

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber - County Hall, Trowbridge BA14 8JN
Date: Wednesday 2 November 2016
Time: 3.00 pm

Please direct any enquiries on this Agenda to Jessica Croman, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718262 or email <mailto:jessica.croman@wiltshire.gov.uk>

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

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Membership:

Cllr Christopher Newbury (Chairman)	Cllr Magnus Macdonald
Cllr John Knight (Vice Chairman)	Cllr Pip Ridout
Cllr Trevor Carbin	Cllr Jonathon Seed
Cllr Ernie Clark	Cllr Roy While
Cllr Andrew Davis	Cllr Graham Payne
Cllr Dennis Drewett	

Substitutes:

Cllr Nick Blakemore	Cllr Keith Humphries
Cllr Rosemary Brown	Cllr Gordon King
Cllr Terry Chivers	Cllr Stephen Oldrieve
Cllr Fleur de Rhé-Philippe	Cllr Jerry Wickham
Cllr Russell Hawker	Cllr Philip Whitehead

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Public Participation

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

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

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

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

AGENDA

Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 14*)

To approve and sign as a correct record the minutes of the meeting held on 12 October 2016.

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** (*Pages 15 - 16*)

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 2.50pm 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 **(4 clear working days, e.g. Wednesday of week before a Wednesday meeting)** 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 **(2 clear working days, eg Friday of week before a Wednesday meeting)**. 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 **CODFORD PATH No. 15 - RIGHTS OF WAY MODIFICATION ORDER 2016**
(Pages 17 - 134)

7 **Planning Applications**

To consider and determine the following planning applications.

7a **15/03120/FUL - Rosefield House, Polebarn Road, Trowbridge, BA14 7EQ** *(Pages 135 - 152)*

8 **Planning Appeals and Updates** *(Pages 153 - 154)*

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

9 **Urgent Items**

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

Part II

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

WESTERN AREA PLANNING COMMITTEE

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 12 OCTOBER 2016 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Magnus Macdonald, Cllr Jonathon Seed, Cllr Fleur de Rhé-Philippe (Substitute), Cllr Russell Hawker (Substitute), Cllr Jerry Wickham (Substitute) and Cllr Graham Payne

Also Present:

Cllr David Jenkins

86 Apologies

Apologies for absence were received from:

- Cllr Dennis Drewett – substituted by Cllr Russell Hawker
- Cllr John knight – Substituted by Cllr Jerry Wickham
- Cllr Pip Ridout – Substituted by Cllr Fleur De Rhe-Philippe
- Cllr Roy While

87 Minutes of the Previous Meeting

The minutes of the meeting held on 28 September 2016 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on 28 September 2016.

88 Chairman's Announcements

There were no Chairman's Announcements.

The Chairman gave details of the exits to be used in the event of an emergency.

89 **Declarations of Interest**

In respect of Application 16/05078/FUL, Councillor Ernie Clark stated he drew attention to his register of interest.

90 **Public Participation**

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

The Chairman referred to the supplement agenda which included questions received from councillors and member of the public and answers from officers.

Cllr Ernie Clark asked a supplementary question -

“Would the E1A site be most suitable for the relocation of the house hold recycling centre?”

Mr Ernie Clark spoke in objection to application 16/05078/FUL.

91 **Planning Applications**

The Committee considered the following applications:

91a 15/03120/FUL - Rosefield House, Polebarn Road, Trowbridge

Prior to the meeting convening, the elected members undertook an officer-led site visit following the deferment of the application at the meeting on 28 September 2016.

The case officer presented the report which recommended that permission should be granted for a change of use of existing stable block at the rear of Rosefield House to form 2 residential units and the erection of a two-storey side extension to form one additional residential unit.

The key planning issues identified in the officer’s presentation were outlined and comprised: the principle of the proposed development, the means of access, the impacts on neighbours and the impact upon the character of the conservation area.

Members of the Committee then had the opportunity to ask technical questions of the officer, key points included; an email stating the applicant would agree to amend the plans should members of the committee resolve not to support the application. Although it was noted that no formal amended plans had been receive. Consideration and debate also centred on the potential loss of light the development would have upon the neighbouring property. Members were informed that a loss of light calculation had not been undertaken.

Public Participation

Pat Hayes spoke in objection to the application.

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

A debate followed where a motion was then moved to refuse the application. Key points of the debate were; loss of light, amenity and overlooking, the relationship to the adjoining property and the proposed insertion of obscure glazing for a habitable room window in the new development.

The motion for refusal was lost and a new motion was then moved to defer the application and instruct the case officer to obtain revised plans from the applicant removing the side extension and third residential unit. The committee also requested that a 25 degree window light survey be undertaken and reported upon.

Resolved:

To defer the application to obtain revised plans from the applicant and to conduct a 25 degree light survey.

91b 16/05078/FUL - 16 St Thomas Passage, Trowbridge

Cllr Ernie Clark left the room before the application began.

The case officer presented the report which recommended that outline permission be granted for the erection of 6 apartments and associated access works following the demolition of the existing dwelling. The key planning issues identified in the officer's presentation were outlined and comprised: the principle of the proposed development, highway access, the impacts on the Conservation Area and the amenity of neighbouring properties and future occupants.

Members of the Committee had the opportunity to ask technical questions of the officer. Details were sought regarding the amount of parking space that would be provided and access for emergency vehicles.

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

Public Participation

Albert Aird spoke in objection to the application.

Mrs Doreen Williams spoke in objection to the application.

James Pike, applicant, spoke in support of the application.

Chris Beaver, agent, spoke in support of the application.

An issue of land dispute, raised as part of Mrs Williams oral representation was discussed by members; and Mr Felton, the Council's Solicitor, advised the Committee that the issue was a civil matter and not a matter for the consideration of the Committee.

Cllr Graham Payne read out a statement for the local member Cllr Nick Blakemore with the key points focusing on: the access to the development, congestion, illegal parking, lack of provision for visitor parking, narrow entrance in close proximity to the access of neighbouring properties, lack of a suitable access for emergency vehicles, inadequate access for construction vehicles, lack of visibility when exiting the property, danger to pedestrians, with the only entrance and exit onto a main road, overdevelopment of the site and the development being built too close to neighbouring properties.

A motion was moved and seconded to approve the officer's recommendation. Main points of the debate included; that there had been no objection from highway authority or the emergency services about access. A proposed condition was discussed about the need for a construction management plan and to restrict any construction fires on the site.

Resolved

To Grant planning permission subject to the following conditions:

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

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

2. The materials to be utilised in the development hereby permitted shall accord with those annotated on the approved drawing AL(1)02 REV D registered on 20 June 2106.

REASON; In the interest of the appearance of the Conservation Area.

3. No part of the development shall be first occupied until the improvements to the junction of the access with Timbrell Street, shown on the approved plan A095925 - GA01 A, have been completed.

REASON: In the interests of highway safety.

4. The parking spaces as shown on the approved plans shall be provided and the access arrangements created prior to the first dwelling being occupied.

REASON: In the interests of road safety.

5. No demolition, site clearance or development shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development, until a Tree Protection Plan showing the exact position of each tree/s and their protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations"; has been submitted to and approved in writing by the Local Planning Authority, and;

The protective fencing shall be erected in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.

No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work - Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later]

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

6. No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing

by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following;

- A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2012 and a plan indicating the alignment of the protective fencing;
- A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2012;
- A schedule of tree works conforming to British Standard 3998: 2010;
- Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
- Plans and particulars showing the siting of the service and piping infrastructure;
- A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification, should this be necessary.
- Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
- Details of all other activities, which have implications for trees on or adjacent to the site.
- Day and sunlight calculations must be submitted in accordance with Building Research Establishment guidance and British standards 8206 Part 2:1992Light for buildings Part 2 -code of practice for day lighting.
- In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant, the designated site foreman and a representative from the Local Planning Authority, to discuss details of the proposed work and working procedures.
- Subsequently and until the completion of all site works, site visits should be carried out on a monthly basis by the developer's arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required should then be submitted to the Local Planning Authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.

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 order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not

be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.

7. Prior to the commencement of development, a noise survey for the proposed dwellings shall have been submitted to and approved, in writing, by the Local Planning Authority. The survey shall have been undertaken by a competent person and identify appropriate noise mitigation measures. Such detail and appropriate consequential noise mitigation measures as shall have been agreed in writing by the Local Planning Authority shall be implemented prior to the first occupation of any dwelling unit and shall be maintained as agreed thereafter.

REASON: To ensure that the development hereby permitted is not detrimental to the amenity of the future residents by reason of undue external noise.

8. No development shall commence on site (including any works of demolition), until a Construction Method statement, which shall include the following:

- The parking of vehicles of site operatives and visitors;
- Loading and unloading of plant materials;
- Storage of plant and materials used in constructing the development;
- The erection and maintenance of security hoarding;
- Measures to control the emission of dust and dirt during construction, with a specific exclusion of any fires on site;
- A scheme for recycling / disposing of waste resulting from demolition and construction works;
- Hours of construction, including deliveries,
- Routing of construction traffic.

has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.

REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detrimental to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

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

AL(1) 01 REV E registered on 16 June 2016; AL(1) 02 REV D registered on 16 June 2016; AL(1) (03) REV B registered on 16 June 2016; and A095925-GA01REV A registered on 16 June 2016.

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

INFORMATIVES TO APPLICANT:

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.

Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact the Bat Advice Service on 0845 1300 228, email enquiries@bats.org.uk or visit the Bat Conservation Trust website

92 Planning Appeals and Updates

The Planning Appeals Update Report for 16/9/2016 – 30/9/2016 was received.

The chairman requested that the issued appeal decision for the Shurnhold site (land off the A365) in Melksham (14/11919/OUT) be reported to the next Strategic Planning Committee.

Resolved:

To note the Planning Appeals Update Report.

93 Urgent Items

There were no Urgent Items.

(Duration of meeting: 3.00 - 4.30 pm)

The Officer who has produced these minutes is Jessica Croman, of Democratic Services, direct line 01225 718262, e-mail <mailto:jessica.croman@wiltshire.gov.uk>

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

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Wiltshire Council

Western Area Planning Committee

2 November 2016

Question From: Councillor Ernie Clark, Hilperton Division

Question

Would the E1a site be most suitable for the relocation of the household recycling centre?

Response

A formal application or a pre-application enquiry would be required to dutifully appraise the suitability of relocating the household recycling centre to the E1a principal employment site allocation, located off the West Ashton Road in Trowbridge. It would be inappropriate for officers to make informal and public comments on such a proposal at this time.

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

2 NOVEMBER 2016

WILDLIFE AND COUNTRYSIDE ACT 1981
THE WILTSHIRE COUNCIL

THE WILTSHIRE COUNCIL CODFORD PATH No. 15 RIGHTS OF WAY
MODIFICATION ORDER 2016

Purpose of Report

1. To:
 - (i) Consider the objection received to the making of The Wiltshire Council Codford Path No. 15 Rights of Way Modification Order 2016 made under Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs and that Wiltshire Council takes a neutral stance in the matter.

The Order is appended at **Appendix 1**.

Relevance to Council's Business Plan

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

Background

3. In January 2016 Wiltshire Council received an application from the Codford Residents Group for a definitive map modification order to add a byway open to all traffic at Codford St Mary to the definitive map and statement.
4. The application adduced evidence of public use of a metalled road leading from Church Lane, past St Mary's Church and south to its junction with Codford High Street (Salisbury Road). Evidence of use by 14 people who had used the way variously on foot, cycling, riding or driving a car was initially submitted and was subsequently increased to 18 following the Council's initial pre-Order consultation and 28 following the making of the Order.
5. The route is known locally as the Military Road or the Army Road, although the landowner refers to it as Farm Road (the claimed route being part of a route that leads to his farm). It is not a route of great antiquity having been built in two parts to service military needs during the two World Wars. It is considered that the through route that is the Order route was probably formed by 1944.

6. Officers investigated evidence from all interested parties and considered that although the legal tests necessary to record the way as a byway open to all traffic had not been satisfied, the application formed a reasonable allegation that public rights on foot have been acquired during the time period 1983 to 2003 and an Order to record them was subsequently made.
7. The full report including the relevant legislation is appended at **Appendix 2**.
8. The publication and advertisement of the Order attracted one objection that has not been withdrawn and accordingly the Order must be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination.
9. To confirm the Order the Secretary of State applies a more rigorous legal test and must be satisfied that it is shown on the balance of probabilities that public rights subsist.
10. A recommendation from the Council is required to accompany the Order when it is submitted.

Main Considerations for the Council

11. The objection has been submitted on behalf of the landowner and states the following.

“Grounds of Objection

2. *The Owners object to the Order above inter alia on the following grounds:*

A. *Insufficient User*

- *The Owners have been in occupation for all of the relevant period. They dispute that user sufficient to support the claim has occurred.*

B. *Any user has not been as of right/there has been no intention to dedicate*

- *Various permissions have existed.*
- *The Owners have submitted deposits under the provisions of s31(6) Highways Act (1980) in and since 2003 and maintained fencing during the relevant period.*
- *In addition signage has been in place continuously at the entrance to the claimed route since the 1970s. This has had the effect of:*
 - i bringing any use of the way into question in the 1970s prior to any claimed user;*
 - ii at all material time showing an intention on the part of the Owners not to dedicate (s31(3) Highways Act (1980)); and*
 - iii rendering any user contentious.*
- *Any or all of (i) – (iii) would render the claim unsustainable.*

3. *The points above would also be applicable to any claim to higher rights than footpath.*

Comments on procedure

4. *The issue of the effect of signage is likely to be very important in this case and indeed may prove independently determinative. There have been several key cases regarding the interpretation and effect of signage involving areas of law outside public rights of way, for example relating to the law of village greens and private rights of way. This has been a developing area of law. As an example, judgement in the most recent applicable case occurred only within a few months (Court of Appeal – Winterburn v Bennett [2016] EWCA Civ 482).*
5. *The application of these cases to public rights of way involves a full understanding of legal principle. Given this and in order to achieve a proper determination and avoid unnecessary costs for all parties the Owners would ask that:*
 - i *the Inspector appointed by the Planning Inspectorate (PINS) should be legally qualified; and*
 - ii *prior to PINS determining how the matter is to be determined, the parties are afforded an opportunity to comment on the appropriate procedure and in particular whether the matter of signage should be determined as a preliminary issue.*
6. *The points raised above are only a brief summary of our Objection. We reserve the right to raise further points of principle and of evidence as matters progress.”*

NB On 30 September 2016 the landowner made a further submission in support of their objection. This is appended at **Appendix 4**.

12. The second submission contains a summary of evidence, witness statements from eight people, aerial photographs and an expert opinion on them. It is regrettable that this information was not made available to the Council at either the initial consultation (pre-Order) stage or at the time of objection; however, it is included fully here at **Appendix 4** for members to consider.
13. The summary of the objector’s submission highlights the following points.
 - (i) All witnesses supporting the objector cover a long timescale with the evidence of Mr Read, Mr Williams, Mr Stratton and Mr Carter all covering the whole of the claim period. The other four cover part of it.
 - (ii) The route was “practically impassable” until the changing of the fencing and gating arrangements around 1989/1990.

- (iii) Prior to 1989/1990 the section B to C of the Military Road was not separately fenced and was a road leading through a field rather than one with fields on either side. Accordingly, it needed to be gated to prevent stock escaping.
- (iv) There were Wiltshire (or Hampshire) short sections of wire fence across a gateway which were difficult to open across the route at approximately points B and C.
- (v) It was only when these were removed and exchanged for easily openable gates that public use occurred at anything above zero or minimal levels of use. It is considered that use by the public did not happen to any notable degree until around 2000 when the claimed route was opened as the main farm access route. Prior to this time all farm traffic, delivery vehicles and public traffic bound for West Country Game Ltd, and later West Country Fine Foods, used Church Lane.
- (vi) This is supported by the testimony of witnesses, photographs and an expert opinion on aerial photographs which show that in 1984 the route was not securely bounded or fenced between B and C but that in 1998 there is evidence for a linear fence along the route between B and C.
- (vii) Witnesses state that they had never seen several of the witnesses for the Order using the route at all.
- (viii) A sign stating 'Private Road' was in place throughout the relevant period (1983 to 2003) at point C.

Comments on the objection

- 14. Members of the Committee are now required to consider the objection received.
- 15. The Order must be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and the Members of the Committee must decide the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State, i.e.:
 - (i) that the Order be confirmed as made
 - (ii) that the Order be confirmed with modification
 - (iii) that the Order should not be confirmed
 - (iv) that the Council takes a neutral stance

Grounds of Objection A: Insufficient user

- 16. In response to the landowner's objection the Council has received a number of letters from additional witnesses bringing the total to 28. A summary of use forms part of Appendix A to the Council's decision report (**Appendix 2** to this report) with additional evidence summarised at **Appendix 3**.

17. A graph depicting use of the route on foot has been appended here in **Appendix 3**. It can be seen that for the years 1983 to 2003 (the relevant period) numbers steadily increased from two users in 1983 to 19 in 2003. This may reflect an increasing popularity of a way with time or may reflect the difficulty of identifying users from over 30 years ago.
18. Guidelines issued by the Planning Inspectorate state that there is no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. The guidelines recognise that numbers will vary from case to case and that the quality of the evidence (i.e. its cogency, honesty, accuracy, credibility and consistency) is often more important than the quantity.
19. It is noted that Codford is a small community and that the population during the relevant period fluctuated between 669 and 821.
20. The applicant for the Order, the Codford Residents Group, responded to the objection in writing on 27 July 2016 as follows.

“As Collator of the Codford Residents Group, I am writing to summarise what I believe is the Group’s position concerning our Application for a Modification Order to the definitive Map and Statement of Rights of Way for the access route in the area in front of and leading to St Mary’s Church in Codford St Mary.

The Group were encouraged that Wiltshire Council supported our Application on the evidence we provided and had considered that a public right on foot had been acquired over the application route, but we remain somewhat disappointed that the Council’s endorsement did not include a Byway open to All Traffic. We consider this aspect still outstanding!

We do not give any credibility to the Landowner’s Objections to the Council’s determination. He majored on two counts.

Firstly that insufficient usage of the route claimed had been demonstrated. We decided at the outset of our campaign that we should not appeal “publicly” for support in order to avoid creating an open battleground between villagers and the Landowner. We are a small community and we know of a number of villagers who have expressed support for our intentions without wanting to openly demonstrate that support because they are in some way obligated to the landowner, being his tenants (he is Landlord of in excess of ten properties in the village), or they are his employees, or they occasionally do business with him or his family. At their request, they shall remain anonymous but some have provided us with useful information and moral support.

We feel we have strengthened our case with a number of new submissions by people we had not considered earlier. I am aware that three ladies, who regularly walked along the Military Road over a number of years have recently sent you statements and I believe others, with different testimonies of their usage are in the process of submitting their accounts to you. Additionally I understand that some villagers, who have already passed their comments to you, have decided that they wish to further emphasise their case. I know that Mr Maurice Cole, Mrs Diana Shaw and Mr Bernard Nicholls are amongst that number.

I believe that the sum total of these submissions quite contradicts the Landowner's claim of an insufficiency of evidence.

His second objection focussed on signage. We sent you photographs of a road running through his property where a Private Road sign pointed in the same direction as another sign showing "PUBLIC FOOTPATH – WILTS CC". It is clear that the two indicators can and do co-exist. Whenever the landowner did erect the Private Road signage at the southern end of the Military Road where it meets the village High Street/Salisbury Road we believe that the route had been used by villagers since the end of WW2 and so have created Prescriptive Rights.

We much regret that this situation could not have been settled amicably but we feel now that a legal determination would decide the situation for posterity. We are grateful for all your assistance and apologise for bombarding your busy desk. As a Group, we are comprised of villagers from different backgrounds but we are united in our aim of not being prevented from exercising what we know are long established rights of passage."

21. Officers consider that while the number of users in the early years (1983 – 1985) is relatively low, four people do claim to have used the route during this period and by 1986 there are a total of eight claiming to have used the route in a variety of ways. Accordingly, if their evidence is cogent and consistent then it is likely that it is sufficient to satisfy s.31(1) of the Highways Act 1980 (subject to other considerations).
22. Officers consider that the objector has established that on the balance of probabilities there were changes to gates and fences across and surrounding the route between 1988 and 1990. The objector's case is that before these changes were made the Wiltshire gates across the route were very difficult to open and accordingly no-one would have used the route (or perhaps very few walkers only). Their case is that the only traffic to use the route at that time were large combine harvesters at harvest time.
23. Although this may be the case in the objector's evidence, it has to be weighed against the evidence of eleven witnesses who claimed to have used the route in the period leading up to the re-fencing of the field and the route and the changes to the gates. There is clear conflict.
24. If no-one used the route then the statements of witnesses 3, 4, 9, 10, 14, 16, 17, 18, 23, 24 and 26 are wholly wrong. On the other hand, if the evidence of the witnesses for the objector is examined closely there are also matters which would need resolution under cross examination. For example, Mr Carter recalls a Wiltshire (or Hampshire) gate at point B which was replaced in 1988/1989 and yet the photograph provided by Ms Oliver taken in approximately 1988 clearly shows an open steel gate at point B. Additionally, there is no information available to the Council regarding the opening or closing of gates. For example, Ms Oliver's photograph No. 3 from 1988 shows the gate at point B open and photograph No. 1 shows a car on the claimed route. These events may have been unique events or they may have been the norm, it is simply not known.

25. Mr Stratton recalls in his original statement that the land was re-fenced and the claimed route 'fenced off' in the mid 1970s and further considers that it was likely that the fencing coincided with the installation of the private road sign in the 1970s. It subsequently appears that with respect to the date of the fencing, it happened some 10 to 15 years later than Mr Stratton recalled.
26. It is not surprising that witnesses on either side will have differing memories after the passage of 30 or 40 years. If the evidence of one is to be preferred over the other then having the evidence examined by seeing the witnesses at a public inquiry is the only way to properly determine this Order.
27. Much of the objectors' statements also relate to not having seen people who claim to have been there. Again, this is a clear conflict of evidence; one version of events should not reasonably be preferred by the council and should be examined at a public inquiry.

Grounds of Objection B: Any user has not been as of right/that there has been no intention to dedicate

28. For the relevant period (1983 to 2003) the objector relies on the placement of a sign saying "Private Road" which was, and is, in place at the southern end of the claimed route (at its junction with High Street/ Salisbury Road). The objector considers that the erection of the sign in the 1970s had the effect of bringing into question the public use of the way, that it demonstrated the Owners' lack of intention to dedicate and that it rendered user contentious.
29. For user to have been 'as of right' it must have taken place without force, permission or secrecy. Force extends beyond the usual sense (i.e. where a fence has been cut) to include use that is in contravention of a sign that clearly prevents it.
30. In addition, s.31(3) of the Highways Act 1980 permits the owner to erect a notice, visible to persons using the way, that is inconsistent with the dedication of the way as a highway. If this is maintained, s.31(1) is not engaged and public rights cannot be acquired under that section.
31. In response to the objection based on the sign the applicant has pointed out (and provided photographs of) a right of way across the same landowner's land that is both signed as a "Private Road" and a "Public Footpath". It is therefore clear that the two are not mutually incompatible and indeed there are many examples in Wiltshire of private roads carrying lesser public rights. A further example of a public bridleway being signed as a 'Private Road' lies to the north of the claimed route in the direction of Chitterne.
32. The sign stating "Private Road" may also refer to the maintenance liability not being public. The objector considers this unlikely but signs indicating private maintenance liability are not uncommon in other places on the highway network.
33. Additionally, it is noted that the Private Road sign was and is only in place at one end of the claimed route. In the 1970s this junction of the claimed route was with the A36, the main road to Salisbury and its placement there, and its appearance as a usual street name sign is logical in that context. It is certainly possible that

anyone walking the route from Church Lane east and south may never have seen it, though it is accepted that this is unlikely.

34. It is usual in considering the effect of notices and signs to consider two key cases (*Paterson v SSEFRA [2010] EWHC 394 (Admin)* and *Burrows v SSEFRA [2004] EWHC 132*) though the objector considers the recent decision of the Court of Appeal in *Winterburn v Bennett [2016] EWCA Civ. 482* to be an important development in the interpretation of the effect of signs and notices.
35. In *Burrows* the High Court considered the effect of a sign stating “Private Road – Access Only” on an existing public footpath over which bridleway rights were claimed. It was found that an Inspector was entitled to consider that the sign had not called into question the claimed public rights with a horse though it might have been taken as a challenge to the use of the lane by vehicles other than those using it for access. The Court found (at paragraph 8) that “*The inference as to the intention of the person who erected it (in the absence of any evidence to the contrary) naturally to be drawn from how the notice would be likely to be understood by members of the public who saw it in its context.*”
36. In *Paterson* the High Court considered the effect of signs stating “Private” or “Private No Tipping” and, as in the case of *Burrows*, found that an Inspector had been entitled to consider that the signs did not unambiguously provide sufficient evidence or notice that there was no intention that the footpath be dedicated to public use.
37. In his judgement Sales J had the benefit of the Supreme Court judgement in *Godmanchester ([2007] UKHL 28)* where Lord Hoffman at paragraph 32 states that “*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 landowner’s intention to be. The test, is, as Hobhouse LJ said, objective: not what the owner 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) 10 App Case 378, 386, to “disabuse [him] “ of the notion that the way was a public highway.”*”
38. It is clear in the case of the claimed route at Codford that the signs that were erected by the Owner in 2012/2013 were a clear indication of the landowner’s intention (subsequently leading to the application for the Order in front of this Committee) but the one from the 1970s was not. It was not specific about its purpose, not erected at both ends of the route, had the appearance of road signs and was of the same style and format as the one on a private road that was also a public footpath within the same parish. It gave no indication of the Owner’s intention with regard to public rights on foot. The public never considered their right to use the way was challenged as a result.
39. The objector raises the case of *Winterburn*. In this case the Court of Appeal considers the effect of a notice erected on private land on the acquisition of a private right to park by a neighbouring property. Although there are clear differences to a case relating to public rights of access the legal principle of the effect of the wording of a notice regardless of people’s behaviour is explored and accordingly it is relevant to consider it here.

40. In *Winterburn* the wording of the sign erected on land owned by the Conservative Club was clear and unambiguous; it said “Private Car Park. For the use of Club patrons only. By order of the Committee.” However, despite this sign the customers and suppliers of the neighbouring chip shop used the Conservative Club’s car park.
41. The Court of Appeal in *Winterburn* found (at paragraph 40) that where the owner of land has made his position clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be as of right and that there is no further requirement for the owner of the land to reiterate his position.
42. Officers consider that in the case before this committee the original sign failed to make the owner’s position clear and that it could not be taken as a notice giving his intention not to dedicate the way as a public footpath. Users may not have understood that this was the owner’s intention.

Safeguarding Considerations

43. There are no safeguarding considerations associated with the making of this Order.

Public Health Implications

44. There are no identified public health implications which arise from this Order.

Corporate Procurement Implications

45. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraphs 50 to 52 of this report.

Environmental and Climate Change Considerations

46. There are no environmental or climate change considerations associated with this Order.

Equalities Impact of the Proposal

47. Matters relating to the equalities impact of the proposal are not relevant considerations in s.53 of the Wildlife and Countryside Act 1981.

Risk Assessment

48. There are no identified risks which arise from this Order. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

49. The making and determination of Orders under the Wildlife and Countryside Act 1981 is a statutory duty for Wiltshire Council for which financial provision has been made.

50. Where there are outstanding objections to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of the Order. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If 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 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£300 to £500 without).
51. Where the Council objects to the Order (i.e. it no longer supports making it, or wishes it be modified to record a Byway Open to All Traffic) the Order must still be forwarded to the Secretary of State for determination. As in the case of a supported Order, the possible processes and costs range from £200 to £3,000 as detailed at paragraph 50 above.
52. In the event that the Council takes a neutral stance in the matter the Order must still be forwarded to the Secretary of State for determination but the case in support of the Order will be made out by the applicant and not the Council. The Council would be expected to attend the Inquiry and to meet all costs relating to room hire (in the region of £300).

Legal Implications

53. Where the Council does not support the Order, clear reasons for this must be given and must relate to the evidence available. The applicant may seek judicial review of the Council if this decision is seen as incorrect or unjust by them. The cost for this may be up to £50,000.

Options Considered

54. Members may resolve that:
- (i) The Order should be forwarded to the Secretary of State for determination as follows:
 - (a) The Order be confirmed without modification.
 - (b) The Order be confirmed with modification.
 - (c) The Order should not be confirmed.
 - (d) The Council takes a neutral stance with regard to the confirmation of the Order.

Reason for Proposal

55. When the Council made the Order it was considered that the application formed a reasonable allegation that public rights subsisted. This is the first stage of the legal test that can be applied to s.53(3)(c)(i) of the Wildlife and Countryside Act 1981. However, a higher standard of proof is required to confirm the Order; this is that it must be considered on the balance of probabilities that public rights subsist.

56. Since making and advertising the Order the Council has been made aware of significant amounts of additional evidence from both supporters of the Order and from the objector.
57. In *R v Secretary of State for the Environment ex p Bagshaw and Norton [1994] 68 P&CR* Owen J held that “*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.*”
58. Unless the objection is withdrawn the Council must send this Order to the Secretary of State for the Environment, Food and Rural Affairs for determination. This is done through the offices of the Planning Inspectorate and it is their usual practice to determine Orders where there is a conflict in evidence of use by holding a public inquiry where the evidence may be tested under cross examination.
59. It is clear that this is a case where the conflict of evidence may only be resolved under cross examination.
60. The matter to be decided by this committee, which acts in a quasi judicial capacity, is whether the Council supports the confirmation of the Order or whether it does not. However, it is considered impossible to effectively weigh the evidence without cross examination of it and accordingly the Council can consider adopting a neutral stance with regard to the confirmation of the Order.

Proposal

61. That “The Wiltshire Council Codford Path No. 15 Rights of Way Modification Order 2016” is forwarded to the Secretary of State for the Environment, Food and Rural Affairs and that Wiltshire Council takes a neutral stance in the matter.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Sally Madgwick

Rights of Way Officer – Definitive Map

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

None

Appendices:

Appendix 1 - Order and Plan

Appendix 2 - Decision Report

Appendix 3 - Additional evidence of use

Appendix 4 - Supplementary submission by objector

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WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE WARMINSTER AND WESTBURY
RURAL DISTRICT COUNCIL AREA DATED 1953 AS MODIFIED UNDER THE
PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE WILTSHIRE COUNCIL CODFORD PATH No. 15 RIGHTS OF WAY 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 Definitive Map and Statement for the Warminster and Westbury Rural District Council area dated 1953 as modified under the provisions of the Wildlife and Countryside Act 1981 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 this order relates.

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is the 3rd May 2016
2. The Definitive Map and Statement for the Warminster and Westbury Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Parts I and 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 Codford Path no. 15 Rights of Way Modification Order 2016

THE COMMON SEAL of }
WILTSHIRE COUNCIL was }
hereunto affixed this 17th day }
of May 2016 }



83340

in the presence of:

Erley

Team Leader (Legal)

SCHEDULE

PART I

MODIFICATION OF DEFINITIVE MAP

Parish	Path No	Description of footpath to be added	Modified under Section 53(3) as specified
Codford	15	That length of path leading from point A to point C via point B as shown on the map attached hereto by a broken line. Width 4.7 metres Approximate length 260 metres	53(3)(c)(i)

SCHEDULE

PART II

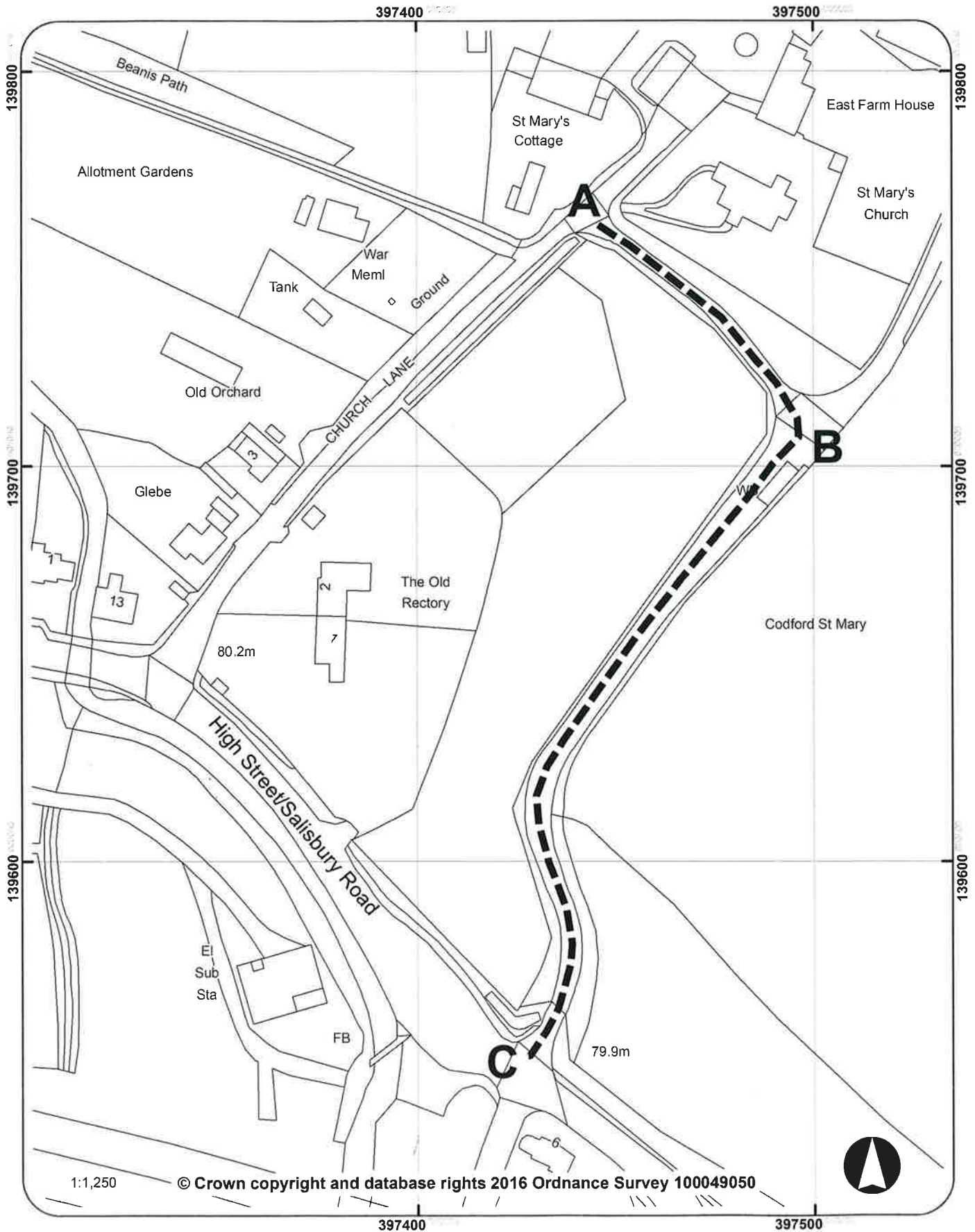
MODIFICATION OF DEFINITIVE STATEMENT

Parish	Path No	Description of path	Modified under Section 53(3) as specified
Codford	15	<u>FOOTPATH</u> Military Road. Leading from Church Lane in a south easterly direction south of St Mary's Church to OS Grid ref ST 9750 3971 where south west and broadly south to its junction with High Street/Salisbury Road at OS Grid ref ST 9743 3955 Width 4.7 metres Approximate length 260 metres	53(3)(c)(i)

Order Plan Codford St Mary



Footpath to be added A - - - - - B - - - - - C



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WILDLIFE AND COUNTRYSIDE ACT 1981 Section 53

DECISION REPORT

**APPLICATION FOR AN ORDER TO ADD A BYWAY OPEN TO ALL TRAFFIC
TO THE DEFINITIVE MAP AND STATEMENT AT CODFORD ST MARY**

NB All documents (including user evidence forms, responses to consultations and correspondence) are available to be viewed at the Council's offices at Ascot Court, Aintree Avenue, White Horse Business Park, Trowbridge; please contact Sally Madgwick on 01225 713392.

1.0 Application

Application number: 2016/01

Application date: 29 January 2016

Applicant: The Codford Residents Group
c/o Codford Parish Council
3 Woolhouse Gardens
Codford
BA13 0PS

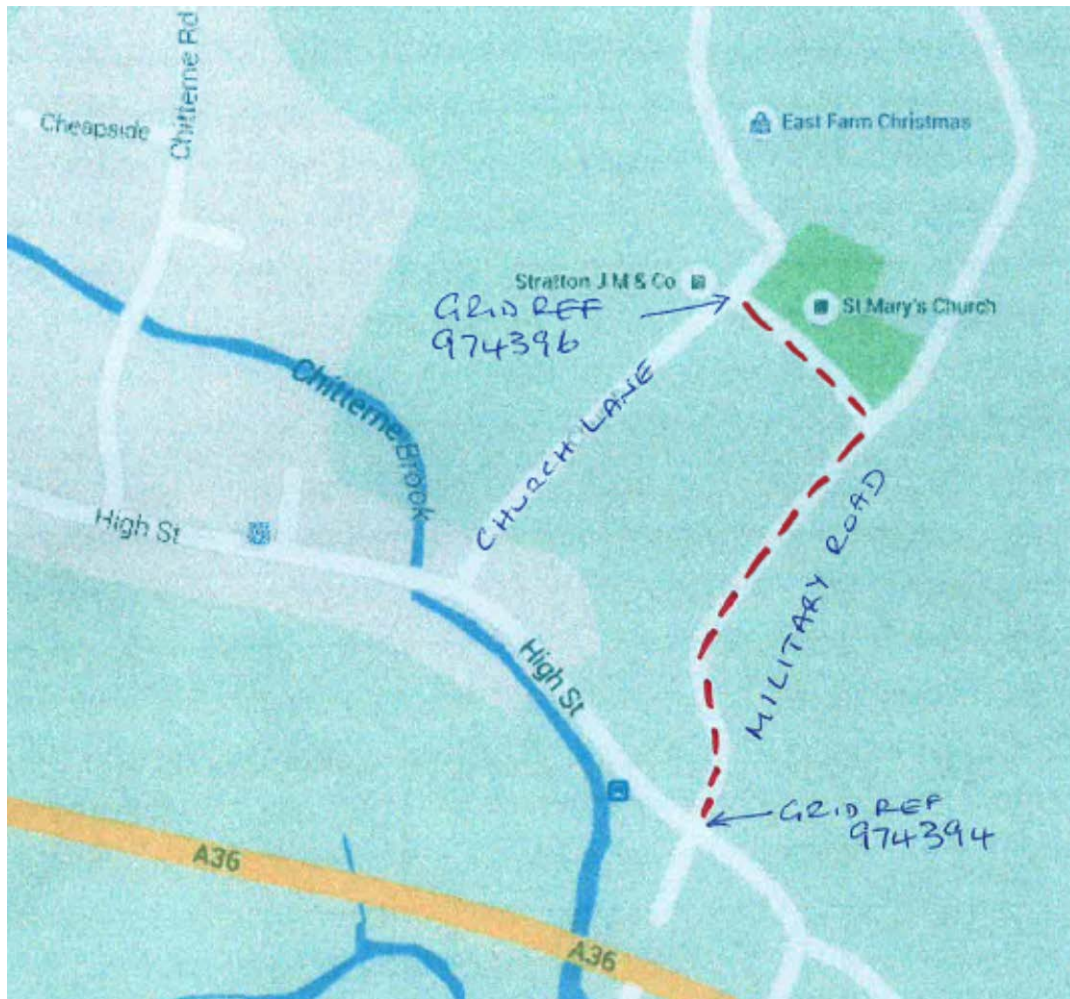
Application to: Add the roadway as a byway open to all traffic from the turning off the Codford High Street/Salisbury Road with the Military Road at Grid Ref 974394 running north to the junction with the road in front of St Marys Church and then on to its junction with Church Lane at Grid Ref 974396. The continuation of the Military Road into East Farm is not part of this submission.

Width: Up to 6 metres

Sch. 14 compliance: Notice of Application for Modification Order (Form 1)
Certificate of Service of Notice of Application (Form 3) served on Mr J Stratton, East Codford Farm, Codford, BA12 0PJ
Plan at scale approx. 1:5000 showing claimed routes in red
Covering letter, newspaper cutting relating to East Farm Christmas Shop and a photograph showing the junction of the Military Road with High Street/ Salisbury Road
14 User Evidence Forms (UEFs) **Summary at Appendix A**

Basis of application: That public rights for mechanically propelled vehicles (MPVs) subsist over the routes and should be added to the definitive map

1.1 Extract from application map: claimed route shown as red pecked lines



2.0 Legal empowerment

2.1 The Wildlife and Countryside Act 1981 (c.69) s.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 the events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.*

The event referred to in subsection 2 above relevant to this case is either:

(3)(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or a restricted byway;

or

(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 over 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.

3.0 Compliance of the application

3.1 Section 53 (5) of the Wildlife and Countryside Act 1981 (WCA81) allows:

(5) 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.

Schedule 14 to this Act states:

Form of applications

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.

Schedule 14 (2) requires that notice is served on owners and occupiers of any land to which the application relates.

3.2 This application comprised the below and is considered to be compliant with the legislation.

Notice of Application for Modification Order (Form 1)

Certificate of Service of Notice of Application (Form 3) served on J Stratton, East Farm, Codford.

Plan at scale c.1:5000 showing claimed route in red

14 User evidence forms

4.0 Land ownership details

The land is owned by J M Stratton and Co., East Codford Farm, Codford, BA12 0PJ

According to their own submission the owners first came to East Farm in 1914 and are a farming partnership. The farm was run by Mr Michael Stratton from 1946, but since 1991 it has been run by his son Josh Stratton.

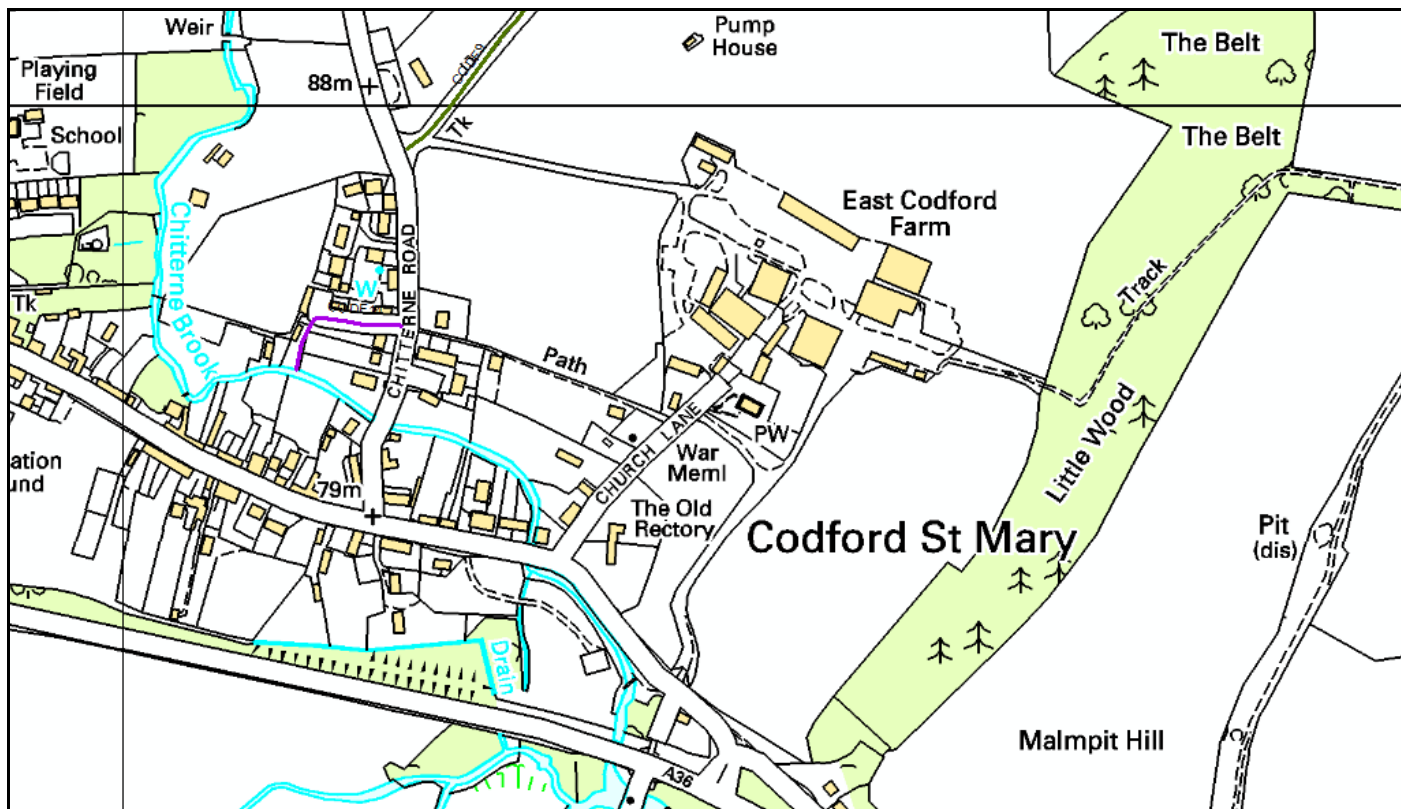
5.0 Description of route

The claimed route is a tarmac roadway leading from Church Lane in an east south easterly direction past St Marys Church to its junction with the tarmac roadway leading to East

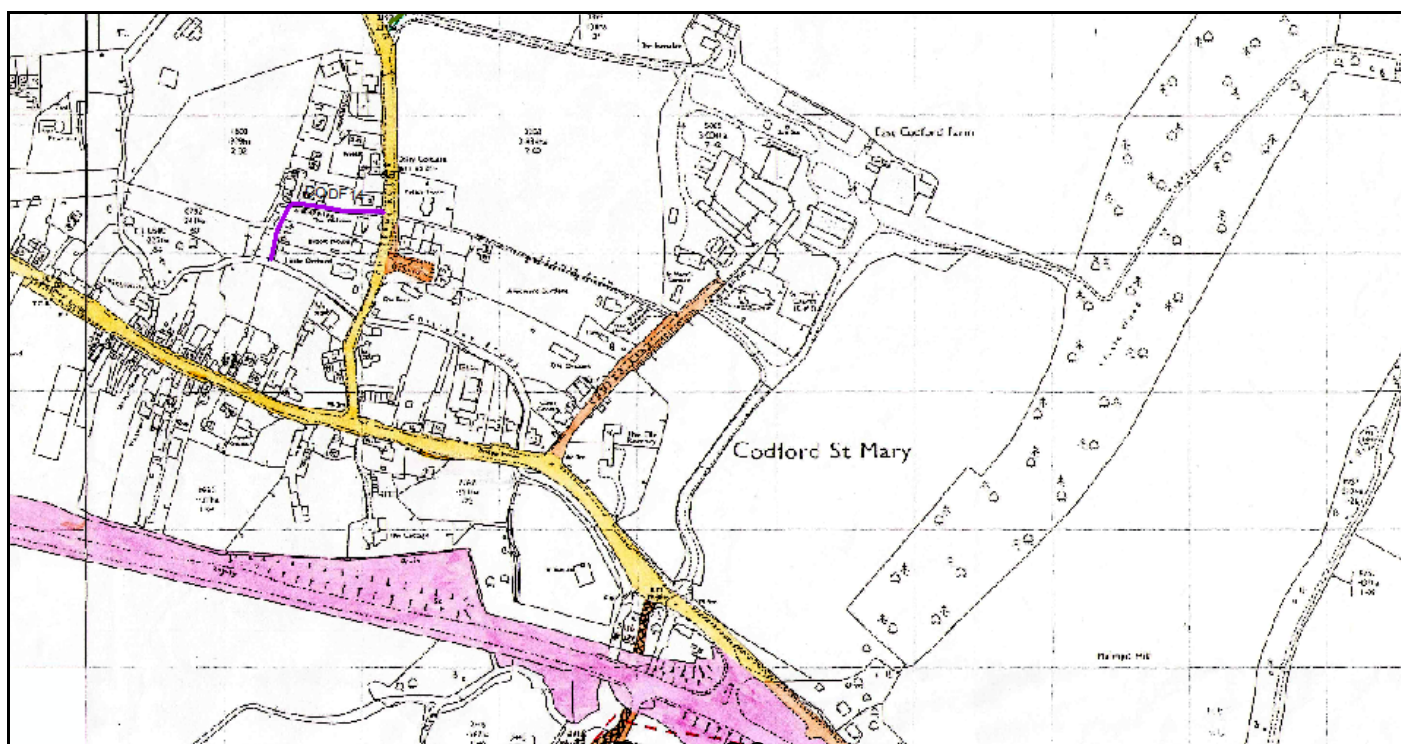
Farm. The claimed route then leads south south west over a tarmac roadway to join High Street, formerly the main road to Salisbury.

6.0 Current Records – Definitive Map, Highway Record and aerial photographs

6.1 The claimed route is not recorded in the definitive map and statement. Purple lines = footpaths, green lines = bridleways, red lines = restricted byways and brown lines = byway open to all traffic. Extract from the working copy:



6.2 The claimed route is not recorded in Wiltshire Council's Highway Record. Coloured routes are highways maintainable at public expense:



6.2 Aerial photograph 2001



6.3 Aerial photograph 2006



6.4 Aerial photograph 2014



7.0 Site visit 24 September 2015





Claimed route past church



Claimed route past church



Claimed route south towards High Street/Salisbury Road



7.1 Signs

A number of signs were observed at the sides of the claimed route:

- i) Junction with High Street “East Codford Farm” “Private Road”
- ii) “Max Speed 15 MPH”
- iii) “Road closed to pedestrians. Access only for farm, Shoot, Offices & Christmas Shop”.
- iv) “Owing to mess, litter and a number of near misses with vehicles, we have decided to close the farm roads to pedestrians and dog walkers. Sorry.”
- v) “No Overnight Parking. Stationnement Interdit de Nuit, Vietato Parcheggio di Notte, Parkowanie Zabronione w Nocny”.
- vi) “Dead End No Access for East Farm Christmas” This sign is on the length past the church.
- vii) “Access for Church & Church Yard only No access to farm yard or farm road. No dog walkers. Sorry.”

8.0 Context of application

Notes from WWW.Wiltshire.gov.uk/community and consultation response from Romy Wyeth.

- 8.1 Codford is a civil parish comprising the two manors of Codford St Peter and Codford St Mary and the manor of Ashton Gifford. The village is situated along the old Salisbury to Warminster turnpike road though the village section was by-passed in 1990.
- 8.2 Although the area is undoubtedly one of ancient settlement (the name Codford possibly deriving from the Anglo Saxon – the fording place of Coddā) and a number of roads and rights of way cross the parish linking it with Chitterne in the north and Stockton and Sherrington in the south.
- 8.3 Codford has a largely agricultural tradition based on sheep and corn, mainly barley. There was also a wool trade served by fulling mills along the River Wylye and the building from which a large wool sorting business was run is in use today as The Woolstore Theatre.
- 8.4 If there was little that was remarkable about Codford as a rural Wiltshire Parish in early times, its 20th Century history sets it apart from most other places in the County.
- 8.5 During the First World war, the Army used Codford as a training camp and remount centre with hundreds of troops passing through on their way to the front. In addition there was also an influx of Australian and New Zealand soldiers (known as ANZACs). The whole area outside the immediate village was covered with wooden army huts in a number of camps.
- 8.6 The railway came to Codford in 1857 as a stop on the Salisbury to Warminster line and a station was built at Ashton Gifford to serve the village. Military railway lines were added to the line during the First World War and acted as a branch line supplying the various camps to the north and north east of Codford. At Chitterne Road, north of the New Road junction, the line divided with one spur heading north to camps 9, 10 and 11 and another south to camps 5, 6 and 7 near St Mary's Church. Camps 5, 6 and 7 surrounded the church on three sides and Camp no. 5 lay immediately to the east of the claimed route. This area was well served by the railway in the period 1914 to 1918 (the lines appear to have been lifted sometime before 1923) and there is no evidence that a road was needed, or built, in this area. The route south of the Church is recorded on post war maps (1923 revision) as a road but whether this was built as a road or was in fact a road built on the redundant track bed is not known.
- 8.7 The Second World War saw much the same sort of use made of the village with its proximity to Salisbury Plain as a training area and its railway connection being clear attractions for the military. Many of the troops were Americans. During this period the area around the claimed route was the site of the 6th Guard's Armoured Brigade Officers' Mess and the 2nd Battalion Welsh Guards. With the railway being long gone from this area it was necessary to construct roads and the claimed route, known locally as the Military Road, dates from this period, possibly 1944.

9.3 The following were consulted:

The Auto Cycle Union	Commons Open Spaces and Footpaths
Wiltshire Bridleways Association	Wiltshire Cycling Touring Club
British Horse Society	Codford Parish Council
Wiltshire Councillor C Newbury	Wiltshire British Horse Society
Byways and Bridleways Trust	British Driving Society
Wiltshire Council Rights of Way Warden	The Ramblers
The Ramblers Wiltshire	Trail Riders Fellowship
Codford Residents Groups	Mr J Stratton
Mr J Cheal Mogers Drewitt LLP	Mr L French
Mr J Abel	Col (retd) N G Quarelle
Mrs E Abel	Mr D Chetwode Belchamber
Mrs D Shaw	Mr B Nicholls
Mr D Hastings Neville	Mrs E Richardson-Aitken
Mr D Cautley Shaw	Mrs M H Belchamber
Sir William W Mahon Bt	Mr R Richardson Aitken
The Revd A Morley	Diocese of Salisbury

10 Consultation Responses

10.1 Mr B Riley, Trail Riders Fellowship 20 February 2016

"I am rather disappointed to find that I have no information relating to the application to add a BOAT at Codford St Mary. The route seems to have originated in the 20th century and the claim will probably rely on local knowledge.

There is a slight possibility that it could be one of the routes mentioned in the Parish Council minutes, so I have attached my index. As you probably know Warminster RDC minute books went up in smoke."

"Codford St Mary Parish Meeting Minutes 1894 – 1933 (WRO 2635/1)

14th April 1925 Proposed that letter be written to the County Council asking them to demain and close the old road leading from Main Road to the station and to take over and maintain Military Road. Letter to be written to the County Council asking them to support Chitterne Parish Council's request to the Ministry of Transport towards a grant to secure the portion of new military road now owned by the Eccliaistical Commissioners at Codford."

10.2 Mr D Belchamber 24 February 2016

"The Military Road, Codford St Mary

Thank you for your letter of 17 February, requesting any further evidence in support of the above application. I have pleasure in attaching a photograph of the farm on Sunday 18 December 2015. My wife and I walked round the whole of the Military Road (from Chitterne Road to Salisbury Road) on that day and took photographs of the activity on the farm.

Dozens of people were visiting the farm shop that opens for about two months before Christmas; at one stage we counted something like 60 cars parked on the farm.

In the course of putting in our applications for the Military Road to be designated as a public right of way on the definitive map, we have been helped by books of local history and also local historians, though we have not carried out any detailed research into them. The following details might help the background picture and, if you feel that some further research into any specific bit of evidence might help the Council in their deliberations, please let me know.

Church Lane: *until about WW1, Church Lane was the sole access to St Mary's Church and to the then farmyard.*

Interconnecting Road from Church Lane to the Military Road:

A local historian told me that the fields between St Mary's Church and the Old Rectory used to belong to the Church. If correct, it would therefore follow that the interconnecting road had at one time also belonged to the Church. It is not known when the fields were conveyed to the farm owner nor whether this conveyance included the road or not.

This section of road must have been built some time after WW1, certainly before the second section of the Military Road was built.

The Military Road:

The Military Road was constructed in two parts: the first part (from Chitterne Road to the Farmyard) was constructed in WW1 and does not form part of our current submission.

The second part was constructed in 1943 or 1944; this runs from the Farmyard to Codford High Street/Salisbury Road, so our submission covers about two-thirds of the length of this section.

Beanis Path: *this provides access to the Anzac War Graves but it is not shown as a public right of way on the map (despite having a Council name sign at one end), although it has been used by the public for several centuries. This does not form part of our submission."*

10.3 Mr R Richardson – Aitken 22 February 2016

"Thank you for your letter dated 17 February in which you asked for further evidence to support the case for the 'military road' at Codford St Mary to be declared a byway open to all traffic. I have lived in Church Lane which runs parallel to the military road for twenty nine years, considerably longer than the landowner.

The information that has been provided by various people seems to admirably state the case for retention of the road as formally annotated byway. The recent informal closure by the landowner has caused sadness and irritation to the people of the village but I think it may help Wiltshire Council to make its decision if some further information is provided.

The positioning of the notices by the landowner coincided with the installation of a swimming pool in the garden of East Farm House. Large hedges and walls were erected to protect the privacy of the occupants of the property and road closure notices were erected. The reasons given were:

Dog fouling on the road

Near misses by vehicles on the military road

Walkers feeding horses in the paddock beside the road

Protecting the privacy is perfectly natural and is to be applauded but closing the road is not.

I wrote to the landowner on 22 May explaining that I would continue to use the roads and paths as I had been in the habit of doing for almost thirty years (a copy of my letter is attached). Some months later Mr Stratton (the landowner) stopped me and asked me what was going on as he had heard about the moves being made to change the status of the military road. He told me that he had not received my letter. I personally delivered an additional copy to him on the same day. He went on to say that he felt he deserved the support of all the people of Codford as he is a major employer in the village and is a generous donor to the church and to the Village Hall. He finished by telling me that he was perfectly entitled to close Beanis Path and that he was minded to do that. I responded by saying that such an action would be petulant and spiteful. Our conversation ended.

I understand that it is possible that the landowner will claim that the principal reason he wishes to close the military road is that modern agricultural vehicles are very large and there is little room for vehicles to pass and an accident might occur. Admirable care for the safety of road users one might say. Contrarily, however, the largest vehicles to use the road are six axled articulated lorries that use the road to collect grain from the barns at East farm and this traffic is particularly heavy in November and December. During these two months one, or possibly several, buildings at East Farm are converted into a type of Christmas bazaar which is advertised throughout the county and even wider afield. The result is an exceptionally large number of motor cars using the military road en route for East Farm Christmas; for so it is called.

It may be thought that the number of village people who have taken an interest in this byway question is quite small and this is true. However, there are many people who have felt strongly about this subject but feel unable to voice their support because they either live in tied houses owned by J M Stratton Ltd, are employed by that company or receive financial help from the company as in the case of the Village Hall staff and committee. This pressure is assumed if not actual.

The most important reason for the byway to be opened to all traffic is the access to St Mary's Church. In recent times two major funerals were held at the church and permission was sought to use the road for hearses and funereal traffic, this was refused. The Commonwealth War Graves Cemetery is adjacent to the church and this is a major place of pilgrimage particularly for visitors from New Zealand and Australia. Each year on Anzac Day a commemorative service is attended by large numbers and is held at the cemetery. In 2015 Mr Stratton ordered that no vehicles were to be parked in Church Lane as someone might need to use the road with a horse box. Clearly he has no right to make road closures in this way be he did it.

J M Stratton and Co is a very large industrial farming concern and taking measures such as this closure is of little consequence to it, however it has a very considerable effect on the people who have used this road for business, worship and pleasure probably since the end of the first world war.

I feel most strongly that the military road and the church road should revert to its former condition when it was freely used by all forms of transport. If you feel I can offer any further help in this matter please do not hesitate to contact me."

Letter dated 22 May 2015 and handed to Mr Josh Stratton by Mr Richardson-Aitken:

"I am sorry that I find it necessary to write to you in this way, however, I have concluded that the closure of the roads and paths on your land has become so inconvenient that I must act.

With effect from the 22nd June I intend to walk on the routes I had become accustomed to during the twenty nine years I have lived here and when both your father and you farmed the land.

Under the Highways Act 1980 Section 31 I claim the right to use the roads and paths as a right and I do this as I have had uninterrupted use for a period in excess of twenty years and I do it as a member of the public at large.

I undertake not to allow any dog under my control to foul those paths and roads: further, I will not damage any property or disturb any livestock on your land."

10.4 **Bridget Lorimer, Church Warden** 04.03.16

"Your letter to the Diocese of Salisbury dated 21st February 2016 has been forward to me to answer as Churchwarden to St Mary's church.

To my knowledge there are no private rights of access for the church, but the owners of the land have always allowed church goers to use the road to the south of the church. To the north it is graveyard abutting the farm house. We have never been refused access to this road, marked A to C on my attached map, and Mr Stratton has offered to draw up legal documents to say that we will always have use of this road for church services.

In the past we have been allowed to use the road from the Salisbury Road to the farm yard (C to B) for extra parking if needed, but as the size and volume of farm vehicles has increased in the past years it has been unsafe to have cars parked there, I have seen grain lorries use the road at 7.30 am and they are small compared to some of the tractors and other farm vehicles, Mr Stratton asked us if we could refrain from using this road which we have duly done. We have access from Church Lane where people can park as well as in front of the church.

I hope this is of some use and if there is anything else I can do to help please let me know. I would just like to add that since putting up the notices asking people not to walk their dogs round the roads, four years ago, the graveyard and grass on the A to C patch of road has been a lot cleaner with lack of dog pooh!"



10.5 **Revd Alison Morley** 09.03.16

“Further to your letter of 21st February 2016, I am not aware of any private rights of access for St Mary’s Church but Mr Stratton, the landowner, has always allowed those going to the church to use the road south of the church. He has offered to make this use permanent by drawing up a legal document.

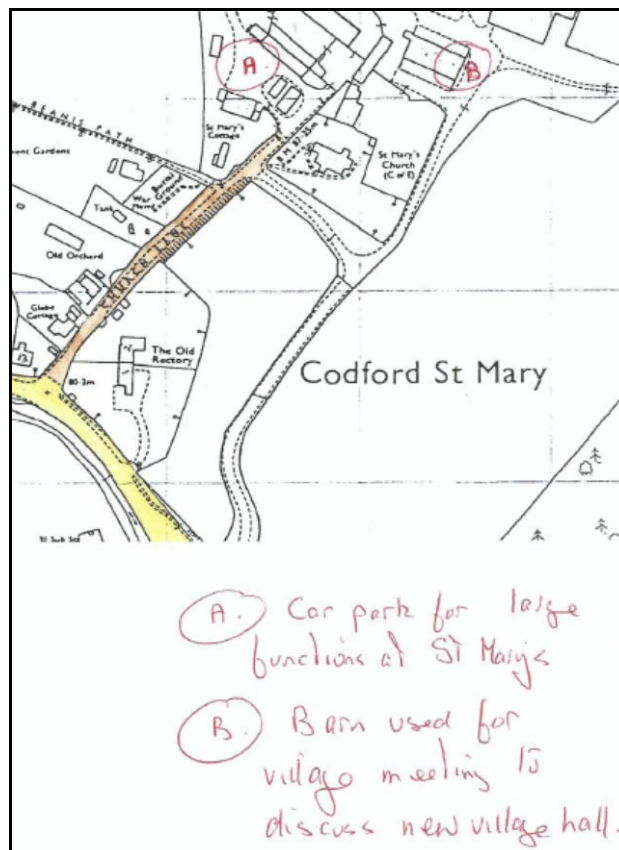
We also used to use the road from the farm yard to the Salisbury Road for extra parking when needed but because of the size of today’s farm vehicles Mr Stratton asked us not to park there anymore, as it wasn’t safe, so we don’t.”

10.6 **Hastings Neville** 20.03.16

“I refer to your letter SM/2016/01 dated 17 February 2016, my telephone conversation and exchange of emails. I would like to submit further evidence associated with this application to help illustrate why I (and indeed others) are confused as to the landowners relatively recent stance over access surrounding St Mary’s Church and in particular what is known as the Military Rd.

1. *In 1990 our daughter got married at St Mary’s. With the landowner’s consent it was common practice to use part of his farmyard (see A on attached map) for car parking for such events and there was no restriction as to which access road could be used. At some stage this consent ceased. I cannot recall the exact date but to the best of my belief it was around the time he moved to East Farm House.*

2. *In the early 1990s, during the process of building a new village hall it was necessary to hold several ‘village’ meetings to discuss the various aspects. The landowner kindly offered one of his large barns (see B on attached map) for a particularly large meeting. There were no restrictions as to which road attendees could use.”*



SUBMISSION

Re: Byway claim at East Farm, Codford

Wiltshire Council reference SM/2016/01

1. This Submission is lodged by Mogers Drewett Solicitors (Wells office) on behalf of J M Stratton & Co, the owners of East Farm, Codford ("the Owners").

2. The Owners **OBJECT** to the claim on the following grounds:

The Claim

3. The claim is based on alleged public use, supported by evidence from 14 local people (six individuals and four couples).

4. It is difficult to see any merit in the claim. It is said to be a byway claim, despite the NERC extinguishment provisions, and in any case adduces no evidence of public vehicular use as of right. Nor is any evidence adduced of bridleway use. Use on foot has been either in connection with visiting the church and/or has been insufficient to amount to use by the public as of right, and goes back only to 1985 at the earliest, which is less than 20 years before the first of the two deposits lodged under the Highways Act (2003 and 2011).

5. It is disingenuous to suggest that public user evidence goes back as far as 1946. That date came from the form of Mr N J Quarrelle, who suggests that the local British Legion have used the route on Armistice and ANZAC Day since 1946, for forming up and marching, but he does not state that he himself has exercised that use. He wasn't born until 1948.

6. The evidence put forward is principally of those visiting the church. There is misunderstanding of the nature of public use as opposed to private use, or church use; and of the nature of a byway. The great majority of witnesses admit to "Private Road" signs and other signs. Several witnesses admit to being challenged. One admits to having been given permission.

7. Mrs Lorimer the church warden has by her letter dated 4th March 2016 made it plain that the church access has been principally by permission.

8. It is therefore difficult to argue that a public right of way of any type subsists on the claimed route or is reasonably alleged to subsist.

The Farm and the Route

9. The Owners first came to East Farm in 1914. They are a farming partnership. The farm was run by Mr Michael Stratton from 1946, but since 1991 it has been run by his son Josh Stratton, who will give a detailed witness statement in due course.

10. For the time being, the summary in this Submission will have to suffice to demonstrate the background information and the evidence which can be given by the Owners.

11. The Applicants have described the claimed route as the Military Road or Army Road, though that is not the name by which the route has ever been known. It is normally known as the farm road, and has never been a public right of way.

12. The farm road was first put in during World War II, for access to the military camps which were installed on East Farm, especially in the last two years of World War II. Use and access will have been strictly controlled and restricted, especially in the period leading up to the Normandy invasion in 1944. The last thing the farm road would have become was a public right of way.

13. The claim is not for the whole of the farm road but only as far as St Mary's Church; it then branches across in front of the church to join Church Lane, which is a public highway.

14. This factor helps underline that the main use with vehicles alleged by the Applicants' witnesses has been for church purposes.

15. Many vehicles do continue up the farm road, but they are farm vehicles, and those visiting the business units, of each of which there are many.

16. Thus it is true that there is much vehicular traffic on the farm road, but none of it is exercising a public right.

17. Ordnance Survey maps show that prior to World War II the route did not exist.

18. The bulk of the use for church visiting has been via Church Lane. Likewise, visiting the ANZAC cemetery, which is on the west side of Church Lane.

19. Witnesses have referred to the forming-up and marching on occasions such as Armistice Day and ANZAC Day. The forming-up position is on the south-west corner of the churchyard, where the flagpole is. The principal means of access thereto has always been Church Lane, which is a public highway. The owners are doubtful as to whether any significant amount of use on those occasions has been via the claimed route, but they assert that any such evidence that there has been has been essentially permissive, and certainly cannot and does not give rise to a public right of way.

20. Until 1998, the bulk of the farm traffic used Church Lane. It is important to bear in mind that it is only in the last 18 years or so that the farm buildings have had their current layout and size. Before then, the "nerve-centre" of the farm was on the west side of the farmhouse and was approached via Church Lane.

21. That farm traffic on Church Lane was greatly increased by the business, operated from a building on the west side of the farmhouse, of West County Fine Foods. They had a large number of vans, many of which were up and down Church Lane several times a day, making about 80 van-journeys daily. In addition, Church Lane was used by heavy refrigeration lorries, as well of course as by farm vehicles.

22. It is the case that up until the 1990s there was some farm use of the farm road but that was principally by combines, which were becoming so wide that they had to use the farm road.

23. By the late 1990s, the vehicular use of Church Lane had become so great that the owners strategically shifted their main farm buildings over to the east side, to be served by the farm road. The purpose of doing this was to enhance the safety for all users, and the quiet enjoyment of Church Lane. This was a great improvement for those villagers abutting Church Lane. Thus it was that the amount of vehicular traffic on the farm road increased radically from the late 1990s.

24. In addition, the farm business units grew significantly about the same time, meaning a large increase in all vehicular traffic on the farm road.

25. BUT all of that use constitutes private farm use and/or use by invitation and permission, and cannot and does not constitute public vehicular use as of right.

Signs, fencing, and gate

26. Mr M Read, the former farm manager, who was employed on the farm all his working life (since age 15 which was nearly 60 years ago) will give a witness statement setting out his clear recollection of these points. In particular, he will confirm the existence of

- the private road signs at the south end of the farm road;
- the fencing at both ends of the farm road;
- and the gateway at the road entrance into the farm road.

27. As to the signs, he will say that the iron signs at either side of the gateway at the south end of the farm road, both of which read "PRIVATE ROAD", have been in place continuously since the 1970s. They are the same ones that are still there now. They are of exactly the same type and format as two other sets of signs, all of them installed at about the same time in the 1970s. The other two are at the farm entrance on the west side of the farm and also at the entrance to the dairy. Thus anyone seeking to enter the farm road from the south over the last 35-40 years will have been left in no doubt that it is a private road.

28. As to the fencing, up until the mid 1970s the south end of the farm road was fenced off. Every time a combine went in or out of that gateway it was necessary to move the fencing aside. The fencing was secured at both sides, and in the middle of the road, by fence posts being anchored in a concrete base. It is likely that the removal of that fencing coincided with the installation of the private road signs in the 1970s.

29. As to the gate, in addition to the fencing at the south end of the farm road there was also a gate, which was kept shut from time to time.

Deposits

30. The Owners have lodged two deposits under the Highways Act. The first was in 2003, the second in 2011. Both are registered on your website. The effect of these two deposits has been to negate any intention to dedicate any public right of way since 2003, and that effect continues to date. Thus, any user evidence will have to cover the 20 years prior to 2003, namely 1983-2003. The earliest walking use which is attested to by the witnesses started in 1985. Even then, any alleged use would have to have been use as of right.

31. In view of the challenges which several witnesses have mentioned, and the private road signs in place since the 1970s, and other signs, and the permissions granted, it is asserted by the owners that the claim based on public use of any type must fail, because no, or no sufficient, evidence of public use as of right for 20 years has yet been adduced.

NERC Act 2006

32. Because of the extinguishment provisions of NERC, it is asserted that, even if byway rights had potentially come into being by long use by the public with vehicles as of right, which is specifically not the case, those rights were extinguished in 2006.

33. None of the NERC exceptions appears to apply in this case. Conceivably s67(2)(d) may require some attention, but should then be dismissed: although the construction of the farm road during World War II may have been dealt with under statutory provision, such as the Military Lands Act or the Defence Act, and will have been intended for use by mechanically propelled vehicles, it would surely and expressly have been restricted to military use only, and subjected to heavy restriction, and in no way was it intended to be a public right of way.

34. In these circumstances, the extinguishment provisions of NERC must now mean that the byway claim must fail.

35. There is no evidence of bridleway use; no horses have used it other than of a private nature, by invitation of the Owners; as for cycle use, the Owners are not aware of anybody having cycled the claimed route (it is the case that one of the 14 witnesses mentions the word cycling, but certainly the public as a whole have not been cycling on this route as of right).

36. Even if the highway authority may consider recommending a footpath designation, based upon the local witness evidence of having walked the route, that cannot lawfully be justified either, in view of the steps taken by the owners to negate public access as of right, and to negate any intention to dedicate, and in view of the challenges, permissions, signs, fencing, gating, and deposits, coupled with a complete lack of evidence of any pedestrian use for the whole of the 20 years prior to 2003.

Conclusion

37. In all these circumstances it is asserted strongly that Wiltshire Council as highway authority could/should not regard this claim as having merit. There is no proper basis for saying that a public right of way of any type is reasonably alleged to subsist. The claim should be rejected unconditionally.

DATED this 22nd day of March 2016.

10.8 **R Richardson-Aitken** 21 March 2016

"You will, perhaps, recall that I wrote to you on 22 February in response to your letter dated 17 February concerning the 'military road' in Codford St Mary. This morning while walking the 'military road' I was reminded of another anomaly in the attitude of the landowner in question.

Some years ago a company called West Country Fine Foods was established at East farm.. This organisation carried out business as a food distribution centre. Very large vehicles, many from Continental Europe, delivered bulk food supplies to a large warehouse where it was broken down into smaller loads and delivered all over the west of England. In addition a small but very popular farm shop operated from the same site. The majority of the vehicles visiting the firm and the shop used 'the military road'. The road was well marked as being the route to the company premises. Indeed signs (in several languages) informing drivers that overnight parking is forbidden at the site are still in place along the road.

My daughter was married in St Mary's Church in 2007. At that time the landowner was extremely helpful with regards to car parking which took place in Church Lane, the 'military road' and the church front road which took place much with his blessing.

It is sad that the disagreement over the 'military road' has caused a rift among neighbours. I am aware that the landowner is a general financial supporter of village amenities and it

would be most unfortunate were he to withdraw his support if this case was lost by him. He has also threatened to close Beanis Path and this would be most regrettable. It is very much hoped that he will act in an honourable way.”

10.9 Romy Wyeth 21.03.16

“I am Romy Wyeth and I have lived in the Old Police Station, Codford St Mary, near Warminster since October 1973. I am a historian and I write and publish books on local history. My husband is a retired policeman and our house (marked on the attached map as Police Station) is situated adjacent to Beanis Path which gives access to the Commonwealth War Graves Cemetery and to St Mary’s Church. I served on Codford Parish Council for 35 years and its Chairman for 16.

I recently learned that a submission has been made to Wiltshire County Council for the creation of a Byway Open to All Traffic to the road immediately in front of St Mary’s Church and what is locally called the Military Road which runs from that road to join the Salisbury Road, the extension of the village High Street.

The landowner, Mr J Stratton, has recently had signs erected prohibiting use of those two roads to pedestrians and vehicular access to and egress from the church along Military Road.

Having lived in close proximity to the site in question for 42 years I know that these two roads have been used by villagers, including myself and visitors not only to access the church but also for recreational purposes since the Second World War when the military occupied that area.

As a local historian, I sometimes take groups of up to 25 persons on walking tours of Codford. The groups park their cars in the lay by near the Lodge Gate House at the bottom of Military Road and we then take a circular route around the village taking particular account of the military sites. During both World wars there were military camps alongside Military Road, in WW1 it was where Camp No 5 (also known as Institute Camp) was and part of the Codford Camp railway ran into it.

During WW2 this was the site of the 6th Guard’s Armoured Brigade Officers Mess and the 2nd Battalion Welsh Guards Camp where Rex Whistler painted many of his best known works such as the Colonel Blimp series. Rex’s Officer’s Mess Tent, Codford St Mary Wiltshire c 1942 depicts the area in question. Undoubtedly the road beside the church would have begun to be in use from 1914 because the soldiers would not have walked out of the camp by the Lodge and then walked up Church Lane when they attended services. From the Military Road to St Mary’s Church then on to the Commonwealth [ANZAC] War Grave Cemetery, a place of pilgrimage to visitors especially those from Australia and New Zealand. I would then take the group down Church Lane, through the village down Chitterne Road and then along Beanis Path.

I have never once been prevented or dissuaded from using that route, nor have I ever felt the need to ask permission. From the time I came to Codford people have used the military road and the path beside the church as part of a walking circuit without any problem from traffic or the land owner. When weddings, funerals, christenings or special services such as the ANZAC Day service on 25th April the congregation has been able to park without hindrance for the short period they are either in church or in the cemetery. As, to my

knowledge, this has been an established custom for decades, I consider the Landowner's recent action in prohibiting such access to the public to be unreasonable.

I am aware that the Military Road is used by many visitors to the East Farm Christmas event, behind St Mary's Church, which has run from mid-October to Christmas for the last six years. This actively encourages many more vehicles to use the military road with advertisements in all the papers and on road signs.

I fully endorse the application for the granting of Byways Open to all traffic status and would be prepared to attend a public inquiry if required."

10.10 Maurice Cole 23.03.16

" Statement in relation to the application to grant byways open to all traffic status in the area of St Mary's Church in Codford

I am Maurice Cole and I was born in Codford in 1927. I have lived in the village all my life except for when I did my military service from 1945 to 1947 and for a short period of about 18 months when I lived in Heytesbury in 1974/75.

I served on the Codford Parish Council for about ten years and am very familiar with the roads and tracks in and around the village. I am surprised to see that the landowner in East farm, Mr J Stratton, has had signs erected which appear to prohibit parking and access to the road directly south of St Mary's Church and to what is called (within the village) the Military Road which runs from the church southwards to join the old A36 in parallel to Church Lane.

I have used these two roads all my adult life in my car(s) to attend Christening, wedding and funeral services at St Mary's Church since the Army left the camps in that area shortly after the Second World War and my subsequent demobilisation.

I will continue to exercise the "prescriptive rights" I feel I have established over the last seven decades and I resent the landowner's moves to prevent me, and other villagers, from having well-established access to St Mary's Church. I would be happy to explain my position if called to attend any public inquiry."

10.11 R Richardson-Aitken 04.04.16

"I imagine that you are becoming thoroughly bored by receiving letters from me on the above subject so please excuse this further piece. I have had sight of the letter written by Mogers Drewett the lawyers acting for the landowner. There is an imbalance in this case since the landowner is a large commercial concern well able to afford the fees of a legal firm whilst I am not in a position to do the same. However, I believe that it is important to seek out the truth and let it be known.

The letter from Mogers Drewett has several inconsistencies, no doubt the result of ignorance of the case rather than a desire to mislead the decision makers. If I may I should like to draw these to your attention:

In paragraph 1 it is stated that the road in question is called Farm Road a name which I have not heard during the thirty years that I have lived here. In my experience the route has always been called the military road. This in itself is not important but truth is important.

On paragraph 5 it is stated that Mr Quarelle's evidence is in some way irrelevant since he was not born until 1948. The date of birth of someone has no part in this dispute. Mr Cheal was not born until even later but his evidence is included. I was born in 1940 but that does not make my evidence more or less relevant than Cheal's or Quarelle's.

In paragraph 12 it is stated that 'access will have been strictly controlled, especially in the period leading up to the Normandy invasion in 1944. The last thing the farm road would have become was a right of way.' This is very subjective statement. We have no proof either way, to suggest that only military vehicles would use the road is nonsense. Every military establishment requires logistic support and this is partially provided by civilian contractors. In addition it may be of interest to note that prior to D Day (6th June 1944) all units stationed in Codford were moved away from Codford for specialist training before proceeding to their Concentration Areas for the seaborne assault.

In paragraph 19 it is stated that the forming up place for the ANZAC Parade is the flag pole to the south west of the church. This is not so, the forming up place for the Parade was at the point in Church Lane where it joins the Salisbury Road. On that day Church Lane is kept clear of vehicles so that those marching have an unimpeded route up to the Commonwealth War Graves site. In order to achieve this free access vehicles are parked along the 'military road' which allows less mobile veterans to walk but a short distance to the service. Strangely, in 2015 the landowner took it upon himself to order motor vehicles and invalid carriages not to park in Church Lane as a member of this family intended to drive a horse-box down the lane. Clearly the landowner had no right to do so and it resulted in some of the less able attenders to miss the service but out of courtesy his wishes were met.

In paragraphs 20, 21 and 23 the impression is given that farm traffic was directed away from Church Lane onto the 'military road' to increase the enjoyment of the people living in Church Lane. This is somewhat disingenuous; one suspects that the real reason was that the landowner, who lives at East Farm had converted a former yard into a major ornamental garden feature; closing the north end of Church Lane protected his garden which was further secured by two electronically powered gates. It was the landowner who benefited from the change not the residents of Church Lane. The claim that the owner shifted their main farm building over to the east side is very questionable. A visit to the site will show that to the east side of the farm there is a farm office, a tractor shed and two storage tanks. To the west are the main vehicle workshops, a large grain storage barn, the large barn used as a Christmas bazaar and commercial property used as offices.

In paragraph 35 the letter states that the Owners are not aware of anybody having cycled the claimed route. This can only be because the Owners have not lived nearby for long enough. My wife and I regularly used the military road on bicycles and my children were regular cyclists over this route. Further, there is an annual charity event held in September. Participants raise money by visiting as many churches in the Salisbury Diocese as possible, at each church they present their forms for signature and given some refreshment. The great majority of those taking part are cyclists and they certainly use the 'circuit' (Salisbury Road, military road and Church Lane).

It is folly to suggest that someone in my position, having lived for thirty years in an area and used the road (and other routes on the farm) throughout that time, would approach the landowner when he, the landowner, took over from his father to seek permission to do

something that I had been doing for six years or so particularly since the landowner lived elsewhere. I wrote to the landowner stating my intention to continue to use the military road only after the small notices were erected very recently.

The somewhat patronising nature of the letter from Mogers Drewett is much to be regretted. Quite contrary to Mogers Drewett contention that the claim has no merit there is a very proper basis for inclusion of the military road as a right of way. Constant and regular usage of the route is well known and has been very much appreciated.

I apologise for the great length of this letter but I feel most strongly the military road at Codford has provided a splendid place to enjoy the countryside and to take exercise. I am saddened that the landowner has taken steps that he has to rob the community of this much loved facility. The cordial, if somewhat distant, relationship between the landowner and the community will be gravely damaged.”

10.12 D Richardson- Aitken 11.04.16

“I am a police officer and I now live in Chilcompton. From 1986 to 2008 I lived in Church Lane, Codford. As a boy I knew Mr Michael Stratton and saw him often when my friends and I played on all the land close to my home, much of this was East Farm land.

We regularly rode our bicycles around the various farm roads and tracks and this included Military Road that runs parallel to Church Lane. Before the village bypass road was built we were encouraged to use the military Road and forbidden to ride on the A36 (now Salisbury Road).

I understand that an application has been made to make the Military Road a Byway open to All traffic. I strongly support this application as it will allow free access to the church and parking where necessary for special occasions such as ANZAC Day, funerals and weddings.

I have seen a letter that indicates that the landowner is not aware that cyclists have used the Military Road. I am surprised to learn this as I and many of my friends used it regularly.”

10.13 Tabitha Butcher 06.04.16

“I have lived in Codford for twenty two years and my daughters were born and brought up here. My home is on the corner of High Street and Church Lane and is, therefore, close to the Military Road.

Throughout the duration of my life in Codford my family and I have used the road which runs parallel to Church Lane, which I know as the Military Road as a normal part of the traffic arrangements of the village. I have walked with my dogs, driven my car and taught my children to ride their bicycles and ponies along the road.

I have continued to walk around Church Lane, Church Road, Military Road and Salisbury Road despite signs that have been erected in the last few months.

I am strongly in favour of the application which seeks to grant the title Byway Open to all traffic to the Military Road.”

THE CODFORD RESIDENTS' GROUP

**Response to the Submission, dated 22 March 2016,
Lodged by Messrs Mogers Drewett, Solicitors**

The Military Road

There is no dispute between the two parties that the Military/Farm road is the Owner's private property. Our case resides in demonstrating that, by regular public use of that road over a period of more than twenty years without express permission, a right of way has been created by prescription.

A private road can also be a right of way, as is proved by Stockton Park, the road from Giggan Street to Stockton House (please see photos attached) on the other side of the River Wylfe, which also belongs to the owner.

Ignoring the frequent irrelevancies in the Solicitors' submission, we would comment as follows:

Para 3 - Update: the Solicitors' submission is dated 22 March 2016, since when we have received some further evidence. We have now received:

- 14 completed forms
- 2 written statements (Romy Wyeth and Maurice Cole)
- 2 completed application forms, which were later withdrawn for understandable reasons.

Additionally, one person has been given permission by the Owner to do exactly what we are now claiming as of right.

Codford St Mary is one half of a small village and a number of people, while supporting our Group's initiative, did not wish to reveal that support, because they are tenants or employees of the Landowner or do business with him.

Para 4 – Update and Corrections:

- We do not believe that the Natural Environment and Rural Communities Act 2006 extinguishes our prescriptive rights over the Military Road.
- Maurice Cole has now testified to having used his prescriptive right to drive along the Military Road regularly over the years ever since about 1947.
- Romy Wyeth has similarly used the Military Road ever since she moved to the village in October 1973. From about 1985, she led tours of up to 25 tourists around the route. She has also testified that: "... regardless, the part of the road to the south of the church has been in use, both walking and driving, I am sure since before we arrived in 1973."
- Nic Nichols testifies to having cycled and run round the whole of the Military Road ever since he arrived in the village in 2000. He frequently came across the owner, he was on good terms with him and was never told not to cycle or run on that road.

Para 5 – Correction:

Ignoring the final egregious comment about Mr Quarrelle, what Mr Quarrelle was testifying to is the undoubted fact that the British Legion has used the Military Road since 1946 for marching and parking cars.

Para 6 – Correction: The evidence is not ‘principally of those using the church.’ The evidence is principally about those people who have used the Military Road largely for recreational purposes. Apart from the testimonies quoted in Para 4 above, there was also a group of ladies who used to walk dogs regularly along the whole of the Military Road (which, we can understand, might not please the Owner) but they do not wish to be identified. Please see the final para of Para 3 above.

Para 7 – Correction & Request:

- It is Miss, Ms or Bridget Lorimer, not Mrs.
- Bridget Lorimer has long experience of St Mary’s Church, so the testimony contained in her letter of 4 March 2016 is particularly valuable.

She states: “We have never been refused access to the road, marked A to C on my attached map.”

And also: “In the past we have been allowed to use the road from the Salisbury Road to the Farm yard (C to B) for extra parking if needed.”

It is clear that a harmonious relationship between the Landowner and the Church used to exist which this Group would like to see restored.

Para 11 – Correction:

The road in question may well be called the Farm road on the farm but in the village it is the Military Road.

Para 12 – Correction:

The Military Road was constructed in two parts - by the military and for the military - so, at that time, it was clearly not intended for general (including farm) usage. We believe that the first (or northern part from Chitterne Road to the Farmyard) was constructed in or soon after WW1. The second (or southern part from the Farmyard down to Salisbury Road) was constructed in 1943 or 1944 to facilitate access to the military camps.

Paras 13 & 14 – Correction:

Clearly the use of the interconnecting road between Church Lane and the Military Road is largely for church use but it is impossible to state categorically that it has been the main use, because a number of people have testified to driving, walking, running or cycling along that route for purely recreational purposes (e.g. R Richardson-Aitken and Nic Nichols have been frequent recent users).

What must be contested is the Owner’s intention to stop vehicles that have parked outside the church on the interconnecting road from then turning right to drive out to Salisbury Road. Hearses would have great difficulty in trying to do a U-turn, especially when other cars are still parked there.

Para 19 – Correction:

The statement about the Armistice Day Parade and the Anzac Parade is incorrect; R Richardson-Aitken says: “The forming up place for the Parade was at the point in Church Lane where it joins Salisbury Road.....Vehicles are parked along the ‘Military Road’ which allows less mobile veterans to walk but a short distance to the service.”

He also stated: “Strangely, in 2015 the landowner took it upon himself to order motor vehicles and invalid carriages not to park in Church Lane as a member of his family intended to drive a horse-box down the lane.”

The Solicitors confirm in Paras 13 & 19 that Church Lane 'is a public highway.'

Para 27 – Correction:

There is no dispute about the existence of signs reading PRIVATE ROAD, nor that they were erected in the 1970s but those facts become irrelevant, if a public right of way has indeed been created by prescription over a private road, as we firmly believe to be the case here.

We have enclosed recent images of a similar road belonging to the same Landowner just to the south of the River Wylye. They show a Wilts C.C. footpath sign directing walkers along a signed private road.

Although the Estate Plan of 2003, mentioned in Para 30 contains at least three glaring errors, it is correctly coloured yellow to denote a public right of way. It is our contention that this is what should now happen to the section of the Military Road that is covered by our claim, which is for a byway open to all traffic.

Para 30 – Corrections:

The Solicitors' Submission refers to two deposits by the Owners. We challenge the first, dated 28 March 2003, on the grounds that it is grossly inaccurate in three respects:

- The Anzac Cemetery was created by deed of gift in 1916 or 1917 and has its own title deed (WT275129). However the Landowner has shown this to lie within his estate.
- St Mary's Church, whose written history dates back to 1282, is also shown as belonging to the Landowner; it, too, has its own title deed (WT275129).
- Finally, as the Owner's Solicitors have conceded in their paras 13 and 19, Church Lane is a public highway.
However, the Owner's Estate Plan clearly shows that he is claiming roughly half of Church Lane as belonging to his estate.
- The second deposit, dated 27 January 2011, is similarly flawed, with the same mistakes being repeated from the 2003 deposit, although the colourings have been changed.

Such carelessness makes one wonder whether any credence can be given to either deposit.

Para 35 – Correction:

R Richardson-Aitken writes: "The (Solicitors' letter) states that the Owners are not aware of anybody having cycled the claimed route. This can only be because the Owners have not lived nearby for long enough. My wife and I have regularly used the military road on bicycles and my children were regular cyclists over this route. Further, there is an annual charity event held in September. Participants raise money by visiting as many churches in the Salisbury Diocese as possible, at each church they present their forms for signature and are given some refreshment. The great majority of those taking part are cyclists and they certainly use the circuit (Salisbury Road, military road and Church Lane).

It is folly to suggest that someone in my position, having lived for thirty years in an area and used the road (and other routes on the farm) throughout that time, would approach the landowner when he, the landowner, took over from his father to seek permission to do something that I had been doing for six years or so particularly since the landowner lived elsewhere. I wrote to the landowner stating my intention to continue to use the military road only after the small notices were erected very recently."

Nic Nichols also testified to cycling regularly round the route and having met the landowner on many occasions while doing so.

Conclusion: We firmly believe that the Council should now uphold our claim that a public right of way has been created by prescription, for a byway open to all traffic, over the route described.

11.0 Historical Mapping and Records

In determining this application the Council must consider all relevant evidence available to it and this includes historical documents and plans. It is able to do this under Section 32 of the Highways Act 1980:

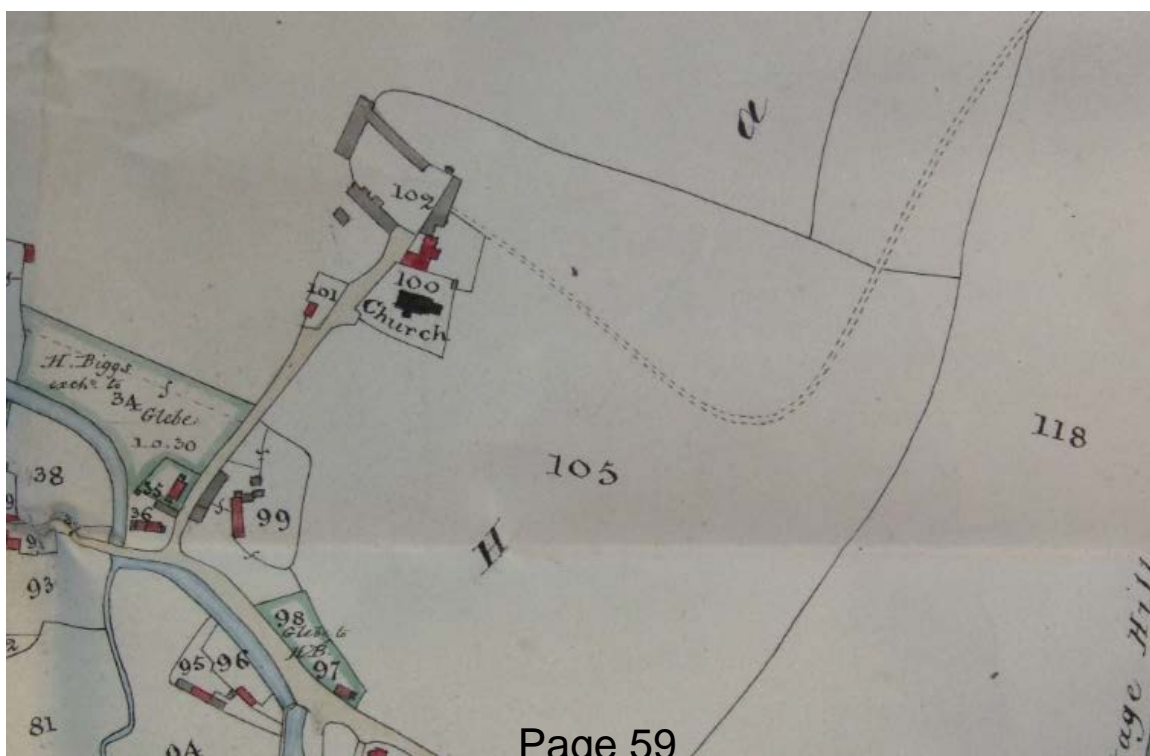
32. Evidence of dedication of way as highway

A court or other tribunal, before determining whether a way 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 circumstance, 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.

Although it is known that the claimed route 'Military Road' was constructed in the 20th century it is important to look at earlier documents to determine whether there was a pre-existing route at the site.

11.1 Inclosure Award Codford St Mary 1844 Wiltshire and Swindon History Centre Cat. Ref. EA164

The enclosure of the open fields and common grazing happened relatively late in Codford St Mary. Arising out of Acts of Parliament, evidence of routes created by this process carries high evidential weight. Extract from Award plan:



11.2 The Inclosure award does not show any route leading south of the Church.

11.3 Tithe map and Award – Codford St Mary – Map 1839 Award 1840

Arising out of the Tithe Apportionment Act of 1836 records relating to the apportionment of tithe payments (where the requirement to pay tithes in kind on productive land was commuted to rent charges and payments) can be good sources of evidence for the pattern of the landscape of the parish and of the existence of any roads or tracks that may have been excluded from productivity and hence charges payable.

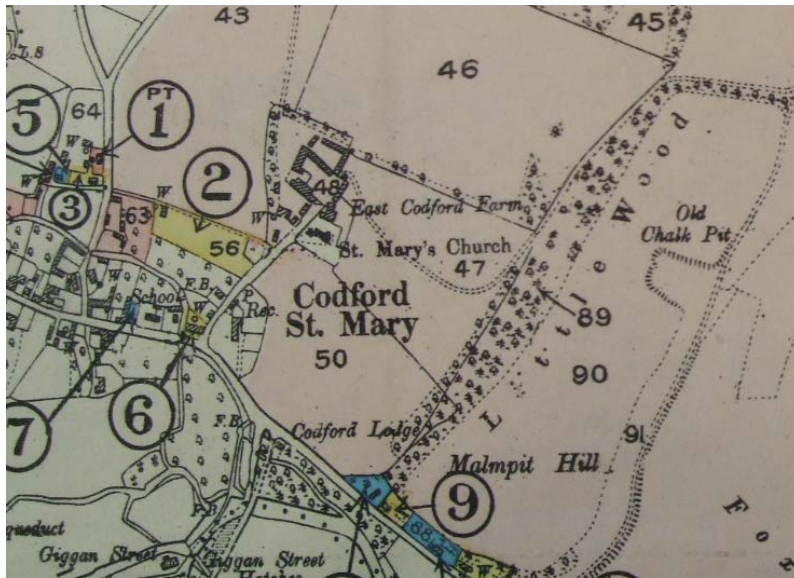
11.4 The tithe map for Codford St Mary shows roads coloured sienna and paths and tracks as pecked lines. The map is drawn at the scale of 6 chains to one inch and also shows rivers, dwellings, outhouses and vegetation types as well as parcel numbers referable to the apportionment document.

11.5 No route in the area of the claimed route is shown but is noted that nearby 'Beanis Path' is shown.



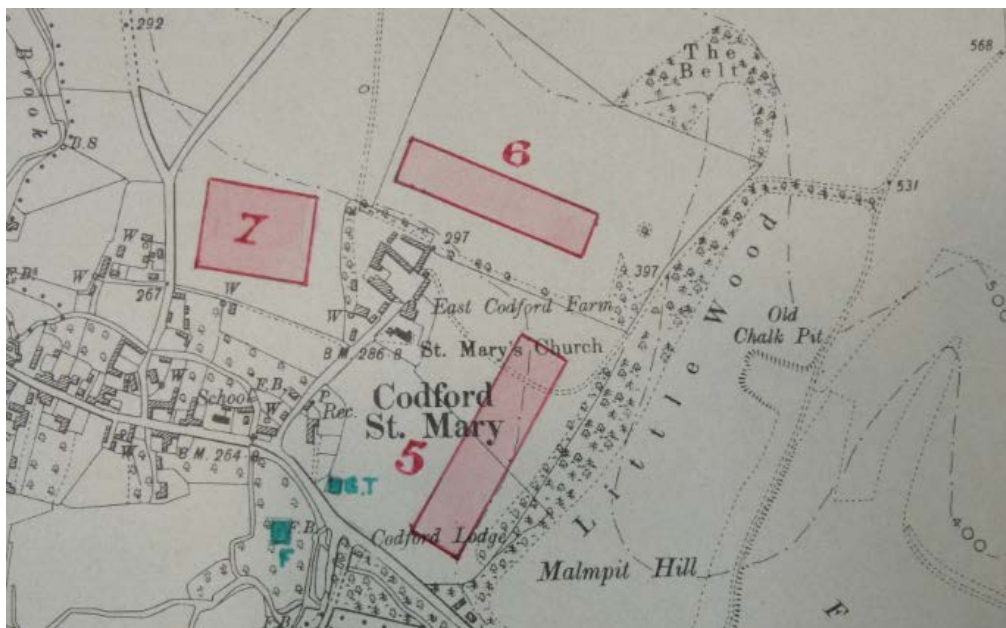
11.6 Sales Particulars East Codford Farm 1919 WSHC Cat. Ref. 628/48/11

East Codford Farm, comprising 1310 acres, was offered for sale by the Right Revd Lord Bishop of Coventry on October 7th 1919. The map accompanying the sales particulars shows all of the land covered by the claimed route coloured pink as part of Lot 1 and numbered 50 – 'pasture'.



- 11.7 The property is described as being “intersected by hard occupation roads and that “The Military are temporarily in occupation of Enclosures Nos 25, 43, 46, 47 and 50”.
- 11.8 The underlying mapping (it is based on an 1899 revision of Ordnance Survey mapping) pre-dates the First World War and the military installations (including the camp railway, the buildings and the roads) are not shown.
- 11.9 **Warminster Rural District Council OS maps showing Military Camps WSHC Cat. Ref. G12/700/1PC**

Although the development of the Military infrastructure at the time of the First World War was not recorded by the Ordnance Survey in its large scale mapping revisions (which occurred in 1899 and 1923) a series of maps have been preserved in the Rural District Council archive which show the positions of the camps. The camps were plotted from a plan supplied by Lieut Bruce RAMC by Clarence C Hancock, the District Surveyor, Warminster RDC on 20th May 1915.



- 11.10 It can be seen that Camp no. 5 was to the east of the claimed route but no roads have been drawn onto the map. It is therefore not possible to establish from these maps whether any part of the claimed route dates from the First World War period.

11.11 **NB** In Codford Wool and War in Wiltshire by John Chandler Map 21 shows the line of the Codford Camp Railway as a spur leading from the west, between camps 6 and 7, arcing round to the west of camp 5 before joining Church Road to the south of St Mary's Church. If this is an accurate representation the part of the claimed route that leads south of the Church was railway line at this time.

11.12 **Wiltshire County Council Roads and Bridges Committee Minutes WSHC Cat. Ref. F1/100/6/9**

After 1929 Wiltshire County Council took over the maintenance liability for rural roads from the Rural District Councils. The minute books of the Roads & Bridges Committee contain a number of references to 'military roads' being considered for public maintenance. No route mentioned is identifiable as being the claimed route but the following extract is illustrative of the process and demonstrates that the public were able to use the 'military roads' during wartime.

"1930

442. Dedication of New Road. On considering the question of the standard of repair in respect of private or newly constructed roads which the County Council may be asked to take over as County Roads, Resolved : That no general standard be prescribed, but that the County Surveyor be instructed to bring up a suitable specification in each case for the Committee's consideration.

443. Parish of Codford St peter. On reading a letter dated 4th August, 1930, from the Chairman of Codford St Peter Parish Meeting, as follows:

At an Assembly of the Codford St peter Parish Meeting on April 3rd 1930, I was instructed to inform the County Council of its opinion :

That since the road commonly known as "Brewery Lane" and the "Green Road" (which leads from the George Hotel, Codford St Peter to the Chitterne bye-pass road) was used as a public road during the War and has been so used ever since, it is desirable that it should be taken over by the County Council."

"The owner of the adjoining property of whom I am one, are willing that this road should be taken over, and they feel that since the public make considerable use of this road and have now probably acquired a right of way over it the road should be under the control of the Council.

I should be much obliged if you would kindly communicate this matter to the Committee in charge of Roads and Communications and I may add that should the Committee wish to send a deputation here to investigate I should be pleased to meet them."

11.14 In 1950 (F1/100/6/16) the County Council tried to adopt another section of Military road at Stockton House but this was refused by the landowner, Mr Stratton.

11.15 **Ordnance Survey Mapping 1:2500 County Series 1884 - 1924**

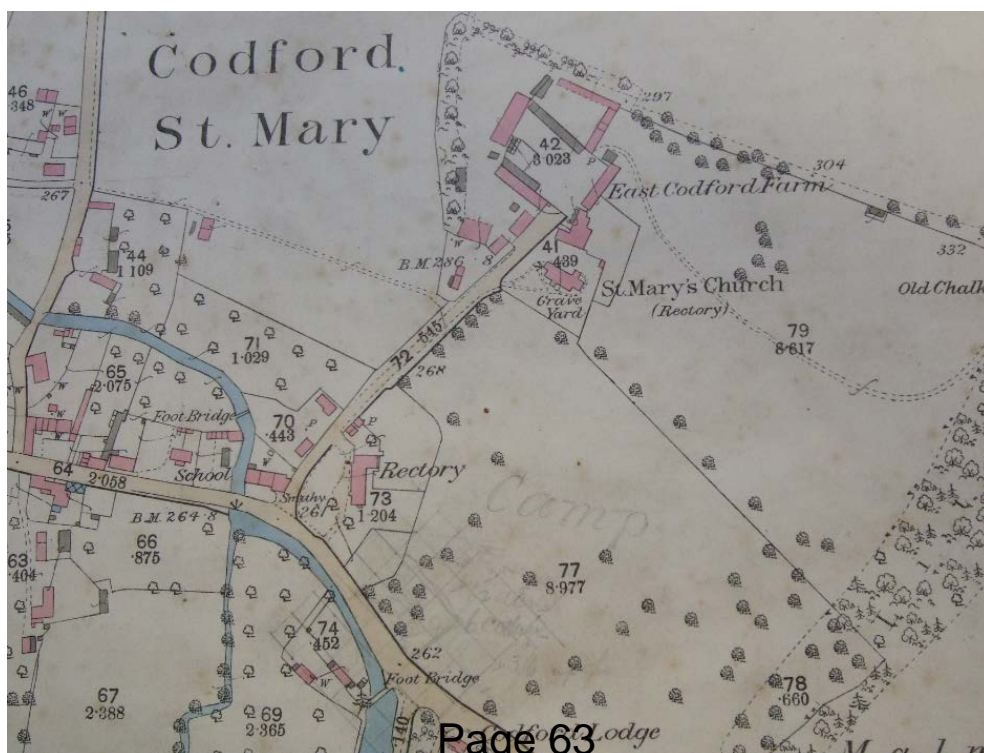
The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheet 58.4 covers the applicant route. J B Harley, historian of the Ordnance Survey, records that "the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be

found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;...hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

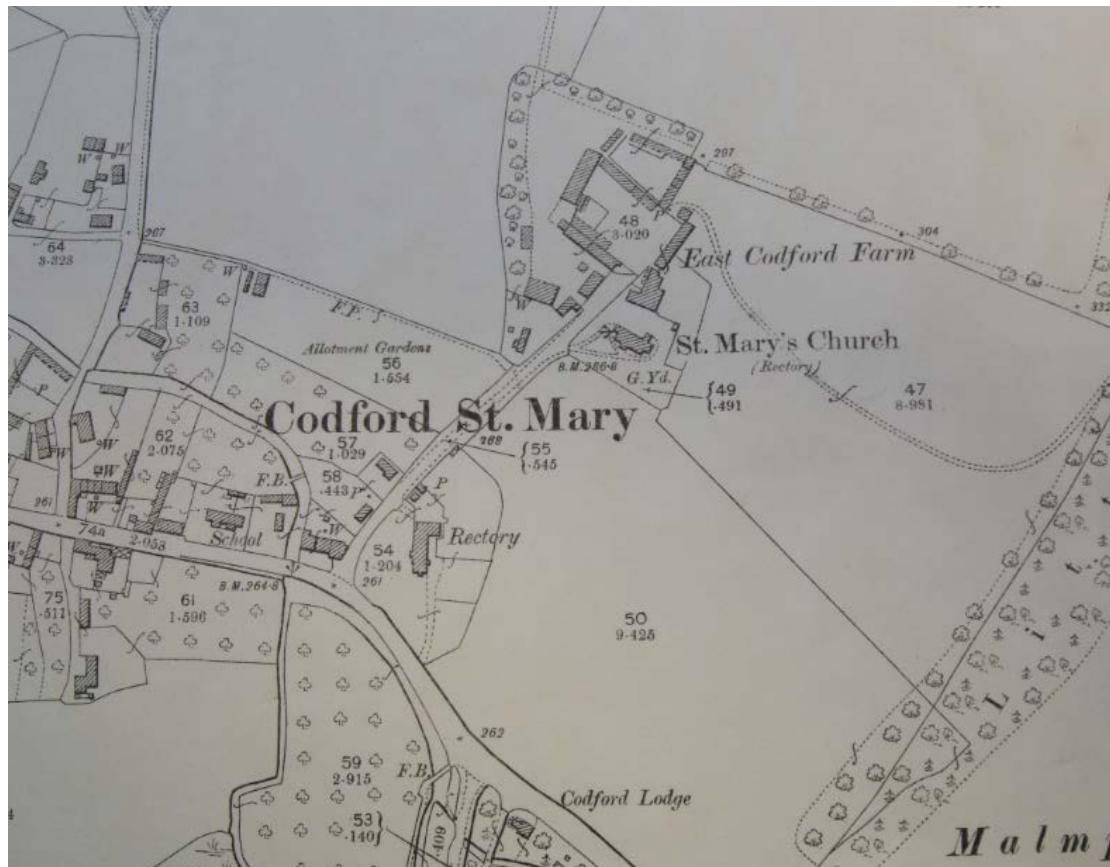
- 11.16 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of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

11.19 First Edition 1886

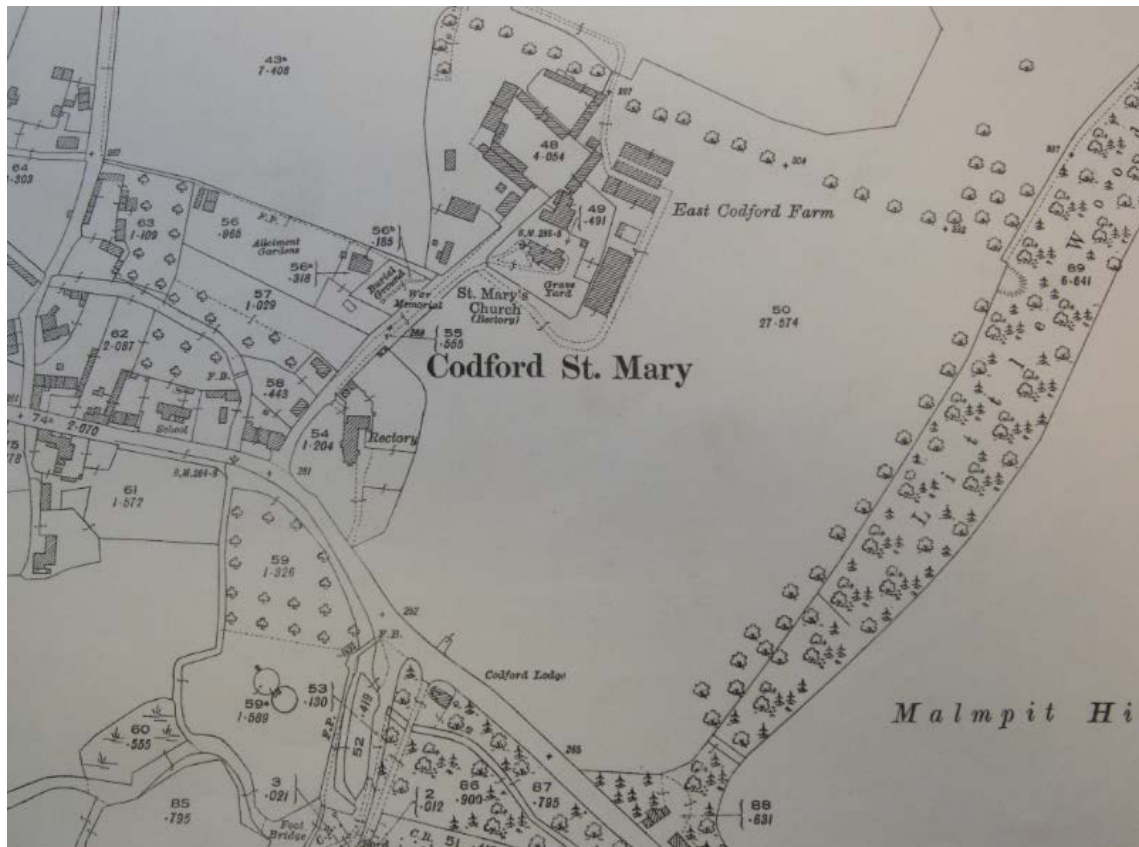
The claimed route is not shown. The copy held at WSHC has the word ‘camp’ and some buildings drawn on in pencil.



11.20 Second Edition Original Survey 1884 revised 1899



11.21 Edition of 1924 Survey 1884 revised 1923



The revision confirms the construction of part of the claimed route south of St Mary's Church. At this time the road linked Church Lane with new buildings to the east of East Codford Farm. The creation of this road seems to have altered the access through the farm

which had previously been north as a continuation of Church Lane. The line of the 'new' farm road coincides with the line of the former camp railway.

12.0 Considerations

12.1 Statutory Presumed Dedication – Highways Act 1980 Section 31

Section 31 of The Highways Act 1980 states:

31. Dedication of way as highway 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 any 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 of 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 have 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 or statutory purposes to dedicate a way over the land as a highway if the existence of a highway would be incompatible with those purposes.

NB The Growth and Infrastructure Act 2013 brought about alterations to s.31(6) extending the length of time that a deposit remains valid for from 10 years to 20 years.

Section 31(1) requires that the use by the public must have been as of right without interruption for a full period of 20 years.

The term 'as of right' is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*).

12.2 **The date when use was brought into question**

There are a number of ways a right of way may be brought into question. These include the erection and maintenance of appropriately worded signs (that make it clear the landowner has no intention to dedicate, or perhaps that use is by a revocable permission), verbal challenges that are widely known about or experienced, an application made under Schedule 14 of the 1981 Act or any action under s.31 (5) or (6) of the Highways Act 1980. Wiltshire Council only holds records relating to s.31(6) related to this route. A duly made deposit under s.31(6) HA80 is, 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. It is therefore an incontrovertible calling into question - for that is the purpose of it.

12.3 Section 31(6) HA80 Deposits

Wiltshire Council has received two deposits under s.31(6) of the HA80 for the land affected by the current claim.

i) Deposit of Statement and Plan at the scale of 1:10000 submitted by Mr J Stratton on 01 April 2003. The area shown to be in Mr Stratton's ownership was incorrect in so far as it included areas he did not and does not own. For example Church Lane, St Mary's Church and churchyard and the Commonwealth War Graves cemetery. This was not identified at the time of receipt and the deposit and plan was accepted by Wiltshire Council and from 2007 onwards has been on the Council's online Register of Deposits filed under Codford.

No Statutory Declaration was made and the Deposit expired in 2013.

12.4 It is considered that the 2003 deposit was duly made. There is no requirement for Wiltshire Council to check deposits and in any event it could not know the extent of a person's land holding. Accordingly it is considered that Mr Stratton's deposit may take effect where he is the landowner (i.e. has the capacity to dedicate) but cannot take effect in other areas.

12.5 ii) Deposit of Statement, Declaration and Plan at the scale of 1:25000 submitted by Fowler Fortescue on behalf of Mr Stratton on 10 February 2011. Again, the area shown to be in Mr Stratton's ownership exceeds that which he does own (i.e. it includes Church Lane, the Church and the Cemetery) and the map is at a scale that is not permissible under the Regulations. This was not identified at the time of receipt and the deposit and plan were placed on the Council's online Register of Deposits filed under the incorrect parish (Stockton) without any cross referencing to Codford.

12.6 Officers of Wiltshire Council, in 2011, failed to spot the error of map scale or the extent of the landholding and accepted the deposit as if it was Section 31(6) HA80 compliant. Accordingly the documents were held for public viewing with other s.31(6) deposits and they were added to the Council's online Register of Deposits which is available on the Council's website (as required by Sch 6 para 4 Countryside and Rights of Way Act 2000). Unfortunately they were misfiled under the Parish of Stockton and could not be found using the website search facility. The paper copies available for public viewing were also misfiled.

12.7 Though it is a logical step to say that it is clear that the maps, although incorrectly scaled, were not misleading in any respect (had they have been unclear as a result of the scale it is considered likely that officers would have noticed in 2011) owing to them being misfiled they were not available to the public in the way they should have been and even a well informed member of the public, if searching for them, would not have been able to find them. Indeed Mogers Drewett, acting for Mr Stratton, knowing they had been made had to request the Council to search for them as they could not find them; it took the officers of the Council some time to locate them.

12.8 Accordingly officers consider that the 2011 deposit cannot be considered to have the same effect as if it were duly made as it was not observable to the relevant audience.

12.9 The cases of *R (on the application of Godmanchester Town Council)(Appellants) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent)* and *R (on the application of Drain)(Appellant) v. Secretary of State for the Environment, food and Rural*

affairs (Respondent) were considered in the House of Lords in 2007 [2007] UKHL 28 and form the leading authority in this matter – the main issue in both appeals being the nature of the evidence which will be sufficient to demonstrate that there was no intention to dedicate.

12.10 Lord Hoffman considers at paragraph 32 “...”*intention” means what the relevant audience, namely the users of the way, would reasonably have understood the landowner’s intention to be”.*

12.11 And at paragraph 33 *“It should first be noted that section 31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It require “sufficient evidence” that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner’s consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J in Billson’s case) it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience.”*

12.12 Lord Neuberger at paragraph 79 considers the provisions of s.31(6) HA80:

First, the whole tenor of section 31, whether it is dealing with establishing presumed dedication (enjoyment as of right) or rebutting presumed dedication (without interruption and the provisions of subsections (3) to (6)) is directed towards observable actions from which presumptions may be made or rebutted. It is true that communications with the local authority under s. 31(5) and (6) are not with members of the public, but a local authority would be obliged to retain the documents there referred to, and to permit members of the public to inspect them.”

12.13 He further considers the purpose of s.31(6) at paragraph 91.

...As to section 31(6), it appears to be aimed primarily at large estates, and enables a landowner to protect himself, inter alia, in relation to potential rights of way which he may not even know are in the process of being acquired under section 31(1).”

12.14 Notwithstanding the failure of the 2011 deposit the deposit made in 2003 had the effect of calling the way into question. Although it expired in 2013 the only 20 year periods available for consideration pre-date 2003, hence the relevant period is taken to be 1983 to 2003.

12.15 **Signs and notices**

There are a number of notices and signs along this route. It is suggested that the oldest are the ones at the southern end of Military Road/Farm Road which say “East Codford Farm Private Road”. In their response to the consultation Mogers Drewett speculate that these have been in place since the 1970s when fencing that limited access at this junction was removed.

12.16 Mogers Drewett state that Church Lane was the main route for farm traffic and vehicles going to West County Fine Foods until the late 1990s when *“the vehicular use of Church Lane became so great that the owners strategically shifted their main farm buildings over to the east side, to be served by the farm road. The purpose of doing this was to enhance the safety for all users and the quiet enjoyment of Church Lane.In addition the farm*

business units grew significantly about the same time, meaning a large increase in all vehicular traffic on the farm road.”

- 12.17 It is therefore most likely that notices related to the prohibition of overnight parking and speed date from this period or the period when vehicular activity increased again as a result of the success of the Christmas Shop. The most recent notices are those closing the road to pedestrians and dog walkers and appear to be the ones referred to on UEFs and may have been the ones that Wiltshire Council received complaint of in 2012 and 2013.
- 12.18 It is considered that none of the signs and notices indicate that the owner of the land gave permission to use the routes or that he had no intention to dedicate the ways to the public. The signs saying “Private Road” are only visible when travelling the route in one direction and give insufficient information to anyone reading them to work out exactly what is their meaning. Roads that are privately owned or maintained may still carry public rights and the applicant, in their response dated 14 April 2016 quite correctly points this out and illustrates the point with a local example in Stockton (Stockton path no. 3) where signs of an identical style to those at Codford state “*Stockton Park Private Road*” and are sited opposite a sign indicating that the road is also a public footpath.
- 12.19 No signs have been erected that are considered sufficient to call into question the exercise of any public right before 2012.

12.15 The date for calling into question is therefore derived from the first Section 31(6) deposit and is hence taken as 2003 which means that the relevant 20 year period for the consideration of sec.31(1) HA 80 is 1983 to 2003.
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13.0 Is there a route or path and did the public use it?

13.1 Is there a route?

To satisfy section 31 (1) ‘a way of such a character’ the route must be definable. In *Oxfordshire County Council v Oxford City Council* [2004] Ch 253 Lightman J said that the true meaning and effect of the exception of “*a way of such character that use of it by the public could not give rise at common law to any presumption of dedication*” is that “*the user must be as a right of passage over a more or less defined route and not a mere or indefinite passing over land*”.

- 13.2 The claimed route is a wide fenced route with a tarmac surface leading between grass verges. To establish the width of the claimed route an average of the widths given by witnesses has been taken. The mean is 4.7 metres.

13.2 Officers are satisfied that the claimed route is a well defined and accessible route.
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14.0 Have the public used the route?

- 14.1 The evidence adduced with this application details use of the claimed route by the public for recreation, by the public for access to the church, by the public accessing East Farm Christmas shop and by farm vehicles and by delivery drivers associated with East Farm. Only some of this use would be qualifying use for the purposes of S.31 HA80.
- 14.2 The Military Road or Farm Road only entered general use some time after its construction, considered to be around 1944. The length of road south of the Church predates this by

perhaps a maximum of 30 years but did not link back to the main road (A.36), instead leading north to East Codford Farm.

- 14.3 No evidence has been adduced for use of the older route in the period between the wars but it is more likely than not that during this time the route would have been of greater utility to the landowners than the public.
- 14.4 Again, there is no evidence for the history of Military Road or Farm Road in the period immediately after the Second World War (though it is known that there was still military occupation in Stockton in 1950) but again, it is more likely that the route would have been of greater utility to the landowners than the public at that time, accordingly, and again on the balance of probabilities, it is thought that use of the route for access to East Codford Farm itself would have been by licence or invitation of the landowner and could not be considered as being 'as of right'.
- 14.5 Public use of the route that is not at the invitation or licence of the landowner can be considered as being 'as of right' (notwithstanding other considerations) and hence officers have discounted only evidence relating to use of the route for the purposes of the farm (including farm vehicles and vehicles visiting the Christmas Shop).
- 14.6 Responses from the Church Warden and the Priest in Charge of St Mary's Church both state that they had permission from the landowner to use both the Military Road/Farm Road and the road south of the church for parking but that this permission has now been revoked in respect of the Military Road (though not for the road south of the church). It is not clear from their responses whether permission extended to using the claimed routes for access or merely for parking. In any event although some witnesses have used the claimed route for the purpose of visiting the church it is clear that they also used the route for other purposes (cycling, walking etc) and their evidence has been included.
- 14.7 It is clear, not least by the evidence of the landowner attempting to stop public use, that the public have used the claimed route.

15.0 Whether use was for the full period of 20 years

Section 31(1) HA80 specifically requires that use must have been for a period of at least 20 years. The relevant period here is considered to be from 1983 to 2003.

- 15.1 The application demonstrates use by the public throughout the relevant period with 3 users having known and used the claimed route for the whole period. They are witnesses 4, 17 and 18 and their use has been on foot in 2 cases and additionally with a vehicle in 1. 5 users have used the claimed route during this period for 15 to 18 years. In total 14 witnesses have used the path during this period.
- 15.2 The main use of the claimed route is on foot though 7 people also drove the route (for the purposes of attending church) during this period and 6 cycled along it. 1 person used it for riding a horse or pony.
- 15.3 It is noted that the landowner only sought to stop use of the routes by the public on foot (signs erected c.2012 and still in place) and accordingly officers consider that this must have been the main use of the route – if the level of other uses had been sufficiently high, if he were consistent in his approach, he would have sought to prevent these also since it

is illogical to seek to prevent access on foot only while allowing cycles, horses, cars and motor bikes.

15.4 The Planning Inspectorate's Consistency Guidelines state at 5.15 that there is *"no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. Use should be by a sufficient number of people to show that it was use 'by public' and this may vary from case to case. Often the quantity of user evidence is less important in meeting these sufficiency tests than the quality (i.e. its cogency, honesty, accuracy, credibility and consistency with other evidence, etc)."*

15.5 At 5.20:

"In R (Lewis) v Redcar and Cleveland Borough Council UKSC 11 (03 March 2010) Lord Walker said that if the public is to acquire a right by prescription, they must bring home to the landowner that a right is being asserted against him. Lord Walker accepts the view of Lord Hoffman in Sunningwell that the English theory of prescription is concerned with how the matter would have appeared to the owner of the land or, if there was an absentee owner, to a reasonable owner who was on the spot. In R (Powell and Irani) v SSEFRA [2014] EWHC 4009 (Admin) Dove J confirmed that the judgements in Lewis were not authority for an additional test beyond the tripartite 'as of right' test. The judgements in Lewis confirm that the extent and quality of use should be sufficient to alert an observant owner to the fact that a public right is being asserted. The presumption of dedication arises from acquiescence in the use. Again in Redcar, in the Court of Appeal Dyson LJ refers to Hollins and Verney and the words of Lindley LJ.

"...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...the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance is intended."

15.6 Although the application does not adduce a large number of UEFs it is considered that they, and the additional responses given by many of the witnesses, provide a cogent and credible body of evidence relating to use of the route. All users record seeing other users. Additionally, it is noted that the actions of the landowner to prevent either the public acquiring rights (from 2003 onwards) or by considering that use was at such a level as to represent a nuisance to him that required stopping, suggests that the use was at a level that satisfied the requirements laid out in *Redcar* above.

15.7 There is a sufficiency of use on foot for the full relevant period. It is considered that taking into account the permissive element of use related to visiting the church that there is an insufficiency of other types of use for the full relevant period. If it were found that the Church did not have permission for access, or that a right had been acquired before permission was sought, then vehicular use may be of a sufficient level to be considered.

16.0 Whether use was interrupted

16.1 No physical interruptions to use have been recorded by any of the users. Mogers Drewett state that the south end of the farm road (Military Road) was fenced off up until the mid 1970s and that every time a combine went in or out of that gateway it was necessary to

move the fencing aside. There was also a gate here which was kept shut 'from time to time'. It is not clear why you have a gate and a fence.

16.2 This being the case it is likely that use of the claimed route including Military Road did not happen either at all, or with any great frequency, until the late 1970s. There is no record of any interruption of use of the road south of the Church.

16.3 While it is possible that the road was closed during the Foot and Mouth outbreak in 2001 this is considered to be a statutory interruption to use that it is not relevant to s.31(1).

16.3 There was no interruption to use in the period 1983 – 2003.

17.0 Whether use was as of right – without secrecy, force or permission

17.1 Secrecy

Use cannot be considered to be 'as of right' if it has been carried out in a covert manner or perhaps only in the hours of darkness.

17.2 Use of the claimed route has not been carried out in secret.

17.3 Force

Use cannot be considered to be 'as of right' if it has been carried out with the use of force. This may include the breaking of locks, cutting of wire or passing over, through or around an intentional blockage such as a locked gate.

17.4 Use of the claimed route has not been carried out with any force.

17.5 Permission

Use cannot be considered to be 'as of right' if it has been carried out with the permission of the landowner.

17.6 No users claim to have asked for permission. The Church claim to have had permission to park on the roads though are less clear about using them for through access to the church. Additionally the Council does not have any evidence of the specific terms of the permission relating to times and purposes. Permission sought or granted to assemble for, say, a procession is irrelevant to the acquisition of a public right to pass and re-pass.

17.7 The landowner does not claim to have granted the public permission to use the route though demonstrated that he believed there to be a revocable permission by the erection of notices stopping pedestrian use in c.2012. There is no evidence of any similar signs granting permission being in place before that time.

17.8 Notwithstanding that use of the claimed route with cars may have been by permission when related to Church visits there is no evidence of permission being sought or granted or implied for any other use.

18.0 The intention of the landowners and subjective belief

The intention of the landowners from 2003 onwards has clearly been that they have no intention to dedicate any rights of way over their land. They took reasonable steps to convey this to the public with a statement, map and statutory declaration made with Wiltshire Council who kept and displayed them in a manner consistent with the requirements of s.31(6) HA80. However, there is no evidence of any actions of the landowner before this time in trying to prevent the public acquiring rights and certainly no acts sufficiently overt to have been brought to the attention of people using the way. In his leading judgement in *Godmanchester* Lord Hoffman approved the obiter dicta of Denning LJ in *Fairey v Southampton City Council* [1956] who held “*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 people who use the path ... that he had no intention to dedicate.’*”

- 18.1 Additionally it does not matter what is in the mind of the user of the way or whether he believes it to be a public right of way or not; it is the nature of his actual use that is the consideration.

Lord Hoffman in *R v Oxfordshire CC Ex p. Sunningwell Parish Council* [2000] A.C. 335 at 356:

“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 that 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 a footpath will use 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 earlier 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.”

- 18.2 What matters in these cases is whether the use satisfies s.31(1) of the Highways Act 1980 and not the belief of the parties involved.

19.0 The common law test

In the absence of evidence of actual express dedication by a landowner, proof of a past dedication is inevitably achieved by looking at the character and extent of use of the way using the principles of “*nec clam, nec vi and nec precario*” i.e. ‘as of right’ and as discussed at section 17 of this report.

- 19.1 The common law test does not require a period of time to be satisfied (unlike the 20 years specified in s.31 Highways Act 1980) but use would be expected to be of such frequency so as for the owner of the land to be aware of the use and to demonstrate acceptance by the public.
- 19.2 The Planning Inspectorate’s Consistency Guidelines consider common law dedication at 5.49 and state:

“In Nicholson Dyson J commented on an assertion that Jaques was authority for the view that the quality of user required to found an inferred dedication was different from that required to found a statutory dedication. To bring the statutory presumption into play it was not necessary that the user should have been so notorious as to give rise to the presumption necessary for common law purposes, that the owner must have been aware of it and acquiesced in it. Dyson J stated “The relevant criteria so far as the quality of the user is concerned are the same in both cases. The use must be open, uninterrupted and as of right. The notoriety of the use is relevant for common law purposes in the sense that the more notorious it is, the more readily will deduction be inferred if the other conditions are satisfied. But notoriety is also relevant for the purpose of the statute, since the more notorious it is, the more difficult it will be for the owner to show that there was no intention to dedicate.”

- 19.3 To consider the application of a dedication at common law having occurred at Codford it remains necessary to consider periods of time before 2003 when the landowner clearly indicated his lack of intention to dedicate.

20.0 Conclusions on the statutory test

The application adduces evidence of the sort of relatively low levels of use that would be expected in a small community like Codford St Mary. The application route lies at the eastern extremity of the village, the village as a whole (including Codford St Peter), during the relevant period, had a population of between 669 and 821 (1981 – 683, 1991 – 669, 2001 – 821) and it is therefore considered that in these circumstances there is a sufficiency of evidence; it being cogent and consistent.

- 20.1 The evidence of use of the routes for recreational purposes is considered to be as of right, that is without secrecy, permission and force and covers the period between 1983 and 2003. Evidence of use by vehicles for the purposes of the farm has been discounted as being by licence and invitation of the landowner.
- 20.2 Evidence of use of the claimed route for assembly and parking has also been discounted as it these are not activities that may lead to the recording of a public right of way. Additionally it is stated by the Church that they have permission to use the claimed route for parking (though use of the Military Road/ Farm Road has now been stopped).
- 20.3 The majority of the UEFs detail use on foot with some users having driven, cycled and one having used a horse or pony. Although these are all activities that may lead to the acquisition of a higher right it is doubted that they were conducted at a sufficiently high level to support the claim. In any event the landowner, when seeking to prevent all public use of the claimed route in 2012 directed his signs only at pedestrians and dog walkers.
- 20.4 It is therefore considered that there being no evidence of interruption to use or lack of intention to dedicate during the period 1983 to 2003, that the application forms at least a reasonable allegation that a public right of way on foot has been acquired over the claimed route.

21.0 Conclusions on the common law test

It is apparent that no dedication at common law has occurred since 2003 since the landowner's intention not to dedicate has been clearly made out.

- 21.1 Lord Hoffman highlighted the difficulties associated with identifying a qualifying act for a dedication at common law in paragraph 6 of *Godmanchester* [2007] UKHL 28:

“As a matter of experience and common sense, however, dedication is not usually the most likely explanation for long user by the public, any more than a lost modern grant is the most likely explanation for long user of a private right of way. People do dedicate land as public highways, particularly in laying out building schemes. It is however hard to believe that many of the cartways, bridle paths and footpaths in rural areas owe their origin to a conscious act of dedication. Tolerance, good nature, ignorance or inertia on the part of the landowners over many years are more likely explanations...”

- 21.2 It appears that in the period leading up to 2003 that there was a greater tolerance to public access over the claimed route. However, for a right of way to be established at common law the use should be of such a level that it was clear a right was being asserted against the landowner. Since it is considered that the statutory test is met with regard to this application there is no need to consider whether a dedication at common law has occurred, however, in the event that the Council did have to look to common law it is likely that applicant would be asked whether there was any further evidence of use to adduce to demonstrate the greater notoriety of the use required for common law.

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

Sections 66 and 67 of NERCA 2006 had the effect of preventing the acquisition of rights for the public with mechanically propelled vehicles (MPVs) by use post 2006 (section 66) and of extinguishing any existing rights for MPVs where they were not recorded in the definitive map and statement on the 2nd May 2006 (but subject to certain exemptions)(section 67).

- 22.1 It is an essential tenet of the application of NERCA 2006 section 67 that it only applies to a route that was a public highway carrying a right for the public with MPVs before the 2nd May 2006. Hence if a route carried a public MPV right before that date (regardless of whether it was unrecorded, or recorded incorrectly as a footpath, bridleway or restricted byway or even on the highway record or List of Streets) it is necessary to consider the effect of NERCA 2006. Where the public MPV right has been lost the highest status the route may have is that of restricted byway. Only if the route was a former vehicular route and one of the NERCA exemptions applies may the route be recorded as a route for the public with MPVs (for example as a byway open to all traffic).
- 22.2 Accordingly, for the Codford application to succeed and for an Order to be made and confirmed recording a byway open to all traffic in the definitive map and statement, the application would need to not only show on the balance of probabilities that the public had acquired a vehicular right before the 2nd May 2006 and that the right had survived the effects of Section 67 of NERCA 2006.
- 22.3 Since it is considered that the application fails to adduce sufficient evidence to make a reasonable allegation that a public vehicular right has been acquired it is not necessary to further consider the effects of s.67 of NERCA 2006.

23.0 Legal and financial considerations and risk assessment

- 23.1 Failure to progress this case to determination within a year of application may result in the applicant seeking a direction from the Secretary of State. As Wiltshire Council prioritises

user based applications it is likely that the Council would be directed to make a determination. At the date of drafting this report the Council is three months into this one year period.

- 23.2 If Wiltshire Council refuses to make an order the applicant may lodge an appeal with the Secretary of State who will consider the evidence and may direct the Council to make the order. If the Council is directed to make an Order it must do so. In the case of this application, the legal test for making an Order is weaker than the test to confirm it and there is a risk in deciding not to make an Order that the decision may be overturned by the Secretary of State at the appeal stage and that the Council is directed to make an Order.
- 23.3 If the Council makes an Order or is directed to make an Order, and when made and advertised it receives objections which are duly made it must be forwarded to the Secretary of State for determination. Through their agent, the Planning Inspectorate (PINS), the order may be determined by way of written representations (no additional cost to the Council), a local hearing (cost £200 to £500) or a public inquiry (cost £3500 - £5000 if Wiltshire Council supports the order; around £300 if it does not). The Council may support the Order, object to it or where directed to make it, may take a neutral stance.
- 23.4 If the Council makes an Order to record a footpath over the claimed route the applicant may either seek judicial review of the Council's decision or more likely, make an objection to the Order. It is also likely that the landowner would also object to a footpath order. In the event objections are received the Council gets another opportunity to examine and consider the evidence (plus any adduced with the objections) before the Order is sent to the Planning Inspectorate.
- 23.5 Statute is clear as to the Council's duty in this matter and financial provision has been made to pursue this duty. It is considered unlikely that judicial review would be sought by any party if the statute is adhered to. Costs arising from judicial review of the Council's processes or decision making can be high (in the region of £20,000 to £50,000).

24.0 Equality impact

- 24.1 Consideration of the Equality Act 2010 is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981. If the path is recorded in the definitive map and statement it must be as used and accepted by the public though any further improvements to access could be pursued by negotiation with the landowner as appropriate.

25.0 Relationship to Council's business plan

- 25.1 Consideration of the Council's Business Plan is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981. However, Wiltshire Council is committed to 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.

26.0 Safeguarding considerations

- 26.1 Consideration of Safeguarding matters is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981.

27.0 Public Health Implications

27.1 Consideration of public health implications is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981.

28.0 Options to consider

- 28.1 i) To make an order under s.53(3)(b) or (c)(i) of the Wildlife and Countryside Act 1981 to record a footpath, bridleway, restricted byway or byway open to all traffic.
- ii) Not make an order under s.53(3)(b) or (c)(i) of the Wildlife and Countryside Act 1981 and to refuse the application.

29.0 Reasons for recommendation

Section 53(3)(b) requires that on the balance of probability a presumption is raised that the public have enjoyed a public right of way over the land for a set period of time.

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates. This section allows for the consideration of common law and the inclusion of historical evidence.

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

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

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

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

29.3 Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This allegation may only be defeated at the order making stage by incontrovertible evidence. Incontrovertible evidence is that contained within s.31(3)(4)(5) and (6) of the Highways Act 1980.

29.4 The deposited plan and statement made in 2003 provides incontrovertible evidence of the landowner's lack of intention to dedicate additional rights of way to the public and calls into question the public's right.

29.5 This being the case the 20 years period for the application of s.31(1) HA80 is 1983 to 2003 and the application makes a reasonable allegation that public rights on foot have been acquired during this period there being no incontrovertible evidence to the contrary.

30.0 Recommendation

That Wiltshire Council makes an Order under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record a public footpath over the claimed route and that the Order is confirmed if no objections or representations are received.

Sally Madgwick Rights of Way Officer – definitive map

16 March 2016

Appendix A Summary of user evidence

Witness Evidence Summary

DMMO Application 2016/01 – Byway Open to All Traffic at St Mary’s Church, Codford

Relevant Period: 1983 – 2003 *W=walking C = cycling R = riding D = driving*

NB – Byway Open to All Traffic is abbreviated to BOAT

Witness No	Name	Years of use	Years in relevant period	Believed status
1	Lionel G French	1995 – 2015	8 <i>W D</i>	BOAT
2	James Abel	2013 – 2015	0 <i>W</i>	BOAT
3	David J Delius	1988 – 2015	15 <i>W</i>	BOAT
4	Col (Retd) N G Quarrelle	1946- 2015	20 <i>W</i>	BOAT
5	Emma Abel	2013 – 2015	0 <i>W</i>	BOAT
6	David Chetwode Belchamber	2005 – 2015	0 <i>W</i>	BOAT
7	Diana Shaw	1998 – 2015	5 <i>WCD</i>	BOAT
8	Bernard Nicholls	2000 – 2012	3 <i>WC</i>	BOAT
9	David Hastings	1988 – 2015	15 <i>W</i>	BOAT
10	Elizabeth Richardson-Aitken	1986 – 2015	17 <i>WCD</i>	BOAT
11	David Cautley Shaw	1998 – 2016	5 <i>WCD</i>	BOAT
12	Helen Belchamber	2005 – 2015	0 <i>W</i>	BOAT
13	Sir William Mahon Bt	1999 – 2015	4 <i>W</i>	BOAT
14	Robert Richardson-Aitken	1985 – 2015	18 <i>WCD</i>	BOAT
15	Tabitha Butcher	1994 – 2016	9 <i>WRD</i>	BOAT
16	David Richardson – Aitken	1986 – 2008	17 <i>C</i>	BOAT
17	Romy Wyeth	1973 – 2016	20 <i>W</i>	BOAT
18	Maurice Cole	Born 1927 but excluding some years	20 <i>D</i>	BOAT

No.	How used	Other users	Nature of own use	Frequency of use	Signs and notices	Gates or stiles	Challenge	Was the owner or occupier aware	Additional comment
1	Walking and driving	Yes frequently walking and driving	Attending church and walking	2 to 3 times per week	'Private Road' at Salisbury Road end. Invite use for farm and shop	No	No	Most certainly. The estate office is within sight of route. Owner regularly acknowledges with a wave	
2	Walking	Walkers, churchgoers and many vehicles Oct to Dec using the shop	Dog walking	weekly	Yes near Salisbury Road entrance	No	No but we know 2 families that were turned back	Yes, the route was routinely used and could be seen from the house of the landowner	
3	Walking	Yes, other pedestrians	Attending church	About 5 times per year	'Private Road' and 'No public right of way' signs recently installed	No	Yes, confronted by the wife of the owner of the farm 15 May 2015	Yes, because its use has been accepted/tolerated until relatively recently	No permission needed as the way has been used by villagers for generations
4	Walking	Yes walkers	Visiting cemetery and church	Twice per year	Yes	No	No	Yes – the Church Warden had approached the landowner asking him to agree to the Royal British Legion forming up on the claimed route. Permission was declined.	The Commonwealth War Graves Commission was approached for comment regarding the use of the route but specific comment was not given

Witness no	How used	Other users	Nature of own use	Frequency of use	Signs and notices	Gates or stiles	Challenge	Was the owner or occupier aware	Additional Comment
5	Walking	Yes, walkers and vehicles visiting the shop	Dog walking and running	Monthly	Yes, three on the entrance off Salisbury Road	No	I know of two families who were stopped and turned back	Yes, it was common practice to use the road and people can be seen from the landowner's house	
6	Walking	Yes, walkers and people in cars	Exercise	Once or twice per week	Yes "Private Road" at farm entrances	No	No but has heard of other people who have been accosted	Yes, because people walking or running along the road have met and spoken to the landowner	
7	Walking, cycling and driving	Yes, walking and driving	Going to church to clean and arrange flowers	Twice per week	Yes, signs appeared a few years ago. Photos provided.	No	No, but has spoken to someone working at the church who has been	Yes, it's obvious and people use it all the time. Oct to Dec it is used for the Christmas shop	Has never needed permission as has always assumed it was ok
8	Walking and cycling	Yes other dog walkers daily	Recreation	Daily	Yes signs appeared in 2012 refusing walkers access though signs saying it was a Private Road and restricting lorries in place pre-2012	No	No, owner used to stop and chat though have heard others say they have been told off	Yes as they used to see me and others walking around on a regular basis	

Witness no	How used	Other users	Nature of own use	Frequency of use	Signs and notices	Gates or stiles	Challenge	Was the owner or occupier aware	Additional Comment
9	Walking	Yes frequently walkers and cars	Recreation	c.12 times per year	Yes 'private type signs' put up recently	No	No but am aware of a friend who was confronted and someone else had a note put on their car when parked	Yes, for 25 years this road has been used without hindrance. Also at Christmas time it is used by the public for access to the Christmas fair. Cars need to park on the route especially when there are large functions at the church.	
Page 82	Walking, cycling and driving a car	Yes, it has been in common use for years	'like I use any road'	2 or 3 times per week	'no overnight parking' sign. Private road sign at the Salisbury Road end	No	No	Yes, in the almost 30 years since I have lived here it was in common use for walkers, weddings, funerals and general access	"we have always got on well with the landowner and his family and we have used the roads frequently for parking"
11	Walking cycling and driving	Yes, walkers cyclists and drivers	Church duties and worship. Access to farm shop.	3 or 4 times per week	Hand made signs appeared about 2 years ago closing the road to pedestrians	No	Yes, verbally 'this is private property' and by clear 'keep out' signs	Yes because the prohibitive notices went up. He allows access to the Christmas shop. In the years when the farm shop operated this was one of two primary routes to it.	"yes; on church business or to use the Military Road as access to the landowner; Christmas shop used to be west Country Fine Foods and accessed by the public daily"

Witness no	How used	Other users	Nature of own use	Frequency of use	Signs and notices	Gates or stiles	Challenge	Was the owner or occupier aware	Additional Comment
12	Walking	Yes, walkers and visitors to the graveyard by car	Recreation and exercise	At least weekly	Not until notices were put up prohibiting all use	No	Know of people who have been accosted while visiting the church	Yes, it has been in use for as long as local people can remember both by vehicles and walkers. Only recently have the signs gone up.	
13	Walking	Yes walkers	Church and cemetery service	Frequently for walks once or twice annually for parades	Yes signs saying 'no overnight parking' and others as shown on plan.	No	Yes, my wife was accosted and told not to park. Individuals berated on several occasions	Yes, he often drove past when we were out walking.	Yes, instructed by the Stratton family to forbid parking for ANZAC Day 2015 (April 25 th) in both Church Lane (public right of way) and Military Road.
14	Walking, cycling, driving	Yes always used as a route to church and for parking	General living in the village	Mostly daily	Signs erected after a swimming pool was built in the garden. Various signs.	No	I know that several people have been stopped.	Yes, it has been common practice for village people and others to use the road for at least 30 yrs. The road is open to all for the Christmas shop	
15	Walked, ridden and driven	Yes	Normal part of village traffic arrangements	Throughout the duration of her life in village	Signs in the 'last few months'	-	No	-	
16	Cycled	Yes other cyclists	To avoid the main road	Regularly	-	-	-	Surprised as he knew Mr M Stratton and saw him often	As a child was encouraged to use the claimed route and forbidden from using main rd

Witness no	How used	Other users	Nature of own use	Frequency of use	Signs and notices	Gates or stiles	Challenge	Was the owner or occupier aware	Additional Comment
17	Walked	Walkers and drivers for church and farm shop	Recreational	Lives nearby	'Recent' signs prohibiting use of the roads	No	No	-	Has never been prevented or dissuaded and never felt the need to ask for permission
18	Driven in car	-	Access to the church	-	Recent signs prohibiting parking and access	-	-	-	Believes he has 'prescriptive rights' established over the last 70 years.

Widths: 4.5 m +, c.5 m, 4 to 5m,c.3 m, c.5 m, 11 – 12 ft, 5 to 6 m, 'normal road width', 3.5 – 5 m, 2 large vehicles wide, 5 to 6 m, 11 – 12 feet, c. 2,5 m, 'wide enough two vehicles to pass with ease'.

Witnesses 15, 16, 17 and 18 have not submitted UEFs but have written letters instead.

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Sally Madgwick, Rights of Way Officer

25th April 2016

Additional witnesses Codford (evidence submitted post Order)

APPENDIX 3

Witness No	Name	Years of use	How used	Comments
19	Rosie Thomas		Walking and cycling	Lived for “many years” in Codford. Her brother used it as well.
20	Karen Edwards	2002 – 2016	Walking	Walked the route regularly. Has no recollection of signage stating any intention of the landowner other than asking dog owners to clear up after their pets
21	Amelia Butcher	c.2000	Walking, cycling and riding	Lives on the corner of Church Lane and have used the Military Road for as long as she can remember. Learnt to ride her bike and ponies along here.
22	Victoria Restorick	1994 – 2016	Walking	Uses it when visiting her daughter and grand daughters
23	Lt Col P Andrews	1980s onwards	For Memorial parades and access to the farm shop in the 1980s and 1990s	
24	Richard Abbott	1988 – 1997	Regular dog walking and by car and bicycle to access the farm shop.	Never told the way was private or that use was unwelcome.
25	Rosemary Carley	2002 – 2012	Walked in a group twice a week	Walked freely with no restrictions
26	Chris Litherland	1983 – 1993	Drove a car	Lived at East Farm House and worked in Salisbury so used the route to get to work. Also recalls it being popular with walkers and dog walkers as well as vehicular for the farm shop
27	Sally Delius	2002 – 2016	Walked in a group	Part of a walking circuit. Only prevented from using the route in 2015.
28	Bernice Neville	2001 – 2012	Walked in a group	Part of a walking circuit. Unaware of any restrictions and were never approached with an objections

Relevant excerpts from submissions:

Mr M Cole 20.07.16

“I have parked on the small road below St Mary’s Church and exited out of the Army Road since the end of the 39 – 45 war, and have never had any comments from anybody for so doing”. “I can recall my own niece’s wedding in August 1976 but have no other dates as I have not kept a log of events attended. Never once have I been told that I cannot do this.”

Mrs E M Richardson – Aitken 21.07.16

I have lived in Church Lane, Codford St Mary for twenty nine years and ten months. For the most part my children were brought up here. Throughout that time we have been able to walk, drive and cycle without hindrance on all the public and farm roads in and around the village. My children learned to ride their bicycles on Church Lane and the Army Road and I regularly drove around what was known locally as 'The Circuit'."

Mr R Richardson –Aitken 12.07.16

"As I have stated previously I used the Military Road as a normal road using my motor car, commercial vehicles, bicycles and on foot often with my dog. At no stage was I ever challenged by anyone."

Mr D Shaw 25.07.16

"..in 1998 at which time it was a perfectly normal and regular activity to walk, cycle and drive up Church Lane, past St Mary's Church and down the Farm Road to the old A36 – and vice-versa. Our family (my wife and me, three children and five grand children) and our friends used it as a recreational route happily for the next dozen years or more..."

Mr B Nicholls 07.16

"My family and I arrived in Codford St Mary in 2000 while I was still serving with the Army. Our property is directly opposite Beanis Path and it became my early morning ritual to run, with my dog, along the path to St Mary's Cottage and then in front of St Mary's Church (point A to B as marked on the map). At this point I would turn into East Codford Farm on the farm road to the bridle path; returning the same way 45 minutes later." "On the weekends I would also cycle from A – C on the map, while on my way to the Great Ridge returning the same way."

Mrs D Shaw 25.07.16

"..having lived here since 1998 I have seen steady numbers of people from all walks of life using the road in the direction of East Farm via Church Lane, then past the church and down the concrete road to the Salisbury Road (Church lane – A – C on your plan). That is steady numbers of adults and children behaving perfectly responsibly and walking or cycling in the countryside." "Most importantly I have used the route up Church Lane, past the church and down the concrete road myself at least once a week from 1998 until being 'discouraged' to do so by the signs that appeared, if my memory serves me reasonably correctly, in 2009 or 2010..."

Mr D Richardson-Aitken 25.07.16

" In my previous letter I pointed out that my friends and I played, cycled and roller skated along the Military Road it was very much part of our country playground." "From 1968 until 2008 I lived in Church Lane so I feel that I am in a position to report on the use of the Military Road and the church front road and its uses for all types of traffic."

Mrs R Thomas 22.07.16

“..for many years I lived in Church Lane at Codford.” “I can assure you that my brother and I cycled, walked and roller skated on the road. We also walked freely over all the farmland around Codford and in so doing obtained a great love of nature and the countryside.” “In my experience the Military Road has always been open for all the people to enjoy.”

Ms K Edwards 27.07.16

“I have walked this pathway regularly since moving to Codford in 2002. This is the most accessible walk in our area...” “With regard to signs, I have absolutely no recollection of seeing any signage to state any intention of the landowner other than a notice asking dog owners to clear up after their pets.”

Ms A Easterbrook 18.07.16

“I am 19 years old and have lived in Codford all my life. I live on the corner of Church Lane and have used the Military Road past St Mary’s Church for as long as I can remember. I learnt to ride my bike as well as ponies and walk our dogs along this road.”

Ms V Restorick 21.07.16

“I have been using this road for the past 22 years, when staying with my daughter in Codford. During this time I have walked and continue to do so, with my two granddaughters and family to church and back down to the High Street on the old Military Road.”

Col P D D J Andrews 25.07.16

“As a member of the committee that organises the ANZAC Memorial Parade and Service held annually on ANAZAC Day in the Commonwealth War Graves Cemetery close to St Mary’s Church in Codford, I was concerned that the landowner had declared the Church Road and the military Road to be closed to all traffic. This caused great problems for those attending the event in 2015...”

Mr R Abbott 21.07.16

“I lived in Codford from 1988 until April 1997, when I moved out of the village. It was my habit to walk my dog along many routes throughout the village, the Army Road being one of the most popular.”

Mrs R Carley 22.07.16

“From 2002 until 2012 I lived in Codford..” “ During those ten years I walked with a small group on average twice a week on a circuit around the village. This route invariably took in the loop of what is known as the Military Road. In the early days we sometimes used the circuit through the farmyard opposite East Farm House until the owner gated this off.” “We walked freely and without any restrictions placed on us by the landowner.”

Mr C Litherland 22.07.16

“I lived in Codford for ten years from 1983 to 1993, during that time my home was at East Farm House at the end of Church Lane. I worked in Salisbury and invariably drove to my place of work using the road in front of St Mary’s Church and the road leading to the main village road which I knew to be called The

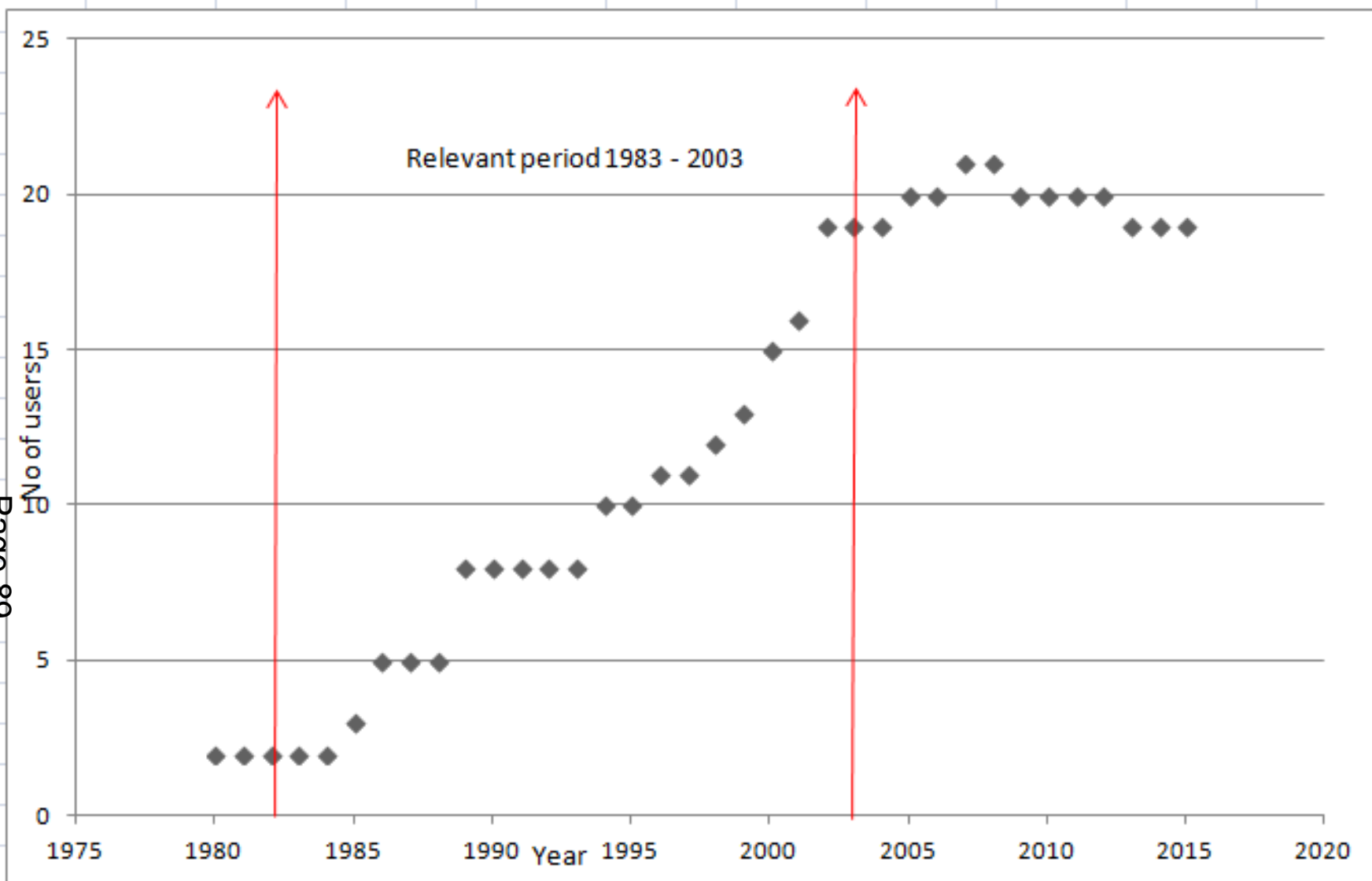
Army Road.” *“At this time I remember the Military Road was a busy thoroughfare used by farm traffic, delivery vans used by West Country Fine Foods and general vehicular movements by people going to the church and to the Farm Shop. The road was also used to park cars by people attending funerals and weddings. I also recall the roads known by me as ‘The Circuit’ was heavily used at the time of the ANZAC services held in the Commonwealth War Graves cemetery that is close to Church Lane.” “...the area was popular with walkers and those exercising their dogs...”*

Mrs S Delius 23.07.16

“I arrived in Codford in 2002, my husband had been living in the village since mid 1988. Shortly after my arrival I teamed up with a group of other middle-aged ladies who were interested in taking regular exercise by walking a reasonable distance within easy reach of our homes in the village.” “We used a circuit of almost two miles, which included what is known as the Military Road approaching St Mary’s Church, normally twice a week, unless weather conditions were very unfavourable for over ten years..”. “We were never prevented or discouraged from using that route by Mr Stratton or his employees.”

Mrs B Neville 21.07.16

“I belonged to a ladies fitness group from 2001 until approximately 2012. Once or twice a week we would walk a circuit around Codford. This invariably took in the loop of the Military Rd in front of St Mary’s Church to the High Street. This was especially so after the owner closed the gate into the yard opposite East farm House. We were unaware of any restrictions and never once did any member of the Stratton family approach us with any objections.”



NB Chart excludes users whose only use was by car

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CODFORD FP15

BUNDLE OF EVIDENCE
submitted on behalf of the Objectors
30th September 2016

1. Summary of Evidence

2. Witness Statements of

Mr Mike Read
Mr David Williams
Mr Josh Stratton
Mrs Jennifer Stratton
Mrs Sally Oliver (plus photos attached)
Mr Graham Carter
Mrs Julie Barnard
Mr Alan Bennett

3. Report and aerial photographs of Airphoto Services

Mogers Drewett, Solicitors
Wells, Somerset

Ref: MJCC



**MOGERS
DREWETT**

Re: Codford FP 15

Summary of Evidence

submitted by the Objectors 30th September 2016

1. Documents attached.
 - Witness statements of
 - Mr Mike Read
 - Mr David Williams
 - Mr Josh Stratton
 - Mrs Jennifer Stratton
 - Mrs Sally Oliver (plus photos attached)
 - Mr Graham Carter
 - Mrs Julie Barnard
 - Mr Alan Bennett
 - Report and aerial photographs of Airphoto Services
2. The main points of this evidence are as follows.
3. All our witnesses go back a long way in their recollection of the farm, the route, and its use or non-use by the public. The evidence of Mr Read, Mr Williams, Mr Stratton, and Mr Carter all cover the whole of the claim period. The other four witnesses cover part of it.
4. A consistent picture emerges: of the route being practically impassable until the changing of the fencing and gating arrangements, which now seems to have been 1989/1990.
5. From then on, the sides of the route were fenced, the animals which had grazed freely until then were kept off the route, and the difficult-to-open Wiltshire gates at C and B exchanged for more easily openable gates.
6. The evidence suggests no, or minimal, public use of the claimed route until that change was made.
7. Even after the change was made, when it had become physically easier to walk C-B, the evidence is that there was hardly any public use until the late 1990s/early 2000s.
8. All of that time, the Private Road signs were in place.
9. Our aerial photographs and the report of Airphoto services show that a difference is apparent on the route when comparing the 1984 pictures with the 1998 pictures (sadly no photographs have been found between those dates). In 1984, the pre-existing position is apparent, with the edges of B-C not fenced and a gate structure at B. By 1998, by contrast, the boundary edges of B-C have become fenced. This does not help to fix the date of the change of the fencing arrangements, but it does confirm and substantiate our evidence that the change was made at some point after 1984.
10. There is further photographic evidence of a gate at 'B' and a lack of fencing in the 1980s (see the statement and exhibits of Sally Oliver). Overall, the photographic

evidence is clear in establishing a barrier at 'B', and a lack of fencing of the route for much of the relevant period. The natural conclusion is that, in an area where animals are grazed, there must have been a barrier at 'C', as asserted by the landowner's witnesses, inter alia to prevent escape of livestock.

11. Our witnesses have seen much public use of Church Lane, and the Beanis Path, but by contrast hardly any public use of the farm road, and certainly not until about sixteen years ago.
12. The evidence adduced by the original set of Claimants' witnesses was insufficient. The Claimants were then encouraged to see if any more witnesses could be found, and they came up with two more, one of whom Mr Cole has since died (and was never seen on the route anyway).
13. The other, Mrs R Wyeth, has according to our witnesses never been seen on the claimed route, by contrast with her observed use of the Beanis Path.
14. The evidence now submitted was not with the Council when the Order was made. For the Order to be confirmed, the test is that the case be made out on the balance of probabilities. In light of this new evidence, we believe that the existence of a public right of way cannot even be reasonably alleged and certainly not asserted on the balance of probabilities.
15. In summary:

- (i) The landowner witness evidence that gates existed across the way during the relevant period is cogent and powerful. It is consistent and supported by aerial and other photographs. A gate is visible in photos at 'B' during the relevant period. No fencing off of the route from the field is apparent in the early part of the period which strongly supports the existence of a gate at 'C'. This objective evidence confirms the landowner witness evidence of gates across the way that would have made the claimed use of the route very difficult if not impossible and also acted to bring into question any public rights/ evidence of a continuing lack of intention to dedicate.

In addition, the failure of any of the Claimant's witnesses to remember any structures across the route raises significant doubts as to the accuracy of their evidence. When the evidence is viewed objectively, it is likely that the memory of witnesses has been significantly coloured by use in recent years i.e. recent use has been assumed to have occurred in earlier years.

- (ii) The level of user evidence is simply insufficient. This was recognised originally by the Officer, it being two extra witnesses that tipped the balance in favour of making the Order on the basis of a reasonable allegation. For confirmation of the Order, the case must be made out to a higher evidence standard: the balance of probabilities. Given the number and quality of the evidence, satisfaction of this test does not seem likely or even possible, particularly as one of the 'new' witnesses has died.
- (iii) It does not appear to be disputed that Private Road signs have been in situ throughout the relevant period. The argument postulated at 12.18 of the Council Report that these were not necessarily visible to walkers is not sustainable; inter alia all the witnesses are local and would have had to pass these signs, which are clearly visible from the main road, on a regular basis in their normal everyday lives going in and out of the village.

- (iv) In interpreting the meaning of the signs and whether they challenged any use, a normal objective test is applied, as to what a reasonable person would think they meant. It does not matter what individual users may have thought the signs meant (see for example R (Burrows) v RBWM and others [2014] EWHC 389 (Admin)).
 - (v) Applying that test, it is unlawful simply to assume that the use of the term 'PRIVATE ROAD' can only apply to vehicular rights because of the use of such signs in other areas (as appears to be the approach in para. 12.18 of the Report). As a further simple point, in contrast to the Stockton Park Private Road, cited in para. 12.18 and to the situation in Burrows v SSEFRA [2004] EWHC 132 (Admin) (often cited, incorrectly, as supporting private road signs only applying to vehicular rights), in the current setting there are no pre-existing public footpath rights on the route. There is nothing in this case, therefore, which would prevent the ordinary user from interpreting the PRIVATE ROAD sign as referring to **all** public rights.
 - (vi) Indeed, in a recent village green case that turned on the interpretation of signs, highly experienced leading counsel Vivian Chapman QC was of the view that normally PRIVATE PROPERTY means, to the ordinary person, that the public have no right to be on the land. His interpretation was approved in the High Court (see para. 8 and 22 in R (Burrows) v RBWM).
 - (vii) In this case the track is physically a road and so when referring to the private nature of the land it is not surprising that 'Private Road' is the term used. There are no pre-existing public rights which would limit the possible application of the word PRIVATE; in short, there is nothing upon which one could argue objectively that a member of the public would reasonably assume the private nature of the land only applied to vehicular rights.
 - (viii) This is exemplified by the rather strange claim that the PRIVATE ROAD sign could just apply to maintenance (see para. 12.18 of the Report); why would a landowner pay to erect a sign just to tell the public that a route is privately maintained when it is of no import to the public. Objectively a landowner erects signs to protect his rights by informing the public that the land, whether or not it is a road, is private.
 - (ix) Overall, when viewed objectively there is no basis to assume that the signs were limited in their application. The legal effect of the signs was to prevent any rights being acquired by the public throughout the relevant period and before, by challenging any user and by showing a continuing lack of intention to dedicate.
16. Given the new evidence, it is to be hoped that the officer's recommendation to the committee will now be that the Council should not support confirmation of the Order, and that PINS be informed accordingly. Any one of the points above leads to this conclusion. In combination the argument against supporting the Order is particularly powerful.
17. If the Council does propose to support the Order, it should make clear the basis upon which it does so in light of the 'new' evidence and submissions now submitted by the landowner.

Statement of Mr Mike Read
(of 4 Ox Yard, Codford)

1. I was born in 1942 and we first moved to Codford in 1952. I went to school in the village. My father was a Policeman.
2. I have a long recollection of East Farm, Codford. As a boy I used to go up to the farm because I knew some of the farm workers there.
3. I started working for the Strattons in 1958 full time, and have carried on doing so until retirement (although I still do some work for them from time to time even now).
4. My clear recollection of the part of the farm through which the claimed route runs is of a field of huts. It was a former army camp, going back to World War II and maybe even World War I. The claimed route was just the road through the camp. It had no name as far as I was concerned.
5. The general public did not walk along the camp road. The locals would not have had any need to walk along it, anyway. This is because the farm is on the eastern side of the village and if anyone in the village wanted to go to the church they would have walked up Church Lane or along the Beanis Path. These two routes approach the farm and church from the village side. It would have been out of the way for any of the villagers to have gone beyond Church Lane and then up the camp road to go to church. In those days the road through the village was the main A36 road as there was no bypass. If you were walking to the church you would want to get off that road as soon as you could, and go either along the Beanis Path or up Church Lane. You would not have wanted to walk on to the southern end of the camp road.
6. When I started work at the Strattons in 1958 I was a general farm worker and tractor driver but by the mid 1980s I had become Foreman. This was a senior and responsible position and it is true to say that not a lot happened on the farm without me knowing it.
7. That is why I feel confident in saying that there was no public access in those days apart from people walking to church which as I say was up Church Lane, or along the Beanis Path.
8. Anyway, the camp road was fenced off at the top and bottom (by which I mean near point B and at point C). This is because the camp field itself (through which the camp road runs) was open to stock, and the cattle ran freely over all parts of the old camp ground. You would not normally have wanted to walk along the camp road through the cattle especially when other routes were available. The fencing was secured at both sides, and in the middle of the road, by fence posts being anchored in a concrete base.
9. It is the case that at a later date the fencing at the top and bottom was removed, and the camp road was fenced either side, thus penning the stock into the fields on either side of the camp road. It is difficult to be precise when that happened. I know that that side-fencing job was done by David Williams and Alan Bennett. I would estimate that the time when the side-fencing was done was at some time in the mid 1980s or perhaps a bit later. When the fencing across the camp road was removed (at the same time that the side-fencing was done) the fence across the road was replaced by a gate. It was a black metal gate and the post for the gate is still there.
10. The Submission which the Strattons put in suggested it was in the 1970s that the fencing was changed. I do not think that is right, and I wish to clarify it. My evidence is that it was not in the 1970s. I know this from my own recollection as Foreman, and also

because I know that David Williams helped do the fencing work, and he didn't start work with the Strattons until later (1980, I believe). It was definitely the mid 1980s that the fencing was changed, and perhaps even later than that.

11. By that time there had long been in existence Private Road signs at the south end of the camp road, so anybody wanting to walk northwards from the area of the Lodge, up the camp road would have been aware of the Private Road signs. I believe the purpose of those signs was to stop the public coming in.

12. Those private road signs would also have been a familiar sight to any of the villagers driving past. That is the route to Salisbury and the A303. The private road signs have been in place at the south end of the camp road since the 1970s. They were put in at the same time as the private road signs put in at the western entrance to the farm, off the Chitterne Road. So anybody driving on the Chitterne Road past the western entrance, or driving on the old A36 past the entrance to camp road, would since the 1970s have been aware that both entrances were private roads.

13. The surface of the camp road has always in my recollection been tarmacked. It was originally put in I believe for army use so it will have been a heavy road. I presume that the army put in the original tarmac but I know that the farm has maintained it from time to time since by repair, and filling of potholes.

14. From my observation I would say that there was a noticeable increase in the amount of public walking on the camp road, in the very late 1990s/early 2000s. Before then there was hardly any use of it and certainly before the camp road was fenced either side I would have said there was very little if any public walking on the camp road.

15. As to use for Armistice Day and ANZAC Day services at the church and at the cemetery, I would say that people have always approached from Church Lane and/or the Beanis Path. The forming up for the service and parade would have been either in Church Lane or in the lane running between Church Lane and the camp road immediately outside the church. Any marching would certainly have been up Church Lane. I don't recall ever having seen the British Legion marching or even walking on the camp road. They just did not march up from the Lodge, and anyway the pattern of services in our group of parishes is such that the Armistice Day services take place on a rota basis, with the service being at Codford only every four or five years, so the use was intermittent. In respect of the ANZAC Day commemoration in the cemetery which is on the side of the Beanis Path, those visiting that cemetery would invariably have used the Beanis Path or Church Lane and not the camp road.

16. I have recently seen a statement put in by Mrs Wyeth and I have the following comments to make. I have known her ever since she came to live in Codford, which was about thirty years ago. She and we live opposite each other. I have never seen her walking on the camp road, whether with or without a party of people. I have seen her walking along the Beanis Path from time to time but not along any part of the claimed route. As to Mr Cole, I have never seen him walking any part of the claimed route, or indeed anywhere.

17. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

Dated ..

Statement of Mr David Williams
(of 2 Bridge House Codford)

1. I was born in Chitterne in 1957 and came to Codford and started work with the Strattons in about 1980. I was a tractor driver and dealing with the dairy herd.
2. In the old days one never encountered a member of the public on the farm.
3. The farm road or camp road was always fenced at the south end. In the 1980s there was no fencing on either side of the farm road which is why we had to keep it secure at top and bottom, otherwise the cattle would have got out on to the A36. Codford did not have a bypass then.
4. In those days, we always used Church Lane with vehicles and tractors, because of the cattle which roamed freely across the camp fields.
5. Then, at some point in or about the mid/late 1980s, we fenced off either side of the camp road to keep the cattle in. I remember being involved in that fencing job, together with Alan Bennett.
6. Before those fences went up either side of the camp road, the fence at the road end was always across the road even during the day time, and also by the church near point B. After the re-fencing was done, the fence across the road at point C was replaced by a gate, and that tended to be kept shut too.
7. I have noticed an increase in the amount of dog walking on the camp road in the last fifteen years or so. This is by contrast with the position in the 1990s when I never noticed any public use. I was there and around on the farm on a daily basis.
8. There were also signs at the Lodge end of the camp road saying Private Road. Those signs were always there from the 1970s. I always thought it meant that there should be no access for the public up the camp road.
9. I don't remember ever having seen Mrs Wyeth or Mr Cole walking the route. Nor do I ever remember seeing any cyclists or horse riders.
10. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed ..

Dated

Statement of Mr Josh Stratton
(of East Farm, Codford)

1. My family owns and runs East Farm Codford and Manor Farm Stockton. I was born in Stockton in 1968, and I have lived my whole life in these two villages. Apart from the time when I was away at boarding school and university, I have been around these two villages all my life. Throughout school holidays, I went to the farm at Codford most days, where I rode ponies and horses, and worked on the farm. I took on full time running of the farm in 1991, and I moved from Stockton to East Farm House, in Church Lane, in 1994.

2. I remember all through my childhood accessing the farm yard up Church Lane. My father's office was on the corner of the lane by the stables. I never accessed the farm through the current farm road, up the Camp field, because this was gated.

3. When I took on the farm in 1991, the main farm access was along the Camp road, which was newly fenced off from the surrounding fields.

4. I remember occasional walkers along this road after this time, all of whom were people I knew well from the village. Usage of the road by walkers increased over time, and there came a time when many of the walkers were unknown to me. Litter dropping and dog mess became prevalent, and, with the increase in farm and business traffic, there were near misses between vehicles and people.

5. As a result, in 2012, I decided to stop all pedestrian access along the private farm roads, and I did this by means of signage on the three access points (off Church Lane by Beanis Path, by Codford Lodge, and off the Chitterne road). Virtually all walkers immediately stopped using it, and there was a general understanding of the reasons behind this.

6. The original Private Road signs, which have been in place since the early 1970s, at point C at the south end of the farm road, and also on the west side of the farm at the dairy entrance off the Chitterne Road, were put in by my father to make it plain that these routes were private. We didn't want the public using the farm road or the road in to the back of the farmyard, at all. We didn't want public rights arising on any part of our farm. I understand that it is now being suggested that the Private Road signs were only aimed at preventing vehicles. That would be incorrect: they were aimed at preventing any type of public use.

7. I make the following comments on the Claimants' witness evidence:

- 10.3. Bob Richardson-Aitken I have always lived in and around the area, and I have used the farmyard all my life. I know considerably more about the area than R-A. The closure of our private road to local walkers has gone largely unnoticed by most of the village, except for a small minority who do not understand the wishes of a private landowner. R-A does not understand that the increasing intensity of use of the road as result of the success of our business enterprises is a significant factor in the road closure to walkers – the risk is very real, particularly where increasing numbers of walkers are unknown to us, and where the blame culture (no win, no fee etc) would result in an immediate claim against us in the event of an accident, irrespective of the cause.
- 10.4 Mrs Lorimer's comments show that we have developed a sensible and amicable arrangement with St Mary's Church. Increasingly people drive to church rather than walking, and they had developed a habit of spreading out down our farm road, often blocking it. This is now sensibly managed, and works well for the community as a whole. We have been asked to permit parking at the church, which we have readily granted (but verbally only: there is nothing in writing).
- 10.5 Rev Morley's comments echo Mrs Lorimer's, and show the good relationship we have with the church

- 10.6 Mr Neville You will see that as landowners, when required we give permission for village and community gatherings
- 10.8 Bob Richardson-Aitken He has clearly stated that we helped with his daughter's wedding. We will always help where possible, e.g. a large funeral in the summer of 2016. He also comments on the volume of traffic as a result of the success of our business operations. I'm sure he is delighted that we took the forward thinking step of creating a new farm access in 1990 in order to divert traffic away from Church Lane, where he lives, thereby considerably increasing his quality of life and property price. This was not done because of a development to our garden – the dates don't fit.
- 10.9 Mrs Wyeth Mrs Wyeth is well known in the community, and has an excellent knowledge of local history. However in this case her memory lets her down. The farm road was not opened to farm traffic until 1990, and she has never been seen on it by any of the people who work in this area. Mrs Wyeth is not a church goer, and would not have seen the church parking arrangements. I have never seen her walking on the farm road, whether on her own or taking groups of walkers.
- 10.10 Mr Cole He has accessed the church in his car. This has nothing to do with walking along the route on non-church business
- 10.11 Bob Richardson-Aitken His comments regarding church permissions are clearly wrong. For instance, on Armistice Day 2015 the church asked for permission to line up on the farm road, this permission was granted.
- 10.12 David Richardson-Aitken He is obviously unaware that we give permission on occasions for church use of this area
- 10.13 Ms Butcher I have seen her, but I've never seen her with ponies and bikes
- 10.14 Codford Residents Group It is highly unlikely that my employees or tenants do not wish to show their support for the opening of a footpath. When approached in order to negate the footpath, many have given statements which they will back up in an appeal. They are unlikely to be perjuring themselves.
- 12.6 Deposit of Statement. These were made by me on 2003 and 2011. The intention of these was and is to show exactly where the rights of way on our land are located, and what sort of rights of way they are. The council filed our 2011 deposit in Stockton parish, understandably because the land in question covers this parish as well as Codford and Chitterne.
- 12.14 The council understand my point in 12.6 above – my intention with the deposit is to show clearly our rights of way, and it clearly shows that the farm road is not a right of way. See also 19.3
- 16.3 This is incorrect. Up until 1989, the farm road was not accessible – it was gated off, and part of a large field

8. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed ...

Dated

Statement of Mrs Jennifer Stratton
(of East Farm House, Codford)

1. I moved to East Farm House, Codford in March 1998 where I have lived permanently since.
2. When I first lived at East Farm all traffic except for the heavy farm machinery used Church Lane and accessed the farm yard directly from there. A few years after when our children were babies, we made a decision because of the volume of vans, lorries and cars using Church Lane to close this access to the farm yard and to put this traffic along the farm road, hence making Church Lane both safer and more peaceful.
3. I have only ever used the farm road in a vehicle, we never allowed our children to use it on bikes, walking or ponies for their own safety due to usage of the farm road by farm machinery and other such vehicles.
4. During that time (say in the late 90s/early 2000s) I used to see one or two familiar faces from the village walking the farm road. Visitors to the church always used Church Lane either walking or driving. I have not seen anyone using the farm road with their ponies; nor did I see the general public walking the farm road.
5. In the last, say, ten years the use of the farm road has become more frequent by people unknown to us. We have experienced strangers watching our children when they are in the fields along the farm road, taking photos of them, leaving mess, verbal abuse, intentional dangerous driving, etc. On more than one occasion our ponies have been let out of the field and have had to be rescued. We have also had continuous feeding of our animals, even though we have tried using signs to stop this and on one occasion such significant overfeeding of apples that we nearly lost a pony due to illness.

Comments on statements

10.3 Mr Richardson-Aitken states that the busiest time for the farm road is during November and December and during the period when grain is collected. The farm road is unfortunately busy all year round, from September through to January there are shoot lorries and vehicles passing several times a day, during harvest from July through to September, which is actually our busiest time, tractors and trailers move quickly along the drive all day until sometimes 11pm at night hauling grain from the combine. There is of course the general running of the farm and other business here which bring with them traffic of large vehicles, vans and cars seven days a week. The Christmas business generates significant traffic of cars during November and December.

We do not employ anyone who is on the staff of the Village Hall and actually only employ 10 people who live in the village. I suggest that the statement is very much assumed.

It is not true to say that Josh Stratton requested no vehicles to be parked in Church Lane, our request was that the vehicles do not block the road therefore making it impossible for us to leave our home, as has happened in the past.

The closure of this road contrary to Mr Richard-Aitken's statement does not stop anyone from using this road for farm business and the church is still very much accessible for worship from Church Lane as it always has been.

10.6 Mr Hastings Neville

In the past permission was granted on occasion to use the farm yard for parking, however as this was not managed correctly and regularly resulted in the yard and farm drive being blocked for use by tractors and farm machinery (usually during harvest time)

it was not possible to continue with this. It should be remembered that the this is a busy commercial farm.

10.8 Mr Richardson-Aitken

A1. As stated by Mr Richardson-Aitken, permission was granted for his daughter to using parking and to hold her wedding in one our barns at Stockton.

10.9 Romy Wyeth

In all my years at East Farm I can say without doubt that I have never seen Romy Wyeth use the farm roador even visit the church.

10.11 Mr Richardson-Aitken

Mr Richardson-Aitken knows very well that Church Lane was blocked from being used as access to the farm by any vehicle some 13 years ago when a business called West Country Fine Foods was at the height of its trading period. I can recall that in a conversation with both Mr & Mrs Richardson-Aitken they thanked me for taking the action to close the access as it had made this road much more peaceful for them.

It is incorrect of Mr Richardson-Aitken to state that he has lived here for longer than my husband Josh Stratton, who was born in the farm house at Stockton in 1968 and visited the yard at East Farm nearly every day of his life, having worked there since the age of 13.

10.13 Tabitha Butcher, I have never seen any children being taught to ride bikes and certainly not to ride ponies along this road.

11. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

Dated 20.1.16

Statement of Sally Oliver
Of 64 Shrewton Road, Chitterne, Warminster

1. I worked at East Farm, Codford as groom, between 1980 and approximately 1988.
2. I do not recall that the farm road was fenced along the sides of it (as it is now), at least not in the years 1980-88. There were cows and other livestock kept in the field on the east side of the farm road. Because it was not fenced in, the animals could be on the farm road. There was I believe a barrier at either end to stop the stock getting out.
3. I have found some old photographs, copies of which are attached. The first two pictures show a girl (Karen) with a Boxer dog, and another smaller girl (who was Cerys Jones) with a Lurcher dog. Those two pictures were taken approximately 1986. It will be seen that there was then no post-and-rail fencing on either side of the farm road as there is now.
4. The third photograph is of me on my horse Duncan taken in approximately 1988. It will be seen that the gate at B was in place but open and that there was no post-and-rail fence in view. I believe that this was taken in approximately 1988, so the post-and-rail fencing that is there now cannot have been put up by then.
5. The fourth photograph is of me with another horse called Abba in about 1990 and it will be seen that the post-and-rail fence was then in place. It looks pretty well new at that time.
6. It appears to me that the present post-and-rail fencing was put up in 1989/90.
7. I recall an annual BHS event, which was held for several consecutive years, on the right hand side of the farm road. I recall that visitors to that event used to drive in and park on the right hand side. They could not have done this had there been a fence there.
8. I moved house in 1988 and I am certain that the fencing along either side of the farm road was not then in place.
9. I never ever saw anybody walking on the farm road in the years 1980-1988. I have never seen any groups of walkers.
10. During those years that I worked there, I was frequently in the church paddock with the horses and ponies. We set up some jumps in that paddock which the children used to use. In my experience, whenever you have jumps and horses in a field in this way, people tend to stop and look as they are walking by. I cannot remember a single person walking the farm road in that time. I believe that I would have remembered, had there been any use by the public of the farm road.

11. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

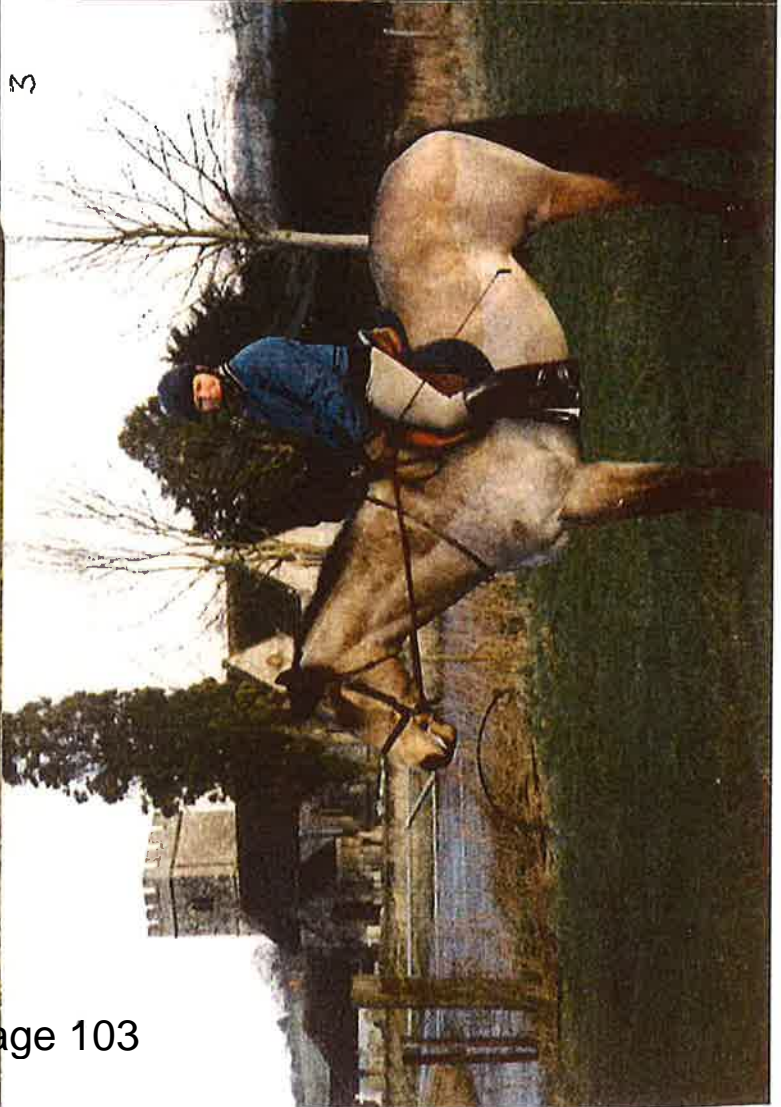
Dated 20 September 2016



1



2



3



4

Statement of Mr Graham Carter
(of Junipers, Hillside, Codford)

1. My employment at East Farm, Codford goes back to 1970, when I started working for the Stratton family on the farm. I was then 16 years old. I was born in 1954. My father had worked there before me as a herdsman, and I have worked on the farm all of my life ever since and I am still working there now.
2. My parents lived at Ox Yard. I know Mrs Wyeth and have known her for many years. I have never seen her walk on the farm road although I have seen her walking on the Beanis path.
3. I was based at East Farm, living with my parents until the age of 22 (1976) when I got married and moved in to my own house within the village.
4. Because of my work on the farm I have been on or around the claimed route on a daily basis from the 1970s until now.
5. At point C, that is at the entrance on to the farm road from the old A36, I have a clear recollection of what I call a Hampshire gate (some people call it a Wiltshire gate), chained at each end and with a concrete block in the middle. It was a real hassle to open and close it. The only time it was ever opened was to accommodate combine harvesters at harvest time or when we were moving stock across the A36.
6. It was practically impossible to walk up the farm road north of C while the Hampshire gate was in place. There was another similar gate at B. The effect of these two barriers was to allow livestock to be free in the fields either side of the farm road and sometimes on the farm road itself.
7. I never saw anybody walk the claimed route in those days.
8. Things changed in the late 1980s. I would have said it was in 1988 when the post-and-rail fence was put along the sides of the farm road, and the gate at both ends put in in substitution for the Hampshire gate. I cannot say exactly when this happened but it would have been in the region of 1988/89.
9. I have hardly ever seen anybody walking the claimed route although I have been there on a daily basis for over forty years. I have seen lots of people walking the Beanis path and of course on Church Lane, but only rarely on this route. Perhaps over the last ten years or so some dog-walkers have come through, but I can definitely say that in the years before the fencing and gating changes in 1988/89 nobody did.
10. As to the Private Road sign at the south end, I recall this being put in in or about ~~[please insert date]~~. 1975

11. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed .

Dated *G.C.* / *1* / *1975*

Statement of Mrs Julie Barnard
(of St Mary's Cottage, East Farm, Codford)

1. I first came to East Farm in 1988. I am married to Kevin Barnard who is the gamekeeper on the farm. We first moved into a bungalow in the farmyard and then in 1994 we moved to St Mary's Cottage which is just by point A on the Order plan. Our main access would have been up Church Lane and never on the farm road.

2. The sign at the south end of farm road at point C saying private road has been there all the time I remember it.

3. I know Mrs Wyeth but I have never seen her on this claimed route, whether alone or with a group.

4. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed ..

Dated *Julie Barnard*

Statement of Mr Alan Bennett
of 22 Stockton, Warminster

1. I first came to work at East Farm, Codford in 1942 at the age of 14. I worked on the farm full time uninterrupted from then until 1993.

2. I remember the changes that were made to the farm road in the late 1980s. In particular I was involved in putting in a new gate just to the south of point B on the Order plan. I have been to the site and have checked that the original footings of the gate posts are still there and visible, and they are. There is also an obvious place in the middle of the road where the bolt-hole for the middle division of the gate has since been tarmacked over.

3. This gate had been put in by me in the late 1980s in place of the barrier that had been there until then, for many years, which had been a barbed wire Wiltshire gate. By this I mean one of those ones which you could roll back with some difficulty but which when closed would be rolled out and fixed with a chain at both ends, and with the middle pole secured in to a concrete block in the middle of the road. The purpose of that Wiltshire gate at B (I believe that there must also have been one at point C) was to keep the animals penned in.

4. Because there had been no fencing along each side of the farm road until that time, the livestock were roaming free on both sides of the farm road and on the road itself. It had been necessary to put barriers at B to prevent the animals going further north from B and also to put a barrier at C to prevent them getting out on to the old A36.

5. I remember that about that time in the late 1980s we also put in the post-and-rail fence along the edge of the farm road.

6. I can't remember seeing the public walking along the farm road. There may have been the very occasional dog walker but I cannot say who or when. I remember Mr Norman Bennett who lived at the Lodge and had a poodle. He used to walk along there quite a lot but that was late on after the road had been fenced in by which time the cows were not on the track. There may have been others about the same period but I cannot remember their names. I am told that Mrs Wyeth and Mr Cole have said that they were on this path but I never saw them there.

7. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

Dated

1984 2 nd April	ADA/177	229 & 230	Historic England stereo pair
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1984 21 st April	OS/84035	5 & 6	Historic England stereo pair
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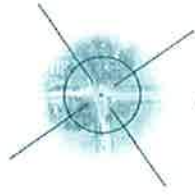
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84 035

1998 16th May

OS/98574

391 &
392Historic England
stereo pair



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EAST FARM, CODFORD ST MARY, WILTSHIRE

Assessment of aerial photographs in regard to a boundary at the site, in 1984 and 1998

EVIDENCE PRESENTED BY CHRISTINE DIANE COX MA MCIFA FSA

[Document 2, 216 07 02 - 2, ANNEXE with original aerial photographs, presented separately]

September 2016

Air Photo Services Ltd

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Directors Chris Cox and Rog Palmer, Associate David W Lang. Company No. 5248188 Registered Office The Shaftesbury Centre SN2 2AZ

East Farm, Codford St Mary, Wiltshire

Assessment of aerial photographs in regard to fenced boundaries at the site

Client: Mogers Drewett Solicitors

Document Reference: 216 07 02 – 2

Project Number: APS 216 07 02

Issue 2.2	Date 28 th September 2016
Prepared by Chris Cox MCIfA FSA	Signed CC
Checked by PJ Griffiths	PJG

Disclaimer

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East Farm, Codford, Wiltshire © Air Photo Services Ltd 2016



Chris Cox MA MCIfA FSA 27th September 2016

1

1 INTRODUCTION

- 1.1 I am Christine Diane Cox, and am a professional aerial photographic interpreter. My qualifications comprise a BA (Honours) degree in Archaeology from the University of Liverpool (1983), an MA in Aerial Photographic Interpretation from the University of Sheffield (1984, Department of Archaeology and Prehistory) and membership of the Chartered Institute for Archaeologists (CIfA, membership number 947, elected 1990, original area of competence Air Photo Interpretation). I am a fellow of the Society of Antiquaries of London, elected October 2014.
- 1.2 In addition to my main occupation, I have previously taught aerial photographic interpretation for landscape applications to undergraduate, postgraduate and professional development levels at the Universities of Sheffield, Bristol and Oxford on an annual basis and undertake ongoing professional mentoring and work experience for students and colleagues presently at Air Photo Services Ltd.
- 1.3 My professional experience in aerial photographic interpretation extends over 30 years and includes assessment of and advice on land use, legal, boundary, adverse possession, environmental and heritage issues in planning, development and research contexts. I am experienced in deducing positions of features from aerial imagery and accounting for the effects of ground height and perspective when determining the shapes positions and direction of features viewed from the air and on comparative ground based images.
- 1.4 I have full stereoscopic vision which enables me to use a magnifying mirror stereoscope to fully interpret magnified vertical aerial photographs as stereo pairs. I am also experienced in making deductions from stereo pairs of vertical aerial photographs and single vertical or oblique aerial photographs and remotely sensed aerial imagery as digital files.
- 1.5 I undertake ortho rectification of aerial images to match them to surveyed map bases and digital comparison of land and individual landscape features on separate images.
- 1.6 To interpret aerial photographs in this case I have used a Lietz Sökkisha magnifying mirror stereoscope which allowed me to view the vertical aerial photographs under magnification and in three dimensions where stereoscopic pairs of vertical aerial photographs were available. I have also used a hand held magnifying stereoscope to examine the photographs at 2x and 4x magnification. I have also used single frames of oblique and vertical aerial photographs which I have examined carefully either as magnified prints or high quality digital files.
- 1.7 The Technical Appendix to this report details what these photographs are, how they were taken and their properties.



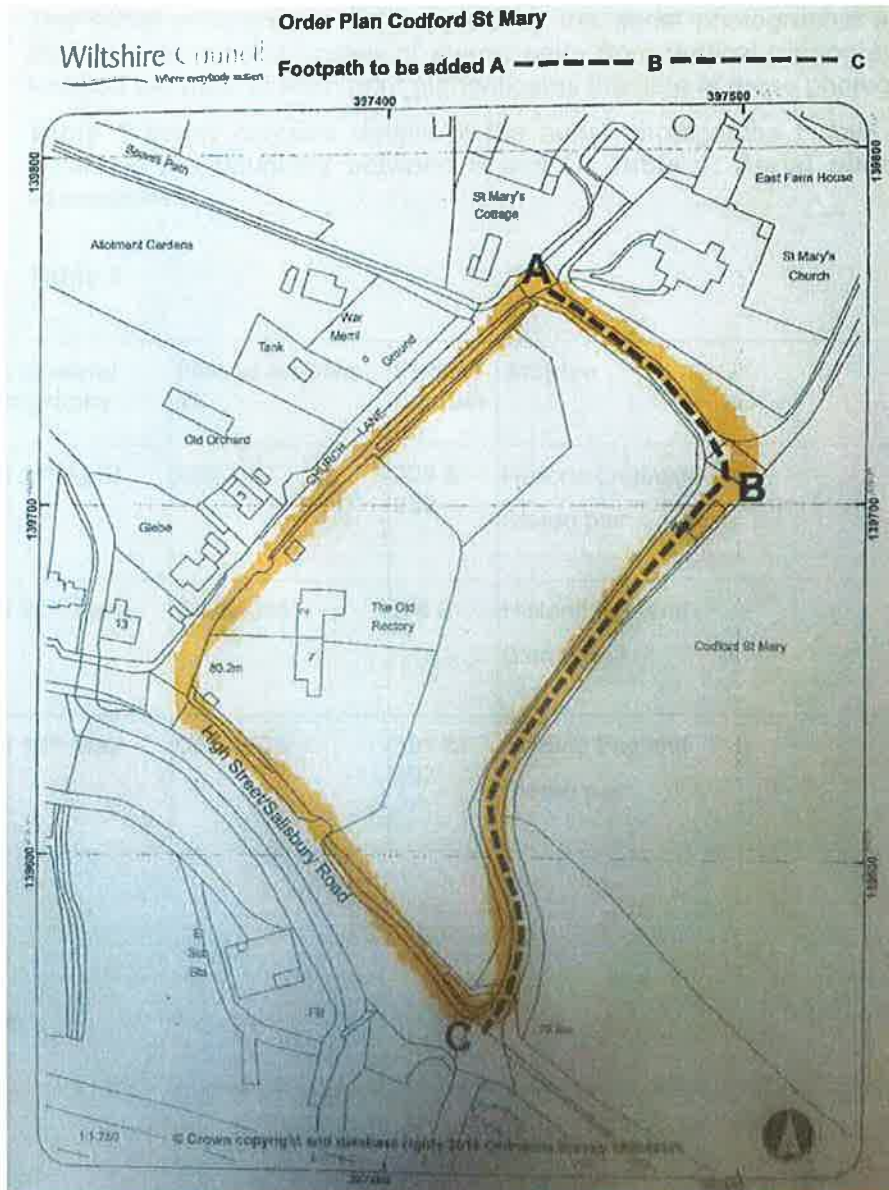
2 REMIT OF THIS ASSESSMENT

- 2.1 I am instructed by Mr Jonathan Cheal of Mogers Drewett Solicitors, on behalf of their client, to examine, and provide expert opinion from, aerial photographs regarding the boundaries to the land at the site at Codford St Mary, Wiltshire.
- 2.2 I am instructed initially to carefully examine aerial photographs held in the Historic England Archive of Aerial Photographs, and provide evidence on any boundary features which may be present and visible.
- 2.3 These aerial photographs were taken in 1984 and 1998.

Figure 1 over the page shows the location of the site and boundary in question, which is marked as B - C.



FIGURE 1: Location of the site



East Farm, Codford, Wiltshire © Air Photo Services Ltd 2016

Chris Cox MA MCIFA FSA 27th September 2016

3 AERIAL PHOTOGRAPHS

- 3.1 I examined three stereoscopic pairs of vertical aerial images taken in 1984 and 1998.
- 3.2 Authenticated copies of the aerial photographs have been annexed to this report.
- 3.3 The aerial photographs are supplied by the aerial photographic archive at Historic England in Swindon, as printed copies of stereo pairs from vertical photographic negatives. The archive's label on the back of each print authenticates the date of these photographs.
- 3.4 **Table 1** below contains details of the aerial photographs I have used to derive my evidence regarding the boundary between B and C. **Table 1: Aerial photographs examined for this assessment**

Table 1

Date of aerial photography	Film or archive ID	Frame number (s)	Archive
1984 2 nd April	ADA/177	229 & 230	Historic England Stereo pair
1984 21 st April	OS/84035	5 & 6	Historic England Stereo pair
1998 16 th May	OS/98574	391 & 392	Historic England Stereo pair



4 EVIDENCE FROM AERIAL PHOTOGRAPHS

April 1984

- 4.1 Photos taken in April 1984 show the whole field on a stereo pair on the 21st and the southern part of the field only on a stereo pair on the 2nd.
- 4.2 There is a possible gate structure across the route just south of B.
- 4.3 There are no traces of fencing or other boundary materials along the sides of the route between B and C in April 1984.
- 4.4 In 1984 the route was not fenced along its sides between B and C.
- 4.5 I was unable to see a gate across the route at C in 1984, due to the resolution in the photo.

May 1998

- 4.6 In 1998 there is evidence for a linear fence along the route between B and C.
- 4.7 I cannot see any gate structure at C, due to vegetation.

5 CONCLUSION

- 5.1 In 1984 the route was not securely bounded or fenced between B and C.
- 5.2 In 1998 there is evidence for a linear fence along the route between B and C.

DECLARATION

I understand that my overriding impartial duty as an expert witness is to a Court, adjudication or inquiry and I have complied with that duty under the requirements of Ministry of Justice Civil Procedure Rules (CPR) Practice Direction 35 for experts and assessors.

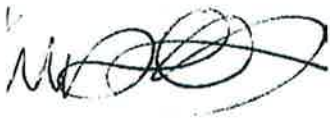
I confirm that, insofar as the facts stated in my report are within my own knowledge, I have made them clear and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion.

My report includes or reflects all relevant facts of which I am aware from the material which I have stated that I have examined. If there are material matters of which I am unaware or if the assumptions are incorrect or inappropriate for any reason of which I am currently unaware, it could have a material effect on my stated opinion.

STATEMENT OF TRUTH

I believe that the facts stated in this report are true and the opinions I have expressed are, to the best of my knowledge, correct.

Signed



Christine D Cox MA MCIFA FSA

28th September 2016



TECHNICAL APPENDIX

Aerial Photographic Interpretation and properties of vertical aerial photographs

Interpretation of Aerial Photographs provides a comprehensive overview of the land-use, vegetation and configuration of visible boundaries, objects and structures at specific and independently authenticated points in time.

It provides accurately dated information on the appearance and condition of land or property at a given point in time, and of the relationship of individual features. It also allows deduction of the nature of past and ongoing land-use such as the presence and possibly the type of objects and structures and changes to the type or position of the above over time.

Evidence based on aerial photographs may be admitted as evidence to a court, inquiry or appeal in support of land use issues, boundary disputes, adverse possession or other legal issues.

Vertical aerial photographs, which were used to deduce some evidence for this case, are taken for general-purpose survey using an automatic camera mounted inside a modified aircraft which takes photographs at pre-set intervals. The camera points straight down to the ground. The aircraft is flown on a pre-planned set of flight-lines which cover the survey area completely. The vertical viewpoint provides aerial photographic coverage from a fixed scale, dependent on ground and flying height straight to the ground surface at the centre of each frame. The overlap between the areas covered by each consecutive frame is usually 60%.

This overlap between frames enables the photo interpreter to study each pair of vertical photos under a magnifying stereoscope – a mechanical instrument which allows the interpreter to see a single three-dimensional image of the ground surface on the aerial photographs. This allows consideration of height differences in objects and topography and greatly enhances the level of information which may be derived from a single unmagnified two dimensional image.



9 CURRICULUM VITAE Chris Cox



PROFILE

Christine Diane Cox MA MCIFA FSA

Director

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Chris Cox is a professional archaeologist, specialist interpreter of aerial imagery and expert witness

Chris established Air Photo Services in Cambridge, UK in 1990 with Rog Palmer and has since worked on major infrastructure, legal expert witness and commercial development projects throughout the UK and Europe. She has over 30 years of experience as an interpreter of aerial imagery in the planning, heritage and engineering sectors, and experience in the provision of professional development training, recruitment and mentoring of graduate level staff.

Chris is a Member of and National Vocational Qualification (NVQ level 3) assessor for the Chartered Institute for Archaeologists (CIfA), a member of the Society of Expert Witnesses (SEW), the Aerial Archaeology Research Group (AARG) and a Fellow of the Society of Antiquaries of London.

SKILLS

- Legal expert witness opinion from aerial imagery
- Representation in Court and at Inquiry
- Air Photo, satellite and LiDAR Interpretation
- Teaching and training at undergraduate, graduate and professional development levels
- Integration of API data with GIS
- Ortho-rectification and accurate mapping from aerial images
- Heritage consultancy, project design and management

QUALIFICATIONS

BA (Hons.) University of Liverpool 1983. **Archaeology**
MA University of Sheffield 1984. **Air Photo Interpretation.**

EXAMPLE PROJECTS

Ash Lodge Drive, Ash and Tongham, Surrey, Expert Witness Services and representation at Public Inquiry regarding a Village Green issue.

Bewley Homes PLC Stereoscopic interpretation of authenticated aerial photographs to establish historic land use on the site and successfully defend a TVG application. Expert Witness report, liaison with Counsel and presentation of evidence in chief.

Speen WTW DO Replacement Water Pipeline, Berkshire.

Optimise Ltd. Interpretation, mapping and reporting from aerial photographs on buried heritage assets for environmental assessment over the route of a water pipeline, for Optimise Ltd.

Heritage Environment Record update 2010 – 2012 from Digital Aerial Imagery.

Hertfordshire County Council. Interpretation of digital False Colour Infra Red (FCIR) aerial imagery and input of results to HBSMR online database. For Hertfordshire County Council Environment Department, Heritage Environment Record, UK.

Mill Lane, Walton-on-the-Naze, Essex. Expert witness services and written representation at Public Inquiry.

Silverbrook Estates Ltd. Expert witness report to document the level of access over the site to successfully defend a Village Green application.

Vixen Tor, Devon. Expert witness services and representation at Public Inquiry regarding a Rights Of Way Issue on behalf of the landowner.

Mrs Mary Alford. Stereoscopic interpretation of authenticated aerial photographs to successfully refute a Right of Way claim over the site by The Ramblers using a 60 year time span of dated aerial photographs.

Ashton Vale, Bristol. Expert witness services for refutation of Town Green application.

Bristol City Football Club (BCFC) Ltd. Stereoscopic interpretation of authenticated aerial photographs to determine the land use to support a planning application for a new football stadium and defend a TVG application.

Woodlands Solar Farm, Calcott, Kent.

Lightsource Renewable Energy Ltd. Assessment of aerial photographs, mapping and report to inform heritage mitigation strategy.



ANNEXE: Presented separately

Aerial photographs used for this assessment presented separately as three stereo pairs stereo pairs.

216 07 02 East Farm Codford St Mary

END OF REPORT



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**CODFORD RESIDENTS' GROUP RESPONSE TO
LANDOWNER'S SUBMISSION Dated 30 September 2016**

1.0 Background

- 1.01 In January 2016, the Codford Resident's Group (CRG) put in an application to W.C. for the southern section of the Military Road to be recognised as a public right of way.
- 1.02 In April 2016, an Order was made by W.C. modifying the Definitive Map to record a public footpath over the claimed route.
- 1.03 The excellent, well researched and balanced Decision Report by the Rights of Way Officer has been approved and signed off by the Rights of Way & Countryside Manager and the Senior Rights of Way Officer.

1.0 The Basis of the Claim

- 2.01 The CRG claimed that a right of way over the southern part of the Military Road had been acquired **by prescription**.
- 2.02 **Prescription:** "an easement acquired upon another person's property **by continued and regular use** without permission of the property owner for a period of 20 years. Section 31 of The Highways Act 1980 sets out the conditions for the acquiring of an easement by prescription and is quoted in section 12.1 of the Decision Report.

3.0 Objection

- 3.01 After a lengthy delay, an objection was made on behalf of the Landowner, primarily based on two points:
- 3.02 **"They dispute that user sufficient to support the claim has occurred"** and
- 3.03 **"That use has been either by permission or that signs have been in place since the 1970s showing the intention of the owners not to dedicate a right of way."**

4.0 Review by Wiltshire Council Planning Committee

Since the Order attracted an objection, the case has now to go to the Secretary of State for determination but initially it has to be considered by the Wiltshire Council Planning Committee to decide whether it supports or opposes the Order. This meeting is to be held on Wednesday 2 November 2016 at County Hall, Trowbridge.

5.0 Level of Proof Required

As with civil courts and tribunals, this issue will be decided on **the balance of probabilities**; one party's case has only to be 'more probable' than the other party's to succeed.

6.0 Agreed Facts from Mogers Drewett's Submission, dated 30 September 2016

- The interconnecting road leading from Church Lane to the Military Road (A to B) had originally run through a former army camp and continued down to C. A Definitive Map (date unknown) showed that the whole of the field to the south of the church had been hutted during WW2, hence the references to Camp Road by the Farm witnesses.

- After the camp had been removed the Military (Camp) Road was fenced off at top and bottom (i.e. at B and C) as the whole of the Camp Field was open to stock (Mike Read).
- At a later date the fencing was removed and the Military (Camp) Road was fenced on both sides.
- The main A36 road ran through the village until the Bypass was opened in 1990.

7.0 Queries arising from the agreed facts

7.01 Can the Landowner **prove** that the interconnecting road (constructed by the Military sometime at the end of WW2) was conveyed to the Farm and not to the Church?

Note 1: In Mr Read's witness statement he stated: "The surface of the Camp (Military) Road has always in my recollection been tarmacked. It was originally put in I believe for army use so it will have been a heavy road. I presume that the army put in the original tarmac but I know that the farm has maintained it from time to time since by repair, and filling of potholes."

Note 2: The Landowner deposited an estate plan (dated 28 March 2003) with the then WCC intending to show the rights of way on his estate. Unfortunately, the estate plan was so carelessly drawn that it showed St Mary's Church, the ANZAC War Graves and a large part of Church Lane as being within the curtilage of the Farm.

A second estate plan (dated 27 January 2011) was deposited with WCC, repeating the errors of the 2003 plan, but this was rejected for having been scaled incorrectly.

Might the interconnecting road be yet another mistake?

7.02 When it is stated that the Military (Camp) Road was 'fenced off' at Point B, what does that mean exactly? Point B is right in the middle of a large field, so fencing off the road alone would not restrain cattle at all.

Note: Sally Oliver's testimony was accompanied by some very useful photographs, Nos 1 and 2 taken in 'approximately 1986', No 3 in 'approximately 1988' and No 4 'in about 1990'. The buildings in the background of No 1 are not recognisable and might possibly have been taken elsewhere. If No 1 was in fact taken on the farm, then there were no cattle in sight but a car in the background suggests that it was open to traffic (and therefore to walkers).

7.03 Was the Camp field always pasture or was it ever put to crops after, say, 1975?

Note 1: Mr Read stated: "The Submission that the Strattons put in suggested that it was in the 1970s that the fencing was changed. I do not think that is right, and I wish to clarify it. My evidence is that it was not in the 1970s. ...It was definitely the mid 1980s that the fencing was changed, and perhaps even later than that."

Note 2: The Submission relies quite heavily on evidence provided by aerial photographs. Unfortunately, although this specialist report takes up half of the whole submission, it adds little or nothing to the evidence. The photo taken on 2 April 1984, doesn't show the field in question at all, except for the entrance at C, the second one dated 21 April 1984 is so indistinct that, even under a magnifying glass, it is difficult for a layman to agree, on the balance of probabilities, with the conclusion at 4.3 on p 6 that: "There are no traces of fencing or other boundary materials along the sides of the route between B and C in April 1984."

The author of the Report also had to admit at 4.5 that: “I was unable to see a gate across the route at C in 1984, due to the resolution in the photo” and again at 4.7: “I cannot see any gate structure at C, due to vegetation.”

It is difficult to conclude, on the balance of probabilities, whether the gate at C was still there in 1984, and even if it was, whether it was still in use.

What is certain is that the whole of Camp Field was hutted until about 1947 or a year or two later (Maurice Cole’s testimony in interview), that it was gated off from the main A36 road as the Camp Field was open to stock (how were they kept in at the church end?) and that at some stage the Military Road was fenced off at some time in the 1980s.

What is not clear is exactly when that happened and, even when it had been fenced, there is no firm evidence to show that all walkers were thereby stopped from walking the route. There is a similar situation at Stockton Park (cited by Mogers Drewett at 15 v), where there is a Byway from the private road across a large field (in which cattle are sometimes to be found) to Stockton village.

8.0 Private Road Signs:

The existence of Private signs from an early date is not disputed but, importantly, to this day there is no private road sign opposite the Church lych gate (point A). This means that any visitor reaching the church from Beanis Path (used by the public for several centuries) or by walking up Church Lane (maintained by the Council) could then walk along the interconnecting road, parallel to the church, and then turn right (at point B) along the Military Road without being aware that it was private property. There is only a hand painted sign stating that it was access to the churchyard only.

In any event, a right of way created by prescription is acquired by continued and regular use **without permission** of the property owner.

9.0 Level of Usage

- i. Codford St Mary is a small village, some 120 households, with the Landowner owning at least 10 of those houses, possibly more.
- ii. From this very small constituency (and with little or no canvassing), we received 18 initial responses, then five more late submissions, making a total of 23 in all. Two other people completed forms, but then withdrew them, and several other people sympathised with our claim but felt unable to contribute, either because they do business with the Landowner or are close to others who do. We understand that one person was given express permission by the Landowner to walk and cycle around the farm. In total we estimate that about thirty people would have signed up. Additionally, of course, there has been a small but constant turnover of home owners over the last three decades, so, in all probability, there could well have been others.
- iii. The Report notes: “The Planning Inspectorate’s Consistency Guidelines state at 5.15 that there is **‘no statutory minimum level of user required** to show sufficient use to raise a presumption of dedication. Use should be by a sufficient number of people to show that it was use **‘by public’** and this may vary from case to case. Often the quantity of user evidence is less important in meeting these sufficiency tests than the quality (i.e. its cogency, honesty, accuracy, credibility and consistency with other evidence etc)”.
- iv. In section 15.0 of the Report (15.3), the Rights of Way Officer makes the telling comment:

“It is noted that the Landowner **only sought to stop use of the routes by the public on foot** (signs erected c. 2012 and still in place) and accordingly officers consider that this must have been the main use of the route.”

- v. Reinforcing this comment, some signs refer to ‘dog walkers’, who clearly would not be going to church, contrary to the Landowner’s assertion.
- vi. Purely anecdotally, the Landowner’s late father, Michael Stratton, was remembered fondly by villagers, because he would find time to have a chat with them while they were walking round the Military Road – totally ignoring the private road signs.

10.0 Credibility of CRG Witnesses:

Mogers Drewett paras 12 & 13: “Mr Cole was never seen on the route anyway” and “the other, Mrs R Wyeth, has according to our witnesses never been seen on the claimed route, by contrast with her observed use of Beanis Path.”

It is indeed true that Maurice Cole was never much given to walking but he mentioned two specific elderly friends of his who did walk round the Military Road and offered to phone them and some others but sadly he died before he could do so.

Mrs Wyeth has been a frequent user of the Military Road, sometimes with groups of visitors, as her evidence testifies and not to believe her evidence would be a serious accusation. I am sure that all the witnesses, who stated that they had not seen those who have claimed use of the route, are telling the truth and were simply working while we were walking. No doubt some of the walkers went round in the evening.

Tellingly, the walkers, when asked, have said that they rarely saw people working in the farm itself and have hardly ever been challenged at any stage over the years, despite the signs, until 2012.

You cannot prove a negative.

11.0 Quotes from farm workers.

Mr Read: “From my observation I would say that there was a noticeable increase in the amount of public walking on the camp road, in the very late 1990s/2000s.”

Mr Williams: “I have noticed an increase in the amount of dog walking on the camp road in the last fifteen years or so.”

Mr Stratton: “I remember occasional walkers along this road after this time (1991), all of whom were people I knew from the village. Usage of this road by walkers increased over time, and there came a time when many of the walkers were unknown to me. As a result, in 2012, I decided to stop all pedestrian access along the private farm roads.

Mrs Stratton: “In the last, say, ten years the use of the farm road has become more frequent by people unknown to us.”

Mr Graham Carter: “I have seen lots of people walking the Beanis Path and of course on Church Lane, but only rarely on this route. Perhaps over the last ten years or so some dog-walkers have come through.”

Mr Alan Bennett: “I can’t remember seeing the public walking along the farm road. There may have been the occasional dog walker but I cannot say who or when. I remember Mr Norman Bennett who

lived at the Lodge and had a poodle. He used to walk along there quite a lot but that was late on after the road had been fenced in by which time the cows were not on the track. There may have been others about the same period but I cannot remember their names.”

Note: we have been led to believe that Mr Norman Bennett walked his dog on the farm very early on, possibly the late 1970s or early 1980s but we cannot verify that.

Conclusion

On the single point, as to whether public use of the Military Road for recreational purposes has been substantiated or not, the well orchestrated witness statements put forward by Mogers Drewett on their own satisfy a higher burden of proof than ‘on the balance of probabilities’. It is ‘beyond all reasonable doubt’ that the public have been so using the Military Road without permission for many years.

The only thing that the CRG has to prove is that this use has been ‘**continued and regular**’ over 20 years. The farm witnesses have testified that the public has walked the Military Road for the best part of 20 years but all with one voice have claimed “not to have seen” those villagers who say otherwise.

As we have already said, it isn’t possible to **prove** a negative and, as our witnesses are not liars, their statements must command the same respect as we showed for the Farmer’s witness statements.

Clearly the further we go back in time, the greater difficulty we face in finding many witnesses who personally used the Military Road in the 1970s and 1980s. Some have died, some are in care homes and others have moved away but we are confident that, on the balance of probabilities, we have amply demonstrated above that villagers have regularly walked the Military Road for recreational purposes, possibly as early as the 1970s but certainly in the early 1980s until stopped in 2012.

Codford Residents’ Group

15 October 2016

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CONDUCT OF INQUIRIES AND HEARINGS INTO RIGHTS OF WAY ORDERS WHERE ORDER MAKING AUTHORITIES DO NOT ACTIVELY SUPPORT AN ORDER

Introduction

1. This Advice Note sets out the procedures to be followed where an order making authority (OMA) does not actively support a definitive map or public path order.
2. The booklet '*Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England*' has been prepared by the Planning Inspectorate and is available to the public on our website at www.planningportal.gov.uk/planning/countryside/. Parts 3 and 4 describe what typically happens when a public hearing or inquiry into a rights of way order takes place. However, where an OMA chooses not to support an order, the Inspector will need to consider adopting different procedures from those set out in the booklet. When this happens, the Inspector will explain to the inquiry or hearing why and how the procedure is being changed. The guidance in this Advice Note is intended to assist all concerned in preparing for such circumstances where these can reasonably be foreseen.
3. This Advice Note is publicly available but has no legal force.

Background

4. In most cases, an OMA will not make an order unless it is satisfied that the circumstances justify it. Exceptions to this occur when an OMA declines to make the requested order but the applicant successfully appeals to the Secretary of State. This will result, in the case of definitive map orders, in the OMA being directed to make the order under Schedule 14 of the Wildlife and Countryside Act 1981.
5. In such circumstances, where an OMA has previously assessed the facts of the case and decided the making of an order is not justified, it may opt to oppose confirmation of the order or it may choose to adopt a neutral stance whereby it neither supports nor objects to confirmation.
6. There may also be occasions where the OMA supported the initial making of the order but subsequently found new information, further evidence or valid objections which caused it to conclude that confirmation was not justified. Again, the OMA may opt to oppose confirmation of the order or it may choose to remain neutral as regards confirmation.
7. Sometimes an OMA is content to make the requested order but is not prepared to support it at an inquiry if it is opposed. This often occurs when an order is made under the Town and Country Planning Act 1990 to enable development to proceed, or an order to divert a path is made under the Highways Act 1980 in the interests of a landowner; the developer or the landowner is often asked to make the case for confirmation. The OMA may choose to remain neutral as

regards confirmation of the order, to passively support it or even to oppose it if new information or objections following advertisement cause a change of mind.

8. Similar circumstances may arise where, after having considered the details of a case, the Inspector proposes modifications to an order but advertisement results in objections to these modifications leading to a second or subsequent hearing or inquiry (see paragraphs 28 to 32 below). In this scenario, the parties concerned (including the OMA) may support, oppose or take a neutral position as regards the proposed modifications.

The role of the OMA

9. In normal circumstances, where an OMA supports confirmation of the order at an inquiry, its advocate will present the case in support and call witnesses as required, cross-examine witnesses who oppose the order, and finally draw together the proceedings at the end of the inquiry, summing up the case in support and making any legal submissions as appropriate. At a hearing the OMA's rights of way officer would normally present its case, without introducing witnesses or cross-examining other witnesses.
10. Where an OMA has decided not to support confirmation of the order at a forthcoming hearing or inquiry (or otherwise) the Planning Inspectorate should be informed at the earliest opportunity. A clear statement indicating whether the OMA intends to actively oppose the order or to adopt a neutral stance is required, together with an indication of its reasons for doing so.
11. When this occurs, the Planning Inspectorate will ask the OMA to secure the agreement of the applicant or another supporter of the order to take the lead in presenting the case. Should that not be possible, the Planning Inspectorate will try to secure such agreement. If no-one is prepared to take the lead (and assuming the case cannot instead be determined by exchange of written representations) at the hearing or inquiry the Inspector will summarise the case for the order from the information before him or her, with the applicant or any other supporters being invited to take part in the discussion (at a hearing) or give their own evidence (at an inquiry) in due course. The Planning Inspectorate will ask the OMA to find a venue for the inquiry or hearing, and to provide administrative assistance such as photo-copying at the venue.

At the start of the inquiry or hearing

12. At the start of an inquiry, it is normal practice to hear the case for the order from those who support it before hearing the case against from the objectors. Where the OMA is appearing as a supporter or objector to the order, it will be invited to present its case in accordance with that convention.
13. Where the OMA has given notice that it will take a neutral stance at an inquiry, the Inspector will allow its representative to make an opening statement before both the supporters and objectors. However, this statement should be limited to a summary of the background to the making of the order and the reasons for the OMA choosing to remain neutral as regards its confirmation and should not be necessary if the Inspector has summarised these matters in his or her opening remarks. If the OMA does make a statement in these circumstances, it should not contain submissions for or against the order, but be a factual

account of the history of the order and the key issues which influenced the OMA's conclusions leading to its neutral position.

14. Where the OMA has given notice that it will take a neutral stance at a hearing, the Inspector will allow its representative to contribute to the discussion. However, comments should be limited to a summary of the background to the making of the order and the reasons for the OMA choosing to remain neutral as regards its confirmation.
15. At hearings or inquiries it will be helpful if the OMA makes it known that its representative will be happy to answer factual questions about the background to the order.
16. If circumstances arise immediately prior to the hearing or inquiry that cause the OMA to revise its position so that it no longer intends to remain neutral, the Inspector should be informed at the start of the proceedings so that the OMA can be heard as either a supporter or objector in the usual sequence of events.
17. Should the reverse situation occur, where information comes to light at the last minute causing an OMA to withdraw its support for the order, thereby becoming an objector or taking a neutral stance, the Inspector must be advised at the earliest possible opportunity.
18. Unless arrangements can be made before the event (see paragraph 11) when an OMA takes a neutral position, the Inspector will enquire at the start of the hearing or inquiry whether any of the supporters present are prepared to take the lead in presenting the case in support of the order. A request for an adjournment is unlikely to be refused although the length of any adjournment will depend on the circumstances of the individual case. It may vary from a few minutes to allow the applicant or supporter to gather his or her thoughts, to several days or longer to enable a full case to be prepared.
19. If there is no-one prepared to lead the case in support of the order, the Inspector may decide to adjourn until a suitable volunteer can be found or, alternatively, to summarise the main points in support of the order him- or herself, after which the individual supporters will give their evidence to the inquiry or contribute to the discussion at the hearing. In some cases it may be appropriate to close the hearing or inquiry altogether and make alternative arrangements for determining the order.
20. Any last minute changes which significantly delay matters or affect the smooth running of the hearing or inquiry can put the party responsible at risk of a claim for costs against them unless the issues could not reasonably have been foreseen. However this should not cause any party to withhold late evidence which has a significant bearing on the determination of the order.

During the hearing or inquiry

21. Particularly in the case of definitive map orders, there may be archival or other documentary evidence which is held by (or has been otherwise discovered by) the OMA that needs to be taken into account by the Inspector when determining the order. Where the OMA takes a neutral stance at an inquiry or hearing following a successful Schedule 14 appeal, it is important that the applicant or supporter ensures that this evidence is put before the Inspector

(as the Inspector will not have received copies of the Schedule 14 application evidence unless it is submitted to the Secretary of State with the order). Where the OMA takes a neutral stance for any other reason, for example because it has discovered further evidence following the making of the order, it is incumbent upon the OMA to provide it. Powers exist [Local Government Act 1972, section 250] under which it may be compelled to do so.

22. The Inspector will decide on the appropriate time for any such evidence to be presented to the hearing or inquiry depending on the nature of the case. Whilst neutral OMAs are still obliged to make such documents available for inspection by the Inspector (if necessary by arrangement with local record offices), there is no requirement for these to be presented by professional witnesses. Depending on the complexity of the documents concerned, it may be helpful to the Inspector if the OMA is able to provide an officer to answer any factual questions in relation to the documents.
23. The most frequent reason for an OMA taking a neutral stance is where an applicant has been successful in obtaining a direction from the Secretary of State/Welsh Ministers under Schedule 14 of the Wildlife and Countryside Act 1981. In such cases, it is not appropriate for any of the parties to simply produce the appeal decision as evidence. The evidence that was submitted to the Secretary of State/Welsh Ministers to support the appeal, together with any other relevant information that has been discovered since, must also be presented to the hearing or inquiry so that the Inspector appointed to determine the order has all the available evidence before him or her so as to reach an independent and impartial decision. It should not be assumed that appeal documents will automatically be transferred.
24. The Inspector is not bound by the decision on the appeal. He or she will have the advantage of hearing evidence given in person by witnesses and (at an inquiry) tested under cross-examination, seeing the order route on site and inspecting at first hand any other relevant evidence. There may therefore be many reasons why an Inspector's conclusions following an inquiry or hearing may be different to those identified in an appeal decision.

Closing submissions at inquiries

25. As the promoter (and a supporter) of the order, the OMA is given the opportunity to make the final closing statement after any made on behalf of the objectors. This may include submissions on points of law relevant to the case as well as summarising the evidence leading to the request for confirmation.
26. Where an OMA has opposed an order, the final closing statement should be made by the applicant or any supporters who took the lead in presenting the case for the order. In these circumstances, the OMA has effectively given up the normal "right of final reply" and will present its closing submissions before the supporters.
27. In the case of an OMA which has taken a neutral stance throughout, the Inspector will first hear closing statements from the objectors and then the supporters before finally allowing the OMA to make any closing observations. In line with its neutral position, any that are made must not seek to make the case for or against confirmation but are likely to be limited to clarifying factual

matters, drawing the Inspector's attention to the main issues of the case and highlighting relevant case law that may have been missed by the other parties.

Second or subsequent hearings or inquiries into advertised modifications to orders

28. As noted above, an Inspector's proposed modifications to an order may result in there being no supporters for the proposed changes at the subsequent inquiry or hearing. In most cases, after explaining the purpose of the inquiry or hearing and dealing with the opening formalities, the Inspector will summarise the reasons for these modifications, based on the matters contained in the interim order decision.
29. If, at a second inquiry, the OMA supports the proposed modifications, it will be given the opportunity to open the case for the supporters and will be invited to make the final closing statement. At a hearing it would contribute to the discussion in the usual way.
30. If, however, the OMA intends to make representations against the proposed modifications, its objections will be heard at the same stage as other objectors, that is, after any representations in support of the modifications have been made. If at an inquiry the OMA wishes to make a closing statement, it may do so along with any other objectors but before the closing submissions of the supporters.
31. Where the OMA takes a neutral stance on proposed modifications to an order, it would not be expected to present any evidence either for or against the proposed changes. The Inspector may, nonetheless, ask whether it would be prepared to assist in clarifying matters not concerned with the merits of the order. At the end of an inquiry, the Inspector will allow the OMA to make any final comments after inviting closing statements from the objectors and then the supporters. Again (see paragraph 27 above) these must not be partial, and are likely to be limited to clarifying factual matters, drawing the Inspector's attention to the main issues of the case and highlighting relevant case law that may have been missed by the other parties.
32. Where a second hearing or inquiry is held to consider both the original order and modifications proposed by the Inspector, the sequence in which the parties are heard is a matter to be determined by the Inspector at the start of the proceedings, in consultation with those concerned.

In conclusion

33. Circumstances will differ from one hearing or inquiry to another. This advice note is not therefore intended to be exhaustive; it is only a guide. Inspectors will continue to exercise their judgement and discretion in these matters, based on each individual case.

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No. 1

Date of Meeting	2 November 2016
Application Number	15/03120/FUL
Site Address	Rosefield House, Polebarn Road, Trowbridge, BA14 7EQ
Proposal	Proposed change of use of existing stable block at the rear of Rosefield House to form 2 residential units to include single storey lean-to extension replacing shed building (to be demolished).
Applicant	Mr Nicholas Ross
Town/Parish Council	TROWBRIDGE
Electoral Division	TROWBRIDGE PARK – Cllr Dennis Drewett
Grid Ref	385990 157929
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

Members will recall that an application carrying a materially different description to the one listed above was deferred on two previous occasions i.e. at the 28 September WAPC meeting, the application seeking permission for the change of use of the stable block to form 2 residential units and proposed erection of a two-storey side extension to form one additional residential unit was deferred for a member site visit which was scheduled and diarised for 2pm on 12 October. The Committee also passed an instruction to the case officer to establish whether the applicant would be willing to delete the two-storey side extension and drop the third residential unit from the proposal.

After the member site visit, members debated the application on 12 October and after a motion to refuse the application was defeated, the Committee voted to defer determination of the application again, and instructed the case officer to obtain revised plans deleting the two storey extension to the property and limit the proposal to 2 residential units. The Committee also asked the case officer to duly appraise loss of light to neighbouring properties within an amended committee report.

This report is submitted to Committee in the light of the above.

The previous report presented to the Committee on 12 October is attached at the end as an aide memoire.

1. Purpose of Report

The purpose of the report is to inform Members of the submission of revised plans and to assess the merits of the new proposal against the policies of the development plan and other

material considerations and to consider the recommendation that planning permission be granted.

2. Report Summary

The report addresses the new considerations arising from the amended plans in terms of neighbouring amenity and impact on the listed building. Considerations in respect of the principle of development, the loss of employment floorspace, ecology and access and parking were assessed in the earlier reports and did not give rise to Committee objections in either resolution.

3. The Revised Proposal

The application has been amended to provide for the change of use of the existing stable block to form two residential units only, removing the previously proposed double storey side extension that would have provided an additional unit. As part of the revised submission, it is proposed to add a single-storey lean-to extension that would replace the dilapidated shed currently in situ. As before, the scheme would largely retain the front openings to the building, but would now make use of existing openings to the side elevation for additional light at first floor level. The lean-to extension would provide a utility room to one of the dwellings as well as undercover bike/bin storage areas serving each of the new dwellings.

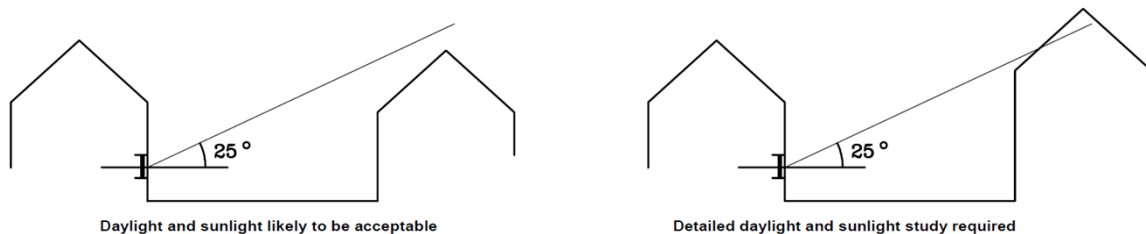
Officers duly submit that the neighbouring concerns raised about the previously proposed two storey element have been addressed. The neighbour's kitchen window would face a single storey lean-to (replacing a shed) with no openings facing the window.



Existing arrangement with objector's property on the right, with a ground floor kitchen window facing subject property.

Following Members request for a loss of light assessment to be undertaken, officers would duly advise that the 25° 'rule-of-thumb' test can be a useful tool when considering the potential impacts of new development on neighbouring properties/amenities.

By way of brief explanation, the 25° test provides a guide as to when new development may affect light to a habitable room within third party properties, as indicated in the diagrams below:



When one applies the 25° test to the subject property, taking the width of the separation between the existing buildings (property orientation and the presence of two storey buildings nearby) light entering the kitchen window of the neighbour's property would not be demonstrably affected by this revised scheme.

However, if one takes the angle from the centre of the kitchen window upwards to the existing roof ridge opposite, an angle of approximately 40° is measured. In terms of the guideline, the 25° rule of thumb would be exceeded, but crucially, not because of what is proposed. In this particular case, and cognisant of the concerns raised by the immediate neighbour with a kitchen window facing the subject building, officers duly submit that with the removal of the two storey addition, the proposed development would have no discernible impact on the neighbours with respect to light penetration. It must be borne in mind that the application principally seeks permission to convert the existing building. The 25° test is therefore of limited relevance to the revised plans. It should also be noted that neighbour's kitchen window serves an open plan kitchen/living room layout, which is also served by another window facing the garden on the opposite side of the dwelling

With regard to other considerations, the previous report also addressed issues of loss of employment space, ecology and parking and access. Members did not raise any questions or identify any issues and these have not therefore been re-assessed. The previous detailed appraisal is contained in the copy of the earlier report, which is appended to this update. With regard to heritage considerations, the revised proposals would utilise the existing openings to the end of the building, retaining the character of that elevation. No overlooking or loss of privacy issues would arise.

The revised plans have been re-advertised, and the case officer forwarded electronic copies of the revisions directly to the 'objecting' neighbour who has confirmed having no objections to the new plans.

In view of the above considerations, the revised plans are recommended for approval subject to conditions, which since 12 October have been varied to accord with the revised plans, and an informative as previously recommended. Should Members resolve to grant permission, the following planning conditions are recommended:

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 No dwelling shall be occupied until parking spaces for four vehicles, together with the access thereto, have been provided in accordance with details to be submitted for approval in writing by the Local Planning Authority. The parking and turning spaces shall be retained for use as such thereafter.

REASON: In the interests of highway safety and the amenity of future occupants.

3 No demolition, development or other internal works shall commence prior to the assessment of the building for bats and nesting birds. The assessment shall be carried out by a licensed, professional ecologist. If the buildings are assessed as having low, moderate or high potential for roosting bats or other protected species, then subsequent presence/absence surveys shall be undertaken. If presence of bats or other protected species is confirmed, an impact assessment comprising detailed mitigation measures, a monitoring strategy and habitat enhancements shall be submitted to the Local Planning Authority before any demolition or other internal works are undertaken. The mitigation strategy, monitoring and habitat enhancements shall be carried out in accordance with the approved details and as modified by a relevant European Protected Species Licence from Natural England (where applicable).

REASON: In the interests of the protection of Protected Species.

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

CLCS/126/03 registered on 13 October 2016; CLCS/126/04 registered on 13 October 2016; CLCS/126/010 registered on 18 October 2016; and CLCS/136/104 REV A received on 11 August 2016.

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

PLANNING INFORMATIVES:

This Decision notice must be read in conjunction with that in relation to application 15/03181/LBC and the conditions applicable thereto.

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.

Previous Report to meeting of 12 October 2016

Reason for the application being considered by Committee

Councillor Drewett has requested that the application be considered by the Planning Committee for the following reasons:

- Visual impact upon the surrounding area;
- Relationship to adjoining properties; and
- Car parking

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 planning permission be granted. This application was deferred by the Committee at the 28 September meeting to allow for a site visit by elected member's to take place prior to further deliberations. The committee also passed an instruction to the case officer to establish whether the applicant would be willing to make a material amendment to the scheme removing the proposed two storey side extension that would create the third residential unit.

2. Report Summary

The main issues to consider are:

- The principle of the proposed development;
- Potential impacts upon the character and appearance of the building and the Conservation Area;
- Impact upon neighbouring amenity
- Access and highways
- Loss of employment floorspace

The Town Council has no objection to the proposal.

3. Site Description

The application relates to the old stable block to the rear (north east) of Rosefield House, Polebarn Road in Trowbridge. It is understood that the building was previously occupied by the Ice Cream factory (Riddiford's Ices/Riddy's) which closed in the 1980's. The building is Grade II listed, and its original function, as indicated by the listing description, was as the stable block serving Rosefield House.

Access is off of Polebarn road onto a large courtyard/access area that serves a number of

properties including those within Polebarn House and Rosefield Cottage. The building fronts onto this courtyard/access area.

4. Planning History

The Council's planning records do not reflect any relevant planning history affecting this particular building, including in relation to any employment use. However, it is clear that the ice-cream factory use has been abandoned for a number of years with the last known use therefore being under Use Class B1.

Further, on the wider surrounding site that includes Polebarn House and outbuildings, permission was granted under reference 15/12319/FUL for a similar change of use of a vacant, Grade II listed building from ancillary storage space and B1 use to create 2 new dwellings. (February 4, 2016: Approved with Conditions).

In another nearby application the Grade II Listed wall along Polebarn Road and the boundary wall between the Police Station and Rosefield House was rebuilt and repaired under application 15/01869/LBC (April 9, 2015: Approved with Conditions). This wall forms the road boundary of the wider site area.

5. The Proposal

The application is for the change of use of the existing stable block to form two residential units and the erection of two-storey side extension to form one additional residential unit. The proposals include the provision of 6 car parking spaces.

6. Planning Policy

National Planning Policy Framework

Section 4 – Promoting Sustainable Transport

Section 6 – Delivering a wide choice of quality homes

Section 7 – Requiring good design

Section 12 - Conserving and enhancing the historic environment

Wiltshire Core Strategy - Core Policy 1 – Settlement Strategy; Core Policy 2 – Delivery Strategy; Core Policy 29 – Trowbridge Community Area Strategy; Core Policy 35 - Existing Employment Land; Core Policy 41 - Sustainable Construction and Low Carbon Energy; Core Policy 45 - Meeting Wiltshire's housing needs; Core Policy 50 - Biodiversity and Geodiversity; Core Policy 58 - Ensuring the Conservation of the Historic Environment; Core Policy 57 – Ensuring High Quality Design and Place Shaping; Core Policy 60 – Sustainable Transport

Wiltshire Local Transport Plan 2011-2026 Car Parking Strategy (LTP3)

Wiltshire's Community Infrastructure Levy - Charging Schedule (Charging Schedule)

Planning Practice Guidance (PPG)

Further, Section 66 of the Planning (Listed building and Conservation area) Act 1990 states that the local planning authority has a duty to pay special attention to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses and Section 72 of the Planning (Listed building and Conservation area) Act 1990 states that the local planning authority has a duty to pay special attention to the desirability of preserving and enhancing the character or appearance of the conservation area.

7. Summary of consultation responses

Trowbridge Town Council: No objection.

Wiltshire Highways: initially objected to a proposed new entrance, requesting details in respect of visibility splays. Revised plans were provided and the objection was withdrawn, subject to conditions.

Wiltshire Council Conservation - Objected to the initial proposals, raising concerns about the detail provided in the heritage statement and details in respect of roofing and new joinery. The agent submitted an amended heritage statement and provided additional details and plans. The officer now supports the application based on the revisions. Heritage aspects and the details of the Officer's comments are discussed further in the "Assessment" section below.

Wessex Water - No objection, noting only that new connections will be required.

Heritage England - noted the issues identified by the Conservation Officer and recommended that they be addressed, but advised no further consultation was needed

8. Publicity

One neighbour responded to advertising, raising the following objections:

- 1) The proposed side extension is only 3.8 metres from the kitchen window to Rosefield Cottage and the effect of a two-storey building will be to seriously restrict daylight into the kitchen area;
- 2) The positioning of the proposed front door and windows opposite the window would affect privacy;
- 3) Possibility that tenants of that proposed extension would create noise disturbance and smells if waste disposal bins are located adjacent to the front door. Smoking outside the front door would also not be acceptable;
- 4) Unless there is a restriction in a tenancy agreement regarding parking and access, there could be interference with access to the garage to Rosefield Cottage Possible interference of the new extension with access roadway;
- 5) Sometimes when work is being done on the objector's dwelling Rosefield Cottage there are tradesmen's vehicles parked on the driveway in front of the garage/access roadway. This also applies to the front of the objector's building which faces onto Rosefield Court;
- 6) Care must be taken when the existing shed is removed to prevent asbestos contamination of Rosefield Cottage with asbestos fibres; and

There are no comments on the modification to the stable block itself, apart from those made previously regarding noise, rubbish disposal, smoking and parking.

In a subsequent submission prior to the Committee meeting of 28 September the objector wrote in and re-stated the view that the kitchen was a habitable room in too close a proximity to the proposed development and that the new door, if open, would allow views directly into the kitchen window. The right to light also applies where the new building would overshadow. The issue of the impact of the new building on the access was also re-stated, and the separation distance in the planning report was queried. (Officers note: By way of explanation, the 9,7m specifically related to the separation distance that would apply between the new building and the objector's garage, i.e. the manoeuvring/parking space that would remain.)

9. Planning Considerations

9.1 Principle of development.

The change of use of these vacant B1 premises to residential use poses no in-principle objection subject to the loss of employment floorspace being justified; the heritage elements of the proposals being satisfactory and no other detail planning issues arising. This is because the application site is located within Trowbridge development limits in an accessible location where the principle of further housing development is acceptable.

A further material consideration is the Trowbridge Masterplan that sets out a desire to see residential planning uses within this location as it is considered to be a more suitable activity in this "quiet cul-de-sac" position that it considers Polebarn Road to be.

9.2 Potential impacts upon the character and appearance of the building and the Conservation Area.

Above the various tiers of planning policy and guidance is the over-arching statutory requirement under the Planning (Listed Buildings and Conservation Areas) Act 1990 to give special regard to the "desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses" (S16 and 66). Paragraph 128 of NPPF further requires applicants to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

Paragraph 129 of the NPPF requires that Local Planning Authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal.

Paragraph 132 of the NPPF states that "when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. ... Significance can be harmed or lost through alteration or destruction of the heritage asset.... As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification."

Core Policy 58 of the Wiltshire Core Strategy echoes the above national policy in seeking the protection, conservation and, where possible, enhancement of listed buildings.

A parallel Listed Building Consent application (15/03181/LBC) was submitted alongside the application. Due to the setting of the adjacent Grade II* Historic England was also consulted. HE noted the issues identified by the Conservation Officer and recommended that they be

addressed, but advised no further consultation was needed. Although the LBC application would deal with the detailed heritage aspects of the design, the impact on the building and the Conservation Area and adjacent Grade II Listed "Rosefield Cottage" settings are also relevant to this full planning application.

The building is a Grade II listed 18th century red brick stable block with a stone tile roof. The first floor has ashlar stone surround square windows flanking an ashlar detailed oculus central window. The ground floor has two cart-style openings. In initial comments the Conservation Officer requested additional information in the heritage statement to provide an assessment of the significance of the listed building under paragraph 128 of the NPPF.

The Officer noted that the stone slates are quite possibly the original roof covering but are in any case an historic roof covering that contributes strongly to the historic character of the listed building. Following the submission of revised plans that removed the initially proposed concrete tile replacements and indicated the retention and continuation of the stone roof; the retention of the windows to be supplemented with secondary glazing; and the confirmation that an inner wall was modern so its removal would not affect the special interest of the building, the officer removed initial objections. He however further noted that the fenestration details, in particular the detail of how to treat the former cart openings would need to be dealt with by way of condition within any Listed Building Consent approval.

In terms of Conservation Area impacts, the building is not visible to the street frontage, being set back within a complex of buildings on the site. The materials and design would nevertheless retain the historic appearance of the building, and the removal of an extremely dilapidated shed structure would constitute an enhancement. The building is seen within the private internal access/courtyard areas on site but, again, in heritage terms the refurbished building would enhance the setting.

The listed building consent application has been held in abeyance pending the decision on this full application, in the event that the decision may affect details/conditions applicable to the LBC decision.

Subject to conditions therefore it is considered that the proposal accords with local and national policy as it relates to heritage assets.

9.3 Loss of employment floorspace.

Core Policy 35 to the WCS is permissive of development replacing employment floor space in principle, subject to detailed criteria. The policy state that within the principal settlements proposals for the redevelopment of land or buildings currently or last used for activities falling within use classes B1, B2 and B8 must be assessed against the following criteria:

"i. The proposed development will generate the same number, or more permanent jobs than could be expected from the existing, or any potential employment use"

Information detailing how many jobs would have been reliant on either the application site or the wider employment activity is clearly not possible to fully establish, given the length of time the use has not been carried on. However the proposal is to completely remove the employment use at the application site and thus future employment from the scheme would be zero. Whilst

the proposals would result in employment during construction, this would be nominal and moreover temporary.

“ii. Where the proposal concerns loss of employment land of more than 0.25ha in the principal settlements, market towns or local service centres it is replaced with employment land of similar size elsewhere at that settlement.”

The floor area previously utilised for employment use is approximately 70m², well below this requirement. No replacement floorspace would therefore be required.

iii. It can be shown that the loss of a small proportion of employment floorspace would facilitate the redevelopment and continuation of employment uses on a greater part of the site, providing the same number or more permanent jobs than on the original whole site

This is a proposal for 100% residential on the site and no employment floorspace would remain.

iv. The site is not appropriate for the continuation of its present or any employment use due to a significant detriment to the environment or amenity of the area

The application site is a relatively small part of wider (but now vacant) employment use on the site. Recent approvals (see above) have seen that use further diminished. Continuation of a B1 - e.g. light industrial/offices/research and development - would have implications in terms of potential new residents and, whilst B1 uses are considered compatible with residential properties, a degree of additional nuisance in the form of traffic movement. However it is noted that the Trowbridge Masterplan forms a material consideration and whilst the weight to be attributed to this is low; the plan does indicate a desire to see residential uses within this locality of Polebarn Road in preference to commercial uses.

v. There is valid evidence that the site has no long term and strategic requirement to remain in employment use; the ability of the site to meet modern business needs must be considered, as well as its strategic value and contribution to the local and wider economy both currently and in the long term. It must be shown that the site is no longer viable for its present or any other employment use and that, in addition, it has remained unsold or un-let for a substantial period of time (at least 6 months), following genuine and sustained attempts to sell or let it on reasonable terms for employment use, taking into account prevailing market conditions

The supporting documentation confirms that the building formed part of the wider uses of Homefield House and ancillary structures as a government building and commercial spaces. The application building has however been vacant since the Ice-Cream factory closed. Additional information has been provided upon request including a commercial assessment by Carter Jonas, which inter alia indicates the cessation of a commercial use in the 1980's and that there has been no replacement activity. The firm marketed the wider site as a whole and on a floor by floor basis also, as reflected in the documentation submitted for the adjacent conversions. The document now submitted (May 2016) also assesses market conditions and the particular location and situation of the building, concluding that:

- There is significant availability of office space on the market in all West Wiltshire market towns and rural locations with limited demand as shown by an average take up in Trowbridge of approximately 20,000 sq. ft. p.a. over the past several years.

- The current consent for the property is B1(c) is, in the opinion of the author not suitable for the manufacturing, or indeed any commercial use, given the location of this property; and
- If planning consent is not forthcoming for a residential conversion, it is the opinion of the author that a conversion to an alternative commercial use would not be viable and the property would remain in its existing unoccupied state.
- It is also the author's view that due to the level of availability of office accommodation, there would be no adverse impact on the office market either within Trowbridge or on a more regional West Wiltshire basis if this site was to be used for an alternative use.

In light of the evidence submitted for the recent approval under 15/12319/FUL and the long-term vacancy of the buildings on the site, these views are considered to reflect the reality of the site, i.e. that commercial uses would be unlikely to bring forward interest that would result in the refurbishment of the Grade II listed building from its current poor condition.

In summary: The site has clearly been vacant for a considerable period of time; and there is evidence of genuine efforts made to market the wider premises for sale without any notable interest and the opinion of experts in the field is that the site is not suitable/viable for ongoing B1 uses.

It is further noted that that permitted development rights exist for some premises to change use to C3 from B1(a); however that is not applicable in this case where B1(c) (Light Industrial) was the last use. Planning permission is required for the change of use and the extension to the building and it needs to be assessed on its merits. The government's stance on allowing some further changes of use under permitted development is thus carries nominal positive weight.

vi. The change of use is to facilitate the relocation of an existing business from buildings that are no longer fit for purpose to more suitable premises elsewhere within a reasonable distance to facilitate the retention of employment."

This is not applicable in this case; the premises are vacant and there is no relocation.

The NPPF is of a further material consideration over and above CP35: *"Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities'.*

Thus, having regard to all the criteria within CP35 and in light of the additional information provided it is considered that sufficient justification exists to allow the loss of employment floorspace at the site.

9.4 Access and Highways

The development site is located in close proximity and within easy walking distance of Trowbridge Town centre and the related facilities, open space and transport links. In such circumstances car-free schemes have in the past been seen as wholly acceptable. In this

instance there is however an extensive open courtyard area wherein the proposals include the provision of 6 parking spaces. Following the re-building of the Grade II listed Wall fronting Polebarn Road between Rosefield House and the Police Station the initial plans that included a new access through what was the collapsing wall were revised to utilise the current access to the complex as a whole. The retention of the wall is considered to be essential to the street scene, and the use of the existing access would not give rise to any new unacceptable hazard when seen in the context of the fall-back position of the commercial uses that could take place on the site.

Pedestrian access over common areas would lead from the parking area to the new dwellings.

The existing courtyard area is wholly adequate in terms of size to provide for the proposed parking. However, a condition would be appropriate to ensure that the area provides for allocated, laid out spaces which are retained as such in the future. (This was an issue raised by the objector as well).

It is considered that, subject to conditions, issues of highways and parking can be fully addressed in relation to the proposed scheme.

9.5 Potential Impact on neighbouring amenity

The proposed development sits in the context of recently permitted residential conversions in the Polebarn House complex (not all fully implemented) as well as directly opposite Rosefield Cottage.

No vehicular access direct to the building would be provided, with parking provided in the separate existing large courtyard area. No new nuisance from car movements over and above that which would be anticipated with a fall-back commercial use of the building would arise.

There is currently one main entrance door to the building, which leads directly from a pedestrian footpath. This entrance is provided through large timber stable doors which are presently in relatively poor condition. It is proposed that the main entrance for one of the dwellings would be provided within this existing opening. A large window opening adjacent the stable doors will provide a main entrance to the second dwelling. A third door would be provided to the dwelling proposed within the extension. Adjacent to the new door would be a window serving an open plan sitting room/kitchen ground floor area. Part of the neighbour objection relates to these openings to the new dwelling.

Whilst acknowledging that the gap between the proposed and neighbouring kitchen window in Rosefield Cottage is narrow, the existing window of concern does serve the kitchen and not a habitable room such as a bedroom. The kitchen window furthermore faces onto the access/yard area serving the wider complex, which is not private curtilage land and issues of privacy are therefore not considered to be a reason for refusal. Further investigation confirmed that the kitchen forms part of an open plan arrangement with a primary window to a sitting room facing the opposite direction onto the garden space. Other primary windows to the lounge/bedrooms in the existing dwelling do not face onto the proposed development. The applicant has however agreed to a condition requiring obscure glazing to the new window that would face towards the existing kitchen in order to further limit any possibility of direct views into it.

With regard to the question of overshadowing, the existing kitchen window currently faces on to the derelict shed building that would be replaced. Beyond that (when viewed from the kitchen) is a double storey element of the complex of buildings on the site. The new extension would replace the footprint of the shed, with limited extension beyond the current outside walls (approximately 290mm towards the front elevation and 750mm to the side). Given the existing situation and the fact that the kitchen window does not serve a habitable room it is considered that refusal on the basis of loss of light to the window would not be sustainable. Higher level windows to the existing dwelling would also face the new extension but, again, these are either secondary windows or do not serve habitable rooms.

A further objection is the potential for future residents to loiter outside of the new building door, for example smoking and creating noise disturbance. There is no indication that the development would be likely to give rise to anti-social behaviour. The intervening space between the development and the existing dwelling is furthermore common land to the wider complex. Thus, whilst there might be a degree of additional footfall in the common area, this is not considered to be likely to give rise to a degree of nuisance justifying refusal. The fall-back position of a light industrial use in the building, with potential higher frequencies of non-residential occupants using the area is also a material consideration.

The proposal would give rise to the building being properly refurbished and brought back into functional use. This is considered to be a positive aspect for the surrounding area including the setting of Rosefield Cottage, and also in terms of the longer term future of the host listed building. The removal of the shed and its replacement with an extension compatible with the listed building would also remove the very dilapidated shed building. With regard to issues of asbestos contamination with the demolition of the shed building, this would be a matter for building regulations rather than planning.

With regard to access to the objector's garage, the extension to the building would result in a reduction of roughly 0.3m in the existing separation distance of approximately 9.7m. It is considered that this would not alter the manoeuvring space to such a degree that would justify refusal of the application.

In view of the above it is considered that, subject to conditions, the development would not give rise to unacceptable neighbouring amenity issues. A positive aspect of the proposal however would be the renewal of the area and enhancement of the parking courtyard.

9.6 Other matters

The existing building (as noted above) has deteriorated over time and, whilst some repair activity was evident at the time that the application was first received, this appears to have ceased. The sealing of the building now appears not fully secure and the possibility therefore exists that protected species may be nesting within the vacant structure. Thus it is considered reasonable to take a precautionary approach and require that prior to any works being commenced, the building is investigated for protected species and, if found, mitigating measures for their removal/accommodation at demolition are agreed.

10. Conclusion (The Planning Balance)

The principle of the acceptability new residential development in this locality is established by virtue of current policy. The proposals are satisfactory in terms of heritage objectives in light of the other additional information provided. The conservation officer is satisfied with the proposals, subject to conditions in any Listed Building Consent approval. Adequate information to justify the complete loss of employment floorspace on the site, and the building is part of a wider, long-term vacant employment site which has recently had other residential changes of use approved. Highways and access requirements are satisfactorily addressed subject to conditions. Also, subject to a condition in relation to obscure glazing, and considering the window affected to a degree by the new extension serves a kitchen, no unacceptable harm to amenity justifying refusal would arise.

RECOMMENDATION

Grant planning permission, subject to the following conditions and informatives:

- 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 No development shall commence on site until details and samples of the materials to be used for the external walls and roofs and in accordance with the annotation to Drawing No. CLCS/ 136/102 REV A have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. For the avoidance of doubt roof material shall be natural stone and not of cement manufacture.

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

- 3 Before the development hereby permitted is first occupied the windows in the extension to the front elevation shall be glazed with obscure glass only and the windows shall be maintained with obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

- 4 No dwelling shall be occupied until parking spaces for six vehicles, together with the access thereto, have been provided in accordance with details to be submitted for approval in writing by the Local Planning Authority. The parking and turning spaces shall be retained for use as such thereafter.

REASON: In the interests of highway safety and the amenity of future occupants.

- 5 No demolition, development or other internal works shall commence prior to the assessment of the building for bats and nesting birds. The assessment shall be carried out by a licensed, professional ecologist. If the buildings are assessed as having low, moderate or high potential for roosting bats or other protected species, then subsequent presence/absence surveys shall be undertaken. If presence of bats or other protected species is confirmed, an impact assessment comprising detailed

mitigation measures, a monitoring strategy and habitat enhancements shall be submitted to the Local Planning Authority before any demolition or other internal works are undertaken. The mitigation strategy, monitoring and habitat enhancements shall be carried out in accordance with the approved details and as modified by a relevant European Protected Species Licence from Natural England (where applicable).

REASON: In the interests of the protection of Protected Species.

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

CLCS/136/100 registered on 18 May 2015;

CLCS/136/101 registered on 18 May 2015;

CLCS/136/102 REV A received on 22 October 2016; and

CLCS/ 136/103 REV A received on 11 August 2016.

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

- 7 INFORMATIVES:

This Decision notice must be read in conjunction with that in relation to application 15/03181/LBC and the conditions applicable thereto.

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.

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No Planning Appeals have been Received between 30/09/2016 and 20/10/2016

No Planning Appeals have been Decided between 30/09/2016 and 20/10/2016

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