – Representations and Objections Received at Initial Consultation

1. **Mr Ronald Isgar, Dengrove Farm** - returned Landowner Evidence Form to confirm that the claim does not affect land in his ownership.
2. **Mr Michael Isgar** - returned Landowner Evidence Form to confirm that the claim does not affect land in his ownership.

3. **Mrs Margaret Pitman** - returned the Landowner Evidence Form to confirm that the claim does not affect land in her ownership.

Mrs Pitman is now the tenant of part of the land, having owned the land for only a very short period of time in 2011, before its sale to Mr and Mrs Shepherd and Wardour Ltd. Previously to this the whole of the land affected by the claim, had been in her family's ownership since 1982/1984. Officers spoke with Mrs Pitman on the telephone in December 2015. She advised that she has always lived in the village and as children they trawled around but never used this path and had not known of its existence. In the 1980's her husband and his family purchased the field but they were never aware of the footpath and never saw anyone using it. In around 2009 the land went into probate and part was sold to Leggits Farm in May 2011 and to Mr and Mrs Shaws in 2012. There were tracks in the field during her husband's ownership which could have been made by animals or machinery. They walked weekly during her husband's ownership of the land, (they got married in 1966), Mrs Pitman acknowledges that there could have been dog walkers using the claimed route early in the morning, at different times to herself, so she would have not seen them. When her husband owned the land she walked with the children across the land herself, but never used this route. When she owned the land herself she was there more often and only ever saw walkers on the very odd occasion.

4. **Mr Tom Kilner** wrote with further evidence in support of the application - letter dated 13th September 2015:
 - Born in the village and lived there until the age of 19 (1981-2000). My parents still live there and I frequently visit. During those 34 years we frequently walked the path along with many other dog walkers and ramblers.

- Used to be a metal fence a long time ago with a gate as I recall, and when the newer wooden fence was put in, a stile was placed where the path crossed it, presumably because there obviously was a path.
- If you were to look at aerial photographs from before the path closure last year, you would probably see a slightly darker stripe where the path runs west of the river and woods.

5. Mr and Mrs C Kilner wrote with further evidence in support of the application - letter dated 15th September 2015.

- Support based on historical mapping evidence and our own experience of using the path for more than 35 years.
- 1901 OS map sheet LXIX Section 6, held by Salisbury Library, shows the footpath leading from the eastern end of FP 4 near Kelloways Mill, to join FP 5 near what was Ricketts Mill. The OS map pre-dates the diversion of FP 4 about 20 years ago.
- Earlier editions of the map show the same footpath, i.e. 1886.
- The 1925 edition and later editions do not show the footpath and we conclude that this is probably a transcription error.
- Moved to present address in Pigtrough Lane in 1977, the footpath was well known and a well used route from Ricketts Mill and Pigtrough Lane, via FP 4 and 5.
- Used path since 1977 fairly frequently to visit neighbours in the village and attend events at the old school, church or onward to Donhead St Mary.
- Often met others using the path.
- To the best of our knowledge the previous owners of the land were aware of its use as a public path and never raised any concerns.
- The section of path in question is the only section linking the south and west footpath network to the network of the north and east.
- A fence with a stile was put up by the owner of the smaller part of the field in about 2013. After the fence was put up the owner of the larger section of the field put up notices at the stile and the northern end alleging that the path was permissive.
- In October and November 2014 notices appeared stating that the path was closed, which gave rise to the definitive map modification order application.

6. **Mr Barry Sullivan** wrote in support of the application - letter dated 20th September 2015.
- Our position is set out in our witness evidence form and we accordingly support a footpath between A and C on the plan.
7. **Mr Roy Powell** wrote with further evidence in support of the application - letter dated 21st September 2015 (Mr Powell did not submit a witness evidence form, but saw the Councils initial consultation letter to Mr and Mrs Collyer).
- Used the claimed footpath as early as 1953 as a child, to walk to school from Pigtrough Lane every day and on Sundays to go to church.
 - I am now 67 years old and I remember the footpath being there at the time.
8. **Mr Richard Lee** wrote with further evidence in support of the application - letter dated 5th October 2015.
- Lived in the parish for over 31 years and know the village and surrounding area well.
 - The footpath forms part of the network of footpaths in the Parish and surrounding area, joins the northern part of the parish around Donhead Mill (previously Ricketts Mill), to the centre, around the church and the old school and on towards Donhead St Mary.
 - I submit that it is very probable that this route has been used by the public for over 100 years. 1900 OS map shows a footpath (marked FP) shown along the linear route joining footpaths 4 and 5.
 - I continue to use footpaths 4 and 5. I used the proposed footpath until the present owner called its existence into question.
 - I believe that it is reasonable to assume that this footpath is the best and obvious route for people walking between their houses; places of work; farms; mills; smithy's etc. and also to get from the village school and church.
 - I have heard no evidence that previous owners of Mansfield have sought to bring into question use of the footpath by the public, nor challenged public use, or otherwise sought to close the footpath either by displaying notices or taking other action such as building fences.
9. **Mr and Mrs C Eves** wrote in support of the application - letter dated 7th October 2015.

- We cannot add much to our witness statements, other than we have used it as a footpath for all of the 26 years that we have lived in Donhead St Andrew.
- Fully endorse the Parish Council's application.

10. Mr P Danby wrote with further evidence in support of the application - letter dated 8th October 2015.

- Resident in Mill Lane for only the last 8 years, it has always been understood by us that historically, the section of path to be designated was, until the construction of New Road along with other interconnecting paths, the only means by which villagers were able to get around, going back centuries.
- The section in question crucially linked the Mill at the northern end with both the Church and school at the centre of Donhead St Andrew.
- It is submitted that Wiltshire Council have an obligation to support the application, recognising the very real strength of feeling felt by residents who live in the area and who have regularly used the footpath, in many cases for a long time.
- There is a huge amount of supporting evidence including witness statements and other submissions along with open discussions through Donhead St Andrew Parish Council. This is all a matter of record and succinctly sums up the very strong feelings felt over this unhappy affair.

11. Mrs E Barkham wrote with further evidence in support of the application - letter dated 9th October 2015.

- We bought our house and the adjoining paddock in 2003, at this time our paddock was part of Mansfield.
- There was no division of the field at that time as there is now and we entered into a "grazing agreement" with Gerald Pitman, whereby his cattle could graze in the part of Mansfield which we owned.
- As we were new to the area we approached him regarding walking through the field along what was a well used path (A-B-C on the map). Gerald said that this was ok as it was a public footpath and we were free to walk it and we have walked it individually and as a family on almost a daily occurrence ever since.
- The field was sold, split up and fences erected. At point B, a stile and dog-hole were incorporated into the fence. We continued to use the footpath as did many others and we were never challenged or asked not to.

- Last year whilst walking the path we recognised a sink hole and alerted the new owner Mrs Shaw. At that time Mrs Shaw did not ask us why we were walking through the field or suggest that we shouldn't have been there.
- The footpath is a vital link between the north and south of the village, it is the traditional route between the two mills in the village and for parishioners from the north of the village to get to the church. The footpath allows access from the Donheads to Wardour Court, Castle and woods without walking along the road and further to Tisbury. The alternative is to walk along the road, a narrow, straight and fast section of road with nowhere safe for pedestrians.

12. Dr S Barkham wrote with further evidence in support of the application - letter dated 9th October 2015.
(Comments as above, as per Mrs E Barkham).

13. Mrs A Shaw of Wardour Ltd (Registered Landowner) returned a completed landowner evidence form and further evidence objecting to the application – submission dated 11th October 2015 (followed by further submissions).

- Land owned since 22nd May 2012, Beauchamp House owned since January 1993.
- Do not believe the way to be public.
- From 1993-2003 use of the alleged path was virtually non-existent. Aware of public use from 2003 – 2015: occasionally in 2003 increasing to several times per day over this period.
- People voluntarily requested permission to use the route and were given permission on dates ranging from 1982/4 to 2012.
- Plan and Statement deposited under Section 31(6) of the Highways Act 1980 on 14th August 2012 and under Section 15A(1) of the Commons Act 2006, on 22nd July 2015.
- Did not initially turn people back or stop anyone using the way as people walked the permissive path with consent. After the appearance of a large sink hole close to the path, notice was placed at point B temporarily closing the path for safety reasons. As this was ignored it was decided to close the path on a permanent basis.
- It was not necessary to tell anyone using the way that the path was not public as permission had been sought and given on 17th July 2012 and signs were erected (permissive path signs).

- Notices were erected stating that the path was not public in Autumn 2012 and January 2013. Two notices were damaged in late June / early July 2013 and both were replaced on 25th July 2013.
- Stile at point B - the owner of the fence, Marcus Shepherd was requested to dismantle the stile by an e-mail dated 15/10/2014, no response was forthcoming.
- The southern section of the route did not exist at all prior to 1997 when public footpath no.4 was diverted. The path was diverted to avoid the garden and driveway of Kelloways Mill, to go south through a small field adjoining Kelloways Mill. The section of the claimed route between the former route of Footpath no.4 and its new route further south, did not exist, therefore the claimed path has not been walked for a period of 20 years.
- 1901 OS map showing a track between Ricketts Mill and Kelloways Mill - the two mills were in common ownership at that time and the track was not shown on OS maps after 1901 (on the 1925 OS map, Kelloways Mill is shown as disused), suggesting that there was no evidence of the footpath after the mill was closed.
- Being shown on the OS map does not equate to public footpath status.
- If a path had been apparent on the ground, one would expect it to remain on the OS maps after 1901 and to have been claimed under the 1949 Act, or in any of the correspondence or objection stages since that date, and there would have been evidence of the path when the Pitmans purchased the land in 1982-84 and when Wardour purchased Beauchamp House in 1993, which was not the case on either occasion. Aerial photographs of the area from the 1990's were viewed in March 2012 with the Rights of Way Department of Wiltshire Council and did not show any evidence of a trodden path along the eastern edge of the field. It was only in the early years of 2000 that people were seen walking along the eastern side of the field (and elsewhere in the field). Statutory declarations have been signed to this effect.
- Until the 1980's the Wardour Ltd land was divided into several fields, as the 1901 OS map indicates, drainage was poor and the eastern edge waterlogged throughout the autumn and winter.
- A conversation overheard in the Forester pub on 20th July 2015 revealed that some villagers had been asked to sign witness statements in favour of the claim, but they refused because they did not think the path was a public footpath.
- A public footpath was not claimed on occasions when this might have been expected i.e:

- 1) Under the National Parks and Access to the Countryside Act of 1949 when the parish survey was done, nor in any subsequent review.
- 2) In 1996-97 when Footpath no.4 was diverted.

(On both occasions there would have been widespread advertising and the Parish Council would have been involved, but there is no record of any mention on either occasion of a footpath along the eastern side of the field).

- 3) When the new fence was erected by Marcus Shepherd in March 2012, some villagers requested that a stile was put in the fence. David Pitman was helping with the fencing at this time (but was no longer an owner of the land), and was displeased and shocked by this request. The stile was put in but no path was claimed. Wardour had not contracted to purchase the land at that time but they were aware of the commotion and sought the advice of solicitors who advised that the purchase would be greatly delayed if they were to attempt to research the status of the path and an informal request was made to the Rights of Way Department of Wiltshire Council, when aerial photographs from the 1990's were viewed and did not show any sign of a trodden path along the eastern edge of the field. Accordingly, it was unlikely that a public footpath could be claimed as the route had not been walked for 20 years and Wardour went ahead with the purchase.

- 4) When Wardour put up permissive path notices in 2012/13.

- Inconsistency of witness plans, even allowing for the fact that the walkers are not qualified cartographers, the maps attached to the statement show many variations of the path, particularly at the northern and southern ends of the Wardour Ltd land.
- Various people have asked permission to walk the permissive path as early as 1982-84 (when the Pitman partnership owned the land), or have thanked me for allowing them to use it, indicating that villagers regarded themselves, prior to Wardour purchasing the land, as walking with the landowners consent.
- Richard and Tamsin Lee requested permission on behalf of the village to walk the permissive route on 17th July 2012. John Barton who was present at that meeting has signed a Statutory Declaration to that effect. This consent was referred to by Jane Hopkins in the presence of independent witnesses on the following day.
- Belinda Blanshard requested permission to walk the field other than on the public footpath in the early 1980's from David Pitman, when they purchased the field (David Pitman has signed a statutory declaration confirming this). Mrs Blanshard says that she always asks the landowner's consent before walking on any part of

the land, however Mrs Blanshard's witness statement did not acknowledge that she received consent and neither did Mr Lee's or Jane Hopkins statements.

- The only person who did confirm that he had consent to walk is John Barton, who also confirms that he had received permission from Gerald Pitman to walk the eastern edge of the field and at that time they had agreed that there was no public right of way.
- Mr and Mrs Barkham suggest in their statement that Gerald Pitman pointed out to them the alleged footpath when they moved to Donhead St Andrew. Mrs Barkham thanked me at a gardening opening of 21st June 2014 for allowing them to walk the permissive path and asked if her husband, a geologist, could inspect the sinkhole, thereby confirming that they regarded themselves as walking with the landowners consent.

Mrs Shaw has also submitted statutory declarations from Mr David Pitman; Mr John Barton; Mr Hugh Graham; Mr John Graham; Mrs Claire MacDonald; Mrs Judy MacMillan; Mrs Margaret Pitman; Mr Christopher Long; Mrs Janet Long and Mr Paul Farrant, summarised as follows:

14. Mr David Pitman – Statutory Declaration dated 30th July 2015:

Together with members of my family, I was co-owner of that land, from approximately 1982/84, until it was transferred to Margaret Pitman in 2011. Margaret Pitman sold part of the land to Wardour Ltd, in June 2012.

I am aware that there are two public footpaths on the land, numbered 4 and 5, as far as I remember, there were and are no other public footpaths on the land. When we purchased the land there was no evidence of any footpath on the eastern edge of the land.

When we purchased the land one or two people asked us for permission to walk other than on the public footpaths (Mrs Belinda Blanshard was one such person) and we granted that permission. I know my brother, Gerald Pitman who died in 2009, also gave permission to some villagers to walk other than on the public footpaths. We told people who asked, where the footpaths were and we always led everybody to believe that it was at our discretion if they walked anywhere else on the field other than on the public footpaths.

My clear recollection is that for the first 20 years or so of our ownership of the field there was hardly any use of the field at all, but in about 2003 public use generally began to increase noticeably. If the public really have been walking any of the field

other than the public footpaths, it will really only have been in the last 12 years or so that they have done so, if that.

- 15. Mr John Barton** - Statutory Declaration dated 26th November 2015 (Mr Barton has also completed a witness evidence form):

I purchased Kelloways Mill in 1987 and have lived there since that date. I am aware that there are two public footpaths numbered 4 and 5. When I purchased Kelloways Mill, I do not recall there being a trodden path on the eastern edge of the land. At that time I asked Gerald Pitman for permission to walk along that edge and he and I agreed that there was no public right of way.

There was also no mention of there being a footpath when the diversion of Footpath no.4 took place in 1997. David and Gerald Pitman had to give written consent for part of the footpath to be diverted onto land in their ownership. It took many years for the diversion of Footpath 4 to be accomplished, so I am sure the Pitmans or the Council would have referred to it if it existed then.

When Mr and Mrs Shaw's company purchased the Land in 2012, I asked Mrs Shaw for permission to walk the circumference of the land.

On 17th July 2012, I collected a letter from Mrs Shaw at Beauchamp House, giving me and my family permission to walk around the circumference of the field. At that time Mrs Shaw's two brothers were present, as was Paul Farrant who looks after the property for her and another friend of Mrs Shaw's. Whilst I was there Richard and Tamsin Lee, who live in Mill Lane, arrived requesting Mrs Shaw's permission on behalf of the village to walk the permissive path on the eastern edge of the field. I understand that Mrs Shaw agreed to give this consent for the village to continue to walk the permissive path.

- 16. Mr Hugh Graham** – Statutory Declaration dated 15th January 2016:

I am Mrs Shaw's brother and I live at Chestnut Cottage, next door to Beauchamp House where I have worked as caretaker and gardener, from January 1993 until September 2013.

I acknowledge the existence of Footpath no's. 4 and 5. There was no obvious footpath on the eastern side of the land in 1993 or for the next 10 years or so. Much of the land is visible from Beauchamp House and garden, especially in winter, so I would have seen people if they'd been walking on a regular basis.

When Footpath no.4 was diverted there was no sign of a footpath.

Around 2002-3 I noticed that the eastern edge of the field was being walked occasionally and use became more frequent in the following years.

The field was divided by a fence in March 2012, after the sale to Marcus Shepherd. A stile was incorporated to accommodate walkers, although the previous landowner did not agree that they had a right to walk there.

Mr John Barton was granted consent to use the route in a letter from my sister dated 17th July 2012. Whilst he was there Mr and Mrs Lee arrived to request permission for people to continue to walk the claimed route. My sister granted this permission.

After this, signs indicating the permissive path were placed at the new stile; the northern edge of the wood and at the stile close to Donhead Mill. Two signs were torn down in May/June 2013 but were promptly replaced and remained there until my sister removed them after the path was closed in October 2014.

Since people only started walking the eastern boundary in 2002-3, the public have only used the route for a maximum of 12 years.

17. Mr John Graham – Statutory Declaration dated 15th January 2016

I am Mrs Shaw's brother and I have visited Beauchamp House very regularly since 1993.

I acknowledge the two recorded rights of way. No footpath was apparent on the eastern edge of the land throughout the 1990's. When Footpath no.4 was diverted in around 1996, there was no sign of a footpath.

In around 2002-3 I noticed the eastern edge being walked occasionally by a small group of people.

The land was divided in March 2012 by a fence, incorporating a stile, subsequently the number of users increased.

Mr John Barton was granted permission to use the claimed route in a letter from my sister dated 17th July 2012. Whilst he was there Mr and Mrs Lee arrived to request permission for people to continue to walk the eastern edge of the field.

After this, Paul Farrant (the current manager of Beauchamp House and garden) and I erected permissive footpath signs at the new stile; the northern edge of the woodland and at the stile close to Donhead Mill.

On 21st June 2014 when the Beauchamp House garden was open to the public, Mr and Mrs Barkham requested permission from Mrs Shaw to access the land to investigate the geology of the sink hole which had opened up beside the claimed path. They thanked Mrs Shaw for allowing people to walk the permissive path.

People only commenced walking the eastern boundary in 2002-3, therefore the public have only used the route for a maximum of 12 years.

18. Mrs Margaret Pitman – Statutory Declaration dated 27th January 2016

My late husband Gerald Pitman was co-owner of the land with his father Arthur Pitman; his mother Francis Pitman and his brother David Pitman, from their purchase in approximately 1982-84 until his death in 2009. The land was transferred into my sole name in 2011. I sold part of the land to the current owner, Wardour Ltd. on 22nd May 2012, renting it back from them for 5 years on a farm business tenancy.

I acknowledge Footpath no's. 4 and 5, there were no other footpaths as I remember on the land and when my husband purchased the land I do not recall any evidence of a footpath. It was divided into several fields and was poorly drained.

I understand that from time to time Gerald gave some villagers permission to walk on the land other than the public footpaths. I was not actively involved in farming the land whilst my husband was alive, but I used to enjoy going to the land occasionally and walking in the wood. I was not aware of many people walking the land at all during the early years of the family's ownership, but around 2002-3 public use generally for dog walking began to increase noticeably.

If the public have been walking along the eastern edge of the land, they have only been doing so for 12 years or so.

19. Mr Christopher Long – Statutory Declaration 25th January 2016:

I have worked as a gardener at Donhead House, for nearly 40 years, I know the village and the footpaths very well as I used to walk the owners dogs when they were away.

I acknowledge footpaths 4 and 5, I do not recall there being any evidence of a footpath on the eastern edge of the land when I started working at Donhead House in 1976. The land was divided into several fields and was very poorly drained. The Pitmans undertook a lot of work to improve the drainage and condition of the land. The existence of a footpath was not picked up when footpath no.4 was diverted in about 1997.

Around 2003, public use of the land, generally for dog walking became apparent and some people were walking along the eastern edge of the field where there was no clear path. I remember that Gerald Pitman was becoming annoyed by the number of walkers who allowed their dogs to run free, disturb wildlife and foul the land which was used for silage.

When Mr Gerald Pitman was ill and after his death in 2009, the remaining members of the Pitman partnership were not as actively involved with the land as he had been. If the public have been walking the claimed route they have only done so for a maximum of 13 years.

20. Mrs Janet Long – Statutory Declaration 25th January 2016

I work as a housekeeper for Mr John Barton at Kelloways Mill and have done so for about 20 years. My husband has worked at Donhead House for nearly 40 years and from 1994-2014, my husband and I have regularly stayed at Donhead House when the owners were away and walked their dogs in the surrounding fields.

I acknowledge Footpath no.4 and 5, I do not recall there being any evidence of a footpath on the eastern edge of the land.

The existence of the claimed footpath was not referred to at the time Footpath no.4 was diverted in 1997.

If the public have been walking the claimed route they have only done so for a maximum of 13 years.

21. Mrs Judy MacMillan – Statutory Declaration 19th January 2016

I stayed at Beauchamp House as a guest of Colin and Anne Shaw in June/July 2012. One morning various neighbours of the Shaw's, John Barton and Richard and Tamsin Lee, came for coffee and to ask Mrs Shaw for permission to walk the eastern edge of the land which runs close to the woodland and stream. The land had recently been purchased by Wardour Ltd and I knew it well as I walked the dogs there with Mrs Shaw frequently during my stay.

John Barton came to collect a letter from Mrs Shaw which I understood gave him permission to walk around the circumference to the land which his property adjoins.

Mr and Mrs Lee came to ask permission for the village to continue walking the footpath on the eastern edge of the field which they referred to as the permissive path. This permission was granted. Paul Farrant who looks after Beauchamp House and Mrs Shaw's brothers John and Bob Graham were present for part of the morning.

22. Mrs Claire Macdonald – Statutory Declaration 18th January 2016

I lived at Donhead House, Donhead St Andrew from October 1990 until July 2014 when we moved to a neighbouring village.

Whilst living in the village we regularly walked our dogs on the public footpaths around the village. I am aware that there are 2 public footpaths on the land (numbered 4 and 5). Footpath 4 was diverted in about 1996. I do not recall there being any evidence of a footpath on the eastern edge of the land when we first came to Donhead St Andrew.

The Barton's who live at Kelloways Mill are family friends and I know the time and trouble they went to in order for public footpath no.4 to be diverted. The diversion

process took years and if another footpath existed then, it would have been referred to at that time by the Parish Council and those who walked it.

Around 2003-5 public use of the land, generally for dog walking began to increase noticeably and some people were now walking along the eastern edge of the field, although there was no clear path. If the public have been walking the eastern edge of the land, they have only done so for about the last 10-15 years.

23. Mr Paul Farrant – Statutory Declaration 17th February 2016

I have worked for Mrs Anne Shaw as a property manager and gardener since 2007.

In October 2013 I moved into Chestnut Cottage next door to Beauchamp House.

There are 2 public footpaths over the land, numbered 4 and 5.

When I first started working at Beauchamp House, I worked about 15hrs a week.

This included some maintenance of the fields belonging to Beauchamp House. I brought my dogs to work with me and had a good knowledge of the fields and land which can be seen from Beauchamp House and its grounds. At the time I noticed that the eastern edge of the field was being walked occasionally and use became more frequent in the following years, although many variations of the route were walked.

In March 2012, following the sale of part of the land to Mr Marcus Shepherd some months earlier, a fence was erected by him dividing the land he had purchased from the rest of the field. A stile was incorporated at the eastern edge of the fence to accommodate walkers, although David Pitman, a previous owner of the land who was not involved in constructing the fence made it clear that the walkers had no right to walk that route.

Wardour Ltd purchased the remainder of the field from Margaret Pitman in May 2012.

I met Mr John Barton, neighbour and owner of Kelloways Mill when he came to Beauchamp House on 17th July 2012 to collect a letter from Mrs Shaw giving him consent to walk the perimeter of the land. I know that Mr and Mrs Richard Lee also came that morning to ask for permission for people to continue to walk the eastern edge of the field, although I did not meet them on that occasion.

After this I helped erect signs indicating the permissive path at the new stile; the northern edge of the woodland and at the stile close to Donhead Mill. Two signs were torn down in May/June 2013 but were promptly replaced and remained together with all the other signs until all the signs were removed after the path was closed in October 2014. Another sign was erected at that time by the new stile saying that there were no public rights of access of any kind.

On 14th October 2014, Mr Michael Cullimore, Chairman of the Parish Council called on Mrs Shaw following receipt of a letter from her saying that for safety reasons she had regretfully decided to close the permissive path. Mrs Shaw was not available but Mr Cullimore told me that he thought many walkers would want to sign a letter releasing Mrs Shaw from any liability for accidents if the permissive path was re-opened.

Since the path was closed, several people have continued to walk the path, particularly when the Shaws are not in residence.

24. Mr J Collyer wrote in support of the application - e-mail dated 19th October 2015.

- Nothing to add to our witness evidence statements.
- I understand that Mr Roy Powell, who has access to a plot of land adjacent to our field, has written to you confirming that he walked this path daily in the 1950's going to school and church. This may be helpful evidence as there are not many people left in the village whose memories go back that far.

25. Mr M Wareham wrote with further evidence in support of the application - letter dated 19th October 2015.

- My family and I regularly walk the route shown on Map 1 between FP no.4 and no.5 Donhead St Andrew and have done so for several years.
- As a child living in the area we would often walk from the church along the path as we had friends at Thorn House at the other end.
- My mother is now 70 and attended the school and church as did her brother and sisters and recalls using the path many times.

Decision Report
Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of
Way – Donhead St Andrew

Appendix 2 - Historical Evidence Summary

Document	Cranbourne Chase Inclosure Award (E/A 141)
Date	1828
Relevant Documents	Award Map no.7 “Berwick St John and Donhead St Andrew” Award
Size	Map size – 17.5cm x 21cm (approx), Scale 32 chains to 1 inch and 24 chains to 1 inch
Significance	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the manor, were redistributed amongst people having rights of common. By the 18th Century new innovations in farming were increasing output, but where communal farming was still in place it was difficult to modernise without the agreement of all parties. Therefore the larger landowners, who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Inclosure Awards provide sound and reliable evidence as they arise from Acts of Parliament. Prior to 1801 inclosure was dealt with by local acts for specific areas. Post 1801 local acts generally operated with the Inclosure Consolidation Act of 1801 which standardised the process and gave the Commissioners the power to change the highway network of the parish and authorised and required the Commissioners to set out and appoint public and private highways, including bridleways and footways, within the parish.</p> <p>Weight can be given to routes included within Inclosure Awards as landowners had a strong influence over the process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce their repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure process was clearly set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways.</p> <p>One of the main purposes of the Inclosure award and plan was to record highways.</p> <p>The Cranbourne Chase Inclosure Award dated 1829 arises from “An Act for disfranchising Cranbourne Chase in the counties of Dorset and Wiltshire”. Donhead St Andrew is included with Berwick St John on Map no.7, the maps are signed and sealed by Phillip Williams the Inclosure Commissioner.</p>
Conclusion	The map of the lands to be inclosed within the parish of Donhead St Andrew, does not include the land in question, over which the claimed route passes. The inclosure award would normally be a significant piece of historical evidence, but no conclusions can be drawn from this document, in this case.

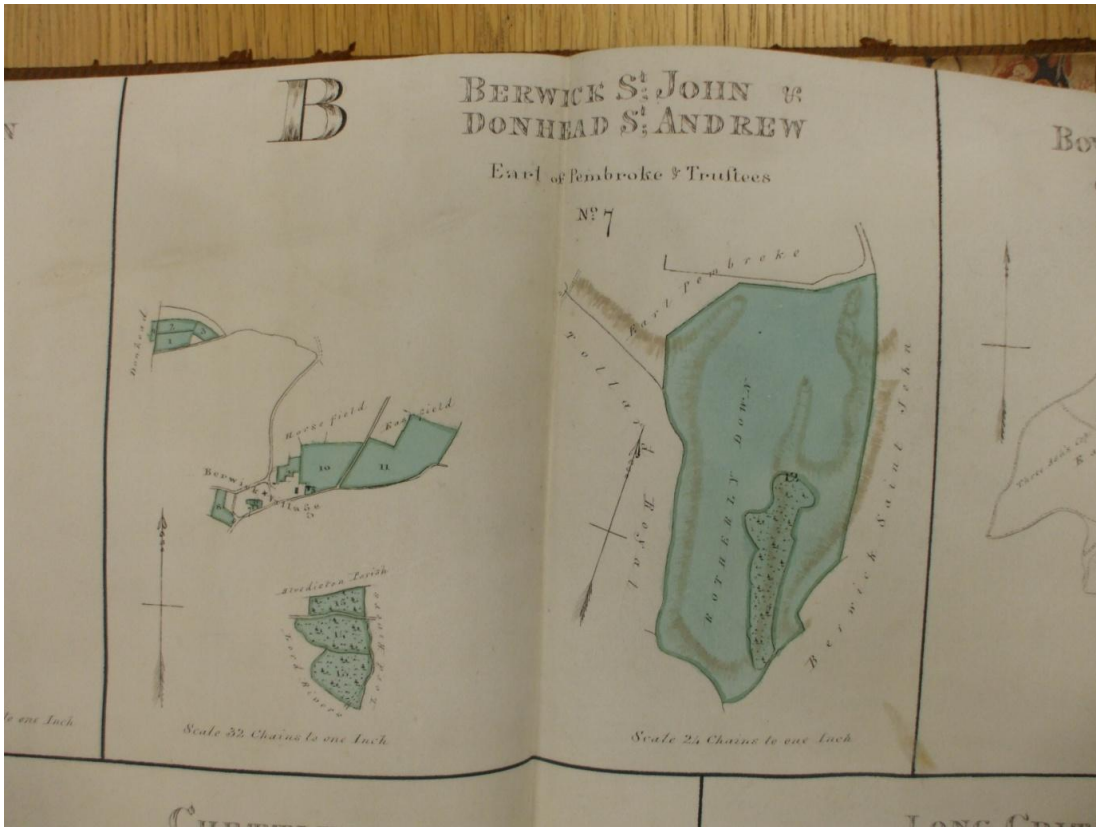


Fig.1 - Cranbourne Chase Inclosure Award 1828 (Map no.7)



Fig.2 - Cranbourne Chase Inclosure Award 1828 (Map no.7)

Document	Parish Claim
Date	Survey date 1950
Relevant Documents	Parish claim map Parish record card
Size / Scale	6" to 1 mile
Significance	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map. Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey Maps to all Parish Councils, who surveyed and recorded what they considered to be public rights of way within their parish, with an accompanying description of each path.</p> <p>Parish Councils were required to convene a meeting at which the public rights of way information, to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of the definitive map and statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District or Urban District area.</p> <p>Detailed guidance regarding the Parish Councils input into the definitive map process was issued and the Planning Inspectorates "Definitive Map Orders: Consistency Guidelines" state that the legal "presumption of regularity" applies, i.e. unless otherwise demonstrated, it should be assumed that Parish Councils received this guidance and complied with it in undertaking the parish claim.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p>
Conclusion	The parish survey map and statement for Donhead St Andrew records Footpath no.'s 4 and 5, but not the application route. There is no correspondence relating to the claimed route and it can be concluded that at the time of survey the Parish Council did not consider the claimed route to be a public right of way and despite public consultation, no objection to its non-inclusion was made.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

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

PUBLIC RIGHT OF WAY.

PARISH OF Donhead St Andrew

<p>NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)</p> <p><u>From Pig Farm to Barbicord Corner; entered by Field gate by Pig Farm Pass - a fence of barbed wire runs across lower field about 200 yards above the stile which is 40 yards from a low iron railing at the Tisbury Road.</u></p> <p><u>7.5' from top of barbed wire to 312 by Wood Copse Landing E to the Tisbury Road 0.61 at Barbicord</u></p>	<p>LENGTH <u>450 yds</u> WIDTH _____</p> <p>WHETHER FENCED OR OPEN <u>open</u></p> <p>APPROXIMATE PERIOD OF UNINTERRUPTED USER :- YEARS FROM _____</p> <p>WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL :- <u>PC</u></p> <p>DATE OF REPAIR _____</p> <p>WHETHER SUBJECT TO PLOUGHING _____</p> <p>DATE OF SURVEY _____</p> <p>WHETHER SHOWN ON UNDERMENTIONED MAPS :- ORDNANCE 6" SHEET, REF. <u>K20 242 x 2511</u></p> <p>INCLOSURE AWARD _____</p> <p>LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932) _____</p> <p>OTHER MAPS :- _____</p>
<p>NATURE OF SURFACE <u>grass</u></p>	
<p>STILES, GATES, FOOTBRIDGES, STEPPING STONES</p> <p><u>11/10 - A barbed wire across lower field at Pig Farm above and stile at to about 100 yards from the road</u></p>	
<p>WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS)</p> <p><u>NO</u></p>	
<p>OBSERVATIONS: <u>Used rarely - walked by Commander Jackson from November 1950</u></p>	

Fig. 5 – Footpath no.5 Donhead St Andrew, Parish Record Card 1950

Document	Donhead St Andrew Tithe Award (T/A Donhead St Andrew)
Date	1841
Relevant Documents	Tithe Apportionment Tithe Award Map
Size / Scale	Map size 183cm x 112cm approx.
Significance	<p>Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain, comprising an agreed proportion of the annual profits of cultivation and farming. This gradually began to be replaced by monetary payments and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system.</p> <p>Tithe Awards are not a primary source of evidence as the apportionments and plans were produced as an official record of all titheable areas and it was not their main purpose to record highways. However, they can provide useful supporting evidence, as the existence of a highway could affect the productivity of the land and give important map orientation and plot boundary information, therefore the Commissioners has some interest in recording them. Additionally, the public provenance of the documents adds weight to the information recorded within them.</p>
Conclusion	<p>The claimed route is not recorded. It was not the main purpose of the tithe award documents to record public rights of way, and if the route was in existence at this time, it is possible that it was not recorded as it did not form a plot boundary and did not give further map orientation information. On the later 1901 ordnance survey map drawn at a scale of 25" to 1 mile, it is noted that the route between the mills (following the claimed route) is shown braced as part of the field. It is therefore possible that the claimed route (if it was in existence at the time) was shown on the tithe map as it</p>

did not affect the productivity of the land and formed part plot no's. 242, 243, 244, 245. It is noticeable that the tithe map does not record the recognised public rights of way, i.e. Footpaths 4 and 5 Donhead St Andrew, which are also shown on the later 1901 25" Ordnance Survey Map and the 1925 edition, being braced as part of the field.

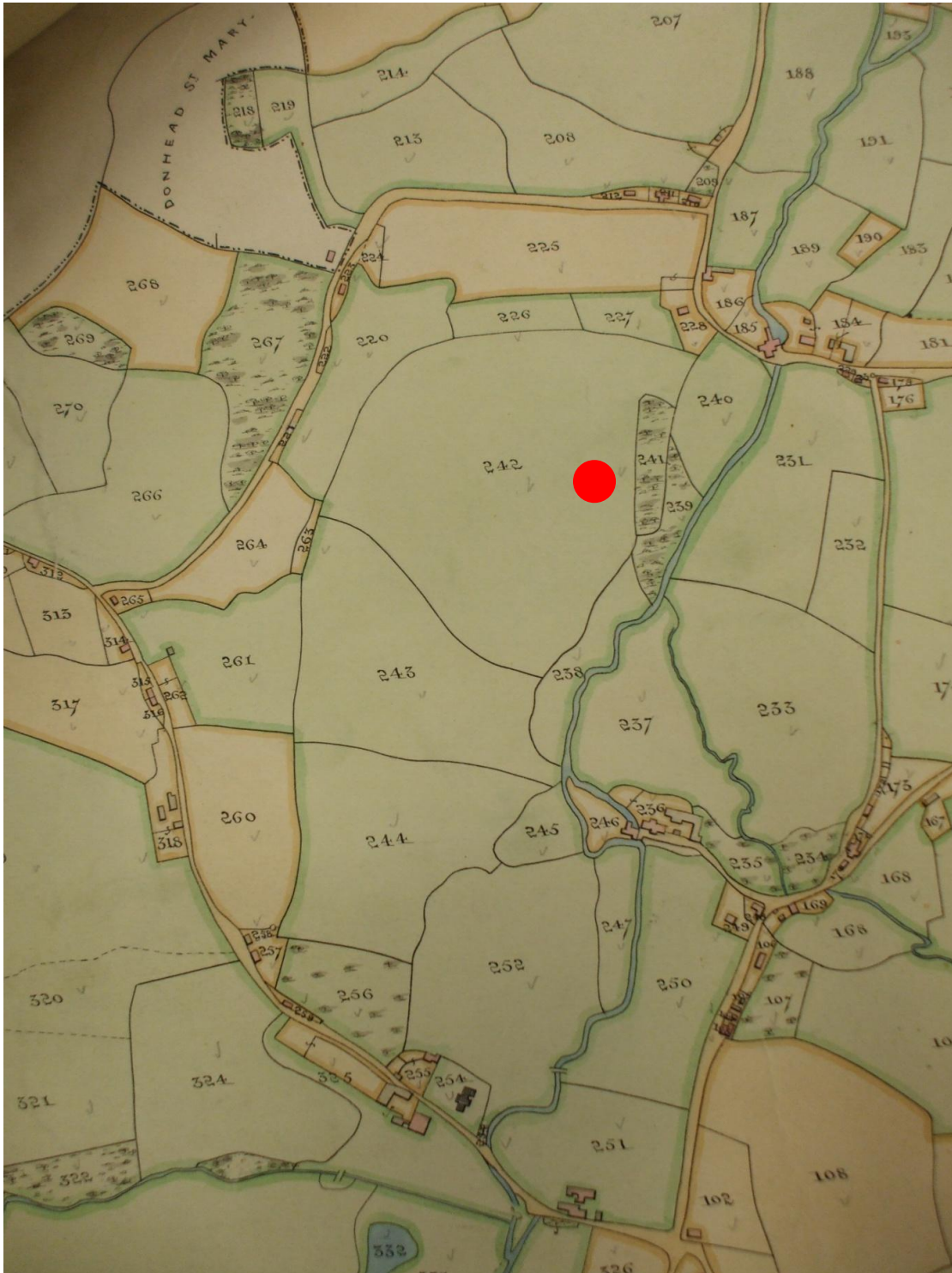


Fig. 6 – Donhead St Andrew Tithe Award Map 1841

Document	Finance Act 1910 (L8/1 174 & L/8/10/69)
Date	1910
Relevant Documents	Finance Act Map (Sheet no.69/6) Book of Reference
Size / Scale	Scale 25 inches to 1 mile
Significance	The 1910 Finance Act required the Valuation Department of the Inland Revenue to carry out a survey of all hereditaments, for the purposes of levying a tax upon the value of land. It has been referred to as the “Second Domesday” as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence. Rights of way across land could be excluded from the land as a tax benefit. Land holdings (hereditaments) are illustrated on OS base maps, coloured and numbered, being referred to in the books of reference which accompany the maps. As rights of way could decrease the value of the land, we would expect them to be shown excluded from the hereditament, or as a deduction made for rights of way within the book of reference. The maps are based on the Ordnance Survey 2 nd edition 25” map, dated 1901, (surveyed 1884-5, revised 1900).
Conclusion	The route between Rickett’s Mill and Kelloway’s Mill is shown on the base map, by double broken lines, braced as part of the field, included as part of Plot no.24. Within the accompanying register, Plot no.24 shows no deductions for “Public Rights of Way or User”, which would suggest that the route did not carry public rights. However, over the same plot of land there is also no rights of way deduction for Footpath no.4 and no.5 Donhead St Andrew which are recorded on the base map and which we know to be recorded public rights of way as claimed by the parish in 1950. It is possible that the landowner was more inclined to pay the full tax than admit to having public rights of way over the land, however there were criminal sanctions for the falsification of evidence.

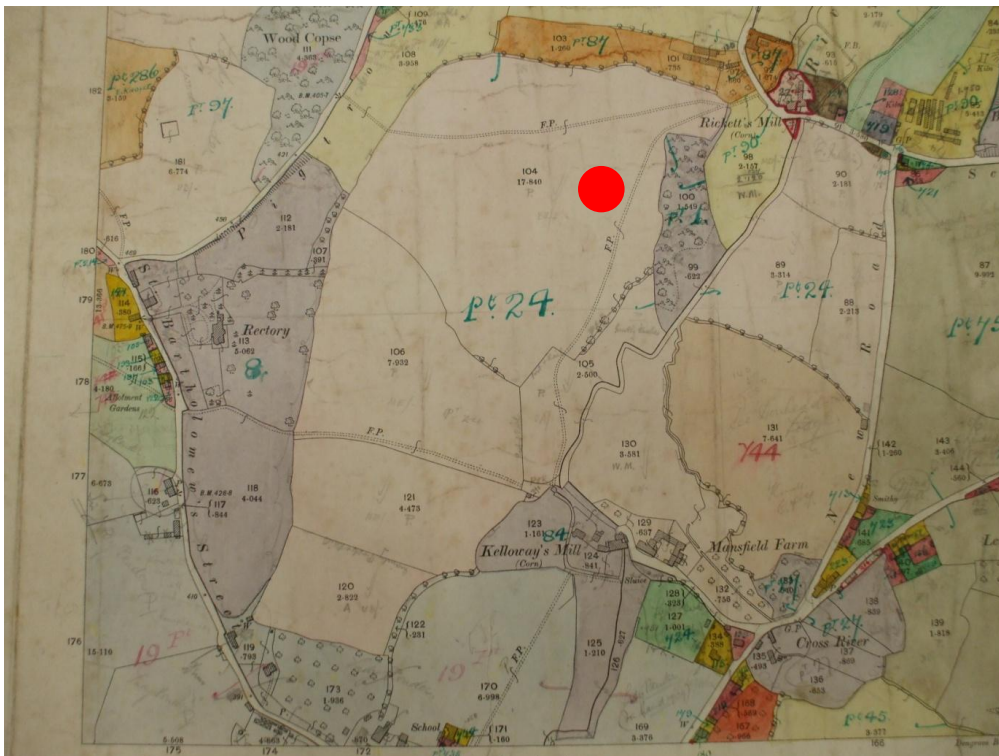


Fig. 7 – Finance Act Map (Sheet no.69/6) 1910

Document	Andrews' and Dury's Map of Wiltshire (2nd Edition 1810 – A1/524/2MS)
Date	1773 & 1810
Relevant Documents	1773 Map Plate no.1 (of 18 plates) 1773 Index Map 1810 Map Plate no.16 (of 18 plates) 1819 Index Map
Size / Scale	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
Significance	Commercial maps were produced for profit and intended for sale to the whole of the travelling public. Andrews' and Dury's Map of Wiltshire dated 1773 is a commercial map of the county based on original survey. The map is dedicated " <i>To Noblemen Gentlemen Clergy shareholders of the County of Wilts This MAP is Inscribed by their most Obedient and devoted servants JOHN ANDREWS ANDREW DURY</i> ". The 1810 second edition map is a corrected and updated edition of the 1773 map. Being intended for sale to the whole of the travelling public and the constraints of small scale mapping, made it unlikely that footpaths and bridleways would be shown. Additionally the map makers would not have wished to encourage trespass onto private land or encourage vehicles onto a footpath which would cause difficulty for the landowners from whom the map makers sought subscriptions.
Conclusion	The claimed route is not recorded on the 1773 map or the 1810 revised edition, perhaps for the reasons given above and therefore these documents are inconclusive.



Fig. 10 – Andrews' and Dury's Map of Wiltshire 1773 – Index Map



Fig. 11 – Andrews' and Dury's Map of Wiltshire 1773 – Plate 1



Fig. 12 – Andrews' and Dury's Map of Wiltshire 1810 – Index Map



Fig. 13 – Andrews' and Dury's Map of Wiltshire 1810 – Plate 16

Document	Greenwoods Map of Wiltshire (1820 = 1390/142 & 1829 = Map Folder 3.3)
Date	1820 & 1829
Relevant Documents	1820 = 4 map sheets of the County NE, NW, SE and SW (SW sheet is relevant) 1829 = Map of Wiltshire
Size / Scale	1820 = Sheet size 75cm x 56.5cm (approx), Scale 1 inch to 1 mile

	1829 = Map size 56.5cm x 68cm (approx), Scale 1 inch to 3 miles
Significance	Greenwood re-surveyed and produced a set of updated County Maps between 1817 and 1839. Greenwood appears to have carried out actual survey, supported by existing secondary sources such as inclosure and estate maps, printed guide books, official sources and local knowledge collected by surveyors. Greenwoods first edition “ <i>Map of the County of Wilts from Actual Survey</i> ”, dated 1820 is a commercial map, produced for the travelling nobility who contributed to its production. The inscription reads “ <i>To the Nobility, Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors</i> ”. Greenwood produced a revised and corrected map of Wiltshire in 1829.
Conclusion	The claimed route is not recorded on Greenwoods Map of 1820 or the later revised edition, perhaps due to the constraints of small scale mapping. This document is inconclusive.

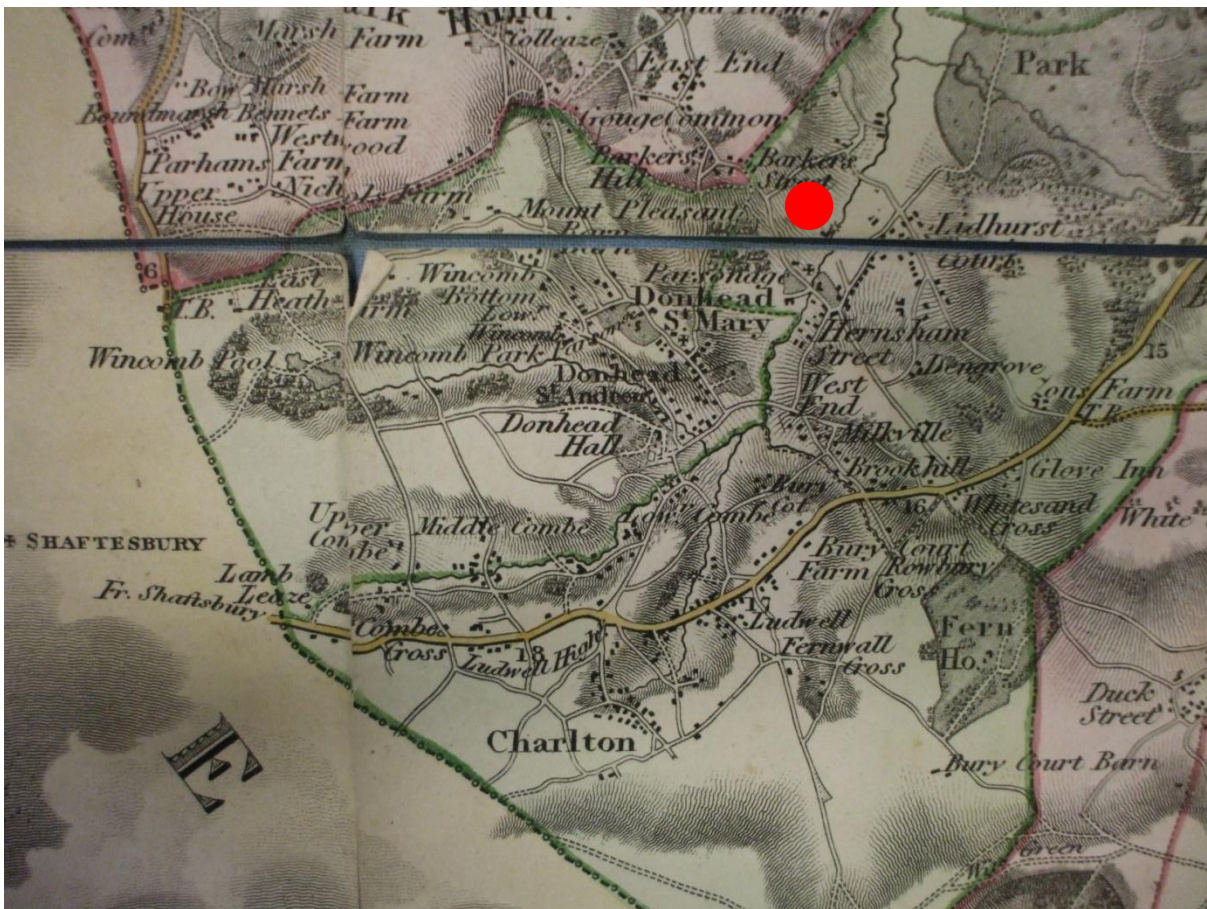


Fig. 14 – Greenwoods Map of Wiltshire 1820

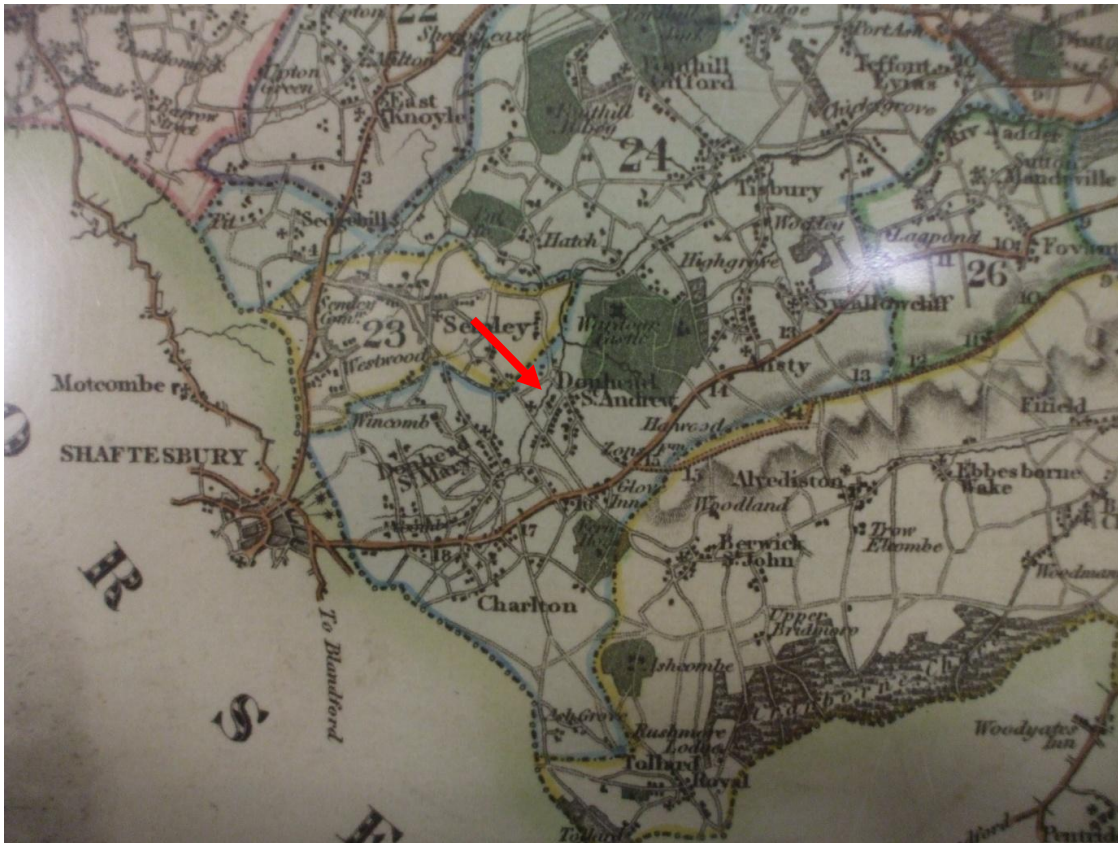


Fig. 15 – Greenwoods Map of Wiltshire 1829

Document	Cary's Map of Wiltshire (Map Folder 3.2)
Date	1801
Relevant Documents	Cary's Map of Wiltshire
Size / Scale	Size 68cm x 55cm (approx), Scale 8 miles to 2 7/8 inches
Significance	John Cary was a cartographer, born in Warminster, Wiltshire in 1755, well known for his series of county maps. In 1794 he became Surveyor of Roads for the Postmaster General, charged with undertaking a survey of all main roads in England. Cary appears to have used actual survey, as well as the work of others, e.g. the Ordnance Survey, in the production of his maps.
Conclusion	The claimed route is not recorded on this map, perhaps due to the constraints of small scale mapping. This document is inconclusive.

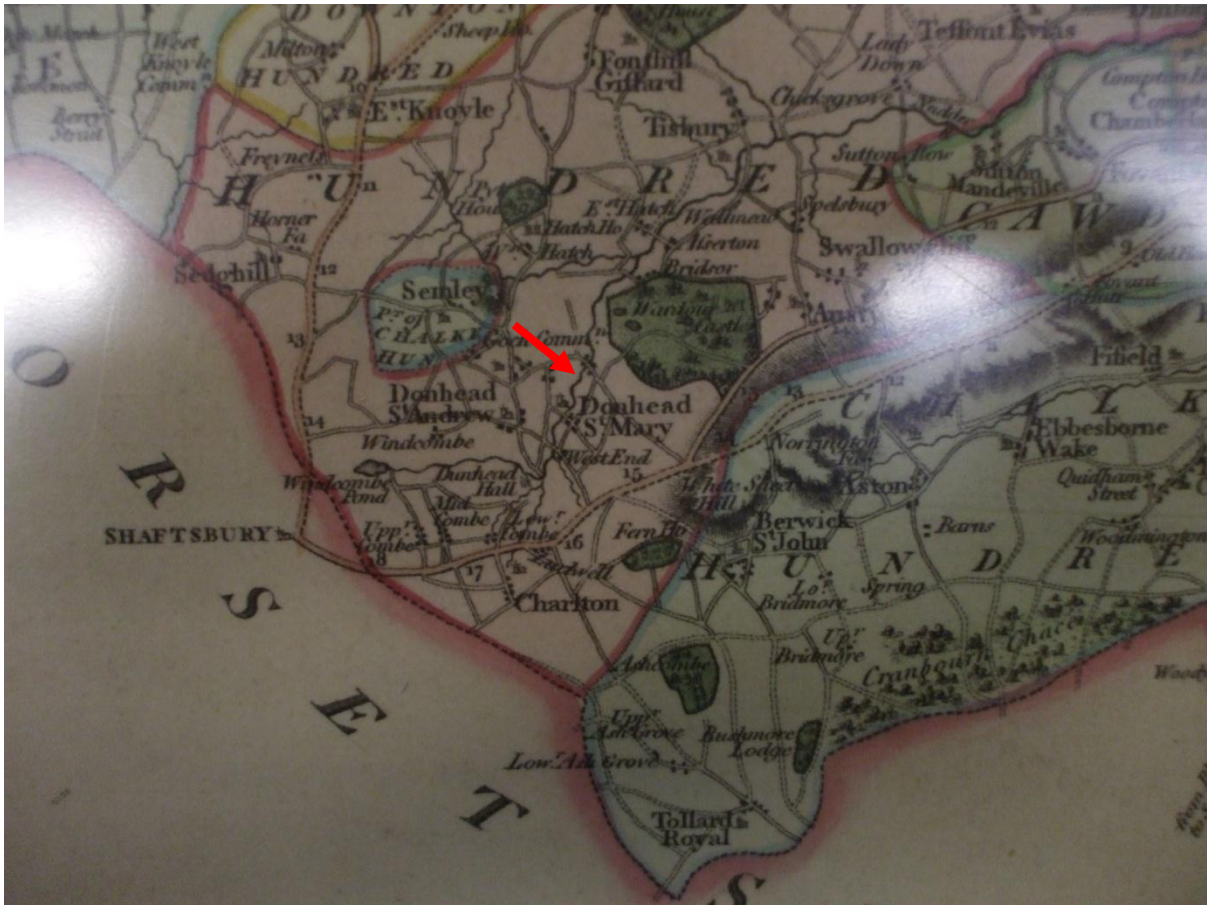


Fig. 16 – Cary's Map of Wiltshire 1801

Document	Ordnance Survey Map
Date	1896 (surveyed 1886)
Relevant Documents	Map sheet no.69
Size / Scale	Map Sheet size 67cm x 98.5cm (approx), Scale: 6 inches to 1 mile
Significance	<p>The Ordnance Survey was founded in 1791, due to demand from the military for accurate maps of Southern England, in preparation for the Napoleonic War. In time the Ordnance Survey developed a range of maps varying in scale and level of detail, to meet changing needs for accurate and updated maps of the country.</p> <p>The maps are based on original survey with revisions and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added.</p>
Conclusion	<p>The claimed route is shown by double broken lines, as a "Minor Road - Unfenced" according to the key, between Ricketts Mill and Kelloways Mill. It is shown in the same manner as Footpath no.4 and Footpath no.5 Donhead St Andrew which are footpaths recorded in the definitive map and statement. It leads into the north-east corner of the field and does not extend southwards from Kelloways Mill to the diverted route of Footpath no.4. Note that the field has several divisions which do not exist today.</p>



Fig. 17 – Ordnance Survey Map – 6" to 1 Mile 1896

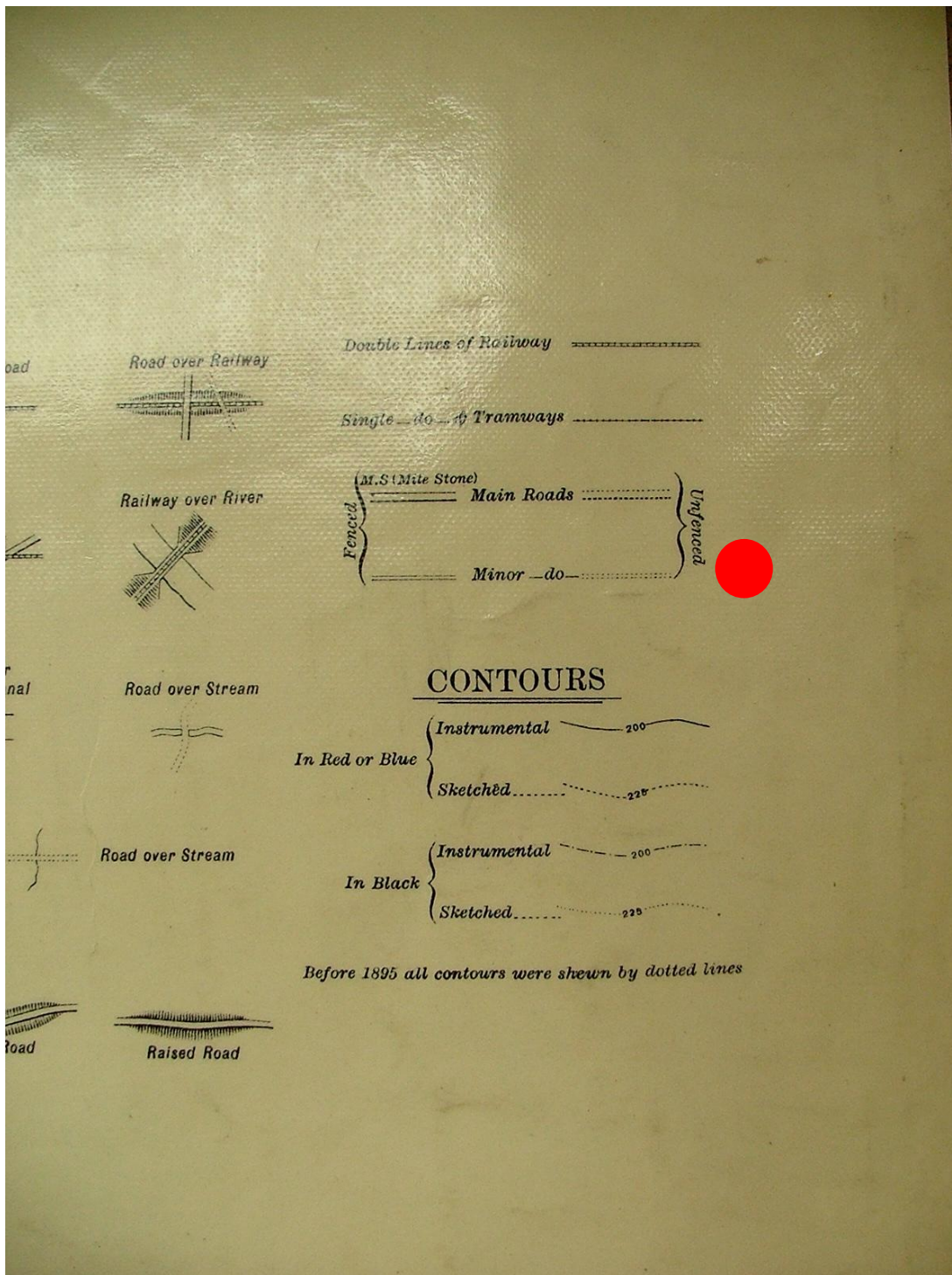


Fig. 18 – Ordnance Survey Map – 6" to 1 Mile 1896 (Key)

Document	Ordnance Survey Map
Date	1901 (surveyed 1884-5, revised 1900)
Relevant Documents	Map Sheet 69/6
Size / Scale	Sheet size 64cm x 96.5cm (approx), Scale 25 inches to 1 mile
Significance	As above (please see entry for 1896 Ordnance Survey 6" map)
Conclusion	The claimed route is shown from the north-east corner of the field from

Ricketts Mill to Kelloways Mill, braced as part of the field. There is no connection to the diverted route of Footpath no.4 further south. The route is shown by double broken lines suggesting that there is no boundary and the path is open to the field. "F.P." is written alongside the route. Note field divisions still in place.



Fig. 19 – Ordnance Survey Map – 25" to 1 Mile - 1901

Document	Ordnance Survey Map
Date	1925 (surveyed 1884-5, revised 1924, levelling revised 1900)
Relevant Documents	Sheet no.69/6
Size / Scale	Sheet size 64cm x 96.5cm (approx), Scale 25 inches to 1 mile.
Significance	As above (please see entry for 1896 Ordnance Survey 6" map)
Conclusion	The claimed route is not recorded on this later edition of the OS 25 inch map. Note field divisions still in place at the time of survey and Kelloways Mill is marked as "Disused".

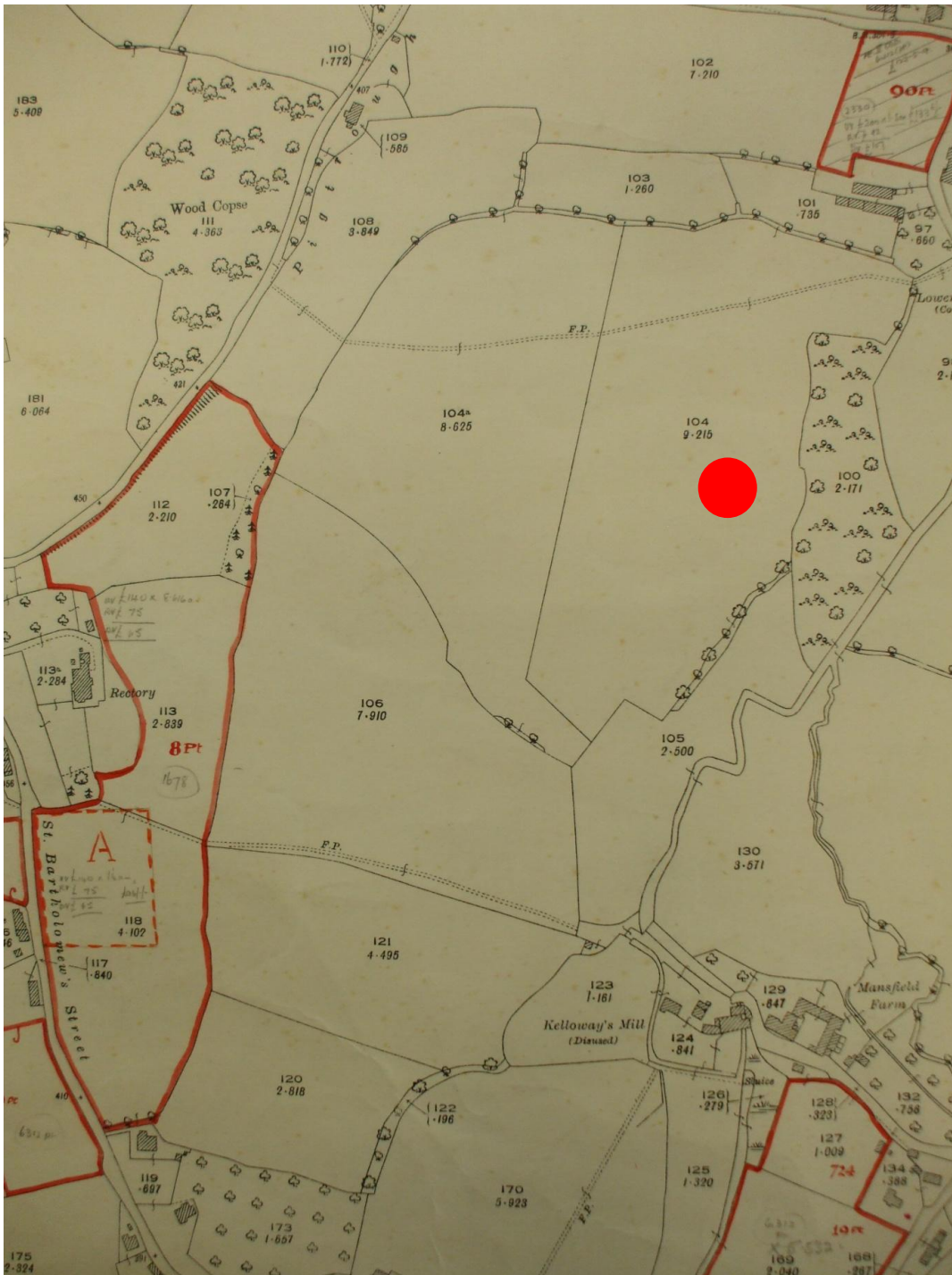


Fig. 20 – Ordnance Survey Map – 25" to 1 Mile - 1925

Document	Map of Donhead St Andrew (2132/251)
Date	1768
Relevant Documents	Map of Donhead St Andrew, the Estate of the Right Honourable Henry Lord Arundell, Baron of Wardour
Size / Scale	Map size 97cm x 82.5cm (approx), Scale 8 chains to an inch
Significance	<p>The inscription to the map reads “<i>A Map of Donhead St Andrew being the fifth part of the Manor of Donhead in the County of Wilts containing no’s 1 and CCCLXXXIV inclusive the Estate of the Right Honourable Henry Lord Arundell Baron of Wardour and Count of the Sacred Roman Empire Surveyed in the year 1768 by George Ingman</i>”.</p> <p>Estate maps were produced for various reasons and the finished maps varied depending upon the specific instructions which had been issued to the surveyor by the landowner, e.g. some were working documents to be used by the estate manager and others could be a means of representing the wealth of the landowner and showing their entire estate in pictorial form. For this reason estate maps are not a primary source of evidence and are unlikely to give reliable highways information as a single document, i.e. they must be considered alongside other evidence. Some useful information can be found on these maps, as the location of highways could help with map orientation and give plot boundary information.</p>
Conclusion	The claimed route is not recorded on this plan, but it may not have been necessary to do so, perhaps where it did not affect the productivity of the land, (on later OS mapping the claimed route and the recorded rights of way no’s 4 and 5 are shown braced with the surrounding land), or the route was not required to be shown for the purposes of plot boundary and map orientation information. It should be noted that the recorded rights of way, Footpath no.4 and no.5 Donhead St Andrew are also not shown on this map. This document is therefore inconclusive.

Significance	<p>The plan forms part of a valuation of the parish of Donhead St Andrew. The inscription within the book of reference, reads: <i>“This valuation of the parish of Donhead St Andrew in the County of Wilts was made in the year 1812, for the purpose of assessing the land thereof to the poor-rate by William Bond and John Rogers. It was revised and re-written, without altering the value of the lands in any one instance by Wm Green of Ludwell in the year 1836; whose object alone was in his conviction to distribute the lands according as they are now held by the existing farmers. W Dansey Rector June 14. 1837.”</i></p> <p>It was not the main purpose of the map to record highways and it is noted that only the main highways within the parish are shown and buildings are not shown.</p>
Conclusion	<p>The claimed route is not recorded on this plan, perhaps where it was not necessary to record the route as it did not affect the value of the land, (on later OS mapping the claimed route and the recorded rights of way, Footpath no’s 4 and 5 are shown braced with the surrounding land) and/or it did not give additional plot boundary information. It is noted that the recorded routes of Footpath no’s.4 and 5 are not recorded either. This map is inconclusive.</p>

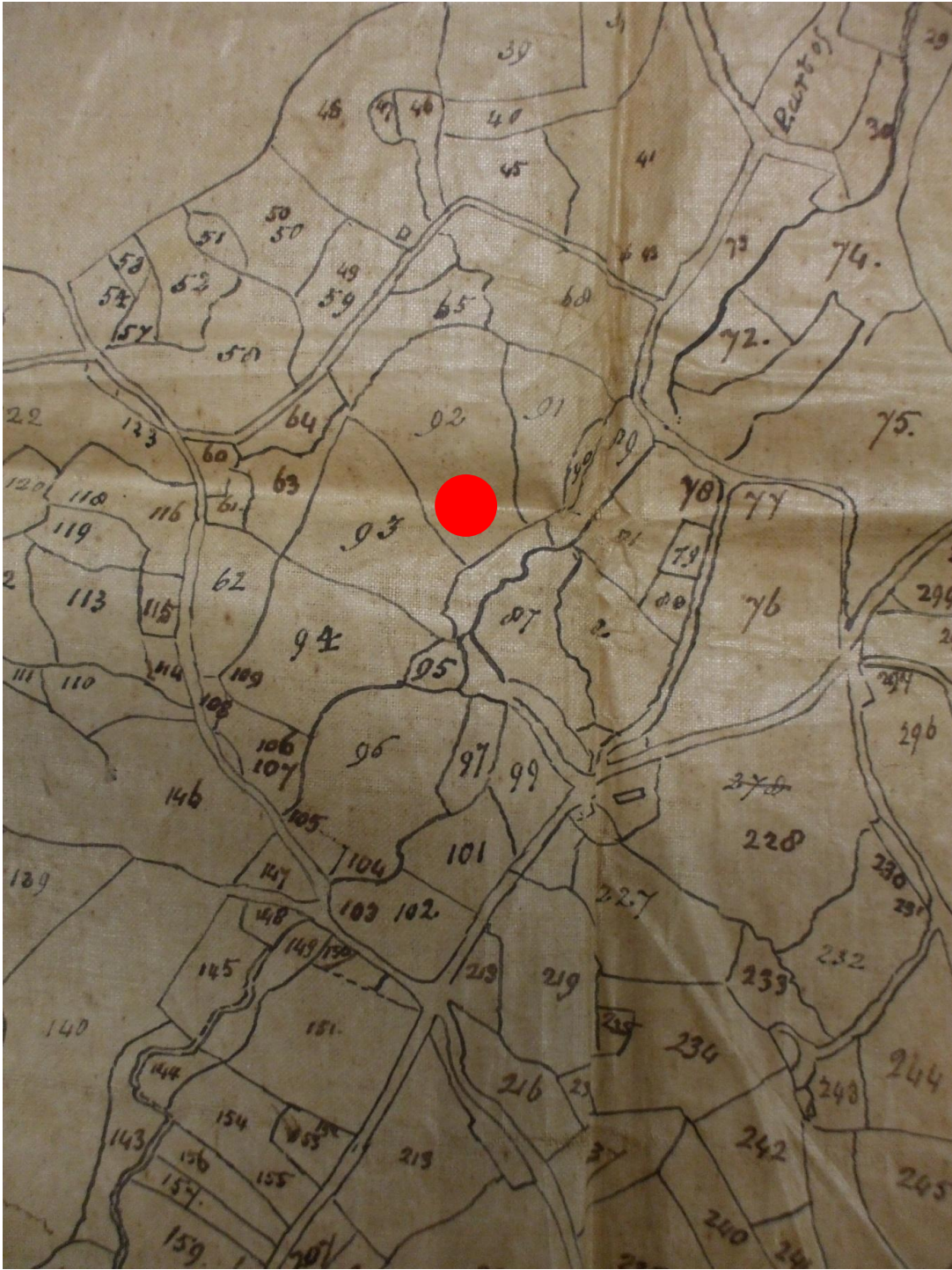


Fig. 22 – Plan of Lower Donhead 1810

**APPENDIX C – THE WILTSHIRE COUNCIL (PARISH OF DONHEAD ST ANDREW)
PATH NO.27 DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2016**

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE MERE AND TISBURY
RURAL DISTRICT COUNCIL AREA DATED 1952**

**THE WILTSHIRE COUNCIL (PARISH OF DONHEAD ST ANDREW) PATH NO.27
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2016**

This Order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the Act”) because it appears to that authority that the Mere and Tisbury Rural District Council Area Definitive Map and Statement dated 1952 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

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

The authority have consulted with every local authority whose area includes the land to which the order relates. The Wiltshire Council hereby order that:

1. For the purposes of this order the relevant date is 18th August 2016.
2. The Mere and Tisbury Rural District Council Area Definitive Map and Statement dated 1952 shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Wiltshire Council (Parish of Donhead St Andrew) Path no.27 Definitive Map and Statement Modification Order 2016.

SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

That length of footpath as shown by a broken black line with short intervals on the attached plan, leading from point A at OS Grid Reference ST 9149-2508, at its junction with Footpath no.4 Donhead St Andrew, in a generally north-easterly direction for approximately 75 metres to point B at OS Grid Reference ST 9155-2513, before leading generally north-east for approximately 380 metres and then east-north-east for approximately 70 metres to point C at OS Grid Reference ST 9174-2550, at its junction with Footpath no.5 Donhead St Andrew, having a width of 1.8 metres.

PART II

Modification of Definitive Statement

Variation of particulars of path or way

Parish	Path No.	Modified Statement to read:-	Modified under Section 53(3) as specified
Donhead St Andrew	27	<u>FOOTPATH</u> . From its junction with Footpath no.4 Donhead St Andrew, west of Kelloway's Mill at OS Grid Reference ST 9149-2508, leading generally north-east for approximately 455 metres and then east-north-east for approximately 70 metres to its junction with Footpath no.5 Donhead St Andrew to the west of Donhead Mill at OS Grid Reference ST 9174-2550. Approximate Length: 525 metres Width: 1.8 metres	53(3)(c)(i)

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
18th day of August 2016 }
in the presence of:


Senior Solicitor



84159

**The Wiltshire Council (Parish of Donhead St Andrew) Path no.27 Definitive Map
and Statement Modification Order 2016**

Key

Length of Footpath to be added:

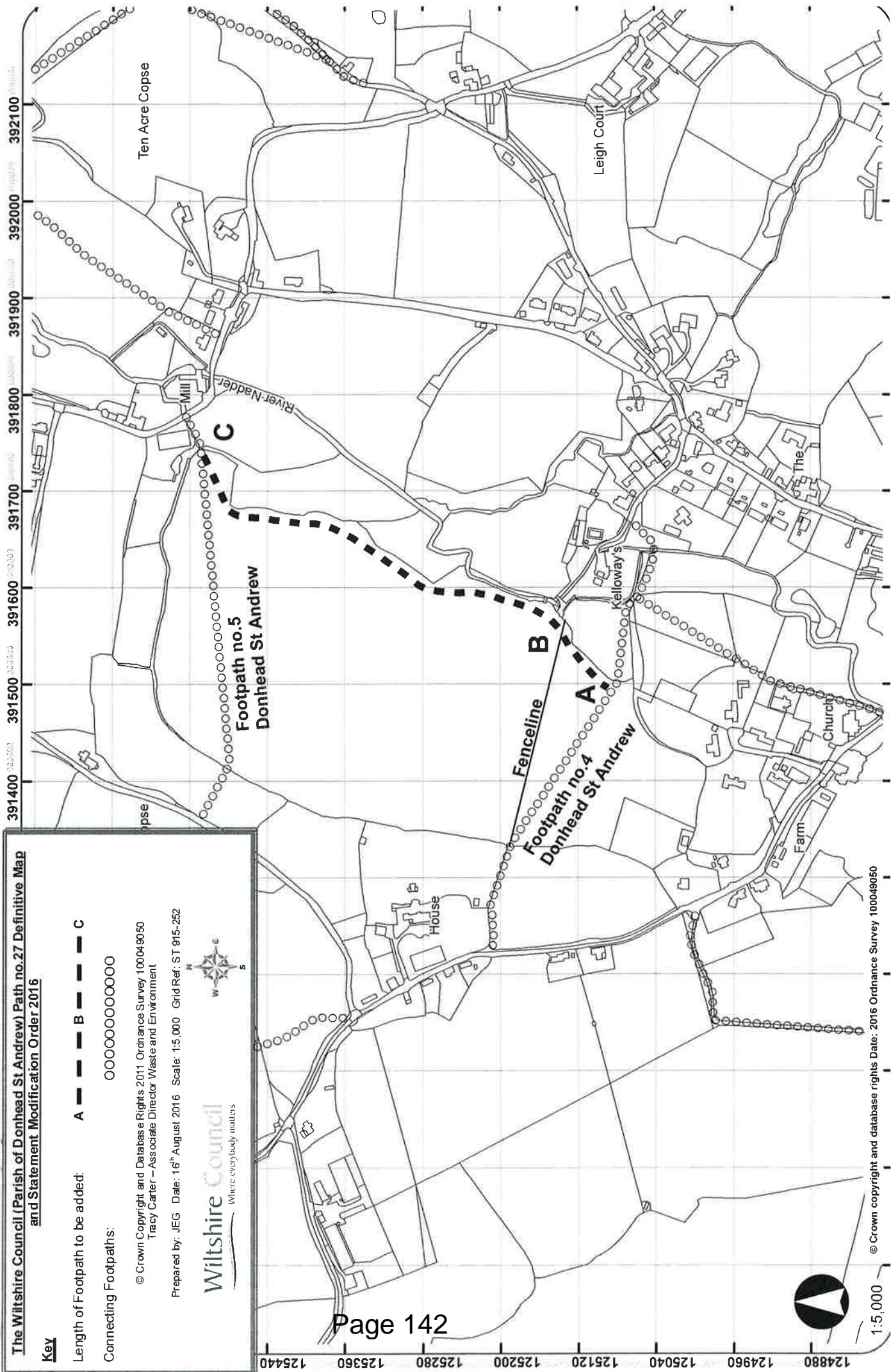
A ——— B ——— C

Connecting Footpaths:

OOOOOOOOOOOO

© Crown Copyright and Database Rights 2011. Ordnance Survey 100049050
Tracy Carter – Associate Director Waste and Environment

Prepared by: JEG Date: 16th August 2016 Scale: 1:5,000 Grid Ref: ST 915-252



**APPENDIX D – CORRESPONDENCE RECEIVED IN THE FORMAL OBJECTION
PERIOD**

This page is intentionally left blank

Green, Janice

From: Jo Shepherd [jo@shepherdstates.co.uk]
Sent: 07 October 2016 11:03
To: Green, Janice
Cc: AnneShaw@colinshaw.ky; 'Marcus Shepherd'
Subject: FW: Reference No. JG/PC/81 2015/04

Dear Ms Green,

**Wildlife and Countryside Act 1981 – Section 53
The Wiltshire Council (Parish of Donhead St Andrew) Path no. 27 Definitive Map and
Statement of Modification Order 2016**

Please could this email supersede the earlier one we sent to you dated 16th September 2016, which should be disregarded.

We wish to make the following objections to some of points made in the Wiltshire County Officers decision report on the above application, which we do not feel accurately reflect our position or our intentions.

- 1) In response to paragraphs 10.68 and 21.4 the circumstances for the installation of the style to the southern boundary were as follows:

The style was erected in response to pressure from the villagers. We were required by the former owner of the land, Margaret Pitman, to erect a fence between our field and the Shaws' land. Whilst the fence was being erected a contingent of villagers gathered and demanded a style or threatened to cut a hole in the fence. With regard paragraph 10.78 we stock the field with sheep and need it to be stockproof so concluded our only course of action was to erect a style.

- 2) In response to paragraph 10.10 we met with Kevin Prince, the Shaws' land agent and agreed that a style should be erected and that a notice was displayed stating that the footpath was a permissive one. Our permission was given for "the map attached to the notices" to display the whole route of the permissive path.
- 3) In response to paragraphs 10.68, 10.70 and 21.4 we were happy for the villagers to have a permissive footpath over our land. It was not our intention to designate this path as a public footpath

Yours sincerely,

Marcus and Johanna Shepherd

Green, Janice

From: Claire Macdonald [claire@acechild.com]
Sent: 09 October 2016 10:42
To: Green, Janice
Subject: JG/PC/81 2015/04

Re: Wildlife and Countryside Act 1981- Section 53
The Wiltshire Council (Parish of Donhead St Andrew) Path no. 27 Definitive Map and Statement
Modification Order 2016

Dear Ms Green,

I am writing to make representations relating to the Parish of Donhead St Andrew Path no 27 Definitive Map and Statement Modification Order 2016, to object to the new map.

I made a statutory declaration about this footpath when it was proposed and I re-state my objection to the addition of this footpath to the map. I object to the addition of the new footpath to this map, for the reasons I set out in my declaration. It appears that the Wiltshire Council is giving equal weight to vague anecdotal statements as they are giving to Statutory Declarations, which are much more reliable evidentially.

When the footpath at Kelloways Mill was diverted there were plenty of local announcements and local residents and the Parish Council were part of the process but the footpath that is claimed to have existed then did not appear on any plans. If the footpath was established then, why didn't it appear on the plans of the time? It wasn't mentioned then or at any time as an informal route that was commonly accepted, or as a path people considered as a footpath then. I lived in Donhead St Andrew from 1990-2014 and regularly walked my dogs along the footpaths in the village, but the route across the field near Donhead Mill was never one I used or noticed others using, because it wasn't an established route.

When the stile appeared it looked like the start of a footpath but the path north of the stile wasn't clear and as I respect my neighbours' right to enjoy their land without trespassers I avoided crossing the field for this reason. If there had been a worn down route that showed that many locals had started to establish a path I probably would have assumed it was a new right of way and used it, but I didn't see any evidence of this whatsoever.

I used to frequent only well-used footpaths. Some were overgrown and virtually impassable. I assume this is because not many people used them at all.

I did observe that in the last ten years or so more people were noticeable walking randomly on fields, such as the one in front of my house, and not keeping to footpaths but rather using other's land to exercise their dogs. They showed little regard for the correct right of way or for stock in the field. On many occasions people would walk along my fence line, which isn't anywhere near the footpath from Donhead St Andrew church to Donhead St Mary church, with out of control dogs that entered my garden from the field.

The countryside is a working environment and I believe that increasing numbers of people have scant understanding or respect for the land and act as if they are allowed to walk with their dogs with impunity, fouling the land and scaring cattle. I'm all for footpaths but I believe there is a growing disregard for established rights of way and some people, who wouldn't want dogs rampaging in their own gardens, nevertheless feel entitled to claim the right to others' property, often citing previous years of use which simply didn't take place.

I was sufficiently certain of my recollection of the village in which I lived for almost 25 years to make a Statutory Declaration about this matter. I think it's undemocratic to give equal regard to statements that are given with lesser regard to the requirement to be accurate and truthful. I trust that this evidence in objection

to the modification will be given due consideration and that the new footpath will be removed from the definitive map.

Yours sincerely,

Claire Macdonald

Church Barn Alvediston Salisbury Wiltshire SP5 5LE 01722 780 222

4 The Porticos King's Road London
SW3 5UW 0777 22 22 270

claire@acechild.com

Leggatts Farm
Semley
Shaftesbury
Dorset SP7 9BJ

Mrs Janice Green
Rights of Way Officer
Wiltshire Council Waste and Environment
Ascot Court
Trowbridge BA14 0XA
ENGLAND

10th October 2016

Your reference: JG/PC/81 2015/04

Dear Ms Green

**Wildlife and Countryside Act 1981 - Section 53
The Wiltshire Council (Parish of Donhead St Andrew) Path No.27 Definite Map and Statement
Order 2016 – Donhead St Andrew**

I object to the above-mentioned definitive map modification order on the following grounds:

1. As set out in the Statutory Declaration I made on 30th July 2015, there was no evidence of a footpath on the eastern side of the field when my family partnership purchased the land known as Mansfield in 1982/4. My brother, Gerald Pitman, and I gave permission to various people in the village such as Belinda Blanshard and, later, John Barton to walk parts of the field other than the public footpaths. It was not possible to prevent entry to the field because of the existence of 2 public footpaths but we regarded that anyone walking did so on the basis that it was a path used with our discretion.
2. There was no mention of the path when footpath 4 was closed in the vicinity of Kelloways Mill in 1994/6 due to a weak bridge or when the path was diverted in 1996/7, which suggests that the path was not being walked at that time and that users did not regard that they used the path as of right.
3. Due to the diversion of footpath 4, the alleged path has not been walked for the statutory period of 20 years and there is no evidence of the path being dedicated by implication.
4. I note that the map attached to the Definitive Map Modification Order mistakenly shows the new fence line as being roughly in the same position as Footpath 4 before it was diverted. This is not the case; the boundary with the Shepherds' land is further south.

5. I confirm that I was employed to work, by Garrett & Fletcher, on the installation of a fence for Mr Shepherd as the new boundary fence to his property in March 2012. As a former part owner (in Pitman and Sons with my brother Gerald) my interest in the land had been transferred to Margaret Pitman and she sold a portion to the Shepherds. Members of the village objected so aggressively to the installation of the new fence, that Mr Shepherd had no option but to install a stile with dog latch. I did not regard that the villagers were entitled to demand the installation of the stile as there was no footpath. So far as I am aware Mr Shepherd agreed to the inclusion of a stile on the basis that the path is a permissive path.

Yours sincerely



David Pitman

Green, Janice

From: John Graham [johngraham.srn@tiscali.co.uk]
Sent: 12 October 2016 12:36
To: Green, Janice
Subject: JG/PC/81 2015/04
Attachments: Letter to WCC.pdf

Dear Ms. Green,

Re JG/PC/81 2014/04

Thank you for your letter of 22nd August 2016.

My representations relating to the order you refer to in this letter are attached.

Yours sincerely,

John Graham

23 Collett Way
Grove
Wantage
Oxfordshire
OX12 0NT

Mrs Janice Green
Rights of Way Officer
Wiltshire Council Waste and Environment
Ascot Court
Trowbridge BA14 0XA

12th October 2016

Your reference: JG/PC/81 2015/04

Dear Ms Green

**Wildlife and Countryside Act 1981 - Section 53
The Wiltshire Council (Parish of Donhead St Andrew) Path No.27 Definite Map and
Statement Order 2016 – Donhead St Andrew**

I write to object to and make representations against the above order. I consider the decision to be ill-founded. I feel that preference has been accorded to witness statements over declarations made under oath.

No path was visible on the claimed route between 1993 (when my sister and brother in law purchased Beauchamp House) and 2002/3. If such a path had existed from 1996, when I acquired my dog, I would have used it for walking him.

The claimed route could not have been walked for the 20 year qualifying period.

The plan accompanying the order is erroneous – the fence between the land owned by the Shepherds and Wardour Ltd is not close to the old route of Footpath 4 it is 20m to the south. The distance between the old route of FP 4 and the south-eastern exit of the new route of FP4 is at least 100-120m. This is a considerable distance and the fact that this was not raised and that the route of the claimed path was not raised when the route of FP4 was altered shows that the claimed route was not walked and was not accepted as a right of way. Repeated requests from people and bodies such as the Ramblers Association for consent to use the path also confirm that the path was not walked as of right. This was also shown by Mrs Barkham when she thanked Mrs Shaw for being allowed to walk the path.

In, para 10.8, of the report accompanying the order I am attributed to confirming 'that after the stile was erected the number of users increased' although I don't dispute this comment, I am sure that the numbers increased due to Mr & Mrs Lee's request to Mrs Shaw for permission to walk the route on behalf of the village.

Yours sincerely,



John Graham

Green, Janice

From: Paul Farrant [pfarrant@aol.com]
Sent: 12 October 2016 14:05
To: Green, Janice
Subject: Your ref. JG/PC/81 2015/04

Follow Up Flag: Follow up
Flag Status: Completed

Dear Mrs Green,

I object to the recent modification order.

I do not consider that the Council has given proper consideration to the many requests for consent to walk along the Eastern edge of the field, including those from John Barton and Mr & Mrs Richard Lee made on 17th July 2012 referred to in my Statutory Declaration sworn on 5th February 2016 or to my conversation with Michael Cullimore on 14th October 2014 also mentioned in my Statutory Declaration.

Furthermore on 26th July 2016 I received an email from Andrew Stevens of Donhead Ramblers (see attached) requesting permission to walk along a permissive path between Rickett's Mill and Kelloway's Mill with the ramblers on 3rd September 2016. He had been advised to contact me by Richard Lee. Although outside the relevant period, as I understand it, this does not suggest that the route has been walked "as of right".

Even after the installation of the stile in March 2012 there was no clear path to the North of the stile. Walkers wandered generally along the Eastern part of the field, often with their dogs running free and chasing deer across the field. They had no regard for the rules of the countryside.

I hope due regard will be made to these comments.

Yours sincerely,

Paul Farrant

3a Palace Green
Kensington Palace Gardens
London W8 4TR
0207 938 4322

07973863069

Chestnut Cottage
Barkers Hill
Donhead St Andrew
Shaftesbury
Dorset SP7 9EB
01747 828016

Begin forwarded message:

From: Andrew Stevens <tas.15@hotmail.co.uk>

Date: 26 July 2016 at 18:39:55 BST

To: "pfarrant@aol.com" <pfarrant@aol.com>

Subject: Donhead Ramblers 3rd September

Dear Paul,

By way of introduction, your name came up in conversation with Richard Lee today and I remembered seeing your email address in the D ST A fete car display round robin.

My reason for contacting you is that I understand that you look after the land belonging to Beauchamp House while the owners are away. On 3rd September I am leading the Donhead ramblers' walk around the Wardour Castles 5 mile circuit from The Forester and I would like if possible to walk through the field between Rickett's Mill and Kelloway's Mill along what I understand to be a permissive footpath, to avoid walking along the road at the end of the walk. This would be a one off event and dogs would be on leads.

I wonder if you are able to grant permission please?

Yours aye,

Andrew Stevens

01747 828232

The Old School House,

Mill Lane,

Donhead St Andrew.

Chardor
Back Street,
East Stour,
Gillingham,
Dorset
SP8 5LD
12/10/16

Ms Janice Green
Rights of Way Office
Works and Environment
Arrest Court,
Trowbridge
BA14 0XA.

Dear Ms Green

RE - Parish of Donhead St Andrew Path no 27
Definitive Map and Modification Order 2016

I object to the addition of the footpath
referred to on the definitive Map above.

My objections are:-

Wiltshire Council has not given regard
to the Statutory declaration including the
declaration made by me on 15 Jan 2016, which
confirmed that there was no evidence of a
footpath on the alleged route prior to 2003.

If the path existed along the Eastern boundary
then I would have walked it.

As far as I was aware there was no sign
of a footpath when footpath 4 was diverted
around 1996-97 nor anyone walking the new
route to the South nor for many years after
the diversion.

The Council has not given sufficient weight to the various requests for consent which indicates that the walkers did not walk as of right.

I hope that you will reconsider the decision.

Yours sincerely
H. R. Graham

Green, Janice

From: Anne Shaw [AnneShaw@colinshaw.ky]
Sent: 14 October 2016 16:24
To: Green, Janice
Subject: Definitive Map Modification Order - Donhead St. Andrew
Attachments: Letter of objection 14.10.16.pdf; The Plan.pdf

Dear Janice

Please find attached a copy of Wardour's letter of objection dated 14th October 2016, together with the plan referred to. I will forward the rest of the attachments in a separate email.

I should be grateful if you would acknowledge safe receipt.

Please let me know if you would like the originals to be sent by post or courier.

Kind regards

Anne

Anne Shaw

Green, Janice

From: Anne Shaw [AnneShaw@colinshaw.ky]
Sent: 14 October 2016 16:28
To: Green, Janice
Subject: Definitive Map Modification Order - Donhead St Andrew
Attachments: Statutory Declaration Plan.pdf; Permissive path sign.pdf; Analysis of user forms.xlsx; E mail from Andrew Stevens dated 26th July 2016.pdf

Dear Janice

Please find attached copies of the following:

1. Statutory Declaration Plan;
2. Permissive path sign;
3. The Analysis; and
4. Andrew Steven's e mail of 2th July 2016.

Please confirm receipt.

Kind regards

Anne

Anne Shaw

Green, Janice

From: Anne Shaw [AnneShaw@colinshaw.ky]
Sent: 14 October 2016 16:49
To: Green, Janice
Subject: RE: Definitive Map Modification Order - Donhead St. Andrew
Attachments: Permissiive Path Sign (labelled).pdf; Email from Andrew Stevens -labelled.pdf

Dear Janice

Thank you for your e mail. I thought you might have gone home by now!

I attach further copies of the permissive path sign and the e mail from Andrew Stevens which I have labelled for clarity. Would you mind replacing those sent earlier with these?

Kind regards

Anne

Anne Shaw

From: Green, Janice [<mailto:janice.green@wiltshire.gov.uk>]
Sent: Friday, October 14, 2016 10:43 AM
To: Anne Shaw <AnneShaw@colinshaw.ky>
Subject: RE: Definitive Map Modification Order - Donhead St. Andrew

Dear Mrs Shaw,

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council (Parish of Donhead St Andrew) Path no.27 Definitive Map and Statement Modification Order 2016

Thank you for your two e-mails dated 14th October, attaching your letter of objection, plan and additional attachments, regarding the above-mentioned order. I can confirm safe receipt of your objections within the formal objection period which ends at 5:00pm on Monday 17th October.

I have not yet read your objections in detail, but we have now received a number of objections. Where the order is opposed, it falls to be determined by the Secretary of State and the objections and representations will now be fully considered in a report to the Southern Area Planning Committee. Members of this Committee will consider the objections and representations received against the evidence already available to the Council and the legal tests for making a definitive map modification order, in order to determine the Wiltshire Council recommendation which is attached to the order when it is forwarded to the Secretary of State for decision, i.e. that the order be confirmed without modification; confirmed with modification or not confirmed.

I will of course advise you of the Southern Area Planning Committee meeting date in due course, it is a public meeting and there is opportunity for public participation at the meeting.

Thank you for your help in this matter,

Kind regards,

Janice

Janice Green

Rights of Way Officer
Wiltshire Council Waste and Environment
Ascot Court Trowbridge BA14 0XA
Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Follow Wiltshire Council



Follow Wiltshire Countryside



From: Anne Shaw [<mailto:AnneShaw@colinshaw.ky>]
Sent: 14 October 2016 16:24
To: Green, Janice
Subject: Definitive Map Modification Order - Donhead St. Andrew

Dear Janice

Please find attached a copy of Wardour's letter of objection dated 14th October 2016, together with the plan referred to. I will forward the rest of the attachments in a separate email.

I should be grateful if you would acknowledge safe receipt.

Please let me know if you would like the originals to be sent by post or courier.

Kind regards

Anne

Anne Shaw

This email originates from Wiltshire Council and any files transmitted with it may contain confidential information and may be subject to Copyright or Intellectual Property rights. It is intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete the email from your inbox. Any disclosure, reproduction, dissemination, modification and distribution of the contents of the email is strictly prohibited. Email content may be monitored by Wiltshire Council to ensure compliance with its policies and procedures. No contract is intended by this email, and any personal opinions expressed in this message are those of the sender and should not be taken as representing views of Wiltshire Council. Please note Wiltshire Council utilises anti-virus scanning software but does not warrant that any e-mail or attachments are free from viruses or other defects and accepts no liability for any losses resulting from infected e-mail transmissions. Receipt of this e-mail does not imply consent to use or provide this e-mail address to any third party for any purpose. Wiltshire Council will not request the disclosure of personal financial information by means of e-mail any such request should be confirmed in writing by contacting Wiltshire Council.

WARDOUR LIMITED
c/o BEAUCHAMP HOUSE, DONHEAD ST ANDREW
SHAFTESBURY, DORSET SP7 9EB

Mrs Janice Green
Rights of Way Officer
Wiltshire Council Waste and Environment
Ascot Court, Trowbridge BA14 0XA
ENGLAND

14th October 2016

Your reference: JG/PC/81 2015/04

Dear Ms Green

Wildlife and Countryside Act 1981 - Section 53
The Wiltshire Council (Parish of Donhead St Andrew) Path No.27 Definite Map and Statement Order
2016 – Donhead St Andrew

I am writing to object to the above mentioned definitive map modification order and to make representations in respect of it.

The main grounds for my objections are set out below; there are numerous further points and discrepancies which could be raised, but which I have omitted at this stage in order to make this letter more manageable.

- 1. The claimed route has not been walked for the full statutory period of 20 years due to the diversion of old FP4 and there is no evidence of implied dedication in respect of the route south of D on the Plan attached hereto (*the Plan*) or on any other part of the claimed route.**

It is acknowledged by Wiltshire Council (*WC*) that the claimed route has not been walked for the full statutory period of 20 years dating back from 8th August 2012 (Paragraph 10.54 of WC's Decision Report dated 18th July 2016 (*the Decision Report*)), where it is stated:

"Prior to 1996 it is considered that the public would have walked to the connection with the existing public highway, Footpath no.4. There would be no reason to continue southwards to the present route of Footpath no 4. as the footpath did not exist on this line and there was no other connection with a public highway at this point. This is supported by the historic evidence OS maps dated 1896 and 1901, which record a route only between the two mills (please see Appendix 2). Where the extension of the claimed route southwards has only been used by the public since the diversion in 1996/97, 20 year public user cannot be established over this part of the route."

Based upon a review of the routes claimed to have been walked prior to 1996/7 as set out in the User Forms submitted, Para 10.57 of the Decision Report confirms that 20 years' public use of the southern

section of the route (i.e. south of old FP4) cannot be shown for the required user period. This is further confirmed in Para 10.63 of the Decision Report:

“This creates a cul de sac footpath, as public user of 20 years cannot be shown on the southern section of the claimed route, following the diversion of Footpath no. 4 Donhead St Andrew in 1996/7 i.e. this section of the route cannot be claimed under statute.”

Thus WC must rely on the implied dedication of a public footpath by the Shepherds on their land in order to show a public footpath. However, WC erroneously assumes that by putting a stile in their new fence, the Shepherds impliedly dedicated a public footpath on their land¹.

When villagers pressed Marcus Shepherd to install the stile in March 2012, Mr Shepherd spoke to Kevin Prince of Carter Jonas, who had advised Wardour Limited (**Wardour**) on the purchase of its land. Mr Shepherd agreed that Carter Jonas should prepare a “*Permissive Path*” sign which would include the route of the path on the Shepherds’ land. Accordingly Mr Shepherd installed his stile on the understanding that it was only a permissive path.

Sometime after the “*Permissive Path*” signs had been erected, Mr Shepherd commented to me that he was glad that they had been put up. The “*Permissive Path*” signs, prepared with the Shepherds’ express consent and agreement, were prepared by Carter Jonas and differ from the plan attached to the Statutory Declaration I made on behalf of Wardour in August 2012, which showed only the permissive path on Wardour’s land and not on the Shepherd’s land².

Paragraph 10.10 of WC’s Decision Report is therefore wrong in suggesting that Wardour attempted to grant a permissive path over the Shepherd’s land; the Shepherds had expressly agreed to this.

Mr Shepherd has confirmed that, due to a problem with his office’s email server at that time, he never received my E-mail dated 15th October 2014 referred to in Question 10 of the Landowner Evidence Form dated 10th October 2015 (the **LEF**) and bullet point 2 on page 6 of Appendix 1 Representations and Objections Received at Initial Consultation of the Decision Report. In my E-mail of 15th October 2014, I requested Mr Shepherd to remove the stile from the fence.

The fact that he did not receive my E-mail explains why I never received a reply from him; accordingly no inference may be drawn that he intended to dedicate a public footpath.

Throughout this application and on the plan attached to the Order itself, the position of the new fence line is incorrectly shown. WC has assumed that the northern boundary of the land purchased by the Shepherds is in approximately the same position as Footpath 4 prior to its diversion in 1997 (**old FP4**). This is incorrect. The boundary is further south as shown by the blue line on the Plan. This location of the fence has always been shown on all plans produced by Wardour. Accordingly there is a significant part of the claimed route on Wardour’s land which has not been walked for the statutory period of 20 years.

¹ Para 10.68 of the Decision Report

² see copy Statutory Declaration plan dated 26th July 2012 and copy Permissive Footpath Sign attached

To illustrate this point, the approximate position of old FP4 is shown by the red line on the Plan and the claimed route walked prior to 1997 (as shown on the map provided by the Parish Council on 10th May 2016, *the Parish Council's pre-1997 Map*) is shown by a green line. The position of the stile in the new fence is shown marked S2, the stile on the old footpath is marked S1 and the closest point between the new stile and old FP4 is marked D. The distance between S1 and S2 is approximately 40 metres and the distance between S2 and D is at least 20 metres. The claimed route between S2 and D and any points between S1 and S2 (since many variations of route were walked) together with the claimed route on the Shepherds' land, totals some 120 metres or more, which cannot have been walked for the full statutory period of 20 years.

Christopher Kilner in his letters of 30th April 2016 and 7th May 2016, with attached maps, suggests that the new stile is sited almost exactly on the historic mapped route of old FP 4. The Plan (which is an extract from a much more recent map than the copy 1901 OS Map Mr Kilner relies on) confirms that this is plainly not the case. Moreover, Mr Kilner's maps do not show the new fence in its correct position and do not accord with the map prepared by the 1996/7 members of the Parish Council dated 10th May 2016.

During its period of ownership, Wardour has not acted in any manner which would suggest an express or implied dedication of a public footpath of any part of the claimed route on its land; indeed, all of its actions clearly indicate the exact opposite.

WC comments in paragraph 10.67 of the Decision Report that there may be implied dedication under the Common Law by the Pitman family in respect of the section of the claimed route north of FP4. But it is accepted law that the burden of proving this is on the claimants. As Scott LJ stated in Jones v Bates³

*"this is a very heavy burden and even a quite formidable body of evidence may not suffice ..."*⁴

The various grants of (or references to) permission to walk the claimed route referred to below also run counter to a suggestion of an implied dedication.

It is submitted that the burden of proof required for an implied dedication has clearly not been discharged in this case.

2. The user evidence in respect of the qualifying 20 year period from 8th August 1992 to 8th August 2012 is insufficient to justify inclusion of the claimed route on the Definitive Map.

Reliability of witness statements

WC appears to have given more weight to the User Evidence Forms (*the UEFs*) submitted by villagers, many of which were clearly hastily completed and signed, than to the detailed Landowner's Evidence Form with Note dated 24th March 2016 attached (the contents of which are incorporated herein by express reference) and the 10 Statutory Declarations submitted, made under oath, objecting to the villagers' claim.

³ [1938] 2 All ER 237

⁴ It was on account of the heavy weight of this burden of proof that the statutory provision now set out in Highways Act 1980 s 31 was enacted.

Great trouble was taken to ensure the accuracy of all statements made in the Landowner's Evidence Form and Statutory Declarations; the same cannot be said of all the UEFs, the majority of which do not appear to have been completed with due care and attention, as indicated by simple "Yes" or "No" replies without reference to the critical time line. Nor do most of the UEFs indicate a detailed knowledge of the land. It has been suggested to me by other villagers that there are in fact a very small number of "real" claimants, who have coerced others into filling in UEFs in order to make it appear as if the claim has widespread support..

It is inappropriate and unjust that a permanent right over another's land should be considered on the basis of such flimsy and unreliable evidence.

As shown on the Analysis of User Evidence Forms attached (*the Analysis*), of the 25 UEFs which refer to use prior to 1997, only 3 mention the diversion of FP4 in 1997; the rest claim to have walked the same route for whole of their period of use. Only 2 of the UEFs show the fence line in its correct position and only 4 have the correct position of Public Footpath 5 shown. This demonstrates a lack of care and attention to detail, a lack of knowledge of the land and tends to indicate that few of the claimants can actually have used the claimed route in the period prior to 1997.

The Analysis shows that many different versions of the claimed route were walked. The second set of maps⁵ which claimants were asked to produce by WC showing the route they walked prior to 1997 (*the pre- 1997 Maps*) confirm this. Even the Parish Council's pre -1997 Map shows a different route from the claimed route!

No clear route has ever been evident on the ground on the land north of the fence line. There is no general right to wander on another person's land. In light of all of this, the claim for a public footpath must at best be highly dubious.

It is inconsistent with the assertion made by some claimants that they used the route to walk to the village Church that prior to 1997 that some claim to have walked 2 parts of a triangle rather than a direct route⁶. Some of the pre 1997 maps produced by villagers showed the alleged footpath forked close to the stile near Kelloway's Mill, with one route going to the Mill and the other turning west towards Beauchamp House, which is more likely.

A number suggest that they walked the route to access Mill Lane and the school and church. However, FP 3 was closed near Kelloway's Mill between in 1994 and 1996 due to the bridges being dangerously weak and unsafe, so villagers cannot have walked to the church/village hall during that period of up to 2 years. This was not mentioned by any of the claimants but the condition of the bridges is referred to in the Parish Council's minutes; WC's files from the time of the path diversion should also confirm this. At that time, Mr John Barton pointed out that old FP4 and old FP3 were rarely used because they ran so close to his house. This all clearly indicates a lack of use of the claimed path and old FP3 and 4 to access Mill Lane, the church and school in the early and mid 1990s.

⁵ referred to in 10.55 – 61 of the Decision Report

⁶ see pre-1997 maps

The charts in Paras. 10.17, 10.24 and 10.33 of the Decision Report are misleading and unreliable. No safe conclusions can be drawn from them because they do not relate to a particular period of use. For example:

- Para. 10.17: witnesses refer to seeing others walking the using the alleged path, without providing details or dates. This assertion is in any event irrelevant as we accept that people walked – with permission - after 2003/5;
- Para.10.24, frequency of user: only 3 claimants differentiate between use in different periods of time. Presumably the rest of the UEFs refer to use prior to the closure of the footpath in 2014.
- Para. 10.33: it is suggested that the owner knew people were walking and did not stop them. The explanation for this was that a few months after Wardour purchased the land, as a gesture of neighbourliness I gave consent to the Lees and the others to use the path on the basis that it was a permissive path, not a public right of way. At the same time we put up *Permissive Path* signs. Had I suspected that the response of so many to my gesture would be to make a far-fetched claim to a public right of way, I would have stopped them using the path immediately.

Evidence of user

It is settled law that there must be sufficient evidence of use to bring it to the landowner's attention. As Lindley LJ stated in Hollins v Verney⁷:

"no actual user is sufficient to satisfy the statute, unless during the whole of the statutory term... the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognized, and if resistance to it is intended."

Walker LJ said in R (Lewis) v Redcar and Clevedon Borough Council⁸:

"if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...."

As is clear from the Statutory Declarations of Hugh Graham, John Graham, Christopher Long, Janet Long, Claire Macdonald, Margaret Pitman and David Pitman⁹, neither of these tests was satisfied in respect of the period prior to 2003-5. WC comments that the aerial photos do not appear to record a well-worn path on the eastern edge of Mansfield even in 2005/6 and that this is "inconclusive". But it is submitted that the aerial photographs are conclusive - in showing that there was no well-worn path at that time. The aerial photographs also show clearly that land south of the route of old FP4 was in pristine condition, with no sign of a path for many years after diversion of old FP4.

⁷ [1884] 13 QBD 304

⁸ [2010] UKSC 11(3rd March 2010)

⁹ See also the aerial photographs produced by WC and referred to Para 10.36 of the Decision Report, which give no indication of a footpath.

It is also settled law that there must be a “sufficient” number of people who have used the same path; and this *sufficiency* test will not be satisfied by one family and their friends using the route.¹⁰ The analysis of the UEFs indicates that only two or three families may have used the same path before 1996. It is submitted that does not satisfy the *sufficiency* test, given that “general wandering” around the field on different routes cannot establish a public right of way¹¹.

“as of right”

Without secrecy

It is submitted that the Chart included in Paragraph 10.33 of the Decision Report is irrelevant as it is not clear from it what time or times within the period of user these replies relate to.

Without permission

At least 5 of the UEFs (those of John Barton¹², Belinda Blanshard, Mr and Mrs Lee (permission given orally on 17th July 2012 to the village) and Jane Hopkins (who referred to this permission on the following day, 18th July 2012), should be discounted as these claimants walked with consent; they clearly knew that they were not walking as of right during the whole of their period of use. This knowledge would also extend to all who knew of the Lees’ request. Of all of these people, only John Barton confirmed that he had consent to walk in his UEF.

Mrs Barkham also thanked me for allowing her and her husband to walk the Permissive Path on 21st June 2014. This is after the qualifying period but clearly indicates that she and her husband did not regard themselves as walking as of right, as confirmed by Michael Cullimore’s conversation with Paul Farrant on 14th October 2014 when, as Chairman of the Parish Council, he confirmed that several members of the village would be willing to sign a release from liability if the permissive path was re-opened¹³. At Richard Lee’s suggestion, The Donhead Ramblers’ Association also made a request dated 26th July 2016 for permission to walk the route¹⁴.

The fact that the Parish Council did not claim a public right of way, or even mention the possibility of a claim, when the diversion took place in 1997, clearly indicates that either that the route wasn’t used, or that the Parish Council didn’t consider it was used as of right. Lord Denning MR commented that when use of a path is brought into question:

¹⁰ R v SSETR (ex parte Dorset) [1997].

¹¹ Dyfed CC v SSW 1989.

¹² It is to be noted that Mr Barton wished to withdraw his UEF but told it was not possible to do so. He submitted a Statutory Declaration sworn on 26th November 2015 confirming he walked with consent.

¹³ see Statutory Declaration sworn by Paul Farrant dated 5th February 2016.

¹⁴ see Andrew Stevens’s e mail dated 26th July 2016, attached.

“the local council may bring an actionagainst the landowner....claiming there is public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way.”¹⁵

The same principle applies to the other occasions when it would have been natural for a path to have been claimed but wasn't, such as when Wardour's *Permissive Path* signs were erected; and also when the new fence was installed. Whilst some of the requests for permission to walk the route may have been outside the relevant period, they clearly indicate that people who requested permission did not believe they walked as of right.

This failure (to assert a public right of way when an opportunity arose to do so) should not be attributed to any element of reticence or timidity on the part of the villagers. Jonathan Cheal, who is recognised as one of the South West's leading experts on rights of way, attended a Parish Council meeting on Wardour's behalf in January 2015 to discuss the matter. He reported back to Wardour that some of the villagers were rude and aggressive; a few he described as "toxic". Putting aside the lack of courtesy shown to Mr Cheal, it is abundantly clear that there were a number of people who, if they genuinely believed there to be a public right of way, could - and should - have claimed such a right many years ago.

One of the reasons why the Parish Council indicated that it was not in favour of confirming the permissive path was that it was unlikely that walkers could be persuaded to stick to a single path. When the possibility of fencing in the path was mentioned, one PC member said she wouldn't want to be confined to one path, she liked to wander (on another person's property)!

At best this attitude appears to evidence a lack of understanding on the part of the claimants of the (much publicized) right to roam. At worst it indicates a total lack of respect for another's property and rights. A small example: our neighbour, John Collyer (one of the most vociferous claimants) took it upon himself to arrange for a planning officer to inspect Beauchamp House in August this year when we moved a potting shed approximately 50 feet from behind the garage into our compost area (and no more than 20 feet from Mr Collyer's own potting shed on his side of the hedge). He has taken similar actions, leading to unexpected visits from planning officers to Beauchamp House, on a number of occasions in the past, in each case without having the courtesy to discuss matters first. On each occasion the planning officer has confirmed that Wardour's actions were lawful, reasonable and entirely proper.

My conclusion is that it is most unlikely that one of the "toxic" villagers (to borrow Mr Cheal's expression) would not have attempted to claim the alleged route in 1996/7, if it had existed then and they were using it.

Both David Pitman and his late brother Gerald, who owned and farmed the land before Wardour acquired it, gave express permission to individuals to walk along the eastern edge of the field. There is absolutely no evidence to suggest that they allowed people to walk the route other than on the basis that it was a permissive path.

There are already two confirmed public footpaths on the relevant land. Thus people had easy access to the field; and it would be impossible to prevent everyone from walking other than on the public footpaths, without taking up a permanent position in the field.

¹⁵ *Fairey v Southampton County Council* [1956]


Conclusion

In summary, it is submitted that there is no legal basis for adding Footpath 27 to the Definitive Map and Statement for the following main reasons:

- It has been agreed by WC that the documentary evidence as a whole **does not** support the existence of public footpath rights over the claimed route (Section 9 Documentary Evidence, Decision Report Para 9.5);
- the claimed route cannot have been walked for the statutory period of 20 years, as explained above;
- there is insufficient user evidence as set out above;
- although there is mention by Roy Powell of use of the claimed route dating back to the 1950s and to the path being an important link between Pigtrough Lane/Donhead Mill and the church, school and village amenities, this is not borne out by evidence;
- the track shown on the 1901 OS map between Rickett's (Donhead) Mill and Kelloway's Mill (which the map confirms was not a right of way) has not been shown on any OS maps since 1901. On the 1925 OS map, Kelloway's Mill is shown as disused and there is no longer a track shown between the Mills. This indicates that since the closure of Kelloway's Mill prior to 1925, there has not been any sign on the ground of a path in that location.
- a public footpath could have been, but was not, claimed on the following prior occasions:
 - (i) under the NPACA of 1949 when the Parish Survey was done nor in any subsequent review;
 - (ii) in 1994 when old Footpath 3 was closed;
 - (iii) in 1996-7 when Public Footpath 4 was diverted;
 - (iv) when the new fence was erected by Marcus Shepherd in March 2012; and
 - (v) when Wardour put up the Permissive Path notices in 2012/13.

It is submitted that the evidence indicates that the path was not used enough to be evident from the ground or to come to the attention of the Parish Council; or alternatively that the villagers knew that they had or needed express consent to walk the path.

Yours sincerely

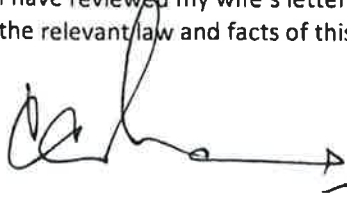


Anne Shaw

Duly authorised for and on behalf of Wardour Limited.

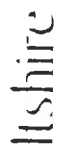
Dated 14th Oct 2016

I have reviewed my wife's letter (above) comprehensively and I am in full agreement with her analysis of the relevant law and facts of this case.

A handwritten signature in black ink, appearing to read 'Colin Shaw', with a horizontal line extending to the right and a small tick mark at the end.

Colin Shaw

PLAN



The Wiltshire Council (Parish of Donhead St Andrew) Path no.27 Definitive Map and Statement Modification Order 2016

Date: 16/08/2016

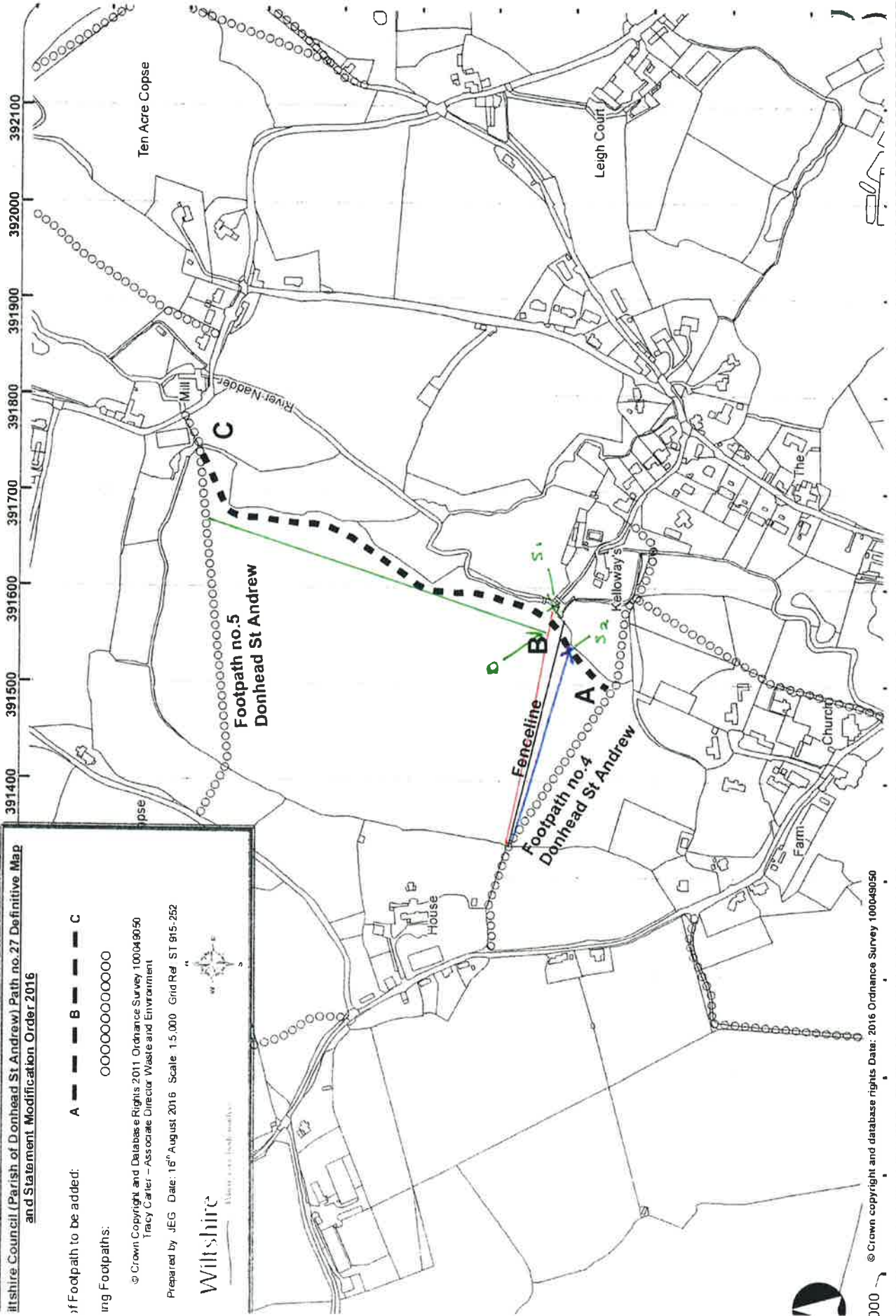
Wiltshire Council (Parish of Donhead St Andrew) Path no.27 Definitive Map and Statement Modification Order 2016

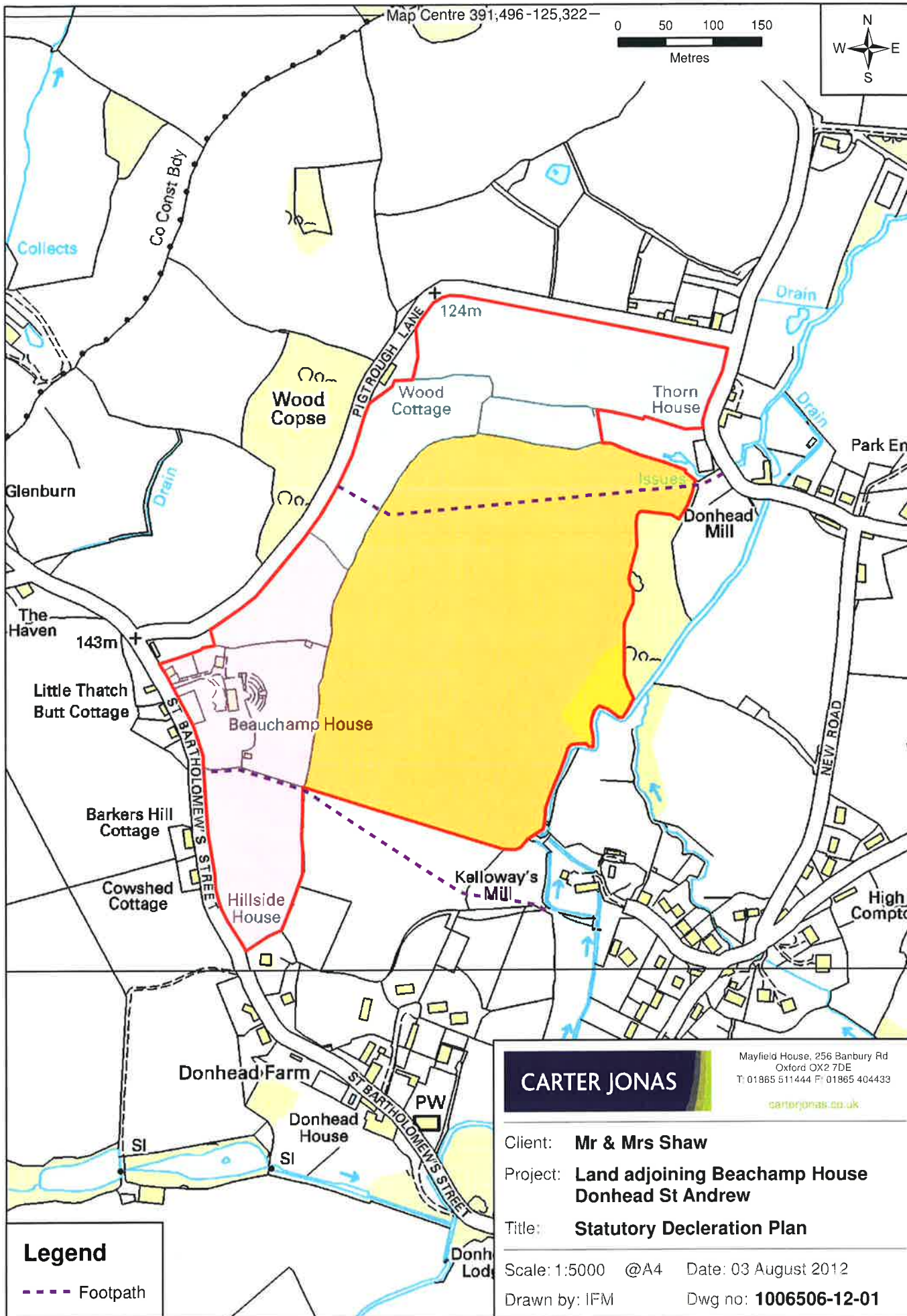
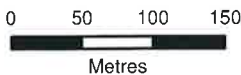
Footpaths to be added: A B C

Existing Footpaths: OOOOOOOOOOOOO

© Crown Copyright and Database Rights 2011 Ordnance Survey 100049050
Tracy Carter - Associate Director Waste and Environment
Prepared by JEG Date: 16th August 2016 Scale: 1:5,000 Grid Ref: ST 915 252

Wiltshire





Legend

--- Footpath

CARTER JONAS

Mayfield House, 256 Banbury Rd
Oxford OX2 7DE
T: 01865 511444 F: 01865 404433

carterjonas.co.uk

Client: **Mr & Mrs Shaw**

Project: **Land adjoining Beauchamp House
Donhead St Andrew**

Title: **Statutory Declaration Plan**

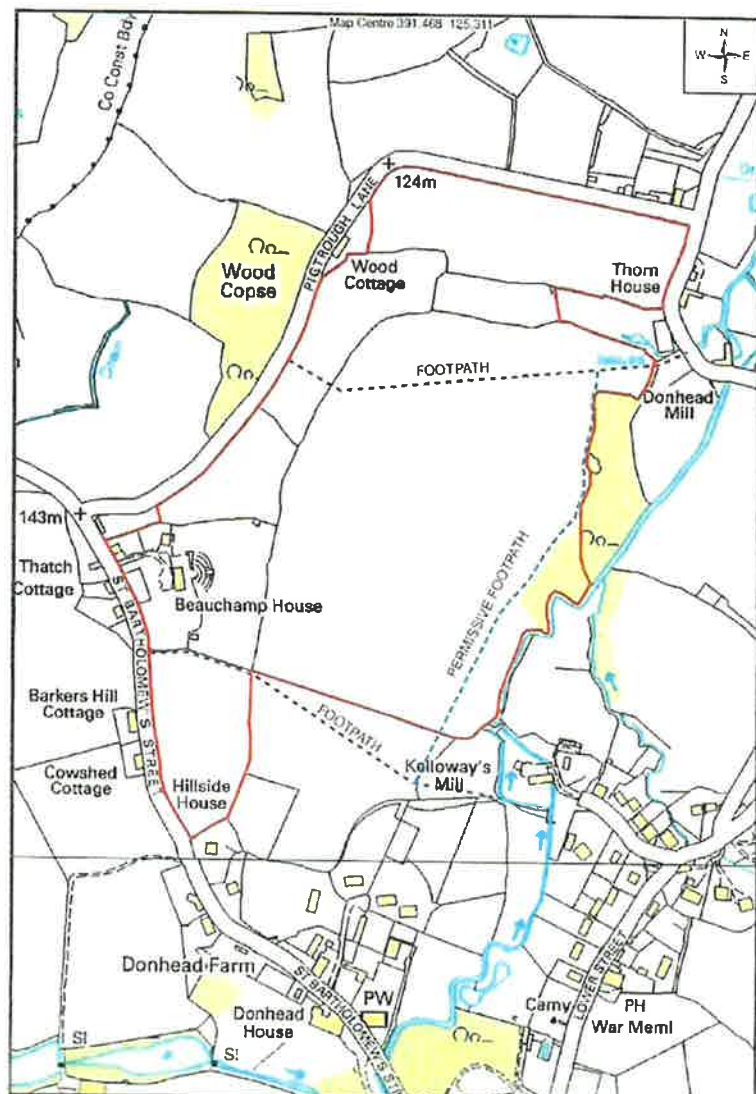
Scale: 1:5000 @A4 Date: 03 August 2012

Drawn by: IFM

Dwg no: **1006506-12-01**

THE FOOTPATH SHOWN IN BLUE ON THE PLAN BELOW IS A PERMISSIVE FOOTPATH ONLY. PLEASE NOTE THAT THIS PATH MAY BE CLOSED ON SOME DAYS. IT IS NOT INTENDED THAT THIS PATH SHOULD BE DEDICATED AS A PUBLIC RIGHT OF WAY.

PLEASE KEEP TO THE ROUTE SHOWN ON THE PLAN.



Analysis of 35 user forms submitted in support of public footpath based on 20 years' use between 8th August 1992 and 8th August 2012

Page 1

Name	Period of use	Walked route	As of right or with permission?	Use prior to 1997	Comments on pre-1997 maps	Other observations
1 Edrys Barkham (wife of No.2)	2004 -2015	Roughly as claimed by Parish Council except for reed bed and northern end	Thanked current owner for allowing use of permissive path in June 2015 Uncertain conversation with Gerald Pitman in 2014	No	N/A	Fenceline incorrectly shown
2 Simon Barkham (husband of No.1)	2004-2015	As claimed by Parish Council except for reed bed northern end	Thanked current owner for allowing use of permissive path in June 2015 Uncertain conversation with Gerald Pitman in 2014	No	N/A	Fenceline incorrectly shown
3 John Barton	1987-2015	Route not as claimed by Parish Council north of new stile and at northern end	Express consent from Gerald Pitman and current owner	Yes	Did not respond to WCC's request for map	1 No reference to change of route 2 Fenceline incorrectly shown
4 Belinda Blanshard	1972-2015	As claimed by Parish Council except for northern end	Express consent from David Pitman sometime between 1982/84	Yes	Roughly shows route of old FP4 across Mansfield	1 No reference to change of route 2 Fenceline incorrectly shown
5 Jane Brown	1995-2015	Route as claimed by Parish Council	Says not given permission	Yes	Not accurate - suggests she walked new route prior to 1997	1 No reference to change of route 2 Fenceline incorrectly shown
6 Tamsin Clark (daughter of no 16 and 17, sister of 18)	1978-2014	Roughly, but not exactly, as claimed by Parish Council	Says not given permission	Yes	Roughly shows route of old FP4 across Mansfield but also possible additional route through paddock at Kelloways Mill	Referred to change of route Fenceline correctly shown 1 Claims to have used path from age 2 2 Evidence inconsistent with parents and brother
7 Elizabeth Collyer (wife of No 8)	1990 - 2014	Route not as claimed by Parish Council	says not given permission within relevant period	Yes	Shows odd route for old FP4 across Mansfield. Growth of gorse questions whether old FP4 was used much over the years	More detailed response but 1 No reference to change of route 2 Fenceline incorrectly shown
8 John Collyer (husband of No 7)	1990- 2014	Route not as claimed by Parish Council	says not given permission within relevant period	Yes	Shows odd route for old FP4 across Mansfield and growth of gorse questions whether old FP4 was used much over the years	More detailed response but 1 No reference to change of route 2 Fenceline incorrectly shown
9 Kate Condon	1994-2008	Route not as claimed by Parish Council	Says not given permission	Yes	Did not respond to WCC's request for map	1 No reference to change of route
10 Philip Danby	2007-2014	Plan inaccurately drawn Route not as claimed by Parish Council	Says not given permission	No	N/A	1 Inaccuracies in plan 2 Fenceline incorrectly shown
11 Alison Eves (wife of No.12)	1989- 2014	Roughly, but not exactly, as claimed by Parish Council	Says not given permission	Yes	Roughly shows route of old FP4 across Mansfield	1 No reference to change of route 2 Fenceline incorrectly shown Wardour did not own land when stile installed (Q.13)
12 Colin Eves (husband of No 11)	1989-2014	Roughly, but not exactly, as claimed by Parish Council	Says not given permission	Yes	Roughly shows route of old FP4 across Mansfield	1 No reference to change of route 2 Inaccurate plan 3 Fenceline incorrectly shown

Analysis of 35 user forms submitted in support of public footpath based on 20 years' use between 8th August 1992 and 8th August 2012

Page 2

Name	Period of use	Walked route	As of right or with permission?	Use prior to 1997	Comments on pre-1997 maps	Other observations
13 Viola Fraser	2000-2015	Route not as claimed by Parish Council	Says not given permission	No	N/A	Fenceline incorrectly shown
14 Hazel Hinchley	1988-2014	Route not as claimed by Parish Council	Says not given permission	Yes	Roughly shows route of old FP4.	1 Inaccurate plan route not capable of being walked 2 Fenceline incorrectly shown
15 Jane Hopkins	1975-2015	Route as claimed by Parish Council	Says not given permission but referred to permission given to Mr and Mrs Lee on behalf of the village on 17.07.12	Yes	Does not show not claimed route	1 No reference to change of route 2 Fenceline incorrectly shown
16 Caroline Kilner (Wife of No 17, Mother of No 6 and No 18)	1977-2014	Route not as claimed by Parish Council	Says not given permission	Yes	Shows odd route for old FP4 across Mansfield and this questions whether old FP4 was used much over the years prior to diversion of path	Reference made to change of route Footpath 5 correctly shown Fenceline incorrectly shown
17 Christopher Kilner (husband of No 16, father of No 6 and No 18)	1977-2014	Route roughly as claimed by Parish Council	Says not given permission	Yes	Shows odd route for old FP4 across Mansfield and this questions whether old FP4 was used much over the years prior to diversion of path	Made reference to change of route Fenceline incorrectly shown
18 Thomas Kilner (son of no 16 and 17)	1981-2014	Route roughly as claimed by Parish Council	Says not given permission	Yes	Was too young to remember diversion of FP4. Map shows route currently claimed, r old route.	1 Claims to have used path since birth 2 No reference to change of route 3 Fenceline incorrectly shown
19 Anthony Lisle (husband of No 20)	1970-2014	Route roughly as claimed by Parish Council	Says not given permission	Yes	Did not respond to WCC's request for map	1 No reference to change of route 2 Fenceline incorrectly shown
20 Jennifer Lisle (wife of No.19)	1970-2014	Route roughly as claimed by Parish Council	Says not given permission	Yes	Did not respond to WCC's request for map	1 No reference to change of route 2 Fenceline incorrectly shown
21 Richard Lee	2007-2014	Route not as claimed by Parish Council	Says not given permission but requested and was granted permission on behalf of the village on 17.07.12	No	N/A	1 Fenceline incorrectly shown 2 Inaccurate plan
22 Patricia Maxwell-Arnold	1996-2014	Route not as claimed by Parish Council	Says not given permission	Yes	Did not respond to WCC's request for map	1 Fenceline incorrectly shown 2 Inaccurate plan 3 No reference to change of route 4. Footpath 5 almost correctly shown
23 Susanna Munro	1975-2015	Route as claimed by Parish Council	Says not given permission	Yes	Plan shows new FP4, not old FP4 and not b claimed route at all	1 Fenceline incorrectly shown 2 No reference to change of route
24 Catherine Roman	2006-2014	Route not as claimed by Parish Council	Says not given permission	No	N/A	1 Inaccurate plan 2 Route not walkable 3 No reference to change of route

Analysis of 35 user forms submitted in support of public footpath based on 20 years' use between 8th August 1992 a 8th August 2012

Page 3

Name	Period of use	Walked route	As of right or with permission?	Use prior to 1997	Comments on pre-1997 maps	Other observations
25 Stephanie Saint	1992-2014	Route as claimed by Parish Council	Says not given permission	Yes	Personal usage post 1996/7	Fenceline correctly shown Footpath 5 correctly shown No reference to change of route
26 Kate Saunders	2006-2013/14	Route roughly as claimed by Parish Council	Says not given permission	No	N/A	1 Fenceline incorrectly shown 2 No reference to change of route
27 Raymond Simpson	2002-2012	Route not as claimed by Parish Council	Says not given permission	No	N/A	No reference to change of route
28 Barry Sullivan	1992- 2014	Route not as claimed by Parish Council	Says not given permission	Yes	Map does not indicate any use or knowledge of old FP4	1 No reference to change of route 2 Inaccurate plan 3 Route shown not walkable
29 Michael Wareham	1970s-2014	Route as claimed by Parish Council except for northern end	Says not given permission	Yes	Did not respond to WCC's request for map	1 No reference to change of route 2 Stile incorrectly shown
30 Jennifer Whymark	1992- 2013	Route as claimed by Parish Council	Says not given permission	Yes	Does not appear to accurately show route of old FP 4	1 No reference to change of route 2 Fenceline incorrectly shown
31 Christopher Winslet	1995-2015	Route not as claimed by Parish Council	Did not reply to this question	Yes	Did not respond to WCC's request for map	1 No reference to change of route 2 Route shown not walkable
32 Christine York (Wife of No 33)	1995-2014	Route not as claimed by Parish Council	Says not given permission	Yes	Does not appear to accurately show route of old FP 4.	1 No reference to change of route 2 Fenceline incorrectly shown
33 Michael York (Husband of No 32)	1995- 2014	Route not as claimed by Parish Council	Says not given permission	Yes	Does not appear to accurately show route of old FP4	1 No reference to change of route 2 Fenceline incorrectly shown Footpath 5 almost correct
34 Donhead St Andrew Parish Council					Shows correct route of old FP4 (but not the route claimed for the alleged path)	See previous column
35 Roy Powell		NO UEF completed			Does not show route of old FP 4 or claimed path; only route pre 1996/7	See previous column

E-MAIL FROM
ANDREW STEVENS
DATED 26 JULY 2016

From: Andrew Stevens <tas.15@hotmail.co.uk>
Date: 26 July 2016 at 18:39:55 BST
To: "pfarrant@aol.com" <pfarrant@aol.com>
Subject: Donhead Ramblers 3rd September

Dear Paul,

By way of introduction, your name came up in conversation with Richard Lee today and I remembered seeing your email address in the D ST A fete car display round robin.

My reason for contacting you is that I understand that you look after the land belonging to Beauchamp House while the owners are away. On 3rd September I am leading the Donhead ramblers' walk around the Wardour Castles 5 mile circuit from The Forester and I would like if possible to walk through the field between Rickett's Mill and Kelloway's Mill along what I understand to be a permissive footpath, to avoid walking along the road at the end of the walk. This would be a one off event and dogs would be on leads.

I wonder if you are able to grant permission please?

Yours aye,

Andrew Stevens

01747 828232

The Old School House,
Mill Lane,
Donhead St Andrew.

Green, Janice

From: Maggs [maggp@btinternet.com]
Sent: 17 October 2016 09:38
To: Green, Janice
Cc: maggs
Subject: Path No.27 Definite Map and Statement Order 2016 – Donhead St Andrew
Attachments: Rights of Way.docx

Follow Up Flag: Follow up
Flag Status: Flagged

I was intending to send this email to you over the weekend but unfortunately I did not have your email address. I telephoned this morning and have just been given it.

Regards Margaret Pitman

WHEELWRIGHTS
SANS LANE
DONHEAD ST ANDREW
SHAFTESBURY
SP7 9EJ

15th October 2016

Ms Green
Rights of Way Officer
Wiltshire Council Waste & Environment
Ascot Court
Trowbridge
BA14 0XA

Dear Ms Green

Wildlife and Countryside Act 1981 - Section 53
The Wiltshire Council (Parish of Donhead St Andrew) Path No.27 Definite Map and Statement
Order 2016 – Donhead St Andrew

I wish to object regarding the above definitive map modification order on the following grounds:

1. The Council does not appear to have taken into consideration and given due weight to the Statutory Declarations made by me and David Pitman as previous landowners and by others with a detailed knowledge of the land and/or relevant events. These Declarations were made under oath unlike the User Evidence Forms submitted to the Council by the claimants.
2. I confirm that I was born and lived my whole life in Donhead St Andrew - 71 years - and when growing up I was never aware of the existence of the alleged path. As children growing up in those times we liked to explore the countryside - and I still do. It is unlikely that a path existed because until improvements were carried out by my late husband and his family the land was divided into several smaller fields and was badly drained.
3. I was unaware of any evidence of a path on the claimed route when my husband's family bought the land in 1982-1984 and there were no stiles. It was quite unusual to see anyone walking the public footpaths at that time. Use of the paths increased in around 2003-2005 but prior to that I rarely saw anyone walking the land and particularly not on the claimed route.

Yours sincerely

Margaret Pitman

Green, Janice

From: John Barton [j.t.barton@icloud.com]
Sent: 15 October 2016 12:55
To: Green, Janice
Subject: Your ref JG/PC/81 2015/04. On October 15th 2016

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green,

I object to the proposed addition of a public footpath in Donhead St Andrew linking fp4 to fp 5.

There are several reasons for my objection but primarily you are not correct in claiming 20 years unbroken use of fps 4 and 3 prior to 8th August 2012.

I have owned and lived in Kelloways Mill since 1986. Not long after arriving here I realised that fp4 was never used and fp 3 hardly ever. I found that the stile into and out of my property on fp 4 was , and obviously had, been broken for some time. It was also covered in brambles. There was never any complaint from the council or the public and it was never repaired .

The main reason that neither was used , I think secondary to one unusable stile, was because fp4 passed through my front garden , directly by the front windows and front door; fp 3 also passed within easy eye line and contact o f windows. In short, both paths were embarrassing for villagers and also a threat to security, implied to any user. I started to try to persuade the Council to move the FPs so that they could be enjoyed by villagers. This was hard work and unsuccessful until 1994 when fp 3 was closed because it had been deemed unsafe due to the treads of both bridges becoming loose.

The WCC eventually realised that rather than replace 2 bridges with new build, if the new fp route could be adopted, costs would be more than halved because only 1 bridge would be necessary and I contributed to the cost of that. In November 1996 the new order was passed and footpaths diverted, a new bridge built in its present position.

I add that at no time during this 10 year period did anyone query inability to use fp 4 through my garden, or the presence of any path joining 4 to 5.

In addition to the above, I find some witness statements to be patently untrue . I would be happy to challenge in court if necessary.

It is also untrue that the majority of the village wants this new path; it is true that a vocal minority want it; there is a large number of residents who want nothing to do with the idea, consider it to be unnecessary and who are unhappy with the bad taste which has been generated.

Yours sincerely,

John Barton
Sent from my iPad

APPENDIX E – Comments on the Objections

Objector	Objections	Officers comments
1.	Stile at point B	
Mr and Mrs Shepherd	<p>Some points made in the decision report do not accurately reflect our position or our intentions: The circumstances for the installation of the stile were as follows: The stile was erected in response to pressure from the villagers. We were required by the former owner of the field, Margaret Pitman, to erect a fence between our field and the Shaw’s land. Whilst the fence was being erected a contingent of villagers gathered and demanded a stile or threatened to cut a hole in the fence.</p> <p>With regard to paragraph 10.78 <i>“Mr and Mrs Shepherd who own the land over which the southern section of the route passes, appear to have taken no action to communicate to the public that it was not their intention to dedicate the land as a public highway and in fact included a stile with dog latch in the boundary fence erected in 2012, against the advice of the previous landowner”</i> – we stock the field with sheep and need it to be stock proof so concluded our only course of action was to erect a stile.</p>	<p>Where there is not a recorded public right of way, there is no onus upon the landowner to install a stile or any other means of access and it is interesting to note that in this case the landowners also installed a dog latch with the stile. Where a stile is installed, there are two options available to the landowner, to prevent the dedication of public rights of way:</p> <p>1) Placing on deposit with Wiltshire Council a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980, negating the landowners intention to dedicate the land as a public right of way;</p> <p>2) Placing permissive path signs on the stile/claimed route, to show that use of the path and stile was entirely at the discretion of the landowner. Where such “permissive” notices are in place, public user during that period cannot qualify as user “as of right”. Mr and Mrs Shepherd did not carry out either of these actions (despite Mr Pitman’s view that villagers were not entitled to demand a stile, as there was no public right of way). Either of these actions would have allowed the landowners to erect the fence and stile as they wished, whilst also preventing public rights of way being acquired over the land, as from that date.</p>
David Pitman	<p>I confirm that I was employed to work by Garrett & Fletcher, on the installation of a fence for Mr Shepherd as the new boundary fence to his property in March 2012. As a former part owner (in Pitman and Sons with my brother Gerald) my interest in the land had been transferred to Margaret Pitman and she sold a portion to the Shepherds. Members of the village objected so aggressively to the installation of the new fence, that Mr Shepherd had no option but to install a stile with dog latch. I did not regard that villagers were</p>	<p>It is noted that when the stile was being installed villagers gathered to demand a stile, which suggests that they considered this to be a public right of way, which was being brought into question by the erection of the fence. In the case of R (on the application of Godmanchester Town Council) (Appellants) v SSEFRA [2007], Lord Hoffman endorses Denning L J’s interpretation of bringing into question contained in the case of <i>Fairey v Southampton County Council</i> [1956], in which it is stated “...<i>the acquiescence of the public tends to show that they</i></p>

Objector	Objections	Officers comments
	entitled to demand the installation of the stile as there was no footpath. So far as I am aware Mr Shepherd agreed to the inclusion of the stile on the basis that the path is a permissive path.	<i>have no right of way...</i> When the fence was being erected, the public did not acquiesce and a stile with dog latch was installed.
2. Permissive path notices		
Mr and Mrs Shepherd	Para 10.10 (which refers to the erection of permissive footpath only signs) – we met with Kevin Prince, the Shaws’ land agent and agreed that a stile should be erected and that a notice was displayed stating that the footpath was a permissive one. Our permission was given for “the map attached to the notices” to display the whole route of the permissive path.	No written evidence that Mr and Mrs Shepherd agreed to the permissive path signs over the route on their land, has been submitted to the Council; however, Officers have concluded at 10.10 of the decision report (Appendix B) that the permissive path notices erected only upon the land owned by Wardour Ltd in autumn 2012, cannot give rise to user “as of right” over the whole of the claimed route, after that date. In any case this is pre-dated by the submission of a statement and plan under Section 31(6) of the Highways Act 1980 by Mrs Shaw, on 8 August 2012, followed by a statutory declaration on 14 August 2012, which negatives Mrs Shaw’s intention to dedicate public rights of way over the land and brings into question public user of the claimed route in full.
3. Common law dedication		
Mr and Mrs Shepherd	Para 10.68, 10.70 and 21.4 (regarding dedication at common law) – we were happy for the villagers to have a permissive footpath over our land. It was not our intention to designate this path as a public footpath.	The evidence suggests that when the stile was erected, no permissive signs were erected on the stile or on the path over Mr and Mrs Shepherds land and that permissive path signs were first erected by Mrs Shaw on land in the ownership of Wardour Ltd in the autumn of 2012. Mr and Mrs Shepherd have presented no evidence to suggest how their permission was communicated to members of the public using the path, if it was intended to be permissive only. Witnesses do not refer to instances of permission being granted by Mr and Mrs Shepherd. Additionally, Mr and Mrs Shepherd have not lodged with Wiltshire Council a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980, to negative their intention to dedicate further public rights over land in their

Objector	Objections	Officers comments
		ownership.
4. Statutory Declarations		
Claire Macdonald	I made a statutory declaration about this footpath, it appears that Wiltshire Council is giving equal weight to vague anecdotal statements as they are giving to Statutory Declarations, which are much more reliable evidentially. I was sufficiently certain of my recollection of the village in which I lived for almost 25 years to make a Statutory Declaration about this matter. I think its undemocratic to give equal regard to statements that are given the lesser regard to the requirement to be accurate and truthful.	The Planning Inspectorate “Definitive map orders: consistency guidelines” considers user evidence at Section 5 and states (page 5): <i>“Claims for dedication having occurred under S.31 HA80 will usually be supported by user evidence forms (“UEF’s”). Analysis of UEFs will identify omissions, lack of clarity, inconsistencies and possible collusion, although the completion of common parts of the form by someone organising the collection of the evidence is not necessarily indicative of collusion. Analysis allows the rejection of invalid UEFs (e.g.no signature, no clear description of the way or of how it was being used) and to note the questions to raise at inquiry. A similar analysis should be made of other types of user evidence, such as sworn statements, letters and the landowner’s evidence. UEF’s are not standardised, and pose differing questions of varying pertinence and precision.”</i> These guidelines suggest that statutory declarations may be subject to the same analysis as the UEF’s.
John Graham	I feel that preference has been accorded to witness statements over declarations made under oath.	
H R Graham	Wiltshire Council has not given regard to the statutory declarations including the statutory declaration made by me on 15 th January 2016 which confirmed that there was no evidence of a footpath on the alleged route prior to 2003.	
Mr and Mrs Shaw	Reliability of witness statements – WC appears to have given more weight to the user evidence forms (UEF’s) submitted by villagers, many of which were clearly hastily completed and signed, than to the detailed Landowner’s Evidence Form with Note dated 24 th March 2016 attached (the contents of which are incorporated herein by express reference) and the 10 Statutory Declarations submitted, made under oath, objecting to the villagers’ claim. Great trouble was taken to ensure the accuracy of all statements made in the Landowner’s Evidence Form and Statutory Declarations; the same cannot be said of all the UEF’s, the majority of which do not appear to have been completed with due care and attention, as indicated by the simple	
		Officers consider that both the UEF’s and the landowner evidence have been subject to the same analysis and the issues raised from all of the evidence have been fully examined, for example the landowner evidence identified that Footpath No.4 had been diverted in 1996/1997, which then led Officers to seek further information from those who had completed UEF’s, regarding their use of the claimed route prior to 1996/1997. This further investigation led Officers to conclude that user over the southern section of the route, could not meet the legal test of public user for a qualifying period of 20 years. In this case there are clearly some conflicting points within the evidence and a public inquiry is helpful in testing the evidence. In

Objector	Objections	Officers comments
Margaret Pitman	<p>“Yes” or “No” replies without reference to the critical time line. Nor do most of the UEF’s indicate a detailed knowledge of the land. It has been suggested to me by other villagers that there are in fact a very small number of “real” claimants, who have coerced others into filling in UEF’s in order to make it appear as if the claim has widespread support.</p> <p>It is inappropriate and unjust that a permanent right over another’s land should be considered on the basis of such flimsy and unreliable evidence.</p> <p>The Council does not appear to have taken into consideration and given due weight to the Statutory Declaration made by me and David Pitman as previous landowners and by others with a detailed knowledge of the land and/or relevant events. These declarations were made under oath unlike the User Evidence Forms submitted to the Council by the claimants.</p>	<p>R v Secretary of State for the Environment ex parte Bagshaw and Norton [1994], Owen J held that <i>“In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”</i></p> <p>In the same case it was also stated that <i>“if, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, on order would seem likely to be appropriate.”</i></p> <p>It is correct for the authority to make a definitive map modification order on a reasonable allegation that public rights subsist.</p>
<p>5. No evidence of path when Footpath no.4 diverted</p>		
<p>Claire Macdonald</p> <p>John Graham</p>	<p>When the footpath at Kelloways Mill was diverted there were plenty of local announcements, local residents and the Parish Council were part of the process, but the footpath that is claimed to have existed then did not appear on any plans. If the footpath were established then, why didn’t it appear on the plan. It wasn’t mentioned then or at any time as an informal route that was commonly accepted or as a path people considered as a footpath then.</p> <p>The distance between the old route of FP 4 and the south-eastern exit of the new route of FP 4 is at least 100-120m. This is a considerable distance and the fact that this was not raised when the route of FP 4 was altered shows that the</p>	<p>The claimed footpath was unrecorded in 1996/97 when the recorded footpath No.4 Donhead St Andrew was diverted south of its definitive line. Officers would therefore not expect it to appear on plans at that time.</p> <p>Perhaps it was not raised at that time as users considered that the diversion did not affect their use of the claimed route. Officers understand that at that time The Mansfield was an open field with no fences or barriers and the only effect which the diversion would have had upon the unrecorded route was that users would have been required to continue further south in the field, to meet the new junction with Footpath No.4. Where the diversion of Footpath No.4 did not bring their use into question it</p>

Objector	Objections	Officers comments
David Pitman	<p>claimed route was not walked and was not accepted as a right of way.</p> <p>There was no mention of the path when the footpath was closed in the vicinity of Kelloways Mill in 1994/6 due to a weak bridge or when the path was diverted in 1996/7, which suggests that the path was not being walked at that time and that users did not regard that they used the path as of right.</p>	<p>would not have been necessary to make a claim at that time. It is noted that an application to add the footpath under Section 53 of the Wildlife and Countryside Act 1981, was made only after the path was temporarily closed to the public in late 2014 / early 2015.</p>
H R Graham	<p>As far as I was aware there was no sign of a footpath when footpath 4 was diverted around 1996-97, nor anyone walking the new route to the south, nor for many years after the diversion.</p>	
Mr & Mrs Shaw	<p>The fact that the Parish Council did not claim a public right of way, or even mention the possibility of a claim, when the diversion took place in 1997, clearly indicates that either the route wasn't used, or that the Parish Council didn't consider it was used as of right. Lord Denning MR commented that when use of the path is brought into question: <i>"the local council may bring an action...against the landowner...claiming there is public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way."</i> The same principle applies to the other occasions when it would have been claimed but wasn't, such as when Wardour's permissive path signs were erected; and also when the new fence was installed. Whilst some of the requests for permission to walk the route may have been outside the relevant period, they clearly indicate that people who requested permission did not believe they walked as of right. This failure (to assert a public right of way when an</p>	

Objector	Objections	Officers comments
<p>David Pitman</p> <p>H R Graham</p> <p>Margaret Pitman</p>	<p>As set out in my statutory declaration (30th July 2015), there was no evidence of a footpath on the eastern side of the field when my family partnership purchased the land known as Mansfield in 1982/4.</p> <p>If the path existed along the eastern boundary then I would have walked it.</p> <p>I confirm that I was born and lived my whole life in Donhead St Andrew – 71 years – and when growing up I was never aware of the existence of the alleged path. As children growing up in those times we liked to explore the countryside – and I still do. It is unlikely that a path existed because until improvements were carried out by my late husband and his family the land was divided into several smaller fields and was badly drained.</p> <p>I was unaware of any evidence of a path on the claimed route when my husband’s family bought the land in 1982-84 and there were no stiles. It was quite unusual to see anyone walking the public footpaths at that time. Use of the paths increased in around 2003-2005 but prior to that I rarely saw anyone walking the land and particularly not on the claimed route.</p>	
<p>7. No evidence of path to the north even after stile erected</p>		
<p>Claire Macdonald</p>	<p>When the stile appeared it looked like the start of a footpath but the path north of the stile wasn’t clear and as I respect my neighbours’ right to enjoy their land without trespassers I avoided crossing the field for this reason. If there had been a worn down route that showed that many locals had started to establish a path I probably would have assumed it was a new right of way and used it, but there was no evidence of</p>	<p>It is difficult to accept that Mr and Mrs Shepherd, when they erected a fence, would have included a stile in the fence line (with dog latch), giving walkers access to the route to the north and the south, where they considered that there was no public access and the previous landowner (Mr David Pitman) had advised them that there was no public right of way. It has been suggested that members of the public applied pressure to add a</p>

Objector	Objections	Officers comments
<p>Paul Farrant</p> <p>Mr and Mrs Shaw</p>	<p>this whatsoever.</p> <p>Even after the installation of the stile in March 2012 there was no clear path to the North of the stile. Walkers wandered generally along the Eastern part of the field.</p> <p>No clear route has ever been evident on the ground on the land north of the fence line. There is no general right to wander on another persons land. In the light of this, the claim for a public footpath must at best be highly dubious.</p>	<p>stile (where perhaps they considered that they had acquired a public right of way); however, there was still no onus upon the landowners to install the stile. Additionally, if they had felt pressure to install a stile, with threats of the fence being cut where they kept stock in the field, they could have installed the stile and then taken appropriate action to prevent (as from that date) further public rights being acquired over their land and negating their intention to dedicate public rights of way. However, there is no evidence before the Council that Mr and Mrs Shepherd erected “permissive” path notices immediately upon installing the stile in March 2012 and they did not lodge with Wiltshire Council a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980.</p> <p>In his statutory declaration Mr John Graham confirms that after the installation of the stile, “<i>Subsequently the number of people walking the eastern boundary increased.</i>” and in their evidence Mr and Mrs Collyer confirm that “<i>...when Mansfield was divided and a fence erected a stile was incorporated into this fence allowing us to continue to use the path between DSTA4 and DSTA5.</i>” In his formal objection to the making of the order Mr Graham does qualify this comment “<i>...I am attributed to confirming ‘that after the stile was erected the number of users increased’ although I don’t dispute this comment, I am sure that the numbers increase due to Mr & Mrs Lee’s request to Mrs Shaw for permission to walk the route on behalf of the village.</i>”, however, there is evidence that the fence was erected in March 2012 and evidence that the Lee’s did not approach Mrs Shaw to request permission until 17 July 2012, a period of 4 months between these events. In addition, no written evidence of the permission granted to Mr and Mrs Lee on behalf of the village, has been presented to Wiltshire Council.</p>
8.	People wander all across the field	

Objector	Objections	Officers comments
Claire Macdonald	<p>I did observe that in the last 10 years or so more people were noticeable walking randomly on fields, such as the one in front of my house, and not keeping to the footpaths but rather using other peoples land to exercise their dogs. They showed little regard for the correct right of way or for stock in the field. On many occasions people would walk along my fence line, which isn't anywhere near the footpath from Donhead St Andrew church to Donhead St Mary church, with out of control dogs that entered my garden from the field.</p> <p>The countryside is a working environment and I believe that increasing numbers of people have scant understanding or respect for the land and act as if they are allowed to walk with dogs with impunity, fouling the land and scaring cattle. I'm all for footpaths but I believe there is growing disregard for established rights of way and some people, who wouldn't want dogs rampaging in their own gardens, nevertheless feel entitled to claim the right to others' property, often citing previous years of use which simply didn't take place.</p>	<p>Para 5.11, Section 5 page 5 of the Consistency Guidelines states: <i>"Wandering at will (roaming) over an area, including the foreshore (Dyfed CC v SSW 1989), cannot establish a public right (Halsbury's Laws of England, Vol.21, paras 2 and 4 refer). Use of an area for recreational activities cannot give rise in itself to a presumption of dedication of a public right over a specific route. Attention should be paid to the maps attached to the UEF's, and any description of the used route to ensure that the Order route is under discussion."</i></p> <p>Officers agree that "wandering" all over the land with no consistent route, does not support the public acquiring a public right of way. However, Officers have examined the routes claimed by users in their evidence forms, and all witnesses have used the route through the field more or less on the same route, although there are some variations, i.e. some being closer to the field boundary and some being more central within the field, allowing for the inevitable inconsistencies in the drawing of the route by different individuals (the claimed route is investigated at pages 40-50 of the decision report attached at Appendix B).</p>
Paul Farrant	<p>After the stile was erected in March 2012, walkers wandered generally along the Eastern part of the field, often with their dogs running free chasing deer across the field. They had no regard for the rules of the countryside.</p>	<p>The "Right to Roam" is entirely separate legislation where areas of mountain, moor, heath, down and common land, were mapped by Natural England following the Countryside and Rights of Way Act 2000, giving the public free access to walk on these pockets of land, known as "Access Land". The land over which the claimed route passes is not designated as Access Land and as a result there is no right for the public to roam at will over the land.</p>
Mr and Mrs Shaw	<p>One of the reasons why the Parish Council indicated that it was not in favour of confirming the permissive path was that it was unlikely that walkers could be persuaded to stick to a single path. When the possibility of fencing in the path was mentioned, one PC member said she wouldn't want to be confined to one path, she liked to wander (on another persons property)!</p>	

Objector	Objections	Officers comments
	At best this attitude appears to evidence a lack of understanding on the part of the claimants of the (much publicised) right to roam. At worst it indicates a total lack of respect for another's property and rights.	
9. The claimed route has not been walked for the 20 year qualifying period		
John Graham	The claimed route could not have been walked for the 20 year qualifying period.	<p>Whilst Officers agree that there is a large amount of evidence and agreement within the statutory declarations submitted by objectors in this case, that the route was not used for the full user period in question of 1992-2012 and that public use of the claimed route began between 2002 and 2005, there is also conflicting evidence from witnesses, who claim to have used the route. 19 of the 33 witnesses claim to have used the route for the full 20 year user period, i.e. 1992-2012, the earliest user dating back to 1970. Where there is this level of conflict within the evidence, we return to the advice given in the Norton and Bagshaw case. It is appropriate to make an order and the witness evidence may be tested at the public inquiry.</p> <p>Additionally, where there is consensus amongst the objectors regarding the date at which the public first began using the claimed route, i.e. between 2002 and 2005, there is no explanation provided to Wiltshire Council as to a significant event which would lead public user to begin at this time, particularly where there is user evidence provided from the 1970's.</p> <p>The further investigations carried by Officers regarding the southern section of the route (south of the fence installed by Mrs and Mrs Shepherd), indicates that this part of the route has not been used for the full 20 year user period and on this section Officers rely upon dedication at common law. Mrs and Mrs Shepherd installed the stile in the fence, where there was no</p>
David Pitman	Due to the diversion of footpath 4 the alleged path has not been walked for the statutory period of 20 years and there is no evidence of the path being dedicated by implication.	
Mr and Mrs Shaw	The claimed route has not been walked for the full statutory period of 20 years due to the diversion of old FP4 and there is no evidence of implied dedication in respect of the route south of D on the plan attached hereto (<i>the Plan</i>) or on any other part of the claimed route. It is acknowledged by Wiltshire Council (<i>WC</i>) that the claimed route has not been walked for the full statutory period of 20 years dating back from 8 th August 2012 (Paragraph 10.54 of <i>WC's</i> decision report dated 18 th July 2016 (<i>the Decision Report</i>)). Based upon a review of the routes claimed to have been walked prior to 1996/7 as set out in the User Forms submitted, Para 10.57 of the Decision Report confirms that 20 years' public use of the southern section of the route (i.e. south of old FP4) cannot be shown for the required user period. This is further confirmed in Para 10.63 of the Decision Report. Thus <i>WC</i> must rely on the implied dedication of a public footpath by the Shepherds on their land in order to show a public footpath. However <i>WC</i> erroneously assumes that by putting a stile in their new fence, the Shepherds impliedly	

Objector	Objections	Officers comments
	<p>dedicated a public footpath on their land.</p> <p>When villagers pressed Marcus Shepherd to install the stile in March 2012, Mr Shepherd spoke to Kevin Prince of Carter Jonas, who advised Wardour Ltd (Wardour) on the purchase of its land. Mr Shepherd agreed that Carter Jonas should prepare a "Permissive Path" sign which would include the route of the path on the Shepherds' land. Accordingly Mr Shepherd installed his stile on the understanding that it was only a <u>permissive</u> path. Sometime after the "<i>Permissive Path</i>" signs had been erected, Mr Shepherd commented to me that he was glad that they had been put up. The "Permissive Path" signs, prepared with the Shepherds express consent and agreement, were prepared by Carter Jonas and differ from the plan attached to the Statutory Declaration I made on behalf of Wardour in August 2012, which showed only the permissive path on Wardour's land and not on the Shepherds land. Paragraph 10.10 of WC's Decision Report is therefore wrong in suggesting that Wardour attempted to grant a permissive path over the Shepherds land; the Shepherds had expressly agreed to this.</p> <p>Mr Shepherd has confirmed that, due to a problem with his office's email server at the time, he never received my e-mail dated 15th October 2014 referred to in Question 10 of the Landowner Evidence Form dated 10th October 2015 (<i>the LEF</i>) and bullet point 2 on page 6 of Appendix 1 Representations and Objections Received at Initial Consultation of the Decision Report. In my e-mail of 15th October 2014 I requested Mr Shepherd to remove the stile from the fence. The fact that he did not receive my e-mail explains why I never received a reply from him; accordingly</p>	<p>requirement for them to do so and although they may have considered the installation of "permissive path" notices, there is no evidence before the Council that they erected such notices immediately upon the erection of the fence in March 2012. The evidence suggests that no such notices were erected until autumn 2012, when Wardour Ltd erected "permissive path" notices, giving a user period of 5-6 months following the installation of the stile and dog latch (Mr John Graham confirms in his statutory declaration that public user increased after the installation of the stile).</p> <p>The failure of the Parish Council or indeed any other member of the public to claim the route on occasions when they might be expected to do so, for example upon the formal diversion of Footpath No.4 on 1996/97, is not contrary to the public acquiring rights. It is possible that on these occasions public use of the unrecorded route, was not affected / prevented by these events and it was not necessary to make a claim at these times. It is noted that no claim was made when the permissive path notices were erected in Autumn 2012, early 2013, but the claim was made following the temporary closure of the footpath when the sink hole appeared on the land in late 2014 / early 2015 and the public were prevented from using the claimed route altogether (the application being dated 15 May 2015).</p> <p>Mr Barton suggests a lack of use of the recorded Footpaths Nos. 3 and 4 Donhead St Andrew, from 1986 onwards, until Footpath No.3 was closed in 1994 and the diversion of Footpath No.4 in 1997, due to being overgrown, out of repair and being in such close proximity to Kelloways Mill. He is owner and resident at Kelloways Mill and has knowledge of these paths; however, where the recorded footpaths were out of repair, it is possible that the public sought alternative routes within the vicinity,</p>

Objector	Objections	Officers comments
	<p>no inference may be drawn that he intended to dedicate a public footpath.</p> <p>Of the 25 UEF's which refer to use prior to 1997, only 3 mention the diversion of FP4 in 1997; the rest claim to have walked the same route for the whole of their period of use. Only 2 of the UEF's show the fence line in its correct position and only 4 have the correct position of FP5 shown. This demonstrates a lack of care and attention to detail; a lack of knowledge of the land and tends to indicate that few of the claimants can actually have used to claimed route in the period prior to 1997.</p> <p>It has been agreed by WC that the documentary evidence as a whole does not support the existence of public footpath rights over the claimed route (Section 9 Documentary Evidence Decision Report Para 9.5).</p> <p>The claimed route cannot have been walked for the statutory period of 20 years, as explained above. There is insufficient user evidence as set out above.</p> <p>Although there is mention by Roy Powell of use of the claimed route dating back to the 1950's and to the path being an important link between Pigtrough Lane/Donhead Mill and the church, school and village amenities, this is not borne out by evidence.</p> <p>The track shown on the 1901 OS map between Ricketts (Donhead) Mill and Kelloways Mill (which the map confirms was not a right of way) has not been shown on an OS maps since 1901. On the 1925 OS map, Kelloways Mill is shown as disused and there is no longer a track shown between</p>	<p>perhaps over the claimed route.</p>

Objector	Objections	Officers comments
John Barton	<p>the Mills. This indicates that since the closure of Kelloways Mill prior to 1925, there has not been any sign on the ground of a path at this location.</p> <p>A public footpath could have been, but was not, claimed on the following prior occasions:</p> <p>(i) under the NPACA of 1949 when the Parish Survey was done, nor in any subsequent review; (ii) in 1994 when the old Footpath 3 was closed; (iii) in 1996-7 when Public Footpath 4 was diverted; (iv) when the new fence was erected by Marcus Shepherd in March 2012; and (v) when Wardour put up the Permissive Path notice in 2012/13.</p> <p>It is submitted that the evidence indicates that the path was not used enough to be evident from the ground or to come to the attention of the Parish Council; or alternatively that the villagers knew that they had needed express consent to walk the path.</p> <p>You are not correct in claiming 20 years unbroken use of fps 4 and 3 prior to 8th August 2012. I have owned and lived in Kelloways Mill since 1986. Not long after arriving here I realised that fp4 was never used and fp3 hardly ever. I found that the stile into and out of my property on fp4 was, and obviously had, been broken for some time. It was also covered in brambles. There was never any complaint from the Council or the public and it was never repaired.</p> <p>The main reason that neither was used, I think secondary to one unusable stile, was because fp4 passed through my</p>	

Objector	Objections	Officers comments
	<p>front garden, directly by the front windows and door; fp3 also passed within easy eye line and contact of windows. In short both paths were embarrassing for villagers and also a threat to security, implied to any user. I started to try to persuade the Council to move the FPs so that they could be enjoyed by villagers. This was hard work and unsuccessful until 1994 when fp3 was closed because it had been deemed unsafe due to the treads of both bridges becoming loose.</p> <p>The WCC eventually realised that rather than replace 2 bridges with new build, if the new fp route could be adopted, costs would be more than halved because only 1 bridge would be necessary and I contributed to the cost of that. In November 1996 the new order was passed and footpaths diverted, a new bridge built in its present position. I add that at no time during this 10 year period did anyone query inability to use fp4 through my garden, or the presence of any path joining 4 to 5.</p> <p>In addition I find some witness statements to be patently untrue. I would be happy to challenge in court if necessary.</p> <p>It is also untrue that the majority of the village wants this new path; it is true that a vocal majority want it, there is a large number of residents who want nothing to do with the idea, consider it to be unnecessary and who are unhappy with the bad taste which has been gathered.</p>	
10.	The plan accompanying the order is erroneous	
John Graham	The plan accompanying the order is erroneous – the fence between the land owned by the Shepherds and Wardour Ltd is not so close to the old route of Footpath 4, it is 20m to the south.	Officers agree that the fence line recorded on the order map, does not accurately reflect the position of the fence on the ground and this line should be located further south. At the time of preparation of the map this fence line was not recorded on the

Objector	Objections	Officers comments
<p>David Pitman</p> <p>Mr and Mrs Shaw</p>	<p>I note that the map attached to the Definitive Map Modification Order mistakenly shows the new fence line as being roughly in the same position as Footpath 4 before it was diverted. This is not the case, the boundary with the Shepherds land is further south.</p> <p>Throughout this application and on the plan attached to the Order itself, the position of the new fence line is incorrectly shown. WC has assumed that that the northern boundary of the land purchased by the Shepherds is approximately the same position as Footpath 4 prior to its diversion in 1997 (<i>old FP4</i>). This is incorrect. The boundary is further south as shown by the blue line on the Plan. This location of the fence has always been shown on all plans produced by Wardour. Accordingly there is a significant part of the claimed route on Wardour's land which has not been walked for the statutory period of 20 years. To illustrate this point, the approximate position of old FP4 is shown by the red line on the Plan and the claimed route walked prior to 1997 (as shown on the map provided by the Parish Council on 10th May 2016, <i>the Parish Council's pre-1997 Map</i>) is shown marked S2, the stile on the old footpath is marked S1 and the closest point between the new stile and old FP4 is marked D. The distance between S1 and S2 is approximately 40m and the distance between S2 and D is at least 20m. The claimed route between S2 and D and any points between S1 and S2 (since many variations of the route were walked) together with the claimed route on the Shepherds' land, totals some 120 metres or more, which cannot have been walked for the full statutory period of 20 years.</p>	<p>Ordnance Survey (OS) base map available and was inserted incorrectly by Officers. This line does now appear on the OS base map and Officers would concur with objectors on this point. However, it is not considered that this inaccuracy materially affects the evidence or the Wiltshire Council decision on the application. When witnesses were completing the evidence forms, no fence line was shown on the map provided to witnesses and many of the witnesses have annotated the map to include the fence where they believe it to be located. It is also noted that the map provided to witnesses who used the route prior to the diversion of Footpath No.4 Donhead St Andrew in 1996/97, did not include the fence line and this map was not annotated in any way by Officers, allowing witnesses to record the route/s they had used. Officers also consider it likely that when witnesses have made later references to the location of the fence, they would have taken reference from the fence in its true location on the ground. It is in fact only the order map which records the fence line incorrectly.</p> <p>Whilst researching the claim, Officers undertook a consultation amongst users who had used the route prior to 1996/1997, i.e. prior to the diversion of Footpath No.4 Donhead St Andrew (please see paragraphs 10.53 – 10.57 of the decision report). Witnesses were able to mark on a map the route/s they had used prior to this date and from this evidence Officers have concluded that whilst some users did use a route turning north immediately upon entering the Mansfield at Kelloways Mill (via the former route of Footpath No.4), more users appear to have continued westwards before turning north, as per the claimed route.</p> <p>By overlaying the diversion order plan (diverting Footpath No.4 Donhead St Andrew 1997) over an OS base map at the same</p>

Objector	Objections	Officers comments
	<p>Christopher Kilner in his letters of 30th April 2016 and 7th May 2016, with attached maps, suggests that the new stile is sited almost exactly on the historic mapped route of old FP 4. The Plan (which is an extract from a much more recent map than the copy of the 1901 OS Map Mr Kilner relies on) confirms that this is plainly not the case. Moreover, Mr Kilner's maps do not show the new fence in its correct position and do not accord with the map prepared by the 1996/7 members of the Parish Council dated 10th May 2016.</p>	<p>scale, with the fence recorded in its correct position, we see that there is a gap of approximately 15m between the former route of Footpath No. 4 and the fence line erected in 2012. Officers agree that the route over Mr and Mrs Shepherds land cannot show 20 years public use as of right; however, there is a gap of approximately 15m between the Shepherds land and the former route of Footpath No.4 which is not accounted for. When asked to describe the route which they had used prior to 1997, (at that time the Mansfield was a single open field), the majority of users used a route leading east-west over the Mansfield in the approximate location of Footpath No.4; however, there are differing reports of the actual used line of this path.</p> <p>The 1901 Ordnance Survey Map is referred to by Mr and Mrs Kilner, which when considered with the OS map of 1925, appears to show the route of Footpath No.4, south of its former line, to the north of a former fence line which existed in 1901, giving less distance between Footpath No.4 and the 2012 fence and stile. Mr and Mrs Kilner state that before the diversion of Footpath No.4, they followed a very similar route to the 1901 OS map and they claim that reference to this historic map shows that the stile is sited almost exactly on the historic mapped route of Footpath No.4, although on the plan their used route intersects the 2012 fence line more central to the field.</p> <p>Mr and Mrs York also appear to record on their map (of use prior to 1997) the route of Footpath No.4 further south in the field. They describe their pre-1997 route entering the Mansfield <i>"...near where the present stile is for the new fence..."</i> and <i>"We think the old footpath 4 roughly followed the line of the new fence. Again we think to its southern side."</i> However, on the plan their route is shown to intersect the 2012 fence line more central to the field.</p>

Objector	Objections	Officers comments
		<p>Miss Whymark also shows a used route for Footpath No.4 (pre-1997) further south in the field and which would have intersected the new fence line at approximately the point where the new stile is located at the eastern side of the field.</p> <p>Mrs Munro used a route which crossed the 2012 fence at about the point of the new stile, using a route past Kelloways Mill and then entering the Mansfield and continuing south to the present route of Footpath No.4, (prior to 1997).</p> <p>Mr B Sullivan shows the claimed route in full, it does intersect the new fence line, but this intersection is slightly further west of the present stile.</p> <p>Mr T Kilner; Mrs Brown and Mr and Mrs Collyer, all claim to have used the claimed route in full prior to 1997 and have therefore intersected the new fence at its eastern end (Mr and Mrs Collyer's intersection, slightly further west).</p> <p>In conclusion, there is some user evidence to suggest that the public had used the 15m gap between the present fence and stile. i.e. some witnesses using a route of Footpath No.4 further south in the field and some using the claimed route in full, prior to 1997 and within the early part of the relevant user period, i.e. between 1992 and 1997.</p>
11.	Requests for permission	
John Graham	Repeated requests from people and bodies such as the Ramblers Association for consent to use the path also confirm that the path was not walked as of right. This was also shown by Mrs Barkham when she thanked Mrs Shaw for being allowed to walk the path.	In order to establish a right of way, public use must be "as of right", i.e. without force, without secrecy and without permission. The meaning of "as of right" was explored in the case of R v Oxfordshire CC ex parte Sunningwell Parish Council [1999] (town and village green registration). It had been considered in the case of Hue v Whiteley 1929, that the state of mind of users

Objector	Objections	Officers comments
Paul Farrant	<p>I do not consider that the Council has given proper consideration to the many requests for consent to walk along the Eastern boundary of the field, including those from John Barton and Mr and Mrs Richard Lee made on 17th July 2012 referred to in my statutory declaration sworn on 5th February 2016 or to my conversation with Michael Cullimore on 14th October 2014 also mentioned in my statutory declaration.</p> <p>Furthermore on 26th July 2016 I received an e-mail from Andrews Stevens of Donhead Ramblers (see attached) requesting permission to walk along the permissive path between Ricketts Mill and Kelloways Mill with the Ramblers on 3rd September 2016. He had been advised to contact me by Richard Lee. Although outside the relevant period, as I understand it, this does not suggest that the route had been walked "as of right".</p>	<p>should be considered within the "as of right" test; however, in Sunningwell Lord Hoffman doubted what Mr Justice Tomlin had meant by this and stated:</p> <p><i>"My Lords, in my opinion the casual and, in its context, perfectly understandable aside of Tomlin J. In Hue v. Whiteley [1929] 1 ch.440 has led the courts into imposing upon the time-honoured expression "as of right" a new and additional requirement of subjective belief for which there was no previous authority and which I consider to be contrary to the principles of English prescription. There is in my view an unbroken line of descent from the common law concept of nec vi, nec clam, nec precario to the term "as of right" in the Acts of 1832, 1932, and 1965."</i></p> <p><i>"In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But this is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use the footpath will use it in the way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the early years will have been without any very confident belief in the existence of a legal right, but that does not mean that it must be ignored."</i></p>
David Pitman	<p>My brother Gerald Pitman and I gave permission to various village residents such as Belinda Blanshard and later John Barton to walk parts of the field other than the public footpaths. It was not possible to prevent entry to the field because of the existence of 2 public footpaths but we regarded that anyone walking did so on the basis that it was a path used with our discretion.</p>	<p><i>"In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But this is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use the footpath will use it in the way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the early years will have been without any very confident belief in the existence of a legal right, but that does not mean that it must be ignored."</i></p>
H R Graham	<p>The Council has not given sufficient weight to the various requests for consent which indicate that the walkers did not walk as of right.</p>	<p><i>"In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But this is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use the footpath will use it in the way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the early years will have been without any very confident belief in the existence of a legal right, but that does not mean that it must be ignored."</i></p>
Mr and Mrs Shaw	<p>During its period of ownership, Wardour has not acted in any manner which would suggest an express or implied dedication of a public footpath on any part of the claimed</p>	<p>It was held that use "as of right" does not require the public to believe they are using the way as of right and therefore the Council is not able to consider whether or not the users</p>

Objector	Objections	Officers comments
	<p>route on its land; indeed all of its actions clearly indicate the exact opposite.</p> <p>At least 5 of the UEF's (John Barton, Belinda Blanshard, Mr and Mrs Lee (permission given orally on 17th July 2012 to the village) and Jane Hopkins (who referred to this permission on the following day, 18th July 2012) should be discounted as these claimants walked with consent, clearly knowing that they were not walking as of right during the whole period of use. This knowledge would also extend to all who knew of the Lees request. Of all these people, only John Barton confirmed that he has consent to walk in his UEF.</p> <p>Mrs Barkham also thanked me for allowing her and her husband to walk the permissive path on 21st June 2014. This is after the qualifying period, but clearly indicates that she and her husband did not regard themselves as walking as of right, as confirmed by Michael Cullimore's conversation with Paul Farrant on 14th October 2014 when, as Chair of the Parish Council, he confirmed that several members of the village would be willing to sign a release from liability if the permissive path was re-opened. At Richard Lee's suggestion, the Donhead Ramblers Association also made a request dated 26th July 2016 for permission to walk the route.</p> <p>Both David Pitman and his late brother Gerald, who owned and farmed the land before Wardour acquired it, gave express permission to individuals to walk along the eastern edge of the field. There is absolutely no evidence to suggest that they allowed people to walk the route other than on the basis that it was a permissive path.</p>	<p>themselves considered their use of the way to be "as of right".</p> <p>After Mrs Shaw deposited with Wiltshire Council a statement, plan and statutory declaration in August 2012, followed by the erection of permissive path signs in autumn 2012 and early 2013, the right of the public to use the way was already brought into question and the requests for permission after August 2012 are not relevant to the Council's consideration of the evidence. Where the right of the public to use the route was already brought into question and this was made clear to them, i.e. by the erection of "permissive path" signs, the public may have considered it necessary to seek permission, after that date, demonstrating that the public did view the path differently after the permissive signs were erected. It does not preclude a period of public user of 20 years before August 2012 and there is little evidence before the Council that the public sought permission before 2012 (Officers have already correctly discounted the evidence of witnesses who refer to permission prior to 2012, i.e. Mrs Belinda Blanshard and Mr John Barton, as being user "as of right").</p> <p>The decision report (attached at Appendix B) considers "permission" at paragraphs 10.41-10:50 and it is agreed that the user evidence of Mr John Barton and Mrs Belinda Blanshard cannot be considered as qualifying user "as of right" where these two individuals sought and were granted permission within the relevant user period in question of 1992-2012; however, even where this evidence is removed, there is still a substantial body of evidence of user "as of right".</p> <p>Officers do not agree that the evidence of Mr and Mrs Lee and Mrs Hopkins should be discounted as user "as of right". It is claimed that Mr and Mrs Lee sought permission from the</p>

Objector	Objections	Officers comments
	<p>There are already 2 confirmed public footpaths on the relevant land. Thus people had easy access to the field and it would be impossible to prevent anyone from walking other than on the public footpaths, without taking up permanent position in the field.</p>	<p>landowners Wardour Ltd, on behalf of the village, which evidence suggests they requested at the same time as Mr Barton, on 17 July 2012 (there is agreement amongst objectors that Mr and Mrs Lee made this request, at this time). Mr Barton received a letter of permission from Mrs Shaw dated 17 July 2012; however, the date of the granting of permission to Mr and Mrs Lee and the village is not known as no letter to this effect from Mrs Shaw and Wardour Ltd has been viewed by Officers of Wiltshire Council. Where the date of granting of this permission is not known, the user evidence of Mr and Mrs Lee cannot be discounted as user "as of right".</p> <p>Surely it would have been considered more important to the landowner to confirm in writing permission given to the whole of the village, than simply writing a letter to give permission to certain individuals, i.e. Mr Barton, particularly where it was not the landowner's intention to dedicate public rights of way over the land. Additionally, if Mr and Mrs Lee were seeking permission for the whole of the village to use the route, would it not have been more appropriate to write to the Parish Council. No evidence of permission being granted through the Parish Council in July 2012 has been presented to the Council.</p> <p>In any case, if permission was granted to Mr and Mrs Lee on 17 July 2012, there is sufficient evidence of public user "as of right" from 17 July 1992; therefore, it would simply serve to push back the relevant user period by less than one month.</p> <p>Wiltshire Council has not seen further evidence that Mrs Jane Hopkins referred to this permission the next day, i.e. on 18 July 2012, other than within the statutory declarations and Mrs Hopkins makes no reference to this within her evidence statement. Again there is a conflict of evidence which may be</p>

Objector	Objections	Officers comments
		<p>tested at a public inquiry.</p> <p>Requests for permission and comments made outside the relevant user period of 1992 - 2012, e.g. where Mrs Shaw recalls that Mrs Barkham thanked her whilst attending a garden opening on 21 June 2014, for allowing herself and her husband to walk the path and requesting permission for her husband to inspect the newly formed sink hole, the path was already signed as a "permissive path" at that time and public user had already been brought into question. Additionally, when the local Donhead Ramblers Association made their request to Mr Paul Farrant for permission to use the route on 26 July 2016, the path was already closed temporarily and the application to add a public footpath made.</p>
12.	Increased use of the path after the stile is a result of Mr and Mrs Lee's request to Mr and Mrs Shaw for permission to walk the route on behalf of the village	
John Graham	In para 10.8 of the report I am attributed to confirming " <i>that after the stile was erected the number of users increased</i> " although I don't dispute this comment, I am sure the number of walkers increase due to Mr and Mrs Lee's request to Mrs Shaw for permission to walk the route on behalf of the village.	The stile was erected in March 2012 and it is claimed that Mr and Mrs Lee requested permission to use the claimed route on behalf of the village on 17 July 2012. There is a period of four months where the stile is installed, before the request for permission from Mr and Mrs Lee is made. Officers have not been presented with evidence in writing of any permission granted to Mr and Mrs Lee and the residents of the village. Mr Barton who requested permission at the same time as Mr and Mrs Lee, received a letter confirming the permission; however, it would appear that permission was not granted in writing to the whole of the village, which is perhaps more important where it is not the landowners intention to dedicate public rights of way.
13.	Common Law Dedication	
Mr and Mrs Shaw	WC comments in paragraph 10.67 of the Decision Report that there may be implied dedication under the Common Law by the Pitman family in respect of the section of the	There is little evidence before the Council that the Pitman family carried any acts to negate their intention to dedicate the land as a public right of way. In his statutory declaration Mr David Pitman

Objector	Objections	Officers comments
	<p>claimed route north of FP4, but it is accepted in law that the burden of proving this is on the claimants as Scott L J stated in Jones v Bates <i>“this is a very heavy burden and even quite a formidable body of evidence may not suffice...”</i> The various grants of (or references to) permission to walk the claimed route referred to below also run counter to a suggestion of an implied dedication. It is submitted that the burden of proof required for an implied permission has clearly not been discharged in this case.</p>	<p>confirms that <i>“When we purchased the Land one or two people asked us for permission to walk other than on the public footpaths (Mrs Belinda Blanshard was one such person) and we granted that permission,”</i> This statement is supported by Mrs Shaw, but is not referred to in Mrs Blanshards evidence form. Mrs Blanshards evidence has been discounted as user <i>“as of right”</i>, based on the comments made by Mr David Pitman and Mrs Shaw.</p> <p>Mr Pitman also states <i>“I know my brother, Gerald Pitman who died in 2009, also gave permission to some villagers to walk other than on the public footpaths”</i>, which is supported by Mrs Margaret Pitman in her statutory declaration, in which she states <i>“I understand that from time to time Gerald gave some villagers permission to walk on the land other than on the public footpaths.”</i> However, no further details of these instances are given, e.g. did this permission refer to the claimed route or just the land in general; to whom was this permission given and when. Mr David Pitman also states that <i>“...we always led everybody to believe that it was at our discretion if they walked anywhere else on the field other than the footpaths”</i>, but there is no further evidence given of how this permission was conveyed to members of the public at large.</p> <p>All but one of the 33 witnesses consider the landowners to be aware of public user, for a number of reasons and Mrs Hazel Hinchley, in her witness evidence form, confirms that <i>“on several occasions I stood in my paddock with Mr G Pitman watching people using the path”</i>. None of the witnesses refer to being challenged by the landowners during the Pitmans period of ownership (some of the witnesses refer to instances of challenge after Wardour Ltd took ownership of the land and to the permissive path notices / closure notices erected by Mrs Shaw,</p>

Objector	Objections	Officers comments
		<p>as a challenge to their user).</p> <p>There is no evidence submitted that the Pitman family erected “permissive path” notices on the claimed route, or submitted a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980 to negate their intention to dedicate further public rights of way over the land.</p>
<p>14. Insufficient user evidence</p>		
<p>Mr and Mrs Shaw</p>	<p>The user evidence in respect of the qualifying 20 year period from 8th August 1992 to 8th August 2012 is insufficient to justify inclusion of the claimed route on the definitive map.</p> <p>Many different versions of the claimed route were walked. The second set of maps which claimants were asked to produce by WC showing the route they walked prior to 1997 (the pre-1997 Maps) confirm this. Even the Parish Council’s pre-1997 map shows a different route from the claimed route.</p> <p>It is inconsistent with the assertion made by some claimants that they used the route to walk to the village church and that prior to 1997 some claim to have walked 2 parts of a triangle rather than a direct route. Some of the pre-1997 maps produced by villagers showed the alleged footpath forked close to the stile near Kelloways Mill, with one route going to the mill and the other turning west towards Beauchamp House, which is more likely.</p> <p>A number suggest that they walked the route to access Mill Lane and the school and church. However, FP 3 was closed near Kelloways Mill between 1994 and 1996 due to bridges being dangerously weak and unsafe, so villagers cannot</p>	<p>A definitive map modification order has been made in this case where it is considered that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot subsists.</p> <p>Officers agree that following their investigations of the route used by the public prior to 1996/97 (the diversion of Footpath No.4 Donhead St Andrew), it is likely that the public have not used the southern section of the claimed route for a period of 20 years of more and therefore this part of the route cannot be claimed under statute.</p> <p>However, turning to the northern part of the route, it would appear that this part of the route has been used for the full period in question, i.e. from 1992-2012. Comments on the claimed route are set out at paragraphs 10.51 - 10.63 of the decision report attached at Appendix B. It is considered that prior to 1996/97 the route linked Footpath No.5 to the former route of Footpath No.4 and there is some evidence that the public walked to the approximate location of the new stile in the fence erected in 2012, or used a route of Footpath No.4 further south in the field, thereby leaving no gap between the former route of Footpath No.4 and the existing fence line, whilst some witnesses used the claimed route in full prior to 1996/97</p>

Objector	Objections	Officers comments
	<p>have walked to the church/village hall during that period of up to 2 years. This was not mentioned by any of the claimants but the condition of the bridges is referred to in the Parish Council's minutes; WC's files from the time of the path diversion should also confirm this. At that time Mr John Barton pointed out that the old FP4 and old FP3 were rarely used because they ran so close to his house. This all clearly indicates a lack of use of the claimed path and old FP3 and 4 to access Mill Lane, the church and school in the early and mid 1990's.</p> <p>The charts in paras. 10.17, 10.24 and 10.33 of the decision report are misleading and unreliable. No safe conclusions can be drawn from them because they do not relate to a particular period of use, eg:</p> <p>Para 10.17: witnesses refer to seeing others walking the alleged path, without providing details or dates. The assertion is in any event irrelevant as we accept that people walked – with permission – after 2003/5.</p> <p>Para 10.24 frequency of user: only 3 claimants differentiate between use in different periods of time. Presumably the rest of the UEF's refer to use prior to the closure of the footpath in 2014.</p> <p>Para 10.33: it is suggested that the owner knew people were walking and did not stop them. The explanation for this was that a few months after Wardour purchased the land, as a gesture of neighbourliness I gave consent to the Lees and others to use the path on the basis that it was a permissive path, not a public right of way. At the same time we put up Permissive Path signs. Had I suspected that the response of so many to my gesture would be to make a far-fetched claim for a public right of way, I would have stopped them using the path immediately.</p>	<p>Mr Barton suggests a lack of use of the recorded Footpaths Nos. 3 and 4 Donhead St Andrew, from 1986 onwards, until Footpath No.3 was closed in 1994 and the diversion of Footpath No.4 in 1997, due to being overgrown, out of repair and being in such close proximity to Kelloways Mill. However, where the recorded footpaths were out of repair, it is possible that the public sought alternative routes within the vicinity, perhaps over the claimed route.</p> <p>The charts within the report at Appendix B, refer to the questions set out within the user evidence forms, and whilst they do not include dates, seeing others walking the route for example, is useful supporting evidence only, it is the witnesses own recollection of their own use of the route which is important. Frequency of user – this is taken to refer to the witnesses full user period, unless further details of specific dates are given, for instance dog walking is a regular activity to be undertaken at least once or twice a day, not necessarily on the same path, (only 5 of the users claim to have used this particular path on a daily basis).</p> <p>Some of the witnesses do suggest that the landowners would have been aware of public user of the route where they gave permission to use the path in 2012. Mr and Mrs Shaw have already confirmed that they were aware of public user of the land after 2003/5 and there is evidence to suggest that the Pitman family as the previous landowners were aware of public use prior to Mr and Mrs Shaw's ownership of the land in 2012. All but one of the witnesses believes the landowners to be aware of use. Where the evidence on this point is conflicting, it may be tested at a public inquiry.</p>

Objector	Objections	Officers comments
	<p>It is settled law that there must be sufficient evidence of use to bring it to the landowner's attention. As Lindley LJ stated in <i>Hollins v Verney</i> "no actual user is sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised, and if resistance to it is intended."</p> <p>Walker LJ said in "R (Lewis) v Redcar and Clevedon Borough Council" "if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him..."</p> <p>As is clear from the statutory declarations of Hugh Graham, John Graham, Christopher Long, Janet Long, Claire Macdonald, Margaret Pitman and David Pitman, neither of these tests was satisfied in respect of the period prior to 2003-5. WC comments that the aerial photos do not appear to record a well worn path on the eastern edge of the Mansfield even in 2005/6 and that this is inconclusive. But it is submitted that the aerial photographs <u>are</u> conclusive – in showing that there was no well-worn path at that time. The aerial photographs also show clearly that land south of the route of the old Fp4 was in pristine condition, with no sign of a path for many years after diversion of old FP4.</p> <p>It is also settled in law that there must be a "sufficient" number of people who have used the same path and this <i>sufficiency</i> test will not be satisfied by one family and their friends using the route. Analysis of the UEFs indicates that 2 or 3 families may have used the same path before 1996. It is submitted that this does not satisfy the <i>sufficiency</i> test,</p>	<p>Aerial photographs cannot be relied upon as conclusive evidence of public rights, where there are varying factors such, as land use, ground conditions, time of day and time of year of the survey. Whilst they may be useful supporting evidence where they do show a visible path, Officers would not recommend reliance upon them to discount public rights being acquired.</p> <p>There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence, i.e. its honesty, accuracy, credibility and consistency is of much greater importance than the number of witnesses. Mrs Shaw is correct to quote the case law in the Redcar case, that user must be sufficient to bring home to the landowner that a right is being asserted against them. Mrs and Mrs Shaw have owned Beauchamp House, adjacent to the Mansfield since 1993. On purchasing the Mansfield in 2012, Mrs Shaw states that she consulted aerial photographs, to satisfy herself that there was no public right of way at this location (she agrees that she had been aware of public user of the claimed route since 2003/5) and there appears to be consensus amongst the objectors that use of the claimed route commenced in 2002/5; however, there is no explanation presented to Wiltshire Council as to why public user started at this time, for there to be such agreement on this date. On the other hand there is user evidence dating back to 1970. Witnesses confirm that the field could be viewed from Beauchamp House and that landowners were aware of use.</p> <p>Officers do not agree that the evidence of use prior to 1996 is confined to 2-3 families alone. 19 witnesses, who had completed witness evidence forms and Mr Roy Powell, have submitted evidence of user prior to 1996.</p>

Objector	Objections	Officers comments
	<p>given that “<i>general wandering</i>” around the field on different routes cannot establish a public right of way.</p> <p>Without secrecy – it is submitted that the chart included at para 10:33 of the decision report is irrelevant as it is not clear from it what time/s within the period of user these replies relate to.</p>	
<p>15. Other objections and discrepancies</p>		
Mr and Mrs Shaw	There are numerous further points and discrepancies which could be raised, but which I have omitted at this stage in order to make this letter more manageable.	Where the order is forwarded to the Secretary of State for determination, all objectors and supporters of the order will have opportunity to submit their evidence in full and will be invited to submit a statement of case to the Inspector.

Wiltshire Council
Southern Area Planning Committee
2nd February 2017

Planning Appeals Received between 20/12/2016 and 19/01/2017

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overtturn at Cttee
15/10781/OUT	Land at Rivermead Braemore Road Downton, SP5 3HW	DOWNTON	Erection of 36 residential units, construction of an access road from Breamore Road, and associated works.	DEL	Hearing	Refuse	20/12/2016	No
16/05800/FUL	16 Marlborough Road Salisbury, Wiltshire SP1 3TH	SALISBURY CITY	Alterations to Garage Including First Floor Extension to Create Studio Workspace with a Mansard (Dutch Barn) Style Roof	DEL	House Holder Appeal	Refuse	21/12/2016	No
16/06131/FUL	Land to the south of Claremont Romsey Road Whiteparish, SP5 2SA	WHITEPARISH	Erection of a 4 bedroom detached dwelling	DEL	Written Representations	Refuse	11/01/2017	No
16/07534/FUL	Blakeney's, The Street West Knoyle Warminster, BA12 6AG	WEST KNOYLE	Construction of a pitched roof and insertion of new doors and windows to an existing outbuilding in connection with the proposed use as an annex.	DEL	House Holder Appeal	Refuse	13/01/2017	No
16/07969/PNCOU	Land Opposite Snell Farm, Livery Road Winterslow, Wiltshire SP5 1RJ	WINTERSLOW	Prior notification under class Q - for change of use of existing agricultural building to form a single dwelling and associated works.	DEL	Written Representations	Refuse	10/01/2017	No
16/08115/FUL	18 Lampard Terrace Wilton, Wiltshire SP2 0LB	WILTON	Proposed rear ground floor extension & front first floor extension.	DEL	House Holder Appeal	Refuse	21/12/2016	No
16/09872/FUL	Holmlea Portland Avenue Salisbury, Wiltshire SP2 8BS	BRITFORD	Proposed two rear balconies.	DEL	House Holder Appeal	Refuse	21/12/2016	No

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded ?
14/11461/FUL	Tesco Stores Ltd Southampton Road Salisbury, SP1 2NY	SALISBURY CITY	New vehicle egress from the Tesco store car park on to New Peters Finger Road	DEL	Written Reps	Refuse	Allowed with Conditions	29/12/2016	No
16/03776/FUL	Chequers Wylve Road Hanging Langford Salisbury, SP3 4NW	STEEPLE LANGFORD	Proposed raising of chimney height to 1.8m above roof	DEL	House Holder Appeal	Refuse	Dismissed	20/12/2016	No
16/05094/FUL	8 Philip Road Wilton, Salisbury Wiltshire, SP2 0JJ	WILTON	Two storey side and single storey rear extensions and alterations	DEL	House Holder Appeal	Refuse	Dismissed	22/12/2016	No
16/05263/FUL	Yew Tree Cottage The Livery West Winterslow Salisbury, Wiltshire SP5 1RH	WINTERSLOW	Erection of single 3 bed dwelling with garage	DEL	Written Reps	Refuse	Dismissed	13/01/2017	No
16/07378/FUL	Yew Tree House Church Lane Amesbury, Salisbury Wiltshire, SP4 7HA	AMESBURY	Replace Hedge & Fencing with 1.8m Brick Wall.	DEL	House Holder Appeal	Refuse	Dismissed	09/01/2017	No

REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No. 1

Date of Meeting	02/02/2017
Application Number	16/08981/FUL
Site Address	Toll Cottage, Towns End, Wylve, BA12 0RZ
Proposal	Erection of a single storey side extension
Applicant	Mr & Mrs Tony Craddock
Town/Parish Council	WYLYE
Electoral Division	TILL AND WYLYE VALLEY – Cllr Ian West
Grid Ref	400532 137614
Type of application	Full Planning
Case Officer	Hayley Clark

Reason for the application being considered by Committee

Cllr West has requested this application be called in to committee if the Officer's recommendation was for approval, due to the following concerns:

- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Design – bulk, height, general appearance
- Environmental
- The application has generated a lot of local interest from residents of the village and the Parish Council have objected to the application

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

2. Report Summary

The main issues in the considerations of this application are as follows:

- Principle of development
- Visual Impact (design, scale and siting) on the existing property, character of the Conservation Area and AONB
- Impact on highway safety
- Impact on neighbour amenity

3. Site Description

Toll Cottage is a late 18 century former tollhouse located on the northern side of Wyllye Road in the village of Wyllye. The property was originally a single detached property and is now a two storey detached dwelling with a first floor added following planning permission in 1993; other extensions were added in 1999.

Toll Cottage is situated in the Wyllye Conservation Area, Cranborne Chase & West Wiltshire Downs AONB and is a building of historic local interest.

4. Relevant Planning History

S/1999/1258	Extension to kitchen	Approved 21/09/99
S/1992/1710	First floor extension to form bedroom and bathroom	Approved 15/01/93

5. The Proposal

The proposal originally submitted was to demolish the existing detached garage and erect a single storey side extension with attached garage. Following objections from Wiltshire Highways and Wiltshire Conservation the scheme was amended and removed the attached garage and changed the design of the extension.

The application is now to erect a single storey side extension.

1. Planning Policy

Planning (Listed Building and Conservation Areas) Act 1990

Section 72: General duties of planning authorities (CONSERVATION AREAS)

Wiltshire Core Strategy (WCS):

- Core Policy 1: Settlement Strategy
- Core Policy 2: Delivery Strategy
- Core Policy 4: Spatial Strategy: Amesbury Community Area
- Core Policy 57: Ensuring high quality design and place shaping
- Core Policy 58: Ensuring the conservation of the historic environment

The "Creating Places" Supplementary Planning Guidance

2. Summary of consultation responses

Wyllye Parish Council: Objections relating to parking, impact on the character of the property.

Wiltshire Conservation Officer: No objections (in respect of amended scheme) subject to conditions regarding the submission of details for rainwater goods, window details, details of the eaves and materials (tiles and render).

Wiltshire Highways: No objections (in respect of amended scheme) subject to conditions:

1. The development hereby permitted shall not be first brought into use until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

2) No part of the development hereby permitted shall be first brought into use until the access and parking spaces have been completed in accordance with the details shown on the approved plans (1315/16/05). The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

3. Publicity

The application was advertised by Site Notice, advert in the Salisbury Journal and published on Wiltshire Council's website.

The application has received 13 letters of objection from 5 different addresses. Issues raised include:-

- A small part of our English heritage will disappear
- Spoil the character of the property and its historic background
- Any added property on this site should not be attached to the old part of the Toll Cottage
- Concerns over parking, turning space and highway safety
- The proposals would lead to the original building becoming lost, thus losing substantial character from the area
- The Toll Cottage is in a Conservation Area and the view from the south side of the road would be impaired and blocked
- Alter the streetscape
- Is deserving of listed building status
- All previous works/extensions have been carried out to the rear of the property so the original frontage has not been changed and many of the original features as a Toll Cottage therefore remain
- Property floods
- Extension is not subservient to main dwelling
- As a flat access exists to the rear of the property do not need to alter the front to get a flat access
- Design in the plans is very uninspiring and makes no attempt to preserve the character of the original Toll House
- Historic importance of the property has not been considered until after the plans were drawn up, therefore the design is inappropriate
- Needs to be a limit to development, Toll Cottage has already been extended twice

The application has received 5 letters of support from 3 local residents. Comments made include:-

- Living opposite Toll Cottage our views will change they will not be spoiled We support the application and do not think the changes will detract from its character
- The building has been significantly altered over the years and the new changes are to make it suitable for modern living
- No concerns over parking

- Being a small character property with steep stair and a high market price (was on the market unsold for a long time) it meets the needs of very few people. Updating the dwelling will appeal to more people
- Toll Cottage is an historic and beautiful building, but should be allowed to improve to meet the needs of changing generations
- As over lookers of the property, it's nice to look out of our window and see pretty little square Toll Cottage. But we would prefer to look out and see a house being beautifully cared for and sympathetically improved, by residents with a vision of upgrading the property In line with modern living, while maintaining its original character

The application received 3 letters from the applicant points raised include:-

- existing parking area has insufficient space for a turning circle
- existing garage is not accessible for any modern car
- Access problems to Toll Cottage are made difficult due to double parking on the south side of Towns End
- Character of the property preserved as the extension is set back from the front elevation and the existing front elevation is unchanged
- Historic England have not listed the property due to much alteration and loss of historic fabric, modern additions which have affected the architectural interest of the original design and claims to intactness

4. Planning Considerations

4.1 Principle of development

Core Policy 1 and 2 of the adopted Wiltshire Core Strategy set out a settlement strategy and a delivery strategy. The policies categorise the application site as being within a “Small Village” where the Housing Policy Boundary defined by SDLP H16 has been removed and effectively the village is within the countryside. SDLP Policy H31 has been saved following the adoption of the WCS, and this policy allows extensions to dwellings in the countryside subject to the extensions being subservient in size, being of an in keeping character, being constructed from appropriate materials, and where the extension would not be capable of creating a separate dwelling

4.2 Visual Impact (design, scale and siting) on the existing property and character of the Conservation Area

The application when first submitted was for a single storey side extension which included an attached garage. The scheme met objections from Highways regarding the parking, turning area and highway safety and from the Conservation Officer due to the design and impact on the Conservation Area and character of the property itself. Discussions were under taken with the Case Officer, Highway and Conservation which resulted in an altered scheme which addressed the concerns raised. The scheme was reduced in size, the design was amended and the parking layout changed. The following report assesses the revised plans only.

The proposed single storey side addition will be constructed to the west of the existing dwelling. The extension will project out from the existing dwelling by 5.65m with a depth of

approximately 7m. The front elevation of the proposed extension will be set back from the front of the existing dwelling by 1.40m although the porch canopy will project forward by 0.45m.

The design of the extension is that of a subservient addition to the property which is set back from the front elevation of the main dwelling with a much lower roof form by nature of its single storey form. The roof pitch matches the pitch on the existing, providing a complementary design which does not detract from the character of the existing dwelling. Whilst the extension will be attached to the existing dwelling it still leaves the front of the Toll House untouched and will leave the square character of this historic building as the prominent feature.

The application proposes to construct the extension using materials to match the existing dwelling in terms of plain tiles for the roof and rendered blockwork painted white for the walls. The choice of materials is considered to allow the development to integrate with the existing building forming a harmonious addition which does not harm the streetscene or the character of the host dwelling.

A request was made to Historic England by a local resident to have the Toll House listed due to the proposed application. Historic England refused to list the building for the following reasons (see Appendix 1):-

- Degree of alteration: the loss of historic fabric, such as the original roof, some windows and the lookout porch, together with the upward extension of the rear outshut and modern additions, have adversely affected the architectural interest of the original design and claims to intactness;
- Architectural interest: despite its late-C18 date, this is a modest vernacular building; the rubble stone and tall stack are attractive, but there is no particular grace to its construction;
- Functional: despite its close proximity to the roadside, the loss of the lookout porch and front doorway means that the building does not demonstrate clear evidence of its original use as a toll house.

Historic England concluded that

While this assessment should not be taken to undermine the building's strong local interest as an early tollhouse and as a reminder of the area's transport history, it does not merit listing in a national context. It is, however, an asset to the conservation area

The plans have been assessed by Wiltshire Council's Conservation Officer who raised no objections to the side extension and that the works do not pose adverse harm to the character of the existing dwelling, Conservation Area, AONB or to the streetscene.

4.3 Impact on highway safety

Wiltshire Highways were consulted as part of the application process due to the nature of the proposals and potential conflict with highways safety and loss of off street parking.

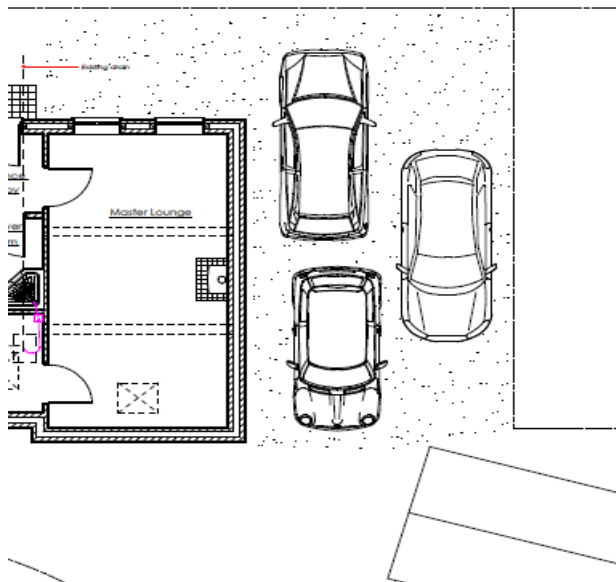
Current parking policy, and the terms and conditions for Wiltshire's resident parking permit schemes, are presented in 'LTP3', which is the third evolution of the Wiltshire Local

Transport Plan. LTP3 sets out the Council’s objectives, implementation plans and targets for transport in Wiltshire for the period from March 2011 to March 2026.

Regarding parking standards, LTP3 sets out minimum space requirements for residential developments. The standards follow:

Bedrooms	Minimum Spaces
1	1 space
2 to 3	2 spaces
4+	3 spaces
Visitor Parking	0.2 spaces per dwelling (unallocated)

Toll Cottage is a 3 bed dwelling which when taking into account the above guidance requires a minimum of 2 off street parking spaces. The submitted plans show 3 off road parking space provided as shown below



The existing layout of the site provides a good area for off road parking but this does not ensure that vehicles will reverse onto site and leave in a forward gear. The proposed layout raised no objections from Wiltshire Highways subject to conditions being imposed on any approval regarding the consolidation and surfacing of the first 5m of the area being completed before use and also the completion of the works as per drawing 1315/16/05.

The existing situation along the village road with regards to the parking situation is noted with double parking a daily occurrence by residents, however as Toll Cottage does provide adequate off road parking which does not substantially affect the existing arrangements it is concluded that the issues around parking/highway safety does not warrant a refusal in this case.

4.4 Impact on neighbour amenity

The proposals have raised a degree of local interest both objecting to and supporting the development.

Objections included the loss of a historical building where the extensions would spoil the character of both the building and conservation area, the comments also stated that no additions should be made to the property as this would affect the historic fabric of the building. These issues have been discussed above and the proposed extension is not considered on balance to cause concern regarding the impact on the existing building or its setting; particularly given the views of both Historic England and the Wiltshire Conservation Officer.

The parking concerns have also been discussed above.

With regards to neighbour amenity, two of the properties situated opposite Toll Cottage had written in supporting the application stating that although their views will be changed they will not be spoiled.

Given the small scale single storey nature of the proposed extension and its siting within the property away from boundaries with adjacent neighbours the proposals are not considered to cause any overbearing or overshadowing. There are also not considered to be any increased privacy issues due to the existing buildings having windows facing neighbouring properties which give some views between nearby properties.

To conclude by allowing the proposed extension the amenity of the nearby dwellings are not considered to be adversely affected and a refusal would not be reasonable on these grounds.

5. Conclusion

The proposed single storey side extension is considered to be acceptable by virtue of its limited visual impact and having no significant impact on the character of the conservation area, highway safety or to neighbouring amenities. The proposal is therefore considered to be in accordance with Core Policies 1, 2, 4, 57 and 58 of the adopted Wiltshire Core Strategy, section 72 of Planning (Listed Building and Conservation Areas) Act 1990 and the aims of the NPPF.

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

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

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

Application form received 29/09/2016

Proposed plans and elevations Drg no 1315/16/02/C received 28/11/16

Parking layout Drg no 1315/16/05 received 18/11/16

3) The development hereby permitted shall not be first brought into use until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

4) No part of the development hereby permitted shall be first brought into use until the access and parking spaces have been completed in accordance with the details shown on the approved plans (1315/16/05). The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety

5) No development shall commence on site until details of all eaves, windows (including head, sill and window reveal details), doors, rainwater goods and canopies have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

6) The development hereby permitted shall not be first brought into use until all of the external walls have been rendered and painted in a colour and finish to match that of the external walls of the existing building unless otherwise agreed in writing and approved by the Local Planning Authority.

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

7) The tiles to be used in the development hereby permitted shall match those of the existing building in terms of their material, colour, texture, profile and pattern of laying unless otherwise agreed and approved in writing by the Local Planning Authority.

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

Appendix 1

Historic England (Designation) Reject at Initial Assessment Report

24 October
2016

Application Name: Toll Cottage, Townsend, Wylze, Warminster, Wiltshire

Number: 1440319
Type: New
Heritage Category: Listing

Address:

Toll Cottage, Townsend, Wylze, Warminster, Warminster

County	District	District Type	Parish
	Wiltshire	Unitary Authority	Wylze

Recommendation: Reject

Assessment
CONTEXT

An application has been received to consider Toll Cottage for listing following the submission of a planning application to construct a large, single-storey extension to the west side of the building. This is due to be determined on 24 November 2016. Toll Cottage is situated in the Wylze Conservation Area.

HISTORY/DETAILS

The C18 saw the huge expansion of turnpike roads, which levied tolls from travellers to finance road improvements. Tollhouses, at which the tolls were extracted, were erected beside the turnpikes or barriers across the road. Toll Cottage in Wylze is a late-C18 former tollhouse that was constructed c1761, the year that the Amesbury Turnpike Trust was formed, and was thus part of the main expansion of the network. The building is known to have originally been thatched, and on the ground floor it had a square room with a central door and lateral windows, so that the gate keeper could see traffic and go out to collect the toll and open the gate, and two first-floor bedrooms. Historic maps indicate that there was also a front lookout porch projecting into the road which is no longer extant. Repairs were carried out in 1802-04 and it is possible that a rear outshot was added at this time. The Trust operated until 1871 at which time the tollhouse was sold. Further alterations were carried out in the late C20 (planning consent in 1993) when the outshot was raised to provide extra first-floor accommodation and the roof was replaced with the hipped roof present today. At the south-east and north-east corners are two single-storey additions of late-C20 date. Toll Cottage is a two-storey building constructed of whitewashed stone rubble under a plain tile roof, with an external, stepped, brick stack to the E elevation. The original central doorway in the roadside elevation has been infilled and replaced with a window, and a number of windows to the other elevations have been replaced with double-glazed units. Internally, the living room has a fireplace with a timber bressumer and brick jambs in the east wall and a chamfered ceiling beam. The rear room contains

a kitchen and utility.

DISCUSSION

The revised Principles of Selection for Listing Buildings (DCMS, March 2010) sets out the broad criteria for assessing buildings for listing. Most buildings dating from 1700 to 1840 are listed, though there is some selectivity. Historic England's Listing Selection Guide for Transport Buildings (2011) provides further guidance and states that most tollhouses, especially those which pre-date 1840, will be serious candidates for listing where they have survived with little alteration. Original interiors are rare and not to be expected.

Where a tollhouse has received an unobtrusive extension, usually to the rear; this will not automatically disqualify it from listing.

Based on the information provided and judged against the relevant criteria, Toll Cottage, a late-C18 former tollhouse which was altered in the first half of the C19 and again in the late C20, is not recommended for listing for the following principal reasons:

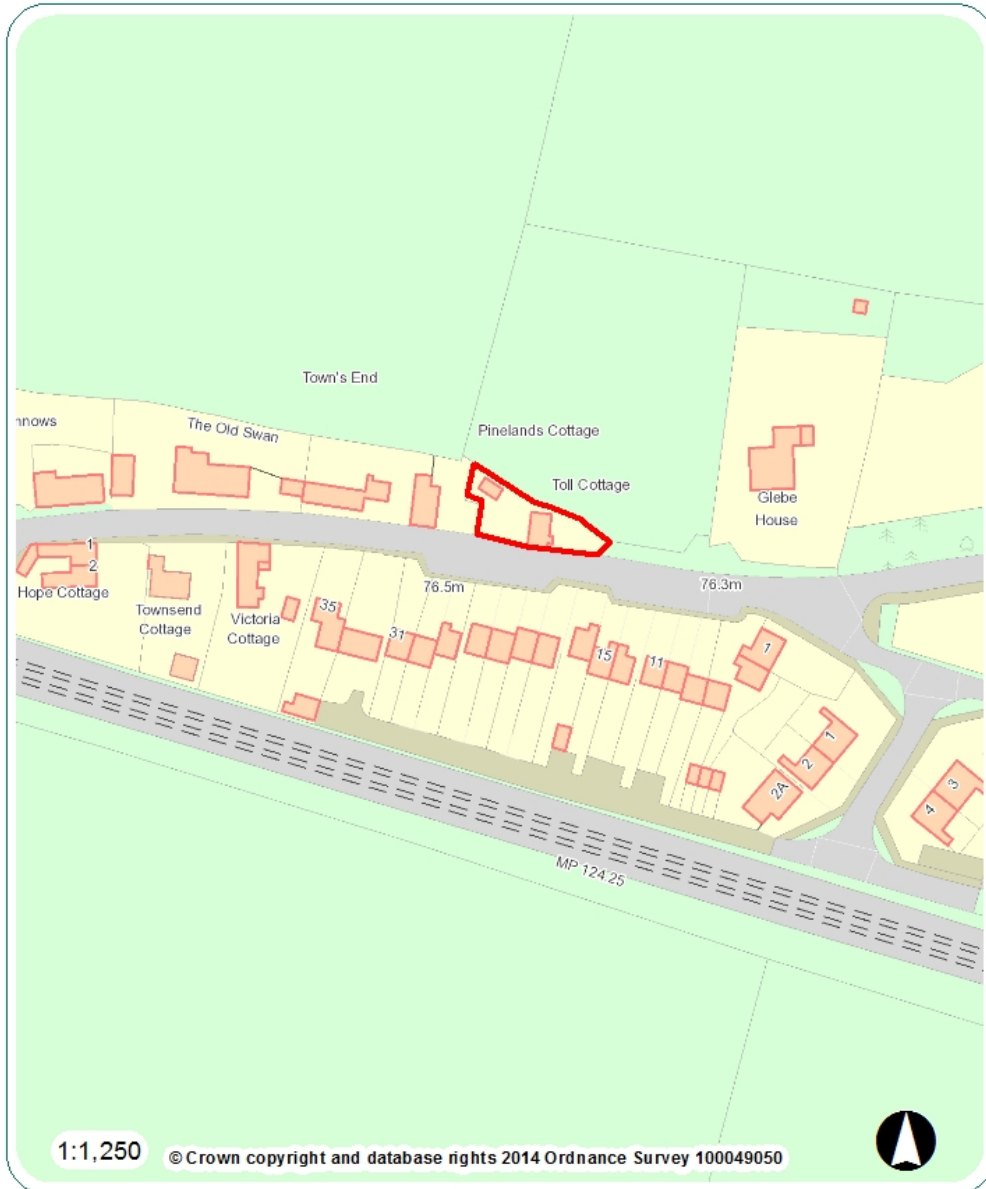
* Degree of alteration: the loss of historic fabric, such as the original roof, some windows and the lookout porch, together with the upward extension of the rear outshut and modern additions, have adversely affected the architectural interest of the original design and claims to intactness;

* Architectural interest: despite its late-C18 date, this is a modest vernacular building; the rubble stone and tall stack are attractive, but there is no particular grace to its construction;

* Functional: despite its close proximity to the roadside, the loss of the lookout porch and front doorway means that the building does not demonstrate clear evidence of its original use as a toll house.

CONCLUSION

While this assessment should not be taken to undermine the building's strong local interest as an early tollhouse and as a reminder of the area's transport history, it does not merit listing in a national context. It is, however, an asset to the conservation area.



This page is intentionally left blank

REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No. 2

Date of Meeting	02/02/2017
Application Number	16/04956/FUL
Site Address	Longacre Farm Figsbury Salisbury SP4 6DT
Proposal	Proposed construction of agricultural trackway, pole barn for hen house, service link building, pole barn for rearing shed and feed bins, along with temporary stationing of mobile home, all in connection with free range egg production flock, with associated works
Applicant	Pitton Poultry
Town/Parish Council	FIRSDOWN
Electoral Division	WINTERSLOW – (Cllr Devine)
Grid Ref	419406 133596
Type of application	Full Planning
Case Officer	Andrew Bidwell

Reason for the application being considered by Committee:

The application has been called – in by Cllr Devine for the following reasons;

- **Scale of development**
- **Visual impact upon the surrounding area**
- **Relationship to adjoining properties**
- **Design – bulk, height, general appearance**
- **Environmental/highway impact**

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be refused.

2. Report Summary

This application is for the construction of an agricultural trackway running from the A36 Trunk road along the eastern edge of the site, pole barn type hen house and a rearing shed and service link building and associated feed bins. A mobile home will be located in the south eastern corner – Top of the site - behind the hen house. An independent agricultural consultant has assessed the need for the mobile home and has concluded that it is necessary meeting the relevant functional tests required. However, this is on the basis of an initial temporary consent and three years is recommended.

A substantial landscaped bund will be positioned across much of the front of the proposed buildings towards the top end of the site where it is reasonably level.

This application is for agricultural development on agricultural land in connection with free range egg production.

3. Site Description

The site is comprised of an agricultural field of approximately 2.7 hectares. The site is sloping with a relatively steep gradient from the A36 up to an existing mature belt of trees forming a 0.5 hectare copse running south west across the rear of the site.

The land is agricultural land Grade 3 and is currently uncultivated grass with some areas of scrub. In the south west corner is a collection of run-down buildings and debris left by a previous owner and in the north-west corner is a large soakaway constructed to improve drainage of the A36 trunk road.

There is existing vehicular access off the A 36 in the north east front corner of the site shared with access to a footpath.

To the west of the site is Warren Down Farm and further west is New Barn Farm. Both of these appear to be farm small holdings with a collection of agricultural buildings and land. Opposite the site are more small holdings/ farms including Longacre and Highfield Farm and all have a selection of various relatively large out-buildings. These properties together with some cottages are intersected by the access lane to Figsbury Rings from where the site is visible in the wider landscape.

The site is within an Area of Special Archaeological Significance and a Countryside Character Area (amongst other things)

4. Planning History

S/2008/0583	USE OF LAND & BUILDINGS FOR THE STORAGE OF BUILDING MATERIALS & EQUIPMENT
S/2005/0730	PROPOSED BUILDERS YARD
S/2007/1507	USE OF LAND & BUILDINGS FOR THE STORAGE OF BUILDING MATERIALS & EQUIPMENT
15/07758/FUL	Retrospective application for creation of car parking and turning area and the parking of 3 vehicles
15/07763/ADV	Retrospective application for the erection of three freestanding signs advertising eggs for sale
15/00220/ENF	Car Park for 'Eggs for Sale' business

5. The Proposal

The proposal is to expand the present flock of egg producing hens managed under a free range operation. The present small flock has been brought onto the holding by the applicant from his previous enterprise. The flock is contained on part of the agricultural land and at night is accommodated in a mobile 'hut'. Legislation requires that the flock is attended on a daily basis for management and inspection, but also egg collecting and generally ensuring that the welfare of the flock meets the required standards.

Pole Barn Hen House:

Although the agricultural land, excluding the tree belt, is approximately 2.16 hectares (5.33 acres), in order to give maximum grazing area for the flock, approximately 1.32 hectares (3.26 acres) will be dedicated for the free range area; therefore the buildings will be to the top of the site.

The design and proportions of the hen house are controlled by EU Regulations as regard stocking rate, scratching area, perches, etc and it is considered the proportions of the building meet those standards.

The construction will be as a pole barn, with single skin cladding to roof, extending over to form a rain shield to the area directly in front of the exit doors and in the position as indicated is considered to be adequately screened to the south by the established tree belt.

Within the hen house will be the nesting boxes, perches and a conveyor belt for egg removal and this will lead through into the service link.

The pole barn type construction is adaptable and therefore is a common structure on agricultural holdings for in-house rearing, but in this instance, the flock leave the building during the day to graze the pasture.

Service Link:

With a free range flock or any egg producing enterprise, any unnecessary disturbance to the flock must be avoided, as they can be quickly distressed and therefore will not lay. The proposal incorporates a service link building attached to the hen house, where all human activities will take place. The eggs will arrive in the service element by conveyor, where they will be collected, sorted, stamped and packed ready for despatch.

The service link also accommodates a changing area and toilet facilities for staff, together with a despatch and delivery lobby area. Access to the hen house is achieved by a personnel door. Attached to the service building is the pole barn rearing shed.

Pole Barn Rearing Shed:

The applicant intends to bring in day old chicks to the complex and rear through to sixteen weeks and therefore it is necessary for these young animals to be kept in a different environment to the main hen house.

The day old chicks will be raised under artificial lighting, which will be intermittently operated in order to acclimatise them to daylight/night light and then progress through to an open straw area, where eventually they will be let out for short periods, again to acclimatise to scratching. This building requires regular attention during day and night time, in order to ensure that immediate attention can be given should a hen develop infection.

The applicant intends to select appropriate replacement hens for the main hen house and these will be transferred to the laying house by a 'chicken race' to avoid handling and boxing, which will cause distress to the bird. The remainder of the young flock will be disposed of to other flocks, therefore giving a supplementary income.

Pasture:

The free range area will be sub-divided in order to give grazing recovery time and the reduced area could accommodate approximately 3,250 birds but the applicant proposes to manage a flock of approximately 1,000 birds and from that assessment the paddock is adequate.

It is the applicant's intention to gradually re-seed the paddock with a blended mixture that will produce good quality eggs and to eventually establish an organic free flock.

Feed Bins:

Two feed bins will be located to the south of the buildings for feed, which will be automatically fed into the hen house/rearing house for ad lib feeding.

Mobile Home:

In view of the investment put into the structural buildings for the complex and for the benefit of the livestock, the applicants consider it necessary to achieve a presence on site, particularly when the rearing shed is fully operational, as the day old chicks are susceptible to health issues from the stress of being boxed and moved, also any stress placed on the livestock by intruders will reduce their laying abilities.

It is therefore proposed to have a mobile home presence on the site for a period of three years, in order to prove the establishment and allow the enterprise to develop.

In this case the proposal is for two mobile homes to be positioned with a link - one for sleeping accommodation, the other for general living - and these will be located to the rear of the livestock housing, set against the woodland and in visible control of the access drive.

It is accepted that the occupation of the mobile home would be for person or persons employed on the complex.

The applicants state that without temporary accommodation on site, the rearing element is not considered feasible. This also applies with the main hen house, in order to comply with legislation on monitoring, etc, is necessary, particularly at night to ensure that the flock is housed; therefore presence on site would reduce the need to travel to and from the site for up to minimum six journeys per day.

Functional Test:

At present, the small flock is managed by several visits to the holding during the daytime and therefore there is no control when the applicant is not on site.

With a presence on site it is considered that the flock is protected, both from visitors and wildlife and particularly with regard to the rearing shed, the danger to day old chicks is the stress caused by handling, boxing and transporting onto the holding, therefore monitoring of the young stock is critical in order to prevent infection and the health of the young bird to suffer.

The acclimatisation of the young stock is important and although it can be automated to some extent, the reliance on the automation cannot be the sole factor as observation is just as critical.

As stated previously - see summary above - the functional test / demonstration of need for the mobile home to be on the site has been subject to independent scrutiny. An independent agricultural consultant has assessed the need for the mobile home and has concluded that it is necessary meeting the relevant functional tests required. However, this is on the basis of an initial temporary consent and three years is normal practice in this behalf.

6. Local Planning Policy

7. The following Core Policies of the Wiltshire Core Strategy are relevant to the determination of this application and are considered to align with the principles, aims, objectives and intentions of the NPPF. The following policies (amongst others) are therefore considered to carry significant weight.

Wiltshire Core Strategy:

CP 1: Settlement strategy

CP 41: Sustainable construction and low carbon energy

CP 48: Supporting Rural Life

CP 51: Landscape

CP 57: Ensuring high quality design and place shaping

CP 58: Ensuring the conservation of the historic environment

National Planning Policy context:

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The National Planning Policy Framework (NPPF) emphasises the importance of having a plan led planning system.

8. Summary of consultation responses

Firsdow Parish Council: Considered the application with resolve of Support Subject to Conditions with reasons being the Parish Council strongly recommends that appropriate signs are placed on both sides of the highway warning oncoming traffic of the access to the site. The Parish Council believes this is necessary because of the speed of the traffic and the proximity of the bend.

Archaeology:

No objections

Rights of Way:

No objections – conditions required to prevent blocking of footpath during construction

Highways Agency:

No objections

Landscape officer:

No objections subject to a condition requiring landscape planting plan.

Wiltshire Highways:

Initial view was unfavourable on highway safety grounds as officers did not have sufficient information regarding likely vehicle movements to offer an informed judgment. A request for a Transport Statement clearly detailing the size and frequency of vehicles likely to access the site as a result of the proposed uses was made and subsequently a Transport statement has been submitted and further comment received (see Highways Safety Issues below). Also the mobile home is considered to be located in a remote location and is contrary to highway and transportation sustainability objectives

Public Protection:

Initially further information was requested due to concerns being raised regarding how manure and fly control was to be dealt with. Having reviewed the further information submitted by the applicant it is apparent that they only propose to keep a 1000 birds on site, although they could accommodate for approximately 3000. If the flock of birds is kept at 1000 as they mention then there would be a low intensification of the site, which is unlikely to have an adverse impact on nearby residents. A manure disposal and fly management plan will be submitted by condition to agree best practice in this behalf.

Wiltshire Drainage: Support subject to conditions regarding surface and foul water disposal (see below).

9. Publicity

The application was advertised by site notice and neighbour consultations were carried out. In summary: 2 neighbour letters with comments have been received concerned mostly with visual amenity and highways safety issues and that the name of the business "Longacre Farm", is too similar to nearby property "Longacre" which is likely to cause confusion with deliveries etc.

The applicants have sought to directly address these concerns by providing additional information in the form of a Transport plan and amended plans which reduce the height of the feed bins by .5 of a metre and painting them as well as extending the bund and landscaping across the entire front of the building.

10. Planning Considerations

Principle of development:

Section 55 of the Town and Country Planning Act 1990 defines the meaning of development as the means of carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The development plan accepts the principle of development subject to the aims and objectives of policy being met.

In this application the proposal is considered to constitute development which, due to the use of the building, the location and type of work proposed, is acceptable in principle subject to the development not conflicting with policy. The following parts of this report assess the proposal against relevant policy.

Site specific considerations and Visual amenity issues:

Policy requires new development to be sympathetic to local setting, maintain a high quality environment, protect, complement and enhance valuable contextual features and characters, reinforce a sense of identity, integrate into its surroundings and enhance the character of the locality.

The pole barn type structure is not alien to the landscape. Adjacent to the west is an agricultural building and further to the west, recent permission was granted for a dwelling in relation to a small equestrian enterprise and again further west, a collection of buildings, formerly a garage, together with a collection of buildings with alternative uses.

To the north of the application site spread on each side of the road leading to Figsbury Rings are residential dwellings, some with major outbuildings of agricultural nature.

The site is well screened from the south by an established copse, which will continue to be managed by the applicant. On each side of the bridleway, there is an established natural hedgerow which will remain.

In front of a collection of random buildings on the west boundary, an earth bank has been formed partly screening the new building from the north and regeneration has taken place on the bank. To protect the rearing shed and visually reduce the length of the building, it is proposed to extend the earth bund and landscaping back to the building, which will allow the hens direct access to the grazing paddock.

The colour of the cladding material will be critical and the choice will either be Anthracite (grey), Dark Green or Brown.

Figsbury Rings:

Figsbury Rings is subject to very significant statutory designation and therefore an assessment of the impact of the proposal – in this case on views from the designated site – is an important material consideration.

The elevation of the site is approximately 148 metres above Newlyn and the base around Figsbury Rings is approximately 135 metres and viewing from the upper ring towards the site, it is clear the tree belt, within the applicant's ownership, is an important feature. This combined with the earth bank and regeneration planting to the north of the proposed buildings, together with the selection of an appropriate colour to the sheeting, will ensure as far as is possible that the building can be absorbed into the countryside.

The remaining pasture to the north of the hen house will be sub-divided in order to give rest period for the grazing, but the applicant also proposes to plant orchard trees in order to encourage the flock to further roam and also to reduce the fear of attack from birds of prey.

Highway safety issues:

Highways officers have further considered the submitted transport statement and have remained of the opinion that the proposal should not be supported on highways safety grounds. Officers have stated the following as the final consideration based on all the available information submitted to date.

Referring to the Transport Technical Note received in response to the speed surveys:

“The access is located on the A30 where a 60mph (derestricted) speed limit applies. The road passing the site has a single broken white line meaning that overtaking may occur when it is safe to do so. The access is of single vehicle width and is classified as a bridleway; it has an appearance of a track with a loose surface material and informal junction radii. To access the track from the A30 requires a driver to slow down rapidly and turn slowly given that the junction is tight and there is little forward visibility up the track to check whether another vehicle is emerging.

With regard to the visibility at the access, the standards contained within DMRB are appropriate in this instance. The results of the speed survey demonstrate that on average vehicles are passing the site at around 59mph. It would therefore not be acceptable to allow a relaxation in the sight lines on a road of this nature. On that basis splays of 2.4m by 215m should be provided. I note from the Planning Statement that sight lines are within that required subject to appropriate verge maintenance, although the submitted drawing shows 2.4m by 145m (West) and 160m (East). It has not been demonstrated that adequate sight lines are achievable following the results of the speed survey.

It is acknowledged that the access exists and currently experiences a low level of vehicle activity. The proposal involves the expansion of the present flock of egg producing hens together with on-site residential accommodation. The vehicle activity in connection with this use passing through the access on a regular basis raises highway safety issues.

I regret that I am unable to support the proposal due to the limitations of the access and the associated highway safety concerns. I recommend that this proposal is refused on highway grounds for the following reason:-

The site is served by bridleway FIRS3 directly off the A30. Vehicles resulting from the proposed development entering and leaving the busy fast section of the A30 Class I road at a point where visibility from and of such vehicles is substandard, would endanger, impede and inconvenience other road users to the detriment of highway safety”.

Note to members: The applicants have provided a document in response to comments received regarding this proposal (Appendix 1). This document is accompanied by a plan which illustrates a further

improved visibility splay for the access to the site. This plan is subject to further consideration of the highways officer and a verbal update on this matter will be given at the meeting.

Other material considerations

Employment:

The applicants anticipate that this proposal will generate the need for one full time and one part time employee. The encouragement for new and the retention of existing Rural Employment is a key policy driver within the Wiltshire Core Strategy. It is important therefore to recognise the benefits to the local economy that developments like this bring and thus, the proposal is supported in this behalf.

11. S106 contributions – Conditions

In cases like this the planning inspectorate recommends the use of conditions to legally tie agricultural accommodation to specific agricultural businesses and not through S 106 agreements. Wiltshire Council has developed standard planning condition the meet legal planning tests. Should this proposal be supported, it is recommended that (amongst others) the relevant agricultural occupancy and temporary use condition are used in this case (see conditions).

12. Conclusion

For the reasons given above it is considered to be unreasonable to conclude that this proposal is visually incongruous in its context given that it is for agricultural development on agricultural land which, is not subject to any statutory designations that would otherwise prevent such development.

The proposal, by reason of its size, positioning and materials, would be sympathetic to the character and appearance of the site and, in turn, would relate well to the wider character of the area. Given the spatial characteristic of the near surrounding area, characterised by a range of existing dwellings small holdings farms and some industrial uses, many of which have a range of relatively large outbuilding, this proposal is not considered likely to result in any notable detriment to views from the Figsbury Rings designated site.

In terms of the impact that the proposal would have on the amenity of the occupiers of the nearest properties: Policy requires new development to have regard to the compatibility of adjoining buildings and uses, the amenity of existing occupants and the amenity of the occupants of the proposed development. The proposal, by reason of the relative distance from nearby properties, its size, material, proposed landscaping bund and positioning on the site and the subsequent possible views that may be had both to and from the site, would not materially harm the amenity of the occupants of existing buildings and uses to a demonstrably harmful extent.

On balance this proposal is not considered to be contrary to the aims and objectives of relevant local and national planning policy overall. That said, there remains to be a clear objection to the proposal on

highways safety grounds. Whilst a significant amount of traffic assessment work has been carried out to try and mitigate highways concerns raised, the findings of the work has not enabled Highways officers to support the proposal. Highways safety is a very weighty material consideration which in this case is considered to outweigh the presumption in favour of development contained within the development plan.

The application is therefore unacceptable from a Town & Country planning point of view.

RECOMMENDATION

Refuse for the following reason:

The site is served by bridleway FIRS3 directly off the A30. Vehicles resulting from the proposed development entering and leaving the busy fast section of the A30 Class I road at a point where visibility from and of such vehicles is substandard, would endanger, impede and inconvenience other road users to the detriment of highway safety”.

As such the proposal is considered to be contrary to the aims and objectives of Core Policy 62 “Development Impacts on the Transport Network” of the Wiltshire Core Strategy as the development does not provide appropriate mitigating measures to offset any adverse impacts on the transport network at both the construction and operational stages.

This page is intentionally left blank

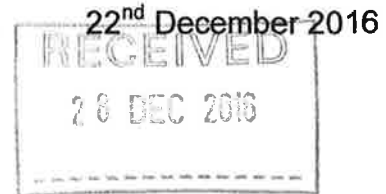


Damen Associates Ltd
Architectural Services

Kingsdown Studio
Back Drove
West Winterslow
Salisbury
Wilts SP5 1SX
Tel/Fax: 01980 863191
E-mail: burrows.damen@btconnect.com

Ref: 018.16

Wiltshire Council
Development Services
P O Box 2281
Salisbury
Wilts SP2 2HX



Dear Sirs

Ref: 16/04956/FUL - Longacre Farm, London Road, Figsbury SP4 6DT

We refer to advice given on 21st December 2016 from the Council in relation to the above application and after due consideration, feel that it would be of benefit in preparing for Committee to outline the full picture and the present situation.

The application seeks planning permission for the erection of agricultural building in connection with the expansion of a free range egg laying business, together with support facilities and temporary living accommodation on the site.

The land at present is used for a flock of approximately 400 free range egg laying birds, housed in a mobile trailer, which has to be moved periodically to comply with Council's requirements. Although the majority of the site is pasture, there are several stable buildings not visible from the highway, together with containers for storage purposes. The copse at the top of the site is within the applicants ownership

Access to the land is via an existing lay-by and pull-in to a bridleway, running from the A.30 to the top of the applicant's land, joining with a footpath that leads from Figsbury to Firsdawn.

Council Officers have provided assistance in advising on matters that have arisen through the course of consultations.

Parish Council

The applicants met with the Parish Council in the early stages of the application and subject to certain conditions, they support of the proposals.

Landscape

The Council's Landscaping Officers suggested that the present earth bank, is extended across the front of the new building and that it is allowed to regenerate with natural hedging/trees, which the applicant has agreed and the plan amended accordingly.

Environmental

The Council's Environmental Health Department raised matters that required clarification, particularly with regard to noise from any extract fans and smell, all of which were adequately addressed to the satisfaction of the Department.

Temporary Accommodation

The application seeks permission for temporary accommodation therefore the proposal was submitted to the Council's Agricultural Consultant, who attended the site to discuss the proposals and confirmed that the proposal was acceptable. The accommodation will be occupied by the applicant

Highways

The application was submitted to the Council's Highways Department in the normal course of consultation, but issues were raised with regard access to the proposal, suggesting that a traffic speed survey needed to be carried out due to concerns on visibility splays being achieved

The applicants appointed Consultants, who carried out a digital traffic speed survey over 24 hours for seven days [22-29thSeptember] and the results collated and presented to the Council

The 7 day average traffic speed was recorded at

48.8mph westbound [towards Salisbury] general speed below speed limit only 1 recorded at 60.1mph at 7 a.m. on a Monday, traffic volume on average 5,000 per day

48.1 mph east bound [towards London] general speed below speed limit only 1 recorded at 61.6mph at 4p.m.on a Monday traffic volume on average 5,500 per day

After further consideration the Council recommended that the results needed to be analysed

The applicant appointed an alternative Consultant to analyse the traffic speed results and their report submitted to the Council,

A precise of their report points out that the law permits vehicles along a bridleway where no alternative access exists and vehicle access rights do exist for access for agricultural and associated uses and the application should not be considered as creating new access.

The poultry farm is in keeping with agricultural use and therefore unlikely to be a significant intensification of use.

We remind ourselves that NPPF [para 28] directs there should be support for development which achieves agricultural diversification unless there is a severe adverse impact and this application is for buildings not the use of the ground, utilising the existing access for agricultural use should not itself merit refusal on highway grounds.

The applicant's highway engineer's draws attention to the manuals to design the visibility spays and using the formula a visibility splay length of 122m would comply

Records revealed a single incident resulting in a slight injury in the vicinity within the last 5 years

The revised attached site plan shows the revised visibility splay the West the visibility splay to the East can be achieved.

Although not within their authority Highways England have no objection to the proposals

In fairness to the applicant, as the majority of issues have been resolved, but the Highways Department are still sustaining their objection, which is contrary to the applicants Traffic Engineer's interpretation of the traffic speed results, that the application be determined by Committee.

Although precedent is not the reason to approve, we are aware that an agricultural smallholding a short distance from the site to the west, but served by an access from the A.30 for Change of Use to Equestrian with temporary living accommodation, received approval and in that situation it is considered that vehicles entering and leaving the site - such as horse boxes, horse trailers, are usually slow moving - together with Vets, clients and feed lorries/manure removal lorries, we consider the traffic activity at that particular access is greater than that at the existing access which forms part of the site for which permission is now sought.

We trust the above will be taken into consideration when reaching a decision in connection with the application.

Yours faithfully
DAMEN ASSOCIATES LIMITED

C. M. J. Burrows, A.M.A.S.I., I.C.I.O.B.
E-mail: burrows.damen@btconnect.com

Copy to: *Mr K Acreman, 1 Drove End Cottages, East Grimstead, Salisbury,
Wilts SP5 3SP*

Please note this office will close for the Christmas period on Thursday, 22 December 2016 and will re-open on Tuesday, 3 January 2017.

Our answerphone will be monitored so please leave a message on 01980 863191 or contact Colin Burrows on 07860 630141.



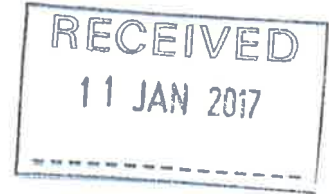
Damen Associates Ltd
Architectural Services

Kingsdown Studio
Back Drove
West Winterslow
Salisbury
Wilts SP5 1SX
Tel/Fax: 01980 863191
E-mail: burrows.damen@btconnect.com

Ref: 018.16

10 January 2017

Wiltshire Council
Development Services
P O Box 2281
Salisbury
Wilts SP2 2HX



Dear Sirs

Ref: 16/04956/FUL - Longacre Farm, London Road, Figsbury SP4 6DT

Further to our recent submissions regarding highway matters, we wish to respond to further comments from Highways of 4 January 2017.

Regarding the matter of the access to the bridleway, we remind ourselves that the access is unrestricted to any vehicle visiting the adjacent agricultural land/buildings.

It will not be necessary for drivers who know they will be turning into the bridleway to 'slow down rapidly'.

The bridleway width is stated at 4.57 metres (source Rights of Way Office). The width at present is 3.5 metres, therefore the west side of the present access will be excavated to achieve a width of 4.6 metres, which is adequate for a vehicle to access whilst a vehicle is waiting to exit. The radii can be improved but not urbanised.

Regarding providing full visibility up the track, the proposal now indicated with the adjustment of the banking on the west side of access to provide a sight of any vehicle coming down the bridleway, but again we remind ourselves that the width of the bridleway is now achieved at its official width of 4.57 m.

To conclude on this point, the application is amended to show -

- a) The width of the bridleway is stated at 4.57 metres.
- b) Alter the west bank of the access to achieve an access width of 4.6 metres.

Continued

2/

- c) Surface the bridleway for full access width to 5 metres from edge of road with base coat tarmac and define lane positions. Provide drain channel at 5 metres to restrict water flow onto the A.30.
- d) Adjust radii at access but not urbanised with kerbs.
- e) Remove informal pull-in and reinstate as verge and regrade banking

Turning now to visibility aspects where it is noted Highways are maintaining their position, requiring 2.4 x 215 m, which is in conflict with the submission from the Applicant's Highway Engineers, therefore we have reviewed the situation.

The view to the east (towards Andover) can be achieved with a sight line of 215 metres.

The distance of 215 metres to the west is compromised by the curvature of the A.30, but what can be taken into account is the relationship in the road level at the access point, to where a vehicle can be seen travelling east (towards Andover).

The double white line changes to dotted white line on the eastbound side at a point where it is not possible to see oncoming westbound traffic, therefore by design there is a potential road danger. This can be rectified by extending the double white line.

The view (visibility) from the access of eastbound traffic could be extended to the centre white line markings at its furthest point, whereby lowering the initial section of banking to the west of the access to not exceeding 900mm above access level, move the field fence to the back of the view line and maintain the grass verge – this will achieve a 209metre view line.

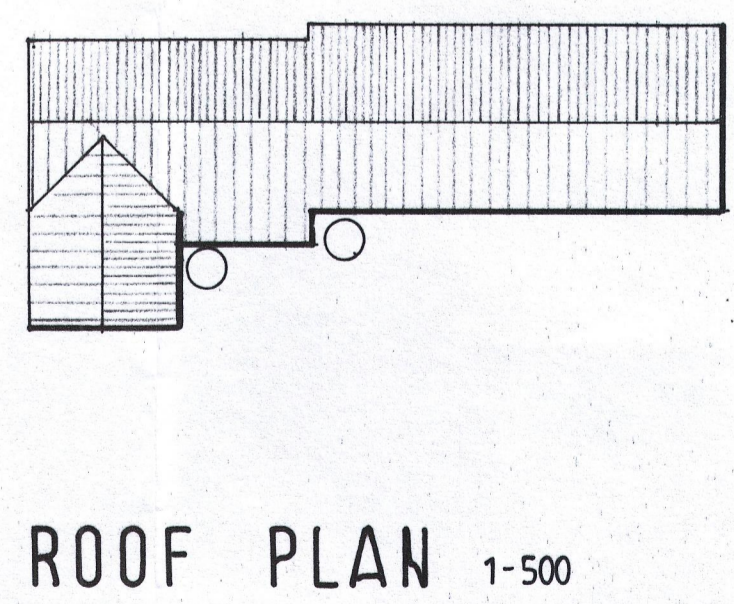
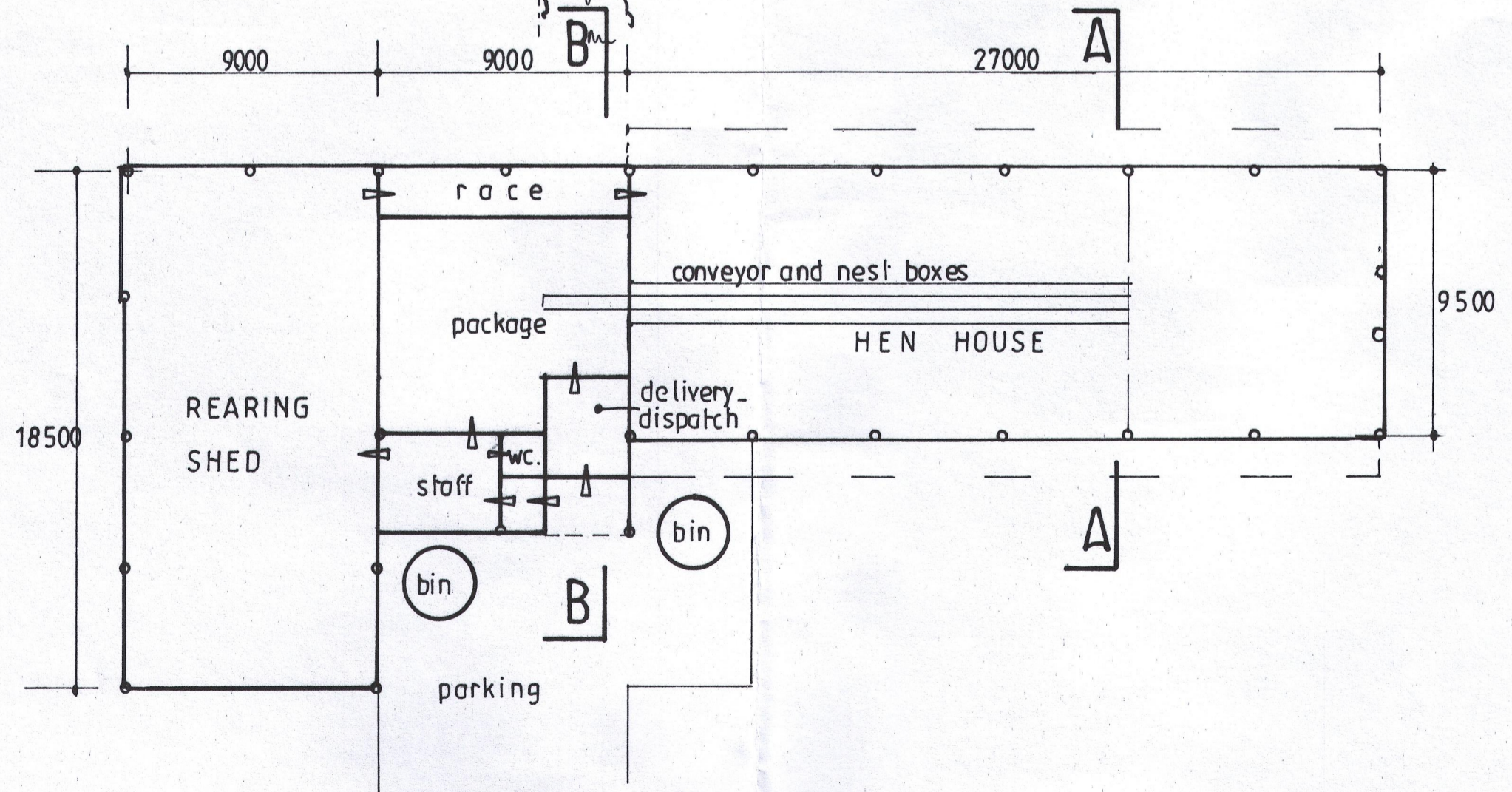
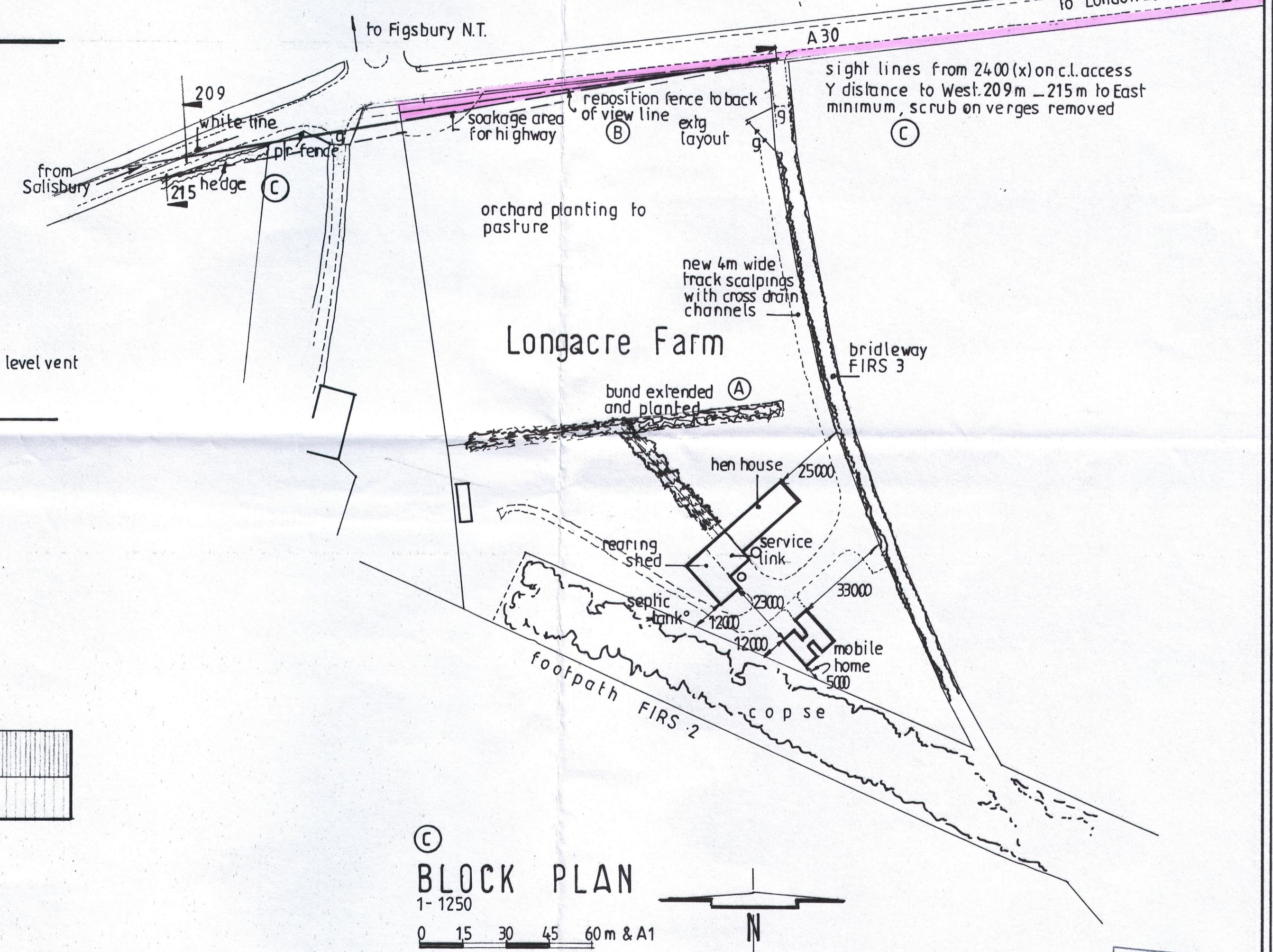
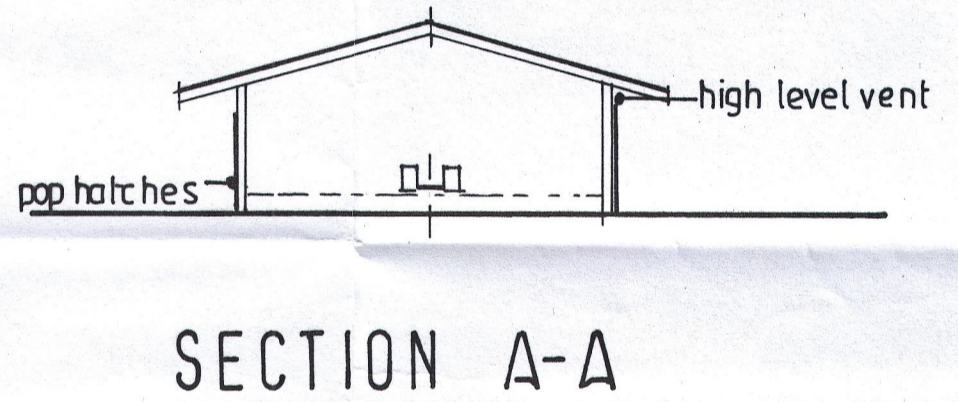
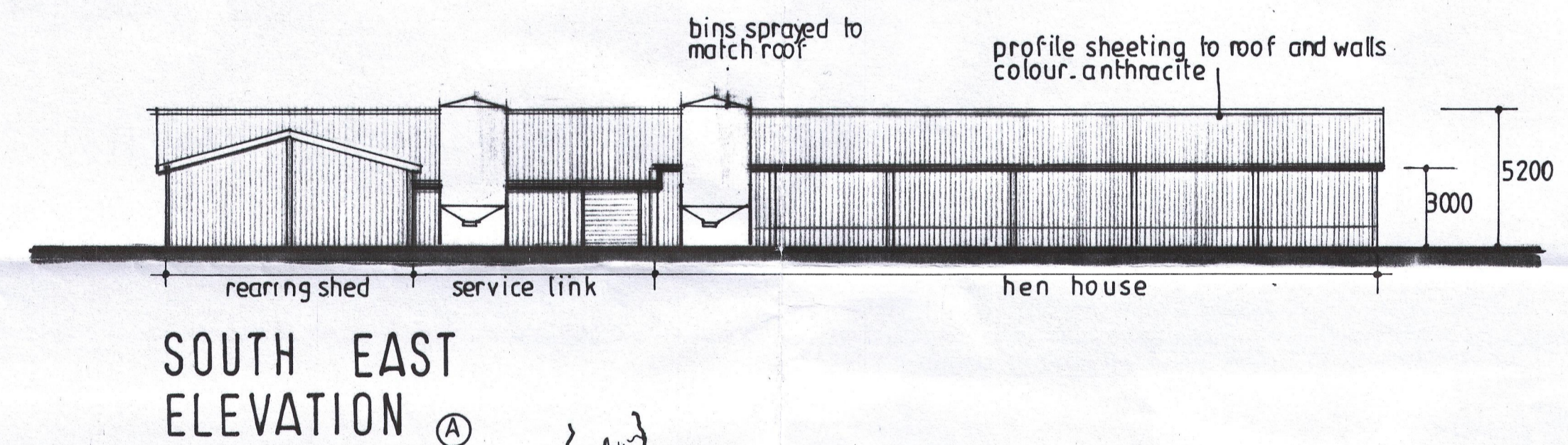
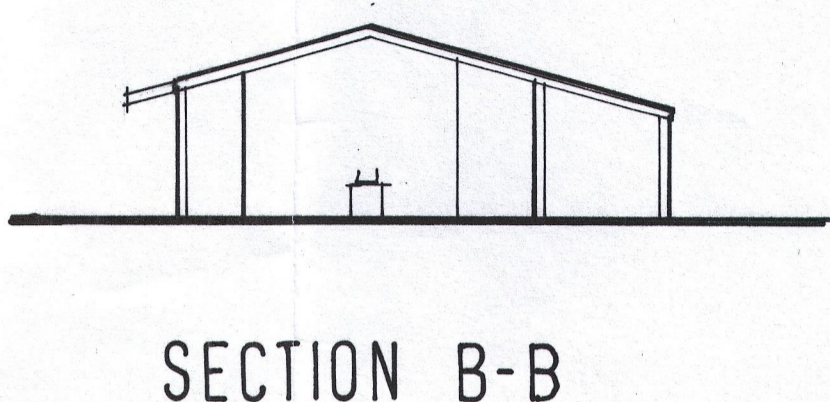
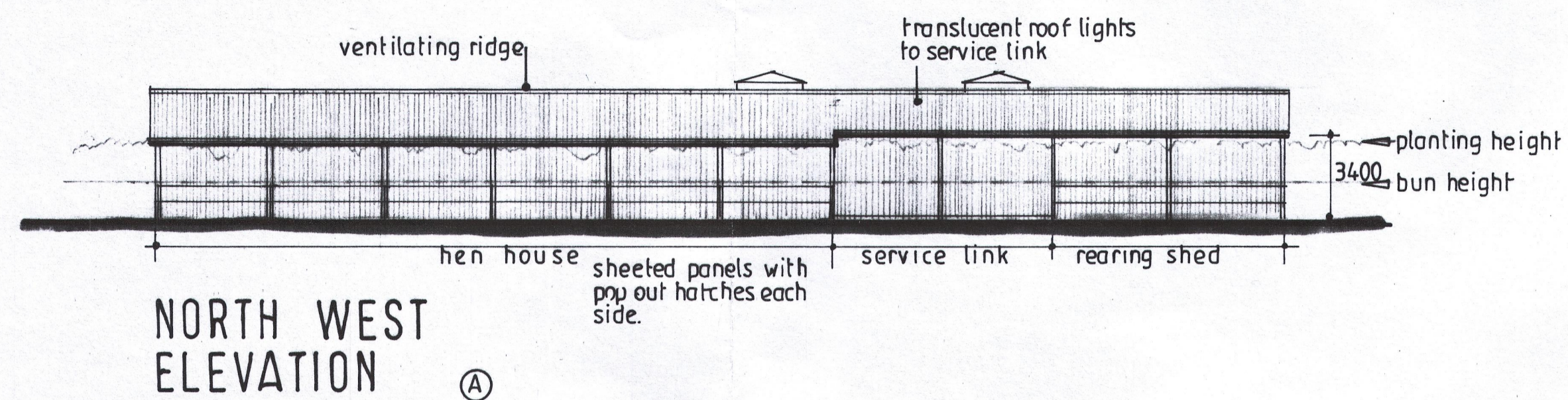
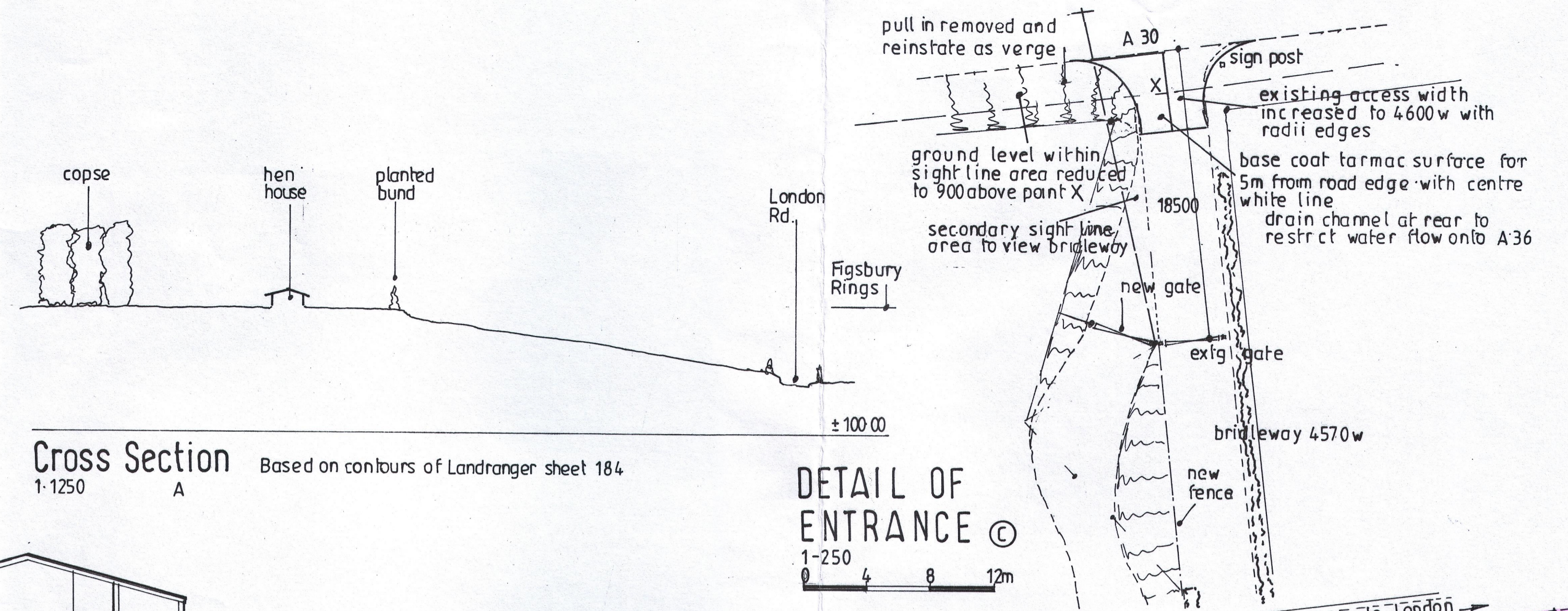
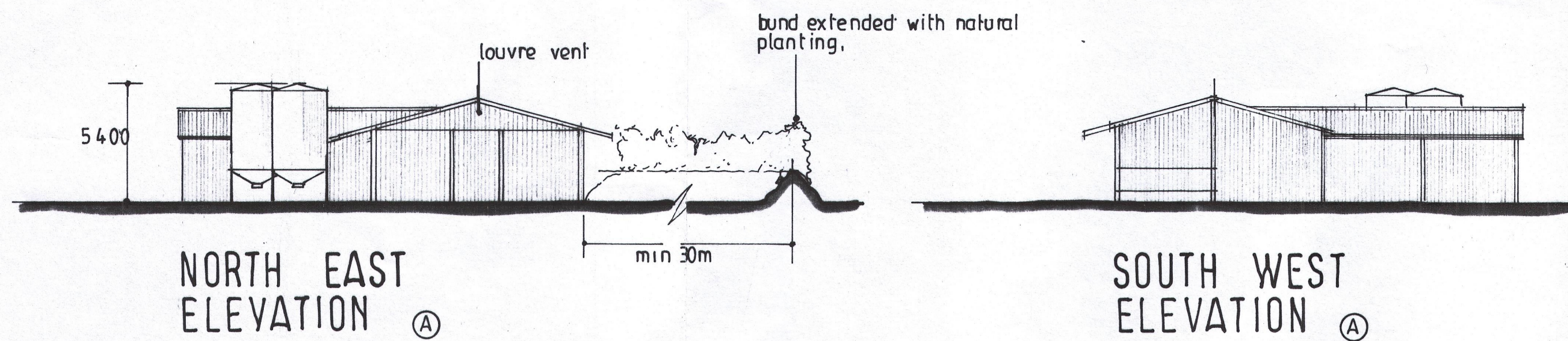
The revised plan attached therefore indicates the following –

- 1) The indicative position of a sight line at 215 metres measured on the south verge, obstructed by hedging.
- 2) View line of 209 metres to the centre line of roadway to view eastbound traffic.

We trust the above will be taken into account when further consideration of the application is given.

Yours faithfully
DAMEN ASSOCIATES LIMITED

 **C. M. J. Burrows, A.M.A.S.I., I.C.I.O.B.**
E-mail: burrows.damen@btconnect.com



RECEIVED
11 JAN 2017

Damen Associates Ltd Architectural Designers & Surveyors	Kingsdown Studio Black Drive West Winterslow Salisbury Wilt. SP15 1SX Tel/Fax: 01980 883191 E-mail: burrows.damen@btconnect.com
	PITTON POULTRY Longacre Farm Figsbury Salisbury
PROPOSED BUILDINGS	
Scale as stated Date MAY 2016	
Drwg. no. 01816	1 Rev. C
This plan is the Surveyors COPYRIGHT	



This page is intentionally left blank