

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber - County Hall, Trowbridge BA14 8JN
Date: Wednesday 14 December 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>

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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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AGENDA

Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 14*)

To approve and sign as a correct record the minutes of the meeting held on

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register by phone, email or in person no later than 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 **Wednesday 7 December 2016** 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 **Friday 9 December 2016** 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 **Public Rights of Way Reports**

6a **Great Hinton - Path No. 34 - Rights of Way Modification Order 2016**
(Pages 15 - 78)

6b **Parish of Holt - Path No.73 - Definitive Map and Statement Modification Order 2016** *(Pages 79 - 174)*

7 **Planning Applications**

To consider and determine the following planning applications.

7a **16/01633/OUT - Land at The Grange, Devizes Road, Hilperton, Wiltshire, BA14 7QY** *(Pages 175 - 196)*

7b **16/06851/FUL - 139 Winsley, Bradford-On-Avon, BA15 2LB** *(Pages 197 - 214)*

7c **16/07872/FUL - Greenacre House, Cleveland Gardens, Trowbridge BA14 7LX** *(Pages 215 - 228)*

7d **16/05154/FUL - Land at Sparrow Road, Southview Park, Trowbridge, BA14 7FS** *(Pages 229 - 246)*

8 **Planning Appeals and Updates** *(Pages 247 - 248)*

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

None

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WESTERN AREA PLANNING COMMITTEE

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 23 NOVEMBER 2016 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Dennis Drewett, Cllr Pip Ridout, Cllr Gordon King (Substitute) and Cllr Jerry Wickham (Substitute)

Also Present:

Cllr Magnus Macdonald
Cllr Nick Blakemore

104 **Apologies**

Apologies for absence were received from:

- Cllr Seed who was substituted by Cllr Wickham
- Cllr MacDonald who was substituted by Cllr King
- Cllr Payne
- Cllr While

105 **Minutes of the Previous Meeting**

The minutes of the meeting held on 2 November 2016 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on 2 November 2016.

106 **Declarations of Interest**

There were no declarations of interest.

107 **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.

108 **Public Participation**

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

Formal questions with answers included in the agenda were noted.

Mr Morland asked who had drafted the response and sought additional clarification pursuant to his formal question. In response, the Council's senior spatial planning officer Christopher Roe, explained that Wiltshire Council did not include greenfield sites when calculating residential windfall opportunities as part of the 5 year housing land supply assessment.

Several Members expressed some concern about this and it was agreed that the Chairman, in consultation with the Vice Chairman, would discuss the possibility of having the issue as a future agenda item.

109 **Planning Applications**

The Committee considered the following applications:

110 **16.07361.FUL - Bitham Brook County Primary School, Arundell Close, Westbury, Wiltshire, BA13 3UA**

The case officer presented the report which recommended the application for the existing primary school to be extended in a 2 phase development with an additional informal and formal hard play area added, be granted subject to conditions.

The key planning issues identified in the officer's presentation were outlined and comprised: the principle of the development, impacts on the character and appearance of the area, impacts on neighbouring residential amenities, highway safety and parking and archaeology.

Members of the Committee then had the opportunity to ask technical questions of the officer, key points included; the status of the school travel plan and if parents had to adhere to the plan.

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

Public Participation

David Ross, on behalf of Bitham brook school, spoke in support to the application.

Cllr Ian Cunningham, Westbury TC, spoke in support of the application.

Cllr King as the local member highlighted the following points: - local residents were in support of the school but were anxious that the issues with parking and drop off would become worse, clear and consistent communication with parents was required to tackle the transport issues and the need for the transport plan to commence as soon as possible and not wait until the latter stages of the development.

A debate followed where a motion was then moved to approve the officer's recommendation. The main focus of the debate was around the school transport plan and parking restrictions.

Members were informed that the school travel plan could be brought forward to the beginning of the development and that a transport regulation order could be negotiated

At the end of the debate it was;

Resolved:

To 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. The development hereby permitted shall be carried out in accordance with the following approved plans: Red Line Location Plan; Existing Site Plan Rev A; Phase 1 Site Plan Rev A; Roof Plan Existing and Phase 1; Roof Plan Phase 2 Rev A; All Phases GIFA (Gross Internal Floor Area) Plans Rev A; Ground Floor Existing and Phase 1 Plan and Phase 1 Section; Ground Floor Phase 2 and Sections B and C Rev A; Existing Elevations; Phase 1 Elevations ; Phase 2 Elevations Rev A; Elevations All Phases Rev A, received 30th August 2016. Phase 2 Site Plan Rev C, received 20th October 2016. Bin and Cycle Stores, received 03rd November 2016

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

3. No development shall commence on site until:

- A written programme of archaeological investigation, which should include on-site work and off-site work such as the

analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- The approved programme of archaeological work has been carried out in accordance with the approved details.

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

4. No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:
- a) the parking of vehicles of site operatives and visitors;
 - b) the loading and unloading of plant and materials;
 - c) the storage of plant and materials used in constructing the development;
 - d) the measures to control the emission of dust and dirt during construction;
 - e) the hours of construction, including deliveries;
- has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

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

5. The development shall not be brought into use until an updated School Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include:
- Promotion of safe walking routes to school by identifying and mapping routes (particularly off-road footpaths), park-and-stride locations, and five- and ten-minute walking zones;
 - Establishment and operation of a walking bus from appropriate park-and-stride locations such as the Co-op car park;
 - Establishment of a rota of parents to monitor parking on Arundell Close;
 - Timing of full parent surveys
 - Details of implementation and monitoring and shall be implemented in accordance with these agreed details.
- The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with any changes to the plan arising from those results.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

6. Phase 2 of the development shall not be brought into use until the parking area shown on the approved plans has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

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

7. Phase 2 of the development shall not be brought into use until the cycle parking facilities shown on the approved plans have been provided in full and made available for use. The cycle parking facilities shall be retained for use in accordance with the approved details at all times thereafter.

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

8. Phase 2 of the development shall not be brought into use until the refuse and recycling facilities shown on the approved plans have been provided and made available for use. These facilities shall be maintained in accordance with the approved details thereafter.

REASON: To ensure the provision of satisfactory facilities for the storage of refuse and recycling.

9. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building with the exception of the Trespa Cladding System to be used on the end elevation of phase 1 which shall be in accordance with the details submitted with this application.

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

10. The MUGA hereby permitted shall only be used between the hours of 09:00 and 18:00 from Mondays to Saturdays only.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

INFORMATIVE: The applicant is advised to contact the council's highway team to investigate the potential setting up a Traffic Regulation Order to restrict parking along Arundell Close.

The case officer presented the report which recommended the application for a two bedroom bungalow with associated parking and amenity area, be approved.

The key planning issues identified in the officer's presentation were outlined and comprised: the principle of the development, impact on heritage assets, impact on the character and appearance of the area, impact on the neighbouring residential amenities and highway safety and parking.

Members of the Committee then had the opportunity to ask technical questions of the officer, no questions were asked.

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

Public Participation

David Fennel spoke in objection to the application.

Robert Kerr spoke in Objection to the application.

Nigel King spoke in Objection to the application.

The local Member Nick Blakemore expressed his concerns and objection to this application and highlighted the following key points: the proposed development is overdevelopment of the plot and would be out of keeping with the area; an additional vehicle access being formed onto the narrow single road would be difficult and would likely lead to highway conflict; where the new access is being proposed, there is no hammer head for manoeuvring vehicle and the proposed development makes no provision for visitor parking which could lead to issues in the future between road users and vehicles trying to access private accesses..

The members were informed that the trees in the open space were protected trees with TPOs and that privacy, light and parking arrangements light had been assessed. A condition had also been included for surface water drainage.

A debate followed where a motion was then moved to refuse the application. Key points raised in the debate included: overdevelopment and loss of amenities, out of keeping with the area, the impact on the appearance and character of the area. It was noted that 4 Members of the committee had visited the site.

At the end of the debate it was:

Resolved

To refuse the planning application for the following reason:

The proposed development is considered to be an overdevelopment of the site resulting in a cramped form of development that is out of keeping

with the character and appearance of the area contrary to Policy 57 of the Wiltshire Core Strategy adopted January 2015.

112 **16.06851.FUL - 139 Winsley, BA15 2LB**

The area team leader presented the report which recommended that the application for alterations to the existing dwelling and erection of one new attached dwelling with an associated new access, parking provision and demolition of an outbuilding and partial down taking of boundary wall, be granted, subject to planning conditions.

The key planning issues identified in the officer's presentation were outlined and comprised: the principle of the development, impact on the conservation area/ heritage assets, impact on neighbouring amenity, impact on highways safety, impact on ecology and the impact on archaeology.

Members of the Committee then had the opportunity to ask technical questions of the officer, key points included; the changes made pursuant to permitted development allowances, the status of the neighbouring property at No. 138 becoming an end of terrace house rather than a semi-detached as well as the means of accessing the property and technical questions relating to the proposed entry and parking turntable.

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

Public Participation

Noelle Elstone spoke in objection to the application.

Tom Rocke (Agent) spoke in support of the application.

Ed Gilling, Chairman of Winsley Parish Council, spoke in objection to the application.

Cllr MacDonald as the local member highlighted the following key points: Local residents were against the development and that the development was out of keeping with the area.

A debate followed where a motion was then moved to defer the application for a site visit to take place.

Resolves

To defer the application for a site visit.

113 **Planning Appeals and Updates**

The Planning Appeals Update Report for 20/10/2017 – 10/11/2017 was received.

Members were informed that the Fulmar Close application appeal was to be handled as a fast track householder appeal and that the Council did not have the right to submit an appeal statement. The Council was only limited to highlighted flaws within the appellants grounds for appeal. The area team leader acknowledged that the local ward member, cllr While was presently out of action and it was understood that his ward member duties were being dealt with by Cllr Seed. Members were advised that officers would review the notifications to ensure that should any flaws be identified, before November 28th, the planning inspectorate would be informed.

It was also discussed and noted that for future refusal decisions made contrary to officer recommendation, detailed minutes would be necessary.

Resolved:

To note the Planning Appeals Update Report.

114 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.05 - 5.15 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

WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

14 DECEMBER 2016

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE WILTSHIRE COUNCIL GREAT HINTON PATH No. 34 RIGHTS OF WAY
MODIFICATION ORDER 2016**

Purpose of Report

1. To:
 - (i) Consider the two objections received to the making of The Wiltshire Council Great Hinton Path No. 34 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 supports the confirmation of the Order.

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 that is fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. Bridleway Great Hinton No. 34 leads from Cold Harbour, Great Hinton in a southerly direction to properties at Bleet and then in a westerly direction to join the Haghill to Steeple Ashton Road. It has no recorded width but leads along an enclosed private road known as "Bleet Lane".
4. Wiltshire Council received an application for a definitive map modification order to record a width for bridleway Great Hinton No. 34 in 2004. Owing to a significant backlog of these applications the Council failed to determine the application within the statutory timescale and in 2015, acting on an appeal made by the applicant, the Secretary of State for the Environment, Food and Rural Affairs directed Wiltshire Council to determine the application by August 2017. The application has therefore been processed out of chronological order of receipt.
5. The application is for a definitive map modification order to record the width of the bridleway Great Hinton No. 34 as extending between the hedgerows of the ancient lane. This has a variable width as the line of the lane is bounded by a number of properties and fields which have irregular boundaries.

6. The applicant relies on an Ordnance Survey map of 1924 showing the lane. It is estimated that on this map the width varies between 21 metres at the northern end at Cold Harbour, narrowing to approximately 8 metres in the middle before widening again to 15 metres at the western end.
7. The case relies on historical evidence and not on evidence of public use in recent times. During the process of determining this application officers carried out a full investigation of historical documents relating to this lane and this can be found in the Council's Decision Report at **Appendix 2**.
8. Bleet Lane was created in 1818 during the process of inclosure of Steeple Ashton Common. This was a procedure directed by Acts of Parliament which laid out the roads and land boundaries in the parish which largely continue to exist today. Bleet Lane was awarded as a "Private Carriage road and Driftway" "20 feet wide" for the use of the owners and occupiers of the adjoining properties. No public rights were awarded along it.
9. Bleet Lane itself is an enduring physical feature that has not significantly altered since 1818 (although the northern end now leads through commercial premises, some of which it is alleged by the applicant encroach on the historic lane). It is considered that public rights were acquired over the lane through public use at sometime after 1818. The nature of the public right has been recorded as public bridleway and is not disputed but the extent or width of these rights remain unrecorded and is the subject of the Order before this Committee.
10. On 25 August 2016 Wiltshire Council made an Order to record the width of bridleway Great Hinton No. 34 as 6.1 metres (20 feet). The Order was duly advertised and has attracted two objections.
11. Unless these objections are withdrawn the Order cannot be confirmed by Wiltshire Council and the Order must be sent to the Secretary of State for Environment, Food and Rural Affairs for determination.

Main Considerations for the Council

12. Objection No. 1 S Noad Received 18 October 2016

"I am still concerned that if the width of 20 ft is recorded it will have an impact on the future of our properties, as the over laid plan clearly shows that the shaded width effects buildings, fences etc and unless excluded or a current useable width is recorded I feel we must object. As I understand an opportunity was made in 1949, under the Wildlife and Countryside Act, for the Parish Council to record a width to supersede the recorded width in 1844 to reflect what the actual width of the bridleway was. If an order has to be made and no objections, other than Mr Fields, have been made in, the last 50 years then surely it is not reasonable to have the new width recorded as what is actually used at its narrowest point which is approximately 13 – 14 ft in places, midway and at the lower part of the lane. I find it hard to see that the lower part has changed at all as you have a brook one side and the ditch on the other. Please find attached letters from myself, my mother and from Mr and Mrs Newman. If you require the hard copies please email me and I will either drop them in or post them."

Three identical letters were submitted with Mr Noad's objection. These were from Mr S Noad himself, Mrs Y Noad and Mr and Mrs Newman. The content of the letters is set out below.

"The Wiltshire Council Great Hinton Path No. 34 Rights of Way Modification Order 2016.

I have inspected the plan attached to the above Order and also the plan which you sent me with your letter of 28 June 2016 showing the bridleway coloured green.

The markings on the plan attached to the Order appear to encroach on to my buildings, hedge, land and for this reason I must object to the Order.

If, however you can confirm to me in writing that Path 34 does not encroach on to my property or any of my buildings on it, and/or they will be excluded from the Order then I will withdraw this objection."

13. **Objection No. 2 Mr G Field (applicant) Received 21 October 2016** submitted by Mogers Drewett acting for Mr Field

"Great Hinton Bridleway 34

We are writing on behalf of Mr G Field the Applicant to object to your Order (that the width be 20 ft throughout its length).

We repeat what we said in our submission of 5th August 2016.

It is Mr Field's assertion that the public right exists across the full extent of the available width, and that it is not limited to a uniform width of 20 ft throughout its length.

The 20 ft width is that which was awarded in 1818, but referable to a private carriage road. The extent of the width which has been used by the public since then, and thus dedicated as a bridleway, is wider than 20 ft and extends to the whole available width.

It is self-evident from the OS Map evidence, as coloured green on the map accompanying our submission, and on the base map for the Finance Act 1910 for example, that the area of the public right widens out as you go north. That is the extent of the used and dedicated width and it is more than 20 ft.

In para 16.16 of your report, you refer to the significant development at the northern end, and indeed the 1980 National Grid Series Map shows how much encroachment/obstruction there has been at that end. This is what gave rise to Mr Field's original complaint and correspondence, that that encroachment and obstruction ought to have been removed. It is within the extent of the dedicated width of the bridleway.

In para 27.23 of your Report you mention the encroachments which have given the route an “irregular appearance”. Those encroachments cannot reasonably be described as de minimis. They substantially cut in to the dedicated width of the bridleway and should be removed.

We concur with paras 27.4 and 27.5 of your Report. We also concur with para 27.19 of your Report and, of the two alternatives mentioned in that para, we assert that the public have acquired a right over the entire available width. The available width varies significantly in different sections of the route. In the lower, southern section it is at least 20 ft and may be 24 ft or 25 ft; in the higher, northern end, it is wider than that, in parts significantly wider than that.

On the balance of probabilities it must surely be more likely that the public have acquired a right across the whole of the available width, and did not limit themselves to a strict blanket width of 20ft; to suggest that they did would be irrational.

In conclusion, it is the basis of Mr Field’s objection to the Order, that the public have acquired a right across the whole available width, that that available width varies significantly, and that it is more than 20ft.”

Comments on the objections

14. Members of the Committee are now required to consider the objections 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
16. Both objections refer to alleged encroachments on the right of way. The presence of any buildings, fences or hedges on or beside the right of way are irrelevant to the determination of this Order where they have occurred after the public right was acquired.
17. Although it is not known when the public right was acquired along Bleet Lane it is clear that it was after 1818 (when the lane was created) and before 1934 (when in a survey of public rights of way Great Hinton Parish Council submitted that the lane at Bleet was a Green Lane not repairable by the public). None of the buildings or fences referred to by either objector were constructed within the period 1818 to 1934 and accordingly their presence or any actions that the council may need to take with regard to them are not relevant considerations for the determination of this Order.

18. Neither objector brings any new evidence to the Council's attention to support their case. Objector No. 1 considers that the recorded width should be narrower than 20 feet based on the presence of recent buildings, fences and hedges and Objector No. 2 considers that the recorded width should be greater than 20 feet based on a public right having been acquired between the historical boundaries of the route.
19. It is the Council's case that the public have acquired a right over the land that was available to them and that it is more likely than not that this extended to the width created at inclosure for the use of adjoining landowners. There is no certainty that a wider width was available for use (owing to the need for drainage ditches) and it is not likely that a narrower width was provided during the process of inclosure when it was clear that a legal event created one that was at least 20 feet wide.
20. It is a rebuttable presumption that public rights extend between the physical boundaries of a public road ('the hedge to hedge presumption') but this may only apply where the fences were erected to separate private land from a public right of way and this is not the case here. In the case of Bleet Lane the fences and hedges that originally defined the lane were erected to separate private land from a private road. It is not known why Bleet Lane was created wider than it needed to have been (it may have been for reasons of drainage or convenience when fencing enclosures) but it is considered likely that the public acquired its rights after the lane was built. Accordingly, it is considered unwise to proceed on the basis of the 'hedge to hedge presumption' where it is possible that from its creation the entire width of the lane was not available to the public to use.
21. The principles of common law dedication are fundamental to this case. For a dedication to succeed at common law there must be an act of dedication by the landowner and whilst it may be argued that the separation of the enclosed land into the highway was an act of dedication, there is no evidence (and considerably less likelihood) that the second requirement of a dedication at common law (the acceptance by the public) occurred over the greater width rather than the available awarded width (of 20 feet).

Safeguarding Considerations

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

Public Health Implications

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

Procurement Implications

24. 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 paragraph 29 of this report.

Environmental and Climate Change Considerations

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

Equalities Impact of the Proposal

26. Matters relating to the equalities impact are not relevant considerations in accordance with section 53 of the Wildlife and Countryside Act 1981.

Risk Assessment

27. 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

28. The making and determination of Orders made under the Wildlife and Countryside Act 1981 is a statutory duty for Wiltshire Council for which financial provision has been made.
29. 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).
30. Where the Council objects to the Order (i.e. it no longer supports making it, or wishes it be modified to record a restricted byway) 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 29 above.
31. 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 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

32. 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’s decision if this is seen as incorrect or unjust by them. The cost for this may be up to £50,000.

Options Considered

33. Members may resolve that the Order should be forwarded to the Secretary of State for determination as follows:
- (i) The Order be confirmed without modification, or
 - (ii) The Order be confirmed with modification.
 - (iii) The Order should not be confirmed.
 - (iv) The Council takes a neutral stance with regard to the confirmation of the Order.

Reason for Proposal

34. Wiltshire Council has a duty to record a width for this right of way and accordingly is not in a position to adopt a neutral stance in this instance. Additionally, no further evidence has come to its attention after the Order was made which may cause officers to amend the initial decision (see **Appendix 2**).
35. Officers consider that encroachments on the historic lane post date the acquisition of public rights and accordingly it is not appropriate to record a width for public rights that excludes an area now covered by them which was previously available for the public. It is therefore not appropriate to seek to modify the Order to record a narrower width.
36. It is considered that a width of 20 feet was created at inclosure and was, in all likelihood available for people to use, whether they were exercising their private right or the public acquiring theirs.
37. It is recognised that Bleet Lane was created at a width wider than 20 feet but officers consider it likely that the extra width included drainage features and ditches that would not have been available for anyone to use in the way they would have used the more central section of the lane.

Proposal

38. It is recommended that The Wiltshire Council Great Hinton Path No. 34 Rights of Way Modification Order 2016 be forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

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

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 GREAT HINTON PATH NO. 34 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 an event specified in section 53(3)(c)(iii) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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 purpose of this order the relevant date is 17th August 2016.
2. The Warminster and Westbury Rural District Council area Definitive Map and Statement dated 1953 shall be modified as described in Parts I and II of the Schedule and shown on the plan attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council Great Hinton Path No 34 Rights of Way Modification Order 2016.

THE COMMON SEAL of]
 WILTSHIRE COUNCIL was }
 hereunto affixed this 25th day }
 of August 2016 }



in the presence of:

Kan...se

Senior Solicitor

84206

SCHEDULE

PART I

MODIFICATION OF DEFINITIVE MAP

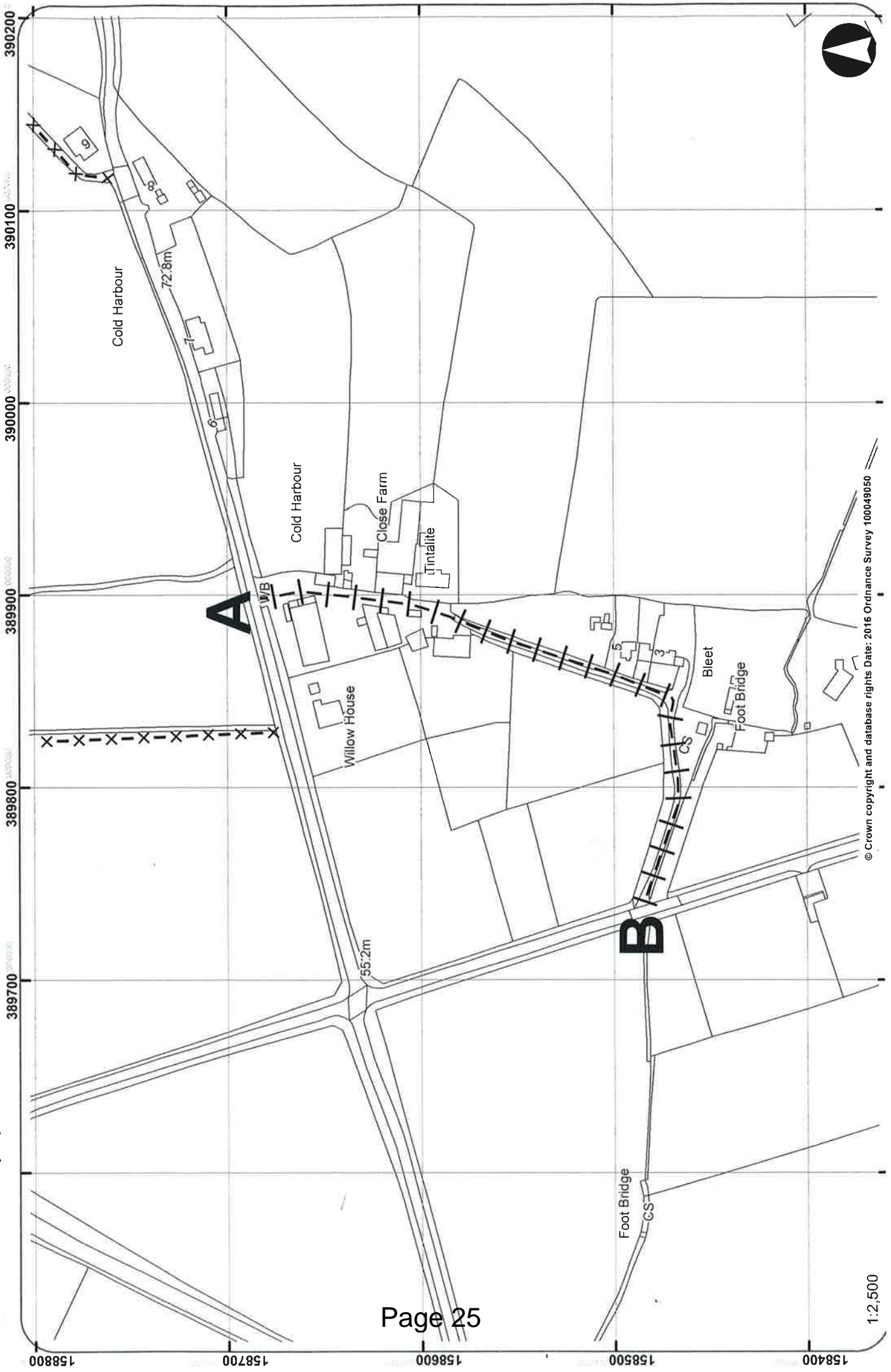
Parish	Path No	Description of path affected by variation	Modified under Section 53(3) as specified
Great Hinton	34	Length of bridleway shown by a continuous line with cross bars at intervals marked A to B on the plan annexed hereto Width 6.1 metres (20 feet) Approximate length 302 metres	53(3)(c)(iii)

SCHEDULE

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Parish	Path No	Description of path affected by variation	Modified under Section 53(3) as specified
Great Hinton	34	<u>BRIDLEWAY</u> Bleet Lane From the Haghill to Steeple Ashton road, C.19, at Bleet leading east south east and north north east to the Keevil road, C.218, at Cold Harbour. Width 6.1 metres (20 feet) Approximate length 302 metres	53(3)(c)(iii)



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WILDLIFE AND COUNTRYSIDE ACT 1981 S.53

DECISION REPORT

GREAT HINTON 34

NB All documents (including any 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, BA14 0XA; please contact Sally Madgwick on 01225 713392.

1.0 APPLICATION

Application number: 2004/33

Date of application: 12th August 2004

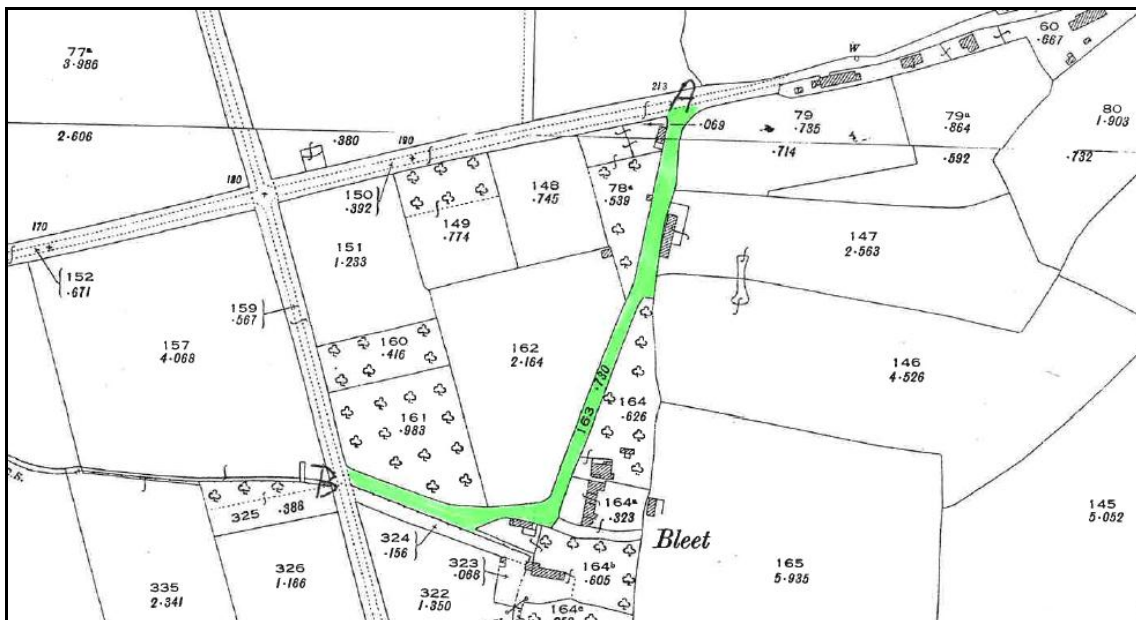
Applicant: Mr G Field
5 Bleet
Great Hinton
Trowbridge
BA14 6EA

Application for: An Order modifying the definitive map and statement for the area by recording the width of the bridleway Great Hinton 34 as shown shaded green on an extract from the 1:2500 Ordnance Survey Map (considered to be an Edition of 1924)

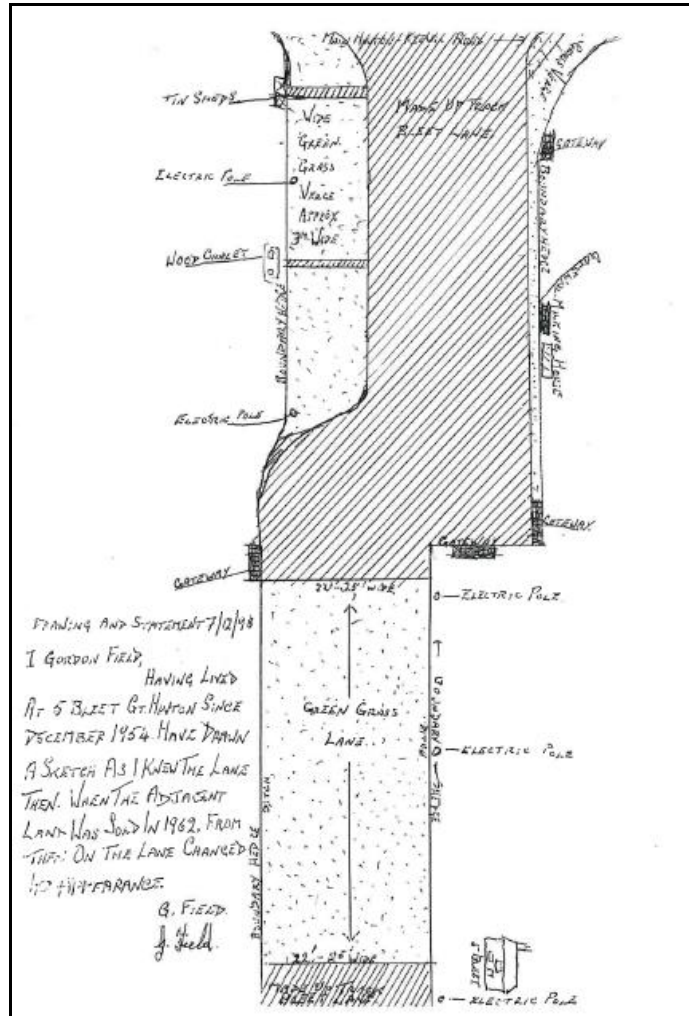
Application comprises: Form 1 Notice of Application for Modification Order
Plan at scale c.1:2500 showing the claimed width in green
Form 3 Certificate of Service of Notice of Application for Modification Order. Notice served on:
Mr P D Noad, Treetops, Great Hinton
Mr R Newman, Close Farm, Great Hinton
Hand drawn plan signed by Mr Field stating that has lived at 5 Bleet since December 1954 and claiming that the lane had changed its appearance when the adjacent land was sold in 1962.

Background to application: From at least 1990 onwards Wiltshire Council has been aware of issues raised by the applicant relating to drainage and width of this route

Application map



Evidence Adduced by Applicant



2.0 Enabling Legislation

2.1 Wiltshire Council is the surveying authority for the County of Wiltshire, excluding the Borough of Swindon. A surveying authority is the body responsible for the preparation and upkeep of the definitive map of public rights of way.

2.2 The Wildlife and Countryside Act 1981 (WCA 1981)(c.69) section 53(2)(b) applies:

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

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

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

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

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

2.4 The council must consider all available evidence and this may relate to a dedication at common law or by statute law. Historical evidence may be considered by virtue of Section 32 of The Highways Act 1980 (below):

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

2.5 Section 53(5) WCA 1981 allows for any person to apply 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.

2.6 Schedule 14 to this Act states:

Form of applications

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

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

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

Notice of applications

2. *(1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*

(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

(4) Every notice or certificate under this paragraph shall be in the prescribed form.

- 2.7 A surveying authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the surveying authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.
- 2.8 This application is considered to be largely compliant with Schedule 14. The ownership of the land over which Great Hinton 34 leads is not clear and although the applicant served notice on two of the adjoining landowners (and is himself another) there are additional properties adjoining the lane who may claim ownership. These have been included in the initial consultation and are therefore now aware of the application and have been given the opportunity to comment.
- 2.9 In *R (Warden and Fellows of Winchester College and Humphrey Feeds Ltd) v Hampshire County Council and SoSEFRA [2008] EWCA Civ 431* The Court of Appeal at paragraph 70 found that a deficiency in a paragraph 2(2) certificate is not fatal to an application if no prejudice has been caused. Since all adjoining landowners have had ample notice of the application and an opportunity to adduce evidence or to comment any failures in the service of notice by the applicant are not considered to have caused prejudice.

3.0 Land Ownership

- 3.1 The applicant (who lives in a property adjoining Great Hinton 34) considers that the route is owned by the following:

Mr P D Noad, Treetops, Great Hinton
Mr R Newman, Close Farm, Great Hinton

- 3.2 Lands belonging to Close Farm are unregistered with Land Registry; the route of Great Hinton 34 is also unregistered with Land Registry.
- 3.3 Use and maintenance of the way was awarded to the adjoining land owners at Inclosure in 1818 and accordingly it is considered that on the balance of

probabilities, the sub soil of the land over which Great Hinton 34 leads remains in the ownership of the adjacent landowners. The surface of the highway is vested in the highway authority, the extent of this in terms of the width is the subject of this application.

- 3.4 For the purposes of consultation and notice of the application the following were also notified:

The Owner or Occupier, 3 Bleet, Great Hinton
The Owner or Occupier, Tintalite, Great Hinton
The Owner or Occupier, Bleet Cottage, Great Hinton
S Noad, Hinton Services, Bleet, Great Hinton

4.0 Current Records

- 4.1 Great Hinton 34 is recorded as a bridleway in the definitive map and statement.

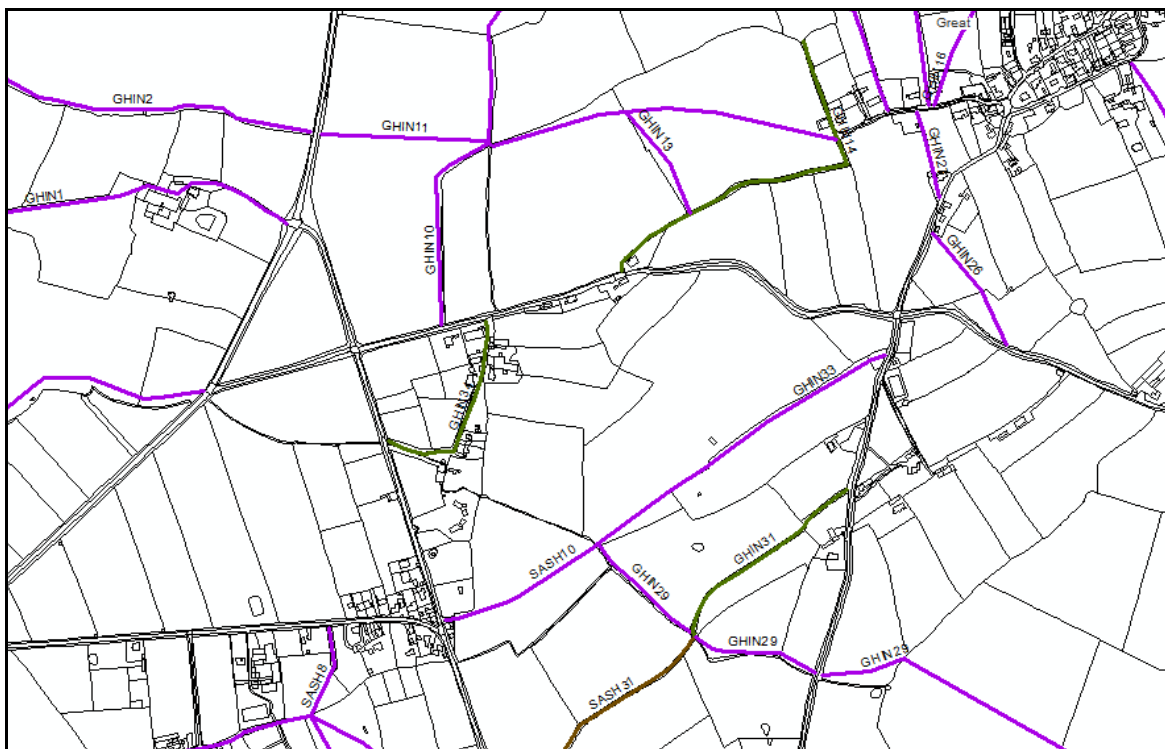
BRIDLEWAY From the Haghill – Steeple Ashton road, C.19, at Bleet leading east – south – east and north – north – east to the Keevil road, C.218, at Cold Harbour.

Approximate length 302 metres

- 4.2 The route was a former Road Used as a Public Path (Carriage Road Bridleway). It was added to the Warminster and Westbury Rural District Council area definitive map and statement dated 1953 without objection and was reclassified during the Council's Second and Special Review of the definitive map in 1972. The Parish Council requested bridleway and the County Council at that time did not find any inclosure or tithe evidence to suggest this was inappropriate. It was reclassified as a bridleway without objection.
- 4.3 An Order was made to update the definitive map in 1991 entitled: The Wiltshire County Council (Sheets ST 85 NW, ST 85 NE, ST 85 SW, ST 85 SE, ST 84 NE, ST 95 SW, ST 8456 – 8556, ST 8457 – 8557, ST 8458 – 8558, ST 8657 – 8757 and ST 8658 – 8758) Rights of Way Modification Order No. 7 1991 (ref no 324) and the map shows the right of way (A1 to B1) as below:



Extract from working copy:



Footpaths = purple, Bridleways = green, Restricted byways = red, Byways Open to All Traffic = brown

4.4 An extract from the original definitive map dated 1953 shows the course of the RUPP Great Hinton 34 as a green pecked line:



5.0 Aerial Photographs

Aerial photographs from 1991, 2001, 2006 and 2014 have been viewed and all record significant activity with cars and buildings at the northern (Cold Harbour) end of the Great Hinton 34 while the rural character of the southern and western sections remains.

2001



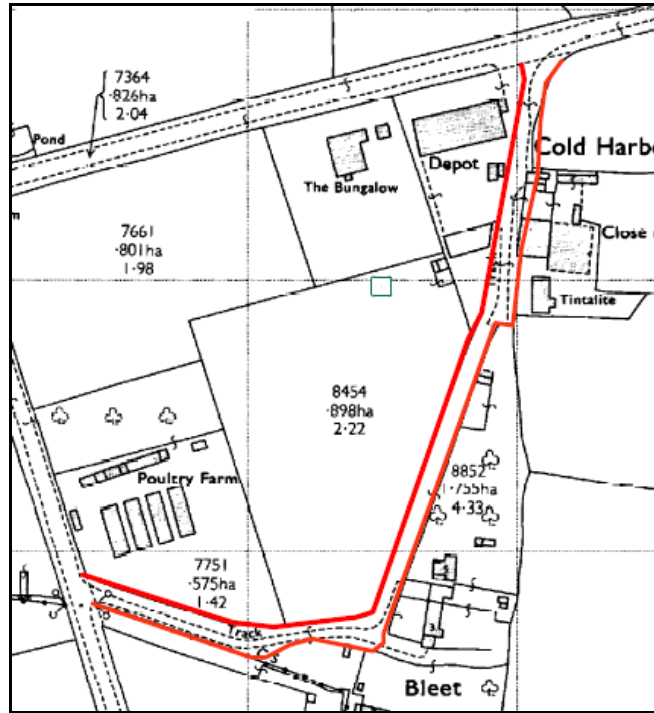
2006



2014



- 5.1 Using the Council's Arc GIS system it is possible to overdraw the boundaries of the applicant route from the historic Ordnance Survey mapping and then to overlay those lines onto more modern mapping or aerial photographs to reveal any changes to the route in the last 100 years or so.
- 5.2 **Historic route (from 1901 Ordnance Survey 1:2500 map) overlaid in red onto c.1980 OS survey plan:**



5.2 Historic route (from 1901 Ordnance Survey 1:2500 map) overlaid in red onto 2014 aerial photograph



6.0 Photographs of the Route

Officers of the Council made site visits and conducted historical research into the route in 1998. These photographs show the route walked from the west (Common Hill) to Cold Harbour in the north and were all taken in 1998 except for the first and last ones which are images taken c.2013



Great Hinton 34 at Common Hill (western) end



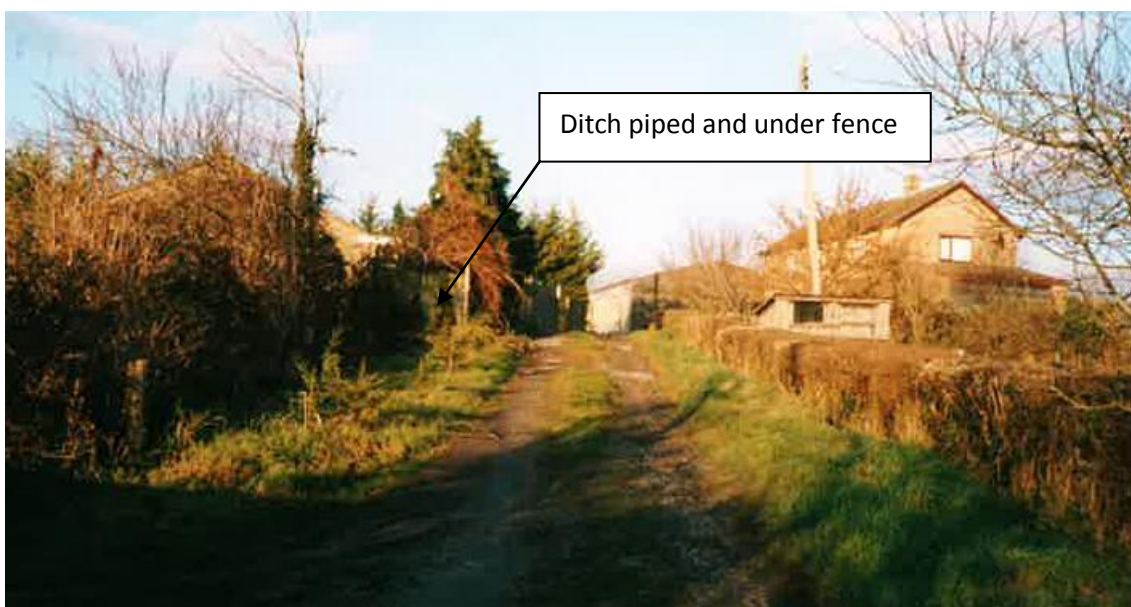
Great Hinton 34 leading east towards cottages at Bleet



At Bleet cottages route turns north north east



Route leads north towards Cold Harbour





Close up of fencing and piped ditch



Route continues north towards Cold Harbour between buildings



Junction of Great Hinton 34 with C.218 at Cold Harbour. Area on left hand side now developed.

7.0 Correspondence 1990 - 2015

Correspondence held on file includes notes, photographs and correspondence dating from 1998 and 1999 from officers of the Council investigating a complaint relating to alleged encroachment by Mr Noad. It is clear from the correspondence that the owner of Close Farm, Mr Williams, and Mr Field were both aware of the investigations at the time and were invited to apply for a definitive map modification order to record a width in 1999 and again in 2001.

7.1 The file also contains copies of correspondence between Mr Field's solicitor and Mr Noad's solicitor relating to a dispute about drainage from the bridleway in 1990. It is not clear what was resolved but the exchanges provide some useful background information about the route including:

- Mr Field had lived at 5 Bleet since 1954 and dug ditches in the lane which was grass at that time.
- By 1985 the ditches were not visible to either party though Mr Noad claims there were none from 1965 onwards.
- A representative of the Council was alleged to have said the bridleway should be 12 feet wide.
- Wessex Water laid a water main under the surface of the bridleway in about 1988.
- Mr Noad had built up the level of the road. The increased levels had caused Wessex Water to raise the level of their sewage manhole on two occasions.

7.2 In 2004 Wiltshire County Council wrote to The Planning Officer at West Wiltshire District Council stating that:

"We have concluded that the width of Bridleway 34 is as described on the Ordnance Survey County Series, an extract of which I enclose."

7.3 In 2005 the Council wrote to a Mr Underwood who was acting as an agent for a planning application submitted on behalf of Mr Noad and informed him that:

"...The evidence supports the legal presumption of the highway boundary being within the fence lines shown on the enclosed map. I understand from my colleague the lane, as marked upon this plan, has been encroached upon at this site as can be evidenced by the wooden fence which protrudes into the lane in the vicinity of the bungalow and possibly other structures...."

7.4 In 2009 Mr Field wrote to the Chief Executive of Wiltshire County Council regarding his application for a DMMO. Mr Field was advised of his rights to appeal to the Secretary of State for non-determination of his application within 12 months of receipt and in 2015 Mr Field made a Schedule 14 appeal to the Secretary of State.

- 7.5 In 2015 an Inspector from the Planning Inspectorate directed Wiltshire Council to determine Mr Field's application on the grounds that *"it is not reasonable for an authority to take 16 years to determine this type of application."*

"In the circumstances the Secretary of State has decided that there is a case for setting a date by which the application should be determined. In exercise of the powers vested in her by paragraph 3 (2) of Schedule 14 to the 1981 Act, the Secretary of State has directed Wiltshire Council to determine your application not later than 1 August 2017."

8.0 Consultation 2016

The following letter was circulated on the 28th June 2016:

"Wildlife and Countryside Act 1981 s.53

Application to record the width of bridleway Great Hinton 34 at Bleet

Wiltshire Council has been directed by the Secretary of State for the Environment Food and Rural Affairs to determine an application made in 2004 to record the width of the public bridleway that leads from Cold Harbour, Great Hinton south to Bleet and then west to Common Hill (at OS Grid reference ST 8974 5848).

The applicant seeks to record the width as shown in green on the attached plan (the plan is at the scale of approximately 1:2500) and relies on evidence of the historic width of the lane pre-dating the sale of the adjacent land in 1962.

The Council must consider all relevant evidence that is made available to it and you are therefore invited to submit any evidence or observations that you have on the matter.

I would be grateful to receive responses by 5th August 2016. If in the meantime you have any queries please do not hesitate to contact me."

- 8.1 The letter was accompanied by a copy of the application plan (para. 1).
- 8.2 The letter and plan were sent to the following:

The Auto Cycle Union	Commons, Open Spaces & Footpaths
Wiltshire Bridleways Assoc.	Cyclists Touring Club
British Horse Society	Great Hinton Parish Council
Wiltshire Councillor J Seed	British Horse Society Wiltshire
Byways and Bridleways Trust	British Driving Society
Wiltshire Council Senior Rights of Way Warden P Millard	
The Ramblers T Lewis	The Ramblers B Micklam
Trail Riders Fellowship B Riley	Applicant G Field
The Owner/Occupier Close Farm	The Owner/Occupier 3 Bleet
The Owner/Occupier Treetops	The Owner/Occupier Tintalite

P M Underwood
Hinton Service S Noad

J Cheal Mogers Drewett (acting for Mr Field)
The Owner/Occupier Bleet Cottage

9.0 Consultation responses

9.1 Paul Millard, Wiltshire Council Senior Rights of Way Warden 01 July 2016

“We resurfaced the section of bridleway from Common Hill road up to 5 Bleet, Great Hinton, Trowbridge, Wiltshire, BA14 6EA this was in response to complaints received from an elderly resident who was in poor health and had reported that a rapid response paramedic had got his vehicle stuck whilst accessing or leaving his property and that this was potentially something which could mean he was denied urgent medical assistance.

The track was resurfaced with road planings tilted and raised above the verges so that rain water could flow off the track. I would think we resurfaced to a width of three meters.

To enable the works to take place some of the tree branches overhanging the bridleway were trimmed back to allow for the boom of the digger to operate safely. We have in the last 6 years also replaced the bridleway finger on the finger post.

I will ask the contractor for the exact date of the works and up date you.”

9.2 Bill Riley, Trail Riders Fellowship 01 July 2016

“Thank you for your letter of 28 June 2016 together with a plan referring to an application to record the width of Great Hinton BR 34 (a former RUPP).

The County Series 25” OS Maps 1885 – 1924 all show the width of the highway to extend from fence to fence, so the application is well founded and I am pleased to support it.”

9.3 Steve Noad, Hinton Services 22 July 2016

“Good to meet with you today, I am pleased that you have now made a site visit and have more of an understanding having viewed the areas in question as I think it was very important to have done so.

I have attached copies of the photos you requested and also for your information a copy of the Wessex Water Waste Network dated 07/04/14.

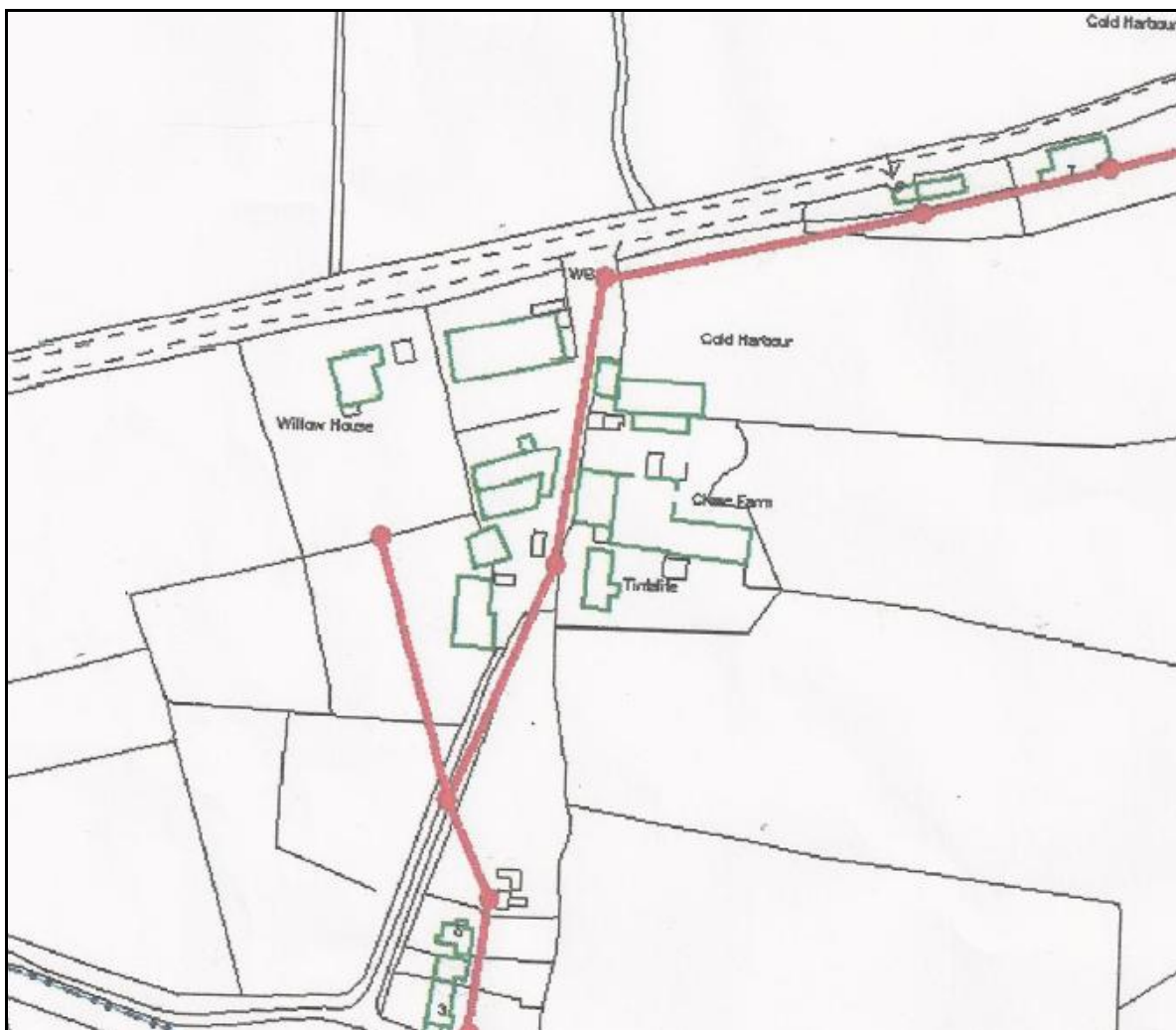
After having spoken with Richard Newman a little more, as we recalled and as per the map you have, the tin building in Mr G Fields paddock was on the edge of the said bridleway, it has occurred to us, that obviously his gate has been replaced for a metal one, myself and Richard recall that prior to that gate there was only an 8ft wooden gate with wooden posts. if you took the position of where that would have been and eye it with existing wooden post and the tin building, you would then have

a straight line and would gain approx. 4ft on the width of the lane. I recall when I was a young lad living here that Mr Fields did have the hedge at the top part of the lane either out or stripped right back and that would be when the new barbed wire fence was erected and post. As can obviously be seen the hedge has been moved and allowed to gain width as the water main is now in the hedge which was once in the lane.

I do think it is a very important point that my father had a site meeting about where he could legally place his fence prior to doing so with a council representative, and placing it in the current position on that advice. Again as from the photos it can be seen that the position of this is over the ditch which is now piped.

I hope this information proves useful.

Again very nice to meet with you, I know my mother, Richard and Joyce are also pleased that they have that meeting also.”



Wessex Water pipeline shown in red.



Aerial view of north end c. 1960s. Lane is clearly shown as a vehicular track with verges and ditches to the side.



9.4 Alan Kind 25 July 2016

“Re: consultation regarding the width of BR 34 at Bleet, Wiltshire.

Notes.

1. *The settlement at Bleet: it existed before inclosure in 1818? If yes, then there must have been some sort of road to / into the settlement, leading from and to the principal road(s)?*
2. *Given the character of Bleet, that ‘access road’ was probably a public road, but because the inclosure award private road (now the bridleway) appears to be wholly ‘internal’ to the lands being inclosed, the award has probably extinguished any prior public rights.*
3. *The irregular shape of the inclosure private road is more consistent with an ‘ancient road’ than a newly made inclosure road.*
4. *Whatever the pre-inclosure history, the outcome of the inclosure process has to be taken at face value unless there is evidence (‘facts and legal context’) to the contrary.*
5. *The award set out a private road 20 feet wide. If for some unknown reason the road was made wider, then as regards the ‘private right of way’, it is a reasonable presumption that the fencing of the road was made to separate the right of way from the adjoining fields. Inclosure awards usually had a ‘fencing clause’ for public and private roads.*
6. *By 1842 (tithe) and 1885 (OS) the road was mapped in the shape and layout that is today. By 1952 the road had the local reputation of being a minor public vehicular highway (per Fortune v. Wiltshire Council) but no width was recorded in the definitive statement.*
7. *In this situation it does not matter that the road was subsequently reclassified as a bridleway: that is an administrative matter in the absence of sufficient evidence to underpin the 1952 local reputation (as a RUPP).*
8. *So, at some time between 1818 and 1952 the road was dedicated as a public highway. The 1952 designation of RUPP was some evidence that, at the time, the local view was that this dedication was as a public vehicular road.*
9. *It would not be unreasonable, or unusual, for a 20-foot-wide (or at a somewhat greater, and irregular, width) private carriage road to be dedicated (generally evidenced by long public user) as a public carriage road. A 20-foot width for private vehicles is the sort of width needed for passing and repassing by public vehicles.*
10. *It would be reasonable and appropriate therefore to presume a width for the RUPP that reflects,*
 - 10.1. *The physical character of the road,*
 - 10.2. *The pre-dedication user of the road, and,*
 - 10.3. *The post-dedication (presumed) user of the road.*

11. *Remember that in the RUPP reclassification process there was no burden of proof to prove bridleway status; the burden was to prove vehicular status; the 'default status' was bridleway. This route is a bridleway where dedication as a bridleway was not an evidential matter.*
12. *Who could dedicate the public rights? It does not really matter at this distance in time. There is no burden to show that the recorded dedication as a RUPP was a valid dedication. That was found to be so via the original (unchallenged) definitive map process.*
13. *But the issue of ownership and dedication has a bearing on the width. Even though the road and adjoining plots were 'awarded', unless there is evidence to the contrary each streetward landowner as regards the awarded private road owns the soil of the road usque ad medium filum. There is nothing to prevent, e.g. a single landowner with an inclosure-awarded footpath across his allotted land expressly, or impliedly, dedicating a higher right of way over that footpath.*
14. *The dedication of the public right of way that was recorded as a RUPP in 1952 has to originate in post-1818 dedication, and that dedication was made by all the streetward landowners, usque ad medium filum. It is improbable that a set of 'half width' dedications (which aggregate to make the whole way dedicated) were dedications for less than the awarded 10-foot-width that each facing landowner owns. The character of the ownership is itself indicative of the extent of the dedication.*
15. *When did dedication take place? Obviously it was after 1818 and before 1952. The 1952 survey sheets may assist, but in the absence of knowledge of then-recent dedication (which you would think would have been known and recorded in 1952) the presumption must be that dedication took place 'time out of mind'. In 1952 time out of mind was around 1882. 1882 fits well with the route as shown by the Ordnance Survey in 1885 et seq.*
16. *Taking the known facts of the case, and applying the usual presumptions (see the attached 'Notes on the Width of Public Rights of Way') the presumption in this case is that the width of the RUPP in 1952 was and is the width of the road as shown by the large-scale OS maps from (about) 1885 onwards to 1952."*

9.5 Mr G Field 4th August 2016

- “1. *Mr G Field, the applicant, applies to have the true width of BR 34 recorded.*
2. *It is asserted by the Applicant that the true width is as shown on the copy OS Map attached, coloured green.*
3. *The 1818 Inclosure Map showed the lower part of BR 34 as being of a width of 20 ft, but the maps tend to show the route widening in its northern section. Thus, it is asserted that as a minimum, the width of BR34 is 20 ft, but at the northern end, as shown coloured green on the attached plan, the true width is considerably wider than that.*

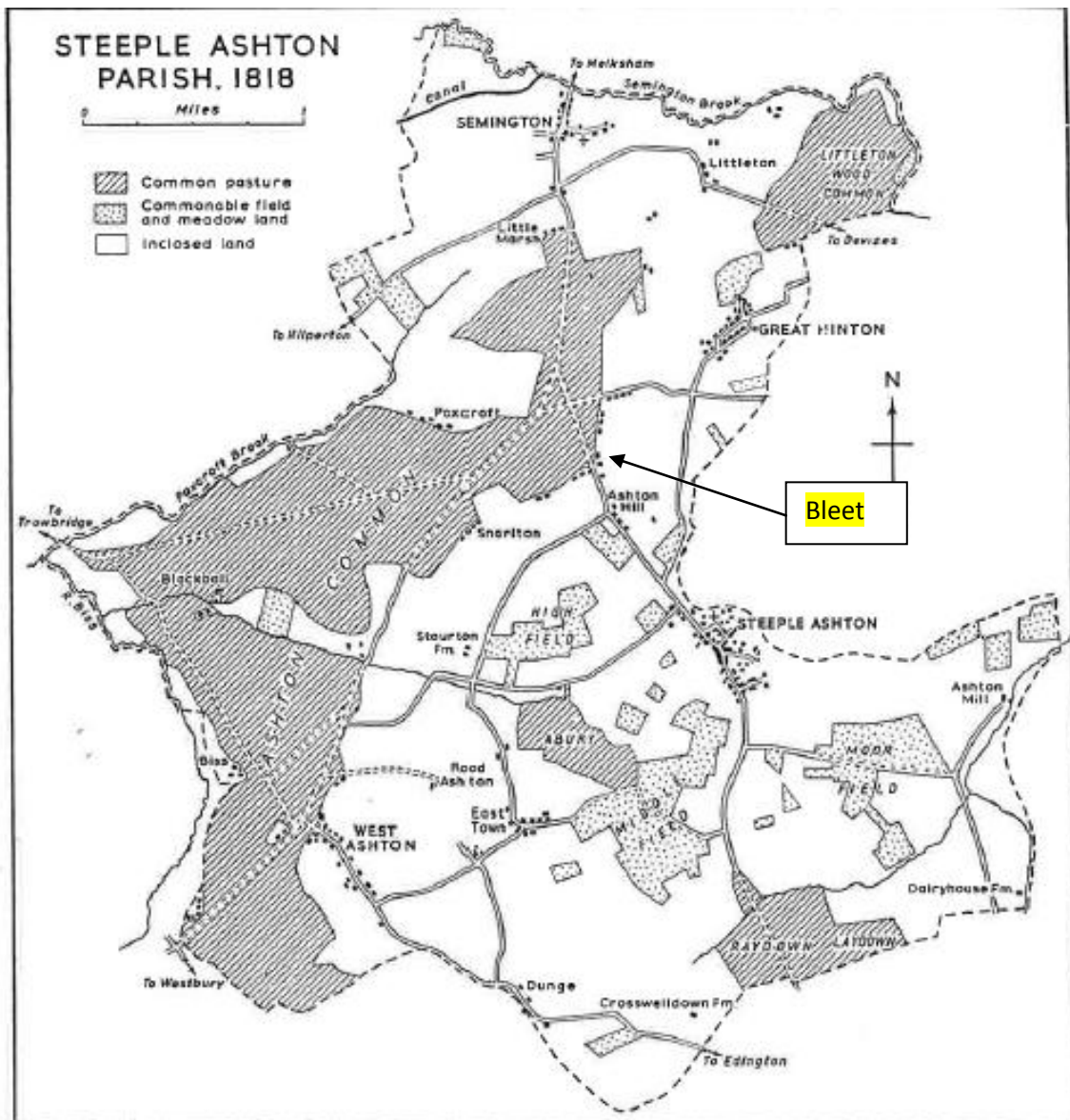
4. *If it is established (and we ask that it should be so established) that the true width includes parts of the track now encroached upon, the encroachments and obstructions must be removed.*
5. *In the Wiltshire letter to the ombudsmen of 29th October 2001 they said: "In this case we believe that prima facie evidence exists to support Mr Field's claim about the width of the track". It remains to be seen exactly what that prima facie evidence consists of, but we now call upon Wiltshire Council to adduce that evidence, and to rely upon it in ruling upon the true width of the track being as coloured green on the attached OS map.*
6. *As to status of the route, it is a public bridleway and remains so. It has been suggested informally in previous correspondence that higher rights may exist, but that was before the NERC Act of 2006, since when any byway rights will have been extinguished. The Applicant purchased his property (no 5 Bleet adjoining BR34) in 1976. The Local Search done as part of that purchase process contained Wiltshire County Council's confirmation that "The track coloured brown on the plan is shown as a road used as a public path on the definitive map of public rights of way. Under the second special review of rights of way this track will be reclassified as a bridleway." The track coloured brown is the same as the track coloured green on the attached plan. The reclassification process had thus been gone through and clearly any question of the bridleway being subject to higher rights would have been investigated at the time and rejected.*
7. *In conclusion, the Applicant seeks to have the true width of BR34 recorded, and that it should be the same as the width shown green on the attached plan."*

NB The plan referred to is the same plan as the application plan shown at paragraph 1.

10.0 General Context *Some notes taken from Victoria County History Vol 8*

Great Hinton is a small village and civil parish south of Melksham and includes the hamlets of Bleet and Cold Harbour. It was a separate tithing of Steeple Ashton parish until it became a separate civil parish in the late 19th century.

- 10.1 Much of the land in the parish of Steeple Ashton (including Great Hinton) had been enclosed by the late 16th century except for some woods and commons, the map below shows the extents of the inclosed land and the common land in the area in 1818:



- 10.2 The claimed route of Great Hinton 34 was not in existence at this time though a number of cottages and buildings were in place at the edge of Ashton Common and these buildings form the hamlet of Bleet that is in existence today. It was only when the Common was inclosed that Bleet Lane (Great Hinton 34) was created.
- 10.2 The population of Great Hinton has varied relatively little between 1801 (174 people) and 2011 (171 people) and there does not appear to have been significant residential development at Bleet since the hamlet was formed by the inclosure of the common.
- 10.3 The claimed route of Great Hinton 34 is shown on Ordnance Survey County Series sheets 39.1 and 39.5 and on the National Grid series maps ST9059 – 9159, 9058 – 9158 and ST 85 NE : ST 95 NW.

11.0 Historical Records

11.1 Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example although a way may appear on twenty commercial maps it does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament.

11.2 The value of relatively low evidential weight documents should not be underestimated though where it is considered that they add synergy to the evidence as a whole. The Planning Inspectorate's *Definitive Map Modification Orders: Consistency Guidelines* state:

“There is a distinct and important difference between the ‘cumulative’ and ‘synergistic’ approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g. three commercial maps by different cartographers all produced within the same decade or so) could be regarded as mere repetition. Thus their cumulative weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents.”

11.3 That said, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used;

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate's Consistency Guidelines:

<https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines>

(as revised to date of report) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

Abbreviations: Wiltshire and Swindon History Centre, Chippenham (WSHC), The National Archive, Kew (TNA), House of Lords Record Office (HoL)

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of a way as a highway Physical existence of a way Conclusive evidence of public rights	Inclosure Acts, awards and plans Orders creating, diverting or extinguishing highways Railway and canal acts and plans Definitive map and statement
B	Reputation of a way as a highway Physical existence of a way	Documents, maps plans drawn up as a result of legislation, consulted upon, but whose primary purpose was not to record public rights. i.e. Tithe Commission, Inland Revenue Finance Act
C	Reputation of a way as a highway Physical existence of a way	Includes local government records (highway board, county council, parish council)
D	Reputation of a way as a highway Physical existence of way	Other maps and documents showing highways additional to or as a part of their purpose. Includes parish maps, estate plans, conveyances
E	Reputation of a way as a highway Physical existence of a way	Commercial maps, some Ordnance Survey records
F	Reputation of a way as a highway Physical evidence of a way	Local repute, consultation responses

12.0 Category A Evidence

12.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e. the definitive map and statement), inclosure acts, awards and plans, legal orders or events and deposited plans for public undertakings (i.e. arising from an Act of Parliament which specifically required the identification and verification of public rights of way).

12.2 Inclosure

Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

12.3 The land over which Bleet Lane (Great Hinton 34) leads was formerly the eastern edge of Ashton Common which was inclosed by an award arising out of an Act of Parliament in 1818. Bleet Lane was created at that time and gave access to not only the cottages that had previously been built at the edge of the common but also to inclosures so formed. The clauses of the 1801 'General Act' also apply.

12.4 **An Act for Inclosing Lands in the Parish of Steeple Ashton in the County of Wilts 21st May 1813** WSHC ref. no A1/215/70
Steeple Ashton Inclosure Award WSHC EA107
An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts *'The General Act 1801' 41 GeoIII cap. 109*

Prior to the 1801 Act each Parliamentary Inclosure of an area was authorised by its own individual local Act, each with its own terms and conditions. The 1801 Act introduced standard terms and conditions for inclosures to proceed under and although a local authorising Act was still needed (which enabled local variations to be applied) the 1801 Act greatly standardised and streamlined the process.

12.5 Section VIII of the 1801 Act empowered commissioners to set out and appoint "publick Carriage Roads and Highways through and over the Lands and Grounds intended to be divided" and Section X empowered commissioners to set out and appoint "private Roads, Bridleways, Footways, Ditches, Drains, Watercourses, Watering Places, Quarries, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds and Land Marks, in, over, upon, and through or by the Sides of the Allotments to be made and set out...".

12.6 Section X further states that the making and repair of these private roads shall be the responsibility of the owners and proprietors of the land and grounds divided and inclosed. Section XI states that the grass and herbage on the roads shall belong to the Proprietors of the Lands adjoining on either side and as far as the Crown of the Road.

12.7 The 1801 Act specifies a minimum width of 30 feet for public carriage roads and this is echoed in the Local Act of 1813 at Section XVII. Neither the 1801 Act or the Local Act makes provision for minimum widths for private roads though Section XXIV does empower commissioners to make alterations to private roads already set out.

12.8 The Commissioners were thus empowered to make an award of public and private roads, public and private footways and bridleways. In the case of Steeple Ashton the Award is extensive and the Commissioners awarded the following:

- 9 Public Roads (2 @ 60 feet wide and 7 @ 30 feet)
- 25 Public Footways (23 @ 4 feet wide, 1 @ 15 feet and 1 @ 16 feet)
- 1 Public bridleway (30 feet wide)
- 4 Private Footways (3 @ 4 feet wide and 1 @ 6 feet)
- 68 Private Carriage Roads and Driftways (all between 15 and 20 feet wide)

12.9 Great Hinton 34 is awarded as “Private Road Bd” as follows:

“And whereas the said Commissioners in further execution of the powers invested in them and in and by the said public Act did set out and appoint such private carriage roads and driftways public bridleways and public and private footways as they judge necessary in over upon and through being by the sides of the allotments hereinafter made and set out by them in pursuance of the said public Act as they thought requisite giving such notice and subject to such examination as hereinbefore mentioned and concerning the several public carriage roads and highways set out and appointed by them in manner aforesaid and the said commissioners together with the said Wm Whittaker at a meeting duly holden for that purpose and by the said public Act did require order and finally direct how all the aforesaid public carriage roads and driftways public bridle and public and private footways should be set out all which said private carriage roads and driftways public bridle and public and private footways as set out appointed and finally directed is also pursuant to the direction of the said public Act hereinafter described (that is to say) ...

.....

Private Road Bd ONE private carriage road and driftway 20 feet wide marked Bd on the said map leading from Keevil turnpike road near Cold Harbour southward and westward to the Hag Hill Road.

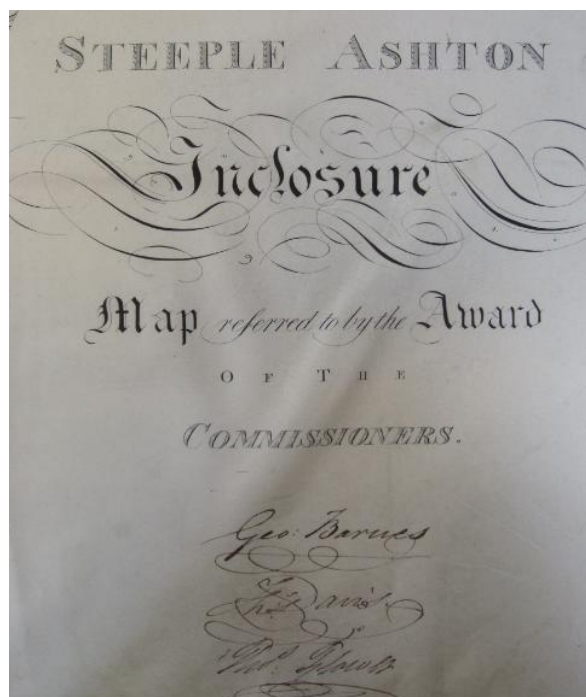
.....

AND the said Commissioners do hereby award order and direct that the several private carriage roads and driftways hereinbefore set out and awarded by them in manner aforesaid which from henceforward and forever hereafter be and remain to and for the use of the several owners and occupiers or proprietors for the time being of the allotments old enclosures lands and premise which adjoin the same or to which the same respectively lead except in all cases where it is hereby otherwise specially provided and that the several private carriage roads and driftways public

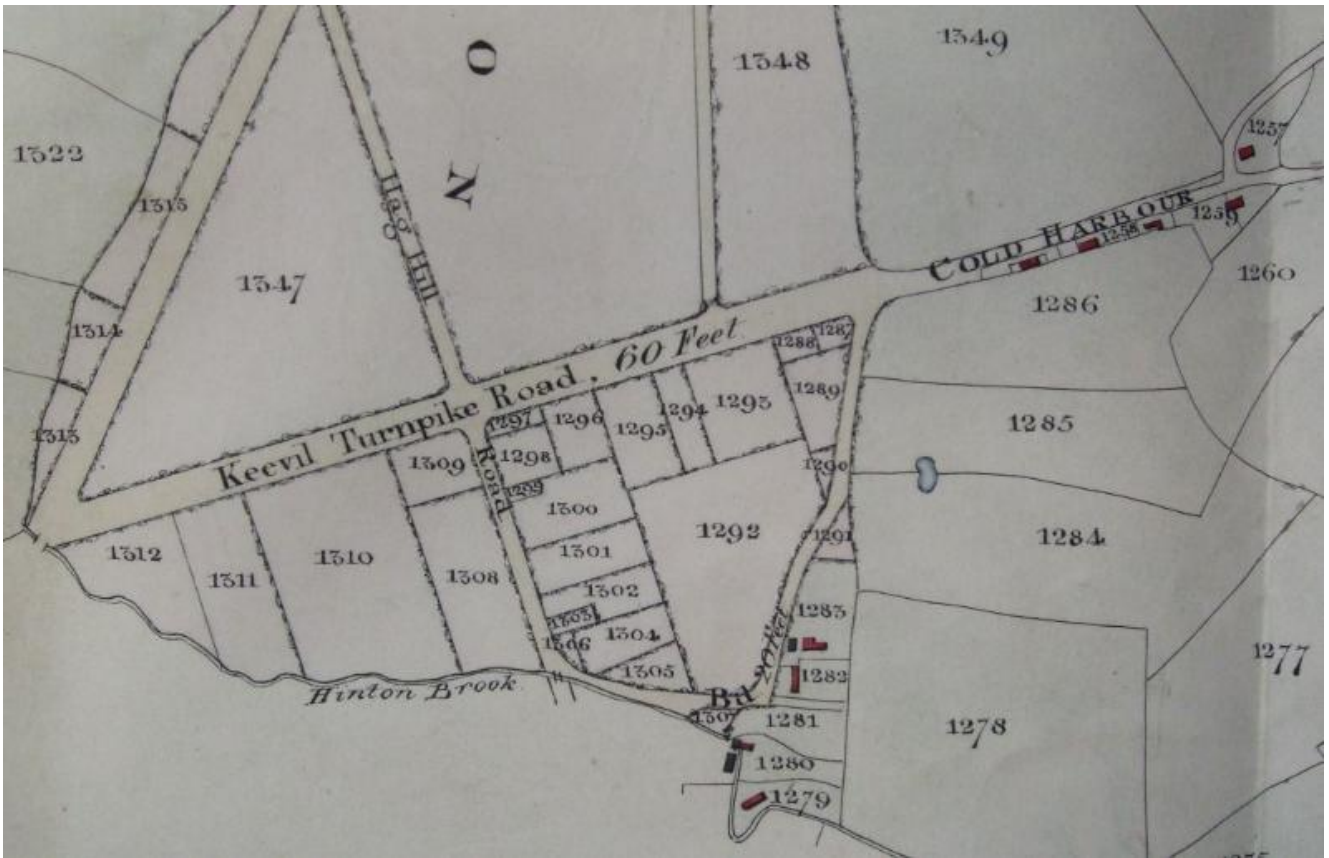
bridleways and public and private footways so set out and awarded as hereinbefore mentioned shall from time to time and at all times forever hereafter be supported and kept in repair by and at the expense of the owners and proprietors for the time being of the lands and grounds by the said Act directed to be divided and enclosed in such shares and proportions by the said Commissioners have in and by certain schedules hereinafter written or contained ordered and directed concerning the same.

AND the said Commissioners do hereby award that the grass and herbage arising growing or renewing in upon from and out of and over the several public and private roads and ways hereby set out and appointed in manner aforesaid shall forever belong and be the sole right of the proprietors of the lands grounds and premises which shall respectively adjoin the said roads and ways on either side thereof as far as the crown or centre of the roads and ways except where any of such roads and ways are hereby declared to pass through or over any allotments hereby awarded or where any such roads and ways are bounded on one side only by allotments in which case the grass and herbage of such last mentioned roads and ways shall wholly belong to and be fed by the owners and occupiers of such allotments only.”

- 12.10 *“The several Roads and Footways in and near Hinton Common and Little Marsh Common respectively marked Bd, Be, Bf, Bg, Bh, Bi, Bk, Bl, Bm, Bn, Bo, Bp, Bq, Br, Bs, Bt and Bu to be for ever hereafter kept in repair by and at the expense of the several persons in respect of their several allotments and the shares and proportions mentioned and expressed in the rate or schedule next hereunder written and by and at the expense of the future owners and proprietors of such allotments for the time being in the like proportion.”*



12.11 The map annexed to the award shows the route inscribed "Bd 20 feet":



12.34 **Other Category A Evidence – Railway and Canal Plans, Quarter and Petty Sessions**

The area is not affected by any plans relating to canals or railways. No mention of the route has been found in any records of Quarter or Petty Sessions relating to obstruction or repair or closure or diversion of the route

12.35 It is noted that the Vestry Minutes (the highway authority at the time) in 1869 make reference to an application to the Justices in Petty Sessions under the provisions of s.31 of 25 & 26 Vic c.61 (Highways Act 1862) to declare certain private carriage roads repaired at the expense of the parish to be declared public highways. The roads were Drove Lane and Moorfield Lane (Bb and As on the inclosure award). Further reference in 1874 was found to another road called the “Strand” being put in repair by the owner and thereafter repaired by the Board. However, no reference to Bleet Lane or Bd was found.

13.0 **Category B Evidence**

Category B evidence may be documents or plans drawn up as a result of legislation, and consulted upon but where the primary purpose was not to record public rights. Examples of this include records from the Tithe Commissioners and the Inland Revenue.

13.1 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and generally represented one tenth of production. The system was both unpopular, cumbersome and increasingly unjust as the industrial revolution gathered pace. The Tithe Commutation Act of 1836 sought to commute these tithe payments in kind to annual rent-charges. Parliament appointed a three man commission to direct a staff of assistant commissioners, valuers and surveyors who mapped, valued and apportioned rent charges among thousands of separate parcels of the titheable land in different states of cultivation.

13.2 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.

13.3 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians* by Roger J P Kain and Hugh C. Prince) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.

13.4 Roger J P Kain and Richard Oliver in *The Tithe Maps of England and Wales* at page 23 note that the portrayal of features on tithe maps is very variable across parishes and that advice to the privately commissioned surveyors was itself imprecise and that although the official instructions required that surveyors should include such detail on their maps as it is usual to find on estate maps, there was no statutory requirement to do this.

13.5 There are however general conventions that are observed and at page 24 Kain and Oliver observe that:

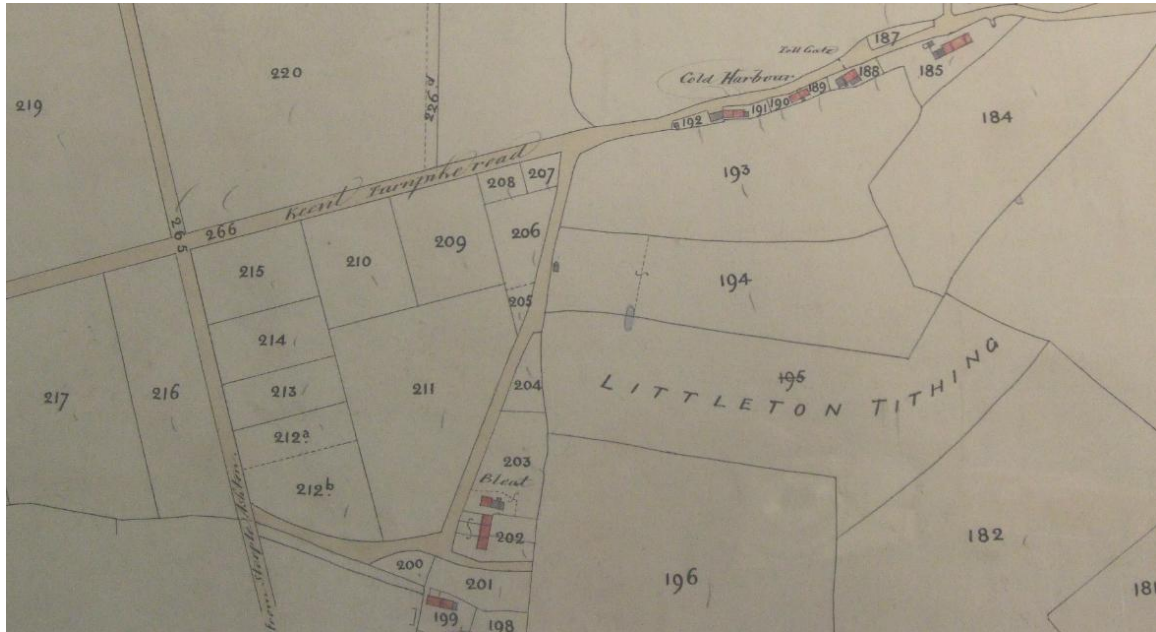
“Roads are usually shown on tithe maps as they normally bounded individual tithe areas. Only very rarely is their status as public or private indicated with any certainty, though the general convention of colour filling public roads in sienna is often followed.”

“Foot and Bridleways ...are sometimes explicitly annotated as such, but more usually they are indicated by single or double pecked lines.”

13.6 **Great Hinton Tithe Map and Apportionment 1842** WSHC TA/Great Hinton

The apportionment is dated 06.01.1842 and the map is dated 1842. It is drawn at the scale of 3 chains to one inch and is sealed by the Tithe Commissioners Wm Blamire and Rd Jones as a First Class Map. The map was surveyed by H G Buxton of Devizes and has construction lines. It shows water bodies, parsonage, houses, woods, plantations, orchards, foot and bridleways, road names, toll gates, road and path ownerships and widths. It is noted that only 6% of Wiltshire's tithe maps were sealed as First Class maps; a First Class map being a map that was accepted as legal evidence of all of the matters it portrayed rather than Second Class maps which were accepted by the Tithe Commissioners as evidence of only those facts of direct relevance to tithe commutation (*p708 Kain and Oliver 'The Tithe Maps of England and Wales'*).

13.7 The route of Great Hinton 34 is clearly shown on the same route as in the 1818 Inclosure Award and is coloured sienna as a road leading through “Bleat”. Unlike other roads however it is not numbered and hence there are no details in the apportionment relating to it and any measurement of it. It could be included in the category of “Roads, waste and water & O” at 14 Acres, 3 roods and 0 perches” as being free of tithe.



13.8 Inland Revenue Finance Act 1909/1910 Records
Plans WSHC L8/10/39
Valuation Book WSHC L8/1/112

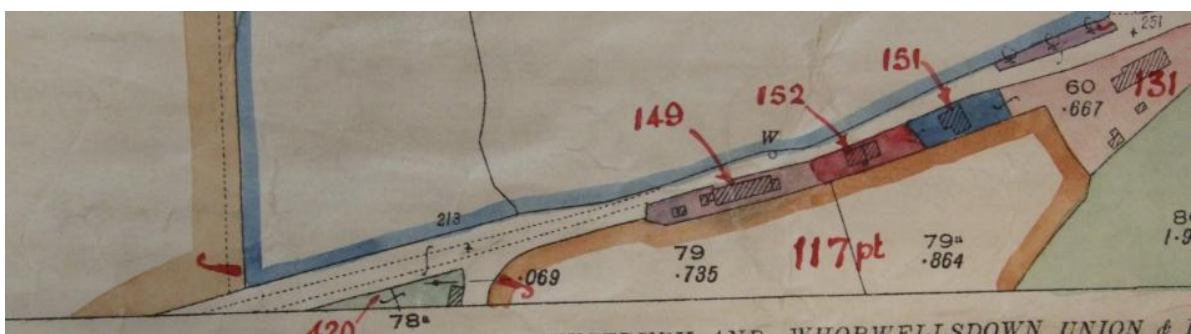
In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was usually carried out by Inland Revenue Inspectors working in an area of the county of which they were knowledgeable. Every individual piece of land in private ownership was recorded and mapped and, because tax was to be levied based on area, highways and common land were generally carefully identified and included in the documentation. The surveyor for the Great Hinton survey was a Wm Bray from Steeple Ashton.

13.9 The working copy of the Finance Act plans held at Wiltshire and Swindon History Centre (WSHC) have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and provide the most accurate record of the landscape that we have for this area at that time. Sheets 39.1 and 39.5 have been viewed.

13.10 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property was diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-inforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol

used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.

- 13.11 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that “No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority”.
- 13.12 However, the Planning Inspectorate’s Consistency Guidelines at Section 11 advises caution when considering routes that have been excluded from the survey and notes that there are some cases where a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual has been shown to be excluded from hereditaments.
- 13.13 The whole length of Great Hinton 34 is shown uncoloured and excluded from the valuation by clear broken braces. The northern end of the route extends onto map sheet 39.1 and the valuer has drawn this small length onto the adjoining sheet in addition to showing it on its own sheet.



- 13.14 It is noted that the valuer represents some other lanes or tracks as coloured with the colouring changing at the mid-point according to the adjacent hereditaments. It is

not clear why this approach was not used at Bleet though it would have been complicated to do so. Additionally, if the exclusion was because the road was in the control of the highway authority (invoking s.35 of the Act) then it would have been inappropriate to do so. Also see paragraph 13.12 for another possible reason.



14.0 Category C Evidence

Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. Includes bodies whose function is the highway authority. These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

14.1 Records in this category can be difficult to identify as they are often contained within minute books or written records rather than depicted on maps or plans.

14.2 Parish Council

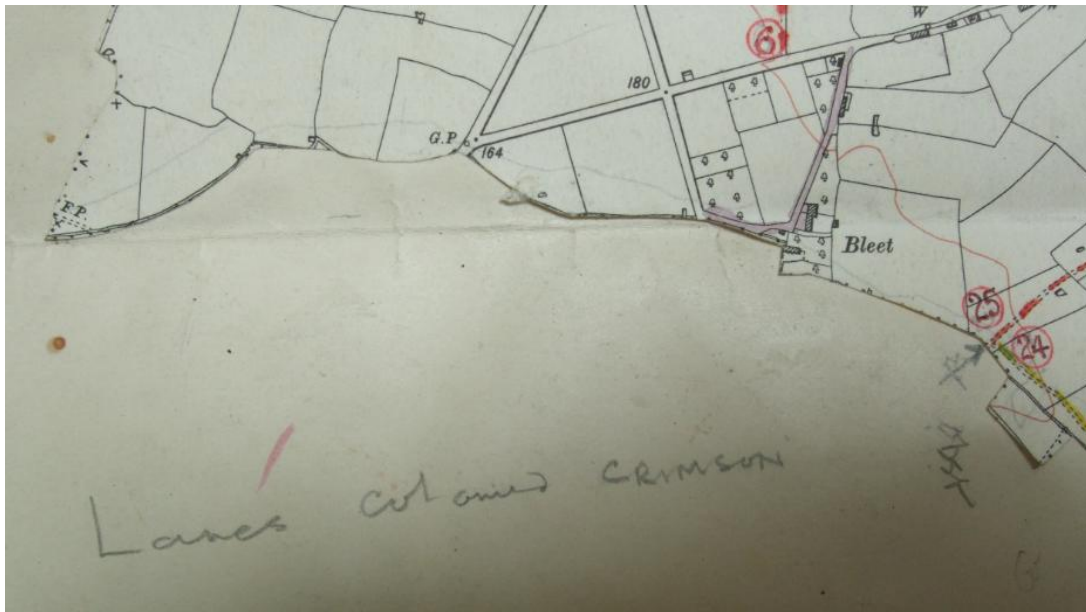
i) Rights of Way Act 1932 Register of Public Rights of Way WSHC 452/22

In response to changes to the law regarding public rights of way in the Rights of Way Act 1932 and to general and ongoing pressure from the Open Spaces Society many local Councils set about producing maps showing public rights in their area.

Although the survey did not result in legally defined public rights in the same way as the later one did (as a result of the National Parks and Access to the Countryside Act 1949) the records provide useful information about how Parish and Rural District Councils viewed public rights at that time.

14.3 The submission of Great Hinton Parish Council in 1934 showed “Lanes coloured crimson” in addition to footpaths as pecked lines. The lanes were not numbered in the same way as the paths were but were listed in the Register according to their

name. Great Hinton 34 was shown as a lane and coloured crimson on the map (as were other green lanes Stoggy Lane, Back Lane, Gypsy Lane and Colestreet Lane).



14.4 The Register has an additional page for lanes and states:

“In addition to the foregoing there are the following Green Lanes not repairable by the public”

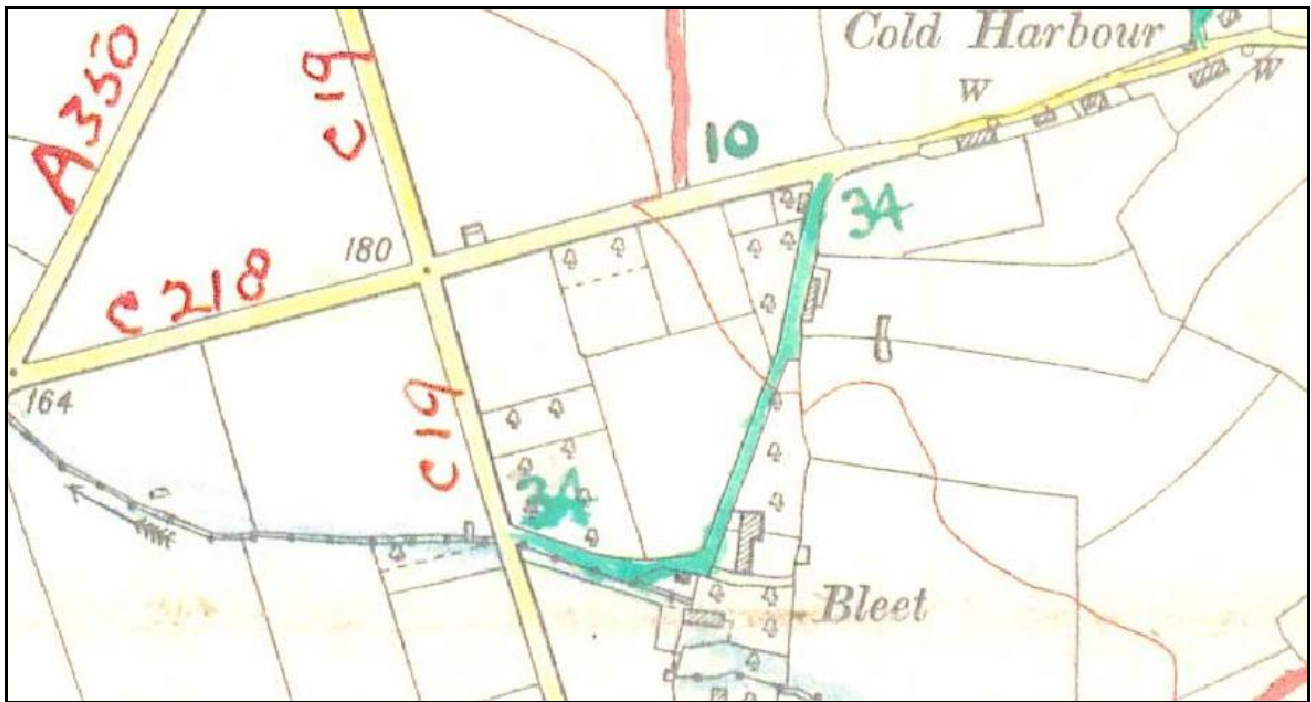
“ Yds

534	Colestreet Lane	A grass track fenced with hedges at Hag Hill
365	Gypsies Lane	A grass track fenced with hedges
200	Catchcroft Lane	A grass track fenced with hedges
380	Lane at Bleet	
580	Stoggy Lane	Partly metalled
166	Lane at Back of Hinton House	
480	Back Lane as far as Catchcroft Lane	

ii) National Parks and Access to the Countryside Act 1949 Parish Survey

The initial step in the process of producing the definitive map and statement was for parish councils to again survey their public rights of way and to make a claim to the County Council for them. They were to be declared footpaths, bridleways or Roads Used as Public Paths (RUPPS) though in some cases the term for RUPP in the statement was substituted for Carriage Road Footway (CRF) or Carriage Road Bridleway (CRB).

14.5 Great Hinton Parish Council claimed Great Hinton 34 as a *“carriage way or Bridleway from Road C.19 at Bleet in a north westerly direction to Road u/c 218 at Coldharbour.”*



14.6 The route was shown on the draft and provisional maps as a RUPP, the Council received no objections and the way was thus shown as a RUPP in the Warminster and Westbury Definitive Map and Statement 1953.

iii) **Parish Council Minutes** WSHC 452/1, 452/2, 452/3. 452/4

It is noted that the Minute Book for the years 1933 to 1953 is missing and subsequent minutes reveal that it disappeared along with the Clerk in 1953. This is unfortunate for this case insomuch that any discussion relating to the definitive map has been lost.

14.7 Although it is clear that Great Hinton Parish Council (and parish meeting) discussed rights of way with frequency and that some lanes were discussed very regularly (Gypsies Lane, Stoggy Lane and Back Lane), the lane at Bleet was not one of these. No specific reference was found to the lane though a reference was found to the cleaning of the brook at Bleet, however, the minutes do not record whether the concern was for purposes of the highway or not.

March 27 1924 *“Mr Rogers raised the question of the cleaning of the Brook at Bleet and the matter was referred to the Parish Council.”*

14.8 The Parish Council were consulted in 1968 when the County Council performed its Second and Special Review of the definitive map. The minutes record that the parish council did not want any changes:

March 29 1968 *“After much discussion it was decided to keep all these the same status as before.”*

14.9 Wiltshire County Council Surveyors Parish Correspondence WSHC F4/300

The following letter and memos relating to Great Hindon 34 were found:

14 November 1985 from County Surveyor to Commander Hocking

"...I assume the track to which you refer is the one leading from the C.19 eastwards to Bleet, and not the access to the Poultry Works 100 yards further south.

On this assumption, the track in question is shown on the definitive map of rights of way as a 'Road Used as a Public Path'. At the review of the map it is proposed to be shown as a bridleway and no objection has been received to this. In other words, the only proven public rights over the track are on foot and on horseback and the County Council only has a duty to maintain the track in a fit condition for this purpose. However, there may well in addition be private rights for the landowner to drive vehicles to his property, and of course with these private rights goes a private liability for maintenance. If the owner is contemplating works to maintain the track, then the County Council would be prepared to contribute 10% of the cost in respect of the public rights, subject to the works being approved in advance."

19 July 1985 from County Surveyor to County Secretary and Solicitor

"Bleet Lane, Great Hinton

Referring to your memorandum of the 21st June 1985 my Area Highway Engineer has inspected the site and finds that although works have taken place within an area of the Depot at the Cold Harbour end of the track there is still an immediate width of 4.75 metres available which I consider to be sufficient for highway needs."

14 April 1986 from Area Highway Engineer to County Surveyor

"Bridleway at Bleet.

With reference to your memo of 22 November 1985, you will be aware that surplus cold planning material was made available for this site in early January, and MSC staff levelled the material later in the month. Recent inspection indicates conditions are now reasonably satisfactory."

15.0 Category D Evidence

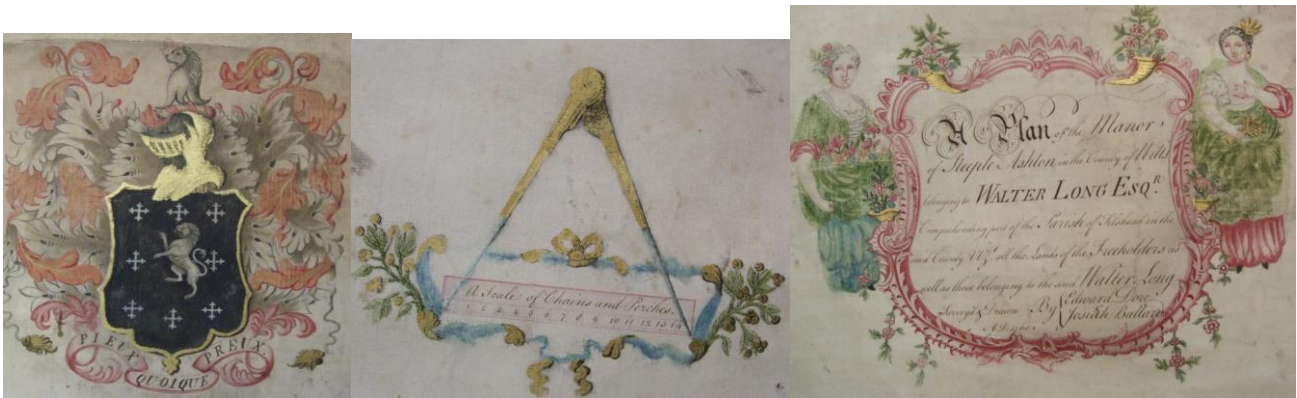
Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.

15.1 **Plan of the Manor of Steeple Ashton belonging to Walter Long 1760**

WSHC Ref. no. 1252/1L

This is a large scale map (3 chains to one inch) of extraordinary quality. It is entitled “Plan of the Manor of Steeple Ashton in the County of Wilts belonging to Walter Long Esq Comprehending part of the parish of Tilshead in the said County Viz all the Lands of the freeholders as well as those belonging to the said Walter Long”

- 15.2 The map was surveyed and drawn by Edward Dore and Josiah Ballard and is dated 1760. The map is drawn on a grid with grid lines and shows considerable detail and embellishment in gold leaf.



- 15.3 The legend refers to there being a book but no book appears to have survived.

“Note all the Letters and Numbers in the under Columns shews each Close or Closes belonging to each farm as plac’d in the Mapp & Refers to the Page in the Book but in the Commons Fields & c where the Red Numbers are pac’d the Pieces are found from the Numbers in the Book”

- 15.4 The map shows “the separation between Ashton and Hinton tithing”. The water courses at Bleet and the roads are clearly shown and labelled i.e. “To Semington”, “Common Lane” “Road from...”, “New Road” etc. Buildings, hedges, trees and water is shown and existing enclosures are named i.e. “Ewe Meads”, “Portway” etc.
- 15.5 The map clearly shows the unenclosed common (Ashton Common) and the roads across it. For example the roads at either end of Great Hinton 34 are shown. The cottages at Bleet are shown but there is no road, they are merely dwellings at the edge of the Common. The unenclosed common is the land that was inclosed in 1818 (see section 12).



Cottages at Bleet

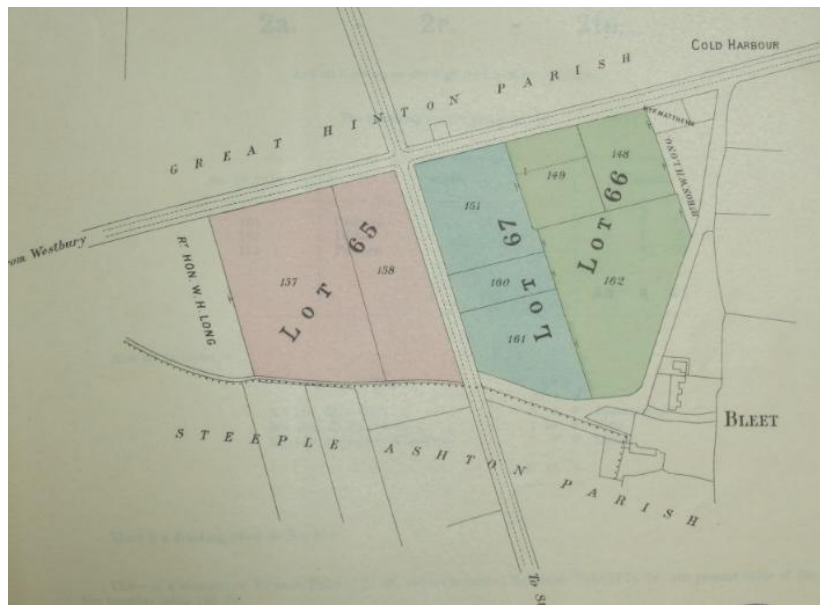


Red line shows route of Great Hinton 34 as created at inclosure in 1818.

15.6 **Sales Particulars 1907** WSHC ref. no. 776/28

Land adjoining Great Hinton 34 was offered for sale in 1907 when outlying lands of the Erlestoke Estate were sold.

- 15.7 Plan No. 8 accompanying the sales particulars show that Lots 66 and 67 adjoined Great Hinton 34 but that the lane was not offered in the sale, or referred to in the description despite it being an obvious access point for one of the closes in Lot 66.



16.0 **Category E Evidence**

Evidence in this category includes commercial maps and Ordnance Survey maps, plans and documents. It is usual for there to be a significant quantity of evidence in this category and it is important to bear in mind the originality and purpose of the documents. The value of this group of evidence lies in the continuity of records over a long period of time and any differing origin. It must be borne in mind that this group of documents would have had the largest public circulation outside of the parish.

- 16.1 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the early county maps produced by Andrews and Dury, John Cary and C & I Greenwood and also those of the Ordnance Survey.
- 16.2 It must also be considered that even when surveys produced by the Ordnance Survey were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.

16.3 Andrews' and Dury's Map of Wiltshire 1773

This map was produced at the scale of 2 inches to one mile over 18 sheets and the area of Bleet is covered by Sheet 10. The map pre-dates the inclosure of the Common and although the cottages at Bleet are shown Great Hinton 34 is not shown though the local road network is in broad agreement with the estate map of 1760.



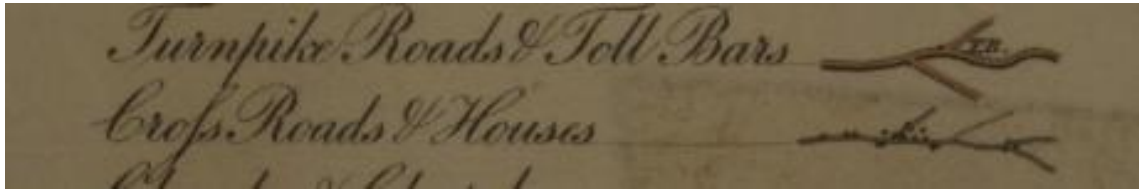
16.4 Ordnance Survey – Surveyor's Drawing 1807 – British Library

In preparation for the production of the first countrywide 1 inch to 1 mile maps (now known as 'the old series') the Ordnance Survey surveyed the country at the scale of 2 inches to 1 mile. The cottages at Bleet are shown, as is the edge of the Common, however, as with Andrews' and Dury's map of 1773, this survey pre-dates the 1818 inclosure and accordingly the route of Great Hinton 34 is not shown.

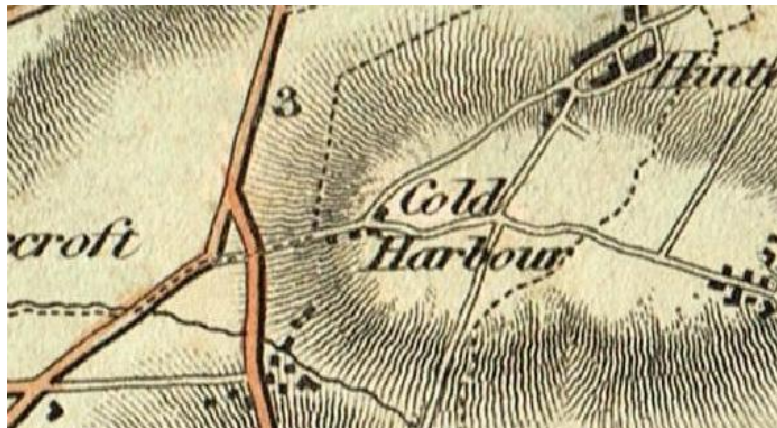


16.5 **C and I Greenwood's Map of Wiltshire 1820** WSHC Ref. no 3.3

This county map, again from an independent survey was produced at the scale of one inch to the mile in 1820. The map has a scale and shows, amongst other things, Turnpike Roads and Cross Roads, Rivers and Brooks. The map does not show footpaths and bridleways.

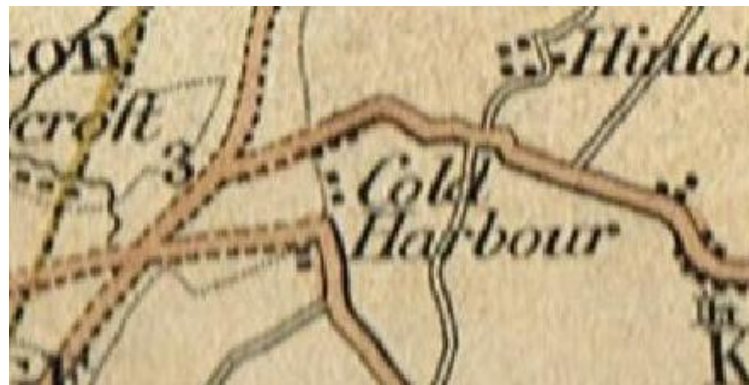


16.6 The map shows the cottages at Bleet but with no connecting road. The map was printed in 1820 and was clearly the result of earlier surveys, however, the reason for the omission could be because the way was not considered public at this time.



16.8 **John Cary's Half Inch Map Sheet 18 1832** (WSHC Ref. no 3.4)

The route of Great Hinton 34 is not recorded as a 'parochial road'.



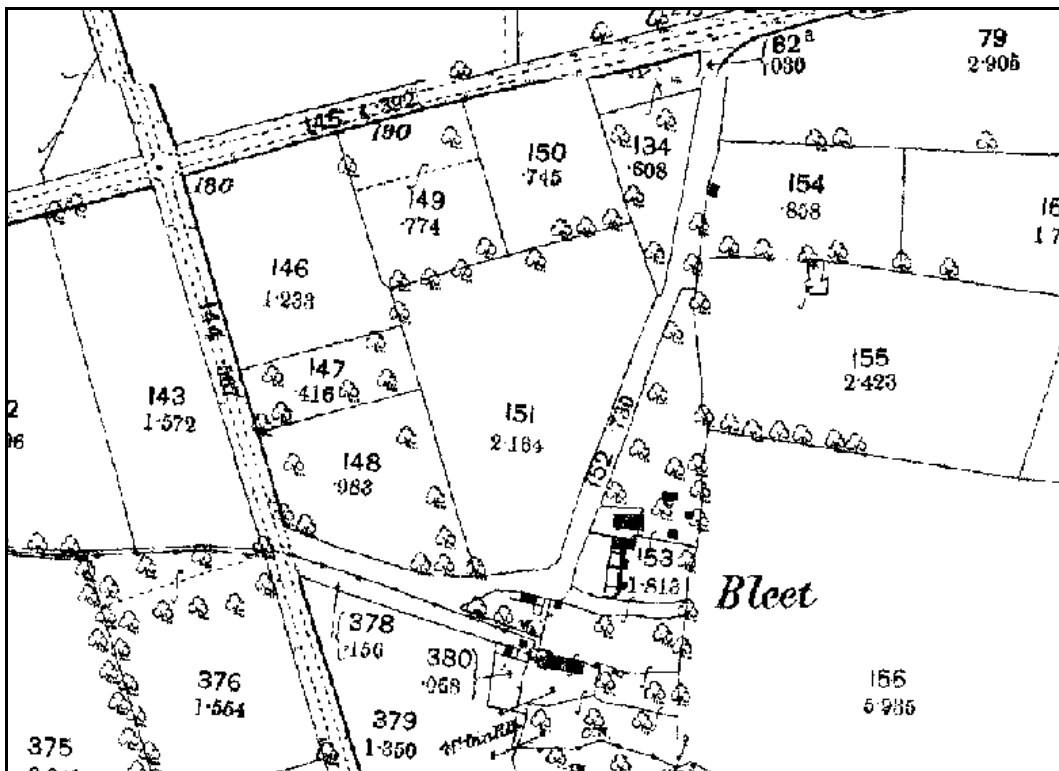
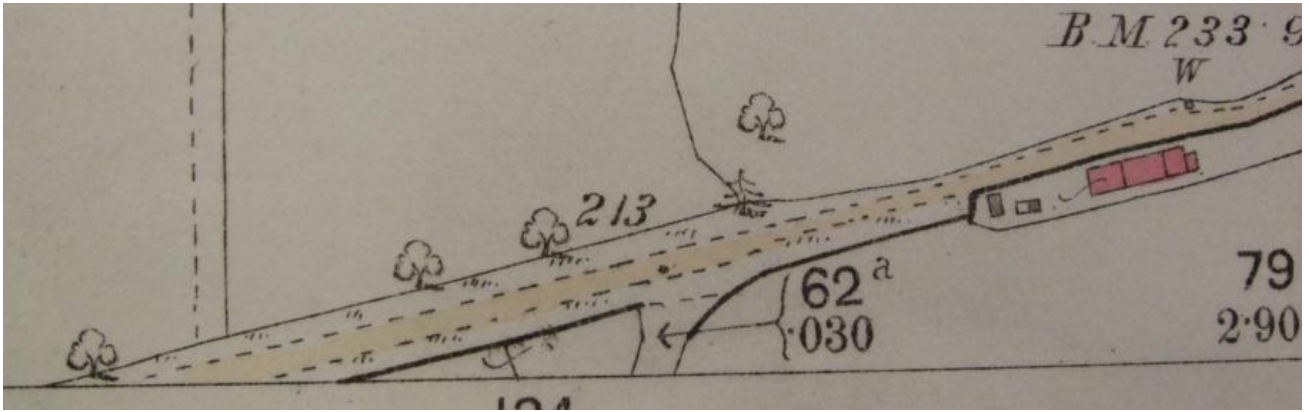
16.9 Ordnance Survey Mapping – The County Series 1:2500 1878 - 1924

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. Sheets 39.1 and 39.5 cover 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”.

- 16.10 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.”
- 16.11 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.
- 16.12 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).

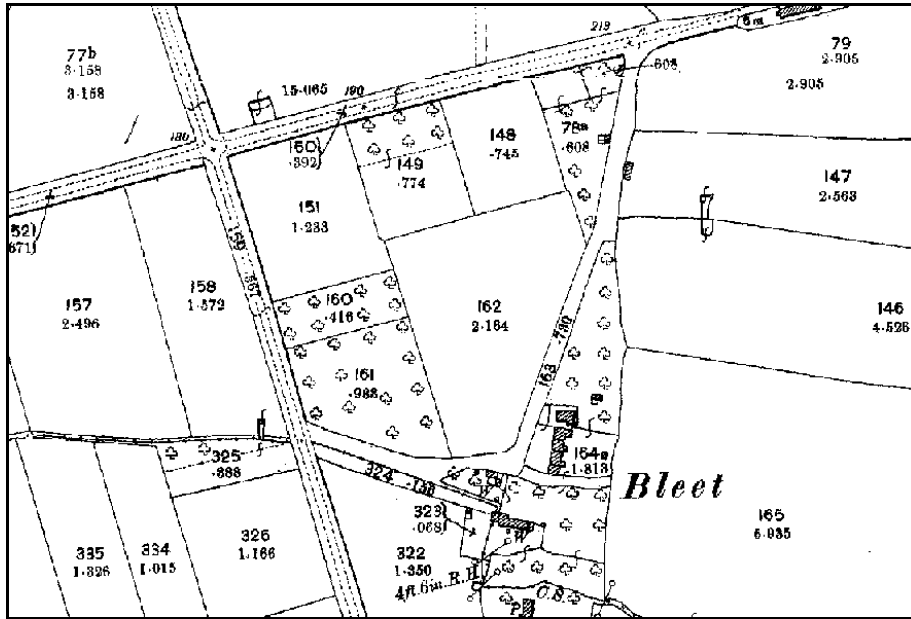
16.13 First Edition 1885 survey

The route is separately numbered and measured (parcel no 152 in the south on sheet 39.5 and 62a on sheet 39.1) but is not coloured sienna on sheet 39.1 (no colour copy of 39.5 has been viewed). NB An Instruction to Surveyors issued by the Ordnance Survey in 1884 required all carriage drives that were metalled and kept in repair to be coloured.



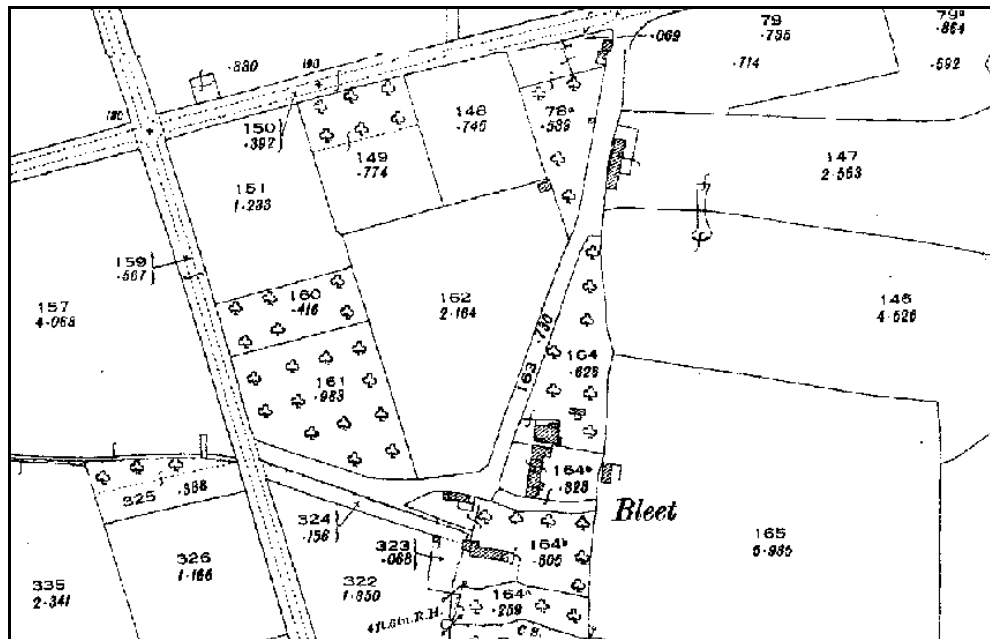
16.14 Second Edition 1885 survey, 1899 revision, 1901 publication Sheets 39.1 & 5

The route is separately numbered and measured as per the First Edition. It is noted that the route is not shaded in the same way as adjoining roads. A circular issued by the Ordnance Survey in 1884 required that from 1884 all metalled public roads for wheeled traffic kept in good repair by the Highway Authority should be shaded.



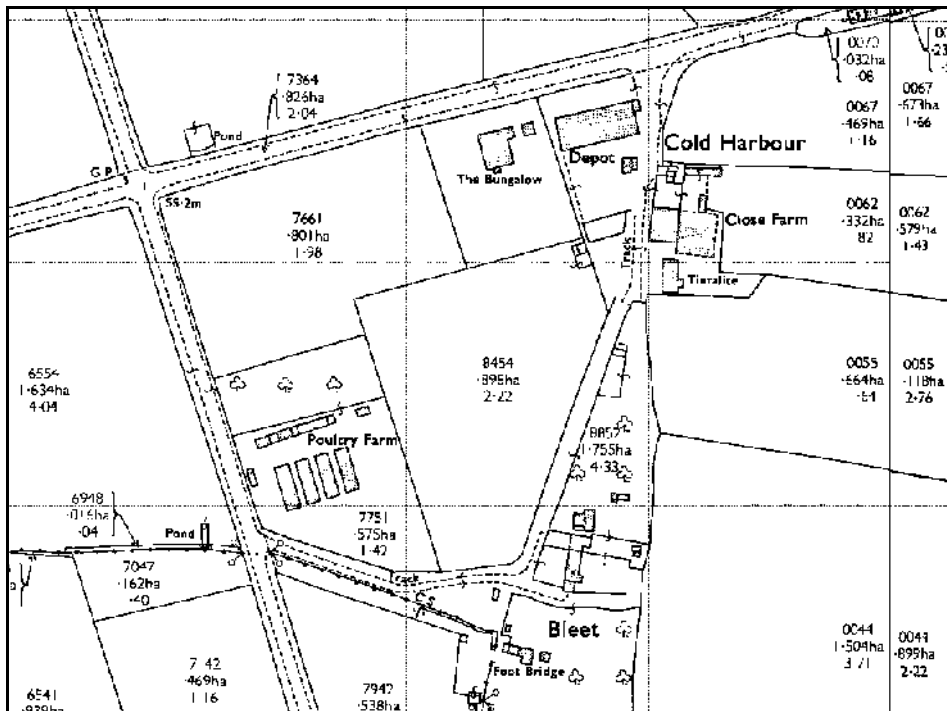
16.15 Edition of 1924 1885 survey, 1922 revision Sheets 39.1 & 5

The route appears unchanged.



16.16 National Grid Series 1:2500 c.1980

By the latter part of the century the route has a defined track at the southern end accessing the cottages and there has been significant development at the northern end.



17.0 Category F Evidence

Evidence in this category includes any user or anecdotal evidence.

- 17.1 The applicant adduced a hand drawn plan showing the northern section of the route (see section 1.0) stating *“I Gordon Field, having lived at 5 Bleet, Great Hinton since December 1954 have drawn a sketch as I knew the lane then. When the adjacent land was sold in 1962 from then on the lane changed appearance.”*
- 17.2 The sketch plan shows utility poles at the edge of the highway and a *“wide green grass verge approx 3 m wide”* at the northern end. The plan shows the section of lane north of 5 Bleet to the part where it widens as being grass from side to side with no central carriageway but with ditches close to the hedges.

18.0 Legal and Financial Considerations

- 18.1 The determination of Definitive Map Modification Orders (DMMOs) and the continual review of the definitive map are statutory processes for which financial provision has been made. In determining applications for DMMOs the Council is acting in pursuit of its statutory duty and cannot be challenged in so doing (subject to due process being followed). In this instance the Council has been directed to determine this application by 01 August 2017.
- 18.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to the Secretary of State for determination. It may be determined by written representations (no

additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £4000).

- 19.3 If the application is successful and the historic width of the highway is found to be public the Council must consider the extent of any obstruction to it and has a duty to enforce that width.

20.0 Risk Assessment

- 20.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety
- 20.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 20.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 20.4 Additionally if the Council refuses the application the applicant has a right to appeal the decision to the Secretary of State. Where the Secretary of State agrees with the applicant the Council will be directed to make an Order.

21.0 Environmental Impact of the Recommendation

- 21.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to the environment.

22.0 Equality Impact

- 22.1 The recording of the width of the highway is in line with the Council's duty under The Equality Act 2010. Equality is however not a material consideration contained within the Wildlife and Countryside Act 1981. Decisions must be evidence based.

23.0 Safeguarding Considerations

- 23.0 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to safeguarding.
- 23.1 It is however noted that there are no considerations arising.

24.0 Public Health Considerations

- 24.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to public health.

25.0 Relationship to the 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 Options to Consider

- i) To make an Order to record the width of bridleway Great Hinton 34.
- ii) To refuse the application to record the width of bridleway Great Hinton 34.

27.0 Reason for Recommendation

It is useful to show a timeline for the lane based on the above evidence:

1760 No route shown

1773 No route shown

1807 No route shown

1818 Inclosure of the Common. Route awarded as private carriage road and driftway

1842 Unnumbered sienna coloured road Tithe Survey (First Class Map)

1885 – 1922 Road shown separately numbered and measured by OS

1910 Road shown uncoloured and braced apart from surrounding hereditaments in The Finance Act 1909/1910 survey and valuation

1917 Lane not included in sale of two adjoining fields

1924 Issue of brook clearance at Bleet raised with Parish Council

1934 Parish Council declare Bleet Lane to be a non-publicly maintainable lane in the Rights of Way Act 1932 survey.

1952 Parish Council claim route as Carriage or Bridleway 'partly unmade and part roughly metalled'

1953 Route added to definitive map and statement as Road Used as a Public Path and Carriage Road Bridleway Great Hinton 34

1972 Reclassified as a bridleway at Second and Special Review with no objections

1985 Route inspected by County Surveyor who found 'some works' at the northern end but an available width of 4.75 metres remained which he deemed 'sufficient for highway needs'.

1986 Road planings laid and levelled on route

1990 Surface of bridleway raised by adjacent landowner

1998 Obstructions reported to Wiltshire County Council

2004 Application for a DMMO to record the width received

2004 Wiltshire Council declare to Planning Authority that "Bridleway 34 is as described on the Ordnance Survey County Series".

c.2013 Wiltshire Council maintained with planings and some trimming back of branches. Planings placed on central track only.

- 27.1 The Council must now consider, the physical extent of the public rights across the lane. It does not have to prove the extent of the rights but it must show that on the balance of probabilities it is so. That is, whether it is more likely or not that the public rights extend to the decided width.
- 27.2 It is considered that the public right may extend as follows:
- 1) Across the whole physical width of the lane between hedges and fences based on how it has been represented historically. The applicant relied upon the 1922 Ordnance Survey 1:2500 map for this and this width includes all ditches and drainage features.
 - 2) Across 20 feet of the route as awarded as a private carriage road and driftway in 1818
 - 3) A lesser width
- 27.3 While it is accepted that before the Common was inclosed local people may well have passed over the edge of the Common in front of the cottages, there is no evidence to suggest that a road or track formed, certainly none appeared on any maps viewed and when the land was inclosed in 1818 no public rights were recorded, suggesting that there were none to be preserved. Accordingly it seems a reasonable starting point to say that Bleet Lane, Great Hinton 34 was laid out and created as a private carriage road and driftway in 1818 for the benefit of the adjoining landowners and that public rights were acquired at a later date.
- 27.4 It is clear that the land on the north and west sides were inclosed to create the lane as the inclosures on the south and east sides already existed by 1818. It is therefore not an unreasonable step to say that the land that formed the lane at the points where it is wider than the awarded 20 feet may have been intended to form part of the highway, albeit at that time a private one.
- 27.5 Taking the OS 1:2500 survey maps (1885 – 1922) as a reasonable representation of the lane the awarded width of 20 feet (6.1 metres) is exceeded at every point along the lane with measurements varying between 7 metres to 12.4 metres wide. In general terms the length from Hag Hill to the cottages is 8 metres wide, from the cottages to Treetops is 7 metres wide and the remainder to Cold Harbour is 12 metres wide. All measurements have been taken from the OS map.
- 27.6 It is possible that extra width was allowed to aid use of the way as a driftway though it is more likely that the extra width was merely a result of making straight boundaries to new inclosures on one side of the road and having old inclosures on the other side.
- 27.7 Another possibility is that drainage of the area was poor and that ditches needed to be dug at the sides of highway leaving the awarded width of 20 feet (6.1 metres) intact for actual use. Roadside ditches were a characteristic of this lane and

although significant lengths of them have now been piped and lie under hedges and fences the image supplied by Mr Noad dating from the early 1960s supports that the full width of the lane was not available owing to the presence of the ditches. It is likely that ditches would have been needed to direct water in the same way as they are today. Some of this is in part owing to the impervious surface that the lane now has but even as far back as 1953 it was deemed necessary to have some rough metalling along the lane (see Parish Claim) and in 1924 the Parish Council were tasked with clearing the brook, suggesting that there may have been flooding concerns then. Correspondence also reveals that in 1990 there were drainage issues with water running down the land and flooding land owned by Mr Field at 5 Bleet. At a site meeting held on the 22nd July 2016 Richard Newman of Close Farm confirmed that before the lane was surfaced (perhaps in the 1980s) its condition was poor, being wet and muddy and largely impassable. This is further supportive of the need to drain this route.

27.8 Case law dating back to 1862 supports the public having a right to use the width of a highway between hedges or fences. Although this is readily rebuttable by either title or the purpose for which the fence or hedge was erected, the law is clear on the “hedge to hedge presumption”. In the 1862 case *R V United Kingdom Electric Telegraph Company* the Court of Queen’s bench agreed that a proposition formulated by Martin B (the B standing for a Baron, a member of a class of judges abolished in 1881) was a proper direction to be used as to the extent of the highway between two fences. The direction was that *“in the case of an ordinary highway, although it may be of a varying and unequal width running between fences, one on each side, the right of passage or way, prima facie, and unless there be evidence to the contrary, extends to the whole space between the fences and the public are entitled to the use of the entire (width) of it as a highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers.”*

27.9 In a Rights of Way Law Review article (1994 s.2.2 5 – 13) Michael Orlick, Solicitor discusses highway boundaries and identifies a case where the width of an awarded private road that had subsequently become a public road was queried.

“At the Lancaster Summer Assizes in 1831, Robert Wright was indicted for nuisance by encroaching on a public highway. The case concerned a road set out by Inclosure Commissioners in 1771 as a private road of a width of 24 feet. In fact, a space of sixty feet had been left between the adjoining fences until the time of the alleged encroachments by the defendant. The centre of this space had been commonly used by the public as a carriage road and had been repaired by the township for 18 years before the encroachment. The jury found that the road had been dedicated to the public since the Inclosure Award and convicted the defendant. On appeal, Lord Tenterden, the Chief Justice, said: “I think the case was for the jury and that they found a right verdict. I am strongly of the opinion when I see a space of fifty or sixty feet, through which a road passes, between inclosures set out under

an Act of Parliament, that, unless the contrary be shown, the public are entitled to the whole of that space, although perhaps on economy the whole may not have been kept in repair. If it is once held that only the middle part, which carriages ordinarily run upon, was the road, you might by degrees enclose up to it, so that there would not be room left for two carriages to pass. Space at the sides is also necessary to afford the benefit of air and sun. If trees and hedges might be brought close up to the part actually used as the road, it could not be kept sound.”

- 27.10 Conversely where the extent of public rights is to be determined on routes over open ground with no hedges or fences the case of *Easton v Richmond Highway Board* found on appeal that a public highway could be enclosed to leave just the carriageway and that the extent of public rights would need to be shown by public user of the adjoining land. It is in effect the reverse situation for a case where a route is fenced in that the burden of proof lies with public to show the extent (width) of their use for unenclosed routes but the landowner has to show that his fences do not mark the highway boundary for enclosed routes.
- 27.11 In the case of *Hale v Norfolk County Council* [2001] Ch. 717 the Court of Appeal considered a case relating to the width of a highway and the reliance that parties may put on the ‘hedge to hedge’ presumption. Hale LJ, at paragraph 43 stated:
- “Third, the presumption of dedication of all the land running between hedges or fences can only arise if there is reason to suppose that the hedge or fence was erected by reference to the highway: that is, to separate the land over which there was to be no public right of way from the land over which there was to be such a right. Where matters are lost in the mists of time, it must often be possible to draw such an inference from the layout on the ground. In a conventional road running between hedges or fences, even if the verges are of varying widths and shapes, this may well be the obvious conclusion. It is not surprising, therefore, that the cases regarded this as the prima facie position. But that is not the same as elevating this preliminary question into a presumption of law.”*
- 27.12 It is therefore of fundamental importance to determining the width of a public highway to establish whether the fences or hedges were erected by reference to the highway.
- 27.13 In the case of *Great Hinton 34* the fences and hedges on the eastern side pre-date the year 1760 and, according to contemporary map evidence pre-date the existence of any highway. Their purpose was to separate the enclosures from the common.
- 27.14 The fences and hedges on the western side were only created in 1818 as a result of the enclosure of the common. The inclosure award created a 20 foot wide private access road along the route of *Great Hinton 34* and it is clear that landowners who were granted enclosures at that time gave up substantially more of their land when creating the highway from the enclosure of their land than was required.

- 27.15 The reason for this is unrecorded but it is clear from the ground today that the wide lane was characterised by ditches on either side and although in places the ditches have been piped and the land taken back into adjoining enclosures, and in places hedges have overgrown by as much as 2 metres to conceal the ditch, it is considered more likely than not that drainage ditches were provided for the route from the time of its creation.
- 27.16 The ditches would have had the function of draining the highway as well as the land towards the stream or river running south of the western extent of the lane.
- 27.17 This being the case it can be said that the eastern fenceline was not erected to define the highway and the western fenceline was not erected to define the highway, it was erected to separate the land from the ditches which ran beside the highway.
- 27.18 Measurements on the ground support that this a reasonable assumption and an available width of the awarded 20 feet would have been possible between the ditches.
- 27.19 The public right over this was acquired at some time after 1818 and it is a matter for the Council to consider whether the public acquired a right over the entire available width (it being physically impossible to acquire a right over the ditches) or a lesser width.
- 27.20 The matter must be considered 'on the balance of probabilities' i.e. what is more likely to have happened and in this respect it is considered likely that the full 20 feet was available for the private users of the way and accordingly the same width was available for the public to use. There is evidence that it was considered a public road in and around the 1930s and 1950s and accordingly the way must have been wide enough to support a public use beyond just people following a narrow track.
- 27.21 Quite reasonably a greater width would have been needed for traffic to pass and given the ground conditions in the area (as evidenced by the need for good drainage) it is considered likely that the public would have not only exercised a right to deviate around and give way to other users they would also, in all probability, sought to use the wider width to avoid ruts and ruinous ground.
- 27.22 Officers therefore consider that the public had access to a track that was 20 feet wide and that they considered it to be sufficiently wide and available to them to declare that the way was a lane in 1932 and a carriage road bridleway in 1950. The standard of proof needed to retain any vehicular right may not have been satisfied at the Second and Special review when the way was reclassified as a bridleway but the route was, since 1818, a wide track that was available for use and was, in all probability, used throughout its awarded width by the public. This is likely to have been an extent including a central track and some verges though unlikely to have been right up to the boundaries and certainly not including any ditches.

27.23 It has been noted that although the route of Great Hinton 34 remains substantially unchanged there have been alterations to the boundaries of the enclosed land since 1818. In most cases the awarded width remains but for the length between Close Farm and 5 Bleet the width in places is narrower than 20 feet. This appears to be partially due to the wide hedge to the east of the lane which has substantially grown over the ditch (as witnessed by the Wessex Water access point which is now in the hedge whereas it would have originally been placed in the verge beside the track). Likewise the electricity pole and the buildings appear further from the track as a result of the hedge being wide. To the west of the track the ditch has been fenced and taken into the curtilage of the enclosure which is Treetops giving the lane an irregular appearance. It is not possible to say exactly where encroachments have occurred and may in any event, and especially in view of the existing access along this stretch being good, be considered *de minimis*. Determining this is not the purpose of this investigation.

27.24 It is noted that temporary circumstances such as these mentioned above are irrelevant to this report and given the ample available width for free passage at this location are unlikely to be investigated further at this time.

28.0 Recommendation

That Wiltshire Council makes an Order under s.53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to record the width of bridleway Great Hinton 32 as 20 feet (6.1 metres)

Sally Madgwick

Rights of Way Officer – Definitive Map 6th August 2016

WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

14 DECEMBER 2016

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

**THE WILTSHIRE COUNCIL (PARISH OF HOLT) PATH NO.73 DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER 2016**

Purpose of Report

1. To:
 - (i) Consider an objection received to the making of “The Wiltshire Council (Parish of Holt) Path No.73 Definitive Map and Statement Modification Order 2016”, under Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to Council’s Business Plan

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

Background

3. In 2014 it was brought to the attention of Wiltshire Council that the route of Footpath No.31 Holt, as recorded within the definitive map and statement of public rights of way, did not accord with the used route of the path on the ground. The used route led to the rear of the properties 22A and 22 Leigh Road on a narrow track enclosed between garden fences on the northern side and a post and wire fence with a drainage ditch to the southern side, before entering the field to join the remainder of Footpath No.31 Holt, which then joins Leigh Road to the west of the property No.23 Leigh Road. The definitive map recorded a route through the gardens of the properties 22A, 22 and 23 Leigh Road.

4. When this anomaly came to the attention of Wiltshire Council, it was not possible to divert the definitive line onto the used route or extinguish the definitive line and create the used route, as the owners of the field through which the used route passed, were unwilling to agree to the diversion or creation of a right of way upon land in their ownership, (it is not possible to divert a public right of way onto an existing highway and where the alternative route has been used by the public, as of right for a period of 20 years or more, without interruption, it may have already acquired public rights, in which case it is not possible to divert onto this route and the diversion of the path may be dealt with by making an extinguishment order over the existing route and a creation order over the used route). Therefore, an extinguishment order was made to stop up that part of the definitive line of Footpath No.31 Holt through the gardens, on the grounds that it was not needed for public use, i.e. it was not used and was unlikely to be used by members of the public. The Parish Council agreed to the extinguishment, but requested that the used line be established as a definitive path as soon as possible where the used route *“has been regarded as a right of way for in excess of thirty years and has been walked regularly during that time.”* At this time Officers of Wiltshire Council confirmed to the Parish Council that where they were in agreement with the extinguishment proposals, it was open to them to make an application to add the used route to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981, where there was evidence of public user for a period of 20 years or more, as of right and without interruption.
5. Following the extinguishment of Footpath No.31 Holt (part), Wiltshire Council is now in receipt of an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Holt, between Leigh Road and Footpath No.31 Holt (i.e. the used route). The application is dated 23 April 2015 and is made by Holt Parish Council on the grounds that public footpath rights can be reasonably alleged to subsist, or subsist, over the land, based on user evidence and should be recorded within the definitive map and statement of public rights of way, as such.
6. The application is made in the correct form (as set out within Schedule 14 of the Wildlife and Countryside Act 1981) and is accompanied by eight user evidence forms with maps attached.
7. The claimed footpath is located in the parish of Holt (please see location plan at **Appendix A**) and forms a link between Leigh Road and the existing Footpath No.31 Holt, leading to the rear of properties 22A and 22 Leigh Road via an enclosed track for approximately 65 metres, before entering the adjacent field and leading generally north-west for approximately 90 metres to its junction with Footpath No.31 Holt (please see Order map attached at **Appendix B**).

8. The track is presently owned by Mr and Mrs Oakley and Mr and Mrs Arkell of Leigh Road, Holt and a short section of the track at its western end is unregistered. The field is owned by Mr and Mrs Tucker of Manor Farm, Holt.
9. Wiltshire Council undertook an initial consultation regarding the proposals on 15 September 2015 requesting further evidence/information regarding public use of the claimed route. Five landowner evidence forms were completed and two additional representations were received.
10. Following its investigation of all the available evidence, Officers of Wiltshire Council produced a decision report in which they made a recommendation to senior officers that the claimed path should be added to the definitive map and statement of public rights of way, on the grounds that a right for the public on foot can be reasonably alleged to subsist (please see decision report at **Appendix C**). Senior officers approved this recommendation on 24 May 2016.
11. Wiltshire Council subsequently made a definitive map modification order to add the claimed footpath to the definitive map and statement of public rights of way, as Footpath No.73 in the parish of Holt, on 5 July 2016 (please see definitive map modification order at **Appendix B**). Notice of the making of the Order was duly advertised, served on interested parties (including landowners) and posted on site.
12. Following the making of the Order, Wiltshire Council received one objection to the making of the Order from Mr and Mrs Tucker, as follows (please see full correspondence attached at **Appendix D**):

“We are very disappointed that Holt Parish Council needs to pursue the Reopening of this Footpath in Leigh Road Holt.

We object to the Route B to C as it has never been walked on this line in our Lifetime, or my Parents.

This path was over Grown for many years. People found it easier and Safer to use the stile around the Corner.

My wife was on Holt Parish Council for Several years and we know for a fact Some of the Paths were not checked Regularly. We were never asked to clear this path when we owned the Site which the Two houses were on. We feel your letters from some Councillors very misleading and see this Dispute as Totally unnecessary.

We have allowed the Public to Walk more or less wherever they have wanted over our Farm for many years, especially down by the River, and behind Holt Village when we owned this land.

The public have nothing to gain and everything to lose for the sake of one or two.

We may consider an alternative Route marked D on your Plan, Subject to a meeting with yourselves anytime ASAP.”

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

Main Considerations for the Council

14. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review. The requirements of this section of the Act and Section 31 of the Highways Act 1980, which refers to the dedication of a way as a highway presumed after public use of 20 years, are outlined at part 8 (pages 11 – 16) of the decision report attached at **Appendix C**.
15. The Order is made under Section 53(c) of the Wildlife and Countryside Act 1981, based on:

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

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

Comments on the Objection

17. The objectors, Mr and Mrs Tucker, object to the route B to C over land in their ownership (please see Order plan at **Appendix B**), on the grounds that it has never been walked in Mr Tucker's lifetime, or that of his parents. However, the objectors have not provided sufficient additional evidence to support this claim and to challenge the eight user evidence forms submitted in support of the claim.
18. Mr and Mrs Tucker claim that the path was overgrown for many years and that the public found it easier and safer to use the stile around the corner. Officers are not sure which stile this refers to, but it is possible that the objectors refer to the kissing gate located at the junction of the existing Footpath No.31 Holt with Leigh Road, located immediately to the west of the property 23 Leigh Road, which is reached by continuing in a westerly direction from point A (please see Order plan at **Appendix B**), i.e. "around the corner".
19. Mrs Tucker was a Parish Councillor for several years and Mr and Mrs Tucker claim to know for a fact that some of the paths were not checked regularly and that they were never asked to clear this path when they owned the site which the two houses were built on. When Officers first viewed the path in 2014, it was accessible at that time, (i.e. within the relevant public user period of 1995-2015), however, Mr and Mrs Tuckers' recollection of the path being overgrown would accord with the annual inspection reports of the Parish Council which were sent to and held by Wiltshire Council in 2001, 2003, 2004, 2005 and 2007. The Parish Steward Work Detail Sheet for Holt, dated 28 June 2007, details Priority Programme No.3, from J Gooding as "*Opposite 49 Leigh Road – Footpath 31*" to "*Clear overgrowth around metal stile and strim path on other side as much as possible*", which would suggest that the claimed route was being cleared by the County Council at that time. There is also evidence from the Ramblers that the path was overgrown in 2005 following an inspection by Malcolm Walsh (the then West Wilts Group Footpath Secretary for the Ramblers), who inspected the path following a complaint from Judy Nickless (see paragraphs 10.16 and 10.17 of decision report attached at **Appendix C**).
20. Five of the eight witnesses refer to this path being part of the annual parish footpath survey carried out by the Parish Council, whereby all footpaths in the parish were walked by Parish Councillors and Wiltshire Council has supporting evidence that the path was walked for this purpose in 2001, 2003, 2004, 2005 and 2007, where a list of observations made by the Parish Council is submitted to Wiltshire County Council. Additionally, the Ramblers have, independently from the Parish Council, reported maintenance issues on the path to the County Council, suggesting that in 2005 the Ramblers considered the claimed route to be a public right of way maintained by the Council.

21. Mr Gooding, former Rights of Way Warden for the area, recalls that if he found the route to be obstructed by crops, he would always reinstate the County Series map line in the field; however, this does not accord with the used route (please see paragraphs 10.42. – 10.47. of decision report at **Appendix C**). Seven of the witnesses claim to have used the route as claimed, within the field, however none of the witnesses refer to crop obstruction of the route in the field and they did not change their route because of crop obstruction.
22. The frequency of use of the claimed route is as follows: about five times per year; once; twice a year; sporadically; approx eight-ten times per year; once a year; very seldom and once or twice a year and five of the witnesses refer to seeing other users whilst they themselves have been using the route. Aerial photographs of the area in 2005/06 and 2014 record the existing route of Footpath No.31 Holt, faintly on the 2005/06 photograph, but very clearly on the 2014 photograph; however, these photographs do not record a route from the point B on the order plan (please see **Appendix B**) where the claimed route enters the field at the western end of the track, leading to its junction with the existing Footpath No.31 Holt. Use of the claimed route was possibly light, but the route was signed by Wiltshire County Council with a stile at point A at its junction with Leigh Road and a stile provided at point B at its entrance to the field (please see order plan at **Appendix B**). Mr James Gooding confirms that these stiles and the waymark were present when he took up the post of Rights of Way Warden with Wiltshire County Council in around 1990. They were present for the whole of the relevant user period (i.e. 1995 – 2015) and Mr Gooding confirms that the landowner, Mr Tucker, never objected to the rights of way furniture and was aware of the footpath over his land.
23. Mr and Mrs Tucker claim to have allowed the public to walk more or less wherever they wanted over the farm for many years and consider that the public have little to gain and much to lose in pursuing this claim. In discussion with the objectors it appears that as the landowners they intend to limit public access to only the recorded public rights of way over their land, as a result of this claim. Of course, it is the landowners right to limit public access over the land to the recorded rights of way only, however, the landowners have admitted that they allowed the public to walk on the land in the past and there is no evidence before the Council to suggest that the public using the claimed route have been challenged or were doing so with the permission of the landowners. No map and statement (with subsequent declarations) under Section 31(6) of the Highways Act 1980 have been lodged with Wiltshire Council to negate the landowners' intention to dedicate further public rights of way over the land. Where the public have been allowed access to the land and the landowners have not communicated to the public their non-intention to dedicate further public rights of way over the land, this can give rise to the public acquiring rights.

24. The landowners would be willing to consider an alternative route around the field edge, from point B to the junction with Leigh Road at the existing metal kissing gate on path No.31 (please see order map at **Appendix B**) and from Officers conversations with the applicant, it is understood that path users would have no objection to an alternative route at the field edge. However, no representations were made at the initial consultation to suggest a suitable alternative route, agreeable to all, and the definitive map modification order was made, (although Wiltshire Council would still have been placed under a duty to consider the evidence and determine the application as made, where evidence is brought to the Council's attention). Where the definitive map modification order is made, it cannot simply be withdrawn or amended by the Council and where objections are received and not withdrawn, it falls to be determined by the Secretary of State, who may, after considering the evidence, confirm the order; not confirm the order or confirm the order with amendment, which may or may not require advertisement. The Secretary of State may only amend the order to record an alternative route, where there is sufficient evidence that the public have used an alternative route, (which is likely to be an advertised amendment). At this time Officers consider that the objectors have provided insufficient evidence of the use of an alternative route at the field edge, to challenge the witness evidence which is already before Wiltshire Council. Only one witness, Mr J Nibbs, claims to have used a route closer to the field edge route in addition to his use of the claimed route, but the route recorded on his witness evidence form does not quite accord with the route indicated by Mr and Mrs Tucker at the field edge.
25. In conclusion, the objectors have provided insufficient evidence within their submission (please see correspondence at **Appendix D**), to challenge the evidence already before the Council and on which grounds the definitive map modification order is made.

Overview and Scrutiny Engagement

26. Rights of Way policies relating to the definitive map modification order process are included and set out within the Wiltshire Council "Wiltshire Countryside Access Improvement Plan 2015-2025", as approved by the Cabinet Member for Highways and Transport. Where a definitive map modification order application is made to add a Footpath to the Definitive Map and Statement of Public Rights of Way in the parish of Holt, it has been determined and an order made, in line with these policies, as approved by the Cabinet Member. Additionally, the definitive map modification order is not a persistent problem of local community concern, which remains unresolved. There is a statutory procedure in place to determine the order and therefore overview and scrutiny engagement is not required in this case.

Safeguarding Considerations

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

Public Health Implications

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

Corporate Procurement Implications

29. When the Order is forwarded to the Secretary of State for determination, there are a number of opportunities for expenditure to occur and these are covered at paragraphs 33 – 36 of this report.

Environmental and Climate Change Impact of the Proposal

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

Equalities Impact of the Proposal

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

Risk Assessment

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

Financial Implications

33. The determination of definitive map modification order applications, and the modifying of the definitive map and statement of public rights of way accordingly, are statutory duties for the Council; therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
34. Where objections are received to the making of the order and not withdrawn, the order falls to be determined by the Secretary of State and cannot simply be withdrawn. The order will now be determined by an independent Inspector appointed on behalf of the Secretary of State by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.
35. Where the case is determined by written representations, the cost to the Council is £200 - £300; however, where a local hearing is held, the costs to the Council are estimated at £300 - £500. A public inquiry could cost between £1,500 and £3,000, if Wiltshire Council supports the order (i.e. where legal representation is required by the Council) and around £300 - £500 where Wiltshire Council no longer supports the making of the order (i.e. where no legal representation is required by the Council and the case is presented by the applicant).
36. Where the Council makes an order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

Legal Implications

37. Where the Council no longer supports the making of the order, clear reasons for this must be given, as the applicant may seek judicial review of the Council if this decision is seen by them to be incorrect or unjust.
38. The determination of an order, which has received objections, is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State (although the Council would be considered by the Court to be an "interested party" in any such proceedings).

Options Considered

39. Members of the Committee should now consider the objection received and the evidence as a whole, in order to determine whether or not Wiltshire Council continues to support the making of the order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the order has been objected to, therefore the order must now be submitted to the Secretary of State for determination and members may determine the Wiltshire Council recommendation which is attached to the order when it is forwarded to the Secretary of State. The options available to members, having considered the available evidence and the objection received, are as follows (please note that all references to the available evidence below, now includes the submission made at the formal objection period (please see correspondence at **Appendix D**), as well as the evidence considered within the decision report dated 19 May 2016), (please note that the evidence in full is available to be viewed at Wiltshire Council's Offices at Ascot Court):
- (i) Members may resolve that Wiltshire Council continues to support the making of the order, based on its consideration of the available evidence, in which case the Committee should recommend that the order be confirmed without modification;
 - (ii) Members may resolve that Wiltshire Council continues to support the making of the order with modification based on its consideration of the available evidence, in which case the Committee should recommend that the order be confirmed with modification;
 - (iii) Members may resolve that Wiltshire Council no longer supports the making of the order, on its consideration of the available evidence, in which case the Committee should recommend that the order is not confirmed.

Reason for Proposal

40. The order has been made on the grounds that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot, subsists.
41. Following the making and advertising of the order, no further evidence has been submitted which would lead officers to change this view, please see comments on objections as set out at paragraphs 17-25 of this report.
42. At the confirmation of an order there is a more stringent test than the "reasonably alleged" test which is sufficient at the making of the order. The test is whether public rights subsist on the balance of probabilities. Officers consider that since the making of the order the objectors have provided evidence that they *"have allowed the public to walk more or less wherever*

they wanted over our farm for many years...” which suggests that the landowners have not contested the public walking in the field and that the public did so without permission, force or secrecy and no evidence is submitted to support the landowners non-intention to dedicate a public right of way. Officers consider that this additional evidence is sufficient to satisfy the more stringent test of the balance of probabilities, (i.e. that it is more likely than not that a public right of way has been acquired over the land).

43. The landowners, in their objection (please see correspondence at **Appendix D**), claim that the route through the field has not been used by the public, yet insufficient evidence to support this claim is submitted and there is not sufficient evidence before the Council that the public used an alternative route through the field, i.e. at the field edge.

Proposal

44. That “The Wiltshire Council (Parish of Holt) Path No.73 Definitive Map and Statement Modification Order 2016”, be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the order be confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Janice Green

Rights of Way Officer

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

None

Appendices:

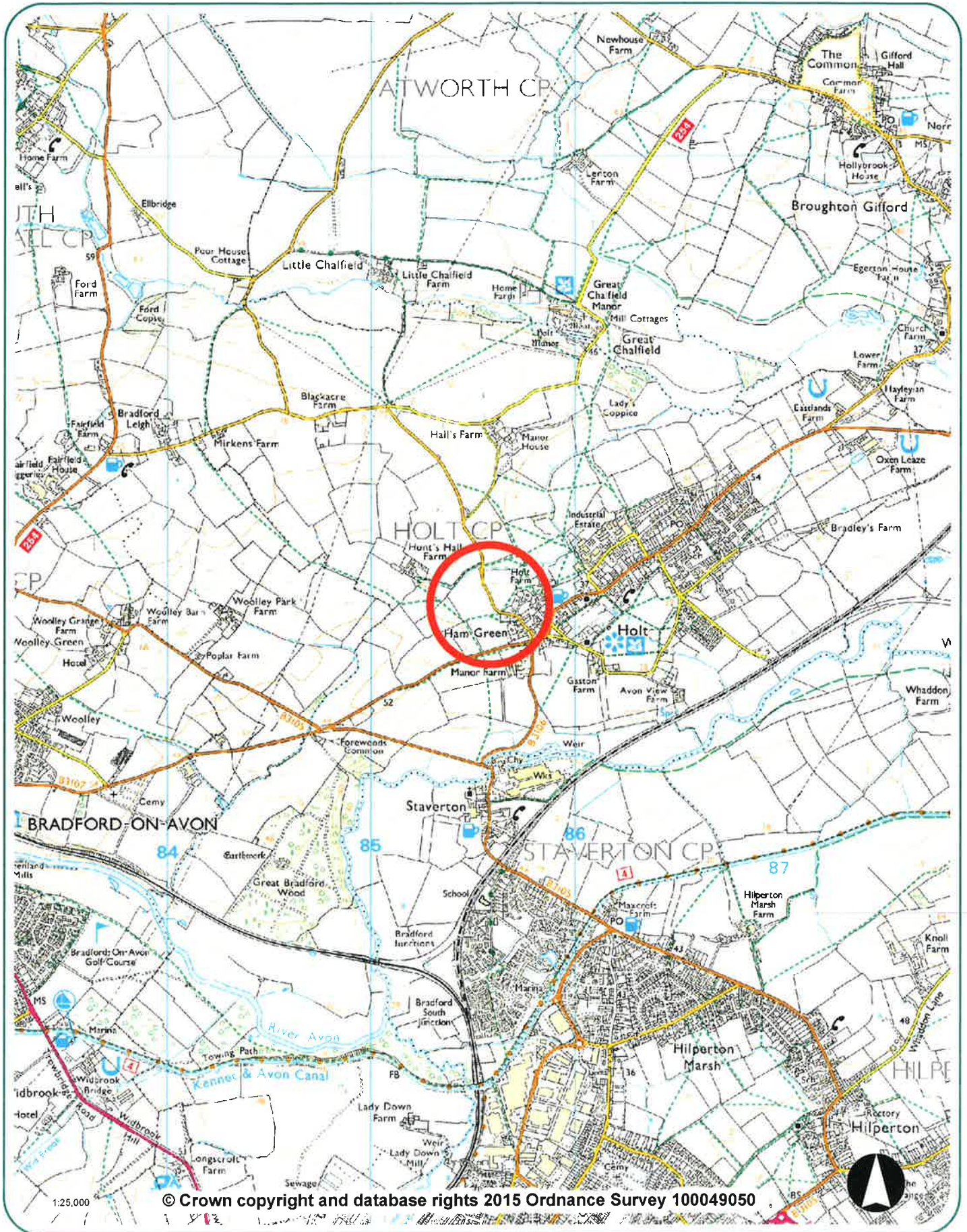
Appendix A – Location Plan

Appendix B – “The Wiltshire Council (Parish of Holt) Path No.73 Definitive Map and Statement Modification Order 2016”

Appendix C – Decision Report (19 May 2016)

Appendix D – Correspondence received in the formal objection period

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**APPENDIX B – “THE WILTSHIRE COUNCIL (PARISH OF HOLT) PATH NO.73
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
2016”**

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE BRADFORD AND
MELKSHAM RURAL DISTRICT COUNCIL AREA DATED 1952**

**THE WILTSHIRE COUNCIL (PARISH OF HOLT) PATH NO.73 DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER 2016**

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

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

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

1. For the purposes of this order the relevant date is 5th July 2016.
2. The Bradford and Melksham Rural District Council Area definitive map and statement shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council (Parish of Holt) Path no.73 Definitive Map and Statement Modification Order 2016.

SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

That length of footpath as shown by purple shading and a continuous purple line on the attached plan, leading from point A at OS Grid Reference ST 8573-6171, at its junction with Leigh Road, Holt, in a south-westerly direction for approximately 6 metres and then west-south-west for approximately 59 metres to point B at OS Grid Reference ST 8566-6169, before leading generally north-west for approximately 90 metres to its junction with Footpath no.31 Holt at point C, at OS Grid Reference ST8559-6174, having a width varying between 0.85 metres and 2 metres, as shown shaded purple on the attached plan, on that section between OS Grid Reference ST 8573-6171 and ST 8566-6169 and a width of 1.6 metres on that section between OS Grid Reference ST 8566-6169 and ST 8559-6174.

PART II

Modification of Definitive Statement

Variation of particulars of path or way

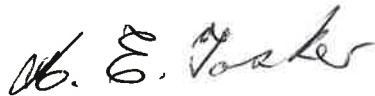
<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53(3) as specified</u>
Holt	73	<u>FOOTPATH.</u> From its junction with Leigh Road at OS Grid Reference ST 8573-6171, leading in a south-westerly direction for approximately 6 metres and then west-south-west for approximately 59 metres, along a track to the rear of properties in Leigh Road, before entering the adjoining field and then leading generally north-west for approximately 90 metres to its junction with Footpath no.31 Holt at OS Grid Reference ST 8559-6174.	53(3)(c)(i)

Approximate length: 155 metres.

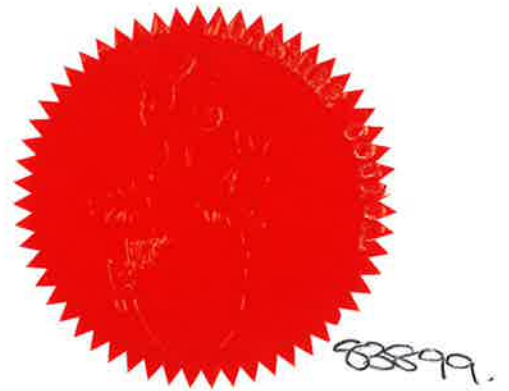
Width: Varying between 0.85 metres and 2 metres on that section between OS Grid Reference ST 8573-6171 and OS Grid Reference ST 8566-6169, as shown shaded purple on the order plan.

1.6 metres on that section between OS Grid Reference ST 8566-6169 and OS Grid Reference ST 8559-6174.

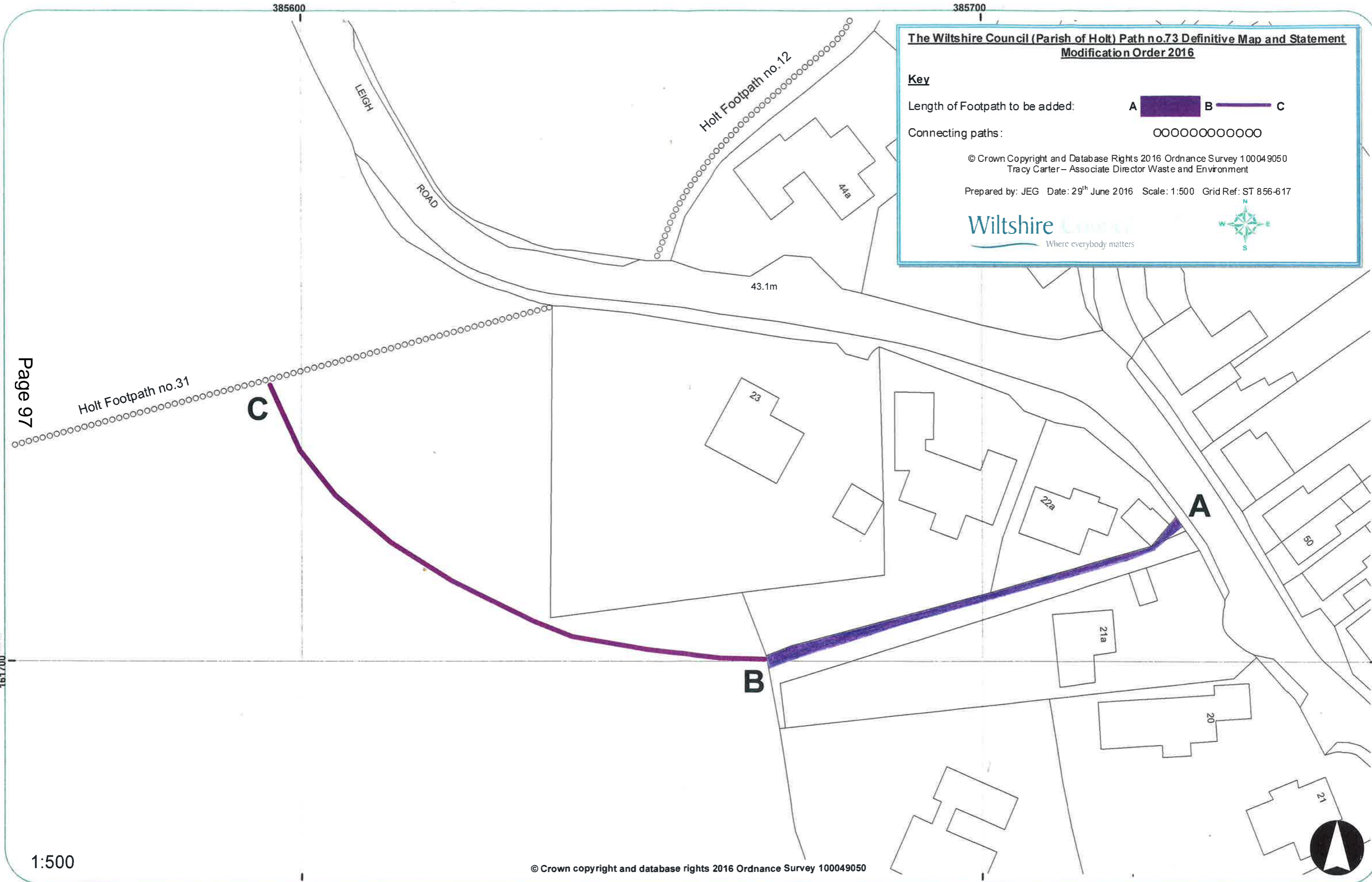
THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
5th day of July }
in the presence of:



Team Leader (Legal)







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COVERING PAGE FOR DECISION REPORT ON APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY – LEIGH ROAD, HOLT

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Sarah Marshall (Solicitor – Highways)		
	Barbara Burke (Definitive Map and Highway Records Team Leader)		24.05.2016
	Richard Broadhead (Rights of Way and Countryside Manager)		24 05 2016
	Ian Brown (Head of Environment Services)	Copy for information only JRS	
	Tracy Carter (Associate Director – Environment and Leisure)		
From:	Janice Green		
Date of report:	19 th May 2016		
Return to:	Janice Green, Rights of Way (Ext. 13345)		

Nature of Report:

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

Executive Summary:

Wiltshire Council are in receipt of an application, made under Section 53 of the Wildlife and Countryside Act 1981 and dated 23rd April 2015, to add a footpath to the definitive map and statement of public rights of way, in the parish of Holt, leading from Leigh Road, (adjacent to the property 22A Leigh Road), in a generally south-south-west and north-westerly direction, to its junction with Footpath no.31 Holt. The application is supported by 8 completed user evidence forms and a statement of supporting documentation.

Following an assessment of the evidence, Officers are satisfied, on the balance of probabilities, that a right of way for the public on foot, which is not shown on the definitive map and statement, can be reasonably alleged to subsist and should be recorded within the definitive map and statement of public rights of way, as such.

Additionally, there is insufficient evidence of the landowner's non-intention to the way as a public right of way, during the relevant public user period of 1995 – 2015.

Officer's Recommendation:

That a definitive map modification order be made to add a right of way for the public on foot to the definitive map and statement of public rights of way in the parish of Holt, leading from Leigh Road, (adjacent to the property 22A Leigh Road), in a generally south-south-west and north-westerly direction, to its junction with Footpath no.31 Holt and if no objections are received, the order be confirmed by Wiltshire Council as an unopposed order.

DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND
STATEMENT OF PUBLIC RIGHTS OF WAY – LEIGH ROAD, HOLT

1. Purpose of Report

- 1.1. To determine an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the Parish of Holt, leading from Leigh Road (adjacent to the property 22a Leigh Road), in a generally south-south-west and north-westerly direction to its junction with Footpath no.31 Holt.

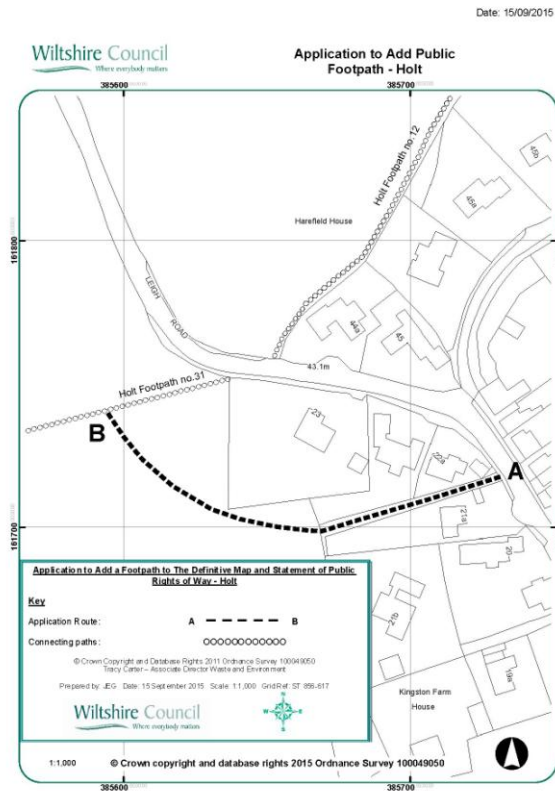
2. Relevance to Council's Business Plan

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

3. Location Plan

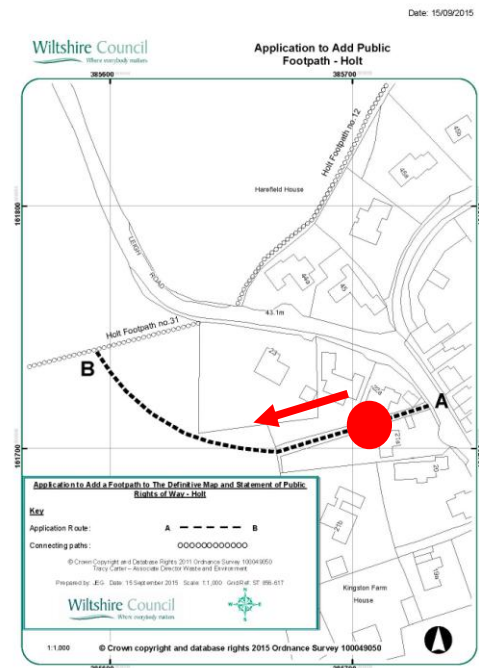
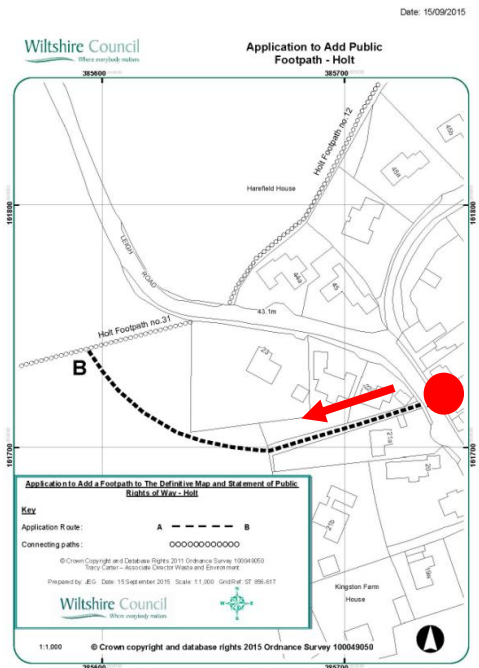


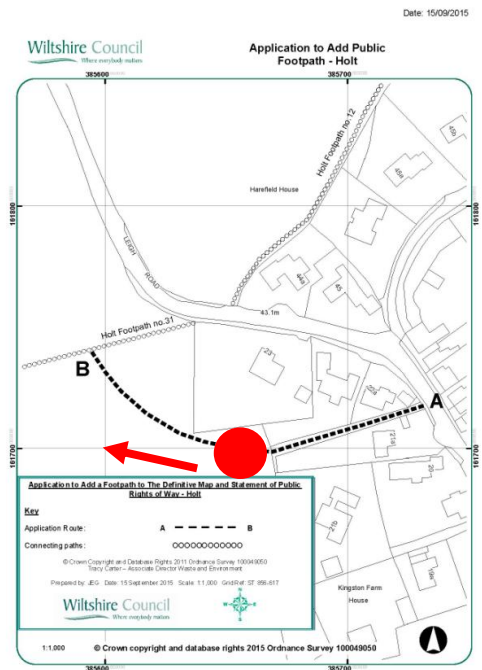
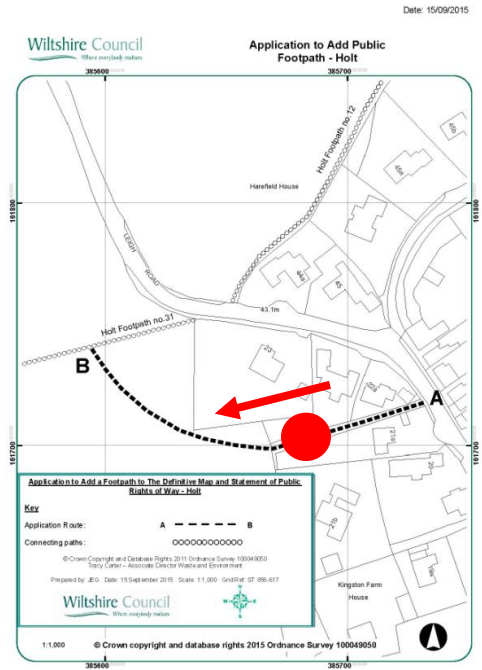
4. Claimed Footpath Route

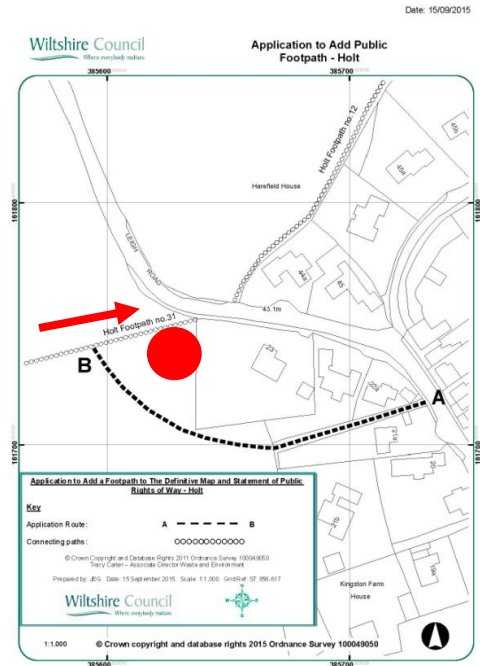


4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Holt, leading from point A, at its junction with Leigh Road, in a generally south-south-west and north-westerly direction to its junction with Footpath no.31 Holt, at point B.

5. Photographs







6. Registered Landowners

6.1. Mr and Mrs Oakley
 22A Leigh Road
 Holt
 Trowbridge
 Wiltshire
 BA14 6PW

Mr and Mrs Arkell
 22 Leigh Road
 Holt
 Trowbridge
 Wiltshire
 BA14 6PW

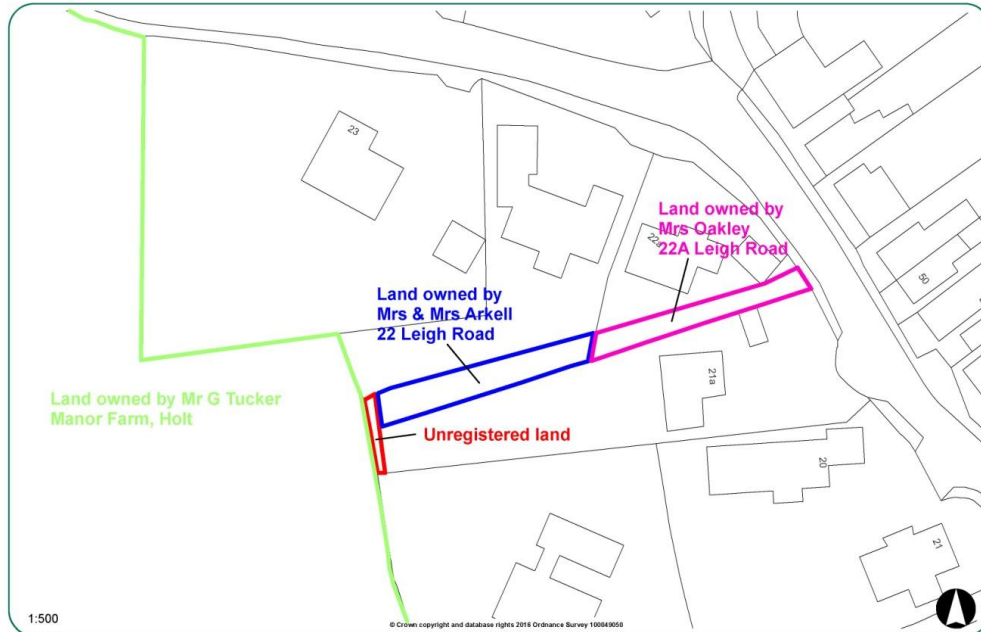
Mr G Tucker
 Manor Farm
 Holt
 Trowbridge
 Wiltshire
 BA14 6PL

6.2. Neighbouring property owners who have been included within the consultations are:

- | | |
|------------------------|--------------------|
| i) Mr and Mrs O'Connor | ii) Mrs Peggy Earl |
| Homefield | 21A Leigh Road |
| 23 Leigh Road | Holt |
| Holt | Trowbridge |
| Trowbridge | Wiltshire |
| Wiltshire | BA14 6PW |
| BA14 6PW | |

6.3. The Parish Council, in its application also identified Mr Mike Singer as a potential landowner, however from the Council's investigations, it is not clear which part of the land Mr Singer owns. Mr Singer has been included in all consultations:

Mr Mike Singer
Kingston Farm House
Holt
Trowbridge
Wiltshire
BA14 6PN



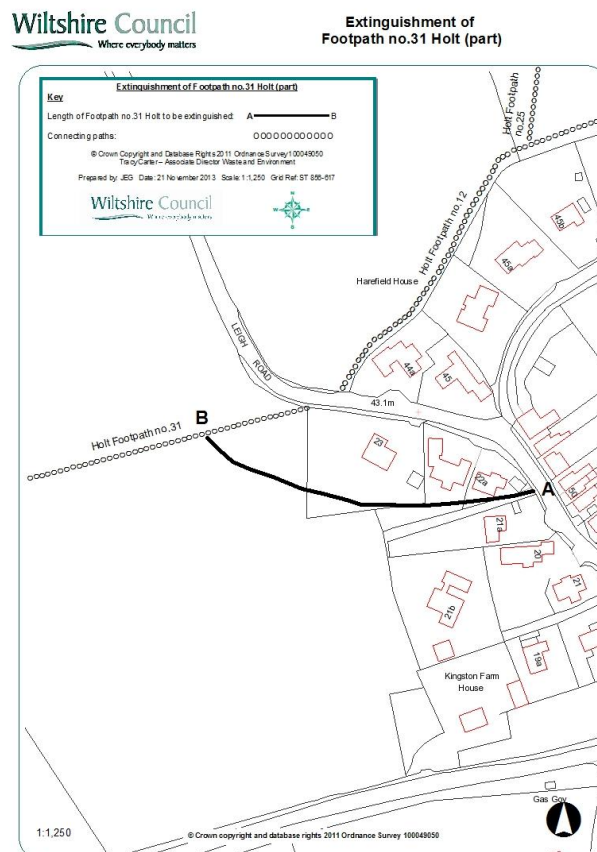
6.4. All of the landowners have received formal notice of the application in the form of “Form 2”, served upon them by the applicant. A small section of the land over which the claimed route passes is unregistered, as shown outlined in red on the plan above. Wiltshire Council are satisfied that the applicants have made all possible efforts to try to establish the identity of this landowner and have required them to post notice of the application upon the section of land in question, addressed to “*Whom it May Concern: Unregistered Land re. Parcel of Land Outlined in Red on Appendix A*”.

7. **Background**

7.1 In 2014 it was brought to the attention of Wiltshire Council that the route of Footpath no.31 Holt, as recorded within the definitive map and statement of public rights of way, did not accord with the route of the path on the ground. The used route led to the rear of properties 22, 22A and 23 Leigh Road, on a narrow track, enclosed between garden fences on the northern side and a post and wire fence with a drainage ditch to the southern side, and then

entering the field to join the remainder of Footpath no.31 Holt, which then joins Leigh Road to the west of property no.23 Leigh Road. The definitive map recorded a route through the gardens of the properties.

- 7.2. When this anomaly came to the attention of Wiltshire Council, it was not possible to divert the definitive line to the used route or extinguish the definitive line and create the used route, as the owner of the field through which the used route passed was unwilling to agree to a diversion/creation on his land. Therefore an extinguishment order was made to stop up the definitive map line through the gardens, on the grounds that the route was not needed for public use, i.e. it was not used and was unlikely to be used by members of public, as shown on the plan below.



- 7.3. Following the extinguishment, Wiltshire Council are now in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Holt, between Leigh Road and Footpath no.31 Holt (i.e. the used route). The application is dated 23rd April 2015 and is made by Holt Parish Council on the grounds that public footpath rights can be reasonably alleged to subsist or subsist over the land, on the balance of probabilities, based on user evidence and should be recorded within the definitive map and statement of public rights of way, as such.
- 7.4. The application form (which consists of forms 1 and 3) is accompanied by a plan drawn at a scale of 1:1,250, highlighting the claimed route, 8 completed witness evidence forms and a statement of supporting documentation.
- 7.5. The claimed route is located in the parish of Holt, which lies to the north of Trowbridge, between Bradford-on-Avon to the west and Melksham to the east. The claimed route forms a link between Leigh Road and Footpath no.31 Holt, leading south-south-west along a track to the rear of the properties 22 and 22A Leigh Road for approximately 65 metres, before entering the adjoining field and then leading generally north-west for approximately 90 metres to its junction with footpath no.31 Holt.
- 7.6. Wiltshire Council undertook an initial consultation regarding the proposals on 15th September 2015. Landowner evidence forms were completed by:

Mr and Mrs Arkell, 22 Leigh Road

Peggy Earl, 21A Leigh Road

Mrs Barbara Oakley, 22A Leigh Road

Mr Dominic O'Connor, 23 Leigh Road

Mr Gordon Tucker, Manor Farm

Mr and Mrs Arkell wrote on 22nd September 2015, enclosing their landowner evidence form:

“I enclose a completed Landowner Evidence Form, as invited. As you will see, we have no objection to our section of the land marked on your map continuing to be used as a footpath and wrote some months ago to Holt Parish Council to that effect. This [is] strictly on condition that access at either end to the section owned by us will follow the marked line and no other.”

Mr Robert Mizen wrote in support of the application, letter dated 25th October 2015:

“As a member of Holt Parish Council, for over thirty five years, I can confirm that the route A to B shown on your plan has been walked annually as part of our Council footpath survey for each of those years.

Each year Holt Councillors are given a number of paths to walk and in this way all of our Parish paths are checked.

As part of that survey, I personally have “drawn” this path on several occasions, the last time being two years ago.

I can confirm that I have walked this path on many occasions for recreational purposes.”

8. Main Considerations for the Council

- 8.1. The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, however this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

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

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

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

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

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

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

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

effect as to the making and determination of applications under this subsection.”

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

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:*
 - (a) *a map drawn to the prescribed scale and showing the way or ways to which the application relates; and*
 - (b) *copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”*

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

8.5. The application to add a right of way to the definitive map of public rights of way in the parish of Holt, has been correctly made in the prescribed form, being accompanied by a map drawn at a scale of 1:1,250 and 8 witness evidence forms and supporting documentation.

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

“(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be

deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) Where the owner of the land over which any such way as aforesaid passes –
 - (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
 - (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.**
- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to*

negative the intention of the owner of the land to dedicate the way as highway.

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

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

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

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

(i) within ten years from the date of deposit

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

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

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

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

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

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

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

“Evidence of dedication of a way as highway

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

9. Documentary Evidence

- 9.1. As part of Wiltshire Council's investigations, Officers have examined documentary evidence, including the provenance and purpose of the documents to draw conclusions regarding the claimed route. Please see list of historical evidence and conclusions attached at Appendix 1 to this report.
- 9.2. Some of the Ordnance Survey (OS) maps (i.e. the 1901 and 1924 edition maps drawn at a scale of 1;2,500; the 1926 edition 6" map onto which the Holt Parish Pathways information is drawn c.1933 and the 1938 edition 6" map onto which the parish claim information is drawn), record the former definitive line, now extinguished, but none of the historic documents and maps record the route as claimed.
- 9.3. The parish claim documents, following the parish survey dated December 1950, are interesting. When looking at the route claimed by the parish on the map, alongside the description on the record card, there are some discrepancies and Officers consider that the original description (which is later deleted), may refer to the claimed route, where the route recorded on the claimed map highlights the route shown on the OS base map, i.e. the definitive line of Footpath no.31 Holt, as extinguished in 2014.
- 9.4. The original description reads: *"31. F.P. to BRADFORDLEIGH. Starts in Leigh Rd from Iron Stile next to two Cottages and Gardens, for 50 yards between this garden and bungalow garden; then wooden stile, 50 yards in open field where it meets path 32."* (path 32 is amended to be part of Footpath no.31 on the claim map). This description is crossed through and a new, less detailed description added: *"F.P. from road C224 north west of Holt House leading west to path no.34."*

- 9.5. The record card also specifies that the route is “*open after the first 50 yards which is between hedge and wire fence.*” and “*Stiles in good condition*”, this information is not deleted. The deleted path description and the references to the stiles and the first 50 yards of the route being enclosed between the gardens, being fenced on one side and having a hedge on the other, seems to accord with the claimed route. On the claim map only the boundary of the property to the south (which Officers believe to be the garden of the two cottages referred to in the description, which still exist to this day), is shown, so Officers consider that the enclosed part of the route described must run alongside this boundary as the claimed route does, (the bungalow referred to in the description is not recorded on the base map). The base map is an OS map drawn at a scale of 6” to 1 mile, Provisional Edition, first surveyed in 1884, Revision of 1922 with additions of 1938, whilst the parish survey is 1950. It would appear that the parish at the time of its survey marked on the map the route shown on the base map, which appears to be open in its entirety as the route is shown by double broken lines, (Officers would expect an enclosed route to be shown on OS mapping by double solid lines), whilst the original accompanying description records a route which is enclosed for the first 50 yards between gardens and having stiles, I would not expect stiles to be required on an open route.
- 9.6. The description given as part of the parish claim in 1950, may support the existence of the claimed route, however there are no other documents which support this and this evidence alone is insufficient to support the existence of public rights, on the balance of probabilities. However, this does not mean that public rights over the claimed route do not exist and alongside the original parish claim path description, we must now consider the available user evidence in this case.

10. User Evidence

- 10.1. The application was accompanied by 8 witness evidence forms with maps attached. 3 landowner evidence forms were submitted following the initial consultation, plus landowner evidence forms from adjoining landowners Mr D O'Connor and Mrs P Earl.
- 10.2. Section 31 of the Highways Act 1980 deals with the dedication of a way as a highway, presumed where a way over the land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. The way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Bringing into question

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

"I think that in order for the right of the public to have been "brought into question", the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of

the Attorney-General against the landowner in the courts claiming that there is a public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in some way makes it clear to the public that he is challenging their right to use the way."

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

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

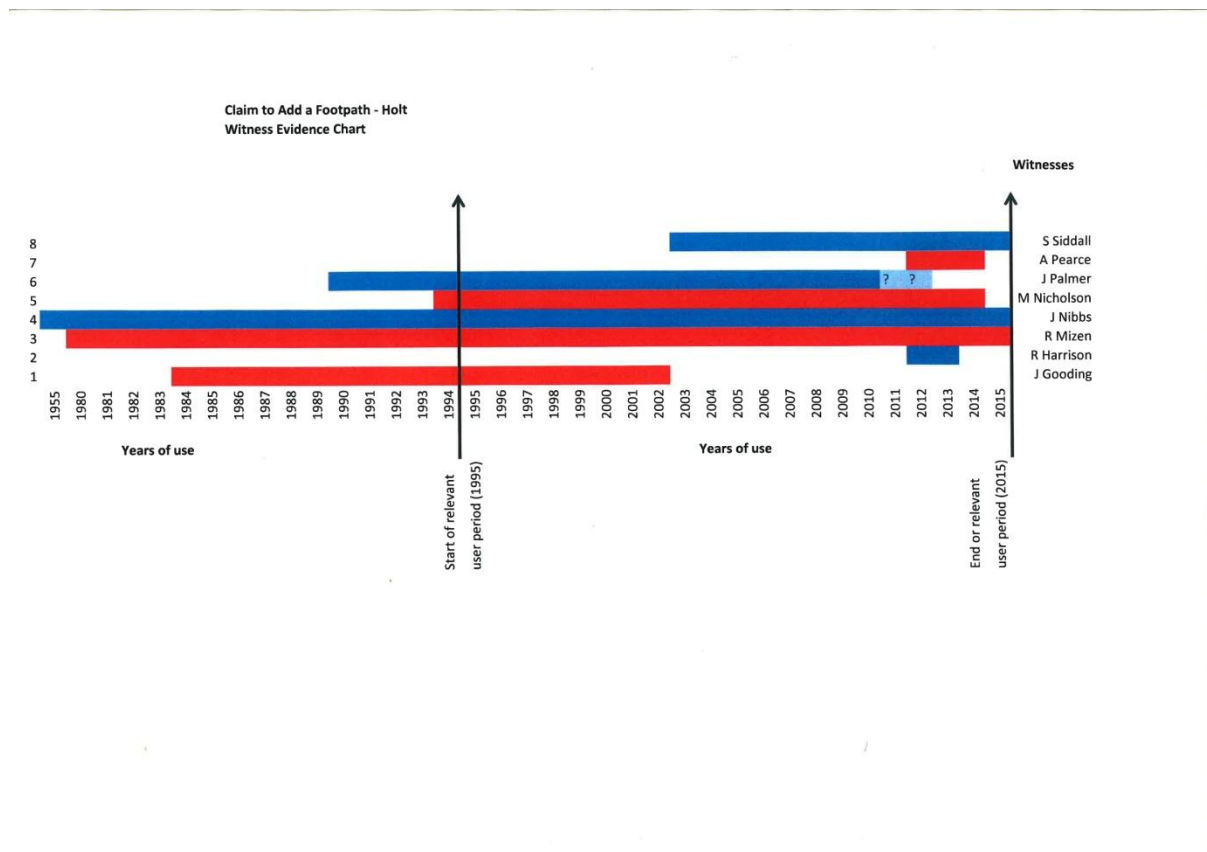
10.6. In the Holt case, Officers have found no evidence that the landowners have taken any action on the claimed route, sufficient to bring home to the public that their right to use the way is being challenged. However, in 2014 Wiltshire Council made an order under Section 118 of the Highways Act 1980 to extinguish the route of Footpath no.31 Holt, as recorded on the definitive map. This order was advertised and notice placed on site. It is noted that 2 of the users ended their use in 2014, including Mrs Nicholson who clarifies that her use continued until its closure in 2014. 3 of the 8 users were still using the route between 2014 and 2015 at the time of application and the used route on the ground was still available after the extinguishment of the definitive route, with stiles remaining in place. It is therefore considered that the making of the extinguishment order on a different route to the used route (the route now being claimed), was not sufficient to bring home to the public at large that their right to use the claimed route was being challenged.

10.7. Where there is no such defining event, under Section 31(7) (a) of the Highways Act 1980, it is possible that the definitive map modification order

application may serve as a trigger to bring the use of the route into question and it is considered that this would be applicable in this case. For this reason the 20 year public user period should be calculated retrospectively from the application date of 23rd April 2015, i.e. the public user period in question is 1995 – 2015.

Twenty Year User

10.8. Please see chart below which shows the dates and level of user as outlined within the 8 witness evidence forms received:



10.9. For the period of user in question, i.e. 1995 – 2015, all witnesses have used the route during this time and 2 witnesses have used the route for the full period of 20 years. The earliest use dates back to 1955 and would support the 1950 parish survey description which suggests that the public used an

enclosed route between the buildings at that time and not the route through the gardens as recorded on the definitive map.

10.10. In addition to their own use, witnesses refer to use of the route with others and seeing others using the route:

User	Used with others	Others seen
1	Group recreational route.	Yes, walking.
2	No information provided.	Yes, walking.
3	No information provided.	When doing Parish Council survey always accompanied by second Councillor.
4	As a child with my parents. We lived at 49 Leigh Road.	Walking.
5	No information provided.	Sometimes – walking.
6	No information provided.	No.
7	No information provided.	No.
8	No information provided.	No.

10.11. There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence i.e. its honesty, accuracy, credibility and consistency, is of much greater importance than the number of witnesses. In *R (Lewis) v Redcar and Cleveland Borough Council* UKSK 11 (03 March 2010), a Town and Village Green registration case, Lord Walker refers to Mr Laurence QC, who:

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

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

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

10.12. The frequency of use should also be considered. The users have used the route as follows: about 5 times per year; once; twice a year; sporadically; approx 8 – 10 times per year; once a year; very seldom and once or twice a year.

10.13. 5 of the witnesses refer to part or all of their use of the route being as part of the annual footpath survey carried out by the Parish Council, whereby all footpaths in the village were walked by Parish Councillors. In his additional supporting evidence Mr Robert Mizen confirms that in the annual parish survey, over the last 35 years, he has been requested to inspect this particular path, the last time being two years ago. He also confirms that he has used the path on many occasions for recreational purposes and his witness evidence form confirms that his use is twice a year.

10.14. Landowners and adjoining landowners who have completed landowner evidence forms, make the following comments:

Mr and Mrs Arkell of 22 Leigh Road have owned the land for 8 years. They believe this land to be a public footpath as a result of the solicitors search on their property. Between June 2007 and September 2015 they have noted that the claimed route is used infrequently and in small numbers, which supports the completed user evidence forms.

Mrs Barbara Oakley of 22A Leigh Road has owned the land for 8 years, she does not believe the way to be public. Originally they thought this was the public right of way until Wiltshire Council informed them that the legal path went under their garage and across their garden (now extinguished). She has never seen anyone walk through.

Mr Dominic O'Connor of 23 Leigh Road has owned the land (adjoining the proposed right of way) since 2009 and he does believe the way to be public given the frequent and regular use. He has seen people using the route every month throughout the year, more in summer.

Mrs Peggy Early has lived at 21A Leigh Road for 55 years (Officers believe this to be a bungalow built within the garden of the two cottages referred to in the 1950 parish survey, path description). Although she does not own any part of the claimed right of way, she does live directly alongside the claimed route, to the south. She believes the route to be a public footpath and has observed that the route is regularly used.

Mr Gordon Tucker, owner of the field, has confirmed that the field has been in his family for 90 years, he does not believe this to be a public right of way and has held this view since approximately 1995 when the plot of land was sold (Officers believe this refers to the land upon which the properties 22 and 22A Leigh Road, were built). Mr Tucker has not seen or been aware of members of the public using this land which accords with the witness evidence that the path was used infrequently.

10.15. Is this level of user, i.e. 8 witnesses whose maximum use is 8-10 times per year (by Mrs Nicholson who has used the claimed route from 1994 – 2014), sufficient to make the landowners aware that a public right was being asserted against them? The majority of landowners appear to be aware of use, but their recollections differ in level of user, perhaps due to their views of

people using the route and the amount of time spent at their property. Mr Tucker claims not to be aware of public use, however Mrs Nicholson recalls that at the time the extinguishment of the footpath was requested, the wife of the owner of the field, Mrs Barbara Tucker, was on the Parish Council and was aware that these paths were being walked on an annual basis.

10.16. The Parish Council claim that the route was walked by them (on the claimed route and not the former definitive line, now extinguished), as part of the annual survey of all paths in the parish. Wiltshire Council has supporting documentary evidence of this path having been surveyed by the Parish Council in 2003, 2004, 2005 and 2007. A list of observations made by the Parish Council was submitted to Wiltshire County Council, at which times the following issues with the path were identified by the Parish Council:

2001 – *“Footpath 31 – This path goes west to Footpath 34, not east as described. Access is possible but overgrown. At the entrance to the field, the path becomes impassable, due to the planting of corn-on-the-cob, as is the spur. At the end of the spur, the gate is damaged, the sign obscured and needs repainting, and the egress very awkward.”*

2003 – *“Footpath 31 – Obstructed by Maize crop and tall weeds.”*

2004 – *“**Footpath 31** Impassable because of brambles at start of footpath. No signage to show where FP31 meets FP 34.”*

2005 – *“**Footpath 31**: From Leigh west to footpath 34 access blocked by nettles.”*

2007 – *“**Footpath 31**: Obstructed by maize crop (September 2006).”*

The Parish Steward Work Detail Sheet for Holt, dated 28/06/07 details Priority

Programme no.3, from J Gooding as *“Opposite 49 Leigh Road – Footpath 31”* to *“Clear overgrowth around metal stile and strim path on other side as much as possible”*.

10.17. Wiltshire Council also have a note from the local Ramblers Secretary Dr Malcolm Walsh, dated 15th October 2005, who inspected the path having received a complaint from Judy Nickless (who has not submitted a user evidence form) about the state of Footpaths 31 and 34 Holt, (path no.34 adjoins the existing part of Footpath no.31 Holt at its western end and leads north-south). He states:

“Holt 31

Starting on the C224 the stile is clear and signposted, but after a few yards as the path passes between the buildings it is badly overgrown by vegetation until it reaches the field. Considering the NE spur, starting at the same road, the kissing gate (Fig 1) is completely overgrown. From the point where the two branches join, the route to FP 34 is completely overgrown by 8-9ft high maize. Obviously no attempt has been made to clear FP 31 through this crop.”

10.18. The above reference to the route passing *“between the buildings”* suggests that in 2005, during the relevant user period, the public were using the route as claimed and not the definitive line through the gardens.

10.19. Wiltshire Council are in receipt of an extract from *“Walking in West Wiltshire (Book 3)”* (unfortunately Officers have been unable to locate a full copy of this publication and a full reference for the extract). This outlines walk 9: Holt, which includes Footpath no.31, as follows and suggests a route between the houses:

“There is a group of farm buildings – Hunt’s Hall Farm – across the field to your left. Head straight on to reach a stile in the hedgerow about twenty yards or so to the left of this field’s right hand corner.

Now head diagonally across the next field, towards Holt, through a broken hedgerow, to the field’s left corner. Turn sharp left here and cross the stile immediately to hand in the corner. Now follow the beaten path towards the buildings of Holt Village. There are two exits; the one leftward is by a kissing gate which drops you onto a lane at the very edge of the village. The one rightwards leads you between houses to reach the lane. In both cases you turn right to return to Ham Green.”

10.20. Additionally, the route was signed by Wiltshire County Council as a public footpath and there was a stile present at the junction with Leigh Road, (between the properties 22a and 21a Leigh Road) and at the entrance to the field. Officers have spoken to Mr James Gooding (29th April 2016), who was formerly the Wiltshire County Council Rights of Way Warden for this particular area (Mr Gooding has also completed a witness evidence form outlining his use of the path, as both part of his maintenance work and for recreational purposes).

10.21. Mr Gooding confirmed that he first joined Wiltshire County Council as Rights of Way Warden in around 1990, and the stile and waymark post off Leigh Road, were already present at this time in the form of a steel tube with fixed welded arm attached and a stile formed of timber posts with tubular metal rails. Mr Gooding erected a step on the stile when he took up post. Previous to Mr Gooding taking up this post with Wiltshire County Council, his first introduction to rights of way work was leading a group of long term unemployed people called “Manpower Services” and he was involved with sign writing all posts with welded fingers on metal posts, from a template. He recalls spraying this particular finger post. The stile into the field was also present at the time Mr Gooding took up post in 1990 and he recalled that the

landowner Mr Tucker never objected to the rights of way furniture and was aware of the footpath over his land, it has always been used on the line claimed. The presence of the stile at this position in 1990 supports that the public were using the route as claimed, and not the definitive route through the gardens (now extinguished).

10.22. Mr Gooding recalled that the owner of the bungalow “Fairlawn” 21A Leigh Road, to the south of the claimed route, maintained the ditch alongside the claimed route. Mr Tucker had originally owned the claimed path and the land to the north of that, on which there was a property which the Dairyman lived in, (Officers believe this to be the bungalow which is referred to in the original parish claim description following the parish survey in 1950), which was demolished and two new properties, 22A and 22 Leigh Road, built. The houses were built after 1990 as Mr Gooding was in post, the building probably took place about 15 to 20 years ago, (this coincides with Mr Tuckers recollection that the land was sold in 1995).

10.23. Mr Gooding recalled that he had always followed a route, as shown on the OS County Series mapping and as the Rights of Way Warden for the area, if he had found the route to be obstructed by crops, he would always reinstate the County Series map line in the field. On the map included with his witness evidence form Mr Gooding records the route which he has used, leading along the track to the rear of the houses and entering the field, but then leading further west to junction with Footpath no.34 Holt at the western edge of the field. However, Officers have found that the County Series OS maps record a route through the gardens, as per the original definitive line now extinguished, junctioning with the remaining section of Footpath no.31 Holt within the field, closer to Leigh Road (please see **Appendix 1**). From Mr Gooding’s further evidence it seems that the definitive line had always been thought to lead along the track to the rear of the houses, i.e. on the claimed route, by all parties, and to enter the field via the existing stile. This was the

signed route and that used by the public and to which the landowners made no objections. There is however some variation in the route taken within the field, which will be explored further at paragraphs 10.42 – 10.47.

10.24. Officers consider that if the landowners and the then Rights of Way Warden Mr Gooding, had considered the definitive line to be different at the time the new houses were built (i.e. not on the claimed route), this would have been an issue and the recorded definitive line (now extinguished) would not have been obstructed by the gardens of these properties. Additionally, the public could not physically follow the definitive route through the gardens, but were led to follow the track and then to enter the field, the claimed route was the only route available for the public to use. The signing of the route as a footpath leads Officers to contend that the owners would have been aware of public use, or it is likely that they would have contested the signing of the used route to the rear of the properties and through the field which encouraged public use of the unrecorded right of way.

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

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

10.26. Given the above, Officers are satisfied that the evidence provided is sufficient, on the balance of probabilities, to support public use of the claimed route, over the relevant user period of 1995-2015.

As of right

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

Without force

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

10.29. From the evidence given, it would appear that users did not use force to enter the land over which the claimed route passes. It is the opinion of Officers that users would not have been required to use force to enter the land as there is a stile at the Leigh Road junction and another stile into the field at the end of the enclosed track. There are 6 references to the stile at Leigh Road and 4 references to the stile at the field entrance, within the 8 user evidence forms and from the evidence given by Mr Gooding, as the former Wiltshire County Council Rights of Way Warden, it would appear that these stiles were present before and during the relevant user period of 1995-2015.

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

“The opposite of “peaceable” user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned

had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”

10.31. In the Holt case Officers are not aware that the public have been advised by the landowners that they cannot use the route, i.e. there is no evidence of prohibitory notices on the claimed route and therefore use is not deemed contentious.

Without secrecy

10.32. It would appear that witnesses used the route in an open manner, in a way in which a person rightfully entitled to do so would do, without secrecy and they believed that the landowner was aware of use.

User	Do you believe the owner or occupier was aware of the public using the way
1	Yes, because I have been in consultation with all his footpaths (former Wiltshire Council Rights of Way Warden).
2	Yes, because the right of way is marked on maps and they have acknowledged it in a Parish Council meeting.
3	Yes, farmer and neighbouring householders would have seen walkers using the 'defacto' path.
4	Yes, because of the fingerposts indicating the paths existence.
5	The wife of the landowner at Manor Farm (at the time of the request for closure), Mrs Barbara Tucker was on the Parish Council and was aware that these paths were being walked on an annual basis. The line of the path across the field is clearly trodden and visible.
6	Don't know.
7	Yes, can be seen from the houses.
8	Yes, because it was a signed footpath.

10.33. 7 of the 8 witnesses believe that the landowners were aware of public use of the way due to the public being seen using the way; the footpath being waymarked; the route being acknowledged by the Parish Council (the landowners wife, Mrs Tucker, was a Parish Council member) and a clearly trodden path across the field. Mr Gooding, in further evidence, claims that Mr Tucker the owner of the field, never objected to the rights of way signage and stiles and was aware of public use. Users claim that they were not challenged whilst using the way by the landowners or any other party.

10.34. 2 of the landowners, Mr Tucker and Mrs Oakley claim that they had never seen anyone using the path, which ties in with the witness evidence that the path was used infrequently, it could be expected that Mr Tucker and Mrs Oakley had not witnessed the use of the path and therefore had no opportunity to challenge that use should they have wished to do so. Mr and Mrs Arkell confirm that use was infrequent and in small numbers, but they never challenged people using the route. Mr O'Connor claims that the path received frequent and regular use and he has advised those using the route that the way is not public, since he was informed that the path actually went through his garden (now extinguished). The recollections from the landowners are conflicting.

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

"...is concerning himself, as the English theory required with how the matter would have appeared to the owner of the land. The user by the public must have been, as Parke B said in relation to private rights of way in Bright v Walker 1 CM and R211, 219, 'openly and in a manner that a person rightfully entitled would have used it.' The presumption arises, as Fry J said of

prescription generally in Dalton v Angus and Co App Cass 770, 773, from acquiescence.”

10.36. Such use would allow the landowner the opportunity to challenge the use, should they wish to do so. In the Holt case the route was also signed as a public footpath and stiles provided. Although the point of signage at Leigh Road, (point A on the plan at 4) coincides with the starting point of the definitive route now extinguished, the public have not been physically able to use the definitive line of the path which has been obstructed by the gardens of the properties built in approximately 1995 (please see evidence from Mr Tucker). Therefore the signing of a public footpath at this point would have led users along the narrow track and into the field and it is considered that the landowners would have been aware of this, yet have not challenged the longstanding signage or the provision of stiles, as evidenced by Mr Gooding, former Wiltshire County Council Rights of Way Warden. It would appear that even before the houses were built, the public followed an enclosed track between the bungalow to the north and the garden of the two cottages to the south (this is now the boundary of the later bungalow 21A Leigh Road), as evidenced in the Parish Survey path description (1950).

Without permission

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

“...the legal meaning of the expression “as of right” is, somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have

been permitted by the landowner – hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried on as if it were by right – hence “as of right”.

10.38. None of the users were employees or tenants of the landowner at the time of their use, nor were they related to the owners or occupiers of the land, so their use is not by implied permission. None of the users claim to have requested permission from the landowner to use the route, or been granted permission and none of the landowners claim to have required people to ask permission before using the way.

User	Have you ever worked for or been tenant of any owner/occupier of land crossed by the way at the time you were using it	Are you related to any past or present owner or occupier of land crossed by the claimed way	Have you ever been given permission to use the way, if so by whom and when
1	No	No	No
2	No	No	No
3	No	No	No
4	No	No	No
5	No	No	
6	No	No	No
7	No	No	No
8	No	No	No

10.39. Where use is “as of right” and the public do not have permission to use the land, it follows that all rights of way claims will begin with a period of trespass against the landowner.

10.40. In the Barkas case, Lord Neuberger states that the mere inaction of the landowner with knowledge of the use of the land does not amount to permission and the use is still trespass:

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

10.41. In conclusion, Officers are satisfied that on the available evidence, use of the claimed route has been “as of right”.

The Claimed Route

10.42. The claimed route forms a link between Leigh Road and Footpath no.31 Holt, leading south-south-west along a track to the rear of the properties 22 and 22A Leigh Road for approximately 65 metres, before entering the adjoining field and then leading generally north-west for approximately 90 metres to its junction with footpath no.31 Holt. At its eastern end, the first 65 metres of the path are enclosed between the garden fences of the properties to its northern side and a post and wire fence and drainage ditch to its southern side. The path then enters the field via a stile and is open to the field.

- 10.43. From the witness evidence forms provided, all but two of the eight witnesses claim to have used the enclosed track to the rear of the properties, before entering the field.
- 10.44. Mr Robert Mizen records on the map a route extending east from the original definitive line and north of the track which would place it within the gardens of the properties 22 and 22a Leigh Road. It has been physically impossible to use this route for a number of years, due to obstruction by gardens and fencing and even the parish claim details suggest an enclosed route at this point as early as 1950, (i.e. the route leading between the gardens of the two cottages and the former bungalow on the site of 22 and 22A Leigh Road, which were built c.1995, please see **Appendix 1**). In his written description of the path, Mr Mizen states that he has used a route *“From stile at Leigh Rd, alongside gardens of no.22A over second stile and into field.”* From this description and the position of the second stile into the field, Officers would suggest that Mr Mizen was using the enclosed track.
- 10.45. Mr Andrew Pearce, records a route on the map from the stile at Leigh Road, following the track behind the property 22a Leigh Road and then leading into the garden of no.23 Leigh Road before entering the field. In his written description of the path Mr Pearce states that he has used a route *“Along the fence behind no’s 22, 22a and 23. Then bear right to meet FP no.31.”* From this description and the obstruction of the route shown on the map, by fencing, Officers would suggest that Mr Pearce was using the enclosed track.
- 10.46. Once entering the field, 7 of the witnesses claim to have used the same route which bears north-west from the track, skirting around the south-west corner of the boundary of the property 23 Leigh Road to meet with the existing part of Footpath no.31 Holt, as per the claim map. In addition to his use of this route, Mr Jonathan Nibbs has also used a spur, leading from the claimed route at the south-west corner of the property 23 Leigh Road and then almost directly

alongside the western boundary of 23 Leigh Road, to join the existing kissing gate at the junction of Footpath no.31 Holt and Leigh Road (alongside 23 Leigh Road). Additionally, Mr James Gooding records on the map a route from the enclosed track, leading further west in the field to its junction with the existing Footpath no.34 Holt, at the field boundary, which he describes “as shown on the County Series Plan”. In discussion with Mr Gooding, as the former Rights of Way Warden for Wiltshire County Council, Mr Gooding also makes reference to reinstating the County Series map line, however looking at the witness evidence overall, this is not the route which the public have used and Officers have not located OS maps which record a route leading further west to junction with Footpath no.34 Holt at the field edge, the historic OS mapping shows a route junctioning with the remaining section of Footpath no.31 Holt within the field, closer to Leigh Road, i.e. the former definitive line, now extinguished, (please see **Appendix 1**).

10.47. Officers are satisfied that, on the balance of probabilities, the witness evidence as a whole, supports public user of the route as claimed.

Width

10.48. In making an order to add a new footpath to the definitive map and statement of public rights of way, a width must be recorded within the definitive statement, based on evidence. There is no width recorded in historical evidence as the claimed route is not recorded in documents examined by Wiltshire Council (please see **Appendix 1**). The eastern part of the route which follows the track to the rear of the properties 22 and 22A Leigh Road, is enclosed between garden fences to the north and a post and wire fence and drainage ditch to the south. It is therefore possible to take a measurement of the width available to be used, which varies from between 0.85m at its narrowest point, to 2m. To include a varying width within a definitive map modification order it would be necessary to include a plan highlighting the

extent of the path to be added to the definitive map, between OS Grid Reference ST 8573-6171 and OS Grid Reference ST 8566-6169.

10.49. There is no such enclosure of that part of the route which leads through the field, therefore the recorded width on this part of the route must be based upon user evidence of the actual used width of the path. Witnesses have recorded the following path widths:

Witness	Width	Witness	Width
1	1m until the erection of house no.22A when the width was increased to 1.5m by fencing	5	0.5 - 0.75m
2	> 1m	6	
3	1.5m	7	1.5 m
4	1 – 3m	8	About 2m

10.50. The witnesses have given varying path widths. Officers have therefore used an average width from those users who provided width figures (based on the maximum extent given) which gives an average width of 1.6m to be recorded as the definitive width of the footpath within the field (i.e. between OS Grid Reference ST 8566-6169 and OS Grid Reference ST 8559-6174), if a definitive map modification order is made.

Landowner's intention

10.51. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after public use of a route for a period of 20 years or more "as of right", unless during that period, there was in fact no intention on the landowners part to dedicate the land as a highway during that period.

Intention to dedicate was discussed in the Godmanchester case, which is considered the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956:

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

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

“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1(1) of the 1923 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.”

10.53. Lord Hoffman went on to say:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood

that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”

10.54. In the Holt case, none of the landowners claim to have carried out any overt acts to bring home to the public that their right to use the path was being challenged. Mr O’Connor states in his landowner evidence form, that once he was advised that the definitive line of the path went through his garden, (now extinguished), he advised path users that the claimed route was not public, however, he has never turned back, or prevented anyone from using the path. Although Mr O’Connor was an affected landowner at time the definitive route was extinguished through the garden of his property, 23 Leigh Road, he is not an owner of the land over which the claimed route passes.

10.55. The witnesses and the landowners do not refer to notices being erected advising the public that the route is not public and the landowners have not completed and lodged with Wiltshire Council a statement / declaration with plan, under Section 31(6) of the Highways Act 1980 to demonstrate the landowners non-intention to dedicate a public right of way. Therefore a non-intention to dedicate the land as a highway, has not been demonstrated.

Common Law Dedication

10.56. Section 5 of the Planning Inspectorates Definitive Map Orders: Consistency Guidelines suggest that even where a claim meets the tests under Section 3 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.

10.57. Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends on the inference that the way was in fact dedicated at some point in the past.

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

10.59. Relatively few highways can be shown to have been expressly dedicated and in the Holt case, there is no evidence before the Surveying Authority that the landowners have carried out any express act of dedication over the claimed route. However, there is evidence that the landowners have acquiesced in the use of the claimed route by the public and evidence of public acceptance of this route through user evidence. If the claim under statute were to fail, it is possible to apply the principles of common law dedication in this case.

Conclusion

10.60. Having considered the evidence submitted in support of the claim and that submitted by the landowners, Officers have concluded that there is sufficient evidence for it to be reasonably alleged that a right for the public on foot subsists over the land in question, on the balance of probabilities and insufficient evidence of the landowners' non-intention to dedicate a public right of way, therefore the only option open to Wiltshire Council, as the Surveying

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

11. Overview and Scrutiny Engagement

11.1. Not required.

12. Safeguarding Considerations

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

13. Public Health Implications

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

14. Environmental Impact of the Proposal

14.1. Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside

Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

15. Equalities Impact of the Proposal

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

16. Risk Assessment

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

17. Financial Implications

17.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, is a statutory duty for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.

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

17.3. Where a definitive map modification order is made and objections received, which are not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 - £500 and a public inquiry could cost between £1500 - £3000, if Wiltshire Council supports the order (where legal representation is required by the Council) and around £200-£500 if it does not support the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant).

18. Legal Considerations

18.1. Where the Surveying Authority determines to refuse 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 an order.

18.2. If an order is made and objections are received, any determination of the Order by the Secretary of State may be challenged in the High Court.

19. Options Considered

19.1. To:

- (i) Refuse to make a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that a right of way for the public on foot

subsists or is reasonably alleged to subsist, on the balance of probabilities, or

- (ii) Where there is sufficient evidence that a right for the public on foot subsists or is reasonably alleged to subsist, on the balance of probabilities, the only option available to the authority is to make a definitive map modification order to add a footpath to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981.

20. Reasons for Proposal

20.1. It is considered that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot, subsists, on the balance of probabilities, over land in the parish of Holt, leading from Leigh Road, (adjacent to the property 22A Leigh Road), to its junction with Footpath no.31 Holt.

20.2. Additionally there is insufficient evidence of the landowner's non-intention to dedicate the way during the relevant user period of 1995 – 2015. Mr O'Connor states in his landowner evidence form, that once he was advised that the definitive line of the path went through his garden, (now extinguished), he advised path users that the claimed route was not public, however, he has never turned back, or prevented anyone from using the path. Although Mr O'Connor was an affected landowner at time the definitive route was extinguished through the garden of his property, 23 Leigh Road, he is not an owner of the land over which the claimed route passes.

21. **Proposal**

21.1. That a definitive map modification order be made to add a right of way for the public on foot to the definitive map and statement of public rights of way in the parish of Holt, leading from Leigh Road, (adjacent to the property 22A Leigh Road), in a generally south-south-west and north-westerly direction, to its junction with Footpath no.31 Holt and if no objections are received, the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 19th May 2016

Decision Report

Wildlife and Countryside Act 1981 – Section 53

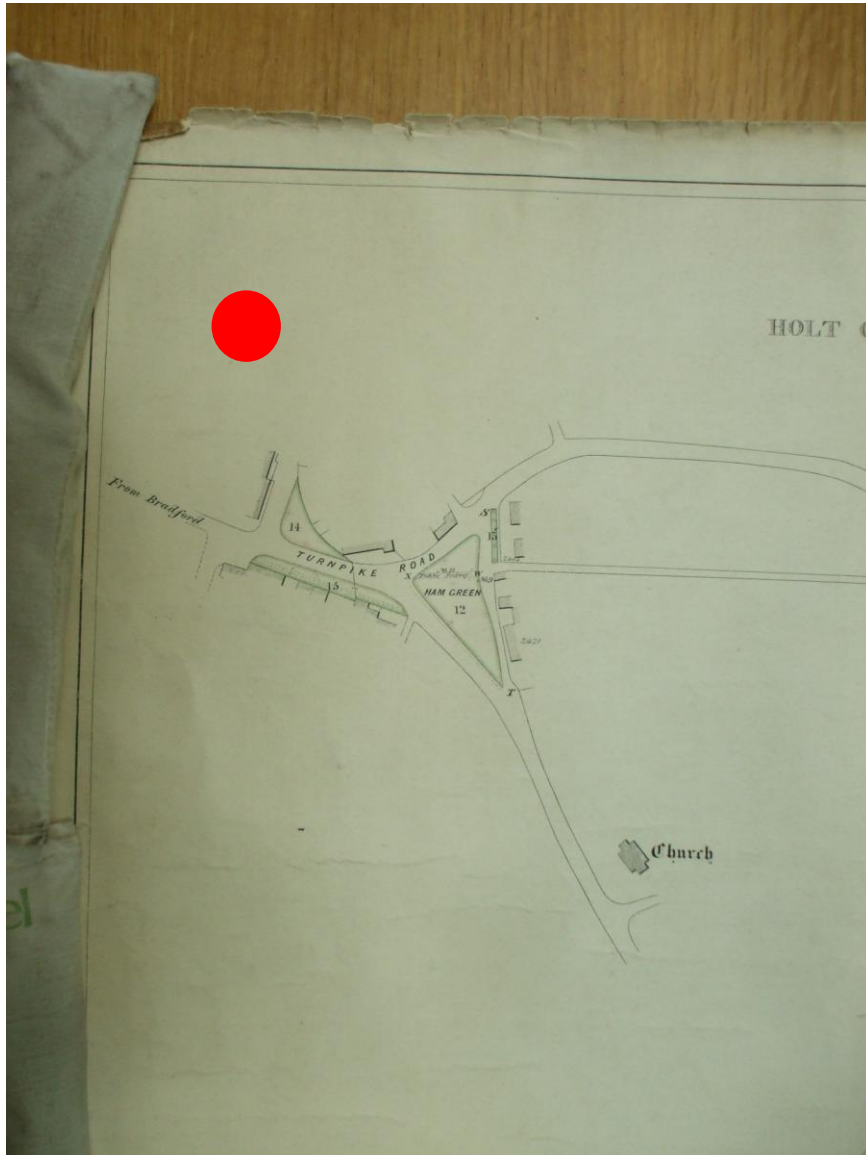
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of

Way – Leigh Road, Holt

Appendix 1 – Historical Evidence Summary

Document	Holt Inclosure Award (E/A 189)
Date	1867
Relevant Documents	Award Map Award
Significance	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the manor, were redistributed amongst people having rights of common. By the 18th Century new innovations in farming were increasing output, but where communal farming was still in place it was difficult to modernise without the agreement of all parties. Therefore, the larger landowners, who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Inclosure Awards provide sound and reliable evidence as they arise from Acts of Parliament. Prior to 1801 inclosure was dealt with by local acts for specific areas. Post 1801 local acts generally operated with the Inclosure Consolidation Act of 1801, which standardised the process. The Commissioners had the power to change the highway network of the parish and were authorised and required the Commissioners to set out and appoint public and private highways, including bridleways and footways, within the parish.</p> <p>Weight can be given to routes included within the Inclosure Awards as landowners had a strong influence over the process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce their repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure process was clearly set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways. The setting out of a route</p>

	within the inclosure award is legal event and therefore the route remains to this day unless a legal event has taken place to stop up that highway.
Conclusion	The map of the lands to be inclosed within the parish of Holt, does not include the land over which the claimed route leads pass therefore no conclusions can be drawn from this document.



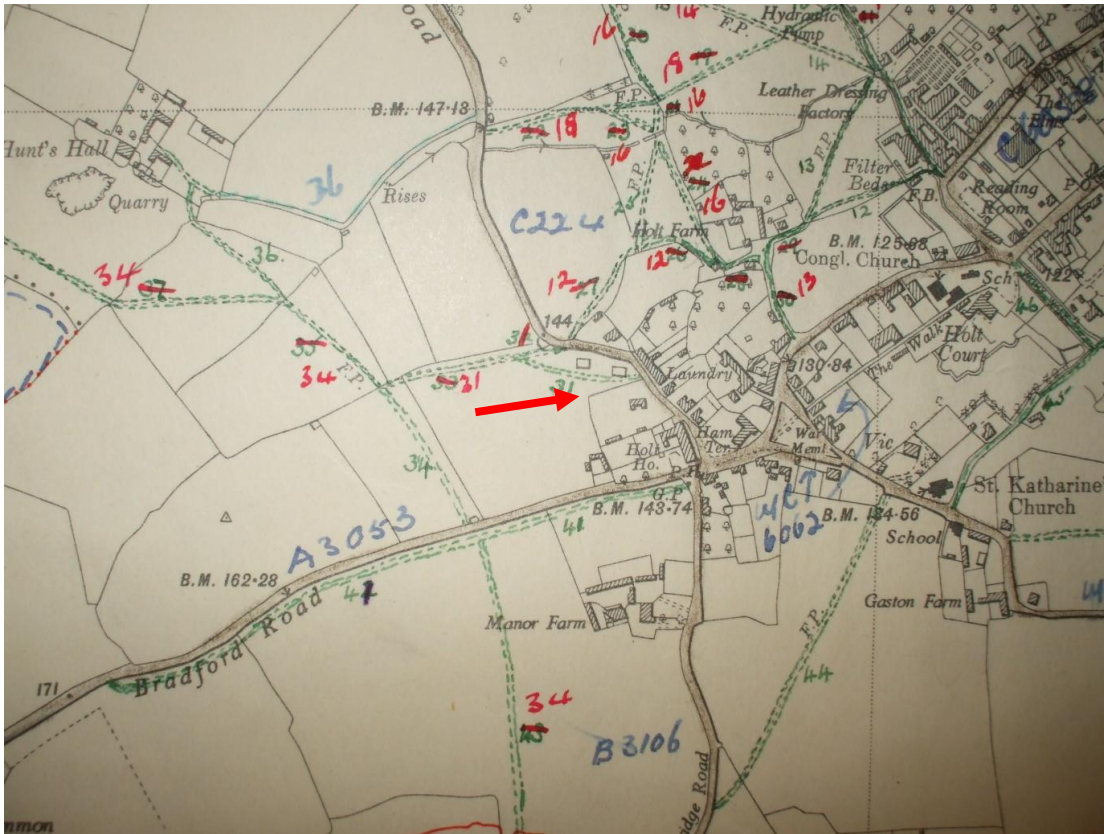
Holt Inclosure Award – 1867

Document	Parish Claim
Date	Survey date December 9 th 1950
Relevant Documents	Parish Claim Map Parish Record Card
Scale	Map scale – 6” to 1 mile

<p>Significance</p>	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake to review of this map. Following this instruction to authorities, Wiltshire County Council sent 6" Ordnance Survey (OS) map sheets to all Parish Councils, who surveyed and recorded what they considered to be public rights of way within their parish, with an accompanying description of each path.</p> <p>Parish Councils were required to convene a meeting at which the public rights of way information, to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of the definitive map and statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District or Urban District area.</p> <p>Detailed guidance regarding the Parish Councils input into the definitive map process was issued and the Planning Inspectorate "Definitive Map Orders: Consistency Guidelines" state that the legal "presumption of regularity" applies, i.e. unless otherwise demonstrated, it should be assumed that the Parish Councils received this guidance and complied with it in undertaking the parish claim. Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion of non-inclusion of a path; its provisionally recorded status and route.</p>
<p>Conclusion</p>	<p>When looking at the route claimed by the parish on the map, alongside the description on the record card, there are some discrepancies and Officer's consider that the original description (which is later deleted), may refer to the claimed route, where the route recorded on the claimed map highlights the route shown on the OS base map, i.e. the original definitive line of Footpath no.31 Holt, as extinguished in 2014.</p> <p>The original description reads: <i>"31. F.P. to BRADFORDLEIGH. Starts in Leigh Rd from Iron Stile next to two Cottages and Gardens, for 50 yards between this garden and bungalow garden; then wooden stile, 50 yards in open field where it meets path 32."</i> (path 32 is amended to be part of Footpath no.31 on the claim map). This description is crossed through and replaced with a less detailed description: <i>"F.P. from road C224 north west of Holt House leading west to path no.34."</i></p> <p>The record card also specifies that the route is "open after the first 50</p>

yards which is between hedge and wire fence.” And “Stiles in good condition”, this information is not deleted. The deleted path description and the references to the stiles and the first 50 yards of the route being enclosed between the gardens, being fenced on one side and having a hedge on the other, seems to accord with the claimed route. On the claim map only the boundary of the property to the south (which Officer’s believe to be the garden of the two cottages referred to in the description, which still exist to this day), is shown, so Officers consider that the enclosed part of the route described must run alongside this boundary as the claimed route does, (the bungalow referred to in the description is not recorded on the base map). The base map is an OS map drawn at a scale of 6” to 1 mile, Provisional Edition, first surveyed in 1884, Revision of 1922 with additions of 1938, whilst the parish survey is 1950. It would appear that the parish at the time of its survey marked on the map the route shown on the base map, which appears to be open in its entirety as the route is shown by double broken lines, (Officer’s would expect an enclosed route to be shown on an OS mapping by double solid lines), whilst the original accompanying description records a route which is enclosed for the first 50 yards between gardens and having stiles, Officer’s would not expect stiles to be required on an open route.

The description given as part of the parish claim, appears to support the existence of the claimed route.



Parish Claim Map - 1950

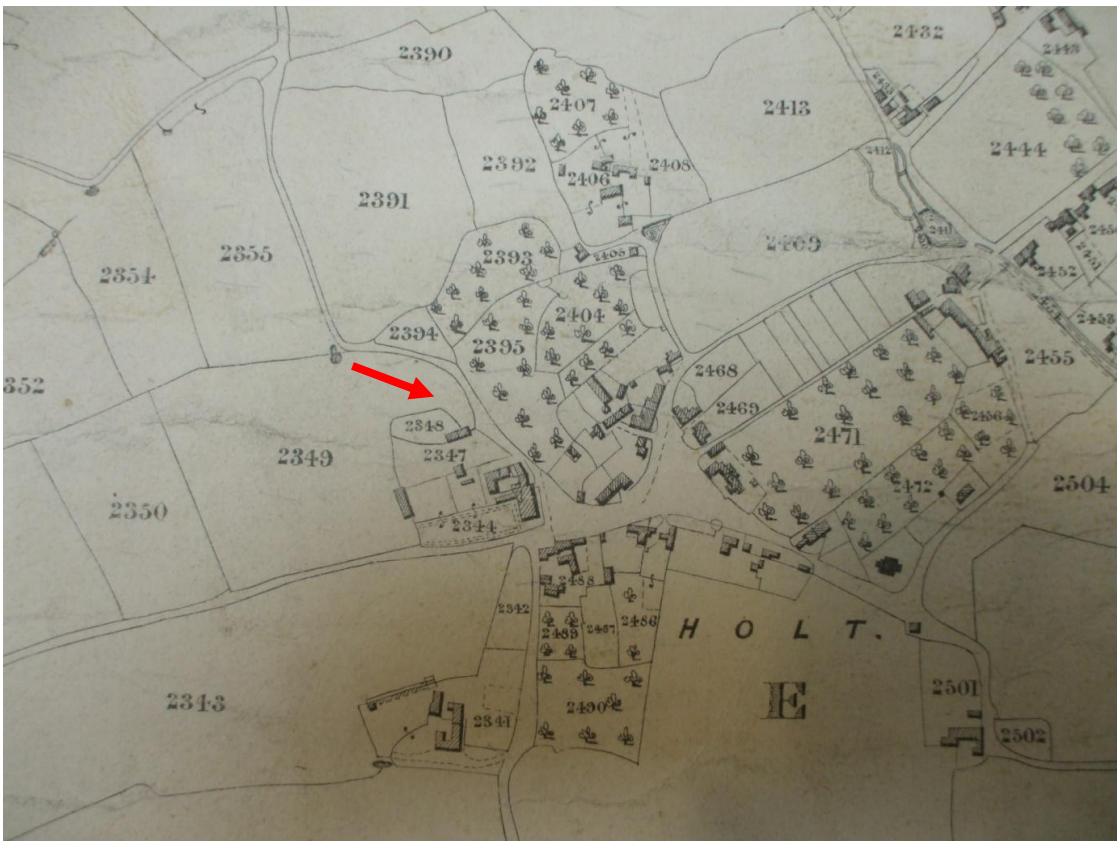
NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.		PATH No. 31.
PUBLIC RIGHT OF WAY.		(to correspond with No. on map)
NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)		PARISH OF Holt.
31. F.P. to BRADBURY'S. Starts in Leigh Rd from Iron Stile next to two Cottages and garden, for 50 yards between this garden and Bangalore garden; then wooden stile; 50 yards in open field where it meets path 32.		LENGTH 360 200 yds WIDTH 2 ft?
F.P. from road C224 north west of Holt House leading west to path no 34		WHETHER FENCED OR OPEN open after 100ft 50 yards which is between hedge and iron fence
NATURE OF SURFACE Grass-track - ill defined		APPROXIMATE PERIOD OF UNINTERRUPTED USER - 80. YEARS FROM at least
STILES, GATES, FOOTBRIDGES, STEPPING STONES Stiles in good condition		WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL - No.
WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS) No.		DATE OF REPAIR
OBSERVATIONS:		WHETHER SUBJECT TO PLOUGHING No
		DATE OF SURVEY Dec 9 1950
		WHETHER SHOWN ON UNDERMENTIONED MAPS - ORDNANCE 6" SHEET. REF. WIMBORNE STREET XXXII EDN 1926. 26
		INCLOSURE AWARD
		LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932).
		OTHER MAPS -

Parish Claim Record Card (Footpath no.31 Holt) – 1950

Document	Tithe Award (T/A Bradford)
Date	1842
Relevant Documents	Tithe Apportionment Tithe Award Map
Scale	Scale – 8 chains to 1 inch, (Enlargements 4 chains to 1 inch)
Significance	<p>Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain comprising an agreed proportion of the annual profits of cultivation and farming. This gradually began to be replaced by monetary payment and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system.</p> <p>Tithe Awards are not a primary source of evidence as the apportionments and plans were produced as an official record of all titheable areas and it was not their main purpose to record highways. However, they can provide useful supporting evidence, as the existence of a highway could affect the productivity of the land and give important map orientation and plot boundary information, therefore the Commissioners has some interest in recording them.</p> <p>Additionally, the public provenance of the documents adds weight to the information recorded within them.</p>
Conclusion	<p>The Bradford-on-Avon Tithe Award map consists of an inset map showing Holt around Ham Green in further detail and the main map. The area of land over which the claimed route passes is included on both maps, however the claimed route is not recorded and no conclusions can be drawn from this document.</p> <p>It was not the main purpose of the tithe award documents to record public rights of way and if the claimed route was in existence at this time, it is possible that it was not recorded as it did not form a plot boundary; did not add further map orientation information, or did not affect the productivity of the land.</p>

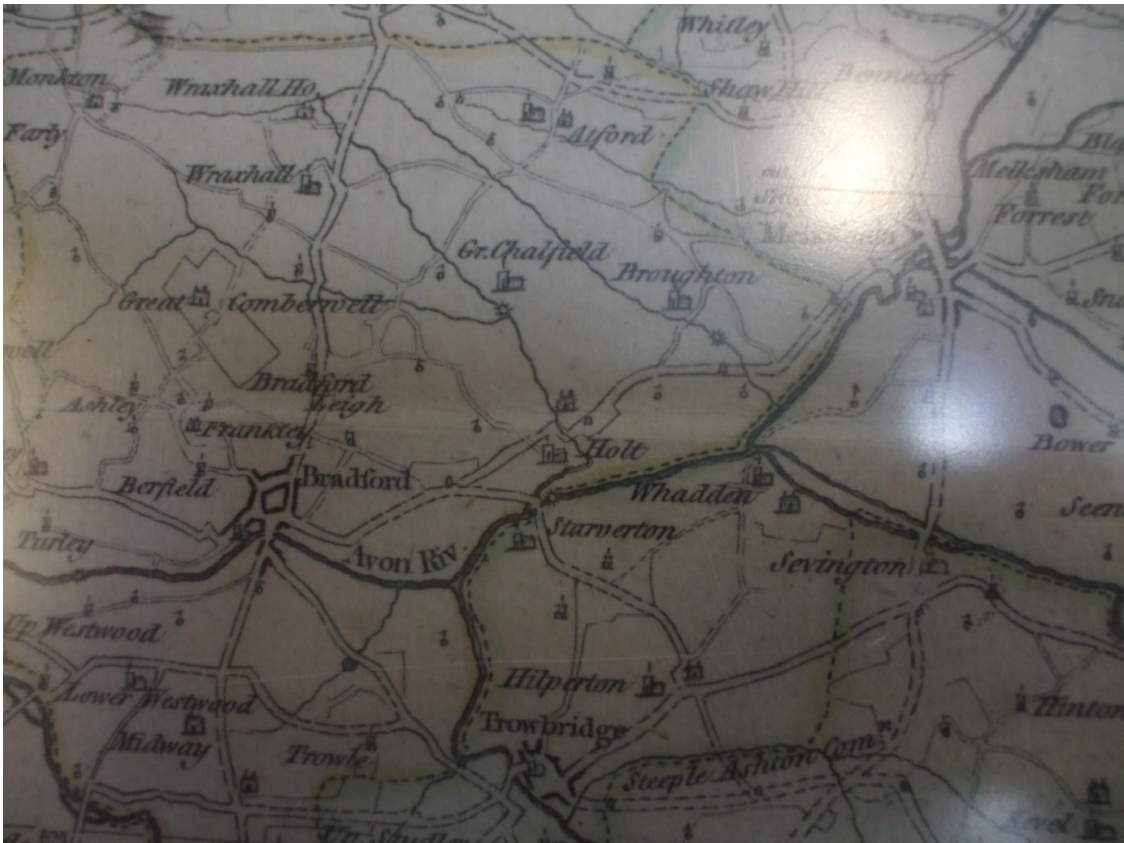


Bradford-on-Avon Tithe Award (Inset Map) – 1842



Bradford-on-Avon Tithe Award (Main Map) – 1842

Document	Andrews' and Dury's Map of Wiltshire
Date	1773 & 1810
Relevant Documents	1773 Index Map 1773 Map Plate no.6 (of 18 plates) 1810 Index Map 1810 Map Plate no.15 (of 18 plates)
Scale	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
Significance	<p>Commercial maps were produced for profit and intended for sale to the whole of the travelling public. Andrews' and Dury's Map of Wiltshire dated 1773 is a commercial map of the county based on original survey. The map is dedicated "<i>To Noblemen Gentlemen Clergy shareholders of the County of Wilts This MAP is inscribed by their most obedient and devoted servants JOHN ANDREWS ANDREW DURY</i>".</p> <p>The 1810 second edition map is a corrected and updated edition of the 1773 map.</p> <p>Being intended for sale to the whole of the travelling public and the constraints of small scale mapping, made it unlikely that footpaths and bridleways would be shown. Additionally the map makers would not have wished to encourage trespass onto private land or encourage vehicles onto a footpath which would cause difficulty for the landowners from whom the map makers sought subscriptions.</p>
Conclusion	The claimed route is not recorded on the 1773 map or the 1810 revised edition, perhaps for the reasons given above, therefore these documents are inconclusive.



Andrews' and Dury's Map of Wiltshire (Index Map) – 1773



Andrews' and Dury's Map of Wiltshire (Plate 6) – 1773



Andrews' and Dury's Map of Wiltshire (Index Map) - 1810



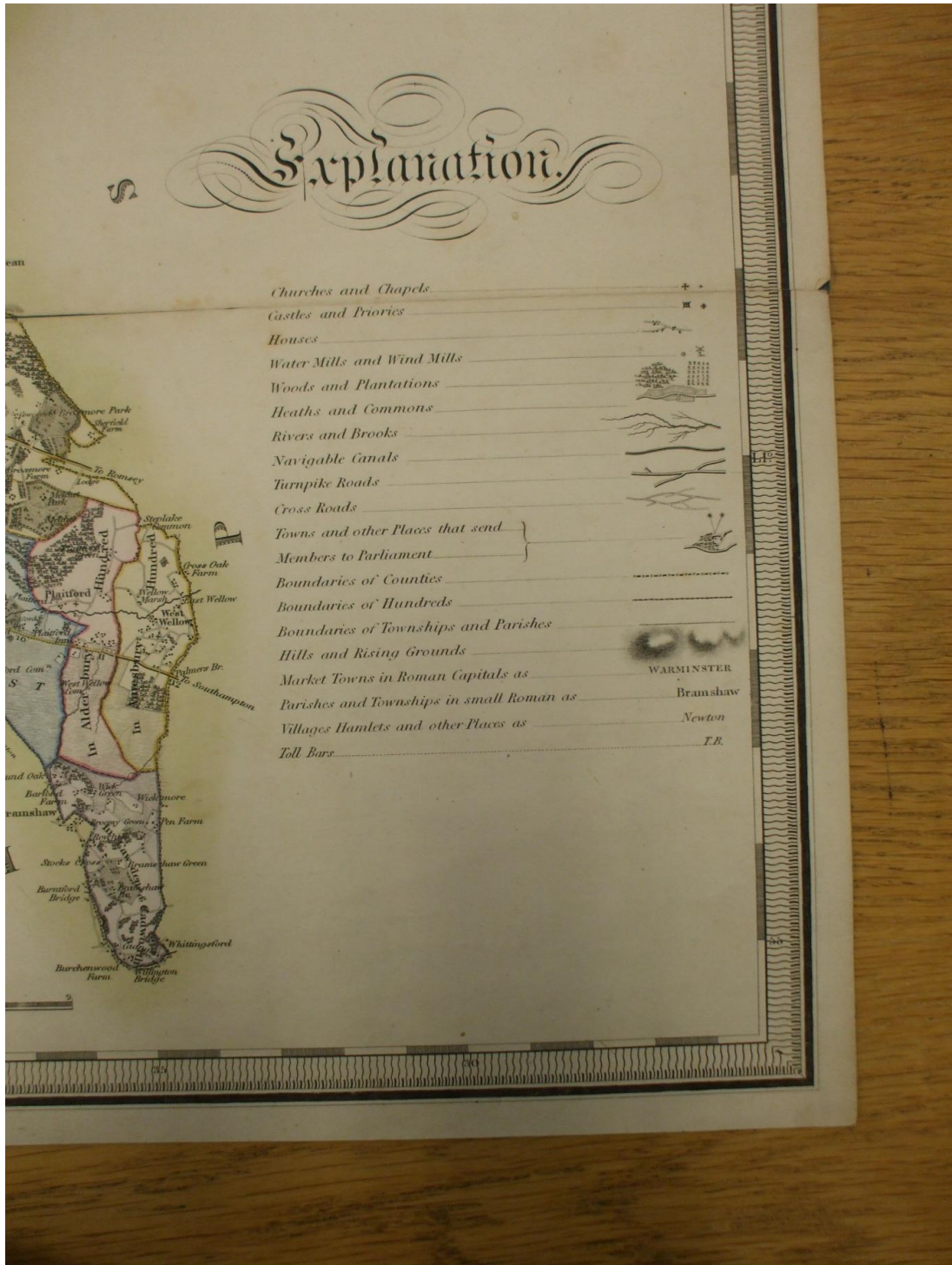
Andrews' and Dury's Map of Wiltshire (Plate 15) - 1810

Document	Greenwoods Map of Wiltshire (1820 – 1390/142 & 1829 – Map Folder 3.3)
Date	1820 & 1829
Relevant Documents	1820 - 4 map sheets of the County (reduced and folded), NE, NW, SE and SW (NW sheet is relevant) 1829 - Map of Wiltshire
Size and scale	1820 – Sheet size 75cm x 56.5cm (approx), Scale 1 inch to 1 mile 1829 – Sheet size 56.5cm x 68cm (approx), Scale 1 inch to 3 miles
Significance	Greenwood re-surveyed and produced a set of updated County Maps between 1817 and 1839. Greenwood appears to have carried out actual survey, supported by existing secondary sources such as inclosure and estate maps, printed guide books, official sources and local knowledge collected by surveyors. Greenwood's first edition "Map of the County of Wilts from Actual Survey", dated 1820 is a commercial map, produced for the travelling nobility who contributed to its production. The inscription reads "To the Nobility Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors".

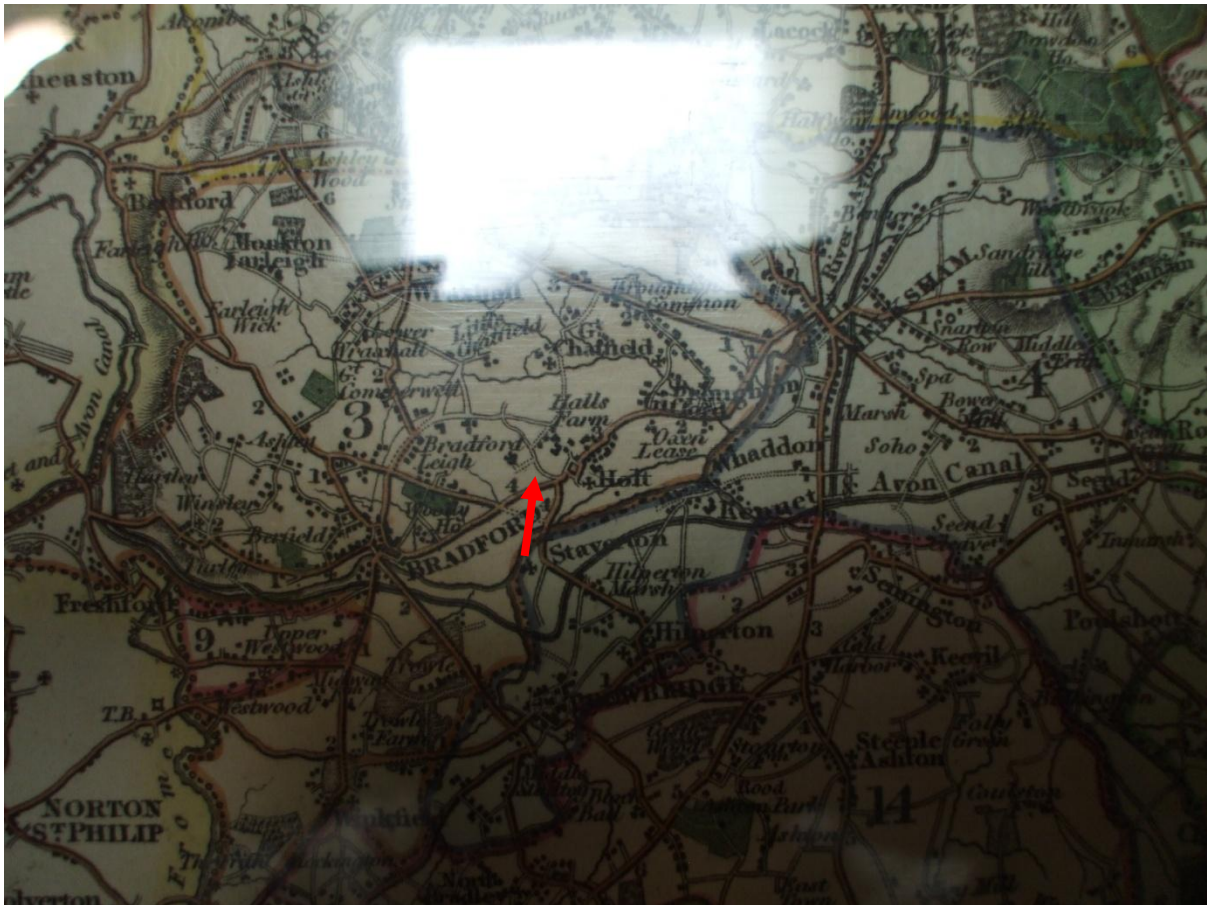
	Greenwood produced a revised and corrected map of Wiltshire in 1829.
Conclusion	The claimed route is not recorded in Greenwoods Map of 1820 and the revised version of 1829, perhaps due to the constraints of small scale mapping.



Greenwood's Map of Wiltshire - 1820



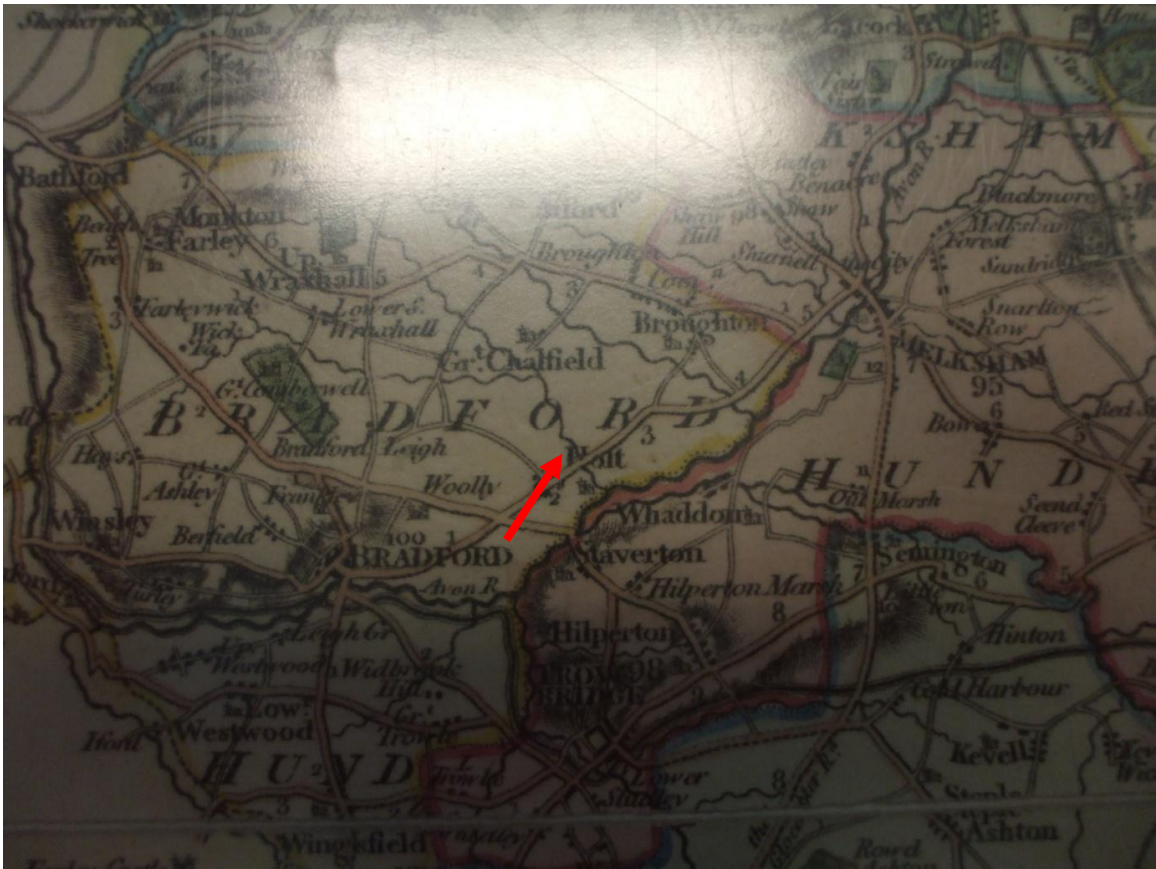
Greenwood's Map of Wiltshire (Explanation) - 1820



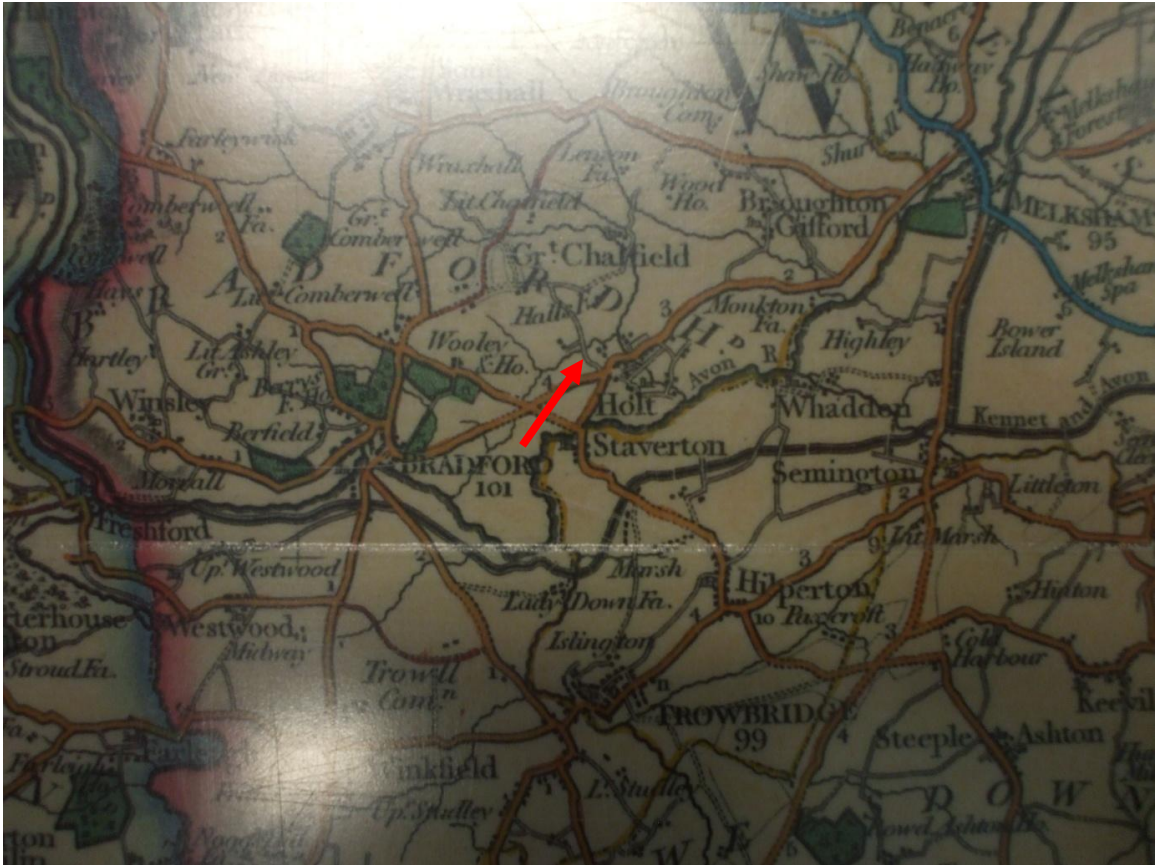
Greenwood's Map of Wiltshire – 1829

Document	Cary's Map of Wiltshire (1801 – Map Folder 3.2; 1823 – Map Folder 3.2A; 1832 – Map Folder 3.4)
Date	1801, 1823, 1832
Relevant Documents	1801 – Map of Wiltshire 1823 – Sheet 28 1832 – Sheet 11
Size and scale	1801 – 55cm x 68cm (approx), Scale – 2.5 miles to 1 inch 1823 – Sheet size 54.1cm x 67.3cm (approx), Scale – 2 miles to 1 inch 1832 – Sheet size 56cm x 67.6cm (approx), Scale – 2 miles to 1 inch
Significance	John Cary was a cartographer, born in Warminster, Wiltshire in 1755, well known for his series of county maps. In 1794 he became Surveyor of Roads for the Postmaster General, charged with undertaking a survey of all main roads in England. Cary appears to have used actual survey, as well as the work of others, e.g. the Ordnance Survey, in the production of his maps.
Conclusion	The claimed route is not recorded on these maps, perhaps due to the

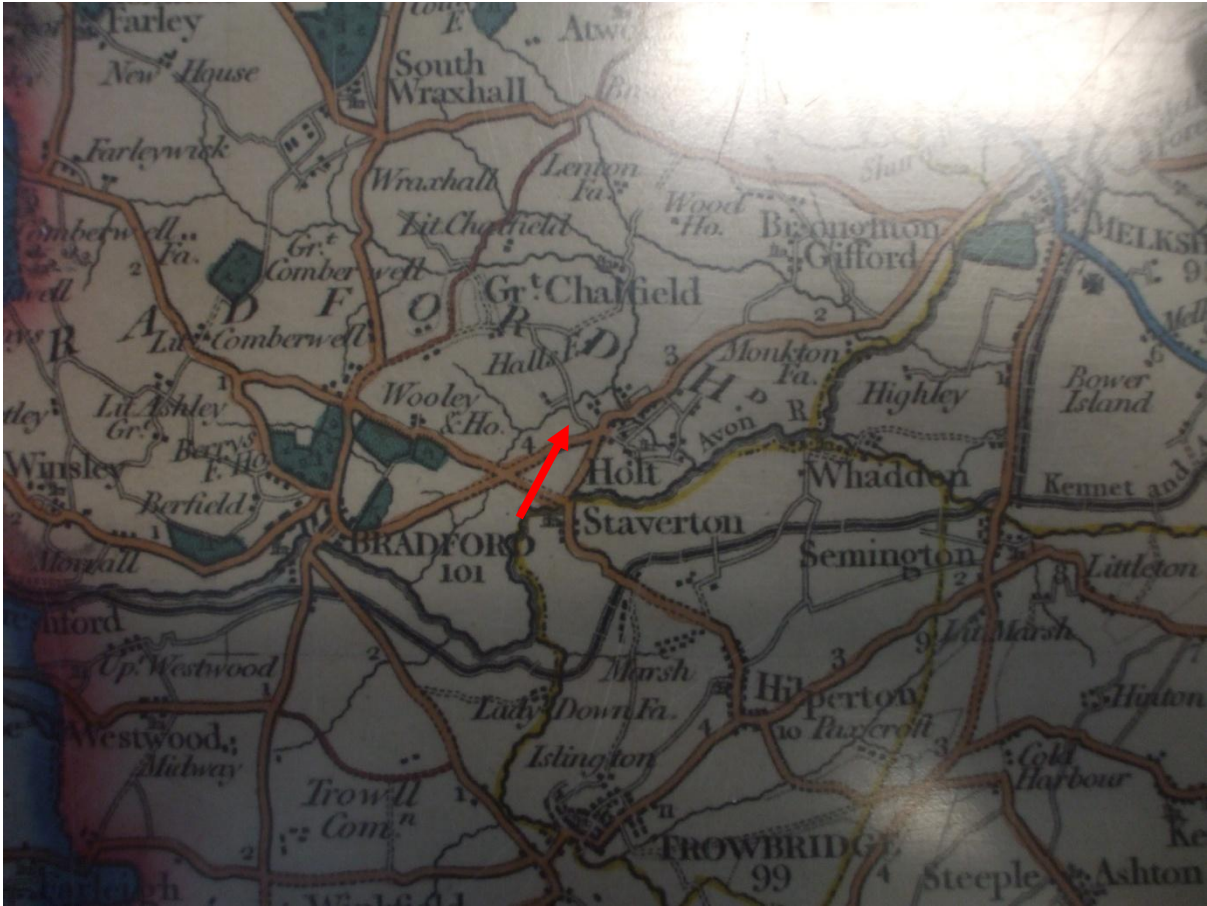
constraints of small scale mapping.



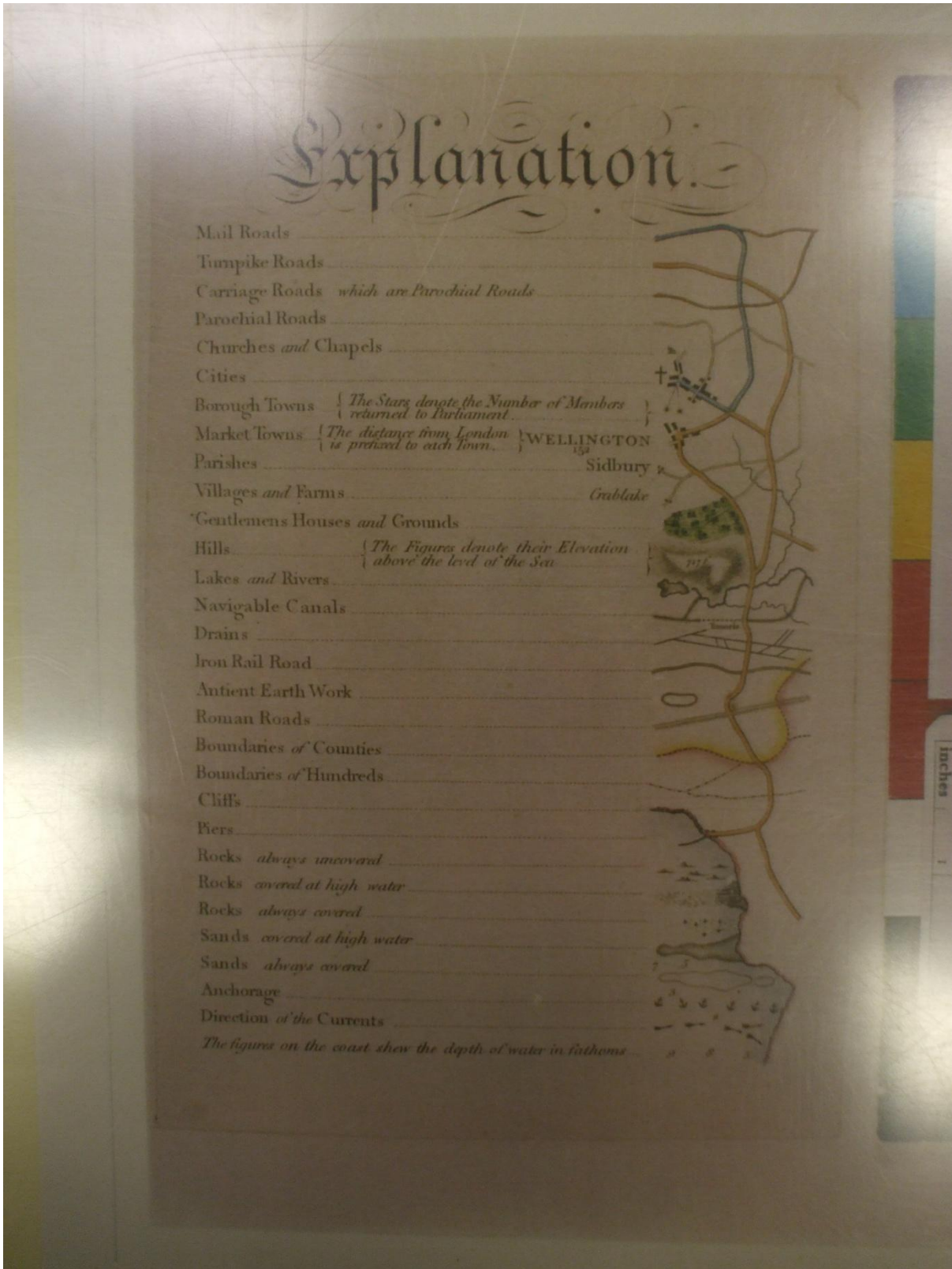
Cary's Map of Wiltshire - 1801



Cary's Map of Wiltshire (Sheet 28) – 1823

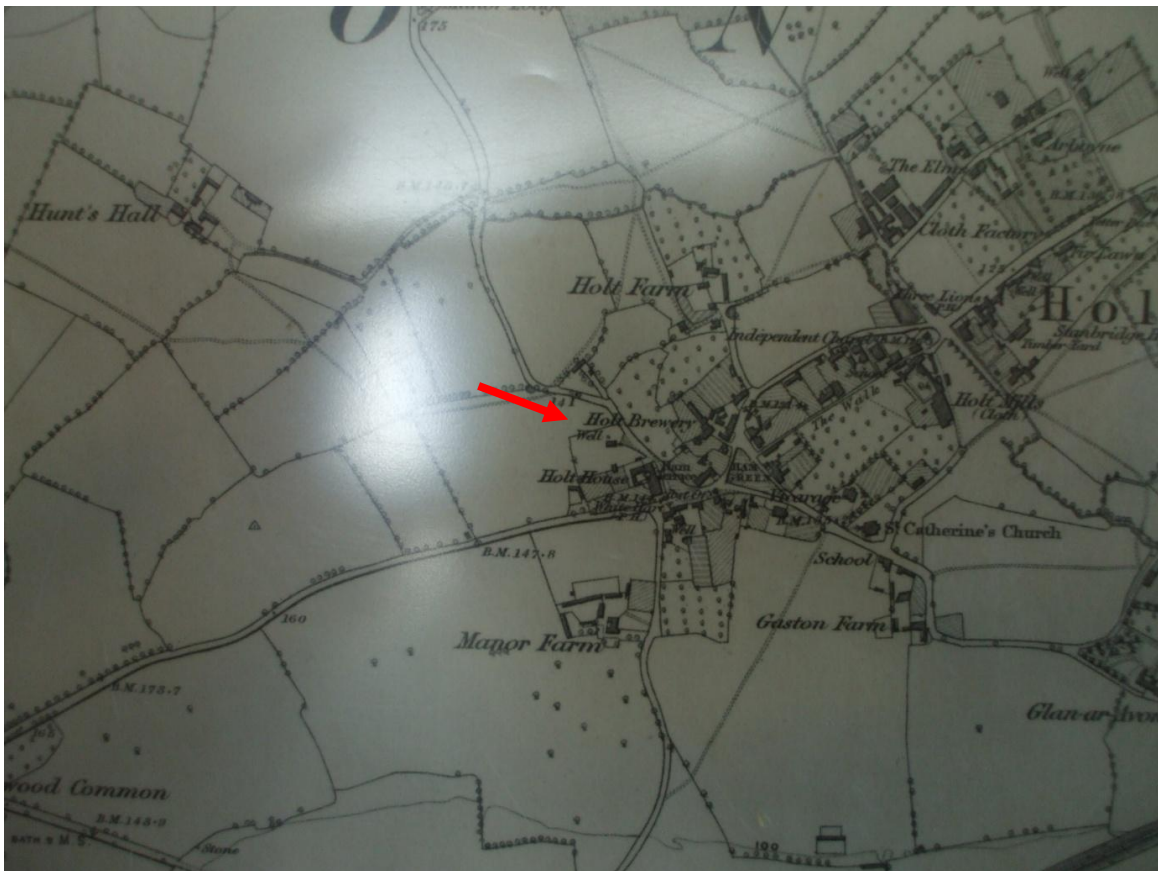


Cary's Map of Wiltshire (Sheet 11) - 1832



Cary's Map of Wiltshire (Explanation) – 1832

Document	Ordnance Survey Map
Date	Engraved and Published 1889
Relevant Documents	OS Map Sheet no.32
Scale	6 inches to 1 mile
Significance	<p>The Ordnance Survey (OS) was founded in 1791, due to demand from the military for accurate maps of southern England, in preparation for the Napoleonic War. In time the Ordnance Survey developed a range of maps varying in scale and level of detail, to meet changing needs for accurate and updated maps of the country.</p> <p>The maps are based on original survey with revisions and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added.</p>
Conclusion	The claimed route is not recorded as a footpath on this map and the former definitive line of Footpath no.31 Holt, now deleted, is not recorded.



Ordnance Survey Map 6" to 1 mile – Published 1889

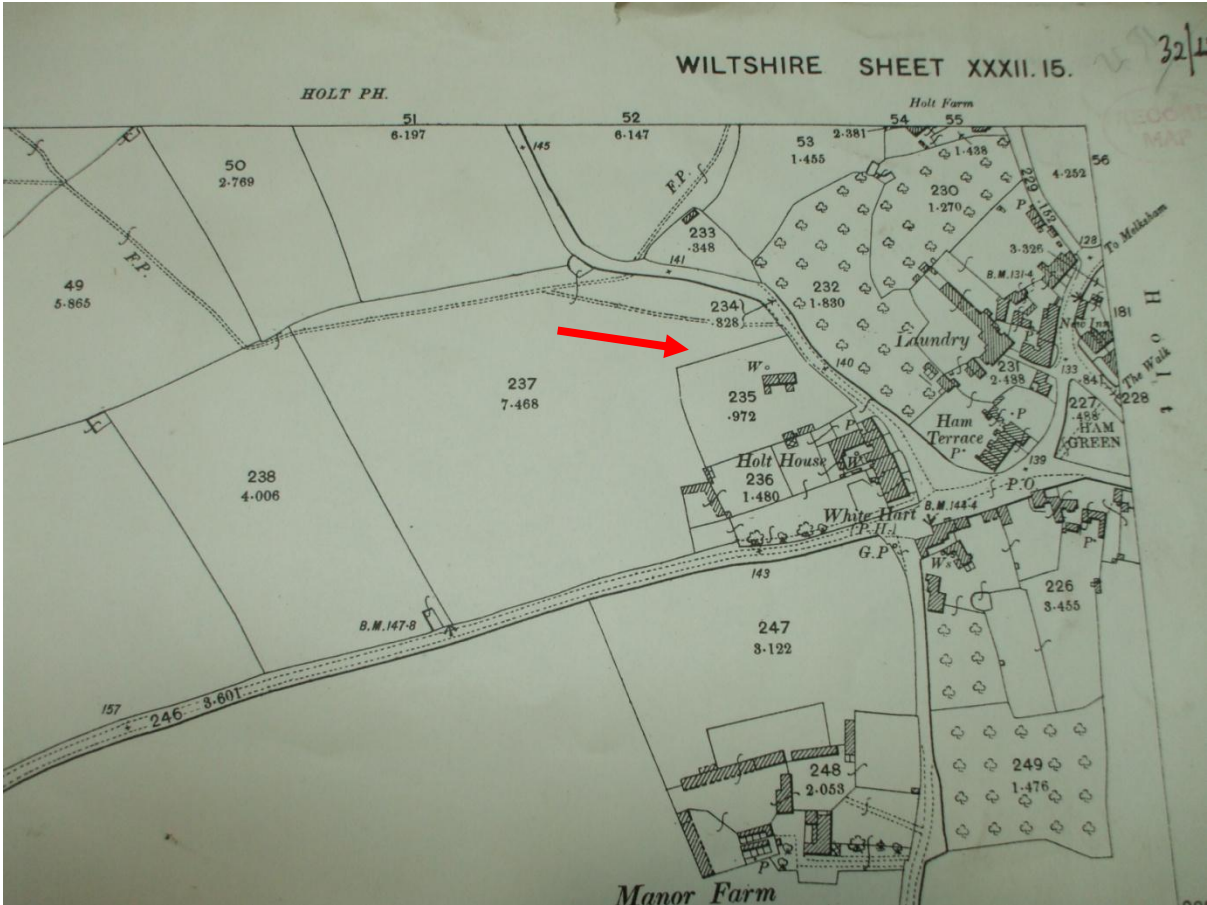
Document	Ordnance Survey Map
Date	Surveyed 1886, Engraved and Published 1886, Re-printed 1892
Relevant Documents	Map Sheet 32/15
Scale	25 inches to 1 mile.
Significance	As above (please see entry for 1889 Ordnance Survey 6" map)
Conclusion	The claimed route and the former definitive line, now extinguished are not recorded on this map.



Ordnance Survey Map 25" to 1 mile – Published 1886

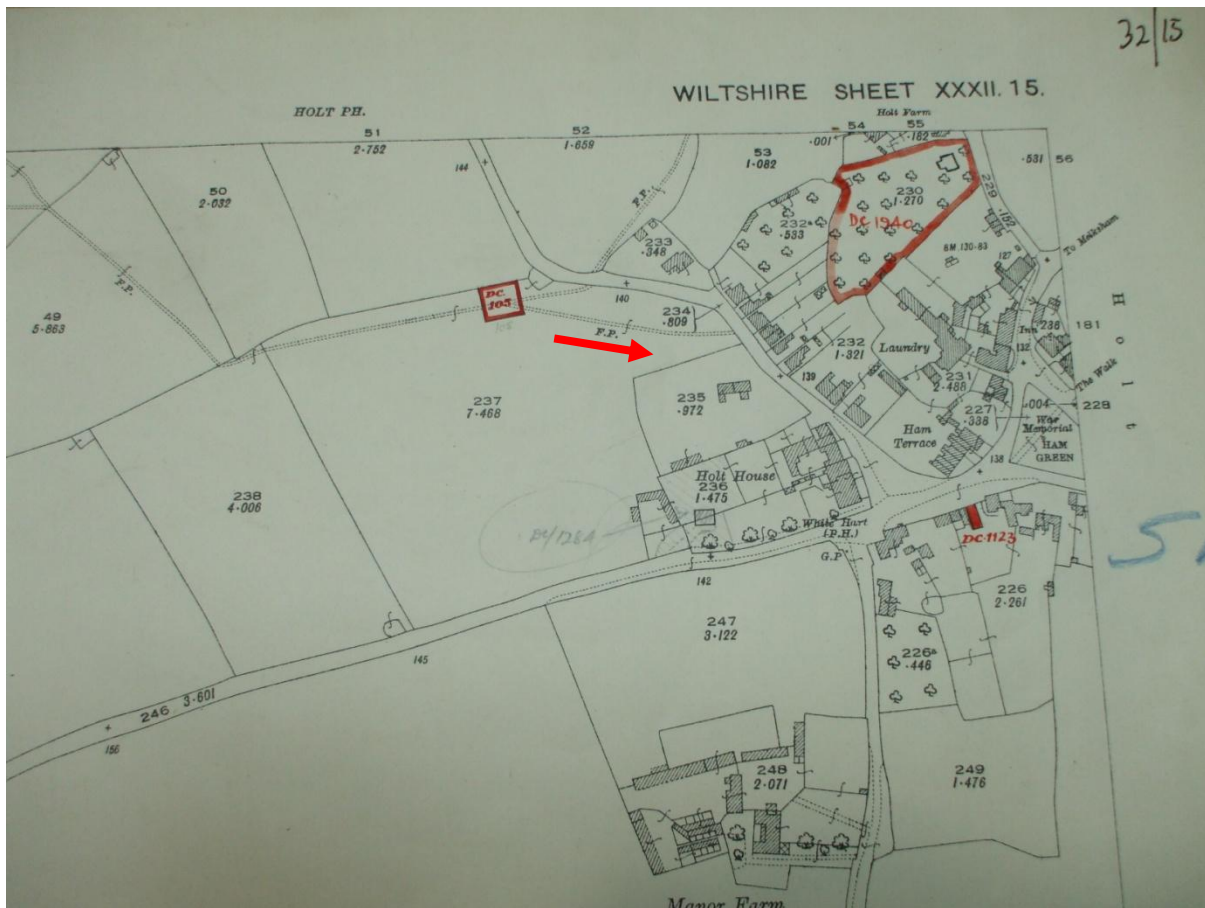
Document	Ordnance Survey Map Second Edition
Date	Surveyed 1884, Revised 1899, Zincographed and Published 1901
Relevant Documents	Map Sheet 32/15
Scale	25 inches to 1 mile.
Significance	As above (please see entry for 1889 Ordnance Survey 6" map)
Conclusion	The former definitive line, now extinguished, is recorded on this map.

Note that the two cottages to the south (as referred to in the parish claim description, 1950), are shown, with the enclosed boundary of their garden, but the bungalow to the north is not recorded on this map.



Ordnance Survey Map 25" to 1 mile – Published 1901

Document	Ordnance Survey Map
Date	Surveyed 1884, Revised 1922, Levelling Revised 1899, Published 1924
Relevant Documents	Map Sheet 32/15
Scale	25 inches to 1 mile
Significance	As above (please see entry for 1889 Ordnance Survey 6" map)
Conclusion	The former definitive line, now extinguished, is recorded on this map. Note that the two cottages to the south are shown, with the enclosed boundary of their garden, but the bungalow to the north is not recorded on this map.



Ordnance Survey Map 25" to 1 mile – Published 1924

Document	Holt Parish Pathways Map
Date	c.1933
Relevant Documents	Parish path information drawn onto OS 1926 base map
Scale	6 inches to 1 mile
Significance	<p>The provenance of this map is not known, however it appears to show known rights of way in the parish of Holt, at around 1933, (prior to the parish survey carried out in 1950 which formed the basis of the definitive map). It is possible that this information was recorded by the Parish Council in around 1933.</p> <p>The key to this map shows roads in red, water in blue and pathways in white.</p>
Conclusion	The former definitive line, now extinguished, is recorded on this map, however it is not shown white as other pathways are, but it is marked with a pencil line. Note that the two cottages to the south are shown, with the enclosed boundary of their garden, but the bungalow to the

north is not recorded on this map.



Holt Parish Pathways Map – c.1933

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Page 1 of 2.
PERIOD

Rights of Way & Countryside Team
Waste & Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN.

To
Janice Green
Rights of Way officers.

Date 3 September 2016.

Thank you for your letter Dated 13 July 2016.

We are very dissapointed that Holt Parish Council need to Pursue the Reopening of this Footpath in Leigh Road Holt.

we object to The Route B to C as it has never been walked on this line in our Lifetime, or my Parents.

This path was over Grown for many years, People found it easier and Safer to use the stile around the corner.

My wife was on Holt Parish Council for several years and we know for a fact some of the Paths were not checked Regularly. We were never asked to clear this Path when we owned the site which the two houses are on.

Page 2.

We feel your letters from some Councilors very misleading and see this Dispute as Totally unnecessary.

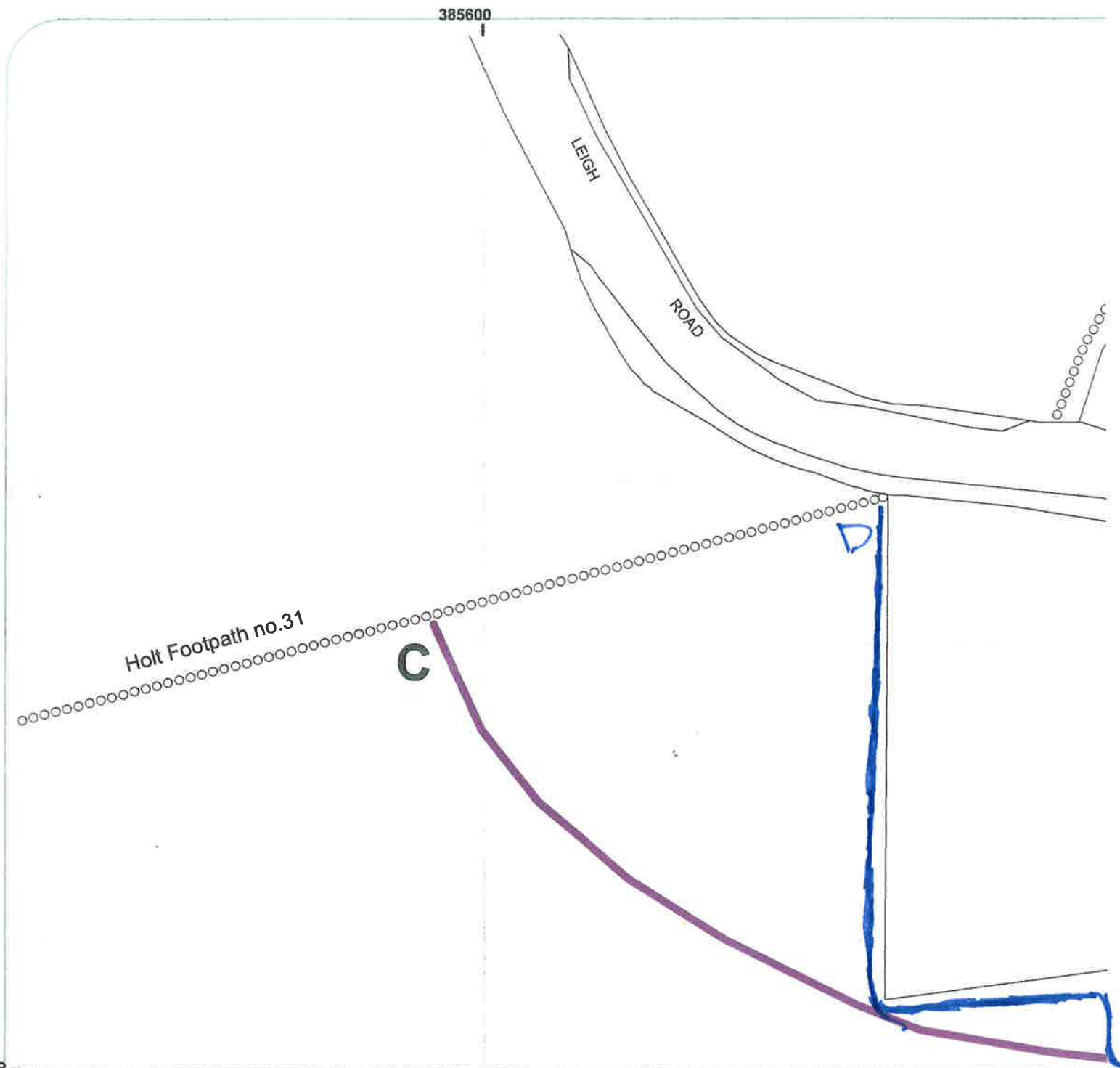
We have allowed the Public to walk more or less whenever they have wanted over our farm for many years, especially down by the River, and behind Holt Village when we owned this land.

The Public have nothing to gain and everything to lose for the sake of one or two.

We may consider an alternative Route marked D on our Plan, Subject to a Meeting with yourselves any Time ASAP.

Yours Sincerely.

Keith & Barbara Tucker.



GKS. Tucker.
Barbara Tucker.

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No. 1

Date of Meeting	14 th December 2016
Application Number	16/01633/OUT
Site Address	Land at The Grange, Devizes Road, Hilperston, Wiltshire, BA14 7QY
Proposal	Erection of up to 26 dwellings - outline application: all matters reserved other than access
Applicant	Charlcombe Homes Ltd
Town/Parish Council	HILPERTON
Electoral Division	HILPERTON – Councillor Clark
Grid Ref	387531 158873
Type of application	Full Planning
Case Officer	Jemma Foster

Reason for the application being considered by Committee

This application was deferred by the Committee at the 28 September meeting to allow officers to provide policy clarification with respect to Wiltshire Core Strategy CP29 – The Spatial Strategy for the Trowbridge Community Area.

Councillor Clark has requested that this application be considered by the Planning Committee if recommended for Approval for the following reasons:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Environmental/highway impact
- Contrary to the adopted Wiltshire Core Strategy

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 should be granted.

2. Report Summary

The main issues to consider are:

- The Principle of Development
- Archaeology
- Flood Risk and Drainage
- Impact upon the character and appearance of the area
- Heritage Assets
- Ecology and Landscape
- Sustainable Construction
- Impact upon neighbouring amenity
- Access and highways

3. Site Description

The site comprises 1.25 hectares of relatively flat open grassland/paddock immediately South of Devizes Road and to the east of 'The Grange' which is a large Victorian house.

The site is immediately adjacent to the current limits of development which runs on the north and west boundary of the site. To the South of the site is the existing Paxcroft Mead development and immediately east of the site is an approved modern housing development which is yet to be completed. The site is also adjacent to the Hilperton Conservation Area which runs on the western boundary. The site is enclosed by existing vegetation on the north, east and southern boundaries. The western boundary sees a masonry wall and the existing driveway to The Grange with a variety of trees.

4. Planning History

There is no planning history on this site.

The site immediately to the east of the site had planning permission granted for 15 units through an appeal (application reference number 13/06879/OUT) which was allowed on 24th December 2014. Although this was some time ago, at the time of decision making, the Local Planning Authority were unable to demonstrate a five year housing land supply, a similar situation that applies at present.

5. The Proposal

The application seeks outline planning permission for the erection of up to 26 dwellings. The application has been made in outline with all matters reserved except for access which would be located off Devizes Road.

During the course of the application, amended plans and a Heritage Assessment were submitted which reduced the amount of dwellings from 30 to up to 26. Layout was also removed and will now be subject of a reserved matters application. A full consultation process was held with the public and statutory consultees following the amended information.

6. Planning Policy

The **Wiltshire Core Strategy** (WCS) was adopted on 20th January 2015. The following Core Policies (CP) are relevant when assessing this application.

CP1 (Settlement strategy), CP2 (Delivery strategy), CP3 (Infrastructure requirements), CP29 (Trowbridge Area Strategy), CP41 (Sustainable construction and low carbon energy), CP43 (Providing affordable homes), CP45 (Meeting Wiltshire's housing needs), CP46 (Meeting the needs of Wiltshire's vulnerable and older people), CP50 (Biodiversity and geodiversity), CP51 (Landscape), CP55 (Air Quality), CP57 (Ensuring high quality design and place shaping), CP58 (Ensuring conservation of the historic environment), CP60 (Sustainable Transport), CP61 (Transport and Development), CP62 (Development impacts on the transport network), CP64 (Demand Management), CP67 (Flood Risk)

Wiltshire Waste Core Strategy WCS6 (Waste Audit)

When adopting the WCS, some policies continued in force from the West Wiltshire District Local Plan (1st Alteration) (WWDLP). Those which are relevant to this application include:

U1a (Foul Drainage/sewerage treatment) U2 (Surface Water Disposal).

Other

- Open Space provision in New Housing Developments – A Guide (Supplementary

- Planning Guidance)
- Affordable Housing Supplementary Planning Guidance adopted August 2004
 - Leisure and Recreation Development Plan Document
 - National Planning Policy Framework 2012
 - Planning Practice Guidance
 - Wiltshire Car Parking Strategy
 - Wiltshire Waste Core Strategy
 - Circular 06/2005 – Biodiversity and Geological Conservation
 - Planning (Listed Buildings and Conservation Areas) Act 1990
 - Wiltshire Council Waste Collection Guidance for New Development
 - Wiltshire Housing Land Supply Statement 2016
 - Hilperton Village Design Statement 2005

7. Consultations

Hilperton Parish Council – Object for the following reasons:

- The site is not allocated for housing and lies outside the limits of development
- Due to the conservation area, a full application should have been submitted
- The proposal fails to comply with CP1, CP2
- There is a requirement for a secondary school to the south east of Trowbridge which has not been constructed – this proposal would cause more cross town school traffic which is not sustainable
- The proposal does not enhance or preserve the Hilperton Conservation Area
- A buffer should be provided to the east of The Grange
- On-site parking is inadequate
- There have been flooding issues in the area which remains a problem when the highway drains are full to capacity
- Flats and three storey houses would be out of keeping with the area
- Provision should be made for the needs of vulnerable and older people

Wiltshire Council Highways – No objection

Wiltshire Council Ecologist – No objection as the application will not lead to adverse effects on the integrity of the Bath and Bradford on Avon Bats SAC alone or in combination with other plans and projects provided that planning conditions, informatives and a S106 agreement are secured.

Wiltshire Council Drainage – Supportive subject to conditions regarding surface water and foul water discharge

Wiltshire Council Public Rights of Way – Supportive

Wiltshire Council Archaeologist – No objection

Wiltshire Council Urban Designer – Supportive

Wiltshire Council Arboriculturalist – No objection

Wiltshire Council Public Protection Officer – No objection but would like the applicant to demonstrate what positive contributions the proposal would make to air quality

Wiltshire Council Affordable Housing Officer – No objection subject to 30% Affordable Housing being provided on site

Wiltshire Council Education Officer – No contributions required

Wiltshire Council Public Open Space Officer – On site open space and equipped play would be required via S106 Legal Agreement

Wiltshire Council Waste Officer- Supportive subject to a S106

Wiltshire Council Landscape Officer – No objection

Wiltshire Council Conservation Officer – No impact on the setting of any listed building. The layout is acceptable but the design of the properties to the north of the site will need to be assessed at reserved matters stage to ensure there is no harm to the adjacent conservation area.

Natural England – No comment

Wessex Water – No objection

Wiltshire Fire and Rescue Service – Building Regulations should be incorporated.

8. Publicity

The application was advertised by a site notice and neighbour notification letters. The deadline for any correspondence was 24th March 2016

18 letters of objection have been received with the following comments (summarised):

Principle

- Outside the settlement boundary
- The site is adjacent to a site that had planning permission refused for 15 dwellings –the reasons of which are applicable to this site
- It would join Hilperton and Paxcroft Mead
- Overdevelopment – too intensive
- The site is one of the last few green spaces in Hilperton which helps to retain the semi-rural identity of the Village
- Contrary to the Village Design Statement
- The density of 58 dwellings per hectare which is much more than the Government advice of 30-50 dwellings per hectare

Impact on Character and Appearance of the Area

- The removal of trees and bushes adjacent Devizes Road will leave the site open which is unacceptable
- The existing houses on Devizes Road are characterised by large plots which is not present in the proposed design
- There will be an impact on the Conservation Area
- Many trees (70%) and hedgerows are to be felled with no replacement or re-planting
- Is a Tree Preservation Order appropriate?
- Proposal may increase flooding issues on my property (NW corner)
- Impact on biodiversity
- The hazel coppice in the NW corner of the site is populated by dormice which is a protected species
- Render is not appropriate to Hilperton as shown by the recently completed building on Devizes Road

- Flats are not appropriate to Hilperton
- Will the dwellings be built in line with the eco green policies

Impact on Neighbouring Amenity

- Loss of amenity due to loss of hedges along Devizes Road – the replacement trees will take a long time to grow
- The proposed properties are too close to my property
- Increase in traffic will cause an increase in noise, light and exhaust pollution

Highways

- More dwellings would put pressure on Devizes Road
- Devizes Road is a rat run despite the opening of the Hilperton Gap bypass (including HGV'S)
- Many properties facing the development park on Devizes Road making access to and from the proposed site unsafe
- Parking restrictions around the entrance would penalise those residents in Devizes Road that have no off road parking
- More cars will result in more danger for pedestrians
- Inadequate parking facilities on site

Other

- Limited facilities in Hilperton (especially schools and doctors surgery)
- My property (128) is much closer to the boundary than shown – There is less than 3 metres to the boundary wall so the new properties would be 7 metres from my living room window

Since the application went to Committee one additional representation has been received making the following considerations (summarised):

- Do not understand why the application was not recommended for refusal due to CP29 – which states that greenfield land will only be supported once secondary school provision has been delivered at Ashton Park
- The adjacent site was recommended for refusal – why is it not the same for this site?

9. Planning Considerations

9.1 The Principle of Development - Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved, form the relevant development plan for the area. The Wiltshire Housing Sites Allocation Plan is an emerging plan but can only be afforded very limited weight at this stage of its preparation. In this particular case, it is important to record that at the present time, the Council cannot demonstrate having a 5-year housing land supply in the North & West Housing Market Area, and the current calculation is that the Council has a 5.13 years supply compared to the 5.25 years requirement; In these circumstances, NPPF paragraph 49 advises that policies relevant for the supply of housing should not be considered as up to date. As a result, the presumption in favour of sustainable development as set out in paragraph 14 of the framework is engaged directing that planning permission should be granted for residential development unless “*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits*”.

A recent court ruling – Suffolk Coastal District Council v Hopkins Homes Ltd [2016] EWCA

Civ 168 has provided a useful direction and understanding that when Council's find themselves unable to demonstrate a 5-year housing land supply, whilst adopted housing policies and any associated restrictive policies relating to housing development should be considered "out of date", they should not be wholly ignored, but cannot be relied upon by themselves as reasons for refusal. It is necessary for decision makers, as directed by paragraph 14 of the NPPF, to weigh up the benefits against any identified harm.

Core Policy 1 (CP1) of the Wiltshire Core Strategy sets out the settlement strategy for Wiltshire identifying four tiers of settlement, namely: Principal Settlements, (2) Market Towns, (3) Local Service Centres and (4) Large and then Small Villages. The limits of development of the Principal Settlements, Market Towns, Local Service Centres and Large Villages, as defined by former District Local Plans have been carried forward into the Core Strategy and retained. These settlement boundaries will be reviewed as part of the Wiltshire Housing Site Allocations Development Plan Document (DPD), as set out in the Council's Local Development Scheme, in order to ensure they are up to date and can adequately reflect changes which have happened since they were first established. It will also be the prerogative of the community to review settlement boundaries through a neighbourhood plan. This approach was supported by the Core Strategy Examining Inspector in his report published in December 2014.

Core Policy 2 (CP2) sets out the delivery strategy and advises that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages. The Core Strategy advises that a number of sources of supply have been identified for new housing in Wiltshire across the plan period including allocations within the Core Strategy, existing commitments, windfall sites, those sites identified through the future Site Allocations Development Plan Document and neighbourhood plans. The delivery strategy seeks to prioritise the re-use of previously developed land and supports the development of sites within the limits of development. It requires a plan led approach to the identification of new development sites on the edge of settlements outside of the limits of development to allow local people to shape their communities and consider alternative sites. The Hilperton Village Design Statement confirms that development outside of the Village would not be supported, but in the current circumstances, this statement too in relation to housing limits would be considered by the NPPF to be out of date.

The Limits of Development of Hilperton run to the north and west of the proposed site. The proposed site is therefore outside of the limits of development but adjacent to it. Hilperton is identified in the Core Strategy as a Large Village, classed as a "*settlement with a limited range of employment, services and facilities*". Hilperton has a range of local services including a village hall, primary school, church, doctors surgery, business facilities (meeting rooms, office space, and hot desking). A Neighbourhood Plan has started to progress in the Village, however as it is not well advanced it holds no weight.

CP29 sets out the strategy for Trowbridge and its community area and identifies an indicative requirement of approximately 7000 new dwellings. The Policy states:

"At Trowbridge, approximately 5,860 dwellings will be delivered and will involve an area for strategic growth to the south east of the town (Ashton Park), which extends towards the A350 to the south and the railway line to the west. An additional 950 dwellings will then be developed at the town only once improved secondary school provision is in place towards the end of the plan period and there has been further assessment of effects on protected bat species and their habitats to ensure that they are properly safeguarded".

CP29 goes onto say that: "Approximately 165 homes will be provided in the rest of the

Community Area over the plan period” and the “development proposal in the Trowbridge Community Area will need to demonstrate how the relevant issues and considerations listed in paragraph 5.150 will be addressed”.

The housing target is expressed as a 20 year target covering the period from 2006 to 2026. The most recent Housing Land Supply Statement 2016 identifies an indicative requirement for 6,975 dwellings in the Trowbridge Community Area with an indicative remaining requirement of 2,017 dwellings in the Trowbridge Area. The Housing Land Supply Statement 2016 confirms that there is no indicative remaining requirement for additional dwellings in the Trowbridge Community Area; however footnote 56 of the WCS confirms that housing numbers for Trowbridge include those planned for the village of Hilperton. Therefore there remains a requirement for additional dwellings in the Trowbridge Area (including Hilperton).

Paragraph 5.150 of the WCS sets out a series of specific issues to be addressed in planning for the Trowbridge Community Area. The concern raised by the Local Ward Councillor in particular is the provision of secondary school provision. Paragraph 5.150 in relation to this concern states:

“there is a requirement to provide a site for a secondary school to the south east of Trowbridge, to serve the proposed urban extension and linked by a new road to recent developments at Paxcroft Mead and other planned development to the east of Trowbridge. This would help to address cross town traffic which is currently a problem as the only secondary schools are located to the west and south west of the town. A new primary school will also need to be delivered as part of the permitted development on land south of Paxcroft Mead and two further primary schools delivered as part of the Ashton Park strategic allocation.”

The above commentary makes it clear that the required improved secondary school provision is to serve the proposed urban extension and not other developments that may come forward such as that subject of this application. Furthermore as detailed in Section 9.10 of this report the Education Officer is of the opinion that a contribution through CIL would be sufficient to meet the education needs of this development. Furthermore, although a planning application has been submitted for Ashton Park (the proposed urban extension in Trowbridge), no decision on this application has been made and the development has not commenced. Therefore the sequential approach to delivering housing growth at Trowbridge over the plan period has not materialised and the requirement for improved secondary school provision in CP29 cannot be relied upon as a reason for refusal.

The settlement strategy set out in CP1 supports development in Large Villages. As noted above, at the present time, the Council cannot currently demonstrate a 5 year housing land supply in the North & West HMA, and the current calculation is that the Council has a 5.13 years supply. The relevance of this is that at present the restraints imposed by CP2 alongside other housing delivery policies (such as CP1, CP2 & CP29) cannot be relied upon per se as a reason for opposing this particular development.

When using the Housing Land Supply Statement 2016, there is a requirement for a further 2,017 dwellings over the plan period in the Trowbridge Area and although this proposal is only for up to 26 units, it would still make an important contribution to the identified housing need and therefore in line with the previous inspectors report which was for an outline application for 15 dwellings, the need for both market and affordable housing carries significant weight in favour of the proposal.

The conclusion that can be drawn from this analysis is that the principle of the

development of this site should be considered acceptable at present unless there are significant adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal, including the benefit of helping address the shortfall in housing land supply. The remainder of the report addresses the relevant issues relating to this proposal.

Concerns raised by the public include density/overdevelopment and coalescence. With regards to density, Paxcroft Mead which is located to the south of the proposed site is a relatively modern estate that has a higher density than those existing houses along Devizes Road which see houses in large plots which is not mirrored in the proposed illustrative layout. However the previous Inspector was of the opinion when assessing the adjacent development which was approximately 15 dwellings per hectare formed “*a reasonable transition from that of Paxcroft Mead to that of Devizes Road*”. It is therefore considered that the proposal which could see approximately 21 dwellings per hectare is also considered to be a reasonable transition between Paxcroft Mead and Hilperton and as such would not warrant a reason to refuse the application.

Coalescence between Hilperton and Trowbridge has been raised as a concern but the previous inspector was of the opinion that coalescence has already occurred with Trowbridge at the eastern and western ends of Hilperton and as such did not find that this was a reason to refuse the development.

9.2 Archaeology - CP58 states that development should protect, conserve and where possible enhance the historic environment. The Wiltshire Council Archaeologist has confirmed that the site lies in an area of high archaeological potential however evaluation immediately to the east of the site revealed nothing of archaeological interest. The Historic Environment Record shows traces of medieval/post medieval ridge and furrow across the site and the centre of settlement during the medieval period lay to the northwest of the site along Church Street. The early Ordnance Survey mapping shows that the southern part of the site was an area of orchard during the late 19th century, likely to be part of “The Grange” to the west of the site. Based on the results of the adjacent evaluation the indication is that the proposed development site is in a localised area with little activity prior to the medieval period when it appears mostly to be activity of an agricultural nature on the periphery of the main settlement. It has therefore been considered by the Wiltshire Council Archaeologist that no archaeological investigations are necessary in relation to the proposed development and as such the proposal is considered to comply with the NPPF and relevant criteria of CP58.

9.3 Flood Risk and Drainage - A Flood Risk Assessment has been submitted with the application which demonstrates that the site is located in Flood Zone 1 where there is a low risk of flooding. The submitted application form confirms that foul sewage will be to the main sewer. Wessex Water have confirmed that there is adequate available capacity within the existing foul sewer network to accommodate the predicted foul flows and that there is also available capacity within the existing water supply network. All of these areas would require further applications and agreements with Wessex Water.

The Wiltshire Council Drainage Officer has confirmed that the location of main foul and storm drainage systems are likely to require third party land crossing which would need to be gained by the applicant. If such an agreement was not possible, the applicant could requisition the sewerage undertaker to provide suitable drainage connections to the boundary of the site which would result in the undertaker using its powers of entry to achieve such a connection. The Council's Drainage Officer has requested conditions requiring details to be submitted for the discharge of foul water and surface water which are considered to be appropriate.

In conclusion, the Wiltshire Council Drainage Officer and Wessex Water have raised no objections to the scheme subject to conditions. The proposal is therefore considered to comply with CP52 and Saved Policies U1a and U2.

Concerns have been raised by objectors regarding flooding in the area. Whilst this application is not able to solve existing problems, the Wiltshire Council Drainage Officer and Wessex Water are of the opinion that the existing facilities are capable of serving the additional dwellings.

9.4 Impact upon the character and appearance of the area - A Landscape and Visual Impact Assessment (LVIA) was submitted with the application which addresses the constraints and opportunities of the site and makes reference to the Hilperton Village Design Statement. The LVIA correctly confirms that there are no landscape designations on the site but the Hilperton Conservation Area adjoins the Western boundary of the site.

The existing site access is provided by an existing drive into The Grange from Devizes Road. The entrance is flanked by stone walls that are approximately 1 metre high. The eastern wall continues along Devizes Road. There is an existing overgrown field gate in the north east corner of the site. The northern boundary (along Devizes Road) has an existing belt of mature and over mature trees many of which are in poor condition. There is also some with a scrub/shrub land which is approximately 5-8 metres wide. The proposal sees the retention of the majority of the existing wall (albeit the proposed access) and a 6 metre vegetated boundary with replacement tree planting

The eastern boundary sees a mixed deciduous, unmanaged hedge which is approximately 3-4 metres in height. An existing ditch also runs alongside the hedgerow. The proposal sees the retention of a managed hedgerow on this boundary and the provision of a centrally located open space with new tree planting.

The southern boundary sees a belt of unmanaged young trees, shrubs and scrub which also includes a small wetland/pond. The proposal sees retained, reinforced planting on this boundary which includes a wildlife zone and SUDS area which will be fenced off by a 1.2 metre high post and wire fence.

The western boundary includes a line of varied semi-mature and mature trees alongside shrubs along the Southern half and an open boundary with scattered small trees along the edge of the drive. The proposal sees the retention of the majority of the trees along this boundary.

An arboricultural survey was carried out on the site and of the 56 trees, 7 were graded as category B trees "worthy of protection" with the remainder graded as category C "not worthy of retention" and as such are being removed. The LVIA confirms that the proposal will provide a tree replacement strategy which will see new tree planting along the road frontage and within the proposed open space area. The Wiltshire Council Landscape Officer has advised that this strategy should include some advanced nursery stock particularly along the Devizes Road boundary. A suitable tree replacement strategy can be requested via a condition.

The Village Design Statement (VDS) requires the following from new developments: *the landscape including flora and fauna features to be respected, enhanced and protected and existing hedgerows should be retained and enhanced to maintain the character of the village.* When assessing the proposal it is accepted that the majority of the trees are to be removed from the site but existing hedgerows and trees that are worthy of being kept are to be retained and managed and a new replacement tree strategy is proposed. As such

the proposal is considered to comply with this element of the VDS.

The proposed development would maintain landscape boundaries and it is accepted that the proposed access would form a substantial break in the existing northern boundary and its associated wall and that the tree replacement strategy will take time to grow, however it is worth stating that none of the trees on the site have a Tree Preservation Order nor are they considered worthy of being protected, furthermore the site is not located in a conservation area and therefore all of the trees and hedgerows on the site could be removed at any time without the need for consent from the local planning authority.

It is accepted that the proposal would result in a change from an open paddock/green gap to an area of residential dwellings and associated development which would have an impact upon the character and appearance of the immediate area. The proposed development would therefore be contrary to the VDS, however due to the existing development north and the proposed development to the east of the site, it is considered that this harm would not warrant a reason to refuse the application.

Illustrative Layout - The application submission includes an amended illustrative layout. Whilst layout is a matter that has been reserved, some statutory consultees have commented on the proposed amended layout, some of which warrant an informative to be included on any recommendation of approval.

The Wiltshire Council Landscape Officer advised that there are large garden trees to adjacent existing properties within the Conservation Area close to the site boundary one of which has TPO status. The proposed dwellings on the illustrative layout lie close to these trees, existing dwellings and the Conservation Area and as such a landscaped buffer should be incorporated along this edge. This can be advised via an informative on a recommendation of approval.

The amended illustrative layout indicates that the proposed dwellings would be two storey, built with a rubble stone or roughcast render finish, however the VDS refers to Bath Stone as the predominant material and recommends its use in new developments. The VDS also states that rendered finishes should only be applied to buildings where render is already present. The materials would therefore need to be re-assessed at the reserved matters application and an informative can be attached to a recommendation of approval ensuring that the proposed materials are reflective of the local character.

The Wiltshire Council Urban Designer has commented on the amended plans and has raised no objections to the proposal subject to the heights being limited to two-storey and a suitable material strategy to include surfacing which reflects the local character to be submitted at the reserved matters stage. The Officer has also suggested other elements to be included at the reserved matters stage which include character, position of buildings, design of corner plots, boundary materials, street furniture, lighting and landscaping all of which can either be conditioned or advised through an informative on a recommendation of approval.

9.5 Heritage Assets - The NPPF deals with determining planning applications that affect heritage assets in paragraphs 128 to 135. Paragraph 132 sets out 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. The more important the asset, the greater the weight should be.* Significance is defined in the NPPF as *the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.* It goes on to note that *significance can be harmed or lost through alteration or destruction of the heritage asset or*

development within its setting and notes that substantial harm to or loss of designated heritage assets of the highest significance, including SAMs and Grade I & II Listed Buildings should be wholly exceptional. The setting of a designated heritage asset is defined in the Framework as the surroundings in which a heritage asset is experienced.*

Paragraph 133 goes on to note, that where a proposed development would lead to substantial harm to or total loss of significance of a designated heritage asset, consent should be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss.

In *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin), it was accepted that substantial harm is an impact which would have such a serious effect on the significance of an asset that its significance was either removed altogether, or very much reduced.

The site is located adjacent to a Conservation Area and therefore the impact the proposed development would have on its setting has to be taken into consideration when assessing this application. The Grange which is located to the west of the proposed site is identified in the VDS as an interesting landmark that is a feature on entering the old village from Paxcroft Mead. The Wiltshire Council Conservation Officer has confirmed that this building would be considered a non-designated heritage asset and therefore the impact the proposed development would have on its setting also needs to be addressed.

The Wiltshire Council Conservation Officer has considered the application in association with the submitted Heritage Assessment and illustrative layout and is of the opinion that if the reserved matters application delivers the claimed attributes in the said documents, then he would raise no objection as the proposal would not significantly adversely affect the setting of the conservation area and The Grange. This would be subject to a variety of informatives ensuring that the proposed development is carried out in broad accordance with the design principles submitted as part of the application. However the detailed assessment of the impact the design of the houses in the proposal would have on the setting of the Conservation Area and The Grange would be considered during the reserved matters application once the detail of the proposed dwellings and their exact locations and materials were known.

The Conservation Officer has confirmed that the proposal would result in no harm to the setting of nearby Listed Buildings which are located over 150 metres from the site and around a corner.

9.6 Ecology and Landscape - The application includes the following statements and plans that are relevant to this appropriate assessment:

- Ecological Appraisal (NPA, December 2015)
- Supplementary Ecology Statement (NPA, September 2016)

The site is located approximately 1km in radius from Green Lane Wood and approximately a 2km walk by foot.

An Ecological Appraisal has been submitted with the application which confirms that the site is of low ecological value. The key ecological features of the site are the existing hedgerows on the boundaries which due to their age and type have low habitat value. No bats, badgers, great crested newts were found on the site.

Additional tree planting will be located on the boundaries to provide screening for existing properties and 10 commemorative trees are due to be planted to remember the 10 casualties in World War I from the village. The proposed swales will also provide opportunities for biodiversity enhancements.

The Ecologist has confirmed that there is some need for compensatory habitat provision to replace the section of northern boundary hedgerow that would be lost to the new access. The proposal provides new hedgerow on the boundaries of the site but also within the site and as such there would be a significant addition to habitat creation.

The Judgement of Likely Significant Effects (JLSE) completed by the Council Ecologist on 12/08/16 concluded there could be impacts with other planning applications and developments on the Bath and Bradford on Avon Bats SAC due to:

- a) the uncertainty over future functioning of the north, east and western boundary features used by SAC bats, particularly horseshoe bats but also possibly Bechstein bats,
- b) the in-combination effects of development of recreational pressure at Green Lane and Biss Woods on Bechstein's bats.

The Supplementary Ecology Statement was submitted following the JLSE to demonstrate additional commitments and measures that can be secured to avoid impacts to flight and foraging routes across the development site.

Increased recreational pressure from this development could lead to a deterioration of woodland habitat used by Bechstein's bats and negatively affect their roosts due to the close proximity of fire pits, disturbance and vandalism of bat boxes. This development for comparatively few dwellings is at the outer limits of the distance where residents may be expected to visit the woodlands on a frequent basis. The Core Strategy allocates 5860 dwellings for Trowbridge town, of which 2526 have been completed. Developable commitments up to the year 2026 number 2649 dwellings which includes the strategic allocation of 2600. The two applications which comprise the allocation have yet to be determined and the HRA for the largest (2500 dwellings at Ashton park) will provide a strong steer for the development strategy for the area. While it is not possible to rule out an in-combination effect, approval for this application of 26 dwellings at The Grange is unlikely to trigger loss of integrity given the applications for other closer and much larger developments are still pending.

The Supplementary Ecological Statement demonstrated that measures could be put in place to provide greater certainty that replacement planting and ongoing management of the boundary features could be achieved in such a way as to avoid affecting bats. The Ecologist has recommended conditions which include a Landscape and Ecology Management Plan, a Construction Management Plan, lighting and a landscaping plan which are all considered to be acceptable. The proposal subject to these conditions is considered to comply with CP50 and CP51.

9.7 Sustainable Construction - CP41 of the Wiltshire Core Strategy identifies how sustainable construction and low-carbon energy will be integral to all new development in Wiltshire. In doing so this policy sets the framework for meeting a number of national and local priorities (for example Part L of the current Building Regulations) that seek to achieve sustainable development and conserve natural resources. This policy will help to reduce Wiltshire's contribution to climate change through improved design and construction methods. As a requirement of this policy if this application were to be recommended for approval a condition would be required to secure all new homes to reach an equivalent

energy performance level the same as Code Level 4 (in full) of the Code for Sustainable Homes.

9.8 Impact upon neighbouring amenity - Due to the application being in outline, the impact of the proposed development upon neighbouring properties in terms of overlooking and overshadowing cannot be assessed as the location of dwellings including heights and location of windows are yet to be determined. If this outline application were to be approved then these matters would be assessed in the subsequent reserved matters application.

Due to there being existing neighbouring properties near the site it would be important to request conditions on any approval requiring a dust management plan to cover the construction period to ensure that existing residential properties are not subject to dust nuisance. Conditions requiring no burning on site and construction hours to protect the amenity of existing neighbouring dwellings would also be appropriate at this stage.

A concern has been raised regarding a neighbouring property being incorrectly shown on the submitted plans and therefore the proposals would impact upon the amenity of the occupants. As neighbouring amenity is not being assessed during this outline application, the agent and applicant have both been made aware of the concern raised and will address it in any future reserved matters application.

9.9 Highway Impacts - The proposal sees the construction of a new access off Devizes Road to serve the new development which has been considered by the Wiltshire Council Highways Officer to be sufficient to serve the proposed development and the existing business centre at The Grange.

The previous Inspector was of the opinion that the appeal site located north of this site was in a sustainable location as it was located close to the local centre in Paxcroft Mead which has a general store, smaller shops including a hot food take-away, a public house, a nursery and a community centre, good public transport links (reasonably good bus service on weekdays with a more limited service on Saturdays and no service on Sundays) and a good network of cycleways and pedestrian routes to the south of the appeal site that extends beyond the local centre through Paxcroft Mead. There is also an existing primary school located between the site and the local centre. However in contrast, all three secondary schools in the Trowbridge area are located to the West of Trowbridge and are some distance from the site and therefore any future occupants are unlikely to walk to school. When assessing this, the previous Inspector indicated that *bus fares are reasonably prices for school aged children and a range of bus services that would link the site with these secondary schools at the start and end of the school day*. The Inspector continued by saying that *the same could be said for accessing a range of services, facilities and employment opportunities in and around the Town Centre*. The Inspector concluded that *the site had good access to a good range and quality of local services. Furthermore there is a range of other services, facilities and employment opportunities available in the wider urban area and links to these via modes of transport other than private motor vehicles are reasonably good*. The proposal is therefore considered to comply with CP60, 61 and 62.

There are no public footpaths on the site that would be affected by the proposal.

The illustrative layout details sufficient off street parking facilities in accordance with the Wiltshire Car Parking Strategy however this would be assessed in the reserved matters application.

Concerns have been raised regarding the loss of parking along Devizes Road for nearby

residential properties. Devizes Road does not have allocated parking and therefore the loss of parking for these properties is not a material consideration when making a decision on this application. The impact of these parked cars on the proposed access has also been raised as a concern, but there is an existing access that is not impacted upon by the existing situation.

9.10 Other Matters - Concerns raised by the public include the loss of a green space in Hilperton. The site is not protected as public open space and therefore is not able to be safeguarded as such.

The Environmental Health Officer raised no objections to the proposal but did raise a concern regarding air quality and suggested that the applicant could demonstrate what positive contributions they could make such as travel alternatives, tree planting and contributing to local air quality actions groups. Some of this information has already been submitted as part of the application but the remainder would not warrant a reason to refuse the application.

The Parish Council were of the opinion that as the proposal was adjacent to a conservation area, a full application should have been submitted and not an outline application, however the Applicant is at liberty to submit an outline application and as such this would not warrant a reason to refuse the application, especially as the site is outside of the conservation area and not within it.

9.11 Section 106/S38 Legal Agreements - Core Policy 3 advises that all new development will be required to provide for the necessary on-site and, where appropriate, off-site infrastructure requirements arising from the proposal. Infrastructure requirements will be delivered directly by the developer and/or through an appropriate financial contribution prior to, or in conjunction with, new development. This Policy is in line with the tests set under Regulation 122 of the Community Infrastructure Levy Regulations 2010, and Paragraph 204 of the National Planning Policy Framework 'The Framework'

The infrastructure items listed below are those that are relevant to the Application site and are required in order to mitigate the impact of the proposed scheme. The Applicant has agreed to provide the following:

Affordable Housing

CP43 requires on sites of 5 or more dwellings, affordable housing of at least 30% will be provided and requires them to be subject to an appropriate legal agreement. 30% of 26 would equate to 8 affordable dwellings being required on this site. Based on current housing need figures for this area these should be a mix of 2 and 3 bed dwellings with a tenure split of 60% Affordable rent (5 units 3 x 2 bed houses, 2 x 3 bed houses) and 40% Shared Ownership (3 units 2 x 2 bed house and 1 x 3 bed house).

Education

The designated schools are Hilperton CE Primary School and Clarendon College and John of Gaunt in Trowbridge at a secondary level. At a primary level, 7 places would be required and at a secondary level, 5 secondary places would be required by this development. Due to the pooling restrictions in place which only allow a Local Planning Authority to combine no more than 5 contributions to the same project, the required places would be sought via CIL by the Education department. Therefore no financial contributions towards education would be required from this development.

Open Space and Play Provision

Saved Policy LP4 of the Leisure and Recreation DPD states that where new development (especially housing) creates a need for access to open space or sport recreation provision

an assessment will be made as to whether a contribution to open space or sport recreation is required. Saved Policy GM2 of the Leisure and Recreation DPD requires the management and maintenance of new or enhance open spaces which will be included within the S106.

The proposal requires 954 sq.m of public open space of which 46 sq.m should be equipped play provision. Due to the badger sett, equipped play would not be able to be provided on the proposed green and therefore £6,718 would be required towards existing play facilities at Lacock Gardens. The on-site open space will be managed by a private management company and as such this detail will also need to be included within the S106.

Refuse

A contribution of £2,730 would be required to provide the new dwellings with adequate waste and recycling bins. This is in conformity with the Wiltshire Council Waste Collection Guidance for New Development.

Ecology

The Habitats Regulations Assessment relies upon a commitment by the Applicant on land within the blue line of the application site (retention of trees, planting of additional trees) which would see the management of this area and communal areas of the application to be undertaken by a management company and in accordance with an approved LEMP. This would ensure the proposal complies with CP50 and the HRA Regulations. A contribution will also be secured towards a project included in the Council-led mitigation strategy which is being designed to avoid or offset a significant increase in the total number of visits to Green Lane and Biss wood. At the current time the size of this contribution is unknown but the S106 will not be finalised until this is resolved.

10. Conclusion

The proposal is not in accordance with the development plan, in that it lies outside of the limits of development and has not been brought forward through the plan led process outlined in policy CP2. However, section 9.1 of this report clearly explains why at the time of decision making, the existing limits of development are not considered to be up to date and it details the latest position on the five year housing land supply. The conclusion that can be drawn from Section 9.1 of this report is that the principle of the development of this site should be considered acceptable at present unless there are adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal as CP2 cannot be relied upon by itself as a defensible housing policy due to the Council being unable to demonstrate a five year housing land supply.

The proposal would see the erosion of an existing green gap between Hilperton and Trowbridge, however it has been considered that this does not amount to an adverse impacts that would significantly and demonstrably outweigh the benefits that this particular development in this location on the edge of a sustainable settlement identified for sustainable growth that is within walking distance to services and facilities would bring. Such benefits would include the provision of affordable housing, improved play equipment, increased housing supply and the financial benefits of the community infrastructure levy. The Council tried and failed to convince an Inspector to refuse the application to develop the adjacent land to the east, but lost because of the then demonstrated lack of a five year land supply. As a similar situation in terms of lack of land supply exists again, the Council cannot expect to win an appeal in this location for this proposal based on an out of date limit of development.

RECOMMENDATION: Defer and delegate to the Head of Development Management to grant outline planning permission subject to the prior completion of a section 106

Legal Agreement to secure the planning obligations set out in section 9.11 of this report and subject to the conditions set out below.

If the legal agreement is not completed within six months, then the application may be refused on the grounds that it fails to provide the necessary affordable housing, mitigation and infrastructure to provide for an acceptable development in accordance with the policies of the Wiltshire Core Strategy.

Planning Conditions

1 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

- (a) The scale of the development;
- (b) The layout of the development;
- (c) The external appearance of the development;
- (d) The landscaping of the site;
- (e) The internal vehicular and pedestrian routes within the site.

The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

4. No development shall commence on site until a scheme of hard and soft landscaping that is in accordance with the Supplementary Ecology Statement (NPA, Sept 16) has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- * location and current canopy spread of all existing trees and hedgerows on the land;
- * full details of any to be retained, together with measures for their protection in the course of development;
- * a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- * finished levels and contours;
- * means of enclosure;
- * car park layouts;
- * other vehicle and pedestrian access and circulation areas;
- * all hard and soft surfacing materials;
- * minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc.);
- * proposed and existing functional services above and below ground (e.g. drainage,

power, communications, cables, pipelines etc. indicating lines, manholes, supports etc);

* retained historic landscape features and proposed restoration, where relevant.

* tree(s), of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

5. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365 as well as any required offsite works to allow connection to existing main sewer, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

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 and to ensure that the development can be adequately drained

6. No development shall commence on site until a scheme for the discharge of foul water from the site, including any required offsite works to allow connection to existing main sewer, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until the foul water drainage has been constructed in accordance with the approved scheme.

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

7. No development shall commence on site until a Tree Replacement Strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

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

8. No development shall commence on site until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved by the local planning authority. The development shall then be managed and maintained in accordance with the measures set out in the LEMP in perpetuity.

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 and to ensure appropriate management of priority habitats and mitigation for protected species.

9. No development shall commence on site until a Construction Environmental Management Plan (CEMP) has been submitted to and approved by the local planning authority. The CEMP shall provide details of the measures that will be implemented during the construction phase including the precautions that will be undertaken to avoid harm to protected species, hedgerows and trees. Development shall be carried out in full accordance with the approved plan.

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 and to ensure adequate protection and mitigation for protected species, priority habitats and Bechstein's bats.

10. No development shall commence on site until details of the material to be used for the access walls have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

11. No walls associated with the access hereby approved shall be demolished or constructed on site, until a sample wall panel, not less than 1 metre square, has been constructed on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

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

12. No part of the development hereby approved shall be first brought into use until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interest of highway safety.

13. No part of the development hereby approved shall be occupied until the access has completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interest of highway safety.

14. No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage demonstrating through the use of lux plots that bat flight lines will receive no greater than 0.1 Lux from artificial lighting, have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

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 and in the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

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

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

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

Site Location Plan received on 25th February 2016

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

Planning Informatives:

1. This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the [NB: DATE TO BE INSERTED ONCE S106 IS SIGNED].

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

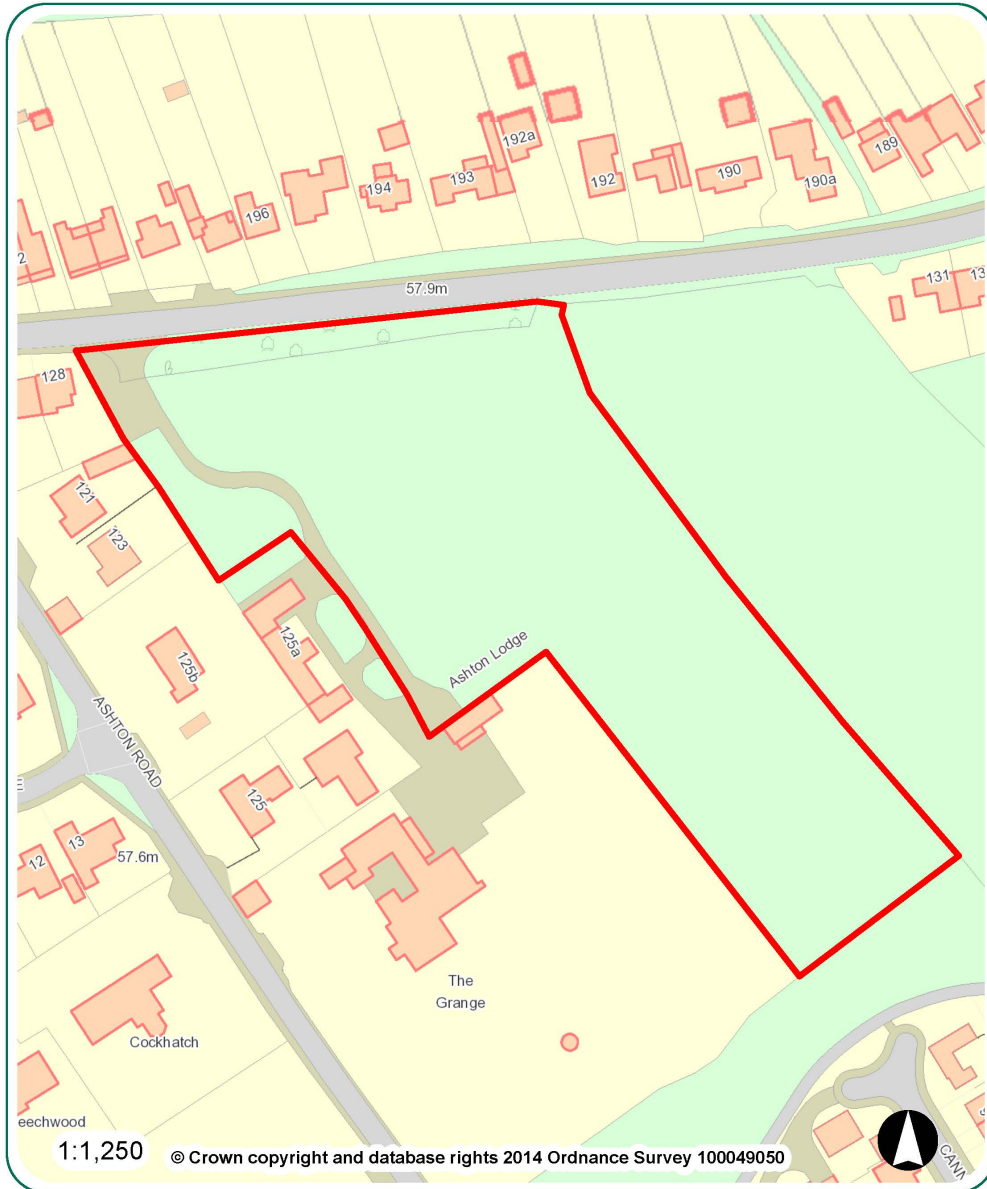
www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy

3. The Reserved Matters application shall take into account the following as the illustrative layout provided as part of this outline application has not been considered to be appropriate:

- a) The design of the proposed properties (especially in the northern part of the site) must take into account local vernacular features including size, scale, design and materials.
- b) Heights of the proposed dwellings should be limited to a maximum of 2 storeys
- c) A suitable material strategy (including surfacing) which reflects the local character and complies with the Hilperton Village Design Statement and Core Policy 57 of the Wiltshire Core Strategy should be submitted
- d) The character and position of distinctive buildings, the design of corner plots, boundary materials, street furniture and lighting should be clearly detailed.
- e) There are some large garden trees to properties within the Conservation Area close to the site boundary - one has TPO status. The proposed dwellings are close to these trees and the existing dwellings within the Conservation Area. Therefore a landscaped buffer should be incorporated along this edge.

- f) The Tree replacement strategy should include some Advanced Nursery Stock, a list of native species and details of retained hedgerows including densities and sizes particularly along the Devizes Road boundary.
- g) The location of the proposed properties should take into account the Wiltshire Waste Supplementary Planning Guidance and ensure that residents will be able to use the standard waste collection service (carry distances). Internal roads should also comply with this guidance with details showing vehicle tracking to demonstrate that refuse vehicles can move through the development and turn.
- h) Details of how the proposal complies with the Wiltshire Council Car Parking Strategy should be submitted alongside details of estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, and a timetable for provision of such works.
- i) Any landscaping plans will need to ensure that they comply with the Supplementary Ecology Statement (Sept 16)
- k) Any external lighting should demonstrate the use of lux plots and ensure that bat flight lines will receive no greater than 0.1 L7ux from artificial lighting.
- l) Whilst this application is for up to 26 dwellings, a reduction in the number of units may be required to ensure that boundary features can be retained in a suitable condition so they are not harmed and can be protected so they can continue to be used by horseshoe bats and Bechstein bats while not affecting the amenity of adjacent properties.
- m) The road layout in the Illustrative Proposed Site Layout is unlikely to be acceptable due to the effect of lighting on the western boundary and associated impact on horseshoe bats unless the developer can demonstrate that road lighting will not be required by the Highways Authority.

4. The applicant/developer is advised to note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.



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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No. 2

Date of Meeting	14 December 2016
Application Number	16/06851/FUL
Site Address	139 Winsley, BA15 2LB
Proposal	Erection of one new attached dwelling, alterations to existing dwelling, access and parking and demolition of outbuildings
Applicant	Mr G Woolley
Town/Parish Council	WINSLEY
Electoral Division	WINSLEY AND WESTWOOD – Cllr. Magnus MacDonald
Grid Ref	379801 160915
Type of application	Full Planning
Case Officer	Kate Sullivan

Reason for the application being considered by Committee

This application was deferred by the Committee at the 23 November meeting to enable members to undertake a formal site visit.

Cllr MacDonald requested that should officers be minded to support this application, it should be brought before the elected members of the planning committee to consider the following matters:

The scale of development, the impact on the conservation area and surroundings, the relationships with adjoining properties, the design, bulk, height and general appearance.

The report below has been updated to take account of questions raised by members at the previous meeting.

1. Purpose of Report

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

2. Report Summary

The main planning issues to consider are:

- Principle of Development
- Impact on the Conservation Area/Heritage Assets
- Impact on Neighbouring Amenity
- Impact on Highway Safety
- Impact on Ecology
- Impact on Archaeology

3. Site Description

The application site relates to a semi-detached unlisted double-gabled stone built property located within the Winsley Village Conservation Area and the established 'large village' policy

limits. As illustrated on the site location plan which is reproduced on the next page, the site occupies a corner plot which has existing vehicular and pedestrian access openings and off-road parking provision. Abutting the Bradford Road highway, there is a stone wall measuring approximately 1.8m which also includes a detached garage with its road side flank wall measuring approximately 3.5m. The road which serves the plot and twenty or so other properties is a narrow, single track lane that meanders through the village. Within 50m of the site there are 5 grade II listed buildings, the nearest being Burghope Manor, located to the north-west. The other grade II listed buildings, are found at No.115, No.117, No 146 Winsley and The Barn.



4. Planning History

There are no recorded planning applications listed on the Council's planning history database. The only recorded application relates to the following submission and decision:

W/02/01898/TCA Crown thinning and pruning of one Birch tree – Consent 23 Jan 2003

5. The Proposal

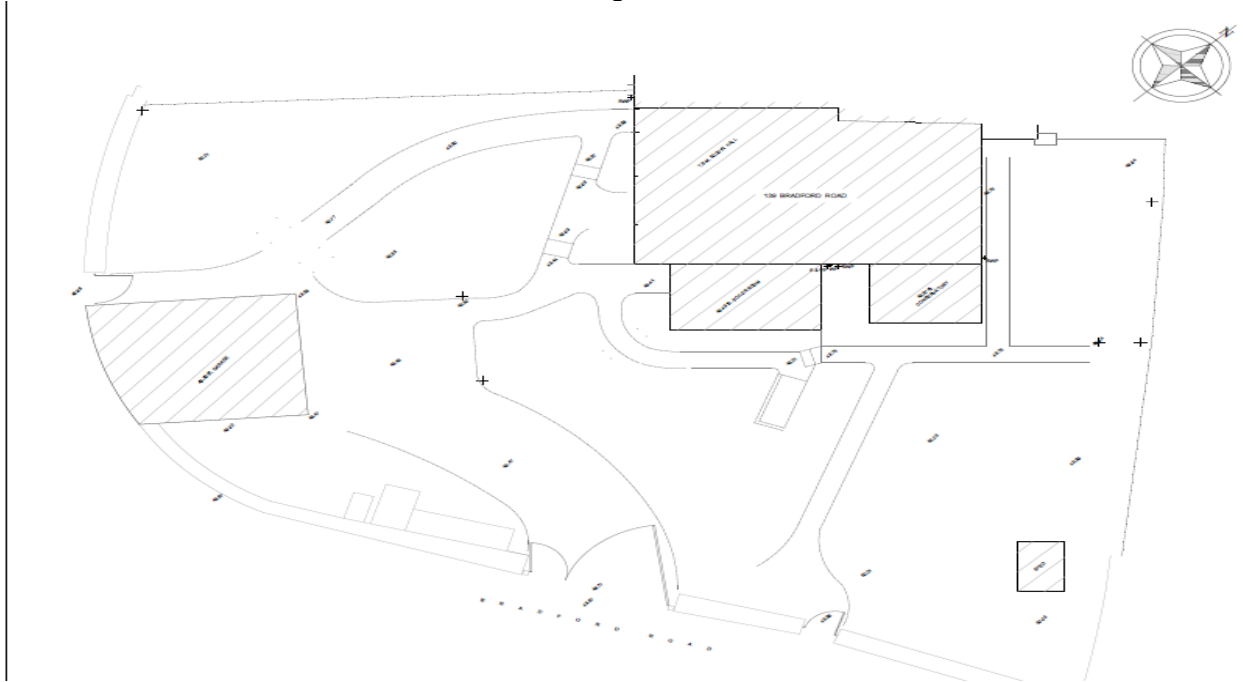
Under this submission, the applicant proposes to erect a two-storey double-gabled 3-bedroom dwelling to be constructed off the south-east gable elevation of the host property at No. 139, thereby creating a terrace of three properties. The new house would also have a single-storey rear extension to accommodate a kitchen. Existing single storey gable additions would be demolished to accommodate the new building which would be constructed using similar detailing to the host property, namely having coursed rubble stone walls with bath stone dressings, string courses and cills, wooden windows, under a double roman clay tiled roof with coped verges and an ashlar stone chimney. The roof of the proposed new house would have a ridge circa 0.8m below the existing ridge line of the host property.

The existing detached garage (with a volume of circa 80m³) and a section of wall which form part of the boundary to the property would be demolished to provide a new vehicular access and on-site car parking space for four cars to serve both the existing and proposed dwelling.

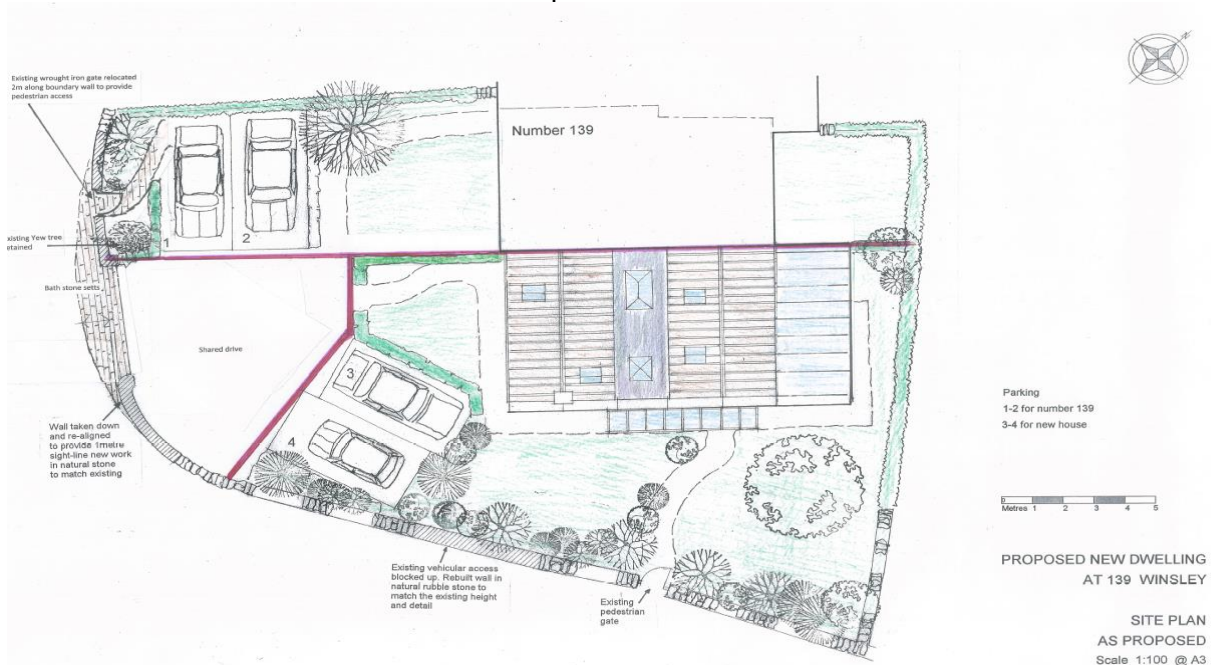
The existing vehicular access would be blocked up using natural rubble stone to match the existing wall height and detailing.

The following two plans illustrate the existing site plan and what is proposed.

Existing Site Plan

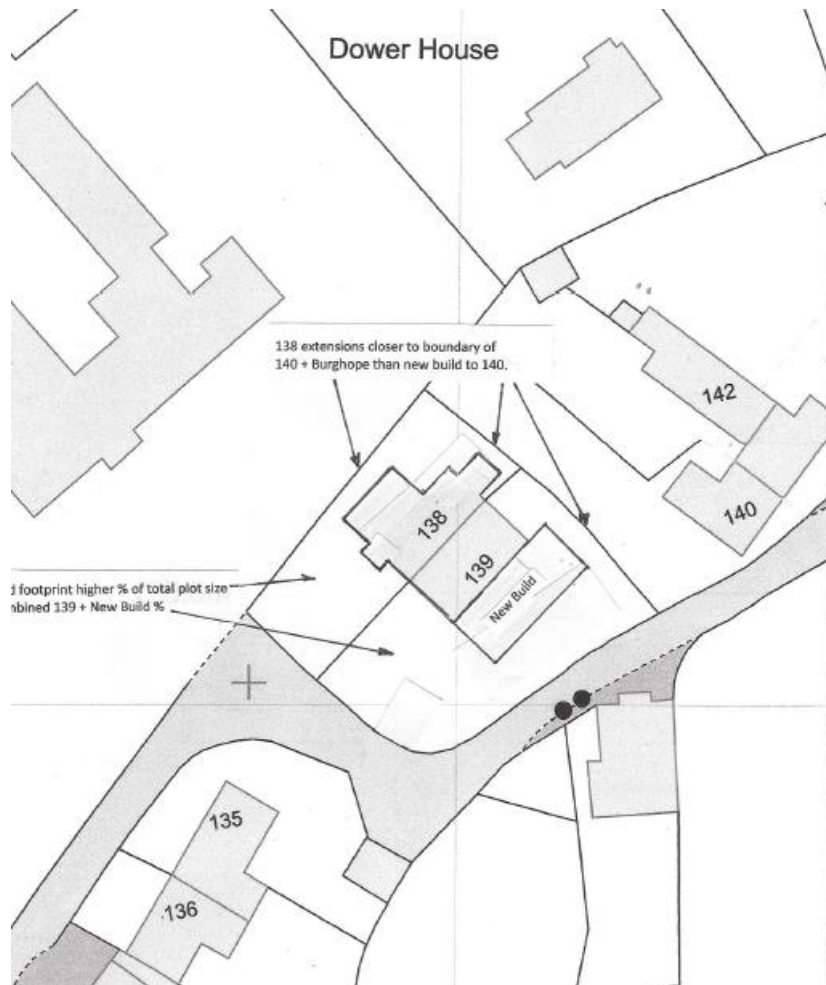


Proposed Site Plan



Members are advised that following the WAPC meeting on 23 November, and after taking on board the Parish Council concern and hearing the member questions and discussion about the site having a parking turntable and electric gates, the applicant has agreed to remove both from the application proposal, as the above plan illustrates.

Furthermore, since the previous meeting, the applicant has submitted a comparative plot plan which illustrates the spatial relationships and boundary proximities. This plan is reproduced below.



6. Planning Policy

The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)

The Wiltshire Core Strategy (2015) CP1 - Settlement Strategy; CP2 – Delivery Strategy; CP7 - Bradford on Avon Community Area (Winsley); CP41 - Sustainable construction and low carbon energy; CP45 - Meeting Wiltshire's Housing Needs; CP50 Biodiversity and Geodiversity; CP57- Ensuring High Quality Design and Place Shaping; CP58 - Ensuring the Conservation of the Historic Environment; CP61 - Transport and Development; CP64 - Demand Management

West Wiltshire District Plan 1st Alteration, 2014 Saved Policy H18 - Area of Minimum Change

Wiltshire Local Transport Plan 2011 – 2026: Car Parking Strategy

7. Summary of Consultation Responses

Winsley Parish Council - Object and requested that the application be called to committee for the elected members to debate the following matters:

- Parking – This is a problem within the village, and the use of the turntable whilst an excellent solution, would not be practically workable. The shared nature of the use of the turntable would require co-operation between two different households, there would be on-going maintenance

and doubts are cast as to whether two cars could use it, which would potentially lead to two cars being parked on the road.

- Housing need – This development on its own would not satisfy the housing requirements, as the applicant has indicated that both properties would be placed on the rental market. Even, if they are sold in the future, they are unlikely to be affordable since they are to be renovated and built to a high standard.
- Impact on the Conservation Area - It is recognised that the current condition of the site is not desirable. However it was agreed that the refurbishment of an untidy site is not a good reason to permit development. It was also agreed that the proposed development would be to a high level and in keeping with the location. However, there were a number of objections raised about removing a large extent of the stone wall to be replaced by a new opening and timber gates. In addition, concern was raised about the amount of space being set aside for car parking and manoeuvring, which would result in the loss of garden and shrub planting.

Wiltshire Council Highways - No objection. Following the committee meeting on 23 November, and after hearing the member debate, the highway officer was asked for her views on an applicant led suggestion deleting the electric gates and turntable from the scheme. It was confirmed that there would be no highway based opposition to such an amendment.

Wiltshire Council Archaeologist - No objection.

Wiltshire Council Conservation Officer - Supportive subject to conditions. This host property is not listed, but the building and its boundary walls are historic and examples of vernacular architecture within the village; and are therefore considered to be non-designated heritage assets. The designated heritage assets under consideration here are the Conservation Area and the nearby Grade II listed Burghope Manor.

In terms of the impact of the proposals on the Grade II listed Burghope Manor, the proposal would not adversely affect its setting due to the Manor's siting, location and seclusion in relation to No.139 Winsley. There would however be some effect on the Manor's south east boundary wall, which is a curtilage grade II listed structure.

The prevailing character of this part of the lane, from the Limpley Stoke Road entrance through to the St Nicholas church, is one of vernacular houses with strong boundary features, namely, stone walls of differing appearances and heights ranging from approximately 1.5m to 1.8m, with a few exceptions.

The application site property has several wall openings along the site frontage and includes an existing garage with its blank gable wall fronting the highway extending above 3.5m in height.

According to historic maps, the garage building appears in the mid 19th Century and was probably a more substantial building than the existing simple mono-pitch roofed garage. The applicant's submitted heritage statement does not go into much detail about the garage building, but does indicate that its removal would bring about a positive impact to the conservation area. The garage has a rather poorly fitted mono-pitch roof, but is not unattractive. It is important to duly acknowledge that the garage is not listed, and although located in a Conservation Area, due to its size being less than 115 m³, it could be demolished without the need for planning permission.

So whilst this garage building is part of, and could be argued to add to, the ad-hoc historic character of the lane, the building could be legitimately removed without requiring the consent of the Council; and as a consequence, a heritage based objection cannot reasonably be made to its removal. Likewise, the partial loss of the boundary wall to create a new access is not objectionable from a Conservation Area / heritage perspective.

The impact of these proposed changes on the setting of the curtilage listed wall to Burghope Manor would not be detrimental. The lane is characterised by strong, well defined boundaries, but there are several vehicular and pedestrian openings set within them all along the lane and therefore a new opening at the proposed location along the lane would not be out of character in general. The blocking up of the existing vehicular access, providing it is done in matching stone and detailing, would have a neutral impact on the character of the Conservation Area.

Turning now to the proposed new dwelling to be attached to the existing building, it is noted that there are other houses in the surrounding area set within similar sized plots. So, in terms of the prevailing density and grain of development within the Conservation Area, houses on relatively small plots mixed with houses on larger plots contributes to the character of the area/historic core of the village.

The proposed dwelling would be set below the ridge of the existing house and would use design details taken from No. 139, such as the string courses, the window detailing and surrounds, as well as the chimney. The proposed materials would also match the existing building and consequently, the proposal would be in keeping with the surrounding non-designated heritage assets in the Conservation Area.

From the details submitted and after visiting the site, the proposal would be in keeping, sympathetic and subservient to the existing dwelling and those in the immediate area. Conditions can be imposed on a grant of planning permission to ensure that the high quality use of materials, as referenced on the plans, is taken through to the development stage. For the above reasons the scheme would result in no harm to the designated and non-designated heritage assets. The impact on the character of the Conservation Area, the setting of the curtilage listed Burghope Manor wall, and the surrounding non-designated heritage assets would be neutral.

Following the committee meeting on 23 November, and after hearing the Member debate, the conservation officer was asked for his views on an applicant led suggestion deleting the electric gates and turntable from the scheme. It was confirmed that there would be no heritage based opposition was to such amendments.

Wiltshire Council Ecologist – Supportive, subject to a condition, requiring the applicant/developer to undertake works in strict accordance with the ecological appraisal recommendations set out within Section 5 of the Preliminary Ecological Assessment and Emergence Survey for Bats by Johns Associates dated May 2016. The application site is not within or immediately adjacent to any site designated for nature conservation although it is within a core foraging area for greater and lesser horseshoe bats associated with the Bath & Bradford on Avon Bats Special Area for Conservation (SAC). However the modest nature of the proposed development, in ecology terms, is unlikely to result in loss of foraging for these species. A comprehensive bat survey of the buildings within the site has been carried out by Johns Associates which found no evidence of current or recent use of the site by bats for roosting. Recommendations are given in the subsequent report for precautionary measures in respect of nesting birds and for enhancement measures for bats. The completed survey work has been of a sufficient level to correctly identify the ecological context of the site and the likely effects of the development on key sensitive receptors. The Council's ecologist concurs with the conclusions stating that the development would unlikely result in negative impacts for any protected sites or species.

Wiltshire Council Tree Officer – No objections.

Wiltshire Fire and Rescue Service – Provided planning informative advice and guidance on the following matters:

- Recommendations identified under B5 of Approved Document B relating to The Building Regulations 2010
- Recommendations to improve safety and reduce property loss in the event of fire.

Wessex Water – No objections subject to agreements being reached between the applicant/developer and Wessex Water with respect to the following: Water supply and waste connections; S105a public sewers; and separate sewer systems will be required with no surface water connection permissible to the foul water system.

8. Publicity

A site notice was displayed along the site frontage on 15 July 2016 and the adjoining neighbours were individually notified.

Following the public notification processes, 24 letters of objection have been received and whilst several of the letters appreciate the need and possibility of renovating and remodelling the host property, the proposed extension to form a new dwelling has brought about the following local raised concerns:

- Detriment to Conservation Area and impact on Grade II listed property located nearby as well as several unlisted, but historic cottages;
- Overdevelopment of the site;
- The proposed development is not subservient to host property;
- Detrimental impacts on neighbouring properties amenity re. overlooking and overshadowing;
- Loss of garden – would become a car park with a proposed alien turntable feature;
- Loss of historic fabric – the historic boundary wall – Its removal would degrade the conservation area;
- Inappropriate gentrification;
- There is no need for more housing in the village;
- Highway safety concerns with a new access being proposed on a blind corner;
- There would be increased traffic and noise disturbance;
- The 30-minute traffic survey is not representative of traffic flow/volume and it underestimates the impacts;
- The scale, bulk, design and fenestration treatment would be out-of-keeping with the old village;
- If the properties are rented out, future temporary occupiers might not have the same respectful appreciation for the old village;
- Concern about the impacts on the established Yew tree;
- Unnecessary loss of wrought iron gates;
- Where will refuse bins be sited?
- The planning committee should visit the site before reaching a decision.

There was also 1 letter of support received as part of the public notification, which highlighted the following:

- The development would not be harmful to the Conservation Area;
- The boundary wall, along with others found nearby, is not of consistent good quality;
- There are various types of construction material found locally;
- There is local precedent set with rebuilding or setting boundary walling back;
- The garage identified for demolition would bring about a positive change to the conservation area;
- Having a turntable to assist with parking manoeuvres is not grounds for objection;
- The new property would offer a housing opportunity for families with school age children. It is reported that there is only one family in the conservation area with school age children. Having more family housing would support the school;
- The current restoration work taking place at the property is of a high standard; and the proposed development should be supported;

- If it is to be approved, imposing a condition requiring the use of grasscrete for the car parking would visually minimise the loss of green space.

9. Planning Considerations

9.1 Principle of Development - The application site is located within the limits of development of Winsley which is a designated large village in the adopted Wiltshire Core Strategy where there is a presumption in favour of sustainable windfall residential development opportunities (CP1 refers) to support the vitality of rural communities. The principle of a dwelling in this location is therefore acceptable provided that the impacts can be satisfactorily accommodated.

The impacts of the development proposal have been carefully appraised and the following sections deal with the issues in turn.

9.2 Impact on Conservation Area/Heritage Assets – 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). Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of designated Conservation Areas.

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 ... development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.*”

Paragraph 135 of the NPPF also stresses that “*the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*”

Core Policy 58 of the Wiltshire Core Strategy echoes the above national policy in seeking the protection, conservation and, where possible, enhancement of heritage assets. The subject property is not listed, but the building and its boundary walls are historic and examples of vernacular architecture within the village location and are therefore considered non-designated heritage assets. The designated heritage assets under consideration here are the Conservation Area and the Grade II listed Burghope Manor.

The Council’s conservation officer has commented that “*the proposal would not adversely affect the setting of the Manor itself... but there would be an effect on its south east boundary wall, which is a curtilage Grade II listed structure*”. The proposed new dwelling would be located on what would be the far end of a terrace away from the listed wall, and the proposed subservient form of development would result in no harm to the setting of the nearby listed structure.

In terms of significance, the prevailing character of this part of the lane and part of the Conservation Area, from the Limpley Stoke Road entrance through to the St Nicholas church, is one of vernacular houses with strong boundary features. The boundary treatments are mostly stone walls of differing appearance and heights approximately around the 1.5m to 1.8m mark along the lane, with some exceptions, including a number of breaches in the walls to provide car parking and garages. The application site is a private garden of an existing semi-detached property that faces onto the Bradford Road, a narrow lane that serves the historic core of the village. By proposing the new dwelling the existing house would become a mid-terrace property

and a terrace of three dwellings would be created. In the immediate area there are a number of terraced dwellings as well as semi-detached and detached dwellings – the plan produced within section 3 is useful in illustrating the spatial relationships and building blocks in this part of the village. Therefore the creation of a 3-property terrace would not be incongruous to this part of the village since there are several within close proximity to the site.

Officers submit that there would be sufficient space within the site to accommodate the new dwelling with adequate private amenity space and parking and turning provision duly allocated to each residential unit. The proposal would not constitute an overdevelopment of the plot and nor would it have a detrimental or harmful impact on the Conservation Area. The existing 2-bed dwelling would retain a garden to the front and back along with two car parking spaces. The proposed 3-bed dwelling would have a side garden, utilise the existing pedestrian access, as well as have two dedicated car parking spaces and the use of the shared access. In order to accommodate the proposed dwelling, the vehicular access would be re-positioned to allow for a more direct access to the main road, Limpley Stoke Road, rather than the existing access which directs traffic through the historic core of the village.

The design of the dwelling would replicate the wall and roof materials and details which characterise the existing semi-detached dwellings at No's 138 and 139. The new dwelling would have a reduced ridge height and would appear subservient to the host dwelling, whilst at the same time maintain the roof form of the two existing properties. By introducing a front door feature to the front elevation, the proposed development would mirror the existing dwelling; and thus, any views gained from the lane would see the new build as being complimentary and respectful of the existing property character. Hardwood windows to be painted would furthermore be respectful of the site's protected status. The south east (side) elevation would introduce two sets of French windows under a powder coated aluminium canopy. This would be at ground floor level, set back behind the existing boundary treatment of the site. This detail would nevertheless provide some elevation interest whilst allowing the dwelling to have a direct visual relationship with the garden.

From site inspections, officers duly note that there are a number of different window treatments within the Conservation Area of Winsley, In terms of the application proposals, the full length windows proposed for the existing property could be installed without planning permission. However, the replication of these for the proposed property would carry a consistent design across the newly created terrace. The use of such glazing is not at all unusual or inappropriate; and in terms of the local context, it is considered to be of a scale and quantity which would be complimentary to the Conservation Area.

The use of powder coated aluminium canopies and the mono-pitched roof over the single storey rear extension would be a modern interpretation of a traditional iron roofed addition. Given the modest size of the rear extension, this feature is considered to be acceptable in the Conservation Area. Conservation roof lights can be inserted using the property's permitted development rights and therefore the proposed roof lights illustrated for the host building does not require planning permission. The use of conservation roof lights for the proposed dwelling is acceptable.



Within the conservation area, parking can be seen outside of the boundary walls or behind modern garage doors as illustrated in the site photographs. The position of the site's existing vehicular access is captured on the upper right photograph. On the extreme right, a wooden gate post forms part of the opening.

The photo below illustrates the existing garage building which forms a part of the boundary wall and the site / road frontage which could be removed without the need for planning permission. The same applies to the proposed partial removal of the stone wall. As long as the wall is not removed in its entirety, no permission is required from the Council. Since the partial demolition works form part of the proposal however, the extent of the wall to be retained and be built up can be controlled by condition. The Conservation Officer has said that the works to the wall are not objectionable from a Conservation Area perspective.



The existing access would be closed, and the salvaged stone from the wall/garage removal should be used to build up the existing vehicular access. A condition is considered necessary to cover this.

The impact of this part of the work on the setting of the curtilage listed wall to Burghope Manor would not be detrimental. The lane is characterised by strong boundaries, as stated above, but there are of course openings within them all along the lane and therefore an opening at this point would not be out of character in general.

The existing wrought iron pedestrian gates which have been identified by some local residents/objectors as being worthy of retention are to be retained and would form part of the boundary treatment.

In order to ensure that the high quality plans are taken through to the development stage, it is recommended that planning conditions are imposed requiring the re-use of stone, to ensure that a sample stonework panel is constructed prior to any house-building works commence, in addition to seeking external joinery and rainwater product details. Providing the details are acceptable, the development would be compliant with Core Strategy policy and the NPPF.

As part of the consultation process, the Council's conservation officer has concluded that the character of the Conservation Area, the setting of the curtilage listed Burghope Manor wall, and the surrounding non-designated heritage assets would not be harmed by this proposed development, and any effects would be neutral. The proposals would therefore comply with the relevant criteria of CP58 of the Wiltshire Core Strategy and Section 66 and 72 of the Planning (Listed Building and Conservation Area) Act 1990.

The general area is known to have high archaeological potential and the Wiltshire and Swindon Historic Environment Records reveal that the proposed development site is situated within the postulated extent of a medieval settlement. However, the County Archaeologist has confirmed having no objection and has acknowledged that given that the development would be carried out within an existing residential garden where there is already evidence of disturbance via the creation of driveways and the formation of the nearby road, the proposal does not require any further archaeological investigation and it is considered compliant with CP58 and the NPPF.

9.3 Impact on the Neighbouring Amenity – Following initial overlooking concerns, the applicant submitted revised plans which removed proposed first floor windows on the rear elevation of the property and re-located a bedroom window onto the side elevation. The rear extension, whilst located close to the boundary would be of single storey; and no demonstrable harm would result. The two-storey extension to create the new residential unit has been carefully assessed taking into account separation distances to neighbouring properties and house orientation and the sun's path. Following this appraisal, no significant overbearing or overshadowing would result.

The site would retain sufficient space to accommodate on-site bin storage. The proposal is policy compliant with the relevant criteria of CP57 of the Wiltshire Core Strategy.

9.4 Impact on Highway Safety – Following extensive discussions with the Council's highways team, the proposed development is considered acceptable in highway safety terms. Whilst it is acknowledged that the local road network has constraints, it is accepted that along the unclassified Bradford Road (North), which provides road access to the site, vehicle volumes and speeds are extremely low, and generally traffic using the lane moves in low gears at approximately 10mph. It is furthermore submitted that the proposal would bring about a highway betterment overall in terms of relocating the vehicular access allowing vehicles to access and exit the site with less manoeuvres and the blocking up a constrained access point would direct traffic away from having to use the historic core of the village.

As directed by the NPPF, it is important to be mindful that paragraph 32 duly directs decision makers to appreciate that "*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*".

The highways team have duly appraised the submitted transport assessment which accompanies this application, have undertaken site visits and have concluded that the development can be supported.

In order to meet the Council's car parking standards, the host dwelling and the proposed new build property would each have 2 dedicated off-road car parking spaces in compliance with the Council's Parking Standards.

In response to local concern, the applicants' agent advises that deliveries of construction materials would be infrequent and of short duration. The garage would be demolished and new wall opening would be created at the outset, enabling deliveries to be made via a new access point. All sand/cement/blocks/timber would be delivered by small pick-up trucks that can reverse into the new opening. The existing access would remain open until the building works have been completed. This would enable construction vehicles to park on the site clear of the public highway. There may be limited occasions when delivery vehicles need to park on the highway adjacent to the property to offload materials, in particular deliveries of ready mix concrete. However, this would be very short-lived (generally around 15 minutes), and would be no different from the situation that occurs with the many other construction projects that are ongoing in the village. It is accepted that construction work does create additional vehicle movements and some nuisance, but this would be for a limited period of time only, and can be suitably controlled.

The applicant's agent has also confirmed that the existing dwelling would remain unoccupied until the completion of the works, as it would be impractical for it to be occupied whilst construction works are being undertaken. This would therefore provide additional space for construction vehicles to be parked on-site during the construction phase.

In conclusion, after an extensive appraisal and discussions, the proposed alterations to the vehicular access would improve the current arrangements at the site. Whilst the constraints of the local road network are duly acknowledged, the necessary parking can be provided and no highways objection has been raised. The proposal is therefore considered to comply with the relevant criteria of CP61 and CP64 of the Wiltshire Core Strategy, and the relevant paragraphs of the NPPF as well as the Wiltshire Car Parking Strategy.

9.5 Impact on Ecology - The application site is not within or immediately adjacent to a site designated for nature conservation although as noted by the Council's ecologist it is "*located within a core foraging area for greater and lesser horseshoe bats associated with the Bath and Bradford on Avon Special Area for Conservation (SAC). However the small size of the proposed development is unlikely to result in loss of foraging for these species*".

A comprehensive bat survey of buildings within the site was undertaken by Johns Associates which found no evidence of current or recent use of the site by bats for roosting. Recommendations are given for precautionary measures in respect of nesting birds and for enhancement measures for bats. Subject to a condition that these measures are carried out the Council's ecologist is satisfied with the conclusions of the report that "*development is unlikely to result in negative impacts for any protected sites or species*".

On the basis of this expert advice, subject to a planning condition, the proposal would comply with the relevant criteria of CP50 of the Wiltshire Core Strategy.

9.6 Other Matters - The Council's arboricultural officer has visited the site and is aware of the trees on site. He is satisfied with the works that have been carried out and raises no objection to the proposed development. As the plans indicate, the yew tree located near to the proposed vehicular access would be retained.

Comments received about the applicant's intention to let the properties, and concerns raised about them being too large or unaffordable due to the proposed high quality specification are not material planning issues and they should not influence the determination of the application.

Following the member question raised at the 23 November meeting about No. 138 becoming part of a 3-property terrace, the applicant commissioned Cobb Farr to advise upon any consequential or material valuation effects on the neighbouring property. After undertaking two visits and reviewing the plan submission, Cobb Farr residential advise that there would be no adverse valuation effect on No. 138 by creating a terrace of 3 properties. Moreover, it is submitted that the value of No. 138 could in fact be enhanced due to the very poor condition of No 139 (at the time of purchase) and taking into account the extremely high level of refurbishment that is being proposed and undertaken.

10. Conclusion (The Planning Balance) - The proposed development is considered to be an acceptable windfall development within the established large village limits of Winsley. The proposed additional house would not harm the character of the conservation area/heritage assets and would be in keeping with the character of the host building and there would be sufficient standard of amenity for future occupiers. The development would not result in significant detriment to neighbouring amenities. The proposal would provide an improved vehicular access and sufficient on-site parking would be provided in line with Council standards.

The proposal is in accordance with the policies of the development plan and accordingly permission is recommended.

11. RECOMMENDATION – 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 development hereby permitted shall be carried out in accordance with the following approved plans:

Existing Site Plan received 13 July 2016; Existing Context Site Plan received 13 July 2016; Existing Ground Floor Plan received 14 July 2016; Existing First Floor Plan received 13 July 2016; Existing South-East Elevation Plan received 13 July 2016; Existing South-West Elevation Plan received 13 July 2016; Existing North-East Elevation Plan received 13 July 2016; Proposed North-East Elevation Plan received 19 October 2016; Proposed South-East Elevation Plan received 19 October 2016; Proposed Cross Section received 19 October 2016; Proposed South-West Elevation Plan received 19 October 2016; Proposed First Floor Plan received 19 October 2016; Proposed Ground Floor Plan received 19 October 2016; Proposed Site Plan received 29 September 2016; Plot Sub-Division Plan received 4 November 2016.

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

3. The mitigation measures recommended in Section 5 of the Preliminary Ecological Assessment and Emergence Survey for Bats by Johns Associates dated May 2016 shall be carried out in full accordance with the approved timetable detailed in the Ecological Assessment.

REASON: To mitigate against the loss of existing biodiversity and nature habitats.

4. No works shall commence on site above ground floor slab level (except for the demolition works and site preparation including the foundations) until details of all new or replacement rainwater goods (which should be of cast metal construction and finished in black) and their means of fixing to the building have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

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

5. No works shall commence on site above ground floor slab level until details of all new external window and door joinery and/or metal framed glazing have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include depth of reveal, details of heads, sills and lintels, elevations at a scale of not less than 1:10 and horizontal/vertical frame sections (including sections through glazing bars) at not less than 1:2. The works shall be carried out in accordance with the approved details.

REASON: The application contains insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with

the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of preserving the character and appearance of the Conservation Area

6. No external stonework shall be constructed on site, until a sample panel of stonework, not less than 1 metre square, has been constructed on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

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

7. The dwellinghouse hereby permitted shall not be occupied until the access and parking spaces have been completed in accordance with the details shown on the approved plans. The access and parking areas shall be retained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

8. The dwellinghouse hereby permitted shall not be occupied until the existing vehicular access along the site frontage has been blocked up using reclaimed stonework from the on-site wall/garage demolition and the finished wall shall match the existing bedding of stone, coursing, type of pointing and mortar mix.

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

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the eastern rear elevation above ground floor ceiling level of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

10. The dwelling hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. Within 6 months of the dwelling being occupied evidence shall be submitted to and approved in writing by the local planning authority certifying that the stated level or its equivalent has been achieved.

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

INFORMATIVE TO APPLICANT:

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

information or to download the CIL forms please refer to the Council's Website www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No. 3

Date of Meeting	14 December 2016
Application Number	16/07872/FUL
Site Address	Greenacre House, Cleveland Gardens, Trowbridge BA14 7LX
Proposal	Creation of 5 new dwellings and incorporation of single bed cottage/flat within existing building.
Applicant	Domus Fay Ltd
Town/Parish Council	TROWBRIDGE
Electoral Division	TROWBRIDGE ADCROFT – Cllr Nick Blakemore
Grid Ref	386343 158637
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

This application is brought to Committee at the request of Councillor Blakemore for the consideration of the visual impact upon the surrounding area, the relationships with adjoining properties, as well as design, highway and parking impacts.

1. Purpose of Report

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

2. Report Summary

The report assesses the proposal in the light of the principle of the development, access/parking impacts, the design and neighbouring amenity impacts and recommends that planning permission should be granted.

Neighbourhood Responses: 9 neighbour objections were received.
Trowbridge Town Council: No objection.

3. Site Description

The application site is an irregular shaped plot located on the north side of Cleveland Gardens within the established two limits of Trowbridge. The site measures some 1500m² and is occupied by a property known as Greenacre House which, whilst not listed or located within a Conservation Area, is a substantial stone built property. The main 2-3 storey existing building is occupied by 4 flats, with an additional residential unit contained within a rectangular single storey addition. Along the north east and south east boundaries of the site, there are two rows of vacant garages in poor condition. The surrounding area and neighbouring properties comprises varying house/property types comprising chalet bungalows, two storey houses and flats above commercial units forming a two-storey block (identified by the property no's of 101-111) located on the junction of St Thomas Road and Cleveland Gardens, which adjoins the application site's south-eastern boundary.



4. Planning History

There have been no recent planning applications directly relevant to the identified site but on the adjacent land, planning permission was granted in February 2016 under reference 15/12282/FUL for the conversion of a former nursing home to 7 residential units with the simultaneous change of use from Class C2 to Class C3. The approved site plan and a site photo pursuant to the 15/12282/FUL application are reproduced below for reference purposes:



5. The Proposal

As illustrated on the proposed site plan which is reproduced on the next page, the application proposal seeks full planning permission for the erection of 5 additional dwellings. To accommodate the proposed development, the existing residential unit contained within the single storey south-eastern side addition attached to the Greenacres House would be demolished and replaced by three 3-bed new dwellings attached to the main building. The ridge level to the extension would be 9.3m and the building would occupy a footprint of 15.2m x 8.9m (this would replace the existing footprint of 12m x 5.6m of the existing extension). Materials would match the existing building, an aspect which is discussed further in the assessment below. The plots to each of the 3 new dwellings would average 115m² in extent each (including the parking allocations to the street frontage) with private rear garden spaces of some 35m² each (7m x 5m)

In addition, two 1½ storey 2-bed semi-detached dwellings with a combined footprint of 8.1m x 12m are proposed to be constructed to the rear of the site adjacent to the northern boundary. The ridge height to this building would be 8.1m. Private amenity space areas to these two properties would be 55m² and 47m².

The proposals also involve the refurbishment and internal re-arrangement of the existing flats within the building, to include one flat as replacement for the demolished unit. The development would include 17 on-site parking spaces, and would provide new garden spaces to the new houses.



6. Planning Policy

The **Wiltshire Core Strategy** (WCS) was adopted on 20th January 2015. The following Core Policies (CP) are relevant when assessing this application.

Core Policy 1: Settlement Strategy; Core Policy 2: Delivery Strategy; Core Policy 3: Infrastructure Requirements; Core Policy 29: Spatial Strategy for the Trowbridge Community Area; Core Policy 41: Sustainable Construction and Low Carbon Energy; Core Policy 50: Biodiversity and Geodiversity; Core Policy 51: Landscape; Core Policy 57: Ensuring High Quality Design and Place Shaping; Core Policy 58: Ensuring the Conservation of the Historic Environment; Core Policy 60: Sustainable Transport

When adopting the WCS, some policies continued in force from the West Wiltshire District Local Plan (1st Alteration) (WWDLP). Those which are relevant to this application include:

U1a (Foul Drainage/sewerage treatment) U2 (Surface Water Disposal).

The following are also material to the assessment of this application:

- National Planning Policy Framework 2012
- Planning Practice Guidance
- Wiltshire Car Parking Strategy

7. Consultation Responses

Trowbridge Town Council - No objection subject to there being no unacceptable loss of neighbouring amenity.

Wiltshire Council Highway Officer - The highway officer initially raised concerns with regard to the submitted parking layout and provision. This resulted in the submission of revised plans for parking and turning spaces to the front and rear of the site. Following a fresh consultation, the highway officer confirmed their satisfaction with the revised proposals. This aspect is discussed further in the appraisal section, below.

Wiltshire Council Ecologist - The Ecologist advises that the site is in a relatively 'green' urban location, close to known bat roosts. However, the part of the building proposed for works does appear to be well sealed and relatively modern, and is located next to the road, and thus is unlikely to offer potential opportunities for roosting bats. The vegetation on site appears suitable for nesting birds. The garages would not be suitable habitat and demolition can be covered by an informative. No ecological survey work is required prior to the determination of this application. However a planning informative is recommended.

Wessex Water – No objection. New water supply and waste water connections would be required to serve this proposed development. A public water main is shown on record plans within the land identified for the proposed development and no building would be permitted within the statutory easement width of 3 metres from the pipeline without agreement from Wessex Water.

8. Publicity

The application was advertised by a site notice and neighbour notification letters. The deadline for any correspondence was 30 September 2016.

9 letters of objection have been received with the following comments (summarised):

- Loss of light and privacy to No.115 St Thomas Road and 1 and 2 Cleveland Gardens due to extended/new buildings;
- Security arrangements would be needed during construction;
- Potential harm to the roots of a neighbour's tree during construction processes;
- The boundary of No. 115 St Thomas Road runs along the area that is taken by 5 demolished garages which form a large part of the boundary wall. Views would be open to and from that property. Also, there is some concern about potential damage to a pathway next to boundary. Assurances from the developer are sought to accept liability for any such damage and agree to any consequential and necessary replacement wall/fence would be put in place;
- Parking problems on adjacent roads;
- Potential presence of bats and birds;
- Lack of Design and Access Statement;
- Overdevelopment of the site;
- Inadequate on-site parking;
- Increased volume of traffic resulting in highway danger;
- If approved, there could be future additional subdivisions into flats;
- Noise nuisance;
- Additional impact of the new development granted under 15/12282/FUL; and
- The site owner tried to remove mature trees over which there is a covenant.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.1 The Principle of the Development - The site is located within the established limits of development of Trowbridge where the principle of residential development of this nature is supported. The proposal is considered to comply with CP1, CP2 & CP29. However, the details of the proposal must be evaluated in terms of the relevant development plan policies set out within section 6 of this report.

9.2 Highways and Parking Impacts - As noted above, the issue of parking and access have been the subject of extensive discussion between the highway Officer and the applicant's agent. Following the initial expressed concerns, revised plans were submitted to the highway officer's satisfaction promoting a revised parking layout allocating two parking spaces for each of the new proposed dwellings, in addition to allocated spaces for the existing flats. No highway based objection is therefore raised. Also, at the case officer's request, evidence has been submitted confirming that right of access exists to the bays to the rear and front of the property.

It is furthermore important to recognise that the application site is located with an urban location in close proximity to bus stops and with the added convenience of local services and amenities and the town centre being within a reasonably convenient distance for walking or cycling. Trowbridge is a designated principal settlement within the WCS settlement hierarchy offering extensive employment, education and leisure opportunities and a good public transport service to neighbouring settlements. As referenced above, the site is close to a rank of shops (including a convenience goods store) located to the immediate south east of the site, on the adjacent land. The planning and highway officers both consider the site to be a highly sustainable location and suitable for residential development. Should the committee be minded to grant planning permission, conditions in relation to the parking spaces, the access and surface water drainage are recommended.

9.3 Design Matters - This application site is not located within a Conservation Area and the building does not have any special designation. The surrounding area is characterised by a residential estate of relatively modern (1960's) appearance and includes detached, semi-detached and apartment dwellings above a rank of shops to the south east. The building itself is unusual in this setting, in part being 3-storeys in height with some gothic architectural detailing. The principal materials are stone under tiles and the building currently comprises 4 flats and one attached dwelling contained within an extension to the south east, which protrudes forward of the original building. The extension element would be demolished as part of the application proposals.

The proposed extension of the existing building has been designed to ensure it is in keeping with the existing structure, by retaining the gothic styled architecture and having an entrance that reflects the current design theme of the fairly ornate existing entrance to the flats to the rear of the building. Revised plans have also resulted in the proposed three unit extension to be constructed onto the south east gable of the subject property having a dropped ridge level to provide a degree of subservience. The design reflects that of the host building and is considered acceptable in terms of the impact on the host property and the street scene. The two modest semi-detached dwellings which are proposed to be constructed to the rear of the site would also be built using materials reflecting the main building and complimentary in appearance, albeit it is appreciated that they would not be visual in the street scene.

In terms of the proposed density of the development, the site sits within a context of the flats over the shops (found to the south east) and a more dense development of seven residential units on the 900m² site of the converted Care Home to the north west, which constitutes as 128 units/ha. The proposal placed before the committee would comprise a total of 10 units (4 existing flats with 5 dwellings proposed and an additional flat proposed as compensation for the demolished residential unit) on 1500m² site representing 66 units/ha, including the flats). In view of the above, the proposal is considered acceptable in design terms, taking into account the local setting.

9.4 Neighbouring Amenity Impacts - Core Policy 57 of the WCS requires inter alia that development must consider “... *the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself...*” and also meet “...*the requirements of Core Policy 61 (Transport and New Development)*”.

The highway and design issues are discussed above, but also have a bearing on the objections raised by neighbours. Access and on-site parking are to the satisfaction of the highway officer and would be unlikely to give rise to substantive issues that would justify refusal of planning permission. On highway/transport impacts, due consideration must be given to Para 32 to the NPPF which clearly states that proposals for development “...*should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*”. In this particular case, no such level of harm has been identified or evidenced and as a consequence, the application should be considered acceptable in highway terms.

It is recognised that local objections have been raised pursuant to the loss of light and privacy to neighbouring properties. With regard to objectors on the opposite side of Cleveland Gardens, the dwellings are at least 25m distant, separated by the public road in the intervening space. This is a normal relationship on estates of this nature. In recognition of this, officers are satisfied that there would be no unacceptable loss of privacy to such properties. The objector’s dwellings located along Cleveland Gardens are furthermore positioned to the south of the application site, meaning that no substantive overshadowing or loss of direct sunlight would occur.

One neighbour occupying a property to the east (at No. 115 St Thomas Road) raises objections regarding loss of light and privacy from the proposed semi-detached dwellings to be constructed along the rear northern part of the site. In that instance, there are no windows serving habitable rooms illustrated in the plans submitted for the proposed residential unit which would face No 115 with obscured glazed bathroom windows only facing the end of the garden space, which includes the tree (and its roots) duly referenced by the objector, which provides a level of screening. The separation distance also means that there would be no unacceptable overshadowing/loss of light issues to rooms in that dwelling. The south-east facing bedroom dormer windows would be some 19m from the windows associated to the upper level of the rear of the dwelling at No. 115, a property with a garage on the boundary and the nearest upstairs windows would only be seen at an obscure angle, with no direct intervisibility. There is also a dwelling to the east of the site behind the shops. However, no upper-level habitable rooms would be subject to loss of privacy (bathroom/WC windows are at that level). Below that there is a kitchen. The neighbour in that dwelling did not respond to the neighbour notification exercise.

With regard to the additional neighbour objections, concerns relating to noise and nuisance whilst fully appreciated, would be temporary in nature, and associated with the construction phase(s) with the residential use upon completion being wholly compatible with the surrounding area. A construction management plan, as recommended, would ensure the

applicant/developer submits details regarding construction hours, including deliveries to ensure the development proceeds having due regard to residential amenity.

The issue of boundary treatments upon demolition of the garages on the boundary with No.115 St Thomas Road could be addressed by way of a landscaping plan condition for the site as a whole, to include boundary details. The density of the site is discussed above, and does not give rise to substantive grounds for refusal on over development given the surrounding context. The trees on site are not subject to any TPOs. The “pollarded” tree referred to would be retained although a smaller tree would be removed. The existing building housing the flats at the time of writing is in the process of repair and refurbishment, with the cottage to be demolished clearly still in sealed structural condition and not giving rise to the likelihood of occupation by bats/birds. A Design and Access Statement has been submitted with the application which has been duly appraised. With regard to bats and birds, the Council’s ecologist is satisfied that no surveys are necessary, but has recommended an informative. The Leylandii tree located in No, 115’s garden tree is set back from the boundary and the proposed development would be well outside of its canopy. However, the proposed landscaping condition should include a requirement that any nearby trees which could be affected by construction processes are suitably protected during development.

In view of the above it is considered that there would be no unacceptable harm to neighbouring amenity arising from the scheme.

9.5 Other Matters - WCS Core Policy 41: Sustainable construction and low carbon energy requires that new dwellings achieve a level of Energy Performance at or equivalent to Level 4 of the Code for Sustainable Homes. Members are advised that any grant of planning permission should include a condition to that effect.

The Council has an adopted CIL regime, so the proposal may generate a limited amount of income towards infrastructure requirements across the county, and the construction would be a short-term economic benefit.

10. Conclusion (The Planning Balance)

The proposal accords with WCS Policy and the design is considered acceptable in terms of the host building and the surrounding context. The proposed development would provide an additional 5 dwellings in a wholly sustainable location and refurbish existing flats and bring them back into use, without unacceptable harm to local amenity. Planning permission is therefore recommended, subject to planning conditions.

11. RECOMMENDATION - Approve subject to the following conditions:

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

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

- 2 Notwithstanding the description in the application form, the materials to be used in the construction of the external surfaces of the extension to the existing building hereby permitted shall match in material, colour and texture those used in the existing building, including the use of matching stone.

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

the area.

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

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

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

- location and current canopy spread of all existing trees and hedgerows on the land;
- full details of trees to be retained, together with measures for their protection, as well as the protection of any other tree on neighbouring property that may be affected, in the course of development;
- finished levels;
- means of enclosure;
- car park layout; and
- all hard and soft surfacing materials;

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

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

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

- 6 No part of the development hereby permitted shall be first brought into use until the access, turning area and parking spaces have been completed in accordance with

the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

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

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

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

- 8 No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use until surface water drainage has been constructed in accordance with the approved scheme.

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

- 9 The new dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. The dwelling shall not be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

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

- 10 Before the development hereby permitted is first occupied the upper level windows in the north east elevation to the new semi-detached dwellings 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.

No development shall commence on site (including any works of demolition), until a Construction Management Plan, which shall include the following:

- 11 a) the parking of vehicles of site operatives and visitors;
b) the loading and unloading of plant and materials;
c) the storage of plant and materials used in constructing the development;
d) the measures to control the emission of dust and dirt during construction;
e) the hours of construction, including deliveries;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: To minimise detrimental effects to the neighbouring amenities, the

amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

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

2326/SP Rev C received on 6 December 2016; 2326/1 Rev C received on 8 November 2016; 2326/2 received on August 2016; 2326/3 received on August 2016; 2326/4 received on August 2016; 2326/5 received on August 2016; 2326/6 received on August 2016; 2326/7 received on 28 October 2016; 2326/8 B received on 8 November 2016; 2326/9 A received on 28 October 2016; 2326/10 A received on 28 October 2016; 2326/11 A received on 28 October 2016; 23126/12 A received on 28 October 2016; 23126/13 A received on 28 October 2016; 23126/14 A received on 6 December 2016; 23126/15 A received on 6 December 2016

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

INFORMATIVES TO APPLICANT:

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

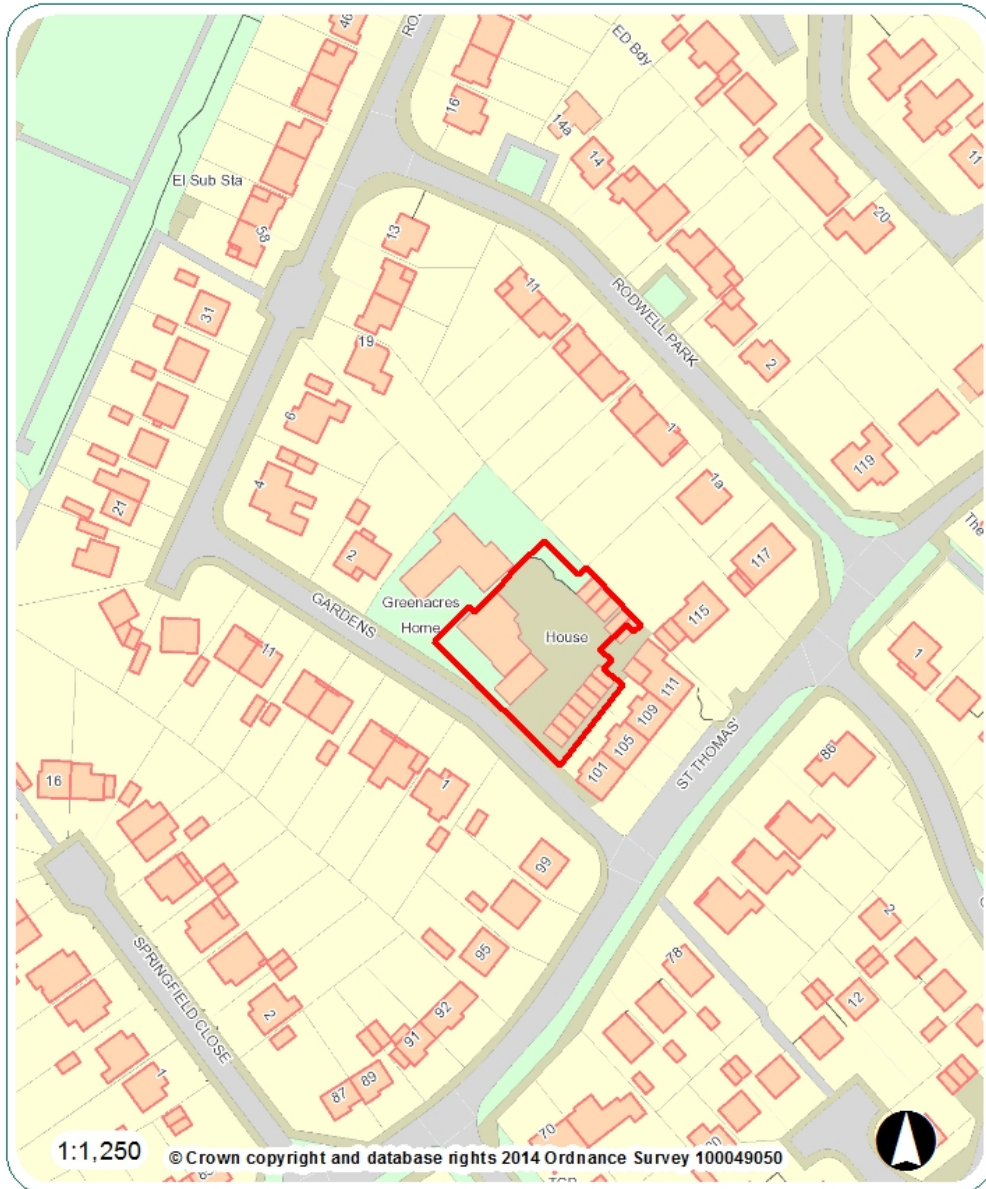
2. The applicant is advised to contact Wessex Water with regard to new connections and in respect of any agreement that may be required with regard to the protection of existing infrastructure.

3. There is a low risk that bats may occur at the development site. Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected all times by the Conservation of Habitats and Species Regulations 2010 (as amended) even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact the Bat Advice Service on 0845 1300 228, email enquiries@bats.org.uk or visit the Bat Conservation Trust Website.

4. The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (Section 1), it is an offence to remove, damage and destroy a nest of any wild bird while that nest is in use or being built. Planning permission for a development does not provide a defence against prosecution under this Act. Trees, scrub and other vegetation, such as dense ivy, are likely to contain nesting birds between 1st March and 31st August. This type of vegetation is present on the application site and should be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

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BA14 7LX



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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No.4

Date of Meeting	14 th December 2016
Application Number	16/05154/FUL
Site Address	Land at Sparrow Road, Southview Park, Trowbridge, BA14 7FS
Proposal	Provision of 50 affordable homes over 4 land parcels within the Southview Park housing development.
Applicant	Anthony Dixon
Town/Parish Council	TROWBRIDGE
Electoral Division	TROWBRIDGE PARK – Councillor Drewett
Grid Ref	386317 157073
Type of application	Full Planning
Case Officer	Steven Sims

Reason for the application being considered by Committee

In accordance with the Council's 'Scheme of Delegation Specific to Planning', this application is brought to committee because the scheme is submitted by Wiltshire Council and objections have been received raising material planning considerations. In addition the scheme was referred to committee by Councillor Drewett.

1. Purpose of Report

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

2. Report Summary

The key issues for consideration are:

- Principle of development
- Impact on the character and appearance of the area
- Impact on the amenity of neighbouring residents
- Impact on the amenity of proposed occupants
- Highway issues
- Ecology issues
- Impact on Heritage Assets (archaeology)
- Drainage issues
- Crime prevention
- Other issues
- Planning obligations

3. Site Description

The application site covers approximately 0.77 hectares of land consisting of four parcels of land located off Sparrow Street within the Southview Park development. The four land parcels are bounded by existing dwellings except land parcel 6 which is bounded by the rail line to the southwest and land parcel 3 which is bounded by a tributary of the River Biss (Drynham Brook) and open fields to the east. The parcels of land are currently unused areas of mainly poor quality grass land enclosed by fencing.

The Ashton Park urban extension lies to the east of the Southview Park site and a public right of way (PROW) lies to the north of land parcels 2 and 3. There are no heritage assets located

in close proximity to the site and the nearest listed building is South View Farmhouse, Drynham Road located 80 metres to the west of land parcel 6.

4. Planning History

W/08/03010/FUL	Application to vary to condition 8 of permission 04/01063/OUT relating to construction of access road – Approved
W/08/00896/REM	Residential development, open space, equipped children’s play area, provision of landscaped flood area and associated infrastructure – Approved
W/07/01908/REM	Erection of 140 dwellings, including infrastructure – Approved
W/04/01063/OUT	Outline application for residential development, recycling mini bank, open space, equipped children’s play area, provision of landscaped flood protection area and associated infrastructure – Approved
W/84/01009/OUT	Residential development with associated roads, sewers and open spaces (area B) - Refused
W/83/01235/OUT	Residential development – Refused, appeal withdrawn

5. The Proposal

This is a full application for the erection of fifty affordable dwellings on four parcels of land within the Southview Park residential development.

The development would provide 50 affordable dwellings. 31 dwellings would be rented units while 19 would be units in shared ownership. Of the 50 units provided, 32 would be houses while 18 would be flats. The scheme would provide 15 1 bedroom units, 23 2 bedroom units and 12 3 bedroom units. Land parcel 2 would accommodate 18 units, parcel 3 10 units, parcel 4 10 units and parcel 6 12 units. 64 off road parking spaces are proposed in total and 11 visitor parking spaces.

The four parcels of land which are the subject of this application were originally delivered to West Wiltshire District Council by Wainhomes. Outline permission was granted in 2006 for ‘residential development’ (04/01063/OUT) and details of the scheme were approved under reserved matters application W/08/00896/REM approved in 2008. The site therefore already benefits from an extant planning permission for housing.

6. Planning Policy

Wiltshire Core Strategy (WCS) – Relevant policies include: Core Policy 1: Settlement Strategy; Core Policy 2: Delivery Strategy; Core Policy 3: Infrastructure requirements; Core Policy 29: Spatial Strategy – Trowbridge Community Area; Core Policy 41: Sustainable construction and low-carbon energy; Core Policy 43: Providing affordable housing; Core Policy 50: Biodiversity and geodiversity; Core Policy 51: Landscape; Core Policy 52: Green Infrastructure; Core Policy 57: Ensuring high quality design and place shaping; Core Policy 58: Ensuring conservation of the historic environment; Core Policy 61: Transport and Development; Core Policy 62: Development impacts on the transport network

West Wiltshire District Local Plan (saved policies) - U1a Foul Water Disposal

Supplementary Planning Guidance - Wiltshire Local Transport Plan 2011- 2026

National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)

1. Building a strong, competitive economy
4. Promoting sustainable transport
6. Delivering a wide choice of high quality homes
7. Requiring Good Design
11. Conserving and Enhancing the Natural Environment
12. Conserving and Enhancing the Historic Environment

7. Summary of the Consultation Responses

Trowbridge Town Council: No objection.

Wiltshire Highway Authority: No objection subject to condition

Wiltshire Council Drainage Engineer: No objection subject to conditions

Wiltshire Council Housing - Service Development & Enabling Team: As this proposed scheme will be providing 100% on-site affordable housing and meeting an affordable housing need in this location, the Housing Enabling Team can confirm that they are supportive of this application.

Wiltshire Council Public Arts Officer: Supportive, subject to contribution of £15,000 to public art.

Wiltshire Council Landscape & Arboricultural Officer: Recommends imposition of a condition in relation to landscaping

Wiltshire Council Archaeology: No objection subject to condition

Wessex Water: No objections.

'Please refer to the attached extract from our records showing the approximate location of our apparatus within the vicinity of the site. The applicant has previously submitted plans of proposed on site sewers in this area which will be laid by the developer and adopted by Wessex Water (subject to agreement and maintenance period).'

Wiltshire Council Urban Design Officer: No objection to amended plans

Wiltshire Council Ecology Officer: Supportive.

Wiltshire Council Environmental Control & Protection: No objection subject to condition requiring a noise impact assessment and a scheme for protecting the proposed dwellings and their curtilages from railway noise

Wiltshire Premises Team School Buildings & Places (Education): At the current time there is a lack of primary school places in Trowbridge and the Council is actively reviewing options for the provision of a new school site and whether any further expansion of existing schools is possible.

Wiltshire Council Waste Management: No objection subject to section 106 contribution of £4550 towards the provision of waste and recycling containers

Wiltshire Fire & Rescue Service: Standard advice and guidance provided in order to improve the health and safety of the development and reduce property loss in the event of fire

8. Publicity

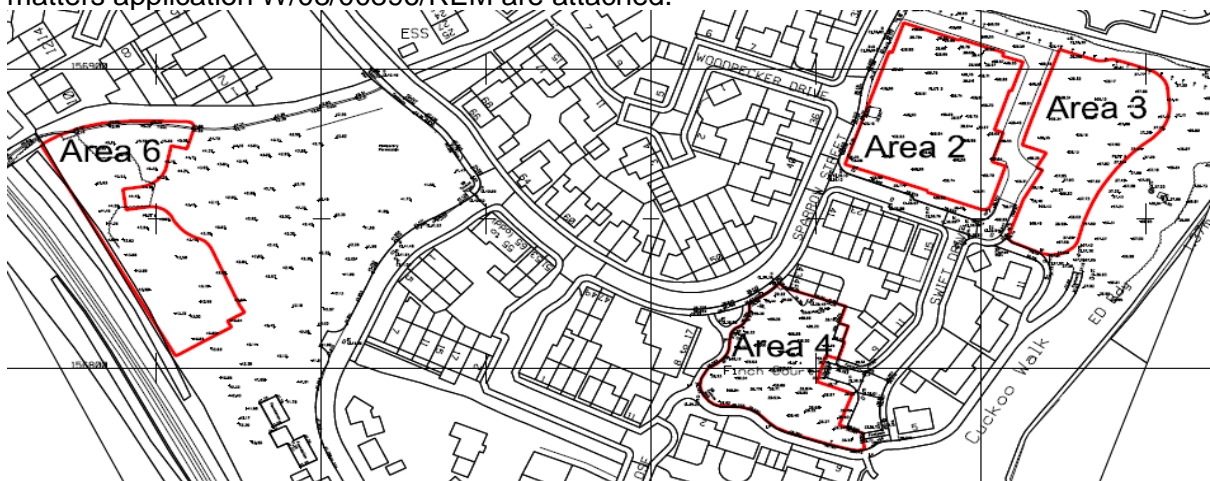
The application has been publicised in the local press and via the display of site notices and letters sent to properties within close proximity to the site. As a result of the aforementioned publicity, 7 representation letters have been received raising the following concerns:

- Prefer the areas to remain free of housing
- Overlooking/loss of privacy
- Location of proposed bins
- Increase in foot traffic
- Parking issues
- Estate and management fee upkeep issues
- Use of greenspace should be for resident only
- Antisocial behaviour from some residents
- Issues of litter/rubbish

9. Planning Considerations

9.1 Principle of Development - Following a public inquiry, outline application (ref 04/01063/OUT) for 'residential dwellings', with all matters reserved except access, was granted permission by the Secretary of State (SoS) in September 2006 on Land at Southview, Trowbridge. This application related to an area of land approximately 11.6 hectares in size south of and adjacent, the boundary of Trowbridge. The application was decided by the SoS following a recommendation for approval by the then West Wiltshire District Council and objection from the then Wiltshire County Council (on grounds that the development would lead to an oversupply of housing). In 2008 a reserved matters application (ref W/08/00896/REM) was approved for the appearance, landscaping, layout and scale of 300 dwellings at Land at Southview, Trowbridge. Development for housing on the Southview Park site has commenced and is well advanced and the permission is extant.

This current application seeks to revise the design and layout of 50 dwellings on land parcels numbered as 2, 3, 4 and 6 as originally approved under reserved matters application W/08/00896/REM. Because the permission is extant, residential development could commence on these land parcels in accordance with details approved under application W/08/00896/REM without applying for any additional permission. However, this application seeks to modify the design and layout of the approved dwellings as the land has changed ownership from the developer to the Council. For comparison copies of the proposed plans for the layout of dwellings on land parcels 2, 3, 4 and 6 and those approved under reserved matters application W/08/00896/REM are attached.

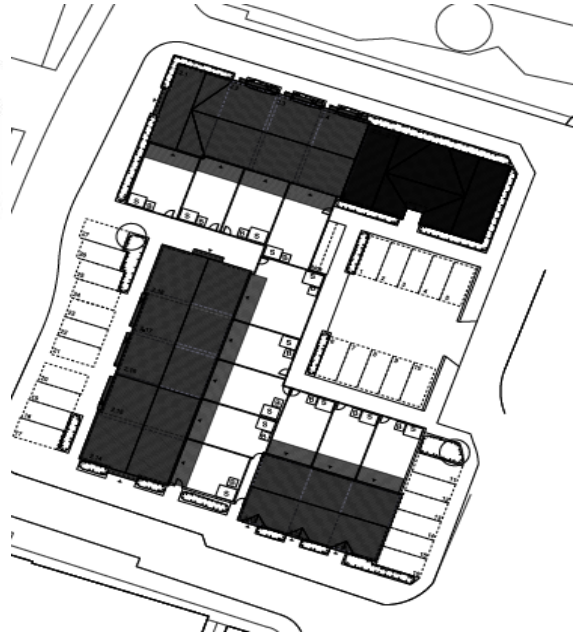


Land parcel 2

Consented W/08/00896/REM



Proposed 16/05154/FUL

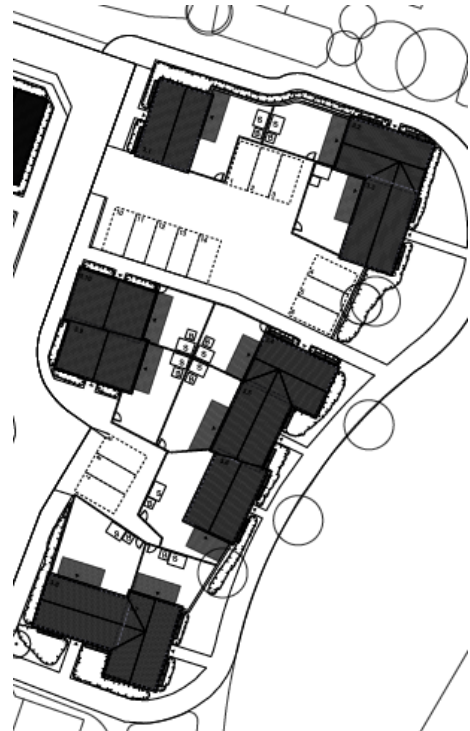


Land parcel 3

Consented W/08/00896/REM



Proposed 16/05154/FUL

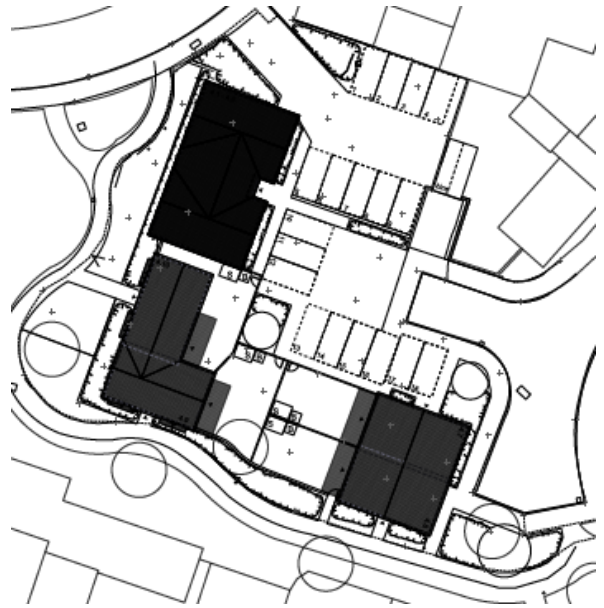
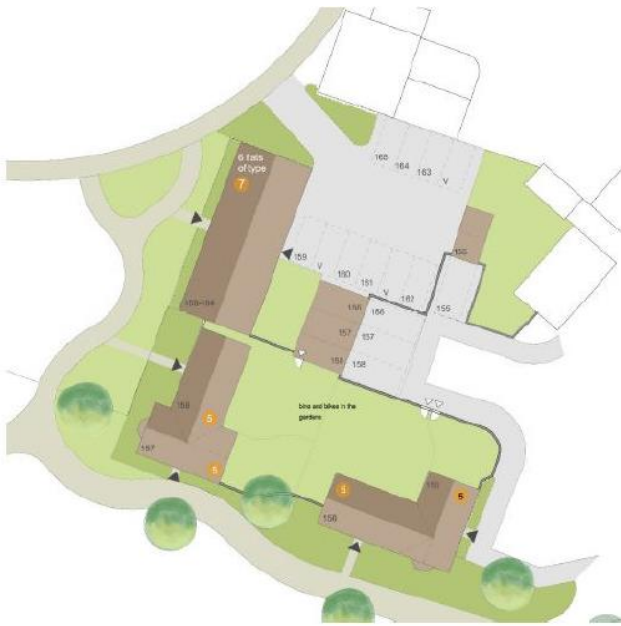


Land parcel

4

Consented W/08/00896/REM

Proposed 16/05154/FUL



Land parcel 6

Consented W/08/00896/REM

Proposed 16/05154/FUL



As the site lies within the limits of development, and has a valid extant planning permission, the principle of residential development is acceptable.

9.2 Impact on the character and appearance of the area - Core Policy 51 'Landscape' outlines that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character. The policy requires

applications to demonstrate how development proposals conserve and where possible enhance landscape character through sensitive design, landscape mitigation and enhancement measures. Core Policy 57 'Ensuring High Quality Design and Place Shaping' states development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality and must, amongst others, relate positively to its landscape setting and the exiting pattern of development and respond positively to the existing townscape and landscape features in terms of building layouts, built form, mass and scale to effectively integrate the building into its setting.

The parcels of land are mainly areas of shrub and grass enclosed by fencing. Land parcels 2 and 3 are bordered by hedgerows and trees to the north and east while land parcel 6 is bordered by hedgerows and trees to the west adjacent the rail line.

The Council's Urban Design Officer provided a series of recommendations on design and layout which have been incorporated into the revised design. A mixture of dwellings types is proposed, including terraced, semi-detached and residential flats of 2 or 3 stories in height. Dwellings range in size from 1 to 3 bedrooms. Dwellings would use a combination of red brick and cream render on elevations which would match materials used on adjacent buildings. Concrete roof tiles would also match those on adjacent properties. The buildings have been designed to avoid blank elevations and dominant features by use of doors and windows while providing overlooking of shared open spaces and parking areas. Where possible the front doors of dwellings face out onto the street while gardens are located to the rear. Hedges, fences and walls have been used to provide boundaries and defensible areas.

There are hedgerows to the north of land parcels 2 and 3 and to the east of the land parcel 3. These lie outside the red line boundary of the application site and would not be affected by the development. Some hedgerow and shrubs would be removed in the western section of parcel 6 adjacent the rail line. However these hedgerows are considered species poor and their removal would not result in any significant harm to landscape character. Some additional planting is proposed throughout the parcels of land mainly in the form of boundary hedgerows and a few trees. A landscape condition would be attached to any approval requiring details of protection methods for adjacent trees and new planting.

The area of open space to the east of land parcel 3 would not be impacted by the development. In addition the scheme involves no loss of open space because the development occurs on land approved for dwellings under the reserved matters application (W/08/00896/REM).

The proposed layout of the development therefore reflects the existing pattern of development in the area and materials used in the proposed dwellings would match those used in the adjacent properties. The dwellings have been designed to provide an element of continuity with the approved scheme while improving on the design and layout of the original scheme. The development would therefore have no harmful impact upon landscape character or appearance of the area and the scheme complies with Core Policy 51 and Core Policy 57 of the Wiltshire Core Strategy.

9.2 Impact on the amenity of neighbouring residents - Core Policy 57 'Ensuring High Quality Design and Place Shaping' requires developments to have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution (e.g. light intrusion, noise, smoke, fumes, effluent, waste or litter).

The separation distance between the front of properties on the north side of land parcel 2 and the rear garden of No. 19 Sparrow Street is just over 10 metres. However the rear garden of

No. 19 Sparrow Street is already directly overlooked by adjacent properties therefore the scheme would not result in additional overlooking or loss of privacy to residents of this property.

Although the scheme involves the erection of flats at land parcel 4 (house No. 4.1 to 4.6 (plan No. 012 rev E)) which would result in overlooking of adjacent rear gardens at properties fronting Swift Drive and in particular No. 9, these properties are already overlooked by existing dwellings. In addition the proposed layout is very similar to that approved under the reserved matters application (W/08/00896/REM), in terms of the location of the flats on this parcel of land, which is a material consideration when dealing with the impact of the current scheme.

The houses fronting the highway to the east and three storey block of flats in the north section of land parcel 6, due to their orientation in relation to properties to the east (still under construction at the time of writing this report), would not result in additional overlooking or loss of privacy to the dwellings to the east of parcel 6. The separation distance between the rear (north facing) elevation of the proposed flats and rear (south facing) elevation of existing properties fronting Lamb Ale Green is approximately 17-18 metres. Although this would result in some overlooking of the rear gardens of these properties from the proposed flats, these properties are already overlooked by existing dwellings to the east and west and the proposed development would not result in additional overlooking.

The separation distance between the front elevations of proposed dwellings facing existing dwellings within the Southview Park development is between approximately 10 and 20 metres. Although this would result in some additional overlooking where properties face one another, the scheme has been designed to avoid such wherever possible. The proposed development is high density and similar separation distances exist within the existing Southview Park development.

As highlighted in section 9.1 'Principle of development' the proposed development in terms of its layout and the design and height of buildings is very similar to the approved layout under reserved matters application (W/08/00896/REM), which was granted permission in 2008 and which is extant. This extant permission is a material consideration when dealing with the current application, especially when considering the layout of development on the four parcels of land.

Concern has been raised by local residents on the location of bins stores for residential flats on land parcel 4. However, the bin location is considered acceptable and would result in no significant harm to the amenity of adjacent residents. The council's environmental protection team and waste management team have no objection to the scheme.

It is therefore considered that the proposed development would not result in additional overlooking or loss of privacy to existing private amenity spaces of local residents and the scheme complies with Core Policy 57 of the Wiltshire core Strategy.

9.4 Impact on the amenity of proposed occupants - Core Policy 57 'Ensuring High Quality Design and Place Shaping' requires that appropriate levels of amenity are achievable within the development itself

The proposed houses would have some amenity space to their rear with gardens separated by brick walls and fences. Where possible parking for each dwelling has been provided in close proximity to its recipient dwelling. Each house would have a bin store and shed located in the rear garden. Residential flats would include a communal area of cycle storage at ground floor level. Bin storage for flats on land parcel 2 would be to the rear adjacent the parking area while bin storage for flats on land parcel 4 would be to the rear of No. 9 Swift Drive. Bin

storage for flats on land parcel 6 would be adjacent the parking area and to the west of the building.

The development would therefore provide sufficient levels of amenity for occupiers of the proposed development and the scheme complies with Core Policy 57 of the Wiltshire Core Strategy.

9.5 Highway issues - One of the core planning principles of the NPPF is to “actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable” (par 17). This core planning principle is reflected within Core Policies 60 ‘Sustainable Transport’ and 61 ‘Transport and New Development’ of the WCS which seek to ensure that new developments are located within sustainable locations and are designed to encourage the use of sustainable transport facilities. Core Policy 61 also seeks to ensure that all new developments are capable of being served by safe access to the highway network.

9.5.1 Access - The application site would be accessed via Sparrow Street which forms a principle street running through the Southfield Park development. Dwellings on land parcels 2 and 4 would be accessed directly off Sparrow Street while dwellings on land parcel 3 would be accessed off a side road off Sparrow Street and land parcel 4 would form a cul-de-sac development. It is not considered that the number of road trips generated by the proposed development for 50 dwellings would have an adverse impact on existing levels of traffic within the development or cause severe harm to highway safety in the area and this level of development was already anticipated in the earlier permission.

9.5.2 Parking - The proposed development would provide 64 off road parking spaces and 11 visitor parking spaces. Although some dwellings would not have the maximum level of parking required by current parking standards, all dwellings proposed would have at least 1 allocated off road parking space. There is an extant permission on site and the council’s highways team has no objection to the scheme. There are existing bus stops to the north of the site, within easy walking distance, along Weavers Drive and Broadcloth Lane East connecting the site with the town centre. The proposed site is therefore located in a sustainable location with access to public transport.

9.5.3 Conclusion - The NPPF (para 32) advises that development proposals should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. In this particular case, the Council’s highway officer is satisfied that the development will not have a severe impact on highway safety.

9.6 Ecology issues - Core Policy 50 ‘Biodiversity & Geodiversity’ of the WCS outlines that all development proposals must demonstrate how they protect features of nature conservation and geological value as part of the design rationale. There is an expectation that such features shall be retained, buffered, and managed favourably in order to maintain their ecological value, connectivity and functionality in the long-term. Furthermore, the policy specifies that all development should seek opportunities to enhance biodiversity. Major development in particular must include measures to deliver biodiversity gains through opportunities to restore, enhance and create valuable habitats, ecological networks and ecosystem services.

The four parcels of land relevant to this application are all of low ecological habitat value, being mainly areas of short amenity type grass, some recently sown with a basic grass seed mix to prevent soil erosion in the interim between different phases of the wider site construction. All are surrounded on either two or three sides by existing new development.

Most of the ground had been recently disturbed, re-graded and seeded or left to re-generate and is of low ecological value.

The council's ecologist provided a series of recommendations that have been incorporated into the design. These included an 8 metre buffer to remain between the proposed development at land parcel 3 and the watercourse boundary hedgerows and trees to the south and a vegetation strip to be maintained adjacent the rail line at land parcel 6. The council's ecologist therefore has no objection to the scheme.

The current scheme involves changes to the design of the buildings previously approved and minor changes in the layout only. These changes are not considered significant in terms of their impact on local fauna and flora and therefore the scheme would have no adverse impact on the integrity of local European sites of ecology value.

9.7 Impact on Heritage Assets (archaeology) - In this case the heritage impact is largely archaeological. The Historic Environment Record shows that the proposed development site has a number of post-medieval field systems surviving as slight earthworks within the site. Archaeological evaluation in advance of the proposed development at Ashton Park to the east of the site recorded evidence for prehistoric activity and two Romano-British farmsteads.

The scheme has received no objections from the council's archaeologist however in recognition of the significance of the heritage asset and scale of impact, a condition is recommended requiring a programme of archaeological investigation to be carried prior to commencement of work on site.

9.8 Drainage Issues - Core Policy 67 'Flood Risk' of the Wiltshire Core Strategy outlines that all new development will include measures to reduce the rate of rainwater run-off and improve rainwater infiltration to soil and ground (sustainable urban drainage) unless site or environmental conditions make these measures unsuitable.

The council's drainage officer has no objection to the scheme. Foul water drainage from the four parcels of land would be via the main infrastructure sewers of the existing development. Surface water disposal will be achieved by appropriate sustainable drainage systems (SuDS) and a condition would be imposed on any approval requiring details of surface water drainage to be submitted.

9.9 Crime Prevention - The objections of the Crime Prevention Officer have been taken into consideration following negotiation and an amended scheme has been submitted. For example, blank gable ends have been removed from the scheme with the introduction of doors and windows into these elevations and ungated alleyways have either been removed or gated.

9.10 Other issues - Other matters have been raised by consultees, namely estate and management fees, residents only use of greenspaces, antisocial behaviour and litter/rubbish issues however these are not material considerations that can be taken into account on this application.

9.11 Section 106 contributions & CIL - Outline application 04/01063/OUT for 'residential dwellings' with all matters reserved except access was granted permission by the SoS in 2006 subject to conditions and s106 legal agreements. The reserved matters application W/08/00896/REM was approved in 2008. This application is a full application for 50 affordable dwellings that seeks revisions to the design and layout of the approved reserved matters scheme.

There are two legal agreements relating to outline permission 04/01063/OUT, one between Wainhomes and Wiltshire County Council and the second between Wainhomes and West Wiltshire District Council, both agreed in 2006. The legal agreements include contributions towards affordable housing (provision of 30%), education, highways, public transport, public open space, and commuted sums towards play areas and a playing pitch. Developer contributions have been received by Wiltshire Council in relation to these legal agreements including those towards education. The proposed 50 affordable dwellings the subject of this application are considered in addition to the the 30% affordable housing secured through the s.106 agreement on the original outline permission.

In terms of education provision the 2006 outline development (04/01063/OUT) was approved subject to legal agreements for the developer to provide an education contribution of £1350 per residential dwelling to secondary education. Given that this is a council application and an existing legal agreement is in place it has been agreed between the council's education team and housing team that the contribution towards education provision would be as per the agreed s106 legal agreement (i.e. £1350 per residential dwelling) and the contribution would be paid from the housing teams budget for the current scheme.

Contributions were also requested by consultees towards the provision of bins. However given that an existing legal agreement is in place on a development that has commenced and is extant and from which monies have been received from the developer towards the agreed contributions, it would not be reasonable to request additional contributions and in addition the council cannot enter into a legal agreement with itself.

10. Conclusion (The Planning Balance) - The parcels of land the subject of this application lie within an established development site where construction has commenced. The site is located in a sustainable location on the edge of Trowbridge where there is adequate public transport. The scheme would provide 50 affordable dwellings the majority of which are 1 or 2 bedrooms in size. In addition the scheme involves no loss of open space because the development occurs on land approved for dwellings under the reserved matters approval.

RECOMMENDATION - Approve, subject to the following conditions:

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

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

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

Amended 3158_L_001 rev D (Proposed site plan)
Amended 3158_L_002 rev C (Landscape plan)
3158_L_003 (Location plan)
3158_L_005 rev B (Topographical survey)
Amended 3158_L_010 rev D (Parcel 2 site plan)
Amended 3158_L_011 rev C (Parcel 3 site plan)
Amended 3158_L_012 rev E (Parcel 4 site plan)
Amended 3158_L_013 rev C (Parcel 6 site plan)
3158_L_051 rev B (House type 1, 2, and 3)
3158_L_052 rev B (House type 4 and 4A plans and elevations)
3158_L_053 rev B (House type 5 and 5A plans and elevations)
3158_L_054 rev B (House type 6 and 6A plans and elevations)
3158_L_055 rev B (House type 6B plans and elevations)
3158_L_056 rev B (House type 8 plans and elevations)
Amended 3158_L_103 rev A (Street elevations 1 of 3)
Amended 3158_L_104 rev A (Street elevations 2 of 3)
Amended 3158_L_105 rev A (Street elevations 3 of 3)

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

3. No dwelling hereby approved shall be commenced until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

4. No development shall occur on a land parcel (amended dwg no. 3158_L_001 rev D), until a scheme of hard and soft landscaping for that land parcel has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include :-

- location and current canopy spread of all existing trees and hedgerows on the land;
- full details of any to be retained, together with measures for their protection in the course of development;
- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- car park layouts;
- other vehicle and pedestrian access and circulation areas;

- all hard and soft surfacing materials;
- refuse and other storage units;
- all tree(s), of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and/or [DELETE as appropriate] the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

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

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

6. No development shall occur on a land parcel (amended dwg no. 3158_L_001 rev D) until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) for that land parcel has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved in accordance with the approved details.

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

7. The roads, including footpaths and turning spaces, shall be constructed so as to ensure that, before it is occupied, each dwelling has been provided with a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

REASON: To ensure that the development is served by an adequate means of access.

8. The development of each land parcel hereby approved (amended dwg no. 3158_L_001 rev D) shall not be first brought into use until that part of the service road which provides access to the land parcel has been constructed in accordance with the approved plans.

REASON: To ensure that the development is served by an adequate means of access.

9. No dwelling hereby approved shall be occupied until the parking area shown on the approved plans for that dwelling has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

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

10. Development on land parcel 6 hereby permitted (amended dwg no. 3158_L_013 rev C) shall not begin until a noise impact assessment and scheme for protecting the proposed dwellings and their curtilages from railway noise on land parcel 6 has been submitted and approved by the Local Planning Authority. Any works which form part of the scheme approved by the Local Planning Authority shall be completed before any dwelling hereby permitted on land parcel 6 is first occupied.

REASON: In order to safeguard the amenities of the area in which the development is located.

11. No development shall commence on a land parcel (amended dwg no. 3158_L_001 rev D) until a scheme for the discharge of surface water from that land parcel, incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. Development on the land parcel shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

12. No development approved by this permission shall commence until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details.

REASON: In the interests of sustainable development and climate change adaptation.

13. No development shall commence on site until a written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis,

publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority. The approved programme of archaeological work is to be carried out in accordance with the approved details. The work should be conducted by a professional archaeological contractor and there will be a financial implication for the applicant.

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

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

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

15. No development shall commence on a land parcel (amended dwg no. 3158_L_001 rev D) (including any works of demolition), until a Construction Method Statement for that land parcel, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) measures to control the emission of dust and dirt during construction;
- e) hours of construction, including deliveries;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

16. Development of the dwellings shall not commence on each land parcel (amended dwg no. 3158_L_001 rev D) until details for the provision of a water supply and fire hydrants necessary to meet the fire-fighting needs of the development (including the installation arrangements and the timing of such an installation) for that land parcel have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full accordance with the agreed details.

REASON: To ensure that adequate measures for fire-fighting can be incorporated into the development, including the construction phase.

INFORMATIVES TO APPLICANT:

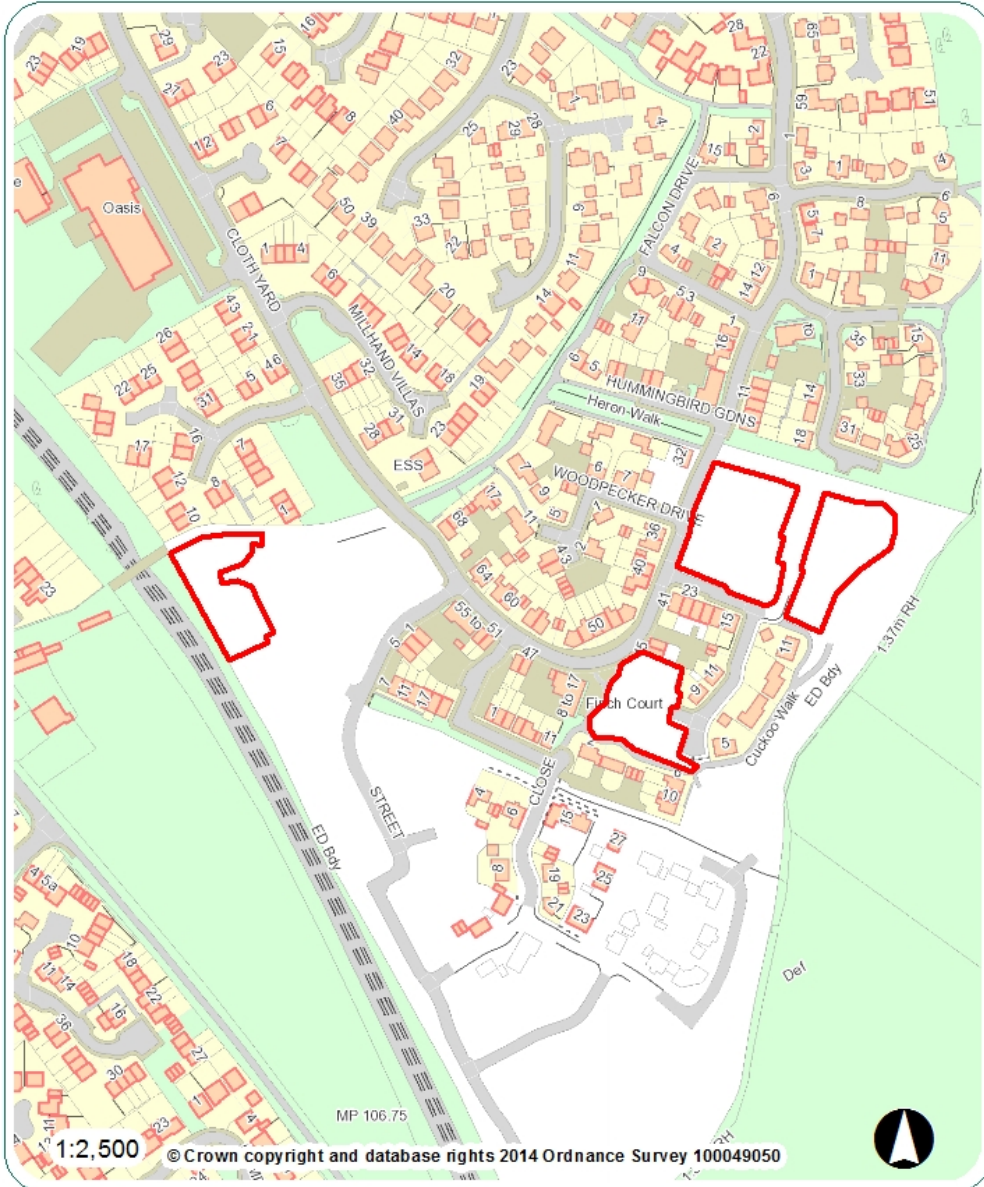
The applicant is advised that the development hereby approved represents chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. A separate Community Infrastructure Levy Liability Notice will be issued by the Local Planning Authority. Should you require further information with regards to CIL please refer to the Council's Website

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

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

No information provided on the proposed storm water system – if it proposed to have new connections to the water course then a separate application will need to be made to the LLFA under the Land Drainage Act to agree flow, location and outfall construction.

16/05154/FUL
Land at Sparrow Street
Southview Park
Trowbridge
Wilts
BA14 7FS



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**Wiltshire Council
Western Area Planning Committee
14th December 2016**

Planning Appeals Received between 10/11/2016 and 02/12/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
15/07724/FUL	Land South of 66 Deverill Road, Warminster Wiltshire, BA12	WARMINSTER	Proposed development of 3 two storey town houses with parking	DEL	Written Representations	Refuse	28/11/2016	No
16/02502/FUL	Old Timbers 14 Gentle Street Horningsham, Wiltshire BA12 7LD	HORNINGSHAM	Revised application for the replacement of modern lean-to extensions and internal alterations (resubmission of 15/04335/FUL)	DEL	Written Representations	Refuse	14/11/2016	No
16/02721/LBC	Old Timbers 14 Gentle Street Horningsham, Wiltshire BA12 7LD	HORNINGSHAM	Revised application for the replacement of modern lean-to extensions and internal alterations	DEL	Written Representations	Refuse	14/11/2016	No
16/06149/OUT	Land at Poplar Farm Dunch Lane Melksham SN12 8DX	MELKSHAM WITHOUT	Outline application for residential development	DEL	Written Representations	Refuse	28/11/2016	No

There are No Planning Appeals Decided between 10/11/2016 and 02/12/2016

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